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10-16-80
Vol. 45 No. 202
Pages 68625-68910

federal register

Thursday
October 16, 1980

Highlights

Briefings on How To Use the Federal Register— For details on briefings in **Washington, D.C.,** see announcement in the **Reader Aids** section at the end of this issue.

68625 **Federal actions in the Lake Tahoe region** Executive order

68640-68644 **Banking** Depository Institutions Deregulation Committee publishes regulations regarding interest on deposits; effective 10-30-80 and 12-31-80 (3 documents)

68633 **Banking** FRS publishes regulations regarding collection of checks and other items and transfer of funds; effective 11-13-80

68890, 68899, 68902 **Grant Programs—Medicine** HHS/PHS/HRA sets forth grants for predoctoral, graduate, and faculty development educational programs in family medicine (Part VI of this issue) (3 documents)

68906 **Budget** OMB reports status of deferrals reported by the President in the first special message for fiscal year 1981 (Part VII of this issue)

68686 **Privacy Act** DOD/NSA proposes policies and procedures for obtaining information from financial institutions; comments by 11-17-80

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Highlights

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

68694 **Motor Vehicle Safety** DOT/NHTSA publishes proposal regarding child restraint systems; comments by 11–17–80

68686 **Tax Shelters** Treasury amends regulations governing practice before IRS and sets standards providing opinions used in promotion of tax shelters; comment period extended to 11–14–80

68661 **Loan Programs** USDA/FmHA proposes to delete regulations for making section 502 rural housing weatherization loans; comments by 12–15–80

68662 **Highway Safety** DOT/FHWA proposes separation of opposing traffic and edge of payment excavation requirements; comments by 12–15–80

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68665 **Continental Shelf** Interior/GS intends to develop requirements for periodic structural inspection of fixed offshore oil and gas platforms; comments by 12–15–80

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Presidential Documents

Title 3—

The President

Executive Order 12247 of October 15, 1980

Federal Actions in the Lake Tahoe Region

By the authority vested in me as President by the Constitution of the United States of America, and in order to ensure that Federal Agency actions protect the extraordinary natural, scenic, recreational, and ecological resources in the Lake Tahoe Region (as defined by Public Law 91–148), an area of national concern it is hereby ordered as follows:

1–1. *Tahoe Federal Coordinating Council.*

1–101. There is established an interagency committee to be known as the Tahoe Federal Coordinating Council.

1–102. The Council shall be composed of representatives from the following Executive agencies (those of the Western Federal Regional Council, Region IX):

(a) Department of Defense.

(b) Department of the Interior.

(c) Department of Agriculture.

(d) Department of Commerce.

(e) Department of Health and Human Services.

(f) Department of Housing and Urban Development.

(g) Department of Transportation.

(h) Environmental Protection Agency.

1–103. The Council shall be chaired by the representative from the Department of Agriculture, which shall be responsible for providing administrative support.

1–104. Other agencies may be invited to designate representatives to participate in the activities of the Council from time to time.

1–2. *Environmental Thresholds.*

1–201. (a) The Council shall develop and issue environmental quality thresholds and carrying capacities for the air, water, and terrestrial components of the area known as the Lake Tahoe Region (Public Law 91–148), which lies within the States of California and Nevada.

(b) These thresholds and carrying capacities shall be developed in consultation with the States of California and Nevada, the local governments in and around the area, and the public.

(c) These thresholds and carrying capacities shall be based on a refinement and a periodic updating of the Western Federal Regional Council's "Lake Tahoe Environment Assessment" issued during February, 1980, and on other appropriate information.

1–202. The Council shall assist the State and local governments of California and Nevada in adopting and utilizing these thresholds and carrying capacities.

1–203. These thresholds and carrying capacities shall, to the extent permitted by law, be utilized by Executive agencies and the Council in determining the impact of Federal actions on the environment of the Region.

1–3. *Environmental Actions.*

1–301. An Executive agency shall, prior to authorizing any undertaking within the Region, whether by taking direct action or approving a license, permit, or financial assistance, determine if that undertaking will have a significant or potentially significant adverse effect on the environment of the Region. This determination shall be made in writing. It shall take into account the thresholds and carrying capacities developed by the Council.

1–302. The Executive agency shall transmit to the Council a copy of its determination as to the environmental impact on the Region.

1–303. (a) The Council will promptly review the agency determinations as to the environmental effect on the Region. The Council shall ensure that there is adequate opportunity for public comment on the agency determination.

(b) If the Council concludes that the action to be taken would be compatible with the environment of the Region, the Chairman of the Council shall promptly so notify the agency.

(c) If the Council concludes that the action to be taken would have a significant adverse impact on the resources and ecological values of the Region, the Chairman of the Council shall recommend to the responsible Executive agency that the action not be undertaken or that it be modified to eliminate the adverse impact.

1–304. If the agency disagrees with the recommendations of the Council, the Chairman of the Council shall promptly refer the matter to the Council on Environmental Quality for its recommendation as to the prompt resolution of any disagreement.

1–305. Until the thresholds and carrying capacities are issued, Executive agencies shall, to the extent permitted by law, not take any direct action nor approve any license, permit, or financial assistance in the Region which would significantly (a) stimulate additional development in environmentally sensitive areas as defined by land use plans or zoning ordinances of the Region, or (b) promote automobile traffic into the Region.

1–306. Until the thresholds and carrying capacities are issued, Executive agencies shall review agency actions in the Region which may have an effect on the Region's overall waste treatment planning. This review shall determine if such actions should be deferred until waste water treatment plans, as provided by Section 208 of the Federal Water Pollution Control Act (33 U.S.C. 1288), are adopted by the States of California and Nevada and approved by the Environmental Protection Agency.

1–4. *General Provisions.*

1–401. The Chairman of the Council on Environmental Quality and the Secretary of Agriculture shall advise the President from time to time on the effectiveness of this Order. They shall recommend other administrative action which may be taken to improve the coordination of agency actions and decisions whenever such coordination would protect and enhance the Region's natural and ecological values.

1–402. Nothing in this Order shall be construed to limit, delay, or prohibit any agency action which is essential for the protection of public health or safety, for national security, or for the maintenance or rehabilitation of environmental quality within the Region.

Jimmy Carter

THE WHITE HOUSE,
October 15, 1980.

[FR Doc. 80–32466
Filed 10–15–80; 10:43 am]
Billing code 3195–01–M

The President's statement of October 15, 1980, on signing Executive Order 12247 is printed in the Weekly Compilation of Presidential Documents (Vol. 16 No. 42).

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

COUNCIL ON WAGE AND PRICE STABILITY

6 CFR Part 705

Anti-Inflation Price Standards; Questions and Answers on Gross-Margin Standard for Utilities

AGENCY: Council on Wage and Price Stability.

ACTION: Clarifying questions and answers on gross-margin standard for gas, electric, and water utilities.

SUMMARY: The Council is changing Q & A II–C–6 to make clear that savings in the cost of purchased power may be included in the adjustment of the gross margin. In addition, the Council is adding two new Questions and Answers (Q & A's) to clarify the method of calculating the amount of revenues to be excluded from the gross margin under Q & A II–C–5 and to emphasize that the addition of that Q & A does not obviate the need for state Public Utility Commissions (PUCs) to determine, before allowing Construction Work in Progress (CWIP) in the utility's rate base, that there is a need for the additional plant.

DATE: Effective on October 16, 1980.

FOR FURTHER INFORMATION CONTACT: Arthur J. Corazzini, Office of Price Monitoring, (202) 456–7730 or Edward Finklea, Office of General Counsel, (202) 456–6286.

SUPPLEMENTARY INFORMATION: On May 29, 1980, the Council on Wage and Price Stability (Council) revised and added to its previously published Questions and Answers (Q & A's) about the gross-margin standard for Gas, Electric, and Water Utilities (Q & A II–C–5 through II–C–7). As amended Q & A II–C–5 provides that, subject to PUC approval, a portion of the revenues attributable to the incorporation in rate base of additional CWIP and/or new facilities completed and transferred to plant-in-service need not be included in program-year gross margins. Q & A II–C–6 provides that fuel cost savings made possible by the introduction of new plant may, within limits, be deducted from the revenues otherwise included in the utility's gross margin. Q & A II–C–7 provides that the costs and revenues associated with incidental sales of steam by electric utilities may be included within the electric operations for purposes of computing gross margins.

The Council received comments on the first two changes from various consumer groups, a state PUC, and a utility company representative.

The consumer groups oppose the change in Q & A II–C–5 primarily because they object to the practice of allowing CWIP in electric utilities' rate bases. These commentators misunderstand the reason for the Council's change. We were not attempting to encourage (or discourage) the inclusion of CWIP in rate base; rather we sought to defer to the judgment of the PUCs on the issue. Before the change, utilities with CWIP in the rate base had to apply for an exception before a PUC would subtract CWIP-derived revenues from gross margin when calculating whether a proposed rate increase was in compliance with the standard. By making the change, the Council is simply saying that *if* a PUC permits CWIP in rate base, the utility need not seek an exception. To emphasize the very limited nature of the change, we are now adding Q & A II–C–8, which states that excluding CWIP-derived revenues from the Council's gross margin standard does not obviate the need for state PUCs to determine, before allowing CWIP in the utility's rate base, whether the utility's construction program is prudent and otherwise meets the PUCs' applicable criteria.

In response to comments about Q & A II–C–6, the Council is revising it to make clear that savings to consumers attributable to reductions in the cost of *purchased power*, as well as in fuel cost, may be the basis for a downward adjustment in the utility's gross margin.

Finally, several commentators requested clarification of how to calculate the amount of CWIP-derived revenues that should be excluded from the gross margin: specifically (1) whether a utility should use a pre-tax or a post-tax rate of return as the multiplier; and (2) whether the amount of the exclusion should be reduced by any tax savings realized from the construction program or new facilities. The Council is issuing Q & A II–C–9 to clarify that the rate of return to be used as the multiplier is a pre-tax rate, and that the PUC should reduce the amount of exclusion by any federal, state, or local tax savings the utility realizes from the construction program or additions or transfers of new facilities to plant-in-service.

(Council on Wage and Price Stability Act, Pub. L. 93–387 (August 24, 1974), as amended by Pub. L. 94–78 (August 9, 1975) and Pub. L. 95–121 (October 5, 1977), 12 U.S.C. 1904 note; as last amended by Pub. L. 96–10 (May 10, 1979); E.O. 12092 (November 1, 1978); E.O. 12161 (September 28, 1979))

Issued in Washington, D.C., October 10, 1980.

R. Robert Russell,
Director, Council on Wage and Price Stability.

Accordingly, the Council revises Q & A II–C–6 (45 FR 36048) and adopts Q & As II–C–8 and II–C–9 as follows:

Q6. Under the gross-margin standard, how should utilities treat net reductions in the cost of purchased power and fuel that result from introducing more fuel-efficient plant since the base year?

A6. The realized program-year margin may be adjusted downward by the amount of estimated savings in fuel or purchased power in the program year, up to the amount by which those savings exceed the additional costs of the new plant recognized in Q & A II–C–5.

Q8. Does the exclusion of CWIP-derived revenues from the Council's gross-margin standard obviate the need for the state PUCs to determine in the first instance the need for the proposed plant?

A8. No. The state PUCs should follow their usual procedures and applicable laws to determine whether the utility's construction work is appropriate for inclusion in rate base.

Q9. In determining the amount of revenue to be excluded from the gross margin under Q & A II–C–5, is the rate of return used as the multiplier in calculating the excluded amount a pre-tax or a post-tax rate of return, and should that amount be reduced by any tax savings the utility realizes from the

construction program and/or the addition or transfer of new facilities to plant-in-service?

A9. The rate of return to be used as the multiplier is a pre-tax rate, and the amount derived from that calculation should be reduced by any federal, state, or local tax savings the utility realizes as a result of the construction program and/or the new facilities.

[FR Doc. 80-32206 Filed 10-15-80; 8:45 am]
BILLING CODE 3175-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

Almonds Grown in California; Administrative Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action changes the formula for computing "adjusted kernel weight" of almonds received by handlers from growers. The adjusted kernel weight computed under the current formula this past crop year has, in some cases, exceeded the actual weight of almonds received from growers and available for shipment after processing. This action also makes a slight change in the quality control requirements. Both changes were recommended by the Almond Board of California. The Board works with USDA in administering the Federal marketing order for California almonds.

EFFECTIVE DATE: October 16, 1980.

FOR FURTHER INFORMATION CONTACT: J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447-5053. The Final Impact Statement describing the options considered in developing this action and the impact of implementing each option is available on request from J. S. Miller.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "non-significant". The proposal on this action was published in the September 12, 1980 issue of the **Federal Register** (45 FR 60447) and invited comments until September 30, 1980. None was received.

It is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553), in that: (1) Handlers are receiving, processing, and marketing 1980 crop almonds in volume and must know promptly what formula will be used for computing adjusted kernel weight and what inedible disposition obligation tolerance will be effective for the 1980-81 crop year so they can plan their processing and marketing operations; (2) handlers are aware of this action and need no additional time to comply; and (3) no useful purpose would be served by delaying the effective date of this action.

The Subpart—Administrative Rules and Regulations (7 CFR 981.401-981.474), is issued under the marketing agreement and Order No. 981, both as amended (7 CFR Part 981), regulating the handling of almonds grown in California. The marketing agreement and order are hereinafter referred to collectively as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

Effective July 1, 1979, § 981.401 was added to that subpart to standardize the computation of adjusted kernel weight. "Adjusted kernel weight" is the weight of almonds handlers receive for their own accounts from growers and available for shipment after processing. However, the current method of computation does not include a factor for weight loss during processing. The absence of this factor has caused the adjusted kernel weight to exceed actual supplies and tended to inflate industry statistics. To correct this situation, the formula set forth in § 981.401 is revised to include a one percent processing loss adjustment in computing the adjusted kernel weight for deliveries with less than 95 percent kernels. Since only a negligible weight loss occurs during processing deliveries from growers with 95 percent or more kernels, a processing loss adjustment is not needed for those deliveries.

With regards to quality control, § 981.42 of the order provides for each handler to cause to be determined through the inspection agency, and at the handler's expense, the percent of inedible kernels in each variety of almonds in excess of two percent of the kernel weight received by the handler, and report this determination to the Board. Section 981.42 also authorizes the Board, with the approval of the Secretary, to change that percentage for any crop year.

Pursuant to § 981.42, § 981.442(a) currently requires the weight of inedible kernels in excess of two percent of the kernel weight received by handlers to be reported to the Board. The almond industry expects a fairly high quality 1980 crop and believes that a tolerance of one and one-half percent this year would best accomplish its objectives of improving the quality of almonds entering marketing channels. Therefore, § 981.442(a)(4) is revised by changing the tolerance for calculating inedible disposition obligations from two percent to one and one-half percent.

After consideration of all relevant matter presented, including that in the notice, the information and recommendation submitted by the Board, and other available information, it is hereby further found that the changes in Subpart—Administrative Rules and Regulations (7 CFR 981.401-981.474), as hereinafter set forth, will tend to effectuate the declared policy of the act.

Therefore, Subpart—Administrative Rules and Regulations (7 CFR 981.401-981.474) is changed as follows:

1. Section 981.401 is revised to read as follows:

§ 981.401 Adjusted kernel weight.

(a) *Definition.* Except for Peerless bleaching stock, "adjusted kernel weight" shall mean the actual gross weight of any lot of almonds: Less weight of containers; less moisture of kernels in excess of five percent; less shells, if applicable; less processing loss of one percent for deliveries with less than 95 percent kernels; less trash or other foreign material. The adjusted kernel weight shall be determined by sampling certified by the inspection agency. The kernel weight of Peerless bleaching stock shall be 35 percent of the clean bleachable weight.

(b) *Computation.* Except for Peerless bleaching stock, the computation of adjusted kernel weight shall be in the manner shown in the following examples. The examples are based on the analysis of a 1,000 gram sample taken from a lot of almonds weighing 10,000 pounds with less than 95 percent kernels, and a 1,000 gram sample taken from a lot of almonds weighing 10,000 pounds with 95 percent or more kernels. The first computation example is for the lot with less than 95 percent kernels containing the following: Edible kernels, 530 grams; inedible kernels, 120 grams; foreign material, 350 grams, and moisture content of kernels, seven percent. Excess moisture is two percent. The second computation example is for the lot with 95 percent or more kernels containing the following: Edible kernels, 840 grams; inedible kernels, 120 grams; foreign material, 40 grams; and moisture content of kernels, seven percent. Excess moisture is two percent. The example computations are as follows:

	Computation No. 1		Computation No. 2	
	Deliveries with less than 95 percent kernels		Deliveries with 95 percent or more kernels	
	Percent of sample	Weight (pounds)	Percent of sample	Weight (pounds)
1. Actual gross weight of delivery		10,000		10,000
2. Percent of edible kernel weight	53.0		84.0	
3. Less weight loss in processing [1]	1.00		0	
4. Less excess moisture of edible kernels (excess moisture × line 2)	1.06		1.68	
5. Net percent shell out (line 2 − lines 3 and 4)	50.94		82.32	
6. Net edible kernels (line 5 × line 1)		5,094		8,232
7. Percent of inedible kernels (from sample)	12.0		12.0	
8. Less excess moisture of inedible kernels (excess moisture from sample × line 7)	.24		.24	
9. Net percent inedible kernels (line 7 − line 8)	11.76		11.76	
10. Total inedible kernels (line 9 × line 1)		1,176		1,176
11. Adjusted kernel weight (line 6 + line 10)		6,270		9,408

[1] Only applies to deliveries with less than 95 percent kernels.

§ 981.442 [Amended]

2. Section 981.442(a)(4) is amended by changing "two percent" to "one and one-half percent".

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: October 10, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 80-32248 Filed 10-15-80; 8:45 am]
BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 82

Exotic Newcastle Disease; and Psittacosis or Ornithosis in Poultry; Area Released From Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of these amendments is to release a portion of Greene County in Arkansas, a portion of Dade County in Florida, a portion of Harris County in Texas, a portion of Barberton County in Ohio, a portion of Cumberland and Penobscot Counties in Maine, and portions of Chittenden County in Vermont from the areas quarantined because of exotic Newcastle disease. Surveillance activity indicates that exotic Newcastle disease no longer exists in the areas quarantined. No areas in the States of Arkansas, Maine, and Vermont remain under quarantine.

EFFECTIVE DATE: October 10, 1980.

FOR FURTHER INFORMATION CONTACT: C. G. Mason, Chief, National Emergency Field Operations, Emergency Programs, Veterinary Services, USDA, 6505 Belcrest Road, Federal Building, Room 751, Hyattsville, MD 20782, 301-436-8073.

SUPPLEMENTARY INFORMATION: These amendments exclude a portion of Greene County in Arkansas, a portion of Dade County in Florida, a portion of Harris County in Texas, a portion of Barberton County in Ohio, a portion of Cumberland and Penobscot Counties in Maine, and portions of Chittenden County in Vermont from the areas quarantined because of exotic Newcastle disease under the regulations in 9 CFR Part 82, as amended. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR Part 82, as amended, will not apply to the excluded areas.

Accordingly, Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respects.

§ 82.3 [Amended]

1. In § 82.3(a)(1) relating to the State of Florida, paragraph (i) relating to the premises of Pet Farm, Inc. (Dr. Bernard Levine), 7000 N.W. 65th Avenue, Miami, Dade County is deleted.

2. In § 82.3(a)(3) relating to the State of Texas, paragraph (i) relating to the premises of Pet Shop and Bird Clinic, 3118 Smith, Houston, Harris County is deleted.

3. In § 82.3(a)(6) relating to the State of Ohio, paragraph (ii) relating to the premises of Petland, 3200 Greenwich Road, Norton, Barberton County is deleted.

4. In § 82.3(a)(9) relating to the State of Maine, paragraph (i) relating to the premises of Pet Menagerie, 317 Main Mall, Portland, Cumberland County, and paragraph (ii) relating to the premises of Pet Menagerie, Bangor Mall, Bangor, Penobscot County are deleted.

5. In § 82.3(a)(10) relating to the State of Vermont, paragraph (i) relating to the premises of Pet Menagerie, University Mall, Burlington, Chittendon County, and paragraph (ii) relating to the premises of Pet Menagerie, Burlington Square, Burlington, Chittenden County are deleted.

6. In § 82.3(a)(14) relating to the State of Arkansas, paragraph (i) relating to the premises of Folkes Exotic Birds, Grove Heights, Lot #5, Paragould, Greene County is deleted.

(Secs. 4-7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; secs. 1-4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; (21 U.S.C. 111-113, 115, 117, 120, 123-126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141)

These amendments relieve certain restrictions no longer deemed necessary to prevent the spread of exotic Newcastle disease, and must be made effective immediately to be of maximum benefit to affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register**.

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by J. C. Jefferies, Acting Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without opportunity for prior public comment or

preparation of an impact analysis statement at this time.

This final rule implements the regulations in Part 82. It will be scheduled for review in conjunction with the periodic review of the regulations in that Part required under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 10th day of October 1980.

Norvan L. Meyer,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 80-32250 Filed 10-15-80; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 82

Exotic Newcastle Disease; and Psittacosis or Ornithosis in Poultry; Areas Quarantined and Released

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of these amendments is to quarantine a portion of Broward County in Florida, a portion of San Francisco County in California, a portion of Harris County in Texas, and a portion of Denver County in Colorado because of the existence of exotic Newcastle disease and to release portions of New Castle County and a portion of Kent County in Delaware from the areas quarantined because of exotic Newcastle disease. Exotic Newcastle disease was confirmed in such portion of Broward County, Florida, on October 4, 1980, San Francisco County, California, on October 6, 1980, Harris County, Texas, on October 4, 1980, and Denver County, Colorado, on October 4, 1980. Therefore, in order to prevent the dissemination of exotic Newcastle disease it is necessary to quarantine the affected areas. Further surveillance activity indicates that exotic Newcastle disease no longer exists in portions of New Castle County and a portion of Kent County in Delaware. No areas in the State of Delaware remain under quarantine.

EFFECTIVE DATE: October 9, 1980.

FOR FURTHER INFORMATION CONTACT: C. G. Mason, Chief, National Emergency Field Operations, Emergency Programs, Veterinary Services, USDA, 6505 Belcrest Road, Federal Building, Room 751, Hyattsville, MD 20782, 301-436-8073.

SUPPLEMENTARY INFORMATION: These amendments quarantine a portion of Broward County in Florida, a portion of San Francisco County in California, a portion of Harris County in Texas, and a portion of Denver County in Colorado because of the existence of exotic Newcastle disease. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement and their carcasses, and parts thereof, and certain other articles, from quarantined areas, as contained in 9 CFR Part 82, as amended, will apply to the quarantined area.

These amendments also release portions of New Castle County and a portion of Kent County in Delaware from the areas quarantined because of exotic Newcastle disease. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR Part 82, as amended, will no longer apply to the released areas.

Accordingly, Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respects:

1. In § 82.3(a)(1)(ii), (a)(2)(i), (a)(3)(v), (a)(20)(i), are added to read:

§ 82.3 Areas quarantined.

(a) * * *

* * * * * *

(1) *Florida.* * * *

(ii) The premises of Pet Carousell, Inc., 7573 W. Oakland Park Blvd., Ft. Lauderdale, Broward County.

(2) *California.* (i) The premises of Alex Zambory, 1760 Pacific, Apt. #9, San Francisco, San Francisco County.

* * * * * *

(3) *Texas.* * * *

(v) The premises of Exotex (David Allen), 5720 Bingle Road, Houston, Harris County.

* * * * * *

(20) *Colorado.* (i) The premises of Pampered Pets, 1322 South Cherokee, Denver, Denver County.

2. In § 82.3(a)(11), relating to the State of Delaware, paragraphs (i) and (iii) relating to New Castle County and paragraph (ii) relating to Kent County, are deleted.

(Secs. 4-7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; secs. 1-4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132 (21 U.S.C. 111-113, 115, 117, 120, 123-126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141)

These amendments impose certain restrictions necessary to prevent the interstate spread of exotic Newcastle disease, a communicable disease of poultry, and must be made effective immediately to accomplish their purpose in the public interest. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

The amendment releasing the quarantined area relieves certain restrictions no longer deemed necessary to prevent the spread of exotic Newcastle disease. It should be made effective immediately in order to permit affected persons to move poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles interstate from such area without unnecessary restrictions. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the Federal Register.

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by J. C. Jefferies, Acting Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without opportunity for prior public comment or preparation of an impact analysis statement at this time.

This final rule implements the regulations in Part 82. It will be scheduled for review in conjunction with the periodic review of the regulations in that Part required under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 9th day of October 1980.

Pierre A. Chaloux,

Deputy Administrator, Veterinary Services.

[FR Doc. 80-32201 Filed 10-15-80; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 82

Exotic Newcastle Disease; and Psittacosis or Ornithosis in Poultry; Area Released From Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to release a portion of Midland County in Michigan from the areas quarantined because of exotic Newcastle disease. Surveillance activity indicates that exotic Newcastle disease no longer exists in the area quarantined.

EFFECTIVE DATE: October 9, 1980.

FOR FURTHER INFORMATION CONTACT: C. G. Mason, Chief, National Emergency Field Operations, Emergency Programs, Veterinary Services, USDA, 6505 Belcrest Road, Federal Building, Room 751, Hyattsville, MD 20782, 301-436-8073.

SUPPLEMENTARY INFORMATION: This amendment excludes a portion of Midland County from the areas quarantined because of exotic Newcastle disease under the regulations in 9 CFR Part 82, as amended. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR Part 82, as amended, will not apply to the excluded area.

Accordingly, Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respect.

§ 82.3 [Amended]

In § 82.3(a)(12) relating to the State of Michigan, paragraph (i) relating to the premises of Sheryl D. Bullington, 9365 North Orr Road, Freeland, Midland County, is deleted.

(Secs. 4-7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; secs. 1-4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; (21 U.S.C. 111-113, 115, 117, 120, 123-126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141)

This amendment relieves certain restrictions no longer deemed necessary to prevent the spread of exotic Newcastle disease, and must be made effective immediately to be of maximum benefit to affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the Federal Register.

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by J. C. Jefferies, Acting Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without opportunity for prior public comment or preparation of an impact analysis statement at this time.

This final rule implements the regulations in Part 82. It will be scheduled for review in conjunction with the periodic review of the regulations in that Part required under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 9th day of October 1980.

Pierre A. Chaloux,

Deputy Administrator, Veterinary Services.

[FR Doc. 80-32200 Filed 10-15-80; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL RESERVE SYSTEM

12 CFR Part 210

[Docket No. R-0266]

Collection of Checks and Other Items and Transfer of Funds (Regulation J)

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting in final form revisions that clarify and simplify Subparts A and B of Regulation J. No substantive changes are intended to occur in these regulatory provisions.

EFFECTIVE DATE: November 13, 1980.

FOR FURTHER INFORMATION CONTACT: Lee S. Adams, Senior Attorney (202/452-3623), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: As part of its Regulatory Improvement Project, the Board proposed on December 13, 1979 (44 FR 75174) revisions intended to simplify and clarify the regulatory framework for the collection of checks and other items and for wire transfers of funds. These regulatory provisions are found in Subparts A and B of Regulation J. The Board's proposal contained no substantive changes in the regulation, and the Board noted that care had been taken not to alter legal concepts through stylistic change. The Board believed this to be important since much of the terminology of the regulation is common and legally recognized through its consistency with the Uniform Commercial Code.

The comments received on the proposed revisions were supportive of the Board's effort to simplify and clarify Regulation J without making substantive changes to it. Nearly all of the commentors stated they believed the proposal had achieved its objective. Further, the commentors noted that the many bankers and others who use this regulation would have a better understanding of it and would be better able to apply it as a result of the changes.

The Board has made only minor changes in the regulation from its earlier proposal. Unless otherwise noted, the changes that are discussed compare the existing provisions of Regulation J with those contained in the revised version being published in this notice. One new provision that does differ from the December 13 proposal is in § 210.2(j) of Subpart A, where the term "sender" has been revised to include a branch or agency of a foreign bank maintaining reserves in accordance with the provisions of Regulation D (12 CFR 204). Branches and agencies of foreign banks that begin to maintain reserves on November 13 will at that time be eligible to send checks and wire transfers of funds through Federal Reserve Banks under authority granted in section 7 of the International Banking Act of 1978. A similar change in Subpart B was not required, however, because § 210.26(g) already defines a "transferor" as including an institution maintaining or using an account at a Reserve Bank and authorized by the Reserve Bank to initiate wire transfers of funds. The terms under which branches and agencies of foreign banks will be authorized to initiate wire transfers of funds will be detailed in a separate release. The Board anticipates making additional definitional modifications in the near future as needed to implement provisions of the Monetary Control Act of 1980 (Title I of Public Law 96-221) which entitles all depository institutions to access to Federal Reserve check collection and wire transfer services as these services are priced. The Board also notes that the revised regulation adopted today does not include the proposed Subpart C, which was published for comment on November 26, 1979 (44 FR 67995), to govern the handling by Reserve Banks of automated clearing house items.

The following is a brief discussion of certain of the changes made in Subparts A and B that are embodied in the regulation published today.

Subpart A

Section 210.2 ("Definitions"). The definitions have been placed in alphabetical order for easier reference. The definition of "actually and finally collected funds" (new § 210.2(a)) comes from former § 210.1(b). The definition of "check" (new § 210.2(e)) combines the former definitions of "check" and "draft" (former § 210.2(b) and (c)), with the reference to "bill of exchange" deleted since all states have adopted Articles 3 and 4 of the Uniform Commercial Code. The former definition of "nonbank depositor" (former § 210.2(m)) has been deleted and its substance incorporated in § 210.3(d). Throughout the subpart, the word "forwards" has been omitted, since the term "sends" is adequate, and the words "remit" and "remittance" have been omitted since the terms "pay" and "payment" are adequate.

Section 210.3(a) ("General") includes the authorization for Reserve Banks to issue circulars, from § 210.16 of the former regulation. The words "or other matters deemed appropriate by the Reserve Banks" have been added to answer the question raised in *Colorado National Bank* v. *First National Bank and Trust Co.*, 459 F. Supp. 1366 (W.D. Mich. 1978), whether Reserve Bank circular provisions dealing with "wire notice of nonpayment" are authorized by Regulation J. The Federal Reserve Banks will issue operating circulars revised for the purpose of clarification and simplification on the effective date of the regulation. The two existing circulars governing cash items ("Collection of Cash Items" and "Instructions to Collecting Banks and Paying Banks") have been consolidated into one circular, and the circular governing noncash items ("Collection of Noncash Items") has been shortened. Section 210.3(b) ("Binding effect") has been modified to clarify that the subpart and the Reserve Banks' circulars are binding on all parties. Section 210.3(c) ("Government Issues") is derived from former § 210.1(b); § 210.3(d) ("Government Senders") is from former § 210.2(m).

Section 210.5 ("Sender's Agreement; Recovery by Reserve Bank"). The sender's agreement that the subpart and the Reserve Banks' circulars will govern the relationships between the sender and the Reserve Banks (last portion of former § 210.5(a)) is deleted, since § 210.3(b) provides that the subpart and the circulars are binding.

Section 210.12(a) ("Recovery of payment"). The last two sentences in the proposal have been rewritten to eliminate any implication that the time limits cannot be extended by circumstances beyond a party's control under § 210.14.

Subpart B

Section 210.26 ("Definitions"). The definitions have been placed in alphabetical order for easier reference. The definition of "item" (now § 210.26(c)) derives from the former definitions of "item" and "instrument for the payment of money" (former § 210.51(a) and (c)). The definition of "transfer request" or "request" (§ 210.26(e)) is new and incorporates the sense of former § 210.54. A transfer request is not an "item" because it is not a writing. References to member banks, Reserve Banks, international organizations, and so forth, have been deleted from the definitions of "transferor" and "transferee" in former § 210.52(d) and (e) because a transferor or transferee can be any institution maintaining or using an account at a Reserve Bank (a transferor must be authorized to transfer funds and may have conditions imposed on the privilege). The definition of "transferor's account" and "transferee's account" in § 210.26(h) is new; it clarifies that an account can be a transferor's or transferee's account even if it is in the name of another institution, so long as the transferor or transferee has access to it. The former definitions of "international organization" and "foreign correspondent" have been deleted, since the terms are never used in the regulation.

Section 210.27 ("General Provisions") has been placed after the definitions, to parallel Subpart A. Section 210.27(a) ("General") incorporates former § 210.57(c), former § 210.65, and part of former § 210.51(a). As under Subpart A, the Reserve Banks' operating circulars under Subpart B will be issued in clarified and simplified form on the effective date of the regulation. Section § 210.27(b) ("Binding effect") has been rewritten to clarify that the subpart and the Reserve Banks' circulars are binding on all parties.

Section 210.28(b) ("Transfer requests") derives from former § 210.54 and incorporates the term now defined in § 210.26(e).

Section 210.29 derives from former § 210.55. The transferor's agreement in former § 210.55(3) has been deleted, since Subpart B and the Reserve Banks' circulars are binding on transferors by virtue of § 210.27(b).

Section 210.30(b) has been amended to refer to a transferee that receives an advice of credit of a transfer item designating a beneficiary.

Section 210.31 ("Sending Transfer Items and Requests") derives from former § 210.57(a) and (b). (Former § 210.57(c) is covered by new § 210.27(a).) Section 210.31(a) has been recast from the version proposed for comment, without substantive change.

Section 210.33 ("Time Limits") derives from former § 210.59, except that § 210.33(d) ("As of adjustments") derives from former § 210.64(b). The good faith/ordinary care language in former § 210.64(b) has been eliminated, since the paragraph applies even when a Reserve Bank has been negligent.

Section 210.34 ("Advices of Credit and Debit") derives from former § 210.60, with various details eliminated as best left to the Reserve Banks' circulars.

Section 210.38(b) ("Damages") has been rewritten to incorporate the provision in § 210.38(a) ("Limitations on liability") that a Reserve Bank can be liable only to its immediate transferor.

Effective November 13, 1980, pursuant to the boards' authority under the Federal Reserve Act, section 13 (12 U.S.C. 342), section 16 (12 U.S.C. 248(o), 360), section 11(i)(12 U.S.C. 248(i)), and other laws, Regulation J (12 CFR PART 210) is revised to read as follows:

Regulation J

PART 210—COLLECTION OF CHECKS AND OTHER ITEMS AND TRANSFERS OF FUNDS

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Authority: Sec. 13, (12 U.S.C. 342); sec. 11(i), 12 U.S.C. 248(i); sec. 16, (12 U.S.C. 248(o) and 360); and sec. 19, (12 U.S.C. 464), et seq.

Subpart A—Collection of Checks and Other Items

§ 210.1 Authority, purpose, and scope.

The Board of Governors of the Federal Reserve System ("Board") has issued this subpart pursuant to the Federal Reserve Act, section 13 (12 U.S.C. 342), section 16 (12 U.S.C. 248(o), 360), section 11(i) (12 U.S.C. 248(i)), and other laws. This subpart governs the collection of checks and other cash and noncash items by Federal Reserve Banks ("Reserve Banks"). Its purpose is to provide rules for collecting items and settling balances.

§ 210.2 Definitions.

As used in this subpart, unless the context otherwise requires:

(a) "Actually and finally collected funds" means cash or any other form of payment that is, or has become, final and irrevocable.

(b) "Bank draft" means a check drawn by one bank on another bank.

(c) "Banking day" means a day during which a bank is open to the public for carrying on substantially all its banking functions.

(d) "Cash item" means:

(1) A check other than one classified as a noncash item under this section; or

(2) Any other item payable on demand and collectible at par that the Reserve Bank of the District in which the item is payable is willing to accept as a cash item.

(e) "Check" means a draft, as defined in the Uniform Commercial Code, that is drawn on a bank and payable on demand.

(f) "Item" means an instrument for the payment of money, whether negotiable or not, that is:

(1) Payable in a Federal Reserve District [1] ("District");

(2) Sent by a sender to a Reserve Bank for handling under this subpart; and

(3) Collectible in funds acceptable to the Reserve Bank of the District in which the instrument is payable.

Unless otherwise indicated, "item" includes both cash and noncash items. "Item" does not include a check that cannot be collected at par,[2] or an "item" as defined in § 210.26 that is handled under subpart B.

(g) "Nonbank payor" means a payor of an item, other than a bank.

(h) "Noncash item" means an item that a receiving Reserve Bank classifies in its operating circulars as requiring special handling. The term also means an item normally received as a cash item if a Reserve Bank decides that special conditions require that it handle the item as a noncash item.

(i) "Paying bank" means:

(1) The bank by which an item is payable, unless the item is payable or collectible through another bank and is sent to the other bank for payment or collection; or

(2) The bank through which an item is payable or collectible and to which it is sent for payment or collection.

(j) "Sender" means any of the following that sends an item to a Reserve Bank: a member bank, a nonmember clearing bank, another Reserve Bank, an international organization, a foreign correspondent, or a branch or agency of a foreign bank maintaining reserves under section 7 of the International Banking Act of 1978.

(1) "Nonmember clearing bank" means:

(i) A bank that is not a member of the Federal Reserve System, but maintains with a Reserve Bank the balance referred to in the first paragraph of section 13 of the Federal Reserve Act; or

(ii) A corporation that maintains an account with a Reserve Bank in conformity with § 211.4 of this chapter (Regulation K).

(2) "International organization" means an international organization for which a Reserve Bank is empowered to act as depositary or fiscal agent and maintains an account.

(3) "Foreign correspondent" means any of the following for which a Reserve Bank maintains an account: a foreign bank or banker, a foreign state as defined in section 25(b) of the Federal Reserve Act (12 U.S.C. 632), or a foreign correspondent or agency referred to in section 14(e) of that Act (12 U.S.C. 358).

(k) "State" means a State of the United States, the District of Columbia, Puerto Rico, or a territory, possession, or dependency of the United States.

[1] For purposes of this subpart, the Virgin Islands and Puerto Rico are deemed to be in the Second District, and Guam and American Samoa in the Twelfth District.

[2] The Board publishes a "Memorandum on Exchange Charges," listing the banks that would impose exchange charges on cash items and other checks forwarded by Reserve Banks and therefore would not pay at par.

§ 210.3 General provisions.

(a) *General.* Each Reserve Bank shall receive and handle items in accordance with this subpart, and shall issue operating circulars governing the details of its handling of items and other matters deemed appropriate by the Reserve Bank. The circulars may, among other things, classify cash items and noncash items, require separate sorts and letters, and provide different closing times for the receipt of different classes or types of items.

(b) *Binding effect.* This subpart and the operating circulars of the Reserve Banks are binding on the sender of an item, on each collecting bank, paying bank, and nonbank payor, to which a Reserve Bank (or a subsequent collecting bank) presents or sends an item, and on other parties interested in the item, including the owner.

(c) *Government Items.* As depositaries and fiscal agents of the United States, Reserve Banks handle certain items payable by the United States or certain Federal agencies as cash or noncash items. To the extent provided by regulations issued by, and arrangements made with, the United States Treasury Department and other Government departments and agencies, the handling of such items is governed by this subpart. The Reserve Banks shall include in their operating circulars such information regarding these regulations and arrangements as the Reserve Banks deem appropriate.

(d) *Government Senders.* Except as otherwise provided by statutes of the United States, or regulations issued or arrangements made thereunder, this subpart and the operating circulars of the Reserve Banks apply to the following when acting as a sender: a department, agency, instrumentality, independent establishment, or office of the United States, or a wholly owned or controlled Government corporation, that maintains or uses an account with a Reserve Bank.

§ 210.4 Sending items to Reserve Banks.

(a) A sender may send any item to the Reserve Bank with which it maintains or uses an account, but that Reserve Bank may permit or require the sender to send direct to another Reserve Bank an item payable within the other Reserve Bank's District.

(b) With respect to an item sent direct, the relationships and the rights and liabilities between the sender, the Reserve Bank of its District, and the Reserve Bank to which the item is sent are the same as if the sender had sent the item to the Reserve Bank of its District and that Reserve Bank had sent the item to the other Reserve Bank.

(c) The Reserve Banks shall receive cash items and other checks at par.

§ 210.5 Sender's agreement; recovery by Reserve Bank.

(a) *Sender's agreement.* By sending an item to a Reserve Bank, the sender:

(1) Authorizes the receiving Reserve Bank (and any other Reserve Bank or collecting bank to which the item is sent) to handle the item subject to this subpart and to the Reserve Banks' operating circulars, and warrants its authority to give this authorization;

(2) Warrants to each Reserve Bank handling the item that: (i) the sender has good title to the item or is authorized to obtain payment on behalf of one who has good title (whether or not this warranty is evidenced by the sender's express guaranty of prior indorsements on the item); and (ii) to the extent prescribed by State law applicable to a Reserve Bank or subsequent collecting bank handling the item, the item has not been materially altered; but paragraph (a)(2) of this section does not limit any warranty by a sender arising under State law; and

(3) Agrees to indemnify each Reserve Bank for any loss of expense sustained (including attorneys' fees and expenses of litigation) resulting from (i) the sender's lack of authority to make the warranty in paragraph (a)(1) of this section; (ii) any action taken by the Reserve Bank within the scope of its authority in handling the item; or (iii) any warranty made by the Reserve Bank under § 210.6(b) of this subpart.

(b) *Recovery by Reserve Bank.* If an action or proceeding is brought against a Reserve Bank that has handled an item, based on:

(1) The alleged failure of the sender to have the authority to make the warranty and agreement in paragraph (a)(1) of this section;

(2) Any action by the Reserve Bank within the scope of its authority in handling the item; or

(3) Any warranty made by the Reserve Bank under § 210.6(b) of this subpart,

the Reserve Bank may, upon the entry of a final judgment or decree, recover from the sender the amount of attorneys' fees and other expenses of litigation incurred, as well as any amount the Reserve Bank is required to pay under the judgment or decree, together with interest thereon.

(c) *Methods of recovery.* The Reserve Bank may recover the amount stated in paragraph (b) of this section by charging any account on its books that is maintained or used by the sender (or if the sender is another Reserve Bank, by entering a charge against the other Reserve Bank through the Interdistrict Settlement Fund), if:

(1) The Reserve Bank made seasonable written demand on the sender to assume defense of the action or proceeding; and

(2) The sender has not made any other arrangement for payment that is acceptable to the Reserve Bank.

A Reserve Bank that has been charged through the Interdistrict Settlement Fund may recover from its sender in the manner and under the circumstances set forth in this paragraph. A Reserve Bank's failure to avail itself of the remedy provided in this paragraph does not prejudice its enforcement in any other manner of the indemnity agreement referred to in paragraph (a)(3) of this section.

§ 210.6 Status, warranties, and Liability of Reserve Bank.

(a) (1) *Status and liability.* A Reserve Bank shall act only as the sender's agent in respect of an item. This agency terminates not later than the time the Reserve Bank receives payment for the item in actually and finally collected funds and makes the proceeds available for use by the sender. A Reserve Bank shall not act as agent or subagent of an owner or holder of an item other than the sender. A Reserve Bank shall not have or assume any liability to the sender in respect of an item or its proceeds except for the Reserve Bank's own lack of good faith or failure to exercise ordinary care.

(2) *Reliance on routing designation appearing on item.* A Reserve Bank may present or send an item based on the routing number or other designation of a paying bank or nonbank payor appearing in any form on the item when the Reserve Bank receives it. A Reserve Bank shall not be responsible for any delay resulting from its acting on any designation, whether inscribed by magnetic ink or by other means, and whether or not the designation acted on is consistent with any other designation appearing on the item.

(b) *Warranties and liability.* By presenting or sending an item, a Reserve Bank warrants to a subsequent collecting bank and to the paying bank and any other payor:

(1) That the Reserve Bank has good title to the item (or is authorized to obtain payment on behalf of one who either (i) has good title or (ii) is authorized to obtain payment on behalf of one who has good title), whether or not this warranty is evidenced by the Reserve Bank's express guaranty of prior indorsements on the item; and

(2) That the item has not been materially altered to the extent prescribed by State law applicable to a Reserve Bank or subsequent collecting bank holding the item.

The Reserve Bank shall not have or assume any other liability to the paying bank or other payor, except for the Reserve Bank's own lack of good faith or failure to exercise ordinary care.

§ 210.7 Presenting items for payment.

(a) *Presenting or sending.* As provided under State law or as otherwise permitted by this section: (1) a Reserve Bank or a subsequent collecting bank may present an item for payment or send the item for presentment and payment; and

(2) A Reserve Bank may send an item to a subsequent collecting bank with authority to present it for payment or to send it for presentment and payment.

(b) *Place of presentment.* A Reserve Bank or subsequent collecting bank may present an item:

(1) At a place requested by the paying bank;

(2) At a place requested by the nonbank payor, if the item is payable by a nonbank payor other than through a paying bank;

(3) Under a special collection agreement consistent with this subpart; or

(4) Through a clearing house and subject to its rules and practices.

(c) *Presenting or sending direct.* A Reserve Bank or subsequent collecting bank may, with respect to an item payable in the Reserve Bank's District:

(1) Present or send the item direct to the paying bank, or to a place requested by the paying bank; or

(2) If the item is payable by a nonbank payor other than through a paying bank, present it direct to the nonbank payor. Documents, securities, or other papers accompanying a noncash item shall not be delivered to the nonbank payor before the item is paid unless the sender specifically authorizes delivery.

(d) *Item payable in another district.* A Reserve Bank receiving an item payable in another District ordinarily sends the item to the Reserve Bank of the other District, but with the agreement of the other Reserve Bank, may present or send the item as if it were payable in its own District.

§ 210.8 Presenting noncash items for Acceptance.

A Reserve Bank or a subsequent collecting bank may, if instructed by the sender, present a noncash item for acceptance in any manner authorized by law if: (a) the item provides that it must be presented for acceptance; (b) the item is payable elsewhere than at the residence or place of business of the payor; or (c) the date of payment of the item depends on presentment for acceptance. Documents accompanying a noncash item shall not be delivered to the payor upon acceptance of the item unless the sender specifically authorizes delivery. A Reserve Bank shall not have or assume any other obligation to present or to send for presentment for acceptance any noncash item.

§ 210.9 Payment.

(a) *Cash items.* A paying bank becomes accountable for the amount of a cash item received directly or indirectly from a Reserve Bank, at the close of the paying bank's banking day on which it receives[3] the item if it retains the item after the close of that banking day, unless, prior to that time, it pays for the item by:

(1) Debit to an account on the Reserve Bank's books;

(2) Cash; or

(3) In the discretion of the Reserve Bank, any other form of payment.

The proceeds of any payment shall be available to the Reserve Bank by the close of the Reserve Bank's banking day on the banking day of receipt of the item by the paying bank. If the banking day of receipt is not a banking day for the Reserve Bank, payment shall be made on the next day that is a banking day for both the Reserve Bank and the paying bank.

(b) *Noncash items.* A Reserve Bank may require the paying or collecting bank to which it has presented or sent a noncash item to pay for the item in cash, but the Reserve Bank may permit payment by a debit to an account on the Reserve Bank's books or by any of the following that is in a form acceptable to the Reserve Bank: bank draft, transfer of funds or bank credit, or any other form of payment authorized by State law.

(c) *Nonbank payor.* A Reserve Bank may require a nonbank payor to which it has presented an item to pay for it in cash, but the Reserve Bank may permit payment in any of the following that is in a form acceptable to the Reserve Bank: cashier's check, certified check, or other bank draft or obligation.

(d) *Handling of payment.* A Reserve Bank may handle a bank draft or other form of payment it receives in payment of a cash item as a cash item. A Reserve Bank may handle a bank draft or other form of payment it receives in payment of a noncash item as either a cash item or a noncash item.

(e) *Liability of Reserve Bank.* A Reserve Bank shall not be liable for the failure of a collecting bank, paying bank, or nonbank payor to pay for an item, or for any loss resulting from the Reserve Bank's acceptance of any form of payment other than cash authorized in paragraphs (a), (b), and (c) of this section. A Reserve Bank that acts in good faith and exercises ordinary care shall not be liable for the nonpayment of, or failure to realize upon, a bank draft or other form of payment that it accepts under paragraphs (a), (b), and (c).

§ 210.10 Time schedule and availability of credits for cash items.

(a) Each Reserve Bank shall include in its operating circulars a time schedule for each of its offices indicating when the amount of any cash item received by it (or sent direct to another Reserve office for the account of that Reserve Bank) is counted as reserve for purposes of Part 204 of this chapter (Regulation D) and becomes available for use by the sender. The Reserve Bank shall give either immediate or deferred credit in accordance with its time schedule to a sender other than a foreign correspondent. A Reserve Bank ordinarily gives credit to a foreign correspondent only when the Reserve Bank receives payment for the item in actually and finally collected funds, but, in its discretion, a Reserve Bank may give immediate or deferred credit in accordance with its time schedule.

(b) Notwithstanding its time schedule, a Reserve Bank may refuse at any time to permit the use of credit given for any cash item for which the Reserve Bank has not yet received payment in actually and finally collected funds.

§ 210.11 Availability of proceeds of noncash items; time schedule.

(a) *Availability of credit.* A Reserve Bank shall give credit to the sender for the proceeds of a noncash item when it receives payment in actually and finally collected funds (or advice from another Reserve Bank of such payment to it). The amount of the item is counted as reserve for purposes of Part 204 of this chapter (Regulation D) and becomes available for use by the sender when the Reserve Bank receives the payment or advice, except as provided in paragraph (b) of this section.

(b) *Time schedule.* A Reserve Bank may give credit for the proceeds of a noncash item subject to payment in actually and finally collected funds in accordance with a time schedule included in its operating circulars. The time schedule shall indicate when the proceeds of the noncash item will be counted as reserve for purposes of Part 204 of this chapter (Regulation D) and become available for use by the sender. A Reserve Bank may, however, refuse at any time to permit the use of credit given for a noncash item for which the Reserve Bank has not yet received payment in actually and finally collected funds.

(c) *Handling of payment.* If a Reserve Bank receives, in payment for a noncash item, a bank draft or other form of payment that it elects to handle as a noncash item, the Reserve Bank shall neither count the proceeds as reserve for purposes of Part 204 of this chapter (Regulation D) nor make the proceeds available for use until it receives payment in actually and finally collected funds.

§ 210.12 Return of cash items.

(a) *Recovery of payment.* A paying bank that receives a cash item directly or indirectly from a Reserve Bank, other than for immediate payment over the counter, and that pays for the item as provided in § 210.9(a) of this subpart, may recover the payment if, before it has finally paid the item, it:

(1) Returns the item before midnight of its next banking day following the banking day of receipt; or

(2) Takes any other action to recover the payment within the times and by the means provided by State law.

The rules or practices of a clearinghouse through which the item was presented, or a special collection agreement under which the item was presented, may not extend these return times, but may provide for a shorter return time.

(b) *Paying bank's warranties and agreement.* A paying bank that obtains a credit or refund for the amount of a payment it has made for a cash item:

(1) Warrants to the Reserve Bank (and to a subsequent collecting bank, and to the sender and all prior parties) that it took all action necessary to entitle it to recover its payment within the time limits of: (i) this subpart; (ii) State law, unless a longer time is afforded by this subpart; (iii) the rules or practices of any clearing house through which the item was presented; and (iv) any special collection agreement under which the item was presented; and

(2) Agrees to indemnify the Reserve Bank for any loss or expense sustained (including attorneys' fees and expenses of litigation) resulting from the Reserve Bank's giving the credit or refund to the paying bank, or charging, or obtaining a refund from, the sender.

[3] A paying bank is deemed to receive a cash item on its next banking day if it receives the item:
(1) On a day other than a banking day for it; or
(2) On a banking day for it, but
(i) After its regular banking hours;
(ii) After a "cut-off hour" established by it in accordance with State law; or
(iii) During afternoon or evening periods when it is open for limited functions only.

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A Reserve Bank shall not have or assume any responsibility for determining whether the action taken by a paying bank was timely.

§ 210.13 Chargeback of unpaid items.

(a) *Right of chargeback.* If a Reserve Bank does not receive payment in actually and finally collected funds for an item for which the Reserve Bank gave credit subject to payment in actually and finally collected funds, the Reserve Bank shall charge back the amount of the item to the sender, whether or not the item itself can be returned. In the event of chargeback, neither the owner or holder of the item nor the sender shall have any interest in any reserve balance or other funds of the paying bank or a collecting bank in the Reserve Bank's possession.

(b) *Suspension or closing of bank.* A Reserve Bank shall not pay or act on a draft, authorization to charge, or other order on a reserve balance or other funds in its possession after it receives notice of suspension or closing of the bank making the payment for that bank's own or another's account.

§ 210.14 Extension of time limits.

If, because of interruption of communication facilities, suspension of payments by a bank or nonbank payor, war, emergency conditions or other circumstances beyond its control, a bank (including a Reserve Bank) or nonbank payor is delayed in acting on an item beyond applicable time limits, its time for acting is extended for the time necessary to complete the action, if it exercises such diligence as the circumstances require.

§ 210.15 Direct presentment of certain warrants.

If a Reserve Bank elects to present direct to the payor a bill, note, or warrant that is issued and payable by a State or a political subdivision and that is a cash item not payable or collectible through a bank: (a) sections 210.9, 210.12, and 210.13 and the operating circulars of the Reserve Banks apply to the payor as if it were a paying bank; (b) section 210.14 applies to the payor as if it were a bank; and (c) under § 210.9 each day on which the payor is open for the regular conduct of its affairs or the accommodation of the public is considered a banking day.

Subpart B—Wire Transfers of Funds

§ 210.25 Authority, purpose, and scope.

The Board of Governors of the Federal Reserve System ("Board") has issued this subpart pursuant to the Federal Reserve Act, section 13 (12 U.S.C. 342), paragraph (f) of section 19 (12 U.S.C. 464), paragraph 14 of section 16 (12 U.S.C. 248(o)), paragraphs (i) and (j) of section 11 (12 U.S.C. 248(i) and (j)), and other laws. This subpart governs the handling by Federal Reserve Banks ("Reserve Banks") of transfer items and transfer requests. Its purpose is to provide rules for the wire transfer of funds.

§ 210.26 Definitions.

As used in this subpart, unless the context otherwise requires:

(a) "Beneficiary" means a person or organization, other than the transferee, designated in a transfer item or request to receive the amount of the item or request from the transferee.

(b) "Interoffice transaction" means a transfer between a transferor and transferee that do not maintain or use accounts at the same office of a Reserve Bank.

(c) "Item" means a writing evidencing a request for the payment of money, that is handled under this subpart. "Item" does not include an "item" as defined in section 210.2 that is handled under subpart A.

(d) "Transfer item" means an item: (1) sent by a transferor (other than a Reserve Bank) to a Reserve Bank for debit to the transferor's account at the Reserve Bank and for credit to a transferee; (2) sent by a Reserve Bank to another Reserve Bank for credit to the latter or to any other transferee; or (3) issued by a Reserve Bank at the request of a transferor for credit to a transferee.

(e) "Transfer request" or "request" means a request by telephone that a Reserve Bank issue a transfer item.

(f) "Transferee" means a member bank, a Reserve Bank, or other institution that (1) maintains or, if authorized by the Reserve Bank, uses an account at a Reserve Bank and (2) is designated in a transfer item or request to receive the amount of the item or request.

(g) "Transferor" means a member bank, a Reserve Bank, or other institution that maintains or uses an account at a Reserve Bank and that is authorized by that Reserve Bank to send a transfer item or request to it.

(h) "Transferor's account" or "transferee's account" means the account at its Reserve Bank maintained or used by the transferor or transferee, respectively.

(i) "Transferor's Reserve Bank" or "transferee's Reserve Bank" means the Reserve office at which the transferor or transferee, respectively, maintains or uses an account.

§ 210.27 General provisions.

(a) *General.* Each Reserve Bank shall receive and handle transfer items, and shall itself issue transfer items, in accordance with this subpart. Each Reserve Bank shall issue an operating circular governing the details of its funds transfer operations and other matters deemed appropriate by the Reserve Bank. The circulars may, among other things: set minimum and maximum dollar amounts; specify format and authentication requirements for transfer items and requests; and impose reasonable funds transfer charges.

(b) *Binding effect.* This subpart and the operating circulars of the Reserve Banks are binding on transferors, transferees, beneficiaries, and other parties interested in an item.

(c) *Government transferors and transferees.* Except as otherwise provided by statutes of the United States, or regulations issued or arrangements made thereunder, this subpart and the operating circulars of the Reserve Banks apply to the following when acting as a transferor or transferee: a department, agency, instrumentality, independent establishment, or office of the United States, or a wholly owned or controlled Government corporation, that maintains or uses an account with a Reserve Bank.

§ 210.28 Media for transfer items and requests.

(a) *Transfer items.* A transferor may issue and send a transfer item in any of the following media, if specified in the operating circular of the transferor's Reserve Bank:

(1) A letter, memorandum, or similar writing;

(2) A telegram (including TWX, TELEX, or similar form of communication); and

(3) Any form of communication, other than voice, registered on (or in form suitable for being registered on) magnetic tape, disc, or other medium designed to contain in durable form conventional signals used for electronic communication of messages.

(b) *Transfer requests.* A transferor may make transfer requests only under special arrangements with its Reserve Bank. The Reserve Bank may record these telephone messages.

§ 210.29 Transferor's agreement.

A transferor, by sending a transfer item or making a transfer request to its Reserve Bank, authorizes:

(a) Its Reserve Bank to debit the amount to the transferor's account, and to handle the transfer item or request in accordance with this subpart and the operating circulars of the Reserve Banks; and

(b) The transferee's Reserve Bank to handle a matching transfer item (matching as to amount, transferee, and beneficiary, if any) in accordance with this subpart and the operating circulars of the transferee's Reserve Bank.

§ 210.30 Transferee's agreement.

(a) A transferee (other than a Reserve Bank), by maintaining or using an account at a Reserve Bank, authorizes its Reserve Bank to credit the amount of the transfer item to its account.

(b) A transferee (other than a Reserve Bank) that receives a transfer item, or advice of credit of a transfer item, designating a beneficiary, agrees:

(1) To credit promptly the beneficiary's account or otherwise make the amount available to the beneficiary; or

(2) To notify promptly its Reserve Bank if it is unable to do so because of circumstances beyond its control.

§ 210.31 Sending transfer items and requests.

(a) A transferor (other than a Reserve Bank) may send a tranfer item to, or make a tranfer request of, its Reserve Bank. A Reserve Bank may refuse to act on, or may impose conditions to its acting on, a transfer item or request if it has reason to believe that the balance in the transferor's account is not sufficient to cover the item or request. The transferor shall arrange to have in its account, at the end of its Reserve Bank's banking day, a balance of actually and finally collected funds sufficient to cover the amounts of transfer items debited to the account during that day. In addition to other remedies, the Reserve Bank has a security interest in the transferor's assets in the possession of, or held for the account of, the Reserve Bank if:

(1) The balance in the transferor's account at the end of the Reserve Bank's banking day is not sufficient to cover the amounts debited to the account during that day; or

(2) The transferor suspends payment or is closed at any time during the Reserve Bank's banking day, and does not have a balance sufficient to cover the amounts debited to its account.

(b) A Reserve Bank may send a transfer item to, or make a transfer request of, another Reserve Bank.

§ 210.32 Handling transfer items and requests.

(a) *Intraoffice transactions.* If the transferor and transferee maintain or use accounts at the same Reserve office, that office shall act on a transfer item by debiting and crediting their accounts. The Reserve office shall act on a transfer request by issuing a transfer item, and debiting and crediting the accounts.

(b) *Interoffice transactions.* The transferor's Reserve Bank shall handle an interoffice transaction by debiting the transferor's account and, acting as a transferor, issuing and sending to the transferee's Reserve Bank a matching transfer item (matching as to amount, transferee, and beneficiary, if any). The transferee's Reserve Bank shall transfer funds to the transferee by debiting the account of the transferor's Reserve Bank, and crediting the transferee's account.

(c) *Notice of delay.* If a Reserve Bank learns that it is unable to effectuate a transfer of funds on a timely basis for any reason, it shall notify the transferor of the delay within a reasonable time.

§ 210.33 Time limits.

(a) *Time schedule.* Each Reserve Bank shall include in its operating circular a schedule showing the hours during which it handles transfer items and requests.

(b) *Acting seasonably.* A Reserve Bank acts seasonably if it takes proper action on the day it receives a transfer item or request. Taking proper action within a reasonably longer time may be seasonable but the Reserve Bank has the burden of so establishing. No Reserve Bank shall represent that it will complete a transfer of funds on the day requested.

(c) *Transfers after closing hour.* A Reserve Bank is not required to act on the day it receives an item or request if it receives the item or request after the time shown in its schedule. In emergency or other unusual circumstances, a Reserve Bank may handle a transfer item or request after the time shown in its schedule. The completion of an interoffice transaction in these circumstances is also discretionary with the transferee's Reserve Bank.

(d) *As of adjustments.* If a Reserve Bank fails to credit to the transferee's account on the day requested the amount of a transfer item or request received by the Reserve Bank before the time shown in its schedule, the Reserve Bank shall, unless otherwise instructed, complete the transfer on its next banking day and make adjustments for reserve accounting purposes as of the day the transfer was to have been made.

§ 210.34 Advices of credit and debit.

(a) *Advice of credit.* The transferee's Reserve Bank shall give advice of credit to the transferee for an executed transfer of funds.

(b) *Advice of debit.* After receiving a transfer item or request, the transferor's Reserve Bank shall send an advice of debit to the transferor. A transferor is deemed to approve the accuracy of an advice of debit unless it sends to its Reserve Bank written objection within 10 calendar days of receiving the advice of debit.

§ 210.35 Revocation of transfer items and requests.

(a) *Request for revocation.* A Reserve Bank may cease acting on a transfer item or request if it receives from the transferor a request for revocation in time to give the Reserve Bank a reasonable opportunity to comply. If the request is received too late, the Reserve Bank may, on request from the transferor, ask the transferee to return the funds. In an interoffice transaction, the Reserve Bank may ask the transferee's Reserve Bank to ask the transferee to return the funds.

(b) *Erroneous transfer.* In an erroneous or irregular transfer of funds, a Reserve Bank may, on its own initiative or at the request of another Reserve Bank, ask the transferee to return funds previously transferred.

§ 210.36 Final payment; use of funds.

(a) *Final payment.* A transfer item is finally paid when the transferee's Reserve Bank sends the transfer item or sends or telephones the advice of credit for the item to the transferee, whichever occurs first.

(b) *Right to use funds.* Credit given by a Reserve Bank for a transfer of funds becomes available for use when the transfer item is finally paid, subject to the Reserve Bank's right to apply the transferred funds to an obligation owed to it by the transferee.

§ 210.37 Timeliness of action.

If, because of circumstances beyond its control, a Reserve Bank is delayed beyond the time limits provided in this subpart, in its operating circular, or by law in acting on a transfer item or request, the time for acting is extended for the time necessary to complete the action, if the Reserve Bank exercises such diligence as the circumstances require.

§ 210.38 Reserve Bank liability.

(a) *Limitations on liability.* A Reserve Bank shall not have or assume any responsibility to a transferee, beneficiary, or other party, except its immediate transferor. A Reserve Bank shall not be liable for the insolvency, neglect, misconduct, mistake, or default of another bank or person, including a transferor, except as provided in this

section. A Reserve Bank shall not have or assume any liability except for its own or another Reserve Bank's lack of good faith or failure to exercise ordinary care.

(b) *Damages.* A Reserve Bank is liable to its immediate transferor for damages proximately caused by a failure to credit the amount of a transfer item or request to the transferee's account caused by a Reserve Bank's failure to exercise ordinary care or to act in good faith. Whether damages are proximately caused by a Reserve Bank's failure to exercise ordinary care or to act in good faith is a question of fact to be determined in each case.

(c) *Right to indemnity.* The transferee's Reserve Bank shall indemnify the transferor's Reserve Bank for any loss or expense sustained (including attorneys' fees and expenses of litigation) as a result of the failure of the transferee's Reserve Bank to exercise ordinary care or to act in good faith in an interoffice transaction.

By order of the Board of Governors of the Federal Reserve System, October 9, 1980.

Theodore E. Allison,

Secretary of the Board.

[FR Doc. 80-32131 Filed 10-15-80; 8:45 am]

BILLING CODE 6210-01-M

DEPOSITORY INSTITUTIONS DEREGULATION COMMITTEE

12 CFR Part 1204

[Docket No. D-0013]

Ceiling Rates of Interest on 14- to 90-Day Time Deposits of Under $100,000

October 9, 1980.

AGENCY: Depository Institutions Deregulation Committee.

ACTION: Final rule.

SUMMARY: The Depository Deregulation Committee ("the Committee") has adopted a final rule concerning the ceiling rate of interest payable, effective October 30, 1980, by banks that are members of the Federal Reserve System on time deposits of under $100,000 with original maturities (or notice periods) of 14 to 90 days. The rate established for such deposits is 5¼ percent. The Committee's action was prompted by the recent action of the Federal Reserve Board, effective October 30, 1980, shortening the minimum maturity of time deposits at banks that are members of the Federal Reserve System from 30 to 14 days. In the event the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board take similar action in the future, the ceiling rate of interest payable on such time deposits will be 5¼ percent for insured nonmember commercial banks, and 5½ percent for insured mutual savings banks and savings and loan associations.

EFFECTIVE DATE: October 30, 1980.

FOR FURTHER INFORMATION CONTACT: Rebecca Laird, Senior Associate General Counsel, Federal Home Loan Bank Board (202/377-6446), Debra Chong, Attorney, Office of the Comptroller of the Currency (202/447-1632), F. Douglas Birdzell, Counsel, Federal Deposit Insurance Corporation (202/389-4324), Margaret Egginton, Attorney, Board of Governors of the Federal Reserve System (202/452-2489), or Allan Schott, Attorney-Advisor, Treasury Department (202/566-6798).

SUPPLEMENTARY INFORMATION: Current regulations of the Board of Governors of the Federal Reserve System ("Federal Reserve"), the Federal Deposit Insurance Corporation ("FDIC") and the Federal Home Loan Bank Board ("FHLBB") establish 30 days as the minimum maturity for time deposits that may be issued by depository institutions subject to their respective jurisdictions. The Federal Reserve, in amending its Regulation D (12 CFR Part 204) to implement the reserve requirement provisions of the Monetary Control Act of 1980 (Title I of P. L. 96-221), shortened the minimum maturity of time deposits at member banks from 30 to 14 days, effective October 30, 1980. (The Federal Reserve will adopt conforming technical amendments to its Regulation Q (12 CFR Part 217) that also will be effective October 30, 1980). Under the Federal Reserve's new rule, banks that are members of the Federal Reserve System, effective October 30, 1980, may issue and pay interest on 14 to 90 day time deposits of over $100,000 at any rate since time deposits issued in such denominations are not subject to interest rate limitations.

The new maturity also applies to time deposits under $100,000 issued by member banks. In the case of such time deposits issued to domestic governmental units, the current ceiling of 8 percent (the highest rate payable on any fixed-ceiling category of time deposit by any federally insured commercial bank, mutual savings bank, or savings and loan association) will apply to new 14 to 90 day accounts (see 12 CFR 217.7(d)). However, no ceiling rate exists for nongovernmental unit time deposits of under $100,000 with original maturities of less than 30 days. Accordingly, the Committee has established a ceiling rate of interest of 5¼ percent payable by member banks on time deposits with original maturities (or notice periods) of between 14 and 90 days issued to other than governmental units in denominations of less than $100,000. This is the same ceiling rate of interest currently payable by member banks on time deposits of under $100,000 with original maturities (or notice periods) of 30 to 90 days. In the event that the FDIC and FHLBB also authorize a reduction to 14 days in the minimum maturity of time deposits, the ceiling rate of interest payable on such time deposits issued to other than domestic governmental units will be 5¼ percent for insured nonmember commercial banks, and 5½ percent for insured mutual savings banks and savings and loan associations. As in the case of member banks, the ceiling rate of interest payable on such time deposits issued to governmental units would be 8 percent.

In view of the fact that this act facilitates implementation of an action taken by the Board of Governors of the Federal Reserve System on which public comment already has been received, the Committee finds that application of the notice and public participation provisions of 5 U.S.C. § 553 to this action is unnecessary and would be contrary to the public interest. Therefore, pursuant to its authority under Title II of Public Law 96-221, 94 Stat. 142 (12 U.S.C. § 3501 *et seq.*), to prescribe rules governing the payment of interest and dividends on deposits of federally insured commercial banks, mutual savings banks and savings and loan associations, the Committee amends Part 1204 (Interest on Deposits), effective October 30, 1980, by adding section 112 as follows:

PART 1204—INTEREST ON DEPOSITS

§ 1204.112 Time deposits of less than $100,000.

Depository institutions that are members of the Federal Reserve System may pay interest on any time deposit with an original maturity or notice period of 14 days or more, but less than 90 days, at a rate not to exceed 5¼ percent. In the event the Federal Deposit Insurance Corporation shortens the minimum required maturity or notice period of time deposits to 14 days, federally insured commercial banks that are not members of the Federal Reserve System also may pay interest on such time deposits at a rate not to exceed 5¼ percent, and federally insured mutual savings banks may pay interest on such time deposits at a rate not to exceed 5½ percent. In the event the Federal Home Loan Bank Board shortens the minimum required maturity or notice period of

time deposits to 14 days, institutions insured by the Federal Savings and Loan Insurance Corporation may pay interest on such time deposits at a rate not to exceed 5½ percent.

By order of the Committee, October 9, 1980.

Normand R. V. Bernard,

Executive Secretary of the Committee.

[FR Doc. 80-32127 Filed 10-15-80; 8:45 am]

BILLING CODE 6210-01-M

12 CFR Part 1204

[Docket No. D-0004]

Premiums, Finders Fees, and the Prepayment of Interest

October 9, 1980.

AGENCY: Depository Institutions Deregulation Committee.

ACTION: Final rules.

SUMMARY: The Depository Institutions Deregulation Committee ("Committee") has adopted final rules concerning the use of premiums, finders fees, and the prepayment of interest by depository institutions. The rules adopted by the Committee apply only to deposits subject to interest rate ceiling limitations. Under the rules adopted, premiums (whether in the form of merchandise, credit, or cash) given by depository institutions to their depositors will not be regarded as a payment of interest if: (a) the premium is given to a depositor only at the time of the opening of a new account or an addition to or renewal of an existing account; (b) no more than two premiums per account are given within a twelve-month period; and (c) the value of the premium or, in the case of articles of merchandise, the total cost (including shipping, packaging and handling expenses) does not exceed $10 for deposits of less than $5,000 and $20 for deposits of $5,000 or more. In addition, averaging the price of various premiums will not be permitted and depository institutions will be required to certify that the total cost of a premium does not exceed the $10/$20 limitations.

With regard to finders fees, the Committee adopted a rule defining such fees as a payment of interest to the depositor and requiring that such fees be paid only in cash. Certain incentive programs for the employees of depository institutions are excepted from this rule. The Committee is aware that some institutions may have relied extensively on the use of finders fees to attract or retain deposits. Accordingly, the Committee requests public comment on a proposal (explained below) to permit the phaseout of finders fees at such institutions. The Committee also adopted a rule prohibiting depository institutions from prepaying interest on deposits of less than $100,000 in either cash or merchandise.

The rules adopted by the Committee apply to all commercial banks, mutual savings banks, and savings and loan associations subject to the authorities conferred by section 19(j) of the Federal Reserve Act, section 18(g) of the Federal Deposit Insurance Act, and section 5B(a) of the Federal Home Loan Bank Act.

EFFECTIVE DATE: December 31, 1980. Comments on the proposed phaseout of finders fees should be received by November 17, 1980.

ADDRESS: Interested parties are invited to submit written comments on the proposed phaseout of finders fee programs to Normand R. V. Bernard, Executive Secretary, Depository Institutions Deregulation Committee, Federal Reserve Building, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. All material submitted should include the Docket Number D-0012. Such material will be made available for inspection and copying upon request except as provided in section 1202.5 of the Committee's Rules Regarding Availability of Information (12 CFR 1202.5).

FOR FURTHER INFORMATION CONTACT: Rebecca Laird, Senior Associate General Counsel, Federal Home Loan Bank Board (202/377-6446), Debra Chong, Attorney, Office of the Comptroller of the Currency (202/447-1632), F. Douglas Birdzell, Counsel, Federal Deposit Insurance Corporation (202/389-4324), Daniel L. Rhoads, Attorney, Board of Governors of the Federal Reserve System (202/452-3711), Allan Schott, Attorney-Advisor, Treasury Department (202/566-6798), or Anthony F. Cole, Deputy General Counsel, Depository Institutions Deregulation Committee (202/452-3612).

SUPPLEMENTARY INFORMATION: On May 6, 1980, the Committee issued for comment proposals to: (1) prohibit depository institutions from giving depositors premiums or gifts associated directly with the receipt of a deposit; (2) require that finders fees paid to a person who introduces a depositor to an institution be paid only in cash and be regarded as a payment of interest to the depositor; (3) require that interest be paid only in the form of cash or a credit to a deposit account; and (4) prohibit the prepayment of interest. (45 Fed. Reg. 32323). Over 5,000 comments were received on the Committee's proposals. The majority of commenters opposed a prohibition on the use of premiums by depository institutions to attract deposits. Many of these respondents favored strengthening existing regulations as an alternative to the proposal. A majority of commenters favored the finders fees proposals, and the proposals to prohibit the prepayment of interest and to require that interest be paid in cash.

Premiums

The rules of the Board of Governors of the Federal Reserve System ("Federal Reserve"), Federal Deposit Insurance Corporation ("FDIC"), and Federal Home Loan Bank Board ("FHLBB") currently limit the cost of premiums to $5 for deposits of less than $5,000 and $10 for deposits of $5,000 or more. Premiums may be in the form of cash or merchandise, but merchandise is used more commonly. In the case of merchandise, the $5 and $10 limits apply to the cost to the institution, excluding shipping and packaging costs. Depository institutions can offer premiums at any time to depositors who open new accounts or add to existing accounts. However, premiums may not be given on a recurring basis to the same individual. The current premium rules were adopted by the agencies in 1970 in order to establish what constituted a *de minimis* amount that would not be regarded as the payment of interest. The rules were intended to clarify this matter and reduce time spent by the agencies in reviewing individual programs. This has not been accomplished, however, because in practice the rules are difficult to enforce since they can be circumvented by attributing an inflated portion of the total cost of the premium to shipping and packaging, rather than to the direct cost of the premium. In view of these considerations, the Committee has modified the current premium rules to lessen the potential for abuses.

The rule adopted by the Committee permits depository institutions to continue to offer depositors a premium at the time of opening a new account or adding to or renewing an account. However, a depository institution may not give more than two premiums per account during a 12-month period. The 12-month period begins on the date the depositor receives the first premium. In addition, the dollar limitations on the permissible cost of premiums has been raised to $10 for deposits of less than $5,000 and to $20 for deposits of $5,000 or more. All costs associated with a premium, including its costs and all other charges such as shipping, warehousing, handling and packaging costs must be included in determining compliance with the $10/$20 limitations.

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The expenses associated with developing, advertising or promoting a premium program need not be included in determining the cost of a premium, and such expenses may not be used to absorb any of the cost of the premium. In addition, repackaging and return freight expenses may not be used to defray the cost of a premium. Any averaging of the cost of various items of merchandise offered in a premium program is prohibited. An executive officer of the institution will be required to certify, prior to the beginning of a premium program, that the institution's program complies with these requirements and that no portion of the cost of a premium has been attributed to development, advertising, promotional, or other expenses. This certification must be retained in the institution's files and must be made available to the institution's primary Federal supervisor upon request. Falsified certifications can result in the imposition of criminal penalties under 18 U.S.C. §§ 1001, 1005, and 1006. Model certifications that must be used by depository institutions are contained in the regulations.

Merchandise sold to a depositor pursuant to a self-liquidating program in which the depositor pays the total cost of the merchandise (including shipping, warehousing, handling and packaging costs) would not be regarded as a premium. An executive officer of the institution, however, would be required to certify that the depositor had paid a price at least equal to the total cost of the merchandise as defined above and that no portion of the total cost had been attributed to development, advertising, promotional, or other expenses. Continuity programs where a depositor receives a premium for one deposit and has the right to purchase additional items at the time of subsequent deposits are subject to the premium rule. (For example, under a continuity program where a depositor receives a gift for the first deposit and for a subsequent deposit, the depositor will have received two premiums under the Committee's rule.) An executive officer of the institution must certify that both the premium portion and the self-liquidating portion of a continuity program comply with the regulations by using both certifications provided for in the regulations. Promotional items such as pencils, pens and calendars, distributed to existing or potential depositors, would not be regarded as premiums in the absence of a requirement that an account be opened, renewed or added to.

Finders Fees

Finders fees, whether in the form of cash or merchandise, are fees paid to a person who introduces a depositor to an institution. The amount of a finders fee typically is related to the size of the deposit received by the institution. Under the current rules of the FHLBB, the total cost of any premiums given to a depositor and finders fees given to a third party are regarded as a payment of interest if in excess of $5 for deposits of less than $5,000 and $10 for deposits of $5,000 or more. The FHLBB excepts from the rule, however, prizes in cash given to employees who participate in a new account drive or contest sponsored by an association or, with certain limitations, sales commissions paid to a broker with respect to accounts opened or increased as a result of the services of the broker. The rules of the FDIC and Federal Reserve do not restrict the use of finders fees paid to third parties. However, if any portion of the fee is passed on to the depositor or a member of the depositor's household, that portion is regarded as additional interest on the deposit.

In view of the increased use of finders fees and the consideration that finders fees may, in some cases, be used to circumvent interest rates ceilings, the Committee has determined that such fees should be regarded as a payment to or for the account of the depositor. Accordingly, the Committee has adopted a rule defining finders fees as a payment of interest to the depositor for purposes of determining compliance with interest rate ceiling limitations. This rule also requires that such fees, when paid for deposits subject to interest rate ceiling limitations, be paid only in cash. This requirement extends to fees paid to individuals or firms that are in the business of brokering funds, but does not apply to bonuses or amounts paid to a depository institution's own employees for participating in an account drive, contest, or other incentive plan provided such bonuses or amounts are tied to the total amount of deposits solicited and are not tied to specific, individual deposits.

The Committee is aware that some institutions may have relied extensively on the use of finders fees to attract or retain deposits and that immediate application of this rule on December 31, 1980, may cause hardship for such institutions. Accordingly, the Committee is prepared to consider a phaseout of finders fee programs. If a phaseout is adopted, certain principles would apply. First, in order to be eligible for the phaseout, an institution would be required to demonstrate that finders fees have accounted for a significant share of its outstanding domestic small-denomination (under $100,000) time and savings deposits over a meaningful period of time. Second, the phaseout would be designed to encourage institutions to develop alternative marketing strategies as soon as possible. Third, to ensure that an undue competitive advantage would not be given to any eligible institution, the phaseout period would be of limited duration and the marketing practices for finders fees could be restricted. In this regard, those institutions qualifying for the phaseout could be limited to contacting directly the original finder.

Comment is requested on a proposal that would provide a phaseout of finders fee programs only for those institutions that can demonstrate that finders fees have accounted, on average, for 25 per cent or more of their outstanding domestic small-denomination time and savings deposits over the ten-quarter period ending June 30, 1980. Under this proposal, the base for the phaseout would be the amount of domestic small-denomination time and savings deposits outstanding on June 30, 1980, on which finders fees had been paid. This base amount could not be exceeded during the phaseout period. The maximum amount of domestic small-denomination time and savings deposits that could be raised through the continued use of finders fees would be limited to 90 per cent of the amount of domestic small-denomination time and savings deposits on which finders fees had been paid maturing in the quarter ending March 31, 1981. In each succeeding quarter, the maximum amount permitted to be raised would be subject to the percentages outlined in the schedule below. Under this proposal, any maturing domestic small-denomination time deposit on which a finders fee had been paid and that is renewed will be included in the amount of deposits obtained through the use of finders fees for the purpose of the schedule below. An institution would be required in advance to receive certification from its primary Federal supervisory agency that it had met the criteria to be eligible for the phaseout.

Quarter ending	Maximum percentage[1]
1981:	
Mar. 31	90
June 30	80
Sept. 30	70
Dec. 31	60
1982:	
Mar. 31	50
June 30	35
Sept. 30	20
Dec. 31	5
1983:	
Mar. 31	0

[1] Maximum percentage of maturing finders fee deposits permitted to be raised through the continued use of finders fees.

Specific comments are requested on: (1) the minimum proportion of domestic small-denomination time and savings deposits and the minimum period of time for which finders fees have been paid necessary to qualify for the proposed phaseout; (2) whether the remaining maturity structure of outstanding deposits obtained through finders fees is consistent with the proposed phaseout schedule; (3) whether limitations or restrictions on advertising the continued availability of finders fees during the phaseout period should be imposed and, if so, what types of limitations or restrictions; (4) the ability of institutions to identify prior recipients of finders fees; and (5) whether records maintained by institutions are adequate to implement the proposed phaseout.

Prepayment of Interest

The Federal Reserve and the FDIC both currently permit prepayment of interest either in cash or merchandise. However, prepaid interest must be discounted to its present value—that is, the amount of prepaid interest plus interest thereon at the maximum rate that may be paid on the type of deposit involved may not exceed the aggregate amount of interest that could have been paid on the deposit at maturity computed at the applicable maximum rate. Under FHLBB rules, however, insured savings and loan associations are not permitted to prepay interest.

The Committee believes that the prepayment of interest, particularly in the form of merchandise, can result in confusion as to the actual rate of return earned on a deposit and presents increased problems of enforcing deposit interest rate ceilings. In view of these considerations, the Committee has adopted a rule prohibiting the prepayment of interest to depositors, in either cash or merchandise, on all deposits subject to interest rate ceilings. This rule does not affect or limit the use of finders fees offered pursuant to the requirements of 12 CFR § 1204.110. The Committee has determined not to adopt its proposal to require that interest be paid only in the form of cash or a credit to a deposit account. Accordingly, depository institutions may pay interest, as it is earned, in the form of merchandise rather than in cash or a credit to a deposit account. For purposes of determining compliance with interest rate ceiling limitations, the cost of any merchandise given in lieu of cash interest must include the total cost of the merchandise. An executive officer of the institution must certify that the total cost includes shipping, warehousing, packaging, and handling fees, and that no portion of the cost has been attributed to development, advertising, promotional, or other expenses. A model certification that institutions must use if they pay interest in the form of merchandise is contained in the regulations.

Pursuant to its authority under Title II of Public Law 96-221, 94 Stat. 142 (12 U.S.C. § 3501 *et seq.*), to prescribe rules governing the payment of interest and dividends on deposits of federally insured commercial banks, savings and loan associations and mutual savings banks, effective December 31, 1980, the Committee amends Part 1204 (Interest on Deposits) by adding sections 1204.109, 1204.110, and 1204.111 as follows:

PART 1204—INTEREST ON DEPOSITS

Sec.

* * * * *

1204.109 Premiums not considered payment of interest.
1204.110 Finders fees.
1204.111 Prepayment of interest and payment of interest in merchandise.

§ 1204.109 Premiums not considered payment of interest.

(a) Premiums, whether in the form of merchandise, credit, or cash, given by a depository institution to a depositor will be regarded as an advertising or promotional expense rather than a payment of interest if: (1) the premium is given to a depositor only at the time of the opening of a new account or an addition to, or renewal of, an existing account; (2) no more than two premiums per account are given within a 12-month period; and (3) the value of the premium or, in the case of articles of merchandise, the total cost (including shipping, warehousing, packaging, and handling costs) does not exceed $10 for deposits of less than $5,000 or $20 for deposits of $5,000 or more. The costs of premiums may not be averaged. Prior to the beginning of a premium program, an executive officer of the depository institution must certify that the total cost of a premium, including shipping, warehousing, packaging, and handling costs, does not exceed the applicable $10/$20 limitations and that no portion of the total cost of any premium has been attributed to development, advertising, promotional, or other expenses. The certification and supporting documents must be retained by the institution in its files and must be made available to the institution's primary Federal supervisory agency upon request.

(b) Certifications required by paragraph (a) must contain the following language:

(1) (For use with premium programs.)

I, _____, (name and title of certifying officer and institution) do hereby certify, to the best of my knowledge and belief, that the total cost(s) of the premium(s) offered by this institution during a premium program to be conducted from _____ (date) to _____, (date) including the wholesale cost, shipping, warehousing, packaging and handling costs, does (do) not exceed $10 for deposits of less than $5,000 or $20 for deposits of $5,000 or more. I further certify that the costs of premium items have not been averaged, that no portion of the cost of any premium has been attributed to development, advertising, promotional, or other expenses, and that this program complies in all respects with the requirements of 12 CFR § 1204.109.

_____
(Signature)

_____
(Date)

Falsification of this document may result in a fine of not more than $10,000 or imprisonment of not more than five years, or both. 18 U.S.C. §§ 1001, 1005, 1006.

(2) (For use with self-liquidating programs.)

I, _____
(name and title of certifying officer and institution)
do hereby certify, to the best of my knowledge and belief, that depositors are required to absorb the total costs of items sold by this institution in a self-liquidating program to be conducted from _____ (date) to _____ (date), including the wholesale cost, shipping, warehousing, packaging and handling costs. I further certify that the costs of items have not been averaged, that no portion of the cost of any item has been attributed to development, advertising, promotional, or other expenses, and that this program complies in all respects with the requirements of 12 CFR § 1204.109.

_____
(Signature)

_____
(Date)

Falsification of this document may result in a fine of not more than $10,000 or imprisonment of not more than five years, or both. 18 U.S.C. §§ 1001, 1005, 1006.

§ 1204.110 Finders fees

Any fee paid by a depository institution to a person who introduces a

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depositor to the institution must be paid in cash when paid for deposits subject to interest rate ceilings, and will be regarded as a payment of interest to the depositor for purposes of determining compliance with interest rate ceilings, except that a depository institution may pay bonuses in cash or merchandise to its employees for participating in an account drive, contest, or other incentive plan, provided such bonuses are tied to the total amount of deposits solicited and are not tied to specific, individual deposits.

§ 1204.111 Prepayment of interest and payment of interest in merchandise.

(a) Interest may be paid in the form of merchandise, cash, or a credit to a deposit account. However, interest on a deposit subject to deposit interest rate ceilings, whether in the form of merchandise, cash, or credit to an account, may not be paid by a depository institution until such interest has been earned, except as provided in 12 CFR § 1204.110. Where merchandise is paid in lieu of cash interest, an executive officer of the depository institution must certify that the total cost of such merchandise includes shipping, warehousing, packaging, and handling costs, and that no portion of the cost has been attributed to development, advertising, promotional, or other expenses. The costs of individual items of merchandise may not be averaged. The certification and supporting documents must be retained by the institution in its files and must be made available to the institution's primary Federal supervisory agency on request.

(b) Certifications required by paragraph (a) must contain the following language:

I, _____ (name and title of certifying officer and institution), do hereby certify, to the best of my knowledge and belief, that the total cost(s) of merchandise offered by this institution in lieu of cash interest during a program conducted from _____ (date) to _____ (date) includes the wholesale cost, shipping, warehousing, packaging and handling costs, and does not exceed the maximum amount of earned interest that could have been paid in the form of cash or a credit to an account. I further certify that the costs of the items have not been averaged, that no portion of the cost of any item has been attributed to development, advertising, promotional, or other expenses, and that this program complies in all respects with the requirements of 12 CFR § 1204.111.

_____
(Signature)

_____
(Date)

Falsification of this document may result in a fine of not more than $10,000 or imprisonment of not more than five years, or both. 18 U.S.C. §§ 1001, 1005, 1006.

By order of the Committee, October 9, 1980.

Normand R. V. Bernard,
Executive Secretary of the Committee.

[FR Doc. 80-32128 Filed 10-15-80; 8:45 am]
BILLING CODE 6210-01-M

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12 CFR Part 1204

[Docket No. D-0011]

Maximum Rate of Interest Payable on Negotiable Order of Withdrawal Accounts

October 9, 1980.

AGENCY: Depository Institutions Deregulation Committee.

ACTION: Final rule.

SUMMARY: The Depository Institutions Deregulation Committee ("Committee") has adopted a final rule concerning the ceiling rate of interest payable on negotiable order of withdrawal ("NOW") accounts. Effective December 31, 1980, the ceiling rate of interest payable on NOW accounts will be 5¼ per cent for all institutions authorized to offer such accounts. The rule applies to all commercial banks, mutual savings banks, and savings and loan associations subject to the authorities conferred by section 19(j) of the Federal Reserve Act, section 18(g) of the Federal Deposit Insurance Act, and section 5B(a) of the Federal Home Loan Bank Act.

EFFECTIVE DATE: December 31, 1980.

FOR FURTHER INFORMATION CONTACT: Rebecca Laird, Senior Associate General Counsel, Federal Home Loan Bank Board (202/377-6446), Debra Chong, Attorney, Office of the Comptroller of the Currency (202/447-1632), F. Douglas Birdzell, Counsel, Federal Deposit Insurance Corporation (202/389-4324), John Harry Jorgenson, Attorney, Board of Governors of the Federal Reserve System (202/452-3778), Allan Schott, Attorney-Advisor, Treasury Department (202/566-6798), or Anthony F. Cole, Deputy General Counsel, Depository Institutions Deregulation Committee (202/452-3612).

SUPPLEMENTARY INFORMATION: Title III of the Depository Institutions Deregulation and Monetary Control Act of 1980 (P.L. 96-221) authorizes depository institutions nationwide, except credit unions, to offer NOW accounts to individuals and certain nonprofit organizations effective December 31, 1980. On June 25, the Committee requested public comment on proposed rules concerning the maximum rate of interest payable on interest-bearing transaction accounts (45 Fed. Reg. 45303). The Committee proposed to establish a uniform ceiling rate on all interest-bearing transaction accounts at commercial banks, mutual savings banks, and savings and loan associations. To encourage depositors to segregate transaction balances from balances that are inactive and thus facilitate the conduct of monetary policy, the Committee also proposed to establish a ceiling rate on transaction accounts that was below the ceiling rate payable on nontransaction accounts. In this regard, the Committee proposed to define interest-bearing transaction accounts to include: NOW accounts; savings accounts subject to automatic transfers, telephone transfers and preauthorized nonnegotiable transfers; and savings accounts that permit payments to third parties by means of an automated teller machine, remote service unit or other electronic device. Comment was requested on four options for uniform ceilings on transaction accounts. The options called for ceilings of 5 per cent, 5¼ per cent, 5½ per cent, or a ceiling higher than 5½ per cent.

After considering over 770 comments on its proposals, the Committee has determined to take action at this time only with respect to the ceiling rate of interest payable on NOW accounts. The ceiling rate of interest payable on NOW accounts for all depository institutions authorized to offer such accounts will be 5¼ per cent effective December 31, 1980. The ceiling rate of interest payble on NOW accounts by those institutions already authorized to offer such accounts will remain at 5 per cent until December 31, 1980. The ceiling rates of interest payable on all other accounts, including savings accounts subject to automatic transfers, telephone transfers, preauthorized nonnegotiable transfers, and savings accounts accessible by automated teller machine, remote service unit or other electronic device, are not affected by this action and remain unchanged. The Committee determined not to adopt any of its original proposals at this time in order to avoid reduction in the rates of interest on certain accounts, as required by some of the proposals, and in view of its concern that consideration of increases in the passbook savings rate should be deferred at this time. The Committee announced its intent, however, to consider increasing the passbook savings rate as soon as feasible and will consider this issue no later than September 30, 1981.

Pursuant to its authority under Title II of Public Law 96-221, 94 Stat. 142 (12 U.S.C. § 3501 *et seq.*), to prescribe rules governing the payment of interest and dividends on deposits of federally insured commercial banks, savings and loan associations, and mutual savings banks, effective December 31, 1980, the Committee amends Part 1204 (Interest on Deposits) by adding 1204.108 as follows:

PART 1204—INTEREST ON DEPOSITS

* * * * * *

§ 1204.108 Maximum rates of interest payable by depository institutions on deposits subject to negotiable orders of withdrawal.

No depository institution subject to the authorities conferred by section 19(j) of the Federal Reserve Act (12 U.S.C. § 371(b)), section 18(g) of the Federal Deposit Insurance Act (12 U.S.C. § 1828(g)), or section 5B(a) of the Federal Home Loan Bank Act (12 U.S.C. § 1425b(a)) shall pay interest at a rate in excess of 5¼ per cent per annum on any deposit or account subject to negotiable or transferable orders of withdrawal that is authorized pursuant to 12 U.S.C. § 1832(a).

By order of the Committee, October 9, 1980.

Normand R. V. Bernard,
Executive Secretary of the Committee.

[FR Doc. 80-32129 Filed 10-15-80; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 80-SO-66, Amdt. No. 39-3943]

Piper PA-31, PA-31-300, PA-31-325, and PA-31-350; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which requires a repetitive inspection, reinforcement and, if necessary, repair of the fuselage bulkhead flange at the attachment point for the vertical tail forward spar on certain PA-31, PA-31-300, PA-31-325, and PA-31-350 series airplanes. This AD is prompted by reports of cracks developing in the bulkhead flange area which could result in the loss of the structural integrity of the vertical tail forward attachment.

DATES: Effective October 29, 1980.

Compliance as prescribed in body of AD.

ADDRESSES: The applicable Service Bulletin may be obained from Piper Aircraft Corporation, Lockhaven Division, Lockhaven, Pennsylvania 17745, telephone (707) 748-6771.

A copy of the Service Bulletin is also contained in Room 275, Engineering and Manufacturing Branch, FAA, Southern Region, 3400 Norman Berry Drive, East Point, Georgia.

FOR FURTHER INFORMATION CONTACT: Jack Bentley, ASO-212, Engineering and Manufacturing Branch, FAA, Southern Region, P.O. Box 20636, Atlanta, Georgia 30320, telephone (404) 763-7407.

SUPPLEMENTARY INFORMATION: There have been reports of cracks developing in the fuselage at the attachment point for the vertical tail forward spar in certain PA-31, PA-31-300, PA-31-325, and PA-31-350 series airplanes, which could result in the loss of the structural integrity of the vertical tail forward attachment. Since this condition is likely to exist or develop on other airplanes of the same type design, an AD is being issued which requires the inspection, reinforcement and, if necessary, repair of the fuselage station 317.75 bulkhead on certain Piper PA-31, PA-31-300, PA-31-325, and PA-31-350 series airplanes.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive (AD):

Piper Aircraft Corporation: Applies to the following Piper models certificated in all categories: PA-31, PA-31-300, and PA-31-325, S/N 31-2 through 31-7912039; and PA-31-350, S/N 31-5001 through 31-7952071.

For airplanes with 2,000 or more hours total time in service, compliance is required within the next 50 hours time in service after the effective date of this AD unless already accomplished. For airplanes with less than 2,000 hours total time in service, compliance is required within the next 50 hours time in service after the accumulation of 2,000 hours total time in service unless already accomplished.

To assure the structural integrity of the fuselage station 317.75 bulkhead, accomplish the following:

(a) Using 10 power magnification, inspect the upper section of the fuselage station 317.75 bulkhead for cracks in accordance with Piper Aircraft Corporation Service Bulletin 636A, dated August 26, 1980.

(b) If any cracks are found, install Piper Kit P/N 764 028 prior to further flight.

(c) If no cracks are found, repeat the inspection in paragraph (a) at intervals not to exceed 100 hours time in service until Piper Kit P/N 763 917 is installed. If any cracks are found during these inspections, install Piper Kit P/N 764 028 prior to further flight.

(d) Make appropriate maintenance record entry.

Upon submission of substantiating data through an FAA inspector, the Chief, Engineering and Manufacturing Branch, FAA, Southern Region, may adjust the inspection intervals.

An equivalent method of compliance may be approved by the Chief, Engineering and Manufacturing Branch, FAA, Southern Region.

This amendment becomes effective October 29, 1980.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified above under the caption "For Further Information Contact."

Issued in East Point, Ga., on October 2, 1980.

Louis J. Cardinali,
Director, Southern Region.

[FR Doc. 80-32202 Filed 10-15-80; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-EA-41]

Designation of Transition Area Broadway, N.J.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule designates a Broadway, N.J., Transition Area over the Broadway VORTAC, Broadway, N.J. This proposal will lower the controlled airspace over the VORTAC to 700 feet MSL. This designation will permit the use of a lower minimum enroute altitude (MEA) on airway Victor 232, east of the VORTAC.

EFFECTIVE DATE: 0901 GMT November 13, 1980.

FOR FURTHER INFORMATION CONTACT: Morris Rosen, Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Federal Building, J.F.K. International Airport, Jamaica, New York 11430, Telephone (212) 995-3391.

SUPPLEMENTARY INFORMATION: On August 11, 1980, the FAA published an NPRM in the **Federal Register** on page 53163 proposing to designate a Broadway, N.J. Transition Area over the Broadway VORTAC. Interested parties were given a period in which to submit comments. No objections were received.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 GMT November 13, 1980, as published.

Section 307(a), and 313(a), Federal Aviation Act of 1958 [49 U.S.C. 1348(a) and 1354(c)]; Sec. 6(c) of the Department of Transportation Act [49 U.S.C. 1655(c)]; and 14 CFR 11.69.

The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operation, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Jamaica, New York, on October 1, 1980.

Lonnie D. Parrish,

Acting Director, Eastern Region.

1. Amend Section 71.181 of Part 71, Federal Aviation Regulations by designating a 700-floor transition area at Broadway, New Jersey as follows:

"Broadway, N.J.

"That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Broadway, New Jersey VORTAC".

[FR Doc. 80-32204 Filed 10-15-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-EA-45]

Alteration of Transition Areas: Millville, Hammonton, Albion, and Berlin, N.J.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule alters the Millville, Hammonton, Albion, and Berlin, N.J., Transition Areas by changing the name of the Millville VORTAC to Cedar Lake VORTAC. The four transition areas are described by reference to the Millville VORTAC. This alteration is the result of ambiguity and unnecessary communications resulting from pilots reporting over either the nearby airport or the VORTAC, but both are named Millville.

EFFECTIVE DATE: 0901 G.m.t. October 30, 1980.

FOR FURTHER INFORMATION CONTACT:

Morris Rosen, Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Federal Building, J.F.K. International Airport, Jamaica, New York 11430, Telephone (212) 995-3391.

SUPPLEMENTARY INFORMATION: The rule is editorial and does not impose any additional burden on any person. In view of the foregoing, notice and public procedure hereon are unnecessary, and the rule may be made effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t. October 30, 1980, as follows:

1. Amend section 181 of Part 71, Federal Aviation Regulations, by altering the 700-foot floor transition areas as follows:

Albion, N.J.

In the text delete, "and within 2 miles each side of the Millville VORTAC 003° radial extending from the 5-mile radius area to the VORTAC, excluding the portion that coincides with the Millville, New Jersey; transition area." and substitute, "and within 2 miles each side of the Cedar Lake VORTAC 003° radial extending from the 5-mile radius area to the VORTAC, excluding the portion that coincides with the Millville, New Jersey, transition area." therefor.

Berlin, N.J.

In the text delete, "and within 2 miles each side of the Millville, New Jersey, VORTAC 011° radial, extending from the 7-mile radius area to 13 miles north of the VORTAC." and substitute, "and within 2 miles each side of the Cedar Lake, New Jersey, VORTAC 011° radial, extending from the 7-mile radius area to 13 miles north of the VORTAC." therefor.

Hammonton, N.J.

In the text, delete, "within 2 miles each side of the Millville, New Jersey, VORTAC 051° radial extending from the 5.5-mile radius area to 7.5 miles northeast of the VORTAC." and substitute, "within 2 miles each side of the Cedar Lake, New Jersey, VORTAC 051° radial, extending from 5.5-mile radius area to 7.5 miles northeast of the VORTAC." therefor.

Millville, N.J.

In the text delete, "north of the Millville, New Jersey, VORTAC" and substitute, "north of the Cedar Lake, New Jersey, VORTAC." therefor.

(Sec. 307(a), and 313(a), Federal Aviation Act of 1958 [49 U.S.C. 1348(a) and 1354(c)]; sec. 6(c), Department of Transportation Act [49 U.S.C. 1655(c)]; and 14 CFR 11.69)

The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operation, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Jamaica, New York, on October 1, 1980.

Lonnie D. Parrish,

Acting Director, Eastern Region.

[FR Doc. 80-32205 Filed 10-15-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 121, 127, and 135

[Docket No. 20298; Amdt. Nos. 121-165; 127-41; and 135-8]

Operations of Foreign-Registered Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments allow U.S. air carriers to operate foreign-registered aircraft, subject to certain conditions and limitations, in foreign air transportation and between points within the United States. They implement the "International Air Transportation Competition Act of 1979" (Pub. L. 96-192) which, among other things, amended section 1108(b) of the Federal Aviation Act of 1958 to allow U.S. air carriers to engage in otherwise authorized common carriage and carriage of mail with foreign-registered aircraft under lease or charter to them without crew. These amendments make available to U.S. air carriers, including air taxi and commuter air carriers, a new source for aircraft and for equipment financing and will assist those carriers in achieving increased operational efficiency.

EFFECTIVE DATE: October 16, 1980.

FOR FURTHER INFORMATION CONTACT:

Mr. Eli S. Newberger, Regulatory Projects Branch (AVS-24), Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 755-8716.

SUPPLEMENTARY INFORMATION:

History

This final rule is based on Notice of Proposed Rule Making No. 80-8, published in the **Federal Register** on May 1, 1980 (45 FR 20964). All interested persons have been given to all matters presented.

Background

Notice 80-8 was issued to provide the basis for implementation of an important amendment to section 1108(b) of the Federal Aviation Act of 1958 (49 U.S.C. 1508(b)) (the FA Act) contained in the International Air Transportation Competition Act of 1979" (Pub. L. 96-192) which became effective February 15, 1980. That amendment to the third sentence of section 1108(b) permitted the Administrator to issue regulations "authorizing United States air carriers to engage in otherwise authorized common carriage and carriage of mail with foreign-registered aircraft under lease or charter to them without crew." Prior to the amendment, section 1108(b) of the FA Act prohibited foreign-registered aircraft from taking on, at any point within the United States, persons, property, or mail carried for compensation or hire and destined for another point within the United States. The statutory amendment is important because it provides the basis for availability to United States air carriers of a new source of aircraft which may be utilized under a wide variety of circumstances. This point will be discussed further under the heading "Benefits".

Notice 80-8 proposed changes to §§ 121.153, 127.71, and 135.25 of the Federal Aviation Regulations (FAR) to implement the statutory amendment. One aspect of the notice was the deletion from §§ 121.153 and 135.25 of prohibitions on the use of any aircraft not registered as a civil aircraft of the United States. In addition to implementing section 1108(b) as it existed prior to February 15, 1980, those prohibitions also prohibited carriage by U.S. carriers in other than U.S.-registered aircraft between a point in the United States and a point outside the United States, and between points outside the United States. Although Part 127 did not contain an explicit prohibition on the use of foreign-registered aircraft, the effect of section 1108(b) of the FA Act prior to February 15, 1980, was to prohibit use of those aircraft in air commerce within the United States. The second aspect of the notice was the addition to §§ 121.153, 127.71, and 135.25 of provisions permitting a Part 121, 127, or 135 certificate holder to operate in common carriage, and for the carriage of mail, a civil aircraft which is leased or chartered to the certificate holder without crew and is registered in a country which is a party to the Convention on International Civil Aviation (Chicago Convention). Four basic requirements were proposed as conditions precedent to the operation of a foreign-registered aircraft as follows:

(1) The aircraft must carry an appropriate airworthiness certificate issued by the country of registration and must meet the registration and identification requirements of that country.

(2) The aircraft must comply with all the requirements of the Federal Aviation Regulations which could be applicable if the aircraft were U.S.-registered instead of foreign-registered.

(3) The certificate holder must file a copy of the lease or charter agreement with the FAA.

(4) The aircraft must be operated by airmen employed by the certificate holder.

Discussion of Comments

The FAA received 11 comments in response to Notice 80-8. These comments represent the views of individuals, labor organizations, foreign governments, airline organizations, and other government agencies. Six commenters highly favor the proposal, four submitted comments and recommendations, and one opposes the proposal.

The commenter opposing the proposal contends that the leasing of these aircraft erodes the U.S. work force by allowing the foreign lessor to maintain the aircraft. The FAA does not agree. The rule permits an air carrier to use a foreign-registered aircraft. The maintenance, preventive maintenance, and inspection requirements for the foreign-registered aircraft are the same as those required for a U.S.-registered aircraft. The U.S. air carrier must conduct the operation and maintenance of the foreign-registered aircraft in accordance with its currently approved FAA operations specifications. This commenter is also concerned that there will be a deterioration in the safety level. This concern is not justified. The foreign-registered aircraft will be of a design approved by the FAA, and will be manufatured, maintained, and operated under the same standards as a U.S.-registered aircraft. Finally, this commenter requested that the rule making be deferred and a public hearing be held. The FAA does not agree that this is necessary. These amendments require a level of safety which is equivalent to that required for U.S.-registered aircraft. The commenter has not made any showing justifying delay of these amendments or why a public hearing should be held.

Several commenters are concerned about the accomplishment of airworthiness directives, service bulletins, service letters, service difficulty reporting, maintenance schedules, maintenance procedures, mechanic certification, and the overall airworthiness of an aircraft that was maintained by a foreign operator. The FAA requires air carriers to show compliance with the operating and airworthiness rules before issuing operations specifications authorizing the aircraft's operation. These amendments require the certificate holder to maintain the foreign-registered aircraft to standards equivalent to those for U.S.-registered aircraft. Therefore, there will not be any significant difference between the airworthiness of a foreign-registered aircraft and a U.S.-registered aircraft operated by a U.S. air carrier.

One commenter states it is unclear why it may be necessary for a pilot to obtain a foreign airman certificate. If imposed by the country of registry, this requirement would parallel the U.S. regulation that requires a foreign airman operating a U.S.-registered aircraft to hold a current U.S. pilot certificate when operating the U.S.-registered aircraft. This requirement conforms with the obligation imposed on the country of registery by the Chicago Convention.

• One commenter states the FAA should make a predetermination that the minimum airworthiness requirements of the foreign country of registry meet the minimum U.S. airworthiness requirements. The FAA does not agree that this is necessary or advisable. It is the air carrier's responsibility to provide to the FAA the documentation and records necessary to determine type certification conformity. The FAA will then make the necessary inspections and/or reviews needed to determine the aircraft's compliance status prior to authorizing the aircraft's use in U.S. air carrier operations. In some cases, the operator may be required to make alterations or obtain exemptions from state of registry requirements in order to operate the aircraft in U.S. air carrier operations.

One commenter proposes a change to allow the certificate holder to contract for airmen as well as the aircraft as long as they are under the exclusive direction and control of the lessee certificate

holder. The FAA does not agree. This suggested change would allow wet lease agreements which are contrary to the provision in the statute which limits this rule making to a lease or charter agreement without crew.

Several foreign airworthiness authorities commented on the various rules, conditions, and limitations contained in their respective regulations concerning the operation and airworthiness of aircraft registered and maintained in their respective States. Their concern is whether the country of registry or the FAA is responsible for surveillance of the aircraft. Since the aircraft is treated as a U.S.-registered aircraft in all respects, while being operated by a U.S. air carrier, the FAA will conduct such surveillance as necessary to ensure compliance with the FAR no matter where the aircraft is operated. The certificate holder is responsible for making arrangements with the country of registry to satisfy that country's requirements, including any special documentation required by that country to be carried on the aircraft. It may be necessary for the lessee or lessor to obtain exemptions or concessions from the foreign airworthiness authority who has jurisdiction over the registration of the aircraft. In any case, the FAA will require documentation or conduct physical inspections to ensure compliance with all applicable requirements in the FAR.

One commenter suggests the FAR should provide for the FAA to accept alternate procedures to those laid down in the FAR if the FAA finds that the procedures of the country of registry provide an equivalent level of safety. It is inappropriate to include such provisions in a general rule making of this nature. Findings of equivalency, if appropriate, are best left for determination in specific cases. The FAA encourages parties to consult with the FAA with a view toward an exemption if there is an appropriate set of circumstances that seem to lend themselves to an exemption.

Another commenter cites a number of hypothetical difficulties that could arise as a result of these leases. The FAA contemplates that any difficulties encountered are best addressed by consultation between the governments involved in specific cases and are inappropriate for resolution in a general rule. The FAA notes that just such a procedure was followed in the case of the Concorde interchange between Braniff and British Airways/Air France.

One commenter questions why the aircraft must meet U.S. type certificate requirements. One of the requirements in the present regulations for air carriers is that an aircraft must have a current airworthiness certificate issued under Chapter 1 of 14 CFR. In order to have a current U.S. airworthiness certificate, the aircraft must comply with U.S. type certificate requirements. This standard is maintained in this rule to ensure that the aircraft is of a design approved by the FAA.

One commenter is concerned as to who can perform maintenance when the aircraft is operated by the certificate holder for a lease or charter operation. The FAA requires that maintenance must be performed by another U.S. certificate holder and those authorized by Parts 43 and 145 of the FAR.

Overall, the FAA recognizes that it has maintained a purposefully high safety standard; however, at the same time the FAA recognizes that we are dealing with cases of first impression. The FAA welcomes the opportunity to deal with individual proposals on a case-by-case basis with a view toward seeing that the Congressional intent is fully carried out.

Benefits

The new law and these amendments enhance the ability of the industry to increase aircraft utilization and to obtain aircraft financing from other than U.S. sources. It should open up a previously virtually untapped source of aircraft equipment for the broad spectrum of air carriers ranging from the very large trunk carrier to the smallest commuter or air taxi air carrier. For example, aircraft purchased by foreign owners from U.S. manufacturers can be leased to U.S. carriers for relatively long periods of time. As another example, a U.S. air carrier could lease a foreign-registered aircraft during its peak season and return the aircraft for the foreign air carrier's peak season. As still another example, the statute and these rules should encourage and facilitate interchange lease arrangements in which an authorized foreign air carrier would operate an aircraft to an interchange point at which the U.S. air carrier would take operational control for operation over its routes. Commuter air carriers should find this amendment especially beneficial in obtaining aircraft for use in providing essential air service to small communities.

Description of the Amendments

To implement Pub. L. 96-192, §§ 121.153, 127.71, and 135.25 of the FAR are amended to allow a U.S. air carrier to operate, in common carriage and for the carriage of mail, a civil aircraft which is leased or chartered to it without crew and is registered in a foreign country which is a party to the Chicago Convention. There are four specific requirements which must be met under each of the sections specified above.

First, the aircraft is required to carry an appropriate airworthiness certificate issued by the country of registration and meet the registration and identification requirements of that country. This is necessary to comply with the Chicago Convention.

Second, the aircraft is required to comply with all the requirements in the FAR that would be applicable if the aircraft were registered in the United States. This includes all the requirements which must be met for the issuance of a U.S. standard airworthiness certificate, although a U.S. standard airworthiness certificate will not be issued for the aircraft. The foreign-registered aircraft and its operation must comply in all respects with the FAR as if it were a U.S.-registered aircraft operated by the air carrier. This ensures that there is no reduction in the level of safety currently provided by U.S. air carriers. The aircraft type design must be approved under a U.S. type certificate and the particular aircraft involved must meet the requirements for a U.S. standard airworthiness certificate, except the requirement for a U.S. registration certificate. With respect to the aircraft being approved under a U.S. type certificate, the proposal has been editorially revised in this final rule by the addition of the clause "is of a type design which is approved under a U.S. type certificate" immediately following the second word "aircraft" in §§ 121.153(c)(2), 127.71(b)(2), and 135.25(d)(2). This change uses more technically correct language and is not a substantive difference from the discussion of the proposal which said that the aircraft type design must be type certificated by the FAA. This means the aircraft must conform to the FAA type certificate and be in a condition for safe operation, including compliance with all effective U.S. and foreign airworthiness directives, maintenance, and life-limited parts requirements. Certification and maintenance rules, operating and equipment rules, and pilot certification, qualification, checking, training, and competency rules applicable to the operation of a U.S.-registered aircraft of the same type also would apply. However, the foreign-registered aircraft is not eligible for, nor would it receive, a U.S. standard airworthiness certificate or be registered in the United States. In addition to the requirement to hold a U.S. airman certificate, it may be necessary for the airman to hold an appropriate foreign airman certificate.

It is implicit in the amendments to §§ 121.153, 127.71, and 135.25 that the foreign-registered aircraft must comply with the noise and engine emissions provisions of the FAR to the same extent that a U.S.-registered aircraft is required to comply for the operations conducted. For example, compliance must be shown with the requirements of the "new production" (§ 36.1(d)) and "acoustical change" (§ 36.7) rules and the operating noise limits rule in Subpart E of Part 91 as if the aircraft were (or would be) certificated and registered in the United States. Thus, a U.S. air carrier operating a foreign-registered aircraft must include that aircraft in the compliance plan/status report submitted to the FAA under § 91.308. In addition, if the FAA adopts or amends any other noise or engine emissions requirements applicable to U.S.-registered aircraft, those requirements would apply to foreign-registered aircraft operated by U.S. air carriers under any rules adopted as a result of this rule.

Third, to enable the FAA to have a listing of all foreign-registered aircraft operated by U.S. air carriers, the certificate holder must file a copy of the lease or charter agreement with the FAA Aircraft Registry at Oklahoma City.

Finally, these amendments provide that the aircraft must be operated by airmen employed by the certificate holder. This is consistent with the requirement in Pub. L. 96-192 that the lease or charter be without crew.

Immediate Adoption

Since these amendments are needed to implement a statute, and are relaxatory, I find that good cause exists for making them effective in less than 30 days.

Adoption of the Amendments

Accordingly, Parts 121, 127, and 135) are amended as follows, effective October 16, 1980.

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. By revising § 121.153(a) and adding a new paragraph (c) to read as follows:

§ 121.153 Aircraft requirements: general.

(a) Except as provided in paragraph (c) of this section, no certificate holder may operate an aircraft unless that aircraft—

* * * * *

(c) A certificate holder may operate in common carriage, and for the carriage of mail, a civil aircraft which is leased or chartered to it without crew and is registered in a country which is a party to the Convention on International Civil Aviation if—

(1) The aircraft carries an appropriate airworthiness certificate issued by the country of registration and meets the registration and identification requirements of that country;

(2) The aircraft is of a type design which is approved under a U.S. type certificate and complies with all of the requirements of this chapter (14 CFR Chapter 1) that would be applicable to that aircraft were it registered in the United States, including the requirements which must be met for issuance of a U.S. standard airworthiness certificate (including type design conformity, condition for safe operation, and the noise, fuel venting, and engine emission requirements of this chapter), except that a U.S. registration certificate and a U.S. standard airworthiness certificate will not be issued for the aircraft;

(3) The aircraft is operated by U.S.-certificated airmen employed by the certificate holder; and

(4) The certificate holder files a copy of the aircraft lease or charter agreement with the FAA Aircraft Registry, Department of Transportation, 6400 South MacArthur Boulevard, Oklahoma City, Oklahoma (Mailing address: P.O. Box 25504, Oklahoma City, Oklahoma 73125).

PART 127—CERTIFICATION AND OPERATIONS OF SCHEDULED AIR CARRIERS WITH HELICOPTERS

2. By amending § 127.71 by redesignating the present paragraph as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 127.71 General.

(a) * * *

(b) An air carrier may operate in common carriage, and for the carriage of mail, a civil helicopter which is leased or chartered to it without crew and is registered is a country which is a party to the Convention on International Civil Aviation if—

(1) The helicopter carries an appropriate airworthiness certificate issued by the country of registration and meets the registration and identification requirements of that country;

(2) The helicopter is of a type design which is approved under a U.S. type certificate and complies with all of the requirements of this chapter (14 CFR Chapter 1) that would be applicable to that helicopter were it registered in the United States, including the requirements which must be met for issuance of a U.S. standard airworthiness certificate (including type design conformity, condition for safe operation, and the noise, fuel venting, and engine emission requirements of this chapter), except that a U.S. registration certificate and a U.S. standard airworthiness certificate will not be issued for the helicopter;

(3) The helicopter is operated by U.S.-certificated airmen employed by the air carrier; and

(4) The air carrier files a copy of the helicopter lease or charter agreement with the FAA Aircraft Registry, Department of Transportation, 6400 South MacArthur Boulevard, Oklahoma City, Oklahoma (Mailing address: P.O. Box 25504, Oklahoma City, Oklahoma 73125).

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

3. By revising §135.25(a) and adding a new paragraph (d) to read as follows:

§ 135.25 Aircraft requirements.

(a) Except as provided in paragraph (d) of this section, no certificate holder may operate an aircraft under this part unless that aircraft—

* * * * *

(d) A certificate holder may operate in common carriage, and for the carriage of mail, a civil aircraft which is leased or chartered to it without crew and is registered in a country which is a party to the Convention on International Civil Aviation if—

(1) The aircraft carries an appropriate airworthiness certificate issued by the country of registration and meets the registration and identification requirements of that country;

(2) The aircraft is of a type design which is approved under a U.S. type certificate and complies with all of the requirements of this chapter (14 CFR Chapter 1) that would be applicable to that aircraft were it registered in the United States, including the requirements which must be met for issuance of a U.S. standard airworthiness certificate (including type design conformity, condition for safe operation, and the noise, fuel venting, and engine emission requirements of this chapter), except that a U.S. registration certificate and a U.S. standard airworthiness certificate will not be issued for the aircraft;

(3) The aircraft is operated by U.S.-certificated airmen employed by the certificate holder; and

(4) The certificate holder files a copy of the aircraft lease or charter agreement with the FAA Aircraft Registry, Department of Transportation, 6400 South MacArthur Boulevard, Oklahoma City, Oklahoma (Mailing address: P.O. Box 25504, Oklahoma City, Oklahoma 73125).

(Sections 313(a) 601, 603, 604, 610(b), 611, and 1108(b), Federal Aviation Act of 1958 (49 U.S.C. §§ 1354(a), 1421, 1423, 1424, 1430(b), 1431, and 1508(b)); Section 6(c), Department of Transportation Act (49 U.S.C. § 1655(c)))

Note.—The FAA has determined that this document involves a regulation which is not considered to be significant under Executive Order 12044 as implemented by the Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by writing to the individual listed above as the information contact.

Issued in Wasington, D.C., on October 13, 1980.

Langhorne Bond,

Administrator.

[FR Doc. 80-32392 Filed 10-15-80; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9059]

Trans World Accounts, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: In accordance with the mandate of the Court of Appeals for the Ninth Circuit, this order further modifies the Modified Order to Cease and Desist issued on July 25, 1979, 44 FR 49650, 94 F.T.C. 141, by inserting a new "Paragraph 3" which substitutes the term "lawsuit" for the phrase "legal action" as used in "Paragraph 3" of F.T.C.'s October 25, 1979 Order of Remand, 44 FR 66576, 94 F.T.C. 1051.

DATES: Order issued October 25, 1977. Modifying order issued September 2, 1980.

FOR FURTHER INFORMATION CONTACT: Robert B. Greenbaum, Acting Director, 9R, San Francisco Regional Office, Federal Trade Commission, 450 Golden Gate Ave., San Francisco, California 94102. (415) 556-1270.

SUPPLEMENTARY INFORMATION: In the Matter of Trans World Accounts, Inc., a corporation, and Floyd T. Watkins, individually and as an officer of said corporation. Codification, under 16 CFR 13, appearing at 43 FR 2388 and 44 FR 49650, remains unaltered.

The Modification of Modified Order To Cease and Desist is as follows:

On July 25, 1979, the Commission entered a "Modified Order to Cease and Desist" in this matter, thereby effectuating those portions of its order of October 25, 1977 that had been affirmed and enforced by the Ninth Circuit Court of Appeals in *Trans World Accounts* v. *FTC*, 594 F.2d 212 (9th Cir. 1979). On October 25, 1979, the Commission entered an "Order on Remand", adding a new "Paragraph 3" to its order of July 25, 1979. Respondents appealed this order to the Ninth Circuit Court of Appeals, and, thereafter, respondents and the Commission entered into a stipulation before the court, which rendered its judgment modifying and enforcing as modified the order under appeal. Because both sides have waived any rights to seek further review of the court's order, it is now appropriate that the order of the Commission be rendered in accordance with the mandate of the court, 15 U.S.C. 45(i).

Therefore, it is ordered that the Commission's "Modified Order to Cease and Desist" dated July 25, 1979, be further modified by the insertion of Paragraph 3 to read: "3. Misrepresenting directly or by implication, that a lawsuit with respect to an alleged delinquent debt has been or will be initiated, or misrepresenting in any manner the imminency of a lawsuit."

By the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80-32152 Filed 10-15-80; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 355

Certain Iron Metal Castings From India: Countervailing Duty Order

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Countervailing duty order.

SUMMARY: This notice is to advise the public that the Department of Commerce and the U.S. International Trade Commission have conducted separate investigations under section 303 of the Tariff Act of 1930 (19 U.S.C. 1303). These investigations have resulted in determinations that the Government of India confers benefits upon the production and/or export of certain iron-metal castings which constitute subsidies within the meaning of the countervailing duty law and that sales of this merchandise in the United States are materially injuring or threatening material injury to an industry in the United States. Imports of this merchandise from the effective date of the preliminary countervailing duty determination will be subject to the payment of countervailing duties.

EFFECTIVE DATE: October 16, 1980.

FOR FURTHER INFORMATION CONTACT: Steven K. Morrison, Program Analyst, Office of Investigations, International Trade Administration, Department of Commerce, Washington, D.C. 20230 (202-377-3965).

SUPPLEMENTARY INFORMATION:

Background

In accordance with section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303, hereinafter "the Act"), the Under Secretary for International Trade in the U.S. Department of Commerce has determined that certain iron-metal castings from India have been the subject of benefits which are subsidies under the countervailing duty law. This Final Affirmative Determination by the Under Secretary was published on August 20, 1980, in the Federal Register (45 FR 55502). In the case of merchandise entering the country free of duty, as in this investigation, the U.S. International Trade Commission has the responsibility to determine if these imports materially injure or threaten material injury to an industry in the United States. A final affirmative determination, was published on October 8, 1980, by the U.S. International Trade Commission (45 FR 66915). Therefore, according to section 706 of the Act (19 U.S.C. 1671e, 93 Stat. 160) this order is being published.

Order

The Government of India provides bounties or grants (subsides) upon the production and/or export of certain iron-metal castings consisting of manhole covers and frames, clean-out covers and frames, and catch basin grates and frames which enter the United States under item number 657.09 of the Tariff Schedules of the United States (TSUS), these subsidies have been provided at the following company specific rates;

	Percent of f.o.b. price
Uma Iron and Steel	16.8
R.B. Agarwalla & Co.	14.9
Basant Udyog	13.8
Kejriwal Iron & Steel Works	13.1
Kajaria Exports	12.9
All Other Companies	13.3

The United States International Trade Commission, in its decision of October 1980, has determined that the importation of these articles from India materially injures or threatens material injury to an industry in the United States. Interested parties have been afforded an opportunity to present written and oral views in accordance with applicable regulations.

Accordingly, Customs Officers are hereby directed to assess a countervailing duty on entries of these articles from India equal to the amount of the net subsidy determined or estimated to exist, within six months after the date on which the Department of Commerce receives satisfactory information upon which the assessment may be based, but in no event later than 12 months after the end of the annual accounting period of the manufacturer or exporter within which the merchandise is entered, or withdrawn from warehouse, for consumption.

The liquidation of all entries for consumption or withdrawals from warehouse for consumption of iron-metal castings imported directly or indirectly from India which benefit from these subsidies shall continue to be suspended, pending further determinations of the net amount of the subsidies paid pursuant to Section 751 of the Act. Effective on October 16, 1980, and until further notice, deposit of the estimated countervailing duties shall be required at the time of entry, or withdrawal from warehouse, for consumption. The amount to be deposited for each company is listed above. Bonds are not acceptable. Entry documents should state the manufacturer of the merchandise as well as the exporter. If the exporter is not the manufacturer of the merchandise and the rate applicable to the manufacturer is higher than that for the exporter, that higher rate will be applicable.

Annex III Part 355 of the Department of Commerce regulations (19 CFR Part 355) is amended by inserting after the last entry for India, the words "certain iron-metal castings" in the column headed "Commodity", the Federal Register citation of this notice in the column headed "Treasury Decision" and the words "Net Subsidy Declared—Rate" in the column headed "Action."

(Sec. 303, 706, Act (19 U.S.C. 1303, and 1671e), and § 355.36 of the Department of Commerce regulations (19 CFR 355.36))

John D. Greenwald,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 80-32183 Filed 10-15-80; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD5-80-07R]

Elizabeth River, Portsmouth, Va., Anchorage Regulations, Correction

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: The amendment to Anchorage O, Hospital Point (33 CFR 110.168(d)(5) published in the Federal Register issue of Monday, September 29, 1980 (45 FR 64175) contained two errors. The first appeared in the next-to-last line of the first column on page 64175 where the incorrect word "charter" appeared instead of the correct word "charted."

The second error concerns the last four lines of the amendment appearing in the first column on page 64177, in which the latitude of the last two points describing the anchorage ground boundary were reversed. As corrected, these last four lines should read as follows: thence to latitude 36°50'27.6" N., longitude 76°16'09.5" W.; thence to the shore at latitude 36°50'25.7" N., longitude 76°16'09.5" W.

FOR FURTHER INFORMATION CONTACT: CDR. E. E. Moran, Chief, Port Safety Branch, (804) 398-6369.

(Sec. 7, 38 Stat. 1053, (33 U.S.C. 471); Sec. 6(g)(1)(B), 80 Stat. 937; (49 U.S.C. 1655(g)(1)(B), 49 CFR 1.46(c)(2); 33 CFR 1.05-1(g))

Dated: October 3, 1980.

T. T. Wetmore III,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 80-32099 Filed 10-15-80; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 10

International Express Mail Rates; Rates to the People's Republic of China

AGENCY: Postal Service.

ACTION: Final international express mail rates to People's Republic of China.

SUMMARY: Pursuant to its authority under 39 U.S.C. 407, the Postal Service is beginning International Express Mail Service with the People's Republic of China at the rates indicated in the tables below. An International Express Mail Agreement with the People's Republic of China was signed on October 9, 1980.

EFFECTIVE DATE: October 20, 1980.

FOR FURTHER INFORMATION CONTACT: George W. Screws, (202) 245-5624.

SUPPLEMENTARY INFORMATION: Although 39 U.S.C. 407 does not require advance notice and opportunity for submission of comments and the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirement of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service normally invites interested persons to submit their views. In this case, however, we believe there are good reasons not to follow our usual practice. The U.S. Economic and Trade Exhibition will be held in Beijing during the period November 17-28, 1980. Beginning International Express Mail Service without delay on October 20 will permit the advanced communication required to make arrangements for the Exhibition. Moreover, the rates to the People's Republic of China are very similar to those established in 1978 for Hong Kong on which comments were invited without response. See 43 FR 31997 (1978).

For the above reasons, the Postal Service adopts the rates of postage for International Express Mail Service to the People's Republic of China set out in the following tables (designated 8-16 and 8-17) for inclusion in Publication 42, International Mail, incorporated by reference at 39 CFR 10.1.

(39 U.S.C. 401, 403, 404(2), 407, 410(a); Universal Postal Convention, Lausanne 1974, T.I.A.S. No. 8231, Art. 6)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

PEOPLE'S REPUBLIC OF CHINA

INTERNATIONAL EXPRESS MAIL

Table 8–16.—*Custom Designed Service*

Pounds (up to and including)	Zone to International Exchange Office						
	3	4	5	6	7	8	9
1	$29.24	$29.29	$29.34	$29.44	$29.54	$29.64	$29.74
2	32.28	32.36	32.45	32.59	32.73	32.88	33.03
3	35.32	35.43	35.56	35.74	35.92	36.12	36.32
4	38.36	38.50	38.67	38.89	39.11	39.38	39.61
5	41.40	41.57	41.78	42.04	42.30	42.60	42.90
6	44.44	44.64	44.89	45.19	45.49	45.84	46.19
7	47.48	47.41	48.00	48.34	48.66	49.06	49.48
8	50.52	50.78	51.11	51.49	51.87	52.32	52.77
9	53.56	53.85	54.22	54.64	55.06	55.56	56.06
10	56.60	56.92	57.33	57.79	58.25	58.80	59.35
11	59.64	59.99	60.44	60.94	61.44	62.04	62.64
12	62.68	63.06	63.55	64.09	64.63	65.28	65.93
13	65.72	66.13	66.66	67.24	67.82	68.52	69.22
14	68.76	69.20	69.77	70.39	71.01	71.76	72.51
15	71.80	72.27	72.88	73.54	74.20	75.00	75.80
16	74.84	75.34	75.99	76.69	77.39	78.24	79.09
17	77.88	78.41	79.10	79.84	80.58	81.48	82.38
18	80.92	81.48	82.21	82.99	83.77	84.72	85.67
19	83.96	84.55	85.32	86.14	86.96	87.96	88.96
20	87.00	87.62	88.43	89.29	90.15	91.20	92.25
21	90.04	90.69	91.54	92.44	93.34	94.44	95.54
22	93.08	93.76	94.85	95.59	96.53	97.68	98.83
23	96.12	96.83	97.76	98.74	99.72	100.92	102.12
24	99.16	99.90	100.87	101.89	102.91	104.16	105.41
25	102.20	102.97	103.98	105.04	106.10	107.40	108.70
26	105.24	106.04	107.09	108.19	109.29	110.64	111.99
27	108.28	109.11	110.20	111.34	112.48	113.88	115.28
28	111.32	112.18	113.31	114.49	115.67	117.12	118.57
29	114.36	115.25	116.42	117.64	118.86	120.36	121.86
30	117.40	118.32	119.53	120.79	122.05	123.60	125.15
31	120.44	121.39	122.64	123.94	125.24	126.84	128.44
32	123.48	124.46	125.75	127.09	128.43	130.08	131.73
33	126.52	127.53	128.86	130.24	131.62	133.32	135.02

Notes:

(1) Rates in this table are applicable to each piece of International Custom Designed Express Mail shipped under a Service Agreement providing for tender by the customer at a Designated Post Office.

(2) Pickup is available under a Service Agreement for an added charge of $5.25 for each pickup stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service agreement incurs only one pickup charge.

(3) If tendered at origin airport mail facility, deduct $3.00 from these rates.

Table 8–17.—*On Demand Service*

Pounds (up to and including)	Zone to International Exchange Office						
	3	4	5	6	7	8	9
1	$18.94	$18.99	$19.09	$19.14	$19.24	$19.34	$19.44
2	21.98	22.06	22.20	22.29	22.43	22.58	22.73
3	25.02	25.13	25.31	25.44	25.62	25.82	26.02
4	28.06	28.20	28.42	28.59	28.81	29.06	29.31
5	31.10	31.27	31.53	31.74	32.00	32.30	32.60
6	34.14	34.34	34.64	34.89	35.19	35.54	35.89
7	37.18	37.41	37.75	38.04	38.38	38.78	39.18
8	40.22	40.48	40.86	41.19	41.57	42.02	42.47
9	43.26	43.55	43.97	44.34	44.76	45.26	45.76
10	46.30	46.62	47.08	47.49	47.95	48.50	49.05
11	49.34	49.69	50.19	50.64	51.14	51.74	52.34
12	52.38	52.76	53.30	53.79	54.33	54.98	55.63
13	55.42	55.83	56.41	56.94	57.52	58.22	58.92
14	58.46	58.90	59.52	60.09	60.71	61.46	62.21
15	61.50	61.97	62.63	63.24	66.90	64.70	65.50
16	64.54	65.04	65.74	66.39	67.09	67.94	68.79
17	67.58	68.11	66.85	69.54	70.28	71.18	72.08
18	70.62	71.18	71.96	72.69	73.47	74.42	75.37
19	73.66	74.25	75.07	75.84	76.66	77.66	78.66
20	76.70	77.32	78.18	78.99	79.85	80.90	81.95
21	79.74	80.39	81.29	82.14	83.04	84.14	85.24
22	82.78	83.46	84.40	85.29	86.23	87.38	88.53
23	85.82	86.53	87.51	88.44	89.42	90.62	91.82
24	88.86	89.60	90.62	91.59	92.61	93.86	95.11
25	91.90	92.67	93.73	94.74	95.80	97.10	98.40
26	94.94	95.74	96.84	97.89	98.99	100.34	101.69
27	97.98	98.81	99.95	101.04	102.18	103.58	104.98
28	101.02	101.88	103.06	104.19	105.37	106.82	108.27
29	104.06	104.95	106.17	107.34	108.56	110.06	111.56
30	107.10	108.02	109.28	110.49	111.75	113.30	114.85
31	110.14	111.09	112.39	113.64	114.94	116.54	118.14

Table 8–17.—*On Demand Service—Continued*

Pounds (up to and including)	Zone to International Exchange Office						
	3	4	5	6	7	8	9
32	113.18	114.16	115.50	116.79	118.13	119.78	121.43
33	116.22	117.23	118.61	119.94	121.32	123.02	124.72

Notes:

(1) Pickup is available under a Service Agreement for an added charge of $5.25 for each pickup stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pickup charge.

[FR Doc. 80–32300 Filed 10–15–80; 8:45 am]

BILLING CODE 7710–12–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–2

[FPMR Amdt. A–31]

Nonstock Direct Delivery Shipments Billing Procedures

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation specifies that the General Services Administration (GSA) will no longer render billings to customer agencies when they requisition nonstock direct delivery items. The ordering agency will be invoiced directly by the vendor since GSA has previously specified that the General Supply Fund (GSF) will no longer be used to finance nonstock direct delivery requisitions. GSA expects these changes will significantly reduce the impact of cash flow upon the GSF and reduce the number of monthly billings.

EFFECTIVE DATE: October 16, 1980.

FOR FURTHER INFORMATION CONTACT: William R. Stanton, Supply and Transportation Accounting Division (202–566–0620).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this regulation will not impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purposes of Executive Order 12044.

Section 101–2.102 is amended by revising paragraph (a) to read as follows:

§ 101–2.102 Billing procedures.

(a) Bills are rendered biweekly, monthly, or quarterly after the fact or in advance on approved billing forms, which are GSA Form 789, Statement, Voucher, and Schedule of Withdrawals and Credits, and Treasury TFS Form 7308, Paid Billing Statement for SIBAC Transactions (illustrated at §§ 101–2 4902–789 and 101–2.4903–7306). Certification of such bills by GSA is not required. Except for those bills which are rendered in advance; bills for shipments from stock are rendered on the basis of drop from inventory, provided that notification of warehouse refusal or other advice of nonavailability has not been received from the depot prior to the billing date; bills for services are rendered after there is evidence of actual delivery of services and; bills for stock direct delivery shipments are rendered based upon payment to the vendor and proof of shipment. However, bills for nonstock direct delivery shipments will not be rendered because customer agencies will make payment directly to the vendor from their appropriations and funds.

* * * * *

(Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c)))

Dated: September 30, 1980.

R. G. Freeman III,

Administrator of General Services.

[FR Doc. 80–32151 Filed 10–15–80; 8:45 am]

BILLING CODE 6820–39–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172 and 175

[Docket No. HM–166B; Amdt. Nos. 172–62, 175–17]

Shipment of Hazardous Materials by Air; Miscellaneous Amendments; Revision

AGENCY: Materials Transportation Bureau, Research and Special Program Administration, DOT.

ACTION: Final rule; revision of previous amendments.

SUMMARY: This amendment revises a final rule published February 28, 1980, regarding the shipment of hazardous materials by air. The rule extends the application of the marking exception contained in the regulations covering liquid hazardous materials (172.312), to certain flammable liquids in the ORM–D hazard class. The rule also clarifies the requirements for inspecting packages of radioactive materials when they are shipped in overpack, as set forth in 175.30.

EFFECTIVE DATE: November 17, 1980; however, shipments may be prepared, offered for transportation, and transported in accordance with these amendments beginning October 16, 1980.

FOR FURTHER INFORMATION CONTACT: Edward T. Mazzullo, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Research and Special Programs Administration, U.S. Department of Transportation, Washington, D.C. 20590, (202) 426–2075.

SUPPLEMENTARY INFORMATION: On February 28, 1980, the Materials Transportation Bureau (MTB) published a final rule (Docket HM–166B; 45 FR 13087) which contained miscellaneous changes to the Hazardous Materials Regulations pertaining to the transportation of hazardous materials aboard aircraft. This amendment revises the final rule published in Docket HM–166B with regard to §§ 172.312 and 175.30 of 49 CFR. The circumstances creating the need for this amendment and the action being taken are discussed under the following headings:

1. *Package orientation markings (§ 172.312).* Since publication of Amendment 172–57 in Docket HM–166B, the MTB has received a petition for reconsideration filed in accordance with the provisions of 49 CFR 106.35 on behalf of the Council for Safe Transportation of Hazardous Articles (COSTHA). The petition requests (1) retraction of a statement made by the MTB in the preamble to Amendment 172–57; and, (2) revision of § 172.312 to clarify that an exception from orientation requirements contained therein applies to flammable liquids in the ORM–D hazard class. The preamble statement made by the MTB is as follows:

> One commenter stated that many cosmetics, drugs and medicines are shipped with no package orientation markings. It is the MTB's impression that most cosmetics, drugs and medicines which are hazardous materials are likely to be classed as ORM–D materials and shipped under the description "Consumer Commodity, ORM–D." The MTB advises shippers that there is no exception from package orientation requirements, including marking requirements, for liquid hazardous materials classed ORM–D.

Prior to Amendment 172–57, § 172.312 required packages having inside packagings containing liquid hazardous materials to be packed with closures (of

the inside packagings) upward and required the marking of outside packages "THIS SIDE UP" or "THIS END UP", as appropriate. An exception was provided from these requirements in this same section for packages containing "limited quantities of flammable liquids" packed in inside packagings of one quart or less. The MTB's preamble statement reflects its interpretation that the phrase "limited quantities of flammable liquids" refers only to those flammable liquids which are shipped under the limited quantity provisions for flammable liquids, as set forth in §§ 172.203(b) and 173.118(a). These two sections prescribe requirements for describing and packaging "limited quantities of flammable liquids."

The COSTHA petition presents the argument that flammable liquids in the ORM–D hazard class (i.e., consumer commodities) are also "liquid quantities of flammable liquids" and qualify for shipment under the exceptions granted in § 172.312. The MTB disagrees. For the sake of consistency and clarity the MTB believes that the phrase "limited quantities of flammable liquids" applies only to those materials meeting the requirements and conditions for "limited quantities" as specified in §§ 172.203(b) and 173.118(a). Materials which are reclassed as ORM–D materials in effect lose the identity of their original hazard class. All requirements and exceptions provided for limited quantities of a material in a particular hazard class do not apply when the material is reclassed as ORM–D. Based on the foregoing discussion, the MTB finds no basis to retract the statement made in the preamble to Amendment 172–57.

The petition also states that prior to establishment of the ORM–D hazard class (Docket HM–103/112; 41 FR 15972), consumer commodities which were flammable liquids were eligible for the exception from upright packing and orientation marking requirements. Also, it stated that when the ORM–D hazard class was established, it was intended that ORM–D materials be provided relief at least equivalent to, and to some extent greater than, that provided for limited quantities in a particular hazard class. Information in the public record to Docket HM–103/112 pertaining to the ORM–D hazard class supports the petitioner's claims. It appears that the exception contained in § 172.312 was not extended to flammable liquids in the ORM–D hazard class due to oversight, rather than by intent.

Flammable liquids in the ORM–D hazard class pose a limited hazard in transportation similar to that posed by limited quantities of flammable liquids packaged under the provisions of § 173.118(a). To require more restrictive packaging for flammable liquids in the ORM–D hazard class may impose an undue burden on the shipment of these materials and is contrary to the intent of changes made in Docket HM–103/112. For these reasons, the MTB grants the petitioner's request to the extent that § 172.312 is revised by this amendment (1) to clarify application of the exception from orientation marking requirements contained therein; and, (2) to extend application of the orientation exception to flammable liquids in the ORM–D hazard class.

2. *Radioactive materials in overpacks (§ 175.30).* Section 175.30 contains requirements pertaining to the acceptance and inspection of hazardous materials prior to loading aboard aircraft. The final rule published on February 28, 1980 (Amendment 175–12) revised § 175.30 to clarify inspection requirements and to except certain hazardous materials, such as dry ice and magnetized materials, from requirements for inspection. Since publication of Amendment 175–12, it has been brought to the MTB's attention that § 175.30 is not clear with regard to inspection requirements applicable to packages of radioactive materials combined in overpacks.

Section 173.393(r) contains requirements pertaining to marking, labeling and transport index limitations for packages of radioactive materials combined in overpacks. The status of such overpacks, with regard to aircraft operator inspection requirements contained in § 175.30, needs clarification. Section 175.30 currently references "package" and "outside container prepared in accordance with § 173.25" but fails to reference an "overpack prepared in accordance with § 173.393(r)." This amendment revises § 175.30 in order to prescribe inspection requirements for overpacks prepared in accordance with § 173.393(r).

Section 175.30 is also being revised with regard to requirements pertaining to the inspection of package seals for packages of radioactive materials contained within properly prepared overpacks. In the interest of safety, it is desirable that aircraft operators not remove or otherwise disturb packages contained in overpacks prepared in accordance with § 173.393(r). Therefore, packages contained in overpacks have been excepted from the requirement pertaining to inspection of package seals contained in § 175.30(c)(2).

In consideration of the foregoing, 49 CFR Parts 172 and 175 are amended as follows:

1. In § 172.312, paragraphs (d) and (e) are revised to read as follows:

§ 172.312 Liquid hazardous materials.

* * * * *

(d) Except when offered for transportation by air, packages containing flammable liquids in inside packagings of one quart or less prepared in accordance with §§ 173.118(a) or 173.1200(a)(1) of this subchapter are excepted from the requirements of paragraph (a) of this section.

(e) When offered for transportation by air, packages containing flammable liquids in inside packagings of one quart or less prepared in accordance with §§ 173.118(a) or 173.1200(a)(1) of this subchapter are excepted from the requirements of paragraph (a) of this section when packed with sufficient absorption material between the inner and outer packagings to completely absorb the liquid contents.

2. In § 175.30, paragraphs (b) and (c) are revised to read as follows:

§ 175.30 Accepting and inspecting shipments.

* * * * *

(b) Except as provided in paragraph (d) of this section, no person may carry a hazardous material in a package, outside container prepared in accordance with § 173.25 of this subchapter, or overpack prepared in accordance with § 175.393(r) of this subchapter aboard an aircraft unless the package, outside container, or overpack is inspected by the operator of the aircraft immediately before placing it—

(1) Aboard the aircraft; or

(2) In a freight container or on a pallet prior to loading aboard the aircraft.

(c) A hazardous material may only be carried aboard an aircraft if, based on the inspection prescribed in paragraph (b) of this section, the operator determines that the package, outside container, or overpack containing the hazardous material—

(1) Has no holes, leakage or other indication that its integrity has been compromised; and

(2) For radioactive materials, does not have a broken seal, except that packages contained in overpacks need not be inspected for seal integrity.

* * * * *

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53 and App. A to Part 1.)

Note.—The Materials Transportation Bureau has determined that this document will not result in a major economic impact under the terms of Executive Order 12221 and DOT implementing procedures (44 FR 11034) nor require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.). A regulatory evaluation and environmental assessment are available for review in the docket.

Issued in Washington, D.C. on October 8, 1980.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 80-32194 Filed 10-15-80; 8:45 am]

BILLING CODE 4910-62-M

Urban Mass Transportation Administration

49 CFR Part 660

State "Buy National" Requirements

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Revision of policy.

SUMMARY: This document revises UMTA's policy concerning the application of state "Buy National" preference statutes to contracts that are partially funded by UMTA grants. This document is necessary to implement the Congressional intent expressed in the DOT Appropriations Act for the current fiscal year. The intended effect of this document is to permit states to apply their own more restrictive "Buy National" statutes in UMTA-funded contracts during fiscal year 1981, provided that the administration of the state statute is consistent with the Federal exemptions to the Federal "Buy National" statute.

EFFECTIVE DATE: October 9, 1980.

FOR FURTHER INFORMATION CONTACT: John J. Collins, Office of the Chief Counsel (202) 426–1906; or James McCullagh, Office of Transit Assistance (202) 426–2053; Urban Mass Transportation Administration, 400 7th Street, S.W., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

Original Policy

The general policy of UMTA concerning the application of non-Federal preferences to the procurement of equipment and the construction of facilities was contained in the preamble to the Buy America regulations (49 CFR Part 660) published by UMTA in the **Federal Register** on December 6, 1978. On page 57145 of Volume 43 of that **Federal Register**, UMTA recited that we would not help fund any procurement contract awarded by a state or local government if the contract contained contract preferences for products manufactured or constructed in the United States that were different from the contract preferences contained in the UMTA Buy America statute (Section 401 of Pub. L. 95–599 (92 Stat. 2689)) as implemented by the UMTA Buy America regulations (49 CFR Part 660). UMTA adopted this policy for a number of reasons including the need to balance the competing commands of the UMTA authorizing legislation concerning contract specifications. Section 3(a)(2)(C) of the Urban Mass Transportation Act of 1964 (92 Stat. 2736 (49 U.S.C. 1602(a))) forbids UMTA from participating in contracts which contain "exclusionary or discriminatory specifications" while Section 401 establishes preferences for United States made products that result in discriminatory specifications.

Impact of New Legislation

The DOT and Related Agencies Appropriations Act for fiscal year 1981 (Pub. L. 96–400 (94 Stat. 1681) (H.R. 7831; 96th Congress, 2nd Session; September 18, 1980; p. 21 (lines 13–18))) mandates that UMTA administer our grant program "pursuant to the provisions of section 401, Pub. L. 95–599". The Conference Report for the Act (House Report No. 96–1400 (September 25, 1980) pp. 16–17) clarifies what is meant by this language. The Conferees explained that:

> If a contract bid does not fall within the scope of any of the exceptions cited in Section 401 of Public Law 95–599, then the grantee should not be denied UMTA financial assistance simply because of the imposition of a state domestic preference law. The conferees do not intend the term "state domestic preference law" to include so-called "buy-state laws" which require preferences for products manufactured in a particular state or subdivision and any such state laws shall not prevail over Federal law. On the other hand, if the imposition of a state domestic preference law causes the contract bid to fall within the scope of any or all of the exceptions cited in Section 401 of Pub. L. 95–599, then UMTA financial assistance could be denied because State statutes are undoubtedly subject to Federal law prescribing the "Buy America" exceptions of public interest, unavailability and unreasonable cost.

Revised Policy

The UMTA policy stated in the preamble on page 57145 of Volume 43 of the **Federal Register** is being revised by this document. During the period October 9, 1980 to September 30, 1981, state "Buy National" preference provisions that are more restrictive with respect to the procurement of foreign made products than Section 401 will be permitted in contracts awarded using UMTA funds provided that the preference provision and its terms are specifically set out in state law. The Federal exceptions to the application of "Buy National" statutes described in Section 401(b) of the Buy America statute will continue to govern UMTA's participation in such contracts. These exceptions require UMTA to withhold funds from contracts where application of the state "Buy National" law is: not in the public interest, adds unreasonably to the cost of rolling stock, makes materials unavailable, or adds more than 10% to the cost of the contract. If an exception under Section 401(b) is appropriate, it will be granted by UMTA under the procedural provisions of subpart C of 49 CFR Part 660. UMTA will not participate in such contracts if the state law is administered in a manner that is inconsistent with the application of the Federal exceptions. The administration of the state statute must conform to the Federal waiver or we will not help fund the contract. The contracting process must not exclude contractors who have the potential to quailfy for the Federal exceptions.

The original policy remains applicable to all other preference provisions. We will continue to decline to participate in contracts governed by:

1. Preference provisions which are not as strict as the Federal requirement.

2. State and local "Buy National" preference provisions which are not explicitly set out under state law. For instance, administrative interpretations of non-specific state legislation will not control.

3. State and local "Buy Local" preference provisions. Specific Guidance:

Guidance concerning the application of this policy in particular circumstances should be obtained by contacting the UMTA Regional Administrator for your area. The telephone numbers and addresses of the regional offices are contained in 49 CFR Part 601.

Timing

The Appropriations Act that necessitated this policy change became effective on October 9, 1980. The statute did not provide a grace period for implementation. Since the statute governs all of our procurements during the current fiscal year, we determined that it was necessary to issue this policy change immediately and make it effective immediately. The discussion in the legislative history of the Appropriations Act was so specific that it did not permit meaningful alternatives that could have been explored in a public comment period.

Enviromental Impact Statement

This policy change does not significantly affect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969.

Dated: October 9, 1980.

Theodore C. Lutz,

Urban Mass Transportation Administrator.

[FR Doc. 80-32247 Filed 10-15-80; 8:45 am]

BILLING CODE 4910-57-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Tenth Rev. S.O. 1473]

Various Railroads Authorized To Use Tracks and/or Facilities of the Chicago, Rock Island & Pacific Railroad Co., Debtor (William M. Gibbons, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Tenth Revised Service Order No. 1473.

SUMMARY: Pursuant to Section 122 of the Rock Island Transition and Empoyee Assistance Act, Pub. L. 96–254, this order authorizes various railroads to provide interim service over Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee), and to use such tracks and facilities as are necessary for operations. This order permits carriers to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

EFFECTIVE DATE: 12:01 a.m., October 11, 1980, and continuing in effect until 11:59 p.m., November 30, 1980, unless otherwise modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275–7840.

Decided: October 9, 1980.

Pursuant to Section 122 of the Rock Island Transition and Employee Assistance Act, Pub. L. 96–254, the Commission is authorizing various railroads to provide interim service over Chicago, Rock Island and Pacific Railroad Company, Debtor, (William M. Gibbons, Trustee), (RI) and to use such tracks and facilities as are necessary for that operation.

In view of the urgent need for continued service over RI's lines pending the implementation of long-range solutions, this order permits carriers to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

Tenth Revised Service Order No. 1473, modifies Appendix A, of the previous order by deleting the authority for the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, in Item 8., B. Seymour, Iowa, as requested, and C and D of this Item become B and C. Also, the authority is deleted for the El Dorado and Wesson Railroad Company, Item 15, from El Dorado to Catesville, Arkansas, as requested. Items previously numbered 16–23 are renumbered one number less. Appendix A is further modified by granting additional authority to Chicago and North Western Transportation Company (CNW), in Item 7., K between Bricelyn, Minnesota (milepost 57.7) and Rake, Iowa (milepost 50.7).

It is the opinion of the Commission that an emergency exists requiring that the railroads listed in the attached appendix be authorized to conduct operations, also identified in the attachment, using RI tracks and/or facilities; that notice and public procedure are impracticable and contrary to the public interest; and good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

§ 1033.1473 Tenth Revised Service Order No. 1473.

(a) *Various Railroads authorized to use tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company, debtor, (William M. Gibbons, trustee).* Various railroads are authorized to use tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company (RI), as listed in Appendix A to this order, in order to provide interim service over the RI.

(b) The Trustee shall permit the affected carriers to enter upon the property of the RI to conduct service essential to these interim operations.

(c) The Trustee will be compensated on terms established between the Trustee and the affected carrier(s); or upon failure of the parties to agree as hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by Section 122(a) Public Law 96–254.

1. The authority contained in Item 5(E) of Appendix A of this order, previously operated by the Union Pacific Railroad Company (UP) between Colby and Caruso, Kansas (milepost 387.8 to 429.3), is conditioned upon the assumption by Burlington Northern, Inc. (BN) of the negotiated agreement between UP and the Rock Island Trustee with regard to the compensation to be paid the Trustee for that line segment until a new agreement is reached between the Trustee and the BN.

(d) Interim operators authorized in Appendix A to this order, shall, within fifteen (15) days of its effective date, notify the Railroad Service Board of the date on which interim operations were commenced or the expected commencement date of those operations.

(e) Interim operators, authorized in Appendix A to this order, shall, within thirty days of commencing operations under authority of this order, notify the RI Trustee of those facilities they believe are necessary or reasonably related to the authorized operations.

(f) During the period of these operations over the RI lines, interim operators shall be responsible for preserving the value of the lines, associated with each interim operation, to the RI estate, and for performing necessary maintenance to avoid undue deterioration of lines and associated facilities.

(g) Any operational or other difficulty associated with the authorized operations shall be resolved through agreement between the affected parties or failing agreement, by the Commission's Railroad Service Board.

(h) Any rehabilitation, operational, or other costs related to the authorized operations shall be the sole responsibility of the interim operator incurring the costs, and shall not in any way be deemed a liability of the United States Government.

(i) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(j) *Rate applicable.* Inasmuch as this operation by interim operators over tracks previously operated by the RI is deemed to be due to carrier's disability, the rates applicable to traffic moved over these lines shall be the rates applicable to traffic routed to, from, or via these lines which were formerly in effect on such traffic when routed via RI, until tariffs naming rates and routes specifically applicable become effective.

The operator under this temporary authority will not be required to protect transit rate obligations incurred by the RI or the directed carrier, Kansas City Terminal Railway Company, on transit balances currently held in storage.

(k) In transporting traffic over these lines, all interim operators involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to that traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between the carriers; or upon failure of the carriers to so agree, the divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(l) In providing service under this order interim operators, to the maximum extent practicable, shall use the employees who normally would have performed work in connection with the traffic moving over the lines subject to this Order.

(m) *Effective date.* This order shall become effective at 12:01 a.m., October 11, 1980.

(n) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., November 30, 1980, unless otherwise modified, amended, or vacated by order of this Commission.

This action is taken under the authority of 49 U.S.C. 10304–10305 and Section 122, Public Law 96–254.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John H. O'Brien.

Agatha L. Mergenovich,

Secretary.

Appendix A—RI Lines Authorized To Be Operated by Interim Operators

1. *Louisiana and Arkansas Railway Company (L&A):*

A. Tracks one through six of the Chicago, Rock Island and Pacific Railroad Company's (RI) Cadiz yard in Dallas Texas, commencing at the point of connection of RI track six with the tracks of the Atchison, Topeka and Santa Fe Railway Company (ATSF) in the southwest quadrant of the crossing of the ATSF and the Missouri-Kansas-Texas Railroad Company (MKT) at interlocking station No. 19.

2. *Peoria and Pekin Union Railway Company (P&PU):* All Peoria Terminal Railroad property on the east side of the Illinois River, located within the city limits of Peking, Illinois.

3. *Union Pacific Railrood Company (UP):*

A. Beatrice, Nebraska.

B. Approximately 36.5 miles of trackage extending from Fairbury, Nebraska, to RI Milepost 581.5 north of Hallam, Nebraska.

C. Limon, Colorado.

4. *Toledo, Peoria and Western Railroad Company (TP&W):*

A. Keokuk, Iowa.

B. Peoria Terminal Company trackage from Hollis to Iowa Junction, Illinois.

5. *Burlington Northern, Inc. (BN):*

A. Burlington, Iowa (milepost 0 to milepost 2.06).

B. Fairfield, Iowa (milepost 275.2 to milepost 274.7).

C. Henry, Illinois (milepost 126) to Peoria, Illinois (milepost 164.35) including the Keller Branch (milepost 1.55 to 8.62).

D. Phillipsburg, Kansas (milepost 282) to CBQ Junction, Kansas (milepost 325.9).

E. CBQ Junction, Kansas (milepost 325.9) to Seibert, Colorado (milespost 487).

6. *Fort Worth and Denver Railway Company (FW&D):*

A. Terminal trackage at Amarillo, Texas, including approximately (3) three miles northerly along the old Liberal Line, and at Bushland, Texas.

B. North Fort Worth, Texas (milepost 603.0 to milepost 611.4).

7. *Chicago and North Western Transportation Company (C&NW):*

A. From Minneapolis-St. Paul, Minnesota, to Kansas City Missouri.

B. From Rock Junction (milepost 5.2) to Inver Grove, Minnesota (milepost 0).

C. From Inver Grove (milepost 344.7) to Northwood, Minnesota.

D. From Clear Lake Junction (milepost 191.1) to Short Line Junction, Iowa (milepost 73.6).

E. From Short Line Junction Yard (milepost 354) to West Des Moines, Iowa (milepost 364).

F. From Short Line Junction (milepost 73.6) to Carlisle, Iowa (milepost 64.7).

G. From Carlisle (milepost 64.7) to Allerton, Iowa (milepost 0).

H. From Allerton, Iowa (milepost 363) to Trenton, Missouri (milepost 415.9).

I. From Trenton (milepost 415.9) to Air Line Junction, Missouri (milepost 502.2).

J. From Iowa Falls (milepost 97.4) to Esterville, Iowa (milepost 206.9).

K. From Bricelyn, Minnesota (milepost 57.7) to Ocheyedan, Iowa (milepost 246.7).[1]

L. From Palmer (milepost 454.5) to Royal, Iowa (milepost 502).

M. From Dows (milepost 113.4) to Forest City, Iowa (milepost 158.2).

N. From Cedar Rapids (milepost 100.5) to Cedar River Bridge, Iowa (milepost 96.2) and to serve all industry formerly served by the RI at Cedar Rapids.

O. From Newton (milepost 320.5) to Earlham, Iowa (milepost 388.6).

P. Sibley, Iowa.

Q. Worthington, Minnesota.

R. Altoona to Pella, Iowa.

S. Carlisle, Indianola, Iowa.

T. Omaha, Nebraska, (between milepost 502 to milepost 504).

U. Earlham, (milepost 388.6) to Dexter, Iowa (milepost 393.5).

8. *Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee):*

A. From West Davenport, through and including Muscatine, to Fruitland, Iowa, including the Iowa-Illinois Gas and Electric Company near Fruitland.

B. Washington, Iowa.[2]

C. From Newport, to a point near the east bank of the Mississippi River, sufficient to serve Northwest Oil Refinery, at St. Paul Park, Minnesota.[2]

9. *Davenport, Rock Island and North Western Railway Company (DRI):*

A. Davenport, Iowa.

B. Moline, Illinois.

C. Rock Island, Illinois, including 26th Street yard.

D. From Rock Island through Milan, Illinois, to a point west of Milan sufficient to include service to the Rock Island Industrial complex.

E. From East Moline to Silvis, Illinois.

F. From Davenport to Iowa City, Iowa.

G. From Rock Island, Illinois, to Davenport, Iowa, sufficient to include service to Rock Island arsenal.

10. *Illinois Central Gulf Railroad Company (ICG):* Ruston, Louisiana.

11. *St. Louis Southwestern Railway Company (SSW):* operating the Tucumcari Line from Santa Rosa, NM, to St. Louis, MO (via Kansas City, KS/MO), a total distance of 965.2 miles. The line also includes the RI branch line from Bucklin to Dodge City, KS, a distance of 26.5 miles, and North Topeka, KS. Also between Brinkley and Briark, Arkansas, and at Stuttgart, Arkansas.

12. *Little Rock & Western Railway Company:* from Little Rock, Arkansas (milepost 135.2) to Perry, Arkansas (milepost 184.2); and from Little Rock (milepost 136.4) to the Missouri Pacific/RI Interchange (milepost 130.6).

13. *Missouri Pacific Railroad Company:* from Little Rock, Arkansas (milepost 135.2) to Hazen, Arkansas (milepost 91.5); Little Rock, Arkansas (milepost 135.2) to Pulaski, Arkansas (milepost 141.0); Hot Springs Junction (milepost 0.0) to and including Rock Island milepost 4.7.

14. *Missouri-Kansas-Texas Railroad Company/Oklahoma, Kansas and Texas Railroad Company:*

A. Herington-Ft. Worth Line of Rock Island: beginning at milepost 171.7 within the City of Herington, Kansas, and extending for a distance of 439.5 miles to milepost 613.5 within the City of Ft. Worth, Texas, and use of Fort Worth and Denver trackage between Purina Junction and Tower 55 in Ft. Worth.

B. Ft. Worth-Dallas Line of Rock Island: beginning at milepost 611.9 within the City of Ft. Worth, Texas, and extending for a distance of 34 miles to milepost 646, within the City of Dallas, Texas.

C. El Reno-Oklahoma City Line of Rock Island: beginning at milepost 513.3 within the City of El Reno, Oklahoma, and extending for a distance of 16.9 miles to milepost 496.4 within the City of Oklahoma City, Oklahoma.

D. Salina Branch Line of Rock Island: beginning at milepost 171.4 within the City of Herington, Kansas, and extending for a distance of 27.4 miles to milepost 198.8 in the City of Abilene, Kansas, including RI trackage rights over the line of the Union Pacific Railroad Company to Salina, (including yard tracks) Kansas.

E. Right to use joint with other authorized carriers the Herington-Topeka Line of Rock Island: beginning at milepost 171.7 within the City of Herington, Kansas, and extending for a distance of 81.6 miles to milepost 89.9 within the City of Topeka, Kansas, as bridge rights only.

F. Rock Island rights of use on the Wichita Union Terminal Railway Company and the Wichita Terminal Association, all located in Wichita, Kansas.

G. Rock Island right to use interchange tracks to interchange with the Great Southwest Railroad Company located in Grand Prairie, Texas.

H. The Atchison Branch from Topeka, at milepost 90.5, to Atchison, Kansas, at

[1] Added.

[2] Changed.

milepost 519.4 via St. Joseph, Missouri, at mileposts 0.0 and 498.3, including the use of interchange and yard facilities at Topeka, St. Joseph and Atchison, and the trackage rights used by the Rock Island to form a continuous service route, a distance of 111.6 miles.

I. The Ponca City Line at approximately milepost 26.1 at Billings, Oklahoma, to North Enid, Oklahoma, at milepost 339.5 on the Southern Division main line, a distance of 26.1 miles.

J. That part of the Mangum Branch Line from Chickasha, milepost 0.0 to Anadarko at milepost 18, thence south on the Anadarko Line at milepost 460.5 to milepost 485.3 at Richards Spur, a distance of 42.6 miles.

K. Oklahoma City-McAlester Line of Rock Island: Beginning at milepost 496.4 within the City of Oklahoma City, Oklahoma, and extending for a distance of 131.4 miles to milepost 365.0 within the City of McAlester, Oklahoma.

15. *The Denver and Rio Grande Western Railroad Company:*

A. From Colorado Springs (milepost 609.1) to and including all rail facilities at Colorado Springs and Roswell, Colorado, (milepost 602.8), all in the vicinity of Colorado Springs, Colorado.

16. *Norfolk and Western Railway Company:* Is authorized to operate over tracks of the Chicago, Rock Island and Pacific Railroad Company running southerly from Pullman Junction, Chicago, Illinois, along the western shore of Lake Calumet approximately four plus miles to the point, approximately 2,500 feet beyond the railroad bridge over the Calumet Expressway, at which point the RI track connects to Chicago Regional Port District track; and running easterly from Pullman Junction approximately 1,000 feet into the lead to Clear-View Plastics, Inc., for the purpose of serving industries located adjacent to such tracks and connecting to the Chicago Regional Port District. Any trackage rights arrangements which existed between the Chicago, Rock Island and Pacific Railroad Company and other carriers, and which extend to the Chicago Regional Port District Lake Calumet Harbor, West Side, will be continued so that shippers at the port can have NW rates and routes regardless of which carrier performs switching services.

17. *St. Louis-San Francisco Railway Co.:*

A. At Okeene, Oklahoma.

B. At Lawton, Oklahoma.

18. *Southern Railway Company:*

A. At Memphis, Tennessee.

19. *Cadillac and Lake City Railroad:*

A. From Sandown Junction (milepost 0.1) to and including junction with DRGW Belt Line (milepost 3.9) all in the vicinity of Denver, Colorado.

20. *Baltimore and Ohio Railroad Company:*

A. From Blue Island, Illinois (milepost 15.7) to Bureau, Illinois (milepost 144.2), a distance of 98.5 miles.

21. *Louisiana Midland Railway Company:*

A. From Hodge, Louisiana (milepost 173.3) to Alexandria, Louisiana (milepost 247.8), which includes assumption of RI's trackage rights over the Louisiana and Arkansas Railway Company between Winnfield, Louisiana, and Alexandria, Louisiana, and the RI's track and yard in Alexandria, Louisiana.

22. *Cedar Rapids and Iowa City Railway Company (CIC):*

A. From the west intersection of Lafayette Street and South Capitol Street, Iowa City, Iowa, southward for approximately 2.2 miles, terminating at the intersection of the RI tracks and the southern line of Section 21, Township 79 North, Range 6 West, Johnson County, Iowa, including spurs of the main trackage to serve various industry; and to effect interchange with the Davenport, Rock Island and North Western Railway Company.

[FR Doc. 80-32214 Filed 10-15-80; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 45, No. 202
Thursday, October 16, 1980

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 427

Oat Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation.

ACTION: Withdrawal of proposed rule.

SUMMARY: This notice withdraws a notice of proposed rulemaking issued by the Federal Crop Insurance Corporation as Amendment No. 3 to the Oat Crop Insurance Regulations. The notice of proposed rulemaking was issued in error. No public comment is necessary on the proposed rule since correcting this error of issuance will effectively eliminate the proposed rule.

DATE: This notice is effective October 16, 1980.

ADDRESS: Any comments on this proposed rule withdrawal should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, United States Department of Agriculture, Washington, D.C. 20250, telephone: (202) 447-3325.

SUPPLEMENTARY INFORMATION: On Friday, August 15, 1980, the Federal Corp Insurance Corporation (FCIC) published a notice of proposed rulemaking in the Federal Register (45 F.R. 54346-54347) as Amendment No. 3 to the Oat Crop Insurance Regulations. In the notice, it was proposed that Appendix "B" to 7 CFR Part 427 be revised and reissued to reflect additional counties approved by the Board of Directors for oat crop insurance effective with the 1981 crop year. It has been determined that there were no additional counties approved for oat crop insurance at this time and that the notice of proposed rulemaking (45 F.R. 54346) had been issued inadvertently and should be withdrawn.

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), FCIC hereby withdraws the notice of proposed rulemaking for Amendment No. 3 to the Oat Crop Insurance Regulations as published in the Federal Register on Friday, August 15, 1980 (45 F.R. 54346-54347).

Issued in Washington, D.C., on October 8, 1980.

Dated: October 8, 1980.

Peter F. Cole,
Secretary, Federal Crop Insurance Corporation.

Approved by:
Everett S. Sharp,
Acting Manager.

[FR Doc. 80-32166 Filed 10-15-80; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Supplementary Regulations and Conversion Factors

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking invites written comments on adding Golden Seedless and Dipped and Related Seedless raisins under a weight dockage system for immaturity under the Federal marketing order for California raisins. The proposal also pertains to the deletion of obsolete provisions, and a needed conforming change in provisions prescribing conversion factors for computing weight lost in reconditioning raisins. The proposal is based on a unanimous recommendation of the Raisin Administrative Committee. The Committee works with USDA in administering the order.

DATES: Comments must be received by October 31, 1980.

ADDRESSES: Send two copies of comments to the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250, where they will be available for inspection during business hours.

FOR FURTHER INFORMATION CONTACT: J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447-5053.

The Draft Impact Statement describing the options considered in developing this proposal and the impact of implementing each option is available on request from J. S. Miller.

SUPPLEMENTARY INFORMATION: This proposal has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "non-significant".

J. S. Miller has determined that an emergency situation exists which warrants less than a 60-day comment period. Handlers are in the process of acquiring 1980 crop Golden Seedless and Dipped and Related Seedless raisins. Thus, the weight dockage system should be effective as soon as possible so that the raisin industry can utilize it.

The proposal under consideration pertains to an amendment of the Subpart—Supplementary Regulations (7 CFR Part 989.202—989.233), and Subpart—Conversion Factors (7 CFR Part 989.601). The subparts are issued under the marketing agreement and Order No. 989, both as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California. The marketing agreement and order are referred to collectively as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The proposal deals with a revision of § 989.210 to include Golden Seedless and Dipped and Related Seedless raisins under the weight dockage system for immaturity. This system has been in effect for Natural (sun-dried) Seedless for several years. The inclusion of these two varietal types of raisins under the dockage system would permit handlers of Golden Seedless and Dipped and Related Seedless raisins to acquire them as natural condition standard raisins even though the raisins have been determined to be off-grade because of an excess of immature raisins. The immature raisins usually can be removed from the lot of raisins by the handler during normal processing so the balance of the lot meets grade requirements. Currently, for Natural (sun-dried) Seedless raisins, the creditable weight of such lots is computed by multiplying the net weight

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of the lot by a dockage factor. The factor would reduce the weight of the lot by an amount approximating the weight of the immature raisins needed to be removed from the lot in order for the balance of the lot to meet grade requirements.

Although there is more control of maturity in selecting grapes for dehydration than in sun-drying, makers of Golden Seedless and Dipped and Related Seedless raisins encounter maturity problems, especially in a year of poor grape maturity. Permitting handlers to acquire low maturity Golden Seedless and Dipped and Related Seedless raisins as standard raisins under this system would speed up acquisitions, would save inspection costs, and would save the makers of such raisins additional reconditioning costs.

The quality control provisions in § 989.202 obsolete and are proposed to be deleted.

The change in the term "Dipped Seedless" to "Dipped and Related Seedless" on August 1, 1979 (44 FR 64397) necessitated a minor wording change in § 989.601 of Subpart—Conversion Factors (7 CFR 989.601). This minor change was overlooked and is now proposed to be made.

The proposal is as follows:

Subpart—Supplementary Regulations

§ 989.202 (Deleted)

1. Section 989.202 is deleted.

2. In § 989.210, paragraphs (a) through (f) are revised to read:

§ 989.210 Handling of Natural (sun-dried) Seedless, Golden Seedless, and Dipped and Related Seedless raisins acquired pursuant to a weight dockage system.

(a) *General.* Subject to prior agreement between handler and tenderer, a handler may acquire as standard raisins any lot of Natural (sun-dried) Seedless, Golden Seedless, and Dipped and Related Seedless raisins containing more than 6 percent, by weight, of substandard raisins under a weight dockage system. The creditable weight of such lot acquired shall be that obtained by multiplying the net weight of the raisins in the lot by the applicable dockage factor from the dockage table prescribed in paragraph (g) of this section.

(b) *Free and reserve tonnage percentages.* Whenever free and reserve percentages are designated for Natural (sun-dried) Seedless, Golden Seedless, and Dipped and Related Seedless raisins for a crop year, such percentages shall be applicable to the creditable weight of any lot of such raisins acquired by a handler pursuant to a weight dockage system.

(c) *Reserve tonnage.* A handler may hold as reserve tonnage raisins any lot, or portion thereof, of Natural (sun-dried) Seedless, Golden Seedless, and Dipped and Related Seedless raisins acquired pursuant to a weight dockage system: *Provided,* That only the creditable weight of such lot, or portion thereof, may be applied by the Committee against the handler's reserve tonnage obligation.

(d) *Assessments.* Assessments on any lot of Natural (sun-dried) Seedless, Golden Seedless, and Dipped and Related Seedless raisins acquired by a handler pursuant to a weight dockage system shall be applicable to the free tonnage portion of the creditable weight of such lot.

(e) *Payments for services on reserve tonnage.* Payment to a handler for services performed by him with respect to reserve tonnage Natural (sun-dried) Seedless, Golden Seedless, and Dipped and Related Seedless raisins acquired pursuant to a weight dockage system shall be made on the basis of the creditable weight of such lot and at the applicable rate specified for such services in § 989.401 of Subpart—Schedule of Payments.

(f) *Identification.* Any lot of Natural (sun-dried) Seedless, Golden Seedless, and Dipped and Related Seedless raisins acquired by a handler pursuant to a weight dockage system shall be so identified by the inspection service by affixing to one container on each pallet, or to each bin, in such lot, a prenumbered RAC control card (to be furnished by the Committee) which shall remain affixed to the container or bin until the raisins are processed or disposed of as natural condition raisins. The control card shall only be removed by, or under the supervision of an inspector of the inspection service, or authorized Committee personnel.

* * * * *

Subpart—Conversion Factors

§ 989.601 [Amended]

3. The conversion factor table in § 989.601 is revised by changing the term "Dipped seedless" to "Dipped and Related seedless".

Dated: October 10, 1980.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 80-32247 Filed 10-15-80; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR 1124

Milk in the Oregon-Washington Marketing Area; Proposed Suspension of Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rules.

SUMMARY: This notice invites written comments on a proposal to suspend certain order provisions relating to how much milk not needed for fluid (bottling) use may be moved directly from farms to manufacturing plants and still be priced under the order. The proposed suspension would remove the limit on such movements of milk during the months of October through December 1980. The action was requested by two cooperative associations to assure the efficient disposition of milk not needed for fluid use and to maintain producer status under the order for their dairy farmer members regularly associated with the market.

DATE: Comments are due on or before October 23, 1980.

ADDRESS: Comments (Two Copies) should be filed with the Hearing Clerk, Room 1017, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, United States Department of Agriculture, Washington, D.C. 20250, 202-447-7183.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), the suspension of the following provisions of the order regulating the handling of milk in the Oregon-Washington marketing area is being considered for October through December 1980: in the third sentence of paragraphs (a) and (b) of § 1124.11 the word "not".

All persons who want to comment on the proposed suspension should send two copies of them to the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, not later than 7 days from the date of publication of this notice in the **Federal Register.** The comments that are sent will be made available for public inspection in the Hearing Clerk's office during normal business hours (CFR 1.27 (b)).

The period of filing comments is limited because a longer period would not provide the time needed to complete the required procedures and include October 1980 in the suspension period.

Statement of Consideration

The proposed action would remove the limit on the amount of producer milk that a cooperative association or other handlers may divert from pool plants to nonpool plants during the months of October through December 1980. The order now provides that during any month a cooperative association may divert a total quantity of producer milk not in excess of the total quantity received during the month from all member producers at pool plants. Similarly, the operator of a pool plant may divert a total quantity of producer milk not in excess of the total quantity received from producers (for which the operator of such plant is the handler during the month) at such pool plant.

The suspension was requested by two cooperative associations that supply the market with a substantial part of its fluid needs and handles much of the market's reserve milk supplies. The basis for the request is that current marketing conditions require the proponent cooperatives to handle an increasing quantity of reserve milk supplies during October through December 1980 because of substantial increased milk production by producers regularly associated with the market. The cooperatives indicated that this situation is aggravated by the fact that in recent months Class I sales in the market have declined and that this trend is expected to continue through the remainder of 1980.

Because of current marketing conditions, the cooperatives expect their reserve milk supplies during October through December 1980 to exceed the quantity of producer milk that may be diverted to nonpool manufacturing plants under the order's present diversion limitations. Without the suspension, the cooperatives belive that some of the milk of their member producers who have regularly supplied the fluid market would have to be moved uneconomically, first to pool plants and then to nonpool manufacturing plants in order to still maintain producer status for such milk during October through December 1980.

Signed at Washington, D.C. on October 10, 1980.

Irving W. Thomas,

Acting Deputy Administrator, Marketing Program Operations.

[FR Doc. 80-32245 Filed 10-15-80; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1822

Section 502 Rural Housing Weatherization Loans Through Public Utilities

AGENCY: The Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to delete its regulations for making section 502 rural housing weatherization loans. The intended effect of this action is to discontinue making section 502 weatherization loans through public utilities. This action results from an administrative decision.

DATES: Comments must be received on or before December 15, 1980.

ADDRESS: Submit written comments, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration, US Department of Agriculture, Room 6346, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspections at the address given above.

FOR FURTHER INFORMATION CONTACT: Mr. Reed J. Petersen, USDA, FmHA, Room 5349, South Agriculture Building, 14th and Independence SW, Washington, DC 20250, Telephone 202 447-4295.

The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from Mr. Joseph Linsley, Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6346, Washington, DC 20250, Telephone 447-4057.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant."

FmHA proposes to delete Subpart B of Part 1822, Chapter XVIII, Title 7, Code of Federal Regulations. The regulations in this Subpart regarding the servicing of existing loans will be retained and incorporated into FmHA Instruction 451.7 which is available at any FmHA office.

Mr. A. Jennings Orr, Assistant Administrator, Single Family Housing, with the concurrence of the Administrator and representatives from the Rural Electrification Administration (REA) and the National Rural Electric Cooperatives Association, has determined that this program can be discontinued. REA has recently implemented a program to provide capital to REA Coops to make weatherization loans to their users. This new program will provide weatherization funding for practically all of the utilities that have been utilizing the FmHA program. The FmHA will continue to make loans to eligible applicants to buy, build or improve adequate but modest homes of their own in rural areas including weatherization loans. Therefore, there is more weatherization credit available to the public as a result of these program changes.

§§ 1822.21-1822.24; 1822.26 (Subpart B) [Deleted and Reserved];

§§ 1822.25 [Amended]

Accordingly, as proposed, Subpart B of Part 1822, Chapter XVIII, Title 7, Code of Federal Regulations is deleted and reserved, except for § 1822.25 paragraph (b) for servicing existing loans which is retained and incorporated into FmHA Instruction 451.7 which is available at any FmHA office.

This instruction does not directly affect any FmHA programs or projects which are subject to the A-95 clearinghouse review.

This document has been reviewed in accordance with FmHA Instruction 1901-G, "Environmental Impact Statements." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environmental and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

(Catalog of Federal Domestic Assistance Program No. 10.410. Low to Moderate Income Housing Loans)

(42 U.S.C. 1490; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70)

Dated: October 8, 1980.

Gordon Cavanaugh,

Administrator, Farmers Home Administration.

[FR Doc. 80-32197 Filed 10-15-80; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 80-NW-44-AD]

Airworthiness Directives: Boeing Model 707/720 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: It is proposed to amend Airworthiness Directive (AD) 79-19-01 (44 FR 52676, September 10, 1979) to require repetitive inspection of Boeing 707-300, 707-400, 707-300B and 707-300C series airplanes for cracks in the wing lower skin splice stringers. If cracks exist and go undetected, it is possible the structural capability of the wing

lower surface could be seriously compromised. This amendment would also lower the compliance threshold specified in the original issue of the AD from 18,000 landings to 14,000 landings for 720/720B airplanes as justified by latest inspection findings.

DATES: Comments must be received on or before December 1, 1980.

ADDRESSES: Send comments on the proposal in duplicate to: Federal Aviation Administration, Northwest Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 79–NW– 44 AD, 9010 East Marginal Way South, Seattle, Washington 98108.

FOR FURTHER INFORMATION, CONTACT: Mr. Harold N. Wantiez, Airframe Section, ANW–212, Engineering and Manufacturing Branch, FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108, telephone (206) 767–2516.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communication should identify the regulatory docket or note number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rule Making (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket, Docket No. 79–NW–44–AD, 9010 East Marginal Way South, Seattle, Washington, 98108.

Discussion of the Proposed Rule

A recent inspection of a Boeing 707–400 airplane revealed many small cracks in the wing lower surface skin splice stringers. The cracks initiated from fastener holes in the splice stringers but had not caused cracks in the wing skin. However, if cracks are allowed to grow, it is possible that the structural capability of the wing lower surface could be seriously compromised. Since the 707–300, 707–400, 707–300B and 707–300C series airplanes are similar in design, it is proposed that AD 79–19–01 be amended to require repetitive low frequency eddy current inspection of the wing lower surface of these airplanes in accordance with Boeing Service Bulletin 3228 Revision 4.

AD 79–19–01 required a mandatory inspection of all 720/720B airplanes at a threshold of 18,000 landings. Recent inspections of the 720/720B fleet have shown cracks which were detectable at less than 18,000 landings and for this reason, a threshold of 14,000 landings has been selected for the initial inspections.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following Amendment to AD 79–19–01:

Delete paragraph A and the applicability sentence which precedes it and replace it with the following:

Boeing: Applies to all Boeing 720/720B, 707–300, 707–400, 707–300B, and 707–300C series airplanes.

A. Perform a low frequency eddy current inspection for cracks in the wing lower surface splice stringers in accordance with Boeing Service Bulletin 3226 Revision 4, or in a manner approved by the Chief, Engineering and Manufacturing Branch, FAA Northwest Region. The inspections are to be made at the threshold times and repetitive intervals below.

Airplane	Threshold	Initial inspection		Repetitive interval
		Within	Unless accomplished within the last	
720/720B	14,000 landings	715 landings	715 landings	1,430 landings.
707–300/400	21,000 landings	1,675 landings	1,675 landings	3,350 landings.
707–300B	19,000 landings	1,425 landings	1,425 landings	2,850 landings.
707–300C	17,000 landings	725 landings	725 landings	1,450 landings.
707–300C (passenger only)	17,000 landings	1,425 landings	1,425 landings	2,850 landings.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.85)

Note.— The FAA has determined that this document involves a regulation which is not considered to be significant under the provisions of Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Seattle, Wash., on October 6, 1980.

Charles R. Foster,

Director, Northwest Region.

[FR Doc. 80–32203 Filed 10–15–80; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1307

Consumer Products Containing Benzene; Extension of Time for Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Extension of time for promulgation of rule.

SUMMARY. The Commission extends for 90 days, from October 13, 1980 to January 12, 1981, the time in which it must issue a consumer product safety rule to declare that certain benzene-containing consumer products are banned hazardous products under section 8 of the Consumer Product Safety Act (CPSA) or withdraw the rule proposed on May 19, 1978. This extension is necessary to enable the Commission to further evaluate available data, which evaluation will provide a firmer basis for considering final action on the proposal. In taking this action, the Commission recognizes that the need for immediate action on the use of benzene in consumer products has diminished because of the declining use of benzene in such products.

DATE: The Commission extends the time for issuance of a final rule or withdrawal of the proposal from October 13, 1980 to January 12, 1981.

ADDRESS: All the information that the Commission has that is relevant to this proceeding may be examined in the Office of the Secretary, Consumer Product Safety Commission (CPSC), 1111 18th St., NW, Third flood, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Rory Sean Fausett, Health Sciences, Consumer Product Safety Commission (CPSC), Washington, D.C. 20207, 301–492–6984.

SUPPLEMENTARY INFORMATION: On May 19, 1978, the Commission proposed a ban under section 8 of the Consumer Product Safety Act (CPSA) of all consumer products, except gasoline and solvents or reagents for laboratory use, containing benzene as an intentional ingredient or as a contaminant at a level of 0.1 percent or greater by volume. (See 43 FR 21838.) Based on the information discussed in the proposal, the Commission preliminarily concluded that benzene-containing consumer products present an unreasonable risk of injury to the public because benzene inhalation can cause blood disorders, chromosomal abnormalities, and leukemia. The Commission also preliminarily concluded that no feasible safety standard could adequately protect the public from these risks.

The Commission received a total of 44 written comments as well as 6 oral presentations concerning the proposed ban. Many of the comments criticized the proposal and raised complex scientific and technical issues, including the claim that there is no evidence that low levels of exposure to benzene constitute a health hazard, the assertion that the Commission's risk assessment is inadequate, and the claim that the proposed contamination level is neither justified nor commercially feasible. In order to adequately address these comments and to obtain and evaluate additional scientific and economic data, the Commission on October 10, 1978 (43 FR 47197), on April 16, 1979 (44 FR 22499), and on April 15, 1980 (45 FR 25409) extended the time in which it must publish a final rule or withdraw the proposal. This time currently expires on October 13, 1980.

During previous extension periods, the Commission staff conducted a limited market survey of selected consumer products to determine their benzene content. The data gathered indicate that benzene is not longer being intentionally added to consumer products.[1] These data also indicate that approximately 10 percent of the products surveyed contained over 0.1 percent benzene; however, none of the products contained over 0.25 percent benzene. The staff believes, furthermore, that the survey shows that solvents are available which permit formulation of products whose final benzene content is below the proposed 0.1 percent limit. The Commission staff plans to evaluate the results of the market survey in terms of risk to consumers from the benzene still available in consumer products.

A study of benzene air levels resulting from typical use of various consumer products has been conducted for the Commission at Edgewood Arsenal. This study, also, needs to be evaluated by Commission staff in term of risk to consumers from the use of benzene-containing consumer products.

Another factor supporting an extension of time is the Commission's need to analyze its evidence on benzene in terms of the possible relevance of the recent opinion of the Supreme Court overturning the Occupational Safety and Health Administration (OSHA) benzene standard. (*Industrial Union Dept., AFL-CIO* v. *American Petroleum Institute, et al. Secretary of Labor* v. *American Petroleum Institute, et al.* 100 S. Ct. 2844 (1980)). This opinion, while not directly applicable to the Commission since it is an interpretation of OSHA's statute, comments on the scientific data used to support the OSHA standard. Since the Commission has relied on much of the same underlying data as that used by OSHA on benzene, the Commission needs to carefully analyze the opionion in terms of CPSC regulation of benzene.

Therefore, in view of the need to further evaluate available data in terms of risk to consumers from benzene-containing consumer products and the evidence suggesting declining use of benzene in consumer products, the Commission in accordance with section 9(a)(1) of the Consumer Product Safety Act (15 U.S.C. 2058(a)), finds that good cause exists to extend the period within which it must issue a consumer product safety rule or withdraw the proposal for 90 days, until January 12, 1981. This period may be further extended for good cause by notice published in the **Federal Register**.

Dated: October 10, 1980

Sadye E. Dunn,

Secretary, Consumer product Safety Commission.

[FR Doc. 80–32297 Filed 10–15–80; 8:45 am]

BILLING CODE 6355–01–M

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[1] It should also be noted than on July 1, 1980, the Commission issued a general order (see 45 FR 44554) requiring any firms which have manufactured, imported, or labeled any consumer products, except gasoline, containing benzene as an intentional ingredient since January 1, 1979 to provide the Commission with specified information concerning such products. In addition, firms are required to update the information or report new uses of benzene as an intentional ingredient in consumer products for a one year period. The Commission received 6 responses to the general order, all indicating no use of benzene as an intentional ingredient in consumer products.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 630

[FHWA Docket No. 79–31, Notice 2]

Traffic Safety in Highway and Street Work Zones; Separation of Opposing Traffic and Edge of Pavement Excavation Requirements

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Highway Administration (FHWA) believes that further modifications of existing requirements are necessary to assure a reduction in the incidence of accidents occuring where two-way traffic is maintained on one roadway of a normally divided highway. It also believes stringent controls are necessary to lessen the hazard of edge of pavement dropoffs on construction projects. This document issues proposed revisions for public review and comment.

DATES: Comments must be received on or before December 15, 1980.

ADDRESS: Anyone wishing to submit written comments may do so. Comments should be sent, preferably in triplicate, to FHWA Docket No. 79–31, Notice 2, Federal Highway Administration, Room 4205, HCC–10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth L. Ziems, Office of Highway Operations, 202–426–4847, or Mr. Stanley H. Abramson, Office of the Chief Counsel, 202–426–0781, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: The FHWA issued a modification of its regulation on traffic safety in highway and street work zones on September 17, 1979 (44 FR 53739). The modification was issued in the form of an emergency final rule requiring separation of

opposing traffic on construction projects where two-way traffic is maintained temporarily on one roadway of a normally divided highway. Comments were solicited on the emergency rule.

Comments on the emergency rule were received from 16 States, 4 cities, 1 county, 4 organizations, and 2 citizens. Responses varied, with 3 expressing agreement with the rule, the majority, 15, suggesting modification of the rule, and 9 expressing complete opposition to the rule by requesting it be rescinded or deferred. The FHWA has rejected the suggestions to rescind or defer application of the existing rule due to the adverse effect that such an action would have on highway safety (i.e., high accident rate with resulting deaths, injuries and property damage).

The three most frequently requested modifications were adopted by: (1) Problems associated with mandatory placement of positive barriers in transition zones (from one-way to two-way operation) when a positive barrier is *not* placed continuously throughout the two-way operation, (2) concern with the requirement for separation of opposing traffic on other than freeway type facilities such as urban streets with low speed limits, and (3) concern with the requirement for separation of opposing traffic in short-term work zones.

This proposed amendment to the emergency final rule makes provisions which would alleviate the concerns expressed above. Positive barriers would no longer be required just in transition zones, but would be required throughout the two-way operation when used at all. Separation of opposing traffic would not be required for low speed facilities, typically urban streets and arterials, as the FHWA has no evidence at this time that head-on collisions are occurring on low speed facilities in these temporary two-lane, two-way traffic operations. Separation of opposing traffic in short-term work zones (those where two-way operation will not exist overnight) would be required, but the use of positive barriers for separation would not be required.

Positive barriers would be used to separate opposing traffic when dictated by individual project conditions. Use of separation devices other than positive barriers would require conditions where the added risk is considered minimal on each Federal-aid project where opposing traffic must be separated. Consideration would include the obvious benefits of positive barriers physically preventing head-on collisions and the difficulty of maintaining separation devices other than positive barriers, especially at night. Head-on collisions have occurred where separation devices were provided but continuing maintenance was inadequate, sometimes due to an extremely high loss rate overnight. Another consideration is that workers maintaining the devices must venture into the traveled lanes often, whereas positive barriers require little maintenance. This proposed amendment would give flexibility to allow separation devices other than positive barriers throughout the two-way operation, including transitions, when conditions such as time and length of exposure, type of traffic and facility warrant. Yet the proposed amendment would strengthen the requirement to provide positive barriers when dictated by individual project conditions.

Nationwide statistics indicate that Interstate type facilities have about one-half the fatality accident rate and about one-third the injury rate of two-lane facilities. When a normally divided highway is reduced to the two-lane, two-way situation, measures should be taken to the extent possible to approach the safer conditions expected by the public when traveling on an Interstate type facility.

This proposed amendment would stipulate that the length of temporary two-lane, two-way operation normally should not exceed 3 miles and would restrict the length to 5 miles. Impatience and inattentativeness of the driver are two major factors believed to contribute to head-on collisions in this situation. These two factors tend to increase in proportion to the length of the two-way operation. The longer the segment the more difficult it is to provide proper maintenance of separation devices. Also, the possibility of an accident or a disabled vehicle causing stoppage or congestion in the restricted segment is increased with its length. The proposed 5-mile limit is considered adequate to allow contractor flexibility in various types of work activity.

In this proposed amendment the Traffic Control Plan (TCP) would also be required to provide assurance that the geometrics of the median crossovers for temporary two-lane, two-way situations generally meet standards equal to or approaching the standards of the existing facility. Recent research indicates that where crossovers are provided in a construction zone, a considerable number of injury-causing accidents occur, with substandard geometrics being the major contributing factor.

Supplemental signing has been used to some extent with good results in reducing drivers' impatience and frustration by advising of the length of two-lane, two-way operations remaining in the construction zones. Therefore, the proposed amendment indicates that the TCP should require such signing at appropriate intervals. The rule would not, however, mandate such signing.

Where dropoffs are to be created at the edge of travel lanes because of construction work on a project, the FHWA believes action is needed to require protection for motorists and highway workers. This proposed amendment would require the TCP to include provisions for mitigating the hazard, such as a wedge of fill material to form a shoulder, if the dropoff is expected to cause loss of control of an errant vehicle and if the dropoff is to remain overnight.

§ 630.1010 [Amended]

In consideration of the foregoing, the FHWA proposes that Subpart J of Part 630, Chapter I, Title 23, Code of Federal Regulations, be amended by changing subparagraph (5) and adding a new subparagraph (6) to § 630.1010(a) to read as follows:

(a) * * *

(5) Two-way operation on one roadway of a normally divided highway shall be permitted only when other methods of traffic control are determined infeasible. Whenever two-way traffic must be maintained on one roadway of a normally divided highway, except for urban type streets and arterials where normally existing operating speeds are low, the TCP shall be based on the following provisions.

(i) Where two-way traffic must be maintained on one roadway of a normally divided highway, opposing traffic shall be separated with positive barriers (concrete safety-shape or approved alternate) throughout the length of the two-way operation including transition areas. Where project conditions are such that the added risk of using other types of separation devices is considered minimal, drums, cones, tubular markers, or vertical panels may be used in place of positive barriers. The use of striping and complementary signing alone is prohibited.

(ii) The length of two-way operation on one roadway of a normally divided highway excluding transitions should not exceed 3 miles, but shall not be more than 5 miles.

(iii) Crossovers shall be designed for speeds equal to or not less than 10 miles per hour below the normal operating traffic speed on the facility unless a lower design standard is required by unusual site conditions. Where lower crossover design is necessary, additional traffic control devices and lighting shall be considered.

(iv) Where terminal sections of temporary positive barriers are not tied to an existing structure, the barriers shall be flared or fitted with crash cushion devices.

(v) Supplementary signing should be provided near the beginning of the two-way operation and at appropriate intervals thereafter advising of the length of the two-lane, two-way operation remaining.

(vi) An exception to the provisions of paragraph (a)(5)(i) of this section may be granted only when it has been demonstrated that the use of positive barriers or delineation and channelization devices is not feasible or practical. An exception shall not be granted where drivers entering the two-way operation cannot see the transition back to a one-way operation. Each exception granted by the FHWA under this paragraph will require the written approval of the FHWA Division Administrator.

(6) The TCP shall include provisions for mitigating the hazard of dropoffs at the edge of travel lanes where the dropoffs are expected to cause loss of control of an errant vehicle and will exist overnight. If a "wedge" of material is used it shall be placed in a manner that will provide stability for errant vehicles.

Note.—The Federal Highway Administration has determined that this document does not represent a significant proposal under the criteria established by the Department of Transportation pursuant to Executive Order 12044. A draft regulatory evaluation is available for inspection in the public docket and may be obtained by contacting Mr. Kenneth L. Ziems, Office of Highway Operations, at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program.)

(23 U.S.C. 109(b), 109(d), 315, and 402(a); 23 CFR 1.48(b))

Issued on: October 9, 1980.

John S. Hassell, Jr.,

Federal Highway Administrator.

[FR Doc. 80-32196 Filed 10-15-80; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Geological Survey

30 CFR Chapter II

Standards for Fixed OCS Platforms Periodic Structural Inspection; Notice of Intent

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of intent, request for comments.

SUMMARY: Notice is hereby given that the U.S. Geological Survey intends to develop requirements to be used for periodic structural inspection of fixed offshore oil and gas platforms. These requirements will be used in conjunction with the U.S. Geological Survey's program for verifying the structural integrity of existing and new oil and gas platforms installed on and to be installed on the Outer Continental Shelf (OCS). Comments relative to the periodic structural inspection of fixed offshore oil and gas platforms are welcomed.

DATES: Comments should be submitted prior to December 15, 1980.

ADDRESSES: Such comments should be submitted to the Deputy Division Chief, Offshore Minerals Regulation, Conservation Division, U.S. Geological Survey, National Center, Mail Stop 640, Reston, Virginia 22092.

FOR FURTHER INFORMATION CONTACT: Price McDonald, 703-860-7571.

SUPPLEMENTARY INFORMATION: Comments are specifically solicited as to:

1. The content of the requirements;
2. The inspection period;
3. The frequency of the inspections;
4. The identification of areas to be emphasized;
5. The inspection methods and techniques which may be used;
6. The reporting requirements.

This list is by no means exhaustive, and other comments relative to the periodic structural inspection of fixed offshore oil and gas platforms are welcomed. Such comments should be submitted prior to December 15, 1980 to the Deputy Division Chief, Offshore Minerals Regulation, Conservation Division, U.S. Geological Survey, National Center, Mail Stop 640, Reston, Virginia 22092.

A report on this subject by the Marine Board, Assembly of Engineering, National Research Council, entitled *Inspection of Offshore Oil and Gas Platforms and Risers*, was prepared at the request of the U.S. Geological Survey and is available from the U.S. Department of Commerce, National Technical Information Service, Springfield, Virginia 22151 (Report Number USGS/CD/79-001, NTIS Accession Number PB 300 381/AS, Paperback A04, Microfiche A01).

Dated: October 6, 1980.

Hillary A. Oden,

Acting Chief, Conservation Division.

[FR Doc. 80-32169 Filed 10-15-80; 8:45 am]

BILLING CODE 4310-31-M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Disapproval of the Permanent Program Submission From the State of Alabama Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior.

ACTION: Proposed rule; disapproval of Alabama's permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977.

SUMMARY: On March 3, 1980, the State of Alabama submitted to the Department of the Interior its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The purpose of the submission is to demonstrate the State's intent and capability to administer and enforce the provisions of SMCRA and the permanent regulatory program regulations in 30 CFR Chapter VII.

After providing opportunities for public comment and a thorough review of the program submission, the Secretary of the Interior has determined that the Alabama program does not include enacted laws or regulations which will meet the minimum requirements of SMCRA and the federal permanent program regulations. Accordingly, the Secretary of the Interior has disapproved the Alabama program.

DATES: This disapproval is effective October 16, 1980. Alabama has until December 15, 1980 to resubmit an acceptable program.

FOR FURTHER INFORMATION CONTACT: Mr. Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Avenue NW., Washington, D.C. 20240, Telephone (202) 343-4225.

ADDRESSES: Copies of the Alabama program and the administrative record on the Alabama program are available

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for public inspection and copying during business hours at:

Alabama Surface Mining Reclamation Commission, Central Bank Building, 2nd Floor 811 Second Avenue, Jasper, Alabama 35501.

Alabama Surface Mining Reclamation Commission, 100 Third Street, Fort Payne, Alabama 35967.

Administrative Record Room, Office of Surface Mining, Region II, 530 Gay Street SW., Suite 500, Knoxville, Tennessee 37902.

Office of Surface Mining, Room 153, South Interior Building, 1951 Constitution Avenue, Washington, D.C. 20240, Telephone (202) 343-4728.

SUPPLEMENTARY INFORMATION:

General Background on the Permanent Program

The environmental protection provisions of SMCRA are being implemented in two phases—the initial program and the permanent program—in accordance with Sections 501 through 503 of SMCRA, 30 USC 1251 through 1253. The initial program became effective on February 3, 1978, for new coal mining operations on non-federal and non-Indian lands which received state permits on or after that date, and was effectuated on May 3, 1978 for all coal mines existing on that date. The initial program rules were promulgated by the Secretary on December 13, 1977, under 30 CFR Parts 710–725 (42 FR 62639 *et seq.*).

The permanent program will become effective in each state upon the approval of a state program by the Secretary of the Interior or upon implementation of a federal program within the state. If a state program is approved, the state, rather than the federal government, will be the primary regulator of activities subject to SMCRA.

The federal rules for the permanent program, including procedures for states to follow in submitting state programs and minimum standards and procedures the state programs must include to be eligible for approval, are found in 30 CFR Parts 700–707 and 730–865. Part 705 was published October 20, 1977 (42 FR 56064), Parts 795 and 865 (originally Part 830) were published December 13, 1977 (42 FR 62639). The other permanent program regulations were published March 13, 1979 (44 FR 15312–15463). Errata notices were published March 14, 1979 (44 FR 15485), August 24, 1979 (44 FR 49673–49687), September 14, 1979 (44 FR 53507–53509), November 19, 1979 (44 FR 66195), April 16, 1980 (45 FR 26001), June 5, 1980 (45 FR 37818), and July 15, 1980 (45 FR 47424). Amendments to the rules were published October 22, 1979 (44 FR 60969), as corrected December 19, 1979 (44 FR 75143), December 19, 1979 (44 FR 75302–75303), December 31, 1979 (44 FR 77440–77447), January 11, 1980 (45 FR 2626–2629), April 8, 1980 (45 FR 25998–26001), May 20, 1980 (45 FR 33926–33927), June 5, 1980 (45 FR 37818), June 10, 1980 (45 FR 39446–39447), and August 6, 1980 (45 FR 52306–52324). Portions of these rules have been suspended, pending further rulemaking. *See* November 27, 1979 (44 FR 67942), December 31, 1979 (44 FR 77447–77454), January 30, 1980 (45 FR 6913), and August 4, 1980 (45 FR 51547–51550).

General Background on State Program Approval Process

Any state wishing to assume primary jurisdiction for the regulation of coal mining under SMCRA may submit a program for consideration. The Secretary of the Interior has the responsibility to approve or disapprove the submission. The federal rules governing state program submissions are found at 30 CFR Parts 730 through 732. After review of the submission by OSM and other agencies, an opportunity for the state to make additions or modifications to the program and an opportunity for public comment, the Secretary may either approve the program, approve it conditioned upon correction of minor deficiencies in accordance with a specified timetable, or disapprove the program in whole or in part. If the program is disapproved, the state may submit a revision of the program to correct the items that need to be changed to meet the requirements of SMCRA and the applicable federal regulations. If this revised program is also disapproved, SMCRA requires the Secretary of the Interior to establish a federal program in that state. The state may again request approval to assure primary jurisdiction after the federal program has been implemented.

The procedure and timetable for the Secretary's review of state programs were intitially published March 13, 1979 (44 FR 15326), to be codified at 30 CFR Part 732.

As a result of litigation in the U.S. District Court for the District of Columbia, the deadline for states to submit proposed programs was extended from August 3, 1979, to March 3, 1980. 30 CFR 732.11(d) required that if all required and fully enacted laws and regulations were not part of the program by November 15, 1979, the program would be disapproved. Because the submission deadline had been changed to March 3, 1980, 30 CFR 732.11(d) was amended to provide that program submissions that do not contain all required and fully enacted laws and regulations by the 104th day following program submission will be disapproved pursuant to the procedures for the Secretary's initial decision in Section 7322.13 (45 FR 33927, May 20, 1980). The Alabama program was submitted on March 3, 1980, and the 104th day following submission was June 16, 1980.

The Secretary's rules for the review of state programs implement his policy that industry, the public, and other agencies of government should have a meaningful opportunity to participate in his decisions. The Secretary also has a policy that a state should be afforded the maximum opportunity possible to change its program, when necessary, to cure any deficiencies in it.

To accomplish both of these policy objectives the Secretary determined that the laws and rules upon which the state bases its program must be finalized at the beginning of the public comment period. By identifying the laws and rules in effect on the 104th day as the basis of his program approval decision, the Secretary assists commenters by informing them of program elements which should be reviewed. Meaningful public comment would be undermined if the program elements were constantly changing up until the day before the Secretary's decision.

The 104 day rule affords the state 3½ months following submission within which it may modify its laws and rules. In addition, after the Secretary's initial program decision, the states have additional opportunities to revise their laws and regulations.

All program elements other than laws and rules, including Attorney General's opinions, program narratives, descriptions and other information, may be revised by the state at any time prior to program approval. The Secretary will provide opportunity for public comment on those changes, as appropriate.

The Secretary, in reviewing state programs, is applying the criteria of Section 503 of SMCRA, 30 USC 1253, and 30 CFR 732.15. In reviewing the Alabama program, the Secretary has followed the federal rules cited above under "General Background on the Permanent Program," and as affected by three recent decisions of the U.S. District Court for the District of Columbia in *In Re: Permanent Surface Mining Regulation Litigation.*

Because of that litigation, the court has issued its decision in two "rounds." The Round I opinion, dated February 26, 1980, denied several generic attacks on the permanent program regulations, but resulted in suspension or remanding of all or part of twenty-two specific regulations. The Round II opinion, dated May 16, 1980, denied additional generic attacks on the regulations, but remanded some 40 additional parts, sections or subsections of the regulations. The court also ordered the Secretary to "affirmatively disapprove, under Section 503 (of SMCRA), those segments of a state program that incorporate a suspended or remanded regulation" (Mem. Op., May 16, 1980, p. 49). However, on August 15, 1980, the court stayed this portion of its opinion. The effect of the stay is to allow the Secretary to approve state program provisions equivalent to remanded or suspended federal provisions in the three circumstances described in paragraph 1, below.

Therefore, the Secretary is applying the following standards to the review of state program submissions:

1. The Secretary need not affirmatively disapprove state provisions similar to those federal regulations which have been suspended or remanded by the District Court where the state has adopted such provisions in a rulemaking or legislative proceeding which occurred either (1) before the enactment of SMCRA or (2) after the date of the Round II District Court decision, since such state regulations clearly are not based solely upon the suspended or remanded federal regulations. (3) The Secretary need not affirmatively disapprove provisions based upon suspended or remanded federal rules if a responsible state official has requested the Secretary to approve them.

2. The Secretary will affirmatively disapprove, to the extent required by the court's decisions, all provisions of a state program which incorporate suspended or remanded federal rules and which do not fall into one of the three categories in paragraph one, above. The Secretary believes that the effect of his "affirmative disapproval" of a section in the state's regulations is that the requirements of that section are not enforceable in the permanent program at the federal level to the extent they have been disapproved. That is, no cause of action for enforcement of the provisions, to the extent disapproved, exists in the federal courts, and no federal inspection will result in notices of violation or cessation orders based upon the "affirmatively disapproved" provisions. The Secretary takes no position as to whether the affirmatively disapproved provisions are enforceable under state law and in state courts. Accordingly, these provisions are not being pre-empted or suspended, although the Secretary may have the power to do so under Section 504(g) of SMCRA and 30 CFR 730.11.

3. A state program need not contain provisions to implement a suspended regulation and no state program will be disapproved for failure to contain a suspended regulation.

4. Nonetheless, a state must have authority to implement all permanent program provisions of SMCRA, including those provisions of SMCRA upon which the Secretary based the regulations which have been remanded or suspended.

5. A state program may not contain any provision which is inconsistent with a provision of SMCRA.

6. Programs will be evaluated only on those provisions other than the provisions that must be disapproved because of the court's order. The remaining provisions will be approved unconditionally, conditionally approved, or disapproved in whole or in part in accordance with 30 CFR 732.13.

7. Upon promulgation of new regulations to replace those which have been suspended or remanded, the Secretary will afford states which have approved or conditionally approved programs a reasonable opportunity to amend their programs as appropriate. In general, the Secretary expects that the provisions of 30 CFR 732.17 will govern this process.

A list of the regulations suspended or remanded as the result of Round I and Round II litigation was published in the Federal Register on July 7, 1980 (45 FR 45604–45607).

To codify decisions on State programs, Federal programs and other matters affecting individual States, OSM has established a new Subchapter T of 30 CFR Chapter VII. Subchapter T will consist of Parts 900 through 950. Provisions relating to Alabama will be found in 30 CFR Part 901.

Background on the Alabama Program Submission

On March 3, 1980, OSM received a proposed regulatory program from the State of Alabama. The program was submitted by the Director of the Alabama Surface Mining Reclamation Commission, the State primary regulatory authority, at the direction of the Governor's Office. Notice of receipt of the submission initiating the program review was published in the March 12, 1980, Federal Register (45 FR 15947–15948) and in newspapers of general circulation within the State. The announcement noted information for public participation in the initial phase of the review process relating to the OSM Regional Director's determination of whether the submission was complete.

On April 14, 1980, a public review meeting on the program and its completeness was held by the OSM Regional Director in Jasper, Alabama. April 14, 1980, was also the close of the public comment period on completeness, which had begun March 12, 1980.

On April 29, 1980, the OSM Regional Director published notice in the Federal Register announcing that he had determined that the program did not fulfill the content requirements for program submissions under 30 CFR 731.14 (45 FR 28367–28368). In accordance with Section 732.11 (c) and (d) of the permanent program regulations, as amended on May 20, 1980 (45 FR 33926–33927), the Regional Director's notice identified the elements missing from the Alabama submission and established June 16, 1980, the 104th day after program submission, as the final date for submission of a revised program.

Alabama has not submitted major additions and/or modifications to the incomplete program of March 3, 1980. On June 26, 1980, the Secretary published notice in newspapers of general circulation within Alabama and in the Federal Register (45 FR 43220–43221) of a public hearing and its procedures and of the comment period to review the substance of the Alabama program submission. On July 11, 1980, public comment was invited on a tentative list of provisions in the Alabama program which appeared to be based on suspended and remanded Federal rules (45 FR 46820–46826).

On July 24, 1980 the public hearing on the Alabama program submission was held in Jasper, Alabama. The public comment period on the Alabama program ended on July 28, 1980.

On August 4, 1980, the OSM Regional Director submitted to the Director of OSM his recommendation that the Alabama program be disapproved, together with copies of the transcript of the public meeting and the public hearing, written presentations, exhibits, copies of all public comments received and other documents comprising the administrative record.

On August 13, 1980, the Secretary, pursuant to 30 CFR 732.13(b)(1), publicly disclosed the comments received on the Alabama program from the Environmental Protection Agency, the Secretary of Agriculture, and other Federal agencies (45 FR 53841).

On September 16, 1980, the Director recommended to the Secretary that the Alabama program be disapproved.

On September 17, 1980, the Secretary disapproved the Alabama program submission.

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Secretary's Findings

The Secretary, pursuant to Section 503 of SMCRA and 30 CFR 732.15, finds that the State of Alabama at this time lacks the capability to carry out the provisions of SMCRA and 30 CFR Chapter VII. This finding is based on the fact that Alabama does not have fully enacted laws and regulations and has not submitted them as part of its program submission.

30 CFR 732.11(d), as amended, requires disapproval of a state program submission which does not contain all required and fully enacted laws and regulations by 104 days from the date of submission. By June 16, 1980, the 104th day from the date of submission of the Alabama program, the state had not submitted any required, enacted laws or regulations.

By letter to Director Willett the Director of OSM will identify and discuss solutions to apparent deficiencies in certain narrative portions of the submission and in the proposed Alabama laws and regulations which have been submitted with the program. The identification and discussion of solutions to apparent deficiencies will be for Alabama's guidance in preparing its resubmission and will represent only a tentative evaluation of the alabama program. Approaches and solutions other than those proposed in the letter may be equally acceptable. A copy of the letter will be available for public review at the addresses listed above.

All required laws and regulations should be made a part of Alabama's resubmission, due within 60 days of this notice, if the Secretary is to be able to approve the Alabama program. The resubmission, and other program elements, will be subject to further review by the Secretary and the public in accordance with 30 CFR 732.13.

Disposition of Public and Federal Agency Comments

Comments have been received and considered on Alabama's initial program submission of March 3, 1980 (Administrative Record Document Reference Number AL–56). The pubic comment periods during which comments were received are described in this notice under "Background on the Alabama Program Submission." All comments received were considered in evaluating the Alabama program for the Secretary's initial decision and in writing the letter to Director Willett providing a discussion of apparent deficiencies in the Alabama proposed program. Responses to the comments are included below and are organized into three groups as follows: Federal Agencies Within Interior. Federal Agencies Outside Interior, and Public.

Frequently, phrases such as "appears to be consistent" and "appears to be less stringent" are used. These phrases are intended to make clear that the Secretary is making no conclusive judgments at this time on the proposed elements of the Alabama program. Once enacted laws and regulations have been submitted by Alabama and reviewed by the public in accordance with 30 CFR Part 732, the Secretary will make his final, conclusive decision.

Comments of Federal Agencies Within Interior

1. The National Park Service suggested on May 14, 1980, that the Regional Director, Southeast Region, National Park Service, should be notified before any decision is made to approve or deny exploration or mining and reclamation permits in areas where mining may have the potential to affect the resources of the National Park System units.

The Alabama program submission appears not to establish an acceptable process for coordinating the review and issuance of permits with other federal or state agencies as requuired by 30 CFR 731.14(g)(9) and (10). The type of notification procedures requested by the NPS should be included in those process descriptions in the Alabama program resubmission, but the specific notification requested by the National Park Service is not required by the federal rules, which specify newspaper notice only (See 30 CFR 776.14 and 776.12(b)).

2. The National Park Service also commented that it be given the opportunity to be involved in setting bond amounts for surface mining and reclamation activities that may have an impact on units under its jurisdiction.

Although 30 CFR 806.12 directs that the state regulatory authority shall determine the amount of the bond, 30 CFR 786.12 and 786.14 provide opportunity for public comment on all aspects of permit applications, including bond amount. Comparable proposed Alabama regulation Sections 786.12 and 786.14 appear consistent with the federal counterparts. It would be inappropriate for the Secretary to require that the state provisions be more stringent than the federal provisions.

3. The National Park Service commented that it should be allowed to participate in inspections in cases where National Park Service units may be affected, especially when these inspections are in response to a petition or notification of violation or for release of performance bond.

Section 842.12 of the Alabama proposed regulations allows for public participation (including federal agencies) in inspections and proposed Alabama Section 807.11 outlines provisions for public involvement prior to bond release. 30 CFR 807.11(e), dealing with informal conferences relating to bond release, was remanded (Round I Opinion February 26, 1980, pp. 41 and 42) because it lacked a priviso for citizen access to the mine site. However, Alabama proposed regulation § 807.11(e) will not be affirmatively disapproved for this reason since it is being disapproved because it is only proposed for this reason since it is being disapproved because it is only proposed. Further, Alabama could retain the provision under certain circumstances (see paragraph 1 under General Background, above). Other subsections of proposed Alabama regulation Section 807.11 appear to contain provisions inconsistent with 30 CFR 807.11 because the regulation omits the requirement to publish notice of a request for release twice a week for two weeks and to be published in a State register if there is one.

4. The National Park Service commented that it should be given the opportunity to participate in developing criteria for designating lands unsuitable for surface coal mining near units in NPS jurisdiction, i.e., buffer zones around NPS lands where the scenic and environmental integrity of the park lands may be involved, and where visual resources seen from the park may be significantly altered.

Proposed Alabama regulation Section 761.11(c) includes a provision for joint approval by the regulatory authority and the federal, state or local agency with jurisdiction over the park near any mine land which will adversely affect the park. This section appears consistent with 30 CFR 761.11(c).

The Secretary has instructed the Park Service not to seek criteria in State programs which would establish "buffer zones" adjacent to national parks as automatically unsuitable for coal mining, unless these lands meet one or more of the other specific criteria for designation. On June 4, 1979, the Secretary made final decisions on the Federal Coal Management Program. Included in those decisions were numerous changes in the proposed unsuitability criteria for Federal lands. The Secretary chose to delete the automatic "buffer zone" language for national parks and certain other Federal lands from the first criterion (43 CFR 3461.1(a)). Instead, he stated lands adjacent to a national park should only be found unsuitable if they are covered by one of the other specific criteria (43 CFR 3461.1(b)–(t)). This instruction to the National Park Service assures that that agency's approach to State unsuitability criteria will be compatible with the Secretary's policy on Federal unsuitability criteria.

5. The National Park Service suggested that the Alabama Division of Surface Mining Control and Reclamation should refer permit applicants to the National Park Service, Air Quality Office, for pre-permit consultation where the proposed mine may have adverse impacts on National Park Service areas that fall under the purview of Section 522(e) of SMCRA.

Since NPS would seem to have ample opportunity to comment on any permit application having potential adverse effect on NPS management units under proposed Alabama regulation Sections 786.12 and 786.14, the objective of the comment appears to be satisfied without a change in the program being required.

6. The Fish and Wildlife Service (FWS) commented that the definition of "Best Technology Currently Available" in Section 700.5 of the Alabama proposed regulations does not conform with the corresponding definition in 30 CFR 701.5, in that Alabama omitted the phrase "within the constraints of the permanent program."

The Secretary agrees that the omission appears to allow the Alabama regulatory authority much more discretion than the federal counterpart in determining the "best technology currently available." A definition consistent with the Federal definition will have to be provided in the program resubmission before the Alabama program could be fully approved.

7. The FWS suggested that the terms "Secretary" and "Regional Director" be defined within the proposed program in order to clearly distinguish between federal and state titles (e.g. 761.11(b)).

As proposed, the Alabama program does not appear to conflict with federal requirements. Therefore, the suggested change would be discretionary with the state.

8. The FWS suggested that the actual or potential presence of wildlife should be evaluated with regard to the vegetation information requirements of Section 779.19 of the proposed Alabama regulations. FWS also suggested that FWS and the state fish and wildlife agency should be consulted and made a part of the decision making process pertaining to the initial determination of land use as well as proposed land use changes (30 CFR 816.133(c)(8) and 817.133(c)(8)).

Alabama proposed regulations appear to contain no provision comparable to 30 CFR 779.19(b) which states that when a map aerial photopraph is required by the regulatory authority, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife for those species of fish and wildlife identified under 30 CFR 779.20. Therefore, provisions authorizing the regulatory authority to require mapping and evaluation of adjacent areas, under certain circumstances, appear necessary. Also, the Secretary agrees that the Alabama program appears to contain no proposed regulation corresponding to 30 CFR 816.133(c)(8).

9. The FWS recommended that the Alabama regulatory authority consult with the FWS before developing a final data base and inventory for lands designated as unsuitable for mining.

According to proposed Alabama regulation section 764.21(b), which appears consistent with 30 CFR 764.21, the Alabama regulatory authority shall include in the system information "including but not limited to" information received from FWS. Therefore, no change appears necessary.

10. The FWS recommended that the title of proposed Alabama regulation Section 770.12 be changed to include specific reference to federal laws as well as state laws. FWS also suggested restructuring proposed Alabama regulation Section 770.12 to specifically reference the applicable requirements of the Endangered Species Act of 1973, as amended, the Fish and Wildlife Coordination Act, as amended, the Migratory Bird Treaty Acts, and the Bald Eagle Act of 1973, as amended.

While a change in the section's title would not be substantive, and the restore is not required, the Secretary agrees that proposed Alabama regulation Section 770.12 concerning coordination with requirements of other laws appears to lack reference to federal and state statutes, and therefore apparently is not consistent with 30 CFR 770.12.

11. The FWS commented that proposed Alabama regulation Sections 779.20(c) and 783.20(c) do not specify consulation with FWS, other appropriate federal agencies or the state fish and wildlife agency as do 30 CFR 779.20(c) and 783.20(c).

The requirements for consultation in the Federal rules were remanded by the District Court in its February 26, 1980, opinion. See discussion above under "General Background on State Program Approval Process."

12. The FWS commented that although proposed State regulation Sections 780.16 and 784.21 are consistent with the federal regulations, consultation with FWS was important from a technological standpoint.

Provisions for consultation with FWS apparently consistent with 30 CFR 780.16 and 784.21 are contained in proposed Alabama regulation Sections 780.16 and 784.21. Therefore, no change seems required.

13. The FWS recommended a 60 day, as opposed to a 30 day, period for filing written objections to permit applications under proposed Alabama regulation Section 786.13(a), and for requesting and informal conference on permit applications under proposed Section 786.14(a). The FWS also expressed concern that delay in providing FWS with notification of newspaper publication might decrease actual comment time to less than 30 days.

The time periods provided in proposed Alabama regulation Sections 786.13(a) and 786.14(a) appear the same as contained in their federal counterparts. Therefore, no charge appears necessary.

14. The FWS recommended that Section 786.29 of the proposed Alabama regulations include a process through which recommendations made by the state fish and wildlife agency and the FWS on permit applications can be incorporated into and made a part of any permit issued.

Section 786.29 of 30 CFR Chapter VII does not require routinely incorporating into the permit all suggestions made by state fish and wildlife agencies and FWS. Consequently, it would appear inappropriate for the Secretary to require the suggested changes.

15. The FWS commented that although Section 788.12(b)(2) of the proposed Alabama regulations was consistent with the federal counterpart, the term "significant alterations in the operation" should be clearly defined.

Since the federal counterpart does not define this term, the Secretary will not require its definition in the state regulations.

16. The FWS suggests that proposed Alabama regulation Section 807.11 be changed to extend the bond release comment period to 60 days, to provide that FWS be notified directly, and to provide that FWS be invited to participate in any field investigations of reclamation work involving previously identified important fish and wildlife issues.

30 CFR 807.11 does not require any of these suggested provisions, and the comment period in proposed Alabama regulation Section 807.11 appears consistent with the federal counterpart. The types of suggestions for notifying FWS could be included in the states description of its process for public participation (State System 731.14(g) (8) and (10)) in the program resubmission rather than regulations, but are not required by the federal rules.

17. The FWS commented that Section 815.15(a) of the proposed Alabama regulations is less stringent than the federal counterpart due to the addition of the word "unnecessarily" before the word "disturbed."

The Secretary agrees that the addition of the word "unnecessarily" would seem to make the section less stringent than

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required because the applicable performance standards would apply only to coal exploration which "unnecessarily" disturbs the land surface.

18. The FWS commented that proposed Alabama regulations Sections 816.57 and 817.57 do not distinguish among stream types, leaving these sections less stringent.

The Secretary agrees that the failure to distinguish among stream types appears to make the sections less stringent than required. Proposed Alabama regulation Sections 816.57 and 817.57 prohibit mining within 100 feet of a stream, unless approved by the regulatory authority, and proposed Alabama regulation Section 700.5 defines "stream" to mean "a natural watercourse that drains a watershed of at least one square mile." In combination, these proposed Alabama regulations would be less stringent than the Federal requirements in 30 CFR 816.57 and 817.57 which prohibit mining within 100 feet of a perennial stream or a stream with a biological community as defined in 30 CFR 816.57(c) and 817.57(c). As written, the proposed Alabama regulations would not protect perennial streams or streams with biological communities in watersheds of less than one square mile.

19. The FWS commented that Sections 816.116 and 817.116 of the proposed Alabama regulations are less stringent than the federal counterparts due to omission of technical guidance procedures, substitution of the word "or" for the word "and," and changes in revegetation and ground cover criteria.

The Secretary agrees that these provisions in Alabama's proposed regulations seem to be less stringent than required because they contain revegetation success standards which do not require comparison of ground cover or productivity standards established by reference areas of Department of Agriculture or Interior publications. The word "or" has been substituted for "and" in the phrase "ground cover and productivity" in proposed Alabama Section 816.116(a) and 817.116(a) which provides discretion not included in the Federal regulations to measure only ground cover or only productivity, and not both, and there are no counterparts to 30 CFR 816.116(c) and 817.116(c).

20. The FWS commented that Sections 816.133(c) and 817.133(c) of the proposed Alabama regulations are less stringent than the federal counterparts due to the omission of requirements equivalent to 30 CFR 816.133(c)(1–9) and 817.133(c)(1–9).

The Secretary agrees that the omission of such requirements appears to make the regulations less stringent. Due to the omission, the regulations appear to mean that alternative postmining land use proposals would not have to meet all the requirements of 30 CFR 816.133(c)(1–9) and 817.133(c)(1–9) prior to approval by the regulatory authority and after consultation with the landowner or land management agency.

21. The FWS commented that Sections 816.44 and 817.44 of the proposed Alabama regulations do not include provisions for compliance with federal and local laws and regulations, and the methods for coordination and consulting with other agencies were not described in accordance with 30 CFR 731.14(g) (9) and (10).

The Secretary agrees that regulatory provisions for compliance with federal and local laws and regulations have been omitted and are required. In addition, the state's processes for consulting with other agencies are not adequately addressed in the systems section.

22. The FWS made several comments regarding the systems section of the Alabama program submission:

a. Section 731.14(f) should contain the statement that a cooperative agreement is expected between the regulatory authority, FWS and the state fish and wildlife agency.

b. Section 731.14(g)(1) does not provide that the regulatory authority will solicit comments from FWS and FWS suggested that such a provision be included.

c. Section 731.14(g)(1) does not contain sufficient material to constitute a permitting system.

d. Section 731.14(g)(9) and (10) should contain flow charts depicting consultation procedures and suggested that TWS be specifically referenced with regard to forwarding applications for review and comment.

e. Section 731.14(h) does not contain sufficient information regarding exploration for an projected mining of lignite.

f. The Alabama regulatory authority states in § 731.14(k) that the Technical Division of the state regulatory authority is intended to be self-sufficient which is in apparent conflict with 30 CFR 779.20, 783.20 and other sections of the federal regulations and suggested that the regulatory authority specifically acknowledge and categorize personnel within the FWS and other agencies.

The Secretary agrees that additional information and details appear to be needed regarding interrelationships between the regulatory authority and other agencies. However, the Federal requirements in 30 CFR 731.14 do not require the type of detail the FWS requested, especially a cooperative agreement or the use of personnel from FWS and other agencies.

Comments of Federal Agencies Outside Interior

1. On May 13, 1980, the U.S. Department of Labor, Mine Safety and Health Administration, commenting on proposed Alabama regulation Sections 816.55 and 817.55 (discharge of water into an underground mine), stated that MSHA requires the district manager to look at each situation, and if a hazard exists, require a plan.

Both 30 CFR 816.55 and 817.55 require that the discharge meet the approval of the Mine Safety and Health Administration, a requirement that appears to have been omitted from proposed Alabama regulation counterpart Sections 816.55 and 817.55. The Alabama regulations must be corrected in the program resubmission before the Alabama program could be fully approved.

2. The U.S. Department of Labor, Mine Safety and Health Administration, commenting on proposed Alabama regulation Sections 816.88 and 817.88 (return of coal processing waste to underground workings), stated that MSHA requires the district manager to look at each situation, and if a hazard exists, a plan then is required.

Proposed Alabama regulation Section 816.88 appears consistent with 30 CFR 816.88 in that MSHA approval is required for return of coal processing waste to underground workings. Proposed Alabama regulation Section 817.88 appears consistent with 30 CFR 817.88 in that the Alabama section references proposed Alabama Section 784.25 which requires plan approval of proposed coal processing waste disposal facilities. Therefore, these sections appear consistent with the counterpart federal regulations and the MSHA approval provisions, and no change appears necessary.

3. The U.S. Department of Labor, Mine Safety and Health Administration, commenting on proposed Alabama regulation Sections 816.86 and 817.86 (burning of coal processing waste), stated that prior to extinguishing a fire, a plan must be approved by MSHA.

The current Alabama program proposal appears to fail to include the MSHA approval requirement of 30 CFR 816.86 and 817.86 which must be corrected in the program resubmission before the Alabama program could be fully approved.

4. The U.S. Department of Labor, Mine Safety and Health Administration, commented on proposed Alabama regulation Sections 816.92 and 817.92 concerning diversions that are designed to divert drainage for an upstream area away from an impoundment area. MSHA guidelines call for the diversion to designed to carry the peak runoff from a 100-year, 6-hour precipitation, as compared to the 100-year, 24-hour precipitation event requirement in 30 CFR Chapter VII.

Proposed Alabama regulation Sections 816.92 and 817.92 appear consistent with 30 CFR 816.92 and 817.92. Therefore, no change appears necessary.

5. The Department of the Army, Corp of Engineers, reviewed the Alabama proposed program but did not provide any specific comments.

6. The Tennessee Valley Authority commented that the surface water information required by Alabama's proposed regulation Section 779.16 will often be difficult and expensive to obtain. TVA further commented that the data gathered is to be used to determine under proposed Alabama regulation Section 780.21(c) the probable hydrologic consequences (PHC) of the proposed mining operation; however, Alabama's proposed submission does not elaborate on how the required hydrologic data might be utilized on the PHC determination.

The hydrologic data to be required by Alabama's proposed regulations will be used by the permit applicant to identify, evaluate, and describe the probable hydrologic consequences. This same data would also have utility to the regulatory authority in its technical evaluation and in reaching a decision on the permit.

The comment relating to the cost of acquiring data under proposed Alabama regulation Section 779.16 is not relevant to the Alabama program evaluation since the comment applies to 30 CFR Part 779 which has already undergone national rulemaking and public review.

7. The Department of Energy (DOE) commented that proposed Alabama regulation Section 816.57 should include the reference to "biological community" as described in 30 CFR 816.57(c).

The Secretary agrees that the reference to "biological community" apparently should be made. See discussion in response to comment No. 16 above from the Fish and Wildlife Service.

8. The DOE commented that 30 CFR 816.65(f)(2) requires 500 feet between blasting operations and facilities, while proposed Alabama regulation Section 816.65(f)(2) reduces this distance to 100 feet, based on studies conducted by the State. DOE suggested that these studies be documented.

The proposed Alabama regulation appears unacceptably to reduce the requirements from 500 feet to 100 feet, which must be corrected before the Alabama program could be fully approved. The proposed Alabama regulation does, however, require that decisions for allowing blasting within a distance lesser than prescribed in the regulation be based on a pre-blast survey, seismic investigation or other appropriate investigation as the Federal rules require for all blasting within 500 feet. Such studies reasonably would result in documentation, but the Secretary will require such studies for blasting within 500 feet not just within 100 feet.

9. The DOE commented that proposed Alabama regulation Section 776.3 has a paragraph which exempts drilling of small diameter exploratory holes from the exploration requirements. DOE pointed out that the equipment and methods used to drill small diameter exploratory holes involve potential environmental impacts and the State exemption should be deleted.

The Secretary agrees with DOE that proposed Alabama regulation Section 776.3(c) appears inconsistent with the Federal requirements in its exemption of drilling of small diameter exploratory holes from the exploration requirements.

10. The DOE commented that proposed Alabama regulation Section 779.27(b)(4) allows surface mining activities in an area that encompasses 10 acres or less of prime farmland.

The Secretary agrees that the proposed Alabama regulations appear unacceptably to allow an exemption from compliance with the strict standards applicable on prime farmlands for areas up to 10 acres. Neither SMCRA nor 30 CFR 779.27 allows such exemption.

Public Comments

1. Auburn University commented on May 2, 1980, that it would be in the best interests of the State of Alabama to include a section in its regulations that addressed experimental practices. Included with this comment was a proposed section prepared by Auburn (proposed as Section 780.28) pertaining to experimental practices and proposals for reclamation research to be included in the Alabama regulations.

Section 711 of SMCRA provides for experimental practices in surface mining. The proposed Alabama statute has a similar provision in Section 33. However, the State is not required to have a section in its regulations such as the one proposed by Auburn. Therefore, no change appears necessary.

2. Joey Stephenson of Jasper, Alabama, commented on June 30, 1980, that he was opposed to the movement of the main office of the Alabama Surface Mining and Reclamation Commission from the present location in Jasper, Alabama, to Montgomery, Alabama.

No provisions exist under Federal requirements for the determination of locations for offices of the regulatory authority. Therefore, the State has the discretion to select the location for its office.

3. On April 10, 1980, Drummond Coal Company commented that the Alabama program submission: (a) was not in the form of a legal opinion from the Attorney General of the State or the chief legal officer of the State regulatory authority, (b) did not have the required legal opinion stating that Alabama has the legal authority or will have the legal authority to administer the program, and (c) did not contain the required section-by-section comparison of the State's proposed laws and amendments with SMCRA and Chapter VII of the Federal regulations; pursuant to 30 CFR 731.14(c).

The Secretary agrees with comments (a) and (b) that the Alabama program submission does not appear to contain a legal opinion. The Secretary also agrees with (c) that the Alabama program submission does not have a section-by-section comparison of the States proposed law with SMCRA (See 45 FR 42330, June 26, 1980). The Secretary is requesting Alabama to provide these documents upon enactment of its law and regulations and upon resubmission of its program.

4. Drummond Coal Company also commented that the information required by 30 CFR 731.14(h)(8) did not appear to be complete in the Alabama program submission and that the graphs presented for compliance with the section were confusing and the required projections were not present in the submission.

The Regional Director's Federal Register notice of April 29, 1980 reflected that Section 731.14(h)(8) of the Systems section of the Alabama program submission was complete with respect to the requirements of 30 CFR 731.14(h)(8). It appears that the statistical information in Alabama systems Section 731.14(h)(8) is acceptable. Projections referred to by the comment are discretionary and are dependent upon the availability of existing studies. Accordingly, the suggested changes will not be required in the State program resubmission.

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5. In a letter dated May 22, 1980, Mining Services, Inc., commented that Section 779.26 of the proposed Alabama regulations implied but did not make clear that preliminary, progress and final stage maps are required. Mining Sources, Inc., also suggested that proposed Alabama regulation Section 779.26 be clarified by specifying that maps will be required at preliminary, progress and final stages.

Preliminary, progress and final stage maps are not required specifically by SMCRA or the Federal regulation. The State's proposed regulation appears to be an additional requirement and thus appears more stringent. Therefore, it would seem inappropriate to require the State to modify proposed State Section 779.26 as suggested.

6. Lawrence Beckerle of Bryant, Alabama, representing Invesco International Corporation, commented at the public hearing in Jasper, Alabama on July 24, 1980, that he was in favor of a variance which would allow retention of highwalls and selective placement of topsoil because it would reduce erosion and increase productivity.

Both the federal and proposed state laws and regulations provide for authorized departures from specific performance standards under limited circumstances and for the purpose of experimentation. However, the suggested variance would be contrary to SMCRA. Therefore, no change is necessary.

7. Lawrence Beckerle of Bryant, Alabama, representing Invesco International Corporation, also commented at the public hearing that he was in favor of a ten percent rule with regard to land use changes. According to the commenter, such a rule decreases cost and increases efficiency by avoiding lengthy procedures for small changes.

Neither Alabama's proposed regulation Sections 780.23 and 784.15 nor the federal counterparts provide for alternate procedures based on the amount or percentage of land for which the usage change is desired. In this respect, Alabama's proposed regulations appear consistent with 30 CFR Chapter VII and the legislative intent of SMCRA.

8. Lawrence Beckerle of Bryant, Alabama, representing Invesco International Corporation, suggested the elimination of the hydrology plan requirement in Alabama on the grounds that hydrology plans were intended for western states only.

Section 515 of SMCRA and 30 CFR 816.52 and 817.52 make no provisions for phasing out or eliminating the hydrology plan in the East. Consequently, it seems clear that hydrologic plans and monitoring should be equally applicable in western and eastern areas.

9. The Environmental Policy Institute (EPI) commented on July 28, 1980, that necessary wording had been omitted from Section 764.15(b)(2) of the Alabama draft regulations. The federal counterpart, 30 CFR 764.15(b)(2), requires announcing petitions for designating lands unsuitable for mining in the newspaper of largest circulation in the state. This provision is lacking the Alabama draft regulation.

The Secretary agrees and the state will have to include a provision consistent with the Federal requirement before the Alabama program could be fully approved.

10. The EPI commented that the requirement of proposed Alabama regulation Sections 787.11(a)(6) and 787.11(b)(3) that the "record shall not be transcribed unless further appeal is taken or the State Regulatory Authority so directs" is not the same as the requirement in 30 CFR 787.11(b)(3) that provides for a transcript to be made on the motion of any party or by the hearing authority.

The Secretary agrees that the proposed Alabama procedure for transcripts appears inconsistent with its federal counterpart. The State regulation does not provide assurance that the regulatory authority will make a transcript available upon motion of any party, as prescribed in the Federal regulation. Thus, a party would not necessarily have the opportunity to review a transcript of the hearing to decide whether or not to appeal.

11. The EPI also commented that Section 787.11(b)(1)(b) of the proposed Alabama regulations allows for automatic affirmance if the Board of Appeals grants the petition for review but fails to act on it within 90 days and that there is no counterpart for this automatic affirmance in the federal regulations.

The Secretary agrees that the proposed Alabama provision appears inconsistent with federal requirements. The federal regulations require that, if an appeal is taken, a decision must be made by the appellate body.

12. The EPI also commented that the provision in proposed Alabama regulation Section 787.12(f)(2) that "If any party unreasonably refuses to stipulate to limit the record, he may be assessed by the court for such additional costs as occasioned by the refusal" is without a federal counterpart and subject to discriminatory abuse. EPI further maintained that unwarranted additions and corrections to the record are permitted.

The Secretary agrees that the cited provision of proposed Alabama regulation Section 787.12(f)(2) appears inconsistent with federal requirements. Without further information as to how this provision is to operate, the Secretary cannot judge whether it may be subject to abuse.

13. The EPI also commented that Section 788.12(a)(1) of the proposed Alabama regulations inappropriately tracks the federal counterpart in that the state fails to provide parameters for determining significant departures from the original application.

The Secretary agrees that proposed Section 788.12(a)(1) apparently is deficient. 30 CFR 788.12(a)(1) requires each regulatory authority to provide such parameters in its regulatory program.

14. The EPI also commented that proposed Alabama regulation Sections 816.41(c), 816.42(a)(2), 816.45, 816.49 and their counterparts to 30 CFR 817 omit the requirement for compliance with applicable federal laws.

The Secretary agrees that such requirements apparently have been omitted from the cited sections. Provisions consistent with the federal requirements must be provided before the Alabama program could be fully approved.

15. The EPI commented on July 28, 1980 that Section 807.11(e) of the proposed Alabama regulations does not provide for access to the minesite as part of the informal conference procedures consistent with the court decision of February 8, 1980.

Assuming the court's decision is not challenged on appeal, the Secretary will undertake rulemaking to bring the Federal rules into compliance with the court's order. After the rules have been modified, the states will be given the opportunity to revise any provisions inconsistent with those new rules. In the meantime, the Secretary only requires that the State act be consistent with the Federal act.

16. The EPI commented that Alabama has not proposed a regulatory counterpart to 43 CFR Part 4, and hence, there is no reference to it in Section 840.15 of Alabama's proposed regulations.

The Secretary agrees that a counterpart to 43 CFR Part 4 apparently has been omitted from the Alabama program submission. Provisions consistent with the applicable provisions of 43 CFR Part 4 must be provided before the Alabama program could be fully approved.

17. Archie Patterson, Jr., commented as a private citizen that the Alabama program submission is insufficient. He noted in particular that the sections covering air and water pollution pursuant to 30 CFR 732.13(b)(2) have not been drafted and are not included in the submission.

The state is not required to comply with 30 CFR 732.13(b)(2). That regulation requires the Secretary of the Interior to obtain concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of the program that relate to air and water quality prior to approval of a State program. The Alabama program submission does include proposed regulations for permitting and performance standards that relate to air and water quality. The state is being advised that some of those provisions must be revised and included in the program resubmission before the Alabama program could be fully approved.

18. The Alabama Historical Commission suggested that Alabama's state mining plan incorporate provisions to provide protection of cultural resources eligible for the National Register as well as those actually listed on the Register.

Proposed Alabama regulation Section 761.11(c) appears to provide protection for cultural resources eligible for listing on the National Register of Historic Places. Proposed Section 761.12(f)(1) appears not to provide protection for cultural resources eligible for listing. However 30 CFR 761.11(c) and 761.12(f)(1) have been suspended by court order insofar as they would apply to privately-owned places listed on the National Register of Historic places as opposed to publicly-owned places and to places eligible for listing. Because of this suspension, the Secretary may not require any changes in the proposed Alabama program regulations.

Disapproval

As indicated under Secretary's Findings, the Alabama program does not meet the criteria for approval in Section 503 (a) and (b) of SMCRA and in 30 CFR 732.15. Accordingly, the Alabama program is initially disapproved.

Effect of This Action

Disapproval means that Alabama is not now eligible to assume primary jurisdiction over implementation of the permanent regulatory program pursuant to SMCRA. Alabama may submit additions or revisions to its proposed program to correct the disapproved parts within 60 days from the effective date of this decision. Fully enacted regulations and law, consistent with SMCRA and 30 CFR Chapter VII which must be effective before the Secretary's final decision, are required.

If no resubmission is made within 60 days, the Secretary will take appropriate steps to promulgate and implement a federal program for the State of Alabama. If the disapproved parts of the Alabama program are revised and resubmitted within the 60 day time limit, the Secretary will have an additional 60 days to review the revised program, to solicit comments from the public, the Administrator of the Environmental Protection Agency, the Secretary of Agriculture and the heads of other federal agencies, and to approve, disapprove, or conditionally approve the final Alabama program submission pursuant to Section 503 (a) and (b) of SMCRA and 30 CFR 732.

This disapproval only relates to the permanent regulatory program under Title V of SMCRA. The disapproval does not constitute disapproval of any provisions related to implementation of Title IV of SMCRA, the abandoned mine lands reclamation program (AML). In accordance with 30 CFR 884 (State Reclamation Plans), Alabama may submit a state AML reclamation plan at any time. Final approval of an AML plan, however, cannot be given by the Director of OSM until the state has an approved permanent regulatory program.

There are no coal-bearing Indian lands in Alabama. Coal development is anticipated in federal lands in Alabama, and such development will be regulated by the initial federal lands program according to 30 CFR 211. If a state regulatory program is approved, the federal lands program will be governed by Subchapter D of 30 CFR Chapter VII.

The Secretary does not intend to promulgate rules in 30 CFR 901 until the Alabama program has been either finally approved or disapproved following opportunity for resubmission.

Additional Findings

The Secretary has determined that pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no Environmental Impact Statement need be prepared on this disapproval.

The Secretary has determined that this document is not a significant rule under E.O. 12044 or 43 CFR Part 14, and no regulatory analysis is being prepared on this disapproval.

Dated: October 8, 1980.

Joan M. Davenport,

Assistant Secretary, Energy and Minerals.

[FR Doc. 80-32112 Filed 10-15-80; 8:45 am]

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30 CFR Part 915

Partial Approval/Partial Disapproval of the Permanent Program Submission From the State of Iowa Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: On February 28, 1980, the State of Iowa submitted to the Department of the Interior its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The purpose of the submission is to demonstrate the State's intent and capability to administer and enforce the provisions of SMCRA and the permanent regulatory program regulations, 30 CFR Chapter VII.

After providing opportunities for public comment and a thorough review of the program submission, the Secretary of the Interior has determined that the Iowa program partially meets the requirements of SMCRA and the Federal permanent program regulations. Accordingly, the Secretary of the Interior has approved in part and disapproved in part the Iowa program. Iowa will not assume primary jurisdiction for implementing the permanent regulatory program until its entire program receives approval.

DATE: Iowa has until December 15, 1980 to submit revisions of the disapproved portions of the program for the Secretary's consideration.

ADDRESSES: Copies of the Iowa program and the administrative record on the Iowa program are available for public inspection and copying during business hours at:

Office of Surface Mining Reclamation and Enforcement, Region IV, 5th Floor, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106;

Iowa Department of Soil Conservation, Mines and Minerals Division, Wallace State Office Building, Des Moines, Iowa 65101;

Office of Surface Mining Reclamation and Enforcement, Room 153, Interior South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240, Telephone: (202) 343-4728.

FOR FURTHER INFORMATION CONTACT:

Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, Interior South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240, Telephone: (202) 343-4225.

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SUPPLEMENTARY INFORMATION:

General Background on the Permanent Program

The environmental protection provisions of SMCRA are being implemented in two phases—the initial program and the permanent program—in accordance with Sections 501–503 of SMCRA, 30 U.S.C. 1251–1253. The initial program became effective on February 3, 1978, for new coal mining operations on non-federal and non-Indian lands that received state permits on or after that date, and on May 3, 1978, for all coal mines existing on that date. The inital program rules were promulgated by the Secretary on December 13, 1977, under 30 CFR Parts 710–725 and 795, 42 FR 62639 et seq.

The permanent program will become effective in each state upon the approval of a state program by the Secretary of the Interior or implementation of a federal program within the state. If a state program is approved, the state, rather than the federal government, will be the primary regulator of activities subject to SMCRA.

The federal regulations for the permanent program, including procedures for states to follow in submitting state programs and minimum standards and procedures the state programs must include to be eligible for approval, are found in 30 CFR Parts 700–707 and 730–865. Part 705 was published October 20, 1977 (42 FR 56064), and Parts 795 and 865 (originally Part 830) were published December 13, 1977 (42 FR 62639). The other permanent program regulations were published March 13, 1979 (44 FR 15312–15463). Corrections were published March 14, 1979 (44 FR 15485), August 24, 1979 (44 FR 49673–49687), September 14, 1979 (44 FR 53507–53509), November 19, 1979 (44 FR 66195), April 16, 1980 (45 FR 26001), June 5, 1980 (45 FR 37818), and July 15, 1980 (45 FR 47424).

Amendments to the regulations were published October 22, 1979 (44 FR 60969), as corrected December 19, 1979 (44 FR 75143), December 19, 1979 (44 FR 75302–75303), December 31, 1979 (44 FR 77440–77447), January 11, 1980 (45 FR 2626–2629), April 16, 1980 (45 FR 25996–26001), May 20, 1980 (45 FR 33926–33927), June 10, 1980 (45 FR 39446–39447), and August 6, 1980 (45 FR 52306–52324). Portions of these regulations have been suspended, pending further rulemaking. *See* 44 FR 67942 (November 27, 1979), 44 FR 77447–77454 (December 31, 1979), 45 FR 6913 (January 30, 1980) and 45 FR 51547–51556 (August 4, 1980).

General Background on State Program Approval Process

Any state wishing to assume primary jurisdiction for the regulation of coal mining under SMCRA may submit a program for consideration. The Secretary of the Interior has the responsibility to approve or disapprove the submission.

The federal regulations governing state program submissions are found at 30 CFR Parts 730–732. After review of the submission of OSM and other agencies, an opportunity for the state to make additions or modifications to the program, and an opportunity for public comment, the Secretary may approve the program, approve it conditioned upon minor deficiencies being corrected in accordance with a specified timetable, or disapproved the program in whole or in part. If any part of the program is disapproved, the state may submit revisions to correct the items that need change to meet the requirements of SMCRA and the applicable federal regulations. If the revised program is also disapproved, SMCRA requires the Secretary of the Interior to establish a federal program in that state. The state may again request approval to assume primary jurisdiction after the federal program has been implemented.

The procedure and timetable for the Secretary's review of state programs were initially published March 13, 1979 (44 FR 15326), to be codified at 30 CFR Part 732.

As a result of litigation in the U.S. District Court for the District of Columbia, the deadline for states to submit proposed programs was extended from August 3, 1979, to March 3, 1980. 30 CFR 732.11(d) required that if all required and fully enacted laws and regulations were not part of the program by November 15, 1979, the program would be disapproved. Because the submission deadline had been changed to March 3, 1980, 30 CFR 732.11(d) was amended to provide that program submissions that do not contain all required and fully enacted laws and regulations by the 104th day following program submission will be disapproved pursuant to the procedures for the Secretary's initial decision in Section 732.13 (45 FR 33927, May 20, 1980). The 104th day after the Iowa program was submitted was June 11, 1980.

The Secretary's rules for the review of State programs implement his policy that industry, the public, and other agencies of government should have a meaningful opportunity to participate in his decisions. The Secretary also has a policy that a State should be afforded the maximum opportunity possible to change its program, when necessary, to cure any deficiencies in it.

To accomplish both of these policy objectives the Secretary determined that the laws and rules upon which the State bases its program must be finalized at the beginning of the public comment period. By identifying the laws and rules in effect on the 104th day as the basis of his program approval decision, the Secretary assists commenters by informing them of program elements which should be reviewed. Meaningful public comment would be undermined if the program elements were constantly changing up until the day before the Secretary's decision.

The 104th day rule affords the State 3½ months following submission within which it may modify its laws and rules. In addition, after the Secretary's initial program decision, the States have additional opportunities to revise their laws and regulations.

All program elements other than laws and rules, including Attorney General's opinions, program narratives, descriptions and other information, may be revised by the State at any time prior to program approval. The Secretary will provide opportunity for public comment on those changes, as appropriate.

The Secretary, in reviewing state programs, is complying with the provisions of Section 503 of SMCRA, 30 U.S.C. 1253, and 30 CFR 732.15. In reviewing the Iowa program, the Secretary has followed the federal rules as cited above under "General Background on the Permanent Program," and as affected by decisions of the U.S. District Court for the District of Columbia in *In Re: Permanent Surface Mining Regulation Litigation*. That litigation is the consolidation of several lawsuits challenging the Secretary's permanent regulatory program.

Three recent decisions from the district court affect the decision-making process. Because of the complex litigation, the court issued its initial decision in two "rounds." The Round I opinion, dated February 26, 1980, denied several generic attacks on the permanent program regulations, but resulted in suspension or remanding of all or part of twenty-two specific regulations.

The Round II opinion, dated May 16, 1980, denied additional generic attacks on the regulations, but remanded some 40 additional parts, sections or subsections of the regulations. The court also ordered the Secretary to "affirmatively disapprove, under Section 503 (of SMCRA), those segments of a state program that incorporate a suspended or remanded regulation"

(Mem. Op., May 16, 1980, p. 49). However, on August 15, 1980, the court stayed this portion of its opinion. The effect of this stay is to allow the Secretary, when requested by a state, to approve state program provisions equivalent to remanded or suspended federal provisions in the three circumstances described in paragraph one below.

Therefore, the Secretary is applying the following standards in the review of permanent program submissions.

1. The Secretary need not affirmatively disapprove state provisions similar to those federal regulations which have been suspended or remanded by the District Court where the state has adopted such provision in a rulemaking or legislative proceeding which occurred either (1) before the enactment of SMCRA or (2) after the date of the Round II District Court decision, since such state regulations clearly are not based solely upon the suspended or remanded federal regulations. (3) The Secretary need not affirmatively disapprove provisions based upon suspended or remanded Federal rules if a responsible state official has after May 16, 1980, requested the Secretary to approve them.

2. The Secretary will affirmatively disapprove, to the extent required by the Court's decisions, all provisions of a state program which incorporate suspended or remanded Federal rules and which do not fall into one of the three categories in paragraph one, above. The Secretary believes that the effect of his "affirmative disapproval" of a section in the state's regulations is that the requirements of that section are not enforceable in the permanent program at the federal level to the extent they have been disapproved. That is, no cause of action for enforcement of the provisions, to the extent disapproved, exists in the federal courts, and no federal inspection will result in notices of violation or cessation orders based upon the "affirmatively disapproved" provisions. The Secretary takes no position as to whether the affirmatively disapproved provisions are enforceable under state law and in state courts. Accordingly, these provisions are not being pre-empted or suspended, although the Secretary may have the power to do so under Section 504(g) of SMCRA and 30 CFR 730.11.

3. A state program need not contain provisions to implement a suspended regulation and no state program will be disapproved for failure to contain a suspended regulation. Nonetheless, a state must have authority to implement all permanent program provisions of SMCRA, including those provisions of SMCRA upon which the Secretary based remanded or suspended regulations.

4. A state program may not contain any provision that is inconsistent with a provision of SMCRA.

5. Programs will be evaluated only on those provisions other than the provisions that must be disapproved because of the court's order. The remaining provisions will be approved, approved conditionally, or disapproved, in whole or in part in accordance with 30 CFR 732.13.

6. Upon promulgation of new regulations to replace those that have been suspended or remanded, the Secretary will afford states that have approved or conditionally approved programs a reasonable opportunity to amend their programs, as appropriate. In general, the Secretary expects that the provisions of 30 CFR 732.17 will govern this process.

A list of the regulations suspended or remanded as a result of the Round I and Round II litigation was published in the Federal Register on July 7, 1980 (45 FR 45604–45607).

To codify decisions on state programs, federal programs, and other matters affecting individual states, OSM has established a new Subchapter T of 30 CFR Chapter VII. Subchapter T will consist of Parts 900 through 950. Provisions relating to Iowa will be found in 30 CFR Part 915.

Background on the Iowa Program Submission

On February 28, 1980, OSM received a proposed regulatory program from the State of Iowa. The program was submitted by the Iowa Department of Soil Conservation, the agency designated as the primary regulatory authority under the Iowa permanent program. Notice of receipt of the submission initiating the program review was published in the March 6, 1980, Federal Register (45 FR 14598–14599) and in newspapers of general circulation in Iowa. The announcement invited public participation in the initial phase of the review process as it related to the regional director's determination of whether or not the submission was complete.

On April 15, 1980, the regional director held a public review meeting in Des Moines, Iowa, on the program submission and its completeness. The public comment period on completeness began on March 10, 1980, and closed April 15, 1980.

On April 25, 1980, the regional director published notice in the Federal Register announcing that the program submission had been determined to be incomplete (45 FR 27953–27954).

On June 11, 1980, the Iowa Department of Soil Conservation submitted to OSM numerous revisions to the Iowa permanent program submission. On June 18, 1980, the regional director published in the Federal Register (45 FR 41164–41166) and in newspapers of general circulation within the state notice of receipt and a summary of the revisions to the Iowa program submission. The notice also set forth procedures for the public hearing and comment period on the substance of the Iowa program.

On July 11, 1980, the Secretary invited public comment on a tentative list of provisions in the Iowa program which appeared to be based on those federal rules suspended or remanded by the U.S. District Court for the District of Columbia. (*See* 45 FR 46820.)

On July 17, 1980, the regional director held a public hearing on the adequacy of the Iowa submission, in Des Moines, Iowa. The list of suspended and remanded federal regulations was also made available to the public during the July 17, 1980, public hearing and placed in the OSM Region IV Kansas City, and Iowa Department of Soil Conservation's public records. The public comment period on the Iowa permanent regulatory program ended on July 25, 1980.

On August 4, 1980, the regional director submitted to the Director of OSM, his recommendation that the Iowa program be approved in part and disapproved in part, together with copies of the transcripts of the public meeting and public hearing, written presentations, exhibits, copies of all public comments received and other documents comprising the administrative record.

On August 15, 1980, the Secretary published a notice announcing the solicitation and public disclosure of comments from other federal agencies on the Iowa permanent program submission (45 FR 54371).

On August 21, 1980, the Director asked the state to inform OSM whether there were any provisions in the Iowa program based on regulations suspended or remanded by the U.S. District Court, which the State wished the Secretary not to affirmatively disapprove. The State has not yet replied to this inquiry.

On September 5, 1980, the Director recommended to the Secretary that the Iowa program be approved in part and disapproved in part.

On September 5, 1980, the Administrator of the Environmental Protection Agency concurred in the

Secretary's approval of those provisions of the Iowa program relating to air and water quality standards being approved today.

Elements Upon Which the Iowa Program Is Being Evaluated for This Decision

The State of Iowa has enacted surface coal mining legislation, but has not adopted final regulations. Neither the proposed regulations submitted on February 28, 1980, nor the revised proposed regulations submitted on June 11, 1980, were fully enacted by June 11, 1980, the 104th day after program submission. Because of the 104 day rule promulgated May 20, 1980, (30 CFR 732.11(d), (45 FR 33926)), only those statutory provisions and regulations that were fully enacted on or before June 11, 1980, are being considered as a basis for this decision. Nevertheless, the Secretary has reviewed the proposed regulations and is providing his preliminary analysis of those proposed regulations in a letter from the Director of OSM to the State. That letter is available for public review at the places listed above under "Addresses." When Iowa resubmits its program, an opportunity will be provided for formal public comment on its enacted regulations pursuant to 30 CFR 732.13(f).

In consideration of these matters and those discussed above under "General Background on State Program Approval Process," the Secretary hereby sets forth the elements of the proposed Iowa program upon which the findings and decision below are being made:

(a) The Iowa Surface Coal Mining Act, and

(b) The balance of the proposed program received on February 28, 1980, as amended through June 11, 1980, except the proposed regulations.

Secretary's Findings:

In reaching his decision to approve in part and disapprove in part the Iowa program submission, the Secretary makes the following findings pursuant to Section 503 of SMCRA and 30 CFR 732.15. Also, see the paragraph below entitled "Additional Findings."

1. The Secretary makes the following findings for the provisions of Section 503(a) of SMCRA:

(a) The Iowa Surface Coal Mining Act (ISCMA), and Iowa Administrative Procedures Act (IAPA) provide for the regulation of surface coal mining and reclamation operations on non-Indian and non-federal lands in Iowa in accordance with SMCRA, with the exceptions identified in finding 1(b);

(b) The ISCMA provides sanctions for violations of Iowa laws, regulations or conditions of permits concerning surface coal mining and reclamation operations, and these sanctions meet the requirements of SMCRA, including civil and criminal actions, forfeiture of bonds, suspensions, revocations, withholding of permits, and the issuance of cessation orders by the Iowa Department of Soil Conservation or its inspectors, except as noted below in findings 4 (h), (i) and (o);

(c) The Iowa Department of Soil Conservation does not have sufficient administrative and technical personnel nor does it have sufficient funds to enable Iowa to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA;

The Secretary's analysis of the proposed permanent program reveals that Iowa has underestimated professional staff needs for exploration, surface mining, permit processing, inspection, enforcement, and bonding. The Secretary believes that Iowa will need additional professional staff to administer adequately the permanent program. (*See* Administrative Record Document No. IA–101, OSM analysis of Iowa staffing needs.) The Director of the Iowa Department of Soil Conservation, in a letter to the Regional Director, OSM Region IV, has acknowledged that staffing is deficient both for the interim and the permanent regulatory programs. (*See* Administrative Record Document No. IA–53.) The Iowa Director stated with respect to the interim program "Our most immediate need is for another one or two people to assist with inspection, enforcement and permitting in conjunction with the requirements of the interim program." As to the permanent program, he stated, ". . . we have determined that as many as three to six additional positions may ultimately be necessary to carry out our responsibilities to the permanent regulatory program." Therefore, the Secretary is unable to find that the proposed staffing and budget in the Iowa program would be sufficient to enable Iowa to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA. The Director of the Iowa Department of Soil Conservation has indicated that he plans to request additional staff positions and funding for 1981–1983. The new budget information should be included with the resubmission.

(d) The ISCMA provides for the effective implementation, maintenance, and enforcement of a permit system that meets the requirements of SMCRA for the regulation of surface coal mining and reclamation operations on non-Indian and non-federal lands within Iowa;

(e) The ISCMA has established a process for the designation of areas as unsuitable for surface coal mining in accordance with Section 522 of SMCRA, 30 U.S.C. 1272;

(f) Iowa has established, for the purpose of avoiding duplication, a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with other federal and state permit processes applicable to the proposed operations;

(g) Iowa does not have fully enacted regulations consistent with federal regulations issued pursuant to SMCRA. The Secretary finds that the state program must include regulations consistent with 30 CFR Chapter VII;

2. As required by Sections 503(b)(1)–(3) of SMCRA, 30 U.S.C. 1253(b)(1)–(3), and 30 CFR 732.11–732.13, the Secretary has, through OSM:

(a) Solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other federal agencies concerned with or having special expertise pertinent to the proposed Iowa program;

(b) Obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of the Iowa program being approved at this time that relate to air or water quality standards promulgated under the authority of the Clean Water Act as amended (33 U.S.C. 1151–1175) and the Clean Air Act as amended (42 U.S.C. 7401 *et seq.*); and

(c) Held a public review meeting in Des Moines, Iowa, on April 15, 1980, to discuss the completeness of the Iowa program submission and subsequently held a public hearing in Des Moines, Iowa, on July 17, 1980, on the substance of the program submission.

3. In accordance with Section 503(b)(4) of SMCRA, 30 U.S.C. 1253(b)(4), the Secretary finds the State of Iowa does not have the qualified personnel necessary nor does it have the legal authority for the enforcement of the environmental protection standards of SMCRA and 30 CFR Chapter VII, because necessary regulations have not been enacted and because the proposed staff does not include sufficient funding or personnel to administer adequately the permanent program. (*See* finding 1(c) above.)

4. In accordance with 30 CFR 732.15, the Secretary finds, on the basis of information in the Iowa program submission, including the section-by-section comparison of the Iowa law and proposed rules with SMCRA and 30 CFR Chapter VII, public comments, testimony and written presentations at the public meeting and hearing, and other relevant information, that:

(a) Pursuant to 30 CFR 732.15(a) the proposed Iowa program does not provide for Iowa to carry out the provisions and meet the purposes of SMCRA and 30 CFR Chapter VII because the program does not include fully enacted regulations consistent with 30 CFR Chapter VII and because the program submitted four proposed alternatives pursuant to 30 CFR 731.13. The Secretary has reviewed each of the four proposed alternatives under 30 CFR 731.13 and makes the following findings:

(1) Iowa proposes to exempt from the permit application requirements of 30 CFR 779.27 and 783.27 (and as a result, from the performance standards of 30 CFR Part 823) prime farmland units of less than 10 acres that are too irregular in shape "to permit differential treatment and efficiency of modern farm machinery operation." (*See* Iowa program, Vol. 4.) The Secretary finds that this proposed alternative is inconsistent with SMCRA because SMCRA does not authorize any such exemption to the prime farmlands permitting or performance standards. (*See* Sections 507(b)(16), 510(d), 515(b)(7), 519(c)(2) and 701(20) and the preamble to the permanent regulations at 44 FR 15046 and 15047 (March 13, 1979).) Therefore, the Secretary is disapproving this proposed alternative.

(2) Iowa proposes to replace the moist bulk density standard for soil compaction contained in 30 CFR 823.14(c) with a more general standard requiring soil replacement practices that minimize soil compaction and require remedial practices if excessive compaction occurs. Since 30 CFR 823.14(c) has been suspended (44 FR 77455), this proposed alternative rule need not be submitted as an alternative under 30 CFR 731.13. The Secretary finds subject to further public comment that proposed Iowa Rule 4.55(4)(c) appears consistent with Section 515(b)(C) of SMCRA. (30 U.S.C. 1265(b)(7)(C).)

(3) Iowa proposes to allow certain small structures to be designed by or under the direction of "qualified professional," rather than "a qualified registered professional engineer or a registered land surveyor," as required by 30 CFR 780.25(a)(3)(i). With regard to Iowa's proposed alternative the Secretary has examined the administrative record to determine (1) Iowa's definition of "small structure," (2) Iowa's definition of "qualified professional," and (3) the adequacy of information submitted in support of the proposal. Iowa's definition of small structure in proposed rule 4.323(10) a.2 is identical to the definition in 30 CFR 780.25(a)(3)(i), that is, a structure that does not meet the size or other criteria of 30 CFR 77.216(a) (MSHA standards). However, 30 CFR 780.25(a)(3)(i) requires that design plans for small structures be prepared by, or under the direction of, and certified by a qualified registered professional engineer or registered land surveyor.

In its original program submission, Iowa proposed to allow a qualified registered professional engineer, registered land surveyor, or professional geologist to prepare and certify design plans for small structures. Subsequently the state submitted, as an alternative under 30 CFR 731.13, its proposal to allow an unspecified "qualified professional" to perform these funtions. The term "qualified professional" is not defined, either in the Iowa program, or in the statement submitted in support of the proposed alternative. This is the principal problem with Iowa's proposal to use "qualified professional." Iowa will be given the chance to define the term upon resubmission. If the proper showings are made, Iowa's proposal could be approved.

In support of the proposed alternative, the state submitted a short narrative stating that small structures have in the past been designed by "qualified professionals," and that these structures have not proven unsafe. In addition, the state noted that each permit application would be reviewed by a qualified registered engineer, who would presumably check on the adequacy of small structure design plans.

Because of the lack of definition and the lack of supporting information, the record currently before the Secretary does not support a conclusion that the proposed alternative fulfills the criteria in 30 CFR 731.13 (c)(1). Iowa will be able to provide further information on its proposal with its resubmission.

(4) Iowa proposes to change the definition of sedimentation pond to exclude secondary sedimentation structures such as straw dikes and check dams to the extent that discharges from the permit area meet the effluent limitations. 30 CFR 701.5 excludes those structures from the definition of sedimentation pond to the extent that their discharges drain to a sedimentation pond. It appears that Iowa interpreted the definition of sedimentation pond in 30 CFR 701.5 to require that flow from these secondary sedimentation structures drain to a sedimentation pond. However, both 30 CFR 816.42(c)(1) and proposed Iowa Rule 4.522911) require all surface drainage to pass through a sedimentation pond. Therefore, Iowa's proposal to alter the definition does not alter the requirement that all surface drainage pass through a sedimentation pond nor does it change any of the performance standards or afford less protection of the environment. The Secretary finds that the proposed change in the definition of sedimentation pond need not be submitted as an alterantive under 30 CFR 731.13. The Secretary preliminarily finds that the language of the proposed regulation appears to be in accordance with the provisions of the Act and consistent with 30 CFR Chapter VII and that Iowa's proposed regulation will not change the requirement of 30 CFR 816.42(a)(1) adopted by reference as proposed Iowa Rule 4.522(11), that all surface drainage pass through a sedimentation pond before leaving the permit areas.

(b) Pursuant to 30 CFR 732.15(b)(1), the Secretary finds that the Iowa Department of Soil Conservation has the authority under Iowa laws but does not have authority under enacted regulations to implmentation, administer and enforce all applicable requirements consistent with 30 CFR Chapter VII, Subchapter K, because the necessary regulations have not been fully enacted.

(c) Pursuant to 30 CFR 732.15(b)(2), the Secretary finds that the Iowa Department of Soil Conservation has the authority under the ISCMA, but does not have authority under enacted state regulations, the implement, administer and enforce a permit system consistent with 30 CFR Chapter VII, Subchapter G, and to prohibit surface coal mining and reclamation operations without a permit issued by the Iowa Department of Soil Conservation.

(d) Pursuant to 30 CFR 732.15(b)(3), the Secretary finds that the Iowa Department of Soil Conservation has the authority under ISCMA Section 18 but does not have authority under enacted regulations to regulate coal exploration consistent with 30 CFR, Parts 778 and 815, and to prohibit coal exploration that does not comply with those requirements.

(e) Pursuant to 30 CFR 732.15(b)(4), the Secretary finds that the Iowa Department of Soil Conservation has the authority under ISCMA Section 26 but the Iowa program does not include enacted regulations to require that persons extracting coal incidental to government-financed construction maintain information on-site consistent with 30 CFR Part 707.

(f) Pursuant to 30 CFR 732.15(b)(5), the Secretary finds that the Iowa Department of Soil Conservation has the authority under Section 13 of the ISMCA to enter, inspect and monitor all coal

exploration and surface coal mining and reclamation operations on non-Indian and non-federal lands within Iowa; however, the Secretary finds that Iowa has not enacted regulations consistent with 30 CFR Chapter VII, Subchapter L. The Secretary finds that Section 13(2)(a) of ISCMA is unclear in that it fails specifically to provide that both partial and complete inspections occur on an irregular basis, in accordance with Section 517(c)(1) of SMCRA. Proposed Iowa rule 4.6(1)(c)(1), however, unambiguously states that all inspections conducted under ISCMA 13(2)(a) shall be on an irregular basis. Based on the understanding that this proposed rule reflects the correct interpretation of ISCMA 13(2)(a), the Secretary preliminarily determines that Iowa's program will be consistent with SMCRA Section 517(c)(1), if the rule is enacted as proposed.

(g) Pursuant to 30 CFR 732.15(b)(6), the Secretary finds that the Iowa Department of Soil Conservation has the authority in Sections 10 and 16 of the ISCMA to implement, administer and enforce a system of performance bonds and liability insurance in accordance with Sections 507(f), 509, 510 and 519 of SMCRA, but the program does not include regulations consistent with 30 CFR Chapter VII, Subchapter 3.

(h) Pursuant to 30 CFR 732.15(b)(7), the Secretary finds that the Iowa Department of Soil Conservation has the authority under Section 15 of the ISOMA (with the exceptions noted specifically below), but does not have authority under fully enacted regulations, to provide for civil and criminal sanctions for violations of Iowa law, regulations, and conditions of permits and exploration approvals including civil and criminal penalties in accordance with Section 518 of SMCRA (30 USC 1268) and consistent with 30 CFR Part 845 (except to the extent remanded) including the same or similar procedural requirements. However, the Secretary finds that Section 15 of the ISCMA is inconsistent with Section 518 of SMCRA in the following respects:

(1) Iowa has proposed a judicial system of penalty assessment, rather than the administrative system prescribed in 30 CFR 845.17–845.20. The preamble to the permanent regulatory program, at 44 FR 15296 (March 13, 1979), discusses five considerations in determing whether a judicial system for the proposal and assessment of civil penalties is the same as or similar to the administrative system under Section 518 of SMCRA. The Secretary has reviewed the information in the administrative record, and has determined that the procedure proposed by Iowa for judicial assessment of civil penalties does not adequately address these considerations, and hence will not satisfy the requirements of the Act and regulations pursuant to 30 CFR 732.15(b)(7) and (c).

(2) The proposed Iowa program does not provide procedures for proposing assessments of civil penalties and informing operators of the amount of those proposed assessments prior to a formal assessment hearing. Indeed, the program does not seem to provide an operator with the opportunity to pay a penalty the necessity of a formal hearing. Without such procedures, the program is inconsistent with the requirements of Section 518(i) of SMCRA.

(3) The proposed Iowa program does not not provide for mandatory assessment of civil penalties for cessation orders as requirements of Section 518(a) of SMCRA.

(4) It is unclear in what circumstances a civil penalty or an injunction will be sought when a notice of violation is issued under Sections 14.8 and 15.1 of the ISCMA. The state must implement criteria for seeking such relief in order to comply with Sections 518 and 521 of SMCRA.

(5) The proposed Iowa program does not provide for prepayment of civil penalties into an escrow account, as required by Section 518(c) of SMCRA. Pursuant to the order of the United States District Court for the Southern District of Iowa in *Star Coal Co. v. Andrus*, 14 ERC 1325 (1980), the Secretary is enjoined from requiring Iowa to include in its program a provision comparable to Section 518(c)'s prepayment requirement. *Star Coal Co. v. Andrus* has been appealed to the United States Supreme Court (appeal filed March 13, 1980). should the injuntion in *Star Coal Co. v. Andrus*, be vacated, stayed, reversed on appeal, or otherwise dissolved, the Secretary will then take steps to require the Iowa permanent program to comply with the requirements of Section 518(c) of SMCRA, relating to prepayment of civil penalties into escrow accounts.

(i) Pursuant to 30 CFR 732.15(b)(8), the Secretary finds that the Iowa Department of Soil Conservation has the authority under Section 14 of ISCMA, but does not have regulations consistent with 30 CFR Chapter VII, Subchapter L, to issue, modify, terminate and enforce notices of violation, cessation orders and show cause orders in accordance with Section 521 of SMCRA (30 USC 1271) (with the exception noted specifically below) including the same or similar procedural requirements. However, according to the opinion of the Attorney General of Iowa, Section 17A.18(3) of the Iowa Administrative Procedures Act requires that an administrative hearing be held prior to the issuance of a cessation order for failure to abate a violation. (*See* Iowa program, Vol. 3.) The Secretary finds that this procedure is inconsistent with Section 521(a)(3) of SMCRA and it is, therefore unacceptable.

(j) Pursuant to 30 CFR 732.15(b)(9), the Secretary finds that the Iowa Department of Soil Conservation has statutory authority under Section 8 of the ISCMA to provide for the designation of areas as unsuitable for surface coal mining, but the program does not include enacted regulations consistent with 30 CFR Chapter VII, Subchapter F.

(k) Pursuant to 30 CFR 732.15(b)(10), the Secretary finds that the Iowa Department of Soil Conservation has authority under ISCMA to provide for public participation in the development, revision and enforcement of Iowa regulations, but the state has not enacted regulations consistent with the public participation requirements of 30 CFR Chapter VII. Iowa also has the authority under ISCMA, but has not enacted regulations to provide for public participation in the permitting process and the enforcement of its laws consistent with 30 CFR Chapter VII and 43 CFR Part 4.

(l) Pursuant to 30 CFR 732.15(b)(11), the Secretary finds that the Iowa Department of Soil Conservation has the statutory authority under ISCMA Section 15, but does not have authority under enacted regulations to monitor, review, and enforce the prohibition against indirect or direct financial interests in coal mining operations by employees of the Iowa Department of Soil Conservation, consistent with 30 CFR Part 705.

(m) Pursuant to 30 CFR 732.15(b)(12), the Secretary finds that the Iowa Department of Soil Conservation has the statutory authority under Section 6.2 of the ISCMA to require the training, examination, and certification of persons engaged in or responsible for blasting and the use of explosives in accordance with Section 719 of SMCRA. Iowa has no regulations on the training, examination, and certification of persons engaged in blasting, but 30 CFR 732.15(b)(12) does not require the state to implement regulations governing such training, examination and certification until six months after federal regulations for these provisions have been promulgated. These federal regulations have not been promulgated at this time.

(n) Pursuant to 30 CFR 732.15(b)(13), the Secretary finds that the Iowa Department of Soil Conservation has authority under Section 4.1(d) of the ISCMA, but does not have authority under enacted regulations to provide for small operator assistance, consistent with 30 CFR Part 795.

(0) Pursuant to 30 CFR 732.15(b)(14), the Secretary finds that the Iowa program contains authority in Section 718.4 of the Iowa Code to provide for protection of state employees of the Iowa Department of Soil Conservation in accordance with the protection afforded federal employees under Section 704 of SMCRA; however, the Iowa Code provides a maximum penalty of 30 days imprisonment and a $100 fine for violation of Section 718.4. Section 704 of SMCRA provides a maximum penalty of 1 year imprisonment and a $5,000 fine. The Secretary finds that the Iowa sanctions are inconsistent with Section 704 of SMCRA.

(p) Pursuant to 30 CFR 732.15(b)(15), the Secretary finds that the Iowa Department of Soil Conservation has authority under Section 14 of the ISCMA and the Iowa Administrative Procedures Act to provide for administrative and judicial review of state program actions in accordance with Section 525 and 526 of SMCRA, but the State has not enacted regulations consistent with 30 CFR Chapter VII, Subchapter L.

(q) Pursuant to 30 CFR 732.15(b)(16), the Secretary finds that the Iowa Department of Soil Conservation has authority under Iowa laws and the Iowa program contains provisions to cooperate and coordinate with and provide documents and other information to the Office of Surface Mining under the provision of 30 CFR Chapter VII.

(r) Pursuant to 30 CFR 732.15(c) the Secretary finds that the ISCMA and the other laws and regulations of Iowa contain provisions that would interfere with or preclude implementation of the provisions of SMCRA and 30 CFR Chapter VII, as noted in findings 4 (f), (h) and (i).

(s) Pursuant to 30 CFR 732.15(d) the Secretary finds that the Iowa Department of Soil Conservation and other agencies having a role in the program do not have sufficient legal, technical, and administrative personnel or sufficient funds to implement, administer, and enforce the provisions of the program, the requirements of 30 CFR 732.15(b), and other applicable state and federal laws. (*See* finding 1(c).)

Additional Findings

None of Iowa's regulations are being approved today because they have not been fully enacted as required by Section 503(a)(7) of SMCRA and 30 CFR 732.15(b) (See finding 1(g) above). However, the Secretary has reviewed through OSM the proposed Iowa regulations and has made a preliminary analysis whether these regulations meet the requirements of SMCRA and 30 CFR Chapter VII. The Secretary is providing his analysis of Iowa's proposed rules in a letter from the Director, OSM, to the State. This letter will be sent shortly and entered into the administrative record. Copies of the letter will be available for public review at the addresses shown above under "Addresses."

Disposition of Comments

A discussion follows of all significant issues raised in comments which OSM and the Secretary received concerning the Iowa program submission. Where the Secretary has addressed a comment concerning Iowa's proposed regulations, the disposition is subject to reconsideration by the Secretary pending the completion of rulemaking and further public review.

1. The Soil Conservation Service (SCS) of the U.S. Department of Agriculture (USDA) recommended that the 10 acre exemption on prime farmland proposed as a variance to the prime farmland performance standards of 30 CFR Part 823, be eliminated and that decisions on small units of prime farmland (less than 10 acres) be made by the Iowa Soil Conservation Committee. Iowa has proposed such an exemption as a "state window" under 30 CFR 731.13. The Secretary is disapproving that proposed alternative. (*See* finding 4(a)(1).) Decisions on small parcels of prime farmland will therefore be made by the Division of Mines and Minerals, which is a division of the Department of Soil Conservation, which in turn is administered by the Soil Conservation Committee.

2. The SCS suggested that the Iowa program address the fact that it is theoretically possible to restore original productivity to prime farmland disturbed by surface mining, but that it is highly unlikely that it can actually be done with equipment currently being used in coal mining operations in Iowa. The Secretary has determined that Section 4.55 of the proposed Iowa regulations, governing mined prime farmland productivity, appears consistent with 30 CFR Part 823. If proposed Iowa rule 4.55 is enacted as proposed, no further program change will be required.

3. The SCS suggested that Iowa's program narrative under Section 731.14(g)(9)–(10)–1, Vol. 4 include a statement that any permit for mining that includes areas of prime farmland shall be provided to the State Conservationist of the SCS. Section 731.14(g)(9)–(10) (Volume 4) of the Iowa program narrative identifies the SCS as an agency to be consulted prior to the issuance of mining permits. (Section 4.34(4) of the proposed Iowa regulations has been amended to include a provision which appears comparable to 30 CFR 785.17(c), requiring that the regulatory authority consult with the SCS prior to issuing a permit for an area containing prime farmland. Therefore, no further program change is required.

4. The SCS suggested that "prime farmland" be added to the list of those areas that may be classified as unsuitable for surface coal mining shown at Iowa program narrative Section 731.14(g)(11), Vol. 4. The Secretary has preliminarily determined that the State of Iowa will have the authority to find prime farmland unsuitable for surface coal mining because of its unique or fragile nature, under Section 4.2 of the proposed regulations. Therefore, if proposed Iowa rule 4.2 becomes fully enacted, no further program change will be necessary.

5. The SCS suggested that the definition of "land use" could be more specific. The Iowa definition in proposed Rule 4.1(2)bn appears consistent with the definition found in 30 CFR 701.5. Therefore, no further program change is required.

6. The SCS suggested that the term "agricultural school" be changed to "land grant university." The use of the term "agricultural school" is consistent with terminology in 30 CFR 785.17(b)(5). Therefore, no program change is required.

7. The SCS commented that the map scale referenced in proposed Iowa Rule 4.311(2)(e)(1), should be 1"=100' not 1:100. Iowa adopted this suggested change. (*See* administrative record number IA–75.)

8. The SCS suggested that the terms "certified engineer," "professional geologist," "certified surveyor," and "landscape architect" be defined. Although the Secretary agrees that definitions of these terms in Iowa's program submission would be useful, neither SMCRA nor 30 CFR Chapter VII require these definitions in a state program. Therefore, no program change is required.

9. The SCS indicated that the term "soil scientist" should be defined as someone employed in that capacity by

the USDA-SCS or a certified soil scientist. Such a definition is not required by SMCRA or 30 CFR Chapter VII. Therefore, no program change is required.

10. The SCS suggested that a formula be used to differentiate between prime farmland and non-prime farmland. The proposed formula is the product of the erodibility factor K times the percent slope, with the cutoff point occurring when the value is less than 2 to be defined as prime farmland. The proposed Iowa rule 4.1(2)cn, definition of prime farmland, appears consistent with the 30 CFR Chapter 701.5 definition of prime farmland. Therefore no change is required in this section of the Iowa program.

11. The SCS commented that the term "foundation characteristics" was not defined and suggested that a definition should be included in the glossary. The term, as used in Section 4.332(11)a(2) of Iowa's proposed rules, is self-explanatory and no change is needed. This term is not defined in 30 CFR Chapter VII and the Secretary finds that Iowa's intended use of the term appears consistent with its usage in 783.22(a)(2)(i).

12. The SCS commented that proposed Iowa Rule 4.55(2)(a)(2), "Soil removal," should be changed to require separate removal and replacement of each soil horizon. The proposed Iowa regulations are identical to the federal regulations, 30 CFR 832.12, with regard to removal and replacement of soil horizons. If proposed Iowa Rule 4.55(2)(a)(2) becomes enacted, no further program change will be required.

13. The U.S. Geological Survey (USGS) suggested that OSM inform the state regulatory authority about the Bureau of Land Management (BLM), USGS, and Office of Surface Mining memorandum of understanding. OSM has informed Iowa of the BLM/GS/OSM memorandum of understanding.

14. The USGS suggested that each state program should include procedures for processing proposed mining and reclamation plans or permits that include federal lands. In states that do not have an approved state-federal cooperative agreement under 30 CFR Part 745, the Secretary has sole responsibility for review and approval or disapproval of permit applications for surface coal mining and reclamation operations on federal lands (30 CFR 741.4(a)). Procedures for processing mining and reclamation plans and permits could be addressed in a state and federal cooperative agreement should Iowa request such an agreement under 30 CFR 745.11(a). There is no need for the state program submission to address procedures for processing mining and reclamation plans and permits for federal lands.

15. The USGS suggested that states be apprised of exploration requirement on federal lands and that reference to these requirements and procedures be included in the state's permanent program. Iowa has been advised of exploration responsibilities through the BLM/GS/OSM memorandum of understanding that has been supplied to Iowa. BLM and USGS procedures for review of exploration plans on federal lands require public notification prior to approval of the plan (30 CFR 211.5 and 43 CFR 3410.2). Therefore, the state regulatory agency would have the opportunity to comment on a plan prior to its approval.

16. The U.S. Fish and Wildlife Service (FWS) commented that the state program submission is missing the FWS coordination and consultation processes comparable to 30 CFR 770.12(c) and the coordination provisions of 30 CFR 731.14(g)(10). The commentor proposed this could be remedied with a memorandum of understanding between the State of Iowa and FWS to coordinate aspects of the state program with reference to the Fish and Wildlife Coordination Act, Migratory Bird Treaty Act, Fish and Wildlife Improvement Act and Endangered Species Act. The required coordination is included in proposed Iowa Rule 4.35(1)(c) and 4.35(2)(a). If proposed Iowa Rules 4.35(1)(c) and 4.35(2)(a) are fully enacted, no further program change will be required.

17. The FWS made several suggestions concerning the format of the Iowa submission. The Secretary did not require a specific format for states to use when submitting information in state program submissions under 30 CFR 731.14. Therefore, no change in the Iowa program format is required.

18. The FWS noted deficiencies in Iowa's checklist proposed for use by the state regulatory authority to judge completeness of permit applications. The Secretary does not approve or disapprove any specific forms submitted with proposed programs. The Secretary will evaluate the use of forms when he initiates the state program monitoring phase under 30 CFR Part 733.

19. The FWS suggested that item 9.b. of the "Surface Coal Mine Inspection Report" on pages g(4)–(6) of Vol. 4, "Use of introduced species," be changed to "Use of native species" to satisfy more specifically the requirements of 30 CFR 816.112. This comment concerns a form Iowa has included in the program. Although the Secretary is not approving or disapproving any specific forms submitted with the proposed program, OSM has passed this suggestion to Iowa. (Also, *see* the disposition of comment 18 above.)

20. The FWS suggested that there is a need for a narrative or graphic depiction of the coordination and consultation process between the Iowa Department of Soil Conservation and the various state and federal agencies included in the State Soil Conservation Committee. Neither SMCRA nor the regulations require a graphic depiction of the coordination/consultation process. The Secretary finds the State has given an adequate narrative description of the consultation process as required by 30 CFR 731.14(g)(9) and (10), in proposed Iowa rules 4.35(1)(c) and 4.35(2)(a).

21. The FWS requested that it be included as an additional agency of the State Soil Conservation Committee referenced in the Iowa program submission. The Secretary believes there is adequate FWS notification in the Iowa Program under proposed Rule 4.35(1)(c), page 125. Enactment of proposed Iowa rule 4.35(1)(c) would appear to meet this concern of the FWS. Furthermore, the Secretary has no authority under SMCRA to require FWS membership on a state committee.

22. The FWS commented that only two copies of the permit application are required under the Iowa proposed program, while federal regulations require seven copies. (The Secretary notes that the federal regulations referred to by FWS here only applies on federal lands, and state programs need not include the requirement). FWS is concerned that copies may not be available for review by other agencies. The Secretary has preliminarily determined that proposed Iowa Rules 4.35(1)(d)(l) and 4.35(5) provide for public availability of permit applications and the information contained in those applications. The Secretary expects that the state regulatory authority will make copies of the permit application available for review by those agencies that have an interest in the proposed operation, including FWS.

23. The FWS commented that the Iowa program does not include provisions comparable to 30 CFR 779.20 for consultation with state and federal fish and wildlife management agencies to determine the detail and areas of studies related to fish and wildlife resource information. 30 CFR Section 779.20 has been remanded by the U.S. District Court for the District of Columbia (Mem. Op., February 26, 1980), and therefore the Secretary may not at this time require Iowa to include a regulation implementing this suspended regulation. (*See* "General Background on State Program Approval Process.")

24. The FWS commented that the proposed Iowa rules 4.323(6) and 4.333(11), relating to fish and wildlife plans for surface and underground mining, should include a reference to proposed Iowa rules 4.322(9) and 4.332(9) to be consistent with 30 CFR 780.16 and 784.21 which in turn refer to 30 CFR 779.20(c) and 783.20(c). Sections 30 CFR 779.20, 780.16, 783.20, and 784.21 have been remanded by the U.S. District Court for the District of Columbia and consequently the Secretary may not at this time require Iowa's program to contain provisions implementing these suspended rules. *See* "General Background on State Program Approval Process."

25. The FWS stated that Iowa's program does not include a process for determining in writing that the granting of a permit will not affect the continued existence of threatened or endangered species or result in the destruction or adverse modification of their critical habitats. Iowa has amended its proposed Rule 4.35 to include a section comparable to 30 CFR 786.19, "Criteria for permit approval or denial," which requires that the regulatory authority find that mining activities will not adversely affect endangered or threatened species or their habitats. (*See* Administrative Record Document Number IA–75.)

26. The FWS commented the objectives stated in 30 CFR Part 810 should be collected into one general section of the state program as they appear in the federal regulations. The commenter stated that these sections can all be found in the state program submission, but they are not included in one general section. 30 CFR 731.14 does not require a specific format for the state regulations, as long as the state rules are as stringent as the federal regulations. A consolidated objectives section is not required.

27. The FWS commented that the proposed Iowa regulations lacked provisions requiring consultation with the FWS on fish and wildlife plans prior to approval by the regulatory authority. The requirement for submission of a fish and wildlife plan in Sections 779.20 and 780.16 and 784.21 of the federal regulations has been remanded by the District Court of the District of Columbia. Therefore, no change is required in the Iowa regulations. When federal regulations are repromulgated, Iowa will be required to amend its program to reflect the new requirements.

28. The FWS commented that the State of Iowa has never contacted them to develop a coordination and consultation process or a memorandum of understanding. Because the regulations requiring a fish and wildlife plan have been remanded, no consultation process on these plans is required at this time. Proposed Iowa Rules 4.35(1)(c) and 4.35(2)(a) appear to provide for consultation with and comment from FWS before permits are issued. The Secretary assumes that if consultation on such a plan is required in the future, the State of Iowa and the FWS will jointly establish a process for consultation pursuant to federal regulations applicable at that time.

29. The U.S. Bureau of Mines (BOM) commented that the State Act does not contain language equivalent to Sections 507(b)(3)–(8) of SMCRA, which contain the permit application requirements, and does not explain the deletion. Section 4 of ISCMA contains enabling language to allow implementation of all of the provisions of Section 507 of SMCRA by the adoption of appropriate regulations. Iowa has proposed rules which appear consistent with the requirements of Section 507 of SM RA and 30 CFR Parts 778, 779 and 780.

30. The BOM commented that Iowa's Act does not include the provisions relating to confidential information comparable to those in Sections 508(a)(12) and (b) of SMCRA. Chapter 68A of the Iowa Code entitled "Examination of Public Records" provides the Department of Soil Conservation with authority to protect confidential information in a permit application. Additionally, proposed Iowa Rule 4.35(5) appears consistent with 30 CFR 786.15, relating to confidential information in permit applications.

31. The BOM noted that Iowa has no self-bonding provisions as provided for under Section 509(c) of SMCRA. Under Section 509(c) of SMCRA a state program is not required to include provisions for self-bonding, and the Secretary may not require such a provisions. Therefore, no program change is required.

32. The BOM commented that Section 525(c) of SMCRA, regarding applications for temporary relief from enforcement orders, has no state counterpart. The Secretary finds a counterpart in Section 14(7) of the Iowa Act, which is consistent with Section 525(c) of SMCRA. Therefore, no program change is required.

33. The BOM commented that Iowa's program narrative pursuant to 30 CFR Section 731.14(g)(13) should be expanded to include a requirement for keeping records of blast designs. The Secretary's requirements for record keeping of blast designs are in 30 CFR 816.68 which Iowa has proposed to adopt by reference. If adopted, record keeping requirements need not be included in the program narrative pursuant to 30 CFR Section 731.14(g)(13).

34. The BOM commented that Iowa's submissions of flow charts pursuant to 30 CFR 731.14(g)(1), (4) and (16) should include statements of time and cost associated with each task. There is no requirement in SMCRA or in 30 CFR Chapter VII for such statements in state program submissions, and the Secretary will not require any.

35. The Heritage Conservation and Recreation Service (HCRS) urged that the results of ongoing consultations between the Advisory Council on Historic Preservation (ACHP) and OSM concerning state program approval be considered in the Secretary's decision on the Iowa program. The State Historic Preservation Officer suggested that additional language be included in the Iowa program to assure compliance with the National Historic Preservation Act and Presidential Executive Order 11593. The Secretary will not, at this time, require adoption of the suggested language since it is not required under 30 CFR Chapter VII. However, if the Secretary promulgates rules on historic preservation to replace those suspended by OSM on November 27, 1979 (44 FR 76942), Iowa will be required to amend its program to be consistent with the new rules. The Secretary further notes that the Director of OSM has proposed to enter into a Programatic Memorandum of Agreement with the ACHP (See 45 FR 41988, June 23, 1980) which, when signed and implemented, will allow the State Historic Preservation Officer, to have an integral role in assuring identification of historic land for each permit application.

36. The National Park Service (NPS) requested that Iowa provide it an opportunity to be involved in the review of mining and reclamation plans for surface mining that may affect national park units. Specifically, NPS is concerned with potential impacts on the Lewis and Clark National Historic Trail and the Mormon Pioneer National Historic Trail designated under Pub. L. 94–527, and that portion of the Iowa River designated for study under Pub. L. 90–542. The NPS also requested an opportunity to participate in the development of criteria for protecting critical areas around parks and lands administered by NPS from mining that occurs adjacent to parks. Sections 4.35(1)(b) and (c) of Iowa's proposed surface coal mining rules require that the regulatory authority issue written notification of permit applications to

federal agencies with jurisdiction over or an interest in the area of the proposed operation. Proposed Section 4.35(2)(a) allows public entities to whom written notification is provided to comment on the permit application. The Secretary finds that these sections, when enacted, would appear to provide the NPS with the opportunity to be involved in the permit process and no additional change is needed.

The Secretary has instructed the Park Service not to seek criteria in State programs which would establish "buffer zones" adjacent to National parks as automatically unsuitable for coal mining, unless these lands meet one or more of the other specific criteria for designation. On June 4, 1979, the Secretary made final decisions on the Federal Coal Management Program. Included in those decisions were numerous changes in the proposed unsuitably criteria for Federal lands. The Secretary chose to delete the automatic "buffer zone" language for national parks and certain other Federal lands from the first criterion (43 CFR 3461.1(a)). Instead, he stated lands adjacent to a national park should only be found unsuitable if they are covered by one of the other specific criteria (43 CFR 3461.1(b)–(t)). This instruction to the Park Service assures that that agency's approach to State unsuitability criteria will be compatible with the Secretary's policy on Federal unsuitability criteria.

37. The NPS commented that it should be allowed to participate in inspections where NPS units are involved. Neither SMCRA nor 30 CFR Chapter VII requires the states to allow the NPS to participate routinely in inspections. The NPS may, or course, participate in any inspection which results from its request for an inspection based upon a suspected violation of the Iowa program by the operator.

38. The NPS requested that ISCMA Section 8(5) be expanded to incorporate the "fragile" and "historic" lands definitions of 30 CFR 762.5. Proposed Iowa Rules 4.1(2)(av) and (bf) contain definitions which would appear to be consistent with those contained in 30 CFR 762.5, if enacted.

39. The NPS stated that it should be consulted regarding the adequacy of the bond amount when issuance of a permit for surface mining and reclamation activities may affect any NPS jurisdictional unit. Iowa proposed Rules 4.41, 4.42 and 4.323(7)(b)(2) appear consistent with 30 CFR 800.11, 800.13, and 780.18(b)(2), concerning determination of the amount of performance bonds. The Secretary believes that the information required of the applicant for a permit under the Iowa proposed Rules 4.321, 4.322, and 4.323 and the procedures for public review and comment on permit applications are adequate to afford federal agencies an opportunity to comment on proposed bond amounts prior to issuance of a permit.

40. The MSHA noted that Iowa proposed to adopt OSM's regulations allowing diversion ditches to be designed to the 100 year-24 hour precipitation event while MSHA guidelines call for design to a 100 year-6 hour precipitation event. The Iowa proposed regulation, 4.522(48), adopts 30 CFR 816.92 by reference. The proposed rules, if enacted, would meet the Secretary's requirements, which are more stringent than MSHA's suggested standard.

41. The Department of Energy (DOE) commented that the Iowa civil penalty system, by requiring that civil penalties be assessed by the courts, does not correspond to the federal system. The Secretary agrees that Iowa's proposal for assessment of civil penalties by the courts rather than by the regulatory authority is unacceptable because it fails to require the same or similar procedural requirements as SMCRA Section 518 and the regulations adopted thereunder. (*See* finding 4(h).)

42. The DOE suggested that the Iowa program should contain an affirmative statement about public participation in inspections. OSM advised Iowa in a May 19, 1980 letter, that to be consistent with Section 517(h) of SMCRA and 30 CFR Parts 840 and 842, the Iowa Act or the rules should contain provisions for citizen participation in inspection and enforcement activities. (*See* Administrative Record No. IA–69.) Iowa has amended its proposed rules. The Secretary has determined that the proposed rules as amended appear consistent with 30 CFR Parts 840 and 842, except that the rules do not provide for citizen access to a mine site without a warrant, as required by 30 CFR 842.12. See the letter from the Director of OSM to state officials referred to above under "Elements Upon Which the Iowa Program Is Being Evaluated for the Decision."

43. The DOE commented that Iowa failed to submit a section-by-section comparison of the Iowa rules and the federal regulations. Iowa submitted such a comparison on June 11, 1980.

44. The Environmental Protection Agency (EPA) commented that the Iowa submission does not include a rule comparable to 30 CFR 817.15, "Casing and sealing of underground openings: Permanent." Iowa has amended its proposed rules to include a proposed rule which appears comparable to 30 CFR 817.15. (*See* Iowa Rule 4.523(4), as revised on June 11, 1980.)

45. The EPA commented that Iowa does not have rules comparable to 30 CFR Part 822, "Special Permanent Performance Standards—Operations in Alluvial Valley Floors." Iowa is not required to have rules comparable to 30 CFR Part 822, since these standards apply only to alluvial valley floors west of the 100th meridian west longitude. Iowa is east of the 100th meridian.

46. The EPA commented that Section 7 of the ISCMA should be amended to ensure that Iowa has the authority to amend its program to be consistent with new federal rules promulgated under SMCRA. Section 7 of the ISCMA now provides authority to adopt performance standards in accordance with federal regulations promulgated only as of March 13, 1979. The Secretary agrees that Iowa must have authority to promulgate regulations consistent with changes or amendments to federal regulations adopted since March 13, 1979. In a letter to the Regional Director of OSM's Region IV, dated June 10, 1980, the Iowa Attorney General stated that Iowa has authority under Section 25 of the ISCMA to adopt additional regulations as necessary, with certain limitations. Therefore, this issue is not a problem at this time. If at some future time, Iowa is unable to adopt a necessary regulation, the Secretary has authority under 30 CFR Part 733 to assure maintenance of an adequate state program, to substitute federal enforcement for the state program, or to withdraw approval of the state program.

47. The EPA commented that the ISCMA Section 13.2(a) requires only eight partial and four complete inspections per mine per year as compared to the SMCRA requirement in 517(c)(1). The Secretary interprets Section 517(c) of SMCRA and 30 CFR Part 840.11 to require an average of one inspection per month, including one complete inspection per quarter. Therefore, the twelve inspections (one per month) required by the Iowa law are adequate.

48. The EPA commented that there are no formal memoranda of agreement with other state agencies, which could result in a lack of adequate consideration of measures to ensure protection of air and water quality standards. The June 11, 1980 amendments to the Iowa program contained an executed copy of an interagency agreement for review of hydrologic impacts of mining by the Iowa Geological Survey. Further, the Iowa program will address adequately the coordination and consultation

requirements if Iowa Rule 4.35(1)(c) is enacted as proposed.

49. The EPA commented that the Iowa submission does not provide for formal coordination with the state hygienic laboratory. It is beyond the scope of the Secretary's regulations to require the state regulatory authority to enter into an agreement with a particular laboratory for analytical services.

50. Pursuant to Section 7 of the Endangered Species Act of 1973, as amended, OSM Region IV initiated consultation with the U.S. Fish and Wildlife Service (FWS). The FWS regional office in Denver, Colorado, rendered a biological opinion and commented that the proposed Iowa program does not adequately protect the continued existence and the habitat of an endangered species.

The Secretary finds that the Iowa program has proposed a regulation equivalent to 30 CFR 786.19(o) which would prohibit issuance of a permit without a finding by the regulatory authority that mining will not affect the critical habitat of a threatened or endangered species. Iowa also has proposed to adopt by reference 30 CFR 816.97, "Protection of fish and wildlife resources." A June 10, 1980 memorandum of understanding between OSM and FWS provides OSM's monitoring obligations of state programs as they relate to endangered species.

The Secretary is not approving the Iowa program at this time. It appears that upon resubmission, Iowa's proposed regulations will meet the FWS concerns and comply with applicable OSM regulatio..s. The FWS will have the chance to closely evaluate Iowa's resubmitted program and its potential effect on threatened or endangered species prior to final program approval or disapproval.

51. The Environmental Policy Institute (EPI) commented that ISCMA Section 25 neglects to mention the 30-day required advance public notice, public hearing and public comment period contained in Section 501 of SMCRA, relating to rulemaking. Neither SMCRA nor the Secretary's regulations require a state to adopt precisely these procedures. However, the Iowa Administrative Procedures Act, 17A.4, "Procedure for adoption of rules," provides that any notice of intended action shall be published at least 35 days in advance of the action, and that interested persons be afforded not less than 20 days to submit written comments. These provisions meet the minimum requirements under SMCRA for public participation in development and revision of a state program's regulations.

52. The EPI commented that Section 4.4 of the ISCMA does not require operators, who expect to be mining eight months after program approval, to file a permit application within two months after program approval. In addition EPI stated that Iowa must act on permit applications within eight months of the Secretary's approval of Iowa's program. The Secretary has preliminarily determined, based on the Iowa Attorney General's opinion submitted pursuant to 30 CFR 731.14(c), that Iowa will have the necessary authority under Section 4.311(1) of the proposed Iowa regulations to require and process permit applications in accordance with Section 502(d) of SMCRA. In addition, Section 502(d) imposed directly upon the state the requirement that the regulatory authority grant or deny a permit within 8 months of program approval, and thus the state law need not repeat this requirement.

53. The EPI recommended that Section 4(4)(b) of the ISCMA be revised by adding "and the approved state plan" to conform to language in Section 506(d)(1)(8) of SMRCA. This section provides that a permit renewal shall be issued unless the regulatory authority finds, among other things, that the existing operation is not in compliance with the environmental protection standards of the Act and the approved state plan. Iowa deleted "and the approved state plan." The Secretary believes the suggested addition is unnecessary because the Iowa Act creates and authorizes all the environmental protection standards of the state program.

54. The EPI recommended that language found at Section 4(4) of the ISCMA be changed from "the department establishes" to "it is established," in order to be consistent with Section 506(d)(1) of SMCRA. EPI feels this change is necessary to allow public participation in the decision making process with regard to applications for permit renewal. EPI also commented that the Iowa program did not contain provisions requiring public notice for permit review, or provisions requiring the regulatory authority to make available written findings on permit review. The Secretary finds that the language of ISCMA Section 4(4), while different from that of Section 506(d)(1) of SMCRA, demonstrates the same intent and accomplishes the same result. The Secretary believes that Sections 4.35(1–5) of the proposed Iowa regulations, as amended, appear to provide adequate public participation in the permit review process consistent with 30 CFR Part 786. More specifically, Section 4.35 of the proposed Iowa regulations, as amended, provides for the distribution of the regulatory authority's written findings as required by 30 CFR Section 786.23. Assuming Section 4.35 is enacted as proposed, it appears no further program changes will be necessary.

55. The EPI stated that Section 4.1 of the ISCMA should provide that the permit application fee must cover the cost of administering and enforcing permit provisions of SMCRA. Section 507(a) of SMCRA does not require that the application fee cover these costs; it provides only that the fee cannot exceed such costs. Therefore, no program change is required.

56. The EPI commented that Section 4 of the ISCMA should specifically require that no permit be approved unless information regarding the probable hydrologic consequences is available. Although the language of Section 4.1(d) of the ISCMA is different from Section 507(b)(11) of SMCRA, it is nonetheless clear that under Section 4.1(d) and proposed Rule 4.322(2), a permit application must contain a determination of hydrologic balance, and under a proposed amendment to Rule 4.35 (comparable to 30 CFR 786.19(c)), no permit may be issued until the assessment of probable hydrologic impacts has been made by the regulatory authority. If proposed rules 4.322(2) and 4.35 are enacted, as proposed, the Secretary anticipates no further program change will be required.

57. The EPI commented that the ISCMA should include the specific requirements for permit applications found in Section 507(b)(1)–(17) of SMCRA, unless Iowa can demonstrate comparable provisions in its regulations. The Iowa program includes provisions comparable to Section 507(b)(1)–(17) in proposed Rules 4.321, 4.322, 4.331, and 4.332. If these proposed rules are enacted, as proposed, no further program change will be required.

58. The EPI stated that the ISCMA should include a provision comparable to Section 507(c) of SMCRA for a Small Operators Assistance Program (SOAP). Section 4(1)(d) of the ISCMA is consistent with Section 507(c) of SMCRA regarding SOAP. Therefore, no program change is required.

59. The EPI commented that ISCMA should require submission of a reclamation plan consistent with Section 507(d) of SMCRA. Section 4(1)(c) of the Iowa Act requires the submission of a reclamation plan.

60. The EPI commented that Sections 6(4) and 10 of ISCMA are internally inconsistent on whether the state itself may accept the bond of the applicant,

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without separate surety. ISCMA does not contain a Section 6(4), and the Secretary has found no section which conflicts with ISCMA Section 10 on bonding.

61. The EPI commented that the ISCMA does not contain provisions comparable to Section 508 of SMCRA, which establishes reclamation plan requirements. Although the ISCMA does not contain a provision directly comparable to Section 508, the Iowa program as a whole fulfills the requirements of Section 508 of SMCRA. In particular, ISCMA Section 4.1(c) requires submission of a reclamation plan and the proposed Iowa regulations Sections 4.323(7) and 4.333(3) appear consistent with the reclamation plan requirements of 30 CFR Parts 780 and 784. If these proposed regulations are enacted, as proposed, the Secretary anticipates that no program change will be required.

62. The EPI suggested that Section 9(2)(e)(1) of the ISCMA should include the phrase "by surface mining methods" to ensure that there will be no misinterpretation of the law, and to protect surface owners by preventing surface mining under the guise of underground mining. The intent of ISCMA Section 9(2)(c)(1) appears the same as Section 510(b)(6)(A) of SMCRA. This conclusion is supported by the fact that proposed Iowa Rule 4.321(3)(b) appears identical to 30 CFR 778.15.

63. The EPI commented that Section 9(2)(e)(3) of the ISCMA, concerning the documents required of a permit applicant in cases where the private mineral estate has been severed from the private surface estate, should be amended to include the words "shall be" instead of "as" to be consistent with Section 510(b)(6)(C) of SMCRA. This difference in wording does not alter the requirement that the surface-subsurface legal relationship will be determined by applicable state law in those situations where the conveyance relied upon by the applicant does not expressly grant the right to extract coal by surface mining methods. Therefore, no change is necessary.

64. The EPI commented that Section 9(3) of the ISCMA (criteria for disapproving a permit application from an operator with a demonstrated pattern of willful violations) should define willful violation as one "of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of the SMCRA." By omitting the quoted language, ISCMA apparently created a more stringent definition of willful violation than that of Section 510(c) of SMCRA.

65. The EPI commented that Section 9(3) of the ISCMA should refer to criteria for denial of "no permit" rather than "the permit." The Secretary finds that although the language of Section 9(3) of the ISCMA differs from that of Section 510(c) of SMCRA, the intent and effect of both statutes is the same, and that Section 9(3) of ISCMA sets criteria for permit denial sufficiently protective of the public interest.

66. The EPI commented that Section 18 of the ISCMA ("Coal Exploration Permits") should specify which lands are disturbed during exploration. While the language of Section 18.1 is different from Section 512(a) of SMCRA in this regard in that the Iowa statue fails to enumerate certain types of lands as "disturbed areas," the Secretary believes that this omission in no way narrows the coverage of the Iowa statue. Furthermore, Iowa proposed Rules 4.312 and 4.521 appear to be consistent with 30 CFR Parts 776 and 815. If these rules are enacted, as proposed, the Secretary anticipates no further program change will be required.

67. The EPI commented that Section 9.1 of the ISCMA should specify "a reasonable time" for permit application decisions as does Section 514 of SMCRA. However, Section 510(a) of SMCRA, the provision corresponding to Section 9.1 of ISCMA, merly requires the regulatory authority to make permit decisions within "a reasonable time." Therefore, the ISCMA provision agrees with SCMRA. Furthermore, Iowa has proposed to adopt a rule consistent with 30 CFR 788.23, which specified time limits for permit decisions.

68. The EPI commented that the ISCMA should include a provision comparable to Section 514(d) of SMCRA, authorizing the regulatory authority to grant temporary relief when an adminstrative hearing is requested on a permit decision. Iowa has given OSM notice of its intent to adopt a rule consistent with 30 CFR 787.11(b), which implements the temporary relief aspect of Section 514 (*See* Administrative Record No. IA–75, p. 13). If Iowa adopts such a rule fully providing for such temporary relief, the Iowa program will comply with SMCRA on this point.

69. The EPI commented that Section 13(2) of the ISCMA should require that all inspections be conducted on an irregular basis. Iowa proposed rule 4.6(1)d requires that all inspections be conducted on an irregular basis. If this rule is enated, as proposed, no further program change appears required. (*See* finding 4f.)

70 The EPI commented that Section 13(6) of the ISCMA should require information to be made available to the public at locations in the county, multicounty, and state area of mining, as provided in Section 517(f) of SMCRA. Section 13(6) of ISCMA requires that such information shall be conveniently available to the public at central locations in the mining area. The Secretary has determined that these requirements are consistent. Therefore, no change is required

71. The EPI commented that the ISCMA should require that all penalties be prepaid and should set a 30-day time limit for payment. Neither the ISCMA nor the proposed regulations include provisions for administrative proposal and assessment of civil penalties as provided by Section 518(c) of SMCRA and 30 CFR Part 845. The Secretary finds that the Iowa program must include the same or similar procedures as Section 518(c) of SMCRA to the extent not enjoined by the U.S. District Court for the Southern District of Iowa, and consistent with 30 CFR SPart 845, to the extent not remanded by the U.S. District Court for the District of Columbia. (*See* finding 4(h).)

72. The EPI commented that Section 15.3 of the ISCMA should provide a penalty for a corporate officer for refusal to comply with an order instead of for refusal or failure to comply with any provision of the Iowa Act. The Iowa Attorney General has stated, and the Secretary agrees, that refusal to comply with an order is a refusal to comply with the Act (*See* Iowa Program Submission, Vol. 3, p. 118.)

73. The EPI commented that Section 13(3) of the ISCMA should provide that the 10-day notification period should be waived if the violation is alleged to be an imminent danger of significant environmental harm and the state has failed to take an appropriate action. However, Section 13(3) of the ISCMA does not require a 10-day notification in such instances. Furthermore, Section, 521(a)(1) of SMCRA waives the notification requirement, thereby giving the Secretary the authority to take a direct enforcement action in these instance without first notifying the state. Therefore, no program change is required.

74. The EPI commented that the ISCMA fails to provide for inspections to be conducted in responde to citizen requests and for citizens to accompany OSM inspectors on such inspections. The Secretary has determined that the Iowa laws and proposed regulations adequately provide for citizen participation in inspection and enforcement activities, except that Iowa proposed Rule 4.6 is inconsistent with 30 CFR 842.12(c). (*See* finding 4(f).)

75. The EPI commented that the ISCMA should require that all interested persons be notified of hearings on suspension or revocation of permits. Section 14(3) of the Iowa Act requires that hearings on these actions be conducted pursuant to Chapter 17A of the Iowa Code. That chapter requires notice to all parties. It further requires the proceedings to be open to the public. Under Chapter 28 of the Iowa Code, such open meetings are subject to public notice requirements including posting at the office of the agency holding the meeting and notifying the news media. Iowa's provisions for notice to all parties and public notice of the open meeting are consistent with the requirements in SMCRA Section 521(a)(4) and 30 CFR 843.13(c).

76. The EPI commented that Section 8 of the ISCMA deleted Section 522(a)(1) of SMCRA's requirement that the state develop a planning process based upon scientifically sound data to determine areas unsuitable for all or certain types of surface coal mining operations. The Iowa program, as proposed, adequately demonstrates the State's Intent to base unsuitability decisions on scientifically sound data. (*See* proposed Iowa Rule 4.2(9), "Data base and inventory requirements," and Volume 4, Section 731.14(g)(11) of the program narrative for a detailed description of the basis for the lands unsuitable determination decisions.) If this rule is enacted, as proposed, no further program change will be required.

77. The EPI commented that the ISCMA omits a provision comparable to Section 522(a)(5) of SMCRA which requires the designation of lands unsuitable system to be integrated as closely as possible with land use planning and regulation processes. The proposed rule 4.2(8), if enacted, would provide that the Department of Soil Conservation use information supplied by other agencies and develop a detailed statement of the impact of such designation on the environment and economy. This requirement would entail coordination and consultation with land use planning agencies. In addition, hearings associated with the petitioning process must be conducted according to the procedures of the Iowa Administrative Procedures Act, including notification of all interested parties. The Secretary presumes that "all interested parties" will include land use planning agencies, when appropriate.

78. The EPI stated that the ISCMA should define the term "approximate original contour" as that term is defined in Section 701(2) of SMCRA. Iowa has proposed to adopt the SMCRA definition of "approximate original contour" in Rule 4.1(2)k. If this rule is enacted, as proposed, no further program change will be required.

79. The EPI commented that the Iowa Administrative Procedures Act, Chapter 17A.12(7), which provides that "oral proceedings . . . shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party," is inconsistent with Section 519(h) of SMCRA. The Secretary believes this means that, while an electronic recording will be made of all proceedings, the recording will be transcribed only upon request. For public hearings required by SMCRA, Section 519(h) of SMCRA provides that a "verbatim record" be made, and that a transcript be made available on the motion of any party or by order of the regulatory authority. The Secretary's regulations establishing procedures for hearings and appeals under SMCRA appear at 43 CFR Part 4. These regulations do not address the issue of whether the cost of transcription may be charged to a party requesting a transcript. The Secretary finds that, under SMCRA and the regulations in 43 CFR Part 4, the regulatory authority must bear the cost of recording the hearing whenever SMCRA requires a public hearing or a hearing "of record." Neither SMCRA nor the Secretary's regulations require the regulatory authority to bear the cost of providing a copy of the transcript to a party, or of creating a transcript from a recording. Furthermore, Iowa Code Section 68A.2, "Citizen's Right to Examine," provides that every citizen has the right to examine all public records.

80. Two federal agencies pointed out that the Iowa program appears to contain typographical errors. First, proposed Iowa Rule 4.35(6) references proposed Rule 4.333(10), "Subsidence Control," while the correct reference should be to proposed Rule 4.333(11), "Fish and Wildlife Plan." Second, on page 103 of Volume 1, proposed Rule 4.333(6)a(2) references 30 CFR 77.217(a) while the correct reference should be to 30 CFR 77.216(a). The Secretary concurs with the commenters and is confident that Iowa will correct the first error; the Secretary notes that the second error has been corrected by an amendment to proposed Iowa Rule 4.333(b)a(2).

Approval in Part/Disapproval in Part

The Iowa program is approved in part and disapproved in part. As indicated above under the Secretary's Findings, certain parts of the program meet the criteria for State program approval in 30 CFR 732.15 and certain parts of the program do not meet the criteria. Partial approval means that Iowa may revise and resubmit the disapproved portions of the program within 60 days of the effective date of the decision. The resubmission will then be reviewed and approved or disapproved under procedures in 30 CFR Part 732. Until the entire program is approved, however, the State will not assume primary jurisdiction to implement and enforce the permanent program under SMCRA.

The following program parts are approved:

(a) The Iowa Surface Coal Mining Act, except Section 15, as set forth in paragraph (a) below. ISCMA 13.2(a) is approved to the extent that it is interpreted as in Proposed Iowa Rule 4.6(1)(d)(1) to require that both partial and complete inspections be conducted on an irregular basis. (*See* Finding 4(f).)

The following program parts are disapproved:

(a) Section 15 of the ISCMA which is inconsistent with SMCRA in that it fails to provide an administrative system for proposing and assessing civil penalties similar to Section 518 of SMCRA. (*See* Finding 4(h).)

(b) All the proposed regulations contained in the Iowa program submission.

(c) The non-statutory program provisions to:

(1) Implement, administer and enforce all applicable performance standards. (*See* Finding 4(b).)

(2) Implement, administer and enforce a permit system and prohibit surface coal mining and reclamation operations without a permit issued by the regulatory authority. (*See* Finding 4(c).)

(3) Regulate coal exploration and prohibit coal exploration that does not comply with the requirements of 30 CFR Parts 776 and 815. (*See* Finding 4(d).)

(4) Require that persons extracting coal incidental to Government-financed construction maintain information on site. (*See* Finding 4(e).)

(5) Enter, inspect and monitor all coal exploration and surface coal mining and reclamation operations consistent with the requirements of Section 517 of SMCRA and 30 CFR Chapter VII, Subchapter L. (*See* Finding 4(f).)

(6) Implement, administer and enforce a system of performance bonds and liability insurance, or other equivalent guarantees. (*See* Finding 4(g).)

(7) Provide for civil and criminal sanctions for violations of State law, regulations and conditions of permits and exploration approvals including civil and criminal penalties. (*See* Finding 4(h).)

(8) Issue, modify, terminate and enforce notices of violations, cessation

orders and show cause orders. (*See* Finding 4(i).)

(9) Designate areas as unsuitable for surface coal mining. (*See* Finding 4(j).)

(10) Provide for public participation in the development, revision and enforcement of State regulations and the State program. (*See* Finding 4(k).)

(11) Monitor, review and enforce the prohibition against indirect or direct financial interests in coal mining operations by employees of the State regulatory authority. (*See* Finding 4(l).)

(12) Provide for small operator assistance. (*See* Finding 4(n).)

(13) Provide for administrative review of State program actions. (*See* Finding 4(p).)

(d) The statutory provisions which provide for protection of State employees of the regulatory authority in accordance with the protection afforded Federal employees under Section 704 of SMCRA. (*See* Finding 4(o).)

(e) The two alternatives proposed under 30 CFR 731.13 dealing with (1) the 10 acre exemption for prime farmland and (2) the qualification of persons who may prepare design plans and certify certain small structures. (*See* Findings 4(a)(1) and 4(a)(3).)

(f) The statutory provisions of the Iowa Administrative Procedures Act (Section 17A.18(3)), to the extent they require an administrative hearing prior to issuance of a cessation order for failure to abate a violation. (*See* Finding 4(i).)

Effect of this Action

Iowa is not now eligible to assume primary jurisdiction to implement the permanent program. Iowa may submit additions or revisions to its proposed program to correct those parts of the program being disapproved within 60 days of this decision.

If Iowa does not submit a revised program within 60 days, the Secretary will take appropriate steps to promulgate and implement a federal program for the State of Iowa. If the disapproved portions of the state regulatory program are revised and resubmitted within the 60 day time limit, the Secretary will have an additional 60 days to review the revised program, solicit comments from the public, the Administrator of the Environmental Protection Agency, the Secretary of Agriculture and the heads of other federal agencies concerned with or having special expertise pertinent to the proposed state program and to approve, disapprove, or conditionally approve the final Iowa program submission.

This approval in part and disapproval in part relates only to the permanent regulatory program under Title V of SMCRA. The Secretary's partial approval of Iowa's program does not constitute approval or disapproval of any state provisions related to the implementation of Title IV of SMCRA, the abandoned mine lands reclamation program. In accordance with 30 CFR Part 884 (State Reclamation Plans), Iowa may submit a state AML reclamation plan at any time. Final approval of an AML plan, however, cannot be given by the Director of OSM until the state has an approved permanent regulatory program.

No coal development is anticipated on federal lands in the State. In the event that surface mining and reclamation operations on federal lands are proposed, however, the initial federal lands program will be governed by regulations in 30 CFR Part 211. When a state regulatory program is approved, the federal lands program, if one is necessary, will be governed by 30 CFR Part 740, or by 30 CFR Part 745 if Iowa chooses to enter into a cooperative agreement with the Secretary.

The Secretary does not intend to promulate rules in 30 CFR Part 915 until the Iowa program has been either finally approved or disapproved following opportunity for resubmission.

Additional Findings

The Secretary has determined that pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this approval in part.

The Secretary has determined that this document is not a significant rule under E.O. 12044 or 43 CFR Part 14, and no regulatory analysis is being prepared on this approval in part.

Dated: October 9, 1980.

Joan M. Davenport,

Assistant Secretary of the Interior.

[FR Doc. 80-32159 Filed 10-15-80; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 10

Proposed Regulation to Set Standards for Opinions by Practitioners Before the Internal Revenue Service Used in the Promotion of Tax Shelters; Public Hearing

AGENCY: Department of the Treasury.

ACTION: Proposed rule; additional time to submit written comments and notice of public hearing.

SUMMARY: A notice of proposed rulemaking to amend the regulations governing practice before the Internal Revenue Service for the purpose of setting standards relative to opinions used in the promotion of tax shelters was published in the **Federal Register** on Thursday, September 4, 1980 (45 FR 58594). The public was invited to submit written comments on the proposal on or before November 3, 1980. No public hearing was contemplated unless requested. It has been determined that the time to submit written comments be extended, and, while to date there has been no request to be heard, the Department believes a hearing on the proposed rule is warranted.

DATES: The time in which to submit written comments is extended until Friday, November 14, 1980. The hearing on the proposed rule is scheduled for Tuesday, November 25, 1980, beginning at 10:00 a.m.

ADDRESS: All written comments on the proposed amendment and all requests for an opportunity to be heard, together with required statements, should be sent to the Office of Director of Practice, U.S. Department of the Treasury, Washington, D.C. 20220. The hearing will be held in the Cash Room, Main Treasury Building, 15th Street and Pennsylvania Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie S. Shapiro, Director of Practice 202-376-0767

SUPPLEMENTARY INFORMATION: The hearing will be open to the public as space is available. Persons wishing to make statements at the hearing should advise the Director of Practice in writing by November 14, 1980, and should submit in triplicate the text or, at a minimum, an outline of comments they propose to make. Comments will be restricted to 10 minutes in length. Written comments also should be sent in triplicate.

Dated: October 10, 1980.

David R. Brennan,

Acting General Counsel.

[FR Doc. 80-32195 Filed 10-15-80; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF DEFENSE

National Security Agency

32 CFR Part 286f

Policies and Procedures for Obtaining Information From Financial Institutions

AGENCY: National Security Agency.

ACTION: Notice of proposed rule making.

SUMMARY: This proposed rule establishes the National Security Agency (NSA) policies and procedures for obtaining information from financial institutions in accordance with Pub. L. 95-630, The Right to Financial Privacy Act of 1978.

DATES: Comments must be received by November 17, 1980.

ADDRESSES: Comments should be directed to the Office of General Counsel, National Security Agency, Fort George C. Meade, MD, 20755.

FOR FURTHER INFORMATION CONTACT: LCDR M. E. Bowman, JAGC, USN, Telephone: (area code 301) 688-6054.

Accordingly it is proposed to add a new part to Title 32 of the Code of Federal Regulations which if adopted will read as follows:

PART 286f—OBTAINING INFORMATION FROM FINANCIAL INSTITUTIONS

Sec.

286f.1 Purpose and applicability.
286f.2 Policy.
286f.3 Procedures.
286f.4 Reports.
286f.5 Implementation.

Authority: 92 Stat. 3697, et seq., 12 U.S.C. 3401, et seq.

§ 286f.1 Purpose and applicability.

(a) This part establishes procedures for the NSA/CSS to obtain records from financial institutions and implements 12 U.S.C. Sec. 3401, 92 Stat. Sec. 3697, and Pub. L. 95-630.

(b) The provisions of this part apply only to financial records maintained by any office of a bank, savings bank, credit card issuer, industrial loan company, trust company, savings and loan, building and loan, homestead association (including cooperative banks), credit union, or consumer finance institution that is located in any district, state or territory of the United States.

(c) All NSA/CSS elements are subject to the provisions of this part.

§ 286f.2 Policy.

(a) Financial records shall be sought regarding any individual who is an applicant for employment with the NSA/CSS or who has a current security clearance and/or access granted by the NSA/CSS, and regarding any other individual assigned or detailed to the NSA/CSS when such records are relevant to a final determination with respect to employment, continued assignment or detail, clearance, access or other related actions.

(b) The NSA/CSS shall seek the consent of an individual when obtaining that individual's financial records from a financial institution. Refusal of an individual to provide such consent may be grounds for denying access to all Sensitive Compartmented Information (SCI) and to other classified information in NSA/CSS custody if the circumstances of such refusal or the nature of the records sought prevent the NSA/CSS from determining that such access is or would be clearly consistent with the national security.

(c) Any actions relative to obtaining financial records without an individual's consent shall be conducted in accordance with the provisions of DoD Directive 5400.12, found in 32 CFR Part 294, as appropriate.

§ 286f.3 Procedures.

(a) Representatives of NSA/CSS Security shall use a consent form as set out in Enclosure 2 of 32 CFR Part 294, relative to obtaining financial records. A copy of the consent form shall be made a part of the individual's NSA/CSS security file, and an additional record copy of the form kept by security for the purpose of an annual report. A certification form as set out in Enclosure 4 of 32 CFR Part 294 shall be provided to financial institutions by security representatives along with the consent form certifying compliance with 12 U.S.C. Sec. 3401 *et seq.*

(b) Procedures used by security regarding matters referenced in paragraph (a) of this section, shall be established on a case-by-case basis and shall be in consonance with the appropriate provisions of 32 CFR Part 294.

(c) Financial records obtained under 12 U.S.C. Sec. 3401 *et seq.* shall be marked: "This record was obtained pursuant to the Right to Financial Privacy Act of 1978, 12 U.S.C. Sec. 3401 *et seq.*, and may not be transferred to another federal agency or department without prior compliance with the transferring requirements of 12 U.S.C. Sec. 3412." Except in accordance with paragraph (e) of this section, such records shall not be transferred to another agency or department outside the Department of Defense unless the Chief, Security, or delegate certifies in writing that there is reason to believe that the records are relevant to a legitimate law enforcement inquiry within the jurisdiction of the receiving agency or department. Such certificates shall be maintained in the appropriate NSA/CSS security file with copies of the released records.

(d) Unless alternate procedures are involved as referenced in paragraph (b) of this section, when financial records have been transferred to another agency, a security representative shall, within 14 days, personally serve or mail to the individual whose records have been transferred, at his or her last known address, a copy of the certificate required by paragraph (c) of this section, and the following notice: "Copies of or information contained in your financial records lawfully in possession of the NSA/CSS have been furnished to (name of agency) pursuant to the Right to Financial Privacy Act of 1978 for the following purpose(s): (state reason). If you believe that this transfer has not been made to further a legitimate law enforcement inquiry, you may have legal rights under the Financial Privacy Act of 1978 or the Privacy Act of 1974."

(e) In cases where another federal agency authorized to conduct foreign intelligence or foreign counterintelligence activities requests a financial record held by the NSA/CSS, and makes such a request for the purpose of conducting that Agency's protective functions, the NSA/CSS may release the information without notifying the individual to whom the financial record pertains.

§ 286f.4 Reports.

Security shall compile an annual report setting forth the data required in the Right to Financial Privacy Act of 1978. The report shall be submitted to the Defense Privacy Board, Office of the Deputy Assistant Secretary of Defense (Administration), by February 15 annually, and shall be assigned the Report Control Symbol DD-COMP[A] of 1538.

§ 286f.5 Implementation.

This NSA/CSS Regulation is effective immediately.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington, Headquarters Services, Department of Defense.

October 10, 1980.

[FR Doc. 80-32207 Filed 10-15-80; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Grand Teton National Park; Proposed Rulemaking and Publication of Noise Abatement Plan for Jackson Hole Airport

AGENCY: National Park Service.

ACTION: Proposed Rule and Publication of Noise Abatement Plan.

SUMMARY: The purpose of this proposed rulemaking is to redescribe the location of the area assigned for the Jackson Hole Airport and provide for regulations

necessary to enforce certain provisions of the Jackson Hold Airport Noise Abatement Plan, which is published in its final form in the attached appendix. These proposed regulations deal with such issues as aircraft noise limitations, curfew, and preferential runway.

DATES: Written comments, suggestions or objections on the proposed rulemaking will be accepted by the National Park Service until December 15, 1980.

ADDRESS: Comments should be directed to: Superintendent, Grand Teton National Park, P.O. Drawer 170, Moose, Wyoming 83012.

FOR FURTHER INFORMATION CONTACT: Robert Yearout, Superintendent's Office, Grand Teton National Park, telephone (307) 733–2880; or Neil J. Reid, Chief, Division of Science and Resource Preservation, Rocky Mountain Regional Office, National Park Service, 655 Parfet Street, Post Office Box 25287, Denver, Colorado 80225, telephone (303) 234–2764. The Noise Abatement Plan is available from these two offices.

SUPPLEMENTARY INFORMATION:

Background

Designated Airstrip: On September 10, 1979, the National Park Service and the Jackson Hole Airport Board signed Special Use Permit No. SP 1460–9–9022, a revision of an earlier permit, authorizing the use of described lands in Grand Teton National Park for the purpose of operating a public airport facility. The permit, which expires on April 28, 1995, prescribes the conditions under which the airport is to be operated, and assigns ±533 acres for this purpose. This is a reduction of some 227 acres, and therefore a revision of the existing description of the Airport's location is required and is included in this proposed regulation.

Noise Abatement Plan: A proposed noise abatement plan was prepared in 1979 by the Airport Board and the National Park Service in consultation with the Federal Aviation Administration (FAA) and the Environmental Protection Agency (EPA) for the purpose of mitigating the adverse effects of airport use on park users and environment. Following publication in the Federal Register of November 9, 1979, (44 FR 65206), public hearings were held at Jackson, Wyoming, and Denver, Colorado, on December 10 and 11, 1979. Public comments were compiled and evaluated by the park staff. Copies of this document are available at the addresses listed above. After public comments were evaluated the Service had further consultation with the Airport Board, FAA, and EPA, and there was general agreement about the elements of the plan except for aircraft noise limitation.

Section 2(d) of the cited Special Use Permit provides for the Service to proceed with noise control regulations should the parties fail to agree upon a noise control plan.

The Service, as airport proprietor, has completed and approved an Airport Noise Abatement Plan. Although some revisions were made to clarify and simplify plan elements, basic plan components remain essentially as proposed. The plan includes some new facilities (air traffic control tower, advisory signs, Airport Terminal Information System, Visual Approach Slope Indicator), procedures (arrival and departure flight patterns; altitude assignments, proposed restricted airspace, proposed preferential runways, local traffic patterns, aircraft noise abatement operating procedures, proposed aircarft noise limitations, proposed curfew), educational efforts, noise monitoring and research, and enforcement procedures. The proposed restricted airspace and a curfew are additions to the proposed plan.

Three proposed elements of the plan require promulgation of regulations by the airport proprietor, the National Park Service, for enforcement. Other procedures in the plan are already enforceable through use of existing Federal Aviation Administration regulations.

In addition to redescribing the area for Jackson Hole Airport, the following are the other components of the proposed regulation:

1. *Aircraft noise limitations.* The proposed aircraft noise limitations are to restrict use of the Airport by aircraft exceeding certain noise levels. Federal Aviation regulations (FAR) Part 36 Stage 3 certification noise levels of 89 Effective Perceived Noise Decibels (EPNdB) for takeoff, 98 EPNdB on approach and 94 EPNdB on sideline are standards determined to be appropriate noise levels for this purpose for all turbojet-powered airplanes, regardless of category, and all transport-category airplanes. All propeller-driven small airplanes (12,500 pounds or less) whose certificated values exceed the FAR Part 36 1980 sound levels of 80 A-weighted decibels, dB(A), (corrected) will, also, be excluded from use of the Airport.

Noise generated by nearly all aircraft in use today is cited in FAA Advisory Circulars by EPNdB (Effective Perceived Noise Decibels) or dBA ("A" Weighted Decibels). Turbojet and transport category aircraft noise is measured by EPNdB, while FAA uses dBA for propeller-driven aircraft. When compared, the proposed noise level restrictions for all aircraft are roughly equivalent. The FAA Advisory Circulars will control as to whether an airplane meets the required noise levels.

The proposed aircraft noise limitations will result in an inconvenience to some aircraft users, i.e., those with the noisier early model turbojets and propeller-driven airplanes. Many of the newer model airplanes, and older models which have been modified can meet the noise limitations listed in the plan. The Service is of the opinion that the inconvenience will not translate into an economic impact of any consequence to the Jackson Hold area. The public benefits from control and reduction of aircraft noise are considered to outweigh such inconveniences and economic factors that may occur.

2. *Curfew.* A curfew on use of the airport between 9 p.m. and 6 a.m. is to restrict the nighttime use of the Airport, an impact which affects the developing residential area south of the Airport as well as park visitors. The curfew is similar to those at over 40 airports across the country.

3. *Preferential Runway.* The preferential runway for landing aircraft is to be Runway 36 (to the north) and for departing aircraft is to be Runway 18 (to the South), except when the air traffic controller decides and instructs otherwise. Safety will be of paramount consideration. Because this involves a ground operation, it also requires a special regulation. The conditions under which the preferential runways would be in effect will be detailed in a Letter of Agreement between the FAA and the Service based upon guidelines and requirements generally used by air traffic controllers.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding this proposed regulation to the address noted at the beginning of this rulemaking.

Impact Analysis

The National Park Service has determined that the proposed regulation contained in this rulemaking is not significant, as that term is defined in 43 CFR Part 14, nor does it require the preparation of a regulatory analysis pursuant to the provisions of this authority.

In addition, a Finding of No significant Impact (FONSI) has been made pursuant to 40 CFR 1500 (CEQ's Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act), and the Department of the Interior's compliance procedures (516 DM). A copy of the FONSI is available for public inspection during regular business hours at the Park Superintendent's office and the National Park Service, Rocky Mountain Regional Office, Denver, Colorado (see above address).

Drafting Information

The following individuals participated in the writing of this proposed regulation; Robert Yearout, Grand Teton National Park and Neil J. Reid, Rocky Mountain Regional Office, National Park Service, Denver.

(Section 3 of the Act of August 25, 1916 (39 Stat. 535, as amended; 16 U.S.C. § 3); the Act of March 18, 1950, as amended (16 U.S.C. §§ 7a through 7e); 245 DM 1 (44 FR 23384); and National Park Service Order No. 77 (38 FR 7478), as amended)

Ira J. Hutchison,
Acting Director,
National Park Service.

In consideration of the foregoing, it is proposed to amend § 7.22(a) of Title 36 of the Code of Federal Regulations as follows:

§ 7.22 Grand Teton National Park.

(a) *Aircraft.* (1) *Designated airstrip.* Jackson Hole Airport, located in NE¼, SE¼NW¼, E½SW¼, N½SE¼, SW¼SE¼ Sec. 11; NW¼NE¼, W½ Sec. 14; SE¼NE¼ Sec. 15; NW¼NW¼ Sec. 23, T. 42 N., R. 116 W., 6th Principal Meridian.

(2) *Aircraft noise limitations.* Except in an emergency, only those category airplanes and turbojet-powered airplanes, regardless of category, whose certificated values or equivalent tests according to FAR Part 36, Appendix C, for uncertificated and unlisted aircraft do not exceed 89 Effective Perceived Noise Decibels (EPNdB) for take-off and 98 EPNdB on approach, and a certificated (or equivalent test as defined above), or estimated according to standard FAA procedures, value of 94 EPNdB on sideline are permitted to use the Jackson Hole Airport. Except in an emergency, propeller-driven small airplanes (12,500 pounds maximum takeoff weight) whose certificated noise value meet the Far Part 36 1980 sound level of 80 A-weighted decibels, dB(A), (corrected) will be permitted to use the Jackson Hole Airport. Airplanes whose measured or estimated sound levels as listed in Federal Aviation Administration (FAA) advisory circulars AC 36–1B or AC 36–2A (or later revisions) do not exceed the above limits are assumed to be in compliance with this regulation.

(3) *Curfew.* Except in an emergency, all aircraft are prohibited from landing or taking off from the Jackson Hole Airport between the hours of 9 p.m. and 6 a.m.

(4) *Preferential Runway.* Runway 36 will be the preferential runway for landing, and Runway 18 will be the preferential runway for takeoff at the Jackson Hole Airport, except (i) when the air traffic controller determines that weather, wind, or other conditions preclude their safe use; or (ii) when touch-and-go training flight exercises are authorized by the air traffic controller.

The following appendix will not appear in the Code of Federal Regulations.

Appendix—Jackson Hole Airport Noise Abatement Plan

(Prepared by National Park Service, U.S. Department of the Interior, in consultation with Jackson Hole Airport Board, Environmental Protection Agency and Federal Aviation Administration)

1. Introduction and Objectives

Jackson Hole Airport is located on Federal land within the southern portion of Grand Teton National Park. This park was established by Congress because of the ambience and uniqueness of the area. The Service is managing and operating the park to maintain, recreate, and enhance the mood of the area. Within this context, the Service finds the ambient environment in the park is sensitive to the intrusion of aircraft noise. It is extremely important that the airport and aircraft operations do not detract unnecessarily from the tranquility of the park which is enjoyed annually by 4,000,000 visitors. Noise intrusions are generally identified as the greatest concerns by those who question the compatibility of an airport in a national park.

The aircraft noise problem will be dealt with through this Noise Abatement Plan (NAP). A proposed Noise Abatement Plan was published in the Federal Register on November 9, 1979 (44 FR 65206) and public hearings were held at Jackson, Wyoming and Denver, Colorado. Public comments were compiled and evaluated by the park staff. Copies of this document are available at Grand Teton National Park, P.O. Drawer 170, Moose Wyoming, and Rocky Mountain Regional Office, National Park Service, 655 Parfet St., P.O. Box 25287, Denver, Colorado 80225.

The purpose of the Noise Abatement Plan is twofold. First, to provide for safe operation of the airport during its remaining years of use. Second, to reduce aircraft noise within and adjacent to the park, including within the immediate vicinity of the airport. While the NAP is designed to mitigate adverse aircraft noise impacts in and over the park, it must be recognized that the various elements of the NAP will not, and cannot, eliminate all such impacts. Each element of the plan will undergo periodic evaluation as to its effectiveness, and the Service plans to consult periodically with the Jackson Hole Airport Board, the Environmental Protection Agency (EPA), the Federal Aviation Administration (FAA), and others, relative to any potential changes in the Plan.

2. Noise Sensitive Areas

The Service finds that the most noise sensitive area of the park is that portion lying west of the Snake River flood plain from the south boundary northward to Moose Village, thence northerly along U.S. Highway 26–187 from Moran Junction to the east park boundary. All parkland lying east of that line of demarcation is determined to be less noise sensitive and is the portion to which aircraft operations will be confined, except as set forth in paragraph 4c(1) below. A map delineating the noise sensitive areas appears at the end of this appendix.

3. Facilities

a. Air Traffic Control Tower: An air traffic control tower will be installed by the Service adjacent to the airport terminal building. The tower is classed as a temporary structure, and could be easily disassembled in 1995. The FAA will provide all communication and other equipment for the tower. Target date for tower completion is October 1981.

Air traffic control operations will be initiated early summer 1981 from a mobile unit to be furnished by FAA until the tower facility is ready.

b. Advisory Signs: Advisory signs, with messages to alert pilots of the noise sensitivity of the area and with brief instructions about procedures to be used to implement this Plan, will be placed adjacent to both ends of the taxiways and at conspicuous locations adjacent to the parking ramp. These messages are to assist the traffic controllers with their role and to avoid repeated and lengthy verbal advisories.

c. Visual Approach Slope Indicator on Runway 36: A Visual Approach Slope Indicator (VASI), set at a minimum glide path angle of three degrees, will be commissioned in fiscal year 1981 for aircraft landings on Runway 36. This navigation aid will assist pilots in maintaining a safe glide path and from flying too low over a low-density rural area south rural area south of the airport.

d. Airport Terminal Information System (ATIS): An ATIS, a continuous broadcasting system, will be installed in the temporary airport traffic control tower to inform pilots desiring to use the airport of procedures required by this Plan (flight paths, altitudes, preferential runways etc.).

4. Noise Abatement Procedures

a. Aircraft Arrival Routing: When at a minimum of 30 nautical miles, pilots of aircraft enroute to the airport shall contact the air traffic controller for incoming flight pattern information. Insofar as possible, aircraft will be directed to approach from the east, south and southwest of the park for landing on Runway 36. The ATIS (item 3d above) also will alert pilots about this approach pattern to the airport.

b. Aircraft Departure Routing: Control of departing aircraft will be more precise:

V 4 5 O C 1 6 1 9 8 0 UMI

(1) Upon arrival at the airport, transient pilots will be given a notice describing departure flight paths, altitudes and other procedures required by this Plan.

(2) Prior to taxing, pilots of departing aircraft must consult with the air traffic controller for departure instructions. Aircraft departing the area to the south or east will exit the area on an easterly, southerly, or southwesterly direction. Aircraft departing to the north or west will promptly proceed either easterly or southwesterly (south of the designated noise sensitive area) prior to assuming their final course. On takeoff, jet aircraft must use established procedures for abatement of engine noise.

c. Restricted Airspace and Altitude Assignments: (1) The Service will request FAA to designate, by Federal regulation, a restricted airspace over noise sensitive areas (see attached map) of the park. Navigation exceptions within the airspace would be allowed only for: (a) emergency operations, (b) search and rescue operations, and (c) official business conducted by Federal, State or local agencies when specifically authorized by the Superintendent, Grand Teton National Park.

(2) Until the restricted airspace regulation is promulgated, pilots, who for some reason must overfly the park, will be requested to: (a) confine operations to the area of the park east of the line of demarcation of the noise sensitive area; (b) maintain a minimum altitude of 3,000 feet above ground level until necessary to descend for landing or until departing the park; and (c) avoid overflight of the Teton Range within the park under all circumstances.

d. Preferential Runway: The preferential runway for landing aircraft is Runway 36 and for departing aircraft is Runway 18, except when the air traffic controller decides and instructs otherwise. Safety will be of paramount consideration. Decisional factors which the controller will use to allow landing on Runway 18 or takeoff on Runway 36 include, but are not limited to:

(1) Weather which requires the use of the precision instrument landing system (from the north),

(2) Wind conditions which exceed the tailwind component of the aircraft,

(3) Air traffic safety considerations, and

(4) Tough-and-go training flight exercises.

e. Local Traffic Patterns: A left hand pattern will be used for landing on Runway 18 and a right hand pattern for landing on Runway 36. These patterns will concentrate air operations to the east of the airport.

For local training flights of category "A" and "B" (light aircraft) where patterns are flown in close proximity to the airport, and when the air traffic controller consents that air traffic conditions will so allow, pilots may fly a continuous pattern without regard to the preferential runway. This will allow touch-and-go landing training exercises. This exception is viewed as an energy conservation and additional noise reduction measure but does constitute visual intrusion. Practice instrument approaches, instrument landings, and pilot examinations will only occur when the official meteorological weather observations at the Jackson Hole Airport are at or above basic Visual Flight Rules (VFR) weather conditions. No flight training exercises other than Instrument approaches will take place within the area of the park designated as noise sensitive.

f. Aircraft Operating Procedures: Pilots of air carrier and other commercial aircraft, high performance aircraft, and large private transport aircraft will use established proceduresd for abatement of engine noise during approaches, landings, takeoffs and departures. The ATIS will include this requirement.

g. Aircraft Noise Limitations: Aircraft noise limitations—Except in an emergency, only those transport category airplanes and turbojet-powered airplanes, regardless of category whose certificated values or equivalent tests according to FAR Part 36, Appendix C, for uncertificated and unlisted aircraft do not exceed 89 Effective Perceived Noise Decibels (EPNdB) for take-off, and 98 EPNdB on approach, and a certificated (or equivalent test as defined above), or estimated according to standard FAA procedures, value of 94 EPNdB on sideline are permitted to use the Jackson Hole Airport.

Propeller-driven small airplanes (less than 12,500 pounds maximum takeoff weight) which do not exceed a maximum A-weighted sound level of 80 decibels under a test performed according to FAR Part 36, Appendix F are permitted to use the airport. Airplanes whose measured or estimated sound levels as listed in Federal Aviation Administration (FAA) Advisory Circulars AC 36-1B or AC 36-2A (or later revisions) do not exceed the above limits are assumed to be in compliance with this regulation.

h. Curfew: Except in emergency situations (e.g., an aircraft in distress, search and rescue operations, etc.) all aircraft will be prohibited from landing or taking off from the Airport between the hours of 9:00 p.m. and 6:00 a.m.

5. Air Traffic Controller Responsibilities and Operating Procedures

FAA Standards and guidelines establish the basic procedures for air traffic controllers. This Plan's success places heavy reliance on the controller's careful routing assignment of the incoming and departing aircraft into the preferred flight pattern and altitudes as set forth in this Plan. Control tower personnel will not compromise safety in implementing any procedure. Tower personnel will maintain required logs and when workload permits, shall record their observations of pilot noncompliance with flight paths, altitudes and other elements of this Plan.

6. Enforcement

a. Existing Regulations: Existing regulations will apply to the elements of this Plan requiring enforcement regulations except for items 4d, 4g, and 4h, above. The Service will review periodically the air traffic controller records, initiate additional investigation, and take enforcement action, as required. Detailed investigative and supplemental investigative procedures will be prepared and implemented by the Service; the target date is August 1, 1981.

b. New Regulations: The Service will promulgate appropriate Federal regulations to enforce items 4d, 4g, and 4h. The proposed regulations will be published in the **Federal Register** and other appropriate places for public comment. The Service will request FAA to promulgate appropriate Federal regulations to enforce 4c.

7. Pilot and Public Education

a. National Actions: The Plan will be circulated for inclusion in Federal airway and airport informational documents (military and commercial) and to non-Federal publications such as those produced by the Aircraft Owners and Pilots Association, General Aviation Aircraft Manufacturers Association, Jeppesen Sandersen, Inc., and the World Aviation Directory. Articles will be circulated to magazines published by aviation-oriented organizations and others.

b. Local Actions: Copies of the Plan will be provided by the Service to the Airport Manager for distribution.

A copy of the Plan will be sent by the Service to the Fixed Base Operator, all local pilots, Frontier Airlines, unscheduled air carriers known to use the Airport, private pilots known to frequent the Airport, and Federal, State, and local agencies which have occasion to use the Airport. Upon arrival, the Airport Manager will give transient pilots a condensed version of the Plan so that they are able to plan their flight departure in accordance with the requirements of the Plan.

8. Aircraft Noise Monitoring and Research

As part of a general regionwide noise research program, an ongoing noise monitoring effort has been initiated for the purposes of measuring noise impact by aircraft over the park, determining the effectiveness of the airport noise abatement plan, and relating aircraft noise to other noise sources in the total sound environment. This program is co-sponsored and funded by the Service and the EPA with participation by the FAA.

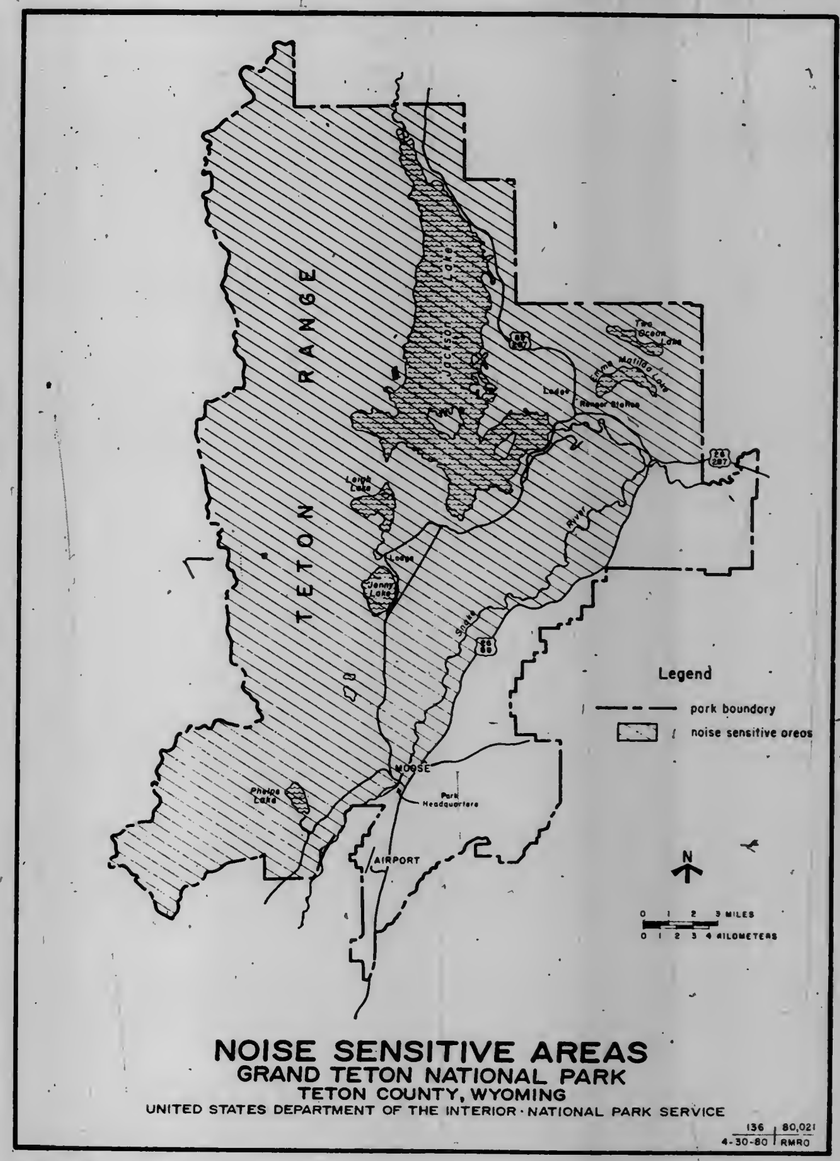
Representatives from the Airport Board, Teton County, the Forest Service, and the U.S. Fish and Wildlife Service (National Elk Refuge) will be invited to participate in this effort, as it particularly concerns the area south and east of the airport. Periodic reports will be made available to all other interested agencies and the general public. Information gained from this effort will be used as appropriate in the annual evaluation of the Plan.

9. Effective Date

This plan will be effective ———— (30 days after publication in the **Federal Register**). Full implementation will occur over a period of a few months with initiation of air traffic controller service in the summer of 1981.

This plan was approved by Rocky Mountain Regional Director Lorraine Mintzmyer on July 25, 1980.

BILLING CODE 4310-70-M



NOISE SENSITIVE AREAS
GRAND TETON NATIONAL PARK
TETON COUNTY, WYOMING
UNITED STATES DEPARTMENT OF THE INTERIOR · NATIONAL PARK SERVICE

136 | 80,021
4-30-80 | RMRO

[FR Doc. 80-32382 Filed 10-15-80; 8:45 am]

BILLING CODE 4310-70-C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AI FRL 1636-6]

Notice of Proposed Rulemaking: Attainment Status Redesignation: Fitchburg, Mass.

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Massachusetts Department of Environmental Quality Engineering (the Massachusetts Department) submitted on September 10, 1979 a request to redesignate the City of Fitchburg as attainment with respect to the secondary total suspended particulate (TSP) National Ambient Air Quality Standard (NAAQS). Additional technical support was submitted on April 18, 1980. Based on the information submitted, EPA proposes to approve the redesignation of the City of Fitchburg from non-attainment to attainment.

DATE: Comments must be received on or before November 17, 1980.

ADDRESSES: Copies of the Massachusetts submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460; and the Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C.; and The Massachusetts Department of Environmental Quality Engineering, Division of Air and Hazardous Materials, Room 320, 600 Washington Street, Boston, Massachusetts 02111.

Comments should be submitted to Harley Laing, Chief, Air Branch, Region I, Environmental Protection Agency, Room 1903, JFK Federal Building, Boston, Massachusetts 02203.

FOR FURTHER INFORMATION CONTACT: Margaret McDonough, Air Branch, EPA Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203, (617) 223-5609.

SUPPLEMENTARY INFORMATION: The Massachusetts Department requested on March 30, 1979 an extension of the statutory timetable for submission of a plan for attainment and maintenance of the secondary standard for particulate matter as provided for in Section 110(b) of the Clean Air Act. On January 10, 1980 (45 FR 2036) EPA granted an extension until July 1, 1980. On September 10, 1979 and April 18, 1980 the Massachusetts Department submitted technical support demonstrating that the City of Fitchburg is attainment with respect to secondary TSP NAAQS. Therefore, as provided for in Section 107(d)(5) of the Clean Air Act, the Commonwealth of Massachusetts is requesting a revision of the designation of the attainment status of the City of Fitchburg.

The September 10, 1979 submittal included a summary of the most recently available TSP air quality data collected in Fitchburg. No violations of the secondary TSP standard were recorded at any representative state monitoring stations (13 consecutive quarters of data) or at any privately operated monitoring stations (6 consecutive quarters).

However, EPA determined that complete 1979 TSP monitoring data from all Fitchburg stations (not included in the September 10, 1979 submittal) and a statistical analysis of the data were necessary to evaluate the proposed redesignation. On April 18, 1980, the Massachusetts Department submitted additional technical support consisting of 1979 TSP data for all Fitchburg monitoring stations and predictions of the second-maximum 24-hour TSP level at each station using a statistical analysis (Larsen Technique).

Based on the information submitted by the Massachusetts Department, EPA proposes that the City of Fitchburg be redesignated to attainment with respect to the secondary particulate standard.

The Environmental Protection Agency has determined that this document is not a "significant" regulation and does not require preparation of a regulatory analysis under Executive Order 12044.

The Administrator's decision to approve or disapprove the plan revision will be based on whether it meets the requirements of sections 107(d)(5) and 301(a) of the Clean Air Act as amended.

Dated: September 29, 1980.

Leslie Carothers,

Acting Regional Administrator.

[FR Doc. 80-32157 Filed 10-15-80; 8:45 am]

BILLING CODE 6560-26-M

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40 CFR Part 52

[A1-FRL 1636-5]

Receipt of Maine Implementation Plan Revision: Secondary TSP Attainment Plan for Augusta.

AGENCY: Environmental Protection Agency.

ACTION: Notice of receipt of submittal to satify conditions of plan approval.

SUMMARY: Thia is to announce the receipt of a State Implementation Plan (SIP) revision for Maine. The secondary total suspended particulate (TSP) plan for Augusta was submitted on July 31, 1980 to satisfy two conditions of the EPA's February 19, 1980 (45 FR 10766) final approval of Maine's Attainment Plan SIP revisions which were required under Part D of the Clean Act. Maine's submittal amends the SIP by completing the Attainment Plan for Augusta.

DATES: See Supplementary Information.

ADDRESSES: Copies of the Maine submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460; and Bureau of Air Quality Control, Department of Environmental Protection, State House, Augusta, Maine 04330.

FOR FURTHER INFORMATION CONTACT: Margaret McDonough, Air Branch, Environmental Protection Agency, Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203 (617) 223-4448.

SUPPLEMENTARY INFORMATION: EPA published a final rulemaking in the **Federal Register** on February 19, 1980 (45 FR 10766) conditionally approving Maine's Attainment Plan SIP revisions submitted on May 1, 1979. These revisions were found to be in substantial compliance with the requirements of Part D of the Clean Air Act, since they implement new measures for controlling air pollution which will result in attainment of primary National Ambient Air Quality Standards by December 31, 1982. However, two conditions of approval of the Attainment Plan was that by April 30, 1980 the state must submit as a SIP revision:

By April 30, 1980:

(1) A schedule for evaluating, adopting and implementing a vacuum street sweeping program throughout Augusta, contingent on the successful demonstration of this measure's control effectiveness in Bangor/Brewer and

By August 1, 1980:

(1) An Analysis of Reasonably Available Control Technology (RACT) for sources of TSP in the City of Augusta.

(2) An assessment of the impact of sources which do not meet RACT.

(3) Evidence of the adoption of RACT where and if it will expedite attainment of secondary TSP standards.

Maine's July 31, 1980 submittal addresses the above conditions. EPA is presently reviewing the state's submittal and intends to publish a final rulemaking notice in the **Federal Register** by October 30, 1980. The conditional approval of the SIP will continue until EPA's final action is published in the **Federal Register.**

Dated: September 24, 1980.

Willaim R. Adams, Jr.,

Regional Administrator, Region I.

[FR Doc. 80-32158 Filed 10-15-80; 8:45 am]

BILLING CODE 6560-26-M

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40 CFR Part 123

[SW10 FRL 1636-8]

Oregon Application for Interim Authorization, Phase I; Hazardous Waste Management Program

AGENCY: Environmental Protection Agency, Region 10.

ACTION: Notice of public hearing and public comment period.

SUMMARY: EPA regulations to protect human health and the environment from the improper management of hazardous waste were published in the **Federal Register** on May 19, 1980 (45 *FR* 33063). These regulations include provisions for authorization of State programs to operate in lieu of the Federal program. Today EPA is announcing the availability for public review of the Oregon application for Phase I Interim Authorization, inviting public comment, and giving notice of a public hearing to be held on the application.

DATE: Comments on the Oregon interim authorization application must be received by November 24, 1980.

Public Hearing: EPA will conduct a Public Hearing for the Oregon Interim Authorization application at 10:00 a.m. on November 17, 1980. EPA reserves the right to cancel the Public Hearing if significant public interest in a hearing is not expressed. The State of Oregon will participate in the Public Hearing held by EPA on this subject.

ADDRESSES: The Public Hearing will be held at: Bonneville Power Administration Auditorium, 1002 N.E. Holladay Street, Portland, Oregon.

Copies of the Interim Authorization application are available at the following addresses for inspection and copying by the public:

Oregon Department of Environmental Quality, Solid Waste Division, 14th Floor, 522 S.W. 5th Street, Portland, Oregon, (503) 229-5913;

Environmental Protection Agency, Region 10, Library, M/S 541 (12th Floor), 1200 Sixth Avenue, Seattle, Washington, (206) 442-1289.

Written comments and requests to speak at the hearing should be sent to: Environmental Protection Agency, Region 10, David Hanline, Program Development Section, M/S 530, 1200 Sixth Avenue, Seattle, Washington, (206) 442-1260.

FOR FURTHER INFORMATION CONTACT: Same as above.

SUPPLEMENTARY INFORMATION: In the May 19, 1980 **Federal Register** (45 *FR* 33063) the Environmental Protection Agency promulgated Phase I of its regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976 (as amended), to protect human health and the environment from the improper management of hazardous waste. EPA's Phase I regulations establish, among other things: the initial identification and listing of hazardous wastes; the standards applicable to generators and transporters of hazardous wastes, including a manifest system; and the "interim status" standards applicable to existing hazardous waste management facilities before they receive permits.

The May 19 regulations also include provisions under which EPA can authorize qualified State hazardous waste management programs to operate in lieu of the Federal program. The regulations provide for a transitional stage in which qualified State programs can be granted Interim Authorization. The Interim Authorization program is being implemented in two phases corresponding to the two stages in which the underlying Federal program will take effect. In order to qualify for Interim Authorization, the State hazardous waste program must, among other things:

(1) Have been in existence prior to August 17, 1980, and

(2) Be "substantially equivalent" to the Federal program.

A full description of the requirements and procedures for State Interim Authorization is included in 40 CFR Part 123 Subpart F (45 *FR* 33479).

The State of Oregon has submitted a complete application to EPA for Phase I Interim Authorization. Copies of the State submittal are available for public inspection and comment as noted above.

Public Hearing:

(1) *Hearing time and place.* A public hearing on the Oregon application for Interim Authorization will be held by EPA on November 17, 1980 (10:00 a.m.) at the Bonneville Power Administration Auditorium, 1002 N.E. Holladay Street, Portland, Oregon. EPA reserves the right to cancel the public hearing if no significant interest is expressed.

(2) *Conduct of hearing.* The hearing is intended to provide an opportunity for interested persons to present their views and submit information for consideration by EPA in the decision whether to grant Oregon Interim Authorization for Phase I of the RCRA program. A panel of EPA employees involved in relevant aspects of the decision will be presented to receive the testimony. Also, a representative of the State will be present to answer questions about the State's program.

The hearings will be informally structured. Individuals providing oral comments will not be sworn in nor will formal rules of evidence apply. Questions may be posed by panel members to persons providing oral comments; however, no cross-examination by other participants will be allowed.

The State will testify first and present a short overview of the State program. Public comments will then be taken in the order in which requests to comment were received, after which unscheduled commenters will be heard. Each organization or individual will be allowed as much time as possible for oral presentation based on the volume of requests to participate. As a general rule, in order to ensure maximum participation and allotment of adequate time for all speakers, participants should try to limit the length of their statements to 10 minutes. The Public Hearing will be followed, as time permits, by a question and answer session during which participants may pose questions to members of the panel.

Preparation of Transcripts

Transcripts of the oral comments received will be prepared. To ensure accurate transcription, participants should, if possible, provide written copies of prepared statements to the hearing chairperson. Transcripts will be available from Environmental Protection Agency, Region 10, Attn: David Hanline, Program Development Section, M/S 530, 1200 Sixth Avenue, Seattle, washington 98101 approximately 10 days after the hearing at the cost of reproduction.

Major Issues of Interest to EPA

In order for a State program to receive Interim Authorization, it must be substantially equivalent to the Federal program. EPA is soliciting comment on all aspects of the substantial equivalence of the Oregon program to the Federal Hazardous waste

management program. The Agency is particularly interested in public comment on the following issues:

(1) The universe of wastes regulated under Oregon's program, and the extent to which the following aspects of Oregon's program significantly restrict Oregon's ability to regulate hazardous wastes which are handled in Oregon: (a) exclusion of wastes from the leather tanning finishing and primary aluminum industries from regulation; (b) lack of an EP toxicity test in the hazardous waste definition; (c) regulation of certain wastes defined as acutely hazardous under the Federal definition when generated in quantities greater than 10 lbs/month, rather than 2.2 lbs/month as in the Federal definition; (d) certain exemption for mining wastes and waste explosives; and (e) exemptions of government-owned vehicles, vehicles under 8,000 lbs., and shipments of less than 2,000 lbs. from manifest requirements.

(2) Oregon's inability to apply standards substantially equivalent to the interim status standards to facilities which are not required to have licenses in Oregon (i.e., on-site treatment and collection facilities).

(3) The existence of licenses which do not fully incorporate the interim status standards (disposal and off-site treatment and collection facilities).

Dated: Octoberd 9, 1980.

Daniel Petke,

Regional Administrator.

[FR Doc. 80-32178 Filed 10-15-80; 8:45 am]

BILLING CODE 6560-30-M

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40 CFR Part 123

[CSW-6-FRL 1633-8]

Texas: Submission for Approval of Interim Authorization Plan, Phase I, Hazardous Waste Management Plan

AGENCY: Environmental Protection Agency.

ACTION: Notice of public comment period and of a public hearings.

SUMMARY: In the May 19, 1980 Federal Register (45 FR 33063), the Environmental Protection Agency promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976 (as amended), to protect human health and the environment from the improper management of hazardous waste. Included in these regulations, which become effective 6 months from the date of promulgation, were provisions for a transitional stage in which states would be granted interim program authorization. The interim authorization program will be implemented in two phases corresponding to the two stages in which an underlying Federal program will take effect.

As noted in the May 19, 1980 Federal Register, copies of state submittals for Phase I Interim Authorization are to be available for public inspection and comment. The purpose of this notice is to announce the availability of the Texas submittal for Phase I Interim Authorization for public review, to invite public comment, and give notice of a public hearing to be held on Texas' application. A listing and a description of requirements for interim authorization are stated in 40 CFR Section 123, Subpart F.

DATE: Comments on the Texas Interim Authorization application must be received by November 25, 1980.

Public hearing: EPA will hold a public hearing on Texas' application for Interim Authorization on Tuesday, November 18, 1980, at 7:00 p.m.

ADDRESSES: Copies of the Phase I Interim Authorization plan are available during normal business hours at the following addresses for inspection and copying:

Environmental Protection Agency, Region VI, Library, 28th floor, 1201 Elm Street, Dallas, Texas 75270. (214) 767-7341;

Texas Department of Health, Division of Solid Waste Management, Room T-713, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7271;

Texas Department of Water Resources, Stephen F. Austin State Office Building, Library—Room 511, 1700 N. Congress Avenue, Austin, Texas 78711, (512) 475-3781.

Written comments should be sent to: Environmental Protection Agency, Region VI, Air and Hazardous Materials Division, Attention: Beverly Foster, Solid Waste Branch, 1201 Elm Street, Dallas, Texas 75270, (214) 767-2645.

The public hearing will be held in the Stephen F. Austin State Office Building, Room 118, 1700 N. Congress Avenue, Austin, Texas.

FOR FURTHER INFORMATION CONTACT: Beveral Foster, Solid Waste Branch, U.S. EPA, Region VI, Dallas, Texas 75270, (214) 767-2645.

Date: October 7, 1980.

Adlene Harrison,

Regional Administrator.

[FR Doc. 80-32156 Filed 10-15-80; 8:45 am]

BILLING CODE 6560-30-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-09; Notice 8]

Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration, (NHTSA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice grants, in parts, a petition for rulemaking by General Motors (GM) seeking a change in the padding requirements of Standard No. 213. In response to the GM petition, the notice proposes to allow the use of the thinner padding materials in some child restraints. The notice denies GM request to lower the minimum compression—deflection resistance of padding materials. The notice also denies another GM petition seeking a change in or a delay of the buckle release requirements of the standard. On June 16, 1980, the agency delayed the effective date of the standard, in part to allow the development of new buckles. Thus, GM and other manufacturers will have adequate time to develop new buckles to meet the requirements.

DATES: Comments on the notice of proposed rulemaking must be received on or before Nov 17, 1980. Proposed effective date: date of publication of the final rule in the Federal Register.

ADDRESSES: Comments should refer to the docket number and be submitted to: Docket Section, Room 5108, National Highway Traffic Safety Administration 400 Seventh Street, S.W., Washington, D.C. 20590. (Docket hours: 8:00 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Vladislav Radovich, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-2264).

SUPPLEMENTARY INFORMATION: On December 13, 1979, NHTSA issued Standard No. 213, *Child Restraint Systems* (44 FR 72131). The standard established new performance requirements for child restraints, including requirements for the padding and buckles used in these devices. On April 1, 1980, General Motors (GM) filed two petitions for rulemaking seeking changes, discussed below, in the padding and buckle release requirements. This notice grants, in part, the GM padding petition and denies the buckle petition.

Padding

Standard No. 213, *Child Restraint Systems*, establishes requirements for the padding used in child restraint systems recommended for use by children under 20 pounds (i.e., infant carriers). The requirements provides that surfaces of the infant carrier which can be contacted by the test dummy's head during dynamic testing must be padded with a material that meets certain thickness and static compression requirements. The standard requires that the padding must have a 25 percent compression-deflection resistance of no less than 0.5 and no more than 10 pounds per square inch (psi). Material with a resistance of between 3 and 10 psi must have a thickness of ½ inch. If the material has a resistance of less than 3 psi, it must have a thickness of at least ¾ inch.

On April 11, GM petitioned the agency for a change in the padding requirement "to permit continued use of padding materials and thickness currently used in restraints." GM said the change was necessary to allow use of padding with a "proven level of performance" and to avoid use of more expensive padding which would raise the cost of child restraints.

GM explained that its infant carrier currently uses ⅜ inches of padding with a compression-deflection resistance of at least 0.2 psi. GM said that "This material, in combination with the energy absorption characteristics and shaped configuration of the Infant Seat body shell helps retain the infant and to minimize injuries due to head impact in a vehicle crash." GM emphasized that, "the primary energy absorbing component in our Infant Seat is the body shell, not the padding." GM said that it has used the same padding since 1973 and it knows of "no instance where infants involved in vehicle crashes, while being transported in our Infant Seats, have incurred injuries due to padding deficiencies."

The agency has decided to deny GM's petition to permit the use of padding with a compression-deflection resistance of 0.2 psi and a thickness of ⅜ inch.

Based on the field experience of GM's infant carrier, it appears that a child restraint with an energy absorbing shell can provide effective protection with padding having a compression-deflection resistance of 0.2 psi. Many infant carriers, however, do not have energy absorbing shells. If a restraint does not have an energy absorbing shell, it is important that the padding have a sufficient compression-deflection resistance and thickness to provide head impact protection. At present, manufacturers of infant carriers with rigid plastic use padding material with a compression-deflection resistance of at least 0.5 psi, more than twice the resistance of 0.2 psi material. The agency does not want to degrade that level of performance by allowing the use of 0.2 psi material.

At present there is no established test for effectively distinguishing between the energy absorbing capability of different infant carrier's structures. Having such a test would eliminate the need for establishing specific requirements for the padding. As noted in the December 1979 final rule on the standard, the agency eventually wants to establish a dynamic test to measure the energy absorption capability of an infant carrier's structure and the padding. Currently, there are no instrumented infant test dummies, which would be needed for dynamic testing of infant carriers. Therefore, the agency will continue to specify static tests for the padding to ensure that infants will be adequately protected in all types of infant carriers.

GM said that if the agency did not grant its request to use its current ⅜ inch thick padding material with a compression-deflection resistance of 0.2 psi, then the agency should "revise the padding requirements to comprehend the characterstics of other protective energy absorbing padding material that are currently available. Such a change would permit the selection of a specific material from a wider range of effective materials," GM said.

GM specifically requested the agency to change the requirements to allow the use of "currently used slow recovery rate padding materials in a thickness of ½ inch by providing for less stringent deflection-resistance characteristics (1.8 psi minimum instead of 3.0 psi minimum)." At present, the standard requires padding that has a compression-deflection resistance of less than 3.0 psi to have a thickness of ¾ inch.

In addition, GM requested the agency to permit the use of 0.2 psi padding materials, if they have a thickness of ¾ inch. GM said the change "would allow continued use of current infant carrier padding materials but require the thickness of those paddings to be increased.

GM noted that the compression-deflection resistance of padding is sensitive to the rate at which deflection occurs during the test procedure. As the deflection rate increases during testing, so does the measured resistance of the material. GM said that the padding used in the head impact areas of its child seat has a maximum compression-deflection resistance of 3 psi. However, several permissible deflection rates are permitted in the padding tests by the American Society for Testing and Materials test procedures incorporated into Standard No. 213. GM reported that the measured 25 percent compression-deflection value of the padding it uses can be as low as 1.8 psi. To accommodate the differences attributable to use of different deflection rates permitted in the testing, the agency is proposing to permit padding with a compression-deflection resistance of 1.8 psi or more to have a minimum thickness of ½ inch. As discussed previously, the agency has decided to deny GM's petition to use material with a compression-deflection resistance of 0.2 psi. Even if that material is used in thickness of ¾ inch, it still has less than half the resistance of the minimum material currently permitted by the standard.

GM also requested the agency to delete the current requirement that the padding not have a compression-deflection resistance greater than 10 psi. GM argued that "materials that exceed a compression-deflection resistance of about 5 psi would probably meet with objections for potential purchasers because they would be too hard. Thus, we do not believe an upper limit is necessary because of the demands of the market place to provide a comfortable restraint system."

The agency agrees with GM that as a practical manner, consumer preference for a comfortable restraint will limit the hardness of materials used in portions of the restraint that are in constant contact with the child. However, there are designs utilizing impact shields that a child may only contact when he or she strikes it during a crash. The agency wants to ensure that such shields do not use padding with a high compression-deflection resistance that does not have an adequate energy-absorbtion capability. Therefore, GM's petition to delete the current limitation on the maximum compression-deflection resistance is denied.

Buckle Release Force

Standard No. 213 establishes the buckle release force required for the harness used to restrain a child within a child restraint. The requirement sets a minimum release of 12 pounds and a maximum release force of 20 pounds. The minimum force of 12 pounds should prevent small children from opening the buckle and thus defeating the protection of the harness system. The maximum release force of 20 pounds is to enable adults to easily open the buckle.

V 45 OCT 16 1980 UMI

In its petition, GM requested the agency to exempt certain buckles from the buckles release force requirements. The requested exemption would cover "buckles which require multiple steps for opening, or other designs which would tend to frustrate the child's attempts to open the buckle," such as designs that would locate the buckle so that it is not accessible to a restrained child. GM believes that "such design will effectively inhibit the operation of the belt release by the child in the child restraint system." GM asked that if the agency denied its petition, then the effective date of the standard shoulds be postponed by six months to allow time for development of a buckle to meet the new release force requirements.

The agency has decided to deny GM's request to add an exemption to the buckle force requirements. The agency adopted the buckle force release requirements because of reports that a child could easily open many current buckles, thus defeating the harness system. These reports included instances of children being able to open buckles, such as GM's current design, which require two or more operations before the buckle can be opened and the harness system completely defeated. Thus, current experience shows that buckles requiring several steps to operate will not satisfactorily prevent children from opening the buckle.

Likewise the agency is concerned about buckles that rely exclusively on their inaccessible location as a means of preventing a child from opening the buckle. Given the ingenuity of children, few if a any locations on the relatively small surfaces of a child restraint may be inaccessible. Likewise, if the location is inaccessible to the child, it may be difficult for an adult to quickly locate and readily unbuckle the harness in an emergency.

On May 1, 1980, the agency published a notice in the **Federal Register** extending the effective date of Standard No. 213, for seven months, from June 1, 1980 until January 1, 1981 (45 FR 29045). One purpose of that extension was to provide manufacturers with sufficient time for the design, testing and tooling of new buckles that meet the release force requirements. Because of this additional leadtime, GM and other manufacturers will be able to have new buckles in time to comply with the January 1, 1981, effective date. Thus, GM's request for a further postponement is denied.

Costs

The agency has assessed the economic and other impacts of the proposed change to the padding requirements and determined that they are not significant within the meaning of Excecutive Order 12044 and the Department of Transportation's policies and procedures for implementing that order. Based on that assessment, the agency concludes that the economic and other consequences of this proposal are so minimal that additional regulatory evaluation is not warranted. When Standard No. 213 was published in the **Federal Register** on December 12, 1979, the agency placed in the docket for that rulemaking a regulatory evaluation assessing the effect of the padding requirements set by the standard. The effect of the amendment proposed today is to permit the use of some padding materials in a thickness of ½ inch rather than ¾ inches. Such a change will reduce manufacturer padding costs. Because the impact is minimal, the agency is also setting a 30-day comment period on the proposal.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. Any claim of confidentiality must be supported by a statement demonstrating that the information falls within 5 U.S.C. section 552(b)(4), and that disclosure of the information is likely to result in substantial competitive damage; specifying the period during which the information must be withheld to avoid that damage; and showing that earlier dsisclosure would result in that damage. In addition, the commenter or, in the case of a corporation, a responsible corporate official authorized to speak for the corporation must certify in writing that each item for which confidential treatment is requested is in fact confidential within the meaning of section 552(b)(4) and that a diligent search has been conducted by the commenter or its employees to assure that none of the specified items has previously been disclosed or otherwise become available to the public.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant matertial as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new materials.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

The principal authors of this notice are Vladislav Radovich, Office of Vehicle Safety Standards, and Stephen Oesch, Office of Chief Counsel.

In consideration of the foregoing, the following amendment is proposed in Standard No. 213, *Child Restraint Systems* (49 CFR 571.213):

1. Section 5.2.3.2(b) would be revised to read as follows:

(b) A thickness of not less than ½ inch for materials having a 25 percent compression-deflection resistance of not less than 1.8 and not more than 10 pounds per square inch when tested in accordance with S8.3. Materials having a 25 percent compression-deflection resistance of less than 1.8 pounds per square inch shall have a thickness of not less than ¾ inch.

(Secs. 103, 119, Pub. L. 89–563; 80 Stat. 718 (15 U.S.C. 1407); delegation of authority at 1.50)

Issued on October 8, 1980.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 80–32078 Filed 10–9–80; 4:28 pm]

BILLING CODE 4910–59–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1034

[Ex Parte No. 376]

Railroads; Rerouting of Traffic

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes rules to permit carriers to reroute traffic automatically for 30 days when necessary for reasons beyond their control. The rules would also allow the carriers to extend the rerouting periods for additional 30-day increments. The rerouting carriers would have to notify the Commission, the shippers affected, other carriers affected, the Association of American Railroads, and the American Short Line Railroad Association of all rerouting activity. Carriers and shippers affected by rerouting are urged to resolve among themselves all controversies that arise and may seek the informal or formal opinion of the Commission.

DATES: Comments must be received on or before December 1, 1980.

ADDRESS: An original and 15 copies of any comments should be sent to: Room 5340, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Richard Felder, (202) 275–7693.

SUPPLEMENTARY INFORMATION:

Background

On February 11, 1980, we published in the **Federal Register** an Advance Notice of Proposed Rulemaking at 45 FR 9027. We announced our intention to propose changing the procedures by which carriers obtain orders permitting them to reroute traffic. Comments on our proposals were received and have been considered. We now propose specific rules changing the procedures, and we request comments on them.

The rerouting procedures currently used require prior approval by the Commission. Under 49 CFR 1034—Routing of Traffic, the Commission appoints agents to issue orders permitting carriers to reroute traffic on a case-by-case basis whenever the carriers are unable to move traffic over their lines. Rerouting orders are issued under 49 U.S.C. 11124.

The need for the Commission to issue these rerouting orders arises only occasionally—typically averaging two or three times per month. The process itself is ministerial, consuming little time. Only in rare instances do rerouting orders impose potential undue harm to shippers, consumers, or other carriers.

The process typically begins when a carrier contacts the Commission by telephone or wire, and requests an order permitting it to reroute traffic to another carrier. Rerouting is necessary when a portion of the carrier's system is disabled as a result of natural disasters, such as floods, or due to other reasons, such as derailments. Service Order No. 1344, served May 28, 1980, (45 FR 66796, Oct. 8, 1980), now in effect, appointed the Director and the Assistant Director of the Commission's Office of Consumer Protection as the Commission's agents for handling these requests.

The Commission's agent quickly assesses the situation and usually issues an order permitting the carrier to reroute traffic to a different carrier or carriers. Prompt action is necessary, for the situation often affects traffic already in route. Typically, the agent notifies the carrier that a rerouting order with a specific order number has been issued, even before that order is issued in writing and published in the **Federal Register**, so that the carrier may immediately refer to the order as authority when it reroutes. Usually, the carriers involved have standing agreements among themselves, so that rerouting can take place efficiently, shippers can be notified, and revenues can be divided accordingly.

Consistent with our authority under Section 11124, we now propose new rules to govern the handling of rerouting and propose to vacate Service Order No. 1344. With the exception of one participant, all those commenting agreed that the Commission's present role as a clearinghouse for these orders unnecessarily interferes with the carriers' day-to-day management of rerouting operations, is unwieldy, and creates an unwarranted paperwork burden. Based on our experience, we concur.

The proposed rules reflect present concurrence and notification practices. Many of the ministerial procedures which our agents have routinely authorized would continue. For example, the AAR would continue to notify involved carriers, and all shippers would continue to be notified of rerouting. The primary change from present practices would be the elimination of the requirement for prior Commission approval. The proposed rules establish a standard for when rerouting is appropriate. They reflect the same standard now being used in the granting of rerouting orders. To implement the rules, the carriers would cite them, and comply with them.

Remedies of affected persons are not changed. In response to the concern of Patrick Simmons, Illinois Legislative Director for United Transportation Union, we note that any person affected by a rerouting action may challenge the lawfulness of the action before the Commission. To provide an additional avenue for informal resolution of any disputes, we also propose an informal advice and mediation procedure through the Railroad Service Board.

Four issues discussed in the comments merit some additinonal discussion.

Duration of Rerouting

The proposed rules provide that a carrier may automatically reroute its traffic for up to 30 days following the day the disability begins. This time period is adequate to cure most disabilities. The rerouting carrier may extend the 30-day period for additional 30-day increments by submitting a notice and explanation for the extension to the commission's Railroad Service Board.

Any shipper who believes the duration of rerouting—the initial 30-day period of 30-day extensions—is being used to circumvent shipper-designated routing without justification and who cannot reach an understanding with the carrier may immediately request the Commission's Railroad Service Board to issue an informal opinion on the matter.

Situations Qualifying for Rerouting

The proposed rules do not list the situations in which rerouting is necessary, e.g., natural disasters such as floods, or other problems such as derailments. Rather, the justification for rerouting would encompass all these situations by establishing the standards as those situations in which the carrier is unable to move the traffic for reasons beyond its control.

If it is believed that the rerouting is not in fact justifed, then any interested person any request the railroad Service Board's opinion and, if not satisfied, file a request for formal Commission review.

Concurrence by Receiving Carriers

The proposed rules provide that if a disabled carrier cannot accept cars received in interchange from a carrier which then must reroute the traffic, the rerouting carrier must confirm the inability of the disabled receiving carrier to handle the traffic before rerouting that traffic. In this way, if the receiving carrier is no longer disabled, it must accept the traffic, and reinstate the original routing.

Remedies

If disputes arise over any of these or any other issues concerning rerouting, the proposed rules assure that all traditional remedies will remain intact. In the event of a dispute, however, we urge all parties affected to work out any controversies among themselves. The parties may request an informal opinion from the Commission's Railroad Service Board to help them resolve any problem. Ultimately, the parties may seek formal adjudication of their dispute. While

formal proceedings and traditional Commission remedies cannot instantly respond to immediate problems inherent in rerouting traffic, they can afford remedies for unreasonable or otherwise unlawful practices.

For example, the Delaware and Hudson Railway Company in its comment discusses a situtation in which a disabled carrier (Penn Central) purportedly had no incentive to replace washed out track and for 2½ months delayed doing so. Delaware and Hudson states that in order to reroute, the disabled carrier diverted the traffic nearly 200 additional miles along its system to interchange with the receiving carrier, and thereby received a greater share of the revenues than it would otherwise have received. Delaware and Hudson states that the damage done, lost profits, was unrecoverable. It would propose a rule requiring any disabled carrier to compensate the rerouting carrier for 90 percent of the revenues lost based on prior traffic volumes.

We believe, contrary to Delaware and Hudson's statements, that damages are recoverable when justified in such situations. We express no opinion concerning the accuracy of the facts alleged or the merits of any claim implied in the above example. However, the example demonstrates the type of situation in which we would first hope to ameliorate any controversy and, if necessary, without prejudice allow for formal resolution. We cannot prejudge in a rulemaking whether or not specific practices are reasonable. Such determinations require case-by-case assement.

Proposed Rules

We propose to add the following rules under Chaper X of Title 49 of the Code of Federal Regulations:

§ 1034.1 Temporary authority.

(a) Authority. Any railroad subject to regulation under 49 USC 10501 may reasonably divert or reroute traffic to other carriers, if it is unable due to circumstances beyond its control promptly to transport traffic over a portion of its lines. This authority may be exercised for no more than 30 days following the day on which the rerouting begins. If a carrier needs more than 30 days before its disability or the disability of a receiving carrier is cured, it may automatically extend its rerouting for additional 30-day periods. To extend the period, it must submit a written or telegraphic notice and explanation to the Commission's Railroad Service Board explaining why the rerouting is necessary, when it began, when the disability occurred, why an extension is necessary, the specific lines disabled, the rerouting to be continued, which shippers are affected, and any other important facts. It must also submit a certification to the railroad Service Board that divisions of revenues have been agreed upon with other carriers involved in the rerouting.

(b) Concurrence by carriers. A railroad rerouting traffic must receive the concurrence of other railroads to which the traffic will be diverted or rerouted, before the rerouting or diversion begins. A rerouting carrier must also confirm the inability of a disabled receiving carrier to handle the traffic before rerouting that traffic. If the receiving carrier is no longer disabled, it must accept the traffic according to the routing originally designated.

(c) Notice by rerouting carrier. A rerouting carrier must notify the Commission's Railroad Service Board, the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to car service and car hire agreements, and the American Short Line Railroad Association before the rerouting or diversion begins. The rerouting carrier must notify each shipper at the time each shipment is rerouted or diverted and furnish to each shipper the rerouting. When a rerouting carrier submits to the Commission a notice and explanation for an extension of the rerouting period, it must immediately also submit a copy of that notice and explanation to the AAR, the American Short Line Railroad Association, and all shippers that have been affected or that the carrier believes will be affected or that request a copy.

(d) Notice by AAR. The Association of American Railroads shall notify all carriers affected by rerouting or by an extension of a rerouting period.

(e) Applicable rates. The rates applicable on shipments rerouted or diverted will be the rates applicable at the time shipments are originally routed.

(f) Divisions. The cariers involved in the rerouting or diversion shall proceed even though no contracts, agreements, or arrangements exist between them at the time concerning the divisions of the rates applicable to the traffic. Divisions shall be, during the time the rerouting is in effect, those voluntarily agreed upon by and between the carriers.

(g) Disputes and remedies. The Railroad Service Board of this Commission will help all parties informally resolve any controversies between them brought to the Board's attention concerning rerouting or diversion. If a controversy cannot be resolved informally, any party may file a complaint or petition for an investigation in a formal proceeding, seeking damages, prescriptions, cease and desist orders, or any other appropriate remedies. These rules and any action taken under them will not prejudice the right of any person to file a formal complaint or petition.

(49.U.S.C. 11124)

Conclusion

Any interested persons may file comments on these proposed rules on or before December 1, 1980.

While we believe that this decision will not significantly affect the quality of the human environment or conservation of energy resources, comments on this subject are invited.

(49 U.S.C. 10321, 11124, 5 U.S.C. 553)

Decided: September 25, 1980.

By the commission, Chairman Gaskins, Vice-Chairman Gregham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-32295 Filed 10-15-80; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

Atlantic Surf Clam and Ocean Quahog Fisheries; Public Hearing

AGENCY: National Oceanic and Atmospheric Administration (NOAA)/ Commerce.

ACTION: Notice of public hearing.

SUMMARY: A public hearing will be held by the National Marine Fisheries Service (NMFS) to solicit comments on the proposed closure of an area of the fishery conservation zone (FCZ) offshore and south of Chincoteague, Va., to surf clam fishing. The area proposed for closure (approximately 130 square miles) is located between (18) eighteen and (27) twenty-seven miles offshore between Chincoteague Inlet and Wachapreague Inlet.

This proposal is based on reports from commerical fishermen which indicate that the surf clams in this area are smaller than 4½ inches; thus the area falls within the criteria governing closure.

DATES: Comments on the proposed area closure are invited until October 31, 1980. A public hearing will be held on October 31, 1980, between 4:00 and 7:00 p.m., in conjunction with the regularly scheduled meeting of the Mid-Atlantic Fishery Management Council's Surf Clam Industry Advisory Subpanel.

ADDRESSES: The hearing will be held at the Sheraton Inn, Dupont Highway, Dover, Delaware. Written comments should be sent to the Regional Director, Northeast Region, National Marine Fisheries Service, at the address listed below. Mark "Surf Clam Comments" on the outside of the envelope.

FOR FURTHER INFORMATION CONTACT:

Allen E. Peterson, Jr., Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts 01930. Telephone (617) 281-3600.

SUPPLEMENTARY INFORMATION: Section 652.23(b) of the final regulations governing the Atlantic surf clam and ocean quahog fisheries, which were published January 3, 1980 (45 FR 786), provides that areas may be closed to surf clam fishing when a determination is made by the Regional Director. That determination may be based on logbook entries, processors' reports, survey cruises, and other sources, which show that the area in question contains surf clams of which: (1) 60 percent or more are smaller than 4½ inches in size, and (2) not more than 15 percent are larger than 5½ inches in size.

A number of areas have been closed in the past under this provision. They include areas offshore of Atlantic City, N.J., and Ocean City, Md. The area currently proposed for closure lies offshore and several miles to the south of Chincoteague, Va. Over the last eighteen months fishermen have occasionally reported significant amounts of small surf clams in this vicinity, In August, 1980, significant amounts of small clams were reported by fishermen in this vicinity, and special scientific studies were funded by the Mid-Atlantic Fishery Management Council (Council) to locate and define the area where small clams predominate. Those studies have delineated an area within which the surf clam size distribution meets the criteria for closure under provisions of § 652.23 of the regulations.

The area proposed for closure (approximately 130 square miles) is defined beginning at a point at 75°0.8′ W. longitude and 37°43.15′ N. latitude; thence southeasterly in a straight line to 74°55′ W. longitude and 37°42.47′ N. latitude; thence southwesterly in a straight line to 75°0.3′ W. longitude and 37°27.65′ N. latitude; thence northwesterly in a straight line to 75°14.3′ W. longitude and 37°28.3′ N. latitude; thence northeasterly in a straight line to 75°0.8′ W. longitude and 37°43.15′ N. latitude, point of beginning. Closure of the area for a period of at least one year has been recommended by the Council.

The public hearing has been scheduled to provide fishermen and others who may depend on the area, or who have information pertinent to the proposed area closure, an opportunity to comment. It is also intended that comments and information presented at the hearing will facilitate an accurate assessment of the economic importance of the area proposed for closure. On the basis of substantive information presented at the hearing, the Regional Director will decide whether the proposed area closure should be effected.

(16 U.S.C. 1801 *et seq*)

Signed at Washington, D.C. this 9th day of October, 1980.

T. L. Leitzell,

Assistant Administrator for Fisheries.

[FR Doc. 80-32241 Filed 10-15-80; 8:45 am]

BILLING CODE 3510-22-M

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Notices

Federal Register
Vol. 45, No. 202
Thursday, October 16, 1980

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Umatilla National Forest Grazing Advisory Board; Meeting

The Umatilla National Forest Grazing Advisory Board will meet at 1:00 p.m., December 10, 1980, at the U.S. Forest Service Office, 2517 S.W. Hailey Avenue in Pendleton, Oregon. The purpose of the meeting is to examine, in detail, the Forest's 1982 range improvement proposals and to make recommendations on the range betterment program to the Forest Supervisor.

The meeting will be open to the public. Persons who wish to attend should notify the Forest Supervisor's Office at 2517 S.W. Hailey Avenue, Pendleton, Oregon, 97801, or call 276–3811, ext. 231. Written statements may be filed with the Forest Service before or after the meeting.

The established rules for public participation are that a time period will be set up for the public to participate. Time limits may be set on individual public participation.

Dated: October 3, 1980.

H. B. Rudolph,
Forest Supervisor.

[FR Doc. 80-32174 Filed 10-15-80; 8:45 am]
BILLING CODE 3410-11-M

CIVIL AERONAUTICS BOARD

[Docket No. 37392; Order 80-10-31]

Transatlantic, Transpacific and Latin American Service Mail Rates Investigation; Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 8th day of October 1980.

By Order 78–12–159, the Board adopted a review procedure and updating formula for establishing final international service mail rates for future periods on a semi-annual basis. The present order reflects all revisions adopted subsequently by the Board [1] and proposes tentative final rates for the last quarter of calendar year 1980. The rates shall serve as temporary rates for that quarter until the final rate order is issued. Since these rates are subject to retroactive adjustment, we waive the procedural requirements of Rule 310 with respect to the establishment of these temporary rates.

The tenative final service mail rates set forth in the attached Appendix A [2] reflect the application of the following cost escalation factors:

1. Fuel Cost: The change in average price per gallon over the four months from March through July is added to the July 1980 average price per gallon to arrive at the projected average price per gallon at November 15, 1980, the midpoint of the quarter for which the rates are to be effective; and

2. Other costs: Cost escalation from October 1, 1979, to October 1, 1980, is based on a comparison of unit costs for the year ended March 31, 1979, with unit costs for the year ended March 31, 1980.

These rates reflect decreases in the linehaul charges in the Atlantic and Latin American areas of about 1.4 and 3.5 percent, respectively, and an increase of approximately 2.4 percent in Pacific linehaul charges from the final rates established for the third quarter of 1980. The cause for the decreases is attributed to a continuing moderation in the rate of increase in fuel prices. Our fuel price projections in Order 80–7–10 were based on average monthly rates of increase of 3.22 cents in the Atlantic and 3.84 cents in Latin America. The actual average monthly rate of increase over the last four months was only 1.11 cents in the Atlantic and 1.06 cents in Latin America.

The Board tentatively finds and concludes that:

(1) The fair and reasonable final rates of compensation to be paid in their entirety by the Postmaster General pursuant to the provisions of section 406 of the Federal Aviation Act of 1958, as amended, to the carriers for the transportation by aircraft of space-available mail, military ordinary mail and all other mail over their respective routes in the Atlantic, Pacific, and Latin American rate areas, the facilities used and useful therefor, and the services connected therewith, for the period from October 1 through December 31, 1980, are those set forth in the attached Appendix A.

(2) The fair and reasonable temporary rates of compensation for the transportation of mail by aircraft in international services for the period January 1, 1981, until further Board order shall be the final rates established for the period October 1 through December 31, 1980.

(3) The terms and conditions applicable to the transportation of each class of mail at the rates established here are those set forth in Order 79–7–16.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, particularly sections 204(a) and 406, and the Board's Procedural Regulations promulgated in 14 CFR, Part 302.

1. We direct all interested persons to show cause why the Board should not adopt the foregoing tentative findings and conclusions, and fix, determine and publish the final rates specified above to be effective October 1, through December 31, 1980.

2. We direct all interested persons having objections to the rates or to the tentative findings and conclusions proposed here to file with the Board a notice of objection within ten (10) days after the date of service of this order, and, if notice is filed, to file a written answer and any supporting documents within 30 days after service of this order.

3. If no notice is filed, or if after notice, no answer is filed within the designated time, or if an answer timely filed raises no material issue of fact, we will deem all further procedural steps waived and we may enter an order incorporating the tentative findings and conclusions set forth here and fixing the final rates set forth in the attached Appendix A.

4. The fair and reasonable temporary rates of compensation for the transportation of mail by aircraft in international services for the period October 1, 1980, until further Board order are the rates set forth in the attached Appendix A.

[1] See Orders 79–7–16, 79–7–95, 79–12–128, 80–3–160, 80–3–161, 80–6–173 and 80–7–10.

[2] Appendix A filed as part of the original document.

5. We shall serve this order upon all parties to the proceeding in Docket 37392.

We shall publish this in the Federal Register.[3]

By the Civil Aeronautics Board.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 80-32191 Filed 10-15-80; 8:45 am]
BILLING CODE 6320-01-M

[Docket No. 37392; Order 80-10-30]

Transatlantic Transpacific and Latin American Service Mail Rates Investigation; Order Fixing Final Service Mail Rates

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 8th day of October 1980.

By Order 80–7–10, served July 9, 1980, the Board directed all interested persons to show cause why we should not establish the international service mail rates proposed therein as final rates of compensation for the period July 1 through September 30, 1980. Pan American World Airways, Inc. and the Flying Tiger Line Inc. filed notices of objection and answers to that order. Trans World Airlines, Inc. filed a motion for leave to file an otherwise unauthorized document and consolidated notice and answer to that order.[1]

Pan Am and TWA reiterate their earlier objections to the proposed rates since they are based on the same methodology which they have challenged in the United States Court of Appeals for the Second Circuit.[2] Otherwise, they have no objection to the proposed rates.

FTL objects to the cost escalation factors used to determine the rates in the Pacific rate area. It alleges that the cost data for Northwest are distorted and unreliable and produce improper escalation factors. The carrier believes that the effects of a strike [3] and alleged incorrect reporting of foreign exchange gains coupled with a change in allocation procedures by Northwest distorts any comparison of unit costs.

Upon consideration of all of the arguments presented, we have determined that no modification of Order 80–7–10 is warranted.

FTL states that it has not been able to ascertain the bases for Northwest's reporting changes. It believes that Northwest has not complied with the Board's Economic Regulations,[4] which call for the filing of a revised policy statement when changes in procedures occur, because Northwest has not filed a policy statement (AP–1) since 1977. We cannot agree. An examination of that policy statement does reveal that there are several items which are allocated on the basis of weighted aircraft movements, weighted revenue passenger-miles, fixes assignments and special analysis. However, the policy statement does not and need not specify precisely how these types of allocations are calculated and, under current procedures, these items can be changed without the carrier being required to file a new AP–1. This is what has occurred in Northwest's case. We would note that the change in allocation procedures shifted costs from the Pacific to the domestic entity. Northwest has little incentive to manipulate costs in this fashion, and no reason appears to question the data. Our staff has reviewed most of the changes in the course of its ongoing supervision of carrier accounting procedures and is satisfied that the adjustments fall well within managerial discretion.[5]

FTL also alleges that Northwest has been incorrectly reporting foreign exchange gains in the general and administrative expense account which materially affects the Board's calculation of total expenses for the Pacific rate area. It believes that they should be reported as a nonoperating expense item because gains of such a large amount (almost $22 million) could not have resulted from ordinary transactions. We believe, however, that Northwest has reported correctly. To warrant treatment as a nonoperating item, gains or losses from transactions involving currency translations must be of a nonroutine abnormal character.[6] At best, the evidence here shows an ascendant rate of growth in gains. While the amount of gains certainly seems substantial in size, the transactions themselves appear to be normal and routine for Northwest, and it has, therefore, properly treated them as an operating expense item.[7] A review of Northwest's reports reveals that it has been consistent in its treatment of these transactions at least since 1975, the base year used to establish the current rate structure, and that these gains total almost $36 million over the five-year period.

With regard to the impact of the strike on costs, our position has been, and remains, that no adjustment is required. Any adjustments to reported data for the impact of a strike are usually speculative and, as such, open to debate. We have opted to make no adjustment on the premise that any distortions will even out over the long-run. The effect on the rates has been that the carriers probably received a small overpayment in calendar year 1979 which will be offset by a small underpayment in 1980. On balance, it is anticipated that the carriers will receive adequate compensation for providing mail services. Reason dictates that we must be consistent in our treatment of this matter throughout the entire period that the rates are affected by the strike.

FTL notes that in the case of the Standard Foreign Fare Levels, the Board added an additional five percent fare flexibility to serve as a counterweight for these anomalies, and should do likewise for mail rates. It should be noted that while flexibility is statutorily mandated for passenger fares, it is not for mail rates. Competition is relied upon as the principal regulator of fares in those foreign and domestic areas where fare flexibility exceeds statutory mandates. Mail rates are currently unaffected by competition. The cost pass through system takes carrier costs as we find them, without adjustment, so that accurate results are obtained over the long term. There is no basis to believe that a series of time consuming and probably controversial *ad hoc* adjustments would provide better results. We note that the Congress has taken the same view when it has legislated in this area. See sections 1002(d)(6)(B) and 1002(j)(9) of the Federal Aviation Act. We note also that a pending rulemaking proceeding has as its focus the proposed establishment of mail rate zones defined by a maximum and minimum rate.[8]

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, particularly sections 204(a) and 406, and the Board's Procedural Regulations

[3] All Members concurred.

[1] We grant the motion of TWA for the Board to accept the filing of its notice and answer out of time.

[2] *Pan American World Airways, Inc.* v. *CAB*, No. 79–4132 and *Trans World Airlines, Inc.* v. *CAB*, No. 79–4131.

[3] FTL states that Northwest was on strike from April 29 to August 14, 1979. The strike actually occurred in 1978.

[4] 14 CFR 241.22(d).

[5] If, despite these considerations, FTL continues to believe that a basis for challenging the calculations exists, our staff is prepared to explore with the parties involved how the necessary non-proprietary information could be obtained.

[6] 14 CFR 241.12(61) and 241.2–3(f).

[7] This is supported by Board audit staff reports.

[8] See EDR–387, August 31, 1979. The staff is currently preparing a supplemental notice which will propose a broadening of the EDR–387 zones.

promulgated in 14 CFR, Part 302.

1. The fair and reasonable rates of compensation to be paid in their entirety by the Postmaster General pursuant to the provisions of Section 406 of the Federal Aviation Act of 1958, as amended, to the carriers for the transportation by aircraft of space-available mail, military ordinary mail and all other mail over their respective routes in the Atlantic, Pacific and Latin American rate areas, the facilities used and useful therefor, and the services connected therewith, for the period from July 1 through September 30, 1980, or until further Board order, are those set forth in the attached Appendix.[9]

2. The fair and reasonable temporary rates of compensation for the transportation of mail by aircraft in international services for the period October 1, 1980, until further Board order shall be the final rates established for the period July 1 through September 30, 1980.

3. The terms and conditions applicable to the transportation of each class of mail at the rates established by this order are those set forth in Order 79–7–16.

4. A copy of this order shall be served upon all parties in this proceeding.

We shall publish this order in the Federal Register.

By the Civil Aeronautics Board:

Phyllis T. Kaylor [10]

Secretary.

[FR Doc. 80-32192 Filed 10-15-80; 8:45 am]

BILLING CODE 6320-01-M

[Docket 38620]

Yukon Air Service, Inc., d.b.a. Air North; Fitness Investigation; Hearing

Notice is hereby given, pursuant to the Federal Aviation Act of 1958, as amended, that a hearing in the above-titled proceeding is assigned to be held on October 27, 1980, at 10:00 a.m. (local time) in Room 1003, Hearing Room B, Universal North Building, 1875 Connecticut Avenue, N.W., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., October 7, 1980.

William A. Kane, Jr.,

Administrative Law Judge.

[FR Doc. 80-32190 Filed 10-15-80; 8:45 am]

BILLING CODE 6320-01-M

[9] Appendix filed as part of the original document.
[10] All Members concurred.

DEPARTMENT OF COMMERCE

International Trade Administration

Numerically Controlled Machine Tool Technical Advisory Committee; Partially Closed Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, as amended 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Numerically Controlled Machine Tool Technical Advisory Committee will be held on Thursday, October 30, 1980, at 10:00 a.m. in Room 6A110, Department of Energy, Forrestal Building, 1000 Independence Ave., SW., Washington, D.C.

The Numerically Controlled Machine Tool Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, January 13, 1977, August 28, 1978, and August 29, 1980 the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to Section 5(h)(1) of the Export Administration Act of 1979, 50 U.S.C.A. App. 2401 *et seq.* and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical specifications and policy issues relating to those specifications which are of concern to the Department, (B) worldwide availability of product and systems, including quantity and quality, and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to any goods or technology, and (D) exports subject to unilateral and multilateral controls in which the United States establishes or in which it participates including proposed revisions of any such controls.

The Committee meeting agenda has five parts:

General Session

(1) Opening remarks by the Chairman.

(2) Presentation of papers or comments by the public.

(3) Discussion of new operating procedures as defined in the recent renewal of TAC charter.

(4) Review observations at the recent IMTS–80. Discuss preparation of a committee report on observed foreign availability.

(5) Continuation of discussion pertaining to robots. A key issue is the degree of involvement of the Numerically Controlled Machine Tool Technical Advisory Committee in this subject.

(6) Any new business.

Executive Session

(7) Discussion of matters properly classified under Executive Order 11652, or 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

With respect to agenda item (7), the Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 16, 1978 pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government In The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1). Such matters are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of the national defense or foreign policy. All materials to be reviewed and discussed by the Committee during the Executive Session of the meeting have been properly classified under Executive Order 11652 or 12065. All Committee members have appropriate security clearances.

A copy of the Notice of Determination to close meetings or portions thereof is available for public insection and copying in the Central Reference and Records Inspection Facility, Room 5317, U.S. Department of Commerce, telephone: 202–377–4217.

Copies of the minutes of the General Session will be available by calling Mrs. Margaret Cornejo, Office of the Director of Licensing, Office of Export Administration, Room 1609, U.S. Department of Commerce, Washington, D.C. 20230, telephone: 202–377–2583.

For further information contact Mrs. Cornejo either in writing or by phone at the address or number shown above.

Dated: October 8, 1980.

Saul Padwo,

Acting Director, Office of Export Administration, Department of Commerce.

[FR Doc. 80-32278 Filed 10-15-80; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The New England Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Public Law 94–265), will meet to discuss lobsters, the Scientific and Statistical Committee Report, environmental affairs, regulatory measures, groundfish, and other business as necessary.

DATES: The meeting, which is open to the public, will convene on Wednesday, October 29, 1980, at approximately 10 a.m., and will adjourn on Thursday, October 30, 1980, at approximately 5 p.m.

ADDDRESS: The meeting will take place at the Sheraton-Regal Inn, Route 132 and Bearses Way, Hyannis, Massachusetts.

FOR FURTHER INFORMATION CONTACT: New England Fishery Management Council, Suntaug Office Park, Five Broadway (Route One), Saugus, Massachusetts 01906. Telephone: (617) 231–0422.

Dated: October 14, 1980.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries. National Marine Fisheries Service.

[FR Doc. 80-32342 Filed 10-15-80; 8:45 am]

BILLING CODE 3510-22-M

COMMUNITY SERVICES ADMINISTRATION

Funding for Center for Rural Affairs, Inc., an Emergency Energy Conservation Program To Operate in Nebraska; Potential Interest to Rural Community Action Agencies in Every State

AGENCY: Community Services Administration.

ACTION: Notice to all Boards of Directors of CAA(s) and SEOO(s).

SUMMARY: The Community Services Administration is notifying Boards of Directors of Community Action Agencies (CAAs) and all State Economic Opportunity Offices (SEOO's), in accordance with section 222(a) of the Economic Opportunity Act of 1964, as amended, that CSA has made a decision to fund the Center for Rural Affairs, Walthill, Nebraska (telephone 402–846–5428) to carry out a two-year project of information dissemination, training, and monitoring of on-farm small-scale appropriate technologies based on the work of the previously CSA-funded Small Farm Energy Project. The project will operate primarily in Nebraska, but training and information dissemination are of potential interest to rural CAAs throughout the country.

EFFECTIVE DATE: October 16, 1980.

FOR FURTHER INFORMATION CONTACT: Ms. Kate Jackson, Community Services Administration, 1200 19th Street, NW., Washington, D.C. 20506, Telephone: (202) 632–6503, Teletypewriter: (202) 254–6218.

(Catalogue of Federal Domestic Assistance: 49.014)

(Sec. 602, 78 Stat. 5301; 42 U.S.C. 2942)

Joe Maldonado,

Deputy Assistant Director for Community Action

[FR Doc. 80-32246 Filed 10-15-80; 8:45 am]

BILLING CODE 6315-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

October 2, 1980.

The USAF Scientific Advisory Board Ad Hoc Committee on Turbine Engine Monitoring Systems will meet at the Northrop Electronics Division, Hawthorne, California, on November 5–6, 1980. The meeting will convene at 8:30 a.m. and adjourn at 5:00 p.m. on both days.

The Committee will review and evaluate the A–10/TF34 turbine engine monitoring system development. The briefings and discussions will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (4).

For further information, contact the Scientific Advisory Board Secretariat (202) 697–8845.

Carol M. Rose,

Air Force Federal Register Liaison Officer.

[FR Doc. 80-32173 Filed 10-15-80; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Medical Research and Development Advisory Panel Ad Hoc Study Group on Surgery; Partially Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

Name of Committee: United States Army Medical Research and Development Advisory Panel Ad Hoc Study Group on Surgery.

Date of Meeting: 3 November 1980.

Time and Place: 0900 hrs, Conference Room AS3102, Letterman Army Institute of Research, Presidio of San Francisco, CA.

Proposed Agenda: This meeting will be open to the public on 3 November 1980 from 0900–0930 hrs to discuss the scientific research program of the Surgery Division, Letterman Army Institute of Research. Attendance by the public at open session will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), Title 5, US Code and Section 10(d) of P.L. 92–463, the meeting will be closed to the public from 0930–1715 for the review, discussion and evaluation of individual programs and projects conducted by the U.S. Army Medical Research and Development Command, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

J. Ryan Neville, Ph. D., Assistant Director, Research Contract Management, Letterman Army Institute of Research, Presidio of San Francisco, CA 94129, (415) 561–4367, will furnish summary minutes, roster of Committee members and substantive program information.

For the Commander:

Harry G. Dangerfield, M.D.,

Colonel, MC, Deputy Commander

[FR Doc. 80-32185 Filed 10-15-80; 8:45 am]

BILLING CODE 3710-08-M

Continuing Operation of Fort Carson, Colo.; Filing of Environmental Impact Statement

October 9, 1980.

The Army, on October 10, 1980, provided the Environmental Protection Agency a Draft Environmental Impact Statement (DEIS) concerning the continuing operation of Ft. Carson, Colorado. The alternatives of maintaining, discontinuing, or changing missions at Fort Carson are analyzed. Copies of the statement have been forwarded to concerned Federal, State, and local agencies. Interested organizations or individuals may obtain copies for the cost of reproduction from the Commander, 4th Infantry Division (mechanized) and Fort Carson, ATTN: AFZC-FE-EQ, Fort Carson, CO 80913.

In the Washington area, copies may be seen during normal duty hours, in the Environmental Office, Office of Assistant Chief of Engineers, Room

1E676, Pentagon, Washington, DC 20310, telephone: (202) 694–3434.

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health, OASA (IL&FM).

[FR Doc. 80-32180 Filed 10-15-80; 8:45 am]

BILLING CODE 3710-08-M

World War II Debris Removal and Cleanup, Aleutian Islands and Lower Alaska Peninsula, Alaska; Filing of Draft Environmental Impact Statement

The Army. On 10 October 1980, provided the Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for the World War II Debris Removal and Cleanup, Aleutian Islands and Lower Alaska Peninsula, Alaska.

The proposed action would remove and dispose of derelict buildings, machinery and other obsolete and abandoned material remaining from military operations and construction during the World War II period. Alternatives considered are no action, minimal level, mid-level and total cleanup. Impacts range from the removal of safety hazards and existing or potential pollutants; employment stimulus to local labor force; visual aesthetic enhancement and long term improvement of surface/groundwater quality to the disruption of fragile ecosystems with 100 or more years recovery time.

Copies of the statement have been forwarded to concerned Federal, State and local agencies. Interested organizations or individuals may obtain copies from Mr. R. M. Oenbrink, Engineering Division, Alaska District, U.S. Army Corps of Engineers, Box 7002, Anchorage, Alaska 99510.

In the Washington area, copies may be seen during normal duty hours, in the Army Environmental Office, Office of Assistant Chief of Engineers, Room 1E676, Pentagon, Washington, D.C. 20310, telephone: (202) 694–3434.

Lewis D. Walker,

Deputy for Environmental, Safety and Occupational Health, OASA (IL&FM).

[FR Doc. 80-32179 Filed 10-15-80; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Naval Discharge Review Board; Hearing Locations

In November 1975, the Naval Discharge Review Board commenced to convene and conduct prescheduled discharge review hearings for a number of days each quarter in locations outside of the Washington, D.C., area. The cities in which these hearings are scheduled are determined in part by the concentration of applicants in a geographic area.

The following Naval Discharge Review Board itinerary for September 1980 through January 1981 has been approved, but remains subject to modification if required:

September 29 through October 10, 1980—Chicago, IL; Minneapolis, MN;
October 20 through 31, 1980—San Diego, CA;
October 27 through November 7, 1980—Dallas, TX; St. Louis, MO;
December 1 through 15, 1980—Atlanta, GA; New Orleans, LA; Tampa, FL;
December 8 through 12, 1980—Albany, NY;
January 11 through 23, 1981—San Diego and San Francisco, CA.

Any former member of the Navy or Marine Corps who desires a discharge review, either in Washington, D.C., or in a city nearer to his or her residence, should file an application with the Naval Discharge Review Board, using DD Form 293. If a personal appearance is requested, the petitioner should enter on the application which location is preferred.

Application forms (DD 293) may be obtained from, and the completed application should be mailed to, the following address: Naval Discharge Review Board, Suite 910, 801 North Randolph Street, Arlington, Virginia 22203.

Notice is hereby given that, since the foregoing itinerary is subject to modification and since, following receipt of a new application, the Naval Discharge Review Board must obtain the applicant's military records before a hearing may be scheduled, the submission of an application to the Naval Discharge Review Board is not tantamount to scheduling a hearing. Applicants and/or their representatives will be notified by mail of the date and place of their hearing when personal appearance has been requested.

For further information concerning the Naval Dischage Review Board, contact: Captain James C. Price, U.S. Naval Reserve, Executive Secretary, Naval Discharge Review Board, Suite 910, 801 North Randolph Street, Arlington, Virginia 22203, telephone No. (202) 696–4881.

Dated: October 7, 1980.

P. B. Walker,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Administrative Law).

[FR Doc. 80-32178 Filed 10-15-80; 8:45 am]

BILLING CODE 3810-71-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Proposed Order Granting Special Temporary Public Interest Exemptions

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby sets forth its Order proposing to grant special temporary public interest exemptions from the prohibitions of Sections 301(a)(2) and (3) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act), 42 U.S.C. 8301 *et seq.*, pursuant to Section 311(e) of FUA, 10 CFR 501.68, and 10 CFR Part 508, to the following powerplants:

Case control No.	Petitioner	Generating station	Unit identification	Location
50441-2716-21-41	Carolina Power & Light Company	W. H. Weatherspoon.	GT 1	Lumberton, N.C.
50441-2716-22-41			GT 2	
50441-2716-23-41			GT 3	
50441-2716-24-41			GT 4	
50467-1130-21-41	Cedar Falls Utilities	Cedar Falls	GT 1	Cedar Falls, Iowa.
50484-2480-01-41	Central Hudson Gas & Electric Corporation.	Danskammer	No. 1	Newburgh, N.Y.
62004-9076-21-41	City of Fayetteville	Fayetteville	CT 1	Fayetteville, N.C.
62004-9076-22-41			CT 2	
62004-9076-23-41			CT 3	
62004-9076-24-41			CT 4	
54015-2393-54-41	Jersey Central Power & Light Company	Gilbert	CC 4	Milford, N.J.
54015-2393-55-41			CC 5	
54015-2393-56-41			CC 6	
54015-2393-57-41			CC 7	
56516-6081-62-41	Maesachusetts Municipal Wholesale Electric Company.	Stony Brook	CC 2	Ludlow, Mass.
62117-3344-21-41	Northwestern Public Service Co	Huron Gas Turbine	GT 1	Huron, S. Dak.
52304-3156-26-41	Philadelphia Electric Company	Barbadoes	Ct 6	Norristown, Pa.
52304-3156-27-41			Ct 7	
53370-2067-02-41	Public Service Commission of Yazoo City	Yazoo City Steam Plant.	No. 2	Yazoo City, Mo.
53370-2067-03-41			No. 3	
53370-2067-04-41			No. 4	
53370-2067-25-41			CT 5	
52564-0147-03-41	Salt River Project	Kyrene	No. 3	Tempe, Ariz.
52564-0147-04-41			No. 4	

Case control No.	Petitioner	Generating station	Unit identification	Location
52855-1336-25-41	Sunflower Electric Coop	Garden City	CT 5	Garden City, Kans.
52987-3393-37-41	Tennessee Valley Authority	Thomas H. Allen	GT 17	Memphis, Tenn.
52987-3393-38-41			GT 18	
52987-3393-39-41			GT 19	
52987-3393-40-41			GT 20	
53256-3527-51-41	West Texas Utilities	San Angelo	CC 1	San Angelo, Tex.

I. Statutory Prohibitions

The above listed powerplants are prohibited by Section 301(a)(2) of FUA from using natural gas as a primary energy source, or are prohibited from using gas as a primary energy source in excess of the average base year proportions allowed in Section 301(a)(3) of the Act.

II. Eligibility for Exemption

The existing powerplants listed above have submitted petitions to ERA for a special temporary public interest exemption and have asserted that:

a. Each existing powerplant is:

1. Prohibited on May 8, 1979, from using natural gas as a primary energy source by Section 301(a)(2) of FUA, or

2. Prohibited from using natural gas in excess of the average base year proportions allowed in Section 301(a)(3) of FUA.

b. The proposed use of natural gas as a primary energy source, to the extent that such use would be prohibited by Section 301(a)(2) or (3) of FUA:

1. Will displace consumption of middle distillate or residual fuel oil; and

2. Will not displace the use of coal or any other alternate fuel in any facility of the owner/operator utility system, including the powerplant for which the exemption petition was submitted.

III. Rationale

To the extent that the *near-term* choice of fuels for existing powerplants is limited to petroleum or natural gas, the use of natural gas is preferred. The expanded use of natural gas in these powerplants will be a singificant step toward reducing the Nation's oil consumption in the short term. This increased use of natural gas will help the United States meet its international commitments to reduce its demand for imported petroleum products, protect the Nation from the effects of oil shortages, and cushion the impact of increasing world oil prices, which have had a detrimental effect on the Nation's balance of payments and domestic inflation rate.

To the extent that this increased use of natural gas will accomplish these goals, it will reduce the importation of petroleum and further the goal of national energy self-sufficiency. This is in keeping with purposes of FUA and is in the public interest.

Since the increased use of natural gas for oil displacement is in keeping with the purposes of FUA and is in the public interest, and since the petitioners have demonstrated that they have met the eligibility criteria established in § 508.2 of the Special Rule (April 9, 1979, 44 FR 21230), ERA proposes to grant the exemptions.

IV. Duration

ERA proposes to grant these temporary public interest exemptions generally as follows:

1. In no case will any exemption granted extend beyond June 30, 1985, or exceed a maximum of 5 years (including the period of time during which the petition was pending if the petitioner used natural gas in excess of that allowed under Sections 301(a)(2) and (3) of FUA during such period), whichever termination point occurs first.

2. To those facilities that will displace middle distillate fuel oil, grant exemptions until June 30, 1985, subject to the limitations described in item 1, above.

3. To those facilities that will displace residual oil with a sulfur content of 0.5 percent or less, grant exemptions for an initial period of two years, with an automatic extension of up to three years, subject to the limitations described in item 1, above, and upon ERA's written acceptance of a system-wide fuel conservation plan filed by the petitioner consistent with the terms and conditions set forth below.

4. To those facilities that will displace residual oil with a sulfur content greater than 0.5 percent, grant exemptions for an initial period ending November 30, 1981, with provision for an extension, subject to the limitations described in item 1, above, and at ERA's option based on an appropriate request filed by the petitioner.

These proposed temporary exemptions are subject to termination by ERA upon six months written notice, if ERA determines such termination to be in the public interest.

V. Terms and Conditions

Pursuant to the authority of Section 314 of FUA and 10 CFR 508.6, ERA will require the order recipient upon issuance of a final order to: (1) Report the actual monthly volumes of natural gas used in each exempted powerplant and the estimated number of barrels of each type of fuel oil displaced during the exemption period; (2) submit a system-wide fuel conservation plan to include the period covered by the temporary exemption; and (3) submit annually to ERA a report on progress achieved in implementing the system-wide fuel conservation plan.

Issued in Washington, D.C., on October 9, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-32294 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-01-M

Receipt of Petitions for Temporary Public Interest Exemptions for Use of Natural Gas by Existing Powerplants Under the Powerplant and Industrial Fuel Use Act of 1978 and Proposed Order Granting the Temporary Exemptions.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of petitions and proposed orders.

SUMMARY: A number of petitions have been received and filed with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for temporary public interest exemptions for the use of natural gas as a primary energy source. Such exemptions are authorized by Section 311(e) of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 et seq., November 9, 1978, (FUA or the Act). The owners/operators of the powerplants have provided the following information:

Petitioner/generating station	Unit identification	Maximum quantity of oil to be displaced (barrels per day)	Type of oil to be displaced	Coal or alternate fuel to be displaced
Carolina Power & Light Company (W. H. Weatherspoon).	GT 1	136	Distillate	No.
	GT 2	136	Distillate	No.
	GT 3	133	Distillate	No.
	GT 4	133	Distillate	No
Cedar Falls Utilities (Cedar Falls)	GT 1	27	Distillate	No.
Central Hudson Gas & Electric Corporation (Danskammer).	#1	1,408	Residual[1]	No.

Petitioner/generating station	Unit identification	Maximum quantity of oil to be displaced (barrels/per day)	Type of oil to be displaced	Coal or alternate fuel to be displaced
City of Fayetteville (Fayetteville)	CT 1	68	Distillate	No.
	CT 2	68	Distillate	No.
	CT 3	68	Distillate	No.
	CT 4	68	Distillate	No.
Jersey Central & Light Company (Gilbert).	CC 4	266	Distillate	No.
	I73CC 5	266	Distillate	No.
	CC 6	266	Distillate	No.
	CC 7	266	Distillate	No.
Massachusetts Municipal Wholesale Electric Company (Stony Brook).	CC 2	1,202	Distillate	No.
Northwestern Public Service Co. (Huron Gas Turbine).	GT 1	19	Distillate	No.
Philadelphia Electric Co. (Barbadoes)	CT 6	1,737	Distillate	No.
	CT 7	265	Distillate	No.
Public Service Commission of Yazoo City (Yazoo City Steam Plant).	#2	7.3	Residual[1]	No.
	#3	22	Residual[1]	No.
	#4	177	Residual[1]	No.
	CT 5	463	Distillate	No.
Salt River Project (Kyrene)	#3	27	Distillate	No.
	#4	27	Distillate	No.
Sunflower Electric Coop. (Garden City).	CT 5	47	Distillate	No.
Tennessee Valley Authority (Thomas H. Allen).	GT 17	80	Distillate	No.
	GT 18	80	Distillate	No.
	GT 19	80	Distillate	No.
	GT 20	80	Distillate	No.
West Texas Utilities (San Angelo)	CC 1	33	Distillate	No.

[1] High sulfur residual fuel (greater than 0.5 percent sulfur).

FUA became effective on May 8, 1979. The Act prohibits the use of natural gas as a primary energy source in certain existing powerplants and also authorizes an exemptions procedure in regard to that and other prohibitions.

ERA is proposing to issue orders which would grant temporary public interest exemptions to all of the powerplants listed above, pursuant to the authority of Section 311(e) of FUA and 10 CFR Part 508, published by ERA on April 9, 1979 (44 FR 21230). These proposed orders, when finalized, would grant a temporary exemption to the subject powerplants from the prohibition against natural gas use, contained in Sections 301(a) (2) and (3) of FUA.

ERA is publishing this notice of petitions filed and its proposed orders granting these exemptions, to invite interested persons to submit written comments pursuant to the requirements of FUA. In addition, any interested person may request that a public hearing be convened in regard to these petitions under the provisions of Section 701(d) of FUA.

DATES: Written comments relating to these petitions and the proposed orders are due on or before November 24, 1980. Requests for a public hearing are also due on or before November 24, 1980.

ADDRESSES: Requests for a public hearing and/or 10 copies of written comments shall be submitted to: Department of Energy, Case Control Unit, Box 4629, Room 3214, 2000 M Street, N.W., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT: William L. Webb (office of Public Information), Economic Regulatory Administration, Department of Energy, Room B–110, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653–4055.

Elmer Lee (Office of Fuels Conversion), Economic Regulatory Administration, Department of Energy, Room 3308, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653–4201.

Marx Elmer (Office of General Counsel), Department of Energy, Room 6G–087, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–2967.

SUPPLEMENTARY INFORMATION: On April 9, 1979, ERA issued a final rule implementing the authority granted to DOE by Section 311(e) of FUA. This final rule, set forth in 10 CFR Part 508, establishes the policy ERA has adopted in implementing its authority under Section 311(e) of FUA, and the eligibility criteria, which petitioners for the temporary exemption must demonstrate.

These temporary exemptions will allow certain existing electric powerplants to use natural gas as a primary energy source in excess of the amounts which are permitted by Sections 301(a) (2) and (3) of FUA. The use of natural gas, permitted under these temporary exemptions, will result in displacing distillate and residual fuel oils in existing electric powerplants.

This expanded use of natural gas in these powerplants will be a significant step toward reducing the Nation's oil consumption in the short term, and will help the United States in meeting its goals to reduce its demand for imported oil, protect the Nation from the effects of oil shortages, and cushion the impact of increasing world oil prices.

The above-listed owners/operators have filed petitions with ERA for temporary public interest exemptions for certain existing electric powerplants. ERA has reviewed these petitions and has determined that the powerplants meet the eligibility criteria established in § 508.2 of the final rule (44 FR 21230).

ERA intends to grant temporary public interest exemptions for the above listed powerplants. The proposed orders are set forth following this notice.

This is not the final notice of petitions and proposed orders under the final rule. ERA will continue to comply with the requirements of Section 701(c) of FUA and will publish further notices as petitions are received and accepted.

Special temporary public interest exemptions granted to the above listed powerplants will not in any case extend beyond June 30, 1985, or exceed a maximum of 5 years (including the period of time during which the petition was pending if the petitioner used natural gas in excess of that allowed under Sections 301(a) (2) and (3) of FUA during such period), whichever termination point occurs first.

Additionally, special temporary public interest exemptions do not relieve existing powerplants from compliance with any pertinent rules or regulations concerning the acquisition of the distribution of natural gas that are administered by the Federal Energy Regulatory Commission or any pertinent State regulatory agency or from any public utility obligation to pertinent categories of customers.

Issued in Washington, D.C., on October 9, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-32279 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-01-M

Powerplant and Industrial Fuel Use Act Issuance of an Order Granting Temporary Public Interest Exemptions

The Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice that on October 9, 1980, it issued an order granting temporary public interest exemptions, pursuant to the authorities granted it by Section 311(e) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act), 42 U.S.C. 8301 et seq., 10 CFR 501.68 and 10 CFR 508, from the prohibitions of Sections 301(a) (2) and (3) of the Act to the following powerplants in order to displace low sulfur residual fuel oil:

Docket No.	Petitioner	Generating station (location)	Powerplant identification
50103-0201-01-41	Arkansas Electric Cooperative.	Fitzhugh	#1
51691-0399-01-41	City of Los Angeles Department of Water and Power.	Harbor	#1
51691-0399-02-41			#2
51691-0399-03-41			#3
51691-0399-04-41			#4
51691-0399-05-41			#5
51691-0408-01-41		Valley	#1
51691-0408-02-41			#2
51691-0408-03-41			#3
51691-0408-04-41			#4
52224-0273-01-41	Pacific Gas and Electric Company.	Potrero	#1
52224-0273-02-41			#2
52224-0273-03-41			#3
52224-0260-01-41	Pacific Gas and Electric Company.	Moss Landing	#1
52224-0260-02-41			#2
52224-0260-03-41			#3
52224-0260-04-41			#4
52224-0260-06-41			#6
52224-0228-01-41		Contra Costa	#1
52224-0228-02-41			#2
52224-0228-03-41			#3
52224-0228-04-41			#4
52224-0228-05-41			#5
52224-0228-06-41			#6
52224-0228-07-41			#7
52224-0259-02-41		Morro Bay	#2
52224-0247-04-41		Hunter's Point	#4

Petitions were received and filed with ERA, pursuant to 10 CFR Part 508 (Exemptions for Use of Natural Gas by Existing Powerplants Under the Powerplant and Industrial Fuel Use Act of 1978, April 9, 1979, 44 FR 21230) for temporary public interest exemptions for the use of natural gas as a primary energy source.

A notice of the petitions and the proposed order granting these temporary exemptions was published in the **Federal Register** on March 21, 1980 (45 FR 18423). This notice presented an opportunity for public comments and for interested persons to request a hearing relating to the petitions and the proposed orders. All comments that referred to specific petitions were supportive of them.

The Process Gas Consumers Group, American Iron and Steel Institute and Georgia Industrial Group requested a hearing. ERA scheduled and convened a hearing on August 25, 1980. Several preliminary motions were filed by other hearing participants to dismiss the hearing upon the ground that the requesting persons were not interested persons as contemplated by Section 701 of FUA and 10 CFR 501.33 and 501.34. The Presiding Officer at the hearing, after receiving written submissions supporting and opposing the motions, granted the motions to dismiss. In so doing he found that the persons who requested the hearing lacked the requisite interest to request a hearing and ruled, thereofore, that in the absence of a competent request for a hearing ERA should proceed with the processing of the petitions for decisions without a hearing.

These temporary exemptions will allow the above-named units to burn natural gas, notwithstanding the prohibitions of Sections 301(a)(2) and (3) of FUA, to displace low sulfur residual fuel oil.

The order granting these temporary exemptions shall become effective sixty calendar days following publication in the **Federal Register** (December 15, 1980) in accordance with Section 702(a) of FUA. The owners of the above-mentioned powerplants have been sent the Decision and Order by certified mail.

The order is set forth following this notice. These temporary exemptions shall be in effect, subject to terms and conditions stated in the order, for a period of two years. The temporary exemptions may be extended for an additional period upon written acceptance by ERA of a system-wide fuel conservation plan. However, a temporary public interest exemption, including all extensions and the period during which the petitioners were allowed to burn gas while their petitions were pending, may not exceed the statutory maximum five year period authorized by the Act, or extend beyond June 30, 1985. The temporary public interest exemptions granted by the Decision and Order may be terminated by ERA, upon six months written notice, if ERA determines such termination to be in the public interest.

ERA's grant of these temporary public interest exemptions does not relieve an existing powerplant from compliance with any rules or regulations concerning the acquisition or the distribution of natural gas that are administered by the Federal Energy Regulatory Commission or any State regulatory agency or from any obligations the utility may have to its customers.

Copies of all comments received during the public comment period will be available for public inspection and copying in the Public Information Office located in Room B–110, 2000 M Street, NW., Washington, D.C. 20461.

Any questions regarding these temporary exemptions should be directed to Mr. James W. Workman, Acting Director, Powerplants Conversion Division, Office of Fuels Conversion, Economic Regulatory Administration, Department of Energy, Room 3128, 2000 M Street, NW., Washington, D.C. 20461, (202) 653–4268.

Issued in Washington, D.C., on October 9, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-32315 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-01-M

Powerplant and Industrial Fuel Use Act; Issuance of an Order Granting Temporary Public Interest Exemptions

The Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice that on October 9, 1980, it issued an order granting temporary public interest exemptions, pursuant to the authorities granted it by Section 311(e) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act), 42 U.S.C. 8301 *et seq.*, 10 CFR 501.68 and 10 CFR 508, from the gas use prohibitions of Sections 301(a)(2) and (3) of the Act to the following powerplants in order to displace middle distillate fuel oil:

Docket No.	Owner	Generating station (location)	Powerplant identification
50126-8008-21-41	Atlantic City Electric Company.	Mikleton	CT 1
50135-3548-01-41	City of Austin	Decker	#1
50135-3549-04-41		Holly	#4
50868-9005-21-41	El Paso Electric Company.	Copper	CT 1
51209-3457-01-41	Gulf States Utilities Company.	Lewis Creek	#1
51209-3457-02-41			#2
51209-1394-02-41	Gulf States Utilities Company.	Willow Glen	#2
51209-1393-01-41		Nelson	#1
51209-1393-02-41			#2
51209-1393-03-41			#3
51209-3458-07-41		Neches	#7
51209-3458-08-41			#8
51209-3459-02-41		Sabine	#2
63001-9067-58-41	Hutchinson Utilities Commission.	Plant #1	CC 8
63001-9103-29-41		Plant #2	CT 9
51388-6060-21-41	Imperial Irrigation District.	Coachella	CT 1
51388-6060-22-41			CT 2
51388-6060-23-41			CT 3
51388-6060-24-41			CT 4
51392-2132-21-41	City of Independence.	Blue Valley	CT 1
51392-2135-22-41		Station H	CT 2
51434-0667-23-41	Jacksonville Electric Authority.	Northside	CT 3
51434-0667-24-41			CT 4
51434-0667-25-41			CT 5
51434-0667-26-41			CT 6
51476-1295-22-41	City of Kansas City	Quindaro	GT 2
51476-1295-23-41			GT 3
51478-1245-03-41	Kansas Gas & Electric Co.	Wichita	#3
51478-1245-04-41			#4
51649-9151-21-41	Lincoln Electric System.	9th and J Street	CT 1
51575-0676-22-41	City of Lakeland	Larsen	GT 2
51575-0676-23-41			GT 3
51691-0399-26-41	City of Los Angeles, Dept. of Water and Power.	Harbor	CT 8
51691-0399-27-41			CT 7
51691-0399-28-41			CT 8
51691-0399-29-41			CT 9
51702-4937-01-41	Lower Colorado River Authority.	Ferguson	#1
51702-3601-01-41		Gideon	#1
51702-3601-02-41			#2
51702-3601-03-41			#3
52413-2966-24-41	Public Service Company of Oklahoma.	Weleetka	CT 4
52413-2966-25-41			CT 5
52413-2966-26-41			CT 6
51915-2184-01-41	Montana Power Company.	Frank Bird	#1
52542-1458-01-41	City Ruston	Ruston	#1
52570-0307-21-41	San Diego Gas and Electric Company.	North Island	GT 1
52570-0310-21-41		South Bay	GT 1
52570-0300-21-41		Division Street	GT 1
52727-1011-21-41	Southern Indiana Gas and Electric.	Broadway	GT 1
53010-0970-05-41	University of Illinois	Abbott	#5
53010-0970-06-41			#6
53010-0970-07-41			#7
53146-3803-21-41	Virginia Electric and Power Company.	Portsmouth	CT 1
53332-4059-21-41	Wisconsin Power and Light Company.	Sheepskin	CT 1
53332-4057-25-41		Rock River	CT 5
53332-4057-26-41			CT 6

Petitions were received and filed pursuant to 10 CFR, Part 508 (Exemption for Use of Natural Gas by Existing Powerplants Under the Powerplant and Industrial Fuel Use Act of 1978, April 9, 1979, 44 FR 21230) with ERA for temporary public interest exemptions for the use of natural gas as a primary energy source.

A notice of the petitions and a proposed order granting these temporary exemptions was published in the **Federal Register** on March 21, 1980, (45 FR 18423). This presented an opportunity for public comments and for interested persons to request a hearing relating to the petitions and the proposed order. All comments that referred to specific petitions were supportive of them.

The Process Gas Consumers Group, American Iron and Steel Institute and Georgia Industrial Group requested a hearing. ERA scheduled and convened a hearing on 25 August 1980. Several preliminary motions were filed by other hearing participants to dismiss the hearing upon the ground that the requesting persons were not interested persons as contemplated by Section 701 of FUA and 10 CFR 501.33 and 501.34. The Presiding Officer at the hearing, after receiving written submissions supporting and opposing the motions, granted the motions to dismiss. In so doing he found that the persons who requested the hearing lacked the requisite interest to request a hearing and ruled, therefore, that in the absence of a competent request for a hearing ERA should proceed with the processing of the petitions for decisions without a hearing.

These temporary exemptions will allow the above-named units to burn natural gas, notwithstanding the prohibitions of Sections 301(a)(2) and (3) of FUA, to displace middle distillate fuel oil.

The order granting these temporary exemptions shall become effective sixty calendar days following its publication in the **Federal Register**, (December 15, 1980) in accordance with Section 702(a) of FUA. The owners of the above-named powerplants have been sent the Decision and Order by certified mail.

The order is set forth following this notice. These temporary exemptions shall be in effect, subject to the terms and conditions stated in the order, for a period of five years including the period during which the petitioners were allowed to burn gas while their petitions were pending, but not to extend beyond June 30, 1985. The temporary exemptions may be terminated by ERA, upon six months written notice, if ERA determines such termination to be in the public interest.

ERA's grant of these temporary public interest exemptions does not relieve an existing powerplant from compliance with any rules or regulations concerning the acquisition or the distribution of natural gas that are administered by the Federal Energy Regulatory Commission or any State regulatory agency or from any obligations the utility may have to its customers.

Copies of all comments received during the public comment period will be available for public inspection and copying in the Public Information Office located in Room B-110, 2000 M Street, NW., Washington, D.C. 20461.

Any questions regarding these temporary exemptions should be directed to Mr. James W. Workman, Acting Director, Powerplants Conversion Division, Office of Fuels Conversion, Economic Regulatory Administration, Department of Energy, Room 3128, 2000 M Street, NW., Washington, D.C. 20461, (202) 653-4268.

Issued in Washington, D.C., on October 9, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-32316 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-01-M

Powerplant and Industrial Fuel Use Act Issuance of an Order Granting Temporary Public Interest Exemptions

The Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice that on October 9, 1980, it issued an order granting temporary public interest exemptions, pursuant to the authorities granted it by Section 311(e) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act, 42 U.S.C. 8301 *et seq.*, 10 CFR 501.68 and 10 CFR 508, from the prohibitions of Sections 301(a)(2) and (3) of the Act to the following powerplants in order to displace high sulfur residual fuel oil:

Docket No.	Petitioner	Generating station (location)	Powerplant identification
50135-3549-01-41	City of Austin	Holly	#1
50135-3549-02-41			#2
50135-3549-03-41			#3
50135-3550-05-41		Seaholm	#5
50135-3550-06-41			#8
50135-3550-07-41			#7
50135-3550-08-41			#8
50135-3550-09-41			#9
50514-1267-03-41	City of Chanute	Municipal	#3
50514-1267-04-41			#4
50610-1271-01-41	City of Coffeyville	Coffeyville	#1
50622-0493-01-41	City of Colorado Springs.	Birdsall	#1

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Docket No.	Petitioner	Generating station (location)	Powerplant identification
50622-0493-02-41			#2
50622-0493-03-41			#3
50622-0492-01-41	City of Colorado Springs.	Drake	#1
50622-0492-02-41			#2
50622-0492-04-41			#4
50643-0881-05-41	Commonwealth Edison.	Ridgeland	#5
50643-0881-96-41			#6
50658-1696-01-41	Consumers Power Company.	B. E. Morrow	#1
50658-1696-02-41			#2
50658-1696-03-41			#3
50658-1696-04-41			#4
50807-0599-01-41	City of Dover	McKee Run	#1
50807-0599-02-41			#2
50807-0599-03-41			#3
51006-6246-51-41	Florida Power and Light Company.	Putnam	CC 1
51006-6246-52-41			CC 2
51208-0641-01-41	Gulf Power Company.	Crist	#1
51208-0641-02-41			#2
51208-0641-03-41			#3
51209-3459-05-41	Gulf States Utilities Company.	Savine	#5
51209-1391-07-41		Louisiana	#7
51209-1391-08-41			#8
51209-1391-09-41			#9
51209-1394-03-41		Willow Glen	#3
51209-1394-04-41			#4
51209-1394-05-41			#5
51209-1393-04-41		Nelson	#4
51259-2244-04-41	City of Hastings	North Denver	#4
51259-2244-05-41			#5
56514-9059-06-41	City of Holyoke	Electric Station	#6
56514-9059-08-41			#8
56514-9059-09-41			#9
51388-5054-01-41	Imperial Irrigation District.	El Centro	#1
51388-9054-02-41			#2
51388-9054-03-41			#3
51388-9054-04-41			#4
51434-0667-01-41	Jacksonville Electric Authority.	Northside	#1
51434-0667-02-41			#2
51434-0667-03-41			#3
51478-1243-03-41	Kansas Gas and Electric Company.	Neosho	#3
51478-1240-01-41		Gordan Evans	#1
51478-1240-02-41			#2
51478-1244-01-41		Ripley	#1
51478-1244-02-41			#2
51478-1244-03-41			#3
51478-1242-01-41		Murray Gill	#1
51478-1242-02-41			#2
51478-1242-03-41			#3
51478-1242-04-41			#4
51575-0676-04-41	City of Lakeland	Larsen	#4
51575-0676-05-41			#5
51575-0676-06-41			#6
51575-0676-07-41			#7
51596-1299-03-41	City of Larned	Municipal	#3
51694-9038-02-41	Louisiana Power and Light.	Waterford	#2
51694-1403-02-41		Ninemile Point	#2
51694-1403-03-41			#3
51888-2046-01-41	Mississippi Power Company.	Eaton	#1
51888-2046-02-41			#2
51888-2046-03-41			#3
51888-2048-01-41		Sweatt	#1
51888-2048-02-41			#2
51988-2276-03-41	Nebraska Public Power District.	Bluffs	#3
51988-2276-04-41			#4
52224-0246-01-41	Pacific Gas and Electic Company.	Humboldt Bay	#1
52224-0246-02-41			#2
52786-2098-04-41	St. Joseph Light and Power Company.	Lake Road	#4
52786-2097-20-41		Edmond Street	#20
53186-3809-03-41	Virginia Electric and Power Company.	Yorktown	#3

Petitions were received and filed with ERA, pursuant to 10 CFR Part 508 (Exemptions for Use of Natural Gas by Existing Powerplants Under the Powerplant and Industrial Fuel Use Act of 1978, April 9, 1979, 44 FR 21230) for temporary public interest exemptions for the use of natural gas as a primary energy source.

A notice of the petitions and the proposed order granting these temporary exemptions was published in the **Federal Register** on March 21, 1980 (45 FR 18423). This notice presented an opportunity for public comments and for interested persons to request a hearing relating to the petition and the proposed order. All comments that referred to specific petitions were supportive of them.

The Process Gas Consumers Group, American Iron and Steel Institute and Georgia Industrial Group requested a hearing. ERA scheduled and convened a hearing on August 25, 1980. Several preliminary motions were filed by other hearing participants to dismiss the hearing upon the ground that the requesting persons were not interested persons as contemplated by Section 701 of FUA and 10 CFR 501.33 and 501.34. The Presiding Officer at the hearing, after receiving written submissions supporting and opposing the motions, granted the motions to dismiss. In so doing he found that the persons who requested a hearing lacked the requisite interest to request a hearing and ruled, therefore, that in the absence of a competent request for a hearing ERA should proceed with the processing of the petitions for decision without a hearing.

These temporary exemptions will allow the above-named units to burn natural gas, notwithstanding the prohibitions of Sections 301(a)(2) and (3) of FUA, to displace high sulfur residual fuel oil.

The order granting these temporary exemptions shall become effective sixty calendar days following publication in the **Federal Register** (December 15, 1980) in accordance with Section 702(a) of FUA. The owners of the above-mentioned powerplants have been sent the Decision and Order by certified mail.

The Order is set forth following this notice. These temporary exemptions shall be in effect, subject to terms and conditions stated in the order, until December 7, 1981. Upon the request of the petitioners, these exemptions may be extended for an additional period at the discretion of ERA. However, a temporary public interest exemption, including all extensions and the pendency period during which the petitioners were allowed to burn gas while their petitions were pending, may not exceed the statutory maximum five year period authorized by the Act, or extend beyond June 30, 1985. The temporary public interest exemptions granted by the Decision and Order may be terminated by ERA, upon six months written notice, if ERA determines such termination to be in the public interest.

ERA's grant of these temporary public interest exemptions does not relieve an existing powerplant from compliance with any rules or regulations concerning the acquisition or the distribution of natural gas that are administered by the Federal Energy Regulatory Commission or any State regulatory agency or from any obligations the utility may have to its customers.

Copies of all comments received during the public comment period will be available for public inspection and copying in the Public Information Office located in Room B-110, 2000 M Street, NW., Washington, D.C. 20461.

Any questions regarding these temporary exemptions should be directed to Mr. James W. Workman, Acting Director, Powerplants Conversion Division, Office of Fuels Conversion, Economic Regulatory Administration, Department of Energy, Room 3128, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653-4268.

Issued in Washington, D.C., on October 9, 1980.

Robert L. Davies,

Assistant of Fuel Conversion, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-32317 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-01-M

Decision and Order Granting Exemptions Pursuant to Section 311 of the Powerplant and Industrial Fuel Use Act of 1978

The Economic Regulatory Administration (ERA) of the Department of Energy hereby issues this Decision and Order granting temporary public interest exemptions from the prohibitions of Sections 301(a) (2) and (3) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act), 42 U.S.C. 8301 *et seq.* This Decision and Order is issued pursuant to Section 311(e) of FUA, 10 CFR 501.68 and 10 CFR Part 508 to the petitioners who own or operate the powerplants listed in the table below.

Docket No.	Petitioner	Generating station (location)	Powerplant identification	Maximum duration date[1]
50103-0201-01-41	Arkansas Electric Cooperative.	Fitzhugh	#1	Nov. 27, 1984.
51691-0399-01-41	City of Los Angeles, Department of Water and Power.	Harbor	#1	July 11, 1984.
51691-0399-02-41			#2	
51691-0399-03-41			#3	
51691-0399-04-41			#4	
51691-0399-05-41			#5	
51691-0408-01-41		Valley	#1	July 11, 1984.
51691-0408-02-41			#2	
51691-0408-03-41			#3	
51691-0408-04-41			#4	
52224-0273-01-41	Pacific Gas and Electric Company.	Potrero	#1	Dec. 27, 1984.
52224-0273-02-41			#2	
52224-0273-03-41			#3	
52224-0260-01-41		Moss Landing	#1	Dec. 27, 1984.
52224-0260-02-41			#2	
52224-0260-03-41			#3	
52224-0260-04-41			#4	
52224-0260-08-41			#6	
52224-0228-01-41		Contra Costa	#1	Dec. 10, 1984.
52224-0228-02-41			#2	
52224-0228-03-41			#3	
52224-0228-05-41			#4	
52224-0228-05-41			#5	
52224-0228-06-41			#6	
52224-0228-07-41			#7	
52224-0259-02-41		Morro Bay	#2	Dec. 27, 1984.
52224-0247-04-41		Hunter's Point	#4	Dec. 27, 1984.

[1]Maximum date to which the exemption can be extended.

The petitioners filed for these temporary public interest exemptions pursuant to 10 CFR Part 508 (Exemption for Use of Natural Gas by Existing Powerplants Under the Powerplant and Industrial Fuel Use Act of 1978, April 9, 1979, 44 FR 21230, hereafter referred to as the Special Rule). Notice of the petitions and a proposed order granting these temporary exemptions was published in the March 31, 1980, **Federal Register** (44 FR 18423) presenting an opportunity for public comments and for interested persons to request a hearing relating to the petitions and the proposed order.

The Process Gas Consumers Group, American Iron and Steel Institute and Georgia Industrial Group requested a hearing. ERA scheduled and convened a hearing on August 25, 1980. Several preliminary motions were filed by other hearing participants to dismiss the hearing upon the ground that the requesting persons were not interested persons as contemplated by Section 701 of FUA and 10 CFR 501.33 and 501.34. The Presiding Officer at the hearing, after receiving written submissions supporting and opposing the motions, granted the motions to dismiss. In so doing he found that the persons who requested the hearing lacked the requisite interest to request a hearing and ruling, therefore, that in the absence of a competent request for a hearing ERA should proceed with the processing of the petitions for decision without a hearing.

Based on the information provided by the petitioners, the listed powerplants are either prohibited by Section 301(a)(2) of FUA from using natural gas as a primary energy source or are prohibited from using natural gas in excess of the average base year proportion allowed in Section 301(a)(3) of the Act. These temporary exemptions will allow these units to burn natural gas, notwithstanding the prohibitions of Sections 301(a)[2) and [3) of FUA, to displace consumption of low sulfur residual fuel oil.

Statement of Reasons

Because world oil supplies continue to be unstable, there is an urgent need to use these natural resources wisely.

To the extent that the near-term choice of fuels for certain existing powerplants is limited to petroleum or natural gas, the use of natural gas is preferred over petroleum. The use of natural gas in these powerplants will be a significant step toward reducing our short-term oil consumption and will help

the United States reduce its dependence on imported petroleum.

This increased use of natural gas will also protect the Nation from the effects of any oil shortages, and will cushion the impact of increasing world oil prices, which have a detrimental effect on the Nation's balance of payments and domestic inflation rate.

To the extent that increased use of natural gas will accomplish these goals, it will reduce the importation of petroleum and further the goal of national energy self-sufficiency.

The petitioners have demonstrated that these powerplants, for which they are requesting temporary exemptions, are existing units that are either prohibited from using natural gas as a primary energy source by Section 301(a)(2) of FUA, or prohibited from using natural gas in excess of the average base year proportion allowed in Section 301(a)(3) of FUA. The petitioners have also shown that the proposed use of natural gas as a primary energy source, to the extent that such use would be prohibited by Section 301(a)(2) or (3) of FUA, will displace consumption of low sulfur residual fuel oil, and will not displace the use of coal or any other alternate fuel in any facility of the petitioners' utility systems, including the powerplants for which these temporary exemptions are issued.

By establishing these facts the petitioners have met the eligibility criteria set out in § 508.2 of the Special Rule. Since the increased use of natural gas is in keeping with the purposes of FUA and is in the public interest, and since the petitioners have demonstrated that they have met the eligibility criteria, ERA is granting these temporary exemptions.

Duration of Temporary Exemptions

ERA grants these temporary public interest exemptions from the effective date of this Decision and Order until December 8, 1982. These exemptions will be automatically extended for an additional period upon written acceptance by ERA of a system-wide fuel conservation plan. However, a temporary public interest exemption, including all extensions and the period during which the petitioners were allowed to burn gas while their petitions were pending may not exceed the maximum five year period authorized by the Act, or extend beyond June 30, 1985. The maximum durations of the temporary public interest exemptions granted by this Order are listed in the table on the first page. The temporary exemptions are subject to termination by ERA, upon six months written notice, if ERA determines such termination to be in the public interest.

Effective Date of Decision and Order

This Decision and Order shall become effective on the sixtieth calendar day following its publication in the **Federal Register** (December 15, 1980) in accordance with Section 702(a) of FUA. However, in accordance with the policy set forth in the notice implementing this Special Rule (44 FR 21230) ERA will take no action with respect to any natural gas used by the exempted powerplants between May 8, 1979, the effective date of FUA, and the date this Decision and Order becomes effective.

Terms and Conditions

Pursuant to Section 314 of FUA and 10 CFR 508.6, the temporary exemptions granted under this Decision and Order are conditioned upon, and shall remain in effect so long as each petitioner, its successors and assigns, complies with the following terms and conditions:

(1) Petitioner will report to ERA for the period from May 8, 1979, through December 31, 1979, and for each subsequent six-month period thereafter the actual monthly volumes of natural gas consumed in each exempted powerplant, and an estimate of the number of barrels of each type of fuel oil displaced.

(2) Petitioner will submit to ERA, within one year after the date this Decision and Order is issued, a system-wide fuel conservation plan to include the period covered by these temporary exemptions, including the means by which the petitioner will measure progress in implementing this plan. If a petitioner has received temporary public interest exemptions under previous orders for other powerplants within his utility system, the first granted exemption order establishes the due date for the system-wide fuel conservation plan.

(3) If the petitioner seeks to have the exemptions extended, the fuel conservation plan must cover both the initial period covered by these temporary exemptions and the additional period to the maximum duration date, including the means by which the petitioner will measure progress in implementing this plan.

(4) Petitioner will submit annually to ERA, commencing with the calendar year ending December 31, 1981, a report on progress achieved in implementing the pertinent fuel conservation plan.

ERA's grant of these temporary public interest exemptions does not relieve an existing powerplant from compliance with any rules or regulations concerning the acquisition or the distribution of natural gas that are administered by the Federal Energy Regulatory Commission or any State regulatory agency or from any obligations the utility may have to its customers.

Issued in Washington, D.C., on October 9, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-32318 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-01-M

Decision and Order Granting Exemptions Pursuant to Section 311 of the Powerplant and Industrial Fuel Use Act of 1978

The Economic Regulatory Administration (ERA) of the Department of Energy hereby issues this Decision and Order granting temporary public interest exemptions from the natural gas use prohibitions of Sections 301(a) (2) and (3) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act), 42 U.S.C. 8301 *et seq.* This Decision and Order is issued pursuant to Section 311(e) of FUA, 10 CFR 501.68 and 10 CFR Part 508 to the petitioners who own or operate the powerplants listed in the table below.

Docket No.	Owner	Generating station (location)	Powerplant identification	Maximum duration date [1]
50126-8008-21-41	Atlantic City Electric Company.	Mickleton	CT 1	Feb. 13, 1985.
50135-3548-01-41	City of Austin	Decker	#1	Oct. 12, 1984.
50135-3549-04-41		Holly	#4	
50868-9005-21-41	El Paso Electric Company.	Copper	CT 1	Dec. 19, 1984.
51209-3457-01-41	Gulf States Utilities Company.	Lewis Creek	#1	July 16, 1984.
51209-34573457-0202-41			#2	
51209-1394-02-41		Willow Glen	#2	July 16, 1984.
51209-1393-01-41		Nelson	#1	July 16, 1984.
51209-1393-02-41			#2	
51209-1393-03-41			#3	
51209-3458-07-41		Neches	#7	July 16, 1984.
51209-3458-08-41			#8	
51209-3459-02-41		Sabine	#2	July 16, 1984.
63001-9067-58-41	Hutchinson Utilities Commission.	Plant #1	CC 8	June 1, 1984.
63001-9103-29-41		Plant #2	CT 9	June 1, 1984.
51388-6060-21-41	Imperial Irrigation District.	Coachella	CT 1	May 16, 1984.
51388-6060-22-41			CT 2	
51388-6060-23-41			CT 3	
51388-6060-24-41			CT 4	
51392-2132-21-41	City of Independence.	Blue Valley	CT 1	Jan. 3, 1985.
51392-2135-22-41		Station H	CT 2	Jan. 3, 1985.
51434-0667-23-41	Jacksonville Electric Authority.	Northside	CT 3	Feb. 8, 1985.
51434-0667-24-41			CT 4	
51434-0667-25-41			CT 5	
51434-0667-26-41			CT 6	
51476-1295-22-41	City of Kansas City	Quindaro	GT 2	Jan. 8, 1985.
51476-1295-23-41			GT 3	
51478-1245-03-41	Kansas Gas & Electric Co.	Wichita	#3	Oct. 10, 1984.
51478-1245-04-41			#4	
51649-9151-21-41	Lincoln Electric System.	8th and J Street	CT 1	Jan. 22, 1985.
51575-0676-22-41	City of Lakeland	Larsen	GT 2	June 30, 1985.
51575-0676-23-41			GT 3	
51591-0399-26-41	City of Los Angeles Dept. of Water and Power.	Harbor	CT 6	July 11, 1984.
51691-0399-27-41			CT 7	
51691-0399-28-41			CT 8	
51691-0399-29-41			CT 9	
51702-4937-01-41	Lower Colorado River Authority.	Ferguson	#1	Oct. 29, 1984.
51702-3601-01-41		Gideon	#1	Oct. 29, 1984.
51702-3601-02-41			#2	
51702-3601-03-41			#3	
52413-2966-24-41	Public Service Company of Oklahoma.	Weleetka	CT 4	July 30, 1984.
52413-2966-25-41			CT 5	
52413-2966-26-41			CT 6	
51915-2184-01-41	Montana Power Company.	Frank Bird	#1	Dec. 17, 1984.
52542-1458-01-41	City of Ruston	Ruston	#1	Jan. 8, 1985.
52570-0307-21-41	San Diego Gas & Electric Company.	North Island	GT 1	Oct. 10, 1984.
52570-0310-21-41		South Bay	GT 1	Oct. 10, 1984.
52570-0300-21-41		Division Street	GT 1	Oct. 10, 1984.
52727-1011-21-41	Southern Indiana Gas & Electric.	Broadway	GT 1	Aug. 30, 1984.
53010-0970-05-41	University of Illinois	Abbott	#5	Feb. 26, 1985
53010-0970-06-41			#6	
53010-0970-07-41			#7	
53146-3803-21-41	Virginia Electric & Power Company.	Portsmouth	CT 1	Feb. 11, 1985.
53332-4059-21-41	Wisconsin Power & Light Company.	Sheepskin	CT 1	Oct. 10, 1984.
53332-4057-25-41		Rock River	CT 5	Oct. 10, 1984.
53332-4057-26-41			CT 6	

[1] Maximum date to which exemption can be extended.

The petitioners filed for these temporary public interest exemptions pursuant to 10 CFR Part 508 (Exemption for Use of Natural Gas by Existing Powerplants Under the Powerplant and Industrial Fuel Use Act of 1978, April 9, 1979, 44 FR 21230, hereafter referred to as the Special Rule). Notices of the petitions and proposed orders granting these temporary exemptions were published in the March 21, 1980, **Federal Register** (45 FR 18423) presenting an opportunity for public comments and for interested persons to request a hearing relating to the petitions and the proposed order.

The Process Gas Consumers Group, American Iron and Steel Institute and Georgia Industrial Group requested a hearing. ERA scheduled and convened a hearing on August 25, 1980. Several preliminary motions were filed by other hearing participants to dismiss the hearing upon the ground that the requesting persons were not interested persons as contemplated by Section 701 of FUA and 10 CFR 501.33 and 501.34. The Presiding Officer at the hearing, after receiving written submissions supporting and opposing the motions, granted the motions to dismiss. In so doing he found that the persons who requested the hearing lacked the requisite interest to request a hearing and ruled, therefore, that in the absence of a competent request for a hearing ERA should proceed with the processing of the petitions for decision without a hearing.

Based on the information provided by the petitioners, the powerplants listed in the above table are either prohibited by Section 301(a)(2) of FUA from using natural gas as a primary energy source or are prohibited from using natural gas as a primary energy source in excess of the average base year proportion allowed in Section 301(a)(3) of the Act. These temporary exemptions will allow these units to burn natural gas, notwithstanding the prohibitions of Sections 301(a) (2) and (3) of FUA, to displace consumption of middle distillate fuel oil.

V 45 OC 1 6 80 UMI

Statement of Reasons

Because world oil supplies continue to be unstable, there is an urgent need to use these natural resources wisely.

To the extent that near-term choice of fuels for certain existing powerplants is limited to petroleum or natural gas, the use of natural gas is preferred over petroleum. The use of natural gas in these powerplants will be a significant step toward reducing our short-term oil consumption and will help the United States reduce its dependence on imported petroleum. This increased use of natural gas will also protect the Nation from the effects of any oil shortages, and will cushion the impact of increasing world oil prices, which have a detrimental effect on the Nation's balance of payments and domestic inflation rate.

To the extent that increased use of natural gas will accomplish these goals, it will reduce the importation of petroleum and further the goal of national energy self-sufficiency.

The petitioners have demonstrated that these powerplants, for which they are requesting temporary exemptions, are existing units that are either prohibited from using natural gas as a primary energy source by Section 301(a)(2) of FUA, or prohibited from using natural gas in excess of the average base year proportion allowed in Section 301(a)(3) of FUA. The petitioners have also shown that the proposed use of natural gas as a primary energy source, to the extent that such use would be prohibited by Section 301(a)(2) or (3) of FUA, will displace consumption of middle distillate fuel oil, and will not displace the use of coal or any other alternate fuel in any facility of the petitioners' utility systems, including the powerplants for which these temporary exemptions are issued.

By establishing these facts the petitioners have met the eligibility criteria set out in § 508.2 of the Special Rule. Since the increased use of natural gas is in keeping with the purposes of FUA and is in the public interest, and since the petitioners have demonstrated that they have met the eligibility criteria, ERA is granting these temporary exemptions.

Duration of Temporary Exemption

ERA grants these temporary public interest exemptions for the maximum statutory period of five years, which includes the period during which the petitioners were allowed to burn gas while their petitions were pending, to the extent that such period will not extend beyond June 30, 1985. The termination dates of these temporary public interest exemptions are listed in the table on the first page. The temporary exemptions are subject to termination by ERA, upon six months written notice, if ERA determines such termination to be in the public interest.

Effective Date of Decision and Order

This Decision and Order shall be come effective on the sixtieth calendar day following publication in the **Federal Register** (December 15, 1980). However, in accordance with the policy set forth in the notice implementing this Special Rule (44 FR 21230) ERA will take no action with respect to any natural gas used by the exempted powerplants between May 8, 1979, the effective date of FUA, and the date this Decision and Order becomes effective.

Terms and Conditions

Pursuant to Section 314 of FUA and 10 CFR 508.6, the temporary exemptions granted under this Decision and Order are conditioned upon, and shall remain in effect so long as each petitioner, its successors and assigns, comply with the following terms and conditions:

(1) Petitioner will report to ERA for the period from May 8, 1979, through December 31, 1979, and for each subsequent six-month period thereafter the actual monthly volumes of natural gas consumed in each exempted powerplant, and an estimate of the number of barrels of middle distillate fuel oil displaced.

(2) Petitioner will submit to ERA, within one year after the date this Decision and Order is issued, a system-wide fuel conservation plan to include the five year period covered by this temporary exemption, including the means by which the petitioner will measure progress in implementing this plan. If a petitioner has received temporary public interest exemptions under previous order for other powerplants within his utility system, the first granted exemption order establishes the due date for the system-wide fuel conservation plan.

(3) Petitioner will submit annually to ERA, commencing with the calendar year ending December 31, 1980, a report on progress achieved in implementing the system-wide fuel conservation plan.

ERA's grant of these temporary public interest exemptions does not relieve an existing powerplant from compliance with any rules or regulations concerning the acquisition or the distribution of natural gas that are administered by the Federal Energy Regulatory or any State regulatory agency or from any obligations the utility may have to its customers.

Issued in Washington, D.C., on October 9, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-32319 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-01-M

Docket No.	Petitioner	Generating station (location)	Powerplants identification
50135-3549-01-41	City of Austin	Holly	#1
50135-3549-02-41			#2
50135-3549-03-41			#3
50135-3550-05-41		Seaholm	#5
50135-3550-06-41			#6
50135-3550-07-41			#7
50135-3550-08-41			#8
50135-3550-09-41			#9
50514-1267-03-41	City of Chanute	Municipal	#3
50514-1267-04-41			#4
50610-1271-01-41	City of Coffeyville	Coffeyville	#1
50622-0493-01-41	City of Colorado Springs.	Birdsall	#1
50622-0493-02-41			#2
50622-0493-03-41			#3
50622-0492-01-41		Drake	#1
50622-0492-92-41			#2
50622-0492-04-41			#4

Decision and Order Granting Exemptions Pursuant to Section 311 of the Powerplant and Industrial Fuel Use Act of 1978

The Economic Regulatory Administration (ERA) of the Department of Energy hereby issues this Decision and Order granting temporary public interest exemptions from the prohibitions of Sections 301(a) (2) and (3) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act), 42 U.S.C. 8301 *et seq.* This Decision and Order is issued pursuant to Section 311(e) of FUA, 10 CFR 501.68 and 10 CFR Part 508 to the petitioners who own or operate the powerplants listed in the table below

Docket No.	Petitioner	Generating station (location)	Powerplants identification
E0643-0881-05-41	Commonwealth Edison.	Ridgeland	#5
50643-0881-06-41			#6
50658-1696-01-41	Consumers Power Company.	B. E. Morrow	#1
50658-1696-02-41			#2
50658-1696-03-41			#3
50658-1696-04-41			#4
50807-0599-01-41	City of Dover	McKee Run	#1
50807-0599-02-41			#2
50807-0599-03-41			#3
51006-6246-51-41	Florida Power and Light Company.	Putnam	CC 1
51006-6246-52-41			CC 2
51208-0641-01-41	Gulf Power Company.	Crist	#1
51208-0641-02-41			#2
51208-0641-03-41			#3
51209-3459-05-41	Gulf States Utilities Company.	Sabine	#5
51209-1391-07-41		Louisiana	#7
51209-1391-08-41			#8
51209-1391-09-41			#9
51209-1394-03-41		Willow Glen	#3
51209-1394-04-41			#4
51209-1394-05-41			#5
51209-1393-04-41		Nelson	#4
51259-2244-04-41	City of Hastings	North Denver	#4
51259-2244-05-41			#5
56514-9059-06-41	City of Holyoke	Electric Station	#6
56514-9059-08-41			#8
56514-9059-09-41			#9
51388-9054-01-41	Imperial Irrigation District.	El Centro	#1
51388-9054-02-41			#2
51388-9054-03-41			#3
51388-9054-04-41			#4
51434-0667-01-41	Jacksonville Electric Authority.	Northside	#1
51434-0667-02-41			#2
51434-0667-03-41			#3
51478-1243-03-41	Kansas Gas and Electric Company.	Neosho	#3
51478-1240-01-41		Gordan Evans	#1
51478-1240-02-41			#2
51478-1244-01-41		Ripley	#1
51478-1244-02-41			#2
51478-1244-03-41			#3
51478-1242-01-41		Murray Gill	#1
51478-1242-02-41			#2
51478-1242-03-41			#3
51478-1242-04-41			#4
51575-0676-04-41	City of Lakeland	Larsen	#4
51575-0676-05-41			#5
51575-0676-06-41			#6
51575-0676-07-41			#7
51596-1299-03-41	City of Larned	Municipal	#3
51694-9038-02-41	Louisiana Power and Light.	Waterford	#2
51694-1403-02-41		Ninemile Point	#2
51694-1403-03-41			#3
51888-2046-01-41	Mississippi Power Company.	Eaton	#1
51888-2046-02-41			#2
51888-2046-03-41			#3
51888-2048-01-41		Sweatt	#1
51888-2048-02-41			#2
51988-2276-03-41	Nebraska Public Power District.	Bluffs	#3
51988-2276-04-41			#4
52224-0246-01-41	Pacific Gas and Electric Company.	Humboldt Bay	#1
52224-0246-02-41			#2
52786-2098-04-41	St. Joseph Light and Power Company.	Lake Road	#4
52786-2097-20-41		Edmond Street	#20
53146-3809-03-41	Virginia Electric and Power Company.	Yorktown	#3

The petitioners filed for these temporary public interest exemptions pursuant to 10 CFR Part 508 (Exemption for Use of Natural Gas by Existing Powerplants Under the Powerplant and Industrial Fuel Use Act of 1978, April 9, 1979, 44 FR 21230, hereafter referred to as the Special Rule). Notice of the petitions and a proposed order granting these temporary exemptions was published in the March 21, 1980, **Federal Register** (44 FR 18423) presenting an

opportunity for public comments and for interested persons to request a public hearing relating to the petitions and the proposed order.

The Process Gas Consumers Group, American Iron and Steel Institute and Georgia Industrial Group requested a hearing. ERA scheduled and convened a hearing on August 25, 1980. Several preliminary motions were filed by other hearing participants to dismiss the hearing upon the ground that the requesting persons were not interested persons as contemplated by Section 701 of FUA and 10 CFR 501.33 and 501.34. The Presiding Officer at the hearing, after receiving written submissions supporting and opposing the motions, granted the motions to dismiss. In so doing he found that the persons who requested the hearing lacked the requisite interest to request a hearing and ruled, therefore, that in the absence of a competent request for a hearing ERA should proceed with the processing of the petitions for decision without a hearing.

Based on the information provided by the petitioners, the listed powerplants are either prohibited by Section 301(a)(2) of FUA from using natural gas as a primary energy source or are prohibited from using natural gas in excess of the average base year proportion allowed in Section 301(a)(3) of the Act. These temporary exemptions will allow these units to burn natural gas, notwithstanding the prohibitions of Section 301(a) (2) or (3) of FUA, to displace consumption of high sulfur residual fuel oil.

Statement of Reasons

Because world oil supplies continue to be unstable, there is an urgent need to use these natural resources wisely.

To the extent that the near-term choice of fuels for certain existing powerplants is limited to petroleum or natural gas, the use of natural gas is preferred over petroleum. The use of natural gas in these powerplants will be a significant step toward reducing our short-term oil consumption and will help the United States reduce its dependence on imported petroleum. This increased use of natural gas will also protect the Nation from the effects of any oil shortages, and will cushion the impact of increasing world oil prices, which have a detrimental effect on the Nation's balance of payments and domestic inflation rate.

To the extent that increased use of natural gas will accomplish these goals, it will reduce the importation of petroleum and further the goal of national energy self-sufficiency.

The petitioners have demonstrated that these powerplants, for which they are requesting temporary exemptions, are existing units that are either prohibited from using natural gas as a primary energy source by Section 301(a)(2) of FUA, or prohibited from using natural gas in excess of the average base year proportion allowed in Section 301(a)(3) of FUA. The petitioners have also shown that the proposed use of natural gas as a primary energy source, to the extent that such use would be prohibited by Section 301(a)(2) or (3) of FUA, will displace consumption of high sulfur residual fuel oil, and will not displace the use of coal or any other alternate fuel in any facility of the petitioner's utility systems, including the powerplants for which these temporary exemptions are issued.

By establishing these facts the petitioners have met the eligibility criteria set out in § 508.2 of the Special Rule. Since the increased use of natural gas is in keeping with the purposes of FUA and is in the public interest, and since the petitioners have demonstrated that they have met the eligibility criteria, ERA is granting these temporary exemptions.

Duration of Temporary Exemptions

ERA grants these temporary public interest exemptions until December 7, 1981. Upon the request of the petitioners these exemptions may be extended for an additional period at the discretion of ERA. However, a temporary public interest exemption, including all extensions and the period during which the petitioners were allowed to burn gas while their petitions were pending, may not exceed the maximum 5 year period authorized by the Act, or extend beyond June 30, 1985. All requests for extensions must be filed with ERA by September 7, 1981. The temporary exemptions are subject to termination by ERA, upon six months written notice, if ERA determines such termination to be in the public interest.

Effective Date of Decision and Order

This Decision and Order shall become effective on the sixtieth calendar day following its publication in the **Federal Register** (December 15, 1980), in accordance with section 702(a) of FUA. However, in accordance with the policy set forth in the notice implementing this Special Rule (44 FR 21230) ERA will take no action with respect to any natural gas used by the exempted powerplants between May 8, 1979, the effective date of FUA, and the date this Decision and Order becomes effective.

Terms and Conditions

Pursuant to Section 314 of FUA and 10 CFR 506.6, the temporary exemptions granted under this Decision and Order are conditioned upon, and shall remain in effect so long as long as each petitioner, its successors and assigns, complies with the following terms and conditions:

(1) Petitioner will report to ERA for the period from May 8, 1979, through December 31, 1979, and for each subsequent six-month period thereafter the actual monthly volumes of natural gas consumed in each exempted powerplant, and an estimate of the number of barrels of each type of fuel oil displaced.

(2) Petitioner will submit to ERA, within one year after the date this Decision and Order is issued, a system-wide fuel conservation plan to include the period covered by these temporary exemptions, including the means by which the petitioner will measure progress in implementing this plan. If a petitioner has received temporary public interest exemptions under previous orders for other powerplants within his utility system, the first granted exemption order establishes the due date for the system-wide fuel conservation plan.

(3) If the petitioner seeks to have the exemptions extended, the fuel conservation plan must cover both the initial period covered by these temporary exemptions and the additional period, including the means by which the petitioner will measure progress in implementing this plan.

(4) Petitioner will submit annually to ERA, commencing with the calendar year ending December 31, 1981, a report on progress achieved in implementing the pertinent fuel conservation plan, if the petitioner's exemptions are extended beyond December 7, 1981.

ERA's grant of these temporary public interest exemptions does not relieve an existing powerplant from compliance with any rules or regulations concerning the acquisition or the distribution of natural gas that are administered by the Federal Energy Regulatory Commission or any State regulatory agency or from any obligations the utility may have to its customers.

Issued in Washington, D.C., on October 9, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-32320 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project Nos. 3135, 3277]

American Hydro Power Corp. and City of Philadelphia, Pa.; Applications for Preliminary Permit

October 9, 1980.

Take notice that the American Hydro Power Corporation filed on April 14, 1980, and the City of Philadelphia filed on June 24, 1980, competing applications for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for a proposed project that would be known as the Fairmount Dam Project FERC Projects Nos. 3135 and 3227, respectively. The proposed project would be located on the Schuykill River in Philadelphia, Pennsylvania. Correspondence with the American Hydro Power Company should be directed to: Mr. Peter A. McGrath, American Refining Company, Inc., One Aldwyn Center, Villanova, Pennsylvania 19085. Correspondence with the City of Philadelphia should be directed to: Mr. Kenneth J. Zitomer, Commissioner, Water Department, Room 1160, Municipal Service Building, Philadelphia, Pennsylvania 19107.

Project Description—The proposed project would consist of: (1) An existing 32-foot high, 1,025-foot long timber and concrete dam currently owned by the City of Philadelphia; (2) a reservoir having a maximum storage capacity of 4,000 acre-feet; (3) a proposed conduit leading from the reservoir (east of the dam) directly underground to; (4) an existing historic structure known as the New Mill House, which would contain six 600-kW generating units having a total installed capacity of 3,600 kW; and (5) appurtenant works. The estimated average annual energy output would be between 17,500 and 26,000 megawatt-hours.

Purpose of Project—Project energy developed from Project No. 3135 would be sold to local customers or used by the American Hydro Power Corporation. Project energy developed from Project No. 3227 would be used by the City of Philadelphia.

Proposed Scope and Cost of Studies under Permit—Each Applicant seeks issuance of a preliminary permit for a period of three years, during which time it would conduct surveys, an engineering feasibility study, and an economic and environmental assessment of the proposed project. Depending upon the outcome of the studies, each of the Applicants would decide whether to proceed with an application for license. The American Hydro Power Company estimates that the cost of studies under the permit would be $71,000. The City of Philadelphia estimates the cost of studies under the permit would be between $75,000 and $80,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 8, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 6, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c), (as amended 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR, 4.33(a) and (d), (as amended, 44 FR 61328, October 25, 1979).

Comments, Protests or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 8, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32269 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3317]

Atlantic Power Development Corp.; Application for Preliminary Permit

October 9, 1980.

Take notice that the Atlantic Power Development Corporation (Applicant) filed on August 14, 1980, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for proposed Project No. 3317 to be known as the Morgantown Project located on the Monongalia River in Monongalia County, West Virginia. Correspondence with the Applicant should be directed to: Mr. Thomas F. Nolan IV, Attorney at Law, 401 C Street, N.E., Washington, D.C. 20002.

Project Description—The proposed project would utilize the Corps of Engineers' Morgantown Lock and Dam facility and would consist of: (1) A new powerhouse at the east end of the dam; (2) turbine/generators rated at 4.3 MW; (3) a 1,320-foot long transmission line; and (4) appurtenant facilities.

The Applicant estimates the annual generation would average 24,108,000 kWh.

Purpose of Project—Applicant intends to sell the entire project output to the local electric public utility.

Proposed Scope and Cost of Studies under Permit—The Applicant seeks issuance of a preliminary permit for a period of 18 months, during which time it would perform surveys and geological investigations, determine the economic feasibility of the project, reach final agreement on sales of the project's power, secure financing commitments, consult with Federal, State, and local government agencies concerning the potential environmental effects of the project, and prepare an application for an FERC license, including an environmental report. The Applicant estimates that the cost of studies under the permit would be approximately $88,000.

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Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 6, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 4, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), (as amended, 44 FR 61328, October 25, 1979). A competing appliction must conform with the requirements of 18 CFR, 4.33 (a) and (d), (as amended, 44 FR 61328, October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application shold file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not because a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 6, 1980. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32266 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3314]

Atlantic Power Development Corp.; Application for Preliminary Permit

October 9, 1980.

Take notice that the Atlantic Power Development Corporation (Applicant) filed on August 14, 1980, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for proposed Project No. 3314 to be known as Hildebrand Project located on the Monongahela in Monongalia County, West Virginia. Correspondence with the Applicant should be directed to: Thomas V. Nolan IV, Attorney at Law, 401 C Street, NE., Washington, D.C. 20002.

Project Description—The proposed project would utilize Hildebrand Lock and Dam under jurisdiction of the Corps of Engineers and would consist of: (1) A new powerhouse at the north end of the dam; (2) turbine/generating units rated at 5.3 MW; (3) a 500-foot long primary transmission line and (4) appurtenant facilities.

The Applicant estimates that annual generation would average 29,714,000 kWh.

Purpose of Project—Project energy would be sold to the local electric utility.

Proposed Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for a period of 18 months, during which time it would perform surveys and geological investigations, determine the economic feasibility of the project, reach final agreement on sales of the project's power, secure financing commitments, consult with Federal, State, and local government agencies concerning the potential environmental effects of the project, and prepare an application for a FERC license, including an environmental report. Applicant estimates that the cost of studies under the permit would be approximately $100,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasiblity of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 6, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 4, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), (as amended, 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR, 4.33 (a) and (d), (as amended, 44 FR 51328, October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 6, 1980. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32267 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3230]

Chasm Power; Application for Preliminary Permit

October 1, 1980.

Take notice that Chasm Power (Applicant) filed on June 30, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 3230 to be known as the Chateaugay Chasm Project located on the Chateaugay River in Franklin County, New York. Correspondence with the Applicant should be directed to: John H. Dowd, General Delivery, Chateaugay, New York 12920.

Project Description.—The proposed project would redevelop the existing but inoperative Chateaugay Chasm Hydroelectric Plant and would consist of : (1) A 60-foot-high and 42-foot-long reinforced concrete dam; (2) a reservoir with a surface area of about 1.8 acres at spillway crest elevation 730 feet U.S.G.S.: (3) a screened and gated intake and sluice structure located at the dam's right (north) abutment; (4) a 7-foot-diameter and 200-foot-long riveted steel penstock; (5) a native stone and masonry powerhouse containing a generating unit having a rated capacity of 820–kW; and (6) appurtenant facilities. Project energy would be transmitted over a short transmission line to a transformer directly connected to existing New York State Electric and Gas Corporation's transmission lines. Applicant estimates the annual generation would average about 6,141,000 kWh.

Purpose of Project.—Project energy would be sold to New York State Electric and Gas Corporation.

Proposed Scope and Cost of Studies Under Permit.—Applicant seeks issuance of a preliminary permit for a period of three years, during which time it would perform the studies, investigations, tests, and surveys, and prepare maps, plans, and specifications necessary for the preparation of an application for an FERC license. Applicant estimates the cost of the work under the permit would be $15,000.

Purpose of Preliminary Permit.—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments.—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications.—Anyone desiring to file a competing application must submit to the Commission, on or before December 1, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 2, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c), (as amended, 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR, 4.33(a) and (d), (as amended, 44 FR 61328, Octoberr 25, 1979.)

Comments, Protests, or Petitions To Intervene.—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 1, 1980. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Lois D. Casbell,

Acting Secretary.

[FR Doc. 80-32263 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-549]

Colorado Interstate Gas Co.; Application

October 9, 1980.

Take notice that on September 15, 1980, Colorado Interstate Gas Company (Applicant), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP80–549 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation for and exchange of natural gas with Western Gas Interstate Company (Western), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to the terms of a gas transportation, exchange and, sales agreement dated July 18, 1980, Applicant proposes to transport up to 5,000 Mcf of natural gas per day for a term of five years. It is asserted the gas would be delivered to Applicant at a delivery point to be established on Applicant's southern system in Oklahoma. Applicant asserts that it would redeliver equivalent volumes to Western Gas at existing system interconnections in Texas and Oklahoma.

It is stated that minor required facilities for connection to Western's gathering system would be installed under Applicant's budget authority.

Applicant asserts it would have the option to purchase 25 percent of the gas transported. It is stated that Western would pay Applicant a current rate of 22.1 cents per Mcf for the transportation service. Applicant, it is further asserted, would pay Western a rate to reflect Western's monthly average purchase price plus 30.52 cents per Mcf for cost of service. Both the purchase rate and cost-of-service charge may change from time to time, it is stated.

Applicant states that the supplies of gas involved are available to Western in the Oklahoma Panhandle area.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 29, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or

1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene if timely filed, or if the Commission on its own motion believes that a formal hearing is required, futher notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb

Secretary.

[FR Doc. 80-32276 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-567]

Columbia Gulf Transmission Co.; Application

October 9, 1980.

Take notice that on September 22, 1980, Columbia Gulf Transmission Company, P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP80-567 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 19,000 Mcf of natural gas per day for Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that Southern would have available for delivery to Applicant for transportation, gas that is produced in East Cameron Block 23, offshore Louisiana. It is stated that Southern would transport the gas from a producer platform in East Cameron Block 23 through approximately 17.8 miles of 16-inch pipeline, to be constructed and owned by Southern and applicant, to a point of interconnection with Applicant's 16-inch pipeline near the South Pecan Lake Amoco Plant, Cameron Parish, Louisiana.

Applicant states it would transport the gas received at the interconnection in Cameron Parish on a best-efforts basis through its 16-inch pipeline to a tie-in with its existing lateral line in Jefferson Davis Parish, Louisiana, and then through Applicant's available capacity in the West Lateral and mainline systems for delivery to Southern at the interconnection of Applicant's mainline facilities and Southern's measurement facilities in East Carroll Parish, Louisiana.

Applicant avers that it has sufficient available capacity to receive, transport and deliver up to 19,000 Mcf of natural gas per day and that the transportation would have no effect on any of Applicant's other sales, services or operations.

Applicant states is would charge Southern 13.665 cents per Mcf for the transportation service. It is further stated that the transportation would commence upon initial deliveries, for a term of 15 years and from year to year thereafter.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 30, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32277 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. SA80-93]

El Paso Natural Gas Co.; Application for Staff Exemptive Order

October 9, 1980.

Take notice that on March 14, 1980, El Paso Natural Gas Company (El Paso) petitioned the Federal Energy Regulatory Commission (Commission) (1) to amend a temporary order concerning a certificate of public convenience and necessity in order to authorize withdrawal of working gas, injected cushion gas, and native gas from the Rhodes Reservoir Storage Project (*see*, Docket No. CP76-87), and (2) to grant an exemption from incremental pricing under Title II of the Natural Gas Policy Act of 1978 (NGPA) for the above-described injected cushion gas. The Commission will treat the second portion of this petition as a request for an exemptive order by the Staff pursuant to § 282.206(b) of the Commission's regulations.

El Paso states that it proposes to withdraw from Rhodes Reservoir and sell volumes of injected cushion gas to low priority, east-of-California (EOC) customers who originally sustained curtailment during the 1973 injection process.[1] El Paso proposes to charge the 1973 price of the gas plus the current transmission charge. Because the injected cushion gas was curtailed from El Paso's low-priority EOC customers prior to enactment of the NGPA and the implementation of the Title II incremental pricing regulations, El Paso believes that the application of incremental pricing to these sales would result in inequity and unfair distribution of burdens to those customers. For this reason El Paso requests an exemption from incremental pricing for this gas.

The procedures applicable to the conduct of this proceeding are found in § 1.41 of the Commission's Rules of Practice and Procedure as revised in Docket No. RM80-78 (September 23, 1980).

Any person desiring to participate in this proceeding shall file a petition to intervene in accordance with the provisions of § 1.41. All petitions to intervene must be filed on or before October 31, 1980.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32272 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[1] Pursuant to the Commission's temporary order issued August 7, 1973, 50 FPC 500, as subsequently confirmed by a final permanent order issued October 10, 1973, 50 FPC 1036, at Docket No. CP73-334, El Paso curtailed its low-priority EOC customers and concurrently injected into Rhodes Reservoir during the 1973 summer season volumes of natural gas which include the subject 2,900,000 Mcf of cushion gas, all as necessary for the reactivation of Rhodes Reservoir as a storage facility to assist El Paso in fully protecting Priority 1 and 2 service to its EOC customers. Said volumes of natural gas injected into Rhodes Reservoir in 1973 were not subject to the restitution plan approved by the Commission in Opinion No. 800-B (*see*, Opinion Nos. 800, *et seq.* dated May 23, 1977, July 20, 1977, and December 30, 1977).

[Docket No. ES80-81]

Gulf States Utilities Co.; Application

October 8, 1980.

Take notice that on September 24, 1980, Gulf States Utilities Company (Applicant) filed an application seeking authorization to issue up to $200,000,000 of short-term notes to be issued from time to time with a final maturity date of December 31, 1982.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 24, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32254 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3290]

Hydro Corp. of Pennsylvania; Application for Preliminary Permit

October 9, 1980.

Take notice that Hydro Corporation of Pennsylvania (Applicant) filed on August 4, 1980, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)] for proposed Project No. 3290 to be known as the Shenango River Dam Project located on the Shenango River in Mercer County, Pennsylvania. The proposed project would utilizer Federal lands and a Federal dam under the jurisdiction of the U.S. Army Corps of Engineers. Correspondence with the Applicant should be directed to: Mr. Fred Fiechter, President and Treasurer, P.O. Box 34, Chatham, Pennsylvania 19318.

Project Description.—The proposed project would utilize the U.S. Army Corps of Engineer's existing Shenango River Dam and Reservior. The project would consist of the following unconstructed works: (1) A penstock extending from a series of existing outlet gates to a powerhouse located on the southwest bank of the river; (2) a powerhouse; and (3) apurtenant facilities. The installed capacity would be about 2,100 kW and have an estimated average annual energy production of 8,65,000 kWh.

Purpose of Project.—Project energy would be sold to local public utilities.

Proposed Scope and Cost of the Studies Under Permit.—Applicant seeks issuance of a preliminary permit for a period of three years, during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic, and recreational aspects of the project. Depending upon the outcome of the studies, the Applicant would proceed with an application for an FERC license. Applicant estimates that cost of the studies would be $50,000.

Purpose of Preliminary Permit.—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments.—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications.—Anyone desiring to file a competing application must submit to the Commission, on or before December 8, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 6, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c), as amended, 44 FR 61328 (October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d), as amended, 44 FR 61328 (October 25, 1979).

Comments, Protests, or Petitions To Intervene.—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protect with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 8, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32268 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-804]

Indiana & Michigan Electric Co.; Filing

October 8, 1980.

The filing Company submits the following:

Take notice that American Electric Power Service Corporation (AEP) on September 29, 1980, tendered for filing on behalf of its affiliate, Indiana & Michigan Electric Company (Indiana Company), Modification No. 9 dated May 1, 1980 to the Interconnection Agreement dated June 1, 1968, between Indiana & Michigan Electric Company and Central Illinois Public Service Company designated Indiana's Rate Schedule FPC No. 67.

The Modification includes a new Service Schedule H which provides for the purpose of conserving energy resources during extended fuel shortages, for transfers of energy to and from systems interconnected with the parties. The Service Schedule H provides for a transmission service charge of 1.7 and 1.2 mills per kilowatt-hour for deliveries of Fuel Conservation Energy, when such receiving company is Central Illinois Public Service Company or Indiana Company, respectively, and for generation of (a) 6 mills per kilowatt-hour plus incremental energy costs, plus 2 mills when Indiana Company is the delivering party and (b) 7.2 mills per kilowatt-hour plus incremental costs, plus 2 mills when Central Company is the delivering party.

The filing parties have requested that these Schedules be permitted to be effective immediately should circumstances arise requiring their use.

Copies of this filing were served upon Central Illinois Public Service Company, the Public Service Commission of Indiana, the Michigan Public Service Commission and the Illinois Commerce Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 27, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-32252 Filed 10-15-80; 8:45 am]
BILLING CODE 6450-85-M

[Docket No. ER80-810]

Indiana and Michigan Electric Co.; Filing

October 8, 1980.

The filing company submits the following:

Take notice that American Electric Power Service Corporation (AEP) on September 29, 1980, tendered for filing on behalf of its affiliate, Indiana & Michigan Electric Company (I&M), Modification No. 12 dated May 1, 1980 to the Interconnection Agreement dated December 30, 1960, between Indiana & Michigan Electric Company and Indianapolis Power & Light Company, designated I&M's Rate Schedule FPC No. 21.

The Modification includes a new Service Schedule K which provides for the purpose of conserving energy resources during extended fuel shortages, for transfers of energy to and from systems interconnected with the parties. The Service Schedule K provides for a transmission service charge of 1.7 and 1.6 mills per kilowatt-hour for deliveries of Fuel Conservation Energy, when such receiving company is Indianapolis Power & Light Company or Indiana & Michigan Electric Company, respectively, and for generation of (a) 6 mills per kilowatt-hour plus incremental energy costs, plus 2 mills when I&ME is the delivering party and (b) 6 mills per kilowatt-hour plus incremental costs, plus 2 mills when Indianapolis is the delivering party.

The filing parties have requested that these Schedules be permitted to be effective immediately should circumstances arise requiring their use.

Copies of this filing were served upon Indianapolis Power & Light Company, the Public Service Commission of Indiana and the Michigan Public Service Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before October 27, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-32259 Filed 10-15-80; 8:45 am]
BILLING CODE 6450-85-M

[Project No. 3297]

James M. Knott; Application for Preliminary Permit

October 8, 1980.

Take notice that James M. Knott (Applicant) filed on August 11, 1980, an application for preliminary permit, (pursuant to the Federal Power Act, 16 U.S.C 791(a)–825(r)) for proposed Project No. 3297 to be known as the Riverdale Project located on the Blackstone River in the Town of Northbridge and the County of Worcester, Massachusetts. Correspondence with the Applicant should be directed to: Mr. James M. Knott, 130 Riverdale Street, Northbridge, Massachusetts 01534.

Project Description—The proposed project would consist of the following exising facilities which would be renovated: (1) A dam approximately 7 feet high and 142 feet long; (2) three sluiceways providing a head of almost 10 feet; (3) an 18 acre mill pond; (4) a small powerhouse integral with the mill plant containing; (5) three turbines rated at 200, 100, and 75 horsepower connected to generators rated at 200, 100, and 75 kW; and (6) appurtenant facilities. Annual generation would average 894,000 kWh.

Purpose of Project—Project energy would be sold to the New England Power Service Company and local industries.

Proposed Scope and Cost of Studies under Permit—The work proposed under this preliminary permit would include preliminary designs, an economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to rehabilitate and operate the project. Applicant estimated that the work to be performed under this preliminary permit would cost $15,000. The proposed term of the requested permit is 24 months.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 5, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 3, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c), (as amended 44 FR 61328, (October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d), as amended, 44 FR 61328, October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protests, or petition to intervene must be filed on or before December 5, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with Commission and is available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-32260 Filed 10-15-80; 8:45 am]
BILLING CODE 6450-85-M

[Projects Nos. 3275 and 3361]

Kansas Electric Power Cooperative, Inc., and Continental Hydro Corp.; Applications for Preliminary Permit

October 9, 1980.

Take notice that Kansas Electric Power Cooperative, Inc. (Applicant/KEPCO) and Continental Hydro Corporation (Applicant/CHC) filed on July 30, 1980, and August 25, 1980, respectively, competing applications for preliminary permits (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for proposed hydroelectric projects, each to be known as the John Redmond Project, FERC Projects Nos. 3275 and 3361, respectively, located on the Upper Grand (Neosho) River near Burlington, in Coffey County, Kansas. Correspondence with KEPCO should be directed to: Mr. Charles Ross, Executive Vice President, Kansas Electric Power Cooperative, Inc., 5709 West 21st Street, P.O. Box 4267, Gage Center Station, Topeka, Kansas 66604. Correspondence with CHC should be addressed to: Mr. A. Gail Staker, President, 141 Milk Street, Suite 1143, Boston, Massachusetts 02109.

Project Description—The proposed project would utilize the existing U.S. Army Corps of Engineers' John Redmond Dam and would consist of: (1) A penstock; (2) a powerhouse containing a generating unit having a total rated capacity of 7,000-kW (KEPCO) or 6,000-kW (CHC); (3) a short tailrace; and (4) appurtenant facilities. KEPCO would construct a project switchyard and deliver project energy to existing transmission lines at Burlington through a 2.5-mile long transmission line. CHC would deliver project energy to existing power lines serving the dam or would connect to Kansas Power and Light Company's 345-kV transmission lines within ten miles of the project. KEPCO estimates the annual generation would average about 21,400,000 kWh; CHC estimates the annual generation would average about 26,000,000 kWh.

Purpose of Project—KEPCO would utilize the project energy within its system to displace power which would otherwise be purchased from other member cooperatives. CHC would sell the project energy to Kansas Power and Light Company.

Proposed Scope and Cost of Studies under Permit—Both Applicants seek issuance of preliminary permits for a period of 36 months. Each Applicant proposes that is would perform data acquisition, investigations, studies, feasibility evaluation, would consult with Federal, State, and local government agencies, and prepare an application for an FERC license, including an environmental report. KEPCO and CHC estimate that the cost of studies under the permit would not exceed $320,000 and $75,000, respectively.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described applications for preliminary permit. (A copy of the application may be obtained directly from the respective Applicants.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 8, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 6, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c), as amended, 44 FR 61328 (October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d), as amended, 44 FR 61328 (October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about these applications should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 8, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the

Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32265 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-561]

Locust Ridge Gas Co.; Application

October 9, 1980.

Take notice that on September 18, 1980, Locust Ridge Gas Company (Applicant), 4100 Southwest Freeway, Suite 320, Houston, Texas 77027, filed in Docket No. CP80-561 an application pursuant to Section 7(c) of the Natural Gas Act and Section 284.221 of the Commission's Regulations for a certificate of public convenience and necessity for blanket authorization to transport natural gas for other interstate pipeline companies, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests blanket authorization to transport gas for other interstate pipeline companies for periods of up to two years. It states that it would comply with §284.221(d) of the Commission's Regulations under the NGPA.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 23, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene if timely filed, or if the Commission on its own motion believes that a formal hearing is required, futher notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32274 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-553]

Michigan Gas Storage Co.; Application

October 9, 1980.

Take notice that on September 16, 1980, Michigan Gas Storage Company (Applicant), 212 West Michigan Avenue, Jackson, Michigan 49201, filed in Docket No. CP80-553 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a 4½-inch O.D. pipeline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate 0.34 mile of 4½-inch O.D. pipeline extending from Applicant's Riverside Storage Field to a tap site at Applicant's McBain City Gate Station, Missaukee County, Michigan, it is stated. The pipeline would parallel Applicant's existing 2-inch pipeline thereby connecting its Riverside Storage Field with its McBain City Gate Station, it is asserted. It is asserted the subject facilities would cost $44,000 which would be financed internally.

Applicant indicates that the proposed pipeline is necessary to meet the demand of its customer, Consumers Power Company, for an increased volume of gas at the McBain City Gate Station which is currently served by a single 2-inch line.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 29, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Enegy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32275 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Projects Nos. 3241, 3242, 3243, 3244, 3245 and 3246]

Missouri Joint Municipal Electric Utility Commission; Applications for Preliminary Permit

October 8, 1980.

Take notice that Missouri Joint Municipal Electric Utility Commission (Applicant) filed on July 8, 1980, six applications for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for the project described below. Correspondence with the Applicant should be direced to: Mr. Richard E. Malon, Chairman, Missouri Joint Municipal Electric Utility Commission, P.O. Box N, Columbia, Missouri 65201.

Projects Nos. 3241, 3242, 3243, 3244 3245 and 3246 would be located at Mississippi River Lock and Dam Numbers 20, 21, 22, 24, 25 and 26R, respectively.

Project Description —The six proposed projects would each utilize an existing U.S. Army Corps of Engineers Lock and Dam.

Project No. 3241 would consist of: (1) A powerhouse constructed at or near the west abutment of the existing lock and dam in Lewis County, Missouri, containing 1 or 2 generating units with a total plant capacity in the range of 15 to 25 MW; (2) transmission lines with the number, length and voltage to be determined during the studies under the preliminary permit; and (3) appurtenant facilities. Applicant estimates the annual generation to be in the range of 79,000 to 131,000 MWH.

Project No. 3242 would consist of: (1) A powerhouse, constructed at or near the west abutment of the existing lock and dam in Marion County, Missouri, containing 1 or 2 generating units with a total plant capacity in the range of 15 to 25 MW; (2) transmission lines with the number, length and voltage to be determined during the studies under the preliminary permit; and (3) appurtenant facilities. Applicant estimates the annual generation to be in the range of 79,000 to 131,000 MWH.

Project No. 3243 would consist of: (1) A powerhouse, constructed at or near the west abutment of the existing lock and dam in Ralls County, Missouri, containing 1 or 2 generating units with total plant capacity in the range of 15 to 25 MW; (2) transmission lines with the number, length and voltage to be determined during the studies under the preliminary permit; and (3) appurtenant facilities. Applicant estimates the annual generation to be in ther range of 79,000 to 131,000 MWH.

Project No. 3244 would consist of: (1) A powerhouse, constructed at or near the west abutment of the existing lock and dam in Pike County, Missouri, containing 1 or 2 generating units with a total plant capacity in the range of 15 to 25 MW; (2) transmission lines with the number, length and voltage to be determined during the studies under the preliminary permit; and (3) appurtenant facilities. Applicant estimates the annual generation to be in the range of 79,000 to 131,000 MWH.

Project No. 3245 would consist of: (1) A powerhouse, constucted at or near the west abutment of the existing lock and dam in Lincoln County, Missouri, containing 1 or 2 generating units with a total plant capacity in the range of 15 to 25 MW; (2) transmission lines with the number, length and voltage to be determined during the studies under the preliminary permit; and (3) appurtenant facilities. Applicant estimates the annual generation to be in ther range of 79,000 tq 131,000 MWH.

Project No. 3246 would consist of: (1) A powerhouse constructed at or near the west abutment of navigation lock No. 26R, presently under construction in St. Charles County, Missouri, containing several generating units with a total plant capacity in the order of 60 MW; (2) transmission lines with the number, length and voltage to be determined during the studies under the preliminary permit; and (3) appurtenant facilities. Applicant estimates the annual generation to be in the order of 366,000 MWH.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, If issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be présumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 8, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 6, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c), as amended, 44 FR 61328 (October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d), as amended, 44 FR 61328 (October 25, 1979).

Comments, Protests or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or § 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 8, 1980. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32261 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ES80-82]

Missouri Utilities Co.; Application

October 8, 1980.

Take notice that on September 29, 1980, Missouri Utilities Company (Applicant) filed an application seeking an order pursuant to Section 204 authorizing the issuance of up to $7,500,000 of unsecured primissory notes to be issued from time to time, with a final maturity date of not later than December 31, 1982.

Any person desiring to be heard or to make any protest with reference to the application should on or before October 31, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings: Persons wishing to become parties to the preceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32253 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-571]

Montana-Dakota Utilities Co.; Application

October 9, 1980.

Take notice that on September 23, 1980, Montana-Dakota Utilities Co. (Applicant), 400 North Fourth Street, Bismarck, North Dakota 58501, filed in Docket No. CP80-571 an application

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pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to render natural gas storage service to Frontier Gas Storage Company (Frontier), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to receive gas for the account of Frontier, store it, and redeliver it for sale back by Frontier to Applicant as an integral part of a gas storage finance project. Applicant states the gas storage finance project is designed to allow Applicant to purchase and store natural gas while financing such purchases entirely by means of debt obligations of Frontier.

Applicant maintains that it would physcially continue to operate its system as it has in the past and that the proposed service would be rendered by means of the existing storage facilities located in its Baker, Elk Basin, and Billy Creek storage fields.

Pursuant to a natural gas sale for storage agreement, Applicant states it would transfer to Frontier title to all gas which Applicant injects into storage on and after December 1, 1980, in addition to transferring to Frontier the quantity of gas held in storage on December 1, 1980, which exceeds the balances in Applicant's storage fields on December 31, 1978. It is stated that since Frontier has no facilities of its own, Applicant must provide a storage service for the benefit of Frontier when it takes title. Applicant states that it would then withdraw from the storage fields whatever volumes are required to meet the needs of its customers pursuant to a sellback agreement with Frontier. The sellback agreement also provides, it is asserted, that Applicant would regain title to the withdrawn gas at the outlet flanges of the master meters serving the storage fields.

Since there is no regularly scheduled flow of gas in and out of storage but rather a use of storage to husband available production and then a withdrawal based on Applicant's customer requirements, Applicant states it would charge Frontier a flat monthly fee of $64,974 for the proposed storage service. It is stated that the charge allocates 25.5557 percent of the allocated storage cost of service to Frontier which reporesents the ratio of total unused storage capacity on December 31, 1978, to total available storage capacity on that date. Moreover, Applicant asserts that it would charge Frontier $3,000 per month for clerical services performed in connection with the finance project.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 30, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32270 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3299]

New Hampshire Water Power, Inc.; Application for Preliminary Permit

October 8, 1980.

Take notice that New Hampshire Water Power, Inc. (Applicant) filed on August 6, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 3299 to be known as the Penacook Hydroelectric Project located on the Contoocook River in Penacook, Merrimack County, New Hampshire. Correspondence with the Applicant should be directed to: New Hampshire Water Power, Inc., Box 134, Franklin, New Hampshire 03235.

Project Description.—The proposed project would consist of: (1) A dam and intake structure, about 220 feet long and 19 feet high (to be constructed at the former site of a dam that was breached); (2) a reservoir of negligible storage capacity at surface elevation between 312 and 314 feet m.s.l.; (3) a powerhouse integral with the dam or located about 40 feet downstream of the dam on the south (right) bank of the river; (4) a penstock (if powerhouse location is 40 feet downstream of the dam); (5) a tailrace; and (6) other appurtenances. Installed capacity of the powerhouse is proposed to be 1,530 kW, and Applicant estimates average annual generation would be 6,530,000 kWh.

Purpose of Project.—Project energy would be sold to the local electric utility, the Concord Electric Company.

Proposed Scope and Cost of Studies under Permit.—Applicant seeks issurance of a preliminary permit for a period of 36 months. During the term of the permit Applicant would perform economic, environmental, and hydrologic studies, engineering surveys and investigations, and prepare preliminary designs of the project works. Applicant estimates costs of studies under a preliminary permit would be approximately $42,000. If the project proves feasible, Applicant would prepare an application for FERC license.

Purpose of Preliminary Permit.—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other necessary information for inclusion in an application for a license.

Agency Comments.—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications.—Anyone desiring to file a competing application must submit to the Commission, on or before December 5, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 3, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), (*as amended*, 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR, 4.33 (a) and (d), (*as amended*, 44 FR 61328, October 25, 1979.)

Comments, Protests, or Petitions to Intervene.—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 5, 1980. The Commission's address is: 825 North Capitol Street, NE, Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32257 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. SA80-149]

Paxton Petroleum, Ltd.; Application for Adjustment and Request for Interim Relief

October 8, 1980.

On September 12, 1980, Paxton Petroleum, Ltd. ("Applicant") filed with the Federal Energy Regulatory Commission ("Commission") an application for adjustment under section 502(c) of the Natural Gas Policy Act (NGPA), 15 U.S.C. 3301 *et seq.* (1978), and 18 CFR 1.41 *et seq.* Applicant is located at 2102 Hollydale Avenue, Baton Rouge, Louisiana 70808.

Applicant requests that the Commission grant an adjustment from the requirement of 18 CFR 271.804(c). Section 271.804(c) requires that applications for determination of stripper well classification pursuant to section 108 of the NGPA, be based on a 90-day production period falling entirely within the 180 days prior to the date of application.

Applicant states that it acquired ownership rights of the W.O. Watson No. 1 well, Parish of Pointe Coupee, Baton Rouge, Louisiana in Agust of 1980. The previous owner established for the well a production period of 90 consecutive days during July, August and September of 1979. The production data indicates that the well produced less than 60 Mcf per day during the 1979, 90-day production period. See 18 CFR 271.803(c)(2). However, the former owner allowed the 180-day filing period required under 18 CFR 271.804(c) to expire. The well was subsequently shut-in.

Applicant requests that the Commission grant applicant an adjustment from 18 CFR 271.804(c), so that applicant may apply for a section 108 determination for the subject well based on the 1979, 90-day production period. Such relief would save applicant from having to re-open the well to establish a new, more recent 90-day production period, and from having to sell the gas during that period at the NGPA section 104 price.

Applicant further requests interim relief, pursuant to 18 CFR 1.41(m), from the 180-day requirement of 18 CFR 271.804(c).

The procedures applicable to the conduct of this adjustment proceeding are found in § 1.41 of the Commission's Rules of Practice and Procedure, 18 CFR 1.41.

Any person desiring to participate in this adjustment proceeding shall file a petition to intervene in accordance with the provisions of § 1.41(e). All petitions to intervene must be filed no later than October 29, 1980, and should be sent to the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32258 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-805]

Southern California Edison Co.; Filing

October 8, 1980.

The filing Company submits the following:

Take notice that on September 25, 1980, Southern California Edison Company ("Edison") tendered for filing, as an initial rate schedule an Agreement dated, April 25, 1980, with Portland General Electric Company ("Portland") and which is titled "Edison-Portland 1980 Exchange Agreement."

Under the terms of the Agreement, Edison is to make available to Portland 300,000 MWH of off-peak energy each of the periods January 1, 1980, through May 31, 1980, and October 1, 1980, through May 31, 1981, and Portland is to make available to Edison up to 200 MW of capacity and associated energy during the period June 1, 1980, through September 30, 1980, all at prices and conditions as set forth in the Agreement.

Edison has requested that the prior notice requirement be waived and that the Agreement be made effective as an initial rate schedule as of January 1, 1980.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Portland.

Any person desiring to be heard or to protest this application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 27, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32256 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RP80-136]

Tennessee Gas Pipeline Co., a Division of Tenneco, Inc.; Petition for Declaratory Order

October 9, 1980.

Take notice that on September 8, 1980, Pennsylvania Gas and Water Company (Penn G&W) filed with the Commission a petition for a declaratory order pursuant to section 1.7(c) of the Commission's Rules of Practice and Procedure. Penn G&W requests that the Commission determine, under the factual circumstances summarized below and set out in detail in the petition, that Tennessee Gas Pipeline Company, a Division of Tenneco, Inc. (Tennessee), is authorized to, and

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should waive the overrun penalty which Tennessee has charged and collected from Penn G&W.

A summary of the facts provided in Penn G&W's petition is as follows: On January 2, 3, 4, 5 and 7, 1980, deliveries by Tennessee to Penn G&W exceeded Penn G&W's 57,120 Mcf per day contract entitlement by a total overrun of 14,781 Mcf (an approximate 2,600 Mcf to 3,200 Mcf overrun for each day). Tennessee has charged and collected a $10.00 per Mcf overrun penalty amounting to a total penalty of $147,810.

Penn G&W states that the overrun was unintentional and due to a malfunction of its telemetering equipment at the Uniondale delivery point. Under such circumstances Penn G&W asserts that a fair reading of sections 6.2 and 6.3 of Tennessee's FPC Gas Tariff, Ninth Revised Volume No. 1, Original Sheet No. 17, indicates that Tennessee should waive any overrun penalty in this instance.

Any person desiring to be heard or to make any protest with reference to said petition on or before October 31, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32254 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP69-222]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Petition To Amend

October 9, 1980.

Take notice that on September 5, 1980, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Petitioner); P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP69-222 a petition to amend the order issued August 27, 1969,[1] as amended, in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize service to the City of Ripley, Mississippi (Ripley) under Petitioner's Rate Schedule G-1 in lieu of service under Petitioner's Rate Schedule GAS-1, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Petitioner proposes to serve Ripley under its Rate Schedule G-1 pursuant to the terms of a gas sales contract dated April 1, 1980. Petitioner asserts its Rate Schedule GS-1 ceased to be available to Ripley on March 31, 1980. It is further asserted that service under Petitioner's Rate Schedule G-1 commenced on April 1, 1980. Petitioner states that its Rate Schedule GS-1 was no longer available to Ripley because in January 1980 Ripley received in excess of 5,100 Mcf of gas on three different days.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before October 29, 1980 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure, (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32273 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RP75-19 (Remand)]

Texas Gas Transmission Corp.; Rescheduling Informal Technical Conference

October 8, 1980.

Take notice that the informal technical conference previously scheduled to be held on October 14, 1980, (Tr. 28) is hereby rescheduled for October 20, 1980, at 10:00 a.m. The conference will be held at the offices of the Federal Energy Reglatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Any interested person may attend the conference, but attendance alone does not constitute Commission authorization to intervene in the proceeding.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32255 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP75-244]

United Gas Pipe Line Co., and Mid Louisiana Gas Co.; Petition To Amend

October 9, 1980.

Take notice that on September 23, 1980, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, and Mid Louisiana Gas Company (Mid Louisiana), 2100 Lykes Center, 300 Poydras Street, New Orleans, Louisiana 70130, filed in Docket No. CP75-244 a joint petition to amend the order issued in the instant docket of February 9, 1976[1] pursuant to Section 7(c) of the Natural Gas Act so as to authorize an additional exchange point between the parties at Geismar, Ascension Parish, Louisiana, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

United and Mid Louisiana state that they are presently authorized in the instant docket by order issued on February 9, 1976, to exchange up to 20,000 MdF of natural gas per day at various points pursuant to their gas exchange agreement dated March 25, 1968, as amended.

United and Mid Louisiana propose herein to implement the terms of an August 21, 1980, amendatory agreement between the parties wherein they agreed to establish an additional exchange point for delivery and receipt of up to 6,000 Mcf of gas per day located on United's existing 30-inch Kosciusko main line, near Geismar. It is further proposed that United would construct, own, and operate the necessary metering, regulating and connecting facilities required to establish the proposed exchange point and that Mid Louisiana would reimburse United for the costs expended in the construction of such facilities. In addition, Petitioners assert that the volumes to be exchanged at the proposed exchange point would be within the presently authorized maximum daily quantity.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before October 30, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to

[1] This proceeding was commenced before the FPC. By joint regulations of October 1, 1977 (10 CFR 1000.0), it was transferred to the Commission.

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the Proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32271 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3315]

Water Power Development Corp.; Application for Preliminary Permit

October 8, 1980.

Take notice that the Atlantic Power Development Corporation (Applicant) filed on August 14, 1980, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)) for proposed Project No. 3315 to be known as the Opekiska Project located on the Monongahela River in Monongalia County, West Virginia. Correspondence with the Applicant should be directed to: Thomas V. Nolan IV, Attorney at Law, 401 C Street, NE., Washington, D.C. 20002.

Project Description.—The proposed project would utilize the Opekiska Lock and Dam under jurisdiction of the Corps of Engineers and would consist of: (1) A new powerhouse on the west side of the dam; (2) turbine/generating units rated at 5.6 MW; (3) a new 200-foot long transmission line; and (4) appurtenant facilities.

The Applicant estimates that annual generation would average 31,396,000 kWh.

Purpose of Project.—Project energy would be sold to the local electric utility.

Proposed Scope and Cost of Studies under Permit.—Applicant seeks issuance of a preliminary permit for a period of 18 months, during which time it would perform surveys and geological investigations, determine the economic feasibility of the project, reach final agreement on sales of the project's power, secure financing commitments, consult with Federal, State, and local government agencies concerning the potential environmental effects of the project, and prepare an application for a FERC license, including an environmental report. The Applicant estimates that the cost of studies under the permit would be approximately $88,000.

Purpose of Preliminary Permit.—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments.—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications.—Anyone desiring to file a competing application must submit to the Commission, on or before December 6, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 4, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c), (as amended, 44 FR 61328, October 25, 1979). A competing application must conform with the requirments of 18 CFR, 4.33(a) and (d), (as amended, 44 FR 61328, October 25, 1979).

Comments, Protests, or Petitions to Intervene.—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 6, 1980. The Commission's address is: 825 North Capitol St., NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32262 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-802]

Canal Electric Co.; Filing

October 8, 1980.

The filing company submits the following:

Take notice that on September 29, 1980, pursuant to Section 35.12 of the Commission's Regulations, Canal Electric Company ("Canal") tendered for filing as an initial rate schedule a Capacity Acquisition Agreement ("Agreement") by and between itself, Cambridge Electric Light Company ("Cambridge") and New Bedford Gas and Edison Light Company ("New Bedford").

The tendered initial rate schedule constitutes a vehicle whereby bulk electric power may be procured by Canal for sale to Cambridge and New Bedford. Canal has heretofore been functioning as a wholesale supplier to Cambridge and New Bedford, *inter alia*. Under the terms of the Agreement, the existing relationship between Canal, Cambridge and New Bedford will be further developed and formalized as Canal increases its role and responsibilities as a wholesale supplier to Cambridge and New Bedford. Canal has requested the Commission to allow the tendered initial rate schedule to become effective as proposed on December 1, 1980, an even date approximately sixty days following filing.

Copies of this filing have been served upon Cambridge and New Bedford.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 27, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32137 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ES81-2-000]

Consumers Power Co.; Application

October 8, 1980.

Take notice that Consumers Power Company (Applicant) on October 3, 1980, filed an Application for Authority to Issue Securities Under Section 204 of the Federal Power Act. Consumers intends to enter into a Construction Financing Agreement (the "Financing Agreement") with a special purpose corporation (the "Company") for the purpose of financing a Nuclear Training Center (the "Center") located in Midland County, Michigan. Concurrently with the execution of the Financing Agreement, the Company will enter into a Credit Agreement (the "Credit Agreement") with The Toronto Dominion Bank, Atlanta Agency, (Toronto Dominion). Pursuant to the Credit Agreement, Toronto Dominion will accept a note from the Company which in aggregate amount will not exceed $40,000,000. The commitment will be available to the Company until 364 days from the date of executive of the Financing Agreement.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR Sections 1.8 and 1.10). All such petitions or protests should be filed on or before October 30, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32142 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-806]

Duke Power Co.; Notice of Filing

October 8, 1980.

The filing Company submits the following:

Take notice that Duke Power Company (Duke Power) tendered for filing on September 29, 1980 a supplement to the Company's Electric Power Contract with Blue Ridge Electric Cooperative. Duke Power states that this contract is on file with the Commission and has been designated Duke Power Company Rate Schedule FERC No. 142.

Duke Power further states that the Company's contract supplement, made at the request of the customer and with agreement obtained from the customer, provides for the following changes in designated and SEPA demands: Delivery point No. 8 from 2,200 KW to -O- KW and Delivery Point No. 16 from 1,500 KW to 2,500 KW with a SEPA Reallocation to this Delivery Point.

Duke Power indicates that this supplement also includes an estimate of sales and revenue for twelve months immediately preceding and for the twelve months immediately succeeding the effective date. Duke Power proposes an effective date of September 20, 1980.

According to Duke Power copies of this filing were mailed to Blue Ridge Electric Cooperative and the South Carolina Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 27, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32139 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3266]

Harrison County, Ohio; Application for Preliminary Permit

October 8, 1980.

Take notice that Harrison County (Applicant) filed on July 24, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3266 to be known as Piedmont Dam Hydropower Project located on the Stillwater Creek near the Village of Freeport, in Harrison County, Ohio. Correspondence with the Applicant should be directed to: Harrison County, Ohio 449 East Market Street, Cadiz, Ohio 43907, and Mr. Robert A. Barnes, P.E., Ayres, Lewis, Norris & May, Inc., 3983 Research Park Drive, Ann Arbor, Michigan 48104.

Project Description—The project would utilize the existing U.S. Army Corps of Engineers' Piedmont Dam, a rolled earth-fill embankment 1,750 feet long and 58 feet high, with an uncontrolled saddle spillway at the north (left) abutment with a crest length of 130 feet at elevation 924.6 feet m.s.l., a reservoir with a surface area of 3,270 acres at elevation 924.6 feet m.s.l. and a storage capacity of 66,700 acre-feet, outlet works northwest of the north abutment, and a stilling basin. The proposed project would consist of: (1) a penstock; (2) a powerhouse with an installed capacity of 300 kW; (3) a transmission line of undetermined voltage rating, about 1½ miles long; (4) a discharge channel; and (5) other appurtenances. Applicant estimates annual generation based on an average effective head of 33 feet would be 2.3 million kWh.

Purpose of Project—Project energy would be sold to the local electric utility company, sold directly to private businesses or industries, utilized directly by county-owned facilities, or utilized by a combination of the three options.

Proposed Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for a period of 36 months. During the term of the permit the Applicant would perform site investigations, develop hydrologicial data and power production characteristics of the site, identify markets for project energy, develop and perform economic analyses of design alternatives, finalize its feasibility report, and if feasible, prepare an application for FERC license. Applicant estimates the cost of studies under a preliminary permit would not exceed $20,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the applicaiton may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before November 17, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than January 16, 1980. Since this application was filed during the term of a preliminary permit, any party intending to file a competing application should review 18 CFR § 4.33(h). A notice of intent must conform with the requirements of 18 CFR § 4.33(b) and (c), as amended 44 Fed. Reg. 61328, (October 25, 1979). A competing application must conform with the requirements of 18 CFR § 4.33(a) and (d), as amended, 44 Fed. Reg. 613238 (October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR, § 1.8 or § 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before November 17, 1980. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32134 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3288]

Hydro Corp. of Pennsylvania; Application for Preliminary Permit

October 8, 1980.

Take notice that the Hydro Corporation of Pennsylvania (Applicant) filed on August 4, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3288 to be known as Youghiogheny Lake Dam Project located on the Youghiogheny River in Fayette County, Pennsylvania. The proposed project would utilized Federal lands and a Federal dam under the jurisdiction of the U.S. Army Corps of Engineers. Correspondence with the Applicant should be directed to: Mr. Fred Fiechter, President and Treasurer, Hydro Corporation of America, P.O. Box 34 Chatham, Pennsylvania 19318.

Project Description—The proposed project would utilize the U.S. Army Corps of Engineers' existing Youghiogheny Lake Dam and Reservior. The project would consist of (1) a proposed penstock extending from an existing water control structure to (2) a powerhouse to be located on the western bank of the Youghiogheny River; and (3) appurtenant facilities. The installed generating capacity would be 8,000 kW, with an average annual energy production of 32,930,000 kWh.

Purpose of Project—Project energy would be sold to local public utilities.

Proposed Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for a period of three years, during which time it would study the hydraulic, construction, economic, environmental, historic, and recreational aspects of the project. Depending upon the outcome of the studies, the Applicant would proceed with an application for an FERC license. Applicant estimates the cost of studies under the permit would be $75,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 8, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 6, 1980. A notice of intent must conform with the requirements of 18 C.F.R. § 4.33(b) and (c), as amended, 44 Fed. Reg. 61328 (October 25, 1979). A competing application must conform with the requirements of 18 C.F.R. § 4.33(a) and (d), as amended, 44 Fed. Reg. 61328 (October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 1.8 or § 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 8, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the

Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32132 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-807]

Idaho Power Co.; Notice of Filing

October 8, 1980.

The filing Company submits the following:

Take notice that on September 29, 1980, the Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during August, 1980, along with cost justification for the rate charged.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 27, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32140 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-2-000]

Indiana & Michigan Electric Co.; Notice of Filing

October 8, 1980.

The filing Company submits the following:

Take notice that American Electric Power Service Corporation (AEP) on October 2, 1980 tendered for filing on behalf of its affiliate, Indiana & Michigan Electric Company, Modification No. 1 dated May 1, 1980 to the Interconnection Agreement dated January 2, 1977 between Indiana & Michigan Electric Company and Richmond Power & Light Company (R & L) designated I&ME's Rate Schedule FPC No. 70.

The Modification includes a new Service Schedule F which provides for the purpose of conserving energy resources during extended fuel shortages, for transfers of energy to and from systems interconnected with the parties. The Service Schedule F provides for a transmission service charge of 1.7 and .24 mills per kilowatt-hour for deliveries of Fuel Conservation Energy, when such receiving company is Richmond Power & Light Company or Indiana & Michigan Electric Company, respectively, and for generation of (a) 6 mills per kilowatt-hour plus incremental energy costs, plus 2 mills when I&ME is the delivering party and (b) 4.34 mills per kilowatt-hour plus incremental costs, plus 2 mills when Richmond is the delivering party.

The filing parties have requested that these Schedules be permitted to be effective immediately should circumstances arise requiring their use.

Copies of this filing were served upon Richmond Power & Light, the Public Service Commission of Indiana, the Michigan Public Service Comission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 27, 1980. Protests will be considered by the Commission in determining the appropriate acton to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32147 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-808]

Indiana & Michigan Electric Co. and Ohio Power Co.; Notice of Filing

October 8, 1980.

The filing company submits the following:

Take notice that American Electric Power Service Corporation (AEP) on September 29, 1980, tendered for filing on behalf of its affiliates Indiana & Michigan Electric Company and Ohio Power Company (American Central Parties), Modification No. 5 dated May 1, 1980 to the Interconnection Agreement dated December 12, 1949 among the American Central Parties and The Cincinnati Gas & Electric Company (Cincinnati) designated Rate Schedule FPC No. 16 (Indiana) and FPC No. 21 (Ohio).

The Modification includes a new Service Schedule E which provides for the purpose of conserving energy resources during extended fuel shortages, for transfers of energy to and from systems interconnected with the parties. The Service Schedule E provides for a transmission service charge of 1.7 and 1.3 mills per kilowatt-hour for deliveries of Fuel Conservation Energy, when such receiving company is The Cincinnati Gas & Electric Company or the American Central Parties, respectively, and for generation of (a) 6 mills per kilowatt-hour plus incremental energy costs, plus 2 mills when the American Central Parties is the delivering party and (b) 6.5 mills per kilowatt-hour plus incremental costs, plus 2 mills when Cincinnati is the delivering party.

The filing parties have requested that these Schedules be permitted to be effective immediately should circumstances arise requiring their use.

Copies of this filing were served upon the Cincinnati Gas & Electric Company, The Public Utilities Commission of Ohio, the Public Service Commission of Indiana and the Michigan Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8, 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.1). All such petitions or protests should be filed on or before October 27, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32144 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3318]

James M. Knott; Application for Preliminary Permit

October 8, 1980.

Take notice that James M. Knott (Applicant) filed on August 14, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3318 to be known as the Pleasant Street Project located on the Charles River in South Natick, Middlesex County, Massachusetts. Correspondence with the Applicant should be directed to: Mr. James M. Knott, 130 Riverdale Street, Northbridge, Massachusetts 01534.

Project Description—The proposed project would consist of: (1) an existing 10-foot-high, 125-foot-long concrete dam; (2) an existing reservoir with negligible storage capacity; (3) an existing 980-foot-long, 25-foot-wide earth lined canal; (4) a powerhouse containing two new or reconditioned turbine-generators with a total rated capacity of 250 kW; and (5) appurtenant facilities. Total estimated annual energy production of the project would be approximately 775,625 kWh saving the equivalent of 1,275 barrels of oil or 360 tons of coal.

Purpose of Project—Applicant proposes to sell energy generated at the project to Boston Edison Company for distribution to its customers.

Proposed Scope and Cost of Studies under Permit—The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $18,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 6, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 4, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), (as amended, 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR, 4.33 (a) and (d). (as amended, 44 FR 61328, October 25, 1979.)

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR, § 1.8 or § 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 6, 1980. The Commission's address is: 825 North Capitol Street NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32135 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-795]

Montana Power Co.; Notice of Filing

October 2, 1980.

The filing Company submits the following:

Take Notice that The Montana Power Company ("Montana") on September 25, 1980, tendered for filing, in accordance with Section 35.12 of the Commission's Regulations, Contract No. 14–03–39212 dated February 6, 1973 and Amendatory Agreement No. 1 to Contract No. 14–03–39212 dated May 31, 1974, each among the Bonneville Power Administration ("BPA"), Washington Public Power Supply System (WPPSS), and Montana providing for power exhange.

Montana requests waiver of the Commission's notice requirements to permit this rate schedule to become effective July 1, 1980, which it claims is the date of commencement of service.

Copies of the filing were supplied to BPA and WPPSS.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 24, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-31410 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Projects Nos. 3342, 3343 and 3402]

New Hampshire Hydro Associates and New Hampshire Water Power, Inc.; Applications for Preliminary Permit

October 8, 1980.

Take notice that [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] New Hampshire Hydro Associates (Applicant) filed on August 19, 1980, applications for preliminary permit for proposed Projects Nos. 3342 and 3343, to be known as the Penacook Upper Falls Project and the Penacook Lower Falls Project, respectively, and New Hampshire Water Power, Inc., filed on August 27, 1980, an application for

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preliminary permit for proposed Project No. 3402, to be known as the Penacook Hydroelectric Project (Dam 51.06). The three applications are competing in that Project No. 3402 proposes to develop the same reach of river proposed for development under Projects Nos. 3342 and 3343. The three projects would be located on the Contoocook River in the Towns of Penacook and Boscawen, Merrimack County, New Hampshire. Correspondence with the Applicants should be directed to: Mr. Richard A. Norman, New Hampshire Hydro Associates, 3 Capitol Street, Concord, New Hampshire 03301, and Mr. George McNamara, Jr., New Hampshire Water Power, Inc., P.O. Box 134, Franklin, New Hampshire 03235.

Project Description—The proposed run-of-the-river Project No. 3342 would consist of: (1) an existing concrete dam, about 300 feet long and 8 feet high; (2) an existing reservoir with negligible storage capacity at surface elevation 270 feet m.s.l.; (3) a new intake structure and powerhouse with an installed capacity of 3,000 kW (two 1,500 kW tube turbine-generator units); (4) a tailrace channel about 60 feet wide and 450 feet long; (5) a 500-foot transmission line; and (6) other appurtenances. Applicant estimates the annual generation would average about 13 million kWh.

Proposed run-of-the-river Project No. 3343 would consist of: (1) an existing concrete masonry dam, about 300 feet long and 12 feet high; (2) an existing reservoir with negligible storage capacity at surface elevation 300 feet m.s.l.; (3) a new intake structure and powerhouse with an installed capacity of 2,200 kW (two 1,100 kW tube turbine-generator units); (4) a tailrace channel about 60 feet wide and 250 feet long; (5) a 500-foot long transmission line; and (6) other appurtenances. Applicant estimates the annual generation would average about 11 million kWh.

Proposed Project No. 3402 would consist of new project works including: (1) a new dam and intake structure (at the site of existing Dam No. 51.06), about 200 feet long and 10.5 feet high; (2) a reservoir with a surface area of 25,000 square feet and a storage capacity of 1.3 acre feet at surface elevation 297 feet m.s.l.; (3) a new penstock about 2,900 feet long; (4) a new powerhouse with an installed capacity of 1,960 kW; (5) a tailrace; and (6) other appurtenances. Applicant estimates the annual generation would average about 12,430,000 kWh.

Purpose of Projects—Applicants propose to sell energy produced at the projects to the local utility Company(s).

Proposed Scope and Cost of Studies under Permit—New Hampshire Hydro Associates, seeks issuance of a preliminary permit for a period of 18 months, and New Hampshire Water Power, Inc., seeks issuance of a preliminary permit for a period of 36 months, during which time each Applicant would accomplish hydrological, engineering, environmental, and economic feasibility studies on the projects and prepare applications for FERC licenses. New Hampshire Hydro Associates estimates costs of studies under each permit would not exceed $37,500, and New Hampshire Water Power, Inc. estimates costs of studies under its permit would be about $49,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described applications for preliminary permit. (A copy of the applications may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 5, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 3, 1981. A notice of intent must conform with the requirements of 18 C.F.R. 4.33(b) and (c), (*as amended*, 44 *Fed. Reg.* 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR, 4.33(a) and (d), (*as amended*, 44 *Fed. Reg.* 61328, October 25, 1979.)

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about these applications should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR, § 1.8 or § 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 5, 1980. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32133 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-809]

Ohio Power Co.; Notice of Filing

October 8, 1980.

The filing Company submits the following:

Take notice that American Electric Power Service Corporation (AEP) on September 29, 1980, tendered for filing on behalf of its affiliate, Ohio Power Company (Ohio), Modification No. 8 dated May 1, 1980 to the Facilities and Operating Agreement dated May 1, 1967 between Ohio Power Company and Dayton Power & Light Company (Dayton) designated Ohio's Rate Schedule FPC No. 36.

The Modification includes a new Service Schedule I which provides for the purpose of conserving energy resources during extended fuel shortages, for transfers of energy to and from systems interconnected with the parties. The Service Schedule I provides for a transmission service charge of 1.7 and 1.3 mills per kilowatt-hour for deliveries of Fuel Conservation Energy, when such receiving company is Dayton Power & Light Company or Ohio Power Company, respectively, and for generation of (a) 6 mills per kilowatt-hour plus incremental energy costs, plus 2 mills when Ohio is the delivering party and (b) 6.5 mills per kilowatt-hour plus incremental costs, plus 2 mills when Dayton is the delivering party.

The filing parties have requested that these Schedules be permitted to be effective immediately should circumstances arise requiring their use.

Copies of this filing were served upon Dayton Power & Light Company and the Public Utilities Commission of Ohio.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 27, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32145 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-811]

Ohio Power Co.; Notice of Filing

October 8, 1980.

The filing Company submits the following:

Take notice that American Electric Power Service Corporation (AEP) on September 19, 1980 tendered for filing on behalf of its affiliate, Ohio Power Company (Ohio), Modification No. 7 dated May 1, 1980 to the Facilities and Operating Agreement dated September 6, 1962 between Ohio Power Company and Duquesne Light Company (Duquesne) designated Ohio's Rate Schedule FPC No. 33.

The Modification includes a new Service Schedule G which provides for the purpose of conserving energy resources during extended fuel shortages, for transfers of energy to and from systems interconnected with the parties. The Service Schedule G provides for a transmission service charge of 1.7 and 1.6 mills per kilowatt-hour for deliveries of Fuel Conservation Energy, when such receiving company is Duquesne Light Company or Ohio Power Company, respectively, and for generation of (a) 6 mills per kilowatt-hour plus incremental energy costs, plus 2 mills when Ohio is the delivering party and (b) 6 mills per kilowatt-hour plus incremental costs, plus 2 mills when Duquesne is the delivering party.

The filing parties have requested that these Schedules be permitted to be effective immediately should circumstances arise requiring their use.

Copies of this filing were served upon Duquesne Light Company, the Public Utilities Commission of Ohio and the Pennsylvania Public Utility Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 27, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32146 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-812]

Public Service Company of Colorado; Notice of Filing

October 8, 1980.

The filing Company submits the following:

Take notice that Public Service Company of Colorado (PSCo) on September 29, 1980, tendered for filing a rate schedule, an agreement between Mountain Parks Electric, Inc. (Mt. Parks) and PSCo which provides for the construction of facilities by PSCo and Mt. Parks.

This agreement provides for the construction of facilities by PSCo and Mt. Parks to enable PSCo to deliver power and energy to Mt. Parks over the transmission portion of PSCo's facilities and the remainder of PSCo's system.

PSCo states that copies of the filing were served upon all parties and affected state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure before October 27, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32143 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-1-000]

Union Electric Co.; Notice of Filing

October 8, 1980.

The filing Company submits the following:

Take notice that on October 2, 1980, Union Electric Company tendered for filing under Appendix C of the Interconnection Agreement between Central Illinois Public Service Company, Illinois Power Company, and Union Electric Company a revision to an existing connection point.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions should be filed on or before October 27, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32138 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ES81-1-000]

Union Light, Heat & Power Co.; Application

October 8, 1980.

Take notice that on October 1, 1980, The Union Light, Heat and Power Company filed an application pursuant to Section 204 of the Federal Power Act, seeking authority to issue up to $10 million unsecured short-term notes and commercial paper, from time to time with a final maturity date of not later than December 31, 1982.

Any person desiring to be heard or to make any protest with reference to said Application should file petitions or protests on or before October 31, 1980.

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with the Federal Energy Regulatory Commission, Washington, D.C. 20428, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). The Application is on file and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32141 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3440]

Western States Energy & Resources, Inc.; Application for Preliminary Permit

October 6, 1980.

Take notice that Western States Energy & Resources, Inc. (Applicant) filed on September 5, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3440 to be known as the Cochiti Project located on the Rio Grande in Sandoval County, New Mexico. Correspondence with the Applicant should be directed to: Jeffrey M. Kossak, Esq., Suite 1900, 14 Wall Street, New York, New York 10005.

Project Description—The proposed project would utilize the existing U.S. Army Corps of Engineers' Cochiti Dam and would consist of: (1) a penstock; (2) a powerhouse containing a generating unit having a rated capacity of 11,000-kW; (3) a transmission substation; and (4) appurtenant facilities. Applicant estimates the annual generation would average about 44,000,000 kWh.

Purpose of Project—Applicant would conduct studies to identify a purchaser of the project energy.

Proposed Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for a period of three years, during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic, and recreational aspects of the project. Depending upon the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $57,500.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 8, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 9, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), (*as amended*, 44 *FR* 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR, 4.33 (a) and (d), (*as amended*, 44 *FR* 61328, October 25, 1979.)

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR, § 1.8 or § 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 8, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32136 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-329]

Central Power & Light Co.; Order Granting Stay and Granting Rehearing for Purposes of Further Consideration

October 9, 1980.

On September 10, 1980, Central Power and Light Company (CP&L) filed an application for rehearing or, alternatively, stay of a Commission letter order dated August 14, 1980. The letter order was transmitted by the Secretary, by direction of the Commission, in response to CP&L's April 14, 1980 filing of an interconnection agreement between the company and the City of Brownsville, Texas. While the letter order accepted CP&L's submittal for filing and allowed the rate schedules to become effective as of April 4, 1980, the fuel adjustment clause embodied in the interconnection agreement was found to be inconsistent with the requirements of section 35.14 of the Commission's regulations. CP&L was therefore required to file a revised fuel adjustment clause in compliance with the regulations. CP&L has requested rehearing or in the alternative, stay, of that part of the order which directed the company to file a conforming fuel adjustment clause.

In order to afford additional time for consideration of the issues raised in CP&L's application, we will grant rehearing of our August 14, 1980 letter order for the limited purpose of further consideration. We shall also grant CP&L's request for stay of the August 14, 1980 order pending our consideration of CP&L's September 10, 1980 application.

The Commission orders:

(A) Rehearing of the August 14, 1980 order is hereby granted for the limited purpose of further consideration.

(B) CP&L's request for stay of that part of the August 14, 1980 order directing CP&L to revise its fuel adjustment clause is hereby granted pending further consideration.

(C) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission. Chairman Curtis voted present.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-32222 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RP80-122]

City Council and Citizens of Erie, Pennsylvania; Petition for Declaratory Order

October 1, 1980.

Take notice, that on July 2, 1980, the City Council and Citizens of Erie, Pennsylvania (the Erie Council), 601 State Street, Erie, Pennsylvania 16501, pursuant to Section 1.7(c) of the Commission's Rules of Practice and Procedure filed in Docket No. RP80-122 a petition for a declaratory order.[1] The Erie Council seeks, inter alia, a declaration regarding the jurisdictionality of certain sales of synthetic natural gas purchased by National Fuels Gas Distribution Corporation (Distribution) from Ashland Oil, Inc.

In addition to the request for a declaratory order, the Erie Council has requested an investigation regarding proposed rate increases by National Fuel Gas Supply Corp. (Supply) and Distribution and whether the Commission should revoke Supply's certificates of public convenience and necessity, a refund of charges paid by Pennsylvania ratepayers to Distribution, a determination as to whether certain costs are properly included in the rate base of Distribution and a suspension of Supply's and Distribution's applications for rate increases pending before the Commission and the Pennsylvania Public Utilities Commission.

Any person desiring to be heard or to make any protest with reference to said petition should on or before October 31, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20428, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-32225 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[1] The Erie Council's petition is styled "Petition for Intervention, Declaratory Judgment and Investigation by the Federal Regulatory (sic) Commission."

[Docket No. CP80-94]

Columbia Gas Transmission Corp.; Petition To Amend

October 9, 1980.

Take notice that on September 10, 1980, Columbia Gas Transmission Corporation (Petitioner), P.O. Box 1273, Charleston, West Virginia 25325, filed in Docket No. CP80-94 a petition to amend the order issued February 13, 1980, in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize the transfer of delivery point to Columbia Gas of Ohio, Inc., all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that by order issued February 13, 1980, it was authorized to construct and operate 154 interconnecting tap facilities to provide additional points of delivery to certain of Petitioner's existing wholesale customers.

It is stated that included in this authorization was one point of delivery incorrectly requested for Columbia Gas of West Virginia, Inc. This point of delivery was included as:

Harrison County, WV; Residential 150, John Coskey, Rt. 3, Oak Park, Cadiz, OH.

This point of delivery should have been included as:

Harrison County, Rt. 3, Oak Park, Cadiz, OH.

Petitioner proposes to transfer the above enumerated point of delivery to Columbia Gas of Ohio, Inc., as described herein.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before October 30, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20428, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32217 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3360]

Continental Hydro Corp.; Application for Preliminary Permit

October 1, 1980.

Take notice that Continental Hydro Corporation (Applicant) filed on August 25, 1980, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for the proposed Coralville Dam Project, FERC No. 3360, to be located at the U.S. Corps of Engineers' Coralville Dam and Reservoir, a flood control project, on the Iowa River near Iowa City, Johnson County, Iowa. Correspondence with the Applicant should be directed to: Mr. A. Gail Staker, President, Continental Hydro Corporation, 141 Milk Street, Suite 1143, Boston, Massachusetts 02109.

Project Description.—The proposed project would utilize an existing U.S. Army Corps of Engineers' dam and reservoir. Project No. 3360 would consist of: (1) A proposed penstock extending from the 23 feet outlet conduit; (2) a powerhouse located on the eastern bank of the river; (3) transmission lines; and (4) appurtenant facilities. Applicant estimates the capacity of the proposed project to be 6.3 MW, and the annual energy output to be 27.5 GWh.

Purpose of Project.—Energy produced at the proposed project would be sold to Iowa Electric Light and Power Company.

Proposed Scope and Cost of Studies Under Permit.—Applicant has requested a 36 month permit to prepare a definitive project report, including preliminary design and economic feasibility studies, hydrological, environmental and social studies, and soils and foundation data. The cost of the aforementioned activities along with obtaining agreements with other Federal, State and local agencies is estimated by the Aplicant to be $75,000.

Purpose of Preliminary Permit.—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments.—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application

for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

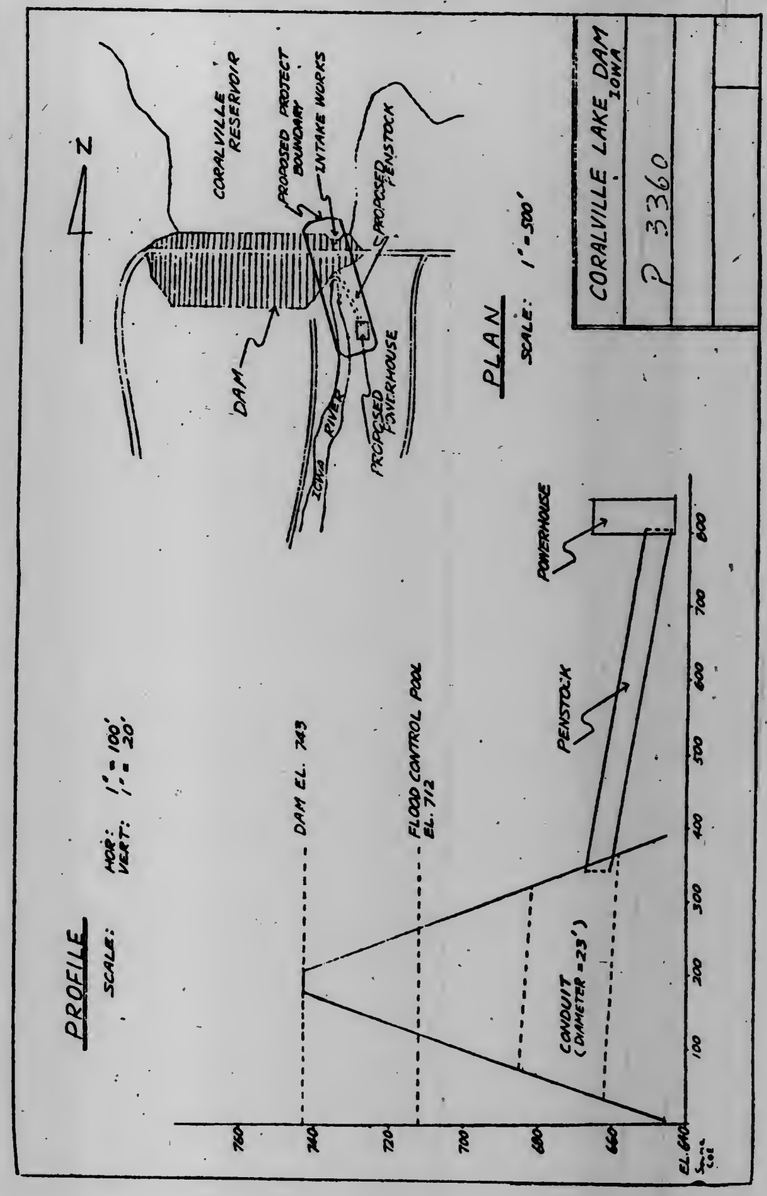
Competing Applications.—Anyone desiring to file a competing application must submit to the Commission, on or before December 1, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than January 27, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), as amended 44 FR 61328, (October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d), as amended, 44 FR 61328 (October 25, 1979).

Comments, Protests, or Petitions to Intervene.—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 1, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Acting Secretary.

BILLING CODE 6450-85-M



[FR Doc. 80-32230 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-C

[Docket No. CP80-570]

Frontier Gas Storage Co.; Application

October 9, 1980.

Take notice that on September 23, 1980, Frontier Gas Storage Company, 220 Montgomery Street, San Francisco, California 84104, filed in Docket No. CP80-570 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sell back of natural gas to Montana-Dakota Utilities Co. (MDU), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it has entered into a sellback agreement with MDU whereby Applicant proposes to sell to MDU the volumes of natural gas purchased from MDU in connection with a gas storage finance project.

Applicant states that the purpose of the gas storage finance project is to minimize the cost of maintaining the necessary storage inventory and that Applicant has been structured to allow for the financing of its purchases from MDU almost entirely by means of debt. Applicant asserts that the debt financing would be accomplished by assuring recovery of its interest and incidental storage and other costs on a current basis.

It is stated that when Applicant pays MDU for gas injected into storage, it would borrow the necessary funds by selling commercial papers and then bill MDU for the carrying costs of the borrowed funds. It is stated that MDU would then buy back from Applicant whatever gas MDU needs to meet its customer requirements. Applicant maintains that this form of financing storage injections would improve its ability to sell commercial paper at highly favorable interest rates which in turn would produce significant reductions in service costs for MDU's customers.

Applicant proposes to sell back storage volumes to MDU under a formula whereby Applicant would charge MDU a net amount reflecting essentially amounts which are currently due and owing as of the date of Applicant's statement to MDU. Applicant states that it would realize no net income as MDU would be charged costs incurred in the month-to-month operation of its business.

Applicant states that its qualification for favorable interest rates also rests on the support provided by a credit agreement between Applicant and Security Pacific National Bank (Bank). Pursuant to the agreement, it is stated, the Bank would issue a letter of credit, assure buyers of Applicant's commercial paper that it would make available sufficient funds for payment of the rates at their maturity, and make revolving credit loans to Applicant. Applicant states that in accordance with the sellback agreement, MDU would reimburse it for the commitment, usage and facility fees Applicant pays to the Bank. It is asserted that the Bank's credit support would be based on MDU's willingness to enter an agreement making it assume responsibility for Applicant's obligations to the Bank in the event Applicant cannot meet its obligations under the credit agreement.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 30, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32223 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 2725]

Georgia Power Co.; Application for Amendment of License

October 1, 1980.

Take notice that the Georgia Power Company (Applicant) filed on November 8, 1979, an application for amendment of its license (pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)) for the Rocky Mountain Pumped Storage Project No. 2725 located on Heath Creek in Floyd County, Georgia. Correspondence with the Applicant should be directed to: Mr. W. L. Westbrook, Vice President, Secretary, and Treasurer, Georgia Power Company, P.O. Box 4545, Atlanta, Georgia 30302.

The license for the Rocky Mountain Pumped Storage Project was issued January 21, 1977. The project, as licensed, includes a powerhouse containing three 225-MW reversible pump generator units, a 947-acre lower reservoir on Heath Creek, a 221-acre upper reservoir on top of Rocky Mountain, and a three-mile long, 230 kV transmission line.

Extensive geotechnical explorations have revealed unsuitable geologic conditions at the lower reservoir main dam site. The Applicant now proposes to relocate the lower reservoir main dam to a site approximately 4,400 feet downstream of the license dam site. Relocation of the main dam would necessitate the construction of two smaller dams and a permanent diversion channel. With the relocation of the main dam site, approximately 250 acres of additional land would be inundated increasing the lower reservoir area to approximately 1,200 acres. Operating pool levels are proposed to be set at 710.5 msl normal maximum and 690.5 msl normal minimum.

The 800-foot long and 85-foot high relocated main dam and spillway would lie across Heath Creek and would consist of an earth and rockfill section, a gated concrete gravity spillway, and concrete gravity non-overflow sections. The second dam, Dam A, a 1,200-foot long and 70-foot high earth and rockfill structure would be located between two ridges approximately 1,600 feet west of the main dam. The third dam, Dam B, a 335-foot long and 12-foot high earthfill structure would be located approximately 2,400 feet southeast of the main dam. Both Dams A and B would be located across Antioch Road. In addition to these structures a permanent diversion channel, approximately 4,000 feet long, would be excavated adjacent to Dam A.

Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before November 10, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-32229 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 946]

Hyrum City Corp.; Application for Short-Form License (Minor) for a Constructed Project

October 1, 1980.

Take notice that an application was filed on February 4, 1980, under the Federal Power Act, 16 U.S.C. 791(a)-825(r), by the Hyrum City Corporation for an existing water power project known as the Hyrum Hydroelectric Project, FERC Project No. 946, located on the Blacksmith Fork River, near the City of Hyrum, in the County of Cache, Utah. Correspondence with the Applicant should be directed to Clain Smith, Mayor, Hyrum City Corporation, Hyrum, Utah 84319. The project occupies approximately 27 acres of lands of the United States administered by the U.S. Forest Service.

Purpose of the Project.—Project energy is used by the Applicant, for sale to its domestic, commercial, and industrial customers in and around the vicinity of Hyrum, Utah. Construction of this project was completed in 1931.

Project Description.—The existing run-of-river project, consists of: (1) A reinforced concrete and earthfill dam, about 260 feet long including (a) an earth-fill embankment with concrete core wall about 70 feet long and 15 feet high at the north (right) abutment, (b) a concrete gravity spillway section about 65 feet long and 14 feet high at the spillway crest elevation of 5,225 feet msl with provisions for 18-inch-high flashboards, and (c) an earth-fill embankment with a concrete core wall about 125 feet long and 15 feet high at the south abutment; (2) a reservoir with a surface area of 8.8 acres and maximum gross storage capacity of 50 acre-feet; (3) a reinforced concrete intake structure at the north end of the spillway section; (4) a pressure pipeline consisting of 3,419 feet of 48-inch-diameter concrete pipe connnected to 132 feet of 42-inch-diameter steel penstock; (5) a surge tank; (6) a brick-masonry powerhouse containing a turbine-generator unit having a rated capacity of 400 kW; (7) a tailrace, about 500 feet long, conveying power plant discharge into the Balcksmith Fork River; and (8) appurtenant facilities. Annual generation for the project averages 3,000,000 kWh.

Agency Comments.—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other application statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If any agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications.—Anyone desiring to file a competing application must submit to the Commission, on or before November 10, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 8, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c), (as amended 44 FR 61328, October 25, 1979. A competing application must conform with the requirements of 18 CFR 4.33(a) and (d), (as amended, 44 FR 61328, October 25, 1979).

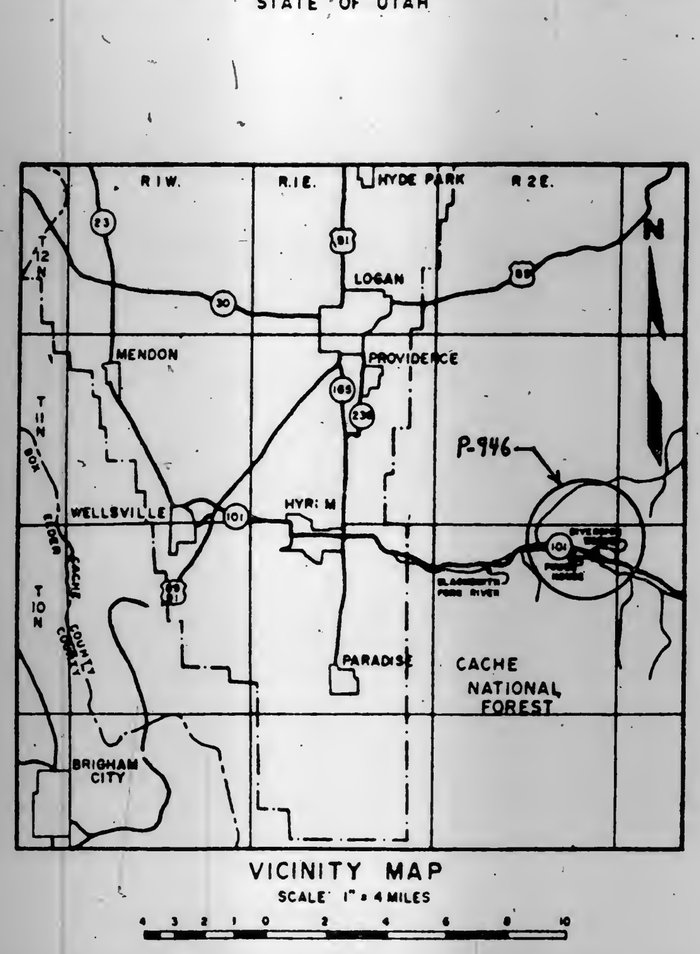
Comments, Protests, or Petitions to Intervene.—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's rules of practice and procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protests, or petition to intervene must be filed on or before November 10, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Acting Secretary.

BILLING CODE 6450-85-M

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[FR Doc. 80-32231 Filed 10-15-80; 8:45 am]
BILLING CODE 6450-85-C

[Docket No. CP70-239]

Kansas-Nebraska Natural Gas., Inc.; Petition To Amend Further

October 9, 1980.

Take notice that on September 22, 1980, Kansas-Nebraska Natural Gas Company, Inc. (Petitioner), P.O. Box 608, Hastings, Nebraska 68901, filed in Docket No. CP70-239 a petition to amend further the order issued in the instant docket on July 22, 1970,[1] as amended, pursuant to Section 7(c) of the Natural Gas Act so as to authorize an additional point of exchange with Cities Service Gas Company (Cities) and for authorization for Petitioner to add and delete delivery points as required from time to time under its March 28, 1970, exchange agreement, as amended, with Cities, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that on July 22, 1970, the Commission issued an order in Docket Nos. CP70-239, *et al.*, authorizing, *inter alia*, the exchange of natural gas by Petitioner and Cities in accordance with an exchange agreement dated March 27, 1970, between the two companies. Petitioner further states that the exchange agreement provides for the exchange of up to 150,000 Mcf of natural gas per day between it and Cities.

Petitioner proposes to establish the Stock Pond Delivery Point in Sweetwater County, Wyoming, as an additional point of delivery to Cities under the stated exchange agreement.

Petitioner submits that both it and Cities obtained the right to purchase a portion of the gas from the Stock Pond W.I. Unit No. 1 well in Sweetwater County. It is further submitted that while Cities had facilities in the area near this well, Petitioner does not. Accordingly, Cities' facilities were extended to connect this well to its system, it is said. Petitioner asserts that with said additional delivery point, it can obtain its share of gas from the Stock Pond Well and avoid the unnecessary and expensive duplication of facilities.

To facilitate the expeditious addition of new delivery points, Petitioner further proposes to add and delete delivery points under the exchange agreement as required from time to time and to file with the Commission on or before January 31 of each year pursuant to Part 154 of the Commission's Regulations a tariff filing showing the addition or deletion of delivery points under the exchange agreement.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before October 30, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-32219 Filed 10-15-80; 8:45 am]
BILLING CODE 6450-85-M

[1] This proceeding was comenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

[Project No. 2866]

Metropolitan Sanitary District of Greater Chicago; Application for Major License for Constructed Project

October 1, 1980.

Take notice that an application was filed on September 5, 1978, under the Federal Power Act, 16 U.S.C. 791(a)-825(r), by the Metropolitan Sanitary District of Greater Chicago (Applicant) for a license for its major project. The Lockport Project FERC No. 2866 is located on the Chicago Sanitary and Ship Canal in Will County, Illinois. Correspondence with the Applicant on this matter should be addressed to: Mr. Allen S. Lavin, Attorney, The Metropolitan Sanitary District of Greater Chicago, 100 East Erie Street, Chicago, Illinois 60611.

Project Description.—The run-of-river Lockport Project would consist of: (1) An existing 385-foot long powerhouse containing two generating units with a total installed capacity of 13.5 MW; (2) a dam between the Federal Navigation Lock and the powerhouse consisting of concrete and masonry structures, including a 22-foot wide abandoned lock, a 20-foot wide sluice-gate section, and a 111-foot section of bulkheads and guard walls; (3) a transmission line approximately three miles long; (4) an access road approximately one mile long; and (5) appurtenant facilities. The estimated average annual output of the project would be 70,000 MWh.

Competing Applications.—Anyone desiring to file a competing application must submit to the Commission, on or before November 10, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 10, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), as amended 44 FR 61328 (October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d), as amended, 44 FR 61328 (October 25, 1979).

Comments, Protests, or Petitions to Intervene.—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before November 10, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 80-32226 Filed 10-15-80; 8:45 am]
BILLING CODE 6450-85-M

[Docket No. TC80-93]

Mid Louisiana Gas Co.; Supplemental Notice of Tariff Filing

October 1, 1980.

Take notice that on September 23, 1980, Mid Louisiana Gas Company (Mid Louisiana), 21st Floor, Lykes Center, 300 Poydras Street, New Orleans, Louisiana 70130, filed in Docket No. TC80-93 substitute sheets as part of its FERC Gas Tariff, First Revised Volume No. 1 to implement changes in its plans for the curtailment of deliveries of natural gas, all as more fully set forth in such sheets

which are on file with the Commission and open to public inspection.

Applicant submits the following tariff sheets to revise certain tariff sheets previously filed and currently pending in the above-referenced docket.

	Superseding
Substitute Fourth Revised Sheet No. 23.	Third Revised Sheet No. 23
Substitute Third Revised Sheet No. 23a.	Second Revised Sheet No. 23a
Substitute Third Revised Sheet No. 23b.	Second Revised Sheet No. 23b
Substitute Third Revised Sheet No. 23c.	Second Revised Sheet No. 23c
Substitute Fourth Revised Sheet No. 23c.	Third Revised Sheet No. 23d
Substitute Third Revised Sheet No. 23e.	Second Revised Sheet No. 23e
Substitute Fourth Revised Sheet No. 23i.	Third Revised Sheet No. 23i
Substitute Second Revised Sheet No. 23j.	Third Revised Sheet No. 23j

In making the instant filing, Mid Louisiana states that the revised sheets would make the following change in Section 13.

Section 13.3, "Curtailment Procedure", has been revised in order to clearly set forth that, in the event Mid Louisiana has a shortage of gas in its system all deliveries to Interruptible Service shall be interrupted in full before any reduction is made in daily deliveries to any Buyer of its requirements up to such Buyer's daily contract volume for other than Interruptible Service as specified in the Service Agreement or Direct sales Contract between Buyer and Seller.

Mid Louisiana requests that the revised tariff sheets be substituted for those previously filed and be accepted for filing to become effective November 1, 1980.

Any person desiring to be heard or to make protest with reference to said filing should on or before October 10, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-32227 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-572]

Montana-Dakota Utilities Co.; Application

October 9, 1980.

Take notice that on September 23, 1980, Montana-Dakota Utilities Co. (Applicant), 400 North Fourth Street, Bismarck, North Dakota 58501, filed in Docket No. CP80-572 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to Frontier Gas Storage Company (Frontier), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell to Frontier the approximately 29,000,000 Mcf of natural gas left in its Baker Field, Montana, Elk Basin Field, Wyoming, and Billy Creek Storage Fields, as of December 1, 1980. In addition, Applicant proposes to sell to Frontier beginning December 1, 1980, gas volumes which are in excess of Applicant's daily requirements and which it desires to sell. It is stated that Applicant would then store the gas sold to Frontier and buy back from Frontier the volumes it needs to meet its customer's requirements.

The sale, storage, and resale would be part of Applicant's gas storage finance project the purpose of which, it is stated, is to maintain Applicant's ability to continue purchasing the gas needed for injection into storage, to lower the cost of maintaining such volumes in storage, and to maintain Applicant's ability to raise capital at a reasonable cost for its other needs. Applicant states that it has created Frontier as a vehicle to secure debt financing which is less expensive than more traditional financing methods. Applicant states that it would minimize the cost of maintaining the necessary storage inventory by assuring Frontier's recovery of its interest and incidental storage costs on a current basis and that in the first three years of the project it estimates a savings of $13,248,000.

Applicant states that it would charge Frontier a lump sum of $48,000,000 for the initial sale of the 27,000,000 Mcf of gas currently stored by Applicant. Applicant asserts that it would charge Frontier for the injection gas sold on and after December 1, 1980, under the applicable jurisdictional rate set forth in Applicant's gas tariff.

It is asserted that since the sale to Frontier is not a sale for consumption but rather a sale in order to husband the gas for the subsequent benefit of Applicant's customers, Applicant requests that the proposed sale of gas to Frontier be excluded from Applicant's FERC curtailment plan.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 30, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32218 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-568]

National Fuel Gas Supply Corp.; Application

October 9, 1980.

Take notice that on September 22, 1980, National Fuel Gas Supply Corporation (Applicant), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP80-568 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the establishment of a new delivery point to an existing wholesale customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate a meter and regulator station in Pleasant Township, Warren County, Pennsylvania, to deliver gas to National Fuel Gas Distribution Corporation (Distribution), an existing wholesale customer, for resale to Pennsylvania Electric Company's Warren turbine peaking plant (Penelec-Warren).

It is stated that the proposed facilities would consist of two 8-inch turbine meters, two 8-inch filters, four 8-inch valves, two 6-inch regulators, four 4-inch valves, a 6-inch by 8-inch relief valve and a 6-inch valve.

Applicant submits that Penelec-Warren has requested Distribution to supply natural gas to meet the needs of its turbine peaking plant at Warren, Pennsylvania. Applicant further submits that Penelec-Warren has informed Distribution that the gas provided would replace the use of No. 2 fuel oil.

The facilities proposed herein are estimated to cost $104,900, which cost would be financed by Applicant with internally generated funds, it is said.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 30, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32224 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-569]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Application

October 9, 1980.

Take notice that on September 23, 1980, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP80-569 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Western Massachusetts Electric Company (Western Mass) for a period ending November 1, 1980, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport for Western Mass during the period ending November 1, 1980, up to 15,000 Mcf of natural gas per day which Western Mass has arranged to purchase from New York State Electric & Gas Corporation (NYSEG). Applicant asserts that the subject gas would be used by Western Mass to displace fuel oil it would otherwise use in its West Springfield, Massachusetts, electric generating station. Applicant further asserts that Western Mass has agreed it would not request Applicant to transport and deliver any gas which would exceed the volumetric limitations imposed on such use of natural gas by Western Mass by the Powerplant and Industrial Fuel Use Act of 1978 (FUA) including the exemption provisions thereof.

It is submitted that gas would be made available to Applicant by NYSEG at Applicant's existing Lockport Sales Meter Station delivery point in Niagara County, New York, and that Applicant would deliver equivalent volumes, less transportation fuel and use volumes, to Bay State Gas Company (Bay State) an existing gas distribution customer of Applicant, at Applicant's Agawam Sales Meter Station in Hamden County, Massachusetts. Bay State would then deliver equivalent volumes to Western Mass, it is said.

Applicant states that assuming this transportation could commence on September 25, 1980, Applicant contemplates that it could transport up to 500,000 Mcf for Western Mass during the period ending November 1, 1980.

Applicant submits that it would charge Western Mass 14.24 cents for each Mcf of natural gas transported. Additionally, Applicant submits that Bay State would charge Western Mass a transportation rate of 10.0 cents per Mcf delivered.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 30, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32220 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-534]

Transcontinental Gas Pipe Line Corp.; Amendment to Application

October 9, 1980.

Take notice that on September 19, 1980, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP80-534 an amendment to its pending application in the instant docket pursuant to Section 7(b) of the Natural Gas Act so as to delete permission and approval to abandon certain facilities, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant, in its application filed in the instant docket on September 4, 1980, listed numerous transmission purchase lines, metering and regulator facilities, and related facilities which it proposed to abandon due to exhaustion of gas reserves which were previously purchased by means of such facilities, it is said.

Applicant further states that included in the items to be abandoned was approximately 11,397 feet of 8-inch lateral known as the Coastal States—South Delcambre transmission purchase lateral, in Vermilion Parish, Louisiana.

Applicant asserts that drilling activity and resulting gas production available in the area of the above described facilities indicate a need to retain such facilities in service for the present and the foreseeable future. Accordingly, Applicant proposes to delete the request for permission and approval to abandon such facilities.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before October 30, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32221 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 459]

Union Electric Co.; Application for Approval of Change in Land Rights

October 1, 1980.

Take notice that an application was filed on July 31, 1980, under the Federal Power Act, 16 U.S.C. 791(a)–825(r) by Union Electric Company (Applicant) for approval of a change in land rights at Osage Project No. 459. The project land and waters affected are located in the Osage River Arm and the Nianqua River Arm of Lake of the Ozarks, in Camden County, Missouri. Correspondence with the Applicant in this matter should be addressed to: Charles A. Bremer, General Attorney, Union Electric Company, P.O. Box 149, St. Louis, Missouri 63166; and to Carl M. Herren, General Manager, Central Electric Power Cooperative, Box 269, Jefferson City, Missouri 65102.

Applicant seeks Commission authorization to permit Central Electric Cooperative (Central) to construct a non-project, 161 kV, single circuit, three phase transmission line. The line would generally parallel Highway 5 and would cross project land and waters adjacent to Hurricane Deek Bridge and Nianqua Arm Bridge. Applicant states that no structures would be placed on project property by Central, and that the conductors, at their lowest point, would be at least 71 feet above the full pool level of the Lake of the Ozarks.

Comments, Protests, or Petitions to Intervene.—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before November 10, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-32228 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3271]

Water Power Development Corp.; Application for Preliminary Permit

October 3, 1980.

Take notice that Water Power Development Corporation (Applicant) filed on July 29, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 3271 to be known as the Collins Company Dams Project located on the West Branch of the Farmington River in Hartford and Litchfield Counties, Connecticut. Correspondence with the Applicant should be directed to: Mr. Kenneth E. Mayo, President, Water Power Development Corporation, 23 Temple Street, Nashua, New Hampshire 03060.

Project Description.—The proposed project would consist of the following existing works: (1) the Collins Company Upper Dam, a stone structure 18 feet high and 350 feet long. The structure is listed in the National Register of Historic Places; (2) the Collins Company Lower Dam, a concrete structure 20 feet high and 350 feet long, located 1.2 miles downstream of the Upper Dam; (3) two small reservoirs associated with the Upper and Lower Dams, having negligible storage capacities; (4) two existing powerhouses associated with the Upper and Lower Dams; (5) the Nepaug Reservoir, located approximately a quarter-mile from the other project facilities; and (6) appurtenant works.

The project would be operated as a two dam, combined hydro-electric/pumped storage facility connected with the Nepaug Reservoir. The Upper and Lower Collins Company Dams are currently owned by the Connecticut Department of Environmental Protection. The Nepaug Reservoir is owned by the Hartford Metropolitan District.

The project would have a total installed generating capacity of at least 3,000 kW. It is estimated that the average annual net generation would be at least 10,000,000 kWh.

Purpose of Project.—Project power would be sold to a local public utility.

Proposed Scope and Cost of Studies under Permit.—Applicant seeks issuance of a preliminary permit for a period of three years, during which time Applicant would investigate the power generation, construction, economic, environmental, historic, and recreational aspects of the project. Depending upon the outcome of the studies, the Applicant would decide how to proceed with further environmental studies, project designs, and an application for an FERC license.

Purpose of Preliminary Permit.—A preliminary permit does not authorize construction. A permit, if issued, give the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comment.—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

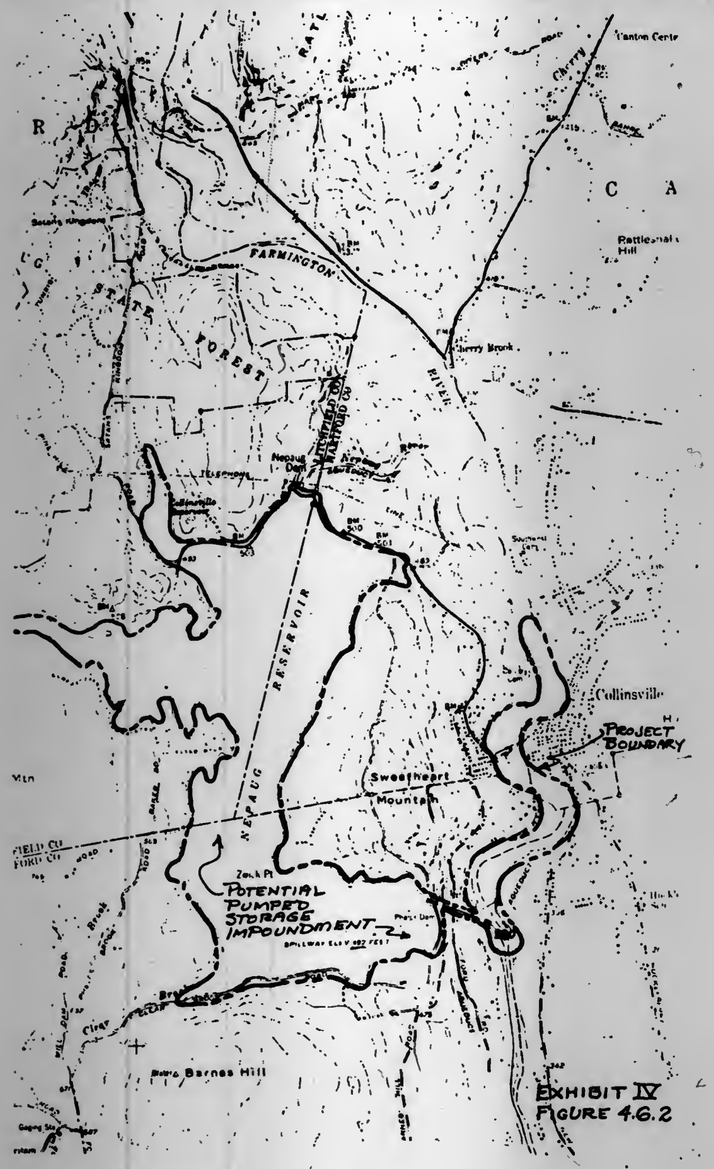
Competing Applications.—Anyone desiring to file a competing application must submit to the Commission, on or before December 5, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 5, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c), (as amended, 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d), (as amended, 44 FR 61328, October 25, 1979.)

Comments, Protests, or Petitions to Intervene.—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 5, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Acting Secretary.

BILLING CODE 6450-85-M



[FR Doc. 80-32232 Filed 10-15-80; 8:45 am]
BILLING CODE 6450-85-C

Office of Conservation and Solar Energy

Automotive Propulsion Research and Development; Automotive Technology Development Contractor Coordination Meeting

AGENCY: Department of Energy.

ACTION: Notice of meeting.

SUMMARY: The Department of Energy will hold the Automotive Technology Development Contractor Meeting on automotive propulsion systems; and members of the public are hereby invited to attend as observers. Papers will be presented on the current state of research and development on automotive propulsion systems and on alternative fuels.

DATES: November 11–14, 1980.

ADDRESS: Hyatt Regency Dearborn Hotel, Dearborn, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. George Thur, U.S. Department of Energy, Mail Station 5H–039, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Telephone (202) 252–8064.

SUPPLEMENTARY INFORMATION: Today's notice follows through on a statement in the notice of proposed regulations (43 FR 31929, 21932 (July 24, 1978)) under Section 304(f) of the Department of Energy Act of 1978—Civilian Applications (Act), 15 U.S.C. 2703(f), in which the Department of Energy (DOE) announced its intention to open meetings to public attendance. Section 304(f) requires the DOE to issue administrative regulations prescribing procedures, standards, and criteria for review and certification of automotive propulsion research and development to be funded by new grants, cooperative agreements, or contracts, or as new DOE or agency projects under the Act. The purpose of the review and certification process is to insure that research and development newly funded under the Act will supplement rather than supplant, duplicate, displace, or lessen the same activities in the private sector.

The final regulations (43 FR 55228, November 24, 1978) provide for notice to the public of proposed research and development and an opportunity to file written objections. To enable the public to avail itself of the opportunity to participate in the review and certification process, the DOE stated in the notice of the proposed regulations that it would give notice of meetings, such as the one announced today, since relevant information is to be presented.

Below is a preliminary agenda:

Date, topic, and session

November 11: Stirling Engine Systems and Ceramics (concurrent sessions), Afternoon.
November 12: Gas Turbine Systems, Morning; Gas Turbine Systems and Alternative Fuels (concurrent sessions) Afternoon.
November 13: Alternative Fuels and Vehicle Systems (concurrent sessions), Morning; Alternative Fuels, Afternoon.

The meeting registration times are scheduled as follows:

Monday, November 10, 5:00 p.m. to 7:00 p.m.
Tuesday, November 11, 8:00 a.m. to 3:00 p.m.
Wednesday, November 12, 8:00 p.m. to 3:00 p.m.
Thursday, November 13, 8:00 p.m. to 12:00 p.m.

Registrants at the meeting pay a $30 registration fee which includes admission to all technical sessions, refreshments, and subsequently a copy of the report of the proceedings. Members of the public may register and pay the fee if they wish to avail themselves of these services and materials. However, if they do not, they are free simply to attend meeting sessions and listen to the proceedings. Members of the public intending to respond to this notice are requested to so advise the information contact named above in advance so that appropriate seating arrangements can be made.

Issued in Washington, D.C., October 3, 1980.

T. E. Stelson

Assistant Secretary, Conservation and Solar Energy.

[FR Doc. 80-32251 Filed 10-15-80; 8:45 am]
BILLING CODE 6450-01-M

Office of Hearings and Appeals

Applications for Exception; Cases Filed; Week of September 19 through September 26, 1980

During the week of September 19 through September 26, 1980, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

George B. Breznay,

Acting Director, Office of Hearings and Appeals.

October 9, 1980.

List of Cases Received by the Office of Hearings and Appeals

[Week of Sept. 19 through Sept. 26, 1980]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 18, 1980	Butler, Binion, Rice, Cook and Knapp (Leidl), Washington, D.C.	BFA-0474	Appeal of Information Request Denial. If granted: The August 22, 1980, Information Request Denial issued by the Office of Hearings and Appeals would be rescinded, and Butler, Binion, Rice, Cook and Knapp would receive access to a December 20, 1979, memorandum from former OHA Director Melvin Goldstein to Deputy Secretary John Sawhill and a January 18, 1980, memorandum from Hazel Rollins, Administrator of ERA to Secretary Charles Duncan.
Sept. 22, 1980	Chevron U.S.A. Inc./Saber Refining Co., Washington, D.C.	BEJ-0137, BED-0137.	Motions for Discovery and Protective Order. If granted: Discovery would be granted to Chevron U.S.A. Inc. in connection with Saber Refining Company's Applications for Exception and Temporary Exception (Case Nos. BEE-1386 and BEL-1386) and Chevron would enter into a Protective Order with Saber Refining regarding the exchange of proprietary information between the two firms.
Sept. 22, 1980	Cities Service Co., Tulsa, Oklahoma	BEL-0059	Request for Temporary Exception. If granted: Participants in Cities Service Company's gasohol test marketing program would be permitted to receive 100 percent of their base period supply allocation without regard to Cities Service's allocation fraction pending a final determination on Cities Service's Application for Exception (Case No. BEE-0367).
Sept. 22, 1980	Cities Service Co./USA Petroleum Corp., Tulsa, Oklahoma.	BEJ-0136	Motion for Protective Order. If granted: Cities Service Company would enter into a Protective Order with USA Petroleum Corp. regarding the exchange of proprietary information between the two firms in connection with the USA Petroleum Corp. Application for Exception (Case No. BEE-1357).
Sept. 22, 1980	Duffy's Car Wash, Inc., Newport, Kentucky	BEX-0097	Supplemental Order. If granted: Duffy's Car Wash, Inc. would be granted partial interim relief pending a final determination on the firm's appeal to the Federal Energy Regulatory Commission (Case No. RA80-56).

List of Cases Received by the Office of Hearings and Appeals—Continued

[Week of Sept. 19 through Sept. 26, 1980]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 22, 1980	Institute of Scrap Iron and Steel, Washington, D.C.	BMR-0059	Request for Modification. If granted: The Department of Energy would modify the recovered materials utilization target established at 10 CFR 445.45 for the ferrous subdivision of the metals and metal products industry.
Sept. 22, 1980	International Processors, St. Rose, Louisiana	BEA-0475	Appeal of Buy/Sell Order. If granted: The August 22, 1980, Decision and Order issued to International Processors by the Economic Regulatory Administration regarding the firm's participation in the Crude Oil Buy/Sell Program would be modified.
Sept. 22, 1980	Marathon Oil Co./Little America Refining Co., Washington, D.C.	BED-0138, BEJ-0138.	Motions for Discovery and Protective Order. If granted: Discovery would be granted to Marathon Oil Company in connection with the Little America Refining Co. Application for Exception (Case No. BEE-1064) and Marathon would enter into a Protective Order with Little America Refining Co. regarding the exchange of proprietary information between the two firms.
Sept. 22, 1980	Natchez Refining, Inc., Washington, D.C.	BEE-1415, BEL-1415.	Exception and Temporary. Exception from the Entitlements Program. If granted: Natchez Refining Inc. would receive an exception and a temporary exception from the provisions of 10 CFR 211.67 which would modify its entitlements purchase obligations.
Sept. 22, 1980	Standard Oil Company of Ohio (SOHIO), Cleveland, Ohio.	BEE-1414, BEL-1414.	Price Exception and Temporary Exception. If granted: Standard Oil Company of Ohio would receive a temporary exception and an exception from the provisions of 10 CFR 212.112 which would permit the firm to establish a base price for unleaded premium motor gasoline.
Sept. 22, 1980	Total Petroleum, Inc., Washington, D.C.	BEL-0065	Temporary Price Exception. If granted: Total Petroleum, Inc. would receive a temporary exception from the provisions of 10 CFR 212.83 with respect to its acquisition of Vickers Energy Corporation.
Sept. 23, 1980	J. D. Streett Co., Inc., Washington, D.C.	BRS-0107	Request for Stay. If granted: J. D. Streett Co., Inc. would receive a stay of its obligation to file within 30 days a response to the August 5, 1980, Notice of Probable Violation issued to the firm.
Sept. 23, 1980	True Oil Purchasing Company, Casper, Wyoming	BFA-0476	Appeal of Information Request Denial. If granted: The August 15, 1980, Information request Denial issued by the ERA Office of Enforcement would be rescinded, the True Oil Purchasing Company would receive access to certain DOE data concerning crude oil reseller compliance with 10 CFR, Part 212, Subpart F.
Sept. 24, 1980	Amerada Hess Corporation, *et al.*, Washington, D.C	BEN-0055, to BEN-0065 and BEN-0067 to BEN-0070.	Interim Decision and Order. If granted: Amerada Hess Corp., *et al.*, would be permitted to add to the maximum lawful selling prices for covered products sold in Connecticut the cost of a Connecticut state gross receipts tax on sales of petroleum products by integrated refiners.
Sept. 24, 1980	Eldon Spencer, Inc., McLean, Virginia	BRD-1273	Motion for Discovery. If granted: Discovery would be granted to Eldon Spencer, Inc. in connection with the Statement of Objections to the June 12, 1980, Proposed Remedial Order (Case No. BRO-1273) issued to Eldon Spencer, Inc. by the Economic Regulatory Administration.
Sept. 24, 1980	Exxon Company, U.S.A., Washington, D.C.	BRH-1271, BRD-1271.	Motions for Discovery and Evidentiary Hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with Exxon Company's Statement of Objections submitted in response to a Proposed Remedial Order (Case No. BRO-1271) issued to the firm.
Sept. 24, 1980	Flint Ink Corp., Detroit, Michigan	BEL-0288	Temporary Exception from the Reporting Requirements. If granted: Flint Ink Corp. would receive a temporary exception which would grant the firm an extension of time in which to file Form EIA-25, "Prime Suppliers Monthly Report."
Sept. 25, 1980	C.F.M. #35-03, Inc., Kansas City, Missouri	BEA-0477	Appeal of ERA Assignment Order. If granted: The March 7, 1980, Assignment Order issued by the Economic Regulatory Administration, Region VII, regarding the assignment of a base period supplier and volume to C.F.M. #35-03, Inc. would be modified.
Sept. 25, 1980	Caribou Four Corners, Inc., Afton, Wyoming	BEE-1416	Price Exception. If granted: Caribou Four Corners, Inc. would receive an exception from the provisions of 10 CFR 212.131, regarding crude oil purchases and sales for the period February 1976 through June 1976.
Sept. 25, 1980	Douglas L. Miller, *et al.*, Washington, D.C	BFA-0480	Appeal of Information Request Denial. If granted: The September 23, 1980, Information Request Denial issued by the DOE Office of Personnel would be rescinded, and Douglas L. Miller, Earl M. Carstens, Alvin L. Richardson, and Paul J. McGuire, would receive access to certain DOE personnel data.
Sept. 25, 1980	K & L Retail, Inc., Kansas City, Missouri	BEA-0479	Appeal of ERA Assignment Order. If granted: The August 5, 1980, Assignment Order issued by the Economic Regulatory Administration, Region VII regarding the assignment of a base period supplier and volume to K & L Retail, Inc. would be modified.
Sept. 25, 1980	Kirtron, Inc., Lincoln, Nebraska	BEA-0478	Appeal of ERA Assignment Order. If granted: The August 4, 1980, Assignment Order issued by the Economic Regulatory Administration, Region VII, regarding the assignment of a base period supplier and volume to Kirtron, Inc. would be modified.
Sept. 26, 1980	MGPC, Inc., Los Angeles, California	BRS-0108, BRT-0108, BRR-0061.	Requests for Stay, Temporary Stay and Modification. If granted: The October 26, 1979, and May 22, 1980, Decisions and Orders issued to McCulloch Gas Processing Corporation regarding motions for discovery and evidentiary hearing would be modified. The firm would receive a stay and a temporary stay pending a final determination on its Request for Modification.

Notices of Objection Received

[Week of Sept. 19 to Sept. 26, 1980]

Date	Name and location of applicant	Case No.
9/22/80	MoCar Oil Corp., Pensacola, Fl.	BEE-0698.
9/22/80	Texaco, Inc., White Plains, NY	BEE-0525.
9/22/80	American Agri-Fuels Corp., Kansas City, MO.	BXE-1255.
9/22/80	Amfood Industries, Inc., Arlington Heights, IL.	DEE-5085.
9/22/80	Getty Refining & Marketing Co., Tulsa, OK.	BXE-1330 to BXE-1335.
9/23/80	Campbell Oil Co., Houston, TX	BEE-0743.
9/25/80	Keller Oil Co., Enfield, CT	BEE-0753.
9/25/80	Commonwealth Oil Refining Co., Inc., San Antonio, TX.	BEE-1308.

[FR Doc. 80-32121 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-01-M

Application for Exception; Issuance of Proposed Decisions and Orders; Week of September 1 through September 5, 1980

During the week of September 1 through September 5, 1980 the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

October 9, 1980.

George B. Breznay,

Acting Director, Office of Hearings and Appeals.

American Agri-Fuels Corporation, Kansas City, Missouri, BXE-1255, Gasohol

American Agri-Fuels Corporation filed an Application for Exception from the provisions of 10 C.F.R. Part 211. The exception request, if granted, would permit American Agri-Fuels to purchase 159,433 barrels of unleaded motor gasoline for use in its gasohol blending and marketing operations. On September 3, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted in part and that American Agri-Fuels' base period allocation of unleaded gasoline be established at 380,000 gallons per month.

Atlantic Richfield Company, Dallas, Texas, BXE-1369, Crude Oil

Atlantic Richfield Company filed an Application for Exception from the provisions of 10 C.F.R., Part 212, Subpart D. The exception request, if granted, would result in an extension of exception relief previously granted and would permit the firm to sell a certain portion of the crude oil which it produces from Platform Spark for the benefit of the working interest owners at market prices. On September 3, 1980, the DOE issued a Proposed Decision and Order in which it tentatively determined that an extention of exception relief should be granted.

Butler County Oil Co., Inc., Poplor Bluff, Missouri, DEE-8283, Gasohol

Butler County Oil Company, Inc. filed an Application for Exception from the provisions of 10 C.F.R. Part 211. The exception request, if granted, would permit Butler to receive an increased allocation of unleaded gasoline with which to blend gasohol. On September 3, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

Cabeon Corporation, Everett, Washington, BEE-0812, Motor Gasoline

Cabeon Corporation filed an Application for Exception from the provisions of 10 C.F.R. Part 211. The exception request, if granted, would permit Cabeon to receive increase supplies of unleaded gasoline to produce gasohol. However, Cabeon has not used any of its current base period supply to produce gasohol. On September 3, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

Campbell Oil Company, Olean, New York, BEE-0743, Motor Gasoline

Campbell Oil Company filed an Application for Exception from the provisions of 10 C.F.R. Part 211. The exception request, if granted, would permit Campbell to receive an increase in its base period obligation of motor gasoline for the purpose of blending and marketing gasohol. On September 3, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

Craft Petroleum, Company, Inc., Jackson, Mississippi, BEE-1035, (Crude Oil)

Craft Petroleum Company, filed an Application for Exception from the provisions of 10 C.F.R., Part 212, Subpart D. The exception request, if granted, would permit the firm to sell a certain portion of the crude oil produced for the benefit of the working interest owners from the J. W. Richardson No. 1 Lease located in Lincoln County, Mississippi, at market price levels. On September 3, 1980, the DOE issued a Proposed Decision and Order and tentatively determined that exception relief should be denied.

David Douglas Public Schools, Portland, Oregon, BEE-1124, Motor Gasoline

David Douglas Public Schools filed an Application for Exception from the provisions of 10 C.F.R. Part 211. The exception request, if granted, would result in the assignment of Mobil Oil Corp. as the school district's sole supplier of motor gasoline. On September 5, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

Environmental Protection Corporation, Bakersfield, California, Reporting Requirements, Bee-1290

Environmental Protection Corporation (EPC) filed an Application for Exception from the provisions of 10 C.F.R. 212.187. The exception request, if granted, would exempt EPC from the requirement that it file the Crude Oil Resellers Self Reporting Form, ERA-69. On September 3, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

Gasohol Enterprises Company, Gigerorgio, Colfiornia, Bee-0819, Gasohol

Gasohol Enterprises Company filed an Application for Exception from the provisions of 10 C.F.R., Part 211. The exception request, if granted, would permit Gasohol Enterprises Co. to receive an allocation of unleaded motor gasoline in order to blend and sell gasohol. On September 3, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

Guam Oil and Refining Company, Inc., Dallas, Texas, BEE-1247, Crude Oil

Guam Oil and Refining Company, Inc. (Gorco) filed an Application for Exception from the provisions of 10 C.F.R. 211.65. The exception request, if granted, would permit Gorco to participate in the Crude Oil Buy/Sell Program as a refiner-buyer. On September 5, 1980, the DOE issued a Proposed Decision and Order which determined that the exception request be denied.

Mocar Oil Company, Pensacola, Florida, BEE-0698 Gasohol

The Mocar Oil Company filed an Application for Exception from the provisions of 10 C.F.R., Part 211. The exception request, if granted, would increase the firm's allocation of unleaded motor gasoline so that it could blend and market gasohol. On September 3, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

Texaco Inc., White Plains, N.Y., BEE-0525, Motor Gasoline

Texaco Inc. filed an Application for Exception from the provisions of 10 C.R.R. 211.9 in which the firm sought the termination of its supplier/purchaser relationship with Edward J. Sweeney & Sons, Inc., a Texaco-branded jobber. On September 5, 1980, the DOE issued a Proposed Decision and Order in which it tentatively concluded that the Texaco request should be denied.

Dollar Rent-a-Car, Frisco, Colorado, DEF-7215

Scott Boulevard Chevron, Decatur, Georgia, BXE-0453

The following firms filed Applications for Exception from the provisions of the Motor Gasoline Allocation Regulations. The exception requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued Proposed Decisions and Orders which determined that the exception requests be granted.

Boulder Valley Oil Co., Lafayette, Colorado, BXE-0203

Chouteau Oil Company, El Paso, Texas, DEE-7637

Tom McDonald Oil Company, Inc., Tampa, Florida, DEE-2309

The following firms filed Applications for Exception from the provisions of the Motor Gasoline Allocation Regulations. The exception requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued

Proposed Decisions and Orders which determined that the exception requests be denied.

[FR Doc. 80-32120 Filed 10-15-80; 8:45 am]

BILLING CODE 6450-01-M

Applications for Exception; Week of August 18 through August 22, 1980

During the week of August 18 through August 22, 1980, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

October 9, 1980.

George B. Breznay,

Acting Director, Office of Hearings and Appeals.

Appeals

Oleum Corporation, Naples, Florida, BFA-0431, Freedom of Information

Oleum Corporation filed an appeal from a partial denial by the District Manager of the DOE Southeast District of Enforcement of a request for information which the firm had submitted under the Freedom of Information Act. In considering the appeal, the DOE found that certain documents which were originally withheld should be released. The DOE also determined that the case should be remanded due to the inadequacy of the initial determination, and upon remand the possibility of the applicability of Exemption 5 should be considered. An important issue that was considered in the Decision and Order was the applicability of Exemption 7(A) to documents gathered in the course of a preliminary investigation of a firm when no formal charges have been made.

United Refining Company, Washington, D.C., BEA-0361, Crude Oil

The United Refining Company filed an Appeal of a Decision and Order issued to the firm by the Economic Regulatory Administration (ERA) on April 30, 1980. The Order denied an Application that United had filed under Section 211.65(c)(2) of the DOE Crude Oil Buy/Sell Program. In considering United's Appeal, the DOE determined that the ERA Order did not contain sufficient findings of fact to support the conclusions reached. The DOE concluded that the April 30 Order should be rescinded and that the matter be remanded to ERA. The important issues discussed in this case are (i) whether OHA has the authority to consider arguments that a regulation is inconsistent with the DOE's statutory mandates and is therefore invalid and (ii) whether the establishment of $41 as a trigger price for crude oil allocations is inconsistent with the objectives of the EPAA in general and of the Buy/Sell program in particular.

Requests for Exception

Handy Foods No. 2, Forrest City, Kansas, BEO-0981, Motor Gasoline

Handy Foods No. 2 filed an Application for Exception from the provisions of 10 C.F.R. Part 211 in which the firm sought an increased base period allocation of motor gasoline. In considering the request, the DOE found that the firm had failed to demonstrate that any operating difficulties it was experiencing were attributable to DOE regulations. Accordingly, exception relief was denied.

Loomis Service Station, Glenmoore, Pennsylvania, BEO-0138, Motor Gasoline

Loomis Service Station filed an Application for Exception from the provisions of 10 C.F.R. § 211.102 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm did not show that it was experiencing a financial hardship, or that the community in which it was located is experiencing an unfair distribution of burdens as a result of the DOE motor gasoline allocation regulations. Accordingly, exception relief was granted.

Dennis R. O'Hara, Lakewood, Colorado, BEO-0268, Motor Gasoline

Dennis R. O'Hara filed an Application for Exception from the provisions of 10 C.F.R. § 211.102 in which he sought an increase in the base period allocation of Four Seasons Conoco, a station that he owns but does not operate. In considering the request, the DOE found that Mr. O'Hara had failed to demonstrate that the DOE's Allocation Regulations prevented him from realizing the intended benefits of his investment in the Four Seasons station. Accordingly, exception relief was granted.

Priest Explorations, Inc., Oklahoma City, Oklahoma, BXE-0818, Crude Oil

Priest Explorations, Inc. (Priest) filed an Application for Exception from the provisions of 10 C.F.R., Part 212, Subpart D. Exception relief was granted to permit Priest to sell at market prices 51.81 and 46.27 percent of the crude oil produced from the Choate Well 3A and the Choate Well 4A, respectively.

Rite-Way, Inc., Waterbury, Connecticut, BEO-0970, Motor Gasoline

Rite-Way, Inc. filed an Application for Exception from the provisions of 10 CFR, Part 211 in which the firm sought an increased base period allocation of motor gasoline. In considering the request, the DOE found that exception relief was necessary to enable the firm to realize the benefits of a capital investment in one of its retail sales outlets. Accordingly, exception relief was granted.

Walker Oil Co., Inc., Kansas City, Kansas, DEE-6090, Motor Gasoline

Walker Oil Company, Inc. filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought reassignment from certain of its base period suppliers to lower priced suppliers. In considering the request, the DOE found that the firm failed to demonstrate that it is experiencing either a substantial price disparity or a serious financial hardship. Accordingly, exception relief was denied.

Request for Temporary Exception

Witco Chemical Corporation, Bradford, Pennsylvania, BEL-1306, Crude Oil

Witco Chemical Corporation (Witco) filed an application for Temporary Exception from the provisions of 10 CFR § 211.67 in which the firm requested an increase in the number of entitlements issued to it in order to bring its post-entitlements crude oil costs into substantial parity with those of other refiners. In considering the request, the DOE found that the firm had failed to demonstrate that it was suffering an irreparable injury under the DOE regulatory program or that there was a strong likelihood that the firm would succeed on the merits of its underlying exception request. Accordingly, temporary exception relief was denied.

Request for Temporary Stay

DeMenno/Kerdoon, Los Angeles, California, BST-0009, Crude Oil

DeMenno/Kerdoon filed an Application for Temporary Stay of the provisions of a Decision and Order which was issued to the Little America Refining Company. DeMenno stated that as a result of the Decision and Order issued to Little America Refining Company it was unable to sell all of its entitlements specified in the July 1980 Entitlements Notice. In considering the request, the DOE determined that DeMenno had failed to show that it would suffer an irreparable injury if its request were denied. DeMenno's Application for Temporary Stay was therefore denied.

Motions for Discovery

Getty Oil Company, Los Angeles, California, BRD-0009, BRH-0009, motions for discovery and evidentiary hearing

Getty Oil Company (Getty) filed a Motion for Discovery and a Motion for Evidentiary Hearing in connection with a Proposed Remedial Order issued to the firm by the Office of Special Counsel. The PRO alleged that Getty improperly terminated its crude oil supplier/purchaser relationship with Phillips Petroleum Company (Phillips), which had its own crude oil supplier relationship with Tosco Corporation (Tosco), because Tosco had not consented to the termination. The PRO requires Getty to recommence supplying Phillips with the crude oil. A part of Getty's Motion for Discovery seeks to ascertain the DOE's factual and legal basis underlying the issuance of the PRO. The DOE held in its order the scope of inquiry concerning a PRO is limited to a review of the sufficiency of the findings of fact, conclusions of law and the factual representations of the parties. Getty's Motion for Discovery and Motion for Evidentiary Hearing with respect to the DOE were therefore denied. Getty also sought discovery from Phillips and Tosco with respect to their alleged consent to the termination of the supplier/purchaser relationship. The DOE determined that since the factual circumstances surrounding the termination were not clearly established in the record, Getty should be permitted (1) limited document production from Tosco and Phillips and (2) to depose no more than three representatives of each firm. Getty's Motion for Evidentiary Hearing with respect to those firms was held in abeyance pending completion of the discovery granted in the Decision.

Mobil Oil Corporation, Washington, D.C., BED-0117, BEJ-0117

Texaco Inc., White Plains, NY, BEJ-0117, BED-0120

Chevron U.S.A. Inc., San Francisco, CA, BEJ-0106, BED-0106, BES-0086, BED-0086, refined products

The Mobil Oil Corporation, Texaco, Inc., and Chevron U.S.A., Inc., filed Motions for Discovery and Protective Order with respect to the Little America Refining Company's (LARCO's) Application for Exception, (Case No. BEE-1064). In considering the request, the DOE found that the terms of existing protective orders offered to the petitioners were sufficient to allow the petitioners which are competitors of Larco to fully participate in the Larco proceedings and that the alleged inconvenience and expense to the petitioners in meeting these terms is outweighed by the potential competitive injury to Larco, if petitioner's direct employees, rather than independent counsel are allowed to examine confidential material.

Petitions for Implementation of Special Refund Procedures

Office of Enforcement (Panhandle) BFF-0003
Office of Enforcement (Enserch) BFF-0006
Office of Special Counsel (Conoco) BEZ-0046 through 0049
Office of Enforcement (Guenther)
Office of Special Counsel (Coastal)
Office of Special Counsel (Standard Oil Co. (Indiana)), Washington, D.C., special refund procedures

The Office of Enforcement and the Office of Special Counsel for Compliance of the Economic Regulatory Administration filed six separate Petitions for the Implementation of Special Refund Procedures. The Office of Hearings and Appeals agreed to accept jurisdiction under 10 CFR Part 205, Subpart V, in the four proceedings involving Consent Orders between the DOE and Continental Oil Co., Jack E. Guenther, The Coastal Corporation, and Standard Oil Co. (Indiana). The Office of Hearings and Appeals declined jurisdiction with respect to proceedings involving Panhandle Eastern Pipeline Co./ Century Refining Co. and Enserch Exploration, since Subpart V is not appropriate in cases involving small refund amounts absent a showing of special need.

Interlocutory Order

Rousseau's Texaco, Meriden, Connecticut, BEZ-0045, motor gasoline

Rousseau's Texaco filed a Petition for Review with the Federal Energy Regulatory Commission (FERC) of a May 21, 1980 Decision and Order issued to the firm by the Office of Hearings and Appeals. FERC determined that the Office of Hearings and Appeals should provide Rousseau's with interim relief, consistent with the standards the DOE has applied in price disparity cases, during the pendency of the firm's Petition for Review. In order to comply with the FERC determination, the Office of Hearings and Appeals requested that Rousseau provide, on an expedited basis, the factual material which is necessary to evaluate petitions for exception relief involving claims of price disparity.

Supplemental Orders

Coastal States Gas Corporation Lo-Vaca Gathering Company, San Antonio, Texas, BEX-0084, propane

The Department of Energy issued a Supplemental Order to the June 17, 1980 Decision and Order issued to Coastal States Gas Corporation and the Lo-Vaca Gathering Company. In the Supplemental Order, the DOE amended the June 17, 1980 Order to: (a) assign to the Valero Energy Corporation a base period supply obligation of propane to Coastal; and (b) permit Valero to compute its maximum allowable selling price for propane for sales to customers other than Coastal by using Coastal's lawful May 15, 1973 classes of purchaser, weighted average selling prices, and May 1973 costs.

Publix Oil Company, Morristown, Tennessee, BEX-0085, motor gasoline

In a Decision and Order issued to Publix Oil Company on July 24, 1980, the Office of Hearings and Appeals assigned five firms to supply Publix with specified volumes of motor gasoline during the period August 1, 1980 through July 31, 1981. The assigned firms were ordered to supply a portion of that volume directly to some Publix jobbers. This supplemental order modifies paragraph 12 of the July 24 Decision to ensure that the assigned suppliers may purchase from Publix's Gulf Coast base period suppliers an amount of gasoline equivalent to the amount the assigned suppliers deliver directly to the Publix jobbers.

Protective Orders

Louisiana Land Exploration Co., Washington, D.C. BRJ-0119

Texaco, Incorporated, Washington, D.C. crude oil

The Louisiana Land & Exploration Company (LL&E) and Texaco, Inc., filed a protective order in connection with an enforcement proceeding pending before the DOE. The order proposed by the parties was intended to permit the DOE's Office of Special Counsel to provide LL&E with proprietary information related to Texaco. The Office of Hearings and Appeals determined that while this was a proper purpose for a protective order, the proposed order submitted by Texaco and LL&E also purported to define OSC's discovery obligations with respect to contested issues prior to the resolution of those issues by OHA. Accordingly, the motion for the entry of the protective order was denied.

The following firms filed an Application for a Protective Order. The application, if granted, would result in the issuance by the DOE of the proposed Protective Order submitted by the firms. The DOE granted the following application and issued the requested Protective Order as an Order of the Department of Energy:

Name, Case No. and Location

Oklahoma Ref. Corp., Gulf Oil Corp., BEJ-0094, Wash., D.C.

Interim orders

The following firms were granted Interim Exception relief which implements the relief which the DOE proposed to grant in an order issued on the same date as the Interim Order:

Company name, Case No. and Location

Chestertown Shorgas Co., BEN-0050, Phila., PA

Little America Ref. Co., Inc., BEN-1064, Wash., DC

Texaco, Inc., BEN-1246, White Plains, NY

Petitions Involving the Motor Gasoline Allocation Regulations

The following firms filed Applications for Exception, Temporary Exception, Stay, and/or Temporary Stay from the provisions of the Motor Gasoline Allocation Regulations. The requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued Decisions and Orders which determined that the requests be granted.

Company Name, Case No. and Location

Meriden Yellow Cab Co., BEO-0139, Meriden, CT

Passport Marina, DEE-5885, Panama City Bch., FL

Petitions Involving the Motor Gasoline Allocation Regulations

The following firms filed Applications for Exception, Temporary Exception, Stay, and/or Temporary Stay from the provisions of the Motor Gasoline Allocation Regulations. The requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued Decisions and Orders which determined that the requests be denied.

Company Name, Case No. and Location

Baker's Wharfside Marina, BEO-0622, Jupiter, FL

Benda's Little Freeway Serv. Stat., Inc., BEO-1056, Lansing, MI

Cable Car Wash, BEO-1079, Davis, CA

Chebanse Texaco, BEO-0311, Chebanse, IL

Fischer Shell Service, DEE-2756, Farmington Hills, MI

C&G Oil Co., DEE-4989, Flagstaff, AZ.

Hawk Oil Company, BEO-0463, Medford, OR

Jim's Exxon, DEE-5031, Cucamonga, CA

Lathan Oil Co., Inc., DEE-8192, Wash., DC

V 45 OCT 16 1980 UMI

Dismissals

The following submissions were dismissed without prejudice to refiling at a later date:

Name and Case No.

Chestertown Shorgas Co., DES–2080
Delta Fuels, BEE–1240
Rhea County Executive, BEE–1164
Sambo's Service, BEE–1341
Uniroyal, Inc., DEE–4158

[FR Doc. 80-32122 Filed 10-15-80; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–180494; PH FRL 1636–3]

Delaware Department of Agriculture Crisis Exemption for Acephate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA gives notice that the Delaware Department of Agriculture (hereafter referred to as "Delaware") has availed itself of a crisis exemption to use acephate for control of the European corn borer on a maximum of 500 acres of peppers other than bell peppers in Kent and Sussex Counties, Delaware.

DATE: The crisis exemption became effective on August 15, 1980. Since the program is expected to continue for more than 15 days, Delaware has requested a specific exemption for continuation of the program.

FOR FURTHER INFORMATION CONTACT: Jack E. Housenger, Registration Division (TS–767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E–107, 401 M St., SW., Washington, D.C. 20460, (202–426–0223).

SUPPLEMENTARY INFORMATION: Delaware reports that a safe pesticide is needed to control the European corn borer in peppers other than bell peppers. According to Delaware the pesticides registered for this use on peppers are either not effective enough, in the cases of carbaryl, carbofuran, and azinphos-methyl, or require more frequent applications at a higher rate of toxicity in the case of methomyl, than acephate. Delaware states that use of acephate can represent savings as much as $30,000 to pepper growers.

Delaware is using the acephate product Orthene, EPA Reg. No. 239–2418, manufactured by the Chevron Chemical Co., at a rate of 0.5 pound active ingredient per acre. Application is being made by low volume air-blast sprayers using 10–20 gallons per acre. State-certified applicators are making the application. A pre-harvest interval of 7 days will be observed. No adverse effects on the environment are anticipated from the program. Because the program is expected to last for longer than 15 days, Delaware has submitted a request for a specific exemption to continue this use of acephate on peppers.

(Sec. 18 as amended 92 Stat. 819; (7 U.S.C. 136)).

Dated: October 8, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80-32162 Filed 10-15-80; 8:45 am]
BILLING CODE 6560-32-M

[OPP–180495; PH FRL 1636–4]

Crisis Exemption for Strychnine Baits; Mont.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA gives notice that Montana has availed itself of a crisis exemption for the use of strychnine baits to reduce rabid skunk populations in 24 counties in eastern Montana.

DATE: The crisis exemption became effective on July 7, 1980. Montana had already submitted a request for a specific exemption for this purpose.

FOR FURTHER INFORMATION CONTACT: Jack E. Housenger, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Room E-107, 401 M St., SW., Washington, D.C. 20460, (202–426–0223).

SUPPLEMENTARY INFORMATION: Following two skunk rabies cases in June 1980, Montana requested a specific exemption to use strychnine alkaloid baits to reduce populations of rabid skunks. Montana decided to implement a skunk rabies control program on July 7, 1980, by which time the request for a specific exemption had not been procesed by EPA. Three additional cases of skunk rabies had occurred in the interim. Since July 10, 1980, Montana reports, an additional case of skunk rabies occurred.

The program calls for the use of a maximum of 500 strychnine-treated baits to be placed within a five-mile radius of an area of human habitation where skunks are determined as the vector species in a positive rabies case. A maximum of two strychnine lard baits or two strychnine-treated eggs per setting are to be placed in the following skunk habitats: skunk dens, holes, garbage dumps, road culverts, junk piles, and unoccupied buildings. At the end of a 30-day treatment period, treated bait and/or eggs will be collected and destroyed. Strychnine-treated lard baits or eggs will be placed only on those lands where premise entry agreements are signed by the landowner, lessee, or Administrator, and warning signs will be posted at entries to all premises and other visible positions near locations where treated baits or eggs have been placed.

Montana has requested permission to continue the program under a specific exemption.

(Sec. 18 as amended 92 Stat. 819; (7 U.S.C. 136)).

Dated: October 8, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80-32163 Filed 10-15-80; 8:45 am]
BILLING CODE 6560-32-M

[OPP–180503; PH FRL 1636–1]

Mississippi Department of Agriculture and Commerce; Issuance of Specific Exemption for Sodium Salt of Acifluorfen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted a specific exemption to the Mississippi Department of Agriculture and Commerce (hereafter referred to as the "Applicant") for use of Blazer 2S (sodium salt of acifluorfen) on 50,000 acres of rice in Mississippi to control hemp sesbania. The specific exemption is issued under the Federal Insecticide, Fungicide, and Rodenticide Act.

DATE: The specific exemption expires on October 1, 1980.

FOR FURTHER INFORMATION CONTACT: Jack E. Housenger, Registration Division (TS-767), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-107, 401 M St., SW., Washington, D.C. 20460, (202-426-0223).

SUPPLEMENTARY INFORMATION: Hemp sesbania (*Sesbania exaltata*) is a summer annual which infests all of the rice producing area, in Mississippi, the Delta region. It emerges with the rice plants and grows actively over the entire growing season. Sesbania can grow up to eight feet tall in wet, fertile, cultivated fields, and competes vigorously with rice for sunlight, nutrients, and water. It may also reduce the value of rough and milled rice due to the presence of its black weed seed. Harvesting problems are also encountered in fields infested with this weed because of its heavy, thick, woody stem.

The Applicant states that there are several currently registered chemicals for the control of hemp sesbania on rice including 2,4,5-T, propanil, 2,4-D, silvex, and MCPA, but that they are not usable for various reasons which follow. The chemical most used for hemp sesbania control has been 2,4,5-T. However, there is currently no production of this chemical and supplies of the amine formulation, the only formulation registered for use on rice, are anticipated to be insufficient to meet the demand for this growing season. Propanil is used to control early season grasses, and the maximum quantity allowed per acre per season is often applied before hemp sesbania problems arise. Only the invert emulsion of 2,4-D may be applied between April 1 and October 1 under Mississippi law; this form has a very limited use on rice because of the special equipment needed to apply it and the hazard which exists from drift to cotton. Use of silvex is undesirable because of drift to crops sensitive to it. Although MCP is registered in Mississippi for weed control in rice, hemp sesbania is not specifically cited as one of the weeds controlled by it. The Applicant claims that without use of Blazer, a yield reduction of 19 to 39 percent could occur if registered alternatives are unavailable. This yield reduction could result in a $4.2 million loss to rice growers in Mississippi, according to the Applicant.

The Applicant proposed to use Blazer 2S when rice is at the late tillering stage up to the ealy boot stage. A single application is to be made using aerial equipment at a rate of 0.125 to 0.25 pound active ingredient per acre.

EPA has determined that residues of acifluorfen and its metabolites are not likely to exceed 0.1 part per million (ppm) in or on rice grain or rice straw from the proposed use. This level has been judged adequate to protect the public health. No. unreasonable adverse effects are expected in non-targeted organisms and only minimal hazards are expected to endangered species.

After reviewing the application and other available information, EPA has determined that the criteria for an exemption have been met. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until October 1, 1980, in the manner and to the extent set forth in the application. The specific exemption is also subject to the following conditions:

1. The Rohm and Haas product Blazer 2S, EPA Reg. No. 707–150, may be applied;

2. A maximum of 50,000 acres of rice may be treated;

3. Treatments may be made using aerial equipment at a rate of 0.5 to 1.0 pint of formulation (0.125 to 0.25 pound active ingredient) per acre;

4. A volume of 5 to 10 gallons of spray mixture per acre will be applied;

5. A maximum of one application per acre to be treated may be made;

6. No application may be made within 50 days of harvest;

7. Root crops (carrots, turnips, sweet potatoes, etc.) must not be planted in fields treated with Blazer 2S for a period of 18 months following treatment;

8. All applicable directions, precautions, and restrictions on the EPA-registered label must be followed;

9. Rice treated in accordance with the above provisions should not have combined residue levels of acifluorfen and its metabolites in excess of 0.1 ppm in or on rice grain and rice straw. Rice grain and straw with residues not exceeding this level may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health and Human Services, has been advised of this action;

10. The Applicant is responsible for ensuring that all provisions of this specific exemption are met and must submit a report summarizing the results of this program by March 31, 1981; and

11. The EPA shall be immediately informed of any adverse effects resulting from the use of Blazer in connection with this exemption.

(Sec. 18 as amended 92 Stat. 819; (7 U.S.C. 136))

Dated: October 8, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80-32164 Filed 10-15-80; 8:45 am]
BILLING CODE 6560-32-M

[OPP–180485A; PH FRL 1632–2]

New York State Department of Environmental Conservation Amendment to Specific Exemption for Bayleton

AGENCY: Environmetal Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has issued an amendment to a specific exemption granted to the New York State Department of Environmental Conservation (hereafter referred to as the "Applicant") to use Bayleton (triadimefon) on grapes to control benomyl-resistant strains of powdery mildew. The specific exemption expired on August 31, 1980. The amendment extends the program.

DATE: The specific exemption expires on September 30, 1980.

FOR FURTHER INFORMATION CONTACT: Patricia Critchlow, Registration Division (TS–767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E–107, 401 M St., SW., Washington, D.C. 20460 (202–426–0223).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 12, 1980 (45 FR 60480), a notice was published which announced the granting of a specific exemption by EPA to the Applicant to use a maximum of 282 pounds of Bayleton 50 WP on a maximum of 500 acres of grapes in New York to control benomyl-resistant strains of powdery mildew. The specific exemption expired on August 31, 1980. Since then, the Applicant has requested an extension of the time during which Bayleton could be used. The request was made because the exemption was granted so late in the season. This extension allows treatment in the event that powdery mildew is not yet under control. No additional quantity of the pesticide is authorized.

After reviewing the application and other available information, EPA has determined that the requested amendment would not result in any significant environmental risks. Accordingly, EPA has granted the amendment to extend the specific exemption to September 30, 1980. All other terms and conditions of the specific exemption granted on July 18, 1980, still apply.

(Sec. 18 as amended 92 Stat. 819; (7 U.S.C. 136))

Dated: November 8, 1980.

Edwin L. Johnson,

Deputy Assistance Administrator for Pesticide Programs.

[FR Doc. 80-32165 Filed 10-15-80; 8:45 am]
BILLING CODE 6560-32-M

[SA FRL 1635–8]

Science Advisory Board, Toxic Substances Subcommittee: Open Meeting

Under Public law 92–463, notice is hereby given that a one-day meeting of the Toxic Substances Subcommittee of the Science Advisory Board will be held in Conference Room 3906, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., on November 5, 1980. The meeting will begin at 11:00 a.m. and last until approximately 6:00 or 7:00 p.m.

The topic for discussion is the agency's proposed regulation on

Asbestos Containing Materials in Schools.

This meeting is open to the public. Anyone wishing to attend or in need of further information regarding the meeting should contact Dr. Helene N. Guttman, Executive Secretary, Toxic Substances Subcommittee, at (202) 472-9444.

Dated: October 8, 1980.

Richard M. Dowd,

Staff Director, Science Advisory Board.

[FR Doc. 80-32161 Filed 10-15-80; 8:45 am]

BILLING CODE 6560-34-M

[WH FRL 1636-7]

Aquifers of the Delaware Basin in Western Texas and Southeastern New Mexico: Request for EPA Determination Regarding Aquifers

A petition has been submitted, requesting the Administrator to determine that the aquifers of the Delaware Basin in western Texas and southeastern New Mexico (the Cenozoic Alluvium, Rustler, Capitan and Santa Rosa) are the sole or principal drinking water source for that area. Counties in the petitioned area are Eddy and Lea in New Mexico; and Crane, Culberson, Loving, Pecos, Reeves, Ward, and Winkler in Texas.

Section 1424(e) of the Safe Drinking Water Act (P.L. 93-523) authorizes the Administrator of the Environmental Protection Agency (EPA) to determine, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health. After such a determination is made, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health.

The petition, submitted to Adlene Harrison, Regional Administrator, EPA Region VI, by the Odessa, Texas League of Women Voters, is reprinted in part below as submitted.

"The League of Women Voters of Odessa, Texas is the group petitioning for sole or principal source aquifer status of the Delaware Basin aquifers. The names of the officers are: Karen Storey, President, Linda Nelson, Vice-President for Program, Mary Crymes, Secretary, Marian Jones, Treasurer, June Naylor, Water Director.

"The League of Women Voters of Odessa, Texas is concerned that the proposed Waste Isolation Pilot Plant (WIPP) near Carlsbad, New Mexico will be in a position to pollute the water supply of the Delaware Basin of southeast New Mexico and southwest Texas if there is ever any leakage. This danger will be potentially present until the time that the radioactive level of the WIPP contents reaches the radioactive level of the surrounding area.

"The League of Women Voters of Odessa, Texas, is concerned that the pollution from the WIPP could be either radioactive and/or saline intrusions in masssive concentrations caused by the WIPP installation. Either source of contamination would endanger the United States citizens of either New Mexico or Texas who live in the endangered zone.

"The aquifers of the Delaware Basin in question are: the Santa Rosa, the Cenozoic Alluvium, the Rustler and the Capitan. Enclosed are major and minor aquifer maps of Texas with the aquifers delineated into New Mexico to the best of our present knowledge.

"According to our present state of knowledge three counties are 100 percent dependent on these aquifers for drinking water—Loving County, Texas, Ward County, Texas, Winkler County, Texas.

"The percentage of use in the following Counties is unknown: Culbertson County, Texas, Crane County, Texas, Eddy County, New Mexico, Lea County, New Mexico, Pecos County, Texas, Reeves County, Texas.

"Population of this area is according to some projected 1985 figures from the Permian Basin Regional Planning Commission unless they are noted with an asterisk. Those dates with (an asterisk) are taken from the 1960 census figures.

Culberson County, Texas	*2,794
Crane County, Texas	4,650
Eddy County, New Mexico	*50,783
Lea County, New Mexico	*53,429
Loving County, Texas	161
Pecos County, Texas	18,003
Reeves County, Texas	22,637
Ward County, Texas	14,688
Ector County receives water from Ward County	131,226
Winkler County, Texas	10,507

"There are no alternate sources of drinking water for Ward, Winkler and Loving Counties, Texas. The other Counties contain varying degrees of Ogallala and Edwards Trinity. (See map attached from Texas Department of Water Resources.)

"The recharge and stream flow source zone (or zones) for the aquifers are not too well understood. The sandhills running through the Delaware Basin are all areas of recharge through the area. There are springs which discharge at Malaga Bend on the Pecos River from the upper Santa Rosa and Rustler formations (location of the WIPP). This water is in turn reabsorbed into the Santa Rosa and Cenozoic Alluvium from the Pecos.

"The Project of major concern which might contaminate the aquifers is the WIPP as proposed by the Department of Energy for the Department of Defense waste. (Will this not be the largest concentration of nuclear waste the world has ever seen?)

"Public water systems utilizing water from the aquifers, the number of people served by each system and the water treatment provided by each system are listed as well as we can from our current knowledge:

Loving County, Texas—Mentone (no information)	161
Ward County, Texas	14,688
Grandfalls (sewage treatment)	
Barstow (septic field?)	871
Monahans (sewage treatment)	8,151
West Texas Children's Home	579
Pyote (septic tank field)	159
Winkler County, Texas	10,507
Kermit (sewage treatment)	7,700
Wink (sewage treatment)	1,055
Cheyenne (no information)	
Culberson County, Texas (no information)	2,794
Crane County, Texas	4,650
Crane (sewage treatment)	3,526
Eddy County, New Mexico)	50,783
Loving	
Malaga	
Carlsbad (sewage treatment)	
Artesia	
Otis	
Hope	
Atoka	
Dayton	
Queen	
El Paso Gap	
Red Bluff	
Lea County, New Mexico	53,429
Jal	
Hobbs (sewage treatment)	
Eunice	
Lovington	
Crossroads	
Caprock	
Gladiola	
Tatum	
McDonald	
Maljamar	
Humble City	
Buckeye	
Monument	
Oil Center	
Lea	
Ochoa	
Bennett	
Pecos County, Texas	16,003
Ft. Stockton (sewage treatment)	8,776
Iraan (sewage treatment)	931
Reeves County, Texas	22,737
Balmorhea (sewage treatment)	572
Balmorhea State Park	
Pecos (sewage treatment)	
Sheffield (sewage treatment)	300
Madera Valley Supply Cooperation	
Orla	
Hermose	
Toyah	
Saragosa	
Ector County (received 2 billion plus gallons in 1978 from Ward County water field)	131,226
Odessa (sewage treatment)	97,460

"We have listed concentrations of population in the involved counties where public water supplies are known or thought to be. Several of these communities are thought to have water supplies outside the aquifers in question—but we do not have all the data at hand. We have placed an asterisk by the communities whose water supply is most likely involved with the aquifer system in question.

"The Santa Rosa is shown on the Texas Department of Water Resources aquifer maps as covering portions of Gaines, Andrews and Ector Counties. We are uncertain whether Seminole (in Gaines County) or Andrews (in Andrews County) receive water from the Santa Rosa in their municipal water system.

"There is recharge from the sandhills of southeast New Mexico and southwest Texas into the aquifers of the Delaware Basin. There is recharge from the Pecos River below Malaga Bend into the Delaware Basin aquifers. Other recharge areas need to be identified.

"Addenda: The Capitan Aquifer may not be eligible for single source status as it is used primarily for oil field production, we believe."

EPA intends to reach a decision on the requested determination at the earliest time consistent with a complete review of the relevant data and information, and a full opportunity for public participation. In this regard, the agency solicits comments, data, and references to additional sources of information which will help build the administrative record. In particular, EPA seeks information relevant to (a) that portion of the hydrogeologic system comprising comprising the Delaware Basin aquifers of New Mexico and Texas which should be designated for protection as an aquifer which provides drinking water; (b) the surface boundary of the recharge area for the aquifers; (c) the boundary of the recharge source zone (that is, any area which drains into the recharge source zone, and, thus contributes to the recharge of the aquifers); (d) the location and influence of natural and manmade features which are important to the recharge or local runoff; (e) the location of impermeable formations, the runoff from which contributes to the recharge of the aquifers; (f) any current or anticipated Federal financially assisted projects which may cause contamination of the aquifers; and (g) any other information deemed relevant to the determination.

Comments, data and reference should be submitted in writing to the Regional Administrator, Region VI, Environmental Protection Agency, 1201 Elm Street, Dallas, Texas 75270, Attention: 6AWS Delaware Basin aquifer designation, on or before. . . . (Set date to be 60 days after F.R. notice.) Information which is available to the agency concerning the Delaware Basin aquifer system, including information submitted by the petitioners, will be available to the public for study at this address. Further information may be obtained from: Mac Weaver, Acting Chief, Water Supply Branch, Water Division, EPA Region VI, 214-767-2774.

Frances E. Phillips,

Acting Regional Administrator.

[FR Doc. 80-32160 Filed 10-15-80; 8:45 am]

BILLING CODE 6560-29-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10218; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before November 5, 1980. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No. 93-22.

Filing Party: David C. Nolan, Esquire, Graham & James, One Maritime Plaza, Suite 300, San Francisco, California 94111.

Summary: Agreement No. 93-22 amends the provisions of the North Europe-U.S. Pacific Freight Conference Agreement to extend the expiration date of the Independent action clause through June 30, 1981, and the joint service voting clause through December 31, 1981.

Agreement No. T-1988-2

Filing Party: William E. Emick, Jr., Harbor Branch Office, Harbor Administration Building, P.O. Box 570, Long Beach, California 90801.

Summary: Agreement No. T-1988-2, between City of Long Beach and Texaco Inc. (Lessee), modifies the parties' basic agreement which provides for the lease of premises on Berth #4 through #7, North Harbor, for a tanker terminal. The purpose of the amendment is to reduce the area of Parcel II of the premises, modify the rental, and to revise other provisions of the lease. The annual rental for Parcels I, II and IV through November 1, 1986, shall be $189,000 per annum. Lessee is entitled to a credit for all wharfage and dockage charges (not to exceed the annual rental) arising out of Lessee's operation at the leased premises assessed in accordance with Port's Tariff No. 3. Lessee shall also have first rights to utilize Parcel II-A, which is contiguous to Parcel II, but not a part of the leased premises.

Agreement No. 5200-37.

Filing Party: David C. Nolan, Esquire, Graham & James, One Maritime Plaza, Suite 300, San Francisco, California 94111.

Summary: Agreement No. 5200-37 would amend various articles of the Pacific Coast European Conference agreement for the express purpose of requiring a security deposit from all member lines to assure the faithful performance of their obligations under the agreement. The security required to be deposited shall be in the amount of fifty percent (50 percent) of each member line's annual share of conference administrative, legal, and neutral body expenses plus $10,000.

Agreement No.: 7770-19.

Filing party: Howard A. Levy, Patricia E. Byrne, Attorneys for North Atlantic French Atlantic Freight Conference, Suite 727, 17 Battery Place, New York, New York 10004.

Subject: Agreement No. 7770-19 would amend the North Atlantic French Atlantic Freight Conference Agreement by adding new language to Article X to provide that the conference members shall appoint a European resident representative, and that they may appoint the Chairman of the Continental North Atlantic Westbound Freight Conference, or a member of his staff, for that purpose. The duties of the resident representative include, among other things, attending meetings, implementing shipper request and complaint procedures pursuant to Article VII of Agreement No. 7770, and housekeeping, administrative and funding arrangements pursuant to the memorandum of Housekeeping arrangement of the Trans-Atlantic Freight Conference (FMC Agreement No. 10281) and pursuant to Article XVIII of Agreement No. 7770.

Agreement No.: 9859-4.

Filing Party: Eliot J. Halperin, Graham & Jarvis, 1050 17th Street, NW., Washington, D.C. 20036.

Summary: Agreement No. 9859-4 modifies Agreement No. 9859-2, which is a joint service agreement among Kommanditselskapet Det Bergenske Dampskibsselskab Star Cruises, Sea Cruises A/S, Kommanditselskapet Royal Viking Sea A/S and Royal Viking Line A/S. Royal Viking Line A/S manages the cruise operations conducted under the name Royal Viking Line, which presently operates the passenger vessels Royal Viking Sea, Royal Viking Star and Royal Viking Sky. Because the parties to the agreement are undertaking a company reorganization, they have filed the present modification to provide for the termination of the entire agreement effective January 1, 1981, rather than the agreement's original termination date of January 1, 1988.

By Order of the Federal Maritime Commission.

Dated: October 10, 1980.

Francis C. Hurney,

Secretary.

[FR Doc. 80-32170 Filed 10-15-80; 8:45 am]

BILLING CODE 6730-01-M

V 45 OCT 1680 UMI

[Agreement No. 10398]

Availability of Finding of No Significant Impact

Agreement No. 10398 was filed with the Federal Maritime Commission (Commission) for approval, disapproval or modification under section 15 of the Shipping Act, 1916. Under this agreement Mayan Line, Inc., will space charter at least 10 TEU's per voyage on two of its vessels to Consolidadora Del Caribe, S.A.

The Commission's Office of Environmental Analysis prepared an environmental assessment on this agreement. It found that this Commission action will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*

The environmental assessment is available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523–5725.

Interested parties may comment on the environmental assessment on or before November 5, 1980.

Such comments are to be filed with the Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573. If a party fails to comment within this period, it will be presumed that the party has no comment to make.

Francis C. Hurney,
Secretary.

[FR Doc. 80-32161 Filed 10-15-80; 8:45 am]
BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 2182]

CNT International; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.9 of Federal Maritime Commission General Order 4 further provides that a license will be automatically revoked or suspended for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of CNT International (Charles N. Tobiasek, d.b.a.), 6943 Loftygrove Drive, Rancho Palos Verdes, CA 90274, FMC No. 2182, was cancelled effective October 8, 1980.

By letter dated September 23, 1980, CNT International (Charles N. Tobiasek, d.b.a.) was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 2182 would be automatically revoked or suspended unless a valid surety bond was filed with the Commission.

CNT International (Charles N. Tobiasek, d.b.a.) has failed to furnish a valid surety bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised), section 5.01(d) dated August 8, 1977;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 2182 be and is hereby revoked effective October 8, 1980.

It is ordered, that Independent Ocean Freight Forwarder License No. 2182 issued to CNT International (Charles N. Tobiasek, d.b.a.) be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the Federal Register and served upon CNT International (Charles N. Tobiasek, d.b.a.).

Robert G. Drew,
Director, Bureau of Certification and Licensing.

[FR Doc. 80-32171 Filed 10-15-80; 8:45 am]
BILLING CODE 6730-01-M

Independent Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

DFW International Services (Pete V. Fuentes, d.b.a.), 941 B Avenue N., Grand Prairie, TX 75050.

Eagle International, Ltd., 10600 Higgins Rd., Suite 207, Rosemont, IL 60018. Officers: L. Gene Mueller, President, Rosalee Mueller, Secretary, Vern J. Weberski, Vice President, Mary Susan Weberski, Treasurer.

Joel Barnehama, 6 Juniper Drive, Great Neck, NY 11021.

John E. Southby, 10455 SW 107 Terrace, Miami, FL 33176.

Richard J. Maddalena, 1331 69th Street, Brooklyn, NY 11219.

Marco International Forwarders (P.T.W. Wang, d.b.a.), P.O. Box 716, San Bruno, CA 94066.

Murphy Shipping Company (Gerald P. Murphy, d.b.a.), P.O. Box 9069, 100 West Harrison Plaza, Seattle, WA 98119.

Contract Crating, Inc., 400 Gregg Street, Houston, TX 77020. Officers: Jerry W. Sadler, President, George E. Sims, Vice President, Sandra Yost, Secretary.

By the Federal Maritime Commission.

Dated: October 10, 1980.

Francis C. Hurney,
Secretary.

[FR Doc. 80-32172 Filed 10-15-80; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Notice of Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and section 225.4(b)(1) of the Board's Regulation Y (12 C.F.R. § 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than November 7, 1980.

A. *Federal Reserve Bank of San Francisco* (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. Bankamerica Corporation, San Francisco, California (industrial loan activities; Utah): to expand the activities of its indirect subsidiary, FinanceAmerica Corporation (whose name will be changed to FinanceAmerica Thrift Corporation upon the issuance of the industrial loan license), to include the additional activity of acting as an industrial loan corporation under the Utah Industrial Loan Law. Such activity will include, but will not be limited to, issuing thrift certificates and thrift passbook certificates, making consumer installment loans, purchasing installment sales finance contracts, making loans and other extensions of credit to small businesses, and making loans secured by real and personal property. The activity will be conducted from an existing office in Salt Lake City, Utah serving the State of Utah.

2. Bankamerica Corporation, San Francisco, California (industrial loan company, financing, insurance, and servicing activities; Kansas): to engage through its indirect subsidiary, FinanceAmerica Corporation, a Kansas corporation (whose name will be changed to FinanceAmerica Thrift Corporation upon the issuance of the industrial loan license) in the activities of an industrial loan company as licensee under the Kansas Investment Certificates of Investment Companies Act. Such activities will include, but will not be limited to, issuing investment certificates; making consumer installment loans; purchasing installment sales finance contracts; making loans and other extensions of credit to small businesses; making loans secured by real and personal property; and offering life, accident and health and property insurance directly related to extensions of credit made or acquired by FinanceAmerica Corporation (Kansas). These activities would be conducted from existing offices located in Emporia, Great Bend, Kansas City, Lawrence, Overland Park, Salina, Topeka, and Wichita, Kansas, serving the State of Kansas.

3. Bankamerica Corporation, San Francisco, California (financing, servicing, and insurance activities, New Hampshire, Maine and Vermont): to continue to engage, through its indirect subsidiary, FinanceAmerica Corporation of New Hampshire, Inc., a New Hampshire corporation, in the activities of making or acquiring for its own account loans and other extensions of credit such as would be made or acquired by a finance company; servicing loans and other extensions of credit; and the offering of credit related life and credit related accident and health insurance. Such activities would include, but will not be limited to, making loans and other extensions of credit to consumers as well as small businesses, purchasing installment sales finance contracts, making loans secured by real property, and offering life and accident and health insurance directly related to extensions of credit made or acquired by FinanceAmerica Corporation of New Hampshire, Inc.

These activities would be conducted from two existing offices in Dover and Laconia, New Hampshire, serving the States of New Hampshire and Maine, and from an existing office in Keene, New Hampshire, serving the States of New Hampshire and Vermont. This application is for an expansion of the geographic service areas of such offices.

4. Wells Fargo & Company, San Francisco, California (credit property and casualty insurance agency activities; Arizona, Arkansas, Kansas, Louisiana, Missouri, Nevada, Oklahoma, Texas and Utah): proposes to engage through its subsidiary, Wells Fargo Credit Corporation ("WFCC"), in acting as agent for credit property and casualty insurance and associated liability insurance related to WFCC's extensions of credit, to the extent permissible under applicable State insurance laws or regulations. These activities would be conducted from offices in Phoenix and Tucson, Arizona, serving Arizona, Nevada, New Mexico and Utah and from offices in Tulsa and Oklahoma City, Oklahoma, serving Arkansas, Kansas, Louisiana, Missouri, New Mexico, Oklahoma and Texas.

B. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, October 8, 1980.

Jefferson A. Walker,
Assistant Secretary of the Board.

[FR Doc. 80-32126 Filed 10-15-80; 8:45 am]
BILLING CODE 6210-01-M

Covington First State Bancshares, Inc.; Formation of Bank Holding Company

Covington First State Bancshares, Inc., Covington, Oklahoma, has applied for the Board's approval under § 3(a)(1) of th Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 100 per cent of the voting shares of First State Bank, Covington, Oklahoma. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than November 7, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governor of the Federal Reserve System, October 8, 1980.

Jeffetson A. Walker,
Assistant Secretary of the Board.

[FR Doc. 80-32123 Filed 10-15-80; 8:45 am]
BILLING CODE 6210-01-M

Ridgeway Bancshares, Inc.; Formation of Bank Holding Compnay

Ridgeway Bancshares, Inc., Ridgeway, Missouri, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 98 per cent of the voting shares (less director's qualifying shares) of Farmers National Bank of Ridgeway, Ridgeway, Missouri. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 7, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 8, 1980.

Jefferson A. Walker,
Assistant Secretary of the Board.

[FR Doc. 80-32124 Filed 10-15-80; 8:45 am]
BILLING CODE 6210-01-M

Southwest Georgia Financial Corp.; Formation of Bank Holding Company

Southwest Georgia Financial Corporation, Moultrie, Georgia, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 100

per cent of the voting shares of Moultrie National Bank, Moultrie, Georgia. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 7, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 8, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32125 Filed 10-15-80; 8:45 am]

BILLING CODE 6210-01-M

Citizens Bankshares, Inc.; Proposed Acquisition of Bonneville Thrift, Inc.

Citizens Bankshares, Inc., Ogden, Utah, has applied, through its subsidiary, Charter Thrift and Loan, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire substantially all of the assets of Bonneville Thrift, Inc., Bountiful, Utah.

Applicant states that the proposed subsidiary would engage in operating an industrial loan company under Utah law, including making loans, issuing thrift certificates and thrift passbook certificates; commercial and consumer finance activities; making leases that are the functional equivalent of extensions of credit; and in selling credit life and credit accident and health insurance related to extensions of credit by Charter Thrift & Loan. These activites would be performed from offices of Applicant's subsidiary in Bountiful, Utah, and the geographic areas to be served are Bountiful, Utah, and surrounding areas. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than November 3, 1980.

Board of Governors of the Federal Reserve System, October 15, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32467 Filed 10-15-80; 11:27 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Interagency Committee on Federal Activities for Alcohol Abuse and Alcoholism; Meetings

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following National Advisory bodies scheduled to assemble during the months of November and December 1980.

Manpower and Training Work Group of the Interagency Committee on Federal Activities for Alcohol Abuse and Alcoholism

November 6; 1:30 p.m.—open

Conference Room N, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

Contact: Mrs. Doris Banks, Room 14C-17, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4640

Purpose: The Manpower and Training Work Group evaluates all external (non-employee) Federal manpower development and training programs which relate to alcohol abuse and alcoholism and provides communication and exchange of information necessary to coordinate these programs and activities. Reports or recommendations are submitted to the Interagency Committee on Federal Activities for Alcohol Abuse and Alcoholism.

Agenda: The meeting will consist of a discussion of future work plans and activities for the work group.

Research Work Group of the Interagency Committee on Federal Activities for Alcohol Abuse and Alcoholism

December 15; 2:00 p.m.—open

Conference Room N, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

Contact: Charles T. Kaelber, Room 16C-16, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-2958

Purpose: The Research Work Group seeks to review, and where appropriate, to coordinate, Federal alcohol and alcoholism related research efforts, and submits any reports or recommendations to the Interagency Committee as necessary in order to carry out these efforts.

Agenda: The meeting will consist of a presentation by Dr. Thomas Harford of the Laboratory of Epidemiology and Population Studies, NIAAA, on the psychosocial research program in alcohol consumption.

Substantive program information may be obtained from the contact person listed above. The NIAAA Committee Management Office will furnish upon request summaries of the meeting and a roster of Committee members, Contact Ms. Helen Garrett, NIAAA, Room 16C-21, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-2860.

Dated: October 9, 1980.

Elizabeth A. Connolly,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 80-32115 Filed 10-15-80; 8:45 am]

BILLING CODE 4110-88-M

Office of Human Development Services

White House Conference on Aging, Technical Committee Meeting; Meeting

The White House Conference on Aging Technical Committee was established to provide scientific and technical advice and recommendations to the national Advisory Committee of the 1981 White House Conference on Aging and to the Executive Director of the 1981 White House Conference on Aging in developing issues to be considered and to produce technical documents to be used by the Conference.

Notice is hereby given pursuant to the Federal Advisory Committee Act, (Public Law 95-463, 5 U.S.C. App. 1, sec. 10, 1976) that the Technical Committee on Spiritual Well Being has changed the location of its meeting on October 30, 1980 from 1 p.m. to 5 p.m., to the Cincinnati South Holiday Inn, 2100 Dixie Highway, Ft. Mitchell, Kentucky.

At this meeting the committee will review the workplan, determine format of final report, finalize specific assignments for committee members in areas of research. Further information on the Technical Committee meeting may be obtained from Mr. Jerome R. Waldie, Executive Director, White House Conference on Aging, Room 4059, 330 Independence Avenue, S.W., Washington, D.C. 20201, telephone (202) 245-1914. Technical Committee meetings are open for public observation.

Dated: October 9, 1980.

Mamie Welborne,

HDS Committee Management Officer.

[FR Doc. 80-32150 Filed 10-15-80; 8:45 am]

BILLING CODE 4110-92-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Susanville District Advisory Council Meeting

Notice is hereby given in accordance with Public Law 94-579 (FLPMA) that a meeting of the Susanville District Advisory Council will be held, Thursday, November 6, 1980 at 9:00 a.m. in the Bureau of Land Management Office in Cedarville, California.

Agenda Items for the November 6th Meeting

1. Role definition.
2. Cowhead/Massacre land use decisions and Rangeland Management Program Document.
3. Process for reporting EIS implementation progress to public.
4. Cal/Neva EIS Alternatives.
5. Rifle range progress report.

The meeting is open to the public and time will be provided for public comment.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction within 30 days following the meeting.

C. Rex Cleary,

District Manager.

[FR Doc. 80-32113 Filed 10-15-80; 8:45 am]

BILLING CODE 4310-84-M

Montana and Wyoming Powder River Regional Coal Team; Meeting

Pursuant to the responsibilities set forth in 43 CFR 3400.4(b), the regional coal team will meet on November 6, 1980 to review the calls for expressions of interest received for the Powder River Region of Wyoming and Montana, and the progress of the U.S. Geological Survey Tract Delineation effort. The Regional Coal Team will also review the protest of the land use planning decisions in the Montana portion of the Region. Public comments will also be received from anyone who wishes to address the team.

Public attendance at the regional coal team meeting is welcome.

The regional coal team will meet at 9 a.m. on November 6, 1980. In the event the regional coal team does not complete it work on November 6, 1980, the meeting will be continued on November 7, 1980 at 8:30 a.m.

The regional coal team meeting will be held on the Holiday Inn West, I-90 and Mullowney Lane, Billings, Montana.

For further information contact: Robert O. Buffington, Regional Coal Team Chairperson, (208) 384-1401, or Stan McKee, Powder River Project Manager, (307) 778-2220, ext. 2473.

F. William Eikenberry,

Associate State Director.

October 6, 1980.

[FR Doc. 80-32177 Filed 10-15-80; 8:45 am]

BILLING CODE 4310-84-M

[W-72338]

Wyoming; Invitation for Coal Exploration License; Sunoco Energy Development Company

Sunoco Energy Development Company hereby invites all interested parties to participate on a pro rata cost sharing basis in its coal exploration program concerning Federally owned coal underlying the following-described land in Campbell County, Wyoming:

Sixth Principal Meridian, Wyoming

T. 46 N., R. 70 W.,
Sec. 6, Lots 1 thru 7, S½NE¼, SE¼NW¼, E½SW¼, and SE¼ (All);
Sec. 7, Lots 1 thru 4, E½, and E½W½ (All);
Sec. 8, W½NW¼, and SW¼;
Sec. 16, Lots 1 thru 4, and E½W½;
Sec. 19, Lots 1 thru 4, and E½W½.
T. 46 N., R. 71 W.,
Sec. 1, Lots 1 thru 4, S½N½, and S½ (All);
Sec. 9, SW¼NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 10, NE¼NW¼, SW¼NW¼, and S½;
Sec. 11, All;
Sec. 12, All;
Sec. 13, All;
Sec. 14, N½, and N½SE¼;
Sec. 15, N½;
Sec. 24, E½, E½NW¼, and NW¼NW¼.
Containing 6,566.11 acres.

All of the coal in the above lands consists of unleased Federal coal within the Powder River Basin known recoverable coal resource area. The purpose of the exploration program is to determine the quality and quantity of the coal, to analyze the character of the over-lying rock and conduct surveying and surface geologic mapping within the boundaries of the above described area.

A detailed description of the proposed drilling program is available for review during normal business hours in the following offices (under serial number W-72338): Bureau of Land Management, 2515 Warren Avenue, Cheyenne, Wyoming 82001, and the Bureau of Land Management, 951 Union Boulevard, Casper, Wyoming 82601.

This notice of invitation will be published in this newspaper once each week for two (2) consecutive weeks beginning the week of October 13, 1980, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Sunoco Energy Development Company, no later than thirty (30) days after publication of this invitation in the **Federal Register**. The written notices should be sent to the following addresses: Sunoco Energy Development Company, Attention: Sara D. Mosca, 12700 Park Central Place, Suite 1500, Box 9, Dallas, Texas 75251, and the Bureau of Land Management, Wyoming State Office, Attention: Lands and Mining Section, P.O. Box 1828, Cheyenne, Wyoming 82001.

The foregoing notice is published in the **Federal Register** pursuant to Title 43 of the Code of Federal Regulation, § 3410.2-1(d)(1).

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

October 6, 1980.

[FR Doc. 80-32175 Filed 10-15-80; 8:45 am]

BILLING CODE 4310-84-M

Wilderness Inventory Announcement of Decision on Protests for Revised Boundaries for Three Overthrust Belt Units; Montana

October 3, 1980.

This notice announces the Montana State Director's final decision on protests received on the revised boundaries for three overthrust belt units.

Background

A notice appeared in the Thursday, August 7, 1980, **Federal Register** (Vol. 45, No. 154, Page 52465) announcing the Montana State Director's final decision on protests received on overthrust belt wilderness inventory units. The wilderness inventory for these units was

accelerated ahead of the statewide schedule because of potential conflicts with energy exploration and development. The overthrust belt in Montana is located entirely within the Butte BLM District.

This notice announced that the final decision on 15 units which had not been protested would remain unchanged. This decision designated 18 units as wilderness study areas and dropped 27 units from further study. The notice also announced revised boundary decision as a result of protests for three units and established a 30-day protest period.

Protest letters were received on all three of the following units. The State Director's final decision for these units will remain unchanged.

Unit No.	Unit name	Acreage identified for WSA status	Acreage dropped from wilderness consideration
MT-076-002	Blacktail Mountains	17,639	3,811
MT-076-026	Bell/Limekiln Canyons	9,588	13,141
MT-076-028	Henneberry Ridge	9,756	27,944
Total		36,983	44,896

Individual's Right of Appeal

All individuals who protested the revised boundaries have been informed that they have a 30-day period in which to file a notice of appeal on an adverse decision to the Interior Board of Land Appeals. Any other adversely affected individuals also have the right of appeal. Appeals should be sent to the Board of Land Appeals, Office of Hearings and Appeals, in accordance with 43 CFR, Part 4.

Additional information can be obtained by writing to: State Director (931), Montana State Office, Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107, or by calling (406) 657-6474.

Michael J. Penfold,

State Director.

[FR Doc. 80-32186 Filed 10-15-80; 8:45 am]

BILLING CODE 4310-84-M

Office of Surface Mining Reclamation and Enforcement

Petition to Designate Certain Federal Lands in Southern Utah Unsuitable for Surface Coal Mining Operations: Extension of Time for Filing Comments

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior, Washington, D.C. 20240.

ACTION: Extension of the public comment period to receive written comments on certain information submitted at the October 10, 1980, public hearing regarding the unsuitability for surface coal mining operations of certain Federal lands in southern Utah.

SUMMARY: This announcement extends the public comment period for written comments on the Environmental Protection Agency (EPA) noise study report and the Utah International, Inc. (UII) air quality report submitted at the October 10, 1980, public hearing regarding the unsuitability for surface coal mining operations of certain Federal lands in southern Utah.

DATE: Written comments on the EPA noise study report and the UII air quality report must be received by 5:00 p.m. on October 20, 1980, at the address given below.

ADDRESSES: Written comment must be mailed or hand-carried to the OSM Regional Office, Division of State and Federal Programs, Region V, 2nd Floor, Brooks Towers, 1020 15th Street, Denver, CO 80202.

FOR FURTHER INFORMATION CONTACT: Paul Bodenberger, Division of Technical Analysis and Research, Office of Surface Mining, Region V, Brooks Towers, 1020 15th Street, Denver, CO 80202 (telephone 303-837-5656).

SUPPLEMENTARY INFORMATION: A public hearing was held on October 10, 1980, in Kanab, Utah, pursuant to a Federal Register notice dated September 12, 1980, to receive testimony pertaining to a petition to designate certain Federal lands in southern Utah unsuitable for surface coal mining operations submitted by the Sierra Club, *et al.* Additional information on this petition may be found in Federal Register notices of January 17, 1980, (Receipt of a Complete Petition for Designation of Lands Unsuitable for Surface Coal Mining Operations, 45 FR 3398-99); April 24, 1980, (intent to Prepare Coal Resources, Demand, and Impact Statement and Draft Environmental Impact Statement; Scoping Meeting, 45 FR 27836-37), and September 12, 1980 (Notice of Availability of Draft Evaluation Document, 45 FR 60495-6).

At the public hearing held on October 10, 1980, EPA submitted a report assessing the impact of noise produced by surface coal mining operations in the petition area. Similarly, UII submitted a report assessing the impact of surface coal mining operations on air quality.

Because of lengthy and detailed nature of these reports, the public comment period is hereby extended from October 15, 1980, (see Federal Register notice dated September 12, 1980) to October 20, 1980, in order to receive public comments regarding only these two documents.

Dated: October 10, 1980.

Walter N. Heine,

Director.

[FR Doc. 80-32182 Filed 10-15-80; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

Motor Carrier Finance Applications; Decision-Notice

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). These rules provide, among other things, that opposition to the granting of an application must be filed with the Commission within 30 days after the date of notice of filing of the application is published in the Federal Register. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. Opposition under these rules should comply with Rule 240(c) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, and specify with particularity the facts, matters and things relied upon, but shall not include issues or allegations phrased generally. Opposition not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of any protest shall be filed with the Commission, and a copy shall also be served upon applicant's representative or applicant if no representative is named. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 240(c)(4) of the special rules and shall include the certification required.

Section 240(e) further provides, in part, that an applicant who does not intend timely to prosecute its application shall promptly request its dismissal.

Further processing steps will be by Commission notice or order which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication except for good cause shown.*

Any authority granted may reflect administratively acceptable restrictive amendments to the transaction proposed. Some of the applications may have been modified to conform with Commission policy.

We find with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a protestant, that the proposed dual operations are consistent with the public interest and the national transportation policy subject to the right of the Commission, which is expressly reserved, to impose such conditions as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930.

In the absence of legally sufficient protests as to the finance application *or* any application directly related thereto filed on or before November 17, 1980 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Decided: September 24, 1980.

By the Commission, Review Board Number 5, Members Krock, Taylor and Williams. (Member Taylor not participating).

MC-F-14426, filed June 17, 1980. G. G. PARSONS TRUCKING CO. (PARSONS), (P.O. Box 1085, North Wilkesboro, NC 28659), Control and Merger, C&S MOTOR EXPRESS, INC., (C&S), (Route 1, Box 307, North Wilkesboro, NC 28697). Representative: Dean N. Wolfe, Gimmel & Weiman, Suite 145, 4 Professional Drive, Gaithersburg, MD 20760. Parsons seeks authority to control C & S through the merger of C&S into Parsons. Shareholdes of C&S will surrender all of the issued and outstanding shares of C & S in exchange for shares of Parsons, the surviving corporation. C & S holds motor common carrier authority pursuant to MC-33060, lead certificate and Sub-2 certificate, which authorize the transportation of *general commodities*, with the usual exceptions, over regular routes, (1) between North Wilkesboro, NC, and Winston-Salem, NC, over U.S. Highway 421, serving all intermediate points (2) Between Winstop-Salem, NC, and Mocksville, NC, over U.S. Highway 158, and U.S. Highway 64, and NC Highway 901, serving all intermediate points, (3) between the intersection of U.S. Highway 64 and NC Highway 901, and North Wilkesboro, NC, over NC Highway 901, and NC Highway 115, serving all intermediate points, and (4) between Lenor, NC, and North Wilkesboro, NC, over NC Highway 18, serving all intermediate points. Parsons is an irregular route motor common carrier operating in interstate and foreign commerce under authority issued in MC-117427 and various subs thereto, which authorize the transportation of lumber and building supplies between points in the U.S. east of the Mississippi River. (Hearing site: Washington, DC or Winston-Salem, NC.)

Note.—A directly related application seeking a conversion of the certificate of registration in No. MC-33060 (Sub-No. 2) into a certificate of public convenience and necessity has been filed in MC-117427 (Sub-No. 79F), published in this same Federal Register issue.

Decision-Notice

The following operating rights applications, filed on or after March 1, 1979, are filed in connection with pending finance applications under 49 U.S.C. 10926, 11343 or 11344. The applications are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). These rules provide, among other things, that a petition to intervene either with or without leave must be filed with the Commission within 30 days after the date of publication in the Federal Register with a copy being furnished the applicant. Protests to these applications will be rejected.

A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under rule 247(l). In deciding whether to grant leave to intervene, the Commission considers, among other things, whether petitioner has (a) solicited the traffic or business of those persons supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. Another factor considered is the effects of any decision on petitioner's interests.

Samples of petitions and the text and explanation of the intervention rules can be found at 43 FR 50908, as modified at 43 FR 60277. Petitions not in reasonable compliance with these rules may be rejected. Note that Rule 247(e), where not inconsistent with the intervention rules, still applies. Especially refer to Rule 247(e) for requirements as to supplying a copy of conflicting authority, serving the petition on applicant's representative, and oral hearing requests.

Section 247(f) provides that an applicant which does not intent timely

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to prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. Broadening amendments will not be accepted after the date of this publication.

Any authority granted may reflect administratively acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings: With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service is either (a) required by the public convenience and necessity, or, (b) will be consistent with the public interest and the transportation policy of 49 U.S.C. 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a protestant, that the proposed dual operations are consistent with the public interest and the national transportation policy subject to the right of the Commission, which is expressly reserved, to impose such conditions as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930.

In the absence of legally sufficient protests as to the finance application or the following operating rights applications directly related thereto filed on or before November 17, 1980 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice by effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

MC 117427 (Sub-79F), filed June 17, 1980. Applicant: G. G. PARSONS TRUCKING CO., P.O. Box 1085, N. Wilkesboro, NC 28659. Representative: DEAN N. WOLFE, Suite 145, 4 Professional Dr., Gaithersburg, MD 20760. Authority sought to operate as a *common carrier*, by motor vehicle over regular routes, transporting: *general commodities*, (except those requiring special equipment), (1) from North Wilkesboro, NC, to Winston-Salem, NC over U.S. Highway 421; (2) from Winston-Salem, NC, to Mocksville, NC over U.S. Highway 158, thence over U.S. Highway 64 and N.C. Highway 901; (3) from the intersection of U.S. Highway 64 and N.C. Highway 901 over N.C. Highway 901 to its intersection with N.C. Highway 115, thence over N.C. Highway 115 to North Wilkesboro, NC; and (4) from Lenoir, NC to North Wilkesboro, NC over N.C. Highway 18. Return over the same routes serving all intermediate points. (Hearing site: Washington, D.C.)

Note.—This proceeding is directly related to MC–F–14426 and the purpose for filing this application is to convert a certificate of registration to be acquired in that proceeding to a certificate of public convenience and necessity.

MC 149401 (notice of proposed grant of petition to modify certificate), filed September 16, 1980. Petitioner: NATIONAL TRUCKING, INC. Representative: William P. Jackson, Jr., 3426 North Washington Blvd., P.O. Box 1240, Arlington, VA 22210. Petitioner holds a Certificate of Public Convenience and Necessity in No. MC–149401 F, authorizing, in pertinent part, the transportation, as a motor common carrier, in interstate or foreign commerce, over irregular routes, of *general commodities* (except those of unusual value, Classes A and B explosives, household goods, as defined by the Commission, commodities in bulk, and those requiring special equipment), between Ravenna, OH, on the one hand, and, on the other, points in Ohio. By supplemental decision dated September 29, 1980, Review Board Number 5 modified the prior decision in the directly related application in No. MC–f–14379F subject to republication, so as to permit the transportation of *general commodities* (except those of unusual value, Classes A and B explosives, and household goods, as defined by the Commission), between the same points. Parties opposed to the granting of the above modification should file protests no later than November 17, 1980, setting forth their interest in this proceeding and how they may be harmed by the modification proposed to be granted.

MC 19311 (Sub-65F). By decision of September 26, 1980, Review Board Number 5 granted Central Transport, Inc., 34200 Mound Road, Sterling Heights, MI 48077, authority as follows: *General commodities* (usual exceptions), between Cincinnati, OH, on the one hand, and, on the other, points in KY. Representative: Jack Goodman, 39 S. LaSalle St., Chicago, IL 60603.

Note.—This application was previously published January 8, 1980. It is directly related to No. MC–F–14176F.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-32212 Filed 10-15-80; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special Rule 247 was published in the Federal Register of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before December 1, 1980 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP2–065

Decided: October 2, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 1222 (Sub-48F), filed September 26, 1980. Applicant: THE REINHARDT TRANSFER COMPANY, a corporation, 1410 Tenth St., Portsmouth, OH 45662. Representative: Robert H. Kinker, P.O. Box 464, Frankfort, KY 40602. Transporting *chemicals, plastic film sheeting, plastic foam, and metal products*, from points in Will County, IL, Mason County, MI, and Hancock, Licking, and Lawrence Counties, OH, to points in AL, GA, IA, IL, IN, KY, MI, MN, MS, MO, NC, OH, SC, TN, VA, WV, and WI.

MC 105613 (Sub-276F), filed September 29, 1980. Applicant: BELFORD TRUCKING CO., INC., 1759 S.W. 12th St., P.O. Box 270, Ocala, FL 32670. Representative: Arnold L. Burke, 180 North LaSalle St., Chicago, IL 60601. Transporting *foodstuffs and kindred products*, as described in Item 20 of the Standard Transportation Commodity Code, between points in Shelby County, TN, on the one hand, and, on the other, points in the U.S. (except AK and HI.)

MC 107012 (Sub-576F), filed September 26, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). Transporting *water trays and water drums*, from points in MI to points in MO.

MC 107012 (Sub-578F), filed September 26, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (address same as above). Transporting *patio furniture and wooden sheds*, from Emmett, ID, to points in the U.S. (except AK and HI).

MC 107012 (Sub-579F), filed September 26, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (address same as applicant). Transporting *automotive wheels and parts and accessories* for automotive wheels, from Ontario, CA, to points in the U.S. (except AK and HI).

MC 107012 (Sub-580F), filed September 26, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (address same as applicant). Transporting *institutional furniture*, from points in the U.S. to Batesville, IN.

MC 107012 (Sub-581F), filed September 26, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Stephen C. Clifford (address same as applicant). Transporting *sporting goods*, from Leesburg, FL, Crivitz, WI, San Diego, and Los Angeles, CA, to points in the U.S. (except AK and HI).

MC 111812 (Sub-738F), filed September 26, 1980. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57117. Representative: Lamoyne Brandsma (same address as applicant). Transporting *food or kindred products*, as described in item 20 of the Standard Transportation Commodity Code (except commodities in bulk), between the facilities of Geo. A. Hormel & Co., at or near Davenport, IA, on the one hand, and, on the other, points in CT, DE, GA, IL, IA, ME, MD, MA, NE, NH, NJ, NY, NC, ND, PA, RI, SC, SD, TN, VT, VA, WV, and DC.

MC 115793 (Sub-32F), filed September 25, 1980. Applicant: CALDWELL FREIGHT LINES, INC., P.O. Box 620, Hwy 321 South, Lenoir, NC. Representative: C. Douglas Woods (address same as applicant). Transporting (1) *tile* and (2) *such commodities* as are dealt in and used by wholesale and retail stores (except tile and commodities in bulk), from points in KY and TN, to points in NC.

MC 116142 (Sub-30F), filed September 26, 1980. Applicant: BEVERAGE TRANSPORTATION, INC., 625 Eberts Lane, York, PA 17405. Representative: Christian V. Graf, 407 N. Front St., Harrisburg, PA 17101. Transporting *malt beverages*, and *materials, equipment, and supplies* used in the manufacture and distribution of malt beverages (except commodities in bulk), between those points in the U.S. in and east of WI, IL, KY, TN, and MS.

MC 116273 (Sub-256F), filed September 29, 1980. Applicant: D & L TRANSPORT, INC., 3800 South Laramie Ave., Cicero, IL 60650. Representative: William R. Lavery (Address same as applicant). Transporting *commodities*, in bulk, between points in IN, IL, IA, KY, MI, MO, OH, PA, and WI, on the one hand, and, on the other, points in the U.S.

MC 117883 (Sub-273F), filed October 9, 1980. Applicant: SUBLER TRANSFER, INC., P.O. Box 62, Versailles, OH 45380. Representative: E. Stephen Heisley, Suite 805, 666 Eleventh St. NW., Washington, DC 20001. Transporting (1) *foodstuffs*, and (2) *meats, meat products, and meat byproducts, and articles distributed by meat-packing houses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except foodstuffs), between points in CT, DE, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MO, NE, NH, NJ, NY, OH, PA, RI, VT, VA, WV, WI, and DC.

Note.—Applicant has presented no shipper support but relies rather on evidence of existing services being provided.

MC 125023 (Sub-83F), filed September 26, 1980. Applicant: SIGMA–4 EXPRESS, INC., P.O. Box 9117, Erie, PA 16504. Representative: Richard C. McGinnis, 711 Washington Bldg., Washington, DC 20005. Transporting (1) *malt beverages*, in containers, and (2) *materials, equipment, and supplies* used in the manufacture, and distribution of malt beverages, between points in Monroe County, NY, on the one hand, and, on the other, points WV.

MC 134023 (Sub-2F), filed September 24, 1980. Applicant: KING VAN & STORAGE, INC., 2323 West La Palma Ave., Anaheim, CA 92801. Represenatative: David P. Christianson, 707 Wilshire Blvd., Suite 1800, Los Angeles, CA 90017. Transporting *household goods* as defined by the Commission, between points in WA, OR, CA, NV, ID, MT, WY, UT, CO, AZ, and NM.

Note.—The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. § 11343(a) or submit an affidavit indicating why such approval is unnecessary.

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MC 136343 (Sub-227F), filed September 25, 1980. Applicant: MILTON TRANSPORTATION, INC., P.O. Box 355, Milton, PA 17847. Representative: Herbert R. Nurick, P.O. Box 1166, Harrisburg, PA 17108. Transporting (1) *brakes, pumps, agricultural implements, castings, and racks,* (2) *parts* for brakes, pumps and agricultural implements, and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above, between the facilities of New York Air Brake Company, at Watertown, NY, on the one hand, and, on the other, those points in the U.S. east of MT, WY, CO, and NM.

MC 139482 (Sub-179F), filed September 26, 1980. Applicant: NEW ULM FREIGHT LINES, INC., P.O. Box 877, New Ulm, MN 56073. Representative: Barry M. Bloedel (address same as applicant). Transporting (1) *foodstuffs, and materials, supplies and equipment* used in the manufacture and distribution of foodstuffs (except commodities in *bulk*), between Chicago, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 149562F, filed September 22, 1980. Applicant: FREE STATE TRUCK SERVICE, INC., P.O. Box 760, Glen Burnie, MD 21061. Representative: W. WILSON CORROUM (address same as applicant). Transporting (1) *metals* (except in bulk), and (2) *equipment, materials, and supplies* used in the manufacture, and distribution of metals (except in dump vehicles), between points in the U.S. (except AK and HI), under continuing contract(s) with Kennecott Corporation, of Salt Lake City, UT.

MC 150823 (Sub-1F), filed September 29, 1980. Applicant: DATA DISPATCH, INC., 850 Florida Ave. South, Minneapolis, MN 55426. Representative: Timothy H. Butler, 4200 IDS Center, 80 South 8th St., Minneapolis, MN 55402. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of cosmetics, between points in the U.S., under continuing contract(s) with Avon Products, Inc., of Morton Grove, IL.

MC 151533 (Sub-5F), filed September 26, 1980. Applicant: BESTWAY FREIGHT LINES, LTD., 1749 Wilbur Cross Hwy., Berlin, CT 06037. Representative: Gerald A. Joseloff, P.O. Box 3258, Hartford, CT 06103. Transporting (1) *scrap metal and scrap metal alloys,* and (2) *equipment, materials, and supplies* used in the manufacture and distribution of the commodities in (1) above, between the facilities of Suisman & Blumenthal, Inc., at Hartford, CT, on the one hand, and, on the other, points in ME, NH, VT, CT, MA, RI, NY, NJ, PA, OH, DE, MD, MI, WI, IN, IL, IA, NC, and VA.

MC 152013F, filed September 26, 1980. Applicant: DISTRIBUTION CARRIER, INC., 2310 Grant Bldg., Pittsburgh, PA 15219. Representative: Henry M. Wick, Jr. (same address as applicant). Transporting *general commodities* (except those of unusual value, household goods as defined by the Commission, and classes A and B explosives), between points in the U.S., under continuing contract(s) with Volkswagen of America, Inc., of Warren, MI. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. § 11343(a) or submit an affidavit indicating why such approval is unnecessary.

Volume No. OP2–067

Decided: October 7, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton and Liberman.

MC 107012 (Sub-582F), filed September 30, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). Transporting *heating and air conditioning ducts and fittings,* from El Paso, TX, to points in the U.S. (except AK and HI).

MC 107012 (Sub-583F), filed September 30, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). Transporting *accessories* for pickup trucks, from Jonesboro, AR, to points in the U.S.

MC 108053 (Sub-180F), filed September 30, 1980. Applicant: LITTLE AUDREY'S TRANSPORTATION CO., INC., P.O. box 129, Fremont, NE 68025. Representative: Arnold L. Burke, 180 North LaSalle St., Chicago, IL 60601. Transporting *general commodities* (except those of unusual value, household goods as defined by the Commission, classes A and B explosives, commodities in bulk, and those requiring special equipment), between points in Pierce and King Counties, WA, on the one hand, and, on the other, points in the U.S. (except AK and HI), restricted to traffic having a prior or subsequent movement by water.

MC 108382 (Sub-42F), filed October 2, 1980. Applicant: SHORT FREIGHT LINES, INC., 459 South River Rd., Bay City, MI 48706. Representative: Rex Eames, 900 Guardian Bldg., Detroit, MI 48226. Transporting *general commodities* (except household goods as defined by the Commission, classes A and B explosives, commodities in bulk, and those requiring special equipment), between points in MN, WI, IA, MO, IL, IN, KY, OH, PA, NY, WV, and MI (except Antrim, Benzie, Charlevoix, Emmet, Grand Traverse, Kalkaska, Leelanau, Manistee, and Wexford Counties).

MC 110012 (Sub-76F), filed September 29, 1980. Applicant: ROY WIDENER MOTOR LINES, INC., 707 North Liberty Hill Road, Morristown, TN 37814. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425–13th Street, NW., Washington, DC 20004. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in Greene County, TN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 113362 (Sub-404F), filed September 30, 1980. Applicant: ELLSWORTH FREIGHT LINES, INC., 310 East Broadway, Eagle Grove, IA 50533. Representative: Milton D. Adams, P.O. Box 429, Austin, MN 55912. Transporting (1) *bags,* from Kansas City, MO, to those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX, and, (2) *equipment, materials, and supplies* used in the manufacture, sale, and distribution of bags, in the reverse direction.

MC 115162 (Sub-544F), filed October 3, 1980. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate (same address as applicant). Transporting (1) *textiles and textile products,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S.

MC 115452 (Sub-5F), filed September 30, 1980. Applicant: HUSBAND TRANSPORT, LIMITED, 159 Bay St., Toronto, Ontario, CD M5J 1J7. Representative: William J. Hirsch, 43 Court St., 1125 Conventon Towers, Buffalo, NY 14202. In foreign commerce only, transporting *general commodities* (except those of unusual value, household goods as defined by the Commission, classes A and B explosives, commodities in bulk, and those requiring special equipment), between the ports of entry on the international boundary line between the U.S. and Canada at Buffalo and Niagara Falls, NY, on the one hand, and, on the other, Buffalo and Niagara Falls, NY.

MC 124692 (Sub-342F), filed September 30, 1980. Applicant: SAMMONS TRUCKING, P.O. Box 4347, Missoula, MT 59806. Representative: James B. Hovland, Suite M–20, 400 Marquette Ave., Minneapolis, MN 55401. Transporting (1) *wood burning stoves and fireplace units* and (2) *parts and accessories* for the commodities in (1) above, from points in Sac County, IA, and Minneapolis, MN, to points in the U.S. (except AK and HI).

MC 125952 (Sub-48F), filed October 1, 1980. Applicant: INTERSTATE DISTRIBUTOR CO., a Corporation, 8311 Durango SW., P.O. Box 99307, Tacoma, WA 98499. Representative: Lawrence V. Smart, Jr., 419 NW 23rd Ave., Portland, OR 97210. Transporting (1) *paper, paper products, and wood pulp,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Boise Cascade Corporation, of Portland, OR.

MC 127303 (Sub-82F), filed September 30, 1980. Applicant: ZELLMER TRUCK LINES, INC., P.O. Box 343, Granville, IL 61326. Representative: E. Stephen Heisley, Suite 805, 666 Eleventh St. NW., Washington, DC 20001. Transporting *beverages,* between Fort Wayne, IN, Kansas City, MO, and Omaha, NE, on the one hand, and, on the other, points in AR, MN, MO, WI, and Council Bluffs, IA.

MC 136182 (Sub-10F), filed September 30, 1980. Applicant: B & C MOTOR FREIGHT, INC., P.O. Box 166, Peru, IN 46970. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting *caustic soda,* in bulk, in tank vehicles, between points in Vigo County, IN, on the one hand, and, on the other, points in IL, OH, KY, and MI.

MC 136182 (Sub-11F), filed October 3, 1980. Applicant: B & C MOTOR FREIGHT, INC., P.O. Box 166, Peru, IN 46970 Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting *petroleum products,* between points in Marion County, IN, on the one hand, and, on the other, points in IL, OH, KY, MI, and MO.

MC 139642 (Sub-8F), filed September 29, 1980. Applicant: BAMA TRANSPORTATION COMPANY, INC., 5247 East Pine, Tulsa, OK 74115. Representative: Jack R. Anderson, Suite 305 Reunion Center, 9 East Fourth St., Tulsa, OK 74103. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of industrial fastening tools, between points in the U.S., under continuing contract(s) with Hilti Industries, Inc., of Tulsa, OK.

MC 141532 (Sub-101F), filed September 30, 1980. Applicant: PACIFIC STATES TRANSPORT, INC., 10244 Arrow Hwy., Rancho Cucamonga, CA 91730. Representative: Michael J. Norton, 1905 South Redwood Rd., Salt Lake City, UT 84104. Transporting *wallboard, insulating board,* and *building materials,* between points in San Bernardino County, CA, on the one hand, and, on the other, points in the U.S. in and west of WI, IL, MO, AR, and LA.

MC 142672 (Sub-154F), filed September 30, 1980. Applicant: DAVID BENEUX PRODUCE AND TRUCKING, INC., P.O. Drawer F, Mulberry, AR 72947. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72701. Transporting (1) *such commodities* as are dealt in by grocery and food business houses (except frozen and in bulk), from the facilities of the Clorox Company, at or near Kansas City, MO, to points in AR and CO, and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above, in the reverse direction.

MC 142672 (Sub-155F), filed September 30, 1980. Applicant: DAVID BENEUX PRODUCE AND TRUCKING, INC., P.O. Drawer F, Mulberry, AR 72947. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72701. Transporting *candy,* from points in Putman County, TN, to points in PA and TX.

MC 144622 (Sub-189F), filed September 30, 1980. Applicant: GLENN BROTHERS TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: J. B. Stuart, P.O. Box 179, Bedford, TX 76021. Transporting *Chemicals, petroleum products, and cleaning products,* between points in Montgomery and Philadelphia Counties, PA, and Baltimore County, MD, and Baltimore, MD, on the one hand, and, on the other, points in CA, TX, OK, LA, and AR.

MC 144822 (Sub-190F), filed September 30, 1980. Applicant: GLENN BROTHERS TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: J. B. Stuart, P.O. Box 179, Bedford, TX 76021. Transporting *such commodities* as are dealt in by grocery, discount, and variety stores, between points in the U.S. (except AK and HI), on the one hand, and, on the other, points in AL, AR, NE, LA, and TX, restricted to traffic originating at or destined to the facilities of Mass Merchandisers, Inc.

MC 144832 (Sub-3F), filed October 1, 1980. Applicant: JOE C. SIKES, d.b.a., GLENN-LEE TRUCKING CO., P.O. Box 281, Springfield, GA 31329. Representative: Michael P. Hines (same address as applicant). Transporting *iron and steel articles,* between points in AL, FL, GA, NC, SC, and TN.

MC 146643 (Sub-61F), filed October 1, 1980. Applicant: INTER-FREIGHT TRANSPORTATION, INC., 655 East 114th St., Chicago, IL 60628. Representative: Donald B. Levine, 39 S. LaSalle St., Chicago, IL 60603. Transporting *paper,* between points in the U.S., under continuing contract(s) with Badger Paper Mills, Inc., of Peshtigo, WI.

MC 150112 (Sub-1F), filed September 29, 1980. Applicant: FLEXIBLE TRANSPORT, INC., P.O. Box 668664, Charlotte, NC. Representative: John M. Nader, 1600 Citizens Plaza, Louisville, KY 40202. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of plastic articles and rubber articles, (except commodities in bulk, in tank vehicles), between points in TX, and those in the U.S. in and east of MN, IA, MO, AR, and LA.

MC 150242 (Sub-2F), filed October 2, 1980. Applicant: BRIAN-DAWN TRUCKING, INC., Box 164, Tremont, IL 61568. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701. Transporting *salt,* between points in Tazewell County, IL, on the one hand, and, on the other, points in IA, IN, MI, and WI.

MC 151632 (Sub-2F), filed September 30, 1980. Applicant: EASTWOOD CARRIERS, INC., P.O. Box 1073, Lockhouse Rd., Westfield, MA 01086. Representative: James M. Burns, 1383 Main St., Suite 413, Springfield, MA 01103. Transporting *such commodities* as are dealt in or used by manufacturers and converters of paper and paper products (except commodities in bulk), between points in the U.S.

MC 152043F, filed September 29, 1980. Applicant: CLYDE SAULS d.b.a. CLYDE SAULS TRUCKING, 2702 Wyndham Lane, Orlando, FL 32808. Representative: James E. Wharton, Suite 811, Metcalf Bldg., 100 South Orange Ave., Orlando, FL 32801. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of floor tile, from points in Harris County, TX, to points in FL.

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Decided: October 9, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

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MC 4966 (Sub-23F), filed September 29, 1980. Applicant: JONES TRANSFER COMPANY, a corporation, 300 Jones Ave., Monroe, MI 48161. Representative: Rex Eames, 900 Guardian Bldg., Detroit, MI 48226. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving points in Trumbull, Erie, Huron, Richland, Ashland, Ashtabula, Hancock, Wyandot, Crawford, Seneca, Hardin, Logan, Greene, Shelby, Darke, Miami, Coshocton, Muskinghum, Hocking, Vinton, Jackson, Pike, and Highland Counties, OH, as off-route points in connection with carrier's authorized regular-route operations. Condition: The regular-route authority granted here shall not be severable, by sale or otherwise, from applicant's retained pertinent irregular-route authority.

Note.—The purpose of this application is to convert a portion of applicant's irregular-route authority to regular-route authority, and to eliminate the gateway of Toledo, OH.

MC 26396 (Sub-379F), filed October 6, 1980. Applicant: THE WAGGONERS TRUCKING, a corporation, P.O. Box 31357, Billings, MT 59107. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Transporting *clay and clay products*, between points in the U.S.

MC 48956 (Sub-19F), filed October 6, 1980. Applicant: JAMES FLEMING TRUCKING, INC., 761 East St., Suffield, CT 06078. Representative: S. Michael Richards, P.O. Box 225, Webster, NY 14580. Transporting *clay tile*, used in commercial construction and home building between points in the U.S., under continuing contract(s) with Dal-Tile Corp., of Alexandria, VA.

MC 56276 (Sub-3F), filed October 3, 1980. Applicant: DOMINIC SHIPPOLE, d.b.a. STAR MOTOR LINES, 11 Irving St., Worcester, MA 01609. Representative: Dominic Shippole (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in CT, MA, NJ, NY, and RI.

MC 74176 (Sub-2F), filed October 6, 1980. Applicant: WILES TRANSPORT, INC., 16901 Van Dam Rd., So. Holland, IL 60413. Representative: Philip A. Lee, 120 W. Madison St., Chicago, IL 60602. Transporting *such commodities* as are dealt in or used by paint and chemical coating manufacturers and distributors (except commodities in bulk, in tank vehicles), between the facilities of Standard Chemical Co., at or near Chicago Heights, IL, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, OK, and TX, restricted to traffic originating at or destined to the facilities of Standard T Chemical Co., Inc.

MC 105566 (Sub-232F), filed October 6, 1980. Applicant: SAM TANKSLEY TRUCKING, INC., P.O. Box 1120, Cape Girardeau, MO 63701. Representative: William F. King, Suite 400, Overlook Bldg., 6121 Lincolnia Rd., Alexandria, VA 22312. Transporting *plastic and metal furniture parts*, between Hawthorne, CA, on the one hand, and, on the other, Fort Washington, PA, and Waterbury, CT.

MC 107107 (Sub-487F), filed October 6, 1980. Applicant: ALTERMAN TRANSPORT LINES, INC., 12805 N.W. 42nd Ave., Opa Locka, FL 33054. Representative: Sidney Alterman (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from points in IL to points in FL, GA, NC, and SC, restricted to traffic originating at the facilities of Trans-Am Shippers Cooperative, Inc.

MC 110686 (Sub-65F), filed October 3, 1980. Applicant: McCORMICK DRAY LINE, INC., Avis, PA 17721. Representative: David A. Sutherland, 1150 Connecticut Ave. NW., Suite 400, Washington, DC 20036. Transporting *boat keels and materials and supplies* used in the manufacture of boat keels, between points in Lycoming County, PA, on the one hand, and, on the other, points in FL, GA, IL, LA, MD, MA, MI, NH, NJ, NY, OH, RI, SC, TX, and VA.

MC 112627 (Sub-36F), filed October 1, 1980. Applicant: OWENS BROS., INC., P.O. Box 247, Dansville, NY 14437. Representative: S. Michael Richards, P.O. Box 225, Webster, NY 14580. Transporting *wine and alcoholic beverages*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between Westfield and New York, NY, on the one hand, and, on the other, Richmond, VA, Charlestown, WV, Kansas City and St. Louis, MO, and points in CT, DE, IL, IN, KY, MD, MA, MI, MN, NJ, NY, OH, PA, RI, VT, WI, and DC.

MC 120547 (Sub-2F), filed October 3, 1980. Applicant: PARKER'S EXPRESS, INC., 21 Parker Dr., Avon, MA 02322. Representative: John F. O'Donnell, 60 Adams St., P.O. Box 238, Milton, MA 02187. Transporting *general commodities* except household goods as defined by the Commission and classes A and B explosives), between points in Putnam, Westchester, Dutchess, Columbia, Rensselaer, Schenectady, Albany, Greene, Rockland, Ulster, and Orange Counties, NY, and points in CT, MA, ME, NH, RI, and VT. Condition: Issuance of a certificate in the proceeding is subject to prior or coincidental cancellation, at applicant's written requests, of Certificate of Registration No. MC 120547 (Sub-1) issued July 10, 1974.

MC 121137 (Sub-3F), filed October 2, 1980. Applicant: JONES RIGGINGS & HEAVY HAULING, INC., 6500 New England Hwy., North Little Rock, AR 72117. Representative: James M. Duckett, 411 Pyramid Life Bldg., Little Rock, AR 72201. Transporting (1)(a) *commodities* the transportation of which by reason of size of weight requires special equipment, (b) *machinery parts*, and (c) *contractors' material and supplies* where their transportation is incidental to the transportation by the carrier of commodities in (1)(a) above, (2)(a) *self propelled articles* each weighing 15,000 pounds or more, and (b) *machinery, tools, parts, and supplies* moving in connection therewith, and (3) *metal and metal articles*, between points in AR, on the one hand, and, on the other, points in TN, MS, AL, LA, TX, OK, and MO.

MC 125037 (Sub-16F), filed September 30, 1980. Applicant: DIXIE MIDWEST EXPRESS, INC., P.O. Box 372, Greensboro, AL 36744. Representative: John R. Frawley, Jr., 5506 Crestwood Blvd., Birmingham, AL 35222. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and those requiring special equipment), between the facilities of Ralston-Purina Company, on the one hand, and, on the other, points in the U.S.

MC 126736 (Sub-136F), filed October 2, 1980. Applicant: FLORIDA ROCK & TANK LINES, INC., 155 East 21st St., Jacksonville, FL 32206. Representative: Martin Sack, Jr., 203 Marine National Bank Bldg., Jacksonville, FL 32202. Transporting *Commidities* in bulk and in dump vehicles, between points in the U.S.

MC 141867 (Sub-22F), filed October 6, 1980. Applicant: SPECIALIZED TRUCKING SERVICE, INC., 2301 Milwaukee Way, Tacoma, WA 98421. Representative: Jack R. Davis, 1100 IBM Bldg., Seattle, WA 98101. Transporting (1) *aircraft, aircraft assemblies, and aerospace craft*, and (2) *parts, materials, and equipment* (except commodities in bulk in tank vehicles), used in the maintenance, servicing, operation and manufacture of aircraft, aerospace aircraft and aerospace craft hardware, hydrofoil boats, asphalt plants, wind turbine systems and water purification systems, between points in Sedgwick County, KS and Tulsa County, OK, on the one hand, and, on the other, points in King and Snohomish Counties, WA, and Multnomah County, OR.

MC 142086 (Sub-2F), filed September 29, 1980. Applicant: JERRY A. JACOBS, d.b.a. JOY MOTOR FREIGHT, 1616 East 26th Tacoma, WA 98421. Representative: Jack R. Davis, 1100 IBM Bldg., Seattle, WA 98101. Transporting *general commodities* (except classes A and B explosives, and commodities in bulk), between points in King, Pierce, Mason, and Thurston Counties, WA, and points in the Seattle and Tacoma, WA Commercial zones, restricted to the transportation of traffic having a prior or subsequent movement by water.

MC 142976 (Sub-4F), filed October 3, 1980. Applicant: JOHN D. PERFETTI, R.D.D. #4, Box 265C, Blairsville, PA 15717. Representative: Eugene A. Waszkiewicz, P.O. Box 8315, Pittsburgh, PA 15218. Transporting (1) *iron and steel articles*, and (2) *materials, equipment, and supplies* used in the manufacture of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Standard Steel Company, of Latrobe, PA.

MC 143607 (Sub-27F), filed October 2, 1980. Applicant: BAYWOOD TRANSPORT, INC., 2611 University Parks Dr., Waco, TX 76706. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 11th St. NW., Washington, DC 20001. Transporting (1) *plastic articles*, and (2) *materials, equipment*, and supplies used in the manufacture of plastic articles, (except commodities in bulk), between points in the U.S., under continuing contract(s) with Rubbermaid Commercial Products, Inc., of Winchester, VA. Condition: Issuance of a permit in this proceeding is subject to prior or coincidental cancellation, at applicant's written request, of permits in MC–143607 Sub 13 and MC–143607 Sub 20.

MC 143636 (Sub-10F), filed September 26, 1980. Applicant: RON SMITH TRUCKING, INC., R.R. No. 1, Box 59, Arcola, IL 61910. Representative: Douglas G. Brown, The INB Center, Suite 555, One North Old State Capitol Plaza, Springfield, IL 62701. Transporting *sand, rock, gravel, aggregates, and plant mixed materials*, from points in Parke, Vigo, and Vermillion Counties, IN, to points in Edgar, Douglas, Vermillion, Champaign, and Coles Counties, IL.

MC 146646 (Sub-119F), filed September 29, 1980. Applicant: BRISTOW TRUCKING CO., INC., P.O. Box 6355A, Birmingham, AL 35217. Representative: James W. Segrest (same address as applicant). Transporting *stoneware, earthenware, steel flatware, glass ware*, and *such commodities* used in the manufacture and distribution of supermarket promotional materials (except commodities in bulk), between points in the U.S.

MC 150856 (Sub-1F), filed October 2, 1980. Applicant: FRANKLIN PENNY, d.b.a. FRANKLIN PENNY TRUCKING, 2201 W. Walnut, Lodi, CA 95240. Representative: Richard D. Howe, 600 Hubbell Bldg., Des Moines, IA 50309. Transporting (1) *tread rubber and retreading materials*, and (2) *equipment and supplies* used in the manufacture of the commodities in (1) above, from Muncie, IN, to points in CA, NV, OR, and WA.

MC 152026 (Sub-1F), filed October 3, 1980. Applicant: SIGHTSEEING UNLIMITED, INC., d.b.a. GRAY LINES OF LITTLE ROCK, 901 E. 8th St., Little Rock, AR 72202. Representative: John Hall, 12920 Southridge Dr., Little Rock, AR 72207. Transporting *passengers and their baggage* in round trip sightseeing and charter operations, between Little Rock, AR, on the one hand, and, on the other, points in MO, TN, MS, LA, TX, and OK.

MC 152086F, filed October 3, 1980. Applicant: DAVID J. BOYOVICH, d.b.a. D. J. B. TRUCKING, 12647 SE. 162nd, Renton, WA 98055. Representative: George LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in WA and OR.

MC 152087F, filed August 26, 1980. Applicant: RAMON R. BIONE, d.b.a. BIONE TRUCK SERVICE, P.O. Box 96, Christopher, IL, 62822. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. Transporting (1) *playground and exercise equipment, outdoor grills and bar stools*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in Jackson, Perry, and Williamson Counties, IL, on the one hand, and, on the other, St. Louis MO.

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By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 31389 (Sub-309F), filed September 25, 1980. Applicant: McLEAN TRUCKING COMPANY, a corporation, 1920 West First St., Winston-Salem, NC 27104. Representative: Daniel R. Simmons, P.O. Box 213, Winston-Salem, NC 27102. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Teledyne Water Pik, at or near Ft. Collins, CO, as an off-route point in connection with applicant's otherwise authorized regular-route operations.

MC 31389 (Sub-310F), filed September 25, 1980. Applicant: McLEAN TRUCKING COMPANY, a corporation, 1920 West First St., Winston-Salem, NC 27104 Representative: Daniel R. Simmons, P.O. Box 213, Winston-Salem, NC 27102. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Candle Lite, Inc., at or near Leesburg, OH, as an off-route point in connection with applicant's otherwise authorized regular-route operation.

MC 31389 (Sub-311F), filed September 26, 1980. Applicant: McLEAN TRUCKING COMPANY, a corporation, 1920 West First St., Winston-Salem, NC 27104 Representative: Daniel R. Simmons, P.O. Box 213, Winston-Salem, NC 27102. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Huffy Corporation, Oklahoma Bicycle Div., at or near Ponca City, OK, as an off-route point in conjunction with applicant's otherwise authorized regular route operations.

MC 64808 (Sub-46F), filed October 1, 1980. Applicant: W. S. THOMAS TRANSFER, INC., 1854 Morgantown, Ave., Fairmont, WV 26554. Representative: Henry M. Wick, Jr., 2310 Grant Bldg., Pittsburgh, PA 15219. Transporting *malt beverages*, in containers, from points in Monroe County, NY to points in WV.

MC 72069 (Sub-31F), filed September 26, 1980. Applicant: BLUE HEN LINES, INC., P.O. Box 280, Milford, DE 19963. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St., NW., Washington, DC 20005. Transporting *frozen bakery products, and materials, equipment, and supplies* used in the manufacture and distribution of frozen

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bakery products, between Sangatuck and Holland, MI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 98498 (Sub-4F), filed September 30, 1980. Applicant: GIROUX BROS. TRANSPORTATION, INC., 843 Boston Post Rd., Marlboro, MA 01752. Representative: John F. O'Donnell, 60 Adams St., P.O. Box 238, Milton, MA 02187. Transporting *general commodities* (except household goods and classes A and B explosives), between points in MA, RI, CT, NH, ME, VT, NY, NJ, and PA.

MC 105269 (Sub-90F), filed September 26, 1980. Applicant: GRAFF TRUCKING COMPANY, INC., 2110 Lake St., Kalamazoo, MI 49005. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in IL, IN, IA, KY, MI, MN, MO, OH, PA, WV, and WI, restricted to traffic originating at or destined to the facilities of the Brown Company.

MC 112049 (Sub-25F), filed September 26, 1980. Applicant: McBRIDE'S EXPRESS, INC., East Route 316, Mattoon, IL 61938. Representative: Michael R. Solomon, 433 Thatcher Ave., St. Louis, MO 63147. Over regular routes, transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between St. Louis, MO, and Indianapolis, IN, serving all intermediate points, and points in Madison, Bond, Fayette, Shelby, Coles, Cumberland, Clark, and Edgar Counties, IL, as off-route points, over U.S. Hwy 40; (2) between Springfield, IL, and Indianapolis, IN, serving all intermediate points, and points in Scott, Macoupin, Morgan, Sangamon, Montgomery, Christian, Macon, Moultrie, and Douglas Counties, IL, as off-route points, over U.S. Hwy 36; (3) between Lincoln, IL, and Indianapolis, IN, serving all intermediate points, and points in Logan De Witt, Piatt, Champaign, and Vermillion Counties, IL, as off-route points, from Lincoln, IL, over IL Hwy 10 to junction U.S. Hwy 150, then over U.S. Hwy 150 to junction U.S. Hwy 136, then over U.S. Hwy 136 to Indianapolis, IN, and return over the same routes; (4) between Peoria, IL, and Indianapolis, IN, serving all intermediate points, and points in Tazewell, McLean, Ford, and Iroquois Counties, IL, as off-route points, from Peoria, IL, over U.S. Hwy 24 to junction U.S. Hwy 52, then over U.S. Hwy 52 to Indianapolis, IN, and return over the same routes. Condition: The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application for approval of common control under 49 U.S.C. 11343, or submit an affidavit indicating why such approval is unnecessary.

Note.—Applicant intends to tack with its existing authority.

MC 119789 (Sub-715F), filed September 23, 1980. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: James K. Newbold, Jr. (same address as applicant). Transporting *paint, paint products, plastic, and plastic articles,* (except commodities in bulk), from Brea, CA, Buffalo, NY, Eightyfour and Palmerton, PA, Sand Springs, OK, and Little Rock, AR, to points in the U.S. (except AK and HI).

MC 119789 (Sub-720F), filed September 26, 1980. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: James K. Newbold (same address as applicant). Transporting *malt beverages and materials, equipment, and supplies* used in the manufacture and distribution of malt beverages, from the facilities of the Stroh Brewery Company, at Detroit, MI, and Perrysburg, OH, to points in MI, OH, GA, IN, and SC.

MC 129219 (Sub-28F), filed September 29, 1980. Applicant: CMD TRANSPORTATION, INC., 12340 SE Dumolt Rd., Clackamas, OR 97015. Representative: Philip G. Skofstad, 1525 NE Weidler, Portland, OR 97232. Transporting (1) *such commodities* as are dealt with in and distributed by grocery, hardware and drug stores; (2) *cleaning and building maintenance, materials and supplies;* (3) swimming pool, spa and hot tub products; (4) *chemicals* and (5) *materials, equipment and supplies* used in the manufacture and distribution of the commodities named in (1) and (4), between the facilities of Purex Corporation at or near South Gate, CA, Denver, CO, Auburndale, FL, Atlanta, GA, Chicago, IL, New Orleans, LA, Baltimore, MD, St. Paul, MN, St. Louis, MO, Omaha, NE, London and Toledo, OH, Bristol, PA, Dallas, TX, Salem, VA, and Tacoma, WA, on the one hand, and, on the other, points in the U.S. (except AK and HI), restricted against the transportation of commodities in bulk, under continuing contract(s) with Purex Corporation of Lakewood, CA.

MC 129809 (Sub-15F), filed September 29, 1980. Applicant: A & H, INC., P.O. Box 346, Footville, WI 53537. Representative: Thomas J. Beener, 67 Wall St., New York, NY 10005. Transporting *foodstuffs* (except in bulk), between points in the U.S., under continuing contract(s) with Universal Foods Corporation of Milwaukee, WI.

MC 133689 (Sub-349F), filed September 30, 1980. Applicant: OVERLAND EXPRESS, INC., 8651 Naples St., NE., Blaine, MN 55434. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S. Condition: Any certificate issued in this proceeding is subject to the prior or coincidental cancellation, at applicant's written request, of all existing certificates.

MC 134599 (Sub-186F), filed September 30, 1980. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, P.O. Box 30303, Salt Lake City, UT 84127. Representative: Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with Lovezzola-Ward Co., Inc., of Lexington, MA.

MC 135678 (Sub-24F), filed September 25, 1980. Applicant: MIDWESTERN TRANSPORTATION, INC., 20 S.W. 10th, Oklahoma City, OK 73125. Representative: C. L. Phillips, Room 248, Classen Terrance Bldg., 1411 N. Classen, Oklahoma City, OK 73106. Transporting *filters, and materials, equipment, and supplies* used in the manufacture of filters, between Oklahoma City, OK, on the one hand, and, on the other, points in AZ, CA, CO, NM, NV, OR, TX, and WA.

MC 135678 (Sub-25F), filed September 25, 1980. Applicant: MIDWESTERN TRANSPORTATION, INC., 20 S.W. 10th, Oklahoma City, OK 73125. Representative: C. L. Phillips, Room 248, Classen Terrance Bldg., 1411 N. Classen, Oklahoma City, OK 73106. Transporting (1) *automobile body parts, automobile floor mats and coverings,* and (2) *fiber backing* for automobile floor mats and body panels, between points in CA, OK, and TX.

MC 139579 (Sub-12F), filed September 29, 1980. Applicant: GEORGE H. GOLDING, INC., 5879 Marion Drive, Lockport, NY 14094. Representative: Raymond A. Richards, 35 Curtice Park, Webster, NY 14580. Transporting (1) *Chemicals or allied products,* as described in Item 28 of the Standard Transportation Commodity Code Tariff, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1), between points in the U.S., under continuing contract(s) with Myers Chemicals, Inc., of Buffalo, NY.

MC 140389 (Sub-90F), filed September 24, 1980. Applicant: OSBORN TRANSPORTATION, INC., P.O. Box 1830, Gadsden, AL 35902. Representative: Clayton R. Byrd, P.O. Box 304, Conley, GA 30027. Transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses,* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Iowa Beef Processors, Inc., at or near Holcomb, KS, to points in AL, FL, GA, MS, NC, SC, and TN.

MC 140418 (Sub-1F), filed September 26, 1980. Applicant: E.L.M. ENTERPRISES, INC., 1006 Carroll St., East Chicago, IN 46312. Representative: Arnold L. Burke, 180 North LaSalle St., Chicogo, IL 60601. Transporting *lime, limestone, and limestone products,* in bulk, between points in ND, SD, NE, KS, OK, TX, MN, IA, MO, AR, LA, WI, MI, IL, IN, OH, PA, KY, WV, VA, TN, MS, and AL. Condition: Prior or coincidental cancellation of at applicant's written request, of its authority in MC 140418.

MC 141459 (Sub-19F), filed September 30, 1980. Applicant: A.G.S. ENTERPRISES, INC., 809 Columbia Blvd., Litchfield, IL 62056. Representative: Allan C. Zuckerman, 39 South LaSalle St., Chicago, IL 60603. Transporting (1) *cardboard packaging materials,* from Flemington and Clinton, NJ, and Litchfield, IL, to points in the U.S. (except AK and HI), and (2) *materials, equipment, and supplies* used in the manufacture of the commodities in (1), in the reverse direction.

MC 143059 (Sub-134F), filed September 18, 1980. Applicant: MERCER TRANSPORTATION CO., a corporation, P.O. Box 35610, Louisville, KY 40232. Representative: Kenneth W. Kilgore (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), between points in Somerset County, NJ, New Haven County, CT, and Cook County, IL, on the one hand, and, on the other, points in the U.S.

MC 143739 (Sub-43F), filed September 30, 1980. Applicant: SHURSON TRUCKING CO., INC., P.O. Box 147, New Richland, MN 56072. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Transporting *frozen foods,* between points in Webster County, IA, on the one hand, and, on the other, points in CO, KS, MN, MO, NE, ND, SD, and WI.

MC 145539 (Sub-2F), filed September 29, 1980. Applicant: OHIO NORTHERN TRANSIT CO., a corporation, 2871 West 130th St., Hinckley, OH 44233. Representative: James C. White (same address as applicant). Transporting *commodities* which because of size or weight require the use of special equipment, between Berea and Orrville, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 145808 (Sub-4F), filed September 25, 1980. Applicant: RED ARROW DELIVERY SERVICE CO., INC., Air Cargo Building, Metropolitan Airport, Nashville, TN 37217. Representative: Peter A. Greene, 900 17th St., NW., Washington, DC 20006. Transporting *printed matter,* between Jonesboro, AR, and Nashville, TN.

MC 1457718 (Sub-2F), filed September 25, 1980. Applicant: ROWLEY INTERSTATE TRANSPORTATION COMPANY, INC., 2010 Kerper Boulevard, Dubuque, IA 52001. Representative: Carl L. Steiner, 39 South LaSalle St., Chicago, IL 60603. Transporting *candy, chocolate, and yogurt-coated commodities,* points in the U.S., under continuing contract(s) with California Peanut Company, Division of L.A. Nut House, of Richmond, CA.

MC 148788 (Sub-2F), filed September 5, 1980, previously noticed in the Federal Register issue of September 23, 1980. Applicant: PORT CARRIERS, INC., 1000 Farragut Drive, P.O. Box 26344, Jacksonville, FL 32218. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202. Transporting (1) *general commodities* (except commodities in bulk) in intermodal containers, and (2) *intermodal containers* between points in Duval County, FL, Glenn and Chatham County, GA, and Charleston County, SC, on the one hand, and, on the other, points in FL and GA, restricted to the transportation of traffic having an immediately prior or subsequent movement by water.

Note. —This republication adds Chatham County, GA to territorial description which was inadvertantly omitted in the original publication.

MC 150508 (Sub-1F), filed September 25, 1980. Applicant: TONY TRUJILLO d.b.a. MOUNTAINVIEW TRUCKING COMPANY, 212 Ortega Road, NW., Albuquerque, NM 87114. Representative: David C. Leathers, 1224 Clemente PL., SW., P.O. Box 26657, Albuquerque, NM 87125. Transporting *building materials,* between points in NM, on the one hand, and, on the other, points in Webb, La Salle, Atascosa, Bexar, Guadalupe, Caldwell, Bastrop, Williamson, Bell, McCulloch, Hill, Ellis, Dallas, Wise, and Cooke Counties, TX.

MC 150798 (Sub-1F), filed September 26, 1980. Applicant: CKR TRANSPORT, LTD., P.O. Box 599, Elmhurst, IL 60126. Representative: Kenneth Clark (same address as applicant). Transporting (1) *chemicals, toilet preparations, personal care items, foodstuffs, and buffing and polishing compounds,* (except commodities in bulk), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1), between the facilities of Alberto-Culver Company, at Chicago, IL, Atlanta, GA, and Sparks, NV, on the one hand, and, on the other, points in AR, AK, CA, FL, IN, GA, NH, NJ, NY, NV, MN, OH, OR, PA, TN, TX, WI, and WA.

MC 150878F, filed September 19, 1980. Applicant: HOWARD MATIN TRUCKING, INC., R.D. No. 1, Bruyer Rd., Cassadaga, NY 14718. Representative: Gregory B. Fraser, Bankers Trust Bldg., 4th floor, Jamestown, NY 14701. Transporting *malt beverages and containers* for malt beverages, between points in the U.S., under continuing contract(s) with Arthur Gren Co., of Jamestown, NY.

MC 150949 (Sub-2F), filed September 30, 1980. Applicant: NFI, INC., P.O. Box 664, Waxahachie, TX 75165. Representative: Thomas F. Sedberry, P.O. Box 2165, Austin, TX 78768. Transporting *plastic containers,* and *materials, equipment, and supplies* used in the manufacture and distribution of plastic containers, from points in Harris County, TX, to points in OK and NM.

MC 151099F, filed September 29, 1980. Applicant: PHELCO, INC., 11842 Missouri Bottom Rd., St. Louis, MO 63042. Representative: B. W. Latourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, MO 63105. Transporting *primary metal products and fabricated metal products,* between points in the U.S., including AK, but excluding HI.

MC 151349 (Sub-1F), filed September 25, 1980. Applicant: HINGHAM EXPRESS, INC., 349 Lincoln St., Hingham, MA 22043. Representative: Jeffrey M. Aresty, Bay 305 Union Wharf, Boston, MA 02109. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment).

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between Boston, MA, on the one hand, and, on the other, Providence, RI, and points in NH.

MC 151929F, filed September 29, 1980. Applicant: INTERSTATE DRAYING CO., a corporation, 8311 Durango, SW., P.O. Box 99307, Tacoma, WA 98499. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, OR 97210. Transporting *paper and paper articles,* and *materials, equipment, and supplies* used in the manufacture and distribution of paper and paper articles, between points in the U.S., under continuing contract(s) with the Weyerhaeuser Company, of Tacoma, WA.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-32209 Filed 10-15-80; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of filing of the application is published in the **Federal Register**. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F-64

The following applications were filed in Region 1. Send protests to: Interstate Commerce Commission, Regional Authority Center, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 1265888 (Sub-1-1TA), filed September 30, 1980. Applicant: KERR MOTOR LINES, INC., ¼ Jackson Street, Binghamton, NY 13903. Representative: Herbert M. Canter, Esq. and Benjamin D. Levine, Esq., 305 Montgomery Street, Syracuse, NY 13202. *Pulp, paper or allied products and printed matter* between points in Delaware County, NY, on the one hand, and, on the other, points in CT, DE, DC, IL, IN, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, VT and VA. Supporting shipper: Valley Offset, Incorporated, Laurel Bank Avenue, Deposit, NY 13754.

MC 151632 (Sub-1-3TA), filed September 30, 1980. Applicant: EASTWOOD CARRIERS, INC., P.O. Box 1073, Lockhouse Road, Westfield, MA 01086. Representative: James M. Burns, 1383 Main Street, Suite 413, Springfield, MA 01103. *Such commodities as are dealt in or used by manufacturers and converters of paper products, except commodities in bulk,* between points in the contiguous 48 states. Supporting shipper: Litton Business Systems, Inc., 601 River Street, Fitchburg, MA 01420.

MC 147074 (Sub-1-11TA), filed September 30, 1980. Applicant: E Z FREIGHT LINES, 70 Gould Street, Bayonne, NJ 07002. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Such merchandise as dealt in by retail department stores, except in bulk,* between CT, IL, IN, IA, KY, MA, ME, MI, MN, MO, NH, NJ, NY, OH, PA, RI, VT, VA, WV, and WI on the one hand, and, on the other, points in the U.S. except AK and HI. Supporting shipper: K Mart Corporation, 3100 West Big Beaver, Troy, MI 48084.

MC 148764 (Sub-1-4TA), filed September 30, 1980. Applicant: BUFFALO FUEL CORP., 2445 Allen Avenue, Niagara Falls, New York 14303. Representative: William Hirsch, 1110 Convention Tower, 43 Court Street, Buffalo, NY 14202. *Pig iron in bulk* from Erie County, NY to points in NJ and PA. Returned, refused, rejected shipments in the reverse direction. Supporting shipper: Hanna Furnace Corp., P.O. Box 207, Buffalo, NY 14240.

MC 124905 (Sub-1-2TA), filed September 29, 1980. Applicant: GARY W. GRAY, P.O. Box 48, Delaware, NJ 07823. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517. *Scrap metals,* between points in CT, NY, NJ, PA, DE and MD. Supporting shipper(s): Morris Iron & Steel Co., Inc., 7345 Milnor St., Philadelphia, PA 19136. Claster Corp., 15 E. Ridge Pk., Conshohocken, PA 19428.

MC 134404 (Sub-1-11TA), filed October 1, 1980. Applicant: AMERICAN TRANS-FREIGHT, INC., P.O. Box 796, Manville, NJ 08835. Representative: Eugene M. Malkin, Suite 1832, Two World Trade Center, New York, NY 10048. *Contract carrier:* irregular routes: *Such commodities as are dealt in or used by a manufacturer of electrical fittings, switches, and receptacles (except commodities in bulk),* (1) between Montgomeryville and Doylestown, PA and Elizabeth and Moorestown, NJ, on the one hand, and, on the other, Indianapolis, IN, and (2) between Morristown, NJ and Atlanta, GA, under continuing contract(s) with T & B/Thomas & Betts Corporation of Raritan, NJ. Supporting shipper(s): T & B/Thomas & Betts Corporation, 920 Route 202 South, Raritan, NJ 08869.

MC 3753 (Sub-1-2TA), filed October 1, 1980. Applicant: AAA TRUCKING CORP., 3630 Quaker Bridge Road, P.O. Box 8042, Trenton, NJ 08650. Representative: Zoe Ann Pace, Esq., Zelby, Burstein, Hartman & Burstein, Suite 2373, One World Trade Center, New York, NY 10048. *Common carrier:* regular route: *General commodities, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment* between Philadelphia, PA and Salisbury, MD serving all intermediate points and points in DE as off route points, from Philadelphia, PA to Salisbury, MD over US Hwy 13 and return over the same route. Supporting shippers: There are 64 statements in support attached to this applicant which may be examined at the I.C.C. Regional Office in Boston MA.

MC 52574 (Sub-1-2TA), filed September 30, 1980. Applicant: ELIZABETH FREIGHT FORWARDING CORP., 120 South 20th Street, Irvington, NJ 07111. Representative: Edward F. Bowes, Esq., 167 Fairfield Road, P.O. Box 1409, Fairfield, NJ 07006. *Contract carrier:* irregular routes: *Bakery products* from Frederick, MD to points in Iredell County, NC and Augusta County, VA. Supporting shipper(s): S. B. Thomas, Inc., 930 North Riverview Drive, Totowa, NJ 07511.

MC 144969 (Sub-1-1TA), filed October 1, 1980. Applicant: WHEATON CARTAGE CO., 3rd and "G" Streets, Millville, NJ 08332. Representative: Laurence J. DiStefano, Jr., Esq., 1101 Wheaton Avenue, Millville, NJ 08332. *Sealants, adheasives, synthetic plastics and chemicals, liquid in bulk in tank trailers,* between points in Gloucester County, NJ on the one hand, and, on the other, points in the continental US in and east of the States of MN, IA , KS, OK and TX, restricted to traffic originating at or destined to the facilities of W.R. Grace & Co. Supporting shipper: W.R. Grace & Co., Dewey and Almy Chemical Division, 55 Hayden Avenue, Lexington, MA 02173.

MC 112963 (Sub-1-5TA), filed October 1, 1980. Applicant: ROY BROS., INC., 764 Boston Road, Pinehurst, MA 01866. Representative: Leonard E. Murphy, 764 Boston Road, Pinehurst, MA 01866. *Liquid soap and cleaning compounds, in bulk, in tank vehicles* from Stoughton, MA to Chicago, IL. Supporting shipper: Neleco Products, Inc., 850 Providence Hwy., Dedham, MA 02026.

MC 104967 (Sub-1-1TA), filed September 29, 1980. Applicant: TIGHE TRUCKING INC., 45 Holton Street, Winchester, MA 01890. Representative: David M. Marshall, Marshall and Marshall, 101 State Street—Suite 304, Springfield, MA 01103. *Such commodities as are dealt in by manufacturers, distributors and users of foodstuffs, grocery and cleaning items, and restaurant supplies,* between the facilities of T. Tighe Sons, Inc., at or near Winchester, MA, on the one hand, and, on the other, points in CT. Supporting shipper(s): T. Tighe Sons, Inc., 45 Holton St., Winchester, MA 01890; Kal Kan Foods, Inc., 3386 E. 44th St., Vernon, CA 90058; Glorietta Foods, P.O. Box 5040, San Jose, CA 95150.; International Multifoods, Inc., 14 Meadow Brook Lane, Portland, ME 04102.

MC 125403 (Sub-1-3TA), filed September 29, 1980. Applicant: S.T.L. TRANSPORT, INC., P.O. Box 369, Newark, NY 14513. Representative: Raymond A. Richards, 35 Curtice Park, Webster, NY 14580. *Foodstuffs (except in bulk), and materials, supplies and equipment used in the manufacture, sale or distribution thereof,* between all points in the US, restricted to traffic originating at or destined to the facilities of CantiSANO Foods, Inc. Supporting shipper: CantiSANO Foods, Inc., 1069 Lyell Ave., Rochester, NY 14606.

MC 150688 (Sub-1-3TA), filed September 29, 1980. Applicant: COLONIAL TRUCKING CO., INC., Chandler Avenue, Pittsfield, ME 04967. Representative: John G. Feehan, Esq., Hewes, Culley, Feehan and Beals, 178 Middle Street, Portland, ME 04112. *(1) Paper, and paper products,* from Madison, ME, to points in the US (except AK and HI; and *(2) recycled paper, construction materials and materials and supplies used in the process of making paper,* from points in the US (except AK and HI) to Madison, ME, restricted to traffic originating at or destined to the facilities of Madison Paper Industries, Madison, ME. Supporting shipper: Madison Paper Industries, Main St., Madison, ME 04950.

MC 109094 (Sub-1-1TA), filed September 25, 1980. Applicant: GAULT TRANSPORTATION INC., 2381 Cranberry Highway, Wareham, MA 02571. Representative: Francis E. Barrett, Jr., Esq., 10 Industrial Park Road, Hingham, MA 02043. *Oophos, in bulk,* from Wareham, MA and Sayreville, NJ to points in ME and NH. Supporting shipper: Davis Chemicals Division of Davis Water and Waste Industries, Inc., P.O. Box A, 2700 Tallevast Rd., Tallevast, FL 33588.

MC 151639 (Sub-1-2TA), filed September 26, 1980. Applicant: EASTWOOD CARRIERS, INC., P.O. Box 1073, Lockhouse Road Westfield, MA 01086. Representative: James M. Burns, 1383 Main Street, Springfield, MA 01103. *Lumber, building materials, and wood products, and building materials, equipment, and supplies used in the manufacture, sale and distribution of such commodities,* between points in CT, MA, ME, NH, RI, and VT, and points in the contiguous 48 states. Supporting shipper(s): Furman Lumber, Inc., 108 Massachusetts Ave., Boston, MA 02115; Kelly, Madison and Zirkel, Inc., 1481 Linden Street, Suite 307, Wellesely, MA 02181; Quaboag Transfer, Inc., Box 501, Bridge & Water Sts., Palmer, MA 01069.

MC 61016 (Sub-1-4TA), filed September 15, 1980. Applicant: PETER PAN BUS LINES, INC., 1776 Main Street, Springfield, MA 01103. Representative: Robert J. Brooks, Suite 1115, 1828 L Street, NW., Washington, D.C. 20036. *Passengers and their baggage, in the same vehicle with passengers, in special round-trip operations,* beginning and ending at points in Hartford, New Haven, and Fairfield Counties, CT and extending to Atlantic City, NJ. Supporting shippers: There are 17 statements in support attached to this application which may be examined at the I.C.C. Regional Office in Boston, MA.

MC 151421 (Sub-1-1TA) (Republication), filed August 1, 1980. Applicant: FAK CO., INC., 14 Bowser Road, New Brunswick, NJ 08901. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Contract carrier:* irregular routes: *Electrical devices, and materials, equipment, and supplies used in the manufacture and sale of electrical devices,* between Long Island City and Astoria, NY and Georgetown, SC, on the one hand, and, on the other, Atlanta, GA, Chicago, IL, Dallas, TX, Miami, FL, Georgetown, SC, Los Angeles and San Francisco, CA, and Portland, OR. Supporting shipper(s): Eagle Electric Manufacturing Co., Inc., 4531 Court Square, Long Island City, NY 11101. Purpose is to add *SC* after Georgetown to **Federal Register** publication of August 18, 1980, Page 54881.

MC 1990 (Sub-1-1TA), filed September 26, 1980. Applicant: BOSTON & WOONSOCKET EXPRESS, CO., INC., d.b.a. B & W EXPRESS, P.O. Box 89, 1117 River Street, Woonsocket, RI 02895. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. *Plastic articles and equipment, materials, and supplies used in the manufacture and distribution of plastic articles,* between points in RI on the one hand, and, on the other, points in NH. Supporting shipper: Tupperware Company, Division of Dart Industries, Inc., Drawer D, Woonsocket, RI 02895.

MC 151977 (Sub-1-2TA), filed September 26, 1980. Applicant: BAY STATE CONTRACT CARRIER, INC., 163 Hooper Street, Tiverton, RI 02878. Representative: William F. Poole, 41 Bea Drive, North Kingstown, RI 02852. *Contract carrier:* irregular routes: *(1) Paints, sundry products and their components, shellacs, resins, varnish (except in bulk), equipment, parts and related accessory items used in the manufacture and distribution thereof* from the facilities owned or operated by Parks Corporation at Somerset, MA to all points in the US *(2) Empty containers, materials, equipment and supplies (except in bulk) used in the manufacture and distribution of (1) above* from the above named points to the facilities owned or operated by Parks Corporation at Somerset, MA. Supporting shipper: Parks Corporation, Main Street, Somerset, MA.

MC 99455 (Sub-1-3TA), filed September 25, 1980. Applicant: M. H. HILLERY, INC., 100 Western Avenue, Allston, MA 02134. Representative: Robert L. Cope, 1730 M Street, NW., Suite 501, Washington, DC 20036. *General commodities (except household goods as defined by the Commission and classes A and B explosives,* between the Commercial Zone of Boston, MA, on the one hand, and, on the other, points in CT, ME, and NH, restricted to shipments having a prior or subsequent movement by rail or water. Supporting shipper: Bay State Shippers, Inc., 100 Western Avenue, Allston, MA 02134.

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MC 151955 (Sub-1–2TA), filed September 24, 1980. Applicant: 76 ADVENTURES OF NEW JERSEY, INC., 1 Lincoln Plaza, New York, NY 10023. Representative: Arthur Wagner, 342 Madison Avenue, New York, NY 10017. *Passengers and their baggage in special operations* beginning and ending at points in Fairfield and New Haven Counties, CT, New York, NY, Westchester, Nassau and Suffolk Counties, NY and extending to points in Atlantic City, NJ. Supporting shippers: Great Bay Hotel Corp., South Indiana Ave., Atlantic City, NJ, and Harrah's Marino Hotel Casino, 1725 Brigantine Blvd., Atlantic City, NJ 08401.

MC 16872 (Sub-1–2TA), filed September 25, 1980. Applicant: WILLIAM MIRRER, d.b.a. MIRRER'S TRUCKING, 100 East 25th St., Paterson, NJ 07514. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Chemicals, in containers,* between points in IL, IN, LA, NJ, NY, OH, PA, and TX. Supporting shipper: Sobin Chemical Co., Inc., 1900 Prudential Tower, Boston, MA 02199.

MC 145277 (Sub-1–1TA), filed September 25, 1980. Applicant: P & P TRUCKING COMPANY, INC., 106 Teaneck Road, Ridgefield, Park, NJ 07660. Representative: Michael R. Werner, 167 Fairfield Road, P.O. Box 1409, Fairfield, NJ 07006. *Contract carrier:* irregular routes: *General commodities (except household goods as defined by the Commission and Class A and B explosives)* between all points in the U.S. Supporting shipper: Pepsi-Cola Manufacturing Co., Inc., GPO Box 3148, San Juan, PR 00936.

MC 151354 (Sub-1–2TA), filed September 25, 1980. Applicant: STEVEN FREIGHT SERVICE CO., INC., 16 Sturtevant Street, Sommerville, MA 01245. Representative: Robert L. Cope, Esq., Suite 501, 1730 M Street, NW., Washington, DC 20036. *Contract carrier:* irregular routes: *General commodities (except household good as defined by the Commission, and classes A and B explosives),* between RI, on the one hand, and, on the other, points in MA, ME, NH, and VT, under continuing contract with Lever Brothers, Company, supporting shipper: Lever Brothers Company, 390 Park Ave., New York, NY 10022.

MC 143127 (Sub-1–22TA), filed September 25, 1980. Applicant: K. J. TRANSPORTATION, INC., 6070 Collett Road, Victor, NY 14564. Representative: Linda A. Calvo, 6070 Collett Road, Victor, NY 14564. *(1) Such commodities as are dealt in by grocery and good business houses (except in bulk) and, (2) materials, supplies and equipment (except in bulk),* between Cattaraugus, Genessee, Livingston, Orleans and Seneca Counties, NY, on the one hand, and, on the other, points in the United States in and east of ND, SD, NE, CO, OK, and TX. Supporting shipper: Curtice-Burns, Inc., Lent Ave., LeRoy, NY 14482.

MC 145981 (Sub-1–7TA), filed September 24, 1980. Applicant: ACE TRUCKING CO., INC., 1 Hackensack Ave., South Kearny, NJ 07032. Representative: Gerge A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *(1) Carpet, tile, and floor covering; and (2) Materials, equipment, and supplies used in the sale and manufacture of the commodities shown in (1) above (except commodities in bulk),* between points in GA, NC, and SC, on the one hand, and, on the other, points in CT, NJ, NY, MA, PA, VT, NH, and VA. Supporting shipper(s): Ben Elfman & Son, Inc., 124 Second St., Chelsea, MA 02150.

MC 111729 (Sub-1–9TA), filed September 24, 1980. Applicant: PUROLATOR COURIER CORP., 3333 New Hyde Park Road, New Hyde Park, NY 11042. Representative: Elizabeth L. Henoch, 3333 New Hyde Park Road, New Hyde Park, NY 11042. *General commodities (except articles of unusual value, classes A and B explosives, household goods, as defined by the Commission, commodities in bulk and those requiring special equipment), restricted against the transportation of packages or articles weighing in excess of 250 pounds,* between points in ID, OR, WA. Supporting Shipper: Shaklee Corporation, 1900 Powell Street, Emeryville, CA 94608.

MC 140092 (Sub-1–1TA), filed September 30, 1980. Applicant: KEY-STONE FREIGHT, INC., 767 St. George Street, Woodbridge, NJ 07095. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Contract carrier:* irregular routes: *Bakery Goods, not frozen,* From Sayreville, NJ, to points in CT, PA, NY, MD, DE, VA, NC, SC, GA, FL, OH, MI, KS, and WV. Supporting Shipper(s): Sunshine Biscuits, Inc., Bordentown Ave. & Jernee Mill Rd., P.O. Box 7, Sayreville, NJ 08872.

MC 113843 (Sub-1–15TA), filed September 30, 1980. Applicant: REFRIGERATED FOOD EXPRESS, INC., 316 Summer Street, Boston, MA 02210. Representative: Lawrence T. Sheils, 316 Summer Street, Boston, MA 02210. *(1) Such commodities as are dealt in by grocery, drug or department stores; and (2) materials, equipment and supplies used in the distribution of commodities in (1),* between points in DE, on the one hand, and, on the other hand, points in CT, IL, IN, KY, ME, MI, MA, MD, MN, MO, NH, NJ, NY, OH, PA, RI, VT, VA, WV, WI, and DC. Supporting Shipper: Omniway Service Co., Elkton Rd., Box 7705, Newark, DE 19711.

MC 150897 (Sub-1–2TA), filed September 29, 1980. Applicant: DOWN EAST TRUCKING, INC., MRC 156, Bangor, ME 04401. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St., NW., Washington, DC 20005. *(1) Machinery and machinery parts; and (2) materials, equipment and supplies used in the manufacture and distribution thereof,* between Winslow, ME, on the one hand, and, on the other, points in TX, and in the US in and east of LA, AR, MO, IA, and MN. Supporting Shipper: Midstate Machine Products, Inc., Verti Drive, Winslow, ME 04091.

MC 152033 (Sub-1–1TA), filed September 29, 1980. Applicant: WILLIAM J. TIGHE TRUCKING CO., 1513 Palisade Ave., Union City, NJ 07087. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Such commodities as are dealt in or used by manufacturers or distributors of foodstuffs or pet foods (except commodities in bulk),* between New York, NY, Atlanta, GA, Chicago, IL, Marseilles, IL, Fairlawn, NJ, Fairfax, VA, Landover, MD, Lansdown, PA, Richmond, VA, Salisbury, MD, Syracuse, NY, and Williamsport, MD, and their Commercial Zones, restricted to traffic originating at or destined to the facilities of Nabisco, Inc. Supporting Shipper: Nabisco, Inc., East Hanover, NJ 07936.

The following applications were filed in Region 2. Send protests to: ICC Federal Reserve Bank Bldg., 101 N. 7th St., Room 620, Philadelphia, PA 19106.

MC 95136 (Sub-II–1), filed September 4, 1980. Applicant: ALLEN S. YEATMAN, INC., P.O. Box 383, Montross, VA 22520. Representative: Maxwell A. Howell, 1100 Investment Bldg., 1511 K St., NW., Washington, D.C. 20005. *Empty cans,* from Cambridge and Fruitland, MD and Hanover, PA to points in Richmond, Westmoreland, Lancaster and Northumberland Counties, VA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: H. H. Perry Canning Co., Montross, VA 22520. Virginia Seafoods, Inc., Irvington, VA.

MC 104896 (Sub-II–3TA), filed September 9, 1980. Applicant: WOMELDORF, INC., Box G, Knox, PA 16232. Representative: James W. Patterson, 1200 Western Savings Bank Bldg., Philadelphia, PA 19107. *Such commodities as are dealt in by chain retail variety stores and materials, equipment and supplies used in the conduct of such business* between the facilities of G. C. Murphy Co. at Fredericksburg, VA, on the one hand, and, on the other, Monore, LA and points in CT, MA, MD, NC, NJ, NY, PA, VA, WV, and DC, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): G. C. Murphy Co., 531 Fifth Ave., McKeesport, PA 15132.

MC 151747 (Sub-II–1TA), filed September 5, 1980. Applicant: WALTER BROTHERS TRUCKING, INC., 1266 N. Franklin St., Chambersburgh, PA 17201 Representative: Christian V. Graf, 407 N. Front St., Harrisburg, PA 17101. *Foodstuffs and pet foods* (except frozen foods and commodities in bulk), *and advertising matter, displays and premiums* in mixed loads with said commodities, from the facilities of The Quaker Oats Company at or near Shiremanstown, PA to that part of NJ north of NJ Hwy 33 and that part of NY on and east of U.S. Hwy 209 and on and south of U.S. Hwy 44, for 270 days. Supporting shipper: The Quaker Oats Co., Merhandise Mart Plaza, Chicago, IL 60654.

MC 141917 (Sub-II–2TA), filed September 10, 1980. Applicant: LEO J. UMERLEY, INC., 9813 Philadelphia Rd., Baltimore, MD 21237. Representative: Dean N. Wolfe, Suite 145, 4 Professional Dr., Gaithersburg, MD 20760. *Salt and calcium chloride,* between points in Baltimore County, MD, including the city of Baltimore, on the one hand, and, on the other, points in PA, MD, VA, WV, DE, NJ, and DC for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Harvey Salt Co., 1325 Mohrs Lane, Baltimore, MD 21220.

MC 113158 (Sub-II-4TA), filed September 12, 1980. Applicant: TODD TRANSPORT CO., INC., Box 158, Secretary, MD 21664. Representative: James W. Patterson, 1200 Western Savings Bank Bldg., Phila., PA 19107. *Foodstuffs* (except frozen foods and commodities in bulk), (1) from points in Lincoln County, NC to points in AL, AR, LA, MS, OK, TN, and TX, and (2) from points in Frederick and Rockingham Counties, VA and Berkeley County, WV to points in AL, AR, FL, GA, LA, MS, OK, SC, TN, and TX, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): National Fruit Product Co., Inc., 550 Fairmont Ave., Winchester, VA 22601.

MC 148471 (Sub-II–1TA), filed September 10, 1980. Applicant: THROUGH TRANSPORTATION, INC., 17 Foxtail Rd., Port Deposit, MD 21904. Representative: Edward N. Button, 580 Northern Ave., Hagerstown, MD 21740. *Contract; irregular: metal fireplaces, materials, equipment and supplies used in the manufacture thereof,* between Baltimore, MD, and Union City, TN, on the one hand, and, on the other, points in the U.S. (except AK and HI), for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Superior Fireplace Co., 1516 S. Baylas St. Baltimore, MD 21224.

MC 5470 (Sub-No.II–9TA), filed September 4, 1980. Applicant: TAJON, INC., R.D. 5, Mercer, PA 16137. Representative: Brian L. Troiano, 918–16th St., NW., Washington, D.C. 20006. *Steel shot,* from Adrian, MI, and Toledo, OH, to Natrium, WV, for 270 days. Supporting shipper(s): Mobay Chemical Corp., Penn Lincoln Parkway West, Pittsburgh, PA, 15205.

MC 116763 (Sub-II–34TA), filed September 12, 1980. Applicant: CARL SUBLER TRUCKING, INC., North West St., Versailles, OH 45380. Representative: Gary J. Jira (same as applicant). *General commodities* (except household goods as defined by the Commission, Classes A & B explosives and commodities in bulk, in tank vehicles, Standard Transportation Commodity Code No. 51), between points in the U.S. in and east of MN, IA, MO, OK AND TX, for 270 days. Restricted to the transportation of traffic originating at or destined to the facilities used by Clark Equipment Company. Supporting shipper(s): Clark Equipment Co. Circle Drive Bunchanan MI 49107.

MC 116763 (Sub-II–31TA), filed September 8, 1980. Applicant: CARL SUBLER TRUCKING, INC., North West St., Versailles, OH 45380. Representative: Gary J. Jira (same as applicant). *Foodstuffs* (except commodities in bulk, in tank vehicles) from Memphis, TN to points in the U.S. (except AK and HI), for 270 days. Restricted to traffic originating at the facilities of Adams Packing Association, Inc. and destined to the indicated territory. Supporting shipper(s): Adams Packing Association, Inc., P.O. Box 37, Auburndale, FL 33823.

MC 116763 (Sub-II–30TA), filed, September 8, 1980. Applicant: CARL SUBLER TRUCKING, INC., North West St., Versailles, OH 45380. Representative: Gary J. Jira (same as applicant). *Such commodities as are used or dealt in by manufacturers, processors and distributors of foodstuffs and confectionery products* (except commodities in bulk, in tank vehicles), between points in the U.S. (except AK and HI), for 270 days. Restricted to traffic originating at or destined to the facilities utilized by Tootsie Roll Industries, Inc. Supporting shipper(s): Tootsie Roll Industries, Inc., 7401 S. Cicero Avenue, Chicago, IL 60629.

MC 116763 (Sub-II–28TA), filed September 8, 1980. Applicant: CARL SUBLER TRUCKING, INC., North West St., Versailles, OH 45380. Representative: Gary J. Jira (same as applicant). *(1) Foodstuffs, and (2) materials, equipment and supplies used in the production of foodstuffs* (Restricted in (1) and (2) above against the transportation of commodities in bulk, in tank vehicles) (1) From the facilities of Geo. A. Hormel & Co. at or near Davenport, IA (Scott County) to points in AL, AR, FL, GA, IN, KY, LA, ME, MI, MN, MS, NC, OH, OK, PA, SC, TN, TX and VA, and (2) from the points named in (1) above to the facilities of Geo. A. Hormel & Co. at or near Davenport, IA (Scott County), for 270 days. Supporting shipper(s): Geo. A. Hormel & Co., P.O. Box 800, Austin, MN 55912.

MC 123091 (Sub-II–1TA), filed September 8, 1980. Applicant: NICK STRIMBU, INC., 3500 Parkway Rd., Brookfield, OH 44403. Representative: James Duvall, P.O. Box 97, 220 W. Bridge St., Dublin, OH 43017. *Building materials* from points in Franklin County, OH, to points in Lawrence and Warren Counties, PA. Supporting shipper: Wesex Corp., P.O. Box 246, Main St., West Middlesex, PA 16159.

MC 151729 (Sub-II–1TA), filed September 11, 1980. Applicant: SKI-DON CORPORATION, Siler Rte., Box 151–A, Winchester, VA 22601. Representative: Earl J. Fuller, Jr., (same as Applicant). *Contract* carrier-*irregular* routes: *Foodstuffs and Kindred Products,* from Winchester and Frederick County, Virginia, to points in TN, AL, MS, LA, AR, OK, TX, NM, AZ, CO, UT, NV, and CA, for 270 days. Supporting shipper: Shenandoah Apple Co-Operative, Inc., 600 Fairmont Ave., P.O. Box 435, Winchester, VA 22601.

MC 109124 (Sub-II–9TA), filed September 10, 1980. Applicant: SENTLE TRUCKING CORP., P.O. Box 7850, Toledo, OH 43619. Representative: James M. Burtch, 100 E. Broad St., Suite 1800, Columbus, OH 43215. *Forest products, lumber mill products, lumber, pressure treated and untreated* from Hatchechubbee, AL to points in TN, KY, IL, IN, OH, WI, and MI, for 270 days. Supporting shipper: Walker-Williams Lumber Co., P.O. Box 170, Hatchechubbee, AL 36858.

MC 128413 (Sub-II–1TA), filed September 9, 1980. Applicant: SEASON-ALL TRANSPORTATION CO., Route 119 South, Indiana, PA 15701. Representative: Henry M. Wick, Jr., 2310 Grant Bldg., Pittsburgh, PA 15219.

Contract Carrier, Irregular Route: Vinyl products and materials, equipment and supplies used in the production, distribution and sale of the above named commodities (except commodities in bulk), between the facilities of Season-All Industries, Inc. at or near Decatur, IL, Indiana, PA, Inkster and Marshall, MI on the one hand, and, on the other, points in AL, AR, CO, CT, DC, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, ND, OK, OH, PA, RI, SC, SD, TN, TX, VT, VA, WV and WI, under a continuing contract or contracts with Season-All Industries, Inc. of Indiana, PA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Season-All Industries, Inc., Rt. 119 S., Indiana, PA 15701.

MC 109443 (Sub-II–2TA), filed September 8, 1980. Applicant: SEABOARD TANK LINES, INC., Monahan Ave., Dunmore, PA 18512. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 16517. *Petroleum and Petroleum Products, in bulk, in tank vehicles,* from Paulsboro, NJ to Lackawanna, Luzerne, Wyoming, Wayne, Pike, Susquehanna, Monroe, Lehigh, Duaphin, and Berks Counties, PA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Cibro Petroleum, Inc., 111 Presidential Blvd., Suite 233, Bala Cynwyd, PA 19004.

MC 151730 (Sub-II–1TA), filed September 4, 1980. Applicant: QUINTON L. SIMPKINS and JUNE R. SIMPKINS d.b.a. S.S.S. EXPRESS, P.O. Box 605, Christiansburg, VA 24073. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168. *New furniture, furniture parts, materials, supplies, and equipment used in the manufacture, sale, and distribution of new furniture,* between Christiansburg, VA, Hickory and High Point, NC, on the one hand, and, on the other, points in AL, AR, AZ, CA, CT, DE, FL, GA, IL, IN, KS, KY, LA, MA, MD, MI, MO, MS, NC, NH, NJ, NM, NY, NV, OH, OK, PA, RI SC, TN, TX, VA, WI, WV, and DC, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Weiman, Warren Lloyd, Warren St., Christiansburg, VA 24073. Vision Inc., P.O. Box 457, Christiansburg, VA 24073. Haley Transfer & Storage Co. Inc., 121 S. Centenial Ave., High Point, NC 27260.

MC 2202 (Sub-II–15TA), filed September 11, 1980. Applicant: ROADWAY EXPRESS, INC., P.O. Box 471, 1077 Gorge Blvd., Akron, OH 44309. Representative: William O. Turney, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. *Common, regular: General commodities (except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* serving Waynesville, NC as an off-route point in connection with applicant's regular routes to and from Asheville, NC for 270 days. Applicant proposes to tack the authority sought herein with its regular routes at Asheville, NC. Applicant proposes to interline at existing gateways through its system. Supporting shipper(s): Dayco Corp., 333 West First St., Dayton, OH 45402.

MC 128934 (Sub-II–1), filed September 5, 1980. Applicant: WILLIAM D. REPKO d.b.a. WILLIAM REPKO TRUCKING, 4 Colonial Ave., Natalie, PA 17851. Representative: William D. Repko (same address as applicant). *Contract carrier:* (1) *Plastic containers and closures and other accessories,* and (2) *plastic film and sheeting,* from Mt. Carmel and Kulpmont, PA, to points in MD, IN, NH, MA, RI, CT, VA, NC, SC, GA, TN, KY, IL, MO, and KS, under a continuing contract or contracts with Universal Packaging, Division of Kraft, Inc., located at Mt. Carmel, PA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Universal Packaging, Division of Kraft, Inc., P.O. Box 346, Mt. Carmel, PA 17851.

MC 50069TA (Sub-II–6TA), filed September 11, 1980. Applicant: REFINERS TRANSPORT & TERMINAL CORP., 445 Earlwood Ave., Oregon, OH 43616. Representative: William P. Fromm, Vice President—Traffic (address same as applicant). *Petroleum products in bulk, in tank vehicles* from Ironton, OH to points in KY, for 270 days. Supporting shipper: Tanner Oil Co., 620 S. Front St., Ironton, OH 45638.

MC 113475 (Sub-II–1TA), filed September 12, 1980. Applicant: RAWLINGS TRUCK LINE, INC., P.O. Box 831, Emporia, VA 23847. Representative: Harry J. Jordan, Suite 502, Solar Bldg., 1000 16th Street, NW., Washington, DC 20036. *Iron and steel articles and materials, equipment, and supplies used in the production of such articles,* between points in Middlesex County, NJ, on the one hand, and, on the other, points in NC, SC, GA, VA, DE, MD, PA, and DC, for 270 days. Supporting shipper: Raritan River Steel Co., P.O. Box 309, Perth Amboy, NJ 08862.

MC 136961 (Sub-II–2TA), filed September 26, 1980. Applicant: BLAIR CARTAGE, INC., 11330 Kinsman Rd., P.O. Box 252, Newbury, OH 44065. Representative: Lewis S. Witherspoon, 88 E. Broad St., Columbus, OH 43215. Contract, irregular: *Litharge, nepheline synenite, soda ash, glass bulbs, glass rod and tubing, glassware, metal racks, cullet, electric lamps, batteries and battery chargers, lighting fixtures, holiday decorations, packaging materials, steel nestainers, lamp ballast, soda ash, sand, potash, metals N.O.I., displays and advertising, borax and borax products, paints, dolomite, lamp bases, compressed gases in cylinders, nitrate and electrical equipment and parts, materials and supplies used in the manufacturer and distribution thereof,* between points in the US, except AK and HI, for 270 days. Supporting shipper: General Electric Co., Nela Park, Cleveland, OH 44112.

MC 138438 (Sub-II–19TA), filed September 26, 1980. Applicant: D. M. BOWMAN, INC., Rt. 2, Box 43A1, Williamsport, MD 21795. Representative: Edward N. Button, 580 Northern Ave., Hagerstown, MD 21740. *Petroleum and petroleum products,* between all points in PA, MD, DE, NJ, VA, WV, and DC, restricted to the transportation of shipments originating at or destined to the facilities owned, operated or utilized by Smith Oil Co., (SOCO), Inc., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Smith Oil Co., (SOCO), Inc., 1237 Harrisburg Pike, Carlisle, PA 17013.

MC 150183 (Sub-II–3TA), filed September 26, 1980. Applicant: CASSCO REFRIGERATED TRANSPORT, Div. of Cassco Corp., 125 W. Bruce St., Harrisonburg, VA 22801. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. *Foodstuffs (except in bulk),* from Timberville, VA to points in NC and to Charleston, SC, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Shen-Valley Meat Packers, Inc., P.O. Box E, Timberville, VA 22853.

MC 151576 (Sub-II–1TA), filed September 25, 1980. Applicant: CHESAPEAKE TRUCKING INC., 4717 W. Military Hwy., Chesapeake, VA 23321. Representative: Ernest E. Stovall, 5001 Bainbridge Blvd., Chesapeake, VA 23321. *Preservative treated poles, piling, lumber, timber and cross-ties,* from Chesapeake, VA to pts. in CT, DE, MA, NC, NJ, NY, PA, VA, AL, GA, KY, ME, NH, FL, DC, and OH, for 270 days. Supporting shipper: Eppinger and Russell, 4010 Buell St., Chesapeake, VA 23324.

MC 114123 (Sub-II–1TA), filed September 26, 1980. Applicant: HERMAN R. EWELL, INC., East Earl, PA 17519. Representative: J. Bruce Walter, P.O. Box 1146, Harrisburg, PA 17108. *Dry sugar, in bulk, in tank vehicles,* from Brooklyn, NY to Altoona, PA, and from Boston, MA to Altoona, PA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Revere Sugar Corp., 280 Richard Street, Brooklyn, NY 11231.

MC 107012 (Sub-II–86TA), filed September 29, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same as applicant). *Such commodities as are dealt in or used by retail drug stores* from the facilities of Superx Drugs, Inc., at or near Melbourne, FL to Dalton, GA; Swainsboro, GA; Normal, IL; New Albany, IN; London, KY; Mayfield, KY; Middletown, OH; Gallatin, TN; Charlottesville, VA; and Sophia, WV for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Superx Drugs, Inc., 175 Tri-County Parkway, Cincinnati, OH 45246.

Note.—Common control may be involved.

MC 151994 (Sub-II–1TA), filed September 26, 1980. Applicant: P.R.T., INC., 135 Wyandot Ave., Marion, OH 43302. Representative: Jerry B. Sellman, 50 W. Broad St., Columbus, OH 43215. *(1) Foodstuffs (except commodities in bulk, in tank vehicles), and (2) materials, equipment and supplies used in the production, manufacture and distribution of foodstuffs,* between Marion and Wyandot Counties, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI) for 270 days. Supporting shipper: Popped-Right, Inc., 135 Wyandot Ave., Marion, OH 43302. Wyandot Popcorn Co., 135 Wyandot Ave., Marion, OH 43302.

MC 150339 (Sub-2–12TA), filed September 26, 1980. Applicant: PIONEER TRANSPORTATION SYSTEMS, INC., 151 Easton Blvd., Preston, MD 21655. Representative: J. Cody Quinton, Jr. (same as applicant). *Contract; irregular; Deodorants, dispensers, sanitary chemicals, and disinfectants (except in bulk in tank vehicles),* from the facilities of Rochester Germicide at Rochester, NY, and Montgomery, IL to pts. in the US (except AK and HI), under a continuing contract(s) with Rochester Germicide, Rochester, NY. An underlying ETA seeks 120 days authority. Supporting shipper(s): Rochester Germicide; P.O. Box 1515, Rochester, NY 14603.

MC 14702 (Sub-II–1TA), filed September 26, 1980. Applicant: OHIO FAST FREIGHT, INC., P.O. Box 808, Warren, OH 44482. Representative: Paul F. Beery, 275 E. State St., Columbus, OH 43215. *Machinery used for the manufacture of iron and steel articles,* from Mahoning County, OH to Jackson, TN and Plymouth, UT for 270 days. Supporting shipper(s): Riise Engineering Co., Inc., 11950 South Ave., P.O. Box 126, North Lima, OH 44452.

MC 145026 (Sub-II–1TA), filed September 29, 1980. Applicant: NORTHEAST CORRIDOR EXPRESS, INC., Railroad Ave., Federalsburg, MD 21632. Representative: Dwight L. Koerber, Jr., P.O. Box 1320, 110 N. 2nd St., Clearfield, PA 16830. *Foodstuffs and materials and supplies used in the processing or distribution of foodstuffs except commodities in bulk,* between Pottstown, Philadelphia, Fogelsville and Lake Winola, PA, on the one hand, and, on the other, pts. in NY, CT, RI, MA, ME, NH, VT, MD, VA, WV, DE, OH, PA, and NC, restricted to the transportation of traffic originating at or destined to the facilities of Mrs. Smith's Pie Co., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Mrs. Smith's Pie Co., P.O. Box 298, Pottstown, PA 19464.

MC 150339 (Sub-2–13TA), filed September 29, 1980. Applicant: PIONEER TRANSPORTATION SYSTEMS, INC., 151 Easton Blvd., Preston, MD 21655. Representative: J. Cody Quinton, Jr. (same as above). *Contract; irregular: Paper products and office supplies* between points in the US (except AK and HI) for 270 days under a continuing contract(s) with Labelon Corp., 10 Chapin St., Canandaigua, NY 14424. An underlying ETA seeks 120 days authority. Supporting shipper(s): Labelon Corp., 10 Chapin St., Canandaigua, NY 14424.

MC 112184 (Sub-II–7TA), filed September 29, 1980. Applicant: THE MANFREDI MOTOR TRANSIT CO., 11250 Kinsman Rd., Newbury, OH 44065. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215. *Contract: irregular: Liquid sugar, in bulk,* from pts. in IN, MI, NY and PA to Cuyahoga Hts., OH for the account of The Cotton Club Bottling Co. for 270 days. Supporting shipper: The Cotton Club Bottling Co., 4922 E. 49th St., Cuyahoga Hts., OH 44125.

MC 140243 (Sub-II–3TA), filed September 30, 1980. Applicant: APPLE HOUSE, INC., 3726 Birney Ave., Scranton, PA 18505. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517. *Plastic film or sheeting and plastic bags* from Pottsville, Norwegian Township, PA to points in the US (except AK, HI, NC, FL and GA) and *materials and supplies* used in the manufacture of the above commodities on return, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Exxon Chem G.V.S.A., P.O. Box 395, Pottsville, PA 17901.

MC 138438 (Sub-II–20TA), filed September 29, 1980. Applicant: D. M. BOWMAN, INC., Rt. 2, Box 43A1, Williamsport, MD 21795. Representative: Edward N. Button, 580 Northern Ave., Hagerstown, MD 21740. *Petroleum and petroleum products,* between all points in DE, MD, PA, VA and DC, restricted to the transportation of shipments originating at or destined to the facilities owned, operated or utilized by Roarda, Inc., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Roarda, Inc., 5 Fanny Lake Rd., Bel Air, MD 21014.

MC 152020 (Sub-II–2TA), filed September 29, 1980. Applicant: ALBERT G. DRIEBE, R.D. 1, Box 1229, Stroudsburg, PA 18360. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517. (1) *Foodstuff;* (2) *Shipping cartons and boxes, fillers, dividers & sheets;* (3) *Materials & supplies used in the manufacture and distribution of the above commodities,* (1) From Cumberland County, NJ to WA, OR, CA, ID, UT, CO, TX, OK, KS, MO, GA, & FL: (2) From Philadelphia & Montgomery Counties, PA to all points in the US (except AK & HI); (3) On return, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Venice Maid, Inc., 270 N. Mill Rd., P.O. Box 1505, Vineland, NJ 08360. Connolly Container, Inc., P.O. Box 426, Bala Cynwyd, PA 19004.

MC 147723 (Sub-II–1TA), filed September 29, 1980. Applicant: E. B. COMPANY, INC., 698 Front St., Berea, OH 44017. Representative: Andrew Jay Burkholder, 275 E. State St., Columbus, OH 43215. *Coal, charcoal, ore and petroleum and products derived from the above, and equipment, materials and supplies used in the mining, production and distribution of the above,* between the facilities of Energy Resources International, Inc. at Raton, New Mexico, on the one hand, and, on the other, pts. in the US, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Energy Resources International, Inc., 20490 Lorain Ave., Fairview Park, OH 44126.

MC 146676 (Sub-II–5TA), filed June 9, 1980. Applicant: BURKS TRUCKING, INC., P.O. Box 37, Old Fort, OH 44861. Representative: Richard H. Brandon, P.O. Box 97, 220 W. Bridge St., Dublin, OH 43017. *Insulation board* from Ruston, LA to Tiffin, OH and from Tiffin, OH to Jackson, MS. An underlying ETA seeks 90 days authority. Supporting shipper(s): Tiffin Enterprises, 458 42nd St., Tiffin, OH 44883.

MC 145235 (Sub-II–1TA), filed June 12, 1980. Applicant: DUTCH MAID PRODUCE, INC., R.D. No. 2, Willard,

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OH 44890. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215. Contract, irregular: *(1) foodstuffs and (2) materials, equipment and supplies used in the processing and distribution of the commodities in (1) above (except commodities in bulk)* between the facilities of Bil-Mar Foods, Inc. and its subsidiaries at or near Storm Lake, IA; Zeeland, MI and Garrettsville, OH, on the one hand, and, on the other, pts. in the U.S. (except AK and HI) for the account of Bil-Mar Foods, Inc. for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Bil-Mar Foods, Inc., 8300 96th Ave., Zeeland, MI 49464.

MC 110683 (Sub-II-5TA), filed June 20, 1980. Applicant: SMITH'S TRANSFER CORPORATION, P.O. Box 1000, Staunton, VA 24401. Representative: Francis W. McInerny, Suite 502, 1000 16th St., NW., Washington, D.C. 20036. Common; regular: *General commodities (except those of unusual value, household goods as defined by the Commission, classes A and B explosives, commodities in bulk, and those requiring special equipment)* (1) Between Memphis, TN, and New Orleans, LA, serving no interrmediate points: From Memphis over U.S. Hwy 51 and/or Interstate Hwy 55 to New Orleans and return over the same route. (2) Between Memphis, TN, and Beaumont, TX, serving all intermediate points on U.S. Hwy 90: From Memphis over U.S. Hwy 61 to its junction with U.S. Hwy 62, then over U.S. Hwy 82 to its junction with U.S. Hwy 165, then over U.S. Hwy 165 to its junction with U.S. Hwy 90, then over U.S. Hwy 90 to Beaumont and return over the same route. (3) Serving Port Arthur, TX, as an off-route point in connection with carrier's authorized regular routes. (4) Between Memphis, TN, and Mobile, AL: From Memphis over Interstate Hwy 55 to its junction with U.S. Hwy 49, then over U.S. Hwy 49 to its junction with U.S. Hwy 98, then over U.S. Hwy 98 to Mobile and return over the same route. (5) Between Tupelo, MS, and Mobile, AL, serving no intermediate points: From Tupelo over U.S. Hwy 45 to Mobile and return over the same route. (6) Between Tupelo, MS, and New Orleans, LA, serving all intermediate points in Louisiana: From Tupelo over U.S. Hwy 45 to its junction with U.S. Hwy 45A, then over U.S. Hwy 45A to its junction with U.S. Hwy 45, then over U.S. Hwy 45 to its junction with Interstate Hwy 59, then over Interstate Hwy 59 to New Orleans and return over the same route. (7) Between Birmingham, AL, and New Orleans, LA, serving all intermediate points in Louisiana: From Birmingham over U.S. Hwy 11 and/or Interstate Hwy 59 to New Orleans and return over the same route. (8) Between Chattanooga, TN, and Mobile, AL, serving no intermediate points: From Chattanooga over Interstate Hwy 24 to its junction with Interstate Hwy 59, then over Interstate Hwy 59 to its junction with AL Hwy 5, then over AL Hwy 5 to its junction with U.S. Hwy 43, then over U.S. Hwy 43 to Mobile and return over the same route. (9) Between Chattanooga, TN, and Montgomery, AL, serving no intermediate points: From Chattanooga over Interstate Hwy 24 to its junction with Interstate Hwy 59, then over Interstate Hwy 59 to its junction with Interstate Hwy 65 or U.S. Hwy 31, then over Interstate Hwy 65 or U.S. Hwy 31 to Montgomery and return over the same route. Supporting shipper(s): There are 45 supporting shippers. Their statements may be examined at the ICC Regional Office, Phila., PA.

Note.—No duplicating authority sought. Tacking and interlining is intended. Authority sought to serve the Commercial Zones of all points included in this application, for 180 days. An underlying ETA seeks 90 days authority.

MC 152029 (Sub-II-1TA), filed September 29, 1980. Applicant: PISCOPO BROTHERS, INC., S. Penna. Ave. & Green St., Morrisville, PA 19067. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517. *Wrecked or disabled motor vehicles and replacement motor vehicles for wrecked or disabled motor vehicles through the use of wrecker type equipment only* between Delaware, Montgomery, Philadelphia & Bucks Counties, PA, Trenton, New Brunswick & Bordentown, NJ, on the one hand, and, on the othjer, NJ, NY, MD, DE, CT, RI, MA, OH, WV, VA, KY, TN, IL, MI, & the District of Columbia, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): There are 24 supporting shippers. Their statements may be reviewed at the regional office listed.

MC 144443 (Sub-II-1TA), filed September 29, 1980. Applicant: GENTRY TRUCKING COMPANY, P.O. Box 4192, Candler's Montain Rd., Lynchburg, VA 24502. Representative: J. Johnson Eller, Jr., 513 Main St., Altavista, VA 24517. *General commodities (except those of unusual value, Class A & B explosives, household goods as defined by the Commission, and commodities in bulk and those requiring special equipment),* between Danville, Lynchburg and Roanoke, VA and Greensboro, NC and points in VA, in and east of the Counties of Bland, Wythe and Carroll (including the City of Bluefield), in and south of the Counties of Rockingham, Greene, Madison, Culpepper and Spotsylvania (including the City of Fredericksburg), and in and west of the Counties of Hanover, Henrico, Chesterfield, Prince George, Dinwiddle and Greensville, with prior or subsequent movement by rail. Supporting shipper(s): Pioneer Carloading, 1118 8th Ave., New York, NY 10011. Western Carloading Co., Inc., 1000 Chattachoochee Ave., NW., Atlanta, GA 30325. Universal Carloading & Distributing Co., Inc., 345 Hudson St., New York, NY 10014.

MC 124821 (Sub-II-23TA), filed September 26, 1980. Applicant: GILCHRIST TRUCKING, INC., 105 North Keyser Avenue, Old Forge, PA 18518. Representative: John W. Frame, Box 626, 2207 Old Gettysburg Road, Camp Hill, PA 17011. *Rubber or miscellaneous plastics products, as described in Item 30 of the Standard Transportation Commodity Code Tariff, and materials and supplies used in the manufacture and distribution of the above-named commodities,* between Chicago, IL, on the one hand, and, on the other, points in the U.S., for 270 days. Supporting shipper: Sound Studios Division, Diversa-Graphics, Inc., 230 North Michigan Avenue., Chicago, IL 60601.

MC 150432 (Sub-II-4TA), filed September 25, 1980. Applicant: H & M TRANSPORTATION, INC., U.S. 42 & 70, London, OH 43140. Representative: Owen B. Katzman, 1828 L Street, NW., Suite 1111, Washington, D.C. 20036. Contract-irregular: *Grain handling equipment and materials, equipment and supplies used in the manufacture and distribution thereof,* (1) between Springfield, OH and West Point, NE, and (2) between the points in (1) above, on the one hand, and, on the other, points in the U.S. (except AK and HI), under a continuing contract with Sweet Manufacturing Company for 270 days. an underlying ETA seeks 90 days authority. Supporting shipper: Sweet Manufacturing Company, 2000 East Leffle Lane, Springfield, OH 45503.

MC 8535 (Sub-II-7TA), filed September 26, 1980. Applicant: GEORGE TRANSFER AND RIGGING COMPANY, INCORPORATED, P.O. Box 500, Parkton, MD 21120. Representative: Charles J. McLaughlin (same address as applicant). *Aluminum ingots,* from the facility of Aluminum Company of America at Newburg, Warrick County, IN to Oswego, NY, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Aluminum Co. of America, 1501 Alcoa Bldg., Pittsburgh, PA 15219.

MC 151706 (Sub-II-2TA), filed September 24, 1980. Applicant: JAN-AL

SALES, INC., 5321 Southwyck Blvd., Toledo, OH 43614. Representative: Joseph E. Ludden, 324 Exchange Bldg., La Crosse, WI 54601. *Chemicals or allied products and materials, equipment and supplies used in the manufacture and distribution of the above commodities,* (except commodities in bulk), between points in OH, IL, and NJ, on the one hand, and, on the other, points in the states of CT, GA, IL, IN, IA, MA, MI, MN, MI, NJ, NY, OH, PA, TN, and WI. An underlying ETA seeks 120 days authority. Supporting shipper: Lehn & Fink Products, Div. of Sterling Drug, Inc., 225 Summit Ave., Montvale, NJ 07645.

MC 44801 (Sub-II-2TA), filed September 25, 1980. Applicant: DICK HARRIS AND SON TRUCKING CO., INC., P.O. Box 10277, Lynchburg, VA 24506. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048. *Such commodities as are dealt in or used by manufacturers and convertors of paper and paper products (except commodities in bulk),* between Lynchburg, VA, on the one hand, and, on the other, points in DE, GA, KY, MD, MI, NJ, NY, NC, OH, PA, SC, TN, VA, WV, and DC. Supporting shipper: The Mead Corporation, Courthouse Plaza, NE., Dayton, OH 45463. An underlying ETA seeks 120 days authority.

MC 124821 (Sub-II-22TA), filed September 24, 1980. Applicant: GILCHRIST TRUCKING, INC., 105 N. Keyser Ave., Old Forge, PA 18518. Representative: John W. Frame, Box 626, 2207 Old Gettsburg Rd., Camp Hill, PA 17011. (1) *Printed matter,* as described in Item 27 of the Standard Transportation Commodity Code Tariff; (2) *pulp, paper, or allied products,* as described in Item 26 of Standard Transportation Commodity Code Tariff; and (3) *materials, supplies and equipment* used in the manufacture and distribution of printed matter (except in bulk), between the facilities of Rand McNally & Company at or near Downers Grove, Naperville and Skokie, IL; Hammond and Indianapolis, IN; Muscatine, IA; Lexington and Versailles, KY; Taunton, MA; Ossining, NY; and Nashville, TN; and points in the U.S. for 270 days. Supporting shipper: Rand McNally & Company, 8225 N. Central Park Ave., Skokie, IL 60076.

MC 61977 (Sub-II-4TA), filed September 5, 1980. Applicant: ZERKLE TRUCKING CO., 2400 Eighth Ave., P.O. Box 5628, Huntington, WV 25703. Representative: N. W. Bowen, Jr. (same as applicant). *Expanded Plastic Sheeting (Microfoam Sheeting),* from Wurtland, KY, on the one hand, and, on the other, Muncie, IN; Hillside, IL; Traverse City, MI; Grand Rapids, MI; Hartford City, IN; Evansville, IN; and Bedford Heights, OH, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: E. I. de Pont de Nemours & Co., Dupont Bldg., 10th and Market Sts., Wilmington, DE 19898.

MC 151806 (Sub-II-1TA), filed October 2, 1980. Applicant: HARRY E. PEEK, SR., INC., 105 Olde Greenwich Dr., Fredericksburg, VA 22401. Representative: Gary M. Nuckols, P.O. Box 240, Fredericksburg, VA 22401. *Contract carrier, Irregular route: new furniture, furnishings and appliances,* under exclusive contract with one retailer, Gallahan's Furniture & Appliances, Inc., from its facilities in or near Fredericksburg, VA, and Boca Raton, FL, and points in MD, DE, PA, WV, NC, SC, GA, FL, VA and DC, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Gallahan's Furniture & Appliances, Inc., 105 Olde Greenwich Dr., Fredericksburg, VA 22401.

MC 151707 (Sub-II-1TA), filed September 30, 1980. Applicant: PIONEER TRUCKING, INC., 1105 N. Market St., Wilmington, DE 19801. Representative: Dennis Kupchik (same as applicant). *Contract; irregular: Bakery goods and articles used in the manufacture, packaging, and distribution of bakery goods* between Atlanta, GA; Bridgeport, CT; Denver, CO; Grand Rapids, MI; Houston, TX; Los Angeles, CA; St. Louis, MO; Stamford, CT; on the one hand, and, on the other, points in the U.S. under a continuing contract or contracts with Country Home Bakery, Inc. and its Subsidiaries. Supporting shipper: Country Home Bakery, Inc., 1722 Barnum Ave., Bridgeport, CT 06610.

MC 146348 (Sub-2-3TA), filed October 1, 1980. Applicant: M. T. SERVICES, INC., d.b.a. BRENNAN EXPRESS, P.O. Box 18402, Baltimore, MD 21237. Representative: Raymond P. Keigher, 401 E. Jefferson St., Suite 102, Rockville, MD 20850. *Contract: Irregular: Cooling towers and evaporative condensers,* from Dorsey, MD, to points in CT, DE, FL, GA, ME, MD, MA, NH, NJ, NY, NC, PA, RI, SC, VT, VA, WV, and DC, under continuing contract(s) with Baltimore Aircoil Co., Inc., for 270 days. Supporting shipper: Baltimore Aircoil Co., Inc., Subsidiary of Merck Co., Inc., P.O. Box 7332, Baltimore, MD 21227.

The following applications were filed in Region 3. Send protests to ICC, Regional Authority Center, P.O. Box 7600, Atlanta, GA 30357.

MC 114604 (Sub-3-12TA), filed September 30, 1980. Applicant: CAUDELL TRANSPORT, INC., P.O. Drawer I, State Farmers Market No. 33, Forest Park, GA 30050. Representative: Jean E. Kesinger (same address as applicant). *Non-exempt food or kindred products,* between points in Mecklenburg County, NC, on the one hand, and, on the other, points in AL, MS, TN, SC, NC, FL, and LA. Supporting shipper: Heinz, U.S.A., Division of H. J. Heinz Company, P.O. Box 57, Pittsburgh, PA 15230.

MC 107934 (Sub-3-6TA), filed September 30, 1980. Applicant: BYRD MOTOR LINE, INCORPORATED, P.O. Box 828, Lexington, NC 27292. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th Street, NW., Washington, DC 20004. *Water heaters, boilers, glass lined tanks and solar panels* from Kankakee, IL to points in DE, DC, MD, NC, SC, TN, VA and WV. Supporting shipper(s): A. O. Smith Corporation, P.O. Box 28, Kankakee, IL 60901.

MC 143956 (Sub-3-12TA), filed September 25, 1980. Applicant: GARDNER TRUCKING CO., INC., P.O. Drawer 493, Walterboro, SC 29488. Representative: Steven W. Gardner, 3574 Piedmont Road, Atlanta, GA 30305. *Antifreeze and chemical compounds (except in bulk),* between Abbeville, LA, and San Antonio, TX, on the one hand, and, points in the U.S. on the other hand. Supporting shipper: Broussard Chemical Co., P.O. Box 836, Abbeville, LA 70510.

MC 121649 (Sub-3-1TA), filed September 26, 1980. Applicant: MILAN EXPRESS, INC., P.O. Box 439, Milan, TN 38358. Representative: Warren A. Goff, 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. *Steel doors, steel door frames, door hardware and equipment, materials and supplies used in the manufacture of steel doors* between Gibson County, TN, on the one hand, and, on the other, points in Lake and Porter Counties, IN and Cook, DuPage, Lake, Kane, Kendall, Will, Tazewell, Putnam and Peoria Counties, IL. Supporting shipper: Ceco Corporation, Telecom Drive, Milan, TN 38358.

MC 152017 (Sub-3-1TA), filed September 25, 1980. Applicant: E & J HAULERS, 195 Medford Dr., Fayetteville, GA 30214. Representative: Douglas Breeding (same address as above). *Contract* carrier: irregular: *Aircraft tires,* between Miami, FL, and Atlanta, GA, and, on the other hand Brentwood, NY. Supporting shipper: Thompson Aircraft Tire Corporation, 4767 Clark Howell Highway, College Park, GA 30349.

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MC 142586 (Sub-3–1TA), filed September 23, 1980. Applicant: JIMCO, INC., Faydur Court, P.O. Box 100941, Nashville, TN 37210. Representative: Jack I. Murphree (address same as applicant). *General commodities (except household goods as defined by the Commission and Classes A & B explosives)* restricted to traffic having a prior or subsequent movement by rail between points in AL, AR, FL, GA, IL, IN, KY, LA, MI, MS, MO, NC, OH, SC, TN, TX, VA, WV. Supporting shipper: National Piggyback Services, Inc. 468 National, Indianapolis, IN.

MC 115496 (Sub-3–1TA), filed September 25, 1980. Applicant: LUMBER TRANSPORT, INC., P.O. Box 111, Cochran, GA 31014. Representative: Ken Simons (same as above). *Pipe and materials and supplies used in the manufacture, distribution and sale of pipe,* between Cook County, IL, and Lake County, IN, on the one hand, and, on the other, all points in AL, GA, KY, MS, NC, SC, TN and VA. Supporting shipper: Unarco-Leavitt, 1717 W. 115th Street, Chicago, IL 60643.

MC 88300 (Sub-3–1TA), filed September 25, 1980. Applicant: DIXIE AUTO TRANSPORT CO., 1600 Talleyrand Ave., Jacksonville, FL 32206. Representative: Ward Watkins (same as applicant). *Automobiles and trucks in truckaway service* between Jacksonville, FL, on the one hand, and, on the other, points in TX. Supporting shipper: BMW of North America, 709 Talleyrand Ave., Jacksonville, FL 32202.

MC 151720 (Sub-3–1TA), filed September 25, 1980. Applicant: K. C. HAY, FEED & GRAIN, INC., 3050 Phillip Lee Dr., Atlanta, GA 30387. Representative: Irwin M. Ellerin, 1101 Marietta Tower, Suite 3311, Atlanta, GA 30387. *Contract Carrier: Irregular routes: Such commodities as are dealt in by retail stores, wholesale groceries, and discount stores (except commodities in bulk),* from the facilities of Southeastern Bonded Warehouses, Inc. at or near Atlanta, GA to points in FL. Supporting shipper: Southeastern Bonded Warehouses, Inc., Phillip Lee Dr., Atlanta, GA 30387.

MC 143031 (Sub-3–2TA), filed September 25, 1980. Applicant: MURPHY & SONS TRUCKING COMPANY, INC., Route 2, Box 139, Spring City, TN 37381. Representative: H. Stan Guthrie, Suite 500, Dome Building, 736 Georgia Ave., Chattanooga, TN 37402. Contract; irregular: *New furniture, furniture parts, crated and uncroted, and materials and supplies to be used by La-Z-Boy Chair Company in the manufacturing and selling of new furniture,* between the plants of La-Z-Boy Chair Company located at Siloam Springs, AR; Redlands, CA; Florence, SC; Newton, MS; Montor, MI; Neosho, MO; Dayton, TN and Tremonton, UT, to all points in the U.S. Supporting shipper: La-Z-Boy Chair Company, 1284 N. Telegraph Road, Monroe, MI 48161.

MC 143753 (Sub-3–1TA), filed September 25, 1980. Applicant: BOLES & FRANKLIN, INCORPORATED, Route 2, Box 169, Weaverville, NC 28787. Representative: George W. Clapp, P.O. Box 836, Taylors, SC 29687. *Coal, in bulk, in dump vehicles,* (1) from points in Bell, Clay, Knox, Leslie, Letcher, Perry and Whitley Counties, KY, to points in GA, IN, MI, NC, OH, SC, and TN, and (2) from points in Harlan and Laurel Counties, KY, to points in GA, NC, SC, and TN. Supporting shippers: Baba Enterprises, Inc., Box T, Cumberland, KY 40823, and The Kearns Coal Company, 1518 First National Bank Building, Cincinnati, OH 45202.

MC 140010 (Sub-3–4TA), filed September 26, 1980. Applicant: JOSEPH MOVING & STORAGE CO., INC., d.b.a. ST. JOSEPH MOTOR LINES, 5724 New Peachtree Rd., N.E., Chamblee, GA 30341. Representative: Richard M. Tettelbaum, Fifth Floor, Lenox Towers S, 3390 Peachtree Rd., N.E., Atlanta, GA 30326. *Contract* Carrier: irregular: *Rubber products (except in bulk),* between facilities of The Kelly Springfield Tire Company, Morrow, GA, on the one hand, and on the other, points in AL, FL, GA, KY, MS, NC, SC, and TN. Supporting shipper: The Kelly Springfield Tire Company, Kelly Road, Cumberland, MD 21502.

MC 107515 (Sub-3–75TA), filed September 26, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, Esq., 3390 Peachtree Road, N.E., 5th Floor-Lenox Towers South, Atlanta, GA 30326. *Steel Forgings, Rough; Magnesium Extrusions, NOI; Steel Sheets, in Bundles* from facilities of or utilized by Piper Industries located at or near Collierville and Memphis, TN to all points in the US (except AK and HI). Supporting shipper: Piper Industries Farm Products Division, 719 Piper Street, Collierville, TN 38017.

MC 152018 (Sub-3–1TA), filed September 25, 1980. Applicant: CONVOY INTERNATIONAL, INC., 3951 Pleasantdale Rd. Suite 110, Atlanta, Georgia 30340. Representative: Frank W. Dennis (same address as applicant). *Contract carrier:* irregular: *General Commodities (with the usual exceptions),* between Portland, OR; Santa Fe Springs, (Los Angeles), CA; Kansas City, KS; Dallas, TX; Atlanta, GA; Chicago, IL; Detroit, MI; Erie, PA; Syracuse, NY; Boston, MA; and Jersey City, NJ, under continuing contracts with Van de Kamp's Frozen Foods of Santa Fe Springs, CA. Supporting shipper: Van de Kamp's Frozen Foods, 13100 Artic Circle Dr., Santa Fe Springs, CA.

MC 144082 (Sub-3–12TA), filed September 24, 1980. Applicant: DIST/TRANS MULTI-SERVICES, INC., d.b.a TAHWHEELALEN EXPRESS, INC., 1333 Nevada Blvd., P.O. Box 7191, Charlotte, NC 28217. Representative: Wyatt E. Smith, (same as above). *Contract carrier,* irregular routes: *Cloth, dry goods or fabrics and department store merchandise and supplies,* between Dist/Trans Multi-Services, Inc. consolidation and warehousing facilities in Dalton, GA: Charlotte and Greenboro, NC and Richmond, VA, on the one hand, and, on the other, points in AL, MS, AR, OK, LA, and TX, under a continuing contract(s) with Hancock Textile Company, Inc. Supporting Shipper: Hancock Textile Company, Tupelo, MS.

MC 151916 (Sub-3–1TA), filed September 17, 1980. Applicant: BARON TRANSPORT, INC., 1 Perimeter Way, Suite 455, Atlanta, GA 30339. Representative: Bill R. Davis, Suite 101 Emerson Center, 2814 New Spring Rd., Atlanta, GA 30339. *Frozen bakery products,* between Carrollton, GA and Murfreesboro TN. Supporting Shipper: Maplehurst Deli-Bake South, Inc.

MC 140484 (Sub-3–12TA), filed September 4, 1980. Republication—Originally Published in F.R. of September 17, 1980, page 61814, volume 45, No. 182. Applicant: LESTER COGGINS TRUCKING, INC., P.O. Box 69, Fort Meyers, FL 33902. Representative: Frank T. Day, (same as above). *Cheese* from Mercer, PA, to Lee County, FL. Supporting Shipper: Laubscher Cheese Co., Inc., R.D. No. 4, Box 4355, Mercer, PA 16137.

MC 148348 (Sub-3–1TA), filed September 29, 1980. Applicant: FONT TRUCKING COMPANY, Route 2, Hartford, AL 36344. Representative: Donald B. Sweeney, Jr., 603 Frank Nelson Building, Birmingham, AL 35203. *Forest products, materials, equipment and supplies used in the forest products industry* between Jefferson, Geneva, Covington, Houston and Escambia Counties, AL; Leon and Walton Counties, FL; and Rapides Parish, LA; on the one hand, and, on the other, points in the U.S. except HI. Supporting Shipper: International Forest Seed Co., P.O. Box 5154, Tallahassee, FL 32301.

MC 115654 (Sub-3–25TA), filed September 26, 1980. Applicant: TENNESSEE CARTAGE CO., INC., P.O.

Box 23193, Nashville, TN 37202, Representative: Jackie L. Hastings (same address as applicant). *Wearing Apparel,* from the facilities of K Mart Corporation at Forest Park, GA to points in Colbert, Franklin, Jackson, Lauderdale, Lawrence, Limestone, Madison, and Morgan Counties, AL. Supporting Shipper: K Mart Apparel Corp., 7373 West Side Avenue, North Bergen, N.J. 07047.

MC 115654 (Sub-3–26TA), filed September 26, 1980. Applicant: TENNESSEE CARTAGE CO., INC., P.O. Box 23193, Nashville, TN 37202. Representative: Jackie L. Hastings, (same address as applicant). *Paper and plastic articles,* from Lexington, KY and Nashville, TN to points in the states of TN and KY. Supporting shipper: American Can Co., Harbison Road, Lexington, KY 40405.

MC 151975 (Sub-3–1TA), filed September 26, 1980. Applicant: DIRECT DELIVERY, INC., 1239 Willingham Drive, East Point, GA 30344. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Boulevard, Atlanta, GA 30349. *Paper and paper products, materials, equipment and supplies used in the manufacture of paper and paper products,* between Stockbridge and East Point, GA and points in AL, FL, GA, NC, SC, MS, LA, TN and KY. Supporting shipper: International Paper Company, 220 E. 42nd St., New York, NY 10017.

MC 107515 (Sub-3–74TA), filed September 26, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, Esq., 3390 Peachtree Road, N.E., 5th Floor-Lenox Towers South, Atlanta, GA 30326. *Foodstuffs (except in bulk)* from Memphis, TN to points in the US (except AK and HI). Supporting shipper: Adams Packing Association, Inc., P.O. Box 37, Auburndale, FL 33823.

MC 126402 (Sub-3–1TA), filed September 25, 1980. Applicant: JACK WALKER TRUCKING SERVICE, INC., 1506 Fort Sumpter Court, Lexington, KY 40505. Representative: William L. Willis, 708 McClure Building, Frankfort, KY 40601. *Malt beverages,* from Detroit, MI; Perrysburg, OH and Lexington, KY to points in GA, NC and TN. Supporting shippers: Ideal of KY, Inc., 1200 Russell Cave Road, Lexington, KY 40505 and The Stroh Brewery Company, One Stroh Drive, Detroit, MI 48226.

MC 107934 (Sub-3–4TA), filed September 19, 1980. Applicant: BYRD MOTOR LINE, INCORPORATED, P.O. Box 828, Lexington, NC 27282. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425–13th Street, NW., Washington, DC 20004. *Food seasoning compounds NOI and products used in the manufacture and distribution thereof* between Germantown, WI and Peoria, IL, on the one hand, and, on the other, points in VA and NC. Supporting shipper: Milwaukee Seasoning Laboratories, Inc., N113 W18900 Carnegie Drive, Germantown, WI 53022.

MC 31389 (Sub-3–5TA), filed September 19, 1980. Applicant: McLEAN TRUCKING COMPANY, 1920 West First Street, Winston-Salem, NC 27104. Representative: Daniel R. Simmons, P.O. Box 213, Winston-Salem, NC 27102. Common: Regular: *General commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* serving the facilities of Teledyne Water Pik, at or near Ft. Collins, CO, as an off-route point in connection with applicant's regular route operations. Supporting shipper: Teledyne Water Pik, 1800 East Harmony Rd., Ft. Collins, CO 80525.

Note.—Applicant's subsidiary holds motor contract carrier authority in MC 147888, Sub-1F and therefore dual operations may be involved. Applicant intends to tack this authority to authority held by him and to interline at approximately 200 places.

MC 102285 (Sub-3–2TA), filed September 22, 1980. Applicant: MIAMI TRANSFER CO., INC., 10340 N.W. 37th Avenue, Miami, FL 33147. Representative: Norman J. Bolinger, 3100 University Blvd., Suite 225, Jacksonville, FL 32216. *General commodities, except classes A & B explosives, in trailers and trailers,* having an immediate prior or subsequent movement by rail, between points in Hillsborough, Dade, Broward and Palm Beach Counties, FL, on the one hand, and, on the other, points in Charlotte, Lee, and Colleri Counties, FL. Supporting Shipper: There are four (4) appendix of support which may be reviewed at the Atlanta, GA Regional Office.

MC 136828 (Sub-3–1TA), filed September 23, 1980. Applicant: COOK TRANSPORTS, INC., P.O. Box 6362–A, Birmingham, AL 35217. Representative: John P. Carlton, 727 Frank Nelson Bldg., Birmingham, AL 35303. *Metals, metal articles, metal fabrications and materials, supplies and equipment used in connection therewith (except commodities in bulk, in dump, tank and hopper vehicles),* between points in AL, AR, GA, FL, LA, MS, NC, SC, TN, and TX, on the one hand, and, on the other, points in the U.S. The purpose of this application is to substitute the single-line service of applicant for joint-line service presently being provided, and, in the case of certain traffic, to eliminate the gateway of Birmingham, AL. Supporting shipper: None.

MC 138157 (Sub-3–28TA), filed September 25, 1980. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 South Market Street, Chattanooga, TN 37410. Representative: Patrick E. Quinn, P.O. Box 9596, Chattanooga, TN 37412. *Floor covering materials* from Ames, IA to points in MT, WY, CO, NM, AZ, UT, ID, NV, WA, OR and CA. Restriction: Restricted to traffic originating at the facilities of 3M Company. Supporting shipper: B. R. Funsten & Co., 2045 Evans Avenue, San Francisco, CA 94124.

MC 115840 (Sub-3–5TA), filed September 25, 1980. Applicant: COLONIAL FAST FREIGHT LINES, INC., McBride Lane, P.O. Box 22168, Knoxville, TN 37922. Representative: Michelene Good (same as applicant). *Plastic pipe,* between points in NC on the one hand, and, on the other, points in the U.S. in and east of TX, OK, KS, NE, SD, and ND; and points in CA. Supporting shipper: Eslon Thermoplastic, Inc., P.O. Box 24069, Charlotte, NC 28224.

MC 147870 (Sub-3–1TA), filed September 24, 1980. Applicant: MEMPHIS LEASING COMPANY, INC., 814 Florida Street, Memphis, TN 38101. Representative: Douglas C. Wynn, Wynn, Bogen & Mitchell, P.O. Box 1295, Greenville, MS 38701. *General commodities (except commodities of unusual value, classes A & B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment)* between Memphis, TN, on the one hand, and, on the other, points in AL on and north of U.S. Hwy I–59; AR; MS on and north of U.S. Hwy I–20; and TN on and west of U.S. Hwy 27 restricted to traffic having a prior or subsequent movement by rail or water. Supporting shipper(s): E. I. du Pont de Nemours & Co., Inc., 1007 Market Street, Wilmington, DE 19898; Terminal Freight Cooperative Association, 1430 Branding Lane, Downers Grove, IL 60515; Illinois Central Gulf Railroad, 590 West Alcy Road, Memphis, TN 38101.

Note.—Common control may be involved.

MC 95540 (Sub-3–20TA), filed September 24, 1980. Applicant: WATKINS MOTOR LINES, INC., 1144 West Griffin Road, P.O. Box 1636, Lakeland, FL 33802. Representative: Paul E. Weaver (same address as applicant). *(1) Foodstuffs, (2) such commodities as are dealt in by wholesale, retail and chain grocery and food business houses and (3) equipment, materials and*

supplies used in the manufacture and distribution of commodities named in (1) and (2) above; from Chicago, IL to Jackson, MS; Mobile, AL; Charlotte, NC and Savannah, GA. Supporting shipper: Topco Associates, Inc., 7711 Gross Point Road, Skokie, IL 60077.

MC 151808 (Sub-3–3TA), filed September 25, 1980. Applicant: SERVICE LINES, INC., 6315 Laurelwood Drive, Brentwood, TN 37027. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th Street NW., Washington, DC 20004. *Common carrier:* regular routes: *General Commodities, with usual exceptions,* between Nashville, TN and St. Louis, MO and points in their respective commercial zones, from Nashville over Interstate Hwy 24 to Jct Interstate Hwy 57, then over Interstate Hwy 57 to Jct Interstate Hwy 64, then over Interstate Hwy 64 to St. Louis and return, serving no intermediate points. There are 16 statements of support which may be examined at the ICC Regional Office in Atlanta.

Note.—Applicant intends to interline at Nashville, TN and St. Louis, MO.

MC 133975 (Sub-3–1TA), filed September 23, 1980. Applicant: FLAMINGO TRANSPORTATION, INC., 11405 NW 36th Ave., Miami, FL 33167. Representative: Richard B. Austin, 320 Rochester Building, 8390 NW 53d St., Miami, FL 33166. *General commodities (with usual exceptions),* between points in FL restricted to traffic moving on freight forwarder bills of lading and having a prior or subsequent movement in interstate or foreign commerce. Supporting shipper: Florida-Texas Freight, Inc., 11405 NW 36th Ave., Miami, FL 33167.

MC 150211 (Sub-3–8TA), filed September 18, 1980. Applicant: ASAP EXPRESS, INC., P.O. Box 3250, Jackson, TN 38301. Representative: Louis J. Amato (same address as above). *Sheet steel laminations* from the plantsite of National Laminations, Inc., Des Plaines, IL to points in TN, AR, MS and AL. Supporting shipper: National Lamination Co., 555 Santa Rosa Dr., Des Plaines, IL 60018.

MC 121654 (Sub-3–10TA), filed September 23, 1980. Applicant: COASTAL TRANSPORT & TRADING CO., P.O. Box 7438, Savannah, GA 31408. Representative: Alan E. Serby, 3390 Peachtree Rd., NE., 5th Floor-Lenox Towers South, Atlanta, GA 30326. *Lumber or Wood Products, and Pulp, Paper and Allied Products* from South Boston, VA; Charleston, SC; Orangeburg, SC; and Canton, NC; Waynesville, NC; and Pasadena, TX to all points in and east of ND, SD, NE, KS, OK and TX. Supporting shipper: Champion International Corporation, Knightsbridge Drive, Hamilton, OH 45020.

MC 133221 (Sub-3–3TA), filed September 25, 1980. Applicant: OVERLAND CO., INC., 1991 Buford Highway, Lawrenceville, Georgia 30245. Representative: John J. Capo, P.O. Box 720434, Atlanta, Georgia 30328. *Cans and enclosures, materials, equipment and supplies used in the manufacture of cans and enclosures.* From the facilities of Continental Can Co. at Orange and Borough Counties FL, Jefferson County, AL, Houston and Fulton Counties, GA, Gregg, Harris and Cameron Counties, TX, Kay County, OK, Warren County, MS, Orleans County, LA, Sebastian County, AR, and Pulaski Park, MD, to points in and east of TX, OK, KS, NE, SD, ND, and to points in NM. Supporting shipper: Continental Can Company, 22 Executive Park, Atlanta, GA 30029.

MC 136315 (Sub-3–7TA), filed September 26, 1980. Applicant: OLEN BURRAGE TRUCKING, INC., Route 9, Box 28, Philadelphia, MS 39350. Representative: Fred W. Johnson, Jr., P.O. Box 22807, Jackson, MS 39205. *Primary metal products and materials, equipment and supplies used in the manufacture and sale and distribution of said commodities,* between points in New Castle County, DE and Washington and Allegheny Counties, PA, on the one hand, and, on the other, points in the states of DE, IL, KY, MI, NC, NY, OH, PA, SC, TN, and VA. Supporting shipper: Forbes Steel Corporation, P.O. Box 329, Cannonsburg, PA 15317.

MC 85970 (Sub-3–12TA), filed September 25, 1980. Applicant: SARTAIN TRUCK LINE, INC., 1625 Hornbrook Street, Dyersburg, TN 38024. Representative: Warren A. Goff, 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. *Scrap plastics, chemicals, and rubber compounds* (1) Between Cook County, IL, on the one hand, and, on the other, Dalton, GA; (2) Between MI and WV, on the one hand, and, on the other, Obion and Dyer County, TN. Supporting shipper: Benco Industries, Route 3, Newburn, TN 38059.

MC 107478 (Sub-3–6TA), filed September 25, 1980. Applicant: OLD DOMINION FREIGHT LINE, INC., Post Office Box 2006, High Point, NC 27261. Representative: C. T. Harris, Post Office Box 999, Wilson, NC 27893. *Dog food* between points in Auglaize County, OH, on the one hand, and, on the other, points in NC and SC. Supporting shipper: FCX, Inc., Post Office Box 2419, Raleigh, NC 27602.

MC 150536 (Sub-3–3TA), filed September 25, 1980. Applicant: WILLIAMS SERVICE CENTER, INC., 4103 Highway 78 East, Jasper, AL 25501. Representative: D. H. Markstein, Jr., 512 Massey Building, Birmingham, Alabama 35203. *General commodities except household goods, explosives, commodities in bulk in tank vehicles, dangerous commodities and those of unusual value* between points in AL on the one hand, and, on the other, points in TN, GA, MS, and AL. Supporting shippers: 1. Lum Oil Company, Inc., 1501 Tenth Avenue, Jasper, AL 35501; 2. Avery Guthrie & Son Lumber Company, P.O. Box 261, Oakman, AL 35579; 3. J & K Lumber and Supply Company, Inc., West 19th Street, Jasper, AL 35501; 4. Brown Pipe Company, P.O. Drawer 1408, Jasper, AL 35501; 5. City Hardware, Inc., P.O. Drawer 1308, Jasper, AL 35501.

MC 128095 (Sub-3–4TA), filed September 25, 1980. Applicant: IBCO TRUCK LINE, INC., P.O. Box 1402, Tupelo, MS 38801. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205. *Carpet, carpet padding and materials used in the sale or installation thereof (except commodities in bulk):* (1) from Haverhill, MA to points in MD, NJ, VA, WV, and DC; (2) from Philadelphia and Eddystone, PA and Trenton, NJ to points in AL, AR, LA, MS, and TN; (3) from Dallas, TX to points in AR and LA; (4) from Shelbyville, TN to points in AL, AR, and GA; (5) from Greensboro, NC to points in AL, GA, and TN; and, (6) from Fort Wyne, IN to points in AR, LA, and KY. Supporting shipper: General Felt Industries, Inc., Part 80 Plaza West One, Saddlebrook, NJ 07662.

MC 121568 (Sub-3–16TA), filed September 25, 1980. Applicant: HUMBOLDT EXPRESS, NC., 345 Hill Ave., Nashville, TN 37211. Representative: James G. Caldwell (same as applicant). *General commodities, with usual exceptions,* between points in the U.S. (except AK and HI) restricted to traffic moving to or originated at Clopay Corporation and it affiliates. Applicant intends to tack with MC 121568 and interline at all gateway points including Memphis, TN and Nashville, TN. Supporting shipper: Clopay Corporation, 1 Clopay Square, Cincinnati, OH.

MC 115841 (Sub-3–26TA), filed September 22, 1980. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., McBride Lane, P.O. Box 22168, Knoxville, TN 37922. Representative: Michelene Good (same as above). *Foodstuffs (except commodities in bulk),* from (1) Cincinnati, OH to points in IL; and from (2) Atlanta, GA to points in FL, NC, SC, TN, MS, AL, LA, KY, OH, VA, WV, PA, NY, NJ, MD, MA, DE, CT, and CA.

Restricted to traffic originating at or destined to the facilities utilized by Serv-A-Portion, Inc. Supporting Shipper: Serv-A-Portion, Inc., 9140 Lurline Avenue, Chatsworth, CA 91311.

MC 144027 (Sub-3–5TA), filed September 25, 1980. Applicant: WARD CARTAGE & WAREHOUSING, INC., Route 4, Glasgow, KY 42141. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004. *Materials, supplies, and equipment used in the manufacture, sale and distribution of drug store articles,* between points in MS, on th one hand, and, Jeffersonville, IN, on the other. Supporting shipper(s): Colgate-Palmolive Company, State & Woerner Streets, Jeffersonville, IN 47130.

MC 148518 (Sub-3–1TA), filed September 25, 1980. Applicant: JUR CORPORATION d.b.a. RAJOR, INC., 100 Beta Drive, P.O. Box 756, Franklin, TN 37064. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. *Contract carrier,* irregular routes: *Furniture or fixtures and materials, equipment and supplies* used in the manufacture, sale or distribution of the named commodities, between points in Davidson and Williamson Counties, TN, and Dougherty County, GA, on the one hand, and, on the other, points in the U.S., for the account of Jamison Bedding, Inc. Supporting shipper: Jamison Bedding, Inc., P.O. Box 989, Nashville, TN 37202.

MC 136155 (Sub-3–1TA), filed September 24, 1980. Applicant: GAY TRUCKING COMPANY, P.O. Box 7179, Garden City, Ga. 31408. Representative: J. Newel Kessler, 17 Main Street, Garden City, Ga. 31408. *Iron and Steel Articles,* from AL, FL, GA, MS, NC, SC, and TN to GA. Supporting shippers: Universal Steel and Construction Materials, Inc., P.O. Box 7115, Savannah, Ga.; Valiant Steel and Equipment Co., P.O. Box 1386, Savannah, Ga.; National Wire of Ga., P.O. Box 4038, Pt. Wentworth, Ga.; Intercontinental Building Products, P.O. Box 7269, Savannah, Ga.

MC 139207 (Sub-3–3TA), filed September 30, 1980. Applicant: MCNABB–WADSWORTH TRUCKING CO., 305 S. Wilcox Drive, Kingsport, TN 37665. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th Street NW., Washington, DC 20004. *Glass and materials, supplies and equipment used in the manufacture of glass,* between FL, on the one hand, and, on the other, points in Cumberland County, PA, Allegany County, MD and Jefferson County, MO. Supporting shipper(s): P.P.G. Industries, Inc., 1 Gateway Center, Pittsburgh, PA 15222.

MC 116254 (Sub-3–18TA), filed September 29, 1980. Applicant: CHEM–HAULERS, INC., P.O. Box 339, Florence, AL 35630. Representative: M. D. Miller (same address as applicant). *Steel beams,* from Muscle Shoals, AL, to New Orleans, LA. Supporting shipper: Bigbee Steel Buildings, Inc., P.O. Box 2314, Muscle Shoals, AL 35660.

MC 146281 (Sub-3–14TA), filed September 29, 1980. Applicant: SILVER FLEET EXPRESS, INC., 4521 Rutledge Pike, P.O. Box 6110, Knoxville, TN 37914. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th Street, NW., Washington, DC 20004. *Paper and paper products and materials, supplies and equipment used in the manufacture of same,* between the facilities of Irving Paper Mills, at or near La Grange, GA and Lockland, OH. Supporting shipper(s): Irving Paper Mills, Lockland Division, Lock and Cooper Streets, Lockland, OH 45214.

MC 142181 (Sub-3–2TA), filed September 29, 1980. Applicant: LIBERTY CONTRACT CARRIER, INC., 214 Hermitage Avenue, Nashville, Tennessee 37202. Representative: Robert L. Baker, 618 United American Bank Building, Nashville, Tennessee 37219. Contract Carrier, irregular routes: *(1) Such commodities as are dealt in or sold by a manufacturer of metal products, and (2) equipment, materials, and supplies used in the conduct of such business* between Nashville, TN, on the one hand, and points in MI, on the other. Supporting shipper: Cincinnati Sheet Metal and Roofing Company, 130 Nester Street, Nashville, TN 37210.

MC 138157 (Sub-3–29TA), filed September 29, 1980. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 South Market St., Chattanooga, TN 37410. Representative: Patrick E. Quinn, P.O. Box 9596, Chattanooga, TN 37412. *Fertilizer compound* from Los Angeles, CA; Clearfield, UT; Fort Madison, IA; Metuchen, NJ; Lebanon, PA; Chillicothe, OH; Danville, Bensenville, Melrose Park, and East Saint Louis, IL; Livonia, MI; Arlington, TX; Atlanta, GA; and Tampa, FL, to Sumter County, AL. Restricted against the transportation of commodities in bulk and restricted to traffic originating at the facilities of Chevron Chemical Company. Supporting Shipper: Chevron Chemical Co., 575 Market St., San Francisco, CA 94105.

MC 144743 (Sub-3–2TA), filed September 29, 1980. Applicant: CHARLES M. SWINFORD, d.b.a. SWINFORD TRUCKING, P.O. Box 85, Cynthiana, KY 41031. Representative: Robert H. Kinker, P.O. Box 464, Frankfort, KY 40602. *General commodities, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment,* between Cynthiana, KY and commercial zone, on the one hand, and, on the other, Frankfort, KY, and commercial zone, with service at Frankfort, KY restricted to interchange with connecting rail carriers. Supporting shipper: Cleveland Twist Drill, Cynthiana Plant, P.O. Box 7, West Pleasant St., Cynthiana, KY 41031. Applicant intends to interline with rail carriers at Frankfort, KY.

MC 107515 (Sub-3–76TA), filed September 29, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, Esq., 3390 Peachtree Rd. NE., 5th Floor, Lenox Towers South, Atlanta, GA 30326. *Plastic Film* from facilities of Allied Chemical Corporation, Fibers & Plastics Company, at or near Pottsville, PA to points in the US (except AK and HI). Supporting shipper: Allied Chemical Corporation, Fibers & Plastics Company, 1411 Broadway, New York, NY 10010.

MC 145836 (Sub-3–7TA), filed September 29, 1980. Applicant: TRYCO TRUCKING CO., INC., 2508 Starita Road, Charlotte, NC 28213. Representative: Eric Meierhoefer, Suite 423, 1511 K Street NW., Washington, DC 20005. *General commodities (except those of unusual value, classes A & B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* between Los Angeles, CA; Chicago, IL; New York, NY; Boston, MA; Philadelphia, PA; Charlotte and High Point, NC; and Tampa, Orlando, and Miami, FL; and points in their commercial zones, and points in WI, on the one hand, and, on the other, points in FL, restricted to traffic originating at or destined to the facilities of Greater Miami Shippers Association, Gulf Freight Association, and Orlando Freight Association, and their members. SUPPORTING SHIPPERS: Greater Miami Shippers Association, P.O. Box 520248, 6885 NW 25th Street, Miami, FL 33152; and Gulf Freight Association, P.O. Box 702, Tampa, FL 33601.

MC 146451 (Sub-3–22TA), filed September 30, 1980. Applicant: WHATLEY-WHITE, INC., 230 Ross Clark Circle NE., Dothan, AL 36302. Representative: William K. Martin P.O. Box 2069, Montgomery, AL 36197. *(A) Tires hollow molded non-inflatable, (B) tires, solid rubber, (C) wheels, plastic with tires,* from Newport, TN, to McDonough, GA, McRae, GA, Manning,

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GA, Swainsboro, GA, Thomasville, GA, Dothan, AL Selma, AL, Indianola, MS, and Tupelo, MS, and *(D) rubber compound unvulcanized in slabs or sheets*, from Prescott, AR, to Newport, TN. Supporting shipper: Firestone Industrial Products Company, Division of Firestone Tire & Rubber Co., 1700 Firestone Boulevard, Noblesville, IN 46060.

MC 114604 (Sub-3–13TA), filed September 29, 1980. Applicant: CAUDELL TRANSPORT, INC., P.O. Drawer I, State Farmers Market #33, Forest Park, GA 30050. Representative: Jean E. Kesinger, P.O. Drawer I, State Farmers Market #33, Forest Park, GA 30050. *Foodstuffs*, (1) Between Greenville, MS; Bridgeport, MI; Imlay City, MI; and Memphis, MI; and (2) from Greenville, MS to points in AL, AR, FL, GA, IL, KY, KS, LA, MO, OK, TN and TX. Supporting shipper: Vlasic Foods, Inc., 33200 West Fourteen Mile Road, Bloomfield, MI 48033.

MC 52704 (Sub-3–10TA), filed September 29, 1980. Applicant: GLENN McCLENDON TRUCKING COMPANY, INC., P.O. Drawer "H" LaFayette, AL 36862. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway; Atlanta, GA 30345. (A) *Carbonated beverages*, between points in FL, LA and TX, on the one hand, and, on the other, points in AL and GA; and (B) *Materials, equipment and supplies* used in the manufacture and distribution of carbonated beverages from points in the U.S. to points in FL, LA and TX. Supporting shipper: King Cola Southeast Limited, 2810 New Spring Road, Suite 112, Atlanta, GA 30339.

Correction

MC 2253 (Sub-3–4TA), filed September 4, 1980. Applicant: CAROLINA FREIGHT CARRIERS CORPORATION, P.O. Box 697, Cherryville, NC 28021. Representative: J. S. McCallie (same as applicant). In **Federal Register** Vol. 45, No. 188 published Thursday, September 17, 1980, at page 61815, the following correction should be made in the Carolina Freight Carriers Corporation (MC–2253 Sub 3–4TA) application. On page 61815, second column, 7th line from top of page the first route description should read "(1) Between Atlanta, GA and Fort Worth, TX, over Interstate Hwy 20, serving junction US Hwy 80 and Interstate Hwy 20 near Kewanee, MS. Junction US Hwys 31 and 11 at Birmingham, AL, and the off-route point of Cuba, AL for purposes of joinder only, serving the intermediate points of Jackson, MS, Monroe and Shreveport, LA and Dallas, TX and the off-route point of Canton, MS."

MC 146449 (Sub-3–1TA), filed August 14, 1980. Republication—Originally Published in **Federal Register** of September 8, 1980, Page 59219, Volume 45, No. 175. Applicant: ALL CITIES TRANSFER, INC., P.O. Box 90130, East Point, GA 30364. Representative: Bill McCann (address same as applicant). *Common carrier:* regular: *General commodities, except commodities in bulk, household goods and commodities which because of size or weight require special equipment* between the following points: (1) Between Opelika, AL and the NC–VA state line: From Opelika, AL over interstate Hwy 85 to its junction with the NC–VA state line, serving all intermediate points and return over the same route; (2) Between Chattanooga, TN and the GA–FL state line: From Chattanooga over interstate Hwy 75 to its junction with the GA–FL state line, serving all intermediate points and return over the same route; (3) Between Atlanta, GA and Columbia, SC: From Atlanta over interstate Hwy 20 to Columbia, SC, serving all intermediate points and return over the same route; (4) Between Kingsland, GA and Roanoke Rapids, NC: From Kingsland, GA over interstate Hwy 95 to Roanoke Rapids, NC serving all intermediate points and return over the same route; (5) Between Charleston, SC and Ashville, NC: From Charleston over interstate Hwy 26 to Ashville, NC serving all intermediate points and return over the same route; (6) Between Savannah, GA and Macon, GA: From Savannah over interstate Hwy 16 to Macon, serving all intermediate points and return over the same route; (7) Between Folkston, GA and Henderson, NC: From Folkton, GA over US Hwy 1 to Henderson, NC serving all intermediate points and return over the same route; (8) Between Nags Head, NC and Atlanta, GA: From Nags Head over US Hwy 64 to its junction with US Hwy 19 then over US Hwy 19 to Atlanta serving all intermediate points and return over the same route; (9) Between Chattanooga, TN and the junction of Hwy US 64 and US 19 near Murphy, NC for purposes of joinder only: From Chattanooga over US Hwy 64 to its junction with US Hwy 19 near Murphy, NC and return over the same route; (10) between Rossville, GA and GA–FL state line: From Rossville over US Hwy 27 to its junction with the GA–FL state line, serving all intermediate points and return over the same route; (11) Between Columbus, GA and Savannah, GA: From Columbus over US Hwy 80 to Savannah, GA serving all intermediate points and return over the same route; (12) Between Brunswick, GA and Cuthbert, GA: From Brunswick, GA over US Hwy 82 to Cuthbert, GA serving all intermediate points and return over the same route; (13) Between Fargo, GA and the NC–TN state line: From Fargo over US Hwy 441 to its junction with the NC–TN state line serving all intermediate points and return over the same route; (14) Between New Bern, NC and Ashville, NC: From New Bern over US Hwy 70 to Ashville, serving all intermediate points and return over the same route; (15) Between Brunswick, GA and the NC–VA state line: From Brunswick over US Hwy 17 to its junction with the NC–VA state line serving all intermediate points and return over the same route; (16) Between Wilmington, NC and Charlotte, NC: From Wilmington over US Hwy 74 to Charlotte serving all intermediate points and return over the same route; (17) Between Charleston, SC and Ashville, NC: From Charleston over interstate Hwy 26 to Ashville serving all intermediate points and return over the same route; (18) Between Atlanta, GA and Myrtle Beach, SC: From Atlanta over US Hwy 78 to its junction with US Hwy 378 at or near Washington, GA then over US Hwy 378 to Myrtle Beach, SC serving all intermediate points and return over the same route; (19) Between Oxford, NC and Summerton, SC: From Oxford over US Hwy 15 to Summerton, SC serving all intermediate points and return over the same route; (20) Between Charlotte, NC and Hardeeville, SC: From Charlotte over US Hwy 21 to its junction with US Hwy 321 then over US Hwy 321 to Hardeeville, SC serving all intermediate points and return over the same route; (21) Between Thomasville, GA and Louisville, GA: From Thomasville over US Hwy 319 to Louisville serving all intermediate points and return over the same route; (22) Between Greensboro, NC and Ashville, NC: From Greensboro over interstate Hwy 40 to Ashville serving all intermediate points and return over the same route. Service in connection with the routes named above is authorized serving all points in GA, NC and SC as off-route points. In connection with temporary authority, applicant requests the right to interline traffic at Atlanta and Savannah, GA; Chattanooga, TN; and Charlotte, NC. Applicant also requests the right to serve the commercial zone of Opelika, AL and Chattanooga, TN. There are 19 Statements in Support attached to this application which may be examined in the ICC office in Atlanta, GA.

MC 26088 (Sub-3–2TA), filed September 11, 1980. Applicant: THE SANDERS TRUCK TRANSPORTATION CO., P.O. Box 457, Augusta, GA 30903.

Representative: William Addams, Suite 212, 5299 Roswell Rd., NE., Atlanta, GA 30342. *Cranes, crane parts, machinery, machinery parts, forklifts, welding machines, compressors, caproloctam (in steel drums and in bags), dollies, boilers, boiler parts, clay products, pumps, steel beams, steel bins, steel and tanks*, between points in GA and SC, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Carolina Cranes, Inc., 3542 Pebble Beach Dr., Martinez, GA 30907.

The following protests were filed in Region 4. Send protests to: Consumer Assistance Center, Interstate Commerce Commission, 219 South Dearborn Street, Room 1304, Chicago, IL 60604.

MC 152052 (Sub-4–1TA), filed October 1, 1980. Applicant: NORTH CENTRAL TRANSPORT CO., INC., 115 E. Barrett Lane, Schaumberg, IL 60193. Representative: Marc J. Blumenthal, 39 S. LaSalle Street, Chicago, IL 60603. *Tile, and materials, equipment and supplies used in the manufocture, distribution and installation thereof*, between points in Chicago Commercial Zone, on the one hand, and, on the other, points in IN, IA, MI, OH and WI. Supporting shipper: Midwestern Ceramics, 1101 Lunt Ave., Elk Grove Village, IL 60007.

MC 111432 (Sub-4–1TA), filed October 1, 1980. Applicant: FRANK J. SIBR & SONS, INC., 5240 West 123rd Place, Alsip, IL 60658. Representative: Douglas G. Brown, P.C. The INB Center, Suite 555, One North Old State Capitol Plaza, Springfield, IL 62701. *Contract;* irregular; *Petroleum and petroleum products* from Hammond, IN, to points in Kankakee County, IL. Under a continuing contract(s) with Smith Oil Company of Kankakee. An underlying ETA seeks 120 days authority. Supporting shipper: Steve Smith, Smith Oil Company, 1045 South East Avenue, Kankakee, IL 60901.

MC 146969 (Sub-4–8TA), filed September 2, 1980. Applicant: STAN KOCH & SONS TRUCKING, INC., 4901 Excelsior Boulevard, Minneapolis, MN 55416. Representative: Stanley C. Olsen, Jr., Gustafson & Adams, P.A., 7400 Metro Boulevard, Suite 411, Edina, MN 55435. *Plastic tonks and containers*, (1) between Hennepin County, MN, on the one hand, and, on the other, points in Woodbury County, IA; (2) between Hennepin County, MN, on the one hand, and, on the other, points in IA and IL; and (3) between Woodbury County, IA, on the one hand, and, on the other, points in KS and NE. Supporting shipper: Solar Plastics, Inc., 732 30th Avenue SE., Minneapolis, MN 55414.

MC 152024 (Sub-4–2TA), filed October 1, 1980. Applicant: RUMM ASSOCIATES, INC., 4153 Owl Road, Lincoln, MI 48743. Representative: Martin J. Leavitt, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. *General commodities* (except those household goods as defined by the Commission and Classes A and B explosives) between the Port of Entry between the U.S. and Canada at Sault Ste. Marie, MI, on the one hand, and on the other, points in MI, South of Hwy. M–55 (except points in Mason, Lake and Osceola Counties). Restricted to shipments having immediate prior or subsequent movement by rail or water. Supporting shippers: There are 10 supporting shippers.

MC 142254 (Sub-4–1TA), filed September 29, 1980. Applicant: FRIEDL FUEL & CARTAGE, INC., 440 West Ann Street, Whitewater, WI 53190. Representative: Michael J. Wyngaard, 150 East Gilman Street, Madison, WI 53703. *Pipe and tubing* from East Troy, WI to points in IA, IL, IN, MI, MN, NY and OH. An underlying ETA seeks 120 days authority. Supporting shipper: Cold Industries Crucible, Inc., Trent Tube Division, 2188 S. Church Street, East Troy, WI 53120.

MC 142844 (Sub-4–1), filed September 29, 1980. Applicant: PRAIRIE WEST TRUCKING, INC., P.O. Box 2576, Bismarck, ND 58502. Representative: Charles E. Johnson, P.O. Box 1982, Bismarck, ND 58502. *Contract:* Irregular; *Lumber, Lumber Products, Wood Products, and Forest Products*, between points in the U.S. for the account of Sprenger Midwest, Inc. An underlying ETA seeks 120 days authority. Supporting shipper: Sprenger Midwest, Inc., Box 1–K, Minnetonka, MN 55343.

MC 152024 (Sub-4–1TA), filed September 29, 1980. Applicant: RUMM ASSOCIATES, INC., 4153 Owl Road, Lincoln, MI 48743. Representative: Martin J. Leavitt, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. *General commodities* (except those household goods as defined by the Commission and Classes A and B explosives) between points in the Lower Peninsula of MI on and North of Hwy. M–55 and in Mason, Lake and Osceola Counties on the one hand, and, on the other, points in the Upper Peninsula of MI. Restricted to shipments having immediate prior or subsequent movement by rail or water. Supporting shippers: There are 10 supporting shippers.

MC 145454 (Sub-4–3TA), filed September 30, 1980. Applicant: SOUTHERN REFRIGERATED TRANSPORTATION COMPANY, INC., 7336 West 15th Ave., Gary, IN 46406. Representative: Anthony E. Young, 29 S. LaSalle St., Suite 350, Chicago, IL 60603. *Foodstuffs*, from Peru, IN and Franklin Park, IL to points in VA, NC, SC, GA, FL, TN, AL, MS, AK, LA, KY, and TX. An underlying ETA seeks 120 days authority. Supporting shipper: Universal Foods, Inc., P.O. Box 737, Milwaukee, WI 53201.

MC 133178 (Sub-4–2TA), filed September 29, 1980. Applicant: PAPER CARGO CORPORATION, 2465 Burlingame, SW., Wyoming, MI 49509. Representative: George A. Pendleton, P.O. Box 51, Comstock Park, MI 49321. *Contract* Irregular: *Paper and paper articles* between Chicago, IL and points in MI, IN, OH, and WI, under a contract or continuing contracts with Corrugated Supplies Corporation. Supporting shipper: Corrugated Supplies Corporation, 5101 West 65th St., Chicago, IL 60638.

MC 152016 (Sub-4–1TA), filed September 29, 1980. Applicant: CHICAGO AREA TRANSPORT, INC., 9517 South Morton, Oak Lawn, IL 60453. Representative: Roy Warner, 9517 South Morton, Oak Lawn, IL 60453. *Common;* Regular, *Freight All Kinds; in containers, or trailers, having a prior or subsequent movement by air, rail, or water, excepting classes A&B explosives, household goods as defined by the commission, and commodities defined or classed as bulk;* between the rail ramps, and yards, and docks and piers, and points within the commercial zone of Chicago, IL; as defined; on the one hand, and points within the states of IL, WI, MN, IA, MO, IN, MI, and OH, on the other hand. Supporting shippers: R. B. Graphic Equipment, Inc., 4701 W. 51st Street, Chicago, IL 60632, Nettles & Co., 9801 West Higgins Road, Rosemont, IL 60018. Glenview Enterprises, 603 Hillside, Glenview, IL 60025. P. D. Q., 14822 South Drexel, Dolton, IL 60419. Transportation Rail Service, Inc., 3750 West 47th Street, Chicago, Illinois 60632.

MC 133566 (Sub-4–3TA), filed September 29, 1980. Applicant: GANGLOFF & DOWNHAM TRUCKING CO., INC., P.O. Box 479, Logansport, IN. 46947. Representative: Daniel O. Hands, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. *Plastic articles, equipment and supplies used in the manufacture and distribution of plastic articles*, between points in the U.S. Restricted to the transportation of traffic originating at or destined to the facilities of Mobil Chemical Co., Plastics Division. Supporting shipper: Mobil Chemical Company, Plastics Division, Macedon, NY 14502.

MC 118696 (Sub-4–27TA), filed September 29, 1980. Applicant: FERREE FURNITURE EXPRESS, INC., 252

Wildwood Road, Hammond, IN 46234. Representative: John F. Wickes, Jr., 1301 Merchants Plaza, Indianapolis, IN 46204. *Paper and paper articles and materials, equipment and supplies* used in the manufacture, sale, and distribution thereof, between Grayson County, KY, on the one hand, and, on the other, points in and east of ND, SD, NE, KS, OK, and TX. An underlying ETA seeks 120 days authority. Supporting shipper: Huron Copyset, Inc., 9144 East 400 North, Van Buren, IN 46991.

MC 146728 (Sub-4-4), filed September 30, 1980. Applicant: GOLDEN BROS., INC., 234 East McClure Street, Kewanee, IL 60443. Representative: ABRAHAM A. DIAMOND, 29 South La Salle Street, Chicago, IL 60603. *Iron or Steel Articles* from Hennepin, IL on the one hand, and, on the other, points in the State of MI. Supporting shipper: Jones & Laughlin Steel Corp., P.O. Box 325, Hennepin, IL 61327.

MC 108393 (Sub-4-12TA), filed October 1, 1980. Applicant: SIGNAL DELIVERY SERVICE, INC., 201 East Ogden Avenue, Hinsdale, IL 60521. Representative: Thomas B. Hill (same as applicant). *Contract,* irregular *Such merchandise, equipment and supplies, sold, used or distributed by a manufacturer of cosmetics, toilet preparations and jewelry (except commodities in bulk, in tank vehicles)* A. Between Newark, DE on the one hand, and Cumberland, Hagerstown, Landover, MD., Edison, NJ, Fayetteville, Greensboro, Raleigh, NC, Butler, Erie, Fayette City, Indiana, New Stanton, Pittsburgh, Willow Grove, Williamsport, York, PA, Covington, Lowmoor, Lynchburg, Richmond, Roanoke, VA, Charleston, Rand, WV, on the other. And B. Between Rye, NY on the one hand, and Boston, Mansfield, Springfield, MA, Bangor, Portland, ME, Providence, Warwick, RI on the other. Supporting shipper: Avon Products, Inc., Nine West Fifty Seventh Street, New York, NY 10019.

MC 108393 (Sub-4-11TA), filed September 30, 1980. Applicant: SIGNAL DELIVERY SERVICE, INC., 201 East Ogden Avenue, Hinsdale, IL 60521. Representative: Thomas B. Hill (same as applicant). *Contract,* irregular *Such merchandise, equipment and supplies, sold, used or distributed by a manufacturer of cosmetics, toilet preparations and jewelry (except commodities in bulk, in tank vehicles)* Between Cincinnati, OH and its commercial zone, on the one hand, and, on the other, Morton Grove, IL; Indianapolis, IN; Mishawaka, IN; Louisville, KY; Plainwell, Pontiac, Mount Pleasant, MI; Corinth, MS; and Lynchburg, VA. Supporting shipper: Avon Products, Inc., Nine West Fifth Seventh Street, New York, NY 10019.

MC 105045 (Sub-4-19TA), filed September 26, 1980. Applicant: R. L. JEFFRIES TRUCKING CO., INC., P.O. Box 3277, Evansville, IN 47731. Representative: George H. Veech (same as above). *Air washers, heating, cooling and air filtration, humidifying and water cooling units* between Pineville, NC and Lansing, MI, Laredo, TX, Bay Pines, FL, Norfolk, VA, Charleston, SC, Jacksonville, IL, Chicago, IL, Houston, TX, Detroit, MI. An underlying ETA seeks 120 days authority. Supporting shipper: Aeronca Inc.,/Buensod Agitair Div., Pineville, NC.

MC 114194 (Sub-4-8TA), filed September 26, 1980. Applicant: KREIDER TRUCK SERVICE, INC., 8003 Collinsville Rd., East St. Louis, IL 62201. Representative: Joseph R. Behnken, 8003 Collinsville Rd., East St. Louis, IL 62201. *Dry bulk sugar* from Reserve, La. to Centralia, IL. An underlying ETA seeks 120 days authority. Supporting shipper: International Distributing Corporation, 4240 Utah, St. Louis, MO 63116.

MC 105159 (Sub-4-3TA), filed October 1, 1980. Applicant: KNUDSEN TRUCKING, INC., 1320 West Main St., Red Wing, MN 55066. Representative: Stephen F. Grinnell, 1000 First National Bank Bldg., Minneapolis, MN 55402. *Floor tile and equipment, materials and supplies* used in the installation thereof, from Houston, TX to points in IA, MN, ND, SD, and WI. Underlying ETA seeks 120 days authority. Supporting shipper: White's, Inc., 4700 Quebec Ave. No., New Hope, MN 55428.

MC 146985 (Sub-4-3TA), filed October 1, 1980. Applicant: MIDWEST EASTERN TRANSPORT, INC., 731 S Main St., Elkhart, IN 46515. Representative: Phillip A. Renz, Suite 200—Metro Bldg., Ft. Wayne, IN 46802. *Contract, Irregular General commodities, except classes A & B explosives, commodities in bulk, household goods, as defined by the Commission, and commodities because of size or weight require the use of special equipment, over irregular routes, in straight or mixed truckloads* (1) between Woodstock, IL on the one hand, and, on the other hand, Los Angeles, CA; Oxnard, CA; Atlanta, GA; Indianapolis, IN, Northvale, NJ; Pryor, OK; Huntingdon, PA; Aiken, SC; Anderson, SC; Jackson, TN; Nashville, TN; Amarillo, TX; Houston, TX; and (2) Between Dayton, OH on the one hand, and, on the other hand; Los Angeles, CA; Oxnard, CA; Atlanta, GA; Indianapolis, IN; Northvale, NJ; Pryor, OK; Huntingdon, PA; Aiken, SC; Anderson, SC; Jackson, TN; Nashville, TN; Amarillo, TX & Houston, TX; and (3) between Orlando, FL on the one hand, and, on the other hand, Los Angeles, CA; Oxnard, CA; Atlanta, GA; Northvale, NJ; Pryor, OK; Houston, TX; and (4) between Goshen, IN on the one hand, and on the other hand, Los Angeles, CA; Oxnard, CA; Atlanta, GA; Northvale, NJ; Pryor, OK; Huntingdon, PA; Aiken, SC; Anderson, SC; Jackson, TN; Nashville, TX; & Houston, TX under a continuing contract with Great Lakes. Supporting shipper: Great Lakes Terminal & Transport, 1750 N. Kingsbury, Chicago, IL 60614.

MC 152030 (Sub-4-1TA), filed September 30, 1980. Applicant: WASPI TRUCKING, INC., 9500 Pyott Road, Algonquin, IL 60102. Representative: Stephen H. Loeb, 33 N. LaSalle Street Suite 2027, Chicago, IL 60602. *Contract irregular: Auxiliary printing equipment,* from the facilities of Cary Metal Products, Inc., at Barrington, IL to points in the U.S. (except AK and HI), under contract with Cary Metal Products, Inc. of Barrington, IL. Supporting shipper: Cary Metal Products, Inc., 327 Pepper Road, Barrington, IL 60010.

MC 105045 (Sub-4-18TA), filed September 30, 1980. Applicant: R. L. JEFFRIES TRUCKING CO., INC., P.O. Box 3277, Evansville, IN 47731. Representative: George H. Veech, (same as above). *Cranes booms, parts, accessories and supplies,* between Hamilton County, TN and Charleston, SC, New Orleans, LA, Houston, TX, Dallas, TX, Kansas City, MO, Oklahoma City, OK, Tulsa, OK, Jacksonville, FL, Savannah, GA, Norfolk, VA, Baltimore, MD, Wilmington, NC and Charlotte, SC. Supporting shipper: Koehring Div., (Korain), Chattanooga, TN 37401.

MC 128860 (Sub-4-8TA), filed September 29, 1980. Applicant: LARRY'S EXPRESS, INC., 720 Lake Street, Tomah, WI 54660. Representative: James A. Spiegel, Olde Towne Office Park, 6425 Odana Road, Madison, WI 53719. *Contract;* Irregular; *Malt beverages and related advertising materials, premiums, and malt beverage dispensing equipment,* from New York, NY, and Newark, NJ, to points in the Chicago, IL Commercial Zone. Under a continuing contract(s) with Van Munching & Co., Inc., NY. An underlying ETA seeks 120 days authority. Supporting shipper: Van Munching & Co., Inc., 51 West 51st Street, New York, NY 10019.

MC 149170 (Sub-4-17TA), filed September 29, 1980. Applicant: ACTION CARRIER, INC., 1000 East 41st Street, Sioux Falls, SD 57105. Representative: Carl L. Steiner, 39 South LaSalle Street, Chicago, IL 60603. *Alcoholic beverages, cordials and mixes* (Except

Commodities in Bulk) between points in AR, CA, CT, IL, IN, KY, LA, MD, MA, MI, MS, MO, NJ, OH, TN and WI. Supporting shipper: Johnson Brothers Wholesale Liquors Co., Inc., 2341 University Avenue, St. Paul, MN 55114.

MC 133870 (Sub-4-1TA), filed September 29, 1980. Applicant: JOHN P. WEYER, INC., Route 1, Box 86B, Brownsville, WI 53006. Representative: Richard C. Alexander, 710 N. Plankinton Ave., Milwaukee, WI 53203. *Contract,* irregular, *Paper Bags,* from points in the Commercial Zones of Toledo and New Philadelphia, OH, to the facilities of Western Lime & Cement Company in Brown, Dodge, and Fond du Lac Counties, WI. An underlying ETA seeks 120 days authority. Supporting Shipper: Western Lime & Cement Company, 125 East Wells Street, Milwaukee, WI, 53202.

MC 111812 (Sub-4-14TA), filed September 29, 1980. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57117. Representative: Lamoyne Brandsma (same address as applicant). *Such commodities as are dealt in by retail stores,* between Albert Lea, Eagandale and Hopkins, MN and Fargo, ND, on the one hand, and, on the other, points in SD; restricted to the transportation of traffic moving between facilities utilized by Red Owl Stores, Inc. Supporting Shipper: Red Owl Stores, Inc., 215 East Excelsior Avenue, Hopkins, MN 55343.

MC 121520 (Sub-4-1TA), filed September 29, 1980. Applicant: ALMOND FREIGHT LINES, INC., 2243 North Central Avenue, Rockford, IL 61103. Representative: Michael S. Varda, 121 South Pinckney Street, Madison, WI 53703. *General commodities* (except commodities in bulk, Classes A and B explosives, household goods as defined by the Commission, articles of unusual value, and commodities which because of size or weight require special handling) between Chicago, IL Commercial Zone, on the one hand, and, on the other, points in Green, Rock and Walworth Counties, WI. Applicant seeks an underlying ETA for 120 days. Applicant intends to interline at Rockford and Chicago, IL. There are 6 supporting shippers.

MC 136182 (Sub-4-2TA), filed September 29, 1980. Applicant: B. C. MOTOR FREIGHT, INC., P.O. Box 166, Peru, IN 46970. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. *Chemicals,* in bulk, in tank vehicles, between Vigo County, IN on the one hand, and on the other, points in IL, OH, KY, and MI. Supporting Shipper: Ulrich Chemical, Inc., Indianapolis, IN 46221.

MC 118202 (Sub-4-10TA), filed September 29, 1980. Applicant: SCHULTZ TRANSIT, INC., P.O. Box 406, 323 Bridge St., Winona, MN 55987. Representative: Robert S. Lee, 1000 First National Bank Bldg., Minneapolis, MN 55402. *(1) Foodstuffs* and (2) *materials, equipment* and *supplies used in the production of gelatin products,* between Scott County, IA, on the one hand, and, on the other, points in AL, AR, CT, DE, DC, FL, GA, IL, KS, ME, MD, MA, MI, MS, MO, NY, NH, NJ, NC, OH, OK, PA, RI, SC, TN, VT, VA, TX and WV. An underlying ETA seeks 120 days authority. Supporting Shipper: Geo. A. Hormel & Company, P.O. Box 800, Austin, MN 55912.

MC 152022 (Sub-4-1TA), filed September 29, 1980. Applicant: JAMES H. POPPINGA, Chancellor, SD 57015. Representative: Claude Stewart, P.O. Box 480, Sioux Falls, SD 57101. *Fertilizer in bulk or bags From:* Points in IA, MN and NE. *To:* Points in SD. Supporting shipper: Farmers Union Central Exchange, Inc., P.O. Box 48, Parker, SD 57053.

MC 129387 (Sub-4-5TA), filed September 29, 1980. Applicant: PAYNE TRANSPORTATION, INC., P.O. Box 1271, Huron, S.D. 57350. Representative: Charles E. Dye, P.O. Box 971, West Bend, WI. 53095. *Frozen Food* from WA, OR, ID, and UT To points in IA, IL, and NE. Supporting shippers: Hardee's Food System Inc., 1811 19th St., S.W., Mason City, IA 50401. D.J.K. Brokerage Inc. d.b.a. Benolken Brokerage, P.O. Box 1006, Clive, IA 50053.

MC 143501 (Sub-4-2TA), filed September 29, 1980. Applicant: R.G.C. CARGO CARRIERS, INC., 16651 S. Vincennes Rd., S. Holland, IL 60473. Representative: Dean N. Wolfe, Suite 145, 4 Professional Drive, Gaithersburg, MD 20760. *Contract,* irregular: *paint, point products, and materials and supplies related thereto,* from Chicago, IL, and its commercial zone to Camp Hill, PA, Carson, CA, Charlotte, NC, Denver, CO, Houston, TX, Jamaica, NY, Minneapolis, MN, Oklahoma City, OK, Omaha, NE, St. Louis, MO, San Carlos, CA, Seattle, WA, South Plainfield, NJ, and West Haven, CT. Order a contract or contracts with The Enterprise Companies, Wheeling, IL. An under lying ETA seeks 120 days authority. Supporting shipper: The Enterprise Companies, 1191 S. Wheeling Rd., Wheeling, IL 60090.

MC 151507 (Sub-4-2TA), filed September 29, 1980. Applicant: J. LAKES TRUCKING, INC., 2957 S. E. St., Indianapolis, IN 46206. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215. *(1) Paper and paper products and (2) materials, equipment and supplies used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk)* between the facilities of Miami Paper Corporation at West Carrollton, OH, on the one hand, and, on the other, pts. in and east of MN, IA, MO, AR and LA. Supporting shipper: Miami Paper Corporation, P.O. Box 66, W. Carrollton, OH 45449.

MC 152019 (Sub-4-1TA), filed September 29, 1980. Applicant: C.A.T. TRUCKING, INC., State Hwys. 3 and 46 W., P.O. Box 487, Greensburg, IN 47240. Representative: Robert W. Loser II, 1101 Chamber of Commerce Bldg., 320 N. Meridian St., Indianapolis, IN 46204. *Contract* irregular: *Paper and paper products, plastic film and plastic bags,* between the facilities of Crown Zellerbach Corporation at Greensburg, IN and Florence, KY on the one hand, and on the other, points in the U.S. Under a continuing contracts with Crown Zellerbach Corporation, South Glens Falls, NY. Supporting shipper: Crown Zellerbach Corporation, One River St., So. Glens Falls, NY 12801.

MC 146643 (Sub-4-29TA), filed September 29, 1980. Applicant: INTER-FREIGHT TRANSPORTATION, INC., 655 East 114th St., Chicago, IL 60628. Representative: Donald B. Levine, 39 S. LaSalle St., Chicago, IL 60603. *Contract; irregular: Such commodities as are dealt in by wholesale and retail chain grocery, drug and department stores,* from Cheswick, PA, to points in the U.S. in and east of ND, DC, NE, KS, OK and TX. Supporting shipper: Action Industries, Inc., Allegheny Industrial Park, Cheswick, PA 15024.

MC 147279 (Sub-4-2TA), filed September 29, 1980. Applicant: LEROY O. SALO d.b.a. SALO TRUCKING, Route 1, Box 49, Gilbert, MN 55741. Representative: Stanley C. Olsen, Jr., 7400 Metro Boulevard, Suite 411, Edina, MN 55435. *(a) Castings and commodities utilized in the mining industry; and (b) materials, equipment and supplies used in the manufacture and distribution of the commodities named in (1) above,* between St. Louis County, MN, on the one hand, and, on the other, points in the U.S. Supporting shipper: Staver Foundry, Box 950, Virginia, MN 55792.

MC 147279 (Sub-4-1TA), filed September 29, 1980. Applicant: LEROY O. SALO d.b.a. SALO TRUCKING, Route 1, Box 49, Gilbert, MN 55741. Representative: Stanley C. Olsen, Jr., 7400 Metro Boulevard, Suite 411, Edina, MN 55435. *(a) Malt beverages, and (b) empty beverage containers and materials, equipment and supplies used in and dealt with by breweries,* between

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St. Louis County, MN, on the one hand, and, on the other, points in WI and IL. Supporting shipper: Mahnich Distributing Co., Inc., 212 Jones Street, Eveleth, MN 55734.

MC 152023 (Sub-4–1TA), filed September 29, 1980. Applicant: JERRY L. ROBINETTE d.b.a. JERRY L. ROBINETTE & SON TRUCKING, R.R. 1, Box 200–A, Whiteland, IN 46184. Representative: Robert W. Loser II, 1101 Chamber of Commerce Bldg., 320 N. Meridian St., Indianapolis, IN 46204. *Contract Irregular: Metal cans and metal ends,* between the facilities of The Coca-Cola Company Foods Division at Valparaiso, IN on the one hand, and, on the other, Paw Paw, MI; Random Lake, WI; Pella, IA; Ortonville, MN; Haskell, OK; Geneva, OH; and Franklin Park, IL. Supporting shipper: The Coca-Cola Company Foods Division, 2351 Industrial Drive, Valparaiso, IN 46383.

MC 145394 (Sub-4–9TA), filed September 29, 1980. Applicant: A & B FREIGHT LINE, INC., 4805 Sandy Hollow Rd., Rockford, IL 61109. Representative: James A. Spiegel, Esq., 6425 Odana Rd., Madison, WI 53719. *Contract;* Irregular; *(a) agricultural fertilizers and soil conditioners,* in bulk and in bags; and *(b) farm equipment, machinery and supplies,* between Holcomb, IL, and points in IL, IN, IA, and WI. Under a continuing contract with Timm's Grain & Farm Supplies, Inc. An underlying ETA seeks 120 days authority. Supporting shipper: Timm's Grain & Farm Supplies, Inc., Holcomb, IL 61043.

MC 52473 (Sub-4–3TA), filed September 29, 1980. Applicant: BEHNKE, INC., 77 South Monroe Street, Battle Creek, MI 49017. Representative: Karl L. Gotting, 1200 Bank of Lansing Building, Lansing, MI 48933. *Contract;* irregular; *plastic articles and iron and steel articles* from Battle Creek, MI to various points in WI under continuing contract(s) with United Steel & Wire Company of Battle Creek, MI. An underlying ETA seeks 120-day authority. Supporting shipper: United Steel & Wire Company, Division of Roblin Industries, 27 Fonda Street, Battle Creek, MI 49016.

MC 146643 (Sub-4–30TA), filed September 29, 1980. Applicant: INTER-FREIGHT TRANSPORTATION, INC., 655 East 114th St., Chicago, IL 60628. Representative: Donald B. Levine, 39 S. LaSalle St., Chicago, IL 60603. *Contract; irregular: Paper, paper products, plastic articles, and materials and supplies used in the manufacture and distribution of paper, paper products and plastic articles,* between Franklin and Coshocton, OH, on the one hand, and, on the other, points in IA, IL, IN, KS, KY, MI, MN, MO, PA and WI. Supporting shipper: Stone Container Corporation, 360 N. Michigan Ave., Chicago, IL 60601.

MC 136545 (Sub-4–3TA), filed September 29, 1980. Applicant: NUSSBERGER BROS. TRUCKING CO., INC., 929 Railroad St., Prentice, WI 54556. Representative: Richard A. Westley, 4506 Regent Street, Suite 100, Madison, WI 53705. *Portable heaters* from the facilities of Fiesta Corporation at or near Colby, WI to New Cumberland Army Depot at or near New Cumberland, PA and Red River Army Depot at or near Texarkana, TX. Applicant has filed a corresponding ETA seeking 120 days authority. Supporting shipper: Fiesta Corporation, County Truck N, Colby Industrial Park, Colby, WI 54421.

MC 133189 (Sub-4–5TA), filed September 29, 1980. Applicant: VANT TRANSFER, INC., 1257 Osborne Rd., Minneapolis, MN 55432. Representative: John B. Van de North, Jr., 2200 First National Bank Bldg., St. Paul, MN 55101. (1) *Fireplace accessories,* from points in the Minneapolis/St. Paul, MN commercial zone to points in the U.S. and (2) *materials, equipment and supplies used in the manufacture and distribution of fireplace accessories* in reverse direction. An underlying ETA seeks 120 days authority. Supporting shipper: Concrete Design Specialties, Inc., 1525 No. Concord, So. St. Paul, MN 55075.

MC 133566 (Sub-4–8TA), filed October 2, 1980. Applicant: GANGLOFF & DOWNHAM TRUCKING CO., INC., P.O. Box 479, Logansport, IN 46947. Representative: Daniel O. Hands, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. *(1) Foodstuffs (except commodities in bulk)* from the facilities of Duffy Mott Company, Inc. at Hamlin and Williamson, NY to OH, *(2) equipment, materials and supplies used in the production and distribution of foodstuffs (except commodities in bulk),* from CO, IL, IN, IA, KY, MI, MN, NE, OH, and WI to the facilities of Duffy Mott Company, Inc. at Hamlin and Williamson, NY. Supporting shipper: Duffy Mott Company, Inc., 370 Lexington Avenue, New York, NY.

MC 110988 (Sub-4–51), filed October 2, 1980. Applicant: SCHNEIDER TANK LINES, INC., 4321 W. College Avenue, Appleton, WI 54911. Representative: Patrick M. Byrne, P.O. Box 2298, Green Bay, WI 54306. *Materials and supplies used in the manufacture and distribution of, (1) paper and paper products; and (2) commodities produced or distributed by manufacturers and converters of paper and paper products,* from points in the U.S. in and east of ND, SD, NE, KS, OK, and TX to points in WI, MN, and the Upper Peninsula of MI. Supporting shipper(s): Niagara of Wisconsin Paper Corporation, 1101 Mill Street, Niagara, WI 54151; Midtec Paper Corp., Kimberly, WI; Potlatch Corp., St. Cloud, MN.

MC 125358 (Sub-4–1TA), filed October 2, 1980. Applicant: MID–WEST TRUCK LINES, LTD., 1216 Fife Street, Winnipeg, Manitoba, Canada. Representative: James E. Ballenthin, 630 Osborn Building, St. Paul, MN 55102. *Contract Irregular: Parts, equipment and materials* used in the manufacture, assembly and repair of automotive buses, from points in IL, IA, IN, KY, MD, MI, MO, NY, PA and WI to Hallock, MN. An underlying ETA seeks 120 days authority. Supporting shipper: Motor Coach Industries, Inc., Pembina, ND.

MC 133566 (Sub-4–6TA), filed October 2, 1980. Applicant: GANGLOFF & DOWNHAM TRUCKING CO., INC., P.O. Box 479, Logansport, IN 46947. Representative: Daniel O. Hands, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. *Malt beverages (except in bulk),* from the facilities of Stroh Brewery Company at Detroit, MI and Perrysburg, OH and points in their commercial zones to AR, DE, DC, FL, GA, IL, IN, IA, KY, MI, MO, NJ, NY, NC, OH, PA, SC, TN, VA, WV and WI. Supporting shipper: Stroh Brewery Company, 1 Stroh Drive, Detroit, MI 48226.

MC 133566 (Sub-4–7TA), filed October 2, 1980. Applicant: GANGLOFF & DOWNHAM TRUCKING CO., INC., P.O. Box 479, Logansport, IN 46847. Representative: Daniel O. Hands, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. *Tallow, lard, shortening, vegetable oil, cooking or salad oil, margarine and materials and supplies used in the manufacture thereof,* between points in the U.S. (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Bunge Edible Oil Corporation. Supporting shipper: Bunge Edible Corporation, Route 50 North, Bradley, Box 192, Kankakee, IL 60901.

MC 151556 (Sub-4–2TA), filed October 2, 1980. Applicant: ALLSTATE TRANSPORTATION COMPANY, 10700 Lyndale Avenue South, P.O. Box 877, Minneapolis, MN 55440. Representative: George L. Hirschbach, P.O. Box 417, Sioux City, IA 51102. *Cabinets and merchandise used in the manufacture of cabinets,* between points in IA, MN, IL, MI, KS, MO, NE, ND, SD, WI and IN. Supporting shipper: Riviera Kitchens, P.O. Box 238, Red Wing, MN 55066.

MC 133566 (Sub-4–4TA), filed October 2, 1980. Applicant: GANGLOFF & DOWNHAM TRUCKING CO., INC., P.O. Box 479, Logansport, IN 46947, Representative: Daniel O. Hands, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. *Printed matter, printing equipment and materials and supplies used in the manufacture, distribution and sale of printed matter (except commodities in bulk),* between the facilities of Rand McNally & Company at San Francisco, CA, Hammond and Indianapolis, IN, Muscatine, IA, Lexington and Versailles, KY, Taunton, MA, Ossining, NY, Nashville, TN and points in IL, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Rand McNally & Company, 8255 N. Central Park Avenue, Skokie, IL 60076.

MC 133566 (Sub-4–5TA), filed October 2, 1980. Applicant: GANGLOFF & DOWNHAM TRUCKING CO., INC., P.O. Box 479, Logansport, IN 46947. Representative: Daniel O. Hands, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. *Meat,* from IA, IN, KS, MI, MN, MO, NE, and OH to the facilities at Lykes Bros., Inc. at Albany, GA and points in its commercial zone. Supporting shipper: Lykes Bros., Inc., P.O. Box 1867, Albany, GA 31702.

MC 152066 (Sub-4–1TA), filed October 2, 1980. Applicant: BOB AIKINS LINES, INC., P.O. Box 264, U.S. 50, Lawrenceburg, IN 47025. Representative: Paul J. Snodgrass (address same as applicant). *General Commodities,* except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment between IN, OH, KY. Supporting shipper(s): There are five supporting shippers.

MC 135410 (Sub-4–13TA), filed October 13, 1980. Applicant: COURTNEY J . MUNSON d.b.a., MUNSON TRUCKING, North 6th St. Rd., Monmouth, IL 61462. Representative: Daniel O. Hands, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. *Chemicals* (except in bulk), from MA, NY, PA and WV, to the facilities of Bonewitz Chemical Services, Inc. at Burlington, IA. Supporting shipper: Bonewitz Chemical Services, Inc., 1731 N. Roosevelt Avenue, Burlington, IA 52601.

MC 140553 (Sub-4–3TA), filed October 3, 1980. Applicant: ROGERS TRUCK LINE, INC., 801 Erie St., Logansport, IN 46947. Representative: Edward A. O'Donnell, 1004 29th St., Sioux City, IA 51104. *Malt Beverages,* from Milwaukee, WI and St. Paul, MN, to points in IA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: H. T. Kennedy Co., 11 North 20th St., Ft. Dodge, IA.

MC 123272 (Sub-4–6TA), filed October 1, 1980. Applicant: FAST FREIGHT, INC., 9651 S. Ewing Ave., Chicago, IL 60617. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602. *Clay and clay products, and materials, equipment and supplies used in the manufacture and distribution of clay and clay products* (except commodities in bulk), between Lowell, FL, on the one hand, and, on the other, points in IL, IN, MI, MD, OH, TX and WI. An underlying ETA seeks 120 days authority. Supporting shipper: Mid-Florida Mining Company, P.O. Box 68, Lowell, FL 32663.

MC 114632 (Sub-4–16TA), filed October 2, 1980. Applicant: APPLE LINES, INC., P.O. Box 287, Madison, SD 57042. Representative: David E. Peterson, (same address as applicant). *Printed matter and such commodities as are used by manufactureres of printed matter,* between Riverside, NJ and Topeka, KS on the one hand, and, on the other, points in the U.S. (except AK and HI). Restricted to the transportation of traffic originating at or destined to the facilities of Macmillan Publishing Co., Inc. Supporting shipper: Macmillan Publishing Co., Inc., Front and Brown St., Riverside, NJ 08370.

MC 139482 (Sub-4–17TA), filed September 29, 1980. Applicant: NEW ULM FREIGHT LINES, INC., P.O. Box 877, New Ulm, MN 56073. Representative: Barry M. Bloedel, P.O. Box 877, New Ulm, MN 56073. *Automotive fluids and cleaning compounds (except commodities in bulk),* between points in the States of AR, IL, IN, IA, KS, KY, MI, MN, MS, MO, NE, NY, OH, OK, PA, TN, TX, and WI. An underlying ETA application seeks 120 days authority. Supporting shipper: Gold Eagle Co., 1872 N. Clybourn Ave., Chicago, IL 60614.

MC 149170 (Sub-4–19TA), filed October 2, 1980. Applicant: ACTION CARRIER, INC., 1000 East 41st St., Sioux Falls, SD 57105. Representative: Carl L. Steiner, 39 South LaSalle St., Chicago, IL 60603. *Recreational and sporting equipment and catalogs* from points in AR, MO, CA, IL, IN, TN, and WI, to Sioux Falls, SD. Restricted to traffic destined to The Austad Company. Supporting shipper: The Austad Company, 4500 E. 10th St., Sioux Falls, SD 57101.

MC 1249170 (Sub-4–18TA), filed October 2, 1980. Applicant: ACTION CARRIER, INC., 1000 East 41st St., Sioux Falls, SD 57105. Representative: Carl L. Steiner, 39 South LaSalle St., Chicago, IL 60603. *Agricultural, lawn and garden materials, farm equipment and related items (Except commodities in bulk)* from points in GA, KS, PA, KY, and TX to Sioux Falls, SD; Omaha, NE; Fargo, ND; Minneapolis and St. Paul, MN; Des Moines, IA; Billings, MT; and Madison, WI. Restricted to traffic destined to the facilities of Dakon, Inc. and its subsidiaries. Supporting shipper: Dakon, Inc., 1100 West Delaware, P.O. Box 909, Sioux Falls, SD 57101.

MC 146420 (Sub-4–1TA), filed October 2, 1980. Applicant: FRATE SERVICE, INC., Rural Route One, East Peoria, IL 61611. Representative: Samuel G. Harrod, Eureka Professional Bldg., Eureka, IL 61530. *Iron and steel group,* from points in Putnum County, IL to and from points in MO and MI. Supporting shipper: Jones & Laughlin Steel Corporation, P.O. Box 325, Hennepin, IL 61327.

MC 139555 (Sub-4–3TA), filed October 3, 1980. Applicant: MODULAR TRANSPORTATION CO., P.O. Box 1822, Grand Rapids, MI 49501. Representative: William D. Parsley, Loomis, Ewart, Ederer, Parsley, Davis & Gotting, 1200 Bank of Lansing Building, Lansing MI 48933. *Gypsum, gypsum products, plasterboard joint systems and building materials, and materials, equipment and supplies used in the manufacture, distribution and installation of gypsum, gypsum products, plasterboard joint systems and building materials EXCEPT commodities in bulk in tank vehicles* (1) points between Ottawa County, OH and points in OH, IN, IL, MI, KY, WI, WV and PA and (2) points between Webster County, IA and points in IL, IN, OH, MI, WI, KY, MN, MO, and IA. An underlying ETA seeks 120 days authority. Supporting shipper is Grand Rapids Gypsum Co., 1700 Butterworth, S.W., Grand Rapids, MI 49504.

MC 135944 (Sub-4–2TA), filed October 3, 1980. Applicant: RODGERS EXPRESS, INC., 1310 S. West Street, Indianapolis, IN. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. *General commodities* except classes A and B explosives, and household goods as defined by the Commission, between Hayes, KS and Columbus, OH via Interstate Highway 70, serving the off route points of Dayton and Marysville, OH. Supporting shippers: There are 15 certificates of support attached. Applicant intends to tack the proposed authority with its existing authority at Indianapolis, IN and intends to interline with other carriers at both terminal points and intermediate points on the proposed route.

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MC 147007 (Sub-4–5TA), filed October 3, 1980. Applicant: EVERFRESH TRANSPORTATION COMPANY, 6431 East Palmer, Detroit, MI 48211. Representative: John S. Barbour, 2711 East Jefferson, Suite 202, Detroit, MI 48207. *Contract, irregular, motor vehicle parts, components, machinery, equipment or parts, materials, supplies, advertising materials and equipment, materials and supplies utilized in the manufacture thereof:* Between shipper's facilities at Newark and Newcastle, DE, on the one hand, and, on the other, shipper's facilities at Warren, Center Line and Marysville, MI, under continuing contract(s) with Chrysler Corporation, Service and Parts Division, 26311 Lawrence Ave., Center Line, MI 48105. Supporting shipper: Chrysler Corp. Service and Parts Div., 26311 Lawrence Ave., Center Line, MI 48105.

MC 119577 (Sub-4–1TA), filed October 2, 1980. Applicant: OTTAWA CARTAGE, INC., P.O. Box 458, Ottawa, IL 61350. Representative: Albert A. Andrin, 180 North La Salle St., Chicago, IL 60601. *Coal,* from Lynnville, IN to Wedron, IL. Supporting shipper: Renco Fuel, 477 East Butterfield, Lombard, IL 60148.

MC 136635 (Sub-4–9TA), filed October 3, 1980. Applicant: UNIVERSAL CARTAGE, INC., 640 W. Ireland Road, South Bend, IN 46680. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. *Petroleum and petroleum waste products* between Marion County, IN on the one hand, and, on the other, points in PA, OH, MI, IL, KY, WV, NY, MS, AL, MO, CT, and WI. Supporting shipper: Metalworking Lubricants Company, 1509 South Senate Street, Indianapolis, IN 46225.

MC 136635 (Sub-4–8TA), filed October 3, 1980. Applicant: UNIVERSAL CARTAGE, INC., 640 W. Ireland Road, South Bend, IN 46680. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. *General commodities* between Chevrolet Motor Division, General Motors Corporation at Indianapolis, IN on the one hand, and, on the other, Flint, Detroit and Pontiac, MI, St. Louis, MO, Baltimore, MD, and Janesville, WI. Supporting shipper: Chevrolet Division—General Motors Corporation, Indianapolis, IN.

MC 151934 (Sub-4–2TA), filed October 2, 1980. Applicant: KING'S EXPRESS, INC., Rural Route 2, St. Joseph, MN 56374. Representative: Stanley C. Olsen, Jr., Gustafson & Adams, P.A., 7400 Metro Boulevard, Suite 411, Edina, MN 55435. *Meat, meat products, meat byproducts and articles distributed by meat packinghouses* (except hides and commodities in bulk), as defined in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates 61 M.C.C. 209 and 766, between Todd County, MN, on the one hand, and, on the other, Erie, PA; North Baltimore, OH, and points in IL and WI. Supporting shipper: Long Prairie Pack, P.O. Box 128, Long Prairie, MN 56347.

MC 145664 (Sub-4–9TA), filed October 1, 1980. Applicant: STALBERGER, INC., 223 South 50th Ave. W., Duluth, MN 55807. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956. *Wood and wood/oil combination furnaces and equipment, supplies and materials used in the manufacture, sale and distribution of named commodities,* between facilities of Combo Furnaces at Grand Rapids, MN and points in the United States. An underlying ETA seeks 120 days authority. Supporting shipper: Combo Furnaces Company, 1707 West 4th, Grand Rapids, MN 55744.

MC 145764 (Sub-4–1TA), filed October 1, 1980. Applicant: C & E TRANSPORT, INC., 1600 Morton, Elkhart, IN 46514. Representative: Robert A. Kriscunas, Scopelitis & Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. *Salt,* from the facilities of Domtar Industries, Inc., Sifto Salt Division, at Chicago, IL, St. Joseph, MI, Toledo, OH, St. Joseph County, IN and Burns Harbor, IN to points in the States of IN and MI. An underlying ETA seeks 120 days of authority. Supporting shipper: Domtar Industries, Inc., 9950 West Lawrence Avenue, Schiller Park, IL 60176.

MC 152064 (Sub-4–1TA), filed October 2, 1980. Applicant: PLAIN-O-TRUCKING, 537½ West Walnut, Albany, IN 47320. Representative: David O. Foreman, 104 Fred Court, Muncie, IN 47302. *Carpet and floor covering* between GA, TN, IL, IN, MA, MI, MN, OH, PA, TX and WI.

MC 70557 (Sub-4–5TA), filed October 1, 1980. Applicant: NIELSEN BROS. CARTAGE CO., INC., 4619 West Homer St., Chicago, IL 60639. Representative: Carl L. Steiner, 39 South LaSalle St., Chicago, IL 60603. *Carbonated beverages, drinks, containers, and materials, equipment and supplies used in the manufacture, sale and distribution of carbonated beverages, drinks and containers.* Between points in AL, FL, GA, LA, MS, OK, SC, TN and TX. Supporting shipper: Hygeia Coca-Cola Bottling Company, P.O. Drawer 12630, Pensacola, FL 32574.

The following applications were filed in region 5. Send protests to: Consumer Assistance Center, Interstate Commerce Commission, P.O. Box 17150, Fort Worth, TX 76102.

MC 5888 (Sub-5–3TA), filed September 29, 1980. Applicant: MID-AMERICAN LINES, INC., 127 West Tenth Street, Kansas City, MO 64105. Representative: Tom Zaun, 127 West Tenth Street, Kansas City, MO 64105. *Chains or Belting other than Machine Finished Steel and Agricultural Iron Implement Parts other than Hand, NOI, Iron* from Dolton, IL to points located in the states of KS and MO. Supporting shipper: Rexnord, 13943 Park, Dolton, IL 60419.

MC 29910 (Sub-5–52TA), filed September 29, 1980. Applicant: ABF FREIGHT SYSTEM, INC., 301 South Eleventh Street, Fort Smith, AR 72901. Representative: Joseph K. Reber, P.O. Box 48, Fort Smith, AR 72902. *General Commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment),* between Jacksonville, TX and Dennison, TX, on the one hand, and, on the other, Colorado Springs, CO. Supporting shipper: Digital Equipment Corporation, 450 Whitney Street, Northboro, MA 01532.

MC 54589 (Sub-5–1TA) filed September 29, 1980. Applicant: VIKING LINE, INC., 4231 Hearnes Blvd., Joplin, MO 64801. Representative: Charles J. Fain, Fain & Fain, Attorneys, 333 Madison Street, Jefferson City, MO 65101. *Common:* regular *Persons and their personal baggage; special and charter service operations included, also express, newspapers and baggage in the same vehicle;* leave Jay, OK, north on U.S. Hwy 59 (Oklahoma 10) to Grove, OK; to Afton, OK; then over U.S. 60 West to Vinita, OK; from Vinita, OK take OK Hwy 2 to Welch, OK; then over U.S. 59 to Miami, OK; then over U.S. 66 to Quapaw, OK; then to Baxter Springs, KS; then to Galena, KS; then to Joplin, MO; then return over same route to Jay, OK. Applicant intends to interline. Supporting witnesses: Town of Welch, OK, Box 475, Welch, OK 74369; City of Grove, OK; Standard Auto Parts, Grove, OK; Cozy Motel, Grove, OK; Earl's Bicycle Shop, Grove, OK; Rockwell's Country Store, Hwy 10, Grove, OK.

MC 59367 (Sub-5–4TA) filed, September 29, 1980. Applicant: DECKER TRUCK LINE, INC., P.O. Box 915, Ft. Dodge, IA 50501. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. *Commodities dealt in by manufacturers of household appliances,* between points in IL, IN, MI, MN, MO, OH, and WI, on the one hand, and, on the other, Ft. Dodge, Jefferson and Webster City, IA. Supporting shipper: Webster City Products Company, 600 Stockdale Street, Webster City, IA 50595.

MC 92983 (Sub-5–6TA) filed September 29, 1980. Applicant: AMERICAN BULK TRANSPORT CO., 18 Central Avenue, P.O. Box 2367, Kansas City, KS 66110. Representative: William J. O'Neill, Traffic Manager, P.O. Box 1408, Kansas City, MO 64141. *Chemicals,* from Orange County, CA to all points in KS. Supporting shipper: Delst Chemical & Research, Inc., 540 East Jamie Avenue, La Habra, CA 90631.

MC 107496 (Sub-5–32TA) filed, September 29, 1980. Applicant: RUAN TRANSPORT CORPORATION, 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check, 666 Grand Avenue, Des Moines, IA 50309. *Vegetable oil and chemicals, in bulk, in tank vehicles,* from Chalmette, LA, DeRidder, LA and Oklahoma City, OK to Valley Park, MO. Supporting shipper: Spencer Kellogg-Textron, P.O. Box 807, Buffalo, New York 14240.

MC 107496 (Sub-5–33TA) filed, September 29, 1980. Applicant: RUAN TRANSPORT CORPORATION, 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check, 666 Grand Avenue, Des Moines, IA 50309. *Sand, cement, flyash, Pozzalan, acids, bentonite, clay, lime salts,* between WY, MT, ND, CO, UT. Supporting shipper: Halliburton Services, Ste. 314 Petroleum Bldg., 111 W. 2nd, Casper, WY 82601.

MC 111401 (Sub-5–18TA), filed September 29, 1980. Applicant: GROENDYKE TRANSPORT, INC., P.O. Box 632, 2510 Rock Island Blvd., Enid, OK 73701. Representative: Victor R. Comstock, Vice President, Traffic (same as applicant). *Flour, in bulk, in tank vehicles,* from Enid, OK to Fort Payne, AL. Supporting shipper: The Pillsbury Company, 515 E. Spruce, Enid, OK 73701.

MC 114045 (Sub-5–7TA), filed September 29, 1980. Applicant: TRANS-COLD EXPRESS, INC., P.O. Box 61228, D/FW Airport, TX 75261. Representative: Arnold L. Burke, 180 North LaSalle Street, Chicago, IL 60601. *General Commodities (except household goods as defined by the Commission and Classes A and B explosives),* between Essex, Passaic and Warren Counties, NJ, on the one hand, and on the other, Cook County, IL. Supporting shipper: Hoffman-La Roche, Inc., 340 Kingsland St., Nutley, NJ 07110.

MC 117119 (Sub-5–34TA), filed September 29, 1980. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, AR 72728. Representative: L. M. McLean (same address as applicant). *Confectionery (except in bulk)* from Atlanta and Augusta, GA to points in the U.S. (except AK and HI). Supporting shipper(s): Fine Products Co., Inc., P.O. Box 2087, Augusta, GA 30913.

MC 117765 (Sub-5–17TA), filed September 29, 1980. Applicant: HAHN TRUCK LINE, INC., P.O. Box 75218, Oklahoma City, OK 73147. Representative: R. E. Hagan (same as applicant). *Insulating Material and equipment used in the manufacture, distribution and installation thereof,* From and to all points in the U.S., excluding AK and HI. Supporting shipper: Rockwool Industries, Inc., 7400 S. Alton Ct., Englewood, CO 80112.

MC 118468 (Sub-5–20TA), filed September 29, 1980. Applicant: UMTHUN TRUCKING CO., 910 South Jackson Street, Eagle Grove, IA 50533. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Contract, irregular *Roofing materials and building materials,* from Kansas City, and St. Louis, MO and Chicago, IL, and points in their commercial zones, to points in IA, under contract with Lumbermans Wholesale Co. Supporting shipper: Lumbermans Wholesale Co., 621 S.W. 7th, Des Moines, IA 50309.

MC 119741 (Sub-5–17TA), filed September 29, 1980. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., 1515 Third Avenue, NW., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (same as applicant). *(1) Such commodities as are dealt in by grocery, hardware, and drug business houses; cleaning and building maintenance supplies; swimming pool, spa, and hot tub products; chemicals;* and *(2) materials, equipment, and supplies used in the manufacture, sale, and distribution of the commodities named in (1) above (except in bulk),* between the facilities of the Purex Corporation located at (a) Columbus, London, and Toledo, OH; (b) Brockport, NY; (c) St. Louis, MO; (d) Chicago, IL; (e) Bristol, PA; (f) Atlanta, GA; (g) Tampa, FL; (h) New Orleans, LA; and (i) St. Paul and Eagan, MN, on the one hand, and, on the other, points in the U.S. (except AK and HI), restricted to the transportation of traffic originating at or destined to the Purex Corporation. Supporting shipper: Purex Corporation, 6120 North Detroit Avenue, Toledo, OH 43612.

MC 119741 (Sub-5–16TA), filed September 29, 1980. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., 1515 Third Avenue, NW., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (same address as applicant). *(1) Aluminum and wood windows and doors, glass, and (2) materials, equipment, and supplies used in the manufacture and distribution of (1) above,* between the facilities of Mon-Ray Windows Inc. at Osage, IA, on the one hand, and, on the other, points in the U.S. Supporting shipper: Mon-Ray Windows Inc., 916 North Second Street, Osage, IA 50461.

MC 124174 (Sub-5–22TA), filed September 29, 1980. Applicant: MOMSEN TRUCKING CO., 13811 "L" Street, Omaha, NE 68137. Representative: Karl E. Momsen, 13811 "L" Street, Omaha, NE 68137. *Security hardware, aluminum and steel security windows, jail and prison equipment and steel fabrications, and equipment, materials and supplies used in the installation, erection, and maintenance of the foregoing commodities,* between points in Bexar County, TX, on the one hand, and on the other, points in the USA (except HI). Supporting shipper(s): Southern Steel Company, 4634 South Presa Street, San Antonio, TX 78297.

MC 124174 (Sub-5–23TA), filed September 29, 1980. Applicant: MOMSEN TRUCKING CO., 13811 "L" Street, Omaha, NE 68137. Representative: Karl E. Momsen, 13811 "L" Street, Omaha, NE 68137. *Ties, timbers, poles, railroad rails (new or used) and materials used in the maintenance and construction thereof,* between points in CO, KS, TX, NE, IA, and OK. Supporting shipper(s): Ties & Tracks, Inc., 8500 Flora Street, Kansas City, MO 64131.

MC 126743 (Sub-5–3TA), filed September 29, 1980. Applicant: HAROLD DICKEY TRANSPORT, INC., Packwood, IA 52580. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501. (1) *Foodstuffs,* (2) *Materials, Equipment and supplies used in the production of gelatin products,* (1) From the facilities of Geo. A. Hormel & Co. at or near Davenport, IA (Scott County) to points in AL, CO, CT, DE, DC, FL, GA, IL, IN, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NJ, NY, NH, NC, ND, OH, PA, RI, SC, SD, TN, TX, VT, VA, WV and WI. (2) From the points named in (1) above to the facilities of Geo. A. Hormel & Co. at or near Davenport, IA (Scott County). Supporting shipper: Geo. A. Hormel & Co., P.O. Box 800, Austin, MN 55912.

MC 126473 (Sub-5–4TA), filed September 29, 1980. Applicant: HAROLD DICKEY TRANSPORT, INC., Packwood, IA 52580. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501, Telephone: 515-682-8154. *(1) Foodstuffs, (3) Meat, meat products, meat by-products, foodstuffs, and canning plant materials, equipment, and supplies.* (1) From the facilities of Geo. A. Hormel & Co. at or near Beloit, WI

(Rock County) to points in TX, LA, AR, MS, TN, MD, PA, and VA. (2) From points named in (1) above to the facilities of Geo. A. Hormel & Co. at or near Beloit, WI (Rock County). Supporting shipper: Geo. A. Hormel & Co., P.O. Box 800, Austin, MN 55912.

MC 129908 (Sub-5–33TA), filed September 29, 1980. Applicant: AMERICAN FARM LINES, INC., 8125 S.W. 15th St., Oklahoma City, Oklahoma 73147. Representative: John S. Odell, P.O. Box 75410, Oklahoma City, Oklahoma 73147. *(1) Pulp, paper or allied products (2) printed matter (3) rubber or miscellaneous plastics products (4) primary metal products (5) fabricated metal products;* between Forsyth County, NC on the one hand, and, on the other, states of AZ, AR, CA, IL, IN, KY, LA, MO, OK, OR, KS, TN, TX and WA. Supporting shipper: RJR Archer, Inc., Reynolds Bldg., 4th & Main Streets, Winston-Salem, NC 27102.

MC 133262 (Sub-5–3TA), filed September 29, 1980. Applicant: TIGGES TRUCKING, INC., 5071 JFK Road, Dubuque, IA 52001. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. *Dry cement, in bulk,* from Rock Island, IL and La Crosse, WI to Waukon and Monona, IA and Prairie du Chien, Gays Mills, Lancaster, Cassville, Boscobel, Platteville, and Muscoda, WI, and (2) from Buffalo, IA to Viroqua, WI. Supporting shipper(s): Prairie Ready Mix, Inc., 800 North Villa Louis Road, Prairie du Chien, WI 53821; Knitt Construction, Inc., P.O. Box 66, Viroqua, WI 54665.

MC 134467 (Sub-5–11TA), filed September 29, 1980. Applicant: POLAR EXPRESS, INC., P.O. Box 845, Springdale, AR 72764. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. *Meats, meat products, meat by-products and articles distributed by meat packinghouses as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk),* from Palestine, TX and points in its commercial zone, to points in the United States (except AK and HI). Supporting shipper: Vernon Calhoun Packing Co., P.O. Box 709, Palestine, TX 75801.

MC 134467 (Sub-5–12TA), filed September 29, 1980. Applicant: POLAR EXPRESS, INC., P.O. Box 845, Springdale, AR 72764. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. (1) *Malt beverages (except in bulk), and (2) Materials, equipment and supplies used in the manufacture, sale, and distribution of the commodities named in (1) above (except in bulk),* from the facilities of The Stroh Brewery Company at or near Detroit, MI and Perrysburg, OH to points in the U.S. in and east of WI, IL, KY, TN, MS and LA. Supporting shipper: The Stroh Brewery Company, 1 Stroh Drive, Detroit, MI 48226.

MC 134501 (Sub-5–10TA), filed September 29, 1980. Applicant: INCORPORATED CARRIERS, LTD., P.O. Box 3128, Irving, TX 75061. Representative: T. M. Brown, P.O. Box 1540, Edmond, OK 73034. (1) *New furniture,* from Headland, AL, to points in MO, MI, IL, IN, OH, PA, NJ, NY, CT, RI, MA, VT, NH, ME, DE, DC, MD, WV, VA, KY, TN (except Shelby County), NC, SC, GA, FL, MS, LA, and TX (except points on, north, and west of a line beginning at the AR–TX State Line and extending along U.S. Hwy 67 to Dallas, then along Interstate Hwy 35E to Waco, then along U.S. Hwy 81 to junction U.S. Hwy 84, then along U.S. Hwy 84 to junction U.S. Hwy 67, then along U.S. Hwy 67 to junction U.S. Hwy 290, then along U.S. Hwy 290 to junction U.S. Hwy 80, then along U.S. Hwy 80 to junction with the TX–NM State Line); and (2) *fixtures,* from Headland, AL, to points in the U.S. (except AK and HI). Supporting shipper: Southeastern Cabinet Company, P.O. Box 889, Dothan, AL 36031.

MC 135797 (Sub-5–69TA), filed September 29, 1980. Applicant: J. B. HUNT TRANSPORT, INC., Post Office box 130, Lowell, AR 72745. Representative: Paul R. Bergant, Esq. (address same as applicant). *Computer machines and parts,* between OK on the one hand, and, on the other, points in MA. Supporting shipper: Magnetic Peripherals, Inc., 10321 West Reno, Oklahoma City, OK 73127.

MC 135797 (Sub-5–70TA), filed September 29, 1980. Applicant: J. B. HUNT TRANSPORT, INC., Post Office box 130, Lowell, AR 72745. Representative: Paul R. Bergant, Esq. (address same as applicant). *Ground clay in bags, and filters and filter parts,* between points in GA and points in OK. Supporting shipper: Perry Filters, Inc., 6420 So. Air Depot, Oklahoma City, OK 73115.

MC 136008 (Sub-5–9TA), filed September 29, 1980. Applicant: JOE BROWN COMPANY, INC., 20 Third Street, N.E., Ardmore, OK 73401. Representative: James W. Hightower, Hightower, Alexander & Cook, P.C., 5801 Marvin D. Love Freeway, No. 301, Dallas, TX 75237. *Cement, in bulk,* from Dallas and Fort Worth, TX, to points in OK. Supporting shipper: General Portland Inc., P.O. Box 324, Dallas, Texas 75221.

MC 136711 (Sub-5–2TA), filed September 29, 1980. Applicant: McCORKLE TRUCK LINE, INC., P.O. Box 94968, Oklahoma City, OK 73143. Representative: G. Timothy Armstrong, 200 N. Choctaw, P.O. Box 1124, El Reno, OK 73036. (1) *Waste bakery products, in bulk, in dump vehicles,* (a) from St. Louis, MO to facilities of Dext company, Inc. at Chicago, IL; and, (b) from Kansas City, MO to facilities of Dext Inc. of Texas at Dallas, TX. (2) *Dried bakery products (not for human consumption) in bulk, in dump vehicles,* (a) from facilities of Dext Inc. of Texas at Dallas, TX, to Nashville and Mountain Home, AR; and, (b) from facilities of Dext Company, Inc. at Chicago, IL to Mountain Home and Springdale, AR; St. Joseph, Kirksville, Mexico, Gerald, Meta and Centralia, MO. Supporting shipper: Dext Company, Inc., 4250 Wilshire Blvd., Los Angeles, CA 90010.

MC 139850 (Sub-5–2TA), filed September 29, 1980. Applicant: FOUR STAR TRANSPORTATION, INC., P.O. Box 77, Underwood, IA 51576. Representative: James F. Crosby & Associates, Oak Park Office Bldg., Suite 210B, 7363 Pacific Street, Omaha, NE 68114. *Meats, and packinghouse products,* from the facilities of Dubuque Packing Co., LeMars, IA to points in the U.S. (except AK and HI). Supporting shipper: Dubuque Packing Co., P.O. Box 340, LeMars, IA 51031.

MC 143179 (Sub-5–5TA), filed September 29, 1980. Applicant: CNM CONTRACT CARRIERS, INC., P.O. Box 1017, Omaha, NE 68101. Representative: Foster L. Kent (same address as applicant). Contract; Irregular. *Packaging and cushioning materials and supplies,* from Lombard, IL, Minneapolis, MN, St. Louis, MO and Oklahoma City, OK to Marshalltown, IA. Supporting shipper: American Excelsior Company, P.O. Box 5067, Arlington, TX 76011.

MC 144603 (Sub-5–25TA), filed September 29, 1980. Applicant: F.M.S. TRANSPORTATION, INC., 2564 Harley Drive, Maryland Heights, MO 63043. Representative: Laura C. Berry (same address as applicant). *General commodities (except household goods, class I & II explosives and commodities in bulk, in tank vehicles)* between points in Madison and St. Clair Counties, IL, St. Louis, St. Louis County, Jefferson County and St. Charles County, MO, on the one hand, and, on the other, points in the U.S. Supporting shippers: Central Hardware Co., 111 Boulder Industrial Dr., Bridgeton, MO 63044; Witte Hardware Corp., 4600 North Goodfellow, St. Louis, MO 63120; Gerber Industries, Inc., 1 Gerber Industrial Dr., St. Peters, MO 63376.

MC 144667 (Sub-5–4TA), filed September 29, 1980. Applicant: ARTHUR E. SMITH & SON TRUCKING, INC., P.O. Box 1054, Scottsbluff, NE 69361. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Food and kindred products, as described in Item 20 of the Standard Transportation Commodity Code, from the facilities of or utilized by Geo. A. Hormel & Co.* at Scottsbluff and Fremont, NE, to points in CO, SD and WY. Supporting shipper: Geo. A. Hormel & Co., P.O. Box 800, Austin, MN 55912.

MC 145441 (Sub-5–28TA), filed September 29, 1980. Applicant: A.C.B. TRUCKING, INC., P.O. Box 5130, North Little Rock, AR 72119. Representative: Ralph E. Bradbury, P.O. Box 5130, North Little Rock, AR 72219. *Nonexempt food or kindred products,* Between Kent County, MI on the one hand, and on the other, San Joaquin County, CA. Supporting shipper: Heinz USA, P.O. Box 57, Pittsburgh, PA 15230.

MC 145997 (Sub-5–5TA), filed September 29, 1980. Applicant: J. E. M. EQUIPMENT, INC., Post Office Box 396, Alma, AR 72921. Representative: Don Garrison, Esq., Post Office Box 1065, Fayetteville, AR 72701. *Frozen Vegetable and Potatoes.* Between points in AR, LA and TX, on the one hand, and, on the other, points in CA, ID, NV, OR, UT, WA and WY. Supporting shipper: Ben E. Keith Company, Post Office Box 2628, Ft. Worth, TX 76101.

MC 147517 (Sub-5–2TA), filed September 29, 1980. Applicant: TEXAS HIGHWAY TRANSPORT, INC., 2311 Butler Street, Dallas, TX 75235. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245. *General commodities (except household goods as defined by the Commission and Classes A and B explosives),* Between points in Lubbock, Potter, Randall, Dallham, Sherman, Hansford, Ochiltree, Lipscomb, Hartley, Moore, Hutchison, Roberts, Hemphill, Oldham, Carson, Gray, Wheeler, Deaf Smith, Armstrong, Donley, Collingsworth, Parmer, Castro, Swisher, Briscoe, Hall, Childress, Hardeman, Bailey, Lamb, Hale, Floyd, Motley, Cottle, Foard, Cochran, Hockley, Crosby, Dickens, King, Knox, Yoakum, Terry, Lynn, Garza, Kent, Stonewall, Haskell, Gaines, Dawson, Borden, Scurry, Fisher, Jones, Andrews, Martin, Howard, Mitchell, Nolan, Taylor, Ector, Midland, Glasscock, Sterling, Coke, Tom Green, and Runnels Counties, TX, RESTRICTED to traffic having a prior or subsequent movement by rail. Supporting shipper(s): Texas Shippers Association, 2311 Butler, Dallas, TX 75235.

MC 147689 (Sub-5–3TA), filed September 29, 1980. Applicant: MEI MOTOR EXPRESS, INC., P.O. Box 29058, New Orleans, LA 70189. Representative: James T. Harmon III, President, P.O. Box 29058, New Orleans, LA 70189. Contract; Irregular. *(1) Paper, Paper Products, Containers, Container Ends, and Components (Except in Bulk). (2) Materials and Supplies used in the Manufacture of (1) above,* between the facilities of The Continental Group, Inc., of Stamford, Connecticut in LA, AR, AL, MS, TX, MI, GA, OH, KY, MO, IL, IN, SC, KS. Supporting shipper: The Continental Group, Inc., 4 Landmark Square, Stamford, Conn. 06901.

MC 148337 (Sub-5–1TA), filed September 29, 1980. Applicant: WESTERKAMP TRUCKING, INC., Route 2, Pella, IA 50219. Representative: Robert R. Rydell, 1020 Savings and Loan Bldg., Des Moines, IA 50309. *Pulleys and rollers and materials and supplies used in connection therewith and supplies and materials used in the manufacture of the above commodities on return trips* from and to the facility of Precision Pulley, Inc., at or near Pella, IA, to points and places in the U.S. (except AK and HI). Supporting shipper: Precision Pulley, Inc., 300 S.E. 14th Street, Pella, IA 50219.

MC 150425 (Sub-5–6TA), filed September 29, 1980. Applicant: TRANS-CONTINENTAL EXPRESS, INC., P.O. Box D, Clarksville, TX 75426. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. *Malt beverages,* from the facilities of Miller Brewing Co., at or near Ft. Worth, TX to Ouachita Parish, LA. Supporting shipper: Testa Distributing Co., Inc., 310 Powell Ave., Monroe, LA 71203.

MC 150740 (Sub-5–3TA), filed September 29, 1980. Applicant: MOTRAN SERVICES, INC., 6816 Englewood, Raytown, MO 64133. Representative: Robert A. Sundblad, Attorney at Law, 6720 Raytown Road, Raytown, MO 64133. Contract, Irregular. *Plastic lids, plastic products and products used in the manufacture of plastic products,* from Lawrence, KS, Reno, NV over irregular routes to points in the United States. Applicant intends to tack. Supporting shipper: Packer Plastics, Inc., 2330 Packer Road, Lawrence, KS 66044.

MC 151021 (Sub-5–1TA), filed September 29, 1980. Applicant: EDWARD J. ELROD, 4119 South Shields, Oklahoma City, OK 73127. Representative: R. H. Lawson, Attorney, 2753 Northwest 22nd Street, Oklahoma City, OK 73107. *Brick, clay, Tile, Building Materials and Supplies and related articles,* Between points in OK, on the one hand, and, on the other, points in TX; Clarksville and Fort Smith, AR; and Concordia and Hoisington, KS. Supporting shipper: Commercial Brick Corporation, Oklahoma City, OK.

MC 151894 (Sub-5–2TA), filed September 29, 1980. Applicant: VENTURE EXPRESS, INC., P.O. Box 142, Marion, AR 72364. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. *General commodities (except household goods as defined by the Commission, Classes A & B explosives, and commodities in bulk),* between points in Rutherford County, TN, on the one hand, and on the other, points in the US. Supporting shippers: There are seven (7) supporting shippers. Applicant intends to interline.

MC 152002 (Sub-5–1TA), filed September 26, 1980. Applicant: DOUGLAS A. HILL, INC., d.b.a. MOUNTAIN HAUS TOURS, 7215 Skillman, Suite 306, Dallas, TX 75231. Representative: Gaylen Crain, 7215 Skillman, Suite 306, Dallas, TX 75231. *Passengers and their baggage, in special and charter operations, in round-trip pleasure trips,* beginning and ending at points in Dallas, Tarrant, Denton, Collin, Rockwall, Kaufman, Smith, Ellis, Harris, Jefferson, Madison, Johnson and Travis counties, TX and extending to points in the US. Supporting shippers: 25.

MC 152021 (Sub-5–1TA), filed September 29, 1980. Applicant: IMPALA TRANSPORTATION SERVICES, INC., 1601 E. Irving Blvd., Irving, TX 75060. Representative: Larry P. Cardin, 1601 E. Irving Blvd., Irving, TX 75060. Contract; Irregular. *Wood burning stoves and parts and accessories used in the manufacturing of wood burning stoves,* between Conway, AR, and all points and places in the Continental United States, under contract with Lakewood South Inc. Supporting shipper: Lakewood South, Inc., Front & Prairie Sts., Conway, AR 72032.

MC 152027 (Sub-5–1TA), filed September 29, 1980. Applicant: JOHNSRUD TRANSPORT, INC., P.O. Box 447, Cresco, IA 52136. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Contract irregular. *Vegetable oils and blends of vegetable oils,* between Des Moines, IA, on the one hand, and, on the other, points in the U.S. (except AK and HI) under contract with Cargill, Incorporated. Supporting shipper: Cargill, Incorporated, 3030 S.E. Granger, Des Moines, IA 50306.

MC 145441 (Sub-5–25TA) Republication, filed September 19, 1980. Applicant: A.C.B. TRUCKING, INC., P.O.

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Box 5130, North Little Rock, AR 72119. Representative: Ralph E. Bradbury, Traffic Manager, P.O. Box 5130, North Little Rock, AR 72119. *Such commodities as are dealt in by wholesale, retail, discount and variety stores*, from NY, NJ, PA and Imperial, Los Angeles, Riverside, San Bernardino, Santa Barbara and San Diego Counties, CA to the facilities of Howard Brothers Discount Stores, Inc., Monroe, LA. Supporting shipper: Howard Brothers Discount Stores, Inc., 3030 Aurora, Monroe, LA 71202.

MC 100449 (Sub-5-4TA), filed October 1, 1980. Applicant: MALLINGER TRUCK LINE, INC., R.R. 4, Ft. Dodge, IA 50501. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. *Frozen foods* between Webster County, IA, on the one hand, and, on the other, points in CO, KS, MN, MO, NE, ND, SD, and WI. Supporting shipper: General Foods Corporation, 250 North Street, White Plains, NY 10625.

MC 107496 (Sub-5-34TA), filed October 1, 1980. Applicant: Ruan Transport Corporation, 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check, 666 Grand Avenue, Des Moines, IA 50309. *Lime and lime products, in bulk*, from Rapid City, SD to Cheyenne, WY. Supporting shipper: Frost Construction Co., P.O. Box 457, Lovell, WY 82431.

MC 113362 (Sub-5-14TA), filed October 1, 1980. Applicant: ELLSWORTH FREIGHT LINES, INC., 310 East Broadway, Eagle Grove, IA 50533. Representative: Milton D. Adams, P.O. Box 429, Austin, MN 55912. *(1) Bags, and (2) Equipment, Materials, and Supplies used in the manufacture, sale, and distribution of bags (except in bulk)*, Between Kansas City, MO, on the one hand, and, on the other, points in the United States in and east of ND, SD, NE, KS, OK, and TX. Supporting shipper: Central Bag Company, 1323 West 13th Street, Kansas City, MO 64101.

MC 126118 (Sub-5-31TA), filed September 30, 1980. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: David R. Parker, P.O. Box 81228, Lincoln, NE 68501. *Such commodities as are used by and dealt in by discount and general merchandise stores*, from Memphis, TN to Omaha, NE, Supporting shipper: K-Mart Corp., C. F. Rowe, Director of Traffic, 3100 West Big Beaver Road, Troy, MI 48084.

MC 129908 (Sub-5-32TA), filed September 29, 1980. Applicant: AMERICAN FARM LINES, INC., 8125 S.W. 15th St., Oklahoma City, Oklahoma 73147. Representative: John S. Obell, P.O. Box 75410, Oklahoma City, Oklahoma 73147. *Electrical equipment and instruments, printed matter and lumber or wood products* between points in the United States. Supporting shipper: Atari, Inc., 1215 Borregas, Sunnyvale, California 94086.

MC 134405 (Sub-5-10TA), filed September 29, 1980. Applicant: BACON TRANSPORT COMPANY, P.O. Box 1134, Ardmore, OK 73401. Representative: Wilburn L. Williamson, Suite 615-East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. *Asphalt, in bulk*, from points in OK to points in TX. Supporting shipper: Trumbull Asphalt, a Division of Owens-Corning Fiberglas, 209 Nursery Road, Irving, TX. Send protests to: ICC, Regional Authority Center, 411 West 7th Street, Fort Worth, TX 76102.

MC 134405 (Sub-5-11TA), filed September 29, 1980. Applicant: BACON TRANSPORT COMPANY, P.O. Box 1134, Ardmore, OK 73401. Representative: Wilburn L. Williamson, Suite 615-East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. *Sodium sulfide solution in bulk, in tank vehicles*, from Wynnewood, OK to Ashdown, AR. Supporting shipper: Kerr-McGee Refining Corporation, Kerr-McGee Center, P.O. Box 25861, Oklahoma City, OK.

MC 135762 (Sub-5-5TA), filed September 30, 1980. Applicant: JOHN H. NEAL, INC., P.O. Box 3877, 6004 Highway 271 South, Fort Smith, AR 72913. Representative: Don A. Smith, P.O. Box 43, 510 North Greenwood, Fort Smith, AR 72702. *Contract* Irregular *(1) New furnitue, and (2) materials, equipment and supplies used in the manufacturing or shipping of new furniture (except commodities in bulk)*, between points in the U.S. (except AK and HI). The service to be performed under a continuing contract with Ayers Furniture Industries, Inc., a subsidiary of HMW Industries, Inc. Supporting shipping: Ayers Furniture Industries, Inc., 1001 North 3rd Street, Ft. Smith, AR 72901.

MC 140033 (Sub-5-6TA), filed September 30, 1980. Applicant: COX REFRIGERATED EXPRESS, INC., 10606 Goodnight Lane, Dallas, TX 75220. Representative: Edwin M. Snyder, P.O. Box 45538, Dallas, TX 75245. *Wearing apparel and supplies necessary to operate retail clothing stores*, from Arlington, TX to Denver, CO; Kansas City, MO; Los Angles, CA; Orlando, FL; Salt Lake City, UT; and San Francisco, CA. Supporting shipper(s): Foxmoor Casuals, 393 Manley Street, West Bridgewater, MA.

MC 142672 (Sub-5-14TA), filed September 19, 1980. Applicant: DAVID BENEUX PRODUCE & TRUCKING, INC., Post Office Drawer F, Mulberry, AR 72947. Representative: Don Garrison, Esq., Post Office Box 1065, Fayetteville, AR 72701. *Meats, Meat Products and Meat By-Products, and Articles Distributed by Meat Packinghouses*, as described in Sections A and C of Appendix I to the Report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk)—between points in CO and points in AR, LA, MO, OK and TX. Supporting shipper: Sam Kane Beef Processors, Inc, Post Office Box 9752, Corpus Christi, TX 78411.

MC 142860 (Sub-5-1TA), filed October 1, 1980. Applicant: RIVERSIDE METALS, Box 46, Route 2, Midway, AR 72651. Representative: John Juenger, Address: Same as above. Contract, Irregular: *Fabricated Metal Products, parts for chimneys and machine parts, crematories, incinerator, trailer parts*, from Midway and Diamond City, Arkansas and their commercial zones to MO, IL, MI, KY, TN, AL, MS, OK, KS, NE, TX, CO, ND, SD, IA, MN, OH, LA. Materials, supplies, and equipment from the above states to Midway, Diamond City, AR, area and their commercial zone. Supporting shippers: Mountain Home Manufacturing, P.O. Box 288, Midway, AR 72651. Maier, Inc., P.O. Box 197, Diamond City, AR 72644.

MC 145149 (Sub-5-3TA), filed October 1, 1980. Applicant: MATADOR SERVICE, INC., P.O. Box 2256, Wichita, KS 67201. Representative: Clyde N. Christey, KS Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. (1) *Butane, propane, natural gasoline and mixtures of butane and propane*, Between McKenzie County, ND; and Richland County, MT on the one hand, and, on the other, points in the states of CO, MT, MN, ND, SD and WY on the other; (2) *Molten sulfur* Between McKenzie County, ND and Richland County, MT. Supporting shipper: Koch Hydrocarbon Company, a Division of Koch Industries, Inc., P.O. Box 2256, Wichita, KS 67201.

MC 146078 (Sub-5-16TA), filed September 29, 1980. Applicant: CAL-ARK, INC, 854 Moline, P.O. Box 610, Malvern, AR 72104. Representative: John C. Everett, 140 E. Buchanan, P.O. Box A, Prairie Grove, AR 72753. *Assembled and unassembled metal shelving and members, component parts, and accessories thereof*, from all points and places in OH, to all points and places in TX. Supporting shipper: Austin Metal Products Company, Inc., 2307 Kramer Lane, Austin, TX 78758.

MC 146448 (Sub-5-9TA), filed September 29, 1980. Applicant: C & L TRUCKING, INC., P.O. Box 409, Judsonia, AR 72081. Representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101. *General Commodities (except household goods as defined by the Commission and Class A and B explosives)* between the facilities of Eastman Kodak Company at Rochester, NY and the facilities of Eastman Kodak Company at Dallas, TX. Supporting shipper: Eastman Kodak Company, 2400 Mt. Read Blvd., Rochester, NY 14650.

MC 146553 (Sub-5-6TA), filed September 29, 1980. Applicant: ADRIAN CARRIERS, INC., 1826 Rockingham Road, Davenport, IA 52808. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. *Castings*, from Coldwater, MI, and Skokie, IL to the facilities of Airesearch Industrial Division, Garrett Corporation, within the Los Angeles, CA commercial zone. Supporting shipper(s): Airesearch Industrial Division, Garrett Corporation, Division Traffic Manager, 1661 West 240th Street, Harbor City, CA 90710.

MC 147718 (Sub-5-1TA), filed September 30, 1980. Applicant: ROWLEY INTERSTATE TRANSPORATION COMPANY, INC., 2010 Kerper Boulevard, Dubuque, IA 52001. Representative: Carl L. Steiner, 39 South LaSalle Street, Chicago, IL 60603. Contract: Irregular: *Meat, meat products, meot by-products, and articles distributed by meat packinghouses, and materials, equipment, supplies used in the manufacture, distribution and sale of meat, meat products and articles distributed by meat packinghouses* between Joslin, IL, on the one hand, and, on the other, points in the U.S. Supporting shipper: Dubuque Packing Company, Dubuque, IA.

MC 148447 (Sub-5-2TA), filed September 30, 1980. Applicant: LCBS TRUCKING ENTERPRISES, 329 Ovida Street, Irving, TX 75061. Representative: William Sheridan, 1025 Metker, P.O. Drawer 5049, Irving, TX 75062. Contract, irregular, *Plastic Articles (other than in bulk)* from Dallas, TX to points in AL, FL, GA, LA, MO, NC, OH, TN, and Denver, CO; Albuquerque, NM; Little Rock and West Memphis, AR; Jackson, MS; Columbia and Spartanburg, SC; Baltimore, MD; Walker and Richmond, VA; and Louisville and Lexington, KY. Restricted to shipments originating at Sewell Plastics, Dallas, TX. Supporting shipper: Sewell Plastics, 2210 St. Germain Street, Dallas, TX 75212.

MC 150088 (Sub-5-10TA), filed October 1, 1980. Applicant: STERLING TRANSPORT DIVISION, INC., 801 Heniz Way, Grand Prairie, TX 75071. Representative: Robert K. Frisch, Brown & Walker, 2711 Valley View Lane, Suite 101, Dallas, TX 75234. *Garments on honger (GOH) and commodities, equipment, materials, and supplies dealt in or used by retail, variety, or department stores in mixed loads with garments on hangers* between points in Dallas and Tarrant Counties, TX, on the one hand, and, on the other, points in Adams, Arapahoe, Boulder, Denver, El Paso, Larimer, Jefferson, Pueblo, and Weld Counties, CO; Douglas, Johnson, Leavenworth, Lyon, Sedgwick, Shawnee, and Wyandotte Counties, KS; Buchanan, Clay, Greene, Jackson, Jasper, Newton, and Platte Counties, MO. Supporting shipper: Ralston-Purina Company, 13700 North Lincoln Boulevard, Edmond, OK 73034.

MC 151154 (Sub-5-9TA), filed October 1, 1980. Applicant: LENERTZ, INC. of Iowa, 1004 29th Street, Sioux City, IA 51104. Representative: Edward A. O'Donnell (same address as applicant). *Kitchen cabinets and vanities and equipment, materials and supplies used in the manufacture and distribution of kitchen cabinets and vanities*, between Lakeville, MN on the one hand, and, on the other, all points in the U.S. in and east of ND, SD, NE, CO, OK, and TX. Supporting shipper: Merillat Industries, Inc., Air Lake Industrial Park, 21755 Cedar Ave. So., Lakeville, MN 55044.

MC 151154 (Sub-5-10TA), filed October 1, 1980. Applicant: LENERTZ, INC. of Iowa, 1004 29th Street, Sioux City, IA 51104. Representative: Edward A. O'Donnell (same address as applicant). *Frozen foods*, from points in Webster County, IA on the one hand, and, on the other, points in CO, KS, MN, MO, NE, ND, SD, and WI. Supporting shipper: General Foods Corporation, 250 North St., White Plains, NY 10625.

MC 151723 (Sub-5-1TA), filed September 29, 1980. Applicant: SIMMCO CARRIERS, 8704 S. Olie, Oklahoma City, OK 73139. Representative: G. A. Simms, (same address as applicant). *Machinery and Supplies and Fabricoted Metal Products*, between Oklahoma City, OK on the one hand, and points in the United States on the other. Supporting shipper: CMI Corporation, P.O. box 1985, Oklahoma City, OK 73125.

MC 152026 (Sub-5-1TA), filed September 29, 1980. Applicant: SIGHTSEEING UNLIMITED, INC., d.b.a. GRAY LINES OF LITTLE ROCK, 901 E. 8th Street, Little Rock, AR 72202. Representative: John Hall, 12920 Southridge Drive, Little Rock, AR 72207. Transporting *passengers and their personol luggage* in round trip sightseeing and charter operations between points in AR and points in MO, TN, MS, LA, TX, and OK. Supporting shippers: AAA World Travel, 201 Chester Street, Little Rock, AR 72202; Camden Band, 647 Jefferson Drive, Camden, AR 71701; Department of Parks and Tourism, No. 1 Capitol Mall, Little Rock, AR 72201.

MC 152031 (Sub-5-1TA), filed September 30, 1980. Applicant: LEE RICHARD OHRMAN, d.b.a. LEE OHRMAN TRUCKING, 511 Southwest St., Benkelman, NE 69021. Representative: Edward A. O'Donnell, 1004 29th Street, Sioux City, IA 51104. *Feed Ingredients, Fertilizer and Fertilizer Ingredients*, between points in and east of Larimer, Boulder, Gilipin, Clear Creek, Jefferson, Douglas, Teller, Fremont, Custer, Huerfano and Costilia Counties, CO; points in KS on and west of U.S. Hwy 75; Yellowstone City, MT; points in NE; points in NM on and east of U.S. Hwy 285; points in Oklahoma on and north of U.S. Hwy 66 and on and west of U.S. Hwy 75; points in TX on and north of U.S. Hwy 66; Bighorn, Johnson, Natrona and Carbon Counties, WY. Supporting shipper: Four.

MC 200 (Sub-5-55TA), filed October 2, 1980. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing Road, Kansas City, MO 64141. Representative: H. Lynn Davis (same address as applicant). *Medical supplies (except commodities in bulk)*, between Cincinnati, OH and Carlsbad, CA. Restricted to shipments originating at or destined to facilities utilized by Dyna-Med, Inc., its suppliers, or vendors. Supporting shipper: Dyna-Med, Inc., 11630 Rockfield Ct., Cincinnati, OH 45241.

MC 2052 (Sub-5-1TA), filed October 2, 1980. Applicant: BLAIR TRANSFER, INC., 203 South Ninth, Blair NE 68008. Representative: Arlyn L. Westergren, Westergren & Hauptman, P.C., Suite 106, 7101 Mercy Road, Omaha, NE 68106. *Such commodities as are dealt in by food and drug stores and food businesshouses (except commodities in bulk, in tank vehicles)*, from the facilities of The Procter & Gamble Distributing Company at Chicago, IL to points in CO, IA, KS, MN, MO, NE, SD, and WI. Supporting shipper: The Procter & Gamble Distributing Company, P.O. Box 599, Cincinnati, OH 45201.

MC 35320 (Sub-5-32TA), filed October 3, 1980. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Common, regular. *General commodities, except household goods as defined by the Commission, and Classes A and B*

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explosives, serving Birmingham, AL and its commercial zone as an off-route point in connection with carrier's otherwise authorized regular route operation. Supporting shippers: Eight.

Note.—Applicant intends to tack to its existing authority and any authority it may obtain in the future and interline with other carriers.

MC 60271 (Sub-5–6TA), filed October 3, 1980. Applicant: HARPER TRUCK LINE, INC., P.O. Box 288, Monroe, LA 71201. Representative: Sherri L. Roberts, P.O. Box 288, Monroe, LA 71201. *Paper and paper products and materials, equipment and supplies used in the manufacture and distribution of paper and paper products,* between points and places in Ouachita Parish, LA on the one hand, and, on the other, points and places in AL, FL, GA, MS, MO, OK, TN, TX, and points and places in AR not within ninety (90) mile radius of Monroe. Supporting shipper: Mannville Forest Products Corporation, P.O. Box 488, West Monroe, LA 71291.

Note.—Applicant intends to tack to its existing authority.

MC 78400 (Sub-5–14TA), filed October 2, 1980. Applicant: BEAUFORT TRANSFER COMPANY, P.O. Box 151, Gerald, MO 63037. Representative: Ernest A. Brooks II, 1301 Ambassador Bldg., St. Louis, MO 63101. (1) *Vinyl* from Pottstown, PA, to Union, MO; and, (2) *printed vinyl* from Union, MO to Jasper, FL; Lynchburg, VA; and Santa Ana, Chatsworth, and Lynwood, CA. Supporting shipper: Spartan Manufacturing Corporation, Union Film Division, P.O. Box 470, Union, MO 63084.

MC 117765 (Sub-5–18TA), filed October 2, 1980. Applicant: HAHN TRUCK LINE, INC., P.O. Box 75218, Oklahoma City, OK 73147. Representative: R. E. Hagan (same address as applicant). *(1) Plastic pipe, aluminum pipe, fittings and accessories, (2) Irrigation systems and (3) Materials, equipment, and supplies used in the manufacture or distribution of (1) and (2) above,* between Finney County, KS and York County, NE on the one hand, and, on the other, points in AL, AR, CO, GA, IA, IL, IN, KS, KY, LA, MN, MO, MS, ND, NE, NM, OK, SD, TN, TX, WI, and WY. Supporting shipper: Kroy Industries, Inc., Box 309, York, NE 68467.

MC 119741 (Sub-5–18TA), filed October 3, 1980. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., 1515 Third Avenue, N.W., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (same as applicant). *Frozen foods,* between North Rose, Rochester, and Sodus, NY, on the one hand, and, on the other, points in AR, CO, IL, IN, IA, KS, MI, MN, MO, NE, ND, OK, SD, TX, and WI, restricted to traffic originating at or destined to the facilities of Statewide Refrigerated Services. Supporting shipper: Statewide Refrigerated Services, Pixley Industrial Park, P.O. Box 8946, Westgate Station, Rochester, NY 14624.

MC 120302 (Sub-5–1TA), filed October 3, 1980. Applicant: KNOX TRUCK LINES, INC., P.O. Box 12226, Grand Prairie, TX 75051. Representative: D. Paul Stafford, P.O. Box 45536, Dallas, TX 75245. *Building materials, chemicals and fertilizer (not in bulk), iron and steel articles and machinery and equipment,* between points in TX, on the one hand, and points in AL, AR, CO, KS, LA, MS, MO, NM, and OK, on the other hand. Supporting shippers: Twenty.

MC 123993 (Sub-5–26TA), filed October 3, 1980. Applicant: FOGLEMAN TRUCK LINE, INC., P.O. Box 1504, Crowley, LA 70526. Representative: Byron Fogleman, P.O. Box 1504, Crowley, LA 70526. *General Commodities (except household goods as defined by the Commission and class A & B explosives) restricted to traffic having subsequent movement by water* from Alexandria, LA to New Orleans, LA. Supporting shipper: Alexandria Metallurgical, P.O. Box 109, Alexandria, Louisiana 71301.

MC 124174 (Sub-5–24TA), filed October 2, 1980. Applicant: MOMSEN TRUCKING CO., 13811 "L" Street, Omaha, NE 68137. Representative: Karl E. Momsen, 13811 "L" Street, Omaha, NE 68137. *Tile or brick,* from Macon, Chattahoochee, GA; Raleigh, Kings Mountain, NC; Columbus, Zanesville, Sugar Creek, Stone Creek, Waynesburg, OH; Johnson City, Knoxville, Chattanooga, TN; Shoemakersville, PA: Owensboro, Lawrenceville, KY; Oklahoma City, OK; Peoria and Streator, IL; Columbia, SC; Pueblo, CO; Mineral Well, TX; Trenton, NJ; Tampa, FL to points in WI and IL on and north of Interstate 80. Supporting shipper: Champion Companies, 1850 South Calhoun Road, New Berlin, WI 53151.

MC 126822 (Sub-5–29TA), filed October 2, 1980. Applicant: WESTPORT TRUCKING COMPANY, 15580 South 169 Highway, Olathe, KS 66061. Representative: John T. Pruitt (same as applicant). *Adhesives and materials and supplies used in the manufacture and distribution thereof* between Baltimore, MD on the one hand, and points in the U.S. on the other. Supporting shipper: A. Z. Bogart Co., Inc., P.O. Box 9598, Baltimore, MD 21237.

MC 135283 (Sub-5–6TA), filed October 2, 1980. Applicant: GRAND ISLAND MOVING & STORAGE CO., INC., P.O. Box 2122, 432 So. Stuhr Road, Grand Island, NE 68801. Representative: Lavern R. Holdeman, Peterson, Bowman & Johanns, P.O. Box 81849, Lincoln, NE 68501. *(1) Aluminum materials (except in bulk) and, (2) plastic articles (except in bulk)* from Lewisport, KY and Grand Junction, TN. and points in their respective commercial zones to the facilities of Hastings Irrigation Pipe, Inc., and Kerrco, Inc., at Hastings, NE. Supporting shippers: Hastings Irrigation Pipe, Inc., P.O. Box 607, E. Hwy. 6, Hastings, NE 68801 and Kerrco, Inc., P.O. Box 368, Hastings, NE 68801.

MC 136786 (Sub-5–33TA), filed October 2, 1980. Applicant: ROBCO TRANSPORTATION, INC., P.O. Box 10375, Des Moines, IA 50306. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. *Dairy products (except commodities in bulk),* (1) From Muenster and Sulphur Springs, TX, to points in OK, KS, MO, NE, IL, and IA; and (2) From Hillsboro, KS, to points in OK, MO, NE, IL, and IA. Supporting shipper: Associated Milk Producers, Inc., P.O. Box 5040, Arlington, TX 76010.

MC 136328 (Sub-5–15TA), filed October 3, 1980. Applicant: CLARENCE L. WERNER, d.b.a. WERNER ENTERPRISES, I–80 and Hwy. 50, P.O. Box 37308, Omaha, NE 68137. Representative: Donna Ehrlich (same as applicant). *Lumber and wood products,* from Escalante, UT, to points in the U.S. Supporting shipper: Escalante Sawmills, Inc., Escalante, UT 84726.

MC 138469 (Sub-5–22TA), filed October 2, 1980. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representative: Daniel O. Hands, Suite 200, 205 West Touhy Ave., Park Ridge, IL 60068. *Floor covering and commodities used in the installation and care of floor covering,* from the facilities of Armstrong World Industries, Inc., at Jackson, MS to points in AR, LA, OK, and TX. Supporting shipper: William Volker & Company, 945 California Drive, Burlingame, CA 94010.

MC 139284 (Sub-5–2TA), filed October 2, 1980. Applicant: TRUCKER'S, INC., P.O. Box 337, 4316 South Main Street, Stafford, TX 77477. Representative: Damon R. Capps, Suite 1230, Capital National Bank Bldg., 1300 Main Street, Houston, TX 77002. *Sand Blasting Sand in bulk and bag,* between points in OK and LA and between points in TX, on the one hand, and points in OK and LA on the other hand. Supporting shipper: Clemtex Limited, Inc., P.O. Box 15214, Houston, TX 77002.

MC 139284 (Sub-5–3TA), filed October 2, 1980. Applicant: TRUCKER'S, INC., P.O. Box 337, 4316 South Main Street, Stafford, TX 77477. Representative: Damon R. Capps, Suite 1230, Capital National Bank Bldg., 1300 Main Street, Houston, TX 77002. (1) *Oilfield Equipment, Pipe including plastic pipe, Iron and Steel Articles, and Machinery,* between points in OK, LA, NM, AR, AL, MS, MO, CO, TN, MI, VA, OH, PA, WY, GA, FL, KS, KY, IL, IN, and WV; and (2) between points in TX, on the one hand, and points in OK, LA NM, AR, AL, MS, MO, CO, TN, MI, VA, OH, PA, WY, GA, FL, KS, KY, IL, IN, and WV, on the other hand. Supporting shipper: Eight.

MC 139284 (Sub-5–4TA), filed October 2, 1980. Applicant: TRUCKER'S, INC., P.O. Box 337, 4316 South Main Street, Stafford, TX 77477. Representative: Damon R. Capps, Suite 1230, Capital National Bank Bldg., 1300 Main Street, Houston, TX 77002. *Cantainerized general commodities,* between points in OK, LA, NM, AR, AL, MS, MO, CO, TN, MI, VA, OH, PA, WY, GA, FL, KS, KY, IL, IN, WV, and between points in TX on the one hand and points in OK, LA, NM, AR, AL, MS, MO, CO, TN, MI, VA, OH, PA, WY, GA, FL, KS, KY, IL, IN, and WV on the other hand. Supporting shipper: Ababron, Inc., P.O. Box 3933, Irving, TX 75061.

MC 142913 (Sub-5–1TA), filed October 3, 1980. Applicant: TRAVIS TRANSPORT, INC., 3546 Vandalia Road, Des Moines, IA 50317. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Contract, irregular, *Such commodities as are stored in warehouses,* between Polk County, IA, on the one hand, and, on the other, points in KS, NE, MN, IL, and MO, under a continuing contract(s) with Continental Warehouse Group, Ltd. Supporting shipper: Continental Warehouse Group, Ltd., 2800 Dixon, Des Moines, IA 50316.

MC 145955 (Sub-5–12TA), filed October 3, 1980. Applicant: CENTRAL TRUCK SERVICE, INC., 4440 Buckingham Avenue, Omaha, NE 68107. Representative: Arlyn L. Westergren, Westergren & Hauptman, P.C., Suite 106, 7101 Mercy Road, Omaha, NE 68106. *Such merchandise, equipment, and supplies sold, used, or distributed by a manufacturer of cosmetics, toilet preparations and jewelry (except commodities in bulk, in tank vehicles);* from Morton Grove and Glenview, IL to Kansas City, MO and their respective Commercial Zones. Supporting shipper: Avon Products, Inc., 6901 Golf Road, Morton Grove, IL 60053.

MC 146833 (Sub-5–3TA), filed October 3, 1980. Applicant: REBEL EXPRESS, INC., Box 98, Dawson, IA 50066. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. *Such commodities as are dealt in by retail drug, variety and department stores,* Between points in the U.S. (except AK and HI) restricted to traffic originating at or destined to the facilities of Ardan, Inc. Supporting shipper: Ardan, Inc., 2320 Euclid Avenue, Des Moines, IA 50310.

MC 150287 (Sub-5–2TA), filed October 3, 1980. Applicant: TOM RICE TRUCKING 723 Commercial Street, La Porte City, IA. 50651. Representative: Tom Rice (same as applicant). *Recyclable paper products* from any point in the state of IA to any point in the state of MN. Supporting shipper: Champion International Corporation, Knightsbridge Drive, Hamilton, OH 45020.

MC 151203 (Sub-5–3TA), filed October 2, 1980. Applicant: AZTEC TRUCKING, INC., 102 N. Sentry Drive, Mansfield, TX 76063. Representative: E. LARRY WELLS, P.O. Box 45538, Dallas, Texas 75245. (1) *Truss manufacturing machinery and* (2) *materials, equipment and supplies used in the manufacture of the commodities named in (1) above and lumber* (1) from Mansfield, TX to all points in the US (except AK and HI) and (2) from all points in the US (except AK and HI) to Mansfield, TX. Supporting shippers(s): Link-Wood Construction Systems, Inc., 107 N. Sentry Drive, Mansfield, TX 76063 and Timber Tech, Inc., 1703 N. Peyco Drive, Arlington, TX 76017.

MC 151855 (Sub-5–1TA), filed October 2, 1980. Applicant: AUTOMOTIVE EXPRESS, INC., 13005 Algarita Terrace, Manchaca, TX 78652. Representative: William E. Collier, 8918 Tesoro Drive, Suite 515 San Antonio, TX 78217. Contract, Irregular; *automotive parts, equipment, accessories and supplies,* from Morrilton, AR; Chicago, Lincolnwood and Clarinda, IL; Logansport and Connersville, IN; Ottumwa, IA; Hernando, MS; Berkley, Kansas City, and St. Louis, MO; Brooklyn and New York, NY; Charlotte, Gastonia and Waynesville, NC; Akron, Cincinnati, Cleveland, Coshocton, Lima and Medina, OH; Oklahoma City, OK; Washington, PA; Knoxville, Louden, Memphis and Nashville, TN; to Austin and Houston, TX. Supporting shippers: Austin Automotive Warehouse, Inc., 3600 S. Congress, Austin, TX 78701. D & G Warehouse, Inc., 3600 S. Congress, Austin, TX 78701. Parts Warehouse, Inc., 8119 Jensen, Houston, TX 77093.

MC 152021 (Sub-5–2TA), filed October 3, 1980. Applicant: IMPALA TRANSPORTATION SERVICES, INC., 1601 E. Irving Blvd, P.O. Box 678, Irving, TX 75060. Representative: Larry P. Cardin, President, 1601 E. Irving Blvd., P.O. Box 678, Irving, TX 75060. Contract: Irregular. *Firebrick and high temperature bonding mortar (refractory materials)* between Houston, TX and all points and places in the continental U.S., under contract with Kaiser Aluminum and Chemical Corporation. Supporting shipper: Kaiser aluminum & Chemical Corporation, 2602 N. Highway 360, Grand Prairie, TX 75050.

MC 152021 (Sub-5–3 TA), filed October 3 1980. Applicant: IMPALA TRANSPORTATION SERVICES, INC., 1601 E. Irving Blvd., P.O. Box 678, Irving TX 75060. Representative: Larry P. Cardin, President, 1601 E. Irving Blvd., P.O. Box 678, Irving, TX 75060. Contract: Irregular. *Paper bags, NOIBN,* between New Orleans, LA, and all points in the continental U.S., under contract with Westvaco. Supporting shipper: Westvaco, 1400 Annunciation Street, New Orleans LA. 70160.

MC 152021 (Sub-5–4 TA), filed October 3 1980. Applicant: IMPALA TRANSPORTATION SERVICES, INC., 1601 E. Irving Blvd., P.O. Box 678, Irving TX 75060. Representative: Larry P. Cardin, President, 1601 E. Irving Blvd., P.O. Box 678, Irving, TX 75060. Contract: Irregular. *(A) pipeline fittings, iron or steel, 14" and above, iron or steel NOI, (B) iron and steel articles NOI, and non-ferrous articles,* between Memphis, TN and all points in the continental U.S., under contract with (A) Gulf and Western Co., Taylor Forge Div., and (B) Edgcomb Metals. Supporting shipper: (A) Gulf and Western Company, Taylor Forge Division, 5577 Tayfor Drive, Memphis, TN 38127. (B) Edgcomb Metals, 1 Auction Avenue, P.O. Box 272, Memphis, TN 38101.

MC 152067 (Sub-5–1 TA), filed October 2, 1980. Applicant: JOHN H. WINSLOW, d.b.a. J. H. WINSLOW TRUCKING, 2660 Knollwood, Florissant, MO 63031. Representative: B. W. LaTourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, MO 63105, No. 314–727–0777. Contract: Irregular. *Frozen Foods, Food Stuffs, and Paper Products,* between Granite City, IL, Memphis, Jackson, TN, Tupelo, MS, West Memphis, AR, and Forest City, AR. Supporting shipper: P. F. D. Supply Corp. 1800 Adams Street, Granite City, IL 62040.

MC 152068 (Sub-5–1 TA), filed October 2, 1980. Applicant: HOC-Express, Inc., 125 N. Elizaberh, Wichita, KS. 67203. Representative: Clyde N. Christey, Ks Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, Ks. 66612. *Air conditioning and refrigeration units and components,* between points in Sedgwick County, KS on the one hand

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and points and places in WA; OR; CA; NV; ID; UT; MT; WY; CO; ND; SD; NE; MN & IA on the other hand. Supporting shipper: Copeland Corp-Products Service, P.O. Box 12663, Wichita, KS. 67277.

MC 152070 (Sub-5–1 TA), filed October 2, 1980. Applicant: RICKY SHAW & SONS TRANSPORTATION COMPANY, INC., 500 Bennington, MO. Kansas City, MO. 64125. Representative: Arthur J. Cerra, 2100 TenMain Center, P.O. Box 19251 Kansas City, MO 64141. *Contract:* Irregular. *Waste Scrap and Hazardous Materials* between points in AR, IA, IL, KS, MO, MS, NE, OK, and TN. Supporting shipper: Shaw & Sons Enviro-Pro Ecology Unit VII, 500 Bennington Avenue, Kansas City, MO 64125.

MC 151655 (Sub-5–1TA), filed September 10, 1980. Applicant: FRANK BROS. TRUCKING CO., 349 Abbott Ave., Hillsboro, TX 76645. Representative: Billy L. Frank, 349 Abbott Ave., Hillsboro, TX 76645. *Scrap Iron and Steel, metal articles, including crushed cars,* from points in the states of AR, CO, KS, LA, MO, MS, NM, OK, TN to the facilities of Chaparral Steel Company at, or near, Midlothian, Ellis County, TX and (2) *Iron and Steel articles, materials, supplies* (except in bulk) *and equipment,* used in or in connection with the production and manufacture of iron and steel articles, from points in the U.S. (except AK & HI) to the facilities of Chaparral Steel Company at, or near, Midlothian, Ellis County, TX. Supporting shipper: Chapparral Steel Company, Route 1, Box 1100, Midlothian, TX 76065.

The following applications were filed in Region 6. Send protests to: Interstate Commerce Commission, Region 6 Motor Carrier Board, P.O. Box 7413, San Francisco, CA 94120.

MC 116544 (Sub-6–17TA), filed September 26, 1980. Applicant: ALTRUK FREIGHT SYSTEMS INC., 1703 Embarcadero Rd., Palo Alto, CA 94303. Representative: Richard G. Lougee, P.O. Box 10061, Palo Alto, CA 94303. *Such commodities as are dealt in by wholesale, retail and chain grocery stores and food business houses, materials, equipment and supplies used in the manufacture, sale and distribution of such commodities (except those shipped in bulk),* between St. Louis County, MO and all points in the United States (except AK and HI), for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Purex Corporation, 6901 McKissock Ave., St. Louis, MO 63147.

MC 151691 (Sub-6–1TA), filed September 24, 1980. Applicant: W. D. CLARK TRUCKING, P.O. Box 1269, Lakeside, AZ 85292. Representative: Bruce L. Dusenberry, 120 West Broadway, Box 48, Tucson, AZ 85701. *Contract Carrier,* Irregular routes: Part A—*(1) Wooden or plastic moldings and molding lumber, and (2) materials and supplies used in the manufacture and distribution of the commodities in (1) above,* between Orange County, CA, McLennan County TX and Bernalillo County, NM; from Navajo County, AZ and El Paso County, TX to Orange County, CA under contract with Maple Bros., Inc., for 270 days. Part B—*Steel,* from Leon County, TX and Ellis County, TX to Maricopa County, AZ, under contract with Rap-I-Form Corporation, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Maple Bros, Inc., 1295 W. Lambert Rd., Brea, CA 92621; Rap-I-Form Corporation, 3303 S. 40th St. Phoenix, AZ 85040.

MC 152004 (Sub-6–1TA), filed September 26, 1980. Applicant: J. R. DALTON AND SONS, Rt. 1 Box 22A, Newport, WA 99156. Representative: G. LaBissoniere, 15 South Grady Way #235, Renton, WA 98055. *Contract Carrier,* Irregular routes: *Lumber, Wood Products and Wood residuals,* between Newport, WA (Pend Oreille County, WA) and Priest River, ID, Missoula, MT, Portland, OR, Seattle and Tri Cities, WA under contract with Northwest Conifer Co, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Northwest Conifer Co., P.O. Box 1170, Newport, WA 99156.

MC 136605 (Sub-6–17TA), filed September 22, 1980. Applicant: DAVIS TRANSPORT, INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (same as applicant). *Fabricated structural steel and miscellaneous fabricated steel,* from Boone County, IA to points in the state of WA, for 270 days. Supporting shipper: Mid States Steel Corporation, RR#2, Bonne, IA 50036.

MC 56640 (Sub-6–5TA), filed September 26, 1980. Applicant: DELTA LINES, INC., 333 Hegenberger Road, Oakland, CA 94621. Representative: Mr. Kirk Wm. Horton, Suite 400, 333 Hegenberger Road, Oakland, CA 94621. Transporting *nonexempt food or kindred products,* between Benton and Yakima Counties, WA, on the one hand, and, on the other, points in AZ, CA, and OR, for 270 days. An underlying ETA seeks 120 day authority. Supporting shipper: Tree Top, Inc., P.O. Box 248, Selah, WA.

MC 151990 (Sub-6–1TA), filed September 25, 1980. Applicant: WILLIAM C. VAN DYKE, d.b.a. HIGH COUNTRY EXPRESS, 40 W. Alameda Ave., Denver, CO 80223. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. *General commodities, (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, those requiring special equipment, and foodstuffs requiring refrigeration in transit),* between Carbon, Yellowstone, Bighorn, Treasure, Rosebud, and Powder River Counties, MT, Denver, CO and points in its commercial zone and points in WY for 270 days. Permission to interline is requested. Supporting shippers: There are 18 supporting shippers. Their statements may be examined at the Regional Office listed.

MC 142332 (Sub-6–1TA), filed September 25, 1980. Applicant: MEAT HANDLERS' EXPRESS, INC., 900 W. Easy St., Camano Island, WA 98292. Representative: Michael D. Duppenthaler, 211 South Washington St., Seattle, WA 98104. *Contract carrier,* irregular routes: *Powdered Gypsum and Casting Plaster (except in bulk),* between points in the Seattle, WA commercial zone on the one hand, and, on the other Gerlach, NV, for the account of The Boeing Company, for 270 days. Supporting shipper: The Boeing Company, P.O. Box 3707, Seattle, WA 98124.

MC 138100 (Sub-6–2TA), filed September 26, 1980. Applicant: MELLOW TRUCK EXPRESS, INC., P.O. Box 23725, Tigard, OR 97223. Representative: Peter H. Glade, 1 SW Columbia, Suite 555, Portland, OR 97258. *Building materials* between points in OR, WA, CA, ID, WY, CO, UT, AZ and NM for 270 days. Supporting shippers: Alpine Veneers, Inc., 1210 Yeon Bldg., Portland, OR 97204; Intermountain Lumber Co., Ltd., 1601 Dover Hwy, Sandpoint, ID 83864; Standard Forest Products, P.O. Box 10306, Eugene, OR 97401; and Wicks Wood Products, P.O. Box 200, Wilsonville, OR 97070.

MC 43685 (Sub-6–2TA) filed, September 24, 1980. Applicant: MERCER TRUCKING COMPANY, INC., P.O. Box 11585, Spokane, WA 99211. Representative: Marshall Hanning (same as applicant). (1) *Lumber, veneer, forest products, and building materials,* between points in Chelan, Douglas, Ferry, Lincoln, Okanogan, Pend Oreille, Spokane, and Stevens counties, WA; Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone counties, ID; Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli, and Sanders counties, MT; and the international

boundary with British Columbia, on the one hand; And points in CO, ND, SD, UT, and WY on the other hand; and (2) *Materials for recycling,* between points in CO, ID, MT, ND, OR, SD, UT, WA, and WY including items having prior or subsequent movement by water, for 270 days. Supporting shippers: There are 11 shippers. Their statements of support may be examined at the Regional Office listed.

MC 144953 (Sub-6–2TA) filed, September 25, 1980. Applicant: MULLEN TRUCKING LTD., 6204–A Burbank Rd., S.E., Calgary, Alberta, Canada T2H 2C2. Representative: John T. Wirth, 717–17th St., Suite 2600, Denver, CO 80202. *Lumber and wood products, and building materials,* from ports of entry on the International Boundary between the U.S. and Canada located in WA, ID, and MT to points in the U.S. in and west of MT, WY, CO, OK, and TX (except AK and HI), for 270 days. An underlying ETA seeks 120 days authority. There are 10 supporting shippers. Their statements may be examined at ICC Regional Office, San Francisco, CA.

MC 151472 (Sub-6–46TA) filed, September 25, 1980. Applicant: PBI FREIGHT SERVICE, P.O. Box 37, Orem, UT 84057. Representative: William S. Richards, P.O. Box 2465, Salt Lake City, UT 84110. *Contract carrier,* irregular routes: *General commodities* (except livestock, commodities of unusual value, commodities in bulk, Class A and B explosives, household goods as defined by the Commission and commodities requiring special equipment), (1) between the plant site of The Deseret Company at Sandy, UT and Los Angeles, CA; and (2) between the plant site of The Deseret Company at Sandy, UT and Nogales, AZ, for the account of The Deseret Company, for 270 days per Ex Parte MC–67 (Sub-No. 9). Supporting shipper: The Desert Company, 9450 South State Street, Sandy, UT.

MC 127090 (Sub-6–1TA) filed, September 25, 1980. Applicant: PACIFIC STORAGE, INC., 440 East 19th Street, Tacoma, WA 98421. Representative: Jack R. Davis, 1100 IBM Building, Seattle, WA 98101. *General commodities* (except Class A&B explosives) and *empty trailers or empty cargo containers* between points in ID, OR and WA, restricted to shipments having a prior or subsequent movement by water for 270 days. Supporting shippers: Totem Ocean Trailer Express, Inc., P.O. Box 24908, Seattle, WA 98124; Puget Sound Traffic Association, P.O. Box 68927 Riverton Heights Branch, Seattle, WA 98188; U.S. Navigation (Pacific), Inc., 301 Norton Building, Seattle, WA 98104.

MC 151987 (Sub-6–1TA) filed, September 25, 1980. Applicant: RAY PORENTA AND JAMES W. HOADLEY, d.b.a. RAY PORENTA TRUCKING COMPANY, 252 Industrial Dr., Rock Springs, WY 82901. Representative: Edward A. O'Donnell, 1004 29th St., Sioux City, IA 51104. *Drilling chemicals, compounds and muds,* between points in CA, CO, ID, MT, NV, NM, ND, SD, WY, & UT, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Milchem, Inc., 410–17th St., Denver, CO 80202.

MC 138875 (Sub-6–25TA), filed September 22, 1980. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Rd., Boise, ID 83709. Representative: F. L. Sigloh, (same address as applicant). *Building materials* (except commodities in bulk), from Hialeah, FL and Wheeling, WV amd their respective commercial zones, to Seattle, WA and its respective commercial zone, for 270 days. Supporting shipper(s): Bill Lile, Contract Administrator, Cascade Commercial Co. (CASCO), 3825 First Ave., So. Seattle, WA 98134.

MC 152007 (Sub-6–1TA), filed September 26, 1980. Applicant: J. WEISS, d.b.a. J. WEISS & COMPANY, 1055 East Flamingo, No. 614, Las Vegas, NV 89109. Representative: (same as applicant). *Food and foodstuffs,* except in bulk, to Clark County, NV from the following California counties: Alameda, Fresno, Imperial, Inyo, Kern, Kings, Los Angeles, Merced, Orange, Riverside, Sacramento, San Bernardino, San Diego, San Francisco, San Joaquin, San Mateo, Santa Barbara, Santa Clara, Tulare and Ventura, for 270 days. Supporting shipper(s): There are five shippers. Their statements may be examined at the Regional office listed.

MC 125146 (Sub-6–1TA), filed September 26, 1980. Applicant: BOB WHITAKER & SON, INC., P.O. Box 65, Roswell, NM 88201. Representative: Bob Whitaker (same as applicant). *Contract carrier,* irregular routes: *Meat, meat products, meat by-products and articles distributed by meat packing houses,* from Dumas, Ft. Worth, San Antonio, Brownwood, TX; Clovis, NM; Guymon, OK to points in NC, SC, GA, FL, AL, TN, LA, MS, for the account of Swift Independent Packing Co., a Division of Swift & Company, for 270 days. Supporting shipper: Swift Independent Packing Co., a Division of Swift & Company, 115 West Jackson Boulevard, Chicago, IL 60604.

MC 142140 (Sub-6–1TA), filed September 29, 1980. Applicant: CITY TRANSFER AND STORAGE OF CONRAD, INC., Box 1432, Conrad, Mont. 59425. Representative: Gene Riewer (same as applicant). *Dry fertilizer* (in bulk) from the Canadian International Boundary line, located at or near ports of entry at Sweetgrass, Mt. on to Power, Mt. and Fairfield Mt. for 270 days. Supporting shippers: Power Farmers Elevator Co., (Cenex) Power, Mt. 59468; Greenfield Farmers Oil Co. (Cenex) Fairfield, Mt. 59436.

MC 42487 (Sub-6–35TA), filed September 29, 1980. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Drive, Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. *Common carrier,* regular routes: *General commodities, (except household goods as defined by the Commission, and Classes A and B explosives),* (1) Between New Orleans, LA and New Iberia, LA, serving all intermediate points: From New Orleans over U.S. Hwy 90 to New Iberia, and return over the same route, and, (2) Between Baton Rouge, LA and junction LA Hwy 1 and U.S. Hwy 90, near Raceland, LA, serving all intermediate points and the off-route points of Taft, Geisma and St. Gabriel: From Baton Rouge over LA Hwy 1 to junction LA Hwy 1 and U.S. Hwy 90, and return over the same route, for 270 days. Carrier is authorized to serve all points in the Commercial Zone of points of service authorized above. Applicant intends to tack to its existing authority and any authority it may acquire in the future. The proposed authority will be tacked or jointed with Docket No. MC 42487 Subs 872 and 885 at New Orleans, LA, Docket No. MC 42487 Sub 885 at Baton Rouge, LA and Docket No. MC 42487 Sub 951F at New Iberia, LA. The Subs 872, 885 and 951F authorities, in turn, will be tacked or joined with other present authorities of Applicant at such points as Atlanta, GA, Birmingham, AL and Houston, TX, to permit service to and from points throughout the United States. Applcaint intends to tack the authorities here applied for at the junction LA Hwy 1 and U.S. Hwy 90. Applicant proposes to interline traffic with its present connecting carriers at authorized interline points throughout the United States, as provided in tariffs on file with the Interstate Commerce Commission. Supporting shipper(s): There are twenty-one shippers. Their statements may be examined at the Regional Office listed.

MC 125433 (Sub-6–35TA), filed October 1, 1980. Applicant: F–B TRUCK LINE COMPANY, 1945 South Redwood Rd., Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). *General*

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commodities (except Class A and B explosives) and except household goods, between the facilities of Maytex, Inc. at or near Terrell, TX, on the one hand, and, on the other, all points in the United States (except AK), for 270 days. Supporting shipper: Maytex, Inc., P.O. Box 729, Terrell, TX 75160.

MC 125433 (Sub-6-36TA), filed October 1, 1980. Applicant: F-B TRUCK LINE COMPANY, 1945 South Redwood Rd., Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). *Pumps, motors, hoses, filters, chemicals and pool accessories,* between the facilities of Purex Corporation at or near Carson, CA, on the one hand, and, on the other, all points in the United States (except AK), for 270 days. Supporting shipper: Purex Corporation, Box 6200, Carson, CA 90749.

MC 148208 (Sub-6-3TA), filed September 29, 1980. Applicant: FUR BREEDERS AGRICULTURAL COOPERATIVE, P.O. Box 295, Midvale, UT 84047. Representative: Irene Warr, 430 Judge Bldg., Salt Lake City, UT 84111. *Commodities dealt in by wholesale and retail grocery stores and food business houses,* between points in CA, on the one hand, and, on the other, points in UT and ID, for 270 days. Supporting shipper: Robins Brokerage Co., P.O. Box 1506, Salt Lake City, UT 84110.

MC 124679 (Sub-6-32TA), filed September 29, 1980. Applicant: C. R. ENGLAND AND SONS, INC., 975 West 2100 South, Salt Lake City, UT 84119. Representative: Michael L. Bunnell (same address as applicant). *Machinery, machinery parts, tools and those commodities used in the operation of energy production, oil drilling and mining* between points in the United States except AK and HI, restricted to shipments showing NJS Associates as the shipper or consignee on the bill of lading for 270 days. Supporting shipper: NJS Associates, 80 East Claybourne Ave., Salt Lake City, UT 84115.

Note.—Applicant holds motor contract carrier authority in number MC-128813 and sub numbers thereunder, therefore dual operations may be involved.

MC 134599 (Sub-6-41TA), filed October 1, 1980. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, P.O. Box 30303, Salt Lake City, UT 84127. Representative: Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501. *Contract carrier,* irregular routes: (1) *Wood pulp and paper articles* from the facilities of Scott Paper Co. at or near Everett, WA to the facilities of Scott Paper Co. at or near Marinette, WI (2) *Paper and paper articles* from the facilities of Scott Paper Co. at or near Marinette, WI to Munster, IN and points in its commercial zone for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Scott Paper Co., Scott Plaza II, Philadelphia, PA 19113.

MC 119634 (Sub-6-6TA), filed September 30, 1980. Applicant: DICK IRVIN, INC., Hwy 2 West, POB F, Shelby, MT 59474. Representative: Mark A. Cole (same as applicant). *Bituminous fiber pipe, conduit and accessories* between Washington County, WI and Toole County, MT on the one hand, and, on the other, ports of entry on the international boundary line between the United States and Canada located in ND, MT, ID, and WA, for 270 days. Supporting shipper: Bermico Co., 2100 Northwestern Avenue, P.O. Box 658, West Bend, WI 53095.

MC 138026 (Sub-6-4TA), filed October 1, 1980. Applicant: LOGISTICS EXPRESS, INC. d.b.a. LOGEX, 1890 S. Chris Lane, Anaheim, CA. Representative: Patricia M. Schnegg, 707 Wilshire Blvd., No. 1800, Los Angeles, CA 90017. *Refrigerant gases* from Taft, LA to Dallas, TX, Jacksonville, FL, and Mobile, AL for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Union Carbide Corporation, 270 Park Ave., New York, NY.

MC 150502 (Sub-6-3TA), filed September 30, 1980. Applicant: REBANDA TRANSPORTATION, INC., 2323 Madrone Ave., Healdsburg, CA 95448. Representative: Ronald C. Chauvel, 100 Pine St., No. 2550, San Francisco, CA 94111. *Contract carrier,* irregular routes: *Musician's equipment, materials and supplies, and show materials* used in connection with concerts presented by shipper between all points in the U.S. (except AK and HI) under contining contracts with Audio Analyst Sound Company. An underlying ETA seeks 120 days authority. Supporting shipper: Audio Analyst Sound Company, 943 Montee De Liesse, Saint Lawrent, Quebec H4T 1R2.

MC 114126 (Sub-6-2TA), filed September 29, 1980. Applicant: SALMO TRANSPORT LTD., Box 139, Salmo, BC, Canada V0G 1Z0. Representative: George H. Hart, 1100 IBM Bldg., Seattle, WA 98101. *Mine ores* from points in Okanogan and Ferry Counties, WA to points of entry on the U.S.-Canada boundary line at or near Oroville, WA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Rocky Mines, Box 744, Republic, WA 99166.

MC 108461 (Sub-6-1TA), filed September 29, 1980. Applicant: SUNDANCE FREIGHT LINES, INC., 124 W. Thomas Rd., Phoenix, AZ 85013. Representative: Andrew V. Baylor, 337 E. Elm St., Phoenix, AZ 85012. *General commodities,* from Alameda, Contra Costa, Fresno, Kern, Kings, Madera, Marin, Merced, Monterey, Napa, Sacramento, San Benito, San Francisco, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaug, Tulare, and Inyo Counties, CA, to Phoenix, AZ, for 270 days. Supporting shipper: A. J. Bayless Markets, Inc., P.O. Box 21152, Phoenix, AZ 85036.

MC 146822 (Sub-6-3TA), filed September 29, 1980. Applicant: EUGENE L. FRAZIER, d.b.a. SUNSET TRANSPORT SYSTEMS, 2200 N. Parmalee, Compton, CA 90222. Representative: Milton W. Flack, 8383 Wilshire Blvd., Suite 900, Beverly Hills, CA 90211. (1) *Steel office furniture,* and (2) *materials, equipment, supplies and accessories* used in the manufacture, sale and distribution of (1) above from Ossining, NY, to San Francisco and Los Angeles, CA, Denver, CO, Dallas and Houston, TX, and Seattle, WA, and commercial zones of said cities, for 270 days. Supporting shipper: Filex Steel Products Co., Inc., North Water St., Ossining, NY 10562.

MC 146822 (Sub-6-4TA), filed September 30, 1980. Applicant: EUGENE L. FRAZIER, d.b.a. SUNSET TRANSPORT SYSTEMS, 2200 N. Parmalee, Compton, CA 90222. Representative: Milton W. Flack, 8383 Wilshire Blvd., Suite 900, Beverly Hills, CA 90211. *Non-exempt food or kindred products and fabricated metal products* (except ordnance), between points in AZ, CA, CO, KS, ID, IL, IN, MO, OR and WA, restricted to traffic originating at or destined to the facilities of Carnation Company, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Carnation Company, 5045 Wilshire Blvd., Los Angeles, CA.

MC 98327 (Sub-6-3TA), filed October 1, 1980. Applicant: SYSTEM 99, 8201 Edgewater Dr., Oakland, CA 94621. Representative: Ray V. Mitchell (same as applicant). *Common carrier,* Regular routes: *General commodities* (except those of unusual value, classes A & B explosives, household goods as defined by the Commission commodities in bulk, and commodities requiring special equipment) between Sparks, NV and Salt Lake City, UT, serving no intermediate points, and serving the commercial zones of Sparks, NV and Salt Lake City, UT, for 270 days. From Sparks, NV over Interstate Hwy 80 to Salt Lake City, UT and return over the same route. Authority is sought to tack and interline at the termini. An underlying ETA seeks 120 days authority. Supporting shippers: There are 47 shippers. Their statements may be examined at the original office listed.

MC 116542 (Sub-6-1TA), filed September 29, 1980. Applicant: TAGGART TRUCKING CO., 11930 W. 44th Ave., Wheatridge, CO 80033. Representative: Bruce W. Shand, 430 Judge Bldg., Salt Lake City, UT 84111. *Pales,* from Denver, CO to points in SD, for 270 days. Supporting shipper: Koppers Company, Inc., 850 Koppers Building, Pittsburgh, PA 15219.

MC 151925 (Sub-6-1TA), filed September 29, 1980. Applicant: KEN VAN LEUVEN & SON, INC., 10798 Seneca Dr., Boise, ID 83709. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. *Contract Carrier,* Irregular routes: (1) *Lumber and Lumber Mill Products,* from the facilities utilized by the Chandler Corporation in ID to points in CO, and (2) *Roofing Materials,* from Woods Cross, UT to the facilities of Building Specialties Wholesale Co., Inc. at or near Boise, ID, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Chandler Corporation, P.O. Box 2840, Boise, ID 83701; and Building Specialties Wholesale Co., Inc., 8620 Franklin Road, Boise, ID 83709.

MC 152055 (Sub-6-1TA), filed September 30, 1980. Applicant: WENDALL'S TRUCKING, INC., 16531 Washington St., Riverside, CA 92504. Representative: Wendall A. Southworth (same as applicant). *Mobile Homes, Modular Home or Building Units and Trailers, including frames, equipment, parts and supplies thereto,* between points in AZ, CA and NV, for 270 days. Supporting shipper(s): There are 12 shippers. Their statements may be viewed at the regional office listed.

MC 152053 (Sub-6-1TA), filed September 30, 1980. Applicant: Maurice E. Whitchurch, d.b.a. WHITCHURCH & SON, 1230 Bruce St., Chico, CA 95926. Representative: Robert G. Harrison, 4299 James Dr., Carson City, NV 89701. *Lumber and wood products and building materials,* between points in OR, WA, ID, CA, MT, WY, UT, AZ, NM and CO, for 270 days. Supporting shippers: Wood-Ply Forest Products, P.O. Box 1511, Chico, CA 95927, Payless Building Supply, PO Box 1738, Chico, CA 95927, Whittaker Forest Products, Inc., PO Box 1578, Chico, CA 95927, Ensworth Forest Products, 12125 High Street, Suite 103, Auburn, CA 95603.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-32216 Filed 10-15-80; 8:45 am]
BILLING CODE 7035-01-M

[Ex Parte No. MC-43]

Lease and Interchange of Vehicles by Motor Carrier

Decided: September 24, 1980.

Calzona Transportation, Inc., (MC-133965), a carrier of liquid bulk commodities, has filed a petition for waiver of paragraph (c) of § 1047.12 of the Lease and Interchange of Vehicles Regulations (49 CFR Part 1057). The waiver would allow petitioner to trip lease tank truck equipment from Tankways, Inc., an affiliated intrastate carrier that holds no operating authority from this Commission.

Findings:

1. The fact that Tankways is a commonly-owned affiliated of Calzona provides reasonable assurance that it is aware of the Commission's regulations and those of the Department of Transportation pertaining to safety.

2. The specialized nature of tank truck equipment makes underutilization a particularly severe problem.

3. Waiver of the 30-day requirement promotes efficient operation and reduces deadhead mileage.

It is ordered:

1. The petition of Calzona Transportation, Inc., for wavier of paragraph 1057.12(c) is granted.

By the Commission, Motor Carrier Leasing Board, Board Members Joel E. Burns, Robert S. Turkington, and John H. O'Brien. (Member Joel E. Burns not participating.)

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-32213 Filed 10-15-80; 8:45 am]
BILLING CODE 7035-01-M

[Vol. No. OP4-087]

Motor Carrier; Permanent Authority Decisions

Decided: October 9, 1980.

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a petition for intervention, either in support of or in opposition to the granting of an application, must be filed with the Commission within 30 days after the date notice of the application is published in the **Federal Register.** Protests (such as were allowed to filings prior to March 1, 1979) will be rejected. A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform. (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, including the extent, if any, to which petitioner (a) has solicited the traffic or business of those supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. The Commission will also consider (a) the nature and extent of the property, financial, or other interest of the petitioner, (b) the effect of the decision which may be rendered upon petitioner's interest, (c) the availability of other means by which the petitioner's interest might be protected, (d) the extent to which petitioner's interest will be represented by other parties, (e) the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and (f) the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable compliance with the requirements of the rule may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission indicating the specific rule under which the petition to intervene is being filed, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Section 247(f) provides, in part, that an applicant which does not intend to timely prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If an applicant has introduced rates as an issue it is noted. Upon request, an

applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administrative acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulation. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930(a) [formerly section 210 of the Interstate Commerce Act].

In the absence of legally sufficient petitions for intervention, filed on or before November 17, 1980 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the following decision-notices on or before November 17, 1980, or the application shall stand denied.

By the Commission, Review Board Number 1 Members Carleton, Joyce, and Jones.

Note.—All applications are for authority to operate as a common carrier, by motor vehicle, in interestate or foreign commerce, over irregular routes, except as otherwise noted.

Agatha L. Mergenovich,

Secretary.

MC 150927F, filed May 30, 1980, previously noticed in the **Federal Register** issue of August 26, 1980, and republished this issue. Applicant: HORIZON TRANSPORT, INC., 13101 N.E. Whittaker Way, Portland, OR 97204. Representative: Michael D. Crew, 1700 Standard Plaza, Portland, OR 97204. Transporting (1) *building materials*, (2) *lumber and lumber products*, other than those in (1), (3) *iron and steel articles*, (4) *forest products*, (5) *contractor's equipment materials and supplies*, (6) *feed and feed ingredients*, (7) *baling twine* and (8) *fertilizer and fertilizer additives*, between points in MT, WY, CO, NM, ID, UT, AZ, WA, OR, NV, and CA.

Note.—The purpose of this republication is to correctly reflect AZ in lieu of AR, and to add MT to the territorial description.

[FR Doc. 80-32210 Filed 10-15-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Permanent Authority Decisions

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the **Federal Register** on July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before December 1, 1980 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP2-068

Decided October 7, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton and Liberman.

MC 94842 (Sub-7F), filed October 3, 1980. Applicant: ROBERT CROCKET, INC., 102 Crescent Ave., Chelsea, MA 02150. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 141523 (Sub-3F), filed September 30, 1980. Applicant: C. R. KIDD PRODUCE, INC., P.O. Box 364, Springdale, AR 72764. Representative: Connie Ray Kidd (same address as applicant). Transporting *general commodities* (except used household goods as defined by the Commission, and classes A and B explosives), between Belzoni, Inverness, Isola, Ruleville, and Vance, MS, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

MC 145842 (Sub-14F), filed September 29, 1980. Applicant: SUNDERMAN TRANSFER, INC., P.O. Box 63, Windom, MN 56101. Representative: Carl E. Munson, 469 Fischer Bldg., Dubuque, IA 52001. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 147902 (Sub-1F), filed October 1, 1980. Applicant: N-W INVESTMENTS, INC., P.O. Box 25387, Houston, TX 77005. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. Transporting *general commodities* (exept used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

Volume No. OP4-086

Decided: October 9, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 131056F, filed October 3, 1980. Applicant: MEL LOESER ASSOCIATES, INC., 21 Devon Dr., West Orange, NJ 07052. Representative: Ronald I. Shapss, 450 7th Ave., New York, NY 10123. As a broker for the transportation of *general commodities* (except household goods), between points in the U.S.

MC 131057F, filed October 3, 1980. Applicant: G. F. TRUCKING COMPANY, a corporation, 1028 West Rayen Ave., P.O. Box 229, Youngstown, OH 44501. Representative: George Fedorisin, 914 Salt Spring Rd., Youngstown, OH 44509. As a broker for the transportation of *general commodities* (except household goods), between points in the U.S.

MC 140216 (Sub-6F), filed October 6, 1980. Applicant: JOHN E. WAY, JR., d.b.a. WAY MESSENGER SERVICE, 205 E. King St., Lancaster, PA 17602. Representative: J. Bruce Walter, 410 No. Third St., P.O. Box 1146, Harrisburg, PA 17108. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 143077 (Sub-4F), filed October 6, 1980. Applicant: GERARD S. REDER, d.b.a. BERKSHIRE ARMORED CAR SERVICE, P.O. Box 62, 343 Pecks Rd., Pittsfield, MA 01201. Representative: James M. Burns, 1383 Main St., Suite 413, Springfield, MA 01103. Transporting *shipments weighting 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 144606 (Sub-15F), filed October 6, 1980. Applicant: DUNCAN & SON LINES, INC., 714 E. Baseline, Buckeye, AZ 85326. Representative: Andrew V. Baylor, 337 E. Elm St., Phoenix, AZ 85012. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

Volume No. OP5-029.

Decided: October 8, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortrei and Hill.

MC 142059 (Sub-142F), filed September 29, 1980. Applicant: CARDINAL TRANSPORT, INC., 1830 Mound Rd., Joliet, IL 60436. Representative: Jack Riley (same address as applicant). Transporting *general commodities*, between Alhambra, Kuhn, Mont. Marine, Ray, Rushville, and Vermont, IL, and Ripon, Green Lake, Princeton, Neshkoro, Wautoma, Wild Rose, Almond and Bancroft, WI, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

MC 149579F filed September 26, 1980. Applicant: TRANSPORT SERVICE, INC., 216 Amaral St., P.O. Box 4167, East Providence, RI 02914. Representative: Jeffrey A. Vogelman, Suite 400 Overlook Building, 6121 Lincolnia Rd., Alexandria, VA 22312. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-32211 Filed 10-15-80; 8:45 am]

BILLING CODE 7035-01-M

Long- and-Short-Haul Application for Relief (Formerly Fourth Section Application)

October 10, 1980.

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the I.C.C. on or before October 31, 1980.

No. 43864, Southwestern Freight Bureau, Agent (No. B-85), increased rates on sugar, beet or cane; corn syrup; and corn sugar, in bulk carloads, from, to, or between stations in Western and Southwestern Territories, as published in Supplement 42 to ICC SWFB 3003-H; Supplement 113 to ICC SWFB 3402; and Supplement 8 to ICC SWFB 4409-A, scheduled to become effective November 15, 1980.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-32215 Filed 10-15-80; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-29 (Preliminary)]

Asphalt Roofing Shingles From Canada

Determination

On the basis of the record [1] developed in investigation No. 731-TA-29 (Preliminary), the Commission determines (Commissioners Bedell and Moore dissenting) that there is no reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, or that the establishment of an industry is being materially retarded by reason of imports from Canada of certain asphalt roofing shingles, provided for in items 256.90 and 523.91 of the Tariff Schedules of the United States (TSUS), which are allegedly sold or likely to be sold at less than fair value (LTFV).

Background

On August 21, 1980, a petition was filed with the U.S. International Trade Commission and the U.S. Department of Commerce on behalf of the Asphalt Roofing Manufacturers Association, alleging that asphalt roofing shingles imported from Canada are being, or are likely to be, sold in the United States at LTFV. Accordingly, on August 29, 1980, the Commission instituted preliminary antidumping investigation No. 731-TA-

[1] The record is defined in § 207.2(j) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(j)).

29 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of certain asphalt roofing shingles from Canada, as provided for in TSUS items 256.90 and 523.91. The statute directs that the Commission make its determination within 45 days of receipt of the petition, or in this case by October 6, 1980. On September 11, 1980, the Department of Commerce issued a notice announcing that it had found the petition to be properly filed within the meaning of its rules and that it was instituting an investigation. Notice to such effect was published in the **Federal Register** of September 17, 1980 (45 FR 61653). The product scope of the Commerce investigation is the same as that instituted by the Commission.

Notice of the institution of the Commission's investigation and of the public conference to be held in connection therewith was duly given by posting copies of the notices in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and the Commission's office in New York City, and by publishing the notices in the **Federal Register** of September 4, 1980, (45 FR 58728) and of September 9, 1980, (45 FR 59438). A public conference was held in Washington, D.C., on September 22, 1980.

In arriving at its determination, the Commission has given due consideration to the information provided by the Department of Commerce, to all written submissions from interested parties, and to information adduced at the conference and obtained by the Commission's staff from questionnaires and other sources, all of which have been placed on the administrative record of this preliminary investigation.

Views of Chairman Bill Alberger, Vice Chairman Michael J. Calhoun, and Commissioner Paula Stern

Determination and Conclusions of Law

Section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b) (hereinafter, the Tariff Act), provides that in preliminary determinations the Commission,

> [S]hall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable indication that

a domestic industry is materially injured, is threatened with material injury or the establishment of an industry is materially retarded "by reason of imports of the merchandise which is the subject of the investigation" by the Department of Commerce.

On the basis of the record in investigation No. 731–TA–29 (Preliminary), we determine that there is no reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, or that the establishment of an industry in the United States is being materially retarded by reason of imports of asphalt roofing shingles from Canada provided for in items 256.90 and 523.91 of the Tariff Schedules of the United States (TSUS), which are allegedly being sold, or are likely to be sold in the United States at less than fair value (LTFV).

Domestic Industry

In this preliminary investigation, our first task is to define the relevant domestic industry against which the criteria for a finding of material injury is to be applied. Section 771(4)(A) of the Tariff Act defines the term "industry":

> [T]he domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product.

The term "like product" is defined in section 771(10) as,

> [A] product which is like, or in the absence of like, most similar in characteristics and uses with the article subject to an investigation.

For the reasons stated below, we find the "like product" to be all asphalt roofing shingles, whether organic or glass-base, in both imperial and metric sizes.

Under the statute, the identification of the domestic industry is based upon the proper identificaton of the "like product," which, in turn, is a function of the article which is the subject of the Commerce Department's investigation. With regard to articles under investigation, the petitioner alleged material injury and the Department of Commerce has instituted an investigation with respect to imports from Canada of asphalt roofing shingles. All of these shingles are organic-base and are the standard Canadian metric shingle which measure 39 and ⅜ inches in length and 13 and ¼ inches in width.

The identification of the domestic product which is "like" the standard Canadian metric asphalt roofing shingle is relatively straightforward. Under section 771(10) there are two alternative ways a product can be found to be a "like product": The product can be "like" the imported article, or where no such product exists, the product can be "similar in characteristics and uses with" the article under investigation. In this case, there is domestic production of asphalt roofing shingles which are virtually identical to the Canadian imports under investigation. Some eleven percent of domestic asphalt shingle production is of the metric size, making these domestic shingles "like" the Canadian imports.

However, the great majority of domestic production of asphalt roofing shingles is of the non-metric size. Thus, the question arises as to whether these so-called imperial size shingles, which are approximately three inches shorter and about one inch narrower than the metric size, can also be considered as products which are "like" the imported metric asphalt shingle. In this regard, the producers of the metric shingle have claimed that because metric shingles are larger than conventional shingles fewer shingles and less labor are required to apply metric shingles to a roof. Additionally, producers of imperial shingles have argued that the use of metric shingles in re-roofing has a negative impact on the appearance of the finished roof.

Despite these claimed advantages, no evidence has been received which would suggest that the size differential of shingles would affect the use to which asphalt shingles are put. Indeed, the respective imperial and metric shingles are virtually identical except for their conformance to the standard unit of measurement used by Canada and used in a significant portion of international commerce. Thus, the domestic imperial shingle is also to be considered "like" the imported metric asphalt shingle.

In addition, 21 percent of domestic asphalt shingle production is glass-fiber base. Thus, there is also some question as to whether glass-fiber base asphalt shingles are "like" the imported organic base asphalt shingle. Organic-base and glass fiber-base asphalt shingles differ largely in the composition of the base felt. Because of this difference, glass-fiber base asphalt shingles are reputed to last longer and are, therefore, sold at a slight premium. In addition, glass-fiber base shingles are alleged to be less suitable for application (not use) during the cold season in colder climates. Nevertheless, both production are manufactured for precisely the same use and each is put to precisely the same use. Each product is sold to the same type of customer and based on the best data available appear to be competitive with one another. Therefore, we see no reason to differentiate between organic and glass-fiber asphalt roofing shingles.

We, therefore, find that the "like product" in this case is the domestically produced asphalt shingle of organic and glass-fiber base and of metric and imperial size. And, accordingly, we find that the domestic industry consists of the producers of asphalt roofing shingles of either metric or imperial size, whether of organic or glass fiber base.

The final issue in our industry analysis concerns petitioner's contention that within the domestic industry as a whole there exists a regional industry consisting of 26 northern states.* Section 771(4)(C) of the Tariff Act of 1930 establishes the criteria for finding a regional industry:

> In appropriate circumstances, the United States, for a particular product market, may be divided into 2 or more markets and the producers within each market may be treated as if they were a separate industry if—
>
> "(i) the producers within such market sell all or almost all of their production of the like product in question in that market, and
>
> "(ii) the demand in that market is not supplied, to any substantial degree, by producers of the product in question located elsewhere in the United States."
>
> In such appropriate circumstances, material injury, the threat of material injury, or material retardation of the establishment of an industry may be found to exist with respect to an industry even if the domestic industry as a whole, or those producers whose collective ouput of a like product constitutes a major proportion of the total domestic production of the product, is not injured, if there is a concentration of subsidized or dumped imports into such an isolated market and if the producers of all, or almost all, of the production within that market are being materially injured or threatened by material injury, or if the establishment of an industry is being materially retarded, by reason of the subsidized or dumped imports.

In addition to these statutory requirements, we indicated in our opinion in *Certain Steel Wire Nails from the Republic of Korea,* Inv. No. 731–TA–26** that there are at least two factors which must be considered in determining whether there are appropriate circumstances to find that a regional industry exists. These factors are that the region should account for a significant share of domestic consumption and production, and that the condition of the producers of the like product in the region should be worse than that of the nationwide industry.

For purposes of this preliminary determination only, we find that it is possible for a northern regional industry to exist, but it is unlikely that this described region meets our standards. Since this opinion constitutes the majority decision to terminate the case, we have given the petitioner his best case for injury by adopting the proposed region. Thus we have used the data collected for the producers in the northern 26 states in our analysis. The statutory considerations can be said to be satisfied. Eighty-seven percent of the production in the 26 northern states during the perioid of the investigation was consumed in the 26 northern states. In addition, it was reported that only 1.3 percent of the demand in the 26 northern states was supplied by producers located outside these states. The Commission's investigation also established that 99.95 percent of the Canadian imports entered through ports of entry in the North, thus indicating a concentration of imports within the region.* With regard to a finding of appropriate circumstances, we note that the northern region accounted for about one-half of total U.S. production and U.S. consumption. The ratio of less-than-fair-value imports to domestic consumption was significantly higher in the northern region than the nationwide ratio. Furthermore, while there was an overall decline in shipments during the period January–June 1979, shipments by producers in the 26 northern states have experienced a greater decline.

If the Commission's determination had been affirmative in this preliminary investigation and this case were to proceed to a final determination, we would have thoroughly explored these data in an attempt to verify their accuracy. It seems highly questionable that the 26 state northern region as defined by petitioner is in fact an isolated geographic market, since there appears to be no natural or commercial reason for the boundary drawn by petitioner between northern states and southern states. Additionally, the location of several producers in the Pacific Northwest and the lack of any other producers west of Minneapolis in the region suggests little if any competition between those producers. Thus, the Pacific Northwest producers probably constitute an isolated geographic market in their marketing region. That would leave the remainder of the northern area as another geographic market, if indeed shipments do not cross the alleged north-south boundary.*

Material Injury by Reason of Alleged LTFV Imports

Section 771(7)(B) of the Tariff Act states that in making its determination under section 733(a), the Commission shall consider among other factors:

> (i) the volume of imports of the merchandise which is the subject of the investigation,
>
> (ii) the effect of imports of that merchandise on prices in the United States for like products, and
>
> (iii) the impact of imports of such merchandise on domestic producers of like products.

In addition, where the Commission is considering whether there is injury to a regional industry, section 771(4)(C) requires us to determine whether "the producers of all, or almost all, of the production within that market" is being injured by reason of the alleged LTFV sales.

Almost all economic indicators reveal that the U.S. asphalt shingle industry in the northern region was doing exceptionally well from 1977 to near the end of 1979. With the construction industry booming, production, shipments, and employment all increased and inventories fell. During this period, the major problem the U.S. industry appears to have had was its ability to supply the growing demand. Periodic shortages of raw materials (granules and felt), particularly during 1978, held back the level of U.S. production.

The only factor which was in decline from 1977–1979 was profits. Despite slightly declining profitability, the industry continued to increase capacity and nearly doubled its capital expenditures.* What the data from 1977–1979 seems to depict is an industry that was thriving and making investments to secure its position for the future.

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* The proposed northern region consists of: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, Iowa, Missouri, Kansas, Nebraska, North Dakota, South Dakota, Montana, Wyoming, Idaho, Washington, and Oregon. This definition is the same as that used in the petition except for the elimination of the partial states of California, Colorado and Utah. Because it was unclear how the petition delineated partial states, the Commission's questionnaire excluded these partial states.

** See *Certain Steel Wire Nails from the Republic of Korea,* Inv. No. 731–TA–29, U.S.I.T.C. Pub. No. 1068 August 1980, views of Chairman Bill Alberger, Vice Chairman Michael J. Calhoun, and Commissioner Paula Stern at p. 9.

* Vice Chairman Calhoun, while concurring in the analysis, believes it inappropriate to view the notion of concentration as a factor bearing on a finding of regional industry. In his view, section 771(4)(C) establishes concentration as a factor bearing solely on the question of whether there is material injury to a regional industry.

* Commissioner Stern notes that there may be appropriate circumstances when a combination of two or more adjacent markets—or distinct regions each of which satisfies the criteria enunciated above—would constitute an appropriate geographic area for regional analysis of the impact of subject imports.

* All other data discussed relate to the northern region except profitability and capital expenditures which were not available on that basis.

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Toward the end of 1979 and through the first six months of 1980—coincident with the recession in the United States—the data reveal a downturn for the asphalt shingle industry. There were declines in production (20 percent), capacity utilization (18 percent), shipments (21 percent) and employment (15 percent). Inventories began to accumulate and profits fell substantially. Consumption which had grown roughly 12 percent from 1977–1979, fell about 18 percent in January–June 1980 over the corresponding period in 1979.

Though consumption was dropping, the rise in imports which had been continuous since 1977 (though market penetration had been small) accelerated in the first six months of 1980. At that time import penetration rose to 11.5 percent in the northern region. Nevertheless, the rise in imports amounted to only 576,000 squares during the period*, while consumption fell about 2.1 million squares. Thus, it is clear that the brunt of the problem facing the industry in 1980 is attributable to the recession. The petitioner in fact recognized this point at the conference.** However, in this investigation the issue is "not whether less than fair value imports are the principal, a substantial or a significant cause of material injury."*** In an antidumping case "the Commission must satisfy itself that in the light of the information presented, there is a sufficient casual link between the less-than-fair-value imports and the requisite injury."**** In this case, after examining the "best available information" we do not find a sufficient casual link.

In evaluating the effects of alleged LTFV imports on prices Section 771(7)(C)(iii) directs the Commission to consider whether "there has been *significant* price undercutting by the imported merchandise as compared with the like products of the United States and to consider whether the imports have resulted in *significont* price suppression or price depression." (Emphasis added.) The data reported in Commission questionnaires do not reveal negative price effects by reason of alleged LTFV imports.* If imports were having a negative impact on the northern region, one would expect prices for the domestic product to be lower in the region where imports are concentrated than prices in the rest of the country.** However, throughout most of the period covered by the investigation, producers' prices in the northern region remained within the three percent of prices in the rest of the country.***/**** In the period when this differential exceeded 3 percent (from October 1979 to March 1980) average prices in the northern region exceeded those in the rest of the country.* From April to June 1980 the regional price relationship again became very close, with prices outside the northern region only slightly higher than northern prices. This similarity in prices between the northern region and the rest of the nation does not support the allegation of price suppression in the region. There is also no evidence of price depression. Prices of asphalt roofing shingles in the U.S. rose by 60 to 66 percent from January–March 1977 to April–June 1980.

Since there is no evidence of price suppression or price depression, we would not expect to find significant underselling. In fact, the data confirm our expectations. The data show that Canadian import prices were on average eleven percent above U.S. prices through 1977–1979. From January to March 1980 Canadian prices fell one percent below U.S. prices. The pattern of higher import prices was reestablished in April-June 1980 when Canadian imports sold for five percent (roughly $1 per square) more than U.S. asphalt shingles. Thus, we see some indication of price competition but certainly not "significant" price undercutting.*

The verified data on lost sales, as well, do not reveal price undercutting, but instead indicate close competition for sales.** While customers contacted by the Commission mentioned price as a consideration in their decision to purchase Canadian shingles, they also cited availability and some indicated a preference for the "metric shingle." The importers obtained affidavits from numerous American customers detailing the latter's preference for Canadian products for reasons other than price.*** Interestingly, U.S. imports from Canada, by quarter for the first six months of 1980, reveal that the import level was nearly the same for both of the first two quarters even though from January to March Canadian imports undersold U.S. shingles by 22 cents per square and from April to June U.S. shingles undersold Canadian shingles by $1 per square. The level of imports does not appear to be correlated to the price relationship of U.S. and Canadian products during this period.

Congress has indicated that our antidumping law is "primarily concerned with the situation in which the margin of dumping contributes to underselling the U.S. product in the domestic market * * *. The Antidumping Act does not proscribe transactions which involve selling an imported product at a price which is now lower than that needed to make the product competitive in the U.S. market, even though the price of the imported product is lower than its home market price. Such so-called 'technical dumping' is not anti-competitive, hence, not unfair."* If the Canadians are indeed dumping asphalt shingles as alledged, the record supports our conclusion that the alleged LTFV sales are at most evidence of "technical" dumping.

In determining whether material injury to an industry is "by reason of" alleged LTFV imports, the legislative history of Title VII of the Trade Agreements Act of 1979 states that:

> The law does not * * * contemplate that injury from such imports be weighted against other factors (e.g., the volume and prices of nonsubsidized imports or imports sold at fair value, contraction in demand or changes in patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry) which may be contributing to overall injury to an industry.**

The Commission is directed, however, to:

> "Take into account evidence presented to it which demonstrates that the harm attributed to the subsidized or dumped imports is attributable to such other factors."*

Much evidence was presented in this investigation concerning a myriad of alternative causes of the economic difficulties that have recently beset the U.S. asphalt shingle industry, including the general economic situaiton in the U.S., the serious recession in the construction industry, the alleged popularity of the "metric-shingle," the alleged failure of the U.S. industry to shift rapidly to metric production, the role of Georgia-Pacific in the marketplace,** and the limited return on glass-fiber-base shingle investments. The Congress has recognized that "the determination by the ITC with respect to causation is . . . complex and difficult" and has left this matter "for the judgment of the ITC." ***

Given the inability of the petitioner in this case to demonstrate a causal link between the alleged LTFV imports and any injury the industry may be suffering, it is clear to us that other casues are responsible for the present condition of the industry.****

Threat of Material Injury

With regard to the threat of material injury, there is no statutory definition of the term, however, the legislative history states that:

> With regard to the standard for a threat of material injury, the committee intends that the ITC affirmative determination shall be based upon evidence showing that the threat is real and imminent and not upon mere supposition or conjecture.*

We do not see any "real" or "imminent" threat to the U.S. industry by reason of the alleged LTFV imports. To the contrary, several developments in the industry are expected to lead to declines in the level of Canadian imports. IKO, Canada's largest shingle producer, has already built one plant in the U.S. and plans to open one or two more. IKO's shipments from Canada to areas which will be serviced by these plants is expected to cease as the plants come fully into production.** Georgia-Pacific, which accounts for sizeable imports, is also gearing up for its own production. And finally, to the extent Canadian imports would increase based on a demand for metric shingles, this demand for Canadian imports will relax as U.S. producers are gradually expanding their capacity to produce metric shingles.

Findings of Fact

The following findings of fact are relevant to our determination in this investigation. These findings contain our analysis of the statutory criteria required by sections 771(7)(B) and (C) of the Tariff Act of 1930.

A. Volume of Imports

1. Imports of asphalt roofing shingles from Canada rose from 811,000 squares [1] in 1977 to 1.5 million squares in 1979. During the first six months of 1980 imports were 655,398 squares in the first quarter and 625,627 squares in the second quarter for a total of 1.3 million squares of shingles imported from Canada, an increase of 80 percent from the level of imports during the corresponding period of 1979. A portion of this increase resulted from imports by Georgia-Pacific and IKO Industries which, at least in part, are expected to decline once these companies open planned production facilities. (See Report at pp. A–8 and A–9 and transcript of Conference at p. 118.)

2. The ratio of imports of asphalt roofing shingles from Canada to total apparent domestic consumption increased from 1.4 percent in 1977 to 2.3 percent in 1979. Imports of shingles from Canada during January–June 1980 accounted for 5.1 percent of apparent domestic consumption, an increase from the 2.5 percent share of such imports in January–June 1979. (See Report at p. A–20.)

3. Virtually all asphalt roofing shingles imported from Canada entered the United States through northern ports of entry and are believed to be sold in the northern region. Consequently, Canadian imports have a larger share of apparent consumption of shingles in the northern region. The ratio of Canadian imports to consumption in this region rose from 2.9 percent in 1977 to 4.7 percent in 1979 and jumped from 5.3 percent in January–June 1979 to 11.5 percent in the corresponding months of 1980. (See Report at p. A–21.)

The Effect of Imports on U.S. Prices

4. Between January 1977 and June 1980, the average delivered prices for Canadian shingles in the northern region generally exceeded those reported by U.S. producers with the single exception of January–March 1980. The average margin by which the price of the imported product exceeded U.S. producers' prices was $1.69 per square, or 11 percent. (See Report at pp. A–22 and A–25.)

5. The margin of overselling of the Canadian shingles was substantially higher in 1977 and 1978 than in late 1979. In January–March 1980, the price of the domestic product was about one percent higher than the Canadian product but in Arpil–June 1980 the price of the imported shingle was approximately five percent above the price reported for domestic shingles. (See Report at p. A–25.)

6. U.S. producers' prices of organic-base shingles sold in the northern region were comparable with those sold in the rest of the country, generally not diverging by more than three percent. Between September 1979 and March 1980, however, the average price for shingles sold in the northern region was five percent higher than in the rest of the country. (See Report at pp. A–23 and A–24.)

C. Impact on the Affected Industry

7. U.S. production of asphalt roofing shingles increased from 56 million squares in 1977 to 63 million squares in 1979. Production fell from 31 million squares in January–June 1979 to 26 million squares in January–June 1980, a decrease of 16 percent. Production in the northern region increased from 29 million squares in 1977 to 32 million squares in 1979. Production of asphalt roofing shingles in the northern region fell from 15 million squares in January–June 1979 to 12 million squares in the

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*Some of these imports are being used by IKO Industries Ltd. (IKO), Canada's largest shingle producer, to establish the market for its planned U.S. production facilities. When IKO begins to produce in the U.S., they have indicated that they will cease imports to areas serviced by their new plants.

**Conference Transcript, p. 40.

***S. Rep. No. 96–249, 96th Cong., 1st Sess. 74 (1979) (hereafter Senate Report).

****Id. at 75.

*All price data discussed above relate to organic-base shingle prices. Glass-fiber-base shingles are generally priced higher than both U.S. and Canadian organic-base shingles in both the northern region and the rest of the United States. Any underselling with respect to U.S. glass-base shingles would be the same as any underselling that may exist with respect to U.S. organic-base shingles.

**The staff report indicates that there is no evidence of regional structural differences such as generally higher production costs which could account for higher northern regional prices.

***Sometimes the prices in the region were higher and sometimes the prices in the rest of the country were higher. The key point is that prices in both areas were extremely close over the period.

****A careful analysis of the price data reveals that prices outside the northern region are overestimated. (See footnote, page 25 of the staff report.)

*The northern region's prices were $1 or five percent over those in the rest of the country during this period.

*Footnote 2 of page A–25 of the staff report speculates that the price relationship of U.S. and Canadian asphalt shingles may be somewhat different than the data shown if U.S. producers reported prices for volume discounts and Canadian importers reported sales to small accounts. This purely hypothetical suggestion is based on underlying assumptions that most Canadian sales are to relatively small accounts and that U.S. producers' sales are to larger accounts with volume discounts. Data was not available concerning the typical size of U.S. and Canadian sales. Our decision in this case is not to be made on speculation, but on the "best available data" which is the price data provided on pages A–23—A–24 of the staff report.

**Staff briefing at public Commission meeting, September 30, 1980.

***Statement and exhibits on behalf of IKO Industries.

*S. Rep. No. 93–1298, 93d Cong., 2d Sess. 179 (1974). This reference to technical dumping was made in the context of amendments to the Antidumping Act of 1921 by the Trade Act of 1974. Although that statute was repealed by the Trade Act of 1979, Congress clearly stated that it intends for the Commission to follow the same standard in applying the new "material injury test" that it used in cases under the 1921 Act, as amended in 1974. *See* H.R. Rep. No. 96–17, 96th Cong., 1st Sess. 46 (1979) (hereafter House Report).

**House Report at p. 47.

*Id.

**Staff report, p. A–8.

***Senate Report, *supra*, note 3 at 75.

****Commissioner Stern notes the contrast between this case and that of Inv. No. 303–TA–13 (Final), *Certain Iron-Metal Castings from India*. In Inv. No. 303–TA–13, the causal link was clear. In the iron-metal casting industry, where import penetration had reached 32 percent by early 1980, price suppression and significant margins of underselling existed.

*House Report at p. 47.

**Also, from January–June 1980 part of the increase in U.S. imports from Canada was comprised of shipments to Wilmington, Delaware, by IKO to break into the market prior to the opening in December, 1980, of its Wilmington plant. (*See* Statement on behalf of IKO at the Conference, pp. 3–4.)

[1] A square of shingles is the standard unit of measurement for this product; it consists of sufficient shingles to cover 100 square feet of roof area.

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corresponding months of 1980, or by 20 percent. (See Report at p. A–11.)

8. Domestic capacity to produce asphalt roofing shingles, rose from 94.4 million squares in 1977 to 97.5 million squares in 1979 and the ratio of production to capacity also increased from 1977 to 1979. Although capacity increased between January–June 1979 and January–June 1980, the capacity utilization rate reported by domestic producers declined between the two periods. Capacity in the northern region also increased from 1977 to 1979 and between January–June 1979 and 1980, rising from 45.2 million squares in 1977 to 46.7 million squares in 1979 and from 23.1 million squares in the first half of 1979 to 23.7 million squares in the corresponding months of 1980. (See Report at pp. A–12 and A–13.)

9. U.S. producers' shipments of asphalt roofing shingles increased from 55.4 million squares in 1977 to 62.6 million squares in 1979, or by 13 percent. Shipments fell from 27.7 million squares in January–June 1979 to 23.8 million squares in January–June 1980, a decline of 14 percent. Shipments of asphalt roofing shingles in the northern region rose from 27.2 million squares in 1977 to 29.8 million squares in 1979, but declined from 12.6 million squares in January–June 1979 to 9.9 million squares in January–June 1980. (See Report at p. A–13.)

10. Inventories of asphalt roofing shingles held by U.S. producers increased slightly from 2.2 million squares as of December 31, 1977 to 2.3 million squares as of December 31, 1979. The ratio of inventories to production declined slightly during that period, from 3.8 percent to 3.7 percent. The ratio of inventories to production reported as of June 30, 1979 and 1980, increased from 7.5 percent on an annualized basis in 1979 to 9.5 percent on an annualized basis in 1980. Inventories held by producers in the northern region declined from 1.2 million squares as of December 31, 1977 to 1.1 million squares of December 31, 1979. The ratio of inventories to production also declined from 4.1 percent in 1977 to 3.6 percent in 1979 and jumped from 8.8 percent as of June 30, 1979 to 12.0 percent as of June 30, 1980, on an annualized basis. (See Report at pp. A–14 and A–15.)

11. Apparent U.S. consumption of asphalt roofing shingles increased from 56.2 million squares in 1977 to 64 million squares in 1979 but declined from 28.4 million squares in January–June 1979 to 25.1 million squares in January–June 1980. Apparent consumption of asphalt roofing shingles in the northern region rose from 28 million squares in 1977 to 31.3 million squares in 1979 and then declined from 13.3 million squares in January–June 1979 to 11.1 million squares in the corresponding months of 1980. (See Report at p. A–15.)

12. The total number of production and related workers in the asphalt roofing shingle industry rose from 8,291 in 1977 to 9,170 in 1979. Employment in this industry dropped about 15 percent between January–June 1979 and January–June 1980, from 9,228 workers to 7,824 workers. Hours worked followed a similar trend. Production and related workers in the northern region rose from 3,428 in 1977 to 3,814 in 1979 and then dropped from 3,840 to 3,249 between the first six months of 1979 and 1980. (See Report at p. A–17.)

13. The net operating profit reported by U.S. producers of asphalt roofing shingles fell from $104 million in 1977 to $84 million in 1979 and dropped sharply from $27 million in January–June 1979 to $580,000 in January–June 1980. The ratio of net operating profit to net sales fell from 12 percent in 1977 to 7 percent in 1979 and from 5 percent in January–June 1979 to less than 0.05 percent for the corresponding months of 1980. (See Report at p. A–18.)

14. The capital expenditures of the U.S. producers of asphalt roofing shingles nearly doubled from 1977 to 1979, rising from $40.2 million to $73.3 million in 1979. Part of the increase in capital expenditures was a result of the addition of three new plants which increased capacity in the northern region. (See Report at pp. A–12 and A–19.)

15. The general decline in the housing market began during the end of 1979 and continued to decline throughout the first part of 1980. The economic indicators of the U.S. producers of asphalt roofing shingles have only shown a decline during January–June 1980, concurrent with this decline in the housing market. (See Report at p. A–6.)

Statement of Reasons of Commissioners George M. Moore and Catherine Bedell

On the basis of the information available in investigation No. 731–TA–29 (Preliminary), we determine that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of the importation of asphalt roofing shingles from Canada that are allegedly being sold or are likely to be sold at less than fair value (LTFV).

The following findings and conclusions, which are based on the record in this investigation, support our determination.

The Domestic Industry

In this investigation we consider the relevant domestic industry to consist of the facilities of the U.S. producers used in the production of asphalt roofing shingles. Since we find there is adequate data to indicate a reasonable indication of injury to the entire domestic industry, it is not necessary for us to reach a conclusion on the appropriateness of the petitioner's allegation that there is a regional industry comprised of the Northern States.

Reasonable Indication of Material Injury

Section 733(a) of the Tariff Act of 1930 directs that the Commission "shall make a determination, based upon the best information available to it at the time of the determination." Section 771(7)(A) defines the term "material injury" to mean "harm which is not inconsequential, immaterial, or unimportant." And sections 771(7) (B) and (C) direct that the Commission, in making its determination, consider, among other factors, (1) the volume of imports of the merchandise which is the subject of the investigation, (2) the effect of imports of such merchandise on prices in the United States for like products, and (3) the impact of such merchandise on domestic producers of like products.

In considering the first factor, the Commission found that imports of asphalt roofing shingles from Canada, which are allegedly being sold at LTFV, nearly doubled between 1977 and 1979, increasing from 811,000 squares[1] to 1.5 million squares. In January–June 1980, 1.3 million squares of shingles were imported from Canada, 80 percent more than the imports of this product during the corresponding months of 1979 and only slightly less than the amount of imports from Canada from all of 1979.[2]

After several years of sustained growth in the U.S. asphalt roofing shingle industry, as shown by most of the economic factors normally examined by the Commission, there was a sudden drop in January–June 1980 compared with data for the corresponding months in 1979. U.S. production, which had increased between 1977 and 1979, declined 16 percent in January–June 1980.[3] Domestic capacity increased between 1977 and 1979 and in January–June 1980; however, the capacity utilization rate declined in the first six months of 1980.[4] Domestic shipments rose from 55.4 million squares in 1977 to 62.6 million squares in 1979 but fell from 27.7 million squares in January–June 1979 to 23.8 million squares in the corresponding months of 1980.[5] Inventories of asphalt roofing shingles held by U.S. producers also increased during the period for which the Commission collected data and the ratio of inventories on June 30, 1979 and June 30, 1980 to production during January–June 1979 and January–June 1980, respectively, rose from 7.5 percent as of June 30, 1979 to 9.5 percent.[6]

Apparent domestic consumption of asphalt roofing shingles rose from 56.2 million squares in 1977 to 64 million squares in 1979 but declined from 28.4 million squares in January–June 1979 to 25.1 million squares in January–June 1980.[7] Employment in this industry also increased between 1977 and 1979 but dropped about 15 percent between January–June 1979 and the corresponding months in 1980.[8] Net operating profit dropped sharply from $27 million in January–June 1979 to $580,000 in January–June 1980; the ratio of net operating profit to net sales fell from 5 percent to less than 0.05 percent in the same period.[9]

The share of apparent U.S. consumption accounted for by imports of asphalt roofing shingles from Canada doubled between 1977 and 1979, rising from 1.4 percent to 2.3 percent in 1979 and to 5.1 percent in January–June 1980.[10] Thus both the volume and relative market share of alleged LTFV imports showed dramatic increases over the period in which the alleged injury occurred.

The data collected by the Commission on average delivered prices for asphalt roofing shingles were inconclusive. We believe there was an upward bias in the price data reported by importers of Canadian shingles because importers in some instances appear to have reported prices to customers who purchased small quantities of shingles whereas U.S. producers reported discounted prices to their largest customers. In January–March 1980, however, the Canadian imports undersold the domestic product and it was in this period that there was a dramatic increase in both the volume and market penetration of the Canadian shingles.[11] The fact that Canadian shingles have undersold domestically produced shingles was confirmed by U.S. purchasers of shingles to whom U.S. producers reported they had lost sales to alleged LTFV imports from Canada. The most frequently cited reason these firms mentioned for why they have purchased Canadian shingles over domestically produced shingles was the lower price of the Canadian product.[12]

Conclusion

On the basis of the information developed during this investigation, we have concluded that there is a reasonable indication that an industry in the United States is materially injured or is threatened with material injury by reason of alleged LTFV imports of asphalt roofing shingles from Canada.

Issued: September 30, 1980.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 80–32233 Filed 10–15–80; 8:45 am]
BILLING CODE 7020–02–M

[1] A square of shingles is the standard unit of measurement for this product; it consists of sufficient shingles to cover 100 square feet of roof area.
[2] Report, at p. A–9.
[3] Report, at p. A–11.
[4] Report, at p. A–12.
[5] Report, at p. A–13.
[6] Report, at p. A–14
[7] Report, at p. A–15.
[8] Report, at p. A–17.
[9] Report, at p. A–18.
[10] Report, at p. A–20.
[11] Report, at pp. A–20 and A–23.
[12] Report, at p. A–27.

[Investigation No. 337–TA–87; Motions No. 87–2, 87–4—87–7]

Certain Coin-Operated Audio-Visual Games and Brochures for the Advertisement; Disposition of Motions To Amend Complaint, Add Respondents and Terminate Investigation as to Respondents Justin Koah and Rowe International, Inc.

AGENCY: U.S. International Trade Commission.

ACTION: Disposition of Motions 87–2, 87–4, 87–5, 87–6 and 87–7, Investigation No. 337–TA–87, Certain Coin-Operated Audio Visual Games and Brochures for the Advertisement Thereof.

Notice is hereby given that the Commission has granted the following motions:

(1) Motion 87–2. Complainant Midway Mfg.'s motion to add KEK Industries, International Trademarks, Hobby Industries, T. T. Sales and Service, and Sunrise New Sound, Inc. as additional respondents and to add allegations of copyright infringement.

(2) Motion 87–4. Complainant Midway Mfg.'s motion to terminate investigation as to respondent Justin Koah.

(3) Motion 87–5. Joint motion by Midway, respondent Rowe International, Inc., and the Commission investigative attorney to terminate investigation as to Rowe International.

(4) Motion 87–6. Joint motion by Midway, the Commission investigative attorney, and respondent Acorn, Inc. to terminate the investigation as to Acorn.

(5) Motion 87–7. Motion by complainant Midway to amend complaint and notice of investigation to add Artic Electronics Co., Ltd., Fuso Corporation, Kyugo Company, Ltd., and Miyabi, Inc. (Compu-Game Inc.) as additional respondents in the subject investigation.

EFFECTIVE DATE: October 6, 1980.

FOR FURTHER INFORMATION CONTACT: Clarease E. Mitchell, Esq., Office of the General Counsel, telephone (202) 523–0148.

AUTHORITY: The authority for Commission disposition of the subject motions is contained in Section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and 19 CFR 210.22 and 19 CFR 210.51–55.

SUPPLEMENTARY INFORMATION: Any party wishing to petition for reconsideration of the Commission's actions must do so within fourteen (14) days of service of the Commission order. Any such petition must be in accord with Commission Rules of Practice and Procedure (19 CFR 210.56).

Copies of the Commission's action and order and any other public documents in this investigation are available for inspection during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, United States International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone (202) 523–0161.

Notice of the Institution of this investigation was published in the **Federal Register** of June 25, 1980 (45 FR 428912).

Issued: October 8, 1980.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 80–32280 Filed 10–15–80; 8:45 am]
BILLING CODE 7020–02–M

[Investigation No. 337–TA–37]

Certain Skateboards and Platforms Therefor; Commission Determination and Order

After an investigation conducted under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), the U.S. International Trade Commission determined on November 13, 1978, that there were no unfair methods of competition or unfair acts in the importation of certain skateboards and platforms therefor into the United States, or in their sale in the United States by the owner, importer, consignee, or agent of either, the effect or tendency of which was to destroy or

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substantially injure an industry, efficiently and economically operated, in the United States. The Commission's determination was appealed to the U.S. Court of Customs and Patent Appeals pursuant to section 337(c) (19 U.S.C. 1337(c)). On December 20, 1979, that court reversed the Commission's determination that there was no violation of section 337, and remanded the case to the Commission for action consistent with the court's opinion.[1]

The purpose of this Commission determination and order is to provide for final disposition of the Commission's investigation on skateboards.

Determination

Having reviewed the record compiled in this investigation, the Commission on August 13, 1980, determined—

1. That there is a violation of section 337 of the Tariff Act of 1930 in the importation into and sale in the United States of certain skateboards by the owner, importer, consignee, or agent of either, the effect or tendency of which is to substantially injure an industry, efficiently and economically operated, in the United States;

2. That the appropriate remedy for such violation is to direct that skateboards and platforms therefor manufactured abroad which infringe claims 1, 2, 7, or 8 of U.S. Letters Patent 3,565,454 be excluded from entry into the United States for the term of said patent, except where such importation is licensed by the owner of said patent;

3. That, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers, such skateboards and platforms therefor should be excluded from entry; and

4. That the bond provided for in subsection (g)(3) of section 337 of the Tariff Act of 1930 should be waived.

Order

Accordingly, it is hereby ordered—

1. That skateboards and platforms therefor which infringe claims 1, 2, 7, or 8 of U.S. Letters Patent 3,565,454 are excluded from entry into the United States for the term of said patent, except where such importation is licensed by the owner of said patent;

2. That skateboards and platforms therefor orderd to be excluded from entry are entitled to entry into the United States without bond from the day after this order is received by the President pursuant to section 337(g) of the Tariff Act of 1930 until such time as the President notifies the Commission that he approves or disapproves this action, but, in any event, not later than 60 days after such date of receipt;

3. That this order and determination be published in the **Federal Register** and served upon each party of record in this investigation and upon the U.S. Department of Health and Human Services, the U.S. Department of Justice, the Federal Trade Commission, and the Secretary of the Treasury; and

4. That the Commission may amend this order at any time.

Issued: October 9, 1980.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-32282 Filed 10-15-80; 8:45 am]

BILLING CODE 7020-02-M

[1] *Stevenson v. U.S. International Trade Commission et al.*, 612 F.2d 546, 204 USPQ 276 (CCPA 1979).

[Investigation No. 337-TA-84]

Chlorofluorohydrocarbon Drycleaning Process, Machines and Components Therefor; Addition of Two Parties Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Addition of two parties respondent:

Union S.R.L., Via Marzabotto, 40050 Via dia Argelato, Bologna, Italy.

United Tex-Care Company, 8505 Whitfield Park Loop, Sarasota, Fla. 33580.

EFFECTIVE DATE: October 8, 1980.

AUTHORITY: The authority for Commission disposition of the subject motion is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in 19 CFR 210.22.

SUPPLEMENTARY INFORMATION: Upon receipt of a complaint filed by Research Development Co. of Minneapolis, Minn., the U.S. International Trade Commission instituted an investigation on April 17, 1980, to determine whether there is a violation of section 337(a) of the Tariff Act of 1930 (19 U.S.C. 1337(a)) in the importation into the United States of chlorofluorohydrocarbon drycleaning machines, or in their sale, by reason of the alleged infringement of claims 1, 3, and 4 of U.S. Letters Patent 3,728,074, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. Notice of the Commission's investigation was published in the **Federal Register** of June 11, 1980 (45 FR 39580).

On August 18, 1980, the complainant filed Motion 84-4 to amend the complaint and notice of investigation by addition of two new parties respondent: Union S.R.L. and United Tex-Care Co. On September 26, 1980, the motion was certified to the Commission by the presiding officer, who recommended that the motion be granted.

Copies of the Commission's Action and Order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0493.

Issued: October 10, 1980.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-32281 Filed 10-15-80; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-82]

Certain Headboxes and Papermaking Machine Forming Sections for the Continuous Production of Paper, and Components; Notice of Termination

Upon consideration of the recommendation of the presiding officer and the record developed in this proceeding, the Commission has granted Motion Docket No. 82-12 and has ordered that investigation No. 337-TA-82 be terminated as to U.S. Letters Patent 3,876,498 effective October 10, 1980.

Any party wishing to petition for reconsideration of the Commission's action must do so within fourteen (14) days of service of the order. Such petitions must comply with the requirements of section 210.56 of the Commission's Rules of Practice and Procedure (19 CFR 210.56).

Copies of the Commission's action and order as well as all other public documents of record in this investigation are available to the public and may be obtained during official working hours (8:45 a.m. to 5:15 p.m.) from the Office of the Secretary, United States International Trade Commission, 701E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Notice of the institution of this investigation was published in the **Federal Register** of April 8, 1980 (43 FR 23832).

By order of the Commission.

Issued: October 10, 1980.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-32234 Filed 10-15-80; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-82]

Certain Headboxes and Papermaking Machine Forming Sections for the Continuous Production of Paper, and Components; Notice of Termination

Upon consideration of the recommnedation of the presiding office and the record developed in this proceeding, the Commission has granted Motion Docket No. 82-15 and has ordered that investigation No. 337-TA-82 be terminated as to respondent Fort Howard Paper Co., effective as of October 10, 1980.

Any party wishing to petition for reconsideration of the Commission's action must do so within fourteen (14) days of service of the order. Such petitions must comply with the requirements of section 210.56 of the Commission's Rules of Practice and Procedure (19 CFR 210.56).

Copies of the Commission's action and order as well as all other public documents of record in this investigation are available to the public and may be obtained during official working hours (8:45 a.m. 5:15 p.m.) from the Office of the Secretary, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Notice of the institution of this investigation was published in the **Federal Register** of April 8, 1980 (43 FR 23832).

Issued: October 10, 1980.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-32235 Filed 10-15-80; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-64 (Preliminary)]

Certain Glass-Lined Steel Storage Tanks and Glass-Lined Steel Pressure Vessels, and Parts Thereof, From France; Termination

AGENCY: U.S. International Trade Commission.

ACTION: Termination of preliminary countervailing duty investigation.

EFFECTIVE DATE: October 6, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Cates, Office of Investigations, (202) 523-0368.

SUPPLEMENTARY INFORMATION: On September 9, 1980, following receipt of a petition filed by the Pfaudler Co., Rochester, N.Y., the Commission instituted preliminary countervailing duty investigation No. 701-TA-64 (Preliminary), Certain glass-lined steel storage tanks and glass-lined steel pressure vessels, and parts thereof from France. The purpose of the investigation was to determine whether there is a reasonable indication that an industry in the United States is materially injuried, or is threatened with material injury, or the establishment of an industry is materially retarded, by reason of allegedly subsidized imports from France of glass-lined steel storage tanks having a capacity of over 75 gallons provided for in item 640.35 of the Tariff Schedules of the United States (TSUS) and glass-lined steel pressure vessels and parts thereof, provided for in item 661.68 of the TSUS.

On October 6, 1980, the Commission received advice from the Department of Commerce that the petition in the subject investigation has been dismissed because it does not properly allege the basis upon which countervailing duties may be imposed and does not appear to present information reasonably available to the petitioners in support of the allegations. Pursuant to its authority under section 207.13 of the Commission's Rules of Practice and Procedure, the Commission's investigation concerning these products from France is hereby terminated.

Issued: October 8, 1980.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-32237 Filed 10-15-80; 8:45 am]

BILLING CODE 7020-02

[Investigation (332-116)]

Study of the Effect of the Enlargement of the European Community on U.S. Trade

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of section 332 of the Tariff Act of 1930 (19 U.S.C. 1332), the Commission has instituted investigation No. 332-116 for the purpose of analyzing the probable effects on U.S. trade of the accession to the European Community of Greece, Portugal and Spain. The report will be chiefly concerned with the prospects for U.S. exports as the three acceding nations adopt the E.C. Common Agricultural Policy and as they harmonize their industrial tariffs with E.C. rates.

EFFECTIVE DATE: September 29, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Larson, Research Division, U.S. International Trade Commission, Washington, D.C. 20436 (Phone 202-724-0082).

WRITTEN SUBMISSIONS: Since there will be no public hearing scheduled for this study, written submissions from interested parties are invited concerning any phase of the study. Commercial or financial information which a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be assured of consideration by the Commission in this study, written statements should be submitted at the earliest practicable date, but no later than March 31, 1981. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

Issued: October 8, 1980.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-32238 Filed 10-15-80; 8:45 am]

BILLING CODE 7020-02-M

[Investigation (332-115)]

Study of the Effectiveness of Escape Clause Relief in Promoting Adjustment To Import Competition

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of section 332 of the Tariff Act of 1930 (19 U.S.C. 1332), the Commission has instituted investigation No. 332-115 for the purpose of assessing the effectiveness of "escape clause" import relief in encouraging and facilitating the adjustment of industries that the Commission has found to be injured by import competition.

In conducting the investigation, the Commission will consider the history of the escape clause from 1951 to the present. An analysis and comparison will be made of all or most petitions for escape-clause relief presented during this period to determine what effect relief from import competition had on the subsequent performance of the industries granted such relief.

EFFECTIVE DATE: September 29, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Golding, Research Division, U.S. International Trade Commission, Washington, D.C. 20436 (Phone 202–724–0092).

WRITTEN SUBMISSIONS: Since there will be no public hearing scheduled for this study, written submissions from interested parties are invited concerning any phase of the study. Commercial or financial information which a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be assured of consideration by the Commission in this study, written statements should be submitted at the earliest practicable date, but no later than March 31, 1981. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

Issued: October 8, 1980.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80–32240 Filed 10–15–80; 8:45 am]

BILLING CODE 7020–02–M

[Investigation (332–117)]

Study of the Operation of Export Restraint Agreements

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of section 332 of the Tariff Act of 1930 (19 U.S.C. 1332), the Commission has instituted investigation No. 332–117 for the purpose of assessing U.S. experience with export restraints as a remedy for import-caused injury.

In its investigation, the Commission will examine the effects of restraints imposed by foreign countries on their exports to the United States of steel, footwear and television receivers as a result of restraint agreements negotiated by United States in the 1970's. The study will consider the effects of these agreements on the price, volume and quality of U.S. imports, as well as the distribution of gains and losses among the affected parties.

EFFECTIVE DATE: September 29, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Larson, Research Division, U.S. International Trade Commission, Washington, D.C. 20436 (Phone 202–724–0082).

WRITTEN SUBMISSIONS: Since there will be no public hearing scheduled for this study, written submissions from interested parties are invited concerning any phase of the study. Commercial or financial information which a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be assured of consideration by the Commission in this study, written statements should be submitted at the earliest practicable date, but no later than March 31, 1981. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

Issued: October 8, 1980.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80–32239 Filed 10–15–80; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–34 (Preliminary)]

Portable Electric Nibblers From Switzerland; Termination

AGENCY: U.S. International Trade Commission.

ACTION: Termination of preliminary antidumping investigation.

EFFECTIVE DATE: October 3, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Leahy, Office of Investigations, (202) 523–1369.

SUPPLEMENTARY INFORMATION: On September 18, 1980, following receipt of a petition filed by the Widder Corp., Naugatuck, CT., the Commission instituted prelimiary antidumping investigation No. 731–TA–34, portable electric nibblers from Switzerland. The purpose of the investigation was to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry is materially retarded, by reason of imports from Switzerland of hand-directed or-controlled nibblers with self-contained electric motors, provided for in item 683.20 of the Tariff Schedules of the United States, sold or likely to be sold at less than fair value.

On October 3, 1980, the Commission received advice from the Department of Commerce that the petition in the subject investigation had been withdrawn by the petitioner. Pursuant to its authority under section 207.13 of the Commission's Rules of Practice and Procedure, the Commission's investigation concerning portable electric nibblers from Switzerland is hereby terminated.

Issued: October 6, 1980.

Kenneth R. Mason,

Secretary.

[FR Doc. 80–32236 Filed 10–15–80; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Bureau of Prisons

National Institute of Corrections Advisory Board; Meeting

Notice is hereby given that the National Institute of Corrections Advisory Board in accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) will meet on Sunday, November 9, 1980, starting at 9:00 a.m., at the Broker Inn, 555—30th Street, Boulder, Colorado, 80301. At this meeting (one of the regularly scheduled triannual meetings of the Advisory Board), the Board will receive its subcommittees' reports and recommendations as to future thrusts of the Institute.

Allen F. Breed,

Director.

[FR Doc. 80–32119 Filed 10–15–80; 8:45 am]

BILLING CODE 4410–05–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanties Panel; Meetings

Agency: National Endowment for the Humanities.

Action: Notice of Meetings.

Summary: Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at 806 15th Street, N.W., Washington, D.C. 20506:

(1)

Date: November 3, 1980.
Time: 9:00 a.m. to 5:30 p.m.
Room: 1134.
Program: This meeting will review applications submitted for the Research Materials Programs, Translations: Near Eastern Languages projects, Division of Research Programs, for projects beginning after March 1, 1981.

(2)

Date: November 6–7, 1980.
Time: 9:00 to 5:30 p.m.
Room: 807.
Program: This meeting will review applications submitted for the Research Resources Programs: Regional and Local History projects, Division of Research Programs, for the projects beginning after March 1, 1981.

(3)

Date: November 7, 1980.
Time: 9:00 a.m. to 5:30 p.m.
Room: 1134.
Program: This meeting will review applications submitted for the Research Materials Program, Translations: Slavic Languages projects, Division of Research Programs, for projects beginning after March 1, 1981.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose,

(1) trade secrets and commerical or financial information obtained from a person and privileged or confidential;

(2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and

(3) information the disclosure of which would significantly frustrate implementation of proposed agency action;

pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 724–0367.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 80–32168 Filed 10–15–80; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering and Applied Science; Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Engineering and Applied Science; Subcommittee for Chemical and Process Engineering; Subcommittee for Civil and Mechanical Engineering; Subcommittee for Electrical, Computer and Systems Engineering; Subcommittee for Human Nutrition; Subcommittee for Science and Technology to Aid the Handicapped.

Date: November 3, 1980—9:00 a.m. to 5:00 p.m.

Place: 1800 G Street, NW, Room 540, Washington, D.C. 20550.

Type: Open.

Contact Person: Mrs. Mary F. Poats, Executive Secretary, Advisory Committee for Engineering and Applied Science, Room 537, National Science Foundation, Washington, D.C. 20550, telephone: (202) 357–9571.

Summary Minutes: Mrs. Mary F. Poats, Room 537, National Science Foundation, Washington, D.C. 20550.

Purpose of Advisory Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to Engineering and Applied Science activities and programs.

Agenda: November 3, 1980—9:00 a.m.—5:00 p.m. Long-range planning; FY 1981 budget; Organizational structure.

Dated: October 10, 1980.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 80–32184 Filed 10–15–80; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

[N–AR 80–42]

Reports, Recommendations and Responses; Availability

Marine Accident Reports

Grounding of the SS FRONTENAC in Lake Superior, Silver Bay, Minnesota, November 22, 1979 (NTSB–MAR–80–13).—The National Transportation Safety Board on October 7 released its formal report on this accident after investigation conducted jointly by the U.S. Coast Guard and the Safety Board. The formal investigation convened on November 29, 1979, in Duluth, Minn., and the report is based on the evidence and testimony developed by that investigation.

Investigation showed that about 2140 e.s.t. last November 22, the FRONTENAC, a bulk cargo vessel, ran aground during a heavy snow squall on shoals extending from Pellet Island, Minn. The use of the vessel's engine, rudder, and bow thruster to free the vessel was insufficient to overcome the effects of the wind and sea. Wind and sea actions held the vessel on the shoals and eventually caused the vessel to swing around to the left while pivoting near the midship section of the hull. The vessel sustained heavy damage to the underwater hull and keel. The No. 3 cargo hold was punctured, resulting in flooding of the hold with some progressive flooding into the No. 2 cargo hold and heavy flooding into the No. 4 cargo hold. The FRONTENAC was declared a constructive total loss since the estimated repair cost exceed the value of the vessel.

The Safety Board has determined that the probable cause of this accident was the master's failure to: accurately determine his vessel's position and course made good; adequately compensate for the effects of wind and sea near a hazardous lee shore; effectively use an available navigational aid; and use his personnel effectively to assist him in navigating the vessel. Contributing to the accident was the failure of the Reserve Mining Company to maintain Pellet Island navigational light in operation during the entire navigation season.

As a result of the accident investigation the Safety Board has recently issued the following recommendations:

M–80–86 through –88 to the U.S. Coast Guard, October 1, 1980—

Conduct a survey of all publicly and privately maintained navigation lights in the Great Lakes area to determine which should be maintained in operation throughout the entire navigation season and amend its operating guidelines and permits for private aids accordingly. (M–80–86)

Revise 33 CFR Part 164, Navigation Safety Regulations, to incorporate navigation watchkeeping standards which quantify the minimum manning level needed for vessels to safely navigate in ports and their approaches in the Great Lakes area during periods of reduced visibility. (M–80–87)

Revise 33 CFR Part 164, Navigation Safety Regulations, to require each self-propelled vessel of 1,600 gross tons or greater, operating in the navigable waters of the United States, to have gyro repeaters conveniently located on the bridge and to require carrying bearing circles to facilitate the taking of visual bearings. (M–80–88)

M–80–89 to the National Oceanic and Atmospheric Administration, October 1, 1980—

Modify the large scale inset charts of all prominent harbors, such as Silver Bay shown on NOAA Chart No. 14967, by including approaches extending at least 1 mile from the harbor entrance. (M–80–89)

Collision of United States Tankship S.S. EXXON CHESTER and Liberian Freighter M.V. REGAL SWORD in the Atlantic Ocean, near Cape Cod, Massachusetts, June 18, 1980 (NTSB–MAR–80–11).—The Safety Board's formal investigation report, also made public on October 7, indicates that the EXXON CHESTER and REGAL SWORD collided in dense fog about 1713 e.d.t. about 1 nautical mile east of the Boston Harbor Traffic Lane Inbound. As a result of the collision, the REGAL SWORD sank and the bow of the EXXON CHESTER was extensively damaged. No one was injured.

The Safety Board determined that the probable cause of this accident was the failure of the master of each vessel to properly interpret and use the radar information which was available to him. Contributing to the accident were the excessive speeds of both vessels in a dense fog; the failure of the EXXON CHESTER and the REGAL SWORD to reduce speed after hearing a fog signal forward of the beam; the REGAL SWORD's imprecise navigation; the REGAL SWORD's alteration of course to port when the risk of collision existed; and the EXXON CHESTER's alteration of course without accurate information about the location of the REGAL SWORD.

The investigation of this accident was conducted jointly by the Safety Board and the U.S. Coast Guard. A formal investigation was convened in Boston, Mass., June 20 through July 2, 1979. As a result of the investigation, the Safety Board on September 12, 1980, recommended that the Coast Guard expedite regulatory action to require recurrent radar observer training at least every 5 years, and seek agenda changes to allow the Intergovernmental Maritime Consultative Organization to adopt an international agreement requiring the use of bridge-to-bridge radio-telephone for navigation in international waters (recommendations M–80–53 and –54). Also on September 12 the Board recommended that Exxon Transportation Company require that masters complete formal training in automated radar plotting before being assigned to vessels with such equipment (M–80–55). (See also 45 FR 63581, September 25, 1980.)

Railroad Accident Report

Head-On Collision of Baltimore and Ohio Railroad Company Freight Trains Extra 6474 East and Extra 4367 West, Orleans Road, West Virginia, February 12, 1980 (NTSB–RAR–80–9).—As indicated in the Safety Board's accident report, released October 9, Extra 6474 East was on track No. 2 traveling at 38 miles per hour as it passed the stop-and-stay signal at Orleans Road and entered a compound curve to the right, where Extra 4367 West was approaching at a speed of 32 mph. The fireman of Extra 4367 West was killed and the engineer and head brakeman were injured; the engineer, conductor, and brakeman of Extra 6474 East were injured. Property damage was estimated to be $1,688,200.

The Safety Board determined that the probable cause of this accident was the failure of the conductor of Extra 6474 East to see that the train was operated in accordance with the operating rules and the failure of the engineer and head brakeman to control the train as required by the signal at Orleans Road. Contributing to the accident was the absence of an adequate safety control device on the locomotive.

As a result of its investigation of this accident, the Safety Board on September 24 addressed two safety recommendations, Nos. R–80–39 >and–40, to the Baltimore and Ohio/ Chesapeake and Ohio Railroad Companies. The Board's recommendation letter state that investigation disclosed that the locomotive crewmembers of Extra 6474 East were tired and not feeling well, and did not take the necessary action to stop their train for the eastbound stop-and-stay signal at the Orleans Road crossovers. Extra 6474 East continued beyond Orleans Road and collided head-on with Extra 4367 West, which was also approaching Orleans Road and slowing to stop for a westbound stop-and-stay signal. These two freight trains were to have stopped at Orleans Road and waited for passage of Amtrak passenger train No. 32 on the adjacent track.

The conductor of Extra 6474 East, who was riding in the second locomotive unit, was not adequately supervising his crewmembers to see that they informed each other of crossover locations and signal indications as required by Baltimore and Ohio operating and radio rules. In addition, the head brakeman of Extra 6474 East, the only person in the cab with the enginer, had only 10 months experience and was not knowledgeable of all Baltimore and Ohio operating rules. Further, he had dozed off and could not take action to stop the train when the engineer failed to do so. Accordingly, the Safety Board recommended that the Baltimore and Ohio Railroad Company of the Chessle System:

Implement a system of training and examination in operating rules which will insure that each employee subject to those rules demonstrates satisfactorily his/her knowledge and understanding of the current operating rules. (R–80–39)

Establish supervisory procedures at crew-change terminals to insure that all operating department employees coming on duty at any hour of the day are physically fit and capable of complying with all pertinent operating rules. (R–80–40)

In addition to these recommendations, the Safety Board in its investigation report reiterates and reemphasizes the importance of the following recommendations, issued to the Federal Railroad Administration as a result of other train collisions:

In cooperation with the Association of American Railroads, develop a fail-safe device to stop a train in the event that the engineer becomes incapacitated by sickness or death, or falls asleep. Regulations should be promulgated to require installations, use, and maintenance of such a device. (R–73–8)

Include in its present investigation of the safety of locomotive-control compartments a study of environmental conditions that could distract crews from their duties or cause them to all asleep at the controls. Regulations should be promulgated to correct any undesirable conditions disclosed. (R–73–9) (Reference for both recommendations R–73–8 and –9: Head-on Collision of Two Penn Central Freight Trains at Herndon, Pa., March 12, 1972.)

Promulgate regulations to require an adequate backup system for mainline freight trains that will insure that a train is controlled as required by the signal system in the event that the engineer fails to do so. (R–76–3) (Reference: Southern Pacific Transportation Co. Freight Train/Automobile Grade Crossing Collision, Tracy, Calif., March 9, 1975.)

Promulgate rules to require engine crews to communicate fixed signal aspects to conductors while trains are en route on signalized track. (R–76–50) (Reference: Head-on Collision of Two Penn Central Transportation Company Freight Trains, Pettisville, Ohio, February 4, 1976.)

Each of the above-noted, recently issued marine and railroad safety recommendations, Nos. M–80–86 and –89 and R–80–39 and –40, is designed "Class II, Priority Action."

Responses to Safety Recommendations

Aviation

A–80–51 and –52, from the Federal Aviation Administration, September 26, 1980.—Response is to recommendations issued June 30 following Safety Board review of 14 CFR 91.23 (Full requirements for flight in IFR conditions) and 91.83 (Flight plan; information required) relative to the requirement that a pilot file for an alternate airport in a flight plan.

Recommendation A–80–51 asked FAA to alert pilots to the disparity between requirements of 14 CFR 91.23 and 91.83 and the approach minimums for certain high altitude airports, by publishing in the Airman Information Manual and on appropriate approved approach charts a specific requirement to file for an alternate airport for those airports where approach minimum are higher than 2,000 feet above airport elevation. Recommendation A–80–52 called on FAA to amend 14 CFR 91.23 and 91.83 to require pilots to file for an alternate airport on an IFR flight plan whenever the ceiling of the destination airport is forcasted to be less than 2,000 feet above the airport or 1,000 feet above the minimum approach altitude or visibility less than 3 miles for a period of 1 hour before to hour after the estimated time of arrival. (See also 45 FR 46584, July 10, 1980.)

FAA in response notes that these recommendations are related to Parts 91.23 and 91.83, but recent rulemaking actions have also amended Part 121.619 to reflect the requirements stated in Part 91. FAA states that the intent of these rulemaking actions was to eliminate the requirements to designate an alternate airport when the weather conditions at the airport were VFR and the approach aids permitted the aircraft to descend into VFR conditions; however, only a limited number of airports (approximately five) exist where the amended regulations do not adequately address the primary approach aid for the airport. At these airports it is possible for a pilot to literally comply with the requirements and not be able to descend to visual conditions or have adequate fuel reserves to divert to an alternate airport. At present, this problem has not, to FAA's knowledge, occurred in operational practice.

To resolve this problem, FAA intends to amend Parts 91, 121, and 135 as indicated in enclosures to the response letter. To achieve consistency between the various Parts of the regulations, FAA intends to amend §§ 91.23 and 91.83 so that IFR alternate airport and fuel reserve requirements are the same as those of Part 135. FAA's Air Transportation Divisions and General Aviation and Commercial Division will work in close coordination so as to arrive at standardized IFR alternate airport and fuel requirements for Parts 91, 121, and 135. These revised requirements would also eliminate the situation which exists with regard to §§ 91.23 and 91.83.

In response to recommendation A–80–51, FAA is exploring various means, including those recommneded by the Safety Board, to inform pilots of the possible disparity in requirements of §§ 91.23 and 91.83.

A–80–53 through –55, from the Federal Aviation Administration, September 25, 1980.—Response is to recommendations issued June 27, based on Board investigations of accident involving Series 20 Learjet aircraft in the low-speed landing configuration and high-speed, high-altitude cruise environment. (See 45 FR 46584, July 10, 1980.)

FAA states in its response letter that it is aware of the fact cited by the Board in the June 27 recommendation letter and has aggressively pursued corrective actions relative to these problems. A review of the accident data pertaining to these aircraft was initiated immediately following the May 6 accident at Richmond, Va. FAA notes that on June 9 the Safety Analysis Division, Office of Aviation Safety, submitted an analysis of Learjet accidents and Service Difficulty Reports to the Air Transportation Division, Office of Flight Operations. The analysis indicated a need for reevaluation of Learjet systems and subsystems concerning stick pusher and shaker, autopilot pitch and roll, elevator, aileron, and throttle cables. It was determined that aircraft control was involved in approximately 30 percent of the 49 accidents used in the analysis. Aircraft control involved overshoot, undershoot, runway alignment, and flying speed; but pilot flight-hour experience did not appear to be a factor. Based upon the analysis and information now available through the accident investigation, FAA has initiated actions addressing the subject of the recommendations as follows:

Recommendations A–80–53 asked FAA to convene a Multiple Expert Opinion Team to evaluate the flight characteristics and handling qualities of Series 20 Learjet aircraft, with and without slow flight modification, at both low- and high-speed extremes of the operational flight envelope under the most critical conditions of weight and balance (and other variable factors) and to establish the acceptability of the control and airspeed margins of the aircraft at these extremes. In responses FAA states that this recommendation has already been encompassed in an earlier investigation involving all Learjets, including the Series 20. This investigation was a followup to the February 1979 "Study of Selected Performance Characteristics of Modified Lear Jet Aircraft" in which the Safety Board, the FAA, Learjet Corporation, National Aeronautics and Space Admininstration, and other interested parties participated. As a result of the investigation, Airworthiness Directive (AD) 79–12–05 was issued (copy provided). Also, a separate investigation was initiated by FAA on June 17 to accomplish a certification review which will also include other areas not specifically addressed in the Board recommendations.

FAA further notes that although this review is still in its initial stages, preliminary information developed as a result of joint FAA and Gates Learjet Corporation flight evaluations has evidenced characteristics at the limits of their operating envelope which in combination with presently approved operating procedures could adversely affect safety of flight. In light of the foregoing, on August 1 the FAA Central Region issued by airmail letter an emergency airworthiness directive (copy provided) to Learjet aircraft owners. Since FAA's investigation and review is incomplete, FAA said it will make its findings available to the Board when research is completed.

In response to recommendations A–80–54, which asked FAA to advise all Learjet operators of the circumstances of recent accidents and emphasize the prudence of rigid adherence to the specified operational limits and recommended operational procedures. FAA states that immediately upon receipt of the recommendation, a notice which included the Board's entire transmission was sent to all Learjet operators. In addition, a GENOT was telegraphed to all FAA General Aviation District Offices (GADO's), Flight Standards District Officers (FSDO's), and Air Carrier District Offices (ACDO's), directing that all Learjet Part 91, 121, and 135 operators be contacted to verify that the operators received the notice and were fully aware of the contents of the contents of recommendation A–80–54.

Recommendation A–80–55 asked FAA to evaluate information contained in Gates Learjet Service News Letter 49 dated May 180 pertaining to procedures to be followed if the aircraft inadvertently exceeds V_{mo}/M_{mo} and, based on this evaluation, require appropriate revisions to the aircraft flight manual. FAA notes that this recommendation is included in FAA's investigation described above, reference recommedation A–80–53. Also, FAA's Office of Flight Operations has established a separate team to review the adequacy and effectiveness of Learjet crew training.

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Further, FAA reports that in addition to these actions, taken in direct response to recommendations A–80–53 through –55, a GENOT (copy provided) was also distributed on May 22, 1980, to all GADO's, FSDO's, and ACDO's. This GENOT requested the immediate inspection of all Learjet aircraft for installation of mach warning cut-out switches. To date, FAA has noted seven instances of aircraft with unapproved cut-out switch installations, and these have all now been removed.

Finally, FAA reports that on June 2, 1980, a special issue of General Aviation Airworthiness Alerts was published (copy provided). This alert addressed the subject of unapproved alterations of speed warning systems in both air carrier and general aviation aircraft.

Highway

H–80–24, from the National Highway Traffic Safety Administration, September 22, 1980.—Letter is in response to Safety Board comments of August 20 concerning NHTSA's initial response of June 5 (45 FR 45422, July 3, 1980) with respect to a recommendation developed as a result of the Board's special study, "Fatal Highway Accidents on Wet Pavement—The Magnitude, Location, and Characteristics." The recommendation asked NHTSA to develop a program to alert the public to the component factors and magnitude of the wet-pavement accident problem.

The Safety Board's August 20 letter restated concern about educating the public as to the many hazards of driving on wet pavements; also, the Board noted that there has been no systematic human factors study of skid accident causation. The Board appreciates the fact that major NHTSA education programs do have instructional material on wet weather driving, but the Board is concerned that the coverage is limited and that it does not convey a sufficient sense of urgency. The Board is not convinced that public awareness programs need necessarily either oversimplify or become timeworn; if they are imaginatively conceived, they can be very effective. NHTSA's statement of preference to concentrate public awareness efforts on higher priority issues such as speed, alcohol, and safety belt usage leads the Board to conclude that NHTSA agrees with this position. The Board urged NHTSA to reconsider the value of more fully informing the driving public of the hazards associated with controlling a vehicle on wet pavement. The Board notes that even though, through the years, alcohol continues to be involved in about 50 percent of all fatal accidents, NHTSA continues its program of public awareness on that front, and, with more than 50 percent of the vehicles traveling in a 55-mile-per-hour zone moving at a speed greater than 55 miles per hour, NHTSA hasn't given up on "55 mph, a law we can live with." The Board hopes that NHTSA will be able to implement an appropriate public awareness program to explain to drivers that a not inconsiderable 13 percent of all fatal accidents occur on wet pavement.

NHTSA's September 22 letter, referring to the June 5 response, reports that at present NHTSA's public information program funds are committed to other projects. Consequently, it would be some time before NHTSA could introduce the type of program recommended by the Safety Board. There are, nevertheless, a couple of actions NHTSA will take which may eventually lead to such a program. First, as part of audience reaction studies NHTSA will investigate the public's awareness and understanding of wet pavement driving problems. Based on the results of these studies, NHTSA says it should be able to gather the necessary evidence to establish the extent of the public's awareness of this problem. Then, if warranted, this information would serve as the basis to formulate a program to address the issue. Second, NHTSA's Highway Safety Accident Data and Analysis Plan committee is being asked to consider what needs to be done to increase NHTSA's understanding of wet weather driving problems. Data resulting from this approach would provide the necessary quantitative data to size the problem as well as suggest solutions.

FHWA Response to NTSB Comments on Rulemaking

The Federal Highway Administration on September 4 responded to the Safety Board's August 15 letter regarding FHWA's compliance with the Regulatory Policies and Procedures issued by the Department of Transportation under Executive Order 12044. (See 45 FR 56737, September 4, 1980.)

After careful review of the concerns raised in the Board's letter, FHWA reports that it has determined that its current practice is in strict conformance with the DOT Regulatory Policies and Procedures. Specifically, paragraph 9a(4) of DOT Order 2100.5 provides that proposed and final regulations that are not considered significant must be accompanied by a statement in the Federal Register to that effect. FHWA says it has scrupulously observed this requirement by inserting a special note in each and every rulemaking document which clearly indicates whether the document is considered to be significant or nonsignificant. Each rulemaking action is reviewed to determine whether it meets the criteria for significance contained in paragraph 5a(2) and 9a of the DOT Order. FHWA does not generally provide the basis for determinations regarding significance in the preamble, but does indicate that its determination is based upon the DOT Regulatory Policies and Procedures. FHWA states that the DOT Order does not require such an explanation to be included in the Federal Register, and FHWA doubts that a recitation of the significance criteria from the DOT Order would be of particular benefit to the public. However, FHWA is very much interested in hearing from those who may disagree with its significance determinations, either at the time a particular document is published for notice and comment or on the basis of the listings in the DOT Semiannual Regulations Agenda.

With respect to the need for regulatory analyses, FHWA states that this again depends upon a determination made under the DOT Order. Each FHWA rulemaking action is evaluated to determine whether it meets the criteria for a regulatory analysis under paragraph 10a of the DOT Order. The Regulations Agenda gives advance notice of those actions for which a regulatory analysis will be prepared. The special note inserted in each rulemaking document is also used to indicate whether a regulatory analysis or evaluation has been prepared. The regulatory analysis or evaluation in turn provides a discussion of the economic and related impacts of the rulemaking action. Regulatory analyses and evaluations are placed in the public docket and are available upon request to all interested parties.

The Safety Board's August 15 letter made specific reference to two FHWA notices of proposed rulemaking: "Design Standards for Highways," Docket No. 80–2, and "Skid Resistant Pavement Surface Design," Docket No. 77–16, Notice 2. FHWA reports that the comments received on these two rulemaking actions are currently under review within the FHWA, and that the concerns raised in the Safety Board's comments to the respective dockets, including those relating to the significance and economic impact of the proposals, will be carefully considered in the development of these rulemaking actions.

In expressing appreciation for the Safety Board's comments in response to rulemaking proposals, FHWA states: "Your comments have indeed assisted in the development of safety standards and effective programs for Federal-State cooperative actions for attainment of national safety objectives." FHWA notes that one of the major objectives of Executive Order 12044 is to provide all interested parties with an opportunity to comment on all aspects of rulemaking proposals, including those aspects which relate to significance and economic impact. FHWA believes that its rulemaking documents have highlighted these items, and FHWA intends to be responsive to the concerns which the Safety Board and others have raised.

Note.—Single copies of Safety Board reports are available without charge, as long as limited supplies last. Copies of Board recommendation letters, responses and related correspondence are also provided free of charge. All requests for copies must be in writing, identified by recommendation or report number. Address requests to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

Multiple copies of Safety Board reports may be purchased from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22161.

(49 U.S.C. 1903(a)(2), 1906)

Margaret L. Fisher,
Federal Register Liasion Officer.

October 10,1980.

[FR Doc. 80-32242 Filed 10-15-80; 8:45 am]

BILLING CODE 4910-58-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee on Babcock and Wilcox Water Reactors; Meeting

The ACRS Subcommittee on Babcock and Wilcox Water Reactors will hold a meeting on October 31, 1980, in Room 1046, 1717 H St., NW., Washington, DC to review the February 26, 1980 event at the Crystal River Nuclear Power Plant, Unit 3, to determine if there are any significant features or causes that are generic to Babcock and Wilcox reactors.

In accordance with the procedures outlined in the Federal Register on October 7, 1980, (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions during which the Subcommittee finds it necessary to discuss proprietary information. One or more closed sessions may be necessary to discuss such information. (SUNSHINE ACT EXEMPTION 4). To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for the subject meeting shall be as follows: Friday, October 31, 1980, 8:30 a.m. until the conclusion of business each day.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, the Babcock and Wilcox Company, their consultants, and other interested persons.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. John C. McKinley (telephone 202/634–3265 between 8:15 a.m. and 5 p.m., EDT.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close some portions of this meeting to protect proprietary information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Dated: October 14, 1980.

John C. Hoyle,
Advisory Committee Management Officer.

[FR Doc. 80-32414 Filed 10-15-80; 10:02 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Transportation of Radioactive Materials; Meeting

The ACRS Subcommittee on Transportation of Radioactive Materials will hold a meeting on October 29, 1980 in Room 1046, 1717 H St., NW., Washington, DC to develop the scope of the Subcommittee's discussion of the transportation certification process for package design of the NRC Transporation Certification Branch.

In accordance with the procedures outlined in the Federal Register on October 1, 1979, (44 FR 56408), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows: Wednesday, October 29, 1980, 8:30 a.m. until the conclusion of business.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on request for the opportunity top present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Paul Boehner (telephone 202/634–3267) between 8:15 a.m. and 5 p.m., EST or EDT.

Dated: October 14, 1980.

John C. Hoyle,
Advisory Committee Management Officer.

[FR Doc. 80-32415 Filed 10-15-80; 10:02 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–17203; File No. SR–DTC–80–6]

Depository Trust Co.; Self-Regulatory Organizations; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s (b)(1), as amended by Pub. L. No. 94–29, 16 (June 4, 1975), notice is hereby given that on October 1, 1980, the above mentioned self-regulatory

organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change

Effective June 1, 1980 The Depository Trust Company (DTC) implemented a policy of monthly refunds to Participants of income earned by DTC from investment of cash dividend, interest and reorganization payments (dividends payments) received by DTC. The proposed rule change provides a basis on which such monthly refunds to Participants can be suspended. Effective with respect to dividends payments to DTC due October 1, 1980 and thereafter, monthly refunds will not be made to any Participant whose performance in making dividends payments to DTC indicates that it has not established procedures to meet the standard of payment to DTC on payable date in immediately-available funds. Payment to DTC on that basis of at least 90% of the dollar value of dividends payments will be evidence that a Participant's procedures meet the standard. The 90% test—both as to payment date timeliness and funds availability—will be based on a moving average of the most recent three month period of dividends payment activity by the Participant (with the November and December 1980 refunds based only on the payment performance in the prior one month and two month period respectively). Funds from refund suspensions will be retained by DTC as general funds and be subject to the general year-end refund to Participants.

The results of applying the 90% test to any Participant could be waived and the refund paid to that Participant if DTC concluded that unusual circumstances appeared to interfere with that Participant's established procedures to pay DTC in accordance with DTC's payment standard.

Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change are as follows:

The purpose of the proposed rule change is to encourage all Participants making dividends payments to DTC to achieve a uniform standard by suspending monthly refunds of investment income to Participants who do not meet the DTC dividends payment standard.

The proposed rule change relates to an equitable allocation of reasonable dues, fees and other charges among DTC's Participants because of its possible effect on a Participant's monthly cost of using DTC.

All Participants were notified that the Board of Directors of DTC would consider implementation of the proposed rule change by DTC Important Notice B 6320, dated March 18, 1980, which was attached as Exhibit 2 to DTC's filing on Form 19b–4, File No. SR–DTC–80–1. Participants affected by the proposed rule change have been notified by letter that the proposed rule change was adopted effective with respect to dividends payments due October 1, 1980. Written comments on the proposed rule change have not been received. Oral comments have concerned the procedures which Participants can establish to meet the DTC dividends payment standard.

DTC perceives no buden on competition by reason of the proposed rule change.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and coping in the public reference room, 1100 L Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before November 6, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons

Secretary.

October 8, 1980.

[FR Doc. 80–32284 Filed 10–15–80; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 17200; File No. 4–208]

Proposed Amendment to the Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage

October 7, 1980.

On September 3, 1980, the participants in the Intermarket Trading System ("ITS") [1] filed with the Commission an amendment ("Amendment") to the Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage ("ITS Plan").[2] The ITS is an experimental market linkage facility which links participating market centers and provides facilities and procedures for (1) routing of commitments to trade and administrative messages between and among the participants, and (2) participation, under certain conditions, by members of all participant markets in opening transactions in those markets.[3]

The Amendment would provide the ITS Operating Committee [4] with authority to implement and administer a pilot program with respect to the Pre-Opening Application created under the terms of the ITS Plan.[5] The pilot would be designed to determine the appropriateness of effecting the Pre-Opening Application based on price parameters outside the previous trading day's closing price which are other than those currently contained in the ITS Plan and shortening the period of time after which an inquiring specialist may open a stock in his market after inquiring of other specialists. The pilot only may be implemented if the price and time parameters selected to be used in the pilot are agreed to by all members of the ITS Operating Committee. In addition, the authority granted to the ITS Operating Committee will expire six

[1] The participants include the American, Boston, Midwest, New York, Pacific and Philadelphia Stock Exchanges.

[2] The ITS Plan and amendments thereto are contained in File No. 4–208.

[3] The ITS Plan was first approved on an interim basis in 1978. Securities Exchange Act Release No. 14661 (April 14, 1978.), 43 FR 17419. Approval on a temporary basis has been extended through January 31, 1983. Securities Exchange Act Release No. 16214 (September 21, 1979), 44 FR 56069.

[4] The ITS Operating Committee includes one member from each ITS participant.

[5] *See* Section 5(b) of the ITS Plan. The Pre-Opening Application enables a specialist on one ITS participant to obtain any pre-opening interest of specialists on other participants. Currently, a specialist arranging an opening transaction is required to inquire of interest from other specialists whenever he determines that the opening transaction in his market in a stock traded in the ITS will be at a price which is more than one-quarter of a point away from the closing price on the previous trading day. The inquiring specialist is prohibited from opening the stock until not less than five minutes after inquiring of other specialists.

months after Commission approval of the Amendment, unless extended by unanimous consent of the ITS participants.

Publication of the submission is expected to be made in the **Federal Register** during the week of October 13, 1980. In order to assist the Commission in determining whether to approve the Amendment, interested persons are invited to submit written data, views and arguments concerning the submission on or before November 17, 1980. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. 4–208.

Copies of the submission, including all amendments, all written statements with respect to the Amendment which are filed with the Commission, and of all written communications relating to the Amendment between the Commission and any person, other than those which may be withheld from the public,[6] will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[7]

George A. Fitzsimmons,

Secretary.

[FR Doc. 80–32283 Filed 10–15–80; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–17165; File No. SR–MSE–79–20 Amdt. #1]

Midwest Stock Exchange, Inc., Self-Regulatory Organizations; Proposed Rule Change

Pursuant to Section 19 (b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94–29, 16 (June 4, 1975), notice is hereby given that on September 17, 1980 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of Terms of Substance of the Proposed Rule Change

The following rules of the Midwest Stock Exchange are hereby further amended from the original filing on this form (Brackets indicate deletions; italics indicate new material):

[6] See 17 CFR 240.24b-2.

[7] *See* Pub. L. No. 87–592, 76 Stat. 394 (15 U.S.C. 78d-1); 17 CFR 200.30–(a)(29).

ARTICLE II

Member Firms

General Partners Bound By Rules of Exchange Rule 4. All partnership articles and all amendments thereto of a member firm for which this Exchange is the Designated Examining Authority *or of a member firm subject to examination by another self-regulatory organization not having a comparable rule* shall be submitted to and be acceptable to the Exchange. General partners in a member firm who are not themselves members of the Exchange, shall be bound by the Constitution and Rules of the Exchange.

ARTICLE II

Member Firms

Subordination of Claims

Rule 6 (a) No change in text.

(b) Withdrawal of Capital—The partnership articles of each member firm for which this Exchance is the Designated Examining Authority *or of a member firm subject to examination by another self-regulatory organization not having a comparable rule* shall contain provisions that without the prior written approval of the Exchange the capital contribution of any partner may not be withdrawn on less than six month's written notice of withdrawal given no sooner than six months after such contribution was first made. Each member firm shall promptly notify the Exchange of the receipt of any notice of withdrawal of any part of a partner's capital contribution or if any withdrawal is not made because prohibited under the provisions of Securities and Exchange Commission Rule 15c3–1 (see 15c3–1(e)).

ARTICLE VI

Restrictions and Requirements

Rule 5(a) A member organization for which this Exchange is the Designated Examining Authority *or subject to examination by another self-regulatory organization not having a comparable rule* shall not open a branch or resident office unless it has obtained prior written approval of the Exchange. Application for approval of the opening of a branch or resident office shall be made on a form provided by the Exchange at least one month (or such shorter period as the Exchange may approve) prior to the proposed opening date of the office.

Statement of Basis and Purpose

The basis and purpose of the foregoing rule change is as follows:

The purpose of these proposed rule changes is to facilitate the periodic examination of member organizations pursuant to agreements now in effect for that purpose with other stock exchanges and the NASD.

The Midwest Stock Exchange has neither solicited nor received any comment.

The Midwest Stock Exchange believes that no burdens have been placed on competition.

On or before November 20, 1980, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549.

Copies of all such filings with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before November 6, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

September 25, 1980.

[FR Doc. 80–32285 Filed 10–15–80; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 33–6246; 34–17207; IC–11392; [A–731]

Publication of Commission Capital Market Working Papers

AGENCY: Securities and Exchange Commission.

ACTION: Announcement of the publication of a series of capital market working papers.

SUMMARY: The Securities and Exchange Commission has announced that it has authorized the publication of a series of working papers which will discuss

economic aspects of various facets of the capital markets and securities regulation. In general, these working papers will be prepared by the staff of the Commission's Directorate of Economic and Policy Analysis, although the series may also include papers prepared by scholars outside of the Directorate. The papers will be distributed to those with an interest in the field and, upon request, to members of the general public. They are intended to be topical and to stimulate public discussion which can assist the Commission in the performance of its responsibilities under the securities laws. The views and conclusions presented will not, however, necessarily be those of the Commission.

FOR FURTHER INFORMATION CONTACT: Jeffry L. Davis, Assistant Director, Directorate of Economic and Policy Analysis (tele. 202/272–2850), Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced that it has authorized its staff to commence the publication of a series of working papers concerning the operation of the capital markets, the capital formation process, and the economic implications of aspects of Commission regulation. The Commission has traditionally viewed economic and empirical analysis as a valuable tool and recognizes the importance of a full understanding of the economics of the marketplace to the formulation of regulatory policy. Similarly, the Commission is sensitive to the impact of regulatory decisions on those markets.[1] The Securities Acts Amendments of 1975 gave the Commission new responsibilities in this area,[2] and, during the past five yers, the Commission has therefore made special efforts to ensure that it has access to informed empirical information relevant to its responsibilities.

The new working paper series is a part of this process. While these papers will not necessarily relate to particular Commission rules or rule proposals, each will serve to highlight general issues of importance to those with an interest in the health, vitality, and future structure of the capital markets and market participants.

The Commission believes that papers of this nature will serve to stimulate dialogue, research, and understanding which will directly benefit Commission decisionmaking. More broadly, the Commission also intends these papers to focus attention on capital formation and other issues of importance to our society as a whole.

The Commission's Directorate of Economic and Policy Analysis will select the topics and the Directorate staff will prepare the papers published in this series. In some cases, however, the Commission will publish papers prepared by academics or others with an interest in the field who are not affiliated with the Directorate.[3] Whether or not prepared by the staff, the papers in the series will not be approved formally on an individual basis by the Commission, and, therefore, will not necessarily represent the views of the Commission. Publication of a particular paper reflects only the fact that the staff of the Directorate of Economic and Policy Analysis has made a judgment that the matters discussed are significant to those with an interest in the capital markets and that the Commission would benefit from the publication of those views and from the resulting opportunity to receive the response and comments of others.

The publication of each paper in this series will be announced in the Commission's *News Digest*. Papers will be distributed routinely to a limited list of scholars and economists active in the fields with which the series deals. In addition, any person interested in receiving a copy of a particular paper may do so, at no cost, by contacting the Commission's Publication Unit, Room B–28, 500 North Capitol Street, Washington, D.C. 20549. While each requestor will be limited to a single copy, there are, of course, no restrictions on private reproduction of these papers.

The Commission invites and encourages comments from economists, academics, issuers, participants in the securities industry, investors, and other interested members of the public on the issues raised in any of these papers. Unless indicated otherwise in a particular paper, all comments should be addressed to the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. In addition, comments on any aspects of this release (*e.g.*, the general goals of the Working Paper series) which do not relate to a particular paper should also be addressed to the Secretary. All such correspondence will be available for public inspection at the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C.

Simultaneous with the publication of this release, the Commission is issuing the first working paper in this series. Working Paper No. 1 is Entitled "Acquisition of Technology-Based Firms by Tender Offer: An Economic and Financial Analysis" and was prepared by the staff of the Commission's Directorate of Economic and Policy Analysis.

By the Commission.

George A. Fitzsimmons,

Secretary.

October 9, 1980.

[FR Doc. 80-32312 Filed 10-15-80; 8:45 am]

BILLING CODE 8010-01-M

[1] *See generally* Securities Act Release No. 6219 (June 30, 1980), 20 SEC Docket 547, 552–53, 45 FR 45554; SEC. *Staff Report on the Securities Industry in 1978* (July 1979).

[2] *See, e.g.*, Sections 8(e)(3), 23 (a)(2), and 23(b)(4)(H) of the Securities Exchange Act of 1934, 15 U.S.C. 78(e)(3), 78w(a)(2), and 78w(b)(4)(H).

[3] Persons with suggestions concerning particular papers or topics which might be included in this series should correspond with the Directorate.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Gulfstream American Model G–1159A; Aircraft Certification and Availability of Documents

The formal certification process for the G–1159A aircraft has taken nearly three years. The certification task was large and technically complex involving over 14,000 hours of direct effort by the FAA Eastern Region staff. Hundreds of technical documents were reviewed. Over 300 hours of flight tests were conducted, 40% of which were flown by FAA pilots.

The Director of the FAA Eastern Region has conducted a thorough review of, (1) the issues involed in the G–1159A type certification program, and (2) the findings of the FAA certification team. He has also reviewed and discussed with his senior staff a document entitled, "Decision Basis for Type Certification of the Gulfstream American Model G–1159A Aircraft".

Based on a review of the entire certification process, the Director approved issuance of the G–1159A Type Certificate as recommended by the Eastern Region Staff. Type Certificate A12EA for the G–1159 aircraft series has been amended to include approval of the G–1159A.

A copy of the "Decision Basis for Type Certification of the Gulfstream American Model G–1159A Aircraft" is on file in the FAA Rules Dockets. The bulk of the "Decision Basis" reviews the purpose, structure, conduct, and significant highlights of the certification program wherein Gulfstream American was required to demonstrate compliance with the applicable Federal Aviation Regulations. Detailed appendices include (1) delineation of the specific compliance required by each rule, (2) a summary of the method by which compliance was established for each, and (3) a bibliography of the reports documenting that compliance. A summary of the objectives and results of each of the flight tests performed by FAA is also included. The report is available for examination and copying at the FAA Rules Docket, Room 916, 800 Independence Avenue, S.W., Washington, D.C. Copies of the report may be obtained from the Office of the Director, FAA Eastern Region, Federal Building, JFK Airport, Jamaica, New York, 11430.

Issued in Jamaica, New York on October 3, 1980.

Lonnie D. Parish,

Acting Director, Eastern Region.

[FR Doc. 80-32154 Filed 10-15-80; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Carteret County, N.C.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Carteret County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Gary D. Holly, Environmental Engineer, Federal Highway Administration, 310 New Bern Avenue, P.O. Box 26806, Raleigh, North Carolina 27611, Telephone (919) 755–4270.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an environmental impact statement (EIS) on a proposed crossing of Bogue Sound in Carteret County. The proposed action would be the construction of a new bridge from in or near Morehead City on the mainland to Bogue Banks, a barrier island. The proposed project is needed to serve the existing and anticipated traffic demand between the mainland and Atlantic Beach, Pine Knoll Shores and other developed areas along the eastern end of Bogue Banks. It will also help relieve the congestion, delay and inconvenience created by the existing drawbridge which presently serves the east end of the island. It will provide an additional crossing of Bogue Sound between the two existing bridge crossings, which are approximately twenty (20) miles apart.

Alternatives under consideration include (1) the "no-build", (2) improving the existing drawbridge and (3) two corridors for construction of a new high level bridge.

Letters describing the proposed action and soliciting comments are being sent to appropriate Federal, State and local agencies. A public meeting and a meeting with local officials have been held in the study area as a part of earlier studies. A public hearing will also be held. Information on the time and place of the public hearing will be provided in the local news media. The draft EIS will be available for public and agency review and comment at the time of the hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The provisions of OMB Circular No. A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program.

Issued on: October 7, 1980.

Roger D. Lewis,

For Division Administrator, Raleigh, N.C.

[FR Doc. 80-32107 Filed 10-15-80; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

[Docket No. RFA 511–80–5]

Receipt of Application; Escanaba & Lake Superior Railroad

The Escanaba and Lake Superior Railroad (E&LS), 125 South First Street, Wells, Michigan 49894, has applied to the Federal Railroad Administration under Section 511 of the Railroad Revitalization and Regulatory Reform Act of 1976 for a loan guarantee totaling $2.5 million which applicant will use to finance the acquisition of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company's (Milwaukee Road) 117.3 mile rail line between Iron Mountain and Ontonagon, Michigan. The rail line is located in the Counties of Dickinson, Iron, Baraga, Houghton and Ontonagon in the Upper Peninsula of Michigan. Applicant states that the proposed acquisition of the Milwaukee Road line will be a natural extension of the E&LS Railroad's existing core system between Escanaba and Channing in Michigan's Upper Peninsula, and will provide essential rail service to forest products and mining industries in the area.

Interested persons may submit written comments on the application to the Associate Administrator for Federal Assistance, Federal Railroad Administration, 400 Seventh Street SW., Washington, D.C. 20590, not later than November 14, 1980. Such submission shall indicate the name of the applicant as shown on this notice and state whether the commenter supports or opposes the application and the reasons therefor.

If the commenter wishes acknowledgment of the Federal Railroad Administration's receipt of the comments, the commenter should include a self-addressed, stamped postcard with the comments, which will be returned upon the Federal Railroad Administration's receipt of the comments. The comments will be taken into consideration by the Federal Railroad Administration in evaluating the application. However, no other formal acknowledgment of the comments will be provided.

Issued in Washington, D.C., on October 6, 1980.

William E. Loftus,

Associate Administrator for Federal Assistance.

[FR Doc. 80-32098 Filed 10-15-80; 8:45 am]

BILLING CODE 4910-06-M

Federal Railroad Administration (FRA)

Receipt of Application for Financial Assistance Under Section 505(h) of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act) as Amended by the Rock Island Railroad Transition and Employee Assistance Act (RITEA)

The following persons have submitted applications to the FRA "noncarrier entity transaction assistance" under section 505(h) of the 4R Act as amended by the RITEA:

V 45 O 16 80 UMI

Purchase, Lease or Rehabilitation Applications Pursuant to Section 112 of the RITEA Act

Name	Segment	Miles	RITEA funding acquisition	RITEA funding rehabilitation
Atlantic-Pacific Railway Corporation, 603 W. Second St., Atlantic, IA 50022.	Rock Island—Omaha, NE/Council Bluffs, IA to South, Chicago Line Junction, IL and branchlines.	742.1	$36,000,000	$87,000,000
City of Sibley, Box 128, Sibley, IA 51249	Rock Island—City of Sibley, IA (local)	3	100,000	650,000
The Continental Group, Inc., One Harbor Plaza, Stamford, CT 06902.	Rock Island—Hodge, LA to Winnfield, LA; (trackage rights) Winnfield to Alexanderia, LA	26.9	1,700,000	
Green Bay Packing, Inc./Little Rock & Western Railway Corporation, 1700 N. Webster Ave., P.O. Box 1107, Green Bay, WI 54305.	Rock Island—North Little Rock, AR to Perry, AR; Hot Springs, Jct., AR to Hot Springs, AR.	53.7	4,050,000	2,587,000
Iowa Falls Western Holding Company, Inc., P.O. Box 83, Estherville, IA 51334.	Rock Island—Iowa Grain Lines	333	6,000,000	18,670,000
Mid-States Port Authority, 257 F Street, P.O. Box 448, Phillipsburg, KS 67661.	Rock Island—Denver-Colorado Springs, CO to Omaha, NE-Council Bluffs, IA and Belleville, KS to MacFarland, KS.	676.9	10,104,436	
Northeast Iowa Shippers Assoc., Packard Elevator, Clarksville, IA 50619.	Rock Island—Cedar Rapids to Vinton to Manly, IA; and Vinton to Iowa Falls, IA	184.0	9,200,000	
B-T-H-G Rail Improvement Assoc., Farmers Co-Op Elevator, Grundy Center, IA 50638.				
North-South Development Corporation, P.O. Box Drawer F, Ruston, LA 71270.	Rock Island—El Dorado, AR to Winnfield, LA	99.3	3,972,000	2,230,000
Panhandle Regional Planning Comm., P.O. Box 9257, Amarillo, TX 79105, and.	Rock Island—Norrick to Adrian, TX	105	581,134	1,841,866
Llano Estacado Water District, P.O. Box 156, Vega, TX 79092.		57.0	85,533 502,260	456,467
			1,168,827	2,298,333
Regional Transportation Authority, 300 North State, Chicago, IL 60610.	Rock Island—Chicago, IL to Joliet, IL	40.2	15,000,000	23,000,000
Royal-Manson Shippers' Assoc., Inc., Savings and Loan Building, Des Moines, IA.	Rock Island—Royal to Manson, IA	55.0	1,950,000	8,780,000
Sheldon-Davis Transportation Co., 15725 Ashbury Park, Detroit, MI 48227.	Rock Island—Ponca City to North Enid, OK, and	54.8	3,515,000	16,100,000
	Anadarka to Magnum Branch Line, OK	79.2		
Southeast Iowa Shippers Assoc., 319 E. Second St., Muscatine, IA 52761.	Rock Island—Keota to Columbus Jct., IA, West Liberty to Burlington, IA Columbus Jct. to Fruitland, IA.	110	3,000,000	
States of Arkansas and Oklahoma	Rock Island—Sunbelt Line, McAlester, OK to Memphis, TN. All branchlines including Little Rock to Winnfield, LA (trackage rights); Winnfield to Alexandria, LA.	726.2	20,000,000	10,500,000
TeCe Corporation, 2300 First Nat'l Bank Building, Dallas, TX 75202.	Rock Island—Liberal, KS to Stinnett, TX; Morse Jct., TX to Wilco, TX	150.5	3,068,000	
Trans-Con Services, Incorporated, P.O. Box 44041, Shreveport, LA 71104.	Rock Island—Winnfield, LA to Fordyce, AR; (trackage rights) Winnfield, LA to Alexandria, LA.	149.2	6,200,000	5,990,000
Beaverville Grain and Lumber Co., Beaverville, IL 60912.	Milwaukee—Hooper to Walz, IL	58.5	2,700,000	
Beverly-Royal Slope Port, District No. 2 of Grant County, WA Star Route One, Royal City, WA 99357.	Milwaukee—Beverly, WA to Othello, WA to Royal City Jct., WA to Royal City, WA	48.8	1,800,000	
Des Moines Metropolitan Transit Authority, 1100 MTA Lane, Des Moines, IA 50309.	Milwaukee—Des Moines, IA (local traffic) to Clive to Woodward, IA; Clive to Adel, IA	42.4	[1]2,188,419	[1]708,400
Earth Products, Inc., Route 2, Box 21, Roseville, IL 60963.	Milwaukee—Chicago Heights, IL to Fayette, IL	138.2	13,320,000	
State of Montana (Montana Railway Corporation), Agriculture-Livestock Bldg., Capitol Station, Helena, MT 59601.	Milwaukee—Miles City, MT to Marengo, WA; branchlines to Agawan, Winifred, & Heath, MT to Spokane, WA & Purdue, ID.	1,210.0	16,000,000	
Port of Pend, Oreille, P.O. Box 565, Newport, WA 99156.	Milwaukee—Newport to Metaline Falls, WA right-of-way, South Newport line	1.0	140,000	
Gateway Railroad Corporation, 2629 Westown Pkwy., Suite 100, West Des Moines, IA 50265.	Milwaukee & Rock Island Iowa Grain Lines	950 385.5 Milw. 564.5 RI	38,362,000	11,638,000 Milw. 4,617,000 RI. 7,021,000

[1] Grimes to Woodward and Des Moines to Adel financial information not available; costs not included.

Interested persons may submit written comments on any of the above applications to the Associate Administrator for Federal Assistance, Federal Railroad Administration, 400 Seventh Street, SW, Washington, D.C. 20590, not later than November 17, 1980. Such submission shall indicate the name of the applicant as shown on this notice and state whether the commenter supports or opposes the application and the reasons therefor.

If the commenter wishes acknowledgment of the Federal Railroad Administration's receipt of the comments, the commenter should include a self-addressed, stamped postcard with the comments, which will be returned upon the Federal Railroad Administration's receipt of the comments. The comments will be taken into consideration by the Federal Railroad Administration in evaluating the application. However, no other formal acknowledgment of the comments will be provided.

Issued in Washington, D.C., on October 10, 1980.

William E. Loftus,

Associate Administrator for Federal Assistance.

[FR Doc. 80-32193 Filed 10-15-80; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1980 Rev., Supp. No. 9]

Surety Companies Acceptable on Federal Bonds; Royal Insurance Co. of America; Change of Name

Royal Globe Insurance Company, an Illinois corporation, has formally changed its name to Royal Insurance Company of America, effective June 27, 1980. The company was last listed as an acceptable surety on Federal bonds at 45 FR 44511, July 1, 1980.

A certificate of authority as an acceptable surety on Federal bonds, dated June 27, 1980, is hereby issued under Sections 6 to 13 of Title 6 of the United States Code, to Royal Insurance Company of America, Chicago, Illinois. This new certificate replaces the certificate of authority issued to the company under its former name, Royal Globe Insurance Company. The underwriting limitation of $13,886,000 established for the company as of July 1, 1980 remains unchanged.

Certificates of authority expire on June 30, each year, unless renewed prior to that date or sooner revoked. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of Treasury Circular 570, 1980 Revision, at page 44511 to reflect this change. Copies of the circular, when issued, may be obtained from the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226.

Dated: October 9, 1980.

W. E. Douglas,

Commissioner, Bureau of Government Financial Operations.

[FR Doc. 80-32167 Filed 10-15-80; 8:45 am]

BILLING CODE 4810-35-M

VETERANS ADMINISTRATION

Advisory Committee on Health-Related Effects of Herbicides; Meeting

The Veterans Administration gives notice under the provisions of Public Law 92-463 that a meeting of the Advisory Committee on Health-Related Effects of Herbicides will be held in Room 119 of the Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. on November 6, 1980, at 8:30 a.m. The purpose of the meeting will be to assemble and analyze information concerning toxicological issues which the Veterans Administration needs to formulate appropriate medical policy and procedures in the interest of veterans who may have encountered herbicidal chemicals used during the Vietnam War.

The meeting will be open to the public up to the seating capacity of the room. Members of the public may only direct questions in writing to the Chairman, Barclay M. Shepard, M.D., and submit prepared statements for review by the Committee. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Transcripts of the proceedings and rosters of the committee members may be obtained from Mr. Donald Rosenblum, Office of the Special Assistant to the Chief Medical Director (102), Department of Medicine and Surgery, Veterans Administration Central Office, Washington, D.C. 20420 (telephone 202-389-5411).

Dated: October 8, 1980.

By direction of the Administrator.

Rufus H. Wilson,

Deputy Administrator.

[FR Doc. 80-32155 Filed 10-15-80; 8:45 am]

BILLING CODE 8320-01-M

Policies and Procedures; School Liability

Correction

In FR Doc. 80-29296 appearing at page 62958 in the issue for Monday, September 22, 1980, make the following corrections:

(1) On page 62959, in the third column, in paragraph 13. (b)(2), between the 20th and 21st lines insert the following: "will be referred to the Chairperson of the Committee on School Liability who".

(2) On page 62962, in the first column, after "4. *Questions on Appendix A*", in Question 2, in the first line, after the word "does" insert the word "not".

BILLING CODE 1505-01-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 202
Thursday, October 16, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

CONTENTS

Civil Aeronautics Board	1
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1

[M–296; Oct. 10, 1980]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 9:30 a.m., October 17, 1980.

PLACE: Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of items adopted by notation.
2. U.S.–London Case (1981), Docket 37937—Instructions to staff.
3. Docket 37578, Miami/Ft. Lauderdale—Netherlands Antilles Service Case. (Further discussion on additional issues)
4. Docket 38541, Application of Air Florida, Inc., for a new or amended certificate to provide service between a point or points in the United States and Shannon, Ireland. (Memo # 9981, BIA, OGC, BALJ)
5. Docket 38375, Application of Caribbean Air Cargo Company, Ltd. for exemption from section 402 to permit it to engage in nonscheduled air transportation of property and mail between U.S. and Caribbean points. (BIA, OGC)
6. Dockets 33887, 31237, and 34314, Joint application of Saudi Arabian Airlines corporation (Saudia) and Pan American World Airways, Inc. for renewal of a blocked-space agreement (Agreement CAB 27693–A2), and applications of Pan American and Saudia for renewal of their respective exemption authorities to continue offering the New York-Dhahran service pursuant to the blocked-space agreement. (Memo # 8431–C, BIA, BDA, OGC, BALJ)
7. Docket 28563, petition for rulemaking by Trans International Airlines (Trasamerica) and World Airways to require traffic and revene data to be reported by class of fare in foreign air transportation. (OGC, OEA)
8. Docket 32660, Agreement CAB 28257–R21, and Docket 36595, *Investigation Into The Competitive Marketing of Air Transportation;* IATA requests approval of and antitrust immunity for an agreement establishing a new IATA passenger general sales agency resolution applicable in the United States, as well as consolidation of the new resolution to the *Investigation.* (Memo # 9979, OCC)
9. Docket 32660, IATA agreement proposing Japan-U.S./Canada GIT fare revisions. (Memo # 9978, BIA, BDA)
10. Docket 38194, Petition of Transamerica Airlines, Inc. for Review of Staff Action taken in Order 80–6–118, approving Pan American's Application for an Exemption to Permit the Sale of Group Contractor Fares (U.S.-Hong Kong) (BDA)
11. Suntours Limited d/b/a Sunflight Holidays—Waiver request for relief from the requirement in Part 380 of having to state the charter price of each flight in its charter prospectus. (Memo # 9977, 9977–A, BDA)
12. Dockets 38559, 38622, and 38635, Applications of Hughes Airwest, Aloha Airlines, and Hawaiian Airlines for a blanket exemption to permit carriers to provide free or reduced-rate air transportation in lieu of cash payments for charitable contributions. (Memo # 9973, BDA)
13. Docket 32484, the Third Review of Class Rate IX. (Memo # 7916–M, BDA)
14. Docket 38743, Application of Ozark for compensation for losses at Clarksville-Ft. Campbell-Hopkinsville. (Memo # 9978, BDA, OCCR, OGC, OC)
15. Docket 38363, United's application for compensation for losses sustained in providing EAS at Flint, Michigan. (Memo # 9980, BDA, OCCR, OGC, OC)
16. Docket 38685, adjustment to payout schedule for Pioneer Airways, Inc., for provision of essential air service to four Nebraska points. (Memo # 9146–C, BDA, OCCR, OGC OC)
17. Docket 38513, Western Air Lines' Notice to Reduce Service at Butte, Montana. (BDA, OCCR)
18. Docket 38714, and NR–275, sixty-day notice of Delta Air Lines of intent to suspend the last nonstop and single-plane service in 14 markets. (BDA)
19. Docket 37972, Notice of intent to Cascade Airways to suspend service at Moses Lake/Ephrata, Washington. (BDA)
20. Dockets 38526, 38527, Ozark Air Lines' notices of intent to suspend essential air service at Columbia/Jefferson City and Springfield, Missouri. (BDA, OCCR)
21. Dockets 38734 and EAS–651, Rio Airways' notice of intent to suspend service at Hot Springs, Arkasas. (BDA, OCCR)
22. Docket 33019, *Chicago-Midway Expanded Service Proceeding.* (Memo # 7909–O, BDA)
23. Docket 38162, Petition for review of the staff's action authorizing Eastern Air Lines and other carriers and agents to discuss implementation of a travel agent sales reporting program in Puerto Rico and the Virgin Islands. (Memo # 9971, BDA)
24. Docket 31838, Professional Air Charter, Inc.—Revocation of Section 418 All-Cargo Air Service Certificate. (BDA)
25. Docket 38654, Petition for a stay of Order 80–8–181, August 29, 1980—That accepted Texas International's airport notice to begin interstate service at Dallas (Love Field), Texas. (Memo # 9896–A, BDA)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, The Secretary, (202) 672–5068.

[S–1900–80 Filed 10–14–80; 3:51 pm]

BILLING CODE 6320–01–M

2

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., Tuesday, October 21, 1980.

PLACE: 2033 K Street, N.W., Washington, D.C., 5th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matter

Proposed Order for Private Investigation; Request for Authorization for Commission Employee to Appear in Court in a Representative Capacity.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey. 254–6374.

[S–1901–80 Filed 10–14–80; 3:50 pm]

BILLING CODE 6351–01–M

3

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., Tuesday, October 21, 1980.

PLACE: 2033 K Street, N.W., Washington, D.C., 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Guideline No. 1.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

[S–1902–80 Filed 10–14–80; 3:50 pm]

BILLING CODE 6351–01–M

4

FEDERAL COMMUNICATIONS COMMISSION.

The Federal Communications Commission will consider an additional item on the subject listed below at the Open Meeting scheduled for 9:30 a.m., Thursday, October 9, 1980 at 1919 M Street, N.W., Washington, D.C.

Agenda, Item No., and Subject

Complaints and compliance—2—*Title:* Application for Review on behalf of Multimedia Program Productions, Inc. of a Staff ruling that the "Donahue" Show does not fall within the definition of a bona fide news interview program. *Summary:* The Commission will consider whether the Broadcast Bureau was correct when it ruled that the "Donahue" Show is not a bona fide news interview program and thus is not exempt from the equal opportunity provision of Section 315.

The prompt and orderly conduct of Commission business requires that less than 7-days notice be given consideration of this additional item.

Additional information concerning this meeting may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254–7674.

Issued: October 9, 1980.

Federal Communication Commission.

William J. Tricarico,

Secretary.

[S–1896–80 Filed 10–14–80; 3:34 pm]

BILLING CODE 6712–01–M

5

FEDERAL COMMUNICATIONS COMMISSION.

The Federal Communications Commission will consider an additional item on the subject listed below at the Closed Meeting scheduled for Thursday October 9, 1980. Following the Open Meeting, in Room 856, at 1919 M Street, N.W., Washington, D.C.

Agenda; Item No., and Subject

General—1—Instructions to General Counsel concerning litigation in *National* Citizens Comm. for Broadcasting v. *FCC*, D.C. Cir., No. 80–1598.

The prompt and orderly conduct of Commission business requires that less than 7 days notice be given consideration of this item.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254–7674.

Issued: October 9, 1980.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[S–1897 Filed 10–14–80; 3:34 pm]

BILLING CODE 6712–01–M

6

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Monday, October 20, 1980 at 2 p.m.

PLACE: 1325 K Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Expedited compliance.

DATE AND TIME: Tuesday, October 21, 1980 at 10 a.m.

PLACE: 1325 K Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Personnel, Litigation, Audits, Compliance.

DATE AND TIME: Wednesday, October 22, 1980 at 10 a.m.

PLACE: 1325 K Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Any matters not concluded on October 21, 1980.

DATE AND TIME: Wednesday, October 22, 1980 at 2 p.m.

PLACE: 1325 K Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Expedited compliance.

DATE AND TIME: Thursday, October 23, 1980 at 10 a.m.

PLACE: 1325 K Street, N.W., Washington, D.C.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates for future meetings.
Correction and approval of minutes.
Advisory opinions: Draft AO 1980–119—James F. Schoener, Counsel, National Republican Senatorial Committee.
1980 election and related matters.
Appropriations and budget.
Pending legislation.
Classification actions.
Routine administrative matters.

DATE AND TIME: Thursday, October 23, 1980 (following the regular open meeting).

PLACE: 1325 K Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Expedited compliance.

DATE AND TIME: Friday, October 24, 1980 at 2 p.m.

PLACE: 1325 K Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Expedited compliance.

DATE AND TIME: Monday, October 27, 1980 at 2 p.m.

PLACE: 1325 K Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Expedited compliance.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, public information officer, telephone: 202–523–4065.

Marjorie W. Emmons,

Secretary to the Commission.

[S–1898 Filed 10–14–80; 3:40 pm]

BILLING CODE 6715–01–M

7

FEDERAL HOME LOAN BANK BOARD

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Vol. No. 45, Issue No. 200. Page No. 67826. Date of Publication October 14, 1980.

PLACE: 1700 G. Street N.W., Sixth Floor, Washington, D.C.

STATUS: Open Meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202–377–6677).

CHANGES IN THE MEETING: The following item has been withdrawn from the open meeting: Application for Bank Membership and Insurance of Accounts, Superior Savings and Loan Association, Los Angeles, Calif.

No. 406, October 14, 1980.

[S–1894–80 Filed 10–14–80; 12:44 p.m.]

BILLING DATE 6720–01–M

8

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR, 67191, October 9, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Tuesday, October 14, 1980.

CHANGES IN THE MEETING: One of the items announced for inclusion at this meeting was consideration of any

agenda items carried forward from a previous meeting; the following such closed item(s) was added: Proposed purchases, under competitive bidding, of computer equipment within the Federal Reserve System. (This matter was originally announced for a meeting on September 29, 1980.)

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 462-3204.

Dated: October 14, 1980.

Theodore E. Allison,

Secretary of the Board.

[S-1895-80 Filed 10-14-80; 2:08 pm]

BILLING CODE 6210-01-M

9

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

TIME AND DATE: 10 a.m., Monday, October 20, 1980.

PLACE: 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph Coyne, Assistant to the Board: (202) 462-3204

Dated: October 10, 1980.

Jeff A. Walker,

Assistant Secretary of the Board.

[S-1892-80 Filed 10-10-80; 4:32 pm]

BILLING CODE 6210-01-M

10

INTERNATIONAL TRADE COMMISSION [USITC ERB—80-11]. Executive Resources Board (ERB).

TIME AND DATE: 10 a.m., Wednesday, October 22, 1980.

PLACE: Room 117, 701 E Street, N.W.; Washington, D.C. 20436.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED:

Pursuant to the specific exemptions of 5 U.S.C. 552b(c)(2) and (6), on the authority of 19 U.S.C. 1335, and in conformity with 19 C.F.R. 201.36(b)(2) and (6), Commissioners Calhoun, Bedell, and Stern, as members of the Executive Resources Board (ERB), voted to hold a meeting of the Board in closed session as follows:

1. Old Business:
   a. Criteria for SES bonuses and awards.
   b. Executive Development.
   c. SES Manpower Planning.

A majority of the entire membership of the Board felt that this meeting should be closed to the public since; (1) the discussion would only concern internal personnel practice and procedures; and (2) the information discussed would be likely to disclose information of a personal nature which could constiute a clearly unwarranted invasion of personnel privacy.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Seretary, (202) 532-0161.

[S-1891-80 Filed 10-10-80; 4:28 pm]

BILLING CODE 7020-02-M

11

NATIONAL SCIENCE BOARD

DATE AND TIME:

October 16, 1980, 1 p.m., Open session; 4 p.m. Closed session.

October 17, 1980, 8:30 a.m., Open session; 11 a.m., Closed session.

PLACE: National Science Foundation, Room 540, 1800 G St. NW., Washington, D.C.

STATUS: Addition to previously published announcement.

MATTERS TO BE CONSIDERED AT THE OPEN SESSION, THURSDAY, OCTOBER 16: Addition to Item 3, "Director's Report." NSF Regulations on Rights of the Handicapped.

CONTACT PERSON FOR MORE INFORMATION: Miss Vernice Anderson, Executive Secretary, (202) 357-9582.

[S-1893-80 Filed 10-14-80; 10:07 am]

BILLING CODE 7555-01-M

12

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES.

Notice of Change in Meeting.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 Fed. Reg. 64797, September 30, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE: 8 a.m., October 9, 1980.

PLACE: Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Maryland 20014.

CHANGE IN THE MEETING: Board of Regents meeting.—The meeting of the full Board was changed to a meeting of the Executive Committee of the Board.

PERSON TO CONTACT FOR MORE INFORMATION: Frank M. Reynolds, Executive Secretary, 202/295-3025.

SUPPLEMENTARY INFORMATION: Five new members of the Board of Regents were appointed by the President and confirmed by the Senate on September 24, 1980. Notice from a number of new members and existing members of their plans to attend was still pending until shortly before the meeting. A quorum of the Board of Regents was not present on the day of the meeting. A quorum of the Executive Committee, however, was present. The Executive Committee decided to proceed with the agenda. This was announced at the time of the meeting, and there was no objection. This Committee, with specified exceptions, possesses all powers of the Board of Regents [General Procedures and Delegations of the Board of Regents, 32 C.F.R. §242 b.8(j)]. Although the Executive Committee discussed all items in the agenda, it took no action on item (d) Revised Appointment, Promotion, and Tenure Document because this is a specific exception to the Committee's powers.

October 14, 1980.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

[S-1899-80 Filed 10-14-80; 3:47 am]

BILLING CODE 3810-70-M

V 45 O C 16 80 UMI

federal register

Thursday
October 16, 1980

Part II

Federal Home Loan Bank Board

Privacy Act of 1974; Systems of Records; Annual Republication

FEDERAL HOME LOAN BANK BOARD

[No. 80-606]

Privacy Act of 1974; Systems of Records; Annual Republication

Dated: September 30, 1980.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final Action Systems of Records—Republication.

SUMMARY: The Bank Board is required by the Privacy Act of 1974 to republish annually its systems of records. On August 13, 1979, the Bank Board, by incorporation by reference, amended the August 11, 1978 publication of its records systems. See 44 FR 47405–47406 and 43 FR 35792–35804. In order to provide a clear copy of the present record systems, the Bank Board herewith republishes all of its systems in full.

The changes in the following systems reflect change in office designations and addresses: FHLBB–1; FHLBB–7; FHLBB–8; FHLBB–9; FHLBB–10; FHLBB–11; FHLBB–16; FHLBB–19; FHLBB–20; and FHLBB–22.

On January 8, 1980, at 45 FR 1681–1683, the establishment of a record system entitled, "Consumer Inquiry Records and Data" was announced. This is hereby designated to be FHLBB–4. In addition, the records retention schedule for this system has been modified.

EFFECTIVE DATE: September 30, 1980.

FOR FURTHER INFORMATION: William Van Lenten (202) 377–6463.

AUTHORITY: 5 USC 552a.

The full text of the Federal Home Loan Bank Board systems of records is as follows:

Table of Contents

FHLBB—1 Internal Office Personnel Files
FHLBB—2 Manpower/Budget System
FHLBB—3 Biographies and Photographs
FHLBB—4 Reserved
FHLBB—5 Reserved
FHLBB—6 District Bank Officers' Biography File
FHLBB—7 District Bank Officers' Salary Cards
FHLBB—8 Candidates for Employment
FHLBB—9 Candidates for Appointed Directorships of Federal Home Loan Banks
FHLBB—10 Depositors/Account Holders in Defaulted Associations
FHLBB—11 Biographical File of Federal Home Loan Bank Directors
FHLBB—12 Payroll/Personnel
FHLBB—14 Asset Management System
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FHLBB—16 Upward Mobility Program (Career Development)
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FHLBB—18 Travel Records
FHLBB—19 Employee Relations File
FHLBB—20 Employee Locator File
FHLBB—21 Statement of Employment and Finance Interest
FHLBB—22 Form 587 File—Training Request, Authorization, Notice of Completion of Training
FHLBB—23 Reserved
FHLBB—25 Office of Secretary, Card Files
FHLBB—26 Propective Organizer of FSLA File
FHLBB—27 Suspensions File
FHLBB—28 Removal and Prohibitions File
FHLBB—29 Investigatory Records Copy File

FHLBB—1

SYSTEM NAME:

Internal Office Personnel Files

SYSTEM LOCATION.

See "System Manager"

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal Home Loan Bank Board employees, consultants, and employees of the Federal Savings and Loan Insurance Corporation, and Federal Savings and Loan Insurance Corporation receiverships.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a variety of records relating to personnel actions and determinations regarding individuals while employeed by the Federal Home Loan Bank Board, as consultants to the Board, or as employees of a Federal Savings and Loan Insurance Corporation receivership. The records may contain information about an individual relating to: date of birth; social security number; veterans preference; tenure; physical handicap; past and present salaries, grades, and position titles; and may include letters of commendations, reprimands, charges, and decison on charges; notices of reduction-in-force; accident reports; upward-mobility information; locator files; loans with Savings and Loans; personnel actions, including but not limited to appointment, promotion, reassignment, demotion, work detail, transfer, and separation; probationary period; training; minority group; indicator; life insurance, health benefits, and designation of beneficiary; application for employment; letters of reference; performance ratings (MBO)/KOI or other as applicable); documentation of personnel actions or decisions made about the individual; awards; records of equipment and materials issued to the individual; leave and time-and-attendance records; travel records; duplicate employee identification cards; and other information regarding the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEMS;

5 U.S.C. 1302, 2951, 4118, 4308, 4506, and Executive Order 10561, dated September 13, 1954.

ROUTINE USES OF RECORDS MAINTAINED IN SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES;

Information in these records is used or may be used:

(1) By Board and receivership officials for review in connection with training, appointments, transfers promotions, reassigments, adverse actions (including, disciplinary actions), determinations of qualifications of an individual, determinations of conflicts of interest, equipment assigned to an individual, entitled benefits, leave authorized and used, travel undertaken, and reimbursements;

(2) By the Civil Service Commission for when a current or former Federal employee questions the validity of a specific document in his record;

Director, Office of Examinations and Supervision

Personnel Liaison Officer, Internal Evaluation and Compliance Office (3) By the Courts to render a decision when an agency has refused to release to a current of former Federal employee a record under the Freedom of Information Act;

(4) To provide information to a prospective employer of a current or former Federal employee;

(5) To provide data for the automated Central Personnel Data File CPDF);

(6) To provide data to update Federal Automated Career Systems (FACS), the Executive Inventory File, Security Investigations, the Index on New Hires, and materials concerning adverse actions and termination;

(7) To provide information to a Federal agency, in response to its request, in connection with hiring or retention of an employee, letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter;

(8) In connection with requests for information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent information, such as licenses, if the obtaining of such information is necessary to an agency decision concerning hiring or retention of an employee, issuance of a security clearance, letting of a contract, or issuance of a license, grant, or other benefit;

(9) To refer, where there is indication of a violation or potential violation of law (whether civil, criminal, or regulatory), to the appropriate Federal, State, or local agency charged with responsibility for investigating or prosecuting such violation of enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto;

(10) As a data source for management information for production of summary descriptive statistics and analytical studies in support of the functions for which the records are collected and maintained, or for related personnel management functions or manpower studies, and for utilization in response to general requests for statistical information without personnel identification of individuals under the Freedom of Information Act or to locate specific individuals for personnel research or other personnel management functions; and

(11) Verification of employment for credit purposes.

(12) Disclosure of information may be made to a congressional office from the record of an individual, in response to an inquiry from that office made at the request of an individual, if such information would be available directly to the individual upon request.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folder or on Kardex cards in the lockable containers or in secured rooms.

RETRIEVABILITY:

Records are filed by name of individual.

SAFEGUARDS:

Access is limited to personnel whose offical duties require such access and who have a need to know the information in a record for a particular job-related purpose.

RETENTION AND DISPOSAL:

Cut-off upon termination of employment. Destroy 60 days after cut-off.

SYSTEM MANAGER(S) AND ADDRESS:

The business address of each system manager listed below, unless otherwise indicated, is: Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

Director, Office of Policy and Economic Research

General Counsel, Office of the General Counsel

Director, Federal Savings and Loan Corporation

Director, Administration

Director, Office of Industry Development

Manager, Scottsdale Office
Federal Savings and Loan Insurance Corporation

Western Office Manager
Federal Savings and Loan Insurance Corporation

Northwest Guaranty Receivership
Federal Savings and Loan Insurance Corporation

Director, Equal Employment Opportunity Office

Director, Communications Office

Personnel Liaison Officer, Controller's Division

Director, Office of Community Investment

Director, Administrative Services Division

Director, Office of District Banks

Director, Information System Division

Personnel Liaison Officer, Internal Review

District Director—Examinations
Office of Examinations and Supervision
Receivership Agent
Midwestern Office
Federal Savings and Loan Corporation
Federal Home Loan Bank Board
One Federal Street—Thirtieth Floor
Boston, Massachusetts 10048

District Director—Examinations
Office of Examinations and Supervision
Federal Home Loan Bank Board
One World Trade Center Floor 103
New York, New York 10048

District Director—Administration
Office of Examinations and Supervision
Federal Home Loan Bank Board
260 Peachtree Street, N.W.
10th Floor
Atlanta, Georgia 30303

Assistant District Director
Silver Spring Area Office
Office of Examinations and Supervision
Federal Home Loan Bank Board
8757 Georgia Avenue
Room 538
Silver Spring, Maryland 20910

Assistant District Director
Charlotte Area Office
Office of Examinations and Supervision
Federal Home Loan Bank Board
4915 Albermarle Road
Charlotte, North Carolina 28205

Assistant District Director
Fort Lauderdale Office
Office of Examinations and Supervision
Federal Home Loan Bank Board
229 E. Broward Blvd. 3rd Floor
Fort Lauderdale, Florida 33301

District Director—Examinations
Office of Examinations and Supervision
Federal Home Loan Bank Board
2700 DuBois Tower
511 Walnut Street
Cincinnati, Ohio 45202

Assistant District Director
Cincinnati Area Office
Office of Examinations and Supervision
Federal Home Loan Bank Board
2710 DuBois Tower
511 Walnut Street
Cincinnati, Ohio 45202

Assistant District Director
Canton Area Office
Office of Examinations and Supervision
Federal Home Loan Bank Board
229 Wells Avenue, N.W.,
Canton, Ohio 44703

Assistant District Director
Office of Examinations and Supervision
90 East Wilson Bridge Road
Worthington Ohio 43085

Assistant District Director
Nashville Area Office
Office of Examinations and Supervision
Federal Home Loan Bank Board
One Commerce Place
Suite 1930
Nashville Tennesse 37239

Assistant District Director
Office of Examinations and Supervision
Federal Home Loan Bank Board
115 W. Washington St. Suite 1290
Indianapolis, Indiana 46204

District Director—Examinations
Office of Examinations and Supervision
Federal Home Loan Bank Board
111 East Wacker Drive Suite 700
Chicago, Illinois 60601

District Director—Examinations
Office of Examinations and Supervision
Federal Home Loan Bank Board
714 Second Avenue
Room 300
Des Moines, Iowa 50309

District Director—Examinations
Office of Examinations and Supervision
Federal Home Loan Bank Board
120 East Street, No. 3 Townsite Plaza
Topeka, Kansas 66603

Assistant District Director
Office of Examinations and Supervision
Federal Home Loan Bank Board
Room 379
Post Office Building

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18th and Stout Street
Denver, Colorado 80202

District Director—Examinations
Office of Examinations and Supervision
Federal Home Loan Bank Board
600 Stewart Street
Suite 610
Seattle, Washington 98101

District Director—Examinations
Office of Examinations and Supervision
Federal Home Loan Bank Board
600 California Street
Room 310
San Francisco, California 94108

District Director—Examinations
Office of Examinations and Supervision
Federal Home Loan Bank Board
1350 Tower Building
Little Rock, Arkansas 72201

Assistant District Director
Dallas Branch Office
Office of Examinations and Supervision
Federal Home Loan Bank Board
1100 Commerce Street
Room 3–A–6
Dallas, Texas 75242

Assistant District Director
Houston Branch Office
Office of Examinations and Supervision
Federal Home Loan Bank Board
Suite 820
One Allen Center
500 Dallas Street
Houston, Texas 77002

NOTIFICATION PROCEDURE:

Inquiries concerning records shall be made by notifying the appropriate system manager. Such notification must include the individual's name, social security number or employee identification number, date of birth, office of employment (including location), period of employment and the name of the record system.

RECORD ACCESS PROCEDURES:

Persons wishing to have access to their records or to have such records changed (including modification, addition, and deletion) shall notify the appropriate system manager. Such notification shall include the same information required to be furnished under "Notification", plus a statement setting forth the desired access or changes and the reasons for such changes.

CONTESTING RECORD PROCEDURES:

See "Access Procedures".

RECORD SOURCE CATEGORIES:

Information in this system of records may have been obtained from the individual, his immediate supervisor or persons at other supervisory levels, the personnel office, the payroll office. Savings and Loan Associations, U.S. Civil Service Commission, or other sources.

FHLBB–2

SYSTEM NAME:

Manpower/Budget System.

SYSTEM LOCATION:

Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current employes of the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual employee records are kept by office and agency as follows: name, title, awards, age, EOD date, service computation date, occupation series, social security number, grade, date of last within-grade raise, date of last promotion, within-grade due-date, and eligibility for promotion. Records are kept for each office (and, where appropriate, for the agency) on number of vacancies, authorized position ceilings, and number of employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) To provide management with data on current employment, vacancies, and history of employees.

(2) For preparation of future personnel actions;

(3) For computerized budget projections for three fiscal years.

(4) Disclosure of information may be made to a congressional office from the record of an individual, in response to an inquiry from that office made at the request of the individual, if such information would be available directly to the individual upon request.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in nylon post-data folders.

RETRIEVABILITY:

Records are filed by name of individual.

SAFEGUARDS:

Access is limited to personnel whose official duties require such access and who have a need to know the information in a record for a particular job-related purpose.

RETENTION AND DISPOSAL:

Cut-off at end of fiscal year. Destroy two years after cut-off. Duplicate files: Destroy when superseded. Magnetic tapes: Cut-off at end of each month. Retain 12 months, then blank.

SYSTEM MANAGER(S) AND ADDRESS:

Controller, Controller's Division; Director, Information Systems Division; Director, Personnel Management Office. See "Location" for address.

NOTIFICATION PROCEDURE:

Inquiries concerning the records shall be made to the system manager. Inquiries must include name, social security number, date of birth, office of employment, period of employment, and name of record system.

RECORD ACCESS PROCEDURES:

Persons wishing to have access to their records or to have their records changed (including modification, addition, and deletion) shall notify the system manager. Such notification shall include the same information required to be furnished under "Notification", plus a statement of the desired access or changes and the reasons for such changes.

CONTESTING RECORD PROCEDURES:

See "Access Procedures".

RECORD SOURCE CATEGORIES:

Personnel Records.

FHLBB—3

SYSTEM NAME:

Biographies and Photographs

SYSTEM LOCATION:

Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal Home Loan Bank Board Chairman, Board members, Office Directors and key personnel; Federal Home Loan Bank Presidents; Federal Savings and Loan Insurance Corporation key personnel; Federal Savings and Loan Advisory Council members; Federal Home Loan Mortgage Corporation, and Amminet Executive Staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical Notes and Photographs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Release for media use when the described individuals are invited to make addresses, are appointed to new positions, or leave through resignation, retirement, etc.

(2) Disclosure of information may be made to a congressional office from the record of an indivudal, in response to an inquiry from that office made at the request of the individual, if such information would be available directly to the individual upon request.

POLICES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in the file folders.

RETRIEVABILITY:

Records are filed by name of individual.

SAFEGUARDS:

No safeguards are needed, since these records are available for public distribution.

RETENTION AND DISPOSAL:

Chairman Biography and Photo File: Permanent. Cut-off upon termination of appointment or resignation. Transfer to Federal Records Center 4 years after cut-off. Offer to National Archives 20 years after cut-off. All others: Cut-off at end of calendar year in which appointment, assignment, or employment is terminated. Destroy 6 months after cut-off.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Communications. See "Location" for address.

NOTIFICATION PROCEDURE:

Inquiries concerning the records shall be made to the system manager.

RECORD ACCESS PROCEDURES:

Records may be obtained, changed, or updated by submission of material to the system manager.

CONTESTING RECORD PROCEDURES:

See "Access Procedures".

RECORD SOURCE CATEGORIES:

Information is submitted by the individuals whose records are maintained.

FHLBB—4

SYSTEM NAME:

Consumer Inquiry Records and Data.

SYSTEM LOCATION:

Consumer Affairs and Civil Rights Division, Office of Examinations and Supervision, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

SUBSIDIARY:

Related information may be maintained in FHLBB and FHLBB Regional Offices' files.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who submit inquiries or complaints concerning savings and loan associations, the deposits of which are insured by the FSLIC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inquiries and complaints, the nature of such inquiries or complaints, and information on the investigation and resolution of inquiries and complaints.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to officials of savings and loan associations in connection with investigation of inquiries and complaints. Relevant referrals may be made to appropriate law enforcement agencies or authorities in connection with investigation and/or prosecution of alleged civil, criminal and administrative violations. Disclosures may be made to a Congressional Office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual. Disclosures may also be made to the Federal Reserve Board, other Federal financial regulatory agencies, and the Congress or any of its authorized committees in fulfilling reporting requirements or assessing implementation of applicable laws and requirements. (Such disclosure will be made in a nonidentifiable manner when feasible and appropriate.) Referrals may also be made to other Federal and nonfederal governmental supervisory or regulatory authorities when the subject matter of a complaint or inquiry is more properly within such other agency's jurisdiction. Other disclosures are intra-agency only.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, computer tape.

RETRIEVABILITY:

By individual name, complaint number or system identifier, or by savings and loan association name, district, complaint code, source code, disposition code; or by some combination thereof.

SAFEGUARDS:

Maintained in secured offices.

RETENTION AND DISPOSAL:

Active Cases: Cut off at end of calendar year in which case is closed. Transfer to FRC 3 years after cut off.

Closed Cases: Cut off at end of 5th calendar year. Destroy 10 years after cut off.

SYSTEM MANAGER(S) AND ADDRESS:

Director, as above.

NOTIFICATION PROCEDURE:

Director, as above.

RECORD ACCESS PROCEDURES:

Director, as above.

CONTESTING RECORD PROCEDURES:

Director, as above.

RECORD SOURCE CATEGORIES:

Inquirer or complainant (or his or her representative, which may include, e.g., a member of Congress or an attorney); savings and loan association officials, employees and members; examiners and central files on savings and loan associations.

FHLBB—5

[Reserved.]

FHLBB—6

SYSTEM NAME:

District Bank Officers' Biography File

SYSTEM LOCATION:

Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Federal Home Loan Bank Officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Resumes and Appointment Histories, including salary information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) To provide general background information on Bank officers for use by the Director, Office of the Federal Home

Loan Banks, and the Board. Information other than salary data is furnished to the public upon request.

(2) Disclosure of information may be made to a congressional office from the record of an individual, in response to an inquiry from that office made at the request of the individual, if such information would be available directly to the individual upon request.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in filing cabinets in file folders.

RETRIEVABILITY:

Records are filed by name of individual.

SAFEGUARDS:

Access to salary data is limited to personnel who have a need to know the information for a job-related purpose.

RETENTION AND DISPOSAL:

Permanent. Cut-off upon retirement or separation of individual, and transfer to the Federal Records Center Offer to National Archives 5 years from date of cut-off.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Assistant (Elections), Office of the Federal Home Loan Banks. See "Location" for address.

NOTIFICATION PROCEDURE:

Inquiries concerning the records shall be made to the system manager.

RECORD ACCESS PROCEDURES:

Persons wishing to have access to the records shall notify the system manager. Salary information is only available to the individual whose record is kept, and a request for such information must include the individual's name, date of birth, social security number, and period of employment. Inquirers wishing to contest records may do so through the system manager.

CONTESTING RECORD PROCEDURES:

See "Access Procedures".

RECORD SOURCE CATEGORIES:

The individuals whose records are kept, and the Federal Home Loan Banks.

FHLBB—7

SYSTEM NAME:

District Bank Officer's Salary Cards

SYSTEM LOCATION:

Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All officers of Federal Home Loan Banks.

CATEGORIES OF RECORDS IN THE SYSTEM:

Salary History.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) For determination of salary requirements and review of salary history by Director, Office of District Banks; Board members; Federal Home Loan Bank Presidents, and the Federal Reserve Board (upon request, the Federal Reserve Board is furnished salary information by position only).

(2) Disclosure of information may be made to a congressional office from the record of an individual, in response to an inquiry from that office made at the request of the individual, if such information would be available directly to the individual upon request.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in a card file.

RETRIEVABILITY:

Records are filed by name of individual.

SAFEGUARDS:

Access is limited to personnel whose official duties require such access and who have a need to know the information in a record for a particular job-related purpose. Access is granted by the Administrative Assistant (Elections), Office of the District Banks.

RETENTION AND DISPOSAL:

Cut-off and destroy 3 months after retirement or separation of individual.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Assistant (Elections), Office of the District Banks. See "Location" for address.

NOTIFICATION PROCEDURE:

Inquiries concerning the records shall be made to the system manager. Individuals inquiring about their own records must supply name, date of birth, social security number, and period of employment.

RECORD ACCESS PROCEDURES:

Persons wishing to have access to the records shall notify the system manager, furnishing the information required under "Notification" in the case of individual requests. Individuals wishing to have their records changed (including modification, addition, or deletion) shall so notify the system manager, furnishing the information required under "Notification" and a statement of the desired changes and the reasons for such changes.

CONTESTING RECORD PROCEDURES.

See "Access Procedures".

RECORD SOURCE CATEGORIES:

Minutes of meetings of the Federal Home Loan Bank Board or of the Boards of Directors of the Federal Home Loan Banks.

FHLBB—8

SYSTEM NAME:

Candidates for Employment

SYSTEM LOCATION:

See "System Manager".

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Candidates for employment by the Federal Home Loan Bank Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

Resumes, letters of referral, transcripts and internal agency memoranda.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES

(1) These materials are used by agency officials to evaluate qualifications of candidates for employment.

(2) A record from this system of records may be disclosed as a "Routine Use" to a Federal, State or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(3) Disclosure of information may be made to a congressional office from the record of an individual, in response to an inquiry from that office made at the request of the individual, if such information would be available directly to the individual upon request.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders. An index card summarizing each application is also prepared and filed.

RETRIEVABILITY:

Records are filed by name of candidate.

SAFEGUARDS:

Access is limited to supervisors and Personnel Management Office employees whose official duties require such access and who have a need to know the information in a record for a particular job-related purpose.

RETENTION AND DISPOSAL:

Transfer application to Official Personnel Folder for candidates selected and destroy index card. Destroy files for other candidates after position has been filled.

SYSTEM MANAGER(S) AND ADDRESS:

The business address of each System Manager listed below, unless otherwise indicated is:
Federal Home Loan Bank Board
1700 G Street, NW.
Washington, D.C. 20552.
Deputy Director
Office of the District Banks
General Counsel, Office of the General Counsel
Chief, Personnel Operations Branch
Personnel Management Office.
Assistant District Director—Personnel Development
Office of Examinations and Supervision
Federal Home Loan Bank Board
260 Peachtree Street, NW.
Atlanta, Georgia 30303.

NOTIFICATION PROCEDURE:

Inquiries concerning records shall be made by notifying the appropriate system manager. Such notification must include name, date of birth, social security number, and name of record system.

RECORD ACCESS PROCEDURES:

Persons desiring access to their records or to have such records changed (including modification, addition, and deletion) shall notify the appropriate system manager, furnishing him the information required under "Notification", plus a statement of the desired access or changes and the reasons for such changes.

CONTESTING RECORD PROCEDURES:

See "Access Procedures".

RECORD SOURCE CATEGORIES:

Individuals whose records are kept; individuals recommending an applicant, agency personnel office, Civil Service Commission, college placement officers.

FHLBB—9

SYSTEM NAME:

Candidates for Appointed Directorships of Federal Home Loan Banks.

SYSTEM LOCATION:

Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Candidates for appointed Directorships of Federal Home Loan Banks.

CATEGORIES OF RECORDS IN THE SYSTEM:

Resumes of potential candidates, referral letters, and internal agency memoranda.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7 of the Federal Home Loan Bank Act (12 U.S.C. 1427).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Information is used by the Director of the Office of the District Banks and by Board members to determine qualifications and availability of candidates being considered as appointed Directors of Federal Home Loan Banks. Information from this system may be conveyed to the Presidents and staffs of the Regional Federal Home Loan Banks, and to the Executive Office of the President of the United States.

(2) Disclosure of information may be made to a congressional office from the record of an individual, in response to an inquiry from that office made at the request of the individual if such information would be available directly to the individual upon request.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are filed by name of candidate.

SAFEGUARDS:

Access is limited to personnel whose official duties require such access and who have a need to know the information for a particular job-related purpose. Access is gained only through the Administrative Assistant (Elections), Office of the District Banks.

RETENTION AND DISPOSAL:

Cut-off when appointment is made. Appointed candidates: Transfer to Biographical File of Federal Home Loan Bank Directors. (FHLBB–11). Unsuccessful candidates: Destroy 3 years after cut-off.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Assistant (Elections). Office of the District Banks. See "Location" for address.

NOTIFICATION-PROCEDURE:

Inquiries concerning records shall be made to the system manager. Such notification must include the candidate's name and bank district.

RECORD ACCESS PROCEDURES:

Persons wishing to have access to their records or to have such records changed (including modification, addition and deletion) shall notify the system manager, furnishing the information required under "Notification", plus a statement of desired access or change and the reasons for such changes.

CONTESTING RECORD PROCEDURES:

See "Access Procedures".

RECORD SOURCE CATEGORIES:

Potential Candidate; letters of reference for appointed Director; memoranda.

FHLBB—10

SYSTEM NAME:

Depositors/Account Holders in Defaulted Associations

SYSTEM LOCATION:

See "System Manager".

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Every individual with an account in a defaulted association.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information pertaining to the account of an individual, including the type of account, account balance, rate of return and interest earned, insurance payment, and other information relating to savings accounts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

402, 405 of the National Housing Act.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information contained in this record system may be disclosed:

(1) In connection with settlement of insurance claims against defaulted institutions insured by the Federal Savings and Loan Insurance Corporation, to representatives of the Corporation (including a private contractor assisting in insurance settlement activities by providing needed data processing or other services);

(2) For credit checks (consistent with the Fair Credit Reporting Act) by individuals, firms, or agencies wishing to verify an individual's financial standing;

(3) In the event that a system of records maintained by the Federal Savings and Loan Insurance Corporation to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, Local or Foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto; and

(4) To Federal, State and Local authorities, if necessary for assessment, computation, and collection of Federal, State, and Local taxes in accordance with established procedures.

(5) Disclosure of information may be made to a congressional office from the record of an individual, in response to an inquiry from that office made at the request of the individual, if such information would be available directly to the individual upon request.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in lockable containers and on magnetic tape or other retrieval devices for use in computer systems.

RETRIEVABILITY:

Records are filed by a combination of name and account number.

SAFEGUARDS:

Access is limited to personnel whose official duties require such access and who have a need to know the information in a record for a particular job-related purpose.

RETENTION AND DISPOSAL:

Retain in office 10 years after payment of last claimed account, then destroy.

SYSTEM MANAGER(S) AND ADDRESS:

Director
Federal Savings and Loan Insurance Corporation
Federal Home Loan Bank Board
1700 G Street, NW.
Washington, D.C. 20552
Receivership Agent
Midwestern Office Receiverships
Federal Savings and Loan Insurance Corporation
10001 West Roosevelt Boulevard
Westchester, Illinois 60153
Insurance Settlement Office
Federal Savings and Loan Insurance Corporation
10001 West Roosevelt Boulevard
Westchester, Illinois 60153
Manager, Scottsdale Office
Federal Savings and Loan Insurance Corporation
10001 West Roosevelt Boulevard
Westchester, Illinois 60153
Receivership Manager
Northwest Guaranty Receivership
Federal Savings and Loan Insurance Corporation
1100 Tower Building
Seattle, Washington 98101

NOTIFICATION PROCEDURE:

Inquiries concerning records shall be made to the applicable system manager, furnishing name of the individual, name of institution where account was held, account number, and the name of the record system.

RECORD ACCESS PROCEDURES:

Persons wishing to have access to their records or to have such records changed (including modification, addition, and deletion) shall notify the appropriate system manager. Such notification shall include the information required under "Notification", plus a statement setting forth the desired access or changes and the reasons for such changes.

CONTESTING RECORD PROCEDURES:

See "Access Procedures".

RECORD SOURCE CATEGORIES:

Defaulted Association records, the individual whose record is maintained, and the Federal Savings and Loan Insurance Corporation, its agents and contractors.

FHLBB—11

SYSTEM NAME:

Biographical File of Federal Home Loan Bank Directors

SYSTEM LOCATION:

Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal Home Loan Bank Directors who are appointed to their positions by the Federal Home Loan Bank Board or elected by the membership.

CATEGORIES OF RECORDS IN THE SYSTEM:

Resumes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1427.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) To determine that directors are qualified and that Appointed Directors have no conflicts of interest;

(2) Users are members of the Federal Home Loan Bank Board, Presidents of the Federal Home Loan Banks, the Director of the Office of the District Banks, and upon request, the public.

(3) Disclosure of information may be made to a congressional office from the record of an individual, in response to an inquiry from that office made at the request of the individual, if such information would be available directly to the individual upon request.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are filed by name of individual.

SAFEGUARDS:

No safeguards are needed, since these records are available for public distribution.

RETENTION AND DISPOSAL:

Permanent. Cut-off at end of term. Offer to National Archives 25 years after cut-off.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Assistant (Elections), Office of the District Banks. See "Location" for address.

NOTIFICATION PROCEDURE:

Inquiries concerning the records shall be made to the system manager.

RECORD ASSESS PROCEDURES:

Persons desiring access to the records shall notify the system manager. Individuals wishing to update their files shall furnish name, date of birth, and social security number.

CONTESTING RECORD PROCEDURES:

See "Access Procedures".

RECORD SOURCE CATEGORIES:

Federal Home Bank directors and Bank Presidents.

FHLBB—12

SYSTEM NAME:

Payroll/Personnel.

SYSTEM LOCATION:

Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current employees and all former employees whose employment terminated within the current calendar year.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information pertaining to (1) employee status, grade, salary, pay plan, hours worked, hours of leave taken and earned, hourly rate, gross pay, taxes, deductions, net pay, location, and payroll history; and (2) employee residence, office, social security number, and address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Information contained in these records is available for intra-Agency use in determining current employment status of employees, history of Payroll/Personnel actions, bi-weekly gross pay, taxes, deductions, and net pay, total wages paid to date and deductions paid. (2) In the event that a system of records maintained by the Board to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, Local or Foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto. (3) A record from this system may be disclosed as a routine use to other Federal agencies and the Civil Service Commission if necessary for or incident to the payment of salaries and expenses incident to employment at the Federal Home Loan Bank Board or other Federal employment, or the vesting, computation, and payment of retirement or disability benefits. (4) A record from this system may be disclosed to Federal, State, and Local authorities for reasons necessary and incident to the assessment, computation, and collection of Federal, State, and Local taxes, in accordance with established procedures. (5) Disclosure of information may be made to a congressional office from the record of an individual, in response to an inquiry from that office made at the request of the individual, if such information would be available directly to the individual upon request.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in computer banks, on magnetic tape, and in file folders.

RETRIEVABILITY:

Records are filed by name or social security number.

SAFEGUARDS:

Access is limited to personnel whose official duties require such access and who have a need to know the information in a record for a particular job-related purpose.

RETENTION AND DISPOSAL:

Computer records are retained until the end of the calendar year in which employment is terminated; Magnetic tapes are retained for one additional calendar year. Records in file folders are retained for 6 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Information Systems Division. See "Location" for address.

NOTIFICATION PROCEDURE:

Inquiries concerning the rcords shall be made to the system manager. Inquiries must include name, date of birth, social security number, period of employment, and name of record system.

RECORD ACCESS PROCEDURES:

Persons wishing to have access to the records or to have such records changed (including modification, addition, and deletion) shall notify the system manager. Such notification shall include the information requird to be furnished under "Notification", plus a statement of the desired access or changes and the reasons for such changes.

CONTESTING RECORD PROCEDURES:

See "Access Procedures".

RECORD SOURCE CATEGORIES:

Personnel and financial records maintained by the agency.

FHLBB—14

SYSTEM NAME:

Asset Management System.

SYSTEM LOCATION:

See "System Manager".

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals having loans with defaulted Associations, employees of such Associations, agents who manage property owned by or under the control of the Federal Savings and Loan Insurance Corporation, and persons who rent such property.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of loans including applications, title insurance policies, financial statements, credit checks, income tax returns, notes, deeds of trust, insurance policies, appraisals, loan settlement statements, disclosures under Fair Credit Reporting Act and Regulation Z of the Board of Governors of the Federal Reserve, collection letters, correspondence and memoranda relating to the loan or property in question; records of rentals of FSLIC-owned or managed property, including tenants lists, rental schedules, security deposit information, amounts in arrears, evictions, rental judgments and other related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 406 of the National Housing Act, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Records maintained in this system are used by Federal Savings and Loan Insurance Corporation personnel and its representatives in connection with management of assets of defaulted Associations and are made available in conformance with the Fair Credit Reporting Act to management agents for the Federal Savings and Loan Insurance Corporation, credit inquirers, and attorneys. (2) In the event that a system of records maintained by the Federal Savings and Loan Insurance Corporation to carry out its functions indicates a violation or potential

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violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use to the appropriate agency, whether Federal, State, Local, or Foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto. (3) A record from this system may be disclosed as a routine use to Federal, State, and Local authorities if necessary and incident to the assessment, computation, and collection of Federal, State, and Local taxes in accordance with established procedures, or to the verification of an applicant's need for welfare benefits. (4) Disclosure of information may be made to a congressional office from the record of an individual, in response to an inquiry from that office made at the request of the individual, if such information would be available directly to the individual upon request.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are maintained in locked file cabinets, secured rooms, and computer secondary storage (off-line).

RETRIEVABILITY:

Records are filed by defaulting institution's account number.

SAFEGUARDS:

Access is limited to persons whose duties required such access and who have a need to know the information in a record for a particular job-related purpose.

RETENTION AND DISPOSAL:

Records relating to loans are maintained for 10 years after repayment of the loan. Records relating to rental property are retained for 5 years. Records pertaining to sales of real estate are retained for 5 years after cash sale or 10 years after sale of properties financed by the Federal Savings and Loan Insurance Corporation. Magnetic tapes: (a) Receivership, Asset Management, and Property Management tapes are retained for 30 days, then blanked; (b) Bank tapes are retained for 90 days, then blanked; (c) Quarterly and year-to-date tapes are retained for 1 calendar year, then blanked.

SYSTEM MANAGER(S) AND ADDRESS:

The business address of each system manager, unless other wise indicated, is:
Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552,
Director, Information Systems Division, Western Office Manager, Federal Savings and Loan Insurance Corporation
Receivership Agent, Midwestern Receiverships, Federal Savings and Loan Insurance Corporation,
Manager, Midwestern Office, Federal Savings and Loan Insurance Corporation
Manager, Scottsdale Offce, Federal Savings and Loan Insurance Corporation
Receivership Manager, Northwest Guaranty Receivership, Federal Savings and Loan Insurance Corporation

NOTIFICATION PROCEDURE:

Inquires concerning records shall be made to the appropriate system manager. Notification must include name of individual, name of defaulted Association, and, where appropriate, account of loan number, property rented and period rented, Association where employed, period of employment, and employment capacity.

RECORD ACCESS PROCEDURES:

Persons wishing to have access to the records or to have such records changed (including modification, addition, and deletion) shall notify the system manager. Such notification shall include the information required to be furnished under "Notification", plus a statement of the desired access or changes and the reasons for such changes.

CONTESTING RECORD PROCEDURES:

See "Access Procedures".

RECORD SOURCE CATEGORIES:

Defaulted Savings and Loan Associations; individuals whose records are maintained; credit bureaus; Federal Savings and Loan Insurance Corporation reports; Internal Revenue Service and other taxing authorities; title insurance companies; county officials, such as recorders; and individuals' employers, banks, and Savings and Loan Associations.

FHLBB-15

SYSTEM NAME:

Discrimination Complaint System.

SYSTEM LOCATION:

Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any current or former agency employee of applicant who files a formal complaint of discrimination based on race, color, religious, sex, national origin, or age.

CATEGORIES OF RECORDS IN THE SYSTEM:

Formal complaints, Equal Employment Opportunity counselors' reports, investigative files, official proposals for resolution, hearing examiners files, Civil Service Commission appeal files, civil actions (with attendant documentation).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101; E.O. 11246.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES.

(1) Records maintained in this system are used to provide documentation of complaint procedures for both administrative and legal purposes, they are made available to the Equal Employment Opportunity officer and Equal Employment Opportunity staff, the parties involved in the complaint procedure and the Civil Service Commission.

(2) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, Local or Foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

(3) A record from this system may be disclosed to other Federal agencies for uses incident to employment of an individual by the Federal Government.

(4) Disclosure of information may be made to a congressional office from the record of an individual, in response to an inquiry from that office made at the request of the individual, if such information would be available directly to the individual upon request.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are filed by name of individual.

SAFEGUARDS:

Access is limited to personnel who have a need to know the information in the record for a job-related purpose, and may be gained only through the Director of Equal Employment Opportunity or the Equal Employment Opportunity officer.

RETENTION AND DISPOSAL:

Destroy 4 years after final adjustment for cases resolved within the agency. Transfer other cases to the Civil Service Commission. Cases resolved by the Commission of a U.S. Court are controlled by the Commission's records schedule. Duplicate copies: Destroy 1 year after resolution of a case.

SYSTEM MANAGER(S) AND ADDRESS:

Equal Employment Opportunity officer. See "Location" for address.

NOTIFICATION PROCEDURE:

Inquiries concerning the records shall be made to the system manager. Inquiries must include name, social security number, date of birth, period of employment and office of employment (including location), and name of record system.

RECORD ACCESS PROCEDURES:

Persons wishing to have access to the records or to have such records changed (including modification, addition, and deletion) shall notify the system manager. Such notification shall include the information required to be furnished under "Notification", plus a statement of the desired access or changes and the reasons for such changes.

CONTESTING RECORD PROCEDURES:

See "Access Procedures".

RECORD SOURCE CATEGORIES:

Equal Employment Opportunity officer, personnel investigations, the complaint.

FHLBB-16

SYSTEM NAME:

Upward Mobility Program (Career Development)

SYSTEM LOCATION:

Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any employee currently participating in the career development program, as well as any employee who participated in the program within a preceding 30-day period.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of reports of quarterly counseling between participants and supervisors, and final reports upon the completion of the program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Records maintained in this system are used to monitor progress of a participant's training and to monitor effectiveness of the Upward Mobility Program. Users are Personnel Management Office, Equal Employment Opportunity Task Force, and participant's supervisor.

(2) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statue, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, Local or Foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statue, or rule, regulation, or order issued pursuant thereto.

(3) A record from this system may be disclosed to other Federal agencies for reasons necessary and incident to employment by the Federal Government.

(4) Disclosure of information may be made to a congressional office from the record of an individual, in response to an inquiry from that office made at the request of the individual, if such information would be available directly to the individual upon request.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are filed by name of individual.

SAFEGUARDS:

Access is limited to persons whose duties requires such access, and to have a need to know the information in a record for a particular job-related purpose; it may be gained only through the Director, Personnel Management Office.

RETENTION AND DISPOSAL:

Destroy 30 days after employee completes or terminates the program.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel Management Office See "Location" for address.

NOTIFICATION PROCEDURE:

Inquiries concerning the records shall be made to the system manager. Inquiries must include name, social security number, period of employment, position filled while in the program, extent of participation in the program, and name of record system.

RECORD ACCESS PROCEDURES:

Persons wishing to have access to the records or to have such records changed (including modification, addition, and deletion) shall notify the system manager. Such notification shall include the information required to be furnished under "Notification", plus a statement setting forth the desired access or changes and the reasons for such changes.

CONTESTING RECORD PROCEDURES:

See "Access Procedures".

RECORD SOURCE CATEGORIES:

The employee whose record is maintained and the employee's supervisor.

FHLBB-17

SYSTEM NAME:

Payroll.

SYSTEM LOCATION:

See "System Manager".

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All present employees of the Federal Home Loan bank Board, the Federal Savings and Loan Insurance Corporation (FSLIC), and persons whose employment with the Board, the Corporation, or an FSLIC receivership has been terminated less than 3 years.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel actions (SF50), State, employees' withholding exemption certificates. Federal employees' withholding allowance certificates (W4), Bond Allotment File (SF1192), Federal Employee's Group Life Insurance (SF 2810 & 2811), Savings Allotment-Financial Institutions, Address File (FHLBB Form 108), Union Dues Allotment, time and attendance reports, and individual retirement records (SF 2806); similar information is required for receivership employees.

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101.

ROUTING USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Information contained in records in this system is provided to payroll clerks, technicians and payroll supervisors for preparation of payroll and necessary related reports and to maintain proper records of salary changes for determining retirement benefits.

(2) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, Local or Foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

(3) A record from this system may be disclosed to Federal, State, and Local authorities for reasons necessary and incident to the assessment, computation, and collection of Federal, State, and Local taxes, in accordance with established procedures.

(4) A record from this system may be disclosed as a routine use to other Federal agencies for reasons necessary for the payment of salaries and expenses incident to employment at the Federal Home Loan Bank Board.

(5) A record from this system may be disclosed as a routine use to other Federal agencies for reasons necessary for the vesting, computation and payment of any retirement or disability benefits.

(6) A record from this system may also be disclosed to other Federal agencies for all reasons necessary and incident to employment by the Federal Government.

(7) Disclosure of information may be made to a congressional office from the record of an individual, in response to an inquiry from that office made at the request of the individual, if such information would be available directly to the individual upon request.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders in locked file cabinets and on magnetic tape or other retrieval devices for use in computer systems.

RETRIEVABILITY:

Records are filed by office and by name of individual.

SAFEGUARDS:

Access is limited to personnel whose official duties require such access and who have a need to know the information in a record for a particular job-related purpose.

RETENTION AND DISPOSAL:

Records are retained at the agency for 3 years after termination of employment. Certain categories of records in the system are then transferred to the Federal Records Center in St. Louis, Missouri. Other categories of records remain in the agency. Disposal of the records varies between 3 years after termination of employment and 56 years after the date of the last action. Magnetic tapes: Cut-off at the end of each pay period. Retain for 26 pay periods, then blank. Receivership file records are retained for 3 years after dissolution of the receivership.

SYSTEM MANAGER(S) AND ADDRESS:

The business address of each System Manager, unless otherwise indicated is: Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552

Director, Accounting and Fiscal Operations, Controller's Division, Director, Information Systems Division, Manager, Scottsdale Office, Federal Savings and Loan Insurance Corporation, Western Office Manager, Federal Savings and Loan Insurance Corporation

Receivership Agent, Midwestern Office Receiverships, Federal Savings and Loan Insurance Corporation

Receivership Manager, Northwest Guaranty Receivership, Federal Savings and Loan Insurance Corporation

NOTIFICATION PROCEDURE:

Inquiries concerning the records shall be made to the appropriate system manager. Inquiries must include name, social security number, period and office of employment, date of birth, and name of record system.

RECORD ACCESS PROCEDURES:

Persons wishing to have access to their records or to have such records changed (including modification, addition, and deletion) shall notify the appropriate system manager. Such notification shall include the information required to be furnished under "Notification", plus a statement of the desired access or changes and the reasons for such changes.

CONTESTING RECORD PROCEDURES:

See "Access Procedures".

RECORD SOURCE CATEGORIES:

For the individidual whose record is maintained, the sources are the staff of Personnel Management Office and the Controller's Division; and with regard to FSLIC receivership employees, officials of the receivership.

FHLBB—18

SYSTEM NAME:

Travel Records.

SYSTEM LOCATION:

Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEMS:

All current employees of the Federal Home Loan Bank Board and Federal Savings and Loan Insurance Corporation and all former employees whose employment has been terminated less than 4 years, who travel or have traveled on official government business at government expenses.

CATEGORIES OF RECORDS IN THE SYSTEM:

One copy of all travel vouchers submitted for reimbursement of travel-related expenses incurred on official government business for the Board of FSLIC, and other records or memoranda relating to travel advances and repayment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) To provide data for determining proper payment of each voucher submitted, and prompt repayment of travel advances to ensure that legal advance balances are maintained and that unused travel advances are repaid before termination of employment. The records are maintainted as a part of the accounting records of the certifying officer of the Board.

(2) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general

statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, Local or Foreign charged with the responsibility of investigating or prosecuting such violation or charges with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

(3) A record from this system may be disclosed as a routine use to other Federal agencies for reasons necessary for the payment of salaries and expenses incident to employment at the Federal Home Loan Bank Board.

(4) A record from this system may be disclosed as a routine use to Federal, State, and local authorities if necessary for assessment, computation, and collection of Federal, State, and local taxes in accordance with recognized procedures.

(5) A record from this system may be disclosed as a routine use to other Federal agencies if necessary to determine the property of the travel expense.

(6) Disclosure of information may be made to a congressional office from the record of an individual, in response to an inquiry from that office made at the request of the individual, if such information would be available directly to the individual upon request.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders in lockable file cabinets, and on magnetic tape or other retrieval devices for use in computer systems.

RETRIEVABILITY:

Records are filed by office by name of individual.

SAFEGUARDS:

Access is limited to personnel whose official duties require such access and who have a need to know the information in a record for a particular job-related purpose, and application must be made to the Controller, Controller's Division.

RETENTION AND DISPOSAL:

Transfer to Inactive File at end of second fiscal year. Destroy 3 years after transfer.

SYSTEM MANAGER(S) AND ADDRESS:

Controller, Controller's Division, Director, Information Systems Division. See "Location" for address.

NOTIFICATION PROCEDURE:

Inquiries concerning the records shall be made to the system manager. Inquiries must include name, social security number, office of employment, and name of record system.

RECORD ACCESS PROCEDURES:

Persons wishing to have access to the records or to have such records changed (including modification, addition, and deletion) shall notify the system manager. Such notification shall include the information require to be furnished under "Notification", plus a statement of the desired access or changes and the reasons for such changes.

CONTESTING RECORD PROCEDURES:

See "Access Procedures".

RECORD SOURCE CATEGORIES:

Employees whose records are maintained.

FHLBB—19

SYSTEM NAME:

Employee Relations File.

SYSTEM LOCATION:

Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual employees against whom allegations have been made.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of supporting materials that document adverse actions, complaints, other actions and appeals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Records maintained in the system are used to review status and history of each action; users are the employee relations specialist and, where appropriate, the Civil Service Commission.

(2) In the event that a system of records maintained by this agency to carry out its functions indicates a violation of potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

(3) A record from this system may also be disclosed as a routine use to other Federal agencies for reasons necessary and incident to employment by the Federal Government.

(4) Disclosure of information may be made to a congressional office from the record of an individual, in response to an inquiry from that office made at the request of the individual, if such information would be available directly to the individual upon request.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in locked filing cabinets in file folders.

RETRIEVABILITY:

Records are filed by name of individual.

SAFEGUARDS:

Access is limited to personnel whose official duties require such access and who have a need to know the information in a record for a particular job-related purpose; access may be gained only through the employee relations officer.

RETENTION AND DISPOSAL:

Destroy 4 years after final adjustment for cases resolved within the agency. Transfer after cases to Civil Service Commission.

SYSTEM MANAGER(S) AND ADDRESS:

Employee Relations Officer, Personnel Management Office. See "Location" for address.

NOTIFICATION PROCEDURE:

Inquiries concerning the records shall be made to the system manager. Inquiries must include name, social security number, date of birth, office of employment of the person making the inquiry, and name of the record system.

RECORD ACCESS PROCEDURES:

Persons within to have access to the records or to have such records changed (including modification, addition, and deletion) shall notify the system manager. Such notification shall include the information required to be furnished under "Notification", the desired access or changes, and the reasons for such changes.

CONTESTING RECORD PROCEDURES:

See "Access Procedures".

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RECORD SOURCE CATEGORIES:

The individual whose record is maintained, the Personnel Management Office Liaison, the individual's supervisor, complaintants and any officials involved in settlement of the complaint.

FHLBB—20

SYSTEM NAME:

Employee Locator File.

SYSTEM LOCATION:

Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All present employees of the FHLBB and persons whose emplbyment has been terminated for less than 6 months.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, present address, telephone number, and the name, address; and telephone number of another person to notify in case of emergency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Used to verify address of employee on employment forms.

(2) To contact designated persons in cases of emergency.

(3) To verify addresses of field employees for mailing vacancy announcements.

(4) Users are personnel liaison for each office of the Board, and Personnel Management Office employees.

(5) Disclusure of information may be made to a congressional office from the record of an indivisual, in response to an inquiry from that office made at the request of the individual, if such information would be available directly to the individual upon request.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on index cards.

RETRIEVABILITY:

Records are filed by name of individual.

SAFEGUARDS:

Access is limited to personnel whose official duties require such access and who have a need to know information in a record for a particular job-related purpose.

RETENTION AND DISPOSAL:

Cut-off and destroy when superseded or obsolete.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Processing and Records Section, Personnel Management Office. See "Location" for address.

NOTIFICATION PROCEDURE:

Inquiries concerning the records shall be made to the system manager. Inquiries must include name and address of inquirer and name of record system.

RECORD ACCESS PROCEDURES:

Persons wishing to have access to the records or to have such records changed or updated (including modification, addition, and deletion) shall notify the system manager. Such notification shall include the information required to be furnished under "Notification", plus a statement of the desired access or changes and the reasons for such changes.

CONTESTING RECORD PROCEDURES:

See "Access-Procedures".

RECORD SOURCE CATEGORIES:

The individual whose record is being maintained.

FHLBB—21

SYSTEM NAME:

Statements of Employment and Financial Interests

SYSTEM LOCATION:

Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Empolyees of the Board classified at GS–13 or above, or at a comparable pay level, who are specified under Part 511 of Chapter V—FHLBB Rules and Regulations and special government employees (12 CFR Part 511).

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of forms recording employment and financial interests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101; E.O. 11222.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Materials contained in the records in the system are reviewed by the Office of the General Counsel and/or the Board to determine whether there are any conflicts of interest or other violations of law.

(2) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, Local, or Foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

(3) A record from the system may be disclosed as a routine use to other Federal agencies for reasons necessary and incident to employment by the Federal Government.

(4) Disclosure of information may be made to a congressional office from the record of the individual, in response to an inquiry from that office made at the request of the individual, if such information would be available directly to the individual upon request.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders in lockable cabinets.

RETRIEVABILITY:

Records are filed by office by name of individual.

SAFEGUARDS:

Access is limited to persons authorized under Sec. 511.73535 of the General Regulations of the Board who have a need to know the information in a record for a particular job-related purpose.

RETENTION AND DISPOSAL:

Cut-off when employee leaves a position in which a statement is required or when employee separates. Destroy 2 years after cut-off.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel Management Office. See "Location" for address.

NOTIFICATION PROCEDURE:

Inquiries concerning the records shall be made to the system manager. Inquiries must include name, social security number, office of employment, and name of record system.

RECORD ACCESS PROCEDURES:

Persons wishing to have access to their records or to have such records changed or updated (including modification, addition, and deletion) shall notify the system manager. Such notification shall include the information required to be furnished under "Notification", plus a brief resume or description of the information thought to be included in the record, a statement setting forth the desired access or changes, and the reasons for such changes.

CONTESTING RECORD PROCEDURES:

See "Access Procedures".

RECORD SOURCE CATEGORIES:

Information submitted by individual whose record is maintained.

FHLBB—22

SYSTEM NAME:

"Form 587" File—Training Request, Authorization, Notice of Completion of Training

SYSTEM LOCATION:

Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Empolyees requesting and completing training.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, social security number, date of birth, title, grade, office and division; course dates, course sponsor and address, course location, actual hours in class, on or off duty hours, course title; principal purpose of training, type of training, cost of training, budget source, budget type; signatures of employee supervisor, office director, director of Personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) To notify Personnel Management Office of completion of training;

(2) To keep a record of all training in the employee's Official Personnel File;

(3) To authorize payment for training by Procurement Management Branch and Controller's Division;

(4) User is Personnel Management Office;

(5) Information from this file is also provided to the Civil Service Commission for use with the Central Personnel Data File.

(6) Disclosure of information may be made to a congressional office from the record of an individual, in response to an inquiry from that office made at the request of the individual, if such information would be available directly to the individual upon request.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders in filing cabinets.

RETRIEVABILITY:

Records are filed by name of individual.

SAFEGUARDS:

Access is limited to personnel whose official duties require such access and who have a need to know information contained in a record for a particular job-related purpose, as determined by the Personnel Management Office prior to permitting review of such records.

RETENTION AND DISPOSAL:

Cut-off at end of fiscal year. Destroy 2 years after cut-off.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Career Development Branch, Personnel Management Office. See "Location" for address.

NOTIFICATION PROCEDURE:

Inquiries concerning the records shall be made to the system manager. Inquiries must include name, social security number, date of birth, office of employment and name of record system.

RECORD ACCESS PROCEDURES:

Persons wishing to have access to their records or to have such records changed (including modification, addition, and deletion) shall notify the system manager. Such notification shall include the information required to be furnished under "Notification" plus a statement of the desired access or changes and the reasons for such changes.

CONTESTING RECORD PROCEDURES:

See "Access Procedures".

RECORD SOURCE CATEGORIES:

The employee whose file is maintained, the employee's supervisor, and the Personnel Management.

FHLBB—23

[Reserved]

FHLBB—25

SYSTEM NAME:

Office of the Secretary, Card Files

SYSTEM LOCATION:

Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Board members, officers and employees of the Board; directors, officers and counsel of Federal Home Loan Banks; agents of the Board; members of Federal Savings and Loan Advisory Council.

CATEGORIES OF RECORDS IN THE SYSTEM:

Index to individuals referred to in Board resolutions and minute entries with regard to assignments, appointments, delegations, travel authorizations, resignations, reassignments, salaries as to those persons not under Civil Service schedules, and other Board actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) In addition to intra-agency use, the records in the system may be released upon request to such other Federal, State, and Local agencies and authorities which have an interest in establishing the authority, rights, and duties of the above listed individuals.

(2) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, Local or Foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

(3) A record from this system may be disclosed as a routine use to other Federal agencies for reasons necessary and incident to employment by the Federal Government.

(4) Disclosure of information may be made to a congressional office from the record of an individual in response to an inquiry from that office made at the request of the individual, if such information would be available directly to the individual upon request.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in a card index file, and/or on microfilm in a secured docket file area or locked file cabinets.

RETRIEVABILITY:

Records are filed by name of individual.

SAFEGUARDS:

Access is limited to personnel whose official duties require such access and who have a need to know the information in a record for a particular job-related purpose.

RETENTION AND DISPOSAL:

Hard Copy: Microfilm annually. Cut-off every 10 years. Destroy after microfilming at end of 10th year. Microfilm: Permanent. (a) Destroy microfilm upon completion of next annual microfilming, except, (h) Retain microfilm of 10th year filming permanently. Offer each 10th year microfilm to National Archives when no longer needed for administrative purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Secretary to the Board. See "Location" for address.

NOTIFICATION PROCEDURE:

Inquiries concerning the records shall be made to the system manager. Inquiries must include name, social security number, period and office of employment, and name of record system.

RECORD ACCESS PROCEDURES:

Persons wishing to have access to their records or to have such records changed (including modification, addition, and deletion) shall notify the system manager. Such notification shall include the information required to be furnished under "Notification", plus a statement setting forth the desired access or changes and the reasons for such changes.

CONTESTING RECORD PROCEDURES:

See "Access Procedures".

RECORD SOURCE CATEGORIES:

Resolutions and minutes of the Board and orders of the Chairman of the Board.

FHLBB—26

SYSTEM NAME:

Prospective Organizer of Federal Savings and Loan Association, File.

SYSTEM LOCATION:

Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Principal individual on an application to organize a Federal Savings and Loan Association.

CATEGORIES OF RECORDS IN THE SYSTEM:

Nonconfidential and confidential biographical and financial data forms submitted by the individual, credit checks, and FBI reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Intra-agency use as to confidential data:

(2) The nonconfidential biographical and financial data forms are publicly available under 5 U.S.C. 552.

(3) Disclosure of information may be made to a congressional office from the record of an individual, in response to an inquiry from the office made at the request of the individual if such information would be available directly to the individual upon request.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in a card index file and/or on microfilm in a secured docket file area or locked file cabinets.

RETRIEVABILITY:

Records are filed by name of individual.

SAFEGUARDS:

Access to confidential data is limited to personnel whose official duties require such access and who have a need to know the information in a record for a particular job-related purpose.

RETENTION AND DISPOSAL:

Hard Copy: Microfilm annually. Cut-off every 10 years. Destroy after microfilming at end of 10th year. Microfilm: Permanent. (a) Destroy microfilm upon completion of next annual microfilming, except (b) Retain microfilm of 10th year filming permanently. Offer each 10th year microfilm to National Archives when no longer needed for administrative purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Secretary to the Board. See "Location" for address. Director, Office of Industry Development. See "Location" for address.

NOTIFICATION PROCEDURE:

Inquiries concerning the records shall be made to the system manager. Inquiries must include name, social security number, birth date, name and location of prospective association, and name of record system.

RECORD ACCESS PROCEDURES:

Persons wishing to have access to their records or to have such records changed (including modification, addition, and deletion) shall notify the system manager. Such notification shall include the information required to be furnished under "Notification" plus a statement of the desired access or changes and the reasons for such changes. Access to FBI reports must be requested from that agency.

CONTESTING RECORD PROCEDURES:

See "Access Procedures".

RECORD SOURCE CATEGORIES:

The individual whose report is maintained, credit reporting agencies, and the FBI reports.

FHLB—27

SYSTEM NAME:

Suspensions File.

SYSTEM LOCATION:

Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers and Directors of Federally chartered Savings and Loan Associations and State chartered insured institutions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Official actions of the Board and documentation considered by the Board and documentation considered by the Board in suspending individuals from performance of functions at insured institutions pending the outcome of (1) formal removal procedures under Section 407 of the National Housing Act, or (2) criminal proceedings against the individual.

AUTHORITY FOR THE MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101; Section 407 of the National Housing Act; Section 5 (D) of the Home Owner's Loan Act of 1933, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Release of the Board action to the individual who is the subject of suspension proceedings, the institution with which he is associated, and the appropriate regional Federal Home Loan Bank; in some cases notices of suspension following an indictment are publicly released.

(2) Disclosure of information may be made to a congressional office from the record of an individual, in response to an inquiry from that office made at the request of the individual if such information would be available directly to the individual upon request.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in a card index file and/or on microfilm in a secured docket file area or locked file cabinets.

RETRIEVABILITY:

Records are filed by name of individual.

SAFEGUARDS:

Access to notices of suspension which are not publicly released is limited to personnel whose official duties require such access and who have a need to know the information in a record for a particular job-related purpose.

RETENTION AND DISPOSAL:

Hard Copy: Microfilm annually. Cut-off every 10th year. Destroy after microfilming at end of 10th year. Microfilm: Permanent. (a) Destroy microfilm upon completion of next annual microfilming, except (b) Retain microfilm of 10th year filming permanently. Offer each 10th year microfilm to National Archives when no longer needed for administrative purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Secretary to the Board. See "Location" for address.

NOTIFICATION PROCEDURE:

Inquiries concerning the records shall be made to the system manager. The notification shall contain sufficient information to establish the identity of the individual involved, including name, institutional association, and approximate date of Board action.

RECORD ACCESS PROCEDURES:

Persons wishing to have access to the records shall notify the system manager. Such notification shall include the information required to be furnished under "Notification" plus a statement of the desired access or changes and the reason for such changes.

CONTESTING RECORD PROCEDURES:

See "Access Procedures".

RECORD SOURCE CATEGORIES:

Official actions of the Board.

FHLBB—28

SYSTEM NAME:

Removal and Prohibitons File.

SYSTEM LOCATION:

Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers and directors of Federally chartered Savings and Loan Associations and State chartered insured institutions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Resolutions and orders of the Board and documentation considered by the Board in removing individuals from positions with insured institutions and prohibiting their future activity in the affairs of said institutions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101; Section 407 of the National Housing Act; Section 5(D) of the Home Owners' Loan Act of 1933, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Release of the Board action to the individual who is the subject of the proceedings, the insured institution with which he was associated, and the regional Federal Home Loan Banks.

(2) Disclosure of information may be made to a congressional office from the record of an individual, in response to an inquiry from that office made at the request of the individual, if such information would be available directly to the individual upon request.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in a card index file and/or on microfilm in a secured docket file area or locked file cabinets.

RETRIEVABILITY:

Records are filed by name of individual.

SAFEGUARDS:

Access is limited to personnel whose official duties require such access and who have a need to know the information in a record for a particular job-related purpose.

RETENTION AND DISPOSAL:

Hard Copy: Microfilm annually. Cut-off every 10 years. Destroy after microfilming at end of 10th year. Microfilm: Permanent. (a) Destroy microfilm upon completion of next annual microfilming, except (b) Retain microfilm of 10th year filming permanently. Offer each 10th year microfilm to National Archives when no longer needed for administrative purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Secretary to the Board. See "Location" for address. Director, Compliance Division, Office of the General Counsel. See "Location" for address.

NOTIFICATION PROCEDURE:

Inquiries concerning the records shall be made to the Secretary to the Board. The notification shall contain sufficient information to establish the identity of the individual involved in the proceedings, including institutional association, and approximate date of Board action.

RECORD ACCESS PROCEDURES:

Persons wishing to have access to their records or to have such records changed (including modification, addition, and deletion) shall notify the Secretary to the Board. Such notification shall include the information required to be furnished under "Notification", plus a statement of the desired access or changes and the reasons for such changes.

CONTESTING RECORD PROCEDURES:

See "Access Procedures".

RECORD SOURCE CATEGORIES:

Board resolutions and minute entries.

FHLBB—29

SYSTEM NAME:

FBI Investigatory Records Copy File.

SYSTEM LOCATION:

Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons under investigation by the Federal Bureau of Investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

FBI Investigative Reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101; Section 5(D) of the Home Owners' Loan Act of 1933, as amended; and Section 407(M) of the National Housing Act, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Internal use by personnel engaged in supervisory or enforcement capacity; no distribution outside agency except to supervisory agents of the Board at the Federal Home Loan Banks.

(2) Disclosure of information may be made to a congressional office from the record of an individual, in response to an inquiry from that office made at the request of the individual, if such information would be available directly to the individual upon request.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in locked files.

RETRIEVABILITY:

Records are filed by name of individual.

SAFEGUARDS:

Access is limited to personnel engaged in supervisory or enforcement activity whose official duties require such access and who have a need to know the information in a record for a particular job-related purpose.

RETENTION AND DISPOSAL:

Retain in office 5 years then return file to FBI, unless continuing interest or conviction.

SYSTEM MANAGER(S) AND ADDRESS:

Director of the Compliance Division, Office of the General Counsel. See "Location" for address.

NOTIFICATION PROCEDURE:

Exempt system under 5 U.S.C. 552A (J) or (K).

RECORD ACCESS PROCEDURES:

Request for access to and correction of records in this system, which are files exempt by the FBI under 5 U.S.C. 552 (J) or (K), should be addressed to the FBI.

CONTESTING RECORD PROCEDURES:

See "Access Procedures".

RECORD SOURCE CATEGORIES:

Exempt record system under 5 U.S.C. 552 (J) or (K).

By the Federal Home Loan Bank Board.

Robert D. Linder,

Acting Secretary.

[FR Doc. 80-31927 Filed 10-15-80; 8:45 am]

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federal register

Thursday
October 16, 1980

Part III

Pension Benefit Guaranty Corporation

Privacy Act of 1974; Systems of Records, Annual Publication

PENSION BENEFIT GUARANTY CORPORATION

Privacy Act of 1974; Systems of Records; Annual Publication

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Annual Privacy Act Notice; notification of system of records.

SUMMARY: This document sets forth the annual notice of the systems of records maintained by the Pension Benefit Guaranty Corporation, as required by the Priavacy Act of 1974. In addition, this document provides notice of a new system of records which includes one routine use.

EFFECTIVE DATE: The new system of records and its routine use shall become effective without further notice on December 15, 1980, unless comments are received on or before that date which would result in a contrary determination and a notice is published to that effect.

ADDRESSES: Send comments to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006. Written comments will be available for public inspection at the PBGC, Suite 7000, at the same address, on weekdays between 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Nina R. Hawes, Staff Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006, (202) 254-3010.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation ("PBGC") is establishing a new system of records entitled Plan Participant and Beneficiary Address Identification File (PBGC-9). This system will contain address information received from the Internal Revenue Service ("IRS") for participants and beneficiaries for whom the PBGC does not have a current address. Notice is also given of one routine use under this system.

In addition, as a result of the PBGC's annual review of the records it maintains subject to the Privacy Act, the PBGC has made minor editorial corrections in several systems of records and has corrected the retention and disposal schedules of several systems. Because of these changes, PBGC's Privacy Act notice is published in its entirety at this time as the annual publication required by 5 U.S.C. 552a(e)(4).

Notice of a New System of Records

This document provides notice of the existence and character of a proposed new system of records. This system is designated PBGC-9, Plan Participant and Beneficiary Address Identification File.

The PBGC pays plan benefits to participants and beneficiaries of a terminated pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974 that has insufficient assets to pay all guaranteed benefits under the plan. In terminated covered plans that have sufficient assets to pay all guaranteed benefits, plan administrators must distribute benefits to plan participants and beneficiaries. However, for some plan participants or beneficiaries, neither the PBGC nor the plan administrator has their current address.

By establishing this system of records, the PBGC will be able to obtain from IRS and maintain in its own files current addresses for such plan participants and beneficiaries. Particularly with respect to a plan participant who left employment with a deferred vested benefit, the IRS is likely to have a more recent address for that participant than does the PBGC.

After receiving an address from IRS, the PBGC will contact the participant or beneficiary for verification of the address. For PBGC-trusteed plans, after the participant or beneficiary has verified his or her address, this information will be transferred to record system PBGC-6, Plan Participant and Beneficiary Data, so that benefit payments can be made. In sufficient plans (or insufficient plans under third party trustees) the participant or beneficiary will be advised by PBGC to contact the plan administrator directly to arrange for receipt of his or her benefit from the plan.

A report on this new system of records was filed with the President of the Senate, the Speaker of the House of Representatives and the Office of Management and Budget on October 8, 1980, as required by 5 U.S.C. 552a(o).

Routine Use

The address information received from IRS is tax return information as defined in 26 U.S.C. 6103 and therefore must be safeguarded as required by 26 U.S.C. 6103(p)(4). Since IRS safeguarding requirements limit disclosure of tax return information to third parties, none of the general routine uses applicable to PBGC's other systems of records will be applicable to PBGC-9. The only routine use applicable to PBGC-9 will be for a disclosure permitted by 26 U.S.C. 6103 and 26 CFR 404.6103. However, once the participant or beneficiary has verified his or her address to PBGC, the address is no longer tax return information, and it will be transferred to PBGC-6, Plan Participant and Beneficiary Data.

Section 552a(e)(11) of the Privacy Act requires that notice of an intended routine use of records be published at least 30 days prior to the implementation of the use and that the public be given an opportunity to comment on the routine use. The proposed routine use is set forth below. It will become final 60 days after publication of this notice (December 15, 1980), when the new system also becomes effective, unless PBGC publishes a notice to the contrary. The proposed routine use reads as follows:

"Disclosure may be made only to the extent permitted by 26 U.S.C. 6103 and 26 CFR 404.6103."

Interested persons are invited to submit written data, views or arguments on this proposed routine use. The routine use may be changed in light of the comments received.

Additional Changes

The PBGC as determined that it is necessary to make several editorial corrections in the descriptions of its other systems of records and to revise the descriptions of the retention and disposal schedules. These changes do not affect the general character or purpose of any system, nor do they expand the population of individuals to which the systems apply. The editorial corrections have been made in PBGC-1 and PBGC-7. Changes in the retention and disposal schedules have been made in PBGC-1, PBGC-3, PBGC-5, PBGC-8, PBGC-7 and PBGC-8.

Issued in Washington, D.C. this 8th day of October, 1980.

Robert E. Nagle,

Executive Director, Pension Benefit Guaranty Corporation.

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Prefatory Statement of General Routine Uses

The following routine uses, except for number 3, apply to and are incoporated by reference into each system of records set forth below except PBGC-9. Routine use number 3 applies to and is incorporated by reference into systems 1-5 and 7-8 set forth below. None of the routine uses apply to PBGC-9.

1. Routine Use—Law Enforcement: In the event that a system of records maintainted by the PBGC to carry out its functions indicates a violation or potential violation of law, whether criminal, civil or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

2. Routine Use—Disclosure When Requesting Information: A record from this system of records may be disclosed as a routine use to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, if necessary to obtain information relevant to a PBGC decision concerning the hiring or retention of an employee, the issuance of a security clearance, or the letting of a contract.

3. Routine Use—Disclosure of Requested Information: A record from this system of records may be disclosed to a federal agency, in reponse to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. Routine Use—Disclosure During and in Anticipation of Litigation: A record from this system of records may be disclosed during litigation, including disclosure to all counsel in the course of discovery or settlement negotiations and during the presentation of evidence to a court, magistrate or administrative tribunal, or during proceedings in reasonable anticipation thereof.

5. Routine Use—Disclosure to OMB: A record contaied in this system of records will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

6. Routine Use—Congressional Inquiries: Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the Congressional Office made at the request of that individual.

PBGC-1

SYSTEM NAME:

Correspondence Between PBGC and Persons Outside PBGC—PBGC.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006, and Pension Benefit Guaranty Corporation, Los Angeles Regional Office, Room 4033A, 300 N. Los Angeles Street, Los Angeles, California 90012.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have correspondended with PBGC and with divisions of the PBGC and individuals who have received replies in response to their correspondence with the PBGC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence containing the name and address of the correspondent and other information regarding various aspects of the PBGC and Title IV of the Employee Retirement Income Security Act of 1974. Correspondence is kept by the Office Director to whom the correspondence was addressed or the Office Director who replied to the correspondent.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used for regulatory purposes including use in evidence in proceedings before the PBGC and the courts.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained manually in file folders.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Records are kept in lockable file cabinets in areas of restricted access which are locked after office hours.

RETENTION AND DISPOSAL:

General requests for information involving no administrative action, policy decisions or special research are destroyed 3 months after reply. Other records will be retained for such periods of time and disposed of in the manner to be prescribed by the PBGC's program of records management authorized by General Services Administration.

SYSTEMS MANAGER(S) AND ADDRESS:

Office of Executive Director, Director of Office of Financial Operations, Director of the Office of Information Management, Director of the Office of Program Operations, and General Counsel, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006, and Special Assistant for Field Liaison, Los Angeles Regional Office, Pension Benefit Guaranty Corporation, Room 4033A, 300 N. Los Angeles Street, Los Angeles, California 90012.

NOTIFICATION PROCEDURE:

Procedures are detailed in PBGC regulations: 29 CFR Part 2607.

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Individuals writing to the PBGC and the PBGC responses.

PBGC-2

SYSTEM NAME:

Disbursements—PBGC.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Consultants and vendors to PBGC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payment vouchers, including SF 1081.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Transmittal of data to United States Department of the Treasury to effect payments to consultants and vendors.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained manually in file folders.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Records are kept in lockable file cabinets in areas of restricted access which are locked after office hours.

RETENTION AND DISPOSAL:

Records created after June 30, 1975 are destroyed 6 years and 3 months after date of voucher.

SYSTEMS MANAGER(S) AND ADDRESS:

Controller, Office of Financial Operations, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006.

NOTIFICATION PROCEDURE:

Procedures are detailed in PBGC regulations: 29 CFR Part 2607.

RECORD ACCESS PROCEDURES:

Same as notification procedures.

CONTESTING RECORDS PROCEDURES:

Same as notification procedures.

RECORD SOURCE CATEGORIES:

Subject consultant or vendor.

PBGC–3

SYSTEM NAME:

Employee Payroll, Leave and Attendance Records—PBGC.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006, and Los Angeles Regional Office, Pension Benefit Guaranty Corporation, Room 4033A, 300 N. Los Angeles Street, Los Angeles, California 90012.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of PBGC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; address; social security number and employee number; earnings records; leave status and data; jury duty data; military leave data; time and attendance records, including number of regular, overtime, holiday, Sunday and other hours worked, co-owner and/or beneficiary of bonds, marital status and number of dependents; and "Notification of Personnel Action". The individual records listed herein are included only as pertinent or applicable to the individual employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

1. Transmittal of data to United States Department of Labor to effect issuance of paychecks to employees and distribution of pay according to employee directions for savings bonds, allotments, financial institutions, and other authorized purposes and to effect tax withholdings and other authorized deductions.

2. Pursuant to Title VII of the Civil Service Reform Act, pertinent records from this system may be furnished to a labor organization upon its request when needed by that organization to perform its duties as the recognized collective bargaining representative of PBGC employees in the bargaining unit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained manually in file folders and in machine readable form.

RETRIEVABILITY:

Indexed by name and/or employee or social security number.

SAFEGUARDS:

Records are kept in lockable file cabinets in areas of restricted access which are locked after office hours. Magnetic tapes and computer records are kept under restricted access.

RETENTION AND DISPOSAL:

Payroll Records are transferred to the National Personnel Records Center and destroyed 56 years after date of last entry.

Leave and Attendance Records are destroyed three years after the close of the leave year.

SYSTEM MANAGER(S) AND ADDRESS:

Controller, Office of Financial Operations, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006, and Special Assistant for Field Liaison, Los Angeles Regional Office, Pension Benefit Guaranty Corporation, Room 4033A, 300 N. Los Angeles Street, Los Angeles, California 90012.

NOTIFICATION PROCEDURE:

Procedures are detailed in PBGC regulations: 29 CFR Part 2807.

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PRECEDURES:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Subject individual and Office of Personnel Management.

PBGC–4

SYSTEM NAME:

Employee Travel Records—PBGC.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006, and Los Angeles Regional Office, Pension Benefit Guaranty Corporation, Room 4033A, 300 N. Los Angeles Street, Los Angeles, California 90012.

CATAGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of PBGC who have filed travel vouchers and related documents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Travel vouchers and related documents filed by employees of PBGC.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Transmittal of data to United States Department of Treasury to effect reimbursement to employees for travel expenses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained manually in file folders.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Records are kept in lockable file cabinets which are locked after office hours, in areas of restricted access.

RETENTION AND DISPOSAL:

Retained for 3 years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Controller, Office of Financial Operations, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006, and Special Assistant for Field Liaison, Los Angeles Regional Office, Pension Benefit Guaranty Corporation, Room 4033A, 300 N. Los Angeles Street, Los Angeles, California 90012.

NOTIFICATION PROCEDURE:

Procedures are detailed in PBGC regulations: 29 CFR Part 2607.

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

PBGC employee executing vouchers.

PBGC–5

SYSTEM NAME:

Personnel Records—PBGC.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and applicants for employment with PBGC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel records that the PBGC maintains, including applications and related information for attorneys maintained by the Office of the General Counsel. (Records included in the Permanent Official Personnel File are maintained as a system of records by the Office of Personnel Management and are not included in this system of records).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. These records are used to carry out authorized personnel programs.

2. Pursuant to Title VII of the Civil Service Reform Act, records from this system may be furnished to a labor organization upon its request when needed by that organization to perform properly its duties as the collective bargaining representative of PBGC employees in the bargaining unit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained manually in file folders and in machine readable form.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Records are kept in areas of restricted access and in lockable file cabinets which are locked after office hours. Magnetic tapes and computer records are kept under restricted access.

RETENTION AND DISPOSAL:

Temporary Personnel File records are destroyed when the employee leaves PBGC or one year after the file was established, whichever is sooner. Applications for employment are destroyed after the receipt of Office of Personnel Management inspection report or 2 years after date of application, whichever is sooner. Applications for training are destroyed 5 years after date of application.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Personnel Programs and Services, Office of Management Services, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006, and the Management Officer, Office of the General Counsel, Pension Benefit Guaranty Corporation, Suite 7200, 2020 K Street, N.W., Washington, D.C. 20006.

NOTIFICATION PROCEDURE:

Procedures are detailed in PBGC regulations: 29 CFR Part 2607.

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Subject individuals, present and past employers, references given by subject individuals and responses to security investigations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from access and contest and certain other provisions of the Privacy Act 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H) and (I), and (f), to the extent it includes material which would reveal the identify of a source who furnished information to the PBGC under an express promise that the identity of the source would be held in confidence or prior to September 27, 1975, was provided to the PBGC under an implied promise of confidentiality.

PBGC–6

SYSTEM NAMES:

Plan Participant and Beneficiary Data—PBGC.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants and beneficiaries in terminated pension plans covered by Title IV of the Employee Retirement Income Security Act of 1974.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain name, address, telephone number, sex, social security number and other social security data, date of birth, date of hire, salary, marital status, time of plan participation, participant status, pay status, benefit data, health data, and insurance information where plan benefits are guaranteed by private insurers. The individual records listed herein are included only as pertinent or applicable to the individual plan participant or beneficiary.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302, 1322 and 1341.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosed to third parties, such as banks, insurance companies and trustees, for the purpose of paying benefits to plan participants and beneficiaries.

2. Disclosure, in furtherance of proceedings under Title IV of the Employee Retirement Income Security Act of 1974, of plan participant and beneficiary data to an employer maintaining the plan.

3. Disclosure may be made to an official of a labor organization which is the duly recognized collective bargaining representative of the individual about whom the request is made.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintainted manually in file folders and in machine readable form.

RETRIEVABILITY:

Indexed by plan and participant and/or beneficiary name.

SAFEGUARDS:

Manual records are maintained in lockable file cabinets which are locked after office hours, in areas of restricted access. Magnetic tapes and computer records are kept under restricted access.

RETENTION AND DISPOSAL:

Records will be retained for such periods of time and disposed of in the manner to be prescribed by the PBGC's program of records management authorized by General Services Administration.

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SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Program Operations, and Director, Internal Audit, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006.

NOTIFICATION PROCEDURE:

Procedures are detailed in PBGC regulations: 29 CFR Part 2607.

RECORDS ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Same as notification procedures.

RECORD SOURCE CATEGORIES:

Plan administrators and Social Security Administration.

PBGC–7

SYSTEM NAME:

Equal Employment Opportunity Discrimination Complaints—PBGC.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, Equal Employment Opportunity Office, Room 4300–A, 2020 K Street, NW., Washington, D.C. 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

PBGC employee and applicant complainants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain names, work locations, dates, Social Security numbers, and other information as included on affidavits, interviews, informal and formal discrimination complaint reports and investigative files of complaints.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 CFR Part 1613.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Purpose—Used by EEO Officer, staff of Equal Employment Opportunity Commission, staff of the Merit System Protection Board, Complaints examiners, Contract EEO investigators, PBGC EEO investigators and PBGC EEO counselors to investigate complaints of alleged discrimination and to evaluate the effectiveness of the EEO program:

Use—

1. Disclosed to complainant's representative.

2. Portions may be disclosed to the alleged discriminating official and his/her representative.

3. Disclosed to Equal Employment Opportunity Commission and Merit System Protection Board to carry out authorized investigations, to adjudicate appeals and of discrimination complaints, and make recommendations regarding discrimination complaints.

4. Disclosed to Contract EEO investigators.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained manually in file folders, binders and marked exhibits.

RETRIEVABILITY:

Indexed by complainant's name.

SAFEGUARDS:

Records are kept in lockable file cabinets which are locked after office hours in rooms with restricted access.

RETENTION AND DISPOSAL:

An official Discrimination Complaint case file which is resolved in the agency is destroyed 4 years after the resolution of the case. The background record is destroyed 2 years after the resulation of the case.

SYSTEM MANAGER(S) AND ADDRESS:

Equal Employment Opportunity Officer, Division of Personnel Programs and Services, Office of Management Services, Pension Benefit Guaranty Corporation, 2020 K. Street, NW., Washington, D.C. 20006.

NOTIFICATION PROCEDURE:

Procedures are detailed in PBGC regulations: 29 CFR Part 2607.

RECORD ACCESS PROCEDURES:

Same as notification procedure above.

CONTESTING RECORDS PROCEDURES:

Same as notification procedure above.

RECORD SOURCE CATEGORIES:

Information is received from the complainants, respondent and from investigations and interviews.

PBGC—8

SYSTEM NAME:

Employee Adverse Action files—PBGC.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

PBGC employees against whom an adverse action covered by this system has been initiated, or a PBGC employee who has initiated a grievance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Notice to employees of disciplinary actions, performance warning letters, adverse actions, reductions-in-force, employees' replies to notices, employee notice of grievance, employee notice of appeal, records of hearing proceedings, appeal decisions and rebuttals, notice of action, investigative reports and related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Purpose—

Provides a record keeping system, 1) for grievances and related appeals filed by an employee who alleges his rights regarding compensation, benefits, or other terms and conditions of employment have been adversely affected and, 2) for adverse actions brought against a PBGC employee.

Use—

1. Disclosed to employee's representative.

2. Disclosed to the Office of Personnel Management and Merit Systems Protection Board to carry out their authorized functions.

3. Pursuant to Title VII of the Civil Service Reform Act, records from this system may be furnished to a labor organization upon its request when needed by the organization to perform properly its duties as the collective bargaining representative of PBGC employees in the bargaining unit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is retained manually in file folders.

RETRIEVABILITY:

Indexed by employee name.

SAFEGUARDS:

Records are kept in lockable file cabinets which are locked after office hours in areas of restricted access.

RETENTION AND DISPOSAL:

Grievance files are destroyed 3 years after the case is closed. Adverse action files are destroyed 4 years after the case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Division of Personnel Programs and Services, Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006.

NOTIFICATION PROCEDURE:

Procedures are detailed in PBGC regulations: 29 CFR Part 2607.

RECORD ACCESS PROCEDURES:

Same as notification procedure above.

CONTESTING RECORD PROCEDURES:

Same as notification procedure above.

RECORD SOURCE CATEGORIES:

Information is received from an employee who initiates a grievance, or against whom an adverse action is initiated, employee's supervisors, and other PBGC employees and from investigations and interviews.

PBGC–9

SYSTEM NAME:

Plan Participant and Beneficiary Address Identification File—PBGC.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Certain plan participants and beneficiaries in terminated pension plans covered by Title IV of ERISA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain name, social security number, name of pension plan, and address received from the Internal Revenue Service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. sections 1302, 1322 and 1341, 26 U.S.C. section 6103. Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Disclosure may be made only to the extent permitted by 26 U.S.C. section 6103 and 26 CFR section 404.6103.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained manually in file folders.

RETRIEVABILITY:

INDEXED BY PARTICIPANT OR BENEFICIARY NAME AND SOCIAL SECURITY NUMBER.

SAFEGUARDS:

Records are kept in locked file cabinets in areas of restricted access under procedures that meet Internal Revenue Service safeguarding standards.

RETENTION AND DISPOSAL:

Records for participants in PBGC-trusteed plans for which the address is verified are transferred to PBGC–6 on verification. Records for which IRS has no address, for which the address was not verified, and records for participants in sufficient plans or plans with a third-party trustee will be retained for two years from the date the request was sent to the Internal Revenue Service and then will be sent to Internal Revenue Service for disposal.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Benefits Administration, Office of Program Operations, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006.

NOTIFICATION PROCEDURE:

Procedures are detailed in PBGC regulations: 29 CFR Part 2607.

RECORD ACCESS PROCEDURES:

Same as notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as notification procedures above.

RECORD SOURCE CATEGORIES:

Information is received from the Internal Revenue Service.

[FR Doc. 80–31926 Filed 10–15–80; 8:45 am]

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federal register

Thursday
October 16, 1980

Part IV

Department of the Interior

Bureau of Land Management

Outer Continental Shelf, Gulf of Mexico; Notice of Bidding Systems and Oil and Gas Lease; Sale No. 62

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management

Outer Continental Shelf, Gulf of Mexico

Notice of Bidding Systems, Sale No. 62

Sec. 8(a)(8) [43 U.S.C. 1337 (a)(8)] of the Outer Continental Shelf (OCS) Lands Act, as amended, requires that, at least 30 days before any lease sale, a notice be submitted to the Congress and published in the Federal Register:

(A) identifying the bidding systems to be used and the reasons for such use; and

(B) designating the tracts to be offered under each bidding system and the reasons for such designation.

This notice is published pursuant to these requirements.

A. Bidding systems to be used. In OCS Sale No. 62, tracts will be offered under the following four bidding systems as authorized under Sec. 8(a)(1) [43 U.S.C. 1337 (a)(1)]: (1) bonus bidding with a fixed 33 1/3 percent royalty on 11 tracts, (2) bonus bidding with a fixed sliding scale royalty on 10 tracts, (3) bonus bidding with a fixed net profit share on 22 tracts, and (4) bonus bidding with a fixed 16 2/3 percent royalty on 38 tracts.

(1) Bonus Bidding with 33 1/3 Percent Royalty. This system is authorized by Sec. 8(a)(1)(A) of the OCS Lands Act, as amended. This higher royalty type system was first tested in OCS Sale 35 held December 11, 1975, in Sale 40 held August 17, 1976, and used again in Sale A62 held September 30, 1980. This system is designed to reduce the bonus bids as a result of the high royalty rates and thereby may increase competition for these leases. Our simulation analysis for the tracts selected for this system indicated that the assignment of the high royalty costs had very little effect on production decisions and therefore on the amount of oil and gas extracted. These results suggest the benefits of possible increases in competition are worth testing when compared to the slight risks of making production less economic.

Bids on tracts 62-19, 62-20, 62-21, 62-22, 62-23, 62-24, 62-64, 62-65, 62-79, 62-80 and 62-81 must be on a cash bonus basis with a fixed royalty of 33 1/3 percent.

(2) Bonus Bidding with Sliding Scale Royalty. This system is authorized by Sec. (8)(a)(1)(C) of the OCS Lands Act, as amended. The use of the sliding scale royalty system was introduced in OCS Sale 43 (March 28, 1978) and used again in the last eleven OCS lease sales.

The sliding scale is designed to establish higher royalty rates for larger reservoirs with higher production rates. As such, the expected bonus is reduced compared to a fixed one-sixth royalty system. This may improve competition for leases, and also tends to reduce the likelihood of production losses that could result if higher royalty rates are set by other means, such as royalty bidding, prior to reservoir delineation and production. The sliding scale formula provided for Sale 62 is based on the current assumed range of costs and wellhead prices for this area.

The sliding scale used in Sale Nos. 43 and 45 was linear in form. Although this form is easy to describe it has three disavantages which may affect the socially optimal level of production. At certain levels of production, a linear schedule causes erratic fluctuations in the royalty charged on increments in output which may lead producers to make socially non-optimal production decisions in order to minimize these royalty impacts on net revenues. Marginal royalty rates also can reach very high levels even though the average rates are low. In addition, because production costs are non-linear it can be shown that the royalty rate schedule should conform more closely to the functional form of these costs in order to minimize production losses from non-development of otherwise profitable tracts.

The fixed sliding scale formula operates in the following way: when the quarterly value of production, adjusted for inflation, is less than or equal to $10,812077 million, a royalty of 16.66667 percent in amount or value of production saved, removed or sold will be due on the unadjusted value or amount of production. When the adjusted quarterly value of production is equal to or greater than $10.812078 million, but less than or equal to $445.239477 million, the royalty percent due on the unadjusted value is given by the formula

$$Rj = b[\ln (Vj/S)]$$

where

Rj = the percent royalty that is due and payable on the unadjusted amount or value of all production saved, removed or sold in quarter j

b = 13.0

ln = natural logarithm

Vj = the value of production in quarter j, adjusted for inflation, in millions of dollars

S = 3.0

When the adjusted quarterly value of production is equal to or greater than $445.239478 million, a royalty of 65.00000 percent in amount or value of production saved, removed or sold will be due on the unadjusted quarterly value of production. Thus, in no instance will the quarterly royalty due exceed 65.00000 percent in amount or value of quarterly production saved, removed or sold.

In adjusting the quarterly value of production for use in calculating the percent royalty due on production during the quarter, the actual value of production will be adjusted to account for the effects of inflation by dividing the actual value of production by the following inflation adjustment factor. The inflation adjustment factor used will be the ratio of the GNP fixed weighted price index for the calendar quarter preceding the quarter of production to the value of that index for the quarter preceding the issuance of the lease. The GNP fixed weighted price index is published monthly in the "Survey of Current Business," by the Bureau of Economic Analysis, U.S. Department of Commerce. The percent royalty will be due and payable on the actual amount or value of production saved, removed, or sold.

Bids on tracts 62-28, 62-29, 62-31, 62-32, 62-33, 62-34, 62-35, 62-55, 62-70 and 62-76 must be submitted on a cash bonus basis with a fixed sliding scale royalty.

(3) Bonus Bidding with a Fixed Net Profit Share. This system is authorized by Sec. 8(a)(1)(D) of the OCS Lands Act, as amended. Sale 62 will be the third test of this bidding system, following Sale A62 and Sale 55, which was established by Department of Energy (DOE) regulations effective May 14, 1980. This fixed net profit share system is intended to increase competition by generating greater contingency payments to the Government and thereby reducing the initial cash bonus. The fixed net profit share allows greater contingency payments without causing reductions in production that could result from use of higher royalty rates for this purpose. Allowable costs, plus an allowance for capital recovery on preproduction costs, are deducted from revenues before calculation of the profit share payment. Development of marginal fields and increased production are encouraged because the Government shares in costs rather than adding to them as under royalty systems.

The use of the fixed net profit share - cash bonus bid system in this sale continues experimentation begun in Sale #A62. The cash bonus is used as the bid variable rather than the profit share principally to avoid percentage bids at too high levels which would make future development either economically inefficient or simply uneconomic. In addition, it is easier to administer and unitize adjacent tracts with similar profit share rates. Furthermore, a fixed profit share better assures that firms which can produce at lower costs are more likely to obtain leases. This may not be the case if it were possible for firms to simply bid away higher percentages of net profits if net profits is used as the bid variable.

Firms will be permitted to deduct their allowable costs plus 1.00 times allowable preproduction costs from production revenues before calculation of the profit share payment. The profit share rate selected for this sale is 50 percent. These parameters were selected on the basis of DOE and DOI studies regarding the effect on bonuses, profit-share payments, government receipts, gross production, minimal economic tract sizes, social value and the incentive to alter the production profile.

Bids on tracts 62-1, 62-2, 62-3, 62-4, 62-11, 62-12, 62-13, 62-16, 62-17, 62-18, 62-46, 62-56, 62-57, 62-58, 62-59, 62-60, 62-61, 62-62, 62-63, 62-72, 62-73 and 62-74 must be submitted on a cash bonus basis with a fixed net profit share rate of 50 percent and a 1.00 capital recovery factor.

(4) Bonus Bidding with a 16 2/3 Percent Royalty. This system is authorized by Sec. 8(a)(1)(A) of the OCS Lands Act, as amended. This relatively low royalty system has been used extensively since the passage of the OCS Lands Act in 1953 and results in greater risks to the lessee from finding a dry hole, but more rewards (i.e., lower contingency payments to the government) if a commercial field is discovered. The use of this system will also provide data to compare the performance of the alternative systems.

Bids on tracts 62-5, 62-6, 62-7, 62-8, 62-9, 62-10, 62-14, 62-15, 62-25, 62-26, 62-27, 62-30, 62-36, 62-37, 62-38, 62-39, 62-40, 62-41, 62-42, 62-43, 62-44, 62-45, 62-47, 62-48, 62-49, 62-50, 62-51, 62-52, 62-53, 62-54, 62-66, 62-67, 62-68, 62-69, 62-71, 62-75, 62-77 and 62-78 must be submitted on a cash bonus basis with a fixed royalty of 16 2/3 percent.

B. Designation of Tracts. The selection of tracts to be offered under the four systems was based on the following factors:

(1) Lease terms on adjacent tracts were considered in order to reduce administrative costs and barriers to unitization, and to enhance orderly development of each field.

(2) A sufficient number of tracts was needed to permit valid statistical analysis while limiting the risks of losses caused by unforeseen problems which could arise in the use of any new bidding system. The number of tracts must also be consistent with the requirements of Sec. 8(a)(5)(B) of the OCS Lands Act, as amended.

(3) The range and distribution of the characteristics of tracts were to be comparable for statistical purposes for each system. Such characteristics include estimated resources, water depth, structure depth, favorable vs. unfavorable location of tracts on structures, and the location of tracts across trends.

Director, Bureau of Land Management

Approved: OCT - 9 1980

Secretary of the Interior

[FR Doc. 80-32110 Filed 10-15-80; 8:45 am]
BILLING CODE 4310-84-C

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management

Outer Continental Shelf, Gulf of Mexico
Oil and Gas Lease Sale No. 62

1. Authority. This notice is published pursuant to the Outer Continental Shelf Lands Act of 1953 (43 U.S.C. 1331-1343), as amended, (92 Stat. 629), and the regulations issued thereunder (43 CFR Part 3300).

2. Filing of Bids. Sealed bids will be received by the Manager, New Orleans Outer Continental Shelf (OCS) Office, Bureau of Land Management, Hale Boggs Federal Building, 500 Camp Street, Suite 841, New Orleans, Louisiana 70130. Bids may be delivered, either by mail or in person, to the above address until 4:15 p.m., c.s.t., November 17, 1980; or by personal delivery to the Louisiana Superdome, Gate "C", Hyatt Ramp, Level 200, Rooms 4 and 5, 1500 Poydras Street New Orleans, Louisiana between the hours of 8:30 a.m., c.s.t., and 9:30 a.m., c.s.t., November 18, 1980. Bids received by the Manager later than the times and dates specified above will be returned unopened to the bidders. Bids may be modified or withdrawn unless written modification or withdrawal is received by the Manager prior to 9:30 a.m., c.s.t., November 18, 1980. All bids must be submitted and will be considered in accordance with applicable regulations, including 43 CFR Part 3300. The list of restricted joint bidders which applies to this sale was published in 45 FR 65324, October 2, 1980.

3. Method of Bidding. A separate bid in a sealed envelope, labeled "Sealed Bid for Oil and Gas Lease (insert number of tract), not to be opened until 10:00 a.m., c.s.t., November 18, 1980" must be submitted for each tract. A suggested form appears in 43 CFR Part 3300, Appendix A. Bidders are advised that tract numbers are assigned solely for administrative purposes and are not the same as block numbers found on official protraction diagrams or leasing maps. All bids received shall be deemed submitted for a numbered tract. Bidders must submit with each bid one-fifth of the cash bonus in cash or by cashier's check, bank draft, or certified check, payable to the order of the Bureau of Land Management. No bid for less than a full tract as described in paragraph 12 will be considered. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, as well as submit a sworn statement that the bidder is not disqualified under 43 CFR Subpart 3316. The suggested form for this statement to be used in joint bids appears in 43 CFR Part 3300, Appendix B. Other documents may be required of bidders under 43 CFR 3316.4. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bidding Systems. All leases awarded for this sale will provide for a yearly rental payment of $3 per acre or fraction thereof. Except for the fixed net profit share tracts listed in Paragraph 4(c) of this notice all leases awarded will provide for a minimum annual royalty payment of $3 per acre or fraction thereof. The following systems will be utilized.

(a) Bonus Bidding with 33 1/3 Percent Royalty. Bids on tracts 62-19, 62-20, 62-21, 62-22, 62-23, 62-24, 62-64, 62-65, 62-79, 62-80, and 62-81 must be on a cash bonus basis with a fixed royalty of 33 1/3 percent.

(b) Bonus Bidding with a Fixed Sliding Scale Royalty. Bids on tracts 62-28, 62-29, 62-31, 62-32, 62-33, 62-34, 62-35, 62-55, 62-70 and 62-76 must be submitted on a cash bonus basis with the percent royalty due in amount or value of production saved, removed or sold fixed according to the sliding scale formula described below. This formula fixes the percent royalty at a level determined by the value of lease production

during each calendar quarter. For purposes of determining the royalty percent due on production during a quarter, the value of production during the quarter will be adjusted for inflation as described below. The determination of the value of the production on which royalty is due will be made pursuant to 30 CFR 250.64.

The fixed sliding scale formula operates in the following way; when the quarterly value of production, adjusted for inflation, is less than or equal to $10.812077 million, a royalty of 16.66667 percent in amount or value of production saved removed or sold will be due on the unadjusted value or amount of production. When the adjusted quarterly value of production is equal to or greater than $10.812078 million, but less than or equal to $445.239477 million, the royalty percent due on the unadjusted value or amount of production is given by

$$Rj = b(\ln (Vj/s))$$

where

Rj = the percent royalty that is due and payable on the unadjusted amount or value of all production saved removed or sold in quarter j

b = 13.0

ln = natural logarithm

Vj = the value of production in quarter j adjusted for inflation, in millions of dollars

s = 310

When the adjusted quarterly value of production is equal to or greater than $445.239478 million, a royalty of 65.00000 percent in amount or value of production saved, removed or sold will be due on the unadjusted quarterly value

Figure 1
Form of the Sliding Royalty Schedule

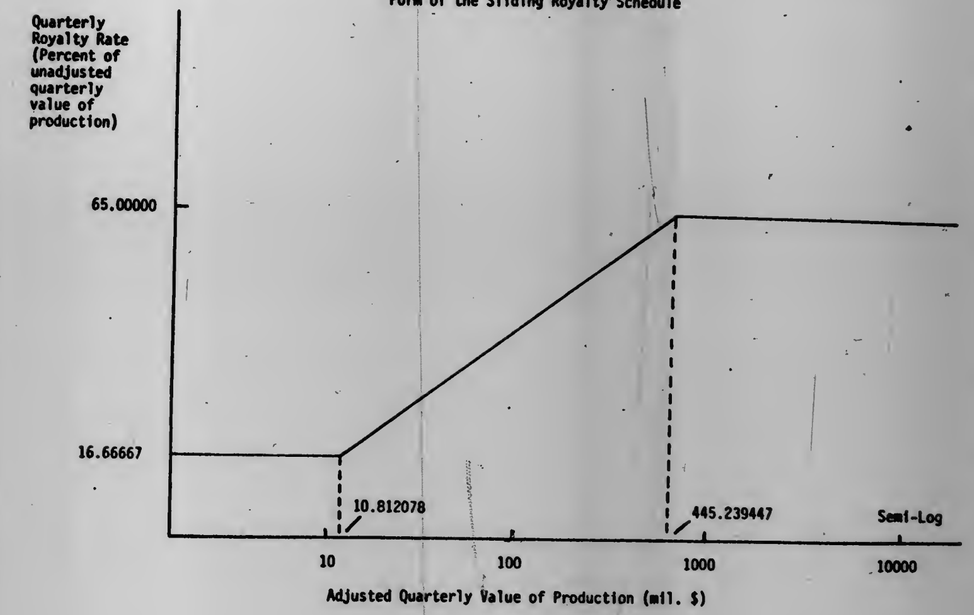


TABLE 1. HYPOTHETICAL QUARTERLY ROYALTY CALCULATIONS

(A) Actual Value of Quarterly production (Millions of Dollars)	(B) GNP Fixed Weighted Price Index	(C) Inflation Factor[1]	(D) Adjusted Value of Quarterly Production[2] (Vj, Millions of $)	(E) Percent Royalty Rate (Rj)	(F) Royalty Payment[3] (Millions of Dollars
10.000000	200.0	4/3	7.500000	16.66667	1.666667
30.000000	200.0	4/3	22.500000	26.19374	7.858122
90.000000	200.0	4/3	67.500000	40.47570	36.428130
270.000000	200.0	4/3	202.500000	54.75766	147.845682
810.000000	200.0	4/3	607.500000	65.00000	526.500000
10.000000	250.0	5/3	6.000000	16.66667	1.666667
30.000000	250.0	5/3	18.000000	23.29287	6.987861
90.000000	250.0	5/3	54.000000	37.57483	33.817347
270.000000	250.0	5/3	162.000000	51.85679	140.013333
810.000000	250.0	5/3	486.000000	65.00000	526.500000

1. Column (B) divided by 150.0 (assumed value of GNP fixed weighted price index at time leases are issued).
2. Column (A) divided by Inflation Factor.
3. Column (A) times Column (E) divided by 100. All values are rounded for display purposes only.

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of production. Thus, in no instance will the quarterly royalty due exceed 65.00000 percent in amount or value of quarterly production saved, removed or sold.

In determining the quarterly percent royalty due, Rj, the calculation will be carried to five decimal places (for example, 21.25878 percent). This calculation will incorporate the adjusted quarterly value of production, Vj, in millions of dollars, rounded to the sixth digit, i.e., the nearest dollar (for example, 15.392847 millions of dollars).

The form of the sliding scale royalty schedule is illustrated in Figure 1. Note that the effective quarterly royalty rate depends upon the inflation adjusted quarterly value of production. However, this rate is applied to the unadjusted quarterly value of production to determine the royalty payment due.

In adjusting the quarterly value of production for use in calculating the percent royalty due on production during the quarter, the actual value of production will be adjusted to account for the effects of inflation by dividing the actual value of production by the following inflation adjustment factor. The inflation adjustment factor used will be the ratio of the GNP fixed weighted price index for the calendar quarter preceding the quarter of production to the value of that index for the quarter preceding the issuance of the lease. The GNP fixed weighted price index is published monthly in the Survey of Current Business by the Bureau of Economic Analysis, U.S. Department of Commerce. The percent royalty will be due and payable on the actual amount or value of production saved, removed, or sold as determined pursuant to 30 CFR 250.64. The timing of procedures for inflation adjustments and determinations of the royalty due will be specified at a later date. Table 1 provides hypothetical examples of quarterly royalty calculations using the sliding scale formula just described under two different values for the quarterly price index.

(c) Bonus Bidding with a Fixed Net Profit Share. Bids on tracts 62-1, 62-2, 62-3, 62-4, 62-11, 62-12, 62-13, 62-16, 62-17, 62-18, 62-46, 62-56, 62-57, 62-58, 62-59, 62-60, 62-61, 62-62, 62-63, 62-72, 62-73 and 62-74 must be submitted on a cash bonus basis with a fixed net profit share rate of 50 percent and a 1.00 capital recovery factor. The net profit share payment shall be calculated according to the Department of Energy regulations in 10 CFR 390 (45 FR 36784, May 30, 1980).

(d) Bonus Bidding with a 16-2/3 Percent Royalty. Bids on the remaining tracts to be offered at this sale must be submitted on a cash bonus basis with a fixed royalty of 16-2/3 percent.

5. Equal Opportunity. Each bidder must have submitted by 9:30 a.m., c.s.t., November 18, 1980, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form 1140-8 (November 1973), and the Affirmative Action Representation Form, Form 1140-7 (December 1971).

6. Bid Opening. Bids will be opened on November 18, 1980, beginning at 10:00 a.m., c.s.t., at the address stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing and recording bids received and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight, November 18, 1980, that bid will be returned unopened to the bidder, as soon thereafter as possible.

7. Deposit of Payment. Any cash, cashier's checks, certified checks or bank drafts, submitted with a bid may be deposited in a suspense account in the Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. Withdrawal of Tracts. The United States reserves the right to withdraw any tract from this sale prior to issuance of a written acceptance of a bid for the tract.

9. Acceptance or Rejection of Bids. The United States reserves the right to reject any and all bids for any tract. In any case, no bid for any tract will be accepted and no lease for any tract will be awarded to any bidder unless:

(a) The bidder has complied with all requirements of this notice and applicable regulations;

(b) The bid is the highest valid cash bonus bid; and

(c) The amount of the bid has been determined to be adequate by the Secretary of the Interior.

No bid will be considered for acceptance unless it offers a cash bonus in the amount of $25 or more per acre or fraction thereof.

10. Successful Bidders. Each person who has submitted a bid accepted by the Secretary of the Interior will be required to execute copies of the lease specified below, pay the balance of the cash bonus bid together with the first year's annual rental and satisfy the bonding requirements of 43 CFR Subpart 3318 within the time provided in 43 CFR 3316.5

11. Leasing Maps/Official Protraction Diagram. Tracts offered for lease may be located on the following leasing maps/official protraction diagrams which are available from the Manager, New Orleans Outer Continental Shelf Office at the address stated in paragraph 2.

(a) Outer Continental Shelf Leasing Maps - Texas Nos. 1 through 8. These maps are arranged in two sets, Nos. 1 through 4 (7 maps), which sell for $5 per set; and Nos. 5 through 8 (9 maps), which sell for $7 per set.

(b) Outer Continental Shelf Official Protraction Diagram:

NG 14-3 Corpus Christi

This sells for $2.

12. Tract Descriptions. The tracts offered for bids are as follows: Note: There may be gaps in the numbers of the tracts listed. Some of the blocks identified in the final environmental statement may not be included in this notice. Some of the blocks are included in prior environmental statements rather than the environmental statement for this sale.

OCS LEASING MAP, SOUTH PADRE ISLAND AREA, EAST ADDITION, TEXAS MAP NO. 1A
(Approved May 6, 1965)

Tract	Block	Description	Acreage
62-1	A-64	All	5760
62-2	A-65	All	5760
62-3	A-70	All	5760
62-4	A-71	All	5760

OCS LEASING MAP, NORTH PADRE ISLAND AREA, TEXAS MAP NO. 2
(Approved July 16, 1954)

Tract	Block	Description	Acreage
62-5	946	All	5760
62-6	966	All	5760

OCS LEASING MAP, MUSTANG ISLAND AREA, TEXAS MAP NO. 3
(Approved July 16, 1954; Revised October 30, 1961)

Tract	Block	Description	Acreage
62-7	791	All	5760
62-8	800	All	5760
62-9	A-22	All	5760
62-10	A-31	All	5760

OCS LEASING MAP, MUSTANG ISLAND AREA, EAST ADDITION, TEXAS MAP NO. 3A
(Approved January 23, 1967)

Tract	Block	Description	Acreage
62-11	A-124	All	5760
62-12	A-128	All	5760
62-13	A-129	All	5760

OCS LEASING MAP, MATAGORDA ISLAND AREA, TEXAS MAP NO. 4
(Approved July 16, 1954)

Tract	Block	Description	Acreage
62-14	528	All	5760
62-15	568	All	5760
62-16	639	All	5760
62-17	640	All	5760
62-18	649	All	5760
62-19	653	All	5760
62-20	654	All	5760
62-21	668	All	5760
62-22	685	All	5760
62-23	701	All	5760
62-24	712	All	5760

OCS LEASING MAP, BRAZOS AREA, TEXAS MAP NO. 5
(Approved July 16, 1954)

Tract	Block	Description	Acreage
62-25	449	1/	3642
62-26	450	1/	5681
62-27	475	All	5760
62-28	501	All	5760
62-29	502	All	5760
62-30	530	All	5760
62-31	57B	All	5760
62-32	A-7	All	5760
62-33	A-39	All	5760
62-34	A-40	All	5760
62-35	A-41	All	5760

OCS LEASING MAP, GALVESTON AREA, TEXAS MAP NO. 6
(Approved July 16, 1954)

Tract	Block	Description	Acreage
62-36	253	All	5760
62-37	272	All	5760
62-38	301	All	5760
62-39	302	All	5760
62-40	303	All	5760
62-41	304	1/	5360
62-42	392	All	5760
62-43	421	All	5760
62-44	426	All	5760
62-45	427	All	5760
62-46	A-100	All	5760

OCS LEASING MAP, HIGH ISLAND AREA, TEXAS MAP NO. 7
(Approved July 16, 1954; Revised August 1955)

Tract	Block	Description	Acreage
62-47	49	All	5760
62-48	50	All	5760
62-49	72	All	5760
62-50	94	All	5760
62-51	108	All	5760
62-52	161	E1/2; NE1/4NE1/4NW1/4; SE1/4NE1/4SW1/4; NE1/4SW1/4SW1/4; S1/2SW1/4SW1/4: SE1/4SW1/4	3690
62-53	200	All	5760
62-54	201	All	5760

OCS LEASING MAP, HIGH ISLAND AREA, SOUTH ADDITION, TEXAS MAP NO. 7B
(Approved September 24, 1959)

Tract	Block	Description	Acreage
62-55	A-417	All	5760
62-56	A-437	All	5760
62-57	A-438	All	5760
62-58	A-439	All	5760
62-59	A-440	All	5760
62-60	A-444	All	5760
62-61	A-445	All	5760
62-62	A-454	All	5760
62-63	A-455	All	5760
62-64	A-470	All	5760
62-65	A-472	All	5760
62-66	A-543	All	5760
62-67	A-569	All	5760
62-68	A-576	All	5760
62-69	A-578	All	5760

OCS LEASING MAP, HIGH ISLAND AREA, EAST ADDITION, SOUTH EXTENSION, TEXAS MAP NO. 7C
(Approved September 24, 1959)

Tract	Block	Description	Acreage
62-70	A-267	All	5760
62-71	A-282	All	5760

OCS OFFICIAL PROTRACTION DIAGRAM, CORPUS CHRISTI NG 14-3
(Approved June 5, 1974; Revised January 27, 1976)

Tract	Block	Description	Acreage
62-72	700	All	5760
62-73	743	All	5760
62-74	744	All	5760

OCS LEASING MAP, BRAZOS AREA, TEXAS MAP NO. 5
(Approved July 16, 1954)

Tract	Block	Description	Acreage
62-75	(438 (439	1/	5055

OCS LEASING MAP, MUSTANG ISLAND AREA, TEXAS MAP NO. 3
(Approved July 16, 1954; Revised October 30, 1961)

Tract	Block	Description	Acreage
62-76	738	All	5760

OCS LEASING MAP, GALVESTON AREA, TEXAS MAP NO. 6
(Approved July 16, 1954)

Tract	Block	Description	Acreage
62-77	241	N1/2	2880

OCS LEASING MAP, HIGH ISLAND AREA, SOUTH ADDITION, TEXAS MAP NO. 7B
(Approved September 24, 1959)

Tract	Block	Description	Acreage
62-78	A-549	All	5760

OCS LEASING MAP, HIGH ISLAND AREA, EAST ADDITION, SOUTH EXTENSION,
TEXAS MAP NO. 7C
(Approved September 24, 1959)

Tract	Block	Description	Acreage
62-79	A-374	All	5760
62-80	A-385	All	5760
62-81	A-357	All	5760

1/ That portion of the lease block seaward of the Three Marine League Line.

13. Lease Terms and Stipulations. All leases issued as a result of this sale will be for an initial term of 5 years. Leases issued as a result of this sale will be on Form 3300-1 (September 1978), available from the Manager, New Orleans Outer Continental Shelf Office, at the address stated in paragraph 2.

(a) For leases resulting from this sale for tracts offered on a cash bonus basis with fixed sliding scale royalty, listed in paragraph 4(b), Form 3300-1 will be amended as follows:

Sec. 6 Royalty on Production. The lessee agrees to pay the lessor royalty of that percent in amount or value of production saved, removed or sold from the leased area as determined by the sliding scale royalty formula as follows. When the quarterly value of production, adjusted for inflation, is less than or equal to $10.812077 million, a royalty of 16.66667 percent in amount or value of production saved, removed or sold will be due on the unadjusted value or amount of production. When the adjusted quarterly value of production is equal to or greater than $10.812078 million, but less than or equal to $445.239477 million, the royalty percent due on the unadjusted value or amount of production is given by

$$Rj = b(\ln(Vj/S))$$

where

Rj = the percent royalty that is due and payable on the unadjusted amount or value of all production saved, removed or sold in quarter j

b = 13.0

Ln = natural logarithm

Vj = the value of production in quarter j, adjusted for inflation, in millions of dollars

S = 3.0

When the adjusted quarterly value of production is equal to or greater than $445.239478 million, a royalty of 65.00000 percent in amount or value of production saved, removed or sold will be due on the unadjusted quarterly value of production. Thus, in no instance will the quarterly royalty due exceed 65.00000 percent in amount or value of quarterly production saved, removed or sold.

In determining the quarterly percent royalty due, Rj, the calculation will be carried to five decimal places (for example, 21.25878 percent). This calculation will incorporate the adjusted quarterly value of production, Vj, in millions of dollars, rounded to the sixth digit, i.e., to the nearest dollar (for example, 15.392847 millions of dollars). Gas of all kinds (except helium) is subject to royalty. The lessor shall determine whether production royalty shall be paid in amount or value.

(b) For leases resulting from this sale for tracts offered on a cash bonus basis with a fixed net profit share, listed in paragraph 4(c), Form 3300-1 will be amended as follows:

Sec. 4 Rentals. The phrase "which commences prior to a discovery in paying quantities of oil or gas on the leased area" is hereby deleted and replaced by "which commences prior to the date the first profit share payment becomes due".

Sec. 5. Minimum Royalty. Hereby deleted.

Sec. 6. Royalty on Production. Hereby replaced by Fixed Net Profit Share. The lessee agrees to pay a net profit share rate of 50 percent with a 1.00 capital recovery factor, calculated pursuant to 10 CFR 390.

(c) Except as otherwise noted, the following stipulations will be included in each lease resulting from this proposed sale. In the following stipulations the term DCM refers to the Deputy Conservation Manager for Field Operations, Gulf of Mexico OCS Region, U.S. Geological Survey and the term Manager refers to the Manager of the New Orleans OCS Office of the Bureau of Land Management.

Stipulation No. 1

If the DCM, having reason to believe that a site, structure or object of historical or archeological significance hereinafter referred to as "cultural resource", may exist in the lease area, gives the lessee written notice that the lessor is invoking the provisions of this stipulation, the lessee shall upon receipt of such notice comply with the following requirements:

Prior to any drilling activity or the construction or placement of any structure for exploration or development on the lease, including, but not limited to, well drilling and pipeline and platform placement, hereinafter in this stipulation referred to as "operation," the lessee shall conduct remote sensing surveys to determine the potential existence of any cultural resource that may be affected by such operations. All data produced by such remote sensing surveys as well as other pertinent natural and cultural environmental data shall be examined by a qualified marine survey archeologist to determine if indications are present suggesting the existence of a cultural resource that may be adversely affected by any lease operation. A report of this survey and assessment prepared by the marine survey archeologist shall be submitted by the lessee to the DCM and to the Manager for review.

If such cultural resource indicators are present the lessee shall: (1) locate the site of such operation so as not to affect adversely the identified location; or (2) establish, to the satisfaction of the DCM, on the basis of further archeological investigation conducted by a qualified marine survey archeologist or underwater archeologist using such survey equipment and techniques as deemed necessary by the DCM either that such operation will not adversely affect the location identified or that the potential cultural resource suggested by the occurrence of the indicators does not exist.

A report of this investigation prepared by the marine survey archeologist or underwater archeologist shall be submitted to the DCM and the Manager for review. Should the DCM determine that the existence of a cultural resource which may be adversely affected by such operation is sufficiently established to warrant protection, the lessee shall take no action that may result in an adverse effect on such cultural resource until the DCM has given directions as to its preservation.

The lessee agrees that if any site, structure or object of historical or archeological significance should be discovered during the conduct of any operations on the leased area, he shall report immediately such findings to the DCM and make every reasonable effort to preserve and protect the cultural resource from damage until the DCM has given directions as to its preservation.

Stipulation No. 2

(To be included only in the lease resulting from this sale for tract 62-69.)

Operations within the area shown as "3 Mile Zone" in figure 2 (attached to and made a part of this lease) shall be restricted as specified in either (a) or (b) at the option of the lessee (Applebaum Bank).

(a) All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a downpipe that terminates an appropriate distance, but no more than ten meters, from the bottom.

(b) The operator (lessee) shall submit a monitoring plan as part of the exploration and development and production plans. The monitoring plan will be designed to assess the effects of oil and gas exploration and development operations on the biotic communities of the nearby banks.

The monitoring program shall indicate that the monitoring investigations will be conducted by qualified independent scientific personnel and that these personnel and all required equipment will be available at the time of operations. The monitoring team will submit its findings to the DCM on a schedule established by the DCM, or immediately in case of imminent danger to the biota of the bank resulting directly from drilling or other operations. If it is decided that surface disposal of drilling fluids or cuttings presents no danger to the bank, no further monitoring of that particular well or platform will be required. If, however, the monitoring program indicates that the biota of the bank is being harmed, or if there is a great likelihood that operation of that particular well or platform may cause harm to the biota of the bank, the DCM shall require shunting as specified in (a) above or other appropriate operational restrictions.

Stipulation No. 3

(To be included only in the lease resulting from this sale for tract 62-79.)

(a) No structures, drilling rigs, or pipelines will be allowed within the aliquots established for the East Flower Garden Bank as follows:

High Island Area, East Addition, South Extension, Block A-374: W1/2W1/2NW1/4; SE1/4SW1/4NW1/4; SW1/4NE1/4SW1/4; W1/2SW1/4; W1/2SE1/4SW1/4; SE1/4SE1/4SW1/4.

(b) Exploration, development, and production operations are permitted within the aliquots described below with the following restrictions:

All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom; however, if the shunting method is not adequate, as determined by the monitoring program proceedings outlined in this stipulation, to protect the unique character of the subject area, then the material must be transported a minimum of ten miles from any 50-meter isobath surrounding live reef-building coral before disposal.

No garbage, untreated sewage, or other solid waste shall be disposed of from vessels (workboats, crew-boats, supply boats, pipelaying vessels) during exploration and development operations.

No drilling permits shall be issued by the DCM until he has found that the lessee's exploration plans and development and production plans filed under 30 CFR 250.34 are adequate to insure that exploration, development and production operations in the leased area will have no significant adverse affect on the biotic communities associated with the high value reef sites on the Flower Garden Banks.

As a part of the exploration plans and development and production plans, a reef monitoring program must be included. The monitoring program will be designed to assess the effects of oil and gas exploration, development, and production operations on the viability of the coral reefs and associated communities. The monitoring plan shall indicate that the monitoring investigations will be conducted by qualified independent scientific personnel and that program personnel and equipment will be available at the time of operations. The monitoring team will submit its findings to the DCM, on a regular schedule established by the DCM, or immediately in case of imminent danger to the biota of the bank resulting directly from drilling or other operations.

The affected aliquots are as follows:

High Island Area, East Addition, South Extension, Block A-374: SW1/4SW1/4NE1/4; E1/2NW1/4; E1/2NW1/4NW1/4; NE1/2SW1/4NW1/4; N1/2NE1/4SW1/4; SE1/4NE1/4SW1/4; NE1/4SE1/4SW1/4; W1/2NW1/4SE1/4; SE1/4NW1/4SE1/4; SW1/4SE1/4; SW1/4SE1/4SE1/4.

(c) Exploration, development, and production operations are permitted within the aliquots described below with the following restrictions:

All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

No garbage, untreated sewage, or other solid waste shall be disposed of from vessels (workboats, crew-boats, supply boats, pipelaying vessels) during exploration, development, and production operations.

No drilling permits shall be issued by the DCM until he has found that the lessee's exploration plans and development and production plans filed under 30 CFR 250.34 are adequate to insure that exploration, development, and production operations in the leased area will have no significant adverse affect on the biotic communities associated with the high value reef sites on the Flower Garden Banks.

The affected aliquots are as follows:

High Island Area, East Addition, South Extension, Block A-374 N1/2NE1/4; N1/2S1/2NE1/4; SE1/4SW1/4NE1/4; S1/2SE1/4NE1/4; NE1/4SE1/4; NE1/4NW1/4SE1/4; N1/2SE1/4SE1/4; SE1/4SE1/4SE1/4.

Stipulation No. 4

(To be included only in the lease resulting from this sale for tract 62-80.).

(a) No structures, drilling rigs, or pipelines will be allowed within the aliquots established for the West Flower Garden Bank as follows:

High Island Area, East Addition, South Extension, Block A-385: SW1/4SW1/4NW1/4; NW1/4SW1/4; NW1/4SW1/4SW1/4.

(b) Exploration, development, and production operations are permitted within the aliquots described below with the following restrictions:

All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom; however, if the shunting method is not adequate, as determined by the monitoring program proceedings outlined in this stipulation, to protect the unique character of the subject area, then the material must be transported a minimum of ten miles from any 50-meter isobath surrounding live reef-building coral before disposal.

No garbage, untreated sewage, or other solid waste shall be disposed of from vessels (workboats, crew-boats, supply boats, pipelaying vessels) during exploration and development operations.

No drilling permits shall be issued by the DCM until he has found that the lessee's exploration plans and development and production plans filed under 30 CFR 250.34 are adequate to insure that exploration, development, and production operations in the leased area will have no significant adverse affect on the biotic communities associated with the high value reef sites on the Flower Garden Banks.

As a part of the exploration plans and development and production plans, a reef monitoring program must be included. The monitoring program will be designed to assess the effects of oil and gas exploration, development, and production operations on the viability of the coral reefs and associated communities. The monitoring plan shall indicate that the monitoring investigations will be conducted by qualified independent scientific personnel and that program personnel and equipment will be available at the time of operations.

The monitoring team will submit its findings to the DCM on a regular schedule established by the DCM, or immediately in case of imminent danger to the biota of the bank resulting directly from drilling or other operations.

The affected aliquots are as follows:

High Island Area, East Addition, South Extension, Block A-385: SW1/4NW1/4NW1/4; N1/2SW1/4NW1/4; SE1/4SW1/4NW1/4; SW1/4SE1/4NW1/4; NE1/4SW1/4; E1/2SW1/4SW1/4; SW1/4SW1/4SW1/4;W1/2SE1/4SW1/4; NE1/4SE1/4SW1/4;W1/2NW1/4SE1/4.

(c) Exploration, development, and production operations are permitted within the aliquots described below with the following restrictions:

All drill cuttings and drilling fluids must be disposed of by shunting the material to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

No garbage, untreated sewage, or other solid waste shall be disposed of from vessels (workboats, crew boats, supply boats, pipelaying vessels) during exploration, development, and production operations.

No drilling permits shall be issued by the DCM until he has found that the lessee's exploration plans and development and production plans filed under 30 CFR 250.34 are adequate to insure that exploration, development, and production operations in the leased area will have no significant adverse effect on the biotic communities associated with the high value reef sites on the Flower Garden Banks.

The affected aliquots are as follows:

High Island Area, East Addition, South Extension, Block A-385: NE1/4; NE1/4NW1/4; N1/2NW1/4NW1/4; SE1/4NW1/4NW1/4; N1/2SE1/4NW1/4; SE1/4SE1/4NW1/4; SE1/4SE1/4SW1/4; E1/2SE1/4; E1/2NW1/4SE1/4; SW1/4SE1/4.

Stipulation No. 5

(To be included in any lease resulting from this sale for tracts 62-1, 62-2, 62-3, 62-4, 62-5, 62-6, 62-9, 62-10, 62-11, 62-12, 62-13, 62-19, 62-20, 62-21, 62-22, 62-23, 62-24, 62-72, 62-73, 62-74 and 62-76.)

'Whether or not compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occur in, on, or above the Outer Continental Shelf, to any persons or to any property of any person or persons who are agents, employees or invitees of the lessee, its agents, independent contractors, or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the Outer Continental Shelf if such injury or damage to such person or

property occurs by reason of the activities of any agency of the U.S. Government, its contractors or subcontractors, or any of their officers, agents or employees, being conducted as a part of, or in connection with the programs and activities of the Naval Air Training Command, Naval Air Station, Corpus Christi, Texas.

Notwithstanding any limitation of the lessees's liability in Sec. 14 of the lease form, the lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of their officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee, and to indemnify and save harmless the United States against, all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the aforementioned military installation whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors, subcontractors, or any of their officers, agents, or employees and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.

The lessee agrees to control his own electromagnetic emissions and those of his agents, employees, invitees, independent contractors or subcontractors emanating from individual designated defense warning areas in accordance with requirements specified by the commander of the Naval Air Training Command, Naval Air Station, Corpus Christi, Texas, to the degree necessary to prevent damage to, or unacceptable interference with, Department of Defense flight, testing or operational activities, conducted within individual designated warning areas. Necessary monitoring control, and coordination with the lessee, its agents, employees, invitees, independent contractors or subcontractors, will be effected by the commander of the appropriate onshore military installation conducting operations in the particular warning area, provided, however, that control of such electromagnetic emissions shall in no instance prohibit all manner of electromagnetic communication during any period of time between a lessee, its agents, employees, invitees, independent contractors or subcontractors and onshore facilities.

The lessee when operating or causing to be operated on its behalf boat or aircraft traffic into the individual designated warning areas shall enter into an agreement with the commander of the Naval Air Training Command, Naval Air Station, Corpus Christi, Texas, utilizing an individual designated warning area prior to commencing such traffic. Such agreement will provide for positive control of boats and aircraft operating in the warning areas at all times.

Stipulation No. 6

(To be included only in the lease resulting from this sale for tract 62-74.)

Portions of this tract may be subject to mass movement of sediments. Exploratory drilling operations, emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas, and the emplacement of pipelines will not be allowed within the potentially unstable portions of this lease block unless or until the lessee has demonstrated to the DOM's satisfaction that mass movement of sediments is unlikely or that exploratory drilling operations, structures (platforms), casing, wellheads and pipelines can be safely designed to protect the environment in case such mass movement occurs at the proposed location. This may necessitate that all exploration for and development of oil or gas be performed from locations outside of the area of unstable sediments, either within or outside of this lease block.

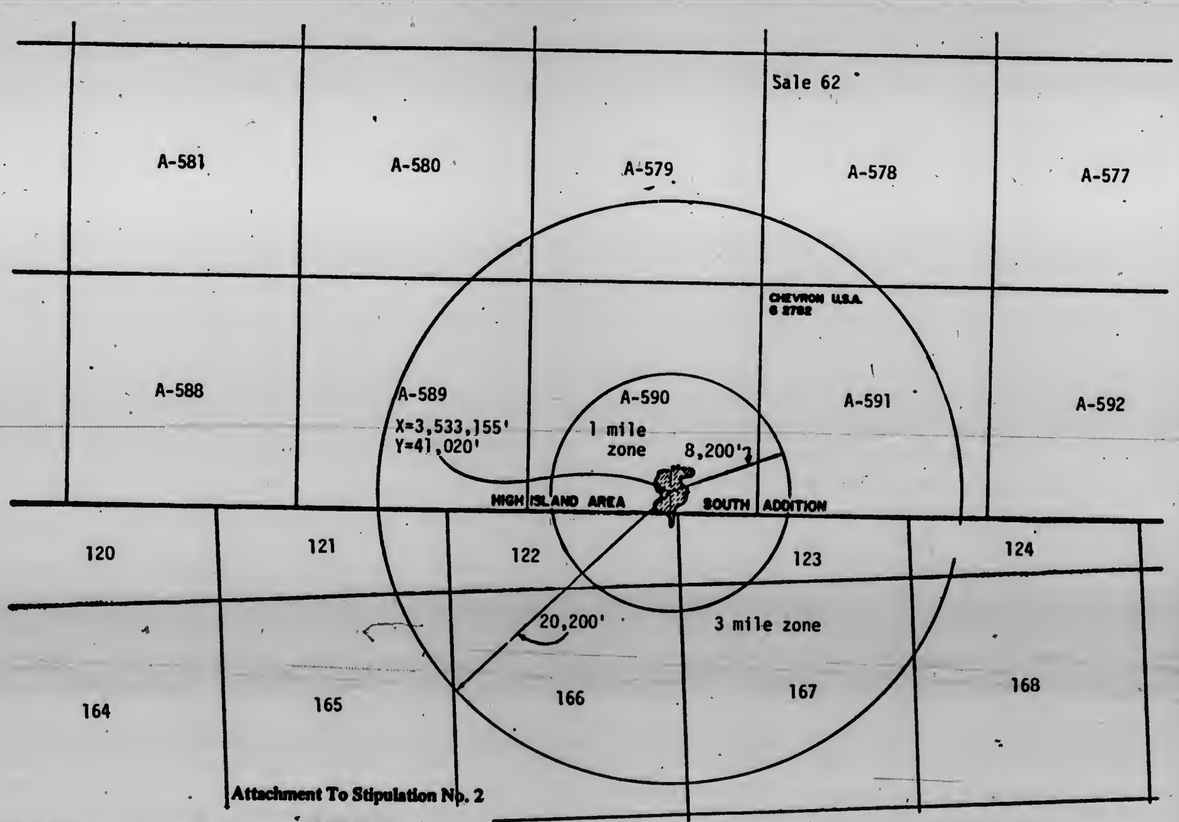
If exploratory drilling operations are allowed, site-specific surveys shall be conducted to determine the potential for unstable bottom conditions. If emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas are allowed, all such unstable areas must be mapped. The DOM may also require soil testing before exploration and production operations are allowed.

Stipulation No. 7

(To be included only in the leases resulting from this sale for the fixed sliding scale and the 33 1/3 percent royalty tracts listed in paragraphs 4(a) and 4(b) of this notice.)

(a) The royalty rate on production saved, removed or sold from this lease is subject to consideration for reduction under the same authority that applies to all other oil and gas leases on the Outer Continental Shelf (30 CFR 250.21). The Director, Geological Survey, may grant a reduction for only one year at a time and reduction of royalty rates will not be approved unless production has been underway for one year or more.

(b) Although the royalty rate specified in section 6(a) of this lease or as subsequently modified in accordance with applicable regulations and stipulations is applicable to all production under this lease, not more than 16 2/3 percent of the production saved, removed or sold from the lease area may be taken as royalty in amount, except as provided in Sec. 15(d); the royalty on any portion of the production saved, removed or sold from the lease in excess of 16 2/3 percent may only be taken in value of the production saved, removed or sold from the lease area.



Attachment To Stipulation No. 2

FIGURE 2
APPLEBAUM BANK
(Tract 62-69)

14. Information to Lessees. The Department of the Interior will seek the advice of the States of Texas and Louisiana, and other Federal agencies, to identify areas of special concern which might require appropriate protective measures for live bottom areas and areas which might contain cultural resources.

If it is determined that live bottom areas might be adversely affected by the proposed activities then the Deputy Conservation Manager for Field Operation, USGS, in consultation with the Regional Director, Fish and Wildlife Service (FWS), the Manager, BLM, the States, EPA, and other Federal agencies with jurisdiction and expertise to protect the environment will require the lessee, pursuant to Section 5(a) of the Act, to undertake any measures to protect live bottom areas.

Operations on some of the tracts offered for lease may be restricted by designation of fairways, precautionary zones, or traffic separation schemes established by the Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.). Corps of Engineers permits are required for construction of any artificial islands, installations and other devices permanently or temporarily attached to the seabed located on the Outer Continental Shelf in accordance with section 4(e) of the Outer Continental Shelf Lands Act of 1953, as amended.

Bidders are advised that the Departments of the Interior and Transportation have entered into a Memorandum of Understanding dated May 6, 1976, concerning the design, installation, operation and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

Bidders are advised that in accordance with Sec. 16 of each lease offered at this sale, the lessor may require a lessee to operate under a unit, pooling or drilling agreement, and that the lessor will give particular consideration to requiring unitization in instances where one or more reservoirs underlie two or more leases with either a different royalty rate or a net profit share payment.

Bidders are advised that the Department of Energy is authorized, under Section 302(b) and (c) of the Department of Energy Organization Act, to establish production rates for all Federal oil and gas leases.

Bidders also are advised that the National Oceanic and Atmospheric Administration (NOAA) is considering whether to propose the designation of a marine sanctuary, pursuant to Title III of the Marine Protection, Research and Sancturaries Act of 1972 (16 U.S.C. 1431-1434) in the area of the Flower Garden Banks in the Gulf of Mexico. Revised proposed regulations describing the boundaries of the possible sanctuary and possible restrictions which NOAA might impose on oil and gas operations within the sanctuary, were published on June 26, 1980 (45 FR 43205). Tracts offered in this sale that are within the boundaries of the marine sanctuary under consideration are 62-79 and 62-80. While a final decision has not been made by NOAA concerning restrictions in the sanctuary, the restrictions under consideration by NOAA for tracts within the sanctuary may be more stringent than those restrictions included by lease stipulation in this Notice of Sale.

Bidders on tracts 62-79 and 62-80 are also advised that the Environmental Protection Agency has expressed its intention to require lessees within the boundaries of the Flower Garden Banks Marine Sanctuary under consideration by NOAA to obtain National Pollution Discharge Elimination System (NPDES) permits, pursuant to its authority under Section 402 of the Clean Water Act (P.L. No. 95-217), containing ocean discharge restrictions and other conditions which may be more stringent than those imposed through lease stipulation or Interior regulation.

15. OCS Orders. Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Gulf of Mexico Orders, as of their effective date, and any other applicable OCS Order as it becomes effective.

Acting Associate Director, Bureau of Land Management

Date: 10-9-80

Approved:

Secretary of the Interior

[FR Doc. 80-32111 Filed 10-15-80; 8:45 am]
BILLING CODE 4310-84-C

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federal register

Thursday
October 16, 1980

Part V

Department of the Interior

Fish and Wildlife Service

Proposed Endangered Status and Critical Habitat for Borax Lake Chub (Gila Boraxobius)

V 45 OC 16 80 UMI

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status and Critical Habitat for Borax Lake Chub (Gila Boraxobius)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine the Borax Lake chub to be an Endangered species and Borax Lake, Harney County, Oregon to be its Critical Habitat. This action is being taken because the distribution of the Borax Lake chub is limited to Borax Lake, its outflow, and Lower Borax Lake in Harney County, Oregon. Geothermal development in and around Borax Lake and human modification of the lake threaten the integrity of the species' habitat and, hence, its survival.

DATES: Comments from the public must be received by December 15, 1980. A public meeting and a public hearing will be held on November 13, and December 2, 1980, respectively.

ADDRESSES: Interested persons or organizations can obtain information from the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, Oregon 97232.

The public meeting and the public hearing will be held at the Museum Club Room, 18 West D. Street, Burns, Oregon, beginning at 10:00 a.m. on November 13, and December 2, 1980, respectively.

FOR FURTHER INFORMATION CONTACT: For further information on this proposed rule contact Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 or phone (703/235–2771).

SUPPLEMENTARY INFORMATION:

Background

The Borax Lake chub is found only in Borax Lake (a small 10.2-acre, natural, thermal lake), its outflow, and Lower Borax Lake located in the Alvord Basin of south-central Oregon. It inhabits the highly mineralized, thermal lake that is fed by a thermal spring. The fish feeds on a variety of aquatic invertebrates.

Over time, the precipitation of minerals from the spring water maintaining the level of Borax Lake has raised the perimeter of the lake approximately eight meters above the valley floor and isolated the chub from the surrounding watershed. The perched nature of the lake compared to the surrounding land make it extremely susceptible to human disturbance. Present modification of the perimeter diverts water from the lake and lowers its level. The lowering levels adversely affect the chub by decreasing habitat and increasing water temperature.

A second major threat to the Borax Lake chub is geothermal development. The entire Alvord Basin is a Known Geothermal Resource Area (KGRA) within which the Bureau of Land Management has already leased rights for geothermal exploration to private oil and geothermal companies. Such development adjacent to Borax Lake could adversely impact the species' habitat. One of the problems of exploratory drilling in this area is the possibility of interconnecting aquifers or springs. This kind of interconnection could, in effect, drain the lake which is at a higher elevation than the valley floor where much of the drilling will be occurring. This drilling also could disrupt the hot water aquifer feeding the lake, thus changing the aquifer pressure or temperature and consequently change the lake. This alteration could range from a simple change in the temperature to a complete elimination of the flow. The threats to Borax Lake resulted in an emergency rule listing the Borax Lake chub as Endangered on May 28, 1980. [45 FR 35821–35823).

The Critical Habitat encompasses Borax Lake and the aquatic environments associated with its outflow located in T37S; R33E; SW ¼ Sec. 11, W ½ Sec. 14, and SE ¼ Sec. 15, Harney County, Oregon. Some of the Critical Habitat is privately owned, but most is federally owned (Bureau of Land Management).

Section 4(a) of the Act (16 U.S.C. 1531 *et seq.*) states:

"General—(1) The Secretary shall by regulation determine whether any species is an endangered species or a threatened species because of any of the following factors:

(1) The present or threatened destruction, modification, or curtailment of its habitat or range;

(2) Overutilization for commercial, sporting, scientific, or educational purposes;

(3) disease or predation;

(4) the inadequacy of existing regulatory mechanisms; or

(5) other natural or man-made factors affecting its continued existence."

This authority has been delegated to the Director.

Summary of Factors Affecting the Species

These findings are sumarized herein under each of the five criteria of Section 4(a) of the Act. These factors, and their application to the Borax Lake chub, are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.*

The Borax Lake chub is endemic to Borax Lake and its outflow. Borax Lake is an extremely fragile aquatic ecosystem which, because of its position above the valley floor, is vulnerable to destruction by human modification for irrigation. Recently a number of channels have been chipped along its perimeter. These channels direct water toward the eastern side of the lake instead of allowing the outflow to follow its natural pathway toward a marsh located on the western side of the lake. If flows through the natural outlet are sufficient, water flows through the marsh and into Lower Borax Lake where it provides additional chub habitat. Because of the artificial diversion, the lower lake may be completely dry during some years. Historically, because of its intermittent nature, the lower lake has probably never provided permanent chub habitat.

In contrast, much of the marsh area retains permanent water and provides suitable chub habitat. Much of this marsh habitat currently is dry because of the unnatural water diversion from the upper lake. If more diversions are constructed in the lake perimeter, the lake level will continue to decline, the marsh will continue to dry, and the continued existence of the chub will be increasingly threatened.

Development of the geothermal resource poses a substantial threat which may adversely affect the Borax Lake chub by modifying or destroying its aquatic habitat. Considerable interest in geothermal exploration has been demonstrated in the Alvord Basin, an area designated by the U.S. Geological Survey as a Known Goethermal Resource Area because of its geothermal potential. Some geothermal leases in the basin have already been issued by the Bureau of Land Management. The private land on which Borax Lake is located has been leased to an oil company for geothermal development. Additional leasing of Federal land in the Critical Habitat area is scheduled. The original leases released by BLM were offered in 1975, and there have been a number of offers since. Some of these leases have been reoffered, most recently in April 1980. Some leases have been issued and three tracts are

presently pending. Although BLM has indicated that it will be anywhere from 4–6 months before exploratory drilling actually begins, processing of applications for drilling permits and BLM stipulations to drilling plans will be taking place in the near future.

Development of a hot springs resort at Borax Lake for recreational purposes has been considered by the land owner, but because of the lakes remoteness this appears unlikely.

2. *Overutilization for commercial, sporting, scientific or educational purposes.*

None.

3. *Disease or predation.*

None.

4. *The inadequacy of existing regulatory mechanisms.*

None.

5. *Other natural or man-made factors affecting its continued existence.*

None.

Critical Habitat

The Act defines "Critical Habitat" to include (a) areas within the geographical area occupied by the species at the time that species is listed which are essential to the conservation of the species and which may require special management considerations or protection and (b) specific areas outside the geographic area occupied by the species at the time, upon a determination by the Secretary that such areas are essential for the conservation of the species.

Critical Habitat for the Borax Lake chub is proposed as follows:

Oregon. Harney County. Borax Lake and aquatic environments associated with the outflow from Borax Lake located within T37S;R33E; SW ¼ Sec. 11, W ½ Sec. 14, and SE ¼ Sec. 15:

These areas provide the Borax Lake chub with all the necessary requirements for suitable survival and reproduction such as food, spawning habitat, water temperatures, etc.

Section 4(b)(4) and 4(f)(4) of the Act require, to the maximum extent practicable, that Critical Habitat determinations be accompanied by a brief description and evaluation of those activities which, in the opinion of the Secretary, may adversely modify such habitat if undertaken, or those Federal actions which may be impacted by such designation. Such activities are identified below for this species. It should be emphasized that Critical Habitat designation may not affect each of the the activities listed below, as Critical Habitat designation only affects Federal agency activities through Section 7 of the Act.

Activities which occur within the proposed Critical Habitat include cattle grazing, nature study, swimming, geothermal exploration, irrigation, and hunting. Of these activities grazing, hunting, nature study, and swimming do not appear to adversely modify the habitat, to any substantial degree.

Geothermal exploration may adversely modify the habitat should it occur within the area adjacent to Borax Lake or its outflows or should it modify the spring flow and/or its water temperature.

Such disturbances from geothermal development would include, but would not be limited to, subsidence problems and/or modifications in the hydrology of the area that may affect the springs supporting Borax Lake. Full scale development of a geothermal plant may have negative effects on the lake due to air pollution, possible ground water contamination, subsidence, and other related impacts. If geothermal development occurs in the Alvord Basin (no plant construction is now known to be scheduled), it will probably entail only small-scale plants.

Construction of such plants on Federal land may be restricted so as not to adversely affect the proposed Critical Habitat. Development on private land could proceed unencumbered provided no Federal approval or funding is involved.

The Service is required to consider economic and other impacts of specifying a particular area as Critical Habitat. The Service has begun this process with a draft impact analysis. The Service is notifying Federal agencies that may have jurisdiction over the land and water under consideration in this proposed action. These Federal agencies and other interested persons or organizations are requested to submit information on economic or other impacts of this proposed action.

The Service will prepare a final impact analysis prior to the time of preparing a final rule and will use this document as the basis for its decision as to whether or not to exclude any area from Critical Habitat for the Borax Lake chub.

The 1979 Amendments to the Endangered Species Act require Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be added to the List of Endangered and Threatened Species of Wildlife and Plants or result in the destruction or adverse modification of Critical Habitat proposed to designated for such species. The purpose of this requirement is to identify and resolve all potential conflicts between a proposed action and conservation of Endangered and Threatened species at an early point in the decision-making process. That purpose is to be achieved with respect to proposed species through informal/formal discussions between the Federal agency and the Service on potential impacts of a proposed action on proposed species or proposed Critical Habitat.

Effect of This Proposal if Published as a Final Rule

Endangered Species regulations already published in Title 50 17.21 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered species. The regulation referred to above which pertain to such species are summarized below.

With respect to the Borax Lake chub, all prohibitions of Section 9(a)(1) of the Act, as implemented by 50 CFR 17.21, will apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife which was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies.

Regulations published in the Federal Register of September 26, 1975, (40 FR 44412), codified at 50 CFR 17.22 and 17.23 provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered species under certain circumstances. Such permits are available for scientific purposes or to enhance the propagation or surval of the species. In some instances, permits may be issued during a specific period of time to relieve undue economic hardship which would be suffered if such relief were not available.

If published as a final rule this determination would require Federal agencies not only to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the Borax Lake chub, but would also require them to insure that their actions do not result in the destruction or adverse modification of the Critical Habitat which has been determined by the Secretary. Provisions for Interagency Cooperation are codified at 50 CFR Part 402.

Pursuant to Section 4(b) of the Act, the Director will notify the Governor of Oregon with respect to this proposal and request his comments and

recommendations before making a final determination.

Public Comments Solicted

The Director intends that the rules finally adopted will be as accurate and effective as possible in the conservation of any Endangered or Threatened species. Suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial, or other relevant data concerning any threat (or the lack thereof) to the species included in this proposal;

(2) The location of and the reasons why any habitat of this species should or should not be determined as Critical Habitat, as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject areas, probable impacts on such activities if the area is designated as Critical Habitat, and any foreseeable economic and other impacts of the Critical Habitat designation on federally funded or authorized projects.

Public Meetings

The Service hereby announces that a public meeting will be held on this proposed rule. The public is invited to attend this session and to present opinions and information on the proposal. Specific information relative to the public meeting is set out below:

Public Meeting

Place: Museum Club Room, 18 West D. Street, Burns, Oregon
Date: November 13, 1980
Time: 10:00 a.m.
Subject: Borax Lake Chub

Public Hearing

Place: Museum Club Room, 18 West D. Street, Burns, Oregon
Date: December 2, 1980
Time: 10:00 a.m.
Subject: Borax Lake Chub

National Environmental Policy Act

A draft Environmental Assessment has been prepared and is on file in the Service's Area Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Sacramento, California 95825, (FTS 468–4106 or 916/484–4106). The assessment will be the basis for a decision as to whether this determination is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

The primary authors of this rule are Dr. Kathleen E. Franzreb, U.S. Fish and Wildlife Service, Endangered Species Staff, 2800 Cottage Way, Sacramento, California 95825 (FTS 468–4106 or 703/235–1975) and Dr. James D. Williams, U.S. Fish and Wildlife Service, Office of Endangered Species, Washington, D.C. 20240 (FTS 235–1975 or 703/235–1975). The following sources were used in the preparation of this proposed rulemaking:

Williams, J. E. and K. M. Howe. Environmental Assessment for the protection of the Borax Lake area, Harney County, Oregon. Unpub. report to Unique Wildlife Ecosystem Program, U.S. Fish and Wildlife Service, Boise, Idaho. 35 p.

Williams, J. E. A preliminary report on the taxonomic status of *Gila* inhabiting Borax Lake, Harney County, Oregon. Unpub. report. Dept. of Fisheries and Wildlife, Oregon State University, Corvallis, Oregon. (perp., 1977) 5 p.

Williams, J. E. and C. E. Bond. 1980. A new species of cyprinid fish from southeastern Oregon with a comparison to *Gila alvordensis* Hubbs and Miller. Proc. Biol. Soc. Wash. 92(2)291–298.

Regulations Promulgation

It is proposed to amend § 17.11 by adding in alphabetical order under "Fishes," the following to the list of animals.

§ 17.11 Endangered and threatened wildlife.

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Chub, Borax Lake	*Gila boraxobius*	USA (Oregon)	Entire	E		17.95(e)	N/A

§ 17.95 [Amended]

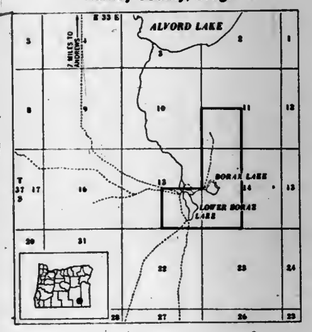
It is proposed to amend § 17.95(e), Fishes, by adding Critical Habitat of the Borax Lake chub after that of the slender chub as follows:

Borax Lake Chub

(Gila boraxobius)

Oregon, Harney County. Borax Lake and aquatic environments associated with the outflow from Borax Lake located within SW ¼ Sec. 11, W ½ Sec. 14, and SE ¼ Sec. 15; T37S; R33E.

Borax Lake Chub
Harney County, Oreg.



Principal constituent elements of this habitat for the Borax Lake chub are considered to be the constant temperature and flow of water into Borax Lake and its natural flow out of Borax Lake into associated aquatic environs and the aquatic and terrestrial food organism of this ecosystem.

Note.—The Department of the Interior has determined that this rule is not a significant rule and does not require preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Dated: October 8, 1980.

Lynn A. Greenwalt,
Director, Fish and Wildlife Service.

[FR Doc. 80–32130 Filed 10–15–80; 8:45 am]
BILLING CODE 4310–55–M

V 45 O C 16 80 UMI

federal register

Thursday
October 16, 1980

Part VI

Department of Health and Human Services

Public Health Service, Health Resources Administration

Grants for Predoctoral, Graduate, and Faculty Development Educational Programs in Family Medicine

V 45 OCT 16 80 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Grants for Predoctoral, Graduate, and Faculty Development Educational Programs in Family Medicine

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: These regulations apply to grants for schools of medicine or osteopathy, hospitals, and other public or private nonprofit entities to plan, develop, and operate or participate in predoctoral, graduate, or faculty training programs in family medicine.

DATE: These regulations are effective October 16, 1980.

FOR FURTHER INFORMATION CONTACT: Kenneth P. Moritsugu, M.D., M.P.H., Director, Division of Medicine, Bureau of Health Professions, Health Resources Administration, Center Building, Room 3–22, 3700 East West Highway, Hyattsville, Maryland 20782 (301) 436–6418.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 16, 1978 (43 FR 47694), the Assistant Secretary for Health, with the approval of the Secretary of Health, Education, and Welfare, added a new Subpart Q to 42 CFR Part 57, entitled "Grants for Predoctoral, Graduate, and Faculty Development Education Programs in Family Medicine" to implement section 786(a) of the Public Health Service Act, as amended.

Funds are authorized in fiscal year 1980 for grants to schools of medicine or osteopathy or other public or private nonprofit entities for approved professional training programs (including continuing education and residency and internship programs) in family medicine for medical and osteopathic students, interns, and residents. Section 786(a) also authorizes grants for programs to train physicians to teach family medicine and for traineeships and fellowships for these physicians, and for osteopathic internship training emphasizing general practice.

Section 780 of the Act authorizes grants for the development and maintenance of departments of family medicine in schools of medicine or osteopathy. Regulations implementing this statute are published elsewhere in this part. The Department regards projects under section 780 as complementary to those of section 786(a). As part of a grant to establish or maintain an academic administrative unit under section 780, the Department is supporting projects for the planning and development of model predoctoral, faculty development, and graduate medical education programs, which will be designed to be able to meet the requirements of the regulations implementing section 786(a). In addition, the Department will support projects for academic and clinical activities relevant to the field of family medicine as part of the function of the unit.

These regulations provide funding preference for programs with substantial training experience in settings which exemplify interdependent utilization of physicians and physician assistants or nurse practitioners, and programs with substantial portions of the training program conducted in a primary medical manpower shortage area which is part of a health manpower shortage area(s) designated under section 332 of the Public Health Service Act, or in an Area Health Education Center, funded, at least in part, under section 781 of the Act. For programs for training physicians to teach family medicine, funding preference is accorded to those programs that emphasize increasing the number of new faculty who will be teaching on a full-time basis in family medicine.

Timely implementation of the regulations for section 786(a) was essential so that applicants could have adequate time to comply with the requirements of this subpart for grants made prior to September 20, 1978. Therefore, the Secretary determined in accordance with 5 U.S.C. 553 and Department policy, that it would be impractical and contrary to the public interest to follow proposed rulemaking procedures or to delay the effective date of these regulations, and published them as interim-final regulations.

Notwithstanding the omission of the proposed rulemaking procedures, interested persons were invited to submit written comments on these regulations not later than December 15, 1978. Following the close of the comment period, the regulations were revised as warranted by the public comments received.

In the Federal Register of October 16, 1978 (43 FR 47699), the Department also published guidelines related to the project requirements in § 57.1605 for public comment. These guidelines concern family medicine education for medical students (including preceptorships and student assistantships), for interns and residents (including allopathic family practice residencies, osteopathic internships emphasizing general practice and osteopathic general practice residencies), and for physicians who plan to teach in family medicine (faculty development). The guidelines provide information as to the minimum standards and criteria that the Department considers desirable, but are neither required, nor sufficient by themselves, for project approval and conduct. They are intended to provide guidance for improving the resources available for family medicine education and for expanding institutional commitment to family medicine.

Interested persons were invited to submit written comments on these guidelines no later than December 15, 1978. Following the close of the comment period, the guidelines were revised as warranted by the public comments received.

The Department held a public hearing in Chicago, Illinois, on November 16 and 17, 1978, to receive information and views on these interim-final regulations and corresponding guidelines. The Department considered the record of these hearings, along with all other written comments received during the comment period, in preparing final regulations and in developing amendments to the guidelines.

The Department received 23 letters on the regulations and guidelines, and 14 individuals testified at the public hearings. The comments received on the regulations and guidelines, the Department's response to these comments, and the revisions made in the regulations and guidelines are indicated below. For clarity, the Department has arranged the comments and responses according to the section of the interim-final regulations to which they pertain. Likewise, the comments and responses to the guidelines are noted separately according to the section of the interim-final regulations to which they relate.

§ 57.1602—Definitions.

One respondent suggested that the Department expand the definition of "osteopathic internship program" to require "rotation through the departments of general practice, internal medicine, obstetrics and gynecology, and surgery."

While the Department acknowledges that the osteopathic internship program with these rotations has been the principal model for production of family physicians within the osteopathic profession, it believes that the definition as written allows flexibility and appropriately emphasizes the significance of family medicine in the curriculum. Consequently, the Department has not changed this definition.

Another respondent commented that the definition of "residency training program" as one which is fully or provisionally accredited by the Liaison Committee on Graduate Medical Education (LCGME) or approved by the American Osteopathic Association (AOA) makes it impossible for a residency program to apply for a grant while it is in its formative stages prior to approval, and that this is inconsistent with § 57.1601, which states that grants are to be made to various entities "to plan, develop, and operate or participate in predoctoral, graduate, or faculty development training programs in family medicine."

The Department has made no change in the definition for the following reasons. The Department recognizes that planning and development are essential elements in these training grant programs and should be supported, but it must allocate the limited funds to most effectively improve the supply of family physicians throughout the Nation. Consequently, it was not considered cost-effective to support residency training programs in the early stages of planning and development before receiving accreditation or approval by the LCGME or AOA. However, funds are available for the continued planning and development of approved or accredited residency or internship training programs which are not yet operational or which are in the early stages of residency training. Also, unapproved or unaccredited programs expecting to receive approval or accreditation within a given fiscal year are eligible to apply for grant funds during that year.

§ 57.1604—How must an entity apply for a grant?

One respondent suggested that § 57.1604(c)(2), which requires that the application include "evidence that grant funds will not be used to supplant other available funds," be amended to require "assurance" that grant funds will not be used to supplant other available funds because it is unclear what evidence fulfills the requirement of this section.

This section has been deleted from the final regulations because this material is more appropriate for application instructions. However, the Department will accept this suggestion by requiring specific documentation in applications showing that these grant funds will be used for the deficit funding of a training program.

§ 57.1605—What requirements must a project meet?

(a) *General requirements.* One individual questioned the need for the project director to work full-time at the grantee institution (§ 57.1605(a)(1)), and stated that it would be more realistic to require him or her to work full-time within the limits of the family medicine program.

The Department believes it is important to have an individual programmatically responsible to the grantee institution for proper conduct of the project supported by grant funds. In some instances, where the training does not occur at the grantee institution, an on-site project director may be more appropriate. Therefore, the Department has revised the requirement to allow the project director to work either at the grantee institution or the training site institution (§ 57.1604(a)(1) of the final regulations).

Another respondent commented that the requirement for a full-time project director would be unreasonable for osteopathic programs which have fewer than six trainees, stating that a one to six ratio of faculty to trainees would be more appropriate for determining a project director's minimum time commitment to the program.

The Department recognizes that in occasional programs with a small number of trainees a full-time project director may not be justified. However, it is strongly recommended that project directors for all programs be full time. The regulation and corresponding guidelines have been revised accordingly.

The Department notes that this comment also applies to the supervisor of training in that programs with small numbers of trainees may not need a full-time supervisor of training. The Department therefore deleted the requirement in § 57.1605(c)(1) that a supervisor of training work full-time. The guidelines have been revised to recommend a full-time supervisor of training for those programs with more than six trainees.

(b) *Additional requirements for predoctoral training programs.* One respondent proposed changing the words "preclinical" and "clinical" to "preclerkship" and "clerkship" to more accurately reflect the nature and variety of current medical school curricula.

The Department agrees that some schools introduce clinical medicine into the first year, thus making the term "preclinical" inaccurate. The change to the terminology "preclerkship" and "clerkship" has therefore been made in the regulations.

The project requirement in § 57.1605(b)(3) states in part, "stipend support from grant funds may only be given to trainees * * * who engage in the preceptorship full-time for at least four consecutive weeks * * *." One individual stated that there are a number of very successful predoctoral programs based on one or two week preceptorships, and that this requirement would be destructive to existing programs with preceptorships less than four weeks. Another noted that time blocks of either three weeks or six weeks would be more compatible for curriculum scheduling at some institutions. Several others commented that the requirement is appropriate as written.

The Department believes that four weeks is the minimum time to make the maximal use of grant funds in terms of the educational benefit derived. This decision does not preclude the use of shorter time blocks or intermittent preceptorship training experiences in the predoctoral program without stipend support from grant funds. Therefore, the Department has retained this requirement.

Section 57.1605(b)(4) states in part, "the assistantship must not be a requirement for a degree nor be used to satisfy requirements for elective credit * * *." One respondent recommended that if a research program is meritorious consideration be given to funding whether or not it satisfied requirements for a degree. Another respondent questioned how the assistantship can be provided within the time frame allotted for medical education, particularly in three year schools, if it cannot be used toward elective credit.

The Department agrees that, in some cases, assistantships used as credit toward a degree should receive stipend support; however, stipend support should not be used in place of other sources of financial aid. In addition, section 786(a) of the Act provides that stipends be used only for students in need. Therefore, this provision has been revised to state that stipend support may only be given to students who are in need thereof and, in the case of assistantships for which academic credit is provided, may only be given for extraordinary living expenses that are incurred. Section 57.1605(b)(3), concerning stipend support for preceptorships, has been revised for consistency with this provision (§ 57.1604(b)(3) and (b)(4) of the final regulations).

There was a general comment that the criteria for predoctoral training grants make no provision for schools that require a primary care extramural

rotation for students. The Department believes that, to the extent this rotation meets the project requirements for predoctoral training in family medicine, the rotation would be eligible for support. The authorizing statute does not permit use of these grant funds to support predoctoral training programs in fields other than family medicine.

(c) *Additional requirements for graduate training projects (except faculty development).* One respondent indicated that a capitation approach to funding residency training programs in family medicine would be preferred, as it would allow more flexibility in the use of funds, and make it easier to obtain stipend support.

The Department believes that the statute does not permit capitation support, and notes that stipends are available in these programs for documented need.

One individual requested that support be considered for independent pedodontic training programs, and that seminars or other courses on pediatric oral pathology and dentistry for children be included in family practice residency core curricula.

The Department notes that support for independent pedodontic programs is not authorized under this legislation. Seminars or other courses may be considered as options in individual programs, but inclusion in core curricula will not be required.

(d) *Additional requirements for faculty development programs.* The project requirement in § 57.1605(d)(2) states that only physicians who teach or intend to teach in family medicine are eligible to participate as trainees in the program. One respondent requested that the training program not be limited to physician trainees. The Department notes that this limitation is imposed by statute and cannot be modified by regulation.

There were a number of comments on § 57.1605(d)(5), which states, "to be eligible for financial assistance from grant funds, a trainee must be an individual not currently in a full-time faculty position * * *." The respondents noted a real need to retain and improve the teaching skills of existing faculty as well as to attract new faculty. One individual suggested that while it might be appropriate to give priority to trainees who are not currently engaged in full-time teaching, it should be permissible to provide support for full-time teachers in instances where this support is justified.

The Department agrees that it is important to retain and improve the skills of existing faculty, although it is recommended that trainees who receive financial assistance not be full-time faculty. Therefore the Department has deleted this requirement and placed it in the guidelines as a recommendation.

One respondent requested that § 57.1605(d)(5), which requires that a trainee who is eligible for financial assistance from grant funds "intend to teach in a family medicine training program on a full-time basis," be modified to read, "intend to teach in a family medicine training program on at least a half-time basis."

The Department recognizes that many practicing physicians may be interested in part-time teaching, but believes that the grant program can provide greater impact with limited funds by concentrating on the development of full-time faculty. Therefore, the Department has retained this requirement.

Other respondents expressed views on § 57.1605(d)(5), which states that to be eligible for financial assistance from grant funds a trainee must "be a full-time participant in the training program for a least three consecutive months." One respondent suggested that this requirement excludes well-qualified individuals who would be able to devote shorter periods of time at regular intervals and, therefore, recommended deletion of the requirement. Another requested that part-time participation in the training program be permitted, and several individuals indicated that workshops or other intermittent types of training activities would be more appropriate.

The requirement in § 57.1605(d)(5) concerns the eligibility of a trainee for financial assistance from grant funds and *not* eligibility for participation in the training program. Therefore, the requirement in the interim-final regulation does not prevent either part-time participation in the training program or full-time participation for less than three consecutive months. The purpose of this requirement is to increase the impact of financial assistance to attract and assist well-qualified individuals by restricting financial assistance to those participants who spend a minimum of three months a year in the training program, since administrative costs are likely to be reduced and educational impact will be increased. While the Department maintains that three consecutive months represent a desirable minimum, upon review it recognizes that certain programs designed to be less than three consecutive months by providing three full months of training in a year may also achieve the objectives of the program. Hence the word "consecutive" has been deleted to allow flexibility in the design and implementation of these programs and trainee support therefor.

§ 57.1606—What are the criteria for deciding which applications will be funded?

Several respondents commented on the funding preference under § 57.1606(b)(1), for programs with "(1) substantial training experience in settings which exemplify interdependent utilization of physicians and physician assistants or nurse practitioners." One individual noted that other health care personnel should be included. Other respondents felt that: (1) these personnel were not necessary for every family medicine program; (2) the utility of physician assistants and nurse practitioners in practice had not been clearly proven; (3) there appeared to be nothing in the legislative history of section 786 of the Act to suggest funds be used to promote the use of physician assistants or nurse practitioners; and (4) the use of these physician extenders has not been shown to more successfully meet the public need. Other respondents said that this funding preference was appropriate as written.

The Department must emphasize that projects not containing these elements, if recommended for approval, will still be given consideration for support from the available funds. The application will not be considered deficient if the elements are not present. In addition, the Department emphasizes that the funding preference is given only to programs which exemplify interdependent utilization of physician assistants or nurse practitioners. Further, the Department encourages a more coordinated and complementary approach to implementing the various program areas legislated by the Congress. In light of these consideration, the preference has been retained.

With regard to the funding preference in § 57.1606(b)(2), for projects in which "(2) substantial portions of the training program are conducted in a health manpower shortage area(s) designated under section 332 of the Act, or in an area health education center funded, as least in part, under section 781 of the Act, one individual suggested that the phrase "or adjacent to" be added to "portions of the training program are conducted in . . . " (a health manpower shortage area). Other respondents felt that: (1) the designation of shortage areas are piecemeal and contrary to a systematic approach for a State or region; (2) placing a training program in a rural area of need often resulted in loss of this designation; (3) this funding preference may be appropriate for

innercity sites close to a medical school, but that other sites preclude adequate resources for an appropriate educational experience; and (4) a successful training program may provide graduates which meet the health care needs of health manpower shortage areas without necessarily being located in one. Other respondents suggested the program element was appropriate as written.

The Department notes that the basic rationale for retaining the previous preference is also applicable to this one. The Department wishes to emphasize that the geographic maldistribution problem, which this funding preference directly addresses, is a major thrust for the Department's health manpower programs and a key factor in Congressional support for family medicine residencies. It asserts that maximum impact on the goal of eliminating underserved areas may be best achieved by substantial training within the area of need. For the above reasons, this funding preference has been retained.

With regard to the funding preference for osteopathic postdoctoral education projects which coordinate training with an affiliated school of osteopathic medicine, in § 57.1606(b)(3), three comments were received. The first expressed a concern that this preference would defeat the intent of the osteopathic profession to concentrate much of the clinical training in community hospitals. Another supported affiliation to enhance the sharing of educational resources, but noted that affiliation might not always be feasible, and suggested that in these cases, this funding element should be waived. The third respondent urged that this funding preference be deleted because: (1) it has no legal basis; (2) it would give a few institutions an unfair advantage in funding, given the general lack of these agreements; (3) it would be discriminatory since no similar priority is established for nonosteopathic applicants; and (4) it would encourage the development of formal affiliation agreements which would severly jeopardize an effective role model for postdoctoral medical education which has proven to be highly capable of producing general/family practitioners.

The Department notes there are varying degrees of affiliation, some of which do not significantly encourage educational interchange. While the Department believes that educational resource interchange should be encouraged, it agrees that this funding preference may not be a clearly defined mechanism for doing so. Therefore, the Department has deleted this funding preference.

The Department received one comment on the funding preference § 57.1606(b)(4) for faculty development projects with emphasis on increasing the number of new faculty who will be teaching on a full-time basis in family medicine. The respondent suggested the wording be changed to "* * * new faculty who will be teaching on at least a half-time basis in family medicine."

The Department maintains that the faculty development program can have maximum impact by giving preference to projects which focus on expanding the pool of new full-time faculty in family medicine. Therefore, this preference has been retained. Projects which do not meet this funding preference, if recommended for approval, will still be given consideration for support from the available funds.

The following is a discussion of guideline comments and amendments. The Department has revised the guidelines to reflect changes made in the regulations.

(a) *Guidelines for general requirements.* One respondent commented that the requirement for a full-time project director (§ 57.1605(a)(1)) is unreasonable for osteopathic programs which have fewer than six trainees. A one to six ratio of faculty to trainees would be more appropriate for determining the project director's minimum time commitment to the program.

The requirement has been revised to state that the project director must work either at the grantee institution or the training site institution. The Department recognizes that, in occasional programs with a small number of trainees, a full-time project director may not be justified. However, it is strongly recommended that project directors for all programs be full-time. Thus, "full-time" is deleted from the regulations and added to the guidelines.

(b) *Guidelines for predoctoral training programs.* Several comments were received on the guidelines for § 57.1605(b)(1), which requires the training program to be sponsored by an appropriate administrative unit. Comments suggested that guideline (1)(a), relating to administrative autonomy, the phrase, "* * * separate budget or the authority * * *." be changed to "separate budget and the authority * * *."

The Department agrees that this is more definitive of the administrative autonomy of the academic administrative unit, and has revised the guideline accordingly.

One respondent felt that the guideline for § 57.1605(b)(1), relating to academic rank of faculty, is unnecessarily specific and incorrectly focuses attention on comparison with other departments. This respondent suggested rephrasing the guideline to state that the program "have faculty holding a range of academic ranks." Other respondents said that the guideline is appropriate, as written.

As noted previously, guidelines are intended to provide recommendations for improving the resources available for family medicine education and for expanding institutional commitment to family medicine. The Department maintains that it is important to the objectives of the program that faculty of the administrative unit have academic rank comparable to that of faculty in other administrative units, and therefore has retained this guideline.

The guidelines for § 57.1605(b)(1) states, in part, that the administrative unit should "have direct and equitable representation on faculty committees regarding matters of budget, curriculum, faculty appointments and promotions, and student selection." One respondent recommended elimination of the guideline, stating that it constituted a serious intrusion into academic administration because faculty committees rarely provide direct and equitable representation to each academic discipline. The respondent felt that the guideline would force academic institutions to adopt a new principle for academic governance. Several other respondents suggested that the guideline was meaningful and the wording appropriate.

The Department asserts that the word "equitable" implies comparability to the representation afforded other academic disciplines. The Department notes that the intent of the guideline is to recommend that the administrative unit have representation comparable to other academic disciplines on the major committees. It agrees that this intent is met satisfactorily by using the term "equitable" rather than "direct and equitable." The guideline has been revised accordingly.

Another guideline for § 57.1605(b)(1) recommends that a predoctoral training program include "at least 100 hours of contact with these faculty for a minimum of 25% of the students in each entering class during their period of preclerkship training * * *." One respondent stated that this guideline is arbitrary and inappropriate and another suggested revision of the guideline to state, "involvement (of these faculty) to the extent possible." A third respondent felt there was a definite need for a

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specified amount of curriculum time and the 100 hours was reasonable. Several respondents emphasized the need for time to recruit sufficient faculty and develop the curriculum, since the 100 hours of contact time with students could be difficult to implement immediately. One respondent suggested that 100 hours of contact time would overtax a small department, and a final comment was that it might be more appropriate to include educational objectives, rather than contact hours, as a guideline for preclerkship training.

The Department recognizes that the number of contact hours provided does not necessarily assure a good education in family medicine, but maintains that the guideline should provide minimum desirable standard. In addition, the Department acknowledges the need for planning and implementation time, and allows until the beginning of the second project year to meet the project requirements. The Department, again, points out that the guidelines are neither required, nor sufficient by themselves, for project approval and conduct. Therefore, this guideline has not been revised.

Concerning the guideline for § 57.1605(b)(1), which states that programs should include "clerkships and other clinical experiences oriented to family medicine to an extent that a minimum of 25% of the students who begin clerkship training will have the equivalent of at least 4 full-time weeks of clinical instruction in family medicine by the date of graduation," one individual suggested substituting "a reasonable percent" for "amount of 25%." Another noted that it would be difficult to assure that this guideline would be met by programs with totally elective fourth years. Several individuals commented that the guideline was appropriate.

The Department asserts that specific guidance should be provided for programs and that 25 percent represents a minimal goal. Elective programs can meet this guideline, if justified.

In the guidelines for § 57.1605(b) (1) and (2), a description of clerkship activities reads as follows: "the Bureau recommends that clerkships in family medicine provide the opportunity for students to engage in the following activities: obtain and record a complete history and physical examination, perform initial laboratory studies, follow the course of assigned patients, record events in daily progress notes, participate in diagnostic and therapeutic procedures with faculty and housestaff, and attend and participate in conferences." One respondent felt the description was accurate but unnecessary. Another however noted the description to be more appropriate for hospital-based clerkships than for those involved with ambulatory care, and a third noted similarly that the use of daily progress notes was inappropriate for a clerkship in family medicine.

The Department recognizes that daily progress notes are not a routine part of outpatient medicine, which often comprises the majority of family medicine clerkships. Likewise, some clerkship experiences may not involve housestaff. Therefore, the following revisions have been made: "record events in daily progress notes" is changed to read "record events in notes appropriate to an inpatient or an outpatient setting," and "participate in diagnostic and therapeutic procedures with faculty and housestaff" is changed to read, "participate in diagnostic and therapeutic procedures with faculty and housestaff, when appropriate."

The guideline for § 57.1605(b)(3) recommends that "preceptorships should begin prior to the last five months of the predoctoral curriculum or otherwise provide the opportunity to affect positively the selection of a family medicine graduate training program by the participating students." One comment was that this guideline essentially eliminates three-year medical schools; several individuals commented that, in certain situations, a preceptorship experience during the last five months of the undergraduate program could impact favorably on career choice.

The Department maintains that the guideline as written makes allowances for these situations and that a preceptorship in family medicine would more readily effect postgraduate education choice if offered before the last five months of training. Therefore, the Department has not revised this guideline.

(c) *Guideline for additional requirements for graduate training projects (except faculty development).* The guideline for allopathic residency training programs relating to § 57.1605(c)(3), which requires each program to provide education for a sufficient number of interns or residents, states in part, "it is also recommended that the project plan to have its residents distributed so that there is no decrease in the number of residents from the first to the third year of graduate training." One comment suggested a wording change to read "* * * that the project attempt to have its residents distributed equally among the year levels of training being conducted." Two other comments were received expressing concern that the guideline does not allow for any attrition in the three year program.

The Department agrees that the loss of an occasional trainee is understandable and acceptable when—justified. The intent of the guideline is to assure that reduction in number of residents from the first to the third year of training is not by design; the program's plan should provide for an equal number of residents in each year level of training. The Department maintains that the guideline provides for sufficient flexibility in the case of unforeseen attrition, and therefore has made no revision.

Section 57.1605(c)(4) relates to numbers of qualified faculty and guidelines for both allopathic and osteopathic residency training programs suggest a one to six ratio of family practice faculty to trainees. From the comments received, there appears to be general agreement that this is an acceptable figure to use as a guideline. One individual noted that the guideline for osteopathic residency training programs should include a recommendation regarding behavioral science faculty, since this suggestion is incorporated in the guideline for the allopathic program.

The Department agrees that behavioral science faculty is also important for the osteopathic training programs, and has changed the guidelines accordingly.

The guideline for allopathic residency training programs which relates to § 57.1605(c)(5), requiring an appropriate amount of clinical training in ambulatory care settings emphasizing family practice, states in part that this training should "be scheduled in at least nine months of each year of training." One respondent noted that the essentials for family practice residency programs require trainees to be scheduled in the ambulatory care center for 12 months in the first year of training, and a minimum of ten months during each of the next two years of training. The Department agrees with ten months as a recommendation and has revised the guideline accordingly, still permitting flexibility.

One individual requested that the percentage of the resident's total training time in the ambulatory care setting be increased from a minimum of 25 percent to 33⅓ percent in the guideline for § 57.1605(c)(3). Other comments noted the guideline to be appropriate as written. The Department points out that the guideline does not prevent programs from requiring the additional time and has not revised the guideline.

The guideline relating to § 57.1605(c)(6) requiring that each program have adequate family medicine ambulatory care space, recommends that a project should "provide at least two examining rooms for each resident while providing care in the setting * * *." One individual commented that while this was appropriate for second and third-year residents, one examining room is usually sufficient for a first-year resident. The Department believes that the guideline as stated is preferred, and has therefore not changed the recommendation.

(d) *Guidelines for additional requirement for faculty development programs.* The guidelines for § 57.1605(d)(3), which requires each facility development program to have a sufficient number of trainees, recommends that a program should "have at least four trainees participating at any one time * * *." One individual commented that, in many cases, several additional faculty would be necessary to facilitate an educational program of that size, whereas with minimal faculty expansion, two physicians could be trained at any one time. Another stated that to require four in training at one time would seem to exclude from participation those departments with less than 28 to 32 full-time teachers. A third comment was that reducing the suggested number of trainees to two or three would permit a program to be more selective in choosing trainees.

The Department is concerned that sufficient numbers be trained to maintain cost efficiency, and notes that not all trainees need be from the sponsoring institution. For these reasons, the Department has not revised this guideline.

Another guideline for § 57.1605(d)(3) states that "* * * the training program should be operational within six months after the beginning of the project period." One individual commented that this implies a January 1 start date and that it is unlikely that the program would be able to recruit people to begin training at that time, since almost all residents graduate from their programs on June 30. Several others expressed no concern with this guideline. The Department asserts that the program should not be heavily dependent on newly graduated residents, and therefore has retained this recommendation.

A number of comments were received concerning the guidelines for § 57.1605(d)(5), which states that "to be eligible for financial assistance from grant funds, a trainee must be an individual not currently in a full-time faculty position * * *." The consensus of the respondents was that there is a real need to retain existing faculty. One individual suggested that, while it might be appropriate to give priority to trainees who are not currently engaged in full-time teaching, it should be permissible to provide support for full-time teachers in instances where this support is justified. The Department agrees to delete "must" from the regulations, but has retained this as a recommendation in the guidelines.

Finally, several changes of an editorial or technical nature have been made to clarify the regulations. Accordingly, Subpart Q of 42 CFR Part 57 is revised to read as set forth below.

Date: June 25, 1980.

Julius B. Richmond,
Assistant Secretary for Health.

Approved: October 7, 1980.

Patricia Roberts Harris,
Secretary.

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS, AND STUDENT LOANS

* * * * * *

Subpart Q—Grants for Predoctoral, Graduate, and Faculty Development Education Programs in Family Medicine

Sec.

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Authority: Sec. 215 of the Public Health Service Act. 58 Stat. 690 as amended by 63 Stat. 35 (42 U.S.C. 216); Sec. 786(a) of the Public Health Service Act. 90 Stat. 2316 (42 U.S.C. 295g–6(a)).

Subpart Q—Grants for Predoctoral, Graduates, and Faculty Development Education Programs in Family Medicine

§ 57.1601 To what programs do these regulations apply?

These regulations apply to the award of grants under section 786(a) of the Public Health Service Act (42 U.S.C. 285g6(a)) to schools of medicine or osteopathy, hospitals, and other public or private nonprofit entities for projects to: (a) plan, develop, and operate, or participate in predoctoral, graduate, or faculty development educational programs in family medicine; and (b) provide financial assistance to trainees participating in predoctoral or graduate educational programs who are in need of financial assistance and who plan to practice family medicine or to trainees in faculty development programs who plan to teach in family medicine training programs.

§ 57.1602 Definitions.

"Act" means the Public Health Service Act, as amended.

"Clerkship" means supervised clinical training in a specific field of medicine for predoctoral medical or osteopathic students.

"Faculty development program" means a systematic training program to increase faculty competence in teaching skills and in other areas related to academic responsibilities.

"Family medicine" means the field of medicine in which the physician:

(a) serves as a physician of first contact with families and with patients of all ages and provided a means of entry into the health care system;

(b) evaluates the patient's total health needs, provides personal medical care within one or more fields of medicine, and refers the patient, when indicated, to appropriate sources of care while preserving the continuity of care;

(c) assumes responsibility with the patient for comprehensive and continuous health care and acts as a leader or coordinator of others providing health services; and

(d) considers the patient's total health care within the context of his or her environment, including the community and the family or comparable social units.

"Hospital" means a public or other nonprofit hospital which is accredited by the Joint Commission on Accreditation of Hospitals or the American Osteopathic Association.

"Nonprofit", as applied to any entity, means one in which no part of the net earnings inures or may lawfully inure to the benefit of any private shareholder or individual.

"Osteopathic intern program" means an internship which emphasizes family medicine and is approved by the American Osteopathic Association.

"Preceptorship" means an educational experience in which the trainee works individually with a designated physician, the preceptor, who teaches and personally supervises clinical activity.

"Predoctoral training program" means an educational program in family medicine, including courses, clerkships or preceptorships in family medicine, which is part of a course of study leading to the degree of doctor of

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medicine or osteopathy, and student assistantships in family medicine.

"Residency training program" means:

(a) a residency program in family practice which is fully or provisionally accredited by the Liaison Committee on Graduate Medical Education; or

(b) a postdoctoral program in osteopathic general practice which emphasizes family medicine and is approved by the American Osteopathic Association.

"School of medicine or osteopathy" means a public or private nonprofit school which provides training leading respectively to a degree of doctor of medicine or to a degree of doctor of osteopathy and which is accredited as provided in section 772(b) of the Act (42 U.S.C. 295f–5).

"Secretary" means the Secretary of Health and Human Services and any other officer or employer of the Department of Health and Human Services to whom the authority involved has been delegated.

"State" means any one of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands.

"Student assistantship" means a research program in family medicine for predoctoral medical or osteopathic students.

"Trainee" means a medical or osteopathic student, intern, resident, or physician participating in a training program supported by a grant under these regulations.

§ 57.1603 Who is eligible to apply for a grant?

(a) For predoctoral training programs, an applicant must be a school of medicine or osteopathy located in a State.

(b) For graduate and faculty development training programs, an applicant must be located in a State and be a school of medicine or osteopathy, a hospital, or a public or private nonprofit entity which provides either health or educational programs as one of its major functions.

§ 57.1604 What requirements must a project meet?

(a) *General requirements.* A project supported under this subpart must meet the following requirements:

(1) Each project must have a project director who works at the grantee institution or training site institution, has relevant training and experience, and has been approved by the Secretary to direct the project.

(2) Each project must have an appropriate administrative and organizational plan and appropriate faculty, staff, and facility resources for the achievement of stated objectives.

(3) Each project must systematically evaluate the educational program including preceptors, the administration of the program, and the degree to which program and educational objectives are met.

(4) Each project, other than a faculty development project, must use ambulatory care settings where family medicine is practiced and when an adequate portion of the clinical training is conducted.

(5) Each project, other than a faculty development project, must have a family medicine curriculum which:

(i) Is appropriate for the academic level of the trainees and the specific length and nature of the educational program;

(ii) Supplements any practical (including clinical) experiences with related education activities; and

(iii) Emphasizes subjects pertinent to:

(A) Ambulatory care;

(B) Psychosocial skills and topics; and

(C) Related nonclinical areas relevant to the practitioner of family medicine.

(b) *Additional requirements for predoctoral training programs.* In addition to the requirements of paragraph (a) of this section, projects for predoctoral training programs must also meet the following additional requirements:

(1) The training program must be sponsored and supervised by an appropriate administrative unit in family medicine, the faculty of which participates in the preparation of the preclerkship curriculum and required courses and activities, for which faculty may be interdisciplinary, such as physical diagnosis and clinical pathological conferences, and which coordinates the predoctoral offering of clerkships and other clinical experiences oriented to family medicine.

(2) Each training program must be part of an integrated institutional strategy to provide education and training in family medicine designed to encourage an appropriate percentage of its graduates, annually, to seek graduate training in family medicine and eventually to enter a career in family medicine.

(3) For projects which include preceptorships in family medicine:

(i) The project must provide medical or osteopathic students with ambulatory care training in a community setting.

(ii) Preceptors must have practices which are consistent with the principles of family medicine and must be selected by the administrative unit in family medicine.

(iii) Stipend support from grant funds may be given to trainees who are not receiving academic credit for the preceptorship only if they (A) need it; (B) indicate an interest in working in the field of family medicine; and (C) engage in the preceptorship full time for at least four consecutive weeks. Stipend support from grant funds may be given to trainees who are receiving academic credit for the preceptorship only when the three conditions above are met and, additionally, when the trainee incurs extraordinary living expenses due to participation in the preceptorship.

(4) For projects for student assistantships:

(i) A family medicine faculty member of the administrative unit, identified under paragraph (b)(1) of this section, must supervise each student assistant.

(ii) The grantee must give preference in admission to the training program to applicants considering a career in academic family medicine.

(iii) Stipend support from grant funds may be given to trainees who are not receiving academic credit for the assistantship only if they (A) need it; (B) indicate an interest in working in the field of family medicine; and (C) engage in the assistantship full time for at least eight consecutive weeks. Stipend support from grant funds may be given to trainees who are receiving academic credit for the assistantship only when the three conditions above are met and, additionally, when the trainee incurs extraordinary living expenses due to participation in the preceptorship.

(c) *Additional requirements for graduate training projects (except faculty development).* In addition to the requirements of paragraph (a) of this section, projects for approved or accredited residency training programs must meet the following additional requirements:

(1) Each program must have a supervisor of training with appropriate experience and training who is responsible for coordination and supervision of training in the program.

(2) Each program must use an appropriate resident or intern recruitment and selection process which assures that residents and interns in the program have applied specifically for training in the approved graduate training program.

(3) Each program must provide education for a sufficient number of interns or residents to provide an adequate collegial environment for the educational program and to enhance cost efficiency.

(4) Each program must have an adequate number of qualified faculty with training and experience in family medicine, behavioral sciences, and liaison specialties, for the number of interns or resident in the program. The faculty of the program must engage in periodic educational activities to improve their teaching skills.

(5) Each program must provide an appropriate amount of clinical training for each intern or resident in ambulatory care settings emphasizing family medicine in each year of the training program. This training will be for the purpose of assuring an adequate education in the principles of the practice of family medicine throughout the program. In addition, each training program must provide clinical training in other ambulatory care settings relevant to family medicine, such as emergency units.

(6) Each program must have adequate facilities for the provision of the educational activities and, in particular, have family medicine ambulatory care space sufficient to provide an adequate clinical experience for the interns or residents.

(7) Each intern or resident must serve a sufficient number of families and individual patients with a variety of health care needs to provide the resident with a broad clinical experience.

(d) *Additional requirements for faculty development programs.* (1) Each project must have a curriculum which:

(i) Directly applies to family medicine training programs;

(ii) Emphasizes improvement of pedagogical skills for clinical and classroom settings; and

(iii) Uses didactic and nondidactic teaching strategies.

(2) Only physicians who teach or intend to teach in family medicine are eligible to participate as trainees in the program.

(3) Each program must have a sufficient number of trainees participating during the conduct of any educational activities to provide a collegial environment and to make the program cost efficient.

(4) Each program must be no longer than 1 calendar year for any trainee.

(5) To be eligible for financial assistance from grant funds, a trainee must:

(i) Intend to teach in family medicine training program on a full-time basis; and

(ii) Be a full-time participant in the training program for at least three months.

§ 57.1605 How will applications be evaluated?

(a) After consultation with the National Advisory Council on Health Professions Education established by section 702 of the Act, the Secretary will approve projects which best promote the purposes of section 786(a) of the Act. The Secretary will consider, among other factors:

(1) The degree to which the proposed project provides for the project requirements in § 57.1605;

(2) The administrative and management ability of the applicant to carry out the proposed project in a cost-effective manner; and

(3) The potential of the project to continue on a self-sustaining basis.

(b) In determining the priority for funding, projects approved under paragraph (a) of this section, the Secretary will consider:

(1) The relative merit of the proposed project based upon the factors in paragraph (a) of this section; and

(2) The extent to which a proposed project contains any of the following elements:

(i) For all projects except faculty development projects, substantial training experience in settings which exemplify interdependent utilization of physicians and physician assistants or nurse practitioners.

(ii) For all projects except faculty development projects, substantial portions of the training program are conducted in a health manpower shortage area(s) designated under section 332 of the Act, or in an area health education center funded, at least in part, under section 781 of the Act.

(iii) For faculty development projects, emphasis on increasing the number of new faculty who will be teaching on a full-time basis in family medicine.

§ 57.1606 How long does grant support last?

(a) The notice of grant award specifies the length of time the Secretary intends to support the project without requiring the project to recompete for funds. This period, called the project period, will not exceed 5 years.

(b) Generally, the grant will initially be funded for one year, and subsequent continuation awards will also be for one year at a time. A grantee must submit a separate application to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding levels of these awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, continuation awards require a determination by the Secretary that continued funding is in the best interest of the Federal Government.

(c) Neither the approval of any application nor the award of any grant commits or obligates the Federal Government in any way to make any additional, supplemental, continuation or other award with respect to any approved application or portion of an approved application.

(d) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward to the next budget period, for use as prescribed by the Secretary, provided a continuation award is made. If at any time during a budget period it becomes apparent to the Secretary that the amount of Federal funds awarded and available to the grantee for that period, including any unobligated balance carried forward from prior periods, exceeds the grantee's needs for the period, the Secretary may adjust the amounts awarded by withdrawing the excess. A budget period is an interval of time (usually 12 months) into which the project period is divided for funding and reporting purposes.

§ 57.1607 For what purposes may grant funds be spent?

(a) A grantee shall only spend funds it receives under this subpart according to the approved application and budget, the authorizing legislation, terms and conditions of the grant award, applicable cost principles specified in Subpart Q of 45 CFR Part 74, and these regulations.

(b) Grantees may not spend grant funds for sectarian instruction or for any religious purpose.

§ 57.1608 What health planning requirements must benefit?

A grant may be made under this subpart only if the applicable requirements of Title XV of the Act relating to review approval by the appropriate health systems agency have been met.

§ 57.1609 What additional Department regulations apply to grantees?

Several other regulations apply to these grants. They include, but are not limited to:

42 CFR Part 50—PHS grant appeals process.
45 CFR Part 16—Department grant appeals process.
45 CFR Part 46—Protection of human subjects.
45 CFR Part 74—Administration of grants.
45 CFR Part 75—Informal grant appeals procedures (indirect cost rates and other cost allocations).
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance from

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the Department—Implements Title VI of the Civil Rights Act of 1964.
45 CFR Part 81—Practice and procedure for hearings under Part 80.
45 CFR Part 83—Nondiscrimination on the basis of sex in the admission of individuals to training programs.
45 CFR Part 84—Nondiscrimination on the basis of handicap in federally assisted programs.
45 CFR Part 86—Nondiscrimination on the basis of sex in Federally assisted education programs.
45 CFR Part 91—Nondiscrimination on the basis of age in Department programs or activities receiving Federal financial assistance.

§ 57.1610 What other audit and inspection requirements apply to grantees?

Each school which receives a grant under this subpart must, in addition to the requirements of 45 CFR Part 74, meet the requirements of section 705 of the Act, concerning audit and inspection.

§ 57.1611 Additional conditions.

The Secretary may impose additional conditions on any grant award before or at the time of an award if he or she determines that these conditions are necessary to assure or protect the advancement of the approved activity, the interest of the public health, or the conservation of grant funds.

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[1] When issued.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources Administration

Grants for Predoctoral, Graduate, and Faculty Development Educational Programs in Family Medicine; Guidelines

AGENCY: Health Resources Administration.

ACTION: Notice of guidelines.

SUMMARY: This notice sets forth guidelines for grants for predoctoral, graduate, and faculty development educational programs in family medicine.

DATES: These guidelines are effective October 16, 1980.

FOR FURTHER INFORMATION CONTACT: Kenneth P. Moritsugu, M.D., M.P.H., Director, Division of Medicine, Bureau of Health Professions, Health Resources Administration, Center Building, Room 3-22, 3700 East West Highway, Hyattsville, Maryland 20782 (telephone 301-436-6481).

SUPPLEMENTARY INFORMATION: Section 786(a) of the Public Health Service Act (the Act) authorizes grants to schools of medicine or osteopathy, hospitals, and other public or nonprofit entities for projects to: (a) plan, develop, and operate, or participate in predoctoral, graduate, or faculty development educational programs in family medicine; and (b) provide financial assistance to trainees participating in predoctoral or graduate educational programs who are in need of financial assistance and who plan to work in the practice of family medicine or to trainees in faculty development programs who plan to teach in family medicine. Final regulations, published elsewhere in this part, implementing this authority have been adopted by the Secretary of Health and Human Services (42 CFR Part 57, Subpart Q).

There guidelines provide guidance to applicants and grantees concerning the minimum standards and criteria that the Health Resources Administration considers desirable in meeting selected project requirements in the regulations governing this grant program.

Guidelines for Grants for Training in Family Medicine

Introduction

Section 786(a) of the Public Health Service Act (42 U.S.C. 295g-6(a)) authorizes grants to schools of medicine and osteopathy, hospitals, and other public or nonprofit private entities for projects to plan, develop, and operate or participate in predoctoral, graduate, or faculty development educational programs in family medicine. Final regulations governing these grants are publishjed elsewhere in this part (42 CFR Part 57, Subpart Q).

The Bureau of Health Professions is supplementing these regulations with guidelines to advise applicants and grantees of those activities which the Bureau considers meet the regulatory requirements. It should be understood that while applicants and grantees can be assured of meeting the requirements by following these guidelines, activities other than those contained in these guidelines may also meet the regulatory requirements.

Section 57.1604(a)(1) of the regulations requires a project director to work at the grantee or training site institution. The Bureau recommends that the project director work full-time either at the grantee or training site institution.

Family Medicine Ambulotory Care Settings

Section 57.1604(a)(4) of the regulations requires that each project use ambulatory care settings in which family medicine is practiced.

The Bureau recommends that these ambulatory care settings should:

1. Primarily attract patients seeking family medicine;
2. Organize personnel, including trainees, into functional units providing family medicine to patients, and providing trainees with experience working with various types of health personnel, such as physician assistants, nurse practitioners, nurses, nutritionists, dieticians, mental health and social services professionals, as well as other staff;
3. Have systems for referring patients to other specialists and subspecialists which assure coordination with the patient's own primary physician(s);
4. Use an appointment system which facilitates the assignment of patients to their primary family physician(s);
5. Use a medical records system which:
   a. gives practitioners ready access to a patient's medical records, including data relating to members of the patient's family which are pertinent to the patient's care,
   b. is suitable for audit, and
   c. assures systematic review of the records;
6. Maintain affiliations so that trainees can routinely have responsibilities for the clinical course of assigned patients prior to, during, and after hospitalization and have access to necessary special services; and
7. Have instructors or preceptors who are physicians trained or experienced in the practice of family medicine.

Predoctoral Training Programs

Section 57.1604(b) of the regulations sets for requirements for predoctoral training programs in family medicine at schools of medicine and osteopathy. The following material provides guidance as to activites on the part of applicants and grantees which will, in the Bureau's view, meet these requirements, as well as Bureau's recommendations concerning desirable activities.

1. Section 57.1604(b)(1) requires that the training program must be sponsored by an appropriate administrative unit.

The Bureau recommends that to meet the requirement the administrative unit should:

(a) Have evidence of administrative autonomy, such as a separate budget and the authority to make separate budget decisions;

(b) Have faculty with academic rank comparable to that of faculty in analogous positions in other administrative units of the school; and

(c) Have equitable representation of faculty committees regarding matters of budget, curriculum, faculty appointments and promotions, and student selection.

2. Section 57.1604(b) (1) and (2) set forth requirements for the training program in which the faculty of the administrative unit participate.

The Bureau recommends that to meet these requirements a training program should include:

(a) At least 100 hours of contact with these faculty for a minimum of 25 percent of the students in each entering class during their period of preclerkship training (exclusive of full-time preceptorship activities); and

(b) Clerkships and other clinical experiences oriented to family medicine to an extent that a minimum of 25 percent of the students who begin clerkship training will have the equivalent of at least four full-time weeks of clinical instruction in family medicine by the date of graduation.

In addition, the Bureau recommends that clerkships in family medicine provide the opportunity for students to engage in the following activities: otbain and record a complete history and physical examination, perform initial laboratory studies, follow the course of assigned patients, record events in notes appropriate to the inpatient or outpatient setting, participate in diagnostic and therapeutic procedures with faculty and housestaff, when appropriate, and attend and participate in conferences.

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3. Section 57.1604(b)(3) sets for requirements for preceptorships.

The Bureau recommends that these preceptorships begin prior to the last 5 months of the predoctoral curriculum or otherwise provide the opportunity to affect positively the selection of a family medicine graduate training program by the participating students.

Allopathic Residency Training Programs

Section 57.1604(c) of the regulations sets forth the requirements for graduate training projects (except in faculty development). The following material provides guidance as to activities on the art of applicants and grantees which will in the Bureau's view meet these requirements for allopathic residency training programs.

Section 57.1604(c)(1) requires that the program have a supervisor of training.

The Bureau recommends that, to meet this requirement, this individual should be certified by the American Board of Family Practice or have satisfied all requirements for certification if the individual is ineligible for certification due to a potential conflict arising from service on or for this organization. The Bureau further recommends that the supervisor of training be full-time.

Section 57.1604(c)(3) requires that each program provide education for a sufficient number of interns or residents.

The Bureau recommends that, to meet this requirement, a program have at least four residents in training by the beginning of the second year of grant support under section 786(a) of the Act and have at least 12 residents in training by the beginning of the fourth year of support.

It is also recommended that the project plan to have its residents distributed so that there is no decrease in the number of residents from the first to the third year of graduate training.

Section 57.1604(c)(4) requires that each program have an adequate number of qualified faculty with training and experience in family medicine, behavioral sciences, and liaison specialties for the number of interns or residents in the program.

The Bureau recommends that, to meet this requirement, a program have, in addition to the supervisor of training, the following faculity resources, for every six residents:

(a) One full-time equivalent physician who is certified or experienced in the practice of family medicine;

(b) A reasonable number of physician faculty in the liaison specialties of internal medicine, pediatrics, obstetrics and gynecology, and surgery, and

(c) An additional one-fourth full-time equivalent instructor with experience and training in behavioral sciences.

Section 57.1604(c)(5) requires that each program provide an appropriate amount of clinical training for each intern or resident in ambulatory care settings emphasizing family medicine in each year of the training program.

The Bureau recommends that, to meet this requirement, training in ambulatory care settings emphasizing family medicine should:

(a) Comprise at least 10 percent (i.e., at least one-half day per week) of the resident's training time (excluding vacation time) during each year in the program;

(b) Comprise a reasonable percent (but no less than 25 percent) of the resident's total training time (excluding vacation time) for the entire residency training period; and

(c) Schedule the resident in at least 10 months of each year of training.

Section 57.1604(c)(6) requires that each program have adequate family medicine ambulatory care space.

The Bureau recommends that, to meet this requirement, a project include, in the aggregate, a number of examining rooms sufficient to provide at least two examining rooms for each resident while providing care in the settings, and adequate facilities, such as conference rooms, for teaching purposes.

Section 57.1604(c)(7) requires that each intern or resident serve a sufficient number of families and individual patients with a variety of health care needs to provide the resident with a broad clinical experience.

The Bureau recommends that, to meet this requirement, a resident serve a panel of families and individual patients in the ambulatory care setting who recognize the resident as their provider of longitudinal and comprehensive (including preventive and psychosocial) health care.

Osteopathic Residency Training Programs

Section 57.1604(c) of the regulations sets forth the project requirements for graduate training projects (except in faculty development). The following material provides guidance as to activities on the part of applicants and grantees which will in the Bureau's view meet these requirements for osteopathic residency training programs.

Section 57.1604(c)(1) requires that the program have a supervisor of training.

The Bureau recommends that, to meet this requirement, this individual be certified by the American Osteopathic Board of General Practice, or have satisfied all requirements for certification if the individual is ineligible for certification due to a potential conflict arising from service on or for this organization. A program with 6 or more trainee positions should have a full-time supervisor of training. A program with fewer than 6 trainees should have a minimum one-sixth full-time equivalent supervisor of training for each resident position.

Section 57.1604(c)(3) requires that each program provide education for a sufficient number of interns or residents.

The Bureau recommends that, to meet this requirement, each program have at least two residents in training by the beginning of the second year of grant support.

Section 57.1604(c)(4) requires that each program have an adequate number of qualified faculty with training and experience in family medicine, behavioral sciences, and liaison specialties, for the number of interns or residents in the program.

The Bureau recommends that, to meet this requirement, a project have, in addition to a full-time director of medical education or supervisor of training, the following faculty resources, for each resident:

(a) One-sixth full-time equivalent physician experienced in family medicine;

(b) A reasonable number of physicians experienced in pediatrics, internal medicine, obstetrics and gynecology, and surgery; and

(c) A reasonable number of instructors with experience and training in behavioral sciences.

Section 57.1604(c)(5) requires that each program provide an appropriate amount of clinical training for each intern or resident in ambulatory care settings emphasizing family medicine in each year of the training program.

The Bureau recommends that, to meet this requirement, each resident have substantial supervised ambulatory clinical experience during which families and individual patients are followed by the resident in a family medicine ambulatory care setting. A resident's activities in these settings should comprise a reasonable percent (but no less than 25 percent) of the resident's total training time (excluding vacation time) during each year in the program.

Osteopathic Internship Programs

Section 57.1604(c) of the regulations sets forth the project requirements for graduate training projects (except in faculty development). The following material provides guidance as to the activities on the part of applicants and grantees which will, in the Bureau's view, meet these requirements for osteopathic internship programs.

The Bureau recommends that, as part of the administrative and organizational plan as required in § 57.1604(a)(2), the director of medical education and the director of the department of osteopathic general practice systematically coordinate all program elements.

Section 57.1604(c)(1) requires that each program have a supervisor of training.

The Bureau recommends that a program with 6 or more trainee positions should have a full-time supervisor of training. A program with fewer than 6 trainees should have a minimum one-sixth full-time equivalent supervisor of training for each intern position. The supervisor of training and the director of medical education or the director of the department of general practice may be the same individual.

Section 57.1604(c)(3) requires that each program provide education for a sufficient number of interns or residents.

The Bureau recommends that, to meet this requirement, a program have at least 4 interns in training by the beginning of the second year of grant support.

Section 57.1604(c)(4) requires that each program have an adequate number of qualified faculty with training and experience in family medicine, behavioral sciences, and liaison specialties, for the number of interns or residents in the program.

The Bureau recommends that, to meet this requirement, a project have, in addition to a full-time director of medical education or supervisor of training, the following faculty resources, for each intern:

(a) One-sixth full-time equivalent physician experienced in family medicine;

(b) A reasonable number of physicians experienced in pediatrics, internal medicine, obstetrics and gynecology, and surgery; and

(c) A reasonable number of instructors with experience and training in behavioral sciences.

Section 57.1604(c)(5) requires that each program provide an appropriate amount of clinical training for each intern or resident in ambulatory care settings emphasizing family medicine in each year of the training program.

The Bureau recommends that, to meet this requirement, each intern in the program should have a supervised clinical experience in a family medicine ambulatory care setting which comprises at least 10 percent of the intern's training time (excluding vacation time in the program).

Faculty Development Program

Section 57.1604(d)(3) of the regulations requires that each faculty development program have a sufficient number of trainees.

The Bureau recommends that, to meet this requirement, a progam should have at least 4 trainees participating at any one time. Furthermore, the training program should be operational within 6 months after the beginning of the project period.

Section 47.1604(d)(5) of the regulations sets forth requirements for financial support of trainees. The Bureau recommends that trainees be individuals not currently in a full-time faculty position.

Dated: October 10, 1980.

Henry A. Foley,

Administrator.

[FR Doc. 80-32188 Filed 10-15-80; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Grants for Establishment of Departments of Family Medicine

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations would govern the award of grants to schools of medicine and osteopathy to meet the costs of projects to establish and maintain academic administrative units to provide clinical instruction in family medicine.

DATE: Comments must be received on or before December 15, 1980.

ADDRESS: Written comments may be addressed to the Director, Bureau of Health Professions, Health Resources Administration, 3700 East West Highway, Center Building, Fourth Floor, Hyattsville, Maryland 20782. All comments received will be available for public inspection and copying at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Kenneth P. Moritsugu, M.D., M.P.H., Director, Division of Medicine, Bureau of Health Professions, Room 3–30, at the above address (telephone 301–436–6418).

SUPPLEMENTARY INFORMATION: On October 12, 1976, the Health Professions Educational Assistance Act of 1976, Public Law 94–484, amended the Public Health Service Act to add a new section 780. To implement this authority, the Assistant Secretary for Health, with the approval of the Secretary of Health and Human Services, proposes to add a new Subpart R to Part 57 of Title 42 of the Code of Federal Regulations, entitled "Grants for the Establishment of Departments of Family Medicine."

Section 780 authorizes the Secretary to make grants to schools of medicine and osteopathy to establish and maintain academic administrative units to provide clinical instruction in family medicine. These academic administrative units may be departments, divisions, or other units.

Although the primary purpose for grants under this subpart is to assist developing and existing family medicine units in attaining administrative status equal to that of other major clinical units, the Department recognizes that the achievement of this objective may necessitate support of activities carried out by the administrative unit. Consequently, the Secretary will support certain activities which are part of the cost of establishing and maintaining the unit and which are necessary to carry out the purposes of section 780.

As part of a grant to establish or maintain an academic administrative unit, the Secretary proposes to provide support for the planning and development of model predoctoral, faculty development, and graduate medical education programs which will be able to eventually meet the requirements of the regulations implementing section 786(a) of the Act, 42 CFR Part 57, Subpart Q, entitled, "Grants for Predoctoral, Graduate, and Faculty Development Educational Programs in Family Medicine." These programs must be designed to test and evaluate innovative teaching concepts, strategies, or programs prior to their full scale operation or implementation. Projects for the actual operation or implementation of a predoctoral, faculty development, or graduate medical education program may be supported under section 786(a). In addition, the Department will support academic and clinical activities relevant to the field of family medicine as part of the function of the unit.

Section 780(b) requires, as a condition of eligibility, an assurance to the Secretary that the academic administrative unit will meet the following requirements, among others: The unit must be comparable in status, faculty, and curriculum to academic administrative units for other major clinical specialties offered by the applicant. The unit must also control a three-year family practice residency program or its equivalent, as determined by the Secretary, with the capacity to enroll at least 12 interns or residents a year. An equivalent program could be an osteopathic internship program combined with a two-year postdoctoral program in osteopathic general practice which emphasizes family medicine.

Section 57.1705(g) of the proposed regulations states that the unit must have a sufficient number of full-time faculty in the judgment of the Secretary, to conduct the family medicine instruction. This section also requires the family medicine unit to have a number of full-time faculty, equal to that of one of the other clinical units, who have responsibility for assuring that the educational activities of the unit are fulfilled.

Fiscal year 1980 is the first year for which funds have been available for this program. These regulations would establish a funding preference for projects that include an educational program for medical students in the prevention, recognition, and treatment of alcoholism. This funding preference is created in accordance with the Department's concern with alcoholism as a disease which impacts on all family members.

Interested persons are invited to submit written comments on these regulations to the Director of the Bureau of Health Professions at the address given above. All relevant materials received not later than December 15, 1980 will be considered in the development of final regulations.

It is therefore proposed to add a new Subpart R to Part 57 of Title 42 of the Code of Federal Regulations, as set forth below.

Dated: June 25, 1980.

Julius B. Richmond,

Assistant Secretary for Health.

Approved: October 7, 1980.

Patricia Roberts Harris,

Secretary.

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

* * * * * *

Subpart R—Grants for the Establishment of Departments of Family Medicine

Sec.

57.1701 To what programs do these regulations apply?
57.1702 Definitions.
57.1703 Who is eligible to apply for a grant?
57.1704 Program requirements.
57.1705 How will applications be evaluated?
57.1706 How long does grant support last?
57.1707 For what purposes may grant funds be spent?
57.1708 What additional Department regulations apply to grantees?
57.1709 What other audit and inspection requirements apply to grantees?
57.17010 Additional conditions.

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended by 63 Stat. 35 (42 U.S.C. 216); sec. 780, Public Health Service Act, 90 Stat. 2311 (42 U.S.C. 295g).

Subpart R—Grants for the Establishment of Departments of Family Medicine

§ 57.1701 To what programs do these regulations apply?

These regulations apply to the award of grants under section 780 of the Public Health Service Act (42 U.S.C. 295g) to schools of medicine and osteopathy to meet the costs of projects to establish and maintain academic administrative units to provide clinical instruction in family medicine. These projects may include: (a) the planning and development of model predoctoral, faculty development, and graduate medical education programs; and (b) academic and clinical activities relevant to the field of family medicine.

§ 57.1702 Definitions.

"Academic administrative unit" or "unit" means a department, division, or other formal academic unit of a school of medicine or osteopathy that provides clinical instruction in family medicine.

"Act" means the Public Health Service Act, as amended.

"Family medicine" means the field of medicine in which the physician:

(a) serves as a physician of first contact with families and patients of all ages and provides a means of entry into the health care system;

(b) evaluates the patient's total health needs, provides personal medical care within one or more fields of medicine, and refers the patient, when indicated, to appropriate sources of care while preserving the continuity of care;

(c) assumes responsibility with the patient for comprehensive and continuous health care and acts as a leader or coordinator or others providing health services; and

(d) considers the patient's total health care within the context of his or her environment, including the community and the family or comparable social units.

"Nonprofit", as applied to any school, means a school no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

"Other major clinical units" means formal academic units at the applicant school that offer clinical instruction in internal medicine, obstetrics and gynecology, pediatrics, psychiatry, or surgery.

"Residency training program" for the purposes of section 780 means (1) a three-year residency program in family practice that is fully or provisionally accredited by the Liaison Committee on Graduate Medical Education, or (2) a three-year postdoctoral program in osteopathic general practice that emphasizes family medicine, is approved by the American Osteopathic Association and may combine a two-year residency with a one-year internship.

"School of medicine or osteopathy" means a public or private nonprofit school that provides training leading respectively to a degree of medicine or to a degree of doctor of osteopathy and which is accredited as provided in Section 772(b) of the Act.

"Secretary" means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

"State" means any one of the serveral States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands.

§ 57.1703 Who is eligible to apply for a grant?

Any school of medicine or osteopathy located in a State is eligible to apply for a grant.

§ 57.1704 Program requirements.

Existing units supported under this subpart must meet all the requirements of this section no later than 12 months after initial award of the grant. Units which are being established with the aid of grants under this subpart must meet the requirement of paragraph (a) of this section no later than 12 months after initial award, and the remaining requirements of this section no later than 24 months after initial award of the grant. However within the the first 12 months of grant support, units which are being established must submit a plan which details how the remaining project requirements will be met by the end of the second year of grant support.

In addition to units that are intially established under this subpart, those that change organizational status (i.e., from division to department) are also considered establishing units for the purpose of this subpart. Those that maintain organizational status are considered existing units.

(a) Each project must have a project director, who works full-time at the grantee institution, heads or will head the unit, and has relevant training and experience in family medicine.

(b) The unit must have academic status equivalent to that of one of the other major clinical units at the institution.

(c) The unit must have administrative autonomy, as shown by a separate budget and the authority to make independent budget decisions, among other indicia of administrative independence.

(d) The unit must have direct representation on faculty committees, including committees on budget, curriculum, student selection, faculty appointments and promotions. The unit's faculty representation must be comparable to the representation of one of the other major clinical units at the school.

(e) The unit must have control over a three-year residency training program. The unit must have direct responsibility for this program with respect to: curriculum, budget matters; evaluations; faculty appointments; and resident recruitment and selection. The program must have the capacity to enroll a total of at least 12 interns or residents annually. A unit whose applicant school does not have a residency program accredited under its direct authority will be considered as meeting this requirement if it has a written affiliation agreement with a hospital which conducts a residency program as described. In either case, the unit must have the authority to control decisions with respect to: curriculum, budget matters; evaluations; faculty appointments; and resident recruitment and selection.

(f) The unit must have responsibility for providing instruction to each member of the student body who is engaged in an education program leading to a degree in doctor of medicine or doctor of osteopathy. The amount of mandatory and elective curriculum time must at least equal the minimum amount of mandatory and elective curriculum time offered by one of the other major clinical units at the school.

(g) The unit must have, in the judgment of the Secretary, a sufficient number of full-time faculty to conduct the instruction required in § 57.1704(f). The number of family medicine faculty in the unit must be at least equal to that of full-time faculty responsible for conducting the instruction of one of the other major clinical units at the school.

(h) Each project must evaluate the program of instruction required in § 57.1704(f) of this section, including

evaluation of faculty competence, the administration of the program, and the degree to which program objectives are met.

(h) Where projects include the planning and development of model predoctoral, faculty development, or graduate medical education programs, those programs must be designed to eventually meet the requirements of the regulations implementing section 786(a) of the Act, 42 CFR part 57, Subpart Q.

§ 57.1705 How will applications be evaluated?

(a) after consulting with the National Advisory Council on Health Professions Education established under section 702 of the Act, the Secretary will award grants to applicants whose projects will best promote the purposes of section 780 of the Act and these regulations. The Secretary will consider, among other factors:

(1) the degree to which the proposed project adequately provides for the project requirements in § 57.1704;

(2) the administrative and management capability of the applicant to carry out the proposed project in a cost-effective manner;

(3) the qualifications of the proposed staff and faculty of the unit; and

(4) The potential of the project to continue on a self-sustaining basis.

(b) In determining the priority for funding of applications approved under paragraph (a) of this section, the Secretary will consider (1) the relative merit of the proposed project based upon the factors in paragraph (a) of this section, and (2) for fiscal year 1980, whether the proposed project contains an educational program for medical students in the prevention, recognition, and treatment of alcoholism which is integrated into the curriculum of the unit.

§ 57.1706 How long does grant support last?

(a) The notice of grant award specifies how long the Secretary intends to support the project without requiring the project to recompete for funds. This period, called the project period, will not exceed five years.

(b) Generally, the grant will initially be funded for one year and subsequent continuation awards will also be for one year at a time. A grantee must submit a separate application to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding levels of these awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, continuation awards require a determination by the Secretary that continued funding is in the best interest of the Federal Government.

(c) Neither the approval of any application, nor the award of any grant, commits or obligates the Federal Government in any way to make any additional, supplemental, continuation or other award with respect to any approved application or portion of an approved application.

(d) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward to the next budget period, for use as prescribed by the Secretary, provided a continuation award is made. If at any time during a budget period it becomes apparent to the Secretary that the amount of Federal funds awarded and available to the grantee for that period, including any unobligated balance carried forward from prior periods, exceeds the grantee's needs for the period, the Secretary may adjust the amounts awarded by withdrawing the excess. A budget period is an interval of time (usually 12 months) into which the project period is divided for funding and reporting purposes.

§ 57.1707 For what purposes may grant funds be spent?

(a) A grantee shall only spend funds it receives under this subpart according to the approved application and budget, the authorizing legislation, the terms and conditions of the grant award, and the applicable cost principles in Subpart Q of 45 CFR Part 74, and these regulations.

(b) Grantees may not spend grant funds for sectarian instruction or for any religious purpose.

§ 57.1708 What additional Department regulations apply to grantees?

Several other regulations apply to grants under this subpart. These include, but are not limited:

42 CFR Part 50—PHS grant appeals process
45 CFR Part 16—Department grant appeals process
45 CFR Part 46—Protection of human subjects
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures (indirect cost rates and other cost allocations)
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department—Implements Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80
45 CFR Part 83—Nondiscrimination on the basis of sex in the admission of individuals to training programs
45 CFR Part 84—Nondiscrimination on the basis of handicap in federally assisted programs
45 CFR Part 86—Nondiscrimination on the basis of sex in federally assisted education programs
45 CFR Part 91[1]—Nondiscrimination on the basis of age in Department programs or activities receiving Federal financial assistance

§ 57.1709 What other audit and inspection requirements apply to grantees?

Each grantee must, in addition to the requirements of 45 CFR Part 74, meet the requirements of Section 705 of the Act, concerning audit and inspection.

§ 57.1710 Additional conditions.

The Secretary may impose additional conditions on any grant award before or at the time of an award if he or she determines that these conditions are necessary to assure or protect the advancement of the approved activity, the interest of the public health, or the conservation of grant funds.

[FR Doc. 80-32189 Filed 10-15-80; 8:45 am]
BILLING CODE 4110-83-M

[1] When issued.

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federal register

Thursday
October 16, 1980

Part VII

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals; October 1, 1980

This report is submitted in fulfillment of the requirements of Section 1014(e) of the Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year with respect to which, as of the first day of the month, a special message has been transmitted to the Congress.

This month's report gives the status as of October 1, 1980 of 22 deferrals contained in the first special message for FY 1981. This message was transmitted to the Congress on October 1, 1980.

Deferrals (Attachment A)

As of October 1, 1980 $613.5 million in 1981 budget authority was being deferred from obligation and another $5.5 million in 1981 obligations was being deferred from expenditure. Attachment A shows the status of the deferrals reported by the President in the first special message for FY 1981 transmitted to the Congress on October 1, 1980.

James T. McIntyre, Jr.,
Director.

BILLING CODE 3110-01-M

PAGE 1 ATTACHMENT A - STATUS OF DEFERRALS - FISCAL YEAR 1981 AS OF 10/02/80 11:57

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	DATE OF MESSAGE MO DA YR	AMOUNT SUBSEQUENT CHANGE	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 10-01-80
DEPARTMENT OF AGRICULTURE								
Forest Service								
Timber salvage sales BA	D81- 1	16,481	10 1 80					16,481
Expenses, brush disposal BA	D81- 2	37,342	10 1 80					37,342
DEPARTMENT OF AGRICULTURE TOTAL BA		53,823						53,823
DEPARTMENT OF COMMERCE								
General Administration								
Participation in U.S. expositions BA	D81- 3	2,867	10 1 80					2,867
National Oceanic and Atmospheric Administration								
Construction BA	D81- 4	10,230	10 1 80					10,230
DEPARTMENT OF COMMERCE TOTAL BA		13,097						13,097
DEPARTMENT OF DEFENSE-MILITARY								
Procurement								
Procurement activities BA	D81- 5	139,700	10 1 80					139,700
Research, Development, Test, and Evaluation								
RDT&E Activities BA	D81- 6	46,500	10 1 80					46,500

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PAGE 2 ~~ATTACHMENT A~~ - STATUS OF DEFERRALS - FISCAL YEAR 1981 AS OF 10/03/80 12:20

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 10-01-80
Military Construction									
Military construction, all services	BA	D81- 7	6,983		10 1 80				6,983
Family Housing, Defense									
Family housing, Defense	BA	D81- 8	18,651		10 1 80				18,651
DEPARTMENT OF DEFENSE-MILITARY TOTAL	BA		211,834						211,834
DEPARTMENT OF DEFENSE-CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, all services	BA	D81- 9	667		10 1 80	-136a			531
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Alcohol, Drug Abuse & Mental Health Administration									
Construction & renovation, St. Elizabeths Hospital	BA	D81-10	10,698		10 1 80				10,698
Office of Assistant Secretary for Health									
Special foreign currency program	BA	D81-11	8,000		10 1 80				8,000
Human Development Services									
White House Conference on Children and Youth	BA	D81-12	562		10 1 80				562
DEPARTMENT OF HEALTH AND HUMAN SERVICES TOTAL	BA		19,260						19,260
DEPARTMENT OF THE INTERIOR									
Heritage Conservation and Recreation Service									

PAGE 3 ATTACHMENT A - STATUS OF DEFERRALS - FISCAL YEAR 1981 AS OF 10/02/80 11:57

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 10-01-80
Land and water conservation fund	BA	D81-13	30,000		10 1 80				30,000
Geological Survey									
Payments from proceeds, sale of water	BA	D81-14	41		10 1 80				41
Bureau of Mines									
Drainage of anthracite mines	BA	D81-15	765		10 1 80				765
DEPARTMENT OF THE INTERIOR TOTAL	BA		30,806						30,806
DEPARTMENT OF JUSTICE									
Federal Prison System									
Buildings and facilities	BA	D81-16	15,750		10 1 80				15,750
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities & equip. (Airport & airway trust fund)	BA	D81-17	133,823		10 1 80				133,823
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing									
State and local government fiscal assistance fund	BA	D81-18	111,773		10 1 80				111,773
	O	D81-19	5,485		10 1 80				5,485
Bureau of the Mint									
Construction of mint facilities	BA	D81-20	5,730		10 1 80				5,730

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PAGE 4 ATTACHMENT A - STATUS OF DEFERRALS - FISCAL YEAR 1981 AS OF 10/02/80 11:57

AGENCY/BUREAU/ACCOUNT	DEFERRAL NUMBER	AMOUNTS IN THOUSANDS OF DOLLARS	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 10 01 80
DEPARTMENT OF THE TREASURY									
TOTAL BA			117,503						112,503
TOTAL O			5,485						5,485
OTHER INDEPENDENT AGENCIES									
Federal Emergency Management Agency									
Emergency planning, preparedness, and mobilization									
BA	D81-21		80		10 1 80				80
Tennessee Valley Authority									
Tennessee Valley Authority fund									
BA	D81-22		17,000		10 1 80				17,000
OTHER INDEPENDENT AGENCIES									
TOTAL BA			17,080						17,080
TOTAL O						-136			-136
TOTAL BA			613,643						613,507
TOTAL O			5,485						5,485

FOOTNOTES

a This amount was released before the special message containing the deferral was transmitted to the Congress

[FR Doc. 80-32243 Filed 10-15-80; 8:45 am]
BILLING CODE 3110-01-C

Reader Aids

Federal Register
Vol. 45, No. 202
Thursday, October 16, 1980

INFORMATION AND ASSISTANCE

Questions and requests for specific information may be directed to the following numbers. General inquiries may be made by dialing 202-523-5240.

Federal Register, Daily Issue:

202-783-3238	Subscription orders and problems (GPO)
	"Dial-a-Reg" (recorded summary of highlighted documents appearing in next day's issue):
202-523-5022	Washington, D.C.
312-663-0884	Chicago, Ill.
213-688-6694	Los Angeles, Calif.
202-523-3187	Scheduling of documents for publication
523-5240	Photo copies of documents appearing in the Federal Register
523-5237	Corrections
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523-5227	Index and Finding Aids
523-5235	Public Briefings: "How To Use the Federal Register."

Code of Federal Regulations (CFR):

523-3419	
523-3517	
523-5227	Index and Finding Aids

Presidential Documents:

523-5233	Executive Orders and Proclamations
523-5235	Public Papers of the Presidents, and Weekly Compilation of Presidential Documents

Public Laws:

523-5266 -5282	Public Law Numbers and Dates, Slip Laws, U.S. Statutes at Large, and Index
275-3030	Slip Law Orders (GPO)

Other Publications and Services:

523-5239	TTY for the Deaf
523-5230	U.S. Government Manual
523-3408	Automation
523-4534	Special Projects
523-3517	Privacy Act Compilation

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CFR PARTS AFFECTED DURING OCTOBER

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator. Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

ENERGY DEPARTMENT

61576 9–16–80 / Privacy Act; records maintained on individuals

[Corrected at 45 FR 63262, 9–24–80]

List of Public Laws

Last Listing October 15, 1980

This is a continuing listing of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–275–3030).

H.J. Res. 560 / Pub. L. 96–416 To proclaim March 19, 1981, as "National Agriculture Day" (Oct. 9, 1980; 94 Stat. 1726) Price $1.

S. 1654 / Pub. L. 96–417 "Customs Courts Act of 1980" (Oct. 10, 1980; 94 Stat. 1727) Price $1.50.

H.R. 7301 / Pub. L. 96–418 "Military Construction Authorization Act, 1981" (Oct. 10, 1980; 94 Stat. 1749) Price $2.

S.J. Res. 201 / Pub. L. 96–419 To provide for the designation of a week as "National Lupus Week" (Oct. 10, 1980; 94 Stat. 1784) Price $1.

H.R. 7919 / Pub. L. 96–420 Maine Indian Claims Settlement Act of 1980 (Oct. 10, 1980; 94 Stat. 1785) Price $1.25.

S.J. Res. 82 / Pub. L. 96–421 To designate the week commencing with the third Monday in February of 1981 as "National Patriotism Week" (Oct. 10, 1980; 94 Stat. 1798) Price $1.

H.R. 7859 / Pub. L. 96–422 "Refugee Education Assistance Act of 1980" (Oct. 10, 1980; 94 Stat. 1799) Price $1.25.

S. 2730 / Pub. L. 96–423 "Federal Railroad Safety Authorization Act of 1980" (Oct. 10, 1980; 94 Stat. 1811) Price $1.25.

S. 3180 / Pub. L. 96–424 To repeal a provision of the Refugee Education Assistance Act of 1980 (Oct. 10, 1980; 94 Stat. 1820) Price $1.

S. 2475 / Pub. L. 96–425 Automobile Fuel Efficiency Act of 1980 (Oct. 10, 1980; 94 Stat. 1821) Price $1.25.

S. 3148 / Pub. L. 96–426 To name the Federal Building located at 444 Southeast Quincy, Topeka, Kansas, the "Frank Carlson Federal Building" (oct. 10, 1980; 94 Stat. 1830) Price $1.

H.R. 7666 / Pub. L. 96–427 Federal Employees' Group Life Insurance Act of 1980 (Oct. 10, 1980; 94 Stat. 1831) Price $1.

H.R. 7218 / Pub. L. 96–428 To establish the Martin Luther King, Junior, National Historic Site in the State of Georgia, and for other purposes (Oct. 10, 1980; 94 Stat. 1839) Price $1.

S. 3044 / Pub. L. 96–429 To designate the United States Federal Building in Hartford, Connecticut, as the "Abraham A. Ribicoff Federal Building" (Oct. 10, 1980; 94 Stat. 1844) Price $1.

H.R. 7434 / Pub. L. 96–430 To provide for the establishment of the Boston African American National Historic Site in the Commonwealth of Massachusetts, and for other purposes (Oct. 10, 1980; 94 Stat. 1845) Price $1.

H.R. 6065 / Pub. L. 96–431 To amend title 5, United States Code, to provide that military leave be made available for Federal employees on a fiscal year rather than a calendar year basis, to allow certain unused leave to accumulate for subsequent use, and for other purposes (Oct. 10, 1980; 94 Stat. 1850) Price $1.

H.R. 6331 / Pub. L. 96–432 To amend the Act of July 31, 1946, as amended, relating to the United States Capitol Grounds, and for other purposes (Oct. 10, 1980; 94 Stat. 1851) Price $1.

H.R. 7939 / Pub. L. 96–433 To amend the Securities Investor Protection Act to increase the amount of protection available under such Act to customers of brokers and dealers, and to provide for the applicability of the Right to Financial Privacy Act of 1978 to the Securities and Exchange Commission (Oct. 10, 1980; 94 Stat. 1855) Price $1.

S. 1796 / Pub. L. 96–434 To authorize the Assiniboine Tribe to file in the Court of Claims any claims against the United States for damages for delay in payment for lands claimed to be taken in violation of the United States Constitution, and for other purposes (Oct. 10, 1980; 94 Stat. 1859) Price $1.

H.R. 7411 / Pub. L. 96–435 Authorizing the Secretary of the Interior to accept the conveyance of the United First Parish Church in Quincy, Massachusetts, and authorizing the Secretary to administer the United First Parish Church as a national historic site, and for other purposes (Oct. 10, 1980; 94 Stat. 1861) Price $1.

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2½ hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between Federal Register and the Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them, as part of the General Services Administration's efforts to encourage public participation in Government actions. There will be no discussion of specific agency regulations.

WHEN: November 14 and 21; December 5 and 19; at 9 a.m. (identical sessions).

WHERE: Office of the Federal Register, Room 9409, 1100 L Street NW., Washington, D.C.

RESERVATIONS: Call King Banks, Workshop Coordinator, 202–523–5235.

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Code of Federal Regulations

Revised as of July 1, 1980

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A Cumulative checklist of CFR issuances for 1980 appears in the back of the first issue of the Federal Register each month in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).

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10-17-80
Vol. 45 No. 203
Pages 68911-69198

federal register

Friday
October 17, 1980

Highlights

68973 **Grant Programs—Housing** HUD/CPD announces competition for 1981 technical assistance to assess the potential for District heating and cooling system projects; proposals by 1–5–81

68920–68929 **Housing** FTC publishes rules regarding labeling and advertising of home insulation; various dates (5 documents)

68952 **Real Property Acquisition** USDA/FmHA proposes rule to provide relocation assistance to persons affected through displacement as a result of Federal or Federally financially assisted programs; comments by 12–16–80

69178 **Television** FCC proposes creation of a new low power television broadcast service; comments by 1–15–81 (Part V of this issue)

68990 **Computer Technology** Commerce/NBS announces standard for magnetic tape labels and file structure for information exchange as a Federal Information Processing Standard (FIPS); effective 10–19–81

68993 **Computer Technology** Commerce/NBS gives notice of proposing a Federal information processing standard for optical character recognition (OCR) character positioning

CONTINUED INSIDE

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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69048, 69049 **Continental Shelf** Interior/GS announces receipt of proposed development and production plans

69174 **Continental Shelf** Interior/BLM makes changes to Outer Continental Shelf Minerals and Rights-of-way Management regulations; effective 10–17–80 (Part IV of this issue)

69052 **Coal** Interior/BLM issues notice of coal lease offering by sealed bid

68948 **Administrative Practice and Procedure** Administrative Conference of the United States invites interested persons to comment by 11–5–80 on draft recommendations on intragovernmental communications in informal rulemaking proceedings

68936 **Government Employees** GSA prescribes procedures for Federal agencies in promoting ridesharing and reporting program achievements; effective 10–17–80; comments by 12–31–80

68971 **Antibiotics** HHS/FDA proposes to replace current procedure for evaluating dissolution test results for tetracycline hydrochloride tablets and capsules and oxytetracycline hydrochloride capsules; comments by 12–16–80

68931 **Old-age, Survivors and Disability Insurance** HHS/SSA provides benefits to young husbands and surviving divorced fathers; effective 10–17–80

69136 **Minimum Wages** Labor/ESA publishes basic hourly wage rates and fringe benefit payments for certain personnel on construction projects (Part III of this issue)

68941 **Motor Carrier** ICC adopts rules which govern operational practices of property brokers; effective 11–17–80

68996 **Privacy Act Documents** DOD/Army

69084 **Sunshine Act Meeting**

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69136 **Part III, Labor, ESA**
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 722

1981 Crop of Extra Long Staple Cotton; Acreage Allotments and Marketing Quotas

AGENCY: Agricultural Stabilization and Conservation Service, Department of Agriculture.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to (1) determine and proclaim a national marketing quota and national acreage allotment for the 1981 crop of extra long staple cotton (referred to as "ELS" cotton), (2) apportion the national acreage allotment to States; and (3) establish the period for holding the national marketing quota referendum in order to find whether farmers are in favor of, or opposed to, the announced marketing quota for ELS cotton. The need for this rule is to satisfy the statutory requirements of the Agricultural Adjustment Act of 1938, as amended (referred to as the "Act"). The latest available statistics of the Federal Government have been used in making determinations under this rule.

EFFECTIVE DATE: October 14, 1980.

ADDRESS: Production Adjustment Division, ASCS, USDA, 3630 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Chief, Program Analysis Branch, Production Adjustment Division, USDA–ASCS, P.O. Box 2415, Washington, D.C. 20013, 202–447–7873.

The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum Number 1955 to implement Executive Order 12044, and has been classified "not significant".

The title and number of the federal assistance program that this notice applies to are: Title—Cotton Production Stabilization; Number 10.052; as found in the Catalog of Federal Domestic Assistance.

This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A–95 was not used to assure that units of local government are informed of this action.

A notice that the Secretary was preparing to make determinations with respect to these provisions of the Act was published in the **Federal Register** on August 8, 1980 (45 FR 52617) in accordance with 5 U.S.C. 553 and Executive Order 12044. Two comments were received. One recommended that the national acreage allotment be established at 145,000 acres, and the other recommended an allotment of at least 150,000 acres. After considering the comments received, and statutory requirements, it was determined that the national marketing quota for the 1981 crop of ELS cotton should be 195,000 bales and that the national acreage allotment for such crop should be 150,241 acres.

It is essential that these provisions be made effective as soon as possible since the proclamation of the quota and the national allotment is required by statute to be made not later than October 15, 1980. Accordingly, it is hereby found and determined that compliance with the 30-day effective date requirement of 5 U.S.C. 553 is impracticable and contrary to the public interest. Therefore, this amendment to 7 CFR §§ 722.558 to 722.561 shall become effective upon the filing of this document with the Director, Office of the Federal Register, with respect to the 1981 crop of Extra-Long Staple Cotton. The material previously appearing in these sections under the centerhead "1980 Crop of Extra-Long Staple Cotton; Acreage Allotments and Marketing Quotas" remains in full force and effect with respect to the crop to which it was made applicable.

Final Rule

Accordingly, the regulations at 7 CFR 722.558 through 722.561 are amended to read as follows:

§ 722.558 National marketing quota for the 1981 crop of ELS cotton.

The marketing quota for the 1981 crop of ELS cotton is hereby proclaimed to be an amount of 195,000 standard bales determined in accordance with section 347(b) of the Act. The quota is based on the following data:

(a) Estimated domestic consumption, 1981–82	60,000
(b) Estimated exports, 1981–82	45,000
(c) Adjustment to assure adequate stocks	95,000
(d) Estimated imports 1981–82	−5,000
Total	195,000

§ 722.559 National acreage allotment for the 1981 crop of ELS cotton.

It is hereby determined and proclaimed that a national acreage allotment shall be in effect for the 1981 crop of ELS cotton. The amount of such national allotment is 150,241 acres, calculated by multiplying the national marketing quota in bales by 480 pounds (net weight of a standard bale) and dividing the result by the national average yield of 623 pounds per planted acre of ELS cotton for the four calendar years 1976, 1977, 1978, and 1979, in accordance with section 344(A) of the Act.

§ 722.560 Apportionment of national acreage allotment to the States.

The national acreage allotment of 150,241 acres is apportioned to the States in accordance with section 344(b) of the Act as follows:

State	State allotment (acres)
Arizona	65,352
California	544
Florida	187
Georgia	197
New Mexico	30,038
Texas	53,923

§ 722.561 National marketing quota referendum for the 1981 crop of ELS cotton.

The national marketing quota referendum for the 1981 crop of ELS cotton shall be held during the referendum period December 8 to 11.

1980, inclusive, by mail ballot in accordance with part 717 of this chapter.

(Secs. 301, 343, 344, 347, 375; 52 Stat. 38, as amended; 63 Stat. 670, as amended; 63 Stat. 675, as amended; 52 Stat. 66, as amended (7 U.S.C. 1301, 1343, 1344, 1347, 1375))

Signed at Washington, D.C., on October 10, 1980.

Bob Bergland,

Secretary of Agriculture.

[FR Doc. 80-32287 Filed 10-14-80; 9:52 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 275]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period October 19–25, 1980. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: October 19, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee, and upon other information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1980–81 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on July 8, 1980. A final impact analysis on the marketing policy is available from Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again publicly on October 14, 1980, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is easier.

It is further found that there is insufficient time between the date when information became available upon which this regulation is based and when the action must be taken to warrant a 60-day comment period as recommended in E.O. 12044, and that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553). It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

Section 910.575 is added as follows:

§ 910.575 Lemon Regulation 275.

(a) The quantity of lemons grown in California and Arizona which may be handled during the period October 19, 1980, through October 25, 1980, is established at 195,000 cartons.

(b) As used in this section, "handled" and "carton(s)" mean the same as defined in the marketing order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: October 15, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-32859 Filed 10-16-80; 12:10 pm]

BILLING CODE 3410-02-M

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7 CFR Part 948

Irish Potatoes Grown in Colorado, Area No. 2; Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation requires fresh market shipments of potatoes grown in Colorado—Area No. 2 to be inspected and meet minimum grade, size and maturity requirements. The regulation will promote orderly marketing of such potatoes and keep less desirable qualities and sizes from being shipped to consumers.

EFFECTIVE DATE: November 1, 1980.

FOR FURTHER INFORMATION CONTACT: Charles W. Porter, Chief, Vegetable Branch F&V, AMS, USDA, Washington, D.C. 20250 (202) 447–2615. The Final Impact Statement relative to this final rule is available on request from Mr. Porter.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant."

Marketing Agreement No. 97 and Order No. 948, both as amended, regulate the handling of potatoes grown in designated counties of Colorado Area No. 2. It is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The Colorado Area No. 2 Potato Committee, established under the order, is responsible for its local administration.

Notice of proposed rulemaking was published in the September 12, 1980, **Federal Register** (45 FR 60446) inviting comments by October 11, 1980. None was received.

This regulation is based upon recommendations for a regulation through October 31, 1981, made by the committee at its public meeting in Monte Vista, Colorado, on August 21, 1980.

The grade, size, maturity and inspection requirements specified herein are similar to those issued during past seasons. They are necessary to prevent potatoes of low quality or less desirable sizes from being distributed to fresh market outlets. They will benefit consumers and producers by standardizing and improving the quality of the potatoes shipped from the production area in order to provide the consumer with a more acceptable product.

Exceptions are provided to certain of these requirements to recognize special situations in which such requirements would be inappropriate or unreasonable.

Shipments are permitted to certain special purpose outlets without regard to the grade, size, maturity and inspection requirements, provided that safeguards are met to prevent such potatoes from reaching unauthorized outlets. Certified seed is exempt because requirements for this outlet differ greatly from those for fresh market. Shipments for use as livestock feed likewise are exempt. Since no purpose would be served by regulating potatoes used for charity purposes, such shipments are exempt. Potatoes for most processing uses are exempt under the legislative authority for this part.

Findings. After consideration of all relevant matter presented, including the proposal set forth in the aforesaid notice which was recommended by the Colorado Area No. 2 Potato Committee, it is hereby found that the following

handling regulation will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for not postponing the effective date of this section until 30 days after its publication in the **Federal Register** (5 U.S.C. 553) in that (1) shipments of potatoes grown in the production area will already have begun by the effective date specified herein, (2) to maximize benefits to producers, this regulation should apply to as many shipments as possible during the marketing season, and (3) compliance with this regulation, which is similar to that in effect during previous marketing seasons, will not require any special preparation on the part of persons subject thereto which cannot be completed by the effective date hereof.

7 CFR Part 948 is amended by adding a new § 948.384 as follows:

§ 948.384 Handling regulation.

During the period November 1, 1980, through October 31, 1981, no person shall handle any lot of potatoes grown in Area No. 2 unless such potatoes meet the requirements of paragraphs (a), (b), and (c) of this section, or unless such potatoes are handled in accordance with paragraphs (d) and (e), or (f) of this section.

(a) *Minimum grade and size requirements.*

(1) *Round varieties.* U.S. No. 2, or better grade, 2 inches minimum diameter.

(2) *Russet Burbank.* U.S. No. 2, or better grade, 1⅞ inches minimum diameter.

(3) *All other long varieties except Russet Burbank.* U.S. Commercial, or better grade, 2 inches minimum diameter or 4 ounces minimum weight, or U.S. No. 2 grade, 1⅞ inches minimum diameter.

(4) *All varieties.* Size B, if U.S. No. 1.

(5) *All varieties for export.* 1½ inches minimum diameter.

(b) *Maturity (skinning) requirements.* During September and October minimum maturity requirements shall be:

(1) *For U.S. No. 2 grade.* Not more than "moderately skinned."

(2) *All other grades.* Not more than "slightly skinned."

(c) *Inspection.* (1) No handler shall handle any potatoes for which inspection is required unless an appropriate inspection certificate has been issued with respect thereto and the certificate is valid at the time of shipment. For purposes of operation under this part it is hereby determined pursuant to § 948.40(d) that each inspection certificate shall be valid for a period not to exceed five days following the date of inspection as shown on the inspection certificate.

(2) No handler may transport or cause the transportation by motor vehicle of any shipment of potatoes for which an inspection certificate is required unless each shipment is accompanied by a copy of the inspection certificate applicable thereto and the copy is made available for examination at any time upon request.

(d) *Special purpose shipments.* (1) The grade, size, maturity and inspection requirements of paragraphs (a), (b) and (c) of this section and the assessment requirements of this part shall not be applicable to shipments of potatoes for:

(i) Livestock feed;

(ii) Relief or charity; or

(iii) Canning, freezing and "other processing" as hereinafter defined.

(2) The grade, size, maturity and inspection requirements of paragraphs (a), (b) and (c) of this section shall not be applicable to shipments of seed pursuant to § 948.6 but such shipments shall be subject to assessments.

(e) *Safeguards.* Each handler of potatoes which do not meet the grade, size, and maturity requirements of paragraphs (a) and (b) of this section and which are handled pursuant to paragraph (d) for any of the special purposes set forth therein shall:

(1) Prior to handling, apply for and obtain a Certificate of Privilege from the committee;

(2) Furnish the committee such reports and documents as requested, including certification by the buyer or receiver as to the use of such potatoes; and

(3) Bill each shipment directly to the applicable processor or receiver.

(f) *Minimum quantity.* For purposes of regulation under this part, each person may handle up to but not to exceed 1,000 pounds of potatoes without regard to the requirements of paragraphs (a), (b) and (c) of this section, but this exception shall not apply to any shipment which exceeds 1,000 pounds of potatoes.

(g) *Definitions.* The terms "U.S. No. 1," "U.S. Commercial," "U.S. No. 2," "Size B," "slightly skinned," and "moderately skinned" shall have the same meaning as when used in the U.S. Standards for Potatoes (7 CFR 2851.1540–2851.1566), including the tolerances set forth therein. The term "other processing" has the same meaning as the term appearing in the act and includes, but is not restricted to, potatoes for dehydration, chips, shoestrings, starch, and flour. It includes only that preparation of potatoes for market which involves the application of heat or cold to such an extent that the natural form or stability of the commodity undergoes a substantial change. The act of peeling, cooling, slicing, dicing, or applying material to prevent oxidation does not constitute "other processing." Other terms used in this section shall have the same meaning as when used in Marketing Agreement No. 97, as amended, and this part.

(h) *Applicability to imports.* Pursuant to Section 8e of the act and § 980.1, *Import regulations* (7 CFR 980.1), Irish potatoes of the red skinned round type, except certified seed potatoes, imported into the United States during the periods November 1, 1980, through June 30, 1981, and September 1, 1981, through October 31, 1981, shall meet the minimum grade, size, quality and maturity requirements specified in paragraphs (a) and (b) of this section.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: October 14, 1980, to become effective November 1, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 32413 Filed 10-16-80; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

[Price Support Regs., Amdt. 2]

7 CFR Part 1464

Tobacco Loan Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation (CCC) will allow producers of flue-cured tobacco who have designated warehouses that have had grading services suspended (usually for an irregularity) to designate another warehouse immediately. This is to prevent a producer from being punished for a warehouse irregularity.

EFFECTIVE DATE: October 17, 1980.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Price Support and Loan Division, ASCS, Room 3754, South Building, P.O. Box 2415, Washington, D.C. 20013, (202) 447–6733.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established to implement Executive Order 12044 and has been classified "not significant." The emergency nature of this action warrants publication of this final action without completion of a Final Impact Statement. A Final Impact Statement will be developed after public comments have been received. I have determined

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that an emergency situation exists which warrants publication without an opportunity for a public comment period of this final action because producers need to market their tobacco as soon as possible without delay caused by warehouse irregularities. Comments will be received for 60 days after publication of this document. In compliance with the Secretary's Memorandum No. 1955 and "Improving USDA Regulations" (43 FR 50988), initiation of review of the regulations contained in 7 CFR 1464.2 for need, currency, clarity and effectiveness, will be made within the next five years.

The title and number of the Federal Assistance Program that this final rule applies to is: (1) Title—Commodity Loans and Purchases; (2) Number—10.051.

This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A–95 was not used to assure that units of local Government are informed of this action.

On September 5, 1980, the Flue-Cured Advisory Board met to discuss penalties relating to warehouse violations of tobacco sales schedules. The penalty for such violation is the suspension of inspection (grading) services for the warehouse. This effectively penalizes the warehouse because of the violation but penalizes as well producers who designated tobacco to the warehouse for sale. Price support is available only at warehouses where federal tobacco inspection service is available. Producers of flue-cured tobacco are required, as a condition for price support, to designate in advance the warehouse(s) at which they will market their tobacco. Current regulations provide for redesignation when a designated warehouse ceases to do business or ceases to have federal inspection or price support available. Temporary disruptions of warehouse inspection service, as where federal inspection service is temporarily withdrawn because of a violation by the warehouse, are not grounds for redesignation. This rule will now permit a producer who has designated flue-cured tobacco to a warehouses whose federal inspection service is temporarily withdrawn to designate his/her tobacco to another warehouse without loss of price support. So as not to penalize a producer who had become bound to a warehouse (in violation) through designation, the Board recommended that a producer be allowed to redesignate his tobacco immediately upon suspension of grading services for a warehouse. Accordingly, 7 CFR, Part 1464 is amended by revising § 1464.2 (e)(2)(iii) and (e)(2)(viii) to read as set forth below.

Final Rule

§ 1464.2 Availability of Price Support.

* * * * *

(e) * * *

(2) * * *

(iii) *When producer designations shall be made.* Producers must designate the warehouse(s) at which they will market their tobacco during a period which shall be announced beforehand by the local county ASCS office. The period for making designations shall be before May 31 each year. Producers who lease quota or whose farm is reconsituted (the combining or dividing of a farm due to a change in operation) after such period may designate the warehouse(s) at which their tobacco will be marketed according to procedures to be established by the Deputy Administrator, State and County Operations, ASCS. Producers who have designated warehouses which cease to operate or cease to have tobacco inspection or price support available may change their designations at any time after such occurrences. Producers who have designated warehouses whose inspection services have been temporarily suspended for any reason for the equivalent of at least one sales day may change their designation at any time after such occurrences. Redesignation (change in warehouse(s) designated or in pounds designated to a warehouse) or designations for farms which have not previously designated tobacco may be made by producers during the five business days ending on the first Friday of each month during the flue-cured tobacco marketing season. Such redesignation or initial designation shall be made on any one day of each redesignation period. Such redesignation or initial designation shall be effective on the second Monday following the Friday on which the redesignation period ends.

* * * * *

(viii) *Failure to comply with opening date and selling schedule by warehouses.* Warehousemen shall comply with opening date and selling schedule requirements as provided in 7 CFR 29.9406.

* * * * *

(Secs. 4 and 5, 62 Stat. 1070 as amended (15 U.S.C. 714b, 714c); secs. 101, 106, 401, 403, 63 Stat. 1051, as amended, 1054, 74 Stat. 6 (7 U.S.C. 1441, 1445, 1421, 1423)

Signed at Washington, D.C., on October 7, 1980.

John W. Goodwin,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 80-32196 Filed 10-16-80; 8:45 am]

BILLING CODE 3410-05-M

Food Safety and Quality Service

7 CFR Part 2859

9 CFR Parts 308, 381

Prohibition of New and Replacement Equipment and Machinery Containing Liquid Polychlorinated Biphenyls (PCBs)

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the Federal meat inspection regulations, the Federal poultry products inspection regulations, and the Federal regulations governing the inspection of eggs and egg products by prohibiting the entry of new or replacement equipment and machinery containing liquid polychlorinated biphenyls (PCBs) in concentrations above 50 parts per million by weight of the liquid medium, onto the premises of any official establishment or plant regulated under the Federal Meat Inspection Act, the Poultry Products Inspection Act, or the Egg Products Inspection Act. Capacitors containing less than 3 pounds of PCBs are exempted from the prohibitions. The purpose of this final regulation is to reduce the risk of adulteration of meat, poultry, and eggs with PCBs, a persistent and toxic environmental contaminant.

EFFECTIVE DATE: November 17, 1980.

FOR FURTHER INFORMATION CONTACT:

Mr. Bartie T. Woods, Director, Facilities, Equipment, and Sanitation Division, Meat and Poultry Inspection Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–5627. The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION:

Significance

This final rule has been reviewed under the USDA procedures established in Secretary's Memorandum No. 1955 to implement Executive Order 12044 and has been classified "significant."

Background

PCBs and Their Uses

PCBs or askarels[1] are a class of toxic industrial chemicals that have been widely used as fluids in electrical transformers and capacitors, and, to a lesser extent, in heat transfer systems and hydraulic equipment. They have been used in these applications due to their high chemical stability, low electrical conductivity, and their fire-resistant and heat transfer characteristics.

Health Risks Due to PCBs

Although PCBs were first manufactured and commercially marketed for industrial uses in 1929, they were not generally recognized as toxic until a widespread incident of PCB poisoning occurred in Yusho, Japan, in 1968. This occurred when 1,000–3,000 ppm levels of PCBs leaked from processing equipment and contaminated rice oil which was later sold to consumers. Within several weeks consumers were stricken with the so-called "Yusho" disease which was traced to the PCBs. Ultimately, 1,291 people were affected exhibiting such symptoms as skin disorders, digestive disturbances, jaundice, throat and respiratory irritations, swelling of joints, and severe headaches.

Prior to that incident, PCBs had caused reproductive problems in commercial mink. Those problems were first reported in 1965, but it was not until 1970, after satisfactory analytical procedures had been developed, that PCBs were identified as the contaminant. The source of the PCBs was found to be contaminated coho salmon from Lake Michigan which were fed to the mink.

Since those early occurrences, well-documented tests on laboratory animals have shown that PCBs can cause reproductive failures, gastric disorders, skin lesions, and tumors. Congress was also aware of the toxic effects of PCBs when the Toxic Substances Control Act was enacted in 1976. Scientific evidence was entered into the record at that time showing that PCBs were known to cause birth defects, miscarriages, and stillbirths, as well as skin eruptions, pigmentation of skin and nails, and eye malfunctions.

The levels of PCBs that produced the above-described effects substantially exceed the levels of PCBs that have been detected at any time in the United States food supply. However, the effects of PCB contamination are cumulative. PCBs are extremely stable and chemically persistent, and thus do not readily metabolize in living organisms. Rather, PCBs accummulate in the fatty tissues of humans and animals, and, as a result, there is ample evidence indicating that prolonged exposure to PCBs poses a health risk. The health hazards of exposure to PCBs are significantly greater at higher levels. In addition, the Environmental Protection Agency (EPA) has determined that PCBs are too widespread in the environment, including human and animal tissues, to establish a zero tolerance, or one that approaches zero. Studies conducted by the EPA indicate that the cut-off level of 50 ppm can provide adequate protection for human health and the environment, while providing a program which is technologically and practically enforceable.[2]

PCBs in Today's Environment

The most significant sources of free PCBs in the environment include discarded consumer or industrial products containing PCBs, atmospheric fallout, and spills associated with the use or transport of PCBs. In today's environment, PCBs are already widespread, as literally thousands of environmental and ecological samples from all over the world have been analyzed and reported to contain PCBs. PCBs have been detected, frequently at high levels, in a large number of fish and bird species inhabiting widely separated geographic areas. Since 1971 there have been at least nine separate incidents of PCB contamination of human food supplies, including meat, poultry, and eggs, as a result of accidental spills, improper disposal techniques, unintentional misuse of PCB-contaminated materials and equipment, and PCB liquid leaking from industrial equipment. These accidents have resulted in PCB contamination of several million pounds of food with a loss of over $10 million. No adverse human health effects have been directly attributed to any of these incidents. However, it is known that some of these foods containing PCBs have reached consumers.

Some of the more noteworthy incidents include the following:

In 1971, fish meal was contaminated in North Carolina when PCBs leaked from a heat-exchanger being used during pasturization of fish meal. Over 16,000 tons of fish meal were contaminated. The fish meal was used as an ingredient in finished feed for meat, poultry, and fish.

In 1977, fish meal prepared and stored at a warehouse in Puerto Rico was contaminated. A poultry firm that began to notice high chemical levels in tissue samples taken from its chickens conducted an investigation. The PCB source was traced to fish meal used in formulating the chicken feed. A fire in a warehouse had damaged transformers stored there, allowing PCBs to leak out. The contamination had not been detected before the fish meal was sold. As a consequence of this incident, 400,000 chickens and 15,000 dozen eggs were destroyed.

In 1979, the contamination of animal feed ingredients at a plant in Billings, Montana, occurred when PCBs leaked from a damaged, stored transformer into the plant's waste water treatment system and were recycled with animal fats into feed ingredients. The finished feed was then fed to poultry and livestock, contaminating meat, poultry, milk, eggs, soups, and bakery items. Contaminated products were distributed to 19 States and two foreign countries. Approximately 1.2 million chickens, 30,000 turkeys, 347 ducks, 7 million eggs, 5,500 hogs, 74,000 bakery goods, and 147,000 pounds of assorted animal feeds and feed ingredients were destroyed.

On December 20, 1979, there was a PCB leakage from a capacitor in a federally inspected hog slaughtering establishment in Iowa. Only the quick actions of plant officials and a Food Safety and Quality Service (FSQS) inspector in recognizing and containing the problem prevented another potentially massive contamination incident.

These incidents demonstrate that the use of PCBs in facilities involved in food production carries the potential for PCB contamination of enormous quantities of human food and therefore presents a substantial risk to human health. Large segments of the population could easily have been exposed to PCBs in all of the above incidents. Fortunately, in only one

[1] Askarel is a generic term for a group of high flash point synthetic chlorinated hydrocarbons used as electrical insulating media, and coolant, hydraulic and heat transfer fluid. All of the fluids listed below are askarels. This list is not complete but identifies the most likely encountered PCB fluids. Hyvol F or J (Areovox Industries), Chlorextol (Allis Chalmers Corp.), Asbestol (American Trans. Corp.), Clophen (Bayer (German)), Dykanol XF, XL, or L, ICA, FCA (Cornell Dubilier), Eucarel (Electrical Utilities Co.), Pyranol (General Electric), Askarel (Hevi Duty Electric), Kaneclor (Kanegafuchi (Japan)), Saf-T-Kuhl (Kuhlman Electric), Askarel or Elemex (McGraw Edison), Aroclor, Pydraul, Therminol FR (Monsanto Chem. Co.), Askarel (Niagra Transformer), Pyralene or Phenoclor (Pro Delec (France)), Diaclor (Sangamo Electric), Clorinol (Sprague Electric), Askarel (Standard Transformer), Askarel (Uptegraff), Noflamol® (Wagner), Inerteen (Westinghouse). All transformer fluids manufactured before 1979 and classified as non-PCB have a 1-out-of-3 chance of containing over 50 ppm PCB contamination.

[2] See EPA proposal on PCBs published in the Federal Register on May 9, 1980 (45 FR 30969–30993).

case was there widespread human exposure.

U.S. Regulatory Control of PCBs

PCBs are currently regulated by the EPA, the Food and Drug Administration (FDA), and the FSQS of the United States Department of Agriculture (USDA).

a. EPA

The Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*) requires the EPA to control the manufacture, processing, and distribution in commerce, use, and disposal of PCBs. Section 6(e)(3) of the Act (15 U.S.C. 2605(e)(3)) provides that no person may manufacture any PCB after January 1, 1979, or process or distribute in commerce any PCB after July 1, 1979, except to the extent that EPA specifically authorizes or exempts such activity. Implementation of the January 1, 1979, ban was subsequently postponed until 30 days after completion of EPA rulemaking on May 31, 1979 (44 FR 31514). Subsequently, the July 1 ban was also delayed slightly. However, the May 31 rule prohibits all manufacturing, processing, and distribution in commerce, and use of PCBs after July 2, 1979, that is not specifically authorized or exempted by EPA.

The May 31, rule did provide certain exemptions to these bans. EPA generally exempted the use of PCBs in "totally enclosed" systems, such as those found in transformers and capacitors, and also authorized uses of PCBs in a few "non-totally enclosed" systems, such as in hydraulic systems and heat transfer systems.

EPA has, under the May 31 rule, established a 50 parts per million (ppm) "cut-off point" for the applicability of its rule to PCB mixtures. Any mixture which is more dilute than this, unless otherwise specifically provided, is not regulated as a PCB. EPA concludes that this cut-off limit provides adequate protection for human health and the environment while establishing a rule that can be effectively implemented.

b. FDA

The FDA similarly has taken steps to prevent the introduction of PCBs into the food supply. Specifically, current FDA regulations, which were promulgated in July 1973, restrict the industrial uses of PCBs in establishments that manufacture, handle, and store food intended for human consumption (21 CFR 110.40), and animal feed (21 CFR 500.45), and in establishments that manufacture food-packaging materials (21 CFR 109.15). These regulations provide that new equipment or machinery for handling or processing human food and animal feed and for manufacturing food-packaging materials shall not contain PCBs. Establishments that manufacture, handle, and store food intended for human consumption and animal feed, and establishments that manufacture food-packaging materials which had such equipment in place were also required to replace, by September 4, 1973, any PCB-containing fluids in such equipment, to the fullest extent possible with good manufacturing practices, with fluid that did not contain PCBs. The FDA regulations, however, specifically exempted electrical transformers and condensers which contain PCBs in sealed containers because at the time there were no known suitable replacement fluids for such equipment, and their use in FDA regulated establishments was not expected to result in direct contact with materials being processed.

C. USDA

Since July 1970, USDA has rejected new PCB-containing equipment or machinery which is proposed for food processing uses. Similarly, no proposed new chemical compound which contains PCBs has been approved since 1970 to be used in food processing machinery or equipment. These case-by-case determinations have been made under the equipment evaluation and chemical compound evaluation systems. In these systems, lists are maintained of approved chemicals and equipment, including the uses for which they are approved. However, no attempt has been made to reevaluate or eliminate equipment or machinery which was approved before 1970. In addition, approval has not been denied for equipment or machinery which is not likely to contact food.

The Proposal

On February 29, 1980, the USDA published in the **Federal Register** (45 FR 13471–13473) a proposal to prohibit the entry of new or replacement equipment and machinery containing liquid PCBs onto the premises of any official establishment or plant inspected under the Federal Meat Inspection Act, the Poultry Products Inspection Act, or the Egg Products Inspection Act. The proposal applied to both food processing and non-food processing equipment and machinery (and replacement parts) which contain PCB liquid concentrations above 50 ppm by volume of the liquid medium. This proposal, with revisions, is being published as a final regulation in this document.

In addition, on May 9, 1980, the Department also proposed, in rulemaking activity with EPA [3] and FDA,[4] to prohibit all equipment or machinery and liquid with liquid PCB levels above 50 ppm by weight in federally inspected meat, poultry, and egg product establishments (45 FR 30980–30983). An exemption was included for capacitors containing less than 3 pounds of PCB liquid. The comment period on this proposal ends on November 4, 1980. It is not a part of this rulemaking.

Thus, the Department is currently engaged in a two-step rulemaking activity—first, to ban generally the entry of new or replacement PCB-containing equipment from official establishments and plants (this rulemaking) and second, to seek the removal of certain currently existing PCB-containing equipment from official establishments and plants. Because of the greater complexity of the latter question, it was decided to bifurcate the proposals.

Options Considered

Four options were considered before proceeding with the final rule. The first option was to take no regulatory action. The second option was to prohibit the introduction of any new or replacement equipment containing liquid PCBs onto the premises of FSQS inspected meat, poultry and egg products processing plants. The third option was to take no regulatory action at the present time, but to conduct an extensive information and education program aimed at the managers of all plants under FSQS jurisdiction. The fourth option was to require removal of existing PCB-containing equipment as well as prohibit the introduction of any new or replacement equipment into any of the aforementioned food processing establishments.

The first option was rejected since it did not deal with the current hazards to human health which PCBs pose. The fourth option is seen as the eventual goal of the Agency. However, more information must be gathered on the economic and technical impact of this option. The second option was selected as the best alternative at present since it will entail a minimal economic impact on the regulated industry while being an important first step leading to the eventual regulation of all PCBs in those food plants inspected by FSQS. It was decided, however, to proceed also with the information and education campaign contained in the third option. Using the booklet *Polychlorinated Biphenyls: An Alert For Food and Feed Facilities* (December 1979), which was prepared by the EPA in cooperation with the USDA and the FDA, FSQS is attempting to reach managers of all plants under its jurisdiction who have decisionmaking authority relating to electrical equipment containing PCBs.

[3] 45 FR 30989–30993.
[4] 45 FR 30984–30988.

IRLG Liaison

PCBs are a toxic substance identified for regulatory coordination by the Toxic Substances Work Group of the Interagency Regulatory Liaison Group (IRLG). During the development stage of this regulation, representatives of the EPA, the FDA, the Consumer Product Safety Commission (CPSC), and the Occupational Safety and Health Administration (OSHA) were consulted.

FSQS, EPA, and FDA are also concurrently and cooperatively developing broader rulemaking which would address the present use of PCBs by the food, feed, pesticide, and fertilizer industries. However, in view of the particular problems of FSQS in regulating meat, poultry, and egg product facilities under its jurisdiction, this action is deemed appropriate at this time.

Comments

The Department received 22 comments on the proposal from individual consumers, meat and poultry packers, feed manufacturers who also process food, trade associations for utility companies, trade associations for meat and poultry processors, environmental groups, utility companies, an office equipment manufacturer, a public interest organization, a food consultant, and a State department of agriculture.

Eighteen comments favored the proposal citing several reasons. Most pointed out that PCBs should be excluded from food or feed facilities to prevent the possibility of contaminating the human food supply. Five of these comments urged the Department to go further and require the existing equipment to be removed as well. One commenter stated that his organization was legally challenging EPA's omission of mixtures with 50 ppm or less.

The comments, both pro and con, raised the following specific issues:

1. *Definition of the term "premises."* Several commenters pointed out that the term "premises" used in the proposed rule is not defined in the regulation.

The "premises" is the area identified on the plot plan by an applicant for Federal inspection. The plot plan is required by § 304.2(a)(1) of the Federal meat inspection regulations (9 CFR 304.2(a)(1)), § 381.19(a)(3) of the poultry products inspection regulations (9 CFR 381.19(a)(3)), and § 2859.146(b)(3) of the regulations governing the inspection of eggs and egg products (7 CFR 2859.146(b)(3)). Therefore, the Department believes that any additional definition is unnecessary.

2. *Interagency cooperation.* Three of the comments urged close cooperation between USDA, EPA. and FDA. One of these also stated that the Federal Energy Regulatory Commission and the Rural Electrification Administration should be involved in this rulemaking to encourage State public utility commissions to replace their transformers on utility poles located on the property of meatpackers and other manufacturers.

Industry respondents and an environmental group, which supported the proposal but indicated that it does not go far enough, have also encouraged cooperation between USDA and other agencies associated with the food and electric utility industries. Since November 1979, USDA has met with EPA and FDA to understand the problem of PCBs in the food industry and how to regulate them. The utility industry has been included in information releases on the PCB regulatory process.

3. *PCB educational campaign.* One comment praised USDA for the proposal, but regretted that it took such a major, costly accident as the one that occurred in Billings, Montana, to goad USDA into action. This comment also indicated the education campaign was a "smart" move.

4. *Removal or ban of existing PCB equipment.* One supporter of the proposed rule indicated concern about the eventual goals of FSQS stated in the fourth option—eventual removal of PCB-containing equipment and prohibition of introduction of any PCB equipment—considered in developing the proposed regulation. He thought it appropriate that FSQS is taking additional time to evaluate thoroughly the economic and technical aspects of removing existing PCB-containing equipment and/or PCB fluids from food processing facilities. He stated that the potential impact of such a regulation should be carefully studied before such a regulation is proposed. Others urged the Department to ban all existing PCB-containing equipment. As previously indicated, the Department is following a two-step approach in its rulemaking activities. A complete ban on PCB-containing machinery in all food processing facilities at this time might pose severe economic hardships on food companies and be disruptive to the Nation's food supply. All comments received concerning the removal of PCB-containing equipment and/or PCB fluids will be included in the administrative record of the other FSQS proposal (45 FR 30980–30983) and considered with the comments to that proposal.

5. *Case-by-case determination of replacement of PCB equipment.* One commenter indicated that his company could not afford the luxury of additional inflationary requirements which do not result in significant environmental benefits and that this amendment, as proposed, was such an inflationary requirement. He recommended that the proposal be modified to provide for a case-by-case evaluation of replacement equipment to determine if a real health hazard exists.

The Department points out that one PCB spill could easily exceed the cost of the entire changeover by the industries involved. It believes the possibility of additional transformer or capacitor spills to be real. Therefore, the Department believes it is appropriate to take this first step to ban new or replacement PCB-containing equipment from entry into official establishments and plants to lessen the possibility of a future PCB spill.

6. *Special exemptions for "low concentration" PCB.* One commenter suggested that because of the small amount of PCBs in some equipment in a concentration as low as 50–500 ppm, such equipment should be exempt from the rule unless the equipment is situated in such a manner that leakage would directly enter the food or food-related products. He further suggested that all PCB-contaminated equipment on the clearly defined premises of a food or feed facility could be inspected for leaks on a regular basis at established frequencies.

The primary concern is to prevent adulteration of food. In order to eliminate the possibility of adulteration, it is necessary to prevent the introduction of new or replacement PCB-containing equipment into the official establishment. The Department also notes that the EPA's definition of a PCB-containing fluid does, in effect, exempt low concentration fluids which contain PCBs in a concentration of less than 50 ppm.

7. *Determination of extent of PCB use in plants inspected by FSQS.* An industry commenter requested that the Department determine the extent of PCB use before final action is taken.

In view of the availability of non-PCB fluids for use in transformers, the Department believes that it is unnecessary to await survey results before adopting a prohibition of new and replacement equipment containing PCBs. However, as part of the two-step regulatory action, the Department has undertaken a survey of USDA-inspected official establishments. The Department

has received responses to the survey from over 90 percent of its inspected establishments and plants describing PCB-containing equipment. The Department considered this survey assessment of the problem. It is not aware of any more accurate data available for determining the extent of PCB use in the meat, poultry, and egg industries or any other industries. As a result of this survey, the Department has concluded that this regulation will result in minimal economic impact on industry.

8. *PCB equipment repair and maintenance.* An industry commenter asked if fluid addition to existing equipment in an official establishment would be considered as a repair action, and if not, how can the establishment control the types of fluid used when a contractor services the transformer.

The Department does not consider fluid addition to existing transformers, hydraulic systems, or heat transfer systems as new or replacement equipment or machinery, but rather routine servicing. Until regulations are adopted prohibiting existing PCB-containing equipment in official establishments, existing equipment may be topped off with fluids according to EPA regulations.

9. *Exemption for certain PCB equipment.* One commenter requested exemption for PCB equipment in vaults or in areas outside the immediate food processing operations.

This rule applies to all equipment located within the premises of an official establishment or plant, as previously described in this document. Prior to 1979, the Department believed that as long as the transformers and capacitors were outside the food processing area, the hazard of a PCB spill was adequately under control. With a series of spills from both active and idle equipment, this has proved to have been a false premise. Therefore, exemption is not provided for such equipment.

10. *Use of PCB equipment for "Useful Life."* Two commenters suggested that in-stock PCB-containing equipment be allowed to be used until its useful life is over.

The purpose of the regulation is to prevent additions of new or replacement PCB equipment to the meat, poultry, and egg establishments or plants in order to minimize the possibility of food contamination. No existing PCB-containing equipment is currently being required to be removed from an official establishment.

11. *Use of National Electric Code Standards for PCB equipment safety.* One industry commenter cited the National Electric Code (NEC) standards concerning special containment rooms as adequate protection against transformer or capacitor spills.

After reviewing the NEC, the Department has determined that the NEC does not appear to support the commenter's contention.

12. *Consideration of equipment which contains "small" amounts of PCBs.* Several commenters voiced opposition to the proposal stating that the proposed regulations were "overbroad." It was suggested that it was inappropriate to equate large electrical transformers and capacitors containing gallons of PCB fluids with electrical equipment which may contain, as components of power supplies and ballasts, small, totally enclosed capacitors with small quantities of PCBs. In addition, they argued that USDA regulations should be consistent with those of EPA for totally enclosed capacitors containing very small quantities of PCBs. Present and proposed EPA regulations would permit the use of PCBs in capacitors containing less than 3 pounds of fluid.

FSQS has determined that there would be little chance of contamination of the food supply from such totally enclosed capacitors. Not only do these capacitors contain relatively small amounts of PCBs, but the PCBs are usually absorbed by paper or other material within the equipment, which minimizes spillage if a leak occurs. Since these capacitors pose little risk of harm to human health, this final rule exempts totally enclosed capacitors containing less than 3 pounds of PCBs from the prohibitions.

Final Rule

After consideration of the comments, the Department has determined to proceed with the proposal as published but with modifications for one technical correction and to provide exemptions for capacitors which contain less than 3 pounds of PCBs. In the proposed regulations, the Department incorrectly described the 50 ppm cutoff as "by volume of the liquid medium." The proper scientific description is "by weight of the liquid medium." The language of the final regulation has been modified to reflect this minor technical correction. This correction does not affect the substance of the regulations. In addition, the section headings are being modified to reflect the addition of the new provisions.

Accordingly, the Federal meat and poultry products inspection regulations and the Federal regulations governing the inspection of eggs and egg products are amended as follows:

1. The following are the amendments to 9 CFR:

PART 308—SANITATION

a. Section 308.5 of the Federal meat inspection regulations (9 CFR 308.5) is amended by changing the section heading and amending the Table of Contents accordingly, and by adding a new paragraph (g) to read as follows:

§ 308.5 Equipment and utensils to be easily cleaned; those for inedible products to be so marked; evaluation of equipment and utensils; PCB-containing equipment.

* * * * *

(g) New or replacement equipment or machinery (including any replacement parts) brought onto the premises of any official establishment shall not contain liquid polychlorinated biphenyls (PCBs) in concentrations above 50 parts per million by weight of the liquid medium. This provision applies to both food processing and nonfood processing equipment and machinery, and any replacement parts for such equipment and machinery. Totally enclosed capacitors containing less than 3 pounds of PCBs are exempted from this prohibition.

(Secs. 5, 8, and 21, 34 Stat. 1260, as amended, 21 U.S.C. 605, 608, and 621; 42 FR 35625, 35626)

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

b. Section 381.56 of the Federal poultry products inspection regulations (9 CFR 381.56) is amended by changing the section heading and amending the Table of Contents accordingly, by designating the present text as paragraph (a), and by adding a new paragraph (b) to read as follows:

§ 381.56 Maintenance of sanitary conditions and precautions against contamination of poultry products; PCB-containing equipment.

* * * * *

(b) New or replacement equipment or machinery (including any replacement parts) brought onto the premises of any official establishment shall not contain liquid polychlorinated biphenyls (PCBs) in concentrations above 50 parts per million by weight of the liquid medium. This provision applies to both food processing and nonfood processing equipment and machinery, and any replacement parts for such equipment and machinery, totally enclosed capacitors containing less than 3 pounds of PCBs are exempted from this prohibition.

(Secs. 7, 14, and 16, 71 Stat. 441, as amended, 21 U.S.C. 456, 463, and 465; 42 FR 35625, 35626)

PART 2859—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT OF 1970)

2. The following is the amendment to 7 CFR:

Section 2859.502 of the Federal regulations governing the inspection of eggs and egg products (7 CFR 2859.502) is amended by changing the section heading and amending the Table of Contents accordingly, and by adding a new paragraph (c) to read as follows:

§ 2859.502 Equipment and utensils; PCB-containing equipment.

* * * * *

(c) New or replacement equipment or machinery (including any replacement parts) brought onto the premises of any official plant shall not contain liquid polychlorinated biphenyls (PCBs) in concentrations above 50 parts per million by weight of the liquid medium. This provision applies to both food processing and nonfood processing equipment and machinery, and any replacement parts for such equipment and machinery. Totally enclosed capacitors containing less than 3 pounds of PCBs are exempted from this prohibition.

(Secs. 2–29, 84 Stat. 1620 *et seq.*, 21 U.S.C. 1031–1056; 42 FR 35625, 35626)

Done at Washington, D.C., on October 2, 1980.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 80-32101 Filed 10-16-80; 8:45 am]

BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Changes in Rules of Practice Governing Summary Disposition on Pleadings

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations governing the authority of its presiding officers to consider motions for summary disposition of certain issues on the pleadings, 10 CFR Section 2.749, to permit parties to file answers supporting such motions.

EFFECTIVE DATE: October 17, 1980.

FOR FURTHER INFORMATION CONTACT: Bruce A. Berson, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone (301) 492–7678.

SUPPLEMENTARY INFORMATION: Section 2.749 of the Commission's Rules of Practice for Domestic Licensing Proceedings, "Authority of presiding officer to dispose of certain issues on the pleadings," establishes a procedure whereby a party to an administrative proceeding may move the presiding officer to rule in that party's favor as to all or any part of the matters involved in the proceeding. The presiding officer will render the decision sought by the moving party if the filings in the proceeding show that there is no genuine issues as to any material fact and that the moving party is entitled to a decision as a matter of law.[1]

Section 2.749(a) now provides that "any other party may serve an answer *opposing the motion* [for summary disposition], with or without supporting affidavits, within twenty (20) days after service of the motion" (emphasis added). However, it has been a long-standing practice of the regulatory staff to file an answer to the motions of other parties for summary disposition—in support or in opposition, as appropriate.

The Commission has determined that the rule should be clarified to specifically permit responses in support of, as well as in opposition to, motions for summary disposition. Since important legal and procedural consequences flow from a presiding officer's grant or denial of a motion for summary disposition, the Commission believes that the views of its regulatory staff, as well as the views of other parties, should be considered and may be of substantial assistance to the presiding officer. Therefore, the Commission is clarifying § 2.749(a) to specifically permit responses from parties which support motions for summary disposition. The clarification will help ensure that the relevant issues are fully developed before the presiding officer rules on the motion and is consistent with the general policy of the Commission's Rules of Practice to encourage parties to express their views before adjudicatory tribunals. The amendment also harmonizes the Commission's summary disposition procedure with the provisions of 10 CFR 2.730(c), "Motions," which permit a party to file an answer in support of or in opposition to a motion filed by another party.

[1]The procedure established in the rule may be used only for the determination of specific subordinate issues in any proceeding involving a construction permit for a production or utilization facility and may not be used to determine the ultimate issue as to whether a construction permit shall be authorized. Section 2.749(d).

Since statements in support of a motion for summary disposition may raise facts and arguments not presented by the moving party and need not be served until the time at which an answer opposing the motion must be served, § 2.749(a) is also amended to permit the party opposing the motion to file a supplemental response in writing which addresses any new matters raised in supporting statements and not presented in the initial motion. The Commission expects its presiding officers to establish expeditious time limits on a case-by-case basis for the filing of any response to supporting statements, consistent with the requirements of fairness. This departure from Commission practice (which does not ordinarily allow further pleadings beyond the initial pleading and response thereto) is desirable here to avoid potential unfair surprise to parties opposing motions for summary disposition. No further supporting statements or responses thereto shall be entertained.

Because this amendment is not substantive and relates only to matters of agency procedure, notice of proposed rulemaking, and public procedure thereon, is unnecessary, and the amendment is effective on October 17, 1980 without the customary 30 days notice.

(5 U.S.C. 553(b) and 553(d))

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendments to Title 10, Chapter 1, Code of Federal Regulations, Part 2 are published as a document subject to codification.

Section 2.749 paragraph (a) is amended to read as follows:

§ 2.749 Authority of presiding officer to dispose of certain issues on the pleadings.

(a) Any party to a proceeding may, at least forty-five (45) days before the time fixed for the hearing, move, with or without supporting affidavits, for a decision by the presiding officer in that party's favor as to all or any part of the matters involved in the proceeding. There shall be annexed to the motion a separate, short and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard. Any other party may serve an answer supporitng or opposing the motion, with or without affidavits, within twenty (20) days after service of the motion. There shall be annexed to any answer opposing the motion a separate, short and concise statement of the material facts as to

which it is contended that there exists a genuine issue to be heard. All material facts set forth in the statement required to be served by the moving party will be deemed to be admitted unless controverted by the statement required to be served by the opposing party. The presiding officer shall permit the opposing party an opportunity to respond in writing to new facts and arguments presented in any supporting statements which were not presented in the papers of the moving party. Any such response shall be served within such time limits as the presiding officer may establish and shall address only the new facts and arguments presented in the supporting statement. No further supporting statements or responses thereto shall be entertained.

* * * * *

(Sec. 161(p), Pub. L. 83–703, 68 Stat. 948 (42 U.S.C. 2201); Sec. 201, as amended, Pub. L. 93–438, 88 Stat. 1243, Pub. L. 94–79, 89 Stat. 413 (42 U.S.C. 5841))

Dated at Washington, D.C. this 9th day of October, 1980.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 80-32543 Filed 10-16-80; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 460

Trade Regulation Rule: Labeling and Advertising of Home Insulation

AGENCY: Federal Trade Commission.

ACTION: Staff compliance guidelines.

SUMMARY: The Staff of the Federal Trade Commission publishes its Staff Compliance Guidelines. The staff is publishing these guidelines to provide assistance to industry members regarding areas in which the staff believes that guidance should prove most helpful to industry members. The views expressed in the guidelines are those of the staff only; they have not been approved or adopted by the Commission and they are not binding on the Commission. However, the guidelines will serve as enforcement criteria for the staff in assessing compliance with the home insulation trade regulation rule.

DATES: Effective date: October 17, 1980. Written comments regarding the Staff Compliance Guidelines will be accepted until November 17, 1980.

ADDRESS: Written comments should be addressed to the Secretary, Federal Trade Commission, 6th and Pennsylvania Avenue, NW., Washington, D.C. 20580. All comments should be captioned: "Comment on Staff Compliance Guidelines—Home Insulation Rule, F.T.C. File 215–59."

FOR FURTHER INFORMATION CONTACT:

Kent C. Howerton, 202–724–1514, Attorney, Division of Energy and Product Information, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:

Note.—The following Guidelines will not appear in the Code of Federal Regulations.

Staff Compliance Guidelines

I. Introduction

The Federal Trade Commission's Trade Regulation Rule on Labeling and Advertising of Home Insulation (16 CFR Part 460) took effect on September 29, 1980.[1] The Commission's staff recognizes that it has a responsibility to provide industry members who are attempting to comply with the Rule with as much guidance as possible. To meet this responsibility, the staff is publishing these compliance guidelines. Although the guidelines do not amend or modify the Rule in any way, they should provide assistance to industry members. These guidelines will serve as enforcement criteria for the staff in assessing compliance with the Rule. Although the staff views these guidelines as final, it will accept written comments until November 17, 1980. If the staff believes it is appropriate to revise any portion of the guidelines based on the comments received, it will publish revised staff compliance guidelines in the Federal Register.

The guidelines cover those areas in which guidance should prove most helpful to industry members. If further compliance questions arise, they will be handled informally by the staff or, if appropriate, by the Commission, as provided for in Sections 1.1 through 1.4 of the Commission's Rules of Practice.[2]

II. When the Rule Takes Effect

The provisions of the Rule apply to home insulation materials produced and sold after September 29, 1980. However, the staff realizes that some insulation retailers and installers will have back stocks of materials, existing at the time of the Rule's effective date, which are not labeled in accordance with § 460.12 of the Rule. Enforcement action will not be recommended against retailers or installers who deplete such back stocks. On the other hand, packages that are not labeled in accordance with the requirements of § 460.12 of the Rule should not be accepted for resale to consumers after September 29, 1980. Similarly, all insulation sold by manufacturers after September 29, 1980 must be labeled in accordance with § 460.12 of the Rule. A manufacturer who delivers improperly labeled materials after this date will be in violation of the Rule, and the product should not be sold to consumers by the retailer or installer.

All advertisements for home insulation, other than those on television, must also comply with the requirements of §§ 460.18 and 460.19 of the Rule as of September 29, 1980. The staff recognizes that some non-complying ads may already be prepared and scheduled for publication and, if so, they will have to have been revised by September 29 unless unusual circumstances make this impossible. The staff notes that industry members have known since August of 1979 that the Commission was very likely to make effective the disclosure requirements for home insulation ads found in the Rule. In addition, the staff considers the advertising disclosures to be essential features of the Rule, and believes that even temporary exceptions from those requirements would frustrate the purposes of the Rule. The Commission has postponed the disclosure requirements for television advertisements pending completion of further rulemaking proceedings.

III. Coverage of the Rule

The Rule applies to the promotion and sale of thermal insulation products. It does not apply to other products with insulating characteristics, such as storm windows and doors, caulking, weatherstripping, insulated residential siding, or draperies.

The Rule applies to insulation sold for use in all types of residential structures, including old or new houses, condominiums, cooperatives, apartments, modular homes and mobile homes. It does not apply to insulation sold for use in commercial or industrial structures.

The Rule also requires disclosure of R-values and related information in sales of "new homes." The term "new homes" includes new houses, apartments, condominiums, cooperatives, modular homes and mobile homes.[3] It includes old residential structures, such as condominium conversions, only when they are sold by someone who is engaged in the business of selling such property and insulation has been added as part of the conversion or other preparation for resale. It includes residential structures whether they are purchased as primary places of residence or for other purposes such as vacation homes. It does not include residences sold by private owners who have resided in the dwellings, and who are not otherwise engaged in selling such property.

[1] 45 FR 54702 (1980). The Rule and its Statement of Basis and Purpose were promulgated and published on August 27, 1979. 44 FR 50218 (1979).

[2] 16 CFR Part 1.1–1.4.

[3] The Commission has received petitions from three trade associations requesting that mobile homes be exempted from part or all of the requirements of the Rule. The Commission has temporarily stayed the effect of § 460.18 of the Rule, insofar as it requires sellers of mobile homes to

Footnotes continued on next page

IV. The R-Value Testing Requirements

Under § 460.5(a) of the Rule, all insulation products, except aluminum foil, sold in the residential market must be tested for R-value under either ASTM C–177, ASTM C–236, or ASTM C–518. If the "calibrated hot box" becomes an ASTM standard test method, it can also be used. The tests must be conducted at a mean temperature of 75 degrees Fahrenheit on the insulation material alone (excluding any air spaces).

Because of the nature of the products, there are specific additional requirements concerning the testing of aluminum foil, mass insulations with foil facings, polyurethane, polyisocyanurate, extruded polystyrene, and loose-fill insulations. These specific requirements and the required thickness for testing all insulation products are discussed in detail in this Section of the Guidelines.

A. Sample Thickness

Section 460.8 of the Rule, as it was published on August 27, 1979, would have required that all mass insulation materials be tested at representative thicknesses. This requirement would mean that such tests would have to be performed at a thickness at which the R-value per inch will vary no more than plus or minus 2% with increases in thickness. However, R-values for smaller thicknesses could be based on tests conducted on those thicknesses.

After the Commission issued the rule in August, 1979, new evidence was presented to the Commission which made it clear that a significant controversy existed regarding the essentially technical questions of the effects of thin-sample testing on R-value measurement and the present feasibility of a "representative thickness" testing requirement until calibration materials are available from the National Bureau of Standards (NBS). The Commission has temporarily stayed the effective date of the representative thickness testing requirement.[4] When thick calibration samples become available from NBS, scheduled to be in January, 1981, the Commission will be able to determine an effective date for the representative thickness testing requirement. The staff recognizes the industry's legitimate need for a reasonable amount of time following the development of these materials for the industry to bring itself into compliance with the rule's representative thickness testing requirement. The staff therefore intends to recommend that the Commission use its discretion to make the representative thickness testing requirement effective only after a reasonable period of time and to consult with interested parties on what period of time would be appropriate before any final decision is made.

Until the Commission makes the representative thickness testing requirement effective, staff will accept as satisfactory compliance testing of samples of mass insulation performed either at representative thicknesses or at 1.5 inches, as recommended by NBS.[5] For thicknesses of less than 1.5 inches, testing may be conducted at 1.5 inches or at the full thickness of the insulation.

After the Commission makes the representative thickness testing requirement in § 460.8 effective, the representative thickness of each insulation product will have to be determined. Under §§ 460.5(a) and 460.8 of the Rule, if the tested R-value per inch does not drop by more than two percent when the thickness of the test sample is increased, then the representative thickness has been achieved. If the material is produced at a thickness greater than the representative thickness, the R-values at these greater thicknesses may be extrapolated from the tested R-value per inch at the representative thickness. Similarly, the R-value per unit at the representative thickness may be extrapolated back to provide R-values at lower thicknesses, or the manufacturer may perform separate tests at those thicknesses. In any event, upward extrapolation of R-values based on tests of thin samples will not be permitted unless the manufacturer can produce test results which demonstrate that the product does not suffer from the thickness effect.

B. Reflective Foil Insulation and Foil Faced Insulation

Section 460.5(b) of the Rule requires that aluminum foil insulation systems with multiple sheets of reflective foil which are separated by air spaces, also called multi-panel foil insulation systems, be tested in accordance with ASTM C–236. The tests must be conducted at a mean temperature of 75 degrees Fahrenheit, with a temperature differential of 30 degrees Fahrenheit, and under the conditions which will be present in the recommended installations.

Section 460.5(c) of the Rule requires that the R-value of single sheet reflective foil insulation, installed in conjunction with an air space, be determined by first testing the emissivity of the foil insulation under ASTM E–408, or a comparable test procedure. The R-value of the foil insulation and its air space may then be derived from the appropriate table in the latest edition of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers' Handbook and Product Directory Fundamentals (hereinafter cited as "ASHRAE Handbook"),[6] based upon the tested emissivity of the foil, and upon the position and size of the air space it faces and the direction of heat flow in the manufacturer's recommended installation. The R-value derived from the table in the ASHRAE Handbook must be that for a mean temperature of 50 degrees Fahrenheit with a temperature differential of 30 degrees Fahrenheit. During the period of time since the Commission promulgated the rule, it has been brought to the staff's attention that use of the ASHRAE Handbook table method to determine the R-value of single sheet reflective foil insulations is only appropriate if the air space configuration and conditions found in actual installation meet the configuration and conditions specified in that table. Therefore, staff urges manufacturers of single sheet reflective foil insulation products which will not be installed according to the air space configuration and conditions listed in

Footnotes continued from last page

make disclosures to purchasers in sales contracts, pending a final decision by the Commission on the exemption petitions. The Commission denied the requests of the trade associations for a stay of other portions of the Rule which may apply to sellers of mobile homes.

[4] 45 FR at 54702–06. The Commission did not stay the prohibitions against making per inch R-value claims, because it believed that such claims would perpetuate the consumer's belief that R-values are linear, and thus would interfere with the effectiveness of the Rule after the stay of the representative thickness testing requirement is lifted *Id.* at 54704.

[5] NBS made this recommendation in a proposed Enforcement Bulletin it submitted to the Commission. Letter of November 19, 1979, to Michael Pertschuk, Chairman, Federal Trade Commission, from Ernest Ambler, Director, National Bureau of Standards, with attached proposed Enforcement Bulletin, FTC File No. 215–59, Document No. W–35.

[6] E.g., ASHRAE Handbook & Product Directory 1977 Fundamentals, at 22.12–22.13 (Table 2. Thermal Resistances of Plane Air Spaces), FTC File No. 215–59, Document No. H–170e.

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the ASHRAE table to determine R-values by testing their products in accordance with ASTM C–236. The test should be conducted under the air space configuration and conditions which will be present when the product is installed according to the manufacturer's recommendations. For consistency, the test should be conducted at a mean temperature of 75 degrees Fahrenheit, with a temperature differential of 30 degrees Fahrenheit. The staff will not recommend enforcement action against those manufacturers who determine the R-values of their single sheet reflection foil insulation products according to tests conducted in accordance with ASTM C–236, in this manner. However, the staff may recommend further action by the Commission, such as an amendment proceeding, if necessary, if it appears that consumers are being mislead because sellers are basing R-value claims on the ASHRAE table for installations which do not meet the table's specifications.

The requirements for determining the R-values of mass insulations with reflective foil facings recognize that foil-faced insulation can be installed with or without an air space facing the foil. Section 460.5(d) of the Rule requires that the R-value of the mass insulation alone be determined according to one of the ASTM R-value test procedures cited in § 460.5(a). If the foil-faced insulation can also be used with an air space directly facing the foil, the insulation may also have a "system" R-Value, that is, both the mass insulation and the foil facing with the air space may contribute to the total R-value of the foil-faced product. Under § 460.5(d)(1) of the Rule, this system R-value may be determined according to ASTM C–236 by testing the faced insulation product under the air space configuration and conditions which will be present when the product is installed as recommended by the seller.

As an alternative, under § 460.5(d)(2), if the faced product may be installed, in normal construction[7] with the air space facing the foil and under the configuration and conditions specified in the ASHRAE Handbook table,[8] the R-value of the foil-faced insulation system may be determined by adding the tested R-value of the mass insulation to the appropriate R-value of the foil facing which is next to the air space, according to the ASHRAE table. Use of the ASHRAE table to determine the R-value of the foil-faced system is only appropriate if the air space configuration and conditions found in normal construction in the installation recommended by the Manufacturer meet the configuration and conditions specified in that table. Lastly, to use this method, the emissivity of the reflective foil facing must be determined by tests conducted under ASTM E–408, or a comparable test procedure, after the foil has been laminated or otherwise attached to the mass insulation.

C. Loose-Fill Testing at Settled Density

Section 460.5(a) of the Rule requires that both cellulose and mineral wool loose-fill insulations be tested for R-value at their settled densities. This requirement is necessary so that the R-values represented accurately reflect the performance of these insulations after settling has occurred.

For cellulose insulation, § 460.5(a)(2) requires that the settled density be determined according to the settled density test procedure required by General Services Administration (GSA) Specification HH–I–515D. The Commission has issued a formal opinion that the Rule requires use of the settled density test procedure which was required by Specification HH–I–515D on August 27, 1979, the date on which the Commission promulgated the Rule. That test procedure includes temperature and humidity cycling and is sometimes referred to as the Canadian drop test. Alternatively, the Commission has stated that it will permit the use of the settled density test procedure currently required by Specification HH–I–515D, commonly known as the cyclone shaker test.

Section 460.5(a)(3) likewise requires that loose-fill mineral wool insulation be tested for R-value at a density that fully reflects the effect of settling. However, because a single test procedure for accurately determining the settled density of loose-fill mineral wool insulation has not yet been generally accepted, the Rule does not specify the test procedure to be used. Studies are currently under way to develop such a test procedure. When a specific test procedure is developed and included in the GSA specification for loose-fill mineral wool insulation, manufacturers must use that test procedure. In the meantime, each manufacturer of loose-fill mineral wool insulation has the burden of ensuring that the method it uses to determine the settled density of its product is reasonable. Until GSA adopts a settled density test procedure for loose-fill mineral wool insulation, Commission staff will consider test methods used to determine the settled density of loose-fill mineral wool insulation on a case by case basis.

D. Aging of Cellular Plastics

Section 460.5(a)(1) of the Rule requires that R-value tests for certain cellular plastics insulation materials be performed on test samples that have been aged in accordance with GSA Specification HH–I–530A or another reliable aging procedure. The materials which normally are subject to this aging phenomenon are extruded polystyrene, polyurethane, and polyisocyanurate. The GSA Specification requires that test samples be aged for 90 days at 140 degrees Fahrenheit dry heat, in the form of intended use. While the staff believes that this procedure will produce R-values that reflect the material's performance over time, it has been suggested that the procedure might severely distort the qualities of some cellular plastics products. To account for this possibility, the Rule permits manufacturers to employ reliable alternative procedures of their own choosing that will produce R-values reflective of a fully aged cellular plastics product.

At present, the staff is unaware of a widely accepted alternative procedure for aging of these materials. As a result, compliance with the other "reliable" procedure alternative in the Rule will be assessed on a case-by-case basis. This assessment will be guided in part by other federal or state regulations in this area, but aging procedures suggested by individual manufacturers will also be considered. For example, a manufacturer who already has test samples which have been aged for several years and are now stable will be in compliance with the Rule, if the aging procedure was fair and reliable.

[7] In the Context, staff means that applications of a given product achieve the conditions specified in the table in the ASHRAE handbook in a significant proportion of applications in construction of residential housing.

[8] There are some obvious examples of applications of foil-faced insulation which will not create the type of airspaces described in the table in the ASHRAE Handbook, *i.e.*, "air spaces of uniform thickness bounded by plane, smooth, parallel surfaces with no leakage of air to or from the space." ASHRAE Handbook (1977), *supra* note 6. Two examples of constructions which do not meet these conditions follow. In the first example, foil-faced board stock is attached over the external siding of an existing house, with the foil facing outward. Residential siding is installed over the foil-faced board stock, creating a bevel-shaped air space between the foil facing and the siding. In the second example, an external brick veneer is installed to the outside of the external walls of a house. In laying the brick, a finger-sized air space is left between the brick and the internal portion of the wall so that the brick can be laid. The inner face of the air space is the foil facing of foil-faced board stock. Mortar oozes into the air space from between the bricks. Weep holes are left at the bottom of the wall for ventilation. Neither of these applications of foil-faced mass insulations creates an air space which meets the conditions specified in the ASHRAE Handbook table.

Regardless of the aging procedure used by the manufacturer, the tolerance provision discussed below will be applied by the staff. In other words, if the marketed product's R-value, when independently tested by the Commission, is more than 10 percent below the labeled R-value, the manufacturer will have violated the Rule, possibly because a faulty aging procedure was used. Thus, industry members who do not have complete confidence in their aging procedures or in the consistency of their production processes should consider whether their products will pass the tolerance test found in the Rule.

V. The Tolerance and Rounding Provisions

Section 460.8 of the Rule states that the actual R-value of any insulation sold to consumers cannot be more than 10 percent below the R-value shown on a label, fact sheet, ad, or other promotional material for the product. This 10 percent tolerance is designed to take the place of detailed quality control standards in the Rule. It does not give industry members a license to raise their R-values above levels determined through R-value testing. Rather, the testing sections impose two separate bases for potential liability. First, industry members will be liable if their stated R-values do not reflect the results of tests performed in accordance with the Rule. Second, if the Commission tests the manufacturer's product, the tested R-value must be within 10 percent of the R-value represented to consumers. If the product is not within this 10 percent tolerance, the manufacturer may be liable even if the stated R-value accurately reflects the manufacturer's test results. In that event, failure to pass the tolerance test indicates that the manufacturer's quality control procedures are insufficient to provide consumers with a reasonable assurance that they are receiving the represented R-value.

The tolerance provision also interacts with the requirement in § 460.11 of the Rule that R-values below 10 must be rounded to the nearest tenth, and that R-values of 10 or more may be rounded to the nearest whole number. This permissive rounding to the nearest whole number, however, will not exempt manufacturers from the Rule's 10 percent maximum tolerance. In other words, while a tested R-value of 12.5 could be rounded to 13, such rounding will consume a portion of the 10 percent tolerance allowed by the Rule. Under these circumstances, the manufacturer may wish to label the product with an R-value of 12.5, or even round the number down to 12, in order to benefit fully from the 10 percent tolerance allowed under the Rule.

VI. Point-of-Sale Disclosures

The Rule requires that R-values and related information concerning home insulation products be disclosed on product labels and on fact sheets available to the consumer at the point of purchase. Since §§ 460.12 and 460.13 of the Rule clearly specify the information that must be included on labels and fact sheets for each type and form of home insulation, those requirements are not repeated in these guidelines. However, this Section of the guidelines discusses some specific requirements about which staff has received inquiries from industry members or other interested parties.

A. Labels and Fact Sheets

1. Loose-Fill Insulations

a. *"Maximum net coverage area."* Sections 460.12(b) (2) and (3) and 460.13(c)(1) of the Rule require that the coverage charts on labels and fact sheets of all loose-fill insulations disclose the "maximum net coverage area" for the bag to obtain the represented R-value. The disclosure required is of the net area which the insulation contained in the bag will cover. For purposes of making the disclosure required by the rule, manufacturers may not consider joist areas or other construction features of a real or an imaginary house in determining the coverage area on labels and fact sheets, since these features vary from one house to another. Only the net coverage area will allow consumers to make cost comparisons between competing products.

On the other hand, the Rule does not prohibit manufacturers or installers from including on labels or other promotional materials, for illustration only to assist the consumer in computing net coverage area, information about the gross coverage area for the bag in specific applications. In such a case, the conditions presumed in any specific examples must clearly and conspicuously be disclosed in connection with the examples. However, since this information is different than that required in the coverage chart by the rule, it may not be described in the fact sheets.

b. *"Minimum thickness" and "minimum weight per square foot."* Sections 460.12(b) (2) and (3) and 460.13(c)(1) of the Rule require that labels and fact sheets for all loose-fill insulations state both "minimum thickness" and "minimum weight per square foot" for each R-value listed. However, all loose-fill insulations which settle may have thicknesses and densities which vary between the time of installation and the time at which the products have reached their settled densities. In fact, environmental conditions and the particular blowing machine used to install the product may result in a particular product having different thicknesses and weights per square foot immediately following installations under different conditions. In view of all these factors, the material information for consumers, and for the staff in enforcing the Rule, is the minimum thickness and minimum weight per square foot required for the represented R-value after all settling has taken place. It is only that thickness and that weight per square foot which will give the consumer the R-value purchased. The consumer can be assured of receiving the proper amount of insulation by comparing the number of bags installed to the settled density coverage area information appearing on the labels and fact sheets.

The Commission's staff recognizes that manufacturers may wish to provide further information regarding the thickness to be expected at the time of installation so that consumers have an additional and immediate measure to ensure that the proper amount of insulation has been installed. Therefore, manufacturers may disclose on labels the average thickness or a range of thicknesses to be expected at the time of installation. Of course, the manufacturer must have data which support the additional thickness(es) disclosed, such as valid studies of installed thicknesses under varying conditions. To ensure that the additional disclosure may not be used to mislead the consumer, the manufacturer should include an explanation that the additional information is provided for the consumer's guidance only, that the installed thickness will vary depending upon conditions at the time of installation, and that to obtain a specific R-value the insulation should not be applied over a larger area than that stated on the coverage chart. Since this additional information is different than that required in the coverage chart by the Rule, it may not be described in the fact sheets.

c. *Bags per 1,000 square feet for mineral wool.* When it issued the final rule, the Commission attempted to ensure that its requirements were consistent with requirements of other federal agencies. For example, the General Services Administration (GSA) has issued specifications for types of

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thermal insulation products that may be purchased by the federal government or in connection with programs operated by the federal government. The GSA specifications require that specific R-value coverage chart information be included on labels. Therefore, for consistency the Commission adopted the coverage chart information required by the GSA specifications for loose-fill mineral wool and cellulose insulations.

At the time the Commission issued the rule, the GSA specification for loose-fill mineral wool insulation required that the coverage chart on the label contain a column disclosing the number of square feet the bag will cover for each total R-value listed on the label. It did not require that the label contain a column disclosing the number of bags required to cover one-thousand (1,000) square feet, although the GSA specification for loose-fill cellulose required both columns. GSA has revised its loose-fill mineral wool insulation specification to require the addition of a column disclosing the number of bags per one-thousand square feet of coverage area which are required to obtain the referenced R-value.

Under these circumstances, staff urges all manufacturers of mineral wool and other loose-fill insulations besides cellulose to add the column disclosing the number of bags per one-thousand (1,000) square feet to the coverage charts on labels and fact sheets. The disclosure is relevant to the coverage chart specifically required by § 460.12(b)(2) of the rule and is, in fact, merely a different way of stating information which that Section already requires to be disclosed on labels and fact sheets. The addition of the column also will make all other loose-fill insulation labels more consistent with those required by the Rule for cellulose.

2. Single Sheet Reflective Foil and Foil-Faced Insulations

The Rule allows manufacturers to use ASHRAE tables to determine the R-value of single sheet foil insulations. However, the ASHRAE values should be used only if normal applications,[9] and the applications recommended by the manufacturer, meet the conditions pertaining to the values which are specified in the ASHRAE Handbook, and if those conditions are clearly and conspicuously disclosed in the conjunction with references to R-values determined in that manner in labels, fact sheets and advertisements. For installations which do not meet the conditions specified in the ASHRAE Handbook,[10] manufacturers should determine the R-value based on tests conducted on the product under ASTM C–236 under the conditions in which it normally will be installed, and which the manufacturer recommends. In this situation too, the conditions necessary to obtain the R-value must be clearly and conspicuously disclosed in connection with the R-value claim.

The Rule recognizes that mass insulation materials with reflective facings can have two different R-values, depending on the manner of installation. If a faced product is installed without the benefit of an adjacent airspace, it has what can be termed its "material R-value." This is simply the R-value of the mass insulation material, as tested in accordance with the Rule. However, if the same faced product is installed in conjunction with an airspace, it may have what is called a "system R-value."

Sections 460.12(b) (5) and (6) and 460.13(c)(2) of the Rule require that the material R-value be disclosed on labels and fact sheets, and, under certain circumstances, in advertisements. Sections 460.12(b)(6) and 460.13(c)(2) allow the additional disclosure of the system R-value. However, since the system R-value will depend on a number of factors, such as the thickness and configuration of the air space and the direction of heat flow, the conditions under which the stated system R-value can be attained must be clearly and conspicuously disclosed in conjunction with any system R-value claim.

A mere description of this disclosure, such as "system R-value of 6.2," will not comply with the Rule. Similarly, the mere notation that the system R-value is "as per ASTM C236" or "as per ASHRAE Handbook" will not suffice. Rather, the Rule requires that the manufacturer specifically disclose the thickness of the airspace and the specific installation conditions and configuration necessary to obtain the system R-value.

3. Urea-Based Foam Insulations

Sections 460.13(d) and 460.18(e) of the Rule provide that when manufacturers of urea-based foam products make R-value claims, they have the option of disclosing that their products shrink or of reducing their R-value claims to account for shrinkage. If the latter option is selected, the specified disclosure otherwise required by the Rule may be omitted. Installers of urea-based foam products must, of course, follow the option of the manufacturer: if the manufacturer declines to reduce the product's R-value to account for shrinkage, then R-value claims by the installer must be accompanied by the disclosure in § 460.18(e) of the Rule.

Manufacturers who elect to lower the product's R-value to account for shrinkage must have "reliable scientific proof of the extent of shrinkage * * * and of its effect on R-value." In assessing whether the manufacture's substantiation constitutes "reliable scientific proof," the staff will be guided primarily by regulations of other government agencies which have developed expertise in this area. For present purposes, a manufacturer in compliance with the HUD Use of Material Bulletin No. 74 will be in compliance with this Rule. The staff also will monitor carefully the ongoing activities of the Department of Energy in the area of urea-based foam shrinkage. Finally, the staff will review individualized shrinkage data developed by a manufacturer for compliance with the "reliable scientific proof" standard. However, such individualized data will be carefully scrutinized in light of the above guides, particularly if the manufacturer contends that it shows an unusually small R-value reduction attributable to shrinkage. Thus, extensive testing by the manufacturer may be required, and idealized testing conditions or assumptions behind any calculations are to be avoided.

B. Availability of Fact Sheets

Section 460.13 of the Rule requires installation manufacturers to provide retailers and installers with fact sheets for their products. Sections 460.14 and 460.15 require retailers and installers to make the fact sheets available to consumers prior to purchase. The fact sheet requirements do not apply to new home sellers.

The Rule does not specify how many fact sheets the manufacturer must provide to retailers and installers. For example, if the retailer elects to use a binder or similar system, only one copy of each fact sheet may be needed. Retailers who wish to provide individual fact sheets to their customs will need a larger supply. In any event, the duties of the manufacturer on the one hand, and of the retailer or installer on the other, are independent. If the manufacturer does not supply any fact sheets, or if the ones supplied do not meet the requirements of the Rule, the manufacturer will have violated the Rule. In such a case, the retailer or installer should halt sales of the product until acceptable fact sheets are

[9] *Supra*, note 7.

[10] *Supra*, note 6.

provided.[11] If the manufacturer refuses to send out the fact sheets as required, the retailer or installer should immediately report this fact to the Commission staff.

As noted above, the Rule requires that retailers and installers make the fact sheets available to customers. Individual copies may be provided, or a binder or similar system may be used with consumers reading the sheets prior to purchase. With respect to installers, § 460.15 of the Rule is more exact: before customers agree to buy insulation, they must be shown the appropriate fact sheets and given an opportunity to read them. Thus, installers have a duty to bring the fact sheets to the customer's attention. Retailers, on the other hand, may often find it difficult to tell whether a consumer is simply browsing in the store or is considering an insulation purchase. As a result, the Commissioin has decided to let retailers select their own method for making fact sheets available, as long as customers "are likely to notice them." Retailers should pay especially close attention to the latter requirement. For example, if the store has a central counter or display area for insulation, the fact sheet display or a large, readable sign should be conspicuously placed in this location. If the store has neither of these, the fact sheet display or sign should be conspicuously placed at a location likely to be visited by an insulation customer, such as the home weatherization or improvement section. On the other hand, if the store has aisles or other locations at which home insulation is readily accessible to customers, it would be appropriate to place signs, indicating where the fact sheets are kept, at strategic places in each aisle or other location. As this last example suggests, more than one sign or display may be necessary, depending on the store.

C. Loose-Fill Insulation Disclosures by Installers

Section 460.17 of the Rule requires that installers give their customers a signed and dated contract, or a receipt, for the insulation they install. For loose-fill insulations, the contract or receipt must show the coverage area, thickness, and R-value of the insulation installed. Consistent with the requirements for labels, this information must be based on the settled density of the product, not its blown density, and upon the net coverage area of the insulation. Installers should use the data on the settled density coverage charts on the manufacturer's bag labels to make these disclosures.

If desired, installers may additionally disclose the average thickness or a range of thicknesses to be expected at the time of installation. The installer must have a reasonable basis to support the additional thickness(es) disclosed, such as valid studies of installed thicknesses under varying conditions. If the manufacturer has provided this additional information to the installer, the installer may rely on that information unless the installer knows or should know that the manufacturer does not have a reasonable basis for the additional information. To ensure that the additional disclosure will not mislead the consumer, the installer should include an explanation that the additional information is provided for the consumer's guidance only, that the installed thickness will vary depending upon conditions at the time of installation, and that to obtain a specific R-value the insulation should not be applied over a larger area than that stated on the settled density coverage chart on the label.

Installers may also disclose, for illustration only to assist the consumer in understanding the net coverage area disclosure, accurate information about the gross coverage area for the bag in specific applications, taking into consideration joist areas and other construction features. In such a case, the conditions presumed in any specific examples must clearly and conspicuously be disclosed in connection with the examples. As an alternative, the installer could use accurate measurements and computations based on the consumer's house to compare the gross coverage area in the consumer's house to the net coverage area of the insulation. To ensure that any additional disclosure will not mislead the consumer, the installer should include an explanation that the additional information is provided for the consumer's guidance only.

D. Disclosures by New Home Sellers

Section 460.16 of the Rule requires new home sellers merely to disclose the type, thickness and R-value [12] of the insulation installed, or to be installed, in each part of the dwelling. If no insulation is installed, or to be installed, that fact should be disclosed. The disclosures must be made in the sales contract. They can be made in a separate document if the document is incorporated into the contract by reference, and if the buyer has an opportunity to review the insulation-related disclosures at the time the contract is signed.[13] New home sellers do not have to display either insulation labels or fact sheets. In the case of multi-unit buildings, the disclosures are required only for the buyer's unit, although additional information is not prohibited by the rule.

Under the Rule, "new homes" means new houses, condominiums, cooperatives, mobile homes,[14] vacation dwellings, or other residential housing units. Previously existing residential structures, such as houses or condominiums, are "new homes" under the rule when they are sold by someone who is engaged in the business of selling such property and insulation has been added, or will be added, as a part of a conversion or other renovation in preparation for resale. However, sellers of these structures need not disclose R-value information about insulation already present in the structures before any renovation or conversion preparations began because they cannot be expected to have that information available.

On the other hand, the rule does not apply to sales of old houses, condominiums, cooperatives, mobile homes, vacation dwellings, or other residential housing units which have not been retrofitted with insulation as part of major renovation in preparation for sale. Since sellers of those types of structures cannot necessarily be expected to have available R-value information about insulation already present in the structures, a disclosure only that no insulation has been added would give the consumer little useful information.

Lastly, the rule does not apply to the sale of a house or other residential housing unit by an individual who merely is selling a previous residence, and who is otherwise not engaged in the sale of housing units.

VII. Disclosures in Advertisements and Other Promotional Materials

A. Advertising Audience

Section 460.18 of the Rule requires that specific R-value related information

[11] However, under § 460.8 of the Rule, retailers and installers can rely on the R-value data provided by the insulation manufacturer, unless they know or should know that the data is false or not based on the proper tests.

[12] Under § 460.8 of the Rule, a new home seller can rely on the R-value data provided by the insulation manufacturer, unless the new home seller knows or should know that the data is false or not based on the proper tests.

[13] By requiring that the disclosures be made in the sales contract, the Commission merely intended to require that the information be disclosed, and the sales contract provides the most convenient and appropriate vehicle for the disclosure. The Commission made no judgment concerning potential state law remedies for nondisclosure or inaccurate disclosure of R-values. 44 FR at 50232.

[14] *Supra*, note 3.

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be disclosed in advertisements or other promotional materials which make certain representations. Section 460.19 of the Rule specifies requirements for ads or other promotional materials which claim or imply that insulation, or a combination of insulation products, or of insulation products and other insulating products, such as storm windows, can cut fuel bills or fuel use. The disclosure requirements in those sections apply only to advertisements and other promotional materials which will be, or may be, seen or read by consumers. Those disclosure requirements do not apply to ads or other promotional materials which are distributed solely to members of the insulation industry or to technical persons, such as architects or other professionals.

B. Nature of Advertisements

The disclosure requirements of § 460.18 of the Rule apply only to advertisements or other promotional materials which promote a specific insulation product. These disclosures are not required in advertisements or other promotional materials which merely promote insulation as an energy conservation practice without promoting a specific manufacturer, installer insulation product.

Section 460.19 requires that specific disclosures be made in connection with claims in advertisements or other promotional materials that savings can result from installation of insulation, or of insulation in connection with other products. Those disclosures are not required for savings claims made by an advertiser who is not engaged in selling insulation, or in the promotion of home insulation sales, a specific type or brand name of insulation, or a specific insulation installer.

C. Single Sheet Reflective Foil and Foil-Faced Insulations

As discussed in Sections IV.B. and VI.A.2, *supra*, the R-value of single sheet reflective foil insulation and the system R-value of foil-faced insulation which is installed with an air space facing the foil will depend upon the thickness and configuration of the air space and the direction of heat flow. Whenever an advertisement claims an R-value for single sheet reflective foil insulation or a system R-value for foil-faced insulation which is installed with an air space facing the foil, those conditions necessary to obtain the R-value must be clearly and conspicuously disclosed in conjunction with the claimed R-value.

D. Disclosures by New Home Sellers

The disclosure requirements of §§ 460.18 and 460.19 apply to advertisements or other promotional materials used by new home sellers which make claims about the insulation in the new homes, or that the insulation installed in the new homes can cut fuel bills or fuel use. However, since the Rule does not require that manufacturers furnish new home sellers with the fact sheets required by § 460.13 of the Rule, or that new home sellers make those fact sheets available to consumers, staff believes that it would be appropriate for advertisers to delete the reference to fact sheets from the disclosures required by §§ 460.18(a) and 460.19(b). Thus, the disclosure required by § 460.18(a) would be: "The higher the R-value, the greater the insulating power." The disclosure required by § 460.19(b) would be: "Savings vary Higher R-values mean greater insulating power."

VIII. Savings Claim Substantiation

The final area in which industry members may need guidance concerns substantiation for savings claims. Because savings vary from consumer to consumer, and because some consumers will save little or nothing through the installation of insulation, § 460.19(b) of the Rule requires that all specific and general savings claims include a disclosure pointing out that savings vary. Further, § 460.19(a) of the Rule requires that all savings claims must be founded on a "reasonable basis." This substantiation requirement applies not only to advertisements and other promotional materials which refer to a specific dollar amount or percentage of savings, but also to those which state in general terms that insulation can lower fuel bills or fuel use. Under this substantiation requirement, the method used to substantiate the savings claim must relate the R-value of the product being promoted, in the application represented, to the total heat flow resistance of a building wall, ceiling, or floor in the represented application.

A. Specific Savings Claims

Claims that insulation can reduce fuel bills by a specific dollar amount of percentage ordinarily will bear a heavy burden of substantiation. Generally, three kinds of substantiation will be acceptable in this area: (1) Actual tests of houses; (2) computer models which predict savings; and (3) standard engineering calculations which predict savings.

Although they are not specifically required by the Rule, tests of actual houses can generate very good substantiation for savings claims. Staff is aware of manufacturers who have the resources to conduct this type of substantiation and who have engaged in such testing. However, such tests must be carefully controlled. For example, two test houses, identical in all details of construction, exposed to identical weather elements and facing in the same direction, could be built near each other. For example, one house might be left uninsulated, while the second house might have a specified amount of attic insulation. To control for the influence of personal living habits, both houses would have to be unoccupied and have identical simulated occupancy conditions. Heating usage and bills can then be fairly compared between the two houses for a specified period of time, and a percentage of fuel use reduction due to the presence of the attic insulation can be determined. While this example is somewhat simplistic and given only for illustrative purposes, careful scientifically valid concurrent testing of this type would be acceptable substantiation for a specific savings claim under the Rule.

There are also a number of computer models currently in use which simulate the type of actual testing described above. While the reliability of these computer models should continue to improve with time and experience, not all computer models are necessarily accurate nor do they employ the same algorithms for producing results. For example, a model which fails to account for such factors as air infiltration, the geographic location of the theoretical house, or the presence of other construction features which can affect energy consumption should not be used to substantiate a savings claim.

Finally, standard engineering calculations for heat flow may constitute a reasonable basis for specific savings claims. For example, calculation procedures may be developed employing the principles given in Chapters 22, 23, and 25 of the ASHRAE Handbook.[15] Once again, such calculations should be used only if they take into account the various related factors that can influence fuel use and savings.

These examples of substantiation methods are given for illustration only. Specific methods used to substantiate savings claims will have to be evaluated on a case by case basis.

Available evidence demonstrates that the savings achieved by any individual consumer are attributable to a host of circumstances unique to that consumer. As a result, tests or calculations which are used to substantiate claimed savings must control these variables to the greatest extent possible. An example of failure to control individual factors and, thus, of unacceptable substantiation, would be a testimonial by an individual consumer of the savings achieved after insulation was installed in his or her home. In this case, the amount of savings could easily have been influenced by purposeful or inadvertent changes in the living habits of the occupants. Thus, testimonials or similar comparisons of occupied houses before and after the addition of insulation are inherently unreliable, and do not constitute a reasonable basis for any claimed savings.

B. General Savings Claims

General savings claims, like specific savings claims, must be founded on a reasonable basis. Staff believes that all general savings claims imply that the level of savings is more than *de minimus*. However, the level of substantiation required for a general savings claim will sometimes be less than that required for a specific savings claim, depending upon the nature of the claim being made. For example, a claim such as "reduce fuel bills" may be substantiated on the basis of government studies or reports that conclude that adding insulation can result in significant savings for many consumers.

On the other hand, general savings claims which suggest significant savings may require substantiation of the type required for specific savings claims. For example, an ad which states that insulation can "slash fuel bills" clearly implies that substantial savings can be achieved. Thus, advertisers who make general savings claims should choose the language of the claim with care, if they wish to avoid the burden of substantiation associated with specific savings claims.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80-32517 Filed 10-16-80; 8:45 am]

BILLING CODE 6750-01-M

[15] "ASHRAE Handook & Product Directory 1977 Fundamentals," *supra*, note 4 at Chapters 22, 23, 25.

16 CFR Part 460

Trade Regulation Rule: Labeling and Advertising of Home Insulation; Partial Stay for Mobile Home

AGENCY: Federal Trade Commission.

ACTION: Notice of temporary partial stay of trade regulation rule insofar as it applies to sales of mobile homes.

SUMMARY: The Federal Trade Commission has temporarily stayed § 460.16 of its trade regulation rule on labeling and advertising of home insulation insofar as it applies to mobile home sellers, pending a final decision by the Commission on petitions for exemptions filed by three trade associations representing mobile home manufacturers and retailers. The Commission has denied the associations' requests to stay other portions of the Rule. The temporary partial stay is effective immediately.

EFFECTIVE DATE: September 29, 1980.

FOR FURTHER INFORMATION CONTACT: Kent C. Howerton, Attorney (202) 724-1515, Division of Energy and Product Information, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Three trade associations—the National Manufactured Housing Federation, Inc., the Manufactured Housing Institute, Inc. and the Indiana Manufactured Housing Association, Inc.—have filed petitions on behalf of mobile home manufacturers and retailers requesting exemptions from the Commission's trade regulation rule on labeling and advertising of home insulation ("the Rule"). The Rule went into effect September 29, 1980. Pending the Commission's final determination on their respective petitions for exemptions, the three petitioners requested that the rule be stayed as to the mobile home industry.

All three petitioners requested that the mobile home industry be exempted from § 460.16 of the Rule. Section 460.16 requires "new home" sellers, including mobile home sellers, to disclose in the sales contract the type, thickness and R-value of any insulation installed in each part of the home. The petitioners asserted that the rule is unnecessary as to mobile homes because construction standards issued by the Department of Housing and Urban Development effectively achieve the same result. Petitioners also argued that R-value information is not appropriate as a tool for comparison shopping in the mobile home area because nearly all such homes have identical insulation due to certain design characteristics.

The Commission has not yet made an initial decision on the merits of the exemption petitions. When an initial decision is made, it will be published in the **Federal Register**, and written public comments will be accepted in accordance with § 1.16 the Commission's Rules of Practice. However, upon review of the petitions for a stay, and weighing the likelihood of success on the merits, the harm to the petitioners, and the public interest, the Commission has determined that a temporary stay of Section 460.16 of the Rule insofar as it applies to mobile home industry members, pending the Commission's decision on the petition, is appropriate. The Commission has denied the request of the petitioners to stay all other portions of the Rule insofar as they apply to the mobile home industry.

Copies of the petitions for stays and exemption from the rule, and the Commission's response, have been placed on the public record of this proceeding.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80-32513 Filed 10-16-80; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 460

Trade Regulation Rule: Labeling and Advertising of Home Insulation; Technical Amendments

AGENCY: Federal Trade Commission.

ACTION: Technical amendment to rule.

SUMMARY: The Commission is publishing a technical amendment to its trade regulation rule on labeling and advertising of home insulation. The amendment is effective immediately. The technical amendment would permit manufacturers of home insulation to include on the fact sheets required by § 460.13 any disclosures which are required by federal laws or regulations to be made on the fact sheet. The amendment corrects a drafting error which would have made it a violation of the rule to include such required disclosures on the fact sheets.

DATES: Although the technical amendment is effective October 17, 1980 the Commission will receive public comment on the amendment until December 16, 1980.

ADDRESSES: Send comments to Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580. Submissions should be captioned "Comment—Technical Amendment to Home Insulation Rule."

FOR FURTHER INFORMATION CONTACT: Kent C. Howerton, Attorney, Division of Energy and Product Information, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, (202) 724-1514.

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SUPPLEMENTARY INFORMATION:

I. Text of the Amendment Voted by the Commission

Accordingly, Chapter I of 16 CFR is amended by revising the first four sentences in the first paragraph of § 460.13 to read as follows:

§ 460.13 Fact Sheets.

If you are a manufacturer, you must give retailers and installers fact sheets for the insulation products you sell to them. Each sheet must contain what is listed here. You can add any disclosures that are required by federal laws, regulations, rules, or orders. You can add any disclosures that are required by state or local laws, rules, and orders, unless they are inconsistent with the provisions of this regulation. Do not add anything else.

* * * * *

II. Reasons for the Amendment

Due to a drafting error in the first paragraph of Section 460.13, the rule prohibited manufacturers from putting disclosures on the fact sheet which were required to be placed there by other federal laws, regulations, rules, or orders. This result clearly put manufacturers in an unfair position: by complying with one set of federal regulations, the manufacturer violates another set of federal regulations. This result is clearly not in the public interest, nor is it consistent with the Commission's intent. Accordingly the Commission has amended § 460.13 to make clear that manufacturers may put disclosures on the fact sheet if required to do so by other federal laws, regulations, rules or orders.

This problem was brought to the Commission's attention by a proposed rule of the Consumer Product Safety Commission, published at 45 Federal Register 39434. Under this proposed rule, manufacturers of urea-formaldehyde foam insulation would be required to include certain health risk disclosures on the fact sheet required by Section 460.13 and 460.15 of the home insulation rule. The Commission is unaware of any other federal rules, regulations, laws, or orders which would require disclosure on the fact sheet required by the Commission's home insulation rule. However, the Commission believes the amendment is necessary to prevent confusion arising out of any future federal regulations.

The amendment does not create any substantive change in the rule. The purpose of the provision prohibiting additional disclosures was to prevent manufacturers from vitiating the required disclosures by making distracting promotional claims. The exception to this prohibition for state and local laws, rules, and orders was intended simply to clarify the preemptive effect of the required disclosures. These purposes are not changed by the amendment. Since other federal actions are equally valid with the Commission's actions, the only effect of the amendment is to remove any potential liability for manufacturers who comply with other federal regulations, rules, laws, or orders. It does not change any duties required by the rule.

III. Public Comment

To avoid any potential conflict with other federal laws, regulations, rules, or orders, the Commission has decided that the amendment should take effect immediately upon publication. The Commission finds that notice and public procedure relating to the amendment are unnecessary and would cause a delay which would be contrary to the public interest. Therefore, under § 1.15 of the Commission's Rules of Practice, the Commission has decided to dispense with the procedures set out in subpart 1 of those Rules. However, the Commission will accept public comment on the amendment action for a period of sixty days following publication in the Federal Register.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80-32514 Filed 10-16-80; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 460

Labeling and Advertising of Home Insulation; Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Invitation for public comment on tentative decision to grant a partial exemption to manufacturers of a type of flat roofing insulation, and notice of a temporary stay of a labeling requirement for those manufacturers.

SUMMARY: The Federal Trade Commission has tentatively decided to grant an exemption to manufacturers of a certain type of flat roofing insulation product used almost exclusively in industrial and commercial applications from the requirement in § 460.12 of its trade regulation rule on labeling and advertising of home insulation (16 CFR Part 460). Section 460.12 requires all home insulation products to be labeled with certain information about R-value. The Commission has tentatively decided to deny an exception to such manufacturers from any other provision of the rule. The Commission has issued a temporary stay of § 460.12 insofar as it applies to this particular type of roof insulation.

DATES: Effective date: September 29, 1980.

Written comments regarding the Commission tentative decision to grant the exemption in part, and deny it in part, will be accepted until November 17, 1980.

ADDRESS: Written comments should be addressed to the Secretary, Federal Trade Commission, 6th and Pennsylvania Avenue, N.W., Washington, D.C. 20580. All comments should be captioned: "Comment on Proposed Partial Exemption for Flat Roof Insulation Manufacturers—Home Insulation Rule."

FOR FURTHER INFORMATION CONTACT:
Kent C. Howerton, 202–724–1514, Attorney, Division of Energy and Product Information, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: On August 31, 1980, the Commission announced that the effective date of the rule would be September 29, 1980 (45 FR 54702).

Two trade associations (The Society of the Plastics Industry, Inc. [SPI] and Thermal Insulation Manufacturers Association [TIMA]) and four manufacturers (Apache Building Products Company, GAF Corporation, Grefco Inc., and the Celotex Corporation) have petitioned the Commission for an exemption from the rule for rigid roof insulation which is used in flat built-up roofs. TIMA and the four manufacturers have requested an exemption from all requirements of the rule, including those requiring disclosures in advertisements (§ 460.18 and § 460.19). SPI has limited its request to an exemption from the labeling requirements of § 460.12 of the rule.

The labeling provisions of § 460.12 require all home insulation products to be labeled with basic information about the type of insulation, its R-value, and the coverage of the product. This type of information was intended to provide consumers purchasing the product directly or through installers with basic information needed to evaluate the thermal performance of the insulation product.

The trade associations and manufacturers state that more than ninety-five percent of the rigid roof insulation boards are used in commercial or industrial buildings, and are therefore not covered by the rule. However, some of the product is used in multi-family residential buildings, such as flat-roof apartment or condominium buildings. The trade associations and manufacturer state that they have no way of knowing which products will be used in residential applications, and which will not. If they are required to label their products which go into residential use, they would be required to assume the unnecessary expenses of labeling every package of insulation even though only a small percentage of them would be used in residential applications. Furthermore, since the product can only be used in large, multi-family, flat-roof buildings, they argue that the labeling information is unnecessary because the product will be selected by an architect or another professional, not the consumer.

The Commission has tentatively decided to grant an exemption to manufacturers of this type of rigid flat-roof insulation board from the requirement in § 460.12 that all insulation materials which might be used in homes be labeled with R-value information.

However, the Commission has tentatively decided to deny the request for an exemption from any other provision of the rule. Section 460.13, in combination with §§ 460.15 and 460.16, requires unstallers to show consumers a fact sheet with essential R-value information and new home sellers to disclose in sales contracts the R-value of the insulation installed in the home. The compliance costs of producing the fact sheets in the few instances where the rigid insulation board is in fact used in residential applications are modest. These sections ensure that, when necessary, consumers will get the relevant R-value information.

Similarly, the Commission has tentatively decided to deny the petition for exemption from any of the rule's provisions which require disclosures in advertising. Most of the claims made for the rigid roof boardstock are made in professional publications, and would therefore not be covered by the rule. But where claims are directed at consumers, there would appear to be no reason to treat claims for this product any differently than other insulation performance or energy savings claims.

In view of the Commission's tentative determination to exempt manufacturers of rigid roof insulation from the labeling requirements of § 460.12, the Commission has tentatively stayed § 460.12 insofar as it applies to such manufacturers, pending a final Commission decision on the exemption request.

The petitions from the two trade associations and the four manufacturers have been placed on the public record and are available for public inspection. They have been filed as documents V–Z through V–7 in FTC file number 215–59.

By Direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80-32515 Filed 10-16-80; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 460

Labeling and Advertising of Home Insulation; Trade Regulation Rule; Partial Exemption for Perlite Insulation

AGENCY: Federal Trade Commission.

ACTION: Invitation for public comment on tentative decision to grant a partial exemption to manufacturers of perlite insulation, and notice of conditional stay of that disclosure requirement for perlite insulation manufacturers.

SUMMARY: The Federal Trade Commission has tentatively decided to grant an exemption to manufacturers of perlite insulations which have an inverse relationship between R-value and density or weight per square foot from the requirement in §§ 460.12(b)(2) and 460.13(c)(1) of its trade regulation rule on labeling and advertising of home insulation (16 CFR Part 460) that manufacturers of perlite insulation disclose minimum weight per square foot for R-values listed on labels and fact sheets. This partial exemption from the rule would be conditioned upon the alternative disclosure of the maximum weight per square foot for each R-value listed. The Commission has issued a conditional stay of the requirement that manufacturers of perlite insulation disclose minimum weight per square foot for each R-value listed on labels and fact sheets, pending a final Commission decision on the exemption. The stay is conditioned on the alternative disclosure of the maximum weight per square foot for each value listed.

DATES: Effective date: September 29, 1980.

Written comments regarding the Commission's tentative decision to grant the conditional exemption will be accepted until November 17, 1980.

ADDRESS: Written comments should be addressed to the Secretary, Federal Trade Commission, 6th and Pennsylvania Avenue, N.W., Washington, D.C. 20580. All comments should be captioned: "Comment on Proposed Partial Exemption for Perlite Insulation Manufacturers—Home Insulation Rule."

FOR FURTHER INFORMATION CONTACT:
Kent C. Howerton, 202–724–1514, Attorney, Division of Energy and Product Information, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: On August 31, 1979, the Commission promulgated a trade regulation rule on the labeling and advertising of home insulation (44 FR 50218). On August 15, 1980, the Commission announced that the effective date of the rule would be September 29, 1980 (45 FR 54702).

The Perlite Institute Inc. petitioned the Commission for an exemption from one of the disclosure requirements in the Rule. Section 460.12(b)(2) of the Rule requires that all loose-fill insulation products other than cellulose be labeled with the following coverage chart information for R-values of 11, 19 and 22: the minimum thickness, maximum net coverage area, and minimum weight per square foot. Section 460.13(c)(1) requires that the same coverage chart information be disclosed on fact sheets available to consumers through retail stores and installers.

The Perlite Institute requested that the Commission exempt manufacturers of perlite insulation from the requirement that they disclose minimum weight per square foot. The requirement in the rule was based on the fact that, for most residential insulation, as the density or weight per square foot decreases, the R-value decreases. Thus, the Rule requires that coverage charts specify the minimum weight per square foot necessary to obtain the labeled R-value.

Specifically, the Perlite Institute requested that the requirement that perlite insulation labels and fact sheets disclose minimum weight per square foot to achieve each R-value be changed to require a maximum weight per square foot disclosure. In support of this request, the Institute has submitted technical publications which show that, contrary to other insulations, as the density or weight per square foot of perlite insulation increases, R-value decreases. A lighter density perlite will have a higher R-value than one with a heavier density installed at the same thickness. Thus, according to the Perlite Institute, unlike other loose-fill insulations covered by the rule, if perlite insulation is installed at a density greater than the weight per square foot listed on the label, the consumer will not receive the labeled R-value.

The Commission has tentatively decided to grant an exemption to manufacturers of perlite insulations which have an inverse relationship between R-value and density or weight per square foot from the requirement in

§§ 460.12(b)(2) and 460.13(c)(1) of the rule that they disclose minimum weight per square foot for R-values listed on labels and fact sheets. This exemption would be conditioned upon the alternative disclosure in labels and fact sheets of the maximum weight per square foot for each R-value required to be listed. The Commission believes that, if the facts alleged by the Perlite Institute Inc. are accurate, the conditional exemption would be in the public interest and should be granted. Therefore, the Commission has conditionally stayed the requirements of §§ 460.12(b)(2) and 460.13(c)(1) of the rule insofar as they require manufacturers of perlite insulations which have an inverse relationship between R-value and density or weight per square foot to disclose minimum weight per square foot on labels and fact sheets, respectively, pending a final Commission decision on the exemption request. The stay is conditioned upon the alternative disclosure of the maximum weight per square foot for R-values required to be listed on fact sheets and labels.

The petition from the Perlite Institute Inc., dated November 19, 1979, plus attachment, has been placed on the public record and is available for public inspection. It has been filed as document number U–1 in FTC File number 215–59.

Carol M. Thomas,

Secretary.

[FR Doc. 80-32516 Filed 10-16-80; 8:45 am]

BILLING CODE 6750-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1212

Safety Standard Requiring Oxygen Depletion Safety Shutoff Systems (ODS) for Unvented Gas-Fired Space Heaters; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Corrections of final rule.

SUMMARY: This notice corrects a typographical error in the final consumer product safety rule requiring oxygen depletion safety systems (ODS) for unvented gas-fired space heaters. Also corrected is the equation in which the typographical error occurs. The correction of the equation does not change its substance but is merely for the purpose of clearly identifying the English and metric equivalent units of the equation.

EFFECTIVE DATE: These corrections are effective on October 17, 1980.

FOR FURTHER INFORMATION CONTACT: Stanley Morrow, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207 (301) 492–6453.

These corrections apply to FR Doc. 80–28597 appearing in the **Federal Register** of September 17, 1980 at page 61933.

At present, there is a typographical error in the equation for corrected oxygen at shutdown at the top of the page; the term,

$$\frac{460 + 70}{450 + T_R}$$ should read, $$\frac{460 + 70}{460 + T_R}$$.

At present, the English and metric equivalents of the equation for corrected oxygen at shutdown are depicted side by side. To avoid any possible confusion concerning the algebraic interpretation of the equation, this notice, in addition to correcting the typographical error, also more clearly separates the English and metric units. The substance of the equation remains precisely the same.

§ 1212.6 [Corrected]

Accordingly, the equation which now appears in the first six lines of the second and third columns of page 61933 should be deleted and the following substituted therefor:

ENGLISH UNITS

$$\text{Corrected oxygen} = \text{measured oxygen} \times \frac{460 + 70}{460 + T_R} \times \frac{P_B}{30}$$

Where

T_R = ambient temperature (°F) in test room at shutdown.

P_B = barometric pressure (inches Hg) in test room at shutdown.

METRIC UNITS

$$\text{Corrected oxygen at shutdown} = \text{measured oxygen at shutdown} \times \frac{273 + 21}{273 + T_R} \times \frac{P_B}{101}$$

Where

T_R = ambient temperature (°C) in test room at shutdown.

P_B = barometric pressure (kPa) in test room at shutdown.

Dated: October 10, 1980.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 80-32298 Filed 10-16-80; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 355

Certain Steel Products From Italy; Revocation of Countervailing Duty Order

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Revocation of countervailing duty order.

SUMMARY: This notice is to advice the public that the Department of Commerce is revoking the countervailing duty order on certain steel products from Italy because of the termination of an injury investigation by the United States International Trade Commission.

EFFECTIVE DATE: October 17, 1980.

FOR FURTHER INFORMATION CONTACT: Mary Martin, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Room 1126, Washington, D.C. 20230 (202–377–5505).

SUPPLEMENTARY INFORMATION: A notice entitled "Countervailing Duties: Certain Steel Products from Italy," T.D. 69–113, was published in the **Federal Register** of May 6, 1969 (34 FR 7328). The notice stated that the Treasury Department had determined that exports of certain steel products from Italy were provided bounties or grants, within the meaning of section 303 of the Tariff Act of 1930 (19 U.S.C. 1303) ("the Act"). Accordingly, imports of the following nine product groups of certain steel products from Italy were subject to countervailing duties:

1. Steel pipes for penstocks, even armored, of the type used for hydroelectric installations;
2. Cables, ropes, plaits and such in iron or steel wire, with or without core of other materials, excluding those insulated for electricity; except as stated below:
   Galvanized steel wire rope;
   Stainless steel aircraft cable;
3. Staples in strip form;
4. Nails of iron or steel;
5. Bolts and nuts of iron or steel except as noted below:
   Galvanized nuts;
6. Rivets of iron or steel;
7. Forged steel grinding balls;
8. Wheels and axles of vehicles for railroads; and
9. Iron and steel constructions and their parts, such as pieces for bridges, steel structural works, gates, frameworks, etc., not galvanized.

On January 1, 1980, Title I of the Trade Agreements Act of 1979 (93 Stat. 150) ("the TAA") went into effect. On January 2, 1980, the authority for administering the countervailing duty law was transferred from the Treasury Department to the Department of Commerce ("the Department"). Under section 104(b)(1) of the TAA, the United States International Trade Commission ("the ITC") is required to review countervailing duty orders issued under section 303 of the Act applicable to merchandise from "countries under the Agreement" upon the request of a government or group of exporters of merchandise covered by the order. Italy is considered a "country under the Agreement".

On March 27, 1980, the ITC received two requests for review of the countervailing duty order on certain steel products from Italy. Pursuant to the ITC's notification to the Department of the requests for an injury review of the order, the Department issued instructions to suspend liquidation of entries of the affected merchandise made on or after April 3, 1980, as required by section 104(b)(3) of the TAA.

On June 13, 1980, the ITC was notified by letter that United States Steel Corporation, the original petitioner in the proceeding, wished to withdraw its petition pursuant to section 704(a) of the Act.

The ITC published a notice on July 9, 1980 in the **Federal Register** (45 FR 46262) proposing termination of its investigation under section 104(b)(1) and requesting public comment by August 8, 1980. No adverse comments were received in response to the ITC notice. As a result, the ITC published a notice in the **Federal Register** of September 4, 1980 (45 FR 58732) accepting the withdrawal of the petition and terminating its investigation, pursuant to section 704(a) of the Act. The ITC informed the Department that "the termination of this investigation has the same effect as a determination of no material injury or threat thereof."

As a result, the Department hereby revokes T.D. 69–113 with respect to all merchandise entered, or withdrawn from warehouse, for consumption on or after April 3, 1980.

The Department will instruct Customs officers to proceed with liquidation of all such entries of the subject merchandise without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to such entries. Entries, or withdrawals from warehouse, for consumption made before April 3, 1980 are subject to countervailing duties as set forth in T.D. 69–113.

The Table in section 355, Annex III, Commerce Regulations (19 C.F.R. 355, Annex III, 45 FR 4949), is amended under the country heading "Italy", by deleting from the column headed "Commodity", the words "Certain steel products"; from the column headed "Treasury Decision", the numbers "69–113", and from the column headed "Action", the words "Bounty declared-rate".

This revocation and notice publication are in accordance with section 104(b)(4)(B) of the TAA (93 Stat. 192, 19 U.S.C. 1516).

October 10, 1980.

John D. Greenwald,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 80-32380 Filed 10-16-80; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Federal Old-Age, Survivors, and Disability Insurance; Benefits for Young Husbands and Surviving Divorced Fathers

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: The Social Security Administration is issuing final regulations that provide benefits to young husbands and surviving divorced fathers. These regulations reflect court decisions, discussed in the Supplementary Information section of this preamble, which eliminate two gender-based distinctions in the Social Security Act.

EFFECTIVE DATE: These regulations are effective October 17, 1980.

FOR FURTHER INFORMATION CONTACT: Mrs. Clara Powell, 4–H–10, West Highrise Building, 6401 Security Boulevard, Baltimore, Maryland 21235, 301–594–7459.

SUPPLEMENTARY INFORMATION: On June 10, 1980, these regulations were published in the **Federal Register** (45 FR 39309), as a Notice of Proposed Rule Making with a 60-day comment period. We received two substantive comments which are discussed under the heading Discussion of Comments.

Background

On December 29, 1978, the U.S. District Court for the Eastern District of Pennsylvania held in *Cooper* v. *Califano* that sections 202(b)(1) and 202(c)(1) of the Social Security Act, taken together, unconstitutionally deny husband's benefits solely on the basis of gender. Section 202(b)(1)(B) of the Act provides benefits for a wife under 62 who has in her care a child entitled to child's benefits on the worker's earnings record; section 202(c) provides no comparable benefit for husbands.

On January 26, 1979, the U.S. District Court for the Western District of Kentucky held in *Yates* v. *Califano* that the Act unconstitutionally denied benefits to a surviving divorced father. Section 202(g)(1)(F) of the Act provides benefits to a surviving divorced mother who has in her care her natural or adopted child entitled to child's benefits on the worker's earnings record; the Act provides no comparable benefits for surviving divorced fathers.

Those court decisions were based largely on *Weinberger* v. *Weisenfeld*, 420 U.S. 636 (1975), in which the U.S. Supreme Court held that section 202(g) was unconstitutional to the extent that it provided benefits for a widow with a child in her care, but not to a widower with a child in his care. As that case did not deal with the rights of young husbands or surviving divorced fathers, we did not apply the *Weisenfeld* decision to them. However, the Solicitor General determined that the issues raised by the *Cooper* and *Yates* decisions are substantially the same as those decided in *Weisenfeld*. He, therefore, declined to appeal *Cooper* and *Yates* to the Supreme Court. Subsequently, the Attorney General, as the law requires him to do, advised the Congress of the decision not to appeal. Since the *Cooper* and *Yates* decisions are final and there will be no further judicial proceedings on the specific issues raised in the two cases, we have decided that they should be implemented on a nationwide basis by issuing regulations. The final regulations will provide benefits beginning with the month of the pertinent decisions.

Final Regulations

The final regulations provide the following new benefits.

V 4 5 O C 1 7 8 0 UMI

(a) Husband's benefits will be provided for the husband of a person entitled to old-age or disability benefits if he is under age 62, has in his care a child entitled to child's benefits on his wife's earnings record, and otherwise meets the conditions of entitlement to husband's benefits.

(b) Father's benefits will be provided for the surviving divorced husband of an insured worker if he is otherwise qualified and has in his care his natural or adopted child who is entitled to child's benefits on his deceased divorced wife's earnings record.

Effective Date

These final regulations are effective with the month of the district court decisions. In the case of benefits for husbands under age 62 with a child in their care, the regulations provide for benefits effective with the month of December 1978. In the case of benefits for surviving divorced husbands with a child in their care, the regulations provide for benefits effective with the month of January 1979.

Discussion of Comments

We received two substantive comments on the NPRM published on June 10, 1980 (45 FR 39309). A summary of the comments and our responses follow:

1. *Implementation of the regulations.* One commenter believes that the regulations will rectify past practices of discrimination in the social security program. The commenter recommends that we retrain our personnel to handle these claims and that we inform potential claimants of benefits to which they are entitled. We have alerted operating personnel to these changes and have issued instructions regarding the processing of these cases. These actions were taken to insure prompt recognition and correct handling of these cases.

With respect to informing potential claimants of the benefits to which they may be entitled, the public information materials we prepare and distribute are now being revised and will include references to these new benefits. Additionally, information about these benefits has been highlighted in our monthly publication, "Social Security Information Items."

2. *Effective date.* A commenter asked that the effective date of the regulations providing benefits for surviving divorced fathers be changed to reflect a court order issued April 2, 1980 by the U.S. District Court for the Western District of Washington in *O'Connor v. Califano.* The court order in *O'Connor* directs us to pay father's benefits to claimant's who had applied for benefits as surviving divorced fathers and were denied by us after August 13, 1978. As a result of this order, which has become final since publication of our NPRM, claimants who were denied by us after August 13, 1978 will be awarded father's benefits based on their earlier application, assuming the other conditions of entitlement are met. Our operating instructions are being revised to implement the *O'Connor* order. For persons not included in the class of claimants affected by the *O'Connor* order, the payment of benefits to individuals as surviving divorced fathers will be based on these regulations, and the earliest possible month of entitlement under the regulations is January 1979, the date of the decision in *Yates.* Since all claimants concerned will be paid in accordance with the legal directives applicable to their case, it is unnecessary to change the effective date of the regulation.

Accordingly these regulations are adopted without change as set forth below.

(Secs. 202, 205, 216, 223, and 1102 of the Social Security Act, as amended; 49 Stat. 623, as amended, 53 Stat. 1362, as amended, 64 Stat. 510, as amended, 70 Stat. 815, as amended, 49 Stat. 647, as amended; 42 USC 402, 405, 416, 423, and 1302)

(Catalog of Federal Domestic Assistance Program Nos. 13.802 Social Security—Disability; 13.803 Social Security—Retirement Insurance; 13.805 Social Security—Survivors' Insuance)

Dated: September 22, 1980.

William J. Driver,

Commissioner of Social Security.

Approved: October 10, 1980.

Patricia Roberts Harris,

Secretary of Health and Human Services.

Part 404 of title 20 of the Code of Federal Regulations is amended as follows:

1. Section 404.330(c) is revised to read as follows:

§ 404.330 Who is entitled to wife's or husband's benefits.

* * * * *

(c) You are 62 years old or older or you are the insured's wife or husband and have "in your care," as defined in §§ 404.348–404.349, a child who is entitled to child's benefits on the insured's earnings record and the child is either under 18 years old or disabled; and

* * * * *

2. Section 404.340 is amended by revising the section heading and the material preceding paragraph (a) and revising paragraphs (a)(1), (b), and (d) to read as follows:

§ 404.340 Who is entitled to mother's or father's benefits as a surviving divorced spouse.

You may be entitled to mother's or father's benefits as the suviving divorced wife or the surviving divorced husband of someone who was fully or currently insured when he or she died. You are entitled to these benefits if—

(a) * * *

(1) You are the mother or father of the insured's child; or

* * * * *

(b) You apply for these benefits; or you were entitled to wife's or husband's benefits for the month before the insured died;

* * * * *

(d) You are not entitled to widow's or widower's benefits, or to an old-age benefit that is equal to or larger than the full mother's or father's benefit; and

* * * * *

[FR Doc. 80-32360 Filed 10-15-80; 8:45 am]

BILLING CODE 4110-07-M

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Certification of True Copies

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document amends the regulations for delegations of authority regarding certification of true copies and use of the Department seal. The amendment adds officials in the Office of Management and Operations, Office of Public Affairs, and the Executive Director of Regional Operations to the delegates and otherwise corrects titles.

EFFECTIVE DATE: October 17, 1980.

FOR FURTHER INFORMATION CONTACT: Robert L. Miller, Office of Management and Operations (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 5 is amended by revising § 5.22 to read as follows:

§ 5.22 Certification of true copies and use of Department seal.

(a) The following officials are authorized to certify true copies of or extracts from any books, records, papers, or other documents on file within the Food and Drug Administration, to certify that copies are true copies of the entire file, to certify the complete original record, or to certify the nonexistence of records on file within the Administration, and to cause the seal of the Department to be affixed to such certifications:

(1) Associate and Deputy Associate Commissioners.

(2) The Director of the Executive Communications Management Staff of the Office of Policy Coordination.

(3) Executive Officer, Office of the Commissioner.

(4) The Director of the Division of Management Systems and Policy of the Office of Management and Operations and the Chief of the Dockets Management Branch of that Division and Office.

(5) The Director of the Freedom of Information Staff of the Office of Public Affairs.

(6) The Executive Director and Deputy Executive Director of Regional Operations; and the Assistant Director for Administration, the Associate Director and Deputy Associate Director for Field Support, and the Associate Director for Federal-State Relations of the Executive Director of Regional Operations.

(7) The Director and Deputy Director of the Bureau of Drugs; and the Director of the Office of Planning, Evaluation, and Management, the Associate Director and Deputy Associate Director for Compliance, and the Directors of the Divisions of: Methadone Monitoring; Drug Product Quality; Drug Labeling Compliance; and Drug Manufacturing of that Bureau.

(8) The Director and Deputy Director of the Bureau of Foods; and the Associate Director for Planning and Operations, the Associate Director for Compliance, and the Directors of the Divisions of: Regulatory Guidance; Food Technology; and Retail Food Protection of that Bureau.

(9) The Director and Deputy Director of the Bureau of Radiological Health; and the Associate Director for Management and Systems and the Director of the Division of Compliance of that Bureau.

(10) The Director and Deputy Director of the Bureau of Biologics; and the Associate Director for Compliance and the Director of the Division of Compliance of that Bureau.

(11) The Director of the Bureau of Veterinary Medicine; and the Executive Officer, the Associate Director and Deputy Associate Director for Surveillance and Compliance, and the Director and Deputy Director of the Division of Compliance of that Bureau.

(12) The Director and Deputy Director of the Bureau of Medical Devices; and the Assistant Director for Program Operations, the Assistant Director for Regulations Policy, the Associate Director for Compliance, and the Director of the Division of Compliance Operations of that Bureau.

(13) The Director and the Director of the Office of Management of the National Center for Toxicological Research.

(14) Regional Food and Drug Directors and District Directors.

(15) Director, Winchester Engineering and Analytical Center.

(16) Director, Minneapolis Center for Microbiological Investigations.

(b) The following officials are authorized to cause the seal of the Department to be affixed to agreements, awards, citations, diplomas, and similar documents.

(1) Associate and Deputy Associate Commissioners.

(2) The Director of the Division of Personnel Management of the Office of Management and Operations.

(c) The Federal Register Writer and his/her alternates of the Office of Regulatory Affairs are authorized to certify true copies of **Federal Register** documents.

Effective date. This regulation shall be effective October 17, 1980.

(Secs. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)))

Dated: October 9, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-32296 Filed 10-16-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 520

Anthelin Tablets; Oral Dosage Form New Animal Drugs Not Subject To Certification

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revoking that portion of the animal drug regulations which reflects approval of a new animal drug application (NADA) providing for use of anthelin tablets as an anthelmintic in dogs. The sponsor, Jensen-Salsbery Laboratories, requested the withdrawal of approval.

EFFECTIVE DATE: October 27, 1980.

FOR FURTHER INFORMATION CONTACT: Leonard D. Krinsky, Bureau of Veterinary Medicine (HFV–216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, approval of NADA 7–226 is withdrawn. This document amends the regulations to delete that section which reflects approval of this NADA.

§ 520.120 [Revoked]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.84), Part 520 is amended by revoking § 520.120 *Anthelin tablets.*

Effective date. October 27, 1980.

(Sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e)))

Dated: October 6, 1980.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 80-32149 Filed 10-16-80; 8:45 am]

BILLING CODE 4110-03-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

Procedural Regulations; 706 Designation; Final Rule

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission amends its regulations on designation of certain State and local fair employment practices agencies so that they may process employment discrimination charges filed with the Commission, within their jurisdiction.

EFFECTIVE DATE: October 17, 1980.

FOR FURTHER INFORMATION CONTACT: Franklin F. Chow, Equal Employment Opportunity Commission, Office of Field Services, State and Local Division, 2401 E. St., N.W., Washington, D.C. 20506, telephone 202/634–6040.

SUPPLEMENTARY INFORMATION: Publication of this amendment to § 1601.74(a) effectuates the designation of the following agency as a 706 Agency:

North Carolina State Personnel Commission [1]

With the addition of the above mentioned agency 29 CFR 1601.74 (a) and (b) are amended as follows:

§ 1601.74 Designated and notice agencies.

(a) The designated 706 agencies are:

Alaska Commission for Human Rights
Alexandria (Va.) Human Rights Office
Allentown (Pa.) Human Relations Commission
Anchorage (Alaska) Equal Rights Commission
Arizona Civil Rights Division
Augusta/Richmond County (Ga.) Human Relations Commission
Austin (Tex.) Human Relations Commission
Baltimore (Md.) Community Relations Commission
Bloomington (Ill.) Human Relations Commission
Bloomington (Ind.) Human Rights Commission
Broward County (Fla.) Human Relations Division
California Department of Fair Employment and Housing
Charleston (W. Va.) Human Rights Commission
Clearwater (Fla.) Office of Community Relations
Colorado Civil Rights Commission
Colorado State Personnel Board
Commonwealth of Puerto Rico Department of Labor
Connecticut Commission on Human Rights and Opportunity
Corpus Christi (Tex.) Human Relations Commission
Dade County (Fla.) Fair Housing and Employment Commission
Delaware Department of Labor
District of Columbia Office of Human Rights
East Chicago (Ind.) Human Relations Commission
Evansville (Ind.) Human Relations Commission
Fairfax County (Va.) Human Rights Commission
Florida Commission on Human Relations
Fort Wayne (Ind.) Metropolitan Human Relations Commission
Fort Worth (Tex.) Human Relations Commission
Gary (Ind.) Human Relations Commission
Georgia Office of Fair Employment Practices
Howard County (Md.) Human Rights Commission
Hawaii Department of Labor and Industrial Relations
Idaho Commission on Human Rights
Illinois Department of Human Rights
Indiana Civil Rights Commission
Iowa Commission on Civil Rights
Jacksonville (Fla.) Community Relations Commission
Kansas Commission on Human Rights
Kentucky Commission on Human Rights
Lexington-Fayette (Ky.) Urban County Human Rights Commission
Lincoln (Neb.) Commission on Human Rights
Madison (Wi.) Equal Opportunities Commission
Maine Human Rights Commission
Maryland Commission on Human Relations
Massachusetts Commission Against Discrimination
Michigan Civil Rights Commission
Minneapolis (Mn.) Department of Civil Rights
Minnesota Department of Human Rights
Missouri Commission on Human Rights
Montana Commission for Human Rights
Montgomery County (Md.) Human Relations Commission
Nebraska Equal Opportunity Commission
Nevada Commission on Equal Rights of Citizens
New Hamsphire Commission for Human Rights
New Hanover (NC) Human Relations Commission
New Jersey Division of Civil Rights, Department of Law and Public Safety
New Mexico Human Rights Commission
New York City (N.Y.) Commission on Human Rights
New York State Division on Human Rights
North Carolina State Personnel Commission [1]
North Dakota Department of Labor
Ohio Civil Rights Commission
Oklahoma Human Rights Commission
Omaha (Neb.) Human Relations Department
Oregon Bureau of Labor & Industries, Civil Rights Division
Orlando (Fla.) Human Relations Department
Pennsylvania Human Relations Commission
Philadelphia (Pa.) Commission on Human Relations
Pittsburgh (Pa.) Commission on Human Relations
Prince George's County (Md.) Human Relations Commission
Rhode Island Commission for Human Rights
Rockville (Md.) Human Rights Commission
St. Louis (Mo.) Civil Rights Enforcement Agency
St. Paul (Mn.) Department of Human Rights
St. Petersburg (Fla.) Office of Human Rights
Seattle (Wa.) Human Rights Commission
Sioux Falls (S.D.) Human Relations Commission
South Bend (Ind.) Human Rights Commission
South Carolina Human Affairs Commission
South Dakota Division of Human Rights
Springfield (Oh.) Human Relations Department
Tacoma (Wa.) Human Rights Commission
Tennessee Commission for Human Development
Utah Industrial Commission
Vermont Attorney General's Office, Civil Rights Division
Virgin Islands Department of Labor
Washington Human Rights Commission
West Virginia Human Rights Commission
Wheeling (W.Va.) Human Rights Commission
Wichita (Ks.) Commission on Civil Rights
Wisconsin Equal Rights Division, Department of Industry, Labor and Human Relations
Wisconsin State Personnel Commission
Wyoming Fair Employment Practices Commission

(b) The designated Notice Agencies are:

Arkansas Governor's Committee on Human Resources
Ohio Director of Industrial Relations
Raleigh (N.C.) Human Resources Department, Civil Rights Unit

(Sec. 713(a), 78 Stat. 265 (42 U.S.C. 20003–12(a)))

Signed at Washington, D.C., this 14th day of October, 1980.

For the Commission.

Ann C. Jeffreys,

Acting Director, State and Local Division.

[FR Doc. 80-32249 Filed 10-16-80; 8:45 am]

BILLING CODE 6570-067-M

[1] The North Carolina State Personnel Commission is being designated as a 706 Agency for those charges filed by State Employees, employees of local social service departments, public health departments and mental health clinics, employees of local civil defense agencies which receive federal grant-in-aid funds and other county employees which the several boards of County Commissioners may from time to time determine.

This designation does not include charges filed by public school superintendents, principals, teachers, other public school employees, employees of the Office of The Governor and Lieutenant Governor. For these types of charges it shall be deemed to "Notice Agency" pursuant to 29 CFR 1601.71(b).

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 28, 55, 56, 57 and 70 Through 90 (Subchapter O)

Mine Safety and Health Standards; Technical Amendments and Editorial Revisions

AGENCY: Mine Safety and Health Administration, Department of Labor.

ACTION: Technical amendments.

SUMMARY: This action by the Mine Safety and Health Administration makes technical amendments or editorial revisions to its safety and health standards in 30 CFR Chapter I, Subchapters D, N and O.

EFFECTIVE DATE: October 17, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Frank A. White, Director, Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203, (703) 235-1910.

SUPPLEMENTARY INFORMATION: The Mine Safety and Health Administration makes the technical amendments or editorial revisions below to correct printing errors, style and related codification changes to improve the clarity of safety and health standards affecting the mining industries. Part 28 and Subchapter O are applicable to coal mines. Parts 55, 56, and 57 of 30 CFR are applicable to metal and nonmetal mines and mills. The heading for Subchapter O is applicable to coal mines. The technical amendments are intended to correct Title 30 of the Code of Federal Regulations (as revised July 1, 1979). The amendments are nonsubstantive in nature and advance notice and public participation are unnecessary. Accordingly, these amendments are exempt from notice and comment procedures by 5 U.S.C. 553(b)(B).

Dated: October 7, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Voriances.

SUBCHAPTER D—ELECTRICAL EQUIPMENT, LAMPS, METHANE DETECTORS; TESTS FOR PERMISSIBILITY; FEES

PART 28—FUSES FOR USE WITH DIRECT CURRENT IN PROVIDING SHORT-CIRCUIT PROTECTION FOR TRAILING CABLES IN COAL MINES

Section 28.23 is amended by revising paragraph (h) to read as follows:

§ 28.23 Approval labels or markings; approval of contents; use.

* * * * *

(h) The use of any MSHA approval label or marking obligates the applicant to whom it is issued to retest the approved fuse within a 2-year period from the date of the certificate of approval, and every 2 years thereafter, in accordance with the provisions of § 28.10.

SUBCHAPTER N—METAL AND NONMETAL MINE SAFETY AND HEALTH

PART 55—SAFETY AND HEALTH STANDARDS METAL AND NONMETAL OPEN PIT MINES

The headings for 30 CFR Subchapter N and Part 55 are amended by revising the headings to read as set out above.

Section 55.9 is amended by revising the introductory text of paragraph (e) of standard 55.9–88 to read as follows:

§ 55.9 Loading, hauling, dumping.

* * * * *

55.9–88 *Mandatory.* * * *

* * * * *

(e) All self-propelled equipment described in paragraph (a) of this standard, manufactured prior to the effective date of this standard, shall be deemed in compliance with the standard if ROPS and seat belt installations meet the ROPS and seat belt requirements of the State of California; or the U.S. Army Corps of Engineers; or the Bureau of Reclamation; or MSHA coal mine regulations of the U.S. Department of Labor; or the Occupational Safety and Health Administration of the U.S. Department of Labor. The requirements in effect are:

* * * * *

Section 55.20 is amended by revising standard 55.20–8 to read as follows:

§ 55.20 Miscellaneous.

* * * * *

55.20–8 *Mandatory.*

(a) Toilet facilities shall be provided at locations that are compatible with the mine operations and that are readily accessible to mine personnel.

(b) The facilities shall be kept clean and sanitary. Separate toilet facilities shall be provided for each sex except where toilet rooms will be occupied by no more than one person at a time and can be locked from the inside.

PART 56—SAFETY AND HEALTH STANDARDS—SAND, GRAVEL, AND CRUSHED STONE OPERATIONS

The heading for 30 CFR Part 56 is amended by revising the Part heading to read as set out above.

Section 56.9 is amended by revising paragraph (b) and the introductory text of paragraph (e) of standard 56.9–88 to read as follows:

§ 56.9 Loading, hauling, dumping.

* * * * *

56.9–88 *Mandatory.* * * *

(b) Except as provided in paragraph (e) all self-propelled equipment described in paragraph (a) of this standard and manufactured on or after the effective date of this standard shall be equipped with (1) ROPS meeting the requirements of paragraph (d), and (2) seat belts meeting the requirements of SAE J4c, J140a, J141, J333a, and J386 specified in paragraph (a) of this standard.

* * * * *

(e) All self-propelled equipment described in paragrpah (a) of the standard, manufactured prior to the effective date of this standard, shall be deemed in compliance with the standard if ROPS and seat belt installations meet the ROPS and seat belt requirements of the State of California; or the U.S. Army Corps of Engineers; or the Bureau of Reclamation; or MSHA coal mine regulations of the U.S. Department of Labor; or the Occupational Safety and Health Administration of the U.S. Department of Labor. The requirements in effect are:

* * * * *

Section 56.19 is amended by revising the introductory text and paragraph (a) of standard 56.19–128 to read as follows:

§ 56.19 Man hoisting.

56.19–128 *Mandatory.* Ropes shall not be used for hoisting when they have: (a) More than six broken wires in any lay;

* * * * *

Section 56.20 is amended by revising standard 56.20–8 to read as follows:

§ 56.20 Miscellaneous.

56.20–8 *Mandatory.* (a) Toilet facilities shall be provided at locations that are compatible with the mine operations and that are readily accessible to mine personnel.

(b) The facilities shall be kept clean and sanitary. Separate toilet facilities shall be provided for each sex except where toilet rooms will be occupied by no more than one person at a time and can be locked from the inside.

PART 57—SAFETY AND HEALTH STANDARDS—METAL AND NONMETAL UNDERGROUND MINES

The heading for 30 CFR Part 57 is amended by revising the heading to read as set out above.

§ 57.6 Explosives. [Amended]

Section 57.6 is amended by adding new standard actions to read as follows:

1. Reserve standard numbers 57.6–176 and 57.6–180 as follows:

57.6–176 [Reserved]

* * * * *

57.6–180 [Reserved]

2. Add a new center heading "Miscellaneous" after the reserve entry "57.6–221 through 57.6–249 [Reserved]" and a new center heading "General-Surface and Underground" below the new heading "Miscellaneous" as follows:

Miscellaneous

General-Surface and Underground

Section 57.9 is amended by revising the introductory text of paragraph (e) of standard 57.9–88 to read as follows:

§ 57.9 Loading, hauling, dumping.

* * * * *

57.9–88 Mandatory. * * *

* * * * *

(e) All self-propelled equipment described in paragraph (a) of this standard, manufactured prior to the effective date of this standard, shall be deemed in compliance with the standard if ROPS and seat belt installations meet the ROPS and seat belt requirements of the State of California; or the U.S. Army Corps of Engineers; or the Bureau of Reclamation; or MSHA coal mine regulations of the U.S. Department of Labor; or the Occupational Safety and Health Administration of the U.S. Department of Labor. The requirements in effect are:

* * * * *

§ 57.9 [Amended]

Section 57.9 is amended by removing standard 57.9–108 and adding reserve entry "57.9–108 [Reserved]."

57.9–108 [Reserved]

§ 57.21 Gassy mines. [Amended]

Section 57.21 is amended by making the following changes to standards 57.21–40 and 57.21–66 as follows:

In standards 57.21–40 and 57.21–66 remove "8(a) of the Federal Metal and Nonmetallic Mine Safety Act" and insert "104(c) of the Federal Mine Safety and Health Act of 1977."

V 45 OC 17 80 O UMI

SUBCHAPTER O—COAL MINE SAFETY AND HEALTH

The heading for 30 CFR Subchapter O is amended by revising the subchapter heading to read as set out above.

[FR Doc. 80-32482 Filed 10-16-80; 8:45 am]
BILLING CODE 4510-43-M

GENERAL SERVICES ADMINISTRATION

Federal Property Management Regulations

41 CFR Ch. 101

[FPMR Temp. Reg. A-16]

Federal Facility Ridesharing Program; Temporary Regulations

AGENCY: General Services Administration.

ACTION: Temporary regulation.

SUMMARY: This regulation implements EO 12191, dated February 1, 1980. It prescribes procedures to be followed by Federal agencies in promoting ridesharing and reporting program achievements. The intent of this regulation is to promote ridesharing as a means of conserving fuel, reducing pollutants, reducing traffic congestion, and providing an economical way for employees to commute to work.

DATES: Effective date: October 17, 1980. Expiration date: June 30, 1981. Comments due on or before: December 31, 1980.

FOR FURTHER INFORMATION CONTACT: Larry Frisbee, National Ridesharing Coordinator, Federal Fleet Management Division, Office of Motor Equipment (202-275-1021).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this regulation will not impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purposes of EO 12044.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter A to read as follows:

Federal Property Management Regulations Temporary Regulation A-16

To: Heads of Federal agencies.
Subject: Federal Facility Ridesharing Program.

1. *Purpose.* This regulation establishes policy and prescribes procedures for the implementation of the Federal Facility Ridesharing Program.

2. *Effective date.* This regulation is effective upon publication in the **Federal Register.**

3. *Expiration date.* This regulation expires June 30, 1981, unless sooner revised or superseded.

4. *Background.* a. Executive Order 12191, dated February 1, 1980, established the Federal Facility Ridesharing Program. The President has assigned primary responsibility for program development and implementation to the General Services Administration (GSA) in consultation with the Department of Transportation (DOT). The objectives of the program are to conserve fuel, reduce congestion, improve air quality, and provide an economical way for employees to commute to work.

b. The effective implementation of the ridesharing program will require a cooperative effort among Federal, State, local, and private sector groups. Therefore, the Office of Management and Budget has asked the Federal Executive Boards, which exist in 26 major U.S. cities, to assist GSA and DOT in coordinating ridesharing efforts in the public and private sectors.

c. The primary role of Federal agencies will be to vigorously promote ridesharing at each Federal facility. The President has encouraged agency heads to take all feasible actions under the current law to provide ridesharing incentives.

5. *Definitions.* a. "Ridesharing" means commuting in groups of two or more using a single vehicle; i.e., carpools, vanpools, private buses, mass transit, or other multioccupancy modes of travel.

b. "Ridematching" means any system for mapping and matching home and work locations of interested commuters to identify prospects for ridesharing.

c. "Facility" means either a single building or a group of buildings or work locations at a common site.

d. "Third party operator" means an organization, firm, or individual, other than an employer or employee, who owns or leases vans or buses and either provides or contracts for continuing operational support.

6. *Policy.* It is the policy of the Federal Government to promote the use of ridesharing at all Federal facilities. In the process of promoting ridesharing, the Government shall not favor or endorse one commercial firm or nonprofit organization to the exclusion of other commercial firms or nonprofit organizations.

7. *Employee transportation coordinators.* Employee transportation coordinators shall be designated at each Federal facility with 100 or more full-time employees. (Agencies are encouraged to appoint coordinators at facilities with less than 100 full-time employees.) At facilities occupied by more than one Federal agency, the employee transportation coordinator shall be from the agency having the largest number of employees at the facility. The employee transportation coordinator shall:

a. Promote ridesharing at the facility by:

(1) Publicizing the availability of public transportation;

(2) Communicating employee transportation needs to local public transportation authorities and other organizations (such as private bus companies) furnishing multipassenger modes of transportation.

(3) Assisting employees in forming carpools or vanpools (employee-owned or leased, directly or through a third party operator);

(4) Aiding employee participation in ridematching programs. (Where ridematching programs do not exist, actions should be taken to begin these programs.)

b. Maintain an employee transportation profile showing the distribution of employee transportation modes; and

c. Prepare GSA Form 3261, Federal Facility Ridesharing Report, for annual submission to the agency coordinator.

8. *Ridesharing goals.* a. Ridesharing goals shall be established by each agency. Goals shall be expressed as a percentage of the full-time personnel that are employed by the agency and use ridesharing to commute between home and work. Goals should consider the availability of mass transit, local commuter routes, the number of employees participating in ridesharing at agency facilities, and the overall national goal.

b. The current national goal is 20-percent employee participation in ridesharing by January 1, 1981. This is the minimum acceptable goal under the Federal Facility Ridesharing Program. If an agency currently has a base line participation of 20 percent or greater, the minimum goal will be to increase employee participation by 20 percent by January 1, 1981. For example, if an agency has 30-percent employee participation in ridesharing, the minimum goal will be to increase employee participation to 36 percent by January 1, 1981.

c. Agencies will be evaluated primarily on their success in increasing the number of employees who use ridesharing to commute between home and work. GSA will evaluate overall agency efforts and results at individual facilities. Consideration will be given to the degree and intensity of agency and facility promotional efforts, the differences between facility locations, and the level of participation in employee ridesharing at the beginning of the program, since those agencies with a significant level of participation may find it more difficult to achieve a 20 percent increase above their base line.

9. *Reporting procedures.* a. *Facility reports.* Employee transportation coordinators shall prepare and submit by May 1, 1981, GSA Form 3261, Federal Facility Ridesharing Report. The report shall be submitted to the overall agency coordinator and shall include data on all Federal employees at the facility. (Copies shall also be furnished to other tenant agencies at the facility.)

b. *Agency reports.* Heads of agencies shall submit to GSA by June 1, 1981, a report which shall include:

(1) The agency ridesharing goal;

(2) Ridesharing results achieved within the agency;

(3) Methods used to promote ridesharing within the agency; and

(4) A copy (original only) of individual facility reports (GSA Form 3261) for each facility at which they have employee transportation coordinator responsibilities. Agencies having no overall responsibility at individual facilities shall submit a narrative report detailing agency promotional efforts.

Reports shall be submitted to: General Services Administration (TMM), Washington, DC 20406.

The report prescribed by this regulation has been cleared in accordance with Subpart 101-11.11 and has been assigned interagency report control number 0258-GSA-AN.

c. *Exemptions.* Facilities with less than 100 full-time employees are not required to submit an annual report. Agencies shall not subdivide buildings, groups of buildings, or worksites for the purpose of meeting the exemption standards.

10. *Ridematching systems.* Wherever possible, agencies shall use and promote existing ridematching services. Where ridematching services do not exist, they shall be established, preferably in conjunction with nearby facilities. Ridematching systems may be manual or computerized. All systems must be in compliance with the Privacy Act of 1974.

11. *Effect on other laws or other agency regulations.* a. *Clean Air Act.* In jurisdictions where State implementation plans for air quality approved or promulgated by the Environmental Protection Agency (EPA) have placed employers under more stringent guidelines in promoting or reporting ridesharing efforts, the requirements in the air quality plans shall take precedence over this regulation.

b. *Federal Standby Conservation Program.* If Federal standby conservation measures are enacted under the Emergency Energy Conservation Act, those measures relating to employer efforts in promoting and reporting ridesharing projects shall take precedence over this regulation.

12. *Technical assistance to agencies.* Because of the large number of Federal, State, local, and private sector groups involved in the promotion of ridesharing, there are many different resources available to Federal agencies interested in technical assistance and promotional materials for use in their ridesharing programs. To aid agencies in identifying these resources, GSA has designated ridesharing coordinators at each of its regional offices. A list of these coordinators and national program officials is provided as an attachment to this regulation.

13. *Comments.* Comments concerning this regulation may be submitted before December 31, 1980, to the General Services Administration (TMM), Washington, DC 20406.

14. *Availability of forms.* Agencies may obtain their initial supply of GSA Form 3261 from the General Services Administration (WBRDD), Union and Franklin Streets Annex, Building 11, Alexandria, VA 22314. Agency field offices should submit all future requirements to their Washington, DC headquarters office which will forward consolidated annual requirements to the General Services Administration (HRM), Washington, DC 20405. An initial distribution of the form will be made to all GSA regional offices for their use and additional supplies of the form should be obtained in the usual manner.

R. G. Freeman III,
Administrator of General Services.

GSA Regional Ridesharing Coordinators

Region 1—Boston, MA

George Delisle, J. W. McCormack P.O. & Courthouse, Boston, MA 02109, FTS 223-2536.

Region 2—New York, NY

Frank Kirschoff, 26 Federal Plaza, New York, NY 10007, FTS 264-3930.

Region 3—Philadelphia, PA

Joe Thompson, 9th & Market Streets, Philadelphia, PA 19107, FTS 597-1261.

Region 4—Atlanta, GA

Ron Summers, 75 Spring Street SW., Atlanta, GA 30303, FTS 242-3054.

Region 5—Chicago, IL

Roger Willadsen, 230 South Dearborn Street, Chicago, IL 60604, FTS 353-5379.

Region 6—Kansas City, MO

Tom Hunter, 1500 East Bannister Road, Kansas City, MO 64131, FTS 926-7551.

Region 7—Fort Worth, TX

John Crawford, 819 East Taylor Street, Forth Worth, TX 78102, FTS 334-2381.

Region 8—Denver, CO

Jim Wooton, Denver Federal Center, Building 41, Denver, CO 80225, FTS 234-4091.

Region 9—San Francisco, CA

Annah Liechti, 525 Market Street, San Francisco, CA 94105, FTS 556-1455.

Region 10—Auburn, WA

Chuck Hammer, GSA Center, Auburn, WA 98002, FTS 396-5423.

National Capital Region—Washington, DC

Michael Ziskind, 7th & D Streets SW., Washington, DC 20407, FTS 472-1776.

GSA National Ridesharing Coordinators

Larry Frisbee
Les Gray
Jack Carlile
425 I Street, NW.
Washington, DC 20405
FTS 275-1021.

[FR Doc. 80-32451 Filed 10-16-80; 8:45 am]
BILLING CODE 6820-AM-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 13, 81, 83, and 87

[Docket No. 20817]

Establishing a Marine Radio Operator Permit and Deleting the Radiotelephone Third-Class Operator Permit

AGENCY: Federal Communications Commission.

ACTION: Setting effective date of final rule.

SUMMARY: On July 17, 1980, the Commission approved an amendment to Parts 13, 81, 83, and 87 of its rules which would, among other things, abolish the Radiotelephone Third Class Operator Permit, establish a "Marine Radio Operator Permit", and re-arrange the order in which examinations for first and second class licenses are given. The effective date would be specified in a later Public Notice. See the August 6, 1980, edition of the **Federal Register,** 45 FR 52154. The FCC has now specified the effective date as October 13, 1980, for all of these changes.

EFFECTIVE DATE: October 13, 1980.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Roy E. Kolly or Vernon P. Wilson, Field Operations Bureau, 202-632-7240.

SUPPLEMENTARY INFORMATION:

PART 13—COMMERCIAL RADIO OPERATORS

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA-PUBLIC FIXED STATIONS

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

PART 87—AVIATION SERVICES

Radiotelephone Third Class Operator Permit Abolished

On July 17, 1980, the Commission adopted an amendment to its rules which, among other things, abolished the Radiotelephone Third Class Operator Permit. The effective date was to be announced in a Public Notice. The purpose of this Public Notice is to announce that the effective date is October 13, 1980.

On and after October 13, 1980, third class permits will no longer be issued nor will examinations for these permits be administered. The other changes taking place on that date are the establishment of a "Marine Radio

Operator Permit" and a re-arrangement of the order in which examinations for first and second class licenses are given. Specifically, the element three examination must be passed before taking the element one and two examinations.

This effective date pertains to the Third Report and Order in Docket 20817 which was adopted July 17, 1980. The Third Report and Order was published in the August 6, 1980, edition of the Federal Register, 45 FR 52154.

Federal Communications Commission.

William J. Tracarico,

Secretary

[FR Doc. 80-31291 Filed 10-16-80; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Second Revised Directed Service Order No. 1482]

Various Railroads—Directed Service—and Chicago, Rock Island & Pacific Railroad Co., Debtor (William M. Gibbons, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Second revised directed service order No. 1482.

SUMMARY: Pursuant to Section 104 of Pub. L. 96–254 (May 30, 1980) the Commission is directing various carriers named in the Appendix to provide service over described lines of the Chicago, Rock Island & Pacific Railroad Company, debtor (William M. Gibbons, Trustee) (Rock Island or RI) due to lack of rail service which cannot be resolved by a grant of interim operating authority over specific lines.

This directed service order, originally published at 45 FR 56810, August 26, 1980, is being revised to clarify the rates which may be established during the directed service period pursuant to paragraph (5) of the order.

DATE: *Effective date:* This directed service order shall become effective at 12:01 a.m. (central time) on October 15, 1980.

FOR FURTHER INFORMATION CONTACT:
Richard J. Schiefelbein, (202) 275–0826
or
Joel E. Burns, (202) 275–7849.

SUPPLEMENTARY INFORMATION:

Decision of the Commission

Background

The Rock Island has been in bankruptcy proceedings since 1975. In September 1979, its cash flow position became so severe as to prevent the continuation of normal rail operations. Accordingly, we issued Directed Service Order No. 1398 (and supplements thereto) directing the Kansas City Terminal Railway Company (KCT) to provide service under 49 U.S.C. 11125 as a subsidized "directed rail carrier" (DRC) over the Rock Island rail system. *Kansas City Term. Ry. Co.—Operate—Chicago, R.I.&P.*, 360 I.C.C. 289, 478, 718 (1979–80) (44 FR 56343, October 1, 1980). That order expired on March 23, 1980.

In order to provide for the continuation of essential rail services, we issued various service orders and directed service orders, without federal subsidy, authorizing several railroads to provide interim service over Rock Island lines on a voluntary basis. Our unsubsidized directed service orders issued under 49 U.S.C. 11125 expired on May 31, 1980, in accordance with statutory time limits.

On May 30, 1980, Pub. L. 96–254 ("Rock Island Railroad Transition and Employee Assistance Act" or "RITEA") was enacted. Section 104 of RITEA provides that the Commission shall, notwithstanding the provisions of 49 U.S.C. 11125 or Pub. L. 96–131, order directed service for a period not to exceed 90 days over any line of the Rock Island if the Secretary of Transportation finds and certifies to the Commission a lack of rail service exists which cannot be resolved by a grant of interim operating authority over such line and that either (a) grains or foods are ready to be shipped to market, or (b) a rail carrier, shipper, State, or other interested party has expressed in writing to the Secretary an interest in purchasing, leasing, or rehabilitating the particular rail line or facilities for purposes of providing rail services, and there is a reasonable expectation that such transaction will be consummated. RITEA further provides that the Secretary may make available to the Commission not more than $15 million for purposes of providing directed service.

The Secretary of Transportation made a directed service certification to the Commission pursuant to section 104 of RITEA, with respect to Rock Island's lines listed in the appendix. The certification is incorporated in this decision by this reference. A summary of the certification is attached as an appendix.

Discussion and Conclusions

Section 104 of RITEA requires the Commission to direct service for a period not to exceed 90 days over any RI line for which the Secretary of Transportation makes an appropriate certification to the Commission. The Secretary has made the appropriate certification for Rock Island's lines described in the appendix. Therefore, we shall direct the named DRCs to perform operations over the certified lines.

We will direct service for the period for which the Secretary of Transportation has certified that need for service over the line exists.

Because of the emergency nature of the situation and the need for immediate action, we are issuing this decision without advance public notice and hearings. The Administrative Procedure Act (APA), 5 U.S.C. Chapter 5, subchapter II, does not require prior notice or hearing where such procedure would be impracticable or inconsistent with the public interest, 5 U.S.C. 553(b)(B). Further, in view of the continuing emergency with respect to service over Rock Island lines, good cause exists to make this decision effective immediately.

The terms and conditions of this directed service are set forth below, and are specifically revised with respect to the rates which may be established during directed service.

Terms and Conditions

Effective date—DSO No. 1482 shall be effective at 12:01 a.m. (central time) on the first day following the service date of this decision.

Expiration date—Unless modified by the Commission, this order will remain in effect, with respect to each particular DRC, according to the terms set forth in the appendix.

Operations—The DRCs are authorized respectively, to operate over the RI tracks described in the appendix. Operation over the designated tracks includes use of facilities and appurtenances thereto that are necessary or reasonably related to train operations, including but not limited to: yards, yard facilities; maintenance facilities; communication, electrical, and signal facilities; locomotive and car repair facilities; scales; etc.

Reimbursement procedures.—Reimbursement for directed service operations under this decision shall be subject to the provisions of 49 CFR Part 1126, *Submission of Cost Data to Justify Reimbursement for Directed Service.* To ease the fiscal burdens involved in commencing service under the directed service order, any DRC may elect to use the optional three-stage funding procedure established in our directed service regulations 49 CFR 1126.3. This flexible procedure was established by us to provide for initial, interim, and final funding to assist a DRC in meeting the startup and subsequent cash requirements involved in directed service.

In an effort to facilitate further the ability of the DRCs to meet startup costs we shall partially relax the reporting requirements associated with initial funding requests under § 1126.3(b). At present, initial funding requests must be documented by three items: (i) a brief description of the DRC's initial operating plan for the directed service; (ii) a statement of its immediate cash requirements; and (iii) a statement of forecasted costs and revenues. See 49 CFR 1126.3(b)(i–iii). To streamline the initial funding process, we shall permit the DRC to omit from its "initial operating plan" certain data which we would ordinarily require.

Section 1126.3(b)(i) requires the DRC's initial operating plan to outline the following information: (1) the frequency and schedule of service planned; (2) the personnel and equipment to be utilized; (3) the crew change and interchange points to be observed; (4) any immediate maintenance and repair work required; and (5) its fuel and supply needs. However, startup funds may well be needed by the DRC before it can determine this information. Therefore, we will permit a DRC to apply for initial funding under 49 CFR 1126.3(b) without filing an initial operating plan containing all the information requested by § 1126.3(b)(i). Rather, the DRC's initial operating plan need only contain the information which it has available to it at the time of its application for initial funding. The DRC shall, however, submit an updated operating plan as soon as one is developed. Initial funding to cover start-up costs may not exceed the estimated net cost of directed service. If the DRC's start-up costs exceed the estimated net cost of directed service, the DRC may borrow the additional funds necessary to commence operations and claim reimbursement for interest on the loan as a cost of directed service. The Commission will not be responsible for the reimbursement of any costs beyond those agreed to by the Secretary of Transportation and the DRCs or in excess of the statutorily available funds under 45 U.S.C. 1003 (Section 4 of RITEA).

The issuance of this directed service order does not preclude interested rail carriers (including the DRC) from filing petitions with the Commission to operate over portions of the RI on a noncompensated basis under section 122 of Pub. L. 96–254 or similar provisions.

Track Safety—The DRCs are not authorized to expend funds to rehabilitate the track above the level necessary to provide the service certified by the Secretary of Transportation without prior approval of the Commission. The DRCs may make necessary repairs in order to keep the line operable.

A DRC, with the Trustee's consent, may enter Rock Island property before commencing operations in order to perform repairs necessary to make the line operable. Entry prior to the service period shall be at the DRC's own risk and expense with respect to insurance, casualties, and rent. Direct costs of repair work prior to the directed service period, necessary to make the line operable at the level of service specified for directed operations, may be claimed as reimbursable cost of directed service. Reimbursement for these costs may not be claimed until directed service has commenced. DRC may, however, borrow funds as needed in order to perform these repairs and claim interest expense as a reimbursable cost.

Cars and Operating Equipment—In operating the involved RI lines, each DRC shall use its own cars and operating equipment.

Employees—To the maximum extent practicable, the DRC shall hire former employees of Rock Island necessary to perform directed service over Rock Island properties. Rock Island employees hired during the directed service period do not assume an employment relationship with the DRCs. The DRC's work rules, rates of pay, and employment conditions will apply. Rock Island seniority roster shall apply.

Preservation of RI Estate—During the period of its operation of RI's lines, the DRCs shall be responsible for preserving the value of the lines to RI estate. The DRCs shall thus have an affirmative duty to perform that degree of maintenance necessary to avoid deterioration of the lines and related facilities, unless otherwise agreed.

Liabilities and expenses.—We shall treat as compensable costs of directed service all liabilities and expenses arising out of wrecks or derailments, personal injury claims and actions, and damage to or destruction of property on directed service lines. Prior to commencing operations, each DRC shall obtain necessary insurance in an amount reasonably estimated to cover major liabilities and expenses of this kind. All liabilities arising out of directed service, but not finally determined as of expiration of the directed service period, should be covered by the DRCs' Casualty Loss reserves.

Both reserves and the cost of appropriate insurance may be claimed as reimbursable costs of directed service. For outstanding claims covered by insurance, deductible amounts may be included in the reserve accounts.

Reserve accounts may be included in the directed service cost form only if contingent liabilities not covered by (or in excess of) insurance have been incurred during directed service but not finalized in amount. Those amounts shall be dispensed to the DRC as the respective liabilities are finalized and certified by the Commission for payment. See *Regional Rail Reorg. Act—Submission of Cost Data*, 348 I.C.C. 251, 278 (1975) (*Submission of cost Data I.*)

Compensation for RI lines and facilities.—The Bankruptcy Court has approved abandonment by the Trustee of the entire Rock Island system. Compensation for use of Rock Island tracks in directed service under RITEA presents a situation different from that presented in *Lehigh & New England Ry. Co.*, v. *I.C.C.*, 540 F.2d 71 (3d Cir. 1976), *cert. denied* 429 U.S. 1061 (1977) (LNE case) In the *LNE* case we concluded that compensation need not be paid by a DRC for use of tracks and related facilities unless directed service should be profitable. That decision was based to a large extent on the conclusion that directed service confers substantial benefits on the owner of the line, by relieving the owner of its duty to provide service during the period of directed operations. The Bankruptcy Court's action has relieved the RI Trustee of these duties. Therefore, we believe that the Rock Island estate should be compensated for the use of Rock Island tracks and related facilities used in directed operations, whether or not those operations are profitable.

In *St. Louis-San Francisco Railway Company—Compensation Company—Compensation for Use of Terminal Tracks—Chicago, Rock Island & Pacific Railroad Company, Debtor (William M. Gibbons, Trustee).*—I.C.C.—(decided April 7, 1980), 45 FR 25401 (April 15, 1980 (*Frisco Compensation* case) we set reasonable compensation terms for use of RI tracks during interim operations under 49 U.S.C. 11123. We believe that the terms set forth in the *Frisco Compensation* case will also provide for payment of just and reasonable compensation for use of RI tracks in directed service operations under section 104 of RITEA. Therefore, DRC shall pay the Trustee, as a reimbursable expense of directed service, compensation for use of Rock Island tracks and related facilities in accordance with the *Frisco Compensation* formula.

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Rates. The DRCs may adopt any existing local Rock Island rates or may establish new through or local rates, other than transit rates, on not less than one day's notice to the Commission and the public. Transit rates may be established on not less than one day's notice, provided that tariffs are appropriately modified requiring (1) that the further movement from transit points be from transit points not located on the line over which service is being directed, unless the further movement (a) takes place during the directed service period, or (b) takes place over a another carrier's lines if the directed service period has expired, (2) that it moves no later than sixty days after the end of the directed service period, and (3) that connecting railroads which agree to these tariff changes have no recourse against the United States should the directed carrier fail to settle a transit claim filed after the end of the directed service period.

Operational Difficulties—Any operational or other difficulties associated with the authorized operations shall be resolved by the DRC and any other affected party through negotiated agreement or, failing agreement, by the Commission's Railroad Service Board.

Reporting Requirements—The DRCs shall submit to the Commission, on a monthly basis, reports on the directed service operations. These reports shall include summaries of the traffic handled, the revenues collected, and the expenses incurred in the directed service operations, in a form to be specified by the Commission's Bureau of Accounts. Revenue, expenses, and statistics resulting from directed service operations shall be internally maintained separate form the DRC's usual railroad operations.

We find: 1. The Secretary of Transportation has made a directed service certification to the Commission, pursuant to a section 104 of Pub. L. 96–254, with respect to Rock Island's lines described in the appendix.

2. The designated DRCs are capable of performing directed service over the lines certified by the Secretary.

3. This decision will not significantly affect either the quality of the human environment or the conservation of energy resources. *See* 49 CFR Parts 1106, 1108, (1978).

It is ordered:

§ 1033.1482 Directed service order No. 1482.

(1) *Various railroads—directed service—Chicago, Rock Island & Pacific Railroad Company, Debtor (William M. Gibbons, Trustee). Entry*—Each DRC is directed to enter upon and operate RI's lines described in the appendix pursuant to this directed service order under and section 104 of Pub. L. 96–254. Entry, by each DRC, respectively, shall occur and continue in accordance with the terms set forth in the appendix. Each DRC shall notify the Commission of its entry on the property immediately after such entry takes place.

(2) *Other Matters*—Operations under this order shall conform with the directions prescribed above and the directed service certification of the Secretary of Transportation.

(3) *Commission Filings*—All submissions filed in this proceeding should refer to "DSO No. 1482" and be sent to the following Commission offices in the Commission's Headquarters at 12th and Constitution Avenue, NW., Washington, DC 20423:

(i) Office of the Secretary (Room 2215) (original)

(ii) Section of Finance (Room 5417) Office of Proceedings (3 copies)

(iii) Section of Rail Service Planning (Room 7375) Office of Policy and Analysis (3 copies)

(iv) Railroad Service Board (Room 7115) (3 copies)

(4) *Applicability*—The provisions of this decision shall apply to intrastate, interstate, and foreign commerce.

(5) *Modifications*—The Commission retains jurisdiction to modify, supplement or reconsider this order at any time.

(6) *Initial and Interim finding*—All correspondence to the Commission containing requests for initial and interim funding shall be addressed to: Ronald S. Young, Director, Bureau of Accounts, Interstate Commerce Commission, Room 6133, 12th and Constitution Avenue NW., Washington, DC 20423.

Envelopes containing such requests shall have the notation "Rock Island-DS" typed on the lower left corner.

(7) *Costs and revenues*—The DRC shall record the costs and revenues attributable to directed service in the manner prescribed in this decision and in 49 CFR 1126, 44 FR 6156, 8879 (1979), subject to the limitations set forth in the directed service certification of the Secretary of Transportation.

(8) *Service on Parties*—This decision shall be served on all parties. This decision shall also be served upon the American Short Line Railroad Association and upon the Association of American Railroads, Car Service Division (as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement).

(9) *Notice to General Public*—Notice of this decision shall be given to the general public by: (a) depositing a copy in the Office of the Secretary, Interstate Commerce Commission, Washington, DC; and (b) filing a copy with the Director, Office of the Federal Register.

(10) *Effective Date*—This decision and order shall be effective at 12:01 a.m. (central time) on the first day after this decision's service date.

(11) *Expiration Date*—Unless otherwise modified by the Commission, this decision and order will expire with respect to the various DRCs in accordance with the terms set forth in the appendix.

Decided: October 9, 1980.

By the Commission. Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam. Vice Chairman Gresham not participating. Commissioner Trantum dissenting.

Agatha L. Mergenovich,

Secretary.

Appendix

Rock Island Lines Certified for Directed Service Under Rock Island Railroad Transition & Employee Assistance Act—Pub. L. 96–254 (May 30, 1980)

1. A. *Carrier.* Wabash Valley Railroad Company, a wholly owned subsidiary of Morrison-Knudsen Company, Inc.

B. *Certification Date.* August 8, 1980.

C. *Description of Lines.*

(1) Subdivision 7, mainline track extending eastward from Phillipsburg, KS, milepost 283.9 to Mahaska, KS, milepost 170.3; and

(2) Subdivision 20–B, branchline track extending southeast from Belleville, KS, milepost 226.1 to Manhattan, KS, milepost 143.3.

D. *Service Period.* Beginning on or about September 1, 1980, and continuing for ninety days, dates inclusive.

E. *Frequency of Service.* Not less than two trains per week.

F. *Reimbursement.* In no event shall the aggregate of compensation paid or payable by the United States exceed $1,000,000 for the total directed service period.

2. A. *Carrier.* The Atchison, Topeka and Santa Fe Railway Company.

B. *Certification Date.* September 4, 1980.

C. *Description of Lines.*

(1) Subdivision 25–C, branchline track in Alva, Oklahoma, (milepost 101.0 to 103.5).

D. *Service Period.* Beginning on or about October 1, 1980, and continuing for ninety days, dates inclusive.

E. *Frequency of Service.* Service to be provided on an as needed basis.

F. *Reimbursement.* The aggregate compensation paid or payable by the United States should not exceed $170,140 for the total directed service period.

[FR Doc. 80-32402 Filed 10-16-80; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1045

[Ex Parte No. MC-96 (Sub-3)]

Property Broker Practices

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commision is adopting rules which govern the operational practices of property brokers. The Commission proposed these rules at 45 F.R. 31140, May 12, 1980. The rules adopted are identical to those proposed, except for minor corrections.

The adopted rules eliminate unnecessary governmental interference with the business dealings between brokers, shippers and carriers, reduce recordkeeping requirements, and clarify the language of the rules.

EFFECTIVE DATE: These rules become effective November 17, 1980.

FOR FURTHER INFORMATION CONTACT: Peter Metrinko, 202–275–7805 or Edward E. Guthrie, 202–275–7691.

SUPPLEMENTARY INFORMATION: These rules deal with the operational practices of property brokers. Following a notice issued last March announcing our intention to conduct a thorough examination of the regulation of brokers, and the receipt of comments in response to that announcement, we issued a set of proposed regulations last May. As we noted there, our fundamental goal in regulating transactions among brokers, carriers and shippers is to remove unnecessary restrictions which might impede the free operation of the marketplace.

Comments were received from only a small number of parties, but significant views are represented. Comments were received from, among others, the National Customs Brokers and Forwarders Association of America, Inc., and the Property Brokers Association of America, Inc., in support of the proposed rule. Several motor carriers, the American Movers Conference and the Household Goods Carrier's Bureau oppose the revisions contemplated to 49 CFR 1045.9, the rebating and compensation rule. Where no public comment has been received on a separate paragraph or section of the proposed rules, we will not address the matter further.

W.S. Hatch Co., argues that the broker is in a predominant position. Once it gets the freight, there is no bargaining. Hatch's experience with brokers, however, has apparently been largely with brokers of exempt commodities, where the brokers are not licensed, and often cannot be precisely located. In addition, the nature of originating traffic is entirely different in the exempt agricultural area. In the regulated transportation area, points of distribution or manufacture are precisely located. If a carrier wishes to bypass the broker and offer the shipper a better deal, the shipper can easily be found.

In addition, I.C.C. brokers are licensed and bonded. Failure to pay transportation bills is guarded against through the Commission's requirement of a surety bond. If the bond is revoked, a broker may not continue to operate until a valid bond is obtained. See 49 U.S.C. 10927(b). The licensed broker is also required to designate service of process agents in States where it writes contracts of has offices. An aggrieved party may thus readily bring suit against an unscrupulous broker.

Yellow Freight System, Inc., argues that the brokerage services performed are generally on behalf of the shipper, and that the carrier should not be placed in the position where it is forced to accede to the request for a commission. This subject was addressed in the notice of proposed rulemaking. We wish to emphasize, however, that the carrier and shipper are free to deal directly with each other. The carrier may, for example, convince the shipper that it will get all the necessary services from the carrier at a cheaper price. Only where the shipper finds that it can get better service from the broker will it stay with the broker. In short, we believe the carrier has it within its power to market its service in a way that will make it attractive for the shipper to deal directly with the carrier.

We nonetheless recognize that brokerage services are performed for the benefit of *both* the carrier and the shipper and we do not want to compromise the opportunities for the use of brokerage where that arrangement is beneficial to all parties. We disagree with the contentions of Yellow that benefits flow only to the shipper. Where a shipper requests that a broker find suitable motor carrier service, the broker, in contacting the carrier for the shipper, is performing similar functions to that which the carrier's sales or traffic departments would normally be performing. The broker has opened up a flow of business that would perhaps never have been tapped. Were we to preclude commissions from carriers entirely, the carrier would be obtaining free sales and traffic service. If the carrier chooses to do business with the broker on a continuing basis, it is conceivable that it might reduce its own sales operations. Finally, the carrier is never required to pay a commission. It will do so only if it determines that the tendered traffic will benefit its operations.

The American Movers Conference and Household Goods Carriers' Bureau (AMC) jointly oppose the modification of 49 CFR 1045.9, especially insofar as it would apply to property brokers of household goods. They also contend that the services of household goods brokers are not mutually beneficial to shippers and carriers. Further, household goods brokers perform services for the shipper which they contend must be paid for by the shipper because payment by the carrier would be an illegal rebate under 49 U.S.C. 10761. They argue that when a person is vested with control of a shipper's traffic because of a non-transportation relationship with the shipper, the payment of a commission by a carrier for the tendering of a shipment is an unlawful rebate, even though the person receiving the payment does not own the goods shipped or pay the transportation charges.

AMC also points to prior Commission decisions, such as *Jacobs Broker Application*, 30 M.C.C. 51, 53 (1941), which state that permitting a carrier to pay for services which benefit only the shipper is unlawful, and that allowing a broker to render free valuable services to a shipper contributes to undesirable control of the traffic, defeating freedom of negotiations.

Further, AMC argues that household goods brokers should be treated differently, since the Commission in the past has stated that these brokers offer little or no benefit to shippers or carriers.

We do not accept the overly strict interpretations of the rebate provisions of the Interstate Commerce Act by the AMC. It is clear that the Motor Carrier Act of 1980 (Act) has substantially changed the way those provisions should be interpreted. Moreover, the philosophy of the new Act gives encouragement to greater individual bargaining. While the Congress has, in certain instances, given the Commission specific direction in implementing transportation policy, it has also clearly given us a general mandate to open up the bargaining process between shippers and carriers. Amendments to the National Transportation Policy, the establishment of a zone of rate freedom accompanied by the eventual elimination of antitrust immunity for single-line rates, and the liberalization of entry for motor carriage of property are all designed to spur individual initiative in service and pricing. It is in

this context that the arguments presented by AMC must be evaluated.

It should be made clear at the outset that payment of a commission by the carrier to the broker was not completely proscribed even under present rule 49 CFR 1045.9. The prohibition extended only to payment of a commission for "brokerage" services. "Non-brokerage" services performed for the carrier, even where there was prior affiliation with the shipper, could have resulted in compensation being paid by the carrier to the broker. Thus, payment of a commission was not an illegal rebate *per se.*

The Commission's policy was partly grounded in the concept, which we now believe is incorrect, that when a broker contacts a carrier on behalf of a shipper that benefits flow only to the shipper. We reject that contention explicitly.

Let us take an example from another industry where brokers play an important part in the transaction, the real estate brokerage industry. While commission payment arrangements differ within that industry, one common arrangement is as follows. A potential seller lists a home with the broker for an agreed upon commission. The seller realizes that if it wishes to receive a certain amount of money from the transaction (hopefully, a profit) it must set the selling price at a level that takes the commission into account. A potential buyer also contacts a broker, which for simplicity we will assume here is the listing broker. The buyer agrees to sign a contract knowing that while technically the commission will come from the seller, the price of the house includes the commission to the broker. The seller agrees to the commission because the broker has found it a buyer. The willing buyer accedes to the arrangement because it knows that it is merely helping to pay the broker's commission for a service the buyer has also received—finding a suitable home. Thus, both buyer and seller have received benefits and both contribute to the broker's payment. The situation in the motor carrier industry is similar—both are receiving a benefit. We will examine some examples in the household goods broker industry.

The broker of household goods may be serving two general types of customers. First, there is the corporate customer. The broker may be hired on a long term basis to handle the household moves of the employees of an entire corporation or other large organization.

While the carrier may attempt to bargain directly with the shipper, it may prefer to allow the broker to handle preliminary details. The broker will have to coordinate schedules and handle paperwork. The broker may have to set up permanent liaison with the corporation, or may be required to learn details about the corporation in order to plan the moves most effectively. Whatever services are provided, however, also benefit the carrier. Undoubtedly the carrier would have to upgrade its own staff were it to undertake all the preliminary services necessary and incident to the actual transportation. And, obviously, the broker has benefitted the carrier by finding traffic for it.

The broker may not be able to bargain directly with the other general type of customer,[1] the individual shipper of household goods, but the fact remains that benefits still flow to the carrier. If the carrier has not prevailed in this bargaining process, it now has a choice. If it wants the traffic the broker has attracted, it can bargain with the broker. Retrieving this business should be worth something to the carrier. If it sees a benefit, the carrier should be willing to pay an appropriate commission. However, the carrier enjoys another benefit. As with the corporate customer, the broker's initial dealings with the shipper will have substituted for those that would been performed by the carrier. While the cost savings to a carrier may not be discernible in individual cases, in the long run the carrier will achieve savings by having to rely less on its own clerical or sales staff. It must be remembered that even the handling of public inquiries constitutes a real cost to an organization, although this is often not apparent on its face. The carrier may even wish to expand its reliance on the sale, paperwork and information disssemination expertise of the broker.

We thus believe that the Commission's early interpretations of the concept of lack of benefit to the carrier, as in *Jacobs, supra,* were incorrect, and that line of cases cited by AMC is overruled. As the implementation of the new Act makes the trucking industry more competitive, carriers may fully discover the advantages in having brokers find suitable shipments which their own traffic and sales departments have not located.

Finally, the Act impels us to make the compensation rule more flexible because of what we see as an increased future need for property brokers. The Act, in broad terms, makes entry into the industry easier. In specific terms, it dramatically opens up entry in the transportation of foodstuffs and other commodities by owner-operators, under the provisions of 49 U.S.C. 10922(b)(4)(E). These individuals will require assistance by property brokers in finding loads since they will not have sophisticated, or perhaps any, communications systems or sales personnel. There will be greater incentive for brokers to seek out the clientele of these owner-operators if they know they can lawfully obtain a commission for matching the needs of the owner-operators with the brokers' shipper clients.

Finally, we find little relevance in the argument that household goods brokers should be treated differently since the Commission in the past has frequently found their services to be of little benefit. We are here talking about licensed brokers whose proposed services have already been found to be in the public interest.

We should point out that in the future, household goods broker applications will be decided under an Act which favors negotiation and provides the means, e.g., rate freedoms, to bring real benefits to individual shippers of household goods.

Accordingly, we adopt the rules proposed in the prior **Federal Register** notice, as set forth in the appendix to this notice.

This action does not significantly affect the quality of the human environment or the conservation of energy resources.

This action is taken under the authority of 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: September 29, 1980.

By the Commission, Chairman Gaskins, Vice-Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

Agatha L. Mergenovich,

Secretary.

Appendix

49 CFR 1045 is revised by making the following changes:

1. Revise § 1045.2 to read as follows:

§ 1045.2 Definitions.

(a) "Broker" means a person who, for compensation, arranges, or offers to arrange, the transportation of property by an authorized motor carrier. Motor carriers, or persons who are employees or bona fide agents of carriers, are not brokers within the meaning of this section when they arrange or offer to arrange the transportation of shipments which they are authorized to transport and which they have accepted and legally bound themselves to transport.

(b) "Bona fide agents" are persons who are part of the normal organization of a motor carrier and perform duties under the carrier's directions pursuant to a preexisting agreement which provides for a continuing relationship, precluding the exercise of discretion on the part of the agent in allocating traffic between the carrier and others.

(c) "Brokerage" or "brokerage service" is the arranging of transportation or the physical movement of a motor vehicle or of property. It can be performed on behalf of a motor carrier, consignor, or consignee.

(d) "Non-brokerage service" is all other service performed by a broker on behalf of a motor carrier, consignor, or consignee.

2. Revise § 1045.3 to read as follows:

§ 1045.3 Records to be kept by brokers.

(a) A broker shall keep a record of each transaction. The record shall show:

(1) The name and address of the consignor;

(2) The name, address, and lead MC-number of the originating motor carrier;

(3) The bill of lading or freight bill number;

(4) The amount of compensation received by the broker for the brokerage service performed and the name of the payer;

(5) A description of any non-brokerage service performed in connection with each shipment or other activity, the amount of compensation received for the service, and the name of the payer; and

(6) The amount of any freight charges collected by the broker and the date of payment to the carrier.

For purposes of this subsection, brokers may keep master lists of consignors and the address and lead docket number of the carrier, rather than repeating this information for each transaction.

(b) Brokers shall keep the records required by this section for a period of three years.

(c) Each party to a brokered transaction has the right to review the record of the transaction required to be kept by these rules.

3. Delete present §§ 1045.4, 1045.5, and 1045.6 and reserve them for future use.

§ 1045.4 [Reserved]

§ 1045.5 [Reserved]

§ 1045.6 [Reserved]

4. Revise §1045.7 to read as follows:

§ 1045.7 Misrepresentation.

(a) A broker shall not perform or offer to perform any brokerage service (including advertising), in any name other than that in which its license is issued.

(b) A broker shall not, directly or indirectly, represent its operations to be that of a carrier. Any advertising shall show the broker status of the operation.

5. Delete present § 1045.8 and reserve it for future use.

§ 1045.8 [Reserved]

6. Revise § 1045.9 to read as follows:

§ 1045.9 Rebating and compensation.

(a) A broker shall not charge or receive compensation from a motor carrier for brokerage service where:

(1) The broker owns or has a material beneficial interest in the shipment or

(2) The broker is able to exercise control over the shipment because the broker owns the shipper, the shipper owns the broker, or there is common ownership of the two.

(b) A broker shall not give or offer to give anything of value to any shipper, consignor or consignee (or their officers or employees) except inexpensive advertising items given for promotional purposes.

7. Revise § 1045.10 to read as follows:

§ 1045.10 Duties and obligations of brokers.

Where the broker acts on behalf of a person bound by law or a Commission regulation as to the transmittal of bills or payments, the broker must also abide by the law or regulations which apply to that person.

8. Revise § 1045.11 to read as follows:

§ 1045.11 Transfer of property broker licenses; change in control of corporations and associations holding broker licenses; petitions for reconsideration.

(a) In order to transfer a property broker license, a transferee must file with the Commission an application for approval of the transfer. The application must contain proof that the transferee is fit, willing, and able to perform the duties of a broker and that the transfer will not be contrary to the public interest.

(b) If there is a change in the control of a corporation or association which holds a broker license, an application must be filed with the Commission describing the change and offering proof that the change is not contrary to the public interest.

(c) The rules that govern the form and manner of filing of applications, the notice that must be given to the public, and the manner of filing protests are the same as those which apply to the transfer of operating rights (see 49 C.F.R. 1100.225).

(d) Rules governing petitions for reconsideration of a decision under this subsection will be governed by the rules contained in 49 C.F.R. 1132.4 and 1100.225.

9. Delete § 1045.12 and reserve it for future use.

§ 1045.12 [Reserved]

10. Revise § 1045.13 to read as follows:

§ 1045.13 Accounting.

Each broker who engages in any other business shall maintain accounts so that the revenues and expenses relating to the brokerage portion of its business are segregated from its other activities. Expenses that are common shall be allocated on an equitable basis; however, the broker must be prepared to explain the basis for the allocation.

[FR Doc. 80-32403 Filed 10-16-80; 8:45 am]

BILLING CODE 7035-01-M

[1] Once the broker has attracted the individual's business, the carrier will not normally know the identity of the shipper. By then the individual may have contracted with the broker, and probably the broker would not willingly disclose the name of the shipper until near the loading date. To counteract this tendency, the carrier will have to step up its salesmanship when contacted by the general public by offering competitive price and service options.

49 CFR Part 1100

[Ex Parte 367]

Tariff Integrity Board

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: Upon reconsideration, 49 CFR 1100.22a(e)(4) is being revised to provide for automatic stays of Tariff Integrity Board decisions when administrative appeals of the decisions are timely filed. The final rules adopted in this proceeding on October 10, 1979 (see 44 FR 58511), did not allow such stays. This action is being taken in response to a petition filed by Southern and Eastern Territory railroads to reopen this proceeding for reconsideration. Except for the revision of 49 CFR 1100.22a(e)(4) the petition is denied.

EFFECTIVE DATE: The revision is effective October 17, 1980.

FOR FURTHER INFORMATION CONTACT: Martin E. Foley, (202) 275-7348.

SUPPLEMENTARY INFORMATION: Southern and Eastern Territory railroads (or petitioners) filed a petition for the reopening of this proceeding for reconsideration of our decision served on October 5, 1979, and published in the **Federal Register** on October 10, 1979, at 44 FR 58511. In that decision we adopted rules which allow tariff users a simplified and expedited procedure for challenging recently filed tariff publications believed to have been established in violation of: the

Commission's tariff regulations; provisions of the Interstate Commerce Act; and orders of the Commission or the courts. The challenges can result in the striking of the complained of tariff publications.

Background

Over the years, the Commission's tariff examination program has contemplated the thorough examination of all tariff matter filed with the Commission. That examination process provided a significant service to tariff users (the shipping/receiving community) since it worked to ensure tariff compliance with the Act, Commission and court orders, and our tariff publishing requirements. Tariffs filed in violation of those authorities were subject to rejection. That examination process also served tariffmakers since deficiencies in filed tariffs were brought to the attention of responsible tariff officials either for corrective action or for future guidance.

In recent years, however, the Commission has been faced with budgetary and personnel constraints. Therefore, beginning with fiscal year 1980, the Commission adjusted its tariff examination program in order to contend with the constraints. Initially, a random sampling examination program was implemented. The sampling program has since been discontinued, and a more limited program of title page examination has been adopted for not yet effective tariffs. Under the title page examination program, only the title pages of tariff filings are reviewed for violations of our tariff publishing requirements. The remaining pages of the tariff publications are not normally reviewed prior to publications' effective dates.

The Commission, however, believes it would be wholly inappropriate to abandon the services and safeguards it formerly offered to tariff users under its complete tariff examination program. In this regard, the Tariff Integrity Board (or T.I. Board) was established as an alternate methodology to protect the public from tariff deficiencies not detected under limited examination programs. In brief, upon complaint of tariff users, tariff matter judged by the Tariff Integrity Board to be so severely flawed as to be deemed unlawfully established may be ordered stricken. Thus, tariff users can continue to rely on the Commission to assure that tariff-makers meet their lawful obligations when constructing and filing tariffs.

The rules under which the T.I. Board operates became effective on October 10, 1979, upon publication in the Federal Register. The present petition seeks to reopen this proceeding for the purpose of amending the adopted rules to reflect the petitioners' views or to adopt a new set of rules previously proposed by the petitioners in their comments submitted in the rulemaking proceeding.

Discussion and Conclusions

Basically, the petitioners feel that the scope and powers of the T. I. Board are too broad. Specifically, petitioners hold that the Board's interests should "cover only inadvertent tariff publishing errors and not violations of the Act, court or Commission orders or other areas of substantive content." Taking petitioners literally, the Board would need to be endowed with clairvoyance to discern "inadvertent" publishing errors from those not "inadvertent." Further, to deny the T. I. Board the right to rectify violations of the Act, or Commission or court orders, would be tantamount to stripping the Commission of current powers whereby tariffs are rejected for such violations. For example, as a result of a Commission decision and order,[1] current regulations require the timely transmission of tariffs to subscribers. Moreover, tariff-makers are required to certify their compliance with this requirement. Under the former full tariff examination program, the observed absence of such certification could have resulted in the rejection of the filed publication. Under our limited examination, the absence of such certification might not be detected; and neither will the tariff users be aware of non-receipt of tariffs in a timely fashion. Under petitioners' plan, tariff subscribers would have no prompt remedy should they fail timely to receive a tariff filing containing matter contrary to their best interests; consequently, those tariff users would effectively be denied their right to protest new or changed tariff provisions. We cannot countenance such a voiding of our obligation to the tariff users. It is proper that the T. I. Board act on complaints concerning noncompliance with Commission and court decisions. This power is merely an amplification of the recognized right[2] of the Commission to reject tariffs filed in violation of an order of the courts or the Commission, whether or not the order is codified in regulations.

Neither can we subscribe to petitioners' plan that the T. I. Board not entertain complaints based on alleged violations of the Act. Under limited examination, tariffs filed on less than 30 days' notice (without Commission approval) could go undetected. Such publications would violate the statutory requirement of the Act that filings give not less than 30 days' notice. Again, absent the power of the T. I. Board, tariff users could be deprived of their right to protest. Again, we do not feel that we can relinquish our obligation to protect tariff users through assurance of compliance with statutory mandates.

Petitioners also express anxiety that the T. I. Board will consider the striking of challenged tariff filings on substantive grounds. We believe such anxiety is misplaced since the parameters of the Board's power to strike are identical to the parameters of the Commission's right to reject, namely—our tariff regulations, court or Commission orders and the Act itself. To the extent that challenged matter will be measured or interpreted against those authorities, the Board will deal with substantive issues. However, this process is no different than was formerly exercised when consideration was being given to rejection of tariffs under the former program of complete tariff examination of all filings to the Commission. Additionally, under the processes of the T. I. Board, tariff-makers are given a protection not previously enjoyed under rejection processes. Under the T. I. Board, tariff-makers have the right to respond to challenges against their tariffs. Thus, any invalid grounds relied on in support of possible strike action can be refuted by the tariff framers. The right to respond prior to rejection was never established under former processes. In summary, the authorities delegated to the T. I. Board in consideration of strike action do not exceed the long-standing authorities formerly relied on in consideration of rejection.

Petitioners contend that the power of the T. I. Board to strike tariffs *ex post facto* is a departure from past Commission policy and practice. We acknowledge this point in our prior decision served October 5, 1979. Thus, petitioners' real concern appears to run more against our right to adopt new or revised policy and practice than against our rationale for doing so.

It has been held that the Commission is free to make changes to accommodate its needs and those of the transportation community. In *American Trucking Associations* v. *Atchison, T. & S. F. Ry. Co.*, 387 U.S. 397 (1967), the following is stated at page 416:

> . . . the Commission, faced with new developments or in light of reconsideration of the relevant facts and its mandate, may alter its past administrative rulings and practice . . . In fact, although we make no judgment as to the policy aspects of the Commission's action, this kind of flexibility and adaptability to changing needs and patterns of transportation is an essential part of the office of a regulatory agency. Regulatory agencies do not establish rules of conduct to last forever; they are supposed, within the limits of the law and of fair and prudent administration, to adapt their rules and practices to the Nation's needs in a volatile, changing economy. They are neither required nor supposed to regulate the present and the future within the inflexible limits of yesterday.

The strike authority of the T. I. Board is patterned after the rejection authority presently delegated to certain employees of the Commission's Bureau of Traffic. The delegation calls for the rejection of publications filed with the Bureau which fail to comply with the law and applicable rules and regulations. The rejections take place prior to effective dates. The delegation of authority to the T. I. Board allows it to strike tariff matter which it finds to have been unlawfully established. Such strike decisions—as has been true of rejection decisions—are appealable to a division of the Commission. Complaints which the T. I. Board finds to be highly controversial will likely be referred to the Commission's formal docket.

Past rejections which have been made subsequent to published effective dates have been the result of formal cases wherein tariff publishers and/or carriers have been unable to "show cause" why a particular tariff filing or portions of filings should not be rejected and stricken from the Commission's files. An example of this type of rejection/strike action is contained in *Acme Fast Freight, Inc., Common Carrier Application*, 17 MCC 549 (1939), sustained 30 F. Supp 968 (1940), affirmed 309 U.S. 638 (1940).

The following language is contained in the Commission's decision at pages 556 and 557:

> Section 217 further provides:
>
> * * * and the Commission is authorized to reject any tariff filed with it which is not a consonance with this section and with such regulations. Any tariff so rejected by the Commission shall be void and its use shall be unlawful.
>
> Under this provision we may "reject" any tariff filed with us which is not in consonance with Section 217 and with our regulations thereunder. We may refuse to accept such a tariff at the time it is first transmitted to us for filing, and we think the provision is reasonably interpreted as granting us implied authority later to strike such a tariff from our files if and when it is determined that it is not in consonance with the section or the regulations thereunder. In several instances we have ordered tariffs stricken from our files. *Wharfage, Handling and Storage Charges*, 59 ICC 488, *Mercer Valley R. Co.* v. *Pennsylvania R. Co.*, 69 ICC 233, *Express Merchandise from Cincinnati, Ohio, to South*, 210 ICC 89, and *Pollard, Receiver* v. *Fort Benning R. Co.*, 206 ICC 362; compare *Powell* v. *United States*, 300 U.S. 276, 285. If tariffs are unlawful, as in *Express Merchandise from Cincinnati, Ohio, to South, supra*, they may not lawfully be used, have no proper place in our files, and may be expunged. If they are not required by statute to be filed, we are not bound to accept them, and if we should accept them upon misapprehension, or inadvertently without examination or without determination as to whether they are proper subjects for filing, we may later reject them and strike them from our files.

A recent example of the Commission's rejection/strike action in Docket No. 36870, *National Association of Specialized Carriers, Inc., Agent-Show Cause and Strike Order*, not printed (1978). In this particular case, the Commission rejected and struck from its files a tariff which was found to have been unlawfully established as a result of non-compliance with the Commission's regulations on the transmission of tariff publications published at 49 CFR 1310.31. The Commission held that since the tariff never had been lawfully established, it was invalid and therefore never applicable. Thus, the strike decision applied retroactively to the stricken tariff's effective date. This action is representative of that which has now been delegated to the T. I. Board.

The petitioners express a concern that tariffs will be stricken for the slightest of infractions. This certainly is not the case. Tariffs have been stricken in the past only for significant publishing or compliance errors. The T. I. Board will continue this practice. However, each case submitted to the T. I. Board will be considered on its own merits. What may be cause for a strike decision in one case may not necessarily be cause for a strike decision in another case.

The retroactive application of the T. I. Board's decisions and resulting overcharges or undercharges were matters of great criticism in the comments we received in this proceeding. This criticism was addressed in our earlier decision. However, the petitioners have again raised this issue and hold that the T. I. Board's decisions may not apply retroactively. Thus, overcharges and undercharges would not exist. The retroactive application of a strike decision is not something new. As pointed out earlier, such an application was used recently by a division of the Commission in Docket No. 36870. Further, an entire Commission made the following statement in *H. J. Baker & Bros., Inc.-Statute of Limitations*, 357 ICC 640 (1978), at page 644:

> The tariffs on file, although unlawful, specified the applicable rate which shippers were bound to pay, pursuant to the act. The act requires strict observance of the tariff regardless of the inherent unlawfulness of the rates specified. However, when and if the rates are shown to be unlawful for any reason, shippers are entitled to recover the difference between what they paid under the applicable tariff, and what is subsequently determined to be the lawful rate. Since the applicable rate cannot be deemed the lawful rate merely by virtue of being on file with the Commission, the argument of the Canadian railroads that the rates assessed were the lawful rates is without merit.

The amounts carriers or shippers may be liable for as a result of the T. I. Board's strike decisions are separate issues which would be dependent on the facts of each case. The T. I. Board does not resolve these issues, which may be resolved through the informal or formal complaint processes or through the courts.

Under the random sampling tariff examination program we expected that a certain number of unlawfully established tariffs would become effective. The substitution of our title page examination program in lieu of the more comprehensive random sampling program will undoubtedly lead to more such tariffs. Without the simplified and expedited complaint procedure of the T. I. Board, tariff users would be forced to file formal complaints with the Commission concerning alleged unlawfully established publications. We feel that the formal complaint alternative would be a needless burden upon complainants and this Commission's already crowded formal docket. The T. I. Board and its authority to strike unlawfully established tariff matter are needed in view of our changed regulatory approach and the need for a deterrent for those who might become careless or devious in their tariff publishing practices.

The petitioners feel that the filing of an exception to a decision of the T. I. Board should automatically stay the effectiveness of the decision. In our notice of final rules in this proceeding, we stated that the decisions of the T. I. Board will become effective when served. We believe that petitioners are correct and that T. I. Board decisions should be automatically stayed upon the filing of an appeal.

Section 10322 of the Act states that, in non-rail cases, if review is sought of an initial decision by a board or an employee, the decision is stayed or postponed pending final determination of the matter. Section 10327(f)(2) contains similar language for rail proceedings. Rule 98(b)(6) of the Commission's General Rules of Practice

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[1] *Regulations For The Transmission Of Tariffs And Schedules To Subscribers And Other Interested Parties*, 349 I.C.C. 119 (1975).

[2] 49 CFR 1300.14(e)(1); 49 CFR 1310.1(i)(3).

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(49 CFR 1100.98(b)(6)), as revised in Ex Parte No. 55 (Sub-No. 45), *Appellate Procedures*, decided July 2, 1980, provides for automatic stays of employee board decisions.

Although we believe the effectiveness of rejection decisions should not be unreasonably delayed and do not expect frequent appeals from such decisions, we see no compelling reasons not to provide the same automatic stay of rejection decisions as our General Rules of Practice provide when other employee decisions are appealed. Accordingly, Rule 22a(e)(4) (49 CFR 1100.22a(e)(4)) is revised to read as follows:

PART 1100—GENERAL RULES OF PRACTICE

§ 1100.22a Special procedures for dealing with unlawfully established tariffs or rates.

* * * * *

(e) Processing of complaints

(1) * * *

(2) * * *

(3) * * *

(4) An administrative appeal of the Tariff Integrity Board's decision may be taken, as appropriate, pursuant to Rules 96 and 98 of the rules of practice (49 CFR 1100.96 and 98). In accordance with rule 98(b)(6) of the rules of practice (49 CFR 1100.98(b)(6)), the Board's decision will be stayed automatically pending the Commission's action on appeal.

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

The petition for reopening and reconsideration filed by Southern & Eastern Territory railroads in this proceeding is granted to the extent that it seeks a rule revision to allow automatic stays of Tariff Integrity Board decisions upon the timely filing of administrative appeals. In all other respects the petition is denied.

(49 U.S.C. 10321, 10762, 10304, and 10305, 5 U.S.C. 553 and 559)

Decided: September 25, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Stafford, Clapp, Trantum, Alexis, and Gilliam. Commissioner Gilliam dissenting with a separate expression.

Agatha L. Mergenovich,

Secretary.

Commissioner Gilliam, dissenting:

I would grant the petitioners' request for reopening and reconsideration based on material error. While I am not opposed to the concept of the Tariff Integrity Board, I believe that the delegation of authority is overly broad. Specifically, I am concerned that delegating the power to reject tariffs which are already in effect, will lead to a proliferation of this type of situation which was formerly a rare occurrence. I question whether the practice of tariff rejection after the fact is even legally or practically defensible.

First, there is the problem of ascertaining what was the legal rate in effect during the period of time the rejected tariff was on file with the Commission. If that uncertainty can be resolved, there is the question of remedy. It seems logical that if we are to find that a tariff was "invalid and therefore never applicable", then the carrier would have the burden of reimbursing all amounts collected under the rejected tariff. However, without a keep account order or even knowledge by the carrier of the identity of non-complaining shippers this becomes an impossible task. What makes it even more onerous is the fact that the tariff provision may be perfectly lawful but nevertheless rejected because it was technically filed incorrectly.

If the Commission even has the power to retroactively reject tariffs, which is debatable, I would retain it and exercise it with extreme caution.

[FR Doc. 80-32394 Filed 10-16-80; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

Hunting; National Wildlife Refuges in Alabama, Louisiana, and Mississippi

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulations.

SUMMARY: The Director has determined that the opening to hunting of certain national wildlife refuges in Alabama, Louisiana, and Mississippi is compatible with the objectives for which the areas were established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public. In addition, managed big game hunts are designed to keep population levels compatible with habitat capabilities. This document establishes special regulations effective for the upcoming hunting seasons for certain migratory birds, upland game, and big game species.

DATES: Period covered—October 20, 1980 to May 30, 1981. See state regulations for waterfowl seasons.

FOR FURTHER INFORMATION CONTACT:

The Area Manager or appropriate refuge manager at the address or telephone number listed below:

Gary L. Hickman, Area Manager, 200 E. Pascagoula St., Suite 300, Jackson, Mississippi 39201, Telephone (601) 960-4900.

Acting Refuge Manager, Eufaula National Wildlife Refuge, Route 2, Box 97-B, Eufaula, Alabama 36027, Telephone 205/687-4065.

Refuge Manager, Delta National Wildlife Refuge, Venice, Louisiana 70091, Telephone: Pilottown 3-3232.

Refuge Manager, Morgan Brake National Wildlife Refuge, P.O. Box 107, Yazoo City, Mississippi 39194, Telephone: 601/746-8511.

SUPPLEMENTARY INFORMATION: Alton Dunaway is the primary author of these special regulations.

General Conditions

1. Hunting is permitted on national wildlife refuges indicated below in accordance with 50 CFR Part 32, all applicable state regulations, the general conditions, and the following special regulations:

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires: (a) that any recreational use permitted will not interfere with the primary purpose for which the area was established; and (b) that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

The recreational use authorized by these regulations will not interfere with the primary purposes for which these refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November, 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

2. A list of special conditions applying to individual refuge hunts and a map of the hunt area(s) are available at each refuge headquarters. Portions of refuges which are closed to hunting are designated by signs and/or delineated on maps.

3. Access points on certain refuges are limited to designated roads or other specified areas. Vehicle use on all refuge areas is restricted to designated roads and lanes.

4. Only steel shot ammunition may be used during refuge migratory waterfowl hunts. Possession of lead or other toxic shot in any gauge is prohibited during such hunts.

5. Persons under 16 must be under the close supervision of an adult. For safety reasons each adult may not have more than two juveniles under his supervision.

6. Unless otherwise specified, dogs are not permitted on refuge areas during hunts. Exception: retriever dogs are allowed during waterfowl hunts, but they must be under control of the handler at all times.

§ 32.12 Special regulations; migratory game bird hunting for individual wildlife refuge areas.

Mississippi

Morgan Brake National Wildlife Refuge

(1) Ducks and coots only may be hunted on Monday, Wednesday, and Saturday mornings from one-half hour before sunrise to 12 noon during the State duck hunting season in Area II of the refuge, which is north of and including Morgan Brake bayou.

(2) Woodcock and snipe—State season.

§ 32.22 Special regulations; upland game hunting for individual wildlife refuge areas.

Louisiana

Delta National Wildlife Refuge

(1) Species permitted: rabbit only—October 20, 1980 through November 16, 1980, 8:00 a.m. to 4:30 p.m. daily.

(2) Permits are required.

(3) Shotguns only; loaded firearms in boats prohibited. Firearms may not be discharged within 250 yards of buildings or work sites.

(4) Camping is prohibited.

Mississippi

Morgan Brake National Wildlife Refuge

(1) Upland game hunting is permitted for rabbit, squirrel, raccoon, and opossum. Beaver may be taken as an incidental species.

(2) Seasons: rabbit—State season except dogs allowed only from February 1, 1981 through February 28, 1981; squirrel—State season; raccoon and opossum—November 1, 1980 through November 20, 1980 and January 16, 1981 through February 8, 1981. Hours for raccoon and opossum hunting are from 6:00 p.m. until 4:00 a.m.

(3) Sunday hunting is prohibited.

(4) Dogs are permitted during the raccoon and opossum hunts. Only beagles are permitted during the February 1, 1981 through February 28, 1981 rabbit hunt.

§ 32.32 Special regulations; big game hunting for individual wildlife refuge areas.

Alabama

Eufaula National Wildlife Refuge

(1) Archery deer hunt: October 20, 1980 through November 18, 1980. Either sex.

(2) Permanent tree stands are not permitted. No nails or spikes may be driven into trees. Portable stands may not be left overnight.

(3) Sunday hunting is prohibited.

Mississippi

Morgan Brake National Widlife Refuge

(1) Archery deer hunt: October 20, 1980 through remainder of State seasons. Primitive weapons deer hunt: State season. Gun deer still hunt: December 13, 1980 through December 26, 1980.

(2) Dogs and "driving" deer prohibited.

(3) Portable tree stands only. Metal objects may not be driven into trees.

(4) Sunday hunting is prohibited.

The provisions of these special regulations supplement the regulations which generally govern hunting on wildlife refuge areas and which are set forth in Title 50, Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

Dated: October 10, 1980.

Wendell A. Neal,

Acting Area Manager.

[FR Doc. 80-32405 Filed 10-16-80; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 45, No. 203
Friday, October 17, 1980

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 305

Intragovernmental Communications in Informal Rulemaking Proceedings; Draft Recommendations

AGENCY: Administrative Conference of the United States.

ACTION: Request for public comments on draft recommendations.

SUMMARY: The Administrative Conference's Committee on Agency Decisional Processes has under consideration draft recommendations on intragovernmental communications in informal rulemaking proceedings. Interested persons are invited to comment on the draft recommendations.

DATE: Comments due by November 5, 1980.

ADDRESS: Send comments to Charles R. Pouncy, Administrative Conference of the United States, 2120 L Street, N.W., Suite 500, Washington, D.C. 20037 (202–254–7065).

FOR FURTHER INFORMATION CONTACT: Charles R. Pouncy (202–254–7065).

SUPPLEMENTARY INFORMATION: The Administrative Conference's Committee on Agency Decisional Processes has under consideration draft recommendations on intragovernmental communications in informal rulemaking proceedings, based on a report prepared by Dean Paul Verkuil of the Tulane University School of Law.

The proposed recommendations are addressed to agencies that engage in informal rulemaking. These recommendations seek to clarify the appropriate communications relationship among both executive branch and independent agencies and among these agencies and the President, his or her advisors, and units of the Executive Office during informal rulemaking, and are based on the conclusion that communication among these units of the Executive Branch during informal rulemaking is both proper and desirable.

The draft recommendation is subject to comment by affected agencies and other interested persons and organizations and then to further consideration by the Committee on Agency Decisional Processes, the Council of the Administrative Conference, and the Assembly of the Conference at Plenary Session.

The Committee would be particularly interested in comment concerning the recommendations' applicability to independent agencies (references to independent agencies appear in brackets).

PROPOSED RECOMMENDATION

Intragovernmental Communications in Informal Rulemaking Proceedings

Preamble

The growing complexity and scope of government regulation have increased the importance of communication and coordination among agencies. Because the President, as the nation's Chief Executive, may be deemed accountable for what agencies do, efforts to achieve policy coordination through Presidential channels have become increasingly significant.

When dealing with Executive branch agencies, the President has undoubted constitutional power to execute the laws and direct his subordinates. In recent years he has attempted to do this through a variety of analytical and procedural mechanisms, such as the promulgation of Executive Order 12044 and establishment of the Regulatory Analysis Review Group and the Regulatory Council. The exercise of Presidential direction has not been limited to the establishment of general mechanisms, however. The President, his advisors, and units of the Executive Office have also on occasion intervened directly in the formation of policy during particular rulemaking proceedings. This intervention has raised questions by private participants about the manner in which the power of direct executive oversight should be exercised.

[When dealing with independent agencies, the President has undoubted consitutional power to inform them of his policy views on issues within their respective jurisdictions. Here again the important question concerns the manner in which the President, his advisors, and units of the Executive Office communicate their opinions concerning the position the agency should adopt.]

This recommendation sets forth the views of the Administrative Conference concerning the appropriate communications relationship among [both] executive branch [and independent] agencies and among these agencies and the President, his advisors, and units of the Executive Office when policy decisions are made through the process of informal rulemaking. It pertains to rulemaking of general applicability, not to proceedings (whether rulemaking or adjudication) that involve the distribution, modification or revocation of valuable privileges to identifiable private interests. To some degree it is a corollary to ACUS Recommendation 77–3 which dealt with restrictions upon private participant's oral and written communication in informal rulemaking. The recommendation is harmonious with the views of the Office of Legal Counsel of the Department of Justice concerning the legal requirements applicable to such communications in rulemaking proceedings.

The recommendation is based upon the need to accommodate two competing elements of a good rulemaking process. The first is the desirability of being able to identify a coherent body of information upon which the rulemaking agency's decision is based, and to make this information available to all—other participants in the process, the staff of the agency itself, and reviewing courts. The second is the desirability of affording government officials opportunity to engage in uninhibited internal debate over the policy implications of this body of information, subject only to the requirement that the ultimate conclusion be rational and adequately explained.

This recommendation recognizes both these principles. Rulemaking agencies should not permit, and other units of the government should not request, any opportunity to introduce into the proceeding substantive information not made available to other participants. At the same time, units of the government other than the one conducting the rulemaking proceeding may have a perspective or expertise not readily available to the rulemaking agency that would enhance the quality of the internal debate on the implications of

the information in the rulemaking record, and their participation should be encouraged.

The recommendation is also concerned with avoiding any possibility that participants from outside the rulemaking agency might act as secret or inadvertent conduits for significant new information, and with insuring that other participants have an adequate opportunity to respond to significant substantive information that is introduced.

[The recommendation encompasses the relationships of the institutional Presidency and Executive branch agencies to independent agencies. Like Executive branch agencies, the independent agencies should not rely on substantive information not available to all participants in a rulemaking proceeding, but neither should they be forced to reject any improvement in their deliberative process that could be provided by officials from other parts of the government. The Conference recognizes that a distinction has long been drawn between independent and executive agencies in so far as Presidential control is concerned, but it does not believe that the principle of independence would be violated by the practices recommended. The independence of these agencies is adequately protected by the fact that the President can neither over rule an agency's final decision nor remove its members.]

The final part of the recommendation expresses the Conference's views on the general principle that should govern judicial review in the area. It does not believe that repetitive inquiry into who participated in an agency's policymaking process or whether a stray fact might have slipped into the deliberations is either necessary of fruitful.

Recommendation

In informal rulemaking proceedings by Executive branch [and independent] agencies:

1. The President, his advisors, the Executive Office of the President, and agencies other than the rulemaking agency should remain free to communicate policy recommendations in written or oral form to the rulemaking agency without having the fact or substance of these intragovernmental communications made public, so long as the communications do not involve the introduction of significant substantive information not already a part of the rulemaking record.

2. Written communications, and summaries of oral communications, from the President, his advisor, the Executive Office of the President or agencies other than the rulemaking agency containing significant substantive information not already a part of the rulemaking record of the proceeding should be placed promptly in that record by the rulemaking agency. However, all communications containing or reflecting comments by persons outside the government which are transmitted to the rulemaking agency by these sources should be identified and placed in the record of the proceeding regardless of their content.

3. If the President, his advisors, units of the Executive Office or an agency other than the rulemaking agency participate in a rulemaking pursuant to paragraph 1, all communications received by the participant from persons outside the government containing significant substantive information not already a part of the rulemaking record should be sent to the rulemaking agency for inclusion in that record.

4. Any material placed in the rulemaking record pursuant to paragraphs 2 and 3 should be made available within the time limits specified for public comment. When materials of these types are introduced at or after the end of the comment period, then agencies should be mindful of the desirability as a rule of giving nongovernment participants adequate opportunity to respond if the material presents new and important issues or create serious conflicts of data.

5. Judicial review of a final rule should focus on the adequacy of the materials before the rulemaking agency and the agency's consideration of them, not upon the fact or extent of participation in the rulemaking process by the President, his advisors, the Executive Office of the President, or agencies other than the rulemaking agency.

Richard K. Berg,
Executive Secretary.
October 15, 1980.

[FR Doc. 80-32546 Filed 10-16-80; 8:45 am]
BILLING CODE 6110-01-M

1 CFR Part 305

Separation of Functions in Agency Proceedings; Draft Recommendation

AGENCY: Administrative Conference of the United States.

ACTION: Request for public comments on draft recommendations.

SUMMARY: The Administrative Conference's Select Committee on Ex Parte Communications has under consideration draft recommendations on separation of functions in agency proceedings. Interested persons are invited to comment on the draft recommendations.

DATE: Comments due by November 5, 1980.

ADDRESS: Send comments to Jeffrey Lubbers, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, D.C. 20037 (202–254–7065).

FOR FURTHER INFORMATION CONTACT: Jeffrey Lubbers (202–254–7065).

SUPPLEMENTARY INFORMATION: The Administrative Conference's Select Committee on Ex Parte Communications has under consideration draft recommendations on separation of functions in agency proceedings, based on a report prepared by Professor Michael Asimow of the UCLA School of Law.

The proposed recommendations are addressed to agencies that engage in administrative adjudicative or rulemaking proceedings. With respect to formal adjudications, the recommendation seeks to provide guidance on a system of separation of functions, consistent with the requirements of the Administrative Procedure Act, that will achieve the basic purposes of separation without imposing undue costs on agencies. With respect to proceedings for making rules of general applicability, the proposal urges no separation of functions; instead it recommends that staff communications containing significant information be placed on the public record.

The draft recommendation is subject to comment by affected agencies and other interested persons and organizations and then to further consideration by the Select Committee on Ex Parte Communications, the Council of the Administrative Conference, and the Assembly of the Conference at Plenary Session.

PROPOSED RECOMMENDATION

Separation of Functions in Agency Proceedings

Preamble

Separation of functions is a principle of administrative law that calls for exclusion from the agency's decision-making process of those staff members who have performed a role in that case, such as advocacy, negotiation, or investigation, which would be likely to commit them to a particular result.

This principle is implemented in section 554(d) of the Administrative Procedure Act which precludes agency prosecutors or investigators from participating or advising off-the-record

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in the decision of certain formal adjudications. As a matter of practice, however, separation of functions is observed in virtually all individualized on-the-record proceedings, even though not required by section 554(d). The Administrative Conference has recommended that the APA be amended to extend the provisions of section 554(d) to all on-the-record proceedings. [Resolution No. 3, 1 CFR § 310.2 (1973)].

Separation of functions is designed to achieve certain objectives. The most important rationale is to protect the neutrality of decision-makers by screening out advice from staff members whose personal involvement in the case is likely to impair their objectivity. In addition, separation of functions helps to avoid infusion of irrelevant criteria and non-record factual inputs into the decision-making process. It also safeguards adversary values and expectations. However, separation of functions, particularly in large and complex cases, entails certain costs. For example, it often precludes decision-makers from obtaining advice from the best qualified staff adviser because the expert is an adversary. Separation of functions can seriously interfere with the ability of agency heads to control important cases, to set policy and to become aware of emerging problems. It can cause serious delays, costly duplication of staff, and confusion about what communications are permissible, and it can interfere with other agency functions carried on concurrently with the proceeding in question.

Separation of functions need not be applied on an all-or-nothing basis; numerous distinctions can be drawn between the different roles of staff members, different types of communication, different types of proceedings, and different stages of the proceedings. It is the purpose of Part A to provide guidance on a system of separation of functions which will achieve the basic goals of separation in individualized on-the-record proceedings without imposing undue costs upon agencies and upon the decision-making function in such proceedings.

In agency proceedings for making rules of general rather than particular applicability (regardless of whether trial-type procedures are employed), the costs of separating functions increase and the reasons for doing so are much less compelling. In proceedings directed at general problems rather than particular respondents, the outcome is likely to be determined by information of a general nature and by broad policy considerations. It is often difficult even to identify the staff members who would be considered adversaries; moreover, participation in such proceedings is less likely to produce a "will to win" which would impair the ability of the staff member to furnish objective advice. Furthermore, because of the complexity of the facts, the bulk of the record, the great variety of interests affected, and the magnitude of the effects of such rules, the value of according to each participant the procedural parity common to individualized proceedings must yield to the agency's need to avail itself fully of staff expertise. The Conference has previously urged that Congress not require on-the-record, trial-type procedures for making rules of general applicability (Recommendation 72–5). Whether the rulemaking procedure followed is formal, hybrid, or informal notice-and-comment, we do not believe separation of functions should ordinarily be employed.

However, even informal rulemaking has developed into a process involving a structured exchange of views. In such a proceeding all centrally relevant data in the agency's possession should be disclosed for outsiders to comment on and criticize, and the agency's statement of basis and purpose, issued with the rule, should respond to all material comments and criticisms. In reviewing the rule, courts are limited to the record before the agency and, to an increasing extent, agencies are inhibited from adding material to that record which has not been subjected to scrutiny by outsiders during the rulemaking process. This structured rulemaking process and record-oriented judicial review can be undermined by off-the-record informational communications by staff members to decisionmakers. However, such communications from participating staff members which represent policy advice, assistance in analyzing the record, or similar non-evidentiary inputs, are valuable to the agency and do not undermine the integrity of the rulemaking process or judicial review. Part B is intended to require critical informational inputs from the staff to be placed on the record.

Part A

Separation of Functions in Formal Adjudications and Other Individualized On-the-Record Proceedings

1. The principle of separation of functions, as defined in section 554(d) of the Administrative Procedure Act, should be applied not only in those cases of formal adjudication now governed by section 554(d), but also in proceedings involving individualized, non-accusatory decision-making where the agency determination is required by law a custom to be made on the record after opportunity for a hearing. These cases typically include initial licensing, setting or determining the validity of an individual carrier's or utility's rates, approval of financial transactions or of market entry or exit. In such proceedings, staff members with significant involvement as adversaries in the case (or a factually related case) should not advise or otherwise participate in the decision, except through an on-the-record presentation.

2. Whether or not a proceeding is governed by section 554(d), agencies should comply with the following guidelines in applying the principle of separation of functions:

(a) An "adversary" for purposes of separation of functions is a staff member who has taken a significant part in negotiating, preparing, or advocating one side of a case in a way which makes likely a personal commitment to a particular result. Whether such involvement occurs before or after the matter is designated for a hearing should not be determinative.

(1) A person whose only involvement in the case is his institutional relationship to an adversary (i.e., as a supervisor, colleague, or subordinate) should not be considered an adversary.

(2) Staff members who serve as witnesses at the hearing, or who have given expert advice to a staff adversary, should not be disqualified unless they have become adversaries themselves (for example, by participating in planning litigation strategy), or, in the case of witnesses, unless the credibility of their testimony is a significant issue in the case.

(3) Staff members who assist agency decision-makers in deciding whether to launch an investigation or designate a matter for hearing, or in framing the issues or proposed remedies to be considered at the hearing, should not be considered adversaries unless they have significant additional adversary involvement (e.g., in negotiating, investigating, or advocating the staff's position).

(4) Staff members who as a result of taking a position on the substantive merits in a judicial proceeding have become personally committed to a particular result should be treated as adversaries.

(5) Staff members who help the agency prepare for a nonadversarial phase of a proceeding (such as an informal public meeting, budgeting, informal rulemaking, or providing Congressional testimony) should not be treated as adversaries.

(b) Persons who are classified as adversaries should nevertheless be available to advise decision-makers under certain circumstances.

(1) Adversaries may appropriately advise decision-makers on predesignation issues (such as those mentioned in (a)(3)).

(2) Adversaries should be available to advise decision-makers about non-adversarial phases of the proceeding (such as those mentioned in (a)(5)).

(3) Adversaries and agency decision-makers may communicate regarding the merits of the case if they do so on the record, without prior notice to outsiders and without providing an immediate opportunity to respond, so long as an adequate opportunity is provided for an effective response.

(4) Agency heads should not permit separation of functions to isolate them from problems arising in pending proceedings, particularly those which involve unusually important issues or substantial commitments of agency resources. Mechanisms which would enable agency heads to assert control over the course of such proceedings include:

(i) Conferences with all parties to a proceeding;

(ii) Consultation with the presiding administrative law judge (on matters other than facts in issue);

(iii) Interlocutory appeals or certification of questions to the agency.

(iv) In appropriate cases the agency heads and the adversary staff might be permitted to communicate off-the-record about procedural matters, adding or dropping issues, settling or abandoning the case, or providing or obtaining guidance on policy matters, provided that the adversaries refrain from advocacy on substantive issues or interjection of non-record information. Such off-the-record channels of communications should ordinarily be available only in the early stages of a case and in no event after the conclusion of the hearings before the ALJ.

(c) In proceedings involving the imposition of sanctions for unlawful conduct, agencies may wish to impose more rigid separation of functions, and should generally do so in such proceedings where it would not impose an undue burden on the agency.

Part B

Rulemaking of General Applicability

In making rules of general applicability, whether informal, hybrid, or informal proceedings, agencies should not ordinarily apply the principle of separation of functions. Instead, they should permit free consultation between agency staff and decision-makers, while ensuring that the rulemaking record adequately reflects all the relevant information before the agency.

(1) Staff communications which convey significant new information of central relevance to the rule should be placed into the rulemaking record in time to provide the public with adequate opportunity to respond.

(2) All staff members should ordinarily be available to the decisionmakers for off-the-record policy advice or assistance in evaluating the rulemaking record. However, where, under agency practice, a staff member or unit is assigned a rule as proponent of the proposed rule or of a specific point of view or interest in the proceeding, the agency should minimize its reliance on off-the-record communication with that member or unit.

(a) In distinguishing between informational and non-informational communications, agencies should consider the developing law under exemption (b)(5) of the Freedom of Information Act.

(b) Agencies should continue to have discretion not to disclose factual information relevant to the rulemaking which is privileged from disclosure by other exemptions of the Freedom of Information Act.

Richard K. Berg,

Executive Secretary.

October 15, 1980.

[FR Doc. 80-32545 Filed 10-16-80; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 906 and 944

Handling Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Fruits; Import Regulations; Proposed Grade and Size Requirements

AGENCY: Agricultural Marketing Service. USDA.

ACTION: Proposed rules.

SUMMARY: This notice invites written comment on a proposal that would establish minimum grade and size requirements for Texas oranges and grapefruit, and for imported oranges, for the period November 10, 1980, through November 8, 1981. The proposed action is designed to assure shipment of ample supplies of fruit of acceptable grades and sizes in the interest of growers and consumers.

DATES: Comments must be received on or before November 3, 1980.

ADDRESSES: Send two copies of comments to: Hearing Clerk, United States Department of Agriculture, Room 1077 South Building, Washington, D.C. 20250, where they will be available for public inspection during business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975. The Draft Impact Analysis relative to this proposed action is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and is classified "not significant." The proposal is being published with less than a 60-day comment period because there is insufficient time between the date when the information upon which it is based became available and the effective date necessary to effectuate the declared policy of the act.

The Department is considering issuing the proposed Texas orange and grapefruit regulation under the marketing agreement, as amended, and Order 906, as amended (7 CFR Part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposed orange import regulation would be issued under section 8e (7 U.S.C. 608e–1) of this act, as required. The proposed grade and size requirements applicable to Texas oranges and grapefruit were recommended by the Texas Valley Citrus Committee which locally administers this marketing order program, and they reflect its appraisal of the need for regulating shipments during the specified period based on the available supply and current and prospective market demand conditions.

The committee estimates the 1980–81 season Texas orange crop at 4,850,000 boxes (85 pounds net weight), up 20 percent from last season, and the 1980–81 season Texas grapefruit crop at 8,625,000 boxes (80 pounds net weight), up 9 percent from last season. The committee reports that this season's orange crop is of good quality and fruit sizes should be larger than normal, while the quality of the grapefruit crop is generally good to excellent. High winds from Hurricane Allen resulted in some fruit loss, especially grapefruit, but the

storm provided much needed moisture and cooler temperatures, which should contribute to larger sizes and increased tonnage on the remaining fruit.

The committee estimates that about 50 percent of the Texas orange crop, and 60 percent of the Texas grapefruit crop will be marketed as fresh fruit. In addition to the regulated domestic market (United States, Canada, and Mexico), Texas oranges are sold in the fresh export market, the processed products market, and the local unregulated market within the production area. Fresh shipments of Texas oranges and grapefruit meet considerable competition in major markets from citrus produced in other areas of the country. This season, 2.5 percent of the nation's orange supply and 12.0 percent of the nation's grapefruit supply is expected to be produced in Texas.

The proposed regulations read as follows:

§ 906.363 Texas Orange and Grapefruit Regulation 32.

(a) During the period November 10, 1980, through November 8, 1981, no handler shall handle any variety of oranges or grapefruit grown in the production area unless:

(1) Such oranges grade U.S. Fancy, U.S. No.1, U.S. No.1 Bright, U.S. No.1 Bronze, U.S. Combination (with not less than 60 percent, by count, of the oranges in any lot thereof grading at least U.S. No.1), or U.S. No.2;

(2) Such oranges are at least pack size 288, as such size is specified in § 2851.691(c) of the U.S. Standards for Grades of Oranges (Texas and States other than Florida, California, and Arizona), except that the minimum diameter limit for pack size 288 oranges in any lot shall be 2–6/16 inches;

(3) Such grapefruit grade U.S. Fancy, U.S. No.1, U.S. No.1 Bright, U.S. No.1 Bronze, or U.S. No. 2;

(4) Such grapefruit are at least pack size 96, as such size is specified in § 2851.630(c) of the U.S. Standards for Grades of Grapefruit (Texas and States other than Florida, California, and Arizona), except that the minimum diameter limit for pack size 96 grapefruit in any lot shall be 3–9/16 inches: *Provided,* That any handler may handle grapefruit smaller than pack size 96, provided such grapefruit grade at least U.S. No.1 and they are at least pack size 112, as such size is specified in the aforesaid U.S. Standards for Grapefruit, except that the minimum diameter limit for pack size 112 grapefruit in any lot shall be 3–5/16 inches;

(5) An appropriate inspection certificate has been issued for such fruit within 48 hours prior to the time of shipment; and

(6) The fruit meets all the applicable container and pack requirements effective under this marketing order.

(b) Terms used in this section shall mean the same as in the marketing order, and terms relating to grade and diameter shall mean the same as in the U.S. Standards for Grades of Oranges (Texas and States other than Florida, California, and Arizona) (7 CFR 2851.680–2851.714) or in the U.S. Standards for Grades of Grapefruit (Texas and States other than Florida, California, and Arizona) (7 CFR 2851.620–2851.653).

§ 944.310 Orange Import Regulation 11.

(a) *Applicability to imports.* Pursuant to § 8e of the act and Part 944—Fruits; Import Regulations, the importation into the United States of any oranges is prohibited during the period November 10, 1980, through November 8, 1981, unless such oranges meet the minimum grade and size requirements specified in paragraphs (a)(1) and (a)(2) of § 906.363 Texas Orange and Grapefruit Regulation 32.

(b) It is hereby determined that oranges imported into the United States are in most direct competition with oranges grown in the Lower Rio Grande Valley in Texas, and that the grade and size requirements specified in this section are the same as those being made effective for Texas oranges in § 906.363.

(c) The Federal or Federal-State Inspection Service, Fruit and Vegetable Quality Division, Food Safety and Quality Service, United States Department of Agriculture, is designated as the governmental inspection service for certifying the grade, size, quality, and maturity of oranges that are imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective Service, applicable to the particular shipment of oranges, is required on all imports. The inspection and certification services will be available upon application in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 2851) and in accordance with the Procedure for Requesting Inspection and Designating the Agencies to Perform Required Inspection and Certification (7 CFR Part 944).

(d) The term "importation" means release from custody of the United States Customs Service.

(e) *Minimum quantity exemption:* Any person may import up to ten 7/10 bushel cartons, or equivalent quantity, of oranges exempt from the requirements specified in this section, except for oranges which have been inspected and found not to meet such requirements.

(f) No provisions of this section shall supersede the restrictions or prohibitions on oranges under the Plant Quarantine Act of 1912.

(g) Nothing contained in this section shall be deemed to preclude any importer from reconditioning, prior to importation, any shipment of oranges for the purpose of making it eligible for importation. Any lot of oranges or portion thereof which subsequently fails to meet the grade or size requirements specified herein may not be imported. Disposal of such fruit at the port of entry shall be certified by the Federal or Federal-State Inspection Service. Costs of certifying the disposal of rejected oranges shall be borne by the importer.

Dated: October 14, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-32412 Filed 10-16-80; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1940

Relocation and Real Property Acquisition

[FCDA No. 10.405, Farm Labor Housing Loans and Grants; 10.409, Irrigation, Drainage, and other Soil and Water Conservation Loans; 10.411, Rural Housing Site Loans; 10.414, Resource Conservation and Development Loans; 10.415, Rural Rental Housing Loans; 10.418, Water and Waste Disposal Systems for Rural Communities; 10.419, Watershed Protection and Flood Prevention Loans; 10.420, Rural Self-Help Housing Technical Assistance; 10.423, Community Facilities Loans; 10.424, Industrial Development Grants; 10.426, Area Development Assistance Planning Grants; 10.427, Rural Rental Assistance Payments; 10.430, Energy Impacted Area Development Assistance Program; 10.431, Technical and Supervisory Assistance Grants]

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) is proposing to add regulations outlining the requirements for implementation of a Public Law. The intended effect of this action is to provide relocation assistance to those persons affected through displacement as a result of Federal or Federally financially assisted programs.

DATE: Comments must be received on or before December 16, 1980.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6346, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection at the address given above.

FOR FURTHER INFORMATION CONTACT: Mr. Glendon D. Deal, Environmental and Technology Staff, Room 6305, S. Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. Telephone: (202)–447–3394.

The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the Office of the Chief, Directives Management Branch, Room 6346, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. Telephone: (202)–447–4057.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant." The Farmers Home Administration proposes to add a new Part 1940 "General" and Subpart R, "Relocation and Real Property Acquisition," to Subchapter H, Chapter XVIII, Title 7 in the Code of Federal Regulations. This Subpart will provide the Agency regulations required for compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91–646. The major provisions of this regulation are as follows:

1. Only loans and grants to State agencies and direct land acquisitions by FmHA are covered by the provisions of this Subpart.

2. Section 1940.866 describes the agency's proposed regulation concerning acquisition of real property by a State agency as part of an FmHA financially assisted project.

3. Section 1940.870 describes the agency's proposed policy regarding a displaced person's moving and related expenses.

4. Section 1940.872 describes proposed regulations regarding replacement housing for displaced persons.

The FmHA programs and projects which are affected by this instruction are subject to state and local clearinghouse review in the manner delineated in Part 1901, Subpart H of this chapter.

Therefore, as proposed, Part 1940 Subpart R reads as follows:

PART 1940—GENERAL

Subpart R—Relocation and Real Property Acquisition

Sec.

1940.851 Purpose.
1940.852 General policy.
1940.853 Scope.
1940.854–1940.858 [Reserved]
1940.859 Definitions.
1940.860 Federal financially assisted projects.
1940.861–1940.865 [Reserved]
1940.866 Real property acquisition.
1940.867–1940.869 [Reserved]
1940.870 Moving and related expenses.
1940.871 [Reserved]
1940.872 Replacement housing—general.
1940.873 Replacement housing for homeowners (over 180 days) displaced from conventional dwellings.
1940.874 Replacement housing for tenants and certain others (over 90 days) displaced from conventional dwellings.
1940.875 Replacement housing for mobile home occupants.
1940.876–1940.878 [Reserved]
1940.879 Relocation assistance advisory services.
1940.880–1940.900 [Reserved]

Authority: 42 U.S.C. 4633, 42 U.S.C. 1480; 7 U.S.C. 1989; delegation of authority by the Secretary of Agriculture, 7 CRF 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70.

PART 1940—GENERAL

Subpart R—Relocation and Real Property Acquisition

§ 1940.851 Purpose

This Subpart provides Farmers Home Administration (FmHA) policies, procedures, and guidelines for compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91–646 (84 Stat. 1894), effective January 2, 1971. the Act provides for uniform and equitable treatment of persons displaced from their homes, businesses or farms by Federal and Federally financial assisted programs and establishes uniform and equitable land acquisition policies for Federal and Federal financially assisted programs. Any claims made under the Act shall be adjudicated on the basis of this Subpart.

§ 1940.852 General policy.

(a) *Applications for relocation assistance payment.* A displaced person, business, or farm operation must apply to the displacing agency for relocation assistance payments within 18 months from the date on which the move was made from the real property acquired or to be acquired, or the date on which the acquiring agency makes final payment of all costs of acquiring that real property, whichever is the later date. The displacing agency may extend this period upon showing of good cause. Prompt payment will be made after a move and submittal of proper application. Advanced pyment may be made if the displacing agency determines that delaying payment until after the move will create a hardship.

(b) *Use of Standard forms.* The Standard Forms (SF) listed below may be used as appropriate when applying for payments under this Subpart. SF's recommended for use, and the sections to which they apply are as follows:

(1) SF–267, "Claim for Reimbursement of Expenses Incidental to Conveyance of Real Property": § 1940.866 (g).

(2) SF–262, "Claim for Moving Costs and Related Expenses—Families and Individuals": § 1940.870.

(3) SF–263, "Claim for Moving Costs and Related Expenses"—Business (Including nonprofit organizations) and Farm Operations: § 1940.870.

(i) Schedule A: § 1940.870 (c) and (e).
(ii) Schedule B: § 1940.870 (f).
(iii) Schedule C: § 1940.870 (g)
(iv) Schedule D: § 1940.870 (d) with the exception that average annual net earnings will be determined in accordance with § 1940.870 (h) of this Subpart.

(4) SF–264, "Claim for Replacement Housing Payment for Homeowners": § 1940.83.

(5) SF–265, "Claim for Supplemental Rental Assistance Payment for Replacement Housing": § 1940.874.

(6) SF–266, "Claim for downpayment and Incidental Expenses for Replacement Housing": § 1940.874

(c) *Appeal Rights.* Any persons aggrieved by a determination as to eligibility for a relocation payment, or the amount of a payment in a project receiving FmHA assistance, may have their applications reviewed by the head of the displacing agency.

(d) *Displacement prerequisites.* A displacing agency shall take no action that will result in a displacement until the following conditions are met:

(1) *Assurance of a comparable replacement dwelling.* No phase of any project will be initiated or continued if that phase will cause the displacement of any individual or family from a dwelling until the displacing agency has determined, on the basis of a current survey and analysis of available comparable replacement dwelling, that prior to displacement a comparable replacement dwelling will be available

for each such displaced individual or family.

(2) *Receipt of a displacement notice.* Each individual, family, business, or farm operation to be displaced must be given a written notice of displacement. The notice shall be served personally or by certified or registered first-class mail not later than initiation of negotiations.

(3) *Payment for real property.* An owner will not be required to surrender possession of the real property acquired until the acquiring agency has paid the agreed purchase price, or deposited with the court for the benefit of the owner, an amount not less than the approved appraisal of the real property being acquired.

(4) *Receipt of a notice to vacate.* The construction or development of a project will be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a comparable replacement dwelling will be available), or to move a business or farm operation without at least 90 days written notice prior to the date on which such move is required. The notice shall be served personally or by certified or registered first-class mail. A notice of less than 90 days may be given only in an emergency or other extraordinary situation, or when the personal property to be moved is not associated with a displacement from a dwelling, business, or farm operation. When it is proposed to give an advance notice less than 90 days, the prior approval of the Administrator will be obtained.

(e) *Criteria for new construction and loans.*

(1) If the Administrator determines that adequate comparable replacement dwellings are not available, action may be taken by the Administrator or the Administrator may approve action by a State agency to develop replacement dwellings. Any action taken or approved shall be in accordance with the guidelines issued by the Secretary of HUD.

(2) The Administrator shall be guided by the criteria and procedures developed by the Secretary of HUD when providing loans to eligible borrowers for planning and other preliminary expenses for additional housing for displaced persons.

(f) *Coordination among agencies.*

(1) When more than one Federal, departmental, or State agency is causing the displacement in a community or an area, the displacing agency receiving FmHA financial assistance shall seek the cooperation of the other agency or agencies on the method for computing the replacement housing payment and on the use of uniform schedules of sale and rental housing in the community or area.

(2) When more than one agency administering a relocation assistance advisory program may be of assistance in the community or area to displaced persons, all agencies shall cooperate so as to eliminate duplication while combining forces in assuring uniform application of the Act so that all displaced persons receive the maximum assistance available to them.

(g) *Nondiscrimination.* The procedures, guidelines and policies contained in this Instruction, and any benefits accruing therefrom, will be applied equally without regard to race, color, religion, sex, national origin, age, marital status, or handicap providing the individual has the capacity to enter into a legal contract.

§ 1940.853 Scope.

This Subpart is to be used by the FmHA Approval Officials in implementing the provisions of the Act. In addition, FmHA will consult with appropriate Federal, State, and local agencies, other organizations, and individuals to assess the displacement impact of any proposed FmHA action. Only FmHA loans and grants to State agencies and direct land acquisitions by FmHA are covered by the provisions of this Subpart.

§ 1940.854—1940.858 [Reserved]

§ 1940.859 Definitions.

For purposes of this Subpart the following definitions apply.

(a) *Administrator.* The Administrator of FmHA or a designated representative.

(b) *Appraiser.* A person with the appropriate professional designation as issued by the American Institute of Real Estate Appraisers, Society of Real Estate Appraisers, or other recognized authority, such as a FmHA Qualified Appraiser, and experience in the subject area being appraised.

(c) *Approval official.* The person within FmHA who has Federal financial assistance approval authority as stated in Part 1901 Subpart A, which is available in any FmHA office.

(d) *Business.*

(1) Any lawful activity, excepting a farm operation, conducted primarily:

(i) For the purchase, sale, lease, and rental of personal and real property, and for the manufacture, processing, marketing of products, commodities, or any other personnel property; or

(ii) For the sale of services to the public; or

(iii) By a nonprofit organization; or

(iv) Solely for the purpose of § 1940.870 (c), outdoor advertising signs erected and maintained for assisting in the purchase, sale, resale, manufacture, processing or marketing of products, commodities, personal property, or services, whether or not located on the premises of the foregoing businesses.

(2) During the two taxable years prior to displacement, or during such other period as the approval official determines to be more equitable, the business as described in paragraph (d)(1)(i), (ii) or (iii) of this section must have:

(i) Had average annual gross receipts of at least $2,000 in value; or

(ii) Had average annual net earnings of at least $1,000 in value (see § 1940.870 (h)); or

(iii) Contributed at least one-third of the average annual gross income of the owner(s), including income from all sources such as welfare, if any.

(e) *Comparable replacement dwelling.* A dwelling which is decent, safe, and sanitary and is:

(1) Functionally equivalent and substantially the same as the acquired dwelling, but not excluding newly constructed housing.

(2) Open to all persons regardless of race, color, religion, age, marital status, sex, or national origin and consistent with the requirements of Title VIII of the Civil Rights Act of 1968.

(3) In an area not generally less desirable than the dwelling to be acquired in regard to neighborhood conditions, including, but not limited to, municipal services and other environmental factors, and public, commercial, and community facilities, in an area not subjected to unreasonable adverse environmental conditions from either natural or man-made sources.

(4) Reasonably accessible to the displaced person's place of employment.

(5) Available on the market to the displaced person at rents or prices within the financial means of the displaced person.

(6) Adequate in size to meet the needs of the displaced family or individual. At the option of the displaced person, a replacement dwelling may exceed actual need when the replacement dwelling has the approximate square footage as the dwelling from which the person was displaced.

(f) *Decent, safe, and sanitary dwelling.* A dwelling which is clean, in good repair, and in sound and weather tight condition, which meets local housing codes, if any, and requirements of § 1804.3 (d) of Part 1804 Subpart A (paragraph III D of FmHA Instructio 424.1), and also meets the following requirements.

(1) *Housekeeping unit.* A housekeeping unit must include a kitchen with fully useable sink; a cooking stove, or connections for same; a separate complete bathroom; hot and cold running water in both the bathroom and the kitchen; and adequate and safe wiring system for lighting and other electrical services; and heating as required by climatic conditions and local codes.

(2) *Nonhousekeeping unit.* A nonhousekeeping unit is one which meets local code standards for boarding houses, hotels, or other congregate living.

(g) *Displacing agency.* A State agency which acquires real property for an FmHA financially assisted project causing the displacement of a person or persons.

(h) *Displaced person.* Any person who moves from a real property, or moves personal property from real property, as a result of the actual acquisition of such real property, in whole or in part, or as a result of a written order of the acquiring agency to vacate real property for a program or project undertaken with Federal financial assistance provided by FmHA. If a person moves as a result of such a notice it makes no difference whether or not the real property actually is acquired.

(i) *Displacement notice.* A written notice given to persons who may be displaced as a result of a proposed acquisition. This notice shall state the acquiring agency's desire to acquire the property and notify the persons of their rights under the Act and these regulations if they are displaced. The notice shall be given to such persons not later than the initiation of negotiations for the property to be acquired.

(j) *Dwelling.* Dwelling includes a single family building; a one family unit in a multi-family building; a unit of a condominium or cooperative housing project; any other residential unit, including a mobile home which is either considered to be real property under State law, or cannot be moved without substantial damage or unreasonable cost. For purposes of § 1940.873, 1940.874, and 1940.875 of this Subpart, the term "dwelling" shall mean the place of permanent abode of a person and does not include seasonal or part-time dwelling units such as beach houses, mountain or other vacation cabins.

(k) *Economic rent.* The amount of rent the displaced person would have had to pay for a similar dwelling located in an area not generally less desirable that the location of the dwelling to be acquired.

(l) *Family.* Two or more individuals living together in the same dwelling as a single family unit and who are related to each other by blood, marriage, adoption, or legal guardianship. Others who live together as a family unit will be treated as a family.

(m) *Farm operation.* Any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support. The activity is capable of contributing materially if, during the immediately preceding two-year period or the period of operation, whichever is the lesser, or during such other period of operation, whichever is the lesser, or during such other period as the approval official determines to be more equitable, the value of sales and the market value of home use contributes:

(1) Average annual gross receipts of at least $2,000 in value; or

(2) Average annual net earnings of at least $1,000 in value (see 1940.870 (h)); or

(3) At least one-third of the average annual gross income of the owner(s) including income from all sources, such as welfare, if any.

(n) *FmHA financially assisted program or project.* Any program or project administered by FmHA or by a State agency in which a grant, loan, or contribution is provided to the State agency by FmHA. *FmHA contracts of guaranty are excluded.*

(o) *Financial means.* The ability of a displaced family or individual to afford a replacement dwelling without jeopardizing the other needs of the displaced family or individual such as food, clothing, child care, and medical expenses. For purposes of this Subpart, the average housing cost (monthly mortgage or rental payments, insurance for the dwelling unit, property taxes, utilities, and other reasonable recurring related expenses) which the displaced family or individual will be required to pay should generally be less than 25 percent of the monthly gross income or the present ratio of housing payment to income including supplemental payments made by public agencies.

(p) *Initiation of negotiations.* The date the displacing agency furnishes the property owner or a representative a written offer to purchase or otherwise acquire the real property.

(q) *Mortgage.* Such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property under the law of the State in which the real property is located, together with the credit instruments, if any secured thereby.

(r) *Notice to vacate.* A written notice to the persons to be displaced of the date by which they must have moved from the property being acquired.

(s) *Owner.* A person who holds fee title, a life estate, a 99-year lease, or an interest in a cooperative housing project which includes the right of occupancy of a dwelling unit, or is the contract purchaser of any such estates or interest, or who is possessed of such other proprietary interest in the property acquired as, in the judgement of the displacing agency, warrants consideration as ownership. In the case of one who has succeeded to any of the foregoing interest by devise, bequest, inheritance or operation of law, the tenure of ownership, not occupancy, or the succeeding owner shall include the tenure of the preceding owner.

(t) *Person.* Any individual, family, partnership, corporation or association.

(u) *Personal property (tangible personal property).*

(1) Tangible property which is situated on the real property vacated or to be vacated by a displaced person and which is considered to be both personal property and noncompensable (other than for moving expenses) under the State law of eminent domain, and

(2) In the case of a tenant, fixtures and equipment which the tenant may lawfully, and which the tenant elects to, remove and for which the tenant is not compensated in the real property acquisition. In the case of an owner of real property, the determination as to whether an item of property is personal or real shall take due consideration of how it is identified in the acquisition appraisals and the closing or settlement statement with respect to the real property acquisitions.

(v) *Purchase of a replacement dwelling.* Purchase of a replacement dwelling shall mean (1) acquisition of an existing dwelling, (2) acquisition and rehabilitation of a substandard dwelling, (3) relocation, or relocation and rehabilitation of an existing dwelling (4) construction of a new dwelling, (5) contract to purchase a dwelling to be constructed on a site provided by a builder or developer, or (6) contract for the construction of a dwelling on a site which the displaced person owns or acquires for this purpose. If construction or rehabilitation is required in the instances cited herein and completion of the construction or rehabilitation is delayed beyond the end of the 1-year period, the displacing agency may establish the date of occupancy as the date that the displaced person enters into a contract either for such construction or rehabilitation, or for the purchase upon completion of a dwelling to be constructed or rehabilitated on a site provided by a builder or developer;

provided, the displacing agency determines that the delay was for reasons not within the reasonable control of the displaced person, and the displaced person occupies the replacement dwelling when the construction or rehabilitation is completed. Payment by the displacing agency will not be made until the displaced person has occupied the replacement dwelling.

(w) *Rental rate.* The amount paid or determined to be appropriate for the bare premises exclusive of such items as utilities and other services.

(x) *Replacement dwelling.* A replacement dwelling is one which is at least decent, safe, and sanitary.

(y) *State.* Any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Commonwealth of the Marianas, and any territory or possession of the United States, the Trust Territory of the Pacific Islands, and any political subdivision thereof.

(z) *State agency.* Any department, agency, or instrumentality of a State or of a political subdivision of a State, or any department, agency, or instrumentality of two or more States, or of two or more political subdivisions of a State or States.

(aa) *Tenant.* A person who leases, rents, lawfully occupies or temporarily possesses real property, or a mobile home classified as personal property, of another by any kind of right.

§ 1940.860 FmHA financially assisted projects.

(a) *Assurances by a State agency.*

(1) FmHA shall not approve a loan or grant to, or enter into a contract or an agreement with a State agency unless satisfactory assurances are secured from such State agency that:

(i) Relocation payments, relocation assistance, and relocation assistance advisory services will be provided and comparable replacement dwellings will be available, all as provided in this Subpart;

(ii) In acquiring real property, it will comply with the land acquisition policies provided in § 1940.866 (a) through (i) if compliance is legally possible under State law, and in any event will reimburse owners for necessary expenses as specified in § 1940.866 (f)(3) and (g); and

(2) If a State agency maintains that it is legally unable to comply with the real property acquisition policies in § 1940.866 (a) through (f)(2), and (h) through (i), its statement to that effect shall be supported by an opinion of the chief legal officer of the State containing a full discussion of the facts and law involved. The approval official may accept this statement or the assurances so qualified as constituting compliance with this paragraph.

(3) A loan or grant to, or contract or agreement with, a State agency, shall contain provisions requiring the State agency to comply with these regulations to the extent determined under this paragraph.

(b) *Execution and amendment of agreements.* Any loan or grant to, or contract or agreement with a State agency under which FmHA financial assistance is made available to pay all or part of the cost of any program or project which will result in the displacement of any person shall include, or be amended to include, the cost of providing the payments and services set forth in this Subpart.

(c) *Project cost.* The cost to a State agency of providing payments and assistance pursuant to this Subpart shall be included as part of the cost of a program or project for which FmHA furnishes financial assistance. The State agency will be eligible for FmHA financial assistance with respect to such payments and assistance in the same manner and to the same extent as other program or project costs.

(d) *Exception.* No payment or assistance under this Subpart will be required of a State agency, or included as a program or project cost, if the displaced person receives a payment required by the State law of eminent domain which is determined by the approval official to have substantially the same purpose and effect as the payment and assistance required by this Subpart.

(e) *Housing standards.* The displacing agency will determine whether the replacement dwelling meets the standards prescribed under this Subpart.

(f) *Organization and facilities.* It will be the responsibility of the approval official to determine that the displacing agency provides adequate personnel and facilities to enable it to provide the payments and services required by this Subpart.

(g) *Compliance.* The approval official will provide for the making of periodic inspections to ascertain whether payments and services are being provided and whether there is compliance otherwise with the assurances furnished.

(h) *Records.* The loan or grant to, or contract or agreement with, the State agency shall provide that the displacing agency will maintain such records as may be specified by the approval official for a period of 3 years and make them available to the approval official for inspection and audit at reasonable times.

(i) *Performance by contract.*

(1) The displacing agency may contract for the services specified in §1940.879(b) with any person or organization if it finds that such contract will prevent unnecessary expense or avoid duplication of functions.

(2) The solicitation of proposals, contract provisions, and administration shall be in accordance with State laws and with procedures prescribed by the approval official but shall as a minimum include provisions:

(i) Required by Federal regulations implementing Title VI of the Civil Rights Act of 1964 (Public Law 82–352), and

(ii) Requiring records relating to the contract to be maintained for a period of not less than 3 years and be available for inspection by representatives of the State agency and FmHA.

(iii) In furnishing housing to the extent authorized under criteria and procedures set forth in paragraph 1940.852 (d), the displacing agency shall, whenever practicable, utilize the services of State or local housing agencies, or other agencies having experience in the administration and conduct of similar housing assistance activities.

(j) *Furnishing real property.* Whenever real property is acquired by a State agency and furnished as a required contribution to an FmHA financially assisted project, the approval official may not accept such property unless such State agency has made all payments and provided all assistance and assurances as are required of a State agency by these regulations. The cost of such requirements will be paid by the State agency.

(k) *State agency acting as agent for Federal project.* Whenever real property is acquired by a State agency at the request of the approval official for a Federal project, such acquisition shall be deemed for the purposes of these regulations as an acquisition by the approval official.

§ 1940.861–1940.865 [Reserved]

§ 1940.866 Real property acquisition.

(a) *General.*

(1) The provisions of this section are applicable to State agencies carrying out FmHA financially assisted projects regardless of whether any person may be displaced as a result thereof, where compliance is legally possible under State law, and in any event, State agencies will reimburse owners for necessary expenses as specified in paragraphs (f)(3) and (g) of this section.

(2) The provisions of this section do not apply to donations of land, or interests in land, or to land exchanges.

(b) *Acquisition by agreement.* Every reasonable effort will be made to (1) acquire real property by agreements with owners based on negotiations, (2) assure consistent treatment for owners, and (3) accomplish negotiations expeditiously. In no event shall negotiations be deferred nor any other action coercive in nature be taken in order to compel an agreement.

(c) *Appraisal.*

(1) Prior to initiation of negotiations, an appraisal of the fair market value of the real property interest to be acquired will be made by a qualified land appraiser.

(2) The owner or a designated representative will be given a reasonable opportunity to accompany the appraiser during the inspection of the property.

(3) Any decrease or increase in the fair market value of the property prior to the date of the appraisal which is caused by the public improvement for which the property is acquired, or by the likelihood that the property would be acquired for such improvement, other than due to physical deterioration within the reasonable control of the owner, will be disregarded in appraising the property.

(4) Where appropriate, the estimate of the fair market value of the property to be acquired and the estimate of damages or offsetting benefits to the remaining property will be separately stated.

(5) Appraisers shall not give consideration to, or include in, their real property appraisals any allowances for the relocation benefits provided by this Subpart.

(6) Standards for appraisals used in such programs shall be consistent with the Uniform Appraisal Standards for Federal Acquisitions published by the Interagency Land Acquisition Conference, U.S. Government Printing Office, Washington, DC.

(d) *Establishing just compensation.*

(1) Prior to negotiations the displacing agency shall establish an amount it believes to be just compensation which, in no event, shall be less than the amount in the appraisal approved by the displacing agency.

(2) If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the displacing agency shall offer to acquire the entire property.

(e) *Initiation of negotiations.*

(1) When the just compensation has been established, a prompt offer will be made to acquire the real property for the full amount of the just compensation so established.

(2) When the offer is made, the owner of the real property will be provided with a written statement of:

(i) Identification of the real property and the estate or interest therein to be acquired including the buildings, structures, and other improvements considered to be a part of the real property;

(ii) The amount of the estimated just compensation as determined by the displacing agency and a summary statement of the basis therefore; and

(iii) If only a portion of the property is to be acquired, a separate statement of the estimated just compensation for the real property interest to be acquired and damages and benefits to the remaining real property, if any.

(3) The offer of just compensation does not preclude further negotiations with respect to the purchase price.

(4) Tenants occupying the property to be acquired shall be given a displacement notice not later than the date negotiations for the property are initiated with the owner.

(5) Contracts or options to purchase real property shall not provide for any payments for relocation costs or reference to such payments.

(f) *Condemnation.*

(1) The time of condemnation will neither be advanced, nor negotiations, condemnation and the deposit of funds in court be deferred, nor any other action coercive in nature be taken, in order to compel an agreement on price.

(2) If the real property is to be acquired by condemnation, proceedings will be instituted promptly. No action will be taken intentionally which will make it necessary for an owner to institute legal proceedings to prove the taking of the owner's real property.

(3) If the final judgment of the court in a condemnation case is that the displacing agency cannot acquire the real property by condemnation, or if the proceeding in condemnation is abandoned by the displacing agency, the displacing agency must pay the owner of the property such sum as will reimburse the owner for reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal and engineering fees actually incurred because of the condemnation proceedings. If this cost is not covered by a court order, nevertheless the displacing agency shall pay such costs to the owner.

(4) When the declaration of taking is filed in a Federal condemnation proceeding, the estimated compensation shall be determined solely on the basis of the appraised value of the real property with no consideration being given to other payments provided for by this subpart.

(g) *Expenses incidental to transfer of title.* As soon as practicable after the date of payment of the puchase price or the date of deposit in court of funds to satisfy the award in a condemnation proceeding to acquire real property, the owner will be reimbursed to the extent the head of the displacing agency determines fair and reasonable, for expenses the owner necessarily incurred for:

(1) Recording fees, transfer taxes, and similar expenses incident to conveying the real property to the displacing agency.

(2) Penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property, and

(3) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the displacing agency, or the effective date of possession of such real property by the displacing agency, whichever is earlier.

(h) *Buildings, structures and improvements.*

(1) Whenever any interest in real property is acquired, the displacing agency shall acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property which such displacing agency requires to be removed from the real property, or which the displacing agency determines will be adversely affected by the use to which such real property will be put.

(2) Payments under paragraph (h) of this section will not be made unless the owner of the land involved disclaims all interest in such buildings, structures, or other improvements of the tenant.

(3) The following will apply in determining the just compensation for any such buildings, structures, or other improvements:

(i) They will be deemed to be part of the real property to be acquired, notwithstanding the right or obligation of the tenant as against the owner of any other interest in the real property to remove them at the expiration of the term, and

(ii) The fair market value which such structures, buildings, or other improvements contribute to the fair market value of the real property to be acquired, or the fair market value of such buildings, structures, or other improvements for removal from the real property, whichever is greater, will be paid the tenant therefore, provided the tenant shall assign, transfer and release to the acquiring agency all rights, title

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and interest in, and to, such improvements.

(4) Payments under paragraph (h) of this section will not be made which result in duplication of any payments otherwise authorized by law.

(5) A tenant may reject payment and obtain payment for the buildings, structures, or other improvements in accordance with any other applicable law.

(i) *Lease to former owner or occupant.* If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term, or for a period subject to termination by the displacing agency on short notice, the amount of rent required will not exceed the fair rental value of the property to a short term occupier.

§§ 1940.867–1940.869 [Reserved]

§ 1940.870 Moving and related expenses.

(a) *Recipient eligibility.* A displaced person, business, or farm operation is eligible to receive payments for actual moving and related expenses described in paragraph (c) of this section, or a fixed relocation payment described in paragraph (d) of this section.

(b) *Extent of eligibility.*

(1) Each owner-occupant, tenant-occupant, family, who is displaced from a dwelling may elect to receive either the payment described in paragraph (c)(1) of this section, or fixed payment described in paragraph (d)(1) of this section, except:

(i) Two or more persons, not a family, living together in a single family unit who are displaced from the unit will be regarded as one displaced person insofar as their eligibility for receiving the fixed payment for moving expenses described in paragraph (d)(1) of this section. Each individual in such group is eligible to receive actual moving and related expenses described in paragraph (c)(1) of this section if the group does not elect to receive the fixed payment.

(ii) No member of a displaced person's family living in the same single unit is eligible for seperate payment for moving expenses.

(2) Any displaced business or farm operation may elect to receive either the payment described in paragraph (c) or (d) of this section.

(3) Any displaced owner-occupant of a multifamily dwelling who earns income from such dwelling and qualifies as a business, is eligible for payments for actual moving and related expenses described in paragraph (c) of this section, for both dwelling and business, or may elect to receive the fixed payments described in paragraph (d) of this section, for both dwelling and business, or may elect to receive payment for the dwelling under one alternative and payment for the business under the other alternate.

(4) A person who lives on a business or farm property and is displaced from both the dwelling and business or farm property is eligible for payments for actual moving and related expenses described in paragraph (c) of this section for both dwelling and business or farm operation, or may elect to receive the fixed payment described in paragraph (d) of this section for both dwelling and business, or farm operation, or may elect to receive payment for the dwelling under one alternate and payment for business or farm operation under the other alternate.

(5) a person displaced from a business or farm operation which causes such person to move from other real property used for the dwelling may elect to receive either the actual expenses payment described in paragraph (c)(1) of this section or the fixed payment described in paragraph (d)(1) of this section. If the displacement causes such person to move other personal property associated with the displaced business or farm operation from real property not acquired, the person is eligible for the moving cost of such personal property as a part of the cost of moving the displaced business or farm operation.

(6) Outdoor advertising signs as defined in § 1940.859(d)(1)(iv) when not part of a displaced business are only eligible for actual expense payments described in paragraph (c) of this section.

(c) *Actual expenses payment.*

(1) A displaced person, business, or farm operation is eligible for actual reasonable expenses specified in paragraph (e) of this section for moving themselves, their family, business, farm operation, or other personal property.

(2) A displaced person, business, or farm operation is eligible for actual direct losses, specified in paragraph (f) of this section, of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount determined by the displacing agency to be equal to the reasonable expenses that would have been required to relocate such property.

(3) A displaced person, business, or farm operation is eligible for actual reasonable expenses, specified in paragraph (g) of this section, in searching for a replacement site for the business or farm operation.

(d) *Fixed payment.*

(1) A displaced person who must vacate a dwelling may elect to receive in lieu of reimbursement for actual expenses described in paragraph (c)(1) of this section, a moving expense allowance not to exceed $300 based on schedules for the area in which the displacement occurs maintained by the State highway departments and approved by the Federal Highway Administration, plus a dislocation payment of $200.

(2) A person who is displaced from a place of business, whether discontinuing or reestablishing the business, may elect to receive, in lieu of reimbursement for actual expenses specified in paragraph (c) of this section, a fixed relocation payment equal to the average annual net earnings of the business as determined in accordance with paragraph (h) of this section, provided:

(i) The business is not a part of a commercial enterprise having at least one other establishment that is not being acquired which is engaged in the same or similar business; and

(ii) The business cannot be relocated without a substantial loss of its existing patronage. The displacing agency will consider all pertinent circumstances in determining whether the business meets this requirement, including the type of business, the nature of the clientele, the relative importance of the present and proposed locations to the displaced business, and the availability of a suitable replacement location for the displaced person.

(3) A person who is displaced from a farm operation, whether such operation is discontinued or reestablished, may elect to receive, in lieu of reimbursement for actual expenses specified in paragraph (c) of this section, a fixed relocation payment equal to the average annual net earnings of the farm operation as determined in accordance with paragraph (h) of this section. Where a person is displaced from a part of a farm operation, the fixed payment shall be made if the displacing agency determines that the part taken met the definition of a farm operation prior to the taking, or the taking caused the operator to be displaced from the farm operation on the remaining land, or so changed the nature of the existing farm operation as to constitute a displacement.

(4) A displaced nonprofit organization, whether it discontinues or reestablishes its operation, may elect to receive, in lieu of reimbursement for actual expenses specified in paragraph (c) of this section, a fixed relocation payment equal to the average annual net earnings of the nonprofit organization as determined in accordance with paragraph (h) of this section, if the displacing agency determines that:

(i) The nonprofit organization cannot be relocated without substantial loss of its existing patronage which includes the persons, community, or clientele served or affected by its activities; and

(ii) The nonprofit organization is not a part of a commercial enterprise having at least one other establishment not being acquired which is engaged in the same or similar activity.

(5) The payment provided in paragraphs (d)(2), (3), and (4) of this section shall be not less than $2,500 nor more than $10,000.

(e) *Actual reasonable expenses in moving.*

(1) Items to be included in determining reasonable expenses are:

(i) Transportation of individual families and personal property from acquired site to the replacement site, not to exceed an airline distance of 50 miles, except where the displacing agency determines that relocation cannot be accomplished within such area.

(ii) Packing, unpacking, crating, and uncrating of personal property.

(iii) Advertising for packing, unpacking, crating, uncrating, and transportation when the displacing agency determines that advertising for any of these services is necessary.

(iv) Storage of personal property for a period generally not to exceed 12 months when determined by the displacing agency to be necessary.

(v) Insurance premiums covering loss and damage of personal property while in transit or approved storage.

(vi) Removal, reinstallation, and reestablishment, including such modification as deemed necessary by the displacing agency, of machinery, equipment, appliances, and other items not acquired as real property, and reconnection of utilities for such items. Prior to payment for any expenses for removal and reinstallation of such property, the displaced person shall be required to agree in writing that the property is personal and the displacing agency is released from any payment for the property.

(vii) Property lost, stolen, or damaged (not caused by the fault or negligence of the displaced person, agents, or employees) in the process of moving, where insurance to cover such loss or damage is not obtainable.

(viii) such other reasonable expenses determined to be allowable by the approval official.

(2) Items excluded in determining reasonable expenses are:

(i) Additional expenses incurred because of living in a new location.

(ii) Cost of moving structures and other improvements classed as real property in which the displaced person reserved ownership, except as otherwise provided by law.

(iii) Improvements to the replacement site except when required by law.

(iv) Interest on loans to cover moving expenses.

(v) Loss of goodwill.

(vi) Loss of profits or income.

(vii) Loss of trained employees.

(viii) Personal injury.

(ix) Cost of preparing the application for moving and related expenses.

(x) Payment for search cost in connection with location of replacement dwelling.

(xi) Any loss caused by the negligence or willful act of either the displaced person or the displaced person's agents or employees.

(3) *Limitations:*

(i) If the displaced person, the family, business, farm operation, or other personal property are moved by other than commercial means, the reimbursement allowance will not exceed the estimated cost of moving commerically based on the prevailing local rates for moving, unless the approval official determines that a greater amount is justified.

(ii) If an item of personal property used in connection with a business or farm operation is not moved, but sold and replaced at the new location with a comparable item, reimbursement will not exceed the replacement cost minus the proceeds from the sale, or the estimated cost of moving, whichever is less.

(iii) If personal property used in connection with a displaced business or farm operation is of low value and high bulk, and the cost of removing, reinstalling, and reestablishing such property would be, in the judgment of the displacing agency, disproportionate in relation to its value, the allowable reimbursement for the expense of moving the personal property will not exceed the difference between the amount that would have been received for such item on liquidation and the cost of replacing the same at the new location with a comparable item available on the market.

(f) *Actual direct losses—business or farm operations.*

(1) Subject to the conditions set out in paragraph (f) (2) of this section, payments for actual direct losses of tangible personal property are allowable where a person displaced from a place of business or farm operation does not move tangible personal property. These property losses may include such items as equipment, machinery, or fixtures which are no longer required, where the business or farm operation is to be discontinued or the property is not suitable for use at the new location.

(2) If the displaced person does not move personal property, and if a bona fide effort is made to sell it, reimbursement for the reasonable costs incurred in the efforts to sell the property will be considered, provided that the amount allowed for this purpose shall not exceed the difference between the cumulative amount allowed under the following items and the estimated cost of moving such items not to exceed an airline distance of 50 miles.

(i) If the business or farm operation is discontinued, the actual direct loss is the difference between the fair market value of the personal property for continued use at its location prior to displacement and the sale proceeds, but not to exceed the estimated cost of moving an airline distance of 50 miles.

(ii) If personal property is abandoned, the acutal direct loss is the lesser of the fair market value of the property for continued use at its location prior to displacement, or the estimated cost of moving to the new location, not to exceed a distance of 50 airline miles.

(3) The cost to the displacing agency of removing abandoned personal property shall not be offset against other payments to the displaced person.

(g) *Actual reasonable expenses in searching for business and farm operations.* A displaced person whose business or farm is acquired may be reimbursed for the actual reasonable expense of searching for a replacement business or farm location. The maximum amount allowable for searching expense is $500 for each displaced business or farm unless the approval official determines that a greater amount is justified based on the circumstances involved. Payment for these expenses are further limited to:

(1) Travel.

(i) Actual cost of common carrier, or

(ii) Eleven cents per mile for use of privately owned vehicle.

(2) Meals and lodging.

(i) Three dollars per meal but not to exceed $9 per day per individual.

(ii) Actual cost of lodging, but not to exceed $20 per day per individual.

(3) Time. Time spent in searching at a flat rate of $3 per hour, or at the rate of the displaced person's salary or earning, but not to exceed $10 per hour. The maximum time allowed shall be 8 hours a day.

(4) Real estate broker. Broker or realtor fees to locate a replacement site for a displaced business or farm operation only when the displacing agency determines in advance that it is necessary.

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(h) *Determination of average annual net earnings.* The average annual net earnings will be one-half of any net earnings of the business or farm operation, before Federal, State, and local income tax for the 2 taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired, and includes any compensation paid by the business or farm operation to the owner, a spouse, or any dependents during such period. Another period may be approved by the approval official if the business or farm operation was not in operation for the full 2-year period or if an unusually long time lag between announcement of a project and the displacement results in a material reduction in the earnings of the business or farm operations for such 2-year period, or under conditions clearly warranting a different period. The business or farm operation will be required to furnish pertinent portions of returns filed with the Internal Revenue Service for the applicable period, or other acceptable evidence of earnings if not required to file returns.

(i) *Mobile home.*

(1) When a mobile home used as a dwelling is deemed personal property and is moved from the acquired site, the displaced person, in requesting parment for the cost of moving the mobile home, may elect to receive either a fixed payment under the provisions of paragraph (d) (1) of this section or the following actual reasonable costs as determined by the displacing agency.

(i) Moving the mobile home to a replacement site but not to exceed the cost of moving to a site 50 airline miles from the acquired site.

(ii) Detaching and reattaching fixtures and appurtenances, where applicable.

(2) If a mobile home is not used as a dwelling, only the actual reasonable costs as determined by the displacing agency and detailed in paragraphs (i) (1) (i) and (ii) of this section may be claimed.

§ 1940.871 [Reserved]

§ 1940.872 Replacement housing—general.

(a) *Certificate of eligibility. Whenever a displaced person is eligible for a replacement housing payment but that person has not purchased a replacement dwelling, the displacing agency shall, at the request of the displaced person, provide a written statement to any interested person, financial institution or lending agency as to:*

(1) The eligibility of the displaced person for a payment.

(2) The requirements that must be satisfied before such payment can be made.

(3) The amount of the payment to be made by the displacing agency, provided the proposed replacement dwelling has been selected, or plans and specifications for the construction or rehabilitation of a proposed replacement dwelling are available, and the displacing agency has inspected and approved the selected dwelling or has reviewed and approved the plans and specifications for construction or rehabilitation.

(b) *Determining purchase price or rental rate.* The displacing agency may determine the amount necessary to purchase or rent, as appropriate, a comparable replacement dwelling by:

(1) A schedule method in which the displacing agency establishes a schedule of reasonable acquisition costs or rental rates of comparable replacement dwellings. The schedule should be based on current analysis of the market; or by

(2) The comparative method in which the displacing agency determines the reasonable acquisition cost or rental rate by selecting one or more comparable replacement dwellings that are most representative of the dwelling acquired. A single dwelling shall be used only when additional comparable replacement dwellings are not available.

(3) When neither the schedule method nor the comparative method is feasible, the approval official may develop other methods for computing replacement housing payments, or approve in advance other methods proposed by the displacing agency.

(c) *Other.*

(1) Payment for replacement housing to a displaced owner-occupant who moves from a one-family unit of a multi-family building owned by such person will be based on the cost of a comparable one-family unit in a multifamily building or if not available, a single-family structure, without regard to the number of units in the acquired multifamily building.

(2) Payment for replacement housing will not affect the eligibility of the displaced person to receive a payment for business earnings attributable to rental units or other legitimate business activities conducted in portions of the building.

(3) Two or more individuals, living together in a single-family dwelling, displaced from the dwelling will be regarded as one displaced person for the purpose of replacement housing.

(4) Relocation payments may be made to displaced persons who select replacement housing in an identified special flood hazard area only if the requirements of Executive Order 11988 and Part 1806 Subpart B of this Chapter are followed.

§ 1940.873 Replacement housing for homeowners (over 180 days) displaced from conventional dwellings.

(a) *Eligibility.* This paragraph is applicable to a displaced person who:

(1) Actually owned and occupied the acquired dwelling for not less than 180 days immediately prior to initiation of negotiations for the property, and

(2) Purchases and occupies a replacement dwelling not later than the end of the 1-year period beginning on the date on which the person receives from the displacing agency final payment of the purchase price or condemnation award for the acquired dwelling, or on the date on which the person moves from the acquired dwelling, whichever is the later date.

(b) *Maximum payment.* The maximum payment which may be made by the displacing agency under this section is $15,000.

(c) *Costs eligible for payment by displacing agency.* Costs eligible for payment by the displacing agency under this paragraph are:

(1) The amount, if any, which when added to the acquisition cost of the dwelling acquired by the displacing agency, equals the reasonable cost of a comparable replacement dwelling.

(i) If the displaced person voluntarily purchases and occupies a replacement dwelling at a price less than the reasonable cost determined by the displacing agency for a comparable replacement dwelling, the displacing agency shall pay not more under this item than the difference between the acquisition price of the acquired dwelling and the actual purchase price of the replacement dwelling.

(ii) If the displaced person voluntarily purchases and occupies a replacement dwelling at a price less than the acquisition price of the acquired dwelling, no payment is allowable under paragraph (c)(1) of this section.

(2) The amount, if any, which will compensate the displaced person for any increased interest cost and points which such person is required to pay for financing the acquisition of the replacement dwelling, provided that the acquired dwelling was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days prior to the initiation of negotiations for the acquisition of such dwelling. This amount shall be computed on the basis of and limited to:

(i) The amount of the unpaid debt at the time of acquisition of the real property;

(ii) The length of the remaining term of the mortgage at the time of acquisition;

(iii) The prevailing interest rate and points currently charged by mortgage lending institutions in the vicinity; and

(iv) The present worth of the future payments of increased interest, computed at the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

(3) Reasonable expenses incurred by the displaced person for the following purposes except that no fee, cost, charge, or expense is reimbursable which is determined by the displacing agency to be prepaid expenses:

(i) Legal, closing, and related costs including title search, preparing conveyance instruments, notary fees, surveys, preparing plats, and charges incident to recordation.

(ii) Lenders, Federal Housing Administration (FHA), or Veterans Administration (VA) appraisal fee.

(iii) FHA or VA application fee.

(iv) Certification of structural soundness when required by lender, FHA, VA or FmHA.

(v) Credit report.

(vi) Title policy, certificate of title,or abstract of title.

(vii) Escrow agent's fee.

(viii) State revenue stamps, or sale or transfer taxes.

(ix) Premiums for the initial flood insurance policy shall not be considered as an eligible expense for a relocation assistance payment.

(d) *Advance payments in condemnation cases.*

(1) An advance replacement housing payment can be computed and paid to a property owner if the determination of the acquisition price will be delayed pending the outcome of condemnation proceedings. The displacing agency may make a provisional replacement housing payment to the displaced homeowner based on the agency's maximum offer for the property, provided the homeowner enters into an agreement with the agency that:

(i) Upon final determination of condemnation proceedings, the replacement housing payment will be recomputed using the acquisition price determined by the court as compared to the actual price paid or the amount determined necessary to acquire a comparable, decent, safe, and sanitary dwelling; and

(ii) If the amount awarded in the condemnation proceedings as the fair market value of the property acquired plus the amount of the recomputed replacement housing payment exceeds the price paid for, or the acquiring agency's determined cost of a comparable dwelling, the property owner will refund to the acquiring agency, an amount equal to the amount of the excess. However, in no event shall the property owner be required to refund more than the amount of the replacement housing payment advanced.

(2) If the property owner does not agree to such adjustment, the replacement housing payment will be deferred until the case is finally adjudicated and computed on the basis of the final determination using the award as the acquisition price.

§ 1940.874 Replacement housing for tenants and certain others (over 90 days) displaced from conventional dwellings.

(a) *Eligibility.*

(1) This paragraph is applicable to a displaced person who:

(i) Is a tenant, or

(ii) Is an owner-occupant who elects to lease or rent rather than purchase a replacement dwelling, or

(iii) Is an owner-occupant who elects to purchase a replacement dwelling but occupied the acquired dwelling for less than 180 days required by § 1940.873 (a)(1).

(2) A displaced person is eligible for a replacement housing payment under this paragraph if the displaced person:

(i) Actually and lawfully occupied the acquired dwelling for not later than 90 days immediately prior to the initiation of negotiations for acquisition of the property.

(ii) Purchases or rents and occupies a replacement dwelling not later than the end of the 1-year period beginning on the date on which the displaced person, if

(A) A tenant, moves from the acquired dwelling.

(B) An owner-occupant, receives from the displacing agency final payment of the purchase price or condemnation award for the acquired dwelling, or the date on which the displaced person moves from the acquired dwelling, whichever is the later date.

(b) *Maximum payment.* The maximum payment which may be made by the displacing agency under this section is $4,000. When the payment is made in connection with the purchase of a replacement dwelling the amount of the payment by the displacing agency in excess of $2,000 must be matched by the displaced person.

(c) *Rental payments.* Computing rental payments for displaced tenants renting replacement housing.

(1) The displacing agency shall compute the amount of the payment to the tenant as follows:

(i) Multiply the monthly rental rate of the replacement dwelling or a comparable replacement dwelling, whichever is the lesser rate, by 48.

(ii) Determine the average monthly rental rate paid by the displaced tenant for the acquired dwelling in the last 3 months prior to initiation of negotiations, provided such rent was reasonable. If such average rent paid was not reasonable, the displacing agency may use an economic rent amount for the acquired dwelling. If the displacing agency deems it advisable, more than 3 months may be used as a base for determining the average rental rate.

(iii) Multiply the average monthly rental rate for the acquired dwelling as determined in paragraph (c)(1)(ii) of this section, by 48.

(iv) Subtract from the amount determined in paragraph (c)(1)(i) of this section, the amount determined in paragraph (c)(1)(iii) of this section.

(2) If the displaced tenant is paying rent for the acquired dwelling to the displacing agency, economic rent shall be used in making the determination required by paragraph (c)(1)(ii) of this section.

(d) *Computing rental payments for displaced owner-occupants renting replacement housing.* The displacing agency shall compute the amount of the rental payment to the displaced owner-occupant in the same manner as prescribed in paragraph (c) of this section except that economic rent shall be used in making the determination required by paragraph (c)(1)(ii) of this section.

(e) *Making payment to a displaced person who rents replacement housing.*

(1) The rental payment to be made shall be paid in a lump sum, except it shall be paid in installments if the displaced person so requests.

(2) Installment payments, not to exceed four equal annual installments, will be made if so requested provided the displacing agency determines the displaced person is continuing to occupy decent, safe, and sanitary housing at the beginning of each annual period.

(f) *Purchase of replacement dwelling.*

(1) The amount of the payment shall be computed by determining the amount necessary to enable the displaced person to make a down payment and to cover incidental expenses on the purchase of the replacement housing.

(i) The amount of the down payment shall be the lesser of:

(A) The amount that would be required as a down payment for

financing a conventional loan on a comparable dwelling; or

(B) The amount required as a downpayment for financing a conventional loan on the replacement dwelling actually purchased.

(ii) Reasonable expenses incurred by the displaced person may be paid for the following purposes except that no fee, cost, charge, or expense is reimbursable which is determined by the displacing agency to be prepaid expenses:

(A) Legal, closing, and related costs including title search, preparing conveyance instruments, notary fees, surveys, preparing plats, and charges incident to recordation.

(B) Lenders, FHA, or VA appraisal fee.

(C) FHA or VA application fee.

(D) Certification of structural soundness when required by lender, FHA, VA, or FmHA.

(E) Credit report.

(F) Title policy, certificate of title, or abstract of title.

(G) Escrow agent's fee.

(H) State revenue stamps, or sale or transfer taxes.

(I) An amount required to be paid by the purchaser as points and/or origination or loan service fees, if such fees are normal to real estate transactions in the area, on the comparable dwelling or the replacement dwelling, whichever is the lesser.

(2) The full amount of the payment must be applied to the purchase price and incidental costs shown on the closing statement.

§ 1940.875 Replacement housing for mobile home occupants.

(a) *Eligibility.*

(1) The occupant of a mobile home located on an acquired site is eligible for a replacement housing differential payment to the extent stated in paragraph (b) of this section if the occupant meets the following requirements:

(i) The mobile home is acquired by the displacing agency, or the site of the mobile home is acquired which results in the mobile home being removed.

(ii) The person actually occupied the mobile home on the acquired site for not less than 90 days immediately prior to initiation of negotiations or date of receipt of displacement notice, whichever is later.

(iii) The person vacated the mobile home or mobile homesite as a result of the acquisition of the property or receipt of a notice to vacate.

(b) *Extent of eligibility.*

(1) A person displaced from a mobile home who is eligible for replacement housing payments may elect a mobile home or a conventional dwelling to serve as a replacement dwelling.

(i) Such displaced occupant of a mobile home will be eligible for replacement housing benefits to the same extent and subject to the same conditions as provided in § 1940.873 or § 1940.874 depending on the period of occupancy of the mobile home on the acquired site and degree of interest held in the acquired mobile home.

(A) Period of occupancy shall be determined on the basis of the date initiation of negotiations or the date of receipt of a displacement notice, whichever is later.

(B) Degree of interest, i.e., owner or tenant, will be that of the displaced occupant in the mobile home, exclusive of the interest held in the homesite.

(ii) When either type of replacement dwelling is elected, the maximum allowable under §§ 1940.873 (c) (1) or 1940.874 (c) shall be computed on the basis of the lesser of:

(A) The amount the displaced person pays for a replacement dwelling; or

(B) The amount determined by the displacing agency as necessary to provide a comparable replacement mobile home.

(2) The occupant of a mobile home not acquired but moved from the acquired homesite is eligible for a replacement homesite.

(i) Such occupant will be eligible for replacement homesite benefits to the same extent and subject to the same conditions as provided in § 1940.873 or § 1940.874 depending on the period of occupancy of the mobile home on the acquired site and the degree of interest held in the acquired homesite.

(A) Period of occupancy shall be determined on the basis of the date of initiation of negotiations or the date of receipt of a displacement notice, whichever is later.

(B) Degree of interest, i.e., owner or tenant, will be that of the occupant in the homesite, exclusive of the interest held in the mobile home.

(ii) When either type of replacement dwelling is elected, the maximum allowable under §§ 1940.873 (c) (1) or 1940.874 (c) shall be computed on the basis of the lesser of:

(A) The amount the occupant of the mobile home pays for a replacement homesite; or

(B) The amount determined by the agency as necessary to provide a comparable replacement homesite.

§§ 1940.876–1940.878 [Reserved]

§ 1940.879 Relocation assistance advisory services.

(a) *Policy.* Whenever the acquisition of real property for a FmHA financially assisted program or project as described in § 1940.853 will result in the displacement of any person, the displacing agency shall provide a relocation assistance advisory program for displaced persons. If such agency determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, that agency shall offer such person relocation assistance advisory services.

(b) *Advisory services.* Each relocation assistance advisory program shall include such measures, facilities, or services as may be necessary or appropriate in order to:

(1) Determine the need, if any, of displaced persons for relocation assistance.

(2) Provide current and continuing information on the availability, prices and rentals of comparable sale and rental replacement housing, and of comparable commercial properties and locations for displaced businesses and farm operations.

(3) Assure that, within a reasonable period of time prior to displacement, comparable replacement dwellings will be available for those to be displaced from dwellings.

(4) Assist a person displaced from a business or farm operation in obtaining and becoming established in a suitable replacement location.

(5) Supply information concerning housing programs, disaster loan programs, and other Federal or State programs offering assistance to displaced persons.

(6) Provide other advisory services to displaced persons in order to minimize hardship to such persons in adjusting to relocation.

(7) Advise displaced persons that they should notify the displacing agency before the move; and

(8) Inform affected persons of the benefits to which they may be entitled under the Act and this Subpart.

(c) *Contracting for advisory services.* The displacing agency may, by contract or otherwise, secure relocation assistance advisory services from any Federal, State, or local governmental agency or from any person or organization providing such service.

§§ 1940.880–1940.900 [Reserved]

This document has been reviewed in accordance with Part 1901, Subpart G, "Environmental Impact Statements" of this chapter. It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

(42 U.S.C. 4633, 42 U.S.C. 1480; 7 U.S.C. 1989; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70)

Dated: September 26, 1980.

James E. Thornton,

Associate Administrator, Formers Home Administration.

[FR Doc. 80-32401 Filed 10-16-80; 8:45 am]

BILLING CODE 3410-07-M

EXPORT-IMPORT BANK

12 CFR Part 400

Post Employment Conflicts of Interest

AGENCY: Export-Import Bank of the United States.

ACTION: Proposed regulations.

SUMMARY: Export-Import Bank of the United States (the "Bank") is revising its regulations dealing with conflicts of interest of former employees to make such regulations consistent with the restrictions on post employment activity established by Title V of the Ethics in Government Act of 1978, as amended, and regulations issued by the Office of Personnel Management 5 CFR Part 737. The proposed regulations will provide guidelines for enforcement of such restrictions by the Bank.

DATE: Comments must be received on or before December 16, 1980.

ADDRESS: Comments, views and opinions concerning the proposed regulations may be submitted to: Office of the General Counsel, Export-Import Bank of the United States, 811 Vermont Avenue, NW., Washington, D.C. 20571.

FOR FURTHER INFORMATION CONTACT: Warren W. Glick, General Counsel, (202) 566–8334 at the above address.

SUPPLEMENTARY INFORMATION: In view of the enactment of the Ethics in Government Act of 1978, and its subsequent amendments, a number of significant changes and additions were made to pre-existing legislation on post employment conflicts of interest affecting employees of the United States government, including Bank employees. Pursuant to the Act, the Office of Government Ethics in the Office of Personnel Management has issued regulations on the subject. Accordingly, it has been necessary to revise and restate Eximbank regulations on Standards of Conduct relating to post employment conflicts of interest by adding this new Subpart G to Part 400 which appears in Chapter IV of Title 12 of the Code of Federal Regulations.

1(a). Accordingly the Bank proposes to amend Chapter IV of Title 12 by deleting § 400.735–9 *Former Employees* and adding a new Subpart G *Regulations Concerning Post Employment Conflicts of Interest*, as follows:

PART 400—STANDARDS OF CONDUCT

* * * * *

Subpart G—Regulations Concerning Postemployment Conflicts of Interest

Sec.

400.735–70 General nature of restrictions.
400.735–71 Permanent restriction on any former Bank Employee's acting as respresentative as to a particular matter in which the employee personally and substantially participated.
400.735–72 Two-year restriction on any former Bank Employee's acting as representative as to a particular matter for which the employee had official responsibility.
400.735–73 Two-year restriction on a former Senior Employee's assisting in representing as to a matter in which the employee participated personally and substantially.
400.735–74 One-year restriction on a former Senior Employee's transactions with the Bank on a particular matter regardless of prior involvement.
400.735–75 Administrative enforcement proceedings.
400.735–76 Effective date of restrictions.

Authority: 18 U.S.C. 207; 5 CFR 737.

Subpart G—Regulations Concerning Postemployment Conflicts of Interest

§ 400.735–70 General nature of restrictions.

(a) *Authority.* Title IV of the Ethics in Government Act of 1978, as amended ("the Act") established the Office of Government Ethics ("OGE") within the Office of Personnel Management ("OPM") and, pursuant to the Act, the OPM has on the recommendation of the Director of the OGE in consultation with the Attorney General issued regulations in 5 CFR 737 giving content to the restrictions on post employment activity established by Title V of the Act (18 U.S.C. 207) for administrative enforcement with respect to former officers and employees of the executive branch; generally to guide agencies in exercising the administrative enforcement authority reflected in Section 18 U.S.C. 207(j); to set forth the procedures to be employed in making certain determinations and designations pursuant to the Act; and to provide guidance to individuals who must conform to the law. Criminal enforcement of the provisions of 18 U.S.C. 207 remains the exclusive responsibility of the Attorney General.

(b) *Purpose.* It is the purpose of these regulations to provide guidelines for Bank employees within the framework of the Act and the OPM regulation to which reference should be made for detailed statements of the law, definitions, exemptions, limitations and illustrative examples.

(c) *Policy and limitations.* The restrictions set forth bar certain acts by former Bank employees which may reasonably give the appearance of making unfair use of prior Bank employment and affiliations. They do not, however, bar any former Bank employee, regardless of rank, from employment with any private or public employer after Bank employ. Nor do they bar employment even on a particular matter to which the former Bank employee had major official involvement, except in certain circumstances involving persons engaged in professional advocacy. In general, the specific prohibitions arise from a combination of factors which in any given situation may include the following: (1) the nature and extent of the involvement in a particular matter by the employee while in Bank employ, (2) the identity of the particular matter with which the employee dealt while in Bank employ with the same matter with respect to which the employee represents others after leaving Bank employ, (3) the manner in which the former Bank employee appears before or communicates with the U.S. Government, (4) the position occupied by the former employee while in Bank employ, (5) the time limits applicable to the periods before and after the employee leaves his or her position or activity in the Bank to which the restriction applies.

§ 400.735–71. Permanent restriction on any former Bank Employee's acting as representative as to a particular matter in which the employee personally and substantially participated.

(a) *Basic prohibition of 18 U.S.C. 207(a).* No former Bank employee after terminating employment with the Bank shall knowingly act as agent or attorney for, or otherwise represent any other person in any formal or informal appearance before, or with intent to influence, make any oral or written communication on behalf of any other person (1) to the United States, (2) in connection with any particular Bank matter involving a specific party, (3) in which such employee participated personally and substantially as an employee of the Bank.

(b) *Comment.* The pertinent combination of factors involved in this prohibition are the following: (1) since the prohibition has no time limit, it provides a permanent bar to the proscribed activity; (2) the former employee is prohibited from acting as agent or attorney for any other person, but not for himself; (3) it prohibits representation by an "appearance," even if only in a technical procedural sense regardless of physical presence; (4) it also prohibits any communication with intent to influence; (5) the prohibition against an appearance or communication extends to other departments, agencies and courts of the United States and is not limited to the agency in which the employee became involved with the particular matter; (6) the representation by the former employee must be in connection with a particular matter involving specific parties; and (7) the particular matter must be one in which the former employee participated personally and substantially while in Bank employ.

§ 400.735-72 Two-year restriction on any former Bank Employee's acting as representative as to a particular matter for which the employee had official responsibility.

(a) *Basic Prohibition of 18 U.S.C. 207(b)(i).* No former Bank employee, within two years after terminating employment by the Bank, shall knowingly act as agent or attorney for, or otherwise represent any other person in any formal or informal appearance before, or with intent to influence, make any oral or written communication on behalf of any other person (1) to the United States, (2) in connection with any particular Bank matter involving a specific party, (3) if such matter was actually pending under the employee's responsibility as an officer or employee within a period of one year prior to the termination of such responsibility.

(b) *Comment.* The pertinent combination of factors involved in this prohibition are the following: (1) Comments (2)–(6) made under paragraph (b) of § 400.735–71 apply equally to this Section; (2) The particular matter must be one which was acually pending under the employee's responsibility as an officer or employee of the Bank; (3) Two time periods limit the applicability of this Section. The particular matter which came under the responsibility of the employee must have been pending within one year prior to the termination of such responsibility. In addition, the prohibition against the employee's representing any other person on such matter lasts for two years after the termination of the employment where such responsibility was held with the Bank; (4) The time periods applicable to the prohibition of this Section are measured from the date when the employee's responsibility in a particular area ends, not from the termination of Bank employ, unless the two occur simultaneously. (See 5 CFR 737.7[e]).

§ 400.735-73 Two-year restriction on a former Senior Employee's assisting in representing as to a matter in which the employee participated personally and substantially.

(a) *Basic prohibition of 18 U.S.C. 207(b)(ii).* No former Senior Employee (defined below), within two years after terminating employment by the Bank, shall knowingly represent or aid, counsel, advise, consult, or assist in representing any other person by personal presence at any formal or informal appearance (1) before the United States, (2) in connection with any particular Government matter involving a specific party, (3) in which matter he or she participated personally and substantially as an employee of the Bank.

(b) *Comment.* The pertinent combination of factors involved in this prohibition are the following: (1) Comments (2), (5), (6), and (7) set forth under paragraph (b) of § 400.735–71 are equally applicable to prohibitions of this Section; (2) The statutory two-year period is measured from the date of termination of employment in the Senior Employee position held by the former employee when be or she participated personally and substantially in the particular matter, (See 5 CFR 737.9(e)); (3) This prohibition deals with the same activity of the employee while in Bank employ as does § 400.735–71 i.e. "a particular matter in which the employee participated personally or substantially" but deals with a different aspect of the employee's conduct after leaving Bank employ. Thus, even though the former Senior Employee does not represent another as agent or attorney or communicate with intent to influence, he or she is also prohibited from "aiding, counseling, advising, consulting, or assisting in representing any other person by personal presence at any formal or informal appearance"; (4) The term "Senior Employee" refers to an officer or employee named in, or designated by, the Director of the Office of Government Ethics, pursuant to Section 207(d) of Title 18 U.S.C.

§ 400.735-74 One-year restriction on a former Senior Employee's transactions with the Bank on a particular matter regardless of prior involvement.

(a) *Basic prohibition of 18 U.S.C. 207(c).* For a period of one year after terminating employment by the Bank, no former Senior Employee (other than a special Government employee who serves for fewer than sixty days in a calendar year) shall knowingly act as an agent or attorney for, or otherwise represent, anyone in any formal or informal appearance before, or with intent to influence, make any written or oral communication on behalf of anyone to (1) the Bank or any of its officers or employees, (2) in connection with any particular Bank matter, whether or nor involving a specific party, which is pending before the Bank, or in which it has a direct and substantial interest.

(b) *Comment.* The pertinent combination of factors involved in this prohibition are the following: (1) Comments (3) and (4) set forth under paragraph (b) of Section 400.735–71 apply equally to the prohibitions of this Section; (2) The statutory one-year period is measured from the date when the individual's responsibility as a Senior Employee in the Bank ends, not from the termination of Bank employ, unless the two occur simultaneously (See 5 CFR 737.11(j)); (3) Not only is the Senior Employee prohibited from representing any other person, but is also prevented from representing himself or herself; (4) The prohibited appearance does not extend to other departments, agencies and courts of the United States, but only to appearances before, or communications to, the agency at which he or she was employed on a particular matter pending before such agency or in which such agency has a direct and substantial interest; (5) The prohibited representation must involve a particular matter, but it need not involve specific parties; (6) Unlike other sections of these regulations, the prohibition of this Section applies without regard to whether the former Senior Employee had participated in, or had responsibility for, the particular matter and includes matters which first arise after the employee leaves Bank employ.

§ 400.735-75 Administrative Enforcement Proceedings.

(a) *Information of Violation.* On receipt of information regarding a possible violation of 18 U.S.C. 207 and after determining that such information appears substantiated, the President of the Bank or the Chairman of the Ethics Committee, if so directed by the President, shall expeditiously provide such information along with any comments or Bank regulations to the Director of the OGE and to the Criminal Division, Department of Justice. Any continuing investigation by the Bank on administrative action shall be coordinated with the Department of Justice to avoid prejudicing criminal proceedings unless the Department of Justice advises the Bank that it does not intend to initate criminal prosecution.

(18 U.S.C. 207, 5 CFR 737.27)

(b) *Initiation of administrative proceedings.* Whenever the Bank has determined after appropriate review that there is reasonable cause to believe that a former Bank employee has violated any of these regulations or 18 U.S.C. 207(a), (b), or (c) or 5 CFR 737, it may initiate an administrative disciplinary proceeding by providing the former Bank employee with notice as defined in paragraph (c) of this Section. Prior to a determination of sufficient cause to initiate an administrative disciplinary hearing, all records under the Bank's control relating to allegations of a violation shall be confidential, subject to applicable law.

(18 U.S.C. 207, 5 CFR 737.27)

(c) *Notice and hearing.* The notice of an administrative disciplinary proceeding and any hearing pursuant to such notice requested by the former Bank employee, shall follow the procedures set forth in 5 CFR 737.27(a)(3), (4), (5), (6), (7), and (8).

(d) *Administrative sanctions.* Actions which may be taken by the Bank in the case of an individual who is found in violation of these regulations or 18 U.S.C. 207(a), (b), or (c) or 5 CFR 737, after a final adminsitrative decision, or who failed to request a hearing after reciving adequate notice, shall include: (f) prohibiting the individual from making, on behalf of any other person except the United States, any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, the Bank on any matter of business for a period not to exceed five years, which may be accomplished by directing Bank employees to refuse to participate in any such appearance or to accept any such communication; or (2) taking other appropriate disciplinary action.

§ 400.735-76 Effective date of restrictions.

Any person who holds a Bank position after June 30, 1979, becomes subject to any additional restrictions relating to the holder of that position contained in the amendments to 18 U.S.C. 207, as set forth in these regulations. Restrictions, which depend on the designation of a position by the Director of the OGE, shall become applicable on the date such designation becomes effective.

The authority for Part 400 is revised to read as follows:

Authority: E.O. 11222, 30 FR 6469, 3 CFR 1964–65 Comp., P. 306; 5 CFR 735.104, unless otherwise noted.

Warren W. Glick,
General Counsel.

October 8, 1980.

[FR Doc. 80-32374 Filed 10-16-80; 8:45 am]

BILLING CODE 6690-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

Miscellaneous Amendments to the Foreign Trade Statistics Regulations

Correction

In FR Doc. 80–30732, appearing at page 65250 in the issue of Thursday, October 2, 1980, the amendment to § 30.53 in the second column on page 65251 should have read, "4. Section 30.53 is hereby amended by deleting § 30.53(e) in its entirety."

BILLING CODE 1505-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229 and 239

[Release Nos. 33-6245, 34-17197; File No. S7-853]

Proposed Availability of Simplified Registration Form to Certain Mining Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is proposing for comment amendments to Form S–18, a simplified registration form, which would allow certain issuers engaged in the mining business to register their securities on that Form. A new disclosure item which includes requirements applicable to mining companies is proposed for Form S–18 and similar amendments are proposed for Item 2 of Regulation S–K. The latter will be applicable to companies using registration forms other than Form S–18 and to companies subject to the continuous reporting requirements under the Securities Exchange Act of 1934. The Commission is also recommending that Form S–3 be rescinded. That form is currently available to certain start-up or unprofitable companies engaged in the mining business.

DATE: Comments must be received on or before November 21, 1980.

ADDRESSES: All communications on this matter should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C., 20549. Comments should refer to File No. S7–853 and will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Robert Rupp, Office of Small Business Policy, Division of Corporation Finance, (202) 272–2644. With respect to proposed Item 7A of Form S–18 and Item 2(c) of Regulation S–K, contact Hubert W. Norman, Office of Engineering, Division of Corporation Finance, (202) 272–3257.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is publishing for comment certain amendments to Form S–18 (17 CFR 239.28), and Regulation S–K (17 CFR 229.20) and a proposal to rescind Form S–3 (17 CFR 239.13).

Form S–18 is a simplified registration statement available to certain domestic and Canadian corporate issuers for the registration under the Securities Act of 1933 (15 U.S.C. §§ 77a, et seq., as amended (1976)) of up to $5 million worth of securities to be sold for cash. The Form is not available to issuers that are engaged or intend to engage in significant mining operations. Form S–3 is designed exclusively for start-up and unprofitable mining companies. The Commission is hereby proposing that the availability of Form S–18 be extended to certain mining companies and that existing Form S–3 be rescinded. A new disclosure requirement specifically applicable to mining issuers would be added to Form S–18.

The Commission is also proposing an amendment to Item 2 of Regulation S–K. The item sets forth the type of disclosure to be made in describing an issuer's property. The proposed amendments deal specifically with the type of information to be furnished by mining companies.

Background

The Commission has for some time been examining steps which might be taken to facilitate capital formation by small businesses. The adoption of Form S–18 in April 1979 represented a significant initiative in this regard.[1] As adopted, issuers who engaged or intended to engage in significant mining operations were precluded from the use of the Form. Several commentators and witnesses who appeared at the Commission's Small Business Hearings

[1] Securities Act Release No. 33–6049, April 3, 1979 (44 FR 21562).

opposed this exclusion.[2] However, in view of the experimental nature of the Form and the initiation of regional processing of registration statements, the Commission determined to proceed cautiously in connection with the adoption of Form S–18. The Commission did express its intent to monitor the use of the Form for an appropriate period and to consider whether the conditions as to its availability should be expanded. The Office of Small Business Policy in the Division of Corporation Finance has undertaken an ongoing monitoring program regarding Form S–18. In addition, the Commission's Directorate of Economic and Policy Analysis recently published a study concerning the use of Form S–18 during the first eight months since its adoption.[3]

In view of the relatively widespread acceptance of the Form and the absence to date of any significant disclosure or enforcement problems, the Commission has determined to propose that Form S–18 be made available to certain companies engaged in the mining business. The staff will continue to consider, over the next several months, the advisability of further expanding Form S–18 to make it available to corporate issuers engaged in oil and gas operations and limited partnerships.

The amendments proposed herein provide for a new disclosure item, Item 7A, to be added to Form S–18. This item contains revised disclosure requirements applicable to issuers engaged in the mining business. With respect to those mining companies filing registration statements on Forms other than Form S–18 and those subject to the reporting provisions of the Securities Exchange Act of 1934 [15 U.S.C. §§ 78a, et seq., as amended (1976)] an amendment to Item 2 of Regulation S–K is also proposed.

Item 7A of Form S–18 incorporates the substantive disclosure concepts that are presently set forth in Form S–3. These provisions have been updated to reflect current disclosure practices and certain additional requirements have been included. Item 2(c) of Regulation S–K incorporates the provisions of proposed Item 7A in their entirety. Certain additions which were unnecessary in the Form S–18 context were included in the Regulation S–K amendments.

[2] In Securities Act Release No. 33–5914, March 6, 1978 (43 FR 10876), the Commission announced its intention to hold a series of small business hearings. The full text of the comments offered can be found in Commission File No. S7–734.

[3] Form S–18, A Monitoring Report on its Use in 1979. U.S. Securities and Exchange Commission. Directorate of Economic and Policy Analysis. March 1980.

Discussion

I. Form S–18 and Form S–3

Form S–3 is available to corporate issuers which engage or intend to engage in the mining business. The registration statement can be used only for shares of stock that are to be sold for cash. Issuers must be either start-up corporations or corporations that have not had any significant income during the past five years. If the issuer expects to succeed to any income producing activity the Form will likewise be unavailable to it. At present, any mining issuer that does not meet the above restrictions would be required to register on Form S–1.[4]

As indicated above, the Commission has determined to propose that Form S–18 be made available to companies engaged in the mining business. This change would be accomplished by deleting the existing prohibition against usage of the Form by mining companies from General Instruction A to the Form. The other restrictions present in the Instructions to Form S–18 would remain. Therefore a mining issuer would be required to be a domestic or Canadian corporation which proposes to sell not more than $5 million worth of securities to the public for cash. The mining issuer also may not be a company reporting under the Securities Exchange Act of 1934, a limited partnership or a subsidiary of a parent that would be unable to use the Form.[5]

If adopted, the proposals published today would extend to mining companies the benefits now available to issuers currently able to use Form S–18. The primary distinctions between Forms S–3 and S–18 are as follows. Issuers utilizing Form S–18 have the option to file their registration statements at the Headquarters Office or at an appropriate regional office.[6] All Form S–3's must be filed at the Headquarters Office. Form S–3 requires financial statements for the past three years that are prepared in accordance with Regulation S–X. Form S–18, on the other hand, requires financial statements for two years and they need only be prepared in accordance with Generally Accepted Accounting Principles. Registrants utilizing Form S–3 incur a reporting obligation under Section 15(d) of the Exchange Act immediately after the registration statement is declared effective. Form S–18 registrants incurring a reporting obligation under Section 15(d) are extended a gradual phase-in procedure whereby much of the information required in the initial Exchange Act reports is either carried over from the Form S–18 registration statement or is permitted to comply with Form S–18 requirements. Finally, Form S–3 is available only for equity offerings while Form S–18 may be used for debt as well as equity offerings.

The Commission is also proposing that Form S–3 be rescinded since the revision of Form S–18 will allow its use by certain mining companies. Under the present restrictions with respect to use of Form S–3 and as proposed for Form S–18, it appears that the only issuers that would be able to use Form S–3 but not Form S–18 are a reporting company that has not had any significant income in the past five years or a foreign issuer that has not had significant income in the past five years. One additional limitation, discussed below, is the $5 million ceiling on the amount of securities that may be registered on Form S–18. Form S–3, on the other hand, has no such limitation. The Division of Corporation Finance, Office of Small Business Policy has conducted a review of all Form S–3 filings over the past two years. This survey indicates that the number of companies that would be able to register on Form S–3 but not Form S–18 is extremely small.

With respect to the first category, the Commission believes that the burden of generating the additional information necessary for registration on Form S–1, the currently available alternative form for registration, would not be significant for an issuer that has been reporting under the 1934 Act. With regard to foreign issuers presently able to use Form S–3 but not Form S–18, it was found that only one registration statement filed in the past two years would have fallen within this category.

Based on the Commission's experience with Form S–3, the $5 million Ceiling applicable to Form S–18 also should not impose a hardship on issuers who would have used Form S–3. It was found that only one Form S–3 registration during the past two years exceeded the $5 million amount and that registration related to a $5.7 million offering. As a result, the effect of this limitation is expected to be minimal.

II. Regulation S-K, Item 2

Proposed Item 7A of Form S–18 represents a comprehensive set of disclosure requirements which address issues particularly germane to registrants engaged in the mining business. In order to provide for similar disclosure in other Securities Act registrations and in Exchange Act registrations and reports, the Commission is also proposing amendments to Item 2 of Regulation S-K.

[4] 17 CFR 239.11.

[5] See General Instruction A(a).

[6] The study prepared by the Directorate of Economic and Policy Analysis indicated that regional filing was perceived as one of the most important benefits of Form S–18. Form S–18 Monitoring Report, *supra* note 3, at 31.

Item 2 of Regulation S-K concerns the description of properties held by the issuer. Item 2 includes detailed disclosure requirements for issuers engaged in the oil and gas business but does not include similar requirements for issuers engaged in the mining business. The proposal herein suggests the addition of Item 2(c) which would set forth detailed disclosure requirements for mining issuers.

The entire set of disclosure requirements proposed as Item 7A to Form S–18 have been carried over to proposed Item 2(c) of Regulation S-K. In addition to those provisions, certain areas which are not relevant to Form S–18 have been included in the Regulation S-K item. The first relates to the impact of takeover or nationalization of properties owned by registrants which are located in foreign nations. Form S–18 is available to domestic and Canadian corporations only. Takeover or nationalization by Canadian authorities has not presented a problem in the past and therefore this provision was not deemed necessary for Form S–18.

A series of requirements concerning issuers that have entered into long term supply contracts have been included in the Regulation S-K item but not in the Form S–18 item. The reason is that mining companies that would be able to enter into such contracts would generally be larger, well-established companies with significant reserves. Such issuers probably would not be able to register on Form S–18. It is expected that the vast majority of mining companies that will use the form will be smaller, start-up companies with no significant reserves. Therefore, this requirement was not included in Item 7A to Form S–18.

Synopsis

The following brief synopsis is intended to assist interested parties in their understanding of the proposed amendments. Attention is directed to the attached text for a more complete understanding.

Item 7A. Description of Property—Issuers Engaged or To Be Engaged in Significant Mining Operations

As proposed, new Item 7A would provide for the inclusion in Form S–18 of disclosure requirements specifically applicable to issuers who engage or intend to engage in significant mining operations. The new item will appear immediately following present Item 7, "Description of Property." The item is essentially divided into three subsections. The first includes certain definitions applicable to mining companies; the second includes the applicable disclosure requirements; and the third includes certain supplemental information requirements.

(a) Item 7A(a)—Definitions

A basic definition of the term "reserve" as it relates to mineral deposits has been included in this subsection. The definition incorporates views from the recently published *U.S. Geological Survey Circular 831* [7] and from standard mining dictionaries. Form S–3 does not include a similar explanatory definition.

The definitions of "proven" and "probable" reserves included in this subsection are similar to those included in Form S–3. They have, however, been updated to reflect the substance of the *U.S. Geological Survey Circular 831.*

FASB No. 7 groups together, under the title "Development Stage Enterprises," issuers that are in both the exploratory and development stages. The distinction, from the perspective of the geologist or engineer, is significant. In mining terminology an exploratory stage company is basically engaged in the search for minerals. A development stage company, on the other hand, has found a commercially feasible body of minerals and is engaging in the preparation of that body for production. Financial statements for exploratory stage mining issuers will typically identify the issuer as a "development stage company." Such a classification may be confusing to investors. As a result, proposed Item 7A requires that the definitional terms in Item 7A(a) be utilized in the textual and financial statement disclosure. In this regard, Item 7A(a) includes separate definitions of the "Exploration," "Development" and "Production" stages. In addition, an amendment to Item 15 "Financial Statements and Instructions" has been inserted which cross-references to the Item 7A(a) definitions. The Commission specifically requests comments on the issue of whether such an instruction is necessary or desirable.

(b) Item 7A(b)—Disclosure Requirements

This subsection sets forth the prospectus informational requirements concerning the registrant's mining operations. Items 7A(b)(1)–(8) are similar to the requirements in Form S–3 Items 4(a)(1)–(6). These requirements have been expanded and updated to reflect current disclosure standards. The salient facts regarding the properties owned and operated by the registrant would be disclosed pursuant to these subsections. These disclosures would include the location of and means of access to the property, form of title or lease and any known mineralization on the property. In addition, a description of the history of operations and work done by the registrant will be required. An instruction indicating that the summation of proven (measured) and probable (indicated) reserves will be allowed under certain circumstances also has been inserted. This instruction will be applied where the difference between the issuer's proven (measured) and probable (indicated) reserves cannot reliably be defined. In addition, the Form S–3 prohibition against disclosure of reserves of lesser assurance proven (measured) or probable (indicated) has been retained. Finally, the present state of the property, plants and equipment would be included.

Two new substantive disclosure provisions have been added. Item 7A(b)(7) requires a description of the total tonnage produced, the grade of such ore and relevant production cost statistics. Item 7A(b)(8) would elicit disclosure concerning changes in the deposits mined and changes in the mining conditions experienced by the issuer.

(c) Item 7A(c)—Supplemental Information

Item 7A(c) addresses three separate subject matter areas of supplemental information. The first concerns maps, drill data and calculations upon which the reserve estimates are based. These requirements are similar to those included in Form S–3's "Instructions to Exhibits" section. A series of new instructions have been added which will delineate the proper format for maps submitted to the staff.

The second section, similar to Form S–3, requires that each engineering, geological or metallurgical report concerning the registrant's property be filed supplementally. The proposal modifies the existing Form S–3 requirements by allowing a list of the non-governmental reports to be filed instead of the reports themselves.

The third subsection requires filing of certain documents necessary to support representations made in the registration statement.

[7] Principles of a Resource/Reserve Classification for Minerals, U.S. Bureau of Mines and the U.S. Geological Survey (1980). This survey was intended as a revision of the widely utilized U.S. Geological Survey Bulletin No. 1450–A.

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Regulation S-K, Item 2(c)

The disclosure requirements discussed above with respect to Form S-18 were carried over in their entirety to proposed Item 2(c) of Regulation S-K. Certain additional disclosure requirements normally not applicable to Form S-18 registrants were added to Item 2(c). These additions are as follows.

Two disclosure provisions concerning the impact of foreign governments have been added. The first would mandate disclosure of the impact on the issuer of takeover or nationalization by a foreign government of the issuer's properties. The second concerns prohibitions against disclosure of estimated reserves by foreign governments or required disclosure of reserves other than proven or probable where the properties are under governmental authority. In these instances, the document should disclose the name of the country, identify the applicable law or regulation and give an appropriate description of the disclosure that is required or prohibited by the foreign government.

Issuers that have entered into contracts for supply of fixed amounts of minerals also will be required to set forth detailed dislosure concerning several aspects of such contracts. These disclosure requirements address matters such as the quantity of minerals to be supplied, the sources of supply, the impact of certain priorities or curtailments which may affect the ability to deliver, and the impact of price limitations imposed by federal or state authorities.

Text of Proposed Amendments

17 CFR Chapter II is proposed to be amended as follows:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

§ 239.13 [Deleted]

1. By rescinding § 239.13 in its entirety.

2. By amending § 239.28 to read as follows:

§ 239.28 Form S-18, optional form for the registration of securities to be sold to the public by the issuer for an aggregate cash price not to exceed $5,000,000.

* * * * *

General Instruction

A. Rule as to Use of Form S-18.

* * * * *

(6) (Delete the text of subsection (6) and insert the text of subsection (7).)

(7) (Insert the text of subsection (8).)

(8) (Delete this subsection.)

* * * * *

Item 7. Description of Property

(No change.)

Item 7A. Description of Property—Issuers Engaged or To Be Engaged in Significant Mining Operations

(a) *Definitions.*—The following definitions apply to registrants engaged or to be engaged in significant mining operations:

(1) *Reserve:* That part of a mineral deposit which could be economically and legally extracted or produced at the time of the reserve determination.

Note.—Reserves are customarily stated in terms of "ore" when dealing with metalliferous minerals; when other materials such as coal, oil shale, tar sands, limestone, etc. are involved, an appropriate term such as "recoverable coal" may be substituted.

(2) *Proven (measured) reserves:* Reserves for which (a) quantity is computed from dimensions revealed in outcrops, trenches, workings, or drill holes; grade and/or quality are computed from the results of detailed sampling and (b) the sites for inspection, sampling and measurement are spaced so closely and the geologic character is so well defined that size, shape, depth, and mineral content of reserves are well-established.

(3) *Probable (indicated) reserves:* Reserves for which quantity and grade and/or quality are computed from information similar to that used for proven (measured) reserves, but the sites for inspection, sampling, and measurement are farther apart or are otherwise less adequately spaced. The degree of assurance, although lower than that for proven (measured) reserves, is high enough to assume continuity between points of observation.

(4) (i) *Exploration stage.*—Includes all issuers engaged in the search for mineral deposits (reserves), which are not in either the development or production stage.

(ii) *Development stage.*—Includes all issuers engaged in the preparation of an established commercially mineable deposit (reserves) for its extraction which are not in the production stage.

(iii) *Production stage.*—Includes all issuers engaged in the exploitation of a mineral deposit (reserve). Instruction-Mining companies in the exploration stage should not refer to themselves as development stage companies in the financial statements, even though such companies should comply with SFAS 7, if applicable.

(b) *Mining operations disclosure.*—Furnish the following information as to each of the mines, plants and other significant properties owned or operated, or presently intended to be owned or operated, by the registrant:

(1) The location of and means of access to the property.

(2) A brief description of the title, claim, lease or option under which the registrant and its subsidiaries have or will have the right to hold or operate the property, indicating any conditions which the registrant must meet in order to obtain or retain the property. If held by leases or options, the expiration dates of such leases or options should be stated. Appropriate maps may be used to portray the location of significant properties.

(3) A brief history of previous operations, including the names of previous operators, insofar as known.

(4) A brief description and the present state of exploration and/or development and the present condition of the property. The information provided should describe on a property-by-property basis the: (i) age, (ii) details as to modernization, (iii) total cost, and (iv) physical condition, with respect to plants, equipment, including subsurface improvements and equipment. Mines should be identified as either open-pit or underground.

(5) A brief description of the rock formations and mineralization of existing or potential economic significance on the property, including the identity of the principal metallic or other constituents insofar as known. If proven (measured) or probable (indicated) reserves have been established, state (i) the estimated tonnages and grades (or quality, where appropriate) of such classes of reserves, and (ii) the name of the person making the estimates and the nature of his relationship to the registrant.

Instructions: 1. It should be stated whether the reserve estimate is of in-place material or of recoverable material. Any in-place estimate should be qualified to show the anticipated losses resulting from mining methods and beneficiation or preparation.

2. The summation of proven (measured) and probable (indicated) ore reserves is acceptable if the difference in degree of assurance between the two classes of reserves cannot be reliably defined.

3. No estimates of reserves of lesser assurance than proven (measured) and probable (indicated) such as "possible" or "inferred" should be set forth.

(6) Describe the work already done by the registrant on the property and the registrant's proposed program of exploration or development of the property. If the property is without known reserves and the proposed program is exploratory in nature, a statement to that effect shall be made.

(7) Show in tabular form to the extent reasonably practicable for each of the registrant's significant mines or, if appropriate, for each group of mines operating as a unit within a specific mining district or other limited area:

(i) the total tonnage of production during each of the last five fiscal years and the average grade or quality of such production during each such year;

(ii) where applicable, for each of the last five fiscal years, the average direct operating cost for mining and beneficiation per ton of production, showing separately cost of labor, power and materials, plus footnotes to the table showing the aggregated amount of additional costs, such as depletion, depreciation, administration and taxes per ton of such production, and the average dollar value realized per ton of material produced;

(iii) the source of power utilized.

(8) Show to what degree there have been material changes during the last five fiscal years, to the most recent date practicable, in the principal deposits mined or the physical mining conditions and whether any such material changes are anticipated. Describe and state the significance of any such past or anticipated changes.

(9) If technical terms relating to geology, mining or related matters whose definitions cannot be readily found in conventional dictionaries (as opposed to technical dictionaries or glossaries) are used, an appropriate glossary should be included in the registration statement.

(10) Detailed geologic maps and reports, feasibility studies and other highly technical data should not be included in the registration statement but should be, to the degree appropriate and necesary for the Commission's understanding of the registrant's presentation of business and property matters, furnished as supplemental information.

(c) *Supplemental Information.*—(1) If an estimate of proven (measured) or probable (indicated) reserves is set forth in the registration statement, furnish:

(i) maps drawn to scale showing any mine workings and the outlines of the reserve blocks involved together with the pertinent sample-assay thereon,

(ii) all pertinent frill data and related maps,

(iii) the calculations whereby the basic sample-assay or drill data were translated into the estimates made of the grade and tonnage of reserves in each block and in the complete reserve estimate.

Instructions—Maps and other drawings submitted to the staff should include:

1. A legend or explanation showing, by means of pattern or symbol, every pattern or symbol used on the map or drawing; the use of the symbols used by the U.S. Geological Survey is encouraged;

2. A graphical bar scale should be included; additional representations of scale such as "one inch equals one mile" may be utilized provided the original scale of the map has not been altered;

3. A north arrow on maps;

4. An index map showing where the property might be in relationship to the state or province, etc., in which it was located;

5. A title of the map or drawing and the date on which it was drawn;

6. In the event interpretive data is submitted in conjunction with any map, the identity of the geologist or engineer that prepared such data;

7. Any drawing should be simple enough or of sufficiently large scale to clearly show all features on the drawing.

(2) Furnish a complete copy of every material engineering, geological or metallurgical report concerning the registrant's property, including governmental reports, which are known and available to the registrant. Every such report should include the name of its author and the date of its preparation, if known to the registrant.

Any of the above-required reports as to which the staff has access need not be submitted. In this regard, issuers should consult with the staff prior to filing the registration statement. Any reports not submitted should be identified in a list furnished to the staff. This list should also identify any known governmental reports concerning the registrant's property.

(3) Furnish copies of all documents such at title documents, operating permits and easements needed to support representations made in the registration statement.

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Item 15. Financial Statements and Instructions

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(f) With respect to companies engaged or to be engaged in the mining business, attention is directed to the instruction to Item 7A(a)(4) concerning the appropriate classification of issuers engaged in the exploratory, development and production stages of mining.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934—REGULATION S-K.

1. By amending § 229.20 to amend item 2 by adding paragraph (c) to read as follows.

§ 229.20 Information required in document.

* * * * *

Item 2. Description of property.

(a)* * *

(b)* * *

(c) if mining operations are material to the registrant's and its subsidiaries' business operations or financial position, disclose the following under appropriate captions in tabular form where practicable, with cross-references, where applicable, to related information in the financial statements:

2(c)(1). Definitions: The following definitions apply to registrants engaged or to be engaged in significant mining operations:

(i) *Reserve:* That part of a mineral deposit which could be economically and legally extracted or produced at the time of the reserve determination. Note: Reserves are customarily stated in terms of "ore" when dealing with metalliferous minerals; when other materials such as coal, oil shale, tar sands, limestone, etc. are involved, an appropriate term such as "recoverable coal" may be substituted.

(ii) *Proven (Measured) Reserves:* Reserves for which (a) quantity is computed from dimensions revealed in outcrops, trenches, workings, or drill holes; grade and/or quality are computed from the results of detailed sampling and (b) the sites for inspection, sampling and measurement are spaced so closely and the geologic character is so well defined that size, shape, depth, and mineral content of reserves are well-established.

(iii) *Probable (Indicated) Reserves:* Reserves for which quality and grade and/or quality are computed from information similar to that used for proven (measured) reserves, but the sites for inspection, sampling, and measurement are further apart or are otherwise less adequately spaced. The degree of assurance, although lower than that for proven (measured) reserves, is high enough to assume continuity between points of observation.

(iv) (a) *Exploration Stage.*—Includes all issuers engaged in the search for mineral deposits (reserves) which are not in either the development or production stage.

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(b) *Development Stages.*—Includes all issuers engaged in the preparation of an established commercially mineral deposit (reserve) for its extraction which are not in the production stage.

(c) *Production Stage.*—Includes all issuers engaged in the exploitation of a mineral deposit (reserve).

Instruction: Mining companies in the exploration stage should not refer to themselves as development stage companies in the financial statements even though such companies should comply with SFAS No. 7.

2(c)(2). Mining operations disclosure.—Furnish the following information as to each of the mines, plants and other significant properties owned or operated, or presently intended to be owned or operated, by the registrant:

(i) The location of and means of access to the property.

(ii) a brief description of the title, claim, lease or option under which the registrant and its subsidiaries have or will have the right to hold or operate the property, indicating any conditions which the registrant must meet in order to obtain or retain the property. If held by leased or options, the expiration dates of such leases or options should be stated. Appropriate maps may be used to portray the location of significant properties.

(iii) a brief history of previous operations, including the names of previous operators, insofar as known.

(iv) A brief description of the present state of exploration and/or development and the present condition of the property. The information provided should describe on a property-by-property basis the: (a) age, (b) details as to modernization (c) total cost, and (d) physical condition, with respect to plants, equipment and including subsurface improvements and equipment. Mines should be identified as either open-pit or underground.

(v) A brief description of the rock formations and mineralization of existing or potential economic significance on the property, including the identity of the principal metallic or other constituents insofar as known. If proven (measured) or probable (indicated) reserves have been established, state (a) the estimated tonnages and grades (or quality, where appropriate) of such classes of reserves, and (b) the name of the person making the estimates and the nature of his relationship to the registrant.

Instructions: 1. It should be stated whether the reserve estimate is of in-place material or of recoverable material. Any in-place estimate should be qualified to show the anticipated losses resulting from mining methods and beneficiation or preparation.

2. The summation of proven (measured) and probable (indicated) ore reserves is acceptable if the difference in degree of assurance between the two classes of reserves cannot be reliably defined.

3. No estimates of reserves of lesser assurance than proven (measured) and probable (indicated) such as "possible" or "inferred" should be set forth.

4. Disclosure shall be given of the effect on ownership of reserves of any takeover or nationalization by foreign governments of properties owned by the registrant, including any change of property interest into a long-term supply, purchase or similar agreement.

5. If any foreign government restricts the disclosure of estimated reserves for properties under its governmental authority, or amounts under long-term supply, purchase, or similar agreements, or if the foreign government requires the disclosure of reserves other than proven and probable, the registrant should notify the Office of Engineering, Division of Corporation Finance, of the Commission. If the required information is not disclosed or if categories of reserves other than proven or probable are disclosed for these reasons, the document should identify the country, cite the law or regulation which restructs or requires such disclosure, and indicate that the reported reserve estimates or amount do not include figures for the named country or that the reserve estimates include reserves other than proven or probable.

(vi) Describe the work already done by the registrant on the property and the registrant's proposed program of exploration or development of the property. If the property is without known reserves and the proposed program is exploratory in nature, a statement to that effect shall be made.

(vii) Show in tabular form to the extent practicable for each of the registrant's significant mines or, if appropriate, for each group of mines operating as a unit within a specific mining district or other limited area:

(a) The total tonnage of production during each of the last five fiscal years and the average grade or quality of such production during each such year;

(b) Where applicable, for each of the last five fiscal years, the average direct operating cost for mining and beneficiation per ton of production, showing separately cost of labor, power and materials, plus footnotes to the table showing the aggregated amount of additional costs such as depletion, depreciation, administration, taxes, etc., per ton of such production, and the average dollar value realized per ton of material produced;

(c) The source of power utilized.

(viii) Show to what degree there have been material changes during the last five fiscal years, to the most recent date practicable, in the principal deposits mined or the physical mining conditions and whether any such material changes are anticipated. Describe and state the significance of any such past or anticipated changes.

(ix) If technical terms relating to geology, mining or related matters whose definitions cannot be readily found in conventional dictionaries (as opposed to technical dictionaries or glossaries) are used, an appropriate glossary should be included in the registration statement.

(x) Detailed geologic maps and reports, feasibility studies and other highly technical data should not be included in the registration statement but should be, to the degree appropriate and necessary for the Commission's understanding of the registrant's presentation of business and property matters, furnished as supplemental information.

(xi) If the registrant is obligated to provide a fixed and determinable quantity of minerals in the future under existing contracts or agreements, material information concerning the estimated availability of minerals from any principal sources.

(a) Such information shall be furnished as to current and future reserves and supplies, and shall (A) identify the principal sources of minerals to be relied upon and the total available amounts expected to be received from each principal source and from all sources combined; (B) disclose the total quantities of minerals which are subject to delivery commitments; and (C) indicate steps taken to insure available reserves and supplies are sufficient to meet such commitments. Such future information shall be provided for an appropriate period of one to five years.

(b) The registrant should develop disclosure based upon the facts and circumstances of its particular situation, including disclosure by appropriate geographic areas. Such disclosure should be in a form understandable to investors and should include, but not be limited to, a description of the following factors: (A) significant supplies dedicated or contracted to the registrant; (B) any significant amounts of reserves or supplies subject to priorities or curtailments which may affect quantities delivered to certain classes of customers, such as customers receiving services under low priority and

interruptible contracts; (C) any priority allocations or price limitations imposed by federal or state regulatory agencies, as well as other factors beyond the control of the registrant which may affect the ability of the registrant to meet its contractual obligations (detailed discussions of price regulation need not be furnished); (D) any other factors beyond the control of the registrant, such as competition for the acquisition of reserves and supplies, and the availability of foreign reserves and supplies which may affect the ability of the registrant to acquire additional reserves and supplies, or to maintain or increase the availability of reserves and supplies; and (E) any impact on the registrant's earnings and financing needs resulting from its inability to meet short or long-term contractual obligations.

(c) If within the last five years the registrant has been unable to meet any significant delivery commitments, describe the circumstances concerning such events and the impact on the registrant.

2(c)(3). Supplemental information.—General Instruction: In filings on Form 10–K, the supplemental information required by this Item 2(c)(3) need only be furnished if requested by the staff.

(i) If an estimate of proven (measured) or probable (indicated) reserves is set forth in the registration statement, furnish:

(a) maps drawn to scale showing any mine workings and the outlines of the reserve blocks involved together with the pertinent sample-assay thereon,

(b) all pertinent drill data and related maps,

(c) the calculations whereby the basic sample-assay or drill data were translated into the estimates made of the grade and tonnage of reserves in each block and in the complete reserve estimate.

Instructions—Maps and other drawings submitted to the staff should include:

1. A legend or explanation showing, by means of pattern or symbol, every pattern or symbol used on the map or drawing; the use of symbols used by the U.S. Geolgical Survey is encouraged;

2. A graphical bar scale should be included; additional representations of scale such as "one inch equals one mile" may be utilized provided the original scale of the map has not been altered;

3. A north arrow on maps;

4. An index map showing where the property might be in relationship to the state or province, etc., in which it was located;

5. A title of the map or drawing and the date on which it was drawn;

6. In the event interpretive data is submitted in conjunction with any map, the identity of the geologist or engineer that prepared such data;

7. Any drawing should be simple enough or of sufficiently large scale to clearly show all features on the drawing.

(ii) Furnish a complete copy of every material engineering, geological or metallurgical report concerning the registrant's property, including governmental reports, which are known and available to the registrant. Every such report should include the name of its author and the date of its preparation, if known to the registrant.

Any of the above-required reports as to which the staff has access need not be submitted. In this regard, issuers should consult with the staff prior to filing the registration statement. Any reports not submitted should be identified in a list furnished to the staff. This list should also identify any known governmental reports concerning the registrant's property.

(iii) Furnish copies of all documents such as title documents, operating permits and easements needed to support representations made in the registration statement.

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 203(a), 49 Stat. 704; sec. 202, 68 Stat. 686; secs. 3, 4, 5, 6, 78 Stat. 565–568, 569, 570–574; secs. 1, 2, 3, 82 Stat. 454, 455; sec. 28(c) 84 Stat. 1435; secs. 1, 2, 3–5, 84 Stat. 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 18, 89 Stat. 117, 118, 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 204, 91 Stat. 1494, 1498, 1499, 1500; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78*l*, 78m, 78n, 78o(d), 78w(a))

The Commission hereby proposes for comment amendments to Form S–18 and an amendment to rescind Form S–3 pursuant to Sections 6, 7, 8, 10 and 19(a) of the Securities Act of 1933. The Commission also proposes for comment amendments to Regulation S–K pursuant to all of the 1933 Act provisions referred to above and Sections 12, 13, 14, 15(d) and 23(a) of the Securities Exchange Act of 1934.

By the Commission.

George A. Fitzsimmons,

Secretary.

October 7, 1980.

[FR Doc. 80-32299 Filed 10-16-80; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 436, 446, and 546

[Docket No. 80N–0249]

Tetracycline Hydrochloride and Oxytetracycline Hydrochloride; Revised Dissolution Test for Human and Animal Drugs

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) proposes to amend the antibiotic drug regulations by replacing the current procedure for evaluating dissolution test results for tetracycline hydrochloride tablets and capsules and oxytetracycline hydrochloride capsules with the dissolution acceptance table published in the United States Pharmacopeia (USP). The agency is taking this action to provide for a more reasonable interpretation of the dissolution test results.

DATES: Comments by December 15, 1980. The final regulation based on this proposal will become effective 30 days after the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan Eckert, Bureau of Drugs (HFD–140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 17, 1979 (44 FR 48186), the Food and Drug Administration (FDA) issued a final rule amending the antibiotic drug regulations to require dissolution testing for tetracycline hydrochloride (HCl) tablets and capsules for human and animal use and oxytetracycline HCl capsules for human use. It took the action to provide a method by which the bioequivalence of these drug products could be ensured.

The regulations provide that the capsules or tablets fail the dissolution test if an individual dosage unit does not meet the specified standard. Thus, no provision is made for repeat testing of a dosage unit which initially fails the specified standard. The dissolution acceptance criteria in the official USP, however, provide three steps in the interpretation of dissolution test results. If test results for a product meet the specified standard at stage 1, the sample

passes the test. If, however, the results do not meet the specified standard, repeat testing of a dosage unit is permitted in stage 2 and, if necessary, stage 3.

In light of several months of testing experience, the agency views the USP dissolution acceptance criteria as more appropriate than those required by the regulations. The USP method is less rigid because of the provision for retesting, and it has a sounder statistical basis. For these reasons, therefore, the agency proposes to amend the antibiotic drug regulations by replacing the method for evaluating the dissolution test results for tetracycline HCl tablets and capsules and oxytetracycline HCl capsules with the official USP dissolution acceptance criteria.

For updating purposes, the agency proposes to revise § 436.541 by replacing the reference to USP XIX with reference to the USP XX, which is the current USP volume. The USP XIX Apparatus 2 equipment and methodology referred to in § 436.541, and which must be used in the dissolution testing of tetracycline HCl tablets and capsules and oxytetracycline HCl capsules is identical to the Apparatus 2 equipment and methodology set forth in the USP XX.

The agency has determined that under 21 CFR 25.24 (b)(22) and (d)(9) (proposed in the Federal Register of December 11, 1979; 44 FR 71842), that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 512(n), 59 Stat. 463 as amended, 82 Stat. 350–351 (21 U.S.C. 357, 360b(n))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), it is proposed that Parts 436, 446, and 546 be amended as follows:

Subchapter D—Drugs for Human Use

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

1. in Part 436, § 436.541 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 436.541 Tetracycline hydrochloride tablets and capsules; oxytetracycline hydrochloride capsules; dissolution test.

(a) *Equipment.* Use Apparatus 2 as described in the United States Pharmacopeia XX dissolution test with the following exception: A distance of 4.5±0.5 centimeters should be maintained between the lower edge of the stirring blade and the lowest inner surface of the vessel during the test.

(b) *Procedure.* For each dosage form listed in the table in this paragraph select the appropriate dissolution medium, stirring blade rotation rate and sampling time and proceed as set forth in Apparatus 2 methodology of the United States Pharmacopeia XX dissolution test. Determine the amount of drug substance dissolved by performing the assay described in paragraph (c) of this section. The amount of dissolution medium removed for sampling purposes may be disregarded if the amount removed is not more than 15 milliliters. If more than 15 milliliters is removed, then correct for the volume removed.

* * * * *

(d) *Evaluation.* Use the dissolution acceptance table and interpretation in the United States Pharmacopeia XX.

PART 446—TETRACYCLINE ANTIBIOTIC DRUGS

2. In Part 446:

a. Section 446.167 is amended by revising the next to last sentence in paragraph (a)(1) and by revising paragraph (b)(3), to read as follows:

§ 446.167 Oxytetracycline hydrochloride capsules.

(a) * * *

(1) * * * It passes the dissolution test. * * *

* * * * *

(b) * * *

(3) *Dissolution.* Proceed as directed in § 436.541 of this chapter. The quantity Q (the amount of oxytetracycline hydrochloride dissolved) is 60 percent in 30 minutes and 85 percent in 60 minutes.

b. Section 446.181d is amended by revising the fifth sentence in paragraph (a)(1) and by revising paragraph (b)(3), to read as follows:

§ 446.181d Tetracycline hydrochloride tablets.

(a) * * *

(1) * * * It passes the dissolution test. * * *

* * * * *

(b) * * *

(3) *Dissolution.* Proceed as directed in § 436.541 of this chapter. The quanity Q (the amount of tetracycline hydrochloride dissolved) is 60 percent in 30 minutes and 85 percent in 60 minutes.

* * * * *

c. Section 446.181e is amended in paragraph (a)(1) by deleting the sixth and seventh sentences and substituting a new single sentence, and by revising paragraph (b)(4), to read as follows:

§ 446.181e Tetracycline hydrochloride capsules.

(a) * * *

(1) * * * It passes the dissolution test. * * *

* * * * *

(b) * * *

(4) *Dissolution.* Proceed as directed in § 436.541 of this chapter. The quantity Q (the amount of tetracycline hydrochloride dissolved), except for the 500-milligram capsule, is 60 percent in 30 minutes and 85 percent in 60 minutes. For the 500-milligram capsule, the quantity Q is 50 percent in 30 minutes, 70 percent in 60 minutes, and 85 percent in 90 minutes.

Subchapter E—Animal Drugs, Feeds, and Related Products

PART 546—TETRACYCLINE ANTIBIOTIC DRUGS FOR ANIMAL USE

3. In Part 546, § 546.110d is amended by revising the fourth sentence in paragraph (a)(1) and by revising paragraph (b)(4), to read as follows:

§ 546.110d Chlortetracycline hydrochloride tablets.

(a) * * *

(1) * * * If it is tetracycline hydrochloride tablets not exceeding 15 millimeters in diameter or not intended solely for use in preparing solutions, it passes the dissolution test. * * *

* * * * *

(b) * * *

(4) *Dissolution.* Proceed as directed in § 436.541 of this chapter. The quantity Q (the amount of tetracycline hydrochloride dissolved) is 60 percent in 30 minutes and 85 percent in 60 minutes.

* * * * *

Interested persons may, on or before December 15, 1980 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Interested persons may also, on or before November 17, 1980, submit to the Hearing Clerk (address above) a request for an informal conference. If an informal conference is held, interested persons will have until December 15, 1980 or 30 days from the date of the conference, whichever is later, to submit their comments.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

October 6, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31956 Filed 10-16-80; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 570

[Docket No. R-80-792]

Community Development Block Grants; Clarifications and Changes to Urban Development Action Grant Rules; Waiver Request

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of congressional waiver request.

SUMMARY: Section 7(o)(4) of the Department of Housing and Urban Development Act permits the Secretary of HUD to request a waiver of the legislation's requirement of a 20 day delayed effective date for final rules in appropriate instances. This notice lists and briefly summarizes for public information a final rule concerning the requirements, policies, and procedures of the action grant program with respect to which the Secretary is presently requesting a waiver.

FOR FURTHER INFORMATION CONTACT: Burton Bloomberg, Director, Office of Regulations, Office of General Counsel, 451 7th Street, SW, Washington, D.C. 20410 (202) 755–6207.

SUPPLEMENTARY INFORMATION: Currently with issuance of this Notice, the Secretary is forwarding to the Chairmen and Ranking Minority Members of both Congressional Banking Committees the final rule listed below. The purpose of the transmittal is to request waiver of the 20-day delayed effective date for the final rule under Section 7(o)(3) of the Department of Housing and Urban Development Act. A summary of the rulemaking document for which waiver has been requested is set forth below:

Final Rule—24 CFR Part 570, Community Development Block Grants; Clarifications and Changes to Urban Development Action Grant Rules.

This rule revises the requirements governing urban development action grants. The rule clarifies policies and procedures used in the action grant program in order to better inform potential applicants of program requirements.

(Sec. 7(o) of the Department of HUD Act, 42 U.S.C. 3535(o); sec. 324 of the Housing and Community Development Amendments of 1978)

Issued at Washington, D.C., October 9, 1980.

Moon Landrieu,

Secretary, U.S. Department of Housing and Urban Development.

[FR Doc. 80-32393 Filed 10-16-80; 8:45 am]

BILLING CODE 4210-01-M

24 CFR Part 570

[Docket No. R-80-759]

Modifications to Urban Development Action Grant Rules; Congressional Waiver Request

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of congressional waiver request.

SUMMARY: This legislation permits the Secretary to request waiver of the legislation's requirements in appropriate instances under Section 7(o)(4) of the Department of Housing and Urban Development Act. This Notice lists and briefly summarizes for public information a final rule with respect to which the Secretary is presently requesting waiver.

FOR FURTHER INFORMATION CONTACT: Burton Bloomberg, Director, Office of Regulations, Office of General Counsel, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755–6207.

SUPPLEMENTARY INFORMATION: Concurrently with issuance of this Notice the Secretary is forwarding to the Chairman and Ranking Minority members of both Congressional Banking Committees the interim rule listed below. The purpose of the transmittal is to request waiver of the 20 day delayed effective date requirements for the final rule under Section 7(o)(3) of the Department of Housing and Urban Development Act. A summary of the rulemaking document for which waiver has been requested is set forth below:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

This rule amends Part 570, Subpart G, Modifications to Urban Development Action Grant Rules by adding a new § 570.466. It finalizes the requirements governing Urban Development Action Grants availability to assist communities in revitalizing the economic base of their pockets of poverty.

Issued at Washington, D.C., October 9, 1980.

Moon Landrieu,

Secretary, U.S. Department of Housing and Urban Development.

[FR Doc. 80-32301 Filed 10-16-80; 8:45 am]

BILLING CODE 4210-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1244

[Ex Parte No. 385]

Revision of Waybill Analysis of Transportation of Property—Railroads

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Interstate Commerce Commission is giving consideration to modification of its orders requiring certain railroads to submit waybills used for the continuous study of rail carload terminations, generally known as the "One-Percent Waybill Sample." The primary purpose of the modifications is to give railroads the option of reporting minimum essential traffic information by means of computer tapes in lieu of hard copy waybills. Rules governing the submission of hard copy waybills are also changed to clarify the procedures, to improve the reliability of the study results and to reduce some of the reporting requirements.

DATE: Comments must be received on or before November 17, 1980.

ADDRESS: Send an original and 10 copies of comments to: Office of Policy and Analysis, Room 7326, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Ernest R. Olson, Telephone: 202–275–0783.

SUPPLEMENTARY INFORMATION: Since 1946, the Interstate Commerce Commission has collected a continuous sample of carload waybills from railroads terminating the shipments. The sample was designed to yield approximately one-percent of the total

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carloads terminated by railroads subject to the reporting rules. The sample is the only known source from which reasonably reliable and comprehensive information can be obtained on rail carload freight traffic flow and its characteristics. It is intended primarily to serve the needs of the Commission and the Department of Transportation,[1] but is also widely used to serve the traffic data needs of other Federal, State and local governments, the transportation industry, shippers, research organizations, universities and others.

The technical design of the waybill sample has remained essentially the same throughout its history. After considerable study, the Commission believes the time has come to revise the sampling process taking advantage of improved statistical theory and the widespread usage of computers by railroads in their business processes, and to recognize that much railroad traffic moves in multiple car lots. The proposed modifications should raise the quality of the sample study results and, at the same time, reduce the railroads' reporting costs and the Government's processing costs.

The proposed rules set forth two options for railroads subject to the order for selecting and submitting the waybill information: a respondent railroad may either furnish a computer tape which is acceptable to the Commission containing specified information from a sample of waybill records (machine readable input MRI system) or submit authenticated copies of the front only of audited waybills (manual system).

Railroads choosing to use the MRI system would be required to conform to standards and format developed and agreed to informally by staff of the Department of Transportation and the Interstate Commerce Commission and representatives of the Association of American Railroads' Revenue and Statistics Committees and the Cost Analysis Organization. A copy of the *Procedures for Sampling Waybill Records by Computer* is available on request to:

Office of Policy and Analysis, Interstate Commerce Commission, Washington, D.C. 20423. Attention: William Norris.

Generally the procedures provide that to be eligible for the MRI system, each railroad must furnish the minimum waybill data elements in a standard computer tape format for a given number of waybill records selected on the basis of the number of carloads for the waybill movement. The sampling rate increases as the number of carloads for the waybill increases. Also, before beginning to use the MRI system for reporting purposes, the railroad would be required to satisfy two tests designed to show that its sampling procedures are technically adequate and that the reported information is valid.

Railroads choosing the manual system would submit a copy of all waybills with less than 6 carloads covering shipments terminating on its lines whose serial numbers are 1 or end in 01, all terminating waybills with 6 to 25 carloads whose serial numbers end in 1, and all terminating waybills with 26 or more carloads per waybill whose serial numbers end in 1 or 7. The current requirement for submitting supplemental information on the type of rate in the Supplemental Statement is eliminated. Also eliminated is the EM–5 system of reporting multiple car shipments voluntarily used by over 35 of the roads.

The proposed rule also modifies the definition of railroads required to report waybills from an average annual revenue standard ($3,000,000 or more) to one based on the number of carloads terminated (4,500 or more annually or 5% of the terminations in a state). The purpose of these changes is to relieve smaller railroads from the reporting burdens and to assure more adequate and stable coverage of total traffic movements since the number of carloads terminated is not affected by monetary inflation.

Also, the definition of railroad for reporting waybill information includes railroads or terminal companies that handle terminating waybills for revenue billing or interline settlement for another railroad. A respondent may be an individual railroad company or collectively a railroad and its operating subsidiaries reporting to the Commission on a consolidated basis.

The proposed rule, for the first time, defines a waybill so as to make clear that all documents or instruments used by railroads for disposition of freight, authority for moving shipments and as a basis for determining and setting freight charges and interline settlements are included in this sample. Experience indicates that in the past some shipments may have been excluded from the sample selection process because the documentation was not considered to be a "waybill."

Sampled waybills, or the computer processed waybill information are required to be filed within 45 days from the end of the audit month (quarter, optional for tape submission). At present railroads are required to file waybills at least once each month, but there is no requirement respecting the number of days following the audit month. This revision should improve the timeliness of the sample results by avoiding the delays sometimes experienced in the past in submitting the waybill information.

It does not appear that the proposed regulations will significantly affect either the quality of the human environment or conservation of energy resources. However, comments on this point are invited.

Attached is the proposed revision of 49 CFR Part 1244 Waybill Analysis of the Transportation of Property Railroads.

Authority: 49 U.S.C. 11144.

Dated: September 26, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

Agatha L. Mergenovich,
Secretary.

Part 1244 would be revised to read as follows:

PART 1244—WAYBILL ANALYSIS OF TRANSPORTATION OF PROPERTY—RAILROADS

Sec.
1244.1 Waybills.
1244.2 Sampling of waybills.
1244.3 Date of filing.

Authority: 49 U.S.C. 11144.

§ 1244.1 Waybills.

(a) Effective January 1, 1981, and thereafter unless otherwise ordered, all railroads and terminal companies [1] handling terminating waybills for revenue billing or interline settlement under special agreement for another railroad subject to the Interstate Commerce Act as revised, and every receiver, trustee, executor, administrator or assignee of any such railroad, terminating 4,500 or more carloads, or 5 percent of the cars terminating for any state in a year, or an immediate prior year, are hereby required to file sample waybill information.[2] Railroads shall also submit the required waybill information for any railroad subsidiaries. A railroad may submit this information in one of the following two ways.

(1) Authenticated copies of the front only of audited waybills—the manual system.

(2) A computer tape containing specified information from a sample of waybills—the computerized system.

(b) A waybill, which may be referred to by other names, such as mine tickets, is the document or instrument prepared from the bill of lading contract or shipper's instructions as to the disposition of the freight, and used by the railroad(s) involved as the authority to move the shipment and as the basis for determining the freight charges and interline settlements.

§ 1244.2 Sampling of waybills.

(a) *For the manual system,* the sample of required waybill shall be as follows:

(1) All waybills with less than 6 carloads whose serial numbers are 1 or end in 01,

(2) All waybills with 6 to 25 carloads per waybill, whose serial numbers end in 1, and

(3) All waybills with 26 or more carloads per waybill, whose serial numbers end in 1 or 7.

Each respondent railroad shall maintain a control procedure to ensure complete and accurate reporting for the waybill sampling. All pertinent waybill data shall be included on hard copy waybill submissions.

(b) *For the computerized system,* the tape shall be required to conform to the standards and format specified in the *Procedure for Sampling Waybill Records by Computer* issued by the Interstate Commerce Commission. The sampling rate shall be as follows:

	Sample rate
Number of carloads on waybill:	
1–2	1/40
3–15	1/12
16–60	1/4
61–100	1/3
101 and over	1/2

§ 1244.3 Date of filing.

(a) Copies of waybill or computer processed waybill information should be forwarded upon completion of audit, but shall be forwarded within 45 days from the end of the audit month (or quarter, optional for tape submissions) to the ICC or a Contractor as specified by ICC.

(b) Certification by a responsible officer as to the completeness and accuracy of the sample shall be made once a year in accordance with the Transmittal Form and instructions thereon.

[FR Doc. 80-32400 Filed 10-16-80; 8:45 am]
BILLING CODE 7035-01-M

[1] Under a Memorandum of Agreement, FR Doc. 70-9634, published July 25, 1970, the sample waybills submitted in response to the Commission's order, are processed by the Department of Transportation.

[1] For purposes of this order, a railroad (including terminal companies) is an individual railroad, or collectively the railroad and its rail operating subsidiaries reporting to the Commission in their annual report on a consolidated basis.

[2] All railroads shall maintain a record of the number of freight carloads terminating on their line annually and shall furnish this number certified by a responsible officer as correct when requested by the Commission for determining whether the railroads meet the criteria for reporting under this order.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 17]

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status and Critical Habitat for the Kentucky Cave Shrimp

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine the Kentucky cave shrimp (*Palemonias ganteri*) to be an Endangered species. This action is being taken in response to a petition which indicates that this species is not extinct, as previously suspected, and that its remaining population is restricted by unseasonal flooding of its habitat and endangered by groundwater contamination. The Kentucky cave shrimp is now known to occur only in the Roaring River passage of the Flint Mammoth Cave System, Mammoth Cave National Park, Edmonson County, Kentucky. The proposed rule would provide protection to wild populations of this species. Critical Habitat is included with this proposed rule. Comments and other information are sought from the public.

DATES: Comments from the public and from the Governor of Kentucky must be received by January 15, 1981. A public meeting on this proposal will be held on Wednesday, December 10, 1980 at 7:00 PM in Room 305, Downing University Center, Western Kentucky University, Bowling Green, Kentucky.

ADDRESSES: Interested persons or organizations are requested to submit comments to Directors (OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and materials relating to this rule are available for public inspection by appointment during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 North Glebe Road, Arlington, Virginia. The time and place of a public meeting on this proposal is presented above.

FOR FURTHER INFORMATION CONTACT: For further information on the proposed rule, contact Mr. John L. Spinks, Jr., Chief, Office of Endangered Species (703/235–2771).

SUPPLEMENTARY INFORMATION:

Background

The Kentucky cave shrimp (*Palaemonias ganteri*) is a crustacean that has been found only in the Flint Mammoth Cave System of Kentucky. Its reduced eyes and lack of body pigment indicate that the species has had a long history of subterranean existence. Its preferred habitats within the cave system are pools that are exposed to seasonal flooding. The kentucky cave shrimp is a member of the family Atyidae. Only three existing species of this family are known from North American north of Mexico.

On April 28, 1975, the Service published in the **Federal Register** (40 FR 18476–18477) a notice that it was reviewing the status of 57 species of freshwater crustaceans, including the Kentucky cave shrimp. The Kentucky cave shrimp was proposed to be listed as a threatened species on January 12, 1977 (42 FR 2507). That proposal was withdrawn on December 10, 1979 (44 FR 70796) under a provision of the 1978 amendments to the Endangered Species Act of 1973 which required withdrawal of all pending proposals if they were not finalized one year after passage of the amendments.

On March 28, 1980 the Service published a notice (45 FR 20502–20503) announcing the acceptance of a petition submitted by Dr. Raymond W. Bouchard to list the Kentucky cave shrimp as an Endangered or Threatened species. By ths action, the Service determined that the petition contained sufficient new evidence to repropose listing this species as Endangerd or Threatened. This notice also solicited comments from interested persons having knowledge of this species, threats to the species or possible impacts of listing. One comment on this notice was received from the Kentucky Nature Preserves Commission. This comment supported listing and cited threats to this species from sewage pollution and disruption of breeding pools by premature opening of floodgates.

Factors Affecting the Species

The Service's listing regulations (Section 424.11(b), Title 50, Code of Federal Regulations) state:

A species shall be listed if the Director determines on the basis of the best scientific and commercial data available to him after conducting a review of the species' status that the species is Endangered or Threatened because of any one or a combination of the following factors:

(1) The present or threatened destruction, modification, or curtailment of its habitat or range;

(2) Utilization for commercial, sporting, scientific, or educational purposes at levels that detrimentally affect it;
(3) Disease or predation;
(4) Absence of regulatory mechanisims adequate to prevent the decline of a species or degradation of its habitat; and
(5) Other natural or manmade factors affecting its continued existence.

These findings are summarized herein under each of the five criteria of 50 CFR 424.11. These factors, and their application to the Kentucky cave shrimp, are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Kentucky cave shrimp's preferred habitats are quiet silt bottom pools associated with seasonal sediment deposits (Poulson and Kane, 1977; Bouchard, 1979). Such pools containing the Kentucky cave shrimp were formerly known in the Golden Triangle area and the Styx and Echo River passages of the Flint Mammoth Cave System. Year round backflooding from Lock and Dam 6 on the Green River has eliminated these preferred habitats in the Styx and Echo Rivers passages.

The species has not been found in recent years in areas where it was formerly abundant. On September 1, 1979, a single dead specimen was found in the shrimp pools of the Roaring River passage, where the previous last find was recorded in 1967. There is some evidence (Duchon and Lisowski, 1980) that backflooding from Lock and Dam 6 also causes siltation and flooding of the Roaring River passage.

Another possible factor affecting the habitat is groundwater contamination. A recent incident of groundwater contamination caused a kill of crayfish and other animals in a part of the cave system. Such incidents have the potential of endangering organisms, including the Kentucky cave shrimp, that are found in other parts of the interconnecting cave system.

2. *Utilization for commercial, sporting, scientific or educational purposes at levels that detrimentally effect it.* Not applicable to this species.

3. *Disease or predation.* Not applicable to this species.

4. *Absence of existing regulatory mechanisms adequate to prevent the decline of a species or degradation of its habitat.* Wildlife are protected by the National Park Service within Mammoth Cave National Park. The threats to the habitat of the Kentucky cave shrimp are located outside the park.

The Kentucky cave shrimp is listed as threatened on the Kentucky Nature Preserves Commission Natural Heritage Program Species Element List. However, this designation carries no legal protection.

5. *Other natural or man-made factors affecting its continued existence.* Not applicable to this species.

Critical Habitat

50 CFR Part 424 defines "Critical Habitat" to include (a) areas within the geographical area occupied by the species, at the time that species is listed, which are essential to the conservation of the species and which may require special management considerations or protection; and (b) specific areas outside the geographic area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species.

Proposed Critical Habitat for the Kentucky cave shrimp is the Roaring River passage of the Flint Mammoth Cave System, Mammoth Cave National Park, Edmonson County, Kentucky. This area contains the last preferred habitat of this species which receives nutrient inflow from seasonal flooding that leaves quiet pools for feeding, breeding and larval growth. The Roaring River passage is the only remaining area where the species is known to occur and all of the physical and biological constitutents necessary for its survival can be found. The activities which may adversely modify such habitat are described in the above discussion.

Effect of This Proposal if Published as a Final Rule

Endangered Species regulations already published in Title 50 Sections 17.21 and 17.31 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered and Threatened species, respectively. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife which was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving Endangered species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23. Such permits are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not available.

Section 7(a) of the Act requires all Federal agencies to evaluate their actions with respect to Endangered species. If published as a final rule this proposal would require Federal agencies not only to insure that activities they authorize, fund, or carry out, are not likely to jeopardize the continued existence of the Kentucky cave shrimp, but also would require them to insure that their actions do not result in the destruction or adverse modification of the Critical Habitat which has been determined by the Director. Provisions for Interagency Cooperation are codified at 50 CFR Part 402.

The proposed Critical Habitat may be affected by backflooding from Lock and Dam 6 on the Green River and by releases of water by Nolin Dam on the Nolin River that contribute to backflooding from Lock and Dam 6. The U.S. Army Corps of Engineers is now considering dismantling Lock and Dam 6 as part of a navigation plan for the Green River. If backflooding from Lock and Dam 6 is found to affect the proposed Critical Habitat, then this portion of the navigation plan would be a subject of consultation. If Lock and Dam 6 is not dismantled and releases from Nolin Dam are found to affect the proposed Critical Habitat, then release schedules for Nolin Dam could be a subject of consultation between the Corps of Engineers and the Service. Water treatment facilities that affect the groundwater entering the Flint Mammoth Cave System may require consultation between the Service and the Environmental Protection Agency. The National Park Service would have to enter into consultation with the Service over any change in use of the Critical Habitat, if determined, that might affect the Kentucky cave shrimp.

The usual result of such consultation is modification of activities rather than their curtailment.

The Service is required to consider economic and other impacts of specifying a particular area as Critical Habitat. The Service has prepared a draft impact analysis. The Service is notifying Federal agencies that may have jurisdiction over the land and water under consideration in this proposed action. These Federal agencies and other interested persons or organizations are requested to submit information on economic or other impacts of this proposed action.

Public Comments Solicited

The Director intends that the rules finally adopted will be as accurate and effective as possible in the conservation of any Endangered or Threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial, or other relevant data concerning any threat (or the lack thereof) to the species included in this proposal;

(2) The location of and the reasons why any habitat of this species should or should not be determined to be Critical Habitat as provided for by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species;

(4) Current or planned activities which may adversely modify the subject area which is being considered for Critical Habitat; and

(5) The foreseeable economic and other impacts of the Critical Habitat designation of federally funded or authorized projects.

Public Meeting

The Service hereby announces that a public meeting will be held on this proposed rule. The public is invited to attend this meeting and to present opinions and information on the proposal. This meeting will be held on Wednesday December 10, 1980 at 7:00 p.m. in Room 305, Downing University Center, Western Kentucky University, Bowling Green, Kentucky.

National Environmental Policy Act

A draft environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia, and may be examined by appointment during regular business hours. A determination will be made at the time of final rulemaking as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (40 CFR Parts 1500–1508).

The Service has determined that this is not a significant rule and does not require preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Primary Author

The primary author of this proposed rule is Dr. Steven M. Chambers, Office of Endangered Species, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 (703/235–1975).

References

Bouchard, Raymond W. 1979. Conservation status report on the Mammoth Cave shrimp, *Palaemonias ganteri*. Submitted as part of a petition to the Office of Endangered Species, December 12, 1979.

Duchon, K., and E. A. Lisowski. 1980. Draft environmental assessment of lock and dam six, Green River navigation project on Mammoth Cave National Park.

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National Park Service. 1976. Final Environmental Statement: Mammoth Cave National Park Master Plan and Wilderness Suitability Study. Denver, CO.

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Poulson, T. L., and T. C. Kane. 1977. Ecological diversity and stability: Principles and management. *In* T. Aley and D. Rhodes (eds.). Proceedings National Cave Management Symposium. Speleobooks, Albuquerque.

U.S. Army Corps of Engineers. 1978. Green and Barren Rivers, Kentucky Navigation Study: Preliminary Feasibility Report U.S. Army Corps of Engineers, Louisville District.

U.S. Army Corps of Engineers. 1979. Green and Barren Rivers, Kentucky Navigation Study: An Information Brochure. U.S. Army Corps of Engineers, Louisville District.

Regulations Promulgation

1. It is proposed to amend § 17.11 by adding, in alphabetical order the following to the list of animals (crustaceans):

§ 17.11 Endangered and threatened wildlife.

Species		Historic range	Vertebrate[1]	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Shrimp, Kentucky Cave	*Palaemonias ganteri*	U.S.A. (Kentucky)	NA	E		Yes	NA

[1] Vertebrate population where endangered or threatened

§ 17.95h Crustaceans. [Amended]

2. It is further proposed that § 17.95h. crustaceans, be amended by adding Critical Habitat of the Kentucky cave shrimp as follows:

Kentucky Cave Shrimp

(Palaemonias ganteri)

Kentucky, Edmonson County: The Roaring River passage of the Flint Mammoth Cave System in Mammoth Cave National Park. Known constituent elements include quiet silt-bottomed pools that are seasonally flooded.

V 45 OCT 17 80 UMI



Dated: October 3, 1980.

Lynn A. Greenwalt,

Director, Fish and Wildlife Service.

[FR Doc. 80-32335 Filed 10-16-80; 8:45 am]

BILLING CODE 4310-55-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[A-5-FRL 1637-2]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations: Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: On March 21, 1980 the State of Ohio, pursuant to section 107(d)(5) of the Clean Air Act (Act), requested that USEPA change the carbon monoxide designation for Summit and Lucas Counties from nonattainment to attainment. The State submitted additional support data on April 4, May 8, May 15 and May 22, 1980. USEPA has reviewed the redesignation request and the ambient air quality monitoring data submitted by the State and proposes to designate Lucas and Summit Counties as unclassifiable. The purpose of this notice is to announce receipt of the redesignation request; to discuss the results of USEPA's review; to propose rulemaking action on the redesignation request; and to invite public comment either on the redesignation request or on USEPA's proposed rulemaking.

DATE: Comments on these redesignations and on USEPA's rulemaking action are due November 17, 1980.

ADDRESS COMMENTS TO: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Richard Clarizio, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, FTS-8-886-6035. Copies of the redesignation request, technical support documents, and the supporting air quality data are available at the address given above and at:

Public Information Reference Unit, Room 2922, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 20460.

Ohio Environmental Protection Agency, 361 East Broad Street, Columbus, Ohio 43216.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1977 added section 107(d) to the Clean Air Act (Act) directing each state to submit to the Administrator of the USEPA a list of those areas within the state which had ambient air concentrations of the pollutants sulfur dioxide (SO_2), total suspended particulates (TSP), nitrogen oxides (NOx), carbon monoxide (CO) and ozone (03) which exceeded the USEPA established primary and secondary National Ambient Air Quality Standards (NAAQS) for each of these pollutants. These areas were to be designated as nonattainment areas. The areas within each State which had ambient air concentrations below the NAAQS level were to be designated as attainment. Those areas which lacked sufficient monitoring data to accurately determine their status were to be designated as unclassified.

The purpose of making these designations was to determine which areas within the state required additional measures to control and to reduce the emissions of these five air pollutants. For those areas designated as nonattainment, the Clean Air Act Amendments of 1977 required the state to submit a revised State Implementation Plan (SIP) by January 1, 1979. The revised SIP for carbon monoxide was to provide for sufficient reductions to ensure attainment of the carbon monoxide NAAQS by December 31, 1982 (or under certain circumstances by December 31, 1987).

For both of these counties the State submitted a revised SIP for carbon monoxide on July 27, 1979. In the March 10, 1980 Federal Register (45 FR 15192) USEPA proposed to approve the revised SIP for Summit County, and to conditionally approve the revised SIP for Lucas County. USEPA, however, will withhold final action on these revised SIPs until a final determination is made on this redesignation request. If this request is approved, and these areas are redesignated as either attainment or unclassifiable, then there would no longer be a need for a carbon monoxide nonattainment SIP revision in the counties, because attainment of the carbon monoxide NAAQS will have been achieved. Consequently, USEPA would then take no final action on these SIP revisions.

In the March 3, 1978 Federal Register (43 FR 8962) and in the October 5, 1978 Federal Register (43 FR 45993) the Administrator of the USEPA promulgated lists of the nonattainment areas for each pollutant in each state. These lists also contained classifications for the attainment and unclassified areas within the state. In Ohio, the following counties were designated in the October 5, 1978 Federal Register as nonattainment for carbon monoxide: Cuyahoga, Franklin, Hamilton, Jefferson, Lucas, Mahoning, Montgomery and Summit. All other areas within the State were designated as attainment/unclassifiable for carbon monoxide.

These nonattainment designations were based on monitored violations in the years 1975 and 1976 of the primary NAAQS for carbon monoxide. A violation of the primary NAAQS for carbon monoxide occurs when, in a calendar year, the monitored concentration of carbon monoxide exceeds, more than once, either the maximum allowable eight hour or maximum allowable one hour concentration of carbon monoxide. The maximum eight hour concentration is 10 milligrams of carbon monoxide per cubic meter of air. The maximum one hour concentration is 40 milligrams of carbon monoxide per cubic meter of air.

According to Section 107(d) of the Act, the designation for an area may be changed whenever sufficient data exists to warrant such a change. In the June 12, 1979 memo entitled "Section 107 Redesignation Criteria", Richard G. Rhoads, the Director of USEPA's Control Program Development Division, described USEPA's requirements for approval of a change in an area designation from nonattainment to either attainment or unclassifiable. In the case of carbon monoxide, such a change may be approved if there are eight quarters of recent ambient air quality data which show no violations of either the primary or secondary carbon monoxide NAAQS.

The State of Ohio on March 21, 1980 requested USEPA to change the designation of Lucas and Summit Counties from nonattainment for carbon monoxide to attainment. This request was based on the ambient air quality data from the years 1977–1979 which showed that during these years there were no violations of either the primary or secondary carbon monoxide NAAQS in those two counties.

USEPA has reviewed the ambient air quality data submitted by Ohio and has determined that the data is valid and that there were no violations of either the primary or the secondary NAAQS for carbon monoxide in these two counties during that period. Although the State requested that these areas be redesignated to attainment, USEPA is proposing that they be redesignated as unclassifiable. In proposing this action USEPA recognizes that there were no monitored violations of the carbon monoxide NAAQS in these counties. However, due to the limited monitoring network employed in these two counties USEPA believes that an unclassifiable designation is more appropriate.

A thirty day comment period is being provided to enable publication of final action on these redesignations as soon as possible. Expeditious final action is desired since it may alleviate some of the statutory growth restrictions imposed by Section (110(a)(1)(I) of the Clean Air Act.

Under Executive Order 12044 (43 FR 12661), USEPA is required to judge whether a regulation is "significant," and therefore subject to certain procedural requirements of the Order or whether it may follow other specialized development procedures. USEPA labels these other regulations "specialized." I have reviewed this proposed regulation pursuant to the guidance in USEPA's response to Executive Order 12044, "Improving Environmental Regulations," signed March 29, 1979, by the Administrator and I have determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Sec. 107 of the Clean Air Act as amended. (42 U.S.C. 7407))

Dated: September 19, 1980.

John McGuire,

Regional Administrator.

[FR Doc. 80-32341 Filed 10-16-80; 8:45 am]

BILLING CODE 6560-26-M

40 CFR Part 123

[SWFRL 1638-6]

Louisiana: Submission for Approval of Interim Authorization Plan, Phase I, Hazardous Waste Management Plan

AGENCY: Environmental Protection Agency.

ACTION: Notice of public comment period.

SUMMARY: In the May 19, 1980 Federal Register (45 FR 33063), the Environmental Protection Agency promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976 (as amended), to protect human health and the environment from the improper management of hazardous waste. Included in these regulations, which become effective 6 months from the date of promulgation, were provisions for a transitional stage in which states would be granted interim program authorization. The interim authorization program will be implemented in two phases corresponding to the two stages in which an underlying Federal program will take effect.

As noted in the May 19, 1980 Federal Register, copies of state submittals for Phase I Interim Authorization are to be available for public inspection and comment. By publication in the Federal Register of September 24, 1980, the Environmental Protection Agency announced reciept of Louisiana's Phase I Interim Authorization Application, the availability of the Application for review a public comment period on the Application and a public hearing thereon to be held on October 23, 1980.

This is to announce the EPA has received additional material in connection with the Application, included in which is an amended Authorization Plan. The amendments to the Authorization Plan and the other additional material received are considered by EPA to be sufficiently extensive as to justify notice thereof and to establish a separate comment period for the amended authorization plan and the additional material received in connection with the Application.

DATE: Comments on this additional material must be received by November 17, 1980.

ADDRESS: Accordingly, notice is hereby given that copies of the amended Authorization Plan are available for inspection and copying at the following addresses:

Environmental Protection Agency, Region VI, Library, 28th floor, 1201 Elm Street, Dallas, Texas 75270, (214) 767–7341;

Louisiana Department of Natural Resources, Office of Environmental Affairs, 6th floor, P.O. Box 44066, 625 North Fourth Street, Baton Rouge, Louisiana 70804, (504) 342–1265.

Written comments should be sent to: Environmental Protection Agency, Region VI, Air and Hazardous Materials Division, Attention: Rena McClurg, Solid Waste Branch, 1201 Elm Street, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: Rena McClurg, Telephone (214) 767–2645.

Dated: October 15, 1980.

Adlene Harrison,

Regional Administrator.

[FR Doc. 80-32613 Filed 10-16-80; 8:45 am]

BILLING CODE 6560-30-M

40 CFR Part 123

[SW8 FRL 1638-7]

Utah Application for Interim Authorization, Phase I Hazardous Waste Management Program; Public Hearing

AGENCY: Environmental Protection Agency, Region VIII.

ACTION: Notice of public hearing and public comment period.

SUMMARY: EPA regulations to protect human health and the environment from the improper management of hazardous waste were published in the Federal Register on May 19, 1980 (45 FR 33063). These regulations include provisions for authorization of State programs to operate in lieu of the Federal program. Today EPA is announcing the availability for public review of the Utah application for Phase I, interim authorization, inviting public comment, and giving notice of a Public Hearing to be held on the application.

DATE: Comments on the Utah interim authorization application must be received by November 14, 1980.

PUBLIC HEARING: EPA will conduct a Public Hearing on the Utah interim authorization application at 9:30 a.m. on November 14, 1980. EPA reserves the right to cancel the Public Hearing if significant public interest in a hearing is not expressed. The State of Utah will participate in any Public Hearing held by EPA on this subject.

ADDRESSES: Copies of the Utah interim authorization application are available at the following addresses for inspection and copying by the public:

Utah State Division of Health, Room #426, 150 W. N. Temple Street, Salt Lake City, Utah 84110, (801) 533–4145.

EPA Regional Office: U.S. Environmental Protection Agency, Waste Management Branch, 1860 Lincoln Street, Denver, Colorado 80295, (303) 837–2221.

Written comments should be sent to: U.S. Environmental Protection Agency, Waste Management Branch (8AH–WM), 1860 Lincoln Street, Denver, Colorado 80295, (303) 837–2221.

The Public Hearing will be held at: Salt Lake City Main Branch Library Auditorium, 209 E. 500 S., Salt Lake City, Utah.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Dr. Henry C. Schroeder, 1860 Lincoln Street, Denver, Colorado 80295, (303) 837–2221.

SUPPLEMENTARY INFORMATION: In the May 19, 1980, Federal Register (45 FR 33063) the Environmental Protection

Agency promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976 (as amended), to protect human health and the environment for the improper management of hazardous waste. These regulations included provisions under which EPA can authorize qualified State hazardous waste management programs to operate in lieu of the Federal program. The regulations provide for a transitional stage in which qualified State programs can be granted interim authorization. The interim authorization program is being implemented in two phases corresponding to the two stages in which the underlying Federal program will take effect. In order to qualify for issuance of interim authorization, the State hazardous waste program must:

(1) Have been in existence prior to August 17, 1980, and

(2) Submit evidence to EPA showing that the existing State program is substantially equivalent to the Federal program.

A full description of the requirements and procedures for State interim authorization is included in 40 CFR Part 123 Subpart F (45 FR 33479). As noted in the May 19, 1980, **Federal Register** copies of complete State submittals for Phase I interim authorization are to be made available for public inspection and comment. In addition, a Public Hearing is to be held on the submittal, unless significant public interest is not expressed.

Dated: October 10, 1980.

James Thompson,

Acting Regional Administrator.

[FR Doc. 80-32814 Filed 10-16-80; 8:45 am]

BILLING CODE 6560-30-M

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40 CFR Part 123

[SW8 FRL 1638-8]

North Dakota Application for Interim Authorization, Phase I Hazardous Waste Management Program; Public Hearing

AGENCY: Environmental Protection Agency, Region VIII.

ACTION: Notice of public hearing and public comment period.

SUMMARY: EPA regulations to protect human health and the environment from the improper management of hazardous waste were published in the **Federal Register** on May 19, 1980 (45 FR 33063). These regulations include provisions for authorization of State programs to operate in lieu of the Federal program. Today EPA is announcing the availability for public review of the North Dakota application for Phase I, interim authorization, inviting public comment, and giving notice of a Public Hearing to be held on the application.

DATE: Comments on the North Dakota interim authorization application must be received by November 14, 1980.

Public Hearing: EPA will conduct a Public Hearing on the North Dakota interim authorization application at 9:30 a.m. on November 14, 1980. EPA reserves the right to cancel the Public Hearing if significant public interest in a hearing is not expressed. The State of North Dakota will participate in any Public Hearing held by EPA on this subject.

ADDRESSES: Copies of the North Dakota interim authorization application are available at the following addresses for inspection and copying by the public:

North Dakota Department of Health, Division of Environmental Waste Management and Research, Missouri Office Building, 1200 Missouri Avenue, Bismarck, North Dakota

EPA Regional Office:

U.S. Environmental Protection Agency, Waste Management Branch, 1860 Lincoln Street, Denver, Colorado 80295, (303) 837-2221

North Dakota State Library, State Capitol Building, Bismarck, North Dakota

North Dakota State Historical Society, State Capitol Building, Bismarck, North Dakota

North Dakota State College Library, Fargo, North Dakota

University of North Dakota Library, Grand Forks, North Dakota

Minot State College Library, Minot, North Dakota

Dickenson State College Library, Dickensen, North Dakota

Written comments should be sent to:

U.S. Environmental Protection Agency, Waste Management Branch (8AH-WM), 1860 Lincoln Street, Denver, Colorado 80295, (303) 837-2221, c/o Rolland Lech

The Public Hearing will be held at:

Blue Room, State Capitol Building, Bismarck, North Dakota

FOR FURTHER INFORMATION CONTACT: Rolland Lech, EPA Region VIII, 1860 Lincoln Street, Denver, Colorado 80295, (303) 837-2221.

SUPPLEMENTARY INFORMATION: In the May 19, 1980, **Federal Register** (45 FR 33063) the Environmental Protection Agency promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976 (as amended), to protect human health and the environment from the improper management of hazardous waste. These regulations included provisions under which EPA can authorize qualified State hazardous waste management programs to operate in lieu of the Federal program. The regulations provide for a transitional stage in which qualified State programs can be granted interim authorization. The interim authorization program is being implemented in two phases corresponding to the two stages in which the underlying Federal program will take effect. In order to qualify for issuance of interim authorization, the State hazardous waste program must:

(1) Have been in existence prior to August 17, 1980, and

(2) Submit evidence to EPA showing that the existing State program is subtantially equivalent to the Federal program.

A full description of the requirements and procedures for State interim authorization is included in 40 CFR Part 123, Subpart F, (45 FR 33479). As noted in the May 19, 1980, **Federal Register** copies of complete State submittals for Phase I interim authorization are to be made available for public inspection and comment. In addition, a Public Hearing is to be held on the submittal, unless significant public interest is not expressed.

Dated: October 10, 1980.

James S. Thompson,

Acting Regional Administrator.

[FR Doc. 80-32815 Filed 10-16-80; 8:45 am]

BILLING CODE 6560-30-M

Notices

Federal Register

Vol. 45, No. 203

Friday, October 17, 1980

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

AMAX, Inc. Proposed Molybdenum Mining and Milling Operation; Gunnison National Forest, Gunnison County; Revised Notice of Intent

A Notice of Intent to Prepare an Environmental Impact Statement for the Amax, Inc. Proposed Molybdenum Mining and Milling Operation was published in the **Federal Register**, Volume 44, No. 107, p. 31687, June 1, 1979.

The estimated dates for filing the Draft and Final Environmental Impact Statements with the Environmental Protection Agency and release to the public have been postponed. The Draft Environmental Impact Statement is now expected in July 1981, and the Final Environmental Impact Statement is proposed for release in November 1981.

All other conditions of the original notice of intent remain the same.

Jimmy R. Wilkins,

Forest Supervisor.

October 6, 1980.

[FR Doc. 80-32422 Filed 10-16-80; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Dairyland Power Coöperative; Finding of No Significant Impact

Notice is hereby given that the Rural Electrification Administration (REA) has made a Finding of No Significant Impact which concludes that there is no need for REA to prepare an environmental impact statement in connection with a proposed loan guarantee by REA for Dairyland Power Cooperative (Dairyland), of La Crosse, Wisconsin. The proposed loan guarantee will assist Dairyland in constructing approximately 33.8 km (21 miles) of 69 kV transmission line and an associated 161-69 kV transmission substation.

The 69 kV transmission line will be built between Interstate Power Company's Dover distribution substation located in Olmsted County, Minnesota, and the proposed Wabasha 161-69 kV transmission substation located in Wabasha County, Minnesota. Dairyland has prepared a Borrower's Environmental Report (BER) concerning the proposed project. REA has reviewed the BER and determined that it represents an accurate assessment of the environmental impact of the project. REA has prepared an Environmental Assessment concerning the proposed project and its impacts.

Threatened and endangered species, important farmland, archaeological and historic sites, wetlands, flood plains and potential impacts of the project are adequately considered in the BER. REA's independent evaluation of the proposed project leads it to conclude that its proposed financial assistance for this project does not represent a major Federal action that will significantly affect the quality of the human environment.

Based on this independent evaluation and a review of Dairyland's BER, a Finding of No Significant Impact was reached in accordance with Section IV.B and IV.D.1 of REA Bulletin 20-21:320-21, Part I.

Various alternatives to the proposed transmission line and substation were reviewed by Dairyland and REA. The alternatives included no action, energy conservation, use of existing facilities and alternative corridors. After reviewing these alternatives, REA determined that the proposed 69 kV transmission line and associated substation is the best alternative for providing power to existing and future Dairyland loads within the area.

Copies of REA's Finding of No Significant Impact and Dairyland's BER may be reviewed in the office of the Director, Power Supply Division, Room 5829, South Agriculture Building, Rural Electrification Administration, Washington, D.C. 20250 and at the office of the cooperative, Dairyland Power Cooperative, 2615 East Avenue South, La Crosse, Wisconsin 54601.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 7th day of October.

Robert W. Feragen,

Administrator.

[FR Doc. 80-32026 Filed 10-16-80; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Annual Wholesale Trade; Determination

In conformity with title 13, United States Code, sections 182, 224, and 225 and due Notice of Consideration having been published September 16, 1980, (45 FR 181 61344) I have determined that data covering year-end inventories and annual sales are needed to aid the efficient performance of essential Government functions, that the data have significant application to the needs of the public, the distributive trades and governmental agencies and that the data are not publicly available from nongovernmental or other governmental sources.

All respondents will be required to submit information covering their December 31, 1980, merchandise inventories, and their 1980 annual sales. Reports will be required only from a selected sample of merchant wholesale firms operating in the United States, with probability of selection based on size. The sample will provide, with measurable reliability, statistics on the subjects specified above.

Report forms will be furnished to firms covered by the survey. Copies of the forms are available on request to the Director, Bureau of the Census, Washington, D.C. 20233.

I have, therefore, directed that this annual survey be conducted for the purpose of collecting these data.

Dated: October 13, 1980.

Vincent P. Barabba,

Director, Bureau of the Census.

[FR Doc. 80-32375 Filed 10-16-80; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

Harvard University; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a

scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review betwen 8:30 a.m. and 5:00 p.m. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 80–00181. Applicant: Harvard University, 9 Oxford Street, Cambridge, MA 02138. Article: High Pressure Pulsed CO_2 Amplifier. Manufacturer: Lumonics Research Limited, Canada. Intended use or article: The article is intended to be used to amplify extremeley short pulses of infrared light. Typical pulse durations will be 50 picoseconds (50 psec) and less. the experimental programs in which the article will be used are: (1) Interaction of intense laser light with plasma, (2) miltiphoton infrared laser photochemistry of gas-phase molecules and (3) ultra-short CO_2 laser pulse generation.

Comments: No comments have been received with respect to this application.

Decision: Application denied.

Reasons: An instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be usd, is being manufactured in the United States.

Discussion: In its response to Questions 8 and 9 the applicant states that is searched the literature for the needed broadband CO_2 Amplification System for its intended purposes. As a result of this search it found a domestically manufactured instrument that could meet the specifications outlined in the purchase order for the foreign article. This comestic system is the Model #120 manufactured by Systems, Science and Software (SSS) of Hayward, California. The National Bureau of Standards (NBS) advises in its memorandum of June 10, 1980 that the SSS system is scientifically equivalent to the foreign article for the applicant's intended purposes. We concur. It is noted that the applicant's reasons for purchasing the foreign article have nothing to do with ability to accomplish its intended program with the domestic system.

The applicant further states that (1) the major difference between the foreign and domestic system is that the Model #120 is an electron-beam controlled device, while the foreign article uses ultraviolet preionization with a considerable savings in cost and size and (2) each SSS Model #120 costs about twice as much as one Lumonics TE–280 unit, the basic unit of the foreign article. The Department's determination of scientific equivalency is based on a comparison of the pertinent specifications of the foreign article and those of comparable domestic instruments. As defined in § 301.2(n) of the regulations, the term "pertinent specifications" does not include cost of the instrument or apparatus.

The applicant further states that the major consideration in choosing the foreign article is that the domestic instrument is too large to be used in its laboratory. In this connection it is claimed that the use of the domestic system would require making a hole in the laboratory wall, moving several very heavy (1500 lbs) optical tables holding carefully aligned optical systems and rebuilding an interior shielded room. The applicant also expresses doubt that the laboratory has the floor space for the domestic units or that the floor can support the weight of such units.

According to § 301.2(n) the term "pertinent specification" does not extend to such characteristics as size unless the applicant can demonstrate that it is necessary for accomplishing the purposes for which the article is intended to be used. The Department notes that the applicant could accomplish all of its intended goals with the domestic system in a laboratory that is adequate for its use. Therefore the Department concludes that size in this case is not scientifically pertinent but rather a matter of cost or convenience which is not pertinent within the meaning of § 301.2(n).

Thus based on the foregoing, NBS advice, and our own review of the application, we find that the Model #102 CO_2 Amplification system is of equivalent scientific value to the foreign article for such purposes as the article is intended to be used.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Stanley P. Kramer,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 32349 Filed 10–16–80; 8:45 am]

BILLING CODE 3510–25–M

Mayo Foundation; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 80–00131. Applicant: Mayo Foundation, 200 First Street Southwest, Rochester MN 55901. Article: Scanning Microdensitometer M85 and Accessories. Manufacturer: Vickers Instruments, Inc., United Kingdom. Intended use of article: The article is intended to be used for investigations to provide highly sensitive assays for the biologic activity of selected hormones including ACTH, TSH, and PHT. These microdensitometry assays will provide single sample in vitro capability to measure the hormones in these deficiency states.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a sensitivity of 5×10^{-15} grams per milliliter to corticotrophien. The Department of Health and Human Service advises in its memorandum dated May 22, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Stanley P. Kramer,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80–32351 Filed 10–16–80; 8:45 am]

BILLING CODE 3510–25–M

University of Tennessee, et al.; Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials

Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230, within 20 calendar days after the date on which this notice of application is published in the **Federal Register.**

Regulations (15 CFR 301.9) issued under the cited Act preacribe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 A.M. and 5:00 P.M., Monday through Friday, in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C. 20280.

Docket No. 80–00373. Applicant: University of Tennessee, Biology Business Office, 125 Austin Peay, Knoxville, Tennessee 37916. Article: Electron Microscope, Model H-600 with Accessories. Manufacturer: Hitachi Scientific Instruments, Japan. Intended use of article: The article is intended to be used for various studies of biological materials which include a variety of different cell types found throughout the body and in a variety of animals found in nature. These studies will include the following:

(1) Studies to obtain a more complete understanding of the role of plasma membrane flow in the variable responsiveness of granulosa lutein cells to gonadotropin stimulation.

(2) Determination of interrelations of the contractile proteins during contraction in order to understand the contraction of smooth muscles.

(3) Analyses of mechanisms affecting *Sertoli cell* differentiation and the interaction of germ cells and somatic cells of the *testis* in the control of *spermotogenesis.*

(4) Elucidation of the host-symbiont relationship in the amoeba-bacteria symbiosis and to formulate a general model for symbiont integration into host cells.

(5) Study to resolve the question of whether cystic fibrosis serum and serum from individuals heterozygous for the disease contains a factor(s) which induces ciliary dyskinesia in tracheal epithelium to account for respiratory impairment.

The article will also be used for demonstration purposes in the courses Cell Biology, Histology and Cytology, Veterinary Medicine Microbiology, Plant Cytology and Plant Toxonomy. Application received by Commissioner of Customs: July 11, 1980.

Docket No. 80–00375. Applicant: Texas A&M University, College Station, Texas 77843. Article: Fermentation Ethanol Distillery. Manufacturer: Coulter Copper & Brass, Ltd., Canada. Intended use of article: The article is intended to be used for studies of processes and feedstocks for production of ethanol and methods of utilization of ethanol for fuel use. The article will also be used to teach principles and processes of producing ethanol for fuel use in a small-scale ethanol plant. Application received by Commissioner of Customs: July 11, 1980.

Docket No. 80–00376. Applicant: University of Washington, Seattle, Washington 98195. Article: Scanning Microdensito-meter-Microscope, M85–0010B. Manufacturer: Vickers, United Kingdom. Intended use of article: The article is intended to be used to study cells, chromosomes, and electron micrographs of chromosomes. Experiments will be conducted primarily on polytene and polyploid cells and chromosomes of the Diptera *Drosophila.* Cells will be prepared cytologically from different tissues at different times of development. Drosophila that are mutant in cell processes and or chromosome structure will be examined. In addition, the article will be used in the courses: Biology 501 and Zoology 600 to teach advanced cytology and molecular cytogenetics to graduate students. Application received by Commissioner of Customs: July 15, 1980.

Docket No. 80–00377. Applicant: University of Kentucky, Room 2, Chem.-Phys. Bldg., Lexington, KY 40506. Article: Mass Spectrometer system, Model MN–ZAB–2F and Accessories. Manufacturer: VG Organics, Ltd., United Kingdom. Intended use of article: The article is intended to be used in conducting a variety of types of mass spectral analyses for the following types of components: boron-containing medicinals, platinum complex anticancer agents, potential maleic hydrazide and sterol carcinogenicity in or on tobacco, pyrrolo(1,4)benzo-diazepine antitumor antibiotics, naphthaquinone alcohols and their esters as antimicrobials, high molecular weight metal carbonyls and polynuclear metals carbonyls, and other compounds of biochemical, biological and pharmaceutical nature related to research activities being conducted. These analyses and the experiments to study Stevenson's Rule, inorganic complex decompositions, fragmentation processes in esters of vanadic, phosphoric, carboxylic and dicarboxylic acids, and non-equilibrium evaporations will be conducted by varying the mass spectrometer conditions, different inlet systems and ionization modes, a variety of chemical ionization reagent gases, and Mass-Analyzed Ion Kinetic Energy Spectroscopy (MIKES) studies as well as precise mass measurements under high resolution. The article will also be used for educational purposes in the courses: CHE 580 Topics in Chemistry, CHE 790 Research in Chemistry and CHE 395 Independent Work in Chemistry. In these respective courses the article will be used to instruct students in the principles, the instrumentation and the applications (and techniques) involved in mass spectrometry; to educate and train M.S. and Ph.D. students in depth in the area of mass spectrometry, and to become investigators in mass spectrometry; and to introduce to and educate B.S. students in the area of mass spectrometry, hopefully encouraging them toward goals in science. Application received by Commissioner of Customs: July 16, 1980.

Docket No. 80–00378. Applicant: Trustees of the University of Pennsylvania, Purchasing Department, 3451 Walnut Street/16, Philadelphia, PA 19104. Article: Mass Spectrometer, MM70–70 with accessories. Manufacturer: VG-Organic Limited, United Kingdom. Intended use of article: The article is intended to be used for research convering the full range of synthetic and mechanistic organic, bio-organic and organometallic chemistry. This research will include:

(1) Extensive programs directed at the synthesis and/or isolation of novel natural products having important physiological properties,

(2) Development of new synthetic methods, employing a wide range of ground, excited state and organometallic chemistry,

(3) Development of new methods for the synthesis of transition metal cluster compounds, many of which may have catalytic properties of novel organic and inorganic polymer materials capable of conducting electricity,

(4) The study of the interactions among molecules present in neuromembranes in order to learn more about the chemistry and dynamics of neurotransmission, and

(5) Use of radioactive photolabeling derivatives of antibiotics as photoaffinity label probes to explore the structure and function of ribosomes.

Application received by Commissioner of Customs: July 16, 1980.

Docket No. 80–00379. Applicant: Carnegie-Mellon University, Department of Chemistry, 4400 Fifth Avenue,

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Pittsburgh PA 15213. Article: NMR Spectrometer System, Model WN–300 and Accessories. Manufacturer: Bruker, West Germany. Intended use of article: The article is intended to be used for nmr spectroscopy in the following research projects:

(1) Solution structure of siderophores.

(2) Primary isotope effects in deuterium nmr spectroscopy.

(3) Synthesis of mechanism in the area of natural products.

(4) Biomembrane phase transitions and lipid mobility.

(5) DNA polymerase I of *E. coli.*

(6) Characterization of synthetic retinals and artificial visual pigments using high resolution ^{1}H and ^{13}C nmr spectroscopy.

(7) Investigation of synthetic macromolecules.

(8) Characterization of protein modification reagents.

(9) Structure of condensed phases and solutions.

(10) Photo-oxidation catalysis.

(11) Silicon-29 nuclear magnetic resonance studies of organosilicon-transition metal complexes.

Application received by Commissioner of Customs: July 17, 1980.

Docket No. 80–00380. Applicant: Bucknell University, Lewisburg, PA 17837. Article: Microthermometry Apparatus. Manufacturer: Chaixmeca Ltd., France. Intended use of article: The article is intended to be used for the following educational purposes:

(1) To teach geology majors how to operate in the field and laboratory as structural geologists in the course Structural Geology (Geology 201),

(2) To learn minerals and the environmental conditions under which they have formed in the course Crystallography and Mineralogy (Geology 217) and,

(3) To teach students how to do independent research on a topic of their choice in the courses Geology 329–330 and (Geology 319–320).

Application received by Commissioner of Customs: July 17, 1980.

Docket No. 80–00381. Applicant: University of Georgia, Dept. of Anatomy and Radiology, College of Vet. Med., Athens, Georgia 30602. Article: Electron Microscope, Model JEM 100S and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used for studies of the ultrastructural characteristics of tissues, viruses and cellular inclusions associated with various diseases. Experiments to be conducted will involve obtaining matrial from a variety of animal diseases and correlating the ultrastructural appearance of the tissue with aspects of the disease and with that seen under experimental conditions such as tissue culture. The article will be used to instruct residents and graduate students within the College of Veterinary Medicine. Application received by Commissioner of Customs: July 17, 1980.

Docket No. 80–00382. Applicant: National Institute for Occupational Safety and Health, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505. Article: Electron Microscope, Model JEM 100CX and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used for the following studies:

(1) Elemental analysis of fine particulates in human biopsy tissue, human autopsy tissue and tissues from experimentally exposed laboratory animals.

(2) Monitoring and surveillance of airborne fine particulate from areas of potential human health hazard.

(3) Examination of animal and human tissues for particulate induced ultrastructural alteration and/or pathology.

Application received by Commissioner of Customs: July 17, 1980.

Docket No. 80–00383. Applicant: State University of New York at Stony Brook, Nichols Road, Stony Brook, NY 11794. Article: Particle Electrophoresis Apparatus. Manufacturer: Rank Bros., United Kingdom. Intended use of article: The article is intended to be used for measurement of the electrophoretic mobility of phospholipid bilayer membrane vesicles. The effect of various additives; proteins, divalent cations, local anesthetics, fluorescent probes, etc.; on the mobility will be measured. The relationship between the electrophoretic mobility, the zeta potential will be determined. Measurement of latex particles will be done for collaborative study with Dept. of Pathology faculty members interested in the surface properties of artificial joints. Educational uses will include instruction of graduate students in the laboratory of the Dept. of Physiology and Biophysics and Dept. of Physics. Application received by Commissioner of Customs: July 17, 1980.

Docket No. 80–00384. Applicant: Sandia National Laboratories, P.O. Box 5800, Albuquerque, New Mexico 87185. Article: Cinetheodolite Test Equipment. Manufacturer: Contraves A.G., Switzerland. Intended use of article: The article is intended to be used to maintain and calibrate the electronic circuity in the new Contraves Model F cinetheodolites at the Tonopah Test Range. The equipment simulates the interfaces in the actual mount and therefore provides the capability to test and repair cinetheodolite subsystems without dedicating a full cinetheodolite to this function. Application received by Commissioner of Customs: July 17, 1980.

Docket No. 80–00385. Applicant: The American University, Mass. & Nebraska Aves., NW., Washington, D.C. 20016. Article: MPC 200 Proportional Counter. Manufacturer: UKAEA, AERE, United Kingdom. Intended use of article: The article is intended to be used in the study of crystalline and amorphous rare-earth-iron alloys. Mossbauer Effect experiments will be conducted to improve the performance of amorphous magnetic materials—used in magnetostrictive transducers—by studying their response to heat treatment. Application received by Commissioner of Customs: July 18, 1980.

Docket No. 80–00386. Applicant: University of Tennessee, Department of Audiology & Speech Pathology, Knoxville, Tennessee 37916. Article: Suvag Lingua Auditory Training Unit. Manufacturer: S.E.D.I., France. Intended use of article: The article is intended to be used for correcting auditory perceptual errors with filters thus improving the listening skills of people with communication problems. The article will also be used to teach correction of perceptual errors in academic courses and practicum. Application received by Commissioner of Customs: July 21, 1980.

Docket No. 80–00388. National Aeronautics & Space Administration, Lewis Research Center, 2100 Brookpark Road, Cleveland, Ohio 44135. Article: Setapoint Detector. Manufacturer: Stanhope—Seta Limited, United Kingdom. Intended use of article: The article is intended to be used for evaluation purposes wherein the article will be compared with the ASTM D2386 Standard Test Method for Freezing Point of Aviation Fuels. The article will also be used for in-house research in the evaluation of freezing point, low temperature pumpability, cold filter plugging, cloud point, and wax appearance of aviation fuels. Application received by Commissioner of Customs: July 22, 1980.

Docket No. 80–00389. Applicant: Veterans Administration Medical Center, 150 Muir Road, Martinez, CA 94553. Article: Electron Microscope, Model EM 109R. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for conducting the following research projects:

A. Investigations to more fully define the nature of Mallory bodies, their significance in alteration of the biological function and their role in carcinogenesis.

B. Investigations to define the origin and nature of the collagen fibres in the disease states with hepatic fibrosis, e.g., alcoholic injury.

C. Observations by electron microscopy of the globules by dietary alterations and their relationship to various organelles.

D. Studies of the role of lipids in the structure and function of erythrocytes.

E. Characterization of human alveolar macrophage and whole lung cell cytochrome P–450 dependent microoxygenases.

F. Determination of the role of internal injury in smooth muscle hyperplastic occlusion of prosthetic graft.

G. Studies of the effects of cytotoxic agents on the rat's small intestine.

H. Studies of the effects of altered oxygen tension on endothelial cell function.

I. Studies of human biopsy and specimens requiring electron microscopy for diagnosis of kidney, liver, lymph node, bone marrow, skin, buffy coats and tumors.

The article will also be used to familiarize pathology residents with the techniques and application of electron microscopy and to apply their skills in future diagnosis and research. Application received by Commissioner of Customs: July 22, 1980.

Docket No. 80–00390. Applicant: Department of Health and Human Services, Food and Drug Administration, Division of Veterinary Medical Research, Agricultural Research Center—East, Building 382A, Beltsville, MD 20705. Article: Scanning Attachment and Accessories for H–5001 TEM. Manufacturer: Hitachi, Ltd., Japan. Intended use of article: The article is intended to be used for ultrastructural studies of cellular organelles and the changes found to be associated with drug treatment. These will include virus particles, changes in cellular and subcellular ion concentration, morphology changes on tissue surfaces, variations of concentrations of elements in certain cells and organelles and ultrastructure changes in animal tissue bacteria or virus particles. Application received by Commissioner of Customs: July 22, 1980.

Docket No. 80–00392. Applicant: Pepperdine University, Seaver College, Natural Science Division, Malibu, California 90265. Article: Carbon Dioxide Gas Analyser, Type 225, Mark II and Gas Handling System, Type W161, Mark II. Manufacturer: Analytical Development Company, Limited, United Kingdom. Intended use of article: The article is intended to be used for the investigation of the gas exchange rates of CO_2 and water vapor in bean plants under controlled environmental conditions. The article will also be used for educational purposes in the courses: Biology 113, "Biology of Plants" and Biology 590 "Research in Biology." Application received by Commissioner of Customs: July 25, 1980.

Docket No. 80–00393. Applicant: University of North Carolina at Chapel Hill, Dept. of Physiology, 186 Medical Research Wing 20GH. Article: Electron Microscopy EM 109 and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for studies of the following materials and phenomena:

a. Tissue from mammalian central nervous system in which single neurons have been labelled for recognition in electron microscopy. Pathways and synaptic connections of single neuron processes.

b. Biochemically prepared microtubules from mammalian brain. Mechanisms of assembly, structure and function of microtubule and associated proteins.

c. Postsynaptic membranes in situ (electric tissue and mammalian muscle) and after biochemical isolation. The structure of the membrane, relative to mechanisms by which it is formed and organized by the cell.

The article will also be used for educational purposes which involve training graduate students and postdoctoral fellows to use the instrument up to the limits of its capabilities in their research efforts which are directed toward the projects described. Application received by Commissioner of Customs: July 25, 1980.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Stanley P. Kramer,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80–32347 Filed 10–16–80; 8:45 am]

BILLING CODE 3510–25–M

University of Notre Dame; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 80–00211. Applicant: University of Notre Dame, Radiation Laboratory, Notre Dame, Indiana 46556. Article: Pulse Nanosecond Fluorometer System. Manufacturer: Photochemical Research Associates, Canada. Intended use of article: The article is intended to be used primarily in the study of fluorescence lifetime, rotation, diffusion, electron transfer and chemical reaction rates and other related phenomena. The nanosecond excited state kinetics of cyclic azo compounds, cyclic allenones, methylene methones, protein transfer involving delocalized negative ions, and quantum chain reactions will be investigated. In addition, the kinetics of cell and biological membrane transportation will be investigated using fluorescent probes. The article will also be used in graduate courses to train students in fast kinetics and fluorescence lifetimes.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides time resolved spectroscopy, multiexponential decay curve analytical capabilities, and a time resolution capability of better than 50 nanoseconds. The National Bureau of Standards advises in its memorandum dated July 9, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Stanley P. Kramer,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80–32350 Filed 10–16–80; 8:45 am]

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University of Texas; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 80–00130. Applicant: The University of Texas Health Science Center, Biochemistry Department, 7703 Floyd Curl Drive, San Antonio, TX 78284. Article: Circular Dichroism Spectrophotometer, J–500C. Manufacturer: Japan Spectroscopic Co., Ltd., Japan. Intended Use of article: The article is intended to be used for studies of proteins and mucleic acids. Experiments will be conducted to obtain a circular dichroism spectra of the molecules and molecular complexes at various temperatures. The objectives of these experiments are: (1) To develop quantitative methods of assessing protein conformation changes; (2) To study subtle changes of the environment surrounding protein chromophores; and (3) To compare predicted and experimental structures.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides circular dichroism spectra and rapid switching (50,000 times/second) between right and left polarized light. The Department of Health and Human Services advises in its memorandum dated May 7, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Stanley P. Kramer,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80–32348 Filed 10–16–80; 8:45 am]

BILLING CODE 3510–25–M

University of Wisconsin System; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket No. 79–00386. Applicant: University of Wisconsin System, A. W. Peterson Office Bldg., 750 University Avenue, Madison, WI 53706. Article: Isotope-Ratio-Mass Spectrometer, Model MAT 250 and Accessories. Manufacturer: Varian MAT GmbH, West Germany. Intended use of article: The article is intended to be used for analysis of ^{15}N, ^{2}H, ^{13}C, ^{18}O and ^{34}S; in investigations of natural isotopic abundance in geologic and natural material, for use of ^{15}N-depleted nitrogen compounds, and for greater accuracy in low enrichment ^{15}N studies. It will also be used in investigations of N_2 fixation, nitrogen transformations in soils and waters, biochemistry of inorganic nitrogen assimilation by plants, mechanisms of oxidative phosphorylation, evaluation of the fate of nitrite in meat products, and characterization of the origin of quartz by $^{16}O/^{18}O$ ratios.

Comments: No comments have been received with respect to this application. Decision: Application denied. An instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the foreign article was ordered (July 18, 1979). Reasons: In its justification for duty-free entry of the foreign article (Question 8.c. of the application) the applicant claims, among other things, that is was a group decision to buy a "proven instrument rather than an unknown design" and that "deliverability" and "reliability" entered into the decision to buy the foreign article. The applicant alleged that "[i]f Nuclide performed as claimed, then it would accomplish the relevant analyses as well as would the Varian MAT. At issue is the actual performance, which all evidence indicates, is below that stated by the manufacturer." To support its claim the applicant cited "important findings" of "several Nuclide users," it had contacted.

The application was reviewed by the Department's scientific consultants at the National Bureau of Standards (NBS) who provided their advice to the Department in a memorandum dated December 28, 1979. There follows a detailed discussion of the conclusions of the NBS consultants and of the various claims of the applicant.

1. *Mass Spectrometer Capable of Providing Analysis of ^{15}N, ^{2}H, ^{13}C, ^{18}O and ^{34}S.* NBS found that the foreign article satisfied this capability. For purposes of evaluation of scientific equivalency, NBS compared the foreign article with instruments from the Nuclide Corporation. With respect to the Nuclide instruments, NBS advised as follows: "These instruments, Model 6–60–RMS or 12–90–RMS, are precision mass spectrometers capable of providing analysis of ^{15}N, ^{2}H, ^{13}C, ^{18}O and ^{34}S with an internal precision equivalent to that of the foreign article."

The Department notes that Nuclide responded to the applicant's request for quote with a variety of options to the 6–60 RMS and the 12–90 RMS which met all the specfications of the Varian MAT 250 and that in response to Question 8.c.(3)(b) the applicant stated that, if Nuclide performed as claimed, it would accomplish the relevant analyses as well as would the Varian MAT. We find that either Nuclide instrument is capable of performing the required analyses.

2. *Proven Instrument.* The applicant claimed the Varian MAT 250 and Micromass 602D mass spectrometers had actually been used by various members of the multi-user group that would be using the instrument and that the group had decided to "go for a proven instrument rather than a unknown design." According to the applicant, the "critical point" is that the domestic instruments quoted by Nuclide are "custom-built" with accessories added to the basic 6–60 to meet performance specifications and that the "actual performance" of the Nuclide instruments "could not be verified by hands-on experience." NBS made no finding on the applicant's statement of a "proven instrument" because this was a "subjective" consideration. NBS noted that in the applicant's proposal to the National Science Foundation, enclosed

with the duty-free entry request, the Chemistry Department at the institution was shown to have a Nuclide isotope ratio mass spectrometer, which suggests the "proven capability of a domestically manufactured item has been established at his own facility * * *" The scientific consultants at NBS also disagreed with the applicant's claim that the instrument offered by Nuclide was "custom built." citing the fact that their examination of the Nuclide bid "shows it to be for their standard 6 or 12 inch instrument with many standard optional features offered." We agree that the combination of a basic instrument with standard optional features is not a "custom-built" instrument in the sense that it has not been produced before, or constitutes an "unknown design."

NBS further advised that the Nuclide instruments "have been available in various configurations over a period of years, they are of proven design and the fact that many have been in use for over 20 years attests to their reliability." We agree.

The Department has historically treated mass spectrometers as produced-on-order instuments. Secion 301.2(i) of the Department's regulations defines produced-on-order instruments as those which a manufacturer lists in a current catalog and "is able and willing to produce and have available without unreasonable delay to the applicant." Nuclide responded positively to the applicant's sealed bid on No. D9–2483, without any exceptions. While the ability to observe and run samples on an instrument before it is purchased may be a legitimate consideration for an institution desiring to purchase a scientific instrument, this is not a valid basis for duty-free entry of a produced-on-order or customs-made instrument under the Department's regulations. Also, while the opinion or personal preferences of the potential users of the instruments, as well as those of some of their colleagues, may constitute sufficient grounds to buy a particular instrument, they are not adequate basis for justification of duty-free treatment under the Department's regulations. The basis for the Department's treatment of custom-made or produced-on-order instruments is explained in the report of the House Ways and Means Committee that accompanied Pub. L. 89–651, which reads in pertinent part as follows:

> It is considered that there would be justification for a finding that an instrument or apparatus is being manufactured in the United states if a manufacturer in the United States has in stock, or lists in a current catalog and offers for sale, such an instrument or apparatus which it has produced domestically. Moreover, *in other instonces* (emphasis added), such a finding would be justified if there is satisfactory evidence that a manufacturer is willing and able to produce and have such a domestic article available promptly so that it may be obtained by the applicant without unreasonable delay, taking into account the normal commercial practices applicable to the production and distribution of instruments or apparatus of the same general type. (H. Rept. No. 1779, 89th Cong., 2d Sess., 19 (1966)).

It is clear from this language that the Congress foresaw circumstances in which the administrators of the law would find domestic instruments as "being manufactured in the United States" even though the instruments were not "proven" and even though "field testing" had not been conducted on the specific instrument being offered for sale by the U.S. manufacturer. In any event, we find that the Nuclide instruments are of proven design.

3. *Deliverability.* The regulations (Section 301.6(b)) require an applicant wishing to justify duty-free entry on the basis of excessive delivery time to state how the difference in quoted delivery times "will seriously impair the purposes described in response to Question 7."

Facts relevant to this Department's finding in this regard are as follows:

1. Both Nuclide and the foreign manufacturer quoted a delivery time of 180 days.

2. While alleging that Nuclide Corp.'s actual delivery of some orders has "been in the order of 24 months or greater," the applicant failed to show how its specific research purposes would be seriously impaired by such delays.

3. The Nuclide instrument is a basic instrument with standard options known by the Department and its scientific consultants at the National Bureau of Standards to be well within the production capability of the domestic firm.

Either of the first two of these facts, taken by itself, precludes a finding of domestic nonavailability on grounds of excessive delivery time. The remaining fact illustrates the rationale underlying the pertinent provision of the regulations: Manufacturers, both domestic and foreign, may not always fulfill contractual obligations to deliver orders within quoted times, and such failures may create legal grounds for redress by purchasers and, if repeated sufficiently to undermine the manufacturers reputation as a reliable supplier, cause the rejection of its bids. The consistent administration of a statute, however, cannot rest on various purchases' perceptions of a supplier's reliability at any given time. The cited regulatory provison rests, instead, on the fact of the contractual obligation incurred by the quote.

4. *Reliability and Service.* Section 301.2(n) of the regulations defines "pertinent specifications" as those "structural, operational performance, and other characteristics specified for the instrument * * * that are necessary for the accomplishment of the purposes described by the applicant," excluding such characteristics as "size, *durability*, complexity, ease of operation, *ease of maintenance* and versatility, unless the applicnt can demonstrate that they are necessary for accomplishing the purposes for which the article is intended to be used" (emphasis added). Nor do pertinent specifications include "cost differences between the domestic and foreign instrument, apparatus or accessory."

The applicant claims that the reliability of the domestic instrument "entered into our decision" and cites the experience of three users of Nuclide instuments. One user's experience was with the "smaller 3–60 instrument"; no research purposes are shown. The second user's experience specified neither the instrument nor the research purposes. The third user employed the 6–60 for analysis of ^{15}N and ^{14}N, one of which ^{15}N is included among the applicant's intended analysis. This user indicated that Nuclide's delivery and service were satisfactory, but complained about the resolution capabilities of a 6 inch radius instrument. Making a standard curve overcame the resolution problem. As previously noted, however, we find that both the Nuclide 6–60 and the Nuclide 12–90 provide analysis of ^{15}N, among others, with an "internal precision equivalent to that of the foreign article.

The Department concludes that these citations, which the applicant describes as evidence of Nuclide's "apparent" poor performance, do not satify the regulatory requirement to *demonstrate* the inability of the domestic instrument to accomplish the stated research purposes. The proponderance of the evidence on the record, in fact, points to the opposite conclusion. Moreover, the Department regards reliability and service considerations as essentially cost factors which are precluded from being taken into account in its decision.

Conclusion: The NBS advises, in summary, that for the research purposes stated by the applicant, the Nuclide Corporation instruments are scientifically equivalent to the foreign article." Based on this advice and our own review of the record, as set forth above, we find that the Nuclide Models

6–60 and 12–90 ratio mass spectrometers were of equivalent scientific value to the foreign article for such purposes as the article is intended to be used at the time the foreign article was ordered.
(Catalog of Federal Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Stanley P. Kramer,
Acting Director, Statutory Import Programs Staff.

[FR Doc. 80-32346 Filed 10-16-80; 8:45 am]
BILLING CODE 3510-25-M

Portable Electric Nibblers From Switzerland; Initiation of Antidumping Investigation

AGENCY: United States Department of Commerce.

ACTION: Initiation of Antidumping Investigation.

SUMMARY: This notice is to advise the public that, on the basis of a petition filed in proper form, the Department of Commerce is initiating an antidumping. investigation to determine whether portable electric nibblers from Switzerland are being, or are likely to be, sold at less than fair value. Sales at less than fair value generally occur when the prices of the merchandise sold for exportation to the United States are less than the prices of such or similar merchandise sold for consumption in the home market, or to countries other than the United States, or less than the constructed value. The Department of Commerce is notifying the International Trade Commission of this action so that the Commission may make a determination no later than November 20, 1980, whether there is a reasonable indication of material injury by reason of imports of this merchandise.

EFFECTIVE DATE: October 17, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. John Davies, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C., 20230 (202–377–1766).

SUPPLEMENTARY INFORMATION: On October 6, 1980, the Department of Commerce received a petition that complies with the requirements of §§ 353.36 and 353.37 of the Commerce Regulations (19 CFR 353.36 and 353.37). The petition was filed by the Widder Corporation, Naugatuck, Connecticut, on behalf of the United States industry producing portable electric nibblers. The petition alleges that portable electric nibblers from Switzerland are being, or are likely to be, sold at les than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (93 Stat. 162, 19 U.S.C. 1673) ("the Act") and that these sales cause and/or threaten to cause material injury in the U.S. industry. The merchandise covered by this investigation is portable, electric nibblers, provided for in item number 683.2028, Tariff Schedules of the United States, Annotated, hand-directed or hand-controlled tools with self-contained electric motors.

The petition includes sufficient evidence supporting both the allegations of sales at less than fair value on the basis of comparisons between prices in the home market and in the United States market, and of material injury.

The petition alleges actual or potential decline in output, sales, market share, profits, and employment on the part of the United States industry.

In accordance with section 732(c) of the Act (93 Stat. 162, 19 U.S.C. 1673a(c)), I hereby determine that the Department will initiate an investigation to determine whether imports of portable electric nibblers from Switzerland are being, or are likely to be, sold at less than fair value.

Pursuant to section 732(d) of the Act (93 Stat. 163, 19 U.S.C. 1673a(d)) the Department is notifying the U.S. International Trade Commission (ITC) and providing it with a copy of the information on which I based this determination to initiate an investigation. The International Trade Administration will make available to the ITC all nonprivileged and nonconfidential information in its files. The International Trade Administration will make available to the ITC all privileged and confidential information in the files, provided the ITC confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Pursuant to section 733(a) of the Act (93 Stat. 163, 19 U.S.C. 1673b(a)), the ITC will determine, no later than November 20, 1980, whether there is a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, by reason of imports of portable electric nibblers from Switzerland. If that determination is negative, this investigation will be terminated, and the International trade Administration will publish no further notice. Otherwise, the investigation will proceed to its conclusion.

Section 733(b) of the Act (93 Stat. 163, 19 U.S.C. 1673b(b)) requires that, normally no later than 160 days after the date on which the petition was filed, the International Trade Administration make a preliminary determination whether there is a reasonable basis to believe or suspect that merchandise which is the subject of this investigation is being, or likely to be, sold at less than fair value. Therefore, unless the investigation is terminated or extended, the International Trade Administration will make a preliminary determination not later than March 16, 1981.

This notice is published pursuant to section 732 of the Act (93 Stat. 162, 19 U.S.C. 1673a and 353.37(b) of the Commerce Regulations (19 CFR 353.37(b), 45 FR 8199).

John D. Greenwald,
Deputy Assistant Secretary for Import Administration.

[FR Doc. 32379 Filed 10-16-80; 8:45 am]
BILLING CODE 3510-25-M

Certain Handbags From the Republic of Korea; Preliminary Results of Administrative Review of Countervailing Duty Order and of Tentative Determination To Revoke

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Countervailing Duty Order and of Tentative Determination To Revoke.

SUMMARY: This notice is to advise the public that, as a result of an administrative review of the countervailing duty order on certain handbags from the Republic of Korea, the Department of Commerce has tentatively determined to revoke such order on the grounds that net subsidies have been *de minimis* for at least two years. Interested parties are invited to comment on this decision.

EFFECTIVE DATE: October 17, 1980.

FOR FURTHER INFORMATION CONTACT: Josephine Russo, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Room 1126, Washington, D.C., 20230 (202–377–4023).

SUPPLEMENTARY INFORMATION: A notice of "Final Contervailing Duty Determination," T.D. 77–152, was published in the **Federal Register** of June 3, 1977 (42 FR 28532). The notice stated that the Treasury Department had determined that exports of certain handbags from the Republic of Korea were provided bounties or grants, within the meaning of section 303 of the Tariff Act of 1930 (19 U.S.C. 1303)("the Act"). Accordingly, imports into the United States of this merchandise were subject to countervailing duties.

The term "handbags" as used throughout this proceeding covers pocketbooks, purses, shoulder bags, clutch bags, and all similar articles by whatever name known, customarily carried by women or girls and classifiable under item 706.06, 706.08, 706.20, 706.22, 707.23, 706.24, 706.30, or 706.60, Tariff Schedules of the United States (TSUS). Luggage, flat goods or other articles classifiable under these TSUS items and handbags under item 706.40 are not included.

The countervailable programs under the Final Determination are: (1) preferential short-term export financing, (2) tax benefits resulting from the inclusion in loss accounts of sales and entertainment expenses incurred in connection with development of overseas markets, (3) tax benefits resulting from the inclusion in loss accounts of reserve funds for losses accuring from overseas activities, and (4) accelerated depreciation of machinery and equipment utilized for export production. The Treasury Department found that 28 manufacturers or exporters of handbags (as identified in the **Federal Register** notice of June 3, 1977) received bounties or grants ranging from 0.48 percent to 0.64 percent *ad valorem*. All other handbag manufacturers/exporters received weighted average benefits of 0.24 percent, considered by Treasury to be *de minimis*. Effective June 3, 1977, countervailing duties were collected on merchandise exported by those 28 companies receiving more than *de minimis* benefits.

On November 19, 1979, the Treasury Department received a request for revocation of the order from the Government of the Republic of Korea. In its submission, the Republic of Korea alleged that only six companies exported to the United States after January 1978 and only five did so after January 1979. Further, for more than a two year period (through September 1979), benefits received by the 5 companies still shipping were below 0.3 percent. The Government of Korea argued that this level was *de minimis*.

On January 1, 1980, Title I of the Trade Agreements Act of 1979 (93 Stat. 150)("the TAA") went into effect. On January 2, 1980, the authority for administering the countervailing duty law was transferred from the Treasury Department to the Department of Commerce ("the Department"). On April 2, 1980, liquidation was suspended on all shipments of handbags from Korea entered, or withdrawn from warehouse, for consumption retroactive to January 1, 1980. Subsequently, the Department conducted an administrative review of the information submitted by the Korean Government for the 28 handbag exporters. We received supplemental information for the last 3 months of 1979. We confirmed that the benefits received by the 5 exporting firms were no more than 0.29 percent *al valorem* from January 1977 through December 1979.

We verified the information through examination of Korean Government laws and documents; company books and records; and consultation with economic officials of the United States consultate in the Republic of Korea.

As a result of our administrative review, we preliminarily conclude that the imported merchandise has not benefitted from more than *de minimis* net subsidies for at least the two-year period specified in § 355.42(b), Commerce Regulations. Furthermore, as required by § 355.42(d), Commerce Regulations, the manufacturers and exporters have agreed in writing to an immediate suspension of liquidation and, if appropriate, reinstatement of the order if circumstances develop which indicate that the imported merchandise benefits from a net subsidy.

Therefore, the Department has tentatively determined to revoke the countervailing duty order concerning certain handbags from Korea. If this order is revoked, it shall apply with respect to unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after (date of publication). Additionally, entries from January 1, 1980 to (date of publication), assuming no change in the *de minimis* rate, will be liquidated without regard to countervailing duties. The suspension of liquidation previously ordered will continue until further notice. Since we have preliminarily determined that the imported merchandise has not benefitted from more than *de minimis* net subsidies, no deposit of estimated countervailing duties will be required as of October 17, 1980.

Interested parties may submit written comments by November 17, 1980 and may request disclosure and/or a hearing by November 3, 1980.

The Department will publish a notice of final results of administrative review after analysis of issues raised in written comments or at a hearing.

This administrative review, tentative determination to revoke, and notice publication are in accordance with section 751(a)(1), (c) of the Act (93 Stat. 175–76, 19 U.S.C. 1675(a)(1), (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42, 45 FR 4947–48).

John D. Greenwald,
Deputy Assistant Secretary for Import Administration.

October 10, 1980.

[FR Doc. 80-32361 Filed 10-16-80; 8:45 am]
BILLING CODE 3510-25-M

National Bureau of Standards

Federal Information Processing Standards 60, 61, 62, 63 Technical Verification Guidance

Under the provisions of Pub. L. 89–306 (79 Stat. 1127; 40 U.S.C. 759(f)) and Executive Order 11717 (38 FR 12315, dated May 11, 1973), Secretary of Commerce is authorized to establish uniform automatic data processing standards. On February 16, 1979, notice was given in the **Federal Register** (44 FR 10098–10101 announcing that the Secretary of Commerce had approved three input/output (I/O) Federal Information Processing Standards (FIPS): (1) I/O Channel Interface, (2) Channel Level Power Control Interface, and (3) Operational Specifications for Magnetic Tape Subsystems, designated Federal Information Processing Standards Publication (FIPS PUB) 60, FIPS PUB 61, and FIPS PUB 62, respectively. On August 27, 1979, notice was given in the **Federal Register** (44 FR 50078–50079) announcing that the Secretary had approved a fourth I/O channel level interface standard, **Operational Specifications for Rotating Mass Storage Subsystems**, designated FIPS PUB 63.

These standards were the subject of corrections and revisions announced in the **Federal Register** on August 27, 1979 (44 FR 50079–50080), August 31, 1979 (44 FR 51294) and December 3, 1979 (44 FR 69317).

On December 11, 1979, notice was given in the **Federal Register** (44 FR 71444–71445) announcing the verification procedures for FIPS PUBS 60, 61, 62, and 63.

On June 25, 1980, notice was given in the **Federal Register** (45 FR 42783–42784) of the interim revision of FIPS PUBS 60–63 as follows:

The Director of the National Bureau of Standards shall, through publication of notices in the **Federal Register**, specify the verification procedures and techniques to be employed and shall conduct or arrange to have conducted this required verification. The Director shall provide, upon request or when he otherwise determines it to be necessary and appropriate, guidance as to whether specific technical interface implementation approaches will meet the verification requirement. Such guidance shall

be published in summary form through notices in the **Federal Register**, specifying the manner in which persons may obtain copies of the full guidance provided.

This is the second notice providing specific guidance concerning technical interface implementation approaches. The first such notice was published in the **Federal Register** of August 13, 1980 (45 FR 53856–53857).

FIPS 60, 61, 62, and 63 are intended to achieve full plug-to-plug interchangeability of peripheral components. This general intent is the basis for this guidance.

2.1 Paragraph 2.2.2.1 of FIPS PUB 60 requires that all control unit-generated interface signals be down within 1.5 microseconds after the fall of 'operational out' at the control unit. Will infrequent exceptions be allowed for control unit error recovery/logging purposes?

Control units which, in exceptional cases, as a result of the detection of fault or error conditions, do freeze inbound lines for a period exceeding 1.5 microseconds, while clearing or logging error states, may be verified relative to FIPS PUB 60 provided:

(a) Such delays do not occur in the normal error free operation of the subsystem, and

(b) The total delay to drop inbound lines does not then exceed 100 microseconds.

2.2 Paragraph 2.2.2.3, subparagraph 2. of FIPS PUB 60 requires that 'operational In' must drop within 6 microseconds of a disconnect indication. Will infrequent exceptions be allowed for control unit error recovery/logging purposes?

Control units which, in exceptional cases, as a result of the detection of fault or error conditions, hold 'operational in' for more than 6 microseconds after a disconnect, while clearing or logging error states, may be verified relative to FIPS PUB 60 provided:

(a) Such delays do not occur in the normal error free operation of the subsystem, and

(b) The total delay until 'operational in' drops never exceeds 100 microseconds.

2.3 Paragraphs 2.2.2.4 and 2.8.2 of FIPS PUB 60 require that a control unit not requiring selection must propagate 'select out' within 1.8 microseconds. Will control units with multichannel or string switching capabilities, which usually meet this requirement but infrequently exceed 1.8 microseconds be allowed?

Control units which implement device sharing and which, in exceptional cases, allow more than 1.8 microseconds to propagate 'select out' may be verified relative to FIPS 60 provided:

(a) Conditions or states which require more than 1.8 microseconds for the propagation of 'select out' occur infrequently, and

(b) This applies only to selector channel or block multiplexor operation, and

(c) The worst case propagation time for 'select out' never exceeds one millisecond.

2.4 Paragraph 2.8.1 of FIPS PUB 60 requires that no signal sequence exceed 32 microseconds because of the control unit. Will units which sometimes exceed 32 microseconds be allowed?

This requirement is of greatest importance with byte multiplex channels, because of the frequent selection sequences typically performed during byte multiplexor operation. When subsystems operate over selector or block multiplexor channels, typically transfer long blocks of data for most data accesses, and typically have (as do magnetic disk and tape subsystems) relatively long mechanical latencies, this requirement is much less significant. Therefore, subsystems which sometimes require more than 32 microseconds for one signal sequence may be verified relative to FIPS PUB 60 provided:

(a) They ordinarily operate over selector or block mutiplexor channels and,

(b) No signal sequence exceeds one millisecond due to the control unit.

2.5 Paragraph 1.6 of FIPS PUB 62 states that the high order 4 bits of an address specify the control unit and the low order 4 bits specify a device address. May other interpretations of the address space be allowed?

It is important that each control unit recognizes the full address of every device assigned to it, and that no two control units on the same channel respond to the same address. Keeping this in mind, other breakdowns of the 8 bit address space may be verified, provided the high order bits identify a control unit and the low order bits identify a device attached to that control unit. It would, therefore, be acceptable, for example to have a subsystem with a 3 bit control unit address concatenated to a 5 bit device address, if the control unit could handle more than 16 devices but less than 33. It would also be acceptable to have a 5 bit control unit address and a 3 bit device address for a control unit which handles 1 to 8 devices.

Because it is possible to respond fully to the foregoing questions in such a brief fashion, the National Bureau of Standards has decided not to avail itself of the opportunity to summarize the guidance provided for in the interim revision of FIPS PUBS 60–63. The guidance provided in response to questions 2.1 through 2.5 is, therefore, considered complete. Requests for additional FIPS 60–63 verification guidance should be addressed to the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, Attention: FIPS 60–63 Verification Guidance.

Dated: October 10, 1980.

Raymond G. Kammer,

Acting Director.

[FR Doc. 80-32343 Filed 10-16-80; 8:45 am]

BILLING CODE 3510-13-M

Magnetic Tape Labels and File Structure for Information Interchange Issuance of Federal Information Processing Standard

Under the provisions of Pub. L. 89–306 (79 Stat. 1127; 40 U.S.C. 759(f)) and Executive Order 11717 (38 FR 12315, dated May 11, 1973), the Secretary of Commerce is authorized to establish uniform Federal automatic data processing standards. On October 10, 1979, notice was published in the **Federal Register** (44 FR 58535) that a standard for Magnetic Tape Labels and File Structure for Information Interchange was being proposed for Federal use. Interested parties were invited to submit written comments concerning this proposed standard to the National Bureau of Standards (NBS).

The written comments submitted by interested parties and other material available to the Department relevant to this standard were reviewed by NBS. On the basis of this review, NBS recommended to the Secretary his approval of the standard as a Federal Information Processing Standard (FIPS), and prepared a detailed justification document for the Secretary's review in support of that recommendation. The purpose of this notice is to announce that the Secretary has approved the standard as a FIPS, and that the standard shall be published as FIPS Publication 79. The provisions of the standard are effective October 17, 1981.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 5317, Main Commerce Building, 14th Street between Constitution Avenue and E Street, NW., Washington, D.C. 20230.

The objective of this standard is to reduce the difficulty of interchange of information recorded on 9-track magnetic tapes between different users and different computing systems. This standard specifies the format, content, and arrangement of magnetically recorded labels that identify and structure files and that specify the format and arrangement of the blocks that contain the records that constitute a file.

The approved FIPS contains two portions: (1) An announcement portion which provides information concerning the applicability, implementation, and maintenance of the standard and (2) a specifications portion which deals with the technical requirements of the standard. Only the announcement portion of the standard is provided in this notice. With certain qualifications noted in the announcement portion, this FIPS represents the adoption of American National Standard X3.27–1978, Magnetic Tape Labels and File Structure for Information Interchange.

By arrangement with the American National Standards Institute, interested parties may purchase copies of this standard, including the specifications portion, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies section of the announcement portion of the standard.

Persons desiring further information about this standard may contact Mr. Joseph C. Collica, Application Systems Division, Center for Programming Science and Technology, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, (301) 921–3491.

Dated: October 10, 1980.

Raymond G. Kammer,

Acting Director.

Federal Information Processing Standards Publication 79

(Date) ————

Announcing the Standard for Magnetic Tape Labels and File Structure for Information Interchange

Federal Information Processing Standards Publications are issued by the National Bureau of Standards pursuant to the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973) and Part 6 of Title 15 Code of Federal Regulations (CFR).

1. *Name of Standard.* Magnetic Tape Labels and File Structure for Information Interchange (FIPS PUB 79).

2. *Category of Standard.* Software Standard, Operating Procedures.

3. *Explanation.* This publication announces the adoption of X3.27–1978, American National Standard Magnetic Tape Labels and File Structure for Information Interchange, as a Federal Standard. This standard establishes four levels of labeling, label formats, blocking structure, and tape-mark relationships on magnetically recorded tapes (volumes) so that these volumes can be used for information interchange.

This standard contains specifications for processing volumes that correspond to a level of this standard to ensure proper treatment and understanding of these volumes and their contents in information interchange. The implementation of these processing specifications is called the system. A system exists for each level.

Each implementation of this standard is expected to be able to produce and accept volumes that corresponds to a level of this standard.

Any volume or volume set (defined in X3.27–1978 as a collection of related volumes) of a given level can be processed correctly by any system of equal or higher level; and any level system can process correctly any volume or volume set of equal or lower level. For example, a level 1 volume can be processed correctly on system levels 1, 2, 3, and 4. Similarly, system level 3 can process correctly volumes produced by system levels 1, 2, and 3.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

6. *Cross Index.* American National Standard X3.27–1978, Magnetic Tape Labels and File Structure for Information Interchange.

7. *Related Documents.* a. American National Standard Code for Information Interchange, X3.4–1968 (FIPS PUBS 1 and 7), X3.4–1977.

b. American National Standard Recorded Magnetic Tape for Information Interchange (9-Track, 200 CPI, NRZI), X3.14–1973.

c. American National Standard Recorded Magnetic Tape for Information Interchange (9-Track, 800 CPI, NRZI), X3.22–1973, FIPS PUB 3–1.

d. American National Standard COBOL, X.23–1974, FIPS PUB 21–1.

e. American National Standard FORTRAN X3.9–1978.

f. American National Standard Representation for Calendar Date and Ordinal Date for Information Interchange, X3.30–1971, FIPS PUB 4.

g. American National Standard Recorded Magnetic Tape for Information Interchange (9-Track, 1600 CPI, Phase-Encoded), X3.39–1973, FIPS PUB 25.

h. American National Standard Unrecorded Tape, X3.40–1973.

i. American National Standard Representation of Numeric Values in Character Strings for Information Interchange, X3.42–1975.

j. American National Standard Recorded Magnetic Tape for Information Interchange (9-Track, 6250 CPI, Phase-Encoded), X3.54–1976, FIPS PUB 50.

k. American National Standard for Bibliographic Information Interchange on Magnetic Tape, Z39.2–1971.

l. Transmittal Form for Describing Computer Magnetic Tape File Properties, FIPS PUB 53.

m. Guidelines for Describing Information Interchange Formats, FIPS PUB 20.

8. *Objectives.* The objective of this standard is to reduce the difficulty of interchange of information recorded on magnetic tapes between different users and different computing systems. This objective is accomplished by specifying the format, content, and arrangement of magnetically recorded labels that identify and structure files and by specifying the format and arrangement of the blocks that contain the records that constitute a file.

The attainment of this objective, from a government-wide point of view, depends upon the widespread availability and use of systems that comply with this standard. Thus, the general intent of this publication is to provide a standard means of recording machine sensible labels, record formats (fixed, variable, and spanned), and file-volume combinations (single-file single-volume, single-file multi-volume, multi-file single-volume, multi-file multi-volume) in an interchange environment.

9. *Applicability.* This standard is applicable to all Federal departments and agencies. Information processing systems which either generate magnetic tapes for information interchange or accept magnetic tapes for information interchange shall have the capability of generating and processing magnetic tape labels and file structure in conformance with this standard. The standard shall be used in the interchange of magnetic tapes unless the interchange parties can agree on an alternate interchange format which is more efficient, convenient, and cost-effective.

10. *Specifications.* This standard adopts, with the qualifications noted in this section, the American National Standard X3.27–1978 for Magnetic Tape Labels and File Structure for Information Interchange.

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The Federal Standard contains the same four levels of labeling described in X3.27–1978. Three of the main constituents of a level—the file formats, the labels used, and the record formats, are described in the following table. Each constituent contains two or three options. Within each option the types of file formats, labels, and record formats permitted for that option are listed.

Constituent	Option	Type
File Formal	1	Single-file single-volume and single-file multi-volume
	2	Single-file single-volume, and single-file multi-volume, and multi-file single-volume, and multi-file multi-volume
Labels	1	VOL1 HDR1 EOV1 EOF1
	2	VOL1 HDR1 HDR2 EOV1 EOV2 EOF1 EOF2
Record Formal	1	Fixed
	2	Fixed and variable
	3	Fixed, and variable, and spanned

The four levels of labeling in the Federal Standard numbered 1, 2, 3, and 4 in increasing order of complexity are made up of the constituent options as follows:

Summary of Level Constituents

	File format	Labels	Record format
Level 1	Option 1	Option 1	Option 1
Level 2	Option 2	Option 1	Option 1
Level 3	Option 2	Option 2	Option 2
Level 4	Option 2	Option 2	Option 3

10.1 Qualifications. a. ANSI X3.27–1978 specifies the use of the American National Standard Code for Information Interchange (ASCII), X3.4–1977, as the character code in representing the labels and data. For the purposes of this standard, American National Standard Code for Information Interchange defined in FIPS PUBS 1 and 7 replaces all references to ANSI X3.4–1977 and ASCII in ANSI X3.27–1978. All labels and data will be recorded in the character code defined in FIPS PUBS 1 and 7.

b. Appendix A, "Levels of Systems," and Appendix B, "Utilization of this Standard," of ANSI X3.27–1978 are not part of the Federal standard specifications, but are useful for the concepts and guidance they contain, and will be considered in resolving interpretations.

c. This standard requires that the following "mechanisms described in ANSI X3.27–1978, Section 1.3.1 (2) through (6) be provided in the system and that the documentation of these mechanisms be supplied in a separate document on preparing and using "interchange tapes." This document shall be a user's manual for producing and reading magnetic tapes conforming to this standard. The use of label facilities through each standard programming language separately described as well as any utilities capable of supporting this standard. The required document can be provided as an index which references applicable portions of existing documents. A single complimentary copy of this user's manual shall be transmitted to NBS for informational purposes, at the address cited in Section 11.3. The mechanisms are:

*A mechanism for a system to obtain information from a program, operator, installation, or user, as appropriate, to initialize, create, or verify labels.

*A mechanism for a system to communicate information to a program, operator, installation, or user, as appropriate, with respect to errors or unusual conditions.

*A mechanism for a program operator, installation, or user, as appropriate, to choose among the alternatives the system makes available.

*A mechanism for a program, operator, installation, or user, as appropriate, to invoke a facility the system makes available.

*A mechanism to pass control to an installation volume label processing routine to process user volume labels, or to an application program routine to process user file labels if these labels are available in an implementation.

Although programming language extensions to Federal standard programming languages for ANSI programming languages are not required by this standard, extensions to these languages may be one of the means through which vendors implement the mechanisms described above. Utility programs or a job control language are also acceptable alternatives.

11. *Implementation.* Implementation of this standard is divided into four areas of consideration: acquisition of a tape label processing facility, conformance to this standard, interpretation of this standard, and use of this standard.

11.1 Acquisition of a Tape Label Processing Facility. The provisions of this standard are effective October 17, 1981. Whenever a 9-track tape drive is acquired or when a new tape label processing facility is acquired, and the applicability criterion, Section 9, has been met, then the computer system must implement the specifications of this standard unless a waiver described in Section 12, Waivers, has been obtained. These requirements are applicable to tape label processing facilities developed in-house, acquired as part of an ADP system procurement, acquired by separate procurement, acquired as part of a time-sharing procurement, or used under an ADP leasing arrangement. Several of the standards listed in Section 7, Related Documents, provide the specifications for the recorded and unrecorded magnetic tapes.

11.2 Conformance to this Standard. A tape label processing facility that conforms to this standard must provide for all of the requirements defined in Section 10, Specifications, of this standard. Each implementation must conform to one of the four levels of the standard.

Opetional portions of X3.27–1978 are not required for this standard. If the optional portions are implemented, they must be in conformance with X3.27–1978.

11.3 Interpretation of the Standard. NBS will provide for the resolution of questions regarding this standard, and will issue official interpretations of the specifications and requirements.

All questions arising about the interpretation of this standard should be addressed to: Standards Administration Office, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234

11.4 Use of this standard. This standard must be used as described in Section 9, Applicability.

12 *Waivers.* Heads of agencies may request that the requirements of this standard for the acquisition of a tape label processing facility or the interchange of information on 9-track magnetic tapes be waived in instances where it can be clearly demonstrated that there are appreciable performance or cost advantages to be gained and that the overall interests of the Federal Government are best served by granting the requested waiver. Such waiver requests will be reviewed by and are subject to the approval of the Secretary of Commerce. The waiver request must address the criteria stated above as the justification for the waiver.

Forty-five days should be allowed for review and response by the Secretary of Commerce. Waiver requests shall be submitted to the Secretary of Commerce, Washington, D.C. 20230, and labeled as a Request for a Waiver to a Federal Information Processing Standard. No agency shall take any action to deviate from the standard prior to the receipt of a waiver approval from the Secretary of Commerce. No agency shall begin any process of implementation or acquisition of a non-conforming tape label processing facility unless it has already obtained such approval.

13. *Special Information.* While not included as a mandatory part of this standard, attention should be given to Appendix D of ANSI X3.27–1978, "Considerations Associated with Changes and Additions to the Earlier Version" (i.e., X3.27–1969). The information contained in this appendix could be helpful in developing a better understanding of problems usually encountered.

Other standards are being considered or are under development to provide standard labels and file structure for such media as disks and cassettes. When available, they will be reviewed to determine their applicability for adoption as Federal standards.

14. *Where to Obtain Copies.* Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 79 (NBS-FIPS-PUB 79), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 80-32313 Filed 10-16-80; 8:45 am]
BILLING CODE 3510-13-M

Proposed Federal Information Processing Standard for Optical Character Recognition (OCR) Character Positioning

Under the provisions of Pub. L. 89–306 and Executive Order 11717, the Secretary of Commerce is authorized to establish uniform Federal Automatic Data Processing standards. A Federal Information Processing Standards Publication, Standard for Optical Character Recognition (OCR) Character Positioning, is being proposed for Federal use. It is based on the Federal Adoption of a proposed voluntary industry standard as it was developed and passed by the Technical Committee X3A1 of the American National Standards Institute.

Prior to the submission of this proposal to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

The proposed Federal Information Processing Standard contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section, which deals with the technical requirements of the standard. Only the announcement section of the proposal is provided in this notice.

Interested parties may obtain a copy oif the technical specifications from and submit comments in writing to the Standards Administration Office, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234.[1] To be considered, comments on this proposed standard must be received on or before January 15, 1981.

Written comments received in response to this notice plus written comments obtaiped from Federal departments and independent agencies will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, Main Commerce Building, 14th Street betweeen Constitution Avenue and E Street, NW., Washington, D.C. 20230.

Dated: October 10, 1980.

Raymond G. Kammer,
Acting Director.

Federal Information Processing Standards Publication ———

(Date) —

Announcing the Stondard for Optical Character Recognition (OCR) Character Positioning

Federal Information Processing Standards Publications are issued by the National Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89–306 (79 Stat. 1127) Executive Order 11717 (38 FR 12315, dated May 11, 1973) and Part 6 of Title 15 Code of Federal Regulations.

Nome of Stondard. Optical Character Recognition (OCR) Character Positioning (FIPS PUB.———).

Category of Standard. Hardware Standard, Character Recognition.

Explonotion. This standard specifies the nominal position with allowable tolerances, of OCR characters in relation to their location to other machine readable characters or sensed marks and to the document edges.

Approving Authority. Secretary of Commerce.

Maintenance Agency. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

Cross Index. Proposed American National Standard for Optical Character Recognition (OCR) Character Positioning (ANSI BSR X3.93M–1980).

Related Documents.—a. Proposed American National Standard for Character Set for Optical Character Recognition (OCR–A), ANSI BSR X3.17–1980.

b. American National Standard for Character Set for Optical Character Recognition (OCR–B), ANSI X3.49–1975.

c. Federal Information Processing Standards Publication (FIPS PUB) 32, Optical Character Recognition Character Sets.

d. Federal Information Processing Standards Publication (FIPS PUB) 40, Guideline for Optical Character Recognition Forms.

e. Federal Information Processing Standards Publication (FIPS PUB) ———, Standards for Optical Character Recognition (OCR) Inks.

Applicobility. This standards is applicable to the acquisition of OCR printers, readers, and printed forms:

(1) Where the interchange of machine readable information between different systems may be required, or

(2) Where these products are produced by different manufacturers.

Users of existing equipment and printed forms are encouraged to employ this standard. Equipment and forms not in accordance with this standard should be evaluated periodically by Federal agencies because printers, readers, or forms with improperly positioned characters may seriously reduce productivity by causing misreadings (errors).

Specifications. This standard adopts in whole the proposed American National Standard for Optical Character Recognition (OCR) Character Positioning (ANSI BSR X3.93M–1980).

Qualifications. None.

Implementation Schedule. All applicable equipment and printed forms ordered on or after the date of this FIPS PUB must be in conformance with this standard unless a waiver has been obtained in accordance with the procedure described below.

Exceptions to this standard are made in the following cases:

a. For equipment installed or on order, or for printed forms in stock or on order prior to the effective date of this standard.

b. Where procurement actions are in the solicitation phase (i.e., Requests for Proposals or Invitations for Bids have been issued) prior to the effective date of this standard.

Waivers. Heads of agencies may request that the requirements of this standard be waived in instances where it can be clearly demonstrated that there are appreciable performance or cost

[1] Specifications filed as part of the original document.

V 45 OCT 7 80 0 UMI

advantages to be gained and that the overall interests of the Federal Government are best served by granting the requested waiver. Such waiver requests will be reviewed by and are subject to the approval of the Secretary of Commerce. The waiver request must address the criteria stated above as the justification for the waiver.

Forty-five days should be allowed for review and response by the Secretary of Commerce. Waiver requests shall be submitted to the Secretary of Commerce, Washington, D.C. 20230, and labeled as a Request for a Waiver to a Federal Information Processing Standard. No agency shall take any action to deviate from the standard prior to the receipt of a waiver approval from the Secretary of Commerce. No agency shall begin any process of implementation or acquisition of non-conforming equipment or forms unless it has already obtained such approval.

Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161. When ordering, refer to Federal Information Processing Standards Publication————(NBS-FIPS-PUB————), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 80-32309 Filed 10-16-80; 8:45 am]
BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Coastal Zone Management Advisory Committee; Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, notice is hereby given of the meeting of the Coastal Zone Management Advisory Committee (the "Committee") on Thursday and Friday, November 6–7, 1980. The meeting will commence at 8:45 a.m. on November 6, and 9 a.m. on November 7. The meetings will be held at the World Trade Center, Oval Room, 1 World Trade Center, New York, New York.

The meeting will be open to public observation and approximately 25 seats will be available. Interested persons are invited to attend and participate in the meeting, subject to the procedures which follow. From approximately 2:30 p.m. until 3 p.m. on November 7, persons will be permitted to make oral statements to the Committee which are relevant to topics on the agenda. The Chairperson retains the prerogative to place limits on the duration of oral statements and discussions. Persons wishing to make oral statements should notify the Committee Control Officer in advance of the meeting. A written version of an oral statement or a written statement may be submitted to the Committee Control Officer before or after the meeting, or may be mailed within five days to: Coastal Zone Management Advisory Committee, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street NW., Washington, D.C. 20235, Attn: Ms. JoAnn Chandler, Committee Control Officer, CZM Advisory Committee. All statements received in typewritten form will be distributed to the Committee for consideration with the minutes of the meeting. Inquiries may be directed to the Committee Staff at (202) 634–4249.

The items for Committee discussion at the meeting will include the following:

November 6

8:45 a.m.—Call to order—Barbara Fegan, Chairperson Introductions.
9 a.m.—Welcome and briefing on the Port Authority of New York and New Jersey.
9:15 a.m.—The Port of New York and New Jersey within the U.S. North Atlantic port structure/Competitive Posture.
10 a.m.—Coffee break—informal question period.
10:15 a.m.—Intergovernmental relationships at the Port of New York/New Jersey.
11 a.m.—Export coal study—Planning for the future.
Noon—lunch.
1:30 p.m.—Guided tour of Port of Newark-Elizabeth Port Authority Marine Terminal Seaport complex. (Space limited)
5 p.m.—Conclusion of tour.

November 7

9 a.m.—Dredging and dredged material disposal—Port Authority Approach and Management.
9:45 a.m.—Coffee break.
10 a.m.—New York/New Jersey Port Waterfront Cleanup Project.
10:30 a.m.—Urban Waterfront Redevelopment.
11 a.m.—Discussion.
11:30 a.m.—Committee deliberations.
Noon—lunch.

November 7

1 p.m.—Committee deliberations.
2:30 p.m.—Public statements (if any).
3 p.m.—Adjourn.

The meeting will be devoted to an analysis and commentary on current U.S. port problems and activities as related to the management of the coastal zone.

Dated: October 14, 1980.

Michael Glazer,

Assistant Administrator, Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 80-32304 Filed 10-14-80; 8:45 am]
BILLING CODE 3510-08-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Level of Restraint for Certain Wool and Man-Made Fiber Products Imported From the Polish People's Republic

October 10, 1980.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Adjusting the level of restraint established for wool and man-made fiber suits in category 443/643/644 from Poland to 13,342 dozen for the agreement year which began on January 1, 1980 by the application of swing and the reinstatement of unused carryforward.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463) and August 12, 1980 (45 FR 53506)).

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 9 and 12, 1978, as amended, between the Governments of the United States and the Polish People's Republic provides, among other things, for the borrowing of yardage in certain categories from the succeeding year's level with the amount used deducted from the level in the following year (carryforward); and that specific ceilings may be increased by designated percentages (swing). Pursuant to the terms of the bilateral agreement, the import restraint level for Category 443/643/644 is being increased from 12,114 dozen to 13,342 dozen during the twelve-month period which began on January 1, 1980.

EFFECTIVE DATE: October 10, 1980.

SUPPLEMENTARY INFORMATION: On December 27, 1979 there was published in the **Federal Register** (44 FR 7651) a letter dated December 20, 1979 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which established levels of restraint for certain cotton, wool and man-made fiber textile products, including Category 443/643/644, produced or manufactured in Poland which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1980 and extends through December 31, 1980.

In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to permit entry for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in Category 443/643/644, produced or manufactured in Poland, at the increased level of 13,342 dozen during the agreement year which began on January 1, 1980.

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

October 10, 1980.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: On December 20, 1979, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry during the twelve-month period beginning on January 1, 1980 and extending through December 31, 1980 of cotton, wool and man-made fiber textile products in certain specified categories, produced or manufactured in Poland, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, and extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 9 and 12, 1978, as amended, between the Governments of the United States and the Polish People's Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed, effective on October 10, 1980, to increase the twelve-month level of restraint for Category 443/643/644 to 13,342 dozen.[2]

The actions taken with respect to the Government of the Polish People's Republic and with respect to imports of wool and man-made fiber textile products from Poland have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80-32344 Filed 10-16-80; 8:45 am]
BILLING CODE 3510-25-M

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 9 and 12, 1978, as amended, between the Governments of the United States and the Polish People's Republic which provided, in part, that: (1) Within the aggregate and applicable group limits of the agreement, specific levels of restraint may be exceeded by designated percentages; (2) these levels may also be increased for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[2] The level of restraint has not been adjusted to reflect any imports after December 31, 1979.

Adjusting Import Restraint Levels for Certain Cotton Textile Products From India

October 10, 1980.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Applying swing and carryover to the levels of restraint established for cotton dresses and trousers in Categories 336 and 347/8; applying carryover to the level for cotton knit shirts and blouses and men's and boys' woven cotton shirts, Category 338/339/340, and deducting swing transferred to Categories 336, 341 and 347/8 from Category 338/339/340; and applying carryforward and swing to the level for women's, girls' and infants' woven cotton blouses in Category 341 and deducting carryforward used in 1979. All adjustments apply to goods produced or manufactured in India and exported during the agreement year which began on January 1, 1980 and extends, through December 31, 1980.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172) as amended on April 23, 1980 (45 FR 27463) and August 12, 1980 (45 FR 53506)).

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 30, 1977, as amended, between the Governments of the United States and India, provides for percentage increases in certain categories during the agreement year (swing), and for the deduction of equivalent amounts from certain other categories; for the carryover of shortfalls in certain categories from the previous agreement year (carryover); for the borrowing of designated percentages of yardage from the succeeding year's level (carryforward) and for deducting those amounts, to the extent used, during the succeeding year; and for administrative arrangements and adjustments to resolve minor problems arising in the implementation of the agreement. Accordingly, under the terms of the bilateral agreement, as amended, adjustments are being made in the levels of restraint established for cotton textile products in Categories 336, 338/339/340, 341 and 347/348, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1980.

EFFECTIVE DATE: October 15, 1980.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230. (202/377–5423).

SUPPLEMENTARY INFORMATION: On December 28, 1979 there was published in the **Federal Register** (44 FR 76840) a letter dated December 21, 1979 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which established import levels for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1980. In the letter published below, in accordance with the provisions of the bilateral agreement and at the request of the Government of India, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the twelve-month levels of restraint previously established for Categories 336, 338/339/340, 341 and 347/348 to the designated amounts.

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

October 10, 1980.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: On December 21, 1979, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption and withdrawal from warehouse for consumption during the twelve-month period beginning on January 1, 1980 and extending through December 31, 1980 of cotton, wool and man-made fiber textile products in certain specified categories, produced or manufactured in India, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

[1] The term "adjustment" refers to those provisions of the bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 30, 1977, as

Footnotes continued on next page

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 30, 1977, as amended, between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1971, as amended by Executive Order 11951 of January 6, 1977, you are directed to amend, effective on October 15, 1980, the twelve-month levels of restraint established for Categories 336, 338/339/340, 341, and 347/348, whether accompanied by a visa or elephant-shaped certification, to the following:

Category	Amended 12-mo level of restraint [1]
336	227,221 dozen.
338/339/340	998,148 dozen.
341	2,202,385 dozen.
347/348	136,901 dozen.

[1] The levels of restraint have not been adjusted to reflect any imports after December 31, 1979.

The actions taken with respect to the Government of India and with respect to imports of cotton textile products from India have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80-32345 Filed 10-16-80; 8:45 am]

BILLING CODE 3510-25-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1980; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1980 commodities to be produced by workshops for the blind and other severely handicapped.

DATE: Comments must be received on or before November 19, 1980.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION:
C. W. Fletcher (703) 557-1145.

SUPPLEMENTARY INFORMATION:
This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested persons an oportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities to Procurement List 1980, November 27, 1979 (44 FR 67925):

Class 5440

Stepladder, Aluminum
5440-00-514-4483
5440-00-514-4485
5440-00-514-4487
(Requirements for GSA Regions 1,2,3,4 and National Capital Region)

Class 6532

Pajamas, Ladies
Tops, Medium 6532-00NSH-001
Tops, Large 6532-00NSH-0002
Pants, Medium 6532-00NSH-0003
Pants, Large 6532-00-NSH-004
Robe, Ladies 6532-00-NSH-0005

Class 8140

Box, Packing, Ammo, 4.2 In. Mortar
8140-00-866-6534
(Requirement for Longhorn Ammunition Dept, Marshall, Texas only)

C. W. Fletcher,

Executive Director.

[FR Doc. 80-32406 Filed 10-16-80; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; Notice of Amendments to Systems of Records

AGENCY: Department of the Army, DOD.

ACTION: Proposed addition, deletions, and amendments to systems of records.

SUMMARY: The Department of the Army proposes to amend its inventory of system notices by adding 1, deleting 5, and amending 2 systems of records. The system of records being technically added is the result of reidentifying and consolidating information now appearing in two systems of records deleted herein. Specific changes to the systems of records being amended are set forth below, followed by the systems printed in their entirety as amended.

DATE: Actions shall be effected as proposed on November 3, 1980 unless comments are received which would result in a contrary determination and require republication for further comments.

ADDRESS: Written public comments are invited and may be submitted to Headquarters, Department of the Army, ATTN: DAAG-AMR-R, 1000 Independence Avenue, SW, Washington, DC 20314, prior to November 3, 1980.

FOR FURTHER INFORMATION CONTACT:
Mr. Richard S. Christian, The Adjutant General's Office (DAAG-AMR-R), 1000 Independence Avenue, SW. Washington, DC 20314; telephone 202/693-0973.

SUPPLEMENTARY INFORMATION:
Department of the Army systems of records have been published in the following editions of the Federal Register:

FR Doc. 79-37052 (44 FR 73729) December 17, 1979
FR Doc. 80-594 (45 FR 1658) January 8, 1980
FR Doc. 80-3891 (45 FR 8399) February 7, 1980
FR Doc. 80-7515 (45 FR 15736) March 11, 1980
FR Doc. 80-9633 (45 FR 20992) March 31, 1980
FR Doc. 80-10014 (45 FR 21673) April 2, 1980
FR Doc. 80-150501-M (45 FR 28117) April 17, 1980
FR Doc. 80-13708 (45 FR 29390) May 2, 1980
FR Doc. 80-18501 (45 FR 41478) June 19, 1980
FR Doc. 80-20779 (45 FR 46842) July 11, 1980
FR Doc. 80-21847 (45 FR 48936) July 22, 1980
FR Doc. 80-29170 (45 FR 62875) September 22, 1980

October 10, 1980.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington, Headquarters Services, Department of Defense.

Addition

A0102.13DAPC

SYSTEM NAME:
102.13 Office Military Personnel Files

SYSTEM LOCATION:
Decentralized segments of this file exist wherever unit and staff office administration of military personnel is authorized, whether active Army, Army Reserves, or National Guard; e.g., company, battery, troop detachment, branch, division, subordinate/major command, Headquarters, Department of the Army/National Guard Bureau.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:
Military personnel and, in some instances, their dependents, who are supervised and/or administered within the respective organizational element enumerated in System Location above.

CATEGORIES OF RECORDS IN THE SYSTEM:
Records include documents/papers pertaining to the individual relating to day-to-day admininstration/supervision. Files may include matters pertaining to appointment, promotion, reduction, reassignment, transfer, special duty, reclassification, orders, sponsors, indebtedness, leave, enlistment waivers, statement of service, bonus, evaluations, insurance, applications for outside employment, line of duty determinations, academic transcripts and individual training reports and instructor evaluations, retirement papers, voting, survivor benefits options, applications to boards and follow-on actions, and related administrative matters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:
Title 5 U.S.C., Section 301; Title 10 U.S.C., Section 3012.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:
To provide commanders a general reference file of information supporting day-to-day operations and administration as pertains to the assigned/attached service member.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:
Paper records in file folders, index cards, mocrofiche.

RETRIEVABILITY:
Alphabetical, by name.

SAFEGUARDS:
Records are retained in file containers, locked desks, cabinets, or rooms accessible only to authorized personnel.

RETENTION AND DISPOSAL:
Records are destroyed 1 year after transfer/separation of the member.

SYSTEM MANAGER(S) AND ADDRESS:
Head of Army/National Guard office or organizational element where member is assigned.

NOTIFICATION PROCEDURE:
Information may be obtained from the commander of unit to which individual is assigned.

RECORD ACCESS PROCEDURES:
Requests should be addressed to the SYSMANAGER. Written requests should include individual's full name, social security number, and rank/grade. For personal visits, individual must provide military identification card.

CONTESTING RECORD PROCEDURES:
The Army's rules for access to records and contesting contents and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:
Copies of records/documents contained in the Military Personnel Records Jacket, Official Military Personnel File, and correspondence originated by member or from sources relating to subjects in which member may be involved.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:
None.

Deletions

A0007.02aDAPC

System name:
0007.02 Information Personnel Files (44 FR 73769) December 17, 1979.

Reason:
Records are covered by system of records A0102.13DAPC, Office Military Personnel Files, being added in this edition.

A0102.04bNGB

System name:
102.04 Supervisor's record of Technician Employment (NGB Form 904-1) (44 FR 73771) December 17, 1979.

Reason:
Records are covered by amended system notice A0102.04aDAPE, Supervisor/Manager Employee Records, printed below.

A0708.03bDAPC

System name:
708.02 Office General Reference/Information/Personnel File (44 FR 73872) December 17, 1979.

Reason:
Records are covered by system of records A0102.13DAPC, Office Military Personnel Files, being added in this publication.

A1417.02DALO

System name:
1417.02 Authorized Supply Representative Card Files (44 FR 74003) December 17, 1979.

Reason:
Records are not subject to the Privacy Act of 1974.

A1417.03DALO

System name:
1417.03 Authorized Supply Representatives Card Register Files (44 FR 74004) December 17, 1979.

Reason:
Records are not subject to the Privacy Act of 1974.

Amendments

A0102.04aDAPE

System name:
102.04 Supervisor/Manager Employee Records (44 FR 73771) December 17, 1979.

Changes:

System location:
Before entry, insert: "Department of Army:". Following entry, add: "National Guard Bureau: Office of the State Adjutant General, ATTN: Technical Personnel Office, of each State, Puerto Rico, Virgin Islands, and the District of Columbia."

Categories of individuals covered by the system:
Change entry to read: "Any civilian employee/NG technician. . . ."

Categories of records in the system:
Wherever "civilian" appears, insert: "/NG technician".

Authority for maintenance of the system:
Add to entry: "and Title 32 U.S.C., Section 709."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:
Delete "US Civil Service Commission" and substitute therefor: "Office of Personnel Management".

Safeguards:
Change the first sentence to read: "Filed in either locked files or in secured locations. Access limited to management/supervisory officials of the assigned employees, clerical personnel maintaining the files, and to persons to whom the subject individual has given written permission."

Footnotes continued from last page
amended, between the Governments of the United States and India which provide, in part, that, for specific limits of that agreement, (1) within the aggregate, group limits may be exceeded by designated percentages; (2) these same levels may be increased for carryover and carryforward, with carryforward used being deducted from the following year's level; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

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Retention and disposal:

After "civilian", insert "technician". Add to entry: "National Guard technicians' records are destroyed 60 days after separation date."

Record source categories:

After "civilian", insert "technician".

A0708.02aDAPC

System name:

708.02 Official Military Personnel File (45 FR 21003) March 31, 1980.

Changes:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Add: "United States International Communication Agency: To receive military and medical record information in conjunction with investigations of applications for sensitive positions under the provisions of Executive Order 10450."

A0718.01aDAPC

System name:

718.01 Military Award Case File (44 FR 73895), December 17, 1979.

Changes:

Retention and disposal:

Delete entire entry and substitute: "Approved wartime or combat activities military award case files are retained permanently; approved case files for all other periods are destroyed after one year. Disapproved military award case files are destroyed after 6 years."

A0102.04aDAPE

SYSTEM NAME:

102.04 Supervisor/Manager Employee Records.

SYSTEM LOCATION:

Department of the Army: Offices of supervisors/managers of the functional elements of an Army activity, installation, or agency.

National Guard Bureau: Office of the State Adjutant General, ATTN: Technician Personnel Office, of each State, Puerto Rico, Virgin Islands, and the District of Columbia.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any civilian employee/NG technician (both appropriated and non-appropriated fund) who is employed within the specific organizational element.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain copies of documents pertaining to the administration of individual civilian/NG technician employees which are duplicated in, or are generated in support of actions recorded in, the Official Personnel Folder, or related personnel files maintained in the civilian/NG technician personnel office. The records in this file contain information about an individual relating to birth date; social security number; veteran's perference; tenure; handicap; past and present salaries, grades, and position titles; letters of commendation, reprimand, charges, and decision on charges; personnel action, including but not limited to, appointment, reassignment, demotion, detail, promotion, transfer, and separation; training; performance ratings, data documenting the reasons for personnel actions or decisions made about an individual; and awards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5 U.S.C., Sections 301, 1302, 2951, 4118, 4308, and 4506; EO 1056, September 13, 1954; and Title 32 U.S.C., Section 709.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records is used for reference or to support supervisory/managerial actions required in the conduct of official civilian personnel management business; by the Office of Personnel Management in the conduct of its responsibilities; to Justice Department, Department of Labor, or other Federal agencies or judiciary bodies in the conduct of official business.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in folders, Kardex files.

RETRIEVABILITY:

Alphabetically, by surname.

SAFEGUARDS:

Filed in either locked files or in secured locations. Access limited to management/supervisory officials of the assigned employees, clerical personnel maintaining the files, and to persons to whom the subject individual has given written permission.

RETENTION AND DISPOSAL:

When an employee leaves the activity through transfer or other separation, the Supervisor/Manager Employee Records File will immediately be forwarded to the civilian/technician personnel office maintaining the Official Personnel Folder (OPF). There it will be screened to insure that it contains no documents that should be permanently filed in the OPF other than exact duplicates of papers already so filed. The Supervisor/Manager Employee Folder and its contents will then be destroyed. National Guard technicians' records are destroyed 60 days after separation date.

SYSTEM MANAGER(S) AND ADDRESS:

The Deputy Chief of Staff for Personnel, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Information may be obtained from the individual's supervisor/manager.

RECORD ACCESS PROCEDURES:

Requests, verbal or written, should be addressed to the individual's supervisor or manager.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations may be obtained from Headquarters, Department of the Army (DAPE–HRE), Washington, DC 20310.

RECORD SOURCE CATEGORIES:

From the supervisor/manager by documenting facts or statements of judgments; copies of records maintained in the civilian/technician personnel office or information obtained from same records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A0708.02aDAPC

SYSTEM NAME:

708.02 Official Military Personnel File

SYSTEM LOCATION:

Primary System: Personnel Information Systems Directorate, United States Army Military Personnel Center (MILPERCEN).

Decentralized Segments: United States Army Enlisted Records and Evaluation Center; United States Army Reserve Components Personnel and Administration Center (RCPAC); and National Personnel Records Center (NPRC), General Services Administration (GSA).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Each individual on active duty in the United States Army in enlisted, appointed, or commissioned status; or in a United States Army or Army of the United States (AUS) retired status, each individual not on active duty who has a reserve status in an enlisted, appointed, or commissioned status, or in a retired reserve status; and each individual who was an elisted, appointed, or commissioned member of the United States Army and who was completely separated by discharge, death, or other termination of his/her military status.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains individual records including enlistment contract; Veterans Administration (VA) laws; physical evaluation board proceedings; miltary occupational specialty data report; statement of service; qualification record; group life insurance election; emergency data form; application for appointment; qualification/evaluation report; oath of office; medical examination; security questionnaire; application for retired pay; application for correction of military records; application for active duty; transfer or discharge report; active duty report; voluntary reduction; line of duty and misconduct determination; discharge or separation reviews; police record checks; consent/declaration of parent/guardian; Army Reserve Officers Training Corps (ROTC) supplemental agreement; award recommendations; academic reports; casualty reports; United States field medical card; retirement points; deferment preinduction processing and commissioning data; transcripts of military records; summary sheets review of conscientious objector; election of options; oath of enlistment extensions; survivor benefit plans; efficiency reports; records of proceeding, Title 10 U.S.C., Section 815 appellate actions; determination of moral eligibility; waiver of disqualifications; temporary disability record; change of name; statements for enlistment; acknowledgements of service requirements; retired benefits; application for review of physical evaluation board and disability board; appointments; designations; evaluations; extensions; birth certificates; photographs; citizenship statements and status; educational constructive credit; educational transcripts; flight status board reviews; assignment agreements/limitations/waivers/election, and travel; efficiency appeals; promotion/reduction recommendations/approvals/declinations/announcements/notifications/reconsiderations/worksheets/elections/letters of notification to deferred officers, and promotion passover notifications; absence without leave and desertion records; Federal Bureau of Investigation reports; Social Security Administration (SSA) correspondence; miscellaneous correspondence, documents, and military orders relating to military service including information pertaining to dependents, interservice actions, inservice details, determinations, reliefs, component; awards, pay entitlements, releases, transfers, and other military service data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5 U.S.C., Section 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Department of the Army (DA): To maintain, use, collect, and disseminate information with respect to an individual holding a military status or former military status, including regular, reserve, retired, former member separated, or deceased. Information pertains to individual's former, current, and subsequent to active duty status relating to birth; citizenship; parentage; home of record; education; training; dependents; travel; language proficiency; former and current association, brotherhood, memberships, and related affiliation with organizations and like collective elements which service member divulges as having meaning, substance, or significance to his/her military service status; assignment history and other related military experiences, qualification, training, preference, restriction, and status actions.

Department of State: To issue passport/visa; to document persona-non-grata status, attache assignments, and related administration of personnel assigned and performing duty with the State Department.

Department of the Treasury: To issue bonds; to collect and record incoming taxes.

Department of Defense (DOD): To authorize and consummate interdepartmental actions relating to interservice requirements pertaining to Army, Navy, Air Force, and Coast Guard when the Coast Guard is operational under DOD.

Department of Justice: To file fingerprints; to perform intelligence function.

Department of Agriculture: To coordinate interdepartmental functions relating to education conducted by the Department of Agriculture's advanced education element.

Department of Labor: To accomplish actions required under Federal Employees Compensation Act.

Department of Health, Education, and Welfare: To provide services authorized by medical, health, and related functions authorized by Title 10 U.S.C., Sections 1074 thru 1079.

Atomic Energy Commission: To accomplish requirements incident to Nuclear Accident/Incident Control Officer functions.

American Red Cross: To accomplish coordination and complete service functions including blood donor programs and emergency investigative support and notifications.

Civil Aeronautics Board: Flight qualifications, certification, and license actions relating to inservice pilots.

Federal Aviation Agency: To accomplish aviation and air service actions involving inservice aviators.

GSA: For records storage and archival services and for printing of directories and related material which includes personal data.

U.S. Postal Service: To accomplish postal service authorization involving postal officers and mail clerk authorizations.

VA: To provide information relating to benefits, pensions, inservice loans, insurance, and appropriate hospital support.

Bureau of Immigration and Naturalization: To comply with statutes relating to inservice alien registration and annual residence/location.

Office of the President of the United States of America: To exchange required information relating to White House Fellows, regular Army promotions, aides, and related support functions staffed by Army members.

Federal Maritime Commission: To obtain licenses for military members accredited as captain, mate, and harbor master for duty as Transportation Corps warrant officer.

Each of the several States and United States possessions: To support state bonus applications; to fulfill income tax requirements appropriate to the service member's home of record; to record name changes in state bureaus of vital statistics; and for National Guard affairs.

Civilian educational and training institutions: To accomplish student registration, tuition support, Graduate Record Examination (GRE) tests requirement, and related school requirements incident to inservice education programs in compliance with Title 10 U.S.C., Chapters 102 and 103.

SSA: To obtain or verify social security numbers (SSN); to transmit Federal Insurance Compensation Act deductions made from inservice members' wages.

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Department of Transportation: To coordinate and exchange necessary information pertaining to interservice relationships between United States Coast Guard (USCG) and United States Army when service members perform duty with the USCG elements or training activities.

Civil authorities: For compliance with Title 10 U.S.C., Section 814.

Department of the Air Force: To administer personnel support for individual Army members assigned for duty with the Air Force.

Department of the Navy: To administer personnel support for individual Army members assigned for duty with the Navy or Marine Corps.

United States International Communication Agency: To receive military and medical record information in conjunction with investigations of applicants for sensitive positions under the provisions of Executive Order 10450.

Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in Title 21 U.S.C., Section 1175 and Title 42 U.S.C., Section 4582. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. Blanket "routine uses" identified in 44 FR 72728 do not apply to these records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Microfiche in plastic carrier stored randomly in electromechanical storage/retrieval devices. Temporary files consist of paper records in file folder/jacket; selected data automated for management facility in a perishable manner on tapes, disks, cards, and other computer media.

RETRIEVABILITY:

Filed alphabetically by last name, automated data retrievable by name, SSN, or automatic data processing parameter; reserve component, retired, and deceased persons' records accessed by SSN terminal digit sequence.

SAFEGUARDS:

Records maintained in areas accessible only to authorized personnel; automated media protected by authorized password system for access terminals, controlled access to operation rooms, and controlled output distribution.

RETENTION AND DISPOSAL:

Microfiche and paper records are permanent. They are retained in active files until termination of service, held in inactive file in accordance with retention and retirement schedule and subsequently retired to NPRC.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, United States Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332.

NOTIFICATION PROCEDURE:

Following address should be used for inquiries on records of commissioned or warrant officers (including members of Reserve Components) serving on active duty:

Commander
United States Army Military Personnel Center
ATTN: Personnel Information Systems Directorate
Hoffman Building II
200 Stovall Street
Alexandria, VA 22332
Telephone: Area Code 202/325–9606.

Following address should be used for inquiries on records of enlisted members (including members of Reserve Components) serving on active duty:

Commander
United States Army Enlisted Records and Evaluation Center
Ft Benjamin Harrison, IN 46249
Telephone: Area Code 317/542–3361.

Following address should be used for inquiries on records of commissioned officers or warrant officers in a reserve status not on active duty; or Army enlisted reservists not on active duty; or members of the National Guard who performed active duty; or commissioned officers, warrant officers, or enlisted members in a retired status:

Commander
United States Army Reserve Components Personnel and Administration Center
9700 Page Boulevard
St. Louis, MO 63132
Telephone: Area Code 314/268–7770.

Following address should be used for inquiries on records of commissioned officers or warrant officers who were completely separated from the service after 30 June 1917 or enlisted members who were completely separated after 31 October 1912:

Commander
National Personnel Records Center
General Services Administration
9700 Page Boulevard
St. Louis, MO 63132
Telephone: Area Code 314/268–7262.

RECORD ACCESS PROCEDURES:

Written requests for information should contain full name of individual, service identification number, current or former military status, and appropriate return address.

Personal visits may be made to the appropriate location based on the individual's status; individual should be able to provide commonly acceptable identification such as driver's license, employment identification card, and give some verbal information relative to his/her current or former military status.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations may be obtained from Headquarters, Department of the Army (DAPC–MSO), 200 Stovall Street, Alexandria, VA 22332.

RECORD SOURCE CATEGORIES:

Enlistment, appointment, or commission related forms pertaining to the individual having a current or former military status; academic, training, or qualification records acquired prior to or during military service correspondence, forms, records, documents, and other related papers originating in or collected by DA Staff agencies and commands; other Federal departmental agencies, administration, Federal separate agencies, commissions, boards, service, or authority; State and local governmental entities; civilian education and training institutions; and members of the public when such information obtained directly concerns the military service member.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

A0718.01DAPC

SYSTEM NAME:

718.01 Military Award Case File

SYSTEM LOCATION:

Primary System: United States Army Military Personnel Center (MILPERCEN), 200 Stovall Street, Alexandria, VA 22332.

Decentralized Segments: Each Army command delegated authority for approval of an award.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel on active duty, members of reserve components, United States (US) civilians serving with US Army in a combat zone, and deceased former members of the US Army.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain recommendation for award; endorsements; transmittals; letters; memoranda; award board approvals/disapprovals; citation texts pertaining to the specific individual and award; Department of the Army (DA) letter orders/general orders; related papers supporting the recommendation; correspondence among (1) MILPERCEN, (2) service member, (3) Army Staff offices, (4) Army commands, and (5) individuals having knowledge/information relative to the service member concerned or the act or achievement stated in the recommendation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5 U.S.C., Section 301; Title 10 U.S.C., Chapters 57 and 357.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Each Army command having authority for action for a specific award: To accomplish review; to authorize the award; to maintain the award case file of approved and disapproved recommendations.

MILPERCEN: To act as the Army element for Headquarters, Department of the Army; to accomplish the review and to authorize the award of these awards/decorations which are not delegated or within the scope of authority of a subordinate element of the Army; to maintain the award case file of approved and disapproved recommendations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Records accessed by name.

SAFEGUARDS:

Records maintained in areas accessible only to authorized individuals.

RETENTION AND DISPOSAL:

Approved wartime or combat activities military award case files are retained permanently; approved case files for all other periods are destroyed after one year. Disapproved military award case files are destroyed after 6 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, United States Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332.

NOTIFICATION PROCEDURE:

Information may be obtained from United States Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332.

RECORD ACCESS PROCEDURES:

Written requests for information should include the full name, service identification number, grade and branch of service, name of award, and current address.

Visits should be made to the organization/station of the service member or to the United States Army Military Personnel Center.

For personal visits, the visitor should be able to provide acceptable identification, i.e., military identification normally acceptable in the transaction of business.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations may be obtained from Headquarters, Department of the Army (DAPC–MSS), 200 Stovall Street, Alexandria, VA 22332.

RECORD SOURCE CATEGORIES:

Recommendation for Award (DA Form 638) with supporting records, forms, statements, letters, and related papers originated by person other than the awardee and other individuals having information useful in making an award determination.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 80–32460 Filed 10–16–80; 8:45 am]
BILLING CODE 3710–08–M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Strategic Sub-Panel of the Chief of Naval Operations (CNO) Executive Panel Advisory Committee will meet on November 3–4, 1980, from 8:00 a.m. to 5:00 p.m. each day, at Headquarters of the Commander in Chief, Pacific, Camp Smith, Hawaii. All sessions will be closed to the public.

The entire agenda for the meeting will consist of discussions on the nature of collective security in the Pacific and the Indian Ocean, centering around the most sensitive intelligence information available on the military and political situation in the area. These matters constitute classified inforamtion that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in Section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Commander Catherine Z. Becker, Executive Secretary of the CNO Executive Panel Advisory Committee, 2000 N. Beauregard Street, Room 392, Alexandria, VA 22311. Phone No. (703) 756–1205.

Dated: October 14, 1980.

P. B. Walker,
Captain, JAGC, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 80–32383 Filed 10–16–80; 8:45 am]
BILLING CODE 3810–71–M

DELAWARE RIVER BASIN COMMISSION

Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on November 3, 1980, beginning at 10:00 a.m. The hearing will be held in the Goddard Conference Room at the Commission's offices, 25 State Police Drive, West Trenton, New Jersey. The subject of the hearing will be a proposed amendment to Commission policy relating to ground water management.

The Commission's Comprehensive Plan includes statements of policy relating to the management of ground water resources throughout the Delaware River Basin. Policies designed to protect quantitative elements of ground water were adopted in 1964 (Resolution No. 64–11). These were supplemented in 1972 and 1978 by policy designed to protect ground water quality. (Resolutions Nos. 72–14 and 78–8). These policies appear in the Water Code of the Delaware River Basin published in July 1978.

Limitation on withdrawals from ground water sources is an essential element of proper water management, particularly in areas of excessive use, or

during drought periods when shortages threaten to occur. Recognition of the necessity to limit withdrawals from ground water is included in the Delaware River Basin Compact, and reflected in Commission policies providing that withdrawals shall be limited to the safe yield of the underground water source.

In order to give more specific content to its ground water policies the Commission proposed a definition of the concept of "safe yield," and held public hearings on that proposal on June 10 and 11, 1980. No action to approve that proposed definition has been taken by the Commission. In response to testimony received, and further consultation with water management specialist, a concept of "withdrawal limitation" in lieu of "safe yield" is now under consideration by the Commission. The revised concept is stated below.

The Commission invites public comment on the following concept of "withdrawal limits" as a proposed policy amendment to the Comprehensive Plan.

Withdrawal Limits. Except as may be otherwise determined by the Commission to be in the public interest, withdrawals from the underground waters of the Basin shall be limited to the maximum draft of all withdrawals from a ground water basin, aquifer, or aquifer system that can be sustained without rendering supplies unreliable, causing long-term progressive lowering of ground water levels, water quality degradation, permanent loss of storage capacity, or substantial impact on low flows of perennial streams.

Persons wishing to testify are requested to notify the Secretary to the Commission, by phone or in writing, prior to the hearing. Written testimony may be submitted in place of oral presentation and will be made part of the record.

W. Brinton Whitall,

Secretary.

October 10, 1980.

[FR Doc. 80-32433 Filed 10-16-80; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA-R-80-33]

Report to the Department of Energy on "Designing Methods for Distributing Petroleum During a Shortage and Selecting Standby Distribution Mechanisms"

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of cancellation of public hearing.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby give notice of the cancellation of the public hearing on the Report to the Department of Energy on "Designing Methods for Distributing Petroleum During a Shortage and Selecting Standby Distribution Mechanisms" (45 FR 63909, September 26, 1980) scheduled for 9:30 a.m. on October 21, 1980, in Room 305B, Federal Building, 26 Federal Plaza, New York, New York. The Chicago Hearing on this matter remains scheduled for October 29, 1980, and the Washington, D.C. hearing remains scheduled for November 13, 1980.

FOR FURTHER INFORMATION CONTACT:

Lorraine Hall (Office of Public Hearing Management), Economic Regulatory Administration, Room B-210, 2000 M Street NW., Washington, D.C. 20461, (202) 653-3971.

William L. Webb (Office of Public Information), Economic Regulatory Administration, Room B-110, 2000 M Street NW., Washington, D.C. 20461, (202) 653-4055.

William E. Caldwell (Office of Regulatory Policy), Economic Regulatory Administration, Room 7202, 2000 M Street NW., Washington, D.C. 20461, (202) 653-3256.

Joel Yudson (Office of General Counsel), Department of Energy, Room 6A-127, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-6744.

Issued at Washington, D.C., on October 16, 1980.

F. Scott Bush,

Assistant Administrator, Office of Regulatory Policy, Economic Regulatory Administration.

[FR Doc. 80-32636 Filed 10-16-80; 11:34 am]

BILLING CODE 6450-01-M

Coral Petroleum Inc.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATE: Effective Date: January 11, 1980. Comments by: November 17, 1980.

ADDRESS: Send comments to: Robert D. Gerring, Director, Program Operations, Office of Enforcement, Economic Regulatory Administration, 2000 M Street, NW., Room 5002, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Robert D. Gerring, Director, Program Operations, Office of Enforcement, Economic Regulatory Administration, 2000 M Street, NW., Room 5002, Washington, D.C. 20461 (202) 653-3507.

SUPPLEMENTARY INFORMATION: On January 11, 1980, the Office of Enforcement of the ERA executed a Consent Order with Coral Petroleum, Inc., its subsidiaries and affiliates, both foreign and domestic, (Coral) of Houston, Texas. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of $500,000 or more in the aggregate, excluding penalties and interest, becomes effective upon its execution only if the DOE expressly finds it to be in the public interest to do so.

This Consent Order is an integral part of the disposition of certain criminal and civil disputes in regard to Coral and The Coastal Corporation, and its subsidiaries and affiliates, both foreign and domestic (Coastal), as agreed to in the letter agreement dated January 4, 1980 between the parties in the matter of *U.S.A.* v. *Coastal States Crude Gathering Company and Coral Petroleum, Inc.* filed with the U.S. District Court, Southern District of Texas, Houston Division.[1] Accordingly, in order to resolve both criminal and civil matters as agreed, the DOE made this Consent Order effective immediately upon execution by both Coral and the DOE in furtherance of the public interest.

I. Consent Order

Coral, with its home office located in Houston, Texas, is a firm engaged in the resale of crude oil, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Part 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Coral, and the letter agreement described above, the Office of Enforcement, ERA, and Coral entered into a Consent Order, the significant terms of which are as follows:

[1] Contemporaneous with the settlement with Coral, DOE executed a Consent Order and a Statement of Plea Bargain was accepted with respect to alleged illegal activities by Coastal. See 45 FR 12286 [Feb. 25, 1980].

1. During the period from November 1, 1974 through January 11, 1980 (the "settlement period"), Coral was a reseller of crude oil as that term is defined at 10 CFR 212.31 and was subject to the price rules and other provisions applicable to such resellers.

2. During the settlement period, DOE claims that Coral bought crude oil from Coastal and resold it in a number of instances without the certification which DOE maintains was required and/or at prices which the DOE maintains were in excess of the maximum lawful selling prices applicable to such oil, as provided in 10 CFR Part 212.

3. In addition to the refunded overcharges described below in Section II, Coral agrees to pay to the DOE a $1,000,000 civil penalty under Section 5 of the Emergency Petroleum Allocation Act of 1973, as amended, 15 U.S.C. 754(a)(3)(A)(i) (1976), arising out of the crude oil transactions described in paragraph I.2.

4. Coral waives any claim for refund of monies paid by it to Coastal pursuant to the transactions upon which this Consent Order was based.

5. The provisions of 10 CFR 205.199J, including the publication of this Notice, are applicable to this Consent Order.

II. Disposition of Refunds

In this Consent Order, Coral, without admitting any violation of law or regulation, agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I.2, above, the sum of $9,000,000 plus interest. Payment is to be made in three annual installments: $3,000,000 by January 21, 1980, $3,000,000 plus interest by January 11, 1981, and $3,000,000 plus interest by January 11, 1982. Interest accrues as of January 11, 1980. Refunds will be in the form of a certified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending a determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199J(a).

The Office of Enforcement, ERA (OE) is unable readily to identify the persons entitled to receive the $9,000,000 plus interest or the amounts of refunds that such persons are entitled to receive. OE will therefore petition the Office of Hearings and Appeals (OHA) to implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, 10 CFR 205.28 *et seq.* to determine the identity of persons entitled to the refunds and the amounts owing to each of them.[2]

III. Submission of Written Comments

A. Potential Claimants: Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. Other Comments: The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Robert D. Gerring, Director, Program Operations, Office of Enforcement, Economic Regulatory Administration, 2000 M Street, NW., Room 5002, Washington, D.C. 20461. You may obtain a free copy of this Consent Order by writing to the same address or by calling (202) 653-3507.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Coral Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on November 17, 1980.

You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Washington, D.C., on the 26th day of September 1980.

Robert Gerring,

Director, Program Operations Division, Office of Enforcement, Economic Regulatory Administration.

[FR Doc. 80-32352 Filed 10-16-80; 8:45 am]

BILLING CODE 6450-01-M

[2] On August 21, 1980, the OHA issued a Decision and Order accepting jurisdiction under 10 CFR Part 205, Subpart V, over the refunds received by the DOE from Coastal. 5 DOE Par. (Aug. 21, 1980).

Hertz Corp.; Proposed Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed Consent Order and opportunity for comment.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order and provides an opportunity for public comment on the proposed Consent Order.

DATE: Comments by: November 17, 1980.

ADDRESS: Send comments to Thomas M. Holleran, Program Manager, Product Retailer Branch, Office of Enforcement, Economic Regulatory Administration, 2000 M Street, NW., Room 5106, Washington, DC. 20461.

SUPPLEMENTARY INFORMATION: On October 7, 1980, the Office of Enforcement of the ERA executed a proposed Consent Order with Hertz Corporation Rent-A-Car Division (Hertz). Under 10 CFR 205.199J(b), a proposed Consent Order which involves a sum of $500,000 or more in the aggregate excluding penalties and interest becomes effective only after the DOE has provided an opportunity for comments with respect to the proposed Consent Order. Although the ERA has signed and tentatively accepted the proposed Consent Order, the ERA, may after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate an alternative Consent Order.

I. The Consent Order.

Hertz, with home office located in New York, New York, is engaged in the busines of renting automobiles. In the course of those rental transactions Hertz levies a charge, referred to by Hertz as a "refueling service charge", in connection with such transactions. The ERA alleges that Hertz is a retailer of gasoline as

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defined in 10 CFR 212.31, and as such is subject to the DOE's Mandatory Petroleum Price Regulations set forth in 10 CFR Part 212 and that the above-referenced charges for gasoline were in excess of the maximum lawful selling price for gasoline through June 30, 1980. To resolve certain civil actions which could be brought by the Office of Enforcement of the ERA as a result of its audit of Hertz, the Office of Enforcement of the ERA and Hertz entered into a Consent Order, the significant provisions of which are as follows;

1. Hertz agrees prospectively to compute its gasoline charges in accordance with the Mandatory Petroleum Price Regulations and to refund to its automobile rental customers the amount of $849,918, including interest.

2. The refund shall be accomplished pursuant to a rollback of two (2) cents per gallon from the maximum legal selling price (MLSP) for each grade of gasoline beginning the first day of the month following the month in which the Consent Order becomes effective. If Hertz's charges at any time during the rollback period are below the MLSP, the rollback shall be computed from those current charges. The projected rollback period is 12 months. Hertz shall file certain written reports with the ERA ever 3 months during the rollback period which demonstrate the progress of the rollback. The DOE has determined this disposition of refunded overcharges to be a just and equitable refund procedure and in accordance with applicable laws and regulations.

3. Hertz agrees to comply with the posting requirement of 10 CFR 211.129.

4. The Consent Order is for the purpose of settling and compromising disputed issues of alleged liability and constitutes neither an admission by Hertz that any DOE regulations have been violated nor a finding by the DOE that Hertz has violated DOE regulations.

5. The provisions of 10 CFR 205.199J, including the publication of this Notice, are applicable to the Consent Order.

II Comments: The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments to Robert Gerring, Director, Program Operations Division, Office of Enforcement, Economic Regulatory Administration, 2000 M St. N.W., Department of Energy, Washington, D.C. 20461. You may obtain a free copy of this Consent Order by writing to the same address or by calling 202–654–3507.

You should identify your comments on the outside of your envelope and on the documents you submit with the designation, "Comments on Hertz Corporation Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on November 17, 1980. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Washington, D.C. on the 10th day of October, 1980.

Dated: October 10, 1980.

James J. Fenton,

Acting Director, Program Operations Division, Office of Enforcement, Economic Regulatory Administration.

[FR Doc. 80-32353 Filed 10-16-80; 8:45 am]

BILLING CODE 6450-01-M

Decision and Order Granting Exemptions Pursuant to Section 311 of the Powerplant and Industrial Fuel Use Act of 1978

The Economic Regulatory Administration (ERA) of the Department of Energy hereby issues this Decision and Order granting temporary public interest exemptions from the natural gas use prohibitions of Sections 301(a) (2) and (3) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act), 42 U.S.C. 8301 *et seq.* This Decision and Order is issued pursuant to Section 311(e) of FUA, 10 CFR 501.68 and 10 CFR Part 508 to the petitioners who own or operate the powerplants listed in the table below.

Docket No.	Owner	Generating station	Powerplant identification	Maximum duration date [1]
50135-3548-02-41	City of Austin	Decker	No. 2	10/12/84
50318-3628-03-41	Brazos Electric Power Cooperative, Inc	R. W. Miller	No. 3	4/22/85
50499-0460-04-41	Central Telephone and Utilities Corp., Southern Colorado Power Division.	Pueblo	No. 4	4/4/85
50499-0460-05-41			No. 5	
50499-0460-06-41			No. 6	
51029-9155-21-41	City of Cleveland	West 41st Street.	GT 1	2/7/85
51029-9155-22-41			GT 2	
51029-9154-23-41		Collinwood	GT 3	2/7/85
50643-0877-31-41	Commonwealth Edison	Lombard	CT 31-1	3/3/85
50643-0877-32-41			CT 31-2	
50643-0877-33-41			CT 32-1	
50643-0877-34-41			CT 32-2	
50643-0877-35-41			CT 33-1	
50643-0877-36-41			CT 33-2	
50643-0875-31-41		Joliet	CT 31-1	3/3/85
50643-0875-32-41			CT 31-2	
50643-0875-33-41			CT 31-3	
50643-0875-34-41			CT 31-4	
50643-0875-35-41			CT 32-1	
50643-0875-36-41			CT 32-2	
50643-0875-37-41			CT 32-3	
50643-0875-38-41			CT 32-4	
50643-0866-31-41		Celumet	CT 31-1	3/3/85
50643-0866-32-41			CT 31-2	
50643-0866-33-41			CT 31-3	
50643-0866-34-41			CT 31-4	
50643-0866-35-41			CT 33-1	
50643-0866-36-41			CT 33-2	
50643-0866-37-41			CT 33-3	
50643-0866-38-41			CT 33-4	
50643-0866-39-41			CT 34-1	
50643-0866-40-41			CT 34-2	
50643-0866-41-41			CT 34-3	
50643-0866-42-41			CT 34-4	
50643-0870-31-41		Electric Junction.	CT 31-1	3/3/85
50643-0870-32-41			CT 31-2	
50643-0870-33-41			CT 31-3	
50643-0870-34-41			CT 31-4	
50643-0870-35-41			CT 32-1	
50643-0870-36-41			CT 32-2	
50643-0870-37-41			CT 32-3	
50643-0870-38-41			CT 32-4	
50643-0870-39-41			CT 33-1	
50643-0870-40-41			CT 33-2	
50643-0870-41-41			CT 33-3	
50643-0870-42-41			CT 33-4	
50782-1726-15-41	Detroit Edison	Conner's Creek.	No. 13	4/10/85
50904-6223-21-41	Empire District Electric Company	Empire Energy Center.	CT 1	3/24/85
50904-6223-22-41			CT 2	
51121-0377-58-41	City of Glendale California Public Service Department.	Grayson Power Plant.	CC 8	2/22/85
51381-8065-21-41	Idaho Power Company	Wood River	CT 1	5/6/85
51388-9006-21-41	Imperial Irrigation District	Rockwood	CT 1	5/16/84
51549-1443-03-41	City of Lafeyette Utilities	Doc Bonin	No. 3	6/21/84
54020-3112-21-41	Metropolitan Edison	Orrtanna	CT 1	2/27/85
54020-3109-21-41		Hamilton	CT 1	2/27/85
54020-3114-21-41		Shawnee	CT 1	2/27/85
54020-3111-21-41		Mountain	CT 1	2/27/85
54020-3111-22-41			CT 2	
54020-3110-21-41		Hunterstown	CT 1	2/27/85
54020-3110-22-41			CT 2	
54020-3110-23-41			CT 3	
52370-3043-22-41	Portland General Electric	Bethel	CT 2	8/31/84
52370-9138-51-41		Beaver	CC 1	9/21/84
52370-9138-52-41			CC 2	
52370-9138-53-41			CC 3	
52370-9138-54-41			CC 4	
52370-9138-55-41			CC 5	
52370-9138-56-41			CC 6	
52721-0329-53-41	Southern California Edison Company	Cool Water	CC 3	10/5/84
52721-0329-54-41			CC 4	
53256-3524-04-41	West Texas Utilities Company	Paint Creek	No. 4	11/13/84
53256-3526-06-41		Rio Pecos	No. 6	11/13/84

[1] Maximum date to which exemption can be extended.

The petitioners filed for these temporary public interest exemptions pursuant to 10 CFR Part 508 (Exemption for Use of Natural Gas by Existing Powerplants Under the Powerplant and Industrial Fuel Use Act of 1978, April 9, 1979, 44 FR 21230, hereafter referred to as the Special Rule). Notices of the petitions and proposed orders granting these temporary exemptions were published in the July 21, 1980, Federal Register (45 FR 48684) presenting an opportunity for public comments and for interested persons to request a hearing relating to the petitions and the proposed order.

The Process Gas Consumer's Group, the American Iron and Steel Institute and the Georgia Industrial Group requested a hearing. These same persons requested a hearing regarding previously filed similar petitions for exemption under the Special Rule. In that previous proceeding, the hearing which was convened pursuant to the request of Process Gas Consumer's Group *et al.*, was dismissed upon the ground that the Group *et al.* had failed to demonstrate the requisite interest as interested persons (*see*, Section 701 of FUA and 10 CFR 501.33 and 501.34). The Group's *et al.* request for a hearing regarding petitions for exemption and proposed order noticed at 45 FR 18423, published on March 21, 1980 contained nothing additional or new as compared with their previous request. Consequently, ERA decided to deny their request for a public hearing on these petitions.

Based on the information provided by the petitioners, the powerplants listed in the above table are either prohibited by Section 301(a)(2) of FUA from using natural gas as a primary energy source or are prohibited from using natural gas as a primary energy source in excess of the average base year proportion allowed in Section 301(a)(3) of the Act. These temporary exemptions will allow these units to burn natural gas, notwithstanding the prohibitions of Section 301(a) (2) and (3) of FUA, to displace consumption of middle distillate fuel oil.

Statement of Reasons

Because world oil supplies continue to be unstable, there is an urgent need to use these natural resources wisely.

To the extent that near-term choice of fuels for certain existing powerplants is limited to petroleum or natural gas, the use of natural gas is preferred over petroleum. The use of natural gas in these powerplants will be a significant step toward reducing our short-term oil consumption and will help the United States reduce its dependence on imported petroleum. This increased use of natural gas will also protect the Nation from the effects of any oil shortages, and will cushion the impact of increasing world oil prices, which have a detrimental effect on the Nation's balance of payments and domestic inflation rate.

To the extent that increased use of natural gas will accomplish these goals, it will reduce the importation of petroleum and further the goal of national energy self-sufficiency.

The petitioners have demonstrated that these powerplants, for which they are requesting temporary exemptions, are existing units that are either prohibited from using natural gas as a primary energy source by Section 301(a)(2) of FUA, or prohibited from using natural gas in excess of the average base year proportion allowed in Section 301(a)(3) of FUA. The petitioners have also shown that the proposed use of natural gas as a primary energy source, to the extent that such use would be prohibited by Section 301(a) (2) or (3) of FUA, will displace consumption of middle distillate fuel oil, and will not displace the use of coal or any other alternate fuel in any facility of the petitioners' utility systems, including the powerplants for which these temporary exemptions are issued.

By establishing these facts the petitioners have met the eligibility criteria set out in § 508.2 of the Special Rule. Since the increased use of natural gas is in keeping with the purposes of FUA and is in the public interest, and since the petitioners have demonstrated that they have met the eligibility criteria, ERA is granting these temporary exemptions.

Duration of Temporary Exemption

ERA grants these temporary public interest exemptions for the maximum statutory period of five years, which includes the period during which the petitioners were allowed to burn gas while their petitions were pending, to the extent that such period will not extend beyond June 30, 1985. The termination dates of these temporary public interest exemptions are listed in the table on the first page. The temporary exemptions are subject to termination by ERA, upon six months written notice, if ERA determines such termination to be in the public interest.

Effective Date of Decision and Order

This Decision and Order shall become effective on the sixtieth calendar day following publication in the Federal Register (December 16, 1980). However, accordance with the policy set forth in the notice implementing this Special Rule (44 FR 21230) ERA will take no action with respect to any natural gas used by the exempted powerplants between May 8, 1979, the effective date of FUA, and the date this Decision and Order becomes effective.

Terms and Conditions

Pursuant to Section 314 of FUA and 10 CFR 508.6, the temporary exemptions granted under this Decision and Order are conditioned upon, and shall remain in effect so long as each petitioner, its successors and assigns, comply with the following terms and conditions:

(1) Petitioner will report to ERA for the period from May 8, 1979, through December 31, 1979, and for each subsequent six-month period thereafter the actual monthly volumes of natural gas consumed in each exempted powerplant, and an estimate of the number of barrels of middle distillate fuel oil displaced.

(2) Petitioner will submit to ERA, within one year after the date this Decision and Order is issued, a system-wide fuel conservation plan to include the five year period covered by this temporary exemption, including the means by which the petitioner will measure progress in implementing this plan. If a petitioner has received temporary public interest exemptions under previous orders for other powerplants within his utility system, the first granted exemption order establishes the due date in the system-wide conservation plan.

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(3) Petitioner will submit annually to ERA, commencing with the calendar year ending December 31, 1981, a report on progress achieved in implementing the system-wide fuel conservation plan.

ERA's grant of these temporary public interest exemptions does not relieve an existing powerplant from compliance with any rules or regulations concerning the acquisition or the distribution of natural gas that are administered by the Federal Energy Regulatory Commission or any State regulatory agency or from any obligations the utility may have to its customers.

Issued in Washington, D.C. on October 14, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-32445 Filed 10-16-80; 8:45 am]

BILLING CODE 6450-01-M

Docket No.	Petitioner	Generating station	Powerplant identification
50318-3628-02-41	Brazos Electric Power Cooperative, Inc	R. W. Miller	No. 2.
50499-9164-03-41	Central Telephone and Utilities Corp., Western Power Division.	Judson Large	No. 3.
50499-9164-04-41			No. 4.
50499-9165-01-41		Arthur Mullergren	No. 1.
50499-9155-02-41			No. 2.
50499-9165-03-41			No. 3.
50781-1822-05-41	City of Detroit, Public Lighting Department	Mistersky Power Station	No. 5.
50781-1822-06-41			No. 6.
50781-1822-07-41			No. 7.
50782-9077-14-41	Detroit Edison	Delray	No. 1.
50782-9077-15-41			No. 7.
50782-9077-16-41			No. 8.
50782-9077-17-41			No. 9.
50782-9077-18-41			No. 10.
50782-9077-19-41			No. 11.
50782-9077-20-41			No. 12.
51150-2242-01-41	City of Grand Island Utility Department	Pine Street	No. 1.
51150-2241-01-41		Burdick	No. 1.
51150-2241-02-41			No. 2.
51150-2241-03-41			No. 3.
51478-1244-04-41	Kansas Gas & Electric Company	Ripley	No. 4.
51478-1244-05-41			No. 5.
51478-1248-01-41	The Kansas Power & Light Company	Hutchinson	No. 1.
51479-1248-02-41			No. 2.
51479-1248-03-41			No. 3.
52000-1816-01-41	New Bedford Gas & Edison Light Company	Cannon Street	No. 1.
52000-1816-02-41			No. 2.
52000-1816-03-41			No. 3.
65016-9152-04-41	Owatonna Public Utilities	Owatonna Power Plant	No. 4.
65016-9152-05-41			No. 5.
65016-9152-06-41			No. 6.
52564-8068-51-41	Salt River Project	Santan	CC 1.
52564-8068-52-41			CC 2.
52564-8068-53-41			CC 3.
52564-8068-54-41			CC 4.
52658-2330-01-41	Sierra Pacific Power Company	Fort Churchill	No. 1.
52658-2330-02-41			No. 2.
52658-2336-01-41		Tracy	No. 1.
52658-2336-02-41			No. 2.
52658-2336-03-41			No. 3.
53256-3517-04-41	West Texas Utilities Company	Abilene	No. 4.
53256-3518-04-41		Concho	No. 4.
53256-4936-01-41		Fort Phantom	No. 1.
53256-4936-02-41			No. 2.
53256-3521-01-41		Lake Pauline	No. 1.
53256-3521-02-41			No. 2.
53256-3523-01-41		Oak Creek	No. 1.
53256-3524-01-41		Paint Creek	No. 1.
53256-3524-02-41			No. 2.
53258-3524-03-41			No. 3.

The petitioners filed for these temporary public interest exemptions pursuant to 10 CFR Part 508 (Exemption for Use of Natural Gas by Existing Powerplants Under the Powerplant and Industrial Fuel Use Act of 1978, April 9, 1979, 44 FR 21230, hereafter referred to as the Special Rule). Notice of the petitions and a proposed order granting these temporary exemptions was published in the July 21, 1980, Federal Register (45 FR 48684) presenting an opportunity for public comments and for interested persons to request a hearing relating to the petitions and the proposed order.

The Process Gas Consumer's Group, the American Iron and Steel Institute and the Georgia Industrial Group requested a hearing. These same persons requested a hearing regarding previously filed similar petitions for exemption under the Special Rule. In that previous proceeding, the hearing which was convened pursuant to the request of Process Gas Consumer's Group *et al.*, was dismissed upon the ground that the Group *et al.* had failed to demonstrate the requisite interest as interested persons (*see*, Section 701 of FUA and 10 CFR 501.33 and 501.34). The Group's *et al.* request for a hearing regarding petitions for exemption and proposed order noticed at 45 FR 18423, published on March 21, 1980 contained nothing additional or new as compared with their previous request. Consequently, ERA decided to deny their request for a public hearing on these petitions.

Based on the information provided by the petitioners, the listed powerplants are either prohibited by Section 301(a)(2) of FUA from using natural gas as a primary energy source or are prohibited from using natural gas in excess of the average base year proportion allowed in Section 301(a)(3) of the Act. These temporary exemptions will allow these units to burn natural gas, notwithstanding the prohibitions of Section 301(a)(2) or (3) of FUA, to displace consumption of high sulfur residual fuel oil.

Statement of Reasons

Because world oil supplies continue to be unstable, there is an urgent need to use these natural resources wisely.

To the extent that the near-term choice of fuels for certain existing poweplants is limited to petroleum or natural gas, the use of natural gas is preferred over petroleum. The use of natural gas in these powerplants will be a significant step toward reducing our short-term oil consumption and will help the United States reduce its dependence on imported petroleum. This increased use of natural gas will also protect the Nation from the effects of any oil shortages, and will cushion the impact of increasing world oil prices, which have a detrimental effect on the Nation's balance of payments and domestic inflation rate.

To the extent that increased use of natural gas will accomplish these goals, it will reduce the importation of petroleum and further the goal of national energy self-sufficiency.

The petitioners have demonstrated that these powerplants, for which they are requesting temporary exemptions, are existing units that are either prohibited from using natural gas as a primary energy source by Section 301(a)(2) of FUA, or prohibited from using natural gas in excess of the average base year proportion allowed in Section 301(a)(3) of FUA. The petitioners have also shown that the proposed use of natural gas as a primary energy source, to the extent that such use would be prohibited by Section 301(a)(2) or (3) of FUA, will displace consumption of high sulfur residual fuel oil, and will not displace the use of coal or any other alternate fuel in any facility of the petitioners' utility systems, including the powerplants for which these temporary exemptions are issued.

By establishing these facts the petitioners have met the eligibility criteria set out in § 508.2 of the Special Rule. Since the increased use of natural gas is in keeping with the purposes of FUA and is in the public interest, and since the petitioners have demonstrated that they have met the eligibility criteria, ERA is granting these temporary exemptions.

Duration of Temporary Exemptions

ERA grants these temporary public interest exemptions until December 7, 1981. Upon the request of the petitioners these exemptions may be extended for an additional period at the discretion of ERA. However, a temporary public interest exemption, including all extensions and the period during which the petitioners were allowed to burn gas while their petitions were pending may not exceed the maximum 5 year period authorized by the Act, or extend beyond June 30, 1985. All requests for extensions must be filed with ERA by September 7, 1981. The temporary exemptions are subject to termination by ERA, upon six months written notice, if ERA determines such termination to be in the public interest.

Effective Date of Decision and Order

This Decision and Order shall become effective on the sixtieth calendar day following its publication the Federal Register (December 16, 1980) in accordance with Section 702(a) of FUA. However, in accordance with the policy set forth in the notice implementing this Special Rule (44 FR 21230) ERA will take no action with respect to any natural gas used by the exempted powerplants between May 8, 1979, the effective date of FUA, and the date this Decision and Order becomes effective.

Terms and Conditions

Pursuant to Section 314 of FUA and 10 CFR 508.6, the temporary exemptions granted under this Decision and Order are conditioned upon, and shall remain in effect so long as each petitioner, its successors and assigns, complies with the following terms and conditions:

(1) Petitioner will report to ERA for the period from May 8, 1979, through December 31, 1979, and for each subsequent six-month period thereafter the actual monthly volumes of natural gas consumed in each exempted powerplant, and an estimate of the number of barrels of each type of fuel oil displaced.

(2) Petitioner will submit to ERA, within one year after the date this Decision and Order is issued, a system-wide fuel conservation plan to include the period covered by these temporary exemptions, including the means by which the petitioner will measure progress in implementing this plan. If the petitioner has received temporary public interest exemptions under previous orders, the first granted exemption order will establish the due date for the system-wide fuel conservation plan.

(3) If the petitioner seeks to have the exemptions extended, the fuel conservation plan must cover both the initial period covered by these temporary exemptions and the additional period, including the means by which the petitioner will measure progress in implementing this plan.

(4) Petitioner will submit annually to ERA, commencing with the calendar year ending December 31, 1981, a report on progress achieved in implementing the pertinent fuel conservation plan, if the petitioner's exemptions are extended beyond December 7, 1981.

ERA's grant of these temporary public interest exemptions does not relieve an existing powerplant from compliance with any rules or regulations concerning the acquisition or the distribution of natural gas that are admininstered by the Federal Energy Regulatory Commission or any State regulatory agency or from any obligations the utility may have to its customers.

Issued in Washington, D.C., on October 14, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-32446 Filed 10-16-80; 8:45 am]

BILLING CODE 6450-01-M

Decision and Order Granting Exemptions Pursuant to Section 311 of the Powerplant and Industrial Fuel Use Act of 1978

The Economic Regulatory Administration (ERA) of the Department of Energy hereby issues this Decision and Order granting temporary public interest exemptions from the prohibitions of Sections 301(a) (2) and (3) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act), 42 U.S.C. 8301 *et seq*. This Decision and Order is issued pursuant to Section 311(e) of FUA, 10 CFR 501.68 and 10 CFR Part 508 to the petitioners who own or operate the powerplants listed in the table below.

Docket No.	Petitioner	Generating station	Powerplant identification	Maximum duration date [1]
50412-1594-12-41	Cambridge Electric Light Company	Blackstone Street	No. 12	4/24/85
50499-6516-01-41	Central Telephone and Utilities Corp., Southern Colorado Power Division.	Rocky Ford	No. 1	4/4/85

[1] Maximum date to which the exemption can be extended.

The petitioners filed for these temporary public interest exemptions pursuant to 10 CFR 508 (Exemption for Use of Natural Gas by Existing Powerplants Under the Powerplant and Industrial Fuel Use Act of 1978, April 9, 1979, 44 FR 21230, hereafter referred to as the Special Rule). Notice of the petitions and a proposed order granting these temporary exemptions was published in the July 21, 1980, Federal Register (45 FR 48684) presenting an opportunity for public comments and for interested persons to request a hearing relating to the petitions and the proposed order.

The Process Gas Consumer's Group, the American Iron and Steel Institute and the Georgia Industrial Group requested a hearing. These same persons requested a hearing regarding previously filed similar petitions for exemption under the Special Rule. In that previous proceeding, the hearing which was convened pursuant to the request of Process Gas Consumer's Group *et al.*, was dismissed upon the ground that the Group *et al.* had failed to demonstrate the requisite interest as interested persons (*see*, Section 701 of FUA and 10 CFR 501.33 and 501.34). The Group's *et al.* request for a hearing

regarding petitions for exemption and proposed order noticed at 45 FR 18423, published on March 21, 1980 contained nothing additional or new as compared with their previous request. Consequently, ERA decided to deny their request for a public hearing on these petitions.

Based on the information provided by the petitioners, the listed powerplants are either prohibited by Section 301(a)(2) of FUA from using natural gas as a primary energy source or are prohibited from using natural gas in excess of the average base year proportion allowed in Section 301(a)(3) of the Act. These temporary exemptions will allow these units to burn natural gas, notwithstanding the prohibitions of Section 301(a) (2) and (3) of FUA, to displace consumption of low sulfur residual fuel oil.

Statement of Reasons

Because world oil supplies continue to be unstable, there is an urgent need to use these natural resources wisely.

To the extent that near-term choice of fuels for certain existing powerplants is limited to petroleum or natural gas, the use of natural gas is preferred over petroleum. The use of natural gas in these powerplants will be a significant step toward reducing our short-term oil consumption and will help the United States reduce its dependence on imported petroleum. This increased use of natural gas will also protect the Nation from the effects of any oil shortages, and will cushion the impact of increasing world oil prices, which have a detrimental effect on the Nation's balance of payments and domestic inflation rate.

To the extent that increased use of natural gas will accomplish these goals, it will reduce the importation of petroleum and further the goal of national energy self-sufficiency.

The petitioners have demonstrated that these powerplants, for which they are requesting temporary exemptions, are existing units that are either prohibited from using natural gas as a primary energy source by Section 301(a)(2) of FUA, or prohibited from using natural gas in excess of the average base year proportion allowed in Section 301(a)(3) of FUA. The petitioners have also shown that the proposed use of natural gas as a primary energy source, to the extent that such use would be prohibited by Section 301(a)(2) or (3) of FUA, will displace consumption of low sulfur residual fuel oil, and will not displace the use of coal or any other alternate fuel in any facility of the petitioners' utility systems, including the powerplants for which these temporary exemptions are issued.

By establishing these facts the petitioners have met the eligibility criteria set out in § 508.2 of the Special Rule. Since the increased use of natural gas is in keeping with the purposes of FUA and is in the public interest, and since the petitioners have demonstrated that they have met the eligibility criteria, ERA is granting these temporary exemptions.

Duration of Temporary Exemptions

ERA grants these temporary public interest exemptions from the effective date of this Decision and Order until December 8, 1982. These exemptions will be automatically extended for an additional period upon written acceptance by ERA of a system-wide fuel conservation plan. However, a temporary public interest exemption, including all extensions and the period during which the petitioners were allowed to burn gas while their petitions were pending, may not exceed the maximum five year period authorized by the Act, or extend beyond June 30, 1985. The maximum durations of the temporary public interest exemptions granted by this Order are listed in the table on the first page. The temporary exemptions are subject to termination by ERA, upon six months written notice, if ERA determines such termination to be in the public interest.

Effective Date of Decision and Order

This Decision and Order shall become effective on the sixtieth calendar day following its publication in the **Federal Register** (December 16, 1980) in accordance with Section 702(a) of FUA. However, in accordance with the policy set forth in the notice implementing this Special Rule (44 FR 21230) ERA will take no action with respect to any natural gas used by the exempted powerplants between May 8, 1979, the effective date of FUA, and the date this Decision and Order becomes effective.

Terms and Conditions

Pursuant to Section 314 of FUA and 10 CFR 508.8, the temporary exemptions granted under this Decision and Order are conditioned upon, and shall remain in effect so long as each petitioner, its successors and assigns, complies with the following terms and conditions:

(1) Petitioner will report to ERA for the period from May 8, 1979, through December 31, 1979, and for each subsequent six-month period thereafter the actual monthly volumes of natural gas consumed in each exempted powerplant, and an estimate of the number of barrels of each type of fuel oil displaced.

(2) Petitioner will submit to ERA, within one year after the date this Decision and Order is issued, a system-wide fuel conservation plan to include the period covered by these temporary exemptions, including the means by which the petitioner will measure progress in implementing this plan. If the petitioner has received temporary public interest exemptions under previous orders for other powerplants within his utility system, the first granted exemption order will establish the due date for the system-wide fuel conservation plant.

(3) If the petitioner seeks to have the exemptions extended, the fuel conservation plan must cover both the initial period covered by these temporary exemptions and the additional period to the maximum duration date, including the means by which the petitioner will measure progress in implementing this plan.

(4) Petitioner will submit annually to ERA, commencing with the calendar year ending December 31, 1981, a report on progress achieved in implementing the pertinent fuel conservation plan.

ERA's grant of these temporary public interest exemptions does not relieve an existing powerplant from compliance with any rules or regulations concerning the acquisition or the distribution of natural gas that are administered by the Federal Energy Regulatory Commission or any State regulatory agency or from any obligations the utility may have to its customers.

Issued in Washington, D.C., on October 14, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-32443 Filed 10-16-80; 8:45 am]

BILLING CODE 6450-01-M

Powerplant and Industrial Fuel Use Act Issuance of an Order Granting Temporary Public Interest Exemptions

The Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice that on October 14, 1980, it issued an order granting temporary public interest exemptions, pursuant to the authorities granted it by Section 311(e) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act), 42 U.S.C. 8301 *et seq.*, 10 CFR 501.68 and 10 CFR Part 508, from the prohibitions of Sections 301(a) (2) and (3) of the Act to the following powerplants in order to displace low sulfur residual fuel oil:

Docket No.	Petitioner	Generating station	Powerplant identification
50412-1584-12-41	Cambridge Electric Light Company	Blackstone Street	No. 12.
50499-6516-01-41	Central Telephone and Utilities Corp., Southern Colorado Power Division.	Rocky Ford	No. 1.

Petitions were received and filed with ERA, pursuant to 10 CFR Part 508 (Exemptions for Use of Natural Gas by Existing Powerplants Under the Powerplant and Industrial Fuel Use Act of 1978, April 9, 1979, 44 FR 21230) for temporary public interest exemptions for the use of natural gas as a primary energy source.

A notice of the petitions and the proposed order granting these temporary exemptions was published in the **Federal Register** on July 21, 1980 (45 FR 48684). This notice presented an opportunity for public comments and for interested persons to request a hearing relating to the petitions and the proposed order. All comments that referred to specific petitions were supportive of them.

The Process Gas Consumer's Group, the American Iron and Steel Institute and the Georgia Industrial Group requested a hearing. These same persons requested a hearing regarding previously filed similar petitions for exemption under the Special Rule. In that previous proceeding, the hearing which was convened pursuant to the request of Process Gas Consumer's Group *et al.*, was dismissed upon the ground that the Group *et al.* had failed to demonstrate the requisite interest as interested persons (*see*, Section 701 of FUA and 10 CFR 501.33 and 501.34). The Group's *et al.* request for a hearing regarding petitions for exemption and proposed order noticed at 45 FR 18423, published on March 21, 1980 contained nothing additional or new as compared with their previous request. Consequently, ERA decided to deny their request for a public hearing on these petitions.

These temporary exemptions will allow the above-named units to burn natural gas, notwithstanding the prohibitions of Sections 301(a)(2) and (3) of FUA, to displace fuel oil.

The order granting these temporary exemptions shall become effective sixty calendar days following publication in the **Federal Register** (December 16, 1980) in accordance with Section 702(a) of FUA. The owners of the above-mentioned powerplants have been sent the Decision and Order by certified mail.

The order is set forth following this notice. These temporary exemptions shall be in effect, subject to terms and conditions stated in the order, for a period of two years. The temporary exemptions may be extended for an additional period upon written acceptance by ERA of a system-wide fuel conservation plan.

However, a temporary public interest exemption, including all extensions and the period during which the petitioners were allowed to burn gas while their petitions were pending, may not exceed the statutory maximum five year period authorized by the Act, or extend beyond June 30, 1985. The temporary public interest exemptions granted by the Decision and Order may be terminated by ERA, upon six months written notice, if ERA determines such termination to be in the public interest.

ERA's grant of these temporary public interest exemptions does not relieve an existing powerplant from compliance with any rules or regulations concerning the acquisition or the distribution of natural gas that are administered by the Federal Energy Regulatory Commission or any State regulatory agency or from any obligations the utility may have to its customers.

Copies of all comments received during the public comment period will be available for public inspection and copying in the Public Information Office located in Room B-110, 2000 M Street, N.W., Washington, D.C. 20461.

Any questions regarding these temporary exemptions should be directed to Mr. James W. Workman, Acting Director, Powerplants Conversion Division, Office of Fuels Conversion, Economic Regulatory Administration, Department of Energy, Room 3128, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653-4268.

Issued in Washington, D.C., on October 14, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 32440 Filed 10-16-80; 8:45 am]

BILLING CODE 6450-01-M

Powerplant and Industrial Fuel Use Act; Issuance of an Order Granting Temporary Public Interest Exemptions

The Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice that on October 14, 1980, it issued an order granting temporary public interest exemptions, pursuant to the authorities granted it by Section 311(e) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act), 42 U.S.C. 8301 *et seq.*, 10 CFR 501.68 and 10 CFR Part 508, from the prohibitions of Sections 301(a) (2) and (3) of the act to the following powerplants in order to displace high sulfur residual fuel oil:

Docket No.	Petitioner	Generating station	Powerplant identification
50318-3628-02-41	Brazos Electric Power Cooperative, Inc	R. W. Miller	No. 2.
50499-9164-03-41	Central Telephone and Utilities Corp., Western Powrer Division.	Judson Large	No. 3.
50499-9164-04-41			No. 4.
50499-9165-01-41		Arthur Mullergren	No. 1.
50499-9165-02-41			No. 2.
50499-9165-03-41			No. 3.
50781-1822-05-41	City of Detroit, Public Lighting Department	Mistersky Power Station	No. 5.
50781-1822-06-41			No. 6.
50781-1822-07-41			No. 7.
50782-9077-14-41	Detroit Edison	Delray	No. 1.
50782-9077-15-41			No. 7.
50782-9077-16-41			No. 8.
50782-9077-17-41			No. 9.
50782-9077-18-41			No. 10.
50782-9077-19-41			No. 11.
50782-9077-20-41			No. 12.
51150-2242-01-41	City of Grand Island Utility Department	Pine Street	No. 1.
51150-2241-01-41		Burdick	No. 1.
51150-2241-02-41			No. 2.
51150-2241-03-41			No. 3.
51748-1244-04-41	Kansas Gas & Electric Company	Ripley	No. 4.
51748-1244-05-41			No. 5.
51479-1248-01-41	The Kansas Power & Light Company	Hutchinson	No. 1.
51479-1248-02-41			No. 2.
51479-1248-03-41			No. 3.
52000-1616-01-41	New Bedford Gas & Edison Light Company	Cannon Street	No. 1.
52000-1616-02-41			No. 2.
52000-1616-03-41			No. 3.
65016-9152-04-41	Owatonna Public Utilities	Owatonna Power Plant	No. 4.
65016-9152-05-41			No. 5.
65016-9152-06-41			No. 6.
52564-8068-51-41	Salt River Project	Santan	CC 1.
52564-8068-52-41			CC 2.
52564-8068-53-41			CC 3.
52564-8068-54-41			CC 4
52658-2330-01-41	Sierra Pacific Power Company	Fort Churchill	No. 1.
52658-2330-02-41			No. 2.
52658-2336-01-41		Tracy	No. 1.
52658-2336-02-41			No. 2.
52658-2336-03-41			No. 3.
53256-3517-04-41	West Texas Utilities Company	Abilene	No. 4.
53256-3518-04-41		Concho	No. 4.
53256-4938-01-41		Fort Phantom	No. 1.
53256-4938-02-41			No. 2.
53256-3521-01-41		Lake Pauline	No. 1.
53256-3521-02-41			No. 2.
53256-3523-01-41		Oak Creek	No. 1.
53256-3524-01-41		Paint Creek	No. 1.
53256-3524-02-41			No. 2.
53256-3524-03-41			No. 3.

Petitions were received and filed with ERA, pursuant to 10 CFR Part 508 (Exemptions for Use of Natural Gas by Existing Powerplants Under the Powerplant and Industrial Fuel Use Act of 1978, April 9, 1979, 44 FR 21230) for temporary public interest exemptions for the use of natural gas as a primary energy source.

A notice of the petitions and the proposed order granting these temporary exemptions was published in the **Federal Register** on July 21, 1980 (45 FR 48684). This notice presented an opportunity for public comments and for interested persons to request a hearing relating to the petitions and the proposed order. All comments that referred to specific petitions were supportive of them.

The Process Gas Consumer's Group, the American Iron and Steel Institute and the Georgia Industrial Group requested a hearing. These same persons requested a hearing regarding previously filed similar petitions for exemption under the Special Rule. In that previous proceeding, the hearing which was convened pursuant to the request of Process Gas Consumer's Group *et al.*, was dismissed upon the ground that the Group *et al.* had failed to demonstrate the requisite interest as interested persons (*see*, Section 701 of FUA and 10 CFR 501.33 and 501.34). The Group's *et al.* request for a hearing regarding petitions for exemption and proposed order noticed at 45 FR 18423, published on March 21, 1980 contained nothing additional or new as compared with their previous request. Consequently, ERA decided to deny their request for a public hearing on these petitions.

These temporary exemptions will allow the above-named units to burn natural gas, notwithstanding the prohibitions of Sections 301(a)(2) and (3) of FUA, to displace high sulfur residual fuel oil.

The order granting these temporary exemptions shall become effective sixty calendar days following publication in the **Federal Register** (December 16, 1980) in accordance with Section 702(a) of FUA. The owners of the above-mentioned powerplants have been sent the Decision and Order by certified mail.

The order is set forth following this notice. These temporary exemptions shall be in effect, subject to terms and conditions stated in the order, until December 7, 1981. Upon the request of the petitioners, these exemptions may be extended for an additional period at the discretion of ERA. However, a temporary public interest exemption, including all extensions and the period during which the petitioners were allowed to burn gas while their petitions were pending, may not exceed the statutory maximum five year period authorized by the Act, or extend beyond June 30, 1985. The temporary public interest exemptions granted by the Decision and Order may be terminated by ERA, upon six months written notice, if ERA determines such termination to be in the public interest.

ERA's grant of these temporary public interest exemptions does not relieve an existing powerplant from compliance with any rules or regulations concerning the acquisition or the distribution of natural gas that are administered by the Federal Energy Regulatory Commission or any State regulatory agency or from any obligations the utility may have to its customers.

Copies of all comments received during the public comment period will be available for public inspection and copying in the Public Information Office located in Room B–110, 2000 M Street, NW., Washington, D.C. 20461.

Any questions regarding these temporary exemptions should be directed to Mr. James W. Workman, Acting Director, Powerplants Conversion Division, Office of Fuels Conversion, Economic Regulatory Administration, Department of Energy, Room 3128, 2000 M Street, NW., Washington, D.C. 20461, (202) 653–4268.

Issued in Washington, D.C., on October 14, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-32442 Filed 10-16-80; 8:45 am]

BILLING CODE 6450-01-M

Docket No.	Owner	Generating station	Powerplant identification
50135-3548-02-41	City of Austin	Decker	No. 2.
50318-3628-03-41	Brazos Electric Power Cooperative, Inc	R. W. Miller	No. 3.
50499-0460-04-41	Central Telephone And Utilities Corp., Southern Colorado Power Division.	Pueblo	No. 4.
50499-0460-05-41			No. 5.
50499-0460-06-41			No. 6.
61029-9155-21-41	City of Cleveland	West 41st Street	GT 1.
61029-9155-22-41			GT 2.
61029-9154-23-41		Collingwood	GT 3.
50643-0877-31-41	Commonwealth Edison	Lombard	CT 31-1.
50643-0877-32-41			CT 31-2.
50643-0877-33-41			CT 32-1.
50643-0877-34-41			CT 32-2.
50643-0877-35-41			CT 33-1.
50643-0877-36-41			CT 33-2.
50643-0875-31-41		Joliet	CT 31-1.
50643-0875-32-41			CT 31-2.
50643-0875-33-41			CT 31-3.
50643-0875-34-41			CT 31-4.
50643-0875-35-41			CT 32-1.
50643-0875-36-41			CT 32-2.
50643-0875-37-41			CT 32-3.
50643-0875-38-41			CT 32-4.
50643-0866-31-41		Calumet	CT 31-1.
50643-0866-32-41			CT 31-2.
50643-0866-33-41			CT 31-3.
50643-0866-34-41			CT 31-4.
50643-0866-35-41			CT 33-1.
50643-0866-36-41			CT 33-2.
50643-0866-37-41			CT 33-3.
50643-0866-38-41			CT 33-4.
50643-0866-39-41			CT 34-1.
50643-0866-40-41			CT 34-2.
50643-0866-41-41			CT 34-3.
50643-0866-42-41			CT 34-4.
50643-0870-31-41		Electric Junction	CT 31-1.
50643-0870-32-41			CT 31-2.
50643-0870-33-41			CT 31-3.

Powerplant and Industrial Fuel Use Act Issuance of an Order Granting Temporary Public Interest Exemptions

The Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice that on October 14, 1980, it issued an order granting temporary public interest exemptions, pursuant to the authorities granted it by Section 311(e) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act), 42 U.S.C. 8301 *et seq.*, 10 CFR 501.68 and 10 CFR Part 508, from the gas use prohibitions of Sections 301(a) (2) and (3) of the Act to the following powerplants in order to displace middle distillate fuel oil:

Docket No.	Owner	Generating station	Powerplant identification
50643-0870-34-41			CT 31-4.
50643-0870-35-41			CT 32-1.
50643-0870-36-41			CT 32-2.
50643-0870-37-41			CT 32-3.
50643-0870-38-41			CT 32-4.
50643-0870-39-41			CT 33-1.
50643-0870-40-41			CT 33-2.
50643-0870-41-41			CT 33-3.
50643-0870-42-41			CT 33-4.
50782-1726-15-41	Detroit Edison	Conner's Creek	No. 13.
50904-6223-21-41	Empire District Electric Company	Empire Energy Center	CT 1.
50904-6223-22-41			CT 2.
51121-0377-58-41	City of Glendale California Public Service Department.	Grayson Power Plant	CC 6.
51381-8065-21-41	Idaho Power Company	Wood River	CT 1.
51388-9006-21-41	Imperial Irrigation District	Rockwood	CT 1.
51549-1443-03-41	City of Lafayette Utilities	Doc Bonin	No. 3.
54020-3112-21-41	Metropolitan Edison	Ontarnna	CT 1.
54020-3109-21-41		Hamilton	CT 1.
54020-3114-21-41		Shawnee	CT 1.
54020-3111-21-41		Mountain	CT 1.
54020-3111-22-41			CT 2.
54020-3110-21-41		Hunterstown	CT 1.
54020-3110-22-41			CT 2.
54020-3110-23-41			CT 3.
52370-3043-22-41	Portland General Electric	Bethel	CT 2.
52370-9138-51-41		Beaver	CC 1.
52370-9138-52-41			CC 2.
52370-9138-53-41			CC 3.
52370-9138-54-41			CC 4.
52370-9138-55-41			CC 5.
52370-9138-56-41			CC 6.
52721-0329-53-41	Southern	Cool Water	CC 3.
52721-0329-54-41	California Edison Company		CC 4.
53256-3524-04-41	West Texas Utilities Company	Paint Creek	No. 4.
53256-3526-06-41		Rio Pecos	No. 6.

Petitions were received and filed pursuant to 10 CFR Part 508 (Exemption for Use of Natural Gas by Existing Powerplants Under the Powerplant and Industrial Fuel Use Act of 1978, April 9, 1979, 44 FR 21230) with ERA for temporary public interest exemptions — for the use of natural gas as a primary energy source.

A notice of the petitions and a proposed order granting these temporary exemptions was published in the **Federal Register** on July 21, 1980. (45 FR 48684). This notice presented an opportunity for public comments and for interested persons to request a hearing relating to the petitions and the proposed order. All comments that referred to specific petitions were supportive of them.

The Process Gas Consumer's Group, the American Iron and Steel Institute and the Georgia Industrial Group requested a hearing. These same persons requested a hearing regarding previously filed similar petitions for exemption under the Special Rule. In that previous proceeding, the hearing which was convened pursuant to the request of Process Gas Consumer's Group *et al.*, was dismissed upon the ground that the Group *et al.* had failed to demonstrate the requisite interest as interested persons (*see*, Section 701 of FUA and 10 CFR 501.33 and 501.34). The Group's *et al.* request for a hearing regarding petitions for exemption and proposed order noticed at 45 FR 18423, published on March 21, 1980 contained nothing additional or new as compared with their previous request. Consequently, ERA decided to deny their request for a public hearing on these petitions.

These temporary exemptions will allow the above-named units to burn natural gas, notwithstanding the prohibitions of Sections 301(a)(2) and (3) of FUA, to displace middle distillate fuel oil.

The order granting these temporary exemptions shall become effective sixty calendar days following its publication in the **Federal Register**, (December 16, 1980) in accordance with Section 702(a) of FUA. The owners of the above-named powerplants have been sent the Decision and Order by certified mail.

The order is set forth following this notice. These temporary exemptions shall be in effect, subject to the terms and conditions stated in the order, for a period of five years including the period during which the petitioners were allowed to burn gas while their petitions were pending, but not to extend beyond June 30, 1985. The temporary exemptions may be terminated by ERA, upon six months written notice, if ERA determines such termination to be in the public interest.

ERA's grant of these temporary public interest exemptions does not relieve an existing powerplant from compliance with any rules or regulations concerning the acquisition or the distribution of natural gas that are administered by the Federal Energy Regulatory Commission or any State regulatory agency or from any obligation the utility may have to its customers.

Copies of all comments received during the public comment period will be available for public inspection and copying in the Public Information Office located in Room B–110, 2000 M Street, NW., Washington, D.C. 20461.

Any questions regarding these temporary exemptions should be directed to Mr. James W. Workman, Acting Director, Powerplants Conversion Division, Office of Fuels Conversion, Economic Regulatory Administration, Department of Energy, Room 3128, 2000 M Street, NW., Washington, DC. 20461, (202) 653–4268.

Issued in Washington, D.C., on October 14, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-32444 Filed 10-16-80; 8:45 am]

BILLING CODE 6450-01-M

Time Oil Co.'s Application for Redirection of Product

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of application withdrawal.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice that on September 23, 1980, Time Oil Company (Time) withdrew its application for redirection of product to its base period customers in the State of Hawaii, which the firm filed on June 20, 1980. Time reserves its right to refile an application at a later date.

FOR FURTHER INFORMATION CONTACT:

John A. Carlyle, Economic Regulatory Administration, Office of Petroleum Operations, Room 2104–I, 2000 M Street, NW., Washington, DC 20461, Telephone: (202) 653–3751;

Joel M. Yudson, Office of General Counsel, Room 6A–127, 1000 Independence Avenue, SW., Washington, DC 20585.

Issued in Washington, D.C., on the 10th day of October 1980.

Doris J. Dewton,

Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.

[FR Doc. 80-32441 Filed 10-16-80; 8:45 am]

BILLING CODE 6450-01-M

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Federal Energy Regulatory Commission

[Volume 296]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

October 9, 1980.

JD NO	JA DKT	API NO	SEC T R WELL NAME	FIELD NAME	PROD	PURCHASER
*****						
OKLAHOMA CORPORATION COMMISSION						
*****						
=A & P OIL CO INC			RECEIVED: 09/26/80 JA: OK			
*8058668	05413	3507100000 103	KAMPSCHROEDER #1	UNNAMED	16.5	CITIES SERVICE GAS C
=BLAIK OIL COMPANY			RECEIVED: 09/26/80 JA: OK			
*8058673	05241	3504722050 103	PETERMAN UNIT #4	SOONER TREND	67.0	EXXON COMPANY USA
8058659	03104	3500320127 108	TRUITT #1	SOONER TREND	19.0	AMINOIL USA INC
=CENTURY OIL & GAS CORP			RECEIVED: 09/26/80 JA: OK			
8058662	02855	3513721870 103	REICH #1 OTC #137-55647	NELLIE	175.0	LONE STAR GAS CO
=CONOCO INC			RECEIVED: 09/26/80 JA: OK			
8058664	05441	3501121019 102	GEPNER NO 1	SQUAW CREEK	70.0	MICHIGAN-WISCONSIN P
=CROUCH PETROLEUM CO			RECEIVED: 09/26/80 JA: OK			
*8058658	04495	3505500000 108	KURTEN #1 055-52896	BLOOMINGTON	1.0	DAMSON OIL CORP
=CROUCH PETROLEUM COMPANY			RECEIVED: 09/26/80 JA: OK			
*8058657	04496	3505500000 108	HOOD #1 055-49476	BLOOMINGTON	2.0	DAMSON OIL CORP
=DALCO PETROLEUM INC			RECEIVED: 09/26/80 JA: OK			
8058675	04844	3507322277 103	HARRISON #1	SOONER TREND	183.0	CITIES SERVICE GAS C
8058674	04855	3507300000 103	NONIER #1	SOONER TREND	72.0	CITIES SERVICE GAS C
=EDWIN L COX			RECEIVED: 09/26/80 JA: OK			
8058669	05403	3501700000 108	MUNSUCKER #1	SHO-VEL-TUM	6.0	LONE STAR GAS CO
=ENNEX PRODUCTION COMPANY			RECEIVED: 09/26/80 JA: OK			
8058666	05428	3501721400 103	GRIFFIN #1	EAST GEARY	513.0	DELHI GAS PIPELINE C
=MELWERICH & PAYNE INC			RECEIVED: 09/26/80 JA: OK			
8058665	05440	3504326978 103	GORE NO 1-36	SOUTH SEILLING	548.0	MICHIGAN WISCONSIN P
=JET OIL COMPANY			RECEIVED: 09/26/80 JA: OK			
8058672	05260	3508320603 103	ANNA PRIESS #2	S E RUSSELL	4.0	SERVICE DRILLING CO
=KRUMME OIL CO			RECEIVED: 09/26/80 JA: OK			
8058667	05415	3511120889 108	ROSE NO 2	BEGGS	10.0	PHILLIPS PETROLEUM C
=L G WILLIAMS OIL COMPANY INC			RECEIVED: 09/26/80 JA: OK			
8058676	04668	3504320901 103	GORE 3-1	PUTNAM	490.0	PANHANDLE EASTERN PI
=MOBIL OIL CORP			RECEIVED: 09/26/80 JA: OK			
8058663	02622	3501900000 108	G T POWERS #6	SHO VEL TUM	4.0	LONE STAR GAS CO
=NOVA ENERGY CORPORATION			RECEIVED: 09/26/80 JA: OK			
8058670	05352	3501720814 102	VABICEK #1-36	N E UNION CITY	334.7	PHILLIPS PETROLEUM C
8058671	05351	3501720913 102	WHITE #1-19	WEST YUKON	136.3	PHILLIPS PETROLEUM C
=RANKIN & CARTER			RECEIVED: 09/26/80 JA: OK			
8058661	02853	3504900000 103	O FREEMAN #1	HOOVER	1.2	LONE STAR GAS CO
=SHAR-ALAN OIL CO			RECEIVED: 09/26/80 JA: OK			
8058678	04354	3509321658 103	BOEHS #1	E FAIRVIEW	47.0	PHILLIPS PETROLEUM C
=TENNECO OIL CO			RECEIVED: 09/26/80 JA: OK			
8058660	03073	3509321174 108	BYFIELD 2-25	CHEYENNE VALLEY	11.3	PHILLIPS PETROLEUM C
=WILLIS EXPLORATION INC			RECEIVED: 09/26/80 JA: OK			
8058677	04662	3501721248 103	MCINTYRE #1	N E MUSTANG	812.0	MOBIL OIL CORP

BILLING CODE 6450-85-M

JD NO	JA DKT	API NO	SEC T R WELL NAME	FIELD NAME	PROD	PURCHASER
*****						
TEXAS RAILROAD COMMISSION						
*****						
=AMERICAN PUBLIC ENERGY CO			RECEIVED: 09/26/80 JA: TX			
8058685	11837	4229530615 103	M G BRILLHART #1-L	KIOWA CREEK (CLEVELAND)	240.0	NORTHERN NATURAL GAS
=AMMEX PETROLEUM CORP			RECEIVED: 09/26/80 JA: TX			
8058841	01475	4205100000 103	NAN UNIT #1 RRC 12750	GIDDINGS (AUSTIN CHALK)	231.0	CLAJON GAS CO
8058842	01476	4205100000 103	NEIMANN UNIT #1 RRC #12784	GIDDINGS (AUSTIN CHALK)	347.0	CLAJON GAS CO
=AMOCO PRODUCTION CO			RECEIVED: 09/26/80 JA: TX			
8058894	01746	4230330104 103	ANTON IRISH CLEARFORK UNIT #355	ANTON IRISH	1.0	PIONEER NATURAL GAS
8058893	01747	4230330103 103	ANTON IRISH CLEARFORK UNIT #356	ANTON IRISH	3.6	PIONEER NATURAL GAS
8058886	01741	4218930145 103	ANTON IRISH CLEARFORK UNIT #358	ANTON IRISH	7.3	PIONEER NATURAL GAS
8058892	01746	4218930144 103	ANTON IRISH CLEARFORK UNIT #359	ANTON IRISH	3.0	PIONEER NATURAL GAS
8058891	01745	4218930134 103	ANTON IRISH CLEARFORK UNIT #360	ANTON IRISH	24.5	PIONEER NATURAL GAS
8058890	01744	4218930148 103	ANTON IRISH CLEARFORK UNIT #361	ANTON IRISH	10.2	PIONEER NATURAL GAS
8058889	01743	4218930138 103	ANTON IRISH CLEARFORK UNIT #363	ANTON IRISH	3.2	PIONEER NATURAL GAS
8058887	01742	4218930137 103	ANTON IRISH CLEARFORK UNIT #366	ANTON IRISH	13.1	PIONEER NATURAL GAS
8058899	01753	4218930140 103	ANTON IRISH CLEARFORK UNIT #368	ANTON IRISH	2.2	PIONEER NATURAL GAS
8058900	01754	4218930136 103	ANTON IRISH CLEARFORK UNIT #369	ANTON IRISH	1.5	PIONEER NATURAL GAS
8058895	01749	4218930151 103	ANTON IRISH CLEARFORK UNIT #371	ANTON IRISH	16.2	PIONEER NATURAL GAS
8058898	01752	4218930153 103	ANTON IRISH CLEARFORK UNIT #373	ANTON IRISH	21.0	PIONEER NATURAL GAS
8058897	01751	4218930156 103	ANTON IRISH CLEARFORK UNIT #375	ANTON IRISH	15.3	PIONEER NATURAL GAS
8058814	01621	4218930154 103	ANTON IRISH CLEARFORK UNIT #377	ANTON IRISH	3.3	PIONEER NATURAL GAS
8058868	01622	4218930148 103	ANTON IRISH CLEARFORK UNIT #378	ANTON IRISH	1.1	PIONEER NATURAL GAS
8058813	01620	4218930147 103	ANTON IRISH CLEARFORK UNIT #379	ANTON IRISH	12.0	PIONEER NATURAL GAS
8058870	01624	4218930155 103	ANTON IRISH CLEARFORK UNIT #380	ANTON IRISH	8.4	PIONEER NATURAL GAS
8058869	01623	4218930158 103	ANTON IRISH CLEARFORK UNIT #381	ANTON IRISH	6.6	PIONEER NATURAL GAS
8058812	01619	4227930062 103	ANTON IRISH CLEARFORK UNIT #382	ANTON IRISH	1.1	PIONEER NATURAL GAS
8058809	01616	4227930065 103	ANTON IRISH CLEARFORK UNIT #384	ANTON IRISH	1.8	PIONEER NATURAL GAS
8058811	01618	4227930051 103	ANTON IRISH CLEARFORK UNIT #386	ANTON IRISH	7.7	PIONEER NATURAL GAS
8058810	01617	4227930054 103	ANTON IRISH CLEARFORK UNIT #388	ANTON IRISH	1.0	PIONEER NATURAL GAS
*8058873	01627	4207931084 103	C B DEAN C #19	SLAUGHTER	14.3	AMOCO PRODUCTION CO
*8058874	01630	4207931083 103	C B DEAN C #22	SLAUGHTER	4.2	AMOCO PRODUCTION CO
*8058871	01625	4207931041 103	C B DEAN C #24	SLAUGHTER	3.9	AMOCO PRODUCTION CO
8058911	01804	4213532844 103	DAVID FASKIN AH #2	FASKEN B/FUSSELMAN/	69.3	PIONEER NATURAL GAS
8058875	01631	4221932774 103	ELLWOOD A #145	SMYER N (CANYON)	0.9	EL PASO NATURAL GAS
8058791	01108	4216730644 103	GILLUCK SOUTH #91	GILLUCK SOUTH	100.0	AMOCO GAS CO
*8058700	14275	4203931186 103	M M SMRYOCK NO 4	HASTINGS WEST	102.0	AMOCO GAS CO
8058718	16999	4229530624 103	J A GEX B #2	MAMMUTH CREEK NORTH	300.0	TRANSWESTERN PIPELIN
8058793	01110	4216130553 102	J E SIMS NO 1	CHENEYBORO (COTTON VALLE	18.3	LONE STAR GAS CO
8058790	01050	4217530573 103	L M OCONNOR A #64	LIVE OAK LAKE/5100/	11.7	AMOCO GAS CO
8058872	01626	4210532581 103	MARGARET F ALFORD A #2	WHITEHEAD/STRAWN/	91.3	LONE STAR GAS CO
8058876	01644	4213532817 103	NORTH COWDEN UNIT #1032	COWDEN NORTH	7.7	PIONEER NATURAL GAS
8058896	01750	4250131776 103	OWNBY (UPPER CLFORK) UNIT #11-2	OWNBY (UPPEN CLEARFORK)	24.5	NORTHERN NATURAL GAS
8058792	01109	4216730641 103	SOUTH GILLUCK UNIT #93	GILLUCK SOUTH	27.4	AMOCO GAS CO
8058910	01893	4203330427 103	T J GUOD A #38	JO MILL/SPRAYBERRY/	21.5	GETTY OIL CO
=ARCO OIL AND GAS COMPANY			RECEIVED: 09/26/80 JA: TX			
8058785	01031	4200332149 103	EMMA COWDEN #74	EMMA	10.0	EL PASO NATURAL GAS
8058757	01030	4200332148 103	EMMA COWDEN #75	EMMA	10.0	EL PASO NATURAL GAS
8058787	01033	4200332172 103	EMMA COWDEN #76	EMMA	9.0	EL PASO NATURAL GAS
8058786	01032	4200332174 103	EMMA COWDEN #78	EMMA	10.0	EL PASO NATURAL GAS
8058879	01665	4249531091 103	J R WALTON A #16	KEYSTONE (CULBY)	18.2	SID RICHARDSON CARBO

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JD NO	JA DKT	API NO	SEC	WELL NAME	FIELD NAME	PROD	PURCHASER
*8058855	21451	4250131754	103	WILLARD UNIT #3-B	WASSON	51,1	SHELL OIL COMPANY
*8058854	21449	4250131759	103	WILLARD UNIT #31-C	WASSON	18,3	SHELL OIL COMPANY
*8058856	21455	4250131755	103	WILLARD UNIT #32-C	WASSON	10,0	SHELL OIL COMPANY
				RECEIVED: 09/26/80 JA: TX			
*ARKLA EXPLORATION COMPANY							
8058868	08410	4201930278	103	LAWRENCE T FRANKS #1-T	STUCKMAN (COTTON VALLEY)	47,0	ARKANSAS LOUISIANA G
8058755	16453	4236530767	103	WILLIAMSON #1	CARTHAGE (COTTON VALLEY)	363,0	ARKANSAS LOUISIANA G
				RECEIVED: 09/26/80 JA: TX			
*ART MACHIN & ASSOCIATES INC							
8058780	18515	4220330652	103	E N SMITH JR #1	WASKOM (TRAVIS PEAK 6150	130,0	ARKANSAS LOUISIANA G
				RECEIVED: 09/26/80 JA: TX			
*B M WEBSTER							
8058906	21781	4237330435	103	KAVANAUGH & COLLINS 1-A	LIVINGSTON	71,0	
				RECEIVED: 09/26/80 JA: TX			
*C & K PETROLEUM INC							
8058731	17577	4245130800	103	GUNTER 25 NO 1	CONGER (PENN)	274,0	
				RECEIVED: 09/26/80 JA: TX			
*CABOT CORPORATION							
8058717	16950	4223330635	103	MERCHANT IRA C #7	PANHANDLE HUTCHINSON COU	20,0	PANHANDLE EASTERN PI
8058750	16949	4223330698	103	MERCHANT IRA C #8	PANHANDLE HUTCHINSON COU	24,0	PANHANDLE EASTERN PI
				RECEIVED: 09/26/80 JA: TX			
*CASHCO ENERGY CORPORATION							
8058823	21586	4218500000	102	W M GRANT NO 1	IOLA (SUBCLARKSVILLE) FI	547,0	LONE STAR GAS CO
8058823	21586	4218500000	103	W M GRANT NO 1	IOLA (SUBCLARKSVILLE) FI	547,0	LONE STAR GAS CO
				RECEIVED: 09/26/80 JA: TX			
*CHAMPLIN PETROLEUM COMPANY							
8058741	18044	4236500000	103	CARTHAGE GAS UNIT #1-3	CARTHAGE	0,0	TENNESSEE GAS PIPELI
				RECEIVED: 09/26/80 JA: TX			
*CHEVRON U S A INC							
8058845	21540	4249531071	103	M E LUVEIT 7C	KEYSTONE	75,0	TRANSWESTERN PIPELIN
8058844	21537	4249531067	103	W E BAIRD 13-69C	KEYSTONE	73,0	TRANSWESTERN PIPELIN
8058716	16138	4235531499	103	W L FOSTER 5 #13	IATAN EAST MOWARD	7,3	GETTY OIL CO
				RECEIVED: 09/26/80 JA: TX			
*CITIES SERVICE COMPANY							
8058762	20270	4208931089	102	HEINSOHN A #1 OIL UNIT			
				RECEIVED: 09/26/80 JA: TX			
*COLORADO INTERSTATE GAS CO							
8058771	18849	4237530062	108	BIVINS 52R	WEST PANHANDLE (RED CAVE	13,0	COLORADO INTERSTATE
				RECEIVED: 09/26/80 JA: TX			
*CONOCO INC							
8058921	22093	4249500000	108	BROWN-ALTMAN #2 ID #07716	EMPEROR-WEINER	0,1	PHILLIPS PETROLEUM C
8058840	21550	4238900000	108	FORD GERALDINE UNIT #308 ID #21021	GERALDINE FORD	10,5	EL PASO NATURAL GAS
8058917	22041	4222700000	108	G O CHALK C #15 ID #02687	HOWARD GLASSCOCK	0,2	PHILLIPS PETROLEUM C
8058919	22077	4222700000	108	G U CHALK E #14 ID #02689	HOWARD-GLASSCOCK	0,4	PHILLIPS PETROLEUM C
8058918	22075	4215532767	108	M S FUSTER #16 ID #06302	CONDEN SOUTH	0,2	PHILLIPS PETROLEUM C
8058885	21683	4200300000	108	MUNGER-NIX #18 ID #10694	FUHRMAN-MASCHO	0,8	PHILLIPS PETROLEUM C
8058883	21680	4200300000	108	W FUHRMAN-MASCHO UNIT #53 ID #21220	FUHRMAN-MASCHO	0,3	PHILLIPS PETROLEUM C
8058920	22092	4200300000	108	W T FORD #22 ID #01665	FUHRMAN-MASCHO	5,3	PHILLIPS PETROLEUM C
8058884	21682	4200300000	108	W T FORD #28 ID #01630	FUHRMAN-MASCHO	0,2	PHILLIPS PETROLEUM C
				RECEIVED: 09/26/80 JA: TX			
*COOK EXPLORATION CO							
8058764	20543	4218300000	103	CULPEPPER NO 3	WILLOW SPRINGS-MACKEY (T	540,0	ARKANSAS LOUISIANA G
				RECEIVED: 09/26/80 JA: TX			
*DAVID ALBERT OIL & GAS							
8058802	21239	4223700000	108	CRANFORD 18	JACK COUNTY REGULAR (GAS	8,0	CITIES SERVICE CO
8058797	21271	4223700000	108	T J YOWELL	YOWELL (MARBLE FALLS)	5,0	CITIES SERVICE CO
				RECEIVED: 09/26/80 JA: TX			
*DELTA DRILLING CO							
8058782	18720	4243500000	108	SHURLEY #2	SAWYER (CANYON SAND)	21,9	NORTHERN NATURAL GAS
				RECEIVED: 09/26/80 JA: TX			
*DEMINEX US OIL COMPANY							
8058832	21558	4217900000	108	LOVETT NO 4 RRC LSE #00327	PANHANDLE (GRAY COUNTY)	5,0	PHILLIPS PETROLEUM C
8058831	21556	4217900000	108	LOVETT NO 6 RRC LSE #00327	PANHANDLE (GRAY COUNTY)	5,0	PHILLIPS PETROLEUM C
8058830	21555	4217900000	108	LOVETT NO 7 RRC LSE #00327	PANHANDLE (GRAY COUNTY)	5,0	PHILLIPS PETROLEUM C
8058847	21553	4217900000	108	LOVETT NO 9 RRC LSE #00327	PANHANDLE (GRAY COUNTY)	5,0	PHILLIPS PETROLEUM C
				RECEIVED: 09/26/80 JA: TX			
*DFC OIL AND GAS CO							
8058682	10854	4208700000	103	EDGAR #ISCHKAEMPER #1	PANHANDLE EAST	100,0	EL PASO NATURAL GAS

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JD NO	JA DKT	API NO	SEC	WELL NAME	FIELD NAME	PROD	PURCHASER
				RECEIVED: 09/26/80 JA: TX			
*DIAMOND SHAMROCK CORPORATION							
*8058696	13611	4234130517	103	ROBERTSON C NO 7	PANHANDLE WEST	80,0	NORTHERN NATURAL GAS
				RECEIVED: 09/26/80 JA: TX			
*DONALD C SLAWSON							
8058774	19263	4221131158	103	GARVER #1 UNIT	CANADIAN (MORROW UPPER)	1500,0	NORTHERN NATURAL GAS
				RECEIVED: 09/26/80 JA: TX			
*DORCHESTER EXPLORATION INC							
8058783	18723	4213130724	103	TERRY 15 NO 1 RRC ID #84261	CONGER (PENN)	548,0	ESPERANZA PIPELINE C
8058834	21562	4245130813	103	TERRY 16 NO 3 RRC ID #85934	CONGER (PENN)	180,0	ESPERANZA PIPELINE C
8058772	18853	4243130796	103	TERRY 17 NO 1 RRC ID #25601	W A M FUSSELMAN	181,0	ESPERANZA PIPELINE C
8058833	21561	4245130795	103	WESTBROOK 22 NO 1 RRC ID #25726	CONGER (PENN)	180,0	ESPERANZA PIPELINE C
				RECEIVED: 09/26/80 JA: TX			
*DYNE OIL & GAS INC							
8058824	21588	4225330738	103	SAMUEL #2 RRC NO 04444	PANHANDLE-HUTCHINSON COU	0,0	PHILLIPS PETROLEUM C
				RECEIVED: 09/26/80 JA: TX			
*ENERGY RESOURCES OIL & GAS CORP							
8058681	09036	4237176489	103	MARY BAKER #1	PAPPY (CANYON)	150,0	NORTHERN NATURAL GAS
				RECEIVED: 09/26/80 JA: TX			
*ENSERCH EXPLORATION INC							
8058690	07433	4223731943	103	ALLISON YATES NO 3	BOUNSVILLE (BCG)	78,0	LONE STAR GAS CO
				RECEIVED: 09/26/80 JA: TX			
*EXXON CORPORATION							
*8058781	18546	4200331919	103	FULLERTON CLFK UNIT #2829	FULLERTON	28,0	PHILLIPS PETROLEUM C
8058766	20991	4226130474	103	MRS B K EAST 102-F (09486)	RITA (9-85C II A)	100,0	NATURAL GAS PIPELINE
8058835	21569	4216531604	103	ROBERTSON CLFK UNIT #2902	ROBERTSON N (CLFK 7100)	16,0	PHILLIPS PETROLEUM C
8058836	21571	4216531681	103	ROBERTSON CLFK UNIT #7502	ROBERTSON N (CLFK 7100)	9,9	PHILLIPS PETROLEUM C
				RECEIVED: 09/26/80 JA: TX			
*FORA CO							
8058705	14334	4206500000	108	F E PERCIVAL NO 3 (25725)	PANHANDLE WEST	10,0	GETTY OIL CO
8058702	14330	4206500000	108	J L NOEL NO 1 (25723)	PANHANDLE WEST	4,0	GETTY OIL CO
8058703	14332	4206500000	108	J L NOEL NO 3 (25724)	PANHANDLE WEST	1,5	GETTY OIL CO
8058704	14333	4206500000	108	PERCIVAL -A- (00032) NO 2	PANHANDLE CARSON COUNTY	4,0	GETTY OIL CO
				RECEIVED: 09/26/80 JA: TX			
*FOREST OIL CORPORATION							
8058843	21511	4247932531	102	VAQUILLAS RANCH CO LTD NO 2	GATO CREEK FIELD	500,0	E I DU PONT DE NEMOU
				RECEIVED: 09/26/80 JA: TX			
*FRIEMEL & CARPENTER							
8058905	21778	4200331795	103	W T FORD NO 9 83593	FUHRMAN-MASCHO (YATES)	109,8	PHILLIPS PETROLEUM C
				RECEIVED: 09/26/80 JA: TX			
*GALAXY OIL COMPANY							
8058714	15927	4225500000	108	HUBER RILEY I #1- 01669	PANHANDLE FIELD	10,0	J M HUBER CORP
				RECEIVED: 09/26/80 JA: TX			
*GETTY OIL COMPANY							
8058729	17559	4235330708	103	LAKE TRAMMEL UNIT #95	LAKE TRAMMEL W (CANYON)	9,0	WEST LAKE NATURAL GA
8058784	18728	4236500000	103	SOUTHLAND PAPER A #1	CARTHAGE (COTTON VALLEY)	770,0	DELHI GAS PIPELINE C
8058701	14293	4212300000	102	SUCHER GAS UNIT NO 2	SUCHER (LOWER WILCOX)	440,0	TRUCKLINE GAS CO
8058701	14293	4212300000	103	SUCHER GAS UNIT NO 2	SUCHER (LOWER WILCOX)	440,0	TRUCKLINE GAS CO
				RECEIVED: 09/26/80 JA: TX			
*GLENN CUPE							
8058825	21590	4248300000	108	C T PALMER #1	PANHANDLE EAST	12,0	EL PASO NATURAL GAS
				RECEIVED: 09/26/80 JA: TX			
*GREAT WEST OPERATING CO INC							
8058888	22198	4223732624	103	L P MICHEY NO 1 LSE NO 19709	JACK COUNTY REGULAR	0,0	TEXAS UTILITIES FUEL
8058758	21012	4223732302	103	M D DAWKINS A NO 1 #85480	DEWEBER (CONGL)	236,0	NATURAL GAS PIPELINE
				RECEIVED: 09/26/80 JA: TX			
*GULF ENERGY PRODUCING COMPANY							
8058719	17037	4236332137	103	HART RANCH #877-1	MINERAL WELLS N (BIG SAL	216,0	TEXAS UTILITIES FUEL
8058707	14839	4236332078	103	HART RANCH NO 868-1	MINERAL WELLS N (BIG SAL	0,0	
				RECEIVED: 09/26/80 JA: TX			
*GULF MINERALS OPERATING CO							
8058913	21986	4217531299	103	JACK GUMM DRILLING UT #1 WELL #3	ALBRECHT S (F-4)	100,0	UNITED GAS PIPE LINE
				RECEIVED: 09/26/80 JA: TX			
*GULF OIL CORPORATION							
8058901	21756	4239330626	103	CHAMBERS F M #2-65	N W MENDUTA/LOWER DOUGLA	9,0	MICHIGAN WISCONSIN P
8058902	21757	4239330625	103	CHAMBERS J S NO 2-66	N W MENDUTA/LOWER DOUGLA	15,0	MICHIGAN WISCONSIN P
*8058880	21067	4249531097	103	KEYSTONE MULT UNIT NO 9337	KEYSTONE (MOLT)	109,0	CABOT CORP
8058837	21575	4250530545	108	MANTIN-SANCHEZ GU #1 W #1 #75016	J C MANTIN (LOBO)	14,0	TENNESSEE GAS PIPELI
8058838	21576	4250530572	108	MATIAS CUELLAR ET AL NO 1 #74217	UREBENO (LOBO)	8,0	TENNESSEE GAS PIPELI

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JD NO	JA DAT	API NO	SEC	WELL NAME	FIELD NAME	PROD	PURCHASER
8058907	21784	4247531800	103	STATE UN NO 1	WANG-INK S (WOLFCAMP)	21.0	
*H-M OIL CO				RECEIVED: 09/26/80 JA: TX			
8058753	16226	4239131323	103	ELSIE SCHUBERT #1	WILDCAT 5692-5700	0.0	FLORIDA GAS TRANSMIS
8058862	21596	4213133962	103	HERMINIA G ROGERS #1	WILDCAT (3372-77) AKA TH	0.0	VALERO TRANSMISSION
*HNG OIL COMPANY				RECEIVED: 09/26/80 JA: TX			
8058732	17595	4243532158	108	WALLACE 64 #3 82851	SAWYER (CANYON)	1.0	INTRATEX GAS CO
8058733	17597	4243532173	103	WALLACE 77 #4 83257	SAWYER (CANYON)	11.0	INTRATEX GAS CO
8058733	17597	4243532173	108	WALLACE 77 #4 83257	SAWYER (CANYON)	11.0	INTRATEX GAS CO
*HURLEY PETROLEUM CORPORATION				RECEIVED: 09/26/80 JA: TX			
8058752	16186	4236530822	103	ALLIE M MUGG #3-C	BETHANY (TRAVIS PEAK LOW	360.0	TENNESSEE GAS PIPELI
*J A LEONARD				RECEIVED: 09/26/80 JA: TX			
8058730	17565	4205100000	102	COOKSEY NO 1	INEZ JAMESON (NAVARRO A)	9.1	
*J M HUBER CORPURATION				RECEIVED: 09/26/80 JA: TX			
8058839	21578	4223330730	103	PERRY NO 13	PANHANDLE	73.0	COLORADO INTERSTATE
*JOHN L COX				RECEIVED: 09/26/80 JA: TX			
8058807	21308	4246131445	103	ALBERT NO 1 RRC #08067	SPRABERRY (TREND AREA)	10.0	PHILLIPS PETROLEUM C
8058806	21307	4246131468	103	ALICE NO 1 RRC #08040	SPRABERRY (TREND AREA)	8.0	PHILLIPS PETROLEUM C
8058863	21313	4246131420	103	AMACKER 57 #1 RRC #07998	OLD UPLAND (BEND)	25.0	PHILLIPS PETROLEUM C
8058861	21323	4246131428	103	AMERADA-NEAL NO 1 RRC #08000	SPRABERRY (TREND AREA)	10.0	EL PASO NATURAL GAS
8058860	21322	4246131488	103	AMERADA-NEAL NO 2 RRC #08000	SPRABERRY (TREND AREA)	10.0	EL PASO NATURAL GAS
8058805	21306	4238331445	103	CARR 11 NO 1 RRC #08065	SPRABERRY (TREND AREA)	8.0	PHILLIPS PETROLEUM C
8058801	21512	4246131535	103	COWDEN 26 NO 1 RRC #08162	OLD UPLAND (BEND)	25.0	PHILLIPS PETROLEUM C
8058804	21305	4246131548	103	COWDEN 53 NO 1 RRC #08210	SPRABERRY (TREND AREA)	8.0	PHILLIPS PETROLEUM C
8058826	21591	4213533242	103	EDWARDS ESTATE #1 RRC #25703	EDWARDS WEST (CANYON)	2.0	
8058803	21303	4246131425	103	ELAINE #1 RRC #08047	SPRABERRY (TREND AREA)	8.0	PHILLIPS PETROLEUM C
*8058829	21594	4243130713	103	FUSTER #2 RRC #24789	CONGER (PENN)	5.0	VELERO GATHERING CO
*8058815	21595	4243130731	103	FUSTER #3 RRC #24789	CONGER (PENN)	5.0	VALERO GATHERING CO
8058800	21311	4246131423	103	HALFF ESTATE 26 NO 1 RRC #07999	OLD UPLAND (BEND)	8.0	PHILLIPS PETROLEUM C
8058859	21320	4217330993	103	IRMA #1 RRC #25573	SPRABERRY (TREND AREA)	10.0	EL PASO NATURAL GAS
8058866	21316	4231732096	103	MABEE RANCH #1 RRC #25704	LACAFF (DEAN)	10.0	NORTHERN NATURAL GAS
8058865	21315	4231732097	103	MABEE RANCH #2 RRC #25704	LACAFF (DEAN)	10.0	NORTHERN NATURAL GAS
8058864	21314	4231732095	103	MABEE RANCH #3 RRC #25704	LACAFF (DEAN)	10.0	NORTHERN NATURAL GAS
8058858	21319	4217331024	103	MYNL RILEY NO 4 RRC #06423	SPRABERRY (TREND AREA)	7.0	EL PASO NATURAL GAS
8058828	21593	4243130789	103	ROSS FUSTER #1 RRC #25792	CONGER (PENN)	5.0	
8058827	21592	4243130790	103	ROSS FUSTER B #1 RRC #25793	CONGER (PENN)	5.0	
8058799	21310	4232930843	103	SCHARBAUER-BRAUN #1 RRC #25668	PARKS (SPRABERRY)	10.0	MOBIL OIL CORP
8058798	21309	4232930844	103	SCHARBAUER-BRAUN #2 RRC #25668	PARKS (SPRABERRY)	10.0	MOBIL OIL CORP
8058857	21318	4246431388	103	UNIVERSITY 30-B NO 1 RRC #07986	SPRABERRY (TREND AREA)	8.0	EL PASO NATURAL GAS
8058867	21317	4238331394	103	UNIVERSITY 30-B NO 2 RRC #07986	SPRABERRY (TREND AREA)	88.0	EL PASO NATURAL GAS
*JONES CO				RECEIVED: 09/26/80 JA: TX			
8058746	16885	4242931832	103	M G LAM 62 NO 1	LAM (DUFFER)	10.0	WARREN PETROLEUM CO
*KNOX INDUSTRIES INC				RECEIVED: 09/26/80 JA: TX			
8058738	17966	4238331470	103	DIXON #1	SPRABERRY (TREND AREA)	0.0	
8058739	17967	4238331444	103	TURNER C #2	SPRABERRY (TREND AREA)	0.0	NORTHERN NATURAL GAS
*LEAR PETROLEUM EXPLORATION INC				RECEIVED: 09/26/80 JA: TX			
8058779	18493	4239500000	102	J C REAGAN JR #1	CAMP COOLEY	750.0	UNITED TEXAS TRANSMI
*M J BRANNON				RECEIVED: 09/26/80 JA: TX			
8058776	19298	4208331643	103	J T PORTER UNIT #2	BURKETT SW (DUFFER OIL)	18.0	WEST CEN-TEX GAS CO
*MAGNATEX CORP				RECEIVED: 09/26/80 JA: TX			
8058759	21019	4243130748	103	MAHAFFEY #2-2A 040108	CONGER (PENN)	18.3	VALERO TRANSMISSION
*MAY PETROLEUM INC				RECEIVED: 09/26/80 JA: TX			
8058912	21897	4229530729	103	HARRY KING NO 1 (04532)	BRADFORD (CLEVELAND)	55.0	DIAMOND SHAMROCK COR

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JD NO	JA DAT	API NO	SEC	WELL NAME	FIELD NAME	PROD	PURCHASER
*MGF OIL CORP				RECEIVED: 09/26/80 JA: TX			
8058765	20803	4203330543	103	CANON-MATLEY A #1	JO-MILL (SPRABERRY)	18.6	GETTY OIL CO
8058777	19799	4223531436	103	WINTERBOTHAM B NO 2	DOVE CREEK (CANYON-C)	2737.5	CRA
*MITCHELL ENERGY CORPORATION				RECEIVED: 09/26/80 JA: TX			
8058711	15703	4249700000	108	JAMES T FITCH #1 35070	BOUNSVILLE (BEND CONGL G	5.0	NATURAL GAS PIPELINE
8058769	18771	4249731567	103	MICHAEL CLOUGH #1 ID #85605	HIBE-KENT (HAM SAND)	190.0	NATURAL GAS PIPELINE
8058723	17457	4236731746	103	T R GARRETSON #2	BOUNSVILLE (BEND CONGL G	27.0	NATURAL GAS PIPELINE
*MOBIL OIL CORP				RECEIVED: 09/26/80 JA: TX			
8058724	17491	4221932667	103	MAPLE WILSON NO 73	SLAUGHTER	7.0	AMOCO PRODUCTION CO
8058725	17493	4221932669	103	MAPLE WILSON NO 75	SLAUGHTER	10.5	AMOCO PRODUCTION CO
8058726	17496	4221932647	103	MAPLE WILSON NO 79	SLAUGHTER	21.5	AMOCO PRODUCTION CO
8058727	17497	4221932649	103	MAPLE WILSON NO 80	SLAUGHTER	11.5	AMOCO PRODUCTION CO
*MOBIL PROD TEXAS & NEW MEXICO INC				RECEIVED: 09/26/80 JA: TX			
8058840	21463	4240300000	103	BRUNN-MCNINCH EST UNIT NO 2	BROWN - BASSETT (ELLENBU	1825.0	EL PASO NATURAL GAS
8058916	21990	4224900000	108	C F H BLUCHER NO 43-L	TIJERINA-CANALES-BLUCHER	18.0	NATURAL GAS PIPE LIN
8058915	21989	4213131039	108	DUVAL RANCH SEC 201 NO 58	PETRUX (WILCOX 7100)	8.2	TENNESSEE GAS PIPE L
*8058914	21987	4224900000	108	LA GLORIA GAS UT NO 83	LA GLORIA (BROOKS)	16.3	NATURAL GAS PIPE LIN
*MORAN EXPLORATION INC				RECEIVED: 09/26/80 JA: TX			
8058818	21604	4208700000	108	MCDONALD #2	PANHANDLE EAST	3.4	WARREN PETROLEUM CO
8058817	21603	4217900000	108	OMARA #1	PANHANDLE WEST	13.5	EL PASO NATURAL GAS
*MORMAC OIL & GAS CO				RECEIVED: 09/26/80 JA: TX			
8058794	21123	4212731913	102	N C KING NO 2	STUMBERG (OLMOS 4150)	40.0	VALERO TRANSMISSION
*MOSBACHER PRODUCTION CO				RECEIVED: 09/26/80 JA: TX			
8058878	21650	4228730462	103	MRS JOHN CARMEAN ET AL NO 1	GIDDINGS (AUSTIN CHALK)	72.0	CLAJON GAS CO
8058877	21649	4228730536	103	MRS JOHN CARMEAN ET AL NO 3	GIDDINGS (AUSTIN CHALK)	239.0	CLAJON GAS CO
*MURJO OIL & ROYALTY CO				RECEIVED: 09/26/80 JA: TX			
8058680	08795	4236700000	103	LADD-CARR K #4 ID #77570	BRAZOS EAST (CADDO)	91.0	LONE STAR GAS CO
*NATIONAL EXPLORATION COMPANY				RECEIVED: 09/26/80 JA: TX			
8058722	17446	4225530722	103	J P WILBRIGH NO 1	MCCASKILL FIELD	140.0	UNITED GAS PIPE LINE
*NIGAS				RECEIVED: 09/26/80 JA: TX			
8058904	21770	4206530748	103	KEITH #5	PANHANDLE CARSON	98.6	PANHANDLE EASTERN PI
*OWL PETROLEUM CO				RECEIVED: 09/26/80 JA: TX			
8058744	16596	4248131780	102	D S BABCOCK NO 1-C	MENEFEE (FRIO 4375)	90.0	TRANSCONTINENTAL GAS
8058744	16596	4248131780	103	D S BABCOCK NO 1-C	MENEFEE (FRIO 4375)	90.0	TRANSCONTINENTAL GAS
*PANHANDLE PRODUCING COMPANY				RECEIVED: 09/26/80 JA: TX			
8058728	17538	4206500000	108	VIDA LEWIS A-1	PANHANDLE CARSON COUNTY	0.3	GETTY OIL CO
*PARKER & PARSLEY INC				RECEIVED: 09/26/80 JA: TX			
8058747	16891	4232930845	103	GOLLADAY D NO 1	SPRAGERRY (TREND AREA)	15.0	PHILLIPS PETROLEUM C
8058748	16892	4217331000	103	HUTCHISON NO 1	SPRAGERRY (TREND AREA)	15.0	PHILLIPS PETROLEUM C
*PENNZOIL PRODUCING COMPANY				RECEIVED: 09/26/80 JA: TX			
8058767	20997	4235531249	103	E A KINSEY NO B-3-D	AGUA DULCE (KINSEY 6400)	190.0	UNITED GAS PIPE LINE
*PETRO-LEWIS CORPORATION				RECEIVED: 09/26/80 JA: TX			
8058694	13500	4210500000	108	J W HENDERSON #3	OZONA (CANYON SAND)	12.6	NORTHERN NATURAL GAS
*PETRO-SEARCH INC				RECEIVED: 09/26/80 JA: TX			
8058693	13256	4223300000	108	WHITTENBURG L #3 (1-117-01259-9)	PANHANDLE	1.7	PHILLIPS PETROLEUM C
*PETROLEUM MANAGEMENT INC				RECEIVED: 09/26/80 JA: TX			
8058697	15668	4248900000	102	YTURRIA CATTLE CO #B-1	LA SARA N E	120.0	LA GLORIA OIL & GAS
8058698	15669	4248900000	102	YTURRIA CATTLE CO #B-3	LA SARA N E (7400)	250.0	LA GLORIA OIL & GAS
*PHILLIPS PETROLEUM COMPANY				RECEIVED: 09/26/80 JA: TX			
8058699	13958	4200304671	108	(14536) TEX UNIV - M #4	FULLERTON SOUTH (WOLFCAM	18.2	EL PASO NATURAL GAS
8058795	21238	4232901406	108	(24027) MCALISTER-A #1	AZALEA (DEVONIAN)	23.0	NORTHERN NATURAL GAS
*8058709	15288	4234100000	108	BERAN NO 1	WEST PANHANDLE	5.0	EL PASO NATURAL GAS
8058749	16930	4246530320	103	CAUTHORN-G NO 1 (84357)	VINEGARONE (STRAWN)	1000.0	NORTHERN NATURAL GAS

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JD NO	JA DAT	API NO	SEC	WELL NAME	FIELD NAME	PROD	PURCHASER
8058745	16721	42421302310	103	CRAIG K NO 2	COLDWATER CREEK MARMATON	45.0	
8058715	15940	4223300000	108	JOHNSON RANCH A NO 82	W PANHANDLE	1.0	PANHANDLE EASTERN PI
8058692	13132	4217900000	108	PHIL-PAMPA UNIT NO 01-05	PANHANDLE GRAY	8.4	GETTY OIL CO
8058691	12913	4217900000	108	PHIL-PAMPA UNIT NO 58-04	PANHANDLE GRAY	4.0	GETTY OIL CO
8058882	21674	4217900000	108	PHIL-PAMPA UNIT 11-11	PANHANDLE GRAY	18.0	GETTY OIL CO
8058881	21673	4217900000	108	PHIL-PAMPA UNIT 3-4	PANHANDLE GRAY	1.0	GETTY OIL CO
*8058710	15300	4223300000	108	THOMPSON E NO 2	PANHANDLE HUTCHINSON	0.1	EL PASO NATURAL GAS
8058751	16154	4234130523	103	VILAS NO 2	W PANHANDLE	92.0	EL PASO NATURAL GAS
-REALITOS II EXPLORATION PROGRAM				RECEIVED: 09/26/80 JA: TX			
8058736	17799	4223931451	102	MAURITZ NO 1	M & C SURVEY A-235	183.0	TEXAS EASTERN TRANSM
-RIAL OIL COMPANY				RECEIVED: 09/26/80 JA: TX			
8058650	21408	4237132877	103	BELDING STATE 29 #1 #25650	BELDING E (YATES)	1.0	
8058652	21412	4228730512	103	M MERTINK #1 #12718	GIDDINGS (AUSTIN CHALK)	5.8	
8058649	21407	4231732092	103	REED #1 62617	ACKERLY (DEAN SAND)	22.3	TEXACO INC
8058648	21406	4211531283	103	RUBY LEWIS #1 62563	ACKERLY (DEAN SAND)	11.1	TEXACO INC
8058651	21409	4200331869	103	UNIVERSITY 4 #1 #25558	MAK (SPRABERRY)	18.0	
-ROBERT M WYNNE				RECEIVED: 09/26/80 JA: TX			
8058808	21610	4210500000	103	UNIVERSITY 24 #1	FARMER (SAN ANDRES)	1.0	BIG LAKE GAS CORP
-ROCKWOOD RESOURCES INC				RECEIVED: 09/26/80 JA: TX			
8058720	17080	4248131738	102	ROCKWOOD-KAINER #1	HUTCHINS S W (FRIO 6020)	60.0	TENNESSEE GAS PIPELI
8058743	18215	4249131789	102	TUCKER NO 1 85158	MENEFEE (FRIO 5540)	0.0	TRANSCONTINENTAL GAS
-SANCHEZ-OBRIEN OIL & GAS CORP				RECEIVED: 09/26/80 JA: TX			
8058737	17952	4235531436	102	CORZINE GAS UNIT NO 1	BOBBY LYNN KING (VXBG 81	500.0	UNITED TEXAS TRANSMI
-SIMPSON-MANN OIL PRODUCERS				RECEIVED: 09/26/80 JA: TX			
8058903	21766	4223531433	103	J R SCOTT EST #1	SPRABERRY (TREND AREA)	90.0	NORTHERN NATURAL GAS
-SOUTHLAND ROYALTY CO				RECEIVED: 09/26/80 JA: TX			
8058796	21239	4210332186	103	BRYANT 20 #1	CRAWAR NORTH	75.0	
8058853	21417	4210532516	103	TODD 53A #1	WYATT	75.0	PERMIAN CORP
-SOUTHWESTERN ELECTRIC POWER CO				RECEIVED: 09/26/80 JA: TX			
*8058721	17285	4236500000	103	J T THOMEY #1	CARTHAGE (COTTON VALLEY)	182.0	TEXAS EASTERN TRANSM
-STERLING CO				RECEIVED: 09/26/80 JA: TX			
*8058742	18085	4241300000	103	HERTZ #1-75550	HERTZ-HAMILL (STRAWN)	250.0	LONE STAR GAS CO
-SUN OIL COMPANY (DELAWARE)				RECEIVED: 09/26/80 JA: TX			
8058754	16433	4227331283	103	A T CANALES NO 54	TIJERINA-CANALES-BLUCHER	305.0	FLORIDA GAS TRANSMIS
8058775	19266	4223732764	103	DURHAM A-3 UNIT NO 4	BOUNSVILLE (BEND CONGLOM	47.0	LONE STAR GAS CO
8058740	17999	4221131075	103	J C STUDER NO 2	HUMPHREYS	423.0	PIONEER NATURAL GAS
8058695	13588	4242700000	108	OLIVARES F G UNIT NO 3	NORTH SUN	11.0	
8058909	21802	4236530974	103	SALLIE J NEAL C #4	CARTHAGE	1022.0	TENNESSEE GAS PIPELI
-SUNNYBROOK OIL & GAS INC				RECEIVED: 09/26/80 JA: TX			
8058908	21798	4240100000	108	J P SNEED MRC ID #22899	MINDEN TRAVIS PEAK	12.0	TEXAS UTILITIES FUEL
-TAYLOR OPERATING COMPANY				RECEIVED: 09/26/80 JA: TX			
8058765	20440	4223700000	103	ORA PORTER #2 (85194)	BOUNSVILLE (BEND CONGL G	657.0	LONE STAR GAS CO
-TENNECO OIL COMPANY				RECEIVED: 09/26/80 JA: TX			
8058773	19220	4217930697	103	COMBS 32A	PANHANDLE GRAY COUNTY	12.0	PHILLIPS PETROLEUM C
8058689	07273	4250131482	103	J E WRIGHT #17	PRENTICE (6700) CLEARFOR	3.5	AMOCO PRODUCTION CO
-TEXACO INC				RECEIVED: 09/26/80 JA: TX			
8058819	21607	4210532494	103	A R KINCAID TRUST #7	OZONA (CANYON SAND)	173.0	NORTHERN NATURAL GAS
8058687	04300	4217900000	108	J P CUNNINGHAM #8	PANHANDLE EAST	4.0	PIONEER NATURAL GAS
-TEXAS OIL & GAS CORP				RECEIVED: 09/26/80 JA: TX			
8058735	17644	4242330395	103	MELTON #1	OVERTON (MAYNESVILLE)	0.0	UNITED GAS PIPE LINE
8058822	21582	4223500000	103	WINTERBOTHAM A #2	DOVE CREEK (CANYON D)	219.0	CRA INC
-TODDCO PETROLEUM INC				RECEIVED: 09/26/80 JA: TX			

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JD NO	JA DAT	API NO	SEC	WELL NAME	FIELD NAME	PROD	PURCHASER
8058679	08593	4223300000	108	DANCIGER-CHEATHAM #1	WEST PANHANDLE	14.0	PHILLIPS PETROLEUM C
-TRINITY OIL & GAS CORP				RECEIVED: 09/26/80 JA: TX			
*8058734	17838	4213331746	103	BAR H BAR #2 #15424	WILDCAT	5.0	REISS PETROLEUM INC
-TUCKER DRILLING COMPANY INC				RECEIVED: 09/26/80 JA: TX			
8058770	18797	4243532151	108	DUNBAR #15	SAWYER (CANYON)	15.8	EL PASO NATURAL GAS
-U B OPERATING INC				RECEIVED: 09/26/80 JA: TX			
8058683	11614	4228730421	102	BONNIE #1	GIDDINGS (AUSTIN CHALK-G	0.0	PGP GAS PRODUCTS INC
-U S RESOURCES INC				RECEIVED: 09/26/80 JA: TX			
8058706	14495	4228730521	102	ANNE #1	GIDDINGS (AUSTIN CHALK -	720.0	PGP GAS PRODUCTS INC
8058684	11758	4228730468	102	RUTHIE #1	GIDDINGS (AUSTIN CHALK G	700.0	PGP GAS PRODUCTS INC
-UNION OIL COMPANY OF CALIF				RECEIVED: 09/26/80 JA: TX			
8058712	15789	4236530705	103	FRED KYLE #2 79862	CARTHAGE (COTTON VALLEY)	438.0	WESTERN GAS CORP
*8058713	15790	4236530706	103	J F MANCUCK #2	CARTHAGE (COTTON VALLEY)	438.0	WESTERN GAS CORP
-VENUS OIL COMPANY				RECEIVED: 09/26/80 JA: TX			
8058708	15024	4235500000	103	SANDERS B #5	BALDWIN (2830 LAGARTO)	0.0	DELHI GAS PIPELINE C
-WARREN PETR CO A DIV OF GULF OIL CO				RECEIVED: 09/26/80 JA: TX			
8058760	21020	4210332095	103	M L BARNSLEY C NO 10	LEA (SAN ANDRES)	3.0	EL PASO NATURAL GAS
8058756	21023	4210332142	103	W N WADDELL ET AL TR A NO 1134	SAND HILLS (JUDKINS)	68.0	EL PASO NATURAL GAS
8058761	21022	4210332141	103	W N WADDELL ET AL TR A NO 1135	SAND HILLS (JUDKINS)	10.0	EL PASO NATURAL GAS
-WAY & MILLS				RECEIVED: 09/26/80 JA: TX			
8058821	21609	4238331454	103	UNIVERSITY 11 #16	FARMER (SAN ANDRES)	13.5	NORTHERN NATURAL GAS
8058768	21006	4238331476	103	UNIVERSITY 98 #2	FARMER (SAN ANDRES)	35.0	NORTHERN NATURAL GAS
8058820	21608	4238331575	103	UNIVERSITY 98 #3	FARMER (SAN ANDRES)	30.0	NORTHERN NATURAL GAS
-WILLIAM C DOENGES				RECEIVED: 09/26/80 JA: TX			
8058816	21596	4223300000	108	RIGSBY 1 RC 27209	PANHANDLE WEST - RED CAV	15.8	PHILLIPS PETROLEUM C
-WOOD MCSHANE & THAMS				RECEIVED: 09/26/80 JA: TX			
8058789	21037	4216531231	103	ALEXANDER #2	BLOCAK A-34 (YATES)	149.7	EL PASO NATURAL GAS
8058778	18405	4216531278	108	MAYO B #1 MRC #75066	BLOCK A-34 (YATES)	0.3	EL PASO NATURAL GAS
8058788	21036	4216531234	103	SIMPSON #2 RRC NO 25318	BLOCK A-34 (YATES)	17.5	EL PASO NATURAL GAS
-WRIGHT COWDEN JR				RECEIVED: 09/26/80 JA: TX			
*8058680	12409	4222130566	102	COOK UNIT #1	LIPAN (MARBLE FALLS)	108.0	NORTHERN GAS PRODUCT

OTHER PURCHASERS VOLUME NO 296

8058657	MUSTANG GAS PRODUCTS CO
8058658	MUSTANG GAS PRODUCTS CO
8058668	CHASE GATHERING SYSTEMS INC
8058675	PANHANDLE EASTERN PIPE LINE COMPANY
8058686	TEXAS UTILITIES FUEL CO
8058696	PANHANDLE EASTERN PIPELINE CO
8058703	TEXAS EASTERN TRANSMISSION CO
8058709	PANHANDLE EASTERN PIPELINE CO
8058710	PANHANDLE EASTERN PIPELINE CO
8058715	DELHI GAS CORP
8058721	SOUTHWESTERN ELECTRIC POWER CO
8058742	REISS PETROLEUM INC
8058762	TEXAS GAS CO
8058781	AMOCO PRODUCTION CO
8058815	TEXAS UTILITIES FUEL CO
8058829	TEXAS UTILITIES FUEL CO
8058850	COLTEX CORP
8058855	COLTEX CORP
8058858	COLTEX CORP
8058871	EL PASO NATURAL GAS CO
8058875	EL PASO NATURAL GAS CO
8058876	EL PASO NATURAL GAS CO
8058880	SID RICHARDSON CARBON & GASOLINE CO
8058911	TRANSCONTINENTAL GAS P L CORP

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" after the section code. Estimated annual production (PROD) is in million cubic feet (MMcf). An (*) preceding the control number indicates that other purchasers are listed at the end of the notice.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before November 4, 1980.

Please reference the FERC Control Number (JD No) in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32449 Filed 10-16-80; 8:45 am]

BILLING CODE 6450-85-M

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Notice of Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

October 9, 1980.

JD NO	API NO	SEC	WELL CAT	FIELD NAME	PROD	PURCHASER
COLORADO OIL & GAS CONSERVATION COMMISSION						
*AMOCO PRODUCTION CO	0500506372	103	RECEIVED: 09/30/80	CHAMPLIN 569 AMOCO C #1	50.0	SUN GAS CO
*BYRON OIL INDUSTRIES INC			RECEIVED: 09/30/80	BYRON-JEAN JACOBUCCI #4	3.7	NORTHERN NATURAL GAS
80-244	0512309829	103		SPINDLE	10.3	NORTHERN NATURAL GAS
80-242	0500107529	103		BYRON-HANK DEGENMART #7	10.8	NORTHERN NATURAL GAS
80-245	0500107520	103		SPINDLE FIELD MATTENBERG	10.8	NORTHERN NATURAL GAS
80-243	0500107519	103		BYRON-QUEBEC-NORTH INV LTD #4	10.8	NORTHERN NATURAL GAS
*FUEL RESOURCES DEVELOPMENT CO	0500450000	108	RECEIVED: 09/30/80	SPINDLE FIELD MATTENBERG		
79-466-B				CARBUNERA	0.0	WESTERN BLUFF GAS CO
80-752	0512506255	108		SCHRAMM	19.0	
80-755	0512506241	108		SMOUT	14.0	
80-750	0512506222	108		SCHRAMM	14.0	
80-749	0512506248	108		BUCKBOARD	19.0	
80-758	0512506231	108		SCHRAMM	12.0	KANSAS-NEBRASKA NATU
80-753	0512506223	108		BUCKBOARD	17.0	
80-754	0512506262	108		WHISPER	18.0	
*KENAI OIL AND GAS INC			RECEIVED: 09/30/80	JAI CO		
80-258	0500107450	103		SINGLETON #12-12	105.0	KOCH HYDROCARBON CO
*MACEY & MERSHON OIL INC			RECEIVED: 09/30/80	JAI CO		
80-273	0512309920	103		URSULA #2	73.0	PANHANDLE EASTERN PI
*MESA PETROLEUM			RECEIVED: 09/30/80	JAI CO		
80-286	0512506412	102		CONRAD #1-30	60.0	CITIES SERVICE GAS C
80-289	0512506411	102		CONRAD #1-31	60.0	CITIES SERVICE GAS C
80-270	0512506410	102		CONRAD #1-32	60.0	CITIES SERVICE GAS C
*MGF OIL CORP			RECEIVED: 09/30/80	JAI CO		
80-275	0512309948	105		MALLEA 34-21	280.0	PANHANDLE EASTERN PI
*MOUNTAIN PETROLEUM CORPORATION			RECEIVED: 09/30/80	JAI CO		
80-260	0512506103	108		ALLISON 1-32	18.0	KANSAS-NEBRASKA NATU
80-246	0512506198	108		FRERICHS 1-30	0.5	KANSAS-NEBRASKA NATU
*NATOMAS NORTH AMERICA INC			RECEIVED: 09/30/80	JAI CO		
80-263	0506706264	102		GEARHART #1-8	0.0	
80-264	0506706243	102		PINE RIVER UNIT NU 1-30	0.0	
80-259	0506706235	102		STATE #1-36	0.0	
*PENROSE ZACHARY OPERATING CO			RECEIVED: 09/30/80	JAI CO		
80-265	0506706275	103		JAQUES #4	276.0	EL PASO NATURAL GAS
KANSAS CORPORATION COMMISSION				IGNACIO-BLANCO		
*ALBERT A THORNBROUGH			RECEIVED: 09/29/80	JAI KS		
K-80-0653	1507500000	108		MCDONALD #1 13-25S-39W	12.0	COLORADO INTERSTATE

BILLING CODE 6450-85-M

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JD NO	JA DAT	API NO	SEC T RGE	WELL NAME	FIELD NAME	PROD	PURCHASER
*ANADARKO PRODUCTION COMPANY				RECEIVED: 09/29/80 JA: KS			
8059175	K-80-0450	1517520453	102	CUSGROVE A #3	SHUCK FIELD	106,0	CIMARRON-QUINQUE STS
*BEREN CORPORATION				RECEIVED: 09/29/80 JA: KS			
8059184	K-80-0701	1509720585	102	DEHAVEN #1	EMMA	195,0	PANHANDLE EASTERN PI
8059183	K-80-0699	1509720546	102	EMMA #1	EMMA	111,0	PANHANDLE EASTERN PI
8059189	K-80-0679	1509320642	103	FLINTJER #1	PANOMA	119,0	
8059186	K-80-0702	1509720581	102	HEALY #1	EMMA	24,0	PANHANDLE EASTERN PI
8059188	K-80-0678	1509320649	103	KRUPP #1	PANOMA	30,0	
*DIAMOND SHAMROCK CORPORATION				RECEIVED: 09/29/80 JA: KS			
8059194	K-80-0608	1511920408	103	OTTO FELDMAN NO 3		15,0	PANHANDLE EASTERN PI
*F G HOLL				RECEIVED: 09/29/80 JA: KS			
8059182	K-80-0659	1504720243	108	BRITTON B NO 1	WAYNE NORTH	2,6	REPUBLIC NATURAL GAS
8059181	K-80-0658	1504700000	108	CAMPBELL B NO 1	ENLOW EXT	8,0	REPUBLIC NATURAL GAS
8059179	K-80-0654-A	1504720423	103	MC BURNEY NO 2-22	WAYNE NORTH	40,0	REPUBLIC NATURAL GAS
8059180	K-80-0657	1504720352	103	MILLER NO 1-13	ENLOW EXT	20,0	REPUBLIC NATURAL GAS
*GETTY OIL COMPANY				RECEIVED: 09/29/80 JA: KS			
8059172	K-80-0619	1504700561	108	EMMA SMITH NO 1	EDSTAFF FIELD	15,6	NORTHERN NATURAL GAS
*LADD PETROLEUM CORPORATION				RECEIVED: 09/29/80 JA: KS			
8059187	K-80-0676	1507500000	108	MCU 1331	GRADSHAW	9,0	KANSAS-NEBRASKA NATU
*LEE BANKS				RECEIVED: 09/29/80 JA: KS			
8059185	K-80-0542	1509720557	102	HEINZE #1	SE JOY STATION	144,0	KANSAS POWER & LIGHT
*MCCOY PETROLEUM CORP				RECEIVED: 09/29/80 JA: KS			
*8059190	K-80-0680	1507720581	103	CRAMER B #1	SPIVEY-GRABS	0,0	PANHANDLE EASTERN PI
*8059191	K-80-0681	1507720602	103	WILLIAMS D #1	SPIVEY-GRABS	18,0	PANHANDLE EASTERN PI
*MOBIL OIL CORP				RECEIVED: 09/29/80 JA: KS			
8059171	K-80-0611	1512920429	103	CONTINENTAL ASSURANCE CO UT #1	PANOMA	70,0	NORTHERN NATURAL GAS
*OX BOW GAS CO				RECEIVED: 09/29/80 JA: KS			
8059196	K-80-0610	1520520427	108	MOLDER #2	NE1/4 N/W1/4 S1 T30 R14E	3,7	UNION GAS CO
8059195	K-80-0609	1520520674	108	MOLDER #3	SE1/2 SE1/4 S1 T 30 R14E	0,8	UNION GAS CO
*QUINQUE OIL & GAS PRODUCING CO				RECEIVED: 09/29/80 JA: KS			
8059177	K-80-0652	1511920357	103	ADAMS #1-4	ADAMS RANCH WILDCAT	81,9	
8059176	K-80-0651	1511920383	103	ADAMS #1-8	ADAMS RANCH WILDCAT	91,1	
*RAYMOND OIL COMPANY INC				RECEIVED: 09/29/80 JA: KS			
8059193	K-80-0683	1500720939	103	CARR A #1	DEERMEAD	100,0	CITIES SERVICE GAS C
8059192	K-80-0682	1500720935	103	CLINE #1	DEERMEAD	100,0	CITIES SERVICE GAS C
*TEXAS OIL & GAS CORP				RECEIVED: 09/29/80 JA: KS			
8059174	K-80-0622	1500320334	103	DAISY HALL #1		670,0	DELMI CORP
*WOOLSEY PETROLEUM CORP				RECEIVED: 09/29/80 JA: KS			
8059173	K-80-0620	1515120670	103	LAWTON #1	PRATT	36,5	CENTRAL STATES GAS C

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OKLAHOMA CORPORATION COMMISSION

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*ANDOVER OIL COMPANY				RECEIVED: 09/29/80 JA: OK			
8059072	05361	3504721601	103	KLADIK #22-1	SOUNER TREND	9,0	PHILLIPS PETROLEUM C
8059044	05397	3501721280	103	ROTHER #2-1	WILDCAT	185,0	DELMI GAS PIPELINE C
*ARTHUR FINSTON				RECEIVED: 09/29/80 JA: OK			
8059083	05212	3508300000	103	ALLISON NO 1	EAST GUTHRIE LAKE	400,0	CITIES SERVICE GAS C
*ASHLAND EXPLORATION INC				RECEIVED: 09/29/80 JA: OK			
8059077	03009	3504320476	108	HUYT 2-33	LENORA SW	13,4	MICHIGAN-WISCONSIN P
*CHAMPLIN EXPLORATION INC				RECEIVED: 09/29/80 JA: OK			
8059052	05003	3504721859	103	MCCLURG-GILLESPIE #1	SOUNER TREND	16,9	PANHANDLE EASTERN PI
*DAVIS OIL COMPANY				RECEIVED: 09/29/80 JA: OK			

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JD NO	JA DAT	API NO	SEC T RGE	WELL NAME	FIELD NAME	PROD	PURCHASER
8059066	05457	3501721239	103	MANSKA NO 1	NORTH FORK	350,0	PHILLIPS PETROLEUM C
8059067	05456	3501721411	103	SUMMER NO 1	NORTH FORK	300,0	PHILLIPS PETROLEUM C
8059049	05323	3507322280	103	YOST #1	WILDCAT	260,0	CITIES SERVICE GAS C
*DICK BUGERT INC				RECEIVED: 09/29/80 JA: OK			
8059018	05292	3504700000	103	CLARK #1-6	SOUNER TREND	250,0	UNION TEXAS PETROLEU
8059017	05293	3504700000	103	DRAGOUN #1-17	SOUNER TREND	250,0	UNION TEXAS PETROLEU
8059071	05285	3507322346	103	ELIZABETH #1-14	SOUNER TREND	140,0	CONOCO INC
8059068	05444	3504700000	103	FELBER 1-7	SOUNER TREND	75,0	UNION TEXAS PETROLEU
8059070	05291	3504721898	103	LILLIAN #1-18	SOUNER TREND	150,0	UNION TEXAS PETROLEU
*EDWIN L COX				RECEIVED: 09/29/80 JA: OK			
8059026	03985	3513921176	103	CARTHAGE I UNIT - CB-6	CARTHAGE	60,0	PHILLIPS PETROLEUM C
8059027	02292	3513900000	103	CARTHAGE 1 UNIT - CB-5	CARTHAGE	60,0	PHILLIPS PETROLEUM C
8059028	02291	3513900000	103	CARTHAGE 1 UNIT - CG-5	CARTHAGE	60,0	PHILLIPS PETROLEUM C
*ENNEX PRODUCTION COMPANY				RECEIVED: 09/29/80 JA: OK			
8059069	05427	3501721349	103	SMALL #2	EAST GEARY	474,0	DELMI GAS PIPELINE C
*F C D LTD				RECEIVED: 09/29/80 JA: OK			
8059019	05387	3508320225	103	MORITZ A-1	W LAMIE	0,0	EASON OIL CO
*F M BUXTON				RECEIVED: 09/29/80 JA: OK			
8059051	05313	3508300000	103	FOX NO 1	SOUNER TREND	110,0	CONOCO INC
*MADSUN PETROLEUM CORP				RECEIVED: 09/29/80 JA: OK			
8059055	04715	3505120644	103	NEVIUS 1-15	CHITWOOD	75,0	MOBIL OIL CO
*MAMM PRODUCTION CO				RECEIVED: 09/29/80 JA: OK			
8059020	05407	3508321191	103	E CASSADY #1	MARSHALL	36,5	EASON OIL CO
8059032	05408	3508321183	103	O HAUGHERTY #1	MARSHALL	36,5	EASON OIL CO
8059029	05406	3508321099	103	POTTER-CABTEEL #1	MARSHALL	36,5	EASON OIL CO
*HARPER OIL COMPANY				RECEIVED: 09/29/80 JA: OK			
8059061	05463	3508321267	103	JOHN #1	S LUCIEN	18,0	EASON OIL CO
8059060	05464	3508321210	103	MAE #2	WILDCAT	10,0	EASON OIL CO
*HELMERICH & PAYNE INC				RECEIVED: 09/29/80 JA: OK			
8059081	05395	3501120972	103	GARRETT NO 1-16	S E THOMAS	274,0	MICHIGAN WISCONSIN P
*HUNT ENERGY CORPURATION ET AL				RECEIVED: 09/29/80 JA: OK			
8059047	05324	3501520701	103	GRIFFIN NO 1	UNNAMED	274,0	MICHIGAN WISCONSIN P
*JET OIL COMPANY				RECEIVED: 09/29/80 JA: OK			
8059074	05261	3508320642	103	ANNA PHIESS #1	S E RUSSELL	5,0	SERVICE DRILLING CO
*JOHN A TAYLOR				RECEIVED: 09/29/80 JA: OK			
8059034	05240	3512920227	103	ELLIS 1-34	W GRAND	475,0	DELMI GAS PIPELINE C
8059035	05233	3508120871	103	WATTS 1-27	E PRAGUE	365,0	SOUTHWEST GATHERING
*JONES & PELLOW OIL CO				RECEIVED: 09/29/80 JA: OK			
8059090	05411	3508120769	103	GRANT #22-1		365,0	SERVICE DRILLING CO
8059036	05436	3501921919	103	MONSON #35-4		60,0	AMINOIL USA INC
*K P EXPLORATION INC				RECEIVED: 09/29/80 JA: OK			
8059023	00962	3513921150	102	WHISENANT NO 1-3		1080,0	NATURAL GAS PIPELINE
8059024	00978	3513921122	102	WRIGHT NO 1-33 (CHESTER)		72,0	NATURAL GAS PIPELINE
8059025	00980	3513921122	102	WRIGHT NO 1-33 (UPPER MORRO)		360,0	NATURAL GAS PIPELINE
*KAISER-FRANCIS OIL COMPANY				RECEIVED: 09/29/80 JA: OK			
8059019	03951	3501720901	102	CAMPBELL #1	E LOOKEBA	274,0	ARKANSAS-LOUISIANA G
8059086	04694	3505120717	103	HUNST #1	WATUNGA-CHICKASHA TREND	75,0	ARKANSAS LOUISIANA G
8059082	05221	3505920853	108	RADER NO 1	MOCANE-LAVERNE GAS	8,6	NORTHERN NATURAL GAS
8059053	04687	3505120759	103	WHITING #1	S E CHICKASHA	365,0	MISSISSIPPI RIVER TR
8059087	04687	3505120759	102	WHITING #1	S E CHICKASHA	365,0	MISSISSIPPI RIVER TR
*L G WILLIAMS OIL COMPANY INC				RECEIVED: 09/29/80 JA: OK			
8059059	05465	3501721306	103	KUNNEMAN #32-2	NORTH CONCHO	0,0	PHILLIPS PETROLEUM C

JOB NO	DATE	API NO	SEC T R	WELL NAME	FIELD NAME	PROD	PURCHASER
8059058	05466	3501721233	103	LAMB #19-4	YUKON	0,0	PHILLIPS PETROLEUM C
8059057	05468	3501721218	103	MORRIS #15-1	NW RICHLAND	0,0	PHILLIPS PETROLEUM C
8059048	05331	3501721525	103	ROTHER #29-1	NORTH CONCHO	50,0	PHILLIPS PETROLEUM C
=LADD PETROLEUM CORPORATION				RECEIVED: 09/29/80 JA: OK			
8059085	04983	3505120827	103	EISENHOUR NO 1	WEST MINCO	684,4	MICHIGAN-WISCONSIN P
=MAPCO PRODUCTION COMPANY				RECEIVED: 09/29/80 JA: OK			
8059010		3504520781	103	GIBBS NO 1	SHATTUCK SW	182,5	TRANSWESTERN PIPELIN
=MAY PETROLEUM INC				RECEIVED: 09/29/80 JA: OK			
8059043	05412	3515320913	103	CHENOWETH #1 (153-56009)	SHARON WEST	36,0	PRODUCERS GAS CO
=MID-REGION OIL & GAS INC				RECEIVED: 09/29/80 JA: OK			
8059045	05381	3511121841	103	GOLDIE NO 1	HECTORVILLE	31,0	PHILLIPS PETROLEUM C
=MONSANTO COMPANY				RECEIVED: 09/29/80 JA: OK			
8059011	05401	3504520770	103	MORAN NO 1	S E MARMON	167,0	PANHANDLE EASTERN PI
=OIL INVESTMENT CO				RECEIVED: 09/29/80 JA: OK			
8059021	02933	3504720793	108	FRANCIS 9 NO 1	SOONER TREND	12,0	PHILLIPS PETROLEUM C
8059022	02912	3507321596	108	VIETH 27 NO 1	SOONER TREND	8,0	PHILLIPS PETROLEUM C
=OKT DEVELOPMENT INC				RECEIVED: 09/29/80 JA: OK			
8059078	02837	3506320716	108	MEADORS 1-26	E LAMAR	9,0	OKLAHOMA GAS & ELECT
=PAYNE INC				RECEIVED: 09/29/80 JA: OK			
8059037	05410	3508321120	103	KENNETH S PRITCHETT #2	N W RUSSELL	14,0	EASON OIL CO
=PETROLEUM INC				RECEIVED: 09/29/80 JA: OK			
8059050	05309	3508720430	103	JOHNSON L #1	S W COLE	20,0	SUN GAS CO
=PHILLIPS PETROLEUM COMPANY				RECEIVED: 09/29/80 JA: OK			
8059041	05424	3501721257	103	BOHLMANN B #1	N PIEDMONT	0,0	PANHANDLE EASTERN PI
8059042	05423	3501721242	103	BOMHOFF B #1	N CONCHO	0,0	PANHANDLE EASTERN PI
8059073	05260	3501720394	103	CROSE A #1	PIEDMONT	0,0	PANHANDLE EASTERN PI
8059040	05425	3501720681	103	DANNEMI D #1	N W PIEDMONT	0,0	OKLAHOMA GAS & ELECT
8059075	05146	3500700000	103	JOHNSON DA NO 1	S COMO(MISS-CHESTER)	95,0	EL PASO NATURAL GAS
8059062	05462	3513900000	108	LORETTA #1	GUYMON HUGOTON	20,0	PANHANDLE EASTERN PI
8059063	05461	3513900000	108	OLIVE NO 1	GUYMON HUGOTON	14,4	PANHANDLE EASTERN PI
8059046	05359	3501721204	103	ZUM MALLEN B #1		0,0	PANHANDLE EASTERN PI
=RICKS EXPLORATION CO				RECEIVED: 09/29/80 JA: OK			
8059030	02217	3509321407	103	FRANTZ #29-A	ORIENTA N	10,0	UNION TEXAS PETROLEU
8059029	02226	3500302398	108	MARLEY #2-A	CHANEY DELL	12,0	UNION TEXAS PETROLEU
=ROBERT E EBERLY SR				RECEIVED: 09/29/80 JA: OK			
8059039	05432	3501500000	103	EBERLY & MEADE DOLCH #1-11	N VERDUN	730,0	PUBLIC SERVICE CO OF
8059080	05398	3501100000	103	EBERLY & MEADE NEELY #1-10	SQUAW CREEK	550,0	MICHIGAN WISCONSIN P
=SCARTH OIL & GAS CO				RECEIVED: 09/29/80 JA: OK			
8059088	04080	3504320972	103	STAUB-MARTINSEN NO 1	LENORA	547,5	MICHIGAN WISCONSIN P
=SEARCH DRILLING CO				RECEIVED: 09/29/80 JA: OK			
8059033	05232	3507216370	103	FICKLE #1	MUCANE-LAVERNE	284,0	
8059038	05434	3500721688	103	FLORIS TOWNSITE #1-29A (REENTRY)	FURGAN	104,0	
=SOUTHPORT EXPLORATION INC				RECEIVED: 09/29/80 JA: OK			
8059013	05393	3515320975	103	WEIR NO 1-15	NORTH VICI	91,0	NORTHERN NATURAL GAS
=TEXACO INC				RECEIVED: 09/29/80 JA: OK			
8059076	04680	3507300000	102	C M SCHRUEDER NO 1	(SILVER LODE PROSPECT)	125,0	PHILLIPS PETROLEUM C
=TOWER OIL AND GAS COMPANY INC				RECEIVED: 09/29/80 JA: OK			
8059079	05400	3504722070	103	SUMMERDUN #1	SOONER TREND	127,8	PANHANDLE EASTERN PI
=TRIGG DRILLING COMPANY INC				RECEIVED: 09/29/80 JA: OK			
8059084	05002	3501120997	103	WOODMAN #1	WATONGA	600,0	DELHI GAS PIPELINE C
=UNIVERSAL RESOURCES CORPORATION				RECEIVED: 09/29/80 JA: OK			
8059056	03938	3501120443	108	LAMLE A-1-2	UKEENE NORTHWEST	18,0	DELHI GAS PIPELINE C

JOB NO	DATE	API NO	SEC T R	WELL NAME	FIELD NAME	PROD	PURCHASER
=VIERSEN & COCHRAN				RECEIVED: 09/29/80 JA: OK			
8059089	05417	3515320995	103	HAMILTON #1-27	WEST VICI	180,0	PANHANDLE EASTERN PI
=VULCAN ENERGY CORP				RECEIVED: 09/29/80 JA: OK			
8059012	05394	3507322269	103	GLADSTONE #1	SOONER TREND	130,0	PHILLIPS PETROLEUM C
=VULCAN OIL & GAS CORPORATION				RECEIVED: 09/29/80 JA: OK			
8059054	05107	3511121906	103	GALEN FINCH #1	BEGGS FIELD	109,5	PHILLIPS PETROLEUM C
=WALKER & WITHROW INC				RECEIVED: 09/29/80 JA: OK			
8059031	05409	3501721377	103	KYLE 25-1	YUKON	109,5	DELHI GAS PIPELINE C
=WILLIAM M DAVIS				RECEIVED: 09/29/80 JA: OK			
8059065	05459	3504921276	103	MARKREADER #1	EOLA-RUBBERSON	125,0	SOHIO PETROLEUM CO
8059064	05460	3508321144	103	LOWE #1	NORTH RUSSELL	50,0	EASON OIL CO
=WM J OCONNOR				RECEIVED: 09/29/80 JA: OK			
8059015	05387	3515121004	103	MAX UNIT #1	WEST ALINE	180,0	
8059016	05383	3515120991	103	TODD #1	WEST ALINE	180,0	

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=WEST VIRGINIA DEPARTMENT OF MINES

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=APPALACHIAN EXPLORATION & DEVEL INC				RECEIVED: 09/29/80 JA: WV			
8059092		4700501334	108	SHUNK LAND CO #2	SHERMAN	5,1	CONSOLIDATED GAS SUP
=CECIL PRUITT JR				RECEIVED: 09/29/80 JA: WV			
8059118		4701700859	108	DAVIS #1	CENTRAL DISTRICT	3,6	EQUITABLE GAS CO
8059119		4701700879	108	SHERWOOD #1 047-017-879	CENTRAL DISTRICT	3,7	EQUITABLE GAS CO
8059120		4704100941	108	SMITH #1 047-041-941	HACKERS CREEK DISTRICT	3,8	EQUITABLE GAS CO
=CONSOLIDATED GAS SUPPLY CORPORATION				RECEIVED: 09/29/80 JA: WV			
8059091		4702103095	108	M O BURNELL 6608	W VA OTHER A-85772	2,0	GENERAL SYSTEM PURCH
8059113		4704101831	108	UNION NATL BANK TRUS 11432	W VA OTHER A-85772	15,0	GENERAL SYSTEM PURCH
=INDUSTRIAL GAS CORPORATION				RECEIVED: 09/29/80 JA: WV			
8059109		4700500371	108	PETTUNA COAL CO 31-474	SHERMAN DISTRICT	20,4	HOUDAILLE INDUSTRIES
=JUSTIN M HENDERSON				RECEIVED: 09/29/80 JA: WV			
8059112		4701701865	102	INDIAN MOUND #1	LEEMAN MAXWELL-SW DISTRI	52,0	CARNEGIE NATURAL GAS
=KEITH CRIMFIELD				RECEIVED: 09/29/80 JA: WV			
8059103		4701302989	103	GEORGE MCKEE #6	MILLSTONE	12,0	CABOT CORP
=NASHVILLE ASSOCIATES INC				RECEIVED: 09/29/80 JA: WV			
8059117		4702102438	108	DESPARD RIDGE NO 3	GLENVILLE DISTRICT	0,6	CONSOLIDATED GAS SUP
8059121		4700701071	108	KNIGHT HARRIS #3	SALT LICK DISTRICT	2,0	EQUITABLE GAS CO
8059108		4700701067	108	KNIGHT BRENDA #2	SALT LICK DISTRICT	4,7	EQUITABLE GAS CO
8059100		4700701029	108	KNIGHT CHAD NO 1	SALT LICK DISTRICT	2,1	CONSOLIDATED GAS SUP
8059104		4700701018	108	KNIGHT FERGUSON NO 8-1	SALT LICK DISTRICT	4,6	CONSOLIDATED GAS SUP
8059106		4700701066	108	KNIGHT GLORIA #3	SALT LICK DISTRICT	9,5	EQUITABLE GAS CO
8059122		4700701065	108	KNIGHT HARRIS #1	SALT LICK DISTRICT	2,1	EQUITABLE GAS CO
8059114		4700701070	108	KNIGHT HARRIS #2	SALT LICK DISTRICT	2,1	EQUITABLE GAS CO
8059115		4700707072	108	KNIGHT HARRIS #4	SALT LICK DISTRICT	3,1	EQUITABLE GAS CO
8059107		4700701017	108	KNIGHT POLACK NO 1	SALT LICK DISTRICT	2,7	CONSOLIDATED GAS SUP
8059105		4700701016	108	KNIGHT REED FERGUSON NO A-1	SALT LICK DISTRICT	3,4	CONSOLIDATED GAS SUP
8059110		4700701063	108	KNIGHT WILLIE MAE #1	SALT LICK DISTRICT	10,7	EQUITABLE GAS CO
8059116		4702102230	108	WHITE LUIS #1	TROY DISTRICT	8,1	COLUMBIA GAS TRANSMI
=PENNZOIL COMPANY				RECEIVED: 09/29/80 JA: WV			
8059102		4704301838	103	J E KEELING #2	DUVAL	0,0	CONSOLIDATED GAS SUP
=QUAKER STATE OIL REFINING CORP				RECEIVED: 09/29/80 JA: WV			
8059093		4703922239	108	C C DODD #1	ELK DISTRICT	1,0	COLUMBIA GAS TRANSMI
8059095		4703922262	108	M F LILLY #1 62200-1	ELK DISTRICT	0,4	COLUMBIA GAS TRANSMI
8059094		4703922184	108	M WALKER #1	ELK DISTRICT	3,6	COLUMBIA GAS TRANSMI

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JD NO	JA DAT	API NO	SEC T RGLE NAME	FIELD NAME	PROD	PURCHASER
8059099		4703923385 103	HOLDREN #2 62200-2	ELK DISTRICT	1,9	COLUMBIA GAS TRANSMI
8059098		4703923386 103	HOLDREN #3 62200-3	ELK DISTRICT	1,9	COLUMBIA GAS TRANSMI
8059123		4703922186 108	I HALSTEAD #1	ELK DISTRICT	3,6	COLUMBIA GAS TRANSMI
8059097		4703923389 103	J RAY #1 62075-1	BIG SANDY DISTRICT	0,2	COLUMBIA GAS TRANSMI
8059096		4703922236 108	MCCABE #1 62115-1	ELK DISTRICT	3,9	COLUMBIA GAS TRANSMI
=KAY RESOURCES CORP			RECEIVED: 09/29/80 JA: MV			
8059101		4710500721 103	CORA BROWN #685	CLAY	20,1	COLUMBIA GAS TRANS
=TRIO PETROLEUM CORP			RECEIVED: 09/29/80 JA: MV			
8059111		4700701220 108	CARPER NO 1	HEATERS	20,0	CONSOLIDATED GAS SUP

** U.S. GEOLOGICAL SURVEY - METAIRIE,LA

=AMINOIL USA INC			RECEIVED: 09/29/80 JA: LA 3			
8059132	GO=1584	1770840396 102	S MARSH IS BLK 76 #8-11	S MARSH IS 76	725,0	TRANSCONTINENTAL GAS
8059169	GO=1607	1770840425 102	S MARSH IS BLK 76 #8-9	SOUTH MARSH ISLAND 76	1460,0	TRANSCONTINENTAL GAS
=AMOCO PRODUCTION CO			RECEIVED: 09/29/80 JA: LA 3			
*8059137	GO=1580	1771340021 102	OCS-G-2925 NO 6A	SOUTH PELTO 10	400,0	FLORIDA GAS TRANSMIS
=ANADARKO PRODUCTION COMPANY			RECEIVED: 09/29/80 JA: LA 3			
8059154	GO=1595	1770340208 102	E CAMERON BLK 104 NO A-1	EAST CAMERON 104	3650,0	TRUNKLINE GAS CO
8059130	GO=1596	1770340331 102	EAST CAMERON 104 NO A-3	EAST CAMERON 104	1825,0	TRUNKLINE GAS CO
8059131	GO=1597	1770340221 102	EAST CAMERON 104 NO A-4	EAST CAMERON 104	1460,0	TRUNKLINE GAS CO
=CNG PRODUCING COMPANY			RECEIVED: 09/29/80 JA: LA 3			
*8059162	GO=1577	1771240096 102	A-883	SHIP SHOAL 246	1460,0	CONSOLIDATED GAS SUP
*8059152	GO=1578	1771240096 102	A-884 (ALT)	SHIP SHOAL 246	876,0	CONSOLIDATED GAS SUP
=DIAMOND SHAMROCK CORPORATION			RECEIVED: 09/29/80 JA: LA 3			
8059160	GO=1599	1772540178 102	MAIN PASS BLOCK 114 NO 1	MAIN PASS AREA 114	365,0	SOUTHERN NATURAL GAS
8059151	GO=1600	1772540176 102	MAIN PASS BLOCK 116 NO 1	MAIN PASS AREA 116	365,0	SOUTHERN NATURAL GAS
=GULF OIL CORPORATION			RECEIVED: 09/29/80 JA: LA 3			
8059134	GO=1586	1771540279 102	OCS G-2821 #F-1	SOUTH TIMBALIER 29	180,0	TEXAS EASTERN TRANSM
=OCEAN PRODUCTION CO			RECEIVED: 09/29/80 JA: LA 3			
8059126	GO=1593	1771140461 102	OCS-G 067 NO 36A	SHIP SHOAL 113	115,0	TRANSCONTINENTAL GAS
8059136	GO=1582	1771140305 102	OCS-G 1526 B-8A	SHIP SHOAL 223	550,0	TRANSCONTINENTAL GAS
=OXY PETROLEUM INC			RECEIVED: 09/29/80 JA: LA 3			
*8059170	GO=1246	1771040613 102	A-1	EUGENE ISLAND 327	50,0	COLOMBIA GAS TRANSMI
=SONAT EXPLORATION COMPANY			RECEIVED: 09/29/80 JA: LA 3			
8059150	GO=1603	1770340097 102	OCS-G-2038 A-150	EAST CAMERON 231	227,5	SEA ROBIN PIPELINE C
8059157	GO=1604	1770340082 102	OCS-G-2038 A-60	EAST CAMERON 231	543,2	SEA ROBIN PIPELINE C
=TRANSCO EXPLORATION COMPANY			RECEIVED: 09/29/80 JA: LA 3			
*8059128	GO=1497	1770840384 102	A-1 (PLATFORM A)	VERMILION 310	1095,0	TRANSCONTINENTAL GAS
*8059127	GO=1509	1770840280 102	A-10 (PLATFORM A)	VERMILION 310	1095,0	TRANSCONTINENTAL GAS
*8059156	GO=1510	1770840285 102	A-11 (PLATFORM A)	VERMILION 310	1095,0	TRANSCONTINENTAL GAS
*8059139	GO=1511	1770840285 102	A-11-D (PLATFORM A)	VERMILION 310	1095,0	TRANSCONTINENTAL GAS
*8059138	GO=1512	1770840283 102	A-12 (PLATFORM A)	VERMILION 310	1095,0	TRANSCONTINENTAL GAS
*8059144	GO=1513	1770840283 102	A-12-D (PLATFORM A)	VERMILION 310	1095,0	TRANSCONTINENTAL GAS
*8059161	GO=1514	1770840356 102	A-13 (PLATFORM A)	VERMILION 310	1095,0	TRANSCONTINENTAL GAS
*8059164	GO=1515	1770840370 102	A-14 (PLATFORM A)	VERMILION 310	1095,0	TRANSCONTINENTAL PIP
*8059163	GO=1516	1770840381 102	A-16 (PLATFORM A)	VERMILION 310	1095,0	TRANSCONTINENTAL GAS
*8059165	GO=1517	1770840392 102	A-17 (PLATFORM A)	VERMILION 310	1095,0	TRANSCONTINENTAL GAS
*8059142	GO=1518	1770840392 102	A-17-D (PLATFORM A)	VERMILION 310	1095,0	TRANSCONTINENTAL GAS
*8059143	GO=1519	1770840378 102	A-19 (PLATFORM A)	VERMILION 310	1095,0	TRANSCONTINENTAL GAS
*8059141	GO=1520	1770840378 102	A-19-D (PLATFORM A)	VERMILION 310	1095,0	TRANSCONTINENTAL GAS
*8059145	GO=1498	1770840238 102	A-2 (PLATFORM A)	VERMILION 310	1095,0	TRANSCONTINENTAL GAS
*8059153	GO=1499	1770840238 102	A-2-D (PLATFORM A)	VERMILION 310	1095,0	TRANSCONTINENTAL GAS

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JD NO	JA DAT	API NO	SEC T RGLE NAME	FIELD NAME	PROD	PURCHASER
*8059135	GO=1500	1770840344 102	A-3 (PLATFORM A)	VERMILION 310	1095,0	TRANSCONTINENTAL GAS
*8059129	GO=1501	1770840349 102	A-4 (PLATFORM A)	VERMILION 310	1095,0	TRANSCONTINENTAL GAS
*8059147	GO=1502	1770840351 102	A-5 (PLATFORM A)	VERMILION 310	1095,0	TRANSCONTINENTAL GAS
*8059146	GO=1503	1770840351 102	A-5-D (PLATFORM A)	VERMILION 310	1095,0	TRANSCONTINENTAL GAS
*8059149	GO=1504	1770840374 102	A-6 (PLATFORM A)	VERMILION 310	1095,0	TRANSCONTINENTAL GAS
*8059159	GO=1505	1770840276 102	A-7 (PLATFORM A)	VERMILION 310	1095,0	TRANSCONTINENTAL GAS
*8059133	GO=1506	1770840342 102	A-8 (PLATFORM A)	VERMILION 310	1095,0	TRANSCONTINENTAL GAS
*8059166	GO=1508	1770840363 102	A-9 (PLATFORM A)	VERMILION 310	1095,0	TRANSCONTINENTAL GAS
*8059125	GO=1507	1770840342 102	A-8-D (PLATFORM A)	VERMILION 310	1095,0	TRANSCONTINENTAL GAS
=EXXON CORPORATION			RECEIVED: 09/29/80 JA: TX 3			
*8059148	GO=1496	4271140467 102	OCS-G 2741 NO A-20	HIGH ISLAND A-243	7000,0	COLUMBIA GAS TRANS C
8059140	GO=1586	4271140476 102	OCS-G 3486 NO A-1	HIGH ISLAND A-286	5000,0	COLUMBIA GAS TRANS C
=PENNZOIL OIL & GAS INC			RECEIVED: 09/29/80 JA: TX 3			
8059167	GO=1575	4270940431 102	OCS-G 2372 HIGH IS A-489 #8-26	HIGH IS SOUTH ADD A-489	1100,0	UNITED GAS PIPE LINE
8059158	GO=1576	4270940545 102	OCS-G 2372 HIGH IS A-489 #8-28	HIGH IS SOUTH ADD A-489	2365,0	UNITED GAS PIPE LINE
=SHELL OIL CO			RECEIVED: 09/29/80 JA: TX 3			
8059160	GO=1583	4270340052 102	JA-3	MATAGORDA ISLAND 620	0,0	TRANSCONTINENTAL GAS
8059124	GO=1585	4270840057 102	OCS-G 3236 A-3	HIGH ISLAND	400,0	UNITED GAS PIPELINE
=TRANSOCEAN OIL INC			RECEIVED: 09/29/80 JA: TX 3			
*8059155	GO=1592	4270340072 102	A-7	MATAGORDA ISLAND 665	0,0	SOUTHERN NATURAL GAS

OTHER PURCHASERS VOLUME NO 298A

8059125	PUBLIC SERVICE ELECTRIC & GAS CO
8059127	PUBLIC SERVICE ELECTRIC & GAS CO
8059128	PUBLIC SERVICE ELECTRIC & GAS CO
8059129	PUBLIC SERVICE ELECTRIC & GAS CO
8059153	PUBLIC SERVICE ELECTRIC & GAS CO
8059135	PUBLIC SERVICE ELECTRIC & GAS CO
8059157	TRANSCONTINENTAL GAS PL CORP
8059138	PUBLIC SERVICE ELECTRIC & GAS CO
8059139	PUBLIC SERVICE ELECTRIC & GAS CO
8059141	PUBLIC SERVICE ELECTRIC & GAS CO
8059142	PUBLIC SERVICE ELECTRIC & GAS CO
8059143	PUBLIC SERVICE ELECTRIC & GAS CO
8059144	PUBLIC SERVICE ELECTRIC & GAS CO
8059145	PUBLIC SERVICE ELECTRIC & GAS CO
8059146	PUBLIC SERVICE ELECTRIC & GAS CO
8059147	PUBLIC SERVICE ELECTRIC & GAS CO
8059148	TEXAS PIPE LINE CO
8059149	PUBLIC SERVICE ELECTRIC & GAS CO
8059150	TRANSCONTINENTAL GAS P L CO
8059152	PUBLIC SERVICE ELECTRIC & GAS CO
8059155	FLORIDA GAS TRANSMISSION CO
8059156	PUBLIC SERVICE ELECTRIC & GAS CO
8059159	PUBLIC SERVICE ELECTRIC & GAS CO
8059161	PUBLIC SERVICE ELECTRIC & GAS CO
8059162	TRANSCONTINENTAL GAS P L CO
8059163	PUBLIC SERVICE ELECTRIC & GAS CO
8059164	PUBLIC SERVICE ELECTRIC & GAS CO
8059165	PUBLIC SERVICE ELECTRIC & GAS CO
8059166	PUBLIC SERVICE ELECTRIC & GAS CO
8059170	TENNESSEE GAS P L
8059190	CITIES SERVICE CO
8059191	CITIES SERVICE CO

BILLING CODE 6450-85-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" after the section code. Estimated annual production (PROD) is in million cubic feet (MMcf). An (*) preceding the control number indicates that other purchasers are listed at the end of the notice.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426.

Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before November 4, 1980.

Please reference the FERC Control Number (JD No) in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32448 Filed 10-16-80; 8:45 am]

BILLING CODE 6450-85-M

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Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

October 9, 1980.

JD No	API No	SEC ID WELL NAME	FIELD NAME	PKUD	PURCHASER
KANSAS CORPORATION COMMISSION					
*AJAX OIL & GAS CORP INC					
8058965	K-80-0555	1509100000 108	RECEIVED: 09/25/80	JAI KS	
8058964	K-80-0554	1509100000 108	CASEY #5		0.5 UNION GAS SYSTEM INC
8058966	K-80-0556	1509100000 108	CASEY #7		0.5 UNION GAS SYSTEM INC
8058963	K-80-0553	1509100000 108	JULIUS FINCKE #1		4.0 UNION GAS SYSTEM INC
8058967	K-80-0557	1509100000 108	MAURICE CASEY #1		0.5 UNION GAS SYSTEM INC
8058962	K-80-0551	1509100000 108	MAURICE CASEY #2		0.5 UNION GAS SYSTEM INC
*AMOCO PRODUCTION CO			SPRINGHILL TOWN NO 1		1.0 UNION GAS SYSTEM INC
8059002	K-80-0663	1505500000 108	RECEIVED: 09/29/80	JAI KS	
8059007	K-80-0668	1505500000 108	CRAIN GAS UNIT NO 1 (2ND FILING)	HUGOTON	19.0 CITIES SERVICE GAS C
8059003	K-80-0664	1509300000 108	EMMA HUDD GU A NO 1 (2ND FILING)	HUGOTON	16.0 CITIES SERVICE GAS C
8059004	K-80-0665	1505500000 108	FARIS GAS UNIT NO 1	HUGOTON	21.0 CITIES SERVICE GAS C
8059005	K-80-0666	1509300000 108	JARMER GAS UNIT NO 1 (2ND FILING)	HUGOTON	17.0 CITIES SERVICE GAS C
8059006	K-80-0667	1506100000 108	MORRIS GAS UNIT NO 1 (2ND FILING)	HUGOTON	20.0 CITIES SERVICE GAS C
*BENSON MINERAL GROUP			WALLACE GAS UNIT NO 2 (2ND FILING)	HUGOTON	19.0 CITIES SERVICE GAS C
8058970	K-80-0640	1514520693 102	RECEIVED: 09/25/80	JAI KS	
8058952	K-80-0692	1504720680 102	NUCKOLLS A #1-15		30.5 NORTHERN NATURAL GAS
8058978	K-80-0545	1504720676 102	SCHULTZ C #3-10		0.0 PANHANDLE EASTERN PI
*BEREN CORPORATION			SCHULTZ E #1-10		0.0 PANHANDLE EASTERN PI
8058954	K-80-0700	1514520561 102	RECEIVED: 09/25/80	JAI KS	
8058953	K-80-0695	1504720270 108	BUTO #1		108.0
*BRADEN-DEEM INC			GRIZZELL-WOOD #1		2.0 CENTRAL STATES GAS C
8058990	K-80-0589	1500720922 103	RECEIVED: 09/29/80	JAI KS	
*BYRON E MUMMON JR			GRAVES #1		BADGER MILL EXT
8058973	K-80-0644	1515920945 103	RECEIVED: 09/25/80	JAI KS	WIL POOL EXT
*BYRON E MUMMON JR			DYMOND #1		
8059008	K-80-0669	1515120715 102	RECEIVED: 09/29/80	JAI KS	72.0 CITIES SERVICE GAS C
*DALE EASTMAN			EUBANK #1		MANDTNER
8058993	K-80-0606	1505522546 102	RECEIVED: 09/29/80	JAI KS	
*F G HOLL			HURET #1		140.0 PEOPLES NATURAL GAS
8058979	K-80-0547	1504720322 102	RECEIVED: 09/25/80	JAI KS	BULL CREEK NORTH
*F G HOLL			JOHNSON NU 1-5		
8059000	K-80-0660	1504720411 103	RECEIVED: 09/29/80	JAI KS	108.0 KANSAS POWER AND LIG
*GETTY OIL COMPANY			MANLEY NU 1-19		WILDCAT
8058995	K-80-0670	1511520545 103	RECEIVED: 08/29/80	JAI KS	
*GREEN WOLF OIL COMPANY			SCULLY N NU 27-13		0.0 COLONIAL CORP
8058971	K-80-0642	1509320556 103	RECEIVED: 09/25/80	JAI KS	POSEY
*HENRY PETROLEUM CORP			HAIMES-HARMEN #2		
8058956	K-80-0678	1503520655 108	RECEIVED: 09/25/80	JAI KS	9.0 KANSAS-NEBRASKA NATU
*ILUS INDUSTRIES INC			HARREN #1		NC - MASSEY WEST DIXCOVE
8058942	K-80-0106	1505320565 103	RECEIVED: 09/25/80	JAI KS	
			GRIFFIN #2		ENLOW
					25.0 REPUBLIC NATURAL GAS
					DUNHAM CENTER EAST
					73.0 CLOVER PIPELINE CORP
					HUGOTON
					100.0 CITIES SERVICE GAS C
					MURPHY
					5.5 EUFAULA ENTERPRISES
					CANNON
					180.0 NORTHERN NATURAL GAS

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JD NO	JA DKT	API NO	SEC & WELL NAME	FIELD NAME	PROD	PURCHASER
8058941	K-79-1684	1505320532 103	MELWICK #3	ELLSWORTH	160,0	NORTHERN NATURAL GAS
8058943	K-80-0110	1505320558 103	SVATY #3	ELLSWORTH	144,0	NORTHERN NATURAL GAS
*LADD PETROLEUM CORPORATION			RECEIVED: 09/25/80 JA: KS			
8058948	K-80-0407	1500700000 108	RINKE #1	PALMER	16,5	CITIES SERVICE GAS C
*LADD PETROLEUM CORPORATION			RECEIVED: 09/29/80 JA: KS			
8058997	K-80-0672	1507500000 108	MCU 0931 #1			
8058998	K-80-0673	1507500000 108	MCU 1930	BRADSHAW	7,0	KANSAS-NEBRASKA NATU
8058999	K-80-0674	1507500000 108	MCU 3120-B	BRADSHAW	12,0	KANSAS-NEBRASKA NATU
8058996	K-80-0671	1507500000 108	MCU 3221	BRADSHAW	10,0	KANSAS-NEBRASKA NATU
*LEAR PETROLEUM EXPLORATION INC			RECEIVED: 09/29/80 JA: KS	BRADSHAW	12,0	KANSAS NEBRASKA NATU
8058994	K-80-0607	1503320307 102	LEMON #1			
*MESA PETROLEUM			RECEIVED: 09/25/80 JA: KS	WILDCAT	250,0	MICHIGAN WISCONSIN P
8058959	K-80-0483	1506120181 103	J B WRIGHT 3-11			
8058957	K-80-0480	1506720571 103	KENDNER 1-18	PANOMA COUNCIL GROVE	60,0	CITIES SERVICE GAS C
8058958	K-80-0481	1506120178 103	R L HALL 2-28	PANOMA COUNCIL GROVE	60,0	CITIES SERVICE GAS C
*NATIONAL COOP REFINERY ASSOC			RECEIVED: 09/25/80 JA: KS	PANOMA COUNCIL GROVE	60,0	CITIES SERVICE GAS C
8058955	K-80-0687	1500720864 103	WERNER #1			
*NORTHERN PUMP COMPANY			RECEIVED: 09/25/80 JA: KS	MCGUIRE-GUEMANN	160,0	PANHANDLE EASTERN PI
8058949	K-80-0689	1517520464 103	SATTERFIELD #2	THIRTY-ONE	100,0	NORTHERN NATURAL GAS
*OIL PROPERTIES CO INC			RECEIVED: 09/25/80 JA: KS			
8058975	K-80-0526	1504720649 103	CUDNEY B NO 2	WIL	11,0	PANHANDLE EASTERN PI
8058976	K-80-0527	1504720667 103	WOOD A NO 2	WIL	11,0	PANHANDLE EASTERN PI
*PAR PETROLEUM INC			RECEIVED: 09/29/80 JA: KS			
8058988	K-80-0562	1507120186 103	LITTLE #1	NORTH BRADSHAW	91,3	
*PATRICK & VAUGHN			RECEIVED: 09/25/80 JA: KS			
8058938	K-80-0648	1517500000 108	CONDIT #1	UN-NAMED	18,3	ANADARKO PRODUCTION
*PICKRELL DRILLING COMPANY			RECEIVED: 09/29/80 JA: KS		36,5	
8058992	K-80-0604	1502520349 103	BALDWIN F #1		157,6	
8058991	K-80-0603	1502520359 103	LUFT A #1			
*R CLAY UNDERWOOD			RECEIVED: 09/29/80 JA: KS	CIMARRON BEND	1,2	PANHANDLE EASTERN PI
8058987	K-80-0559A	1511920369 103	JESSIE S ADAMS B NO 6			
*RUPE OIL CO INC			RECEIVED: 09/25/80 JA: KS	MCCLANAMAN EAST	18,0	KANSAS-NEBRASKA NATU
8058977	K-80-0529	1504720010 108	WELSCH #1			
*TEXAS ENERGIES INC			RECEIVED: 09/25/80 JA: KS	CARVER-ROBBINS	91,3	CENTRAL STATES GAS C
8058960	K-80-0484	1515120671 103	CURTIS NO 1	MEAIKS EXTENSION	18,4	CENTRAL STATES GAS C
8058947	K-80-0356	1500720563 108	OLSON NO 1	CARVER-ROBBINS	91,3	CENTRAL STATES GAS C
8058961	K-80-0485	1515120721 103	WARD NO 2-12			
*TEXAS ENERGIES INC			RECEIVED: 09/29/80 JA: KS	BARNES	0,0	CENTRAL STATES GAS C
8058989	K-80-0568	1515120704 103	BARNES NO 1-25			
*TEXAS OIL & GAS CORP			RECEIVED: 09/25/80 JA: KS	SULLIVAN	365,0	NORTHERN GAS PRODUCT
8058937	K-80-0647	1507720591 103	ANTHONY #1	TRI-COUNTY PROSPECT	365,0	KANSAS-NEBRASKA
8058968	K-80-0626	1509720823 103	EINSEL H #1	ZENITH-PEACE CREEK	182,5	PEOPLES NATURAL GAS
8058939	K-80-0649	1515520673 103	HILL B #1	MAPLE GROVE	292,0	NORTHERN GAS PRODUCT
8058974	K-80-0645	1509520963 103	KELLY #1	SULLIVAN	365,0	NORTHERN GAS PRODUCT
8058936	K-80-0646	1500720585 103	TRINITY UMC #1			
*TOMLINSON OIL CO INC			RECEIVED: 09/25/80 JA: KS	MACKSVILLE	1,5	KANSAS NEBRASKA NATU
8058950	K-80-0690	1518500000 108	BRUNNE NO 1	BENSON SE	8,2	KANSAS NEBRASKA NATU
8058951	K-80-0691	1518500000 108	WALKER NO 1			
*VILAS OIL & GAS PRODUCTION GROUP			RECEIVED: 09/25/80 JA: KS	VILAS	60,0	CITIES SERVICE GAS C
8058944	K-80-0206	1520520601 103	BLACK #1	VILAS	60,0	CITIES SERVICE GAS C
8058945	K-80-0207	1520520604 103	BLACK #2	VILAS	60,0	CITIES SERVICE GAS C
8058946	K-80-0208	1520520605 103	BLACK #3			

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JD NO	JA DKT	API NO	SEC & WELL NAME	FIELD NAME	PROD	PURCHASER
*M-R MURFIN D/B/A MURFIN DRILLING CO			RECEIVED: 09/25/80 JA: KS			
8058972	K-80-0643	1504720433 103	FISHER #1-36 GAS UNIT	ENGLISH	26,0	CENTRAL STATES GAS C
8058940	K-80-0650	1502320093 108	VAN DYKE #1-10 GAS UNIT	CHERRY CREEK	9,0	KANSAS-NEBRASKA NATU
*WALLACE OIL & GAS INC			RECEIVED: 09/29/80 JA: KS			
8059001	K-80-0661	1507520320 103	MCDONALD #2	KANSAS MUDUTON	182,4	PEOPLES NATURAL GAS
*WAYNE E WALCHER			RECEIVED: 09/25/80 JA: KS			
8058969	K-80-0638	1515120251 108	ROBERT #1	IUKA-CARMI	5,5	CENTRAL STATES GAS C
**********						
LOUISIANA OFFICE OF CONSERVATION						
**********						
*ERGON INC			RECEIVED: 09/08/80 JA: LA			
8057878	80-3014	1711121346 108	JOE C MILLER NO 3	MONROE (6824)	7,8	TEXAS GAS TRANSMISSI
*LOUISIANA GENERAL PETROLEUM CORP			RECEIVED: 09/26/80 JA: LA			
8058983	80-1421	1703121174 102	BARNES NU 1 SEK NO 166476	BENSON	300,0	LOUISIANA INTRASTATE
8058982	80-1076	1703120902 102	EVANS NO 1	BENSON	500,0	LOUISIANA INTRASTATE
8058984	80-1080	1703121086 102	EVANS NO 2	BENSON	400,0	LOUISIANA INTRASTATE
8058980	80-1079	1703121054 102	HALL NO 1	BENSON	500,0	LOUISIANA INTRASTATE
*PENN EXPLORATION CORP			RECEIVED: 09/24/80 JA: LA			
8058925	80-2663	1707522679 102	H J HARVEY #1	FORT JACKSON	185,0	SOUTHERN NATURAL GAS
*TEXACO INC			RECEIVED: 09/24/80 JA: LA			
8058924	80-2662	1710121132 102	S L 340 ATCHAFALAYA BAY #37	BELLE ISLE	3650,0	UNITED GAS PIPE LINE
*TRANSCO EXPLORATION COMPANY			RECEIVED: 09/26/80 JA: LA			
8058981	80-1866	1703121091 102	T J LAWRENCE EST NO 1	SPIDER	0,0	LOUISIANA INTRASTATE
*WILLIAMS EXPLORATION COMPANY			RECEIVED: 09/24/80 JA: LA			
8058923	80-2660	1771420071 102	STATE LEASE 7655 NO 3	TIMBALIER BAY	1095,0	LOUISIANA RESOURCES
8058922	80-2659	1771420073 102	STATE LEASE 7655 NO 4	TIMBALIER BAY	1460,0	LOUISIANA RESOURCES
*WNF OIL CORPORATION			RECEIVED: 09/24/80 JA: LA			
8058926	80-2667	1710121124 102	S L 4801 #5	ATCHAFALAYA BAY	365,0	TENNESSEE GAS PIPELI
**********						
MONTANA BOARD OF OIL & GAS CONSERVATION						
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*MIDLANDS GAS CORPORATION			RECEIVED: 09/30/80 JA: MT			
*8058935	1-80-11	2507121150 108	1852 ARCHIE DUNBAR 1-18	BOWDOIN	22,0	KANSAS-NEBRASKA NATU
*8058934	9-80-195	2507121567 108	2171 1-2171 K ANDERSON	BOWDOIN	25,0	KANSAS-NEBRASKA NATU
**********						
NORTH DAKOTA GEOLOGICAL SURVEY						
**********						
*JOSEPH J C PAINE			RECEIVED: 09/30/80 JA: ND			
8058932	279	3301100288 108	CHAPMAN #3-28	LITTLE MISSOURI	10,0	MONTANA DAKOTA UTILI
8058931	278	3301100260 108	RINGSTAD #1	LITTLE MISSOURI	7,5	MONTANA DAKOTA UTILI
8058933	280	3301100284 108	HULL #1-33	LITTLE MISSOURI	0,0	MONTANA DAKOTA UTILI
**********						
** U.S. GEOLOGICAL SURVEY - METAIRIE,LA						
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*AMINOIL DEVELOPMENT INC			RECEIVED: 09/26/80 JA: LA 3			
8058986	G9-561	1771140381 102	SHIP SHOAL BLOCK 223 #8-15A	SHIP SHOAL 223	850,0	TRANSCONTINENTAL GAS
**********						
** U.S. GEOLOGICAL SURVEY - CASPER,WY						
**********						
*MIDLANDS GAS CORPORATION			RECEIVED: 09/26/80 JA: MT 5			
8058985	M-109-0	2507121558 108	1942 #1 FEDERAL	BOWDOIN	21,0	KANSAS-NEBRASKA NATU
*TRICENTROL UNITED STATES INC			RECEIVED: 09/29/80 JA: MT 5			

VOLUME 297 PAGE 004

JD NO	API NO	STD OR FIELD NAME	PROD CODE	PURCHASER
		FIELD NAME		PURCHASER
		HUEBSCHWERLEN UNIT		35.0 NORTHERN NATURAL GAS
8058928 M-14-0	2500522067 102	U S 25-10-25-17		
•GAS PRODUCING ENTERPRISES INC		RECEIVED: 09/29/80		JAS UT 5
8058930 UCS-0	4304730479 102	NBU 59-24B 30479		
8058927 UC4-0	4304730477 102	NBU 62-35B 30477		
•BURLINGHAMS INC		RECEIVED: 09/29/80		JAS WY 5
8058929 W125-0	4901320891 102	NO 33-1 LOST CREEK FEDERAL		
		NATURAL BUTTES UNIT		67.0 COLORADO INTERSTATE
		NATURAL BUTTES UNIT		101.0 COLORADO INTERSTATE
		LOST CREEK (ABD)		40.0

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JD NO API NO VOLUME NO 1297

8058933 MONTANA-DAKOTA UTILITIES
8058935 MONTANA-DAKOTA UTILITIES

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" after the section code. Estimated annual production (PROD) is in million cubic feet (MMcf). An (*) preceding the control number indicates that other purchasers are listed at the end of the notice.

The applications for determination in these proceedings together with a copy or description of other materials is the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20428.

Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before November 4, 1980.

Please reference the FERC Control Number (JD No) in all correspondence related to these determinations.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-32447 Filed 10-16-80; 8:45 am]
BILLING CODE 6450-85-M

Western Area Power Administration

Floodplain/Wetlands Involvement Determination for the Cottonwood-Elverta No. 3 230-Kilovolt Transmission Line Rehabilitation Proposal, Shasta, Tehama, and Butte Counties, Calif.

AGENCY: Western Area Power Administration, U.S. Department of Energy.

ACTION: Notice of floodplain/wetlands involvement and opportunity for comment.

SUMMARY: The Western Area Power Administration (Western) proposes to rehabilitate 68 miles of the Cottonwood-Elverta #3 230-Kilovolt transmission line from Cottonwood, California, in southern Shasta County, to a point north of Oroville, California, in Butte County. Western is proposing to replace deteriorated existing wood pole structures with steel lattice towers and upgrade the conductor.

Pursuant to the requirements of the U.S. Department of Energy's procedures for Compliance with Floodplain/Wetlands Environmental Review Requirements, Part 1022 of Chapter X of Title 10 of the Code of Federal Regulations, Western has determined that the rehabilitation proposal will involve some activities within floodplain/wetlands at a few locations. Based on examination of the Federal Insurance Administration's (Department of Housing and Urban Development) Flood Hazard Boundary Maps for the area, floodplain/wetlands will be encountered at the following locations: Cottonwood Creek, Mud Creek, Butte Creek, Sycamore Creek, Hamlin Slough, Little Dry Creek, Clear Creek, Fallagher Creek, and Dry Creek. Maps and further information are avialble from Western at the addresses given below. Public comments or suggestions on Western's activities in these particular floodplain/wetlands are invited.

DATE: Any comments are due November 3, 1980.

ADDRESS: Send comments or suggestions to: Mr. Gordon Estes, Area Manager, Sacramento Area Office, Western Area Power Administration, 2800 Cottage Way, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Mr. Gary W. Frey, Environmental Mananger, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, Telephone: (303)231-1527.

Issued at Golden, Colorado, October 9, 1980.

Robert L. McPhail,
Administrator.

[FR Doc. 80-32439 Filed 10-16-80; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180499; PH-FRL 1637-3]

Michigan, Minnesota, New York and North Dakota; Issuance of Specific Exemptions To Use Paraquat Dichloride

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions to the Michigan, Minnesota, and North Dakota Departments of Agriculture, and the New York State Department of Environmental Conservation (hereafter referred to as "Michigan," "Minnesota," "New York," and "North Dakota" or the "Applicants") to use Ortho Paraquat CL (paraquat dichloride) as a desiccant on dry beans. The specific exemptions are issued under the Federal Insecticide, Fungicide, and Rodenticide Act.

DATES: Minnesota's and South Dakota's specific exemptions expire on September 30, 1980; Michigan's and New York's expire on October 15, 1980.

FOR FURTHER INFORMATION CONTACT: Libby Welch, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-124, 401 M St., SW., Washington, D.C. 20460, (202-426-0223).

SUPPLEMENTARY INFORMATION: According to the Applicants, fall rains, high humidity, and green plants interfere with dry bean harvest. The Applicants state that cool summer nights during this growing season have delayed plant maturity, promising to make the dry bean harvest late ths fall and usual fall rains more hazardous than normal. Green beans make the operation of harvest machinery difficult and the leaves slow the drying of soil enough to prevent the machinery from passing through the fields, if heavy rains occur. In some cases, cool wet weather causes the regrowth of the plants. Weather-damaged, moldy, and sun-darkened or discolored beans are a major problem under such conditions, the Applicants report.

In more arid dry bean-growing regions of the United States, green plants are pulled, windrowed and allowed to dry before threshing. According to the Applicants, windrowed beans, even under more favorable conditions, become wet and the beans mold, rot, or sprout. No desiccant is presently registered for use on dry beans. Ortho Paraquat CL is currently registered as a harvest aid of soybeans and potatoes. Aerial application of paraquat dichloride is currently approved for desiccation of soybeans.

Michigan, Minnesota, and North Dakota are under contract with Mexico for beans. Due to the late planting of the bean crop, without a desiccant the contracts might be impossible to fulfill and farmers may not be able to market the beans otherwise. Without the use of a desiccant, the Applicants project the following possible losses to dry bean producers: Michigan—$9 million; Minnesota—$4,013,000 or more; New York—$5 million; and North Dakota—$1,630,000.

The Applicants proposed a single application of paraquat dichloride at a rate of 0.25 to 0.5 pound active ingredient (a.i.) in 20 to 40 gallons of water per acre by ground or in 5 gallons of water per acre by air.

EPA has determined that residues of paraquat in or on dry beans should not exceed 0.4 part per million (ppm) from the proposed use. This residue level has been judged adequate to protect the public health. EPA has also determined that the proposed use should pose no unreasonable threat to the environment.

After reviewing the applications and other available information, EPA has determined that the criteria for exemptions have been met. Accordingly, Minnesota and North Dakota have been granted specific exemptions to use the desiccant noted above until September 30, 1980, and Michigan and New York until October 15, 1980, to the extent and in the manner set forth in the applications. The specific exemptions are also subject to the following conditions:

1. Use of the product Paraquat CL, EPA Reg. No. 239-2186 manufactured by Chevron Chemical Company, is authorized. If an unregistered label is used, it must contain the identical,

applicable precautions and restrictions which appear on the registered label:

2. A single application of paraquat dichloride at the rate of 0.25 to 0.5 pound a.i. per acre will be made;

3. Application will be made in 20 to 40 gallons of water per acre by ground equipment or in 5 gallons of water per acre by air equipment;

4. The following maximum acreage may be treated: 171,000 acres in Michigan, 30,000 acres in Minnesota, 20,000 acres in New York, and 110,000 acres in North Dakota;

5. The following maximum quantity of a.i. may be applied: 85,000 lbs. in Michigan, 18,000 lbs. in Minnesota, 10,000 lbs. in New York, and 55,000 lbs. in North Dakota;

6. All applications will be made by State-certified commercial or private applicators or persons under their direct supervision;

7. A pre-harvest interval of 7 days will be observed. Treated fields are not to be grazed and treated foliage is not to be fed to livestock;

8. Applications should not be made when weather conditions favor drift from the application site;

9. All applicable directions, precautions, and restrictions on the EPA-registered product label must be followed;

10. Dry beans with residues of paraquat not exceeding 0.4 ppm may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health and Human Services, has been advised of these actions;

11. A full report summarizing the results of its program must by submitted by each of the Applicants to EPA by April 15, 1981;

12. The EPA shall be immediately informed of any adverse effects resulting from the use of paraquat dichloride in connection with these exemptions; and

13. The Applicants are each responsible for assuring that all of the provisions of its specific exemption are met.

(Sec. 18 as amended 92 Stat. 819; (7 U.S.C. 136))

Dated: October 9, 1980.

James M. Conlon,

Acting Deputy Assistont Administrator for Pesticide Programs.

[FR Doc. 80-32357 Filed 10-16-80; 8:45 am]

BILLING CODE 6560-32-M

[OPTS-51105A; TSH-FRL 1637-4]

Polyisobutenyl Succinic Anhydride Reaction Products With Substituted Ethanol; Premanufacture Notice and Extension of Review Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is extending the review period for a premanufacture notice (PMN) for which the review period commenced on July 16, 1980, under section 5(c) of the Toxic Substances Control Act (TSCA). See Notice of Receipt published in the **Federal Register** of August 6, 1980 (45 FR 52241). The generic identity of the substance covered by PMN P80-172 is polyisobutenyl succinic anhydride reaction products with substituted ethanol.

The review period for this substance is now scheduled to end on January 12, 1981. The PMN described a chemical substance that would be manufactured for a use claimed confidential. The submitter of the PMN also claimed his identity to be confidential along with individual exposure, environmental release, processing, byproducts, disposal, and production volume information.

FOR FURTHER INFORMATION CONTACT: George Bagley, Chemical Control Division (TS-794), Environmental Protection Agency, Room 210 East Tower, 401 M St., SW., Washington, D.C. 20460, (202-426-3936).

SUPPLEMENTARY INFORMATION:

Background

Under section 5 of TSCA any person who intends to manufacture in, or import into, the United States a new chemical substance for commercial purposes must submit a PMN to EPA prior to commencement of manufacture or import. In general, section 5 provides that EPA must complete its review of a PMN within 90 days of its receipt by the Agency. However, under section 5(c) EPA may extend the notice period for good cause for additional periods, not to exceed an aggregate of 180 days from the date of receipt.

EPA issued proposed rules to implement the premanufacture notification program published in the **Federal Register** of January 10, 1979 (44 FR 2263). Section 720.35 of the proposed regulation addressed the section 5(c) extension authority and provided examples of situations in which the Agency believed there would be good cause to extend the notice period. Although EPA has not yet promulgated these rules, the example in the proposal that would apply in this case is that:

> EPA has received the notice and has determined that there is a significant possibility that the chemical will be regulated under section 5(e) or section 5(f) of the Act, but the Agency is unable to initiate regulatory action within the initial 90-day period (44 FR 2273).

Review to Date

EPA's initial evaluation of the subject PMN substance entailed review of information that the manufacturer supplied in the PMN and in subsequent submissions to EPA. EPA also conducted literature searches on the PMN substance and on structurally similar substances, i.e., structural analogues.

Using the information, EPA assessed seven major areas of potential concern: process chemistry, uses, worker and consumer exposures, environmental releases, health effects, environmental fate, and ecological effects. The Agency also considered other factors, such as economics and impacts on technological innovation, that are not directly associated with the assessment of the risks that the PMN substance may present to human health and the environment. When EPA completed this initial screening of the substance, the Agency concluded that it needed to conduct a more thorough review of certain aspects to focus on specific areas of concern.

The initial results of these assessents are summarized below:

1. EPA is concerned about potential risks that the substance may pose to humans. The intended use of the PMN substance can reasonably be expected to produce a highly toxic chemical. The carcinogenic and toxic properties of the substance expected to be generated in use are well established. The manufacturer supplied little information in the PMN or in subsequent communications that would comment or bear any light on the PMN substance's potential, while in use or storage, to generate the substance with known tumorigenic activity.

2. EPA can predict that a significant number of workers both in processing and use operations will come into contact with the toxic substance that is likely to be generated. Such contact will involve both dermal and inhalation exposure routes.

3. The lack of adequate information on the formation of the toxic substance when the PMN substance is stored or used as intended, the known toxicity of the substance expected to be generated, and the potential for broad human exposure give rise to the increased possibility that the PMN chemical will be regulated under section 5 of the Act.

Extension of the Review Period

Therefore, EPA has entered the PMN into another series of analyses, the Detailed Review Process. During the Detailed Review, Agency staff will conduct further evaluations and assessments of the following: (1) The mechanism for formation of the highly toxic chemical associated with processing, use, and disposal of the PMN substance and (2) the nature and extent of risks to human health posed by the formation of this toxic chemical, and (3) the exposure associated with the toxic chemical during processing, use, and disposal.

On the basis of the cited concerns raised during EPA's evaluation of the PMN substance, the significant possibility of further regulation under section 5, and because of the limited time before the end of the review period for the substance (which closes on October 14, 1980), EPA has determined that good cause exists to extend the notice period for an additional 90 days, until January 12, 1981.

EPA needs additional time to assess this chemical substance to determine if regulatory controls are appropriate. During the additional 90 days EPA will: (1) evaluate the need for additional data on the substance, (2) determine the need for regulatory control in light of EPA's concerns about the substance, and (3) examine possible control options. Extension of the notice period preserves EPA's authority to initiate a regulatory action under section 5 of TSCA if the Agency concludes that such an action is appropriate.

The PMN, summaries of communications between the submitter and EPA, and other written material, are available for public inspection in Room 447, East Tower, at the EPA Headquarters address given above. The public record is available from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. All information that the manufacturer has claimed to be confidential has been deleted from the documents in the public record.

Dated: October 10, 1980.

Edwin A. Clark II,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 80-32358 Filed 10-16-80; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL COMMUNICATIONS COMMISSION

[BC Docket Nos. 80-559 and 80-560; File Nos. BPH-781227AE and BPH-790328AR]

Millard Orick, Jr. and Rim-Co, Inc.; Hearing Designation Order

Adopted: September 16, 1980.

Released: October 8, 1980.

In the matter of applications of Millard Orick, Jr., Payson, Arizona, Req: 103.9 MHz, Channel 280 1kW (H&V), 473 feet (BC Docket No. 80-559, File No. BPH-781227AE) and Rim-Co, Inc., Payson, Arizona, Req: 103.9 MHz, Channel 280.3 kW (H&V), 813 feet (BC Docket No. 80-560, File No. BPH-790328AR for a construction permit for a new FM station.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration: (i) the above-captioned mutually exclusive applications of Millard Orick, Jr. (Orick) and Rim-Co, Inc. (Rim-Co); (ii) a petition to assign a new file number and dismiss the Rim-Co application, filed by Orick; and, (iii) pleadings related thereto.[1]

2. *Rim-Co.* Applicants for new broadcast facilities are required to demonstrate the financial ability to build and operate the proposed station for three months. Rim-Co's bank loan commitment letters have by their own terms expired, rendering the applicant's financial status unclear. To remedy this deficiency, the applicant will be required to submit current loan commitment letters to the presiding Administrative Law Judge.

3. Rim-Co has failed to demonstrate substantial compliance with the requirements of the *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 21 RR 2d 1507 (1971). The applicant has failed to submit data to indicate the minority, racial and ethnic breakdown of Payson, as required by Question and Answer 9 of the Primer. It appears from other available information that Payson has a significant American Indian Population. Rim-Co has not shown consultations with American Indian leaders in its ascertainment effort, as required by Question and Answer 10 of the *Primer*. Moreover, the applicant has not listed all ascertained community problems, as required by Question and Answer 22 of the Primer. Accordingly, a limited ascertainment issue will be specified.

4. *Other Matters.* Rim-Co's application contains an engineering statement which indicates that the 3.16 millivolt per meter contour of the proposed station will not encompass all of the community of Payson, the proposed city of license. Rim-Co accordingly requests a waiver of Section 73.315(a). In support of its waiver request, Rim-Co notes that 81.8% of Payson is within the contour, that most commercially zoned portions of the central business area lie within that contour, that the entire corporate boundary of Payson lies within the 68.0 dBu contour, as determined from the F (50,50) FM channel curves, that the proposed operation will provide a first aural service to 1,988 persons in an isolated community and that the selected site will provide the largest possible coverage area and, in addition, will provide the best coverage to the north and east of Payson—the directions of current growth. Further, Rim-Co asserts that its operation, as proposed, will comply with the intent of Section 73.315(a)—*to wit*, "to provide good radio service to the public." In his petition Orick contends that only 75.1% of Payson falls with Rim-Co's proposed 3.16 mV/m contour, and that the area that would not receive the required signal strength is substantially populated (over 300 homes) and experiencing significant growth. Thus, it appears that Rim-Co's waiver request raises a substantial and material question of fact which requires adjudicative hearing. Accordingly, an issue will be designated to determine the appropriateness of Rim-Co's waiver request.

5. On April 2, 1980, Rim-Co amended its application to show the inclusion of Eugene Voyles as a shareholder of the applicant corporation. Orick, in his petition, asserts that such an amendment constitutes a major change of ownership and control within the meaning of Sections 73.3540 and 73.3573(b) because Rim-Co shareholder Virginia LaRue's stock interest was reduced from 68% to 45.05%. The amendment does not constitute a major change that would require assignment of a new file number because 50% of Rim-Co's stock is not changing hands. See *Barnes Enterprises, Inc.*, 55 FCC 2d 721, 35 RR 2d 176 (1975). Accordingly, Orick's petition will be denied with respect to Rim-Co's amendment.

6. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals.

[1] Pursuant to the Commission's recent decision in *K & L Communications, Inc.*, 70 FCC 2d 1987, 45 RR 2d 187 (1979), the Orick petition will be treated as an informal objection and will be disposed of in accordance with the policies expressed in Section 0.281(b)(1) of the Rules.

V 4 5 O C 1 7 8 0 UMI

Consequently, for the purpose of comparison, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, it is ordered, that, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place specified in a subsequent Order, upon the following issues:

1. To determine whether Rim-Co has complied with Questions 9, 10 and 22 of the *Primer* in connection with its ascertainment effort.

2. To determine whether Rim-Co's proposed operation would provide adequate coverage to Payson, the proposed city of license, as required by Section 73.315(a) of the Commission's Rules, and, if not, whether circumstances exist which warrant a waiver of that Section.

3. To determine which of the proposals would, on a comparative basis, better serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further ordered, that Rim-Co submit current loan commitment letters to the presiding Administrative Law Judge to demonstrate its financial qualifications.

10. It is further ordered, that Orick's petition to dismiss and assign a new file number to the Rim-Co application is granted to the extent indicated above and DENIED in all other respects.

11. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

12. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

Federal Communications Commission.

Jerold L. Jacobs,

Chief, Broadcast Facilities Division.

[FR Doc. 80-32395 Filed 10-16-80; 8:45 am]

BILLING CODE 6712-01-M

[Report No. A-20; Released Sept. 29, 1980]

FM Broadcast Applications Accepted for Filing and Notification of Cut-Off Date

Cut-Off Date: November 7, 1980.

Notice is hereby given that the applications listed in the attached appendix are hereby accepted for filing. They will be considered to be ready and available for processing after November 7, 1980. An application, in order to be considered with any application appearing on the attached list or with any application on file by the close of business on November 7, 1980, which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and tendered for filing at the offices of the Commission in Washington, D.C., not later than the close of business on November 7, 1980.

Petitions to deny any application on this list must be on file with the Commission no later than the close of business on November 7, 1980.

Federal Communications Commission.

William J. Tricarico,

Secretary.

BPH-800502AA (new) Haskell, Texas, Rolling Plains Broadcasting Corp., Req: 95.5 MHz; Channel No. 236C, ERP: 100 kW; HAAT: 529 Ft.

BPH-800714AM (new) Martinez, Georgia, Columbia County Broadcasters, Req: 94.3 MHz; Channel No. 232A, ERP: 3 kW; HAAT: 300 Ft.

BPH-800716AC (WXTQ) Athens, Ohio, WATH, Inc., HAS: 105.5 MHz; Channel No. 288A, ERP: 3 kW; HAAT: 290 Ft. (LIC), Req: 105.5 MHz; Channel No. 288A, ERP: 3 kW; HAAT: 300 Ft.

BPED-790723AI (KBHU-FM) Spearfish, South Dakota, Black Hills State College, HAS: 89.1 MHz; Channel No. 206DS, ERP: .01 kW; HAAT: Ft. (LIC), Req: 89.1 MHz; Channel No. 206A, ERP: .100 kW; HAAT: —322 Ft.

BPED-791211AB (KGRG) Auburn, Washington, Green River Community College, HAS: 89.9 MHz; Channel No. 210DS, ERP: .01 kW; HAAT: Ft. (LIC), Req: 89.9 MHz; Channel No. 210A, ERP: .100 kW; HAAT: 185.3 Ft.

BPED-791216AB (new) McDonough, Georgia, Mount Vernon Christian School, Req: 90.7 MHz; Channel No. 214A, ERP: .3 kW; HAAT: 451 Ft.

BPED-791221AD (KWWC-FM) Columbia, Missouri, Stephens College, a corporation, HAS: 90.5 MHz; Channel No. 213DS, ERP: .01 kW; HAAT: Ft. (LIC), Req: 90.5 MHz; Channel No. 213A, ERP: 1 kW; HAAT: 95 Ft.

BPED-791226AX (KJHK) Lawrence, Kansas, the University of Kansas, HAS: 90.7 MHz; Channel No. 214DS, ERP: .01 kW; HAAT: Ft. (LIC), Req: 90.7 MHz; Channel No. 214A, ERP: .100 kW; HAAT: 277.2 Ft.

BPED-791226AY (WAMP-FM) Toledo, Ohio, Toledo City Board of Education, HAS: 88.3 MHz; Channel No. 202DS, ERP: .01 kW; HAAT: Ft. (LIC), Req: 88.3 MHz; Channel No. 202A, ERP: .107 kW; HAAT: 123 Ft.

BPED-791226BD (KMSA) Grand Junction, Colorado, Mesa College, HAS: 91.3 MHz; Channel No. 217DS, ERP: .01 kW; HAAT: Ft. (LIC), Req: 91.3 MHz; Channel No. 217A, ERP: .500 kW; HAAT: —382 Ft.

BPED-791226BW (WAHS) Auburn Heights, Michigan, Avondale School District, HAS: 89.5 MHz; Channel No. 208D, TPO: .01 kW (LIC), Req: 89.5 MHz; Channel No. 208A, ERP: .100 kW; HAAT: 142 Ft.

BPED-791226BZ (KOVF-FM) Kearney, Nebraska, Kearney State College, HAS: 91.3 MHz; Channel No. 217DS, ERP: .01 kW; HAAT: Ft. (LIC), Req: 91.3 MHz; Channel No. 217A, ERP: 1 kW; HAAT: 117 Ft.

BPED-791226CA (KHSU-FM) Arcata, California, Humboldt State University, HAS: 90.5 MHz; Channel No. 213D, TPO: .01 kW (LIC), Req: 91.5 MHz; Channel No. 218A, ERP: .100 kW; HAAT: —220 Ft.

BPED-791226CE (WDCC) Sanford, North Carolina, Central Carolina Technical College, Req: 90.5 MHz; Channel No. 213A, ERP: 3 kW; HAAT: 148 Ft.

BPED-791226CJ (WBGD) Bricktown, New Jersey, Brick Township Board of Education, HAS: 91.9 MHz; Channel No. 220D, TPO: .01 kW (LIC), Req: 91.9 MHz; Channel No. 220A, ERP: .189 kW; HAAT: 40.45 Ft.

BPED-791226CM (KRBM) Pendleton, Oregon, Blue Mountain Community College, HAS: 90.9 MHz; Channel No. 215D, TPO: .01 kW (LIC), Req: 90.9 MHz; Channel No. 215A, ERP: .437 kW; HAAT: —185 Ft.

BPED-791226CV (KZUU) Pullman, Washington, Washington State University, HAS: 90.7 MHz; Channel No. 214DS, ERP: .016 kW; HAAT: 105 Ft. (LIC), Req: 90.7 MHz; Channel No. 214A, ERP: .422 kW; HAAT: 106 Ft.

BPED-791227AO (WVUM) Coral Gables, Florida, WVUM, Inc., HAS: 90.5 MHz; Channel No. 213DS, ERP: .01 kW; HAAT: Ft. (LIC), Req: 90.5 MHz; Channel No. 213A, ERP: .368 kW; HAAT: 190 Ft.

BPED-800616BA (new) Cumming, Georgia, Curriculum Development Foundation, Inc., Req: 91.5 MHz; Channel No. 218A, ERP: .220 kW; HAAT: 912 Ft.

[FR Doc. 80-32699 Filed 10-16-80; 8:45 am]

BILLING CODE 6712-01-M

[Report No. B-14; Released Oct. 16,1980]

TV Broadcast Applications Accepted for Filing and Notification of Cut-Off Date

Cut-Off Date: November 24, 1980.

Notice is hereby given that the applications listed in the attached appendix are accepted for filing. Because the applications listed in the attached appendix are in conflict with applications which were accepted for filing and listed previously as subject to a cut-off date for conflicting applications, no application which would be in conflict with any application listed in the attached appendix will be accepted for filing.

Petitions to deny the applications listed in the attached appendix and minor amendments thereto must be on file with the Commission not later than the close of business on November 24, 1980. Any application previously accepted for filing and in conflict with any application listed in the attached appendix may also be amended as a matter of right not later than the close of business on November 24, 1980. Amendments filed pursuant to this notice are subject to the provisions of Section 73.3572(b) of the Commission's Rules.

Federal Communications Commission.

William J. Tricarico,

Secretary.

BPCT-800908KE (New), Tallahassee, Florida, Holt Robinson Television, Inc., Channel 40, ERP: Vis. 660 kW; HAAT: 820 feet

BPCT-800908KF (New), Tallahassee, Florida, Octagon Broadcasting Company, Channel 40, ERP: Vis. 20 kW; HAAT: 565 feet

BPCT-800908KI (New), Tallahassee, Florida, JGM, Inc., Channel 40, ERP: Vis. 3837 kW; HAAT: 403 feet

BPCT-800908KG (New), Everett, Washington, Unity Broadcasting Company, of Washington, State, Inc., Channel 16, ERP: Vis. 5000 kW; HAAT: 1275 feet

BPCT-800908KH (New), Everett, Washington, FNI Communications, Inc., Channel 16, ERP: Vis. 5000 kW; HAAT: 1305 feet

BPCT-800908KJ (New), Everett, Washington, Channel 16, Inc., Channel 16, ERP: Vis. 5000 kW; HAAT: 1275 feet

BPCT-800816KF (New), Wilmington, Delaware, HHL Broadcasting, Inc., Channel 61, ERP: Vis. 2290 kW; HAAT: 980 feet

BPCT-800828KE (New), Wilmington, Delaware, Delaware Valley Broadcasting, Inc., Channel 61, ERP: Vis. 1245 kW; HAAT: 963 feet

BPCT-801001KI (New), Wilmington, Delaware, Wilmington Channel 61, Inc., Channel 61, ERP: Vis. 5000 kW; HAAT: 1460 feet

BPCT-801001KX (New), Wilmington, Delaware, Ebony Broadcasting Corporation, Channel 61, ERP: Vis. 1533 kW; HAAT: 647 feet

BPCT-801001LE (New), Wilmington, Delaware, Wilmington Communications, Inc., Channel 61, ERP: Vis. 3090 kW; HAAT: 954 feet

BPCT-801001LF (New), Wilmington, Delaware, Wilmington Broadcasting Company, Channel 61, ERP: Vis. 5000 kW; HAAT: 990 feet

BPCT-801001KK (New), Sherman, Texas, 2020 Broadcasting Corporation, Channel 20, ERP: Vis. 5000 kW; HAAT: 1018 feet

BPCT-800710KH (New), Major Amendment, Rawlins, Wyoming, Strang Telecasting, Inc., Channel 11, ERP: Vis. 316 kW; HAAT: 854 feet

[FR Doc. 80-32398 Filed 10-16-80; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Altamaha Bancshares, Inc.; Formation of Bank Holding Company

Altamaha Bancshares, Inc., Uvalda, Georgia, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of Altamaha Bank and Trust Company, Uvalda, Georgia. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 7, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 8, 1980.

Jefferson A. Walker

Assistant Secretary of the Board.

[FR Doc. 80-32393 Filed 10-16-80; 8:45 am]

BILLING CODE 6210-01-M

Barnett Banks of Florida, Inc.; Acquisition of Bank

Barnett Banks of Florida, Inc., Jacksonville, Florida, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act [12 U.S.C. 1842(a)(3)] to acquire 80 per cent or more of the voting shares of Hobe National Bank, Hobe Sound, Florida. The factors that are considered in acting on the application are set forth in section 3(c) of the Act [12 U.S.C. 1842(c)].

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than November 7, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 8, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32382 Filed 10-16-80; 8:45 am]

BILLING CODE 6210-01-M

Baxter Insurance Agency, Inc.; Proposed Retention of Insurance Business

Baxter Insurance Agency, Inc., Baxter, Iowa, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to continue to act as an insurance agency.

Applicant states that it would continue to directly engage in the general insurance agency business in a community with a population of less than 5,000. These activities would be performed from offices of Applicant in Baxter, Iowa, and the geographic area to be served includes northwest Jasper County, Iowa. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a

hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than November 10, 1980.

Board of Governors of the Federal Reserve System, October 9, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32361 Filed 10-16-80; 8:45 am]

BILLING CODE 6210-01-M

First Bancshares of Muskogee, Inc.; Formation of Bank Holding Company

First Bancshares of Muskogee, Inc., Muskogee, Oklahoma, has applied for the Board's approval under Section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of First of Muskogee Corporation, Muskogee, Oklahoma. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 6, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 9, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32364 Filed 10-16-80; 8:45 am]

BILLING CODE 6210-01-M

First Gwinnett Bancshares, Inc.; Formation of Bank Holding Company

First Gwinnett Bancshares, Inc., Lawrenceville, Georgia, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of First National Bank of Gwinnett County. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received no later than November 5, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 8, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32365 Filed 10-16-80; 8:45 am]

BILLING CODE 6210-01-M

First State Bancorporation of Watonga, Inc; Formation of Bank Holding Company

First State Bancorporation of Watonga, Inc., Watonga, Oklahoma, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of First State Bank, Watonga, Oklahoma. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 10, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 9, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32366 Filed 10-16-80; 8:45 am]

BILLING CODE 6210-01-M

First Western Bancorp; Formation of Bank Holding Company

First Western Bancorporation, LaJara, Colorado, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of The First National Bank, LaJara, Colorado. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 10, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 9, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32367 Filed 10-16-80; 8:45 am]

BILLING CODE 6210-01-M

Garrett Bancshares Ltd.; Formation of Bank Holding Company

Garrett Bancshares Ltd., Bloomfield, Iowa, has applied for the Board's approval under Section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Davis County Savings Bank, Bloomfiled, Iowa. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 10, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 9, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32368 Filed 10-16-80; 8:45 am]

BILLING CODE 6210-01-M

Green City Bancshares, Inc.; Formation of Bank Holding Company

Green City Bancshares, Inc., Green City, Missouri, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Farmers Bank of Green City, Green City, Missouri. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 10, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 9, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32369 Filed 10-16-80; 8:45 am]

BILLING CODE 6210-01-M

Jones National Corp.; Formation of Bank Holding Company

Jones National Corporation, Seward, Nebraska, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of The Jones National Bank and Trust Company of Seward, Seward, Nebraska. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 10, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 9, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32370 Filed 10-16-80; 8:45 am]

BILLING CODE 6210-01-M

Kennedy Bancshares, Inc.; Formation of Bank Holding Company

Kennedy Bancshares, Inc., Bancroft, Iowa, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 88 percent or more of the voting shares of Farmers and Traders Savings Bank, Bancroft, Iowa. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 7, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 8, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32371 Filed 10-16-80; 8:45 am]

BILLING CODE 6210-01-M

Moore Financial Corp.; Formation of Bank Holding Company

Moore Financial Corporation, Berwyn, Illinois, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 85.12 percent of the voting shares of Commercial National Bank of Berwyn, Berwyn, Illinois. Applicant will temporarily be a wholly-owned subsidiary of Conlon-Moore Corporation, Berwyn, Illinois, which now owns 85.12 percent of the bank's voting shares. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 10, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 9, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32372 Filed 10-16-80; 8:45 am]

BILLING CODE 6210-01-M

P & C Bank Shares, Inc.; Formation of Bank Holding Company

P & C Bank Shares, Inc., Camilla, Georgia, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 53.73 percent or more of the voting shares of Planters & Citizens Bank, Camilla, Georgia. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 10, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 9, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32373 Filed 10-16-80; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Transmittal Rules; Early Termination of the Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Compagnie Francaise des Petroles is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of all the stock of Vickers Petroleum. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by Compagnie Francaise. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: September 30, 1980.

FOR FURTHER INFORMATION CONTACT: Naomi Licker, Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202) 523–3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80-32457 Filed 10-16-80; 8:45 am]

BILLING CODE 6750-01-M

Transmittal Rules; Early Termination of the Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Crouse-Hinds Company is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of all the stock of Belden Corporation. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: September 29, 1980.

FOR FURTHER INFORMATION CONTACT: Naomi Licker, Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202) 523–3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80-32458 Filed 10-16-80; 8:45 am]

BILLING CODE 6750-01-M

Transmittal Rules; Early Termination of the Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Penn Central Corporation is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of all the stock of Butler-Johnson, Inc. from Mr. H. Blume Johnson. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by Mr. Johnson. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: September 26, 1980.

FOR FURTHER INFORMATION CONTACT: Naomi Licker, Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202) 523–3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80-32459 Filed 10-16-80; 8:45 am]

BILLING CODE 6750-01-M

Transmittal Rules; Early Termination of the Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: American Industries, Inc. is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of certain assets of Gilmore Steel Corporation. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: September 25, 1980.

FOR FURTHER INFORMATION CONTACT: Naomi Licker, Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202) 523–3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80-32456 Filed 10-16-80; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

GSA Bulletin FPR 48 Federal Procurement; Energy Conservation

October 8, 1980.

To: Heads of Federal agencies.

Subject: Federal procurement policy concerning energy conservation.

1. *Purpose.* This bulletin reemphasizes the importance of considering energy conservation in acquisition decisions.

2. *Expiration date.* This bulletin expires October 8, 1981 unless earlier revised or superseded.

3. *Background.*

a. The Office of Federal Procurement Policy (OFPP) Policy Letter 76–1, in implementing the Energy Policy and Conservation Act (42 U.S.C. 636(a)(1)), required Executive agencies to promote energy conservation and efficiency through procurement policies and decisions. Accordingly, regulations making the requirement a mandatory standard with respect to procurements and underlying procurement and property management documents have been set forth in § 1–1.339–1 of the Federal Procurement Regulations and in Part 101–25 of the Federal Property Management Regulations.

b. The OFPP has now issued Supplement No. 1 to OFPP Policy Letter 76–1 (45 FR 47772, July 16, 1980), which reemphasizes the need to conform to both the spirit and intent of those regulations. In a September 2, 1980, memorandum, OFPP encourages Agency and Industry Contact Points procuring offices to work cooperatively to give meaningful consideration to the conservation of energy.

4. *Agency action.* Energy conservation as it relates to acquisition decisions is expected to be made a matter of management emphasis throughout the Executive branch.

Gerald McBride,

Assistant Administrator for Acquisition Policy.

Executive Office of the President
Office of Management and Budget, Office of Federal Procurement Policy
September 2, 1980.

Memorandum for: OFPP Agency and Industry Contact Points
From: Karen Hastie Williams, Administrator
Subject: Federal Contractor's Energy Conservation Programs

Under the auspices of the Interagency Federal Energy Policy Committee (sometimes referred to as the "656" Committee), this Office and the DOE's Office of Conservation and Solar Energy recently reviewed the measures taken by several Federal contractors and Government procurement activities to promote energy conservation at facilities employed in the performance of Federal contracts. The purpose of this survey was to determine if inclusion of an energy conservation clause in Federal contracts was warranted.

We have concluded that, on balance, Federal contractors are conscientiously pursuing energy conservation measures and that an energy conservation clause, per se, is not warranted as an additional stimulus. In fact, there is a general feeling that the efforts associated with administering an energy conservation clause could detract from positive measures being devoted to conservation efforts. Therefore, we have decided not to promulgate such a clause.

However, the survey did disclose that most of us still waste energy needlessly. A prime example is the use of lighting on bright days and when rooms are unoccupied. Also, industry associations could be helpful in promoting energy conservation by exchanging energy conservation ideas through such media as their newsletters to member firms.

Another area worth considering is to emphasize and discuss energy conservation during source selection for major programs. Such discussions could promote a common understanding of obstructions to energy conservation measures and cooperative means for overcoming such obstructions within the scope of the program.

Working cooperatively, I am certain that Federal contractors and procuring offices alike will continue to give meaningful consideration to the conservation of energy. Energy conservation makes good economic sense for both sides.

[FR Doc. 80-32324 Filed 10-16-80; 8:45 am]

BILLING CODE 6820-61-M

Qualifications Reviews Panel for the Position of Director, Gerald R. Ford Library Meeting

Notice is hereby given that the Qualifications Review Panel for the position of Director, Gerald R. Ford Library, will meet on October 23 and November 21 from 10 a.m. to adjournment in Room 105, National Archives and Records Service, 8th and Pennsylvania Avenue, NW., Washington, D.C. 20408.

The Panel will:

1. Develop selection criteria for the position of Director, Gerald R. Ford Library.

2. Review applications for position of Director, rank applicants, and make recommendations to the Archivist of the United States.

The meeting on October 23 will be open to the public during the discussion of item 1, above. Panel deliberations under item 2, above, are closed in accordance with exemption (6) of the Government in the Sunshine Act (5 U.S.C. 552b(c)). If necessary, discussions under item 2 will be continued on November 21 and will also be closed to the public in accordance with 5 U.S.C. 552b(c)(6). For further information contact Richard A. Jacobs, General Services Administration (NL), Washington, D.C. 20408 (202–523–3073).

Issued in Washington, D.C., on September 23, 1980.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 80-32326 Filed 10-16-80; 8:45 am]

BILLING CODE 6820-26-M

Public Buildings Service

Proposed Rehabilitation of Union Station, Montgomery, Montgomery County, Ala.; Decision

September 18, 1980.

The General Services Administration, in accordance with the National Environmental Policy Act of 1969, as amended, and the Regulations issued by the Council on Environmental Quality, Section 1505.2, dated November 29, 1978, completed the Record of Decision (ROD) for the proposed project.

The Record of Decision is available at the Regional Office for public review upon request.

Statement of Decision

It has been decided after consideration of available information, that the rehabilitation of Montgomery's historic Union Station is the most suitable and feasible choice in order to provide space for the proposed agency consolidation plan.

Positive social, economic, and environmental objectives, including employment within the central business area, energy conservation by the utilization of existing resources and the ultimate reduction in total miles traveled by employees and the public, preservation of a unique historic landmark, and stabilization of the downtown Riverfront area through cooperation with local revitalization and land use plans are expected to be realized by this proposal. The rehabilitation of Union Station is the most desirable alternative in serving the tax paying public under the auspices of Congressional acts and Executive directives.

For additional information contact: Mr. W. H. Capes, Director, Operational Planning Staff (4PG), GSA, Public Buildings Service, Richard B. Russell

Federal Building and U.S. Courthouse, 75 Spring Street, SW., Atlanta, GA 30303, Telephone (404) 221–3080.

Wesley L. Johnson, Jr.,
Regional Administrator.

[FR Doc. 32327 Filed 10–16–80; 8:45 am]
BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 79N–0339; DESI Nos. 8615, 9152, 9188, and 50168]

Certain Ophthalmic Antibiotic Combination Drugs for Human use; Drug Efficacy Study Implementation; Followup Notice; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; Correction.

SUMMARY: In FR Doc. 80–26545 appearing at page 57776 in the Federal Register of August 29, 1980, the following corrections are made:

1. On page 5776, the paragraph entitled "Dates," is corrected to read: "Amendments to Antibiotic Forms due on or before December 1, 1980; petitions due on or before September 29, 1980."

2. On page 57778, the second full paragraph in column two is corrected to read "Batches of such drugs with labeling bearing indications other than that specified above will no longer be acceptable for certification or release after December 1, 1980."

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, Bureau of Drugs (HFD–140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

Dated: October 2, 1980.
J. Richard Crout,
Director, Bureau of Drugs.

[FR Doc. 80–31973 Filed 10–16–80; 8:45 am]
BILLING CODE 4110–03–M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming consumer exchange meeting to be chaired by the Commissioner of Food and Drugs.

DATE: The meeting will be held at 1 p.m., Tuesday, October 21, 1980.

ADDRESS: The meeting will be held in the Hubert H. Humphrey Building Auditorium, 200 Independence Ave. SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Alexander Grant, Associate Commissioner for Consumer Affairs (HFE–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5006.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to exchange information between FDA officials and consumer representatives, by providing an opportunity for consumer representatives to present their views directly to the Commissioner and to the top managers of FDA, by seeking solutions to any problems agreed on during this communication, and by giving the agency an opportunity to discuss and communicate vital health and policy issues to the concerned public.

Dated: October 9, 1980.
William F. Randolph,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–32288 Filed 10–16–80; 8:45 am]
BILLING CODE 4110–03–M

Darragh Co., Hygromycin B Premix; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The agency withdraws approval of a new animal drug application (NADA) providing for the use of Darco 38% Layer Premix-H Medicated containing 44 grams hygromycin B per ton. The sponsor, Darragh Co., requested the withdrawal of approval.

EFFECTIVE DATE: October 27, 1980.

FOR FURTHER INFORMATION CONTACT: David Scarr, Bureau of Veterinary Medicine (HFV–214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4093.

SUPPLEMENTARY INFORMATION: Darragh Co., P.O. Box 86, Little Rock, AR 72203, is the sponsor of NADA 44–266 which provides for the use of Darco 38% Layer Premix-H Medicated which contains 44 grams hygromycin B per ton. The premix is used to make a medicated feed containing 12 grams hygromycin B per ton to be fed continuously to chickens as an aid to control certain worm infestations. The application was originally approved on April 5, 1971. By letter of April 17, 1980, the sponsor requested that approval of the NADA be withdrawn because the product is no longer manufactured.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360(e))), under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 44–266 and all supplements thereto for Darco 38% Layer Premix-H Medicated is hereby withdrawn, effective October 27, 1980.

Dated: October 6, 1980.
Gerald B. Guest,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 80–32116 Filed 10–16–80; 8:45 am]
BILLING CODE 4110–03–M

[Docket No. 80F–0365]

Dow Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Dow Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of oxirane (chloromethyl)-, polymer with ammonia, reaction product with chloromethane as an ion-exchange resin in treating food, including potable water.

FOR FURTHER INFORMATION CONTACT: Neal D. Singletary, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s) and 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s) and 348)), notice is given that a petition (FAP OA3519) has been filed by Dow Chemical Co., Midland, Michigan 48640, proposing that § 173.25 *Ion-exchange resins* (21 CFR 173.25) be amended to provide for the safe use of oxirane (chloromethyl)-, polymer with ammonia, reaction product with chloromethane as an ion-exchange resin in the treatment of food, including potable water.

The Food and Drug Administration (FDA) has carefully considered the potential environmental effects of this action and has found that the action will not have a significant impact on the human environment and that no environmental impact statement is required. FDA's finding of no significant impact and the evidence supporting that document may be seen in the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 7, 1980.
Sanford A. Miller,
Director, Bureau of Foods.

[FR Doc. 80–32290 Filed 10–16–80; 8:45 am]
BILLING CODE 4110–03–M

[Docket No. 80F–0401]

Eastman Chemicals Division, Eastman Kodak Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Eastman Chemicals Division, Eastman Kodak Co. has filed a petition proposing that the food additive regulations be amended to broaden the mole percentages of ethylene glycol and 1,4-cyclohexane dimethanol to 99–66 and 1–34, respectively, in the mixture used as a reactant with dimethyl terephthalate in the production of ethylene-1,4-cyclohexylene dimethylene terephthalate copolymer intended for food-contact use.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) notice is given that a petition (FAP OB3523) has been filed by Eastman Chemicals Division, Eastman Kodak Co., Kingsport, TN 37662, proposing that § 177.1315 *Ethylene—1,4-cyclohexylene dimethylene terephthalate copolymer* (21 CFR 177.1315) be amended to broaden the mole percentages of ethylene glycol and 1,4-cyclohexane dimethanol to 99–66 and 1–34, respectively, in the mixture used as a reactant with dimethyl terephthalate in the production of ethylene-1,4-cyclohexylene dimethylene terephthalate copolymer intended for food-contact use.

FDA has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting the document may be seen in the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 7, 1980.
Sanford A. Miller,
Director, Bureau of Foods.

[FR Doc. 80–32289 Filed 10–16–80; 8:45 am]
BILLING CODE 4110–03–M

Farmland Industries, Inc.; Co-op Chick Fortifier; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The agency withdraws approval of a new animal drug application (NADA) providing for use of Co-op Chick Fortifier (amprolium) premix. Finished feeds containing the premix are fed to poultry as an aid in prevention of coccidiosis or for development of immunity to coccidiosis. The sponsor, Farmland Industries, Inc., requested the withdrawal of approval.

EFFECTIVE DATE: October 27, 1980.

FOR FURTHER INFORMATION CONTACT: Vitolis E. Vengris, Bureau of Veterinary Medicine (HFV–214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3183.

SUPPLEMENTARY INFORMATION: Farmland Industries, Inc., P.O. Box 7305, Kansas City, MO 64116, is the sponsor of NADA 44–364 which provided for use of Co-op Chick Fortifier (0.50 percent amprolium) premix in making finished poultry feeds. The feeds are indicated as aids in prevention of coccidiosis in broiler chickens, turkeys, and laying hens or for development of active immunity to coccidiosis in replacement chickens under conditions of slight exposure to coccidiosis. The application was originally approved November 10, 1970. By letter of April 22, 1980, the sponsor requested withdrawal of approval of the NADA because the product is no longer being manufactured or marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))), under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 44–364 and all supplements for Farmland Industries, Inc., Co-op Chick Fortifier is hereby withdrawn, effective October 27, 1980.

Dated: October 6, 1980.
Gerald B. Guest,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 80–32118 Filed 10–16–80; 8:45 am]
BILLING CODE 4110–03–M

[DESI 5897; Docket No. 80N–0379]

Folic Acid Preparations, Oral and Parenteral for Therapeutic Use; Drugs for Human Use; Drug Efficacy Study Implementation; Amendment

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice amends a previous **Federal Register** notice for folic acid by revising the Precautions statement to be included in the labeling for these drugs. The agency believes the revised labeling more accurately states the level at which folic acid may obscure pernicious anemia.

DATE: Supplements to approved NDA's and ANDA's due on or before December 16, 1980.

ADDRESS: Communications in response to this notice should be identified with the reference number DESI 5897, directed to the attention of the appropriate office named below, and addressed top the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Supplements to full new drug applications (identify with NDA number): Division of Metabolism and Endocrine Drug Products (HFD–130), Rm. 14B–03, Bureau of Drugs.

Original abbreviated new drug applications or supplements thereto (identify as such): Division of Generic Drug Monographs (HFD–530), Bureau of Drugs.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD–310), Bureau of Drugs.

FOR FURTHER INFORMATION CONTACT: David T. Read, Bureau of Drugs (HFD–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: A notice published in the **Federal Register** of April 9, 1971 (36 FR 6843), announced the conditions under which the FDA would approve new drug applications for folic acid preparations. The labeling conditions included the following precaution:

Folic acid especially in doses abaove 1.0 mg daily may obscure pernicious anemia, in that hematologic remission may occur while neurological manifestations remain progressive.

This same precaution was required in an amendment published August 2, 1973 (38 FR 20750).

Based on available data and information the Director of the Bureau of Drugs finds that the precautions section of the labeling conditions for folic acid preparations should be amended. While obscuration of pernicious anemia does not ocur at levels of 0.1 mg for folate per day, hemotologic remissions in pernicious anemia have been reported at levels as low as 0.25 mg of folate per day. The precautions section of the labeling conditions for folic acid preparations is amended to read as follows:

Folic acid in doses above 0.1 mg daily may obscure pernicious anemia in that hematologic remission can occur while neurological manifestations remain progressive.

Supplements to approved NDA's or ANDA's providing for appropriate revision of the labeling of drug products affected by this notice should be submitted on or before December 16, 1980. The revised labeling may be put into use before FDA approves the supplemental NDA or ANDA, but it shall be put into use no later than February 17, 1981.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053, as amended (21 U.S.C. 352, 355)), and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.82).

Dated: October 6, 1980.

J. Richard Crout,

Director, Bureau of Drugs.

[FR Doc. 80-32293 Filed 10-16-80; 8:45 am]

BILLING CODE 4110-03-M

Jensen-Salsbery Laboratories; Anthelin Tablets; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) withdraws approval of a new animal drug application (NADA) providing for use of anthelin tablets as an anthelmintic in dogs. The sponsor, Jensen-Salsbery Laboratories, requested withdrawal of approval.

EFFECTIVE DATE: October 27, 1980.

FOR FURTHER INFORMATION CONTACT: Leonard D. Krinsky, Bureau of Veterinary Medicine (HFV–216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4093.

SUPPLEMENTARY INFORMATION: Jensen-Salsbery Laboratories, Division of Burroughs-Wellcome Co., Kansas City, MO 64108, is sponsor of NADA 7–228 which provides for use of anthelin tablets as a taeniafuge (anthelmintic) in dogs. Each tablet contains 47 milligrams of anthelin (equivalent to 12.7 mg of antimony). The NADA was originally approved January 23, 1950. In their letter of April 29, 1980, the firm requested that approval of the NADA be withdrawn because the product is no longer being manufactured or marketed.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that NADA 7–226 and all supplements for anthelin tablets is hereby withdrawn, effective October 27, 1980.

In a document published elsewhere in this issue of the Federal Register, § 520.120 *(Anthelin tablets* is being revoked.

Dated: October 6, 1980.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 80-32117 Filed 10-16-80; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 80F–0359]

Mitsui Petrochemical Industries, Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Mitsui Petrochemical Industries, Ltd., has filed a petition proposing that the food additive regulations be amended to provide for an increase in the weight-percent of units derived from 4-methylpentene-1 in ethylene/4-methylpentene-1 copolymers intended for food-contact applications.

FOR FURTHER INFORMATION CONTACT: Neal D. Singletary, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)), notice is given that a petition (FAP No. 0B3521) has been filed by Mitsui Petrochemical Industries, Ltd., c/o Keller and Heckman, 1150 17th St. NW., Washington, DC 20036, proposing that § 177.1520 *Olefin polymers* (21 CFR 177.1520) be amended to provide for an increase in the weight-percent units derived from 4-methylpentene-1 in ethylene/4-methylpentene-1 copolymers intended for food-contact applications.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that document will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: October 7, 1980.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 80-32282 Filed 10-16-80; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 80F–0368]

Radiation Technology, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Radiation Technology, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a source of gamma radiation to reduce or control microbial contamination in spices, natural flavorings, and dehydrated vegetable seasonings.

FOR FURTHER INFORMATION CONTACT: George H. Pauli, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)), notice is given that a petition (FAP OM3516) has been filed by Radiation Technology, Inc., Lake Denmark Road, Rockaway, NJ 07866, proposing that Part 179—Irradiation in the Production, Processing and Handling of Food (21 CFR Part 179) be amended to provide for the safe use of a Cobalt 60 or Cesium 137 source of gamma radiation to reduce or control microbial contamination in spices, natural flavorings, and dehydrated vegetable seasonings by irradiating those foods at doses up to 1 megarad. This petition is being evaluated.

The agency has considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and an environmental impact statement is not required. the agency's findings of no significant impact and the evidence supporting that document may be seen in the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 7, 1980.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 80-32291 Filed 10-16-80; 8:45 am]

BILLING CODE 4110-03-M

Health Care Financing Administration

National Professional Standards Review Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 USC App. I), announcement is made of the following Council meeting:

Name: National Professional Standards Review Council.

Date and Time: November 3, 1980 (10:00 a.m. to 5:00 p.m.), November 4, 1980 (9:00 a.m. to 1:00 p.m.).

Place: Auditorium (first floor) HHS North Building, 330 Independence Avenue SW., Washington, D.C. 20201.

Purpose of Meeting: The Council was established to advise the Secretary of Health and Human Services on the administration of Professional Standards Review (Title XI, Part B, Social Security Act). Professional Standards Review is the procedure to assure that the services for which payment may be made under the Social Security Act are medically necessary and conform to appropriate professional standards for the provision of quality health care. The Council's agenda will include discussion of a variety of issues relevant to the implementation of the PSRO program. On October 24, 1980 a tentative agenda will be available to the public.

The meeting of the Council is open to the public. Public attendance is limited to space available.

Any member of the public may file a written statement with the Council before, during, or after the meeting. To the extent that time permits, the Council Chairperson will allow public presentation of oral statements at the meeting.

All communications regarding this Council should be addressed to Cleo E. Hancock, Jr., Staff Director, National Professional Standards Review Council, Health Standards and Quality Bureau, Room 4520, Health and Human Services Building, 330 Independence Avenue, SW, Washington, D.C. 20201, (202) 245–6097.

Cleo E. Hancock, Jr.,

Staff Director, National Professional Standards Review Council.

[FR Doc. 80-32420 Filed 10-16-80; 8:45 am]

BILLING CODE 4110-35-M

Office of Human Development Services

White House Conference for Children and Youth National Advisory Committee; Establishment

AGENCY: Office of Human Development Services, DHHS.

ACTION: Notice of National Advisory Committee Establishment.

PURPOSE: The National Advisory Committee, 1981 White House Conference for Children and Youth, shall provide advice and recommendations to the Secretary, Health and Human Services, to assist in planning, conducting and reviewing the conference.

DATES: The Charter for this Committee was signed by the Secretary of Health and Human Services on September 30, 1980. The Committee will terminate when it has completed its work and in any event, six months after the date of adjournment of the Conference. The Charter of the Committee shall terminate when the Committee has completed its work, or two years from the date of signature by the Secretary, whichever comes first, unless renewed by appropriate action prior to the end of the first two-year period.

FOR FURTHER INFORMATION CONTACT: Amy Potter, Special Assistant to the National Advisory Committee, White House Conference for Children and Youth, 730 Jackson Place, NW., Washington, D.C. 20006, 202/456–6440.

SUPPLEMENTARY INFORMATION: This Committee is being formed to assist in planning, conducting, and reviewing the White House Conference for Children and Youth, pursuant to Section 101 (g) of Pub. L. 96–123. The Committee is governed by the provisions of the Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C. Appendix I, as amended, which sets forth standards for the formation and use of advisory committees.

Dated: October 10, 1980.

Mamie J. Welborne,

Human Development Services Committee Management Officer.

[FR Doc. 80-32355 Filed 10-16-80; 8:45 am]

BILLING CODE 4110-92-M

White House Conference on Aging Technical Committee; Meeting

The White House Conference on Aging Technical Committee was established to provide scientific and technical advice and recommendations to the National Advisory Committee of the 1981 White House Conference on Aging and to the Executive Director of the 1981 White House Conference on Aging in developing issues to be considered and to produce technical documents to be used by the Conference.

Notice is hereby given pursuant to the Federal Advisory Committee Act, (Public Law 95–463, 5 U.S.C. App. 1, sec. 10, 1976) that the Technical Committee on Governmental Structures will hold a meeting on October 16 and 17, 1980, in Washington, D.C. The October 16 session will be from 10 a.m. to 4:30 p.m. in Room 5542, Health and Human Services Building North, 330 Independence Avenue, S.W. The October 17 session will be from 8:30 a.m. until 3 p.m. in Room 337 and 339A in the Hubert H. Humphrey Building, 200 Independence Avenue, S.W.

At this meeting the committee will review the previously developed workplan and discuss existing and ongoing relevant studies by Government Accounting Office, Federal Council on Aging and Administration on Aging. We will also meet with and provide charge to the consultant relative to the development of the Technical Committee Report.

Further information on the Technical Committee meeting may be obtained from Mr. Jerome R. Waldie, Executive Director, White House Conference on Aging, Room 4059, 330 Independence Avenue, S.W., Washington, D.C. 20201, telephone (202) 245–1914. Technical Committee meetings are open for public observation.

This announcement is being published less than 15 days advance notice because of difficulties in securing federal meeting space.

Dated: October 10, 1980.

Mamie Welborne,

HDS Committee Management Officer.

[FR Doc. 80-32359 Filed 10-16-80; 8:45 am]

BILLING CODE 4110-92-M

Public Health Service Center for Disease Control

Availability of Proposed Biosafety Guidelines for Microbiology and Biomedical Laboratories

Notice is hereby given that a proposed voluntary code of practice for

laboratories working with microorganisms infectious for humans has been developed jointly by the Center for Disease Control and the National Institutes of Health. The guidelines entitled "Proposed Biosafety Guidelines for Microbiology and Biomedical Laboratories" have been published and are available for public review and comment. Comments or requests for single copies should be directed to:

Dr. John H. Richardson, Director, Office of Biosafety, Center for Disease Control, PHS, HHS, 1600 Clifton Road, NE, Atlanta, Georgia 30333, Telephone: (404) 329–3883, FTS: 236–3383

Dr. W. Emmett Barkley, Director, Division of Safety, National Institutes of Health, PHS, HHS, 9000 Rockville Pike, Bethesda, Maryland 20205, Telephone: (202) 496–1357, FTS: 496–1357

Dated: October 7, 1980.

William H. Foege,

Director, Center for Disease Control.

[FR Doc. 80-32453 Filed 10-16-80; 8:45 am]

BILLING CODE 4110-86-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-80-1036]

Fiscal Year 1981 Technical Assistance for Assessing Potential District Heating and Cooling System Projects; Competition for Fiscal Year 1981

AGENCY: Department of Housing and Urban Development.

ACTION: Notice establishing a competition for FY 1981 technical assistance to assess the potential for District Heating and Cooling in CDBG—eligible communities.

SUMMARY: Proposals are solicited for technical assistance to communities and other participants in identifying potential district heating system projects which will contribute to Community Development Block Grant communities' achievements of national and local community development objectives, in assessing their feasibility, in developing community consensus on whether to proceed with a project, and in developing a district heating system.

Public or private entities as well as municipalities may respond to this announcement. Where the respondent is not a CDBG-eligible community see 24 CFR 570.3 (u)(v), however, it must include a letter from the chief executive of a unit of general local government which is undertaking or planning to undertake a CDBG program indicating that: (a) the respondent's proposed activities under the cooperative agreement are for the purpose of assisting the governmental unit to plan, develop, or administer its community development program; (b) the unit of general local government will provide representation to, and fully participate in, the local DHS Assessment Work Group.

CLOSING DATE FOR PROPOSALS: January 5, 1981.

PROPOSAL FORMS: Proposal forms and program information packages are expected to be ready for mailing by November 7, 1980. They may be obtained by writing to the: Department of Housing and Urban Development, Office of Procurement and Contracts, Room B–133 (711 Bldg.) (ACC–CL), 451 7th Street, S.W., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Christopher Lee, Department of Housing and Urban Development, Office of Procurement and Constracts, Room B–133 (711 Bldg.) (ACC–CL), 451 7th Street, S.W., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: Program information: The U.S. Department of Energy (DOE) and Department of Housing and Urban Development (HUD) are interested in promoting the use of district heating and cooling systems in CDBG-eligible communities where such systems would enhance the communities' abilities to use CDBG funds to meet community development national and local objectives. They are seeking proposals to assist in this effort. For purposes of this proposed Cooperative Agreement, DOE and HUD are defining a "community district heating/cooling system" as an energy system that generates thermal energy from one or more central plants to service a multiple number of buildings and customers with thermal services through a piping distribution network and, where possible, a storage facility. The piping system may extend throughout an entire urban area, or may be limited to a single neighborhood. These systems can contribute significantly to the ability of Community Development Block Grant communities to achieve the objectives of the Housing and Community Development Act of 1974 by lowering energy costs, reducing environmental pollution, and expanding local economic opportunities, particularly for persons of low- and moderate-income.

Other Resources Available to Applicants: Communities receiving funds under awards from this solicitation will also be eligible for technical support from DOE. Support, upon request, will come from a DOE Project Manager who will provide on-site support to the local DHS Assessment Work Group, analyzing the particular aspects of the community's situation and offering advice and counsel on the types of assessment activities it may opt to undertake. The DOE Project Manager will also provide information on the specialized technical support resources which DOE can make available. For example, energy managers from such organizations as the Argonne National Laboratory, Oak Ridge National Laboratory and Pacific Northwest Laboratory can advise on heat source possibilities (including industrial waste heat sources, geothermal sources, incinerator waste heat sources, etc.), alternative piping systems, heat storage systems, cost considerations, financing mechanisms and alternatives, etc.

Available Funds: It is estimated that approximately $1.5 million will be available for this solicitation in FY 81 subject to availability of FY 81 funds. While no maximum amount has been set, it is estimated that approximately 20–35 proposals will be funded, with amounts varying according to the complexity of the assessment program, size of potential heat service areas and communities, etc.

Applicable regulations: Regulations applicable to this program include 24 CFR Part 570.402.

[Sec. 7(d) of Department of Housing and Urban Development Act, 42 USC 3535 (d)]

Issued at Washington, D.C., October 14, 1980.

Robert C. Embry, Jr.,

Assistant Secretary for Community Planning and Development.

[FR Doc. 80-32452 Filed 10-16-80; 8:45 am]

BILLING CODE 4210-01-M

Office of Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection

[Docket No. N-80-1035]

National Mobile Home Advisory Council

AGENCY: Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection, HUD.

ACTION: Notice of nominees selected by the secretary, Department of HUD, for appointment to the national mobile home advisory council and notice of biannual meeting of the national mobile home advisory council.

SUMMARY: This Notice announces the nominees selected by the Secretary for appointment to the National Mobile Home Advisory Council. Their terms are for two years, ending on August 21, 1982. The terms of the other 12 members on the Council will expire on August 21, 1981. This Notice also announces a biannual meeting of the Advisory Council.

FOR FURTHER INFORMATION CONTACT: Janice Ligon, Coordinator, National Mobile Home Advisory Council, Office of Neighborhoods, Voluntary Associations and Consumer Protection, Department of Housing and Urban Development (Attention: Office of Mobile Home Standards, Room 3248), 451 7th Street, S.W., Washington, D.C. 20410; Telephone (202) 755–6920.

SUPPLEMENTARY INFORMATION: The National Mobile Home Construction and Safety Standards Act of 1974 (hereinafter "the Act"), 42 U.S.C. 5401 *et seq.*, requires the Secretary of the Department of Housing and Urban Development to establish Federal construction and safety standards for mobile homes. The Act also requires that the Secretary appoint a National Mobile Home Advisory Council composed of 24 members. The membership of the Council is selected equally from each of the following categories: (a) Consumer organizations, community organizations, and recognized consumer leaders; (b) the mobile home industry and related groups, including at least one representative of small business; and (c) government agencies including Federal, State and local governments. The purpose of the National Mobile Home Advisory Council is to advise the Department, to the extent feasible, prior to the establishment, amendment or revocation of any mobile home construction and safety standard.

Sections 6(a) and (b) of the Charter of the National Mobile Home Advisory Council stipulate that members are appointed to serve two-year terms which expire on August 21 of the second year of each member's appointment, unless a member is appointed to fill an unexpired term.

Nominations for the terms ending on August 21, 1980, were requested in a Notice published on May 21, 1980 in the Federal Register (45 FR 34,071 (1980)). In evaluating the qualifications of candidates, the Department also considered the following major factors in selecting the members:

(1) Achieving geographical balance, within the Council as a whole and within the three membership categories, weighing that balance according to the size of the mobile home industry and the number of homes in use in each region of the country;

(2) Appointing persons who would offer the Council a broad spectrum of views;

(3) The knowledge, experience and special qualifications of candidates;

(4) Small business representation; and

(5) Strong consumer advocation.

From the many nominations received in response to the Federal Register Notice, the Department has selected individuals whom it believes to be the most qualified to serve on the Council.

The following persons have been selected by the Secretary for appointment to the National Mobile Home Advisory Council with terms expiring on August 21, 1982:

Consumer Sector

Benjamin L. Johnson, Attorney at Law, Donaldsonville, Louisiana
John H. Jensen, Committee Chairman, Mobile Home Owners of America, Inc., Bothell, Washington
Andrew Sabhlok, Environmental Consultants, Berkeley, California
C. J. Sullivan, Andalusia, Alabama

Industry Sector

Diane Montoya, President, States Industries, Inc., Eugene, Oregon
Cecil Cullip, Consultant, Cullip Industries, Ellaville, Georgia
George W. Hammett, Vice President of Engineering, Winston Industries, Inc., Double Springs, Alabama
Charles E. Talmage, Director of Government Relations, Skyline Corporation, Elkhart, Indiana

Government Sector

Leslie G. Tingle, Residential Construction and Inspection Engineer, Division of Housing, Department of Local Affairs, State of Colorado, Denver
Travis Pitts, Operations Manager, Mobile Home Section, Department of Housing and Community Development, State of California, Sacramento
Henry Green, Chief, Building Division, Bureau of Construction Codes, Department of Labor, State of Michigan, Lansing
*James Shields, Chief, Division of Industrialized and Mobile Housing, Department of Community Affairs, Commonwealth of Pennsylvania, Harrisburg

*Mr. Shields was appointed in February 1980 to fill an unexpired term which terminated on August 21, 1980. Due to the short duration of his term, it has been extended by the Secretary and will expire on August 21, 1982.

The following members were previously appointed and will continue to serve on the Council until August 21, 1981:

Consumer Sector

Timothy Carlyle, Attorney at Law, Sullivan and Carlyle, Santa Ana, California
Suzanne Lindamood, Associate Professor, Department of Family Economics, Kansas State University, Manhattan, Kansas
William White, Federation of Mobile Home Owners of Florida, Inc., Largo, Florida
Edward Kramer, Director, The Housing Advocates, Inc., Cleveland, Ohio

Industry Sector

Raymond F. Tucker, Vice President of Engineering, Guerdon Industries, Inc., Louisville, Kentucky
Vincent J. Wanzek, Director, Product Engineering, Fleetwood Enterprises, Inc., Riverside, California
John F. DePledge, Product Manager, Prefinished Paneling, Champion Building Products, Stamford, Connecticut
Paul Stiner, Owner, Fireside Mobile Homes, Inc., Richmond, Indiana

Government Sector

Milton R. Nash, Building Code Supervisor, Department of Housing and Community Development, Commonwealth of Virginia, Richmond
Leah McCartney, Member Public Service Commission, State of Missouri, Jefferson City
Robert Leggett, Sanitarian, Health Department, State of Iowa, Des Moines
*John P. Steele, Administrator, Manufactured Housing, Department of Labor and Standards, State of Texas, Austin

*Mr. Steele serves as Chairman of the Council.

In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. I, announcement is made of the following meeting:

The National Mobile Home Advisory Council will meet on December 9, 10, 11 and 12, 1980. The meetings are open to the public and will convene at 9:00 A.M. on Tuesday, December 9, 1980 at the Sheraton-Crest Inn, 111 East First Street, Austin, Texas 78701.

Among other items, the Department plans to discuss and seek recommendations concerning evaluations and recommendations for improvements and clarifications to the Federal Mobile Home Construction and Safety Standards in the following areas:

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(1) Space Planning;
(2) Fire and Egress Safety;
(3) Energy;
(4) Transportation;
(5) Plumbing Systems;
(6) Electricial Systems;
(7) Mechanical Systems;
(8) Structural and Load Testing Requirements; and
(9) General Provisions.

The final agenda will be available prior to the meeting. Inquires concerning the agenda may be made after November 10, 1980 by contacting the Office of Mobile Home Standards, HUD, at (202) 755–6920 (not a toll free number).

(Sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)); National Mobile Home Construction and Safety Standards Act of 1974, (42 U.S.C. 5404); and Federal Advisory Committee Act, (5 U.S.C. App. I), 10(a)(2).)

Issued at Washington, D.C., October 9, 1980.

Geno C. Baroni,

Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection.

[FR Doc. 80-32303 Filed 10-16-80; 8:45 am]

BILLING CODE 4210-01-M

Office of the Secretary

[Docket No. D-80-624]

Redelegation of Authority for Regional Office, Region I (Boston)

AGENCY: Regional Office, Region I (Boston), (HUD).

ACTION: Redelegaton of Authority to Administer Oaths and Verify Complaints.

SUMMARY: This document redelegates authority to administer oaths and verify complaints under Title VIII (Fair Housing) of the Civil Rights Act of 1968.

SUPPLEMENTAL INFORMATION: *Redelegation of Authority to Administer Oaths and Verify Complaints.* Each of the officials appointed to the following positions is authorized to administer oaths and verify complaints under section 811(a) of the Civil Rights Act of 1968 (42 U.S.C. 3611(a)).

1. Regional Office—a. Director, Fair Housing and Equal Opportunity Compliance Division
b. All Fair Housing and Equal Opportunity Compliance Specialists
2. Boston and Hartford Area Offices—a. Director, Fair Housng and Equal Opportunity Division
b. All Fair Housing and Equal Opportunity Specialists

SUPERCEDURE: This redelegation of authority supercedes the redelegation published at 41 FR 45617, October 15, 1976.

EFFECTIVE DATE: This redelegation of authority is effective on October 17, 1980.

Issued at Boston, Massachusetts September 4, 1980.

Joseph Vera,

Director, Office of Regional Fair Housing and Equal Opportunity Region I, Department of Housing and Urban Development.

[FR Doc. 80-32302 Filed 10-16-80; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Geological Survey

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that Sonat Exploration Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Leases OCS–G 2038 and 3537, Blocks 231 and 232, East Cameron Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act amendments of 1978, that the Geological Survey is considering approval of the Plan and that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 pm., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (505) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: October 10, 1980.

E.A. Marsh,

Staff Assistance for Operations, Gulf of Mexico OCS Region.

[FR Doc. 80-32314 Filed 10-16-80; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Aminoil U.S.A., Inc.

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Aminoil U.S.A., Inc. has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 2711, Block A-560, High Island Area, offshore Texas.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: October 9, 1980.

E. A. Marsh,

Staff Assistant for Operations, Gulf of Mexico OCS Region.

[FR Doc. 80-32378 Filed 10-16-80; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; ARCO Oil and Gas Co.

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS 0438, Block 175, Eugene Island Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m. 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: October 9, 1980.

E. A. Marsh,

Staff Assistant for Operations, Gulf of Mexico OCS Region.

[FR Doc. 80-32376 Filed 10-16-80; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Union Oil Co. of California

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Union Oil Company of California has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 4000, Block 53, South Timbalier Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: October 8, 1980.

E. A. Marsh,

Staff Assistant for Operations, Gulf of Mexico OCS Region.

[FR Doc. 80-32424 Filed 10-16-80; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Chevron U.S.A. Inc.

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that Conoco Inc. has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 2110, Block 307, Eugene Island Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and

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Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: October 8, 1980.

E. A. Marsh,

Staff Assistant for Operations, Gulf of Mexico OCS Region.

[FR Doc. 80-32428 Filed 10-16-80; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Conoco Inc.

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 2937, Block 33, South Pass Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002. Phone (504) 837–4720, Ext. 228.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: October 9, 1980.

E. A. Marsh,

Staff Assistant for Operations, Gulf of Mexico OCS Region.

[FR Doc. 80-32425 Filed 10-16-80; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Land Management

[M 070475]

Montana; Proposed Continuation of Withdrawal

The Bureau of Land Management, U.S. Department of the Interior, proposes that the Camp Creek Campground, Montana Gulch Campground and Azure Cave Area (Zortman Park) withdrawal made by Public Land order 3938 on March 1, 1966, be continued in its entirety for a 20 year period, pursuant to the authority contained in section 204 of the Federal Land Policy and Management Act of October 21, 1976, 90 Stat. 2751. 43 U.S.C. 1714. The following described land is included in the proposed continuation:

Montana Principal Meridian

T. 25 N., R. 24 E.,
Sec. 21: E½SE¼SE¼,
Sec. 22: W½SW¼SW¼,
Sec. 27: NW¼NW¼NW¼,
Sec. 28: NE¼NE¼NE¼
T. 25 N., R. 25 E.,
Sec. 16: S½NE¼NE¼, N½SE¼NE¼,
Sec. 19: E½ of Lot 7,
Sec. 20: Lot 17, W½SE¼SW¼,
Sec. 29: NW¼NW¼,
Sec. 30: E½NE¼NE¼.

Containing 240 acres in Phillips County.

The land is currently segregated from location and entry under the public land laws generally including the mining laws, but not the mineral leasing laws. The purpose of the withdrawal is to protect the public recreational values within the sites. No change is proposed in purpose or segregative effect of the withdrawal.

Notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal continuation. All interested persons who desire to be heard on the proposal must submit a written request for a hearing to the undersigned on or before November 14, 1980. Upon determination by the State Director, Bureau of Land Management, that a public hearing will be held, a notice will be published in the Federal Register giving the time and place of such hearing. In lieu of or in addition to attendance at a scheduled public hearing, written comments or objections to the proposed withdrawal continuation may be filed with the undersigned official on or before November 14, 1980.

The authorized officer of the Bureau of Land Management will undertake such investigation as are necessary to determine the existing and potential demand for the land and its resources. He will review the withdrawal rejustification to insure that continuation would be consistent with the statutory objectives of the programs for which the land is dedicated; the area involved is the minimum essential to meet the desired needs; the maximum concurrent utilization of the land is provided for; and an agreement is reached on the concurrent management of the land and its resources. He will also prepare a report for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

All communications in connection with this proposed withdrawal continuation should be addressed to the undersigned offices. Bureau of Land Management, U.S. Department of the Interior, P.O. Box 30157, Billings, Montana 59107.

Dated October 7, 1980.

Edgar D. Stark,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 80-32308 Filed 10-16-80; 8:45 am]

BILLING CODE 4310-84-M

[Designation Order NM-010-8002]

New Mexico Off-Road Vehicle Designations

October 8, 1980.

AGENCY: Bureau of Land Management.

ACTION: Notice of off-road vehicle interim designation decisions.

Decision: Notice is hereby given relating to the use of off-road vehicles on public lands in accordance with the authority and requirements of Executive Orders 11644 and 11989, and regulations contained in 43 CFR 8340. The following described lands under administration of the Bureau of Land Management are designated as limited or closed to off-road motorized vehicle use.

The 32,010 acres affected by the designations are all located in the San Juan Planning Unit and in San Juan County, New Mexico. These are interim designations of four separate areas, three of which are Wilderness Study Areas, and one which is proposed as an Area of Critical Environmental Concern. The restrictive designations are designed to protect the sensitive natural resources found within each of these areas.

Comments which influenced these designation decisions were received as a result of television announcements, a newspaper article, and 125 letters which were sent to appropriate individuals and groups. This designation order supersedes that portion of a previous closure (Federal Register Vol. 43, No. 108—Monday, June 5, 1978) which refers to off-road motorized vehicle use in the Bisti Badlands. The remainder of that closure order is to remain in effect.

A. Limited Designation—24,940 Acres

1. Use Limited to Existing Ways and Trails—27,160 acres.

The Ah-shi-sle-pah Wilderness Study Area (6,000 acres) is located 2½ miles north of Chaco Canyon National Monument, New Mexico. Vehicle use in this area is permitted on currently existing ways and trails.

The De-na-zin Wilderness Study Area (19,000 acres) is located 25 miles south of Bloomfield, New Mexico. Vehicle use in this area is permitted on currently existing ways and trails.

The Bisti Wilderness Study Area (3,520 acres) is located 30 miles south of Farmington, New Mexico. Vehicle use on 2,160 acres of this area is permitted on currently existing ways and trails.

2. Use Limited to Existing Roads and Trails—1,780 Acres.

The proposed Simon Canyon Area of Critical Environmental Concern (3,490) acres) is located 3 miles northwest of Navajo Dam, New Mexico. Vehicle use within this area, but above the canyon rim, is permitted on currently existing roads and trails and on any new roads that are properly approved. This area consists of 1,780 acres.

B. Closed Designation—3,070 Acres.

The central portion of the Bisti Wilderness Study Area, which consists of 1,360 acres, is closed to vehicle use to protect the fragile scenic and fossil resources located there.

Simon Canyon is closed to vehicle use to preserve the natural scenic, wildlife and cultural values found there. The closure extends from the rim downward and consists of 1,710 acres.

These designations become effective October 17, 1980 and will remain in effect until rescinded or modified by the authorized officer. An environmental assessment describing the impact of these designations is available for inspection at the offices listed below:

ADDRESSES: For further information about these designations, contact either of the following Bureau of Land Management offices:

District Manager, Albuquerque District Office, 3550 Pan American Fwy. NE., P.O. Box 6770, Albuquerque, NM 87107;

Area Manager, Farmington Resource Area, 900 LaPlata Hwy, P.O. Box 568, Farmington, NM 87401.

Van W. Manning,

Acting State Director.

[FR Doc. 80-32321 Filed 10-16-80; 8:45 am]

BILLING CODE 4310-84-M

Anchorage District Advisory Council Meeting

September 30, 1980.

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Anchorage District Bureau of Land Management's Advisory Council will be held November 13, 1980, at 8:00 a.m. in the Training Room of the District Office, 4700 E. 72nd Avenue, Anchorage, Alaska 99507.

The agenda is as follows:

I. Opening remarks—Richard Tindall
II. Election of Officers—Richard Tindall
III. Review of history and status of the easement program—Pat Beckley
IV. Easement development on 1980—Darryl Fish, Lou Waller
A. Community reaction—Herbert Smelcer, Michael Harrington

Break—10:30 a.m.

V. Plans for 1981—Pat Beckley
Problem areas:
Maintenance—Jack Fisher
Monitoring—Lou Waller
Acquisition—Pat Beckley

Lunch—12:00 a.m.

Public Hearing—1:00 p.m. Council Chairperson
Formation of subcommittees deliberations—2:30 p.m. Council Chairperson

Adjournment

The meeting is open to the public. Interested persons may make oral statements to the council at 1:00 p.m. or may file a written statement for the council's consideration. Anyone wishing to appear before the council should notify the Public Information Officer, Anchorage district Office, 4700 E. 72nd Avenue, Anchorage, Alaska 99507.

Summary minutes of the council meeting will be maintained at the District Office and will be available for public inspection and reproduction during regular business hours, within 30 days of the meeting.

Donovan Yingst,

Acting District Manager.

[FR Doc. 80-32454 Filed 10-16-80; 8:45 am]

BILLING CODE 4310-84-M

California Desert Conservation Area Proposed Plan and Final Environmental Impact Statement; Extension of the Public Comment Period

Notice is hereby given that the Public Comment Period on the Proposed California Desert Conservation Area Proposed Plan and Final Evnironmental Impact Statement (45 FR 64714) has been extended from November 3, 1980 until November 21, 1980. The extension is provided to assure that interested parties have an opportunity to review lengthy background material contained in seven volumes of appendices to the Plan and EIS.

Comments must be received by November 21, 1980 and should be sent to: Bureau of Land Management, Box 5555, Riverside, California 92517, (714) 787–1462.

Dated: October 18, 1980.

Ronald D. Hofman,

Associate State Director.

[FR Doc. 80-32427 Filed 10-16-80; 8:45 am]

BILLING CODE 4310-84-M

Oregon; Closure to Motorized Vehicles; Correction

October 9, 1980

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction Document of Previous Notice.

Two corrections are hereby given for the notice which was published in the Thursday, September 18, Federal Register, Volume 45, Number 183, pages 62212 and 62213. Both corrections are on page 62213. The first correction is in reference to the general description of the road opening schedule with the dates shown being dependent on current weather conditions and should read as follows:

"Area from *7000'* + elevation—roads open July 1 to October 31."

The second correction under (d) should read:

"Exemptions from the proposed action will be allowed for access to and from operation *of* mining related activities according to applicable laws, regulations and Department of the Interior policy."

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Dated: October 9, 1980.

L. Christian Vosler,

District Manager.

[FR Doc. 80-32423 Filed 10-16-80; 8:45 am]

BILLING CODE 4310-84-M

Burns District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR 1780 that a meeting of the Burns District Advisory Council will be held on November 6, 1980.

The meeting will begin at 9 a.m. in the Harney County Museum Room, Burns, Oregon.

The agenda for the meeting is:

1. Introduction and a brief overview of the District's programs.
2. The role of the Advisory Council.
3. The election of a chairperson and vice chairperson.
4. The Diamond Craters Program.
5. The progress of the Drewsey project work.
6. The Wild Horse Management Plan for the coming year.
7. The Alvord Geothermal Program and the Borax Chub.
8. The Steens Off-Road-Vehicle Management Plan.
9. The Andrews Resource Area Grazing Program.
10. The District's planning efforts.
11. The Wilderness Program.

The meeting is open to the public and news media. Interested persons may make oral statements to the Council between 2 p.m. and 3 p.m., or file written statements for the Council's consideration. Anyone wishing to make an oral statement should notify the District Manager, Bureau of Land Management, 74 South Alvord, Burns, Oregon 97720, telephone 503-573-2071, by close of business November 3, 1980. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

A report of the Council meeting will be maintained at the District Office and be made available for public inspection and reproduction at the cost of duplication.

L. Christian Vosler,

District Manager.

October 8, 1980.

[FR Doc. 80-32436 Filed 10-16-80; 8:45 am]

BILLING CODE 4310-84-M

[S 2184]

California; Partial Termination of Segregation by Classification for Multiple Use Management

Pursuant to the authority delegated to me by Bureau Order No. 701, dated July 23, 1964 (29 FR 10526), it is ordered as follows:

1. I hereby terminate the segregative effect as specified in Paragraph 5 of the Multiple Use Classification Order of December 16, 1968 (FR Doc. 68-15279, filed December 23, 1968), published in the Federal Register December 24, 1968, No. 249, 33 FR pages 19201 and 19202, insofar as it affects the lands described below:

Mount Diablo Meridian, California

T. 46 N., R. 6 W.,
Sec. 5, NE¼SE¼.
T. 46 N., R. 7 W.,
Sec. 24, SW¼NE¼.

The areas described aggregate 80 acres.

2. Paragraph 5 of the Classification Order of December 24, 1968, segregated the lands from appropriation under the mining laws (30 U.S.C., Ch. 2). This segregative effect will terminate on the above lands October 17, 1980 as provided by the regulations in 43 CFR 2461.5(c)(2).

3. The lands remain segreated from appropriation under the agricultural land laws (43 U.S.C., Chapter 9; 25 U.S.C., Sec. 334). They shall remain open to all other applicable forms of appropriation.

James B. Ruch,

State Director.

[FR Doc. 80-32434 Filed 10-16-80; 8:45 am]

BILLING CODE 4310-84-M

[NM 27214]

Notice of Coal Lease Offering by Sealed Bid

October 10, 1980.

U.S. DEPARTMENT OF THE INTERIOR, Bureau of Land Management, New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87501. Notice is hereby given that at 2:00 p.m., November 13, 1980, certain coal resources in the land hereinafter described in McKinley County, New Mexico, will be offered for competitive lease by sealed bid of $25 per acre or more to the qualified bidder submitting the highest bonus bid in accordance with the provisions of the Mineral Leasing Act of 1920 (41 Stat. 437), as amended, and the Department of Energy Organization Act of August 4, 1977 (91 Stat. 575, 42 U.S.C. 7101). However, no bid will be accepted for less than fair market value as determined by the authorized officer. The sale will be held in Room 2004, State Director's Conference Room, Bureau of Land Management, on the second floor of the U.S. Post Office and Federal Building, located on South Federal Place, Santa Fe, New Mexico.

Sealed bids must be submitted on or before 2:00 p.m., November 13, 1980, to the Cashier, Room 3031, Bureau of Land Management, New Mexico State Office, U.S. Post Office and Federal Building, P.O. Box 1449, Santa Fe, New Mexico 87501. Bids received after 2:00 p.m. on the day of the sale will not be considered. Sealed bids may not be modified or withdrawn unless such modification or withdrawal is received at the foregoing address before 2:00 p.m.

Coal Offered: The coal resource to be offered is limited to those reserves recoverable by surface mining methods from the Sundance coal bed, "A" seam and "B" seam, in the following described tract located approximately five miles southeast of Gallup, McKinley County, New Mexico:

New Mexico Principal Meridian, New Mexico

T. 14 N., R. 17 W.
Sec. 8: E½
Containing 230.00 Acres.

The estimated total reserves recoverable by surface mining methods are 1.436 million tons, assuming an 80 foot mining depth. The coal is high volatile C bituminous coal and has an average heating value of approximately 11,200 BTU per pound and an average sulfur content of approximtely 0.9 percent and 12.0 percent ash (as received). The Sundance coal bed averages about 6.0 feet in thickness. The "A" seam overlies the Sundance coal seam and the "B" seam underlies the Sundance coal seam. The "A" and "B" seams are lenticular and not included in the above reserves.

Qualified Surface Owners: The surface of the NE¼ Sec. 8, T. 14 N., R. 17 W., NMPM, to be offered in this coal lease sale is owned by qualified surface owners as defined in Section 714 of the Surface Mining Control and Reclamation Act (SMCRA) of 1977 and 43 CFR 3400.0-5(pp). The surface owners have consented to surface mining of this land through a transferable lease agreement. The lease agreement is held by the applicant for this competitive coal lease sale, as grantee. The agreement satisfies the surface owner consent requirements of SMCRA and 43 CFR 3427. The terms and conditions of the lease agreement are attached to the Detailed Statement of the lease sale.

Rental and Royalty: A lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre or fraction thereof and a royalty payable to the United States at the rate of 12.5 percent of the value of coal mined by surface mining methods. The value of coal shall be determined in accordance with 30 CFR 211.63.

Notice of Availability: Bidding instructions are included in the Detailed Statement of the Lease Sale. A copy of the Statement and of the proposed coal lease are available at the Bureau of Land Management, Room 3031, at the address given above. All case file documents and written comments submitted by the public on Fair Market Value or royalty rates, except those portions identified as proprietary by the commentor and meeting exemptions stated in the Freedom of Information Act, are also available for public inspection in the aforementioned Room 3031.

Van W. Manning,

Acting State Director.

[FR Doc. 80-32435 Filed 10-16-80; 8:45 am]

BILLING CODE 4310-84-M

Medford District Advisory Council; Meeting

Notice is hereby given in accordance with 43 CFR 1780 that a meeting of the Medford District Advisory Council will be held on November 14, 1980.

The meeting will begin at 8:00 A.M. and end at 12:00 noon in the Oregon Room of the Bureau of Land Management Office at 3040 Biddle Road, Medford, Oregon.

The agenda for this meeting will include:

1. A continued orientation to Medford District programs and issues.
2. Arrangements for the next meeting.

The meeting is open to the public and new media. Interested persons may make oral statements to the Council between 11:00 and 11:30 A.M. or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97501, telephone 503-776-4187, by close of business November 7, 1980. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the Council meeting will be maintained at the District Office and be available for public inspection and reproduction at the cost of duplication

Dated: October 3, 1980.

George Francis,

District Manager.

[FR Doc. 80-32431 Filed 10-16-80; 8:45 am]

BILLING CODE 4310-84-M

Outer Continental Shelf Oil and Gas Lease Sale, Gulf of Mexico—Sale No. 62; Correction

November 18, 1980.

On October 16, 1980, the Notice of Sale for OCS Lease Sale No. 62 was published in the Federal Register. This correction notice amends that document with the following changes:

1. In paragraph 2, the fourth sentence which begins with "Bids may be . . ." should read, "Bids may not be . . ."
2. In paragraph 12, the OCS Official Protraction Diagram, Corpus Christi, NG 14-3 which indicates, "(Approved June 5, 1974; . . .)" should read, "(Approved June 15, 1974; . . .)"
3. Lease Stipulation No. 3(b) describes the fourth affected aliquot as, "NE1/2SW1/4NW1/4"; this should read, "NE1/4SW1/4NW1/4."

Dated: October 15, 1980.

Ed Hastey,

Associate Director, Bureau of Land Management.

[FR Doc. 80-32465 Filed 10-16-80; 8:45 am]

BILLING CODE 4310-84-M

Spokane District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR 1780 that a meeting of the Spokane District Advisory Council will be held on Wednesday, November 12, 1980.

The meeting will begin at 9:00 a.m. in Room 485, U.S. Courhouse, 920 Riverside, Spokane, Washington.

The agenda for the meeting is:

1. A discussion of the functions of the Council.
2. An election of the chairperson and vice chairperson.
3. An orientation to and discussion of Spokane District programs and current issues.
4. Arrangements for the next meeting.

The meeting is open to the public and news media. Interested persons may make oral statements to the Council between 2 and 3 p.m., or file written statements for the Council's consideration. Anyone wishing to make an oral statement should notify the District Manager, Bureau of Land Management, Room 551, U.S. Courthouse, Spokane, WA 99201, telephone (509) 456-2570, by close of business, 4:30 p.m., November 5, 1980. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

A report of the Council meeting will be maintained at the District Office and be made available for public inspection and reproduction at the cost of duplication.

Roger W. Burwell,

District Manager.

October 6, 1980.

[FR Doc. 80-32438 Filed 10-16-80; 8:45 am]

BILLING CODE 4310-84-M

INTERSTATE COMMERCE COMMISSION

Decision-Notice

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR § 1100.240). These rules provide, among other things, that opposition to the granting of an application must be filed with the Commission within 30 days after the date of notice of filing of the application is published in the Federal Register. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. Opposition under these rules should comply with Rule 240(c) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, and specify with particularity the facts, matters and things relied upon, but shall not include issues or allegations phrased generally. Opposition not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of any protest shall be filed with the Commission, and a copy shall also be served upon applicant's representative or applicant if no representative is named. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 240(c)(4) of the special rules and shall include the certification required.

Section 240(e) further provides, in part, that an applicant who does not intend timely to prosecute its application shall promptly request its dismissal.

Further processing steps will be by Commission notice or order which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication except for good cause shown.*

Any authority granted may reflect administratively acceptable restrictive amendments to the transaction proposed. Some of the applications may have been modified to conform with Commission policy.

We find with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action signficantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a protestant, that the proposed dual operations are consistent with the public interest and the national transportation policy subject to the right of the Commission, which is expressly reserved, to impose such conditions as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930.

In the absence of legally sufficient protests as to the finance application *or* any application directly related thereto filed within 30 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: October 9, 1980.

By the Commission, Review Board Number 5. Members Krock, Taylor, and Williams.

MC-F-14337F, TAYLOR TRUCK LINE, INC.—POOLING—C-B-C TRANSPORTS Application filed February 28, 1980, of Taylor Truck Line, Inc. (Taylor) of Charleston, MS, and C-B-C Transports, Inc., of Greenville, MS (C-B-C), both common carriers by motor vehicles subject to Title IV, U.S. Code for authority under 49 U.S.C. § 11342 approving and authorizing the pooling services in the transportation of property in interstate or foreign commerce, at Greenville, MS, for delivery by C-B-C Transports of Taylor Truck Line's traffic at Greenville and Leland, MS, and points in Mississippi south of U.S. Hwy 82 and transportation by Taylor of C-B-C's traffic at points on and within five miles of U.S. Hwy 82 east of Leland, MS, and points in Mississippi north of U.S. Hwy 82. Application approved September 26, 1980. No pooling services between Taylor and C-B-C shall be instituted until 30 days after this notice has been published in the Federal Register and no objections have been received. If any objections are received as to the arrangement between Taylor and C-B-C, that pooling arrangement will be given further consideration in this proceeding and no services may be instituted under that arrangement unless approved by further order of the Commission in this proceeding. Representative: Douglas C. Wynn, P.O. Box 1295, Greenville, MS 38071.

Note.—This notice replaces an earlier erroneous notice published March 27, 1980 at 45 FR 61 at page 20251.

MC-F-14454, PERSONALIZED AGENT SERVICE, INC.—POOLING—CAPE AIR FREIGHT, INC. Application filed February 21, 1980, of Personalized Agent Service, Inc. (PAS) of Atlanta, GA, and Cape Air Freight, Inc of Shawnee Mission, KS (Cape Air) both common carriers by motor vehicles subject to Title 49, Subtitle IV, U.S. Code, for authority under 49 U.S.C. § 11342 approving and authorizing the pooling of services in the transportation of property in interstate or foreign commerce having an immediately prior or subsequent movement by air between Atlanta, GA Airport on the one hand, and, on the other, points in AL, GA and TN. Application approved September 25, 1980 of PAS and Cape Air. No pooling services shall be instituted until 30 days after this notice has been published in the Federal Register and no objections have been received. If any objections are received as to the arrangement between PAS and Cape Air, that pooling arragement will be given further consideration in this proceeding and no services may be instituted under that arrangement unless approved by further order of the Commission in this proceeding. Representative: Kim G. Myer, P.O. Box 872, Atlanta, GA 30301.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-32332 Filed 10-16-80; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29436 (Sub-1F)]

Cedar Rapids & Iowa City Railway Co.—Purchase (Portion)—Chicago, Milwaukee, St. Paul & Pacific Railroad Co. (Richard B. Ogilvie, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Application accepted for consideration.

SUMMARY: The Commission is accepting for consideration the application of Cedar Rapids and Iowa City Railway Company to acquire and operate 23.1 miles of line owned by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Richard B. Ogilvie, Trustee). The line runs from Cedar Rapids to Middle Amana, IA. This Commission is also setting a schedule for the proceeding, so that a final decision on the application could be issued within the 90-day deadline.

DATES: (1) Verified statements supporting or opposing the application are due November 3, 1980; (2) verified statements from the United States Secretary of Transportation and the Attorney General of the United States are due November 10, 1980; (3) verified replies are due November 17, 1980.

ADDRESS: An original and 10 copies of all statements should refer to Finance Docket No. 29436 (Sub-No. 1F) and should be sent to: Section of Finance, Room 5414, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Ellen D. Hanson, (202) 275-7245.

SUPPLEMENTARY INFORMATION: The Cedar Rapids and Iowa City Railway Company (CIC) filed an application on October 7, 1980, under Section 5 of the Milwaukee Railroad Restructuring Act, 49 U.S.C. 904, for authority to acquire a line of railroad from the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Richard B. Ogilvie, Trustee) (MILW). The line is approximately 23.1 miles in length and runs from Cedar Rapids, IA, to Middle Amana, IA. The application will be handled under the

special procedures in *Acquisition Procedures for Lines of Railroads*, 360 I.C.C. 623 (1980), 45 FR 6107 (January 25, 1980). In a decision in Finance Docket No. 29436, *Cedar Rapids and Iowa City Railway Company-Petition*, (not printed) decided August 29, 1980, the Commission determined that this proposed acquisition is a minor transaction.

The application has been reviewed and found to comply with the information requirements of our regulations.

The MILW's Reorganization Court, in Order No. 382, issued July 29, 1980, directed the Commission to act upon the CIC's application within 90 days from its filing. To meet this deadline, we have established the expedited schedule set forth above to apply to this proceeding.

Requests for copies of CIC's application should be addressed to: Thomas J. Pitner, P.O. Box 351, Cedar Rapids, IA 52406.

It is ordered:

(1) The application in Finance Docket No. 29436 (Sub-No. 1) is accepted for consideration.

(2) The parties shall comply with all provisions stated above.

(3) This decision shall be effective on Oct. 16, 1980.

Dated: October 10, 1980.

By the Commission, Michael Erenberg, Acting Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-32330 Filed 10-16-80; 8:45 am]

BILLING CODE 7035-1-M

[No. WC-34]

Delta Queen Steamboat Co.—Petition for Exemptive Relief; Decision

AGENCY: Interstate Commerce Commission.

ACTION: Notice of petition seeking exemption.

SUMMARY: Delta Queen Steamboat Company seeks an exemption under 49 U.S.C. 11108 from the provisions of 49 U.S.C. 11904(c)(1) and 11905, in order to offer free or reduced-rate transportation to travel agents and tour guides.

DATES: Comments are due November 17, 1980.

ADDRESS: An original and 15 copies of comments should be sent to: Room 5340, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 275-7693 or Jane F. Mackall, (202) 275-7656.

SUPPLEMENTARY INFORMATION: Petitioner, Delta Queen Steamboat Company, is a regulated common carrier of passengers by water. It provides domestic vacation cruises on inland rivers, mainly on the Mississippi River, using a paddle-wheel steamer.

Despite its relatively limited operations vis-a-vis other cruise lines, Delta Queen believes it is in direct competition with cruise lines operating between U.S. and foreign ports. It argues that vacation cruises tend to compete for the same passenger market, regardless of whether they have domestic or foreign destinations. Passengers appear to be most interested in the duration of the cruise and the amenities of shipboard life. These features tend to be similar on all cruises. In advertising brochures published to attract customers, the emphasis is on shipboard life, instead of where a particular cruise is destined.

As the foreign lines are not regulated by this Commission, they can and do offer many inducements to promote their cruises. The practice of providing free or reduced-priced transportation for travel agents and tour guides is widespread. Familiarization trips acquaint this largest group of potential sellers of the transportation with the cruise. Agents' recommendations to potential customers can be critical in generating enough patronage to make a cruise operation profitable. Barter arrangements are also used, and are especially attractive to petitioner, which has a limited advertising budget. Thus, for example, free advertising can be traded for free or reduced-passage.

Petitioner arguably cannot participate in these practices, as 49 U.S.C. 11904(c)(1) and 11905 prohibit free transportation and require collection of the published rate. Therefore, it seeks an exemption from these regulations, pursuant to 49 U.S.C. 11108. It believes that it could then better compete with foreign carriers for cruise bookings.

Section 11108 authorizes exemption when a domestic water carrier shows: (1) it is in competition with a water carrier operating to or from a port in a foreign country; (2) the competing foreign carrier unreasonably discriminates against the domestic carrier by a rate, rule, or practice; and (3) the relief sought is in the public interest and is consistent with the National Transportation Policy.

We believe that factors (2) and (3) are proven. The availability of free or reduced transportation, barter arrangements, and other such arrangements for foreign cruises places petitioner at a severe disadvantage in its efforts to promote its cruises. A 1978 survey of travel agents showed that 50 percent of them did not know enough about petitioner's cruises to recommend them.

We also see certain public interest in the continued operation of petitioner's line because of its historic value. More importantly, public policy has supported the concept that American enterprise should have the opportunity to compete fairly with foreign products and services. Petitioner's customers would benefit by lower prices resulting from fully-booked cruises. A greater number of bookings can be expected when more travel agents become familiar with petitioner's operations.

As we see it, the major question is whether (1) above must be read narrowly to authorize exemption only where competition exists by virtue of the fact that the companies operate between the same points. While petitioner notes that the principal motivation behind the exemption provision was to assure effective competition between U.S. and Canadian water carriers operating on the Great Lakes, there was a general concern regarding market, as well as point-to-point competition. We seek comments on this analysis, especially as to the application of 49 U.S.C. 11108 to these circumstances.

We also seek comments on other alternative forms of relief, should the exemption not be available. For example, should the Commission make a general finding that reduced rates do not violate 49 CFR 10741? May the Commission take action similar to that taken by the CAB in *Free and Reduced-Rate Transportation Case*, 14 C.A.B. 481 (1951)? May we authorize barter arrangements here as has the CAB (45 CFR 46797)? We note that the Act does not prohibit reduced rates for promotional purposes and that these rates could be found nondiscriminatory based on the different circumstances involved. However, the existence of various regulatory requirements would inhibit such proposals.

Comments should also include discussion of what, if any, significant effect granting the proposed exemption would have on either the quality of the human environment or conservation of energy resources.

Decided: October 3, 1980.

(49 U.S.C. 10101, 10541, 10701, 11108, 5 U.S.C. 553)

By the Commission, Division 2, Commissioners Trantum, Gresham, and Gaskins.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-32331 Filed 10-16-80; 8:45 am]

BILLING CODE 7035-01-M

V 45 OCT 17 1980 UMI

[Permanent Authority Decisions Volume No. OP3-041]

Decision-Notice

Decided: October 8, 1980.

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 C.F.R. 1100.247. Special rule 247 was published in the **Federal Register** of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 C.F.R. 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed within 45 days of publication of this decision-notice (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board Number 2, Member Chandler, Eaton, and Liberman, participating.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

MC 2934 (Sub-77F), filed September 26, 1980. Applicant: AERO MAYFLOWER TRANSIT CO., INC., 9998 North Michigan Rd., Carmel, IN 46032. Representative: James L. Beattey, 300 E. Fall Creek Parkway, Suite 403, Indianapolis, IN 46205. Transporting *stereos* and *stereo component parts*, between Santa Claus, on the one hand, and, on the other, points in AL, AR, CT, DE, FL, GA, IL, IA, KS, KY, LA, ME, MD, MA, MI, MN MS, MO, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA, WV, WI, and DC.

MC 14314 (Sub-43F), filed September 30, 1980. Applicant: DUFF TRUCK LINE, INC., P.O. Box 359, Broadway & Vine Sts., Lima, OH 45802. Representative: R. L. Anderhalt, Jr. (same address as applicant). Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) Between Fort Wayne, IN, and Lansing, MI, over U.S. Hwy 27; (2) Between Detroit and Bay City, MI, over Interstate Hwy 75; (3) Between Detroit and Muskegon, MI, over Interstate Hwy 96; (4) between Port Huron and St. Joseph, MI, over Interstate Hwy 94; in connection with routes (1) through (4) serving all intermediate points and points in Allegan, Barry, Bay, Berrien, Branch, Calhoun, Cass, Clinton, Eaton, Genesee, Gratiot, Hillsdale, Huron, Ingham, Ionia, Isabella, Jackson, Kalamazoo, Kent, Lapeer, Lenawee, Livingston, Macomb, Midland, Monroe, Montcalm, Muskegon, Oakland, Ottawa, Saginaw, Saint Clair, Saint Joseph, Sanilac, Shiawassee, Tuscola, Van Buren, Washtenaw, and Wayne Counties, MI, as off-route points.

Note.—Applicant intends to tack this authority with its existing regular-route authority.

MC 43685 (Sub-25F), filed September 25, 1980. Applicant: MERCER TRUCKING COMPANY, INC., P.O. Box 11585, Spokane, WA 99211. Representative: Marshall Hanning (same address as applicant). Transporting (1) *lumber, forest products*, and *building materials*, between points in Chelan, Douglas, Ferry, Lincoln, Okanogan, Pend Oreille, Spokane, and Stevens Counties, WA, Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties, ID, and Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli, and Sanders Counties, MI, on the one hand, and, on the other, points in CO, ND, SD, UT, and WY; and (2) *materials for recycling*, between points in CO, ID, MT, ND, OR, SD, VT, WA, and WY.

MC 94265 (Sub-366F), filed September 22, 1980. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305, Windsor, VA 23487. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. Transporting *meats, meat products and meat by-products*, and *articles distributed by meat-packing houses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk and hides), from the facilities of Iowa Beef Processors, Inc., at or near Holcomb, KS to points in AL, FL, GA, MS, NC, SC, TN, CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, VA, WV, and DC.

MC 102285 (Sub-7F), filed September 25, 1980. Applicant: MIAMI TRANSFER CO., INC., 10340 N.W. 37th Avenue, Miami, FL 33147. Representative: Norman J. Bolinger, 3100 University Blvd. S, Suite 225, Jacksonville, FL 32216. Transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), between points in Hillsborough, Dade, Broward, and Palm Beach Counties, FL, on the one hand, and, on the other, points in Charlotte, Lee, and Collier Counties, FL.

MC 107934 (Sub-41F), filed September 26, 1980. Applicant: BYRD MOTOR LINE, INCORPORATED, P.O. Box 828, Lexington, NC 27292. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th Street NW., Washington, DC 20004. Transporting *water heaters, boilers, glass lined tanks, and solar panels*, from Kankakee, IL, to points in DE, MD, NC, SC, TN, VA, WV, and DC.

MC 107934 (Sub-42F), filed September 26, 1980. Applicant: BYRD MOTOR LINE, INCORPORATED, P.O. Box 828, Lexington, NC 27292. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th Street NW., Washington, DC 20004. Transporting *newsprint*, between points in Davidson County, NC, on the one hand, and, on the other, points in AL, GA, LA, TN, and SC.

MC 125335 (Sub-108F), filed September 26, 1980. Applicant: GOODWAY TRANSPORT, INC., P.O. Box 2283, York, PA 17405.

Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. Transporting *foodstuffs*, between points in Shelby County, TN, on the one hand, and, on the other, points in the US (except AK and HI).

MC 128205 (Sub-97F), filed September 26, 1980. Applicant: BULKMATIC TRANSPORT COMPANY, a corporation, 12000 South Doty Ave., Chicago, IL 60628. Representative: Arnold L. Burke, 180 North LaSalle St., Chicago, IL 60601. Transporting *lime*, in bulk, from points in OH to points in Cook County, IL.

MC 131045F, filed September 25, 1980. Applicant: MARYLAND UNLIMITED TOURS INC., 9110 Perryvale Rd., Baltimore, MD 21236. Representative: Peter C. Sugatt (same address as applicant). *Broker*, at Baltimore, MD, in arranging for the transportation of *passengers and their baggage*, in special and charter operations, between points in MD, on the one hand, and, on the other, points in the U.S. (including AK and HI).

MC 134404 (Sub-66F), filed September 29, 1980. Applicant: AMERICAN TRANS-FREIGHT, INC., P.O. Box 796, Manville, NJ 08835. Representative: Eugene M. Malkin, Suite 1832, 2 World Trade Center, New York, NY 10048. Transporting *such commodities* as are dealt in or used by food business houses (except commodities in bulk), between points in the U.S., under continuing contract(s) with Nabisco, Inc., of East Hanover, NJ.

MC 135154 (Sub-8F), filed September 25, 1980. Applicant: BADGER LINES INC., 3109 West Lisbon Avenue, Milwaukee, WI 53208. Representative: Richard C. Alexander, 710 N. Plankinton Avenue, Milwaukee, WI 53203. Transporting *malt beverages*, from St. Louis, MO, and Columbus, OH, to Janesville and Madison, WI.

MC 135924 (Sub-25F), filed September 26, 1980. Applicant: SIMONS TRUCKING CO., INC., 3851 River Road, Grand Rapids, MN 55744. Representative: Samuel Rubenstein, Post Office Box 5, Minneapolis, MN 55440. Transporting (1) *building materials, equipment, and supplies*, and (2) *paper mill and board mill materials, equipment, and supplies*, from points in the U.S. (except AK and HI) to points in Itasca County, MN.

MC 138635 (Sub-119F), filed September 25, 1980. Applicant: CAROLINA WESTERN EXPRESS, INC., P.O. Box 3995, Gastonia, NC 28052. Representative: W. C. Sutton (same address as applicant). Transporting *automobile parts* and *materials, supplies, and equipment* used in the manufacture of motor vehicles, between points in the U.S.

MC 139424 (Sub-6F), filed September 26, 1980. Applicant: FISHER TRUCKING COMPANY, INC., P.O. Box 345, Hammonton, NJ 08037. Representative: Raymond A. Thistle, Jr., Five Cottman Court, Homestead Rd. & Cottman St., Jenkintown, PA 19046. Transporting *petroleum and petroleum products*, between points in NJ, PA, and DE.

MC 140665 (Sub-114F), filed September 26, 1980. Applicant: PRIME, INC., P.O. Box 4208 G.S., Springfield, MO 65804. Representative: Clayton Geer, P.O. Box 766, Ravenna, OH 44266. Transporting (1) *automotive care and maintenance supplies, batteries, flashlights, lamps, electrical equipment, parts for electrical equipment*, and *plastic articles*, and (2) *materials and supplies* used in the manufacture and distribution of the commodities named in (1) above (except commodities in bulk), between the facilities used by Union Carbide Corporation, in the U.S. (except AK and HI), on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 142835 (Sub-10F), filed September 22, 1980. Applicant: CARSON MOTOR LINES, INC., P.O. Box 337, Auburndale, FL 33823. Representative: A. Charles Tell, 100 East Broad St., Columbus, OH 43215. Transporting *food or kindred products* as described in Item 20 of the Standard Transportation Commodity Code Tariff, from the facilities of Nabisco, Inc., at (1) Atlanta, GA, to points in AL, CT, FL, LA, ME, MD, MA, NJ, NY, NC, OH, PA, RI, SC, TN, TX, VT and VA, (2) Houston, TX, to points in CT, FL, LA, ME, MD, MA, NJ, NY, OH, PA, RI and VA, (3) Fairlawn, NJ, and Philadelphia, PA, to points in FL, ME, TX and VT, (4) Pittsburgh, PA, to points in FL and TX, and (5) Richmond, VA, to points in TX, MD, and LA.

MC 142935 (Sub-19F), filed September 25, 1980. Applicant: PLASTIC EXPRESS, a corporation, 2301 East Francis Street, Ontario, CA 91761. Representative: Richard C. Celio, 2300 Camino Del Sol, Fullerton, CA 92663. Transporting *plastic articles*, from points in TX, to points in OR, WA, and CA.

MC 143505 (Sub-3F), filed September 29, 1980. Applicant: KOMMER BULK FEED SERVICES, INC., 171 Stafford Rd., Palmyra, NY 14522. Representative: Charles A. Schiano, 500 Wilder Bldg., One East Main St., Rochester, NY 14614. Transporting *feed, feed ingredients and feed grade phosphate*, between points in NY, PA, OH, CT, MD, VA, DE, NJ, MA, ME, and VT.

MC 144595 (Sub-4F), filed September 26, 1980. Applicant: ROBERT D. ANTHOLZ, d.b.a. PAWNEE GRAIN COMPANY, Route 3, Box 42, 1647 G St., Pawnee City, NE 68420. Representative Jack L. Shultz, P.O. Box 82028, Lincoln, NE 68501. Transporting *lumber, lumber mill products, and wood products*, between points in the U.S., under continuing contract(s) with Commercial Lumber Sales, of Little Rock, AR.

MC 144984 (Sub-3F), filed September 26, 1980. Applicant: LAHOMA TRANSPORT, INC., P.O. Box 189, Omaha, NE 68101. Representative: Scott E. Daniel, 800 Nebraska Savings Building, 1623 Farnam, Omaha, NE 68102. Transporting *cement*, from the facilities of Oklahoma Cement Company, division of Lone Star Industries, at or near (1) Pryor, OK to points in AR, KS and MO, and (2) Woodward and Oklahoma City, OK, to points in KS.

MC 145664 (Sub-21F), filed September 26, 1980. Applicant: STALBERGER, INC., 223 South 50th Ave., West, Duluth, MN 55807. Representative: Norman A. Cooper, 145 West Wisconsin Ave., Neenah, WI 54956. Transporting (1) *food additives*, between points in Cook County, IL, Hennepin and St. Louis Counties, MN, Hall County, NE, and Hudson County, NJ, on the one hand, and, on the other, points in the U.S. and (2) *foodstuffs*, between points in Cook County, IL, on the one hand, and, on the other, those points in the U.S. in an east of ND, SD, NE, KS, OK, and TX.

MC 145955 (Sub-17F), filed September 29, 1980. Applicant: CENTRAL TRUCK SERVICE, INC., 4440 Buckingham Ave., Omaha, NE 58107. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Rd., Omaha, NE 68106. Transporting *paper products*, between Omaha, NE, on the one hand, and, on the other, points in IL, IN, MI, MO, and WI.

MC 146964 (Sub-13F), filed September 25, 1980. Applicant: RELIABLE TRUCK LINES, INC., 1451 Spahn Ave., York, PA 17403. Representative: Michael Valencik (same address as applicant). Transporting (1) *paper and paper products, lumber, forest products, janitorial equipment and supplies, packaging materials and equipment, and printing equipment and supplies*, and (2) *materials, equipment, and supplies* used in the manufacture, conversion, or distribution of the commodities in (1) above, between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to facilities used by Hammermill Paper Company.

MC 148314 (Sub-4F), filed September 25, 1980. Applicant: INTER-FREIGHT TRANSPORTATION, INC., 655 East

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114th Street, Chicago, IL 60628. Representative: Joel H. Steiner, 39 S. LaSalle, Suite 600, Chicago, IL 60603. Transporting (1) *carbon, carbon wood products, charcoal, charcool briquettes, hickory chips, lighter fluid, grills, grill accessories,* and (2) *materials, equipment and supplies* used in the manufacture, sale, and distribution of the commodities in (1), (except commodities in bulk), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to facilities used by Husky Industries, Inc.

MC 148894 (Sub-4F), filed September 26, 1980. Applicant: DISPATCH DISTRIBUTION SERVICES, INC., 1285 William Street, Buffalo, NY 14206. Representative: Roy D. Pinsky, Suite 1020, State Tower Building, Syracuse, NY 13202. Transporting *general commodities* (except classes A and B explosives, and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with Thruway Terminals, Inc., of Buffalo, N.Y.

MC 149564 (Sub-1F), filed September 18, 1980. Applicant: BOB HUBBARD HORSE TRANSPORTATION, INC., 20825 Currier Rd., P.O. Box 277, Walnut, CA 91789. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. Transporting (1) *race horses and show horses,* (2) *personal effects* of horse attendants, (3) *supplies and equipment* used in the care, transportation, racing, and exhibition of race horses and show horses, between points in the U.S.

MC 151205 (Sub-1F), filed September 23, 1980. Applicant: ROY RIPLEY AND R. F. CAMPBELL, a partnership, d.b.a., R&C ENTERPRISES, P.O. Box 2492, Johnson City, TN 37601. Representative: M.C. Ellis, Chattanooga Freight Bureau, Inc., 1001 Market St., Chattanooga, TN 37402. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between those points in and east of Claiborne, Grainger, Cocke, and Jefferson Counties, those in VA in and west of Bland, Wythe, and Grayson Counties, and those in NC in and north of Madison, Buncombe, McDowell, Burke, Caldwell, Watauga, and Ashe Counties.

MC 151285 (Sub-1F), filed September 26, 1980. Applicant: DON CRYDER, d.b.a. CRYDER TRUCK LINE, Route 3, Ames, IA 50010. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. Transporting *meats, meat products and meat byproducts,* and *articles distributed by meat packing houses,* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except commodities in bulk), from the facilities of Tama Meat Packing Corporation, at or near Tama, IA, to points in CA and CO.

MC 151285 (Sub-2F), filed September 26, 1980. Applicant: DON CRYDER, d.b.a. CRYDER TRUCK LINE, Route 3, Ames, IA 50010. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. Transporting *animal and poultry feed supplements,* (except in bulk), (1) from Ames, IA to points in AR, CA, IL, CO, IN, KS, MN, MO, NE, OH, PA, and TX; and (2) between the facilities of Hoffmann La Roche, Inc., at or near (a) Ames, IA, (b) Fresno, CA, (c) Fort Worth, TX, and (d) Salisbury, MD.

MC 151504 (Sub-1F), filed September 29, 1980. Applicant: PHELCO, INC., 11842 Missouri Bottom Rd., St. Louis, MO 63042. Representative: B. W. LaTourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, MO 63105. Transporting (1) *boxes, pulpboard, and paper products,* (2) *materials* used in the manufacture of paper products, between points in the U.S., under continuing contract(s) with Alton Box Board Company, of Alton, IL.

MC 150425 (Sub-1F), filed September 29, 1980. Applicant: TRANS-CONTINENTAL EXPRESS, INC., P.O. Box D, Clarksville, TX 75426. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. Transporting *zinc dust dross and skimmings,* between the facilities of Southern Zinc Company, in Fulton County, GA, on the one hand, and, on the other, points in AL, MS, LA, TX, OK, AR, MO, TN, OH, NC, SC, VA, PA, NJ, FL, and RI.

MC 150444 (Sub-2F), filed September 25, 1980. Applicant: ADVANCE FREIGHT, LTD., 7637 Leesburg Pike, Falls Church, VA 22043. Representative: Wayne Hartke (same address as applicant). Transporting *such commodities* as are dealt in or used by grocery and food business houses, between points in the U.S., under continuing contract(s) with Borden Foods, Division of Borden, Inc., of Columbus, OH.

MC 150724 (Sub-1F), filed September 25, 1980. Applicant: DONALD SANTISI TRUCKING COMPANY, a corporation, 1024 North Main St., Niles, OH 44446. Representative: Paul F. Beery, 275 E. State St., Columbus, OH 43215. Transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses,* as described in Section A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from points in Moore County, TX, to points in OH, and those points in OH, and those in PA and WV on the west of U.S. Hwy 219.

MC 151994 (Sub-1F), filed September 29, 1980. Applicant: P. R. T., INC., 135 Wyandot Ave., Marion, OH 43302. Representative: Jerry B. Sellman, 50 W. Broad St., Columbus, OH 43215. Transporting (1) *foodstuffs,* (except in bulk, tank vehicles), and (2) *materials, equipment, and supplies* used in the production, manufacture, and distribution of foodstuffs, between points in Marion and Wyandot Counties, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 152014 (Sub-1F), filed September 25, 1980. Applicant: MARSHALL DILLION TRANSPORT, INC., P.O. Box 18590, Tucson, AZ 85731. Representative: Ron Bishop (same address and applicant). Transporting (1) *lighting fixtures,* (2) *accessories and parts,* for lighting fixtures, and (3) *equipment, materials, and supplies* used in the manufacture and distribution of the commodities in (1) above, between Americus, GA, and Eufaula, AL, on the one hand, and, on the other, points in TX, NM, AZ, CA, UT, OR, WA, WY, MT, CO, MO, OK, KS, IL, IN, OH, and ID.

MC 152015 (Sub-1F), filed September 25, 1980. Applicant: BLACK BEAUTY TRUCKING CO., INC., 414 South Fares St., Evansville, IN 47701. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting *coal,* between points in the U.S., under continuing contract(s) with Black Beauty Coal Co., of Evansville, IN.

[FR Doc. 80-32328 Filed 10-16-80; 8:45 am]
BILLING CODE 7035-01-M

[ICC Order No. 71 Under S.O. No. 1344]

Rerouting of Traffic

To: Fort Worth and Denver Railway Company.

In the opinion of Robert S. Turkington, Agent, the Fort worth and Denver Railway Company, is unable to transport promptly all traffic offered for movement between Wichita Falls and Abilene, Texas, because of flooding.

It is ordered,

(a) *Rerouting traffic.* The Fort Worth and Denver Railway Company, being unable to transport promptly all traffic offered for movement between Wichita Falls and Abilene, Texas, because of flooding is authorized to divert or reroute such traffic via any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided for under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 1:00 p.m., September 30, 1980.

(g) *Expiration date.* This order shall expire at 11:59 p.m., October 15, 1980, unless otherwise modified, amended or vacated.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., September 30, 1980.

Interstate Commerce Commission.
Robert S. Turkington
Agent.

[FR Doc. 80-32333 Filed 10-16-80; 8:45 am]
BILLING CODE 7035-01-M

[ICC Order No. 70 Under S.O. No. 1344]

Rerouting of Traffic

To: Roscoe, Snyder and Pacific Railway Company.

In the opinion of Robert S. Turkington, Agent, Roscoe, Snyder and Pacific Railway Company is unable to transport promptly all traffic offered for movement over its line between Roscoe, Texas, and Snyder, Texas, due to flood conditions.

It is ordered,

(a) *Routing traffic.* The Roscoe, Snyder and Pacific Railway Company, being unable to transport promptly all traffic offered for movement over its lines between Roscoe, Texas, and Snyder, Texas, because of flood conditions, that line and its connections are authorized to divert or reroute such traffic via any available route to expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 12 noon, September 29, 1980.

(g) *Expiration date.* This order shall expire at 12 noon, September 30, 1980, unless otherwise modified, amended or vacated.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., September 29, 1980.

Interstate Commerce Commission.
Robert S. Turkington,
Agent.

[FR Doc. 80-32334 Filed 10-16-80; 8:45 am]
BILLING CODE 7035-01-M

[Volume No. 344]

Motor Carriers; Permanent Authority Decisions, Decision-Notice

Correction

In FR Doc. 80-30341, appearing at page 65072, in the issue of Wednesday, October 1, 1980, make the following correction:

On page 65073, second column, last paragraph, the docket number for the Pittsburgh-Fayette Express, Inc. application, in the first line of that paragraph now reading "MC 4242 (Sub-71F)" should read "MC 4242 (Sub-7F)".

BILLING CODE 1505-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

[Delegation of Authority No. 27, Amendment. No. 2]

Authority Delegation; Director, Office of Personnel Management

Pursuant to the authority delegated to me by Executive Order No. 12163 of September 29, 1979 (44 FR 56673) and International Development Cooperation Agency Delegations of Authority. No. 1, dated October 1, 1979 (44 FR 57521) and No. 8, dated August 29, 1980, I hereby

amend Section V, "General Provisions" of Delegation of Authority No. 27, dated October 25, 1978 as follows:

1. Subsection 2 of Section V is deleted in its entirety and replaced by the following:

"2. To the extent consistent with law, regulation or delegation of authority, there is hereby delegated to the Director, Office of Personnel Management, any authority vested in the Administrator (including any authority vested in the Administrator as "head of agency") by ay statute, regulation or delegation of authority, relating to any aspect of personnel authority or administration governing personnel of A.I.D. and other agencies, including authority to prescribe regulations and to establish policy and procedures relating thereto."

2. Subsection 3 of Section V is amended by inserting "regulation or delegation of authority" after "to the extent consistent with law."

This amendment is effective immediately.

Dated: September 25, 1980.

Douglas J. Bennet, Jr.

Administrator.

[FR Doc. 80-32322 Filed 10-16-80; 8:45 am]

BILLING CODE 4710-02-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

Consent Decree In Action To Enforce Compliance With Provisions of the Clean Air Act

In accordance with Departmental policy, 28 CFR § 50.7, 38 Fed. Reg. 19029, notice is hereby given that a modification to a previously proposed consent decree in *United States of America* v. *Republic Steel Corporation* has been lodged with the United States District Court for the Northern District of Ohio, Eastern Division. The original decree was lodged in this case on August 28, 1979, and notice of the proposed decree was published in the **Federal Register** on September 18, 1979, (44 FR 54131) Numerous comments have been received from members of the public concerning this decree. As originally proposed, the decree imposed on defendant Republic Steel Corporation certain requirements and compliance dates with respect to the operation of its sinter plant and coke batteries in Cleveland, Ohio. The decree also provided for the payment of a $7,500 per day fine if the final compliance dates are not met.

The modification to the proposed decree extends the time within which Republic Steel must complete construction of pollution control equipment (spot cars) at its coke batteries from October 1, 1980, to December 1, 1980, and to achieve compliance with the applicable requirement at coke batteries #6 and 7 from September 1, 1980, to November 1, 1980. The proposed modification would also increase the emission rate at coke battery #1 from .03 lb of filterable particulate to .06 lb. per ton of coke pushed. It would reduce the emission rate at batteries 2, 3, and 4 from .1 lb. of filterable particulate to .06 lb. per ton of coke pushed.

The Department of Justice will receive for a period of thirty (30) days from the date of this notice written comments relating to the proposed consent decree as modified. Comments previously received will be addressed in response to all comments and need not be resubmitted. Comments should be addressed to the Deputy Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States of America* v. *Republic Steel Corporation*, D.J. Ref. 90-5-1-1-1056.

The consent decree may be examined at the office of the United States Attorney, Northern District of Ohio, Eastern Division, Room 400, United States Courthouse, Cleveland, Ohio 44114; at the Region V office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 2644, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.10 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Angus Macbeth,

Deputy Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 80-32421 Filed 10-16-80; 8:45 am]

BILLING CODE 4410-01-M

[Order No. 912-80]

Placing Assistant Attorneys General in Charge of Their Respective Offices or Divisions

Correction

In FR Doc. 80-31255 appearing on page 66929 in the issued of Wednesday, October 8, 1980, the designation "[Order No. 912-80]" was inadvertently left out of the heading and should be inserted as shown above.

BILLING CODE: 1505-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-80-102-C]

Mullin Creek Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Mullin Creek Coal Company, Inc., P.O. Box 66, Sidney, Kentucky 41564 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 1 located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follow:

1. The coal seam ranges from 48 to 66 inches in height, with consistent ascending and descending grades creating dips in the coal bed.

2. Installation of canopies on the mine's cutting machine would result in a diminution of safety to the miners affected because:

a. The canopy might strike the roof, destroying roof support; and

b. The canopy allows a near zero percent visibility for the equipment operator.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before November 17, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Date: October 9, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-32483 Filed 10-16-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-98-M]

Phelps Dodge Corp.; Petition for Modification of Application of Mandatory Safety Standard

Phelps Dodge Corporation, Tyrone Branch, Tyrone, New Mexico 88065 has filed a petition to modify the application of 30 CFR 55.9-22 (loading, hauling, dumping) to its Tyrone Branch Mine located in Grant County, New Mexico, in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petitioner's dams are constructed with the sand fraction underflow of hydrocyclones which are spaced evenly in a pipeline across the dams; thus the dams are an integral part of the operation. Maintenance of the dams is accomplished by a tailings dam crew.

2. The competency of the dam structures is directly related to the thickness of the sand shell. The depth of this sand shell is sensitive to rain water runoff which, if channeled, can cause deep erosion channels. Thus lateral drainage is needed to prevent the collection of water into larger riverlets that can erode the face of a dam. Therefore lateral drainage is needed to prevent the collection of water into larger riverlets that can erode the face of the sand tailings dams. For reasons such as these, a registered professional engineer is in charge of dam safety, and supervisory personnel assist by maintaining a constant surveillance of the roadways on the dams.

3. The roadways on the tailings dams are used as limited service roadways and are not used for haulage of materials mined. The petitioner states that it does not view these roadways as "elevated roadways," and they were established pursuant to direction from the State Engineer of the State of New Mexico.

4. Construction of a berm along the roadways would cause pooling of floodwaters or rainfall. The water would soak into the dam and reduce the integrity and safety of the dam. It also would create a potentially severe driving hazard. Further, if a pipeline should break, a berm would concentrate and direct the entire flow (to 14,000 gallons per minute) into a single channel causing significant damage to the dam and possibly dam failure.

5. Guard facilities such as posts and cables would interfere with sweeping the roadway debris clear to the crest of the dam and ultimately would result in a trace berm that would, in turn, obstruct the lateral drainage across the roadways.

6. The petitioner requests relief from the application of 30 CFR 57.9-22. The petitioner alleges that the construction of berms or guard facilities will result in a diminution of safety to miners who work at the operation or travel on the tailings dams and roadways located thereon. Relief is necessary, the petitioner states, to avoid the diminution to affected miners. At present, downstream slopes of the tailings dams faces do not present a hazard to miners, the petitioner claims.

Request for Comments

Persons interested in this petition may furnish written comments on or before November 17, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: October 9, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 32486 Filed 10-16-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-126-C]

Sewell Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Sewell Coal Company, Nettie, West Virginia 26681 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its No. 4 Mine located in Nicholas County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. Petitioner's permanent pump station is ventilated directly by intake air and only a very small portion of the air passing through the entries where the pump is located would reach any working areas.

2. As an alternate method to complying with the standard, petitioner proposes to ventilate the pump in the manner described in item No. 1 above rather than causing the air ventilating the pump to be directly coursed into the return airway.

3. In addition to this ventilating plan, petitioner will cause the pumps to be protected by automatic heat sensors which will activate a twenty pound dry-type chemical fire suppression device located in the fire-proof structure.

4. In addition, the following safeguard will be employed:

a. The motor will be provided with overload and shortcircuit protection as required by 30 CFR 75.518.

b. A metal door will be provided for the enclosure hinged on the top and a chain or similar linkage connected to a thermal heat link located over motor that would open on not more than 155 degrees Fahrenheit and close door.

c. A switch will be provided and interconnected into the electrical system so as when the metal door closed the power circuit would be de-energized at the beginning of branch circuit.

d. Fire fighting equipment as required by 30 CFR 75.1100-2(e) will be provided.

5. Petitioner states that the proposed method outlined above will at all times provide the same degree of safety to the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before November 17, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Bolevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Date: October 9, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-32485 Filed 10-16-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-130-C]

United Castle Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

United Castle Coal Company, Route #1, Box 523, Norton, Virginia 24273, has filed a petition to modify the application of 30 CFR 75.1710 (cabs or canopies) to its No. 1 Mine located in Wise County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The coal seam ranges from 60 to 64 inches in height, with reasonably sound top conditions and muddy bottom conditions.

2. Petitioner states that the use of canopies on the mine's large scoops is prohibited due to the 36 inch clearance of the entrance haulageways.

3. Petitioner also states that the use of canopies on this equipment reduces the equipment operator's visibility, resulting in a diminution of safety.

4. Therefore, petitioner requests a modification of the standard to allow the use of these scoops without canopies in and inby the last open break only after the top has been permanently supported.

5. Petitioner further states that canopies will be installed on these

scoops as soon as the installation of track and rail motors for mantrips in some active working is completed.

Request for Comments

Persons interested in this petition may furnish written comments on or before November 17, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Date: October 9, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-32484 Filed 10-16-80; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 80-74]

Exemption From Prohibitions for Certain Transactions Involving Guaranty State Bank of St. Paul Profit-Sharing Plan and Trust Located in St. Paul, Minn. (Exemption Application No. D-1401)

AGENCY: Department of Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This temporary exemption permits transactions involving the purchase, holding and repurchase (if necessary) of Participation Certificates in certain Small Business Administration (SBA) guaranteed loans between the Guaranty State Bank of Saint Paul Profit-Sharing Plan and Trust (the Plan) and the Guaranty State Bank of Saint Paul (the Employer).

FOR FURTHER INFORMATION CONTACT: Paul R. Antsen of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. (202) 523-6915. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 8, 1980, notice was published in the **Federal Register** (45 FR 52962) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code, for the purchase, holding and repurchase (if necessary) of Participation Certificates in certain SBA guaranteed loans between the Plan and the Employer. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that it has complied with the requirements of the notification to interested persons as set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly, the restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply:

1. from the date of this exemption until five years thereafter to the purchase, holding and repurchase; and

2. subsequent to the expiration date of this exemption to the holding and repurchase (provided such interest was acquired during the period such exemption was in effect) [1] of Participation Certificates in the SBA Loans between the Plan and the Employer, provided the following conditions are met:

A. Only that portion of the SBA Loan that is actually covered by the guaranty shall be the subject of a Participation Certificate acquisition by the Plan.

[1] The Department has traditionally viewed a guarantee to repurchase from the plan by a party in interest as a prohibited transaction under ERISA. Because the terms of the Participation Certificate provide for a guaranteed repurchase on demand during the entire term of such Participation Certificate, the terms of the exemption must necessarily extend to provide relief for the operation of the safeguards incorporated in the conditions. Therefore, the relief provided includes the "holding and repurchase" of the Participation Certificates. Additionally, in order that the Plan not be required to dispose of its holdings in Participation Certificates issued by the Employer during the period such exemption was in effect the Department intends that the language of the exemption also be construed to provide continuing relief for the "holding" after the expiration of the exemption for those Participation Certificates purchased before such date in accordance with the terms of the exemption.

B. The Participation Certificates are sold to the Plan with no sales commission and the Employer agrees to service the entire SBA Loan at no fee to the Plan.

C. The purchase price of the Participation Certificate would be determined by comparing the market interest rate at the time the participation interest would be purchased with the interest rates of the SBA Loan; however, in no event would the purchase price to the Plan be less favorable than a similar transaction would be with an unrelated third party.

D. Any Participation Certificate acquisition by the Plan shall include a written repurchase provision by the Employer at the demand of the Plan, upon fifteen (15) days written notice, such requirement for repurchase to be at the absolute discretion of the Plan. Should the repurchase provision be exercised, the pruchase price shall be the unpaid principal balance, provided this amount is not less than fair market value at the time of sale, plus any accrued interest payments.

E. In the event of a default by the borrower on any payment due under the terms of the SBA Loan, the Employer will be called upon to honor his obligation under condition D of this exemption. A loan shall be considered to be in default for purposes of this exemption when it would be considered in default under the SBA provisions governing a guaranty for such loans.

F. The Employer shall continue to hold at least a fifty (50) percent interest in that portion of the SBA Loan not transferred to the Plan by a Participation Certificate.

G. The acquisition of a Participation certificate from the Employer involving an SBA Loan shall not cause the Plan to hold:

(1) more than fifty (50) percent of the current value (as that term is defined in section 3(26) of the Act) of Plan assets in such participation interests; and

(2) more than ten (10) percent of Plan assets (as defined above) in any single transaction or involve the same borrower.

H. The Plan shall maintain or cause to be maintained for a period of six years from the date of each transaction such records as are necessary to enable the Department to determine whether the conditions of this exemption have been met, except that:

(1) a prohibited transaction will not be deemed to have occurred if due to circumstances beyond the control of the trustees or other Plan fiduciaries, such records are lost or destroyed prior to the end or such six year period; and

(2) the Employer shall not be subject to civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or are not available for examination as required by paragraph I below.

I. Notwithstanding anything to the contrary in subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph H are unconditionally available at their customary location for examination during normal business hours by:

(1) the Internal Revenue Service;

(2) the Department of Labor;

(3) the Plan participants and beneficiaries;

(4) any employer of Plan participants;

(5) any employee organization any of whose members are covered by the Plan; or

(6) any duly authorized employee or representative of a person described in subparagraphs (1) through (5) of this paragraph.

The availability of this exemption is subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 10th day of October 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-32385 Filed 10-16-80; 8:45 am]

BILLING CODE 4510-29-M

Proposed Exemption for a Certain Transaction Involving the Barnett Bank of Westchester, Superseded Profit-Sharing Plan; Located in Jacksonville, Fla. (Application No. D-1810)

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the cash sale of a certain Government National Mortgage Association Single Family Pool by the Barnett Bank of Westchester Superseded Profit Sharing Plan (the Plan) to the Barnett Banks of Florida, Inc. (the Employer). The proposed exemption, if granted, would affect the Employer and participants and beneficiaries of the Plan.

DATES: Written comments and requests for a public hearing must be received by the Department on or before December 1, 1980.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-1810. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department of Labor, telephone (202) 523-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the trustee of the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). The application was filed with both the Department and the Internal Revenue Service. However, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a profit sharing plan with seven participants. After the purchase of the Westchester Bank by the Employer, the Plan was curtailed

and the participants became 100 percent vested in their account balances. The Plan assets were then transferred to the retirement plan for employees of the Employer (the Pension Plan), and set up in a separate subsidiary account on December 31, 1975. Assets of the Plan have remained segregated from the Pension Plan with earnings allocated to the participant's accounts on a yearly basis. Payments have been made to participants of their total account balance upon their termination, retirement, death or total disability.

2. As of February 15, 1980, Plan assets in the segregated account consisted of cash totaling $3,171.53 and an 8 percent Government National Mortgage Association Single Family Mortgage Pool dated February 15, 1972 due January 15, 2002 (Mortgage Pool).

3. The Plan trustee has received a request for payment of a participant's account balance which is in excess of the cash balance of the Plan. Since the Plan's cash is insufficient to make the distribution, the Plan is required to sell the Mortgage Pool.

4. As of June 2, 1980, the Mortgage Pool had a carrying value (defined as the original purchase price less all previous principal payments received) of $32,700.48. The trustee has always used carrying value to value the Mortgage Pool for purposes of allocating Plan assets to participants' accounts. The Employer has offered to purchase the Mortgage Pool for its carrying value in order to avoid reducing the value of participants' accounts. The carrying value is in excess of the fair market value of the Mortgage Pool. A letter submitted by Merrill Lynch Pierce Fenner & Smith states that as of May 28, 1980, the Mortgage Pool was quoted at $84^{15}/_{32}$ per the *Wall Street Journal*. The Mortgage Pool would thus have had a fair market value at that date of $24,905.25 based upon a par value of $29,450.48. Par value is the original face value of the Mortgage Pool less principal payments received.

5. The applicant has represented that any excess in price over fair market value paid to the Plan will be treated as an employer contribution, and this contribution will not cause the Plan to fail to qualify as a result of section 415 of the Code.

6. In summary, the applicant represents that the proposed sale of the Mortgage Pool will satisfy the statutory criteria contained in section 408(a) of the Act as follows: (1) the sale will be a one-time transaction for cash; (2) liquidity is necessary to pay distributions to vested participants who are eligible to receive distributions; (3) the sale will be at a price higher than the fair market value of the Mortgage Pool as reported in the *Wall Street Journal;* and (4) the trustee has determined that the transaction is in the interests of Plan participants and beneficiaries and protective of their rights.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

Notice to Interested Persons

Within 10 days of the publication of this notice in the Federal Register, the applicant will provide notification to all remaining participants in the Plan, to the President of the Employer, and to the Administrators of the Pension Plan. Such notification will be made by certified mail, return receipt requested, and will inform all interested parties of their right to comment and request a hearing.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested parties are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the cash sale of the Mortgage Pool by the Plan to the Employer, provided the purchase price shall be the greater of the carrying value (defined as the original purchase price less all principal payments previously received) or the fair market value of the Mortgage Pool at the time of the sale.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately described all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 9th day of October, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-32387 Filed 10-16-80; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 80-76]

Exemption From the Prohibitions for Certain Transactions Involving the Cement Masons Pension Trust Fund for Northern California Located in San Francisco, Calif.; (Exemption Application No. D-1424)

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the issuance by the Cement Masons Pension Trust Fund for Northern California (the Plan) of commitments, in accordance with the guidelines and procedures set forth in the application, obligating the Plan to purchase mortgage loans on single-family dwelling units from financial institutions, when construction of such dwelling units is by persons who are parties in interest or disqualified persons with respect to the Plan, and the purchase of mortgage loans which meet the criteria of the guidelines and procedures set forth in the application, from financial institutions which are parties in interest or disqualified persons with respect to the Plan solely by reasons of servicing mortgages which they previously have sold to the Plan.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, (202) 523-8884. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 1, 1980, notice was published in the Federal Register (45 FR 51310) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (D) of the Code, for the transactions described in an application filed by McMorgan & Company, the investment manager of the Plan. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. The applicant has represented that it has complied with the requirements of the notification to interested persons as set forth in notice of pendency. No public comments were received by the Department.

This application was filed with both the Department and the Internal Revenue Service. However, the notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b) of the Act and section 4975(c)(1)(E) and (F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations: (a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to issuance by the Plan of commitments, in accordance with the guidelines and procedures set forth in the application, obligating the Plan to purchase mortgage loans on single-family dwelling units from financial institutions, when construction of such dwelling units is by persons who are parties in interest or disqualified persons with respect to the Plan, and shall not apply to the purchase of mortgage loans which meet the criteria of the guidelines and procedures set forth in the application, from financial institutions which are parties in interest or disqualified persons with respect to the Plan solely by reason of servicing mortgages which they previously have sold to the Plan. The foregoing exemption will be appicable subject to the conditions as set forth in the notice of pendency.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 10th day of October, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-32386 Filed 10-16-80; 8:45 am]

BILLING CODE 4510-29-M

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[Prohibited Transaction Exemption 80-73]

Exemption From the Prohibitions for Certain Transactions Involving Food Store Employees Union and Employers Pension Plan and Food Store Employees Union and Employers Health and Welfare Plan, Located in Charleston, W. Va. (Exemption Application No. L-1737 and L-1738)

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption would permit the leasing of office space by Food Store Employees Union Local 347 (the Union) to Food Store Employees Union and Employers Pension Plan and Food Store Employees Union and Employers Health and Welfare Plans (collectively, the Plans).

EFFECTIVE DATE: August 1, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Sandler of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, (202) 523-8195. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 8, 1980, notice was published in the Federal Register (45 FR 52958) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act). The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice was distributed to interested persons in accordance with the provisions set out in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act does not relieve a fiduciary or other party in interest with respect to a plan to which the exemption is applicable from certain other provisions of the Act. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act.

(2) This exemption does not extend to transactions prohibited under section 406(a), 406(b)(1) and 406(b)(3) of the Act.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plans and of their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plans.

Accordingly the restrictions of section 406(b)(2) of the Act shall not apply to the lease of office space between the Union and the Plans described in the notice of pendency. The effective date of the exemption shall be August 1, 1979.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction that is the subject of this exemption.

Signed at Washington, D.C., this 9th day of October, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-32391 Filed 10-16-80; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 80-72]

Exemption From the Prohibitions for Certain Transactions Involving Martin Gibbs, M.D., P.A., Pension Plan (Exemption Application No. D-1556)

AGENCY: Department of Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption permits the cash sale of unimproved waterfront real property by the Martin Gibbs, M.D. P.A. Pension Plan (the Plan) to Dr. Martin Gibbs, a party in interest with respect to the Plan.

FOR FURTHER INFORMATION CONTACT: Horace C. Green of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, (202) 523-8196. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On July 15, 1980, notice was published in the Federal Register (45 FR 47555) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4976(c)(1)(A) through (E) of the code, for the transaction described in an application filed by the Martin Gibbs, M.D., P.A. (the Employer). The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that he has complied with the notification requirements as set forth in the notice of pendency. One comment was received by the Department and was subsequently withdrawn. Therefore, the Department has decided to grant the exemption as proposed.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of the unimproved waterfront real property to Dr. Martin Gibbs for the greater of the fair market value on the date of sale or $48,500.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 9th day of October, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-32390 Filed 10-16-80; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 80-75]

Exemption From the Prohibitions for Certain Transactions Involving Guaranty State Bank of St. Paul Profit-Sharing Plan and Trust Located in St. Paul, Minn. (Exemption Application No. D-1402)

AGENCY: Department of Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This temporary exemption permits transactions involving the purchase, holding and repurchase (if necessary) of Participation Certificates in certain real estate mortgage loans between the Guaranty State Bank of Saint Paul Profit-Sharing Plan and Trust (the Plan) and the Guaranty State Bank of Saint Paul (the Employer).

FOR FURTHER INFORMATION CONTACT: Paul R. Antsen of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523-6915. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 1, 1980, notice was published in the Federal Register (45 FR 51312) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code, for the purchase, holding and repurchase (if necessary) of Participation Certificates in certain real estate mortgage loans between the Plan and the Employer. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that it has complied with the requirements of the notification to interested persons as set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section

406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply:

(1) From the date of this exemption until five years thereafter to the purchase, holding and repurchase; and

(2) Subsequent to the expiration date of this exemption to the holding and repurchase (provided such interest was acquired during the period such exemption was in effect) [1]

of Participation Certificates in the Real Estate Loans secured by first mortgages between the Plan and the Employer, provided the following conditions are met:

A. No sales commission will be charged to the Plan in connection with the Participation Certificate acquisition.

B. The purchase price of the Participation Certificate will be determined by comparing the market interest rate at the time the participation interest would be purchased with the interest rate of the Real Estate Loan; however, in no event would the purchase price to the Plan be less favorable than a similar transaction with an unrelated third party.

C. The Employer will continue to hold at least a fifty (50) percent interest in that portion of the Real Estate Loan not transferred to the Plan by a Participation Certificate and service the entire loan at no fee to the Plan.

D. Only Real Estate Loans secured by first real estate mortgages which have been properly recorded and insured in the amount of such loan and having a loan-to-value ratio not greater than seventy-five (75) percent shall be the subject of a Participation Certificate acquisition by the Plan.

E. Any Participation Certificate acquisition by the Plan shall include a written repurchase provision by the Employer at the demand of the Plan, upon fifteen (15) days written notice, such requirement for repurchase to be at the absolute descretion of the Plan. Should the repurchase provision be exercised, the purchase price shall be the unpaid principal balance, provided this amount is not less than fair market value at the time of sale, plus any accrued interest payments.

F. In the event of a default by the borrower on any payment due under the terms of the security agreement governing the loan transaction (a required document pursuant to local banking law), the Employer will be called upon to honor his obligation under condition E of this exemption. A Real Estate Loan shall be considered to be in default for purposes of this exemption when it would be considered in default under the terms of the security agreement or any other loan documentation governing the Employer originated loan in which the Plan has a participation interest.

G. The acquisition of a Participation Certificate from the Employer involving the Real Estate Loans shall not cause the Plan to hold:

1. More than thirty-five (35) percent of the current value (as that term is defined in section 3(26) of the Act) of Plan assets in such participation interests; and

2. More than ten (10) percent of Plan assets (as defined above) in participation interests of any one real estate secured loan or individual borrower.

H. A plan which relies upon this exemption shall maintain or cause to be maintained for a period of six years from the date of such transaction such records as are necessary to enable the Department to determine whether the conditions of this exemption have been met, except that:

1. A prohibited transaction will not be deemed to have occurred if due to circumstances beyond the control of the plan fiduciaries, such records are lost or destroyed prior to the end of such six year period; and

2. Such employer shall not be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or are not available for examination as required by paragraph I below.

I. Notwithstanding anything to the contrary in subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph H above are unconditionally available at their customary location for examination during normal business hours by:

1. The Internal Revenue Service;

2. The Department of Labor;

3. The Plan participants and beneficiaries;

4. Any employer of Plan participants;

5. Any employee organization any of whose members are covered by the Plan; or

6. Any duly authorized employee or representative of a person described in subparagraphs (1) through (5) of this paragraph.

The availability of this exemption is subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 10th day of October, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Laobr-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-32384 Filed 10-16-80; 8:45 am]

BILLING CODE 4510-29-M

[1] The Department has traditionally viewed a guarantee to repurchase from the plan by a party in interest as a prohibited transaction under ERISA. Because the terms of the Participation Certificate provide for a guaranteed repurchase on demand during the entire term of such Participation Certificate, the terms of the exemption must necessarily extend to provide relief for the operation of the safeguards incorporated in the conditions. Therefore the relief provided includes the "holding and repurchase" of the Participation Certificates. Additionally, in order that the Plan not be required to dispose of its holdings in Participation Certificates issued by the Employer during the period such exemption was in effect the Department intends that the language of the exemption also be construed to provide continuing relief for the "holding" after the expiration of the exemption for those Participation Certificates purchased before such date in accordance with the terms of the exemption.

Proposed Exemption for Certain Transactions Involving the Pacific Scientific Co.'s Employee Retirement Plan Located in Anaheim, Calif.; (Application No. D–1900)

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt (1) the sale to the Pacific Scientific Company Employee Retirement Plan (the Plan) of an improved parcel of real property (the Property) by the Pacific Scientific Comnpany (the Employer), a party in interest with respect to the Plan; (2) a lease (the Lease) of the Property by the Plan to the Employer; (3) an assumption by the Plan of the Employer's obligations pursuant to a note and deed of trust; and (4) a guarantee by the Employer to the Plan with regard to the Plan's future disposition of the Property.

The proposed exemption, if granted, would affect the participants and beneficiaries of the Plan, the Plan, the Employer, and other persons participating in the transactions.

DATES: Written comments and requests for a public hearing must be received by the Department on or before December 2, 1980.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–1900. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. David Stander of the Department, telephone (202) 523–8882. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406(b)(1), 406(b)(2) and 407(a) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a noncontributory defined benefit plan. As of January 1, 1980, the Plan had 390 participants and had net assets of approximately $4,786,000. The Plan's Investment Advisory Committee (the Committee) is responsible for the investment of Plan assets. The United California Bank is the trustee of the Plan and invests and administers Plan assets at the direction of the Committee.

2. The Employer manufactures restraint equipment and electronic instruments. The Employer also sells and services various products manufactured by other companies. The Employer is a publicly held company whose stock is traded on the New York Stock Exchange. As of January 1, 1980, the Employer had a net worth of $23,053,000. In 1979, the Employer had net earnings of $5,161,000.

3. On December 28, 1979, the Employer purchased from an unrelated party, Hycel, Inc., the Royco Instruments Division of Hycel. Among the assets acquired was the Property. The Employer purchased the Property subject to a note (the Note) dated December 1, 1978, in the original principal amount of $1,245,000. The Note bears interest at the ratge of 9¼ percent per annum, and is payable on January 1, 1994 to the Prudential Insurance Company of America. The Note is secured by a first deed of trust on the Property.

4. The Property is located at 141 Jefferson Drive, Menlo Park, California, and forms part of the master planned Bohannon Industrial Park. A complete appraisal by a qualified, independent appraiser, the Tait Appraisal Company (Tait), determined that, as of February 1, 1980, the fair market value of the Property was $2,400,000. Tait determined that, based upon an "income" approach, the Property could be expected to yield an annual net income of approximately $257,000.

5. The Plan seeks to purchase the Property from the Employer for its appraised fair market value of $2,400,000, and lease the Property to the Employer. The Plan will pay $1,178,000 in cash, and assume the Employer's obligations with respect to the Note and deed of trust. The Employer will pay all costs related to the purchase of the Property.

6. The Lease terms provide for an initial fifteen (15) year term. The Employer will have the option to renew the Lease for two consecutive five year terms upon 180 days written notice to the Plan. The initial annual rental payable to the Plan, $268,000, is $11,000 grater than the amount of income the Property could be expected to yield as determined by the appraisal. A complete appraisal of the Property by a qualified, independent appraiser will be made every three years and the rental payments will be adjusted to reflect the fair market rental value. In no event will the rental payments be less than the rental payments received in the preceding three year period. The Lease is a "triple net" lease, and the Employer will incur the cost of the reappraisals.

7. The Note provides for equal monthly principal and interest payments of $10,665.50 (or $127,986 per year) until maturity, at which time a "balloon" payment is due. The Note also provides that after December 1, 1988 payments under the Note may be fully amortized to avoid effecting a "balloon" payment at maturity. The Plan therefore intends to increase its monthly payments pursuant to the Note to $21,392 (or $256,705 per year) after December 1988 until maturity on January 1, 1994 so that payments under the Note will be fully amortized and no "balloon" payment will be due. The initial annual rental payable to the Plan, $268,000, being the minimum annual rental to be received by the Plan during the term of the Lease, will always be in excess of the annual amounts the Plan will be paying pursuant to the Note and will be sufficient to pay the Plan's unrelated debt-financed income tax liability under section 514 of the Code.

8. The Employer will deposit $268,000 with the Plan (the Security Deposit) upon the execution of the Lease to be used as security for the Employer's obligations pursuant to the Lease. The Security Deposit may be applied toward monthly rental payments due during the last six months of the final term of the Lease, provided that in no event during that time will the Security Deposit be reduced below the amount of $50,000. The Security Deposit can be used by the Plan for payment of any sums which the

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Plan may become obligated to pay as a result of a default by the Employer.

9. In the event the Employer defaults with respect to any of its obligations under the Lease, the Plan will have the right to sell the Property to the Employer at a price equal to the greater of the original pruchase price, or the fair market value of the Property, as determined by a complete appraisal, at the date of sale.

10. The Property will represent approximately 40 percent of the Plan's net assets after its purchase. The Property will initially provide an annual rate of return equal to approximately 11 percent of its appraised value. The rate of return is expected to increase as rental payments are adjusted every three years to reflect the fair market rental value of the Property.

11. The Title Insurance and Trust Company (Title) will be appointed as the trustee of the Plan with respect to the Property. Title is independent of the Employer and has determined that the proposed transactions, including the terms thereof, are appropriate for the Plan, taking into consideration the Plan's overall investment portfolio. Title will also completely monitor the terms of the Lease and may take any reasonable and legal steps to protect the rights of the participants and beneficiaries of the Plan.

12. In summary, the applicant represents that the proposed transactions satisfy the statutory criteria of section 408(a) of the Act because (a) the purchase price of the Property and the rental to be received pursuant to the Lease have been determined pursuant to a complete appraisal by an independent, qualified appraiser; (b) the Plan will receive a cash deposit from the Employer upon the execution of the Lease to be used as security for the employer's obligations under the Lease; (c) the rental received by the Plan will be adjusted every three years, pursuant to an appraisal, to reflect the fair market rental value of the Property; (d) the Plan may sell the Property back to the employer for its appraised fair market value, provided that the sale price is not less than the original purchase price of the Property, if the Employer defaults with respect to any of its obligations under the Lease; (e) an independent party, Title, will maintain complete responsibility with respect to the Property, and will completely monitor the terms of the Lease; and (f) Title has reviewed the appraisal of the Property and the Lease and represents that the proposed transactions are in the best interests of the Plan and of its participants and beneficiaries, and are an appropriate investment for the Plan, taking into consideration the Plan's overall investment portfolio.

Notice to Interested Persons

Notice will be provided to all participants and beneficiaries of the Plan by mailing or delivering a copy of this Notice of Proposed Exemption as published in the **Federal Register** to be postmarked no later than fifteen (15) days after such publication. Additionally, such Notice of Proposed Exemption will be posted on appropriate employee bulletin boards within such fifteen (15) day period.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of a exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation, of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1), 406(b)(2) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the purchase of the Property from the Employer by the Plan; (2) the lease of the Property to the Employer; (3) an assumption by the Plan of the Employer's obligations pursuant to the Note and deed of trust; and (4) a guarantee by the Employer to the Plan with regard to the Plan's disposition of the Property upon the default by the Employer on any of its obligations under the Lease.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in this application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C. this 9th day of October, 1980.

Ian D. Lanoff,

Administrator, Pensian and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-32389 Filed 10-16-80; 8:45 am]

BILLING CODE 4510-29-M

Proposed Exemption for Certain Transactions Involving the Wisconsin State Carpenters Pension Fund, Located in Eau Claire, Wis. (Application No. D-1352)

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the making of long-term mortgage loans by the Wisconsin State Carpenters Pension Fund (the Plan) in situations where the loans would be arranged by and purchased from mortgage bankers which are service providers to the Plan, and therefore, parties in interest. The proposed exemption, if granted, would affect the Plan, participants and beneficiaries of the Plan, the mortgage banking institutions involved, contributing employers to the Plan, and any other persons participating in transactions to which the exemption might be applicable.

DATES: Written comments must be received by the Department of Labor on or before December 5, 1980. If granted, the exemption will be effective from the date of grant.

ADDRESS: All written comments (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–1352. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Department of Labor, telephone (202) 523–8884. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code. The proposed exemption was requested in an application filed on behalf of the trustees of the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a multi-employer collectively bargained plan, participants in which are employed in the construction industry. There are approximately 15,468 Plan participants. Plan assets total approximately $29,332,618 as of June 30, 1980.

2. The board of trustees of the Plan is composed of 22 members, 11 appointed by employers and 11 union-appointed, with power to cast an equal number of aggregate votes. Because of the size of the full board of trustees, standing committees have been established to perform on-going administrative and management functions for the Plan.

Fiduciary duties are expressly delegated to standing committees. Of such standing committees, the Plan Investment Committee is charged with decisions regarding management of Plan assets. Moreover, investment managers may be appointed for the Plan.

3. Four employer-appointed and four union-appointed trustees comprise the Investment Committee. The primary duties of the Investment Committee are to oversee the activities of investment managers, who are responsible for approximately three-quarters of the Plan's assets. Additionally, the Investment Committee oversees management of Plan assets, the responsibility for which does not fall upon the investment managers.

4. The Investment Committee acts on all applications for permanent mortgage financing. Such financing is provided only after completion of the construction project involved, replacing the short-term construction loan. Exemption for construction financing is not sought.

No application for mortgage financing is considered by the Investment Committee unless the loan meets published criteria promulgated by that Committee. Mere satisfaction of the published criteria does not result in automatic Investment Committee approval of a particular loan, inasmuch as all loan applications are considered on an individual basis, the published criteria serving only as minimum requirements which must be met before a loan application will be considered at all. Also, the Plan will not extend permanent mortgage financing to any persons who are parties in interest or disqualified persons with respect to the Plan.

5. The Plan makes mortgage loans secured by commercial real property. Construction of such commercial properties may be performed by persons who are parties in interest or disqualified persons with respect to the Plan. Specifically, the transactions for which exemption is sought are commitments on the part of the Plan both to provide a borrower with long-term mortgage financing and to purchase the construction mortgage loan held by the short-term lender. Such purchase is upon completion of the construction project involved.

At the closing of the permanent mortgage loan commitment, the Plan is assigned the first mortgage held by the short-term lender. Such assignment inlcudes the outstanding note, as well as the mortgage, upon receipt of which the Plan advances funds to the short-term lender in satisfaction of the assignment.

6. The Plan regards investments in permanent mortgage loans on commercial real property as being particularly attractive. According to the application, such investments in the past have proved to be an excellent medium for meeting the Plan's long-term investment objectives of principal preservation, investment return, stability of return, and diversification. In addition, the application states that the Plan's investment experience with mortgage loans has been more favorable than with investments managed by outside investment managers. Further, the Plan would be unable to continue its policy of making investments in permanent mortgage loans on commercial real property if the proposed exemption were not granted.

In the past, the Plan has invested less than 10% of its total assets in mortgage loans. If the proposed exemption is granted, the Plan would not invest more than 30 percent of its assets in mortgage loans to which the exemption would be applicable, such percentage to be determined as of the time the commitment for a particular mortgage loan is closed by assignment of the loan from a mortgage banker, as the process more fully is described below. Moreover, if the proposed exemption is granted, the Plan would not invest more than five percent of its assets in any one mortgage loan, such percentage also to be determined as of the time the commitment is closed.

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7. The process through which the Plan issues a commitment to make permanent mortgage financing in a particular instance can be summarized as follows.

A prospective borrower approaches a mortgage banker to discuss financing of an anticipated construction project. If the banker reacts favorably to the proposed project, it enters into an arrangement with the borrower, pursuant to which the banker agrees to act as agent for the borrower in attempting to obtain long-term financing. Typically, the agreement provides that the banker will receive an origination fee from the borrower if it is successful in obtaining long-term financing.

The banker prepares a loan offering for submission to potential lenders. The offering typically is upon the terms and conditions then prevailing for such financing, as being carried out by a variety of lenders, including the Plan. The Plan Investment Committee may receive such an offering from a banker, and will review it according. The Investment Committee may accept the terms of the offering as presented, or it may present a counter-proposal. Upon the Investment Committee's being satisfied with a particular offering, or upon acceptance by the potential borrower of the Plan's counter-proposal, the Plan issues its commitment to provide permanent financing for the project involved.

The Plan's commitment imposes certain conditions, in non-satisfaction of which the Plan will not accept the mortgage loan upon completion of the construction project. The conditions include issuance of an appraisal of the completed building, showing that the loan will not exceed 75 percent of the appraised value; issuance of a title policy insuring the Plan's first mortgage status in an amount at least equal to the amount of the loan; receipt of an architect's certificate that construction conforms to requisite plans and specifications and meets applicable zoning and ordinance restrictions; issuance of a certificate from the appropriate building inspector that the building is ready for occupancy; and presentation of a hazard insurance policy in an amount at least equal to the loan, naming the Plan as payee.

The borrower obtains construction financing, normally through the banker which he approached initially. The borrower, the banker and the Plan become parties to an agreement which confirms the understanding of the parties that upon completion of the project the Plan will provide permanent financing.

Throughout construction, the banker monitors the project. Upon completion of the project, the banker makes the necessary inspections and then schedules the loan closing, at which time the mortgage and note are assigned to the Plan as discussed above.

The Plan considers only those loan offerings presented by corporate mortgage bankers which the Investment Committee considers experienced and responsible. The application states that an exemption is sought for entering into loan commitments with none other than those mortgage bankers who are parties in interest with respect to the Plan solely as a consequence of servicing other mortgage loans.

According to the application, the use of mortgage bankers for servicing of such loans is of benefit to the Plan by assuring availability of loan servicing at lesser expense than would be required if the Plan were to service such loans itself.

8. Determinations to make commitments with respect to particular mortgage loans result from exclusive decisions of the Investment Committee. Such decisions are not subject to review or confirmation by the trustees as a whole.

9. In summary, the applicant represents that the statutory criteria contained in Section 408(a) of the Act have been satisfied because:

(a) the process by which the Plan makes mortgage loans is well established and subject to review, with a history of successful long-term mortgage investments;

(b) the applicant represents that long-term mortgage loans provide stable investment returns at attractive yields;

(c) the Plan has rigorous standards for acceptance of any loan; and

(d) the trustees have determined that the transactions are appropriate for the Plan and in the best interests of the participants and beneficiaries of the Plan.

Notice to Interested Persons

Within twenty days of publication in the **Federal Register**, notice of the proposed exemption will be sent by bulk mailing to all contributing employers to the Plan, and to each union, members of which are participants in the Plan, for conspicuous posting by such union. Such notice shall include a copy of the notice of pendency of the exemption as proposed in the **Federal Register** and shall inform interested persons of their right to comment within the time period set forth in the notice of proposed exemption.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act. Among other things, section 404 requires that a fiduciary discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B). Moreover, an exemption does not affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b) of the Act and section 4975(c)(1) (E) and (F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments

All interested persons are invited to submit written comments on the proposed exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to issuance by the Plan of commitments, in accordance with the limitations and procedures discussed above, obligating the Plan to purchase mortgage loans on commercial real estate, where such commitments are made to financial institutions which are parties in interest or disqualified persons with respect to the Plan solely by reason of servicing mortgage loans for the Plan. Moreover, the foregoing exemption shall apply only if the following conditions are met:

(a) At the time the transaction is entered into, the terms of the transaction are not less favorable to the Plan than the terms generally available in arm's-length transactions between unrelated parties.

(b) The Plan maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the fiduciaries of the Plan, records are lost or destroyed prior to the end of the six-year period, (2) no party in interest shall be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the sanctions imposed by section 4975 of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c) Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this section are unconditionally available at their customary location for examination during normal business hours by:

(i) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service;

(ii) Any employer, or duly authorized representative of such employer, of employes who are covered by the Plan;

(iii) Any employee organization, or duly authorized representative of such organization, members of whom are covered by the Plan;

(iv) Any participant or beneficiary of the Plan or any duly authorized representative of such participant or beneficiary.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 9th day of October, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-32386 Filed 10-16-80; 8:45 am]

BILLING CODE 4510-29-M

Office of the Secretary

[TA-W-10,256]

Banner Spring and 4-Slide Co.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 18, 1980 in response to a worker petition received on August 4, 1980 which was filed by the United Steelworkers on behalf of workers and former workers producing wire and rod forms, stampings and jack supplies at the Banner Spring and 4-Slide Company, Taylor, Michigan.

The Notice of Investigation was published in the **Federal Register** on August 22, 1980 (45 FR 56212–13). No public hearing was requested and none was held.

In a letter dated September 19, 1980 the petitioners requested withdrawal of the petition. On the basis of the withdrawal, continuing the investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 6th day of October 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-32473 Filed 10-16-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-10,717]

Bridgeport Brass; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 15, 1980, in response to a worker petition received on September 8, 1980, which was filed by the United Steelworkers of America on behalf of workers and former workers of Bridgeport Brass, Bridgeport, Connecticut (TA–W–10,717). On August 18, 1980, a petition was filed on behalf of the same group of workers (TA–W–10,453).

Since the identical group of workers is the subject of the ongoing investigation TA–W–10,453, a new investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 3rd day of October 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-32478 Filed 10-16-80; 8:45 am]

BILLING CODE 4510-28-M

Brunswick Corp., Marine Power Group; Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certifications of eligibility to apply for worker adjustment assistance.

In order to make affirmative determinations and issue certifications of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigations were initiated on April 14, 1980 in response to petitions which were filed by the International Association of Machinists and Aerospace Workers on behalf of workers at the Brunswick Corporation, Marine Power Group facilities listed in Appendix I. Workers in these facilities produce outboard motors and/or sterndrive motors. The investigation revealed that all Brunswick Corporation, Marine Power Group facilities are parts of an integrated production process for the manufacture of outboard motors and/or sterndrive motors for boats. The investigation was expanded to include the facilities listed in Appendix I.

In the following determinations, without regard to whether any of the other criteria have been met, with respect to workers producing sterndrive motors, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S. imports of sterndrive motors are negligible. Imports of sterndrive motors relative to domestic production have been insignificant during the past three years.

With respect to workers producing outboard motors, all of the criteria have been met.

U.S. imports of outboard motors increased relative to domestic production and consumption in 1979 compared with 1978 and increased both absolutely and relatively during the first half of 1980 compared with the first half of 1979.

The Brunswick Corporation's Marine Power Group increased its imports of outboard motors in 1979 compared with 1978 and in the first half of 1980 compared with the same time period in 1979. Marine Power's imported outboards represented a significant and increasing percentage of Marine Power's production and sales of outboards in 1979 and 1980. These imports also accounted for the majority of Marine Power's production decline in the first half of 1980 compared with the same time period in 1979. Imported outboard motors increased their share of the domestic market from 1978 to 1979 and during the first half of 1980 compared with the same period in 1979.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with outboard motors produced at the Brunswick Corporation, Marine Power Group plants listed in Appendix I contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

"All workers of the locations of the Brunswick Corporation's Marine Power Group listed in Appendix I engaged in employment related to the production of outboard motors who became totally or partially separated from employment on or after the respective impact dates listed in Appendix I are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 7th day of October 1980.

James F. Taylor,

Director, Office of Management Administration and Planning.

Appendix I

Location, TA-W-, and impact date

#1 Cedarburg, WI—7593, July 15, 1979
#2 Cedarburg, WI—7594, December 15, 1979
#5 Oshkosh, WI—7595, December 15, 1979
#3 Fond du Lac, WI—7596, November 11, 1979
#4 & 4A Fond du Lac, WI—7597, February 15, 1979
#8 Fond du Lac, WI—7598, July 15, 1979
#10 Fond du Lac, WI—7599, October 15, 1979
#15 & 16 Fond du Lac, WI—7600, July 15, 1979
#17 Fond du Lac, WI—7601, February 15, 1979
#98, WI—7602, April 15, 1980

The investigation was expanded to include these production facilities and Mercury distribution center:

Location, TA-W-, and impact date

#7 St. Cloud, Fla.—7602A, January 15, 1980
#70 Santa Ana, CA—7593A, March 15, 1980
#72 Denver, CO—7593B, March 15, 1980
#73 Norcross, GA—7593C, January 15, 1980
#74 Auburn, MA—7593D, December 15, 1979
#75 Hayward, CA—7593E, March 15, 1980
#76 Orlando, FL—7593F, December 15, 1979
#77 East Brunswick, NJ—7593G, April 15, 1980
#78 Fort Wayne, IN—7593H, March 15, 1980

[FR Doc. 80-32480 Filed 10-16-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-7788]

Clark Reed Shake Co.; Affirmative Determination Regarding Application for Reconsideration

On August 7, 1980, the employees requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers and former workers of the Clark Reed Shake Company, Quinault, Washington. The determination was published in the **Federal Register** on July 17, 1980, (45 FR 49702).

The application for reconsideration claimed that the Department's investigation was incomplete because (1) Canadian imports of cedar shakes at lower prices caused a downturn in employment and sales at Clark Reed Shake Company rather than a decrease in housing starts; (2) company sales are made through brokers who distribute the shake products to the brokers' customers, and these same brokers buy shakes from other mills that have been declared eligible for Trade Act benefits; (3) increases in value of Clark Reed cedar shake sales in 1979 were due to inflation; and (4) increased employment in 1979 was due to the installation of an extra saw to handle rougher types of wood.

Conclusion

After review of the application, I conclude that the employees' claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 3rd day of October 1980.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 80-32479 Filed 10-16-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-10,669]

Hawley Coal Mining Corp.; #1 Mine; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 8, 1980 in response to a worker petition received on August 28, 1980 which was filed on behalf of workers at the #1 Mine, Landgraff, McDowell County, West Virginia of the Hawley Coal Mining Corporation. The workers mine metallurgical coal.

On September 16, 1980, workers at the #1 and #2 Mine, Landgraff, McDowell County, West Virginia, Hawley Coal Corporation, (also known as Hawley Coal Mining Corporation) were denied eligibility to apply for adjustment assistance (TA-W-10,286).

On September 8, 1980, the Department instituted a second investigation on behalf of workers at the #1 Mine, McDowell County, West Virginia, Hawley Coal Mining Corporation. The petition alleges that foreign imports have depressed sales of metallurgical coal thus causing layoffs at the mine in August, 1980. The second petition presents no new information which would change the determination made in TA-W-10,286.

Since an investigation has already been conducted pursuant to the facts and statements presented in the current petition (TA-W-10,669) and since the current petition presents no additional information pursuant to the previous determination (TA-W-10,286) that would change the previous determination, another investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 3rd day of October 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-32474 Filed 10-16-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-10,670]

Hawley Coal Mining Corp.; No. 2 Mine; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 8, 1980 in response to a worker petition received on October 17, 1979 which was filed on behalf of workers at the #2 Mine, Landgraff, McDowell County, West Virginia of the Hawley Coal Mining Corporation, Keystone, West Virginia. The workers mine metallurgical coal. The petition alleges that imports have depressed sales of metallurgical coal this causing the layoffs beginning in August, 1980.

On September 16, 1980, workers at the #1 and #2 Mines, Landgraff, McDowell County, West Virginia, Hawley Coal Corporation (also known as Hawley Coal Mining Corporation) were denied eligibility to apply for adjustment assistance (TA-W-10,286).

On September 8, 1980, the Department instituted a second investigation on behalf of workers at the #2 Mine, Landgraff, McDowell County, West Virginia, Hawley Coal Mining Corporation. The petition alleges that foreign imports have depressed sales of metallurgical coal thus causing layoffs at the mine in August, 1980. The second petition presents no new information which would change the determination made in TA-W-10,286.

Since an investigation has already been conducted pursuant to the facts and statements presented in the current petition (TA-W-10,670) and since the current petition presents no additional information pursuant to the previous determination (TA-W-10,286) that would change the previous determination, another investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 8th day of October 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-32481 Filed 10-16-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-7505]

Jung Great Lakes Shoe, Inc.; Negative Determination Regarding Application for Reconsideration

By an application dated July 30, 1980, former workers requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers producing men's work boots and slippers at the Oconto, Wisconsin plant of Jung Great Lakes, Shoe, Inc., Oconto, Wisconsin. The determination was published in the **Federal Register** on July 18, 1980, (45 FR 48289).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The former workers claimed in their application for reconsideration that felt liners, a component of the work boots manufactured at the Oconto, Wisconsin plant of Jung Great Lakes Shoe were imported into the plant in 1979 and as such contributed importantly to their layoffs. They also claimed that the manufacture of felt liners was their main activity.

The Department's review showed that workers at Jung Great Lakes Shoe's Oconto, Wisconsin plant did not meet the "contributed importantly" test of the Trade Act of 1974. The Department's customer survey showed that most respondents did not buy imported work boots and slippers. Those customers who reduced their purchases of footwear from Jung and increased their purchases of imports accounted for an insignificant proportion of company sales in 1979 and the first quarter of 1980. Further, U.S. imports of men's work footwear declined absolutely and relative to domestic production in 1979 compared to 1978 and in the first six months of 1980 compared to the same period in 1979.

Although the company imported some felt liners from Canada in early 1980, the Department could not find a sufficient basis for the recognition of an appropriate subdivision comprising only felt liners since the work on felt liners constituted only an insignificant part of the production at the Oconto plant and the workers, with one possible exception, employed on felt liners at the Oconto plant spent only a minor amount of their time in this activity and were not separately identifiable.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 7th day of October 1980.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 80-32477 Filed 10-16-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-10,318]

Norwood Engineering Co., Inc.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 25, 1980 in response to a worker petition received on August 14, 1980 which was filed on behalf of workers and former workers producing special tooling at Norwood Engineering Company, Incorporated, Dayton, Ohio.

In a letter dated September 8, 1980, the petitioners requested that the petition be withdrawn. On the basis of this withdrawal, continuing the investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 6th day of October 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-32476 Filed 10-16-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-10,732]

Thompson Steel Co., Inc.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 15, 1980 in response to a worker petition received on September 8, 1980 which was filed by the United Steelworkers of America on behalf of workers and former workers producing cold rolled strip steel for Thompson Steel Company, Baltimore, Maryland.

In a letter received on September 25, 1980 the petitioner requested withdrawal of the petition. On the basis of the withdrawal, continuing the investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 6th day of October 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-32475 Filed 10-16-80; 8:45 am]

BILLING CODE 4510-28-M

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Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for worker adjustment assistance issued during the period.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases it has been concluded that at least one of the above criteria has not been met.

TA-W-10,455; Grow Group, Inc., Automotive Division, Pontiac, Mich.

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of automotive coatings are negligible.

TA-W-9678; White Pine Sportswear, Inc., Brooklyn, N.Y.

Investigation revealed that criterion (3) has not been met. The closure of the firm and separation of workers resulted from a fire which occurred in January 1980.

TA-W-9447; Joseph T. Ryerson & Son, Inc., Dayton, Ohio

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-9633; United Technologies Corp., Automotive Division, Tampa, Fla.

Investigation revealed that criterion (3) has not been met. U.S. imports of electronic circuit boards did not increase as required for certification under Section 223 of the Act.

TA-W-8996; Anaconda Industries, American Brass & Magnet Wire, Business Operations, and Buffalo Operations; Buffalo, N.Y.

Investigation revealed that criterion (3) has not been met. U.S. imports of copper and brass sheet strips have not increased as required for certification under Section 223 of the Trade Act of 1974.

TA-W-8876; Cummings Leather Co., Lebanon, N.H.

Investigation revealed that criterion (3) has not been met. U.S. imports of cattle hides did not increase as required for certification under Section 223 of the Act.

TA-W-7842; Mt. Baker Cedar, Inc., Port Angeles, Wash.

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-7721; Texaco, Inc., River Rouge, Mich.

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-9607; Conrail, Buffalo Division, Buffalo, N.Y.

Investigation revealed that criterion (3) has not been met. The workers' firm does not produce an article as required for certification under Section 223 of the Trade Act of 1974.

TA-W-9726; R.C. Co., Inc., Grand Rapids, Mich.

Investigation revealed that criterion (3) has not been met. The workers' firm does not produce an article as required for certification under Section 223 of the Trade Act of 1974.

TA-W-8982; J.J. Co., Atlantic City, N.J.

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-7740; The Newburgh & South Shore Railway Co., Cleveland, Ohio

Investigation revealed that criterion (3) has not been met. The Workers' firm does not produce an article as required for certification under Section 223 of the Trade Act of 1974. Further, workers of the plant serviced by the subject firm are currently covered by an active certification.

TA-W-8907; Magnavox Consumer Electronics Co., Greeneville, Tenn.

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of television did not increase as required for certification.

TA-W-10,185; Uniwear Inc., Akron, Ohio.

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-10,271, 10,272, and 10,273; Unger Public Warehouses, Inc., Detroit, Mich.; Wayne, Mich.; and Highland Park, Mich.

Investigation revealed that criterion (3) has not been met. The workers' firm does not produce an article as required for certification under Section 223 of the Trade Act of 1974.

TA-W-9998; Kaiser Aluminum & Chemical Sales, Inc., Kaiser Lng. Product, Mobile, Ala.

Investigation revealed that criterion (3) has not been met. U.S. imports of liquified natural gas tanks are negligible.

TA-W-8616; Friendly Mfg. Co., Montesano, Wash.

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-7664; Automotive Spring Corp., Detroit, Mich.

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-7357; LaSalle Steel Co., Hammond, Ind.

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-8669; Union Carbide Corp., Wayne, N.J.

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-9770; Brown Shoe Co., Fredericktown, Mich.

The investigation revealed that criterion (2) has not been met.

TA-W-8731; Inmont Corp., Detroit, Mich.

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of paints, varnishes, and lacquers are negligible.

Affirmative Determinations

TA-W-9084; Parker & Sons, Inc., Copalis Beach, Wash.

A certification was issued applicable to all workers at the subject firm separated on or after June 3, 1979.

TA-W-7358; Schwitzer Coaling System Division, Rolla, Mo.

A certification was issued covering all workers of the firm separated on or after July 1, 1979.

I hereby certify that the aforementioned determinations were issued during the period October 6–10, 1980. Copies of these determinations are available for inspection in Room S–5314, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210 during normal working hours or will be mailed to persons who write to the above address.

Dated: October 14, 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-32487 Filed 10-16-80; 8:45 am]

BILLING CODE 4510-28-M

NUCLEAR REGULATORY COMMISSION

NRC Enforcement Program: Public Meetings

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meetings concerning NRC enforcement policy.

SUMMARY: On September 4, 1980, the Nuclear Regulatory Commission approved publication of a proposed general policy statement on enforcement actions for public comment and interim use. The interim policy statement was published in the **Federal Register** on October 7, 1980 (45 FR 66754).

This notice announces one-day public meetings that are to be held in five locations to obtain and consider public comments on the proposed enforcement policy.

DATES:

Meeting Dates and Locations

The public meetings will be held at the following times and places:

Atlanta, Georgia on December 1, 1980 in Stadium Hotel, 450 Capitol Ave., Atlanta, Georgia 30312.

Chicago, Illinois on December 2, 1980 in Sheraton O'Hare Hotel, 6810 Mannheim Road, Rosemont, Ill.

Philadelphia, Pennsylvania on December 4, 1980 in Holiday Inn-Midtown, 1311 Walnut Street, 19107.

Irving, Texas on December 9, 1980 in Holiday Inn-South, 444 W. Airport Freeway, 75061.

Oakland, California on December 11, 1980 in the Hyatt House, 455 Hegenberger Road, 94621.

SUPPLEMENTARY INFORMATION:

I. *Public participation.*—Any individual may make a written or oral request to NRC for an opportunity to be scheduled to speak at one of the meetings. Each request must state (1) the identity of the speaker, (2) the length of the presentation (not to exceed 15 minutes), (3) organization(s) the speaker represents, and (4) a mailing address and daytime telephone number through which the speaker may be contacted. Requests to speak should be made at least five days in advance of the meetings to any of the following:

Karl Abraham, NRC Region I, 631 Park Avenue, King of Prussia, PA 19406, (215) 337–5330;

Kenneth Clark, NRC Region II, 101 Marietta Street, Atlanta, GA 30303, (404) 221–4503;

Jan Strasma, NRC Region III, 799 Roosevelt Road, Glan Ellyn, IL 60137, (312) 932–2674;

Clyde Wisner, NRC Region IV, 611 Ryan Plaza Drive, Arlington, TX 76012, (817) 334–2841;

James Hanchett, NRC Region V, 1990 N. California Blvd., Walnut Creek, CA 94956, (415) 943–3809.

Individuals not making an advance request may register to speak at the meetings. Time for such late-scheduled presentations will depend on the time available. Any further procedural rules needed for the proper conduct of the meetings will be announced by the meeting chairman.

II. *Conduct of the meeting.*—In each of the above cities, public meetings will be held from 1 p.m. to 10 p.m. with a recess from 5 p.m. to 7 p.m., or to the extent indicated by requests for participation. The purpose of the meeting is to provide an opportunity for interested persons to voice their questions and comments on the proposed enforcement policy.

Each of the meetings will follow the same agenda: (1) Registration; (2) introduction and opening NRC remarks; and (3) receipt of comments. Remarks will consist of a summary of the enforcement policy and its implementation. The remainder of the time will be available for interested persons to ask questions and make comments.

III. *Purpose of the enforcement policy.*—The enforcement authority of the Nuclear Regulatory Commission is drawn from the Atomic Energy Act of 1954 as amended, and the Energy Reorganization Act of 1974. NRC requires licensee compliance with regulatory requirements and takes enforcement action to foster improvement in licensee performance when noncompliance is identified. Enforcement actions available to NRC include notices of violations, orders modifying licenses, suspending operations, revoking licenses or requiring cease and desist actions and imposition of civil penalties (fines). In June 1980, Pub. L. 96–295 amended the Atomic Energy Act to raise the maximum civil penalty from $5,000 to $100,000 and to eliminate a provision limiting civil penalties in any 30-day period to $25,000.

The proposed policy explains how NRC intends to use these enforcement authorities in matters involving public health and safety, the common defense and security, and the environment. The policy categorizes all violations in terms of six levels of severity for each type of license activity and specifies the conditions under which each enforcement sanction available to NRC would be used.

The NRC is specifically seeking comment on the following:

(1) Is the policy fair and equitable?

(2) Is the policy understandable?

(3) Are the Severity Levels appropriate?

(4) Are the different types of activities well-enough defined? Should there be others?

(5) Are the distinctions among various types of licensees shown in Table 1 appropriate?

(6) Are the factors for determining the level of enforcement actions appropriate? Should there be others?

(7) Is the degree of discretion allowed to Office Directors appropriate? Should there be more flexibility permitted? Less?

(8) Are the levels of civil penalties that require Commission involvement appropriate? Should they be higher? Lower?

(9) Are the provisions for escalated action, set forth in Table 2, appropriate?

Copies of the enforcement policy may be obtained by contacting the individuals named above at the NRC regional offices.

Transcripts of the meetings will be filed in the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the regional offices.

Dated at Bethesda, Md., this 14th day of October 1980.

Dugley Thompson,

Director, Office of Enforcement and Investigations, Office of Inspection and Enforcement.

[FR Doc. 80-32328 Filed 10-16-80; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Actuarial Advisory Committee With Respect to the Railroad Retirement Accounts; Public Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that the Actuarial Advisory Committee will hold a meeting on November 24, 1980, at the office of the Chief Actuary of the U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, on the conduct of the 15th Actuarial Valuation of the Railroad Retirement Account. The agenda for this meeting will include the results of the recently completed mortality, remarriage and family composition studies for the 15th Valuation, together with the recommendations of the Chief Actuary as to the mortality, remarriage and family composition assumptions to be used for the 15th Valuation.

The meeting will be open to the public. Persons wishing to submit written statements or make oral presentations should address their communications or notices to the RRB Actuarial Advisory Committee, c/o Chief Actuary, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

Dated: October 7, 1980.

R. F. Butler,

Secretary of the Board.

[FR Doc. 80-32456 Filed 10-16-80; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

Boston Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

October 10, 1980.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Akzona Inc.; Common Stock, $1.25 Par Value (File No. 7-5745)
Automatic Data Processing, Inc.; Common Stock, $.10 Par Value (File No. 7-5746)
Bache Group, Inc.; Common Stock, $2 Par Value (File No. 7-5747)
Bay Financial Corp. (Del.); Common Stock, No Par Value (File No. 7-5748)
Belden Corp.; Common Stock, $5 Par Value (File No. 7-5750)
Benguet Corporation; Common Stock Class B, .77 (Philippine Currency) (File No. 7-5751)
Beverly Enterprises; Common Stock, $.10 Par Value (File No. 5752)
Castle & Cooke, Inc.; Common Stock, No Par Value (File No. 7-5753)
Chris-Craft Industries, Inc.; Common Stock, $.50 Par Value (File No. 7-5754)
Consolidated Oil & Gas Co.; Common Stock, $.20 Par Value (File No. 7-5755)
Crestmont Oil & Gas Co.; Common Stock, $1 Par Value (File No. 7-5756)
Crouse-Hinds Co.; Common Stock, $1⅔ Par Value (File No. 7-5757)
Dataproducts Corp.; Common Stock, $.10 Par Value (File No. 7-5758)
Di Giorgio Corp.; Common Stock, $2.50 Par Value (File No. 7-5759)
DMG, Inc.; Common Stock, No Par Value (File No. 7-5760)

These securities are listed and registered on one or more other national securities exchanges and are reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 3, 1980 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-32410 Filed 10-16-80; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-10681]

Jones & Laughlin Steel Corp.; Application and Opportunity for Hearing

October 10, 1980.

Notice is hereby given that Jones & Laughlin Steel Corporation ("J&L") and Mellon Bank N.A. ("Mellon") have filed an application under Clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of Mellon under an indenture dated September 1, 1947, between J&L and Mellon National Bank and Trust Company (now Mellon N.A.), as amended, through the date of such application, heretofore qualified under the Act, and under an indenture dated as of August 1, 1980 between Mellon and Beaver County Industrial Development Authority not qualified under the Act, and under another indenture to be dated as of a future date between Mellon and the Ohio Air Quality Development Authority not qualified under the Act, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Mellon from acting as Trustee under any such indenture.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such Section provides, in effect, with certain exceptions that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that the trusteeship under such qualified indenture and any other indenture is not

so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under any of such indentures.

The Company alleges that: 1. Jones & Laughlin Steel Corporation, a Pennsylvania corporation ("J&L Steel"), has entered into a Pollution Control Facilities Agreement, dated as of August 1, 1980 (the "Facilities Agreement"), with the Beaver County Industrial Development Authority (the "Beaver County Authority") providing for the acquisition and construction from time to time by the Beaver County Authority of facilities (the "Beaver County Project Facilities") designed for the abatement of air and/or water pollution or the disposal of sewage or solid waste located at operations of J&L Steel situated in the Commonwealth of Pennsylvania, and for the sale thereof to J&L Steel. The Beaver County Facilities Agreement provides for financing the acquisition and construction of the Beaver County Project Facilities by the Beaver County Authority through the issuance from time to time of its Pollution Control Revenue Bonds (Jones & Laughlin Steel Corporation Project) (the "Beaver County Pollution Control Revenue Bonds") in one or more series under a Trust Indenture dated as of August 1, 1980 (the "Beaver County Pollution Control Revenue Bond Indenture"), between the Beaver County Authority and Mellon as Trustee (the "Beaver County Pollution Control Revenue Bond Trustee"). J&L Steel will purchase Beaver County Project Facilities from the Beaver County Authority for a purchase price equal to the principal amount of any series of Beaver County Pollution Control Revenue Bonds issued to finance the acquisition and construction of such Beaver County Project Facilities. J&L Steel will satisfy its obligation to pay the purchase price of Beaver County Project Facilities by delivery to the Beaver County Pollution Control Revenue Bond Trustee of one or more series of its first mortgage bonds (the "First Mortgage Bonds") corresponding to the series of Beaver County Pollution Control Revenue Bonds issued to finance the acquisition and construction of Beaver County Project Facilities in respect of principal amount, interest rates, maturity dates and redemption provisions. All First Mortgage Bonds will be issued under and secured by the Indenture of Mortgage and Deed of Trust, dated September 1, 1947, from J&L Steel and certain subsidiary companies to Mellon National Bank and Trust Company (now Mellon Bank, N.A.) (the "Mortgage Trustee") and N.R. Smith, as amended and supplemented (the "Mortgage Indenture").

2. J&L Steel proposes to enter into a Pollution Control Facilities Agreement, to be dated as of a future date (the "Ohio Facilities Agreement"), with the Ohio Air Quality Development Authority (the "Ohio Authority") providing for the acquisition and construction from time to time by the Ohio Authority of facilities (the "Ohio Project Facilities") designed for the abatement of air and/or water pollution or the disposal of sewage or solid waste located at operations of J&L Steel situated in the State of Ohio, and for the sale thereof to J&L Steel. The Ohio Facilities Agreement will provide for financing the acquisition and construction of the Ohio Project Facilities by the Ohio Authority through the issuance from time to time of its Pollution Control Revenue Bonds (Jones & Laughlin Steel Corporation Project) (the "Ohio Pollution Control Revenue Bonds") in one or more series under a Trust Indenture, to be dated as of a future date (the "Ohio Pollution Control Revenue Bond Indenture"), between the Ohio Authority and Mellon Bank, N.A., as Trustee (the "Ohio Pollution Control Revenue Bond Trustee"). J&L Steel will purchase Ohio Project Facilities from the Ohio Authority for a purchase price equal to the principal amount of any series of Ohio Pollution Control Revenue Bonds issued to finance the acquisition and construction of such Ohio Project Facilities. J&L Steel will satisfy its obligation to pay the purchase of Ohio Project Facilities by delivery to the Ohio Pollution Control Revenue Bond Trustee of one or more series of its First Mortgage Bonds corresponding to the series of Ohio Pollution Control Revenue Bonds issued to finance the acquisition and construction of Ohio Project Facilities in respect of principal amount, interest rates, maturity dates and redemption provisions. All First Mortgage Bonds will be issued under and secured by the Mortgage Indenture.

3. The Beaver County Authority proposes to issue and sell $33,500,000 aggregate principal amount of its Beaver County Pollution Control Revenue Bonds, Series 1980 (Jones & Laughlin Steel Corporation Project) (the "Beaver County Series 1980 Pollution Control Revenue Bonds") to finance the acquisition and construction of air and/or water control facilities (the "Beaver County Project Facilities") located at the Aliquippa Works of J&L Steel in Beaver County, Pennsylvania. $6,000,000 of the Beaver County Series 1980 Pollution Control Revenue Bonds will be due August 1, 1990 and $27,500,000 of the Beaver County Series 1980 Pollution Control Revenue Bonds will be due August 1, 2010, subject to mandatory redemption of the longer-term series through the operation of a sinking fund. Concurrently with the issuance and the sale of the Beaver County Series 1980 Pollution Control Revenue Bonds, J&L Steel will deliver directly to the Beaver County Pollution Control Revenue Bond Trustee $6,000,000 aggregate principal amount of its First Mortgage Bonds, Series P, and $27,500,000 aggregate principal amount of its First Mortgage Bonds, Series Q (collectively the "Series P and Q First Mortgage Bonds"), issued under the Eighteenth Supplemental Mortgage Indenture, dated as of August 1, 1980 (the "Eighteenth Supplemental Mortgage Indenture"), to the Mortgage Indenture.

4. The Ohio Authority proposes to issue and sell approximately $26,000,000 aggregate principal amount of its Ohio Pollution Control Revenue Bonds, Series 1980 (Jones & Laughlin Steel Corporation Project) (the "Ohio Series 1980 Pollution Control Revenue Bonds") to finance the acquisition and construction of air and/or water control facilities (the "Ohio Project Facilities") located at the Cleveland Works of J&L Steel in Cleveland, Ohio. Approximately $5,200,000 of the Ohio Series 1980 Pollution Control Revenue Bonds will be due in 1990, approximately $10,400,000 of the Ohio Series 1980 Pollution Control Revenue Bonds will be due in 2000 and approximately $10,400,000 of the Ohio Series 1980 Pollution Control Revenue Bonds will be due in 2010, subject to mandatory redemption of the two longer-term series through the operation of a sinking fund. Concurrently with the issuance and the sale of the Ohio Series 1980 Pollution Control Revenue Bonds, J&L Steel will deliver directly to the Ohio Pollution Control Revenue Bond Trustee approximately $5,200,000 aggregate principal amount of its First Mortgage Bonds, Series R, $10,400,000 aggregate principal amount of its First Mortgage Bonds, Series S and $10,400,000 aggregate principal amount of its First Mortgage Bonds, Series T (collectively the "Series R, S and T First Mortgage Bonds"), issued under a future supplemental mortgage indenture, to be dated at a future date, to the Mortgage Indenture.

5. The Series P and Q First Mortgage Bonds will have interest rates, maturity dates and redemption provisions corresponding to the two series of the Beaver County Series 1980 Pollution Control Revenue Bonds due 1990 and

2010. The Series P and Q First Mortgage Bonds will also be subject to mandatory redemption by J&L Steel prior to maturity if the Mortgage Trustee receives a written demand for redemption from the Beaver County Pollution Control Revenue Bond Trustee stating that, as a result of a failure to pay the principal of, premium, if any, or interest on, any Beaver County Series 1980 Pollution Control Revenue Bond, an Event of Default under the Beaver County Pollution Control Revenue Bond Indenture has occurred and is continuing and that payment of the Beaver County Series 1980 Pollution Control Revenue Bonds has been accelerated by the Beaver County Pollution Control Revenue Bond Trustee (see Sections 1.05 and 2.07 of the Eightieth Supplemental Mortgage Indenture).

6. The Series R, S and T First Mortgage Bonds will have interest rates, maturity dates and redemption provisions corresponding to the three series of the Ohio Series 1980 Pollution Control Revenue Bonds due 1990, 2000 and 2010. The Series R, S and T First Mortgage Bonds will also be subject to mandatory redemption by J&L Steel prior to maturity if the Mortgage Trustee receives a written demand for redemption from the Ohio Pollution Control Revenue Bond Trustee stating that, as a result of a failure to pay the principal of, premium, if any, or interest on, any Ohio Series 1980 Pollution Control Revenue Bond, an Event of Default under the Ohio Pollution Control Revenue Bond Indenture has occurred and is continuing and that payment of the Ohio Series 1980 Pollution Control Revenue Bonds has been accelerated by the Ohio Pollution Control Revenue Bond Trustee.

7. As security for the payment of the Beaver County Series 1980 Pollution Control Revenue Bonds, the Beaver County Authority will assign to the Pollution Control Revenue Bond Trustee all its right, title and interest in the Series P and Q First Mortgage Bonds, the Beaver County Facilities Agreement and, with certain exceptions, the amounts payable thereunder, including amounts required pursuant to Section 5.9 of the Beaver County Facilities Agreement to make up any deficiency which would result if for any reason the amounts paid on the First Mortgage Bonds assigned to the Beaver County Trustee are not sufficient to make the corresponding payments with respect to the Beaver County Pollution Control Revenue Bonds.

8. As security for the payment of the Ohio Series 1980 Pollution Control Revenue Bonds, the Ohio Authority will assign to the Pollution Control Revenue Bond Trustee all its right, title and interest in the Series R, S and T First Mortgage Bonds, the Ohio Facilities Agreement and, with certain exceptions, the amounts payable thereunder, including amounts required pursuant to Section 5.9 of the Ohio Facilities Agreement to make up any deficiency which would result if for any reason the amounts paid on the First Mortgage Bonds assigned to the Ohio Trustee are not sufficient to make the corresponding payments with respect to the Ohio Pollution Control Revenue Bonds.

9. By virtue of Section 3(a)(2) of the Securities Act of 1933, as amended (the "1933 Act"), the Beaver County and Ohio Series 1980 Pollution Control Revenue Bonds and the related Series P and Q and R, S and T First Mortgage Bonds are exempt from registration under the 1933 Act because the Beaver County and Ohio Series 1980 Pollution Control Revenue Bonds are industrial development bonds, the interest on which is excludable from gross income under Section 103(a)(1) of the Internal Revenue Code of 1954, as amended (the "Code"), by reason of Section 103(c)(4)(f) of the Code.

10. By virtue of Section 304(a)(4)(B) of the Trust Indenture Act of 1939, as amended (the "1939 Act"), the Beaver County and Ohio Pollution Control Revenue Bond Indentures are not required to be qualified under the 1939 Act. Certain provisions which would be required to be included in the Beaver County and Ohio Pollution Control Revenue Bond Indentures if they were qualified under the 1939 Act are not so included.

11. The Mortgage Indenture was originally qualified under the 1939 Act (File No. 22–4039) in connection with the issuance and sale of $100,000,000 aggregate principal amount of First Mortgage Bonds, Series E, which were registered under the 1933 Act (File No. 2–24449). The Fifty-Eighth Supplemental Mortgage Indenture, dated February 1, 1966, to the Mortgage Indenture contains the provisions permitted by the proviso to Section 310(b)(1) of the 1939 Act.

12. Since the Beaver County and Ohio Pollution Control Revenue Bonds will be payable from and secured by First Mortgage Bonds, the Beaver County and Ohio Pollution Control Revenue Bond Indentures are very similar to a "collateral trust indenture" with respect to which an exception to the provisions of Section 310(b) of the 1939 Act is provided by clauses (1)(A) and (1)(B) thereof. Only in the event that for some unforeseen reason, such as a tax imposed upon payments received by the Beaver County or Ohio Pollution Control Revenue Bond Trustee on the First Mortgage Bonds, sufficient amounts are not available from the First Mortgage Bonds to make payments with respect to the Beaver County or Ohio Pollution Control Revenue Bonds, respectively, will the Beaver County or Ohio Pollution Control Revenue Bond Trustee be required to look to the obligations of J&L Steel contained in Section 5.9 of the Beaver County or Ohio Facilities Agreement, rather than exclusively to the First Mortgage Bonds, for payment of the Beaver County or Ohio Pollution Control Revenue Bonds. Even in this event the First Mortgage Bonds would remain the primary collateral under the Beaver County and Ohio Pollution Control Bond Indentures.

13. Mellon currently serves as Trustee under a Pollution Control Revenue Bond Indenture, dated as of April 1, 1975 (the "1975 Pollution Control Revenue Bond Indenture") between Mellon and the Beaver County Industrial Development Authority, the provisions of which are in its relevant respects essentially similar to the provisions in the Beaver County and Ohio Pollution Control Revenue Bond Indentures which form a part of this application. On May 5, 1975, the Securities and Exchange Commission, pursuant to the joint application by J&L Steel and Mellon declared by order that the trusteeship of Mellon was not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Mellon from acting as Trustee under either the 1975 Pollution Control Revenue Bond Indenture or the Mortgage Indenture. Similarly, the provisions of the Mortgage Indenture and those of the Beaver County and Ohio Pollution Control Revenue Bond Indentures and the related Facilities Agreements are not so likely to result in a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify from acting as Trustee under any of said Indentures.

The Company has waived notice of hearing, and any and all rights to specify procedures under the Rules of Practice of the Securities and Exchange Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the office of the Commission, Washington, D.C. 20549.

Notice is further given that any interested person may, not later than November 4, 1980, request in writing

that a hearing be held on such matters, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-32411 Filed 10-16-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21742; 70-6501]

Public Service Company of Oklahoma and Transok Pipe Line Co., Proposal To Sell and Lease Back Office Building; Guarantee of Lessee's Obligations by Affiliate

October 9, 1980.

In the matter of Public Service Company of Oklahoma P.O. Box 201 Tulsa, Oklahoma 74102 and Transok Pipe Line Company 600 South Main Street Tulsa, Oklahoma 74101 (70–6501).

Notice is hereby given that Transok Pipe Line Company ("Transok"), an intrastate pipe line company and a subsidiary of Public Service Company of Oklahoma ("PSO"), an electric utility subsidiary of Central and South West Corporation, a registered holding company, has, with its parent, filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, 12(b) and 12(f) of the Act and Rule 45 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

PSO owns an office building in Tulsa, Oklahoma which it presently leases to Transok for a rental of $28,290 per month. The property has a depreciated book value of $1,028,244 and a fair market value of approximately $3,750,000, determined pursuant to appraisal. PSO proposes to sell the property to Pubson Associates Limited Partnership, a Connecticut limited partnership ("lessor") to be formed by Integrated Resources, Inc., which partnership will own the property and enter into a long term net lease ("lease") with Transok as lessee. The sales price of the property will be $3,750,000 cash, subject to appraisal. PSO will guarantee to the lessor all of Transok's obligations as lessee under the lease.

The lease will have a term of 25 years ("basic term"), beginning on the closing date of the transaction, which is anticpated to occur in November, 1980, and will contain two 10-year renewal options. As rental for the use of the property, Transok will agree to pay, monthly in arrears, .643% of the capitalized cost of the property during the first 5 years of the basic term, 1.003% of the capitalized cost of the property during the second 5 years of the basic term, 1.192% of the capitalized cost of the property during the third 5 years of the basic term and 1.303% of the capitalized cost of the property during the last 10 years of the basic term of the lease. If Transok exercises the renewal options, it will be required to pay .767% of the capitalized cost of the property, monthly in arrears, during each month of the renewal term. Capitalized cost, for purpose of calculating the rentals payable by Transok, is defined to be an amount equal to the Lessor's purchase price of the property from PSO plus amounts paid by the lessor for title insurance, recording costs, mortgage taxes and any other costs incurred by the lessor in connection with its permanent mortgage loan. The foregoing rentals have been calculated by the lessor on the assumption that it can obtain permanent financing on terms acceptable to it at a fixed annual interest cost of 12%. The lessor has advised PSO that it has a commitment from an insurance company to provide this financing at the assumed interest rate but the base rentals are subject to adjustment, upward or downward, in the event the permanent financing is at an interest cost other than 12% per annum.

The lease will be a net lease and in addition to Transok's obligation to pay rentals, Transok will be required to pay all taxes (other than income taxes of the lessor), assessments, utility charges, the cost of insurance, repairs and maintenance and will agree to maintain the property in good order and repair and to keep the property free of all liens and encumbrances except those permitted by the terms of the lease. If during the term of the lease the property sustains a casualty (including condemnation) which renders the property unsuitable for restoration and continued use by Transok, or if at any time during the last 10 years of the 25 year basic term of the lease Transok determines that the property has become uneconomical for continued use in Transok's operations, the lease will terminate and Transok will be required to make a rejectable offer to purchase the property at a price determined by reference to a casualty value schedule designated in the lease. Transok will be given the right to sublease the property provided that, upon such a sublease, its obligation under the lease and PSO's obligations under the guaranty will not be affected.

PSO will enter into an Agreement of Guaranty (the "Guaranty") with the lessor pursuant to which PSO will agree, unconditionally and irrevocably, to perform, observe and discharge each and every one of the convenants, agreements, terms and conditions of Transok under the lease, to the extent not performed ty Transok. The Guaranty will provide that PSO shall be required to perform the obligations of Transok under the lease in the event of the disaffirmance of the lease by a trustee or receiver of the property of Transok in a bankruptcy proceeding affecting Transok. PSO will further agree under the guaranty to provide to the lessor certain information relating to its financial condition.

The proceeds to be derived from the sale of the property will be used by PSO to repay short-term borrowings which were incurred for PSO obligations, including projects under construction. Approximately $13,400,000 of short-term borrowings are expected to be outstanding as of November 30, 1980, the anticipated closing date of the sale to the lessor. No funds generated from the sale of the property will be utilized to pay the cost of facilities which would not be needed to provide service to customers of PSO if it were not part of the Central and South West System. No expenditures will be made by PSO for the constructionor acquisition of any facility not so needed prior to the time all funds covered by this declaration have been expended. For the purpose of the foregoing representation, it is assumed that none of the facilities the construction or acquisition of which would be part of any proposal forming the subject of the proceedings in *Central and South West Corporation, et al.* (File No. 3–4951), would be needed to provide service to customers of PSO if it were not part of the Central and South West System.

A statement of the fees, commissions and expenses to be incurred in

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connection with the proposed transaction will be filed by amendment. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than November 3, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the isues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-32409 Filed 10-16-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 17206; SR-NYSE-80-23]

New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

October 9, 1980.

In the matter of New York Stock Exchange, Inc., 55 Water Street, New York, New York 10041 (SR-NYSE-80-23).

On June 9, 1980, the New York Stock Exchange, Inc. filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which would amend New York Stock Exchange Rule 325(e) to impose a minimum financial responsibility requirement on all members who execute orders on the floor of the Exchange and raise the amount of such financial requirement from $25,000 to $50,000.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-17096, August 27, 1980) and by publication in the **Federal Register** (45 FR 58998, September 4, 1980). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-32408 Filed 10-16-80; 8:45 am]

BILLING CODE 8010-01-M

TREASURY DEPARTMENT

Treasury Small Business Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-253, notice is hereby given that a meeting of the Treasury Small Business Advisory Committee will be held on October 27 and 28, 1980, at the Main Treasury Building, 15th and Pennsylvania Avenue, NW Washington, D.C. and the Internal Revenue Service Building, 1111 Constitution Avenue, NW Washington, D.C.

The Committee was formed to provide a means of communication between the small business community and Treasury officials on numerous economic and financial issues, including capital formation, tax policy, tax administration and governmental regulations.

The meeting will be open to the public. A limited number of seats will be available on a first-come, first-served basis. In order to facilitate admittance, persons interested in attending are asked to call 566-3887 so that confirmation of space and access procedures can be provided.

Interested persons may file a written statement with the Committee before, during and after the meeting. The Chairman will, as time permits, entertain oral comments from members of the public attending the meeting. Persons interested in making oral statements are asked to call 566-3887 before 5:00 p.m. on October 24.

Minutes of the meeting will be available on request from the Treasury Small Business Advisory Committee thirty days after the meeting.

Inquires may be directed to William A. Anawaty, Executive Assistant to the Deputy Secretary, Department of the Treasury, Main Treasury Building, Room 3327, 15th and Pennsylvania Avenue, NW Washington, D.C. 20220, Telephone (202) 566-3887.

Dated: October 10, 1980.

Robert Carswell,

Deputy Secretary.

[FR Doc. 80-32329 Filed 10-16-80; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Outpatient Clinic and Renovation of Buildings 11A and 11B Veterans Administration Medical Center, West Side, Chicago, Ill.; No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impact that may occur as a result of the renovation of buildings 11A and 11B and construction of a new outpatient clinical addition at the Veterans Administration Medical Center (VAMC), West Side, Chicago, Illinois. The renovation will cover all 7 floors of buildings 11A & 11B totalling 289,000 gross square feet. The outpatient clinical addition will be a 68,500 gross square feet one story building across the front of existing 11A & 11B. The total project is estimated at 27 million dollars.

Development of this project would have impacts on the natural and human environments as it affects landscaping, energy use and parking. Additionally, construction noise, fumes, dust, and visual impacts will exist during construction.

Mitigating actions include: landscaping, control of erosion, dust, fumes and noise, and architectural and site design which will be compatible with the surrounding University of Illinois Medical School construction and should stimulate the rejuvenation of the neighborhood.

Findings conclude that the proposed action will not cause an adverse effect on the human and physical environment and, therefore, does not require the preparation of an Environmental Impact Statement. This Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, §§ 1501.3 and 1508.9, Title 40, Code of Federal Regulations. A "Finding of No Significant Impact" has been reached based on the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. Willard Sitler, P.E., Director, Office of Environmental Affairs (003A), Room 1027A, Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420, (202-389-2526). Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: October 3, 1980.

By direction of the Administrator.

Maury S. Cralle, Jr.,

Associate Deputy Administrotor.

[FR Doc. 32325 Filed 10-16-80; 8:45 am]

BILLING CODE 8320-01-M

V 4 5 O C T 1 7 8 0 UMI

Sunshine Act Meetings

Federal Register
Vol. 45, No. 203
Friday, October 17, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

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1

[M–296 Amdt. 1, October 14, 1980]

CIVIL AERONAUTICS BOARD.

Notice of Addition of item to the October 17, 1980 Board Meeting.

TIME AND DATE: 9:30 a.m., October 17, 1980.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 2a. Docket 38629—U.S. People's Republic of China Service Proceeding (Instructions to staff) BIA.

STATUS: Open

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673–5068.

[S–1914–80 Filed 10–15–80; 3:59 pm]

BILLING CODE 6320–01–M

2

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., Friday, October 24, 1980.

PLACE: 2033 K Street NW., Washington, D.C., eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Surveillance briefing.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

[S–1903–80 Filed 10–14–80; 4:10 pm]

BILLING CODE 6351–01–M

3

COUNCIL ON ENVIRONMENTAL QUALITY.

October 15, 1980.

TIME AND DATE: 11:30 a.m., October 23, 1980.

PLACE: Conference Room 722 Jackson Place NW., Washington, D.C. 20006.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Old Business.
2. Status Report on Federal Agency Compliance With Executive Orders on Floodplain Management and Wetlands Protection.

CONTACT PERSON FOR MORE INFORMATION: John F. Shea III (202) 395–4616.

[S–1905–80 Filed 10–15–80; 10:28 am]

BILLING CODE 3125–01–M

4

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m. (eastern time), Tuesday, October 21, 1980.

PLACE: Commission conference room, 5240, fifth floor, Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED: Open to the public:

1. Freedom of Information Act Appeal No. 80–9–FOIA–001–IN, concerning a request for a copy of the work agreement between the agency and the Evansville Human Relations Division.
2. Freedom of Information Act Appeal No. 80–9–FOIA–002–NO, concerning a request for certain documents contained in two charge files.
3. Report on Pilot Program for the Investigation of Title VII Complaints of Discrimination in the Federal Sector.
4. Recommendation and Selection of Five (5) Litigation Support Centers (ABAR) Contracts.
5. Interpretations of the Employee Benefit Plans Under the Age Discrimination in Employment Act of 1967.
6. Proposed Revision of EEOC Order 960 to Reflect Delegation of Authority to the Office of Review and Appeals to Directly Issue Decisions Under Specified Circumstances.
7. Technical Amendments to Final Guidelines on Discrimination Because of Religion.
8. Approval for Final Commission Regulations on the Section 504 Rehabilitation Regulations.
9. Report on Commission Operations by the Executive Director.

Closed to the public:

Litigation Authorization; General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION: Treva I. McCall, Acting Executive Officer, Executive Secretariat, at (202) 634–6748.

This notice issued October 14, 1980.

[S–1910–80 Filed 10–19–80; 2:33 pm]

BILLING CODE 6570–06–M

5

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 67825, October 14, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., October 15, 1980.

CHANGE IN MEETING: The following item has been added:

Item Number, Docket Number, and Company

M–9: RM80–75, Interim Rule Amending § 282.202(a) of the Commission's Regulations Under the Natural Gas Policy Act of 1978.

Kenneth F. Plumb,
Secretary.

[S–1908–80 Filed 10–15–80; 11:05 am]

BILLING CODE 6450–85–M

6

FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 67829, Book 1 of 2, October 14, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m., October 16, 1980.

PLACE: 1700 G Street NW., board room, sixth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202–377–6677).

CHANGE IN MEETING: The bank board meeting previously scheduled for October 16, 1980, has been cancelled.

No. 407, October 15, 1980.

[S–1911–80 Filed 10–15–80; 3:44 pm]

BILLING CODE 6720–01–M

7

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 9 a.m., October 23, 1980.

PLACE: Hearing room one, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Agreement No. 9902–12; Modification of the Euro Pacific Joint Service Agreement to extend its scope to include Hawaii.
2. Agreement No. 57–115: Modification of the Pacific Westbound Conference Agreement to provide a uniform interpretation of the procedural rules for taking independent action on intermodal rates and tariff rules.
3. Seatrain Pacific Services, S.A.—Application for special permission to file rates on immediate notice.
4. Midland Pacific Shipping Company, Inc.—Possible violations of the Shipping Act, 1916.
5. Antonio Lopez Quintana d.b.a. Tony Quintana Freight Forwarders—Possible violations of the Shipping Act, 1916.
6. Domestic Circular Letter No. 1–79—Petition of Sea-Land Service, Inc. for reconsideration of revocation.
7. Informal Docket No. 724(I): Cotton Import and Export Co. v. Sea-Land Service, Inc.—Petition of claimant for reconsideration.
8. Docket No. 78–6: Adel International Development, Inc. v. Puerto Rico Maritime Shipping Authority and Star Lines, Inc.—Consideration of request for oral argument and possible consideration of the record.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523–5725.

[S–1913–80 Filed 10–15–80; 3:59 pm]

BILLING CODE 6730–01–M

8

FEDERAL RESERVE SYSTEM.

(Committee on Employee Benefits of the Board of Governors).

TIME AND DATE: 11 a.m. Wednesday, October 22, 1980.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals involving internal personnel procedures relating to the System's employee benefits program, including the following: (a) acturial assumptions recommended by a consulting firm; and (b) supplemental allowance for Bank Plan retirees and their beneficiaries.
2. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board (202) 452–3204.

Dated: October 14, 1980

Theodore E. Allison,
Secretary of the Board.

[S–1904–80 Filed 10–14–80; 4:20 pm]

BILLING CODE 6210–01–M

9

[NM–80–35]

NATIONAL TRANSPORTATION SAFETY BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 66541, October 7, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m., Wednesday, October 15, 1980.

CHANGE IN MEETING: A majority of the Board has determined by recorded vote that the business of the Board requires revising the agenda of this meeting and that no earlier announcement was possible. The time of the meeting has been changed to 10 a.m., Wednesday, October 15, 1980. The agenda as now revised is set forth below.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Special Investigation Report*—Assessment of Tank Car Structural Integrity in the Derailment Environment, and *Recommendations* to the Association of American Railroads, the Research and Special Programs Administration, and the Federal Railroad Administration.
2. *Safety Report*—The Status of General Aviation Crashworthiness, and *Recommendations* to the Federal Aviation Administration.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming, 202–472–6022.

October 15, 1980.

[S–1909–80 Filed 10–15–80; 2:09 pm]

BILLING CODE 4910–58–M

10

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Week of October 13, 1980.

PLACE: Commissioners conference room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:
Wednesday, October 15:

10 a.m.

1. Briefing on NRC EEO Program (approximately 1 hour), (public meeting).

Thursday, October 16:

10 a.m.

1. Discussion of Unresolved Safety Issues (approximately 1½ hours, public meeting).
2. Affirmation Session (approximately 10 minutes, public meeting): (a) 10 CFR 50 Revision on Fracture Toughness; (b) Motion of North Coast Intervenor; (c) Order on Instructions to Board in Indian Point Proceeding (Tentative).
3. Discussion and Vote: (a) Order on Psychological Stress at TMI (approximately ½ hour, open/closed status to be determined).

2 p.m.

1. Briefing on Clarification of TMI Action Plan Requirements (approximately 1 hour, public meeting).
2. Discussion and Vote on Fire Protection Program (approximately 1½ hours, public meeting).

Friday, October 17:

10 a.m.

1. Discussion of Management-Organization and Internal Personnel Matters (approximately 2 hours, closed—exemption 2–6).

1:30 p.m.

1. Briefing by IE on Report on NFS-Erwin (approximately 1½ hours, public meeting).

ADDITIONAL INFORMATION: The following meetings were not held: Monday, 10/6, Discussion of Potential Litigation and Other Responses to TMI–2 Developments; Thursday, 10/9, Discussion of Management-Organization, and affirmation of items a and b.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634–1498.

Those planning to attend a meeting should reverify the status on the day of the meeting.

Walter Magee,
Office of the Secretary.

[S–1908–80 Filed 10–15–80; 11:55 am]

BILLING CODE 7590–01–M

11

SECURITIES AND EXCHANGE COMMISSION.

STATUS: Closed meeting.

DATE AND TIME: October 15, 1980, 10 a.m.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

The following item will be considered by the Commission at a closed meeting scheduled for Wednesday, October 15, 1980, at 2:30 p.m.

Litigation matter.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the item to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402(a)(8)(9)(i) and (10).

Chairman Williams and Commissioners Loomis, Evans, and Friedman determined that Commission business required consideration of this matter and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Nancy Wojtas at (202) 272–2178.

October 14, 1980.

[S–1907–80 Filed 10–15–80; 11:30 am]

BILLING CODE 8010–01–M

12

FEDERAL DEPOSIT INSURANCE CORPORATION.

(Notice of Agency Meeting)

Pursuant to subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at 1:55 p.m. on Saturday, October 11, 1980, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to (1) accept sealed bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in The Rochelle Bank and Trust Company, Rochelle, Illinois, which was closed by the Illinois Commissioner of Banks and Trust Companies on October 11, 1980; (2) accept the bid for the transaction submitted by United Bank of Rochelle, Rochelle, Illinois, a newly-chartered State bank; (3) approve a resulting application of United Bank of Rochelle for Federal deposit insurance and for consent to purchase certain assets of and assume the liability to pay deposits made in the closed bank; (4) provide such financial assistance, pursuant to section 13(e) of the Federal Deposit Insurance Act (12 U.S.C. 1823(e)), as was necessary to effect the purchase and assumption transaction; and (5) appoint a liquidator for such of the assets of the closed bank as were not purchased by United Bank of Rochelle.

In calling the meeting, the Board determined, on motion of Chairman Irvine H. Sprague, seconded by Director William M. Isaac (Appointive), concurred in by Mr. H. Joe Selby, acting in the place and stead of Director John G. Heimann (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: October 14, 1980.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S–1912–80 Filed 10–15–80; 3:56 pm]

BILLING CODE 6714–01–M

13

FEDERAL RESERVE SYSTEM.

(Board of Governors)

TIME AND DATE: Approximately 12 noon, Thursday, October 23, 1980, following a recess at the conclusion of an open meeting to be held earlier the same day.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Request by the General Accounting Office for Board comment on a draft report concerning consumer legislation and compliance examinations. (This item was previously announced for a meeting on Friday, October 17, 1980.)
2. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452–3204.

Dated: October 15, 1980.

Theodore E. Allison,

Secretary of the Board.

[S–1915–80 Filed 10–15–80; 4:29 pm]

BILLING CODE 6210–01–M

14

FEDERAL RESERVE SYSTEM.

(Board of Governors)

TIME AND DATE: 10 a.m., Thursday, October 23, 1980.

PLACE: Board Building, C Street entrance between 20th and 21st Streets NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Request for reconsideration of the Board's position regarding the handling of reserve calculations for the survivor of mergers of member and nonmember banks.
2. Proposed policy statement regarding bank brokerage placement practices.
3. Proposed amendment to Regulation Y (Bank Holding Companies and Change in Bank Control) to add real estate and certain advisory services to the list of activities permissible for bank holding companies. (Proposed earlier for public comment; Docket No. R–0310.)
4. Any agenda items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452–3204.

Dated: October 15, 1980.

Theodore E. Allison,

Secretary of the Board.

[S–1918–80 Filed 10–15–80; 4:28 pm]

BILLING CODE 6210–01–M

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federal register

Friday
October 17, 1980

Part II

Department of Health and Human Services

Food and Drug Administration

Establishment of Monographs for Nailbiting and Thumbsucking Deterrent and Ingrown Toenail Relief Drug Products for Over-the-Counter Human Use

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 358

[Docket No. 80N-0146]

Nailbiting and Thumbsucking Deterrent Drug Products for Over-the-Counter Human Use; Establishment of a Monograph

AGENCY: Food and Drug Administration

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish conditions under which over-the-counter (OTC) nailbiting and thumbsucking deterrent drug products are generally recognized as safe and effective and not misbranded. The proposed rule, based on the recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products, is part of the ongoing review of OTC drug products conducted by the Food and Drug Administration (FDA).

DATES: Comments by January 14, 1981, and reply comments by February 16, 1981.

ADDRESS: Written comments to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Bureau of Drugs (HFD–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4960.

SUPPLEMENTARY INFORMATION: In accordance with Part 330 (21 CFR Part 330), FDA received on March 12, 1979, a report on nailbiting and thumbsucking deterrent drug products from the Advisory Review Panel on OTC Miscellaneous External Drug Products.

Under § 330.10(a) (6) (21 CFR 330.10(a) (6)), the agency issues (1) a proposed regulation containing the monograph recommended by the Panel, which establishes conditions under which OTC nailbiting and thumbsucking deterrent drug products are generally recognized as safe and effective and not misbranded; (2) a statement of the conditions excluded from the monograph because the Panel determined that they would result in the drugs' not being generally recongized as safe and effective or would result in misbranding; (3) a statement of the conditions excluded from the monograph because the Panel determined that the available data are insufficient to classify these conditions under either (1) or (2) above; and (4) the conclusions and recommendations of the Panel.

The unaltered conclusions and recommendations of the Panel are issued to stimulate discussion, evaluation, and comment on the full sweep of the Panel's deliberations. The report has been prepared independently of FDA, and the agency has not yet fully evaluated the report. The Panel's findings appear in this document as a formal proposal to obtain public comment before the agency reaches any decisions on the Panel's recommendations. This document represents the best scientific judgment of the Panel members but does not necessarily reflect the agency's position on any particular matter contained in it. After reviewing all comments submitted in response to this proposal, FDA will issue a tentative final regulation in the **Federal Register** to establish a monograph for OTC nailbiting and thumbsucking deterrent drug products.

In accordance with § 330.10(a)(2), the Panel and FDA have held as confidential all information concerning OTC nailbiting and thumbsucking deterrent drug products submitted for consideration by the Advisory Review Panel. All the submitted information will be put on public display at the Hearing Clerk's Office, Food and Drug Administration, after (November 17, 1980), except to the extent that the person submitting it demonstrates that it still falls within the confidentiality provisions of 18 U.S.C. 1905 or section 301 (j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(j)). Requests for confidentiality should be submitted to William E. Gilbertson, Bureau of Drugs (HFD–510) (address above).

Based upon the conclusions and recommendations of the Panel, FDA proposes the following:

1. That the conditions included in the monograph, under which the drug products would be generally recognized as safe and effective and not misbranded (monograph conditions), be effective 30 days after the date of publication of the final monograph in the **Federal Register.**

2. That the conditions excluded from the monograph, either because they would cause the drug to be not generally recognized as safe and effective or to be misbranded or because the available data are insufficient to support the inclusion of such conditions in the monograph (nonmonograph conditions), be eliminated from OTC drug products effective 6 months after the date of publication of the final monograph in the **Federal Register,** regardless of whether further testing is undertaken to justify their future use.

FDA published in the **Federal Register** of May 13, 1980 (45 FR 31422) its proposal to revise the OTC procedural regulations to conform to the decision in *Cutler* v. *Kennedy,* 475 F. Supp. 838 (D.D.C. 1979). The Court in *Cutler* held that the OTC drug regulations (21 CFR 330.10) are unlawful to the extent that they authorize the marketing of Category III drugs after a final monograph. Accordingly, the proposed regulations delete this provision and provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process, before the establishment of a final monograph (45 FR 31422).

Although it was not required to do so under *Cutler,* FDA has also decided to stop using the terms "Category I," "Category II," "Category III" at the final monograph stage in favor of the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III). Any OTC drug product containing a "nonmonograph condition" will be subject to regulatory action after the establishment of a final monograph. This document, however, retains the concepts of Categories I, II, and III because that was the framework in which the Panel conducted its evaluation of the data.

A proposed review of the safety, effectiveness, and labeling of all OTC drugs by independent advisory review panels was announced in the **Federal Register** of January 5, 1972 (37 FR 85). The final regulations providing for this OTC drug review under § 330.10 were published and made effective in the **Federal Register** of May 11, 1972 (37 FR 9464). In accordance with these regulations, requests for data and information on all active ingredients used in OTC miscellaneous external drug products were issued in the **Federal Register** of November 16, 1973 (38 FR 31697) and August 27, 1975 (40 FR 38179).

The Commissioner of Food and Drugs appointed the following Panel to review the information submitted and to prepare a report under § 330.10(a) (1) and (5) on the safety, effectiveness, and labeling of those products:

William E. Lotterhos, M.D., Chairman
Rose Dagirmanjian, Ph. D.
Vincent J. Derbes, M.D. (resigned July 1976)
George C. Cypress, M.D. (resigned November 1978)
Yelva L. Lynfield, M.D. (appointed October 1977)
Harry E. Morton, Sc. D.
Marianne N. O'Donoghue, M.D.
Chester L. Rossi, D.P.M.

J. Robert Hewson, M.D. (appointed September 1978)

Representatives of consumer and industry interests served as nonvoting members of the Panel. Marvin M. Lipman, M.D., of Consumers Union served as the consumer liaison. Gavin Hildick-Smith, M.D., served as industry liaison from January until August 1975, followed by Bruce Semple, M.D., until February 1978. Both were nominated by the Proprietary Association. Saul A. Bell, Pharm. D., nominated by the Cosmetic, Toiletry, and Fragrance Association, also served as an industry liaison since June 1975.

Two nonvoting consultants, Albert A. Belmonte, Ph. D., and Jon J. Tanja, R.Ph., M.S., have provided assistance to the Panel since February 1977.

The following FDA employees assisted the Panel: John M. Davitt served as Executive Secretary until August 1977, followed by Arthur Auer until September 1978, followed by John T. McElroy, J.D., Thomas D. DeCillis, R.Ph., served as Panel Administrator until April 1976, followed by Michael D. Kennedy until January 1978, followed by John T. McElroy, J.D., Joseph Hussion, R. Ph., served as Drug Information Analyst until April 1976, followed by Victor H. Lindmark, Pharm. D., until March 1978, followed by Thomas J. McGinnis, R.Ph.

The Advisory Review Panel on OTC Miscellaneous External Drug Products was charged with the review of many categories of drugs. Due to the large number of ingredients and varied labeling claims, the Panel decided to review and publish its findings separately for several drug categories and individual drug products. The Panel presents its conclusions and recommendations for nailbiting and thumbsucking deterrent drug products in this document. The review of other categories of miscellaneous external drug products will be continued by the Panel, and its findings will be published periodically in future issues of the **Federal Register.**

The Panel was first convened on January 13, 1975 in an organizational meeting. Working meetings which dealt with the topic in this document were held on: June 27 and 28, August 15 and 16, 1975; May 16 and 17, 1976; September 30, December 11 and 12, 1977; January 29 and 30, September 17 and 18, October 29 and 30, 1978; January 14 and 15, and March 11 and 12, 1979.

The minutes of the Panel meetings are on public display in the Hearing Clerk's Office (HFA–305), Food and Drug Administration (address above).

No person requested an opportunity to appear before the Panel to present information on nailbiting and thumbsucking deterrent drug products.

The Panel has thoroughly reviewed the literature, has listened to additional testimony from interested persons, and has considered all pertinent information submitted through March 12, 1979, in arriving at its conclusions and recommendations.

In accordance with the OTC drug review regulations in § 330.10, the Panel reviewed OTC nailbiting and thumbsucking deterrent drug products with respect to the following three categories:

Category I. Conditions under which OTC nailbiting and thumbsucking deterrent drug products are generally recognized as safe and effective and are not misbranded.

Category II. Conditions under which OTC nailbiting and thumbsucking deterrent drug products are not generally recognized as safe and effective or are misbranded.

Category III. Conditions for which the available data are insufficient to permit final classification at this time.

I. Submission of Data and Information

In an attempt to make this review as extensive as possible and to aid manufacturers and other interested persons, the agency compiled a list of ingredients recognized, either through historical use or use in marketed products, as nailbiting and thumbsucking deterrent active ingredients. Three ingredients were identified as follows: denatonium benzoate, sucrose octaacetate, and isopropyl alcohol. Notices were published in the **Federal Register** of November 16, 1973 (38 FR 31697) and August 27, 1975 (40 FR 38179) requesting the submission of data and information on these ingredients or any other ingredients used in OTC nailbiting and thumbsucking deterrent drug products.

A. Submissions

Pursuant to the above notices, the following submissions were received:

Firms and marketed products.

Commerce Drug Co. Inc., Farmingdale, NY 11735—Don't.

Mentholatum Co., Buffalo, NY 14213—Stop 'n grow.

Purepac Pharmaceutical Co., Elizabeth, NJ 07207—Nailicure, Stop zit.

In addition, the following firms made related submissions.

International Research and Development Corp., Mattawan, MI 48232—Testing for Toxicity of Denatonium Benzoate.

Parke, Davis & Co., Detroit, MI 49071—Denatonium Benzoate (December 12, 1975), Denatonium Benzoate (April 11, 1977; Additional Data), Sucrose Octaacetate.

B. Ingredients Reviewed by the Panel

Labeled ingredients contained in marketed products submitted to the Panel.
Denatonium benzoate
Isopropyl alcohol
Sucrose octaacetate

C. Classification of Ingredients

1. *Active ingredients.*
Denatonium benzoate
Sucrose octaacetate
2. *Inactive ingredient.*
Isopropyl alcohol

D. Referenced OTC Volumes

The "OTC Volumes" cited throughout this document include submissions made by interested persons in response to the call-for-data notices published in the **Federal Register** of November 16, 1973 (38 FR 31697) and August 27, 1975 (40 FR 38179). All the information included in these volumes, except for those deletions which are made in accordance with confidentiality provisions as set forth in § 330.10(a)(2), will be put on public display after November 17, 1980, in the Hearing Clerk's Office (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

II. General Discussion

A. *Nailbiting.* Fingernail biting is an extremely common habit among young and old alike. Nailbiting occurs in 43 percent of preadolescent children, 25 percent of college students, and 10 percent of adults (Ref. 1).

The nail is a horny plate on the dorsal surface of the distal end of a finger or toe and is made of hard keratin. The nail is continuously produced by the matrix, which is visible as the white, half-moon (lunula) at the base of the nail and extends back under the skin of the posterior nail fold. Nailbiting (onychophagia) usually occurs at the tip of the nail resulting in short, irregular nails. The nail is often bitten back to a point of separation from the nail bed (the tissue under the portion of the nail which appears pink), and in severe cases, the nail bed bulges beyond the nail plate. As a result of the nailbiting, fine needlelike projections are left at the edge of the nail which cause splits and mild paronychia (inflammation involving folds of tissue surrounding the nail). When nails are bitten excessively, open wounds result making this area highly susceptible to infections.

Nails are very quick to reflect local stresses such as disease, emotional stresses, drugs, and mechanical trauma. These stresses can lead to thinning, splitting, furrowing, and laddering of the nail. Nails normally grow at the rate of

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0.1 millimeter (mm) daily. Nailbiting doubles this rate (Ref. 2).

The psychology of nailbiting is still uncertain. Sometimes, nailbiting is an expression of discontent, pressure, or maladjustment (Ref. 3). It is most likely to occur in a stressful situation. In most cases, nailbiting is an unconscious habit and provides an outlet for oral gratification (Ref. 4). Many different treatments have been tried to prevent nailbiting. Some of these treatments include negative practice, operant procedures, and psychotherapy; none have been very successful (Ref. 1).

One of the primary methods of treating nailbiting is to make the patient aware of the nailbiting activity. The Habit Reversal Procedure uses the awareness technique (Ref. 1). Awareness, control motivation, and activities designed to compete with the habit were emphasized in a study using the Habit Reversal Procedure. In a 1-month study involving 13 patients who were chronic nailbiters, using this procedure, the nailbiting stopped in all cases by using the Habit Reversal Procedure (Ref. 1).

Nailbiting can be a source of embarrassment. Frequently habitual nailbiters, upon recognition of their unsightly and ragged nails, try some of the nailbiting deterrent drug products that are on the OTC market in hopes of breaking the habit. These products contain bitter substances which alert the nailbiter to the activity. The two substances which have been evaluated by the Panel are denatonium benzoate and sucrose octaacetate. They are commonly used as alcohol denaturants because they impart a bitter taste, thus making the alcohol unfit to drink. Deterring nailbiting is based on this same principle. Home remedies such as pepper are used in a similar fashion to deter nailbiting (Ref. 5). Since these products are intended for topical application to deter nailbiting and/or thumbsucking, they should not be taken internally. Accordingly, these products should be labeled, "For topical use only."

Denatonium benzoate and sucrose octaacetate are used in combination or alone with vehicles such as isopropyl alcohol or pharmaceutical-grade shellac. The finished drug product is painted on the nails, thumbs, or other fingers. Additionally, appropriate warning labels should accompany any product containing flammable vehicles.

Because ingredients in the finished product may be irritating to the corneal and conjunctival areas of the eye, the product should be kept away from the eyes (Ref. 6).

B. *Thumbsucking.* In several studies the reported incidence of thumbsucking has varied from 16 to 46 percent of the child population (Refs. 7, 8, and 9).

Sucking of thumbs and other fingers is a natural act in the newborn, sometimes beginning prior to birth (Ref. 10).

Thumbsucking usually stops spontaneously at about age four (Refs. 11 and 12). Although a variety of theories have been proposed, current thinking holds that it is an empty or simple habit, a result of learned behavior, and that finger suckers are not emotionally disturbed (Ref. 10).

There are numerous reports which show an association of thumbsucking and malocclusion (Refs. 13 through 16). Persistent thumbsucking may lead to the incomplete eruption of incisors. It also affects development of muscles of the lips, thus affecting swallowing. Arch and palate formation may be adversely affected, causing deviation of the nasal septum and mouthbreathing. A cross-bite or other or other occlusal abnormalities may also develop. Thus, respiration, mastication, speech, and swallowing may be affected. The consensus is that if the habit persists beyond the age of four, it may lead to clinically significant problems, and should be treated.

Among the tactics advocated for curtailment of thumbsucking are orthodontic devices such as a palatal arch or palatal crib, mechanical thumb guards, ridicule or harangue by parents, drug therapy in the form of bitter substances applied to the thumb, and combinations of the above (Ref. 17).

The consensus at this time is that the thumbsucking habit can be lessened if not eliminated without emotional disturbances or other undesirable consequences such as temper tantrums (Ref. 18).

Because persistent thumbsucking is a relatively common condition that can result in clinically significant problems, some form of therapy is warranted. However, the Panel is of the opinion that thumbsucking or nailbiting is not a significant problem in children below the age of 4 years. Labeling for these drug products should be directed to use in persons aged 4 years and over.

References

(1) Nunn, R. G. and N. H. Azrin, "Case Histories and Shorter Communications: Eliminating Nail-biting by the Habit Reversal Procedure," *Behavior Research and Therapy*, 14:65–67, 1976.

(2) Pillsbury, D. M., "A Manual of Dermatology," W. B. Saunders & Co., Philadelphia, pp. 17–21, 1971.

(3) Rook, A., D. S. Wilkinsin, and F. J. Ebling, "Textbook of Dermatology," 2d Ed., Blackwell Scientific Publications, Philadelphia, p. 1659, 1968.

(4) Sutton, R. L., Jr., "The Practitioner's Dermatology," Yorke Medical Books, New York, p. 221, 1962.

(5) OTC Volume 160020.

(6) OTC Volume 160010.

(7) Haryett, R. D., et al., "Chronic Thumb-Sucking: The Psychologic Effects and the Relative Effectiveness of Various Methods of Treatment," *American Journal of Orthodontics*, 53:569–585, 1967.

(8) Klackenberg, G., "Thumbsucking: Frequency and Etiology," *The Journal of Pediatrics*, 4:418–423, 1949.

(9) Zadik, D., N. Stern, and M. Litner, "Thumb- and Pacifier-Sucking Habits," *American Journal of Orthodontics*, 71:197–201, 1977.

(10) Fletcher, B. T., "Etiology of Fingersucking: Review of Literature," *Journal of Dentistry for Children*, July–August, pp. 293–298, 1975.

(11) Traisman, A. S., and H. S. Traisman, "Thumb- and Finger-Sucking: A Study of 2,650 Infants and Children," *The Journal of Pediatrics*, 52:566–572, 1958.

(12) Brenner, J. E., "Thumbsucking: Dental and Psychological Aspects," *New York State Dental Journal*, 40:78–80, 1974.

(13) Gardiner, J. H., and D. Orth, "A Survey of malocclusion and Some Aetiological Factors in 1,000 Sheffield Schoolchildren," *The Dental Practitioner*, 6:187–201, 1956.

(14) Johnson, L. R., "The Status of Thumb-sucking and Finger-sucking," *The Journal of the American Dental Association*, 26:1245–1254, 1939.

(15) Rhobotham, F. B., "Children's Dentistry in Relation to Orthodontia," *The Journal of the American Dental Association*, 20:865–870, 1933.

(16) Popovich, F., "The Incidence of Sucking Habits and Its Relationship to Occlusion in 3-Year-Old Children," Burlington Orthodontic Research Center, Progress Report Series No. 1, Division of Dental Research, University of Toronto, 1956.

(17) Jacobsen, A., "The Treatment of Thumbsucking, Part III," *The Journal of the International Association of Orthodontics*, 2:4–16, 1964.

(18) Ayer, W. A., and E. N. Gale, "Psychology and Thumbsucking," *The Journal of the American Dental Association*, 80:1335–1337, 1970.

III. Categorization of Data

A. Category I Conditions

These are conditions under which active ingredients used as nailbiting and thumbsucking deterrents are generally recognized as safe and effective and are not misbranded. The Panel recommends that Category I conditions be effective 30 days after the date of publication of the final monograph in the **Federal Register**.

1. *Category I ingredients.* The Panel concludes that none of the submitted active ingredients are generally recognized as safe and effective and are not misbranded as OTC nailbiting and thumbsucking deterrents.

2. *Category I labeling.* The Panel recommends the following labeling for Category I nailbiting and thumbsucking deterrent active ingredients.

a. *Indications.* (1) "For use as a nailbiting deterrent in persons aged 4 years and older."

(2) "For use as a thumbsucking deterrent in persons aged 4 years and older."

(3) "For use as a nailbiting and thumbsucking deterrent in persons aged 4 years and older."

b. *Warnings.* (1) "Avoid contact with eyes."

(2) "For topical use only."

(3) *For products containing flammable vehicles.* "Keep away from flame."

c. *Directions.* (1) "Apply to the nail after washing hands and at bedtime, or as directed by a physician."

(2) "Apply to the thumb after washing hands and at bedtime, or as directed by a physician."

(3) "Apply to the nail or thumb after washing hands and at bedtime, or as directed by a physician."

B. Category II Conditions

These are conditions under which active ingredients used as nailbiting and thumbsucking deterrents are not generally recognized as safe and effective or are misbranded. The Panel recommends that the Category II conditions be eliminated from OTC nailbiting and thumbsucking drug products effective 6 months after the date of publication of the final monograph in the **Federal Register**.

1. *Category II ingredients.* None.

2. *Category II labeling.* None.

C. Category III Conditions

These are conditions for which the available data are insufficient to permit final classification at this time. The Panel recommends completion of additional studies to support the movement of Category III conditions to Category I.

1. *Category III ingredients.*
Denatonium benzoate
Sucrose octaacetate

a. *Denatonium benzoate.* The Panel concludes that denatonium benzoate is safe when topically applied on children 4 years of age and over, but that there are insufficient data to show that it is effective for OTC use as a nailbiting and thumbsucking deterrent.

The chemical formula for denatonium benzoate is designated as benzyldiethyl[(2,6-xylylcarbamoyl) methyl]-ammonium benzoate (Ref. 1). It is a white, crystalline powder with an intensely bitter taste. This bitter taste has been utilized in denatured alcohol to signal that it is not intended for ingestion but rather for topical application and industrial usage. Denatonium benzoate has been added to a brand of lead paint to discourage children from biting and ingesting paint chips (Ref. 2).

(1) *Safety.* There have been limited studies to establish the safety of denatonium benzoate.

In a 2-year oral toxicity study, denatonium benzoate was administered by gavage to Charles River CD rats, in dosage levels of 1.6, 8, and 16 milligrams/kilogram (mg/kg) daily. Sixty-five male and 65 female rats were studied at each dosage level and a like number of male and female rats were in a control group. The rats were observed daily for signs of toxicity and for mortality; detailed observations were recorded weekly. Individual body weights and sex-group food consumptions were measured daily for the first 5 weeks of study and weekly thereafter. Hematological, biochemical, and urinalysis studies were conducted at 3, 6, 12, 18, and 24 months of the study. All rats received opthalmoscopic examinations during the control periods and at 3, 6, 12, 18, and 24 months of the study. The rats shows no ill effects at the maximum daily dose of 16 mg/kg of denatonium benzoate (Ref. 3). This amount would far exceed that used in various nailbiting and thumbsucking deterrent products.

The Litchfield and Wilcoxon (Ref. 4) method of calculation determined that the median lethal dose (LD_{50}) of denatonium benzoate is 820 mg/kg (95 percent confidence limits—569 to 1,179 mg/kg). The highest dose was 1,430 mg/kg, and toxic effects usually appeared within 30 minutes after administration. Deaths occurred within the first 24 hours.

In another oral toxicity study, it was found that the oral LD_{50} dose for adult male and female albino rats was 612 mg/kg with confidence levels of 558 to 671 mg/kg (Ref. 3).

Ninety neonatal albino rats, produced in the laboratory by mating the Charles River CD albino rats, were used in another study. Undifferentiated as to sex, these rats weighed from 5.7 to 9.6 grams (g). Following birth, each litter of newborn pups was allowed to remain with its respective mother throughout the course of the 14-day study. Each litter was reduced to 10 pups. The parental female and litter were maintained in plastic breeding cages containing ground corncob bedding and controlled temperature and humidity throughout the study period. The parental females had food and water available ad libitum.

Each of the neonatal rats used was administered the test compound (denatonium benzoate in distilled water) within the first 24 hours following parturition. Dosing was accomplished by means of a polyethylene catheter attached to a syringe.

The test compound was administered orally at dosage levels of 7.9, 12.5, 19.8, 31.5, 50.0, 79.4, 125, and 315 mg/kg. Ten neonates were used at each dosage levels. Volumes of 10 milliliters/kilogram (mL/kg) of body weight were administered at all dosage levels.

A control group of an additional 10 neonatal rats was administered volumes of 10 mL/kg distilled water.

The neonatal rats were observed for pharmacodynamic signs and mortality during the first 5 hours following oral intubation, again at 24 hours, and daily thereafter for a total of 14 days. Gross necropsy (cell death) examinations were conducted on animals that died during the study period.

Individual body weights were obtained just prior to compound administration and again 14 days after compound administration. After the 14-day observation period, all surviving neonatal rats were destroyed.

All 10 neonatal rats in the control group survived the 14-day observation period and appeared normal on the day of dosing, at 24 hours, and throughout the 14-day observation period.

All 10 neonatal rats in both the 7.9 and 12.5 mg/kg dosage level groups survived the 14-day observation period and appeared normal on the day of dosing, at 24 hours, and throughout the 14-day study period.

At the 19.8 mg/kg dosage level, 3 of 10 neonates were dead within 60 minutes following oral dosing. At the 31.5 mg/kg level, 7 of 10 neonates were dead within 5 hours following oral intubation. Two additional neonates at the 31.5 mg/kg dosage level group were found dead at 24 hours.

At the 50.0 mg/kg dosage level, one neonate was dead at 2 hours, five at 3 hours, one at 4 hours, and the remaining three neonates were found dead at 24 hours.

At the 79.4 mg/kg level, three neonates were dead at 2 hours, four at 3 hours, and the remaining three were dead at 4 hours.

At the 125 mg/kg level, one neonate was dead within 60 minutes, eight at 2 hours, and the remaining neonate was dead at 3 hours.

At the 315 mg/kg level, eight neonates were dead at 2 hours, and one each was dead at 3 hours and 4 hours.

Based on the results obtained, an LD_{50} for denatonium benzoate in neonatal rats was calculated to be 23 mg/kg with

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confidence limits of 19 to 27 mg/kg (Ref. 5).

An irritation study was done on 90 volunteers for a 30-day period. They were instructed to paint their fingernails daily with a product containing 0.15 percent denatonium benzoate and 6 percent sucrose octaacetate. At 4-hour intervals the nails were licked to expose the mouth and tongue to the painted surface of the nail. Nails, mouth, and tongue were checked daily for any signs of irritation. No irritation or damage to the nails, mouth, or tongue was found when this product was applied to the nails and tested for 30 days (Ref. 4).

Patch tests using 5 percent solutions of denatonium benzoate were done on 6 patients, who were allergic to quaternary (four-ringed) chemical compounds. No irritation was seen (Ref. 4).

(2) *Effectiveness.* As part of the irritation study involving the 90 volunteers applying a combination of 0.15 percent denatonium benzoate and 6 percent sucrose octaacetate for 30 days, the nail growth of the 19 nail biters in the group of 90 volunteers was visually observed and graded to 1 of 4 criteria (Ref. 4). Results of the uncontrolled study are summarized in the following chart (Ref. 4):

Visual Nail Growth of 19 Nailbiters Applying a Combination of 0.15 Percent Denatonium Benzoate and 6 Percent Sucrose Octaacetate for 30 Days

Nail growth	Number	Percent
Good	12	63.1
Fair	3	15.8
Poor	1	5.3
No noticeable growth	3	15.8
	19	100.0

In an uncontrolled study for the treatment of nailbiting and thumbsucking, the effectiveness of two marketed denatonium benzoate (0.35 percent) products was tabulated. The results, taken from reply cards, indicated that 66 percent of the replies were positive and 34 percent of the replies claimed the product to be ineffective or partially effective. It was concluded by the manufacturer that this response showed the products to be effective (Ref. 6). It was noted that of the 165,000 bottles of 1 product that were sold from 1972 to 1973, only 192 requests for refunds were made. The manufacturer assumed that the rest of the consumers were pleased with the results received from the products.

One manufacturer stated that, owing to many factors, the consumer response method was a better indication of effectiveness than controlled studies (Ref. 6). Some of these factors include: (i) That the products are cosmetically oriented and that the effect of the principal ingredient is well recognized for its intended purpose of imparting a bitter taste which will make nailbiting and thumbsucking unpleasant.

(ii) The results of the consumer studies allow for much greater statistically significant data.

(iii) The difficulty in designing a meaningful, controlled study plus the unavailability of a patient population to participate in such a study renders the consumer response method more desirable (Ref. 6).

(3) *Proposed dosage.* Adult and children 4 years of age and older: Topical dosage is the preparation containing 0.35 percent denatonium benzoate or less.

(4) *Labeling.* The Panel recommends Category I labeling for nailbiting and thumbsucking deterrent active ingredients. (See part II. paragraph B.1. above—Category I Labeling.)

(5) *Evaluation.* Data to demonstrate effectiveness as a nailbiting or thumbsucking deterrent will be required in accordance with the guidelines set forth below for testing thumbsucking and nailbiting deterrent ingredients. (See part II. paragraph C. below—Data Required for Evaluation.)

References

(1) "Merck Index," 9th Ed., Merck & Co., Rahway, NJ, p. 378, 1976.

(2) Challop, R. S., "Evaluation of an Acerbic Paint Containing Denatonium Benzoate for the Prevention of Paint Ingestion," Draft of unpublished study is included in OTC Volume 160020.

(3) OTC Volume 160228.

(4) OTC Volume 160020.

(5) OTC Volume 160295.

(6) OTC Volume 160054.

b. *Sucrose octaacetate.*

The Panel concludes that sucrose octaacetate is safe, but there are insufficient data to establish general recognition of effectiveness for use as an OTC nailbiting and thumbsucking deterrent.

Sucrose octaacetate is used as a denaturant for alcohol (Ref. 1). It is prepared by subjecting sucrose to exhaustive acetylation by reaction with acetic anhydride in the presence of a condensing agent such as pyridine (Ref. 2). Sucrose octaacetate is a white, practically odorless powder with an intensely bitter taste. It is hygroscopic (has the ability to take on and retain water readily) and has a melting point not lower than 76° C (Ref. 1).

Sucrose octaacetate has the chemical formula, $C_{28}H_{38}O_{19}$, and a molecular weight of 678.60 (Ref. 1). It is very soluble in methanol and chloroform, soluble in alcohol and ether, and very slightly soluble in water. Sucrose octaacetate has been used as a repellent for food sources for birds (Ref. 3). It has been used as a means of determining diet selection in free-choice situations for rats (Ref. 4). Studies of these uses revealed an initial success by producing aversion to food containing the sucrose octaacetate. However, a fast recovery was made followed by actual consumption of the diet containing the sucrose octaacetate. The rate of recovery, or consumption of the sucrose octaacetate supplemental diet, appeared to be influenced by the diet alternatives presented to the animals.

A study by Warren and Pfaffman (Ref. 5) showed no known toxic properties associated with sucrose octaacetate. Because a 0.06 percent concentration renders sugar inedible, the belief is that vomiting or gastric irritation would occur long before a toxic dose could be ingested (Ref. 6).

The Panel received a submission for a product containing sucrose octaacetate for use as a nailbiting and thumbsucking deterrent (Ref. 7). Additionally, a submission was received for a product containing sucrose octaacetate plus denatonium benzoate for use as a nailbiting deterrent (Ref. 8).

(1) *Safety.* In a study done by Linegar (Ref. 9), the minimum lethal dose of sucrose octaacetate could not be determined; 25 to 45 g did not kill any of the animals. No detectable pathological lesions of the kidney, spleen, or stomach could be determined after feeding the drug in the diet to rats and administering the drug orally to rabbits over a 3-month period (Ref. 9). The Panel concludes that sucrose octaacetate is safe in concentrations up to and including 6 percent.

(2) *Effectiveness.* There are insufficient data (controlled studies) to adequately judge the effectiveness of sucrose octaacetate as a nailbiting and thumbsucking deterrent.

(3) *Proposed dosage.* Adults and children 4 years of age and older: Topical dosage is the preparation containing 6 percent sucrose octaacetate or less.

(4) *Labeling.* The Panel recommends Category I labeling for nailbiting and thumbsucking deterrent active ingredients. (See part II. paragraph B.1. above—Category I Labeling.)

(5) *Evaluation.* Data to demonstrate effectiveness as a nailbiting or thumbsucking deterrent will be required in accordance with the guidelines set forth below for testing nailbiting and thumbsucking deterrent ingredients. (See part II. paragraph C. below—Data Required for Evaluation.)

References

(1) "The National Formulary," 14th Ed., American Pharmaceutical Association, Washington, DC, p. 838, 1975.

(2) "Remington's Pharmaceutical Sciences," 15th Ed., Mack Publishing Co., Easton, PA, p. 1267, 1975.

(3) Rogers, J. G., "Responses of Caged Red-Winged Blackbirds to Two Types of Repellents," *Journal of Wildlife Management*, 38:418–423, 1974.

(4) Naim, M., M. R. Kare, and D. E. Ingle, "Sensory Factors Which Affect the Acceptance of Raw and Heated Defatted Soybeans by Rats," *The Journal of Nutrition*, 107:1653–1658, 1977.

(5) Warren, R. P., and C. Pfaffmann, "Early Experience and Taste Aversion," *Journal of Comparative Physiology and Psychology*, 52:263–266, 1959.

(6) Arena, J. M., "Poisoning. Toxicology-Symptoms-Treatments," 2d Ed., Charles C. Thomas, Springfield, IL, p. 165, 1974.

(7) OTC Volume 160010.

(8) OTC Volume 160020.

(9) Linegar, C. R., "Acute and Chronic Studies on Sucrose Octa Acetate by the Oral Method," *in* "Bulletin of the National Formulary Committee," 11:59–63, 1943.

2. *Category III labeling.* None.

D. Data Required for Evaluation

The Panel considers the guidelines recommended in this document for the studies required to bring a Category III ingredient into Category I to be in agreement with the present state of the art and does not intend to preclude the use of any advances or improved methodology in the future.

A double-blind study, using the vehicle as a control, in a patient population of nailbiters as well as thumbsuckers is needed.

1. *Interpretation of data.* The Panel requires investigators to develop methods for human experimentation and to design studies which are well-controlled and safe. Data produced from these studies should be statistically significant and reproducible.

2. *Effectiveness.* Evidence of drug effectiveness, based on the results of two independent investigators or laboratories, is required from a minimum of two well-controlled studies.

All data, both favorable and unfavorable, must be submitted to FDA.

3. *Completion of studies.* Because the Panel is unable to recommend the precise protocols for such investigations at this time, 2 years will be allowed to develop the methodology and conduct studies for nailbiting and thumbsucking deterrent drug products in human subjects.

E. Combination Policy

The Panel concurs with the OTC drug review regulation (21 CFR 330.10(a)(4)(iv)) which states:

An OTC drug may combine two or more safe and effective active ingredients and may be generally recognized as safe and effective when each active ingredient makes a contribution to the claimed effect(s); when combining of the active ingredients does not decrease the safety or effectiveness of any of the individual active ingredients; and when the combination, when used under adequate directions for use and warnings against unsafe use, provides rational concurrent therapy for a significant proportion of the target population.

The Panel recognizes the combination of denatonium benzoate and sucrose octaacetate as a Category III combination because the perception of a bitter taste may vary from person to person and from ingredient to ingredient.

The agency has determined that under 21 CFR 25.24(d)(9) (proposed in the Federal Register of December 11, 1979; 44 FR 71742) this proposal is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 502, 505, 701, 52 Stat. 1040–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321, 352, 355, 371)) and the Administrative Procedure Act (secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704)) and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended by adding to Part 358, new Subpart C, to read as follows:

PART 358—MISCELLANEOUS EXTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart C—Nailbiting and Thumbsucking Deterrent Drug Products

Sec.

358.201 Scope.
358.203 Definitions.
358.210 Nailbiting and thumbsucking deterrent active ingredients [Reserved].
358.250 Labeling of nailbiting and thumbsucking deterrent drug products.

Authority: Secs. 201, 502, 505, 701, 52 Stat. 1040–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321, 352, 355, 371); (5 U.S.C. 553, 554, 702, 703, 704).

Subpart C—Nailbiting and Thumbsucking Deterrent Drug Products

§ 358.201 Scope.

(a) An over-the-counter nailbiting and thumbsucking deterrent drug product in a form suitable for topical application is generally recognized as safe and effective and is not misbranded if it meets each condition in this subpart and each general condition established in § 330.1 of this chapter.

(b) References in this subpart to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 358.203 Definitions.

(a) Nailbiting is the habitual biting of the fingernails.

(b) Thumbsucking is the habitual sucking of a thumb.

§ 358.210 Nailbiting and thumbsucking deterrent active ingredients [Reserved].

§ 358.250 Labeling of nailbiting and thumbsucking deterrent drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as a "nailbiting deterrent," "thumbsucking deterrent," or "nailbiting-thumbsucking deterrent."

(b) *Indications.* The labeling of the product contains a statement of the indications under the heading "Indications" that is limited to one of the following phrases: (1) "For use as a nailbiting deterrent in person aged 4 years and older."

(2) "For use as a thumbsucking deterrent in persons aged 4 years and older."

(3) "For use as a nailbiting and thumbsucking deterrent in persons aged 4 years and older."

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) *For product containing any ingredient identified in 358.210.*

(i) "Avoid contact with eyes."

(ii) "For topical use only."

(2) *For products containing flammable vehicles.* "Keep away from flame."

(d) *Directions.* The labeling of the product contains one of the following directions under the heading "Directions," followed by "or as directed by a physician."

(1) "Apply to the nail after washing hands and at bedtime."

(2) "Apply to the thumb after washing hands and at bedtime."

(3) "Apply to the nail or thumb after washing hands and at bedtime."

Interested persons are invited to submit their comments in writing

(preferably in four copies and identified with the Hearing Clerk docket number found in brackets in the heading of this document) regarding this proposal on or before January 14, 1981. Comments should be addressed to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and may be accompanied by a supporting memorandum or brief. Comments replaying to comments may also be submitted on or before February 16, 1981. Comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, as amended by Executive Order 12221, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: October 6, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

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21 CFR Part 358

[Docket No. 80–0348]

Ingrown Toenail Relief Drug Products for Over-the-Counter Human Use; Establishment of a Monograph

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish conditions under which over-the-counter (OTC) ingrown toenail relief drug products are generally recognized as safe and effective and not misbranded. The proposed rule, based on the recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products, is part of the ongoing review of OTC drug products conducted by the Food and Drug Administration (FDA).

DATES: Comments by January 14, 1981, and reply comments by February 16, 1981.

ADDRESS: Written comments to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Bureau of Drugs (HFD–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4960.

SUPPLEMENTARY INFORMATION: In accordance with part 330 (21 CFR part 330), FDA received on April 21, 1980 a report on ingrown toenail relief drug products from the Advisory Review Panel on OTC Miscellaneous External Drug Products.

Under § 330.10(a)(6) (21 CFR 330.10(a)(6)), the agency issues (1) a proposed regulation containing the monograph recommended by the Panel, which establishes conditions under which OTC ingrown toenail relief drugs are generally recognized as safe and effective and not misbranded; (2) a statement of the conditions excluded from the monograph because the Panel detemined that they would result in the drugs' not being generally recognized as safe and effective or would result in misbranding; (3) a statement of the conditions excluded from the monograph because the Panel determined that the available data are insufficient to classify these conditions under either (1) or (2) above; and (4) the conclusions and recommendations of the Panel.

The unaltered conclusions and recommendations of the Panel are issued to stimulate discussion, evaluation, and comment on the full sweep of the Panel's diliberations. The report has been prepared independently of FDA, and the agency has not yet fully evaluated the report. The Panel's findings appear in this document as a formal proposal to obtain public comment before the agency reaches any decision on the Panel's recommendations. This document represents the best scientific judgment of the Panel members but does not necessarily reflect the agency's position on any particular matter contained in it. After reviewing all comments submitted in respose to this proposal, FDA will issue a tentative final regulation in the **Federal Register** to establish a monograph for OTC ingrown toenail relief drug products.

In accordance with § 330.10(a)(2), the Panel and FDA have held as confidential all information concerning OTC ingrown toenail relief drug products submitted for consideration by the Advisory Review Panel. All the submitted information will be put on public display at the Hearing Clerk's Office, Food and Drug Administration, after November 17, 1980, except to the extent that the person submitting it demonstrates that it still falls within the confidentiality provisions of 18 U.S.C. 1905 or section 301(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(j)). Requests for confidentiality should be submitted to William E. Gilbertson, Bureau of Drugs (HFD–510) (address above).

Based upon the conclusions and recommendations of the Panel, FDA proposes the following:

1. That the conditions included in the monograph, under which the drug products would be generally recognized as safe and effective and not misbranded (monograph conditions), be effective 30 days after the date of publication of the final monograph in the **Federal Register.**

2. That the conditions excluded from the monograph, either because they would cause the drug to be not generally recognized as safe and effective or to be misbranded or because the available data are insufficient to support the inclusion of such conditions in the monograph (nonmonograph conditions), be eliminated from OTC drug products effective 6 months after the date of publication of the final monograph in the **Federal Register,** regardless of whether further testing is undertaken to justify their future use.

FDA published in the **Federal Register** of May 13, 1980 (45 FR 31422) its proposal to revise the OTC procedural regulations to conform to the decision in *Cutler* v. *Kennedy,* 475 F. Supp. 838 (D.D.C. 1979). The Court in *Cutler* held that the OTC drug regulations (21 CFR 330.10) are unlawful to the extent that they authorize the marketing of Category III drugs after a final monograph. Accordingly, the proposed regulations delete this provision and provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process, before the establishment of a final monograph (45 FR 31422).

Although it was not required to do so under *Cutler,* FDA has also decided to stop using the terms "Category I," "Category II," and "Category III" at the final monograph stage in favor of the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III). Any OTC drug product containing a "nonmonograph condition" will be subject to regulatory action after the establishment of a final monograph. This document, however, retains the concepts of Categories I, II, and III because that was the framework in

which the Panel conducted its evaluation of the data.

A proposed review of the safety, effectiveness, and labeling of all OTC drugs by independent advisory review panels was announced in the **Federal Register** of January 5, 1972 (37 FR 85). The final regulations providing for this OTC drug review under § 330.10 were published and made effective in the **Federal Register** of May 11, 1972 (37 FR 9464). In accordance with these regulations, requests for data and information on all active ingredients used in OTC miscellaneous external drug products were issued in the **Federal Register** of November 16, 1973 (38 FR 31697) and August 27, 1975 (40 FR 38179).

The Commissioner of Food and Drugs appointed the following Panel to review the information submitted and to prepare a report under § 330.10(a) (1) and (5) on the safety, effectiveness, and labeling of those products:

William E. Lotterhos, M.D., Chairman.
Rose Dagirmanjian, Ph. D.
Vincent J. Derbes, M.D. (resigned July 1976).
George C. Cypress, M.D. (resigned November 1978).
Yelva L. Lynfield, M.D. (appointed October 1977).
Harry E. Morton, Sc. D.
Marianne N. O'Donoghue, M.D.
Chester L. Rossi, D.P.M.
J. Robert Hewson, M.D. (appointed September 1978).

Representatives of consumer and industry interests served as nonvoting members of the Panel. Marvin M. Lipman, M.D., of Consumers Union served as the consumer liaison. Gavin Hildick-Smith, M.D., served as industry liaison from January until August 1975, followed by Bruce Semple, M.D., until February 1978. Both were nominated by the Proprietary Association. Saul A. Bell, Pharm. D., nominated by the Cosmetic, Toiletry, and Fragrance Association, also served as an industry liaison since June 1975.

Two nonvoting consultants, Albert A. Belmonte, Ph. D., and Jon J. Tanja, R.Ph., M.S., have provided assistance to the Panel since February 1977.

The following FDA employees assisted the Panel: John M. Davitt served as Executive Secretary until August 1977, followed by Arthur Auer until September 1978, followed by John T. McElroy, J.D., Thomas D. DeCillis, R.Ph., served as Panel Administrator until April 1976, followed by Michael D. Kennedy until January 1978, followed by John T. McElroy, J.D., Joseph Hussion, R.Ph., served as Drug Information Analyst until April 1976, followed by Victor H. Lindmark, Pharm. D., until March 1978, followed by Thomas J. McGinnis, R.Ph.

The Advisory Review Panel on OTC Miscellaneous External Drug Products was charged with the review of many categories of drugs. Due to the large number of ingredients and varied labeling claims, the Panel decided to review and publish its findings separately for several drug categories and individual drug products. The Panel presents its conclusions and recommendations for ingrown toenail relief drug products in this document. The review of other categories of miscellaneous external drug products will be continued by the Panel, and its findings will be published periodically in future issues of the **Federal Register.**

The Panel was first convened on January 13, 1975 in an organizational meeting. Working meetings which dealt with the topic in this document were held on: May 16 and 17, 1976; August 5 and 6, September 30, October 1, December 11 and 12, 1977; April 16 and 17, June 11 and 12, May 18 and 19, August 3 and 4, September 28 and 29, October 28 and 29, and December 9 and 10, 1979; January 27 and 28, March 7 and 8, and April 20 and 21, 1980.

The minutes of the Panel meetings are on public display in the Hearing Clerk's Office (HFA–305), Food and Drug Administration (address above).

The following individuals were given an opportunity to appear before the Panel, either at their own request or at the request of the Panel, to express their views on ingrown toenail relief drug products:

Barry Brooks, J.D.
Joel Hertz, Ph. D.

No person who so requested was denied an opportunity to appear before the Panel.

The Panel has thoroughly reviewed the literature and data submissions, has listened to additional testimony from interested persons, and has considered all pertinent information submitted through April 21, 1980 in arriving at its conclusions and recommendations.

In accordance with the OTC drug review regulations in § 330.10, the Panel reviewed OTC ingrown toenail relief drug products with respect to the following three categories:

Category I. Conditions under which OTC ingrown toenail relief drug products are generally recognized as safe and effective and are not misbranded.

Category II. Conditions under which OTC ingrown toenail relief drug products are not generally recognized as safe and effective or are misbranded.

Category III. Conditions for which the available data are insufficient to permit final classification at this time.

I. Submission of Data and Information

In an attempt to make this review as extensive as possible and to aid manufacturers and other interested persons, the agency compiled a list of ingredients recognized, either through historical use or use in marketed products, as ingrown toenail relief active ingredients. Six ingredients were identified as follows: benzocaine, dibucaine, isopropyl alcohol, para-chloro-metaxylenol, sodium sulfide, and tannic acid. Notices were published in the **Federal Register** of November 16, 1973 (38 FR 31697) and August 27, 1975 (40 FR 38179) requesting the submission of data and information on these ingredients or any other ingredients used in OTC ingrown toenail relief drug products.

A. Submissions

Pursuant to the above notices, the following submissions were received:

Firms and Marketed Products

Scholl, Inc., Chicago, IL 60610—Onixol.
Whitehall Laboratories, Inc., New York, NY 10017—Outgro.

B. Ingredients Reviewed by the Panel

1. *Labeled ingredients contained in marketed products submitted to the Panel.*

Chlorobutanol
Isopropyl alcohol
Sodium sulfide
Tannic acid

2. *Other ingredients reviewed by the Panel.*

Benzocaine
Dibucaine
Para-chloro-metaxylenol
Triethanolamine
Urea

C. Classification of Ingredients

1. *Active ingredients.*

Sodium sulfide
Tannic acid

2. *Inactive ingredients.*

Isopropyl alcohol
Triethanolamine

3. *Ingredients reviewed by other Panels.* The following ingredients have previously been classified by the Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products in the **Federal Register** of December 4, 1979 (44 FR 69768).

Benzocaine
Chlorobutanol
Dibucaine

4. *Other ingredients.* The Panel was not able to locate nor is it aware of data demonstrating the safety and

effectiveness of the following ingredients when used as OTC ingrown toenail relief active ingredients. The Panel, therefore, classifies these ingredients as Category II for this use, and they will not be discussed further in this document.

Chloroxylenol (para-chloro-metaxylenol)
Urea

D. Referenced OTC Volumes

The "OTC Volumes" cited throughout this document include submissions made by interested persons in response to the call-for-data notices published in the Federal Register of November 16, 1973 (38 FR 31697) and August 27, 1975 (40 FR 38179). All the information included in these volumes, except for those deletions which are made in accordance with confidentiality provisions as set forth in § 330.10(a)(2), will be put on public display after November 17, 1980, in the Hearing Clerk's Office (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rochville, MD 20857.

II. General Discussion

Nails serve as a means of protection for the upper ends of the toes. The flattened, expanded, free end of the nail protects the softer tissue of the end of the toe. The ingrown toenail (onychocryptosis) is a condition in which the side of the nail becomes imbedded in the surrounding soft tissue of the toe and causes pain. Secondary complications that can arise from the ingrown toenail condition are simple inflammation, swelling, ulceration, cellulitis (wide-spread inflammation of tissue), granulation tissue (rounded masses), infection, lymphangitis (red streaks on foot and leg), and septicemia (blood poisoning).

Grinnell (Ref. 1) describes the term ingrown toenail as a misnomer, because the nail never grows into the flesh but instead becomes imbedded. The correct method of cutting the toenail to prevent an ingrown toenail is to cut the nail straight across without tapering the corners in any way. The cause of most ingrown toenail conditions is incorrect cutting of the toenail but may also result from injury to the matrix or from hereditary tendencies. Acute symptoms of an ingrown toenail do not necessarily develop immediately after incorrect cutting; usually several days elapse before irritation becomes evident. Short and tight hosiery or tight shoes can also cause ingrown toenail, since improper footwear can force the lateral edge of the nail into the softer tissues by direct pressure. Tight bed covers, creating pressure of the soft skin tissue against the nails, can cause bed-ridden patients to have ingrown toenails (Ref. 1). Fungus infection of the nails (onychomycosis) may sometimes cause the nails to thicken and develop ragged edges. The movement of walking can cause these nail edges to irritate and penetrate the grooves on both sides of the toenail. In some families there is a tendency toward curling of the toenails; individuals in these families are predisposed to developing ingrown nails.

In treating a case of ingrown toenail in its early stages before the surrounding tissue of the nail has become enlarged, considerations are hardening of the nail groove and shrinking the soft tissue, so that there will be sufficient room for the nail to resume its normal position adjacent to the soft tissue. Prevention of infection is also a consideration at this time.

Reference

(1) Grinnel, R. N., "Ingrown Toe Nail," *Podiotry Quarterly*, 2:8–10, 1964.

General Labeling

The Panel has reviewed the general labeling requirements previously adopted by the Food and Drug Administration for OTC products (21 CFR 201.60, 201.61, and 201.62) and agrees that these general requirements are appropriate for labeling of products intended to relieve the symptoms of ingrown toenail.

1. *Indications and directions for use.* The Panel believes that the labeling of a product intended to relieve discomfort of ingrown toenail should state the nature and use of the product in language that is clear and easy for a lay user to understand and should provide the user with enough information for safe and effective use of the product.

No reference should be made or implied regarding the relief of symptoms unrelated to the condition that is an indication for use of the product.

2. *Warnings against unsafe use.* Because the ingredients in products intended to provide relief from discomfort of ingrown toenail might be toxic if absorbed through broken skin, of at least excessively irritating, the Panel recommends a label warning against application of these products to open sores. Labeling should also specify that these products are for external use only.

A statement of the maximum length of time the products should be used for self-treatment should be included in labeling, as well as a warning to consult a doctor if symptoms of infection, such as redness and swelling or discharge around the nail, should occur. The Panel believes that infection is not amenable to self-treatment, that self-treatment of infection might in fact permit it to progress to a serious stage, and that, if signs of infection appear, a doctor should be consulted immediately.

The Panel is also concerned about the use of these products by diabetics and persons having impaired circulation to the feet. These individuals are susceptible to infection and can have numbing of sensation in the feet which might mask the pain of an infected ingrown toenail. The Panel therefore recommends that the labeling of products intended to provide relief from the discomfort of ingrown toenail contain a warning to diabetics and persons having circulatory impairment to see a doctor for treatment of this condition.

III. Categorization of Data

A. Category I Conditions

These are conditions under which active ingredients used for ingrown toenail relief are generally recognized as safe and effective and are not misbranded. The Panel recommends that Category I conditions be effective 30 days after the date of publication of the final monograph in the Federal Register.

1. *Category I ingredients.* None.

2. *Category I labeling.* The Panel recommends the following labeling for Category I drug products to relieve symptoms of ingrown toenail.

a. *Indications.* "For temporary relief of discomfort from ingrown toenails."

b. *Warnings.* (1) "For external use only."

(2) "Do not use this product for more than 7 days. Consult a doctor if no improvement is seen after 7 days."

(3) "If you have diabetes or circulatory impairment, see a doctor for treatment of ingrown toenail."

(4) "Do not apply this product to open sores. If redness and swelling of your toe increases, or if a discharge is present around the nail, stop using this product and see your doctor."

c. *Directions.* "Cleanse affected toes thoroughly. Place a small piece of cotton in the nail groove (the side of the nail where the pain is) and wet cotton thoroughly with the solution. Repeat several times daily until nail discomfort is relieved, but do not use for more than 7 days."

B. Category II Conditions

These are conditions under which active ingredients used for ingrown toenail relief are not generally recognized as safe and effective or are misbranded. The Panel recommends that the Category II conditions be eliminated from OTC ingrown toenail relief drug products effective 6 months after the date of publication of the final monograph in the Federal Register.

1. *Category II ingredients.* See part I. paragraph C.4. above—Other ingredients.

2. *Category II labeling.* The Panel has placed in Category II the following labeling claim: "For fast pain relief."

C. Category III Conditions

These are conditions for which available data are insufficient to permit final classification at this time.

1. *Category III ingredients.*

Sodium sulfide
Tannic acid

a. *Sodium sulfide.* The rationale for the use of sodium sulfide in treating ingrown toenail discomfort is that this ingredient softens the keratin in the nail and the calloused skin surrounding the nail, thereby providing relief from pressure and pain caused by contact of the imbedded nail with the skin.

The Panel concludes that sodium sulfide is safe for this use as applied according to the dosage and directions specified below, but there are insufficient data available to determine its effectiveness.

(1) *Safety.* Sodium sulfide has been shown to have an intraperitoneal lethal dose (LD_{50}) in mice of 53 milligrams per kilogram (mg/kg) (Ref. 1). A marketed OTC product containing 1 percent sodium sulfide has been subjected to acute toxicity studies in young albino rats and the acute oral LD_{50} was determined to be 25.5 grams per kilogram (G/KG) (ref. 1). The oral LD_{50} for a 70-gram human is 50 to 500 MG/KG (ref. 2).

Necropsy revealed gastrointestinal tract hemorrhaging, pale livers, pale kidneys, and mottled lungs. No gross pathologic alterations were noted among any of the animals sacrificed at the end of the 14-day observation period. Calculations based on results of this study show that a 70-kg human would need to consume more than 1 quart of a 1-percent sodium sulfide preparation to achieve a lethal dose.

In assessing the irritancy of sodium sulfide, a 1-percent preparation was tested for eye irritation in young albino rabbits. The preparation was classified as minimally irritating based on irritation and damage to the cornea, iris, and conjuntiva (Ref. 2).

(2) *Effectiveness.* Nail keratin is very similar in structure and composition to hair keratin (Ref. 3), and chemicals that soften hair keratin may be useful in softening nail keratin. Sodium sulfide was used as a hair depilatory as early as 1893, and this ingredient is the basis of most liquid depilatories (Refs. 1 and 4).

A solution of 1 percent sodium sulfide in a water and emollient vehicle was evaluated for effectiveness as a nail softener in a double-blind study conducted on 100 subjects with ingrown toenail problems. Fifty subjects were treated with the 1-percent sodium sulfide preparation, and 50 subjects were treated with the vehicle alone as a control. Initial treatment with the test and control solutions was conducted by clinicians who were directed to cleanse each affected toe thoroughly and place a small piece of cotton in the nail groove. The cotton was then saturated with the respective solutions. Subsequent treatment was done by the subjects according to directions from the clinicians, and treatments were repeated three times per day for a maximum of 7 days unless pain was relieved earlier. The subjects returned for examination on the third and seventh days of the study.

According to the researchers conducing the study, moderate to complete relief of pain and tenderness due to ingrown toenails was noted within 3 to 7 days with the use of the sodium sulfide preparation, while little or no relief of pain was noted with the vehicle alone (Ref. 2).

However, careful analysis of this study reveals several problems. Subjects were to be placed by each investigator into respective groups in equal numbers, according to age, sex, and duration and severity of the pain. This protocol was not followed, and the randomization of patient population and assignment of treatment was defective. Although the protocol specified a double-blind study, the actual test conditions did not meet double-blind test conditions. The subject report form containing the rating systems to be used by the clinicians was revised by several investigators. Thus comparisons and statistical treatment of the results could not be done accurately.

A total of 10 investigators were to be utilized in the study. Two investigators, however, did not conduct any studies, while a third investigator reported data, but no background information or credentials were submitted for him. One subject-report form had an investigator's signature which differed from all the others he had signed.

Thus, the Panel has concluded that, in order to establish the effectiveness of sodium sulfide as an ingrown toenail relief softener, it is necessary for the results of this study to be corroborated, either by additional study or by repetition of this study using a similar protocol.

(3) *Proposed dosage.* Topical dosage is a 1-percent solution of sodium sulfide in a suitable vehicle.

(4) *Labeling.* The Panel recommends Category I labeling for active ingredients to relieve the symptoms of ingrown toenail. (See part III. paragraph A.2. above—Category I labeling.)

References

(1) OTC Volume 160100.
(2) OTC Volume 160280.
(3) Baden, H. P., "The Physical Properties of Nail," *The Journal of Investigative Dermatology*, 55:115–122, 1970.
(4) Wells, F. V., and I. Lubowe, "Cosmetics and the Skin," Reinhold Publishing Corp., New York, pp. 363–364, 1964.

b. *Tannic acid.* Tannic acid is a tannin usually obtained from nutgalls, which are excessive growths formed on young twigs of certain oak trees as a result of development of eggs deposited by the female gall fly. Tannic acid occurs as an amorphous powder, glistening scales, or spongy masses, yellowish-white to light brown in color. Tannic acid has a faint, characteristic odor and strong astringent taste; it is soluble in water and alcohol and almost insoluble in chloroform and ether (Ref. 1).

Tannic acid is classified as an astringent, that is, a substance that precipitates protein and thereby has such actions as hardening skin, forming a protective coating over mucous membranes, checking excessive secretion, and stopping superficial hemorrhage. It has been used therapeutically for all these actions (Ref. 1).

The claimed rationale for use of tannic acid in treating ingrown toenail is that it hardens the skin surrounding the imbedded nail and shrinks the soft tissue adjacent to the nail, making sufficient room for the nail to resume its normal position adjacent to the soft tissue.

(1) *Safety.* Tannic acid was formerly used orally for the symptomatic treatment of diarrhea, topically for the management of extensive burns, and rectally for the relief of various rectal disorders (Ref. 2). However, these applications are now practically obsolete because sufficient tannic acid may be absorbed from the gastrointestinal tract, denuded surfaces, and mucous membranes to cause severe damage to the liver (Refs. 3 through 5). In 1942, Wells et al. (Ref. 3) reported that treatment of severe burns with tannic acid resulted in toxic hepatitis within 36 hours.

The Panel notes that the Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment

Drug Products, in reviewing tannic acid as a skin protectant and burn treatment agent, concluded that tannic acid has little action on intact skin (43 FR 34644). This view supports the safety of tannic acid when applied to a small area of intact skin, such as that surrounding an ingrown toenail, and the Advisory Review Panel on OTC Miscellaneous External Drug Products concludes that tannic acid is safe when so applied in concentrations up to 25 percent.

(2) *Effectiveness.* The Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products noted that tannic acid has little action on intact skin. This casts doubt on the effectiveness of tannic acid when used to harden the skin and shrink the tissue surrounding an ingrown toenail.

The Advisory Review Panel on OTC Miscellaneous External Drug Products is aware of several studies dealing with tannic acid. One uncontrolled study by Grinnell (Ref. 6) deals with the effectiveness of tannic acid in treating ingrown toenail relief. He studied the effects of a product combining 25 percent tannic acid, 5 percent chlorobutanol, a topical anesthetic, and 69.25 percent isopropyl alcohol, an antiseptic, on 44 patients suffering from ingrown toenails. The patients were instructed to apply several drops of the medication in the crevice where the nail was imbedded in the flesh, to work the medication under the nail, let it dry thoroughly without rubbing it off, and to repeat this procedure several times a day. Forty of the 44 patients were professionally reevaluated 5 hours to 9 days after initial application of the medication. The other four patients telephoned in their own evaluations. According to Grinnell, the product proved to be an excellent aid in helping to restore the nail to its proper relationship to the soft tissue of the toe, and 94 percent of the patients who experienced swelling in connection with an ingrown toenail obtained complete relief from the swelling.

The Panel notes that it is not clear whether the swelling in these instances resulted from infection at the ingrown toenail site. If infection was initially present, then relief from swelling would very likely be the result of the germicidal activity of the isopropyl alcohol rather than the tissue-shrinking and skin-hardening activity of the tannic acid.

Another study (Ref. 7) tested the epidermal hardening of several ingredients in a combination product by preparing five nonabraded sites on albino rabbits for exposure to each of the following solutions: (a) untreated control, (b) 5 percent chlorobutanol in isopropyl alcohol, (c) 25 percent tannic acid in isopropyl alcohol, (d) 25 percent tannic acid and 5 percent chlorobutanol in isopropyl alcohol, and (e) isopropyl alcohol. Each site was treated topically once daily for 3, 7, and 10 days. The study concluded that the combination of 25 percent tannic acid and 5 percent chlorobutanol in isopropyl alcohol resulted in the greater skin thickening observed. However, the Panel concludes that this skin thickening cannot be equated to a skin-hardening effect.

Further studies were undertaken to demonstrate skin hardening by (a) the measurement of the resistance of treated and untreated excised mouse skin to a sharp needle dropped from a measured distance above the skin, and (b) by determining the compressibility of treated and untreated excised mouse skin (Ref. 7). From the needle-pierce method it was concluded that the combination product, 25 percent tannic acid and 5 percent chlorobutanol in isopropyl alcohol, hardened or toughened the mouse skin as measured by resistance to needle penetration. From the compressibility method it was concluded, because treated mouse skin was less compressible than the untreated skin, that the hardness of mouse skin increased.

The Panel concludes that there is insufficient evidence to show that tannic acid alone is effective in hardening the skin and shrinking the soft tissue surrounding an ingrown toenail in humans. It is necessary for controlled studies to be done showing the effect of tannic acid alone on the intact skin and soft tissue surrounding an ingrown toenail.

(3) *Proposed dosage.* Topical dosage is tannic acid in concentrations up to 25 percent.

(4) *Labeling.* The Panel recommends Category I labeling for active ingredients to relieve the symptoms of ingrown toenail. (See part III. paragraph A.2 above—Category I labeling.)

References

(1) Osol, A., and R. Pratt, "The United States Dispensatory," 27th Ed., J. B. Lippincott Co., Philadelphia, p. 1140, 1973.

(2) Swinyard, E. A., "Surface-Acting Drugs," *in* "The Pharmacological Basis of Therapeutics," 5th Ed., edited by L. S. Goodman and A. Gilman, MacMillan Publishing Co., Inc., New York, p. 951, 1975.

(3) Wells, D. B., H. D. Humpbrey, and J. J. Coll, "Relation of Tannic Acid to Liver Necrosis, Occurring in Burns," *New England Journal of Medicine*, 226:629–636, 1942.

(4) Barnes, J. M., and R. J. Rossiter, "Toxicity of Tannic Acid," *Lancet*, 2:218–222, 1943.

(5) Krezanoski, J. Z., "Tannic Acid: Chemistry, Analysis, and Toxicology," *Radiology*, 87:655–657, 1966.

(6) Grinnell, R. N., "Ingrown Toe Nail," *Podiatry Quarterly*, 2:8–10, 1964.

(7) OTC Volume 160364.

2. *Category III labeling.* None.

D. Combination Policy

The Panel was not aware of any product combining OTC ingredients that it reviewed for relief of the symptoms of ingrown toenail. A combination that can soften the nail and harden the nailbed would be rational. Any combination of ingredients reviewed in this document with ingredients from other therapeutic categories should meet the criteria outlined in § 330.10(a)(4)(iv) which states:

An OTC drug may combine two or more safe and effective active ingredients and may be generally recognized as safe and effective when each active ingredient makes a contribution to the claimed effect(s); when combining of the active ingredients does not decrease the safety or effectiveness of any of the individual active ingredients; and when the combination, when used under adequate directions for use and warnings against unsafe use, provides rational concurrent therapy for a significant proportion of the target population.

In addition to the regulation cited above, the Panel concurs with the FDA's general guidelines for OTC drug combination products referred to in the **Federal Register** of November 28, 1978 (43 FR 55466). These guidelines provide for combining ingredients from different therapeutic categories and are thus applicable to combinations of ingredients for relief of the symptoms of an ingrown toenail with ingredients from other therapeutic categories.

Category I active ingredients from different therapeutic categories may be combined to treat different symptoms concurrently *only* if each ingredient is present within its established safe and effective dosage range and the combination meets the OTC combination policy in all other respects.

The agency has determined that under 21 CFR 25.24(d)(9) (proposed in the **Federal Register** of December 11, 1979; 44 FR 71742) this proposal is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 502, 505, 701, 52 Stat. 1040–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321, 352, 355, 371)), and the Administrative Procedure Act (secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704)), and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended by adding to Part 358, new Subpart E, to read as follows:

PART 358—MISCELLANEOUS EXTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart D—[Reserved]

Subpart E—Ingrown Toenail Relief Drug Products

Sec.

358.401 Scope.
358.403 Definitions.
358.410 Ingrown toenail relief active ingredients. [Reserved]
358.450 Labeling of ingrown toenail relief drug products.

Authority: Secs. 201, 502, 505, 701, 52 Stat. 1040–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat 919 and 72 Stat 948 (21 U.S.C. 321, 352, 355, 371); (5 U.S.C. 553, 554, 702, 703, 704).

Subpart E—Ingrown Toenail Relief Drug Products

§ 358.401 Scope.

(a) An over-the-counter ingrown toenail relief drug product is a form suitable for topical application is generally recognized as safe and effective and is not misbranded if it meets each condition in this subpart and each general condition established in § 330.1 of this chapter.

(b) References in this subpart to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 358.403 Definitions.

Ingrown toenail relief drug product. A drug product applied to an ingrown toenail that will correct the condition either by softening the nail or by hardening the nail bed.

§ 358.410 Ingrown toenail relief active ingredients [Reserved].

§ 358.450 Labeling of ingrown toenail relief drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an "ingrown toenail relief drug product."

(b) *Indications.* The labeling of the product contains a statement of the indications under the heading "Indications" that is limited to the phrase "for temporary relief of discomfort from ingrown toenails."

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) "For external use only."

(2) "Do not use this product for more than 7 days. Consult a doctor if no improvement is seen after 7 days."

(3) "If you have diabetes or circulatory impairment, see a doctor for treatment of ingrown toenail."

(4) "Do not apply this product to open sores. If redness and swelling of your toe increases, or if a discharge is present around the nail, stop using this product and see your doctor."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions," followed by "or as directed by a doctor": "Cleanse affected toes thoroughly. Place a small piece of cotton in the nail groove (the side of the nail where the pain is) and wet cotton thoroughly with the solution. Repeat several times daily until nail discomfort is relieved, but do not use for more than 7 days."

Interested persons are invited to submit their comments in writing (preferably in four copies and identified with the Hearing Clerk docket number found in brackets in the heading of this document) regarding this proposal on or before January 14, 1981. Comments should be addressed to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and may be accompanied by a supporting memorandum or brief. Comments replying to comments may also be submitted on or before February 16, 1981. Comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: October 6, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-32153 Filed 10-15-80; 8:45 am]

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Friday
October 17, 1980

Part III

Department of Labor

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

New General Wage Determination Decision

Puerto Rico: PR80–3063

Modification to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Alabama: AL79–1066	Apr. 13, 1979.
North Carolina:	
NC80–1024	Jan. 4, 1980.
NC80–1023	Jan. 4, 1980.
NC78–1037	Apr. 14, 1978.
NC80–1025	Jan. 4, 1980.
NC80–1026	Jan. 4, 1980.
NC78–1027	Mar. 24, 1978.
NC78–1036	Apr. 14, 1978.
NC78–1035	Apr. 14, 1978.
Oregon: OR80–5106	Feb. 9, 1980.
Vermont: VT80–2078	Sept. 5, 1980.
Wisconsin:	
WI80–2027	Apr. 18, 1980.
WI80–2040	May 30, 1980.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Alabama:	
AL77–1090 (AL80–1112)	July 8, 1977.
AL80–1030 (AL80–1112)	Jan. 4, 1980.
Kentucky:	
KY79–1135 (KY80–1106)	Oct. 19, 1979.
KY79–1137(KY80–1107)	Oct. 19, 1979.
KY79–1139 (KY80–1108)	Oct. 19, 1979.
South Carolina: SC79–1105 (SC80–1113)	July 8, 1979.
Washington: WA80–5107 (WA80–5136)	Mar. 7, 1980.

Cancellation of General Wage Determination Decisions

None.

Signed at Washington, D.C. this 10th Day of October 1980.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

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Modification Page 1

DECISION NO. AL79-1066 - MOD. #8
(44 FR 22307 - April 13, 1979)
Madison County, Alabama

CHANGE:

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
GROUP A	11.33	.50	.55		.05
GROUP B	9.89	.50	.55		.05
GROUP C	9.07	.50	.55		.05

NEW DECISION

STATE: PUERTO RICO
DECISION NO. PR80-3063
DESCRIPTION OF WORK: Building Construction, (does not include single family homes and apartments up to and including 4 stories).

COUNTY: ISLAND WIDE
DATE: DATE OF PUBLICATION

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air Conditioning & Heating	3.75				
Carpenters	3.76				
Carpenter's Helpers	3.10				
Cement Masons	3.66				
Electricians	3.78				
Electrician's Helpers	3.30				
Elevator Mechanics	5.08				
Glaziers	4.00				
Ironworkers, Ornamental & Structural	3.37				
Ironworkers, Reinforcing	3.25				
Insulation Mechanic	4.05				
Laborers	3.10				
Mason Tenders	3.19				
Pipelayers	4.10				
Painters, Brush	3.25				
Painters, Spray	3.15				
Plasterers	3.91				
Plumbers	3.93				
Plumber's Helpers	3.25				
Sheet Metal Workers	3.50				
Truck Drivers	3.62				
Power Equipment Operators:					
Riggers	3.50				
Oilers	3.65				
Tractors	4.50				
Rollers	3.73				
Diggers	4.00				
Bulldozers	4.40				
Cranes	4.55				
Forklifts	4.25				
Gradicks	4.37				
Loaders	4.60				
Welders-Receive rate prescribed for craft performing operation to which welding is incidental					
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clause (29 CFR, 5.5 (a)(1)(ii))					

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Modification Page 2

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. NC80-1024 - MOD. #1 (45 FR 1368-January 4,1980) Edgecombe, Greene, Nash, Johnston, and Wilson Counties, North Carolina.					
CHANGE:					
Sprinkler Fitters	11.00	.85	1.20		.08
DECISION NO. NC80-1023 - MOD. #2 (45 FR 1372-January 4,1980) Carteret, Craven, Jones, Lenoir, Onslow, and Pamlico Counties, North Carolina.					
CHANGE:					
Sprinkler Fitters	11.00	.85	1.20		.08
DECISION NO. NC78-1037 - MOD. #3 (43 FR 16096-April 14, 1978) New Hanover County, North Carolina					
CHANGE:					
Sprinkler Fitters	11.00	.85	1.20		.08

Modification Page 3

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. NC80-1025 - MOD. #1 (45 FR 1371 - January 4, 1980) Durham County, North Carolina					
CHANGE:					
Sprinkler Fitters	11.00	.85	1.20		.08
DECISION NO. NC80-1026 - MOD. #1 (45 FR 1368 - January 4, 1980) Cumberland County, North Carolina					
CHANGE:					
Sprinkler Fitters	11.00	.85	1.20		.08
DECISION NO. NC78-1027 - MOD. #4 (43 FR 12602 - March 24, 1978) Gaston, Lincoln, Union, and Mecklenburg Counties, North Carolina					
CHANGE:					
Sprinkler Fitters (Mecklenburg and Union Counties)	11.00	.85	1.20		.08

Modification Page 4

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. NC78-1036 - MOD. #3 (43 FR 16095 - April 14, 1978) Guilford County, North Carolina					
CHANGE:					
Sprinkler Fitters	11.00	.85	1.20		.08
DECISION NO. NC78-1035 - MOD. #3 (43 FR 16095 - April 14, 1978) Chatham, Harnett, Lee, and Moore Counties, North Carolina					
CHANGE:					
Sprinkler Fitters (Chatham and Lee Counties)	11.00	.85	1.20		.08

Modification Page 5

DECISION NO. OR80-5106 - Mod #3
(45 FR 8856 - February 9, 1980)
Statewide Oregon

CHANGE:
LINE CONSTRUCTION:

	BASE ZONE	ZONE 1	ZONE 2	ZONE 3	ZONE 4
Group 1: Cable Splicer, Leadman Pole Sprayer	$16.15	$17.40	$18.15	$18.90	$20.15
Group 2: Lineman, Pole Sprayer, Heavy Line Equipment Man, Certified Lineman Welder	14.59	15.84	16.59	17.34	18.59
Group 3: Tree Trimmer	13.17	14.42	15.17	15.92	17.17
Group 4: Line Equipment Man	12.57	13.82	14.57	15.32	16.57
Group 5: Head Ground (Chipper), Head Groundman, Powderman, Jackhammer Man	10.99	12.24	12.99	13.74	14.99
Group 6: Groundman	10.32	11.57	12.32	15.07	14.30

FRINGE BENEFITS PAYMENTS:	GROUPS 1 to 3	GROUPS 4 to 6
Health and Welfare	$0.45	$0.45
Pension	3%+1.70	3%+1.10
Vacation	0.10	0.10
Apprenticeship Training	1/2%	1/2%

LABORERS:

Group	ZONE 1	ZONE 2	ZONE 3	ZONE 4	ZONE 5	ZONE 6
1	$10.83	11.33	11.73	12.23	13.13	13.83
2	11.18	11.68	12.08	12.58	13.48	14.18
3	11.48	11.98	12.38	12.88	13.78	14.48
4	11.73	12.23	12.63	13.13	14.03	14.73

FRINGE BENEFITS PAYMENTS:

Health & Welfare	$1.20
Pension	1.40
Vacation	1.00
Apprenticeship Training	.10

Modification Page 6

DECISION NO. OR80-5106 (Cont'd)

LABORERS GROUP DESCRIPTION

Group 1: General Laborer; Asphalt Plant Laborers; Asphalt Spreaders; Batch Weighman; Broomers; Brush Burners and Cutters; Cat and Truck Loaders; Carpenter Tender; Changehouse Man or Dry Shack Man; Choke Setter; Clean-up Laborers; Concrete Laborers; Culvert, hand labor; Curing, concrete; Demolition, wrecking and moving Laborers; Drillers' Tenders; Dumpers, road oil crew; Dumpman (for grading crew); Elevator Feeders; Fence Builder (including guard rail, median rail, reference post, guide post, right-of-way marker); Fine Graders; Form Strippers (not swinging stages); Landscaping or Planting Laborers; Leverman or Aggregate Spreader (Flaherty and similar types); Loading Spotters; Material Yard Man (including electrical); Powderman Tender; Pittsburgh Chipper Operator or similar types; Ribbon Setters (including steel forms); Rip Rap Man (hand placed); Road Pump Tender; Sewer Labor; Signalman; Skipman; Slopers; Spraymen; Stake Chaser; Stockpiler; Timber Faller and Bucker (hand labor); Toolroom Man (at job site); Tunnel Bull Gang (above ground); Weightman - Crusher (aggregate when used)

Group 2: Applicator (including Pot Tender for same) applying protective material by hand or nozzle on utility lines or storage tanks on project; Brush Cutters (power saw); Burners; Choker Splicer; Clary, power spreader and similar types; Clean-up Nozzleman-Greencutter (concrete, rock, etc.); Concrete power Buggyman; Crusher Feeder; Demolition and wrecking charred materials; Grade Checker; Gunite Nozzleman Tender; Gunite and Sand Blasting Pot Tender; Handlers or Mixers of all materials of an irritating nature (including cement and lime); Power Tool Operators, includes but not limited to: Dry Pack Machine, Jackhammer, Chipping Guns, Paving Breakers, Vibrators (less than 4" in diameter); Post Hole Digger, air, gas or electric; Vibrating Screed; Tampers; Ribbon Setter, head; Rip Rap Man, head, hand placed; Sand Blasting (wet); Stake Setter; Tunnel-Muckers; Brakemen; Concrete Crew; Bull Gang (underground)

Group 3: Asphalt Rakers; Bit Grinder; Drill Doctor; Drill Operators; Air Tracks; Cat Drills; Wagon Drills; Rubber - mounted Drills and other similar typed; Concrete Saw Operator; Gunite Nozzleman; High Scalers; strippers and Drillers (covers work in swinging stages; chairs or belts, under extreme conditions unusual to normal drilling, blasting, barring-down or sloping and stripping); Laser Beam (pipe laying); Applicable when employee assigned to move, set up, align Laser Beam; Manhole Builder; Powdermen; Power Saw Operators (bucking and falling); Pumpcrete Nozzleman; Sandblasting (dry); Sewer (Pipe Layers); Sewer Timberman; Track Liners; Anchor Machines, Ballast Regulators, multiple Tampers, power Jacks; Tugger Operator; Tunnel Chuck Tenders; Nippers and Timbermen; Vibrators (4" and larger); Water Blaster; Welder

Group 4: Laser Beam (tunnel) - Tunnel Miners; Tunnel Powderman

Modification Page 7

DECISION NO. OR80-5106 (Cont'd)

TRUCK DRIVERS:

GROUPS	ZONE 1	ZONE 2	ZONE 3	ZONE 4	ZONE 5	ZONE 6
1	$12.53	$13.03	$13.43	$13.93	$14.83	$15.53
2	12.58	13.08	13.48	13.98	14.88	15.58
3	12.63	13.13	13.53	14.03	14.93	15.63
4	12.68	13.18	13.58	14.08	14.98	15.68
5	12.73	13.23	13.63	14.13	15.03	15.73
6	12.83	13.33	13.73	14.23	15.13	15.83
7	12.93	13.43	13.83	14.33	15.23	15.93
8	13.03	13.53	13.93	14.43	15.33	16.03
9	13.13	13.63	14.03	14.53	15.43	16.13
10	13.30	13.80	14.20	14.70	15.60	16.30
11	13.40	13.90	14.30	14.80	15.70	16.40
12	13.50	14.00	14.40	14.90	15.80	16.50
13	13.60	14.10	14.50	15.00	15.90	16.60
14	13.70	14.20	14.60	15.10	16.00	16.70

FRINGE BENEFITS:	
Health and Welfare	$0.93
Pension	1.19
Vacation	1.00
Apprenticeship Training	0.08

*See ZONE DESCRIPTIONS - following TRUCK DRIVERS' Classifications

Modification Page 8

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. VT80-2076 - MOD. #2 (45 FR 59078 - September 5, 1980) Chittenden County, Vermont					
Change: LABORERS	$ 6.60	.75	1.10		.10
DECISION NO. WI80-2027 - MOD. #2 (45 FR 26656 - April 18, 1980) Ashland, Bayfield, and Douglas, Wisconsin					
Change: Boilermakers	$13.87	1.375	1.10		.05
Laborers: General Laborers Ashland County Only	9.83	.55	.50		.05
Concrete Handling, and Carrying Reinforced Steel	9.88	.55	.50		.03
Mason Tenders, Power Tool Operators such as Jack Hammer, Vibrator, Air Spade, Fork Lift also Plaster Laborers	9.98	.55	.50		.03

Modification Page 9

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. WI80-2040 - MOD. #1 (45 FR 36781 - May 30, 1980) Green and Rock Counties, Wisconsin					
Change:					
Asbestos Workers	$13.30	1.05	1.15	1.50	.14
Boilermakers	13.87	1.375	1.10		.05
Bricklayers	12.43	.85	.90		.05
Elevator Constructors: Northern Portion of Counties	12.75	1.195	.95	a+b	.035
Elevator Constructor Helper: Northern Portion of Counties	9.25	1.195	.95	a+b	.035
Ironworkers (all): Vic. Edgerton, Milton, Poolville & Evansville	12.31	1.25	1.00		.07
Roofers	14.92	.65			.03

SUPERSEDEAS DECISION

STATE: Alabama
COUNTY: See Below*
DECISION NUMBER: AL80-1112
DATE: Date of Publication
Supersedes Decisions Nos.: AL77-1090 dated July 8, 1977 in 42 FR 35509; AL80-1030 dated January 4, 1980 in 45 FR 1340.
DESCRIPTION OF WORK: Residential Construction consisting of single family homes and apartments up to and including 4 stories.

*Counties: Cullman, Jackson, Limestone, Morgan, Madison, and Marshall

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters	$5.10				
Cement Masons	6.00				
Drywall Finishers	7.00				
Drywall Hangers	5.00				
Electricians	6.62				
Laborers	3.60				
Painters, brush	7.25				
Plumbers and Pipefitters	6.50				
Roofers	5.00				
Sheet Metal Workers	4.50				
Truck Drivers	3.60				
POWER EQUIPMENT OPERATORS:					
Backhoe	6.20				
Bulldozer	5.13				
Front End Loader	5.77				
Tractor Operator	5.60				

SUPERSEDEAS DECISION

STATE: KENTUCKY
COUNTIES: ALLEN, BALLARD, BUTLER, CALDWELL, CALLOWAY, CARLISLE, CHRISTIAN, CRITTENDEN, DAVIESS, EDMONSON, FULTON, GRAVES, HANCOCK, HENDERSON, HICKMAN, HOPKINS, LIVINGSTON, LOGAN, LYON, MCRACKEN, MCLEAN, MARSHALL, MUHLENBERG, OHIO, SIMPSON, TODD, TRIGG, UNION WARREN, AND WEBSTER.
DECISION NUMBER: KY80-1106
DATE: DATE OF PUBLICATION
Supersedes Decision Number 79-1135, dated October 19, 1979, in 44 FR 60520
DESCRIPTION OF WORK: HEAVY & HIGHWAY CONSTRUCTION PROJECTS

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS	$ 9.70	.45	.35		
CARPENTERS:					
Heavy Rate of Pay	11.50	.45	.30		.05
Highway Rate of Pay	10.80	.45	.20		.05
CEMENT MASONS	10.35	.90	.40		
ELECTRICIANS (OUTSIDE):					
Linemen	12.65	.55	13%		% of 1%
Cable splicers	12.00	.55	13%		% of 1%
IRONWORKERS	14.70	.55	1.05		.045
MILLWRIGHTS:					
Heavy Rate of Pay	12.25	.45	.30		.05
Highway Rate of Pay	11.65	.45	.30		.05
PAINTERS:					
Brush & Roller	10.05	.50			
Sandblast & Power Tools	10.50	.50			
BRIDGE WORK - Brush, Roller, Spray, & Sandblast	11.05	.50			
PILEDRIVERMEN:					
Heavy Rate of Pay	11.75	.45	.30		.05
Highway Rate of Pay	11.15	.45	.30		.05
PLUMBER & PIPEFITTERS	14.35	.75	1.00		.09

LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$ 9.22	.40	.70		
GROUP 2	9.42	.40	.70		
GROUP 3	9.52	.40	.70		
GROUP 4	10.12	.40	.70		

LABORERS' CLASSIFICATIONS DEFINITIONS

GROUP 1 - Asphalt plant laborers, concrete laborers, asphalt laborers, storm & sanitary sewer laborers, carpenter tenders, cement mason tenders, mesh handlers & placers, landscaping and seeding, planters & tree-trimmers, sign guard rail & fence installers, grade checkers, aging & curing of concrete, truck spotters & dumpers, batch truck dumpers, flagmen, rip-rap & grouters, dredging laborers, right of way laborers, wrecking & demolition laborers, drill tender, & all hand digging and hand back filling.

GROUP 2 - Mason drills, jack hammers, paving breakers, chain saw, concrete saw, paving joint machine, vibrator operator, power driven Georgia buggy or wheel barrow, sand blaster & concrete chippers, green concrete cutting, brickmason tenders & mortar mixers, pipe layers, joint maker, batter board man (sanitary & storm sewer), dry cement handlers, concrete rubbers, walk-behind tamper machine, walk-behind trenching machine, surface grinderman, hand operated grouter & grinder machine, operator & deckhand scow man, burner & welder.

GROUP 3 - Powderman and blasters, side rail setters - including rail paved ditches, tunnel laborers (free air), gunnite operators & mixer man, gunnite nozzleman, asphalt luteman & rakeman, air tact driller (all types), grout pump operator.

GROUP 4 - Tunnel blasters, tunnel muckers (free air), miners & drillers (free air), Caisson workers (free air).

POWER EQUIPMENT OPERATORS: HEAVY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS A	$12.07	.50	1.00		.08
CLASS B	9.74	.50	1.00		.08
CLASS C	8.84	.50	1.00		.08
CLASS D	12.32	.50	1.00		.08

NOTE: Railroad and Highway bridges across commercially navigable rivers; i.e. navigable to loaded barge tow, (including setting of super structure steel on bridges) shall receive the HEAVY rate of pay.

CLASS A Auto patrol, batcher plant, bituminous paver, cableway, central compressor plant operator, clamshell concrete mixer (21 cu. ft. or over), concrete pump, crane, crusher plant, derrick, derrick boat, ditching and trenching machine, dragline, dredge, engineer, elevator (used for hoisting building materials), elevating grader and all types of loaders, hoe-type machine, hoisting engine, locomotive, Lourneau or carry-all scoop, bulldozer, mechanic, mechanic welder, Orangepeel bucket, pile driver, power blade, roller (bituminous), scarifier, shovel, tractor shovel, truck crane, winch truck, push dozer, high lift, fork lift (regardless of lift height), all types of boom cats, core drill, tow or push boat, A-frame winch truck, concrete paver, grade all, hoist (two or more drums), hyster, pumpcrete, Ross carrier, side boom, tail boom, Rotary drill, mucking machine, rock spreader attached to equipment, scoopmobile, KeCal loader, tower cranes (French, German & other types), hydrocrane, backfiller, gurries, subgrader.

CLASS B- All air compressors (over 600 cu. ft. per min. or greater capacity), bituminous mixer, concrete mixer (under 21 cu. ft.), welding machine, form grader, roller (rock), tugger, tractor (50 H.P. and over), bull float, finish machine, outboard motor boat, well points, flexplane, fireman, boom type tamping machine, truck crane oiler, greaser on grease facilities servicing heavy equipment, switchman or breakman, joint sealing machine, mechanic tender, Thirley oiler, trac-air and road-widening trencher, grout pump, electric vibrator compactor/self-propelled compactor, throttle valve, elevator (one drum or huck hoist), power sweeper (riding type), core drill and caisson drill tender (truck mounted).

CLASS C Bituminous distributor, cement gun conveyor, mud jack, paving joint machine, pump, roller (earth), tamping machine, tractors (under 50 H.P.), vibrator, oiler, concrete saw, burlap and curing machine, hydro-seeder, power form handling equipment, deckhand steerman, hydraulic post driver, core drill and caisson drill tender (track or skid mounted).

CLASS D Operators on cranes with booms one hundred fifty feet (150') and over (including jib).

DECISION NO. KY80-1106 Page 4

POWER EQUIPMENT OPERATORS: HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS A	$10.72	.50	1.00		.09
CLASS B	8.30	.50	1.00		.09
CLASS C	8.68	.50	1.00		.09
CLASS D	8.04	.50	1.00		.09

CLASS A - Auto patrol, batcher plant, bituminous paver, cableway, central compressor plant operator, clamshell, concrete mixer (21 cu. ft. or over), concrete pump, crane, crusher plant, derrick boat, ditching and trenching machine, dragline, elevator, (when used for hoisting any building material), elevating grader and all types of loaders, hoe-type machine, hoisting engine (two or more drums), locomotive, motor scraper, bulldozer, mechanic, orangepeel bucket, pile driver, power blade, roller (bituminous), scarifier, shovel, tractor shovel, truck crane, winch truck, push dozer, high lift, fork lift (regardless of lift height), all types of boom cats, core drill, tow or push boat, A-frame winch truck, concrete paver, grade-all, hoist (two or more drums), hyster, pump-crete, Ross carrier, side boom, rotary drill (5" and over), mucking machine, rock spreader attached to equipment, scoopmobile, TeCal loader, tower cranes, (French German and other types), Hydrocrane, backfiller, gurries, subgrader, tailboom and dredge engineer.

CLASS B Air compressors (over 900 cu. ft. per min.), bituminous mixer, concrete mixer (under 21 cu. ft.), elevator (one drum or buck hoist), welding machine, form grader, grout pump, roller (rock) tractor (50 HP or over), hull float, finish machine, outboard motor boat, electric vibrator compactor/self-propelled compactor, boom type tamping machine, truck crane oiler, switchman or brakeman, mechanic tender, whitley oiler, tractair and road widening trencher, joint sealing machine, rotary drill (under 5"), throttle valve man, tugger, well points, flexplane, fireman, and hoist (one drum).

CLASS C - Greaser on grease facilities servicing heavy equipment.

CLASS D - Bituminous distributors, cement gun, conveyor, mud jack, paving joint machine, pump, roller (earth), tamping machine, tractors (under 50 HP), vibrator, oiler, concrete saw, burlap and curing machine, hydro seeder, power form handling equipment, deckhand oiler, and hydraulic post driver.

DECISION No. KY80-1106 Page 5

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Driver-single axle Dump, flat bed trucks-semi-trailer or pole trailer when used to pull building materials or Equipment-Dump truck Tandem Axle-Driver of Distributors - Drivers on mixed trucks (all types)	$10.15		a		
Driver-Euclid and other heavy earth moving equipment and Low Boy - Winch Truck and A-Frame truck when used in transporting materials & Ross Carrier - Fort Lift truck when used to transport Building materials-Driver on pavement breakers	10.16		a		
Truck Mechanic	10.08		a		
Truck Tender - Mobile Batch Truck Helper	9.80		a		
Greaser, Tire Changer, and Mechanic Helper	9.85		a		

WELDER: Receive rate prescribed for craft performing operation to which welding is incidental.

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FOOTNOTES:

a: Pension 46 dollars a week-applies to Employees who have been employed a minimum of (20) work days within any (90) consecutive day period for that employer

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: KENTUCKY
COUNTIES: ADAIR, BARREN, BELL, BREATHITT, CASEY, CLAY, CLINTON, CUMBERLAND, ESTILL, FLOYD, GARRARD, GREEN, HARLAN, HART, JACKSON, JOHNSON, KNOTT, KNOX, LAWRENCE, LAUREL, LEE, LESLIE, LETCHER, LINCOLN, MCCREARY, MACOFFIN, MARTIN, MENIFEE, METCALFE, MONROE, MORGAN, OWSLEY, PERRY, PIKE, POWELL, PULASKI, ROCKCASTLE, RUSSELL, TAYLOR, WAYNE, WHITLEY AND WOLFE.
DECISION Number: KY80-1107 DATE: DATE OF PUBLICATION
Supersedes Decision Number KY79-1137, dated October 19, 1979, in 44 FR 60523
DESCRIPTION OF WORK:

HEAVY & HIGHWAY PROJECTS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS	$10.40	.45	.45	.25	
CARPENTERS	9.90	.45	.45	.25	
CEMENT MASONS	9.75	.45	.45	.25	
ELECTRICIANS:					
Linemen	14.60	.70	3%		½ of 1%
Groundmen	10.95	.70	3%		½ of 1%
IRONWORKERS:					
Reinforcing	9.80	.45	.45	.25	
Structural	10.00	.45	.45	.25	
PAINTERS					
Guard Rail	10.60	.45	.45	.25	
Structural	11.60	.45	.45	.25	
PILEDRIVERMEN	9.55	.45	.45	.25	
PLUMBERS & PIPEFITTERS	14.75	.70	1.20		.09
SHEET METAL WORKERS	10.45	.45	.45	.25	
TRUCK DRIVERS:					
Truck tender	7.20	.45	.45	.25	
Driver - winch truck and A-frame truck when used in transporting materials	7.30	.45	.45	.25	
Driver - distributor, dump truck tandem axle, semi-trailer or pole trailer	8.40	.45	.45	.25	
Driver - mixer trucks (all types)	8.45	.45	.45	.25	
Truck mechanic	8.50	.45	.45	.25	
Driver - 3 tons & under, tire changer & mechanic tender	8.53	.45	.45	.25	
Driver - pavement breakers	8.55	.45	.45	.25	
Driver - over 3 tons	8.74	.45	.45	.25	
Driver - Euclid and other earth moving equipment, & low boy	9.31	.45	.45	.25	
Greaser on grease facilities	9.40	.45	.45	.25	

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.					
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).					
LABORERS:					
Asphalt lute & rakerman, side sail setter, Drill operator of percussion type drills which are both powered and propelled by an independent air supply	$ 8.35	.45	.45	.25	
	9.75	.45	.45	.25	
Operator of following: wagon drill, Chain Saw, Jack Hammer, Concrete Saw, Sand Blaster, Concrete Chipper, Pavement Breaker, Vibrator, Power wheel Barrow, Power Buggy, - Sewer Pipe Layer, Bottom Man, Dry Cement Handler, Concrete Rubber, Mason Tender,	8.30	.45	.45	.25	
Gunnite Operator & Nozzleman	7.45	.45	.45	.25	
Hand Blade Operator, Deck Hand or Scow Man	7.20	.45	.45	.25	
Batch Truck Dumper,	8.20	.45	.45	.25	
Caisson Worker	8.45	.45	.45	.25	
General Laborer, & Flagmen	7.95	.45	.45	.25	

LABORERS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Tunnel Miner, Blaster, and Driller (Free Air)	$ 8.90	.45	.45	.25	
Tunnel Mucker (Free Air)	8.55	.45	.45	.25	
Tunnel Laborer (Free Air)	8.50	.45	.45	.25	
Powderman	9.55	.45	.45	.25	

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
HEAVY CONSTRUCTION:					
CLASS A	$12.07	.50	1.00	.08	
CLASS B	9.24	.50	1.00	.08	
CLASS C	8.44	.50	1.00	.08	
CLASS D	12.32	.50	1.00	.08	

NOTE: Railroad and Highway bridges across commercially navigable rivers; i.e. navigable to loaded barge two, (including setting of super structure steel on bridges) shall receive the HEAVY rate of pay.

CLASS A - Auto patrol, batcher plant, bituminous paver, cableway, central compressor plant operator, clamshell, concrete mixer (21 cu. ft. or over), concrete pump, crane, crusher plant, derrick derrick boat, ditchin and trenching machine, dragline, dredge engineer, elevator (used for hoisting building materials), elevating grader and all types of loaders, hoe-type machine, hoisting engine, locomotive, LeTourneau or carry-all scoop, bulldozer, mechanic, mechanic welder, Orangepeel bucket, pile driver, power blade, roller (bituminous), scarifier, shovel, tractor shovel, truck crane, winch truck, push dozer, high lift, fork lift (regardless of lift height), all types of boom cats, core drill, two or push boat, A-frame winch truck, concrete paver, grade all, hoist (tow or more drums), Hyster, pumpcrete, Ross carrier, side boom tail boom, Rotary drill, Mucking machine, rock spreader attached to equipment, scoopmobile, KeCal loader, tower cranes, (French, German & other types), Hydrocrane, backfiller, gurries, subgrader.

CLASS B - All air compressors (over 900 cu. ft. per min, or greater capacity), bituminous mixer, concrete mixer (under 21 cu. ft.), welding machine, form grader, roller (rock), tugger, tractor (50 H.P. and over), bull float, finish machine, outboard motor boat, well points, flexplane, fireman, boom type tamping machine, truck crane oiler, greaser on grease facilities servicing heavy equipment, switchman or brakeman, joint sealing machine, mechanic helper, Whirley oiler, tract-air and road-widening trencher, grout pump, electric vibrator compactor/self-propelled compactor, throttle valve, elevator (one drum or buck hoist), power sweeper (riding type), core drill and caisson drill helper (truck mounted).

CLASS C Bituminous distributor, cement gun conveyor, mud jack, paving joint machine, pump, roller (earth), tamping machine, tractors (under 50 H.P.), vibrator, oiler, concrete saw, burlap and curing machine, hydro-seeder, power form handling equipment, deckhang, steerman, hydraulic post driver, core drill and caisson drill helper (track or skid mounted).

CLASS D Operators on cranes with booms one hundred fifty feet (150') and over (including jib).

POWER EQUIPMENTEN OPERATOS: HIGWAY CONSTRUCTION:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS A	$10.72	.50	1.00		.08
CLASS B	8.30	.50	1.00		.08
CLASS C	8.68	.50	1.00		.08
CLASS D	8.04	.50	1.00		.08

CLASS A - Auto patrol, batcher plant, bituminous paver, cableway, central compressor plant operator, clamshell, concrete mixer (21 cu. ft. or over), concrete pump, crane, crusher plant, derrick boat, ditching and trenching machine, dragline, elevator (when used for hoisting any building material), elevating grader and all types of loaders, hoe-type machine, hoisting engine (two or more drums), locomotive motor scraper, bulldozer, mechanic, orangepeel bucket, pile driver, power blade, roller (bituminous), scarifier, shovel, tractor shovel, truck crane, winch truck push dozer, high lift, fork lift (regardless of lift height), all types of boom cats, core drill, two or push boat, A-frame winch truck, concrete paver, grade-all, hoist (two or more drums), hyster, pumpcrete, Ross carrier, side boom, rotary drill (5" and over), muching machine, rock spreader attached to equipment, scoopmobile, KeCal loader, tower cranes, (French, German and other types), hydrocrane, backfiller, gurries, subgrader, tailboom and dredge engineer.

CLASS B All air compressors (over 900 cu. ft. per min.), bituminous mixer, concrete mixer (under 21 cu. ft.), elevator one drum or buck hoist), welding machine, form grader, grout pump, roller (rock), tractor (50 HP or over), bull float, finish machine, outboard motor boat, electric vibrator, compactor/self-propelled compactor, boom type tamping machine, truck crane oiler, switchman or brakeman, mechanic helper, whirley oiler, tractair and road widening trencher, joint sealing machine, rotary drill (under 5"), throttle valve man, tugger well points, flexplane, fireman, and hoist (one drum),

CLASS C Greaser on grease facilities servicing heavy equipment.

CLASS D Bituminous distributors, cement gun, conveyor, mud jack, paving joint machine, pump, roller (earth), tamping machine, tractors (under 50 HP), vibrator, oiler, concrete saw, burlap and curing machine, hydroseeder, power form handling equipment, deckhand oiler, and hydraulic post driver.

SUPERSEDEAS DECISION

STATE: KENTUCKY COUNTIES: Boone, Campbell, Kenton, & Pendleton

DECISION NUMBER: KY80-1108 DATE: Date of Publication

Supersedes Decision Number KY79-1139, dated October 19, 1979, in 44 FR 60527

DESCRIPTION OF WORK: HEAVY & HIGHWAY CONSTRUCTION PROJECTS

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS	$14.30	.90	1.10		.075
CEMENT MASONS	14.23	.90	.95		
ELECTRICIANS	15.30	.70	3%+.80		½ of 1%
IRONWORKERS:					
Reinforcing	14.33	1.00	1.65		.02
Structural	14.23	1.00	1.45		.03
PAINTERS:					
*Brush	14.35		.50		
*Spray	14.85		.50		
*Sandblast	15.10		.50		
*Painters on Bridges, when highest point of clearance is 60' or more, shall receive $1.00 per hour in addition to the base rate of work classifications					
PILEDRIVERMEN	14.30	.90	1.10		.075
PIPEFITTERS	14.60	1.075	1.85		.08
PLUMBERS	14.97	1.25	1.50		.07
WELDERS: Receive rate prescribed for craft performing operation to to which welding is incidental					

DECISION NO. KY80-1108

LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	10.77	.70	.90		.10
GROUP 2	10.895	.70	.90		.10
GROUP 3	10.97	.70	.90		.10
GROUP 4	11.12	.70	.90		.10
GROUP 5	11.42	.70	.90		.10

GROUP 1 - Laborers (construction), Plant Laborers or Yardmen, Right-of-way Laborers, Landscape Laborers, Utility Men or Handymen, Joint Setter, Flagmen, Carpenter Tender, Waterproofing Laborers, Slurry Seal, Seal Coasting Surface Treatment or Road Mix Laborers, Riprap Laborers or Grouter, Asphalt Laborers, Dump Man (batch trucks), Guardrail and Fence Installer, Mesh Handler and Placers, Concrete Curing Applicator, Scaffold Erector

GROUP 2 - Asphalt Raker, Concrete Puddler, Kettleman (pipeline), All Machine Driven Tools (gas, electric, air), Mason Tenders, Motar Mixers, Sheeting and Shoring Man, Surface Grinder Man, Power Buggy and Wheelbarrow (power)

GROUP 3 - Form Setter, Bottom Man, Welder Tender (pipeline), Concrete Saw Man, Cutting with Burning Torch, Pipe Layer, Hand Spiker (railroad), Car Pusher (without air), Underground Man (working in sewer and waterline, Cleaning and Repairing and reconditioning), Tunnel Laborer (without air), and Caisson, Cofferdam (below 25 ft. deep), Air Track and Wagon Drill

GROUP 4 - Blaster and Powder man, Muckers, Wrencher (mechanical joint and utility pipeline), Yarner, Top Lander

GROUP 5 - Curb Setter, and Cutter, Miner (without air), Concrete Crew in Tunnels, Utility Pipeline Tapper, Gunnite Nozzleman, Waterline Caulker

DECISION NO. KY80-1108

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MASTER MECHANICS					
CLASS A	14.19	1.11	1.25		.11
CLASS B	13.94	1.11	1.25		.11
CLASS C	13.82	1.11	1.25		.11
CLASS D	12.35	1.11	1.25		.11
CLASS E	9.49	1.11	1.25		.11

CLASS A - Air Compressor on Steel Erection, Boiler Operator on Compressor or Generator when Mounted on a Rig, Cableways, Combination Concrete Mixer & Tower, Concrete Plants (over 4 yds. capacity), Concrete Pumps, Cranes (all types, including A-Frame, Boom Truck, Cherry Picker), Derricks, Draglines, Dredge (dipper, clam or suction), Elevating Grader or Euclid Loader, Floating Equipment (all types), Helicopter Crew (operator hoist or winch), Hoes (all types), Hoisting Engines or Shaft or Tunnel Work, Hoisting Engines, Industrial Type Tractor, Jet Engine Dryer (D8 or D9) Diesel Tractor, Locomotives (standard gauge), Maintenance Operator Class A Mixer, Paving (single or double drum), Mucking Machine, Multiple Scraper, Piledriving Machines (all types), Power Shovels, Quad 9 (double pusher), Refrigerating Machine (freezer operation), Rotary Drill on Caisson Work, Slip Form Paver, Survey Crew Party Chief, Tower Derricks, Tree Shedder, Trench Machines (over 24" wide), Truck Mounted Concrete Pumps Tug Boat, Tunnel Machine, Wheel Excavator,

CLASS B - Asphalt Paver, Automatic Subgrader Machine, Self-propelled (CMI type), Bulldozer, Endloader, Kolman Loader (production type - Dirt), Lead Greaseman, Maintenance Operators Class B, Power Grader, Power Scoops & Scrapers, Push Cat, Trench Machines (24" wide & under)

CLASS C - Air Compressors on Tunnel Work (low pressure), Asphalt Plant, Locomotive (narrow guage), Mixers, Concrete (more than 1 bag capacity), Mixers, Side Loader (1 bag capacity), Power Boilers over 15 lbs. pressure, Pump Operator Installing and Operating Well Points, Pumps (4" and over discharge), Rollers (asphalt, utility operator - small equipment), Welding Machines & Generators

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POWER EQUIPMENT OPERATORS (CONT'D)

GROUP D - Backfiller, Bar, Joint & Mesh Installing Machines, Batch Plant, Bull Floats, Burlap & Curing Machines, Compressors (portable - sewer, heavy & highway), Concrete Plant (capacity 4 yds. & under), concrete Saw (multiple), Conveyors (highway), Crushers, Deckhand, Drill (highway with integral power), Farm Type Tractors with Attachments (highway), Finishing Machines, Fireman, Floating Equipment (all types), Fork Lift (highway), Form Trenches, Hydro Seeders, Plant Mixers, Post Driver, Post hole Digger (power auger), Power Brush Burner, Power Form Handling Equipment, Road Widening Trencher, Rollers (brick, grade, macadam), Self-propelled Power Spreaders, Self-propelled Subgraders, steam Fireman, Survey instrument man, Tractor (pulling sheepfoot Roller or grader), Vibratory Compactors (with integral power), Boring Machine Operators (48" or less), Hydro Hammer, Pavement Breaker

CLASS E - Drum Fireman, Asphalt Plant, Tenders-inboard-outboard Motor Boat-Launch, Oil Heaters (Asphalt Plant), Oilers, Power Driven Heaters, Pumps (under 4: discharge), Signalmen, Survey Rodmen or Chainmen, Tire Repairmen

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DECISION NO. KY80-1108

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Truck Tender	9.68	*a	*b		
Mobile Batch Truck Tender	9.68	*a	*b		
Greaser, Tire Changer, & Mechanic Tender	9.79	*a	*b		
Driver - Single Axle Dump & Flat Bed Trucks, Semi-Trailer or Pole Trailer (when used to pull building materials and equipment), Dump Truck Tandem Axle, Distributor, & Truck Mechanic	9.97	*a	*b		
Driver - Mixer Truck (all types)	10.00	*a	*b		
Driver - Euclid & other Heavy Earth Moving Equipment, Low Boy, Winch Truck & A-Frame Truck (when used in transporting materials), Ross Carrier, Fork Lift Truck (when used to transport building materials), & Pavement Breakers	10.07	*a	*b		

a. Health & Welfare Benefits are $26.00 per week
b. Pension benefits are $24.00 per week

*Fringe Benefits apply to Employees who have been employed a minimum of twenty (20) work days within any ninety (90) consecutive day period for that employer

Unlisted classifications included within the scope of the classifications listed may be added after award only as provided in the labor standard contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: SOUTH CAROLINA
COUNTIES: CLARENDON, DARLINGTON, DILLON, FLORENCE, LEE MARION, MARLBORO, SUMTER, & WILLIAMSBURG.
DECISION NUMBER: SC80-1113 DATE: DATE OF PUBLICATION
Supersedes Decision Number SC79-1105, dated July 6, 1979, in 44 FR 39934.
DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION PROJECTS - consisting of single family homes and apartments up to and including four (4) stories.

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
AIR CONDITIONING & HEATING MECHANICS	$ 5.65				
BRICKLAYERS	5.69				
CARPENTERS	5.00				
CEMENT MASONS	5.00				
DRYWALL FINISHERS	5.50				
DRYWALL HANGERS	5.00				
ELECTRICIANS	5.46				
INSULATION INSTALLERS	4.61				
LABORERS:					
Unskilled	3.33				
Mason tenders	3.40				
Mortar mixers	3.50				
PAINTERS	5.00				
PLUMBERS & PIPEFITTERS	5.11				
ROOFERS	5.00				
SHEET METAL WORKERS	4.10				
SOFT FLOOR LAYERS	4.00				
TILE SETTERS	7.03				
TRUCK DRIVERS	3.70				
WELDERS - Rate for craft.					
POWER EQUIPMENT OPERATORS:					
Backhoe	5.00				
Bulldozer	6.00				
Motor grader	4.17				

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Washington COUNTIES: Statewide
DECISION NUMBER: WA80-5136 DATE: Date of Publication
Supersedes Decision No. WA80-5107 dated March 7, 1980, in 45 FR 15037
DESCRIPTION OF WORK: Building Projects (does not include single family homes and apartments up to and including 4 stories), Heavy and Highway Projects and Dredging

	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:*					
Area 1	$17.64	.85	$1.30		.06
Area 2	18.34	.82	1.45		.18
Area 3	14.64	.72	1.30		.04
BOILERMAKERS	13.51	1.275	1.25	1.00	.04
BRICKLAYERS; MARBLE SETTERS:					
Area 1	14.33	.80	1.00		.05
Area 2	14.19	.80	.40		
Area 3	15.30	.80	1.00		.07
Area 4	15.47	.80	1.55		.16
Area 5	15.66	1.05	1.40		.22
Area 6	15.25	.90	.80		
Area 7	15.23	.75	1.50		.07
Area 8	14.83	.80	1.55		.23
Area 9	15.48	.80	1.65		.06
CARPENTERS:*					
Area 1:					
Carpenters	14.04	.96	1.20		.10
Piledriver; Floor Sanders; Saw Filer; Stationary Power Woodworking Tool Operator	14.19	.96	1.20		.10
Boom Men; Carpenters (creosoted material)	14.29	.96	1.20		.10
Piledriver (creosoted material)	14.44	.96	1.20		.10
Millwrights and Machine Erectors	14.54	.96	1.20		.10
Area 2:					
Carpenters and Drywall Applicators	14.93	.75	.95		.04
Carpenters on creosoted material	15.03	.75	.95		.04
Sawfilers; Stationary Power Saw; Floor Finisher; Floor Layer; Shinglers; Floor Sander and other stationary power woodworking tools	15.06	.75	.95		.04
Millwrights and Machine Erectors	15.43	.75	.95		.04

*See AREA DESCRIPTIONS- Page 4

DECISION NO. WA80-5136 Page 2

CARPENTERS:* (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Area 2: (Cont'd)					
Piledrivers; Bridge, Dock and Wharf Builders	$15.08	.75	.95		.04
Acoustical Workers	15.09	.75	.95		.04
Boommen	15.13	.75	.95		.04
Area 3:					
Acoustical and Drywall Applicator, Automatic Nailing Machine, Carpenters, Form Strippers, Manhole Builders	13.80	1.00	1.00	.65	.07
Floor Layers and Finishers, Stationary Power Saw Operator	13.95	1.00	1.00	.65	.07
Millwrights and Machine Erectors	14.05	1.00	1.00	.65	.07
Instrument Men	14.20	1.00	1.00	.65	.07
Piledrivermen; Bridge, Dock and Wharf Builders	13.90	1.00	1.00	.65	.07
Boommen	14.00	1.00	1.00	.65	.07
CEMENT MASONS:*					
Area 1:					
Cement Masons:					
Zone 1	13.23	.95	1.50		.15
Zone 2	14.28	.95	1.50		.15
Zone 3	14.68	.95	1.50		.15
Zone 4	15.33	.95	1.50		.15
Zone 5	16.08	.95	1.50		.15
Power Troweling Machine Gunnite Operator;					
Zone 1	13.73	.95	1.50		.15
Zone 2	14.78	.95	1.50		.15
Zone 3	15.18	.95	1.50		.15
Zone 4	15.83	.95	1.50		.15
Zone 5	16.58	.95	1.50		.15
Power Tool Operator (grinding, bushing of toxic material):					
Zone 1	14.23	.95	1.50		.15
Zone 2	15.28	.95	1.50		.15
Zone 3	15.68	.95	1.50		.15
Zone 4	16.33	.95	1.50		.15
Zone 5	17.08	.95	1.50		.15

* See AREA and ZONE Descriptions - Page 4

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CEMENT MASONS:* (Cont'd)					
Area 2:					
Cement Masons	$14.63	.85	$1.25		.09
Composition, Color, Mastic, Trowel Machine; Grinder, Power Tool, Gunnite Nozzleman	14.88	.85	1.25		.09
Area 3:					
Cement Masons	12.71	.85	1.25		.02
Composition, Color, Mastic, Trowel Machine, Grinder, Power Tools, Gunnite Nozzleman	12.96	.85	1.25		.02
Area 4:					
Cement Masons	13.10	1.05	1.17	1.00	.20
Composition Materials and power machinery	13.36	1.05	1.17	1.00	.20
ELECTRICIANS:					
Area 1:					
Electricians	16.85	.95	3%+.40		.02
Cable Splicers	17.25	.95	3%+.40		.02
Area 2:					
Electricians	16.65	.95	3%+1.30		.05
Cable Splicers	17.40	.95	3%+1.30		.05
Area 3:					
Electricians	16.50	.95	3%+1.30		.05
Cable Splicers	18.15	.95	3%+1.30		.05
Area 4:					
Electricians	17.87	.98	3%+1.30		.10
Cable Splicers	19.66	.98	3%+1.30		.10
Area 5:					
Electricians	17.75	.90	3%+1.80		.10
Cable Splicers	18.50	.90	3%+1.80		.10
Area 6:					
Electricians	16.50	.90	3%+1.75	5%	.02
Cable Splicers	18.15	.90	3%+1.75	5%	.02
Area 7:					
Electricians	15.14	1.00	3%+1.05	8%	.07
Cable Splicers	16.95	1.00	3%+1.05	8%	.07
Area 8:					
Electricians	17.85	.90	3%+.40		.04
Cable Splicers	19.64	.90	3%+.40		.04

*See AREA Descriptions - page 5

AREA and ZONE DESCRIPTIONS

ASBESTOS WORKERS:
Area 1: Chelan, Clallam, Douglas, Grays Harbor, Island, Jefferson, King, Kitsap, Kittitas, Lewis, Mason, and Okanogan Counties; Pacific County (northern portion); Pierce, San Juan, Skagit, Snohomish, Thurston, Whatcom, and Yakima Counties
Area 2: Clark, Cowlitz, and Klickitat Counties; Pacific County (southern portion); Skamania and Wahkiakum Counties
Area 3: Remaining Counties

BRICKLAYERS; MARBLE SETTERS:
Area 1: Adams County (except City of Othello); Asotin, Columbia, Ferry, Garfield, Lincoln, Pend Oreille, Spokane, and Stevens Counties; Grand Coulee Dam Area in Okanogan County; and Whitman County
Area 2: Benton, Franklin, and Walla Walla Counties
Area 3: Chelan and Douglas Counties; Okanogan (except area of Grand Coulee Dam)
Area 4: Clallam, Island, Jefferson, King, Kitsap, and Snohomish Counties; Skagit County (south of the Cities of Burlington, Sedro-Woolley and Concrete)
Area 5: Clark and Cowlitz Counties; Pacific County (southern portion); Skamania and Wahkiakum Counties, and ten mile strip bordering the Columbia River in Klickitat County
Area 6: Grant County and the portion of Adams County including the City of Othello
Area 7: Kittitas and Yakima Counties; Klickitat County (except a ten mile strip bordering the Columbia River)
Area 8: Grays Harbor, Lewis, and Mason Counties; Pacific County (northern portion); Pierce and Thurston Counties
Area 9: San Juan County; Skagit County (including the Cities of Burlington, Sedro-Woolley, Concrete and north thereof); and Whatcom County

CARPENTERS:
Area 1: All Counties and parts of Counties east of the 120th Meridian
Area 2: All Counties and parts of Counties west of the 120th Meridian except Clark, Cowlitz, and Klickiata Counties; Pacific County (southern portion); Skamania and Wahkiakum Counties
Area 3: Clark, Cowlitz, and Klickitat Counties; Pacific County (southern portion), Skamania and Wahkiakum Counties

AREA DESCRIPTIONS

CEMENT MASONS:
Area 1: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, and Grant Counties; Kittitas County (except for western portion lying one mile west of the City of Easton); Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima Counties:

ZONES 1, 2, 3, and 4
Travel Zone Centers: Moses Lake, Wenatchee, Pasco, Yakima, *Coeur D'Alene, *Walla Walla, Spokane and Lewiston

Area 2: Clallam, Grays Harbor, and Jefferson Counties; King County (southern portion); Kittitas County (western portion lying one mile west of the City of Easton); Lewis and Mason Counties; Pacific County (northern portion); Pierce and Thurston Counties
Area 3: Island, San Jaun, Skagit, and Snohomish Counties; King County (northern portion); Whatcom county
Area 4: Clark, Cowlitz, and Klickitat Counties; Pacific County (southern portion); Skamania and Wahkiakum Counties

ELECTRICIANS:
Area 1: Adams, Ferry, Lincoln, Pend Oreille, Spokane, Stevens, and Whitman Counties
Area 2: Asotin, Benton, Columbia, Franklin, Garfield, Kittitas, Walla Walla, and Yakima Counties
Area 3: Chelan, Douglas, Grant, and Okanogan Counties
Area 4: Clallam, Kefferson, King, and Kitsap Counties
Area 5: Clark, Klickitat, and Skamania Counties
Area 6: Cowlitz and Wahkiakum Counties
Area 7: Grays Harbor, Lewis, Mason, Pierce, Pacific, and Thurston Counties
Area 8: Island, San Juan, Skagit, Snohomish, and Whatcom Counties

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRONIC TECHNICIANS:*					
Area 1:					
Journeyman Installer	$10.08	.69	3%		
ELEVATOR CONSTRUCTORS:*					
Area 1	16.835	1.195	.95	a	.035
Area 2	17.44	1.195	.95	a	.035
Area 3	16.07	1.195	.82	a	.035
GLAZIERS:*					
Area 1	11.79	.42	.50	b	
Area 2	11.83	.47	.55	.77	
Area 3	10.36	.40	1.00	.68	.02
Area 4	11.06	.47	.55	b	
Area 5	13.27	.40	1.05	b	
Area 6	10.69	.42	.70		
Area 7	11.41	.61	.65		.01
INSULATION APPLICATORS:*					
Area 1	9.55	.60	.80		.02
IRONWORKERS:*					
Area 1:					
Reinforcing; Structural; Fence Erectors; Ornamental; Riggers and Signalmen	15.66	.93	1.90		.10
Area 2:					
Reinforcing; Structural; Fence Erectors; Ornamental; Riggers and Signalmen	15.66	.93	1.90		.10
LATHERS:*					
Area 1	11.00	.90	1.25		
Area 2	15.31	.85	1.00		.10
Area 3	12.42	.75	1.55		.06
MASON TENDERS:*					
Area 1:					
Mason Tenders (including Tenders of Plasterers, Bricklayers, Tile Setters, Marble Setters, and Terrazzo Workers; Topping for Cement Finishers and Mortar Mixers)	12.95	.95	1.30		.10

*See AREA Descriptions Page 7

AREA DESCRIPTIONS

ELECTRONIC TECHNICIANS:
Area 1: Adams, Ferry, Lincoln, Pend Oreille, Spokane, Stevens, and Whitman Counties:
(Installation and repair of low-voltage communication and alarm systems, excluding any work under the jurisdiction of a journeyman wireman)

ELEVATOR CONSTRUCTORS:
Area 1: Adams, Asotin, Benton, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, and Whitman Counties
Area 2: Chelan, Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Kittitas, Lewis, and Mason Counties; Pacific County (northern portion); Pierce, San Juan, Skagit, Snohomish, Thurston, Whatcom, and Yakima Counties
Area 3: Clark, Cowlitz, and Klickitat Counties; Pacific County (southern portion); Skamania and Wahkiakum Counties

GLAZIERS:
Area 1: Adams County (northeastern portion); Lincoln County (eastern half); Pend Oreille, Spokane, and Stevens Counties
Area 2: Adams County (southeastern portion); Benton, Columbia, Franklin, and Walla Walla Counties
Area 3: Adams County (southwestern corner); Chelan, Douglas, and Grant Counties; Lincoln County (western half); and Okanogan County
Area 4: Asotin, Garfield, and Whitman Counties
Area 5: Clallam, Island, Jefferson, Grays Harbor, King, Kitsap, Lewis, and Mason Counties; Pacific (northern portion); Pierce, San Juan, Skagit, Snohomish, Thurston, and Whatcom Counties
Area 6: Yakima and Kittitas Counties
Area 7: Clark, Cowlitz, and Klickitat Counties, Pacific County (southern portion); Skamania and Wahkiakum Counties

INSULATION APPLLICATORS:
Area 1: King County

IRONWORKERS:
Area 1: Statewide, except Clark, Cowlitz, and Klickitat Counties Pacific County (southern portion); Skamania and Wahkiakum Counties
Area 2: Clark, Cowlitz, and Klickitat Counties; Pacific County southern portion); Skamania and Wahkiakum Counties

LATHERS:
Area 1: Adams, Asotin, Benton, Chelan, Columbia, Ferry, Franklin, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima Counties
Area 2: Clallam, Island, Jefferson, King, Kitsap, and Lewis Counties; Pacific County (northern portion); Pierce San Juan, Skagit, Snohomish, and Whatcom Counties
Area 3: Clark, Cowlitz, and Klickitat Counties; Pacific County (southern portion); Skamania and Wahkiakum Counties

MASON TENDERS:
Area 1: Clark, Cowlitz, and Klickitat Counties; Pacific County (southern portion); Skamania and Wahkiakum Counties

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:*					
Area 1:					
Drywall Tapers	$12.84	.53	$1.10		.02
Brush	12.99	.53	1.10		.02
Steel; Spray; Steam Cleaning; Roller, over 9" or 10' handle	13.49	.53	1.10		.02
Swing Stage work or high rate (over 30')	13.69	.53	1.10		.02
Bitumastic; Sandblasting; Bridge; Tanks on legs; Tower; Stacks; Steeples	13.79	.53	1.10		.02
Area 2:					
Brush	12.42	.90	1.00	.50	.09
Spray	12.97	.90	1.00	.50	.09
Bridges, High work over 50' (brush)	13.32	.90	1.00	.50	.09
Bridges, High work over 50' (spray)	13.87	.90	1.00	.50	.09
Drywall Finishers	14.23	.80	.80		.06
Area 3:					
General Painters	13.82	.84			.04
Drywall Tapers	14.22	.84			.04
Industrial Painter	14.22	.84			.04
Towers, Steeplejack	14.57	.84			.04
Area 3:					
Striper	14.99	.84	.25		
PLASTERERS:*					
Area 1	12.61	.95	1.50		
Area 2	14.79	.85	1.50		.12
Area 3	12.97	.75	1.00		.06
PLASTERERS' TENDERS:*					
Area 1	10.75	.82	1.00		.05
PLUMBERS:*					
Area 1	15.71	.94	1.65	1.61	.12
Area 2	16.63	.87	1.70	2.25	.16
Area 3	16.98	.90	1.45	2.00	.12
Area 4	17.77	1.50	1.85		.13

*See AREA Descriptions Page 10

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS:					
Area 1	$13.06	.85	$1.45		.10
Area 2	14.49	.85	.60		.04
Area 3:					
Roofers; Waterproofers	15.08	.85	1.00		.03
Slate and Tile Roofers	15.33	.85	1.00		.03
Area 4:					
Roofers; Waterproofers	14.13	.85	1.10		.10
Slate and Tile Roofers	14.38	.85	1.10		.10
Area 5:					
Roofers; Waterproofers	12.40	.85	.50		.01
Slate and Tile Roofers	12.90	.85	.50		.01
Area 6:					
Roofers	13.55	.80	1.10		.10
Handling of irritating material (coal, tar or epoxy)	13.80	.80	1.10		.10
Handling of irritating material (coal, tar or epoxy) in confined area	14.05	.80	1.10		.10
SHEET METAL WORKERS:					
Area 1	15.13	3%+.60	1.14		.14
Area 2	17.34	3%+.64	.94		.14
Area 3	15.04	1.10	1.81	1.00	.10
Area 4	14.25	3%+.68	1.06		.04
Area 5	16.65	3%+.73	1.56		.14
Area 6	15.93	3%+.73	1.49		.14
SOFT FLOOR LAYERS:*					
Area 1	11.11	.47	.60		
Area 2	10.66	.40	.90	1.21	
Area 3	11.00	.40	.90	.60	
Area 4	10.41	.47	1.00		
Area 5	13.58	.63	1.25		1%
Area 6	12.415	.60	1.05	c	.12
Area 7	12.91	.63	1.25		1%
Area 8	11.67	.47	.35		
Area 9	11.72	.63	1.25		1%

*See AREA Descriptions - Page 11

AREA DESCRIPTIONS

PAINTERS:
Area 1: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima Counties
Area 2: Clark, Cowlitz, and Klickitat Counties; Pacific County (southern portion); Skamania and Wahkiakum Counties
Area 3: Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pierce, San Juan, Skagit, Snohomish, and Thurston Counties; Pacific County (northern portion); and Whatcom County
Area 4: Statewide except Wahkiakum, Cowlitz and Skamania Counties

PLASTERERS:
Area 1: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima Counties
Area 2: Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, and Mason Counties; Pacific County (northern portion); Pierce, San Juan, Skagit, Snohomish, Thurston, and Whatcom Counties
Area 3: Clark, Cowlitz, and Klickitat Counties; Pacific County (southern portion); Skamania and Wahkiakum Counties

PLASTERERS' TENDERS:
Area 1: All Counties and portions of Counties east of the 120th Meridian

PLUMBERS:
Area 1: Chelan, Clallam, and King Counties; Kittitas County (north of 47°15' N. Lat.); Douglas County (west of the 119°30' W. Long.), Jefferson and Okanogan Counties (except the area lying east of the 119°31' W. Long., North to 48°30' N. Lat., North Lines)
Area 2: Adams County (except area between a line drawn south from the western boundary of Ferry County to Highway #10 eastward to Whitman County), Asotin, Benton, Columbia, Franklin, Garfield, Grant, Klickitat, Walla Walla, and Yakima Counties; Douglas County (east of 119°30' W. Long.); Ferry County (west of a line drawn from a line from Creston in Lincoln County northward to the Canadian Border), Kittitas County (south of 47°15' N. Lat.), Lincoln County (west of a line drawn from Schrag in Adams County northward to the Ferry County Line) and Okanogan County (east of 119°30' W. Long. and south of 48°30' N. Lat.)

AREA DESCRIPTIONS (Cont'd)

PLUMBERS: (Cont'd)
Area 3: Adams County (area between a line drawn south from the western boundary of Ferry County to Highway #10 and eastward to Whitman County), Asotin and Cowlitz Counties; Ferry County (east to a line drawn from Creston in Lincoln County northward to the Canadian Border), Grays Harbor, Kitsap, and Lewis Counties; Lincoln County (east of a line drawn from Schrag in Adams County northward to the Ferry County Line), Mason, Pend Oreille, Pierce, Skagit, Snohomish, Spokane, Stevens, Thurston, Wahkiakum, Whatcom, Whitman, Clark, and Skamania Counties (those portions lying north of a east-west line drawn through Woodland eastward to the Klickitat County Line
Area 4: Clark and Skamania Counties south of an east-west line drawn through Woodland eastward to the Klickitat County Line

ROOFERS:
Area 1: Adams, Asotin, Chelan, Columbia, Douglas, Ferry, Garfield, Grant, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, and Whtman Counties
Area 2: Benton, Franklin, Kittitas, Klickitat and Yakima Counties
Area 3: Clallam, Jefferson, King, Kitsap, Mason, and Snohomish Counties
Area 4: Cowlitz, Grays Harbor, Lewis, Pacific, Pierce, Thurston, and Wahkiakum Counties
Area 5: Island, San Juan, Skagit, and Whatcom Counties
Area 6: Clark and Skamania Counties

SHEET METAL WORKERS:
Area 1: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima Counties
Area 2: Clallam, Jefferson, Kitsap, and Mason Counties
Area 3: Clark and Skamania Counties
Area 4: Cowlitz, Grays Harbor, Lewis, Pacific, Pierce, Thurston, and Wahkiakum counties
Area 5: King, Kittitas, Island, and Snohomish Counties
Area 6: Whatcom, Skagit, and San Juan Counties

SOFT FLOOR LAYERS:
Area 1: Adams County (northeastern portion); Ferry County; Lincoln County (eastern half); Pend Oreille, Spokane, and Stevens Counties
Area 2: Adams County (southeastern portion); Benton, Columbia, Franklin, and Walla Walla Counties
Area 3: Adams County (southwestern portion); Chelan, Douglas, and Grant Counties, Lincoln County (western half); Okanogan County
Area 4: Asotin, Garfield, and Whitman Counties
Area 5: Island, King, Kitsap, Skagit, Snohomish, and Whatcom Counties
Area 6: Clark, Cowlitz, and Klickitat Counties; Pacific County (southern portion); Skamania and Wahkiakum Counties
Area 7: Grays Harbor, Lewis, and Mason Counties; Pacific County (northern portion); Pierce and Thurston Counties
Area 8: Yakima and Kittitas County
Area 9: Whatcom County

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SPRINKLER FITTERS:*					
Area 1	$17.96	.85	$2.70		.11
Area 2	15.34	.85	1.20		.08
TERRAZZO WORKERS; TILE SETTERS:					
Area 1	12.90	.80	2.00		
Area 2	13.52	.80	.40		.05
Area 3	11.96	.80	1.00		.16
Area 4	14.67	.80	1.55		.28
Area 5	15.66	.90	1.20		
Area 6	13.25	.40			
Area 7	14.43	.80	1.80		.16
Area 8	13.84	.80	1.25		.06
TILE, MARBLE and TERRAZZO FINISHERS:					
Area 1	12.58	.80	.75		

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental

*Where Pacific County is stated as "Northern Portion" or "Southern Portion" such areas are defined as follows:

Pacific County (northern portion) - North of Wahkiakum County northern boundary extended due west to the Pacific Ocean

Pacific County (southern portion) - South of Wahkiakum County northern boundary extended due west to the Pacific Ocean

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:
a. Employer contributes 8% of basic hourly rate for over 5 years' service and 6% of basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit. Six Paid Holidays: A thru F.
b. Two weeks' vacation with pay after 1 year employment. Also seven Paid Holidays: A thru F plus Washington's Birthday
c. 4% of all gross wages to be placed to the credit of the employee with less than one year's service - 6% of all gross wages to be placed to the credit of the employee with more than one year of service.

AREA DESCRIPTIONS

SPRINKLER FITTERS:
Area 1: Skagit, Snohomish, King, Island, Kitsap, Pierce, and Thurston Counties
Area 2: Remaining Counties

TERRAZZO WORKERS; TILE SETTERS:
Area 1: Adams County (except that portion including the City of Othello), Asotin, Columbia, Ferry, Garfield, Lincoln, Pend Oreille, Spokane, Stevens, and Whitman Counties, and Grand Coulee Dam area in Okanogan County
Area 2: Benton, Franklin, and Walla Walla Counties
Area 3: Chelan, and Douglas Counties, Okanogan County (except area of Grand Coulee Dam)
Area 4: Clallam, Island, Jefferson, King, and Kitsap Counties, Skagit County (south of the Cities of Burlington, Sedro-Woolley and Concrete); Snohomish County
Area 5: Clark, and Cowlitz Counties; Pacific County (southern portion); Skamania and Wahkiakum Counties, and a ten-mile strip bordering the Columbia River in Klickitat County
Area 6: Grant County and that portion of Adams County including the City of Othello
Area 7: Grays Harbor, Lewis, Mason, Pierce, and Thurston Counties
Area 8: San Juan County; Skagit County (including the Cities of Burlington, Sedro-Woolley, Concrete and north thereof); Whatcom County

TILE, MARBLE and TERRAZZO FINISHERS:
Area 1: All Counties west of the Cascade Mountain Range (except Clark, Cowlitz, and Klickitat Counties; Pacific County (southern portion); Skamania and Wahkiakum Counties

LINE CONSTRUCTION

	BASE ZONE	ZONE 1	ZONE 2	ZONE 3	ZONE 4
Group 1: Cable Splicer, Leadman Pole Sprayer	$16.15	$17.40	$18.15	$18.90	$20.15
Group 2: Lineman, Pole Sprayer, Heavy Line Equipment Man, Certified Lineman Welder	14.59	15.84	16.59	17.34	18.59
Group 3: Tree Trimmer	13.17	14.42	15.17	15.92	17.17
Group 4: Line Equipment Man	12.57	13.82	14.57	15.32	16.57
Group 5: Head Ground (Chipper), Head Groundman, Powderman, Jackhammer Man	10.99	12.24	12.99	13.74	14.99
Group 6: Groundman	10.32	11.57	12.32	15.07	14.30

FRINGE BENEFITS PAYMENTS:	GROUPS 1 to 3	GROUPS 4 to 6
Health and Welfare	$0.45	$0.45
Pension	3%+1.70	3%+1.10
Vacation	0.10	0.10
Apprenticeship Training	1/2%	1/2%

ZONE DESCRIPTIONS

BASE ZONE* 0 to 3 miles radius from the geographical center of the Cities listed below
ZONE 1: 3 to 20 miles radius
ZONE 2: 20 to 35 miles radius
ZONE 3: 35 to 50 miles radius
ZONE 4: Over 50 miles radius

Spokane	Ellensburg	Astoria	Medford	Corvallis
Tacoma	Ephrata	Baker	Portland	Coeur D'Alene
Walla Walla	Everett	Burns	Pendleton	Kellog
Wenatchee	Kennewick	Bend	Salem	Lewiston
Yakima	Longview	Eugene	Roseburg	Orofino
Wilbur	Olympia	Seattle	Lakeview	The Dalles
Klamath Falls	Bellingham	Umatilla	Sand Point	

*BASE ZONE rate is paid when working out of employer's permanent shop.

LABORERS (AREA 1)	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
BUILDING CONSTRUCTION					
All Counties and portions of Counties East of the 120th Meridian					
Group 1	$11.80	.97	$1.10		.10
Group 2	12.05	.97	1.10		.10
Group 3	12.30	.97	1.10		.10
Group 4	12.55	.97	1.10		.10

LABORERS (Area 1)*
All Counties and portions of Counties East of the 120th Meridian

HEAVY and HIGHWAY CONSTRUCTION

GROUPS	ZONE 1	ZONE 2	ZONE 3	ZONE 4	ZONE 5
1	$ 11.80	$12.85	$13.25	$13.90	$14.65
2	12.05	13.10	13.50	14.15	14.90
3	12.30	13.35	13.75	14.40	15.15
4	12.55	13.60	14.00	14.65	15.40

FRINGE BENEFITS:
Health and Welfare $ 0.97
Pension 1.10
Apprenticeship Training 0.10

*Underground Work -10% additional

*See ZONE DESCRIPTIONS - following TRUCK DRIVERS' Classifications

LABORERS (Area 1)
All Counties and portions of Counties East of the 120th Meridian

BUILDING, HEAVY, and HIGHWAY CONSTRUCTION

Group 1: Brush Hog Feeder; Carpenter Tender; Concrete Crewman (to include: Stripping of forms, hand operating jacks on slip form construction, application of concrete curing compounds, Pumpcrete Machine, Signaling, handling the nozzle of Squeeze-crete or similar machine - 6 in. and smaller); Crusher Feeder; Demolition (to include: clean-up, burning, loading, wrecking and salvage of all material); Dumpman; Fence Erector (to include: Guard Rail, Guide and Reference Post, Sign Posts, and Right-of-way Markers); Flagman; General Laborer; Grout Machine Header Tender; Nippers; Riprap Man; Scaffold Erector, wood or steel; Scaleman; Stake Jumper; Structural Mover (to include: separating foundation, preparation, cribbing, shoring, jacking and unloading of structures); Tailhoseman (water nozzle); Timber Bucker and Faller (by hand); Truck Loader; Well-point Man; Window Cleaner; Miner Class "A" - Bull Gang, Pump Crete Crewman including Distribution Pipe, Assembling and Dismantle and Nipper

Group 2: Asphalt Raker; Asphalt Roller, walking; Cement Finisher Tender; Cement Handler; Concrete Saw, walking; Demolition Torch; Dope Pot Fireman, non-mechanical; Driller Tender (when required to move and position machine); Form Cleaning Machine Feeder; Stacker; Form Setter, paving; Grade Checker using level; Jackhammer Operator; Nozzleman (to include: Squeeze and Flow-crete Nozzle); Nozzleman, water, air or steam; Pavement Breaker; Pipelayer, corrugated metal culvert; Pipelayer, multi-section; Pot Tender; Powderman Tender; Power Buggy Operator; Power Tool Operator, gas, electric, pneumatic; Railroad Equipment, power driven, except dual mobile power Spiker or Puller; Railroad power Spiker or Puller, dual mobile; Rodder and Spreader; Sandblast Tailhoseman; Tamper (to include: operation of Barco, Essex and similar Tampers, and Pavement Breakers); Trencher, Shawnee; Tugger Operator; Vibrator, under 4 inches; Wagon Drills; Water Pipe Liner; Wheelbarrow, power driven; Miner Class "B" - Brakeman, Finisher, Vibrator and Form Setter

Group 3: Air Track Drill; Brush Machine (to include: Horizontal Construction Joint Clean-up Brush Machine, power propelled); Caisson Worker, free air, Chain Saw Operator and Faller; Concrete Stack (to include: Laborers when 40 ft. high); Gunnite (to include: operation of machine and nozzle); High Scaler; Hod Carrier; Laser Beam Operator (to include: Grade Checkers and Elevation control); Monitor Operator (track or similar mounting); Mortar Mixer; Nozzleman (to include: Jet Blasting Nozzleman, over 1,200 lbs., Jet Blast Machine, power propelled, Sandblast Nozzle); Pipelayer (to include: working Topman, Caulker, Collarman, Jointer, Mortarman, Rigger, Jacker, Shorer, Valve or meter Installer); Pipewrapper; Vibrator, 4 inches and over; Miner Class "C" - Miner and Nozzleman for concrete and Laser Beam Operator in Tunnels

Group 4: Drills with dual masts; Powderman; Miner Class "D" - Raise and Shaft Miner and Laser Beam Operator on Raises and Shafts

LABORERS (Area 2) All Counties West of the 120th Meridian (except those enumerated in Areas 3 those enumerated in Areas 3 and 4 and the Northern portion of Pacific County	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1-A	$7.90	.95	$1.30		.08
Group 1-B	12.93	.95	1.30		.08
Group 2	13.27	.95	1.30		.08
Group 3	13.41	.95	1.30		.08
Group 4	13.51	.95	1.30		.08

Group 1A: Landscape Laborers; Window Washers

Group 1-B: Asphalt Laborer; Batch Weighman; Broomers; Brush Cutter; Brush Hog Feeder; Burners; Car and Truck Loader; Cement Handler; Changehouse or Dry Shack; Chocker Setter; Clean up Laborer; Concrete Form Stripper; Concrete and Clean up Laborer; Concrete Form Stripper; Concrete and Monolithic Laborer; Crusher Feeder; Curing Laborer; Demolition, wrecking and moving; Ditch Digger; Drierman; Dumpman; Elevator Feeders; Faller and Bucker, hand; Fence Laborer; Fine Graders; Flagman; Form Setter; Grout Machine Header Tender; Header Laborer and Guardrial Erector; House Wrecker; Material Yard Man (including electrical); Nipper-Swamper; Pilot Car; Pitman; Pot Tender; Rip Rap Man; Scaleman; Signalman; Skipman; Sloper Sprayman; Stockpiler; Toolroom Man (at job site); Track Laborer; Truck Spotter

LABORERS (AREA 2) (Cont'd)
All Counties West of the 120th Meridian (except those enumerated in Areas 3 and 4) and the Northern portion of Pacific County

Group 2: Air, gas or electric Vibrating Screed; Anchor Machine; Ballast Regulator Machine; Chippers; Chocker Splicer; Chuck Tender; Clary power Spreader and similar types; Concrete Saw; Gabian Basket Builder; Grinders; Groutman, pressure, including Post Tension Beams; Jackhammer; Multiple Tampers; Pavement Breaker; Pipe Pot Tender; Pipe Wrapper; Powderman Tender; Power Jacks; Power Wheelbarrow or Buggy; Railroad Spike Puller; Ribbon setter, head; Rip Rap Man, head; Rodder; Sloper, over 20 ft.; Stake Hopper; Swinging Scaffold or Boatswain Chair over water or 25 ft., in height; Tamper, multiple and self-propelled; Tamper and similar electric and air operator tools; Topman-Tailman; Track Liners; Wagon Driller and Air Trac Tender Well Point Laborer; Epoxy Technician

Group 3: Bit Grinder and Drill Doctor; Cement Dumper, paving; Cement Finisher Tender; Faller and Bucker Chain Saw; Grade Checker and Transit Man; High Scaler; Laser Beam Operator; Manhole Builder; Mortarman and Hodcarrier; Nozzleman (concrete and rock, sandblast, gunnite, shotcrete); Water Blaster; Pipelayer and Caulker; Powderman; Raker, asphalt; Spreader (carries grade with rodder); Timberman, sewer; Tugger Operator; Vibrator (all); Wagon and Air Trac Operator

Group 4: Caisson Worker; Laser Beam Operator (tunnel); Powderman; Re-timberman; Pipe Reliner (not insert type)

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LABORERS (AREA 3)*
Clark, Cowlitz, Klickitat, Skamamia, and Wahkiakum Counties, and the Southern portion of Pacific County

GROUPS	ZONE 1	ZONE 2	ZONE 3	ZONE 4	ZONE 5	ZONE 6
1	$11.53	$12.03	$12.43	$12.93	$13.83	$14.53
2	11.88	12.38	12.78	13.28	14.18	14.88
3	12.18	12.68	13.08	13.58	14.48	15.18
4	12.43	12.93	13.33	13.83	14.73	15.43

FRINGE BENEFITS:	
Health and Welfare	$0.95
Pension	1.30
Vacation	0.65
Apprenticeship Training	0.10

*See ZONE DESCRIPTIONS - following TRUCK DRIVERS' Classifications

Group 1: General Laborer; Asphalt Plant Laborers; Asphalt Spreaders; Batch Weighman; Broomers; Brush Burners and Cutters; Cat and Truck Loaders; Carpenter Tender; Changehouse Man or Dry Shack Man; Choke Setter; Clean-up Laborers; Concrete Laborers; Culvert, hand labor; Curing, concrete; Demolition, wrecking and moving Laborers; Drillers' Tenders; Dumpers, road oil crew; Dumpman (for grading crew); Elevator Feeders; Fence Builder (including guard rail, median rail, reference post, guide post, right-of-way marker); Fine Graders; Form Strippers (not swinging stages); Landscaping or Planting Laborers; Leverman or Aggregate Spreader (Flaherty and similar types); Loading Spotters; Material Yard Man (including electrical); Powderman Tender; Pittsburgh Chipper Operator or similar types; Ribbon Setters (including steel forms); Rip Rap Man (hand placed); Road Pump Tender; Sewer Labor; Signalman; Skipman; Slopers; Spraymen; Stake Chaser; Stockpiler; Timber Faller and Bucker (hand labor); Toolroom Man (at job site); Tunnel Bull Gang (above ground); Weightman - Crusher (aggregate when used)

LABORERS (AREA 3) (Cont'd)
Clark, Cowlitz, Klickitat, Skamania, and Wahkiakum Counties; and the Southern portion of Pacific County

Group 2: Applicator (including Pot Tender for same) applying protective material by hand or nozzle on utility lines or storage tanks on project; Brush Cutters (power saw); Burners; Choker Splicer; Clary, power spreader and similar types; Clean-up Nozzleman-Greencutter (concrete, rock, etc.); Concrete power Buggyman; Crusher Feeder; Demolition and wrecking charred materials; Grade Checker; Gunite Nozzleman Tender; Gunite and Sand Blasting Post Tender; Handlers or Mixers of all materials of an irritating nature (including cement and lime); Power Tool Operators, includes but not limited to: Dry Pack Machine, Jackhammer, Chipping Guns, Paving Breakers, Vibrators (less than 4" in diameter); Post Hole Digger, air, gas or electric; Vibrating Screed; Tampers; Ribbon Setter, head; Rip Rap Man, head, hand placed; Sand Blasting (wet); Stake Setter; Tunnel-Muckers; Brakemen; Concrete Crew; Bull Gang (underground)

Group 3: Asphalt Rakers; Bit Grinder; Drill Doctor; Drill Operators; Air Tracks; Cat Drills; Wagon Drills; Rubber - mounted Drills and other similar typed; Concrete Saw Operator; Gunite Nozzleman; High Scalers; strippers and Drillers (covers work in swinging stages, chairs or belts, under extreme conditions unusual to normal drilling, blasting, barring-down or sloping and stripping); Laser Beam (pipe laying); Applicable when employee assigned to move, set up, align Laser Beam; Manhole Builder; Powdermen; Power Saw Operators (bucking and falling); Pumpcrete Nozzleman; Sandblasting (dry); Sewer (Pipe Layers); Sewer Timberman; Track Liners; Anchor Machines, Ballast Regulators, multiple Tampers, power Jacks; Tugger Operator; Tunnel Chuck Tenders; Nippers and Timbermen; Vibrators (4" and larger); Water Blaster; Welder

Group 4: Laser Beam (tunnel) - Tunnel Miners; Tunnel Powderman

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (Area 4) Those portions of Chelan, Douglas, Kittitas, Okanogan, and Yakima Counties lying West of the 120th Meridian					
Group 1-A	$7.90	.95	$1.30		.08
Group 1-B	12.93	.95	1.30		.08
Group 2	13.27	.95	1.30		.08
Group 3	13.41	.95	1.30		.08
Group 4	13.51	.95	1.30		.08

Group 1A: Landscape Laborers; Window Washers

Group 1-B: Asphalt Laborer; Batch Weighman; Broomers; Brush Cutter; Brush Hog Feeder; Burners; Car and Truck Loader; Carpenter Tender; Cement Handler; Changehouse or Dry Shack; Chocker Setter; Clean up Laborer; Concrete Form Stripper; Concrete and Clean up Laborer; Concrete Form Stripper; Concrete and Monolithic Laborer; Crusher Feeder; Curing Laborer; Demolition, wrecking and moving; Ditch Digger; Drierman; Dumpman; Elevator Feeders; Faller and Bucker, hand; Fence Laborer; Fine Graders; Flagman; Form Setter; Grout Machine Header Tender; Header Laborer and Guardrial Erector; House Wrecker; Material Yard Man (including electrical); Nipper-Swamper; Pilot Car; Pitman; Pot Tender; Rip Rap Man; Scaleman; Signalman; Skipman; Sloper Sprayman; Stockpiler; Toolroom Man (at job site); Track Laborer; Truck Spotter

LABORERS (AREA 4) (Cont'd)
Those portions of Chelan, Douglas, Kittitas, Okanogan, and Yakima Counties lying West of the 120th Meridian

Group 2: Air, gas or electric Vibrating Screed; Anchor Machine; Ballast Regulator Machine; Chippers; Chocker Splicer; Chuck Tender; Clary power Spreader and similar types; Concrete Saw; Gabian Basket Builder; Grinders; Groutman, pressure, including Post Tension Beams; Jackhammer; Multiple Tampers; Pavement Breaker; Pipe Pot Tender; Pipe Wrapper; Powderman Tender; Power Jacks; Power Wheelbarrow or Buggy; Railroad Spike Puller; Ribbon setter, head; Rip Rap Man, head; Rodder; Sloper, over 20 ft.; Stake Hopper; Swinging Scaffold or Boatswain Chain over water or 25 ft.; in height; Tamper, multiple and self-propelled; Tamper and similar electric and air operator tools; Topman-Pailman; Track Liners; Wagon Driller and Air Trac Tender Well Point Laborer; Epoxy Technician

Group 3: Bit Grinder and Drill Doctor; Cement Dumper, paving; Cement Finisher Tender; Faller and Bucker Chain Saw; Grade Checker and Transit Man; High Scaler; Laser Beam Operator; Manhole Builder; Mortarman and Hodcarrier; Nozzleman (concrete and rock, sandblast, gunnite, shotcrete); Water Blaster; Pipelayer and Caulker; Powderman; Raker, asphalt; Spreader (carries grade with rodder); Timberman, sewer; Tugger Operator; Vibrator (all); Wagon and Air Trac Operator

Group 4: Caisson Worker; Laser Beam Operator (tunnel); Powderman; Re-timberman; Pipe Reliner (not insert type)

POWER EQUUIPMENT OPERATORS (AREA 1)*
All Counties and portions of Counties East of the 120th Meridian

GROUPS	ZONE 1	ZONE 2	ZONE 3	ZONE 4	ZONE 5
1	$12.05	$13.10	$13.50	$14.15	$14.90
2	12.35	13.40	13.80	14.45	15.20
3	12.90	13.95	14.35	15.00	15.75
4	13.05	14.10	14.50	15.15	15.90
5	13.20	14.25	14.65	15.30	16.05
6	13.45	14.50	14.90	15.55	16.30
7	13.70	14.75	15.15	15.80	16.55
8	14.70	15.75	16.15	16.80	17.55

FRINGE BENEFITS:	
Health and Welfare	$1.20
Pension	1.55
Apprenticeship Training	0.08

*See ZONE DESCRIPTIONS - following TRUCK DRIVERS' Classifications

Group 1: Bit Grinders; Bolt Threading Machine; Compressor, under 2,000 cu. ft. per minute, gas, diesel or electric power; Crusher Feeder (mechanical); Deckhand; Driller's Tender; Fireman and Heater Tender; Grade Checker; Tender (Mechanic, H.D.); Oiler, Oiler and Cable Tender, Mucking Machine; Pumpman; Rollers, all types on subgrade (farm type, Case, John Deere and similar - or Compacting or Vibrator) except when pulled by Dozer with operable blade; Steam Cleaner; Welding Machine; Hydro-seeder

POWER EQUIPMENT OPERATORS (AREA 1) (Cont'd)
All Counties and portions of Counties East of the 120th Meridian

Group 2: A-Frame Truck (single-drum); Assistant Refrigeration Plant (under 1,000 tons); Assistant Plant Operator; Fireman or Pugmixer (asphalt); Bagley or Stationary Scraper; Belt Finishing Machine; Blower Operator (cement); Cement Hog; Compressor (2,000 cu. ft. or over, 2 or more, gas, diesel or electric power); Concrete Saw multiple cut); Distributor Leverman; Elevator hoisting materials; Dope Pots (power agitated); Fork lift or Lumber Stacker; Hydra-lift and similar; Gin Trucks (Pipeline); Hoist, single drum; Loader (Bucker, Elevator and Conveyors); Longitudinal Float; Mixer (portable - concrete); Pavement Breaker; Hydra Hammer and similar; Power Broom; Railroad Ballast Regulation Operator (self-propelled); Railroad Power Tamper Operator (self-propelled); Railroad Power Tamper Jack Operator (self-propelled); Spray Curing Machine (concrete); Spreader Box (self-propelled); Straddle Buggy (Ross and similar on construction job site); Tractor (farm type R/T with attachments except Backhoe); Tugger Operator; Ditch Witch or similar

Group 3: A-Frame Truck (2 or more drums); Assistant Refrigeration Plant and Chiller Operator (over 1,000 tons); Backfillers (Cleveland and similar); Beltcrete Conveyors with power pack or similar; Belt Loader (Kocal or similar); Batch Plant and Wet Mix Operator, single unit (concrete); Bending Machine; Boring Machine (earth); Boring Machine (rock under 8" bit) (Quarry Master, Joy or similar); Bump Cutter (Wayne, Saginaw or similar); Canal Lining Machine (concrete); Chipper (without crane); Cleaning and Doping Machine (pipeline); Elevating Belt-type Loader (Euclid, Barber Green or similar); Elevating Grader-type Loader (Dumor, Adams or similar); Generator Plant Engineers (diesel, electric); Gunite Combination Mixer and Compressor; Locomotive Engineer; Mixermobile; Mucking Machines; Soil Stabilizer (P & H or similar); Spreader Machine; Pump; Tractor to D-6 or equivalent and Traxcavator; Transverse Finish Machine, Turnhead Operator

Group 4: Blade Operator (Motor Patrol and attachments); Concrete Pump (Squeeze-crete, Flow-crete, Pump-crete, Whitman and similar); Drills (Churn, Core, Calyx, or Diamond); Equipment Serviceman, Greaser and Oiler; Hoist (2 or more drums or Tower Hoist); Loaders (Overhead and Front-end, under 4 yards R/T); Pave or Curb Extruders (asphalt or concrete); Refrigeration Plant Engineers (under 1,000 tons); Rubber-tired Skidders (R/T with or without attachments); Screed Operator; Surface Heater and Planer Machine; Trenching Machines (under 7 feet depth capacity); Turnhead (with re-screening); Vacuum Drill (Reverse Circulation Drill, under 5" bit)

POWER EQUIPMENT OPERATORS (AREA 1) (Cont'd)
All Counties and portions of Counties East of the 120th Meridian

Group 5: Backhoe (under 1 yard); Crane (25 tons and under); Derrick and Stifflegs (under 65 tons); Drilling Equipment (8" bit and over) (Robbins, Reverse Circulation and similar); Hoe Ram; Piledriving Engineers; Paving (dual drum); Railroad Track Liner Operator (self-propelled); Refrigeration Plant Engineer (1,000 tons and over); Signalman (Whirleys, High-line, Hammerheads or similar)

Group 6: Asphalt Plant Operator; Automatic Subgrader (Ditches and Trimmers (Autograde, ABC, R.A. Hansen and similar on grade wire); Backhoes (1 yard to 3 yards); Batch Plant (over 4 units); Batch and Wet Mix Operator (multiple units, 2 and including 4); Blade (finish and bluetop) (Automatic, CMI, ABC, and similar when used as automatic); Boat Operator; Boom Cats (side); Cableway Controller (Dispatcher); Clamshell Operator (under 3 yards); Concrete Slip Form Paver; Cranes (over 25 tons including 45 tons); Crusher, Grizzle and Screening Plant Operator; Draglines (under 3 yards); Drill Doctor; H.D. Mechanic; H.D. Welder; Loader Operator (Front-end and Overhead, 4 yards including 8 yards); Multiple Dozer Units with single blade; Quad-track or similar equipment; Rollerman (finishing pavement); Rubber-tired Scrapers (one motor with one scraper, under 40 yards); Rubber-tired Scrapers, Multi-engine power with one scraper (Euclid, TS 24 and similar); Rubber-tired Scrapers, one motor with one scraper (40 yards and over); Rubber-tired Scraper, multiple engines with two scrapers; Shovels (under 3 yards); Tractors (D-6 and equivalent and over); Trenching Machines (7 feet depth and over)

Group 7: Backhoe (3 yards and over); Cableway Operators; Clamshell Operator (3 yards and over); Cranes (over 45 tons to 85 tons); Derricks and Stifflegs (65 tons and over); Draglines (3 yards and over); Elevating Belt (Holland type); Loader 360 degrees revolving Kochring Scooper or similar); Loaders (Overhead and Front-end, over 8 yards to 10 yards); Rubber-tired Scrapers (multiple engine with three or more scrapers); Shovels (3 yards and over); Whirleys and Hammerheads, all

Group 8: Cranes (85 tons and over, and all climbing, rail and tower); Loaders (Overhead and Front-end, 10 yards and over); Helicopter Pilot

POWER EQUIPMENT OPERATORS (AREA 2)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
All Counties and portions of Counties West of the 120th Meridian (except those enumerated in Area 3)					
Group 1	$17.00	.95	$1.50		.16
Group 2	16.50	.95	1.50		.16
Group 3	16.06	.95	1.50		.16
Group 4	15.70	.95	1.50		.16
Group 5	15.40	.95	1.50		.16
Group 6	13.60	.95	1.50		.16

Group 1: Cranes, 100 tons and over or 200' of boom including jib and over; Loaders, 8 yards and over; Shovels and attachments, 6 yards and over

Group 2: Cableways; Cranes, over 45 tons up to 100 tons or over 150' including jib; Rollagon; Tower Crane; Helicopter, Winch; Remote Control Operator; Loader, Overhead, 6 yards up to 8 yds.; Shovels, Backhoes, over 3 yards to 6 yards; Slipform Pavers; Scrapers, self-propelled, 45 yards and over; Quad 9, HD 41, D-10

Group 3: Concrete Batch Plant Operator; Bump Cutter; Cranes, 20 tons through 45 tons; Hydralifts; Chipper; Crushers; Derrick; Drilling Machine; Finishing Machine; Loaders, Overhead, under 6 yards; Mechanics; Mixers, Asphalt Plant; Motor Patrol Graders, finishing; Pump Truck mounted Concrete Pump with boom attachment; Piledriver Operator; Screed Man; Shovels, Backhoes, 3 yards and under; Subgrader, Trimmer; Tractors, Backhoe, over 60 HP; Scrapers, Self-propelled, under 45 yards

Group 4: Brooms; Dozers, D-9 and under; Paydozers; A-Frame Crane; Cranes up to 20 tons; Conveyors; Hoists, Air Tugger; Loaders, elevating type; Fork Lifts; Motor Patrol Grader, non-finishing; Mucking Machine; Concrete Pumps; Roller, Plant Mix or Multi-lift materials; Saws, Concrete; Scrapers, Carryall; Spreaders, Blaw Knox; Trenching Machines; Equipment Service Engineer; Oiler Driver on Truck Cranes over 45 tons; Tractor, Backhoe, 60 HP and under

Group 5: Oiler Driver on Truck Cranes, 45 tons and under; Oil Distributors, blower; Assistant Engineer (formerly Oiler classification); Pavement Breaker; Posthole Digger, mechanical; Power Plant; Wheel Tractors, Farmall type; Compressor; Pumps, water; Rollers, other than plant mix;

Group 6: Cradechecker and Stakeman

POWER EQUIPMENT OPERATORS (AREA 3)*
Clark, Cowlitz, Klickitat, Skamania, and Wahkiakum Counties; and the Southern portion of Pacific County

Groups	ZONE 1	ZONE 2	ZONE 3	ZONE 4	ZONE 5	ZONE 6
1	$11.43	$11.83	$12.18	$12.43	$12.68	$12.93
2	11.57	11.97	12.32	12.57	12.82	13.07
3	11.67	12.07	12.42	12.67	12.92	13.17
4	11.83	12.23	12.58	12.83	13.08	13.33
5	11.85	12.25	12.60	12.85	13.10	13.35
6	11.93	12.33	12.68	12.93	13.18	13.43
7	11.99	12.39	12.74	12.99	13.24	13.49
8	12.09	12.49	12.84	13.09	13.34	13.59
9	12.15	12.55	12.90	13.15	13.40	13.65
10	12.21	12.61	12.96	13.21	13.46	13.71
11	12.23	12.63	12.98	13.23	13.48	13.73
12	12.29	12.69	13.04	13.29	13.54	13.79
13	12.37	12.77	13.12	13.37	13.62	13.87
14	12.53	12.93	13.28	13.53	13.78	14.03
15	12.69	13.09	13.44	13.69	13.94	14.19
16	12.87	13.27	13.62	13.87	14.12	14.37
17	13.01	13.41	13.76	14.01	14.26	14.51
18	13.19	13.59	13.94	14.19	14.44	14.69
19	13.33	13.73	14.08	14.33	14.58	14.83

FRINGE BENEFITS:

Health and Welfare	$1.00
Pension	1.47
Vacation	0.50
Apprenticeship Training	0.05

*See ZONE DESCRIPTION - following TRUCK DRIVERS' Classifications

POWER EQUIPMENT OPERATORS (AREA 3)
Clark, Cowlitz, Klickitat, Skamania, and Wahkiakum Counties; and the Southern portion of Pacific County

Group 1: Oiler, including Plant, Crane, Crusher, Guardrail equipment, and Trenching Machine; Assistant Conveyor Operator; Crusher Feederman; Deckhand; Self-propelled Scaffolding Operator; Guardrail Punch Oiler; Pump Operator, under 4"; Brakeman; Switchman; Parts Man (tool room)

Group 2: Blade Operator, pulled type; Truck Crane Oiler - driver, 25 ton capacity or over; Crane Fireman (all equipment except floating); A-Frame Truck Operator, single drum; Tugger or Coffin type Hoist Operator; Driller Tender; Auger; Oiler; Boatman; Fork Lift or Lumber Stacker Operator (on job site); Oiler, combination Guardrail Machines; Temporary Heating Plant Operator; Grade Oiler, required to check grade; Grade Checker; Tar Pot Fireman; Tar Pot Fireman (power agitated); H.D. Repairman Tander; Helicopter Radioman (ground); Roller Operator, grading of base rock (not asphalt)

Group 3: Asphalt Plant Fireman; Pugmill Operator (any type); Truck mounted Asphalt Spreader, with Screed; Compressor Operator (any power), under 2,250 cu. ft. total capacity; Conveyor Operator; Mixer Box Operator (C.T.B., Dry Batch, etc.); Cement Hog; Concrete Saw; Concrete Curing Machine (riding type); Wire Mat or Brooming Machine; Ross Carrier Operator (on job site); Bucket Elevator Loader, Barber Greene and similar types; Hydraulic Pipe Press; Pump Operator (any power), 4" and over; Hydrostatic Pump; Motorman; Ballast Jack Tamper; Bell Boy, phones, etc.; Tamping Machine, mechanical self-propelled; Hydrographic Seeder Machine, straw, pulp or seed; Broom Operator, self-propelled (on job site); Air Filtration Equipment; Welding Machine Operator

Group 4: Screed Operator; Compactor, including Vibratory; Compressor (any power) over 1,250 cu. ft. total capacity; Combination Mixer and Compressor, Gunnite Work; Concrete Mixer Operator, single drum, under five bag capacity; Helicopter Hoist Operator; Floating Equipment Fireman; Lull Hi-lift Operator or similar type; Fork Lift, over 5 ton; Serivce Oiler (Greaser); Hydra Hammer or similar types; Pavement Breaker; Pump Operator, more than 5 (any size); Locomotive, under 40 tons; Roller Operator, Oiling, C.T.B.

Group 5: Extrusion Machine; Wagner Factor or similar type (without blade); Concrete Batch Plant Quality Control Operator; Power Jumbo, Setting Slip Forms, etc. in tunnels; Slip Form Pumps, Power drivan Hydraulic Lifting Device for concrete forms; Hoist, single drum; Elevator Operator; Pulva-mixer or similar types; Chip Spreading Machine Operator; Lime Spreading (on job site); Sweeper (Wayne type) Self-propelled (on job site); Tractor, rubber-tired 50 H.P. Flywheel and under; Trenching Machine, maximum digging capacity 3 ft. depth

POWER EQUIPMENT OPERATORS (AREA 3) (Cont'd)
Clark, Cowlitz, Klickitat, Skamania, and Wahkiakum Counties; and the Southern portion of Pacific County

Group 6: Asphalt Burner and Reconditioner; Pavement Grinder and/or Grooving Machine (riding type); Cast-in-place Pipe Laying Machine; Maginnis Internal Full Slab Vibrator; Concrete Finishing Machine, Clary, Johnson, Bidwell, Burgess Bridge Deck or similar type; Curb Machine, Mechanical Berm, Curb and/or Curb and Gutter; Concrete Joint Machine; Concrete Planer; Concrete Paving Machine; Concrete Spreader; Loaders, rubber-tired type, 2½ cu. yds. and under; Rock Spreaders, self-propelled

Group 7: Roller (any asphalt mix); Beltcrete; Pumpcrete Operator (any type); Fuller-Kenyon and similar; Concrete Pump; Grouting Machine; Concrete Mixer, single drum, five bag capacity and over; Tower Mobile Operator; A-Frame Truck, double drum; Boom Truck; Churn Drill and Earth Boring Machine; Hydraulic Backhoe, wheel type 3/8 cu. yds. and under with or without Front End attachments 2½ cu. yds. and under (Ford, John Deere, Case type); Elevating Grader, Tractor towed requiring Operator or Grader; Pot Rammer; Ballast Regulator; Ballast Tamper, Multiple-purpose; Track Liner; Tie Spacer; Shuttle Car; Locomotive, 40 tons and over

Group 8: Diesel-electric Engineer, Plant, Crusher, Generator, Floating; Batch Plant and/or wet mix, one and two drum; Generator Operator; Belt Loader, Kolman and Ko Cal types; Asphalt Paver Operator

Group 9: Bulldozer; Drill Cat Operator; Side-boom Cat; Compactor, with blade; Concrete Cooling Machine; Chicago Boom and similar types; Lift Slab Machine; Boom type lifting device, 5 ton capacity or less; Cherry Picker or similar type Crane-hoist, 5 ton capacity or less; Grizzley Crusher; Crusher Plant; Drill Doctor; Boring Machine; Guardrail Punch and Auger (all types); Surface Heater and Planer; Hydraulic Backhoe, track type 3/8 cu. yds.; Loader, Front End and Overhead, 2½ cu. yds. and under 4 cu. yds.; Hammer Operator; Pipe Cleaning, Doping, Bending and Wrapping Machines; Bolt-threading Machine; Drill Doctor (bit grinder); H.D. Mechanic Machine Tool Operator; Stationary Drag Scraper; Tractor, rubber-tired over 50 H.P. Flywheel; Tractor with boom attachment; Trench Machine, maximum digging capacity over 3 ft. depth; Asphalt Plant Operator

Group 10: Bulldozer, twin engine (TC 12 and similar); Cable Plow (any type); Compactor, multi-engine; Jack Operator, Elevating Barges; Barge Operator, self-unloading; Rubber-tired Dozers and Pushers (Michigan, Cat, Hough type); Driller - Percussion, Diamond, Core, Cable, Rotary and similar type

Group 11: Mixer Mobile; Concrete Breaker; Crane Operator, 25 tons and under; Combination Guardrail Machines, i.e., Punch, Auger, etc.; Shovel; Dragline; Clamshell, Hoe, etc., under 1 cu .yd.; Grade-alls, under 1 cu. yd.; Mucking Machine (tunnel)

POWER EQUIPMENT OPERATORS (AREA 3) (Cont'd)
Clark, Cowlitz, Klickitat, Skamania, and Wahkiakum Counties; and the Southern portion of Pacific County

Group 12: Blade Operator; Batch Plant and/or Wet Mix, 3 units or more; Reinforced Tank Banding Machine (K-17 or similar); Hoist, two or more drums; Elevating Loader, Athey and similar; Piledriver (not crane type); Rubber-tired Scraper, single and twin engine; Single Scraper, with Push-pull attachments, self-loader; Paddle Wheel, auger type; Blade mounted Spreaders, Ulrich and similar types; Shield Operator

Group 13: Blade Operator, finish; Blade, externally controlled by electronic, mechanical hydraulic means; Blade, multi-engine; Concrete Paving Road Mixer; Derrick, under 100 tons; Hoist, Stiff Leg, Guy Derrick or similar, 50 tons and over; Cableway Operator 25 ton and over; Crane, over 25 ton and including 50 tons; Piledriver Operator; Floating Clamshell, etc., under 3 cu. yds.; Floating Crane (Derrick Barge), less than 30 ton; Elevating Grader, operated by tractor operator, Sierra, Euclid, or similar; Back Filling Machine; Shovel, etc. 1 cu. yd. and less than 3 cu. yds.; Grade-all, 1 cu. yd. and over; Bridge Crane Operator, Locomotive Crane, Gantsy and Overhead

Group 14: Tower Crane Operator; Rubber-tired Scraper, with Tandem Scrapers, self-loading, Paddle Wheel, auger type, finish and/or 2 or more units

Group 15: Rock Hound Operator; Loader, 4 cu. yds., but less than 6 cu. yds.

Group 16: Autograder or "Trimmer"; Tandem Bulldozer, Quad-nine and similar; Automatic Concrete Slip Form Paver; Concrete Canal Line; Cableway, 25 ton and over; Crane, over 40 ton and including 100 ton; Whirley, 80 ton and under; Floating Clamshell, etc., 3 cu. yds. and over; Floating Crane (Derrick Barge) 30 ton but less than 80 ton; Loader, 6 cu. yds., but less than 12 cu. yds.; Rubber-tired Scraper, with Tandem Scrapers, multi-engine; Shovel, etc., 3 cu. yds. but less than 5 cu. yds.; Wheel Excavator, under 750 cu. yds. per hour

Group 17: Crane over 100 ton and including 200 ton; Whirley, over 80 ton and inlcuding 150 ton; Floating Crane (Derrick Barge), 80 ton, but less than 150 ton; Loader, 12 cu. yds. and over; Shovel, etc., 5 cu. yds. and over; Canal Trimmer

Group 18: Crane, over 200 ton; Whirley, 150 ton and over; Floating Crane, 150 ton but less than 250 ton; Wheel Excavator, over 750 cu. yds. per hour; Band Wagons, in connection with Wheel Excavator

Group 19: Helicopter, when used in erecting work; Floating Crane, 250 ton and over; Remote contolled earth moving equipment; Underwater equipment, remote or otherwise

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUPMENT OPERATORS (DREDGING - AREA 1) All Counties and portions of Counties East of the 120th Meridan:					
Group 1	$13.02	.85	$1.50		.11
Group 2	13.12	.85	1.50		.11
Group 3	13.46	.85	1.50		.11
Group 4	13.51	.85	1.50		.11
Group 5	13.56	.85	1.50		.11
Group 6	13.88	.85	1.50		.11
Group 7:					
(a)	14.27	.85	1.50		.11
(b)	14.82	.85	1.50		.11
(DREDGING - AREA 2) All Counties and portions of Counties West of the 120th Meridian (except those enumerated in Area 3) and including the Northern portion of Pacific County:					
Group 1	13.02	.85	1.50		.11
Group 2	13.12	.85	1.50		.11
Group 3	13.46	.85	1.50		.11
Group 4	13.51	.85	1.50		.11
Group 5	13.56	.85	1.50		.11
Group 6	13.88	.85	1.50		.11
Group 7:					
(a)	14.27	.85	1.50		.11
(b)	14.82	.85	1.50		.11
(DREDGING - AREA 3) Clark, Cowlitz, and Klickitat Counties; Pacific County (southern portion); Skamania and Wahkiakum Counties:					
Group 1	12.79	1.00	1.47	.50	.05
Group 1A	13.44	1.00	1.47	.50	.05
Group 2	12.42	1.00	1.47	.50	.05
Group 3	12.18	1.00	1.47	.50	.05
Group 4	11.92	1.00	1.47	.50	.05

POWER EQUIPMENT OPERATORS
DREDGING - AREAS 1 and 2

Group 1: Assistant Mate (Deckhand)

Group 2: Fireman; Oiler

Group 3: Assistant Engineer (electric, diesel, steam or booster pump); Mates and Boatman

Group 4: Engineer; Craneman

Group 5: Assistant Engineer (electric generator Operator for Primary Pump, power barge or dredge)

Group 6: Leverman, Hydraulic

Group 7: Leverman, Dipper:
(a) 5 yards and under
(b) Over 5 yards

POWER EQUIPMENT OPERATORS
DREDGING - AREA 3

Group 1: Leverman, Dipper

Group 1A: Leverman, Hydraulic

Group 2: Assistant Engineer (including Watch Engineer, Mehcanic, and Machinist) and Mate

Group 3: Tenderman (Boatman, attending Dredging Plant); Fireman

Group 4: Assistant Mate (Deckhand); Oiler

TRUCK DRIVERS (AREA 1)*
All Counties and portion of Counties East of the 120th Meridian

GROUPS	ZONE 1	ZONE 2	ZONE 3	ZONE 4	ZONE 5
1	$13.19	$14.24	$14.64	$15.29	$16.04
2	13.23	14.28	14.68	15.33	16.08
3	13.29	14.34	14.74	15.39	16.14
4	13.38	14.43	14.83	15.48	16.23
5	13.59	14.64	15.04	15.69	16.44
6	13.63	14.68	15.08	15.73	16.48
7	13.69	14.74	15.14	15.79	16.54
8	13.73	14.78	15.18	15.83	16.58
9	13.84	14.89	15.29	15.94	16.69
10	13.88	14.93	15.33	15.98	16.73
11	14.19	15.24	15.64	16.29	17.04
12	14.33	15.38	15.78	16.43	17.18
13	14.49	15.54	15.94	16.59	17.34
14	14.63	15.68	16.08	16.73	17.48

FRINGE BENEFITS:

Health and Welfare	$1.24
Pension	1.33
Apprenticeship Training	0.09

*See ZONE DEFINITOINS - following TRUCK DRIVERS' Classifications

TRUCK DRIVERS (AREA 1)
All Counties and portions of Counties East of the 120th Meridian

Group 1: Flat Bed Truck, single rear axle; Fork Lift, 3,000 lbs. and under; Tender and Swamper; Leverperson loading Trucks at Bunkers; Pick-up hauling material; Seeder and Mulcher; Stationary Fuel Operator; Team Driver; Tractor (small rubber tired pulling trailer or similar equipment); Water Tank Truck, 1,800 gallons

Group 2: Bus Driver or Employeenaul Driver; Flat Bed Truck, dual rear axle; Power Boat hauling employees or material); Tireperson No. 1

Group 3: Buggy Mobile and similar; Bulk Cement Tanker; Oil Tank Driver; Power operated Sweeper; Straddle Carrier (Ross Hyster and similar); Transit Mixers and Trucks hauling concrete (3 yards and under); Trucks, side, end, and bottom dump (under 6 yards); Water Tank Truck, 1,801 - 4,000 gallons

Group 4: Auto Crane, 2,000 lbs. capacity; Bulk Cement Spreader; Dumptor (6 yards and under); Flat Bed Truck (with hydraulic system); Fork Lift (3,001 - 16,000 lbs.); Rubber-tired Tunnel Jumbo; Scissor Truck; Slurry Truck Driver; Transit Mixers and Trucks, 4,001 to 6,000 gallons; Wrecker and Tow Trucks; Fuel Truck Driver; Steam Cleaner and Washer; Flaherty Spreader

Group 5: Service Greaser; Tireperson No. 2; Truck, side, end, and bottom Dump (over 6 yards to 12 yards)

Group 6: A-Frame; Water Tank Truck, 6,001 to 8,000 gallons

Group 7: Dumptor (over 6 yards); Transit Mixers and Trucks hauling concrete (6 yards to 10 yards); Trucks, side, end, and bottom dump (over 12 yards including 20 yards); Semi Truck and Trailer; Lowboy 50 Tons and under

Group 8: Low Boy (over 50 tons); Water Tank Trucks, 8,001 to 10,000 gallons; Tractor with Steer Trailer; Truck mounted Crane with load bearing surface, either mounted or pulled

Group 9: Transit Mixer and Trucks hauling concrete (10 yards to 15 yards); Trucks, side, end, and bottom dump (over 20 yards including 30 yards); Water Tank Truck (10,001 to 12,000 gallons); Fork Lift, over 16,000 lbs.; Flaherty Spreader Box Driver; Flow Boys; Semi-end Dumps

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TRUCK DRIVERS (AREA 1) (Cont'd)
All Counties and portions of Counties East of the 120th Meridian

Group 10: Mechanic, Field

Group 11: Tournarocker, D.W.'s and similar, with 2 or 4 wheel power tractor with trailer, gallonage or yardage scale, which is greater; Transit Mixers and Trucks hauling concrete (15 yards to 20 yards); Trucks, side, end, and bottom dump (over 30 yards to 40 yards); Water Tank Truck, 12,001 to 14,000 gallons

Group 12: Transit Mixers and Trucks hauling concrete (over 20 yards); Trucks, side, end, and bottom dump (over 40 yards to 50 yards)

Group 13: Trucks, side, end, and bottom dumps (over 50 yards to 100 yards)

Group 14: Helicopter Pilot hauling employees or material; Trucks, side, end, and bottom dump (over 100 yards)

TRUCK DRIVERS (AREA 2) All Counties and portions of Counties West of the 120th Meridian (except those enumerated in Area 3) including the Northern portion of Pacific County and all of Kittitas and Yakima Counties:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$13.41	.94	$1.12		.09
Group 2	12.46	.94	1.12		.09
Group 3	13.51	.94	1.12		.09
Group 4	13.62	.94	1.12		.09
Group 5	13.68	.94	1.12		.09
Group 6	13.72	.94	1.12		.09
Group 7	13.73	.94	1.12		.09
Group 8	13.79	.94	1.12		.09
Group 9	13.84	.94	1.12		.09
Group 10	13.86	.94	1.12		.09
Group 11	13.89	.94	1.12		.09
Group 12	13.99	.94	1.12		.09
Group 13	14.01	.94	1.12		.09
Group 14	14.05	.94	1.12		.09
Group 15	14.17	.94	1.12		.09
Group 16	14.21	.94	1.12		.09
Group 17	14.33	.94	1.12		.09
Group 18	14.38	.94	1.12		.09
Group 19	14.54	.94	1.12		.09
Group 20	14.70	.94	1.12		.09
Group 21	14.86	.94	1.12		.09

TRUCK DRIVERS (AREA 2)
All Counties and portions of Counties West of the 120th Meridian (except those enumerated in Area 3) including the Northern portion of Pacific County and including all of Kittitas and Yakima Counties

Group 1: Leverman and Loaders at Bunkers and Batch Plants; Pickup Trucks, Escort or Pilot Car; Swampers; and Checkers

Group 2: Team Drivers

Group 3: Bull Lifts and similar equipment used in loading and unloading trucks, transporting materials on job site, Dumpsters and similar equipment (including Tournarockers, Tournawagon, Turnatrailer, Cat DW series, Terra Cobra, LeTourneau, Westinghouse, Athey Wagon, Euclid, two and four-wheeled power tractor with trailer and similar top-loaded equipment transporting material; Dump Trucks, side, end and bottom dump, including Semi-trucks and Trains or combinations thereof) - up to and including 5 yards; Flatbed, single rear axle; Fuel Truck; Grease Truck; Greaser, Battery Service Man and/or Tire Service Man; Scissor Truck; Spreader, Flaherty; Tractor (small, rubber-tired); Vacuum Truck; Water Wagon and Tank Trucks, up to 1,600 gallons; Winch Truck, single rear axle; Wrecker, Tow Truck and similar equipment

Group 4: Flatbed, dual rear axle

Group 5: Buggymobile; Hyster Operators; Straddle Carrier (Ross, Hyster, and similar equipment); Water Wagon and Tank Trucks, 1,6000 gallons to 3,000 gallons

Group 6: Transit-mix, 0 to and including 41 yards

Group 7: Dumpsters and similar equipment (as listed in Group 3) - over 5 yards to and including 12 yards; Explosive Truck (field mix) and similar equipment; Lowbed and Heavy Duty Trailer, under 50 tons gross; Road Oil Distributor Driver; Slurry Truck; Sno-go and similar equipment; Winch Truck, dual rear axle

Group 8: Dumpster and similar equipment (as listed in Group 3) - over 12 yards to and including 16 yards

TRUCK DRIVERS (AREA 2) (Cont'd)
All Counties and portions of Counties West of the 120th Meridian (except those enumerated in Area 3) including the Northern portion of Pacific County and inlcuding all of Kittitas and Yakima Counties

Group 9: Bulk Cement Tanker; Dumpsters and similar equipment (as listed in Group 3) - over 16 yards to and including 20 yards; Water Wagon and Tank Truck, over 3,000 gallons

Group 10: Bull Lifts or similar equipment used in loading or unloading trucks transporting materials on job site, other than warehousing

Group 11: Transit-mix, over 4½ yards to and including 6 yards

Group 12: "A" Frame or Hydralift Trucks or similar equipment

Group 13: Dumpster and similar equipment (as listed in Group 3) - over 20 yards to and including 30 yards; Lowbed and Heavy Duty Trailer, over 50 tons gross to and including 100 tons gross

Group 14: Transit-mix, over 6 yards to and including 8 yards

Group 15: Dumpsters and similar equipment (as listed in Group 3) - over yards to and including 40 yards; Lowbed and Heavy Duty Trailer, over 100 tons gross

Group 16: Transit-mix, over 8 yards to and including 10 yards

Group 17: Dumpsters and similar equipment (as listed in Group 3) - over 40 yards to and including 55 yards

Group 18: Transit-mix, over 10 yards to and including 12 yards

Group 19: Transit-mix, over 12 yards to and including 16 yards

Group 20: Transit-mix, over 16 yards to and including 20 yards

Group 21: Transit-mix, over 20 yards

TRUCK DRIVERS (AREA 3)*
Clark, Cowlitz, Klickitat, Skamania, and Wahkiakum
Counties; and the Southern portion of Pacific County

GROUPS	ZONE 1	ZONE 2	ZONE 3	ZONE 4	ZONE 5	ZONE 6
1	$12.53	$13.03	$13.43	$13.93	$14.83	$15.53
2	12.58	13.08	13.48	13.98	14.88	15.58
3	12.63	13.13	13.53	14.03	14.93	15.63
4	12.68	13.18	13.58	14.08	14.98	15.68
5	12.73	13.23	13.63	14.13	15.03	15.73
6	12.83	13.33	13.73	14.23	15.13	15.83
7	12.93	13.43	13.83	14.33	15.23	15.93
8	13.03	13.53	13.93	14.43	15.33	16.03
9	13.13	13.63	14.03	14.53	15.43	16.13
10	13.30	13.80	14.20	14.70	15.60	16.30
11	13.40	13.90	14.30	14.80	15.70	16.40
12	13.50	14.00	14.40	14.90	15.80	16.50
13	13.60	14.10	14.50	15.00	15.90	16.60
14	13.70	14.20	14.60	15.10	16.00	16.70

FRINGE BENEFITS:

Health and Welfare	$0.93
Pension	1.19
Vacation	1.00
Apprenticeship Training	0.08

*See ZONE DESCRIPTIONS - following TRUCK DRIVERS' Classifications

TRUCK DRIVERS (AREA 3)
Clark, Cowlitz, Klickitat, Skamania, and Wahkiakum
Counties and the Southern portion of Pacific County

Group 1: Battery Rebuilders; Bus or Manhaul Driver; Concrete Buggies (power operated); Dump trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: 6 cu. yds. and under, Lift Jitneys, Fork Lifts (all sizes in loading, unloading and transporting material on job site); Loader and/or Leverman on Concrete Dry Batch Plant (manually operated); Pilot Car; Solo Flat Bed and misc. Body Trucks, 0-10 tons; Truck Tender; Truck Mechanic Tender; Warehouseman (warehouse parts, tool men and parts chaser, checkers and receivers); Water Wagons (rated capacity) - up to 1,600 gallons

Group 2: "A" Frame or Hydra-lift Truck with load bearing surface; Lubrication Man, Fuel Truck Driver, Tireman, Wash Rack, Steam Cleaner or combinations; Team Drivers

Group 3: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 6 cu. yds. and including 10 cu. yds.; Slurry Truck Driver or Leverman; Transit Mix, and Wet or Dry Mix Trucks: 5 cu. yds. and under; Tireman (full-time basis); Water Wagons (rated capacity) - 1,600 to 3,000 gallons

Group 4: Flaherty Spreader Driver or Leverman; Lowbed Equipment, Flat Bed Semi-trailer, Truck and Trailers or doubles transporting equipment or wet or dry materials; Lumber Carrier Driver - Stadddle Carrier (used in loading, unloading and transporting of materials on job site); Oil Distributor Driver or Leverman; Water Wagons (rated capacity) - 3,000 to 5,000 gallons

Group 5: Dumpsters or similar equipment, all sizes; Transit Mix and Wet or Dry Trucks, over 5 cu. yds. and including 7 cu. yds.

Group 6: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 10 cu. yds. and including 20 cu. yds.; Transit Mix and Wet or Dry Mix Truck, over 7 cu. yds. and including 9 cu. yds.; Truck Mechanic - Welder - Body Repairman; Water Wagons (rated capacity) - 5,000 to 7,000 gallons

TRUCK DRIVERS (AREA 3) (Cont'd)
Clark, Cowlitz, Klickitat, Skamania, and Wahkiakum
Counties and the Southern portion of Pacific County

Group 7: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 20 cu. yds. and including 30 cu. yds.; Transit Mix and Wet or Dry Mix Trucks, over 9 cu. yds. and including 11 cu. yds.; Water Wagons (rated capacity) over 7,000 gallons to 10,000 gallons

Group 8: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 30 cu. yds. and including 40 cu. yds.; Transit Mix and Wet or Dry Mix Trucks, over 11 cu. yds. and including 15 cu. yds.; Water Wagon (rated capacity) over 10,000 gallons to 15,000 gallons

Group 9: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 40 cu. yds. and including 50 cu. yds.; Transit Mix and Wet or Dry Mix Trucks, over 13 cu. yds. and including 15 cu. yds.

Group 10: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 50 cu. yds. and including 60 cu. yds.

Group 11: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 60 cu. yds. and including 70 cu. yds.

Group 12: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 70 cu. yds. and including 80 cu. yds.

Group 13: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 80 cu. yds. and including 90 cu. yds.

Group 14: Dump Trucks, side, end and bottom dumps, including Semi Trucks and Trains or combinations thereof: over 90 cu. yds. and including 100 cu. yds.

Drivers and Tenders (handling sacked cement - add $.15 per hour)

Winch Truck - takes classification of Truck on which Winch is mounted.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

[FR Doc. 80-32199 Filed 10-16-80; 8:45 am]
BILLING CODE 4510-27-C

ZONE DESCRIPTIONS (AREA 1)

LABORERS
(Heavy and Highway)
POWER EQUIPMENT OPERATORS
TRUCK DRIVERS

Travel Zone Centers:
Moses Lake, Pasco, Spokane, Lewiston
*Coeur d'Alene, *Walla Walla
*15 mile free Zone

ZONE 1 - within a 15 mile radius from the center of the above named Cities
ZONE 2 - 15-30 miles radius from the center of the above named Cities
ZONE 3 - 30-45 miles radius from the center of the above named Cities
ZONE 4 - 45-90 miles radius from the center of the above named Cities
ZONE 5 - over 90 miles radius from the center of the above named Cities

ZONE DESCRIPTIONS (AREA 3) ONLY

LABORERS
Goldendale, Longview and Vancouver

POWER EQUIPMENT OPERATORS
Astoria, Goldendale, Hood River, Longview
The Dalles and Vancouver

TRUCK DRIVERS
Astoria, Goldendale, Longview, The Dalles and Vancouver

ZONE 1 - all jobs or projects located within 10 miles of the respective City Hall
ZONE 2 - more than 10 miles but less than 25 miles from the respective City Hall
ZONE 3 - more than 25 miles but less than 35 miles from the respective City Hall
ZONE 4 - more than 35 miles but less than 45 miles from the respective City Hall
ZONE 5 - more than 45 miles but less than 75 miles from the respective City Hall
ZONE 6 - more than 75 miles from the respective City Hall

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federal register

Friday
October 17, 1980

Part IV

Department of the Interior

Bureau of Land Management

Amendments to the Outer Continental Shelf Minerals and Rights-of-Way Management, General Regulations

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3300

[Circular No. 2477]

Amendments to the Outer Continental Shelf Minerals and Rights-of-Way Management, General Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking makes technical and procedural changes to the regulations on Outer Continental Shelf Minerals and Rights-of-way Management. The changes are necessary to conform Part 3300 with either Department of Energy regulations or Outer Continental Shelf Lands Act, as amended. These changes will clarify the existing Part 3300 and bring it into conformance with applicable portions of the Department of Energy's regulations.

EFFECTIVE DATE: October 17, 1980.

ADDRESS: Any recommendations or inquiries should be sent to: Director (540), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:
William Quinn, (202) 343–5121
or
Gerard F. Fuda, (202) 343–5121.

SUPPLEMENTARY INFORMATION: This final rulemaking makes three procedural changes in Part 3300 which relate to the Outer Continental Shelf Minerals and Rights-of-Way Management, General. These changes do not impose any additional requirements on the impacted public and implement through Part 3300 requirements that currently exist in Department of Energy regulations.

The first change covers regulations controlling the joint bidding procedure. Authority to issue regulations controlling joint bidding was transferred from the Secretary of the Interior to the Secretary of Energy pursuant to section 302(b) of the Department of Energy Organization Act (42 U.S.C. 1701 et seq.). Joint bidder regulations are now contained in 10 CFR 376. However, the administration of Federal leases on the Outer Continental Shelf is the responsibility of the Secretary of the Interior and the reporting requirements pertaining to them are contained in subpart 3316 of Title 43 of the Code of Federal Regulations. It is necessary that the regulations in subpart 3316 be consistent with the recently published Department of Energy regulations on joint bidding contained in 10 CFR Part 376 (45 FR 62029) and this change accomplishes that aim.

The change eliminates the current requirement in subpart 3316 for all joint bidders to file statements of production with the Bureau of Land Management. The filing requirements will apply only to those companies who wish to submit joint bids and who are chargeable with an average daily production in excess of 1.6 million barrels of crude oil, natural gas and liquefied petroleum products.

The second change covers payment of rentals for Outer Continental Shelf leases issued under the fixed net profit sharing bidding system. The Department of Energy has the responsibility for establishing bidding systems while the Department of the Interior retains the responsibility for administering those systems in connection with the issuance and maintenance of leases. As a result of the issuance of a final rulemaking by the Department of Energy establishing a fixed net profit share bidding system at 10 CFR Parts 376 and 390 (45 FR 36784), the regulations in subpart 3317 are being changed to make them consistent with the Department of Energy regulations.

The third change is being made to subpart 3340, Grants of Pipeline Rights-of-Way on the Outer Continental Shelf. The change will bring subpart 3340 into conformance with the language of section 5(f) of the Outer Continental Shelf Land Act, as amended (43 U.S.C. 1334(f)). Section 5(f)(2) authorizes the Federal Energy Regulatory Commission to exempt certain pipelines on the Outer Continental Shelf from the requirement of complying with the competitive principles of section 5(f)(1). Section 5(e) authorizes the Secretary of the Interior to grant rights-of-way for pipelines on the Outer Continental Shelf. Subpart 3340 of Title 43 of the Code of Federal Regulations published on June 29, 1979 (44 FR 36268), does not fully reflect the language of the Act with respect to responsibilities of the Federal Energy Regulatory Commission. This change, developed in conjunction with the Federal Energy Regulatory Commission, assures consistency with the authorities of that agency pursuant to section 5(f)(2) of the Act. It is the responsibility of the applicant for a right-of-way to comply with the requirements imposed by the Federal Energy Regulatory Commission.

This rulemaking is being issued as a final rulemaking because the changes made by it are technical and make only procedural changes in the existing regulations. The joint bidding change brings these regulations into agreement with regulations already promulgated by the Department of Energy. Likewise, the change in rental payments for leases issued under the fixed net-profit share bidding system is necessary to make section 3317.1 consistent with the Department of Energy regulations (10 CFR 390, 45 FR 36784) which established the system and current practice with regard to rental payments on oil and gas leases issued under other bidding systems.

The final change more accurately reflects the language of the Outer Continental Shelf Lands Act, as amended, as it pertains to the authorities of the Federal Energy Regulatory Commission. The changes impose no new requirements to the procedure contained in part 3300. For these reasons, the changes are being adopted in final form without first being published in proposed form.

The principal authors of this rulemaking are Mr. William Quinn and Mr. Gerard F. Fuda, Division of Offshore Resources, assisted by the staff of the Office of Legislation and Regulatory Management, both of the Bureau of Land Management.

It is hereby determined that the publication of this document is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a significant regulatory action requiring the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Under the authority of the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 et seq.), Part 3300, Group 3300, Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below.

James W. Curlin,
Acting Assistant Secretary of the Interior.
October 10, 1980.

1. Section 3316.3–2(a) is revised to read as follows:

§ 3316.3–2 Joint bidding requirements.

(a) Any person who submits a joint bid for any oil and gas lease during a 6-month bidding period, and who was chargeable for the prior production period with an average daily production in excess of 1.6 million barrels of crude oil, natural gas and liquified petroleum products, shall have filed under oath with the Director, a Statement of Production of crude oil, natural gas and liquified petroleum products, hereinafter referred to as a Statement of Production, no later than 45 days prior to the commencement of the applicable 6-month bidding period of May 1 through October 31, and November 1 through April 30. Statements of Production shall be submitted to the Director, Bureau of Land Management (Attention: 541), Washington, D.C. 20240. The Statement of Production shall indicate that the person was chargeable, in accordance with § 3316.3–3 of this title, with an average daily production in excess of 1.6 million barrels of crude oil, natural gas and liquified petroleum products for the prior production period. The Director shall publish semi-annually in the **Federal Register** a "List of Restricted Joint Bidders" to be effective immediately upon publication and to continue in force and effect until a subsequent list is published. The "List of Restricted Joint Bidders" shall consist of those persons, who in the judgment of the Director, based on information available to him, including, but not limited to, sworn Statements of Production, are chargeable under § 3316.3–3 of this title with an average daily production in excess of 1.6 million barrels of crude oil, natural gas and liquified petroleum products for the prior production period.

* * * * *

2. Section 3316.3–4 (b), (c)(4) and (d) are revised to read as follows:

§ 3316.3–4 Bids disqualified.

* * * * *

(b) A joint bid submitted by two or more persons when 1 or more of those persons is chargeable for the prior production period with an average daily production in excess of 1.6 million barrels of crude oil, natural gas and liquified petroleum products and has not filed a Statement of Production as required by § 3316.3–2 of this title for the applicable 6-month bidding period, or (2) any of those persons have failed or refused to file a detailed report of production when required to do so under § 3316.4(h) of this title, or

(c) * * *

(4) For any of the types of conveyances described in paragraphs (c)(1), (2) or (3) of this section where any party to the conveyance is chargeable for the prior production period with an average daily production in excess of 1.6 million barrels of crude oil, natural gas and liquified petroleum products and has not filed a Statement of Production pursuant to § 3316.3–2 of this title for the applicable 6-month bidding period. Assignments expressly required by law, regulation, lease or stipulation to lease shall not disqualify an otherwise qualified bid; or

(d) A bid submitted by or in conjunction with a person who has filed a false, fraudulent or otherwise intentionally false or misleading detailed Report of Production.

3. Section 3316.4(h)(2) is revised to read as follows:

§ 3316.4 Submission of bids.

* * * * *

(h) * * *

(2) permit the inspection and copying by an official of the Department of the Interior of such documents, records of production of crude oil, natural gas and liquified petroleum products, analyses and other material as are necessary to demonstrate the accuracy of any statement or information contained in any Report of Production.

* * * * *

4. Section 3317.1 (a), (b) and (e) are revised to read as follows:

§ 3317.1 Rentals.

(a) Except for leases issued subject to fixed-net profit sharing provisions, an annual rental shall be due and payable in advance, at the rate specified in the oil and gas leases, on the first day of each lease year prior to discovery of oil or gas on the lease.

(b) The owner of any lease created by the segregation of a portion of a producing lease which is not subject to fixed net profit sharing provisions and on which segregated portion there is no production, actual or allocated, shall pay an annual rental for such segregated portion at the rate per acre or hectare specified in the lease. This rental shall be payable each lease year following the year in which the segregation became effective and prior to a discovery on such segregated portion.

* * * * *

(e) For leases issued subject to the fixed net profit sharing provisions, annual rental payments shall be due and payable in advance, on the first day of each lease year which commences prior to the date the first profit share payment becomes due. The owner of any lease created by the segregation of a portion of a lease subject to fixed net profit sharing provisions, shall pay an annual rental for such segregated portion at the rate per acre or hectare specified in the lease. This rental shall be payable each year following the year in which the segregation becomes effective and shall continue to be due and payable, in advance, on the first day of each year which commences prior to the date the first profit share payment becomes due.

5. Section 3340.1(a)(ii) is revised to read as follows:

§ 3340.1 Nature of grant.

(a) * * *

(11) Unless otherwise exempted by the Federal Energy Regulatory Commission pursuant to section 5(f)(2) of the act, the holder shall provide open and nondiscriminatory access to the pipelines to both owner and nonowner shippers.

[FR Doc. 80-32354 Filed 10-16-80; 8:45 am]

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Part V

Federal Communications Commission

Inquiry Into the Future Role of Low-Power Television Broadcasting and Television Translators in the National Telecommunications System

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 78-253; RM-1932; FCC 80-503]

Inquiry Into the Future Role of Low-Power Television Broadcasting and Television Translators in the National Telecommunications System

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: The Federal Communications Commission proposes the creation of a new low power television broadcast service, in which stations would be authorized to originate programs to an unlimited extent and to conduct their own subscription television operations. The proposed service would include television broadcast translators, which currently are regulated under Part 74, Subpart G of the Commission's Rules. The proposed rules are based upon a Commission staff study, to be released at a later date: *Report and Recommendations in the Low Power Television Inquiry (BC Docket No. 78-253).* The action is based, in part, upon evidence of a large unsatisfied demand for television broadcast service, in both rural and urban areas.

DATES: Comments must be received on or before January 15, 1981, and reply comments on or before March 1, 1981.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Michael Couzens, Broadcast Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: No freeze on translator applications is proposed for the pendency of the rule making. The Broadcast Bureau published "Interim Processing Procedures for TV Translator Applications Seeking Low Power Features," on pages 62003-62005 of the Federal Register of September 17, 1980.

In the matter of an inquiry into the future role of low-power television broadcasting and television translators in the National Telecommunications System, BC Docket No. 78-253, RM-1932.

Adopted: September 9, 1980.

Released: October 17, 1980.

By the Commission: Chairman Ferris issuing a separate statement; Commissioner Lee concurring and issuing a statement; Commissioner Quello concurring in the result; Commissioner Washburn concurring in part and issuing a statement; Commissioner Fogarty concurring in part and issuing a separate statement.

I. Introduction

1. The Commission today concludes the inquiry stage of its study into the role of low power television broadcasting, including television translators,[1] and proposes rules for a new low power television service. These rules would be contained in a new "Subpart G—Low Power Television Broadcast Stations," in Part 74 of the Commission's rules. The current Subpart G contains the rules for television broadcast translators. Many of the features of the present Subpart G would be retained in this proposed revision, but the results of the inquiry have convinced us that we should explore a number of new approaches. Through the rule changes proposed we hope to bring television service to locations that otherwise are unserved or underserved—for whatever reasons—by regular, full service[2] television stations and by cable services. We propose to build upon the existing translator service, affording new opportunities in low power television. At the same time, translator licensees will be free to continue the service they have offered in the past, if that is their choice.

2. This proceeding began with the adoption of a *Notice of Inquiry* on August 8, 1978, 68 FCC 2d 1525 (1978, hereinafter, *"Notice"*). This *Notice* made it clear that this proceeding was addressed to the entire concept of low power television broadcasting. We stressed the possibility that the current translator service could be viewed as the evolutionary basis for a larger and more flexible low power service. We observed that translator policy generally had developed on an *ad hoc* basis, and announced our purpose to be the development of a comprehensive, long-range plan. The record developed in this proceeding has fulfilled this hope, and enables us today to propose a new low power television broadcast service.

3. The decision to propose the inauguration of a new low power television service is motivated, in part, by our recognition of a large unsatisfied demand for television service. In rural areas, millions of American citizens do not receive even a basic complement of three or four television signals. In major urban areas, there are few available channels, and when one does become available, competing applications are filed. In addition, there is considerable interest in the use of other, newer television delivery systems into the home, such as multipoint distribution service (MDS), pay cable, "superstations," and videocassettes and video discs. Market studies and economic research continue to suggest that consumer demand for television programming exceeds the supply in many areas of the country. The technology now is available for low power originating stations as well as for their interconnection. With the changes we propose, we believe that low power television can play an important part in responding to these needs. Before discussing our specific proposals, we shall briefly describe the results of the inquiry stage of this proceeding. Viewed in this context, our proposals can be seen as a natural evolutionary step.

II. Results of the Inquiry

4. Shortly after the *Notice* in this proceeding was adopted, a Commission-wide task force was created to develop the public record, to sponsor research, and to perform its own studies. This group, the Low Power Television Inquiry Staff, has submitted the results of its work to the Commission as the *Report and Recommendations in the Low Power Television Inquiry* (hereinafter, *"Report"*). The *Report* provides a full record that enables us to proceed to the stage of proposed rules. Because of the *Report*, we can expect that commenting parties will engage in a discussion that is clearly focused, detailed, and therefore of maximum use to the Commission in any final decision on adopting rules for this promising new service.[3] Although the *Report* is not being adopted as a position of the Commission, we have relied upon it in the preparation of this *Notice*, and would expect commenting parties to take its findings into account.

5. During the inquiry, comments and reply comments were received from more than 80 individuals and groups representing a wide range of interests. The staff summarized this record in *Attachments A* and *B* to its *Report*. The staff also commissioned a survey of very low power originations in the United States and Canada: Parry D. Teasdale, "A Micro-TV Service in the United States," *Attachment C* to the *Report* (hereinafter, "Teasdale"). In addition to its usefulness in revealing the practicalities of very low power station operations, Mr. Teasdale's report appends a significant technical study performed for the Government of Canda, where low power station operations appear to have developed to a considerable degree, Switzer Engineering Services, Ltd., "A Study of Very Low Power TV and FM Transmitters for Remote Communities," (April, 1978, hereinafter, "Switzer"). Finally, the staff performed its own studies and analyses, covering technical, economic, and legal terms.

6. The staff began its analysis with two principal goals, with which we are in agreement. The first goal was to recognize the contribution that the traditional translator operator has given in the past, and so not to recommend rules that would make translator service more difficult to provide, especially in isolated rural areas where the need for television service is greatest. The second goal was to provide maximum flexibility for new originating services to come into being, easily and at low cost. The staff recommended that a new low power television service be created by adding to well-proved translator rules and practices, rather than by attempting to create a separate service "from the ground up." Most significantly, the staff recommended the retention of secondary status for translators and for low power stations. All such stations were envisioned as operating on a noninterfering basis, and as being required to relinquish their frequency if a full service station wished to commence operations using the same channel.

7. The staff reasoned that a new secondary service could be designed for maximum flexibility—in the nature of its program service, in the technical standards, and in licensing procedures. In this way, they argued, the Commission could modify or eliminate many requirements that we would continue to apply to full service station operations. Specifically, no low power station would be required to originate programs to any extent, but all could originate to an unlimited extent. The Commission also would place no artificial restrictions upon the station's method of financial support, whether local taxes, advertisers, or subscription television (STV). Secondary status also was concluded to imply more relaxed technical standards, and a set of liberalized rules regarding ownership.

8. The Commission is well aware of the interest in, and demand for, new television outlets, both in rural and urban areas.[4] We agree with our staff that secondary status for low power stations appears to provide the key to rapid implementation of such service, and so we are proposing rules that follow the broad contours of the staff's recommendations. Before we describe our own proposals, a brief historical sketch is appropriate.[5]

III. History of Television Translators

9. The Table of Television Assignments (hereinafter, "Table") adopted in 1952 was designed to provide service to as large a part of the population as was possible and at the same time to provide local outlets for as many communities as possible.[6] Although the goals of the Table have been largely achieved, service has not been available to all who wanted it. Indeed, from the very beginning, interest in television was so great that conventional means of obtaining reception proved to be inadequate to satisfy the demand. One way of dealing with this problem was the installation of a "community antenna" that would then be connected by cable to households paying a subscription fee for the signals delivered, thus giving birth to the cable industry, originally called CATV for Community Antenna Television. A less expensive approach also was possible involving the reception and amplified retransmission of the weak television signal over a low power installation. This could be either an on-channel booster or a translator that broadcast on another channel. In the early days of television, the Commission's rules made no provision for either kind of operation. This lack of a licensing procedure, however, did not prevent the establishment of such stations. In many areas plagued by poor reception, individuals provided low power service on an extra-legal basis.[7]

10. The first such low power operation probably was established in 1948 and was used to serve homes beyond the reach of a cable TV system. Soon after that, other bossters and translators were established to extend television coverage. When complaints were filed, the Commission sent out field inspectors to shut down these unauthorized operations. By 1958, there were "the estimated number of 1,000 or so," of these unlicensed stations in operation.[8] As they grew in number, the Commission became increasingly concerned about the potential for causing interference to other broadcast services. Without a licensing procedure, the Commission had no way of incorporating them into the overall pattern of assignments.

11. It was against this background that the Commission initiated several proceedings involving the use of translator and booster systems and a possible regulatory scheme for their authorization. In the first of these proceedings, a notice of proposed rulemaking (Docket No. 11331, FCC 55-404) adopted on March 31, 1955, solicited information on the feasibility of licensing VHF and UHF television boosters. While his rulemaking was pending, the Commission adopted a second notice of proposed rulemaking (Docket No. 11611, FCC 56-44), in January of 1956, exploring a regulatory framework within which TV translator stations could be authorized and licensed.

12. The second proceeding was acted on first, and the Commission adopted a report and order which amended the rules to authorize UHF translators. They were limited to the upper 14 UHF channels (that is, Channels 70-83) and their power was limited to 10 watts. The Commission limited translators to the upper 14 UHF channels because they were less congested and would allow more flexibility to meet required protective spacing. The Commissin also believed that confining translators to the less congested upper 14 UHF channels made it possible to relax operating and licensing requirements, and, thereby, to facilitate the viability of translators.

13. While it is true that operation on these channels had the least potential for causing harmful interference to regular television reception, it also is true that these were the least advantageous channels from the translator station's point of view. Not only were there greater costs of

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[1] A television translator is a low power broadcast station that receives a television signal on one channel, amplifies it and transmits it on another channel. Although we expect tanslators to continue to play a part in bringing television reception, we propose to broaden the concept of low power television to include stations that originate programming and even conduct their own subscription television operations.

[2] We use the term "full service" throughout to describe television broadcast stations with complete facilities and staff. These full service stations are licensed under Part 73 of our rules.

[3] In the *Notice* we anticipated a series of inquiry and, perhaps later, rule making notices. However, we now believe that the staff's *Report* is adequate for us to sharpen the discussion at this point, and that no useful purpose would be served by adding cycles of pleading to what already is an unusually full record for the onset of rule making.

[4] On April 24, 1980, we adopted an *Order* stating that no new applications for broadcast experimental stations proposing use of low power or television translator technology would be accepted for filing, *see* Public Notice, FCC 80-262, April 29, 1980. This was done, in part, because the staff had received so many expressions of interest that new experimental applications could not been handled or evaluated, within our administrative resources. On demand for new outlets more generally, *see Part III* of the *Report*.

[5] A fuller history of TV translators appears as *Part II* of the *Report*.

[6] This table appears in § 73.606(b) of the rules, *see Sixth Report and Order* in Docket No. 8736, 41 FCC 148 (1952).

[7] Kenneth A. Cox, "The Problems of Television Service for Smaller Communities," Staff Report for the Committee on Interstate and Foreign Commerce, United States Senate (85th Cong., 2d. Sess.), December 28, 1958, pp. 11-17.

[8] *Id.*, p. 16.

construction and operation, but also there was a lack of developmental experience. The Commission also rejected the suggestion for an increase in the maximum power output of translators above the 10 watts originally proposed, preferring first to gain experience from operation at the lower power.

14. At this time, the Commission was considering authorizing translators in the VHF band, but it rejected this idea, believing that it would produce interference problems. Throughout this period, the Commission assigned absolute weight to the prevention of any possibility of interference, even if this meant that it could not authorize a means of providing reception to those lacking it.

15. The Commission action restricting translators to the use of the upper 14 UHF channels did not solve the problems posed by unauthorized operations. Many translators and booster systems that had operated previously in the VHF band simply continued to do so. The first challenge to the Commission's efforts to curb these illegal operations came in a case involving C. J. Community Services, Inc. (hereinafter, "C.J."). The Commission issued a cease and desist order to C.J. to halt the operation of its television booster station. On appeal, the United States Court of Appeals for the District of Columbia Circuit reversed the Commission's Order.[9] Although the Court upheld the jurisdiction of the Commission over such operations and held that the unlicensed operation of repeaters was unlawful, it found the Commission remiss in not providing rules and procedures under which the illegal boosters could have been licensed. The Court also pointed to the pending rulemaking in Docket No. 11331, regarding the feasibility of licensing VHF boosters, as an aid in the resolution of the issues that were before the Court.

16. On June 27, 1957, the Commission issued a memorandum opinion and order (FCC 56–700) rejecting the licensing of VHF booster systems, finding what it believed were insurmountable difficulties connected with their operation. Several parties petitioned for reconsideration, requesting an opportunity to provide detailed engineering data that would prove VHF boosters to be feasible. This led the Commission to issue a new notice of proposed rulemaking (Docket No. 12116, FCC 57–829), again examining the possibility of licensing VHF boosters. Ultimately, the Commission again rejected the idea, although in the meantime it had authorized the use of UHF boosters.

17. With the authorization of translator stations and then the pending rulemaking proceeding looking toward the feasibility of licensing booster systems, the Commission determined that there was a need to examine these program distribution services, as well as cable and "satellite" systems.[10] Accordingly, a notice of inquiry was adopted on January 3, 1958, in Docket No. 12443 (FCC 58–493). Among the questions raised were: (1) What economic impact did translators, boosters, satellites and cable systems have on local television broadcast systems? and, (2) What percentage of homes received their only satisfactory television service from stations located in or near communities in which translator, booster, or cable systems were operating?

18. Finally, on July 27, 1960, the Commission issued a report and order authorizing the licensing of VHF translators and modifying the rules applying to UHF translators, 18 RR 1573. These actions are the foundation of the present translator rules. Unlike UHF translators, which could use 100 watts, VHF translators were limited to 1 watt. Because of an amendment to the Communications Act, the Commission was able to license the previously illegal operations and to permit unattended operation of translators.[11] In addition to the question of what to allow, the Commission dealt with who could have it and where it could be built. For example, television licensees were not permitted to obtain a license for a VHF translator that was designed to provide reception beyond the predicted Grade B contour of the primary station, or within its Grade A or B contour where the transitor was intended to provide reception to all or part of any community located within the Grades A contour of any other television station, if the translator would duplicate the other station's programs.

19. By the early 1960's, the general standards for translators had been developed. Although some rule changes were adopted in later years, most actions were taken in connection with applications proposing particular forms of service. Various proposals were put forward that did not meet the requirements of the rules. While the rules were not changed, on a number of occasions waivers were granted to permit operations thought to be in the public interest. Viewed in retrospect, it can be seen that these actions suggested a need for a rule changes so that waiver would not be necessary to respond to the public demand for additional television service.[12]

20. The Table standing alone could not bring adequate service to rural areas. Some areas lacked an assigned channel, while in others the channel was not put to use. This situation led the Commission to take various actions designed to encourage new service. One such approach involved support for UHF development.[13] Other measures included easing the cost of entry into television broadcasting, by permitting a television "satellite" station.[14] These measures by themselves, however, have proved inadequate to satisfy rural demand for television service.[15] In fact, the most significant progress has been made through the enterprise and ingenuity of the rural residents themselves, and later of investors and entrepreneurs, in developing two new delivery systems: television translators and CATV. These systems have grown and have become major parts of our national television service, in urban as well as rural areas.

21. As mentioned, our translator policy has evolved essentially on an *ad hoc* basis. This *Notice of Proposed Rule Making* is designed to address the technical and practical issues in broadly allowing originations on translators. To date, originations have been limited to emergency warnings and to 30 seconds per hour for fundraising. We now believe, based upon the record amassed in this proceeding, that low power stations, using translator technology, hold significant promise as a new source of network, regional and local programs, complementary to the concept of full service television development in the

[9] *C. J. Community Services* v. *F.C.C.*, 100 U.S. App. D.C. 379, 15 R.R. 2029 (1957).

[10] A "satellite" station is a full service station that rebroadcasts entirely the program schedule of another station. There also are "semisatellites" that do have local studios where a limited amount of local programming originates.

[11] Congress had stepped in to solve the problem of the construction of these stations without prior Commission authorization, waiving the ban on premature construction for those built before Congress acted. It also permitted unattended operation of stations that merely rebroadcast another station. Pub. L. 86–609, approved on July 7, 1960.

[12] The most recent of these waivers was the latest of more than 70 waivers granted for the State of Alaska, *see* Wrangell Radio Group, *et al.*, FCC 79–868, released on January 17, 1980. Other examples are collected in *Part II* of the *Report*. The innovative use of lower power technology in Alaska is described by Teasdale, pp. 11–16.

[13] Congressional action also was involved through passage of the All Channel Receiver Act. See paragraph (s) of Section 303 of the Communications Act, Pub. L. 87–529, approved on July 10, 1962, 76 Stat. 151.

[14] For a definition of satellite station, *see* note 10, *supra*.

[15] The gaps in service in rural areas are treated in *Part III* of the *Report*.

Table but also offering their own unique benefits.

IV. Proposed Policy Changes

Introduction

22. Translators simultaneously broadcast the programs of a full service station. Our proposed low power television broadcast service would retain that role in full, but as only one type of service permitted on the low power television station. Any low power television station, including those employing translator technology, would be permitted to originate to an unlimited extent, provided that certain requirements are met.[16] As mentioned, our approach begins with the fundamental principle urged by our staff that low power television broadcast stations, like television translators, should enjoy only a secondary status. This means that a translator or low power station creating harmful interference to a full service station must cease operation if it is unable to change its channel or take other steps to correct the interference. Translators and low power stations also are secondary in the sense that they must give way to a full service station proposing a mutually exclusive use of a frequency. Secondary status permits a more flexible approach that enables the low power television broadcasters to select the appropriate mix of technology that accords with local needs, up to the definitional limit of the service itself: namely, maximum transmitter output powers of 100 watts (VHF) or of 1,000 watts (UHF). The operator willing to assume the risks of secondary status would be given wide latitude to design and engineer a system adapted to local needs. We begin with the standards for programming, financial support, and ownership that we propose to apply to the low power service.

B. Program Services, Financial Support, and Ownership

23. *Low Power Station Programming.* Years ago, the Commission dealt with the question of program originations on translators, observing that:

> The technical hurdles appear insuperable at this time, and for this reason alone, we do not find warrant for initiating rulemaking now looking toward permitting programming originations by translators. We have arrived at this judgment with some regret, because there is much appeal in the exploitation of possibilities for giving smaller communities * * * a means of local self-expression, and of presenting issues of local importance.[17]

At that time the only obstacles were said to be technical. Recent technological and economic developments dictate a re-evaluation of the role of low power technology in the national telecommunications system. It now is clear that low power origination is technically feasible, and a considerable body of experience has been gained from low power originations in practice.[18] We have recognized the importance of this experience, notably in our efforts, through waivers, to support the creative use of this technology in the statewide mini-TV system in Alaska, "a system that provides the only practical means of extending off-the-air broadcast services to the numerous small remote Alaska communities."[19]

24. A number of technical developments have converged to make originations possible. One of these is the development and rapid refinement during the 1970's of low cost portable videotape players, such as the ones that have been used successfully to distribute programs to the originating mini-TV stations in Alaska. Another development, well described by a commenting party at the inquiry stage of this proceeding, is:

> * * * the advent of integrated circuits which can generate full NTSC black-and-white and color synchronization signals (instead of non-interlaced sync as used in low-cost television cameras of the past), as well as generating television carriers and graphics and lettering on the screen of a standard receiver, sometimes along with NTSC color and 4.5 MHz sound. Such integrated circuits greatly decrease the size and cost of high quality (and, for that matter, low-quality) television equipment, requiring less adjustment and being less likely to generate an out-of-tolerance condition, allowing users to concentrate more on subject matter and less on technical details.[20]

As a result, we now know that equipment for originations can be made to function reliably, without creating new problems of objectionable interference.[21] Both live and pre-recorded programs are technically feasible.

25. Finally, in the past five years, satellite technology has opened entirely new possibilities for reliable, low-cost program interconnection services.[22] The use of satellite interconnection for low power TV program services is being demonstrated by Spanish International Network, which is using satellite relays for delivery of its network feed from San Antonio to experimental translator stations that we have authorized in Denver (KA 2XE8) and in Washington, D.C. (KA2XEH).

26. Recently, we revised our translator rules to permit the use of modern FM microwave feeds to deliver program services to a translator from any suitable source.[23] The only remaining limitation upon originations—whether live, on tape, by terrestrial feed or by satellite—has been the restriction imposed by our rules limiting origination to emergency warning and to 30-second fund-raising appeals. The *Report* and record in this proceeding now persuade us that our permissive policies of allowing waivers and experiments were the prefigurement of a much broader potential for delivery of new service to the public. We therefore propose to authorize unlimited originations as an inherent feature of the proposed low power television service. We proceed to a discussion of the practicalities involved that need to be addressed in rulemaking.

27. Copyright liability for lower power stations is governed by two statutory provisions. The first is contained in the General Revision of the Copyright Law, Pub. L. 94–553, 17 U.S.C. 101 *et seq.* (1976), redefining the rights of, and limitations upon, copyright owners in the use of their works. Essentially, non-cable retransmissions, with the exception of those by governmental or non-profit entities, are subject to full copyright liability. Sec. 325(a) of the Communications Act permits the rebroadcast of programming only if the rebroadcasting station has obtained the consent of the originating station. Although rebroadcast consent needs to be sought, the Commission has held that it may not be withheld without justification. On occasion, we have considered whether the refusal was justified, depending upon the facts of the particular case and an evaluation of the circumstances involved.[24] We believe

[16] The most important distinguishing requirement is that an originating low power station must be attended by a qualified operator. Translators functioning unattended may not originate beyond emergency warnings and 30–second segments each hour. *See Report and Order* in BC Docket No. 78–252, released on May 28, 1980, 77 FCC 2d 1006 (1980). This distinction constitutes the definition of a "translator," which would be but one type of low power station.

[17] *Report and Order* in Docket No. 15971, 13 FCC 2d 305 (1968).

[18] *See* generally Switzer; *see* also the descriptions by Teasdale of low power originations in Alaska, New York State, and Canada.

[19] *Wrangell Radio Group, et. al.*, FCC 79–868, released on January 17, 1980, para.. 10.

[20] "Comments" of Kitchen Productions, Ridgecrest, California, November 27, 1978, p. 1.

[21] See *Part IV.B* of the *Report*.

[22] *See* FCC, Network Inquiry Special Staff, Video Interconnection: Technology, Costs and Regulatory Policies (Preliminary Report, March 1980).

[23] *Report and Order* in Docket No. 20539, 67 FCC 2d 209 (1978). Previously, translators had been limited to a very simple AM heterodyne conversion of the rebroadcast signal onto another frequency.

[24] This includes:

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that these existing provisions, regarding copyright and retransmission consent, are adequate to establish an initial assignment of program rights, so that low power stations will be free to enter the marketplace for programs and to privately negotiate appropriate arrangements for the program services they may offer.

28. A special case is presented by commercial substitution for television programming broadcast by conventional stations that generally are financed by advertiser support. We do not believe that a low power station should be permitted to engage in commercial substitution without the consent of the primary broadcast station. It does not follow, however, that all examples of substitution are harmful. In fact, the originating broadcast station actually may be better off with some commercial substitution by translators, because without it they might not get the additional coverage for the remainder of their advertising provided by the translator. Moreover, commercial substitution may be desirable from a communications policy perspective because communities that could not otherwise support translator or low power station operation may find commercial substitution a promising solution to the problem. Thus, we propose to permit commercial substitution, but only if the consent of all affected parties is obtained and compliance with copyright law is achieved.[25]

29. One major concern that must be addressed before we permit translators to originate programming and to collect subscription fees is the effect that increased competition may have on existing television service. This issue has been studied by the staff and *Parts IV.C* and *IV.D* of the *Report* dealing with it are quite illuminating. That analysis strongly suggests that it would be possible to achieve the contemplated increase in service without a detrimental impact on existing service. The various sections of the *Report* have considered the impact of competition of new low power over-the-air service upon cable TV and on other translators and low power stations. We find this analysis a persuasive one.[26] We believe that those parties claiming adverse economic impact must show how the effects of competition would harmfully affect the public, before obtaining any relief.

30. We believe that our proposed rules in particular can encourage competition between low power stations and cable television to deliver new and expanded services to the public. Realizing the benefits of competition, we have acted to liberalize many of our cable rules.[27] We now believe that protection of local broadcasters from cable competition was a self-defeating enterprise, and have changed our cable rules to reflect that. Even if it did help local broadcasters escape the impact of competition, this protection came at the price of denying the public the benefits of new services on the cable. In the same way, we have concluded that it is counterproductive to attempt to shield cable from the rigors of competition with low power broadcast. We believe that the time has come to establish a parity of free and open opportunities for translators and low power stations to compete not only with cable television systems, but with other distribution technologies as well. We believe that competition between low power television and cable television and others will encourage each to build upon its unique strengths. Cable is most efficient in delivering a large number of channels to areas of comparatively dense population, and in overcoming congestion of broadcast frequencies. Low power broadcast television will be particularly important in serving sparsely settled areas, in other locations where full service broadcast stations and cable are not in a position to increase program choices, and in some densely populated urban areas where the cost of laying cable is extremely high.

31. *Low Power Pay TV Operations.* Currently, translators are forbidden to alter a rebroadcast signal deliberately so as to make it inaccessible to conventional home receivers.[28] This rule precludes the use of scrambled programming to collect subscription fees. Based on the record, it appears that this ban has retarded the growth of television service, especially in rural areas. In many of these areas cable also is not feasible because of the sparseness of the population, compared with the high cost of laying cable. Translators also may not be able to respond to gaps in service, because the translator operator needs a source of funds but does not have the opportunity to require payment of a monthly subscription fee. The translator signal is available to anyone in the coverage areas, whether they contribute to the operation of the station or not, and some viewers—perhaps most—will elect to take a "free ride" rather than contribute to supporting the service. Thus, unless this problem can be overcome, translators will have limited financial viability.[29] We believe that allowing scrambled programming to be delivered via low power broadcast technology could enable communities to overcome the chronic difficulties of remote communities in securing an adequate financial base for their local television service. In this way, it could provide support for a larger and more diverse menu of television. Service improvements also could be expected in urban areas where subscription low power stations could cater to unmet demands for specialized programs. We do not believe it is necessary to require a separate STV authorization for low power stations or for translators selecting this method of financial support. Rather, STV would be inherent as an option in the low power television service, and the use of this service option would need only a minor modification of the station's license.

32. Even though we are concerned about a loss of "free" television, it does not serve the public interest to preclude pay service in competition with free, over-the-air, service. Equally, the public interest would not be served by artificial limitations upon the ability of advertiser-supported or tax-supported service to compete with pay television service. In our view, a mixture of advertiser-supported, tax-supported, and pay TV service is the pattern of distribution most likely to maximize consumer welfare from television. STV provides options and diversity unavailable from free television. We expect that the current fare of free television programming will continue to be available to the overwhelming majority of television households.[30]

33. For several reasons we believe that the potential loss in television service to viewers if unlimited STV operation is permitted in these communities is likely to be minimal. First, many of these communities already receive service from full service television broadcasters. Second, some of these communities already are paying for translator service either through elaborate voluntary contribution systems or through mandatory tax systems. In such cases there might be nothing more than a change in the payment mechanism more equitably distributing the cost of service to those desiring it, and actually enjoying it. Third, even if the schedule of programming presently offered by translators were to be scrambled, there is sufficient spectrum space in rural areas so that free rebroadcast television service could be provided from other sources. Fourth, given the high level of community interest in providing translator service in many communities today, local origination becomes a real possibility for these communities with the support that a scrambled system could provide. For all these reasons we believe that translator service, with a free choice for the licensee between a profit-motivated and a non-profit basis, could result in a totality of service that is more responsive to consumer demands. It could offer better signal quality and a more diverse selection of available television programming.[31]

34. Four other areas of possible regulatory intervention must be considered if we permit translators and low power television stations to collect subscription fees. They are: (1) Should we set standards for technical compatability? (2) Should we set any requirements of a minimum number of hours of free programming? (3) Should we call for the filing of franchise contracts? and (4) Should we require the leasing rather than selling of decoders? As to the first, we do not foresee any need at the present time to require scrambled translators or low power stations to conform to one chosen technical method of operation. We believe that the rigors of the marketplace will be more effective in shaping good technical performance than regulatory intervention, especially in light of the infancy of the industry and the scarcity of technical information upon which to rely.[32]

35. Currently we require full service STV stations to provide some "free" programming to consumers. However, we do not believe this requirement should be placed on low power television stations. Imposition of such a requirement could curtail the provision of the service, and it seems to us consistent to impose no minimum of "free" programming, just as no minimum amount of programming is proposed generally for low power stations. We also currently require full service STV applicants to submit the terms of agreements and arrangements that the applicant intends to have with other parties concerning the supply of subscription programs. This rule was adopted to insure that the broadcast station retains full control over the programming chosen for broadcast. We continue to believe that this is an important concern, and would specifically require than any such agreement be consistent with the rules applicable to full service programming agreements, § 73.642(e). Even so, we do not believe it is necessary for low power subscription television stations to submit these agreements. However, we are willing to consider whether it would be appropriate to arrange for access to them on a local basis so that the public can be aware of their terms.

36. We currently require full service STV broadcasters to lease rather than sell decoders to consumers. The *Report* recommended that, in the absence of an identifiable cause of market failure, this decision is best left to the individual investor. However, it also recommended that, if sale be the choice, the purchaser should receive a written explanation that the contemplated STV service is secondary. This appears to strike a reasonable balance at the onset of new service. The Commission currently is reviewing its lease-only policies for full service STV operations.[33]

37. *Ownership.* Currently, the Commission has four ownership eligibility restrictions or requirements for translator licensees. *First*, a commercial television broadcast station cannot own or financially support a VHF translator not operating on an assigned channel in the Television Table of Assignments if that translator is located in a distant television market.[34] *Second*, a cable television system cannot own a translator licensed to the same community as the cable system.[35] *Third*, translators operating at a maximum permissible power, on a channel in the Table of Assignments, normally will be authorized only to licensees of television broadcast stations unless other parties can demonstrate that they have capable technical personnel available to assure satisfactory technical quality and the avoidance of harmful interference.[36] *Finally*, no one may own or operate a VHF translator in an area receiving satisfactory service from a UHF television station or a UHF translator unless such intermixture is determined, exceptionally, to serve the public interest.[37]

38. As the analysis in the *Report* shows, all of these ownership restrictions and requirements appear unnecessary and counterproductive in their present form. Indeed, problems with present multiple ownership rules, by themselves, are an adequate justification for the comprehensive revisiting of all of our translator policies, in which today's action is a significant step. A rule that forbids our full service UHF station licensees from extending their coverage by VHF translators, while full service VHF stations may do so, arbitrarily imposes added costs upon the

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"* * * whether licensees of stations, through express or implied agreements or understandings, act in concert with each other or with other interests in refusing rebroadcast requests whether requesting stations serve the same or a different area as the station whose program they wish to rebroadcast, whether the request is for permission to carry a simultaneous rebroadcast or to rebroadcast a program at some subsequent date, whether the requesting station has indicated a willingness to pay a reasonable share of the legitimate costs of the originating station, whether or not other persons having interests in the program have requested or agreed to the rebroadcast, and whether the program concerned has public service aspects that make its wide dissemination to the public clearly desirable." *Memorandum Opinion and Order* in Docket No. 9808, 17 FR 10309, 1 RR 91:1136 (1952).

[25] This issue marks another distinction between the translator and the low power station. The translator may operate unattended through an exception in Sec. 318 of the Communications Act. Congress has indicated that in doing so, it should not engage in commercial substitution. See *Report and Order* in BC Docket No. 78-252, released on May 28, 1980, 77 FCC 2d 1006 (1980). The low power station, which would have a qualified operator, is not availing itself of this privilege and can negotiate with the primary station to achieve any mix of substitution that could be agreed to by the parties. The only modification that we would make to the 30-second origination allowed currently for translators would be the deletion of any specified technology of accomplishing it.

[26] Subsequently, in paras. 37-41, we propose to liberalize many of the multiple ownership rules applicable to translators. Both full service stations and cable systems would have new competitive opportunities, using low power technology themselves, under our proposals.

[27] *Report* in Docket No. 21284, 71 FCC 2d 632 (1979). *Report* in Docket No. 20989, 71 FCC 2d 951 (1979); and *Notice of Proposed Rulemaking* in Dockets 20988 and 21284, 71 FCC 2d 1004 (1979), and *Report and Order* adopted on July 22, 1980 (FCC 80-443).

[28] Sec. 74.731(d) of the rules.

[29] The potential advent of direct satellite to home broadcasting may have a significant effect on rural television service in the long term, but it would not make sense to forego important opportunities here and await this development at some unknown future date.

[30] We do not believe that it would be in the public interest to limit translator STV operation to cases where there are at least three or four free signals available in the community. This would preclude service just where it is most needed, in the absence of any evidence that unlimited low power STV operation would adversely affect viewer interests. See the detailed discussion in *Part IV.D* of the *Report*.

[31] As to the competitive ramifications, we believe it is important for us not to favor any one technology, especially since translators are using spectrum on a secondary basis. Therefore, we are not proposing to require cable systems to carry translator or low power station signals, whether scrambled or not. Any negotiation and settlement that is reached by individual parties concerning carriage would be accepted by the Commission.

[32] This approach is consistent with our treatment of full service STV service where we decided that "the public interest will be served by allowing STV operators the option of deciding whether or not to standardize their system or to offer decoders compatible with whatever other STV systems are serving the market." *See First Report and Order* in Docket No. 21502, adopted September 25, 1979; FCC 79-535.

[33] *See First Report and Order* in Docket No. 21502, FCC 79-535, adopted on September 25, 1979.

[34] Sec. 74.732(e)(1) and (2).

[35] Sec. 76.501(a)(3).

[36] Sec. 74.732(i).

[37] Sec. 74.732(d).

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UHF licensee, and perpetuates its comparative handicaps. This rule stands as an illustration of nothing more than the haphazard develop of translator policies to this date. We do propose to retain two of the present rules in revised form. The others would be eliminated. We believe that cross-ownership between cable television and translators need not be precluded, but we propose to retain the exclusion of cable cross ownership, in their franchise area, for low power stations that originate programming and for both translators and low power stations using scrambled signals. Common ownership in such situations could well diminish the head-to-head competition expected between them because each is the likeliest source of new competition for the other. In addition, we propose rules that would prevent a full service station from owning an originating or low power station in its own service area and would bar a national network [38] from owning an originating station.

39. There was considerable uncertainty as to the competitive effect of translators upon the national television system in the 1960's, when the scope and direction of full service development were not yet clearly in view. However, we believe that these uncertainties have been resolved and that any reasonable fear of harmful competition has been allayed. The growth of translators can be expected to increase the availability of televison, especially in rural areas, and to provide local programming. We believe that a rule prohibiting broadcast stations from owning VHF translators in distant markets would stifle this opportunity and thereby disserve the public interest. The rule restricting the use of VHF translators in areas served by either UHF full service stations or by UHF translators also disserves the public interest. The selection of a frequency to use to serve the local community will be performed most efficiently, with maximum benefit to the public, if it is made by the individual operator or investor.

40. Section 74.732(i) of the rules provides that translators authorized to operate in the Table (at 100 watts for VHF; 1,000 watts for UHF) normally will be authorized only to the licensees of full service stations. Licenses are issued to others only upon a showing of technical proficiency. This rule should be modified in light of our proposal to remove any distinction in transmitter output power arising from operation in the Table and by our proposal to require attendance by a licensed operator.[39] Moreover, advances in the reliability of low power technology have obviated the need for a separate showing of technical competency. Finally, we must recognize the fact that the present rule restricts entry to only one class of licensees, thereby discouraging the free and open development of new services by other classes of licensees. This we view as contrary to the public interest.

41. Low power stations, because they have the ability to originate programs, should be treated as "voices" in the First Amendment sense, implying that the Commission's pro-diversity ownership rules would be applicable. We propose to apply "duopoly" and "one-to-a-market" rules, as these rules are applied to TV, AM and FM broadcasting. No license would be issued to an entity already owning a station in the low power or in another broadcast service where that would result in primary service contour overlap of the two stations as defined by § 73.636 of our rules. On the other hand, we are inclined not to place a limit upon "regional concentration of control," as it is currently employed in the broadcast services, nor would we limit a single owner to a total of seven stations. The latter requirement could prevent the upgrading of many existing translator services to low power status, and the concern for anticompetitive effects is lessened where the stations are both secondary and inherently limited in their coverage potential. We note that conventional translators are not subject to any of these ownership rules today, and we do not propose to alter that policy. For ownership purposes we would regard an STV station that only rebroadcasts—in encoded form—as a low power station, rather than a translator, subject to the duopoly and one-to-a-market rules. Finally, the multiple ownership rules we propose would apply equally to commercial and to noncommercial licensees. The ownership rules will significantly affect the future shape of the service, and we specifically encourage commenting parties to offer analysis of these proposals and the related discussion is Part IV. E of the Report, which has informed our approach in this area.

42. *Programming Rules.* Unlike translators as they now exist, stations in the low power service would be able to originate programming. This raises the question of how to treat these stations in terms of the applicability of a series of requirements or policies.

43. As a general proposition, any statutory obligation or prohibition imposed upon broadcast stations must apply to translators and to low power TV broadcast stations. However, the manner in which such requirements are specified by Commission rule can and should be adjusted to reflect the actual nature and capabilities of the service. Certain statutory requirements would apply to low power stations in exactly the same fashion that they apply to every broadcaster. These include the prohibition on the broadcast of obscenity or lotteries. However, there are other areas where the statute impowers the Commission to enter the field of program regulation, consistent with the obligation to avoid censorship as contained in Section 326 of the Act, but does not require regulation of a particular type. In these areas, it is necessary carefully to weigh the goals of content regulation together with other statutory goals, including the ones that could be advanced by the inauguration of the proposed service itself. Perhaps the most important area of this type is the issue of rules appropriate to the implementation of the Fairness Doctrine in the low power television service, where we must balance carefully our goal of a new service with the minimum of regulatory oversight against the long established right of the public to be informed by our broadcast licensees.

44. Stated simply, the Fairness Doctrine is a requirement that broadcasters give fair and adequate attention to controversial issues of public importance in the community. That the attention of the broadcaster be "adequate"—an affirmative obligation to cover at least the most important of issues—commonly is spoken of as a "Part I" obligation. That the attention to issues be "fair" entails the provision of reasonable opportunities for the presentation of opposing views, a so-called "Part II" obligation.[40] The low power service that we are proposing would not provide a full range of services. Translators in this service essentially would not originate and low power stations that did choose to originate would not be required to do so to any minimum extent. Neither type of station would be required to have a studio. Accordingly, it appears reasonable in most instances to permit stations in the low power service to achieve compliance with the Fairness Doctrine by showing, in the case of a complaint, that they had accepted and broadcast a reasonable amount of responsive issue programming submitted

[38] For the definition of a national network, see § 73.658(l)(1)(v) of the rules.

[39] These proposals appear in our discussion of technical standards, *infra*, paragraphs 53 and 65–66.

[40] See, for example, *Fairness Doctrine*, 58 FCC 2d 691, 693 (1976).

to the station in a form or format compatible with the station's originating equipment, if any. The "Part II" Fairness Doctrine obligation usually could be met by a showing that a reasonable amount of time was made available for the presentation of contrasting views also submitted in a form compatible with the station's originating equipment, if any. There may be instances where a purely passive acceptance of material on a controversial issue would be inadequate, and where an obligation by the licensee itself to address the issue would be raised. In all cases, we would expect that the fairness obligation would be commensurate with the licensee's ability to offer a responsive forum, using the equipment and staff normally available to it. The obligation to afford the opportunity for opposing views would be incurred, regardless of whether or not a sponsor could be found to purchase time for such presentation.[41]

45. In the area of political broadcasting, we propose that compliance be measured in a fashion similar to the treatment of Fairness Doctrine obligations. That is, low power and translator stations would be required to provide reasonable access to, or to permit purchase of reasonable amounts of time by, legally qualified candidates for Federal elective office. However, we do not propose to require the station to provide production facilities, and see its duties as ending with the acceptance of political material furnished in any format compatible with the station's originating equipment. In all cases, once any legally qualified candidate for public office is permitted to use the facility, the requirements of Section 315 of the Communications Act would apply to access by opponents. This approach is a direct application of the current policy for translators, which are not required to offer political time if they do not originate, but must offer it in accordance with Section 315 if they do.[42]

46. The Commission's rules governing program content, in contrast to the statutory requirements, should be examined for their appropriateness in a secondary low power service. In general, we do not consider it appropriate to impose such obligations upon these stations. Several commenting parties urged that, given the nature of low power services, they should not be burdened with the types of requirements that apply to full service TV stations.[43] We agree with these parties with respect to non-entertainment programming guidelines, commercial limitations, and formal ascertainment for translator or low power station licensees. Even participation in the Emergency Broadcast System should be limited to simple requirements for directing viewers to another broadcast source of emergency information.

47. We do not believe that the Commission should require formal ascertainment in the low power television service. Ascertainment is not now required of translator stations. The low power station will have a small coverage area and typically would select a directional antenna to cover a specific pocket of local population, such as a valley floor or part of a city. The likelihood of familiarity with the service area by the licensee is much greater than is the case with full service stations, whose signals span a wider distance. Beyond this, formal requirements could impose too great a burden for these stations to carry.[43] Even though formal ascertainment would not be imposed, the Commission retains a statutory duty to find in initial licensing and at renewal that the station is serving the public interest. In this service, responsiveness to specialized needs and interests should be permitted, indeed encouraged.

C. Technical Standards

48. The proposed technical changes are designed to fit together to form a coherent whole. In fact, this interrelationship is a vital aspect of the proposal for, without it, we believe the new low power service is likely to falter. Commenting parties should take this into account. The Commission's experience in licensing translators provides a firm foundation for the technical proposals. For example, more than 2,400 VHF translators have been licensed, with no minimum mileage separations, and cases of objectionable interference are extremely rare. The technical proposals, as a whole, are refinements of existing translator policies and practices.

49. *Channel Selection.* The channel selection criteria for translators have evolved in minor increments since 1956, when translators were authorized only to Channels 70 through 83. With the reallocation of that band to the land mobile radio services in 1970, translators were encouraged to move "downward" to the highest available UHF channel. The discussion of channel assignments in the *Report* marks the first comprehensive analysis of translator assignments that has been available to us. It enables us to propose a general simplification of the standards for both VHF and UHF operations, while retaining the basic concept of secondary status to full service TV broadcast. Although relaxation of the policies in both bands is proposed, we recognize that the development of new service is likely to be concentrated in the UHF band where spectrum is more readily available. We propose to eliminate the requirement that a UHF translator applicant first look to Channels 55 through 69, and instead are inclined to permit the selection of any Channel from 14 through 69.[45] This change promises the more efficient use of UHF, and eliminates an engineering showing that places unnecessary burdens upon applicants and the Commission's administrative resources. We propose to eliminate the prohibition on VHF translators or low power stations in markets that are all-UHF. We do not believe that the benefits of a deintermixed local market are in any way placed at risk by the entry of a few secondary 10-watt or 100-watt stations. Admittedly, a unique situation is posed by all-UHF markets that the Commission specifically deintermixed. We specifically invite comments from interested parties in those markets. Although our starting assumption is that they should be treated the same as any other market, we will be attentive to any reasons that may be advanced for handling these localities under a separate standard. Finally, we propose that low power, like other TV broadcast stations, have access to auxiliary broadcast frequencies, where available, for studio-to-transmitter links and

[41] *See Cullman Broadcasting Co., Inc.*, 25 R.R. 895 (1963).

[42] See, *Public Notice*, "Acceptance of Political Advertising by UHF Translator Licensees", 62 FCC 2d 896 (1976).

[43] There is one important exception. Because of the ease with which even low power stations can achieve compliance, we propose that the Commission's rules regarding personal attacks apply in full to translator and low power stations to the extent that these stations do originate.

[44] During local origination, we propose that the station identify itself with a local telephone number where a person responsible for the station could be contacted. The *Report* stated that the question of whether this is an "ascertainment" rule or a "station identification" rule is a philusophical one. *see Part IV.F.*

[45] Our *Notice of Inquiry* in this proceeding stated that we would not revisit the reallocation of Channels 70 through 83, and no change in that approach is proposed here. New broadcast authorizations will not be made there, and translators operating there will be renewed on a secondary basis to land mobile radio. In addition, we will continue the present policy against authorization of major upgrading of translators now operating in that band. Although we have decided against a flat prohibition on the introduction of low power features to facilities at Channels 70–83, we caution applicants against making investments in frequency specific equipment there. Such applicants will not be heard to argue their investment as a reason for delaying primary land mobile radio use of the band, or even for retaining Channels 70–83 on the receiver dial. *See* UHF Comparability Task Force, *Comparability for UHF Television: Final Report* (September, 1980), pp. 106–117.

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remote broadcast pickups. In some locations, a link would be essential if originations are to be carried on at all.

50. *VHF Station Power.* When VHF translators first were authorized in 1960, the transmitter power was limited to one watt. This power limitation was intended to minimize interference, particularly because no minimum mileage separation standards were established for VHF translators. In 1965, the rules were amended to permit 100-watt VHF translators to operate on vacant channels in the Table. The higher power reflected protection ensuing from the standard mileage separations between stations upon which the Table is based. For those not operating on a vacant assignment, the rules were amended in 1968 to allow transmitter powers of up to 10 watts for translators located West of the Mississippi River, including Alaska and Hawaii.[46] The one-watt power limitation was retained for stations located East of the Mississippi River because of the greater density of television stations and what was thought to be a greater possibility of interference.

51. Several commenting parties in this proceeding, including the Association of Maximum Service Telecasters (MST), have asked that we increase maximum VHF transmitter power to 10 watts for stations located in areas East of the Mississippi River. We have waived this rule on a number of occasions to permit 10-watt translators to operate at locations where interference was not likely to result. Not only has little, if any interference resulted, but also the additional power could offer real advantage in increased coverage. For these reasons, we propose to increase the maximum VHF translator power to 10 watts for stations located in areas East as well as West of the Mississippi River. We believe this step can be taken without causing interference to any existing television service. Applicants would be expected to exercise caution in selecting channels and site locations for new 10-watt VHF translators or low power TV stations. Currently, VHF stations operating on the Table must use 100-watt transmitter output, only. The *Report* argues for flexibility here, to allow a free range up to 100 watts, and we find this persuasive as an added source of choice to the applicant in designing an appropriate facility on those frequencies. In addition, the use of higher power, up to 100 watts, should be permitted to any VHF applicant that complies with the co-channel and adjacent channel minimum mileage separation applicable to full service operations, regardless of whether or not a full service channel happens to be assigned there in the Table.

52. *UHF Station Power:* The rules currently allow UHF translators to operate at transmitter powers of up to 100 watts on "unlisted" channels, outside of the Table. Translators using output channels listed in the Table must have a transmitter power of 1,000 watts, only. The National Translator Association and other commenting parties have requested us to increase the power limitations to 1,000 watts for stations that are not operating on listed channels. NTA contends that this higher power could bring service to a wide area more efficiently, thereby lessening the need for translator chains.

53. When we amended the rules to permit UHF translators on "listed" channels to operate at transmitter powers of 1,000 watts,[47] we agreed with the efficiency arguments with respect to the use of 1,000 watts. Even so, we were then reluctant to extend the 1,000-watt limit to UHF stations operating on channels not listed in the Table, fearing that such a policy could result in a high potential for interference to existing television service. In the past nine years, we have gained considerable experience in licensing UHF translator stations, and the record is virtually silent as to reported interference. For that reason, we are now inclined to increase the maximum UHF transmitter power to 1,000 watts, for translators and for low power TV stations, regardless of whether or not they operate on a listed channel.[48] It is not the assignment of a channel in the table that determines that interference will be avoided. Rather, it is the mileage separations, effective radiated power and antenna height requirements implicit in the Table. By definition, the requirement of a listed channel is a wasteful one, particularly where secondary status itself is used to assure interference protection, because the protection it offers is based on a full-power operation. For these reasons, we believe that it is desirable to unbind the relationship between station power and placement in the Table for VHF and for UHF. We also propose to eliminate the rule requiring UHF translator stations in the Table to employ transmitter powers of 1,000 watts only. We would leave the selection of a transmitter power to the applicant's own judgment.[49] Finally, the provision in the translator rules precluding use of the "fifteen mile rule" to employ a location within that distance from an assigned channel location should be deleted, to enable the licensee to select an appropriate site.[50]

54. The minimum mileage separations for translators, as they have evolved, reveal a complete paradox. For VHF, there are no minimum mileage separations. Avoidance of interference is imposed by secondary status and by certain injunctions in the Rules that the VHF translator operator must not select a channel that would interfere, and in fact must not interfere. For UHF, employing the maximum transmitter power of 100 watts outside the Table, a translator operator must fully comply with all of the existing UHF "taboos"—which were designed to minimize mutual interference between stations operated at maximum facilities of one million watts. This is, to say the least, a regime predicated upon an excess of caution. In practice, more than 2,400 VHF translators have been authorized in a more congested band, under more imprecise standards. Yet the interference problems resulting appear to have been minimal. At the same time, the tough UHF standards have discouraged UHF translator development—a result that has been contrary to our consistent policy since 1956, when we began authorizing translators solely at UHF. For VHF, we propose to retain the current general protection against interference for translators and for low power stations. With respect to UHF, the record and the staff work afford a basis for developing new criteria that are more realistic.

55. We believe that it is possible to develop standards to use in the prediction of interference. As early as 1971, in the *Report and Order* in Docket No. 18861, we indicated that it might be possible to reduce the mileage separations or "taboos," applicable to UHF translators, but said that we would have to wait until related technical studies had been completed. Now, on the basis of a study of television receiver performance performed at our laboratory facility in Laurel, Maryland, we are in a position to propose changes to the current mileage separation standards.[51] Basically, we propose to offer applicants a two-step UHF selection procedure. First, an applicant should attempt to comply with the current separation standards. But, second, if this is shown to be infeasible for reasons of spacings or because all channels are occupied, we would accept a supplemental engineering study in lieu of compliance with the mileage separation requirements specified in § 74.702(c) of the rules.

56. the current separation standards are premised upon the use of full power by full service stations. As an alternative, we propose the use of desired-to-undesired (D/U) signal ratios as determined in the 1974 study. The maximum allowable level of the undersired F(50,10) signal at the full service station's calculated Grade B contour is found by subtracting the applicable D/U ratio from the desired F(50,50) signal level of 64 dBu V/m. In demonstrating that undesired levels are not exceeded, applicants unable to find an interference-free UHF channel in compliance with all of the minimum mileage separations should be required to employ the Commission's F(50,10) curves; or a "free space" propagation model or the F(50,50) curves for distances of less than 10 miles. Applicants could meet the required ratios by any combination of antenna directionality, antenna height, ERP, and frequency offset. Terrain shielding could be considered on a case-by-case basis. The following table indicates the values for maximum undesired F(50,10) signal that would have to be met in any such calculations:

Channel of broadcast station relative to the low power station	D/U ratio (dB)	Maximum level of undesired F(50,10) signal at Grade dB (uV/m)
Co-channel (n)[1]	45	19
Adjacent channel (n±1)	−15	79
Sound image (n−14)	−23	87
Picture image (n−15)	−6	71
Intermodulation (n±2,3,4,5)	[2]	[2]
Oscillator (n+7)	[3]	[3]

[1] "n" refers to the power channel in question. The co-channel D/U ratio of 45 dB generally is considered appropriate for stations not operating on frequency offsets. A ratio of 28 dB would apply where stations proposed operations of the basis of 10,000 Hz ±1,000 Hz offsets.
[2] Minimum separation of 20 miles.
[3] Minimum separation of 60 miles.

57. The *Report* indicates that a low power station would have to be extemely close to a full service station for interference to occur as the result of IF beat. We invite comment on the *Report's* recommendation that this taboo be inapplicable to low power and translator stations. We also propose, as indicated by the table, not to "protect" stations 14 and 15 channels above a low power facility, for reasons of sound image or picture image interference, or to protect channels seven below from oscillator radiation. In practice, it is an engineering fact that the interference travels only oneway toward the lower channel. While full service stations should be protected from mutual interference on the "image taboos" criteria, the low power applicant can make the choice of whether or not to be concerned with incoming interference without the need for a Commission rule constraining use of UHF frequencies.

58. We hope to facilitate efficient spectrum usage through the application of innovative engineering approaches to the planning of translator and low power stations, including the effective use of directional antennas and natural terrain shielding. In offering this proposal for licensing UHF translators we have relied upon our licensing experience in the VHF band, where mileage separation standards are not applied to translators. We are encouraged by the apparent lack of interference that has resulted. With this history in mind we are hopeful that this proposal for UHF channel selection would not lead to interference if applicants take proper care in the selecting of channels and in their engineering of transmitting facilities.[52]

59. *Interference.* As the Comments of MST indicate, "interference" can occur occasionally under freak conditions, as when reception of a regular station is being attempted at a very substantial distance from the television broadcast transmitter (for example, greater than 100 miles). In such cases, MST believes that it is unreasonable to require the translator to suspend operation. Its view is that in cases where there is no reasonable expectation of reception of the desired station, the trnaslator should not be required to go off the air to end the interference. We agree, and would expect that secondary status for all low power stations, including translators, can be enforced adequately by requiring the licensee's prompt cooperation in tests to determine the source of interference, and in the corrective action that may be necessary.

60. Sec. 74.703(a) provides for different treatment of interference occurring between VHF translators and that occurring between UHF translators. New UHF translators must protect existing UHF translators from interference, but if interference occurs among VHF translators, licensees have been expected to resolve the problem by mutual agreement. This implies a type of "seniority system" with UHF, but not with VHF. Upon reflection, we do not believe there is a substantial basis for this distinction. We would continue to expect them both to cooperate with one another in such matters. A priority for the low power station first entering service should apply when disputes cannot be resolved by mutual agreement. The assignment and power proposals, described already, are intended to remove artificial distinctions among low power stations that would turn on whether or not they are operating within the TV Table. Consistently with that, we propose to eliminate the priorities among translators that are accorded by the rules, favoring those in the Table in cases of mutual interference. The general low power to low power interference criteria already described should apply to these cases, as well.

61. In the *Notice of Inquiry* in this proceeding, we specifically invited cable television parties and others to report to us on any conditions of objectionable interference arising from translator operations. *See* paragraph 20 of the *Notice.* A great deal of declamatory assertion issued from the cable parties on this point, but they completely failed to respond to the call for evidence. At length, the National Cable Television Association, in its *Reply Comments,* was able to support its general claims of

[46] See *Report and Order* in Docket No. 15971, 13 FCC 2d 305, 13 RR 1577 (1968).

[47] *Report and Order* in Docket No. 18861, 47 FCC 2d 628 (1971).

[48] Because of the power gain of the antenna used, the station's effective radiated power might be as much as 30 kW ERP in the main direction of radiation.

[49] The *Report* contended that authorization should continue to be made for transmitter output power, rather than effective radiated power. However, to give the Commission's records more practical utility, for example, in reviewing any reported interference, it urged that this be included as a term of the authorization. Such a requirement appears reasonable to us, and should not be burdensone in practice.

[50] Sec. 74.702(g) and Sec. 74.702(b)(2), incorporating by reference § 73.607(b) of the rules.

[51] W. K. Roberts and L .C. Middlekamp, A study of the Characteristics of Typical Receivers Relative to the UHF Taboos, NITS PB-235 057 (June, 1974).

[52] We propose no changes to the current policy of permitting translators to locate without minimum mileage separations, either between themselves or to cable TV head ends.

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massive interference with documentation of two instances. The *Report* examined these in detail, and found them to be caused by operations outside of the Commission's technical rules. This is a proper subject for the Commission's complaint procedures, but, if anything, it is supportive of the contention that the existing rules are adequate to disclose and proscribe interfering conditions. Nevertheless, we propose a rule that low power stations should not be authorized where it has been demonstrated that interference to an existing cable television service, at the head end, will be caused. Cable parties as yet have not shown that this is likely to be anything but an issue in isolated instances. The proof to be offered in opposition to an authorization would have to be clear and convincing, in view of the ease of taking corrective action after the interfering conditions has been identified and measured in the field. Finally, where interference does arise in practice we propose three rules:

1. The low power station operator is strictly responsible for taking immediate corrective action where an interfering condition to any other service results from operations in violation of the Commission's technical standards, or from improper maintenance.

2. The cable operator should be responsible to correct interference at the cable distribution system and at the subscriber's set.[53]

3. The first-come-first-served principle should govern conditions of interference between a low power station and reception to a cable television headend. Where possible, a solution should be found by mutual agreement upon the lowest cost solution, and the sharing of any burdens from taking corrective action.

62. Finally, we propose that translators and low power stations no longer be required to suspend operations until it has been established that they are not at fault with respect to any condition of interference to another television service. It strikes us as inequitable to make the low power station the automatic "prime suspect" where objectionable interference arises. It should be adequate to require that the low power station cooperate promptly in tests to determine the source of objectionable interference. In summary, we would treat complaints of interference to CATV systems caused by low power stations or translators in the same manner as complaints involving interference among translators or low power stations. In general, we would hope that situations of interference could be resolved by mutual agreement among the affected parties. Where such agreement cannot be reached, we would continue to intervene and require remedial action if that becomes necessary.

63. *Transmitter Standards.* We are concerned primarily with maintaining those standards necessary for the prevention of objectionable interference. Additional standards that are calculated to maintain a first-rate quality of signal into the home appear to us neither necessary nor desirable. Rigorous standards may preclude the service altogether in some instances, and we have every confidence that the operator will attempt to make his or her use attractive to viewers. For these reasons we specifically reaffirm our rules that protect against out-of-band emissions, and that require good frequency tolerance. We propose to extend these standards to low power stations, and to require all low power stations that employ modulators to comply with the transmitter rules applicable to full service stations, § 73.687 (a) and (b), as translators currently do. The only relaxation in these standards recommended in the *Report* was to require that the wave form characteristics be the same, incoming and outgoing, instead of requiring conformity of the outgoing signal with a specified modulation envelope, and we agree that this should be adequate.[54] Translators and transmitters in this service should continue to be type accepted. Finally, in view of the extensive treatment given the frequency tolerance and interference issues in the *Report*, and the resolution of the subject proposed here, we are dismissing a petition for rule making on tolerances as moot.[55]

64. The foregoing rules are expected to assure the avoidance of objectionable interference. With that in mind, we are able to leave a fair degree of latitude to the operator on the quality of the service, and the monitoring and test equipment that would be necessary. We do not propose to apply the full compliment of full service station transmission standards in § 73.682 to the low power television service. Specifically, we are not inclined to create standards here for sync pulse and blanking wave forms, or color mixture, or audio distortion.[56] Stations involved in STV operations should employ FCC certified equipment for decoding, but there are no added STV transmission standards for full service stations, and we propose none for low power stations.

65. *Station Operation, Identification, and Maintenance.* Since 1960, when Congress amended the Communications Act specifically for this purpose, translators have enjoyed an exception to the statutory requirement that broadcast stations be attended by a qualified operator, 47 U.S.C. 318.[57] The low power television service we are proposing may be well beyond what Congress had in mind with this particularized exception. For this reason, we propose to require an operator for all low power television stations. Unattended operation would only be permitted for translators operating in the traditional mode, and not originating beyond 30 seconds per hour. Indeed, this requirement of an operator, pursuant to law, is the principal difference between the regulatory framework for translators, and for low power stations. The addition of a modulator to a translator adds few new complications, and the degree of operator involvement required by our *Report and Order* in Docket No. 20539 [58] should suffice: observation of the off-air signal by a person designated by the licensee for ten continuous minutes each day, using a conventional TV receiver at a convenient location.

66. In contrast, the low power station will require the direct involvement of an operator. The *Report* distinguished between an imported signal by FM microwave feed, and a local origination, from a videotape player, film chain, camera, or other local source. For the former, the *Report* recommended a direct application of the rules for microwave feed, as adopted in Docket No. 20539, but requiring the monitoring to be done by a person holding at least a Restricted Permit. For the latter, it recommended that a person so qualified be actually present at the transmitter site, at a remote control point, or at the program source. The distinction appears reasonable to us, and should pose the minimum burdens upon the originating station licensees.

67. The *Report* and the record in this proceeding indicate significant advances in the reliability of modern translator technology. We also note, however, that equipment designed to function reliably, even while unattended, must receive adequate maintenance. We propose to require that translator and low power licensees be required to conducted measurements of the carrier frequencies of their outgoing channels at least once a year and as often as necessary to assure compliance with the Commission's frequency tolerance standards. The aural carrier frequency of modulator-fed stations also should be measured. On the other hand, we would agree with the *Report* in considering it adequate to permit factory measurement of the modulation characteristics, rather than field measurement, and in allowing proof-of-performance certification to be made by Second- as well as First-Class Radio Telephone Operators.

68. The final technical issue to be considered is station identification. The format and time of station identification seem to us significant, the type of equipment to be used of minor importance. We propose to continue the current translator rule that specifies hourly transmission of the call sign in International Morse Code or identification by a primary station being rebroadcast. During local originations, we propose to require some type of identification by a local telephone number where a person responsible for the station can be contacted. We do not propose to require any particular equipment configuration to place the station "ID" onto the broadcast.

D. The Authorization Process

69. We are not proposing any minimum hours for the low power television service, nor do we make any distinction as to the type of financial support. Rebroadcast and origination, tax support, advertising and STV all are inherent as service options in this proposed new service. The goal of rapid and flexible development of the service, in response to public needs, will not be realized if the administrative process for securing an authorization itself is slow and cumbersome. *Part V* of the *Report* contains a number of recommendations to streamline and simplify the process of awarding permits and licenses. While we propose to follow the approach recommended there, interested parties should have ample opportunity to present specific alternatives. We intend to give particular weight to comments that advance procedures complementary to the goal of expeditious development of the service.

70. The *Report*, in *Part V*, recommends several steps that are designed to eliminate costly and profracted comparative cases. Any party filing a mutually exclusive application would be notified, and given 30 days to amend, specifying other facilities. If the party did not amend, the staff would have authority to attempt to work out an agreement in a "pre-designation conference." If these efforts are unavailing, a "paper hearing" would be held, in which applicants would present written evidence upon questions of basic qualification, conformity of their applications with our Rules, and on three and only three, simple and easily applied comparative criteria. The criteria would be of equal weight and would be cumulative, toward a preference for a particular applicant. The applicant who first filed a complete and sufficient application would receive a preference. The applicant under minority ownership and control greater than 50% would receive a preference. Finally, the noncommercial applicant proposing a noncommercial service for the general public would receive a preference.[59] Thus, the paper hearing in a contested case would end with findings as to which of the applicants were basically qualified, and a finding that one qualified applicant was entitled to an authorization because it had more comparative preferences than any of the others. If use of the three comparative criteria did not disclose a "winner," the case would be referred for a lottery, with each applicant having an equal chance to receive the authorization.[60]

71. We note that our staff recommended the three criteria as a "first draft" set of preferences, and propose them in that spirit. We shall carefully consider comments that advance other approaches to the comparative process balancing, as we must, the statutory goals of "fair" as well as "efficient" distribution of service.

72. The purpose of this overall approach is to avoid head-to-head competition among applicants, with its profound drain upon the resources of the parties and the administrative agency. We want to emphasize the early stages of settlement and agreement, and to de-emphasize the lottery, which we would hope need be invoked in a small minority of initially contested cases. Prior to the use of the lottery, a set of clear and simple bases for a preference should foster settlements, by foreshadowing a probable outcome to all concerned. As proposed, the party that has taken the initiative to first perfect an application is accorded a preference. The minority applicant and the noncommercial applicant are accorded a preference, as well.

73. The first filing raises at least an equitable interest by the party that seized the initiative, and who first prepared engineering analysis and other showings. This would be entitled to some weight in the comparative setting. For the preference to operate successfully, it could only be earned by the first filing of a complete and sufficient application. Criteria for this cannot be stated with certainty until a low power construction permit application form is adopted to suspersede the TV translator form, FCC Form No. 346. We invite commenting parties to suggest procedures and criteria that would comport with efficiency and fairness if this preference is used comparatively. We wish to be clear that the first filing preferance is not a reward for the submittal of a hastily prepared application. To operate successfully, the preference would be available only to the applicant meeting rigorous standards of completeness and sufficiency. A significant public interest benefit of the preference would be an overall improvement in the quality of applications as applicants endeavor to earn the preference by submitting complete and accurate applications, thereby speeding service to the public and relieving some administrative demands upon the Commission's resources.

74. We propose that a preference be accorded to applications by noncommercial entities, because we believe that non-profit operations have had an important role in the development of translator service, including pioneering efforts in origination, in Alaska and elsewhere. We want to assure strong noncommercial participation in the low power television service, cooperatively with public broadcast interests.

75. We invite public broadcasting parties to comment on any reasonable steps we could take to coordinate our

[53] Not only is the cable operator the one best able to correct the condition, through shielding or otherwise, but the claim that delivery in the home warrants spectrum protection belies the entire theory of cable regulation founded upon cable not precluding other uses of broadcast frequencies.

[54] Translators limiting their originations to emergency warnings and 30-second fundraising appeals should continue to be exempt from any wave form criteria.

[55] Petition by KOAT Television, Inc., filed on February 22, 1972 (RM–1932).

[56] For discussion of these, *see Part IV.B* of the Report. The *Report* suggested "minimal" standards, for example that the channel be 6 MHz and that the number of scanning lines per frame be 525, and this seems to us adequate.

[57] The Commission is currently re-examing its operator requirements for all broadcast services. Some requirements have been eliminated and significant deregulation proposals are outstanding for others. *See Report and Order* in Docket No. 20817, FCC 79–721, November, 1979.

[58] 67 FCC 2d 209 (1978).

[59] In paragraph 38, *supra*, we proposed to permit certain types of cross ownership between cable and translators and low power stations. However, in a comparative case that reaches the paper hearing, we believe that cable ownership in the same locality should be disqualifying, because any other licensee could be expected to provide a new source of competition. Translator ownership in the same locality also should be disqualifying.

[60] We presently contemplate that none of these preferences would apply in a contested license renewal. We have assumed that the procedures and applicable law for renewals would be identical to those now applied for translators. We specifically invite comment on the comparative renewal process.

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findings of financial qualification with the cycles of grant funding through the National Telecommunications and Information Administration and the Corporation for Public Broadcasting. We also encourage public telecommunications parties to begin planning now for the advent of low power television service, and to indicate in their comments whether they contemplate interconnection arrangements for these stations. Finally, we agree with the *Report* that in the early stages it is desirable to keep open a wide range of financing possibilities, and state that we do not rule out low power applications by noncommercial entities that would be supported by taxes, voluntary contributions, or even subscription fees. The *Report* makes it clear that the noncommercial area involves many statutory questions. These are best treated by the parties charged with statutory duties in public telecommunications, but we encourage early planning, and are ready to assist in securing a meaningful noncommercial role in the low power television service. We hope that these parties will continue to be active in this proceeding, and that they will furnish us with sufficient details regarding their own plans to enable us to complement and to strengthen their development of new noncommercial offerings in this service.

76. We also propose that a preference be accorded to applicants that are owned and controlled by minorities. The experience in Alaska and in northern Canada described in the *Report* and in Teasdale suggest that the low power television service may be an important instrument for responding to the needs and interests of particular audiences that are underserved by available television broadcast service, both in urban and rural areas. Already, the Commission has received many expressions of interest from minority groups and individuals regarding the use of low power technology to develop new service and new ownership opportunities. We specifically encourage this interest, and fully intend that the inauguration of this new broadcast service be the occasion for assuring enhanced diversity of ownership and of viewpoints in television broadcasting.

77. Under current rules, a party is not permitted to convey its permit or license within three years of the initial grant.[61] The advent of a new television service, accompanied as it is by many uncertainties, does not seem to us an appropriate place to apply this rule. Individuals and groups willing to assume the risks of development are conferring a benefit upon the public. If their calculations are not borne out, they should have the opportunity to convey to another developer who may have a more efficient plan for implementing new service. A limitation upon conveyance may cause spectrum to lay idle for reasons of that limitation, alone. In addition, this service presents us with a rare opportunity to test the efficacy of a free-transferability policy. As experience is gained, we may later decide to institute a limit, but presently we are unsure as to what the appropriate limit would be, and so do not propose to specify a rule against "trafficking."[62]

78. *Interim Handling of Applications.* Finally, we address the policy that we intend to follow during the pendency of this proceeding. We do not believe that a "freeze" on low power applications would serve the public interest. Certainly, the routine uncontested translator application should contine to be processed. In addition, we have pursued a liberal policy of waiver in the past, and have no reason to depart from that now, where applicants propose low power features, and offer a public interest justification for waiver. The staff will continue to process routine applications and will grant waivers in accordance with existing precedents or will refer novel applications to the Commission for determination on an *ad hoc* basis during the pendency of the rulemaking. All grants, including conventional translator grants, will be conditioned upon the outcome in rulemaking. The Commission will reserve the right to modify or to terminate any such authorizations upon 60 days notice after the release of any final report and order in this proceeding.

79. The staff will defer action on any application, seeking waiver, that is inconsistent with the technical standards or the ownership rules of the proposed Low Power Television Service. Because the comparative criteria and comparative procedures both are the subject of rulemaking, no mutually exclusive applications can be processed through to a grant during the pendency of this proceeding. Only after comparative criteria and procedures are finally established for the service could they then be applied to resolve mutually exclusive cases. We caution applicants that the grant of novel applications can only be done within the Commission's administrative resources. To avoid giving any premium to an interim filing, we would in no event use a first-filed preference in cases involving applications filed during the pending of the rulemaking. If we finally adopt a preference for a first filed application, we intend it to apply only when every application in a group that is mutually exclusive was filed at least 30 days after the release of a final report and order in this proceeding. Thus, we preserve the status quo by assuring that there never will be a comparative premium for the earliest filing arising during the pendency of this rulemaking.

80. If it should appear that an applicant during the interim is making filings merely to store a large quantity of TV broadcast frequencies, or where there is intrinsic or extrinsic evidence of an anticompetitive pattern of applications, we reserve the right to defer action until we have the benefit of a full record on the ownership and other issues, and have adopted final rules informed by that record. In short, we are not encouraging or discouraging interim applications, so long as applicants understand that they may in no way impinge upon our ability to respond in full to the record being developed here.

81. We encourage the submission of other suggested approaches that could be used to provide the maximum benefit from low power television and translator operation. It may be that modifications of the approaches we propose could even better serve the public interest in extending TV coverage and in providing enhanced program diversity. This applies particularly to the bases for a preference, and generally to the administrative procedures we propose here. Those proposing new approaches are asked to offer an analysis of their benefits in fulfilling the goals of the service and not simply to offer them as "bare-bones" alternatives.

V. Procedural Matters

82. Accordingly, Comments on the various proposed changes in the Commission's rules are invited to be filed not later than January 15, 1981, and Reply Comments by March 1, 1981. This action is taken pursuant to the authority contained in Sections 4(i) 303(b)(c)(g) and (r) of the Communications Act of 1934, as amended.

83. Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments and reply comments by the dates indicated. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order. The contact person for further information regarding this proceeding is Michael Couzens in the Broadcast Bureau, 1919 M St. NW., Washington, D.C. 20554 (632–6302). However, members of the public should note that from the time a notice of proposed rulemaking is issued until the time the matter no longer is subject to Commission consideration or court review, *ex parte* contacts presented to the Commission in proceedings such as this one will be disclosed in the public docket file.

84. In accordance with the provisions of § 1.419 of the Commission's rules, an original and 5 copies of all statements, briefs or comments filed shall be furnished the Commission. Responses will be available for public inspection during business hours in the Commission's Public Reference Room in its headquarters in Washington, D.C.

85. Finally, it is ordered that the petition by KOAT Television, Inc., mentioned in para. 63 of this Notice, is dismissed as moot.

Federal Communications Commission.[63]

William J. Tricarico,

Secretary.

September 9, 1980.

Separate Statement of Chairman Charles D. Ferris

Re: Low Power Television Broadcasting

A month ago, the Commission removed the regulatory weeds of the last decade by freeing the Cable Industry from regulatory oppression. Today the Commission is planting in their place seed for hundreds of new television stations.

Low power television broadcasting, the first new broadcast service considered by the FCC in 20 years, offers the same intriguing possibilities as the advent of commercial television broadcasting in the late 1940s. It poses an exciting challenge to commercial and noncommercial entrepreneurs of creating programming to make the new service attractive to Americans.

Lower power TV offers a chance to add new TV services for our citizens, primarily over UHF channels that today go wanting because, due to the construction and operating costs of full power operation, they cannot be viable as full service UHF channels. For smaller communities, it means first local TV outlets or additional UHF outlets that might someday become full service stations. For the larger cities, it means additional choices from the TV fare they now get.

The proposals developed by the commission's staff are highly innovative. They propose unlimited multiple ownership, and do away with requirements like ascertainment, maintaining a studio or providing local origination. Operating requirements—and thereby operating costs—will be kept simple. No extra authorizations would be necessary to operate these stations on a subscription television basis. And simplified paper bearings would be employed to speed up the assignment process.

This proceeding should encourage new program ideas. The much reduced costs of low power operation, compared to start-up of a conventional TV station, along with the narrowcasting possibilities of targeting specific service areas, should attract a new breed of broadcaster, and broadcast networks, that are priced out of TV today.

We have already received applications for spanish language service and other minority-oriented networks, which we today have authorized our staff to process expeditiously, and many other potential commercial and noncommercial applicants have made their interest known. Citizens in Alaska are already receiving additional service through low-power TV operations we have previously granted through waiver of our translator rules. Other entrepreneurs should find this new marketplace a welcome opportunity, and citizens in other areas, both rural and urban, can likewise benefit from adding new television services to meet their specialized interests.

Concurring Statement of Commissioner Robert E. Lee

In re: Low-Power Television Broadcasting, BC Docket No. 78–253

I concur in issuance of this Notice of Proposed Rulemaking because it offers the promise of more viable translator operations and fosters innovative uses of the television spectrum. The proposed secondary status for these stations effectively eliminates any concern I might have had regarding degradation of regular service, which is in marked contrast to the documented effects of interference from short-spaced VHF drop-ins, also addressed today. While I am peripherally concerned about the potential impact that such stations may have on UHF development, I will reserve judgment until the record has been developed in response to this Notice.

I hope that this Notice will stimulate a lot of comment about this proposed new service. As is the case with any major revision of our rules, many of the details need a lot more thought. I hope the commenters will focus some of their attention on the procedures for handling any comparative cases which may arise and on the proposal to give preferences on the basis of race or because of a noncommercial format. Both these matters concern me, and I would benefit greatly from comments of the parties.

Finally, I am concerned that potential applicants for low-power stations have not been alerted adequately to the prospect that such stations may exhibit *very limited service areas* due to interference from regular stations. While this isn't a reason to deny anyone use of one of these channels, I don't want anyone to misunderstand what this low-power proposal really means. It certainly isn't going to be a license to print money.

Concurring—in Part—Statement of Commissioner Abbott Washburn

Re: Inquiry Into the Future Role of Low Power Television and Television Translators in the National Telecommunications System, BC Docket No. 78–253

The absence of any limitation on the multiple ownership of this proposed new service is inconsistent with the Commission's limitation on AM, FM and television stations. Currently, ownership of those services is limited to seven of each per licensee. Such limits have proved valuable in encouraging diversity of voices and ownership of facilities. A similar provision should have been included here for low power television. Nevertheless, I am concurring in the issuance of the Notice without limitation on multiple ownership of the new low power service. At this writing, I am inclined to favor a reasonable limitation on this service if it becomes a reality and before we are forced to consider grandfathering systems which would exceed whatever limits we might impose later. I encourage and seek comments for and against the advisability of limiting the multiple

[61] Sec. 73.3597 of Rules.

[62] On the other hand, it is not spectrally efficient to encourage licenses to be held solely for resale, as opposed to use. We expect every broadcast permittee and transferee—in the low power television service as in others—to exercise due diligence in pursuing its plan for the implementation of service. The application is for the purpose of specifying a plan for actual service, and we treat that plan as a serious representation to us of the applicant's intentions. Undue delay in pursuing construction would be inconsistent with this representation. Without a rule against trafficking, the failure to construct in a timely manner should result in the cancellation of the construction permit.

[63] See attached Statements of Chairman Ferris, Commissioner Lee, Commissioner Washburn and Commissioner Fogarty.

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ownership of low power television from any interested party, and will consider all such carefully before casting my vote when this proposal returns to us for a final determination.

Separate Statement of Commissioner Joseph R. Fogarty; Concurring in Part

In re: Notice of Proposed Rulemaking Looking Toward the Creation of a New Low Power Television Broadcast Service

I believe the proposed creation of a new Low Power Television Service is well-conceived in its basic concept and outline. The record developed in response to the *Notice of Inquiry* in this proceeding provides substantial assurance that low power television will offer a significant opportunity for enhanced service diversity and minority ownership without jeopardizing the technical or economic integrity of the existing full service television station system.

At the same time, however, I have serious reservations concerning the manner in which this new service would be implemented. In particular, the authorization process proposed by this *Notice* raises several difficult legal and policy issues, and because the proper resolution of these critical issues is at this juncture by no means clear, I only concur in this part of the Commission's action.

The *Notice* proposes authorization (i.e., licensing) procedures designed to minimize cases of mutual exclusivity and to avoid oral comparative hearings. Where "consultation" procedures fail to discourage or avoid mutually exclusive applications, only three comparative factors would be considered: Comparative preferences of equal and cumulative weight would be awarded to (1) the applicant who first files a complete and sufficient application; (2) non-commercial applicants proposing a non-commercial service; and (3) minority owned and controlled applicants. Applicants would *not* be allowed to compete in terms of the technical or service attributes of their respective proposed operations. In the event that comparative preferences thus awarded did not determine a "winner", a lottery would be held to determine the grant of license.

While I am sensitive to the concern that a new Low Power Television Service not be stifled by the delay and costs attending the oral comparative hearing process, I must question whether this "streamlined" procedure—and particularly the prescription of only these three limited comparative criteria—is in sufficient conformity with the Commission's statutory licensing responsibilities.

Under the Communications Act, the Commission, in passing upon an application for a permit to construct a broadcasting station, must judge by the standard of the "public convenience, interest, and necessity." [1] In construing this statutory public interest standard of broadcast regulation, the courts have observed that "Comparative analysis is implicit in any scheme of allocation and has always been at least formally a consideration in broadcasting licensing." [2] Thus, in *Ashbacker Radio Corp.* v. *FCC*,[3] the Supreme Court firmly established that under Section 309(e) of the Act where two or more applications are mutually exclusive, there must be a joint comparative hearing.

Following *Ashbacker*, the courts have held that the "full hearing" requirement of Section 309(e) includes "a decision upon all relevant criteria": [4]

> [T]he findings must cover all the substantial differences between the applicants and the ultimate conclusion must be based on a composite consideration of the findings as to each applicant.[5]
>
> "A choice between two applicants involves more than the bare qualifications of each applicant. It involves a comparison of characteristics. Both A and B may be qualified, but if a choice must be made, the question is which is the better qualified * * *
>
> "* * * Comparative qualities and not mere positive characteristics must then be considered.
>
> * * * * * *
>
> "* * * The Commission cannot ignore a material difference between two applicants and make findings in respect to selected characteristics only * * * It must take into account all the characteristics which indicate differences, and reach an over-all relative determination upon an evaluation of all factors, conflicting in many cases * * *" [6]

Section 307(b) of the Act also provides a guide to the proper discharge of the Commission's licensing responsibilities:

> In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is a demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.

In *FCC* v. *Allentown Broadcasting Corp.*,[7] the Supreme Court ruled that Section 307(b) requires that when mutually exclusive applicants seek authority to serve different communities, the Commission must first determine which community has the greater need for additional services and then determine which applicant can best serve that community's need. In *Pasadena Broadcasting Co.* v. *FCC*,[8] the Court of Appeals for the District of Columbia Circuit observed that the facial language of Section 307(b) "applies not only to changes in the structure of spectrum allocation, such as grants of new licenses or modifications, but to license renewals as well," and adjures the Commission to "consider the propriety of allocation 'when and insofar as there is demand' for service." [9] Based on this analysis, the court concluded that the "Satisfaction of these statutory commands is not, nor ought it to be, a one-time thing, for the balance of demand for service will shift among communities over time." [10] The *Pasadena* court also noted that because "Local transmission service bestows such important benefits," Section 307(b) has been consistently interpreted * * * virtually to ensure an applicant for first local service preference over one who proposes merely to complement preexisting local operations." [11]

These statutory provisions embody the fundamental principle that the comparative process is designed specifically to ensure "the best practicable service" to the public by licensees of broadcast facilities. The critical importance of this principle was stated by the Supreme Court in *National Broadcasting Co.* v. *United States* [12] in a passage which especially warrants full quotation here:

> The facilities of radio are limited and therefore precious; they cannot be left to wasteful use without detriment to the public interest. "An important element of public interest and convenience affecting the issue of a license is the ability of the licensee to render the best practicable service to the community reached by his broadcasts." *FCC* v. *Sanders Radio Station*, 309 U.S. 470, 475. The Commission's licensing function cannot be discharged, therefore, merely by finding that there are no technological objections to the granting of a license. If the criterion of "public interest" were limited to such matters, how could the Commission choose between two applicants for the same facilities, each of whom is financially and technically qualified to operate a station? Since the very inception of federal regulation by radio, comparative considerations as to the services to be rendered have governed the application of the standard of "public interest, convenience, or necessity."[13]

When measured against these statutory requirements and interpretative judicial precedent, the proposed assignment and licensing procedures for the new Low Power Television Service are problematical, to say the least. The *Notice* issued by the Commission seems to acknowledge that we are required to evaluate and decide all "substantial relevant differences" between competing applications; however, while first filer status, minority ownership and control, and non-commercial status and operation represent significant "public interest" applicant attributes, they are by no means exhaustive of such characteristics. In this regard, I must question why proposed service and technical operation characteristics are not to be deemed "substantial and relevant" to the ultimate public interest in the use of these new low power television frequencies and thus entitled to comparative evaluation. Again, it bears emphasizing that " 'The Commission cannot ignore a material difference between two applicants and make findings in respect to selected characteristics only * * *'" [14] "[C]omparative considerations as to the services to be rendered * * * govern[ ] the application of the standard of 'public interest, convenience, or necessity.' " [15] If service and technical attributes do not count in the process of determining "best practicable service," what do?

I also find troublesome the "equal weighting" of the three "comparative" factors proposed by the *Notice*. As the courts have repeatedly held, where a choice must be made between two or more competing applicants, "* * * the question is which is the *better* qualified." [16] A proper determination of this ultimate issue requires that the Commission consider "Comparative qualities and not mere positive characteristics * * *'" [17] This clearly means that the Commission "must take into account all the characteristics which indicate differences, and reach an *over-all relative determination* upon an evaluation of *all* factors, conflicting *in many cases*." [18] First filing status, minority ownership and control, and non-commercial status and operation are "mere positive characteristics," and it strikes me as extremely doubtful that in any given case an "equal weighting" of these factors among competing applicants would suffice as the "overall *relative* determination" which the statute and interpretative case law commands. Section 309(e) and its surrounding precedent implicate a more searching and refined comparative analysis. Moreover, while *"no hearing* need be held where an application fails to measure up to the Commission's rules and does not indicate waiver," the Commission is not authorized "to deny *qualified* applicants their statutory right to a *full hearing* on their own merits." [19] The "equal weighting" process cannot be easily squared with this "full hearing" requirement of the statute.

From the standpoint of Section 307(b)'s requirements, there is an implicit suggestion in the *Notice* that comparative evaluation of service and technical differences would increase the delay and costs of the authorization process and thus impinge on the "efficient" distribution of new low power television facilities. However, the Commission cannot emphasize the "efficient" distribution of these limited facilities to the exclusion or nullification of the statutory command that this distribution also be "fair" and "equitable." In this regard, judicial holding has firmly rejected the "notion" that Section 307(b)'s requirement of "fair, efficient, and equitable" spectrum allocation is "a tailsman whereby the rigors of a comparative hearing may be avoided if only grounds for decision can be found that smack of 'efficiency'—or, presumably, 'fairness' or 'equity.' " [20]

Two hypothetical—but plausibly foreseeable—cases illustrate the flaws and difficulties which may be inherent in the authorization process tentatively proposed by the Notice:

Assume there are three low power television channel allotments available in the Detroit, Michigan, area. Also assume that two of these three allotments have already been granted to minority owned and controlled applicants pursuant to the proposed three-factor preference criteria. Assume further that the third and remaining channel is applied for by another minority applicant and a non-minority applicant proposing to serve the Polish-American enclave of Hamtramck (a city within the city of Detroit) with Polish-language and -ethnic programming. Under the limited three-factor criteria, the minority applicant would receive a preference and the competing applicant would not (unless it was the first filer or non-commercial). If the minority preference were determinative of the contest, or led to a lottery in which the minority applicant prevailed, how could this process and result be squared with the most elementary principles of "fair" and "equitable" distribution of television service? Would not a grant to the minority applicant in this case be *prima facie* irrational, arbitrary, and capricious?

Assume a "first filed" application by a non-minority, commercial applicant proposes a pure translator operation while another non-minority, commercial applicant proposes a primarily local origination service. The process and criteria proposed by the *Notice* would dictate that the pure translator service be preferred over the local origination service proposal. But, how could this process and result be reconciled with the statutory goal of "best practicable service" and the judicially recognized Section 307(b) preference for local transmission service?

I believe that a few cautionary observations are also appropriate on the *Notice's* tentative preference for paper hearings and lotteries in structuring a special authorization process for the new Low Power Television Service. The Commission's authority to resolve mutually exclusive comparative proceedings on the basis of the competing applications and pleadings responsive thereto, without oral hearings, has never been fully explored. I think the public interest would be well served by pursuing the procedural and statutory implications of this issue in this proceeding. At the outset of this inquiry, it should be noted that the "full hearing" requirement of Section 309(e) does not necessarily implicate a full oral or evidentiary hearing in all cases. The test should be one of substance, not mere formality. If the Commission can make a rational, principled, and thorough evalution of the basic and comparative characteristics of the competing applicants on the written record alone, I see no statutory or administrative requirement that the Commission nonetheless must hold an oral hearing before making its choice. This, of course, may only state the critical issue, that is, whether the written record joins substantial and material questions of fact concerning the basic and comparative merits of the competing applicants which can be satisfactorily resolved only in the

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[1] *FCC* v. *Pottsville Broadcasting Co.*, 309 U.S. 134 (1940).

[2] *Central Florida Enterprises, Inc.* v. *FCC*, 598 F.2d 37, 41 (D.C. Cir. 1978).

[3] 326 U.S. 327 (1945).

[4] *Citizens Communications Center* v. *FCC*, 447 F.2d 1201,1212 (D.C. Cir. 1971).

[5] Greater Boston Television Corp. *v.* FCC, 444 F.2d 841, 851 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923 (1971).

[6] *Citizens Communications Center* v. *FCC*, 447 F.2d at 1212, quoting *Johnstan Broadcasting Co.* v. *FCC*, 175 F.2d 351, 356–57 (D.C. Cir. 1949).

[7] 349 U.S. 358 (1955).

[8] 555 F.2d 1046 (D.C. Cir. 1977).

[9] *Id.* at 1051 n. 39.

[10] *Id.*

[11] *Id.* at 1050–51 (Footnote citations omitted).

[12] 319 U.S. 190 (1943).

[13] *Id.* at 216–17.

[14] Citizens Communications Center, *supra* n. 8.

[15] National Broadcasting Co., *supra* n. 12.

[16] Citizens Communications Center, *supra* n. 6 (Emphasis added).

[17] *Id.*

[18] *Id.* (Emphasis added).

[19] *Id.*, 447 F. 2d at 1212 n. 34 (Emphasis in original).

[20] Pasadena Broadcasting Co., 555 F.2d at 1052.

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crucible of an evidentiary hearing allowing for the introduction of oral testimony and cross-examination. This issue, in turn, brings us back to the fundamental question of comparative standards and criteria. In my judgment, this is, in any case, where we should begin the inquiry on the limits and constraints of the "full hearing" requirement.

The inquiry here should focus on identifying and refining the comparative criteria so that their application may be amendable to a paper process yet fully responsive to the paramount public interest goal of "best practicable service." My fundamental problem with the *Notice's* proposal is that it appears to tilt this endeavor improperly and unnecessarily in favor of expediency (or, less perjoratively, "expedition") and away from the full public interest analysis which I believe both statute and precedent command. The task of developing and justifying a paper comparative process is certainly herculean and may prove ultimately futile. But, a serious attempt by both the Commission and the competing public is clearly called for.

These preliminary observations on paper hearings are also applicable to the *Notice's* apparent penchant for lotteries in "deciding" comparative cases. While a lottery may be an appropriate and lawful alternative in resolving genuinely "deadlocked" comparative proceedings, the Commission cannot evade its responsibility for making refined public interest judgments where that more rational and less arbitrary mode of decision-making is clearing available and applicable. Here, I believe it axiomatic that *resolution by lottery or chance is the very antithesis of the system of rational, principled determination which has been the hallmark of administrative law and process.* As the Supreme Court has so plainly stated:

> Congress has granted applicants a right to a hearing on their applications for station licenses. Whether that is wise policy or whether the procedure adopted by the Commission in this case [which the Court invalidated] is preferable is not for us to decide.[21]

Before the Commission rushes to embrace the "easy out" of lottery, we have a clear statutory obligation to exhaust the search for public interest criteria to distinguish and choose among applicants so as to effectuate the "best practicable service" standard of the Act. Such an effort is the absolute minimum required as a legal and policy predicate for utilizing a lottery in the licensing process, and any attempt to evade the requirement will put in peril the integrity of this Commission's mandate and process.

It is extremely important for the Commission to continue to address these critical issues of comparative criteria and procedure in the course of this rule making proceeding. I urge the fullest public analysis and comment on these concerns.

[FR Doc. 80-32407 Filed 10-16-80; 8:45 am]
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[21] Ashbacker Radio Corp., 326 U.S. at 333.

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federal register

Friday
October 17, 1980

Part VI

Department of Agriculture

Food and Nutrition Service

Unfunded Demonstration Project: New York City's Food Stamp Replacement ATP Issuance Procedure and Rapid Access Reconciliation System

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 282

[Amdt. No. 177]

Unfunded Demonstration Project—New York City's Food Stamp Replacement ATP Issuance Procedure and Rapid Access Reconciliation System

AGENCY: Food and Nutrition Service, USDA.

ACTION: Emergency final rule.

SUMMARY: This rulemaking establishes procedures to be in effect upon installation of New York's City's food stamp replacement ATP issuance procedure and Rapid Access Reconciliation System (to be referred to as the Rapid Access System). This project will require the issuance of a replacement food stamp authorization to participate card (ATP) only upon verification that the participant has not already transacted the original ATP, the Rapid Access System will allow New York City to determine whether the original ATP has been transacted and whether the participant requesting a replacement has transacted that ATP.

The system also contains safeguards against persons who request a replacement ATP for a "lost" ATP not yet cashed. Rapid Access provides for an eight-day ATP validity period, with issuance of the replacement ATP within five business days after the loss or theft of the original ATP is reported.

This emergency final rule establishes procedures for the implementation, as an unfunded demonstration project, of New York City's Rapid Access System. The Administrator of the Food and Nutrition Service has determined that an improved replacement ATP issuance procedure is required in New York City as a result of the dimension of the City's duplicate issuance problem. The gravity of New York City's replacement ATP problem necessitates the expeditious implementation of this new system.

DATES: Effective date: October 17, 1980. The Rapid Access System will be implemented citywide on December 1, 1980. However, the New York City Human Resources Administration will implement the lost ATP reporting requirements and the replacement procedures upon publication of this rule. Comments must be received by February 1, 1981, to be assured of consideration.

ADDRESS: Comments should be submitted to: Alberta Frost, Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, USDA, Washington, D.C. 20250. All written comments will be open to public inspection at the offices of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 500 12th Street, S.W., Washington, D.C., Room 603.

FOR FURTHER INFORMATION CONTACT: James I. Porter, Section Chief, Mid-Atlantic/New England Section, State Evaluation Branch, State Operations Division, Family Nutrition Programs, Food and Nutrition Service, Washington, D.C. 20250 (202–447–4014).

SUPPLEMENTARY INFORMATION: This final action has been reviewed under procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as not significant.

The emergency nature of this action warrants publication of this final action without completion of a Final Impact Statement. A Final Impact Statement will be developed after public comments have been received.

Robert Greenstein, Administrator of the Food and Nutrition Service has determined that an emergency situation exists which warrants publication without opportunity for public comment on this final action because of the need to take prompt action to test and develop an alternate issuance system in New York City that will improve the integrity of the Food Stamp Program by reducing the duplicate issuance of food stamp authorizations.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this emergency final action are impracticable and contrary to the public interest; and good cause is found for making this emergency final action effective less than 30 days after publication of this document in the Federal Register. Comments have been solicited until February 1, 1981, and this emergency final action will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the Federal Register as soon as possible.

Introduction

The Department is concerned over Federal dollars being lost in New York City as a result of the duplicate issuance of food stamp ATP's. Latest statistics, from May 1980, show the City issuing 26,377 replacement ATP's with a value of $2,454,267. While many of these replacement requests result from actual loss or theft and are legitimate, a study conducted by the New York City Human Resources Administration indicates that a significant number of the replacement ATP's issued may have been requested fradulently. New York City issues a far larger number of replacement ATP's than any other jurisdiction in the country.

A major reason for the high rate of duplicate issuances in New York City is the City's lack of a system that would allow it to rapidly detect if the original ATP has been transacted when a replacement is requested. As a result, City officials are issuing replacement ATP's based upon participants' requests for replacement and participants' signing an affidavit stating that the original ATP would be returned to the State agency if recovered by the household. However, given the size of the Food Stamp Program in New York City, fraudulent duplicate ATP issuances may not be detected, or if detected, collection or fraud determinations may not be made. In order to prevent fraudulent requests for replacement ATP's it is felt a system must be implemented that would detect a fraudulent request prior to issuance.

New York City's Human Resources Administration (HRA) has taken administrative actions to reduce the number of replacement ATP's. Controls for authorizing replacement ATP's have been tightened and procedures have been implemented which require households requesting a second replacement ATP, or households with a history of duplicate issuance, to pick-up replacement ATP's at either local public assistance or food stamp offices. Despite these actions, New York City is unable to verify the validity of a client's claim that an original ATP was never received or that the original ATP was either lost or stolen after its receipt. A client's signed affidavit of ATP loss or nonreceipt is the only source by which a determination is made to issue a replacement ATP. Only after a replacement ATP has been issued can New York City's HRA determine whether a household redeemed the original ATP it claims it never received or lost.

Under New York City's present ATP reconciliation system, redeemed ATP's are reconciled against authorized issuance at the end of the issuance month. Discrepancies discovered during this reconciliation must be followed up on by a manual review of all the redeemed ATP's. Given the size of the caseload in New York City, this reconciliation system is not adequate for detecting fraudulent duplicate issuance.

The Rapid Access System is designed to be the keystone of New York City's current efforts to reduce or eliminate the City's duplicate issuance problem. The system will allow the New York City Human Resources Administration to rapidly determine whether the participant requesting a replacement ATP has transacted the original ATP.

The Rapid Access System requires that a participant wait four business days after the expected day of ATP delivery to go to the local certification office to fill out an affidavit reporting the loss. This affidavit constitutes the participant's request for replacement. The certification office will then check a listing of ATP's issued for that office. If no ATP was issued and one should have been, an ATP will be authorized immediately. If the listing indicates that an ATP has been issued to the participant household requesting the replacement, the affidavit will be held in suspense. By the fifth business day following the request for the replacement, the certification office will check a listing of redeemed ATP's which have the same issuance code as the household requesting replacement. This listing is generated for the certification office by the Rapid Access contractor. If a participant's ATP is not on the listing, a replacement ATP will be authorized immediately. Participants whose ATP appears on the listing and who still claim that they did not redeem their ATP will be referred to the City's central Fraud Prevention Unit for a further review of their case. Fare to the Fraud Prevention Unit will be provided by HRA.

The Fraud Prevention Unit will compare the signature of the participant requesting the replacement against the signature on a photocopy of the redeemed ATP. If the signatures match, the replacement request will be denied. The household may then request an immediate review by the Fraud Prevention Unit supervisor, and if still dissatisfied, may request a fair hearing. Every effort will be made to schedule this fair hearing within 30 days of the request.

If the signatures do not match, the Fraud Prevention Unit will examine the photocopy of the redeemed ATP for a reconciliation number. The reconciliation number is written on the back of the ATP by the issuance agent at the time of redemption. The number itself comes from the participant's food stamp identification card. Therefore, if the reconciliation number on the ID card of the participant requesting the replacement is the same as the reconciliation number on the redeemed ATP, the request for replacement will be denied, again, subject to immediate supervisory review. If both the signature and the reconciliation number do not match, a replacement will be authorized by the Fraud Prevention Unit.

Regulatory Variances

Rapid Access differs from current regulations in that it will deny replacement of an ATP when it can be shown that the participant requesting replacement has already signed the original. The system specifically requires a household to wait four business days after the date of expected delivery to report its ATP as lost, stolen or nondelivered.

The four-business-day period will begin on the day of expected delivery. If the participant has any question as to when this waiting period is over he should contact the local certification office. HRA officials would prefer participants to call their local certification office whenever a question arises about when they may fill out a request for replacement. This will reduce traffic in the certification office and avoid unnecessary trips by the participants. Upon receipt of a report from a participant that the original ATP was lost, stolen or not received, the State agency shall have a replacement ATP available for pick-up within five business days following the date of the report of the loss when it is shown that the loss is legitimate.

Another area where the Rapid Access System's replacement issuance procedures are at variance with current regulations concerns the validity period of the ATP. Section 274.2(e)(3) requires that each ATP shall be valid for the entire month of issuance unless the ATP was issued after the 25th of the month. The Rapid Access System limits the validty of the ATP to eight days. The eight-day ATP validity period will prevent a participant from holding the ATP, requesting a replacement, and transacting both the original ATP and a replacement. Under these procedures, replacement will only be made after the original has expired. If a household does not redeem its ATP within the eight-day validity period, it will receive a replacement immediately upon presentation of the original ATP to the eligibility worker. The ATP will contain an expiration date reflecting the eight-day validity period.

In FNS' review of New York City's Rapid Access proposal, questions arose as to what procedures would be followed if a participant reports both his ATP and food stamp identification card (ID) as lost or stolen. The loss or theft of both may in some instances result in a denial of replacement if the ATP is transacted by using the lost or stolen ID. However, to permit waiver of the identification number match whenever the food stamp identification card was reported as lost or stolen would create a potential area of abuse in the "Rapid Access" system. In order to prevent such abuse and to protect a participant whose ATP and food stamp identification card are stolen, the Department is permitting such persons to obtain immediate replacement for the stolen ATP one time in a 6-month period, provided a police report is filed.

The New York City HRA will issue a notice to participants to enable them to understand the operation of the Rapid Access System. Participants will be informed of the eight-day validity period, and what to do when they do not redeem their ATP within eight days. Also, participants will be made aware of the four-business-day waiting period and how they can determine when they can report their ATP as lost, stolen or non-received and whom they can contact about any questions that arise. HRA will also issue a press release explaining the system and will post notices at all certification offices in New York City. Certification workers will also be required to explain the system to all new applicants and all recertification cases for the next year. These actions are designed to prevent confusion that may occur during implementation of Rapid Access System.

The Department has carefully examined the impact of these procedures upon participants in the New York City Food Stamp Program and concluded it is necessary to test them in light of the sizeable loss that duplicate ATP issuance is causing in New York City. Upon publication of this rule, New York City will implement all aspects of the Rapid Access System except the eight-day validity period. The entire system will be implemented on December 1, 1980. We will evaluate the effect of Rapid Access as it relates to both the reduction in the number of duplicate issuances and its impact on participants.

The authority for installation of this system as a demonstration project in New York City is contained in Section 17(b)(1) of the Food Stamp Act of 1977. Title XIII, Pub. L. 95–113, 91 Stat. 977, Sept. 29, 1977.

Accordingly, Part 282 of the regulations is amended by adding a new § 282.15 to read as follows:

PART 282—DEMONSTRATION, RESEARCH, AND EVALUATION PROJECTS

§ 282.15 New York City Food Stamp Replacement Issuance Procedures and Rapid Access Reconciliation System.

(a) *General.* This part sets forth the procedures to be operational upon New York City's installation of its Food Stamp Replacement Issuance Procedure and Rapid Access Reconciliation System. This system, to be called "Rapid Access", will be tested as a demonstration project.

(b) *Purpose.* Rapid Access is designed to give New York City a reconciliation system with the means to rapidly ascertain whether a participant requesting replacement of a lost or stolen Authorization to Participate (ATP) has transacted the original ATP and is fraudulently requesting replacement of that ATP. A participant will be able to report non-receipt or loss four business days after the scheduled date of delivery. Replacements will be available within five business days following the report of non-receipt or loss. The system also provides for an eight-day ATP validity period during which the ATP may be redeemed.

(c) *Scope and Applicability.* Rapid Access will be implemented citywide as demonstration project. Only those participating households whose ATP can be proven to have been transacted by that household will actually be denied a replacement ATP. The demonstration project is expected to operate for two years.

(d) *Replacement of a Lost of Stolen ATP.* ATP's will be valid for eight calendar days from the scheduled date of delivery. The expiration date will be marked on the ATP. To allow for possible delays in ATP delivery, participants can only request a replacement after four business days following the scheduled date of delivery.

(1) On or after the fourth business day following the date the ATP was scheduled to be delivered, the particpant may request a replacement ATP at the local certification office by completing an affidavit reporting nonreceipt or loss of his/her ATP.

(2) The local certification office will then check the affidavit against a listing of ATP's that were issued for participants served by that office.

(i) If the listing shows that the participants has not been issued an ATP, the certification office will determine why the ATP was not issued and take appropriate action (i.e., provide immediate authorization for issuance of an ATP, if warranted).

(ii) If the listing shows that the participant was issued an ATP, the certification office will hold the affidavit in suspense for five business days to allow for the original ATP to expire. The participant will be instructed to return to the certification office after the passage of five business days.

(3) By the fifth business day following the date the participant requested the replacement, the certification office will have checked the affidavit against a listing of redeemed ATP's for participants served by that office.

(i) If the participant's ATP is not on the listing, a replacement will be authorized immediately by the certification office.

(ii) If the participant's ATP is on the listing (i.e. the ATP is shown to have been redeemed), the participant will be referred to New York City's central Fraud Prevention Unit.

(4) The Fraud Prevention Unit will compare the signature of the participant requesting the replacement against the signature on a photocopy of the redeemed ATP.

(i) If the signatures match, the replacement request will be denied. The household may then request an immediate review by the Fraud Prevention Unit supervisor. If still dissatisfied, he may request a fair hearing.

(ii) If the signatures do not match, the Fraud Prevention Unit will check a photocopy of the redeemed ATP for the reconciliation number written on the back of the ATP by the issuance agency at the time of redemption. This number is taken from the participant's food stamp identification card.

(A) If the reconciliation number on the identification card of the participant requesting the replacement is the same as the reconciliation number on the redeemed ATP, the request for replacement will be denied, again subject to immediate supervisory review.

(B) If neither the signature nor the reconciliation number match, a replacement will be authorized by the Fraud Prevention Unit.

(5) In instances where a participant reports both his/her ATP and food stamp identification card as stolen and a police report is filed, the requirement that the reconciliation number on the identification card of the participant differ with the reconciliation number on the redeemed ATP will be waived. In this situation, the participant shall receive an immediate replacement for the stolen ATP only one time in a 6-month period.

(e) *Right of Appeal*—Participants being denied a replacement ATP shall be informed of their right of appeal.

(1) When denied a replacement for an ATP reported as lost or stolen, the participant may request an internal supervisory examination of the determination.

(2) If dissatisfied with this review, the participant may request of fair hearing. The State agency shall make every effort to schedule that hearing within 30 days.

(f) *Evaluation of the Rapid Access Demonstration Project*—An evaluation of this project will be conducted by FNS. The purpose of the evaluation will be to ascertain the effect Rapid Access has had on the number of fraudulent duplicate issuances and the effect this system has on participating households.

Authority: 91 Stat. 958 (7 USC 2011–2027)

(Catalog of Federal Domestic Assistance Program No. 10.551 Food Stamps)

Dated: October 10, 1980.

Carol Tucker Foreman,

Assistant Secretary.

[FR Doc. 80-32624 Filed 10-16-80; 10:04 am]

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Friday, October 17, 1980

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
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DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
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DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

INTERIOR DEPARTMENT

Fish and Wildlife Service—

61944 9-17-80 / Determination of potententilla robbinsiana to be an endangered species

List of Public Laws

Last Listing October 16, 1980

This is a continuing listing of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202-275-3030).

H.R. 7592 / Pub. L. 96-436 "Military Construction Appropriation Act, 1981". (Oct. 13 1980; 94 Stat. 1863) Price $1.

H.R. 5546 / Pub. L. 96-437 To amend the United States Grain Standards Act to permit grain delivered to export elevators by any means of conveyance other than barge to be transferred into such export elevators without official weighing, and for other purposes. (Oct. 13 1980; 94 Stat. 1870) Price $1.

S. 985 / Pub. L. 96-438 To amend the Consolidated Farm and Rural Development Act. (Oct. 13 1980; 94 Stat. 1871) Price $1.

H.R. 7779 / Pub. L. 96-439 To amend the Internal Revenue Code of 1954 to authorize three additional judges for the Tax Court and to remove the age limitation on appointments to the Tax Court. (Oct. 13 1980; 94 Stat. 1878) Price $1.

S. 1790 / Pub. L. 96-440 "Privacy Protection Act of 1980". (Oct. 13 1980; 94 Stat. 1879) Price $1.

H.R. 8103 / Pub. L. 96-441 To rename the National Collection of Fine Arts and the Museum of History and Technology of the Smithsonian Institution as the National Museum of American Art and the National Museum of American History, respectively. (Oct. 13 1980; 94 Stat. 1884) Price $1.

H.R. 5048 / Pub. L. 96-442 "Manassas National Battlefield Park Amendments of 1980". (Oct. 13 1980; 94 Stat. 1885) Price $1.

H.J. Res. 568 / Pub. L. 96-443 To authorize and request the President to issue a proclamation designating October 12 through October 19, 1980, as "Italian-American Heritage Week". (Oct. 13 1980; 94 Stat. 1888) Price $1.

S. 2936 / Pub. L. 96-444 To transfer certain employees of the Architect of the Capitol to the Sergeant at Arms and Doorkeeper of the Senate. (Oct. 13 1980; 94 Stat. 1889) Price $1.

H.R. 6440 / Pub. L. 96-445 To establish priorities in the payment of claims against the People's Republic of China. (Oct. 13 1980; 94 Stat. 1891) Price $1.

S. 2185 / Pub. L. 96446 To authorize the acceptance and use of bequests and gifts for disaster relief. (Oct. 13 1980; 94 Stat. 1893) Price $1.

S. 2511 / Pub. L. 96-447 Civil Rights Commission Authorization Act of 1980 (Oct. 13 1980; 94 Stat. 1894) Price $1.

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A Cumulative checklist of CFR issuances for 1980 appears in the back of the first issue of the Federal Register each month in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).

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Highlights

Document Drafting Handbook
The Office of the Federal Register has issued a revised editions of the handbook. See the **Reader Aids** section of this issue for details.

69199 **Adjustments of Certain Rates of Pay and Allowances** Executive order

69403 **Washington National Airport** DOT/Sec'y requests comments on temporary allocation of Instrument Flight Rules reservations at Washington National Airport; comments by 5:30 p.m., 10–23–80 (Part VI of this issue)

69366 **Census Data** Commerce/Census publishes report regarding adjustment to 1980 census results for possible undercoverage of population (Part III of this issue)

69378 **Handicapped** ED proposes to revise regulations for Research in Education of the Handicapped Program to clarify definition of eligible applicants; comments by 12–19–80 (Part IV of this issue)

69272 **Civil Rights** HHS/Sec'y publishes proposal regarding nondiscrimination on the basis of race, color, or national origin under programs receiving Federal assistance

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Highlights

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

69214 Law Enforcement Justice establishes guidelines for Government on consenting to, or moving for, closure of judicial proceedings; effective 10–14–80

69215 Environmental Protection DOD/Army publishes regulations regarding environmental effects of Army actions; effective 11–3–80

69380 Education ED gives notice of closing dates for transmittal of applications for certain research projects for fiscal year 1981 (Part IV of this issue) (10 documents)

69248 Interstate Highways DOT/FHWA/UMTA revises regulations implementing statutory amendments pertaining to withdrawal of certain nonessential interstate highway routes and substitute highway or nonhighway public mass transit projects; effective 11–19–80 (Part V of this issue)

69248 Insurance HHS/SSA publishes proposed regulation regarding supplemental security income for the aged, blind, and disabled

69338 Securities Treasury/Sec'y announces action of Series X–1982 notes

69207 Wage and Price Controls CWPS publishes regulations regarding anti-inflationary pay and price standards; comments by 11–10–80

69211 Electric Power Plants DOE publishes regulations clarifying the definition of "operational"

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Monday, October 20, 1980

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Title 3—

The President

Executive Order 12248 of October 16, 1980

Adjustments of Certain Rates of Pay and Allowances

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

1–1. *Adjusted Rates of Pay and Allowances.*

1–101. *Statutory Pay Systems.* Pursuant to the provisions of subchapter I of Chapter 53 of Title 5 of the United States Code, the rates of basic pay and salaries are adjusted, as set forth at the schedules attached hereto and made a part hereof, for the following statutory pay systems:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) the schedules for the Foreign Service (22 U.S.C. 867 and 870(a)) at Schedule 2;

(c) the schedules for the Department of Medicine and Surgery, Veterans Administration (38 U.S.C. 4107) at Schedule 3; and

(d) the rates of basic pay for the Senior Executive Service (5 U.S.C. 5382) at Schedule 4.

1–102. *Pay and Allowances for Members of the Uniformed Services.* Pursuant to the provisions of Section 801 of Public Law 96–342 of September 8, 1980, the rates of monthly basic pay (37 U.S.C. 203 (a) and (c)), the rates of basic allowances for subsistence (37 U.S.C. 402), and the rates of basic allowances for quarters (37 U.S.C. 403(a)) are adjusted, as set forth at Schedule 5 attached hereto and made a part hereof, for members of the uniformed services.

1–103. *Executive Salaries.* The Executive Salary Cost-of-Living Adjustment Act (Public Law 94–82, 89 Stat. 419) provides for adjustments in the rates of pay and salaries as set forth at the schedules attached hereto and made a part hereof, for the following:

(a) The Vice President (3 U.S.C. 104) and the Executive Schedule (5 U.S.C. 5312–5316) at Schedule 6; and

(b) Congressional Salaries (2 U.S.C. 31) at Schedule 7.

(c) Judicial Salaries (28 U.S.C. 5, 44(d), 135, 173, 213, 252, 792(b), and 11 U.S.C. 68(a), and Sections 401(a), 404(a), 404(b), and 404(d) of Public Law 95–598) at Schedule 8.

1-2. *General Provisions.*

1-201. *Effective Date.* The adjustments in rates of monthly basic pay and allowances for subsistence and quarters for members of the uniformed services shall be effective on October 1, 1980. All other adjustments of salary or pay shall be effective on the first day of the first applicable pay period beginning on or after October 1, 1980.

1-202. *Superseded Orders.* Executive Orders No. 12165 of October 12, 1979 and No. 12200 of March 12, 1980 are superseded.

Jimmy Carter

THE WHITE HOUSE,
October 16, 1980.

Billing code 3195-01-M

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Schedule 1 - THE GENERAL SCHEDULE

	1	2	3	4	5	6	7	8	9	10
GS-1	$7,960	$8,225	$8,490	$8,755	$9,020	$9,179	$9,437	$9,695	$9,712	$9,954
2	8,951	9,163	9,439	9,712	9,820	10,109	10,398	10,487	10,576	11,265
3	9,756	10,092	10,428	10,764	11,100	11,294	11,723	12,048	12,374	12,700
4	10,963	11,328	11,693	12,058	12,423	12,799	13,153	13,519	13,885	14,248
5	12,266	12,675	13,084	13,493	13,902	14,311	14,720	15,129	15,538	15,947
6	13,672	14,229	14,586	15,040	15,494	15,953	16,408	16,866	17,320	17,776
7	15,193	15,699	16,205	16,711	17,217	17,723	18,229	18,735	19,241	19,747
8	16,826	17,387	17,948	18,509	19,070	19,631	20,192	20,753	21,314	21,875
9	18,583	19,205	19,825	20,445	21,065	21,685	22,305	22,925	23,545	24,165
10	20,467	21,149	21,831	22,513	23,195	23,877	24,559	25,241	25,923	26,605
11	22,486	23,236	23,986	24,736	25,486	26,236	26,986	27,736	28,486	29,236
12	26,951	27,849	28,747	29,645	30,543	31,441	32,339	33,237	34,135	35,033
13	32,049	33,116	34,184	35,252	36,320	37,388	38,456	39,524	40,592	41,660
14	37,871	39,133	40,395	41,657	42,919	44,181	45,443	46,705	47,967	49,229
15	44,547	46,032	47,517	49,002	50,487*	51,972*	53,457*	54,942*	56,427*	57,912*
16	52,247*	53,989*	55,731*	57,473*	59,215*	60,957*	62,699*	64,441*	66,183*	
17	61,204*	63,244*	65,284*	67,324*	65,364*					
18	71,734*									

* Basic pay is limited by Section 5308 of Title 5 of the United States Code to the rate for level V of the Executive Schedule which is, as of the effective date of this schedule, $58,300. See also Note 1.

Note 1. Notwithstanding the above rates, the maximum rate payable, as of the effective date of this schedule, is $50,112.50. (The effect of Section 101(c) of Public Law 96-369 (the continuing resolution approved October 1, 1980) is to limit the use of the funds so appropriated so that they are not available to pay salaries in this schedule in excess of the rate payable for level V of the Executive Schedule on September 30, 1980.)

Schedule 2 - FOREIGN SERVICE SCHEDULES

Part I - The Per Annum Salaries of Foreign Service Officers

	1	2	3	4	5	6	7
FSO-01	$67,536*	$69,787*	$71,724*				
02	51,867*	53,586*	55,325*	$57,056*	$58,793*	$60,512*	$62,241*
03	40,440	41,768	43,136	44,484	45,832	47,180	48,528
04	33,048	33,118	34,194	35,252	36,320	37,388	38,456
05	25,842	26,703	27,564	28,425	29,286	30,147	31,008
06	21,221	21,928	22,635	23,342	24,049	24,756	25,463
07	17,370	18,363	18,954	19,544	20,138	20,730	21,322
08	15,353	15,845	16,205	16,711	17,217	17,723	18,229

Part II - The Per Annum Salaries of Foreign Service Staff Officers and Employees

	1	2	3	4	5	6	7	8	9	10
FSS-01	$40,640	$41,788	$43,136	$44,484	$45,832	$47,180	$48,528	$49,876	$51,224*	$52,572*
02	32,048	33,116	34,184	35,252	36,320	37,388	38,456	39,524	40,592	41,660
03	25,842	26,703	27,564	28,425	29,286	30,147	31,008	31,869	32,730	33,591
04	21,221	21,928	22,635	23,342	24,049	24,756	25,463	26,170	26,877	27,584
05	18,987	19,620	20,253	20,886	21,519	22,152	22,785	23,418	24,051	24,684
06	16,998	17,565	18,132	18,699	19,266	19,833	20,400	20,967	21,534	22,101
07	15,224	15,731	16,238	16,745	17,252	17,759	18,266	18,773	19,280	19,787
08	13,641	14,096	14,551	15,006	15,461	15,916	16,371	16,826	17,281	17,736
09	12,224	12,636	13,042	13,450	13,858	14,266	14,674	15,082	15,490	15,898
10	10,563	11,328	11,693	12,058	12,423	12,788*	13,153	13,518	13,883	14,248

* Basic pay is limited by Section 5308 of Title 5 of the United States Code to the rate for level V of the Executive Schedule which is, as of the effective date of this schedule, $58,300. See also Note 1.

Note 1. Notwithstanding the above rates, the maximum rate payable, as of the effective date of this schedule, is $50,112.50. (The effect of Section 101(c) of Public Law 96-369 (the continuing resolution approved October 1, 1980) is to limit the use of the funds so appropriated so that they are not available to pay salaries in this schedule in excess of the rate payable for level V of the Executive Schedule on September 30, 1980.)

Schedule 2 - DEPARTMENT OF MEDICINE AND SURGERY SCHEDULES, VETERANS ADMINISTRATION

	Minimum	Maximum
Section 4103 Schedule		
Chief Medical Director	single rate	$80,461***
Deputy Chief Medical Director	single rate	77,167**
Associate Deputy Chief Medical Director	single rate	73,812*
Assistant Chief Medical Director	single rate	71,734*
Medical Director	$61,204*	69,364*
Director of Nursing Service	61,204*	66,364*
Director of Podiatric Service	52,267*	66,183*
Director of Chaplain Service	52,267*	66,183*
Director of Pharmacy Service	52,267*	66,183*
Director of Dietetic Service	52,267*	66,183*
Director of Optometric Service	52,267*	66,183*
Physician and Dentist Schedule		
Director grade	52,267*	66,183*
Executive grade	48,243	63,715*
Chief grade	44,347	57,912*
Senior grade	37,871	49,229
Intermediate grade	32,048	41,680
Full grade	26,931	35,033
Associate grade	22,486	29,238
Nurse Schedule		
Director grade	44,347	57,912*
Assistant Director grade	37,871	49,228
Chief grade	32,048	41,860
Senior grade	26,951	35,033
Intermediate grade	22,486	29,228
Full grade	18,583	24,185
Associate grade	15,993	20,790
Junior grade	13,872	17,778
Clinical Podiatrist and Optometrist Schedule		
Chief grade	44,547	57,912*
Senior grade	37,871	49,229
Intermediate grade	32,048	41,666
Full grade	26,951	35,033
Associate grade	22,486	29,228

* Basic pay is limited by Section 4107(d) of Title 38 of the United States Code to the rate for level V of the Executive Schedule which is, as of the effective date of this schedule, $58,500. See also Note 1.

** Basic pay is limited by Section 4107(d) of Title 38 of the United States Code to the rate for level IV of the Executive Schedule which is, as of the effective date of this schedule, $61,800. See also Note 2.

*** Basic pay is limited by Section 4107(d) of Title 38 of the United States Code to the rate for level III of the Executive Schedule which is, as of the effective date of this schedule, $66,700. See also Note 3.

Note 1. Notwithstanding the above rates, the maximum rate payable for this position or grade, as of the effective date of this schedule, is $50,112.50. (The effect of Section 101(c) of Public Law 96-369 (the continuing resolution approved October 1, 1980) is to limit the use of the funds so appropriated so that they are not available to pay a salary for this position or grade in excess of the rate payable for level V of the Executive Schedule on September 30, 1980.)

Note 2. Notwithstanding the above rate, the maximum rate payable for this position, as of the effective date of this schedule, is $52,750. (The effect of Section 101(c) of Public Law 96-369 (the continuing resolution approved October 1, 1980) is to limit the use of the funds so appropriated so that they are not available to pay a salary for this position in excess of the rate payable for level IV of the Executive Schedule on September 30, 1980.)

Note 3. Notwithstanding the above rate the maximum rate payable for this position, as of the effective date of this schedule, is $55,387.50. (The effect of Section 101(c) of Public Law 96-369 (the continuing resolution approved October 1, 1980) is to limit the use of the funds so that they are not available to pay a salary for this position in excess of the rate payable for level III of the Executive Schedule on September 30, 1980.)

Schedule 6 - SENIOR EXECUTIVE SERVICE SCHEDULE

ES-1	$52,267*	ES-4	$67,673*
ES-2	52,994*	ES-5	59,484*
ES-3	55,904*	ES-6	61,460**

* Notwithstanding these rates, the maximum rate payable, as of the effective date of this schedule, at these levels is $50,112.50. (The effect of Section 101(c) of Public Law 96-369 (the continuing resolution approved October 1, 1980) is to limit the use of the funds so appropriated so that they are not available to pay salaries in excess of the payable rates for Executive level V in effect on September 30, 1980.)

** Notwithstanding this rate, the maximum rate payable, as of the effective date of this schedule, at this level is $50,112.50 for individuals at this level whose payable salary on September 30, 1980 was $50,112.50 or less, and the maximum rate payable at this level is $52,750 for individuals at this level whose payable salary on September 30, 1980 was $52,750. (The effect of Section 101(c) of Public Law 96-369 (the continuing resolution approved October 1, 1980) is to limit the use of the funds so appropriated so that they are not available to pay salaries in this schedule in excess of the payable rates in effect on September 30, 1980.) See also Note 1.

Note 1. For the purpose of Section 101(c) of Public Law 96-369, Section 306(b) of HR 7593, and only for the purpose of applying these limitations on the use of appropriated funds for paying rates of pay, individuals who are serving in newly created SES positions or who are otherwise in a new position within the meaning of Section 306(b) of HR 7593, shall be deemed to be serving in a position comparable to an Executive level V position if paid at the rate of ES-5 or lower; and, shall be deemed to be serving in a position comparable to an Executive level IV position if paid at the rate of ES-6.

Schedule 8 - PAY AND ALLOWANCES OF THE UNIFORMED SERVICES
Part I - Monthly Basic Pay
(Years of service computed under 37 U.S.C. 205)

Commissioned officers

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12
O-10[1]	$3543.90	$4081.50	$4081.50	$4081.50	$4081.50	$4238.10*	$4238.10*	$4562.70*
O-9	3494.40	3846.20	3462.60	3462.60	3462.60	3755.70	3755.70	3911.70
O-8	3143.00	3299.90	3337.20	3337.20	3337.20	3584.20	3584.20	3755.70
O-7	2835.50	2968.90	2968.90	2968.90	2968.90	3034.40	3034.40	3103.00
O-6	1949.40	2141.90	2281.80	2281.80	2281.80	2281.80	2281.80	2281.80
O-5	1539.10	1830.90	1937.20	1937.20	1937.20	1937.20	2014.90	2124.90
O-4	1314.30	1395.90	1707.00	1738.20	1813.60	1813.60	1936.20	2044.40
O-3	1231.36	1345.30	1459.30	1616.90	1692.00	1752.30	1847.40	1939.20
O-2	1064.70	1165.10	1397.10	1464.20	1474.30	1474.30	1474.20	1474.20
O-1[2]	924.30	982.10	1163.10	1163.10	1163.10	1163.10	1163.10	1163.10

Pay Grade	Over 14	Over 16	Over 18	Over 20	Over 22	Over 24	Over 26
O-10[1]	$4562.70*	$4889.10*	$4889.10*	$5216.10*	$5216.10*	$5341.60*	$5341.60*
O-9	3911.70	4238.10*	4363.70*	4543.70*	4889.10*	4889.10*	4889.10*
O-8	3799.70	3811.70	4001.90	4238.10*	4407.90*	4407.90*	4407.90*
O-7	3259.80	3584.20	3632.50	3632.50	3632.50	3632.50	3632.50
O-6	2355.20	2372.70	2572.50	2934.60	3165.00	3347.50	3347.50
O-5	2187.20	2434.90	2377.00	2534.70	2747.40	2747.40	2747.40
O-4	2142.80	2233.40	2297.70	2297.70	2297.70	2297.70	2297.70
O-3	1984.90	1984.90	1984.90	1984.90	1984.90	1984.90	1984.90
O-2	1474.20	1474.20	1474.20	1474.20	1474.20	1474.20	1474.20
O-1[2]	1163.10	1163.10	1163.10	1163.10	1163.10	1163.10	1163.10

1. While serving as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps, basic pay for this grade is $4114.20* regardless of cumulative years of service computed under section 205 of Title 37 of the United States Code.

2. Does not apply to commissioned officers who have been credited with over 4 years' active service as enlisted members or warrant officers.

* Basic pay is limited by Section 5308 of Title 5 of the United States Code to the rate for Level V of the Executive Schedule which is, as of the effective date of this schedule, $4875.00 per month. See also Note 1.

Note 1. Notwithstanding the above rates the maximum rate payable, as of the effective date of this schedule, is $4,176.00 per month. (The effect of Section 101(c) of Public Law 96-369 (the continuing resolution approved October 1, 1980) is to limit the use of the funds so appropriated so that they are not available to pay basic pay in this schedule in excess of the rate payable for level V of the Executive Schedule on September 30, 1980.)

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Commissioned officers who have been credited with over 4 years' active service as enlisted members or warrant officers

(Years of service computed under 37 U.S.C. 205)

Pay Grade	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14
O-3	$1614.90	$1682.00	$1753.20	$1847.40	$1939.20	$2016.90
O-2	1444.20	1474.20	1521.60	1599.90	1661.40	1707.00
O-1	1163.10	1262.20	1288.20	1334.70	1381.20	1444.20

Pay Grade	Over 16	Over 18	Over 20	Over 22	Over 26	Over 30
O-3	$2016.90	$2016.90	$2016.90	$2016.90	$2016.90	$2016.90
O-2	1707.00	1707.00	1707.00	1707.00	1707.00	1707.00
O-1	1444.20	1444.20	1444.20	1444.20	1444.20	1444.20

Warrant Officers

(Years of service computed under 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12
W-4	$1244.10	$1334.70	$1344.70	$1369.20	$1427.60	$1490.40	$1552.80	$1661.60
W-3	1131.00	1236.70	1236.70	1242.30	1257.00	1348.80	1427.40	1474.20
W-2	996.60	1071.30	1071.30	1102.50	1163.10	1226.70	1272.90	1319.70
W-1	825.20	946.20	946.20	1025.10	1071.20	1117.90	1163.10	1211.10

Pay Grade	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26	Over 30
W-4	$1738.20	$1799.70	$1847.40	$1907.70	$1971.60	$2124.90	$2124.90
W-3	1521.80	1566.60	1614.90	1677.20	1738.20	1799.70	1799.70
W-2	1368.30	1413.00	1459.50	1505.70	1566.60	1566.60	1566.60
W-1	1257.00	1303.20	1348.80	1397.10	1397.10	1397.10	1397.10

Enlisted Members

(Years of service computed under 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12
E-9[1]	$0	$0	$0	$0	$0	$0	$1413.60	$1445.70
E-8	0	0	0	0	0	1195.90	1219.20	1251.60
E-7	828.00	893.70	927.00	959.10	992.10	1023.30	1056.30	1089.00
E-6	715.20	779.70	812.60	846.60	878.10	910.20	943.50	992.10
E-5	677.90	683.40	716.40	747.60	796.50	828.90	862.20	893.70
E-4	603.60	697.50	674.70	727.20	756.00	756.00	756.00	756.00
E-3	580.50	612.30	636.90	662.10	663.10	662.10	662.10	662.10
E-2	558.60	558.60	558.60	558.60	558.60	558.60	558.60	558.60
E-1	501.30	501.30	501.30	501.30	501.30	501.30	501.30	501.30

Pay Grade	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26	Over 30
E-9[1]	$1478.40	$1512.60	$1546.20	$1576.20	$1659.30	$1820.40	$1820.40
E-8	1284.30	1317.90	1348.50	1381.50	1462.60	1626.00	1626.00
E-7	1138.20	1170.60	1203.60	1215.20	1301.10	1462.80	1462.80
E-6	1023.30	1056.30	1072.20	1072.20	1072.20	1072.20	1072.20
E-5	910.20	910.20	910.20	910.20	910.20	910.20	910.20
E-4	756.00	756.00	756.00	756.00	756.00	756.00	756.00
E-3	662.10	662.10	662.10	662.10	662.10	662.10	662.10
E-2	558.60	558.60	558.60	558.60	558.60	558.60	558.60
E-1	501.30	501.30	501.30	501.30	501.30	501.30	501.30

1. While serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $2212.80 regardless of cumulative years of service computed under section 205 of Title 37 of the United States Code.

Part II - Basic Allowance for Subsistence Rates

Officers:	$82.93 per month
Enlisted Members:	
When on leave or authorized to mess separately:	$ 3.94 per day
When rations in-kind are not available:	$ 4.45 per day
When assigned to duty under emergency conditions where no messing facilities of the United States are available:	$ 5.89 per day

Part III - Monthly Basic Allowance for Quarters Rates

Pay Grade	Without Dependents		With Dependents
	Full Rate[1]	Partial Rate[2]	
Commissioned officers			
O-10	$427.80	$50.70	$535.20
O-9	427.80	50.70	535.20
O-8	427.80	50.70	525.20
O-7	427.80	35.60	468.60
O-6	364.00	33.00	436.30
O-5	354.20	33.00	380.40
O-4	315.30	24.70	342.00
O-3	277.20	22.20	304.50
O-2	240.40	17.70	264.50
O-1	187.80	13.20	
Warrant Officers			
W-4	$303.60	$25.20	$348.60
W-3	270.90	20.70	313.90
W-2	235.50	15.90	299.70
W-1	212.70	13.80	275.40
Enlisted Members			
E-9	$239.20	$18.60	$322.50
E-8	213.29	15.30	297.90
E-7	179.70	13.00	277.20
E-6	163.20	9.90	255.00
E-5	154.90	8.70	234.30
E-4	138.30	8.10	204.10
E-3	123.60	7.20	179.70
E-2	109.20	7.20	179.70
E-1	103.20	6.90	178.70

1. Payment of the full rate of basic allowance for quarters at these rates to members of the uniformed services without dependents is authorized by 37 U.S.C. 403 and Part IV of Executive Order 11157, as amended.

2. Payment of the partial rate of basic allowance for quarters at these rates to members of the uniformed services without dependents who, under 37 U.S.C. 403(b) or 403(c), are not entitled to the full rate of basic allowance for quarters, is authorized by 37 U.S.C. 1009(d) and Part IV of Executive Order 11157, as amended.

Part IV - Monthly Rate of Cadet or Midshipman Pay

The rate of monthly cadet or midshipman pay authorized by section 203(c) of Title 37 of the United States Code is adjusted from $375.60 to $419.40.

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Schedule 6 - VICE PRESIDENT AND THE EXECUTIVE SCHEDULE

Vice President	$92,400	Level III	$66,700
Level I	81,300	Level IV	61,600
Level II	70,500	Level V	58,300

Note. Notwithstanding the above rates, the maximum rates payable, as of the effective date of this schedule, are set forth below. The effect of Section 101(c) of Public Law 96-369 (the continuing resolution approved October 1, 1980) is to limit the use of the funds so appropriated so that they are not available to pay salaries in this schedule in excess of the rates payable on September 30, 1980.

Vice President	$79,125.00	Level III	$55,387.50
Level I	66,638.00	Level IV	52,750.00
Level II	60,862.50	Level V	50,112.50

Schedule 7 - CONGRESSIONAL SALARIES

Senator	$70,900
Member of the House of Representatives	70,900
Delegate to the House of Representatives	70,900
Resident Commissioner from Puerto Rico	70,900
President pro tempore of the Senate	80,100
Majority leader and minority leader of the Senate	80,100
Majority leader and minority leader of the House of Representatives	80,100
Speaker of the House of Representatives	92,400

Note. Notwithstanding the above rates, the maximum rates payable, as of the effective date of this schedule, are set forth below. The effect of Section 101(c) of Public Law 96-369 (the continuing resolution approved October 1, 1980) is to limit the use of the funds so appropriated so that they are not available to pay salaries in this schedule in excess of the rates payable on September 30, 1980.

Senator	$60,662.50
Member of the House of Representatives	60,662.50
Delegate to the House of Representatives	60,662.10
Resident Commissioner from Puerto Rico	60,662.50
President pro tempore of the Senate	68,575.00
Majority leader and minority leader of the Senate	68,575.00
Majority leader and minority leader of the House of Representatives	68,575.00
Speaker of the House of Representatives	79,125.00

Schedule 8 - JUDICIAL SALARIES

Chief Justice of the United States	$92,600
Associate Justices of the Supreme Court	88,700
Circuit Judges	70,900
District Judges	67,100
Judges of the Court of Claims	70,500
Judges of the Court of Customs and Patent Appeals	70,900
Judges of the Customs Court	67,100
Commissioners of the Court of Claims	59,600
Referees in Bankruptcy (full-time) or Bankruptcy Judges	58,600
Referees in Bankruptcy (part-time) (maximum rate)	29,300

Note. Notwithstanding the above rates, the maximum rates payable, as of the effective date of this schedule, are set forth below. The effect of Section 101(c) of Public Law 96-369 (the continuing resolution approved October 1, 1980) is to limit the use of the funds so appropriated so that they are not available to pay salaries in this schedule in excess of the rates payable on September 30, 1980.

Chief Justice of the United States	$79,125
Associate Justices of the Supreme Court	75,960
Circuit Judges	60,662.50
District Judges	57,457.50
Judges of the Court of Claims	60,662.50
Judges of the Court of Customs and Patent Appeals	60,662.50
Judges of the Customs Court	57,457.50
Commissioners of the Court of Claims	51,167.50
Referees in Bankruptcy (full-time) or Bankruptcy Judges	51,167.50
Referees in Bankruptcy (part-time) (maximum rate)	25,583.75

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Rules and Regulations

Federal Register
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Monday, October 20, 1980

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

COUNCIL ON WAGE AND PRICE STABILITY

6 CFR Part 705

Anti-Inflationary Pay and Price Standards; Final Second-Year Pay Standard; Questions and Answers on the Extrapolation of the Pay Standard

AGENCY: Council on Wage and Price Stability.

ACTION: Final second-year pay standard; questions and answers on the extrapolation of the pay standard.

SUMMARY: On March 18, 1980, the Council issued the interim final second-year pay standard (45 FR 17125); accompanying questions and answers were published on March 28, 1980 (45 FR 20453), June 3, 1980 (45 FR 42589), June 25, 1980 (45 FR 42589), and October 6, 1980 (45 FR 65995). The Council is now adopting the standard as final and extrapolating it to the period beginning October 1, 1980. The pay standard is a range of 7.5 percent to 9.5 percent; in normal circumstances, annual pay-rate increases should be expected to average about the mid-point of the range (8.5 percent). Finally, the Council is adopting new Questions and Answers to respond to inquiries about the extrapolation of the pay standard.

DATES: The effective date of the pay standard is October 1, 1979; the effective date of the Questions and Answers is October 1, 1980. Written comments should be submitted by November 10, 1980.

ADDRESS: Written comments should be sent to: Office of General Counsel, Council on Wage and Price Stability, 600 17th Street, NW., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Office of Pay Monitoring, Lucretia Tanner, Richard Mullins, or Homer Jack: (202) 456-7180; Office of General Counsel, Daniel Duff or Jane Campana: (202) 456-6210.

SUPPLEMENTARY INFORMATION: On September 28, 1979, the President announced the creation of a Pay Advisory Committee to advise the Council on policies that encourage anti-inflationary behavior by employers and labor, that decelerate the rate of inflation, and that provide for a fair and equitable distribution of the burden of restraint. The Committee's Charter provides that it will recommend new or revised interpretations of the pay standard.

On March 18, 1980, the Council issued the interim final second-year pay standard, accepting the Committee's January 22, 1980, recommendation that the second-program-year pay standard be a range of 7.5 percent to 9.5 percent. Clarifying or interpretive Questions and Answers were published over the next few weeks. The Council received only eleven comments from the public on the pay standard and accompanying questions and answers: the respondents included nine companies or business organizations, one trade association, and one union.

The issue discussed in most of these comments is the need for equitable treatment between employee groups covered by cost-of-living-adjustment clauses (COLA'S) and employee groups without such clauses. (In addition to the comments received last spring, seventeen comments on the pay standard were submitted in response to the Council's July 11, 1980, report entitled *The Pay/Price Standards Program: Evaluation and Third Program Year*. These commentators also asserted that the disparate treatment of COLA and non-COLA employees under the pay standard was inequitable.) Most respondents suggested that the inequities between COLA and non-COLA covered workers could be minimized by (1) expanding the criteria for exceptions for non-COLA groups beyond situations involving intra-company or inter-firm inequities, or (2) applying the relief granted in non-COLA inequity exceptions approved during the interim period (between October 2, 1979, and March 13, 1980) to the first-year, instead of to the second-year pay range, or both.

The Council recognizes that the COLA assumption in the pay standard can result in inequities between COLA and non-COLA covered workers. For this reason, the Council included in the interim final second-year pay standard a new exception category, "Pay-rate increases to correct COLA-related inequities" (Section 705.21). While the criteria for that exception (Section 707.40) are not as expansive as some commentators would like them to be, the Council also considers COLA-related inequity cases under the more general gross-inequity exception category. After considering the comments, the Council has concluded that ample opportunity is provided for compliance units to present COLA-related inequity cases, which the Council will review promptly on a case-by-case basis. In light of this, we do not believe that any modification of its criteria is warranted.

In other comments, respondents recommended that changes be made in the procedural rules (especially § 706.24, "Notification of pay-rate increases") to reduce the amount of paperwork required for submissions to the Council. The Council has always been responsive to suggestions for minimizing the administrative costs of this program. (See *e.g.* § 706.31(c), 45 FR 65505 (October 3, 1980)). In this instance, however, we believe that the requested information is necessary and we have tailored the requests to produce only what is necessary. Accordingly, we do not believe that any change in the procedural rules is desirable.

On September 16, 1980, the Pay Advisory Committee recommended that "the present program should be extrapolated through the end of 1980." In the same document, the Committee announced that it will complete its review of its position, embodied in the Committee's January 22, 1980, "Statement & Principles", about the future course of the program and the alternatives, if any, that it would propose for encouraging wage restraint.

On September 24, 1980, the Council accepted the Committee's recommendation that the second-year pay standard be extrapolated for the rest of the calendar year. In view of the fact that certain outstanding issues under the interim final pay standard have now been resolved—most recently with the Council's issuance of questions and answers on pensions (45 FR 65995; October 6, 1980)—the Council is now publishing the second-year pay standard

as final. The pay standard remains unchanged from the interim final second-year standard published on March 13, 1980 (45 FR 17125), except for a revision of the front-loading provision at § 705.12(b) (45 FR 42589; June 25, 1980). The final pay standard published today reflects this change.

The Council is also publishing some explanatory Questions and Answers on extrapolation of the pay standard. These questions relate to the amount of increase permitted following a compliance unit's second program year; the amount of carry-over permitted; and the applicability of the low-wage exemption. With respect to the second, compliance units that believe that it would be manifestly unfair to limit carry-over according to the formula set forth in the Q & A may, of course, request an exception. The Council will consider such applications on a case-by-case basis. In all other respects, the Pay Standard (45 FR 17125) and clarifying Questions and Answers (45 FR 20453; 45 FR 42589; 45 FR 37397; and 45 FR 65995) are extrapolated to the period beginning October 1, 1980.

(Council on Wage and Price Stability Act, as amended (12 U.S.C. 1904, note); E.O. 12092 (November 1, 1978); E.O. 12161 (September 28, 1979))

Issued in Washington, D.C. October 15, 1980.

R. Robert Russell

Director, Council on Wage and Price Stability.

1. Accordingly, 6 CFR Part 705, Subpart B is adopted final as follows:

PART 705—ANTI-INFLATIONARY PAY AND PRICE STANDARDS

* * * * *

Subpart B—The Pay Standard

Sec.

705.10 Pay Standard.
705.11 Employee units.
705.12 Application of the pay standard to collective bargaining agreements.
705.13 Application of the pay standard to employees not under collective bargaining agreements.
705.14 Pay standard for future-value incentive plans.
705.15 Maintenance of health plan benefits.
705.16 Changes in pension funding costs.
705.17 Low-wage exemption.
705.18 Tandem pay-rate changes.
705.19 Pay-rate increases traded for productivity improving work rule changes.
705.20 Pay-rate increases attributable to acute labor shortages.
705.21 Pay-rate increases to correct COLA-related inequities.
705.22 Undue hardship and gross inequity.

Subpart B—The Pay Standards

§ 705.10 Pay standard.

(a) For each employee unit, the annual pay-rate increase should be no more than an amount within a range of 7.5 percent to 9.5 percent. In the normal circumstance, annual pay-rate increases should be expected to average about the midpoint of the range (8.5 percent). Compliance units implementing a pay-rate increase above the midpoint should follow the procedures under § 706.24.

(b) Pay adjustments in normal circumstances under paragraph (a) of this section should be based on the following criteria: cost-of-living (and any provisions in the pay arrangements relating to cost-of-living adjustments), ability to pay, profits, competitive conditions, productivity, labor availability, comparable compensation in other establishments, etc.

§ 705.11 Employee units.

For the purpose of establishing compliance with the pay standard, a compliance unit must identify three types of employee units: (a) Each group of the compliance unit's employees subject to a collective bargaining agreement to which the compliance unit (or the company of which it is a part) is a party constitutes a separate employee unit, (b) All management employees not under a collective bargaining agreement constitute an employee unit, and (c) All other employees constitute an employee unit.

A compliance unit need not identify separately collective bargaining units accounting for less than 5 percent of its employees. However, if a collective bargaining unit is not separately identified, the workers must be included in the management or "all other employees" category.

§ 705.12 Application of the pay standard to collective bargaining agreements.

(a) A compliance unit complies with the pay standard if the annual rate of pay-rate change over the life of each collective-bargaining agreement negotiated during the program year is no more than provided for in § 705.10(a).

(b) In addition, the annual pay-rate increase may be no greater than 10.5 percent in any year of a multi-year agreement.

(c) For purposes of determining whether the annual rate of pay-rate change complies with the pay standard, formulas for cost-of-living adjustments should be computed on the assumption of a 7.5 percent annual rate of inflation in the Consumer Price Index over the life of the contract.

(1) This assumption cannot be used if:

(i) A new cost-of-living provision is established that makes payments only after the Consumer Price Index has increased by some minimum amount;

(ii) An existing cost-of-living provision is modified to begin making payments only after the Consumer Price Index has increased by some minimum amount;

(iii) The Consumer Price Index minimum amount in an existing cost-of-living provision of the type described in paragraph (c)(1)(i) of this section is increased; or

(iv) The duration of the contract is one year or less.

(2) Cost-of-living adjustment provisions that are not permitted to be evaluated using the 7.5 percent inflation assumption should be evaluated using the actual rate of inflation. Contracts with such clauses should be in compliance with the pay standard at the end of each year of the contract.

(d) The cost of private fringe benefit programs should be measured by employer contribution rates.

(e) Pay-rate increases dictated by agreements signed prior to October 25, 1978, are exempted from the pay standard.

(f) A contract that includes a provision for a future wage reopening will be assumed to be terminating on that date.

(g) The effects of legitimate promotions and increases under preexisting incremental pay plans and practices are excluded from computations for the purpose of measuring compliance with the pay standard.

§ 705.13 Application of the pay standard to employees not under collective bargaining agreements.

(a) A compliance unit complies with the pay standard if, for each employee unit, the increase in the pay rate from the base quarter to the last quarter of the program year is no more than provided for in § 705.10(a).

(b) Alternatively, compliance may be determined by computing pay-rate changes for the fixed population of continuing employees employed in the beginning and end of the program year. In this case, pay-rate increases may exclude the effects of legitimate promotions and increases under preexisting incremental pay plans and practices.

(c) In determining compliance under paragraph (a) of this section, adjustments may be made for shifts in the composition of the work force among distinct functional employee subgroups within the employee unit.

§ 705.14 Pay standard for future-value incentive plans.

(a) A future-value incentive plan is any long-term plan under which the compensation value of the units (such as shares, stock options, and awards) granted or issued will not be known until some future time.

(b) Any such units granted or issued before October 25, 1978, under such plans are not subject to the pay standard.

(c) The average number of units per recipient granted or issued in the program year under any continuation of, or modification to, existing plans or creation of successor plans may not exceed one plus the percent provided for in § 705.10(a) multiplied by—

(1) The average number granted or issued in the twelve-month period prior to the program year, or

(2) The annual average of the units granted over the last five years, whichever is greater.

(d) With respect to plans covered by paragraph (c) of this section, any spread between an option or purchase price and fair market value at the time of the grant is included as pay.

(e) For any new plans introduced during the program year for which there is no historical precedent, companies should place a value on units granted or issued in the program year consistent with generally accepted accounting practices and include these amounts in pay.

§ 705.15 Maintenance of health plan benefits.

Changes in the costs of maintaining existing health benefits up to and including the rate of pay increase implemented under § 705.10(a) are charged against the pay standard; any additional costs of maintaining existing health benefits are excluded from computations for purposes of measuring compliance with the standard. Any changes in costs due to changes in benefits should be included as pay-rate changes.

§ 705.16 Changes in pension funding costs.

For pension plans that pay specified benefits at retirement (qualified defined-benefit plans), changes in employer costs due to (a) changes in funding methods, (b) changes in amortization periods, (c) changes in actuarial assumptions, and (d) plan experience (other than year-to-year wage or salary changes) are not included as pay-rate changes. Changes in employer costs due to plan amendments, changes in the benefit structure, or changes in benefit levels due to wage or salary changes are included as pay-rate changes.

§ 705.17 Low-wage exemption.

(a) Employee units with an average straight-time hourly wage rate of $5.35 or less during the third quarter of 1979 are exempt from the pay standard in the second program year.

(b) Individual employees in other employee units who were earning $4.00 or less per hour in straight-time wages on October 1, 1978, may be either excluded from or included in all pay-rate computations for the second program year. If such employees are included, any portion of their pay-rate increases that exceeds the pay standard should be excluded in determining compliance. Employers should also be prepared to demonstrate that, if low-wage employees are included, they are being treated equitably.

§ 705.18 Tandem pay-rate changes.

Pay-rate changes in an employee unit that have been linked regularly to pay-rate changes in another employee unit or groups of employee units will be excepted if the leader is in compliance with or exempt from the pay standard and the pay-rate change of the follower unit maintains the historical relationship. This exception also may be applied when pay-rate changes in an employee unit have been linked regularly to a survey of pay-rate changes in an identified labor market. In order to establish such linkage, the parties must be able to demonstrate that the past pay-rate changes in the follower unit have been substantially equivalent over a period of years to pay-rate changes in the leader unit, group of units, or identified labor market. Employee units need not be in the same company, industry, or geographical area to establish a relationship.

§ 705.19 Pay-rate increases traded for productivity improving work-rule changes.

In determining compliance, that part of a pay-rate change that is in return for changes in contractual work-rules and practices that improve productivity may be deducted from the total pay-rate change. In order to comply in this manner, it must be demonstrated that the cost reductions generated by the work-rule changes are equal to or greater than the excess of the pay-rate change over the pay standard.

§ 705.20 Pay-rate increases attributable to acute labor shortages.

Where pay-rate increases in excess of the pay standard are necessary to attract or retain employees in a particular job category because of an acute labor shortage, the amount of such excess may be excepted if all of the following conditions are met:

(a) The proportion of vacancies relative to the work force or the number of vacancies during the preceding quarter has increased abnormally over that experienced during the past two years;

(b) The time required to fill vacancies during the preceding quarter has increased abnormally over that required during the past two years, despite intensive recruiting;

(c) Pay rates for the shortage category in the relevant labor market have increased abnormally over the past two years; and

(d) The requested pay rate for the shortage category is comparable to the pay rate in the relevant labor market.

§ 705.21 Pay-rate increases to correct COLA-related inequities.

The Council may grant an exception for increases in excess of the pay standard that are necessary to restore equity with wages of comparable groups of employees, occasioned by the operation of COLA clauses.

§ 705.22 Undue hardship and gross inequity.

The Council may grant an exception from the application of the pay standard or may make appropriate adjustments in the standard if its application would cause undue hardship or gross inequity.

(a) An undue hardship exists if application of the pay standard would seriously threaten the company's financial viability.

(b) A gross inequity is any situation that, in the Council's judgment is manifestly unfair.

2. The Council adopts the following Questions and Answers:

Questions and Answers

II. The Pay Standard

N. Extrapolation of the Pay Standard

Q1. What pay-rate increases are allowed following a compliance unit's second program year?

A. Pay-rate increases consistent with the second-year pay standard and accompanying Questions and Answers are permitted.

Q2. Is carry-over of unused allowable second-year increases permitted?

A. Carry-over is applicable only if the chargeable pay-rate increase (before any adjustments for carry-over from the first program year) for the second program year is less than 7.5 percent. When applicable, carry-over is computed as follows: 7.5 percent minus the employee unit's second program year chargeable pay-rate increase

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(before any adjustment for carry-over from the first program year). This amount may be added to the allowable pay-rate increase for the employee unit.

Q3. Under the second-year pay standard employee units with average straight-time hourly rates of $5.35 or less (including incentive pay) during the third quarter of 1979 were exempt. In addition, individuals in other employee units who were earning $4.00 or less in straight-time hourly wage rates (including incentive pay) October 1, 1978, were exempt from the pay standard. Are the employee units and individuals that were exempt in the second program year still exempt?

A. Yes.

[FR Doc. 80-32544 Filed 10-17-80; 8:45 a.m.]

BILLING CODE 3175-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Expenses of the Raisin Administrative Committee and Rate of Assessment for the 1980-81 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation authorizes expenses and a rate of assessment for the 1980-81 crop year, to be collected from handlers to support activities of the Raisin Administrative Committee which locally administers the Federal marketing order covering raisins produced from grapes grown in California.

DATES: Effective August 1, 1980 through July 31, 1981.

FOR FURTHER INFORMATION CONTACT: J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, U.S. Department of Agriculture, Washington, D.C. 20250 (202) 447-5053.

SUPPLEMENTARY INFORMATION: Findings: Pursuant to Marketing Order No. 989, as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Committee, established under this marketing order, and upon other information, it is found that the expenses and rate of assessment, as hereinafter provided, will tend to effectuate the declared policy of the act.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice and engage in public rulemaking, and that good cause exists for not postponing the effective time of this action until 30 days after publication in the Federal Register (5 U.S.C. 553), as the order requires that the rate of assessment for a particular crop year shall apply to all assessable raisins handled from the beginning of such year which began August 1, 1980. To enable the Committee to meet crop year obligations, approval of the expenses and assessment rate is necessary without delay. Handlers and other interested persons were given an opportunity to submit information and views on the expenses and assessment rate at an open meeting of the Committee. To effectuate the declared purposes of the act, it is necessary to make these provisions effective as specified.

Further, in accordance with procedures in Executive Order 12044, the emergency nature of this regulation warrants publication, without opportunity for further comments. The regulation has not been classified significant under USDA criteria for implementing the executive order. An Impact Analysis is available from J. S. Miller (202) 447-5053.

§ 989.331 Expenses and rate of assessment.

(a) Expenses that are reasonable and likely to be incurred by the Committee during the 1980-81 crop year will amount to $236,100.

(b) The rate of assessment for said period payable by each handler in accordance with § 989.80 is fixed at $1.20 per ton for: (1) Free tonnage raisins acquired by the handler during the crop year, exclusive of such quantity thereof as represents the assessable portions of other handlers' raisins under paragraph (b)(3) of this section; (2) reserve tonnage raisins released or sold to the handler for use as free tonnage during that crop year; and (3) standard raisins (which he does not acquire) recovered by the handler by the reconditioning of off-grade raisins, but only to the extent of the aggregate quantity of the free tonnage portions of these standard raisins that are acquired by other handlers during the crop year.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: October 15, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 80-32617 Filed 10-17-80; 8:45 am]

BILLING CODE 34120-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Air Tungaru Corp.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This amendment to the regulation of the Immigration and Naturalization Service adds a carrier to the list of transportation lines which have entered into agreement with the Commissioner of Immigration and Naturalization to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries. This amendment is necessary because transportation lines which have signed such agreements are published in the Service's regulations.

EFFECTIVE DATE: September 22, 1980.

FOR FURTHER INFORMATION CONTACT: Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: This amendment to 8 CFR 238.3 is published pursuant to section 552 of Title 5 of the United States Code (80 Stat. 383), as amended by Pub. L. 93-502 (88 Stat.1561), and the authority contained in section 103 of the Immigration and Nationality Act (8 U.S.C. 1103), 28 CFR 0.105(b), and 8 CFR 2.1 Compliance with the provisions of section 553 of Title 5 of the United States Code as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment contained in this order adds a transportation line to the listing and is editorial in nature.

The Commissioner of Immigration and Naturalization Service entered into agreement with the following named carrier on the date indicated to guarantee the passage through the United States of aliens in immediate and continuous transit destined to foreign countries under section 238(d) of the Immigration and Nationality Act and 8 CFR Part 238: Air Tungaru Corp. Effective date: September 22, 1980.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

§ 238.3 [Amended]

In § 238.3 *Aliens in immediate and continuous transit*, the listing of transportation lines in paragraph (b) *Signatory lines* is amended by adding in alphabetical sequence, "Air Tungaru Corp."

* * * * *

(Secs. 103 and 238(d), (8 U.S.C. 1103 and 1228(d)))

This amendment is effective September 22, 1980 as to Air Tungaru Corp.

Dated: October 10, 1980.

David Crosland,

Acting Commissioner of Immigration and Naturalization.

[FR Doc. 80-32560 Filed 10-17-80; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF ENERGY

10 CFR Ch. II

Clarification of the Definition of Operational Applicable to Transitional Facilities Implementing the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Department of Energy.

ACTION: Ruling.

SUMMARY: The appended Ruling is issued by the Department of Energy (DOE) Office of General Counsel pursuant to 10 CFR 501.140 to clarify the meaning of the definition of "operational" set forth in 10 CFR 515.20(c)(23) applicable to 10 CFR Part 515, Transitional Facilities, implementing the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.*, Pub. L. No. 95-620 (November 9, 1978). A written comment of objection to the appended Ruling may be filed at any time with the DOE Office of General Counsel pursuant to the provisions of 10 CFR 501.143.

FOR FURTHER INFORMATION CONTACT: Dennis M. Moore, Office of General Counsel, Department of Energy, 1000 Independence Ave. SW., Room 5E052, Forrestal Building, Washington, D.C. 20585, (202) 252-2931.

Issued in Washington, D.C.

Dated: October 6, 1980.

Lona L. Feldman,

Acting Assistant General Counsel for Interpretations and Rulings.

10 CFR is amended by adding to the Rulings appearing at the end of Chapter II, the following Ruling—1980-4 to read as follows:

[Ruling 1980-4]

Clarification of the Definition of "Operational"

The Department of Energy (DOE) seeks to clarify the definition of "operational" set forth in 10 CFR 515.20(c)(23), applicable to transitional facilities under the Powerplant and Industrial Fuel Use Act of 1978 (FUA), Pub. L. 95-620 (November 9, 1978).[1] A "transitional facility" is defined in § 515.20(c)(30) as "a facility which was not *operational* on April 20, 1977, but for which a contract for the construction or acquisition was signed prior to November 9, 1978." (Emphasis added.) *See* § 515.1(a). The regulatory term "operational" is one that aids in distinguishing between "existing" and "new" facilities for the purpose of determining the FUA prohibitions applicable to an electric powerplant or major fuel-burning installation (MFBI).

Under the FUA an electric powerplant or a MFBI is classified as either an "existing" unit subject to the prohibitions of Title III, or a "new" unit subject to the prohibitions of Title II. An existing electric powerplant and an existing MFBI are defined in the FUA [2] and in the implementing regulations [3] as any powerplant or MFBI other than a "new" powerplant or a "new" MFBI. A new electric powerplant and a new MFBI are defined in the FUA [4] and in the implementing regulations [5] as any electric powerplant or MFBI for which construction or acquisition began on or after the date of the FUA's enactment, November 9, 1978. A "new" unit is also one for which construction or acquisition began after April 20, 1977, and before November 9, 1978. The FUA presumes that all transitional units are "new" unless the DOE classifies such a unit as "existing" for the reasons set forth in section 103(a) (8) and (11) of the FUA, as implemented by 10 CFR Part 515, Transitional Facilities.

"New" electric powerplants or MFBIs may be absolutely prohibited under Title II of the FUA from using natural gas or petroleum as a primary energy source unless granted an exemption from the prohibition. However "existing" units are subject to less stringent prohibitions under Title III of the FUA. Part 515 of 10 CFR specifies the criteria by which the DOE will classify electric powerplants or MFBI's as existing units subject to the prohibitions of Title III rather than continuing to subject the units to the prohibitions of Title II of the FUA as "new" units.

One such distinguishing criterion is whether the unit is "operational." For an electric powerplant as well as a MFBI, § 515.20(c)(23) defines "operational" as follows:

> "Operational" means that a unit is used and useful, has completed its testing phase and is capable of producing a product or providing a service on a continuing basis.

The definition of an "operational" unit set forth in § 515.20(c)(23) has two requirements. The first is that the unit is "used and useful." The second is that the unit "has completed its testing phase and is capable of producing a product or providing a service on a continuing bases." This standard was established to distinguish between those "new" MFBI's and electric powerplants that are subject to reclassification as "existing" units pursuant to the regulations governing transitional facilities and those units that will still be classified as "new" units. A unit that was operational on April 20, 1977, is clearly an "existing" unit. However, a unit that "was not operational on April 20, 1977, but for which a contract for the construction or acquisition was signed prior to November 9, 1978," is a transitional facility which may be either a new unit or an existing unit depending upon whether the construction or acquisition could be cancelled, rescheduled or modified without substantial financial penalty or significant operational detriment. The two-part definition of "operational" performs a single differentiation between "existing" and "new" facilities. In the performance of this function, the requirement that a unit be "used and useful" has the same meaning as the requirement that a unit "has completed its testing phase and is capable of producing a product or providing a service on a continuing basis." Only when employed in relation to a unit in this unified manner does the definition of "operational" in 10 CFR Part 515 properly and uniformly differentiate between "existing" units and "new" units.

Accordingly, an electric powerplant may be considered "operational" if it is capable of providing the service of producing "electric power for purposes of sale or exchange" [6] and has completed its testing phase. Such a powerplant would be "used and useful."

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[1] 42 U.S.C. 8301 *et seq.* (November 9, 1978).

[2] FUA section 103(a) (9) and (12).

[3] 10 CFR 500.2; *see also* 10 CFR Part 504, Existing Electric Powerplants, and Part 506, Existing Major Fuel-Burning Installations.

[4] FUA section 103(a)(8) and (11).

[5] 10 CFR 500.2; *see also* 10 CFR Part 503, New Electric Powerplants, and Part 505, New Major Fuel-Burning Installations.

[6] See the definition of "electric powerplant" in section 103(a)(7) of the FUA.

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A MFBI may be considered "operational" when a boiler, gas turbine unit, combined cycle unit, or internal combustion engine [7] is capable of producing a product or providing a service on a continuing basis and has completed its testing phase as performed by the manufacturer and/or supplier of the particular MFBI. Such a MFBI would be "used and useful." In the case of a package boiler purchased for use as a MFBI, for example, the applicable DOE regulations permit a unit to qualify as "operational" as of a specific date for the purposes of implementing 10 CFR Part 515 even if the particular MFBI had not been installed or tested by the purchaser, so long as the purchaser had acquired a unit that the manufacturer had tested.

Issued in Washington, D.C., October 6, 1980.

Lynn R. Coleman,
General Counsel.

[FR Doc. 80-32812 Filed 10-17-80; 8:45 am]
BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 80-AAL-11]

Alteration of Transition Area, Kenai, Alaska and Revocation of Transition Area, Soldotna, Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: In a Final Rule published in the **Federal Register** on September 11, 1980, Volume 45, Page 59839, under Adoption of the Amendment on Page 59840, the Kenai Airport coordinates incorrectly stated the longitude as "115°14'44"W." It should have read "151°14'44"W." This correction reflects the correct coordinates in the Adoption of the Amendment.

EFFECTIVE DATE: October 20, 1980.

FOR FURTHER INFORMATION CONTACT: Jerry M. Wylie, Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, Box 14, 701 C Street, Anchorage, Alaska 99513, telephone (907) 271-5903.

SUPPLEMENTARY INFORMATION: Federal Register Document 80-27761 was published on September 11, 1980, (45 FR 59839) and altered the Kenai transition area. The longitude of the Kenai Municipal Airport was incorrectly stated as 115°14'44"W. The longitude should have read "151°14'44"W." Action is taken herein to correct this error.

[7] See the definition of "major fuel-burning installation" in section 103[a][10] of the FUA.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the description of the Kenai transition area contained in the **Federal Register** Document 80-27761, appearing on Page 59839 in the **Federal Register** of September 11, 1980, under the heading "Adoption of the Amendment," second paragraph, sixth line, is corrected by deleting "115°" and substituting "151°" therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65)

Issued in Anchorage, Alaska, on October 2, 1980.

Robert L. Faith,
Alaskan Region Director.

[FR Doc. 80-32340 Filed 10-17-80; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-CE-17]

Designation of Federal Airways, Area Low Point Routes, Controlled Airspace and Reporting Points; Designation of Transition Area—Atchison, Kans.

Correction

In FR Doc. 80-30180, appearing at page 65193, in the issue of Thursday, October 2, 1980, on page 65194, in the first column, under the heading "Atchison, Kans.", the first paragraph in the fourth line and in the sixth line, correct "Latitude 30°" to read "Latitude 39°".

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14 CFR Part 97

[Docket No. 20844; Amdt. No. 1175]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Information Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, may be ordered from Superintendant of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The annual subscription price is $135.00.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures and Airspace Branch (AFO-730), Aircraft Programs Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA for documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4 and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing the SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, or contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. By amending § 97.23 VOR-VOR/DME SIAPs identified as follows:

* * * *Effective November 27, 1980*

Lancaster, CA—General Wm. J. Fox Airfield, VOR-A, Amdt. 5
Lancaster, CA—General Wm. J. Fox Airfield, VOR-B, Original
Peoria, IL—Mount Hawley Auxiliary, VOR-A, Amdt. 1
Peoria, IL—Greater Peoria, VOR Rwy 12 (TAC), Amdt. 16
Gary, IN—Gary Muni, VOR/DME Rwy 2, Amdt. 3
Frederick, MD—Frederick Muni, VOR Rwy 23, Amdt. 7
Ann Arbor, MI—Ann Arbor Muni, VOR Rwy 6, Amdt. 9
Ann Arbor, MI—Ann Arbor Muni, VOR Rwy 24, Amdt. 8
Allegan, MI—Padgham Field, VOR Rwy 28, Amdt. 8
Woodward, OK—West Woodward, VOR/DME-A, Amdt. 4
Gallatin, TN—Gallatin Muni, VOR/DME-A, Amdt. 3
Chesapeake, VA—Chesapeake Muni, VOR/DME Rwy 4, Amdt. 2
Chesapeake, VA—Chesapeake Muni, VOR/DME Rwy 22, Original

* * * *Effective October 30, 1980*

Ames, IA—Ames Muni, VOR Rwy 31, Amdt. 4

* * * *Effective October 3, 1980*

Napoleon, OH—Henry County, VOR Rwy 28, Amdt. 2

Note:—The FAA published an amendment in Docket No. 20668, Amdt. No. 1172 to Part 97 of the Federal Aviation Regulations (Vol. 45 FR No. 175 page 59142; dated September 8, 1980) under section 97.23 effective October 30, 1980, which is hereby amended as follows: Naples, FL—Naples Muni, VOR Rwy 4, original is rescinded. Naples, FL—Naples Muni, VOR Rwy 22, original is rescinded.

2. By amending § 97.25 SDF-LOC-LDA SIAPs identified as follows:

* * * *Effective November 27, 1980*

Beverly, MA—Beverly Muni, SDF Rwy 16, Amdt. 1, cancelled
Jackson, MS—Allen C. Thompson Field, LOC BC Rwy 15R, Amdt. 2
Cincinnati, OH—Cincinnati Muni Airport Lunken Field, LOC BC Rwy 2R, Amdt. 4

* * * *Effective October 30, 1980*

Ames, IA—Ames Muni, LOC Rwy 31, Original

3. By amending § 97.27 NDB/ADF SIAPs identified as follows:

* * * *Effective November 27, 1980*

Gary, IN—Gary Muni, NDB Rwy 30, Amdt. 4
Lafayette, IN—Purdue University, NDB Rwy 10, Amdt. 9
Jackson, MS—Allen C. Thompson Field, NDB Rwy 15L, Amdt. 2
Smithfield, NC—Johnston County, NDB Rwy 21, Amdt. 2
Southport, NC—Brunswick County, NDB-A, Amdt. 1
Batavia, OH—Clermont County, NDB-A, Amdt. 2
Cincinnati, OH—Cincinnati Muni Airport Lunken Field, NDB Rwy 20L, Amdt. 8
Cincinnati, OH—Cincinnati Muni Airport Lunken Field, NDB Rwy 24, Amdt. 3
Woodward, OK—West Woodward, NDB Rwy 17, Original
Moncks Corner, SC—Berkeley County, NDB Rwy 5, Original
Newport News, VA—Patrick Henry Intl, NDB Rwy 2, Original
Newport News, VA—Patrick Henry Intl, NDB Rwy 20, Original

* * * *Effective October 30, 1980*

Ames, IA—Ames Muni, NDB Rwy 13, Original
Ames, IA—Ames Muni, NDB Rwy 31, Amdt. 6

4. By amending § 97.29 ILS-MLS SIAPs identified as follows:

* * * *Effective November 27, 1980*

Chicago, IL—Chicago-O'Hare Intl, ILS Rwy 32L, Amdt. 20
Gary, IN—Gary Muni, ILS Rwy 30, Amdt. 1
Lafayette, IN—Purdue University, ILS Rwy 10, Amdt. 7
Jackson, MS—Allen C. Thompson Field, ILS Rwy 15L, Amdt. 2
Jackson, MS—Allen C. Thompson Field, ILS Rwy 33L, Amdt. 2
Cincinnati, OH—Cincinnati Muni Arpt Lunken Field, ILS Rwy 20L, Amdt. 10

* * * *Effective October 30, 1980*

Tucson, AZ—Ryan Field, ILS/DME Rwy 6R, Original
New York, NY—LaGuardia, ILS Rwy 4, Amdt. 32

5. By amending § 97.31 RADAR SIAPs identified as follows:

* * * *Effective November 27, 1980*

Peoria, IL—Greater Peoria, RADAR-1, Amdt. 5

6. By amending § 97.33 RNAV SIAPs identified as follows:

* * * *Effective November 27, 1980*

Gainesville, GA—Lee Gilmer Memorial, RNAV Rwy 4, Original
Peoria, IL—Greater Peoria, RNAV Rwy 12, Original

* * * *Effective October 30, 1980*

Ames, IA—Ames Muni, RNAV Rwy 13, Amdt. 1
Ames, IA—Ames Muni, RNAV Rwy 31, Amdt. 1

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.49(b)(3))

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

V 45 O C 20 80 UMI

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on May 12, 1969.

Issued in Washington, D.C. on October 10, 1980.

John S. Kern,

Acting Chief, Aircraft Programs Division.

[FR Doc. 80-32337 Filed 10-17-80; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[T.D. 7726]

Manufacturers and Retailers Excise Taxes; Excise Tax on Coal

Correction

In FR Doc. 80-31055 appearing on page 66452 in the issue of Tuesday, October 7, 1980 make the following correction:

In § 48.4121-1, paragraph (b) was adopted from the proposed rule and should have been included as follows:

(b) *Rate of tax.*—(1) *Underground mines; surface mines.* The rate of tax imposed on coal from underground mines located in the United States is the lower of 50 cents per ton (2,000 pounds), or 2 percent of the sale price. The rate of tax imposed on coal from surface mines located in the United States is the lower of 25 cents per ton (2,000 pounds) or 2 percent of the sale price. If a sale or use includes a portion of a ton, the tax is applied proportionately. Thus, if 1,200 pounds of coal from an underground mine are sold for $35.00, the tax is 30 cents.

(2) *Combination.* If a single mine yields coal from both surface and underground mining, the producer must determine the rate (50 cents or 25 cents per ton) for each ton of coal mined: It is presumed that coal is mined from underground mines (50 cents per ton) unless the producer keeps sufficient records to establish to the satisfaction of the Secretary that the coal was mined from a surface mine.

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 50

[Order No. 914-80]

Open Judicial Proceedings; Policy

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order, revised on the basis of comments received pursuant to the notice published in the Federal Register on August 6, 1980, establishes guidelines for the Government on consenting to, or moving for, closure of judicial proceedings. It adopts, as policy, a strong presumption that judicial proceedings should be open to the public unless closure is plainly essential to the interests of justice. Under the policy, the Government has a general overriding affirmative duty to oppose the closure of judicial proceedings. Experience under these guidelines will be carefully documented and evaluated to ensure that, in practice, they achieve their goal of ensuring maximum openness in judicial proceedings in which the Government appears.

EFFECTIVE DATE: October 14, 1980.

FOR FURTHER INFORMATION CONTACT: T. Alexander Aleinikoff, Office of the Associate Attorney General, Department of Justice, Washington, D.C. 20530. (202) 633-4552.

By virtue of the authority vested in me as Attorney General by 5 U.S.C. 301 and 28 U.S.C. 516, 519 it is hereby ordered as follows:

1. A new section, § 50.9, to read as follows is added to Part 50 of Chapter I of Title 28, Code of Federal Regulations:

§ 50.9 Policy with regard to open judicial proceedings.

Because of the vital public interest in open judicial proceedings, the Government has a general overriding affirmative duty to oppose their closure. There is, moreover, a strong presumption against closing proceedings or portions thereof, and the Department of Justice foresees very few cases in which closure would be warranted. The Government should take a position on any motion to close a judicial proceeding, and should ordinarily oppose closure; it should move for or consent to closed proceedings only when closure is plainly essential to the interests of justice. In furtherance of the Department's concern for the right of the public to attend judicial proceedings and the Department's obligation to the fair administration of justice, the following guidelines shall be adhered to by all attorneys for the United States.

(a) These guidelines apply to all federal trials, pre- and post-trial evidentiary hearings, plea proceedings, sentencing proceedings, or portions thereof, except as indicated in paragraph (e) of this section.

(b) A Government attorney has a compelling duty to protect the societal interest in open proceedings.

(c) A Government attorney shall not move for or consent to closure of a proceeding covered by these guidelines unless:

(1) No reasonable alternative exists for protecting the interests at stake;

(2) Closure is clearly likely to prevent the harm sought to be avoided;

(3) The degree of closure is minimized to the greatest extent possible

(4) The public is given adequate notice of the proposed closure; and, in addition, the motion for closure is made on the record, except where the disclosure of the details of the motion papers would clearly defeat the reason for closure specified under paragraph (c)(6) of this section;

(5) Transcripts of the closed proceedings will be unsealed as soon as the interests requiring closure no longer obtain; and

(6) Failure to close the proceedings will produce

(i) A substantial likelihood of denial of the right of any person to a fair trial, or

(ii) A substantial likelihood of imminent danger to the safety of parties, witnesses, or other persons, or

(iii) A substantial likelihood that ongoing investigations will be seriously jeopardized.

(d) A Government attorney shall not move for or consent to the closure of:

(1) A civil proceeding except with the express authorization of the Associate Attorney General, based on articulated findings which meet the requirements of paragraph (c) of this section; or

(2) A criminal proceeding except with the express authorization of the Deputy Attorney General, based on articulated findings which meet the requirements of paragraph (c) of this section.

(e) These guidelines do not apply to:

(1) The closure of part of a judicial proceeding where necessary to protect national security information or classified documents; or

(2) *In camera* inspection, consideration or sealing of documents, including documents provided to the Government under a promise of confidentiality, where permitted by statute, rule of evidence or privilege; or

(3) Grand jury proceedings or proceedings ancillary thereto; or

(4) Conferences traditionally held at the bench or in chambers during the course of an open proceeding.

(f) The principles set forth in this section are intended to provide guidance to attorneys for the Government and are not intended to create or recognize any legally enforceable right in any person.

2. A new section heading to read as follows is added, in proper numerical sequence, to the table of contents of Part 50 of Chapter I of Title 28, Code of Federal Regulations:

Sec.
50.9 Policy with regard to open judicial proceedings.

Dated: October 14, 1980.

Benjamin R. Civiletti,

Attorney General.

[FR Doc. 80-32559 Filed 10-17-80; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Parts 650, 651

Environmental Quality; Environmental Effects of Army Actions, (AR 200-2)

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: This is final action by the Department of the Army to add a new part to Subchapter K of 32 CFR. This new part provides policy and guidance for considering environmental effects in the Army decision-making process both in the United States and abroad. It implements the Council on Environmental Quality (CEQ) Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA) (43 FR 55990-56007, November 29, 1978, 40 CFR Parts 1500-1508); Executive Order (E.O.) 12114, Environmental Effects Abroad of Major Federal Actions, January 4, 1979; and supersedes Army Regulation 200-1, Subpart B—Environmental Considerations in DA Actions, January 20, 1978.

EFFECTIVE DATE: November 3, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Bickley, Army Environmental Office, Assistant Chief of Engineers, Room 1E676, Pentagon, Washington, DC 20310 (202-694-3434).

SUPPLEMENTARY INFORMATION:

General

In accordance with the CEQ regulation, 40 CFR Parts 1500-1508, and Department of Defense Directive 6050.1 and E.O. 12114 and Department of Defense Directive 6050.7, the Department of the Army implementing procedures were provided for public review and comment in the Federal Register, 45 FR 1086-1108, January 4, 1980. Comments were received from private citizens, national organizations, State and other Federal agencies. Except as noted below, the comments provided were incorporated into this regulation.

Response to Comments

1. Some commentors inquired concerning the relationship between this regulation and the regulation published for civil works activities of the Corps of Engineers. This regulation applies to the military activities of the Department of the Army and implements directives from the Office of the Secretary of Defense. Separate guidance is provided for Army civil works activities for which the Secretary of the Army has direct statutory authority. This civil works guidance is provided in Engineer Regulation 200-2-2, "Environmental Quality: Policy and Procedures for Implementing NEPA." Refer to § 651.3(d) (§ 651.3(a)(1) of the previously published draft regulation) which excludes civil works activities with this regulation.

2. One comment concerned the published list of types of actions normally requiring an EIS and implied that an environmental assessment should be prepared to preclude doing unnecessary EISs. The CEQ regulation (40 CFR 1507.3(b)) expressly requires that agency implementing procedures include specific critieria and typical classes of actions normally requiring EAs, normally requiring EISs and not normally requiring an EA or EIS. The list of actions is meant to be general guidance and is not to be used as rigid direction to prepare an EIS. Use of this list is expected to be tempered by experience. It is not expected that unnecessary EISs will be generated from the listing.

3. Several comments requested that the regulation place more stress on other environmental legislation such as the Coastal Zone Management Act and the National Historic Preservation Act, as amended. This regulation implements NEPA; attention is called to actions involving the coastal zone and historic places, as well as endangered species, prime and unique farmland and wetlands. However, specific implementing procedures are the subject of other Army regulations. Specifically, AR 420-74 implements the Coastal Zone Management Act and AR 200-1, Chapter 8, the National Historic Preservation Act.

4. One organization requested that the role of newspapers be stressed in the public notification process. The use of the OMB Circular A-95 process and Federal Register has been stressed in this regulation. The use of the public affairs officer (PAO) has been further emphasized in this final version of the regulation. It is the role of the public affairs officer, in coordination with the proponent of the action, to determine which news media will be used in each particular circumstance. Certainly newspapers should be used quite extensively for local public notices and news releases.

5. It was requested that the economic interests of small businesses be stressed during the NEPA review process. NEPA is basically concerned with the physical and biological environment rather than socio-economic impacts. The procedures for the preparation of environmental documents direct the inclusion of socio-economic impacts in the overall environmental impact analysis. The level of socio-economic impact analysis (including impacts on small businesses) must be predicated on the expected magnitude of the potential impacts. To require that a detailed small business economic analysis accompany every environmental document, even though the potential for impact is slight, would be unreasonable and contrary to the CEQ regulations to concentrate on significant impacts.

Implementation

This rulemaking will be provided for planning purposes by letter guidance to all Army agencies and takes precedence over AR 200-1, Chapter 2 until final publication and distribution of AR 200-2 is accomplished.

Accordingly, the Department of the Army amends 32 CFR Part 650 by revising and redesignating §§ 650.21 through 650.39 as Part 651 as set forth below:

1. Sections 650.21 through 650.39 deleted and reserved.

2. Addition of a new Part 651 to read as follows:

Dated: October 14, 1980.

For the Chief of Engineers.

Forrest T. Gay III,

Colonel, Corps of Engineers, Executive Director, Engineer Staff.

PART 650—ENVIRONMENTAL PROTECTION AND ENHANCEMENT

§§ 650.21-650.39 [Deleted and Reserved]

Sections 650.21 through 650.39 are deleted and reserved.

A new Part 651 is to be added as follows:

PART 651—ENVIRONMENTAL EFFECTS OF ARMY ACTIONS (AR 200-2)

Subpart A—General

Sec.
651.1 Purpose.
651.2 Background.
651.3 Applicability.
651.4 Policies.
651.5 Responsibilities.

Subpart B—Records and Documents

Sec.
651.6 Summary of required records and documents.
651.7 Definitions.

Subpart C—NEPA and the Planning Process

651.8 General.
651.9 Applicability.
651.10 Categories of actions and procedures for environmental review.
651.11 Classified actions.
651.12 Integration with Army planning.
651.13 Mitigation and monitoring.

Subpart D—Categorical Exclusions

651.14 Purpose and definition.
651.15 Criteria.
651.16 Procedures.
651.17 Categorical exclusions.
651.18 Modification of the list of categorical exclusions.

Subpart E—Environmental Assessment (EA)

651.19 Purpose and definition.
651.20 Criteria.
651.21 Actions normally requiring an EA.
651.22 Components of the EA.
651.23 Decision process.
651.24 Public involvement.
651.25 Existing EAs.

Subpart F—Environmental Impact Statement (EIS)

651.26 Purpose and definition.
651.27 Criteria.
651.28 Actions normally requiring EISs.
651.29 Format of the EIS.
651.30 Steps in preparing and processing an EIS.
651.31 Existing EISs.

Subpart G—Public Involvement

651.32 General procedures.
651.33 Scoping.

Subpart H—Environmental Effects Abroad of Major Army Actions

651.34 General.
651.35 Purpose.
651.36 Applicability.
651.37 Definitions.
651.38 Policy.
651.39 Responsibilities.
651.40 Implementation guidance.

Appendix A—List of Categorical Exclusions
Appendix B—Content of the EIS
Appendix C—Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act
Appendix D—Implementing a Monitoring Program
Appendix E—Requirements for Environmental Considerations—Global Commons
Appendix F—Requirements for Environmental Considerations—Foreign Nations and Protected Global Resources

Authority: National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq., Council on Environmental Quality Regulations, 40 CFR Part 1500, 43 FR 55990—56007, Nov. 29, 1978, and EO 12114.

Subpart A—General

§ 651.1 Purpose.

This regulation states Department of the Army (DA) policy, assigns responsibilities, and establishes procedures for the integration of environmental considerations into Army planning and decisionmaking in accordance with 42 U.S.C. 4321 et. seq., "National Environmental Policy Act of 1969" (NEPA), the Council on Environmental Quality (CEQ) regulations of November 29, 1978 and Executive Order 12114, "Environmental Effects Abroad of Major Federal Actions", January 4, 1979.

§ 651.2 Background.

(a) NEPA establishes National policies and goals for the protection of the environment. Section 102 (2) of NEPA contains certain procedural requirements directed toward the attainment of such goals. In particular, all Federal agencies are required to give appropriate pre-decisional consideration to the environmental effects of their proposed actions in their planning and decisionmaking, and to prepare detailed statements regarding recommendations or reports on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

(b) EO 11991, dated May 24, 1977, directed the CEQ to issue regulations to implement the procedural provisions of NEPA. Accordingly, CEQ issued final regulations for implementing NEPA's procedural provisions (40 CFR Part 1500–1508) on November 29, 1978, which became binding on all Federal agencies commencing July 30, 1979. These regulations provide that each Federal agency shall, as necessary, adopt procedures to supplement the CEQ regulations. The Department of Defense (DOD) issued its implementing procedures in DOD Directive 6050.1, "Environmental Effects in the United States of DOD Actions," on July 30, 1979.

(c) Executive Order 12114 directs that Federal agencies prepare procedures to implement the EO with respect to areas outside the United States. Accordingly, DOD issued DOD Directive 6050.7, "Environmental Effects Abroad of Major Department of Defense Actions," March 31, 1979.

§ 651.3 Applicability.

(a) Subparts A through G and Appendices A through D in this regulation apply to Headquarters, Department of the Army (HQDA) and to all Army Command, subordinate activity, and agency (hereinafter referred to as DA agencies) actions affecting the environment in the United States,[1] and are effective immediately.

(b) Subpart H and Appendices E and F of this regulation apply to HQDA and DA agencies' actions that would significantly affect the quality of the human environment outside the United States.

(c) This regulation also applies to federally managed National Guard installations and sites and federally funded National Guard activities.

(d) The Civil Works functions of the Corps of Engineers are not subject to this regulation. See Corps of Engineers regulation ER 200–2–2, "Environmental Qualtiy: Policy and Procedures for Implementing NEPA."

§ 651.4 Policies.

(a) It is the continuing policy of DA, as a trustee of the environment, to carry out its mission of national security in a manner consistent with NEPA and other applicable environmental standards, laws, and policies. All practicable means consistent with other essential considerations of national policy should be employed to minimize or avoid adverse environmental consequences and to attain the goals and objectives in Sections 101 and 102 of NEPA.

(b) Recognize the worldwide and long-range character of environmental problems and, where consistent with national security requirements and the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of the world human environment. In accordance with Executive Order 12114, DOD Directive 6050.7, and this regulation, incorporate the environmental planning and evaluation process into major Army actions which may significantly affect global commons, the environments of certain other nations, or any natural or ecological resources of global importance designated for protection.

(c) Comply with laws other than NEPA which require DA to gain approval of another Federal, state, or local government agency before commencing certain types of actions that may have environmental consequences. Compliance with such laws does not relieve the responsible official from preparing and processing necessary environmental documents. Compliance with NEPA is required unless existing law applicable to a specific action or activity prohibits, exempts or makes compliance impossible.

(d) Insure that all environmental documentation will be subjected to reviews which consider operations and security (OPSEC) principles and procedures described in AR 530–1. These reviews will be documented.

[1] *United States* means the 50 states, the District of Columbia, territories, and possessions of the United States; and all waters and airspace subject to the territorial jurisdiction of the United States. For the purpose of this regulation, United States also includes the Commonwealth of Puerto Rico and the Commonwealth of the Northern Marianas. The territories and possessions of the United States include the Virgin Islands, American Somoa, Wake Island, Midway Island, Guam, Palmyra Island, Johnston Atoll, Navassa Island, Kingman Reef, and the Trust Territory of the Pacific Islands, subject however to future changes in their legal status. Certain environmental statutes may specify other definitions of "United States" and overseas installations may not be affected by a particular statute or regulation. Consult applicable statutes and Status of Force Agreements for guidance.

§ 651.5 Responsibilities.

(a) The Assistant Secretary of the Army (Installations, Logistics and Financial Management) serves as the Secretary of the Army's responsible official for NEPA matters.

(b) The Chief of Engineers exercises primary staff responsibility for coordinating and monitoring NEPA activities within the Army. Through the Assistant Chief of Engineers (DAEN-ZCE), the Chief of Engineers is the Army staff point of contact for environmental matters and;

(1) Provides assistance and advice on the preparation/processing of environmental documentation through the identification and quantification of environmental impacts and selection of impact mitigation techniques.

(2) As necessary, designates a single agency or lead office having the responsibility for preparing and processing environmental documentation when more than one DA agency is involved and assigns DA lead agency responsibility when non-DA agencies are involved.

(3) Reviews and comments on environmental impact statements (EISs) submitted by other DOD components and other Federal agencies.

(4) Monitors proposed DA policy and program documents which have environmental implications to determine if EISs or environmental assessments (EAs) are required and to insure that environmental considerations are integrated into the decisionmaking process.

(5) Maintains liaison with the Office of Management and Budget (OMB), CEQ, Environmental Protection Agency (EPA), and other Federal, state and local agencies, with respect to their environmental policies which may affect DA, thereby assisting in the identification and evaluation of applicable regulatory policies for proposed actions.

(6) Maintains a current record of actions for which EISs have been prepared or are under preparation, and those actions of national concern for which a Finding of No Significant Impact (FNSI) has been rendered.

(7) Retains a copy of each draft and final EIS (DEIS and FEIS) prepared by DA. The EIS will be retained until the proposed action and any mitigation program is complete or the information therein is no longer valid at which time it will be deposited in the National Archives.

(8) Directs the preparation of EISs as appropriate to insure adequate consideration of environmental impacts.

(9) Comments on EISs within those areas of assigned staff responsibility and technical capability, and

(10) Fulfills Office, Chief of Engineers (OCE) responsibilities as a DA staff agency for those actions or activities for which OCE is normally responsible as defined in Subparts A and H.

(c) HQDA staff agencies will:

(1) Apply the policies and procedures set forth in this regulation to programs and actions within their staff responsibility.

(2) Assess continuing and proposed programs and actions to determine their environmental consequences and initiate the preparation of necessary environmental documentation. Environmental documents shall be circulated and reviewed at the same time as other planning documents, such as the DD 1391, and the Intergrated Program Summary document in the Systems Development and Acquisition process.

(3) Coordinate appropriate environmental documents with other DA staff agencies as well as with DAEN-ZCE.

(4) Designate, record, and report the identity to DAEN-ZCE of the agency's single point of contact for NEPA considerations.

(5) Maintain a current record of staff agency actions on which EISs have been prepared, or are being prepared and those actions of national concern for which FNSIs have been prepared.

(6) As requested, assist in the review of environmental documents prepared by DOD and other DA or Federal agencies.

(7) Coordinate proposed directives, instructions, regulations and major policy publications that have environmental implications with DAEN-ZCE.

(8) Resolve issues in determining if a public hearing is appropriate for the proposed action and assign, when necessary, the responsibility for the hearing to an appropriate office or agency.

(9) Shall be capable, in terms of personnel and other resources, of complying with the requirements of this regulation (See 40 CFR 1507.2).

(d) The Judge Advocate General (TJAG) will provide legal advice and assistance, as requested, in the interpretation of NEPA and the CEQ regulations, and interface with the Department of Justice on NEPA related litigation.

(e) The Comptroller of the Army (COA) will establish necessary procedures to insure compliance with the requirements for environmental exhibits and data in support of annual authorization request. Additionally, for those actions or activities for which the COA is normally responsible, the COA will fulfill the requirements defined in paragraph (c) of this section.

(f) The Surgeon General (TSG) is responsible for coordinating the environmental review related to health and welfare aspects of proposed EISs submitted to HQDA, and for preparing EAs or EISs for proposed actions and programs for which he/she is the proponent. DA agencies are encouraged to draw upon the special expertise which is available within the medical department to identify and evaluate environmental impacts.

(g) The Adjutant General will institute administrative procedures to preclude the publication of any policy, regulation, circular, or other DA issuance unless the proponent staff agency certifies that necessary environmental documentation (including a Record of Environmental Consideration) has been prepared.

(h) The Chief of Public Affairs (SAPA) will:

(1) Provide guidance on the issuance of public announcements required by this regulation including NOIs, scoping procedures, and FNSI, and public involvement activities.

(2) Review proposed news releases on actions of national interest/impact.

(3) Arrange for the issuance of news releases on actions of national interest/scope to the national news media.

(i) Major field commanders are responsible for monitoring proposed actions and programs for accomplishment within their commands; and for assuring that appropriate environmental documentation is prepared and, as necessary, forwarded to HQDA.

(j) All Army commands and agencies will:

(1) Establish, as necessary, internal procedures for analyzing environmental consequences for continuing and

proposed actions and programs for which they are the proponent or approving agent in accordance with the policies contained herein, and for preparing, coordinating within their technical staffs, and processing environmental documentation required for proposed actions and programs within their agencies.

(2) Establish, as necessary, internal procedures to insure that proposed regulations, directives, instructions, and other major policy publications for which they are the proponent agency, or which implement issuances by higher headquarters, are evaluated for environmental consequences prior to publication.

(3) Maintain the capability (in terms of personnel and other resources) to comply with this regulation (40 CFR 1507.2).

Subpart B—Records and Documents

§ 651.6 Summary of required records and documents.

The following written records and documents are required in order to fully implement this regulation:

(a) Record of Environmental Consideration. See Subpart C for application.

(b) List of Categorical Exclusions (CX). These are described in detail in Subpart D.

(c) Environmental Assessment (EA). See Subpart E for requirements.

(d) Finding of No Significant Impact (FNSI). See §§ 651.12(a)(4) and 651.23 for applicability and processing.

(e) Notice of Intent (NOI). See §§ 651.30 and 651.33(d)(1) for application.

(f) Environmental Impact Statement (EIS). See Subpart F for requirements.

(g) Record of Decision. See Subpart C for application.

§ 651.7 Definitions.

(a) *List of Categorical Exclusions.* A listing of categories of actions which do not individually or cumulatively have a significant effect on the human environment. DAEN–ZCE will maintain a master list of actions for all DA agencies which normally qualify for a categorical exclusion from the requirement to prepare environmental documentation as defined in 40 CFR 1508.10. This list will include those in this regulation, Appendix A, and those nominated by DA agencies and approved by HDQA. Refer to Subpart D for further discussion.

(b) *Record of Environmental Consideration.* A Record of Environmental Consideration is a record which briefly describes the proposed action and its anticipated time frame; identifies the responsible proponent; and explains why further environmental documentation is not required. See Figure 2–1 for suggested format which contains elements of a Record of Environmental Consideration.

(c) *Reports Control Symbol.* Environmental documentation to comply with the National Environmental Policy Act or EO 12114 has been assigned reports control symbol RCS DD–M (AR) 1327.

(d) *Preparer.* The preparers are personnel from a variety of disciplines who write environmental documentation, in clear and analytical prose, who are the primary substantive reviewers of the domumentation and who are responsible for the accuracy of the document.

(e) *HQDA Staff Proponent.* This is the principal review and/or approval authority of all lower level proponents.

(f) *Proponent.* Since proponent identification is dependent on the nature and scope of any given action, a proponent may exist at all levels of the Army structure, e.g., the installation facility engineer becomes proponent of installation-wide MCA or O&M activity, HQ TRADOC becomes a proponent of a change in initial entry training. In general, the proponent is the lowest level decisionmaker. However, in the decisionmaking process, decisions are often subject to review and/or approval by higher level authorities including the HQDA staff proponent. Therefore, the review/approval of the environmental document follows the same channel of review/approval as that of the proposed action.

(g) *Environmental Documents.* Record of Environmental Consideration, Environmental Assessment, Environmental Impact Statement, Finding of No Significant Impact, Notice of Intent, and Record of Decision.

Figure 2–1 Format for Record of Environmental Consideration [2]

RECORD OF ENVIRONMENTAL CONSIDERATION

Title:

Description of Proposed Action: (Brief description (if not obvious from title))

Anticipated Date and/or Duration of Proposed Action: (Month/year of expected action)

It has been determined that the action (choose one)

a. Is adequately covered in the existing EA ——— EIA ——— EIS ———
entitled: ———
and dated ———

b. Qualifies for Categorical Exclusion # ——— Appendix A, AR 200–2.

c. Is exempt from NEPA requirements under the provisions of (cite superseding law).

Signed ———
(office responsible for proposed action)
Date: ———
Concurrence: ———
(Installation, office, or agency designated Environmental Officer)
Date: ———

[2] Variation from this format is acceptable provided basic information and approvals are included in any modified document.

Subpart C—NEPA and the Planning Process

§ 651.8 General.

(a) The NEPA process includes the systematic examination of the possible and probable environmental consequences of implementating a proposed action. To be an effective decisionmaking tool, this process will be integrated with other Army project planning at the earliest possible time. This insures that planning and decisionmaking reflect environmental values, avoid delays later in the process, and avoid potential conflicts.

(b) To achieve these ends, NEPA requires that the Army "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's enviornment" (Pub. L. 91–190; 102(a)(A)). This procedure enables the identification of environmental effects and values in sufficient detail so they can be evaluated in conjunction with economic, technical, and mission-related analyses.

(c) The NEPA process also requires that the proponent of an action or project identify and describe appropriate alternatives to the proposed action or project where the proposed action would involve unresolved conflicts concerning alternative uses of available resources or would significantly affect the quality of the human environment. To assist in identifying appropriate alternatives, the proponent is required to consult appropriate Federal, state and local agencies and the general public.

(d) These procedures are designed to allow the decisionmaker to select the proper course of action by providing him/her with the relevant background information and subsequent analyses of positive and negative environmental effects of the proposal. The written report to the decisionmaker which contains the environmental evaluation of an action is either the Record of Environmental Consideration, EA, FNSI, or EIS.

§ 651.9 Applicability.

(a) The types of projects or actions to be evaluated for environmental impact include:

(1) Policies, regulations, and procedures (DA regulations, circulars, or other issuances).

(2) New management and operational concepts and programs (in areas such as logistics, R&D, procurement, personnel assignment).

(3) Projects (e.g., facilities construction, weapons and vehicle research and development).

(4) Activities (e.g., individual and unit training, flight operations, overall operation of an installation or facility.

(5) Requests for a Nuclear Regulatory Commission license (new, renewal, or amendment) or an Army radiation authorization.

(b) In addition to the above, an environmental review is required for certain activities supported by the Army through:

(1) Federal contracts, grants, subsidies, loans, or other forms of funding assistance such as GOCO industrial plants.

(2) Lease, easement, permit, licenses, certificates, or other entitlements for use (e.g., grazing lease, grant of easement for highway right-of-way).

(3) Approval to use or store radiation sources on Army land by non-Army entities.

§ 651.10 Categories of actions and procedures for environmental review.

(a) There are five broad categories into which a proposed action may fall for environmental review purposes. These categories are:

(1) *Exemption by Law.* The law must apply to the Department of Defense and/or DA and must prohibit, exempt or make impossible compliance with NEPA. (40 CFR 1500.6) See § 651.11 below for security exemptions.

(2) *Emergencies.* (i) In the event of an emergency, DA may be required to take immediate actions with significant environmental impact. These include actions that must be taken to promote the national defense or security and cannot be delayed, and actions necessary for the protection of life or property. The DA staff proponent shall notify the Assistant Secretary of Defense for Manpower, Reserve Affairs, and Logistics (ASD(MRA&L)) of an emergency action at the earliest possible time so that ASD (MRA&L) may consult with the CEQ if necessary. In no event shall DA delay an emergency action necessary to the preservation of national defense security or preservation of human life or property for the purpose of complying with this regulation or the CEQ Regulations (40 CFR Part 1500–1508).

(ii) These modifications apply to actions necessary to control the immediate effects of the emergency; other actions remain subject to NEPA review. (40 CFR 1506.11)

(3) *Categorical Exclusions (CX) (Subpart D and Appendix A).* These actions normally do not require an EA or an EIS because DA has determined that they do not individually or cumulatively have a significant effect on the human environment. If qualifications are met for a CX, as described in Subpart D of this regulation, a Record of Environmental Consideration will be made to that effect. In special cases, further environmental analysis may be necessary (see § 651.16(b)).

(4) *Actions normally requiring an EA (Parts 651.20 and 21).* (i) If the proposed action is covered adequately within an existing EIA (environmental impact assessment prepared under earlier guidelines), EA, or EIS, prepare a Record of Environmental Consideration to that effect.

(ii) If the proposed action is within the general scope of an existing EIA, EA, or EIS, but supplementation is needed, prepare a supplement to the existing document and a FNSI.

(iii) If the proposed action is not covered in any existing adequate EIA, EA, or EIS, Or is of significantly larger scope than that described in the existing document, then prepare an EA followed by either a FNSI or a new EIS.

(5) *Actions Normally Requiring an EIS (§§ 651.27 and 651.28).* (i) If it is determined that the action is covered adequately in a previously filed final EIS, the Record of Environmental Consideration must so state, citing the applicable EIS by name and date; the Record of Environmental Consideration is then attached to the proponent's record copy of that final EIS.

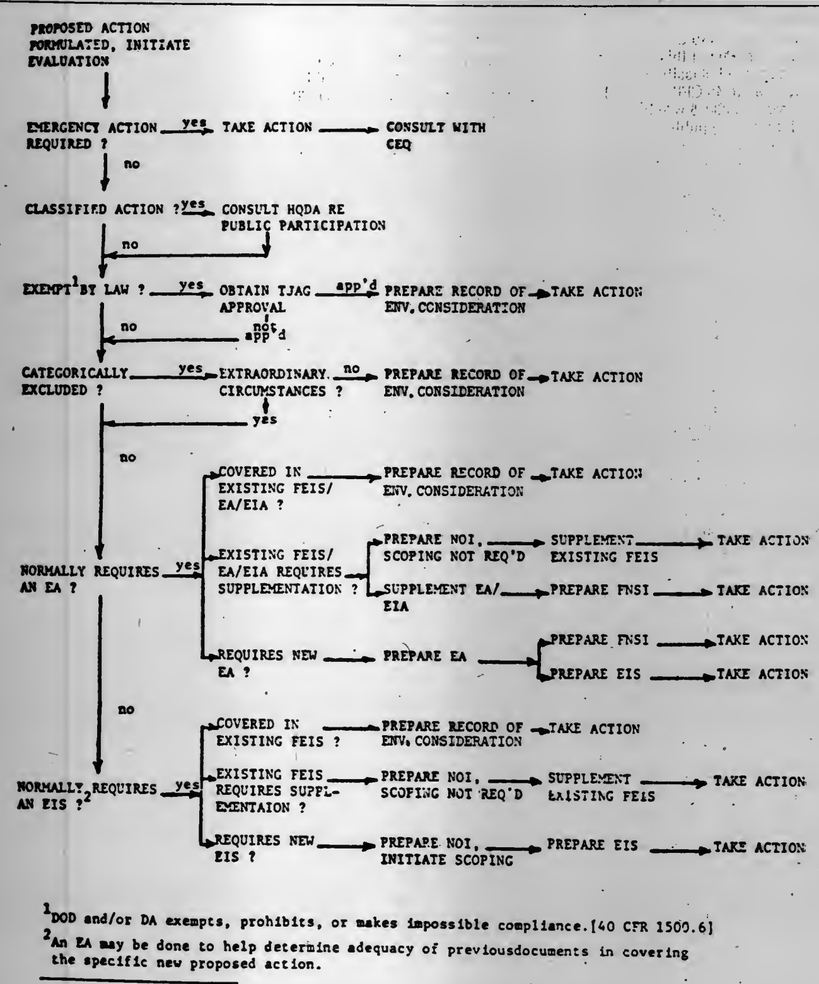
(ii) If the proposed action is within the scope of an existing FEIS but was not covered in that document or not covered adequately, then the proponent must prepare supplemental documentation to that EIS.

(iii) If the proposed action is not within the scope of any existing EIS, then the proponent must begin the preparation of a new EIS.

(b) The flow chart shown in Figure 3–1 summarizes the process for determining documentation requirements.

(c) The proponent of a proposed action may adopt appropriate environmental documents (EAs or EISs) prepared by another agency (40 CFR 1500.4(n) and 1506.3). In such cases, the proponent will retain its own recordkeeping for Records of Environmental Consideration and Records of Decision. See 40 CFR 1506.3 for procedures to be followed when adopting other documents.

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[1] DOD and/or DA exempts, prohibits, or makes impossible compliance. [40 CFR 1500.6]

[2] An EA may be done to help determine adequacy of previousdocuments in covering the specific new proposed action.

Summary of Types of Environmental Analyses and Required Documentation

Figure 3-1

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§ 651.11 Classified actions.

(a) Limited exceptions to the procedural requirements of this regulation for proposed classified actions are covered in 40 CFR 1507.3(c). The provisions of AR 380–5 will be followed with respect to public dissemination of environmental documents containing classified information.

(b) Efforts will be made to separate classified from unclassified facts and conclusions related to the proposed action so that unclassified portions of the action may be processed routinely in accordance with this regulation, and the classified portions kept separate for use by reviewers and decisionmakers with need-to-know as defined in AR 380–5 and paragraph (c) of this section.

(c) Classification does not relieve a proponent of the necessity to assess the environmental effects of the proposed action. The HQDA staff proponent, in coordination with DAEN–ZCE and ACSI, may select a review team from DA agency(ies) or office(s) not connected with the proponent agency, or from outside DA, in order to provide an external review of classified environmental documents.

§ 651.12 Integration with Army planning.

It is the Army's goal that environmental reviews be integrated with and take place during other Army planning to comply with the law and the CEQ regulations and to avoid delays in mission accomplishment.

(a) *Time Limits*—(1) *Environmental Documents.* The timing of the preparation, circulation, submission, and public availability of environmental documents is of great importance in meeting the above goal, and shall be initiated as early as possible in the decisionmaking process.

(2) *Environmental Impact Statements.* (i) EPA publishes a weekly notice in the **Federal Register** of the EISs filed during the preceding week. The following time periods calculated from the publication date of the EPA notice will be observed:

(A) Not less than 45 days for public comment on draft statements (§ 1506.10(c)).

(B) Not less than 15 days for public availability of draft statements prior to any public hearing on the DEIS (40 CFR 1506.6(c)(2)).

(C) Not less than 90 days total for public availability of the EIS draft and final statements prior to any decision on the proposed action. These periods may run concurrently (40 CFR 1506.10 (b) and (c)).

(D) The time periods prescribed in paragraphs, (a)(2)(i) (A)–(C) of this section may be extended or reduced in specific instances in accordance with 40 CFR 1506.10(b)(2) and 1506.10(d).

(ii) When variations to these time limits are set, the DA agency should consider the following factors (40 CFR 1501.8(b)(1)):

(A) Potential for environmental harm—as based on previous similar or identical actions that demonstrated a high probability of significant impact.

(B) Magnitude of the proposed action—one which affects land, air or water on a regional basis.

(C) Degree of public need for the proposed action, including the consequence of delay, as in the case of pressing national defense requirements of certain Army RDT&E programs.

(D) Number of persons and agencies affected.

(E) Degree to which relevant information is known, and if not known, time required for obtaining it by such methods as ecological inventories, historical surveys, aerial photographs, or soil surveys.

(F) Degree of environmental controversy associated with the action.

(G) Other time limits imposed on DA by law, regulation, or executive order.

(iii) The proponent may also set time limits for other procedures or decisions related to draft and final EISs as listed in 40 CFR 1501.8(b)(2).

(iv) The entire EIS process normally takes ten months. Figure 3–2 indicates the normal and required time limits to be observed for EISs.

(3) *Categorical Exclusions.* When a proposed action is categorically excluded from further environmental review (see Subpart D and Appendix A), the proponent may proceed immediately with the action upon written concurrence of the environmental officer at the site of the proposed action.

(4) *Findings of No Significant Impact.* (i) If the proposed action is one of national concern or is one normally requiring an EIS, the proponent will make the FNSI available for at least 30 days review by the public (including state and areawide clearinghouses and in the **Federal Register**) prior to making a final decision.

(ii) Except for those proposed actions referred to in paragraph (a)(4)(i) of this section, the proponent may allow a 30-day period or other reasonable period for public comment between the time that the FNSI is publicized in accordance with 40 CFR 1506.6(b) and the time the proposed action begins. A deadline and point of contact for receipt of comments should be included in the FNSI.

(b) *Programmatic Environmental Review (Tiering).*

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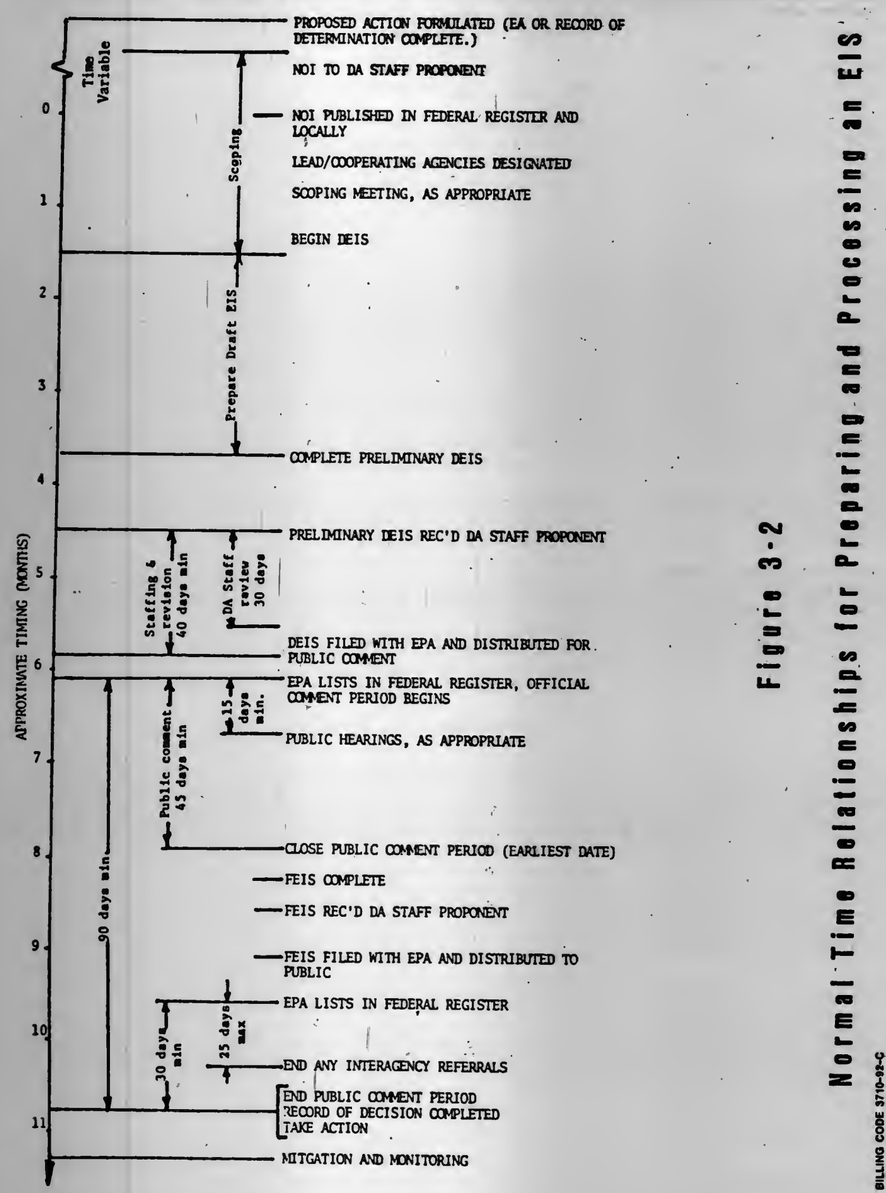


Figure 3-2

Normal Time Relationships for Preparing and Processing an EIS

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(1) DA agencies are encouraged to write programmatic environmental analyses (40 CFR 1502.4(c), 1502.20 and 1508.28) in order to eliminate repetitive discussions of the same issues and focus on the key issues at each appropriate level of project review. When a broad EIS or EA has been prepared and a subsequent EIS or EA is then prepared on an action included within the entire program or policy (particularly a site-specific action), the subsequent EIS or EA need only summarize the issues discussed in the broader statement, reference it, and shall concentrate on the issues specific to the subsequent action. This subsequent document shall state where the earlier document is available.

(2) An example would be the assessment of a proposed major weapon system program. An overall programmatic EIS or EA could be developed for the system; tiered EAs and EISs, as appropriate, would evaluate specific sub-phases such as testing, production, development/use and ultimate disposal.

(c) *Scoping.* (1) When the planning for an Army project or action indicates that an EIS should be prepared, the scoping process (40 CFR 1501.7) will be initiated for determining the scope of issues to be addressed and for identifying the significant issues related to the proposed action. During the scoping process the participants identify the range of actions, alternatives, and impacts to be considered in the EIS (40 CFR 1508.25). For an individual action, the scope may depend on the relationship of the proposed action to other environmental documents.

(2) The extent of the scoping process, including the appropriate degree of public involvement, will depend on such factors as the size and type of proposed action, whether the proposed action is of regional or national importance, the degree of any associated environmental controversy, the size of the affected environmental parameter(s) and the significance of any effect(s) on it (them), the extent of prior environmental review, whether any substantive time limits are involved, and whether environmental review is required by other laws.

(3) If the proponent desires to incorporate scoping in the public involvement or environmental review processes other than those required for an EIS, significant reduction in the extent of scoping may be appropriate in such cases and is allowed at the proponent's discretion.

(4) Section 651.33 of this regulation discusses in detail the procedures and actions to be taken by a proponent during the scoping process for an EIS.

(d) *Documentation and Analyses.* Environmental documentation and analyses required by this regulation shall be integrated as much as practicable with other environmental review laws and executive orders (40 CFR 1502.25) and:

(1) Environmental documentation required by various state laws.

(2) Any cost-benefit analyses prepared in relation to a proposed action (40 CFR 1502.23).

(3) Permitting and licensing procedures required by Federal and state law (e.g., the Clean Air Act, as amended (42 U.S.C. 57401 et seq.), and the Clean Water Act, as amended (33 U.S.C. 125 et seq.)).

(4) Installation and MACOM Master Planning functions and plans.

(5) Installation management plans, particularly those which deal directly with the environment (e.g., Fish and Wildlife Management Plan, Forest Management Plan, Range Improvement or Maintenance Plan, and Historic Preservation Program).

(6) Stationing and installation planning, force development planning, and major weapon systems and materiel acquisition planning.

(e) *Relations with Local and Regional Agencies.* Installation, agency, or activity environmental officers or planners should establish close and harmonious planning relations with local and regional agencies and planning commissions of adjacent cities, countries, and states, for cooperation and resolution of mutual land use and enviornment-related problems. A Memorandum of Understanding may be prepared to identify areas of mutual interest, establish points of contact, identify lines of communication between planning bodies, and specify procedures to follow in conflict resolution. Additional coordination may be obtained from state- and area-wide planning and development "clearinghouses." These are agencies which have been established pursuant to the Office of Management and Budget (OMB) Revised Circular A-95, "Federal and Federally-assisted Programs and Projects," 38 FR 32873 (November 28, 1973). Since the A-95 Clearinghouses serve a review and coordination function for Federal activities, the proponent may gain insights on other agencies' approaches to environmental assessments, surveys, and studies in relation to any current proposal. They would also be able to assist in identifying possible participants in scoping procedures for projects requiring an EIS.

§ 651.13 Mitigation and monitoring.

(a) *Identification in Environmental Documents.* Only those mitigation measures which can reasonably be expected to be accomplished as part of any proposed alternative shall be identified in environmental documentation (EA, FNSI, or EIS) as measures which the proponent will implement as part of the action finally selected. Other mitigation measures which appear practicable but which are not capable of accomplishment within expect resources, or which should be performed by some other agency or agencies (including non-DA agencies), shall also be identified as such in the environmental document(s). ("Practicable" measures include, but are not limited to, actions which appear capable of being accomplished even if the exact means of doing so have not been completely developed or tested.)

(b) *Consideration Throughout NEPA Process.* Mitigation will be considered throughout the NEPA process. When an EIS or EIS Supplement has been prepared, the Record of Decision will state specific mitigation measures which will be taken to reduce or avoid adverse environmental effects of the selected alternative action, as well as those practicable mitigation measures which have not been adopted (40 CFR 1505.2(c)).

(c) *Assistance From Cooperating Non-DA Agencies.* Other agencies will be requested to assist with mitigations when appropriate. Whether it is appropriate to request assistance is determined by whether the agency (1) was a cooperating agency during preparation of an environmental document, or (2) has the technology, expertise, time, funds, or familiarity with project or area necessary to implement the mitigation measure more effectively than the lead agency.

(d) *Implementing the Decision.* (1) Mitigation and other conditions established in the EIS or during its review, and committed as part of the Record of Decision, shall be implemented by the lead agency or other appropriate cooperating agency.

(2) Legal documents implenting the action (contracts, permits, grants, etc.) will specify mitigation measures to be performed. Penalties for noncompliance may also be specified as appropriate. Specification of penalties should be fully coordinated with the appropriate legal advisor.

(3) A monitoring and enforcement program shall be adopted and summarized in the Record of Decision where applicable for any mitigation. (See Appendix D for guidelines on

implementing such a program.) Whether adoption of a monitoring and enforcement program is "applicable" (40 CFR 1505.2(c)) and whether the specific adopted action is an "important" case (40 CFR 1505.3) may depend on such factors as the following:

(i) A change in environmental conditions or project activities assumed in the EIS (such that original predictions of the extent of adverse environmental impacts may be too limited).

(ii) Cases in which the outcome of the mitigation measure is uncertain (e.g., new technology).

(iii) Projects in which major environmental controversy remains associated with the selected alternative.

(iv) Cases in which failure of a mitigation measure, or other unforeseen circumstances, could result in serious harm to federal or state listed endangered or threatened species; important historic or archeological sites, either in or eligible for nomination to the National Register of Historic Places; wilderness areas, wild and scenic rivers, or other public or private protected resources. The evaluation of serious harm will be made in coordination with the appropriate Federal, state or local agency responsible for each particular program.

(v) The proponent shall respond to inquiries from the public or other agencies regarding the status of mitigation measures adopted by the agency (40 CFR 1505.3(c)).

Subpart D—Categorical Exclusions

§ 651.14 Purpose and definition.

The Categorical Exclusion (CX) is intended to reduce paperwork and delay and eliminate preparation of unnecessary EA/EISs.

§ 651.15 Criteria.

The criteria used to determine those categories of actions that normally do not require either an EIS or EA are:

(a) Minimal or no individual or cumulative effect on environmental quality and

(b) No environmentally controversial change to existing environmental conditions and

(c) Similarity to actions previously examined and found to meet the above criteria.

§ 651.16 Procedures.

(a) Determine whether the proposal in encompassed by one of the categories in Appendix A not normally requiring the preparation of an EA or EIS.

(b) Determine if there are any extraordinary circumstances that may result in the proposed action having impact on the human environment which would require an EA or EIS. These circumstances include:

(1) Greater scope or size than normally experienced for a particular category of action.

(2) Potential for degradation, even though slight, or already existing poor environmental conditions, or initiation of a degrading influence, activity, or effect in areas not already significantly modified from their natural condition.

(3) Employment of unproven technology.

(4) Presence of threatened or endangered species, archaeological remains, historical sites, or other protected resources.

(5) Use of hazardous or toxic substances which may come in contact with the surrounding environment. However, use of hazardous and toxic substances under adequately controlled conditions in established laboratories is categorically excluded.

(6) Proposed actions affecting areas of critical environmental concern such as prime or unique agricultural lands, wetlands, coastal zones, wilderness areas, floodplains, or wild and scenic river areas.

§ 651.17 Categorical exclusions.

Types of actions which normally qualify for categorical exclusion are listed in Appendix A.

§ 651.18 Modification of the list of categorical exclusions.

(a) The DA list of CXs is subject to continual review and modification as changes are identified and experience is gained in the CX process. Proponents of all DA actions are encouraged to investigate and request modifications to the DA list of categorically excluded actions to HQDA (DAEN–ZCE). Subordinate headquarters are not authorized to modify the CX list through supplements to this regulation.

(b) Proposed modifications to the list of CXs will be published in the Federal Register by HQDA (DAEN–ZCE) in order to provide an opportunity for public review and comment.

Subpart E—Environmental Assessments (EA)

§ 651.19 Purpose and definition.

The purpose of an EA is to determine whether the proposed action requires an EIS. The EA is the examination of new and continuing activities which do not normally require an EIS, are not categorically excluded from environmental examination or are not excluded from environmental review by law. The EA is defined 40 CFR 1508.9.

§ 651.20 Criteria.

(a) Potential for measurable degradation of environmental quality.

(b) Potential for cumulative impact on environmental quality when effects are combined with those of other actions or when the action is of lengthy duration.

(c) Presence of hazardous/toxic chemicals, or ionizing radiation or other radiation which could be released into the environment.

(d) Potential for violation of pollution abatement standards.

(e) Potential for some harm to culturally or ecologically sensitive areas.

§ 651.21 Actions normally requiring an EA.

(a) Special field training exercise or test activity on DOD land of a level, nature, or magnitude not within the annual installation training cycle.

(b) Military Construction.

(c) Operation of military installations.

(d) An installation herbicide, insecticide, and rodenticide use program.

(e) Preparation of regulations, directives, manuals, or other guidance documents which have a potential for measurable impact on the environment and which are not subject to categorical exclusion.

(f) Changes to established installation land use which may be expected to have some impact on the environment.

(g) Repair or alteration projects which affect historically significant structures or areas which are either in or eligible for nomination to the National Register of Historic Places.

(h) Acquisition of or alteration of or space for a laboratory which will use dangerous or hazardous chemicals, drugs, or radioactive materials.

(i) Actions that could potentially affect prime or unique farm land, wetlands, floodplains, coastal zones, wilderness areas, wild and scenic rivers, and similar areas of critical environmental concern.

(j) New weapon systems development and acquisition.

(k) Development of installation master plans, and land and natural resource management plans.

(l) Environmentally controversial actions which may lead to the excessing of Army property.

(m) Actions which take place in wildlife refuges.

(n) Timber management programs and/or proposals for forest harvest for energy conversion.

(o) Field activities on land not controlled by the military, including firing of weapons or missiles over navigable waters of the U.S.

(p) An action with significant local or regional effects on energy availability.

(q) An activity which affects any species which (1) is on or proposed for the U.S. Fish and Wildlife Service list of Threatened and Endangered Plant and Animal Species in accordance with the Endangered Species Act of 1973, as amended, or which (2) is on an applicable state or territorial list of threatened or endangered species.

(r) Production, storage, transportation or disposal of hazardous or toxic materials.

§ 651.22 Components of the EA.

(a) The EA shall include brief discussions (40 CFR 1508.9) of:

(1) Purpose and need for the proposed action.

(2) Description of the proposed action.

(3) Alternatives considered when the proposed action concerns unresolved conflict concerning alternative uses of available resources.

(4) Environmental impact of the proposed action and any alternatives resulting from unresolved conflicts concerning alternative use of available resources.

(5) Listing of agencies and persons consulted.

(6) Conclusion of whether to prepare an EIS.

(b) The EA will indicate by signature that the appropriate decisionmaker has reviewed the document along with all other appropriate planning documents.

(c) The format for the EIS (Appendix B) may be used to facilitate EA preparation. The format may vary provided the above components are included in the EA.

§ 651.23 Decision process.

Every EA must lead to either a FNSI or the preparation of an EIS.

(a) The FNSI is a document (40 CFR 1508.13) which briefly presents reasons why an action will not have a significant effect on the human environment and, thus, will not be the subject of an EIS. The FNSI shall contain a summary of the EA or have the EA attached, and shall reference any other environmental documents which are being or have been prepared on closely related topics. The FNSI must contain:

(1) The name of the action.

(2) A brief description of the action (including any alternatives considered).

(3) A short discussion of the anticipated environmental effects.

(4) The conclusions which have led to the FNSI.

(5) A deadline and point of contact for receipt of public comments.

(b) The FNSI should normally not exceed two typewritten pages in length.

(c) The FNSI will be made available to the affected or the potentially affected or interested public prior to initiation of the proposed action unless excluded on a security basis in accordance with § 651.11 of this regulation (40 CFR 1501.4(e)) and (40 CFR 1506.6). The FNSIs that are proposed to be published in the Federal Register will be submitted through command channels to the HQDA staff proponent. FNSIs having national interest/impact will be coordinated wtih SAPA–PP. Local publication of the FNSI will not precede the FR publication. The text of the publication should be identical to the FR publication.

(d) For actions of only regional or local interest, the FNSI will be publicized in accordance with 40 CFR 1506.6(b) (Appendix D). Copies of the FNSI may also be distributed to any agencies, organizations, and individuals which the proponent feels are appropriate.

§ 651.24 Public involvement.

When considering the "extent practicable" of public interaction (40 CFR 1501.4(b)) some of the factors to be weighed are:

(a) Magnitude of the proposed project/action.

(b) Extent of anticipated public interest.

(c) Urgency of the proposal.

(d) Any relevant questions of national security classification.

§ 651.25 Existing EAs.

Existing documentation (EIA/EA) will be periodically reviewed as an action continues to insure that the setting, actions, and effects described remain substantially accurate. New environmental documentation must be prepared if substantive changes have occurred.

Subpart F—Environmental Impact Statement (EIS)

§ 651.26 Purpose and definition.

An EIS is a public document whose primary purpose (40 CFR 1502.1) is to serve to insure that the policies and goals defined in NEPA are infused into the programs and actions of Federal agencies. The EIS is required to "provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment" (40 CFR 1502.1).

§ 651.27 Criteria.

The criteria for proposed actions which normally require an EIS are when the proposed action has the potential to:

(a) Significantly degrade environmental quality or public health or safety.

(b) Significantly affect historic or cultural resources, public parks and recreation areas, wildlife refuge or wilderness areas, wild and scenic rivers, sole or principal drinking water aquifers, prime and unique farmlands, wetlands, floodplains, coastal zones, or ecologically or culturally important areas or other areas of unique or critical environmental concern.

(c) Result in potentially significant and uncertain environmental effects or unique or unknown environmental risks.

(d) Significantly affect a species listed or proposed to be listed on the Federal list of endangered or threatened species.

(e) Have significant effect on properties listed or eligible to be listed in the National Register of Historic Places, or the National Registry of Natual Landmarks maintained by the Heritage Conservation and Recreation Service, U.S. Department of the Interior.

(f) Either establish a precedent for future action or represent a decision in principle about a future consideration with significant environmental effects.

(g) Adversely interact with other actions with individually insignificant effects so that cumulatively significant environmental effects result.

(h) Involve the production, storage, transportation, use, and disposal of hazardous or toxic materials which have the potential to cause significant environmental impact.

§ 651.26 Actions normally requiring EISs.

(a) Construction or significant expansion of a military facility, such as a depot, munitions plant, or major training installation.

(b) Construction or operation of facilities or installations which have a significant effect on wetlands, coastal zones, and other areas of critical environmental concern.

(c) The disposal of nuclear materials, munitions, explosives, industrial and military chemicals, and other hazardous or toxic substances which have the potential to cause significant environmental impact.

(d) The life cycle development of new weapon systems where the action will cause the construction and operation of new fixed facilities or the significant commitment of natural resources.

(e) Land acquisition, outleasing or other actions which may lead to significant change in land use.

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(f) CONUS realignment of a brigade or larger TOE unit during peacetime (except where the only significant impacts are socioeconomic with no significant direct or indirect environmental impact).

(g) Closure of a major military installation (except where the only significant impacts are socioeconomic with no significant direct or indirect environmental impact).

(h) Training exercises conducted outside the boundaries of an existing military reservation where significant environmental damage might occur.

(i) Major changes in the mission of facilities affecting areas of critical environmental concern.

§ 651.29 Format of the EIS.

(a) The format of the EIS must contain the following:

(1) Cover Sheet.
(2) Summary.
(3) Table of Contents.
(4) Purpose of and Need for the Action.
(5) Alternatives Considered.
(6) Affected Environment.
(7) Environmental and Socio-Economic Consequences.
(8) List of Preparers.
(9) Distribution List.
(10) Index.
(11) Appendices (if any).

(b) The content of each section is discussed in greater detail in Appendix B.

§ 651.30 Steps in preparing and processing an EIS.

(a) *Notice of Intent.* The NOI shall be published in the **Federal Register** and in newspapers with appropriate or general circulation in the area(s) potentially affected by the proposed action. Copies of the notice may also be distributed to agencies, organizations, and individuals as the responsible official feels is appropriate. The NOI will be forwarded to the HQDA staff proponent for **Federal Register** publication. The NOI will be coordinated with HQDA (SAPA–PP). Since the NOI normally initiates the scoping process adequate response time should be provided for those wishing to comment on the NOI or participate in the scoping process. Subpart G discusses public participation requirements and options.

(b) *Lead and Cooperating Agency Determination.* As soon as possible after the decision is made to prepare an EIS, the proponent office, if necessary, will contact appropriate Federal, state and local agencies to identify lead and cooperating agency responsibilities concerning EIS preparation (40 CFR 1501.5).

(c) *Scoping.* If it has been determined that DA is the lead agency, the proponent will begin the scoping process described in § 651.34. Portions of the scoping process may take place prior to publication of the NOI.

(d) *DEIS Preparation and Processing*—(1) *Preliminary DEIS.* Based on information obtained and the decisions made during the scoping process, the proponent will prepare the preliminary DEIS and forward 15 copies to the appropriate HQDA staff proponent for HQDA staff review. The preliminary DEIS will be circulated by the proponent office to OASA (ILFM), DAEN–ZCE, OTJAG, OTSG and other interested offices for review and comment. The preliminary DEIS is then returned to the preparer for revision as required, and printing of the DEIS for filing.

(2) *DEIS.* One hundred copies of the DEIS will be forwarded to the HQDA staff proponent for final HQDA staff review, filing with EPA, and distribution to interested Congressional delegations and committees, governors, national environmental organizations, the DOD and Federal agency headquarters, and other selected entities. When the DEIS is formally approved by HQDA, the HQDA staff proponent will notify the preparer to distribute the DEIS to the remainder of the distribution list that include Federal, regional, state and local agencies, private citizens, local organizations.

(e) *Public Review of DEIS.* (1) The length of the DEIS public comment period will normally be no less than 45 days from publication of the notice of availability in the **Federal Register**. If the statement is unusually long, a summary may be circulated with an attached list of locations where the entire DEIS may be reviewed, e.g., local public libraries, except that the EIS must be distributed to certain entities (40 CFR 1502.19).

(2) Public meetings or hearings on the DEIS will be held in accordance with the criteria established in 40 CFR 1506.6 (c) and (d) or for any other reason the proponent deems appropriate.

(f) *Response to Comments.* Responses to comments will be incorporated in the FEIS by modification of the text and/or written explanation. Where possible, comments of a similar nature will be grouped for a common response. Individual response may be made if considered desirable by the preparer or by higher authority (40 CFR 1503.4).

(g) *Prepare FEIS.* If the changes in the DEIS are limited to factual corrections, only an errata sheet containing DEIS comments, responses, and changes must be prepared and circulated. However, the entire document with new cover sheet would be filed with EPA (40 CFR 1503.4(c)). If other more extensive modifications are required, the proponent will prepare a preliminary FEIS incorporating these modifications. Processing the FEIS is the same as outlined for the DEIS transmittal except that the public need not be invited to comment during the 30 day post-filing waiting period (40 CFR 1503.1(b)).

(h) *Decision.* No decision on a proposed action shall be made until 30 days after the FEIS has been filed with EPA.

(i) *Record of Decision.* At the time of decision, or, if appropriate, its recommendation to Congress, the HQDA staff proponent will prepare a Record of Decision in accordance with 40 CFR 1505.2, and 1505.3.

(j) *Predecision Referrals.* Procedures to resolve Federal agency disagreements on the environmental effects of a proposed action are those provided in 40 CFR Part 1504. Predecision/referrals apply to interagency disagreement concerning whether a proposed action might cause unsatisfactory effects.

(k) *Revisions and Supplement.* If at any time during the planning process for a proposed action, there are substantial changes in the proposed action relevant to environmental concerns, or significant new circumstances or information relevant to environmental concerns, the proponent office shall prepare revisions or a supplement to any environmental document and/or in other ways prepare new documentation as necessary.

(l) *Mitigation.* All measures which are planned to minimize or mitigate expected significant environmental impacts shall be identified in the EIS. Implementation of the mitigation plan is the responsibility of the proponent. The proponent will make available to the public, upon request, the status and/or results of mitigation measures associated with the proposed action.

§ 651.31 Existing EISs.

When an existing EIS has been outmoded by extensive changes in the environmental setting, proposed action, environmental effects, or other substantive portions of the document, further supplementation is recommended. A newly proposed action must be the subject of a separate EIS. The proponent may, entirely revise the existing document in such a way as to bring it completely up to date, including the new proposal. Such a revised EIS, however, must be prepared and processed entirely under the provisions of this regulation.

Subpart G—Public Involvement

§ 651.32 General procedures.

(a) The requirement (40 CFR 1506.6) for public involvement (PI) recognizes the principle that all potentially affected parties shall be consulted, whenever practicable, when developing environmental documentation. DA proponents should:

(1) Disseminate factual information about proposed actions which require environmental documentation.

(2) Coordinate proposed actions with official representatives of other government jurisdictions before formulating specific courses of action.

(3) Request constructive input from members of the unorganized and organized general public with respect to the potential scope of the environmental documentation to be prepared for a proposed action.

(4) Coordinate with the installation and MACOM public affairs officer(s) and with SAPA–PP, as appropriate.

(b) When an EIS is being prepared, PI is required (40 CFR 1501.7(a)(1)) during the scoping process.

(c) Preparation of EAs shall incorporate PI processes whenever appropriate.

(d) Persons and/or agencies to be consulted include:

(1) Municipal, township, and county elected and appointed officials.

(2) State, county, and local government officials and administrative personnel whose official duties include responsibility for activities or components of the affected environment which are believed related to the proposed Army action.

(3) Local and/or regional administrators of other Federal agencies or commissions who may either control resources which may be affected by the proposed action (e.g., Fish and Wildlife Service) or who may be aware of other actions by other Federal agencies whose effects must be considered in combination with the proposed Army action (e.g., General Services Administration).

(4) The members of identifiable population segments within the potentially affected environments, whether or not they are organized or have clearly identifiable leaders (e.g., farmers and ranchers, homeowners, small business owners, Indian tribes).

(5) Members and officials of those identifiable interest groups of local or national scope which may be expected to have interest in the environmental effects of the proposed action or activity (e.g., hunters and fishermen, Audubon Society).

(6) State, regional, or local A–95 clearinghouses, as appropriate.

(7) Any person or group which has specifically requested to be involved in the specific action or in actions of this general nature.

(e) The PI processes and procedures by which participation may be solicited include the following:

(1) Direct individual contact—identifies persons expected to express an opinion and participate in later PI meetings. Direct contact may also identify the preliminary positions of such persons on the scope of issues to be addressed in the EIS. Such limited contact may suffice for all PI required for actions where the expected environmental effect is of very limited scope.

(2) Small workshops or discussion groups.

(3) Larger public gatherings should normally be held after some formulation of the potential areas of focus and alternatives. The public may then be invited to express its views on the candidate courses of action and provide suggestions or alternative courses of action not already identified. These need not to be formal public hearings.

(4) Other processes and procedures to accomplish PI may be developed and applied as appropriate.

(f) The meetings described above should not be public hearings in the early stages of evaluating a proposed action. Public hearings do not substitute for the full range of PI procedures under the purposes and intent of paragraph (a) of this section.

(g) Any public surveys or polls taken to identify a range of opinion of publics which may be affected by a proposed action will be performed in accordance with AR 335–15, Chapter 10.

§ 651.33 Scoping.

(a) *Purpose.* The "scoping" process, required when an EIS will be prepared (40 CFR 1501.7), is designed to aid the proponent in determining the significant issues related to the proposed action. The process incorporates appropriate public participation as early as possible in the Army's planning for the action. EISs for proposals for legislation are not required to go through the scoping process (40 CFR 1506.8(b)(1)); however, Army policy is that these EISs go through scoping unless extenuating circumstances make it impractical.

(b) *Scoping Procedures.* Scoping procedures can be divided into preliminary, public interaction, and final phases.

(1) *Preliminary Phase.* The proponent agency or office identifies as early as possible, how it will accomplish scoping and who should be involved. Key points of this preliminary phase will be identified or briefly summarized as appropriate in the Notice(s) of Intent. The proponent will:

(i) Develop a draft scope for the EIS.

(ii) Identify the office or person(s) responsible for matters related to the scoping process. If these office(s) or person(s) are not the same as the proponent of the action, that distinction will be made.

(iii) Identify the lead and cooperating agency(ies), if they have been determined (40 CFR 1501.5–6). (See ETL 79–6, coordination with Federal and State Land Use Agencies, February 8, 1979.)

(iv) Identify the method(s) by which the agency will invite participation of affected parties. Also, the proponent may identify a tentative list of the affected parties to be notified.

(v) Identify the proposed method(s) through which the scoping procedure will be accomplished.

(vi) Indicate the relationship between the timing of the preparation of environmental analyses and the proponent's tentative planning and decisionmaking schedule including:

(A) The scoping process itself.
(B) Collecting or analyzing environmental, including studies required of cooperating agencies.
(C) Preparation of draft and final EISs.
(D) Filing of the Record of Decision.
(E) Taking the action.
(F) For a programmatic EIS, preparing a general expected schedule for future specific implementing actions which will involve separate environmental analysis.

(vii) If applicable, identify the extent to which the EIS preparation process for the proposed action is exempt from any of the normal procedural requirements of this regulation, including scoping.

(2) *Public Interaction Phase.* (i) During this portion of the process, the proponent will request all affected parties and respondents to the NOI to assist in development of a series of recommended issues to be addressed in detail in the EIS. Assistance in identifying possible participants may be obtained from HQDA (DAEN–ZCE) or from the appropriate environmental office of MACOM headquarters.

(ii) In addition to the affected parties as identified above, the following should be included among participants:

(A) One or more technical representatives of the proponent(s). Such persons must be able to describe for other participants the technical aspects of the proposed action and alternatives.

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(B) One or more representatives of any Army-contracted consulting firm(s), if it has (they have) been retained by the time this phase occurs, and which will either actively participate in writing the EIS, or provide report(s) which the Army will directly use to create substantial portions of the EIS.

(C) Experts in various environmental areas or disciplines, if any area in which impacts may be expected is not already represented among the other scoping participants.

(iii) In all cases, the participants will be provided the information developed during the preliminary phase and with as much of the following information as may be available:

(A) A brief description of the environment(s) at the affected location(s). When (a) specific location(s) cannot be described for the particular EIS, general descriptions of the probable types of affected environment(s) may be used. The extent to which these environment(s) have been modified or affected in the past should also be included.

(B) A description of the proposed alternatives. The description will be in sufficient detail so that participants may reasonably be able to evaluate the range of impacts which may be caused by the proposed action and alternatives. The amount of detail that is "sufficient" will depend on the stage of the development of the proposal, its magnitude, and its similarity to other actions with which participants may be expected to be familiar.

(C) A tentative identification of "* * * any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration" (40 CFR 1501.7(a)(5)).

(D) Any preliminary scoping issues or limitations on the EIS, if not already described during the preliminary phase.

(iv) The public involvement may be initiated with the NOI. In general the NOI may indicate when and where a scoping meeting will take place and whom to contact in order to receive information developed during the preliminary phase. The scoping meeting is not intended to be a formal public hearing but rather a working session where information relating to potential environmental impacts can be gathered and evaluated.

(v) Starting with the above information, the person/office conducting the scoping process will use input from the technical representative of the proponent, any cooperating agency(ies), the affected parties, and any other scoping participants to aid in developing the conclusions which become the scope of the EIS. These determinations on scope are reserved for the proponent and are detailed more fully in § 651.33b(3) below. However, when significant issues or factors brought out during this interactive portion of the scoping process are determined by the proponent to *not* require detailed treatment in the EIS, in spite of relevant technical or scientific objections by any participant(s) to the contrary, the proponent will clearly identify (in the Environmental Consequences section of the EIS) the criteria which it used to eliminate such issues/factors from detailed consideration.

(3) *The Final Phase.* (i) The scope used in the preparation of a draft EIS consists of the determinations made by the proponent during and after the public interaction phase of the process, as follows:

(A) The scope and the significant issues to be analyzed in depth in the EIS (40 CFR 1501.7(a)(2)). To determine the scope of EISs, the proponent will consider three types of actions, three types of alternatives, and three types of impacts, as described in 40 CFR 1508.25 (Appendix C).

(B) Identification and elimination from detailed study of the issues which are not significant or which have been covered by prior environmental review, thereby narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment, and/or providing a reference to their coverage elsewhere (40 CFR 1501.7(a)(3)).

(C) Allocation of assignments for preparation of the EIS among the lead and any cooperating agencies, with the lead agency retaining responsibility for the statement (40 CFR 1501.7(a)(4)).

(D) Indication of any public EAs and other EISs which are being or will be prepared by the Army or by another Federal agency, and which are related to, but are not part of, the scope of the impact statement under consideration (40 CFR 1501.7(a)(5)).

(E) Identification of any other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the EIS (40 CFR 1501.7(a)(6)).

(ii) As part of the scoping process the lead agency may.

(A) Set time limits, as provided in § 651.12, if they were not already indicated in the preliminary phase.

(B) prescribe overall page limits to the EIS in accordance with the CEQ regulations which emphasize conciseness.

(iii) The proponent will provide for modifying the scope during preparation of the document.

(iv) All determinations reached by the proponent during the scoping process will be clearly conveyed to the actual preparers/writers of the EIS document and will be made available to participants in the scoping process and to other interested parties on request. Any conflicts on issues of a scientific or technical nature which arise between the proponent and scoping participants, cooperating agencies, other Federal agencies, or the preparers of the document, will be identified during the scoping process, and will be resolved by the proponent in the draft EIS.

(c) *Aids to Information Gathering.* The proponent may use and/or develop graphic or other innovate methods to aid information gathering, presentation, and transfer during the three scoping phases, including methods for presenting preliminary information to scoping participants, obtaining and consolidating input from participants, and/or organizing its own determinations on scope for use during preparation of the draft EIS.

(d) *Modification of the Scoping Process.* (1) If there is a lengthy period between a decision to prepare an EIS and the time of preparation, the Notice of Intent may be published at a reasonable time in advance of preparation of the draft statement. Any tentative conclusions regarding the scope of the EIS that have been made prior to publication of the NOI must be stated in the NOI and a reasonable amount of time must be allowed for public participation before any final decisions or commitments on the scope of the EIS document are made by the proponent.

(2) The proponent of a proposed action may use scoping during preparation of environmental review documents other than an EIS, if desired. The above procedures may be used, or the proponent may develop modified procedures at his/her discretion.

Subpart H—Environmental Effects Abroad of Major Army Actions

§ 651.34 General.

Inclosures 1 and 2 of DOD Directive 6050.7 (Appendix E and F) pertaining to environmental effects abroad of major military actions are provided for information, guidance, and compliance.

§ 651.35 Purpose.

This chapter states DA policy, assigns responsibilities, and establishes procedures for review of environmental effects abroad of major Army actions as required by Executive Order 12114, "Enivronmental Effects Abroad of Major Federal Actions," dated January 4, 1979.

§ 651.36 Applicability.

Refer to § 651.3(b).

§ 651.37 Definitions.

(a) Foreign nation means any geographic area (land, water, and airspace) that is under the jurisdiction of one or more foreign governments; any area under military occupation by the United States alone or jointly with any other foreign government; and any area that is the responsibility of an international organization of governments. "Foreign nation" includes contiguous zones and fisheries zones of foreign nations. "Foreign government" in this context includes government regardless of whether recognized by the United States, political factions, and organizations that exercise governmental power outside the United States.

(b) Global commons are geographical areas that are outside the jurisdiction of any nation, and include the oceans outside territorial limits and Antarctica. Global commons do not include contiguous zones and fisheries zones of foreign nations.

§ 651.38 Policy.

DA agencies shall:

(a) Act with care in the global commons because the stewardship of these areas is shared by all the nations of the world and will take account of environmental considerations acting in the global commons in accordance with procedures set out in Appendix E.

(b) Act with care within the jurisdiction of a foreign nation. Treaty obligations and the sovereignty of other nations must be respected, and restraint must be exercised in applying United States laws within foreign nations unless Congress has expressly provided otherwise. DA will take account of environmental considerations in accordance with Appendix F when the proposed action could affect the environment of a foreign nation.

(c) Coordinate with the Department of State on formal communications with foreign governments concerning environmental agreements and other formal arrangements with foreign governments. Consult with the Department of State in connection with the utilization of additional exemptions from this directive as specified in paragraph C.3.b of inclosure 2. Coordinate and consult with the Department of State through the Assistant Secretary of Defense (International Security Affairs).

§ 651.39 Responsibilities.

(a) DA agencies that control actions abroad (as defined by this regulation) will:

(1) Insure that regulations and other major policy issurances are reviewed for consistency with Executive Order 12114, DOD Directive 6050.7, and this regulation.

(2) Consult with HQDA (DAMO–SSM) on signficant or sensitive actions or decisions affecting relations with other nations.

(b) The ASA (IL&FM):

(1) Serves as the Secretary of the Army's responsible official for environmental matters abroad.

(2) Maintains liaison with ASD (MRA&L) on matters pertaining to EO 12114 and DOD Directive 6050.7.

(c) The Chief of Engineers:

(1) Serves as DA staff proponent for policy matters under EO 12114, DOD Directive 6050.7, and this regulation.

(2) Applies the provisions of this regulation in the planning and execution of overseas construction activities where appropriate in light of applicable statutes and Status of Forces Agreements (SOFAs).

(d) Deputy Chief of Staff for Operations and Plans:

(1) Serves as the focal point on the Army Staff on integrating environmental considerations required by this chapter into appropriate Army plans and activities which could reasonably be expected to have widespread, long-term, and severe impacts on the global commons or the territories of foreign nations.

(2) Consults with Foreign Military Rights Affairs of ASD (ISA) on significant or sensitive actions affecting relations with another nation.

(e) The Judge Advocate General shall provide advice and assistance concerning the requirements of EO 12114 and DOD Directive 6050.7.

(f) DA Staff Agencies shall consult with HQDA (DAMO–SSM) on significant or sensitive actions or decisions affecting relations with another nation.

(g) DA agencies shall:

(1) Prepare and consider environmental documents for proposed actions required by this regulation.

(2) Insure that regulations and other policy issuances are reviewed for consistency with this regulation.

(3) Designate a single point of contact for matters pertaining to this regulation.

(4) Consult with HQDA (DAMO–SSM) on significant or sensitive actions affecting relations with another nation.

§ 651.40 Implementation guidance.

(a) EISs prepared under the provisions of this subpart should use the format for such documents as contained in Subpart F and Appendix B, where appropriate in light the applicable statutes and SOFAs.

(b) Nominations for inclusions in the list of Army Categorical Exclusions—Global Commons are to be submitted to HQDA (through DAMO–SSM to DAEN–ZCE).

(c) Announcements to be published in the **Federal Register** concerning the availability of Draft and Final EISs are to be submitted to HQDA (DAMO–SSM) for transmittal to the **Federal Register.**

Appendix A—List of Categorical Exclusions

1. Normal personnel, fiscal, and administrative activities involving military and civilian personnel (recruiting, processing, paying, and records keeping).

2. Law and order activities performed by military police and physical plant protection and security personnel, excluding formulation and/or enforcement of hunting and fishing policies or regulations which differ substantively from those in effect on surrounding non-Army lands.

3. Recreation and welfare activities not involving off-road recreational vehicle management; fish and wildlife management plans and activities except those that involve introduction of or effect on exotic, endangered, or threatened species.

4. Commissary and PX operations.

5. Routine repair and maintenance of buildings, roads, airfields, grounds, equipment and other facilities to include the lay away of facilities except in cases requiring disposal of hazardous or contaminated materials.

6. Routine local procurement of goods and services, including routine utility services.

7. Construction conducted in accordance with an approved installation Master Plan and that does not significantly alter land use, and that provided the operation of the project when completed would not of itself have a significant environmental impact; includes out-grants to private lessees for similar construction.

8. Simulated war games and other tactical and logistical excercises without troops.

9. On-the-job training, basic training, and other initial entry training entirely of an administrative or classroom nature.

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10. Material storage other than storage of ammunition, explosives, pyrotechnics, nuclear materials, and other hazardous/toxic materials except for storage of such materials in structures designed and maintained for that explicit purpose.

11. Research conducted by established laboratories in enclosed facilities where: (a) All airborne emissions, waterborne effluents, external radiation levels, outdoor noise, and solid or bulk liquid waste disposal practices are in compliance with existing federal, state, and local laws and regulations; and (b) no animals which must be captured from the wild are used as research subjects (excluding reintroduction projects).

12. Developmental and operational testing on a military installation, where the tests are conducted in conjunction with normal military training or force maintenance activities so that the tests produce only incremental impact, if any; and provided that the training/force maintenance activities have been adequately assessed, where required, in other Army environmental documents.

13. Routine movement of personnel; routine handling and distribution of non-hazardous and hazardous materials, in conformance with DA, EPA and Department of Transportation regulations.

14. Reduction realignment of civilian and/or military personnel which fall below the thresholds for reportable actions as prescribed in AR 5–10. Conversion of commercial and industrial type activities (CITA) to contract performance on contracted services from in-house performance under the provisions of DOD Directive 4100.15. This CITA exclusion does not apply if the net change in employment exceeds the thresholds for reportable actions prescribed in AR 5–10.

15. Preparation of regulations, directives, manuals and other guidance documents related to action that qualify for categorical exclusion.

16. Installation and operation of communications, data processing, and similar electronic equipment using cable systems which use existing rights of way, easements, and distribution systems.

17. Activities which identify the state of the existing environment without altering it (inspections, surveys, investigations), including the granting of any permits necessary for such surveys.

18. Deployment of military units on a TDY basis where existing facilities are used and the activities to be performed have no significant impact on the environment.

19. Preparation of regulations, procedures, manuals, and other guidance documents that implement without substantial change the regulations, procedures, manuals, and other guidance documents of higher headquarters or another Federal agency which have already been environmentally evaluated.

20. Grants of easements for the use of existing rights-of-way for use by vehicles; electrical power, telephone and other transmission and communication lines; transmitter and relay facilities; water, wastewater, stormwater, and irrigation pipelines, pumping stations, and facilities; and for other similar public utility, and transportation uses.

21. Grants of leases, licenses, and permits to utilize existing Army controlled property for: Agriculture and grazing; classroom, office warehouse and administrative space; housing; other use similar to previous or concurrent Army use of the property; and historical or archaeological studies or preservation.

22. Grants of consents to use a Government-owned easement in a manner not inconsistent with existing Army use of the easement.

23. Grants of licenses for the operation of private or publicly-owned telephone, gas, water, electricity, community antenna television, and other distribution systems normally considered as public utilities.

24. Reporting excess real property to the General Services Administration; transfer of real property administrative control within the Army or to another military department or other Federal department or agency, including the return of public domain lands to the Department of the Interior; and reporting of property available for outgranting.

25. Disposal of existing uncontaminated buildings and other improvements for removal off-site.

26. Studies that involve no commitment of resources other than manpower.

27. Study and test activities within the procurement program for Military Adaptation of Commercial Items for items manufactured in the U.S.

Appendix B—Content of the EIS

This appendix is intended to supplement 40 CFR 1502.10 through 1502.18.

1. *Cover Sheet.* The cover sheet shall not exceed one page (40 CFR 1502.11) and shall include:

a. A cover sheet preceded by a protective cover sheet that contains the following statement: The material contained in the attached (Final or Draft) Environmental Impact Statement is for internal coordination use only and may not be released to non-Department of Defense Agencies or individuals until coordination has been completed and the material has been cleared for public release by appropriate authority. This sheet will be removed prior to filing the document with EPA.

b. A list of responsible agencies including the lead agency and any cooperating agency,[1]

c. The title of the proposed action that is the subject of the statement (and, if appropriate, the titles of related cooperating agency actions), together with the state(s) and county(ies) (or other jurisdiction as applicable) where the action is located.

d. The name, address, and telephone number of the person at the agency who can supply further information, and the name and title of the major approval authority(ies) in the command channel through HQDA staff proponent.

e. A designation of the statement as a draft, final, or draft or final supplement.

f. A one-paragraph abstract of the statement that should describe only the need for the proposed action, alternative actions, and the significant environmental consequences of the proposed action and alternatives.

g. The date by which comments must be received (computed in cooperation with EPA).

See example cover sheet, Figure B–1.

Figure B–1—Example Cover Sheet

Lead Agency: Department of the Army, TRADOC
Cooperating Agency(ies): (if any) Heritage Conservation and Recreation Service, Department of the Interior
Title of Proposed Action: Realignment of Ft Swampy Training Mission
Affected Jurisdiction: State of Maryland, Smith, Taylor and Jones Counties
Preparer/Proponent: Name, Address and Telephone Number of Environmental Coordinator; Approved (or Reviewed by): Name and Title of Proponent (i.e., Installation Commander or Program Manager)
Approved (or Reviewed by): Name and Title of any Intermediate Proponent (i.e., MACOM Commander); Approved by: Name and Title of DA Staff Proponent (i.e., Director of Training, DA)
Documentation Designation: Draft or Final EIS (or Draft or Final Supplemented EIS).
Abstract: One paragraph summary.
Review Comment Deadline: (Computed in cooperation with EPA guidance).

[1] The EIS is an Army document, not a contractor's document. Contractors who assist in the EIS preparation are not listed here but in the list of preparers.

2. *Summary.* The summary shall stress the major conclusions of environmental analysis, areas of controversy, and issues yet to be resolved. It should list all Federal permits, licenses, and other entitlements that must be obtained prior to proposal implementation. Further, a statement of compliance with the requirements of other Federal environmental protection laws will be included (40 CFR 1502.25).

In order to simplify consideration of complex relationships, every effort will be made to present the summary of alternatives and their impacts in a graphic format with narrative. This summary should not exceed 10 pages.

3. *Table of Contents.* This section will provide for the table of contents, list of figures and tables, and a list of all referenced documents, including a bibliography of references within the body of the EIS. The table of contents should have enough detail so that searching for sections of text is not difficult.

4. *The Purpose of and Need for the Action.* This section should clearly state the nature of the problem and discuss how the proposed action or range of alternatives would solve the problem. This section is designed specifically to call attention to the benefits of the proposed action. If a cost/benefit analysis has been prepared for the proposed action, it may be included here, or attached as an appendix and referenced here. This section shall briefly give the relevant background information on the proposed action and summarize its operational, social, economic, and environmental objectives.

5. *Alternatives Considered.* This section presents all reasonable alternatives and their environmental impacts. An examination of each specific proposal in clear terms is required. This section should be written in simple, non-technical language for the lay reader. A "no action" alternative will be included (40 CFR 1502.14(d)). For actions other than construction, the term "no action" is often misleading because a continuation of the status quo is implicit. Required in this section is an examination of the status quo. A preferred alternative need not be identified in the DEIS; however, a preferred alternative generally must be included in the FEIS (40 CFR 1502.14(e)).

A simple title or a letter or number symbol may be used for each of the discussed alternatives (e.g., "Alternative A"). Reference to the title or designation will be continued uniformly throughout the document in the appropriate sections.

The environmental impacts of the alternatives will be presented in comparative form, thus sharply defining the issues and providing a clear basis for choice among the options that are provided the decisionmaker and the public (40 CFR 1502.14). The information should be summarized in a brief, concise manner. The use of tabular or matrix format(s) is encouraged to provide the reviewer with an at-a-glance review. In some the following points are required:

a. A description of all reasonable alternatives including the preferred action, including all alternatives beyond DA jurisdiction (40 CFR 1502.14(c)), and the "no action" alternative.

b. A comparative presentation of the environmental consequences of all reasonable alternative actions including the preferred alternative.

c. A description of the mitigation measures nominated for incorporation into the proposed action and alternatives, as well as mitigation measures available but not incorporated.

d. Listing of any alternatives that were eliminated from detailed study. Briefly discuss the reasons for which each alternative was eliminated.

6. *Affected Environment(s).* This section will contain information about existing conditions in the affected area(s) necessary to understand the potential effects of the alternatives under consideration (40 CFR 1502.15). Environments created by the implemented proposal will be included as appropriate. Affected elements could include, for example, biophysical characteristics (ecology, water quality); land use and land use plans; architectural, historical, and cultural amenities; utilities and services; and transportation. This section will not be encyclopedic. It will be written clearly and the degree of detail for all points covered will be related to the significance and magnitude of expected impacts. Elements not impacted by any of the alternatives need only be presented in summary form or referenced.

7. *Environmental and Socio-Economic Consequences.* This section of the EIS forms the scientific and analytic basis for the summary comparison of effects in part 5. The following will be discussed (40 CFR 1502.16):

a. Direct Effects and Their Significance. Include in the discussion the direct impacts on human health and welfare and on other forms of life and related ecosystems. Examples of direct effects might include noise from military helicopter operations or the benefits derived from the installation of wet scrubbers to meet air quality control standards.

b. Indirect Effects and Their Significance. Include here socio-economic impacts. Many Federal actions attract people to previously unpopulated areas and indirectly induce pollution, traffic congestion, and haphazard land development. Conversely, other actions may disperse the existing population. Aircraft noise often affects future development patterns, and air pollution abatement operations may result in secondary water pollution problems.

c. Possible conflicts between the proposed actions and Federal, regional, state, and local (including Indian tribe) land use plans, policies, and controls for the area(s) concerned. Compare the land use aspects of the proposed action, and discuss possible conflicts, such as, siting an extremely noisy activity adjacent to a residential area, leasing land for purposes inconsistent with state wildlife management, or creating conflicts with prime and unique farm land policies.

d. The environmental effects of alternatives, including the proposed action.

(1) Impacts of the alternatives, including a worst case analysis where there are gaps in relevant information or scientific uncertainty.

(2) Adverse environmental effects which cannot be avoided should the proposal be implemented. Include the relationship between short-term uses of the human environment and the maintenance and enhancement of long-term productivity. The section should discuss the extent to which the proposed action and its alternatives involve short-term vs. long-term environmental gains and losses. In this context, short-term and long-term do not refer to any rigid time period and should be viewed in terms of the environmentally significant consequences of the proposed action. Thus, "short-term" can range from a very short period of time during which an action takes place to the expected life of a facility.

e. Energy Requirements and Conservation Potential of Various Alternatives and Mitigation Measures. Consult the Energy Resource Impact Statement (AR 11–27), when applicable, to satisfy this requirement. Account for the energy consumption of each proposed alternative and associated economics. Discuss, where appropriate, the uses of renewable and nonrenewable energy resources. A discussion of conservation techniques which could attenuate energy consumption should also be discussed within this section—for example, the use of insulation for newly constructed

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family housing which would reduce the long-term consumption of fuel oil or natural gas.

f. Natural or Depletable Resource Requirements and Conservation Potential of Various Mitigation Measures. Include discussion of any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. The term "resources" should include:

(1) Materials. Discuss materials in short supply (metals, wood, etc.), but do not include materials which are plentiful or have competitive alternatives (for example, aggregate or fill material).

(2) Natural. Discuss the use of natural resources resulting in irrevocable effects such as ecosystem imbalance, destruction of wildlife, loss of prime and unique farm lands. Specifically include consumption of natural energy resources in short supply, such as oil or natural gas.

(3) Cultural. Discuss destruction of human interest sites, archaeological/historical sites, scenic views or vistas, or valued open space. Reiterate lasting socio-economic effects the proposed action might have on the surrounding community.

g. Urban Quality, Historic and Cultural Resources, and the Design of the Built Environment (including reuse and conservation potential of various alternatives and mitigation measures). Discuss the effects of adjacent neighborhoods and the city at large. Examine the effects on physical design features (also known as built environment) and resultant impacts on social interaction areas such as privacy, public opinion, personnel perceptions, and other aspects of the social environment. Review the reuse potential of existing building space and its time use allocation (usually referred to as time and spatial management). (Time and spatial management allows for conservation of energy and other resources by discouraging new construction and operation until all existing building and time allocations have been fully scrutinized for alternate reuse).

h. Means to Mitigate Adverse Environmental Effects. Include mitigations not already included as part of the various alternatives. Also, specify mitigations that require action by other agencies or outside parties.

8. *List of Preparers.* The EIS shall list the names of its preparers, together with their qualifications (expertise, experience, professional disciplines) (40 CFR 1502.17). Include those people who were primarily responsible for preparing (research, data collection, and writing) the EIS or significant background or support papers, including basic components of the statement. Where possible, the persons who are responsible for a particular analysis, including analysis of background papers, shall be identified. If some or all of the preparers are contractors' employees, they may be identified as such. Identification of the firm which prepared the EIS is not, by itself, adequate to meet the requirements of this point. Normally, the list will not exceed two pages.

9. *Distribution List.* For the DEIS a list will be prepared indicating from whom review and comment is requested. The list will include public agencies and private parties or organizations. The FEIS will normally only list those who have commented or shown an interest in the proposed action.

10. *Index.* The index shall be an alphabetical list of topics in the EIS, especially of the types of effects induced by the various alternative actions. Reference may be made to either page number or paragraph number.

11. *Appendices.* If an agency prepares an appendix to an EIS, the appendix shall:

a. Consist of material prepared in connection with an EIS (as distinct from material which is not so prepared and which is incorporated by reference).

b. Consist only of material which substantiates any analysis fundamental to an impact statement.

c. Be analytic and relevant to the decision to be made.

d. Be circulated with the EIS or be readily available upon request.

Appendix C—Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act

(40 CFR Parts 1500–1508. 43 FR 55978–56007, November 29, 1978)

Appendix D—Implementing a Monitoring Program

The following steps are provided as guidance for setting up a mitigation monitoring and enforcement program where applicable in accordance with 40 CFR 1505.2(c). More detail is available in U.S. Geological Survey Circular 782, *A Method for Post-EIS Monitoring*, 1979.

1. Identify the key impacts or mitigation methods to be monitored.

2. Determine data needs for each impact or mitigation to be monitored, including:

a. Quantitive indicators suitable for measuring impacts or mitigation.

b. Alternative indicators.

c. Recommended data collection frequency (including minimum data collection frequency necessary to obtain meaningful information).

d. Recommended format (maps, tables, text, etc.)

e. Level of detail or accuracy possible with the specified method.

f. Locations or geographic areas where data should be collected.

g. Potential methods of collection, including installation of data-gathering devices.

3. Determine data availability and feasibility of data gathering.

4. Delegate or assign responsibility to the appropriate agency or office.

5. Collect and analyze data.

6. Provide status and results of the program to the office which is the public Point of Contact for the project being monitored [40 CFR 1505.3(c) and (d)].

Appendix E—Requirements for Environmental Considerations—Global Commons

(Refer to Department of Defense, Final Procedures issued April 12, 1979 (44 FR 21786), inclosure 1.)

Inclosure 1—Requirements for Environmental Considerations—Global Commons

A. *General.* This enclosure implements the requirements of Executive Order 12114 with respect to major Department of Defense actions that do significant harm to the environment of the global commons. The focus is not the place of the action, but the location of the environment with respect to which there is significant harm. The actions prescribed by this enclosure are the exclusive and complete requirement for taking account of environmental considerations with respect to Department of Defense activities that affect the global commons.

B. *Actions Included.* The requirements of this enclosure apply only to major federal actions that do significant harm to the environment of the global commons.

C. *Environmental Document Requirements.*

1. *General.* When an action is determined to be a major federal action that significantly harms the environment of the global commons, an environmental impact statement, as described below, will be prepared to enable the responsible decision-making official to be informed of pertinent environmental considerations. The statement may be a specific statement for the particular action, a generic statement covering the entire class of similar actions, or a program statement.

2. *Limitations on Actions.* Until the requirements of this enclosure have been met with respect to actions involving the global commons, no action concerning the proposal may be taken that does significant harm to the environment or limits the choice of reasonable alternatives.

3. *Emergencies.* Where emergency circumstances make it necessary to take an action that does significant harm to the environment without meeting the requirements of this enclosure, the DoD component concerned shall consult with the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics). This includes actions that must be taken to promote the national defense or security and that cannot be delayed, and actions necessary for the protection of life or property.

4. *Combining Documents.* Environmental documents may be combined with other agency documents to reduce duplication. If an environmental impact statement for a particular action already exists, regardless of what federal agency prepared it, no new statement is required by this directive.

5. *Collective Statements.* Consideration should be given to the use of generic and program statements. Generic statements may include actions with relevant similarities such as common timing, environmental effects, alternatives, methods of implementation, or subject matter.

6. *Tiering.* Consideration should be given to tiering of environmental impact statements to eliminate repetitive discussions of the same issue and to focus the issues. Tiering refers to the coverage of general matters in broader environmental impact statements, with succeeding narrower statements or environmental analyses that incorporate by reference the general discussion and concentrate only on the issues specific to the statement subsequently prepared.

7. *Lead Agency.* When one or more other federal agencies are involved with the Department of Defense in an action or program, a lead agency may be designated to supervise the preparation of the environmental impact statement. In appropriate cases, more than one agency may act as joint lead agencies. The following factors should be considered in making the lead agency designation:

a. The magnitude of agency involvement;

b. Which agency or agencies have project approval and disapproval authority;

c. The expert capabilities concerning the environmental effects of the action;

d. The duration of agency involvement; and

e. The sequence of agency involvement.

8. *Categorical Exclusions.* The Department of Defense may provide categorical exclusions for actions that normally do not, individually or cumulatively, do significant harm to the environment. If an action is covered by a categorical exclusion no environmental assessment or environmental impact statement is required. Categorical exclusions will be established by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) and will be identified in Attachment 1 to this enclosure. DoD components identifying recurring actions that have been determined, after analysis, not to do significant harm to the environment should submit recommendations for categorical exclusions and accompanying justification to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).

9. *Environmental Assessments.* The purpose of an environmental assessment is to assist DoD components in determining whether an environmental impact statement is required for a particular action. The assessment should be brief and concise but should include sufficient information on which a determination can be made whether the proposed action is major and federal, and whether it significantly harms the environment of the global commons. As a minimum, the assessment should include consideration of the need for the proposed action and the environmental effect of the proposed action. The environmental assessment will be made available to the public in the United States upon request, but there is no requirement that it be distributed for public comment.

D. *Environmental Impact Statements.*

1. *General.* Environmental impact statements will be concise and no longer than necessary to permit an informed consideration of the environmental effects of the proposed action on the global commons and the reasonable alternatives. If an action requiring an environmental impact statement also has effects on the environment of a foreign nation or on a resource designated as one of global importance, the statement need not consider or be prepared with respect to these effects. The procedures for considering these effects are set out in enclosure 2.

2. *Draft Statement.* Environmental impact statements will be prepared in two stages and may by supplemented. The first, or draft statement, should be sufficiently complete to permit meaningful analysis and comment. The draft statement will be made available to the public, in the United States, for comment. The Department of State, the Council on Environmental Quality, and other interested federal agencies will be informed of the availability of the draft statement and will be afforded an opportunity to comment. Contacts with foreign governments are discussed in subsection D.4. of the directive and subsection D.11. of this enclosure.

3. *Final Statement.* Final statements will consider, either individually or collectively, substantive comments received on the draft statement. The final statement will be made available to the public in the United States.

4. *Supplemental Statement.* Supplements to the draft or final statement should be used when substantial changes to the proposed action are made relative to the environment of the global commons or when significant new information or circumstances, relevant to environmental concerns, bears on the proposed action or its environmental effects on the global commons. Supplemental statements will be circulated for comment as in subsection 2. above unless alternative procedures are approved by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).

5. *Statement Content.* The statement will include: A section on consideration of the purpose of and need for the proposed action; a section on the environmental consequences of the proposed action and reasonable alternatives; a section that provides a succinct description of the environment of the global commons affected by the proposed action and reasonable alternatives; and a section that analyzes, in comparative form, the environmental effects on the global commons of the proposed action and reasonable alternatives.

6. *Incomplete Information.* The statement should indicate when relevant information is missing due to unavailability or scientific uncertainty.

7. *Hearings.* Public hearings are not required. Consideration should be given in appropriate cases to holding or sponsoring public hearings. Factors in this consideration include: foreign relations sensitivities; whether the hearings would be an infringement or create the appearance of infringement on the sovereign responsibilities of another government; requirements of domestic and foreign governmental confidentiality; requirements of national security; whether meaningful information could be obtained through hearings; time considerations; and requirements for commercial

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confidentiality. There is no requirement that all factors listed in this section be considered when one or more factors indicate that public hearings would not produce a substantial net benefit to those responsible for authorizing or approving the proposed action.

8. *Decision.* Relevant environmental documents developed in accordance with this enclosure will accompany the proposal for action through the review process to enable officials responsible for authorizing or approving the proposed action to be informed and to take account of environmental considerations. One means of making an appropriate record with respect to this requirement is for the decision-maker to sign and date a copy of the environmental impact statement indicating that it has been considered in the decision-making process. Other means of making an appropriate record are also acceptable.

9. *Timing.* No decision on the proposed action may be made until the later of 90 days after the draft statement has been made available and notice thereof published in the Federal Register, or 30 days after the final statement has been made available and notice thereof published in the Federal Register. The 90-day period and the 30-day period may run concurrently. Not less than 45 days may be allowed for public comment. The Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) may, upon a showing of probable important adverse effect on national security or foreign policy, reduce the 30-day, 45-day, and 90-day periods.

10. *Classified Information.* Environmental assessments and impact statements that address classified proposals will be safeguarded and classified information will be restricted from public dissemination in accordance with Department of Defense procedures (DoD Directive 5200.1) established for such information under Executive Order 12065. The requirements of that Executive Order take precedence over any requirement of disclosure in this directive. Only unclassified portions of environmental documents may be disseminated to the public.

11. *Foreign Governments.* Consideration will be given to whether any foreign government should be informed of the availability of environmental documents. Communications with foreign governments concerning environmental agreements and other formal arrangements with foreign governments concerning environmental matters under this directive will be coordinated with the Department of State. Informal, working-level communications and arrangements are not included in this coordination requirement. Coordination with the Department of State will be through the Assistant Secretary of Defense (International Security Affairs).

Appendix F—Requirements for Environmental Considerations—Foreign Nations and Protected Global Resources

(Refer to Department of Defense, Final Procedures issued April 12, 1979 (44 FR 21786), inclosure 2.)

Inclosure 2—Requirements for Environmental Considerations—Foreign Nations and Protected Global Resources

A. *General.* This enclosure implements the requirements of Executive Order 12114 to provide for procedural and other actions to be taken to enable officials to be informed of pertinent environmental considerations when authorizing or approving certain major Department of Defense actions that do significant harm to the environment of a foreign nation or to a protected global resource.

B. *Actions Included.*

1. The requirements of this enclosure apply only to the following actions:

a. Major federal actions that significantly harm the environment of a foreign nation that is not involved in the action. The involvement of the foreign nation may be directly by participation with the United States in the action, or it may be in conjunction with another participating nation. The focus of this category is on the geographical location of the environmental harm and not on the location of the action.

b. Major federal actions that are determined to do significant harm to the environment of a foreign nation because they provide to that nation: (1) A product, or involve a physical project that produces a principal product, emission, or effluent, that is prohibited or strictly regulated by federal law in the United States because its toxic effects on the environment create a serious public health risk; or (2) a physical project that is prohibited or strictly regulated in the United States by federal law to protect the environment against radioactive substances. Included in the category of "prohibited or strictly regulated" are the following: asbestos, vinyl chloride, acrylonitrile, isocyanates, polychlorinated biphenyls, mercury, beryllium, arsenic, cadmium, and benzene.

c. Major federal actions outside the United States that significantly harm natural or ecological resources of global importance designated for protection by the President or, in the case of such a resource protected by international agreement binding on the United States, designated for protection by the Secretary of State. Such determinations by the President or the Secretary of State are listed in Attachment 1 to this enclosure.

2. The actions prescribed by this enclosure are the exclusive and complete requirement for taking account of environmental considerations with respect to federal actions that do significant harm to the environment of foreign nations and protected global resources as described in subsection B.1., above. No action is required under this enclosure with respect to federal actions that affect only the environment of a participating or otherwise involved foreign nation and that do not involve providing products or physical projects producing principal products, emissions, or effluents that are prohibited or strictly regulated by federal law in the United States, or resources of global importance that have been designated for protection.

C. *Environmental Document Requirements.*

1. *General.* a. There are two types of environmental documents officials shall use in taking account of environmental considerations for actions covered by this enclosure:

(1) Environmental studies—bilateral or multilateral environmental studies, relevant or related to the proposed action, by the United States and one or more foreign nations or by an international body or organization in which the United States is a member or participant; and

(2) Environmental reviews—concise reviews of the environmental issues involved that are prepared unilaterally by the United States.

b. This section identifies the procedures for the preparation of environmental studies or reviews when required by this enclosure and the exceptions from the requirement to prepare environmental studies or reviews. If an environmental document already exists for a particular action, regardless of what federal agency prepared it, no new document is required by this enclosure.

2. *Lead Agency.* When one or more other federal agencies are involved with the Department of Defense in an action or program, a lead agency may be designated to supervise the preparation of environmental documentation. In appropriate cases, more than one agency may act as joint lead agencies. The following factors should be considered in making the lead agency designation:

a. The magnitude of agency involvement;

b. Which agency or agencies have project approval and disapproval authority;

c. The expert capabilities concerning the environmental effects of the action;

d. The duration of agency involvement; and

e. The sequence of agency involvement.

3. *Exemptions.* There are general exemptions from the requirements of this enclosure provided by Executive Order 12114, and the Secretary of Defense has the authority to approve additional exemptions.

a. *General Exemptions.* The following actions are exempt from the procedural and other requirements of this enclosure under general exemptions established for all agencies by Executive Order 12114:

(1) Actions that the DoD component concerned determines do not do significant harm to the environment outside the United States or to a designated resource of global importance.

(2) Actions taken by the President. These include: signing bills into law; signing treaties and other international agreements; the promulgation of Executive Orders; Presidential proclamations; and the issuance of Presidential decisions, instructions, and memoranda. This includes actions taken within the Department of Defense to prepare or assist in preparing recommendations, advice, or information for the President in connection with one of these actions by the President. It does not include actions taken within the Department of Defense to implement or carry out these instruments and issuances after they are promulgated by the President.

(3) Actions taken by or pursuant to the direction of the President or a cabinet officer in the course of armed conflict. The term "armed conflict" refers to: hostilities for which Congress has declared war or enacted a specific authorization for the use of armed forces; hostilities or situations for which a report is prescribed by section 4(a)(1) of the War Powers Resolution, 50 U.S.C.A. 1543(a)(1) (Supp. 1978); and other actions by the armed forces that involve defensive use or introduction of weapons in situations where hostilities occur or are expected. This exemption applies as long as the armed conflict continues.

(4) Actions taken by or pursuant to the direction of the President or a cabinet officer when the national security or national interest is involved. The determination that the national security or national interest is involved in actions by the Department of Defense must be made in writing by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).

(5) The activities of the intelligence components utilized by the Secretary of Defense under Executive Order 12036, 43 FR 3674 (1978). These components include the Defense Intelligence Agency, the National Security Agency, the offices for the collection of specialized intelligence through reconnaissance programs, the Army Office of the Assistant Chief of Staff for Intelligence, the Office of Naval Intelligence, and the Air Force Office of the Assistant Chief of Staff for Intelligence.

(6) The decisions and actions of the Office of the Assistant Secretary of Defense (International Security Affairs), the Defense Security Assistance Agency, and the other responsible offices within DoD components with respect to arms transfers to foreign nations. The term "arms transfers" includes the grant, loan, lease, exchange, or sale of defense articles or defense services to foreign governments or international organizations, and the extension or guarantee of credit in connection with these transactions.

(7) Votes and other actions in international conferences and organizations. This includes all decisions and actions of the United States with respect to representation of its interests at international organizations, and at multilateral conferences, negotiations, and meetings.

(8) Disaster and emergency relief actions.

(9) Actions involving export licenses, export permits, or export approvals, other than those relating to nuclear activities. This includes: advice provided by DoD components to the Department of State with respect to the issuance of munitions export licenses under section 38 of the Arms Export Control Act, 22 U.S.C. 2778 (1976); advice provided by DoD components to the Department of Commerce with respect to the granting of export licenses under the Export Administration Act of 1969, 50 U.S.C. App. 2401–2413 (1970 & Supp. V 1975); and direct exports by the Department of Defense of defense articles and services to foreign governments and international organizations that are exempt from munitions export licenses under section 38 of the Arms Export Control Act, 22 U.S.C. 2778 (1976). The term "export approvals" does not mean or include direct loans to finance exports.

(10) Actions relating to nuclear activities and nuclear material, except actions providing to a foreign nation a nuclear production or utilization facility, as defined in the Atomic Energy Act of 1954, as amended, or a nuclear waste management facility.

b. *Additional Exemptions.* The Department of Defense is authorized under Executive Order 12114 to establish additional exemptions that apply only to the Department's operations. There are two types of additional exemptions: Case-by-case and class.

(1) *Case-by-Case Exemptions.* Exemptions other than those specified above may be required because emergencies, national security considerations, exceptional foreign policy requirements, or other special circumstances preclude or are inconsistent with the preparation of environmental documentation and the taking of other actions prescribed by this enclosure. The following procedures apply for approving these exemptions:

(a) *Emergencies.* This category includes actions that must be taken to promote the national defense or security and that cannot be delayed, and actions necessary for the protection of life or property. The heads of the DoD components are authorized to approve emergency exemptions on a case-by-case basis. The Department of Defense is required to consult as soon as feasible with the Department of State and the Council on Environmental Quality with respect to emergency exemptions. The requirement to consult as soon as feasible is not a requirement of prior consultation. A report of the emergency action will be made by the DoD component head to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), who, with the Assistant Secretary of Defense (International Security Affairs), shall undertake the necessary consultations.

(b) *Other Circumstances.* National security considerations, exceptional foreign policy requirements, and other special circumstances not identified in paragraph C.3.a. above, may preclude or be inconsistent with the preparation of environmental documentation. In these circumstances, the head of the DoD component concerned is authorized to exempt a particular action from the environmental documentation requirements of this enclosure after obtaining the prior approval of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), who, with the Assistant Secretary of Defense (International Security Affairs), shall consult, before approving the exemption, with the Department of State and the Council on Environmental Quality. The requirement for prior consultation is not a requirement for prior approval.

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(2) *Class Exemptions.* Circumstances may exist where a class exemption for a group of related actions is more appropriate than a specific exemption. Class exemptions may be established by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) who, with the Assistant Secretary of Defense (International Security Affairs), shall consult, before approving the exemption, with the Department of State and the Council on Environmental Quality. The requirement for prior consultation is not a requirement for prior approval. Requests for class exemptions will be submitted by the head of the DoD component concerned to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) after coordination with other interested DoD components. Notice of the establishment of a class exemption will be issued as Attachment 2 to this enclosure.

4. *Categorical Exclusions.* The Department of Defense is authorized by Executive Order 12114 to provide for categorical exclusions. A categorical exclusion is a category of actions that normally do not, individually or cumulatively, do significant harm to the environment. If an action is covered by a categorical exclusion, no environmental document is required. Categorical exclusions will be established by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), and will be identified in Attachment 3 to this enclosure. DoD components identifying recurring actions that have been determined, after analysis, not to do significant harm to the environment should submit requests for categorical exclusions and accompanying justification to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).

D. *Environmental Studies.*

1. *General.* Environmental studies are one of two alternative types of documents to be used for actions described by paragraph B. of this enclosure.

a. An environmental study is an analysis of the likely environmental consequences of the action that is to be considered by DoD components in the decision-making process. It includes a review of the affected environment, significant actions taken to avoid environmental harm or otherwise to better the environment, and significant environmental considerations and actions by the other participating nations, bodies, or organizations.

b. An environmental study is a cooperative action and not a unilateral action undertaken by the United States. It may be bilateral or multilateral, and it is prepared by the United States in conjunction with one or more foreign nations, or by an international body or organization in which the United States is a member or participant. The environmental study, because it is prepared as a cooperative undertaking, may be best suited for use with respect to actions that provide strictly regulated or prohibited products or projects to a foreign nation (B.1.b.) and actions that affect a protected global resource (B.1.c.).

2. *Department of State Coordination.* Communications with foreign governments concerning environmental studies and other formal arrangements with foreign governments concerning environmental matters under this directive will be coordinated with the Department of State. Informal, working-level communications and arrangements are not included in this coordination requirement. Coordination with the Department of State will be through the Assistant Secretary of Defense (International Security Affairs).

3. *Whether to Prepare an Environmental Study.* The judgment whether the action is one that would do significant harm to one of the environments covered by this enclosure normally will be made in consultation with concerned foreign governments or organizations. If a negative decision is made, the file will be documented with a record of that decision and the decision-makers who participated. If a decision is made to prepare a study then, except as provided by this enclosure, no action concerning the proposal may be taken that would do significant harm to the environment until the study has been completed and the results considered.

4. *Content of the Study.* The document is a study of the environmental aspects of the proposed action to be considered in the decision-making process. The precise content of each study must be flexible because of such considerations as the sensitivity of obtaining information from foreign governments, the availability of useful and understandable information, and other factors identified under "Limitations," (subsection D.6., below). The study should, however, include consideration of the following:

a. A general review of the affected environment;

b. The predicted effect of the action on the environment;

c. Significant known actions taken by governmental entities with respect to the proposed action to protect or improve the environment; and

d. If no actions are being taken to protect or enhance the environment, whether the decision not to do so was made by the affected foreign government or international organization.

5. *Distribution of the Study.* Except as provided under "Limitations," (subsection D.6., below), and except where classified information is involved, environmental studies will be made available to the Department of State, the Council on Environmental Quality, other interested federal agencies, and, on request, to the public in the United States. Interested foreign governments also may be informed of the studies, subject to the "Limitations" (subsection D.6., below) and controls on classified information, and furnished copies of the documents. No distribution is required prior to the preparation of the final version of the study or prior to taking the action that caused the study to be prepared.

6. *Limitations.* The requirements with respect to the preparation, content, and distribution of environmental studies in the international context must remain flexible. The specific procedures must be determined on a case-by-case basis and may be modified where necessary to:

a. Enable the component to act promptly. Considerations such as national security and foreign government involvement may require prompt action that must take precedence in the environmental review process;

b. Avoid adverse impacts on relations between the United States and foreign governments and international organizations;

c. Avoid infringement or the appearance of infringement on the sovereign responsibilities of another government. The collection of information and the preparation and distribution of environmental documentation for actions in which another nation is involved, or with respect to the environment and resources of another nation, unless done with proper regard to the sovereign authority of that nation, may be viewed by that nation as an interference in its internal affairs and its responsibility to evaluate requirements with respect to the environment;

d. Ensure consideration of:

(1) Requirements of governmental confidentiality. This refers to the need to protect sensitive foreign affairs information and information received from another government with the understanding that it will be protected from disclosure regardless of its classification;

(2) National security requirements. This refers to the protection of classified information and other national security interests;

(3) Availability of meaningful information. Information on the environment of foreign nations may be unavailable, incomplete, or not susceptible to meaningful evaluation, particularly where the affected foreign nation is not a participant in the analysis. This may reduce or change substantially the normal content of the environmental study;

(4) The extent of the participation of the DoD component concerned and its ability to affect the decision made. The utility of the environmental analysis and the need for an in-depth review diminishes as DoD's role and control over the decision lessens; and

(5) International commercial, commercial confidentiality, competitive, and export promotion factors. This refers to the requirement to protect domestic and foreign trade secrets and confidential business information from disclosure. Export promotion factors includes the concept of not unnecessarily hindering United States exports.

7. *Classified Information.* Classified information will be safeguarded from disclosure in accordance with the Department of Defense procedures (DoD Directive 5200.1) established for such information under Executive Order 12065. The requirements of that Executive Order take precedence over any requirement of disclosure in this directive.

E. *Environmental Reviews.*

1. *General.* Environmental reviews are the second of the two alternative types of documents to be used for actions covered by paragraph B of this enclosure.

a. An environmental review is a survey of the important environmental issues involved. It includes identification of these issues, and a review of what if any consideration has been or can be given to the environmental aspects by the United States and by any foreign government involved in taking the action.

b. An environmental review is prepared by the DoD component concerned either unilaterally or in conjunction with another federal agency. While an environmental review may be used for any of the actions identified by section B., it may be uniquely suitable, because it is prepared unilaterally by the United States, to actions that affect the environment of a nation not involved in the undertaking (B.1.a.).

2. *Department of State Coordination.* Communications with foreign governments concerning environmental agreements and other formal arrangements with foreign governments concerning environmental matters under this enclosure will be coordinated with the Department of State. Informal working-level communications and arrangements are not included in this coordination requirement. Coordination with the Department of State will be through the Assistant Secretary of Defense (International Security Affairs).

3. *Whether To Prepare an Environmental Review.* Sufficient information will be gathered, to the extent it is reasonably available, to permit an informed judgment as to whether the proposed action would do significant harm to the environments covered by this enclosure. If a negative decision is made, a record will be made of that decision and its basis. If a decision is made to prepare a review, then, except as provided by this enclosure, no action concerning the proposal may be taken that would do significant environmental harm until the review has been completed.

4. *Content of the Review.* An environmental review is a survey of the important environmental issues associated with the proposed action that is to be considered by the DoD component concerned in the decision-making process. It does not include all possible environmental issues and it does not include the detailed evaluation required in an environmental impact statement under enclosure 1 of this directive. There is no foreign government or international organization participation in its preparation, and the content therefore may be circumscribed because of the availability of information and because of foreign relations sensitivities. Other factors affecting the content are identified under "Limitations," (subsection E.6., below). To the extent reasonably practical the review should include consideration of the following:

a. A statement of the action to be taken including its timetable, physical features, general operating plan, and other similar broad-gauge descriptive factors;

b. Identification of the important environmental issues involved;

c. The aspects of the actions taken or to be taken by the DoD component that ameliorate or minimize the impact on the environment; and

d. The actions known to have been taken or to be planned by the government of any participating and affected foreign nations that will affect environmental considerations.

5. *Distribution.* Except as provided under "Limitations," (subsection E.6., below), and except where classified information is involved, environmental reviews will be made available to the Department of State, the Council on Environmental Quality, other interested federal agencies, and, on request, to the public in the United States. Interested foreign governments also may be informed of the reviews and, subject to the "Limitations" (subsection E.6., below) and controls on classified information, will be furnished copies of the documents on request. This provision for document distribution is not a requirement that distribution be made prior to taking the action that is the subject of the review.

6. *Limitations.* The requirements with respect to the preparation, content, and distribution of environmental reviews in the international context must remain flexible. The specific procedures must be determined on a case-by-case basis and may be modified where necessary to:

a. Enable the component to act promptly. Considerations such as national security and foreign government involvement may require prompt action that must take precedence in the environmental review process;

b. Avoid adverse impacts on relations between the United States and foreign governments and international organizations;

c. Avoid infringement or the appearance of infringement on the sovereign responsibilities of another government. The collection of information and the preparation and distribution of environmental documentation for actions in which another nation is involved or with respect to the environment and resources of another nation, unless done with proper regard to the sovereign authority of that nation, may be viewed by that nation as an interference in its internal affairs and its prerogative to evaluate requirements with respect to the environment; and

d. Ensure consideration of:

(1) Requirements of governmental confidentiality. This refers to the need to protect sensitive foreign affairs information and information received from another government with the understanding that it will be protected from disclosure regardless of its classification;

(2) National security requirements. This refers to the protection of classified information;

(3) Availability of meaningful information. Information on the environment of foreign nations may be unavailable, incomplete, or not susceptible to meaningful evaluation, and this may reduce or change

substantially the normal content of the environmental review;

(4) The extent of the participation of the DoD component concerned and its ability to affect the decision made. The utility of the environmental analysis and the need for an in-depth review diminishes as the role of the Department of Defense and control over the decision lessens; and

(5) International commercial, commercial confidentiality, competitive, and export promotion factors. This refers to the requirement to protect domestic and foreign trade secrets and confidential business information from disclosure. Export promotion factors includes the concept of not unnecessarily hindering United States exports.

7. *Classified Information.* Classified information will be safeguarded from disclosure in accordance with the DoD procedures (DoD Directive 5200.1) established for such information under Executive Order 12065. The requirements of that Executive Order take precedence over any requirement of disclosure in this directive.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10, 12, and 157

[CGD 80-131]

Licensing and Certification of Seamen

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment sets out the procedures to be followed by seamen to obtain temporary licenses as master, mate, or engineer, or temporary certificates or service as able seamen or qualified member of the engine department, for employment upon certain U.S. vessels engaged in the offshore mineral or energy industry. This amendment also sets out manning requirements for this group of vessels. The licensing or certification of seamen on all vessels in this category has not been previously required. Recent legislative action (Pub. L 96-378), mandates the carriage of licensed officers upon all offshore supply vessels, as defined by the Act, and carriage of certificated seamen upon those vessels of one hundred gross tons or over. This action will allow the integration of previously unlicensed or uncertificated personnel employed in closely related positions on this type of vessel into the professional categories outlined by the Act for vessel operation.

EFFECTIVE DATE: October 20, 1980.

APPLICATION DEADLINE: Application for temporary licenses must be submitted to the Coast Guard by January 6, 1981.

FOR FURTHER INFORMATION CONTACT: Commander Scott D. McCowen, Office of Merchant Marine Safety, Vessel Manning Branch (G-MVP-5/14), Room 1400G, Department of Transportation, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C., 20593 (202-426-2240).

SUPPLEMENTARY INFORMATION: This amendment is issued without publication of a notice of proposed rulemaking and is effective in less than 30 days from the date of publication. Since the manning requirements became effective with the passage of the Act and the Act requires registration for temporary licenses or certificates of service within 90 days of its passage, delay in publication of the rule could lead to disruption in the mineral and energy industry. Therefore, notice and public procedure hereon are unnecessary and impracticable and good cause exists for making the rule effective in fewer than 30 days after publication.

This amendment has been reviewed under the Department of Transportation's "Regulatory Policies and Procedures" published on February 26, 1979 (44 FR 11034), and is considered to be an emergency regulation that would otherwise be nonsignificant. As such, neither a regulatory analysis nor a final evaluation are required.

Drafting information: The principal persons involved in drafting this proposal are:

Commander Scott D. McCowen, Project Manager, Office of Merchant Marine Safety, and

Lieutenant George J. Jordan, Project Counsel, Office of the Chief Counsel.

Discussion of the regulations: The passage of Pub. L. 96-378 on October 6, 1980 (an Act to amend certain inspection and manning laws applicable to small vessels carrying passengers or freight for hire, and for other purposes) necessitates the revision of certain Coast Guard regulations pertaining to the inspection and manning of vessels subject to the Act and licensing and certification of certain crew members.

The provisions of the Act subject a heretofore statutorily undefined group of vessels commonly referred to as "offshore supply vessels" to U.S. vessel inspection and manning requirements. This group, made up vessels of more than fifteen but less than 500 gross tons, has, over the past thirty years, grown to over 3,000 in number, directly employing approximately 30,000 persons in support of the offshore mineral and energy industry.

For many years the offshore support industry has employed the use of bareboat charter arrangements that allowed its vessels to avoid Coast Guard manning and inspection requirements. In recent years, however, the Coast Guard has questioned these arrangements concluding that many of these vessels are, in fact, subject to inspection. Although effective enforcement has been difficult, these Coast Guard efforts, along with congressional concern, culminated in the passage of Pub. L. 96-378 on October 6, 1980. Current Coast Guard regulations in 46 CFR Parts 10, 12 and 157 do not speak directly to the manning requirements for offshore supply vessels to to the licensing or certification of their crewmembers.

These rules provide revisions and additions to current regulations found in Subchapter B of Title 46, Code of Federal Regulations. They provide for the temporary licensing of officers in Subpart 10.03, and temporary certification of able seamen and qualified members of the engine department in Subparts 12.07 and 12.17 respectively, for offshore supply vessel crewmembers who can show evidence of service in a like capacity on offshore supply vessels prior to January 2, 1979. The service requirements for the temporary licenses and certificates of service spoken to in the above subparts were determined as a result of a series of consultations with operators of the vessels involved. It is felt that these requirements are the minimum that can be allowed without imparing the safety of these vessels.

Section 12.05-3 is revised to reflect a lowering of the age qualifications for certificates of service as Able Seamen, from ninteen to eighteen years of age. In addition, § 12.05-7 is revised to reducing the number of currently existing categories of able seamen from five to three and creating a new category of able seamen, Able Seamen-Special (OSV), who will be limited to service upon offshore supply vessels, in order to comply with the requirements of the Act. Paragraphs (c) and (d) of this section have been added to show how the existing categories of able seamen endorsements mesh with the categories of able seamen specified by the Act. Existing certificates of service as able seaman will be endorsed to reflect the wording of the revised caegories upon the request of the certificate holder.

This document also revises portions of the regulations in Part 157 of Subchapter P of Title 46, Code of Federal Regulations pertaining to the manning of inspected vessels. These revisions implement the requirements of the Act by: (1) Plaing a definition of "offshore supply vessel" in § 157.10-87; (2) adding offshore supply vessels to the list of those types of vessels previously exempted from certain watch system requirements when on voyages of less than 600 miles, found in § 157.20-5(b); (3) establishing four specific categories of able seaman, and amending the percentage requirements of able seamen required to be carried in the deck crews of certain vessels, in § 157.20-15; and (4) amending § 157.20-25, § 157.20-35 and adding a new § 157.20-37 to reflect the number of licensed officers to be carried upon vessels subject to the Act.

These regulations conform existing regulations to the requirements of the Act. The major substantive change to existing regulations is the creation of offshore supply vessel manning and personnel licensing requirements as mandated by the Act.

In consideration of the foregoing, Chapter I of Title 46, Code of Federal Regulations is amended as follows:

PART 10—LICENSING OF OFFICERS AND MOTORBOAT OPERATORS AND REGISTRATION

§ 10.01-5 [Amended]

1. By revising paragraph (b) of 46 CFR 10.01-5 to read as follows:

* * * * *

(b) Deck and engineer officers' licenses. The regulations regarding requirements for deck and engineer officers' licenses interpret or apply Title 46, U.S. Code, sections 214, 224, 224a, 225, 226, 228, 229. 230, 231, 233, 237, 367, 391a, 404, 401-1, 405. 672a, and 1132, and Title 50, U.S. Code. section 198.

2. By adding a new Subpart 10.03 to read as follows:

Subpart 10.03—General Requirements for Issuance of Temporary Deck and Engineer Licenses for the Officers of Offshore Supply Vessels

Sec.

10.03-1 Eligibility
10.03-5 Application procedure.
10.03-7 Service under an acknowledgment of application
10.03-10 Issuance of temporary licenses.
10.03-15 Requirements for temporary licenses.
10.03-20 Exhibition of temporary license or acknowledgment of application.

Authority: Pub. L. 96-376; (46 U.S.C. 223, 224, 390-390g, 404. 404-1, 672, 673; 49 U.S.C. 1655(b)); 49 CFR 1.46(b)]

Subpart 10.03—General Requirements for Issuance of Temporary Deck and Engineer Licenses for the Officers of Offshore Supply Vessels

§ 10.03-1 Eligibility.

A person is eligible for a temporary license as master, mate or engineer for offshore supply vessels if:

(a) Application is made on or before January 6, 1981; and,

(b) The applicant was serving in an equivalent capacity on board an offshore supply vessel as defined by 46 U.S.C. 404-1, on or before January 1, 1979.

§ 10.03-5 Application procedure.

(a) A person may apply for a temporary license at any Coast Guard Marine Inspection or Marine Safety Office.

(b) Application shall be made upon Coast Guard Form "Application for Temporary License or Certificate of Service for Crews of Offshore Supply Vessels".

§ 10.03-7 Service under an acknowledgment of application.

(a) Upon receipt of the completed application, the Officer in Charge, Marine Inspection, issues an "acknowledgment of application" to the applicant. Upon receipt of this acknowledgment, the applicant is deemed to be in compliance with the statutes dealing with licensing of merchant marine personnel pending issuance of a temporary license, or expiration of the acknowledgment of application.

(b) An acknowledgment of application is subject to suspension and revocation on the same grounds and procedures as provided by 46 U.S.C. 239.

(c) An acknowledgment of application remains valid until October 7, 1982.

§ 10.03-10 Issuance of temporary licenses.

(a) An Officer In Charge, Marine Inspection, may issue temporary licenses on or before October 6, 1982 to persons who have applied under § 10.03-5 and meet the requirements of § 10.03-15.

(b) Temporary licenses issued under the provisions of this part:

(1) Authorize service only upon offshore supply vessels;

(2) Remain valid for a period of three years from the date of issuance;

(3) May not be raised in grade;

(4) Are not renewable except for replacement occasioned by loss; and,

(5) Are subject to suspension and revocation on the same grounds and procedures as provided by 46 U.S.C. 239.

(c) Authority to issue temporary licenses as master, mate or engineer of offshore supply vessels expires on October 7, 1982.

§ 10.03-15 Requirements for temporary licenses.

(a) An applicant for a temporary license subject to the provisions of this subpart must meet the age, physical, character and citizenship requirements of § 10.02-5 of this part before such license will be issued.

(b) An applicant for temporary license shall present to the Officer in Charge, Marine Inspection, letters, discharges, or other official documents certifying the amount and character of sea service, and the names of the vessels on which acquired. The Officer in Charge, Marine Inspection, must be satisfied as to the bona fides of all evidence of sea service or training presented and may reject any evidence not considered to be authentic or which does not sufficiently outline the amount, type and character of service.

(c) The minimum service required to obtain a temporary license is:

(1) For master—175 days service as master of an offshore supply vessel.

(2) For mate—135 days service as master or mate of an offshore supply vessel.

(3) For chief engineer—175 days service as chief engineer of an offshore supply vessel.

(4) For assistant engineer—135 days service as chief engineer or assistant engineer of an offshore supply vessel.

Note.—A twelve hour work day is equivalent to one day of the above service requirements. An eight hour work day is equivalent to two thirds of a service day.

(d) Service in the appropriate licensed capacity upon offshore supply vessels while holding the acknowledgment of application issued in accordance with § 10.03-7 may be utilized to meet the sea service requirements of paragraph (c) ofthis section.

(e) An applicant for a temporary license as master or mate, who does not hold a valid deck license issued by the Coast Guard, shall be required to demonstrate competency in the International and Inland Rules of the Road prior to issuance of the temporary license.

§ 10.03-20 Exhibition of temporary license or acknowledgment of application.

All individuals serving in a licensed capacity upon an offshore supply vessel shall have their temporary licenses or acknowledgments of application conspicuously displayed as required by 46 U.S.C. 232.

PART 12—CERTIFICATION OF SEAMEN

3. By revising 46 CFR 12.05–1 to read as follows:

§ 12.05–1 Certification required.

(a) Every person employed in a rating as able seaman on any United States vessel requiring certificated able seamen, before signing articles of agreement, shall present to the master, his or her certificate as able seaman (issued in the form of a merchant mariner's document).

(b) No certificate as able seaman is required of any person employed on any tug or towboat on the bays and sounds connected directly with the seas, or on any unrigged vessel except seagoing barges or tank barges.

(c) The following categories of able seaman are established:

(1) Able Seaman—Any Waters, Unlimited.

(2) Able Seaman—Limited.

(3) Able Seaman—Special.

(4) Able Seaman—Special (OSV).

4. By revising 46 CFR 12.05–3 to read as follows:

§ 12.05–3 General requirements.

To qualify for certification as able seaman an applicant must:

(a) Be at least 18 years of age;

(b) Pass the prescribed physical examination;

(c) Meet the sea service or training requirements set forth in this part;

(d) Pass an examination demonstrating ability as an able seaman and lifeboatman; and,

(e) Speak and understand the English language as would be required in performing the general duties of able seaman and during an emergency aboard ship.

5. By revising 46 CFR 12.05–7 to read as follows:

§ 12.05–7 Service or training requirements.

(a) The minimum service required to qualify an applicant for the various categories of able seaman is as listed in this paragraph.

(1) Able Seaman—Any Waters, Unlimited. Three years service on deck on vessels operating on the oceans or the Great Lakes.

(2) Able Seaman—Limited. Eighteen months service on deck in vessels of 100 gross tons or over which operate in a service not exclusively confined to the rivers and smaller inland lakes of the United States.

(3) Able Seaman—Special. Twelve months service on deck on vessels operating on the oceans, or the navigable waters of the United States including the Great Lakes.

(4) Able Seaman—Special (OSV). Six months service on deck on vessels operating on the oceans, or the navigable waters of the United States including the Great Lakes.

Note.—Employment considerations for the various categories of able seaman are contained in § 157.20–15 of this chapter.

(b) Training programs approved by the Commandant may be substituted for the required periods of service on deck as follows:

(1) A graduate of a school ship may be rated as able seaman upon satisfactory completion of the course of instruction. For this purpose, "school ship" is interpreted to mean an institution which offers a complete course of instruction, including a period of at sea training, in the skills appropriate to the rating of able seaman.

(2) Training programs, other than those classified as a school ship, may be substituted for up to one third of the required service on deck. The service/training ratio for each program is determined by the Commandant, who may allow a maximum of three days on deck service credit for each day of instruction.

(c) A certificate of service as "Able Seaman, Great Lakes—18 months' service," is considered equivalent to a certificate of service as "Able Seaman—Limited."

(d) A certificate of service as Able Seaman with the following route, vessel, or time restrictions is considered equivalent to a certificate of service as "Able Seaman—Special":

(1) "Any waters—12 months."

(2) "Tugs and towboats—any waters."

(3) "Bays and sounds—12 months, vessels 500 gross tons or under not carrying passengers."

(4) "Seagoing barges—12 months."

(e) An individual holding a certificate of service endorsed as noted in paragraphs (c) or (d) of this section may have his or her merchant mariner's document endorsed with the equivalent category, upon request.

6. By adding a new Subpart § 12.07 to read as follows:

Subpart 12.07—General Requirements for Issuance of Temporary Certificates of Service, for Able Seamen on Offshore Supply Vessels

Sec.

12.07–1 Eligibility.
12.07–5 Application procedure.
12.07–7 Service under an acknowledgment of application.
12.07–10 Issuance of temporary certificates of service.
12.07–15 Requirements for temporary certificates of service.
12.07–20 Possession of temporary certificate of service or acknowledgment of application.

Authority: Pub. L. 96–376; (46 U.S.C. 223, 224, 390–390g, 404, 404–1, 672, 673; 49 U.S.C. 1655(b)); 49 CFR 1.46(b))

Subpart 12.07—General Requirements for Issuance of Temporary Certificates of Service for Able Seamen on Offshore Supply Vessels

§ 12.07–1 Eligibility.

A person is eligible for a temporary certificate of service as Able Seaman—Special (OSV), for offshore supply vessels if:

(a) Application is made on or before January 6, 1981; and,

(b) The applicant was serving in an equivalent capacity on board an offshore supply vessel as defined by 46 U.S.C. 404–1, on or before January 1, 1979.

§ 12.07–5 Application procedure.

(a) A person may apply for a temporary certificate of service as Able Seaman—Special (OSV), at any Coast Guard Marine Inspection or Marine Safety Office.

(b) Application shall be made upon Coast Guard Form "Application for Temporary License or Certificate of Service for Crews of Offshore Supply Vessels."

§ 12.07–7 Service under an acknowledgment of application.

(a) Upon receipt of the completed application, the Officer in Charge, Marine Inspection, issues an "acknowledgment of application" to the applicant. Upon receipt of this acknowledgment, the applicant is deemed to be in compliance with the statutes dealing with certification of merchant marine personnel pending issuance of a temporary certificate or expiration of the acknowledgment of application.

(b) An acknowledgment of application is subject to suspension and revocation on the same grounds and procedures as provided by 46 U.S.C. 239.

(c) An acknowledgment of application shall remain valid until October 7, 1982.

§ 12.07–10 Issuance of temporary certificates of service.

(a) An Officer in Charge, Marine Inspection, may issue temporary certificates of service on or before October 6, 1982 to persons who have applied under § 12.07–5 and meet the requirements of § 12.07–15.

(b) Temporary certificates of service issued under the provisions of this part:

(1) Authorize service only upon offshore supply vessels;

(2) Remain valid for a period of three years from the date of issuance;

(3) May not be raised in grade;

(4) Are not renewable except for replacement occasioned by loss; and,

(5) Are subject to suspension and revocation on the same grounds and procedures as provided by 46 U.S.C. 239.

(c) Authority to issue temporary certificates of service of Able Seaman—Special (OSV), expires on October 7, 1982.

§ 12.07–15 Requirements for temporary certificates of service.

(a) An applicant for a temporary certificate of service as Able Seaman—Special (OSV), must meet the:

(1) Age requirements of § 12.05–3;

(2) Physical requirements of § 12.05–5; and,

(3) The citizenship requirements of § 12.02–13 and § 12.02–14 before such certificate of service shall be issued.

(b) An applicant for a temporary certificate of service shall present to the Officer in Charge, Marine Inspection, letters, discharges, or other official documents certifying the amount and character of sea service, and the names of the vessels on which acquired. The Officer in Charge, Marine Inspection, must be satisfied as to the bona fides of all evidence of sea service or training presented and may reject any evidence not considered to be authentic or which does not sufficiently outline the amount, type and character of service.

(c) The minimum service required to obtain a temporary certificate of service as Able Seaman—Special (OSV) is 95 days service as master, mate or able seaman on board offshore supply vessels.

Note.—A twelve hour work day is equivalent to one day of the above service requirements. An eight hour work day is equivalent to two thirds of a service day.

(d) Service as master, mate or able seaman on board offshore supply vessels while holding the acknowledgment of application issued in accordance with § 12.07–7 may be utilized to meet the sea service requirements of paragraph (c) of this section.

§ 12.07–20 Possession of temporary certificate of service or acknowledgment of application.

An individual employed in a certificated capacity upon an offshore supply vessel under a valid temporary certificate or acknowledgment of application must have the document in his or her possession and available for examination at all times.

7. By revising 46 CFR 12.15–7 to read as follows:

§ 12.15–7 Service or training requirements.

(a) An applicant for a certificate of service as qualified member of the engine department shall furnish the Coast Guard proof of qualification based on six months' service in a rating at least equal to that of wiper or coal passer.

(b) Training programs approved by the Commandant may be substituted for the required service at sea in accordance with the following:

(1) A graduate of a school ship may be rated as qualified member of the engine department upon satisfactory completion of the course of instruction. For this purpose, "school ship" is interpreted to mean an institution which offers a complete course of instruction, including a period of sea training, in the skills appropriate to the rating of qualified member of the engine department.

(2) Training programs other than those classified as a school ship may be substituted for up to one-half of the required service at sea.

8. By adding a new Subpart § 12.17 to read as follows:

Subpart 12.17—General Requirements for Issuance of Temporary Certificates of Service for Qualified Member of the Engine Department on Offshore Supply Vessels

Sec.

12.17–1 Eligibility.
12.17–5 Application procedure.
12.17–7 Service under an acknowledgment of application.
12.17–10 Issuance of temporary certificates of service.
12.17–15 Requirements for temporary certificates of service.
12.17–20 Possession of temporary certificate of service or acknowledgment of application.

Authority: Pub. L. 96–378; 46 U.S.C. 223, 224, 390–390g, 404, 404–1, 672, 673, 49 U.S.C. 1655(b); 49 CFR 1.46(b)

Subpart 12.17—General Requirements for Issuance of Temporary Certificates of Service for Qualified Member of the Engine Department on Offshore Supply Vessels

§ 12.17–1 Eligibility.

A person is eligible for a temporary certificate of service as Qualified Member of the Engine Department for offshore supply vessels if:

(a) Application is made on or before January 6, 1981; and,

(b) The applicant was serving in an equivalent capacity on board an offshore supply vessel as defined by 46 U.S.C. 404–1, on or before January 1, 1979.

§ 12.17–5 Application procedure.

(a) A person may apply for a temporary certificate of service as Qualified Member of the Engine Department at any Coast Guard Marine Inspection or Marine Safety Office.

(b) Application shall be made upon Coast Guard Form "Application for Temporary License or Certificate of Service for Crews of Offshore Supply Vessels."

§ 12.17–7 Service under an acknowledgment of application.

(a) Upon receipt of the completed application, the Officer in Charge, Marine Inspection, issues an "acknowledgment of application" to the applicant. Upon receipt of this acknowlegment, the applicant is deemed to be in compliance with the statutes dealing with certification of merchant marine personnel pending issuance of a temporary certificate or expiration of the acknowledgment of application.

(b) An acknowledgment of application is subject to suspension and revocation on the same grounds and procedures as provided by 46 U.S.C. 239.

(c) An acknowledgment of application shall remain valid until October 7, 1982.

§ 12.17–10 Issuance of temporary certificates of service.

(a) An Officer in Charge, Marine Inspection, may issue temporary certificates of service on or before October 6, 1982 to persons who have applied under § 12.17–5 and meet the requirements of § 12.17–15.

(b) Temporary certificates of service issued under the provisions of this part:

(1) Authorize service only upon offshore supply vessels;

(2) Remain valid for a period of three years from the date of issuance;

(3) May not be raised in grade;

(4) Are not renewable except for replacement occasioned by loss; and,

(5) Are subject to suspension and revocation on the same grounds and procedures as provided by 46 U.S.C. 239.

(c) Authority to issue temporary certificates of service of Qualified Member of the Engine Department expires on October 7, 1982.

§ 12.17–15 Requirements for temporary certificates of service.

(a) An applicant for a temporary certificate of service as Qualified Member of the Engine Department must meet the:

(1) Physical requirements of § 12.15–5; and

(2) The citizenship requirements of § 12.02–13 and § 12.02–14 before such certificate of service shall be issued.

(b) An applicant for a temporary certificate of service shall present to the

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Officer in Charge, Marine Inspection, letters, discharges, or other official documents certifying the amount and character of sea service, and the names of the vessels on which acquired. The Officer in Charge, Marine Inspection, must be satisfied as to the bona fides of all evidence of sea service or training presented and may reject any evidence not considered to be authentic or which does not sufficiently outline the amount, type and character of service.

(c) The minimum service required to obtain a temporary certificate of service as Qualified Member of the Engine Department is 95 days service as chief engineer, assistant engineer or qualified member of the engine department on board offshore supply vessels.

Note.—A twelve hour work day is equivalent to one day of the above service requirements. An eight hour work day is equivalent to two thirds of a service day.

(d) Service as chief engineer, assistant engineer or qualified member of the engine department on board offshore supply vessels while holding the acknowledgment of application issued in accordance with § 12.17-7 may be utilized to meet the sea service requirements of paragraph (c) of this section.

§ 12.17-20 Possession of temporary certificate of service or acknowledgment of application.

An individual employed in a certificated capacity upon an offshore supply vessel under a valid temporary certificate or acknowledgment of application must have the document in his or her possession and available for examination at all times.

PART 157—MANNING REQUIREMENTS

§ 157.01-101 [Amended]

9. By amending 46 CFR 157.01-10(b) to read as follows:

* * * * *

(b) *Manning of inspected vessels.* (1) The requirements regarding the manning of inspected vessels are set forth in various statutes with many qualifications as to their applications. The regulations interpret or apply, subject to various limitations contained in the laws, R.S. 4400, as amended, 4401, as amended, 4417a, as amended, 4421, as amended, 4426, as amended, 4426a, 4427, as amended, 4438, as amended, 4438a, as amended 4453, as amended, 4463, as amended, 4477, as amended, 4488, as amended, 4551(j), as amended sec. 2, 38 Stat. 1164 as amended, sec. 13, 38 Stat. 1169, as amended, sec. 1, 52 Stat. 753, as amended, sec. 2, 40 Stat. 549, as amended, 41 Stat. 305, as amended, secs. 1 and 2, 49 Stat. 1544, 1545, as amended, sec. 7, 49 Stat. 1936, as amended, sec. 7, 53 Stat. 1147, as amended, secs. 7 and 17, 54 Stat. 165,166, as amended, sec. 3, 54 Stat. 347, as amended, secs. 1 to 8, 62 Stat. 232–234, as amended, sec. 3, 70 Stat. 152, and sec. 3, 66 Stat. 675 (46 U.S.C. 362, 364, 391a, 399, 404, 404–1, 405, 224, 224a, 435, 222, 470, 481, 643(j), 673, 672, 672b, 223, 363, 367, 689, 247, 526f, 526p, 1333, 229a–229h, 390b, and 50 U.S.C. 198).

10. By adding a new 46 CFR 157.10-87 to read as follows:

§ 157.10-87 Offshore supply vessel.

"Offshore supply vessel" means a vessel that

(a) Is propelled by machinery other than steam,

(b) Is not a passenger carrying vessel as defined by 46 U.S.C. 390,

(c) Is of more than fifteen and less than five hundred gross tons, and

(d) Regularly carries goods, supplies, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources.

§ 157.20-5 [Amended]

11. By revising 46 CFR 157.20-5(b) to read as follows:

* * * * *

(b) Officers in Charge, Marine Inspection, will note that the 3-watch system extends to all licensed officers and to the sailors, coal passers, firemen, oilers, and water tenders, and will be governed accordingly in fixing the complement of licensed officers and crew, as authorized by 46 U.S.C. 222: *Provided,* That in the case of radio telegraph operators this requirement shall be applicable only when 3 or more radio officers are employed. 46 U.S.C. 673 does not apply to the licensed officers and crew of tugs, barges, and offshore supply vessels when engaged in voyages of less than 600 miles except with regard to coal passers, firemen, oilers, and water tenders. A voyage of less than 600 miles is construed as meaning the entire distance traversed in proceeding from the initial port of departure to the final port of destination, stops at intermediate ports while enroute not being considered as breaking the continuity of the voyage.

(R.S. 4421, as amended, 4463, as amended, sec. 2, 38 Stat. 1164, as amended, sec. 7, 49 Stat. 1936, as amended; 46 U.S.C. 399, 222, 673, 689)

12. By revising 46 CFR 157.20-15 to read as follows:

§ 157.20-15 Able seamen.

(a) *Vessels affected.* The provisions of U.S.C. 672, relating to able seamen, apply to all merchant vessels of the United States of 100 gross tons and upward except:

(1) Vessels navigating exclusively on rivers or the smaller inland lakes;

(2) Non-self-propelled vessels other than seagoing barges of one hundred gross tons or over, or barges which carry oil or any other hazardous material in bulk as cargo or residue; and,

(3) Tugs and towboats operating on bays and sounds connected directly with the ocean.

(b) *Number required.* (1) Except as indicated in paragraph (b)(2) of this section at least 65 percent of the deck crew, exclusive of licensed officers, shall be rated as able seamen.

(2) Tugs, barges and offshore supply vessels subject to the provisions of 46 U.S.C. 673 and engaged on a voyage of less than 600 miles shall have at least 50 percent of the deck crew, exclusive of licensed officers, rated as able seamen.

(c) *Type required.* (1) The total number of able seamen required on:

(i) Any vessel, may be made up of Able Seaman—Any Waters, Unlimited, ratings.

(ii) Any vessel of less than 1600 gross tons, or any vessel operating on the Great Lakes and the Saint Lawrence River as far east as Sept Iles, may be made up of Able Seaman—Limited, ratings.

(iii) Any vessel of five hundred gross tons or less, or a seagoing barge, tug, or towboat, may be made up of Able Seaman—Special, ratings.

(iv) Any offshore supply vessel, may be made up of Able Seaman—Special (OSV), ratings.

(2) Fifty percent of the total number of able seamen required on:

(i) Vessels other than those listed in paragraph (c)(1)(ii) of this section may be made up of Able Seaman—Limited, ratings.

(ii) Vessels other than those listed in paragraphs (c)(1)(iii) and (iv) of this section may be made up of Able Seaman—Special, ratings.

(3) In any case where Able Seamen—Limited, or Able Seaman—Special, ratings may constitute only a portion of the total number of able seamen required on board a vessel, at least 50 percent of the total number of able seamen required shall hold Able Seaman—Any Waters, Unlimited, ratings.

13. By revising 46 CFR 157.20-25 to read as follows:

§ 157.20-25 Mates.

The minimum number of licensed mates required to be carried on every inspected ocean or coastwise seagoing merchant vessel propelled by machinery, and every inspected oceangoing vessel carrying passengers shall be as follows:

(a) Vessels of one thousand gross tons or more—three licensed mates.

(b) Vessels of one hundred gross tons or more, but less than one thousand gross tons—two licensed mates.

(c) Vessels of one thousand gross tons or more engaged in a run of less than four hundred miles from the port of departure to the port of final destination—two licensed mates.

(d) Offshore supply vessels engaged on a voyage of less than six hundred miles—one licensed mate.

14. By revising 46 CFR 157.20-35 to read as follows:

§ 157.20-35 Engineers.

The Officer in Charge, Marine Inspection, shall determine the minimum number of licensed engineers required for the safe navigation of inspected vessels. Each determination must take into account:

(a) The statutory requirements of 46 U.S.C. 404, 404–1, 405, and 673;

(b) The regulatory requirements of § 157.20-37; and

(c) The type, horsepower, and degree of automation of the vessel's propulsion equipment.

15. By adding a new 46 CFR 157.20-37 to read as follows:

§ 157.20-37 Chief Engineer.

A licensed chief engineer shall be carried upon every:

(a) Steam propelled vessel;

(b) Seagoing mechanically propelled vessel of 200 gross tons and above documented under the Laws of the United States; and

(c) Inspected, mechanically propelled, vessel of 300 gross tons or over.

(Pub. L. 96-378; 46 U.S.C. 223, 224, 390–390g, 404, 404–1, 672, 673; 49 U.S.C. 1655(b); 49 CFR 1.46(b))

Dated: October 16, 1980.

Clyde T. Lusk, Jr.,

Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 80-32766 Filed 10-17-80; 8:45 am]

BILLING CODE 4910-14-M

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46 CFR Parts 90 and 175

[CGD 80—133]

General Provisions; Offshore Supply Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment sets out the procedures for registering with the Coast Guard each offshore supply vessel which does not possess a valid certificate of inspection as mandated by Pub. L. 96-378, Small Vessel Inspection and Manning. This action also defines the applicability of the inspection regulations to offshore supply vessels.

EFFECTIVE DATE: October 20, 1980.

FOR FURTHER INFORMATION CONTACT: L T Michael P. Rolman, Office of Merchant Marine Safety, Merchant Vessel Inspection Division, Room 2415, Department of Transportation, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, D.C. 20593, (202-426-1464).

SUPPLEMENTARY INFORMATION: This amendment is issued without publication of a notice of proposed rulemaking and is effective in less than 30 days from the date of publication. Since the inspection requirements became effective with the passage of the Act and the Act requires registration of existing offshore supply vessels within 90 days of its passage, delay in publication of the rule could lead to disruption in the mineral and energy industry. Therefore, notice and public procedure hereon are unnecessary and impracticable and good cause exists for making the rule effective in fewer than 30 days after publication.

This amendment has been reviewed under the Department of Transportation's "Regulatory Policies and Procedures" published on February 26, 1979 (44 FR 11034), and is considered to be an emergency regulation that would otherwise be nonsignificant. As such, neither a regulatory analysis nor a draft evaluation are required.

Drafting Information: The principal persons involved in drafting this proposal are: LT Michael P. Rolman, Project Manager, Office of Merchant Marine Safety, and LT George J. Jordan, Project Counsel, Office of the Chief Counsel.

Discussion of the regulation: The passage of Pub. L. 96-378, October 6, 1980 (an Act to amend certain inspection and manning laws applicable to small vessels carrying passengers or freight for hire, and for other purposes) necessitates the revision of certain Coast Guard regulations pertaining to the inspection and manning of vessels subject to the Act and licensing and certification of certain crewmembers.

The licensing and manning aspects of the Act are the subject of a separate regulatory action and will not be addressed here.

The provisions of the Act subject a heretofore statutorily undefined group of vessels commonly referred to as "offshore supply vessels" to U.S. vessel inspection and manning requirements.

Made up of vessels of more than 15 but less than 500 gross tons, over the past 30 years this group of vessels has grown to over 3,000 in number, directly employing approximately 30,000 persons in support of the offshore mineral and energy industry.

For many years the offshore support industry has employed the use of bareboat charter arrangements that allowed its vessels to avoid Coast Guard manning and inspection requirements. In recent years, however, the Coast Guard has questioned these arrangements concluding that many of these vessels are, in fact, subject to inspection. Although effective enforcement has been difficult, the Coast Guard's efforts, along with congressional pressure culminated in the passage of Pub. L. 96-378 on October 6, 1980. Current Coast Guard regulations in 46 CFR Parts 90 and 175 do not speak directly to the inspection requirements for offshore supply vessels.

The Act requires that offshore supply vessels be inspected. Vessels of above 15 and less than 100 gross tons are inspected under 46 USC 390–390g and those 100 gross tons and less than 500 gross tons are inspected under 46 USC 404. The Act also divides offshore supply vessels into existing and new vessels. An existing vessel is one which was in service as an offshore supply vessel on or before January 1, 1979. In addition if a vessel was contracted for and not in service of any kind on or before January 1, 1979, it is classified as an existing vessel if it entered service as an offshore supply vessel between January 1, 1979 and October 6, 1980. These vessels must be registered with the Coast Guard on or before January 6, 1981. The owner of such a vessel must register the vessel with an officer in charge, marine inspection. Registration will allow the vessel to be used as an offshore supply vessel until inspected, but no longer than two years from the date of registration. The Coast Guard will develop regulations concerning the inspection of these vessels.

New vessels are any vessels that do not meet the statutory definition of existing vessel. Included is any vessel contracted for after January 1, 1979. Also included is any vessel that was in service of any kind prior to January 1, 1979 which entered service as an offshore supply vessel after that date. New vessels must be inspected in accordance with regulations currently in effect. The Coast Guard intends to allow owners of vessels that are currently in service, but are defined as "new vessels" to make application for inspection with the cognizant officer in

charge, marine inspection until January 6, 1981. These vessels will be inspected as soon as possible taking into account the workload of the marine inspection office and the reasonable needs of the owner.

Owners of vessels not yet in service should contact the officer in charge, marine inspection of the inspection zone (see 33 CFR Part 3 for the boundaries of the inspection zones) in which the vessel is located to arrange for an inspection.

In consideration of the foregoing, Chapter I of Title 46, Code of Federal Regulations is amended as follows:

PART 90—GENERAL PROVISIONS

1. By adding a new 46 CFR 90.05–20:

§ 90.05–20 Applicability to offshore supply vessels.

Offshore supply vessels of 100 gross tons and less than 500 gross tons are subject to inspection under the provisions of this subchapter

2. By adding a new 46 CFR 90.10–40:

§ 90.10–40 Offshore supply vessels.

(a) An offshore supply vessel is a vessel that is propelled by machinery other than steam, that is of 15 gross tons and less than 500 gross tons, and that regularly carries goods, supplies, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources.

(b) An existing offshore supply vessel is one that was operating as such on or before January 1, 1979, or that, if not in service of any kind on or before that date, was contracted for on or before that date and entered service as such before October 6, 1980.

(c) A new offshore supply vessel is one that is not an existing offshore supply vessel.

3. By adding a new 46 CFR 90.30–10:

§ 90.30–10 Existing offshore supply vessels.

(a) Existing offshore supply vessels of 100 gross tons and less than 500 gross tons that do not possess a valid certificate of inspection must be registered with an officer in charge, marine inspection on or before January 6, 1981. The initial inspection for certification for each registered offshore supply vessel shall be made within two years of the date the vessel is registered.

(b) The registration must be on board the vessel and available for inspection.

PART 175—GENERAL PROVISIONS

4. By adding a new 46 CFR 175.05–2:

§ 175.05–2 Applicability to offshore supply vessels.

Offshore supply vessels of above 15 gross tons and less than 100 gross tons are subject to inspection under the provisions of this subchapter.

5. By adding a new 46 CFR 175.10–40:

§ 175.10–40 Offshore supply vessel.

(a) An offshore supply vessel is a vessel that is propelled by machinery other than steam, that is of above 15 gross tons and less than 500 gross tons, and that regularly carriers goods, supplies, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources.

(b) An existing offshore supply vessel is one that was operating as such on or before January 1, 1979, or that, if not in service of any kind on or before that date, was contracted for on or before that date and entered service as such before the effective date of this section.

(c) A new offshore supply vessel is one that is not an existing offshore supply vessel.

6. By adding a new 46 CFR 175.35:

Subpart 175.35—Special Provisions

§ 175.35–1 Existing offshore supply vessels.

(a) Existing offshore supply vessels of above 15 and less than 100 gross tons that do not possess a valid certificate of inspection must be registered with an officer in charge, marine inspection on or before January 6, 1981. The initial inspection for certification for each registered offshore supply vessel shall be made within two years of the date the vessel is registered.

(b) The registration must be on board the vessel and available for inspection.

(Pub. L. 96–378, 94 Stat. 1513 (46 U.S.C. 404–1); 49 CFR 1.46(b))

Dated: October 16, 1980.

Clyde T. Lusk, Jr.,

Captain, U.S. Coost Guard, Acting Chief, Office of Merchant Marine Sofety.

[FR Doc. 80–32767 Filed 10–17–80; 8:45 am]

BILLING CODE 4910–14–M

COMMUNITY SERVICES ADMINISTRATION

45 CFR Parts 1067, 1068, and 1069

Cost Principles; Grantee Financial Management; Correction

AGENCY: Community Services Administration.

ACTION: Correction to final rule.

SUMMARY: The Community Services Administration is publishing correction to final rules, on Cost Principles and Index and Applicability published in the Federal Register on October 1; 1980 and October 2, 1980.

The action corrects typographical errors in the original documents.

EFFECTIVE DATE: October 20, 1980.

FOR FURTHER INFORMATION CONTACT: Ms. Maryann J. Fair, Community Services Administration, 1200 19th Street, NW., Washington, D.C. 20506, Telephone (202) 254–5047, Teletypewriter (202) 254–6218.

(Sec. 602, 78 Stat. 530; (42 U.S.C. 2942))

Thomas Mack,

General Counsel.

PART 1068—GRANTEE FINANCIAL MANAGEMENT

1. Pages 64940, column 2, paragraph three (October 1, 1980) and page 65233, column 2, paragraph four (October 2, 1980) are corrected to read as follows:

Part 1068 is amended by deleting Subpart 1068.4, Allowability of Cost Incurred to Borrow Funds; and Subpart 1068.8 Use of Federal Funds for Union Activities. Part 1068 is also amended by revising Subpart 1068.30, Membership Dues and Related Expenses Paid to Professional Organizations as noted in the amendatory language to this document.

2. At the bottom of page 64940, column 2, (October 1, 1980) and at the bottom of page 65233, column 2, (October 2, 1980), the amendatory language which appears just after the Part 1068 heading should read:

"In Part 1068, Subparts 1068.4 and 1068.8 are revoked".

PART 1069—GRANTEE PERSONNEL MANAGEMENT

Part 1069 is amended by deleting Subpart 1069.3, Travel Regulations for CSA Grantees and Delegate Agencies; and Subpart 1069.4, Per Diem Rates for CSA Grantees and Delegate Agencies.

PART 1067—FUNDING OF CSA GRANTEES

Subpart 1067.17 and 1067.5 Appendix A, are revised as noted in amendatory language to this document.

3. In FR Doc. 80–30444, October 1, 1980, make the following changes:

a. The tables on page 64932 and 65225 (October 1, and 2, respectively) are corrected to add "1068.30—Membership Dues and Related Expenses Paid to Professional Organization is applicable to Titles II, IV, and VII", between the entries for "1068.20" and "1068.40".

b. Pages 64935 and 65228 are corrected are corrected in "Appendix B" to add "I–6803–6, Membership Dues and Related Expenses Paid to Professional Organizations 1068.30", between the entries for "I–6800–03 and I–6900–04".

[FR Doc. 80–32794 Filed 10–17–80; 9:32 am]

BILLING CODE 6315–01–M

Proposed Rules

Federal Register
Vol. 45, No. 204
Monday, October 20, 1980

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Amdt. 1]

Tomatoes Grown in Florida; Proposed Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed amendment would extend through June 13, 1981, the minimum grade, size, pack, container, marking and inspection requirements effective from October 12 through November 30, 1980, for tomatoes grown in certain counties in Florida. It would promote orderly marketing of such tomatoes and keep less desirable sizes and qualities from being shipped to consumers.

DATE: Comments due: November 19, 1980.

ADDRESSES: Comments should be sent to Hearing Clerk, Room 1077–S, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written comments shall be submitted, and they will be made available for public inspection at the office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Charles W. Porter (202) 447–2615.

SUPPLEMENTARY INFORMATION: This action is consistent with the marketing policy for 1980–81 which was designated "significant" under the procedures of Executive Order 12044.

The marketing policy and regulation were recommended by the Florida Tomato Committee following discussion at a public meeting in Sarasota on September 5, 1980. A Final Impact Analysis on the marketing policy is available from Charles W. Porter, Chief, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250 (202) 447–2615.

Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR 966) regulate the handling of tomatoes grown in designated counties of Florida. It is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The Florida Tomato Committee, established under the order, is responsible for its local administration.

The recommendations of the committee reflect its appraisal of the composition of the 1980–81 crop of Florida tomatoes and the marketing prospects for this season. The proposed regulation is similar to those issued during past seasons and to the temporary regulation in effect during October 12 through November 30, 1980. The proposed grade and size requirements are necessary to prevent tomatoes of lower quality and undesirable size from being distributed in fresh market channels. Such tomatoes are usually of negligible economic value to producers. This would provide consumers with tomatoes of good quality and size throughout the season consistent with the overall quality of the crop. During past seasons, some problems were encountered in properly sizing varieties that have a tendency towards an oblong shape when grown under unfavorable weather conditions. Last season a $\frac{2}{32}$ inch overlap of sizes was permitted to help alleviate the problem, and it is proposed that this overlap be permitted again this season in an effort to ensure more accurate sizing. The proposed requirements, including those for containers, container net weights, and size classifications, are intended to standardize shipments in the interest of orderly marketing and to improve returns to growers.

Exceptions would be provided to certain of these requirements to recognize special situations in which such requirements would be inappropriate or unreasonable. Shipments would be allowed to certain special purpose outlets without regard to minimum grade, size, container or inspection requirements provided that safeguards were used to prevent such tomatoes from reaching unauthorized outlets. Tomatoes for canning are exempt under the legislative authority for this part. Tomatoes for experimental purposes would be exempt since such tomatoes would not usually enter fresh market channels of trade. Since no purpose would be served by regulating tomatoes used for relief or charity purposes such shipments would also be exempt. Because export requirements differ materially, on occasion, from domestic market requirements such shipments would also be exempt.

The following types of tomatoes would be exempt from these regulations: elongated types commonly referred to as pear shaped or paste tomatoes, cerasiform type tomatoes commonly referred to as cherry tomatoes, hydroponic tomatoes and greenhouse tomatoes. Such types are generally of good quality, readily identifiable either by their distinctive shapes or container markings and usually comprise a very small part of the total crop. Only tomatoes shipped outside the regulated areas would be regulated because of an increase in the U-pick type of harvest in Florida production areas close to urban areas and resulting difficulty in obtaining compliance with regulations. The minimum quantity exemption would permit persons to handle up to 60 pounds of tomatoes per day without regard to the requirements of this part. This would reduce the problem of enforcement on small shipments of essentially noncommercial nature. The proposals concerning special pack shipments are intended to help handlers in the production areas compete on an equal basis with those outside the area by not requiring reinspection of previously inspected and certified tomatoes when repacked in consumer size packages.

Occasionally individual fruit of several new varieties, including Flora-Dade, may be elongated in shape. This characteristic may be exaggerated by adverse growing conditions. It is anticipated that handlers packing these varieties usually will be able to comply with all provisions of the regulation. However, if situations arise in which the incidence of tomatoes not of the normal globular shape makes sizing in accordance with present grade standards infeasible, the affected varieties could be exempted from the size requirements of the regulation.

This proposal is being published with less than a 60-day comment period because (1) shipments of the 1980–81 crop tomatoes grown in the production area are expected by, and the regulation should become effective on, the effective date herein to maximize benefits to producers; (2) information regarding the provisions of the recommendation by

the committee has been disseminated among growers and handlers of tomatoes in the production area; (3) a temporary regulation with identical requirements is effective for the period October 12 through November 30, 1980; and (4) compliance with this section should not require any special preparation on the part of handlers subject thereto which cannot be completed by such effective date.

It is proposed that 7 CFR 966.319 be amended to read as follows:

§ 966.319 Handling regulation.

During the period December 1, 1980, through June 13, 1981, no person shall handle any lot of tomatoes for shipment outside the regulated area unless they meet the requirements of paragraph (a) or are exempted by paragraphs (b) or (d).

(a) *Grade, size, container and inspection requirements.* (1) *Grade.* Tomatoes shall be graded and meet the requirements specified for U.S. No. 1, U.S. Combination, U.S. No. 2, or U.S. No. 3, of the U.S. Standards for Grades of Fresh Tomatoes. When not more than 15 percent of tomatoes in any lot fail to meet the requirements of U.S. No. 1 grade and not more than one-third of this 15 percent (or 5 percent) are comprised of defects causing very serious damage including not more than one percent of tomatoes which are soft or affected by decay, such tomatoes may be shipped and designated as at least 85 percent U.S. No. 1 grade.

(2) *Size.* (i) Tomatoes shall be at least 2$^{6}/_{32}$ inches in diameter and be sized in one or more of the following ranges of diameters. Measurement of diameters shall be in accordance with the methods prescribed in Paragraph 2851.1859 of the U.S. Standards for Grades of Fresh Tomatoes.

Size classification	Inches	
	Minimum diameter	Maximum diameter
7x7	2$^{6}/_{32}$	2$^{9}/_{32}$
6x7	2$^{7}/_{32}$	2$^{11}/_{32}$
6x6	2$^{15}/_{32}$	2$^{22}/_{32}$
5x6 and larger	2$^{24}/_{32}$	

(ii) Tomatoes of designated sizes may not be commingled unless they are over 2$^{15}/_{32}$ inches in diameter and each container shall be marked to indicate the designated size.

(iii) Only numerical terms may be used to indicate the above listed size designations on containers of tomatoes, except when tomatoes are commingled the containers can be marked 6x6 & Lgr. or 5x6 & Lgr.

(iv) To allow for variations incident to proper sizing, not more than a total of ten (10) percent, by count, of the tomatoes in any lot may be smaller than the specified minimum diameter or larger than the maximum diameter.

(3) *Containers.* (i) Tomatoes shall be packed in containers of 20, 30 or 40 pounds designated net weights and comply with the requirements of § 2851.1863 of the U.S. tomato standards.

(ii) Each container shall be marked to indicate the designated net weight and must show the name and address of the shipper in letters at least one-fourth (¼) inch high.

(iii) If the container in which the tomatoes are packed is not clean and bright in appearance without marks, stains, or other evidence of previous use, the lid of such container shall be marked in a principal display area at least 2½ inches high and 4½ inches long with the words "USED BOX" in letters not less than 1¼ inches high and the name of the shipper and point of origin in letters not less than ⅜ inch high.

(4) *Inspection.* Tomatoes shall be inspected and certified pursuant to the provisions of § 966.60. Each handler who applies for inspection shall register with the committee pursuant to § 966.113. Handlers shall pay assessments as provided in § 966.42. Evidence of inspection must accompany truck shipments.

(b) *Special purpose shipments.* The requirements of paragraph (a) of this section shall not be applicable to shipments of tomatoes for canning, experimental purposes, relief, charity or export if the handler thereof complies with the safeguard requirements of paragraph (c) of this section. Shipments for canning are also exempt from the assessment requirements of this part.

(c) *Safeguards.* Each handler making shipments of tomatoes for canning, experimental purposes, relief, charity or export in accordance with paragraph (b) of this section shall:

(1) Apply to the committee and obtain a Certificate of Privilege to make such shipments.

(2) Prepare on forms furnished by the committee a report in quadruplicate on such shipments authorized in paragraph (b) of this section.

(3) Bill or consign each shipment directly to the designated applicable receiver.

(4) Forward one copy of such report to the committee office and two copies to the receiver for signing and returning one copy to the committee office. Failure of the handler or receiver to report such shipments by signing and returning the applicable report to the committee office within ten days after shipment may be cause for cancellation of such handler's certificate and/or receiver's eligibility to receive further shipments pursuant to such certificate. Upon cancellation of any such certificate, the handler may appeal to the committee for reconsideration.

(d) *Exemption.* (1) *For types.* The following types of tomatoes are exempt from this regulation: Elongated types commonly referred to as pear shaped or paste tomatoes and including but not limited to San Marzano, Red Top and Roma varieties; cerasiform type tomatoes commonly referred to as cherry tomatoes; hydroponic tomatoes; and greenhouse tomatoes.

(2) *For minimum quantity.* For purposes of this regulation each person subject thereto may handle up to but not to exceed 60 pounds of tomatoes per day without regard to the requirements of this regulation but this exemption shall not apply to any shipment or any portion thereof of over 60 pounds of tomatoes.

(3) *For special packed tomatoes.* Tomatoes which met the inspection requirements of paragraph (a)(4) which are resorted, regraded, and repacked by a handler who has been designated as a "Certified Tomato Repacker" by the committee are exempt from (i) the tomato grade classifications of paragraph (a)(1), (ii) the size classifications of paragraph (a)(2) except that the tomatoes shall be at least 2$^{6}/_{32}$ inches in diameter, and (iii) the container weight requirements of paragraph (a)(3).

(4) *For varieties.* Upon recommendation of the committee, varieties of tomatoes that are elongated or otherwise misshapen due to adverse growing conditions may be exempted by the Secretary from the provisions of paragraph (a)(2) *Size.*

(e) *Definitions.* "Hydroponic tomatoes" means tomatoes grown in solution without soil; "greenhouse tomatoes" means tomatoes grown indoors. A "Certified Tomato Repacker" is a repacker of tomatoes in the regulated area who has the facilities for handling, regrading, resorting and repacking tomatoes into consumer size packages and has been certified as such by the committee. "U.S. tomato standards" means the revised United States Standards for Grades of Fresh Tomatoes (7 CFR 2851.1855–2851.1877), effective December 1, 1973, as amended, or variations thereof specified in this section. Other terms in this section shall have the same meaning as when used in Marketing Agreement No. 125, as amended, and this part, and the U.S. tomato standards.

(f) *Applicability to imports.* Under Section 8e of the act and § 980.212 "Import regulations" (7 CFR 980.212) tomatoes imported during the effective period of this section shall be at least U.S. No. 3 grade and at least 2$^{6}/_{32}$ inches in diameter. Not more than 10 percent, by count, in any lot may be smaller than the minimum specified diameter.

Dated: October 15, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-32634 Filed 10-17-80; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Ch. I

Issuance of Quarterly Report on Proposed Rules

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of quarterly report.

SUMMARY: The Nuclear Regulatory Commission has issued the July 31, 1980, Quarterly Report on Proposed Rules. The report, which is a quarterly summary of proposed rules that are pending final action, is issued to provide the public with information regarding NRC's rulemaking activities.

ADDRESSES: A copy of this report, designated NRC Status of Proposed Rules—July 31, 1980, is available for inspection and copying at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC.

Requests for single copies of the report, or a request to be placed on an automatic distribution list for single copies of future reports, should be made in writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: John Philips, Chief, Rules and Procedures Branch, Office of Administration, Telephone 301–492–7086.

Dated at Bethesda, Maryland this 7th day of October 1980.

For the Nuclear Regulatory Commission.

J. M. Felton,

Director, Division of Rules and Records, Office of Administration.

[FR Doc. 80-32782 Filed 10-20-80; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 80-SO-83]

Proposed Designation of Transition Area, Lanett, Ala.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule will designate the Lanett, Alabama, Transition Area, and will lower the base of controlled airspace in the vicinity of the Lanett Municipal Airport from 1200 to 700 feet AGL. A standard instrument approach procedure has been developed to the airport, and additional controlled airspace is required to protect Instrument Flight Rule (IFR) operations.

DATES: Comments must be received on or before: December 2, 1980.

ADDRESS: Send comments on the proposal to: Federal Aviation Administration, Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

FOR FURTHER INFORMATION CONTACT: Harlen D. Phillips, Airspace and Procedures Branch, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: 404–763–7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Southern Region, Federal Aviation Administration, Attention: Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. All communications received on or before December 2, 1980, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules docket for examination by interested persons. A report summarizing each public contact with FAA personnel concerned with its rulemaking will be filed in the public, regulatory docket.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA—430, 800 Independence Avenue, S.W., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR 71) to designate the Lanett, Alabama, 700-foot transition area. This action will provide controlled airspace protection for IFR operations at the Lanett Municipal Airport. A standard instrument approach procedure, VOR/DME–A, to the airport, utilizing the Columbus VORTAC, is proposed in conjunction with the designation of the transition area. If the proposed designation is acceptable, the airport operating status will be changed from VFR to IFR.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposed to amend subpart G, § 71.181 (45 FR 445), of Part 71 of the Federal Aviation Regulations (14 CFR 71) by adding the following:

Lanett, Ala.

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Lanett Municipal Airport (Lat. 32°48'43"N., Long. 85°13'47"W.); excluding that portion within the Columbus, Georgia, Transition Area.

(Sec. 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—The Federal Aviation Administration has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operational current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in East Point, Georgia, on October 6, 1980.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 80-32336 Filed 10-17-80; 8:45 am]

BILLING CODE 4910-13-M

V 45 O C 20 80 0 UMI

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Commodity Pool Operator and Commodity Trading Advisor Regulations; Extension of Comment Period

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On August 4, 1980, the Federal Register published the Commission's proposed amendments to Part 4 of its regulations, which relates to the operations and activities of commodity pool operators and commodity trading advisors (45 FR 51600). The comment period thereon was to have expired on September 30, 1980.

In response to requests, on September 26, 1980 the Commission approved a fifteen-day extension of the comment period. See 45 FR 65257 (October 2, 1980). The comment period will now expire on October 15, 1980.

The Commission has received requests to further extend the comment period. Because the Commission wishes to be certain that all parties have an opportunity to finalize and submit their comments, it is allowing an additional thirty days for comment.

DATES: Accordingly, notice is hereby given that all comments on the Commission's proposed amendments to Part 4 of its regulations (45 FR 51600, August, 4, 1980) must be submitted by November 14, 1980.

FOR FURTHER INFORMATION CONTACT: Barbara R. Stern, Special Counsel, Front Office Audit Unit, Division of Trading and Markets (202) 254–8955.

Issued in Washington, D.C. on October 15, 1980.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 80-32823 Filed 10-17-80; 8:45 am]

BILLING CODE 6351-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34-17213; File No. S7-851]

FOCUS Reporting System; Requirements for Financial Reporting

AGENCY: Securities and Exchange Commission.

ACTION: Extension of comment period.

SUMMARY: On September 9, 1980, the Commission published for comment proposed amendments to Form X-17A-5, the Financial and Operational Combined Uniform Single ("FOCUS") Report and Rule 17a-5 under the Securities Exchange Act of 1934. The Commission is extending the period for submitting comments until October 21, 1980.

DATE: Comments must be received on or before October 31, 1980.

ADDRESSES: All comments should be directed in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C. 20549. Comments should refer to File No. S7-851 and will be available for inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: James G. Moody, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549 (202) 272-2370; or William J. Atkinson, Directorate of Economic and Policy Analysis, Securities and Exchange Commission, Washington, D.C. 20549 (202) 523-5493.

SUPPLEMENTARY INFORMATION: On September 9, 1980, the Commission published for comment Proposed Amendments to Part I, Part II, and Part IIA of Form X-17A-5 (17 CFR 249.617), the Financial and Operational Combined Uniform Single ("FOCUS") Report and Rule 17a-5 (17 CFR 240.17a-5) under the Securities Exchange Act of 1934. The proposed amendments would revise the Form so as to clarify certain financial and operational reporting requirements of securities brokers and dealers, to require more detailed reporting of some items, and to eliminate or consolidate other items. Rule 17a-5 would be amended to require the filing of two copies of the annual audited report at the Commission's headquarters' office instead of the single copy now required.

Notice of the request for comments was given by Securities Exchange Act Release No. 34-17138 (September 9, 1980) and by publication in the Federal Register (45 FR 62092 (September 18, 1980)). Interested persons were invited to submit written comments prior to October 15, 1980. It appears that the comment period may be inadequate for some interested members of the public to submit responsible comments on the proposed changes.

Accordingly, the Commission today has extended the period for the submission of written comments concerning the foregoing proposed amendments until October 31, 1980.

Dated: October 14, 1980.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-32810 Filed 10-17-80; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404, 416

Federal Old-Age, Survivors, and Disability Insurance; Supplemental Security Income for the Aged, Blind, and Disabled; Decision To Develop Regulations

AGENCY: Social Security Administration, HHS.

ACTION: Notice of decision to develop regulations.

SUMMARY: The Social Security Administration (SSA) plans to publish proposed regulations to implement section 501 of Pub. L. 96-265 which will be effective with determinations of entitlement to social security benefits that SSA makes after June 30, 1981. This provision directs SSA to reduce a person's retroactive (as of the time of first payment) old-age, survivors or disability insurance (OASDI) benefits payable under title II of the Social Security Act if the person received supplemental security income (SSI) payments or State supplementary payments made by SSA under title XVI of the Act or under section 212 of Pub. L. 93-66 for the same period. The amount of the reduction will equal the amount of SSI or State supplementary payments that would not have been paid had the OASDI benefits been paid when they were regularly due rather than retroactively. The amounts of OASDI withheld will be used first to reimburse the States for any supplementary payments that would not have been made, and the balance of the OASDI benefits withheld will be used to reimburse the general fund in the U.S. Treasury for any SSI payments that would not have been made.

In the regulations, we will explain which social security benefits will be subject to the reduction, when the reduction will apply and what the amount of the reduction will be.

HHS has classified the proposed regulations as policy significant.

FOR FURTHER INFORMATION CONTACT: Mr. William Beil, 1108 West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235–Telephone (301) 594–2227.

Dated: September 26, 1980.

Appoved:

William J. Driver,

Commissioner of Social Security Administration.

[FR Doc. 80-32563 Filed 10-17-80; 8:45 am]

BILLING CODE 4110-07-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 5, 13, 19, 170, 173, 186, 194, 195, 196, 197, 200, 201, 211, 212, 213, 231, 240, 250, 251 and 252

[Notice No. 349; Ref: Notice No. 329, TD-ATF-62; Notice No. 347]

Implementing the Distilled Spirits Tax Revision Act of 1979 (Pub. L. 96-39)

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Extension of comment period.

SUMMARY: This notice further extends the comment period for Notice No. 329, Implementing the Distilled Spirits Tax Revision Act of 1979 (Public Law 96-39), until December 1, 1980. Notice No. 329 was published in the Federal Register on December 11, 1979 (44 FR 71612).

DATE: The comment period for Notice No. 329 is extended until December 1, 1980.

ADDRESS: Comments should be submitted to the Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044 (Notice No. 329).

FOR FURTHER INFORMATION CONTACT: Edward J. Sheehan or E. J. Ference, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Telephone: 202-566-7626.

SUPPLEMENTARY INFORMATION:

Background

On December 11, 1979, the Bureau of Alcohol, Tobacco and Firearms (ATF) published a notice of proposed rulemaking cross-reference to temporary regulations (Notice No. 329) to obtain comments on the temporary regulations for implementation of the Distilled Spirits Tax Revision Act of 1979, Subtitle A of Title VIII of the Trade Agreements Act of 1979 (Pub. L. 96-39). The temporary regulations were published as Treasury Decision TD-ATF-62 in the Federal Register of December 11, 1979 (44 FR 71613). Those temporary regulations will remain in effect until superceded by final regulations. In the development of the final rule, ATF intends to—

(1) Eliminate unnecessary regulatory sections;

(2) Incorporate ATF rulings and industry circulars into the final regulations; and

(3) Rewrite the regulations into language that is more understantable.

Further comment from consumers and industry members will aid ATF in attaining these goals. ATF Notice No. 347 extended the comment period closing date for the notice and temporary regulations from September 11, 1980, to October 15, 1980 (45 FR 54087). Due to comments received, ATF is further extending the comment period closing date for the notice and temporary regulations from October 15, 1980, to December 1, 1980.

Disclosure of Comments

Copies of written comments or data are available for public inspection in the ATF Reading Room, Room 4407, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, DC, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

ATF will not recognize any material in comments designated as confidential or as not to be disclosed; and any material that the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of any person submitting comments is not exempt from disclosure.

Drafting Information

The principal author of this document is E. J. Ference of the Bureau of Alcohol, Tobacco and Firearms. However, other personnel of the Bureau and of the Treasury Department have participated in the preparation of this document, both in matters of substance and style.

Authority

This notice is issued under the authority contained in 26 U.S.C. 7805 (68a Stat. 917).

Signed October 16, 1980.

G. R. Dickerson,

Director.

[FR Doc. 80-32851 Filed 10-17-80; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

Partial Approval/Partial Disapproval of the Permanent Program Submission From the State of West Virginia Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: On March 3, 1980, the State of West Virginia submitted to the Department of the Interior its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The purpose of the submission is to demonstrate the state's intent and capability to administer and enforce the provisions of SMCRA and the permanent program regulations, 30 CFR Chapter VII. After providing opportunities for public comment and a thorough review of the program submission, the Secretary of the Interior has determined that the West Virginia program only partially meets the requirements of SMCRA and the permanent program regulations. Accordingly, the Secretary of the Interior has approved in part and disapproved in part the West Virginia program. The State of West Virginia has sixty days within which to correct the deficiencies in its proposed permanent regulatory program. Until the state's permanent program or a Federal program is implemented in the state, the interim program will remain in effect in West Virginia.

DATE: West Virginia has until December 19, 1980 to submit for the Secretary's consideration revisions of the portions of the program which are not approved.

ADDRESSES: Copies of the West Virginia program and the administrative record on the West Virginia program are available for public inspection and copying during business hours at:

Office of Surface Mining Reclamation and Enforcement, Region I, 950 Kanawha Boulevard East, Charleston, West Virginia 25301, Telephone: (304) 342-8125.

West Virginia Department of Natural Resources, 1800 Washington Street, East, Charleston, West Virginia 25305, Telephone (304) 348-2752.

Office of Surface Mining Reclamation and Enforcement, Room 153, Interior South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240, Telephone (202) 343-4728.

FOR FURTHER INFORMATION CONTACT:
Carl C. Close, Assistant Director, State and Federal Programs Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240, Telephone (202) 343-4225.

SUPPLEMENTARY INFORMATION:

Introduction

To assist understanding of the findings underlying the Secretary's decision, this notice is organized into nine major parts.

A. General Background on the Permanent Program,

B. General Background on the State Program Approval Process,

C. Elements Upon Which the West Virginia Program Is Being Evaluated for This Decision,

D. Background on the West Virginia Program Submission,

E. Secretary's Findings and Explanation,

F. Disposition of Comments,

G. Portions Approved/Portions Disapproved,

H. Effect of This Action,

I. Additional Findings.

Part A sets forth the statutory and regulatory framework under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the permanent program requirements of 30 CFR Chapter VII.

Part B sets forth the general statutory and regulatory requirements applicable to all states which wish to obtain primary jurisdiction to implement the permanent program on non-Indian and non-Federal lands within their borders.

Part C describes the elements upon which the Secretary's findings are based.

Part D summarizes the steps undertaken by West Virginia and officials of the Department of the Interior to arrive at the decision being announced today.

Part E contains the findings the Secretary has made and the reasons for each finding.

Part F summarizes the substantive public comments received during the review of the West Virginia program, and discusses the Secretary's disposition of them.

Part G describes the portions of the West Virginia program which are being approved and the portions which are being disapproved.

Part H summarizes the effect of the Secretary's findings on the current regulatory program in West Virginia.

Part I summarizes the Secretary's findings with regard to regulatory analysis and environmental impact of the decision.

A. General Background on the Permanent Program

The environmental protection provisions of SMCRA are being implemented in two phases—the initial program and the permanent program—in accordance with Sections 501–503 of SMCRA, 30 U.S.C. 1251–1253. The initial program has been in effect since December 13, 1977, when the Secretary of the Interior promulgated interim program rules 30 CFR Parts 710–724 and 795, 42 FR 6239 *et seq.*

The permanent program will become effective in each state upon the approval of a state program by the Secretary of the Interior or implementation of a Federal progam within the state. If a state program is approved, the state, rather than the Federal government, will be the primary regulator of activities subject to SMCRA.

The Federal regulations for the permanent program, including procedures for states to follow in submitting state programs and minimum standards and procedures the state programs must include to be eligible for approval, are found in 30 CFR Parts 700–707 and 730–865. Part 705 was published October 20, 1977 (42 FR 56064), and Parts 795 and 865 (originally Part 830) were published December 13, 1977 (42 FR 62639). The other permanent program regulations were published March 13, 1979 (44 FR 15312–15463). Errata notices were published March 14, 1979 (44 FR 15485), August 24, 1979 (44 FR 49673–49687), September 14, 1979 (44 FR 53507–53509), November 19, 1979 (44 FR 66195), April 6, 1980 (45 FR 26001), June 5, 1980 (45 FR 37818), and July 15, 1980 (45 FR 47424). Amendments to the regulations were published October 22, 1979 (44 FR 60969), as corrected December 19, 1979 (44 FR 75143), December 19, 1979 (44 FR 75302–75303), December 31, 1979 (44 FR 77440–77447), January 11, 1980 (45 FR 2626–2629), April 16, 1980 (45 FR 25998–26001), May 20, 1980 (45 FR 33926–33927), June 10, 1980 (45 FR 39446–39447), and August 6, 1980 (45 FR 52306–52324). Portions of these regulations have been suspended pending further rulemaking [see 44 FR 67942 (November 27, 1979), 44 FR 77447–77455 (December 31, 1979), 45 FR 6913 (January 30, 1980), and 45 FR 51547–51550 (August 4, 1980)].

B. General Background on State Program Approval Process

Any state wishing to assume primary jurisdiction for the regulation of coal mining under SMCRA may submit a program for consideration. The Secretary of the Interior has the responsibility to approve or disapprove the submission.

The Federal regulations governing state program submissions are found at 30 CFR Parts 730–732. After review of the submission by OSM and other agencies, an opportunity for the state to make additions or modifications to the program, and an opportunity for public comment, the Secretary may approve the program, approve it conditioned upon minor deficiencies being corrected in accordance with a specified timetable set by the Secretary, or disapprove the program in whole or in part. If the program is disapproved, the state may submit a revision of the program to correct the items that need to be changed to meet the requirements of SMCRA and the applicable Federal regulations. If the revised program is also disapproved, SMCRA requires the Secretary of the Interior to establish a Federal program in that state. The state may again request approval to assume primary jurisdiction after the Federal program has been implemented.

The procedures and timetable for the Secretary's review of state programs were initially published March 13, 1979 (44 FR 15326), to be codified at 30 CFR Part 732. Section 732.11(d), as published on March 13, 1979, required that states make any modifications and additions by November 15, 1979. As a result of litigation in the U.S. District Court for the District of Columbia, the deadline for states to submit proposed programs was extended from August 3, 1979, to March 3, 1980. 30 CFR 732.11(d) required that if all required and fully enacted laws and regulations were not part of the program by November 15, 1979, the program would be disapproved. Because the submission deadline had been changed to March 3. 1980, 30 CFR 732.11(d) was amended to provide that program submissions that do not contain all required and fully enacted laws and regulations by the 104th day following program submission will be disapproved pursuant to the procedures for the Secretary's initial decision in § 732.13 [45 FR 33927, May 20. 1980). The West Virginia program was submitted on March 3, 1980, and the 104th day following submission was June 15, 1980. Since June 15 was not a normal business day, the deadline was extended to June 16, 1980.

The Secretary's rules for the review of state programs implement his policy that industry, the public, and other agencies of government should have a meaningful opportunity to participate in his decisions. The Secretary also has a policy that a state should be afforded the maximum opportunity possible to

change its program, when necessary, to cure any deficiencies in it.

To accomplish both of these policy objectives the Secretary determined that the laws and rules upon which the state bases its program must be finalized at the beginning of the public comment period. By identifying the laws and rules in effect on the 104th day as the basis of his program approval decision, the Secretary assists commenters by informing them of program elements which should be reviewed. Meaningful public comment would be undermined if the program elements were constantly changing up until the day before the Secretary's decision.

The 104 day rule afforded the state 3½ months following submission within which it could modify its laws and rules. In addition, after the Secretary's initial program decision, the states have additional opportunities to revise their laws and regulations.

All program elements other than laws and rules, including Attorney General's opinions, program narratives, descriptions and other information, may be revised by the state at any time prior to program approval. The Secretary will provide opportunity for public comment on those changes, as appropriate.

The Secretary, in reviewing state programs, is applying the criteria of Section 503 of SMCRA, 30 U.S.C. 1253, and 30 CFR 732.15. In reviewing the West Virginia program the Secretary has followed the Federal rules as cited above under "General Background on the Permanent Program," and as affected by three recent decisions of the U.S. District Court for the District of Columbia in *In Re: Permanent Surface Mining Regulation Litigation* (Civil Action No. 79–1144).

Because of the complex litigation, the court issued its initial decision in two "rounds." The Round I opinion, dated February 26, 1980, denied several generic attacks on the permanent program regulations, but resulted in suspension or remanding of all or part of twenty-two specific regulations. The Round II opinion, dated May 16, 1980, denied additional generic attacks on the regulations, but remanded some forty additional parts, sections or subsections of the regulations. The court also ordered the Secretary to "affirmatively disapprove, under Section 503 [of SMCRA], those segments of a state program that incorporate a suspended or remanded regulation" (Mem. Op., May 16, 1980, p. 49). However, on August 15, 1980, the court stayed this portion of its opinion. The effect of this stay is to allow the Secretary, when requested by a state, to allow the inclusion in the state program of provisions equivalent to remanded or suspended Federal provisions. Therefore, the Secretary is applying the following standards in the review of permanent program submissions:

1. The Secretary need not affirmatively disapprove state provisions similar to those Federal regulations which have been suspended or remanded by the District Court where the state has adopted such provisions in a rulemaking or legislative proceeding which occurred either (1) before the enactment of SMCRA or (2) after the date of the Round II District Court decision, since such state regulations clearly are not based solely upon the suspended or remanded Federal regulations. (3) The Secretary need not affirmatively disapprove provisions based upon suspended or remanded Federal rules if a responsible state official has requested the Secretary to approve them.

2. The Secretary will affirmatively disapprove, to the extent required by the court's decision, all provisions of a state program which incorporate suspended or remanded Federal rules and which do not fall into one of the three categories in paragraph one, above. The Secretary believes that the effect of his "affirmative disapproval" of a section in the state's regulations is that the requirements of that section are not enforceable in the permanent program at the Federal level to the extent they have been disapproved. That is, no cause of action for enforcement of the provisions, to the extent disapproved, exists in the Federal courts, and no Federal inspection will result in notices of violation or cessation orders based upon the "affirmatively disapproved" provisions. The Secretary takes no position as to whether the affirmatively disapproved provisions are enforceable under state law and in state courts. Accordingly, these provisions are not being pre-empted or suspended, although the Secretary may have the power to do so under Section 504(g) of SMCRA and 30 CFR 730.11.

3. A state program need not contain provisions to implement a suspended regulation and no state program will be disapproved for failure to contain a suspended regulation. Nonetheless, state programs must have the authority to implement all permanent program provisions of SMCRA upon which the Secretary bases the suspended or remanded regulations.

4. A state program may not contain any provision that is inconsistent with a provision of SMCRA.

5. Programs will be evaluated only as to those provisions other than the provisions that must be disapproved because of the court's order. The remaining provisions will be unconditionally approved, conditionally approved or disapproved, in whole or in part, in accordance with 30 CFR 732.13.

6. Upon promulgation of new Federal regulations to replace those that have been suspended or remanded, the Secretary will afford states that have approved or conditionally approved programs a reasonable opportunity to amend their programs, as appropriate. In general, the Secretary expects that the provisions of 30 CFR 732.17 will govern this process.

The regulations suspended or remanded as the result of the Round I and Round II litigation were published in the **Federal Register** on July 7, 1980 (45 FR 45605).

To codify decisions on state programs. Federal programs, and other matters affecting individual states, OSM has established a new Subchapter T of 30 CFR Chapter VII. Subchapter T will consist of Parts 900 through 950. Provisions relating to West Virginia will be found at 30 CFR 948 once West Virginia's resubmission has been approved or finally disapproved after opportunity for resubmission, or if West Virginia does not resubmit its program within sixty days.

C. Elements Upon Which the West Virginia Program Is Being Evaluated for This Decision

In consideration of the matters discussed above under "General Background on State Program Approval Process," the Secretary hereby sets forth the elements of the proposed West Virginia program upon which the findings and decisions below are being made.

1. In accordance with the 104 day rule promulgated May 20, 1980 (30 CFR 732.11(d), 45 FR 33927), only those statutory provisions and rules that were fully enacted on or before June 16, 1980, are being considered as a basis for this decision.

The draft regulations submitted by West Virginia on June 16, 1980, do not meet the 104 day rule and, therefore, are not being considered in this Secretarial decision and are not part of the partially approved/partially disapproved program. The Director of OSM is informing West Virginia by separate letter of his preliminary review and analysis of these draft regulations to assist the State in its resubmission effort. Copies of the letter will be available for public review in the administrative record.

2. When these draft regulations are enacted and resubmitted, they may remedy certain aspects of the program

which are not approved by this decision. At that time the Secretary will reopen the public comment period in accordance with 30 CFR 732.13(f).

3. The balance of the program submittal received on March 3, 1980, as amended through June 16, 1980, has been evaluated.

D. Background on the West Virginia Program Submission

On March 3, 1980, the Secretary of Interior received a proposed regulatory program from the State of West Virginia. The program was submitted by the Director of the Department of Natural Resources (DNR) of the State of West Virginia; the agency which will be the primary regulatory authority under the West Virginia permanent program. Notice of receipt of the submission initiating the program review was published in the Federal Register on March 10, 1980 (45 FR 15190–15192) and in newspapers of general circulation within the State. The announcement contained information concerning public participation in the initial phase of the review process relating to the regional director's determination of whether the submission was complete.

On April 9, 1980, the regional director held a public meeting on the completeness of the program in Charleston, West Virginia. Written comments on completeness were accepted until April 11, 1980.

On April 28, 1980, the regional director published a notice in the Federal Register (45 FR 28164–28165) announcing that he had determined the program to be incomplete for the reasons contained in the notice.

A detailed listing of issues which appeared to represent deficiencies in the state program submittal was forwarded to the state by the Office of Surface Mining on May 23, 1980 (hereafter referred to as "the May 23 letter"). See Administrative Record No. WV 84.

On June 9–12, 1980, representatives of the West Virginia Department of Natural Resources met with representatives of OSM to discuss comments forwarded to the state in the May 23 letter.

On June 16, 1980, the state submitted various amendments and modifications to the program. A summary of these was published in the Federal Register on June 20, 1980 (45 FR 41654–41656). Notices placed in newspapers of general circulation within the state also set forth procedures for the hearings and announced the public comment period on the adequacy of the West Virginia program.

On July 11, 1980, public comment was invited on a tentative list of those parts of the West Virginia program which might have to be disapproved under the District Court's May 16 order mentioned above because they appeared to be based on suspended or remanded Federal regulations (45 FR 46820–46826).

On July 14 and 15, 1980, public hearings on the adequacy of the West Virginia submission were held by the regional director in Morgantown and Charleston, West Virginia, respectively. The public comment period closed on July 21, 1980.

On August 4, 1980, the regional director submitted to the Director of OSM his recommendation that the West Virginia program be approved in part and disapproved in part, together with copies of the transcript of the public hearings, written presentations, exhibits, copies of all public comments received, and other documents comprising the administrative record.

On August 11, 1980, OSM published in the Federal Register (45 FR 53181) a notice of the availability of the views on the West Virginia program submitted by the Appalachian Regional Commission; the U.S. Department of Agriculture through the Soil Conservation Service and the Forest Service; the Department of Energy; the Bureau of Land Management, the Bureau of Mines, the Fish and Wildlife Service and the National Park Service of the U.S. Department of the Interior; the U.S. Department of Labor through the Mine Safety and Health Administration; the U.S. Environmental Protection Agency; and the U.S. Army Corps of Engineers.

The U.S. Fish and Wildlife Service stated on July 11, 1980, that they were withholding a Biological Opinion under Section 7 of the Endangered Species Act of 1973 (Administrative Record No. WV 158). Their Opinion will be issued when West Virginia submits additional required documentation.

On August 22, 1980, the Director of OSM asked West Virginia if there were any provisions in its program, based on suspended or remanded Federal rules, which it did not want the Secretary to affirmatively disapprove under the District Court Order. West Virginia responded that it did not want the Secretary to disapprove any of its provisions based on suspended or remanded Federal regulations. A discussion of these provisions will be included in the letter to West Virginia analyzing its draft regulations.

On September 9, 1980, the Director recommended to the Secretary that the West Virginia program be partially approved and partially disapproved. On September 8, 1980, the Secretary approved in part and disapproved in part the West Virginia program. The Secretary's decision was conveyed to West Virginia in a letter to Governor John D. Rockefeller IV on October 3, 1980. A copy of the letter to Governor Rockefeller is available for review in the West Virginia Administrative Record.

The West Virginia program consists of the formal submission of March 3, 1980 (Administrative Record No. WV 1) as amended on March 21, April 1, and June 16, 1980 (Administrative Record Nos. WV 37, 50 and 101).

Throughout the period beginning with the submission of the program, OSM has had frequent contact with the staff of the DNR. Discussions of the state program submission were held with various officials. Minutes or notes of the discussions were placed in the Administrative Record and made available for public review.

All contacts between officials or staffs of the Department of the Interior and the State of West Virginia were conducted in accordance with the Department's guidelines for such contacts published September 19, 1979 (44 FR 54444–54445).

E. Secretary's Findings and Explanation

The findings in this section, and the explanation which accompanies the findings, are based on the West Virginia program submitted March 3, 1980 (and amended on March 21, April 1, and June 16, 1980), and public comments submitted in response thereto. The disposition of each public comment considered in the Secretary's decision is contained at Part F of this document.

A detailed list of the elements contained in West Virginia's complete program submittal is contained in Finding 29. The submittal contained among other things, an enacted law (West Virginia Surface Coal Mining and Reclamation Act), an incomplete set of draft regulations, a legal opinion of the West Virginia Attorney General (Attorney General's opinion), and a program narrative. As required by 30 CFR Part 731, the state submission also contained many other documents including a copy of regulations currently in effect (existing Chapter 20–6, Series VII (1978) Rules and Regulations). However, since the state indicated that the draft regulations would, when promulgated, constitute the regulatory basis of the West Virginia program, the existing regulations were not reviewed.

30 CFR 732.11(d), as clarified at 45 FR 33927 (May 20, 1980), provides that program submissions that do not contain all required and fully enacted laws and regulations by the 104th day must be disapproved. The 104th day for West Virginia was June 16, 1980.

After review, it was determined that the draft regulations were incomplete. Draft regulations covering significant portions of 30 CFR Chapter VII had not been written, rendering a meaningful review impracticable. In addition, since the regulations had not been enacted, the Secretary is unable to consider them for purposes of these findings.

During the public comment period, numerous public comments were received on the draft regulations. The Secretary has not addressed these comments in his findings or in Section F, Disposition of Comments. A response to these comments is being prepared by OSM for transmittal to the state for consideration during the resubmission process. The information will be placed in the Administrative Record and will be available for review or can be requested from the Region I OSM office at the address above.

The Secretary will review the state's disposition of OSM's response to these comments together with the enacted regulations, and will discuss these comments in the Federal Register announcement of the Secretary's decision on West Virginia's resubmission. The draft regulations are discussed further in Finding 7, below.

Since West Virginia's regulations were not fully enacted on June 16, 1980, they cannot form the basis for approval of any portion of the state's program. The findings and accompanying explanations are based only on enacted state law, the program narrative, and comments submitted by the public which do not deal with the draft regulations. *The primary focus of the explanation of these findings is significant differences between Federal law and state law as identified by the Department of the Interior and public commenters.*

No reference is made in the findings to aspects of the West Virginia program which are equivalent to the Federal requirements, or to deficiencies in state law where the deficiencies are expected to be corrected via the adoption and promulgation of regulations. Problems in existing law which are capable of correction by regulations have been discussed with the state on many occasions (See Part C of this document and the May 23 letter). In the event that appropriate corrections are not made in the enacted regulations when they are resubmitted, the Secretary will be unable to find these provisions consistent with Federal requirements. Throughout the review process the Secretary will continue to provide advice and assistance to the state.

Although the resolution of public comments which pertain to state statutes and program narrative is contained in Part F of this document, the disposition of these comments must also be considered part of the Secretary's findings. To the extent possible, public comments with which the Secretary agrees have been incorporated directly into the findings.

In accordance with Section 503(a) of SMCRA, the Secretary finds that West Virginia has, in part, the capability of carrying out the provisions of the SMCRA and meeting its purpose to the extent set forth in Findings 1 through 30, below.

Finding 1

The Secretary finds that Chapter 20, Article 6 of the Code of West Virginia, known as the West Virginia Surface Coal Mining and Reclamation Act (West Virginia SCMRA), and the West Virginia Administrative Procedures Act provide, in part, for the regulation of surface coal mining and reclamation operations on non-Indian and non-Federal lands in West Virginia in accordance with the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

This finding is based on the requirements of Section 503(a)(1) of SMCRA [30 U.S.C. 1253(a)(1)]. Analysis of the issues underlying this finding is found in the discussion of Findings 12 through 30, below.

Finding 2

The Secretary finds that the West Virginia SMCRA provides, in part, sanctions for violations of West Virginia laws, regulations or conditions of permits concerning surface coal mining and reclamation operations and that these sanctions meet, in part, the requirements of SMCRA, including civil and criminal actions, forfeiture of bonds, revocation of permits, withholding of permits, and the issuance of cessation orders by the Department of Natural Resources or its inspectors.

This finding is based on the requirements of Section 503(a)(2) of SMCRA [30 U.S.C. 1253(a)(2)]. Analysis of the issues underlying this finding is found in the detailed discussion of Findings 18, 19, and 20, below.

Finding 3

The Secretary finds that the Department of Natural Resources has not demonstrated either that it has sufficient administrative and technical personnel or that it has sufficient funds to enable West Virginia to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA. This finding is based on the requirements of Section 503(a)(3) of SMCRA [30 U.S.C. 1253(a)(3)]. An analysis of the issues underlying this finding is found in the discussion of Finding 30, below.

Finding 4

The Secretary finds that West Virginia law provides, in part, for the effective implementation, maintenance, and enforcement of a permit system that meets the requirements of SMCRA for the regulation of surface coal mining and reclamation operations on non-Indian and non-Federal lands within West Virginia.

This finding is based on the requirements of Section 503(a)(4) of SMCRA [30 U.S.C. 1253(a)(4)]. An analysis of the issues underlying this finding is found in the discussion of Finding 14, below.

Finding 5

The Secretary finds that West Virginia has established, in part, a process of the designation of areas as unsuitable for surface coal mining in accordance with Section 522 of SMCRA.

This finding is based on the requirements of Section 503(a)(5) of SMCRA [30 U.S.C. 1253(a)(5)]. An analysis of the issues underlying this finding is found in the discussion of Finding 21, below.

Finding 6

The Secretary finds that West Virginia has, in part, established for the purpose of avoiding duplication, a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with other Federal and State permit processes applicable to the proposed operations.

This finding is based on the requirements of Section 503(a)(6) of SMCRA [30 U.S.C. 1253(a)(c)]. An analysis of the issues underlying this finding is found in the discussions of Findings 13 and 14 below.

Finding 7

The Secretary finds that West Virginia does not have enacted regulations consistent with regulations issued pursuant to SMCRA.

This finding is based on the requirements of Sections 503(a)(7) of SMCRA [30 U.S.C. 1253(a)(7)].

As discussed previously, West Virginia proposes to develop new regulations to implement the West Virginia SCMRA. Portions of the regulations were drafted and submitted as part of the State's program on June 16, 1980. Review of the draft regulations indicates that additional changes will be needed to meet the requirements of Section 503(a)(7) of SMCRA. In addition, because of the 104 day rule, the

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Secretary cannot approve any part of these rules until they have been enacted.

Finding 8

The Secretary has, through OSM, solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise pertinent to the proposed program.

This finding is based on the requirements of Section 503(b)(1) of SMCRA [30 U.S.C. 1253(b)(1)] and is based on the information contained in a Federal Register notice published August 11, 1980 (45 FR 52181). This notice identified the Federal agencies from which comments were solicited, the agencies which responded and the offices of OSM and the West Virginia Department of Natural Resources at which copies of the comments were made available.

Finding 9

The Secretary has obtained the written concurrence of the Adminstrator of the Environmental Protection Agency with respect to those aspects of the West Virginia program being approved in part today which relate to air or water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1151–1175) and the Clean Air Act, as amended (42 U.S.C. 1857 *et seq*).

This finding is based on the requirements of Section 503(b)(2) of SMCRA [30 U.S.C. 1253(b)(2)] and on the letter transmitted by the Administrator of EPA to the Secretary on September 5, 1980. A copy of this letter has been placed in the Administrative Record.

Finding 10

The Secretary, through the OSM Regional Director for Region I, held a public meeting in Charleston, West Virginia, on April 9, 1980, to discuss the completeness of the West Virginia program submission, and held public hearings in Morgantown and Charleston, West Virginia on July 14 and 15, 1980, respectively, to solicit public comments on the substance of the West Virginia program submission.

This finding is based on the requirements of Section 503(b)(3) of SMCRA [30 U.S.C. 1253(b)(3)].

Finding 11

The Secretary finds that the State of West Virginia has, in part, the legal authority, but has not demonstrated that it has sufficient qualified personnel necessity for the enforcement of the environmental protection standards of SMCRA and 30 CFR Chapter VII.

This finding is based on the requirements of Section 503(b)(4) of SMCRA [30 U.S.C. 1253(b)(4)]. Analysis of the issues underlying this funding is found in the discussions of Findings 12 through 30, below.

Finding 12

The Secretary finds that the West Virginia program provides, in part, for West Virginia to carry out the provisions and meet the purposes of SMCRA and 30 CFR Chapter VII.

This finding is made under the requirements of the first half of 30 CFR 732.15(a). Analysis of the issues underlying those findings is found throughout Part E of this Federal Register notice. Additional issues which arose during review of the program are as follows:

12.1 Section 20–6–3 of the West Virginia SCMRA, which contains definitions for the terms used in the law, is introduced by the phrase "As used in this article, unless used in a context that clearly requires a different meaning." The Secretary finds this acceptable based on the assumption that the definitions in the state law will be interpreted as having meanings consistent with SMCRA. The Federal oversight responsibilities will determine if the definitions in the state law are being subjected to conflicting interpretations which make them inconsistent with the definitions contained in SMCRA and 30 CFR Chapter VII.

12.2 Section 20–6–3(t) of the state law defines the term "surface mining." It includes a provision which exempts certain permanent facilities from the requirements of the law. The Secretary finds that this provision is inconsistent with the definition of "surface coal mining operations" contained in Section 701(28) of SMCRA.

Finding 13

The Secretary finds that the DNR has, in part, the authority under West Virginia laws to implement, administer, and enforce applicable requirements consistent with 30 CFR Chapter VII, Subchapter K (performance standards), and the West Virginia program includes, in part, provisions adequate to do so. This finding is made under the requirements of 30 CFR 732.15(b)(1).

West Virginia incorporates provisions corresponding to Sections 515 and 516 of SMCRA and certain provisions of Subchapter K of 30 CFR Chapter VII in Sections 13 and 14 of Chapter 20, Article 6 of the Code of West Virginia. Section (g)(8) of the program narrative contains a discussion of West Virginia's administrative and enforcement procedures for performance standards. As stated previously, the draft regulations submitted by the state have not been enacted and have not been considered in these findings.

A discussion of significant issues raised during the review of the West Virginia statute and narrative for environmental performance standards follows.

13.1 West Virginia has failed to include the requirement to eliminate existing highwalls in premined areas when augering operations are conducted. During the initial review of the state's law, OSM expressed concern that the state's definition of approximate original contour [Section 20–6–3(e) of the West Virginia SCMRA] provided variances from AOC and highwall elimination. Upon further review and clarification by the Attorney General's opinion (page 36), the Secretary determined that the highwall elimination provision would be inconsistent with Federal law only as it related to auger mining on preexisting highwalls.

13.2 Section 515(b)(20) of SMCRA requires responsibility for successful revegetation for a period of five full years after the last year of augmented seeding. The state law [Section 20–6–13(b)(20)] requires this responsibility for five growing seasons. This provision of state law is approved. However, regulations enacted by the state must define the term "growing season" in such a manner as to provide revegetation responsibility consistent with the provisions of Section 515(b)(20).

13.3 Section 20–6–13(b)(21) of the state law allows the Director to approve the placement of spoil outside the permit area if environmental benefits will result. The Attorney General's opinion (page 40) states that regulations will limit this provision to situations where spoil will be placed on a project conducted under the state's Abandoned Mine Land program, used on another permitted operation, or on a project which would qualify as a Title IV project but for which insufficient funds are available.

This provision of state law, as presently written, is not consistent with Section 515(b)(22) of SMCRA because it would allow spoil placement without appropriate environmental protection standards. However, this provision will be acceptable if regulations are enacted which specify that the spoil is excess spoil not needed to restore the approximate original contour of the land and reclaim the permit area, and that (1) the spoil disposal area is under a permit and bond, or (2) spoil is placed on

abandoned mine lands under a contract for reclamation conducted under the state's Abandoned Mine Land program in accordance with Title IV of SMCRA.

13.4 Section 515(b)(25) of SMCRA provides for retention of an undisturbed natural barrier to prevent slides and erosion. The corresponding section of the West Virginia SCMRA, 20–6–13(b)(25), provides for the use of a constructed barrier in certain situations. OSM has previously advised the state that such an exception may be found acceptable only if technical and regulatory data, including material strength characteristics and engineering design principles, submitted with the state program proposal support a finding that the requirement is more stringent. Sufficient data were not contained in the program submission. Thus, the Secretary cannot find that the West Virginia provision is in accordance with SMCRA at this time. The Secretary will continue to work with West Virginia to develop additional support for this provision.

13.5 Section 20–6–13(d) of the West Virginia SCMRA allows a permittee to place spoil from a new mining operation on a limited specified area of the downslope. Section 515(d)(1) of SMCRA prohibits the placement of spoil on the downslope and requires placement of all excess spoil in accordance with Section 515(b)(22)(A)–(f). The Secretary finds that the West Virginia provision is not in accordance with these provisions of SMCRA.

13.6 In the May 23 letter, OSM expressed concern that the state had failed to provide for jurisdiction over acid mine drainage treatment sludge by deleting the phrase "or other liquid" from the requirement of Section 516(b)(5) of SMCRA which provides that operations must meet certain standards in relation to waste piles consisting of "mine wastes, tailings, coal processing wastes, or other liquid and solid wastes . . ." [See Section 20–6–14(b)(5) of the West Virginia SCMRA.] The Attorney General's opinion (page 43) states that their regulations would prohibit the placement or disposition of liquid non-coal processing wastes on coal processing waste piles. The provisions of Section 20–6–14(b)(5) of the West Virginia SCMRA are approved to the extent that enacted state regulations will provide jurisdiction over liquid wastes consistent with Section 516(b)(5) of SMCRA.

13.7 West Virginia Sections 20–6–13(b)(10)(B) and 20–6–14(b)(9)(B) both provide that additional contributions of suspended solids would only be controlled by "applicable state law." Both of these provisions are found inconsistent with Section 515(b)(10)(B)(i) of SMCRA which requires that such contributions cannot be in excess of requirements set by "applicable state or Federal law."

13.8 West Virginia has added "woodland" to the list of alternative postmining land uses (Section 20–6–13(c)(3) of the West Virginia SCMRA) for mountaintop removal operations authorized by SMCRA. Section 515(c)(3) of SMCRA provides five alternative postmining land uses as acceptable bases for variance to the general requirement to return to approximate original contour (AOC). The preamble to the Permanent Regulatory Program for 30 CFR 824.11 states that forestry and silviculture would not be acceptable under the criteria of SMCRA because flat or gently rolling terrain is not necessary for such postmining land uses. If West Virginia desires to pursue the woodlands postmining land use, it must submit information demonstrating the need for flat or rolling terrain for woodlands and the basis for including the woodland use within one of the five statutory uses. The Secretary cannot approve this provision at this time.

13.9 Sections 515(b)(10) and (c)(3) of SMCRA require that various structures be designed and/or certified by a registered professional engineer. The West Virginia law allows these designs and/or certifications to be submitted by a person approved by the Director. The Attorney General's opinion (page 17) states that any person seeking the Director's approval must pass an examination which tests the person's competence to prepare permit applications. The state contends that this provision is more stringent than Federal law in that even registered professional engineers must pass the examination. OSM has evaluated sample copies of the examination used by the state and found that the examination tests only the applicant's knowledge of West Virginia regulatory requirements and standards. The requirements for a registered professional engineer included in SMCRA were intended to assure a high level of professional knowledge and skills with regard to engineering principles and practices. The application of such knowledge and skills to the unique characteristics of each mining site is essential to assure that the degree of protection of the environment and the public intended by the Congress is achieved. The Secretary finds the state's requirement is less stringent than the Federal requirement.

13.10 Section 516(b)(12) of SMCRA prohibits up-dip mining in acid or iron-producing coal seams. Section 20–6–14(b)(12) of the West Virginia law grants the Director discretion ". . . in consideration of the relevant safety and environmental factors" to approve up-dip mining. The Secretary finds this authorization of discretion to the Director is inconsistent with SMCRA which requires all underground mines to be developed to prevent gravity discharge.

13.11 Section 20–6–3(e) of the state law defines the term "approximate original contour" consistent with the definition found in Section 701(2) of SMCRA except that the state definition allows for "minor deviations." The state program does not define or describe the limits of "minor deviations" which might be allowed under this exception. West Virginia should establish in its resubmission that the definition will not result in approximate original contour or highwall elimination requirements less stringent than SMCRA. Without such information, the Secretary cannot find that the state provision is consistent with SMCRA.

13.12 The state definition of "adequate treatment" [Section 20–6–3(a) of the West Virginia SCMRA] states that treated water shall not lower the water quality standards established for the river, stream or drainway. Since lowering of water quality standards is an administrative process and not a function of a mining operation, the meaning of this provision is uncertain. The state program must require, at a minimum, compliance with applicable effluent standards and water quality standards for receiving streams established under the Clean Water Act, as amended, in accordance with Section 515(b)(10) of SMCRA. Until the definition is clarified to indicate that the quality of the water will not be degraded below applicable water quality standards the Secretary is not able to approve it.

13.13 In the May 23 letter, OSM expressed concern that the definition of "affected area" contained in the state law at Section 20–6–3(b) may preclude jurisdiction over ground water as provided by 30 CFR 701.5. The Secretary cannot approve this portion of the program until the definition is clarified jurisdiction over ground water.

13.14 The definition of "disturbed area" contained in Section 20–6–3(j) of the state law is inconsistent with 30 CFR 701.5 in that the state's definition does not include the areas upon which topsoil, spoil, coal processing waste, underground development waste or non-coal waste are placed. In addition the states definition does not specify that the area is classified as disturbed until reclamation is complete and the bond is

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released.-The Attorney General's opinion (page 12) states that regulations will clarify the state definition to include those areas noted above. However, since these regulations have not been adopted, the Secretary cannot find the section of the state law consistent with SMCRA at this time.

13.15 Section 711 of SMCRA provides for the use of experimental practices to allow a post-mining land use for industrial, commercial, residential or public use. The experimental practice must be authorized by the regulatory authority and approved by the Secretary. Section 20-6-33 of the West Virginia SCMRA includes agriculture as an experimental post-mining land use but fails to require prior approval of the Secretary for the experimental practices. The Secretary finds that the failure to provide for approval is inconsistent with SMCRA. The state may correct this deficiency by requiring, preferably through a regulation, that all proposed experimental practices will receive approval of the Secretary, as mandated by SMCRA, prior to their initiation. Experimental practices involving agriculture as a post-mining land use will be considered by the Secretary in the event such use is proposed.

13.16 The discussion contained in Section (g)(6) of the state's program narrative fails to demonstrate that the state has the capability for administering and enforcing the permanent program peformance standards. This failure is based primarily on the lack of an adequate discussion on the number, qualifications, and distribution of the pemanent program staff and the failure to demonstrate adequately that the state's permitting system will be sufficient. Further discussion concerning these issues can be found in Findings 14 and 30 below.

Finding 14

The Secretary finds that the Department of Natural Resources has the authority under West Virginia laws and regulations and the West Virginia program includes, in part, provisions to implement, administer and enforce a permit system consistent with 30 CFR Chapter VII, Subchapter G (permits). This finding is made under the requirements of 30 CFR 732.15(b)(2).

West Virginia incorporates provisions corresponding to Sections 506, 507, 508, 510, 511, and 513 of SMCRA and Subchapter G of 30 CFR Chapter VII in Chapter 20, Article 6, Sections 8, 9, 10, 11, and 18 of the Code of West Virginia. Section (g)(1) of the state's program narrative contains discussions of the systems for (1) issuing permits, (2) incidental mining permits, (3) surface mining, underground mining and other operations permits, (4) pemit revisions, (5) permit renewals and (6) transfer, assignment, and/or sale of permit rights.

Discussion of significant issues raised during the review of the West Virginia permit provisions follows.

14.1 Section 507(b)(3) of SMCRA requires that a permit applicant submit a statement of any current or previous surface coal mining permits held by the applicant in the United States with the permit identification and each pending application. Section 20-6-10(a)(3) of the West Virginia law does not require the identification of previous permits held in West Virginia and current and previous permits held outside the State of West Virginia. The lack of these requirements inhibits the state's ability to gather adequate background data on the permit applicant and deprives the public of information necessary for effective participation in the permitting process. The Secretary finds that this omission is inconsistent with Section 507(b)(3) of SMCRA.

14.2 Section 507(b)(5) of SMCRA requires that a permit applicant submit a statement of suspended or revoked mining permits for the previous five year period. State law [Section 20-6-10(a)(5)] has limited this requirement to "permanently" suspended permits which are, in effect, revoked permits. The Secretary finds that omission of suspended mining permits results in a requirement that is less stringent than SMCRA.

14.3 Section 510(c) of SMCRA requires that the applicant shall file with his permit application a schedule listing any and all notices of violations pertaining to air or water environmental protection incurred by the applicant on any surface coal mining operation within the three-year period prior to the date of application. Section 20-6-10(f) of the state law requires this schedule only for bond forfeitures, permit revocations, cessation orders or permanent suspension orders. It does not require that other types of violations be reported. In addition, state Section 20-6-18(c) allows the Director to consider only violations of West Virginia laws during the decision making process on permit applications, a limitation not contained in Section 510 of SMCRA. The Attorney General's opinion (page 14) provides a discussion as to why the information required by Section 510(c) of SMCRA is not necessary. This explanation does not override the Congressional mandate that the information required by Section 510(c) be submitted. For this reason, the Secretary finds that the West Virginia requirements are less stringent than those of SMCRA.

14.4 Section 20-6-31 of the state law provides for issuance of special permits for removal of coal incidental to the development of land. This provision allows the Director to authorize mining associated with land development on areas up to five acres. Reduced permitting and performance standard requirements apply to those operations. The Federal law contains no comparable provision.

The Attorney General's opinion (page 57) contends that the state process is more stringent than Federal law since it applies to all mining operations while the Federal law applies only to operations of more than two acres. The Secretary has determined that at this time the West Virginia provision is less stringent than SMCRA to the extent it does not subject operations over two acres to all requirements. Less stringent requirements may be applied by the state to operations of two acres or less since Section 528 of SMCRA exempts areas of two acres or less from all of the Federal requirements. Any operation of more than two acres must be subject to all applicable Federal requirements. The Secretary, however, specifically requests public comment on West Virginia's proposal, particularly in light of the possiblity that the state may exempt operations of less than two acres as the trade-off from more intensive regulation of sites of two to five acres.

14.5 The May 23, 1980, letter from OSM to the Department of Natural Resources detailed numerous deficiencies in the state's permitting system described in Section (g)(1) of the program narrative. Since the state has indicated that this portion of the narrative will be revised, the Secretary will not attempt to discuss the individual elements of the May 23 letter. The resubmisssion of the program to be made following publication of this notice will be reviewed to determine if these deficiencies have been corrected. In addition, much of the information to be required of permit applicants by the State will be contained on the various permit application forms which are currently being developed. These forms, which are considered by the state to be part of their regulations as required by Section 20-6-7(b)(1) of the West Virginia SMCRA, may address many of the issues raised in the May 23 letter.

Finding 15

The Secretary finds that the Department of Natural Resources has, in part, the authority to regulate coal

exploration consistent with 30 CFR Parts 776 and 815 (coal exploration) and to prohibit coal exploration that does not comply with 30 CFR Parts 776 and 815, and the West Virginia program includes, in part, provisions adequate to do so. This finding is made under the requirements of 30 CFR 732.15(b)(3).

The West Virginia program incorporates provisions corresponding to Section 512 of SMCRA and 30 CFR Parts 776 and 815 (as related to coal exploration) in Chapter 20, Article 6, Section 8 of the Code of West Virginia. Section (g)(1) of the program narrative includes discussion of the systems for exploration, review, and approval. In the West Virginia law and program, exploration is referred to as prospecting.

Section (g)(1) of the state's program narrative discusses state procedures for approval or denial of prospecting permits. The procedures contained in the program submission, however, were prepared prior to the passage of the state's enacted legislation. The procedures described within the program narrative do not agree with the requirements Section 20-6-8 of state law. The state's description should be revised to reflect the requirements of state law.

Finding 16

The Secretary finds that the Department of Natural Resources has the authority under West Virginia law but that the West Virginia program does not include provisions to require that persons extracting coal incidental to government-financed construction maintain information on site consistent with 30 CFR Part 707. This finding is made under the requirements of 30 CFR 732.15(b)(4).

Provisions corresponding to 30 CFR Part 707 (exemption for coal extraction incidental to government-financed highway and other construction) are found in Chapter 30, Article 6, Section 29(3) of the West Virginia Code. However, no state regulations or program narrative implementing this provision were contained in the state program submission. Until these regulations are included, no decision can be made on the ability of the state to implement this requirement.

Finding 17

The Secretary finds that the Department of Natural Resources has the authority and the West Virginia program includes provisions to enter, inspect, and monitor all coal exploration and surface coal mining and reclamation operations on non-Indian and non-Federal lands within West Virginia consistent, in part, with the requirements of Section 517 of SMCRA (inspections and monitoring) and 30 CFR Chapter VII, Subchapter L (inspection and enforcement). This finding is made under the requirements of 30 CFR 731.15(b)(5). Provisions corresponding to Section 517 of SMCRA and Subchapter L of 30 CFR Chapter VII for inspection and monitoring are found in Chapter 20, Article 6, Section 15 of the Code of West Virginia. No state regulations or program narrative specifying inspection and monitoring procedures were included with the state program submission.

Section 20-6-15(g) of the state statute provides that the permittee, his authorized agents, employees and the inspector shall not be liable for any injury sustained by a citizen accompanying the inspector except for willful and deliberate acts. Section 521(a)(1) of SMCRA grants authority to citizens to accompany an inspector during an inspection resulting from the citizen's complaint. The state provision could operate as a constraint on citizens exercising this right. The Secretary finds the liability provisions of Section 20-6-15(g) of the West Virginia SCMRA inconsistent with SMCRA.

Finding 18

The Secretary finds that the Department of Natural Resources has the authority under West Virginia law and the West Virginia program includes provisions to implement, administer, and enforce a system of liability insurance or other equivalent guarantees consistent with the requirements of Sections 509 and 519 of SMCRA and 30 CFR Chapter VI, Subchapter J (performance bonds). The Secretary cannot find at this time that the Department of Natural Resources has the authority to implement administer, and enforce a system of performance bonds consistent with these sections. This finding is made under the requirements of 30 CFR 732.15(b)(6).

Provisions corresponding to Sections 509 and 519 of SMCRA and to Subchapter J of 30 CFR Chapter VII are incorporated in Chapter 20, Article 6, Sections 12 and 28 of the Code of West Virginia. Section (g)(3) of the state program narrative contains descriptions of the state's process for implementing, administering, and enforcing a system of performance bonds and liability insurance or other equivalent guarantees.

Discussion of significant issues raised in the review of West Virginia's bonding and insurance provisions follows.

18.1 West Virginia has proposed a bonding system which is an alternative to the Federal requirement that each operator provide a reclamation bond sufficient to cover the full cost of reclamation by the state regulatory authority if the operator fails to complete reclamation. The state proposes, in Section 20-6-12(a) of the West Virginia SCMRA, to bond each operation at the rate of $1,000 per acre, with a minimum bond of $10,000. In order to supplement the amount of the bond provided by individual operators, the state proposes to establish a special reclamation fund provided by taxes levied on the amount of coal produced by each operator. The amount of money in the fund could fluctuate between one and two million dollars. The taxes would be levied at any time the fund dropped below the minimum amount established (one million dollars) and would continue until the end of the quarter in which the fund was replenished to the two million dollar level. Monies contained in the fund would be used for reclamation of areas where the bonds provided by individual operators were not sufficient to cover the actual cost of reclamation.

The Attorney General's opinion (page 30-34) contends that the statutory bond amount of $1,000 per acre, together with the special reclamation fund and various other state requirements such as stringent enforcement of contemporaneous reclamation requirements, the prohibition of future mining by any person who has a permit revoked or a bond forfeited, and the requirement that the entire bond be forfeited notwithstanding the cost of reclamation, if more stringent than the Section 509 of SMCRA.

The Secretary finds that the alternative bonding approach as proposed seems on its face to be an innovative approach to the requirements of SMCRA. Section 509(c) allows the Secretary to approve an alternative system that will achieve the objectives and purpose of the bonding program. This provision requires financial assurances equivalent to other bonding methods allowed by SMCRA (i.e., surety bonds, cash, collateral, letters of credit). SMCRA specifically requires the value of securities to be equal to or greater than the amount of bond required for the bonded area. Therefore, each system considered for approval must demonstrate bond equivalence of sufficient coverage of each permit area to allow a regulatory authority to complete all the reclamation plans. Such a demonstration should also relate to an operator's economic incentive to perform and avoid default. The Secretary cannot find on the basis of the

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program narrative explanation and other data provided by the state thus far that the alternative system will make sufficient funds available to the state to cover, in all cases where individual operators fail to complete reclamation, the total cost to the state of such reclamation. Upon resubmission, the state should, at a minimum, include regulatory provisions, additional explanation, statistics and other data which will support its contention that funds available to the state will in all cases be sufficient to cover the cost if individual operators fail to complete reclamation.

18.2 Section 20–6–12(f) of the state law prohibits the Director from releasing that portion of the bond designated to assure compliance with the backfilling and grading requirements until all acid bearing or acid producing spoil has been treated so that any untreated drainage or discharge is not lower than the water quality of the receiving stream. Section 509(a) of the SMCRA requires that the discharge not violate applicable state or Federal law. The state's requirement relating to the water quality of the receiving stream could, in some cases, violate state or Federal law. Therefore, the Secretary finds that the state requirement is less stringent than the Federal requirement.

18.3 Section 20–6–12(c)(2) of the state law contains a provision allowing the Reclamation Commission to approve alternative bonding systems. This provision is consistent with SMCRA Section 509(c) to the extent that it would allow an alternative system to be implemented if approved by the Secretary. The Secretary finds this provision acceptable because he interprets this provision to require the state to obtain Secretarial approval of alternative systems before they are implemented.

18.4 Section (g)(3) of the state's program narrative discussed only bond release and forfeiture. This discussion is adequate. However, no information is provided on the state procedures for filing bonds or insurance policies. This information is needed in order for the Secretary to make a determination of acceptability of the West Virginia bonding and insurance procedures.

Finding 19

The Secretary finds that the Department of Natural Resources has, in part, the authority and the West Virginia program provides, in part, for civil and criminal sanctions for violations of West Virginia law, regulations and conditions of permits and exploration approvals including civil and criminal penalties consistent with Section 518 of SMCRA (penalties) including the same or similar procedural requirements. This finding is made under the requirements of 30 CFR 732.15(b)(7). Provisions corresponding to Section 518 of SMCRA and to 30 CFR 845 are incorporated, in part, in Chapter 20, Article 6, Section 17 of the Code of West Virginia.

On February 26, 1980, the U.S. District Court for the District of Columbia issued its first round decision in the litigation over the permanent program regulations. *In Re: Permanent Surface Mining Regulation Litigation*, Civil Action No. 79–1144. In that decision, the court held that the Secretary could not require a point system for assessing civil penalties. On May 16, 1980, in its second round decision in this litigation, the court answered the Secretary's request for clarification regarding the round one decision remanding the penalty point system. The court stated that the Secretary may not require the states to develop a system to assess penalties at least as stringent as those imposed under the civil penalty system set forth in the Federal regulations. The Secretary has interpreted the court's decision concerning penalty systems in such a way that the states need only develop a penalty system incorporating: (1) the four criteria in Section 518(a) of SMCRA, (2) the procedural requirements of 30 CFR 845.17 through 845.20, (3) the requirement of 30 CFR 845.12 that all cessation orders must be assessed, and (4) the requirement of 30 CFR 845.15(b) that a minimum of $750 per day be assessed for all cessation orders issued for failure to abate a violation. Based on Section 518 of the Act and 30 CFR 845, as interpreted by the District Court's rulings, and the specific findings below, the Secretary finds West Virginia's system for assessing and collecting civil penalties unacceptable as presently structured and explained.

19.1 Section 518(a) of the Federal law provides for a maximum civil penalty of $5,000 for each violation. In the May 23 letter, OSM expressed concern that state law, Section 20–6–17(c), did not indicate the maximum panalty which could be assessed for each violation. West Virginia clarified in its Attorney General's opinion (page 23) that Section 20–6–17(c) of the state law authorizes a maximum penalty of $5,000 for *each* violation. This clarification resolved the concern raised by OSM.

Section 518(a) requires that a mandatory civil penalty of seven hundred fifty dollars per day be assessed if a cessation order is issued. Section 20–6–17(a) of the West Virginia law provides, "If a violation is not abated within the time specified or any expension (sic) thereof, or any cessation order is issued, a mandatory civil penalty of not less than one thousand dollars per day per violation shall be assessed . . ." This is more stringent than the Federal law. The state section also contains a proviso that, "if a cessation order is released or expires within twenty-four hours after issuance no mandatory civil penalty shall be assessed." The Attorney General's opinion (page 25) states that this provision, "is a carrot for prompt effective efforts to deal with a problem and is a necessary adjunct to due process since if the hearing called for within twenty-four hours does not occur it is inappropriate to mandatorily fine someone." While the Secretary does not agree that due process requires a hearing in 24 hours, since both the West Virginia law and SMCRA contain similar provisions promoting the early abatement of a violation, Section 20–6–17(a) of the West Virginia SCMRA is acceptable.

19.2 Section 518 provides for prompt administrative assessment of civil penalties after issuance of notices of violations and cessation orders. The Secretary finds that (1) the proposed West Virginia program does not adequately describe the procedures for proposing assessments of civil penalties and informing operators of the amount of those proposed assessments prior to an assessment hearing; (2) the proposed West Virginia program does not include regulations in accordance with Section 518(c) and consistent with 43 CFR Part 4 and 30 CFR 845.17–845.20, regarding administrative assessment of civil penalties; (3) the proposed use of magistrate court proceedings by West Virginia to impose civil penalties in inconsistent with Section 518 of SMCRA and (4) the West Virginia program does not provide for prepayment of civil penalties into an escrow account, as required by Section 518(c) of SMCRA.

Section 518(c) of SMCRA requires the Secretary to propose an assessment and to inform the operator of that amount within thirty days of the issuance of a notice or order. Furthermore, under Section 518(c), the operator may challenge the amount of that proposed assessment before the Secretary in a formal administrative hearing. These procedures provide notification to the operator of the proposed amount of the penalty, and provide an opportunity for the operator to pay the penalty without the necessity of a formal hearing. To the extent that the West Virginia program fails to incorporate similar procedures for an assessment proposal, it is inconsistent with SMCRA.

Second, the preamble to the permanent regulatory program, at 44 FR 15296 (March 13, 1979), discusses five considerations in determining whether a judicial system for the proposal and assessment of civil penalties is the same or similar as the administrative system under Section 518 of SMCRA. The Secretary has reviewed the information in the administrative record, and has determined that the procedure proposed by West Virginia for judicial assessment of civil penalties does not adequately address these considerations; and hence, as it stands and is presently explained, will not satisfy the requirements of the Act and regulations pursuant to 30 CFR 732.15 (b)(7) and (c). Additionally, the West Virginia magistrate court system does not appear to include citizen participation requirements consistent with 43 CFR Part 4.

Third, SMCRA provides that, after a public hearing of record, findings of fact and a written decision shall be entered. Since West Virginia does not provide for administrative review of proposed penalties it has no such provisions. Even if West Virginia's use of the magistrates to handle civil penalties for the Director was otherwise deemed acceptable, this requirement would not appear to be satisfied. The state law contains no provisions requiring magistrate proceedings to be of record and preparation of findings of fact or written decisions. In addition, W. Va. Code Ann. 50–5–8 provides that any party in magistrate court may demand a trial by jury. Utilization of juries to determine civil penalties appears, on its face, to interfere with the efficient processing of civil penalties, and is not a procedure that is the same or similar to the procedures set forth in Section 518 of SMCRA.

Fourth, West Virginia law does not contain an escrow provision as required by Section 518(c) of Federal law. Under 518(c), Congress stated explicitly that failure to contest the violation, or failure to prepay the penalty, results in a waiver of all legal rights to contest the penalty. Under state law, there is no requirement that an operator challenging a civil penalty assessment prepay the proposed amount at any point during the process of administrative or judicial review.

19.3 Under the proposed West Virginia system the first hearing on a civil penalty would be before the Magistrate Court and would be a full fact hearing. The Attorney General's opinion (page 27) states that W. Va. Code Ann. Section 50–5–12 provides that, after judgment in the magistrate court, any party may appeal to the circuit court of the county and such appeal shall be *de novo*. The Secretary cannot find these provisions consistent with Section 525 of SMCRA. For further discussion of this issue, see Finding 27.

19.4 Federal Section 518(h) provides that, "any operator who fails to correct a violation . . . within the period permitted for its correction . . . shall be assessed a civil penalty of not less than $750 for each day during which such failure or violation continues." Section 20–6–17(a) of the state law provides that, "assessment of civil penalties under this subsection shall continue until corrective steps have been initiated by the operator to the satisfaction of the surface mining reclamation inspector." The state law is less strigent than the Federal law because it mandates an assessment only until corrective steps have begun rather than until the violation is corrected.

19.5 Section 20–6–17(d) of the West Virginia SMCRA provides that civil penalties may be assessed and collected by the magistrate courts. Rule 14.1(b) of the Rules of Civil Procedure for the Magistrate Court of West Virginia provides for a hearing if the defendant alleges that the allegations are not true or that the relief requested in not appropriate. This would be consistent with the hearing requirement of Section 518(b) of SMCRA. However, Section 20–6–24(a) of the state law provides that an operator may also appeal a notice or order to the Reclamation Board of Review. This procedure seems to provide the operator with two independent avenues for taking an appeal which could result in unequal enforcement and two separate appeals being taken with differing results. Possible inconsistencies between these two appeal processes might be worked out by procedural rules of the Reclamation Board of Review or application of various legal principles such as "election of remedies" or collateral estoppel. The state should address these questions in the resubmission.

Finding 20

The Secretary finds that the Department of Natural Resources has, in part, the authority under West Virginia law to issue, modify, terminate and enforce notices of violation, cessation orders and show cause orders consistent with Section 521 of SMCRA (enforcement) and with 30 CFR Chapter VII, Subchapter L (inspection and enforcement), including the same or similar procedural requirements. This finding is made under the requirements of 30 CFR 732.15(b)(8).

Provisions corresponding to Section 521 of SMCRA and to Subchapter L of 30 CFR Chapter VII are included in Chapter 20, Article 6, Sections 16 and 17 of the Code of West Virginia. Discussion of significant issues raised in the review of West Virginia's provisions for violation notices and orders follows.

20.1 Section 20–6–16(a) of the West Virginia law grants discretionary authority for an inspector to issue a cessation order in situations of imminent danger. Section 521(a)(2) of SMCRA mandates that such orders be issued. The Secretary finds that the state law is inconsistent with the requirements of Section 521(a)(2) to the extent that such authority is discretionary.

20.2 Section 20–6–17(a) of the state law requires the issuance of a cessation order for operations or portions thereof which are in violation following the opportunity for abatement. This provision is consistent with Section 521(a)(3) of the Federal law. However, the state provides that if the operator affirmatively demonstrates compliance is unattainable due to conditions totally beyond the control of the operator, cessation is not mandatory. This is inconsistent with Section 521(a)(3) which provides for *immediate* cessation and a maximum time limit of 90 days for abatement of the violation.

The Attorney General's opinion (page 48) states that, in certain instances, the Federal law imposes consequences on operators who are unable to meet mandated abatement times for reasons totally beyond their control. However, the Secretary must abide by the Congressionally mandated time limit of 90 days established in Section 521(a)(3). For this reason, the Secretary cannot approve the state provision to the extent that cessation is not mandatory.

20.3 Section 20–6–17(a) of the West Virginia SCMRA provides that if any of the requirements of the law and regulations or permit conditions have not been complied with, the Director "may" cause a notice of violation to be served upon the operator. The Secretary finds that this provision is less stringent than the corresponding requirement of Federal Section 521(a)(3) which requires mandatory issuance of a notice of violation when "the Secretary or his authorized representative determines that any permittee is in violation of any requirement of this Act or any permit condition required by this Act; but such violation does not create an imminent danger to the health or safety of the public, or cannot reasonably be expected to cause significant, imminent environmental harm to land, air or water resources. . . ."

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The Attorney General's opinion (page 22) attempts to justify the state provision by comparing it to the language contained in Section 517(e) of SCMRA. While the state provision may be consistent with the general language of 517(e), the Secretary finds that it does not comply with the more specific requirements of Section 521(a)(3). As required by Section 521(d), the Secretary cannot approve any state program which contains sanctions less stringent than those of Section 521.

20.4 Section 521(a)(3) of the Federal law provides that a cessation order shall remain in effect until the Secretary determines that the violation has been abated. Section 20–6–17(a) of the state law has no comparable provision. In addition, this section of the state law provides for a mandatory daily civil penalty only until corrective steps have been initiated. The Secretary finds these provisions inconsistent with the Federal requirements. Refer also to Finding 19.4.

20.5 Section 20–6–16(a) of the West Virginia law mandates that a cessation order shall expire 24 hours after the order becomes effective unless an informal conference by a reclamation supervisor is held at or near the mine site. Section 521(a)(5) of SMCRA states that a cessation order shall expire within 30 days unless a public hearing is held at or near the mine site. The Secretary has found (See Finding 30) that the state has not adequately demonstrated that it can conduct the required hearings in a timely manner. To the extent additional information concerning staffing adequacy does not clearly establish that the state will be able to conduct the hearings within 24 hours, the provisions cannot be approved.

20.6 Section (g)(4) of the state program narrative fails to address the procedures for issuance of orders and notices in accordance with 30 CFR 731.14(g)(4). The state must develop a narrative describing its procedures so that the Secretary can determine the adequacy of the State system.

20.7 State Section 20–6–16(e) states that an inspector shall be readily available to vacate a cessation order upon abatement of the violation. The Secretary is concerned that this section would allow and possibly require, the vacation rather than termination of such orders. The Secretary, therefore, requires further explanation of this section to show that properly issued cessation orders will not be improperly vacated.

20.8 State Section 20–6–17(a) omits the language in Section 521(a)(3) of SMCRA which states that in the issued cessation order, "the Secretary shall determine the steps necessary to abate the violation in the most expeditious manner possible, and shall include the necessary measures in the order." The Secretary finds the state provision inconsistent with SMCRA to the extent that the Federal requirement is omitted.

Finding 21

The Secretary finds that the Department of Natural Resources has the authority and the West Virginia program contains provisions to designate areas unsuitable for surface coal mining consistent, in part, with 30 CFR Chapter VII, Subchapter F (designations of areas unsuitable for mining). This finding is made under the requirements of 30 CFR 732.15(b)(9).

Provisions corresponding to Section 522 of SMCRA and to Subchapter F of 30 CFR Chapter VII are included in Chapter 20, Article 6, Section 22, of the Code of West Virginia. Section (g)(11) of the West Virginia program narrative describes the system by which petitions for designating areas unsuitable for surface coal mining will be received and processed and the establishment of a data base and inventory system. A discussion of significant issues raised in the review of West Virginia's provisions for unsuitability designations follows.

21.1 Section 20–6–22(d)(1) of the state law authorizes the Director to grant variances to the prohibitions contained in Section 522(e)(1) of SMCRA. Since the Federal law provides no variances to these prohibitions, the Secretary finds this provision is inconsistent with Section 522(e)(1) of SMCRA.

21.2 The state has proposed to use the West Virginia Heritage Trust Program to satisfy the requirements of a data base and inventory system under Section 522(a)(4)(B) of SMCRA. Since the Heritage Trust Program does not contain all the information necessary for a data base and inventory system, the state should include a general work plan which sets forth a methodology for developing the Trust Program to provide the required information. The discussion should also indicate that the state will identify local, state, and federal sources of information that will be necessary for the process.

Finding 22

The Secretary finds that the Department of Natural Resources has the authority under West Virginia laws and the West Virginia program contains, in part, provisions to provide for public participation in the development, revision and enforcement of West Virginia's laws and regulations and the West Virginia program consistent with the public participation requirements of SMCRA and 30 CFR Chapter VII. This finding is made under the requirements of 30 CFR 732.15(b)(10).

Provisions corresponding to public participation requirements in SCMRA and in 30 CFR Chapter VII are included throughout West Virginia statutes and rules submitted as part of the program. Section (g)(14) of the program narrative describes the procedures for insuring that adequate public participation is provided throughout the development and functioning of the state program.

Discussion of significant issues raised in the review of West Virginia's public participation provisions follows:

22.1 The Secretary finds that Section 20–6–24(b) of the State law is inconsistent with 43 CFR Part 4 to the extent that it provides for a determination of timeliness of intervention on a case-by-case basis. 43 CFR 4.1110(a) allows for intervention at any stage in an enforcement proceeding.

22.2 Section (g)(14) of the state program narrative provides a listing of the areas of public participation. The Secretary finds that this listing is not adequate to determine that the state has the capability of providing for public participation throughout the program because it mentions the subject areas but does not actually describe what is authorized. The listing should provide specific descriptions of the avenues of public participation in each area listed.

While preparing this part of the program narrative, the state may refer to the preamble of the OSM permanent regulations (44 FR 14965, March 13, 1979), which summarizes ten areas in which public participation provisions are required. The state program should address these ten areas at a minimum.

22.3 Section 20–6–24(f) of the state law provides that, with respect to appeals to the Reclamation Board of Review, all fees and mileage expenses incurred and the expense of preparing the record at the request of the appellant shall be paid by the appellant. In the May 23, letter, OSM expressed concern that this provision could result in an appellant bearing all costs of an appeal. The Attorney General's opinion (page 54) states that this provision means only that each party is responsible for its own expenses. However, this section and Section 20–6–25(c) of the state law require the appellant to bear the cost of preparing and transcribing the record. Section 29A–5–1(f) of the Code of West Virginia appears to place the cost of preparing the transcript upon the agency.

The Secretary finds the West Virginia procedures consistent with SMCRA only to the extent that appellants would not

be required to bear the cost of preparing the record of proceeding.

Finding 23

The Secretary finds that the West Virginia Department of Natural Resources has the authority under West Virginia laws and the West Virginia program includes, in part, provisions to monitor, review, and enforce the prohibition against indirect or direct financial interests in coal mining operations by employees of the West Virginia Department of Natural Resources consistent with 30 CFR Part 705 (restrictions on financial interests of state employees). This finding is made under the requirements of 30 CFR 732.15(b)(11).

Provisions corresponding to Section 517(g) of SMCRA are incorporated in Chapter 20, Article 6, Section 40 of the Code of West Virginia.

Only one significant issue was raised in the review of West Virginia's conflict of interest provisions. A discussion of the issue follows.

Section 517(g) of SMCRA requires that no employee of the state regulatory authority shall have a direct or indirect financial interest in any coal mining operation. The West Virginia Reclamation Commission, which consists of four members, three from the DNR and the fourth from the West Virginia Department of Mines, would be subject to this federal requirement.

However, Section 20–6–40(a) of the West Virginia law fails to subject the Reclamation Commission to the conflict of interest requirements. Three members of the Commission are subject to the conflict provisions, through their employment with the Department of Natural Resources. The only member not subject to the requirements is the Director of the Department of Mines, who is subject to a similar provision contained in Section 22–1–5 of the Code of West Virginia. Although this provision is similar, it does not subject the Director of the Department of Mines to the penalties provided by Federal law or Section 20–6–40.

The Secretary finds that the failure of the West Virginia law to include the Director of the Department of Mines under the conflict provisions is inconsistent with Section 517(g) of SMCRA.

Finding 24

The Secretary finds that the West Virginia Department of Natural Resources has the authority under West Virginia laws and the West Virginia program includes provisions to require the training, examination, and certification of persons engaged in or responsible for blasting and the use of explosives in accordance with Section 719 of SMCRA to the extent required for approval of its program. The finding is made under the requirements of 30 CFR 732.15(b)(12).

Provisions corresponding to Section 719 of SMCRA are incorporated in Chapter 20, Article 6, Section 34 of the Code of West Virginia. There are no regulations required at this time.

Section (g)(13) of the West Virginia program narrative contains a description of the cooperative effort between the state Department of Mines and the Department of Natural Resources as it relates to blaster training and certification. West Virginia has no regulations on training, examination, and certification of persons engaged in blasting. However, 30 CFR 732.15(b)(12) does not require a state to implement regulations governing such training, examination and certification until six months after Federal regulations on those provisions have been promulgated. The Federal regulations have not been promulgated at this time.

Finding 25

The Secretary finds that the West Virginia Department of Natural Resources has, in part, the authority under West Virginia laws and the West Virginia program contains, in part, provisions to provide small operator assistance consistent with 30 CFR Part 795 (small operator assistance). This finding is made under the requirements of 30 CFR 732.15(b)(13).

Provisions corresponding to Section 507(c) of SMCRA are incorporated in Chapter 20, Article 6, Section 10(19)(b) of the Code of West Virginia.

Section (g)(16) of the state program submission contains a description of the small operator assistance program within the state. Only one significant issue was raised in the review of the West Virginia small operator assistance program. Discussion of this issue follows.

Section 20–6–10(b) of the state law provides for the payment of costs associated with the determination of probable hydrologic consequences and the statement of the result of test borings and core sampling for operators producing less than one hundred thousand tons of coal annually. The cost "shall be assumed by the Department from funds provided by the United States Department of the Interior pursuant to Public Law 95–87." This has the effect of limiting funding for the small operator assistance program to Federal funds. Such a limitation is not consistent with section 507 of the SMCRA. The Federal funds currently available to West Virginia for small operator assistance are sufficient to meet the present needs of West Virginia. However, this may not be the case in the future and thus it is determined that the West Virginia law concerning small operator assistance does not fully comply with Section 507(c) of SMCRA. The Secretary finds the West Virginia provision inconsistent with SMCRA.

Finding 26

The Secretary finds that the West Virginia Department of Natural Resources has the authority under West Virginia law and the West Virginia program contains provisions to provide protection of employees of the Department of Natural Resources corresponding with the protection afforded federal employees under Section 704 of SMCRA (protection of employees). This finding is made under the requirements of 30 CFR 732.15(b)(14).

Provisions corresponding to Section 704 of SMCRA are incorporated in Chapter 20, Article 6, Section 17(i) of the West Virginia Code. While there is no specific reference to protection of state employees in the presentation of systems in the state program submission, the Secretary finds that incorporation of the appropriate authority is sufficient.

Finding 27

The Secretary finds that West Virginia has, in part, the authority under its laws and the West Virginia program contains, in part, provisions to provide for administrative and judicial review of state program actions in accordance with Section 525 and 526 of SMCRA (review of decisions). This finding is made under the requirements of 30 CFR 732.15(b)(15).

Provisions corresponding to Sections 525 and 526 of SMCRA are incorporated in Chapter 6, Article 9A; Chapter 20, Article 6, Sections 24 and 25; and Chapter 29A of the Code of West Virginia. Section (g)(15) of the program narrative contains a description of the administrative and judicial procedure which are available for the review of administrative decision, action, and refusals to act.

Discussion of significant issues raised in the review of West Virginia administrative and judicial review provisions follows.

27.1 Section (g)(15) of the West Virginia program narrative states that the administrative hearing before the Reclamation Board of Review will be held within sixty days of the notice of filing. Section 20–6–24(c) of the state law states that the hearing will be held

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within 30 days. It appears that Section (g)(15) was prepared prior to passage of the new state law, and the State should eliminate this inconsistency.

27.2 Chapter 6, Article 9A, Section 3 of the West Virginia Code (Open Government Proceedings) requires public notification of all meetings of any governing body. This is consistent with the requirement of Section 525(a)(2) of SMCRA. However, the Open Government Proceedings Law also requires promulgation of rules by each governing body to implement the public notification requirement. These rules were not submitted by the state as part of its program submittal. The Secretary requests that these rules be submitted.

27.3 Section 526(a)(2) of SMCRA states that the court shall have jurisdiction to enter an order requiring payment of any civil penalty assessment enforced by its judgment. The West Virginia program submission does not contain any state law that would indicate such authority exists. Before this aspect of the state law can be found consistent with the Federal law, the state must provide the necessary information to establish the court's jurisdiction.

27.4 It is unclear from the West Virginia submission exactly how an operator may contest the fact of violation and/or the amount of the proposed assessment. The Secretary believes that an operator has his choice of either or both of two routes which may be pursued simultaneously. First, the fact of the violation may be contested administratively before the Reclamation Board of Review. West Virginia law provides in Section 20–6–25 that appeals for decisions of the Board of Reclamation Review shall be to the Circuit Court of Kanawha County, and that the court shall hear such appeal solely on the record made before the board. This procedure is similar to that provide in SMCRA.

Second, Section 20–6–17(d) of the state law provides that the amount of the proposed penalty must be contested before the magistrate courts. In addition, the Attorney General's opinion (page 26) indicates that in a magistrate proceeding both the fact of a violation and the amount of the penalty could be determined by a jury upon appropriate instructions. Rule 17 of the Rules of Civil Procedure for the Magistrate Court of West Virginia provides that any party may demand a jury trial where the amount in controversy exceeds $20.00. Thus, West Virginia allows an appeal procedure that provides for *de novo* review. The Secretary finds this procedure not to be the same or similar to Section 525 of SMCRA.

The Secretary's position that *de novo* review of administrative decisions was acceptable was challenged in the first round of the permanent program litigation. *In Re: Permanent Surface Mining Regulation Litigation*, Civil Action No. 79–1144, in the District Court for the District of Columbia. As a result of that litigation the Office of Surface Mining modified its position on *de novo* review and stated that such reviews would be acceptable if the *de novo* review procedures; (1) insure preservation of the administrative record, including all exhibits and transcripts of all testimony taken at the proceedings; (2) guarantee that any party to a *de novo* review proceeding has the right to use any evidence contained in the administrative record whenever such evidence cannot otherwise be practicably obtained; (3) insure that any money paid into escrow is held until there is a final, binding resolution of the controversy; (4) demonstrate that the provision for trial *de novo* will not result in undue delay so as to undermine the effectiveness of the enforcement program; (5) make trial *de novo* review available to any party to the administrative proceeding, including the regulatory authority and any intervening party; (6) insure that review by trial *de novo* is not available to a person who has failed to appear at or waived his right to an administrative hearing; and (7) provide for representation of the regulatory authority by a licensed attorney at every stage of the judicial review proceedings.

The Attorney General's opinion states that W. Va. Code Ann. Section 50–5–12 provides that, after judgment in the magistrate court, any party may appeal to the circuit court of the county and such appeal shall be *de novo*. Although Section 50–5–12 was not contained in the state's submission the Secretary relies on the Attorney General's opinion in this regard. The section should, however, be part of the state's resubmission.

The Secretary finds the West Virginia review procedure is not the same or similar to the procedures in Section 525 and 526 of SMCRA in that it provides for two separte opportunities for a trial *de novo*, and the state has not demonstrated that its procedures meet any of the seven conditions enumerated above.

Finding 28

The Secretary finds that the West Virginia Department of Natural Resources has the authority under West Virginia laws and the program contains provisions to cooperate and coordinate with and provide documents and other information to the Office of Surface Mining under the provisions of 30 CFR Chapter VII. This finding is made under the requirement of 30 CFR 732.15(b)(16).

Chapter 20, Article 6, Section 20(a) of the Code of West Virginia provides for public notice of applications for permits, applicatons for permit revisions and actions to revoke permits. In addition, the West Virginia Administrative Procedures Act assures that information is publicly available.

Finding 29

The Secretary finds that the West Virginia laws and regulations and the West Virginia program do not contain provisions which would interfere with or preclude implementation of the provisions of SMCRA and 30 CFR Chapter VII. This finding is made under the requirements of 30 CFR 732.15(c).

In West Virginia's permanent program submission, the following laws other than the West Virginia Surface coal mining Reclamation Act were referenced as legal authority for various sections of West Virginia's program.

Open Government Proceedings Law (Chapter 6, Article 9A)
Conflict of Interest Law (Chapter 6B, Article 1)
Administrative Procedures Law (Chapter 29A)
Civil Jurisdiction and Authority Law (Chapter 50, Article 2)

Other state laws and regulations directly affecting the regulation of surface coal mining and reclamation operations include:

Existing Chapter 20, Article 6 of the Code of West Virginia, Surface Mining and Reclamation
Enrolled H.B. 1404, Surface Mining and Reclamation
Existing Chapter 20–6, Series VII (1978) Rules and Regulations Draft Chapter 20–6, Series VII Rules and Regulations
Chapter 20, Article 5 of the Code of West Virginia, Water Resources
Administrative Regulations of the State of West Virginia for Water Quality Criteria on Inter- and Intrastate Streams, 1977
Proposed Administrative Regulations of the State of West Virginia for Water Quality Criteria on Inter- and Intrastate Streams, 1980
Chapter 22 of the Code of West Virginia, Underground Coal Mine Safety Laws

In the substantive review of the program submission, these laws and regulations were reviewed as part of the adequacy analysis or reviewed for their potential for conflicting with the statutory and regulatory elements of the state program. No conflicts were found which might weaken those state laws and state regulations which form the basis for implementation of a program equal to or more stringent than SMCRA or 30 CFR Chapter VII. Although the existing laws do not conflict with an adequate program, they do not contain sufficient provisions to constitute one.

Finding 30

The Secretary finds that the West Virginia Department of Natural Resources has not demonstrated that it will have sufficient legal, technical, and administrative personnel, and sufficient funds to implement, administer, and enforce the provisions of the program, the requirements of 30 CFR 732.15(b) (program requirements), and other applicable state and Federal laws. This finding is made under the requirements of 30 CFR 732.15(d).

Sections (i) and (j) of the State program narrative describe the existing and proposed staff. They do not demonstrate how such staff will be adequate to carry out the functions for the projected workload to ensure that coal exploration and surface coal mining and reclamation operations comply with the requirements of SMCRA and the federal regulations. Section (1) contains a description of the actual capital and operating budget to administer the state program for the prior and current fiscal years, and the projected annual budget for the next two fiscal years. The description does not, however, provide the information in such a way as to allow the Secretary to determine that adequate funds are available.

The state's budget description included several categories of funds which are not part of the permanent regulatory program. These include descriptions of funds for "Reclamation Federal Funds," "AML Reclamation Fund," and "Coal Refuse and Dam Control." These should be removed from the budget description or their relationship to the regulatory program budget should be explained. In addition, Federal SOAP operational funds should be identified separately from other regulatory funds.

Also, since the Division of Water Resources and the magistrate court system are included in the permanent program, capital and operating budgets for the portions of these organizations which will be utilized during the permanent program should be included. The magistrate court information should be included only if the state can adequately address the concerns expressed in Finding 19.

The West Virginia Department of Natural Resources has proposed a fulltime staff of 188 persons. This includes an inspection staff of 94 and a supervisory staff of 10.

The state has indicated that 716 deep mines and 464 surface mines will require inspection (based on 1979 figures). No estimate has been given on other types of inspectable units such as coal preparation plants, loading facilities, etc. Until these figures are presented, no determination on the adequacy of the inspection force can be made. Work load analysis for other staff of the DNR must also be included.

The remaining program staff will be utilized for permit review, SOAP, Abandoned Mine Lands and administrative and clerical support. No personnel have been included for implementation of a civil penalty system.

Since the state has not provided functional job statements with a description of expertise required for each position, no determination of adequacy can be made.

F. Disposition of Comments

The Secretary received a number of public comments on the West Virginia program. The disposition of these comments has been organized into categories to assist the reader. Comments from Federal agencies are addressed first; all other comments are arranged into groups corresponding to the topic areas of Findings 13–30 of Section E of this notice (Secretary's Findings and Explanation).

Many comments pertained to state regulations. As discussed more fully in the introduction to Part E of this document, West Virginia has not promulgated or enacted permanent program regulations at this time. Consequently, public comments dealing with the draft regulations contained in the state program have not be considered for purposes of this section. However, a response to these comments is being prepared by OSM for transmittal to the state for consideration during the resubmission process. This information will be placed in the Administrative Record and will be available for review or can be requested from the Region I OSM office at the address above.

OSM will review the state's disposition of its response to these comments during the review of the state's resubmission. OSM does not, however, anticipate further response to the comments themselves. Commenters should review the enacted regulations and if their concerns have not been addressed, resubmit their comments during the public comment period for the program resubmission. The draft regulations are discussed further in Finding 7, above.

The disposition of public comments is a part of the Secretary's Findings. Where possible, comments with which the Secretary agrees have been incorporated directly into specific findings contained in Part E, above.

1. The Forest Service (FS) suggested that the permit procedures for prospecting, surface mining, and underground mining permits, and designation of lands unsuitable should include notification of the surface owner. The West Virginia SMCRA contains adequate authority to promulgate regulations consistent with 30 CFR 776.12(b) and 786.11. If these regulations are promugated, the West Virginia program will be acceptable in this regard.

2. The FS suggested that coordination with the FS be required when lands administered by it are involved. The Secretary agrees with this comment. Procedures for coordination included in the West Virginia program at Subsection (g)(1) do not fulfill the intent of 30 CFR 732.14(g)(9) and (10) to provide coordination and consulation with Federal and state agencies in permitting and other actions. See the May 23, letter, (Part II, pages 5 and 6) for specific deficiencies in the state procedures.

3. The Soil Conservation Service was concerned that reclamation research and demonstration work be adequately addressed in the state program. SMCRA places no requirements on the states dealing with research and demonstration. West Virginia cannot be required to include these provisions. However, this comment has been forwarded to West Virginia for its consideration.

4. The Department of Energy (DOE) commented that West Virginia does not address the anticipated costs of reviewing permit applications. Section 20–6–9(f) of the West Virginia law requires a specific fee of five hundred dollars at the time of submission of the permit application. This is consistent with Section 507(a) of SMCRA which requires only that the regulatory authority establish a fee which may be less than but shall not exceed the cost of reviewing, administering and enforcing the permit. OSM research indicates that a five hundred dollar fee clearly will not exceed this amount.

5. DOE suggests that the lands unsuitable section of the program narrative, [Section (g)(11)] should include more detail on the necessary components of the data base, and how the data base will be used in conjunction with the criteria for designating lands unsuitable for surface mining. 30 CFR 731.14(g)(11) does not require a data base narrative. Section

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522 of SMCRA requires the state to develop a data base and explain how the criteria for unsuitability are to be used in conjunction with the data base. The state must promulgate regulations to meet these requirements of Section 522.

6. DOE recommended that the state should specify the civil and criminal penalties on which the prosecuting attorney can proceed in the event of a willful conflict of interest. Section 20–6–4 of the state law provides for criminal penalties for employees who knowingly violate the conflict of interest provisions of the state law. This is consistent with Section 517(g) of SMCRA.

7. DOE stated that the narrative section on administrative and judical review was unclear. The Secretary agrees. The state has failed to submit and explain other state laws and procedural regulations having an affect on administrative and judical review, and public participation in this process. See Finding 27.

8. DOE suggested that the state should incorporate estimates for coal production for surface and underground mining at either regional or state levels. 30 CFR 731.14(h)(8) requires projections of coal production, if available from existing studies, for the three to five years after the date of submission of the proposed program. This regulatory requirement is imposed to allow the Secretary to make judgment informed by the history and size of each State's coal industry. West Virginia has said that no suitable studies or projections dealing with West Virginia coal production were available in the course of preparing this submission (Section (h)(8) of the program narrative). The Secretary has not identified specific studies as part of this review, but will assist the state in locating those studies as part of the resubmission process.

9. DOE suggested that a wildlife management professional be added to the staff of the Department of Natural Resources. The Secretary agrees that Section (i) through (k) of the state program narrative is insufficient to cover this subject. The state should not only show that staffing is sufficient, but provide flowcharts, agreements, or other appropriate documents indicating the coordination system, lines of authority, and the staffing functions within each agency and between agencies.

10. The Mine Safety and Health Administration commented that the West Virginia program failed to contain a proposed system for training, examining, and certifying blasters. Within the state program, the West Virginia Department of Mines will be responsible for the training of blasters in accordance with 30 CFR Chapter VII. West Virginia's system for training blasters will be drafted and submitted at a later date. See Finding 24.

11. The Environmental Protection Agency (EPA) recommended language changes in Section 20–6–13(b)(25)(c) to reflect a requirement to select barrier construction materials so as to maintain water quality to a maximum degree at all sites. This same comment applies to Section 20–6–13(C)(4)(a) (iii). The constructed outcrop barrier provision has not been approved as presented (See Finding 13.4).

12. EPA suggested that Section 20–6–13(b)(10)(A) should detail methods or specifically refer to state regulations describing means by which acid or othewise toxic mine drainage shall be avoided. Regulations will be necessary to implement this section of the state law. In addition, certain deficiencies do exist in state Section 20–6–13(b)(10), as discussed in Finding 13.7.

13. EPA recommended language changes in Section 20–6–14(b)(9)(B) to clarify the difference between surface and deep mining as they relate to water monitoring. The Federal Act requires consideration in rulemaking of the differences between surface and underground mining and the Secretary has taken the differences into account in 30 CFR 817.52. The State should also clarify its treatment of the differences. Under Section 20–6–14(b)(9)(B) of the state law, discharges from deep mine openings have to be monitored in accordance with the Clean Water Act of 1977.

14. EPA expressed concern that without provisions for review coordination the unsuitable lands designation process under Section 20–6–22 of the West Virginia SMCRA could result in an interagency permitting conflict. The Secretary shares this concern. To help avoid it, the state must develop regulations requiring notification of interested governmental agencies within three weeks of determining the petition complete.

15. EPA expressed concern that coordination of issuance of permits with other agencies does not mention EPA coordination. The Federal Act by requiring permittees to comply with other laws in effect requires permitting agencies to coordinate their work. The state must promulgate regulations providing for such coordination.

16. EPA noted that if recommended stream criteria for iron are not adopted to West Virginia, the minimum performance standards for waste treatment required by SMCRA may not be sufficient to meet the iron limits in certain stream segments. Under the Clean Water Act of 1977, states are to adopt water quality standards approved by EPA. Under SMCRA, surface mining operations cannot violate these water quality standards. The absence of approved water quality standards in West Virginia may jeopardize EPA concurrence of the state's program.

17. The Corps of Engineers stated that the state program as revised on June 16, 1980, did not address the geotechnical aspects of spoil embankment design and construction, specifically safety factors. In order to meet the requirement of SMCRA to ensure spoil embankment stability, the state must promulgate regulations which address embankment stability.

18. The Bureau of Mines suggested that the following sections of the West Virginia law exceed the requirements of Title V of SMCRA; 20–6–10, 20–6–12(e), 20–6–18(e), 20–6–19, and 20–6–22)(e). The Secretary has made no determination that these sections are in fact more stringent. However, any provision of state law which is more stringent than SMCRA "shall not be construed to be inconsistent with the Act" (Section 505(b) of SMCRA). Therefore, the previously mentioned sections are acceptable even if they are more stringent.

19. The Bureau of Mines suggested that Section 20–6–18(c) of the West Virginia SMCRA is less stringent than Section 510(c) of SMCRA. The West Virginia statute limits consideration of past history of violations to violations of West Virginia law only. The Secretary agrees that this is less stringent than SMCRA Section 510(c). See Finding 14.3.

20. The Bureau of Mines suggested that West Virginia Section 20–6–26(c)(2) which specifies a two year period for revegetation bond release conflicts with Section 515(b)(20) of SMCRA which specifies that successful revegetation must be assured before bond release. The West Virginia SMCRA contains adequate authority to promulgate regulations consistent with the criteria for revegetation success contained in Section 519(c)(2) of SMCRA. If these regulations are promulgated, the West Virginia program will be acceptable in this regard.

21. The Fish and Wildlife Service (FWS) recommended that Section (f) of the program narrative contain appropriate cooperative agreements with other state and Federal agencies or, at a minimum, a list of those agencies the state intends to solicit for technical assistance or services. With the exception of the Department of Mines, all state agencies with a direct responsibility in the state's regulatory process are within the Department of Natural Resources, and therefore are responsible to the Director. Section 20–6–2 of the West Virginia SMCRA addresses the Director's authority. However, the state must provide for cooperation with other interested Federal, state and local agencies. The state program does not presently contain the needed information to determine that this coorperation will occur.

22. The FWS commented that except for the discussion of lands unsuitable for mining, Section (g)(10) of the program narrative is insufficient regarding consultation with state and Federal agencies having responsibilities for the protection or management of fish and wildlife and related environmental values. It also suggested listing the state and local agencies required to be notified to satisfy the coordination requirement. The Secretary agrees with this comment. As pointed out above in response to comment 14, coordination with other regulatory and permitting agencies is a requirement of SMCRA to promote efficiency and insure compliance with other state and Federal laws. Procedures for coordination included in Section (g)(1) of the program narrative do not fill the requirements of the Act as described in 30 CFR 731.14[g](9) and (10) to provide coordination and consultation with state and Federal agencies. See the May 23 letter (Part II, pages 5 and 6) for specific deficiencies in the state procedures.

23. The FWS stated that § 731.14(f) of the permanent regulatory program regulations requires a copy of supporting agreements between agencies which have duties in the state program. It went on to state that there are currently no supporting agreements for consultation with the state or federal fish and wildlife agencies. It felt that these agreements were necessary to demonstrate that adequate protection and consideration will be given to fish and wildlife resources. 30 CFR 731.14(f) does not require the state to enter into cooperative agreements. It simply requires the state to submit such agreements if they exist. Section 20–6–20(a) of the state law does require that at the time of submission of a permit application, the Director shall notify various appropriate Federal and state agencies of the operator's intention to mine on a particularly described tract of land. However, the state has not provided any information on how this requirement will be implemented. This information must be included in Sections (g)(9) or (10) of the program.

24. The FWS stated that state fish and wildlife divisions should be consulted in the initial data gathering phases of developing the Heritage Trust Program to satisfy the requirement of the data base and inventory system required by Section 522 of SMCRA. It went on to indicate that the regulatory authority is required to include information received from the FWS, the State Hisoric Preservation Officer and the agency administering Section 127 of the Clean Air Act. The Secretary agrees with this comment. The state should include these provisions in their regulations or the program narrative.

25. The FWS stated that the program elements in the narrative portion of the West Virginia program were in some cases largely incomplete and in other cases lacked the detail necessary to ensure the protection of proposed or listed endangered and threatened species and their critical habitat. State law is also in some cases incomplete. For this reason the FWS was unable to assess the West Virginia program for compliance with Section 7 of the 1973 Endangered Species Act.

26. The FWS stated that Section 20–6–22 of the West Virginia SMCRA does not include endangered species critical habitat as a criteria for designating areas unsuitable. The state also did not include coordination or notification of other state and Federal agencies. Section 20–6–22 of the West Virginia SMCRA requires consideration of fragile land; however, no definition for fragile land has been included. The definition may be included in the state's regulations.

27. FWS commented that the West Virginia program narrative [Section (g)(4)], for monitoring and inspecting coal exploration, mining and reclamation is incomplete. The Secretary agrees that West Virginia has supplied insufficient information as required in 30 CFR 731.14(g)(4) to allow determination of how the State's regulation of coal exploration would actually work.

28. FWS commented that West Virginia Section (g)(5) lacks discussion of enforcement provisions. The Secretary agrees with this comment. Although the Attorney General's opinion (page 21–29) discusses several areas of the state's enforcement procedures, no discussion of the complete enforcement process, including the entire civil penalty program, was provided. See Finding 19.

29. FWS stated that the West Virginia program narrative in section (g)(6) is incomplete. State Section (g)(6) must contain a system for administering and enforcing the performance standards. An outline to a complete program narrative is contained in 30 CFR Part 731, see especially subsections (g)(6) and (i).

30. The National Park Service (NPS) stated that it should be notified during the first step of the permitting process which is the execution of the unsuitable lands inquiry procedure in most West Virginia permit processes. The unsuitable lands inquiry is not a formal process and there is no requirement for notification of other state and Federal agencies. However, as stated in Section (g)(1) of the West Virginai program narrative, potential conflicts are assessed and state and Federal agencies are given the opportunity to constructively participate in the permit process at a stage where their input can be most beneficial.

31. The NPS requested that it be notified before any decision is made to approve or deny exploration or mining permits in areas which may have the potential to affect the resources of park units. SMCRA does not require actual notification of other agencies of proposed coal exploration activities of less than 250 tons; however, approval from NPS is required for coal removal exceeding 250 tons which adversely affects lands over which it has jurisdiction. See Section 522 of the Act. West Virginia has the necessary statutory authority and must include this provision in their promulgated regulations.

32. The NPS commented that if the permitting agency continues the permitting process in spite of severe objections by other agencies, a copy of the objections should accompany the permit application throughout the remainder of the permitting process. Section 20–6–20 of the West Virginia SMCRA requires that all comments and objections to the proposed permit shall be made available to the public. This would insure that the comments and objections are available throughout the permit process.

33. The NPS commented that it should be involved in the development and review of mining and reclamation plans for surface mining which might have impacts on the resources of any NPS jurisdictional unit. Agencies, including NPS, can review mining and reclamation plans when the operation affects areas under their jurisdiction as specified in the state program narrative, Section (g)(1).

34. The NPS stated that it should be consulted regarding the adequacy of the bond amount when issuance of a permit may affect any NPS jurisdictional unit. Section 20–6–20(a) of the West Virginia SMCRA does require notification of "various agencies" but is not specific. The state regulations should provide the

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agencies to be notified. However, since West Virginia is proposing a statutory bond rather than a bond based on the cost of reclamation, agencies would not be able to address the bond amount.

35. The NPS commented that it should be allowed to participate in inspections in cases where NPS units may be affected. Neither SMCRA nor the permanent program regulations contain provisions for cooperative inspections with Federal agencies. If the NPS desires to be involvd, a cooperative agreement could be proposed to the state. However, the Secretary has no authority to require such an agreement.

36. The NPS requested that it be given the opportunity to directly participate in developing criteria for designating lands unsuitable for surface coal mining near NPS units. The criteria for designating lands unsuitable for surface coal mining are contained in Section 20–6–22 of the state law and are consistent with Section 522(e) of SMCRA. During the promulgation process for the state regulations, the NPS can participate in the development of regulations to implement these criteria and to add additional criteria if proposed by the State.

37. The NPS commented that Section 20–6–22 of the West Virginia SCMRA should include the definitions of "fragile lands" and "historic lands" which appear in 30 CFR 762.5. The definition of these terms need not appear in the state law but may be contained in state regulations.

38. The NPS stated that Section 20–6–22(d)(1) of the state law contains a provision for the regulatory authority to grant variances to the prohibition aagainst mining in certain park and wildlife areas after a finding that positive environmental benefits will result. It feels that this provision for variances is contrary to Section 522(e)(1) of SMCRA and should not be approved. The Secretary agrees with this comment. The variance in Section 20–6–22(d)(1) is inconsistent with Section 522(e)(1) of SMCRA. See Finding 21.1.

Performance Standards

A. Hydrologic Balance

1. Several commenters were concerned that significant groundwater zones could exist and not be protected under Section 20–6–10(a)(13)(H) of the state law which requires protection and monitoring of "significant aquifers." The West Virginia SCMRA contains adequate authority to promulgate regulations consistent with the Federal requirements. These regulations must be included in the state's resubmission.

2. Several commenters were concerned that Section 20–6–14(c)(12) of the state law allows gravity discharges from mines in acid or toxic-producing coal seams. Section 516(b)(12) of SMCRA is quite specific in disallowing these types of discharges. See Finding 13.10.

3. One commenter presented a new technical approach to sediment control structure design based on length of use. 30 CFR 816.46, to which this comment applies, is suspended and in rulemaking at this time. The commenter should present this comment during rulemaking.

B. Fills

1. Several commenters objected to provisions in Section 20–6–13(d) of the West Virginia SCMRA which allow the operator to place first cut spoil and debris on the downslope. SMCRA Section 515(d)(1) specifically prohibits the placement of spoil and debris on the downslope in step slope areas. Excess spoil must be placd in accordance with SMCRA Section 515(b)(22) in order to be consistent with the prohibition in Section 515(d)(1) of SMCRA. See Finding 13.5.

2. Several commenters objected to the provision in West Virginia law at Section 20–6–13(b)(21), which allows for disposal of excess spoil outside of the permit area if such disposal would benefit the environment. Section 515(b)(21) of SMCRA requires that all surface coal mining operations be permitted, including excess spoil disposal areas. While disposal of excess spoil in areas off the actual mining permit can benefit the environment, these areas must be permitted and bonded to insure compliance with the performance and reclamation standards. See Finding 13.3.

C. Topsoil

One commenter noted that the West Viginia law contained no comparable provision to SMCRA Section 515(b)(5) which requires that topsoil be stockpiled so that it is ". . . in a usable condition for sustaining vegetation when restored during reclamation . . ." The Secretary agrees with the comment; however, notes that adequate authority does exist for West Virginia to promulgate regulations consistent with the Federal requirements. If promulgated, such regulations will be sufficient.

D. Blasting

One commenter pointed out that the requirement in Section 515(b)(15)(a) of SMCRA which requires that a daily notice be given to resident/occupiers in the area which might be affected by the use of explosives had been omitted from the state law. The state law contains adequate authority to require the necessary provisions in the state regulations. These enacted regulations must be included in the state's resubmission.

E. Outcrop Barriers

Several commenters stated that Sections 20–6–13(b)(25) and (c)(4) of state law will allow removal of the natural outcrop barrier and leave a constructed barrier. The state has requested approval of this proposal as being more stringent than Section 515(b)(25) of the Act. The Secretary has requested additional supporting information. See Finding 13.4.

F. Revegetation

Several commenters objected to Section 20–6–13(b)(20) of the West Virginia law which requires operator responsibility for five growing seasons for successsful revegetation. Section 515(b)(20) of SMCRA requires responsibility for successful revegetation for a period of five full years after the last year of augmented seeding. If West Virginia fails to define "growing season" to be equal to one year, the use of the term would make Section 20–6–13(b)(20) less stringent than SMCRA.

G. Post-Mining Land Use

Many commenters found unacceptable Section 20–6–13(c)(3) of the West Virginia law which allows variances from AOC for woodland following mountaintop removal mining. This comment is valid since Section 515(c) of SMCRA does not list woodland as an allowable post-mining land use. Agriculture, which is allowed under 515(c) is defined in 30 CFR 701.5 and does not include forestry. Although it could be argued that "commercial" land use, which is permitted by the Act, includes commercial forest land use, such an interpretation was not accepted by OSM at 44 FR 15288–9 (March 13, 1979), for the following reasons:

1. It could lead to indiscriminate granting of variances from AOC restoration on mountaintop mining areas.

2. Level or gently rolling land is not essential for conducting commercial forestry. Thus, no variance to AOC would normally be necessary.

The Secretary has requested the State to provide further information on this alternative land use. See Finding 13.8.

H. Auger Mining

1. A commenter recommended that the state program require maximization of coal recovery when augering is involved. This point is covered in Section 20–6–13(9) of the state law. The DNR is given authority to prohibit augering if necessary to maximize the utilization, recoverability or conservation of the mineral resource. This provision is the same as the provision in Section 515(b)(9) of SMCRA.

2. A commenter suggested that the state proposal with regard to auger mining should assure that future mines will not be endangered; that exemptions from auger hole sealing will be granted only if pollution will not occur and that access to drilled holes should follow Federal regulations. State law provides the necessary authority to promulgate acceptable regulations in this area. The regulations should be included in the state's resubmission.

I. Deep Mines

A commenter recommended that surface mining not be allowed near deep mines unless the DNR approves. The state provision 20–6–14 repeats exactly the provision of SMCRA Section 516, with the addition of a requirement that inadverent openings to underground mines be sealed. Both requirements imply approval by the regulatory authority as well as that of the state agency reponsible for health and safety of underground mines.

Permitting

1. The West Virginia Division of Water Resources pointed out discrepancies between the program narrative and the Division's role and responsibility in the permitting process under West Virginia law. It has been found that the state has not demonstrated the authority to administer a permit system consistent with SMCRA and, further, that the state has not demonstrated that it has sufficient personnel to implement the proposed program. See Findings 14 and 30, respectively. The errors noted by the commenter should be corrected by the state's resubmission.

2. Comments were made relating to the provision of the West Virginia law [20–6–10(a)(13)] which allows a person approved by the Director to prepare and certify maps and plans as part of a permit application. The commenters stated that only properly trained and experienced professional engineers and/or professional geologists should be allowed to perform these functions as required by Section 507(b)(14) of SMCRA. See Finding 13.9.

3. One commenter stated that the state law [Section 20–6–10(f)] requires submission by an applicant of a brief explanation of permanent permit suspensions, revocations, and bond forfeitures, while 30 CFR 778.14(b) requires a detailed listing of the facts and the current status of the proceedings involving the above actions. The state statutory language corresponds to SMCRA [Section 507(b)(5)], except for the inclusion of the word "permanent" preceding "permit suspensions." This additional term makes the state provision less stringent. See Finding 14.2.

4. A commenter also stated that 30 CFR 778.14(c) requires a listing of each violation received by the applicant pertaining to air or water environmental protection. The requirement of 30 CFR 778.14(c) is mandated by Section 510(c) of SMCRA. The state law [Section 20–6–10(f)] requires a listing of only the violations resulting in bond forfeitures, permit revocations, cessation orders of permanent suspension orders and is not consistent with SMCRA.

5. A commenter stated that the West Virginia law Section 20–6–11(a)(2) does not require a description of the land use other than the most immediate use at the time of the application. Section 20–6–11(a)(2) is consistent with Section 508(a)(2) of SMCRA.

6. One commenter was concerned that the requirements in 30 CFR 779.24(g) to locate surface water bodies such as streams, lakes, ponds, and springs is not included in the state program. Section 20–6–10(a)(12) of the state law, which is consistent with Section 507(b)(13) of SMCRA, requires the same information as would be shown on a USGS topo map. Such maps show surface water bodies.

7. A commenter stated that the detailed blasting plan required by 30 CFR 780.13 is not included in Section 20–6–10(e) of the West Virginia law. However, this provision of West Virginia law requires a blasting plan and is consistent with 507(g) of SMCRA. The state has the necessary authority to promulgate regulations consistent with 30 CFR 780.13.

Coal Exploration

One commenter enumerated a number of shortcomings in the state regulations for exploration and requested that differences be explained. To remove greater than 250 tons during exploration, the state law requires the operator to obtain a surface mining permit for the area to be disturbed. In effect, the State program primarily provides for only one category of coal removal while conducting exploration—those that remove less than 250 tons. To remove more than 250 tons, specific approval of the DNR is required. A surface mine permit is required if specific approval in not obtained to remove more than 250 tons, in which case, the requirements of Section 20–6–13 of the West Virginia SMCRA are applicable. The state program is silent on the applicable standards for exploration reclamation in the case of the Director's approval to remove more than 250 tons. These should be included on resubmission.

Inspecting and Monitoring

1. Two commenters stated that state inspections, as required by Section 20–6–15(c), are required once every thirty days. The commenters felt that this provision was less stringent than the Federal requirement. Section 517(c) of SMCRA requires the regulatory authority to conduct monthly inspections at a rate of two partial inspections and one complete inspection per calendar quarter. The state law contains the necessary authority to promulgate regulations consistent with the federal requirements.

2. Commenters addressed a concern that the number of inspectors being proposed by the state in Section (i) of the program narrative may not be sufficient to adequately perform the necessary permanent program functions. Finding 30 does not approve the state's proposed staffing since no justification was provided to demonstrate the state's capability to administer the permanent program. The state should include this information with their program resubmission.

Bonding

1. One commenter stated that the State does not require bonds to be held until successful revegetation has been established for five successive years as required by Section 515(b)(20) of SMCRA. As discussed in Finding 13.2, Section 20–6–13(b)(20) of the West Virginia SMCRA requires the operator to assume responsibility for successful revegetation for a period of not less than five growing seasons. The State regulations must define "growing season" in a manner consistent with the revegetation provisions of Section 515(b)(20) of SMCRA. See Finding 13.2.

2. One commenter indicated that West Virginia's $1000/acre bond rate, as required by 20–6–12 of the State law, was clearly inadequate even when supplemented by a special reclamation fund. Finding 18 discusses the State's alternative bonding system and concludes that the State has not adequately demonstrated that it can achieve the objectives and purposes of the Federal system in accordance with Section 509(c) of SMCRA.

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Civil Penalties

The Tug Valley Recovery Center (TVRC) and other commenters submitted a number of comments concerning West Virginia's civil penalty procedure as stated in Section 20–6–17 of the West Virginia SMCRA. Disposition of these comments relates to the Secretary's Finding 19.

1. TVRC objected to the language in State Section 20–6–17(d) which provides that, "such civil penalty may be imposed and collected by the magistrate courts which shall have jurisdiction over all civil penalty actions brought by the Director", on the grounds that the word "may" would permit magistrates to exercise discretion to not impose certain penalties that are mandatory.

The sentence referred to by TVRC read as follows: "Notwithstanding the jurisdictional limitations contained in Article 2 of Chapter 50 of this Code, any such civil penalty may be imposed and collected by the magistrate courts . . ." In the context of the entire sentence it appears that the legislature was merely clarifying that certain jurisdictional limitations on the authority of the magistrates contained in Article 2 Chapter 50 would not be applicable where the magistrates were reviewing cases brought under the West Virginia Surface Coal Mining and Reclamation Act. Although the Secretary has not approved the magistrate system on other grounds, use of the word "may" in Section 20–6–17(d) would not give the magistrates discretion to waive mandatory penalty assessments provided for in 20–6–17(a) in the State law.

2. Several commenters stated that the use of the magistrates, an independent judicial body, to impose civil penalties is not similar to the Federal law which requires administrative assessment and review of penalties. Civil penalty assessments must be made by the regulatory authority. Discussion of this conclusion is contained in Finding 19.2.

3. Several commenters objected to the use of the magistrate court because the magistrates do not have the requisite technical training or knowledge to understand or judge the seriousness of violations. The Secretary does not agree with this comment because Federal law does not require that persons involved in assessing or adjudicating civil penalty assessments have any special technical training. Although such technical training might be beneficial, it cannot be required by the Secretary.

4. Several commenters stated that use of the magistrate system would require inspectors to prepare for long hearings on technical evidence, would tie up enforcement efforts, and keep inspectors busy in magistrate court waiting rooms. Due process demands that any person challenging a civil penalty assessment be given a right to a hearing. This necessarily involves presenting evidence concerning the violation and may well require inspectors to take time out from enforcement duties to testify. Although any adjudicatory system would result in enforcement personnel being taken away from their assigned duties, this should be addressed under the State's staffing requirements to ensure that an adequate enforcement staff is available at all times.

5. Several commenters stated that the magistrate court in West Virginia was subject to political pressure and, therefore, would result in penalty decisions favorable to industry and discourage inspectors from assessing penalties. Information in the Administrative Record (Administrative Record No. WV 165 Exhibit A, submitted by Benjamin C. Green, President of the West Virginia Surface Mining Reclamation Association) showed 784 successful prosecutions before magistrates by DNR in 1979. This would tend to refute this contention. In addition, provided West Virginia develops an approvable system for assessing civil penalties that involves the magistrates, their decisions would be subject to both judicial review and the Secretary's oversight function.

6. Several commenters noted that the magistrate system was subject to crowded dockets and that this fact would result in delays and ultimately in few penalties being issued or collected. The Secretary agrees with this comment. In order for West Virginia to receive an approval of this civil penalty system, it will be necessary for the state to submit information demonstrating that the court docket dealing with cases other than those involving surface mining civil penalties will not interfere with the state's meeting certain criteria, including: a demonstration that the alleged violator is required to place the proposed penalty in escrow within a time period consistent with Section 518 of SMCRA and the Secretary's regulations; that adequate staff exists to handle all phases of the civil penalty system; and that cases would be processed in a timely manner.

7. Several commenters, including the TVRC, stated that West Virginia's civil penalty system did not provide for a uniform method of assessment. The Secretary agrees that one of the drawbacks to the state's system is that it fails to provide for any mechanisms which might lead to uniform assessment of civil penalties. The state should propose a system that will lead to uniform assessment of penalties and demonstrate how the penalty criteria in 20–6–17(c) relate to the amounts assessed.

8. Several commenters noted that the West Virginia law did not require that mandatory penalties continue until the violation was abated, contrary to the requirement of Section 518(h) of SMCRA. This comment is discussed under Finding 19.4.

9. Several commenters observed that the West Virginia civil penalty system did not address itself to how continuing violations would be assessed. Although West Virginia law states at 20–6–17(a) that, "if a violation is not abated within the time specified . . . a mandatory civil penalty of not less than one thousand dollars per day per violation shall be assessed . . ." the West Virginia program narrative does not set forth procedures for assessing and collecting fines for continuing violations. This should be addressed in West Virginia's resubmittal of their program narrative.

10. TVRC commented that the availability of a jury trial *de novo* in magistrate court was inconsistent with the Federal Act. The West Virginia Surface Mining and Reclamation Association commented that *de novo* review provided more due process for all parties and should be allowed. The Secretary has decided previously that *de novo* review is acceptable only if certain procedures are met. A discussion of *de novo* review is contained in Finding 27.

11. TVRC commented that the number of opportunities for operators to delay and defeat the civil penalty process in magistrates court was unacceptable because the operator could swamp the court with motions to dismiss, discovery motions, legal briefs and technical evidentiary objections. It is not objectionable that a review or adjudicator process can be made cumbersome by the use of traditional legal devices as long as the operator has placed the amount of proposed penalty in escrow within 150 days from the date he receives a notice of violation or cessation order. In addition, the state should demonstrate that given this possibility the procedures, staffing and funds are available to process appeals without curtailing field enforcement.

12. TVRC objects to using the magistrates to administer the civil penalty system because Congress intended courts to be involved only in the collection of civil penalties and in reviewing appeals from final assessments made by an administrative agency. In support of this view, the commenter notes that Section 518(d) of the Federal law provides that civil penalties owed under the Act may be recovered in a civil action brought by the Attorney General in any appropriate district court of the United States. Section 518 of the SMCRA requires the administrative agency to make the penalty assessments. A more detailed discussion of this is contained in Finding 19.

13. TVRC comments that under the Federal Act it is intended that an administrative officer (in the form of an administrative law judge) would hear the operator's challenge to the fact of violation. TVRC objects to the West Virginia system because it would permit the operator to challenge the fact of violation as well as the proposed penalty in magistrate court. Section 20–6–24(a) of state law provides that an operator may also appeal a notice or order to the Reclamation Board of Review. This means the operator may have two independent avenues for taking an appeal which could result in unequal enforcement and "forum shopping." This dual procedure also would present the possibility of two separate appeals being taken with differing results. This comment is discussed under Finding 19.5.

14. TVRC states that the West Virginia civil penalty procedure should be disapproved because officials of the Department of Natural Resources have stated publicly that they do not intend to take seriously the civil penalty sanction and do not really intend to use it as an enforcement tool. The Secretary does not have authority to reject a procedure on the basis of general, non-binding statements made by officials that the procedure would not be used. Whether or not the provisions of state law, including the civil penalty assessment procedures, are in fact carried out by the state is a matter that must be left to oversight.

15. TVRC notes that Section 503(a)(3) of the SMCRA mandates that the state regulatory authority have "sufficient administrative and technical personnel and sufficient funding to enable the state to regulate coal mining operations in accordance with the requirements of this Act." The commenter states that West Virginia has not fulfilled that requirement with respect to the magistrate system because there is no demonstration that (1) the magistrates have appropriate support personnel or funding for court reporters, (2) inspectors have adequate training necessary to successfully prosecute civil penalty actions, (3) the state has sufficient attorney staff to back up the inspectors, and (4) the magistrate court or the circuit courts can process civil penalty actions efficiently and promptly given their current caseload. The Secretary agrees with this comment. The state should submit information sufficient to enable the Secretary to make a decision on these matters.

16. Several commenters noted that West Virginia does not provide for pre-payment of a civil penalty assessment as a prerequisite to a hearing, as required by Section 518(c) of SMCRA. This omission makes the West Virginia program less stringent than SMCRA.

17. TVRC states that the venue rules contained in the "Rules of Civil Procedure for Magistrates Court of West Virginia" would allow the operator to go to any magistrate in the county (1) where his operation is located, (2) where the company office is located, or (3) where the defendant owns property, in order to seek review of a civil penalty proposed by a DNR inspector. The commenter states that this would lead to "forum shopping" because the operator would seek out the magistrate most likely to assess the lowest penalty. Although the state's civil penalty system has not been approved on other grounds, the Secretary notes that the process envisioned by West Virginia (Attorney General's Opinion, page 26) would require the DNR inspector to file a complaint in magistrate court for collection of the penalty. If this is the case, the possibility of "forum shopping" by operators seeking review of notices or orders would not be a problem.

18. The West Virginia Surface Mining and Reclamation Association commented that actual data regarding the magistrate system's ability to handle the anticipated civil penalty caseload was available from the State's Supreme Court of Appeals, and that the system seemed more than capable of handling the present caseload. This material is not in the administrative record, nor is it contained in West Virginia's program submission; therefore, the Secretary cannot respond to this comment.

Notice of Violation and Cessation Orders

1. Several commenters objected to the state provision which allows discretion in citing violations detected during an inspection [Section 20–6–17 of the West Virginia SCMRA]. These comments are accepted in that Section 521(a)(3) of the Federal law clearly requires that the "Authorized representative *shall* issue a notice of violation upon detection of a violation of the Act, regulations, or permit conditions." Section 20–16–17 of the state statute says "The Director *may cause* a notice of violation to be served. . . ." The state must provide for issuance of violation notices in accordance with Section 521(a)(3).

2. One commenter stated that the state did not define the circumstances under which a cessation order will not be issued following failure to abate a violation. Section 20–6–17(a) of the state law deals with this subject. Section 521(a)(3) of SMCRA is very specific on the issuance of cessation orders for failure to abate a violation. Federal law requires immediate cessation if the violation has not been abated. The state provision does not contain this requirement and is not approved. See Finding 20.2.

Designating Areas Unsuitable

1. One commenter stated that Section 20–6–22(d)(i) of the state law provides for variances from the prohibition to mining in National Parks. This provision is inconsistent with Section 522(c) of SMCRA and must be deleted from the state law.

2. One commenter stated that the Director may petition to designate an area unsuitable for mining [Section 20–6–22(b) of the West Virginia SCMRA]. The commenter felt that this was not in compliance with Federal law. Although the final decision on a petition is made by the Reclamation Commission, which is chaired by the Director, the decision is a matter of record and subject to appeal. This would prevent the Director from issuing unfounded decisions.

3. One commenter stated that the state program does not indicate that there are some areas of the state that probably should never be mined. The state law, Section 20–6–22, includes the prohibitions and limitations on mining contained in Section 522(e) of SMCRA. In addition, the state has included a partial process for designation of lands unsuitable for mining in Section (g)(11) of the program narrative. Use of the designation process will identify other areas where mining is inappropriate and should be prohibited. See Finding 21.

4. One commenter felt that the state's proposed system for designating lands unsuitable for mining did not meet the Federal procedural requirements. A proposed flow-chart and narrative were submitted by the commenter to correct the deficiencies contained in the state process as described in Section (g)(11) of the program narrative is deficient (see Finding 21), the Secretary cannot require the state to adopt the submitted process.

All that can be required is that the state provide a process consistent with the Federal requirements.

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Public Participation

1. Several commenters objected to Section 20–6–15(g) of the state law, which places limitations on a citizen's right to inspect mine sites which are suspended to be in violation. The comment is accepted. See Finding 17.

2. Many commenters expressed only a general dissatisfaction for past and current state regulatory agency practices concerning citizen/public participation. Past practice of a state agency cannot be considered for purposes of program approval, unless it is continued as a formal policy statement, statute, or regulation.

3. Several commenters focused on opportunities for citizen participation in the procedures for permit renewals, prospecting applications, permit approval decisions and blasting. The concerns of the commenters are valid. See Finding 22.

4. Some commenters were concerned with public participation in the permit transfer procedures. West Virginia law Section [20–6–199(d)] prohibits transfer of permits, providing only for reassignment upon approval of the Director of DNR. In such cases, the party to whom the permit was reassigned must apply for a new permit; thus, the public participation opportunities required for permit applications would be triggered.

5. One commenter submitted a document entitled "Citizens Group Proposal for Public Participation in the West Virginia Permanent Regulatory Program." The proposal outlined a public participation plan for the Department of Natural Resources and established citizen advisory groups. The Secretary has no authority to require the state to enter into this type of agreement with citizen groups.

Administrative and Judicial Review

The Center for Law and Social Policy objected to West Virginia's provision for a Reclamation Board of Review comprised of five members appointed by the Governor [West Virginia SCMRA 20–6–23]. The Center states that the "mixed" board would not result in review by impartial decision makers and is, therefore, in violation of Section 517(g) of the Act, and the Administrative Procedure Act, 5 U.S.C. 551 et seq.

30 CFR 705.5 states explicitly that, ". . . members of advisory boards or commissions established in accordance with State law or regulations to represent multiple interests are not considered to be employees." Therefore, 517(g) of the Act which requires in relevant part that, "no employee of the state regulatory authority performing any function or duty under this Act shall have a direct or indirect financial interest in any underground or surface coal mining operation," is not applicable to the West Virginia Reclamation Board of Review. In response to a petition filed on December 15, 1978 [44 FR 11795, March 2, 1979] the Secretary proposed certain amendments to the regulations [44 FR 52098, September 6, 1979]. Since no final regulations have been promulgated at this time, West Virginia's proposal for a "mixed" board is not inconsistent with Federal law or regulations.

Staffing

One commenter stated that the Division of Reclamation, which is the responsible agency within the DNR, was planning to increase their staffing to include expertise in water resources, wildlife, etc. The commenter stated that since DNR already had this expertise in other Divisions, the addition of staff in the Division of Reclamation was wasteful of expertise and person-power. The commenter went on to state that the arrangement being proposed eliminated the necessary checks and balances. Under the Federal requirements the regulatory authority must provide certain types of expertise in order to meet the minimum standards for program approval. The manner in which this expertise is supplied is entirely up to the regulatory authority. If the expertise is provided within the regulatory authority, sufficient coordination must be provided with other interested agencies. The manner in which the Department of Natural Resources intends to provide the necessary expertise is acceptable provided adequate coordination with other agencies is provided. Please refer to Findings 14 and 30 for additional comments concerning coordination and staffing.

G. Portions Approved / Portions Disapproved

The West Virginia program is approved in part and disapproved in part. As indicated above under the Secretary's findings, certain program parts meet the criteria for state program approval in 30 CFR 732.15 and certain program parts do not meet the criteria. Partial approval means that West Virginia may revise and resubmit the disapproved portions of the program within 60 days of the effective date of the decision. The resubmission will then be reviewed and approved or disapproved under procedures in 30 CFR Part 732. Until the entire program is approved, however, the state will not assume primary jurisdiction to implement and enforce the permanent program under SMCRA.

The following program parts are approved:

1. The West Virginia Surface Coal Mining and Reclamation Act as amended with the following exceptions:

1. Section 20–6–3(a) as it relates to water quality standards. See Finding 13.12.

2. Section 20–6–3(b) as it relates to jurisdiction over ground water. See Finding 13.13.

3. Section 20–6–3(c) as it relates to highwall elimination and minor deviations. See Findings 13.1 and 13.11.

4. Section 20–6–3(j) as it relates to the actual areas included and the length of time they are considered disturbed. See Finding 13.14.

5. Section 20–6–3(t) as it relates to the proviso for permanent facilities. See Finding 12.2.

6. Section 20–6–10(a)(3) as it relates to identification of previous permits. See Finding 14.1.

7. Section 20–6–10(a)(5) as it relates to identification of suspended permits. See Finding 14.2.

8. Section 20–6–10(b) as it relates to funding under the small operator assistance program. See Finding 25.

9. Section 20–6–10(f) as it relates to identification of violations of air and water quality laws. See Finding 14.3.

10. Section 20–6–12(a) as it relates to the proposed alternative bonding system. See Finding 18.1.

11. Section 20–6–12(f) as it relates to water quality of the receiving stream. See Finding 18.2.

12. Section 20–6–13(b)(10)(B) and Section 20–6–14(b)(9)(B) as they relate to applicable state and Federal water quality laws. See Finding 13.7.

13. Section 20–6–13(b)(21) as it relates to placement of spoil outside the permit area. See Finding 13.3.

14. Section 20–6–13(b)(25) as it relates to the use of a constructed outcrop barrier. See Finding 13.4.

15. Section 20–6–13(c)(3) as it relates to the postmining land use of woodland. See Finding 13.8.

16. Section 20–6–13(d) as it relates to placement of spoil on the downslope. See Finding 13.5.

17. Section 20–6–14(b)(5) as it relates to jurisdiction over liquid wastes. See Finding 13.6.

18. Section 20–6–14(b)(12) as it relates to approval of up-dip mining. See Finding 13.10.

19. Section 20–6–15(g) as it relates to operator liability during citizen initiated inspections. See Finding 17.

20. Section 20–6–16(a) as it relates to discretionary issuance of cessation orders and expiration of cessation orders within 24 hours. See Findings 20.1 and 20.5.

21. Section 20–6–16(c) as it relates to vacation of cessation orders following abatement of the violation. See Findings 20.7.

22. Section 20–6–17(a) as it relates to non-assessment of daily civil penalty for violations abated within 24 hours; the assessment of penalties until action to abate the violation is initiated; the unattainable abatement provision; the discretionary issuance of a notice of violation; and inclusion in a cessation order of steps necessary to abate a violation. See Findings 19.2, 19.4, 20.2, 20.3, 20.4, and 20.8.

23. Section 20–6–17(d) as it relates to the use of magistrate courts for assessment of civil penalties. See Findings 19.2 and 19.3.

24. Section 20–6–17(d) and 20–6–24(a) as they relate to dual procedures for appeals from civil penalty actions. See Findings 19.5 and 27.4.

25. Section 20–6–18(c) as it relates to the Director's authority to consider of West Virginia laws only. See Finding 14.3.

26. Section 20–6–22(d)(1) as it relates to granting variances to the requirements of Section 522(e)(1) of SMCRA. See Finding 21.1.

27. Sections 20–6–24(f) and 20–6–25(c) as they relate to appellant expenses. See Finding 22.3

28. Section 20–6–31 as it relates to issuance of incidental permits to operations of more than two acres. See Finding 14.4.

29. Section 20–6–133 as it relates to the experimental post-mining land use of agriculture. See Finding 13.15.

30. Section 20–6–40(a) as it relates to exemption of the Director of the Department of Mines from the conflict of interest provisions. See Finding 23.

31. All Sections containing the provision for use of an "approved person" rather than a registered Professional Engineer. See Finding 13.9.

32. Those sections of the law which should contain provisions comparable to the following omitted Federal requirements of SMCRA:

a. Section 518(b)(2) as it relates to the assessment and collection of civil penalties. See Finding 19.2; and

b. Section 518(c) as it relates to an escrow provision. See Finding 19.2.

II. Proposed systems and processes described in the West Virginia program narrative with the following exceptions:

1. Section (g)(1)—See Findings 14.5 and 15.1.
2. Section (g)(3)—See Finding 18.4.
3. Section (g)(4)—See Finding 20.6.
4. Section (g)(6)—See Finding 13.16.
5. Section (g)(7)—See Finding 19.2.
6. Section (g)(11)—See Finding 21.1.
7. Section (g)(14)—See Finding 22.2.
8. Section (g)(15)—See Finding 27.1.
9. Section (h)(8)—See Federal agency comment 8.
10. Sections (i), (j), and (l)—See Finding 30.

H. Effect of this Action

West Virginia is not now eligible to assume primary jurisdiction to implement the permanent program. West Virginia may submit additions or revisions to its proposed program within sixty days of this decision to correct those parts of the program which are not approved. The State must submit approvable regulations and additional information as identified in the Secretary's Findings and the Disposition of Comments.

If no revised submission is made within sixty days, the Secretary will take appropriate steps to promulgate and implement a Federal program in the State of West Virginia. If the disapproved portions of the State regulatory program are revised and resubmitted within the sixty day time limit, the Secretary will have an additional sixty days to review the revised program, solicit comments from the public, the Administrator of the Environmental Protection Agency, the Secretary of Agriculture and the heads of other Federal agencies and to approve, disapprove, or conditionally approve the final West Virginia program submission.

This approval in part and disapproval in part relates at this time only to the permanent regulatory program under Title V of SMCRA. This partial approval does not constitute approval or disapproval of any provisions related to the implementation of Title IV of SMCRA, the abandoned mine lands reclamation program. In accordance with 30 CFR Part 884 (State Reclamation Plans), West Virginia may submit a State AML reclamation plan at any time. Final approval of an AML plan, however, cannot be given by the Director of OSM until the State has an approved permanent regulatory program.

There are no coal bearing Indian lands in West Virginia. At present there is no coal mining on Federal lands in West Virginia. In the event that surface mining and reclamation operations on Federal lands are proposed, however, the initial Federal lands program will be governed by regulations in 30 CFR Part 211. When the State regulatory program is approved, the Federal lands program, if one is necessary, will be governed by 30 CFR Part 740.

The Secretary does not intend to promulgate rules in 30 CFR Part 948 until the West Virginia program has been either finally approved or disapproved following opportunity for resubmission.

I. Additional Findings

The Secretary has determined that pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this approval in part.

The Secretary has determined that this document is not a significant rule under E.O. 12044 or 43 CFR Part 14, and no regulatory analysis is being prepared on this approval in part.

Dated: October 14, 1980.

Joan M. Davenport,

Assistant Secretary of the Interior.

[FR Doc. 80-32818 Filed 10-17-80; 8:45 am]
BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52 and 81

[A-9-FRL 1637-8]

Approval and Promulgation of Implementation Plans and Attainment Status Designations; California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rules; extension of comment periods.

SUMMARY: On August 19, 1980 [45 FR 55231] a notice of proposed rulemaking was published concerning the sulfur dioxide nonattainment area boundaries in Kern County. Notices of proposed rulemaking were published regarding the South Central Coast Air Basin nonattainment area plan [NAP] [45 FR 58912] and the San Joaquin Valley Air Basin NAP for Fresno, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare Counties [45 FR 58897] on September 5, 1980. A notice of proposed rulemaking was also published on September 15, 1980 [45 FR 60931] for the Kern County portion of the San Joaquin Valley Air Basin NAP. The notices provided 30 day public comment periods. During the comment periods the EPA Regional Office received several requests to extend the comment periods. This notice officially revises the public comment periods.

DATES: The comment period deadlines are extended as follows:

October 20, 1980: South Central Coast NAP.

October 20, 1980: San Joaquin Valley NAP for Fresno, Kings, etc.

October 29, 1980: San Joaquin Valley NAP for Kern County.
December 1, 1980: Nonattainment Area Boundaries in Kern County.

FOR FURTHER INFORMATION CONTACT:
Douglas Grano, Chief, Regulatory Section, Air Technical Branch, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont St., San Francisco, Calif. 94105 (415) 556-2938.

Dated: October 8, 1980.

Sheila M. Prindiville,
Acting Regional Administrator.

[FR Doc. 80-32768 Filed 10-17-80; 8:45 am]
BILLING CODE 6560-26-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 80

Nondiscrimination on the Basis of Race, Color or National Origin Under Programs Receiving Federal Assistance Through the Department of Health and Human Services

AGENCY: Office for Civil Rights, Department of Health and Human Services.

ACTION: Notice of decision to develop regulations.

SUMMARY: These proposed regulations will revise the Department of Health and Human Services' existing regulations implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* Title VI prohibits discrimination on the basis of race, color or national origin in programs receiving Federal financial assistance from the Department of Health and Human Services. These proposed regulations (1) will delete references to programs which were transferred to the Department of Education by the Department of Education Organization Act, Public Law Number 96-88, Oct. 17, 1979, (2) add examples and provisions specific to programs funded by the Department of Health and Human Services, (3) incorporate suggestions from the Department of Justice under its Title VI coordination responsibilities, and (4) improve the clarity and readability of the existing regulations.

FOR FURTHER INFORMATION CONTACT:
Brenda Kohn, Staff Attorney, Office of the General Counsel, Civil Rights Division, Department of Health and Human Services, 5627-E North Building, 330 Independence Avenue, S.W., Washington, D.C. 20201, (202) 245-7420.

Dated: September 28, 1980.

Sylvia Drew Ivie,
Director Office for Civil Rights.

[FR Doc. 80-32562 Filed 10-17-80; 8:45 am]
BILLING CODE 4110-12-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 173, 177, and 178

[Docket No. HM163-E; Notice No. 8]

Withdrawal of Certain Bureau of Explosives Delegations of Authority and Proposed Miscellaneous Amendments

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Materials Transportation Bureau (MTB) proposes to issue an amendment to the Department's Hazardous Materials Regulations to (1) withdraw the two remaining delegations of authority to the Bureau of Explosives (B of E) in Part 173 and one in Part 177; (2) amend § 171.7(d) to include Compressed Gas Association (CGA) Pamphlets S-1.1, C-12 and C-14; and (3) revise § 173.86(b) and § 173.114a(d)(3) to include the Bureau of Mines, U.S. Department of the Interior, as an authorized testing agency. Also, § 178.59-16 (a) and (b) and § 178.60-20 (a) and (b) would be revised to coincide with the proposed change in § 173.303(a).

DATE: Comments must be received on or before December 5, 1980.

ADDRESS: Address comments to Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. It is requested that the docket number be identified and that five copies be submitted. The Dockets Branch is located in Room 8426 of the Nassif Building, 400 7th St., SW., Washington, D.C. Office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday. Telephone (202) 426-3148.

FOR FURTHER INFORMATION CONTACT:
Darrell L. Raines, Chief, Exemptions and Regulations Termination Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Research and Special Programs Administration, Washington, D.C. 20590, (202-472-2726).

SUPPLEMENTARY INFORMATION: On November 26, 1979 the MTB published Notice 79-15 (Docket HM-163D, 44 FR 67476) which proposed the withdrawal of certain delegations of authority to the B of E, including those in §§ 173.34(d) and 173.303(a). In proposing these withdrawals of authority, the MTB stated its intention to continue to recognize the B of E as a source for testing and evaluation, but to place in the Associate Director for Operations and Enforcement the authority for final approval. However, in the final rule (published in the **Federal Register** on May 19, 1980; 45 FR 32692) to Notice 79-15, the MTB stated that the proposed changes to §§ 173.34(d) and 173.303(a) were being deleted from that rulemaking, but would be included, with a proposed change to § 177.821(e), in a separate notice of proposed rulemaking.

The MTB is proposing the deletion of § 177.821(e) because we do not believe that condemned or leaking dynamite should be repacked and offered for shipment.

In keeping with our past practice to eliminate or reduce as many approval type functions as possible, the MTB is proposing to adopt a proposal submitted by the Compressed Gas Association which would eliminate the need for B of E examination and approval by the Associate Director for OE for pressure relief devices on compressed gas cylinders. This would be accomplished by incorporating by reference in § 171.7 CGA Pamphlet S-1.1, CGA Pamphlet C-12, and CGA Pamphlet C-14.

IN addition, the MTB is proposing to amend § 173.86(a)(2) and (c) by changing the Office of Hazardous Materials Regulation (OHMR) to read Associate Director for OE; paragrah (b) of § 173.86 and § 173.114a(d)(3) would be amended to include, as indicated in Notice 79-15, the Bureau of Mines, U.S. Department of Interior, as an authorized testing agency.

In consideration of the foregoing, 49 CFR 171, 173, 177 and 178 would be amended as follows.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. In § 171.7 paragraph (d)(3) would be amended by adding paragraphs (vi), (vii) and (viii) to read:

§ 171.7 Matter incorporated by reference.

* * * * *

(d) * * *
(3) * * *
(vi) CGA Pamphlet S-1.1 is titled, "Pressure Relief Device Standards Part 1—Cylinders for Compressed Gases," 1979 edition.
(vii) CGA Pamphlet C-12 is titled, "Qualification Procedure for Acetylene Cylinder Design," 1979 edition.
(viii) CGA Pamphlet C-14 is titled, "Procedures for Fire Testing of DOT Cylinder Pressure Relief Device Systems," 1979 edition.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

2. In § 173.34 the heading and the first sentence of paragraph (d) would be revised to read:

§ 173.34 Qualification, maintenance and use of cylinders.

* * * * *

(d) *Pressure relief device systems.* No person may offer a cylinder charged with compressed gas for transportation unless the cylinder is equipped with one or more pressure relief devices sized and selected as to type, location, and quantity and tested in accordance with CGA Pamphlet S-1.1. The pressure relief device(s) must be capable of preventing rupture of the cylinder when subjected to a fire tested conducted in accordance with CGA Pamphlet C-14, or in the case of an acetylene cylinder, CGA Pamphlet C-12. * * *.

3. In § 173.86 paragraph (a)(2), the introductory text of paragraph (b), and paragraph (c) would be revised to read:

§ 173.86 New explosives definitions; approval and notification.

(a) * * *

(2) Has previously produced the explosive compound, mixture or device, but has made a change in the formulation, design, process or production equipment. An explosive compound, mixture or device is not considered a "new explosive" is an agency listed in paragraph (b) of this section has determined and confirmed in writing to the Associate Director for OE that there is no significant difference in its hazard characteristics from when it was previously approved.

(b) No person may offer a new explosive for transportation unless it has been examined and assigned a recommended shipping description and hazard class by the Bureau of Explosives or the Bureau of Mines and classed and approved by the Associate Director for OE; or examined, classed, and approved by one of the following agencies:

* * * * *

(c) Except for approvals issued by the Associate Director for OE and the exception in paragraphs (d) and (e) of this section, each person who offers a new explosive for transportation, other than a new DOD explosive covered by a security classification, must file a copy of the approval for the new explosive accompanied by a supporting laboratory report or equivalent data with the Associate Director for OE before offering the new explosive for transportation.

* * * * *

4. In § 173.114a paragraph (d)(3) would be revised to read:

§ 173.114a Blasting agents.

(d) * * *

(3) No person may offer a blasting agent for transportation unless it has been examined by the Bureau of Explosives or Bureau of Mines and classed and approved by the Associate Director for OE; or examined, classed, and approved by one of the following agencies:

(i) U.S. Department of Energy (DOE) for blasting agents made by, or under the direction or supervision of DOE; or

(ii) U.S. Army Materiel Development and Readiness Command (DRCSF), Naval Sea Systems Command (NAVSEA 04H) or HQUSAF (IGD/SEV) for blasting agents made by, or under the direction or supervision of the DOD.

* * * * *

5. In § 173.303 the introductory text of paragraph (a) would be revised to read:

§ 173.303 Charging of cylinders with compressed gas in solution (acetylene)

(a) *Cylinder, filler and solvent requirements.* (Refer to applicable parts of Specification 8 and 8AL). Acetylene gas must be shipped in Specification 8 or 8AL (§ 178.59 or § 178.60 of this subchapter) cylinders. The cylinders shall consist of metal shells filled with a porous material, and this material must be charged with a suitable solvent. The cylinders containing the porous material and solvent, shall be tested with satisfactory results in accordance with CGA Pamphlet C-12. Representative samples of cylinders charged with acetylene shall be tested with satisfactory results in accordance with CGA Pamphlet C-12.

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

6. § 177.821 paragraph (e) would be deleted as follows:

§ 177.821 Hazardous materials forbidden or limited for transportation.

* * * * *

(e) (Reserved)

* * * * *

PART 178—SHIPPING CONTAINER SPECIFICATIONS

7. In § 178.59-16 paragraphs (a) and (b) would be amended to read:

§ 178.59-16 Porous filling.

(a) Cylinders must be filled with a porous material of such structure that it will not disintegrate or sag when wet with solvent or when subjected to normal service. The porous filling material shall be uniform in quality and free of voids, except that a well drilled into the filling material beneath the valve is authorized if the well is filled with a material of such type that the functions of the filling material are not impaired. Overall shrinkage of the filling material is authorized if the total clearance between the cylinder shell and filling material, after solvent has been added, does not exceed ½ of 1 percent of the respective diameter or length but in no case to exceed ⅛ inch measured diametrically and longitudinally and that such clearances do not impair the functions of the filling material. In all cases, the filling material as installed in the cylinder must meet the requirements of CGA Pamphlet C-12.

(b) Porosity of filling material may not exceed 80 percent except that filling material with a porosity of up to 92 percent may be used when tested with satisfactory results in accordance with CGA Pamphelt C-12. A cylinder taken at random from a lot of 200 or less must be tested for porosity providing the porosity of each cylinder is not known. If the test cylinder fails, each cylinder may be tested individually and those cylinder that pass the test are acceptable.

* * * * *

8. In § 178.60-20 paragraphs (a) and (b) would be amended to read:

§ 178.60-20 Porous filling.

(a) Cylinders must be filled with a porous material of such structure that it will not disintegrate or sag when wet with solvent or when subjected to normal service. The porous filling material shall be *uniform in quality and free of voids, except that a well drilled into the* filling material beneath the valve is authorized if the well is filled with a material of such type that the functions of the filling material are not impaired. Overall shrinkage of the filling material is authorized if the total clearance between the cylinder shell and filling material, after solvent has been added, does not exceed ½ of 1 percent of the respective diameter or length but in no case to exceed ⅛ inch measured diametrically and longitudinally and that such clearances do not impair the functions of the filling material. In all cases, the filling material as installed in the cylinder must meet

the requirements of CGA Pamphlet C–12.

(b) Porosity of filling material may not exceed 60 percent except that filling material with a porosity of up to 92 percent may be used when tested with satisfactory results in accordance with CGA Pamphelt C–12. A cylinder taken at random from a lot of 200 or less must be tested for porosity providing the porosity of each cylinder is not known. If the test cylinder fails, each cylinder may be tested individually and those cylinders that pass the test are acceptable.

* * * * *

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, App. A to Part 1 and paragraph (a)(4) of App. A to Part 106)

Note.—The Materials Transportation Bureau has determined that this document will not have a major impact under Executive Order 12044 and DOT implementing procedures (44 FR 11034), nor an environmental impact under the National Environmental Policy Act (49 U.S.C. 4321 et seq.). A regulatory evaluation and Environmental Assessment are available for review in the docket.

Issued at Washington, D.C., on October 13, 1980.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 80-32418 Filed 10-17-80; 8:45 am]

BILLING CODE 4910-60-M

Notices

Federal Register
Vol. 45, No. 204
Monday, October 20, 1980

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Routt National Forest Grazing Advisory Board; Meeting

The Routt National Forest Grazing Advisory Board will meet November 18, 1980, at 10:00 a.m. at the Yampa Valley Electric Association building, Steamboat Springs, Colorado.

The Agenda for the meeting will include: 1) review of the bylaws; 2) a discussion of the projects planned for FY 1981 utilizing range betterment funds; 3) discuss and receive advice and recommendations for the utilization of range betterment funds and development of allotment management plans for FY's 1982 and 1983.

The meeting will be open to the public. Persons who wish to attend and participate should notify Les Clark or Jim Webb, Routt National Forest (303–879–1722) prior to the meeting. Public members may participate in discussions during the meeting at any time or may file a written statement following the meeting.

Jack Weissling,

Forest Supervisor.

October 8, 1980.

[FR Doc. 80-31463 Filed 10-16-80; 8:45 am]

BILLING CODE 3410-11-M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations

Notice is hereby given that, during the week ended October 10, 1980 CAB has received the applications listed below, which request the issuance, amendment, or renewal of certificates of public convenience and necessity or foreign air carrier permits under Subpart Q of 14 CFR part 302.

Answers to foreign permit applications are due 28 days after the application is filed. Answers to certificate applications requesting restriction removal are due within 14 days of the filing of the application. Answers to conforming applications in a restriction removal proceeding are due 28 days after the filing of the original application. Answers to certificate applications (other than restriction removals) are due 28 days after the filing of the application. Answers to conforming applications or those filed in conjunction with a motion to modify scope are due within 42 days after the original application was filed. If you are in doubt as to the type of application which has been filed, contact the applicant, the Bureau of Pricing and Domestic Aviation (in interstate and overseas cases) or the Bureau of International Aviation (in foreign air transportation cases).

Subpart Q Applications

Date filed	Docket No.	Description
Oct. 6, 1980	38803	Sun Pacific Airlines, c/o Ballard & Beasley, 505 Commerce Building 1700 K Street, N.W., Washington, D.C. 20006. application of Sun Pacific Airlines pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests a certificate of public convenience and necessity to operate scheduled air Transportation of persons, property and mail as follows: Between the terminal point San Francisco, CA, the intermediate points, Fresno, CA, Bakersfield, CA, Las Vegas, NV, Los Angeles, CA, and the terminal point, Ontario, CA, provided, however, that Sun Pacific may begin or terminate, or begin and terminate, trips at points short of terminal points. Conforming applications and Answers are due November 3, 1980.
Oct. 6, 1980	38808	Empire Airlines Inc., c/o Michael Goldman, Verner, Liipfert, Bernhard and McPherson, Suite 1100—1660 L Street, NW., Washington, D.C. 20036. Application of Empire Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests an amendment of its certificate of public convenience and necessity for Route 200 authorizing it to engage in interstate air transportation with respect to persons, property, and mail as follows: Between and among New York/Newark, Boston, Washington, Albany, Rochester, Syracuse, Buffalo, Cleveland, Pittsburg, Detroit, Columbus, Dayton, Cincinnati and Indianapolis. Answers are due October 20, 1980.
Oct. 9, 1980	38821	TACA International Airlines, S.A., c/o Harry A. Bowen, Bowen & Atkin, Suite 300, 1747 Pennsylvania Avenue, N.W., Washington, D.C. 20006. Application of TACA International Airlines, S.A. pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations requests an amendment of its Foreign Air Carrier Permit authorizing service to Houston, Texas as a coterminal to New Orleans, Louisiana. Answers may be filed by November 6, 1980.
Oct 9, 1980	38826	Arrow Airways, Inc., P.O. Box 480233, Miami, Florida 33148. Application of Arrow Airways, Inc. Pursuant to Section 418 of the Act and Parts 201 and 291 of the Board's Regulations for a certificate of public convenience and necessity to conduct domestic air cargo transportation in the following markets. Domestic air transportation of property between any point in any state of the United States or the District of Columbia or any territory or possession of the United States. Conforming Applications and Answers are due November 6, 1980.
October 9, 1980	38827	Arrow Airways, Inc., P.O. Box 480233, Miami, Florida 33148. Application of Arrow Airways, Inc. pursuant to Section 401 of the Act and Parts 201 and 302 of the Board's Regulations requests an amendment of its certificate of public convenience and necessity authorizing it to engage in: Foreign charter air transportation of property between any point in any state of the United States or the District of Columbia or any territory or possession of the United States, and any point in Greenland, Iceland, the Azores, Europe, Africa and Asia as fara east as, and including, India. Conforming Applications and Answers are due November 6, 1980

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-32582 Filed 10-17-80; 8:45 am]

BILLING CODE 6320-01-M

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[Docket No. 30352]

British Airways; Part 213 Violation; Reassignment of Proceeding

This proceeding has been reassigned to Administrative Law Judge Elias C. Rodriguez. Future communications should be addressed to Judge Rodriguez.

Dated at Washington, D.C., October 10, 1980.

Joseph J. Saunders,

Chief Administrative Law Judge.

[FR Doc. 80-32583 Filed 10-17-80; 8:45 am]

BILLING CODE 6320-01-M

[Docket No. 38495]

Universal Airlines, Inc., Fitness Investigation; Reassignment of Proceeding

This proceeding has been reassigned to Administrative Law Judge William A. Pope, II. Future communications should be addressed to Judge Pope.

Dated at Washington, D.C., October 10, 1980.

Joseph J. Saunders,

Chief Administrative Law Judge.

[FR Doc. 80-32584 Filed 10-17-80; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Coastal Zone Management Programs

AGENCY: Office of Coastal Zone Management.

ACTION: Notice of availability of evaluation findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for the Alabama, Alaska, Maine, Maryland, Massachusetts, Michigan, New Jersey, North Carolina, Oregon, Puerto Rico, Rhode Island, Virgin Islands, Washington, and Wisconsin Coastal Zone Management Programs.

Section 312 of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.) requires the conduct of a continuing review of the performance of each coastal state under its federally approved coastal zone management program. All 14 states evaluated were found to be adhering to their management programs as a result of which accomplishments are occurring with respect to resource protection, management of coastal development, increased recreational access, and improved government decisionmaking.

A copy of the findings made by the Assistant Administrator for Coastal Zone Management for each of these states may be obtained on request from: Rosella Sussman, Evaluation Officer, Office of Coastal Zone Management, Page Building 1, 3300 Whitehaven Street, N.W., Washington, D.C. 20235, telephone (202) 634-4245.

Dated: October 7, 1980.

Michael Glazer,

Assistant Administrator for Coostol Zone Manogement.

[FR Doc. 80-32502 Filed 10-17-80; 8:45 am]

BILLING CODE 3510-08-M

Gulf of Mexico Fishery Management Council and its Scientific and Statistical Committee; Cancellation and Amended Public Meetings

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Meeting cancellation/change in meeting location.

SUMMARY: The scheduled meeting of the Gulf of Mexico Fishery Management Council, published in the **Federal Register**, October 7, 1980 (45 FR 66489-66490), has been cancelled. However, the Gulf of Mexico Fishery Management Council's Scientific and Statistical Committee scheduled meeting, published in the **Federal Register**, October 7, 1980 (45 FR 66489-66490), has been relocated as follows:

From: Broadwater Beach Hotel, West Beach Boulevard, Biloxi, Mississippi

To: Tampa Room, Barclay Best Western Inn, 5303 West Kennedy Boulevard, Tampa, Florida

All other information remains unchanged.

FOR FURTHER INFORMATION CONTACT:

Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609. Telephone: (813) 338-2815.

October 15, 1980.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 80-32572 Filed 10-17-80; 8:45 am]

BILLING CODE 3510-22-M

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine fisheries Service, NOAA.

SUMMARY: The Mid-Atlantic Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will meet to discuss amendments to the Squid, Mackerel and Butterfish Fishery Management Plans (FMP's), Surf Clam/Ocean Quahog FMP; status of other FMP's; foreign fishing applications, and other fishery management and administrative matters.

DATES: The meetings, which are open to the public, will convene on Wednesday, November 12, 1980, at approximately noon, and will adjourn on Friday, November 14, 1980, at approximately noon. The meetings may be lengthened or shortened, or agenda items rearranged, depending upon progress on the agenda.

ADDRESS: The meetings will take place at the Gurney's Inn, Old Montauk Highway, Montauk, Long Island, New York.

FOR FURTHER INFORMATION CONTACT:

Mid-Atlantic Fishery Management Council, North and New Streets, Room 2115, Federal Building, Dover, Delaware 19901. Telephone: (302) 674-2331.

Dated: October 15, 1980.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 80-32571 Filed 10-17-80; 8:45 am]

BILLING CODE 3510-22-M

Mid-Atlantic Fishery Management Council's Scientific and Statistical Committee; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Mid-Atlantic Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), has established a Scientific and Statistical Committee which will meet to discuss the Surf Clam and Ocean Quahog Fishery Management Plan Amendment No. 3, and other fishery matters.

DATES: The meeting, which is open to the public, will convene on Wednesday, November 5, 1980, at approximately 10:30 a.m., and will adjourn at approximately 3:30 p.m.

ADDRESS: The meeting will be held at the Best Western Airport Motel, Philadelphia International Airport, Route 291, Philadelphia, Pennsylvania 19153. Telephone: (215) 365-7000.

FOR FURTHER INFORMATION CONTACT:

Mid-Atlantic Fishery Management Council, North and New Streets, Room 2115, Federal Building, Dover, Delaware 19901. Telephone: (302) 674-2331.

Dated: October 15, 1980.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 80-32570 Filed 10-17-80; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Scoping Meeting

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Notice of public meeting and intent to prepare an environmental impact statement.

SUMMARY: The Pacific Fishery Management Council announces a Scoping Meeting to discuss the preparation of the 1981 amendment to the Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coast of Washington, Oregon and California. The Scoping Meeting is part of the Council's process for determining the scope of issues to be addressed in its supplemental environmental impact statement and for identifying the significant issues related to the development and implementation of the 1981 amendment to the salmon plan. The purposes of the scoping process are discussed in 40 CFR 1501.7 of the Council on Environmental Quality's regulations implementing the National Environmental Policy Act (43 FR 55978). This notice is also intended to satisfy the requirement for a Notice of Intent to Prepare an Environmental Impact Statement.

DATE: November 13, 1980, beginning at 10 a.m. and continuing until those present wishing to speak have had an opportunity to do so.

ADDRESS: Marriott Hotel, 1402 SW., Front Street, Portland, Oregon 97201; phone (503) 226-7600.

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FOR FURTHER INFORMATION CONTACT:
Mr. Lorry Nakatsu, Executive Director, Pacific Fishery Management Council, 526 SW., Mill Street, Second Floor, Portland, Oregon 97201. Telephone: (503) 221–6352.

SUPPLEMENTARY INFORMATION: Federal regulation of the ocean salmon fishery in the Fishery Conservation Zone (FCZ) off Washington, Oregon and California will be necessary for the 1981 fishing season. The basis for the regulations will be an amendment to the fishery management plan (FMP) for the ocean salmon fishery which will review the coastwide status of the stocks of salmon, the effectiveness of the 1980 ocean salmon fishery regulations, the major issues expected to be encountered in 1981 and alternative management regimes. The FMP was prepared in 1978 and amended in 1979 and 1980. The 1981 amendment will be accompanied by a supplemental environmental impact statement, a regulatory analysis and draft proposed regulations. The availability of the draft amendment package and dates and addresses of public hearing on 1981 ocean salmon management will be announced in the Federal Register.

The Council invites the participation of all interested Federal, State and local government agencies, fishing industry organizations, treaty Indian tribes, recreational and commercial fishermen, fish processors, consumers of fishery products, environmental organizations and any other interested persons in the development of the 1981 amendment. Public participation in the development of the 1981 amendment will begin with the Scoping Meeting on November 13, 1980.

Dated: October 14, 1980.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 80–32558 Filed 10–17–80; 8:45 am]

BILLING CODE 3510–22–M

COMMUNITY SERVICES ADMINISTRATION

Privacy Act of 1974; Annual Notice of Systems of Records

AGENCY: Community Services Administration.

ACTION: Annual notice of systems of records.

SUMMARY: Federal agencies are required by the Privacy Act of 1974 to give annual notice of certain records they maintain. The full text of CSA's systems of records last appeared at 42 FR 53430, September 30, 1977. (Also see Privacy Act Issuances, 1979 Compilation, Volume III, p. 2591). The full text was amended by subsequent annual publications at 43 FR 42116, September 19, 1978, and 44 FR 54536, September 20, 1979. The purpose of this document is to publish in full the systems that this agency has amended since the September 20, 1979, publication. This document fulfills the annual notice requirements of the Privacy Act for 1980.

FOR FURTHER INFORMATION CONTACT:
Alan O. Mann, Privacy Act Officer, Community Services Administration, 1200 19th Street NW., Room 406, Washington, D.C. 20506. Telephone (202) 254–5300.

Published below is the full text of "Geographical Guidance for Accessing Systems of Records" to reflect changes in the Regional Office addresses and telephone numbers. (This was last revised at 43 FR 42116, September 19, 1978 and 44 FR 54536, September 20, 1979). Other than these changes none of this agency's systems of records have been amended since the September 30, 1977 publication.

Geographical Guidance for Accessing Systems of Records

Many CSA systems of records are maintained wholly or partially in the CSA Regional Offices. To facilitate access to such records, a listing of the CSA Regional Offices, the States served thereby, their addresses and telephone numbers are provided:

Region I

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont: John F. Kennedy Federal Building, Room E400, Boston, Massachusetts 02203, (617) 223–4080.

Region II

New Jersey, New York, Puerto Rico, Virgin Islands: 26 Federal Plaza, 32nd Floor, New York, New York 10007, (212) 264–1900.

Region III

Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia: 9th & Market Streets, P.O. Box 160, Philadelphia, Pennsylvania 19105, (215) 597–1139.

Region IV

Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee: 101 Marietta Street NW., Atlanta, Georgia 30323, (404) 221–2717.

Region V

Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin: 300 South Wacker Drive; 24th Floor, Chicago, Illinois 60606, (312) 353–5987.

Region VI

Arkansas, Louisiana, New Mexico, Oklahoma, Texas: 1114 Commerce Street, 5th Floor, Dallas Texas 75242, (214) 767–6125.

Region VII

Iowa, Kansas, Missouri, Nebraska: 911 Walnut Street, Room 1720, Kansas City, Missouri 64106, (816) 374–3361.

Region VIII

Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming: Tremont Center Building, 333 W. Colfax Avenue, Denver, Colorado 80204, (303) 837–4767.

Region IX

Arizona, California, Guam, Hawaii, Nevada, Pacific Trust Territories: 450 Golden Gate Avenue, Box 36008, San Francisco, California 94102, (415) 556–5400.

Region X

Alaska, Idaho, Oregon, Washington: Arcade Plaza Building, Mail Stop 105A, 1321 Second Avenue, Seattle, Washington 98101, (206) 422–4910.

Location of Notices in Privacy Act Issuances, 1978 Compilation.

The complete text of this agency's systems of records also appears in Volume III of the 1979 Compilation at page 2591. The price of this volume is $9.50. It may be ordered through the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Alan O. Mann,

Privacy Act Officer.

[FR Doc. 80–32464 Filed 10–17–80; 8:45 am]

BILLING CODE 6315–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Application Technologies, Inc.; Intent To Grant Limited Exclusive Patent License

Pursuant to the provisions of Part 746 of title 32, *Code of Federal Regulations* (41 FR 55711–55714, December 22, 1976) the Department of the Navy announces its intention to grant to Application Technologies, Inc., a corporation of the State of Maryland, a revocable, nonassignable, limited exclusive license which will expire on August 31, 1983 under Government-owned United States Patent Number 3,273,376, issued September 20, 1966, entitled "Static and Dynamic Calibration Vessel for Pressure Gages", inventors: Philip M. Aronson and Robert H. Waser.

This license will be granted unless on or before December 19, 1980 an application for a nonexclusive license from a responsible applicant is received by the Office of Naval Research (Code 302), Arlington, VA 22217, and the Chief of Naval Research or his designee determines that such applicant has established that he has already brought or is likely to bring the invention to the point of practical application within a reasonable period under a nonexclusive license; or the Chief of Naval Research or his designee determines that a third party has presented to the Office of Naval Research (Code 302) evidence and argument which has established that it would not be in the public interest to grant the limited exclusive license.

Any objection thereto, together with a request for an opportunity to be heard, if desired, should be directed to the Office of Naval Research (Code 302), Arlington, VA 22217 within 60 days from the publication of this notice. Also, copies of the patent may be obtained for fifty cents ($0.50) from the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

For further information concerning this notice, contact: Dr. A. C. Williams, Staff Patent Adviser, Office of Naval Research (Code 302), Ballston Tower No. 1, 800 North Quincy Street, Arlington, VA 22217, Telephone No. (202) 696–4005.

Dated: October 10, 1980.

P. B. Walker,

Captain, JAGC, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 80–32533 Filed 10–17–80; 8:45 am]

BILLING CODE 3810–71–M

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Marine Corps, Navy Department

Amendments to Systems of Records

AGENCY: Department of Navy (U.S. Marine Corps).

ACTION: Notice of change of titles and addresses.

SUMMARY: The Marine Corps proposes to correct four systems which have changes in the activities' title and/or address. The new title and address for the Marine Corps Automated Services Center is the Marine Corps Central Design and Programming Activity (MCCDPA), 1500 East 95th Street, Kansas City, Missouri 64131. The new address for the Finance Center is the Marine Corps Finance Center, 1500 East 95th Street, Kansas City, Missouri 64197. The Allotment Division, which is a part of the Marine Corps Finance Center, is now called the Centralized Pay Division. Additionally, the office codes for the systems managers and the current title of the Department of Health and Human Services (DHHS) is provided where formerly identified as the Department of Health, Education and Welfare. The proposed corrections are to four systems maintained by the Marine Corps that are subject to the Privacy Act of 1974. The specific title and address changes are set forth below.

FOR FURTHER INFORMATION CONTACT: Mrs. B. L. Thompson, Privacy Act Coordinator, Headquarters, U.S. Marine Corps, D.C. 20380, telephone: 202–694–4115.

SUPPLEMENTARY INFORMATION: The Marine Corps' systems of records notices as prescribed by the Privacy Act of 1974, Public Law 93–579 (5 U.S.C. 552a) have been published in the Federal Register as follows:

FR Doc 79–36297 (44 FR 66946) November 30, 1979
FR Doc (44 FR 74495) December 17, 1979
FR Doc 80–4470 (45 FR 9316) February 12, 1980
FR Doc 80–5182 (45 FR 10640) February 19, 1980
FR Doc 80–5420 (45 FR 11523) February 21, 1980
FR Doc 80–6233 (45 FR 13182) February 28, 1980
FR Doc 80–15426 (45 FR 33677) May 20, 1980
FR Doc 80–16549 (45 FR 37254) June 2, 1980
FR Doc 80–26959 (45 FR 58646) September 4, 1980

The proposed corrections are not within the purview of the provisions of 5 U.S.C. 552a(o) of the Act which requires the submission of a new or altered system report.

M. S. Healy,
OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.
October 10, 1960.

Amendments

MFD00003

SYSTEM NAME:

MFD00003, Joint Uniform Military Pay System/Manpower Management System (JUMPS/MMS)

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Headquarters, U.S. Marine Corps and Marine Corps commands, activities and organizations—By officials and employees of the Marine Corps in the performance of their assigned duties in matters relating to a Marine's automated personnel and/or pay record.

Department of Defense and its components—By officials and employees of the Department in the performance of their official duties.

The attorney General of the U.S.—By officials and employees of the Office of the Attorney General in connection with litigation, law enforcement of other matters under the direct jurisdiction of the Department of Justice or as carried out as the legal representative of the Executive Branch agencies.

Courts—By officials of duly established local, state, and federal courts as a result of court order pertaining to matters properly within the purview of said court.

Congress of the U.S.—By the Senate or the House of Representatives of the U.S. or any committee or subcommittee thereof, any joint committee of Congress or subcommittee of joint committee on matters within their jurisdiction requiring disclosure of the files.

The Comptroller General of the U.S.—By the Comptroller General or any of his authorized representatives in the course of performance of duties of the General Accounting Office relating to the Marine Corps.

By officials and employees of the American Red Cross and the Navy Relief Society in the performance of their duties. Access will be limited to those portions of the member's record required to effectively assist the member.

Federal, state and local government agencies—By officials and employees of federal, state and local government through official request for information with respect to law enforcement investigatory procedures, criminal prosecution, civil court action and regulatory order.

To provide information to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States which has been authorized by law to conduct law enforcement activities pursuant to a request that the agency initiate criminal or civil action against an individual on behalf of the U.S. Marine Corps, the Department of the Navy, or the Department of Defense.

To provide information to individuals pursuant to a request for assistance in a criminal or civil action against a member of the U.S. Marine Corps, by the U.S. Marine Corps, the Department of the Navy, or the Department of Defense.

Department of Health and Human Services (DHHS)—Disclosure of the name, rank or grade, and Social Security Account Number of each Marine Corps active duty military member to the Inspector General of DHHS for the specific purpose of comparison with appropriate rolls reflecting recipients of Aid to Families with Dependent Children (AFDC).

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Commandant of the Marine Corps, Codes FD/MP, Headquarters, U.S. Marine Corps, Washington, D.C. 20380.

* * * * *

RECORD ACCESS PROCEDURES:

Information on JUMPS may be obtained from the member's local disbursing officer. Information on MMS may be obtained from the member's immediate commanding officer. Requests for information from persons no longer in service should be signed by the person requesting the information. Dates of service, Social Security Number, and full name of requester should be printed or typed on the request. It should be sent to the Marine Corps Finance Center, 1500 East 95th Street, Kansas City, Missouri 64197.

* * * * *

MFD00004

SYSTEM NAME:

MFD00004, Bond and Allotment (B&A) System

* * * * *

SAFEGUARDS:

The Centralized Pay Division is locked during nonduty hours, as well as the building being under security guard protection. Files within the Division are accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Magnetic records are maintained by MCCDPA on all active allotments during the life of the allotment and for a period of 12 months after the allotment has been stopped. Paper and microform files of the Centralized Pay Division are maintained indefinitely.

* * * * *

NOTIFICATION PROCEDURE:

Individual requests for information, should be addressed to the Marine Corps Finance Center, Centralized Pay Division (Code CPA), Kansas City, Missouri 64917.

A person may visit any Marine Corps disbursing office to find out if the system contains records pertaining to him or her.

For personal visits, the requester must present a military identification card or copy of an Armed Forces of the United States Report of Separation from Active Duty (DD Form 214 (MC)) for separated personnel.

* * * * *

MFD00005

SYSTEM NAME:

MFD00005, Retired Pay/Personnel System (RPPS)

* * * * *

NOTIFICATION PROCEDURE:

Requests from individuals for information should be referred to the SYSMANAGER.

Requesting individual must supply full name and SSN.

The requester may visit the Marine Corps Finance Center, 1500 East 95th Street, Kansas City, Missouri 64197, to obtain information on whether the system contains records pertaining to him or her.

In order to personally visit the above address and obtain information, individuals must present a military identification card, a driver's license, or other suitable proof of identity.

* * * * *

MFD00006

SYSTEM NAME:

MFD00006, Centralized Automated Reserve Pay System (CAREPAY)

* * * * *

NOTIFICATION PROCEDURE:

Requests from individuals for information should be referred to the SYSMANAGER.

Requesting individual must supply full name and SSN.

The requester may visit the Marine Corps Finance Center, 1500 East 95th

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Street, Kansas City, Missouri 64197, to obtain information on whether the system contains records pertaining to him or her.

In order to personally visit the above address and obtain information, individuals must present a military identification card, a driver's license, or other suitable proof of identity.

* * * * *

[FR Doc. 80-32461 Filed 10-17-80; 8:45 am]
BILLING CODE 3810-71-M

Office of the Secretary

Privacy Act of 1974; New System of Records

AGENCY: Office of the Secretary of Defense (OSD).

ACTION: Notice of new system of records.

SUMMARY: The Office of the Secretary of Defense publishes a notice of a new system of records, DOCHA 09, entitled: "Civilian Health and Medical Program of the uniformed Services (OCHAMPUS) Grievance Records", which incorporates information contained in OPM's system of records OPM/GOVT-2, "Grievance Records", which is being deleted from OPM's annual republication of systems of records (September 1980).

DATE: This system shall be effective November 19, 1980.

ADDRESS: Mr. James D. Netterfield, Personnel Officer, Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Department of Defense, Aurora, Colorado 80045.

FOR FURTHER INFORMATION CONTACT: Mr. James S. Nash, telephone: 202-695-0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense (OSD) systems of records notices as prescribed by the Privacy Act have been published in the Federal Register as follows:

FR Doc. 79-370542 (44 FR 74088) December 17, 1979
FR Doc. 80-7517 (45 FR 15064) March 11, 1980
FR Doc. 80-8135 (45 FR 17056) March 17, 1980
FR Doc. 80-13709 (45 FR 29390) May 2, 1980
FR Doc. 80-13707 (45 FR 29590) May 5, 1980
FR Doc. 80-25479 (45 FR 34034) May 21, 1980
FR Doc. 80-19461 (45 FR 43409) June 27, 1980
FR Doc. 80-23575 (45 FR 51880) August 5, 1980
FR Doc. 80-25326 (45 FR 55516) August 20, 1980
FR Doc. 80-25947 (45 FR 56861) August 16, 1980
FR Doc. 80-26399 (45 FR 57515) August 28, 1980
FR Doc. 80-29169 (45 FR 62881) September 22, 1980

This system not fall within the purview of Office of Management and Budget (OMB) Circular A-108, Transmittal Memoranda No. 1 and No. 3, dated September 30, 1975, and may 17, 1976, respectively, which provide supplemental guidance to Federal agencies regarding the preparation and submission of reports of their intention to establish or alter systems of records under the Privacy Act of 1974. This OMB guidance was set forth in the Federal Register (40 FR 45877) on October 3, 1975.

M. S. Healy,
OSD Federal Register Liaison Officer
Washington Headquarters Services
Department of Defense.
October 10, 1980.

DOCHA 09

SYSTEM NAME:

Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS) Grievance Records.

SYSTEM LOCATION:

Personnel Office, Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Department of Defense, Fitzsimons Army Medical Center, Aurora, Colorado 80045.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Federal employees who have submitted grievances in accordance with 5 U.S.C. 2302, and 5 U.S.C. 7121, or a negotiated procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances filed by Office of CHAMPUS employees under 5 U.S.C. 2302, and 5 U.S.C. 7121. These case files contain all documents related to the grievances, including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the original and final decision, and related correspondence and exhibits. This system includes files and records of internal grievance and arbitration systems that OCHAMPUS may establish through negotiations with recognized labor organizations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 2302, and 5 U.S.C. 7121.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING THE CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

INTERNAL USERS, USES, AND PURPOSES:

This information is used by the Office of CHAMPUS in the creation and maintenance of records of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by reference.

EXTERNAL USERS, USES, AND PURPOSES:

These records and information in these records are used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to any source from which additional information is requested in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

c. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee; the issuance of a security clearance; the conducting of a security or suitability investigation of an individual; the classifying of jobs; the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to requesting the Agency's decision on the matter.

d. To provide information to a congressional office from the record of an individual, in response to an inquiry from that congressional office, made at the request of that individual.

e. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

f. By the National Archives and Records Service conducted under authority of 44 U.S.C. 2906.

g. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission, when requested in performance of their authorized duties.

h. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

i. To provide information to officials of labor organizations reorganized under the Civil Service Reform Act when relevant and necessary to their duties, exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom the records are maintained.

SAFEGUARDS:

These records are maintained in locked metal file cabinets, with access only to authorized OCHAMPUS Personnel Office employees.

RETENTION AND DISPOSAL:

These records are disposed of three years after closing of the case. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Mr. James D. Netterfield, Personnel Office, Office of Civilian Health and Medical Program of the Uniformed Services, Department of Defense, Aurora, Colorado 80045, telephone: 303-341-8600.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager.

RECORD ACCESS PROCEDURES:

Request for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided:

a. By the individual on whom the record is maintained.

b. By testimony of witnesses.

c. By Agency officials.

d. From related correspondence from organizations or persons.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 80-32462 Filed 10-17-80; 8:45 am]
BILLING CODE 3810-70-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Arkla Chemical Corp.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and an potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective date: September 25, 1980.

Comments by: November 19, 1980.

ADDRESS: Send comments to: Wayne I. Tucker, District Manager, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, Texas 75235.

FURTHER INFORMATION CONTACT: Wayne I. Tucker, District Manager, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, Texas 75235 (phone) 214/767-7745.

SUPPLEMENTARY INFORMATION: On September 25, 1980, the Office of Enforcement of the ERA executed a Consent Order with Arkla Chemical Corporation, of Shreveport, Louisiana. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, may be made effective upon its execution.

Because the DOE and Arkla Chemical wish to expeditiously resolve this matter as agreed to and to avoid delay in the payment of refunds, the DOE has determined that it is in the public interest to make the Consent Order with Arkla Chemical effective as of the date of its execution by the DOE and Arkla Chemical.

I. The Consent Order

Arkla Chemical Corporation, with its home office in Shreveport, Louisiana, is a firm engaged in the resale of premium and regular gasoline, No. 2 diesel fuel, naphtha, and kerosene, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211, and 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of sales of these products, the Office of Enforcement, ERA, and Arkla Chemical entered into a Consent Order,

the significant terms of which are as follows:

1. The period covered by the Consent Order was November 1, 1973 through January 31, 1974, and it included all sales of the above mentioned products which were made during that period.

2. Arkla Chemical Corporation improperly applied the provisions of 10 CFR 212.93(a) when determining the prices to be charged for its gasoline, diesel fuel, naphtha, and kerosene and as a consequence overcharged certain of its customers on some of their purchases.

3. Because the sales were not made to ultimate consumers, and they are not readily identifiable, Arkla Chemical Corporation will repay $67,500 through the DOE. Additionally Arkla Chemical Corporation has agreed to pay a penalty of $2,500.

4. The provisions of 10 CFR 205.199J, including the publication of this Notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, Arkla Chemical Corporation, agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I. 1. above, the sum of $67,500 in the manner specified in I. 3. above. Refunded overcharges will be in the form of a certified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order received appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have been passed through as higher prices to subsequent purchasers. The adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199J(a).

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Wayne I. Tucker, District Manager, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, Texas 75235. You may obtain a free copy of this Consent Order by writing to the same address or by calling 214/767–7745.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Arkla Chemical Corporation Consent Order". The ERA will consider all comments received by 4:40 p.m. local time, on November 19, 1980.

You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Dallas, Texas on the 6th day of October 1980.

Wayne I. Tucker,

District Manager, Southwest District, Economic Regulatory Administration.

[FR Doc. 80-32600 Filed 10-17-80; 8:45 am]

BILLING CODE 6450-01-M

L. P. Rech Distributing Co.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and an opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective date; September 15, 1980.
Comments by: November 19, 1980.

ADDRESS: Send comments to: Kenneth E. Merica, District Manager of Enforcement, Rocky Mountain District, Department of Energy, P.O. Box 26247, Belmar Branch, Lakewood, CO 80226; (303) 234–3195.

SUPPLEMENTARY INFORMATION: On September 15, 1980, the Office of Enforcement of the ERA executed a Consent Order with Loren P. Rech, d/b/a L. P. Rech Distributing Co. (Rech) of Roundup, Montana. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

Rech, with its home office located in Roundup, Montana, is a firm engaged in the marketing of gasoline, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211 and 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Rech, the Office of Enforcement of the ERA, and Rech have entered into a Consent Order, the significant terms of which are as follows:

1. Total alleged overcharge during the audit period (September 1, 1979 through November 30, 1979) on all sales of gasoline was: $14,117.76.

a. Wholesale Reseller Overcharge: $7,093.97.

b. Retail End-User Overcharge: $7,017.68.

2. The Office of Enforcement alleged that Rech violated the gasoline price regulations contained in 10 CFR 212.93(a)(1) of the Mandatory Petroleum Price Regulations by exceeding its "maximum legal selling price" for gasoline sold to Rech's wholesale and retail customers.

3. Rech agreed to refund the total alleged overcharge, plus interest, on or before September 30, 1980.

4. Rech agreed to pay a civil penalty of $1,500.00

5. The provisions of 10 CFR 205.199J, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, Rech agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions between Rech and its wholesale customers during the audit period the sum of $7,093.97, plus cumulative interest through June 30, 1980, of $759.11, on or before September 30, 1980. This refund will be in the form of a certified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system it is likely that overcharges have been passed through as higher prices to subsequent purchasers.

In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199J(a).

In addition, Rech agrees to refund, in full settlement of any and all civil liability within the jurisdiction of the DOE in regard to actions that might be brought by the DOE arising out of sales by Rech to its retail customers during the audit period, the sum of $7,017.68, plus cumulative interest through June 30, 1980, of $750.96, on or before September 30, 1980. Each individual refund payment shall be made by check or by credit against the purchases of gasoline by the customer concerned in the month of refund. The total refund to each customer shall consist of the overcharge to that customer, plus applicable prorated interest.

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount held by DOE should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established.

Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send you comments or written notification of a claim to Kenneth E. Merica, District Manager of Enforcement, Rocky Mountain District, Department of Energy, P.O. Box 26247, Belmar Branch, Lakewood, Colorado 80226. You may obtain a free copy of this Consent Order by writing to the same address or by calling (303) 234–3195.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on L. P. Rech Distributing Co. Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on November 19, 1980.

You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Lakewood, Colo., on the 15th day of September 1980.

Kenneth E. Merica,

District Manager, Office of Enforcement, Rocky Mountain District, Economic Regulatory Administration.

Concurrence:

Charles F. Dewey,

Regional Counsel.

[FR Doc. 80-32602 Filed 10-17-80; 8:45 am]

BILLING CODE 6450-01-M

Plaquemines Oil Sales Corp.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Plaquemines Oil Sales Corporation, Belle Chasse, Louisiana 70037. This Proposed Remedial Order charges Plaquemines with pricing violations in the amount of $331,572.44, connected with the resale of No. 2 diesel fuel during the time period November 1, 1973, through August 31, 1975, in the State of Texas.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Wayne I. Tucker, District Manager of Enforcement, 2626 West Mockingbird, Dallas, Texas 75235, phone 214/767–7745. Within 15 days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, NW, Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Dallas, Texas on the 7th day of October 1980.

Wayne I. Tucker,

District Manager, Southwest District Enforcement.

[FR Doc. 80-32601 Filed 10-17-80; 8:45 am]

BILLING CODE 6450-01-M

Northeastern Oil Co., Inc.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on consent order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATE: Effective date: September 29, 1980. Comments by: November 17, 1980.

ADDRESS: Send comments to: Kenneth E. Merica, District Manager of Enforcement, P.O. Box 26247, Belmar Branch, Lakewood, Colorado, 80226.

FOR FURTHER INFORMATION CONTACT: Kenneth E. Merica, District Manager of Enforcement, P.O. Box 26247, Belmar Branch, Lakewood Colorado, 80226.
PHONE: (303) 234–3195.

SUPPLEMENTARY INFORMATION: On September 29, 1980, the Office of Enforcement of the ERA executed a Consent Order with Northeastern Oil Co., Inc. (NOCI) of Gillette, Wyoming. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

NOCI, with its home office located in Gillette, Wyoming, is a firm engaged in the business of purchasing covered products and reselling them to wholesale purchasers and ultimate consumers, without substantially changing their form, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts

210, 211 and 212. To resove certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of NOCI, the Office of Enforcement, ERA, and NOCI entered into a Consent Order, the significant terms of which are as follows:

1. NOCI has agreed to refund a total of $30,000 in six equal monthly installments beginning in October 1980 in full settlement of overcharges (including interest) alleged by the DOE for the period December 18, 1978, through April 30, 1980.

2. NOCI has agreed to pay a civil penalty of $3.000.

3. The provisions of 10 CFR 205.199J are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, NOCI agrees to refund, in full settlement of any civil liability (except civil penalties) with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I.1. above, the sum of $30,000 which includes interest. Refund of those overcharges will be in the form of certified check(s) made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforecement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system it is likely that overcharges has been passed through as higher prices to subsequent purchasers. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount specified in I.1. above, should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of the Consent Order.

You should send your comments or written notification of a claim to Kenneth E. Merica, District Manager of Enforcement, P.O. Box 26247, Belmar Branch, Lakewood, Colorado, 80226. You may obtain a free copy of this Consent Order by writing to the same address or by calling (303) 234-3195.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Northeastern Oil Co., Inc. Consent Order". We will consider all comments we receive by 4:30 p.m., local time, on November 19, 1980. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Lakewood, Colorado on the 29th day of September 1980.

Kenneth E. Merica,

District Manager of Enforcement, Rocky Mountain District.

Concurrence by:

Charles F. Dewey,

Regional Counsel.

[FR Doc. 80-32599 Filed 10-17-80; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Energy Research Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Energy Research Advisory Board.
Date and time: November 6, 1980—9:00 a.m.–3:00 p.m.; November 7, 1980—9:00 a.m.–4:00 p.m.
Place: Department of Energy, 1000 Independence Avenue SW., Forrestal Building—Room 4A104, Washington, D.C. 20585
Contact: Georgia Hildreth, Director, Advisory Committee Management, Department of Energy, Forrestal Building—Room 8G087, 1000 Independence Avenue SW., Washington, D.C. 20585. Telephone: 202-252-5187.
Purpose of the Board: To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.
Tentative Agenda:

- Discussion of Energy R&D Priorities in DOE
- Consideration of Geothermal Panel Reports
- Consideration of Advanced Isotope Separation Technology Study Group Report
- Progress Report on Conservation and Biomass Panels
- Progress Report on Solar Photovoltaic Energy Advisory Committee
- Status of DOE Technology Base Assessment
- Discussion of New Assignments Mandated by Congress:
  Ocean Technology Energy Conversion Panel
  Fusion Review Panel
- Administrative Matters
- Public Comment (10 minute rule)

Public participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact the Advisory Committee Management Office at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C., between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Executive summary: Available approximately 30 days following the meeting from the Advisory Committee Management Office.

Issued at Washington, D.C., on October 14, 1980.

Georgia Hildreth,

Director, Advisory Committee Management.

[FR Doc. 80-32606 Filed 10-17-80; 8:45 am]

BILLING CODE 6450-01-M

High Energy Physics Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is given fo the following advisory committee meeting:

Name: High Energy Physics Advisory Panel.
Date and Time: Sunday, November 9, 1980—9:00 a.m.–6:00 p.m.; Monday, November 10, 1980—9:00 a.m.–6:00 p.m.; Tuesday, November 11, 1980—9:00 a.m.–4:00 p.m.
Place: National Science Foundation, National Science Board Room (Room 540), 1800 G Street NW., Washington, D.C.
Contact: Dr. P. K. Williams, Secretary, High Energy Physics Advisory Panel, Department of Energy, Mail Stop J-309, Washington, D.C. 20545, Telephone: 301-353-3367.
Purpose of Committee: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.
Tentative Agenda:

- Discussions of the status of the FY 1981 and FY 1982 DOE and NSF budgets for High Energy Physics
- Discussion of the GAO final report on High Energy Physics
- Discussion on international cooperation in High Energy Physics
- Status reports on ISABELLE (BNL) and the Energy Saver (Fermilab)
- Discussion with representatives of the Division of Particles and Fields on problems in the field
- Discussion on long range planning and needs for the program
- Public Comment (10 minute rule)

Public Participation: The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact the Advisory Committee Management Office at 202-252-5187. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.
Transcripts: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW, Washington, D.C., between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.
Executive summary: Available approximately 30 days following the meeting from the Advisory Committee Management Office.

Issued at Washington, D.C., on October 14, 1980.

Georgia Hildreth,

Director, Advisory Committee Management.

[FR Doc. 32608 Filed 10-17-80; 8:45 am]

BILLING CODE 6450-01-M

Conservation and Solar Applications; National Energy Extension Service Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: National Energy Extension Service Advisory Board.
Date and time: Wednesday, November 12, 1980—1:00 p.m.–5:00 p.m., Thursday, November 13, 1980—8:30 a.m.–3:00 p.m.
Place: Department of Energy, 1000 Independence Avenue SW., Forrestal Building—Room 5A104, Washington, D.C. 20585
Contact: Georgia Hildreth, Director, Advisory Committee Management, Department of Energy, 1000 Independence Avenue SW., Forrestal Building—Room 8G087, Washington, D.C. 20585. Telephone: 202-252-5187
Purpose of Committee: The Board was established to carry on a continuing review of the comprehensive Energy Extension Service program and approved plans of the Governors of each State for implementing Energy Extension Service activities.
Tentative Agenda:
November 12, 1980.
1:00 p.m.—Update on DOE energy conservation programs, emphasizing EES
3:00 p.m.—Consideration of Reports to the Board:

- EES services to low and moderate income clients
- The Comprehensive Program and Plan for Federal Energy Education, Extension, and Information Activities
- International Energy Conservation Outreach Programs

4:45 p.m.—Public Comment (10 minute rule)
November 13, 1980
8:30 a.m.—Board evaluation of the EES transition from a pilot to a national program for preparation of the Second Board Report to Congress, the Secretary of Energy, and the EES Director
12:00 noon—Recess
1:30 p.m.—Future Directions for the Board
2:45 p.m.—Public Comment (10 minute rule)

Public participation: The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact the Advisory Committee Management Office. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C., between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Executive summary: Available approximately 30 days following the meeting from the Advisory Committee Management Office.

Issued at Washington, D.C., on October 14, 1980.

Georgia Hildreth,

Director, Advisory Committee Management.

[FR Doc. 80-32607 Filed 10-17-80; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, Task Group of the Committee on Unconventional Gas Sources; Meeting

Notice is hereby given that the Coordinating Subcommittee and the Tight Gas Reservoirs Task Group of the Committee on Unconventional Gas Sources will meet in October 1980. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Unconventional Gas Sources will analyze the potential constraints in these areas which may inhibit future production and will report its findings to the National Petroleum Council. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location and agenda of the meeting follows:

The joint meeting of the Coordinating Subcommittee and the Tight Gas Reservoirs Task Group will be held on Monday, October 27, 1980, and Tuesday, October 28, 1980, starting at 9:00 a.m. on both days, in the Pan American Room of the Capital Hilton Hotel, 16th and K Streets NW, Washington, D.C.

The tentative agenda for the meeting follows:

1. Introductory remarks by Chairman and Government Cochairman.
2. Review draft work of the Coordinating Subcommittee Tight Gas Reservoirs Task Group.
3. Discuss the completion of the NPC Unconventional Gas Sources study.
4. Discussion of any other matters pertinent to the overall assignment of the Subcommittee and Task Group.

The meeting is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will, in his judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the task group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Lucio A. D'Andrea, Office of Resource Applications, 202/633-8383, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Issued at Washington, D.C., on October 14, 1980.

Georgia Hildreth,

Director, Advisory Committee Management.

[FR Doc. 80-32607 Filed 10-17-80; 8:45 am]

BILLING CODE 6450-01-M

V 4 5 O C 2 0 8 0 UMI

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE, Forrestal Building, 1000 Independence Avenue SW, Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on October 9, 1980.

R. Dobie Langenkamp,

Deputy Assistant Secretary, Resources Development and Operations Resource Applicotions.

October 9, 1980.

[FR Doc. 80-32504 Filed 10-17-80; 8:45 am]

BILLING CODE 6450-01-M

Resource Applications; National Petroleum Council Subcommittee on Refinery Flexibility; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Subcommittee on Refinery Flexibility of the National Petroleum Council

Date and time: Wednesday, November 5, 1980—10:00 a.m.

Place: Plaza Hotel, Savoy Room, Fifth Avenue at 59th Street, New York, New York

Contact: Georgia Hildreth, Director, Advisory Committee Management, Department of Energy, 1000 Independence Avenue, S.W., Forrestal Building—Room 8G087, Washington, D.C. 20585. Telephone: 202-252-5187

Purpose of parent committee: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Tentative agenda:

- Opening remarks
- Review and discuss proposed final report on Refinery Flexibility
- Discuss any other matters pertinent to the overall assignment of the Committee
- Public Comment (10 minute rule)

Public participation: The meeting is open to the public. The Chairperson of the Subcommittee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Subcommittee will be permitted to do so either before or after the meeting. Members of the public who wish to make oral statements pertaining to the agenda items should contact the Advisory Committee Management Office at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room, 1E-190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on October 14, 1980.

Georgia Hildreth,

Director, Advisory Committee Management.

[FR Doc. 80-32505 Filed 10-17-80; 8:45 am]

BILLING CODE 6450-01-M

Office of Intergovernmental Affairs

Local Government Energy Policy Advisory Committee and Subcommittees; Open Meetings

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meetings:

Name: Local Government Energy Policy Advisory Committee

Date and Time: Thursday, November 13, 1980. Full Committee—9:00 a.m. to 12:00; Subcommittees—2:00 p.m. to 3:00 p.m. Friday, November 14, 1980. Subcommittees Reconvene—9:00 a.m. to 10:00 a.m.; Full Committee—10:00 a.m. to 1:30 p.m.

Place: Department of Energy, Forrestal Building (see agenda for room numbers), 1000 Independence Avenue SW, Washington, D.C. 20585.

Contact: Georgia Hildreth, Director, Advisory Committee Management, Department of Energy, Room 8G087, 1000 Independence Avenue SW., Washington, D.C. 20585, Telephone: 202-252-5187.

Purpose of Committee: To advise and make recommendations to the Secretary of Energy on matters relating to Federal energy policies, programs, and legislation so that the Secretary may reach a judgment as to whether national energy policies are reflective of and responsible to the needs of local governments, that components of the Department are coordinating their activities with local governments, where appropriate, and that intergovernmental communication exists with local governments.

TENTATIVE AGENDA:

Thursday, November 13, 1980. Full Committee Meeting—Room 2E-069 Forrestal Bldg. 9:00 a.m.-12:00.

- Welcoming Remarks
- General Business

—Status Report
—Focus/Mission/Objectives of LGEPAC for FY 81
—NEP III: Status and Local Government Concerns
—LGEPAC Annual Assessment
—Role of Local Governments in Energy
—Federal Assistance for Local Governments
—Report on Departmental Actions on LGEPAC Resolutions

Subcommittee Meetings—Room 6E-069, 2:00 p.m.-3:00 p.m.
Subcommittee on Procedural Mechanisms
Subcommittee on Legislation
Subcommittee on Local Energy Planning
Subcommittee on Local Energy Emergency Contingency Planning

Friday, November 14, 1980. Subcommittees Reconvene—Room 6E-069, 9:00 a.m.-10:00 a.m.
Full Committee Meeting—Room 2E-069, 10:00 a.m.-1:30 p.m.
1:30—Public Comment (10 minute rule)

Public Participation: The meetings are open to the public. The Chairpersons of the Committee and Subcommittees are empowered to conduct the meetings in a fashion that will, in their judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee or Subcommittees will be permitted to do so, either before or after the meetings. Members of the public who wish to make oral statements pertaining to agenda items should contact the Advisory Committee Management Office at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting concerned and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Executive Summary: Available approximately 30 days following the meeting from the Advisory Committee Management Office.

Issued at Washington, D.C., on October 10, 1980.

Georgia Hildreth,

Director, Advisory Committee Management.

[FR Doc. 80-32609 Filed 10-17-80; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Public Hearing; Compliance With Title I of the Public Utility Regulatory Policies Act

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Announcement of public hearing, compliance with Title I of the Public Utility Regulatory Policies Act.

SUMMARY: To comply with sections 111 and 113 under Title I of the Public Utility Regulatory Policies Act of 1978 (PURPA), the Western Area Power Administration (Western) will hold a public hearing to consider each of the standards established by those sections. Both sections 111 and 113 will be discussed at the same public hearing. A brochure entitled "Preconsideration of Public Utility Regulatory Policies Act Title I Standards" has been prepared and is currently available from Western upon request and will be available at the public hearing. Each standard is listed and discussed in the brochure. The brochure will be the basis for comments during the hearing.

DATE: A public hearing will be held on November 6, 1980, beginning at 9 a.m. at the Sheraton Inn, Denver Airport, Mt. Evans Room, 3535 Quebec Street, Denver, Colorado. Written comments should be received by December 1, 1980, in order to be assured of consideration.

ADDRESS: For further information concerning the public hearing or to request a copy of the brochure, please contact: Mr. Conrad K. Miller, Chief, Rates and Statistics Branch, Western Area Power Administration, Department of Energy, P.O. Box 2402, Golden, CO 80401, (303) 231-1535.

Written comments should be also submitted to the above address.

SUPPLEMENTARY INFORMATION: Western was established on December 21, 1977, under the Department of Energy Organization Act of 1977 (DOE Act). The DOE Act transferred to the Secretary of Energy all the functions of the Secretary of the Interior with respect to, among other things, the power marketing functions of the Bureau of Reclamation (now the Water and Power Resources Service and hereinafter called the Service), including the construction, operation, and maintenance of tranmission lines and attendant facilities. Western was established to administer those functions transferred from the Service.

Western sells power for 10 individual power projects, each with its own rates, to almost 400 customers consisting of cooperatives, municipalities, public utility districts, private utilities, Federal and State agencies, irrigation districts. Electric power marketed by Western is generated by hydroelectric resources of the Service, the Corps of Engineers, and the International Boundary and Water Commission. Additionally, Western markets the United States' entitlement from the large Navajo coal-fired plant near Page, Arizona, and, in northern California, markets power purchased from the most economic resources available to meet obligations of the Central Valley Project in excess of the Federal hydroelectric resouces available.

Western's obligations to its customers are contractually established and limited. Western neither claims nor accepts any utility responsibility. In all cases, customer requirements in excess of the power and energy available to that customer from Western must be obtained by the customer from other sources.

Section 111 of PURPA requires that utilities with annual sales that are not for resale in excess of 500 million kilowatt hours " * * * consider each standard established by subsection (d) and make a determination concerning whether or not it is appropriate to implement such standard to carry out the purposes of this title." The section goes on to say that "The consideration referred to in subsection (a) shall be made after public notice and hearing." Section 113 requires that such utilities " * * * provide public notice and conduct a hearing respecting the standards established by subsection (b) and, on the basis of such hearing * * * " either adopt, pursuant to subsection (a), each of the standards, or expain why the standard will not be adopted.

Two of the projects for which Western markets power, the Boulder Canyon Project and the Central Valley Project, have annual sales that are not for resale in excess of the 500 million kilowatthour threshold. A third project, the Pick-Sloan Missouri Basin Program, has such sales so close to the threshold amount that it too will be considered in the category of being above the threshold. For those sales that are not for resale for each of these three projects, Western is considering each of the standards set forth in section 111 and 113 of the PURPA. At the public hearing, Western will receive comments concerning whether or not it is appropriate for Western to implement each standard for such sales for these projects for the purposes of Title I of PURPA.

Although not statutorily required to do so, Western is willing to receive comments concerning the appropriateness of implementing each standard for its sales that are for resale for each of these three projects, and for both sales that are for resale for other projects for which it markets power. The other projects are the Collbran Project, Colorado River Basin Project, Colorado River Storage Project, Falcon-Amistad Project, Parker-Davis Project, Provo River Project, and the Rio Grande Project.

After analyzing any comment received, Western will complete its consideration and will make a determination concerning whether or not it is appropriate to implement each standard. The final determinations will be in writing and will be available to the public.

Issued at Golden, Colorado, October 10, 1980.

Robert L. McPhail,

Administrator.

[FR Doc. 80-32603 Filed 10-17-80; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-1638-5]

Availability of Environmental Impact Statement

AGENCY: Office of Environmental Review (A-104), U.S. Environmental Protection Agency.

PURPOSE: This notice lists the Environmental Impact Statements (EIS's) which have been officially filed with the EPA and distributed to federal agencies and interested groups, organizations and individuals for review pursuant to the Council on Environmental Quality's Regulations (40 CFR Part 1506.9).

PERIOD COVERED: This notice includes EIS's filed during the week of October 6, 1980 to October 10, 1980.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this notice is calculated from October 17, 1980 and will end on December 1, 1980. The 30-day review period for final EIS's as calculated from October 17, 1980 will end on November 17, 1980.

EIS AVAILABILITY: To obtain a copy of an EIS listed in this notice you should contact the federal agency which prepared the EIS. This notice will give a contact person for each federal agency which has filed an EIS during the period covered by the notice. If a federal agency does not have the EIS available upon request you may contact the Office of Environmental Review, EPA, for further information.

BACK COPIES OF EIS'S: Copies of EIS's previously filed with EPA or CEQ which are no longer available from the originating agency are available with charge from the following source: Information Resources Press, 1700 North Moore Street, Arlington, Virginia 22209. (703) 558-8270 (for hard copy reproduction or microfiche.)

SUMMARY OF NOTICE: This notice sets forth a list of EIS's filed with EPA during the week of October 6, 1980 to October 10, 1980. The federal agency filing the EIS, the name, address, and telephone number of the federal agency contact for copies of the EIS, the filing status of the EIS, the actual date the EIS was filed with EPA, the title of the EIS, the state(s) and county(ies) of the proposed action and a brief summary of the proposed federal action and the federal agency EIS number, if available, is listed in this notice. Commenting entities on draft EIS's are listed for final EIS's. All additional information relating EIS's such as time extensions or reductions of prescribed review periods, withdrawals, retractions, corrections or supplemental

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reports is also notice under the appropriate agency.

FOR FURTHER INFORMATION CONTACT: Kathi L. Wilson, Office of Environmental Review, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 245–3006.

Dated: October 15, 1980.

William N. Hedeman, Jr.,

Director, Office of Environmental Review (A–104).

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Director, Office of Environmental Quality Office, of the Secretary, U.S. Department of Agriculture, Room 412–A Admin. Building, Washington, D.C. 20250, (202) 447–3965.

Forest Service

Draft

Maine Spruce Budworn Management (1981–1985), Several Programmatic Counties, Maine, October 10: This programmatic EIS addresses the awarding of funding on an annual basis for a 5 year spruce budworm intergrated pest management program in the counties of Aroostock, Piscataquis, Somerset, Penobscot, Washington, Franklin and Hancock, Maine. The preferred alternative would involve an increase in the use of silviculture and utilization-marketing, while the use of chemicals is reduced and the use of biologicals is increased. All of the alternatives consider, except no action, an increase in the use of silviculture and utilization-marketing. The alternatives vary in the use of chemicals and biologicals. The cooperating agency is the state of Maine. (USDA–FS–NA–81–01). (EIS order No. 800780.)

Correction: Flathead Wild and Scenic River Designation (FS–1), MT, published FR October 14, 1980—EIS Order Number should be 800766.

U.S. ARMY CORPS OF ENGINEERS

Contact: Mr. Richard Makinen, Office of the Chief of Engineers, Attn: DAEN–CWR–P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, Washington, D.C. 20314, (202) 272–0121.

Draft

Valdez Hydroelectric Powerplant, Allison Lake, Alaska, October 6: Proposed is the construction of a hydroelectric power plant at Allison Lake, Alaska, to provide power to the Valdez/Copper River basin area. The preferred plan would involve the generation of 8 MW with 32,000 MWH of firm annual energy from the hydroelectric project and 7.4 MW with 52,000 MWH of annual energy from the pressure reducing turbine. Other plans included combinations of diesel, pressure reducing turbines, and hydroelectric. (Alaska district.) (EIS order No. 800770.)

Extension: The review period for the above EIS has been extended until December 5, 1980. (No. 800770)

Oceanside Vicinity Beach Erosion Control, San Diego, Calif. October 10: Proposed is a beach erosion control plan for the oceanside vicinity of San Diego County, California. The preferred alternative involves: 1) A continuous breakwater 10,800 feet long, 2) an 800 foot groin, 3) A 500 foot groin, 4) A 400 foot groin, 5) A 200 foot groin, 6) creation of a beach by sandfill, and 7) A 30 foot wide channel between Loma Alta Creek and Buena Vista Lagoon. The other alternatives considered are: 1) sandfill with periodic nourishment, 2) A sand bypassing system and sandfill, and 3) placement of groins and sandfill. The cooperating agencies are the state of California, EPA, FWS and NMFS. (Los Angeles District.) (EIS order No. 800785.)

Final

Prudhoe Bay Oil Field Waterflood Project, Alaska, October 10: Proposed is the issuance of permits for the construction and operation of a project to recover an additional billion barrels of oil from the currently producing Prudhoe Bay oil field in the North Slope Borough of Alaska. The project would include: (1) Widening, raising and extending an existing gravel causeway in the Beaufort Sea; (2) construction and operation of a seawater intake and treatment plant; (3) construction of six new gravel pads and related facilities for pressurizing and distributing seawater; (4) construction and maintenance of about 196 km of pipeline; and (5) widening 27 existing gravel pads and construction of one new gravel pad to accommodate water injection wells. The cooperating agencies are NMFS, EPA and FWS. (Alaska district). Comments made by: EPA, DOI, DOC, DOT, HUD, AHP, State and local agencies, groups, individuals, and businesses. (EIS order No. 800788.)

Nehalem Bay North and South Jetties Rehabilitation; Tillamook County, Oreg., October 9: Proposed is the rehabilitation of the north and south jetties of Nehalem Bay in Tillamook County, Oregon. The rubblemound jetties would be constructed to original dimensions using present construction specifications. The alternatives consider: Bar dredging, and rehabilitation of both jetties. The purposes of the project include: Improvement of navigational safety, maintenance of the usability of the navigation channel, and the reduction of wave erosion damage to a nearby residential area. (Portland district). Comments made by: DOI, USDA, FERC, EPA, DOC, State and local agencies, groups, and businesses. (EIS order No. 800775.)

Withdrawal: Dickey-Lincoln School Lakes Project, ME, published FR October 3, 1980, No. 800729 Final Supplement—has been officially withdrawn.

Department of Commerce

Contact: Dr. Robert T. Miki, Acting Deputy Assistant Secretary for Regulatory Policy, Room 7614, Department of Commerce, Washington, D.C. 20230, 202–377–2462.

Economic Development Administration

Draft

Gatlinburg Intercity Water Supply; Sevier County, Tenn., October 10: Proposed is a intercity water supply plan for the city of Gatlinburg, Sevier County, Tennessee. This contains four phases consisting of: (1) The water supply systems of Gatlinburg, Pigeon Forge and Pittman Center would be interconnected, (2) construction of distribution lines in Pittman Center, (3) construction of a new pipeline from Sevierville to Pigeon Forge, and (4) searching and planning of development of new water sources. The cooperating agencies are FHA and Applaichian Regional Commission. (EIS order No. 800777.)

Environmental Protection Agency

Contact: Mr. Bill Geise, Region VIII, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295, 303–837–4831.

Draft

Spearfish WWT Facilities, Grant, Lawrence County, S. Dak., October 6: Proposed is the awarding of a grant for the construction of wastewater treatment facilities for the Spearfish areas of Lawrence County, South Dakota. The facilities to be constructed will include: (1) A 3,800 foot, 8 inch gravity sewer line up Christensen Drive, and (2) a 4,000 foot, 8 inch sewer line with a 2,050 foot force main to the west subdivision in the lower Spearfish Valley. (EPA–908/5–80–002A). (EIS order No. 800769.)

Department of Defense, Army

Contact: Col. Kenneth Halleran, Chief of the Environmental Office, Headquarters Daen–zce, Office of the Assistant Chief of Engineers, Department of the Army, Room 1E676, Pentagon, Washington, D.C. 20310, (202) 694–4269.

Draft

Aleutian Is./Alaskan Peninsula, Debris Removal, Alaska, October 10: Proposed is the clean-up of World War II debris remaining on the Aleutian Islands and the lower Alaska Peninsula, Alaska. Clean-up operations would involve removal and disposal of derelict buildings, machinery, other obsolete and abandoned material and scattered debris remaining from military operations and construction. The Alternatives consider: (1) total clean-up, (2) partial clean-up, and (3) minimal clean-up. (EIS Order No. 800786.)

Fort Carson continued operation, Fort Carson; El Paso, Pueblo, and Fremont Counties, Colorado; October 10: Proposed is the continued operation of Fort Carson military installation located in Fort Carson and the counties of El Paso, Pueblo and Fremont, Colorado. Continued operation would involve the following land uses: (1) Cantonment area, (2) Butts Army Airfield, (3) ammunition storage point, (4) recreation areas, (5) training encampment areas, (6) tank firing tables, (7) training and maneuver areas, and (8) impact areas. Activities of the installation currently include support of the fourth infantry division and education/training of combat ready ground troops. The alternatives considered are: (1) no action/maintenance of the status quo, and (2) decrease of mission through elimination of one bridge. (EIS Order No. 800779.)

Extension: The review period for the above EIS has been extended until December 8, 1980. (No. 800779)

Federal Energy Regulatory Commission

Contact: Dr. Jack M. Heinemann, Advisor on Environmental Quality, Room 3000, S–22, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, (202) 357–8228.

Special notation.—Anyone desiring to protest or file a petition to intervene with the FERC on the basis of a draft EIS listed below should do so in accordance with the requirements of FERC's rules of practice and procedure, 16 CFR 1.8, 1.10 (1979), within the time period set forth in this notice, unless otherwise stated.

Draft

South Fork American River Development, License, El Dorado County, California, October 10: Proposed is the issuance of a license for the construction of a conventional hydroelectric and water supply project with an installed generating capacity of 110.4 Mw on the South Fork American River and tributaries in El Dorado County, California. The facilities required involve: (1) diversion dams, (2) diversion structures, (3) water conveyance structures, (4) powerhouses, (5) transmission lines, (6) access roads, (7) recreational facilities, and (8) appurtenant facilities. The cooperating agency is the FS. (FERC/EIS–0020/D.) (EIS Order No. 800783.)

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Room 7274, Department of HUD, 451 7th Street, SW., Washington, D.C. 20410, (202) 755–6300.

Draft

Midvale Park Development, Mortgage Insurance, Pima County, Arizona, October 10: Proposed is the issuance of various types of HUD Home Mortgage Insurance for the Midvale Park, a major housing, commercial and industrial development, to be located in Pima County, Arizona. The development would consist of 8,752 single-family, townhouse, condominium, apartment and mobile home units. Commercial facilities will include: (1) 116 acres of local and district shopping facilities, and (2) 74 acres for a regional shopping center. A site for a 127-acre industrial park is also planned. In addition, school and park sites would be reserved. (EIS Order No. 800776.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256, Interior Bldg., Department of the Interior, Washington, D.C. 20240, (202) 343–3891.

BUREAU OF LAND MANAGEMENT

Draft

Southern Appalachian Regional Coal Leasing, several counties in Alabama, October 6: Proposed is the initiation of an active coal leasing program in the counties of Fayette, Jefferson, Tuscaloosa and Walker, Alabama. The low or preferred alternative would offer for lease in mid-1981, six underground tracts and seven surface-mineable tracts, which would result in an average annual production of approximately 8 million tons. The alternatives consider: (1) no action, (2) underground mining, (3) low production, (4) medium production, and (5) high production. (EIS Order No. 800768.)

Extension: The review period for the above EIS has been extended until December 10, 1980. (No. 800768.)

Uinta-Southwestern Utah Coal Development, several counties in Utah, October 9: Proposed is the development of the Uinta-Southwestern Utah coal region in Carbon, Emery, Sevier and Sanpete Counties, Utah. The alternatives consider: (1) leasing of 11 tracts and mining of 572.6 million tons, (2) leasing of 7 tracts and mining of 446.6 million tons, (3) leasing of specified exchange tracts and mining of 335.6 million tons, (4) leasing of 3 tracts and mining of 171.3 million tons, and (5) no action. The cooperating agencies are AFS, FWS and GS. (DES–80–68.) (EIS Order No. 800773.)

Extension: The review period for the above EIS has been extended until December 9, 1980. (No. 800773.)

Extension: California Desert Conservation Area, CA; published FR October 14, 1980, No. 800743—review period extended until November 21, 1980. Ute Mountain Strip Coal Mine Lease, NM, published FR September 26, 1980, No. 800717—review period extended until November 20, 1980.

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environment and Safety, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590, (202) 426–4357.

Federal Aviation Administration

Draft

Washington National Airport Safety Modification, Washington, D.C., October 10: Proposed is approval of a safety overrun area modification at Washington National Airport in Washington, D.,C. the modifications will involve constructing a 550 foot grass overrun on the north end in roaches run. The total overrun would be 750 feet. On the south end the existing 1,000 foot overrun would be rehabilitated. In addition to no build, four design alternatives are considered. The cooperating agency is the COE. (EIS Order No. 800776.)

Extension: The review period for the above EIS has been extended until December 9, 1980. No. 800776.

Federal Highway Administration

Final

IA–100 Construction and U.S. 30 Reconstruction Linn County, Iowa, October 6: proposed is the construction of IA–100 and the reconstruction of US 30 in Linn County, Iowa. Plans for IA–100 involve constructing a two lane rural facility from US 30 to IA–94. From IA–94 to usher's ferry road, IA–100 would be an urban four lane divided facility. The reconstruction and relocation of US 30 would begin two miles west of Stoney Point Road to one mile south of the existing US 30. The alternatives consider no build and four alignments. (FHWA–IOWA–EIS–78–4–F.) Comments made by: USDA HUD, DOI, EPA, DOT, COE, state and local agencies. (EIS Order No. 800772.)

Final

Alton Beltline extension, IL–140 to Broadway Avenue, Madison County, Illinois, October 6: Proposed is the Construction, on a new alignment, of the Alton Beltline extension (FAP route 785 S) located in Madison County, Illinois. The project will extend for two miles from the Alton Beltline highway's present terminus at college avenue (IL–140) in northeast Alton to Broadway in southeast Alton, near the city's common corporate boundary with east Alton. Project features include the reconstruction of the thousand island intersection, replacement of the present two-lane Milton road bridge over Wood River Creek, and relocation of Milton Road over come-in place. (FHWA-IL-EIS-79–02–F) Comments made by: EPA, DOT, USDA, DOI, FERC, State and local agencies, groups, and businesses. (EIS order No. 800771.)

Mid-County Expressway /I–476, I–95 to I–76, Delaware and Montgomery Counties, October 10: Proposed is the construction of a segment of the Mid-County Expressway /I–476 from I–95 to I–76 in the counties of Delaware and Montgomery, Pennsylvania. The total length of this segment would be 16.9 miles. The facility would be a six land, divided, limited access highway. The alternatives consider: 1) build with all planned interchanges, 2) delete West Chester Pike Interchange, 3) delete Lancaster Avenue Interchange, and 4) delete both interchanges. (FHWA–PA–EIS–76–03–F) Comments made by: USDA, DOC, DOI, DLAB, EPA, GSA, State and local agencies, groups, individuals, and businesses. (EIS Order No. 800787.)

Report: I–40, Extension, I–40/I–95 to Wilmington, NC, has been made available. (No. 800776.)

Federal Railroad Administration

Draft

Shaw's Cove Bridge and Approaches, New London, New London County, Connecticut, October 9: Proposed is the replacement of the movable-span bridge carrying the northeast corridor mainline across Shaw's Cove in the city and county of New London, Connecticut, with a new bridge and approaches. The preferred alternative is a swing-span bridge on a new alignment approximately 106 feet east of the existing structure, with two 70 foot wide channels and a vertical clearance of 6.8 feet above mean high water (MHW) in the closed position. Other alternatives include: 1) no action, 2) rehabilitation of existing bridge, and 3) construction of a new bridge. The cooperating agency is COE. (FRA–RNC–EIS–80–02–D.) (EIS Order No. 800774.)

Urban Mass Transportation Administration

Draft

Washington Metrorail System, West Hyattsville, Prince Georges County, Maryland, October 10: Proposed is the construction of the West Hyattsville segment of Washington Metrorail System (green/yellow line, E route) in Prince George's County, Maryland. This segment extends from the DC boundary to approximately 2000 feet west of the Prince George's Plaza station. The preferred alignment is an S-curve facility and would involve the elimination of the Chillum Road Station and the construction of

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a West Hyattsville station. The cooperative agency is the Washington Metropolitan area transit authority. (EIS Order No. 800784.)

Tennessee Valley Authority

Extension: Alternative Electric Power Rate Structures, published FR August 1, 1980, No. 800547—has been extended until October 20 1980.

Nuclear Regulatory Commission

Report: Joseph M. Farley Nuclear Plant, Unites 1 & 2, AL, has been made available. (No. 800782.)

[FR Doc. 80-32616 Filed 10-17-80; 8:45 am]

BILLING CODE 6560-37-M

[TSH-FRL 1638-3; OPTS—59036]

Aminoalkanol Salt, as a 25-Percent Aqueous Solution; Premanufacture Exemption Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1)(A) of the Toxic Substances Control Act (TSCA) requires any person intending to manufacture or import a new chemical substance for a commercial purpose in the United States to submit a premanufacture notice (PMN) to EPA at least 90 days before he commences such manufacture or import. Under Section 5(h) the Agency may, upon application, exempt any person from any requirement of section 5 to permit such person to manufacture or process a chemical for test marketing purposes. Section 5(h)(6) requires EPA to issue a notice of receipt of any such application for publication in the Federal Register. This notice announces receipt of an application for an exemption from the premanufacture reporting requirements for test marketing purposes and requests comments on the appropriateness of granting the exemption.

DATE: The Agency must either approve or deny this application by November 6, 1980. Persons should submit written comments on the applications no later than November 4, 1980.

ADDRESS: Written comments to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St. SW., Washington, DC 20460, (202-755-5080).

FOR FURTHER INFORMATION CONTACT: Mary Cushmac, Premanufacturing Review Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-221, Washington, DC 20460 (202-426-398).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA (90 Stat. 2012 (15 U.S.C. 2604)), any person who intends to manufacture or import a new chemical substance for commercial purposes in the United States must submit a notice to EPA before the manufacture or import begins. A "new" chemical substance is any chemical substance that is not on the Inventory of existing chemical substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the Federal Register on May 15, 1979 (44 FR 28558) and the notice of availability of the Revised Inventory was published on July 29, 1980 (45 FR 50544). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

Section 5(a)(1) requires each PMN to be submitted in accordance with section 5(d) and any applicable requirement of chemical substance that are subject to testing rules under section 4. Section 5(b)(2) requires additional information in PMN's for substances which EPA, by rules under section 5(b)(4), has determined may present unreasonable risks of injury to health or the environment.

Section 5(h), "Exemptions," contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorized EPA, upon application, to exempt persons from any requirement of section 5(a) or section 5(b) to permit the persons to manufacture or process a chemical substance for test marketing purposes. To grant such an exemption, the Agency must find that the test marketing activities will not present any unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and the Agency must publish a notice of its disposition in the Federal Register. If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

Under section 5(h)(6), EPA must publish in the Federal Register a notice of receipt of an application under section 5(h)(1) immediately after the Agency receives the application. The notice identifies and briefly describes the application (subject to section 14 confidentiality restrictions) and gives interested persons an opportunity to comment on it and whether EPA should grant the exemption. Because the Agency must act on the application within 45 days, interested persons should provide comments within 15 days after the notice appears in the Federal Register.

EPA has proposed Premanufacture Notification Requirements and Review Procedures published in the Federal Register of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764) containing proposed premanufacture rules and notice forms. Proposed 40 CFR 720.15 (45 FR 2268) would implement section 5(h)(1) concerning exemptions for tests marketing and includes proposed 40 CFR 720.15(c) concerning the section 5(h)(6) Federal Register notice. However, these requirements are not yet in effect. In the meantime, EPA has published a statement of Interim Policy published in the Federal Register of May 15, 1979 (44 FR 28564) which applies to PMN's submitted prior to promulgation of the rules and notice form.

Interested persons may, on or before November 4, 1980, submit to the Document Control Officer (TS-793), Rm. E-447, Office of Pesticides and Toxic Substances, 401 M St., SW, Washington, DC 20460, written comments regarding this notice. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-59036]". Comments received may be seen in the above office between 8 a.m. and 4 p.m., Monday through Friday excluding holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: October 9, 1980.

Warren R. Muir,

Deputy Assistant Administrator for Toxic Substances.

TM-80-41

The following summary is taken from data submitted by the manufacturer in the test marketing exemption application.

Close of Review Period. November 6, 1980.

Manufacturer's Identity. International Minerals & Chemical Corp., Mundelein, IL 60060.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Aminoalkanol salt, as a 25% aqueous solution.

Use. Pigment dispersant for latex paint and polyelectrolyte for industrial cooling water.

Production Estimates. The manufacturer states that 25,000 pounds of the new substance will be manufactured for test marketing purposes.

Physical/Chemical Properties

Flash point (TCC)—>194°F.

Specific gravity—1.07.
Viscosity (Brookfield)—4.3 cps.
pH—8.9-9.3.
Color (APHA)—<5.

Toxicity Data

Acute oral toxicity, LD_{50} (rat)—>6 g/kg.
Primary eye irritation (rabbit)—Non-irritating.
Primary skin irritation (rabbit)—Non-irritating.
Primary skin corrosion (rabbit)—Non-corrosive.

Exposure. During manufacture, the submitter states that work exposure will be limited to two or three persons who will employ safe housekeeping procedures and wear protective clothing. During use, exposure potential is limited to incorporation of the material into the paint. One to two workers could be exposed for a period of one-half to one hour during the process.

Environmental Release/Disposal. The submitter states that disposal will not be necessary. However, should a spill occur, the substance could be absorbed with sawdust or bentonite and disposed of in a landfill.

[FR Doc. 80-32530 Filed 10-17-80; 8:45 am]

BILLING CODE 6560-31-M

[OPTS-50021A; TSH-FRL 1638]

Premanufacture Information, Access by Contractor and Subcontractor; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice corrects the commencement of access by a contractor and a subcontractor to confidential business information submitted by manufacturers in premanufacture notices.

FOR FURTHER INFORMATION CONTACT: John B. Ritch, Jr., Director, Industry Assistance Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-429, 401 M St. SW., Washington, D.C. 20406, Toll free: (800-424-9065), In Washington, D.C.: (202-554-1404).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the Federal Register of October 2, 1980 (45 FR 65299) announcing a contract between EPA and the American Management Systems, Inc. (AMS) and its subcontractor, Management Design, Inc. (MDI), to conduct an internal study of the review processes involved in implementing the Toxic Substances Control Act (TSCA).

In the FR Doc. 80-30641, appearing at page 65299, the entry following the heading "date:", first column, line 24, corrected to read: "Access to information submitted and claimed to be confidential will occur no sooner than October 17, 1980."

Dated: October 14, 1980

Warren R. Muir,

Deputy Assistant Administrator for Toxic Substances.

[FR Doc. 80-32528 Filed 10-17-80; 8:45 am]

BILLING CODE 6560-31-M

[OPTS-51152; TSH-FRL 1638-2]

Premanufacture Notices; Certain Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture Notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the Federal Register certain information about each PMN within 5 working days after receipt. This Notice announces receipt of two PMN's and provides a summary of each.

DATES: Written comments by: PMN 80-251—November 11, 1980; PMN 80-260—November 18, 1980.

ADDRESS: Written comments to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460 (202-755-8050).

FOR FURTHER INFORMATION CONTACT: Robert Jones, Chemical Control Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460 (202-426-8816).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under Section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the Federal Register of May 15, 1979 (44 FR 28558-Initial) and July 29, 1980 (45 FR 50544-Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the Federal Register issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the Federal Register of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the Federal Register nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the Federal Register.

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended Federal Register notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) Federal Register notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause,

extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the Federal Register.

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, summaries of the data taken from the PMN's are published herein.

Interested persons may, on or before the dates shown under "Dates", submit to the Document Control Officer (TS-793), Rm. E-447, Office of Pesticides and Toxic Substances, 401 M St., SW, Washington, DC 20460, written comments regarding these notices. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-51152]" and the specific PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: October 14, 1980

Warren R. Muir,

Deputy Assistant Administrator for Toxic Substances.

PMN 80-251

Close of Review Period. December 11, 1980.

Manufacturer's Identity. Claimed confidential business information. Generic information provided: Standard Industrial Identification Code—28.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Carbomonocyclic, carbopolycyclic polyester.

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Claimed confidential business information. Generic information provided: The submitter states that the substance will be used in an open use that will release more than 50,000 kilograms of the substance into the environment per year.

Production Estimates. No data were submitted.

Physical/Chemical Properties

Vapor pressure—Solid at room temperature.
Density—>1.1 gm/cc.
Solubility in penta fluoro phenol at 60° C—1-10 gm/1.
Melting point—>100° C.

Toxicity Data

Animal Toxicological Evaluations:
Dermal toxicity screen—Negative.
Oral toxicity screen—Negative.
Skin sensitization—Negative.
Human patch test—Negative.
Mutagenicity Evaluations:
Ames test of the polymer resin—Negative.
Ames test of an artificial sweat extract—Negative.
Environmental testing:
Acid leachate of polymer resin—Non-hazardous.

Exposure. The manufacturer states that the use of the PMN substance will involve potential skin contact and potential inhalation exposure at a frequency of five or more times per week to chemical industry employees; a very low potential for contact by commercial employees in maintenance, services, and retail sales at frequency of more than once per week; and a very low potential for contact by consumers at a frequency of once per year or less.

Exposure.

Activity	Exposure route	Maximum number exposed	Maximum duration		Concentration (ppm)	
			Hours/day	Day/year	Average	Peak
Manufacture	Skin, Eye, Inhalation.	18	4	10	0-1	0-1
Use	Skin, Eye, Inhalation.	15	3	250	0-1	0-1

Environmental Release/Disposal.

Manufacture:
Media—Amount/Duration of Chemical Release (kg/yr).
Air—10-100. 4 hr/da; 5-20 da/yr.
Land—10-100.
Water—Less than 20.

Use:
Air—Less than 10.
Land—Less than 10.
Water—100-1,000 (intermittent).

The manufacturer states that reaction byproduct is disposed by incineration.

Environmental Release/Disposal. The submitter states that environmental release as an industrial or commercial loss will be to a landfill and final consumer disposal will be as solid waste.

PMN 80-269

Close of Review Period. December 18, 1980.

Manufacturer's Identity. Claimed confidential business information. Standard Industrial Classification Code—285; e.

Specific Chemical Identity. Claimed confidential business information. Generic name provided: Neutralizer polymer of styrene, alkyl acrylate and substituted alkyl methacrylates.

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Claimed confidential business information. The submitter states that the substance will be used in an open use that will release more than 50 but less than 500 kilograms (kg) of the substance to the environment per year.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties. No data were submitted.

Toxicity Data. No data were submitted.

[FR Doc. 80-32529 Filed 10-17-80; 8:45 am]

BILLING CODE 6560-31-M

[SA-1-RL 1637-6]

Task Group on Marine Ecosystem Monitoring of the Ecology Committee, Science Advisory Board; Open Meeting

Under Pub. L. 92-463, Notice is hereby given that a meeting of the Task Group on Marine Ecosystem Monitoring of the Ecology Committee, Science Advisory Board, will be held on November 6 and 7, 1980, beginning at 9:00 a.m., Hall of States A Conference Room, Skyline Inn, South Capitol and I streets, SW, Washington, D.C.

This is the second meeting of the Task Group on Marine Ecosystem Monitoring. The Task Group was established to examine marine ecosystem monitoring and the utility of data gathered to the mandates of the Environmental Protection Agency (EPA). The Agenda includes such issues as regulatory aspects of ocean monitoring, parameters and factors that should be monitored, use of masses of data in decision-making, and planning of future meetings. It is anticipated that considerable time will be devoted to discussion of the preparation of the report and report writing.

The meeting is open to the public. Because of limited seating capacity of the meeting room, all members of the public must register no later than November 3, 1980, and receive a confirmed reservation from Dr. J Frances Allen, Staff Officer, Science Advisory Board, or Ms. Anita Najera, 202-472-9444.

Dated: October 14, 1980.

Richard M. Dowd,

Staff Director, Science Advisory Board.

[FR Doc. 80-32528 Filed 10-17-80; 8:45 am]

BILLING CODE 6560-34-M

FEDERAL RESERVE SYSTEM

Northstar Bancorporation, Inc.; Acquisition of Bank

Northstar Bancorporation, Inc., Wayzata, Minnesota, has applied for the Board's approval and under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 98.9 percent or more of the voting shares of Minnetonka State Bank, Excelsior, Minnesota. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than November 12, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 10, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32499 Filed 10-17-80; 8:45 am]

BILLING CODE 6210-01-M

S & H Holdings, Inc.; Formation of a Bank Holding Company

S & H Holdings, Inc., Iroquois, Illinois, has applied for the Board's approval under section 3(a)(1)) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1) to become a bank holding company by acquiring 88.25 per cent or more of the voting shares of Iroquois Farmers State Bank, Iroquois, Illinois. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 12, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 10, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32498 Filed 10-17-80; 8:45 am]

BILLING CODE 6210-01-M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on October 14, 1980. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the Federal Register is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed NRC request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before November 7, 1980, and should be addressed to Mr. John M. Lovelady, Senior Group Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

Nuclear Regulatory Commission

The NRC is requesting an extension-without-change clearance of the application, recordkeeping and reporting requirements contained in 10 CFR Part 33, Specific Domestic Licenses of Broad Scope for Byproduct Material; specifically §§ 33.13, 33.14 and 33.15. The NRC states that applications are made by letter containing the information required by §§ 33.13, 33.14 and 33.15. The NRC estimates that applicants will number approximately 60 and that applications for Type A licenses (§ 33.13) will require 40 hours to complete, for Type B licenses (§ 33.14) 25 hours per application; and for Type C (§ 33.15) 15 hours per application. NRC also states that recordkeeping burden is incorporated in burden as reported.

Norman F. Heyl,

Regulatory Reports Review Officer.

[FR Doc. 80-32573 Filed 10-17-80; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health

National Committee on Vital and Health Statistics, Cooperative Health Statistics System; Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92-463), notice is hereby given that the Subcommittee on Cooperative Health Statistics System of the National Committee on Vital and Health Statistics, pursuant to functions established by Section 306(k), Paragraph (4) of the Public Health Service Act (42 U.S.C. 242(k)), will convene on Monday, October 27, 1980, at 9:00 a.m., in Room 337A-339A of the Hubert H. Humprhrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201.

Principal consideration and discussion will be devoted to the NCHS Task Force review of the panel report on CHSS; budget report and long-term funding issues; FY 1981 State Agency development projects; and Federal Agency cooperation. Agenda items are subject to change as priorities dictate.

Futher information regarding this meeting of the Subcommittee or other matters pertaining to the National Committee on Vital and Health Statistics may be obtained by contacting Samuel P. Korper, Ph.D., M.P.H., Executive Secretary, National Committee on Vital and Health

Statistics, Room 17A–55, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: 301–443–2660.

Date: October 14, 1980.

Wayne C. Richey, Jr.,

Associate Director for Program Support Office of Health Research, Statistics, and Technology.

[FR Doc. 80–32148 Filed 10–17–80; 8:45 am]

BILLING CODE 4110–85–M

Office of the Secretary

Consumer Affairs Council; Meeting

SUMMARY: This notice sets forth the scheduled date for the first meeting of the HHS Consumer Affairs Council. This meeting is being held under the Department of Health and Human Service's consumer affairs guidelines to comply with E. O. 12160 established by President Carter in the Federal Register, Vol. 45 No. 112, Monday, June 9, 1980, page 38981.

DATE: Friday, October 31, 1980, 2:00–4:00 p.m.

ADDRESS: 200 Independence Ave. SW., Room 800, Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Susan L. Randolph, Assistant for Consumer Affairs, 200 Independence Ave. SW., Washington, D.C. 20201, (202) 245–0409.

Dated: October 14, 1980.

Glenn Kamber,

Deputy Executive Secretary (Regulations).

[FR Doc. 80–32554 Filed 10–17–80; 8:45 am]

BILLING CODE 4110–12–M

Senior Executive Service Performance Review Board Amendment

In accordance with Section 4314(c)(4) of the Civil Service Reform Act of 1978, Pub. L. 95–454, a notice announcing the appointment of Performance Review Board members for the Department of Health and Human Services was published in the Federal Register on July 16, 1980, Volume 45, Number 138, 45 FR 47729. This notice amends the composition of the Board as follows:

Federal Performance Review Board Members

Deletions

Peter J. Bersano
J. Richard Crout
Irvin Cushner
David Kefauver
Robert McClernan
Edward Nicholas
Gregory O'Conor
Gerald Rosenthal
Helen L. Smits
John C. Villforth
Jack Wicklein

Additions

Richard Adamson
Leonard Bachman
Calvin Baldwin
Ralph DeAngelus
Louis D. Enoff
Charlotte Frank
Gene Handelsman
Richard Helm
J. Paul Hile
Margaret H. Jordan
Martin Kappert
Jesse McCorry
Harry Meyer
Nick Onorato
Saul A. Schepartz
Kevin Sexton
Thomas Staples

Dated: October 10, 1980.

Thomas S. McFee,

Assistant Secretary for Personnel Administration.

[FR Doc. 80–32561 Filed 10–17–80; 8:45 am]

BILLING CODE 4110–12–M

Public Health Service; Center for Disease Control; Office of the Assistant Secretary for Health; Statement of Organization, Functions, and Delegations of Authority

Correction

In FR Doc. 80–31888 appearing on page 67772 in the issue of Tuesday, October 14, 1980, make the following correction:

On page 67774, center column, item (6) under *Center for Prevention Services (HCM)* should have read "(6) conducts operational research to improve the assistance programs;".

BILLING CODE 1505–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Casper District Advisory Council; Meeting

October 10, 1980.

Notice is hereby given in accordance with Pub. L. 92–463, that a meeting of the Casper District Advisory Council will be held on November 20, 1980.

The meeting will begin at 9:00 a.m. in the conference room of the Casper District Office, Bureau of Land Management, 951 Rancho Road, Casper, Wyoming.

The agenda will include: (1) Review of the council's purpose, responsibilities and operating procedures; (2) review of district programs, activities, and land management issues; (3) election of officers; and (4) arrangements for the next meeting.

The meeting will be open to the public. Interested persons may make oral statements or file written statements for the council's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 951 Rancho Road, Casper, Wyoming 82601 by November 17, 1980. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the district manager.

Summary minutes of the meeting will be maintained in the district office and be available for public inspection within 30 days following the meeting.

Robert E. Wilber,

District Manager.

[FR Doc. 80–32450 Filed 10–17–80; 8:45 am]

BILLING CODE 4310–84–M

National Park Service

Wilderness Reevaluation Study; Carlsbad Caverns National Park, New Mexico; Public Hearing

Notice is hereby given in accordance with Section 401 of the Act of November 10, 1978, 92 Stat. 3489, 16 U.S.C. 1132(n) (1978 Supp. 2), and in accordance with Departmental procedures as identified in 43 CFR 19.5 that a public hearing will be held at the following location and time for the purpose of receiving comments and suggestions as to the reevaluation of lands within Carlsbad Caverns National Park for additional wilderness designation.

November 18, 1980 at 7:00 p.m., Carlsbad Municipal Library Auditorium, downtown Carlsbad, New Mexico.

A copy of the wilderness reevaluation study report may be obtained from the Superintendent, Carlsbad Caverns National Park, 3225 National Parks Highway, Carlsbad, New Mexico 88220, telephone (505) 885–8884, or from the Regional Director, Southwest Region, National Park Service, Post Office Box 728, Santa Fe, New Mexico 87501, telephone (505) 988–6388.

The wilderness reevaluation study report including a map of the areas studied for their suitability or nonsuitability as wilderness is available for review at the locations noted above and in Room 1210 of the Department of the Interior Building at 18th and C Streets, NW., Washington, D.C. 20240.

Interested individuals, representatives of organizations and public officials are invited to express their views in person at the aforementioned public hearing, provided they notify the Hearing Officer by November 14, 1980, of their desire to appear. Those not wishing to appear in person may submit written statements on the wilderness reevaluation study report to the Hearing Officer for inclusion in the official record which will be held open until December 19, 1980. The Hearing Officer may be reached by writing or telephoning the Superintendent, Carlsbad Caverns National Park.

Time limitations may make it necessary to limit the length of oral presentations and to restrict to one person the presentation made in behalf of an organization. An oral statement may, however, be supplemented by a more complete written statement that may be submitted to the Hearing Officer at the time of presentation of the oral statement. Written statements presented in person at the hearing will be considered for inclusion in the transcribed hearing record. However, all materials presented at the hearing shall be subject to a determination by the Hearing Officer that they are appropriate for inclusion in the hearing record. To the extent that time is available after presentation of oral statements by those who have given the required advance notice, the Hearing Officer will give others present an opportunity to be heard.

After and explanation of the wilderness reevaluation study report by a representative of the National Park Service, the Hearing Officer insofar as possible, will adhere to the following order in calling for the presentations of oral statements:

1. Governor of the State or his representative.
2. Members of Congress.
3. Members of the State Legislature.
4. Official representatives of the counties in which the national park is located.
5. Officials of other Federal agencies or public bodies.
6. Organizations in alphabetical order.
7. Individuals in alphabetical order.
8. Others not giving advance notice, to the extent there is remaining time.

Dated: October 14, 1980.

Russell E. Dickenson,

Director, National Park Service.

[FR Doc. 80–32580 Filed 10–17–80; 8:45 am]

BILLING CODE 4310–70–M

General Management Plan, Redwood National Park, Calif.; Availability of Final Environmental Impact Statement

Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service, U.S. Department of the Interior, has prepared a final environmental impact statement for the proposed General Management Plan for Redwood National Park. The proposal involves concepts for visitor use and facility development, cultural resources management and goals for natural resources management and watershed rehabilitation. Existing use would be continued, provision made for additional use and facilities, accessibility improved and overall use dispersed while cultural and natural measures are protected. The four alternatives considered are: (1) No action, continuing existing use without provision of any increase or new facilities; (2) Extended visit, emphasizing development of new facilities and services to permit longer visits and more opportunities for visitor enjoyment of park resources; (3) Restructured visitor use, emphasizing closer interaction with adjacent communities and providing shuttle services for visitors to visit park facilities and (4) The preferred alternative which is a mix of the other three and the actual proposal.

A limited number of copies are available upon request from:

Superintendent, Redwood National Park, 111 Second Street, Drawer N, Crescent City, California 95531, (Telephone) (707) 464–6101.

Public reading copies will be available for review at the following locations:

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240, (Telephone) (202) 343–6843;

Western Regional Office, National Park Service 450 Golden Gate Avenue, San Francisco, California 94102, (Telephone) (415) 556–4122;

Headquarters, Redwood National Park, 1111 Second Street, Crescent City, California 95531, (Telephone) (707) 464–6101.

Dated: October 8, 1980.

John H. Davis,

Acting Regional Director.

[FR Doc. 80–32498 Filed 10–17–80; 8:45 am]

BILLING CODE 4310–70–M

Sleeping Bear Dunes National Lakeshore Advisory Commission; Meeting

Notice is hereby given in accrodance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. I, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Sleeping Bear Dunes National Lakeshore Advisory Commission will be held at 1:30 p.m. (EST), November 21, 1980, at Crystal Mountain in Thompsonville, Michigan.

The Commission was established by the Act of October 21, 1970, 84 Stat. 1075, 16 U.S.C. 460x–3, to meet and consult with the Secretary of the Interior on matters related to the administration and development of the Sleeping Bear Dunes National Lakeshore.

The members of the Commission are as follows:

Mr. Samuel F. Eberly (Chairman)
Mr. Charles H. Yeates
Mr. John S. Daugherty
Mr. Walter B. Hart
Mr. George T. Schilling
Mr. William B. Bolton
Dr. Michael Chubb
Ms. Evageline J. Stanchik
Ms. Sylvia B. Kruger

The agenda for the meeting will include an updating of activities in the Sleeping Bear Dunes National Lakeshore since the last Advisory Commission meeting in August of 1979.

The meeting will be open to the public. Any member of the public may file with the Commission prior to the meeting a written statement concerning the matters to be discussed. Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact Richard R. Peterson, Superintendent, Sleeping Bear Dunes National Lakeshore, Frankfort, Michigan 49635, telephone 616–352–9611.

Minutes of the meeting will be available for public inspection 4 weeks after the meeting at the office of Sleeping Bear Dunes National Lakeshore, Frankfort, Michigan.

Dated: October 6, 1980.

J. L. Dunning,

Regional Director, Midwest Region.

[FR Doc. 80–32495 Filed 10–17–80; 8:45 am]

BILLING CODE 4310–70–M

Office of the Secretary

[Order No. 3057]

Transfer of Administrative Jurisdiction Over Land Partitioned to the Navajo and Hopi Tribes

Section 1. *Purpose.* This order transfers jurisdiction and operational responsibilities now held by the Flagstaff Administrative Office, Bureau of Indian Affairs.

a. Land partitioned to the Hopi Tribe by Pub. L. 93–531 (88 Stat. 1712) amended by Pub. L. 96–305 (94 Stat. 929) will be placed under the administrative jurisdiction of the Phoenix Area Office, Bureau of Indian Affairs, for operations and programs undertaken in regard to all conservation practices, including grazing control and range restoration activities.

V 45 O C 2 0 8 0 UMI

b. Land partitioned to the Navajo Tribe by Pub. L. 93–531 (88 Stat. 1712) amended by Pub. L. 96–305 (94 Stat. 929) will be placed under the administrative jurisdiction of the Navajo Area Office, Bureau of Indian Affairs, for operations and programs undertaken in regard to all conservation practices, including grazing control and range restoration activities.

Sec. 2. *Authority.* The transfer of functions directed by this order is made under the authority provided by Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262) as amended and by Section 10 of Pub. L. 93–531 (88 Stat. 1712) as amended by Pub. L. 96–305 (94 Stat. 929).

Sec. 3. *Procedures.* Actions taken by the Bureau of Indian Affairs affecting conservation practices on lands partitioned to the Hopi Tribe and the Navajo Tribe shall be coordinated and executed with the concurrence of the tribe to which the lands in question have been partitioned. All grazing and range restoration matters shall be administered in accordance with 25 CFR Parts 12 and 153 and with any applicable statutes.

Sec. 4. *Effective Date.* The transfer of functions directed by this order will be effective October 6, 1980, and will remain in effect until April 18, 1981, by which time the changes will have been published in Chapter 130 of the Departmental Manual. At that time this order will terminate and be considered obsolete.

Cecil D. Andrus,

Secretary of the Interior.

October 9, 1980.

[FR Doc. 80-32532 Filed 10-17-80; 8:45 am]

BILLING CODE 4310-02-M

INTERSTATE COMMERCE COMMISSION

[No. 37488]

American Trucking Association—Petition for Declaratory Order—Electronic Transmission of Freight Bills by Motor Carriers

AGENCY: Interstate Commerce Commission.

ACTION: Notice of institution of declaratory order proceeding.

SUMMARY: In this proceeding, the Commission will determine whether the electronic transmission of freight bills by motor carriers to shippers in lieu of paper documents is lawful and whether any existing rules prevent this procedure.

DATES: Comments are due by December 4, 1980.

ADDRESS: An original and 15 copies of comments should be sent to: Room 5356, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Richard Felder or Jane Mackall, (202) 275–7693 or (202) 275–7656.

SUPPLEMENTARY INFORMATION: The American Trucking Association (ATA) seeks a declaratory order as to the lawfulness of substituting, when the carrier and shipper agree, electronic freight bill data for the standard paper document.[1]

ATA does not contemplate any change from the use of paper documentation traveling with the freight or in the information to be contained in the bill. It only seeks approval of use of magnetic tapes, discs or other electonic data processing techniques as the record of the freight bill as an alternative to issuing a "paper" bill when collecting transportation charges. ATA notes that the electronic data capabilities of carriers and shippers are increasing, and both may use computers in their internal processing of freight bills. Approval of the proposal would eliminate the extra costs of the current practice of carrier conversion of internally-generated electronic data into a paper bill and shipper conversion of the paper bill back to electonic form. ATA stresses the savings to all carriers and shippers who can take advantage of this technology. Before encouraging carriers to initiate electronic billing, the ATA wants to be sure the procedure complies with all applicable Commission rules and regulations.

ATA recognizes that not all shippers have the necessary facilities to use this proposal. The proposal contemplates that shippers unable or unwilling to participate would continue to receive their billing in paper form. Apparently, some carriers fear being accused of discrimmination in offering this service only to those shippers having the necessary equipment.

ATA believes the proposal does not violate any Commission rules. It points out that, as carriers will continue current procedures for shippers not equipped to receive the data in electronic form, paper bills will also be available to comply with 49 CFR 1057.12(h) (requiring that owner-operators receive copies of bills) and 49 CFR 1220 (record retention).

We believe this petition raises issues appropriate for resolution under 5 U.S.C. 554(e) and we will grant it. We also believe the proposal has great merit. We encourage efforts such as this which eliminate inefficiency and unnecessary costs, and improve the transportation sector's use of new technology. It is our opinion at this point that ATA is correct in its analysis that no discrimination will result.

We seek comments on the proposal, especially as to the existence of any other rules which may hinder or prohibit the proposal. Given the intent to comply with 49 CFR 1057.12(h) and 1220, we do not view them as obstacles to the proposal. The 49 CFR 1220 record retention rules provide for use of magnetic tapes and discs.

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

Dated: October 8, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-32520 Filed 10-17-80; 8:45 am]

BILLING CODE 7035-01-M

[1] A letter dated September 10, 1980 supplementing the petition was also submitted. It provides clarification concerning the breadth of the proposal.

[Finance Docket No. 29494]

Louisiana Midland Railway Co.—Purchase (Portion)— Chicago, Rock Island & Pacific Railroad Co., Debtor (William M. Gibbons, Trustee) Between Hodge and Alexandria, La.

October 14, 1980.

AGENCY: Interstate Commerce Commission.

ACTION: Application accepted for consideration.

SUMMARY: The Commission is accepting for consideration the application of the Louisiana Midland Railway Company to acquire and operate a line of railroad owned by the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee), located between Hodge and Alexandria, LA. The Commission is also setting a schedule for the proceeding, so that a final decision on the application may be made expeditiously.

DATES:

(1) Verified statements supporting or opposing the application are due November 23, 1980.

(2) Verified statements from the United States Secretary of Transportation and the Attorney General of the United States are due November 23, 1980.

(3) Verified replies are due December 3, 1980.

ADDRESS: An original and 5 copies of all statements make reference to Finance Docket No. 29494 and should be sent to: Section of Finance, Room 5414, Interstate Commerce Commission, Washington, DC 20423. Attention: Rock Island Acquisition.

FOR FURTHER INFORMATION CONTACT: Louis Gitomer, (202) 275–7026.

SUPPLEMENTARY INFORMATION: The Louisiana Midland Railway Company (LOAM) filed an application on October 3, 1980, under Section 17(b) of the Milwaukee Railroad Restructuring Act, Pub. L. 96–101, 93 Stat. 736 (1979) and 49 CFR Part 1111, *et seq.*, for authority to purchase certain properties of the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) located in Louisiana. The application will be handled under the rules adopted in Ex Parte No. 282 (Sub-No. 4), *Acquisition Procedures for Lines of Railroads*, 360 I.C.C. 623 (1980), 45 *FR* 6107 (January 25, 1980).

The property involved consists of approximately 27.7 miles of track located between Hodge, LA, at milepost 173.2 and Winnfield, LA, at milepost 199.9; assumption of Rock Island trackage rights to operate over the lines of the Louisiana and Arkansas Railway between Winnfield and Alexandria, LA; and purchase of the Rock Island yard located at Alexandria which comprises approximately 38 acres of land.

An interim lease was entered into on August 1, 1980, between the Rock Island Trustee and LOAM, allowing the latter to begin operations over the line between Hodge and Alexandria. The sale and purchase agreement involved in this application was signed by LOAM and the Trustee on August 6, 1980. An order was entered by the Reorganization Court on September 25, 1980, preliminarily approving this transaction. No governmental financial assistance is involved in this proposal.

We have reviewed this application and find that it contains the information required by our regulations. It is therefore complete. To facilitate a final decision in this proceeding, the dates set forth in the schedule noted above will apply. A copy of all comments should be served upon applicant's representatives:

Fritz R. Kahn, Esq.,
Ellen A. Efros, Esq.
Suite 1100, 1660 L Street, NW.,
Washington, DC 10036.

It is ordered:

1. The application in Finance Docket No. 29494 is accepted for consideration.

2. The parties shall comply with all provisions as stated above.

3. This decision is effective on October 14, 1980.

Dated: October 14, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam. Commissioners Trantum and Alexis not participating.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-32522 Filed 10-17-80; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29430]

NWS Enterprises, Inc.—Control—Norfolk & Western Railway Co. and Southern Railway Co.

October 1, 1980.

AGENCY: Interstate Commerce Commission.

ACTION: Request for further information under 49 CFR 1111.4(c)(2)(v) formerly 49 CFR 1111.4(a)(4).

SUMMARY: The Commission has required applicants in this proceeding to answer certain questions regarding specific markets, geographic areas, or other carriers which are likely to be affected by the proposed transaction.

SUPPLEMENTARY INFORMATION: On July 23, 1980, the Norfolk and Western Railway Company (SR) filed a Notice of Intent to file an application under 49 U.S.C. 11343 and 11344 later this year. The notice was supplemented on September 10, 1980.

Our regulations provide that the Commission may require applicants in a rail consolidation proceeding to provide additional information in support of their application, 49 CFR 1111.4(c)(2)(v). We specifically reserved this right in our order of September 30, 1980, disposing of the waiver request in this proceeding. We have decided to require additional information in this proceeding as set forth below.

We believe the markets and issues dealt with in the questions set out below may be of particular concern in this proceeding. Where applicants' responses indicate that projected traffic levels may differ from current levels, applicants should explain the factors accounting for the difference. We are specifically interested in changes applicants would make after consolidation in routings, in frequency and quality of service, and in traffic solicitation. This information is to be submitted in addition to the operating plan required under 49 CFR 1111.2(b)(4). We expect applicants' answers to the specific items listed to be more detailed than the system operating plan, and to describe the differences between the ways they currently conduct operations and the ways they would conduct operations if the transaction is approved.

I. General Impacts on Traffic Routings

To identify the general impacts of this transaction applicants are to provide: a projected traffic density map (tonnage chart) for the consolidated system with notes explaining (a) the assumptions and methodology used in generating the map and (b) the differences between this map and the current traffic density map required as Exhibit A–14(i) to the application, 49 CFR 1111.2(b)(1)(i).

II. Effect on Local Rail Service in Virginia and North Carolina

a. *North/South Traffic.*

Currently, SR and NW operate parallel routes between points in North Carolina and Northern Virginia/Maryland. Specifically, NW's line runs from Winston-Salem or Durham, NC, to Hagerstown, MD, through the Shenandoah Valley, where connections are made with Conrail and Chessie.

SR's route runs from Winston-Salem (through Greensboro) or Durham to Alexandria, VA, through the Piedmont region, where connections are also made with Conrail and Chessie.

If the transaction is approved, applicants could consolidate their operations. Therefore, applicants are directed to indicate:

1. Amounts of originated, terminated, and overhead traffic on these lines, both current and projected.

2. Whether there will be any consolidation of these north/south lines;

3. A list of the feasible active routings available today for traffic moving north/south through Virginia and North Carolina by carrier (not limited to applicants), and those projected after consummation (not limited to applicants);

4. The impact on communities and shippers along the affected routes if there is a lessening of alternative routings; and

5. The extent to which other rail carriers or modes provide current or potential competitive alternatives for shippers using these routes.

b. *East/West Traffic.*

Currently applicants also operate parallel routes running east/west through North Carolina or Virginia. Southern has a route originating in Norfolk, VA which runs west through Virginia and then northern North Carolina. NW has a route also originating in Norfolk that runs west through southern Virginia.

It appears that these routes compete at various points in southern Virginia and northern North Carolina for local

traffic. Merger could result in consolidation of these lines.

Applicants are directed to indicate:

1. Amounts of originated, terminated and overhead traffic on these lines, both current and projected;

2. Whether there will be any consolidation of these east/west lines;

3. A list of the feasible active routings available today for traffic moving east/west through Virginia and North Carolina by carrier (not limited to applicants), and those projected after consummation (not limited to applicants);

4. The impact on communities and shippers along the affected routes if there is a lessening of alternative routings; and

5. The extent to which other rail carriers or modes provide current or potential competitive alternatives for shippers using these routes.

III. Midwestern Interchange Traffic

Currently, Southern's westernmost gateway is East St. Louis, IL. NW serves Kansas City and St. Louis, and both carriers serve Cincinnati. Service from the East Coast and Middle Atlantic States to these gateway cities may be accomplished over various routes of the proposed system.

Applicants are directed to indicate:

a. The number of available active routings for traffic moving to Cincinnati, St. Louis or Kansas City from points in Maryland, Virginia or North Carolina before and after consummation;

b. The number of available active routings for traffic moving westward from Cincinnati to St. Louis or Kansas City (the midwestern routes) before and after consummation;

c. The anticipated preferred service route for the traffic discussed in (a) and (b) above;

d. The extent to which other rail carriers or modes provide current or potential competitive alternatives for shippers using these midwestern routes.

IV. Impact on Illinois Central Gulf Railroad (ICG)

Currently both SR and NW interchange traffic with ICG.

SR interchanges east/west traffic at East St. Louis with both NW and ICG for traffic moving to Omaha and Kansas City. After consummation SR's traffic at East St. Louis could move single-line to Kansas City and Omaha over NW lines, thus avoiding the ICG.

NW interchanges southbound traffic with ICG at St. Louis heading for eastern gulf ports. After merger the portion of this traffic which originates in the Great Lakes industrial area could move to these ports via the Cincinnati interchange with SR,—thus bypassing St. Louis and ICG.

Applicants are directed to discuss, to the extent possible:

a. The effect of any projected diversions on ICG's future and its ability to provide essential servies; and

b. The extent to which inter- or intramodal alternatives exist or are potentially available to offset any reduction in service along ICG routes.

V. Impact on Chicago & North Western Transportation Co. (CNW)

Currently, SR interchanges traffic with CNW at East St. Louis. Since the transaction, if consummated, would provide SR with a direct connection with western trunk lines via NW, traffic could be diverted from CNW.

Applicants are directed to discuss, to the extent possible:

a. The effect of any diversions on CNW's future and its ability to provide essential services, and

b. The extent to which inter- or intramodal alternatives exist or are potentially available to offset any reduction in service along CNW routes.

VI. Effect of the Transaction on the Transportation of Coal

Both applicants serve significant coal areas. Considering the importance of coal as a source of energy in our nation's future, applicants are directed to:

a. Provide current and projected coal traffic density maps on a consolidated basis for coal traffic on any of the applicants' systems with explanatory notes of the changes;

b. Indicate: (1) the extent to which rail routings or competitive alternatives may be reduced for shippers or receivers of coal; (2) whether planned or potential route consolidations, abandonments, or other operating changes could adversely affect the supply of coal to certain areas or the development of coal supply areas themselves; and (3) the extent to which other modes, or other railroads (whether by alternative routings or future agreements related to trackage rights or similar arrangements) provide current or potential competitive alternatives to mitigate any of the consequences identified in response to this question. Include projections as to future utility sitings in areas served by the applicants. Specify markets and tonnage involved for each answer.

Applicants must provide the requested information as part of their application when filed.

Decided: September 30, 1980.

By the Commission, Chairman Gaskins, Vice-Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-32521 Filed 10-17-80; 8:45 am]

BILLING CODE 7035-01-M

[Volume 32]

Motor Carrier Alternate Route Deviations

The following letter—notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Property (49 CFR 1042.4(c)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed on or before November 19, 1980.

Each applicant states that there will be no significant effect on either the quality of the human environment or energy policy and conservation.

Motor Carriers of Property

MC 11220 (Deviation No. 59) GORDONS TRANSPORTS, INC., 185 West McLemore Ave. Memphis, TN 38101, filed September 23, 1980. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Memphis, TN over Interstate Hwy 40 to Nashville, TN, then over Interstate Hwy 65 to Louisville, KY, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Memphis, TN, over U.S. Hwy 61 to Sikeston, MO, then over U.S. Hwy 60 to Cairo, IL, then over IL Hwy 37 to Salem, IL, then over U.S. Hwy 50 to Vincennes, IN, then over U.S. Hwy 41 to Terre Haute, IN, then over U.S. Hwy 40 to Indianapolis, IN, then over U.S. Hwy 31 to Columbus, IN, then over IN Hwy 7 to Madison, IN, then over IN Hwy 56 to Scottsburg, IN, then over U.S. Hwy 31 to Sellersburg, IN, then over U.S. Hwy 31–E to Louisville, KY, and also over U.S. Hwy 31–W to Louisville, KY, and return over the same route.

MC 30605 (Deviation No. 35), THE SANTA FE TRAIL TRANSPORTATION COMPANY, 433 E. Waterman, P.O. Box 56, Wichita, KS 67201, filed September 22, 1980. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Lubbock, TX over U.S. Hwy 62 to El Paso, TX and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Lubbock, TX over U.S. Hwy 84 to Farwell, TX, then over U.S. Hwy 60 to junction NM Hwy 6, then over NM Hwy 6 to Belen, NM, then over U.S. Hwy 85 to Las Cruces, NM, then over U.S. Hwy 80 to El Paso, TX and return over the same route.

MC 30605 (Deviation No. 36), THE SANTA FE TRAIL TRANSPORTATION COMPANY, 433 E. Waterman, P.O. Box 56, Wichita, KS 67201, filed September 26, 1980. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Ft. Smith, AR, over US Hwy 59 to Houston, TX, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Ft. Smith, AR over US Hwy 64 to junction Interstate Hwy 40, then over Interstate Hwy 40 to junction US Hwy 69, then over US Hwy 69 to junction US Hwy 75, then over US Hwy 75 to Dallas, TX, then over Interstate Hwy 45 to Houston, TX and return over the same route.

MC 42487 (Deviation No. 124), CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, P.O. Box 3062, Portland, OR 97208, filed September 29, 1980. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviaton route as follows: From junction US Hwy 4 and VT Hwy 22A near Fair Haven, VT over VT Hwy 22A to junction US Hwy 7 near Vergennes, VT, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From junction US Hwy 4 and VT Hwy 22A near Fair Haven, VT, over US Hwy 4 to Rutland, VT, then over US Hwy 7 to junction VT Hwy 22A near Vergennes, VT, and return over the same route.

Motor Carrier Alternative Route Deviations

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Passengers (49 CFR 1042.2(c)(9)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed on or before November 19, 1980.

Each applicant states that there will be no significant effect on either the quality of the human environment or energy policy and conservation.

Motor Carriers of Passengers

MC 1515 (Deviation No. 756), GREYHOUND LINES, INC., Greyhound Tower, Phoenix, AZ 85077, filed September 25, 1980. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and the baggage* and *express* and *newspapers* in the same vehicle with passengers, over a deviation route as follows: From Marysville, CA over CA Hwy 20 to Grass Valley, CA and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property over a pertinent service route as follows: From Marysville, CA over CA Hwy 70 to junction CA Hwy 65 (Marysville junction), then over CA Hwy 65 to Roseville, CA, then over Interstate Hwy 80 to Auburn, CA, then over CA Hwy 49 to Grass Valley, CA and return over the same route.

Motor Carrier Intrastate Application(s)

The following application(s) for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to Section 10931 (formerly Section 206(a)(6)) of the Interstate Commerce Act. These applications are governed by Special Rule 245 of the Commission's *General Rules of Practice* (49 CFR 1100.245), which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, and any other related matters shall be directed to the State Commission with which the application is filed and shall *not* be addressed to or filed with the Interstate Commerce Commission.

California Docket No. A59924, filed September 4, 1980. Applicant: TRANS-AERO SYSTEMS CORPORATION, P.O. Box 429, San Jose, CA 95103. Representative: Virgil J. McVicker, 1005 Railroad Avenue, Santa Clara, CA 95050. Certificate of Public Convenience and Necessity sought to operate a freight service, as follows: Transportation of: General commodities (except those of unusual value, household goods as defined by the commission, class A and B explosives, commodities in bulk, motor vehicles, livestock, and commmodities requiring special equipment). Regular routes between points in California, serving intermediate points, as follows: (1) between Weed, CA, and San Diego, CA over Interstate 5 to Sacramento over U.S. Hwy 99 from Sacramento to the junction of Interstate Hwy 5 and U.S. Hwy 99 at a point approximate five miles north of Wheeler Ridge over Interstate 5 to San Diego; (2) between San Jose, CA and Sacramento over U.S. Hwy 101 to the junction of Interstate 80 to Sacramento over California Hwy 17 to the junction of Interstate 80 to Sacramento; (3) between Los Angeles and San Bernardino over Interstate 10; (4) between San Jose and Los Angeles over U.S. Hwy 101; and (5) between Los Angeles and Riverside over Hwy 60. Service is authorized at all off-route points in the counties of Alameda, Los Angeles, Orange, Sacramento, San Francisco, San Mateo, Santa Clara, San Bernardino, and San Diego. Alternate routes for operating convenience only: General commodities, except those of unusual value, household goods as defined by the commission, classes A and B explosives, commodities in bulk, motor vehicles, livestock, and commodities requiring special equipment, between points in California, serving no intermediate points, except as otherwise authorized, as follows: (1) between San Jose and Los Angeles over U.S. Hwy 101 to junction California Hwy 152 to junction Interstate 5 to Los Angeles; (2) between San Jose and Sacramento over Interstate 680 to junction Interstate 580 to junction Interstate 5; (3) between San Jose and Weed over Interstate 680 to junction Interstate 80 to junction Interstate 505 to junction Interstate 5 to Weed; and (4) between Weed and San Diego over Interstate 5. Intrastate, interstate and foreign commerce authority sought. Hearing: Date, time and place not yet fixed. Requests for procedural information should be addressed to California Public Utilities Commission, State Building, Civic Center, San Francisco, CA 94102, and should not be directed to the Interstate Commerce Commission.

V 45 OCT 20 1980 UMI

Permanent Authority Notices Substitution Applications: Single-Line Service for Existing Joint-Line Service

The following applications, filed on or after April 1, 1979, are governed by the special procedures set forth in Part 1062.2 of Title 49 of the Code of Federal Regulations (49 CFR 1062.2). These proposals are published as "service sought", (as opposed to decision-notices), because in each case it appears questionable as to whether all or part of the authority sought should be issued, weighing applicant's evidence under 49 CFR 1062.2. (For example, questions may be raised relating to applicant's contentions concerning why the involved joint-line service has been cancelled or is in a state of deterioration which warrant a decision on the merits, regardless of whether the application is opposed.)

The rules provide, in part, that carriers may file petitions with this Commission for the purpose of seeking intervention in these proceedings. Such petitions may seek intervention either with or without leave as discussed below. However, all such petitions must be filed in the form of verified statements, and contain all of the information offered by the submitting party in opposition. Petitions must be filed with the Commission within 30 days of publication of this decision-notice.

Petitions for intervention without leave (i.e., automatic intervention), may be filed only by carriers which are, or have been, participating in the joint-line service sought to be replaced by applicant's single-line proposal, and then only if such participation has occurred within the one-year period immediately proceeding the application's filing. Only carriers which fall within this filing category can base their opposition upon the issue of the public need for the proposed service.

Petitions for intervention with leave may be filed by any carrier. The nature of the opposition, however, must be limited to issues other than the public need for the proposed service. The appropriate basis for opposition, i.e., applicant's fitness, may include challenges concerning the veracity of the applicant's supporting information, and the bona-fides of the joint-line service sought to be replaced (including the issue of its substantiality). Petitions containing only unsupported and undocumented allegations will be rejected.

Petitions not in reasonable compliance with the requirements of the rules may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

MC 135082 (Sub-88F), filed May 23, 1979, and published in the **Federal Register** issues of April 15, 1980 and September 11, 1980 and republished as corrected this issue. Applicant: ROADRUNNER TRUCKING, INC., P.O. Box 26748, 4100 Edith Blvd. NE., Albuquerque, NM 87125. Representative: Randall R. Sain (same address as applicant). The purpose of this republication is to correctly identify the state of "MI" to read "MT" which was previously published in error. The rest of the application remains the same as previously published.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-32523 Filed 10-17-80: 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions, Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special Rule 247 was published in the **Federal Register** of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before December 4, 1980, (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP2-069

Decided: October 10, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton, and Liberman.

MC 1403 (Sub-6F), filed October 2, 1980. Applicant: CENTRAL TRANSFER COMPANY, a corporation, 100 Kellogg St., Jersey City, NJ. Representative: Ronald I. Shapss, 450 Seventh Ave., New York, NY 10123. Transporting *general commodities* (except those of unusual value classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in NY, NJ, and PA, on the one hand, and, on the other, points in DE, MD, VA, CT, and DC.

MC 61592 (Sub-499F), filed October 6, 1980. Applicant: JENKINS TRUCK LINE, INC., P.O. Box 697, Jeffersonville, IN 47130. Representative: Elisabeth A. DeVine, P.O. Box 737, Moline, IL 61265. Transporting (1) *carbon and charcoal*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between Scotia, NY, on the one hand, and, on the other, points in the U.S., restricted to traffic originating at or

destined to the facilities used by Husky Industries.

MC 89723 (Sub-73F), filed October 1, 1980. Applicant: MISSOURI PACIFIC TRUCK LINES, INC. 210 N. 13th St., St. Louis, MO 63103. Representative: Michael Thompson (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), between points in AR, MO, KS, CO, OK, NE, LA, TX, IL, TN, MS, and NM, on the one hand, and, on the other, points in IA, IN, KY, AL, AZ, and OH, restricted to traffic, having a prior or subsequent movement by rail.

MC 92633 (Sub-32F), filed September 29, 1980. Applicant: ZIRBEL TRANSPORT, INC., P.O. Box 933, Lewiston, ID 83501. Representative: Wm. Seehafer (same address as applicant). Transporting (1) *boards and lumber*, from points in CA, to points in ID, (2) *lumber, lumber products, particleboard, and wood products*, in the reverse direction, and (3) *lumber*, from points in ID, to points in AZ, and points in San Juan and Rio Arriba Counties, NM.

MC 107012 (Sub-584F), filed October 6, 1980. Applicant: NORTH AMERICAN VAN LINES, INC. 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Bruce W. Boyarko (same address as applicant). Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in the U.S., restricted to traffic originating at or destined to the facilties used by Black & Decker (U.S.), Inc., and its customers.

MC 107012 (Sub-585F), filed October 6, 1980. Applicant: NORTH AMERICAN VAN LINES, INC. 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). Transporting *heating and air conditioning ducts and fittings*, from Houston, TX, to points in the U.S. (except AK and HI).

MC 107012 (Sub-586F), filed October 6, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). Transporting *padding*, from East Point, CA, to points in the U.S. (except IL, IN, MI, MO, OH, and WI).

MC 107542 (Sub-2F), filed October 2, 1980. Applicant: MOSKOWITZ MOTOR TRANSPORTATION, INC., Drawer 427, Jewett City, CT 06351. Representative: Michael R. Werner, 167 Fairfield Rd., P.O. Box 1409, Fairfield, NJ 07006. Over regular routes, transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), (1) between Cape May, NJ and Haverhill, MA, from Cape May over unnumbered Hwy to junction U.S. Hwy 9, then over U.S. Hwy 9 to junction Interstate Hwy 95, then over Interstate Hwy 95 to junction Interstate Hwy 93, then over Interstate Hwy 93 to junction Interstate Hwy 495, then over Interstate Hwy 495 to junction MA Hwy 97, then over MA Hwy 97 to Haverhill, and return over the same route, (2) between junction Interstate Hwy 95 to U.S. Hwy 7, and, junction Interstate Hwys 495 and 93, from junction Interstate Hwy 95 and U.S. Hwy 7 over U.S. Hwy 7 to junction Interstate Hwy 84, then over Interstate Hwy 84 to junction Interstate Hwy 86, then over Interstate Hwy 86 to junction Interstate Hwy 90, then over Interstate Hwy 90 to junction Interstate Hwy 290, then over Interstate Hwy 290 to junction Interstate Hwy 495, then over Interstate Hwy 495 to junction Interstate Hwy 93, and return over the same route, (3) between Deepwater, NJ and Williamstown, MA, from Deepwater over Interstate Hwy 95 to junction U.S. Hwy 9W, then over U.S. Hwy 9W to junction Interstate Hwy 287, then over Interstate Hwy 287 to junction Interstate Hwy 95, then over Interstate Hwy 95 to junction U.S. Hwy 7, then over U.S. Hwy 7 to Williamstown, and return over the same route, (4) between Phillipsbury, NJ and junction Interstate Hwys 78 and 95, from Phillipsbury over U.S. Hwy 22 to junction Interstate Hwy 78, then over Interstate Hwy 78 to junction Interstate Hwy 95, and return over the same route, (5) between Phillipsburg, NJ and junction Interstate Hwy 80 and U.S. Hwy 9W, from Phillipsburg over NJ Hwy 57 to junction U.S. Hwy 46, then over U.S. Hwy 46 to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction U.S. Hwy 9W, and return over the same route, (6) between Montauk Point, NY and junction Interstate Hwys 295 and 95, from Montauk Point over NY Hwy 27 to junction NY Hwy 24, then over NY Hwy 24 to junction NY Hwy 495, then over NY Hwy 495 to junction Interstate Hwy 295, then over Interstate Hwy 295 to junction Interstate Hwy 95, and return over the same route, (7) between High Point, NJ and Bernardston, MA, from High Point over NJ Hwy 23 to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction Interstate Hwy 95, then over Interstate Hwy 95 to junction Interstate Hwy 91, then over Interstate Hwy 91 to Bernardston, and return over the same route, and (8) serving in connection with routes (1) through (7) above, (a) all intermediate points and (b) New York, NY, points in CT, MA, NJ, RI and points in Westchester, Rockland, and Suffolk Counties, NY as Off-route points.

MC 115162 (Sub-545F), filed October 6, 1980. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate (same address as applicant). Transporting (1) *cast iron products*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of cast iron products, between points in the U.S.

MC 116763 (Sub-649F), filed October 3, 1980. Applicant: CARL SUBLER TRUCKING, INC., North West St., P.O. Box 81, Versailles, OH 45380. Representative: Gary J. Jira (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission, classes A & B explosives, those of unusual value, commodities in bulk, and those requiring special equipment), between points in the U.S.

MC 118202 (Sub-161F), filed September 30, 1980. Applicant: SCHULTZ TRANSIT, INC., P.O. Box 406, 323 Bridge St., Winona, MN 55987. Representative: Robert S. Lee, 1000 First National Bank Bldg., Minneapolis, MN 55402. Transporting (1) *foodstuffs* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of gelatin products, between points in Scott County, IA, on the one hand, and, on the other, points in AL, AR, CT, DE, FL, GA, IL, KS, ME, MD, MA, MI, MS, MO, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, VT, VA, TX, WV, and DC.

MC 123812 (Sub-7F), filed October 6, 1980. Applicant: SULLIVAN FREIGHT LINES, INC., C-4 Congress Parkway, Athens, TN 37303. Representative: Blaine Buchanan, 1024 James Bldg., Chattanooga, TN 37402. Transporting *iron and steel articles*, from points in IA, KY, MI, and WI, to points in Washington, County, TN.

MC 125023 (Sub-84F), filed October 1, 1980. Applicant: SIGMA-4 EXPRESS, INC., P.O. Box 9117, Erie, PA 16504. Representative: Paul F. Sullivan, 711 Washington Bldg., Washington, DC 20005. Transporting (1) *malt beverages and containers*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of malt beverages and containers, between points in the U.S., restricted to traffic originating at or destined to the facilities of Jos. Schlitz Brewing Company.

MC 138322 (Sub-26F), filed October 2, 1980. Applicant: BHY TRUCKING, INC.,

9231 Whitmore St., El Monte, CA 91733. Representative: Robert Fuller, 13215 E. Penn St., Suite 310, Whittier, CA 90602. Transporting (1) *commodities*, the transportation of which because of size or weight require the use of special equipment, and (2) *materials* used in the manufacture of heat exchangers and feed water heaters, between points in Harris County, TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 139302 (Sub-5F), filed October 6, 1980. Applicant: KREUGER TRUCKING CO., INC., P.O. Box 432, Orchard Park, NY 14127. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in Erie County, NY, on the one hand, and, on the other, points in MI.

MC 141622 (Sub-6F), filed October 6, 1980. Applicant: H & W CARRIERS, INC., Box 130, Camargo, IL 61919. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701. Transporting (1) *printed matter*, and (2) *materials and supplies* used in the manufacture and distribution of printed matter, between points in the U.S., under continuing contract(s) with R. R. Donnelly & Sons Company, of Mattoon, IL.

MC 144982 (Sub-11F), filed October 3, 1980. Applicant: OHIO PACIFIC EXPRESS, INC., 683 East Broad St., Columbus, OH 43215. Representative: Harry F. Horak, Suite 115, 5001 Brentwood Stair Rd., Fort Worth, TX 76112. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of metal and wooden storage buildings, from points in Trumbull County, OH, to points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, and WY.

MC 147152 (Sub-11F), filed September 29, 1980. Applicant: GENERAL CARRIERS CORPORATION, 9838 Alburtis, Santa Fe Springs, CA 90670. Representative: Miles L. Kavaller, 315 So. Beverly Dr., Suite 315, Beverly Hills, CA 90212. Transporting *general commodities* (except those of unusual value, classes A and B explosvies, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) moving on the bills of lading of non-profit shipper associations as defined in 49 U.S.C. Section 10562(3), between points in the U.S.

MC 147573 (Sub-1F), filed October 2, 1980. Applicant: OAK ISLAND EXPRESS, INC., 2 Sixth St., Jersey City, NJ 07302. Representative: Charles J. Williams, 1815 Front St., Scotch Plains, NJ 07076. Transporting *such commodities* as are used or dealt in by retail stores (except commodities in bulk), between points in the U.S., under continuing contract(s) with United States Packing & Shipping Co., Inc., of Jersey City, NJ.

MC 148882 (Sub-5F), filed October 6, 1980. Applicant: SUPER TRUCKERS, INC., 3900 Commerce Ave., Fairfield, AL 35064. Representative: William P. Jackson, Jr., P.O. Box 1240, Arlington, VA 22210. Transporting *metal articles*, between points in the U.S., under continuing contract(s) with Pyramid Steel Incorporated, of Billings, MO.

MC 150072 (Sub-2F), filed October 6, 1980. Applicant: DEWEY ENTERPRISES, INC., 3320 New So. Province Blvd., Fort Myers, FL 33907. Representative: Leonard E. Monschein, Suite 108, 1515 NW 7th St., Miami, FL 33125. Transporting *malt beverages*, between points in the U.S., under continuing contract(s) with Cronin Distributors, of Fort Myers, FL.

MC 150423 (Sub-5F), filed September 30, 1980. Applicant: H & M TRANSPORTATION INC., U.S. 42 and 70, London, OH 43140. Representative: Owen B. Katzman, 1828 L St. NW., Suite 1111, Washington, DC 20036. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the U.S., restricted to traffic originating at or destined to the facilities used by Ralston Purina Company, under continuing contract(s) with Ralston Purina Company, of St. Louis, MO.

MC 151592 (Sub-1F), filed September 29, 1980. Applicant: D & L TRUCKING SERVICES, INC., 2080 South 9th St., Louisville, KY 40208. Representative: John M. Nader, 1600 Citizens Plaza, Louisville, KY 40202. Transporting *general commodities* (except classes A and B explosives), between points in the U.S. under continuing contract(s) with the Ralston Purina Company of St. Louis, MO, and the Kingsford Company of Louisville, KY.

MC 152052F filed October 2, 1980. Applicant: NORTH CENTRAL TRANSPORT CO. INC., 115 E. Barrett Lane, Schaumberg, IL 60193. Representative: Marc J. Blumenthal, 39 S. LaSalle St., Chicago, IL 60603. Transporting (1) *tile*, and (2) *materials, equipment and supplies* used in the manufacture, distribution, and installation of tile, between points in IL, on the one hand, and, on the other, points in IN, IA, MI, OH, and WI.

MC 152052F filed October 2, 1980. Applicant: NORTH CENTRAL TRANSPORT CO., INC., 115 E. Barrett Lane, Schaumberg, IL 60193. Representative: Marc J. Blumenthal, 39 S. LaSalle, St., Chicago, IL 60603. Transporting (1) *tile*, and (2) *materials, equipment and supplies* used in the manufacture, distribution and installation of tile, between points in IL, on the one hand, and, on the other, points in IN, IA, MI, OH, and WI.

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Decided: October 7, 1980.
By the Commission, Review Board Number 2 Members Chandler, Eaton and Liberman.

MC 1515 (Sub-288F), filed September 22, 1980. Applicant: GREYHOUND LINES, INC., Greyhound Tower, Phoenix, AZ 85077. Representative: L. J. Celmins (same address as applicant). Regular routes, transporting *passengers and their baggage, and express and newspapers*, in the same vehicle with passengers, between Tampa and Clearwater, FL, over Florida Hwy 60 (Campbell Causeway), serving all intermediate points.

Note.—Applicant intends to tack this authority with its existing authority.

MC 34454 (Sub-3F), filed September 23, 1980. Applicant: GORMLEY MOTOR TRANSPORTATION, INC., 397 Riverside Ave., Medford, MA 02155. Representative: Paul V. Gormley (same address as applicant). Transporting *general commodities* (except classes A and B explosives, and household goods as defined by the Commission), between points in Chesire, Hillsboro, Merrimas, Rockingham, and Stratford Counties, NH, on the one hand, and, on the other, points in CT, MA, RI, NJ, and NY.

MC 43685 (Sub-24F), filed September 22, 1980. Applicant: MERCER TRUCKING COMPANY, INC., P.O. Box 11585, Spokane, WA 99211. Representative: Marshall Hanning (same address as applicant). Transporting (1) *lumber, forest products, building materials, machinery*, and *contractors' equipment*, between points in WA, OR, ID, and MT, and (2) *iron and steel articles*, between points in Clark, King, Pierce, Snohomish, and Spokane Counties, WA, Clackamas, Multonomah, Washington, and Yamhill Counties, OR, and Kootenai County, ID, on the one hand, and, on the other, points in WA, OR, ID, and MT.

MC 106674 (Sub-507F), filed September 23, 1980. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant). Transporting *cleaning and polishing compounds, textile softeners, lubricants, deodorants, disinfectants, hypo-chloride solutions, paints, plastic bags and filters*, between the facilities of Economics Laboratory, Inc., in the U.S., on the one hand, and, on the other, points in the U.S., restricted to traffic originating at or destined to the named facilities.

MC 144054 (Sub-14F), filed September 22, 1980. Applicant: BILL LITTLEFIELD TRUCKING, INC., 775 E. Vilas Rd., Medford, OR 97501. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. Transporting *electrical appliances*, from the facilities of Intertherm, Inc., at or near Bonneville, MO, to those points in the U.S. in and west of ND, SD, NE, KS, MO, OK, and TX.

MC 145394 (Sub-4F), filed September 23, 1980. Applicant: A & B FREIGHT LINE, INC., 4805 Sandy Hollow Road, Rockford, IL 61109. Representative: James A. Spiegel, Olde Towne Office Park, 6425 Odana Road, Madison, WI 53719. Transporting *adhesives, automotive supplies, chemicals, containers, iron and steel articles, machinery, parts* for machinery, and *rubber products*, between points in the U.S., under continuing contract(s) with Murphy-Kullens Warehouses, Inc.

MC 147524 (Sub-4F), filed September 25, 1980. Applicant: SINED LEASING, INC., 108 High Street, Mt. Holly, NJ 08060. Representative: Frank L. Newburger, III, 17th Floor, 1234 Market Street, Philadelphia, PA 19107. Transporting *flour*, in bulk, between points in the U.S., under continuing contract(s) with International Multifoods Corporation, of Minneapolis, MN.

MC 149214 (Sub-3F), filed September 23, 1980. Applicant: TRANSPORT ASSOCIATES, INC., 3512 Rockville Road, Indianapolis, IN 46222. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting (1) *iron and steel castings* and *automobile parts*, between points in IN and WI.

MC 150204 (Sub-1F), filed September 23, 1980. Applicant: CAL RENTAL TOOL & SUPPLY, INC., 4557 W. Yellowstone Hwy., Casper, WY 82601. Representative: Gino Cerullo, P.O. Box 1360, Mills, WY 82644. Transporting (1) *machinery, equipment, materials, and supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, and (2) *machinery, materials, equipment and supplies* used in, or in connection with the construction, operation, repair, servicing, maintenance and dismantling of pipe lines, including the stringing and picking up thereof, between points in WY, CO, UT, MT, and ND, restricted against the transportation of complete oil drilling rigs.

MC 151164 (Sub-1F), filed September 23, 1980. Applicant: T. L. C. CHARTER COACH, INC., 186 New Wilmot Rd., Scarsdale, NY 10583. Representative: L. C. Major, Jr., Suite 400 Overlook Bldg., 6121 Lincolnia Rd., Alexandria, VA 22312. Transporting *passengers and their baggage*, in the same vehicle with passengers, in charter operations, beginning and ending at points in Westchester, Nassau, Suffolk and Putnam Counties, NY, and extending to points in the U.S., (including AK, but excluding HI), under continuing contract(s) with T.L.C. Senior Tours, Ltd.

MC 151444F, filed September 19, 1980. Applicant: ROBERT A. AND VIVIAN D. CARPENTER, a partnership, d.b.a. RAC TRANSPORT COMPANY, 747 West White, Grand Junction, CO 81501. Representative: Raymond M. Kelley, 450 Capitol Life Center, Denver, CO 80203. Over regular routes, transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), (1) Between Grand Junction and Denver, CO, (a) over U.S. Hwy 6, and (b) over Interstate Hwy 70, serving the intermediate and off-route points in Adams, Arapahoe, Denver, Mesa, and Jefferson Counties, CO; (2) Between Grand Junction and Craig, CO: From Grand Junction over U.S. Hwy 6 and Interstate Hwy 70 to junction CO Hwys 789 and 13, then over CO Hwys 769 and 13 to Craig, and return over the same route, serving all intermediate points, and serving the facilities of Occidental Oil Shale Project, in Rio Blanco County, CO, as an off-route point; (3) Between Grand Junction and Aspen, CO: From Grand Junction over U.S. Hwy 6 and Interstate Hwy 70 to junction CO Hwy 82, then over CO Hwy 82 to Aspen, and return over the same route, serving all intermediate points; and (4) Between Grand Junction and Montrose CO, over U.S. Hwy 50, serving all intermediate points.

Note.—Applicant intends to tack the requested routes with each other.

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Decided: October 10, 1980.
By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

FF 126 (Sub-1F), filed October 8, 1980. Applicant: KNICKERBOCKER DESPATCH, INC., 16 Central Ave., Tenafly, NJ 07670. Representative: Donald E. Cross, 918–16th St. NW., Washington, DC 20006. To operate in interstate commerce, as a *freight forwarder*, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between points in CT on the one hand, and, on the other, points in MA, RI, NY, and NJ, and (2) between points in MA and RI, and (3) between points in NY and NJ.

MC 41116 (Sub-87F), filed October 7, 1980. Applicant: FOGLEMAN TRUCK LINE, INC., P.O. Box 1504, Crowley, LA 70526. Representative: Austin L. Hatchell, P.O. Box 2165, Austin, TX 78768. Transporting *general commodities* (except household goods and classes A and B explosives), between points in the U.S., under continuing contract(s) with Boise Cascade Corporation, of Boise, ID, restricted to traffic originating at or destined to the facilities of Boise Cascade Corporation.

MC 65697 (Sub-59F), filed October 8, 1980. Applicant: THEATRES SERVICE COMPANY, a corporation, P.O. Box 1695, Atlanta, GA 30301. Representative: Paul W. Smith (same address as applicant). Over regular routes, transporting *general commodities* (except classes A and B explosives), (1) between Natural Bridge and Phil Campbell, AL, over AL Hwy 5, (2) between Andalusia and Mobile, AL: from Andalusia over U.S. Hwy 29 to Pensacola, FL, then over U.S. Hwy 98 to Mobile, and return over the same route, (3) between Brewton and Mobile, AL: from Brewton over AL Hwy 41 to the AL–FL State line, then over FL Hwyt 87 to Milton, FL, then over U.S. Hwy 90 to Mobile, and return over the same route, (4) between Greenville and Mobile, AL, over U.S. Hwy 31, (5) between Greenville and Mobile, AL, over Interstate Hwy 65, serving the off-route points of Frisco City and Monroeville, AL, and (6) between Milton, FL and Mobile, AL, over Interstate Hwy 10; serving all intermediate points in (1) through (6) above.

Note.—Applicant proposes to tack this authority with its existing regular-route authority.

MC 117786 (Sub-112F), filed October 7, 1980. Applicant: RILEY WHITTLE, INC., P.O. Box 19038, Phoenix, AZ. Representative: A. Michael Bernstein, 1441 E. Thomas Rd., Phoenix, AZ 85014. Transporting *alcoholic beverages*, from Melvindale, MI, to points in AZ, CA, CO, OR, and WA.

MC 143776 (Sub-8F), filed October 6, 1980. Applicant: C.D.B.

V 45 OC 20 80 UMI

INCORPORATED, 155 Spaulding SE., Grand Rapids, MI 49506. Representative: Karl L. Gotting, 1200 Bank of Lansing Bldg., Lansing, MI 48933. Transporting (1) *chemicals and plastic products* (except commodities in bulk, in tank vehicles, and expanded plastic products), from the facilities of Dow Chemical U.S.A., at Midland, MI to Kansas City, MO.

MC 145277 (Sub-3F), filed October 8, 1980. Applicant: P & P TRUCKING COMPANY, INC., 106 Teaneck Rd., Ridgefield Park, NJ 07660. Representative: Michael R. Werner, 167 Fairfield Rd., P.O. Box 1409, Fairfield, NJ 07006. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with Pepsi-Cola Manufacturing Company, Inc., of San Juan, Puerto Rico.

MC 146646 (Sub-120F), filed October 7, 1980. Applicant: BRISTOW TRUCKING CO., INC., P.O. Box 8355 A, Birmingham, AL 35217. Representative: James W. Segrest (same address as applicant). Transporting *washing, cleaning, and scouring compounds, and dispensers,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between the facilities used by the Calgon Corporation in the U.S. (except AK and HI), on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 147547 (Sub-10F), Filed October 7, 1980. Applicant: R & D TRUCKING COMPANY, INC., Church Rd., Lauderdale Industrial Pk., Florence, AL 35630. Representative: Roland M. Lowell, 618 United American Bank Bldg., Nashville, TN 37219. Transporting *printed matter,* between points in Lauderdale County, AL, on the one hand, and, on the other, those points in the U.S. in and east of MN, NE, CO, and AZ, restricted to traffic originating at or destined to the facilities used by Anderson News Company, Inc..

MC 150567 (Sub-3F), filed October 7, 1980. Applicant: TRAVIS TRANSPORTATION, INC., 123 Coulter Ave., Ardmore, PA 19003. Representative: William E. Collier, 8918 Tesoro Dr., Suite 515, San Antonio, TX 78217. Transporting (a) *lumber, wood products, lumber mill products,* and (b) *building materials* (except those described in (a) above), between points in the U.S., under continuing contract(s) with Emmer Brothers Company, of Minneapolis, MN.

MC 151207 (Sub-1F), filed October 7, 1980. Applicant: P.S.T. TRANSPORT, INC., 11236 West Ave., San Antonio, TX 78213. Representative: William E. Collier, 8918 Tesoro Dr., Suite 515, San Antonio, TX 78217. Transporting (1) *malt beverages,* from the facilities of Pearl Brewing Company, Inc., at San Antonio, TX, to points in IL, IN, and OH, and (2) *material and supplies* used in the manufacture of malt beverages, in the reverse direction.

MC 151207 (Sub-2F), filed October 7, 1980. Applicant: P.S.T. TRANSPORT, INC., 11236 West Ave., San Antonio, TX 78213. Representative: William E. Collier, 8918 Tesoro Dr., Suite 515, San Antonio, TX 78217. Transporting (1) *malt beverages* from San Antonio, TX, to points in AZ, CA, NM, NV, OR, and WA, and (2) *materials and supplies* used in the manufacture of malt beverages, in the reverse direction, restricted to traffic originating at or destined to the facilities of Pearl Brewing Company, Inc., at San Antonio, TX.

MC 151936 (Sub-2F), filed October 7, 1980. Applicant: WATKINS MOTOR LINES, INC., P.O. Box 1636, Lakeland, FL 33802. Representative: Paul M. Daniell, P.O. Box 872, Atlanta, GA 30301. Transporting (1) *such commodities* as are dealt in by grocery and food business houses, and (2) *materials, equipment, and supplies* (except in bulk) used in the manufacture and distribution of the commodities in (1) above, between points in the U.S., under continuing contract(s) with General Foods Corporation, of White Plains, NY.

Volume No. OP5–032

Decided: October 9, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

W–1329F, filed September 24, 1980. Applicant: JOHN GUTH-MARTINEZ LAKE RESORT, Box 2245, Martinez Lake, AZ 85364. Representative: Bart Baker, 1700 S. First Ave., Suite 108, Yuma, AZ 85364. To operate as a *common carrier* by water, in interstate or foreign commerce, by self-propelled vessels, transporting *passengers and their baggage,* between ports and points in AZ and CA on Martinez Lake and the Colorado River.

MC 1179 (Sub-2F), filed September 30, 1980. Applicant: PFEFFER'S DAILY EXPRESS, a corporation, 44 South West Avenue, Vineland, NJ 08250. Representative: Michael R. Werner, 167 Fairfield Road, P.O. Box 1409, Fairfield, NJ 07006. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between Philadelphia, PA on the one hand, and, on the other, points in NJ.

MC 29839 (Sub-8F) filed, October 3, 1980. Applicant: EVERGREEN STAGE LINES, INC., 9038 North Denver, P.O. Box 17306, Portland, OR 97217. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, OR 97210. Transporting *passengers and their baggage,* in special operations, beginning or ending at points in Clark County, WA, and Multnomah, Washington, and Clackamas Counties, OR, and extending to points in the U.S. (including AK but excluding HI).

MC 50069 (Sub-563F) filed, October 3, 1980. Applicant: REFINERS TRANSPORT & TERMINAL CORPORATION, 445 Earlwood Ave., Oregon, OH 43616. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114. Transporting *petroleum products,* in bulk, in tank vehicles, from Ironton, OH, to points in KY.

MC 76449 (Sub-32F) filed, October 2, 1980. Applicant: NELSON'S EXPRESS, INC., 675 Market St., Millersburg, PA 17061. Representative: J. Bruce Walter, P.O. Box 1146, Harrisburg, PA 17108. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in Dauphin and York Counties, PA, on the one hand, and, on the other, Detroit, MI, Louisville, KY, Milwaukee, WI, and points in IL, IN, KS, MO, and OH.

MC 115669 (Sub-201F) filed, October 2, 1980. Applicant: DAHLSTEN TRUCK LINE, INC., 101 W. Edgar St., P.O. Box 95, Clay Center, NE 68933. Representative: Vayle Hayes (same address as applicant). Transporting *malt beverages* (1) from Belleville, IL, St. Paul, MN, and Milwaukee, WI to Auburn, NE, (2) from Belleville and Peoria, IL, Omaha, NE, Memphis, TN, Ft. Worth, TX, and Milwaukee, WI to points in KS, (3) from Omaha, NE and Dubuque, IA to points in AZ, CO, IA, MN, NM, ND, and SD, (4) from Galveston and San Antonio, TX to points in OK, (5) from Dubuque, IA, Omaha, NE, and Galveston, TX to points in AR, (6) from San Antonio, TX to Omaha, NE, and (7) from Ft. Wayne, IN, Dubuque, IA, and Omaha, NE to points in IL, MO and WI.

MC 121568 (Sub-54F) filed, September 26, 1980. Applicant: HUMBOLDT EXPRESS, INC., 345 Hill Ave., Nashville, TN 37210. Representative: James G. Caldwell (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to facilities of Colonial Fiber Company and its affiliates.

Note.—Applicant intends to tack with its existing authority in MC 121568.

MC 121568 (Sub-55F), filed October 2, 1980. Applicant: HUMBOLDT EXPRESS, INC., 345 Hill Ave., Nashville, TN 37210. Representative: James G. Caldwell (same address as applicant). Transporting (1) *outdoor barbecue grills and folding metal furniture,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Metal Engineering Co.

Note.—Applicant intends to tack with its existing authority.

MC 121568 (Sub-56F), filed October 2, 1980. Applicant: HUMBOLDT EXPRESS, INC., 345 Hill Ave., Nashville, TN 37210. Representative: James G. Caldwell (same address as applicant). Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of H. B. Fuller and its affiliates.

Note.—Applicant intends to tack with its existing authority.

MC 126118 (Sub-257F), filed September 30, 1980. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: David R. Parker, P.O. Box 81228, Lincoln, NE 68501. Transporting *such commodities* as are used by or dealt in by manufacturers and processors of tobacco products (except in bulk), (1) from points in the U.S. to Owensboro, KY, and (2) from Owensboro, KY, to points in AR, CO, CT, DE, IL, IN, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, TN, VT, VA, WV and WI.

MC 126118 (Sub-258F), filed October 1, 1980. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: David R. Parker, P.O. Box 81228, Lincoln, NE 68501. Transporting *such commodities* as are used by or dealt in by discount and general merchandise stores, between Memphis, TN, and Omaha, NE.

MC 134358 (Sub-4F), filed September 29, 1980. Applicant: CENTRAL DISPATCH, INC., P.O. Box 4941, Kansas City, MO 64120. Representative: Donald J. Quinn, Suite 900, 1012 Baltimore, Kansas City, MO 64105. Transporting *foodstuffs and kindred products* as described in Item 20 of the Standard Transportation Commodity Code, between points in MO and KS.

MC 144029 (Sub-6F), filed September 29, 1980. Applicant: CUMBERLAND TRANSPORTATION CORP., 5950 Fisher Rd., P.O. Box 487, East Syracuse, NY 13057. Representative: Michael R. Werner, 167 Fairfield Rd., P.O. Box 1409, Fairfield, NJ 07006. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with Mead Container/ Division of Mead Corp., of Dayton, OH.

MC 147248 (Sub-4F), filed October 2, 1980. Applicant: CONTAINER SHUTTLE SERVICE CORP., Route 8, Box 139, Beaumont, TX 77705. Representative: Charles Norris Driver (same address as applicant). Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in TX and LA, on the one hand, and, on the other, points in the U.S.

MC 149218 (Sub-9F), filed September 30, 1980. Applicant: SUNBELT EXPRESS INC., Hwy. 78, W., Breman, GA 30110. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. Transporting (1) *paper and paper products,* and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1), between points in AL, FL, GA, and SC, on the one hand, and, on the other, points in AL, AR, FL, GA, IL, IN, KY, LA, MO, MS, NC, OH, SC, TN, VA, and WV.

MC 150239 (Sub-2F), filed October 2, 1980. Applicant: PACESETTER TRANSPORT, DIVISION OF EDGEMERE TERMINALS, INC., 8004 Stansbury Road, Baltimore, MD 21222. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030—15th St. NW., Washington, DC 20005. Transporting (1) *Aluminum and aluminum products,* and *equipment, materials, and supplies* used in the manufacture and distribution of aluminum and aluminum products, (except commodities in bulk), (a) between the facilities of Eastalco at or near Frederick, MD, on the one hand, and, on the other, points in NY, NJ, PA, DE, MD, VA, and DC, (b) between Lancaster, PA, and Baltimore, MD, restricted in (b) to traffic moving in foreign commerce only, and (2) *iron and steel articles,* and *equipment, materials, and supplies* used in the manufacture and distribution of iron and steel articles, (except commodities in bulk), between Baltimore, MD, on the one hand, and on the other, points in MD, PA, NJ, NY, DE, VA, and DC.

MC 151378 (Sub-3F), filed September 30, 1980. Applicant: BIG B TRUCK LINES, INC., P.O. Box 67, Jonesburg, MO 63351. Representative: John F. Clark (same as above). Transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment) between points in Warren County, MO, on the one hand, and on the other, St. Louis, IL, and Kansas City, KS.

MC 152039F, filed September 29, 1980. Applicant: CATO TRANSPORT, INC., P.O. Box 446, High Point, NC 27260. Representative: A. W. Flynn, Jr., 314 S. Eugene St., P.O. Box 180, Greensboro, NC 27402. Transporting *new furniture,* from points in Guilford County, NC, to points in SC, GA, FL, AL, NJ, MD, DE, VA, RI, NY, and DC.

MC 152079F, filed October 2, 1980. Applicant: R & S CARTAGE, INC., 1030 South Mount St., Indianapolis, IN 46221. Representative: Constance J. Goodwin, Suite 800—Circle Tower, Five East Market St., Indianapolis, IN 46204. Transporting *industrial and household cleaning products and materials and supplies, janitorial equipment and supplies, insecticides, electronic flycatchers, feminine hygiene products, and air purification equipment,* between points in KY, IL, IN, MI, and OH, under continuing contract(s) with M. R. Blue Co., of South Bend, IN, and Rochester Germicide Company, of Indianapolis, IN.

Volume No. OP5–033

Decided: October 9, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

MC 339 (Sub-13F), filed September 30, 1980. Applicant: LINCOLN MOVING & STORAGE CO., INC., 1071 Andover Park West, Seattle, WA 98188. Representative: Henry C. Winters, 525 Evergreen Building, Renton, WA 98055. Transporting *household goods* in containers between points in the United States (including AK but excluding HI).

MC 2359 (Sub-27F), filed September 29, 1980. Applicant: DAMEO TRUCKING, INC., 568 Central Ave., Bridgewater, NJ 08807. Representative: Morton E. Kiel, Suite 1832, 2 World Trade Center, New York, NY 10048.

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Transporting *general commodities* (except classes A and B explosives, and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with John-Manville Sales Corporation of Manville, NJ.

MC 44639 (Sub-96F), filed September 29, 1980. Applicant: L & M EXPRESS CO., INC., 220 Ridge Road, Lyndhurst, NJ 07071. Representative: Robert B. Russell (same address as above). Transporting *wearing apparel*, and *materials* and *supplies* used in the manufacture of wearing apparel (except commodities in bulk), between New York, NY and points in GA, NC, PA, SC, VA, and WV.

MC 54819 (Sub-6F), filed September 30, 1980. Applicant: T. F. BOYLE TRANSPORTATION, INC., 15 Riverhurst Rd., Billerica, MA 08121. Representative: Rhomas F. Boyle (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in CT, IL, IN, MA, ME, MD, MI, NH, NJ, NY, OH, PA, RI, and WI.

MC 117119 (Sub-831F), filed October 2, 1980. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, AR 72728. Representative: L. M. McLean (same address as applicant). Transporting *chemicals* (except plastics) and *plastics*, from the facilities of Union Carbide Corporation at or near Torrance, CA to points in ID, OR, UT, and WA.

MC 117119 (Sub-832F), filed October 2, 1980. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, AR 72728. Representative: L. M. McLean (same address as applicant). Transporting *such commodities* as are dealt in or used by retail stores (except commodities in bulk), (a) from points in MO, MA, CT, NY, NJ, PA, MD, GA, NC, SC, TN, and TX, to points in IL, AZ, MO, KS, CO, MT, ID, OR, WA, WY, and UT, and (b) from Chicago and Rockford, IL, and points in IN and OH, to points in AZ, CO, MT, WY, UT, ID, WA, and OR.

MC 124078 (Sub-1034F), filed October 3, 1980. Applicant: SCHWERMAN TRUCKING CO., a corporation, 611 South 28th St., Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. Transporting *vegetable oils*, in bulk, between points in Polk County, IA, on the one hand, and, on the other, points in the U.S.

MC 124679 (Sub-127F), filed September 30, 1980. Applicant: C. R. ENGLAND AND SONS, INC., 975 West 2100 South, Salt Lake City, UT 84119. Representative: Michael L. Bunnell (same address as applicant). Transporting (1) *pharmaceuticals, medical supplies, confectioneries, foodstuffs, and personal care products*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) (except in bulk), between points in the U.S., (except AK and HI), restricted to traffic originating at or destined to the facilities of Warner-Lambert Company, its subsidiaries, and affiliates.

MC 125368 (Sub-120F), filed October 2, 1980. Applicant: CONTINENTAL COAST TRUCKING CO., INC., P.O. Box 26, Holly Ridge, NC 28445. Representative: Roland M. Lowell, 618 United American Bank Bldg., Nashville, TN 37219. Transporting *meats, meat products, meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of Appendix 1 to the Report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Swift & Company, at or near Cactus, TX, to Memphis, TN, and points in LA and MS.

MC 126899 (Sub-131F), filed September 29, 1980. Applicant: USHER TRANSPORT, INC., 3925 Old Benton Road, Paducah, KY 42001. Representative: George M. Catlett, 708 McClure Buiding, Frankfort, KY, 40601. Transporting *malt beverages and materials, supplies, and equipment* used in the manufacture and distribution of malt beverages between Detroit, MI, and Perrysburg, OH, on the one hand, and, on the other, points in OH, IN, IL, WI, PA, WV, KY, NY, MO, TN, VA, IA, AR, MD, NC, SC, GA, FL, and DC.

MC 127079 (Sub-1F), filed September 29, 1980. Applicant: G & M COACHES, INC., 1538 Fuller SE., Grand Rapids, MI 49507. Representative: Robert E. McFarland, 2855 Coolidge, Suite 201A Troy, MI 48084. Transporting *passengers and their baggage*, in special and charter operations, in round-trip tours, beginning and ending at points in Oceana, Newaygo, Mecosta, Isabella, Muskegon, Montcalm, Mason, Lake, Osceola, Gratiot, Iona, Kent, Ottawa, Allegan, and Barry Counties, MI, and extending to points in the U.S. (except HI).

MC 143008 (Sub-3F), filed September 19, 1980. Applicant: ITG TRUCKING COMPANY, INC., P.O. Box 2823, Jacksonville, FL 32202. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. Transporting *cigars*, between points in the U.S., under continuing contract(s) with Jno. H. Swisher & Sons, Inc., of Jacksonville, FL.

MC 146448 (Sub-23F), filed September 30, 1980. Applicant: C & L TRUCKING, INC., P.O. Box 409, Judsonia, AR 72081. Representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), (a) between Rochester, NY and Dallas, TX, and (b) between Rochester, NY, on the one hand, and, on the other, points in CA.

MC 148208 (Sub-7F), filed October 1, 1980. Applicant: FUR BREEDERS AGRICULTURAL COOPERATIVE, a corporation, P.O. Box 295, Midvale, UT 84074. Representative: Irene Warr, 430 Judge Bldg., Salt Lake City, UT 84111. Transporting (1) *feed and feed ingredients*, and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1), (except commodities in bulk), between points in Weber County, UT, on the one hand, and, on the other, points in WA, OR, MT, ID, NV, AZ, CO, WY, NM, and CA.

MC 148329 (Sub-3F), filed October 2, 1980. Applicant: AOL EXPRESS, INC., 6441 "C" St., Anchorage, AK 99502. Representative: Michael B. Crutcher, 2000 IBM Bldg., Seattle, WA 98101. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), from Seattle and Takoma, WA to Anchorage, AK, restricted to transportation of traffic to or from the facilities of J. B. Gottstein & Co.

MC 150098 (Sub-1F), filed September 30, 1980. Applicant: CHARLES OFFUTT CO., 105 West Broadway, Bossier City, LA 71111. Representative: Charles Offutt (same as above). Transporting *sporting goods and recreational equipment* between Bossier City, LA, and points in AR, MS, MO, AL, FL, PA, CA, MI, and TN.

MC 150339 (Sub-4F), filed October 3, 1980. Applicant: PIONEER TRANSPORTATION SYSTEMS, INC., 151 Easton Blvd., Preston, MD 21655. Representative: J. Cody Quinton, Jr. (same address as applicant). Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with Aluminum Smelting & Refining Co., Inc. of Maple Heights, OH.

MC 150339 (Sub-5F), filed October 6, 1980. Applicant: PIONEER TRANSPORTATION SYSTEMS, INC., 151 Easton Blvd., Preston, MD 21655. Representative: J. Cody Quinton, Jr. (same address as applicant). Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with Commercial Shearing, Inc., of Youngstown, OH.

MC 151498F, filed October 1, 1980. Applicant: DANIEL COAKLEY SR., d.b.a. COAKLEY TRANSPORT, Route 121, Auburn, NH 03032. Representative: Ronald I. Shapss, 450 Seventh Ave., New York, NY 10123. Transporting *petroleum and petroleum products*, between points in the U.S., under continuing contract(s) with Bailey Distributing Co., Inc., of Manchester, NH.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-32518 Filed 10-17-80; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the **Federal Register** on July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before December 4, 1980 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP2–070

Decided: October 10, 1980.
By the Commission, Review Board Number 2, Members Chandler, Eaton and Liberman.

MC 131053F, filed September 30, 1980. Applicant: THREE B TRANSPORTATION, INC., 2307 Bristol Pike, Croydon, PA 19020. Representative: Lawrence E. Bandrowsky (same address as applicant). As a *broker*, to arrange for the transportation of *general commodities* (except household goods), between points in the U.S.

MC 144982 (Sub-12F), filed October 3, 1980. Applicant: OHIO PACIFIC EXPRESS, INC., 683 East Broad St., Columbus, OH 43215. Representative: Harry F. Horak, Suite 115, 5001 Brentwood Stair Rd., Fort Worth, TX 76112. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions) for the United States Government, between points in the U.S.

MC 152062F, filed October 1, 1980. Applicant: POWERS TRUCKING & BROKERAGE, INC., 2392 South Peck Rd., Suite 275, Whittier, CA 90601. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Rd., Omaha, NE 68106. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions) for the United States Government, between points in the U.S.

MC 152112F, filed October 6, 1980. Applicant: CLAYTON W. AYARS, d.b.a., A & A TRUCKING, E. 2640 16th Ave., Post Falls, ID 83854. Representative: Jack Pearce, Suite 1200, 1000 Connecticut Ave., NW., Washington, D.C. 20036. Transporting *food and other edible products* (including edible byproducts but excluding alcoholic beverages and drugs) *intended for human consumption, agricultural limestone and other soil conditioners, and agricultural fertilizers* if such transportation is provided with the owner of the motor vehicle in such vehicle, except in emergency situations, between points in the U.S.

MC 152113F, filed October 6, 1980. Applicant: ARROW COURIER, INC., 251 State St. Extension, Fairfield, CT 06430. Representative: Dennis Geronimo, 10 Scribner Ave., Norwalk, CT 06854. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

Volume No. OP3–042

Decided: October 8, 1980.
By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 139225 (Sub-1F), filed September 29, 1980. Applicant: INTERSTATE COURIER SYSTEMS, INC., 18 Park Place, Paramus, NJ 07652. Representative: Julius DeVito, 240 Madison Avenue, New York City, NY 10016. Transporting *shipments* weighing 100 pounds or less if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

Volume No. OP3–044

Decided: October 9, 1980.
By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 126635 (Sub-4F), filed October 1, 1980. Applicant: CHRISTIE-LAMBERT VAN & STORAGE CO., INC., 1010 6th Ave., North, Kent, WA 98031. Representative: Michael D. Duppenthaler, 211 South Washington St., Seattle, WA 98104. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and

munitions), for the U.S. Government, between points in the U.S.

MC 131055F, filed October 3, 1980. Applicant: ALL WORLD TRANSPORTATION, INC., 7828 Woodside Terrace T–3, Glen Burnie, MD 21061. Representative: Nancy Lee Donnelly (same address as applicant). *Broker*, in arranging for the transportation of *general commodities* (except household goods), between points in the U.S.

MC 152035 (Sub-1F), filed September 30, 1980. Applicant: RAYMOND M. CHENOWETH, 1900 Westlund Drive, Las Vegas, NV 89102. Representative: Lawrence Marquette, P.O. Box 711, Pebble Beach, CA 93953. Transporting *food and other edible products (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, agricultural limestone and other soil conditioners, and agricultural fertilizers*, if such transportation is provided with the owner of the motor vehicle in such vehicle, except in emergency situations, between points in the U.S.

Volume No. OP4–069

Decided: October 10, 1980.

By the Commission: Review Board Number 1, Members Carleton, Joyce and Jones.

MC 129328 (Sub-36F), filed October 7, 1980. Applicant: CHEMICAL TANK LINES, INC., P.O. Box 432, Mulberry, FL 33860. Representative: Charles A. Webb, Suite 1111, 1828 L St., N.W., Washington, DC 20036. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 141707 (Sub-2F), filed October 7, 1980. Applicant: JOE A. STEVENS TRUCKING, INC., 454 N. College St., Harrodsburg, KY 40330. Representative: John M. Nader, 1600 Citizens Plaza, Louisville, KY 40202. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 144867 (Sub-3F), filed October 7, 1980. Applicant: R & J TRANSPORT, INC., 929 No. 24th St., Manitowoc, WI 54220. Representative: Wayne W. Wilson, 150 East Gilman St., Madison, WI 53703. Transporting *general commodities* (except used household goods, hazardous or secretive materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

Volume No. OP5–031

Decided: October 9, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

MC 41098 (Sub-55F), filed September 29, 1980. Applicant: GLOBAL VAN LINES, INC., Number One Global Way, Anaheim, CA 92803. Representative: Alan F. Wohlstetter, 1700 K ST., NW, Washington, DC 20006. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 113908 (Sub-510F), filed October 2, 1980. Applicant: ERICKSON TRANSPORT CORP., 2255 N. Packer Rd., P.O. Box 10068 G.S., Springfield, MO 65804. Representative: B. B. Whitehead (same address as applicant). Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 152038F, filed September 30, 1980. Applicant: DAVID BRUCE, Park River, ND 58270. Representative: David C. Britton, 1425 Cottonwood Street, Grand Forks, ND 58201. Transporting *food and other edible products (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, agricultural limestone and other soil conditioners, and agricultural fertilizers*, with the owner of the motor vehicle in such vehicle, except in emergency situations, between points in the U.S.

MC 152048F, filed September 23, 1980. Applicant: F & L TRUCKING CORP., 24 Hamilton Drive, Roslyn, NY 11576. Representative: Robert S. Le Beau (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 152078F, filed October 2, 1980. Applicant: MIDDLESEX COURIER SERVICE, INC., 6 Governor Saltonstall Drive, Billerica, MA 01821. Representative: George C. O'Brien, 12 Vernon St., Norwood, MA 02062. Transporting *shipments* weighing 100 pounds or less, if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80–32525 Filed 10–17–80; 8:45 am]
BILLING CODE 7035–01–M

[Docket No. AB–12 (Sub-No. 60F)]

Southern Pacific Transportation Co.—Abandonment—Near Matheson and Kett in Shasta County, Calif.; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision decided July 23, 1980, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, the public convenience and necessity permit the abandonment by the Southern Pacific Transportation Company of a continuous line of railroad known as the Matheson Branch extending from milepost 267.65 at or near Matheson to milepost 263.20 at or near Kett in Shasta County, CA, subject to the conditions for the protection of employees discussed in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). A certificate of abandonment will be issued to the Southern Pacific Transportation Company based on the above-described finding of abandonment, on or before November 19, 1980, unless on or before November 19, 1980, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued. The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission Building, Washington, D.C. 20423, no later than 10 days from publication of this Notice.

(2) It is likely that such proffered assistance would: (a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the **Federal Register** on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80–32519 Filed 10–17–80; 8:45 am]
BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil Action No. 791–69]

United States v. Ciba-Geigy Corp.; Proposed Final Judgment, and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of New Jersey in *United States of America* v. *Ciba-Geigy Corporation*, Civil Action No. 791–69. This civil action began on July 9, 1969, when the United States filed a Complaint alleging that Ciba's marketing arrangements for its patented drug hydrochlorothiazide ("HCT") violated Section 1 of the Sherman Act, 15 U.S.C. § 1, by unreasonably restricting sales of HCT. The validity of the HCT patent, which was put in issue when Ciba relied on it as a defense, was also challenged. The court held that Ciba's agreements to supply HCT to other drug companies violated the Sherman Act but ruled against the United States on all other issues.

The proposed Final Judgment requires Ciba to dedicate to the public as of March 31, 1981 its patent rights to HCT and combinations of HCT and other drugs. Absent the proposed Judgment, Ciba's patent rights to HCT will not expire until December 29, 1981, and its patent rights to the HCT combinations will not expire until November 29, 1983.

In addition, the proposed Final Judgment obligates Ciba to take steps in advance of dedicating its patent rights to open up competition in HCT and HCT combinations. The proposed Judgment requires Ciba upon request to grant financially responsible persons unrestricted, nonexclusive, reasonable royalty licenses under the HCT patent to make and sell HCT alone or in HCT combinations. Ciba is also obligated to grant the same rights under the HCT patent to its existing HCT licensees.

Public comment is invited within the statutory 60-day comment period. Comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Roger B. Andewelt, Assistant Chief, Intellectual Property Section, Antitrust Division (Safe-704), United States Department of Justice, Washington, D.C. 20530 (telephone: 202/724–7966).

Joseph H. Widmar,
Director of Operations.

U.S. District Court, District of New Jersey

United States of America, Plaintiff, v. *Ciba-Geigy Corporation*, Defendant.

Filed: September 30, 1980.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that the Final Judgment entered on October 16, 1979 may be vacated and that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

For the plaintiff: Sanford M. Litvack, *Assistant Attorney General:* Joseph H. Widmar, Roger B. Andewelt, Charles F. B. McAleer, P. Terry Lubeck, Joseph T. Melillo, Nicholas W. Clark, *Attorneys, Department of Justice*, Antitrust Division, Department of Justice, Washington, D.C. 20530.

For the defendant: Davis Polk & Wardwell: Richard E. Nolan, *A member of the firm.* Kenyon & Kenyon: Hugh A. Chapin, *A member of the firm.* Lowenstein, Sandler, Brochin, Kohl & Fisher: Matthew P. Boylan, *A member of the firm.*

It is so ordered:

Dated: September 30, 1980.

Curtis H. Meanor, *Judge of the District Court.*

Final Judgment

Plaintiff, United States of America, having filed its complaint herein on July 9, 1969, defendant having filed its answer thereto, the trial having been bifurcated, the Court having rendered its opinion on the antitrust issues on April 15, 1976 and its opinion on the patent issues on August 7, 1979, the Court having entered a Final Judgment on October 16, 1979, plaintiff having filed an appeal from the Final Judgment, defendant having filed a cross-appeal, upon joint application of the parties, both appeals having been dismissed and the action having been remanded to this Court, plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without it consituting any evidence against or admission by any party with respect to any issue of fact or law herein;

Now, therefore, without final adjudication of any issue of fact or law herein and upon consent of the parties hereto, it is hereby,

Ordered, Adjudged, and Decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The complaint states a claim upon which relief may be granted against defendant under Section 1 of the Sherman Act (15 U.S.C. § 1).

II

The Final Judgment entered on October 16, 1979 is vacated, and this Final Judgment is substituted therefor.

III

As used in this Final Judgment:

(A) "Ciba" means defendant Ciba-Geigy Corporation, a corporation organized and existing under the laws of the State of New York; and any subdivision, subsidiary, or affiliate thereof.

(B) "Hydrochlorothiazide" means 6-chloro-7-sulfamyl-3,4-dihydro-1,2,4-benzothiadiazine-1,1-dioxide.

(C) "Hydrochlorothiazide Combination Patents" means United States Patent Nos. 3,379,612, 3,499,082, and 3,515,786.

(D) "Hydrochlorothiazide Patents" means United States Patent No. 3,163,645.

(E) "Person" means any individual, partnership, association, firm, corporation, proprietorship, joint venture, or other legal or business entity.

IV

This Final Judgment applies to defendant and to its officers, directors, agents, employees, subsidiaries, successors, and assigns, and to all other Persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

V

(A) Ciba is ordered and directed upon the request of any or its existing licensees under the Hydrochlorothiazide Patent to extend the licensee's license thereunder to include the right to make, have made, use, and sell Hydrochlorothiazide in combination with any one or more other therapeutically active ingredients selected by the licensee. The royalty rate for the extended license shall be no more than the royalty rate specified in the license at the time of the request. Ciba shall notify each of its existing licensees under the Hydrochlorothiazide Patent whose license may be extended pursuant to this Subsection V(A) of its rights under this Subsection V(A).

(B) Ciba is ordered and directed to grant any financially responsible Person making written application therefor an unrestricted, nonexclusive license under the Hydrochlorothiazide Patent to make, have made, use, and sell Hydrochlorothiazide alone and in combination with any one or more other therapeutically active ingredients selected by the licensee. The royalty rate for the license shall be reasonable, but in no event more than six (6) percent.

(C) Nothing in this Final Judgment shall prevent any Person from attacking at any time the validity or scope of the Hydrochlorothiazide Patent or shall require Ciba to grant or extend any license under any patent other than the Hydrochlorothiazide Patent.

VI

Ciba is ordered and directed at or about the date of entry of this Final Judgment to file with the United States Patent Office pursuant to Section 253 of the Patent Laws (35 U.S.C. § 253) a terminal disclaimer of:

(A) Claims 1, 2, 40, and 41 of the Hydrochlorothiazide Patent for the part of their term remaining after the date of entry of this Final Judgment.

(B) Claim 3 of the Hydrochlorothiazide Patent for the part of its term remaining after March 31, 1981.

(C) Each of the Hydrochlorothiazide Combination Patents for the part of its term remaining after March 31, 1981. Ciba shall furnish plaintiff copies of all terminal disclaimers Ciba files with the United States Patent Office pursuant to this Section VI.

VII

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to its principal office, be permitted:

(1) Access during office hours of defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of defendant and without restraint or interference from it, to interview officers, employees and agents of defendant, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendant's principal office, defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(C) If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendant is not a party.

VIII

This Final Judgment will expire on December 31, 1981.

IX

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

Entry of this Final Judgment is in the public interest.

Dated:

_____,

Judge of the District Court.

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

This civil action began on July 9, 1969, when the United States filed a Complaint challenging defendant's marketing arrangements for its patented drug hydrochlorothiazide ("HCT"). Defendant, Ciba-Geigy Corporation ("Ciba"), had licensed Merck and Co., Inc. ("Merck") and Abbott Laboratories ("Abbott") to make and sell HCT and had vending agreements with several other drug companies pursuant to which the companies purchased HCT for resale. The Complaint alleges that the license and vending agreements violated Section 1 of the Sherman Act, 15 U.S.C. § 1, by unreasonably restricting sales of HCT by the licensees and vendees. Ciba denied the allegations, maintaining that the Abbott license agreement was a legal use of its patent on HCT. The United States then challenged the validity of the patent.

The antitrust issues were tried in the spring of 1975, and the District Court rendered a written opinion on April 15, 1976, reported in 1976–1 Trade Case ¶ 60,908. The Court held that each of Ciba's vending agreements violated Section 1 of the Sherman Act, but that Ciba's license agreements, and its HCT marketing arrangements as a whole, did not violate that Act. The Court refused to grant the United States any relief, except a declaration that Ciba had violated the Sherman Act.

The patent issues were tried in December 1978, and the District Court rendered a written but unreported opinion on August 7, 1979. The Court ruled against the United States on all patent issues.

On October 16, 1979, the District Court entered a Final Judgment in the action. The United States appealed from the Judgment, and Ciba cross-appealed. While the appeals were pending, the United States and Ciba agreed upon a proposed Final Judgment to settle the litigation. The United States and Ciba then jointly asked the appellate court to return the action to the District Court to consider the proposed Judgment. The District Court may substitute the proposed Judgment for the Final Judgment of October 16, 1979, after compliance with the Antitrust Procedures and Penalties Act. Entry of the proposed Final Judgment will terminate the action, except the Court will retain jurisdiction to construe, modify, and enforce the proposed Judgment and to punish violations of the proposed Judgment.

II. Events Giving Rise to the Alleged Violation

In 1958 Ciba invented HCT, a drug useful in treating edema and hypertension, and filed a United States patent application covering HCT and many of its analogues. The Patent Office, relying on a patent on chlorothiazide ("CT"), a previously patented diuretic and antihypertensive, rejected the application on the ground that HCT and the analogues were obvious under Section 103 of the patent laws, 35 U.S.C. § 103. The Patent Office eventually found HCT and the analogues patentable, but only after Ciba filed several affidavits comparing the properties of HCT and CT. Ciba told the Patent Office that the affidavits showed HCT was a significant advance over CT. Ciba's application then became involved in several Patent Office interference proceedings with applications of other inventors that also covered HCT. These proceedings were instituted to determine whether Ciba was the first to invent HCT and certain of its analogues. Ciba eventually prevailed, and the HCT patent issued on December 29, 1964, as United States Patent No. 3,163,645. Ciba also received three patents covering combinations of HCT and other drugs: United States Patent No. 3,379,612, issued April 23, 1968; United States Patent No. 3,499,082, issued March 3, 1970; United States Patent No. 3,515,786, issued June 2, 1970. Before these HCT combination patents issued, Ciba dedicated to the public the portion of their terms remaining after November 29, 1963, the earliest expiration date of related combination patents issued to Ciba.

In 1959, while its HCT patent application was pending in the Patent Office, Ciba licensed Merck and Abbott to make and sell HCT. Ciba then entered into vending agreements with eight other drug companies pursuant to which Ciba agreed to supply HCT in bulk form, the powdery form in which HCT exists prior to being packed into dosage form, the pill form in which HCT is sold for use by patients.

The Complaint alleges that the effect of Ciba's marketing arrangements was to prevent competition between Ciba and its licensees and vendees, and among the licensees and vendees, and to prevent generic and other drug firms from obtaining HCT in bulk form. The United States contended that Ciba's licensees illegally agreed with Ciba not to sell HCT in bulk form in competition with Ciba. Merck's license contained no express limitation on the forms in which it could sell HCT, but the United States contended that there was an unwritten agreement between Merck and Ciba that except under very limited circumstances, Merck would not supply HCT in bulk form. The Court found, however, that no such agreement existed between Ciba and Merck. Abbott's license limited it to selling HCT in dosage form, and Abbott refused to supply HCT in bulk form because its agreement with Ciba would not permit Abbott to make such sales. The Court held that Abbott's limited license was a legal use of Ciba's presumptively valid HCT patent and did not violate the Sherman Act.

The United States contended that each of the vendee agreements illegally restricted the resale of HCT. Ciba's vending agreements prevented the vendees from selling the bulk HCT they purchased from Ciba except in combination with other drugs, and in most cases, Ciba had to approve the HCT combinations. Ciba marketed three combinations of HCT and other drugs, which were covered by its HCT combination patents, and it consistently refused to allow its vendees to market any of these combinations or their equivalents. Thus, Ciba used its HCT patent to prevent its vendees from selling HCT in bulk form in competition with Ciba, from selling dosage form HCT in competition with Ciba, Merck, and Abbott, and from selling HCT in the three combinations Ciba marketed. The Court held that each of Ciba's vending agreements violated the Sherman Act. The United States also contended that Ciba and its vendees illegally combined to restrict the resale of HCT. The Court, however, rejected this contention, finding that the vendees acted independently regarding the vending agreements.

Based upon the Court's ruling that Ciba's vendee agreements violated the Sherman Act, the United States sought as relief an injunction compelling Ciba to sell bulk HCT and to license its HCT patent, all without restrictions. In addition, the United States asked the Court to prohibit Ciba from engaging in post-sale restraints in the future. The Court, however, denied the United States any relief, except a declaration that Ciba violated the antitrust laws. The Court found that Ciba's illegal practices of restricting the resale of HCT, which Ciba unilaterally abandoned several years before the trial of the antitrust issues, left no lingering effects in the market. The Court also found that there was no evidence from which it could conclude that in the future Ciba will employ illegal post-sale restraints in connection with products it vends.

On the patent issues, the United States challenged the validity and enforceability of the HCT patent and the validity of the HCT combination patents. As to the HCT patent, it contended that HCT was obvious under Section 103, that HCT analogues claimed in the patent also were obvious under Section 103, and that Ciba had procured the patent by fraud. The United States also contended that Ciba had procured the HCT patent by inequitable conduct, making it unenforceable. As to the HCT combination patents, the United States contended that the HCT combinations were obvious under Section 103.[1] The Court denied the United States the opportunity to challenge the obviousness of the HCT analogues, the enforceability of the HCT patent, and the validity of the HCT combination patents. As to HCT itself, the Court found that the United States had not proved that HCT was obvious or that Ciba procured the HCT patent by fraud. On the fraud issue, the Court found that the United States had not proved that Ciba had a fraudulent intent in its dealings with the Patent Office. The Court held that Ciba's HCT patent was valid, making the Abbott license a legal use of the patent.

III. Explanation of the Proposed Final Judgment and Its Anticipated Effects on Competition

The proposed Final Judgment will permit generic and other drug firms to sell HCT and HCT combinations in competition with Ciba and its licensees and vendees well before the HCT and HCT combination patents will expire. The proposed Judgment requires Ciba to dedicate to the public at specified times its patent rights to HCT, the analogues of HCT, and the HCT combinations. With respect to the HCT patents, Ciba is obligated to dedicate to the public claims 1, 2, 40, and 41 when the proposed Judgment becomes final and claim 3 on March 31, 1981. Claim 3 specifically covers HCT, claims 1 and 2 cover HCT and many of its analogues, and claims 40 and 41 cover methods of making the drugs. With respect to the HCT combination patent, Ciba is obligated to dedicate them to the public on March 31, 1981. Absent the proposed Judgment, the HCT patent will not expire until December 29, 1981, and the HCT combination patents will not expire until November 29, 1983.

In addition, the proposed Final Judgment obligates Ciba to take steps in advance of dedicating its patent rights to open up competition in HCT and HCT combinations. The proposed Judgment requires Ciba upon request to grant financially responsible persons unrestricted, nonexclusive licenses under the HCT patent to make and sell HCT alone or in combination with one or more other drugs. The license may not limit the drugs the licensee may combine with HCT. The royalty rate for the license must be reasonable, but in any event no more than six (6) percent. Ciba is also obligated to grant the same rights under the HCT patent to its existing HCT licensees.

The effects on competition of Ciba's obligation to license its HCT patent when the proposed Judgment becomes final are two-fold. First, by paying a reasonable royalty, all generic and other drug firms may compete for sales of HCT alone. Of course, any firm is free to challenge the validity of the HCT patent and thus Ciba's right to collect any royalty at all. Second, by paying a reasonable royalty, these firms may also compete for sales of HCT combinations without concern for the HCT patent. Until the HCT combination patents are dedicated, Ciba may seek to assert these patents and thereby prevent competition in those combinations that are patented. However, Ciba has historically not asserted its HCT combination patents, choosing instead to rely on its HCT patent to shield them from challenges to their validity. If Ciba now elects to rely on its HCT combination patents, their validity may be challenged on the ground of obviousness or any other ground.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment in this proceeding will neither impair nor assist the bringing of any private antitrust actions. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the proposed Judgment has no prima facie effect in any subsequent private antitrust lawsuits that may be brought against the defendant. Although testimony was taken in this action, the proposed Final Judgment contains nothing to the effect that defendant has violated the antitrust laws.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance

[1] The United States relied in part on two articles describing the same combinations with CT substituted for HCT: E. D. Freis and I. M. Wilson, Potentiating Effect of Chlorothiazide (DIURIL) in Combination With Antihypertensive Agents—Preliminary Report, 26 Med. Ann. District of Columbia 408 (1957); and E. D. Freis et al., Treatment of Essential Hypertension With Chlorothiazide [DIURIL]—Its Use Alone and in Combination With Other Antihypertensive Agents. 166 J.A.M.A. 137 [1958].

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with the provisions of the Antitrust Procedures and Penalties Act, provided that the United States has not withdrawn its consent. The Act conditions entry upon the Court's determination that the proposed Judgment is in the public interest.

The Act provides a period of at least sixty (60) days preceding the effective date of the proposed Judgment within which any person may submit to the government written comments regarding the proposed Judgment. Any person who wants to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Roger B. Andewelt, Assistant Chief, Intellectual Property Section, Antitrust Division (SAFE–704), U.S. Department of Justice, Washington, DC 20530.

VI. Alternatives to the Proposed Final Judgment

In the Complaint, the United States requested broad relief to infuse competition into sales of HCT and HCT combinations. This relief appeared appropriate to compensate for the restrictive marketing of these HCT products that had prevailed since 1959. This relief included compelling Ciba to sell HCT in bulk form and to grant to all applicants licenses on reasonable terms to make and sell HCT and HCT combinations, all without restrictions. The Complaint also requested that Ciba be prohibited from using similar marketing arrangements for other drug products.

The proposed Final Judgment will provide all of the competitive benefits that would be obtained from a successful appeal and will provide them sooner. When it becomes final, the proposed Judgment will obligate Ciba upon request to grant financially responsible drug companies unrestricted licenses under the HCT patent to make and sell HCT. This will permit open competition in sales of HCT. Furthermore, as of March 31, 1981, Ciba must dedicate to the public its patent rights to HCT and the HCT combinations. With the patents rights dedicated, drug companies also will be free to compete in the sale of HCT combinations.

The appellate process, if continued, most likely would not be completed until after March 31, 1981. The final appellate decision may hold the HCT patent invalid or unenforceable. In addition, the final appellate decision may permit the United States to challenge the validity of the HCT combination patents, but a final ruling on the validity of the patents most likely would not be reached for several more years. A ruling after March 1981 that the HCT patent is invalid or unenforceable, or a ruling several years later that the HCT combination patents are invalid, is of insufficient value when balanced against the immediate competitive benefits the proposed Judgment will provide.

The proposed Final Judgment provides no prohibitory relief forbidding Ciba from engaging in post-sale restraints in the future. However, on balance it appears unwise to continue the appeal in an attempt to obtain this additional relief. The appeal would be difficult and expensive, and there is some risk of losing this issue on appeal and not getting any prohibitory relief. Moreover, appeal would risk loss or delay of the competitive benefits that would be obtained through entry of the proposed Judgment.

VII. Other Materials

The United States considered no materials or documents determinative in formulating the proposed Final Judgment and, therefore, files none with this Competitive Impact Statement.

Dated: September 30, 1980.

Respectfully submitted,

Roger B. Andewelt,
P. Terry Lubeck,
Joseph T. Melillo,
Nicholas W. Clark,
Attorneys, U.S. Department of Justice.

[FR Doc. 80-32431 Filed 10-16-80; 8:45 am]
BILLING CODE 4410-01-M

[Civil Action No. 80–1401]

United States v. Rockwell International Corp. and Rockwell International Holdings Limited; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16(b) through (h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement (CIS) have been filed with the United States District Court for the Western District of Pennsylvania in *United States of America* v. *Rockwell International Corporation ["Rockwell"] and Rockwell International Holdings Limited ["RIHL"]*, Civil Action No. 80–1401. The Complaint in this case alleged that Rockwell's acquisition, through RIHL, of 29.7% of Serck Limited's shares may substantially lessen actual and potential competition in the lubricated plug valve market and the lubricated tapered plug valve submarket in violation of Section 7 of the Clayton Act. The proposed Final Judgment orders Rockwell and RIHL to divest themselves of all Serck shares within four years, and if all shares have not been sold within such time, empowers the Court to appoint a Trustee to sell the shares. Pending divestiture, the proposed Final Judgment enjoins the defendants from (a) voting the Serck shares that they own or control directly or indirectly; (b) being represented directly or indirectly on Serck's Board of Directors; (c) communicating with Serck for the purpose of controlling or influencing, or seeking to control or influence, Serck; or (d) acquiring any equity interest in Serck which would increase their aggregate holding of Serck shares beyond 29.7% of the total outstanding Serck shares. The proposed Final Judgment also enjoins the defendants for ten years from making certain asset or equity interest acquisitions in Serck or any other person engaged in the manufacture, sale or distribution of lubricated plug valves.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to John W. Clark, Chief, Special Trial Section, Antitrust Division, Department of Justice, Washington, D.C. 20530 (telephone: 202/724–6335).

Joseph H. Widmar,
Director of Operations Antitrust Division.

U.S. District Court, Western District of Pennsylvania

United States of America, Plaintiff, v. *Rockwell International Corporation and Rockwell International Holdings Limited*, Defendants.

Filed: September 30, 1980

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirments of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: September 30, 1980.

For the plaintiff: Stanford M. Litvack, *Assistant Attorney General;* Joseph H. Widmar, John W. Clark, Frank N. Bentkover, *Attorneys, Department of Justice.*

For the defendants: Howrey & Simon, J. Wallace Adair, John DeQ. Briggs III, Fred E. Haynes, Laura Ross Blumenfeld, *Attorneys, Department of Justice Antitrust Division* Washington, D.C. 20530, Telephone: (202) 724–6337.

U.S. District Court Western District of Pennsylvania

United States of America, Plaintiff, v. *Rockwell International Corporation and Rockwell International Holdings Limited*, Defendants.

Filed: September 30, 1980

Final Judgment

Plaintiff, United States of America, having filed its Complaint herein on September 30, 1980, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and upon consent of the parties hereto, it is hereby

Ordered, adjudged, and decreed as follows:

I

This Court has jurisdiction over the subject matter of this action and over each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against each defendant under Section 7 of the Clayton Act, 15 U.S.C. § 18.

II

As used in this Final Judgment:

(A) "Rockwell" means defendant Rockwell International Corporation;

(B) "RIHL" means defendant Rockwell International Holdings Limited;

(C) "Serck" means Serck Limited and its officers, directors, agents, employees, subsidiaries, successors and assigns;

(D) "Lubricated tapered plug valve" means a valve containing a vertical truncated cone-shaped plug, with a hole through its center, that rotates 90 degrees about its axis within the valve body. Lubricant is distributed through channels in the plug and body to seal the seating surfaces and facilitate operation. When the plug's hole is aligned with the pipe, fluids or gases flowing through the pipe also pass through the valve; when the plug is turned 90 degrees, the solid face of the plug blocks flow through the valve;

(E) "Lubricated cylindrical plug valve" means a lubricated valve similar in construction and operation to the lubricated tapered plug valve except that it has a cylindrically-shaped plug instead of a truncated cone-shaped plug;

(F) "Lubricated plug valves" means lubricated tapered plug valves and/or lubricated cylindrical plug valves;

(G) "Person" means an individual, partnership, corporation, or any other business or legal entity; and

(H) "Subsidiary" means a company which a person controls or has power to control or in which more than 50 percent of the voting securities are owned by the same person, directly or indirectly.

III

This Final Judgment applies to defendants and to their officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise, Provided however that no provision of this Final Judgment shall apply to any purchaser of all or part of RIHL's equity interest in Serck solely by virtue of such purchase.

IV

(A) Within four (4) years from the date of entry of this Final Judgment, Rockwell and RIHL are hereby ordered and directed to divest themselves of all of the equity interest in Serck that each owns or controls, directly or indirectly.

(B) If Rockwell or RIHL have not sold all of the equity interest in Serck that each owns or controls, directly or indirectly, within the period specified in (A) above, the Court shall undertake, upon application by plaintiff, to appoint a Trustee for the purpose of selling any remaining equity interest. For the purpose of appointing such Trustee, the Court shall promptly receive nominations from the parties and grant a hearing to the parties as to the qualifications of any nominee. Once appointed by the Court, the Trustee shall be entitled to reasonable compensation and actual expenses to be set by the Court and paid by Rockwell or RIHL.

(C) The Trustee's primary duty shall be to sell all of Rockwell's or RIHL's remaining equity interest in Serck at such price and on such terms as may be required to effect the sale within three months after the date of his appointment. The proceeds of any such sale shall be turned over to Rockwell or RIHL immediately, and in no event later than five (5) business days after the sale of any equity interest in Serck.

(D) Notice of any sale of said equity interest in Serck by Rockwell, RIHL and/or the Trustee shall be provided to the Court and to the plaintiff's Director of Operations, Antitrust Division, Department of Justice, Washington, D.C. 20530, within twenty-four (24) hours thereafter. Such notice may be by telephone but within two (2) business days thereafter shall be confirmed in writing.

V

Pending divestiture of the equity interest in Serck, neither Rockwell nor RIHL shall:

(A) Vote or permit to be voted the Serck shares that Rockwell or RIHL owns or controls directly or indirectly;

(B) Be represented directly or indirectly on the board of directors of Serck;

(C) Communicate with Serck directly or indirectly for the purpose of controlling or influencing, or seeking to control or influence, Serck, Provided however that nothing in this subparagraph prohibits communications between Rockwell and Serck in connection with commercial transactions in the ordinary course of business that do not otherwise violate this Final Judgment; or

(D) Acquire any equity interest in Serck that would increase Rockwell's and RIHL's aggregate equity interest in Serck beyond 29.7 percent of the total equity of Serck.

VI

During the effective period of this Final Judgment (but only for so long as Rockwell continues to be a competitor in the domestic market for lubricated plug valves) neither Rockwell nor RIHL shall acquire or otherwise purchase, without the permission of the Antitrust Division:

(A) Any assets of Serck, wherever located, utilized in the manufacture, distribution, or sale of lubricated plug valves (if permission to aquire assets of Serck is denied by the Antitrust Division, Rockwell or RIHL may apply to the Court for permission to acquire such assets, which will be granted by the Court upon a showing by Rockwell or RIHL that the acquisition of assets will not violate the antitrust laws of the United States);

(B) Any equity interest in Serck (except as may be permitted under Paragraph V(D) of this Final Judgment);

(C) More than one (1) percent of the equity interest in any person that manufactures, distributes or sells lubricated plug valves in the United States; or

(D) Any assets of any person used in the manufacture, distribution or sale of lubricated plug valves in the United States.

VII

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a defendant made to its principal office, be permitted:

(1) Access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees and agents of such defendant, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to a defendant's principal office, such defendant shall submit such written reports as may be requested, under oath if requested, with respect to any of the matters contained in this Final Judgment.

No information or documents obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(C) If at the time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to such defendant prior to

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divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

VIII

This Final Judgment will expire on the tenth anniversary of its date of entry.

IX

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, or for the punishment of any violation hereof.

X

Entry of this Final Judgment is in the public interest.

United States District Judge.

Dated:

U.S. District Court For The Western District Of Pennsylvania

United States of America, Plaintiff, v. *Rockwell International Corporation and Rockwell International Holdings Limited*, Defendents.

Filed: September 30, 1980

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)), the United States hereby submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On September 30, 1980, the United States filed a complaint alleging that the acquisition by defendent Rockwell International Corporation ("Rockwell"), through defendant Rockwell International Holdings Limited ("RIHL"), of approximately 30% of the stock of Serck Limited ("Serck") violated Section 7 of the Clayton Act. Entry by the Court of the proposed final judgment will terminate this action. The Court will retain jurisdiction over this matter for such further proceedings as may be required to interpret, modify or enforce the proposed judgment, or to punish violations thereof.

II. Description of the Alleged Violation

Rockwell is a large, diversified corporation that had sales in excess of $6.1 billion in its 1979 fiscal year. It is one of the nation's largest manufacturers of industrial valves. RIHL, a Delaware corporation, is a wholly-owned subsidiary of Rockwell. Serck is a British company whose major business is the manufacture of industrial valves. In 1979, it had sales of approximately $219 million. Serck's operations in the United States are conducted through its wholly-owned subsidiary, Serck Incorporated, which has its principal place of business in Houston, Texas.

On February 1, 1980, Rockwell, through RIHL, purchased 29.7%of Serck's outstanding shares. It then initiated a tender offer to acquire the remaining shares. On April 17, 1980, the United States Department of Justice announced that it would file suit to enjoin the acquisition of the remaining shares if Rockwell persisted with the tender offer. Shortly thereafter, Rockwell withdrew the tender offer and no suit was filed. However, the Department continued to investigate whether Rockwell's acquisition of nearly 30% of Serck's stock violated Section 7 of the Clayton Act. In the course of this investigation, counsel for the defendants and for the Department entered into negotiations aimed at resolving this matter without the expense of extended litigation. These discussions have resulted in the proposed final judgment, which has been filed with the Court simultaneously with the filing of the government's complaint against the defendants.

Had this case gone to trial, the government would have contended that Rockwell's acquisition, through RIHL, of the Serck stock violated Section 7 of the Clayton Act in that it may substantially lessen competition in the domestic market for lubricated plug valves and the submarket for lubricated tapered plug valves. The lubricated plug valve product market consists of lubricated tapered plug valves and lubricated cylindrical plug valves. Lubricated plug valves are used for the flow control purposes in a variety of industrial applications, including oil and gas production, processing, transmission, and distribution. Lubricated plug valves are the valve of choice in many applications due to favorable design characteristics such as quarter-turn operation (i.e., a lubricated plug valve can be turned on or off by moving the handle through a 90 degree arc), durability, bubbletight shutoff, fire safety, and a seal that can be restored in-service through the injection of additional lubricant. Lubricated tapered plug valves differ from lubricated cylindrical plug valves in sufficient degree to constitute a separate submarket of the overall lubricated plug valve market.

The lubricated plug valve market is highly concentrated, with Rockwell the dominant company in the market. In 1979, approximately $57 million of lubricated plug valves were sold in the United States. Rockwell's sales of lubricated tapered plug valves (it does not manufacture lubricated cylindrical plug valves) accounted for approximately 83.5% of the total sales of lubricated plug valves. The lubricated tapered plug valve submarket is also highly concentrated, and Rockwell is also the dominant company in that submarket. Its sales of such valves accounted for approximately 94% of the $50.7 million of lubricated tapered plug valves sold in the United States in 1979.

Serck is, after Rockwell, the second largest manufacturer of lubricated tapered plug valves in the world. Serck is the leading manufacturer of such valves outside the United States and is Rockwell's main competitor in the international market. Since at least 1977, Serck has been trying to expand into the United States, the world's largest market for lubricated tapered plug valves, by means of an acquisition or joint venture that would enable it to manufacture such valves domestically. Serck has been selling lubricated tapered plug valves in the United States since 1977 through various companies, including Serck Incorporated. In 1979, Serck Incorporated's sales of lubricated tapered plug valves accounted for less than 1% of the domestic sales of lubricated plug valves or lubricated tapered plug valves. Given Serck's position in the international market and its plans for expansion in the United States. Serck is the most significant and probable entrant into the manufacture of lubricated tapered plug valves in the United States.

Rockwell's acquisition, through RIHL, of nearly 30% of Serck's stock makes Rockwell the largest shareholder in Serck and gives it the power to exercise great influence, if not actual control, over Serck. Additionally, uncertainty has been created in the minds of potential joint venture partners with Serck (in a domestic valve manufacturing plant) by Rockwell's ownership of this large block of stock and the possibility that, unless restrained by the proposed final judgment, Rockwell may renew its attempt to acquire all of Serck. This uncertainty has had an adverse impact on Serck's efforts to enter into the domestic manufacture of lubricated tapered plug valves.

The government would have contended at trial that Rockwell's acquisition of the Serck stock violated Section 7 in several ways. First, actual competition between Rockwell and Serck will be eliminated and actual competition in the lubricated plug valve market and the lubricated tapered plug valve submarket may generally be substantially lessened. While Serck's sales of lubricated tapered plug valves account for less than 1% of domestic sales, Serck's United States market share understates its competitive potential, given its stated plans to enter into domestic lubricated tapered plug valve production. Second, potential competition may be substantially lessened by the acquisition, which eliminates Serck as an independent actual potential entrant into the manufacture of lubricated tapered plug valves in the United States. Finally, the acquisition also adversely affects the procompetitive influence that Serck has had on the domestic market by the perception that existed of it as a potential entrant into domestic manufacturing.

III. Explanation of the Proposed Final Judgment

The United States and the defendants have agreed in a stipulation that the proposed final judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The final judgment provides that there has been no admission by any party with respect to any issue. Under the provision of Section 2(e) of the Antitrust Procedures and Penalties Act, entry of this judgment is conditioned upon a determination by the Court that the proposed judgment is in the public interest.

The terms of the Final Judgment require that Rockwell and RIHL divest themselves of all the Serck shares that each owns or controls, either directly or indirectly, within four years of entry of the final judgment. If Rockwell and RIHL have not completed divestiture within the required time period, the Court will appoint a Trustee to accomplish the divestiture. The Trustee will sell all of Rockwell's or RIHL's remaining shares of Serck at such price and terms as may be required to effect the sale within three months after the date of his appointment.

Pending divestiture of the Serck shares, neither Rockwell nor RIHL will be permitted to (a) vote or permit to be voted the Serck shares that Rockwell or RIHL owns or controls, directly or indirectly; (b) be represented directly or indirectly on Serck's Board of Directors; (c) communicate with Serck directly or indirectly for the purpose of controlling or influencing, or seeking to control or influence, Serck; or (d) acquire any equity interest in Serck that would increase Rockwell's and RIHL's aggregate holding of the Serck shares beyond 29.7% of the total outstanding shares of Serck. The latter provision permits Rockwell and RIHL to acquire such additional equity interest in Serck as may be necessary to avoid the dilution of their 29.7% ownership interest pending divestiture. Of course, any additional equity purchased by the defendants would be subject to the restriction on voting and the divestiture requirement.

Additionally, during the effective period of the judgment (but only as long as Rockwell continues to be a competitor in the domestic lubricated plug valve market), Rockwell and RIHL are prohibited from acquiring or purchasing, without the permission of the Antitrust Division, (a) any equity interest in Serck (except as explained in the preceding paragraph), (b) more than one percent of the equity interest in any person that manufactures, distributes or sells lubricated plug valves in the United States, or (c) any assets of any person used in the manufacture, distribution or sale of lubricated plug valves in the United States. Furthermore, neither Rockwell nor RIHL may acquire any assets of Serck, wherever located, that are utilized in the manufacture, distribution, or sale of lubricated plug valves, unless it obtains the permission of the Antitrust Division or the Court. The permission of the Court will be granted upon a showing by Rockwell or RIHL that the acquisition of assets will not violate the antitrust laws of the United States.

In order to ensure that the defendants comply with the provisions of the judgment, Paragraph VII sets forth procedures under which representatives of the Department of Justice will be permitted to inspect and copy the defendants documents and to interview their officers, employees, or agents. This paragraph also requires that the defendants submit written reports when requested by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division. The term of the Final Judgment is 10 years.

IV. Alternatives Considered to the Proposed Final Judgment

The United States initially sought divestiture by the defendants of the Serck shares within a shorter period of time than four years. However, given the uncertainties and delays of litigation, the United States believes that four years for divestiture of the stock provides adequate relief in light of the fact that the defendants are prohibited by the judgment from exercising any control or influence over Serck pending divestiture.

The United States also initially considered requiring approval by the Department of Justice over any sale of the Serck stock pursuant to the divestiture obligation. The approval requirement was dropped when it became apparent that it might impede the defendants' ability to dispose of the stock without meterially advancing the United States' interests. If an antitrust issue is raised by the identity of a purchaser of the divested stock, certain delays required by English procedure (Serck is an English corporation) governing mergers and take-overs should provide the Department of Justice with sufficient time to evaluate the competitive implications, if any, of the sale before the purchaser can effect a merger or take-over of Serck.

The relief in the final judgment will restore the competition that may have been substantially lessened by the defendants' stock acquisition. In addition to restoring Serck as a fully independent competitor, the final judgment will restrict Rockwell's ability to make other acquisitions that might lessen competition in the lubricated plug valve market and the lubricated tapered plug valve submarket.

The government considered the possibility of a full trial on the merits as an alternative to the proposed final judgment. However, a trial would involve substantial expense, as well as a commitment of staff which otherwise could be devoted to other enforcement ectivities. In addition, it is felt that the proposed final judgment will provide essentially the same relief the government would have obtained had it been successful at trial.

V. Remedies Available to Private Plaintiffs

Any potential private plaintiff who might have been damaged by the alleged violation will retain the same right to sue for monetary damages and any other legal or equitable remedies that they would have had were the proposed final judgment not entered. However, pursuant to Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), this judgment may not be used as *primo facie* evidence in private litigation.

VI. Procedures Available for Modification of the Proposed Judgment

The proposed final judgment is subject to a stipulation by and between the United States and the defendants that provides that the United States may withdraw its consent to the judgment at any time until the Court has found that entry of the judgment is in the public interest. By its terms, the final judgment provides for the Court's retention of jurisdiction in order, among other reasons, to permit the parties to apply to the Court for such orders as may be necessary or appropriate for the modification of the Final Judgment.

As provided by Section 2(b) of the Antitrust Procedures and Penalties Act, any person wishing to comment on the proposed judgment may, for the sixty (60) day period prior to the effective date of the judgment, submit written comments to: John W. Clark, Chief, Special Trial Section, Antitrust Division, Department of Justice, Washington, D.C. 20530.

The comments, and the responses thereto, will be filed with the Court and published in the **Federal Register**. The Department of Justice will evaluate all comments and determine whether there is any reason for withdrawal of its consent to the judgment.

VII. Determinative Documents

Since there are no materials or documents which were determinative in formulating a proposal for the consent judgment, none are being filed by the United States pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act.

Fred E. Haynes,

Laura Ross Blumenfeld.

Attorneys, Department of Justice.

[FR Doc. 32432 Filed 10-16-80; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts and Artifacts Indemnity Panel Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at the Columbia Plaza Office Building, 2401 E Street, NW., Washington, D.C. 20506 in room 1422, from 9:00 to 5:30 pm., on November 5, 1980.

The purpose of the meeting is to review applications for certificates of indemnity submitted to the Federal Council on the Arts and the Humanities for exhibits beginning after January 1, 1981.

Because the proposed meeting will consider commercial and financial data and because it is important to keep values of objects, methods of transportation, and security measures confidential, pursuant to authority granted me by the Chairman's Delegation Authority to Close Advisory Committee Meetings, dated April 16, 1978, I have determined that the meeting would fall within exemptions (4) and (9) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806

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15th Street, NW., Washington, D.C. 20506, or call (202) 724–0367.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 80-32585 Filed 10-17-80; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Mathematical Sciences Subcommittee of the Advisory Committee for Mathematical and Computer Sciences; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee for Mathematical Sciences of the Advisory Committee for Mathematical and Computer Sciences

Date and time: November 14, 1980—9:00 a.m. to 5:00 p.m., November 15, 1980—9:00 a.m. to 4:00 p.m.

Place: National Science Foundation, Room 523, 1800 G Street NW., Washington, DC 20550

Type meeting: Open

Contact person: Dr. William G. Rosen, Head, Mathematical Sciences Section, Room 304, National Science Foundation, Washington, DC 20550, Telephone: (202) 357–7341

Summary minutes: May be obtained from the contact person at the above address

Purpose of Subcommittee: To provide advice and recommendations concerning support for research in the Mathematical Sciences

Agenda:

Friday, November 14, 1980

9:00 a.m.—Introductions—Dr. William G. Rosen, Head, Mathematical Sciences Section

9:30 a.m.—Opening Remarks and Discussion—Dr. William E. Klemperer, Assistant Director, Mathematical and Physical Sciences

10:30 a.m.—Review of the Applied Mathematics program—Professor James M. Climm

11:15 a.m.—Review of the Modern Analysis program—Professor William W. Veech

12:00 noon—Lunch

1:00 p.m.—Alternative Modes Update—Dr. William G. Rosen

2:00 p.m.—Allocation of Limited Resources—Dr. Ronald Pyke (Chairman)

A. General

B. Instrumentation needs

C. Graduate student support

D. Foreign visitor support

4:00 p.m.—The Case for Mathematics I—Dr. Ronald Pyke

Saturday, November 15, 1980

9:00 a.m.—The Case for Mathematics II

11:00 a.m.—The Regional Conference Program—Dr. Alvin I. Thaler, Acting Program Director for Special Projects

12:00 noon—Effort Reporting—Dr. Grace Wahba

12:30 p.m.—Lunch

1:30 p.m.—The Case for Mathematics III

3:30 p.m.—Other Business

4:00 p.m.—Adjournment

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 80-32500 Filed 10-17-80; 8:45 am]

BILLING CODE 7555-01-M

Policy Research and Analysis Dissemination, Distribution, and Publication Subcommittee of the Advisory Committee for Policy Research and Analysis and Science Resources Studies; Time Change

Notice is hereby given that the time of the meeting of the PRA Dissemination, Distribution, and Publication Subcommittee to be held on October 23, 1980, has been changed from 2:00 p.m. to 3:30 p.m. This meeting was published in the **Federal Register** on September 24, 1980.

For further information contact Ms. Sharon Dyer (202–634–4790), Division of Science Resources Studies, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

M. Rebecca Winkler,

Committee Management Coordinator.

October 15, 1980.

[FR Doc. 80-32501 Filed 10-17-80; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence; Failure of Control Rods To Insert Fully During a Scram

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following incident was determined to be an abnormal occurrence using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). One of the general criteria of the Policy Statement notes that major degradation of essential safety-related equipment can be considered an abnormal occurrence. The following description of the event also contains the remedial action taken.

Date and Place—On June 28, 1980, Browns Ferry Unit 3, a Boiling Water Reactor (BWR), located in Limestone County, Alabama, reported that 76 control rods failed to insert fully during a routine shutdown by a manual scram actuation at about 35% power.

Nature and Probable Consequences—Following the manual scram actuation, 76 of 185 control rods failed to insert fully. The partially inserted rods were all (with one exception) on the east side of the core where reactor power level was indicated to be two percent or less. The west side of the core was subcritical. A second manual scram was initiated six minutes later and all partially inserted rods were observed to drive inward but 59 remained partially withdrawn. A third manual scram was initiated two minutes later and 47 rods remained partially withdrawn. Six minutes later an automatic scram occurred when the scram discharge level switch was returned from "bypass" to "normal" while there was a high water level in the scram discharge instrument volume. All rods inserted fully upon this automatic scram. It appears that this was a coincidence in that a manual scram at that time would probably have produced the same result. Core coolant flow, temperature and pressure remained normal for the existing plant conditions.

There was no danger to the general public or plant employees as a result of this event. No radioactivity was released to the environment. There was no indication of fuel damage.

This type of occurrence could result in failure of the control rods to inset fully in part or all of the core on any automatic or manual scram signal. Such a failure to scram on demand has the potential to cause significant fuel damage.

Cause or Causes—The exact cause of the event has not been precisely determined. The problem appears to be hydraulic in nature rather than electrical. The control rod drives (CRDs), which insert and withdraw the attached control rods in a General Electric BWR, are essentially water-driven hydraulic pistons. Upon a scram demand, a relatively high water pressure is applied to the bottom side of the piston by opening a scram inlet valve; a scram outlet valve opens to relieve water pressure above the piston and the rods are rapidly driven up into the reactor core. Water discharged from the 185 individual CRDs is collected in two separate headers consisting of a series of interconnected 6 inch diameter pipes (four on each side of the reactor) called the scram discharge volume (SDV). Each SDV is designed to be continually drained to a scram discharge instrument volume (SDIV) during normal operation and to be ready to receive the scram discharge water when a scram occurs. This instrument volume is monitored for water level. An automatic scram is initiated upon high level, in anticipation of too much water in the SDV preventing a full rod insertion. The control rod drives at Browns Ferry Unit 3 are grouped in such a manner that the east and west sides of the reactor core are connected to separate SDVs. The east SDV was apparently partially full of water at the time of the event leaving insufficient room for the discharge water. Upon scram actuation, the CRDs drove the rods into the core until pressure equalized on each side of the pistons and the rods stopped inserting.

Following each scram actuation, the scram signal was reset by the operator, allowing water to drain from the SDV and permitting the rods to insert further with each scram attempt. Sufficient water was finally drained from the SDV to allow the rods to insert fully on the fourth scram signal. The exact cause initiating the SDV water accumulation problem is not known at this time. It is postulated that either the drain piping was plugged or inadequate venting of the SDV prevented the water from draining from the SDV following a previous scram.

Actions Taken To Prevent Recurrence

Licensee—The unit remained shutdown while a series of tests was performed in an attempt to determine the cause of the water accumulation in the SDV. Ultrasonic probes were installed on the SDVs to continuously monitor the water level in the SDVs. The unit was authorized to restart on July 13, 1980, as discussed below.

NRC—Immediately following the event, Region II dispatched a core physics specialist to the site to assist the two NRC resident inspectors. Region II also issued a letter confirming the licensee's (Tennessee Valley Authority) commitment to obtain NRC concurrence prior to restart. An evaluation team consisting of the Region II Director, Region II specialists and NRC Headquarters personnel was dispatched to the site to evaluate the significance of this event. A Preliminary Notification was issued to inform other NRC offices promptly. On July 3, 1980, IE Bulletin No. 80–17 was issued to all licensees operating BWRs and required them to conduct prompt and periodic inspections of the SDV; perform two reactor scrams within 20 days while monitoring pertinent parameters to further confirm operability; review emergency procedures to assure pertinent requirements are included; and conduct additional training to acquaint operating personnel with this type of problem. On July 18, 1980, Supplement 1 to Bulletin 80–17 was issued to all licensees operating BWRs. This supplement required an analysis of the "as built" SDV; revised procedures on initiation of the Standby Liquid Control System (SLCS); specifying in operating procedures action to be taken if water is found in the SDV; daily monitoring of the SDV until a continuous monitor can be installed and studying of designs to improve the venting of the SDV.

During testing required by IE Bulletin 80–17, the following anomolies were found:

1. On July 19, following the manual scram at Dresden 3, the SDV was aligned for draining. An ultrasonic test (UT) of the SDV showed the west SDV to be 80 percent filled with water when it was thought to be empty. The SDV contains a ball check valve in the vent line that serves as a vacuum breaker. The ball check provides a vent path directly from the reactor building atmosphere in the event the vent header does not function. The vent header terminates in the Reactor Building Equipment Drain Tank (RBEDT). This line extended into the tank and below the surface of the water. Because the SDV was draining slower than the operators had anticipated, the ball check valve was unseated by the operators and the SDV drain rate increased.

2. At Duane Arnold, the SDIV drain valve was found installed so that pressure in the SDIV tended to unseat the drain valve disk. This resulted in leakage out of the SDIV during the scram. This was corrected by reversing and reinstalling the valve. The scram tests were performed on July 12 and 13 and the drain valve was corrected before return to power operations on July 17, 1980.

3. At the Millstone Unit 1, the scram tests were performed successfully on July 11 through 14. The function of the 10-second delay on scram reset was tested separately from the scram tests. Review of the separate test results by plant personnel established that the scram reset delay feature was not functioning in the scram circuits due to a wiring error on the circuit boards. This was corrected.

4. At Browns Ferry Unit 1, a test scram involving two rods was performed on July 19, 1980. The test showed normal response of level switches in the SDIV. When proceeding to drain the SDIV, however, the SDV did not empty as required and expected. A vacuum in the SDV apparently existed which kept the system from draining. Subsequently, the vacuum was cleared by operator actions and the volume drained properly. Tests are continuing toward determination of the cause and to measure the vacuum.

5. At Nine Mile Point Unit No. 1, one rod failed to scram during the manual scram test on July 14, 1980. This was due to a failure of the scram pilot valve for that rod.

6. On July 21, 1980, the licensee for Peach Bottom 2 & 3 reported that improperly rated solenoids for the backup scram valves had been installed. The installed solenoids were rated at 250-volts DC but were connected to a 125-volt DC power source. These valves are not considered essential to safety because the remainder of the scram system satisfies all NRC licensing requirements. The solenoids were replaced with ones requiring 125-volts DC.

As a result of the above findings, Supplement 2 to IE Bulletin 80–17 was issued on July 22, 1980. This required the BWR licensees to provide a vent path from the SDV directly to the building atmosphere without any intervening component except for the vent valve itself. These modifications had to be completed within 48 hours for plants operating or prior to startup for plants shutdown.

Browns Ferry Unit 3 was authorized to restart on July 13, 1980 following completion of the actions required by IE Bulleting 80–17 and other extensive tests. A letter was issued on July 14, 1980, confirming the actions taken by the licensee and to confirm that the licensee will perform an expedited review of design changes recommended by the reactor vendor (General Electric Company).

Continuing staff review of this event identified a potential for unacceptable interaction between the control rod drive system and the nonessential control air system; therefore, IE Bulletin 80–17 Supplement 3 was issued on August 22, 1980. This Supplement required affected BWR licensees to implement operating procedures within five days which required an immediate manual scram on low control air pressure, or in the event of multiple rod drift-in alarms, or in the event of a marked change in the number of control rods with high temperature alarms. In addition, the licensees were requested to implement procedures which require a functional test using water for the instrument volume level alarm, rod block, and scram switches after each scram event.

Dated at Washington, D.C. this 8th day of October 1980.

For the Nuclear Regulatory Commission
Samuel J. Chilk,
Secretary of the Commissioner.
[FR Doc. 80-32490 Filed 10-17-80; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-147]

Rockwell International Corp.; Order Terminating Facility License

By application dated July 16, 1974, as supplemented April 30, 1980, Rockwell International Corporation (the licensee) requested authorization to dismantle the Fast Critical Experimental Laboratory (FCEL) reactor located in Ventura County, California, and to dispose of the component parts in accordance with a plant submitted as part of the application, and termination of Facility License No. CX-17. A "Notice of Proposed Issuance of Order Terminating Facility License" was published in the Federal Register on July 25, 1980 (45 FR 49730). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has found that the facility has been dismantled and decontaminated, and that satisfactory disposition has been made of the component parts and fuel in accordance with the Commisison's regulations in 10 CFR Chapter I, and in a manner not inimical to the common defense and security or to the health and safety of the public. The facility was dismantled pursuant to the Commissin's Order dated November 1, 1974.

The facility area has been inspected by the Commission's Office of Inspection and Enforcement and radiation surveys confirm that radiation levels meet the values defined in the decommissioning plan, and the area is available for unrestricted access.

Therefore, pursuant to the application by Rockwell International Corporation, Facility License No. CX-17 is hereby terminated as of the date of this Order.

For further details with respect to this action, see (1) application for authorization to dismantle facility and dispose of component parts and for termination of facility license dated July 16, 1974, as supplemented April 30, 1980, (2) the Commission's Order Authorizing Dismantling of Facility dated November 1, 1974, and (3) the Commission's related Safety Evaluation. Each of these items is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 1st day of October 1980.

For the Nuclear Regulatory Commission.
Thomas M. Novak,
Assistant Director for Operating Reactors, Division of Licensing.
[FR Doc. 80-32489 Filed 10-17-80; 8:45 am]
BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on the General Electric Test Reactor; Meeting

The November 5, 1980 meeting of the ACRS Subcommittee on the General Electric Test Reactor (GETR), announced in the Federal Register on September 18, 1980, has been rescheduled to be held on November 4, 1980 in Room 1046, 1717 H St., NW, Washington, DC, to continue its review of GETR structural integrity when subjected to design basis loads. In addition, the Subcommittee will discuss other topics such as landslide hazards.

In accordance with the procedures outlined in the Federal Register on October 7, 1980, (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Tuesday, November 4, 1980
8:30 a.m. until the conclusion of business.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, the General Electric Company, their consultants, and other interested persons.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Elpidio G. Igne (telephone 202/634-1413) between 8:15 a.m. and 5:00 p.m., Eastern Time.

Dated: October 15, 1980.
John C. Hoyle,
Advisory Committee Management Officer.
[FR Doc. 80-32648 Filed 10-17-80; 8:45 am]
BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Agency Forms Under Review

Background

October 15, 1980.

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Federal Reports Act (44 USC, Chapter 35). Departments and agencies use a number of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibility under the Act also considers comments on the forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

Every Monday and Thursday OMB publishes a list of the agency forms received for review since the last list was published. The list has all the entries for one agency together and grouped into new forms, revisions, extensions, or reinstatements. Some forms listed as revisions may only have a change in the number of respondents or a reestimate of the time needed to fill them out rather than any change to the content of the form. The agency clearance officer can tell you the nature of any particular revision you are interested in. Each entry contains the following information:

The name and telephone number of the agency clearance officer (from whom a copy of the form and supporting documents is available);

The office of the agency issuing this form;

The title of the form;

The agency form number, if applicable;

How often the form must be filled out;

Who will be required or asked to report;

An estimate of the number of forms that will be filled out;

An estimate of the total number of hours needed to fill out the form; and

The name and telephone number of the person or office responsible for OMB review.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. Our usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the Federal Register but occasionally the public interest requires more rapid action.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review. If you experience difficulty in obtaining the information you need in reasonable time, please advise the OMB reviewer to whom the report is assigned. Comments and questions about the items on this list should be directed to the OMB reviewer or office listed at the end of each entry.

If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer of your intent as early as possible.

The timing and format of this notice have been changed to make the publication of the notice predictable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Jim J. Tozzi, Assistant Director for Regulatory and Information Policy, Office of Management and Budget, 726 Jackson Place, Northwest, Washington, D.C. 20503.

DEPARTMENT OF AGRICULTURE

Agency Clearance Officer—Richard J. Schrimper—447-6201

New Forms

Economics, Statistics, and Cooperatives Service
Sugar Processor Costs
Single time
Sugar beet and sugar cane processors, 76 responses; 304 hours
Off. of Federal Statistical Policy and Standard, 673-7974

Revisions

Economics, Statistics, and Cooperatives Service
Virginia Flue-Cured Tobacco Variety Survey Annually
Tobacco growers, 345 responses; 28 hours
Off. of Federal Statistical Policy and Standard, 673-7974
Economics, Statistics, and Cooperatives Service
Mint Survey
Other (see SF-83)
Mint growers, 1,080 responses; 216 hours
Off. of Federal Statistical Policy and Standard, 673-7974
Economics, Statistics, and Cooperatives Service
Virginia Peanut Variety Survey
Annually
Peanut growers, 326 responses; 82 hours
Off. of Federal Statistical Policy and Standard, 673-7974

DEPARTMENT OF COMMERCE

Agency Clearance Officer—Edward Michals—377-3627

New Forms

National Bureau of Standards
Evaluation of Dimensions/NBS
NBS-1167
Single time
Individuals who subscribe to dimensions/NBS, 500 responses; 67 hours
William T. Adams, 395-4814

DEPARTMENT OF DEFENSE

Agency Clearance Officer—John V. Wenderoth—697-1195

Extensions

Departmental and other
Report of DOD and Defense related employment as required by Pub. L. 91-121
DD 1787
Annually
Former DOD personnel, 900 responses; 500 hours
Kenneth B. Allen 395-3785

DEPARTMENT OF EDUCATION

Agency Clearance Officer—William A. Wooten—426-5030

New Forms

Office of Education
Nonstudent Borrower Application for a Health Education Assistance Loan
OE-768
Annually
Nonstudents (Graduates)—Lending institution, 1,200 responses; 450 hours
Laverne V. Collins, 395-6880

Office of Education
Quality Control Surveys
ED-765
On occasion
Banks and Financial Aid Offices, 240 responses; 150 hours
Laverne V. Collins, 395-6880

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Clearance Officer—Joseph J. Strnad—245-7488

New Forms
Office of Human Development
State Plan Preprint for Title IV-E of the Social Security Act (Foster Care and Adoption Assistance)
Other (See SF-83)
State agencies, 220 responses; 880 hours
Barbara F. Young, 395-6880

Office of Human Development
Quarterly Statement of Expenditures for Foster Care and Adoption Assistance
SF-269
Quarterly
State agencies, 220 responses; 880 hours
Barbara F. Young, 395-6880

Office of Human Development
Quarterly Estimate of Expenditures, Allotment Need for Foster Care and Adoption Assistance
SF-269
Quarterly
State agencies, 220 responses; 880 hours
Barbara F. Young, 395-6880

Office of the Secretary
SF-269—Financial Status; SF-270—Request for Advance or Reimbursement
OS-23-80
Quarterly
Agencies administering State plans under 42 CFR 400, 400 responses; 200 hours
Eisinger, Richard, 395-6880

Office of the Secretary
Cuban/Haitian Entrant State Estimate Form
OS-22-80
Annually
Agencies administering State plans under 42 CFR 400, 50 responses; 50 hours
Eisinger, Richard, 395-6880

Social Security Administration
Summary Report on the Low Income Energy Assistance Program
SSA-4473
Quarterly
States administering energy assistance programs, 200 responses 76,000 hours
Barbara F. Young, 395-6880

DEPARTMENT OF TRANSPORTATION

Agency Clearance Officer—John Winsor, Acting—426-1887

New Forms

Department and other
Application for Temporary License or Certificate of Service for Crews of Offshore Supply Vessels

Single time
Persons wishing to apply for temp. license or cert. of serv., 4,000 responses; 133 hours
Hayward, Corinne D., 395–7340

Revisions

Federal Aviation Administration
Operations Specifications
FAA 1014 and FAA 8400–1
On occasion
Applicants for air carrier operating certificates 10,116 responses; 5,408 hours
Hayward, Corinne C., 395–7340

Reinstatements

Federal Aviation Administration
Malfunction or Defects Report—Other Than Scheduled Air Carrier
FAA 8330–2
On occasion
Malfunction or defects reports, 8,000 responses; 2,000 hours
Hayward, Corinne D., 395–7340

Federal Aviation Administration
Certification: Flight Crewmembers Other Than Pilots
FAR 63
On occasion
Airmen, 8,660 responses; 3,955 hours
Hayward, Corinne D., 395–7340

Federal Aviation Administration
Mechanic School Certification Procedures (Manual)
On occasion
All FAA cert. aviation mainte. technical schools
Hayward, Corinne D., 395–7340

Federal Aviation Administration
Application for Aviation Maintenance Technician School Certificate
FAA 8310–6
On occasion
Airmen, 20 responses; 502 hours
Hayward, Corinne D. 395–7340

Federal Aviation Administration
Statement of Qualifications (DMIR–DER–DPRE–DME)
FAA 8110–14
On occasion
Properly qual. indiv. working in the aviation comm., 2,250 responses; 1,350 hours
Hayward, Corinne D., 395–7340

OFFICE OF PERSONNEL MANAGEMENT

Agency Clearance Officer—John P. Weld—632–7737

Revisions

Application for Guaranteed Minimum Annuity (For Annuitant)
BRI 49–389
On occasion
CS annuitants eligible under Pub. L. 93–273, 2,400 responses; 600 hours
Veeder, Robert N., 395–4814

TENNESSEE VALLEY AUTHORITY

Agency Clearance Officer—Eugene E. Mynatt—857–2596

New Forms

Tennessee Valley Preference Study
Single time
Individuals in 201 counties in TVA Region A 30,000 responses; 10,000 hours
Charles A. Ellett, 395–7340

WHITE HOUSE

Agency Clearance Officer—Charles Atkins—252–8870

New Forms

Year-End Report to the President and Application for the President's Award for Energy Efficiency [1]
Single time
Uti., fin., inst., gov't., trade assoc., empl., serv., org., etc., 5,000 responses; 1,670 hours
Edward C. Springer, 395–4814

C. Louis Kincannon,

Acting Deputy Assistant Director for Reports Management.

[FR Doc. 80–32618 Filed 10–17–80; 8:45 am]
BILLING CODE 3110–01–M

President's Commission for a National Agenda for the Eighties; Meeting

October 14, 1980.

AGENCY: Office of Management and Budget.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given that a meeting of Panel IV (Government and the Advancement of Social Justice) of the President's Commission for a National Agenda for the Eighties, is scheduled for October 22, 1980 from 2:00 p.m. to 4:30 p.m. in New York City. The meeting will be held at the NAACP National Office, 1790 Broadway, New York, New York.

The purpose of the meeting is to discuss, in general, topics pertaining to government and social justice in the eighties.

Available seats will be assigned on a first-come basis.

The meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: President's Commission for a National Agenda for the Eighties, Office of Administration, 744 Jackson Place Northwest, Washington, D.C. 20006, (202) 275–0116.

Brenda Mayberry,

Acting Budget and Management Officer.

[FR Doc. 80–32396 Filed 10–17–80; 8:45 am]
BILLING CODE 3110–01–M

[1] This report may be acted on before the normal 10-day period. The clearance of the questionnaires on an expedited basis is necessary in order to be able to recognize outstanding accomplishments in achieving energy efficiency by public and private sector organizations and individuals before the end of 1980.

Office of Federal Procurement Policy

OMB Circular A–76: Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government

October 10, 1980.

AGENCY: Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Circular revision.

SUMMARY: The changes incorporated in this revision clarify the intent of Transmittal Memorandum No. 4 in respect to obtaining a contract price used in the cost comparison. The revision clearly states that a current bid or offer obtained from a new solicitation must be used to determine contract costs for comparison to in-house new start costs. In addition, the revision changes the Cost Comparison Handbook to increase the accuracy of the estimate of Government costs associated with the contract mode of performance. Finally, the revision extends for another year the one-year moratorium on compliance with the Circular and the periodic review of inventoried Research and Development activities, except for new starts and expansions as defined in the Circular. This extension will permit further study of available options. The revision advises the Department of Defense to follow their statutory provisions in applying the Circular to Research and Development.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth L. Gerken, Deputy Associate Administrator for Major System Acquisitions and Procurement Strategies, Office of Federal Procurement Policy, Office of Management and Budget, 726 Jackson Place, NW., Room 9013, Washington, DC 20503, or telephone 202–395–3254.

Karen Hastie Williams,

Administrotor.

Circular No. A–76 Revised; Transmittal Memorandum No. 5

September 26, 1980.

To the Heads of Executive Departments and Establishments.

Subject: Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government.

1. This revision amends Transmittal Memo No. 4 to OMB Circular A–76 (revised), dated March 29, 1979. The following revisions are made to the Circular and Cost Comparison Handbook as set forth in paragraphs a through c below.

a. *Calculating Contract Costs:* Paragraph 9(b) of Circular A–76 is clarified by adding the following sentences: "All cost comparisons under a new start will be based on the solicitation of firm bids or offers. Prepriced option prices in existing contracts will not be used in lieu of the issuance of a new solicitation when conducting a cost comparison under a new start."

b. *Utilization of Government Capacity:* To ensure that all significant costs are included in the cost comparison, subparagraph F–5(g) of paragraph F–5, entitled "Utilization of Government Capacity," in Chapter V of the Cost Comparison Handbook—Supplement 1 to OMB Circular A–76 is modified as follows. Delete all references to the 5% exception so that the paragraph reads: "Computations similar to those above should also be made for the general and administrative expense rate. Similarly, the impact of contracting-out a product or service on material overhead should be determined."

c. *Application of the Circular to Research and Development:* The paragraph of Transmittal Memorandum No. 4, entitled "Application to R&D Activities," is amended as follows. Compliance with this Circular and the periodic review of inventoried research and development activities, except for new starts and expansions, are deferred for one additional year pending the development of appropriate criteria on determining justified "core capability." The Department of Defense (DOD), however, shall follow the statutory provision of Section 802 of the Defense Appropriation Authorization Act of FY 1960 (Public Law 96–107).

2. This revision is effective immediately and shall apply to all studies in process where no contract award has resulted.

James T. McIntyre, Jr.,

Director.

[FR Doc. 80–32471 Filed 10–17–80; 8:45 am]
BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 11395; 812–4724]

Bergen Bank; Filing of Application for an Order Exempting Applicant From All the Provisions of the Act

October 10, 1980.

Notice is hereby given that Bergen Bank A/S ("Applicant") c/o H. Rodgin Cohen, Esq., Sullivan & Cromwell, 125 Broad Street, New York, New York 10004, filed an application on August 27, 1980 for an order of the Commission, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below.

Applicant represents that it is one of the three major commercial banks in Norway, and that as of December 31, 1979, based on that date's exchange rate for Norwegian kroners, it had assets of $2.88 billion, deposits of $2.1 billion and capital funds (including reserves and subordinated loan capital) of $163 million. Applicant states that its principal business is the receipt of deposits and the making of loans, and that approximately 93% of its liabilities (excluding capital) consists of deposits. It is stated that approximately 83% of the deposits are from nonbank depositors, and over 90% of its deposits are from Western European countries and the United States. Applicant states that its deposits are received from a broad spectrum of customers, and that approximately 38% of its nonbank deposits are retail deposits received through a domestic network of approximately 100 branches. Applicant states that approximately 43% of its nonbank deposits are received from corporations.

Applicant further represents that its loans total approximately $1.8 billion and that almost all of its loans are to, or guaranteed by, Norwegian persons. According to Applicant, its loan portfolio is widely diversified as to type of borrower. Applicant states that its other assets consist principally of Norwegian government and government-guaranteed bonds, which as of December 31, 1979 amounted to $670 million.

Applicant also represents that, in addition to its deposit and lending business, it engages in other banking and bank-related activities typical of major full service European banks, including fiduciary and investment advisory services, money transfers, foreign exchange, lease financing and underwriting in the Eurobond market.

According to Applicant, its shares are held by an estimated 34,000 investors and are listed on the Oslo Stock Exchange. Applicant represents that approximately 53% of its shares are held by individuals, 31% by institutional investors and 16% by the Kingdom of Norway.

Applicant states that the Government of Norway has adopted a statutory and administrative policy to ensure the solvency of Norwegian commercial banks. It is stated that the basic statute governing commercial banks, the Bank Act of 1961 ("Bank Act"), provides that bankruptcy proceedings cannot be instituted by creditors of commercial banks. Applicant also represents that in a report to the Norwegian Parliament, the Governor of the Norwegian Central Bank (Norges Bank) stated that under no circumstances would the Norges Bank allow a Norwegian commercial bank to default on its obligations, that Norges Bank would provide sufficient loans to achieve that objective, and that the governor of the Norges Bank subsequently confirmed in writing that this policy applied to commercial paper issued in the United States by a Norwegian commercial bank.

Applicant asserts that it is subject to a regulatory structure comparable to that to which United States banks are subject. Applicant states that it is supervised by the Norwegian Bank Inspectorate ("NBI"), which has broad regulatory and enforcement powers with respect to commercial banks. It is represented that under the Bank Act, a Norwegian commercial bank such as Applicant is required to hold: (i) Cash, deposits at other banks with maturities of not more than one month, and government obligations with maturities of not more than five years, in an amount equal to not less than 25% of demand deposits and time deposits with maturities of not more than one month; (ii) similar assets in an amount equal to not less than 5% of time deposits from nonbanks; and (iii) similar assets in an amount equal to not less than 10% of nonbank deposits and demand and one month deposits from banks.

Applicant states that it is required to maintain "primary liquid reserves," consisting generally of high quality assets, in an amount currently equal to 5% of total assets, and that it is currently also required to maintain 30% of its assets in Norwegian Government and similar high class bonds. Applicant also states that it is required to maintain equity capital equal to at least 6.5% of total liabilities after deducting cash in hand, amounts receivable from Norges Bank and government securities, and advances having government or equivalent guarantees, and that it is required to maintain a reserve fund equal to at least one-half its share capital. Applicant represents that the NBI receives monthly statements of financial condition from each Norwegian commercial bank and conducts periodic inspections of each commercial bank, and that NBI prescribes the accounting principles for commercial banks. Applicant states that it cannot engage directly or through subsidiaries in nonbanking activities, and that it may not own real estate in an amount exceeding 4% of its total assets, nor equity securities exceeding 2% of its total assets. Applicant further states that a Norwegian commercial bank

generally may not lend more than 50% of its capital to any borrower, and that its single largest loan is approximately one-half this maximum. Applicant states that loans to related parties are closely regulated through collateralization requirements. Applicant represents that Norwegian governmental authorities appoint a majority of its Board of Representatives, its the highest governing authority, which among other things, elects its board of directors and is required to (i) establish a Control Committee to supervise the activities of the bank and its compliance with all applicable statutes and regulations and (ii) appoint auditors who report to the Board of Representatives through the Control Committee.

Applicant proposes to issue and sell in the United States unsecured prime quality commercial paper notes ("Notes"), in bearer form and denominated in United States dollars, in order to provide an alternative source of supply of United States dollars which supplement United States dollars currently obtained by Applicant in the Eurodollar market. It is stated that under this proposal no Note will be in a denomination smaller than $100,000, and that the Notes will be issued and sold by Applicant to a commercial paper dealer in the United States which will reoffer the Notes as principal to investors in the United States. Applicant represents that it does not currently intend to sell the Notes in the United States in excess of an aggregate of $100 million at any one time outstanding.

Applicant states that it undertakes to ensure that the Notes will not be advertised nor otherwise offered for sale to the general public, but instead will be sold by a dealer to institutional investors and other entities and individuals who normally purchase commercial paper notes. Applicant also states that it undertakes to ensure that the dealer will provide each offeree of the Notes prior to purchase with a memorandum which briefly describes Applicant's business and includes its most recent publicly available fiscal year-end balance sheet and income statement, which shall have been audited in such manner as is customarily done for Applicant by its auditors. Applicant represents that such memorandum will describe any material differences between accounting principles applied in the preparation of such financial statements and "generally accepted accounting principles" employed by United States banks. Applicant states that such memorandum will be at least as comprehensive as those customarily used by United States bank holding companies in offering commercial paper in the United States and will be updated promptly to reflect material changes in Applicant's financial condition.

Applicant represents that the terms of the Notes, including their maturity and minimum denomination, the amount outstanding at any given time, and their manner of offering to investors, will be such as to qualify them for the exemption from registration provided for certain short-term commercial paper by Section 3(a)(3) of the Securities Act of 1933 ("1933 Act"). Applicant states further that the Notes will be prime quality, negotiable commercial paper of a type eligible for discount by Federal Reserve Banks and will arise out of, or the proceeds of which will be used for, current transactions. Applicant states that it will agree with its commercial paper dealer that the Notes will contain no provision for payment on demand, extension, renewal or automatic rollover either at the option of Applicant or the holder. Applicant asserts that, as a consequence, it will not be required to register the Notes under the 1933 Act.

Applicant represents, in addition, that it will not issue and sell the Notes until it has received an opinion of its United States legal counsel to the effect that, under the circumstances of the proposed offering, the Notes would be entitled to the exemption provided by Section 3(a)(3) of the 1933 Act. Applicant states that it does not request Commission review or approval of United States counsel's opinion letter regarding the availability of an exemption under Section 3(a)(3) of the 1933 Act. Applicant further represents that it is not subject to the reporting requirements of the Securities Exchange Act of 1934 and will not become subject to such requirements in connection with the issuance and sale of the Notes.

Applicant also represents that the currently proposed issue of securities and all future issues of securities will have received prior to issuance one of the three highest investment grades from at least one nationally-recognized statistical rating organization and that its United States counsel will have certified that such rating has been received.

Applicant asserts that the Notes will rank *pari passu* among themselves and equally with all other of its unsecured indebtedness (including liabilities to depositors) and will rank prior to its equity securities.

Applicant states that it will appoint a bank in the United States as its authorized agent to issue the Notes from time to time. Applicant also states that it will appoint either such bank, the Commission or some other party which normally acts in such capacity to accept any process which may be served in any action based on the Notes and instituted by the holder of any Note in any State or federal court. Applicant further states that it will expressly accept the jurisdiction of any State or federal court in the City and State of New York in respect of any such action, and that such appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the Notes have been paid by Applicant. Applicant represents that it will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of the Notes or otherwise, but that its authorized agent will not have any responsibilities or duties to act for such holders as would a trustee.

Applicant states that it may, from time to time, offer other securities, such as debt securities, bankers acceptances and letters of credit supporting commercial paper issued by other companies, but not including shares of its capital stock, for sale in the United States. Applicant represents that any such future offering of its securities in the United States will be done on the basis of disclosure documents at least as comprehensive in their description of Applicant, its business and its financial condition as those customarily used in United States offerings of such securities and undertakes to ensure that each offeree of such securities will be provided with such disclosure documents. Applicant further states that any such future offering will be made with due regard to the provisions of Rule 146 and the doctrine of "integration" referred to in Securities Act Release Nos. 4434, 4552 and 4708 and various "no action" letters made public by the Commission. Applicant states, in connection with any future offering in the United States of its securities, that it will appoint an agent to accept any process which may be served in any action based on any such security and instituted in any state or federal court by the holder of any such security. Applicant further represents that it will expressly accept the jurisdiction of any state or federal court in the City and State of New York in respect of any such action, and that such appointment of an agent to accept service of process and such consent to jurisdiction will be irrevocable so long as such securities remain outstanding and until all amounts due and to become due in respect of such securities have been paid. Applicant states that it will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of such securities or otherwise. Applicant consent to having any order granting the relief requested under Section 6(c) of the Act expressly conditioned upon its compliance with its undertakings regarding disclosure documents.

Section 3(a)(3) of the Act defines investment company to mean any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of government securities and cash items) on an unconsolidated basis.

Applicant requests an order pursuant to Section 6(c) of the Act exempting it from all provisions of the Act. Section 6(c) provides that the Commission, by order upon application, may exempt any person from the provisions of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant states that it is applying to the Commission because of uncertainty whether or not foreign commercial banks would be defined as "investment companies" under the Act.

Applicant contends that approval of its application is both necessary and appropriate in the public interest. According to Applicant, a foreign bank would be effectively precluded from selling securities in the United States if it were required to register as an investment company and comply with the provisions of the Act and such a result would be inherently inequitable and conflict with the objective of the International Banking Act of 1978, which, Applicant contends, was intended to place foreign banks on a basis of competitive equality in their transactions in the United States with United States banks, which are not required to register as investment companies.

Applicant maintains that foreign banks have a particular need for access to the United States securities markets which goes beyond that for foreign issuers generally. It is stated that because of the development of the large Eurodollar market, major foreign banks which deal in that market need a source of dollars in the event of even a short disruption in the market. Applicant asserts that an exemption pursuant to Section 6(c) could make an important contribution to the stability of the international financial markets. Applicant further asserts that such an exemption would benefit United States investors, and that absent an exemption these investors would be unable to purchase securities issued by foreign banks. Those securities, according to Applicant, represent an increasingly important segment of the short-term, prime quality securities available for purchase.

Applicant asserts further that the exemption requested would be consistent with the protection of investors because there are already in place Norwegian governmental policies and regulatory structures which afford sufficient protection for investors. Applicant asserts that to subject it to the provisions of the Act would be to impose unnecessary regulation upon it, and thereby prevent it from engaging in normal commercial banking operations. Applicant states that in general the operations of commercial banks do not result in abuses the Act was intended to prevent, either because banking regulations prevent such abuses or because banking operations do not lend themselves to such abuses.

Notice is further given that any interested person may, not later than October 31, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-32585 Filed 10-17-80; 8:45 am]

BILLING CODE 8010-01-M

Midwest Stock Exchange, Inc.; Application for Unlisted Trading Privileges and of Opportunity for Hearing

October 14, 1980.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of:

UNR Industries Inc., Common Stock, $2.50 Par Value (File No. 7-5761)

This security is listed and registered on one or more other national securities exchanges and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 4, 1980 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-32576 Filed 10-17-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-17217; File No. SR-NASD-80-17]

National Association of Securities Dealers, Inc.; Self-Regulatory Organizations; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on October 1, 1980, the above-mentioned self-regulatory organization filed with the Securities

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and Exchange Commission a proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change

Text of Proposed Rule Change

The following is the full text of a proposed amendment to Section C.4 of Part I of Schedule D of the Association's By-Laws. (language to be deleted is bracketed, new language is italicized)

Part I, Paragraph C.4(a)

If accepted for registration, and the market maker's terminal is timely installed, the market maker's registration shall be effective at the start of business on the second business day following receipt of his application by the Corporation. Otherwise the market maker's registration shall be effective at the start of business on the second business day following installation of the terminal. [However, if the registration is received in an issue which has never been previously authorized, the market maker's registration shall be effective at the start of business on the first day that the issue is authorized for quotation.]

Part I, Paragraph C.4(d)

A market maker's initial registration in a security not previously authorized may become immediately effective if a request for registration is received by the Corporation within five business days of authorization of the security.

Purpose of Proposed Rule Change

The proposed amendment will permit immediate registration of market-makers during the initial week of quotations on NASDAQ. This will alter the present practice of two-day registration (except for the first day of trading).

Basis Under the Act for the Proposed Rule Change

Section 15A(b)(11) provides that an association of brokers and dealers shall not be registered as a national securities association unless the Commission determines that the rules of the association contain provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange, which may be distributed or published by any member or other persons associated with a member, and the persons to whom such quotations may be supplied. Such rules relating to quotations shall be designed to produce fair and informative quotations to prevent fictitious or misleading quotations and to promote orderly procedures for collecting, distributing and publishing quotations.

Comments Received From Members, Participants or Others on the Proposed Rule Change

Comments were neither solicited nor received.

Burden on Competition

The Association foresees no burden on competition caused by the proposed rule change. Indeed, since the proposed amendment would permit earlier inclusion of market maker quotations, competition should be enhanced.

On or before November 24, 1980, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submission should file six (6) copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before November 10, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

October 14, 1980.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-32497 Filed 10-17-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-17215; File No. SR-NSCC-80-28]

National Securities Clearing Corp.; Self-Regulatory Organizations; Proposed Rule Changes

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 14 U.S.C. 78s (b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on September 25, 1980, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change makes permanent the previous change to subsection E of Section VIII *PASS-THROUGH EXPENSES* of the NSCC fee schedule as follows:

E. For processing cash or stock dividend claims made against the Corporation's NCC & Co. nominee by NSCC participants and others on and after December 1, 1979; $10.00 per record date claim.

The proposed rule change would make permanent, effective October 24, 1980, SR-NSCC-79-13 which had previously become effective on October 24, 1979 for a one year period of time.

Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change is as follows:

The proposed rule change continues the use of the established $10.00 processing fee for each dividend claim made on and after December 1, 1979 against NSCC's NCC & Co. nominee by participants and non-Participants alike which fee will be utilized by NSCC to defray the costs of processing such claims.

The proposed rule change relates to the equitable allocation of reasonable dues, fees and other charges.

No comments on proposed rule change have been solicited or received.

NSCC does not perceive that the proposed rule change would constitute a burden on competition.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and

copying in the Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before November 10, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-32577 Filed 10-17-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 17216; SR-Phlx-80-20]

Philadelphia Stock Exchange; Order Approving Proposed Rule Change

October 14, 1980.

On August 25, 1980, the Philadelphia Stock Exchange, Inc. ("Phlx"), 17th Street & Stock Exchange Place, Philadelphia, PA 19103, filed with the Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b-4 thereunder, copies of a proposed rule change regarding exchange disciplinary procedures. The rules set forth, among other things, procedures relating to investigations, the issuance of complaints, hearings and review. The rules also define the powers of the Business Conduct Committee the Hearing Committee and its panels and staff.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-17130, September 8, 1980) and by publication in the Federal Register (45 FR 61058, September 15, 1980). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges. In particular, the proposed rule changes enhance the exchange's ability to comply with its statutory obligations to enforce compliance with the Act, the rules and regulations thereunder, and its own rules; to discipline its members and their associated persons for rule violations in an appropriate manner with fitting sanctions; and to provide fair procedures for discipline in accordance with Sections 6(b) (1), (6) and (7), respectively.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-32587 Filed 10-17-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-17214; File No. SR-SCCP 80-4]

Stock Clearing Corp. of Philadelphia; Self-Regulatory Organizations; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. 94-29, 16 (June 4, 1975), notice is hereby given that on October 1, 1980 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of Terms of Substance of the Proposed Rule Change

Stock Clearing Corporation of Philadelphia (SCCP) proposes an amendment to Rule 23, Compensation, which deals with charges for services rendered. SCCP proposes a reduction in the PHILADEP depository fee charged for deposits of securities known as "legal" items from the current $15.00 to $7.50. The text of the rule change is attached as Exhibit 2.

Basis and Purpose of Proposed Rule Change

The purpose of the reduced fee for legal deposits is to make it more cost related, and to encourage our participants to use our facilities for this service.

The proposed rule change provides equitable allocation of reasonable dues, fees and other charge among participating members in accordance with the standards set forth in Section 17A(b)(3)(D) of the Act.

No formal comments have been solicited or received regarding the proposed Rule change. The membership was advised of the proposed rate reduction in PHILADEP Participant Bulletin No. 80-8.

No burden on competition will be imposed by the proposed Rule change. The proposed rate schedule does not discriminate between marketplaces, nor does it inhibit clearing interfaces.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof, with the Secretary of the Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 "L" Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before November 10, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

October 14, 1980.

[FR Doc. 80-32578 Filed 10-17-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21744; 70-6505]

West Penn Power Co.; Proposal To Issue and Sell Promissory Notes to Authority in Connection With Financing of Pollution Control Facilities

October 14, 1980.

Notice is hereby given that West Penn Power Company ("West Penn"), 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, an electric utility subsidiary company of Allegheny Power System, Inc., a registered holding company, has filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act").

designating Sections 6,7,9,10 and 12 of the Act as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

The proposed transactions involve the financing, including the transfer to and purchase from Washington County Industrial Development Authority ("Authority") by West Penn, of certain air and water pollution control equipment and facilities including a flue gas desulferization system, associated sludge disposal and handling facilities, precipitators, lime unloading handling and storage facilities, fly ash handling systems, a new chimney, associated land and interests in land and equipment (collectively known as the "Facilities"), now under construction at West Penn's Mitchell Power Station ("Mitchell") located in Washington County, Pennsylvania. The Facilities are required to be installed to meet air quality standards pursuant to consent decrees embodying settlement agreements with the Federal Environmental Protection Agency and the Pennsylvania Department of Environmental Resources.

The Authority proposes to finance the Facilities by issuing and selling its tax exempt pollution control revenue bonds ("Bonds") in one or more series with a maturity of not less than three and not more than forty years. It is not expected that the amount of Bonds to be issued will exceed $60 million. The Bonds will be issued in either coupon or registered form under a trust indenture with a corporate trustee approved by West Penn, which will provide for redemption, sinking funds, no call and other appropriate provisions, and such bonds shall be sold at such times, in such principal amounts, at such rates and for such prices as shall be approved by West Penn.

At the date the financing is consummated, West Penn will transfer to the Authority title to those portions of the Facilities then in place at Mitchell, subject to the first mortgage lien of the indenture securing West Penn's first mortgage bonds and to a second lien to be imposed on the Facilities. Title to those portions of the Facilities thereafter constructed shall vest in the Authority. The aggregate purchase price of the Facilities will be an amount equal to the aggregate principal amount of the Bonds issued by the Authority.

To evidence its obligation to pay the purchase price of the Facilities, West Penn will deliver concurrently with the issuance of each series of Bonds its non-negotiable pollution control notes ("Notes"), corresponding to such series of Bonds with respect to principal amount, interest rates and redemption provisions and having installments of principal corresponding to any mandatory sinking fund payments and stated maturities. Payments on such notes will be made to the trustee and applied to pay the maturing principal, redemption prices, interest and other costs of the Bonds as the same become due. West Penn also proposes to pay any trustees' fees or other expenses incurred by the Authority. The Notes will be secured by a second lien on the Facilities and certain other properties, pursuant to a Mortgage and Secruity Agreement creating a mortgage and security interest in the Facilities and certain other property. It is stated that the Notes will not constitute "unsecured debt" within the meaning of the provisions of West Penn's charter.

West Penn intends to accomplish a permanent long-term financing of the Facilities through the proposed transactions. If the current high interest rates prevail at the proposed time of the financing, it may be advantageous for West Penn to complete the financing in two phases. The first phase would be the issuance of three year bonds by the Authority and notes by West Penn. The second phase would be the refunding of those three year bonds and notes sometime prior to their maturity with long term bonds and notes having a maturity not to exceed forty years. Such refunding would be the subject of a post-effective amendment.

It is expected that the Authority will engage Goldman, Sach's & Co. and any co-managers that may be desirable to provide financing advice and, together with such other underwriters as may be designated, to underwrite the sale of the Bonds. Fees, commissions and expenses of the underwriters and of legal counsel will be included in the total cost of the Facilities.

The Bonds will be secured by the Notes and will be supported by various convenants of West Penn to be contained in a Pollution Control Financing Agreement. West Penn will cause the Facilities to be completed and will have complete control of the operation of the Facilities including maintenance thereof.

The proceeds to be received by West Penn will be added to its general funds to reimburse its treasury for expenditures made or to be made in connection with the Facilities, including costs to complete construction thereof and to pay fees and expenses associated therewith. As of December 31, 1980, it is expected that about $20 million of such expenditures will have been made.

The fees, commissions and expenses to be incurred in connection with the proposed transactions will be supplied by amendment. The proposed transactions are subject to authorization by the Public Utility Commission of Pennsylvania. The Department of Environmental Resources of the State of Pennsylvania will be required to certify that the Facilities are being installed for air quality purposes. The Secretary of Commerce of the Commonwealth of Pennsylvania is required to certify the proposed transactions. It is stated that no other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested persons may, not later than November 10, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rule 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-32586 Filed 10-17-80; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Proposal No. 06/06-0236]

American Energy Investment Corp.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration pursuant to § 107.102 of the SBA Regulations (13 CFR 107.102(1980)), by American Energy Investment Corporation, Suite 203, 4543 Post Oak Place Drive, Houston, Texas 77027, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*).

The proposed officers, directors and shareholders are:

Name and Address, Title and Relationship, Percent of Ownership

John C. Deuss, Mijmeegsebaan 45, Groesbeek, Holland; Chairman of the Board and Director; None.
John J. Hoey, 17 E. 74th St., New York, NY 12021; President, Investment Advisor and Director; 5.
Michael Corrie, 17 Garden St., Garden City, NY 11530; Secretary and Director; None.
Manuel Paredes, 4543 Post Oak Place Dr., Suite 203, Houston, TX 77027; Treasurer and Director; None.
John D. Ritchie, 923 Fifth Ave., New York, NY 10021; Director; None.
Dr. Leslie C. Peacock, Route 3, Box 139D, Brenham, TX 77833; Director; None.
Etablissement Financier Poussin, Postfach 21498, Im Ziel 430, T-L-9493, Mauren, Liechtenstein; Shareholder; 95.

The Etablissement Financier Poussin is wholly owned by John C. Deuss.

The Applicant proposes to begin operations with a capitalization of $2,500,000 and will be a source of equity capital and long-term loan funds for qualified small business concerns. The Applicant may render management consulting services to small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including adequate profitability and financial soundness, in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 15 days from the date of publication of the Notice, submit written comments on the proposed SBIC to the Acting Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW, Washington, D.C. 20416.

A copy of the Notice will be published in a newspaper of general circulation in Houston, Texas.

(Catalog of Federal Domestic Assistance Program 59.011, Small Business Investment Companies.)

Dated: October 10, 1980.

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 80-32589 Filed 10-17-80; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0211]

Florists' Capital Corp.; Application for Approval of a Conflict of Interest Transaction

Notice is hereby given that Florists' Capital Corporation (Florists), 10524 West Pico Boulevard, Los Angeles, California 90064, a Federal Licensee under the Small Business Investment Act of 1958, as amended, has filed an application with the Small Business Administration pursuant to § 107.1004 of the Regulations governing small business investment companies (13 CFR 107.1004 (1980) for approval of a conflict of interest transaction.

Florists proposes to loan $21,500 to Edgard and Margaret Roegiers (Roegiers) to purchase inventory, supplies equipment and goodwill of a flower shop business located at 18400 South New Hampshire Avenue, Gardina, California 90248 from Brian Conroy, the brother of Florists' president and chairman of the board, Christopher M. Conroy.

Brian Conroy is defined as an Associate of Florists by Section 107.3 of the SBA Regulations. As a result, Florists' financing of the Roegiers falls within the purview of § 107.1004(b)(5) of the SBA Regulations, and its loan to the Roegiers requires prior written approval of SBA.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments to the Acting Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW, Washington, D.C. 20416.

A similar Notice shall be published in a newspaper of general circulation in the Santa Barbara, California area.

(Catalog of Federal Domestic Assistance Program No. 95.001, Small Business Investment Companies.)

Dated: October 10, 1980.

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 80-32590 Filed 10-17-80; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0266]

PBC Venture Capital, Inc.; Issuance of a License To Operate as a Small Business Investment Company

On August 6, 1980, a notice was published in the Federal Register (45 FR 52293) stating that PBC Venture Capital, Inc., 1408 18th Street, Bakersfield, California 93301, had filed an application with the Small Business Administration (SBA), pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1980)) for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (the Act). (15 U.S.C. 661 et. seq.).

Interested persons were given until the close of business on August 21, 1980, to submit written comments on the application to the SBA.

Notice is hereby given that no written comments were received and, having considered the application and all other pertinent information, the SBA approved the issuance of License No. 09/09-0266 on September 29, 1980, to PBC Venture Capital, Inc., pursuant to Section 301(c) of the Act.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: October 10, 1980.

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 80-32591 Filed 10-17-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1935]

Kentucky; Declaration of Disaster Loan Area

Martin County and adjacent counties within the State of Kentucky constitute a disaster area as a result of damage caused by torrential rains, strong winds and flash flooding which occurred on August 21–22, 1980. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on December 1, 1980, and for economic injury until the close of business on July 2, 1981, at: Small Business Administration, District Office, Federal

Office Building, Room 188, 600 Federal Place, Louisville, Kentucky 40202, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 2, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-32592 Filed 10-17-80; 8:45 am]

BILLING CODE 6025-01-M

[Declaration of Disaster Loan Area No. 1938]

Minnesota; Declaration of Disaster Loan Area

Stearns County and adjacent counties within the State of Minnesota constitute a disaster area as a result of damage caused by a tornado, winds and thunderstorm which occurred on September 3, 1980. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on December 8, 1980, and for economic injury until the close of business on July 6, 1981, at: Small Business Administration, District Office, Plymouth Building—Room 530, 12 South Sixth Street, Minneapolis, Minnesota 55402, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 7, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-32595 Filed 10-17-80; 8:45 am]

BILLING CODE 6025-01-M

[Declaration of Disaster Loan area No. 1941]

North Carolina; Declaration of Disaster Loans Area

The following 80 counties and adjacent counties within the State of North Carolina constitute a disaster area as a result of a natural disaster (drought). Date: 5/1-9/24/80.

County	
1. Alamance	16. Columbus
2. Alexander	17. Craven
3. Alleghany	18. Cumberland
4. Anson	19. Currituck
5. Beaufort	20. Davidson
6. Bertie	21. Davie
7. Bladen	22. Duplin
8. Brunswick	23. Durham
9. Buncombe	24. Edgecombe
10. Burke	25. Forsyth
11. Cabarrus	26. Franklin
12. Camden	27. Gaston
13. Caswell	28. Gates
14. Chowan	29. Granville
15. Cleveland	30. Greene
31. Gullford	56. Person
32. Halifax	57. Pitt
33. Haywood	58. Randolph
34. Hertford	59. Richmond
35. Hoke	60. Robeson
36. Iredell	61. Rockingham
37. Jackson	62. Rowan
38. Johnston	63. Rutherford
39. Jones	64. Sampson
40. Lenoir	65. Scotland
41. Lincoln	66. Stanly
42. Macon	67. Stokes
43. Madison	68. Surry
44. Martin	69. Swain
45. Mecklenburg	70. Transylvania
46. Montgomery	71. Union
47. Moore	72. Vance
48. Nash	73. Wake
49. Northampton	74. Warren
50. Onslow	75. Washington
51. Orange	76. Wayne
52. Pamlico	77. Wilkes
53. Pasquotank	78. Wilson
54. Pender	79. Yadkin
55. Perquimans	80. Yancey

Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on April 6, 1981, and for economic injury until the close of business on July 6, 1981 at: Small Business Administration, District Office, 230 S. Tryon Street, Suite 700, Charlotte, North Carolina 28202, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: October 6, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-32594 Filed 10-17-80; 8:45 am]

BILLING CODE 6025-01-M

[Declaration of Disaster Loan Area No. 1934]

Ohio; Declaration of Disaster Loan Area

Ashtabula County and adjacent counties within the State of Ohio constitute a disaster area as a result of damage caused by torrential rains and flooding which occurred on August 5, 1980. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on December 1, 1980, and for economic injury until the close of business on July 2, 1981, at:

Small Business Administration, District Office, AJC Federal Building—Room 317, 1240 East Ninth Street, Cleveland, Ohio 44199

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: October 2, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-32598 Filed 10-17-80; 8:45 am]

BILLING CODE 6025-01-M

[Declaration of Disaster Loan Area No. 1933]

Ohio; Declaration of Disaster Loan Area

Butler County and adjacent counties within the State of Ohio constitute a disaster as a result of damage caused by flooding which occurred on August 18, 1980. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on December 1, 1980, and for economic injury until the close of business on July 2, 1981, at:

Small Business Administration,
District Office,
Federal Building—U.S. Court House,
85 Marconi Boulevard,
Columbus, Ohio 43215

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 2, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-32596 Filed 10-17-80; 8:45 am]

BILLING CODE 6025-01-M

[Declaration of Disaster Loan Area No. 1931]

Ohio; Declaration of Disaster Loan Area

Williams County and adjacent counties within the State of Ohio constitute a disaster area as a result of damage caused by heavy rainstorm and flooding which occurred on July 28, 1980. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on December 1, 1980, and for economic injury until the close of business on July 2, 1981, at:

Small Business Administration, District Office, AJC Federal Building—Room 317, 1240 East Ninth Street, Cleveland, Ohio 44199

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: October 2, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-32597 Filed 10-17-80; 8:45 am]

BILLING CODE 6025-01-M

[Declaration of Disaster Loan Area No. 1925]

Oklahoma; Declaration of Disaster Loan Area

All counties within the State of Oklahoma constitute a disaster area as a result of natural disaster as indicated:

County	Natural disaster(s)	Date(s)
Adair	drought	6/25/80-8/14/80
Alfalfa	do	6/25/80-8/14/80
Aloka	do	6/25/80-8/14/80
Beaver	do	6/25/80-8/14/80
Beckham	do	6/25/80-8/14/80
Blaine	do	6/25/80-8/14/80
Bryan	do	9/15/79-8/14/80
Caddo	do	9/15/79-8/14/80
Canadian	do	6/25/80-8/14/80
Carter	do	9/15/79-8/14/80
Cherokee	do	6/25/80-8/14/80
Choctaw	do	6/25/80-8/14/80
Cimarron	do	6/25/80-8/14/80
Cleveland	do	6/25/80-8/14/80
Coal	do	6/25/80-8/14/80
Cotton	do	9/15/79-8/14/80
Comanche	do	9/15/79-8/14/80
Craig	do	6/25/80-8/14/80
Creek	do	6/25/80-8/14/80
Custer	do	6/25/80-8/14/80
Delaware	do	6/25/80-8/14/80
Dewey	do	6/25/80-8/14/80
Ellis	do	6/25/80-8/14/80
Garfield	do	6/25/80-8/14/80
Garvin	do	6/25/80-8/14/80
Grady	do	9/15/79-8/14/80
Grant	do	6/25/80-8/14/80
Greer	do	9/15/79-8/14/80
Harmon	do	9/15/79-8/14/80
Harper	do	9/15/79-8/14/80
Haskell	do	6/25/80-8/14/80
Hughes	do	6/25/80-8/14/80
Jackson	do	9/15/79-8/14/80
Jefferson	do	9/15/79-8/14/80
Johnston	do	9/15/79-8/14/80
Kay	do	6/25/80-8/14/80
Kingfisher	do	6/25/80-8/14/80
Kiowa	do	9/15/79-8/14/80
Latimer	do	6/25/80-8/14/80
Leflore	do	6/25/80-8/14/80
Lincoln	do	6/25/80-8/14/80
Logan	do	6/25/80-8/14/80
Love	do	9/15/79-8/14/80
Marshall	do	9/15/79-8/14/80
Major	do	6/25/80-8/14/80
Mayes	do	6/25/80-8/14/80
McClain	do	6/25/80-8/14/80
McCurtain	do	6/25/80-8/14/80
McIntosh	do	7/01/80-8/14/80
Murray	do	9/15/79-8/14/80
Muskogee	do	7/01/80-8/14/80
Noble	do	6/25/80-8/14/80
Nowata	do	6/25/80-8/14/80
Okfuskee	do	6/25/80-8/14/80
Oklahoma	do	6/25/80-8/14/80
Okmulgee	do	6/25/80-8/14/80
Osage	do	6/25/80-8/14/80
Ottawa	do	6/25/80-8/14/80
Pawnee	do	6/25/80-8/14/80
Payne	do	6/25/80-8/14/80
Pittsburg	do	6/25/80-8/14/80
Pontotoc	do	6/25/80-8/14/80
Pottawatomie	do	6/25/80-8/14/80
Pushmataha	do	6/25/80-8/14/80
Roger Mills	do	6/25/80-8/14/80
Rogers	do	6/25/80-8/14/80
Seminole	do	6/25/80-8/14/80
Sequoyah	do	6/25/80-8/14/80
Stephens	do	9/15/79-8/14/80
Tillman	do	9/15/79-8/14/80
Texas	do	6/25/80-8/14/80
Tulsa	do	6/25/80-8/14/80
Wagoner	do	6/25/80-8/14/80
Washington	do	6/25/80-8/14/80
Washita	do	6/25/80-8/14/80
Woods	do	6/25/80-8/14/80
Woodward	do	6/25/80-8/14/80

Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on March 24, 1981, and for economic injury until the close of business on June 24, 1981, at:

Small Business Administration, District Office, 200 NW. 5th Street-Suite 670, Federal Building, Oklahoma City, Oklahoma 73102

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program No. 59002 and 59008)

Dated: September 24, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-32593 Filed 10-17-80; 8:45 am]

BILLING CODE 6025-01-M

Region IX Advisory Council Public Meeting

The Small Business Administration Region IX Advisory Council, located in the geographical area of Phoenix, Arizona, will hold a public meeting at 12:00 noon, Wednesday, October 29, 1980, at the International Hawaiian Inn, 1102 N. Central, Phoenix, Arizona, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Mack Kehoe, Advocacy Officer, U.S. Small Business Administration, 3030 N. Central Avenue, Phoenix, Arizona 85012—(602) 221-2206.

Dated: October 10, 1980.

Michael B. Kraft,

Deputy Advocate for Advisory Councils.

[FR Doc. 80-32588 Filed 10-17-80; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD-80-133]

New York Harbor Vessel Traffic Service; Advisory Council Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the New York Harbor Vessel Traffic Service Advisory Committee to be held on Wednesday, November 19, 1980, in the Conference Room, second floor, U.S. Coast Guard Marine Inspection Office, Battery Park Office, New York, New York, beginning at 10:00 a.m. The agenda for the meeting will be as follows:

1. Discuss the present operation of the New York Vessel Traffic Service.

2. Discuss the future planning proposals and implementation of the New York Vessel Traffic Service.

3. Presentation on the application of marine traffic engineering concepts to New York Harbor.

4. Comments and questions from the floor.

The New York Harbor Vessel Traffic Service Advisory Committee was established by the Commander, Third Coast Guard District to advise on the need for, and development, installation and operations of a Vessel Traffic Service for New York Harbor. Members of the Committee serve voluntarily without compensation from the Federal Government, either travel or per diem.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time. Additional information may be obtained from Captain D. J. Linde, Executive Director, New York Harbor Vessel Traffic Service Advisory Committee, U.S. Coast Guard, Governors Island, New York, New York 10004 or by calling (212) 668-7954.

Issued in Washington, D.C. on October 9, 1980.

H. W. Parker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Boating, Public and Consumer Affairs.

[FR Doc. 80-32575 Filed 10-17-80; 8:45 am]

BILLING CODE 4910-14-M

[CGD 78-135b]

Waiver of Navigation and Vessel Inspection Laws and Regulations, Suspension of Requirements for Survey, Inspections, and Measurement of M/V Lionheart

AGENCY: Coast Guard, DOT.

ACTION: Notice of extension of order.

SUMMARY: The Coast Guard has extended the order suspending the provisions of law requiring survey, inspection, and measurement of the *M/V Lionheart* until December 31, 1980, or until a replacement vessel for the *M/V Lionheart* is placed in operation, whichever occurs first. The order was due to expire on September 30, 1980. The extension has been granted to allow the *M/V Lionheart* to continue in present service pending the availability of a replacement vessel.

EFFECTIVE DATE: This extension became effective on September 29, 1980.

ADDRESS: The material referenced in this notice will be available for examination and copying between 7 a.m. and 5 p.m., Monday through Thursday, except holidays, at the Marine Safety Council (G–CMC/24), Room 2418, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593 (202) 426–1477.

FOR FURTHER INFORMATION CONTACT: Commander Lloyd C. Burger, c/o Commandant (G-MVI/24), U.S. Coast Guard Headquarters, Washington, D.C. 20593 (202) 426–2178.

SUPPLEMENTARY INFORMATION: 1. The original order was issued on October 24, 1978, and has been extended twice since that time. The background and rationale for issuing the original order and the extensions are explained in detail in Federal Register notices of November 2, 1978, (43 FR 51161), July 26, 1979, (44 FR 43833), and October 11, 1979, (44 FR 60636).

2. On August 21, 1980, Coordinated Caribbean Transport, Inc. (CCT) submitted a request to the Coast Guard to extend the original order to December 31, 1980. According to the request, an additional extension is needed to provide sufficient time for delivery of the RO–RO vessel being built in West Germany. Delivery was scheduled for September 1, 1980, but delays have occurred in completing Coast Guard inspections of the vessel. Also, the ARTUBAR barge originally scheduled for completion on March 1, 1980, has been delayed until 1981. Based upon these considerations, a determination has been made to extend the order for a further 3 month period to allow the *M/V Lionheart* to continue in service pending delivery of a replacement vessel. The terms of this extension make the original order effective through December 31, 1980, or until a replacement vessel for the *M/V Lionheart* is placed in operation, whichever occurs first.

4. This notice was drafted by Commander Lloyd C. Burger, Office of Merchant Marine Safety, and William R. Register, Office of the Chief Counsel.

(46 U.S.C. 82; 49 U.S.C. 1655(b); E.O. 10289; and 49 CFR 1.45(a))

Dated: October 14, 1980.

Clyde T. Lusk, Jr.,

Captain, U.S., Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 80-32574 Filed 10-17-80; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Northwest Region; New Authority as Lead and Certificating Region for Transport Category Airplanes

This is to provide notice that on or about November 1, 1980, the Northwest Region of the Federal Aviation Administration with its headquarters at Seattle, Washington, will assume additional authority for the certification and certain staff functions relating to transport category airplanes. Presently, regional authority includes the certification responsibility for aeronautical products manufactured in the Northwest Region which consists of the states of Washington, Oregon, and Idaho. The principal airplane transport category manufacturer is The Boeing Commercial Airplane Company. The new authority assigned to the region will include the following:

- Serve as certificating region for domestic manufactured airplanes over 75,000 pounds gross takeoff weight and all foreign manufactured airplanes being certificated as transport category airplanes regardless of weight; and
- Serve as "lead region" for FAR Part 25: Airworthiness Standards: Transport Category Airplanes.

As a "certificating region", the Northest Region will hold final authority and responsibility for type (including supplemental type), production and newly manufactured airworthiness certification or approval of these products, including Airworthiness Directive issuance authority and responsibility. As a "lead region", it will perform national headquarters staff functions relative to the type certification, production and original airworthiness certification programs encompassed by FAR Part 25.

The following organizational changes will be effected:

1. An Aircraft Certification Area office will be established in the Los angeles area with responsibility for the day-to-day type, production and original airworthiness certification related to McDonnell-Douglas and Lockheed airplanes. These functions were formerly performed by the Western Region of the FAA.

The temporary address of the Los Angeles Area office will be: Aircraft Certification Area, ANW–100L, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009.

2. Air Aircraft Certification Area office will be established in the Seattle area with similar responsibilities for The Boeing Commercial Airplane Company, foreign manufactured transport category airplanes, and all other engineering and manufacturing activities located within the Northwest Region. These functions with respect to foreign aircraft were formerly performed by the Europe, Africa and Middle East Office with Headquarters in Brussels, Belgium.

The address of the Seattle Area office will be: Aircraft Certification Area, ANW—100S, FAA Building, Boeing Field, Seattle, Washington 98108.

3. Transport category airplane certification Project Managers will be located in other regional offices and the Europe, Africa and Middle East Office as required.

4. Both the Los Angeles and Seattle Area offices will report to a newly established Aircraft Certification Division, located in the Northwest Regional Headquarters.

The address of the Aircraft Certification Division will be: Aircraft Certification Division, ANW—100, FAA Building, Boeing Field, Seattle, Washington 98108.

5. The authority to issue Airworthiness Directives on McDonnell-Douglas and Lockheed airplanes, formerly exercised by the Director of the Western Region, and on foreign manufactured products, formerly exercised by the Director of Airworthiness (Washington Headquarters), will now be exercised by the Director of the Northwest Region.

This information will be reflected in the Federal Aviation Administration Organization Statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Seattle, Washington, this 7th day of October, 1980.

Charles R. Foster,

Director, Northwest Region.

[FR Doc. 80-32339 Filed 10-17-80; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement, Hartford and Litchfield Counties, Conn.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Hartford and Litchfield Counties, Connecticut.

FOR FURTHER INFORMATION CONTACT: David R. Billings, Environmental Engineer, Federal Highway Administration, 990 Wethersfield Avenue, Hartford, Connecticut 06114, Telephone (203) 244–2437; or James F. Byrnes, Jr., Assistant Director, Office of Environmental Planning, Connecticut Department of Transportation, 24 Wolcott Hill Road, Wethersfield, Connecticut, Telephone 9203) 566–5704.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Connecticut Department of Transportation (Department), will prepare an environmental impact statement (EIS) on a proposal to construct Connecticut State Route 72 (Rt. 72) on new location in the City of Bristol. This statement will involve analysis of six alternatives for the Rt. 72 corridor through Bristol, an assessment of the transportation needs west through Plymouth and Thomaston, and analysis of the effect of Rt. 72 build alternatives on demand for the proposed upgrading of the Waterbury to Hartford rail line as a commuter service.

The location of the preferred corridor for Rt. 72 in Bristol was based upon an earlier *Corridor Location Study for the Relocation of Connecticut Route 72 Bristol.* This corridor extends from Forestville Avenue, at the Bristol-Plainville town boundary westward through Bristol, passing south of existing Rt. 72, until it joins existing Rt. 72 at the Bristol-Plymouth town boundary, a distance of about 5.9 miles. Construction of transportation improvements in this corridor is considered desirable to accommodate existing and projected traffic demands and to divert a high volume of through traffic from local streets in Bristol.

Alternatives through Bristol under consideration include: (1) taking no action; (2) arterial highway facility terminating at Route 229; (3) grade separated, limited-access expressway facility terminating at Route 229; (4) arterial highway facility terminating at the Bristol-Plymouth town Boundary; (5) grade separated, limited access expressway facility terminating at the Bristol-Plymouth town boundary; (6) Mass Transit improvements.

This proposal has an extensive history of coordination with State, local and regional agencies and organizations. Additional public informational meetings concerning traffic, engineering, environmental, social, economic and land use issues will be held.

Early coordination with appropriate local, regional, State and Federal agencies will be accomplished to assist in the identification and evaluation of significant environmental impacts resulting from the proposed action and measures to mitigate adverse impacts which result from that action.

Since previous coordination has identified major areas of environmental concern, a formal scoping meeting is not deemed to be necessary at this time. Agency and public input will be sought through early coordination and through informal public informational meetings. The Department of Housing and Urban Development will be requested to assist as a cooperating agency in the preparation of this EIS due to their approving, concurrence and commenting responsibility.

The following Federal Agencies will also be invited to submit comments on this proposed action as they relate to the particular agency's field of expertise: the U.S. Fish and Wildlife Service, the Soil Conservation Service, the Corps of Engineers, the Environmental Protection Agency, the Heritage Conservation and Recreation Service, and the Water Resources Council. Other appropriate State and local agencies will also be requested to comment.

Other agencies, organizations, and individuals interested in submitting comments or questions should contact the FHWA or the Connecticut Department of Transportation at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20,205, Highway, Research, Planning and Construction: The provisions of OMB Circular No. A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program)

Issued on: October 7, 1980.

D. J. Altobelli,

Division Administrator, Hartford, Conn.

[FR Doc. 80-32323 Filed 10-17-80; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

[FRA Waiver Petition Docket HS–80–12]

McCloud River Railroad Co.; Petition for Exemption From the Hours of Service Act

In accordance with 49 CFR Section 211.41 and Section 211.9, notice is hereby given that the McCloud River Railroad Company (MCR) has petitioned the Federal Railroad Administration (FRA) for an exemption from the Hours of Service Act (83 Stat. 464, Pub. L. 91–169, 45 U.S.C. 64a(e)). That petition requests that the MCR be granted authority to permit certain employees to continuously remain on duty for in excess of twelve hours.

The Hours of Service Act currently makes it unlawful for a railroad to require or permit specified employees to continuously remain on duty for a period in excess of twelve hours. However, the Hours of Service Act contains a provision that permits a railroad, which employs no more than fifteen employees who are subject to the statute, to seek an exemption from this twelve hour limitation.

The MCR seeks this exemption so that it can permit certain employees to remain continuously on duty for periods not to exceed sixteen hours. The petitioner indicates that granting this exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs no more than fifteen employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in this proceeding by submitting written views or comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning this proceeding should identify the Docket Number, Docket Number HS–80–12 and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Department of Transportation, (Nassif Building), 400 Seventh Street, SW., Washington, D.C. 20590. Communications received before November 24, 1980, will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 8211, Department of Transportation (Nassif Building), 400 Seventh Street, SW., Washington, D.C. 20590.

Authority: Section 5 of the Hours of Service Act of 1969 (45 U.S.C. 64a), 1.49(d) of the regulations of the Office of the Secretary, 49 CFR 1.49(d).

Issued in Washington, D.C. on October 2, 1980.

J. W. Walsh,

Chairman, Railroad Safety Board.

[FR Doc. 80-32428 Filed 10-17-80; 8:45 am]

BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

Petition to Commence Defect Proceedings; Denials

This notice sets forth the reasons for the denials of petitions to commence a proceeding to determine whether to issue an order pursuant to section 152(b) of the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1412(b).

On April 11, 1980, Peter F. Carpenter of Palo Alto, California, petitioned NHTSA to commence a defect proceeding with respect to allegedly leaking fuel injectors in 1973–75 Mercedes Benz passenger cars. NHTSA had received eight similar complaints over a 6-year period and sent the nine complaints to the manufacturer for review. The reply from Mercedes Benz analyzed seven of the conditions complained of, including Mr. Carpenter's, as the result of faulty servicing by persons other than authorized Mercedes dealers. The two remaining complaints involved a leaking fuel hose and a clogged injector. Since there was no reasonable possibility that a defect order would be issued, the agency denied the petition on August 13, 1980.

Milton J. Thomas of Houston, Texas, asked the agency on April 27, 1980, to investigate whether the fuel system used to supply gasoline to the carburetor from the fuel pump on 1978 Mercury Cougar 359 C.I.D. engines may cause fires. Mr. Thomas had experienced a fire in his car which a damage appraisal service attributed to a rupture in the fuel line. NHTSA investigated all 1978 Ford Motor Company passenger cars with the 359 C.I.D. engine, of which over 180,000 were built. Total complaints of fire received by Ford and NHTSA from this population numbered 13. The cause of the fires was not known though several owners suspected fuel leaks.

In NHTSA's experience, engine compartment fires have been experienced in all makes and all years. Changes made to the 1978 359 C.I.D. engine fuel system appear to reduce the likelihood of fuel leakage. Since the total picture did not indicate that fuel systems on these vehicles present an unreasonable risk to safety, the petition was denied on August 27, 1980.

On May 1, 1980, John R. Carter of Redwood City, California, asked the agency whether 1979 Chevrolet C–10 pick-up trucks contained defective upper control arm attachments and diesel crankshafts, having experienced problems with both components in his vehicle. NHTSA's investigation covered 1978–1980 GMC and Chevrolet trucks with the C–10 chassis, including an examination of its own files of consumer complaints, manufacturer's service bulletins, parts return program, etc., and asked the manufacturer for records of complaints. Two additional complaints of upper control arm attachment failure were discovered. From a population of almost 98,000 diesel-engined trucks, 82 complaints of cracked or broken crankshafts were received. No fatalities or injuries were reported which occurred as a result of either type of failure; and on September 2, 1980, the petition was denied.

(Secs. 124, 152, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1410a, 1412); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on October 10, 1980.

Lynn L. Bradford,

Associate Administrator for Enforcement.

[FR Doc. 80-32581 Filed 10-17-80; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor Vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comment period closes on or before November 19, 1980.

ADDRESS COMMENTS TO: Dockets Branch, Information Services Division, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

New Exemptions

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8487-N	Brunswick Corporation, Lincoln, NE	49 CFR 173.302, 178.44	To manufacture, mark and sell non-DOT specification fiberglass reinforced plastic pressurized containers with welded aluminum liners for shipment of various non-flammable compressed gases. (Modes 1, 2, 3, 4 and 5.)
8488-N	Born Free Plastics, Inc., Gardena, CA	49 CFR 173.119(a), 173.119(b), 173.119(m), 173.346(a).	To manufacture, mark and sell DOT Specification 34 polyethylene containers for shipment of various Class B poisons, and flammable liquids. (Modes 1, 2, and 3.)
8489-N	FMC Corporation, Philadelphia, PA	49 CFR 173.154	To authorize shipments of sodium persulfate, potassium persulfate, ammonium persulfate and sodium perborate monohydrate, classed as oxidizers; and sodium sulfide, classed as a flammable solid in 2,200 pound polyethylene lined polypropylene bags. (Modes 1, and 3.)
8490-N	Houghton Chemical Corporation, Allston, MA	49 CFR 173.245(a)(31)	To authorize shipment of acetic acid (glacial) monoethanolamine and monethanolamine solutions classed as corrosive materials in a 4 compartmented bottom unloading MC-306 cargo tank constructed or type 304 stainless steel. (Modes 1.)
8491-N	Union Carbide Corporation, New York, NY	49 CFR 173.206(i)	To authorize shipment of batteries comparised of multiple cells not to contain more than 35 grams of lithium metal per outside containers as non-regulated. (Modes 1, 2, 3, 4 and 5.)
8492-N	Baeharaeh Instrument Company, Santa Clara, CA	49 CFR 173.304(a)(2), 175.3	To manufacture, mark and sell a DOT specification cylinder (calibration device) for shipment of liquefied hydrogen sulfide. (Modes 1, 2, 3, and 4.)
8498-N	Gibson Cryogenics, Lakeside, CA	49 CFR 173.315	To manufacture, mark and sell a non-DOT specification 2000 and 4000 gallon capacity cryogenic pressurized container for shipment of liquid nitrogen. (Modes 3.)

New Exemptions—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8494-N	Fruehauf Corporation, Omaha, NE	49 CFR 173.119, 178.342-6(a)	To manufacture, mark and sell a non-DOT specification MC-307-AL cargo tanks, equipped with sight glass gauges for shipment of various flammable liquids such as casing head gasoline and petroleum crude oil. (Mode 1.)
8495-N	Walter Kidde & Company, Inc., Belleville, NJ	49 CFR 173.304, 178.47, 175.3	To manufacture, mark and sell a non-DOT specification spherical containers similar to DOT Specification 4DS for shipment of bromotrifluoromethane pressurized with nitrogen. (Modes 1, 2, 3, 4 and 5.)
8496-N	American Cyanamid Company, Wayne, NJ	49 CFR 173.351	To authorize shipment of solutions containing less than 5% hydrocyanic acid, classed as poison B liquid, in packages prescribed in Section 173.332. (Modes 1, and 2.)
8497-N	Roper Plastics, Inc., New York, NY	49 CFR 178.19-2, Part 173, Subpart F	To manufacture, mark and sell a high-density polyethylene pail of up to 6-gallons capacity conforming to a DOT Specification 34 except for polyethylene melt index value for shipment of various corrosive liquids. (Modes 1, 2, and 3.)
8498-N	Hunter Drums, Limited, Burlington, Ontario	49 CFR 173.119, 173.221, 173.245, 173.249, 173.250, 173.256, 173.257, 173.263, 173.265, 173.266, 173.272, 173.277, 173.287, 173.288, 173.289, 173.292, 173.346, 178.19.	To manufacture, mark and sell non-DOT specification 55 gallon tight head polyethylene drums for shipment of certain corrosive liquids, flammable liquids, poison B liquids, liquid organic peroxides and hydrogen peroxide solutions. (Modes 1, 2, and 3.)
8499-N	Hedwin Corporation, Baltimore, MD	49 CFR 173.119, 173.125, 173.272, 173.228, 173.346.	To manufacture, mark and sell DOT Specification 34: 30-gallon polyethylene drums for shipment of certain flammable, corrosive and poison B liquids. (Modes 1, 2, and 3.)
8500-N	Talley Industries of Arizona, Inc., Mesa, AZ	49 CFR 173.154, 175.3	To qualify a passive restraint system containing a propellant explosive Class B as a flammable solid classification. (Modes 1, 2, 3, and 4.)
8501-N	Dynatrans, Gothenburg, Sweden	49 CFR 173.315	To authorize shipment of certain liquefied compressed gases in non-DOT specification IMCO Type V portable tanks. (Modes 1, 2, and 3.)
8502-N	Bland Brothers, Inc., New York, NY	49 CFR 173.400	To authorize shipment of trick noisemakers, Class C explosives, packaged 50 each in a sealed polyethylene bag overpacked 2 to a box, to be shipped without the explosive C label. (Mode 1.)

This notice of receipt of applications for new exemptions is published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 CFR U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, D.C., on October 9, 1980.

J. R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 80-32417 Filed 10-17-80; 8:45 am]

BILLING CODE 4910-60-M

Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in arlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes on or before November 4, 1980.

ADDRESS COMMENTS TO: Dockets Branch, Information Services Division, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, S.W., Washington, DC.

V 45 O C 20 80 UMI

Application No.	Applicant	Renewal of exemption
970-X	Callery Chemical Co., Callery PA	970
3198-X	E. I. du Pont de Nemours & Company, Incorporated, Wilmington, DE	3193
4039-X	Airco Industrial Gases, Murray Hill, NJ	4039
4490-X	National Aeronautics and Space Administration, Washington, DC	4490
4607-X	Armstrong Laboratories Division, West Roxbury, MA	4607
4717-X	Stauffer Chemical Company, Westport, CT	4717
4844-X	BAJ Vickers Ltd., London, England	4844
5038-X	Synthatron Corporation, Parsippany, NJ (See Footnote 1)	5038
5186-X	Liquid Carbonic Corporation, Chicago, IL	5186
5263-X	Dow Corning Corporation, Midland, MI	5263
5403-X	Halliburton Services, Inc., Duncan, OK	5403
5456-X	J. T. Baker Chemical Company, Phillipsburg, NJ	5456
5767-X	Du Bois Chemical Company, Cincinatti, OH	5767
5825-X	Phillips Petroleum Company, Bartlesville, OK	5825
5959-X	Ethyl Corp., Baton Rouge, LA	5959
6016-X	Airco Welding Products, Murray Hill, NJ (See Footnote 2)	6018
6334-X	U.S. Department of Defense-MTMC, Washington, DC	6334
6369-X	E. I. du Pont de Memours & Company, Incorporated, Wilmington, DE	6369
6418-X	Shell Oil Company, Houston, TX	6418
6434-X	Mobil Chemical Company, Richmond, VA	6434
6484-X	International Minerals and Chemical Corporation, Mundelein, IL	6484
6543-X	Synthatron Corporation Corporation, Parsippany, NJ (See Footnote 3)|156543	
6554-X	Pennwalt Corporation, Philadelphia, PA	8554
6610-X	Oxirane Chemical Company, Pasadena, TX	6610
6611-X	Philips Petroleum Company, Bartlesville, OK	6611
6611-X	Ohes Service Company, Tulea, OK	6611
6651-X	Park Chemical Company, Detroit, MI	6651
6651-X	Enthone, Inc., New Haven, CT	6651
6668-X	Union Carbide Corporation, Linde Division, Tarrytown, NY	6668
6672-X	Chandler Evans Inc., West Hartford, CT	6672
6726-X	Born Free Plastics, Inc., Gardena, CA (See Footnote 4)	6726
6765-X	Air Products and Chemicals, Inc., Allentown, PA (See Footnote 5)	6765
6772-X	Monsanto Company, St. Louis, MO	6772
6949-X	Monsanto Company, St. Louis, MO	6949
6949-X	FMC Corporation, Philadelphia, PA	6949
7005-X	Lowaco, S.A., Geneva, Switzerland	7005
7005-X	Societe Anonyme por L'Industrie Chimique, Mulhouse Cedex, France	7005
7013-X	ASM Enterprises, Incorporated, Pine Bluff, AR	7013
7041-X	Ethyl Corporation, Baton Rouge, LA	7041
7046-X	J. T. Baker Company, Phillipsburg, NJ	7048
7063-X	Hooker Chemical Company, Houston, TX (See Footnote 6)	7063
7066-X	Compagnie des Containers Reservoirs, Paris, France	7066
7085-X	California Seal Control Corporation, San Pedro, CA	7085
7096-X	Fike Metal Products Corporation, Blue Springs, MO	7096
7220-X	Grief Bros. Corporation, Springfield, NJ	7220
7235-X	Luxfer USA Limited, Riverside, CA (See Footnote 7)	7235
7423-X	The Dow Chemical Co., Freeport, TX	7423
7493-X	Hugonnet, S.A., Paris, France	7493
7517-X	Trinity Industries, Inc., Dallas, TX	7517
7574-X	Remmers-Tomkins Flight Service, Inc., Burlington, IA	7574
7625-X	Hydrite Chemical Company, Milwaukee, WI	7625
7654-X	Eastman Kodak Company, Rochester, NY	7654
7677-X	San Diego Gas & Electric Company, San Diego, CA	7677
7765-X	Carleton Controls Corporation, East Aurora, NY	7765
7808-X	Whitmire Research Laboratories, Inc., St. Louis, MO	7808
7820-X	Compagnie des Containers Reservoirs, Paris, France	7620
7820-X	Liquor Control Board of Ontario, Toronto, Canada	7820
7949-X	Riegel Textile Corporation, Ware Shoals, SC	7949
8002-X	Lowaco, S.A., Geneva, Switzerland	8022
8002-X	Tankcargo Container Leasing S.A., Geneva, Switzerland	8002
8002-X	Compagnie des Containers Reservoirs, Paris, France	8002
8002-X	Eurotainer, Paris, France	8002
8023-X	Acurex Corporation, Mountain View, CA (See Footnote 8)	8023
8053-X	Eastman Kodak Company, Rochester, NY	8053
8056-X	Hapag-Lloyd AG, Hamburg, Germany	8058
8057-X	Hapag-Lloyd AG, Hamburg, Germany	8057
8059-X	Acurex Corporation, Mountain View, CA (See Footnote 9)	8059
8063-X	Union Carbide Corporation, Linde Division, Tarrytown, NY	8063
8094-X	Milport Chemical Company, Milwaukee, WI	8094
8192-X	Griel Brothers Corporation, Springfield, NJ (See Footnote 10)	8192

[1] To authorize additional flammable liquids.
[2] Request renewal and to extend retest period from two years to five years.
[3] To authorize additional flammable liquids.
[4] To authorize shipment of corrosive liquids, poison B liquids, flammable liquids and hydrogen peroxide solutions as additional commodities.
[5] To authorize water as an additional mode of transportation, for shipment of liquified hydrogen; and to provide for minor tank appertenance changes.
[6] To renew and authorize the use of a DOT Specification 35.
[7] To authorize oxygen and helium-oxygen mixtures as additional commodities.
[8] To renew and to modify various mechanical and test features of the cylinder.
[9] To renew and to modify various mechanical and test features of the cylinder.
[10] Request removal of the single trip service restriction.

Application No.	Applicant	Parties to exemption
3121-P	Air Products and Chemicals, Inc., Allentown, PA	3121
6267-P	Hill Brothers Chemical Company, Orange, CA	6267
6824-P	GPS Industries, City of Industry, CA	6824
7005-P	CATU Cantainers, S.A., Geneva, Switzerland	7005
7052-P	Allen-Bradley, Twinsburg, OH	7052
7066-P	Tankcargo Container Leasing, Geneva, Switzerland	7066
7714-P	W. R. Zane & Co., of La., Inc., New Orleans, LA	7714
7819-P	Lowaco, S.A., Geneva, Switzerland	7819
7819-P	CATU Containers, S.A., Geneva, Switzerland	7819
7893-P	Lowaco, S.A., Geneva, Switzerland	7893
7893-P	Catu Containers, S.A., Geneva, Switzerland	7893
8000-P	Catu Containers, S.A., Geneva, Switzerland	8000
8000-P	Lowaco, S.A., Geneva, Switzerland	8000
8002-P	CATU Containers, S.A., Geneva, Switzerland	8002
8012-P	Lowaco, S.A., Geneva, Switzerland	8012
8012-P	Catu Containers, S.A., Geneva, Switzerland	8012
8156-P	Cryogenic Rare Gas Labs., Inc., Newark, NJ	8156
8380-P	Fomo Products, Inc., Akron, OH	8380
8390-P	Allied Chemical Company, Morristown, NJ	8390
8441-P	Battery Disposal Technology, Inc., Clarence, NY	8441
8441-P	Sanders Associates, Inc., Nashua, NH	8441
8441-P	Power Conversion, Inc., Mount Vernon, NY	8441

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 CFR U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, D.C., on October 9, 1980.

J. R. Grother,
Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 80-32416 Filed 10-17-80; 8:45 am]
BILLING CODE 4910-60-M

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the venue and proposed agenda for a public meeting which will review the recent activities of the MTB relating to the development of international standards for the transport of dangerous goods.

DATE: November 20, 1980, 9:30 a.m. to 4:00 p.m.

ADDRESS: Room 9230, Nassif Building, 400 7th Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Edward A. Altemos, International Standards Coordinator, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590 (202/426-0656).

SUPPLEMENTARY INFORMATION: Particular topics to be reviewed at this meeting will include:

1. Items on the agenda for the December 1980 meeting of the United Nations Committee of Experts on the Transport of Dangerous Goods.

2. Status of the development of the International Civil Aviation Organization's (ICAO) dangerous goods regulations.

3. Recent decisions of the RID/ADR Joint Meeting with respect to the packaging and classification of dangerous goods.

Interested persons are invited to attend and participate in this meeting.

Issued in Washington, D.C., on October 10, 1980.

Alan I. Roberts,
Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 80-32419 Filed 10-17-80; 8:45 am]
BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY
Customs Service
[T.D. 80-252]

Revocation of Customhouse Cartman's License No. 168 Issued by the Area Director of Customs, Newark, N.J. to Di Jub Leasing Corp.

Notice is hereby given that on October 7, 1980, pursuant to the provisions of section 565, Tariff Act of 1930, as amended, and section 112.30 of the Customs Regulations (19 CFR 112.30), it was decided to revoke the Customhouse Cartman's License No. 168 issued in the District of Newark on December 19, 1975, to Di Jub Leasing Corporation of Hoboken, New Jersey. This revocation is effective as of October 7, 1980.

R. E. Chasen,
Commissioner of Customs.

October 7, 1980.

[FR Doc. 80-32524 Filed 10-17-80; 8:45 am]
BILLING CODE 4810-22-M

Office of the Secretary

Delegation of Privacy Act Systems of Records

AGENCY: Department of the Treasury, Office of the Secretary.

ACTION: Deletion of Privacy Act Systems of Records.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974 (5 U.S.C. 552a), the Office of the Assistant Director (Management Analysis) gives notice of the deletion of Treasury/OS 00.042—OMO Management Consultants File. (45 FR 18668, March 21, 1980)

The responsibility for recommending management consultants is no longer in this office. The records in this system have become obsolete and are being destroyed.

EFFECTIVE DATE: October 20, 1980.

FOR FURTHER INFORMATION CONTACT: Linda K. Zannetti, Departmental Disclosure Officer, 1500 Pennsylvania Avenue, Washington, D.C. 20220.

Dated: October 9, 1980.

W. J. McDonald,
Assistant Secretary (Administration).

[FR Doc. 80-32463 Filed 10-17-80; 8:45 am]
BILLING CODE 4810-25-M

V 45 O C 2 0 8 0 UMI

[Public Debt Series No. 31-80]

Treasury Notes of October 31, 1982, Series X-1982

October 15, 1980.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $4,500,000,000 of United States securities, designated Treasury Notes of October 31, 1982, Series X-1982 (CUSIP No. 912827 LD 2). The securities will be sold at auction with bidding on the basic of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities, to the extent that the aggregate amount of tenders for such accounts exceeds the aggregate amount of maturing securities held by them.

2. Description of Securities

2.1. The securities will be dated October 31, 1980, and will bear interest from that date, payable on a semiannual basis on April 30, 1981, and each subsequent 6 months on October 31 and April 30, until the principal becomes payable. They will mature October 31, 1982, and will not be subject to call for redemption prior to maturity.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Daylight Saving time, Wednesday, October 22, 1980. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, October 21, 1980.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is $5,000 and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.11%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender and the amount may not exceed $1,000,000.

3.3. All bidders must certify that they have not made and will not make any agreements for the sale or purchase of any securities of this issue prior to the deadline established in Section 3.1. for receipt of tenders. Those authorized to submit tenders for the account of customers will be required to certify that such tenders are submitted under the same conditions, agreements, and certifications as tenders submitted directly by bidders for their own account.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3.5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securties specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1.Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.5., must be made or completed on or before Friday, October 31, 1980. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Teasury; in Treasury bills, notes or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Tuesday, October 28, 1980. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Supplementary Statement: The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

Paul H. Taylor,

Fiscal Assistant Secretary.

[FR Doc. 80-32748 Filed 10-19-80; 8:45 am]

BILLING CODE 4810-40-M

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Sunshine Act Meetings

Federal Register
Vol. 45, No. 204
Monday, October 20, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL ENERGY REGULATORY COMMISSION.

October 15, 1980.

TIME AND DATE: 10 a.m., October 22, 1980.

PLACE: Room 9306, 825 North Capitol Street NE., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary; telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Power Agenda—466th Meeting, October 22, 1980, Regular Meeting (10 a.m.)

CAP-1. Project No. 2811, Klickitat County Public Utility District No. 1.
CAP-2. Docket No. ER80-508, Boston Edison Co.
CAP-3. Docket No. RE80-10, Wisconsin Power & Light Co.
CAP-4. Docket No. ER80-113, Central Telephone & Utilities Corp.

Miscellaneous Agenda—466th Meeting, October 22, 1980, Regular Meeting

CAM-1. Docket No. QF80-19, Cranston Print Works Co.
CAM-2. Docket No. QF80-21, French Paper Co.
CAM-3. Docket No. QF80-15, Glen L. Custer.

Gas Agenda—466th Meeting, October 22, 1980, Regular Meeting

CAG-1. Docket No. RP81-1-000, Michigan Wisconsin Pipeline Co.
CAG-2. Docket No. RP80-144, Commercial Pipeline Co., Inc.
CAG-3. Docket No. CP80-242, United Gas Pipe Line Co.
CAG-4. Docket No. CI75-21, Perry R. Bass, et al.; Docket No. CI74-372, Shell Oil Co.; Docket No. CI72-878, Energy Resources, Inc.; Docket No. CI75-456, Exchange Oil and Gas Corp.; Docket No. CS80-122, Ann B. Little; Docket No. CS80-152, HCW Income Properties; Docket No. CS80-176, H&H Gas Co.; Docket No. CI75-221, Arco Oil & Gas Co., a division of Atlantic Richfield Co.; Docket No. CI69-420, Conoco, Inc.; Docket No. CI79-97, Phillips Petroleum Co.; Docket Nos. CI65-1363 and CI65-1369, Exxon Corp.; Docket No. CI68-106, Pennzoil Producing Co.; Docket No. CI68-1333, Marathon Oil Co.; Docket No. CI71-750, Bass Enterprises Production Co.; Docket No. CI64-1244, Exxon Corp. (operator), et al.
CAG-5. Docket No. CI80-436, Texaco, Inc.
CAG-6. Docket No. CP80-388, Tennessee Gas Pipeline Co.
CAG-7. Docket No. CP80-251, Michigan Wisconsin Pipe Line Co.
CAG-8. Docket No. CP80-375, Consolidated Gas Supply Corp.; Northern Natural Gas Co., Division of Internorth, Inc.; Michigan Wisconsin Pipe Line Co. and El Paso Natural Gas Co.
CAG-9. Docket No. CP80-384, Michigan Wisconsin Pipe Line Co.
CAG-10. Docket No. CP80-359, United Gas Pipe Line Co.
CAG-11. Docket No. CP80-345, Midwestern Gas Transmission Co.
CAG-12. Docket No. CP80-370, Columbia Gas Transmission Corp. and Equitable Gas Co.
CAG-13. Docket No. CP80-482, Northern Natural Gas Co., division of Internorth, Inc.
CAG-14. Docket No. CP80-491, Northern Natural Gas Co.
CAG-15. Docket No. CP79-19, Mountain Fuel Supply Co.

Power Agenda—466th Meeting, October 22, 1980, Regular Meeting

I. Licensed Project Matters

P-1. Reserved.

II. Electric Rate Matters

ER-1. Docket No. ER80-434, Duke Power Co.
ER-2. Docket Nos. ER80-379 and ER80-380, Utah Power & Light Co., Deseret Generation & Transmission Cooperative.
ER-3. Docket No. ER80-329, Central Power & Light Co.
ER-4. (A) Docket No. EF80-2011, Bonneville Power Administration (system rates); (B) Docket No. E-7631 and E-7633, City of Cleveland, Ohio v. Cleveland Electric Illuminating Co.; Docket No. E-7713, City of Cleveland, Ohio.
ER-5. Docket Nos. E-7631 and E-7633, City of Cleveland, Ohio v. Cleveland Electric Illuminating Co.; Docket No. E-7713, City of Cleveland, Ohio.
ER-6. Docket Nos. ER77-488 and ER78-520 (phase II), El Paso Electric Co.

Miscellaneous Agenda—466th Meeting, October 22, 1980, Regular Meeting

M-1. Docket No. RM80-65, exemption from all or part of part I of the Federal power act of small hydroelectric power projects with an installed capacity of 5 megawatts or less.
M-2. Docket No. RM80- , eligibility, rate and exemptions of qualifying and utility-owned geothermal small power production facilities.
M-3. Reserved.
M-4. Reserved.
M-5. Docket No. RM80- , revision to the regulations governing preservation of records.
M-6. Docket No. RM80-11, statement of policy on distributor access to Outer Continental Shelf Gas
M-7. (A) Docket No. RM80-50, high-cost natural gas: Production enhancement procedures; (B) Docket No. RM80-14, final regulations under section 105 and 106(b) of the Natural Gas Policy Act of 1978; (C) Docket No. RM80-21, regulations under section 110, 105 and 106(b) of the Natural Gas Policy Act of 1978; (D) Docket No. SA80-90, American Petrofina Co. of Texas, et al.
M-8. Docket No. RM79-76 (Texas—1), high-cost gas produced from tight formations.
M-9. Docket No. GP81- , U.S. Geological Survey—New Mexico, section 108 NGPA determination, El Paso Natural Gas Co., Huerfanito unit No. 75 well, USGS docket No. NM4274-79, FERC No. JD80-36472.
M-10. Docket No. GP80-42, Sea Robin Pipeline Co.

Gas Agenda—466th Meeting, October 22, 1980, Regular Meeting

I. Pipeline Rate Matters

RP-1. Docket Nos. RP75-105 and RP76-94 (offshore plant depreciation rate), Columbia Gulf Transmission Co.

II. Producer Matters

CI-1. Reserved.

III. Pipeline Certificate Matters

CP-1. Reserved.

Kenneth F. Plumb,
Secretary.

[S-1917-80 Filed 10-16-80; 9:37 am]
BILLING CODE 6450-85-M

2

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 9:30 a.m., October 23, 1980.

PLACE: 1700 G Street, NW., sixth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202-377-6677).

MATTERS TO BE CONSIDERED:

Application for Bank Membership—The Elmira Savings Bank, Elmira, N.Y.
Service Corporation Activity—Cragin Federal Savings & Loan Association, Chicago, Ill.
Preliminary Application for Conversion to a Federal Mutual Charter—Columbia Banking Savings & Loan Association, Rochester, N.Y.
Preliminary Application for Conversion to a Federal Mutual Charter—Sunnyside Savings & Loan Association, Long Island City, N.Y.
Preliminary Application for Conversion to a Federal Mutual Charter—Schenectady Savings & Loan Association, Schenectady, N.Y.
Preliminary Application for Conversion to a Federal Mutual Charter—Cross-County Savings & Loan Association, Middle Village, N.Y.
Preliminary Application for Conversion to a Federal Mutual Charter—Clover Savings & Loan Association, Camden, N.J. (now located in Pennsuken, N.J.)
Application for Modification of Dividend Restriction—Sunwood Corporation, Parker, Colo. and Sun Savings & Loan Association, Loveland, Colo.

No. 408, October 16, 1980.

[S-1918-80 Filed 10-16-80; 11:03 am]
BILLING CODE 6720-01-M

3

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 2:30 p.m., October 23, 1980.

PLACE: Hearing Room One, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Open.

MATTER TO BE CONSIDERED: Processing of section 15 agreements.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523-5725.

[S-1919-80 Filed 10-16-80; 11:32 am]
BILLING CODE 6730-01-M

4

FEDERAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Thursday, October 23, 1980.

PLACE: Room 432, Federal Trade Commission Building, Sixth Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

STATUS: Open.

MATTERS TO BE CONSIDERED: Presentation on advertising approval process by the Association of National Advertisers and the American Association of Advertising Agencies, with question and answer period to follow.

CONTACT PERSON FOR MORE INFORMATION: Pamela F. Richard, Office of Public Information: (202) 523-3830; recorded message: (202) 523-3806.

[S-1922-80 Filed 10-16-80; 2:41 pm]
BILLING CODE 6750-01-M

5

FEDERAL TRADE COMMISSION.

TIME AND DATE: 2 p.m., Friday, October 24, 1980.

PLACE: Room 532, (open); Room 540 (closed) Federal Trade Commission Building, Sixth Street and Pennsylvania Avenue NW., Washington, D.C. 20508.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to public:

(1) Oral Argument in Beltone Electronics Corporation, et al., Docket 8928.

Portions closed to the Public:

(2) Executive Session to discuss Oral Agument in Beltone Electronics Corporation, et al., Docket 8928.

CONTACT PERSON FOR MORE INFORMATION: Pamela F. Richard, Office of Public Information: (202) 523-3830; recorded message: (202) 523-3806.

[S-1923-80 Filed 10-16-80; 2:41 pm]
BILLING CODE 6760-01-M

6

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Thursday, August 23, 1980.

PLACE: Room 117, 701 E Street N.W., Washington, D.C. 20436.

STATUS: Emergency meeting—less than 10 days prior notice. Open to the public.

MATTERS TO BE CONSIDERED:
1. Investigation 337-TA-89 (Copper Rod)—vote.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-1921-80 Filed 10-16-80; 1:57 pm]
BILLING CODE 7020-02-M

7

[USITC SK-80-48A]

INTERNATIONAL TRADE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 67827, October 14, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Tuesday, October 21, 1980.

CHANGES IN THE MEETING: Additional item added to the agenda. In deliberations held Thursday, October 16, 1980, the United States International Trade Commission, in conformity with 19 CFR 201.37(b), voted, by unanimous consent, to add the following item to its agenda for the meeting to be held on Tuesday, October 21, 1980:

7. Investigation 337-TA-89 (Copper Rod)—Vote.

Commissioners Alberger, Calhoun, Moore, and Stern determined by unanimous consent that Commission business requires the change in subject matter by addition of the agenda item, and affirmed that no earlier announcement of the addition to the agenda was possible, and directed the issuance of this notice at the earliest practicable time. Commissioner Bedell was not present for the vote.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-1920-80 Filed 10-16-80; 1:54 pm]
BILLING CODE 7020-02-M

V 45 O C 20 80 UMI

federal register

Monday
October 20, 1980

Part II

Department of the Interior

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Determination of Hudsonia Montana To Be a Threatened Species, With Critical Habitat

V 4 5 O C 2 0 8 0 UMI

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Hudsonia Montana To Be a Threatened Species, With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Hudsonia montana* (mountain golden-heather) to be a Threatened species and determines its Critical Habitat under the authority contained in the Endangered Species Act. This plant occurs in North Carolina solely on public lands administered by the U.S. Forest Service. The plant is threatened by human trampling and other factors. This determination of *Hudsonia montana* to be a Threatened species will implement the protection provided by the Endangered Species Act of 1973, as amended.

DATES: This rule becomes effective on November 19, 1980.

ADDRESSES: Questions concerning this action may be addressed to the Director (FWS/OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, 703/235–2771.

SUPPLEMENTARY INFORMATION: *Hudsonia montana* (mountain golden-heather) was first discovered on the summit of Table Rock, North Carolina in 1816, by Thomas Nuttall. Today all known populations of the species occur within an eight kilometer radius of Table Rock, and all are on public lands administered by the U.S. Forest Service. The plant is a low perennial shrub with needle-leaves and yellow flowers which measure about two centimeters across. The plants occur on open wind-swept rock ledges. The continued existence of this plant and the fragile plant community in which it occurs are threatened by trampling. This rule determines *Hudsonia montana* to be a Threatened species and implements the protection provided by the Endangered Species Act. The following paragraphs further discuss the actions to date involving this plant, the threats to the plant, and effects of this action.

Background

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be Endangered, Threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Director published a notice in the **Federal Register** (40 FR 27823) of his acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposal in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be Endangered species pursuant to Section 4 of the Act. This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Hudsonia montana* was included in the Smithsonian's report, the 1975 notice of review, and the 1976 proposal. The notice of review and the proposal included *Hudsonia ericoides* ssp. *montana* rather than *Hudsonia montana*. Treatment of this taxon as a subspecies by Skog and Nickerson (1972) was followed by the Smithsonian Institution and thus the derived **Federal Register** publications. Since 1972, however, this taxon has been treated as a species by various authors. Recent morphological, cytological, and population studies by Morse (1979) have confirmed the distinctness of *Hudsonia montana* from *Hudsonia ericoides*.

The Endangered Species Act Amendments of 1978 required that all proposals over two years old be withdrawn. A one year grace period was given to proposals already over two years old. On December 10, 1979, the Service published a notice (44 FR 70796) withdrawing the June 16, 1976, proposal along with four other proposals which had expired.

Based on sufficient new information the Service reproposed *Hudsonia montana* on May 29, 1980 and proposed its Critical Habitat for the first time (45 FR 3633). Additional studies conducted by the local Fish and Wildlife Service Area Office this spring and research provided by Dr. L. E. Morse in January of this year provided additional biological evidence verifying the precarious status of the species. A public meeting was held on this proposal on July 1, 1980, in Morganton, North Carolina.

The regulations to protect Endangered and Threatened plant species appear at 50 CFR 17 and establish the prohibitions and a permit procedure to grant exceptions, under certain circumstances, to the prohibitions.

The Department has determined that this is not a significant rule and does not require the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR 14.

Summary of Comments and Recommendations

In the May 29, 1980, **Federal Register** proposed rule (45 FR 36331) and associated notifications and press releases, all interested parties were requested to submit factual reports or information which might contribute to the development of a final rule. Letters were sent to the Governor of North Carolina, the U.S. Forest Service, and local governments notifying them of the proposed rule and soliciting their comments and suggestions. All comments received during the period from May 29, 1980, through August 27, 1980, were considered and these are discussed below.

The Governor of North Carolina commented that the *Hudsonia* proposal was referred to the North Carolina Plant Conservation Board, which had already placed the plant on North Carolina's threatened plant list. A representative of the North Carolina Department of Agriculture which administers North Carolina's Plant Protection Act spoke at the public meeting. Those comments will be summarized later with the other public meeting comments.

The North Carolina Natural Heritage Program commented favorably on the listing of *Hudsonia montana* and stated that they felt the designation of Threatened status was appropriate. The Burke County Manager commented that Burke County endorsed the listing of *Hudsonia montana* as Threatened.

The U.S. Forest Service commented that they feel their management program adequate to conserve *Hudsonia montana* and therefore did not recommend listing. Service Response: The Forest Service only began developing a monitoring plan in the spring of 1980 to determine what management is needed for *Hudsonia montana*. Once management begins and if long range monitoring shows the plant not to be Threatened, steps will be taken by the Service to delist the species. At this time, the species fits the definition of Threatened and is being listed accordingly.

The Garden Club of America commented that they support the listing of *Hudsonia montana* as a Threatened species. Two private citizens commented that they support the listing of *Hudsonia montana* as Threatened and provided information on status and threats.

A public meeting concerning the proposal of *Hudsonia montana* to be a Threatened species was held on July 1, 1980, in Morganton, North Carolina. Thirty-six people attended. Presentations concerning *Hudsonia montana* and its listing as Threatened were made by Service personnel. Statements and questions from the audience were then entertained. A representative of the North Carolina Department of Agriculture described North Carolina's plant protection program and the North Carolina Plant Conservation Act. He pointed out that *Hudsonia montana* is on the State's list as a threatened species and that Federal listing would complement the protection offered by the State law.

An individual representing a rock climbing and outdoor recreation group voiced concerns over the impact of the listing on such activities. A representative of the North Carolina Bow Hunters' Association voiced concern over the impact of the listing on hunting in Linville Gorge. These concerns were addressed by Service personnel and it was pointed out that such impacts should be minimal or non-existent. If the Forest Service did decide in the future to close areas where the populations of the species occur to hikers and climbers, only several small areas would be involved. Such action would not put an undue burden on climbers in the area since there are many better climbing spots within a matter of feet which are not occupied by *Hudsonia montana*. In fact, Outward Bound, a private enterprise which teaches rockclimbing, among other things, and leases land in the Forest has volunteered help in identifying and monitoring areas occupied by the plant. The audience offered other similar observations and comments in an informal discussion which followed.

Conclusion

After a thorough review and consideration of all information available, the Director has determined that *Hudsonia montana* (mountain golden-heather) is likely to become an Endangered species within the foreseeable future throughout all or a significant portion of its range due to one or more of the factors described in Section 4(a) of the Act.

These factors and their application to *Hudsonia montana* are as follows:

(1) *Present or threatened destruction, modification, or curtailment of its habitat or range. Hudsonia montana* was originally collected by Thomas Nuttall in 1816, from the summit of Table Rock Mountain in Burke County, North Carolina. Since its discovery, it has been collected at infrequent intervals from this and several other locations all within Burke County, North Carolina. The species was assumed extinct by various recent treatments due to the failure of botanists to relocate the populations. However, all earlier known populations were still extant in 1978 (Morse 1980).

Although all previously known populations are still extant, two populations have shown declines in the number of individuals present (Morse 1980). Nuttall, in 1816, described *Hudsonia montana* as abundant and forming extensive caespitose patches on Table Rock (Pennell 1936). In 1978, approximately 21 plants (including juvenviles and seedlings) were observed to be present on Table Rock (Morse, 1980).

This apparent reduction is, in part, due to trampling and soil compaction by human visitors. One location receives heavy use by hikers and campers and one camp fire circle resulted in the partial charring of one large clump of *Hudsonia montana*. The other populations have not been monitored, so changes in the populations cannot be readily determined. All populations are threatened by the heavy use the area receives from hikers and rock climbers and all populations show impact from trampling. Misplaced trails or inadequately regulated hiking and climbing could destroy entire populations or population segments in a short period.

Hudsonia montana grows on exposed quartzite ledges in an ecotone between bare rock and *Leiophyllum*—dominated heath balds which merge into pine oak forest. All populations occur on public lands administered by the U.S. Forest Service in the North Fork Catawba River Planning Unit, Pisgah National Forest, North Carolina.

Efforts to develop a habitat management and monitoring plan are being initatied for the *Hudsonia montana* populations by U.S. Forest Service personnel. Possible measures which this plan could incorporate include:

(a) Regulations restricting climbing, campfires, and off-trail hiking on designated ledges;

(b) Consideration of *Hudsonia* requirements in trail maintenance operations;

(c) Realignment of trails at locations where these pose a threat to the plant and implementation of erosion control measures at these locations; and

(d) Monitoring studies to evaluate the maintenance and reproduction of *Hudsonia montana*.

(2) *Overutilization for commercial, sporting, scientific, or educational purposes.* Not applicable to this species.

(3) *Disease or predation (including grazing).* Not applicable to this species.

(4) *The inadequacy of existing regulatory mechanisms.* During the summer of 1979, North Carolina passed new legislation to protect its Endangered plants. At this time, the State is in the process of developing a list of species to be included under that legislation and *Hudsonia montana* was included upon that list as of July 1, 1980.

The Forest Service's regulations prohibit removing, destroying, or damaging any plant that is classified as a Threatened, Endangered, rare, or unique species (36 CFR 261). These regulations, however, may be difficult to enforce. The Endangered Species Act will offer additional protection to this species.

(5) *Other natural or man-made factors affecting its continued existence. Hudsonia montana* is an early pioneer species and evidence indicates that overtopping by taller shrubs may result in the death of the *Hudsonia* plants. Removal of these taller shrubs overtopping the *Hudsonia* should be considered in the management plan for the species. Seedlings have been noted most often in distrubed subtrates so preparation of seed beds perhaps by fire or other means may also be necessary.

The small size and number of the populations cuase this species to be in greater danger of extinction due to natural fluctuations of populations, especially in the case of the three smaller populations.

Critical Habitat

The Act defines "Critical Habitat" as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, in accordance with provisions of Section 4 of the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by the species at the time it is listed, in accordance with the provisions of Section 4 of this Act, upon a

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determination by the Secretary that such areas are essential for the conservation of the species.

Critical Habitat for *Hudsonia montana* is being determined to include all known populations of this species in North Carolina. Adjacent suitable habitat is being included as essential to the conservation of the species because it provides an area for natural expansion. Modifications of this Critical Habitat designation may be proposed in the future.

Section 4(f)(4) of the Act requires, to the maximum extent practicable that any proposal to determine Critical Habitat be accompanied by a brief description and evaluation of those activities which, in the opinion of the Secretary, may adversely modify such habitat if undertaken, or may be impacted by such designation.

Any activity which would result in increased trampling or disturbance of the fragile areas where *Hudsonia montana* occurs would adversely modify the Critical Habitat. The long-term solution for best protecting *Hudsonia montana* may be to greatly reduce the human traffic in the immediate areas where this plant occurs. In this respect, Critical Habitat designation may affect Federal activities as this may require prohibiting the development of new trails in areas where the plant occurs, relocating old trails, or other steps by the Forest Service.

Section 4(b)(4) of the Act requires the Service to consider economic and other impacts of specifying a particular area as Critical Habitat. The Service has prepared an impact analysis and believes at this time that economic and other impacts of this action are not significant. As stated above, designation would impact only Forest Service practices relating to controlling recreational land use. The Service has been in contact with the Forest Service and others who had input into the impact analysis of determining this Critical Habitat. This economic analysis served as part of the basis for the Service's decisions as to whether or not to exclude any area from the Critical Habitat for *Hudsonia montana*.

Effects of the Rule

In addition to the effects discussed above, the effects of this rule will include, but will not necessarily be limited to, those mentioned below.

The Act and implementing regulations published in the June 24, 1977, **Federal Register** (42 FR 32373) set forth a series of general prohibitions and exceptions which apply to all Endangered plant species. All of those prohibitions and exceptions also apply to any Threatened species, excluding seeds of cultivated plants treated as Threatened, unless a special rule pertaining to that Threatened species has been published and indicates otherwise. The regulations referred to above, which pertain to Endangered and Threatened plants, are found at §§17.61 and 17.71, of 50 CFR and are summarized below.

With respect to *Hudsonia montana* all prohibitions of Section 9(a)(2) of the Act, as implemented by § 17.71 would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions would apply to agents of the Service and State conservation agencies. The Act and 50 CFR § 17.71 also provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered or Threatened species under certain circumstances. International and interstate commercial trade in *Hudsonia montana* does not exist. It is anticipated that few permits involving plants of wild origin would ever be issued, since this plant is not common in the wild or in cultivation. Additional paperwork and permits required for the public would be minimal in the case of *Hudsonia montana*.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species which is listed as Endangered or Threatened. This protection will now accrue to *Hudsonia montana*. Provisions for Interagency Cooperation implementing Section 7 are codified at 50 CFR Part 402. These require Federal agencies not only to insure that activities they authorize, fund, or carry out, are not likely to jeopardize the continued existence of *Hudsonia montana*, but also to insure that their actions are not likely to result in the destruction of adverse modification of its Critical Habitat which has been determined by the Director. A discussion of the Forest Service's involvement appears in the Critical Habitat section of this rule. No other Federal involvement is foreseeable at this time.

National Environmental Policy Act

An environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia, and may be examined during regular business hours, by appointment. This assessment forms the basis for a decision that this is not a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Author

This rule is being published under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; 87 Stat. 844). The primary author of this rule is Ms. E. LaVerne Smith, Washington Office of Endangered Species (703/235–1975).

Literature Cited

Morse, Larry E. 1980. Report on the Conservation of *Hudsonia montana*, a Candidate Endangered Species. *In:* Geographical Data Organization for Rare Plant Conservation, edited by Larry E. Morse and Mary Sue Henifin, The New York Botanical Garden, Bronx, New York (In Press).

Morse, L.E. 1979. Systematics and Ecological Biogeography of the Genus *Hudsonia (Cistaceae), the Sand Heathers. Ph.D. dissertation. Harvard University. Cambridge, Mass.*

Pennel, F.W. 1936. Travels and scientific publications of Thomas Nuttall. *Bartonia* 18:1–51.

Skog, J.T. and N.H. Nickerson. 1972. Variation and Speciation in the genus *Hudsonia. Ann. Missouri Botanical Gardens* 59:454–464.

Regulations Promulgation

Accordingly, § 17.12 of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended, as set forth below.

1. Section 17.12 is amended by adding, in alphabetical order, the following plant:

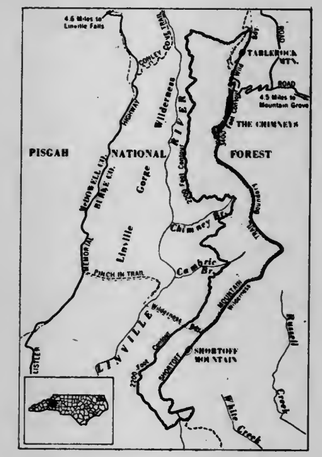
§ 17.12 Endangered and threatened plants.

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Cistaceae—Rockrose family:						
Hudsonia montana	Mountain golden-heather	U.S.A. (NC)	T		17.96(a)	NA

§ 17.26 [Amended]

2. Also, the Service amends 17.96(a) by adding the Critical Habitat of *Hudsonia montana* after that of Brassicaceae-*Erysimum capitatum* var. *angustatum* (Contra Costa wallflower) as follows:

Family Cistaceae: Mountain golden heather (*Hudsonia montana*) North Carolina; Burke County; the area bounded by the following: on the west by the 2200' contour; on the east by the Linville Gorge Wilderness Boundary north from the intersection of the 2200' contour and the Shortoff Mountain Trail to where it intersects the 3400' contour at "The chimneys"—then following the 3400' contour north until it reintersects the Wilderness Boundary—then following the Wilderness Boundary again northward until it intersects the 3200' contour extending west from its intersection with the Wilderness Boundary until it begins to turn south—at this point the Boundary extends due east until it intersects the 2200' contour.


4.6 Miles to Linville Falls
Wilderness
TABLEROCK MTN.
ROAD
4.5 Miles to Mountain Grove
THE CHIMNEYS
PISGAH
NATIONAL
FOREST
Linville
Chimney
Cedar Rock
SHORTOFF MOUNTAIN
Linville River
Linville Gorge
Wilderness
Boundary
Trail
Camp
Creek
Russell
Table Rock
Mountain
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Monday
October 20, 1980

Part III

Department of Commerce

Bureau of the Census

Census Undercount Adjustment: Basis for Decision

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DEPARTMENT OF COMMERCE

Bureau of the Census

Census Undercount Adjustment: Basis for Decision

The following report sets forth the basic assumptions related to a decision on whether, when, and how to adjust 1980 census results for possible undercoverage of the population. This report was developed prior to Judge Gilmore's decision on the suit brought by the City of Detroit and does not analyze the issue of adjusting the population count for apportionment purposes.

This report provides information on the process that the Bureau is following in order to arrive at a decision which considers all relevant information. The report is structured in terms of critical assumptions, supporting information, and rebuttals to those assumptions. Its purposes are (1) to distill into meaningful information 2 years of deliberation on the issues, and (2) to provide a direct and practical response mechanism for a final round of comment and discussion before decisions are made later this year.

The Bureau is interested in any reactions or comments on particular parts of the report as well as general comments. Any information—either supporting or rebutting—is welcomed as input to the final decision. However, as the Bureau is under very tight deadlines for the decision, please submit any comments to the Director, Bureau of the Census, Washington, D.C. 20233, by October 31, 1980.

Dated: October 13, 1980.

Vincent P. Barabba,

Director, Bureau of the Census.

Section and Subject

A—Introduction
B—Procedures for Arriving at the Basis for Decision
C—The Basic Question and Critical Assumptions
D—Factors that Prevent Adjustment for Apportionment Purposes
Appendix A—Memorandum from the Secretary of Commerce to the Director of the Bureau of the Census
Appendix B—Assumptions Discussed at the Second Census Undercount Workshop
Appendix C—References and Background Material

Section A—Introduction

A substantial body of knowledge has been developed over several decades as to the accuracy and completeness of decennial censuses. There is also, now, wide recognition that the shortcomings of census enumerations and the resulting statistics may have adverse consequences for the end uses of census data, even though the census remains, in our judgment, the most comprehensive and uniform statistical profile that our free society can achieve.

Through its own evaluation work, the Bureau has produced estimates of census undercount for the past three censuses; the preferred estimates were 3.3 percent in 1950, 2.7 percent in 1960, and 2.5 percent in 1970. For the 1970 census, the principal evaluation studies show that the most plausible estimates of undercoverage were 1.9 percent for the White population and 7.7 percent for the Black population, with variations in coverage among geographic areas and for age/sex categories.

For the 1980 census, the Post Enumeration Program (PEP) is intended to expand our knowledge of the levels and types of census undercoverage. Certain studies, for example, are designed to develop reasonable estimates of undercount for the Hispanic population, and possibly other minority groups, and for subnational areas such as the States and selected substate areas.

Census undercoverage has always been a concern of elected officials—Federal, State, and local. During the 19th century, when there was no systematic knowledge of undercount, communities and their elected representatives nonetheless called attention to perceived deficiencies in the decennial censuses that they believed shortchanged them of monies, prominence, prosperity, or political representation. For the 1980 census, these concerns have focused largely on political representation and the distribution of Federal funds to State and local governments. Because of these real concerns and the increasing ability of statisticians to measure census coverage, proposals have emerged to adjust census figures so that the "whole number of persons" would include those omitted from the actual enumeration.

For the past two years, the Bureau has committed itself to deal with the undercount adjustment issue in a careful, systematic, and open way, so that decisions on the questions of whether, when, and how to adjust would be clearly understood, if not embraced, by all affected individuals and groups (see section B).

The debates about undercount adjustment have also found expression in legislative proposals and lawsuits. On September 25, 1980, a Federal District Court judge issued an opinion which, if sustained, would require adjustments for apportionment purposes and reserve to the court a decision on whether the statutory deadline of December 31, 1980, for reporting census figures to the President should be extended until acceptable adjusted data are compiled. The Bureau has considered the extent to which adjustment for apportionment purposes is permissible and feasible, and it has been our view that Federal Statutes do not permit adjustment for that purpose, and that it is not operationally feasible to do so within the time constraints set by law. These aspects of the adjustment issue are discussed in section D of this report, which was prepared prior to the September 25th opinion.

Discussions about adjustment will continue, regardless of the outcome of litigation. In the following section (C) we concentrate on the most critical assumptions that we believe provide the basis for decisions about adjustment. These assumptions represent a wide range of contributions made by many individuals and organizations outside the Bureau as well as through the two workshops. The Bureau is responsible for selection of the assumptions that are discussed here as most important. We invite reaction and comment on these assumptions.

Review of this report will be concurrent with the processing and tabulating phases of the 1980 census which will result in the transmittal of the count of the total population of each State to the President in December 1980. The magnitude of census undercount in 1980, as well as its distribution among geographic areas or population characteristics, has not yet been determined. The earliest information we will have on 1980 undercount will be rough approximations subject to later revision. While those approximations can also impinge on the decisions, based on what we now know, they will not alter the critical assumptions on which the decision should be made.

Section B. Procedures for Arriving at a Decision on Undercount Adjustment

The Bureau has established a procedure for considering undercount adjustment where it might be permitted by law, time schedules and resource availability, and supported by professional judgment. The procedure that is being followed is outlined below:

Initially, the Secretary of Commerce requested that the National Academy of Sciences review and evaluate the 1980 census data collection plans, including the undercount adjustment issue. A special panel convened by the Academy conducted the desired research and issued a report stating the judgment, among other things, that on balance an improvement in equity would be achieved through an adjustment. The panel did not recommend either a particular technique for adjustment or that adjusted figures be used for legislative apportionment. At the same time, the panel pointed out that the application of an adjustment methodology has arbitrary features and that the figures for some areas would be further from the correct population than the actual census count.

Next, the Bureau conducted a 3-day intensive workshop in September 1979 at which Bureau staff members attempted to surface all assumptions that would underlie a decision on whether providing a set of adjusted data is desirable and feasible. Technical and policy issues were identified and recommendations were made for additional information needed to make the final decision.

Third, the Bureau hosted a Conference on Census Undercount in late February of this year. Attended by a diverse body of professionals from academic, business, Federal and local governmental, and legal communities, the Conference was successful in presenting research results and in eliciting opinions on a wide range of topics related to the undercount issue. A discussion of invited papers followed each presentation, thereby affording the Bureau staff insight into the concerns of individuals viewing undercount adjustment from differing perspectives. The Bureau issued a report on the undercount conference that presented all papers in full and summaries of the discussions.

Fourth, during the first week of September, the Bureau conducted a second workshop to facilitate the concluding process of decisionmaking. Analyses of our ability and the time required to produce adjusted data, guidelines for deciding the issue and the legal aspects and possible implications of providing adjusted data were prepared for this workshop. The purpose of the workshop was to integrate the issues which had surfaced and to reach a consensus as to a final set of critical assumptions which must underlie the ultimate decision. The findings of that workshop are being made available for public comment in this document.

Finally, by November/December of this year, consonant with the instruction from the Secretary of Commerce to the Director of the Bureau of the Census, (see Appendix A) and based on all the information obtained through the preceding steps and on any preliminary assessment of census coverage, the Bureau will decide whether or not adjusted data can or should be made available for official uses *other than apportionment.* If the decision is to provide data adjusted for the estimated undercount, the questions of when and how an adjustment is to be made, how the data will be presented, and how the data will be used in postcensal estimates programs will also be assessed.

With respect to its two workshops, the Bureau adopted a proven process for dealing with ill-structured problems. In this process, participants are divided into groups according to contrasting views and positions. Each group surfaces assumptions, and challenges the assumptions of other groups. Through this exercise, a wide range of views and issues emerge, and these are coupled to facts that strengthen or weaken specific assumptions as well as affect the individuals or segments of the public that support those assumptions and have perceived stakes in the outcome of the decision process. The published report from the September workshop expressed this wide range of assumptions and stakeholders.

Section C—The Basic Question and Critical Assumptions

As noted in the introduction and discussed fully in section D, we have argued that Federal statues do not permit us to adjust census results for purposes of apportionment, and are convinced that it is not operationally feasible to do so in accordance with timing requirements as set forth in Federal law.

Issues concerning adjustment go well beyond these purposes, however, and the resolution of those issues will have consequences throughout the decade. Principal among them is the distribution of Federal and State revenues to subordinate units of government on the basis of decennial census data, and on population and income estimates compiled regularly between censuses from other sources and linked in various ways to census results.

Through the workshop process many issues and assumptions were thoroughly discussed and debated (see Appendix B). This section examines only those considered most critical in making the decisions on whether, when, and how to adjust, without extensive discussion of specific end uses of census information. The format for discussing the critical assumptions provides key premises, supporting information, and possible rebuttals to the assumption. This approach is intended to encourage the reader to act to specific as well as general points; to defend, reject, or modify assumptions; or to present counterarguments. Although predispositions are not entirely avoidable, we have attempted to develop an approach that provides a reasonably neutral framework for comment.

The assumptions are examined with reference to this basic question: *Should the Census Bureau adjust the 1980 census results for purposes other than apportionment?*

A "Yes" answer to this question requires that certain critical assumptions be accepted as plausible.

If, however, the assumptions are rejected because the rebuttals are considered stronger, then the answer to this question should be "No."

These assumptions are organized around three broad premises and supporting statements shown on the following page and discussed later in terms of specific assumptions and rebuttals beginning on the pages noted in the margin. Background materials are listed in Appendix C.

Critical Assumptions

I. The Census Bureau has the capability to develop statistically acceptable and programmatically useful procedures for adjustments.

a. We will have a data base from evaluation studies that is substantially improved from previous censuses.

b. The Bureau has in the past demonstrated the ability to develop acceptable procedures to meet similar challenges.

II. It is the responsibility of the Bureau to take an active role in developing methodology and providing adjusted data.

a. Other options (anyone who chooses can adjust), though plausible, do not meet societal needs for accuracy, credibility, and consistency.

b. The Bureau is best equipped to apprise society of the limitations of adjusted census data.

III. The Census Bureau will be able to produce a series of adjusted census figures that are statistically acceptable for various geographic levels and various characteristics as they become technically feasible; the Bureau will continue to produce additional estimates during the decade.

a. Adjustments to headcounts that produce more accurate figures are desirable; information obtained from evaluation studies will provide partial adjustments for large geographic areas rather than all geographic areas at one point in time.

b. Acceptable adjustments for measures of population characteristics are also desirable; results of evaluation studies will provide for only limited adjustments for characteristics, but additional research throughout the decade may permit extending the range

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of characteristics for which satisfactory adjustments could be produced.

c. An acceptable adjustment that includes adjusting for uncounted undocumented aliens will not be possible at the time adjustment for other groups is; however, the inability to adjust for every group does not take away the responsibility to adjust for those for which data are available. During the decade, further information may become available to enable adjustment for undocumented aliens.

The following assumptions deal with the broad premise:

The Census Bureau has the capability to develop statistically acceptable and programmatically useful procedures for adjustments.

Critical Assumption

The Census Bureau will continually examine, evaluate, and share its understanding of undercoverage throughout the decade.

Basis of Assumption

The Bureau has the responsibility to continue to improve the state of the art by striving to achieve greater statistical accuracy in coverage estimates.

Supporting Information

1. The Bureau has historically advanced the level of knowledge regarding undercoverage estimates.
2. An ongoing program permits expansion of the number and kinds of areas covered and would contribute to accuracy as more data and refined methods are employed.
3. The continuing reevaluation of coverage provides the flexibility to respond to methodological advances, new data, and changes in policies, programs, and enabling legislation.
4. This policy is in line with the traditional approach of revising and improving current data series.
5. Work is continuing on the development of undercoverage estimates for Hispanics, since this group may be affected by specific programs.
6. The present schedule of research and evaluation work calls for different pieces of information to become available at different points in time.

Reubttal

1. Once a revision is made, reevaluation will result in increased demands for revised numbers, and this will lead to confusion among data users as to which data sets should be used for various purposes.
2. The Bureau often neglects to anticipate the broad consequences of an issue. Thus an announcement of new findings which the Bureau regards merely as technical improvements may have widespread impact that the Bureau fails to recognize in advance.
3. Lack of congressional or administration support could result in budgetary constraints limiting the Bureau's work in this area.
4. Changes in type of funding or a reduction in funding for the census count in 1990 may occur if, for example, Congress argues that based upon 1980 results, adjustments are cheaper *and* more accurate.
5. The census is recognized to be the best measure of the U.S. population. Doing anything to that count might not necessarily improve it.

Critical Assumption

The Census Bureau has the ability to develop a statistical and analytical methodology which will permit adjustment of *critical variables* (e.g., selected subnational geographic units and selected characteristics) in a timely fashion.

Basis of Assumption

In the past, when the Census Bureau has been confronted with a significant information need, it has been able, over time, to develop a statistically acceptable procedure for generating the required information.

Supporting Information

1. The need for credible employment statistics during the Depression era was the impetus for the development of sample survey methodology leading to the Current Population Survey.

General Revenue Sharing generated the need for current estimates of the population for 39,000 general-purpose governments.

3. The Bureau has experimented with and tested the following methodologies which have shown some promise:
   a. Matching studies
   b. Demographic analysis
   c. Regression analysis or refined synthetic estimation
4. The Bureau is supporting research related to adjustment methodologies.
5. The Bureau has been able to rearrange priorities to expedite carrying out the Post Enumeration Program.
6. The Bureau will have available throughout the next 3 years the results of the Post Enumeration Program, which should provide the following:
   a. Estimates of undercount for total population at the State level.
   b. Estimates of undercount by region for age, sex, race, and Hispanic origin.
   c. Information about undercount related to income, education, labor force, urban vs. rural, and metropolitan vs. nonmetropolitan areas that could be used in regression analysis or in refined synthetic estimation.

Rebuttal

1. Although the need to generate "adjusted" totals for geographic subdivisions has existed for the past couple of decades, the Bureau has not yet developed a procedure it is willing to implement today.
2. Results of the 1980 census test program, especially for Oakland and Richmond, indicate there are a number of difficulties in the match studies that still need to be resolved.
3. There is a stated concern within the professional statistical community that the techniques being developed are at the "frontier" and are not yet ready for implementation.

Critical Assumption

A Census Bureau adjustment procedure would be recognized as equitable, legally acceptable, meeting professional standards, and providing users with more accurate data.

Basis of Assumption

In the past, the need to provide adjustment procedures to take care of nonresponse and undercoverage biases has resulted in the development of statistically acceptable and useful procedures.

Supporting Information

1. Survey undercoverage in the Current Population Survey is adjusted for by using the ratio of survey estimates to independently derived population control totals. (The control totals are based on previous census data, which do not include adjustments for undercoverage in the census.
2. To improve coverage in the 1976 Census of Agriculture, a direct enumeration of an area sample was used to supplement mailing lists. Since the sample data provided reliable estimates for State totals only, data for lower levels were not adjusted. Both adjusted State totals and unadjusted data below the State level were published. The size of the adjustment from the area sample was also published with the adjusted State data.
3. There currently is being developed an adjustment procedure (based on direct estimates of the undercount) for the national and State levels, using data which will be available from demographic analysis and the Post Enumeration Program.
4. A study of the effect of population adjustment on General Revenue Sharing allocations in two States showed that most areas tended to move in the direction of their "proper" allotment (although this means a decrease in allotment for most areas), "proper" being determined by both population and income adjustments.
5. The National Academy of Sciences' panel on decennial census plans concluded that "inequities resulting from the geographic differentials in the decennial census undercount could be reduced by adjustment of the data for underenumeration."
6. The courts, in the past, have upheld Bureau procedures because they could be shown to be neither arbitrary nor capricious.

Rebuttal

1. Currently there is no adequate methodology for measuring the quality (limitations) of adjusted figures at geographic levels below the State.
2. Studies of synthetic estimates have shown that any areas with undercount rates much above or below the national average would be adjusted in such a way that error rates for those areas would be high.
3. Estimates from demographic analysis are subject to unknown errors, especially in the net immigration component.
4. Examination of the effects of an adjustment procedure on allocation of funds will result in the realization that there are more "losers" than "winners."

The following assumptions deal with the broad premise:

It is the responsibility of the Bureau to take an active role in developing methodology and providing adjusted data.

Critical Assumption

The Census Bureau is recognized as having the ability to objectively make and defend the appropriate decision on whether or not to adjust. If adjustments are to be made, the Census Bureau should formulate the procedures. This will promote a high standard of statistical rigor and encourage the appropriate use of census results.

Basis of Assumption

The Bureau has long been recognized as an agency of unquestioned integrity. It has a history of systematically studying the undercount problem and took the lead in bringing the issue into the open. The Bureau has the appropriate technical skills, resources, and specialized knowledge to develop and implement a procedure for adjusting census data.

Supporting Information

1. Bureau leadership in this area will enhance the credibility of the results, in view of the Bureau's accumulation of information on the undercount not shared by other organizations.
2. Official statistics issued by the Bureau are accepted by the public as impartial and free of vested interests.
3. Legislators, program administrators, and courts of law give sanction to census data as official Government statistics.
4. Affected parties have strongly expressed their opinions that the Bureau should make the adjustment. No one has questioned the Bureau's competence in this area, nor its objectivity or integrity.
5. Through conferences and workshops, the Bureau encouraged discussion and debate on the adjustment issue so that all relevant information could be considered in arriving at a sound decision.
6. A large-scale Post Enumeration Program is in place and funded; it will provide the necessary information for adjustments for States and other subnational areas.

Rebuttal

1. Census statistics are in the public domain; users are free to accept, modify, or reject them (and sometimes do).
2. The judiciary has not always prescribed the use of decennial census figures when superior data are available from a source other than the Census Bureau.
3. Census data are used for a multitude of purposes; adjusted data are not appropriate for all of them. The responsibility for proper use of data, including appropriate adjustments, rests with the user.
4. There are other reputable institutions that can produce adjusted census data which would be acceptable for many purposes.
5. Equity is essentially a political issue, and the decision whether or not to adjust census data should be made by Congress, not by the Census Bureau.

Critical Assumption

A simple synthetic adjustment procedure would not satisfy the Census Bureau's standards for accuracy.

Basis of Assumption

The Bureau implements new statistical methods only when certain general standards of data quality can be satisfied.

Supporting Information

1. A most important criterion is that there should be some knowledge of the limitations of the data to reduce misuse of statistics that are not fully reliable.
2. The Bureau's analyses of 1970 census undercount show that geographic variation is substantial. The simple synthetic method is not sensitive to this variation, and can, in fact, introduce serious defects not present in the unadjusted data.
3. If the undercount for specific age/race/sex groups were the same among subunits below the national level, the method would be acceptable.
4. The simple synthetic method is dependent on readily available independent estimates of undercount for population subgroups, and therefore provides no direct means for adjusting for the undercount of Hispanics.
5. Bureau research, and comparable studies by Canada for its census, demonstrate that adjustments by this method would produce more errors than superior methods that can be refined as more information is available from evaluation projects.

Rebuttal

1. The simple synthetic method is uncomplicated, easily understood, and timely. Its use would produce acceptable results on the average.
2. In view of the important and immediate uses of census results, adoption of the simple synthetic method will produce adjusted data quickly, and such data will correct for some of the most serious defects of unadjusted data.
3. The Bureau has an obligation to reduce statistical inequity even through the method used may not satisfy its highest standards of data quality.
4. The National Urban League recommends that synthetic adjustments be used for States and local areas and that the national undercount rate for Blacks be used for subnational adjustment for the Hispanic undercount.
5. Application of the simple synthetic method requires only that the null hypothesis be satisfied—that there is no *statistically significant* difference in undercoverage rates among geographic areas.
6. Alternatives to the synthetic method depend partly on demographic analysis, for which a number of questionable assumptions must be made to derive national undercount estimates.
7. According to the National Commission on Employment and Unemployment Statistics, adjustments for undercount in labor force statistics by use of the synthetic method would be smaller in magnitude that the adjustments the Census Bureau traditionally makes to account for underreporting of income and unemployment in its Current Population Survey.

The following assumptions deal with the broad premise:

The Census Bureau will be able to produce a series of adjusted census figures that are statistically acceptable for various geographic levels and various characteristics as they become technically feasible; the Bureau will continue to produce additional estimates during the decade.

Critical Assumption

Recognizing the present limits of technical feasibility, affected parties will accept and find useful initial adjustments for larger geographic areas only, despite program requirements for data for smaller areas.

Basis of Assumption

The demand for statistical adjustment of decennial census data stems in large part from the conviction that differential population undercoverage, especially of minorities such as the Black and Spanish-origin populations, produces serious inequity in the administration of Federal and State programs, especially those which distribute funds according to statistical formulas. Adjustment for

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States and large metropolitan areas, which should be feasible by 1982, will be an important step toward improved program administration.

Supporting Information

Population data, both counts and characteristics, are key elements in many formulas used to distribute billions of dollars in Federal funds annually.

2. Partial adjustments, such as for selected geographic areas and key characteristics, would satisfy some program requirements.

3. About one-third of the population lives in the 30 largest SMSA's for which adjustment is expected to be feasible within 2 years.

Rebuttal

1. Limited adjustments are not adequate:

a. An adjustment would be of dubious utility unless it applied to all geographic levels for which stakeholders have a program interest.

b. Many Federal agencies indicate that adjustment should be applied to all levels for which they have program responsibility.

2. Census results without adjustment are adequate; unadjusted census data have been valuable in the past and will continue to be useful, partly because they provide internally consistent figures for use in program administration and formula grants.

3. The Census Bureau should be in the counting business. Its staff is the most competent and highly regarded in that field.

4. Going beyond an absolute count would be to go outside of the mission of the Census to try to solve the problems of society.

Critical Assumption

No currently available adjustment procedure will provide more accurate numbers than the actual counts for *all* units of government or down to the block level; therefore, adjustments to relevant geographic levels must be made over time as procedures are refined geographically.

Basis of Assumption

None of the currently known procedures have been tested for their capability to measure the undercount at all levels for all units of government.

Supporting Information

1. There is a stated concern within the professional statistical community that the techniques being developed are still in the experimental stage and are not yet ready for implementation.

2. Canadian experience with reverse record checks indicates that simple synthetic adjustment might not be appropriate for geographic subdivisions below the regional level.

3. Comparisons of demographic estimates for States with those computed by synthetic methods also raise doubts about the accuracy of synthetic adjustment for small areas.

4. Demographic estimates are available only for the Nation and are still developmental for the States.

5. Standards against which to measure and evaluate adjustment procedures are not yet available for the smallest geographic areas.

6. To make estimates for every unit of government involves an assumption that undercount rates from the sample area apply to areas not in the sample.

7. Even though more accurate numbers cannot be provided for all units, it is important to increase the accuracy of as many as possible; improving the level of accuracy of some numbers is better than leaving them alone. Demographic estimates of national undercount by age, sex, and race will be available in the spring of 1981. Estimates of the undercount, based on evaluation studies, for the States, the 30 largest SMSA's, and 10 cities, and for the Hispanic undercount at the national level, will be available in late 1981, and improvements in these estimates will be possible by 1983.

Rebuttal

1. Adjustments for smaller geographic areas could be made using various synthetic or regression techniques. Although the data might be of unknown accuracy, at least a complete set of "official" data would be available for program administration.

2. Multiple series of adjusted census data may be unacceptable to users of census data.

3. The Census Bureau may not be capable of handling the workload required to produce multiple sets of printed and taped census figures.

4. There would be "numerator-denominator" difficulties in Federal program implementation where unadjusted and adjusted figures had to be combined to produce rates and ratios for program analysis or fund allocation formulas.

5. Because of difficulties in producing small area detail counts and characteristics, publication of official data could be delayed with corresponding adverse effects on timely application of census results for policy planning and program implementation.

Critical Assumption

In order for adjustment to improve program effectiveness, program agencies will require adjustment for key demographic characteristics such as age and income; adjustment for a limited number of key characteristics will satisfy the most important program needs.

Basis of Assumption

Agencies are dependent on accurate distributions of the population by certain demographic characteristics in order to carry out major program goals.

Supporting Information

1. Adjustment for some areas and not others is acceptable for many programs.

2. Legislated programs are often targeted at specific segments of the population; for example, the Elementary and Secondary Education Act allocates funds on the basis of the number of children ages 5 through 17 in low-income families.

3. The distribution of General Revenue Sharing funds could be adjusted if and when adjustment factors are available for all geographic areas and for income.

4. Among the characteristics most commonly incorporated into funding formulas are race, age, per capita income, family income, and employment and unemployment.

Rebuttal

1. No timely adjustments are feasible:

a. Current methodology does not produce estimates of acceptable quality for the adjustment of characteristics.

b. The time it may take to implement an adjustment of this type will not satisfy agency needs for timely data.

2. A few adjustments are not enough:

a. Different adjustment techniques must be used for various characteristics. This will result in a combination of adjustment procedures ranging from very sophisticated to simple raking, and therefore there may be inconsistencies in the data.

b. Program agencies have indicated the need for adjustment of many characteristics and will press for adjustment of more than a limited number of key characteristics.

Critical Assumption

Given the estimated magnitude of the undocumented-alien population and the fact that the Bureau's policy is to count all residents, it is important to include the development of an estimate of their "true" number as part of the 1980 census evaluation and statistical adjustment program.

Basis for Assumption

The stated policy of the Census Bureau is to enumerate all U.S. residents, regardless of legal status.

Supporting Information

1. Current interpretation of the Constitution indicates that the census should enumerate all residents.

2. Determining the legal status of respondents would be a complex legal undertaking and is not feasible or appropriate in a statistical activity such as the census.

3. Ultimately, a valid estimate of the undercount by demographic methods cannot be made without an estimate of undocumented residents in the estimate of the "true" population. Since some undocumented residents were likely to have been counted in the 1980 population census, they must also be accounted for in the national population estimates for consistency in making an adjustment.

4. Users of census data require complete information about all residents of the United States and its subnational areas.

5. Undocumented residents have an impact on economic and political life in the United States.

6. The speculative estimates of undocumented residents indicate this group may be a significant portion of the population. The number could be as high as several million.

7. Because of their reported concentration in certain areas of the country, the underenumeration of undocumented aliens could reduce political representation and funds allocated to certain States and cities.

Rebuttal

1. The Bureau does not now have a methodology to estimate the number of undocumented residents nationally or for geographic subdivisions, and the available evidence indicates an uneven geographic distribution of such persons.

2. It may not be possible to derive an estimate of undocumented immigrants to include in the estimated "true" population.

3. Including undocumented residents in the census or the undercount estimates may not be acceptable to Congress.

4. Even if no method is available to adjust for an undercount of undocumented aliens, that does not relieve the Bureau of the responsibility to adjust for other groups for which estimates are available.

Section D. Factors That Prevent Adjustment for Apportionment

The purpose of this statement is to summarize in nonlegal and nontechnical language the Census Bureau's position on the subject of statistical adjustment of the 1980 Decennial Census counts to be used to reapportion the U.S. House of Representatives.

The need for this statement arises from public confusion—generated by various lawsuits and attendant publicity—as to whether the Bureau could legally or operationally make such adjustments. The statement was prepared for the Undercount Adjustment Workshop held September 2–5, and, therefore, was completed before a decision was rendered in the Detroit suit.

The Issue

For a variety of reasons, not all persons are counted in the census. The 1970 census figures, for example, are estimated by one technique to have fallen about 2½ percent below the "true" population. All earlier censuses, going back to the first enumeration in 1790, are believed to have had net underenumeration. The courts have indirectly addressed the issue of underenumeration and concluded that officially released (albeit incomplete or not final) census results are appropriate for apportionment and redistricting.[1]

Knowledge of the extent and character of census undercounts has expanded considerably in the past two decades and with that expansion of knowledge there has been a growing interest in the possibility of adjusting both national and local area census counts to include statistical estimates of omissions. The specific issue is whether it is possible and appropriate to adjust 1980 census counts that will be used to reapportion seats in the House of Representatives among the States and to redistrict within States. This issue has two key parts:

1. Would it be legal?

2. If legal, would it be operationally feasible?

The answer to both questions is no.

The Legal Foundation

Statistical programs of the Federal Government, such as the Decennial Censuses of Population and Housing (hereafter, census) are authorized, controlled, and ultimately accountable within a specific legal framework. In the case of the census, the foundation and specific constraints are established in Article 1, Section 2 of, and the 14th Amendment to, the Constitution. The Constitution also confers full authority for the determination of census procedures on the Congress.[2] Congress, in turn, has delegated the responsibility for the conduct and content of the census to the Secretary of Commerce and to the Director of the Bureau of the Census; this statutory delegation is found in Title 13 of the U.S. Code (hereafter, Title 13). The delegation of responsibility for procedural and other matters has been tested in court and upheld.[3] This broad delegation of authority is, of course, subject to both specific and general constraints arising from the Constitution, Title 13 and other statutes.

In discharging its mandated responsibilities the Bureau of the Census (hereafter, Bureau) also faces other constraints. Important among these are the current state of census-taking technology and the state of knowledge in the statistical and demographic professions, the availability of adequate budgetary and other resources (including, particularly, a sufficient number of effective enumerators), public attitudes toward the census and government information collection in general, and various time constraints.

Paramount among time constraints are the statutory requirements that the Congress be notified of the population court by State and the appropriate number of Representatives for each State within one week after the opening of the next session of Congress after Census Day (or roughly 9½ to 10 months from Census Day)[4] and that local area data for redistricting within States be provided no later than one year after Census Day (April 1, 1981).[5]

Constitutional Provisions

Article I, Section 2, of the Constitution states:

Representatives * * * shall be apportioned among the several states which may be included with this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of Free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three-fifths of all other Persons. The actual Enumeration shall be made within three Years ater the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct.

The term, "actual Enumeration", means a census or a headcount. A "census" has been judicially defined as "an official enumeration of the inhabitants with details of sex, age, family, etc., and the public record thereof * * * A 'census' is not an estimate of the population."[6] The legal definition does not differ from the common or historical usage.[7]

This original population base for apportionment was revised with the abolition of slavery; the fourteenth amendment to the Constitution modified the first sentence to provide that:

Representatives shall be apportioned among the several States according to their respective numbers, *counting* the whole number of persons in each State, excluding Indians not taxed.

[1] *Asbury Park Press, Inc. v. Wooley*, 33 (1960) and *East Chicago v. Stans*, Civil No. 70–H–156 (1970).

[2] *Bethel Park v. Stans*, 449 F.2d 575 (1971).

[3] *Quon v. Stans, 309 F. Supp 604 (1970).*

[4] Title 2, U.S. Code

[5] Title 13, U.S. Code

[6] *Union Electric Co. v. Curie River Electric Coop., Inc.*, 571 S.W. 2nd 790, 794 (Mo. App. 1978). See also, *State v. Nobours*, 286 P. 2d 752, 755, 1955 (to "enumerate means 'to designate' or specifically mention, in detail, or reckon singly.")

[7] *Webster's Third New International Dictionary*, p. 381 (1976) ed.; *New English Dictionary On Historical Principles*, p. 219–20 (1893).

Since the passage of the income tax law, there are no longer any Indians not taxed who are to be excluded from the apportionment population, so that it now includes the "whole number of persons" in each State to be arrived at by an "actual Enumeration" or count.

In the phrase, "in such manner as they shall by Law direct.", the Constitution grants to Congress the authority to determine the manner and, hence, methods by which the census shall be taken. The Congress, through enactment of Title 13, has legislatively delegated the determination of the manner and methods of conducting the census to the Secretary of Commerce and the Director of the Bureau of the Census.

Title 13, U.S. Code

In its delegation of authority in Title 13, the Congress explicitly authorized the use of sampling as a means of estimating characteristics of the population. Section 141(a) of Title 13, which requires that the decennial census be taken, provides:

> The Secretary shall, in the year 1980 and every 10 years thereafter, take a decennial census of population as of the first day of April of such year, which date shall be known as the "decennial census date", in such form and content as he may determine, including the use of sampling procedures and special surveys.

At the same time, in Section 195 of Title 13, the Congress expressly prohibited the use of sampling in the apportionment process, saying:

> Except for the determination of population for purposes of apportionment of Representatives in Congress among the several States, the Secretary shall, if he considers it feasible, authorize the use of the statistical method known as "sampling" in carrying out the provisions of this title.

Thus, Title 13 clearly continues the constitutional mandate and historical precedent of using the "actual Enumeration" for purposes of apportionment, while eschewing estimates based on sampling or other statistical procedures, no matter how sophisticated.

There are, of course, methods other than sampling for estimating population and some have argued that the exclusion of sampling does not cover such alternatives. There are two relevant responses:

First, alternative methods for undercount adjustment were discussed in a General Accounting Office (GAO) report [8] to the House Committee on Post Office and Civil Service in a manner that underscored their developmental and experimental status. Although the GAO report recommended greater efforts to adjust for undercounts, the Committee did not authorize use of such adjustment techniques under Title 13, thus continuing the requirement of use of the actual enumeration.

Second, and perhaps more importantly, the framers of the Constitution drew a clear distinction between an "actual Enumeration" and an estimate, regardless of its underlying methods. In the absence of an "actual Enumeration," seats were apportioned in the first House of Representatives based upon what was characterized as "a mere conjecture" of population, which was contrasted to the more "precise standard" anticipated from the later census.[9]

Congressional Intent

The legislative history of Title 13 makes it eminently clear that sampling was not to be used in apportionment. Relative to the initial enactment of section 195, the relevant House report states: [10]

> Section 195 provides that the Secretary of Commerce may authorize the use of the statistical method known as sampling in carrying out the purpose of Title 13, if he deems it appropriate. However, section 195 does not authorize the use of sampling procedures in connection with apportionment of Representatives.
>
> The purposes of section 195 in authorizing the use of sampling procedures is to permit the utilization of something less than a complete enumeration, as implied by the word "census," when efficient and accurate coverage may be effected through a sample survey. Accordingly, except with respect to apportionment, the Secretary of Commerce may use sampling procedures when he deems it advantageous to do so.

Furthermore, enactment of section 195 was at the specific request of the Department of Commerce to provide authority to use sampling in the context of the overall census enumeration to achieve economies of operation. Thus, in the context of an understanding that an actual enumeration was required for apportionment purposes, the Congress granted authority for the use of sampling for other purposes.

The Congress had an opportunity in the 1976 amendments to Title 13 to consider expansion or alteration of section 195 and, even in the presence of recommendations to do so, chose not to modify section 195 to permit any undercount adjustment or correction. The continuation of the longstanding actual enumeration requirement is fully binding on census activities.

Other Opportunities for Congressional Action

In meeting its oversight responsibilities, the Congress has had ample opportunity to instruct the Bureau to make adjustments for underenumeration. The clearest such opportunity occurred in 1977, when the House Committee on Post Office and Civil Service considered, but chose not to report, H.R. 10386. In its final form this bill would have provided for "corrections" of the actual enumeration and, thereby, relaxed the obligation for an actual census.[11] H.R. 9623 and H.R. 8871, the precursors of H.R. 10386, were the subject of subcommittee hearings in which the proposal to require undercount "corrections" and other proposed changes in Title 13 were discussed extensively.[12]

The frequent Congressional hearings concerned with the census in particular, and the Bureau's programs in general, have provided ample opportunity for the Congress to consider undercount adjustments. In no instance has a proposal to adjust census results gone beyond a full Committee. When consulted, the Bureau has steadfastly maintained that, even if it were legal, a statistically defensible underenumeration adjustment of the census counts to be used for apportionment was not possible given statutory time constraints and the experimental and developmental character of possible undercount adjustment techniques.

Operational Feasibility

The issue is not just—or even—whether an adjustment should be done. Rather, it is whether an appropriate adjustment could be done within the time deadlines posed by statute. Tabulation of the total population by States required for the apportionment of Representatives in Congress must be completed and reported to the President by December 31, 1980. Tabulations for political subdivisions in the various States must be reported to the States by April 1, 1981. For the following reasons, it is the judgment of the Bureau that such adjustment to the counts to be used for apportionment would not be operationally feasible within the statutory time constraints.

[8] Comptroller General of the United States, *Report to the House Committee on Post Office and Civil Service on Programs to Reduce the Decennial Census Undercount*, B-78395 (May 5, 1976), p. 21–22.

[9] See Ferrand, *Records of the Federal Convention of 1787*, Vol. 1, p. 578–9.

[10] H.R. Rep. No. 85–1043, 85th Cong., 1st Sess. (1957), p. 10.

[11] See, Section 143., "Corrections in census counts, H.R. 10386, 95th Congress, 1st. Sess. (1977), p. 9–11.

[12] See hearings on H.R. 8871, Hearing before the Subcommittee on Census and Housing, 95th Congress, 1st Sess., No. 95–46, (1977).

At the minimum, such adjustment would require:

1. A reliable estimate of the undercount with specific estimates for such demographic, socioeconomic, administrative, and geographic subgroups as were needed for a pre-agreed adjustment methodology. At best, preliminary estimates of the undercount based on demographic analysis (race, sex and age) should be available around April 1, 1981. Preliminary estimates of the undercount would, of course, be subject to revisions, and, based on past experience, such revisions might be large.

2. Completion of the special data development efforts necessary to estimate State level undercounts by match studies and selected other analyses. This is necessary to address the problem of differential geographic undercounts arising from operational or other nondemographic factors. Fully tabulated data from these efforts will not be available until the fall of 1981 at the earliest. These activities involve direct matches of census returns with other surveys, some of which are not scheduled for collection until January 1, 1981, and includes sifting through the entire census file; a file that is expected to include records for more than 85 million households and more than 222 million individuals. It is impossible to complete the requisite work in time for the use of any adjusted data for Congressional apportionment among and within the States.

3. To properly lay the foundation for public, congressional, legal, and administrative acceptance of adjusted census counts for any purpose, there must be a suitable interval for statisticians, demographers, and the widely interested user community both to study and analyze the methodology to be used, and to assess the evidence in support of that methodology vis-a-vis alternative techniques. It is essential that this step engage the best minds and most interested users outside the Bureau as well as incorporate the best work within the Bureau.

4. Finally, it is essential that the Bureau be prepared to fully defend the accuracy of the chosen adjustment. The courts have long recognized the census counts as having a "presumptive correctness" and that alternatives that might be considered for redistricting would have to exhibit "clear, cogent and convincing evidence" to support their validity.[13] The Bureau has always adopted similar criteria in reaching decisions on new methods. In the case of undercount adjustment for apportionment purposes, because the first three conditions could not be met within the statutory time deadlines, *no* clear, cogent or convincing evidence could possibly be provided.

Operational Facets of "Actual Enumeration"

The 1980 census data covering the vast majority of Americans will result from a pure count in the full tradition and practice of actual enumeration. That is, the individual form will be completed (generally by a family respondent), checked for omissions or errors, and sent through a device which derives the statistical information and puts it into the Bureau's computer. The computer, in turn, prints the necessary tabulations for reapportionment calculations, and, later, for other statistical purposes. In enumeration and processing, however, there are situations which require error corrections or special efforts to ensure that the most accurate and complete count is achieved. Error correction and coverage improvement in the 1980 census requires information gained in the enumeration process as to the existence of a person or household at a specific location.

Substitution for Enumeration and Processing Reasons

Substitution is the process by which all the characteristics for one enumerated person are used during data processing to describe another enumerated person whose characteristics are unknown. This process has been used in previous censuses. Substitution is being used in the 1980 census as follows:

Close-out. After repeated visists by an enumerator to a housing unit known to be occupied, the enumerator is instructed, as a last resort, to determine at least the number of persons living in the unit as well as housing characteristics. This is usually obtained from neighbors, building manager, or other knowledgeable persons. The census form is identified as a "close-out" in machine readable form and the number of occupants is entered. During processing, characteristics are "substituted" by the computer for each person in a "close-out" household. If the number of occupants is unknown, an entire set of characteristics for a neighboring household is substituted. (The specific field guidelines for such procedures are described in the 1980 Census operations manuals).

Unreadable questionnaires. Occasionally during shipment or the processing of data, census forms are lost, destroyed, or damaged so as to be unreadable by the machine. In such instances, replacement questionnaires are entered into the system that indicate the number of persons, if any, in the living quarters. When possible, this information is obtained from master control counts for each address that is entered by the field staff during the actual census. By "reading" the replacement questionnaires, the characteristics for these enumerated persons are "substituted" by the computer from information reported for other persons. When master control counts are not available or the number of damaged forms is small, both the numbers and characteristics are substituted. In 1970, characteristics for more than 3 million enumerated persons were "substituted" for the two reasons described above. In 1980, the Bureau expects to hold substitution for these reasons to about 2¼ million persons.

Coverage Improvement—1980 and 1970

The Bureau's extensive coverage improvement program for the 1980 census is discussed in detail in a recent article by Peter Bounpane and Clifton Jordan of the Bureau staff.[14] Of the substantial improvements over 1970 procedures, two aspects of the 1980 coverage improvement program deserve special mention in the instant situation: The vacancy recheck and the post-enumeration post office check in conventional areas.

Vacancy Recheck. As the proportion of single, 2-person and 2-worker households has increased along with greater mobility, there has been growing difficulty in obtaining a census report for each occupied dwelling unit. One aspect of this problem has been a tendency on the part of enumerators to judge that a dwelling unit is vacant when, in fact, the residents were simply not home at the times the enumerator called. A special survey taken in the closing phase of the 1970 census showed that about one of every ten dwelling units classified as vacant by enumerators was actually occupied. Because the potential for even greater underenumeration from this type of situation grew during the 1970's and was clearly shown in the Bureau's intercensal surveys, a special, intensive recanvass of every dwelling unit classified as vacant is being undertaken in the 1980 census. Persons identified as omitted in this followup effort will, of course be added to the count.

In 1970, the magnitude of the problem of misclassification of dwelling units as

[13] *Dixon v. Hassler*, 412 Supp. 1036, 1976.

[14] "Plans For Coverage Improvement in the 1980 Census", *Papers and Proceedings of the Social Statistics Section of the American Statistical Association*, 1978.

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vacant did not become apparent until initial field work had been largely completed. At that time, the cost, complexity, and delays associated with a recanvass would have delayed census processing to a point where the counts for apportionment probably would not have been available within the required time period. To correct this problem, a carefully designed and monitored program of substitution for units with a high probability of being occupied was used.[15] This use of substitution was of considerable concern within the Bureau and, even though the courts had regularly decided that the procedures used in the 1970 census were within the meaning of the Constitution and neither arbitrary nor capricious, a decision was made to recanvass completely in 1980, eliminating the need for the 1970-type activity.

The Post-Enumeration Post Office Check. About 5 percent of the 1980 population count is expected to be found in rural or remote areas where enumerators visit the household and complete or check the census form on the spot. The Bureau has learned that dwelling units are more likely to be completely missed than in urban areas. The Bureau, therefore, again enlisted the aid of the U.S. Postal Service in an effort to identify missed households. In 1980, a census enumerator will make an on-the-spot check of missed units as indicated by the post-enumeration postal service check. As with the vacancy check, this procedure will take place before the local census office is closed and any persons that were missed will be added to the count.

In 1970, by contrast, the timing and budgetary situation did not permit a direct canvass of post-office identified misses. Consequently, limited substitution was used in the South where the miss problem was most pronounced.[16] Because field procedures permit a direct early visit, no such substitution will be used in the 1980 census.

Coverage Improvement Vis-a-Vis Undercount Adjustment

Coverage improvement in the 1980 Census will rely almost entirely on strict observation by Bureau employees in reference to master control counts, rechecks or special recanvass procedures. *By contrast,* undercount adjustment means direct additions of persons to the basic count by statistical means alone, without any direct evidence of the actual existence of the persons or of the dwelling units in which they may reside. A variety of techniques are available for such adjustments, but they have the common characteristic of assigning individuals to a specific geographic area. Such assignments would have an uncertain effect on accuracy; they may make the resulting estimates for the majority of areas less accurate even as they bring the national total closer to the "true" population. As indicated by the proceedings of the Conference on Census Undercount,[17] there is no consensus on an optimal procedure for such allocation.

May 13, 1980.

Appendix A

Memorandum For: Vincent Barabba, Director, Bureau of the Census.
Through: Courtenay M. Slater (C.M.S.), Chief Economist for the Department of Commerce.
Subject: 1980 Census: Statistical Adjustment for Undercoverage.

Apparent undercoverage in previous decennial censuses has led to widespread interest in the possibility of statistical adjustments to the 1980 census data. Extraordinary efforts have been undertaken by the Census Bureau to achieve the most complete coverage possible in 1980. The extent of any undercount will not be known for some months. You are now engaged in an active and systematic process of examining the validity of various methods of measuring and analyzing a possible undercount in the 1980 Census, as well as the desirability of making adjustments once the existence and extent of an undercount is determined. This process should continue with the following guidelines.

1. Planning for and execution of a program to evaluate census data should continue to be given high priority by the Bureau and should proceed as expeditiously as is consistent with good professional standards.

2. There should be full and frequent consultation with the Chief Economist and the General Counsel throughout this process.

3. Federal agencies and interested parties among the general public should be kept informed regarding the Bureau's examination of this issue and should be given adequate opportunity to comment on the approach being taken by the Bureau.

The culmination of this process should be a decision by the Director of the Census Bureau on whether and how any statistical adjustment should be made to 1980 census data. This decision should take full cognizance of the importance of:

(1) the need for confidence that any adjustment will produce more accurate information regarding the distribution of the population and the relevant characteristics of that population;

(2) the defensibility of any adjustment methodology that may be used;

(3) a continued public perception of the accuracy, reliability, and objectivity of census data; and

(4) the very great public need for accurate and timely data about the U.S. population and its characteristics.

Even if there were some basis for an adjustment of the population count to be used for apportionment of the House of Representatives, I do not believe that any adjustment can be made prior to the statutory deadline for the delivery of this information to the President. I do expect, however, that by the end of this calendar year, or shortly thereafter, you will be prepared to announce a decision on adjusting the census data for other uses.

I should appreciate receiving from you a detailed description of the process to be followed in arriving at the above decision, and shall expect you to take direct personal charge of this process.

Philip M. Klutznick,
Secretary of Commerce.

Appendix B—Assumptions Discussed at the Second Census Undercount Workshop

1. A simple synthetic adjustment procedure would be timely.

2. The courts will accept adjusted Census Bureau numbers.

3. Any adjustment of the census counts will increase the demand for further adjustments for racial, ethnic, and socioeconomic groups.

4. The Census Bureau will continually examine, evaluate, and share its understanding of undercoverage throughout the decade.

5. The nature of the Congressional legislative stucture and process, and knowledge of the complexity in determining gains and losses, will lead to maintaining the status quo, i.e., the use of *straight counts.*

6. Any adjustment procedure implies two sets of population counts—one adjusted and the other unadjusted.

7. There would be "numerator-denominator" difficulties in the use and interpretation of census data if not all census figures are adjusted.

8. The Census Bureau has to take into account the major uses of its data in making its decision whether or not to adjust.

9. Minorities will insist on complete adjustments at the lowest geographic levels, because they believe that this will bring them closer to the truth and equity in funds allocation.

10. The Census Bureau has the ability to develop a statistical and analytical metbodology which will permit adjustment of *critical variables* (e.g., selected subnational geographic units and selected characteristics) in a timely fashion.

11. The Census Bureau can change operational procedures to improve timeliness, detail, etc., of a complex procedure for adjustment of census counts.

12. A simple synthetic adjustment procedure will not meet Census Bureau standards for accuracy.

13. Major users of census data are capable of using multiple sets of data.

14. Given the estimated magnitude of the undocumented resident population and the fact that our policy was to count all residents, it is important to attempt to incorporate an allowance for this group in the expected (i.e., corrected) population and hence in the estimates of the undercount.

15. Given the potential for reducing the great uncertainty in our estimates of the undocumented resident population over time, the estimates of undercoverage will need to be modified with the passage of time for this reason.

16. The confidence of the Census Bureau to make a decision, to defend its position vis-a-vis stakeholders, and in its technical abilities has improved.

17. The Census Bureau is less hypersensitive to pressure applied by stakeholders.

18. All stakeholders must act through the Courts, Congress or the Administration.

19. It is assumed that the selected adjustment procedure will be accepted by stakeholders.

20. The anticipated reactions of segments of the public should not be the driving force behind the Bureau's decision to adjust or not to adjust.

21. If adjustments are to be made, the Census Bureau should formulate the procedures. This will promote a high standard of statistical rigor and encourage the appropriate use of census results.

22. Local area data required by Federal programs must be of sufficient quality to be credible in the courts.

23. Adjustment of census data would respond to widely expressed public policy needs.

24. In order for adjustment to improve program effectiveness, program agencies will require adjustment for key demographic characteristics, such as age and income, as well as for total population counts; however, adjustment for a limited number of key characteristics will satisfy the most important program needs.

25. The Administration will view support of the use of straight census counts to be consistent with expenditures for coverage improvement.

26. The Census Bureau has the ability to develop a statistical and analytical methodology which will permit adjustment of critical variables within 3 years of the census.

27. Regardless of the adjustment procedure used, there is currently no adequate methodology for measuring the quality of the adjusted figures.

28. Bureau professional staff would support the use of actual census counts rather than adjusted figures until the methodology area determines that there is a statistically acceptable adjustment technique.

29. Most stakeholders will expect that an adjustment procedure will be applied to all levels for which they have program interest.

30. No currently available adjustment procedure will provide more accurate numbers than the actual census counts for all units of government.

31. If an adjustment to census data is made, minorities other than Blacks will expect the Bureau to develop separate adjustment ratios to cover their populations.

32. An adjustment procedure would receive initial support from a wide range of stakeholders; however, there will be active opposition to the adjustment as the effects become known.

33. Pressure for a timely adjustment may force the Bureau to make an adjustment that does not make use of the information that will become available from the full set of evaluation studies. As more information becomes available, additional adjustments will be called for. Multiple adjustments could lead to more litigation.

34. A Bureau decision to adopt an adjustment procedure that is not statistically defensible is a step toward politicizing the Bureau.

35. Adjustment of census counts will result in the perception that the Bureau has changed the numbers for political purposes.

36. Adjustment of 1980 census data will raise serious doubts about whether the current investment in data collection should be repeated for the next census, whether the costs of data collection for surveys and other censuses are cost effective, and whether rigorous statistical standards for data quality are necessary. Concerns about response burden could intensify and the high levels of respondent cooperation could diminish.

Appendix C—References and Background Material

Discussion Toward the 1980 Undercount Adjustment Decision

1. Bounpane, Peter, and Mayer Zitter. "Technical Issues in Adjusting for the Census Undercount," presented at the 1980 Annual Meeting of the American Statistical Association, Houston, Texas: August 11–14, 1980.

2. Letter to the Honorable William Lehman, Chairman, Subcommittee on Census and Population, House Committee on Post Office and Civil Service, from the Comptroller General of the United States, November 9, 1978, GGD–79–7.

3. National Academy of Sciences, National Research Council, Assembly of Behavioral and Social Sciences, Committee on National Statistics, Panel on Decennial Census Plans. *Counting the People in 1980: An Appraisal of Census Plans.* Washington, DC: 1978.

4. Passel, Jeffrey S. and Jacob S. Siegel. "Measuring the Coverage of the Hispanic Population of the United States in the 1970 Census by Demographic Analysis," revised version of a paper presented at the 1979 Annual Meeting of the Southwestern Social Science Association, Fort Worth, Texas: March 28–31, 1979.

5. Siegel, Jacob S., Jeffrey S. Passel and J. Gregory Robinson. "Preliminary Review of Existing Studies of the Number of Illegal Residents in the United States," Working paper for the research staff of the Select Commission on Immigration and Refugee Policy, January 1980.

6. U.S. Bureau of the Census. *Conference on Census Undercount, Proceedings of the 1980 Conference,* Washington, DC: July 1980. See especially:

"The Census Bureau Experience and Plans," Jacob S. Siegel and Charles D. Jones

"Adjusting for Decennial Census Undercount: An Environmental Impact Statement," Peter K. Francese

"The Impact of Census Undercoverage on Federal Programs," Courtenay M. Slater

"The Impact of the Undercount on State and Local Government Transfers," Herrington J. Bryce

"Should the Census Count Be Adjusted for Allocation Purposes: Equity Considerations," Ian P. Fellegi

7. U.S. Bureau of the Census. "Coverage of Population in the 1970 Census and Some Implications for Public Programs," *Current Population Reports,* Series P–23, No. 56, Washington, DC: U.S. Government Printing Office, 1975.

8. U.S. Bureau of the Census. 1970 Census of Population and Housing, *Evaluation* and Research Program, "Estimates of Coverage of Population by Sex, Race, and Age: Demographic Analysis" Issued February 1974, Reprinted June 1976.

9. U.S. Bureau of the Census. *Proceedings of the Census Undercount Workshop, September 5–8, 1979,* Washington, DC: October 2, 1979.

Framework for the Decisionmaking Process

10. Mason, Richard O. and Ian I. Mitroff. *A Primer for SAST: Strategic Assumption Testing and Surfacing for Strategic Management.*

11. Toulmin, Stephen, Richard Rieke and Allan Janik. *An Introduction to Reasoning.* New York: Macmillan Publishing Co., Inc., 1979.

[FR Doc. 80–32557 Filed 10–17–80; 8:45 am]
BILLING CODE 3510–07–M

[15] See, Joseph Waksberg and Margaret A. giglitto, *The Effect Of Special Procedures To Improve Coverage In The 1970 Census, April 1973; and Bureau of the Census, Effect Of Special Procedures To Improve Coverage In The 1970 Census,* PHC(E)–6.

[16] *Effect of Special Procedures To Improve Coverage In The 1970 Census,* PHC(E)–6.

[17] *Conference On Census Undercount,* July 1980.

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Part IV

Department of Education

Research in Education of the Handicapped: Proposed Rules and Announcement of Closing Date for Transmittal of Applications for Certain Projects for Fiscal Year 1981

DEPARTMENT OF EDUCATION

45 CFR Part 121h

Research in Education of the Handicapped

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to revise the regulations for the Research in Education of the Handicapped Program to clarify the definition of eligible applicants, and to reflect administrative policy decisions regarding Federal direction of the program.

These regulations make explicit that both nonprofit and profit making organizations are eligible to participate in the program. They also provide a means for the Secretary to direct portions of available funds to particular types of research and model program activities through the establishment of priorities for major program activities.

DATES: Comments must be received on or before December 19, 1980.

ADDRESSES: Comments should be addressed to Jane Case Williams, U.S. Department of Education, Office of Special Education, Room 3117, Donohoe Building, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Jane Case Williams. Telephone (202) 245-3387.

SUPPLEMENTARY INFORMATION: This program sponsors both research and model projects. Research projects are designed to identify and solve critical problems involved in educating handicapped individuals and to translate those solutions into the development of practical techniques and materials. Model projects develop and implement innovative approaches to the education of the handicapped.

The program is authorized to support research activities and model programs through grants or contracts.

These proposed regulations amend the present system of selecting annual priorities for funding. The Secretary has determined that the funding priorities for model programs in the current § 121h.10 are inadequate.

The following amendments are proposed:

(a) The revision of § 121h.3 to clarify that profit making organizations are eligible for contracts under Part E of the Education of the Handicapped Act.

(b) The revision of § 121h.4 to define both Research and Model Programs.

(c) The deletion of § 121h.5 as unnecessary due to the addition of the new §§ 121h.9 and 121h.12.

(d) The addition of new § 121h.9 to list priority areas from which the Secretary may annually choose priority areas for funding Research and Model Programs.

For the Student Initiated Research priority area, the Secretary proposes to limit eligible applicants to post-secondary students to assist in the implementation of the State-wide personnel development plan mandated by Part B of the Education of the Handicapped Act.

(e) The addition of a new § 121h.10 to explain how the Secretary selects and announces a priority area.

(f) The addition of a new § 121h.11 to explain that the Secretary establishes a separate competition for each selected priority, and to discuss how the Secretary treats an application that addresses both a priority and non-priority area.

(g) The addition of a new § 121h.12 to state that, regardless of any priority area selected by the Secretary, the Secretary funds a separate competition each year to accept applications for any activity authorized under Part E of the Education of the Handicapped Act.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before December 19, 1980, will be considered in the development of the final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3165, 400 6th Street, SW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(20 U.S.C. 1441–1444))

Dated: October 15, 1980.

(Catalog of Federal Domestic Assistance No. 84.023, Research in Education of the Handicapped)

(Sec. 641–644, Education of the Handicapped Act, as amended 84 Stat. 185 (20 U.S.C. 1441–1444), unless otherwise noted)

Steven A. Minter,

Acting Secretary of Education.

The Secretary of Education proposes to amend Title 45 CFR Part 121h as follows:

PART 121h—RESEARCH IN EDUCATION OF THE HANDICAPPED

1. Section 121h.3 is revised as follows:

§ 121h.3 Eligible parties.

The Secretary may make grants to or contracts with States, State or local educational agencies, institutions of higher education and other public or nonprofit private educational or research agencies and organizations. In addition the Secretary may award contracts to profitmaking organizations.

(20 U.S.C. 1441–1442)

2. Section 121h.4 is revised as follows:

§ 121h.4 Research and model projects.

(a) Research projects supported under this part are designed to generate knowledge about the education of handicapped children and to translate such knowledge into practical techniques and materials.

(b) Model projects supported under this part develop and implement innovative educational programs that serve handicapped individuals either directly or indirectly. These projects are designed to—

(1) Improve significantly an aspect of the education of the handicapped population;

(2) Continue beyond the award period; and

(3) Provide for the dissemination and replication of a successful program.

(20 U.S.C. 1441–1442)

§ 121h.5 [Deleted]

3. Section 121h.5 is deleted.

4. Sections 121h.9 and 121h.10 are revised as follows:

§ 121h.9 Priorities for Research and Model Programs.

The Secretary may select annually one or more priorities from the following:

(a) *Research Integration Projects.* This priority supports projects that examine the state of the art in areas related to education of the handicapped and that analyze and interpret future research needs in those areas.

(b) *Technology Utilization Research Projects.* This priority supports research on the actual use of technological devices and systems in schools and by students.

(c) *Assessment Research Projects.* This priority supports research on, the use of existing assessment instruments and systems related to education of the handicapped.

(d) *Youth Employment Research Projects.* This priority supports research into the role of the school in increasing the employability of handicapped children, and into any option open to handicapped children providing for the transition from school to work.

(e) *Ethnic or Racial Group Handicapped Research Projects.* This priority supports research dealing with the unique educational problems resulting from a combination of membership in a particular racial or ethnic group and handicapping condition(s).

(f) *Non-vocal Communication Research Projects.* This priority supports research in educational programs for non-vocal, severely handicapped children.

(g) *School Based Research Projects.* This priority supports research based upon data available from school records focusing on issues related to the implementation of Part B of the Education of All Handicapped Childern Act.

(h) *Student Initiated Research Projects.* This priority provides support to post-secondary students to initiate and direct a broad range of research and research-related projects focusing on the education of handicapped children. The Secretary proposes to limit eligible applicants to post-secondary students to assist in the impementation of the Statewide personnel development plan mandated by Part B of the Education of the Handicapped Act.

(i) *Related Services Demonstration Projects.* This priority supports innovative demonstration projects focusing on the provision of related services for handicapped children as defined by Part B of the Education of the Handicapped Act, and other facilitative services or activities which complement the implementation of that Act.

(j) *Secondary Age/Level Demonstration Projects.* This priority supports innovative demonstrations of educational services delivery to handicapped children who are of post-elementary age or grade level.

(k) *Specific Handicapping Conditions.* This priority supports projects focusing on the provision of special education and related services to language impaired, autistic, or seriously emotionally disturbed children.

(20 U.S.C. 1441–1442)

§ 121h.10 How the Secretary selects and announces a priority.

(a) The Secretary selects a priority based upon current needs in the education of handicapped children, as those needs arise in the implementation of Part B of the Education of the Handicapped Act.

(b) The Secretary announces the priority areas selected for each fiscal year in the Application Notice for that year.

(20 U.S.C. 1441–1442)

5. New §§ 121h.11 and 121h.12 are added as follows:

§ 121h.11 How the Secretary uses a priority.

(a) The Secretary establishes a separate competition for each selected priority area. An application which does not address a priority area will not be considered in the competition for that area.

(b) If an application addresses both a priority area and a nonpriority area, the Secretary may consider that part which addresses the priority area separately from that part which does not.

(20 U.S.C. 1441–1442)

§ 121h.12 Separate competition for all authorized research and model programs activities.

In addition to the use of any priority area selected under § 121h.9, the Secretary establishes separate competitions, under both the Research and Model Programs, for any activity authorized under Part E of the Education of the Handicapped Act.

(20 U.S.C. 1441–1442)

[FR Doc. 80-32531 Filed 10-17-80; 8:45 am]

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DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

School Based Research

AGENCY: Department of Education.

ACTION: Notice of closing date for transmittal of applications for school based research projects for fiscal year 1981.

Applications are invited for requests to support new research projects related to education of the handicapped.

Authority for this program is contained in sections 641 and 642 of Part E of Education of the Handicapped Act (20 U.S.C. 1441, 1442).

The purpose of this program is to support research based on data available from school records, and focused on issues related to the implementation of Part B of The Education of the Handicapped Act, as amended by Pub. L. 94–142.

Closing date for transmittal of applications: Applications must be mailed or hand delivered by December 19, 1980.

Applications delivered by mail: An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.023], 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with their local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand-delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, Seventh and D Streets SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between the hours of 8:00 a.m. and 4:30 p.m., (Washington, D.C. time) daily, except Saturdays, Sundays, or Federal holidays.

Applications that are hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Available funds: Approximately $200,000 is available for support of School Based Research projects. Projects should be for twelve months or less duration and budgeted at less than $20,000.

Applicotions forms: Application forms and program information are available and may be obtained by writing to the Research Projects Branch, Office of Special Education, Department of Education, 400 Maryland Avenue SW., (Donohoe, 3165), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages. The Secretary strongly urges that the narrative portion of the application not exceed twenty (20) pages in length. The Secretary further urges that applicants not submit information that is not requested.

Applicable regulations: The following regulations are applicable to this program:

(a) Regulations governing the Handicapped Research and Demonstration program (45 CFR Part 121h);

Note.—Proposed amendments to the funding criteria for research projects (45 CFR 121h.7) were published in the Federal Register on April 3, 1980 (45 FR 22812–22813). Additional amendments to the current Part 121h are proposed and may be found in the proposed rule section of this issue of the Federal Register. These amendments, when they become final, will govern all fiscal year 1981 awards. If the final amendments differ substantially from the proposed amendments, the closing date will be revised at a later date; and

(b) Education Division General Administrative Regulations (EDGAR) (45 CFR Parts 100a and 100c).

FOR FURTHER INFORMATION CONTACT:
Max Mueller, Research Projects Branch, Office of Special Education, Department of Education, 400 Maryland Avenue, SW (Room 3165, Donohoe Building), Washington, DC, 20202, telephone (202) 245–2275.

(20 U.S.C. 1441, 1442)

(Catalog of Federal Domestic Assistance No. 84.023, Handicapped Research and Demonstration)

Dated: October 15, 1980.

Edwin W. Martin,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 80–32503 Filed 10–17–80; 8:45 am]

BILLING CODE 4000–01–M

Research Integration Projects

AGENCY: Department of Education.

ACTION: Notice of closing date for transmittal of applications for research integration projects for fiscal year 1981.

Applications are invited for new projects for support of integration of research related to education of the handicapped.

Authority for this program is contained in sections 641 and 642 of Part E of Education of the Handicapped Act (20 U.S.C. 1441, 1442).

The purpose of this program is to support projects that examine the state of the art in critical areas related to education of the handicapped, integrate available research information, and analyze and interpret futur research needs in those areas.

Research Integration grants may include costs of reviewing the literature, contacting persons involved in on-going projects pertinent to the review topic, and preparing written reports of the review findings and research recommendations.

Closing Date for Transmittal of Applications: Applications must be mailed or hand delivered by December 19, 1980.

Applications delivered by mail: An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.023H, 400 Maryland Avenue, SW, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with their local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand-delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, Seventh and D Streets SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between the hours of 8:00 a.m. and 4:30 p.m., (Washington, D.C. time) daily, except Saturdays, Sundays, or Federal holidays.

Applications that are hand-deliverd will not be accepted after 4:30 p.m. on the closing date.

Available funds: Approximately $150,000 is available for support of up to 16 research integration projects at funding levels of up to $20,000. Projected timelines should be 12 months or less.

Application forms: Application forms and program information packages are available and may be obtained by writing to the Research Projects Branch, Office of Special Education, Department of Education, 400 Maryland Avenue SW, (Donohoe, 3165), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages. The Secretary strongly urges that the narrative portion of the application not exceed twenty (20) pages in length. The Secretary further urges that applicants not submit information that is not requested.

Applicable regulations: The following regulations are applicable to this program:

(a) Regulations governing the Handicapped Research and Demonstration program (45 CFR Part 121h);

Note.—Proposed amendments to the funding criteria for research projects (45 CFR 121h.7) were published in the Federal Register on April 3, 1980 (45 FR 22812–22813). Additional amendments to the current Part 121h are proposed and may be found in the proposed rule section of this issue of the Federal Register. These amendments, when they become final, will govern all fiscal year 1981 awards. If the final amendments differ substantially from the proposed amendments, the closing date will be revised at a later date; and

(b) Education Divison General Administrative Regulations (EDGAR) (45 CFR Parts 100a and 100c).

FOR FURTHER INFORMATION CONTACT:
Max Mueller, Research Projects Branch, Office of Special Education, Department of Education, 400 Maryland Avenue, SW, (Room 3165, Donohoe Building), Washington, DC, 20202, telephone (202) 245–2275.

(20 U.S.C. 1441, 1442)

(Catalog of Federal Domestic Assistance, No. 84.023, Handicapped Research and Demonstration)

Dated: October 15, 1980.

Edwin W. Martin,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 80–32504 Filed 10–17–80; 8:45 am]

BILLING CODE 4000–01–M

Handicapped Children's Model Program

AGENCY: Department of Education.

ACTION: Closing date notice for transmittal of applications for fiscal year 1981.

Applications are invited for new demonstration projects under the Handicapped Children's Model Program.

Authority for this program is contained in Section 641 of Part E of the Education of the Handicapped Act (20 U.S.C. 1441).

This program issues awards to States, State or local educational agencies, institutions of higher education and other public or nonprofit private educational or research agencies and organizations.

The purpose of this program is to develop and conduct model programs designed to meet the special educational needs of handicapped children.

Closing date for trarsmittal of applications: An application for a grant must be mailed or hand delivered by January 5, 1981.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.023D, Washington, D.C. 20202.

An application must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept a hand delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time), daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Available funds: Approximately $2,000,000 is available for support of new demonstration projects in 1981. It is expected that about 25 new grants will be awarded. The range of funded projects is expected to be from approximately $50,000 to $110,000 per year. In 1980, the average award was $104,000.

There will be separate competitions for each of the three priorities specified, and a general competition for applications addressing other innovative activities authorized under the Handicapped Children's Model Program. An applicant may submit a comprehensive project which addresses two or more of the specified priorities.

Priorities for funding: The notice of proposed rulemaking, found in the proposed regulations section of this issue of the Federal Register, authorizes the Secretary to select from among eligible activites and areas (45 CFR proposed § 121h.9) those to which priority may be given through announcement in the Federal Register.

Each year the Secretary selects priorities based on the Secretary's determination of the current needs in the education of handicapped children. In addition to funding projects addressing announced priorities, the Secretary may choose to support projects that do not address a specified priority but are

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within the scope of the authorized activities under section 641 of Part E of the Education of the Handicapped Act.

For fiscal year 1981, the Secretary selects the following three priority areas for funding:

(1) *Related Services Demonstration Projects.* This priority supports innovative demonstration projects focusing on the provision of related services for handicapped children, as defined by Part B of the Education of the Handicapped Act, and other facilitative services or activities which complement the implementation of that Act;

(2) *Secondary Age/Level Demonstration Projects.* This priority supports innovative demonstrations of educational services delivery to handicapped children who are of post-elementary age or grade level; and

(3) *Specific Handicapping Conditions.* This priority supports projects focusing on the provision of special education and related services to language impaired, autistic, or seriously emotionally disturbed children.

Application forms: Application forms and program information packages are expected to be ready for mailing November 4, 1980. They may be obtained by writing to the Handicapped Children's Model Program, Program Development Branch, Office of Special Education, U.S. Department of Education, 400 Maryland Avenue, SW. Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages. The Secretary strongly urges that the narrative portion of the application not exceed thirty (30) pages in length. The Secretary further urges that applicants not submit information that is not requested.

Special procedures: Every applicant is subject to the State and areawide clearinghouse review procedures under OMB Circular A–95 and the Department's implementing regulations in EDGAR (see "APPLICABLE REGULTIONS"), 45 CFR 100a.170–100a.173.

An applicant should check with its appropriate Federal regional office to obtain the name(s) and address(es) of the clearinghouse(s) in its State. OMB Circular A–95 requires the applicant to give the clearinghouse(s) up to 60 days for review, consultation, and comments on the application.

In its application each applicant must provide—

(a) The comments of each clearinghouse that commented on the application; or

(b) A statement that the applicant used the procedures of Part I of OMB Circular A–95 but did not receive any clearinghouse comments.

Applicable regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Handicapped Children's Model Program (45 CFR Part 121h);

Note.—Proposed amendments to the selection criteria for model programs (45 CFR 121h.8) were published in the Federal Register on April 3, 1980 (45 FR 22813).

Further amendments to the current Part 121h are proposed and may be found in the proposed rule section of this issue of the Federal Register. These amendments, when they become final will govern all fiscal year 1981 awards. If the final amendments differ substantially from the proposed amendments, the closing date will be revised at a later date; and

(b) Education Division General Administrative Regulations (EDGAR) (45 CFR Parts 100a and 100c).

FURTHER INFORMATION: For further information contact the Handicapped Children's Model Program, Program Development Branch, Office of Special Education, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202. Telephone (202) 245–3387.

(Catalog of Federal Domestic Assistance No. 84.023D, Handicapped Children's Model Program)

Dated: October 15, 1980.

Edwin W. Martin,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 80-32505 Filed 10-17-80; 8:45 am]

BILLING CODE 4000-01-M

Assessment Research Projects

AGENCY: Department of Education.

ACTION: Notice of closing date for transmittal of applications for assessment research projects.

Applications are invited for new projects for support of Assessment Research related to education of the handicapped.

Authority for this program is contained in sections 641 and 642 of Part E of Education of the Handicapped Act (20 U.S.C. 1441, 1442).

The Assessment Research program supports research on assessment which is related to the education of the handicapped. Applications must focus on research relating to existing assessment instruments and systems and not on new test development.

Closing date for transmittal of applications: Applications for awards must be mailed or hand delivered by January 9, 1981.

Applications delivered by mail: An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.023E, 400 Maryland Avenue SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand-delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, Seventh and D Streets SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between the hours of 8:00 a.m. and 4:30 p.m., (Washington, D.C. time) daily, except Saturdays, Sundays, or Federal holidays.

Applications that are hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Available funds: Approximately $250,000 is available for support of Assessment Research. Projects should be planned to be completed within a twelve month period, and budgeted at $50,000 or less.

Application forms: Application forms and program information packages are available and may be obtained by writing to the Research Projects Branch, Office of Special Education, Department of Education, 400 Maryland Avenue SW., (Donohoe, 3165), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages. The Secretary strongly urges that the narrative portion of the application not exceed twenty (20) pages in length. The Secretary further urges applicants not to submit information that is not requested.

Applicable regulations: The following regulations are applicable to this program:

(a) Regulations governing the Handicapped Research and Demonstration program (45 CFR Part 121h).

Note.—Proposed amendments to the funding criteria for research projects (45 CFR 121h.7) were published in the Federal Register on April 13, 1980 (45 FR 22812–22813). Additional amendments to the current Part 121h are proposed and may be found in the proposed rule section of this issue of the Federal Register. These amendments, when they become final, will govern all fiscal year 1981 awards. If the final amendments differ substantially from the proposed amendments, the closing date will be revised at a later date; and

(b) Education Division General Administrative Regulations (EDGAR) (45 CFR Parts 100a and 100c).

FOR FURTHER INFORMATION CONTACT: Max Mueller, Research Projects Branch, Office of Special Education, Department of Education, 400 Maryland Avenue SW. (Room 3165, Donohoe Building), Washington, D.C. 20202, telephone (202) 245–2275.

(20 U.S.C. 1441, 1442)

(Catalog of Federal Domestic Assistance, No. 84.023, Handicapped Research and Demonstration)

Dated: October 15, 1980.

Edwin W. Martin,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 80-32506 Filed 10-17-80; 8:45 am]

BILLING CODE 4000-01-M

Nonvocal Communication Research

AGENCY: Department of Education.

ACTION: Notice of closing date for transmittal of applications for non-vocal communication research projects for fiscal year 1981.

Applications are invited for new projects for support of non-vocal communication research related to education of the handicapped.

Authority for this program is contained in sections 641 and 642 of Part E of Education of the Handicapped Act (20 U.S.C. 1441, 1442).

The purpose of this program is to support research addressing communication alternatives for the non-vocal, severly handicapped child.

Closing date for transmittal of applications: Applications must be mailed or hand delivered by January 9, 1981.

Applications delivered by mail: An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.023K, 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with their local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delievered by hand: An application that is hand-delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, Seventh and D Streets, SW., Washington, D.C.

The application Control Center will accept hand-delivered applications between the hours of 8:00 a.m. and 4:30 p.m., (Washington, D.C. time) daily, except Saturdays, Sundays, or Federal holidays.

Applications that are hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Available funds: Approximately $200,000 is available for support of Non-vocal Communication Research projects. Projects should be planned for 12 months' duration or less, and budgeted at $40,000 or less.

Application forms: Application forms and program information packages are available and may be obtained by writing to the Research Projects Branch, Office of Special Education, Department of Education, 400 Maryland Avenue, SW., (Donohoe, 3165), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages. The Secretary strongly urges that the narrative portion of the application not exceed twenty (20) pages in length. The Secretary further urges that applicants not submit information that is not requested.

Applicable regulations: The following regulations are applicable to this program:

(a) Regulations governing the Handicapped Research and Demonstration program (45 CFR Part 121h);

Note.—Proposed amendments to the funding criteria for research projects (45 CFR 121h.7) were published in the Federal Register on April 3, 1980 (45 FR 22812–22813). Additional amendments to the current Part 121h are proposed and may be found in the proposed rule section of this issue of the Federal Register. These amendments, when they become final, will govern all fiscal year 1981 awards. If the final amendments differ substantially from the proposed amendments, the closing date will be revised at a later date; and

(b) Education Division General Administrative Regulations (EDGAR) (45 CFR Parts 100a and 100c).

FOR FURTHER INFORMATION CONTACT: Max Mueller, Research Projects Branch, Office of Special Education, Department of Education, 400 Maryland Avenue, SW., (Room 3165, Donohoe Building), Washington, D.C. 20202, telephone (202) 245–2275.

(20 U.S.C. 1441, 1442)

(Catalog of Federal Domestic Assistance, No. 84.023, Handicapped Research and Demonstration)

Dated: October 15, 1980.

Edwin W. Martin,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 80-32507 Filed 10-17-80; 8:45 am]

BILLING CODE 4000-01-M

Technology Utilization Research

AGENCY: Department of Education.

ACTION: Notice of closing date for transmittal of applications for Technology Utilization Research projects for fiscal year 1981.

Applications are invited for new projects for support of technology utilization research related to education of the handicapped.

Authority for this program is contained in Sections 641 and 642 of Part E of the Education of the Handicapped Act (20 U.S.C. 1441, 1442).

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The purpose of this program is to support research on the actual use of technological devices and systems in schools and by students as it relates to handicapped children.

Closing date for transmittal of applications: Applications must be mailed or hand delivered by January 9, 1981.

Applications delivered by mail: An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.023L, 400 Maryland Avenue, SW, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with their local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, Seventh and D Streets, SW, Washington, D.C.

The Application Control Center will accept hand-delivered applications between the hours of 8:00 a.m. and 4:30 p.m. (Washington, D.C. time), daily, except Saturdays, Sundays, or Federal holidays.

Applications that are hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Available funds: Approximately $200,000 is available for support of Technology Utilization Research projects. Projects should be planned for 12 months' duration or less, and budgeted at $40,000 or less.

Application forms: Application forms and program information packages are available and may be obtained by writing to the Research Projects Branch, Office of Special Education, Department of Education, 400 Maryland Avenue SW, (Donohoe, 3165), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages. The Secretary strongly urges that the narrative portion of the application not exceed twenty (20) pages in length. The Secretary further urges that applicants not submit information that is not requested.

Applicable regulations: The following regulations are applicable to this program:

(a) Regulations governing the Handicapped Research and Demonstration program (45 CFR Part 121h);

Note.—Proposed amendments to the funding criteria for research projects (45 CFR 121h.7) were published in the **Federal Register** on April 3, 1980 (45 FR 22812–22813). Additional amendments to the current Part 121h are proposed and may be found in the proposed rule section of this issue of the **Federal Register.** These amendments, when they become final, will govern all fiscal year 1981 awards. If the final amendments differ substantially from the proposed amendments, the closing date will be revised at a later date; and

(b) Education Division General Administrative Regulations (EDGAR) (45 CFR Parts 100a and 100c).

FOR FURTHER INFORMATION CONTACT:
Max Mueller, Research Projects Branch, Office of Special Education, Department of Education, 400 Maryland Avenue, SW, (Room 3165, Donohoe Building), Washington, DC, 20202, telephone (202) 245–2275.

(20 U.S.C. 1441, 1442)

(Catalog of Federal Domestic Assistance, No. 84.023, Handicapped Research and Demonstration)

Dated: October 15, 1980.

Edwin W. Martin,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 80-32508 Filed 10-17-80; 8:45 am]

BILLING CODE 4000-01-M

Youth Employment Research

AGENCY: Department of Education.

ACTION: Notice of closing date for transmittal of applications for youth employment research projects for fiscal year 1981.

Applications are invited for new projects for support of youth employment research related to education of the handicapped.

Authority for this program is contained in sections 641 and 642 of Part E of Education of the Handicapped Act (20 U.S.C. 1441, 1442).

The purpose of this program is to support research in the role of the school in increasing the employability of handicapped youth. Issues which may be addressed include any option open to handicapped youth that provides for transition from school to work.

Closing date for transmittal of applications: Applications must be mailed or hand delivered by January 23, 1981.

Applications delivered by mail: An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.023F, 400 Maryland Avenue, SW, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with their local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand-delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, Seventh and D Streets SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between the hours of 8:00 a.m. and 4:30 p.m., (Washington, D.C. time) daily, except Saturdays, Sundays, or Federal holidays.

Applications that are hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Available funds: Approximately $250,000 is available for support of Youth Employment Research projects. Projects should be planned for completion within a 12 month Period, and budgeted at $50,000 or less.

Application forms: Application forms and program information packages are available and may be obtained by writing to the Research Projects Branch, Office of Special Education, Department of Education, 400 Maryland Avenue SW (Donohoe, 3165), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages. The Secretary strongly urges that the narrative portion of the application not exceed twenty (20) pages in length. The Secretary further urges applicants not to submit information that is not requested.

Applicable regulations: The following regulations are applicable to this program:

(a) Regulations governing the Handicapped Research and Demonstration program (45 CFR Part 121h);

Note.—Proposed amendments to the funding criteria for research projects (45 CFR 121h.7) were published in the **Federal Register** on April 3, 1980 (45 FR 22812–22813). Additional amendments to the current Part 121h are proposed and may be found in the proposed rule section of this issue of the **Federal Register.** These amendments, when they become final, will govern all fiscal year 1981 awards. If the final amendments differ substantially from the proposed amendments, the closing date will be revised at a later date; and

(b) Education Division General Administrative Regulations (EDGAR) (45 CFR Parts 100a and 100c).

FOR FURTHER INFORMATION CONTACT:
Max Mueller, Research Projects Branch, Office of Special Education, Department of Education, 400 Maryland Avenue, SW, (Donohoe Building), Washington, DC, 20202, telephone (202) 245–2275.

(20 U.S.C. 1441, 1442)

(Catalog of Federal Domestic Assistance, No. 84.023, Handicapped Research and Demonstration)

Dated: October 15, 1980.

Edwin W. Martin,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 80-32509 Filed 10-17-80; 8:45 am]

BILLING CODE 4000-01-M

Minority Handicapped Research

AGENCY: Department of Education.

ACTION: Notice of closing date for transmittal of applications for ethnic or racial group handicapped research projects for fiscal year 1981.

Applications are invited for new projects for support of racial or ethnic group handicapped research projects related to education of the handicapped.

Authority for this program is contained in sections 641 and 642 of Part E of Education of the Handicapped Act (20 U.S.C. 1441, 1442).

The purpose of this program is to support research dealing with the unique educational problems resulting from a combination of membership in a particular racial or ethnic group and handicapping condition(s).

Closing date for transmittal of applications: Applications must be mailed or hand delivered by January 23, 1981.

Applications delivered by mail: An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.023G, 400 Maryland Avenue SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with their local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand-delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, Seventh and D Streets SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between the hours of 8:00 a.m. and 4:30 p.m., (Washington, D.C. time) daily, except Saturdays, Sundays, or Federal holidays.

Applications that are hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Available funds: Approximately $250,000 is available for support of Minority Research projects. Projects should be planned to be completed within a 12 month period, and budgeted at $50,000 or less.

Application forms: Application forms and program information packages are available and may be obtained by writing to the Research Projects Branch, Office of Special Education, Department of Education, 400 Maryland Avenue SW., (Donohoe, 3165), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages. The Secretary strongly urges that the narrative portion of the application not exceed twenty (20) pages in length. The Secretary further urges applicants not to submit information that is not requested.

Applicable regulations: The following regulations are applicable to this program:

(a) Regulations governing the Handicapped Research and Demonstration program (45 CFR Part 121h).

Note.—Proposed amendments to the funding criteria for research projects (45 CFR 121h.7) were published in the **Federal Register** on April 3, 1980 (45 FR 22812–22813). Additional amendments to the current Part 121h are proposed and may be found in the proposed rule section of this issue of the **Federal Register.** These amendments, when they become final, will govern all fiscal year 1981 awards. If the final amendments differ substantially from the proposed amendments, the closing date will be revised at a later date; and

(b) Education Division General Administrative Regulations (EDGAR) (45 CFR Parts 100a and 100c).

FOR FURTHER INFORMATION CONTACT:
Max Mueller, Research Projects Branch, Office of Special Education, Department of Education, 400 Maryland Avenue SW. (Room 3165, Donohoe Building), Washington, D.C. 20202, telephone (202) 245–2275.

(20 U.S.C. 1441, 1442)

(Catalog of Federal Domestic Assistance, No. 84.023, Handicapped Research and Demonstration)

Dated: October 15, 1980.

Edwin W. Martin,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 80-32510 Filed 10-17-80; 8:45 am]

BILLING CODE 4000-01-M

Field Initiated Research

AGENCY: Department of Education.

ACTION: Notice of closing date for transmittal of applications for field initiated research for fiscal year 1981.

Applications are invited for new projects for support of Field Initiated research related to education of the handicapped.

Authority for this program is contained in sections 641 and 642 of Part E of Education of the Handicapped Act (20 U.S.C. 1441, 1442).

The purpose of this program is to provide a source of support for a broad range of research and development projects which fall outside the areas of interest defined by solicitations for directed research activities. The appropriate areas of interest for projects are limited only by the mission of the Research program—support of applied, educational research relating to education of the handicapped.

Closing date for transmittal of applications: Applications for awards must be mailed or hand delivered by February 6, 1981.

Applications delievered by mail: An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.023C, 400 Maryland Avenue, SW, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with the local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand-delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, Seventh and D Streets SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between the hours of 8:00 a.m. and 4:30 p.m., (Washington, D.C. time) daily, except Saturdays, Sundays, or Federal holidays.

Applications that are hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Available funds: Approximately $1,500,000 is available for support of new Field Initiated Research projects in 1981. Based on a mean grant amount in recent years of approximately $95,000 we expect that about 15 new grants will be awarded. The range of funding for 1980 projects was from under $15,000 per year to over $200,000. Most awards were for under $100,000 per year.

While the limit on duration of projects is 60 months, the vast majority of field-initiated projects are for one to three years. In the event that assistance is provided for multiple year projects, grant awards will be for a budget period of a single year's duration with continuation awards made in accordance with 45 CFR 100a.117, 118 and 100a.250–253.

Application forms: Application forms and program information packages are available and may be obtained by writing to the Research Projects Branch, Office of Special Education, Department of Education, 400 Maryland Avenue SW, (Donohoe, 3165), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages. The Secretary strongly urges that the narrative portion of the application not exceed thirty (30) pages in length. The Secretary further urges that applicants not submit information that is not requested.

Applicable regulations: The following regulations are applicable to this program:

(a) Regulations governing the Handicapped Research and Demonstration program (45 CFR Part 121h);

Note.—Proposed amendments to the funding criteria for research projects (45 CFR 121h.7) were published in the **Federal Register** on April 3, 1980 (45 FR 22812–22813). Additional amendments to the current Part 121h are proposed and may be found in the proposed rule section of this issue of the **Federal Register**. These amendments, when they become final, will govern all fiscal year 1981 awards. If the final amendments differ substantially from the proposed amendments, the closing date will be revised at a later date; and

(b) Education Division General Administrative Regulations (EDGAR) (45 CFR Parts 100a and 100c).

FOR FURTHER INFORMATION CONTACT: Max Mueller, Research Projects Branch, Office of Special Education, Department of Education, 400 Maryland Avenue, SW, (Room 3165, Donohoe Building), Washington, DC, 20202, telephone (202) 245–2275.

(20 U.S.C. 1441, 1442)

(Catalog of Federal Domestic Assistance, No. 84.023, Handicapped Research and Demonstration)

Dated: October 15, 1980.

Edwin W. Martin,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 80-32511 Filed 10-17-80; 8:45 am]

BILLING CODE 4000-01-M

Handicapped Children's Model Program

AGENCY: Department of Education.

ACTION: Closing date notice for transmittal of applications for fiscal year 1981.

Applications are invited for noncompeting continuation projects under the Handicapped Children's Model Program.

Authority for this program is contained in Section 641 of Part E of the Education of the Handicapped Act (20 U.S.C. 1441).

This program issues awards to States, State or local educational agencies, institutions of higher education and other public or nonprofit private educational or research agencies and organizations.

The purpose of this program is to develop and conduct model programs designed to meet the special educational needs of handicapped children.

Closing date for transmittal of applications: To be assured of consideration for funding, and application for a noncompeting continuation award should be mailed or hand delivered by March 12, 1981.

If the application is late, the Department of Education may lack sufficient time to review it with other noncompeting continuation applications and may decline to accept it.

Applications delivered by mail: An application sent by mail should be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.023D, Washington, D.C. 20202.

An applicant should show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications delivered by hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time), daily, except Saturdays, Sundays, and Federal holidays.

Available funds: The funding level for the Handicapped Children's Model Program for noncompeting continuations is expected to be approximately $5,500,000 for fiscal year 1981. During the previous year of the program, the range of individual awards for continuation projects was between $55,000 and $145,000.

Application forms: Application forms and program information packages are expected to be ready for mailing by January 8, 1981. They may be obtained by writing to the Elementary, Secondary, Postsecondary Section, Program Development Branch, Office of Special Education, U.S. Department of Education, 400 Maryland Avenue S.W., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages. The Secretary strongly urges that applicants not submit information that is not requested.

Special procedures: Every applicant is subject to the State and areawide clearinghouse review procedures under OMB Circular A–95 and the Department's implementing regulations in EDGAR (see "Applicable Regulations"), 45 CFR 100a.170–100a.173.

An applicant should check with its appropriate Federal regional office to obtain the name(s) and address(es) of the clearinghouse(s) in its State. OMB Circular A–95 requires the applicant to give the clearinghouse(s) up to 60 days for review, consultation, and comments on the application.

In its application each applicant must provide—

(a) The comments of each clearinghouse that commented on the application; or

(b) A statement that the applicant used the procedures of Part I of OMB Circular A–95 but did not receive any clearinghouse comments.

Applicable regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Handicapped Children's Model Program (45 CFR Part 121h).

Note.—Proposed amendments to the selection criteria for model programs (45 CFR 121h.8) were published in the **Federal Register** on April 3, 1980 (45 FR 22813). Further amendments to the current Part 121h are proposed and may be found in the proposed rule section of this issue of the **Federal Register**. These amendments, when they become final, will govern all fiscal year 1981 awards. If the final amendments differ substantially from the proposed amendments, the closing date will be revised at a later date; and

(b) Education Division General Administrative Regulations (EDGAR) (45 CFR Parts 100a and 100c).

FURTHER INFORMATION: For further information contact the Handicapped Children's Model Program, Office of Special Education, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone (202) 245–9722.

(20 U.S.C. 1441)

(Catalog of Federal Domestic Assistance, No. 84.023D, Handicapped Children's Model Program)

Dated: October 15, 1980.

Edwin W. Martin,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 32512 Filed 10-17-80; 8:45 am]

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federal register

Monday
October 20, 1980

Part V

Department of Transportation

Federal Highway Administration and Urban Mass Transportation Administration

Interstate System Withdrawal and Substitution; Revision of Regulations

V 45 OCT 20 1980 UMI

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Urban Mass Transportation Administration

23 CFR Parts 450 and 476

Interstate System Withdrawal and Substitution; Revisions

AGENCIES: Federal Highway Administration (FHWA) and Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Highway Administration (FHWA) and the Urban Mass Transportation Administration (UMTA) are issuing these revised regulations to implement statutory amendments pertaining to the withdrawal of certain nonessential Interstate highway routes from the Interstate System and to the use of funds thus authorized for substitute highway or nonhighway public mass transit projects.

EFFECTIVE DATE: November 19, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. L. A. Staron, Office of Engineering (202–426–0404), or Mr. Frank Calhoun, Office of the Chief Counsel (202–426–0761), in the Federal Highway Administration (FHWA); or in the Urban Mass Transportation Administration (UMTA), Mr. Richard White, Office of Transit Assistance (202–472–6997), or Mr. John Collins, Office of the Chief Counsel (202–426–1907), all at 400 Seventh Street, SW., Washington, D.C. 20590. The FHWA hours are from 7:45 a.m. to 4:15 p.m. and the UMTA hours are from 6:30 a.m. to 5:00 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: These regulations provide for the withdrawal of certain uncompleted or planned highways on the Interstate System in and connecting urbanized areas (within a State) and the transfer of their funding entitlements to other transportation projects under the Interstate transfer provisions first enacted in the Federal-Aid Highway Act of 1973. States and local jurisdictions can use these transfer provisions to accommodate revised plans for providing urban transportation. Involved, basically, are two major steps: the withdrawal of a nonessential segment of the Interstate System, and the substitution of highway and/or transit projects to serve the area that would have been served by the withdrawn segment.

In order to be considered for withdrawal, a segment of the Interstate System must be within an urbanized area or the segment can also pass through and connect urbanized areas within a State. Specifically excluded are segments added to the System after May 5, 1976, as substitutes for segments withdrawn under 23 U.S.C. 103(e)(2), open to traffic segments, toll roads incorporated in the System, and routes which were added to the System under 23 U.S.C. 139. Also excluded are segments added to the Interstate System by specific legislation unless a comparable statute permitting its withdrawal is enacted. Further, the approval of any new Interstate withdrawals is not permitted after September 30, 1983, unless the segment was under judicial injunction prohibiting its construction on November 6, 1978.

The withdrawal request is a joint submittal of the Governor and local governments within whose jurisdiction the Interstate segment would have been located and must include, for the portion of segments within an urbanized area, the concurrence of the metropolitan planning organization (MPO) representing the principal elected officials of the area. The request should be submitted to FHWA and UMTA through the FHWA Division Administrator in the State involved.

The principal Federal decision in an Interstate withdrawal is the determination that the segment is not essential to completion of a unified and connected Interstate System.

Joint approval of a withdrawal by the Federal Highway and Urban Mass Transportation Administrators authorizes an amount from general funds of the U.S. Treasury to be appropriated for substitute projects serving the same area. The amount is computed from the Federal share for completion of the segment, as shown in the latest Interstate Cost Estimate (ICE) approved by Congress, and is adjusted quarterly, up or down, according to price trends in Federal-aid highway construction. This adjustment continues for unobligated funds up to the point that each substitute project under the withdrawal is approved, until the balance of funding authorized by the withdrawal is fully obligated. General fund appropriations for substitute projects are provided by Act of Congress on an annual basis.

Substitute funds may be used in any combination for a wide variety of highway and public mass transit projects. The Federal share for the projects chosen will be up to 65 percent of the project cost. Highway projects are street and highway improvements on any of the Federal-aid systems described in 23 U.S.C. 103. Transit projects include any undertaking to develop, improve, or purchase public mass transit facilities or equipment (with the exception of operating assistance), such as construction of fixed rail facilities and purchase of bus and rail rolling stock, and other transportation equipment.

The 1978 Federal-Aid Highway Act imposes two critical time limitations concerning substitute projects. Substitute projects must receive Federal approval by September 30, 1983, and (providing sufficient Federal funds are available) be under construction or under contract for construction by September 30, 1986. To meet the first time limitation, the regulations call for the submission of a concept program which identifies the proposed substitute projects to be approved. This concept program should be endorsed by the MPO of the urbanized area (for those projects in or serving that urbanized area) or by the jurisdiction served by a project (for those projects in or serving the nonurbanized area connecting corridor). The concept program should be submitted by the Governor or his/her designee to the Federal Highway Administrator. The Urban Mass Transportation Administrator and the Federal Highway Administrator act jointly in the review and approval of concept programs.

The second time limitation involves the actual implementation of substitute projects and is therefore dependent on the availability of Federal funding and the completion of any required preliminary steps such as public hearings, environmental impact statements, final design, etc. Subject to the deadlines and funding availability, projects may be advanced for obligation of Federal funds immediately or as they individually become ready.

Governors or their designees submit applications for nonhighway transit projects to the appropriate Urban Mass Transportation Administration (UMTA) Regional Office and for highway projects to the FHWA Division Office.

Transit project applications are developed by transit officials for the area or by local governments in consultation with the transit officials. Highway projects are developed by the State or local officials responsible for the highway system and type of improvement involved. Urbanized area (50,000 or more population) projects must be based on the urban transportation planning process for the area and must be selected by the MPO and endorsed in an annual element of a Transportation Improvement Program (TIP/AE). Projects outside an urbanized area must have the concurrence of the responsible officials of the local jurisdictions in which the projects are located. Substitute highway projects, however, need not be processed through the annual statewide program of Federal-aid highway projects.

Substitute project requests for Federal authorization to proceed or for grant approval are processed in the same manner as similar projects programmed under normal FHWA procedures (for highway projects) and UMTA procedures (for nonhighway public mass transit projects).

Disposition of Comments

A notice of proposed rulemaking for proposed revisions to the Interstate System withdrawal and substitution program was published in the Federal Register on January 10, 1980 (45 FR 2296). Sixty comments were received. These include: Seven from State governors, seven from State legislators, eighteen from State highway agencies, two from other State agencies, eleven from cities and counties, three from planning organizations, two from national local government organizations, three from private citizen groups, two from a trade organization, and one each from the House of Representatives Committee on Public Works and Transportation, a transit operator, a national utility organization, a private citizen, and a Federal agency.

The commentors generally expressed support for the proposed regulations, many suggested editorial and other minor changes and clarifications. In the preparation of the final regulations, set forth below, consideration was given to all comments received in response to the notice of proposed rulemaking, insofar as they relate to matters within the scope of the notice. Except for editorial changes, and except as specifically discussed hereinafter, these regulations and the reasons therefor are the same as contained in the notice. Most of the changes are clarifications rather than substantive alterations; however, several comments resulted in substantive alterations to the regulations. In view of the interest in these regulations, each section of these final regulations which has been revised or which was the subject of major commentary or concern is discussed in detail below.

General

Several commentors took issue with requirements that the Governor, specifically, must act at several key points in the withdrawal/substitution process. A major objection was based on existing longstanding delegations of authority to highway or transit agencies resulting from State law or policy. The regulations, however, repeat statutory language wherein withdrawal requests and substitute projects must be submitted by the Governor. They also extend the latter statutory requirement to submittal of the substitute projects concept program by the Governor. To emphasize the statutory requirement, a definition of "Governor" has been added under § 476.2(b) and "or his/her designee" has been deleted from § 476.308(a). Nevertheless, the definition recognizes the right of these chief executives to delegate their authority for the above actions when the delegations are documented as specifically referring to these regulations. The Department will accept the actions of designees thus established who are acting for the Governor.

A basic premise of these regulations is that Governors (including their specific designees) and local officials have the responsibility in the Interstate transfer process to meet the needs of their own jurisdictions in such a way that programs of mutual benefit can be implemented and that conflicts can be resolved. The techniques for meeting these responsibilities include those that have been tested by time in categorical programs of the Department such as Section 3 public transportation grants and Federal-aid Primary System highway authorizations or have been the subject of intermodal regulations for transportation planning in urbanized areas. The new characteristics of Interstate transfer, however, would have led to much more extensive State-local procedural requirements if the State's chief executive were not assigned a key role by the legislation.

The Department reaffirms the June 1974 preamble statement on the regulations hereby being revised that: "The Federal Government will not be an arbiter in these matters of State and local decisionmaking." At that time the statement referred to State-local coordination of withdrawal requests and to disagreements about essentiality of Interstate segments. Additional areas of decisionmaking to which this applies are programing of Federal and State funds across time on a statewide basis, distribution of substitute funds from a single withdrawal between urbanized areas and jurisdictions in nonurbanized connecting corridors, balancing of available funds to meet substitute highway and substitute transit needs on a statewide basis, and project development and submittal procedures. Each of these and other important decisionmaking areas can have critical State level, State-local, and local level implications which are properly resolved, when necessary, by the Governor prior to Federal involvement.

The Department agrees with comments to the effect that the proposed regulatory wording had the unintended effect of diminishing the decisionmaking role of the Governor by implying mandatory pro forma submittal of requests endorsed by local officials. Clarifying amendments have been made to §§ 476.308(a) and 476.310(e).

Four comments were received concerning the deadlines for submitting withdrawal requests and concept programs. Prior to September 30, 1983, the concept programs will be used primarily for budget purposes. The projected funding needs contained in the programs will facilitate the preparation of accurate budget proposals. Funding requests for individual projects may be submitted and approved without previously being approved in concept, as part of a concept program, until September 30, 1983. After September 30, 1983, in addition to budgeting purposes, concept approval becomes a prerequisite to individual project approvals. The only exception to this is for those concept programs related to Interstate segments which were under injunction prohibiting their construction as of November 6, 1978. In these cases the September 30, 1986, time limitation will govern approval of withdrawals and the development of substitute projects. Since all withdrawals and project concepts (except those under injunction) must be approved prior to September 30, 1983, it was suggested in the NPRM preamble that they should be submitted by July 30, 1983, to provide adequate time for review and approval. Withdrawal requests and concept programs submitted between July 30, 1983, and September 30, 1983, will be given prompt consideration so that the September 30, 1983, time limitation can be met. However, the statutory language does not provide any flexibility with regard to this time limitation. It may be difficult to provide approvals for requests which are submitted just prior to September 30, 1983, if they lack appropriate documentation or are found deficient in some other regard. Additional guidance concerning the preparation and submission of concept programs will be provided in directives shortly after issuance of this final rule.

One comment asked whether the programming of an Interstate substitute transit project in the Annual Element of a Transportation Improvement Program (TIP/AE) would affect the availability of

UMTA capital grant funding under the Section 3 and 5 capital grant programs. Section 103(e)(4) of Title 23, U.S.C., requires that Interstate substitution funds be "supplementary to and not in substitution for" funds available under the Urban Mass Transportation Act, of 1964, as amended. As such, the use of these funds will not jeopardize the availability of UMTA Section 5 formula apportioned funds and Section 3 discretionary grant funds, to the extent that discretionary funds are available. In addition, § 476.312 of the regulation provides for the utilization of Interstate substitution funding in combination with other Federal mass transit and/or highway funding for the purppose of implementing a project which might not otherwise be possible through the use of only one source of funding.

One comment suggested the regulations be revised to permit the further designation of Interstate routes because the provisions of the Federal-Aid Highway Act of 1978 could be interpreted to permit the continued designation of routes with Federal Interstate funding. This suggestion was not adopted because the statutory language clearly has been read in Section 107(a)(1) and 107(b) of the 1978 Act to prohibit designation of mileage as part of the Interstate System.

Definitions (§ 476.2)

This section includes only those definitions considered necessary. Two new definitions were included and four of the previous definitions were revised as a result of comments received.

One comment noted that the term "concurrence," as defined in § 476.2(b)(2), was not appropriate for the way the term was used in § 476.310(b) and (c). The definition has been modified so that it is appropriate for usage throughout the final rule.

A definition for "Governor" was added. The need for this new definition is discussed in this preamble under "General," above, and under "Proposals For Substitute Public Mass Transit And Highway Projects (§ 476.310)," below.

Several comments were received requesting clarification of the definition of "open to traffic" as it was contained in proposed § 476.2(b)(5). Additional clarification has been provided in the revised definition as contained in renumbered paragraph (8) and also in § 476.302(b)(5). Some of the language from the preamble was included in the regulation. One comment suggested that "new location" should be eliminated from the reference to a highway being replaced by an entirely new facility as the phrase is not pertinent in evaluating whether or not a facility should be considered "open to traffic." We agree that this is not always a valid measure and have not included this NPRM preamble wording in the final regulations. No attempt was made to provide a precise definition which would cover the wide variety of potential cases. The determination on a segment's classification as "open to traffic" will be made on a case-by-case basis after reviewing the history of the Interstate segment, currently approved design concept, operational characteristics, and other pertinent information.

Several comments and questions were received concerning types of projects that could be approved as substitute highway projects. The definition of a "substitute highway project" has been revised to remove any question of consistency with the provisions of Title 23, U.S.C., by allowing any undertaking on the Federal-aid systems described in 23 U.S.C. 103 which is eligible for Federal financial assistance under Title 23. The definition now makes reference to several eligible projects including projects for high occupancy vehicle lanes, carpooling and vanpooling. The original wording was intended to allow any construction, as defined in Title 23, U.S.C., which would be done on any Federal-aid highway system under the provisions of Title 23, but was not intended to include undertakings on other highway systems.

One comment noted that the proposed revised definition of a "substitute nonhighway public mass transit project" appeared to expand project eligibility beyond the legislative authority of 23 U.S.C. 103(e)(4). The definition has been amended to conform to that used in the original regulation with an appropriate modification to reflect the transportation improvement program requirements of 23 CFR 450.306.

Several comments requested clarification on what constitutes "under construction or under contract for construction" as this wording was used in § 476.310(g). A new definition has been included in § 476.2(b)(10), for "under construction or under contract for construction." The new definition indicates that obligations or grants for physical construction must have occurred which would fully commit the ultimate project in both length and scope. Detailed guidance will be provided later on this item in the form of FHWA and UMTA directives.

Applicability (§ 476.302)

This section describes the Interstate System segments to which these regulations do and do not apply. It also discusses the time limitation for approval of withdrawal requests. Two substantial revisions were made and clarification was provided in one subparagraph as a result of comments received.

The House Public Works Committee expressed disagreement with allowing application for withdrawal on a segment which "has portions within an urbanized area and has portions outside the same urbanized area but in close proximity to that area." The final regulations reflect this comment by providing for withdrawal of only those segments entirely within urbanized areas and segments that pass through and connect urbanized areas in a State in paragraph (b).

Paragraph (b)(5) discusses open to traffic Interstate segments. Clarification has been provided for segments in which only a portion, between logical termini, is open to traffic.

One comment questioned the applicability of the regulations to a segment added to the Interstate System by specific legislation. When the proposed rule was being prepared for publication, Department policy concerning such additions was not firmly established and therefore could not be reflected. Now, Department policy has been developed to a point where these additions can be addressed in this final rule. Congress mandated these routes and it is evident from their legislative histories that Congress considered the routes to be of great importance. Although the Department may have the legal authority to approve the withdrawal of such segments, it would be highly inappropriate to remove a segment from the Interstate System which Congress, by law, had directed to be added to the System. Therefore, the Department will not approve the withdrawal of any segment added to the Interstate System by specific legislation unless a comparable statute permitting its withdrawal is enacted. This restriction is reflected in new subparagraph (6) of § 476.302(b).

Withdrawal Request (§ 476.304)

This section contains a discussion of the requirement for joint submission of a withdrawal request by the Governor and local government concerned. It also outlines the items which must be included in the request. Only one minor clarifying revision was made to this section as a result of comments received. Additional clarification is offered in this section of the preamble.

Two comments were received concerning the need to include public involvement in the withdrawal process with one comment suggesting responsible local civic or neighborhood groups be permitted to initiate withdrawal requests. Secion 103(e)(4) of title 23, U.S.C., requires a withdrawal request be made jointly by "the State Governor and the local governments concerned." In some cases, these parties may consider it appropriate to hold public hearings or request other input from various sources before making a decision. In other cases, adequate information may already be available from the normal planning and preliminary project activities. Another comment received from a city expressed concern that the rules for requesting withdrawal of an interstate segment could be interpreted so as to preclude use, in the State and local decisionmaking process, of the legislative devices of referendum and initiative. Nothing in these rules is intended to preclude the legislative prerogative of a State or local electorate with respect to the withdrawal process so long as the action is permissible under State and/or local law.

In the absence of specific legislative requirements, it is not considered appropriate to prescribe the specific arrangements or determinations upon which State and local officials must base their decision.

Two comments were received concerning the role of metropolitan planning organizations (MPO's) in the withdrawal and substitution process. This role was not introduced by the current regulatory revision but has been a part of the process since the original notice of proposed rulemaking on March 11, 1974. It is considered critical to retain the involvement of the parties responsible for long-range, comprehensive planning in urbanized areas in decisions having a significant impact on the development of those areas. The Department believes that in urbanized areas the local governments concerned and the responsible local officials should be involved in withdrawal and substitution decisions. Such cooperation and consultation is considered important and in keeping with the emphasis on local involvement in 23 U.S.C. 134. Additionally, it assures that all concerned entities are kept informed of plans and decisions affecting their interests. The representation of the MPO is primarily a State/local matter. However, 23 CFR 450.104(d) does require that principal elected officials of general purpose local government within the jurisdiction of the MPO have adequate representation on the MPO. Selection of project concepts and the development of substitute projects are consistent with the normal procedures for FHWA and UMTA projects.

Several commentors asked who was responsible for acting on behalf of local governments concerned in partnership with the Governor in proposing withdrawal requests (e.g., Chief Executive, Council, Commission, etc.). The regulations do not prescribe who is responsible for acting on behalf of the local government concerned in this situation. It is assumed that a delineation of authority exists within each municipality which established appropriate roles for governing the affairs of that municipality. The Department is looking for an action that is current and binding for the particular form of local government. Unless there are reasons to believe otherwise, it is assumed that the individual group that has taken a concurrence action on behalf of the local government concerned has the authority to do so. Also, the District of Columbia expressed concern that the proposed regulations would prescribe an internal operation since the term "Governor" was understood and would now be defined to mean the Mayor for that area. Once again, this is not the case. Should the Mayor have the local authority to act as the unilateral representative of the District of Columbia in such matters, then his concurrence alone would be sufficient both in terms of acting as the Governor and as the local government concerned.

One comment suggested that § 476.304(b) could be clarified by adding a statement that the concurrence of the responsible local officials is required regardless of the method used to accomplish the required joint submittal for segments in urbanized areas. This requirement was indicated in § 476.304(a) but has also been added to paragraph (b) to provide the suggested clarification.

At least six commentors took issue with the lack of precision in not requiring unanimous local support for withdrawal of an Interstate segment. Recommendations were received suggesting the regulations require total support of all local governments concerned or support of a "majority" or a stated percent of the local government concerned. The Department continues to view the statutory language as not requiring local unanimity and basically judgmental in application. Substantial local support coupled with the approval of the Governor and, in urbanized areas, with concurrence of responsible local officials has proven to be a workable approach in withdrawal submissions to date, and would become no clearer if assigned a numerical guideline.

One comment suggested that the intent of the statute with regard to withdrawals of nonurbanized portions of segments did not require support by nonurbanized local governments concerned. While it can be agreed that emphasis in withdrawals is given to urbanized areas by the legislation, no basis can be found for excluding any local government, in whose jurisdiction the segment lies, from an assessment of substantial local support.

One comment suggested that when a withdrawal request is being prepared, the entire Federal-aid system in the corridor should be reviewed and expanded to include all major roadway facilities. These regulations require the participation of the MPO in the decision to withdraw a segment of the Interstate System and the selection of projects in a manner consistent with the urban transportation planning process for the area. As a part of this process, it is expected that the transportation plans for the affected area will be reevaluated to take into consideration the effect of deleting a significant link in the highway network. As part of the normal planning process, this evaluation would consider the need to revise the functional classification of roads and streets, possible changes in the Federal-aid system, and the additional demands which will be placed upon portions of the remaining network within the corridor.

Withdrawal Approval (§ 476.306)

This section describes factors considered prior to Departmental approval, procedures for adjusting authorized funds, and other technical matters related to the approval of a withdrawal request. Only one subparagraph was revised as a result of comments received. However, this section of the preamble provides clarification for other comments received.

The regulations provide for the approval of withdrawals by the Federal Highway Administrator and the Urban Mass Transportation Administrator. A question was raised as to why the UMTA Administrator is directly involved in the withdrawal approval process since the principal Federal decision is the determination that the segment is not essential to completion of a unified and connected interstate System. The Secretary delegated authority to administer 23 U.S.C. 103 to the Federal Highway Administrator except as it involves mass transportation projects authorized by 23 U.S.C. 103(e)(4), which are delegated to

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the Urban Mass Transporatation Administrator. The Department recognizes the principal decision in withdrawal is determination of essentiality; however, as all withdrawals potentially involve both substitute highway and transit projects, and the substitute project funds are appropriated by Congress to UMTA, the dual review and approval serves to assure the early involvement of all parties and clearly indicates the withdrawal-substitution program is a coordinated program. The joint review and approval processing of withdrawal requests is working quite well and has been retained in the regulations.

Several comments were received concerning the essentiality determination made by the Federal Highway Administrator. Once defense needs are considered, the principal Federal decision in an Interstate withdrawal is the determination that the segment is not essential to a unified and connected Interstate System. This decision is made on the basis of national transportation needs without consideration of a withdrawal's impact on local transportation needs or plans. It is assumed that the effects of the withdrawal upon the local system has been evaluated and any necessary measures will be taken as part of the normal planning process. The primary concern in an essentiality decision is to assure the remaining system continues to retain connectivity and will continue to provide all necessary links for the reasonable movement of people and goods either through or around the area of the withdrawal.

A determination that a segment is not essential can be requested at any time by the Governor or designated MPO. Although the designation of a route segment as an "essential gap" in the Interstate Gap Study [1] does indicate the route has a high priority for construction, this designation does not of itself preclude its withdrawal if other routes are available which will maintain essential Interstate route connectivity.

Three comments were received concerning the use of the "Composite Index," as shown in the quarterly publication "Price Trends for Federal-Aid Highway Construction" [2] to adjust the funding authorized by a withdrawal. The composite index shown in the first table of the publication will be used rather than the composite index in the table entitled "Price Trends for Federal-Aid Highway Construction-Rural, Urban, and Rural and Urban Combined," because it is weighted to reflect the actual value of construction rather than an adjustment to arbitrary base quantities which do not reflect the actual value of construction in either urban or rual areas. The quarterly composite indexes will be used to adjust funding availability rather than the three quarter moving index. By using the quarterly index, the adjustment more closely reflects the requirement in 23 U.S.C. 103(e)(4) to make the adjustment "as of the date of approval of each substitute project." The national composite index will be used rather than a State or local index to assure an adequate sample upon which to base an index.

One comment questioned the need to retain "May 5, 1976" and "the second calendar quarter of 1976" in § 476.306(b) because they appear outdated. These references are only necessary to describe the method of computing previous adjustments to the amount authorized for several of the earliest withdrawals. They are not relevant to the method of computing subsequent adjustments for these withdrawals or withdrawals approved after May 5, 1976. Because the references are primarily of historical significance and they tend to confuse the current procedures for determining amounts authorized for substitute projects by a withdrawal, they have been eliminated from the final rule.

Two comments were received concerning § 476.306(f), which references the payback provisions of 23 CFR Part 480. Pub. L. 96–106 will require revisions to the payback regulations. Until the revised payback regulations are issued, any payback requirements will be governed by 23 CFR Part 480 with appropriate modifications reflecting the new law. It is considered beyond the scope of this regulation to provide detailed guidance on the existing payback regulation or how that regulation will be revised to reflect the Pub. L. 96–106.

Concept Approval for Substitute Projects (§ 476.308)

This section outlines the procedures for development and submission of concept programs. Several changes (primarily editorial) were made to this section as a result of comments received.

Two comments were received which suggested that the final regulations require that responsible local officials consult with officials of special purpose programs, such as air pollution control agencies in areas designated as nonattainment for carbon monoxide or ozone by the Environmental Protection Agency, park and recreation agencies, etc., before selecting Interstate substitute transit and highway projects. Although the Department agrees that it is in a region's best interest to consider the important contributions mass transit and highway projects can make in alleviating special regional problems and promoting regional goals and interests, it does not believe that it is appropriate for the Federal Government to prescribe a process which should be developed at this stage at the State and local level. As such, the final regulations do not incorporate these comments and assume that the selection of substitute projects by responsible local officials will culminate from a careful planning, review, and coordination process which evaluates the transportation merits of the proposed substitute project as well as the protential for broader positive impacts for the area.

Several commentors asked whether a new submittal of a concept program would be required if a submission had previously been made. The regulations require a submission of a program of substitute projects for joint approval by FHWA and UMTA before September 30, 1983. Since no previous substitute project concepts have been approved in compliance with these regulations, a resubmission of the concept program which includes the information specified will be required through the FHWA.

Several comments asked if the projects must be included in a transportation improvement program (TIP) when submitted as part of a concept program. All substitute projects do not need to be included in an approved TIP when the concept program is submitted. These projects may be added to the TIP as appropriate for the urbanized area which the projects will serve. However, the TIP should be revised to include those projects which are expected to be initiated within the time frame of the area's TIP and must be included in the annual element of the TIP prior to authorization of the work.

The proposed regulations indicated that, as part of the concept program submission (§ 476.308(a)(2)(iii)), a summary would be needed of the anticipated level of funding needs by fiscal year, as estimated on a substitute transit and highway project-by-project basis. It is understood that it is a difficult task to predict accurately the actual timing of application submissions and corresponding funding needs of individual projects over a multi-year time frame. Also, it is recognized that this requirement could result in a large number of proposed adjustments and refinements to previously approved project concepts. In order to avoid this potential shortcoming without undermining the usefulness of the concept program in this regard, § 476.308 was revised to require, in paragraph (a), individual fiscal year funding estimates for the area only on an overall transit and/or highway basis rather than on a specific project-by-project basis. In this manner, the advancement of specific application requests can be gauged within a broadly planned implementation strategy which should be sufficiently flexible to accommodate priority needs of the local area as they might change.

New paragraph (a)(3) has been added to clarify the role of the Governor in the preparation and submission of concept programs. This role is discussed in greater detail under the section entitled "General" above. Along these lines, paragraph (a)(4) has been revised by deleting "or his/her designee." This corresponds to the new definition of "Governor" contained in § 476.2(b)(3).

Six comments requested clarification or offered suggestions concerning § 476.308(b)(1). This section has been revised to clarify that the adjustments and refinements to project concepts after September 30, 1983, relate only to those project concepts approved prior to that date. Section 107(b) of the Surface Transportation Assistance Act of 1978 precludes approval of new substitute projects after September 30, 1983. As detailed substitute project plans are developed and funding needs are more accurately determined, minor modifications from the previously approved concept descriptions as well as adjustments in both individual project funding needs and overall yearly funding needs may be necessary. These types of adjustments and refinements will be permitted to approved concepts. It is recognized that currently unforeseen circumstances could prevent implementation of certain approved project concepts by the September 30, 1986, deadline. It is therefore suggested that sufficient flexibility be designed into an overall concept program to permit some of the projects to drop out and yet have a sufficient number of remaining projects to utilize available funding. The degree of flexibility necessary would be dependent on the nature of overall substitution program. As discussed above, § 476.308(a)(1)(iii) has been modified to require only yearly anticipated needs on an overall basis rather than project-by-project yearly needs. To some extent, this facilitates the development of a sufficiently flexible concept program.

Proposals For Substitute Public Mass Transit and Highway Projects (§ 476.310)

This section provides details concerning the development of individual substitute projects, including funding applications and deadlines. Actual changes to this section, from the proposed rule, are primarily editorial in nature. This section of the preamble explains these changes and provides additional clarification where changes were not considered appropriate.

Two requests for clarification on the geographic setting requirements for substitute projects were received. Section 476.310(a) indicates that substitute projects must serve the urbanized area or nonurbanized area corridor, or both, from which the Interstate segment was withdrawn. For those Interstate segments involving a single urbanized area this means that a substitute project may be located anywhere within the urbanized area. In those cases, a substitute project may also be located outside the urbanized area if it can be demonstrated that the project serves the urbanized area. For those Interstate segments involving more than one urbanized area and a connecting nonurbanized area corridor, substitute projects can be in or serving either urbanized area. They can also be in or serving the nonurbanized area connecting corridor.

A large number of comments were received concerning paragraphs (b) and (c). Several comments requested clarification or offered interpretation of the requirement that a substitute project must "serve the urbanized area or the connecting nonurbanized area corridor, or both." As stated in the notice of proposed rulemaking, this does not require substitute projects to be located along the right-of-way of the withdrawn route nor does it even require these projects to be located within the same corridor. However, the total package of projects should serve the needs of the area which would have been served by the withdrawn route. Since project selection is to be made by the "responsible local officials of the urbanized area or areas to be served," the selection process should, in most cases, generate a package of projects which address the needs of the area to be served. While § 476.314(a)(1) requires the respective Administrators of UMTA and FHWA to determine that substitute projects serve the urbanized area or the nonurbanized corridor or both from which the Interstate segment was withdrawn, this Federal judgment will rely heavily upon the local decision-making process to reflect the needs of the area to be served.

One comment expressed concern that the responsible local official of an urbanized area would be selecting substitute projects in and serving a nonurbanized area connecting corridor. Paragraphs (b) and (c) have been revised in an effort to clarify the roles of the selecting parties. Responsible local officials, in a nonurbanized area connecting corridor, select substitute projects located in or serving the nonurbanized area corridor. In the case of a substitute project which is located outside, but serves the nonurbanized area corridor, the concurrence of the jurisdiction in which the project is located is needed.

Another commentor believed that the term "responsible local officials of the jurisdiction to be served" in § 476.310(c) could lead to difficulty in determining which nonurbanized jurisdiction should be involved in substitute project selection. It is recognized that most nonurbanized connecting corridors will not have an established forum for local decisionmaking. Local jurisdictions in the corridor will, therefore, have to rely on State-local arrangements under the purview of the Governor to develop an equitable distribution of substitute funds.

A clarifying parenthetical phrase has been added to § 476.310(b) which indicates that all subsequent actions made by the Department which amend or are related to 23 CFR Part 450, Subpart A will be applicable to substitute projects.

Several comments were received concerning paragraph (d) which indicates that substitute highway projects need not appear in the statewide Federal-aid program. By law, substitute highway projects are to be submitted by the Governor or his/her designee. For this reason, it would be inappropriate to require these projects to be a part of the State highway agency's annual program of projects (105 program). The requirement that individual projects must be in the annual element of an urbanized area's transportation improvement program should be sufficient to assure that the work will be compatible with the area's transportation plans. In addition, the requirement of § 476.310(e) that "substitute highway projects shall be developed in accordance with the policies and procedures established for the Federal-aid highway system" assumes and assures that the State highway agencies will have a significant

[1] Report of the Secretary of Transportation to the U.S. Congress in accordance with section 102(b) of the Federal-Aid Highway Act of 1976, House Committee on Public Works and Transportation, Committee Print 95–18, 95th Congress, 1st Sess., October 1976. Available for inspection and copying pursuant to 49 CFR Part 7, Appendix D.

[2] Published by FHWA, Interstate Reports Branch. It is available for inspection and copying pursuant to 49 CFR Part 7, Appendix D.

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role in the development of these projects. Finally, these regulations do not prohibit the inclusion of substitute highway projects. If a State prefers, these projects may be included in its statewide program of projects.

Several comments expressed concern that the requirement in § 476.310(e) for submission of substitute transit and highway projects by the Governor was a change from previous policy and procedures even though there was not a corresponding change in legislation on this matter. A number expressed concern that the traditional transit operator-city/UMTA relationship was being jeopardized by the proposed regulations. Under regulations issued on June 12, 1974 (39 FR 20656, 23 CFR Part 476), and amended on November 6, 1974 (39 FR 39659), the submission of proposals for substitute public mass transit projects was accomplished by the Governor (see § 476.310 of the June 12, 1974 regulation). This was based on an interpretation of the requirements of Section 137(b) of the Federal-Aid Highway Act of 1973 (Pub. L. 93–87). Section 110(a) of the Federal-Aid Highway Act of 1976 (Pub. L. 94–280) further amended Section 103(e)(4) of Title 23, United States Code, to provide for substitute projects "* * * which are selected by the responsible local officials of the urbanized area or area to be served, and which are submitted by the Governor of the State in which the withdrawn route was located." These regulations continue the requirement that all substitute projects be submitted by the Governor, but it is not the intent of the regulations to interfere with the development phase of transit project applications which is usually done by transit officials for the area or by local governmental units in consultation with transit officials. Also, the law has been interpreted to allow States to develop their own procedures as to how the Governor will accomplish his/her submission of the application. In fact, a new definition of "Governor" has been created which makes clear that the Governor may make a specific delegation of authority to other State and local officials to act on his/her behalf in any withdrawal and substitution action should he/she so desire. There are many stages during which the Governor can delegate transit project application responsibility to local officials, such as immediately after the withdrawal action is approved, after he/she endorses the annual element to a Transportation Improvement Program (TIP/AE) for a specific year, after he/she approves and submits the required concept program (see § 476.308), etc.

Also, there are a number of options which the Governor may select in submitting an application if there is no delegation of authority made. For example, the Governor may actually submit the locally-prepared application; he/she may forward the locally-prepared and formally-executed application with a letter of concurrence; he/she may provide the local applicant a letter of concurrence to accompany a locally submitted and executed application, etc. The regulations are designed to ensure that local, regional, and State interests are considered in the advancement of substitute transit projects without otherwise disturbing the traditional local-UMTA direct relationship.

Administrator's Review and Approval of Substitute Projects (§ 476.314)

This section discusses the technical aspects of the Federal review and approval of individual substitute projects. Two comments were received on this section which concerned the participation ratio for a substitute project. One comment indicated it would be preferable to apply the same participation ratio for substitute projects as used on the Interstate System. Section 107(a)(2) of the Surface Transportation Assistance Act of 1978 requires that substitute funding not exceed 65 percent. Therefore, the statutory provisions do not permit increasing the Federal share to 90 percent. The second comment on this item requested clarification of the statement in the proposed regulations that the Federal funding share for substitute projects was not to exceed 85 percent. Another provision in the proposed regulations indicated that requests for substitute nonhighway public mass transit projects were to be developed and processed in accordance with the policies and procedures established for the UMTA Section 3 capital grant program. The latter provision appears to be contradictory since the Federal share for UMTA Section 3 projects is 80 percent, and not 65 percent. There has been an addition to § 476.314(f) in the final regulations which clarifies that the Federal funding share for all substitute projects approved after November 6, 1978, shall not exceed 85 percent, notwithstanding the normal funding ratios for these types of projects under UMTA and FHWA programs. This implements the amendment to Section 103(e)(4) of Title 23, U.S.C., made by Section 107(a)(2) of Title I of the Surface Transportation Assistance Act of 1978.

Note.—The FHWA and UMTA have determined that this document contains a significant regulation according to the criteria established by the Department of Transportation pursuant to Executive Order 12044. A regulatory analysis is available for inspection in the public docket and a copy may be obtained by contacting Mr. L. A. Staron of the program office at the address specified above.

Accordingly, Part 450, Subpart C and Part 476, Subparts A, B, C, and D of Title 23, Code of Federal Regulations, are revised to read as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program)

Issued on: October 15, 1980.

John S. Hassell, Jr.,
Federal Highway Administrator.

Theodore C. Lutz,
Urban Mass Transportation Administrator.

PART 476—INTERSTATE HIGHWAY SYSTEM

Subpart A—General

Sec.
476.2 Definitions

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—Withdrawal of Interstate Segments and Substitution of Public Mass Transit or Highway Projects or Both

476.300 Purpose.
476.302 Applicability.
476.304 Withdrawal request.
476.306 Withdrawal approval.
476.308 Concept approval for substitute projects.
476.310 Proposals for substitute public mass transit and highway projects.
476.312 Combined proposal.
476.314 Administrator's review and approval of substitute projects.

Authority: 23 U.S.C. 103(e)(4), 103(h), and 315; 49 CFR 1.48(b) and 1.51(f).

Subpart A—General

§ 476.2 Definitions.

(a) Except as otherwise provided, terms defined in 23 U.S.C. 101(a) are used in this part as so defined.

(b) The following terms, where used in the regulations in this part, have the following meaning—

(1) "Base cost year" for the latest Interstate System cost estimate approved by Congress shall be the calendar year specified in the Interstate Cost Estimate Manual [1] for that

[1] The "Instructional Manual for the Preparation and Submission of the (Year) Estimate of the Cost of Completing the Interstate System in Accordance with section 104(b)(5) of Title 23, U.S.C., Highways," published by the Federal Highway Administration.

Footnotes continued on next page

estimate. For example, the base cost year for the 1972 estimate is 1970.

(2) "Concurrence" means written agreement which is currently binding on the concurring party and which addresses the specific proposal being submitted for approval.

(3) "Governor" means the Governor of any one of the fifty States and the Mayor of the District of Columbia. It also refers to any State or local entity specifically designated by the Governor for the purpose of executing any of his/her responsibilities under this part.

(4) "Interstate segment" means any designated, toll-free route, or portion thereof, of the Interstate System.

(5) "Local governments concerned" means local units of general purpose government under State law within whose jurisdiction the Interstate segment lies, or is to be withdrawn.

(6) "Open to traffic" means a segment which has been constructed or has had major improvements with Federal-aid Interstate funds and open to normal Interstate traffic; or a segment which was an existing freeway, meeting acceptable Interstate geometric standards and recognized as the final location of the route, when incorporated into the System. "Open to traffic" does not mean a segment of existing highway that is ultimately planned to be replaced by an entirely new facility.

(7) "Responsible local officials" means:

(i) In urbanized areas, principal elected officials of general purpose local governments acting through the Metropolitan Planning Organization in accordance with Part 450, Subpart A of this title, and;

(ii) In rural areas and urban areas not within any urbanized area, principal elected officials of general purpose local governments.

(8) "Substitute highway project" means any undertaking for highway construction, which may encompass phases of work including preliminary engineering, right-of-way, and actual construction, individually or any combination thereof, on any of the Federal-aid systems described in 23 U.S.C. 103 and which is eligible for Federal financial assistance under title 23, U.S.C. A substitute highway project may include the construction of exclusive or preferential bus lanes, high occupancy vehicle lanes, highway traffic control devices, bus passenger loading areas and facilities (including shelters), and fringe and corridor parking facilities to serve bus and other public mass transportation passengers. A substitute highway project may also be a carpool and vanpool project including but not limited to, providing carpooling opportunities to the elderly and handicapped, systems for locating potential riders and informing them of convenient carpool opportunities, acquiring vehicles appropriate for carpool use, designating existing highway lanes as preferential carpool highway lanes, providing related traffic control devices, and designating existing facilities for use as preferential parking for carpools.

(9) "Substitute nonhighway public mass transit project" means any undertaking to develop or improve public mass transit facilities or equipment. A project in an urbanized area must be included in and related to the transportation improvement program (TIP) required under 23 CFR 450.306. The TIP in urbanized areas and all projects in nonurbanized areas must include either the construction of fixed rail facilities, or the purchase of passenger equipment, or both. Passenger equipment includes buses, fixed rail rolling stock, and other transportation equipment for passenger use.

(10) "Under construction or under contract for construction" means funds for physical construction have been obligated (for highway projects) or have been included in an approved grant (for transit projects) which would commit the final development of the ultimate project in both length and scope. When projects do not involve physical construction, "under construction or under contract for construction" means the obligation of funds (for highway projects) or grant approval (for transit projects) has occurred.

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—Withdrawal of Interstate Segments and Substitution of Public Mass Transit or Highway Projects or Both

§ 476.300 Purpose.

The purpose of the regulations in this subpart is to prescribe policies and procedures for implementation of 23 U.S.C. 103(e)(4), which permits the withdrawal of Interstate System segments and the substitution of public mass transit or highway projects or both.

§ 476.302 Applicability.

(a) Except as provided in paragraph (b) of this section, this subpart applies to an Interstate segment at any stage of development if:

(1) The segment is within an urbanized area; or

(2) The segment passes through and connects urbanized areas within a State.

(b) The regulations in this subpart shall not apply to:

(1) A segment removed from the Interstate System prior to August 13, 1973;

(2) A segment added to the Interstate System after May 5, 1976, under the provisions of 23 U.S.C. 103(e)(2);

(3) Interstate segments designated under 23 U.S.C. 139;

(4) A toll bridge, tunnel, or approach thereto for which funds were advanced in accordance with 23 U.S.C. 124(b); or

(5) After September 30, 1979, an Interstate segment open to traffic before the date of the proposed withdrawal. If only a portion of an Interstate segment (between logical termini) is open to traffic the regulations of this subpart are applicable to the portion not open to traffic. The open to traffic portion will be removed from the Interstate System under 23 U.S.C. 103(f).

(6) Any segment added to the Interstate System by specific legislation unless a comparable statute permitting its withdrawal is enacted.

(c) Withdrawal requests may not be approved under this subpart after September 30, 1983, unless the route segment was under a court injunction prohibiting its construction as of November 6, 1978. For segments under such injunction, withdrawal requests may not be approved under this subpart after September 30, 1986. However, as indicated in § 476.310(g), the September 30, 1986, substitute project construction time limitation remains applicable to these segments.

§ 476.304 Withdrawal request.

(a) A request to withdraw an Interstate segment within a State under this subpart shall be submitted jointly by the Governor and local governments concerned. For those segments within urbanized areas, the concurrence of responsible local officials is also required. The withdrawal request shall be submitted to the Federal Highway Admininstrator and the Urban Mass Transportation Administrator, through the Federal Highway Administrator.

(b) Joint submittal may be accomplished by a single request prepared by the Governor and concurred in by the local governments concerned. This may also be accomplished by a request by the Governor with separate concurrence documentation by the local governments concerned. In either case, for those

Footnotes continued from last page
U.S. Department of Transportation, is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

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segments within urbanized areas, the concurrence of responsible local officials is also required. While unanimous local action is not required, the withdrawal request is expected to have substantial support.

(c) The request for withdrawal shall include the following:

(1) A statement that the request is filed pursuant to 23 U.S.C. 103(e)(4).

(2) Reasons why the segment is not essential to the completion of a unified and connected Interstate System.

(3) A detailed statement of mileage and cost of the segment to be withdrawn as included in the latest Interstate cost estimate approved by Congress.

(4) An assurance that a toll road will not be constructed in the traffic corridor which would be served by the segment.

§ 476.306 Withdrawal approval.

(a) The Federal Highway Administrator and the Urban Mass Transportation Administrator may approve the withdrawal of an Interstate segment under the provisions of this subpart after considering the impact of the withdrawal on national defense needs if:

(1) The requirements of § 476.304 are met; and

(2) The Federal Highway Administrator determines that the segment is not essential to completion of a unified and connected Interstate System.

(b) When the withdrawal of an Interstate segment is approved under paragraph (a) of this section, an amount equal to the Federal share of the cost to complete the withdrawn segment as shown in the latest Interstate System cost estimate approved by Congress is authorized for substitute projects. The amount authorized will be increased or decreased, as determined by the Federal Highway Administrator, based on changes in construction costs of the withdrawn route occurring between the base cost year of the latest cost estimate approved by Congress which included the costs of the withdrawn route and the date of approval of each substitute project. The changes in construction costs will be computed on the basis of the Composite Index shown in the quarterly publication "Price Trends for Federal- Aid Highway Construction." [1] For purposes of cost adjustments, the Composite Index for the calendar quarter within which the approval of the substitute project occurs will be used in computing the change in construction costs.

[1] Published by FHWA, Interstate Reports Branch, and available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

(c) Authorizations of funds made available by the withdrawal of an Interstate route under 23 U.S.C. 103(e)(4) shall remain available until expended within the limitations described in § 476.310 (f) and (g).

(d) Effective as of date of approval of the withdrawal of an Interstate segment, the unobligated apportionments for the Interstate System of the State receiving the approval will be reduced in the proportion that the Federal share of the cost of the withdrawn segment bears to the Federal share of the total cost of all Interstate routes in the State as reported in the latest Interstate System cost estimate approved by Congress.

(e) Mileage withdrawn under the provisions of this subpart may not be redesignated in any State under any provision of title 23, U.S.C.

(f) The payback of Federal-aid Interstate funds expended on a segment withdrawn under this subpart shall be governed by 23 CFR Part 480, Use and Disposition of Property Acquired by States for Modified or Terminated Highway Projects.

(g) Segments withdrawn under the provisions of this subpart may not be redesignated under the provisions of 23 U.S.C. 139.

§ 476.308 Concept approval for substitute projects.

(a) A concept program which identifies the proposed substitute projects to be approved in concept and which, as a minimum, accounts for all unobligated funding made available by this subpart must be submitted as soon as practicable after the effective date of this subpart or after a withdrawal is formally approved.

(1) The substitute project concepts included in the program must be selected in a manner consistent with the procedures provided in § 476.310(b) and (c).

(2) The concept program submission must contain:

(i) A proposed split, if any, of Interstate withdrawal authorizations between transit and highway projects;

(ii) A concept description (e.g., type of work, termini, length, estimated cost, number and type of vehicles, size and type of facility, identification of major transportation investment, etc.) of the proposed transit and/or highway projects for which concept approval is requested; and

(iii) A summary of the anticipated level of overall funding needs by individual fiscal year, as estimated on a general transit and/or highway basis.

(3) The concept program shall be endorsed by the Governor and the responsible local officials.

(4) The concept program should be submitted by the Governor to the Federal Highway Administrator and the Urban Mass Transportation Administrator, through the Federal Highway Administrator.

(b) Approval of substitute project concepts must be given jointly by the Federal Highway Administrator and the Urban Mass Transportation Administrator by September 30, 1983. This time limitation does not apply to segments which were under court injunction prohibiting construction as of November 6, 1978.

(1) Adjustments and refinements to the previously approved project concepts may be permitted after September 30, 1983.

(2) Approval of the project concepts does not commit funding under this subpart nor does such approval constitute an obligation on the State or local governments to fully implement the project concepts. Approval of a project concept is processed as a categorical exclusion under 23 CFR Part 771.

§ 476.310 Proposals for substitute public mass transit and highway projects.

(a) The proposed substitute projects must serve the urbanized area or connecting nonurbanized area corridor, or both, from which the Interstate segment was withdrawn.

(b) Substitute projects in or serving urbanized areas shall be based on an urban transportation planning process in accordance with 23 CFR Part 450, Subpart A (and policies and regulations pertaining thereto), and shall be selected by the responsible local officials of the urbanized area in accordance with 23 CFR Part 450, Subpart C. Substitute projects located outside but serving the urbanized area shall also have the concurrence of the responsible local officials of the jurisdiction in which the project is located.

(c) Substitute projects in or serving the nonurbanized area corridor shall be selected by the responsible local officials of the nonurbanized area corridor. Substitute projects located outside but serving the nonurbanized area corridor shall also have the concurrence of the responsible local officials of the jurisdiction in which the project is located.

(d) Applications for substitute nonhighway public mass transit projects shall be developed either by the principal elected officials of general purpose local units of government in consultation with local transit officials or by local transit officials. Substitute highway projects shall be developed in accordance with the policies and procedures established for the Federal-aid highway system of which they will be a part. Substitute highway projects need not appear in the statewide Federal-aid program described in 23 CFR Part 630, Subpart A.

(e) Applications for substitute nonhighway public mass transit projects are submitted to the Urban Mass Transportation Administrator by the Governor. Requests for authorization to proceed with substitute highway projects are submitted to the Federal Highway Administrator by the Governor.

(f) After September 30, 1983, only applications for those substitute projects which have previously received concept approval under § 476.308 should be submitted.

(g) Substitute projects (for which sufficient funds are available) must be under construction or under contract for construction by September 30, 1986. This time limitation is applicable to all substitute projects, including those related to Interstate segments which were under court injunction prohibiting construction on November 6, 1978. Approval for substitute projects not meeting this requirement will be withdrawn or not issued, and no funds will be appropriated or authorized for these projects.

§ 476.312 Combined proposal.

A proposal for one or more substitute projects may be combined with projects utilizing other Federal funds available including, but not limited to, financial assistance available under either the Urban Mass Transportation Act of 1964, as amended, or 23 U.S.C. 104. Only the funds available from a withdrawal under this subpart are constrained by the limiting amount described in § 476.306(b).

§ 476.314 Administrator's review and approval of substitute projects.

(a) The Urban Mass Transportation Administrator shall review substitute nonhighway public mass transit projects and the Federal Highway Administrator shall review substitute highway projects to determine that the projects meet the following requirements.

(1) The proposed projects serve the urbanized area or connecting nonurbanized area corridor or both from which the Interstate segment was withdrawn.

(2) The Federal share of the costs of the proposed projects which is to be provided under this subpart by virtue of the withdrawal of an Interstate segment does not exceed the Federal share of the cost of the withdrawn segment, as determined in § 476.306(b).

(b) Approval of substitute projects can be given only to the extent that authority to obligate the funds is available.

(c) For substitute nonhighway public mass transit projects, the approval of the plans, specifications, and estimates of a project, or any phase thereof, shall be deemed to occur on the date the Urban Mass Transportation Administrator approved the substitute project or phase thereof in accordance with the policies and procedures established for the UMTA section 3 capital grant program.

(d) Substitute highway projects will be approved by the Federal Highway Administrator in accordance with policies and procedures established for the Federal-aid highway program.

(e) Approval of a substitute project or phase thereof obligates the United States to pay its proportional share of the cost of the project or phase thereof out of the general funds in the Treasury.

(f) The Federal share for substitute projects approved after November 6, 1978, shall not exceed 85 percentum, notwithstanding the Federal share for nonhighway public mass transit projects established under the Urban Mass Transportation Act of 1964, as amended, and highway projects under Title 23, U.S.C.

(g) The labor protective provisions of Section 3(e)(4) of the UMT Act of 1964, as amended, (49 U.S.C. Section 1602(e)(4)) are applicable to nonhighway public mass transit projects funded under the provisions of this subpart.

Transportation Improvement Program; Amendments

PART 450—PLANNING ASSISTANCE AND STANDARDS

The FHWA and the UMTA hereby amend Subpart C of Part 450, Chapter I of Title 23, Code of Federal Regulations, as follows:

1. By revising § 450.302(a)(4) to read as follows:

§ 450.302 Applicability.

(a) * * *

(4) 23 U.S.C. 104(b)(1) (projects on extensions of primary systems in urbanized areas), except as provided in this subpart;

* * * * *

2. By revising the definition of "Interstate substitution projects" in paragraph (b) in § 450.304 *Definitions* to read:

§ 450.304 Definitions.

* * * * * *

(b) * * *

"Interstate substitution projects" means projects funded under 23 U.S.C. 103(e)(4) (Withdrawal of Interstate segments and substitution of either nonhighway public mass transit projects or highway projects, or both).

* * * * * *

§§ 450.310, 450.318, and 450.320 [Amended]

3. By amending §§ 450.310(b), 450.318(b)(1), and 450.320(a)(1) to delete the phrase "nonhighway public mass transportation projects" wherever it appears therein and to substitute in lieu thereof the words "nonhighway public mass transit projects."

4. By amending § 450.310 to add a new paragraph (f) as follows:

§ 450.310 Annual element: Project initiation.

* * * * * *

(f) Proposed Interstate substitution highway projects shall be initiated according to the provisions of this section for the Federal-aid system of which they will be a part.

§ 450.318 [Amended]

5. By revising § 450.318(a) to read:

(a) The projects proposed to be implemented with Federal assistance under sections 3 and 5 of the Urban Mass Transportation Act (49 U.S.C. 1602 and 1604) and nonhighway public mass transit projects under 23 U.S.C. 103(e)(4) shall be those contained in the annual element of the transportation improvement program submitted by the MPO to the Urban Mass Transportation Administrator.

* * * * * *

6. By amending § 450.318(b)(1) to delete the words "and 103(e)(4) (Withdrawal of Interstate segments and substitution of public mass transportation projects)".

7. By amending § 450.318(b)(2) to delete the words "104(b)(3) (Extensions of Federal-aid primary and secondary systems)" and substitute in lieu thereof the words "104(b)(1) (Projects on urban extensions of the Federal-aid primary system)".

8. By amending § 450.318(b)(3) to delete the words "104(b)(3) (Projects on urban extensions of the primary and secondary systems)" and substitute in lieu thereof the words "104(b)(1) (Projects on urban extensions of the primary system)".

§ 450.320 [Amended]

9. By amending § 450.320(a)(2) to delete "included in the statewide program of projects under 23 U.S.C. 105" and substitute in lieu thereof the words "included in the annual element of the transportation improvement program".

(23 U.S.C. 103(e)(4), 105, 134(a), and 135(b); secs. 3, 4(a), and (5) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602, 1603(a), and 1604; and 49 CFR 1.48(b) and 1.51(f))

[FR Doc. 80-32820 Filed 10-17-80; 8:45 am]
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federal register

Monday
October 20, 1980

Part VI

Department of Transportation

Office of the Secretary

Washington National Airport; Temporary Allocation of IFR Reservations; Notice and Request for Comments

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 93

[Notice No. 80-14]

Special Federal Aviation Regulation; Temporary Allocation of IFR Reservations at Washington National Airport; Notice and Request for Comments

AGENCY: Department of Transportation/ Office of the Secretary.

ACTION: Notice and request for comments.

SUMMARY: This notice requests comments on the temporary allocation of Instrument Flight Rules (IFR) reservations or "slots" for operations (takeoffs and landings) of air carriers except air taxis at Washington National Airport, a "high density" airport under 14 CFR Part 93, Subpart K. Under that regulation, air carriers are limited to 40 scheduled IFR operations per hour at National. In the past, air carrier IFR slots were allocated by an air carrier scheduling committee. On October 14, the committee advised the Department that it is deadlocked and unable to reach any agreement with respect to the period December 1, 1980 to April 26, 1981. A copy of the committee's letter is set forth below. This notice requests public comment on the mechanism that should be used for allocation of the available slots for that period and thereby provide for orderly operations at the Washington National Airport and for an efficient utilization of the navigable airspace.

DATE: Comments must be received by 5:30 p.m., October 23, 1980.

ADDRESS: Send comments in duplicate to: Docket Clerk; Notice No. 80-14, Office of the General Counsel, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:
Gregory Wolfe, Office of the Assistant General Counsel for Environmental, Civil Rights and General Law, Department of Transportation, Washington, D.C. 20590, telephone No. 202-426-4710.

or

Rick Yates, Office of Industry Policy, Industry Operations Division, Department of Transportation, Washington, D.C. 20590, telephone No. 202-426-4422.

SUPPLEMENTARY INFORMATION:

Need for Expedited Action and Invitation for Comments

Because a rule is necessary to maintain an efficient airspace system, because the carriers must settle their own system-wide schedules, and because the schedules must be resolved quickly in order to meet various publication dates, I find that, although public comments are desirable, a short comment period is all that can be provided. Consequently, interested persons are invited to submit such written data, views or arguments as they may desire until 5:30 p.m. on October 23, 1980, regarding this notice. Communications should identify the Notice number and be submitted in duplicate to the Docket Clerk, Office of the Secretary, Notice No. 80-14, Office of the General Counsel, Department of Transportation, Washington, D.C. 20590, or be delivered in duplicate to Room 10421, 400 Seventh Street, S.W., Washington, D.C. 20590. Comments delivered must be marked: Notice No. 80-14. Comments may be inspected at Room 10421 between 9:00 a.m. and 5:30 p.m.

Commenters wishing the DOT to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments on Notice No. 80-14." The postcard will be dated and time stamped and returned to the commenter.

All communications received before 5:30 p.m., October 23, 1980, will be considered by the Secretary in the adoption of a rule. All comments submitted will be available, both before and after the closing date for comments, in the docket for examination by interested persons. Comments submitted after that date will be considered by the Department in making changes to the rule if warranted.

(Secs. 103, 307(a) and (c), 313(a) of the Federal Aviation Act of 1958, as amended [49 U.S.C. section 1303, 1348 (a) and (c), and 1354(a)]; Sec. 6 of the Department of Transportation Act [49 U.S.C. 1655]; Sec. 2, Act for the Administration of Washington National Airport [54 Stat. 688])

Issued at Washington, D.C. on October 16, 1980.

Thomas G. Allison,
General Counsel.

Airline Scheduling Committees, Walter S. Coleman, Director

October 14, 1980.

Hon. Langhorne M. Bond,
Administrator, Federal Aviation Administration, 800 Independence Ave., SW., Washington, D.C.

Dear Mr. Bond: On behalf of the Washington Airline Scheduling Committee I am writing to advise you that at its recent meeting the Committee was unable to adjust slot requests to comply with the FAA quota assigned to certificated air carriers beyond November 30, 1980.

We assume that you will contact individual carriers with regard to their slot needs at DCA for the period December 1, 1980 through April 25, 1981.

Sincerely,

Jack B. Hempstead,
Acting Chairman.

[FR Doc. 80-32805 Filed 10-17-80: 10:22 am]
BILLING CODE 4910-62-M

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Reader Aids

Federal Register
Vol. 45, No. 204
Monday, October 20, 1980

INFORMATION AND ASSISTANCE

Questions and requests for specific information may be directed to the following numbers. General inquiries may be made by dialing 202-523-5240.

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
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DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

COMMUNITY SERVICES ADMINISTRATION

62065 9–18–80 / Rural Development Loan Program provisions

ENERGY DEPARTMENT

62031 9–18–80 / Definition of "small hydroelectric power project"

INTERIOR DEPARTMENT

Indian Affairs Bureau

62034 9–18–80 / Provisions for acquisition of land by U.S. in trust for individual Indians and tribes

PERSONNEL MANAGEMENT OFFICE

62413 9–19–80 / Senior Executive Service; appointment, reassignment, transfer, and reinstatement; competitive and excepted service

SECURITIES AND EXCHANGE COMMISSION

62418 9–19–80 / Confidential treatment procedures under the Freedom of Information Act

TRANSPORTATION DEPARTMENT

Coast Guard—

53135 8–11–80 / Puget Sound vessel traffic service regulations
[*See also* 45 FR 48822, July 21, 1980]

National Highway Traffic Safety Administration—

62083 9–18–80 / Federal motor vehicle safety standards; new pneumatic tires for passenger cars

List of Public Laws

Last Listing October 16, 1980

This is a continuing listing of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–275–3030).

S. 1946 / Pub. L. 96–448 "Staggers Rail Act of 1980" (October 14, 1980; 94 Stat. 1895) Price $3.50.

H.R. 7085 / Pub. L. 96–449 Hostage Relief Act of 1980 (October 14, 1980; 94 Stat. 1967) Price $1.

S. 2597 / Pub. L. 96–450 Intelligence Authorization Act for Fiscal Year 1981 (October 14, 1980; 94 Stat. 1975) Price $1.

H.R. 4310 / Pub. L. 96–451 To amend the Federal Boat Safety Act of 1971 to promote recreational boating safety through the development, administration, and financing of a national recreational boating safety improvement program, and for other purposes (October 14, 1980; 94 Stat. 1983) Price $1.25.

H.R. 7665 / Pub. L. 96–452 Fifth Circuit Court of Appeals Reorganization Act of 1980 (October 14, 1980; 94 Stat. 1994) Price $1.

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2½ hours) to present:
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3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them, as part of the General Services Administration's efforts to encourage public participation in Government actions. There will be no discussion of specific agency regulations.

WHEN: November 14 and 21; December 5 and 19; at 9 a.m. (identical sessions).

WHERE: Office of the Federal Register, Room 9409, 1100 L Street NW., Washington, D.C.

RESERVATIONS: Call King Banks, Workshop Coordinator, 202–523–5235.

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federal register

Tuesday
October 21, 1980

Highlights

Seminar on Principles of Regulations Writing—For details on seminar in **Washington, D.C.**, see announcement in the **Reader Aids** section at the end of this issue.

69840 **Toxic Shock Syndrome** HHS/FDA proposes requiring a statement in labeling menstrual tampons to warn users; comments by 11–20–80 (Part VII of this issue)

69495 **Aid to Families With Dependent Children** HHS/Office of Child Support Enforcement proposes new "substantial compliance" test to determine effectiveness of a State's Child Support Enforcement Program; comments by 12–22–80

69437 **Civil Rights** State publishes regulations in order to enhance assurance of nondiscrimination in programs to which it extends financial assistance; effective 11–20–80

69469 **Mobile Homes** USDA/FmHA intends to compose regulations for a program to finance mobile homes and mobile home sites; comments and input by 12–22–80

69816 **Soda Water** HHS/FDA amends standard of identity; comments by 12–22–80 (Part VI of this issue)

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Highlights

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There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

69816 **Caffeine** HHS/FDA proposes to delete caffeine used as an added food ingredient from the list of substances that are generally recognized as safe (GRAS); comments by 12–22–80 (Part VI of this issue)

69678 **Medical Devices** HHS/FDA publishes final rules regarding general provisions applicable to the classification of general hospital and personnel use devices; effective 11–20–80 (95 documents) (Part II of this issue)

69740 **Health Care** HHS/PHS requires that planning agencies review and determine need for proposed capital expenditures, institutional health services and major equipment for certain health institutions; effective 10–21–80 (Part III of this issue)

69561 **Medicare** HHS/HCFA invites comments by 12–22–80, on current policy of Medicare reimbursement for provider costs incurred in relation to union activities

69470 **Banks, Banking** FRS extends comment date to 12–22–80, regarding its proposal on equal credit opportunity

69479 **Investments** SEC proposes ruling concerning individualized investment management services; comments by 1–9–81

69542 **Natural Gas** DOE/EIA publishes alternative fuel price ceilings and incremental price threshold

69776 **Government Employees** OPM adopts ruling regarding executive personnel financial disclosure requirements; effective 11–20–80 (Part IV of this issue)

69597 **Owner-Operator and Truckload Traffic** ICC publishes decision to expedite procedures for recovery of fuel costs; effective 10–17–80

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and General Officers of the Department to reflect the merger of the Office of the General Sales Manager with the Foreign Agricultural Service, and to make minor editorial changes.

EFFECTIVE DATE: October 15, 1980.

FOR FURTHER INFORMATION CONTACT: Charles E. Soisson, Personnel Programs Branch, Personnel Division, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, D.C., 20250 (202–447–7073).

SUPPLEMENTARY INFORMATION: It has been determined that merger of the General Sales Manager with the Foreign Agricultural Service will strengthen the role of the General Sales Manager as the principal sales spokesman of the Department; and will strengthen participation of the General Sales Manager in on-going international functions involving collection, analysis and dissemination of information on world production and utilization of agricultural commodities and in representation of the Department in international economic and trade matters.

Accordingly, Part 2, Subtitle A, Title 7, Code of Federal Regulations is amended as follows:

Subpart H—Delegations of Authority by the Under Secretary for International Affairs and Commodity Programs

1. Section 2.66 is revoked and reserved as follows:

§ 2.66 [Revoked and Reserved]

2. Section 2.68 is amended to read as follows:

§ 2.68 Administrator, Foreign Agricultural Service.

(a) Delegations. Pursuant to § 2.21(d), subject to reservations in § 2.22(d), the following delegations of authority are made by the Under Secretary for International Affairs and Commodity Programs to the Administrator, Foreign Agricultural Service: *Provided* That, on policy matters relating to activities listed in paragraphs (15) thru (27) the General Sales Manager who reports to the Administrator, FAS, shall report to the Secretary who is Chairman of the Board of Directors of the Commodity Credit Corporation, through the Under Secretary for International Affairs and Commodity Programs, who is president of the Commodity Credit Corporation:

(1) Coordinate the carrying out by Department agencies of their functions involving foreign agriculture policies and programs and their operations and activities in foreign areas (other than those functions assigned to the Director, Office of International Cooperation and Development). Act as liaison agency on these matters and functions relating to foreign agriculture between the Department of Agriculture and the Department of State, the United States Trade Representative, the Trade Expansion Act Advisory Committee, International Development Cooperation Agency and other departments, agencies and committees of the U.S. Government, foreign governments, Organization for Economic Cooperation and Development, European Economic Community, The Food and Agriculture Organization of the United Nations, International Bank for Reconstruction and Development, Inter-American Development Bank, Organization of American States, and other public and private United States and international organizations, and the contracting parties to the General Agreement on Tariffs and Trade.

(2) Conduct functions of the Department relating to the General Agreement of Tariffs and Trade (GATT), the Trade Expansion Act of 1962 (19 U.S.C. 1801 et seq.), and other legislation affecting international agricultural trade including the programs designed to reduce foreign tariffs and other trade barriers.

(3) Provide staff support services to the Office of International Cooperation and Development for participation of the Department of Agriculture in U.S./U.S.S.R. exchange agreements, scientific and technical matters in East European bilateral agreements, and activities of international organizations concerned with food and agricultural development.

(4) Conduct studies of worldwide production, trade, marketing, prices, consumption, and other factors affecting exports and imports of U.S. agricultural commodities and to obtain information on methods used by other countries to move farm commodities in world trade on a competitive basis for use in the development of programs of this Department, provision of information to domestic producers, agricultural trade, the public and other interests, and the promotion of normal commercial markets abroad. This delegation excludes basic and long-range analyses of world conditions and developments affecting supply, demand, and trade in farm products and general economic analyses of the international financial and monetary aspects of agricultural affairs as assigned to the Director of Economics, Policy Analysis and Budget.

(5) Administer Departmental programs concerned with development of foreign markets for agricultural products of the United States except functions relating to export marketing operations under section 32, Pub. L. 320, 74th Congress (7 U.S.C. 612c) delegated to the Assistant Secretary for Food and Consumer Services, and utilization research delegated to the Director of Science and Education. Legal authority for these programs is contained in section 104(b)(1) of the Agricultural Trade Development and Assistance Act of 1954, as amended, hereinafter referred to as "Public Law 480" (7 U.S.C. 1704(b)(1), section 601 of the Agricultural Act of 1954, as amended (7 U.S.C. 1761), section 5(f) of the Commodity Credit Corporation Charter Act, hereinafter referred to as "CCC Charter Act" (15 U.S.C. 714(f)).

(6) Conduct Department activities to carry out the provisions of the

International Coffee Agreement Act of 1968 (19 U.S.C. 1356f–j).

(7) Administer functions of the Department relating to import controls, including, among others, functions under section 22 of the Agricultural Adjustment Act (of 1933), as amended (7 U.S.C. 624), section 2 of Pub. L. 88–482 (19 U.S.C. 1202 note) and section 204 of the Agricultural Act of 1958, as amended (7 U.S.C. 1854), but not including those functions reserved to the Secretary under § 2.22(d), those relating to the Sugar Act of 1948, as amended (7 U.S.C. 1100 et seq.), as specified in § 2.21(a) and those relating to section 8e of the Agricultural Adjustment Act (of 1933), as amended (7 U.S.C. 608e–1), as assigned to the Assistant Secretary for Marketing and Transportation Services.

(8) Represent the Department on the Interdepartmental Committee for Export Control and conduct Departmental activities to carry out the provisions of the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401–2413), except as reserved to the Secretary under § 2.22(d).

(9) Exercise the Department's responsibilities in connection with international negotiations of the International Wheat Agreement and in administration of such agreement.

(10) Provide foreign agricultural intelligence and other foreign agricultural services in support of programs administered by the Department under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 et seq.), and the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 et seq.)

(11) Conduct economic analyses pertaining to the foreign sugar situation.

(12) Exercise the Department's functions with respect to the International Sugar Agreement or any such future agreements.

(13) Administer and coordinate, subject to the overall policy guidance of the Department's Executive Steering Group, responsibilities and functions of the Department of Agriculture for carrying out the Large Area Crop Inventory Experiment (LACIE), undertaken by the Department in cooperation with National Oceanic and Atmospheric Administration (NOAA) and National Aeronautics and Space Administration (NASA), to establish utility and cost-effectiveness of using satellite meteorological and climatological data to predict global production of major crops.

(14) Serve as a focal point for handling quality or weight discrepancy inquires from foreign buyers of U.S. agricultural commodities to insure that they are investigated and receive a timely response and that reports thereof are made to appropriate parties and government officials in order that corrective action may be taken.

(15) Administer that program under section 812 of the Agricultural Act of 1970, as added by the Agricultural and Consumer Protection Act of 1973 (7 U.S.C. 612c–3) relating to export sales contract reporting operations.

(16) Formulate policies and administer programs under section 5(f) of the CCC Charter Act (15 U.S.C. 714c(f)) and section 4, Public Law 89–808 (7 U.S.C. 1707a) to finance commercial export credit sales of agricultural commodities by U.S. exporters.

(17) Formulate policies and administer barter programs under which agricultural commodities are exported under sections 4(h) and 5(f) of the CCC Charter Act (15 U.S.C. 714b(h)) and 714c(f) and section 303 of Public Law 480 (7 U.S.C. 1692).

(18) Perform functions of the Department in connection with the development and implementation of basic country agreements to finance the sale and exportation of agricultural commodities on long-term credit or for foreign currencies under Title I of Public Law 480 (7 U.S.C. 1701–1711).

(19) Negotiate and implement agreements between Commodity Credit Corporation and private trade entities to finance the sales and exportation of agricultural commodities for dollars on long-term credit under Title I of Public Law 480, (7 U.S.C. 1707).

(20) Participate in program development, evaluation, and review including related liaison with the International Development Cooperation Agency, private relief agencies, and intergovernmental organizations, and activities involving operational responsibilities with respect to making agricultural commodities available for distribution in foreign countries under Title II, Public Law 480, (7 U.S.C. 1721–1726).

(21) Coordinate within the Department activities arising under Public Law 480 (except as delegated to the Director of Economics, Policy Analysis and Budget in § (2.27(c)), and to represent the Department in its relationships in such matters with the Department of State, the Food-Aid Sub-Committee on Public Law 480, and other departments, agencies and committees of the Government.

(22) Perform functions in connection with the transportation of commodities from point of export under Public Law 480, and under section 5 of the CCC Charter Act (15 U.S.C. 714(c)), except for movement to trust territories or possessions.

(23) Formulate policies for export pricing and price review, in connection with export sales of commodities owned by Commodity Credit Corporation (except for tobacco, peanuts, tung oil, and gum naval stores) and for export sales under Public Law 480.

(24) Formulate and administer programs for sales for export of asgricultural commodities owned by Commodity Credit Corporation (except for tobacco, peanuts, tung oil, and gum naval stores).

(25) Allocate among the various export programs agricultural commodities determined under § 2.21(a)(26) to be available for export.

(26) Formulate policies and administer export payment programs (other than those under section 32, Public Law 320, 74th Congress (7 U.S.C. 612c) and other programs as assigned to encourage or cause the export of U.S. agricultural commodities.

(27) Formulate policies and administer programs to facilitate the exportation of U.S. agricultural commodities under Section 5 (d) and (f) of the CCC Charter Act (15 U.S.C. 714c (d) and (f)).

(28) Maintain a worldwide Agricultural Attache intelligence and reporting system, including provision for foreign agricultural representation abroad to protect and promote U.S. agricultural interests, and to acquire information on demand, competition, marketing and distribution of U.S. agricultural products abroad pursuant to title VI of the Agricultural Act of 1954, as amended (7 U.S.C. 1761–1766).

(29) Plan and carry out programs and activities under the foreign market promotion authority of the Wheat Research and Promotion Act (7 U.S.C. 1292 note); the Cotton Research and Promotion Act (7 U.S.C. 2101–2118); section 610 of the Agricultural Act of 1970 (7 U.S.C. 2119–; the Potato Research and Promotion Act (7 U.S.C. 2611–2627); the Egg Research and Consumer Information Act of 1974 (7 U.S.C. 2701–2718); the National Wool Act of 1954, as amended (7 U.S.C. 1781–1787); the Beef Research and Information Act, as amended (7 U.S.C. 2901–1918); and the Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401–3417). This authority includes determining the programs and activities to be undertaken and assuring that they are coordinated with the overall departmental programs to develop foreign markets for U.S. agricultural products.

(30) Establish and administer regulations relating to foreign travel by employees of the Department. Regulations will include, but not be limited to, obtaining and controlling passports, obtaining visas, coordinating State Department medical clearances and imposing requirements for itineraries and contacting the Agricultural Attache upon arrival in the Attache's country(ies) of responsibility.

(31) Provide management support services for the Office of International Cooperation and Development as agreed upon by the agencies with authority to take actions required by law or regulation. As used herein, the term management support services includes budget, finance, personnel, procurement, property management, communications, messenger and paperwork management, and related administrative services.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect thereto are impractical and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency services management, it is exempt from the provisions of Executive Order 12044, Improving Government Regulations, and thus, does not require the preparation of a regulatory impact statement.

(5 U.S.C. 301 and Reorganization Plan No. 2 of 1953)

Dated: October 15, 1980.

Bob Bergland,

Secretary of Agriculture.

Dated: September 15, 1980.

Dale E. Hathaway,

Under Secretary for International Affairs and Commodity Programs.

[FR Doc. 80-32745 Filed 10-20-80; 8:45 am]

BILLING CODE 3410-01-M

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7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and General Officers of the Department to reflect a transfer of functions from the Director of Science and Education to the Under Secretary for International Affairs and Commodity Programs.

EFFECTIVE DATE: October 21, 1980.

FOR FURTHER INFORMATION CONTACT: Charles E. Soisson, Chief, Personnel Programs, Personnel Division, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, D.C. 20250 (202–447–7073).

SUPPLEMENTARY INFORMATION: The delegations of authority of the Department of Agriculture are amended to assign to the Under Secretary for International Affairs and Commodity Programs the authority to administer and coordinate a foreign contracts and grants program of market development research in the physical and biological sciences and in agricultural and forestry research, to administer and coordinate assigned international research programs with national and international institutions, and to coordinate policy formulation for USDA international science and technology programs concerning the international agricultural research centers and international organizations.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect thereto are impractical and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12044.

Accordingly, Part 2, Subtitle A, Title 7, Code of Federal Regulations is amended as follows:

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, Assistant Secretaries, and the Director of Economics, Policy Analysis and Budget

1. Section 2.21 is amended by revising paragraph (a)(3) and by adding new paragraphs (a)(6) and (a)(7) to read as follows:

§ 2.21 Delegations of authority to the Under Secretary for International Affairs and Commodity Programs.

* * * * * *

(a) * * *

(3) Administer and coordinate assigned Departmental programs in international research and scientific and technical cooperation with other governmental agencies, land grant universities, international organizations, international agricultural research centers, and other institutions (7 U.S.C. 1624, 3291).

* * * * *

(6) Administer and coordinate a foreign contracts and grants program of market development research in the physical and biological sciences under section 104(b)(1) of the Agricultural Trade Development and Assistance Act of 1954, but excluding agricultural economics research; and administer and coordinate a foreign contracts and grants program of agricultural and forestry research under section 104(b)(3) of such Act (7 U.S.C. 1704 (b)(1), (3)).

(7) Coordinate policy formulation for USDA international science and technology programs concerning international agricultural research centers, international organizations, and international agricultural research and extension activities (7 U.S.C. 3291).

Subpart D—Delegation of Authority to Other General Officers and Agency Heads

2. Section 2.39 is amended by revoking and reserving paragraph (a)(18) as follows:

§ 2.39 Delegations of authority to the Director of Science and Education.

* * * * * *

(a) * * *

(18) Revoked and Reserved.

* * * * * *

Subpart H—Delegations of Authority by the Under Secretary for International Affairs and Commodity Programs

3. Section 2.64 is amended by revising paragraph (a)(3) and by adding new paragraphs (a)(6) and (a)(7) to read as follows:

§ 2.64 Special Assistant for International Scientific and Technical Cooperation/Director, Office of International Cooperation and Development.

(a) *Delegations* * * *

(3) Administer and coordinate assigned Departmental programs in international research and scientific and technical cooperation with other governmental agencies, land grant universities, international organizations, international agricultural research centers, and other institutions (7 U.S.C. 1624, 3291).

* * * * * *

(6) Administer and coordinate a foreign contracts and grants program of market development research in the physical and biological sciences under section 104(b)(1) of the Agricultural Trade Development and Assistance Act of 1954, but excluding agricultural economics research; and administer and coordinate a foreign contracts and grants program of agricultural and forestry research under section 104(b)(3) of such Act (7 U.S.C. 1704 (b)(1), (3)).

(7) Coordinate policy formulation for USDA international science and technology programs concerning

international agricultural research centers, international organizations, and international agricultural research and extension activities (7 U.S.C. 3291).

(5 U.S.C. 301 and Reorganization Plan No. 2 of 1953)

For Subparts C & D:

Dated: October 6, 1980.

Bob Bergland,

Secretary of Agriculture.

For Subpart H:

Dated: October 6, 1980.

Dale E. Hathaway,

Under Secretary for International Affairs and Commodity Programs.

[FR Doc. 80-32724 Filed 10-20-80; 8:45 am]

BILLING CODE 3410-01-M

Agricultural Stabilization and Conservation Service

7 CFR Part 730

[Amendment 1]

Rice Program for Crop Years 1978–81

AGENCY: Agricultural Stabilization and Conservation Service.

ACTION: Final rule.

SUMMARY: This rule incorporates previously announced determinations of the set-aside and voluntary diversion, disaster extension, payment limitation, and 1980 target price for rice. It also clarifies program definitions. The action is required and intended to provide a current and complete set of 1980 rice program provisions.

EFFECTIVE DATE: October 21, 1980.

FOR FURTHER INFORMATION CONTACT: Charles J. Riley, Production Adjustment Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, D.C. 20013 (202) 447–7633. Actions of this kind were anticipated under the provisions of the notice of final determination published in the **Federal Register** on March 21, 1980, and were specifically considered in the Final Impact Statement prepared for that action. That Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from George H. Schaefer, (ASCS), (202) 447–8480, at the above address.

SUPPLEMENTARY INFORMATION: The program title and number from the "Catalog of Federal Domestic Assistance" is Rice Production Stabilization, 10.065. This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A–95 was not used to assure that units of local government are informed of this action.

This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified as "not significant."

The regulations at 7 CFR Part 730 providing for the rice program are amended to incorporate determinations relating to required set-aside and voluntary diversion. These determinations were initially published in the **Federal Register** in proposed form (44 FR 61047) to allow for public comment and were then published in the **Federal Register** in final form on March 21, 1980 (45 FR 18410).

The established (target) price for 1980-crop rice announced by the Secretary on March 18, 1980, is also set forth in this final rule. The Agricultural Adjustment Act of 1980 (Pub. L. 96–213, 94 Stat. 119 approved March 18, 1980) imposed a limitation on disaster payments under one or more of the annual rice, feed grain, upland cotton, and wheat programs of $100,000, and extended the disaster program for one year. As announced by notice in the **Federal Register** of August 12, 1980 (45 FR 53501), the Secretary has determined that offsetting compliance is not required for 1980. This final rule includes these changes.

In addition to the above, this final rule rewords the definition of "rice acreage" to correspond with the provisions of 7 CFR Parts 713 and 718 for the 1980 crop year. The definition of "planted and considered planted acreage" is reworded for clarity and is expanded to include acreage approved for protection under a water bank agreement as provided for in 7 CFR Part 752. The definition of "annual nonconserving crop" is deleted and replaced by reference to the definition in 7 CFR Part 713. The computation of low yield payments is clarified in accordance with the intent of Congress. Finally, the previously announced 1979 deficiency rate is included.

Farmers are now cultivating and harvesting their 1980 crop. Therefore, it is important that the changes being made in this final rule be announced as soon as possible. Thus, pursuant to the administrative procedure provision in 5 U.S.C. 553 it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register.**

Accordingly, 7 CFR Part 730 is amended as follows:

Final Rule

1. Section 730.1 is amended by adding the following sentence to the end of paragraph (b):

§ 730.1 Applicability.

* * * * *

(b) * * *

The total amount of disaster payments which a person shall be entitled to receive annually under one or more of the rice, feed grain, upland cotton, and wheat programs for the 1980 and 1981 crops shall not exceed $100,000.

* * * * *

2. Section 730.3 is amended by revising paragraphs (a), (g)(3), and (i) to read as follows:

§ 730.3 Definitions.

* * * * *

(a) "Annual nonconserving crop" is defined in Part 713 of this chapter.

* * * * *

(g) "Rice Acreage" * * *

* * * * *

(3) Disposed of without feed or other benefit and excluded by the operator on the report of acreage. However, the acreage so disposed of will count as rice acreage for the purpose of determining under Part 713 of this chapter whether the farm is within its NCA if either:

(i) The exclusion by the operator occurs after the final reporting date for rice, or

(ii) The acreage report has been determined to be inaccurate because the difference between a reported acreage and a measured acreage exceeded the tolerance allowed in part 718 of this chapter.

* * * * *

(i) "Rice planted and considered planted acreage" means the rice acreage defined in paragraph (g) of this section plus acreage in the following categories, the total of which will not exceed the allotment on the farm or allocated to the farm, as applicable.

(1) Any acreage which the county committee determines was not planted to rice because of drought, flood, or other natural disaster or condition beyond the control of the operator;

(2) Any acreage credited as rice acreage (except for new farms) under the provisions of Part 719 of this chaper, as amended;

(3) Any allotment acreage temporarily transferred from a farm or producer allotment: *Provided,* That the acreage transferred from a producer allotment is allocated to a farm;

(4) Any allotment acreage temporarily released to the county committee;

(5) Any acreage approved for protection under an active water bank program agreement under Part 752 of this chapter; and

(6) Any other acreage (except for new farms) which is planted to annual nonconserving crops (as defined in Part 713 of this chapter, as amended) or which the county committee determines was not planted because of drought, flood, or other natural disaster or conditions beyond the control of the operator.

§ 730.18 [Amended]

3. Section 730.18 is amended by deleting the language appearing in paragraph (c)(1) after the words "in the current year" and inserting a period at the end thereof.

4. Section 730.19 is amended to read as follows:

§ 730.19 Required set-aside.

(a) *1978, 1979, and 1980.* No set-aside required.

(b) *1981.* To be announced by amendment to this subpart.

5. Section 730.20 is amended to read as follows:

§ 730.20 Voluntary diversion.

(a) *1978, 1979, and 1980.* No voluntary diversion for payment is authorized.

(b) *1981.* To be announced by amendment to this subpart.

§ 730.25 [Amended]

6. Section 730.25 is amended:

a. By revising the first sentence to read as follows: "Prevented planting and low yield disaster payments are authorized only for 1978, 1979, and 1980." and

b. By revising the first sentence of paragraph (b)(3) to read as follows: "Low yield payments shall be determined by multiplying the acreage for payment by 75 percent of the established farm yield as provided for in § 730.15, subtracting therefrom the determined production from the farm, and multiplying the result by the low yield payment rate."

7. Section 730.26 is amended by adding a paragraph (c) to read as follows:

§ 730.26 Established (target) prices.

* * * * *

(c) *1980.* The established price for the 1980 crop is $.0949 per pound.

8. Section 730.27 is amended by revising paragraph (a) to read as follows:

§ 730.27 Deficiency payments.

(a) *Payment rate.* The deficiency payment rate shall be the amount by which the established price exceeds the higher of the national weighted average market price received by farmers for rice during the first five months of the marketing year or the national average loan rate established for rice.

(1) *Payment rate for 1979.* $.0000 per pound.

(2) *Payment rate for 1980.* To be announced by amendment to this subpart.

(Secs. 101(h), 408(b), 1001, 91 stat. 940, 91 Stat. 944, 94 Stat. 119 (7 U.S.C. 1441, 1428(b), 1421 note); sec. 352, 52 Stat. 60, 91 Stat. 940 (7 U.S.C. 1352))

Signed at Washington, D.C. on October 10, 1980.

John E. Gibbs,

Acting Administrator.

[FR Doc. 80-32636 Filed 10-20-80; 8:45 am]

BILLING CODE 3410-05-M

Commodity Credit Corporation

7 CFR Part 1421

[CCC Grain Price Support Regulations, 1980-Crop Barley Supplement]

Grains and Similarly Handled Commodities; 1980-Crop Barley Loan and Purchase Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to set forth the (1) final loan and purchase availability dates, (2) maturity dates, and (3) loan and purchase rates and discounts under which Commodity Credit Corporation (CCC) will extend price support on 1980-crop barley. This rule will enable eligible barley producers to obtain loans and purchases on their eligible 1980-crop barley.

EFFECTIVE DATE: October 20, 1980.

ADDRESS: Price Support and Loan Division, ASCS, USDA, P.O. Box 2415, Washington, D.C., 20013.

FOR FURTHER INFORMATION CONTACT: Eloise Mauck, ASCS, (202) 447–7923. With respect to the availability of an impact analysis, the increases in the basic county loan and purchase rates announced by this final rule were considered under the provisions of the "Notice of Determinations of the 1980 Crop Normal Crop Acreages (NCA), Established 'Target Prices,' Loan and Purchase Rates for Feed Grains, Soybeans, Wheat, and Rice, and Loan Rates for Upland and ELS Cotton" published in the **Federal Register** (45 FR 53501) on August 12, 1980, and specifically considered in the Final Impact Statement prepared for that action. Thus, the Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from Bruce R. Weber, Agricultural Program Specialist, Production Adjustment Division, ASCS–USDA, P.O. Box 2415, Washington, D.C., 20013, (202) 447–6688.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant." Also for "Improving USDA Regulations" (43 FR 50988), initiation of review of the regulations contained in 7 CFR 1421.72–.76 for need, accuracy, clarity, and effectiveness will be made within the next five years. The next review will take into consideration problems, issues, etc., which are experienced in program administration during the intervening period.

A "Notice of Determinations of 1980-Crop Normal Crop Acreages (NCA) Established 'Target' Prices, Loan and Purchase Rates for Feed Grains, Soybeans, Wheat, and Rice, and Loan Rates for Upland and Extra Long Staple (ELS) Cotton" was published in the **Federal Register** on August 12, 1980, (45 FR 53501), effective August 7, 1980. The notice included the Secretary's determination that the 1980 loan and purchase rate for barley was being increased to $1.83 per bushel in accordance with Section 105A of the Agricultural Act of 1949, as amended (7 U.S.C. 1444c). The announcement of this action by the Secretary had to be made immediately so that farmers could indicate their 1980 program participation. Therefore, it was and remains impractical and contrary to the public interest to comply with the public rulemaking requirements of 5 U.S.C. 553 and Executive Order 12044. Thus, this final rule shall become effective upon filing with the Director, Office of the Federal Register.

This rule announces the individual basic county loan and purchase rates to conform with the above notice of determination which increased the national average loan and purchase rate to $1.83 per bushel for the 1980 crop of barley. Producers who wish to secure loans can do so by contacting their local county ASCS office or Agricultural Service Center.

The program title and number from "Catalog of Federal Domestic Assistance" is Commodity Loan and

Purchases, 10.051. This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A-95 was not used to assure that units of local government are informed of this action.

Final Rule

The General Regulations Governing Price Support for 1978 and Subsequent Crops and any amendments thereto, and the 1978 and Subsequent Crops Barley Loan and Purchase Regulations and any amendments thereto in this Part 1421 are further supplemented for the 1980 crop of barley. Accordingly, the regulations in 7 CFR 1421.72 through 1421.76 and the title of the subpart are revised to read as provided below effective as to the 1980 crop of barley. The material previously appearing in these sections shall remain in full force and effect as to the crops to which it is applicable.

PART 1421—GRAINS AND OTHER SIMILARLY HANDLED COMMODITIES

Subpart—1980-Crop Barley Loan and Purchase Program

Sec.

1421.72 Purpose.
1421.73 Availability.
1421.74 Maturity of loans.
1421.75 Warehouse charges.
1421.76 Loan and purchase rates and discounts.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); Secs. 105 A, 401, 63 Stat. 1051, as amended (7 U.S.C. 1444c 1421).

§ 1421.72 Purpose.

This supplement contains additional program provisions which, together with the provisions of the General Regulations Governing Price Support for the 1978 and Subsequent Crops, the 1978 and Subsequent Crop Barley Loan and Purchase Program regulations and any amendments thereto, apply to loans on and purchases of the 1980 crop of barley.

§ 1421.73 Availability.

(a) **Loans.** Producers desiring to participate in the program through loans must request a loan on their 1980 crop of eligible barley on or before March 31, 1981.

(b) **Purchases.** A producer desiring to offer eligible 1980-crop barley not under loan for purchase must execute and deliver to the county ASCS office on or before March 31, 1981, a Purchase Agreement (Form CCC-614) indicating the approximate quantity of 1980-crop barley the producer will sell to CCC.

§ 1421.74 Maturity of loans.

Loans mature on demand but not later than the last day of the ninth calendar month following the month the loan is disbursed.

§ 1421.75 Warehouse charges.

If storage is not provided for through loan maturity, the county ASCS office shall deduct storage charges at the daily storage rate for the storing warehouse times the number of days from the date the commodity was received or date through which storage has been provided for to the maturity date.

§ 1421.76 Loan and purchase rates and discounts.

(a) Basic loan and purchase rates (counties). Basic county rates per bushel (marketing area in the case of Alaska) for loan and settlement purposes for barley grading U.S. No. 2 or better are as follows:

1980—Crop Barley Loan and Purchase Rates

County	Rate per bushel
Alabama	
All counties	$1.61
Alaska	
(In Alaska, loan rates are for marketing areas)	
Delta	1.54
Fairbanks	1.53
Glenallen	1.83
Homer	1.59
Kenai-Soldotna	1.86
Palmer	1.72
Talkeetna	1.72
Wght. St. Avg	1.83
Arizona	
All counties	2.01
Arkansas	
All counties	1.81
California	
Alameda	2.22
Alpine	2.05
Amador	2.18
Butte	2.13
Calaveras	2.18
Colusa	2.17
Contra Costa	2.19
El Dorado	2.17
Fresno	2.18
Glenn	2.14
Humboldt	2.02
Imperial	2.16
Inyo	2.04
Kern	2.17
Kings	2.15
Lake	2.12
Lassen	2.02
Los Angeles	2.22
Madera	2.18
Marin	2.19
Mariposa	2.16
Mendocino	2.06
Merced	2.18
Modoc	2.00
Monterey	2.14
Napa	2.17
Orange	2.22
Placer	2.15
Plumas	2.05
Riverside	2.17
Sacramento	2.22
San Benito	2.14
San Bernardino	2.18
San Diego	2.22
San Francisco	2.22

1980—Crop Barley Loan and Purchase Rates—Continued

County	Rate per bushel
San Joaquin	2.22
San Luis Obispo	2.14
San Mateo	2.19
Santa Barbara	2.13
Santa Clara	2.18
Santa Cruz	2.15
Shasta	2.02
Sierra	2.04
Siskiyou	2.00
Solano	2.19
Sonoma	2.17
Stanislaus	2.20
Sutter	2.16
Tehama	2.13
Tulare	2.14
Tuolumne	2.16
Ventura	2.17
Yolo	2.19
Yuba	2.18
Wght. St. Avg	2.15
Colorado	
All counties	1.89
Connecticut	
All counties	1.81
Delaware	
All counties	1.81
Florida	
All counties	1.82
Georgia	
All counties	1.82
Idaho	
Ada	1.88
Adams	1.88
Bannock	1.86
Bear Lake	1.85
Benewah	1.94
Bingham	1.87
Blaine	1.88
Boise	1.86
Bonner	1.90
Bonneville	1.85
Boundary	1.89
Butte	1.87
Camas	1.88
Canyon	1.86
Caribou	1.85
Cassia	1.87
Clark	1.84
Clearwater	1.93
Custer	1.88
Elmore	1.88
Franklin	1.89
Fremont	1.85
Gem	1.88
Gooding	1.88
Idaho	1.89
Jefferson	1.85
Jerome	1.88
Kootenai	1.94
Latah	1.94
Lemhi	1.84
Lewis	1.93
Lincoln	1.86
Madison	1.85
Minidoka	1.89
Nez Perce	1.94
Oneida	1.88
Owyhee	1.88
Payette	1.88
Power	1.88
Shoshone	1.82
Teton	1.85
Twin Falls	1.89
Valley	1.86
Washington	1.88
Wght. St. Avg	1.87
Illinois	
Alexander	1.87
Cook	1.82
Madison	1.86
St. Clair	1.86
All other counties	1.77
Wght. St. Avg	1.77
Indiana	
All counties	1.77

1980—Crop Barley Loan and Purchase Rates—Continued

County	Rate per bushel
Iowa	
Pottawattamie	1.83
All other counties	1.79
Wght. St. Avg	1.79
Kansas	
Leavenworth	1.84
Wyandotte	1.84
All other counties	1.80
Wght. St. Avg	1.80
Kentucky	
All counties	1.76
Louisiana	
East Baton Rouge	1.99
Jefferson	1.99
Orleans	1.99
St. Charles	1.99
West Baton Rouge	1.99
All other counties	1.82
Wght. St. Avg	1.82
Maine	
All counties	1.81
Maryland	
Baltimore	1.99
All other counties	1.81
Wght. St. Avg	1.81
Massachusetts	
All counties	1.81
Michigan	
All counties	1.73
Minnesota	
Aitkin	1.93
Anoka	1.96
Becker	1.79
Beltrami	1.82
Benton	1.92
Big Stone	1.83
Blue Earth	1.96
Brown	1.94
Carlton	1.97
Carver	1.97
Cass	1.85
Chippewa	1.90
Chisago	1.96
Clay	1.77
Clearwater	1.77
Cottonwood	1.90
Crow Wing	1.89
Dakota	1.97
Dodge	1.96
Douglas	1.84
Faribault	1.95
Fillmore	1.93
Freeborn	1.96
Goodhue	1.96
Grant	1.82
Hennepin	1.97
Houston	1.92
Hubbard	1.82
Isanti	1.95
Itasca	1.89
Jackson	1.89
Kanabec	1.94
Kandiyohi	1.83
Kittson	1.72
Koochiching	1.86
Lac Qui Parle	1.88
Lake of the Woods	1.81
Le Sueur	1.97
Lincoln	1.84
Lyon	1.88
McLeod	1.96
Mahnomen	1.77
Marshall	1.74
Martin	1.94
Meeker	1.94
Mille Lacs	1.94
Morrison	1.90
Mower	1.95
Murray	1.87
Nicollet	1.96
Nobles	1.85
Norman	1.75
Olmsted	1.96
Otter Tail	1.81
Pennington	1.75

1980—Crop Barley Loan and Purchase Rates—Continued

County	Rate per bushel
Pine	1.97
Pipestone	1.83
Polk	1.75
Pope	1.87
Ramsey	1.97
Red Lake	1.75
Redwood	1.91
Renville	1.94
Rice	1.97
Rock	1.81
Roseau	1.74
St. Louis	1.97
Scott	1.97
Sherburne	1.96
Sibley	1.96
Stearns	1.92
Steele	1.97
Stevens	1.85
Swift	1.88
Todd	1.87
Traverse	1.81
Wabasha	1.96
Wadena	1.86
Waseca	1.97
Washington	1.97
Wantonwan	1.95
Wilkin	1.79
Winona	1.94
Wright	1.97
Yellow Medicine	1.86
Wght. St. Avg	1.77
Mississippi	
All counties	1.81
Missouri	
Buchanan	1.83
Clay	1.83
Jackson	1.83
St. Louis	1.85
All other counties	1.81
Wght. St. Avg	1.81
Montana	
Beaverhead	1.77
Big Horn	1.71
Blaine	1.67
Broadwater	1.79
Carbon	1.72
Carter	1.60
Cascade	1.75
Chouteau	1.71
Custer	1.62
Daniels	1.81
Dawson	1.82
Deer Lodge	1.83
Fallon	1.80
Fergus	1.71
Flathead	1.88
Gallatin	1.83
Garfield	1.67
Glacier	1.74
Golden Valley	1.72
Granite	1.81
Hill	1.70
Jefferson	1.83
Judith Basin	1.72
Lake	1.81
Lewis and Clark	1.73
Liberty	1.72
Lincoln	1.86
McCone	1.84
Madison	1.83
Meagher	1.76
Mineral	1.85
Missoula	1.85
Musselshell	1.71
Park	1.80
Petroleum	1.69
Phillips	1.84
Pondera	1.73
Powder River	1.62
Powell	1.83
Prairie	1.82
Ravalli	1.81
Richland	1.61
Roosevelt	1.59
Rosebud	1.65
Sanders	1.85
Sheridan	1.59
Silver Bow	1.83

1980—Crop Barley Loan and Purchase Rates—Continued

County	Rate per bushel
Stillwater	1.72
Sweet Grass	1.75
Teton	1.73
Toole	1.73
Treasure	1.66
Valley	1.64
Wheatland	1.73
Wibaux	1.60
Yellowstone	1.71
Wght. St. Avg	1.72
Nebraska	
Douglas	1.84
All other counties	1.76
Wght. St. Avg	1.76
Nevada	
All counties	2.01
New Hampshire	
All counties	1.81
New Jersey	
All counties	1.81
New Mexico	
All counties	1.91
New York	
Albany	1.99
New York City	1.99
All other counties	1.81
Wght. St. Avg	1.81
North Carolina	
All counties	1.82
North Dakota	
Adams	1.59
Barnes	1.72
Benson	1.64
Billings	1.57
Bottineau	1.59
Bowman	1.57
Burke	1.57
Burleigh	1.63
Cass	1.75
Cavalier	1.66
Dickey	1.70
Divide	1.57
Dunn	1.57
Eddy	1.67
Emmons	1.62
Foster	1.68
Golden Valley	1.57
Grand Forks	1.72
Grant	1.58
Griggs	1.69
Hettinger	1.57
Kidder	1.66
La Moure	1.69
Logan	1.66
McHenry	1.62
McIntosh	1.67
McKenzie	1.59
McLean	1.61
Mercer	1.60
Morton	1.60
Mountrail	1.57
Nelson	1.69
Oliver	1.61
Pembina	1.70
Pierce	1.63
Ramsey	1.66
Ransom	1.72
Renville	1.58
Richland	1.75
Rolette	1.62
Sargent	1.74
Sheridan	1.63
Sioux	1.60
Slope	1.57
Stark	1.57
Steele	1.71
Stutsman	1.70
Towner	1.64
Traill	1.72
Walsh	1.70
Ward	1.59
Wells	1.66
Williams	1.57
Wght. St. Avg	1.66
Ohio	
All counties	1.75

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1980—Crop Barley Loan and Purchase Rates—Continued

County	Rate per bushel
Oklahoma	
All counties	1.82
Oregon	
Baker	1.93
Benton	1.98
Clackamas	2.02
Clatsop	2.08
Columbia	2.08
Coos	1.99
Crook	1.97
Curry	1.97
Deschutes	1.97
Douglas	1.91
Gilliam	2.02
Grant	1.97
Harney	1.94
Hood River	2.04
Jackson	1.90
Jefferson	2.00
Josephine	1.90
Klamath	1.90
Lake	1.89
Lane	1.97
Lincoln	1.97
Linn	1.99
Malheur	1.87
Marion	2.00
Morrow	2.01
Multnomah	2.08
Polk	2.00
Sherman	2.03
Tillamook	2.03
Umatilla	1.96
Union	1.96
Wallowa	1.93
Wasco	2.04
Washington	2.04
Wheeler	1.99
Yamhill	2.02
Wght. St. Avg	1.94
Pennsylvania	
Philadelphia	1.99
All other counties	1.81
Wght. St. Avg	1.81
Rhode Island	
All counties	1.81
South Carolina	
Charleston	1.97
All other counties	1.82
Wght. St. Avg	1.82
South Dakota	
Aurora	1.70
Beadle	1.74
Bennett	1.64
Bon Homme	1.73
Brookings	1.80
Brown	1.73
Brule	1.88
Buffalo	1.70
Butte	1.57
Campbell	1.67
Charles Mix	1.71
Clark	1.75
Clay	1.75
Codington	1.78
Corson	1.82
Custer	1.62
Davison	1.70
Day	1.78
Deuel	1.82
Dewey	1.64
Douglas	1.71
Edmunds	1.70
Fall River	1.82
Faulk	1.71
Grant	1.82
Gregory	1.70
Haakon	1.64
Hamlin	1.78
Hand	1.72
Hanson	1.71
Harding	1.57
Hughes	1.58
Hutchinson	1.72
Hyde	1.70
Jackson	1.64
Jerauld	1.70

1980—Crop Barley Loan and Purchase Rates—Continued

County	Rate per bushel
Jones	1.97
Kingsbury	1.77
Lake	1.76
Lawrence	1.57
Lincoln	1.76
Lyman	1.88
McCook	1.73
McPherson	1.70
Marshall	1.75
Meade	1.80
Mellette	1.88
Miner	1.72
Minnehaha	1.76
Moody	1.78
Pennington	1.62
Perkins	1.58
Roberts	1.80
Potter	1.69
Sanborn	1.70
Shannon	1.82
Spink	1.73
Stanley	1.67
Sully	1.69
Todd	1.88
Tripp	1.68
Turner	1.75
Union	1.76
Walworth	1.67
Yankton	1.75
Ziebach	1.62
Wght. St. Avg	1.73
Tennessee	
Shelby	1.67
All other counties	1.81
Wght. St. Avg	1.81
Texas	
Chambers	2.01
Galveston	2.01
Harris	2.01
Jefferson	2.01
Nueces	2.01
San Patricio	2.01
All other counties	1.85
Wght. St. Avg	1.85
Utah	
All counties	1.91
Vermont	
All counties	1.81
Virginia	
Chesapeake (Norfolk)	1.91
All other counties	1.81
Wght. St. Avg	1.81
Washington	
Adams	1.97
Asotin	1.97
Benton	1.99
Chelan	2.01
Clallam	1.87
Clark	2.08
Columbia	1.98
Cowlitz	2.08
Douglas	1.96
Ferry	1.82
Franklin	1.98
Garfield	1.96
Grant	1.97
Grays Harbor	1.98
Island	2.00
Jefferson	1.92
King	2.08
Kitsap	2.00
Kittitas	1.98
Klickitat	2.00
Lewis	2.01
Lincoln	1.98
Mason	1.94
Okanogan	1.95
Pacific	1.98
Pend Oreille	1.90
Pierce	2.08
San Juan	1.95
Skagit	1.95
Skamania	2.02
Snohomish	2.00
Spokane	1.94
Stevens	1.91

1980—Crop Barley Loan and Purchase Rates—Continued

County	Rate per bushel
Thurston	2.01
Wahkiakum	2.04
Walla Walla	1.98
Whatcom	1.93
Whitman	1.96
Yakima	1.98
Wght. St. Avg	1.96
West Virginia	
All counties	1.81
Wisconsin	
Douglas	1.88
All other counties	1.76
Wght. St. Avg	1.78
Wyoming	
All counties	1.85

(b) Schedule of discounts.

(1) Grade discounts: U.S. No. 3, cents per bushel: −4; U.S. No. 4, cents per bushel: −8; U.S. No. 5, cents per bushel: −20; Sample—on the factors of Test Weight and Total Damage, cents per bushel: −32.

(2) Sample on Account of Test Weight

Test weight	Cents per bushel
35.0 to 35.9	−1
34.0 to 34.9	−2
33.0 to 33.9	−3
32.0 to 32.9	−4
31.0 to 31.9	−5
30.0 to 30.9	−6
29.0 to 29.9	−7
28.0 to 28.9	−8
27.0 to 27.9	−9
26.0 to 26.9	−10
25.0 to 25.9	−11

(3) Sample on Account of Total Damaged Kernels

Percent—Total damaged kernels	Cents per bushel
10.0 to 11.0	−2
11.1 to 12.0	−4
12.1 to 13.0	−6
13.1 to 14.0	−8
14.1 to 15.0	−10
Each percent over 15	−5

(4) Garlicky discount, cents or pound: −10.

(5) Weed control discount (where required by S 1421.24), cents per pound: −10.

(6) Other. Barley with quality factors exceeding limits shown in foregoing schedule or barley that (1) contains in excess of 14.5 percent moisture, (2) is weevily, (3) is musty, or (4) is sour, shall not be eligible for loan. In the event quantities of barley exceeding limits shown are delivered in satisfaction of loan obligations, such quantities will be discounted on the basis of the schedule of discounts as provided by the Kansas City Commodity Office for settlement purposes. Such discounts will be established not later than the time delivery of barley to CCC begins and will thereafter be adjusted from time to time as CCC determines appropriate to reflect changes in market conditions. Producers may obtain schedule of such factors and discounts at county ASCS offices approximately one month prior to the loan maturity date.

Note.—Discounts are cumulative except that only one grade discount shall be applied.

Signed at Washington, D.C. on October 14, 1980.

John W. Goodwin,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 80-32791 Filed 10-20-80; 8:45 am]

BILLING CODE 3410-05-M

7 CFR Part 1421

[CCC Grain Price Support Regulations, 1980-Crop Rye Supplement]

Grains and Similarly Handled Commodities; 1980-Crop Rye Loan and Purchase Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to set forth the (1) final loan and purchase availability dates, (2) maturity dates, and (3) loan and purchase rates and premiums and discounts under which Commodity Credit Corporation, (CCC) will extend price support on 1980-crop rye. This rule will enable eligible rye producers to obtain loans and purchases on their eligible 1980-crop rye.

EFFECTIVE DATE: October 20, 1980.

ADDRESS: Price Support and Loan Division, ASCS, USDA, P.O. Box 2415, Washington, D.C., 20013.

FOR FURTHER INFORMATION CONTACT: Thomas Fink, ASCS, (202) 447-7923.

With respect to the availability of an impact analysis, the increases in the basic county loan and purchase rates announced by this final rule were considered under the provisions of the "Notice of Determinations of the 1980-Crop Normal Crop Acreages (NCA), Established 'Target Prices,' Loan and Purchase Rates for Feed Grains, Soybeans, Wheat, and Rice, and Loan Rates for Upland and ELS Cotton" published in the **Federal Register** (45 FR 53501) on August 12, 1980, and specifically considered in the Final Impact Statement prepared for that action. Thus, the Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from Bruce R. Weber, Agricultural Program Specialist, Production Adjustment Division, ASCS-USDA, P.O. Box 2415, Washington, D.C., 20013, (202) 447-6688.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant." Also for "Improving USDA Regulations" (43 FR 50988), initiation of review of the regulations contained in 7 CFR 1421.350-.354 for need, accuracy, clarity, and effectiveness will be made within the next five years. The next review will take into consideration problems, issues, etc., which are experienced in program administration during the intervening period.

A "Notice of Determinations of 1980-Crop Normal Crop Acreages (NCA) established "Target" Prices, Loan and Purchase Rates for Feed Grains, Soybeans, Wheat, and Rice, and Loan Rates for Upland and Extra Long Staple (ELS) Cotton" was published in the **Federal Register** on August 12, 1980, (45 FR 53501) effective August 7, 1980. The notice included the Secretary's determination that the 1980 loan and purchase rate for rye was being increased to $1.91 per bushel, in accordance with Section 105A of the Agricultural Act of 1949, as amended (7 USC 1444c).

The announcement of this action by the Secretary had to be made immediately so that farmers could indicate their 1980 program participation. Therefore, it was and remains impractical and contrary to the public interest to comply with the public rulemaking requirements of 5 U.S.C. 553 and Executive Order 12044. Thus, this final rule shall become effective upon filing with the Director, Office of the Federal Register.

This rule announces the individual basic county loan and purchase rates to conform with the above notice of determination which increased the national average loan and purchase rate to $1.91 per bushel for the 1980-crop of rye. Producers who wish to secure loans can do so by contacting their local county ASCS office or Agricultural Service Center.

The program title and number from the "Catalog of Federal Domestic Assistance" is Commodity Loan and Purchases, 10.051. This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A-95 was not used to assure that units of local government are informed of this action.

Final Rule

The General Regulations Governing Price Support for 1978 and Subsequent Crops and any amendments thereto, and the 1978 and Subsequent Crops Rye Loan and Purchase Regulations and any amendments thereto in this Part 1421 are further supplemented for the 1980-crop of rye. Accordingly, the regulations in 7 CFR § 1421.350 through § 1421.354 and the title of the subpart are revised to read as provided below effective as to the 1980-crop of rye. The material previously appearing in these sections shall remain in full force and effect as to the crops to which it is applicable.

PART 1421—GRAINS AND OTHER SIMILARLY HANDLED COMMODITIES

Subpart—1980-Crop Rye Loan and Purchase Program

Sec.

1421.350 Purpose.
1421.351 Availability.
1421.352 Maturity of loans.
1421.353 Warehouse charges.
1421.354 Loan and purchase rates and premiums and discounts.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); Secs. 105 A, 401, 63 Stat. 1051, as amended (7 U.S.C. 1444c 1421).

§ 1421.350 Purpose.

This supplement contains additional program provisions which, together with the provisions of the General Regulations Governing Price Support for the 1978 and Subsequent Crops, the 1978 and Subsequent Crop Rye Loan and Purchase Program regulations and any amendments thereto, apply to loans on and purchases of the 1980-crop of rye.

§ 1421.351 Availability.

(a) Loans. Producers desiring to participate in the program through loans must request a loan on their 1980 crop of eligible rye on or before March 31, 1981.

(b) Purchases. A producer desiring to offer eligible 1980-crop rye not under loan for purchase must execute and deliver to the county ASCS office on or before March 31, 1981, a Purchase Agreement (Form CCC-614) indicating the approximate quantity of 1980-crop rye the producer will sell to CCC.

§ 1421.352 Maturity of loans.

Loans mature on demand but not later than the last day of the ninth calendar month following the month the loan is disbursed.

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§ 1421.353 Warehouse charges.

If storage is not provided for through loan maturity, the county ASCS office shall deduct storage charges at the daily storage rate for the storing warehouse times the number of days from the date the commodity was received or date through which storage has been provided for to the maturity date.

§ 1421.354 Loan and purchase rates, premiums and discounts.

(a) Basic loan and purchase rates. Basic county rates per bushel for loan and settlement purposes for rye are established for rye grading No. 2 or better, or No. 3 on the factor of test weight only, are as follows:

1980—Crop Rye Loan and Purchase Rates

County	Rate per Bushel
Alabama	
All counties	$2.02
Arizona	
All counties	1.99
Arkansas	
All counties	1.96
California	
Alameda	2.18
Los Angeles	2.18
Sacramento	2.18
San Diego	2.18
San Francisco	2.18
San Joaquin	2.18
All other counties	2.03
Wght. State avg.	2.03
Colorado	
All counties	1.85
Connecticut	
All counties	2.00
Delaware	
All counties	2.05
Florida	
All counties	2.09
Georgia	
All counties	2.09
Idaho	
All counties	1.94
Illinois	
Cook	2.03
St. Clair	2.03
All other counties	1.97
Wght. State avg.	1.97
Indiana	
All counties	1.96
Iowa	
Pottawattamie	1.96
Woodbury	1.96
All other counties	1.92
Wght. State avg.	1.92
Kansas	
Wyandotte	1.94
All other counties	1.84
Wght. State avg.	1.84
Kentucky	
All counties	2.02
Louisiana	
East Baton Rouge	2.18
Jefferson	2.18
Orleans	2.18
St. Charles	2.18
West Baton Rouge	2.18
All other counties	1.99
Wght. State avg.	1.99
Maine	
All counties	2.00

1980—Crop Rye Loan and Purchase Rates—Continued

County	Rate per Bushel
Maryland	
Baltimore	2.18
All other counties	2.05
Wght. State avg.	2.05
Massachusetts	
All counties	2.00
Michigan	
All counties	1.87
Minnesota	
Hennepin	1.98
St. Louis	1.98
All other counties	1.92
Wght. State avg.	1.92
Mississippi	
All counties	2.04
Missouri	
St. Louis	2.07
All other counties	1.94
Wght. State avg.	1.94
Montana	
All counties	1.75
Nebraska	
All counties	1.84
Nevada	
All counties	1.89
New Hampshire	
All counties	2.00
New Jersey	
All counties	2.02
New Mexico	
All counties	1.89
New York	
Albany	2.16
New York City	2.16
All other counties	2.00
Wght. State avg.	2.00
North Carolina	
All counties	2.09
North Dakota	
All counties	1.79
Ohio	
All counties	1.95
Oklahoma	
All counties	1.92
Oregon	
Clatsop	2.17
Multnomah	2.17
All other counties	2.04
Wght. State avg.	2.04
Pennsylvania	
Philadelphia	2.16
All other counties	2.00
Wght. State avg.	2.00
Rhode Island	
All counties	2.00
South Carolina	
Charleston	2.18
All other counties	2.07
Wght. State avg.	2.07
South Dakota	
All counties	1.84
Tennessee	
Shelby	2.09
All other counties	2.04
Wght. State avg.	2.04
Texas	
Galveston	2.18
Harris	2.18
Jefferson	2.18
Nueces	2.18
San Patricio	2.18
All other counties	1.97
Wght. State avg.	1.97
Utah	
All counties	1.84

1980—Crop Rye Loan and Purchase Rates—Continued

County	Rate per Bushel
Vermont	
All counties	2.00
Virginia	
Chesapeake (Norfolk)	2.16
All other counties	2.05
Wght. State avg.	2.05
Washington	
Clark	2.17
Cowlitz	2.17
King	2.17
Pierce	2.17
All other counties	2.04
Wght. State avg.	2.04
West Virginia	
All counties	2.02
Wisconsin	
Douglas	1.98
Milwaukee	2.04
All other counties	1.95
Wght. State avg.	1.95
Wyoming	
All counties	1.84

(b) *Schedule of Premiums and Discounts for 1980-Crop Rye*

1. *Premiums*

Rye, grading U.S. No. 1, +2

2. *Discounts*

a. Rye, grading U.S. No. 3 on account of "thin" rye:

15.1–17.0 % thins, −3
17.1–19.0 % thins, −5
19.1–21.0 % thins, −7
21.1–23.0 % thins, −9
23.1–25.0 % thins, −11

b. Rye grading U.S. No. 3 for factors other than test weight or % of thins, −5

c. Weed control discount (where required by § 1421.24), −10

3. *Other.* Rye, grading U.S. No. 4 or Sample Grade is not eligible for loan. In the event quantities of rye grading U.S. No. 4 or Sample Grade are delivered in satisfaction of loan obligations, such quantities will be discounted on the basis of the schedule of discounts as provided by the Kansas City ASCS Commodity Office for settlement purposes. The schedule will also provide discounts for certain quality factors not specified above which affect the value of rye, e.g., weevily, ergoty, stones, etc. Such discounts will be established prior to loan maturity and will thereafter be adjusted from time to time as CCC determines appropriate to reflect changes in market conditions. Producers may obtain schedules of such factors, discounts and adjustments at county ASCS offices approximately one month prior to the loan maturity date.

Signed at Washington, D.C. on October 14, 1980.

John W. Goodwin,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 80-32779 Filed 10-20-80; 8:45 am]
BILLING CODE 3410-05-M

7 CFR Part 1421

[CCC Grain Price Support Regulations, 1980—Crop Wheat Supplement]

Grains and Similarly Handled Commodities; 1980—Crop Wheat Loan and Purchase Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to set forth the (1) final loan and purchase availability dates, (2) maturity dates, and (3) loan and purchase rates and premiums and discounts under which Commodity Credit Corporation (CCC) will extend price support on 1980-crop wheat. This rule will enable eligible wheat producers to obtain loans and purchases on their eligible 1980-crop wheat.

EFFECTIVE DATE: October 20, 1980.

ADDRESS: Price Support and Loan Division, ASCS, USDA, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: W. W. Beesley, ASCS, (202) 447-7923. With respect to the availability of an impact analysis, the increases in the basic county loan and purchase rates announced by this final rule were considered under the provisions of the "Notice of Determinations of the 1980 Crop Normal Crop Acreages (NCA), Established 'Target Prices,' Loan and Purchase Rates for Feed Grains, Soybeans, Wheat, and Rice, and Loan Rates for Upland and ELS Cotton" published in the Federal Register (45 FR 53501) on August 12, 1980, and specifically considered in the Final Impact Statement prepared for that action. Thus, the Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from Bruce R. Weber, Agricultural Program Specialist, Production Adjustment Division, ASCS-USDA, P.O. Box 2415, Washington, D.C. 20013, (202) 447-6688.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant."

Also for "Improving USDA Regulations" (43 FR 50988), initiation of review of the regulations contained in 7 CFR 1421.485–.490 for need, accuracy, clarity, and effectiveness will be made within the next five years. The next review will take into consideration problems, issues, etc., which are experienced in program administration during the intervening period.

A "Notice of Determinations of 1980-Crop Normal Crop Acreages (NCA) Established "Target" Prices, Loan and Purchase Rates for Feed Grains, Soybeans, Wheat, and Rice, and Loan Rates for Upland and Extra Long Staple (ELS) Cotton" was published in the Federal Register on August 12, 1980 (45 FR 53501), effective August 7, 1980. The notice included the Secretary's determination that the 1980 loan and purchase rate for wheat was being increased to $3.00 per bushel in accordance with Section 107A of the Agricultural Act of 1949, as amended (7 USC 1445b). The announcement of this action by the Secretary had to be made immediately so that farmers could indicate their 1980 program participation. Therefore, it was and remains impractical and contrary to the public interest to comply with the public rulemaking requirements of 5 U.S.C. 553 and Executive Order 12044. Thus, this final rule shall become effective upon filing with the Director, Office of the Federal Register.

This rule announces the individual basic county loan and purchase rates to conform with the above notice of determination which increased the national average loan and purchase rate to $3.00 per bushel for the 1980 crop of wheat. Producers who wish to secure loans can do so by contacting their local county ASCS office or Agricultural Service Center.

The program title and number from the "Catalog of Federal Domestic Assistance" is Commodity Loan and Purchases, 10.051. This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A-95 was not used to assure that units of local government are informed of this action.

Final Rule

The General Regulations Governing Price Support for 1978 and Subsequent Crops and any amendments thereto, and the 1978 and Subsequent Crops Wheat Loan and Purchase Regulations and any amendments thereto in this Part 1421 are further supplemented for the 1980 crop of wheat. Accordingly, the regulations in 7 CFR 1421.485 through 1421.490 and the title of the subpart are revised to read as provided below effective as to the 1980 crop of wheat. The material previously appearing in these sections shall remain in full force and effect as to the crops to which it is applicable.

PART 1421—GRAINS AND OTHER SIMILARLY HANDLED COMMODITIES

Subpart—1980-Crop Wheat Loan and Purchase Program

Sec.
1421.485 Purpose.
1421.486 Availability.
1421.487 Maturity of loans.
1421.488 Ineligible classes.
1421.489 Warehouse charges.
1421.490 Loan and purchase rates and premiums and discounts.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); Secs. 107 A, 401, 63 Stat. 1051, as amended (7 U.S.C. 1445b 1421).

§ 1421.485 Purpose

This supplement contains additional program provisions which, together with the provisions of the General Regulations Governing Price Support for the 1978 and Subsequent Crops, the 1978 and Subsequent Crop Wheat Loan and Purchase Program regulations and any amendments thereto, apply to loans on and purchases of the 1980-crop of wheat.

§ 1421.486 Availability.

(a) Loans. Producers desiring to participate in the program through loans must request a loan on their 1980 crop of eligible wheat on or before March 31, 1981.

(b) Purchases. A producer desiring to offer eligible 1980-crop wheat not under loan for purchase must execute and deliver to the county ASCS office on or before March 31, 1981, a Purchase Agreement (Form CCC-614) indicating the approximate quantity of 1980-crop wheat the producer will sell to CCC.

§ 1421.487 Maturity of loans.

Loans mature on demand but not later than the last day of the ninth calendar month following the month the loan is disbursed.

§ 1421.488 Ineligible classes.

Unclassed wheat which includes red durum shall not be eligible for loan or purchases.

§ 1421.489 Warehouse charges.

If storage is not provided for through loan maturity, the county ASCS office shall deduct storage charges at the daily storage rate for the storing warehouse times the number of days from the date the commodity was received or date through which storage has been provided for to the maturity date.

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§ 1421.490 Loan and purchase rates, premiums and discounts.

(a) Basic loan and purchase rates (counties). Basic rates per bushel for loan settlement purposes for wheat are established for wheat grading No. 1 and are as follows:

1980—Crop Wheat Loan and Purchase Rates

County	Rate per bushel
Alabama	
Mobile	$3.12
All other counties	2.93
Wght. State Avg	2.93
Arizona	
All counties	3.03
Arkansas	
All counties	2.94
California	
Alameda	3.19
Alpine	3.01
Amador	3.14
Butte	3.08
Calaveras	3.14
Colusa	3.13
Contra Costa	3.14
El Dorado	3.13
Fresno	3.09
Glenn	3.07
Humboldt	2.96
Imperial	3.11
Inyo	3.07
Kern	3.14
Kings	3.11
Lake	3.07
Lassen	2.96
Los Angeles	3.19
Madera	3.12
Marin	3.12
Mariposa	3.12
Mendocino	3.01
Merced	3.15
Modoc	2.96
Monterey	3.09
Napa	3.13
Orange	3.19
Placer	3.13
Plumas	2.96
Riverside	3.11
Sacramento	3.19
San Benito	3.12
San Bernardino	3.20
San Diego	3.19
San Francisco	3.19
San Joaquin	3.19
San Luis Obispo	3.08
San Mateo	3.19
Santa Barbara	3.09
Santa Clara	3.13
Santa Cruz	3.14
Shasta	2.97
Sierra	2.98
Siskiyou	2.96
Solano	3.14
Sonoma	3.11
Stanislaus	3.18
Sutter	3.13
Tehama	3.03
Tulare	3.11
Tuolumne	3.12
Ventura	3.16
Yolo	3.14
Yuba	3.13
Wght. State Avg	3.12
Colorado	
Adams	2.84
Alamosa	2.80
Arapahoe	2.84
Archuleta	2.77
Baca	2.87
Bent	2.83
Boulder	2.84
Chaffee	2.80
Cheyenne	2.84
Conejos	2.80
Costilla	2.80

1980—Crop Wheat Loan and Purchase Rates—Continued

County	Rate per bushel
Crowley	2.83
Custer	2.82
Delta	2.74
Denver	2.87
Dolores	2.74
Douglas	2.84
Eagle	2.77
Elbert	2.83
El Paso	2.83
Fremont	2.82
Garfield	2.77
Grand	2.80
Huerfano	2.84
Jackson	2.80
Jefferson	2.84
Kiowa	2.84
Kit Carson	2.84
La Plata	2.74
Larimer	2.83
Las Animas	2.86
Lincoln	2.83
Logan	2.83
Mesa	2.74
Moffat	2.80
Montezuma	2.74
Montrose	2.74
Morgan	2.83
Otero	2.83
Ouray	2.74
Phillips	2.83
Pitkin	2.74
Prowers	2.85
Pueblo	2.83
Rio Blanco	2.77
Rio Grande	2.80
Routt	2.80
Saguache	2.80
San Miguel	2.74
Sedgwick	2.86
Summit	2.77
Teller	2.82
Washington	2.83
Weld	2.83
Yuma	2.84
Wght. State Avg	2.83
Connecticut	
All counties	2.95
Delaware	
All counties	2.98
Florida	
All counties	2.92
Georgia	
All counties	2.92
Idaho	
Ada	2.97
Adams	2.97
Bannock	2.95
Bear Lake	2.93
Benewah	3.07
Bingham	2.93
Blaine	2.93
Boise	2.97
Bonner	3.00
Bonneville	2.92
Boundary	2.98
Butte	2.92
Camas	2.94
Canyon	2.97
Caribou	2.94
Cassia	2.96
Clark	2.90
Clearwater	3.08
Custer	2.92
Elmore	2.96
Franklin	2.96
Fremont	2.91
Gem	2.97
Gooding	2.97
Idaho	3.05
Jefferson	2.92
Jerome	2.97
Kootenai	3.05
Latah	3.08
Lemhi	2.92
Lewis	3.07
Lincoln	2.96
Madison	2.92

1980—Crop Wheat Loan and Purchase Rates—Continued

County	Rate per bushel
Minidoka	2.96
Nez Perce	3.10
Oneida	2.96
Owyhee	2.96
Payette	2.97
Power	2.96
Shoshone	3.08
Teton	2.91
Twin Falls	2.97
Valley	2.96
Washington	2.97
Wght. State Avg	2.98
Illinois	
Adams	2.96
Alexander	2.99
Bond	3.02
Boone	3.04
Brown	2.96
Bureau	3.02
Calhoun	3.03
Carroll	3.01
Cass	2.98
Champaign	3.02
Christian	3.00
Clark	2.98
Clay	2.98
Clinton	3.02
Coles	2.98
Cook	3.04
Crawford	2.97
Cumberland	2.98
De Kalb	3.04
De Witt	2.98
Douglas	2.99
Du Page	3.04
Edgar	3.00
Edwards	2.98
Effingham	3.00
Fayette	3.01
Ford	3.02
Franklin	3.02
Fulton	3.00
Gallatin	2.95
Greene	3.02
Grundy	3.04
Hamilton	2.96
Hancock	2.96
Hardin	2.95
Henderson	2.96
Henry	3.01
Iroquois	3.04
Jackson	3.01
Jasper	2.97
Jefferson	3.02
Jersey	3.03
Jo Daviess	3.01
Johnson	2.99
Kane	3.04
Kankakee	3.04
Kendall	3.04
Knox	3.00
Lake	3.04
La Salle	3.04
Lawrence	2.97
Lee	3.03
Livingston	3.03
Logan	2.98
McDonough	2.98
McHenry	3.04
McLean	3.00
Macon	2.98
Macoupin	3.02
Madison	3.03
Marion	3.02
Marshall	3.01
Mason	2.96
Massac	2.98
Menard	2.96
Mercer	3.00
Monroe	3.03
Montgomery	3.02
Morgan	3.00
Moultrie	2.99
Ogle	3.02
Peoria	3.00
Perry	3.02
Piatt	2.98
Pike	2.97
Pope	2.96

1980—Crop Wheat Loan and Purchase Rates—Continued

County	Rate per bushel
Pulaski	2.99
Putnam	3.01
Randolph	3.03
Richland	2.97
Rock Island	3.01
St. Clair	3.03
Saline	2.96
Sangamon	3.00
Schuyler	2.98
Scott	2.98
Shelby	3.00
Stark	3.00
Stephenson	3.03
Tazewell	2.98
Union	2.99
Vermilion	3.03
Wabash	2.97
Warren	3.00
Washington	3.02
Wayne	2.98
White	2.95
Whiteside	3.02
Will	3.04
Williamson	3.00
Winnebago	3.03
Woodford	3.00
Wght. State Avg	3.00
Indiana	
Adams	2.97
Allen	2.97
Bartholemew	2.97
Benton	3.02
Blackford	2.97
Boone	2.96
Brown	2.97
Carroll	3.00
Cass	3.00
Clark	3.02
Clay	2.98
Clinton	2.96
Crawford	3.02
Daviess	2.98
Dearborn	2.97
Decatur	2.97
De Kalb	2.97
Deleware	2.97
Dubois	2.99
Elkhart	2.99
Fayette	2.97
Floyd	3.02
Fountain	3.00
Franklin	2.97
Fulton	3.00
Gibson	2.97
Grant	2.96
Greene	2.98
Hamilton	2.97
Hancock	2.97
Harrison	3.02
Hendricks	2.96
Henry	2.97
Howard	2.96
Huntington	2.96
Jackson	2.96
Jasper	3.03
Jay	2.97
Jefferson	3.00
Jennings	2.98
Johnson	2.96
Knox	2.97
Kosciusko	3.00
Lagrange	2.96
Lake	3.04
La Porte	3.04
Lawrence	2.96
Madison	2.97
Marion	2.97
Marshall	3.00
Martin	2.98
Miami	2.96
Monroe	2.97
Montgomery	2.96
Morgan	2.96
Newton	3.03
Noble	2.97
Ohio	2.97
Orange	3.00
Owen	2.97
Parke	3.00

1980—Crop Wheat Loan and Purchase Rates—Continued

County	Rate per bushel
Perry	2.96
Pike	2.96
Porter	3.04
Posey	2.95
Pulaski	3.03
Putnam	2.96
Randolph	2.97
Ripley	2.97
Rush	3.02
St. Joseph	3.00
Scott	2.97
Shelby	2.96
Spencer	3.03
Starke	3.03
Steuben	2.97
Sullivan	2.96
Switzerland	2.96
Tippecanoe	2.99
Tipton	2.96
Union	2.97
Vanderburgh	2.97
Vermillion	3.00
Vigo	2.99
Wabash	2.96
Warren	3.02
Warrick	2.96
Washington	3.00
Wayne	2.97
Wells	2.97
White	3.02
Whitley	2.96
Wght. State Avg	2.96
Iowa	
Pottawattamie	3.07
All other counties	2.96
Wght. State Avg	2.96
Kansas	
Allen	3.02
Anderson	3.05
Atchison	3.07
Barber	2.91
Barton	2.91
Bourbon	3.03
Brown	3.05
Butler	2.95
Chase	2.96
Chautauqua	2.96
Cherokee	3.00
Cheyenne	2.84
Clark	2.88
Clay	2.96
Cloud	2.96
Coffey	3.03
Comanche	2.89
Cowley	2.95
Crawford	3.01
Decatur	2.88
Dickinson	2.95
Doniphan	3.05
Douglas	3.06
Edwards	2.91
Elk	2.96
Ellis	2.91
Ellsworth	2.94
Finney	2.88
Ford	2.89
Franklin	3.06
Geary	2.96
Gove	2.86
Graham	2.90
Grant	2.86
Gray	2.88
Greeley	2.84
Greenwood	2.98
Hamilton	2.85
Harper	2.93
Harvey	2.94
Haskell	2.87
Hodgeman	2.90
Jackson	3.04
Jefferson	3.06
Jewell	2.95
Johnson	3.07
Kearny	2.86
Kingman	2.94
Kiowa	2.91
Labette	3.00
Lane	2.88
Leavenworth	3.07

1980—Crop Wheat Loan and Purchase Rates—Continued

County	Rate per bushel
Lincoln	2.94
Linn	3.05
Logan	2.85
Lyon	3.00
McPherson	2.94
Marion	2.94
Marshall	3.00
Meade	2.86
Miami	3.06
Mitchell	2.94
Montgomery	3.00
Morris	2.98
Morton	2.87
Nemaha	3.02
Neosho	3.01
Ness	2.90
Norton	2.90
Osage	3.03
Osborne	2.94
Ottawa	2.95
Pawnee	2.91
Phillips	2.91
Pottawatomie	3.02
Pratt	2.91
Rawlins	2.86
Reno	2.94
Republic	2.96
Rice	2.94
Riley	3.00
Rooks	2.92
Rush	2.91
Russell	2.92
Saline	2.95
Scott	2.86
Sedgwick	2.94
Seward	2.87
Shawnee	3.04
Sheridan	2.98
Sherman	2.84
Smith	2.94
Stafford	2.91
Stanton	2.85
Stevens	2.87
Sumner	2.94
Thomas	2.86
Trego	2.90
Wabaunsee	3.01
Wallace	2.84
Washington	2.96
Wichita	2.85
Wilson	3.00
Woodson	3.01
Wyandotte	3.07
Wght. State Avg	2.92
Kentucky	
Jefferson	3.03
All other counties	2.95
Wght. State Avg	2.95
Louisiana	
East Baton Rouge	3.13
Jefferson	3.13
Orleans	3.13
St. Charles	3.13
West Baton Rouge	3.13
All other counties	2.96
Wght. State Avg	2.96
Maine	
All counties	2.92
Maryland	
Baltimore	3.11
All other counties	2.98
Wght. State Avg	2.98
Massachusetts	
All Counties	2.94
Michigan	
Alcona	2.97
Alger	2.88
Allegan	2.98
Alpena	2.84
Antrim	2.84
Arenac	2.88
Baraga	2.88
Barry	2.95
Bay	2.92
Benzie	2.97
Berrien	3.00

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1980—Crop Wheat Loan and Purchase Rates—Continued

County	Rate per bushel
Branch	2.97
Calhoun	2.96
Cass	2.97
Charlevoix	2.83
Cheboygan	2.83
Chippewa	2.88
Clare	2.90
Clinton	2.93
Crawford	2.87
Delta	2.88
Dickinson	2.88
Eaton	2.95
Emmet	2.81
Genesee	2.95
Gladwin	2.90
Gogebic	2.88
Grand Traverse	2.87
Gratiot	2.93
Hillsdale	2.96
Houghton	2.86
Huron	2.94
Ingham	2.95
Ionia	2.93
Iosco	2.88
Iron	2.89
Isabella	2.92
Jackson	2.96
Kalamazoo	2.96
Kalkaska	2.87
Kent	2.93
Keweenaw	2.86
Lake	2.89
Lapeer	2.95
Leelanau	2.86
Lenawee	2.99
Livingston	2.96
Luce	2.88
Mackinac	2.88
Macomb	2.96
Manistee	2.86
Marquette	2.88
Mason	2.91
Mecosta	2.92
Menominee	2.88
Midland	2.92
Missaukee	2.87
Monroe	3.01
Montcalm	2.93
Montmorency	2.84
Muskegon	2.93
Newaygo	2.91
Oakland	2.96
Oceana	2.91
Ogemaw	2.88
Ontonagon	2.88
Osceola	2.89
Oscoda	2.87
Otsego	2.84
Ottawa	2.93
Presque Isle	2.83
Roscommon	2.87
Saginaw	2.95
St. Clair	2.98
St. Joseph	2.97
Sanilac	2.95
Schoolcraft	2.88
Shiawassee	2.95
Tuscola	2.95
Van Buren	2.96
Washtenaw	2.98
Wayne	2.98
Wexford	2.87
Wght. State Avg	2.95
Minnesota	
Aitkin	3.19
Anoka	3.19
Becker	3.09
Beltrami	3.12
Benton	3.16
Big Stone	3.10
Blue Earth	3.17
Brown	3.17
Carlton	3.19
Carver	3.19
Cass	3.15
Chippewa	3.13
Chisago	3.19
Clay	3.07
Clearwater	3.11
Cottonwood	3.14
Crow Wing	3.17
Dakota	3.19
Dodge	3.19
Douglas	3.14
Faribault	3.16
Fillmore	3.15
Freeborn	3.15
Goodhue	3.19
Grant	3.12
Hennepin	3.19
Houston	3.12
Hubbard	3.12
Isanti	3.19
Itasca	3.17
Jackson	3.13
Kanabec	3.18
Kandiyohi	3.17
Kittson	3.03
Koochiching	3.13
Lac Qui Parle	3.11
Lake of the Woods	3.07
Le Sueur	3.19
Lincoln	3.09
Lyon	3.12
McLeod	3.19
Mahnomen	3.09
Marshall	3.06
Martin	3.15
Meeker	3.19
Mille Lacs	3.18
Morrison	3.17
Mower	3.17
Murray	3.12
Nicollet	3.19
Nobles	3.11
Norman	3.07
Olmsted	3.17
Otter Tail	3.12
Pennington	3.06
Pine	3.19
Pipestone	3.09
Polk	3.06
Pope	3.16
Ramsey	3.19
Red Lake	3.06
Redwood	3.15
Renville	3.17
Rice	3.19
Rock	3.09
Roseau	3.04
St. Louis	3.19
Scott	3.19
Sherburne	3.19
Sibley	3.19
Stearns	3.17
Steele	3.17
Stevens	3.13
Swift	3.13
Todd	3.15
Traverse	3.09
Wabasha	3.19
Wadena	3.13
Waseca	3.18
Washington	3.19
Watonwan	3.16
Wilkin	3.09
Winona	3.16
Wright	3.19
Yellow Medicine	3.13
Wght. State Avg	3.10
Mississippi	
Harrison	3.13
Jackson	3.13
All other counties	2.84
Wght. State Avg	2.94
Missouri	
Adair	2.83
Andrew	3.05
Atchison	3.00
Audrain	2.98
Barry	2.95
Barton	2.99
Bates	3.03
Benton	3.99
Bollinger	2.98
Boone	2.95
Buchanan	3.07
Butler	2.97
Caldwell	3.04
Callaway	2.98
Camden	2.98
Cape Girardeau	2.99
Carroll	3.02
Carter	2.96
Cass	3.05
Cedar	2.98
Charlton	2.99
Christian	2.92
Clark	2.94
Clay	3.05
Clinton	3.05
Cole	2.98
Cooper	2.96
Crawford	2.98
Dade	2.97
Dallas	2.94
Daviess	3.02
De Kalb	3.04
Dent	2.96
Douglas	2.91
Dunklin	2.98
Franklin	3.02
Gasconade	3.00
Gentry	3.01
Greene	2.94
Grundy	2.99
Harrison	3.01
Henry	3.02
Hickory	2.99
Holt	3.03
Howard	2.98
Howell	2.99
Iron	2.98
Jackson	3.07
Jasper	2.98
Jefferson	3.01
Johnson	3.03
Knox	2.93
LaClede	2.93
Lafayette	3.05
Lawrence	2.95
Lewis	2.95
Lincoln	3.02
Linn	2.99
Livingston	3.01
McDonald	2.95
Macon	2.96
Madison	2.98
Maries	2.98
Marion	2.97
Mercer	2.98
Miller	2.95
Mississippi	3.00
Moniteau	2.96
Monroe	2.97
Montgomery	3.00
Morgan	2.97
New Madrid	3.00
Newton	2.95
Nodaway	3.03
Oregon	2.93
Osage	2.97
Ozark	2.90
Pemiscot	2.98
Perry	2.99
Pettis	2.99
Phelps	2.96
Pike	3.00
Platte	3.05
Polk	2.97
Pulaski	2.94
Putnam	2.96
Ralls	2.98
Randolph	2.96
Ray	3.05
Reynolds	2.98
Ripley	2.95
St. Charles	3.03
St. Clair	3.00
St. Francois	2.99
Ste. Genevieve	3.00
St. Louis	3.03
Saline	3.00
Schuyler	2.91
Scotland	2.91
Scott	3.00
Shannon	2.93
Shelby	2.96

1980—Crop Wheat Loan and Purchase Rates—Continued

County	Rate per bushel
Stoddard	2.99
Stone	2.95
Sullivan	2.96
Taney	2.92
Texas	2.92
Vernon	3.01
Warren	3.02
Washington	2.99
Wayne	2.97
Webster	2.93
Worth	3.01
Wright	2.93
Wght. State Avg	3.00
Montana	
Beaverhead	2.89
Big Horn	2.90
Blaine	2.91
Broadwater	2.95
Carbon	2.91
Carter	2.91
Cascade	2.94
Chouteau	2.94
Custer	2.90
Daniels	2.89
Dawson	2.91
Deer Lodge	2.96
Fallon	2.92
Fergus	2.93
Flathead	2.97
Gallatin	2.96
Garfield	2.89
Glacier	2.94
Golden Valley	2.93
Granite	2.96
Hill	2.92
Jefferson	2.96
Judith Basin	2.93
Lake	2.96
Lewis and Clark	2.94
Liberty	2.93
Lincoln	2.97
McCone	2.90
Madison	2.96
Meagher	2.94
Mineral	2.96
Missoula	2.96
Musselshell	2.91
Park	2.95
Petroleum	2.91
Phillips	2.90
Pondera	2.94
Powder River	2.90
Powell	2.96
Prairie	2.91
Ravalli	2.94
Richland	2.91
Roosevelt	2.90
Rosebud	2.89
Sanders	2.96
Sheridan	2.90
Silver Bow	2.96
Stillwater	2.93
Sweet Grass	2.94
Teton	2.94
Toole	2.93
Treasure	2.90
Valley	2.89
Wheatland	2.94
Wibaux	2.92
Yellowstone	2.91
Wght. State Avg	2.92
Nebraska	
Adams	2.94
Antelope	3.02
Arthur	2.85
Banner	2.82
Blaine	2.92
Boone	3.02
Box Butte	2.82
Boyd	2.99
Brown	2.92
Buffalo	2.95
Burt	3.07
Butler	3.04
Cass	3.06
Cedar	3.03
Chase	2.84
Cherry	2.86
Cheyenne	2.82
Clay	2.95
Colfax	3.04
Cuming	3.06
Custer	2.92
Dakota	3.06
Dawes	2.82
Dawson	2.94
Deuel	2.83
Dixon	3.03
Dodge	3.06
Douglas	3.07
Dundy	2.84
Fillmore	2.97
Franklin	2.92
Frontier	2.87
Furnas	2.90
Gage	3.00
Garden	2.83
Garfield	2.96
Gosper	2.90
Grant	2.85
Greeley	2.96
Hall	2.96
Hamilton	2.96
Harlan	2.91
Hayes	2.86
Hitchcock	2.86
Holt	2.99
Hooker	2.86
Howard	2.96
Jefferson	2.99
Johnson	3.00
Kearney	2.92
Keith	2.85
Keya Paha	2.94
Kimball	2.82
Knox	3.02
Lancaster	3.03
Lincoln	2.89
Logan	2.89
Loup	2.92
McPherson	2.88
Madison	3.02
Merrick	2.99
Morrill	2.82
Nance	3.00
Nemaha	3.00
Nuckolls	2.94
Otoe	3.03
Pawnee	3.02
Perkins	2.84
Phelps	2.91
Pierce	3.02
Platte	3.02
Polk	3.01
Red Willow	2.87
Richardson	3.03
Rock	2.95
Saline	2.99
Sarpy	3.07
Saunders	3.06
Scotts Bluff	2.82
Seward	3.02
Sheridan	2.83
Sherman	2.95
Sioux	2.80
Stanton	3.04
Thayer	2.97
Thomas	2.89
Thurston	3.06
Valley	2.95
Washington	3.07
Wayne	3.03
Webster	2.94
Wheeler	2.98
York	2.99
Wght. State. Avg	2.90
Nevada	
All counties	2.97
New Hampshire	
All counties	2.94
New Jersey	
All counties	2.96
New Mexico	
All counties	3.00
New York	
Albany	3.11
New York City	3.11
All other counties	2.96
Wght. State Avg	2.96
North Carolina	
All counties	2.92
North Dakota	
Adams	2.91
Barnes	3.04
Benson	2.97
Billings	2.90
Bottineau	2.91
Bowman	2.91
Burke	2.89
Burleigh	2.95
Cass	3.06
Cavalier	2.96
Dickey	3.04
Divide	2.88
Dunn	2.91
Eddy	3.00
Emmons	2.96
Foster	3.01
Golden Valley	2.90
Grand Forks	3.05
Grant	2.93
Griggs	3.04
Hettinger	2.91
Kidder	2.96
La Moure	3.02
Logan	3.00
McHenry	2.92
McIntosh	3.00
McKenzie	2.89
McLean	2.91
Mercer	2.91
Morton	2.94
Mountrail	2.90
Nelson	3.03
Oliver	2.92
Pembina	3.02
Pierce	2.94
Ramsey	2.99
Ransom	3.07
Renville	2.91
Richland	3.08
Rolette	2.94
Sargent	3.07
Sheridan	2.94
Sioux	2.93
Slope	2.91
Stark	2.91
Steele	3.04
Stutsman	3.02
Towner	2.95
Traill	3.05
Walsh	3.04
Ward	2.90
Wells	2.98
Williams	2.89
Wght. State Avg	2.97
Ohio	
Adams	2.96
Allen	2.99
Ashland	3.02
Ashtabula	3.04
Athens	3.01
Auglaize	2.96
Belmont	3.02
Brown	2.96
Butler	2.96
Carroll	3.02
Champaign	2.96
Clark	2.96
Clermont	2.96
Clinton	2.96
Columbiana	3.03
Coshocton	3.02
Crawford	3.01
Cuyahoga	3.02
Darke	2.96
Defiance	2.96
Delaware	3.01
Erie	3.01
Fairfield	3.01
Fayette	2.96
Franklin	3.01
Fulton	3.00
Gallia	2.96
Geauga	3.04

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1980—Crop Wheat Loan and Purchase Rates—Continued

County	Rate per bushel
Greene	2.98
Guernsey	3.02
Hamilton	2.98
Hancock	3.01
Hardin	3.01
Harrison	3.02
Henry	3.00
Highland	2.98
Hocking	3.01
Holmes	3.02
Huron	3.01
Jackson	2.98
Jefferson	3.02
Knox	3.02
Lake	3.04
Lawrence	2.98
Licking	3.02
Logan	2.98
Lorain	3.02
Lucas	3.01
Madison	2.98
Mahoning	3.04
Marion	3.01
Medina	3.02
Meigs	2.98
Mercer	2.98
Miami	2.98
Monroe	3.02
Montgomery	2.98
Morgan	3.02
Morrow	3.02
Muskingum	3.02
Noble	3.02
Ottawa	3.01
Paulding	2.98
Perry	3.01
Pickaway	3.01
Pike	2.98
Portage	3.02
Preble	2.98
Putnam	3.00
Richland	3.02
Ross	3.01
Sandusky	3.01
Scioto	2.98
Seneca	3.01
Shelby	2.98
Stark	3.02
Summit	3.02
Trumbull	3.04
Tuscarawas	3.02
Union	3.01
Van Wert	2.98
Vinton	3.01
Warren	2.98
Washington	3.02
Wayne	3.02
Williams	2.98
Wood	3.01
Wyandot	3.01
Wght. State Avg	3.00
Oklahoma	
Adair	3.01
Alfalfa	2.98
Atoka	3.03
Beaver	2.93
Beckham	3.02
Blaine	3.02
Bryan	3.03
Caddo	3.03
Canadian	3.03
Carter	3.03
Cherokee	3.01
Choctaw	3.03
Cimarron	2.93
Cleveland	3.03
Coal	3.03
Comanche	3.03
Cotton	3.03
Craig	3.00
Creek	3.02
Custer	3.02
Delaware	3.01
Dewey	3.01
Ellis	2.98
Garfield	3.00
Garvin	3.03
Grady	3.03
Grant	2.96
Greer	3.03
Harmon	3.03
Harper	2.93
Haskell	3.03
Hughes	3.03
Jackson	3.03
Jefferson	3.03
Johnston	3.03
Kay	2.99
Kingfisher	3.02
Kiowa	3.03
Latimer	3.03
Le Flore	3.03
Lincoln	3.03
Logan	3.02
Love	3.03
McClain	3.03
McCurtain	3.03
McIntosh	3.03
Major	3.00
Marshall	3.03
Mayes	3.01
Murray	3.03
Muskogee	3.03
Noble	3.00
Nowata	3.00
Okfuskee	3.03
Oklahoma	3.03
Okmulgee	3.03
Osage	3.00
Ottawa	3.00
Pawnee	3.00
Payne	3.02
Pittsburg	3.03
Pontotoc	3.03
Pottawatomie	3.03
Pushmataha	3.03
Roger Mills	3.00
Rogers	3.01
Seminole	3.03
Sequoyah	3.03
Stephens	3.03
Texas	2.93
Tillman	3.03
Tulsa	3.01
Wagoner	3.01
Washington	3.00
Washita	3.02
Woods	2.98
Woodard	2.98
Wght. State Avg	3.00
Oregon	
Baker	3.07
Benton	3.14
Clackamas	3.21
Clatsop	3.28
Columbia	3.28
Coos	2.94
Crook	3.12
Curry	2.93
Deschutes	3.12
Douglas	2.98
Gilliam	3.17
Grant	3.12
Harney	2.98
Hood River	3.23
Jackson	2.98
Jefferson	3.15
Josephine	2.98
Klamath	3.06
Lake	3.03
Lane	3.12
Lincoln	3.04
Linn	3.15
Malheur	2.98
Marion	3.19
Morrow	3.15
Multnomah	3.28
Polk	3.17
Sherman	3.17
Tillamook	3.21
Umatilla	3.14
Union	3.10
Wallowa	3.06
Wasco	3.19
Washington	3.21
Wheeler	3.14
Yamhill	3.19
Wght. State Avg	3.15
Pennsylvania	
Philadelphia	3.11
All other counties	2.96
Wght. State Avg	2.96
Rhode Island	
All counties	2.95
South Carolina	
Charleston	3.11
All other counties	2.92
Wght. State Avg	2.92
South Dakota	
Aurora	3.04
Beadle	3.03
Bennett	2.91
Bon Homme	3.05
Brookings	3.07
Brown	3.03
Brule	3.01
Buffalo	3.01
Butte	2.89
Campbell	2.96
Charles Mix	3.01
Clark	3.03
Clay	3.07
Codington	3.07
Corson	2.93
Custer	2.83
Davison	3.07
Day	3.07
Deuel	3.10
Dewey	2.93
Douglas	3.03
Edmunds	3.00
Fall River	2.81
Faulk	3.02
Grant	3.10
Gregory	2.96
Haakon	2.96
Hamlin	3.06
Hand	3.03
Hanson	3.04
Harding	2.90
Hughes	2.98
Hutchinson	3.06
Hyde	3.01
Jackson	2.95
Jerauld	3.04
Jones	2.97
Kingsbury	3.04
Lake	3.06
Lawrence	2.89
Lincoln	3.09
Lyman	2.98
McCook	3.07
McPherson	3.00
Marshall	3.07
Meade	2.90
Mellette	2.96
Miner	3.05
Minnehaha	3.08
Moody	3.08
Pennington	2.90
Perkins	2.90
Potter	2.98
Roberts	3.09
Sanborn	3.04
Shannon	2.88
Spink	3.03
Stanley	2.97
Sully	2.98
Todd	2.93
Tripp	2.96
Turner	3.08
Union	3.07
Walworth	2.98
Yankton	3.05
Ziebach	2.91
Wght. State Avg	3.00
Tennessee	
Shelby	3.04
All other counties	2.93
Wght. State Avg	2.93
Texas	
Anderson	3.15
Andrews	3.01
Archer	3.06
Armstrong	3.01

1980—Crop Wheat Loan and Purchase Rates—Continued

County	Rate per bushel
Atascosa	3.15
Bailey	3.01
Bandera	3.11
Bastrop	3.15
Baylor	3.05
Bee	3.23
Bell	3.15
Bexar	3.15
Blanco	3.13
Borden	3.01
Bosque	3.12
Bowie	3.08
Brazos	3.20
Briscoe	3.01
Brown	3.09
Burleson	3.20
Burnet	3.13
Caldwell	3.15
Calhoun	3.19
Callahan	3.05
Carson	3.01
Castro	3.01
Chambers	3.25
Cherokee	3.17
Childress	3.03
Clay	3.07
Cochran	3.01
Coke	3.02
Coleman	3.06
Collin	3.10
Collingsworth	3.01
Comal	3.15
Comanche	3.10
Concho	3.07
Cooke	3.08
Coryell	3.14
Cottle	3.01
Crockett	3.03
Crosby	3.01
Culberson	3.01
Callam	2.96
Dallas	3.12
Dawson	3.01
Deaf Smith	3.01
Delta	3.11
Denton	3.10
DeWitt	3.17
Dickens	3.01
Dimmit	3.09
Donley	3.01
Eastland	3.05
Edwards	3.05
Ellis	3.12
El Paso	3.01
Erath	3.10
Falls	3.14
Fannin	3.08
Fisher	3.02
Floyd	3.01
Foard	3.03
Frio	3.13
Gaines	3.01
Galveston	3.25
Garza	3.01
Gillespie	3.09
Glasscock	3.01
Goliad	3.19
Gonzales	3.17
Gray	3.01
Grayson	3.06
Grimes	3.20
Guadalupe	3.15
Hale	3.01
Hall	3.01
Hamilton	3.12
Hansford	2.96
Hardeman	3.03
Harris	3.25
Hartley	2.98
Haskell	3.03
Hays	3.15
Hemphill	2.98
Henderson	3.13
Hill	3.12
Hockley	3.01
Hood	3.09
Hopkins	3.11
Houston	3.17
Howard	3.01
Hudspeth	3.01
Hunt	3.11
Hutchinson	2.98
Irion	3.03
Jack	3.07
Jackson	3.15
Jeff Davis	3.01
Jefferson	3.21
Johnson	3.11
Jones	3.03
Karnes	3.19
Kaufman	3.13
Kendall	3.13
Kent	3.01
Kerr	3.09
Kimble	3.07
King	3.01
Kinney	3.05
Knox	3.03
Lamar	3.06
Lamb	3.01
Lampasas	3.14
Limestone	3.14
Lipscomb	2.96
Live Oak	3.21
Llano	3.11
Loving	3.01
Lubbock	3.01
Lynn	3.01
McCulloch	3.09
McLennan	3.14
Martin	3.01
Mason	3.09
Maverick	3.05
Medina	3.11
Menard	3.07
Midland	3.01
Milam	3.18
Mills	3.10
Mitchell	3.02
Montague	3.07
Moore	2.98
Motley	3.01
Navarro	3.13
Nolan	3.02
Nueces	3.25
Ochiltree	2.98
Oldham	3.01
Palo Pinto	3.07
Parker	3.09
Parmer	3.01
Pecos	3.01
Potter	3.01
Presidio	3.01
Rains	3.11
Randall	3.01
Real	3.07
Red River	3.08
Reeves	3.01
Refugio	3.22
Roberts	2.98
Robertson	3.17
Rockwall	3.11
Runnels	3.05
San Patricio	3.25
San Saba	3.10
Schleicher	3.03
Scurry	3.02
Shackelford	3.05
Sherman	2.98
Somervell	3.09
Stephens	3.06
Sterling	3.02
Stonewall	3.01
Sutton	3.03
Swisher	3.01
Tarrant	3.12
Taylor	3.03
Terry	3.01
Throckmorton	3.05
Tom Green	3.04
Travis	3.15
Uvalde	3.06
Van Zandt	3.13
Victoria	3.19
Waller	3.20
Ward	3.01
Wharton	3.20
Wheeler	3.01
Wichita	3.05
Wilbarger	3.05
Wilkamson	3.15
Wilson	3.17
Wise	3.08
Yoakum	3.01
Young	3.06
Zavala	3.09
Wght. State Avg	3.03
Utah	
All counties	2.97
Vermont	
All counties	2.94
Virginia	
Chesapeake (Norfolk)	3.11
All other counties	2.96
Wght. State Avg	2.96
Washington	
Adams	3.12
Asotin	3.11
Benton	3.14
Chelan	3.15
Clallam	3.07
Clark	3.28
Columbia	3.13
Cowlitz	3.28
Douglas	3.13
Ferry	3.05
Franklin	3.14
Garfield	3.13
Grant	3.13
Grays Harbor	3.20
Island	3.09
Jefferson	3.09
King	3.28
Kitsap	3.10
Kittitas	3.17
Klickitat	3.19
Lewis	3.23
Lincoln	3.10
Mason	3.17
Okanogan	3.10
Pacific	3.20
Pend Oreille	3.00
Pierce	3.28
San Juan	3.09
Skagit	3.17
Skamania	3.23
Snohomish	3.22
Spokane	3.09
Stevens	3.05
Thurston	3.22
Wahkiakum	3.22
Walla Walla	3.14
Whatcom	3.14
Whitman	3.12
Yakima	3.15
Wght. State Avg	3.12
West Virginia	
All counties	2.97
Wisconsin	
Douglas	3.14
All other counties	2.92
Wght. State Avg	2.92
Wyoming	
All counties	2.84

(b) Schedule of Premiums and Discounts for 1980—Crop Wheat:

1. *Class Premiums and Discounts:* (i) Premiums—Hard Amber Durum, No. 3 or better, cents per bushel: +7½; (ii) Discounts—Durum, cents per bushel: −10; Mixed wheat (mixes of classes other than contrasting classes), cents per bushel: −3; Mixed wheat (mixtures of contrasting classes), cents per bushel: −10; (iii) Unclassed wheat which includes Red Durum.[1]

2. *Grade Discounts:* (i) Grade Discounts—No. 2, cents per bushel: −2;

No. 3, cents per bushel: —4; No. 4, cents per bushel: —6; No. 5, cents per bushel: —9; sample—on the factors of test weight and total damage,[2] cents per bushel: —11.

Sample on Account of Test Weight

Hard Red Spring/White Club (cents)		All other classes (cents)	
Test weight	Per bushel	Test weight	Per bushel
49	—2	50	—2
48	—4	49	—4
47	—6	48	—6
46	—8	47	—8
45	—10	46	—10
44	—13	45	—12
43	—16	44	—15
42	—19	43	—18
41	—22	42	—21
40	—25	41	—24
		40	—27

Sample on Account of Total Damaged Kernels

Percent—total damaged kernel	Cents per bushel
15.1 to 16	—2
16.1 to 17	—4
17.1 to 18	—6
18.1 to 19	—8
19.1 to 20	—10
20.1 to 21	—12
21.1 to 22	—14
22.1 to 23	—16
23.1 to 24	—18
24.1 to 25	—20
25.1 to 26	—22
26.1 to 27	—24
27.1 to 28	—26
28.1 to 29	—28
29.1 to 30	—30
Each percent over 30	—3

(ii) Special Grade Discounts:

Smut:

Light Smutty, cents per bushel: —6.

Smutty, cents per bushel: —12.

Garlic:

Light Garlicky, cents per bushel: —15.

Garlicky, cents per bushel: —40.

3. Weed Control Discount (where required by § 1421.24), cents per bushel: —15.

4. *Premiums for Protein Content:*

Applicable to wheat grading No. 5 or better of the classes Hard Red Winter and Hard Red Spring.

[1] Unclassed wheat which includes Red Durum is ineligible for loan.

[2] Wheat grading sample is ineligible for loan except on the factor of test weight and/or total damage. In the event quantities of wheat grading sample are delivered in satisfaction of loan obligations, such quantities will be discounted on the basis of the schedule of discounts as provided by the Kansas City ASCS Commodity Credit Office for settlement purposes.

Hard Red Winter

Percent protein	Cents per bushel
10.50 to 10.99	0
11.00 to 11.49	½
11.50 to 11.99	1
12.00 to 12.49	2
12.50 to 12.99	3
13.00 to 13.49	4½
13.50 to 13.99	6
14.00 to 14.49	8
14.50 to 14.99	10
15.00 and over	12

Hard Red Spring

Percent protein	Cents per bushel
11.50 to 11.99	0
12.00 to 12.49	1
12.50 to 12.99	2
13.00 to 13.49	4
13.50 to 13.99	6
14.00 to 14.49	9
14.50 to 14.99	12
15.00 to 15.49	16
15.50 to 15.99	20
16.00 to 16.49	25
16.50 to 16.99	30
17.00 and over	36

5. *Other.* Wheat with quality factors exceeding limits shown in foregoing schedule or wheat that (1) contains in excess of 13.5 percent moisture, (2) is weevily, (3) is musty, or (4) is sour, and heating shall not be eligible for loan. In the event quantities of wheat exceeding limits shown are delivered in satisfaction of loan obligations, such quantities will be discounted on the basis of the schedule of discounts as provided by the Kansas City Commodity Office for settlement purposes. Such discounts will be established not later than the time delivery of wheat to CCC begins and will thereafter be adjusted from time to time as CCC determines appropriate to reflect changes in market conditions. Producers may obtain schedule of such factors and discounts at county ASCS offices approximately one month prior to the loan maturity date.

Signed at Washington, D.C. on October 14, 1980.

John W. Goodwin,

Acting Executive Vice President, Commodity Credit Corporation.

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BILLING CODE 3410-05-M

Food Safety and Quality Service

7 CFR Part 2842

Standards for Condition of Food Containers Including On-Line Sampling Procedures

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the United States Standards for Condition of Food Containers to include on-line sampling procedures for the condition inspection of food containers. In addition, certain definitions are added for this procedure and several existing definitions in the standards are amended for clarification. The amendments provide procedures to determine the condition of food containers in an on-line production operation.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Ashley R. Gulich, Poultry and Dairy Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-3506. The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION:

Significance

This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant."

Background

On June 6, 1980, the Food Safety and Quality Service (FSQS) published in the **Federal Register** (45 FR 38064-38071) a proposed rule to establish on-line sampling procedures for the condition inspection of food containers.

The United States Standards for the Condition of Food Containers currently provide sampling procedures and acceptance criteria for the inspection of stationary lots of filled food containers and also skip lot sampling procedures for the examination of these lots. The standards are concerned only with external defects such as dents in a can or torn areas in fiberboard containers.

Stationary lot sampling is the process of randomly selecting sample units from a lot whose production has been completed. This type of lot is usually stored in a warehouse or in some storage area and is offered "in toto" for inspection.

Skip lot sampling is a special procedure for inspecting stationary lots in which only one-half or one-fourth of the lots offered for inspection are formally inspected. Skip lot inspection can only be instituted when a certain number of lots of essentially the same quality at origin in a plant have been consecutively acceptable.

To be acceptable under the examination criteria in the standards, lots must contain only a limited number of defects classified as minor, major, and critical. Acceptance criteria is based on sampling plans, accompanied by operating characteristic curves, for different lot sizes and levels of inspection such as normal, reduced, or tightened. Defects tables classify the severity of the defect.

Adding procedures for the on-line sampling of food containers to the standards would provide a new dimension for the condition inspection and certification of these containers. On-line sampling and inspection is a procedure in which subgroups of sample units are selected randomly from predesignated portions of production and in which the acceptability of these portions of production is determined by inspecting, at the time of sampling, the subgroups which represent these portions. The advantage of this type of sampling over stationary lot sampling is that only portions of a lot rather than a whole lot may be rejected. It also helps to quickly pinpoint trouble spots in a production cycle, enabling the producer to make timely corrections.

While the standards were developed for the use of Government agencies when requested to certify that filled primary containers or shipping cases or both be certified for condition, they are permissive and may be used by private parties as well.

The addition of on-line sampling procedures to the container standards enables the standards to provide procedures for every conceivable situation for the inspection of food containers. This is a valuable asset for all who need to determine the condition of filled food containers in an on-line production operation. The procedures are especially valuable to processors since problems such as defects in containers caused by such things as packaging machines out of adjustment could be promptly detected and the problem corrected. Under this procedure, rejections can be confined to portions of a lot rather than a whole lot.

Comments

FSQS received four comments in response to the June 6, 1980, proposed rule—two from food manufacturers, one from a container corporation, and one from a trade organization. Three of the commenters supported the proposal. One of the food manufacturers mentioned the desirability of the proposed sampling plan that would preempt situations where an entire lot, rather than a portion of a lot, is rejected. Another desirable feature of the proposal was assisting the producers to effect corrective action during the actual production process.

The other food manufacturer objected to the proposal on the basis that the on-line procedure would duplicate inspection made by the manufacturer and would increase the cost of inspection as opposed to stationary lot sampling. The sampling procedures in the United States Standards for Condition of Food Containers are to be used when a Government agency or private user of the inspection or grading services requests that filled food containers be examined for condition. When this is part of a contract, it is mandatory that the examination, using either on-line or stationary lot sampling, be done by official graders or inspectors and not by plant management. The addition of on-line sampling procedures would not change the present situation. The contractor would still have the option to request stationary lot sampling if he prefers. Thus, the on-line procedure adds a new dimension that is particularly desirable for plants with continuous resident inspection or grading service.

Options Considered

Two options were considered by FSQS before proceeding with this rule:

1. Take no regulatory action at this time.

2. Amend the standards to provide on-line sampling procedures for the condition inspection of filled food containers under the United States Standards for Condition of Food Containers.

Option 2 was selected because of reasons previously stated herein.

Final Rule

After consideration of the comments, FSQS has determined to adopt the proposal as published.

Accordingly, the standards are amended to read as follows:

Subpart A—Definitions

1. In § 2842.102 of Subpart A—Definitions, the definitions for "Acceptable Quality Level (AQL)", "Administrator", "Double sampling", "Operating Characteristic Curve (OC Curve)", "Probability of Acceptance", "Random Sampling", "Sampling plan", and "Single sampling" are amended and new definitions for "Basic inspection period", "Cumulative Sum Sampling (CuSum) Plan", "Defect", "Defective", "On-line Sampling", "Secondary Container", and "Subgroup" are added in alphabetical order to read, respectively:

§ 2842.102 Definitions, general.

* * * * *

Acceptable Quality Level (AQL). The maximum number of defects per hundred units (DHU) which is acceptable as a process average. Lots, or portions of production, having a quality level equal to a specified AQL will be accepted approximately 95 percent of the time when using the sampling plans prescribed for the AQL.

* * * * *

Administrator. The Administrator of the Food Safety and Quality Service (FSQS) of the Department or any other officer or employee of the Agency to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in his stead.

Basic Inspection Period. A specified period of consecutive production designated for on-line inspection (e.g., one shift's production, one day's production, etc.).

* * * * *

Cumulative Sum Sampling (CuSum) Plan. An on-line sampling plan that accumulates the number of defects which exceed the subgroup tolerance ("T") in a series of consecutive subgroups. Terms specified to the CuSum sampling plans are:

(a) *Acceptance Limit ("L").* The maximum accumulation of defects allowed to exceed the subgroup tolerance ("T") in any subgroup or consecutive subgroups.

(b) *CuSum value.* The accumulated number of defects that exceed the subgroup tolerance ("T").

(c) *Subgroup tolerance ("T").* The allowable number of defects in any subgroup.

(d) *Starting value ("S").* The initial CuSum value used to begin a CuSum sampling plan.

Defect. Any nonconformance of a container from specified requirements.

* * * * *

Defective. A container which has one or more defects.

* * * * *

Double sampling. A sampling scheme which involves use of two independently drawn but related samples, a first sample and a second sample which is added to the first to form a total sample size. A double sampling plan consists of first and total sample sizes with associated acceptance and rejection criteria. The first sample must be inspected first, and if possible, a decision as to acceptance or rejection of the lot made before a second sample is inspected. When the decision cannot be made on the first sample, a second sample is inspected;

the decision to accept or reject is based on the total sample size.

* * * * *

On-line sampling. The random selection of samples from a production line.

Operating Characteristic Curve (OC Curve). A curve that gives the probability of acceptance as a function of the quality level of the lot or the quality level of the portion of production. It shows the discriminatory power of a sampling plan, i.e., how the probability of accepting a lot, or portion of production, varies with the quality of the containers offered for inspection.

* * * * *

Probability of Acceptance.—(a) *For Stationary Lot Sampling.* The chance that a lot with a given level of quality will be accepted. Probability of acceptance is synonymous with "Percent of Lots Expected to be Accepted." The probability of acceptance is normally designated as "Pa" but is designated as "Pas" when referring to skip lot sampling and inspection.

(b) *For On-line Sampling.* The chance that a portion of production with a given level of quality will be accepted. Probability of acceptance is synonymous with "Percent of Production Expected to be Accepted." The probability of acceptance is normally designated as "Pa." In on-line sampling inspection, the probability of acceptance of any portion of production depends on the sample results obtained from the preceding portions. The probability of acceptance values associated with these procedures are the values which would be expected if a large number of samples are to be inspected. For the CuSum plans referenced in this standard, the probability of acceptance at the Acceptable Quality Level (AQL) is approximately 95 percent. The starting value ("S") associated with each CuSum plan helps to make the probability of acceptance of the first portions of production of a basic inspection period as close as possible to 95 percent.

Random sampling. A process of selecting a sample from a lot, or portion of production, whereby each unit in the lot of portion of production, has an equal chance of being chosen.

* * * * *

Sampling plan. Any plan stating the number of sample units to be included in the sample as well as the corresponding plan parameters used to make acceptance and rejection decisions.

Secondary container. The container in which one or more primary containers are packed. For example, a shipping case containing canned product.

* * * * *

Single sampling. A sampling scheme where the decision to accept or reject an inspection lot with respect to a specified requirement is made after the inspection of a single sample. A single sampling plan consists of a single sample size with associated acceptance and rejection criteria.

* * * * *

Subgroup. A group of sample units representing a portion of production.

* * * * *

2. Section 2842.103(a) is amended to read as follows:

§ 2842.103 Purpose and scope.

(a) This subpart outlines the procedure to be used to establish the condition of containers in stationary lots of packaged foods. This subpart shall be used to determine the acceptability of a lot based on specified acceptable quality levels and defects referenced in § 2842.104 or any alternative plan which is approved by the Administrator. In addition, any other sampling plan in the tables with a larger first sample size than that indicated by the lot size range may be specified when approved by the Administrator. This subpart or approved alternative plan will be applied when a Government agency or private user of the inspection or grading services requests that filled primary containers or shipping cases, or both, be certified for condition. Unless the request for certification specifically asks that only the primary container or only the shipping case be examined, both containers will be examined.

* * * * *

§§ 2842.140–2842.142 (Subpart D)—[Redesignated Subpart E]

3. The present Subpart D—Miscellaneous (7 CFR 2842.140 through 2842.142) is redesignated Subpart E—Miscellaneous, and a new § 2842.143 is added to Subpart E—Miscellaneous to read as follows:

§ 2842.143 Operating Characteristic (OC) curves for on-line sampling and inspection.

(a) This section contains the Operating Characteristic (OC) curve for each of the on-line cumulative sum sampling plans provided in Subpart D. The OC curve and the corresponding cumulative sum sampling plans are listed by AQL.

(b) Different plan parameters used to make acceptance and rejection decisions are provided for each AQL.

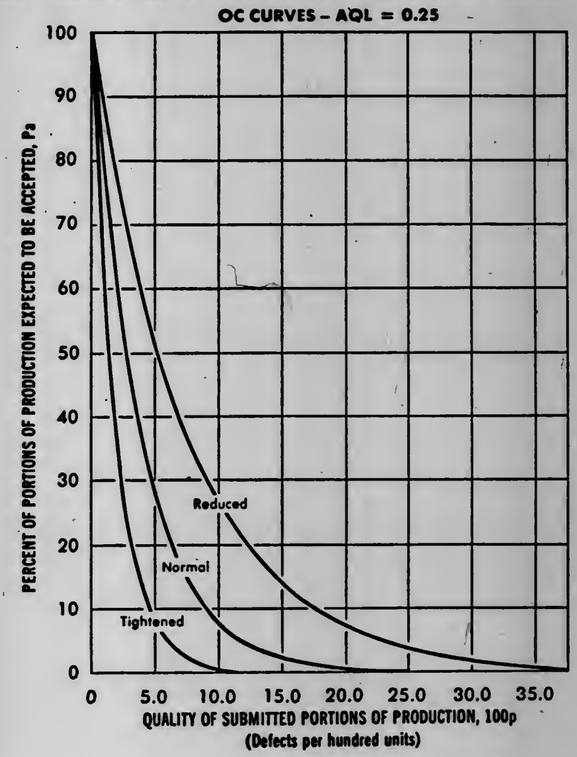
(c) The curves show the ability of the various cumulative sum sampling plans to distinguish between good and bad portions of production. The interpretation of these curves for portions of production is similar to the interpretation of the OC curves for stationary lots as illustrated in § 2842.140(c).

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REDUCED, NORMAL AND TIGHTENED INSPECTION PLANS
CUMULATIVE SUM SAMPLING PLANS AND OPERATING CHARACTERISTIC (OC) CURVES FOR AQL = 0.25
DEFECTS PER HUNDRED UNITS
[SAMPLING PLANS–AQL = 0.25]

Identification name of OC curves											
Reduced				Normal				Tightened			
n_g	T	L	S	n_g	T	L	S	n_g	T	L	S
13	0	0	0	25	0.05	0.95	0.35	50	0.1	0.9	0.3

n_g = Number of sample units in a subgroup. T = Subgroup tolerance. L = Acceptance limit. S = Starting value.

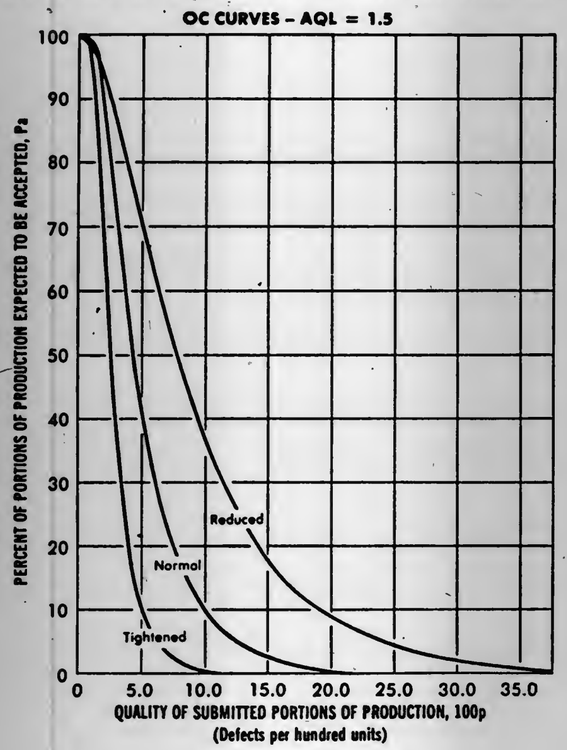


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REDUCED, NORMAL AND TIGHTENED INSPECTION PLANS
CUMULATIVE SUM SAMPLING PLANS AND OPERATING CHARACTERISTIC (OC) CURVES FOR AQL = 1.5
DEFECTS PER HUNDRED UNITS
[Sampling plans—AQL = 1.5]

Identification name of OC curves											
Reduced				Normal				< Tightened			
n_g	T	L	S	n_g	T	L	S	n_g	T	L	S
13	0.5	0.5	0	25	0.5	2	1	50	0.8	1.6	0.4

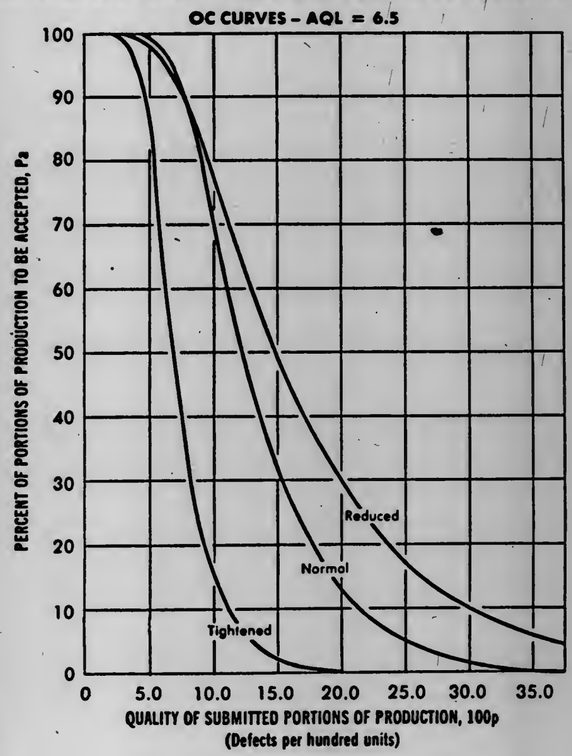
n_g = Number of sample units in a subgroup. T = Subgroup tolerance. L = Acceptance limit. S = Starting value.



REDUCED, NORMAL AND TIGHTENED INSPECTION PLANS
CUMULATIVE SUM SAMPLING PLANS AND OPERATING CHARACTERISTIC (OC) CURVES FOR AQL = 6.5
DEFECTS PER HUNDRED UNITS
[Sampling Plans—AQL = 6.5]

Identification name of OC curves											
Reduced				Normal				Tightened			
n_g	T	L	S	n_g	T	L	S	n_g	T	L	S
13	1	2	1	25	2	3	1	50	2.5	3	1

n_g = Number of sample units in a subgroup. T = Subgroup tolerance. L = Acceptance limit. S = Starting value.



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4. A new Subpart D (7 CFR 2842.130–2842.136) is added, and the Table of Contents is amended accordingly, to read as follows:

Subpart D—On-Line Sampling and Inspection Procedures

Sec.
2842.130 Description and qualifications.
2842.131 Selection of samples.
2842.132 Determining cumulative sum values.
2842.133 Portion of production acceptance criteria.
2842.134 Disposition of rejected portions of production.
2842.135 Normal, tightened or reduced on-line inspection.
2842.136 Applicability of other procedures.

Authority: Sec. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624).

Subpart D—On-Line Sampling and Inspection Procedures

§ 2842.130 Description and qualifications.

(a) In many instances, food containers are loaded directly into carriers immediately after final packaging. This situation makes stationary lot sampling and inspection impractical. For such circumstances, the optional procedure for on-line sampling and inspection using cumulative sum sampling plans is provided. On-line sampling and inspection is a procedure in which subgroups of sampling units are selected randomly from predesignated portions of production. The acceptability of the portions of production is determined by inspecting, at the time of the sampling, the subgroups which represent these portions. On-line sampling and inspection contrasts with stationary lot procedures in which sample units are selected randomly and inspected and lot acceptability determinations are made only after lot production is completed.

(b) On-line sampling and inspection procedures may be instituted only when all of the following conditions are met:

(1) When authorized by the Administrator and acceptable to the user and producer, if different from the user.

(2) When inspection is origin inspection (see § 2842.102).

(3) When previous production lots from the producer are currently on, or eligible to be on, either normal or reduced inspection. (When shifting from stationary lot sampling and inspection to on-line sampling and inspection, normal on-line inspection shall be initially used.)

(4) When inspection of the containers is performed at a point after which all condition of container related characteristics are fixed and will not be subject to change during final handling.

§ 2842.131 Selection of samples.

(a) Prior to commencement of on-line sampling and inspection, the total amount of production for a given day or shift is predicted and is then subdivided into conveniently designated portions of production approximately equal in size. Portions may be designated by sequential numbers (e.g., containers 1 through 500 are portion 1, containers 501 through 1000 are portion 2, etc.) or by time intervals (e.g., the first half hour of production is portion 1, the second half hour of production is portion 2, etc.) during which the containers are identified by individual production codes for each time interval.

(b) Determine the number of sample units in a subgroup as follows:

Type of Inspection and Number of Sample Units

Normal—25
Tightened—50
Reduced—13

(c) Subgroups are drawn randomly from portions of production throughout the production process and are inspected for defects. The drawing of sampling units may be done in either of two ways: (1) The number of sample units (13, 25 or 50) comprising a subgroup may be drawn at the same time from a randomly chosen point in the production of each portion, or (2) sample units may be drawn individually, but in a random manner, throughout the production of each portion. At least 6 subgroups must be obtained during each basic inspection period regardless of the system used to designate portions of production.

(d) A shift to on-line sampling plans from stationary lot sampling plans (or vice versa) during a basic inspection period is not permitted.

§ 2842.132 Determining cumulative sum values.

(a) The parameters for the on-line cumulative sum sampling plans for AQL's applicable to origin inspection are as follows:

Acceptable quality levels	Type of inspection								
	Normal			Tightened			Reduced		
	T	L	S	T	L	S	T	L	S
0.25	0.05	0.95	0.35	0.1	0.9	0.3	0	0	0
1.5	0.5	2	1	0.8	1.8	0.4	0.5	0.5	0
6.5	2	3	1	2.5	3	1	1	2	1

(b) At the beginning of the basic inspection period, the CuSum value is set equal to the starting value ("S") for the specified CuSum plan. The CuSum value is then determined for each consecutive subgroup as follows:

(1) Add the number of defects for the present subgroup to the CuSum value of the previous subgroup.

(2) Subtract the subgroup tolerance ("T").

(3) The CuSum value is reset in the following situations; however, determine portion of production acceptability (see § 2842.133) prior to resetting the CuSum value:

(i) Reset the CuSum value to zero (0) if the CuSum value is less than zero (0).

(ii) Reset the CuSum value to the acceptance limit ("L") if the CuSum value exceeds the acceptance limit ("L").

§ 2842.133 Portion of production acceptance criteria.

(a) The acceptability of a portion of production is determined by comparing the calculated CuSum value with the acceptance limit ("L") for the specified AQL.

(b) A portion of production is acceptable if the CuSum value, calculated from the subgroup representing that portion, is equal to or less than the acceptance limit ("L") for all classes of defects.

(c) A portion of production is rejected if the CuSum value, calculated from the subgroup representing that portion, exceeds the acceptance limit ("L") for one or more classes of defects.

§ 2842.134 Disposition of rejected portions of production.

Rejected portions of production from the same basic inspection period may be reworked, combined together to form a lot, and resubmitted for inspection under the criteria for tightened inspection using stationary lot sampling procedures described in Subpart B of this part.

§ 2842.135 Normal, tightened or reduced on-line inspection.

(a) Normal, tightened and reduced on-line sampling plans are specified in § 2842.132 (Determining cumulative sum values). Normal plans shall be used except when the history of inspection permits reduced inspection or requires tightened inspection.

(b) Switching rules: Normal on-line inspection procedures shall be followed except when conditions in subparagraph (1) or (3) of this paragraph are applicable or unless otherwise specified. Application of the following switching rules will be restricted to the inspection of production for one applicant at a single production location and will be based upon records of original inspections of production (excluding resubmitted portions previously rejected and reworked) at that same location.

(1) *Normal Inspection to Reduced Inspection.* When normal inspection is in effect, reduced inspection shall be instituted provided that reduced inspection is considered desirable by the Administrator and further provided that all of the following conditions are satisfied for each class of defect:

(i) The preceding 40 consecutive portions of production have been on normal inspection and no more than one of these portions has been rejected on original inspection; and

(ii) The total number of defects in the subgroups (1000 sample units) from these preceding 40 consecutive portions of production is less than or equal to the following limit numbers for the specified AQL's:

Acceptable quality levels	Limit No.
0.25	0
1.5	9
6.5	54

(2) *Reduced Inspection to Normal Inspection.* When reduced inspection is in effect, normal inspection shall be reinstituted if any of the following occurs:

(i) More than one portion of production in any 40 consecutive portions of production is rejected on original inspection; or

(ii) Production becomes irregular (delayed or accelerated); or

(iii) Other valid conditions warrant that normal inspection shall be reinstituted.

(3) *Normal Inspection to Tightened Inspection.* When normal inspection is in effect, tightened inspection shall be instituted when two out of five consecutive portions of production have been rejected.

(4) *Tightened Inspection to Normal Inspection.* When tightened inspection is in effect, normal inspection shall be reinstituted when five consecutive portions of production have been considered acceptable.

(c) When the rules require a switch in the inspection status because of one or more classes of defects, all classes of defects shall be inspected under the new inspection criteria. At the option of the user of the service, and when approved by the Administrator, such user may elect to remain on normal inspection when qualified for reduced inspection, or on tightened inspection when qualified for normal inspection.

§ 2842.136 Applicability of Other Procedures.

When appropriate, the procedures for classifying and recording defects in § 2842.106 and for appeal inspections in § 2842.108 also apply to on-line sampling and inspection.

(Sec. 203, 205, 60 Stat. 1087, as amended, 1090, as amended; (7 U.S.C. 1622, 1624))

Done at Washington, D.C., on October 16, 1980.

Donald L. Houston,
Administrator, Food Safety and Quality Service.

[FR Doc. 80-32822 Filed 10-20-80; 8:45 am]
BILLING CODE 3410-DM-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245

Adjustment of Status to That of Persons Admitted for Permanent Residence; Correction

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: In the interim regulations relating to Refugee and Asylum Procedures, published in the Federal Register on June 2, 1980 at 45 FR 37396, § 245.1(d) of Title 8 was incorrectly amended by deleting the last sentence of the sub-paragraph rather than amending the penultimate sentence. To avoid future ambiguity regarding the revised text, § 245.1(d) is being re-published in this order.

EFFECTIVE DATE: June 1, 1980.

FOR FURTHER INFORMATION CONTACT: Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 I Street NW., Washington, D.C. 20536. Telephone: (202) 633–3048.

SUPPLEMENTARY INFORMATION: This correction to 8 CFR 245.1(d) is published as a final rule to correct an amendment which appeared in the Federal Register at 45 FR 37396 on June 2, 1980. The existing sub-paragraph was incorrectly amended by deleting the last sentence without considering prior amendments which had been published in the Federal Register at 45 FR 26015 on April 16, 1980 and 45 FR 26947 on April 22, 1980. To avoid future ambiguity regarding the revised text, § 245.1(d) is being re-published in this order. Compliance with 5 U.S.C. as to notice of proposed rulemaking and delayed effective date is unnecessary because the correction is editorial in nature and does not make any substantive changes to the regulation.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is corrected by revising § 245.1(d) as follows:

§ 245.1 [Amended]

* * * * *

(d) *Immediate relatives under section 201(b) and preference aliens under section 203(a)(1) through 203(a)(6).* An applicant who claims immediate relative status under section 201(b) or preference status under section 203(a)(1) through 203(a)(8) of the Act is not eligible for the benefits of section 245 of the Act unless he/she is the beneficiary of a valid unexpired visa petition filed in accordance with Part 204 of this chapter and approved to accord him/her such status. A nonimmigrant alien who is an Iranian national is not eligible for the benefits of section 245 of the Act unless (1) he/she claims immediate relative status under section 201(b) or preference status under section 203(a)(1), (2), (4) or (5) of the Act and is also the beneficiary of a valid visa petition filed in accordance with Part 204 of this chapter and approved to accord him/her such status, or (2) he/she has applied for or has been granted asylum in the United States.

* * * * *

(Secs. 103, and 245; 8 U.S.C. 1103 and 1255)

Effective: June 1, 1980.

Dated: October 10, 1980.

David Crosland,
Acting Commissioner of Immigration and Naturalization.

[FR Doc. 80-32835 Filed 10-20-80; 8:45 am]
BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 82

Exotic Newcastle Disease; and Psittacosis or Ornithosis in Poultry; Areas Quarantined and Released

AGENCY: Animal and Plant Health Inspection Service. USDA.

ACTION: Final rule.

SUMMARY: The purpose of these amendments is to quarantine a portion

of Caddo Parish in Louisiana because of the existence of exotic Newcastle disease and to release a portion of Broward County in Florida and a portion of Saginaw County in Michigan from the areas quarantined because of exotic Newcastle disease. Exotic Newcastle disease was confirmed in such portion of Caddo Parish, Louisiana, on September 12, 1980. Therefore, in order to prevent the dissemination of exotic Newcastle disease it is necessary to quarantine the affected area. Further surveillance activity indicates that exotic Newcastle disease no longer exists in the areas quarantined. No areas in the State of Michigan remain under quarantine.

EFFECTIVE DATE: October 15, 1980.

FOR FURTHER INFORMATION CONTACT: C. G. Mason, Chief, National Emergency Field Operations, Emergency Programs, Veterinary Services, USDA, 6505 Belcrest Road, Federal Building, Room 751, Hyattsville, MD 20782, 301–436–8073.

SUPPLEMENTARY INFORMATION: These amendments quarantine a portion of Caddo Parish in Louisiana because of the existence of exotic Newcastle disease. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement and their carcasses, and parts thereof, and certain other articles, from quarantined areas, as contained in 9 CFR Part 82, as amended, will apply to the quarantined area.

These amendments also release a portion of Broward County in Florida and a portion of Saginaw County in Michigan from the areas quarantined because of exotic Newcastle disease. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR Part 82, as amended, will no longer apply to the released areas.

Accordingly, Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respects:

§ 82.3 Areas quarantined [Amended]

1. In § 82.3 (a)(21)(i), is added to read:

(a) * * *

* * * * * *

(21) *Louisiana.* (i) The premises of Docktor's Pet Center (Joe Hedl), South Park Mall #37 and 3016 Greenwood, Shreveport, Caddo Parish.

* * * * * *

2. In § 82.3(a)(1), relating to the State of Florida, paragraph (vii) relating to the premises of Shawn Cadwallader, 704 N. Crescent Drive, Hollywood, Broward County is deleted.

3. In § 82.3(a)(12), relating to the State of Michigan, paragraph (ii) relating to the premises of The Fish Gallery and Hobby Shop, 247 Meyers Street, Freeland, Saginaw County is deleted.

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132 (21 U.S.C. 111–113, 115, 117, 120, 123–126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141)

These amendments impose certain restrictions necessary to prevent the interstate spread of exotic Newcastle disease, a communicable disease of poultry, and must be made effective immediately to accomplish their purpose in the public interest. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

The amendment releasing the quarantined area relieves certain restrictions no longer deemed necessary to prevent the spread of exotic Newcastle disease. It should be made effective immediately in order to permit affected persons to move poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles interstate from such area without unnecessary restrictions. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register**.

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by J. C. Jefferies, Acting Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without opportunity for prior public comment or preparation of an impact analysis statement at this time.

This final rule implements the regulations in Part 82. It will be scheduled for review in conjunction with the periodic review of the regulations in that Part required under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 15th day of October 1980.

R. P. Jones,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 80-32723 Filed 10-20-80; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

15 CFR Part 2301

Public Telecommunications Facilities Program Policy Statement

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Policy Statement.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces the adoption of a "use interference" test to govern the implementation of Section 392(a)(4) of the Public Telecommunications Financing Act of 1978 (PTFA). Section 392(a)(4) of the Communications Act explicitly requires grantees to assure NTIA that facilities funded under the PTFA shall be "used only for the provision of public telecommunications services." The "use interference" test will allow grantees under the PTFA to share the cost and use of Federally-funded "non-interfering equipment" with a commercial entity.

EFFECTIVE DATE: This Policy Statement shall be effective October 21, 1980.

FOR FURTHER INFORMATION CONTACT: Dr. John Cameron, Chief, Public Telecommunications Facilities Division, NTIA, (202) 724–3307, or Kenneth Salomon, Deputy Chief Counsel, NTIA, 377–1866, Room 703, 1800 G Street, N.W., Washington D.C. 20504.

SUPPLEMENTARY INFORMATION:

Policy Statement

I. Introduction

The rapidly changing nature of the telecommunications industry requires the National Telecommunications and Information Administration (NTIA) to reassess from time to time its program implementing the Public Telecommunications Financing Act of 1978, Pub. L. No. 95–567, 92 Stat. 2405.

Grantees under the 1978 Act should not be denied the benefits of emerging technology by a rigid and unyielding regulatory scheme.

NTIA has recently received informal requests from industry representatives for a ruling on the legality of grantees sharing the cost and use of Federally-funded satellite earth stations with commercial entities. We have reviewed the relevant sections of the Communications Act, applicable case law, and administrative rulings and believe that there is authority for sharing the non-interfering components of an earth station. "Non-interfering equipment," as used in this Statement, is equipment that is capable of being used simultaneously by multiple entities without disrupting the operation of any of them. Based on a "use interference" test under § 392(a)(4) of the Communications Act, any equipment which meets this definition may be shared by a grantee and a commercial entity.

The action NTIA takes today has a dual benefit. It will increase the effective utilization of satellite technology by grantees under the Public Telecommunications Facilities Program (PTFP) and at the same time provide a mechanism to raise much-needed capital to support public telecommunications services. This flexible approach provides an economic and efficient method for enabling PTFP grantees to maintain pace in a highly dynamic industry.

While the "use interference" test has broad applicability, it is particularly advantageous for the use of satellite earth stations. An earth station includes a number of components which can be combined to satisfy particular user requirements. Typically, the simplest receive-only earth station includes an antenna, a low noise amplifier, and a receiving system. Sophisticated receive/transmit earth stations involve several additional components. The antenna and low noise amplifier are non-interfering components. Other components may be non-interfering, depending on particular characteristics. It should be stressed that this Policy Statement authorizes only the shared use of non-interfering equipment.

In this Policy Statement, we deal with the two fundamental obstacles to a sharing scheme, the active/passive test, developed by the Department of Health, Education and Welfare (HEW, now the Department of Health and Human Services) as a method of allowing grantees to share broadcast towers with commercial entities, and § 392(a)(4) of the Communications Act which requires that facilities funded under the PTFA be used only to provide public telecommunications services.

II. The Active/Passive Test

Section 392(a)(4) of the Communications Act explicitly requires grantees to assure NTIA that facilities funded under the PTFA shall be "used only for the provision of public telecommunications services." Nonetheless, NTIA [1] and HEW,[2] which administered the grant program prior to NTIA,[3] have consistently held that grantees could share broadcasting towers with commercial broadcasters.

The sharing of towers was first sanctioned in the 1964 legal memorandum referred to in footnote number two. In that memorandum, the issue was whether or not a grantee was required to exercise exclusive ownership over Federally-funded facilities. HEW's Office of the General Counsel found that it was not. "Acquisition of any type of equipment," HEW concluded, "does not require the applicant to obtain full and complete ownership of all interests." Instead, according to HEW, all that is required is that the "property interest be such as to assure that no other property interest interferes with the use of the apparatus" by the grantee. The primary concern was that shared use of Federally-funded equipment not obstruct the use of that equipment by the grantee.

With this understanding of § 392(a)(4), HEW distinguished towers from all other types of eligible transmission equipment on the following grounds: (1) towers are not actively used for transmission, but instead only passively hold other equipment; (2) shared use of a tower in no way affects the use of the tower by a grantee; and (3) shared use does not increase the wear on or the depreciation of the tower. Thus, by forming an active/passive test, HEW allowed grantees to share towers with non-grantees, including commercial broadcasters. NTIA followed this approach in its *Report and Order* adopting its rules under the PTFA.[4]

To date, only towers have been singled out as fitting within the active/passive test. Therefore, a threshold question is whether or not any components of a satellite earth station may come within this test. In order to make this determination, one must clearly understand the rationale of the HEW test. Under a strict active/passive approach, neither receive/transmit nor receive-only earth stations qualify for sharing. In fact, NTIA has held that transmitting antennae are active elements and cannot be shared. 45 FR, *supra*, at 1997–98; 44 FR, *supra*, at 30,911. Although the antenna in a receive-only earth station is not a radiating element, it still has an active role in increasing the gain of a received signal.

While both HEW and NTIA have used the active/passive language, it is clear that the primary concern has been that sharing would hamper the grantee's use of the equipment. For example, in *KBOO*, NTIA commented that, "shared use of active components [antennae] would interfere with a grantee's unfettered use of its equipment for public telecommunications purposes." [5] It was the potential for interference with the grantee's use of the equipment rather than the active nature of the equipment which formed the basis of the opinion.

Under a "use interference" test, however, both receive-only and receive/transmit earth stations contain components which qualify for sharing since they may perform multiple tasks simultaneously.[6] As long as the grantee has a sufficient property interest in the earth station to assure that no other property interest interferes with the use of the apparatus for public telecommunications purposes, sharing would be permissible.

Implementation of the "use interference" test requires NTIA to modify prior determinations.[7] As the present situation demonstrates, however, the active/passive test is unnecessarily narrow and ill-suited for emerging technology. Abandonment of the active/passive language and substitution of a "use interference" test provides the flexibility NTIA needs to administer the PTFP in light of rapidly changing technology and better serve the 1978 Act's purpose.

III. Section 392(a)(4)

Even under a "use interference" test, there is still the language of § 392(a)(4) which explicitly states that Federally-funded equipment shall be used "only for" public telecommunications services. It makes no mention of the active/passive test, and the HEW and NTIA memoranda on this subject cite no authority for such an interpretation of the section. In addition, the legislative history of the PTFA does not clarify this matter, neither explaining the "only for" language, nor addressing the active/

[1] 44 FR 30898 (May 29, 1979); *KBOO*, 45 FR 1997 (January 9, 1980).

[2] Memorandum from Edwin H. Yourman to Dr. John Bystrom (October 8, 1964).

[3] Educational Television Act of 1962, Pub. L. No. 87–447, 76 Stat. 64.

[4] 44 FR, *supra*, at 30,910–911.

[5] 45 FR, *supra*, at 1997–98.

[6] *In re Application of Western Union Telegraph Co.*, FCC 80–133 (para. 20) (March 13, 1980).

[7] *KBOO*, *supra*.

passive test. It is possible to argue, therefore, that HEW and NTIA erred in adopting and following the active/passive test and that an interference test would not cure the inconsistency with the language of § 392(a)(4).

We do not find this argument persuasive. It is well established that a longstanding interpretation of a statute by the agency charged with its execution should be given considerable deference.[8] Further, it can be reasonably assumed that Congress has had full knowledge of HEW's view of § 392(a)(4). It has amended the Act on several occasions since 1964 without upsetting that interpretation. Thus, we conclude that Congress tacitly approved the active/passive test and the interference analysis on which it is based. As the courts have ruled, "[s]uch longstanding administrative construction is entitled to great weight, particularly when, as here, Congress has revisited the Act and left the practice untouched." [9]

Having reached the conclusion that sharing of non-interfering equipment between a grantee and a commercial entity is permissible under § 392(a)(4), we note that our determination is buttressed by § 392(g)(2) of the Act, which allows for the waiver, for good cause, of the noncommercial use requirement. Section 392(g)(2) provides that:

> (g) If, within 10 years after completion of any project for construction of public telecommunications facilities with respect to which a grant has been made under this section—
>
> * * * * *
>
> (2) such facilities cease to be used only for the provision of public telecommunications services (unless the Secretary determines, in accordance with regulations, that there is good cause for releasing the applicant or other owner from the obligation to do so); the United States shall be entitled to recover from the applicant . . . [the pro rata value of such facilities). . . .

The phrase "obligation to do so" in § 392(g)(2) refers to the grantee's duty to use funded facilities only for public telecommunications services. Section 2301.32 of the PTFP Rules reflects this interpretation:

> *§ 2301.32 Termination and change in eligibility status.*
>
> (a) The following circumstances shall constitute grounds for termination of a grant and for recovery from the applicant or other owner of the facilities of the amount bearing the same ratio to the value of the facilities as the Federal grant bore to the project if they occur within 10 years after completion of the project:
>
> * * * * *
>
> (2) The facilities, either permanently or for an indefinite period of time, cease to be used only for the provision of public telecommunications services (unless the Administrator determines, based on a petition for such relief with opportunity for filing oppositions by interested members of the public, that *good cause exists to release the applicant, grantee or other owner from this obligation);*. . . . [Emphasis added]

We therefore believe that § 392(g)(2) provides NTIA with authority to waive the noncommercial use requirement, for good cause, for non-interfering equipment. We have already enumerated the consequences which would flow to grantees from shared use of non-interfering equipment—mainly the ability to utilize new technology and to raise additional capital for public telecommunications services. These important benefits represent ample cause for dispensing with the commercial use prohibition on non-interfering equipment.

The "use interference" test and the waiver provision of § 392(g)(2) afford grantees the flexibility needed to make efficient use of earth station technology. Grantees may purchase an entire earth station and subsequently lease its capacity, consistent with the guidelines expressed in this Policy Statement, or they may enter into a joint venture for the purchase of qualifying earth station components. These sharing arrangements, because of the nature of the equipment, will not raise the problems of interference or increased wear and tear on the equipment. As noted, non-interfering earth station components are capable of simultaneous use and are not susceptible to significantly increased wear and tear due to such use.

An outright purchase of an earth station by a grantee and a subsequent lease to a commercial entity has certain advantages over a joint venture. The question of ownership and control in § 392(a)(2) of the Act and § 2301.6 of the PTFP Rules is much clearer where the grantee owns the entire station and leases those components which qualify under a "use interference" test. The specific charges which a grantee may assess for shared use of its equipment are normally a matter for market negotiation. NTIA involvement would occur only in exceptional circumstances (*e.g.*, a significant claim of unfair competitive advantage by grantees leasing equipment at less than prevailing market rates).

In addition, while funding the entire cost of a satellite earth station would require larger grants from NTIA than funding a joint venture, it would allow a grantee greater flexibility in leasing the earth station's capacity and thereby raising additional capital which must be rechanneled into public telecommunications facilities or services. *See* § 2301.6(d)(3) of the PTFP Rules. In order to assure continued compliance with §§ 392 (a)(1)(D), (a)(4) and 392 (6), (7), (14), we will continue to require that all income generated from rental of an earth station be used only for public telecommunications purposes.

As noted, our action today also allows grantees to enter into a joint venture with a commercial entity for the purchase of an earth station. NTIA has already specifically recognized the legitimacy of a joint venture for the funding of broadcast towers between PTFP grantees and commercial entities.[10] Of course, § 392(a)(2) of the Act and §§ 2301.6(b) and 2301.36 of the PTFP Rules require that the public telecommunications facility be controlled by the grantee. This does not mean, however, that a grantee must own 100 percent of the equipment. For example, a grantee may share a broadcast tower even though he is not the exclusive owner, so long as he actually controls the tower in the totality of circumstances.[11] The same interpretation should be applied to earth stations.

An earth station funded on a joint venture basis will likely require a smaller grant from NTIA. We will be funding, for example, up to 75 percent of half the price of an earth station rather than up to 75 percent of the full price. Moreover, depending on the particular characteristics of the joint venture agreement, it may still be possible for the grantee to raise additional capital through a lease of the earth station.

IV. Conclusion

Based on the above analysis, NTIA adopts a "use interference" test under § 392(a)(4) in place of the active/passive test. This step allows grantees, consistent with the Act and relevant precedent, to share the cost and use of the non-interfering equipment through either a joint venture or an outright lease to a commerical entity.

[8] Zuber v. Allen, 396 U.S. 168 (1969); Udall v. Tallman, 380 U.S. 1 (1965); Alabama v. United States, 461 F.2d 1324 (Cl. Cl. 1972).

[9] *Saxbe* v. *Bustos*, 419 U.S. 65, 74 (1974).

[10] *Report and Order, supra*, at 30,911 (para. 102), *KBOO, supra*.

[11] 44 Fed. Reg., *supra*, at 30,911, paras. 101–102.

(Catalog Program No. 11.550)

Henry Geller,

Administrator, National Telecommunications and Information Administration.

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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1021

Environmental Review; Final Procedures

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission issues procedures to implement the Council on Environmental Quality's final regulations of November 29, 1978 concerning agency compliance with the National Environmental Policy Act. The procedures provide for identification of the effects of a proposed action and its alternatives on the environment; for assessment of the significance of these effects; for consideration of effects at appropriate points in the Commission's decisionmaking process; and for preparation of appropriate environmental documents.

DATE: The environmental review procedures are effective November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Carole Roth, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207 (202–634–7770).

SUPPLEMENTARY INFORMATION:

Background

In the Federal Register of November 31, 1979, the Commission proposed procedures to implement and supplement the Council on Environmental Quality's (CEQ) regulations concerning agency compliance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4347 as amended by Pub. L. 94–83, August 8, 1975). (See the Commission's proposed NEPA procedures at 44 FR 62526; 16 CFR Part 1021.)

CEQ's regulations concerning agency compliance with NEPA became effective July 30, 1979. (See 43 FR 55978; 40 CFR Part 1500 et seq.) CEQ's regulations are intended to implement the procedural provisions of NEPA, the basic national charter for the protection of the environment. The procedural provisions of the act require that all federal agencies include in their decisionmaking process an appropriate and careful consideration of the environmental aspects of proposed actions and their alternatives, of ways to avoid or minimize adverse effects of proposed actions, and of ways to restore or enhance environmental quality. In addition, NEPA requires agencies to prepare detailed environmental impact statements on proposals for legislation and other major federal actions significantly affecting the quality of the human environment.

Section 1507.3 of CEQ's November 29, 1978 NEPA regulations provides that each agency shall adopt procedures to implement and supplement the Council's procedures. Therefore, as indicated above, on October 31, 1979, the Commission proposed environmental review procedures, providing a 60-day period for public comment on the proposal.

The proposed procedures do not attempt to restate or paraphrase CEQ's NEPA regulations, but merely reference those regulations, where appropriate. Essentially, the proposed procedures are designed to make the requirements set forth in the more comprehensive NEPA regulations meaningful and effective in the context of CPSC decisionmaking.

The proposal document pointed out that the Commission will follow the procedures required by its own regulatory statutes in making findings and decisions regarding product safety actions. The environmental review procedures are intended to be used for analysis and findings concerning the effects Commission actions may have upon the environment. The Commission emphasized, however, that it plans to base its substantive decisions regarding actions on consideration of the results of environmental review in addition to the considerations required by CPSC's regulatory statutes.

Comment on the Proposal

The Commission received one comment, from an interested person, on its proposed environmental review procedures. The commenter referred to § 1021.12(b) of the proposed procedures concerning the contents of an environmental assessment and asked why an assessment should discuss measures for mitigating adverse effects on the environment when, at this stage, no determination concerning the significance of environmental effects and the corresponding need for an environmental impact statement has been made.

Under CEQ's NEPA regulations, an environmental assessment is used in determining whether an environmental impact statement (EIS) is needed for an action. (See § 1508.9 of the NEPA regulations.) One of the issues which is required to be analyzed in detail in an EIS is methods to mitigate adverse environmental impacts (sectic 1502 of the NEPA regulations). Therefore, the Commission believes it is appropriate to consider mitigation measures briefly in an environmental assessment. If, however, no adverse environmental effect is identified in an assessment of a particular action, then, obviously, mitigation measures need not and cannot be discussed in the assessment. The Commission points out that the language of § 1021.12 recognizes that there may be assessments which do not discuss mitigation measures; the section states that the assessment shall discuss "*any* methods or approaches which would avoid or minimize adverse effects on the environment." (emphasis added)

The Commission points out, in addition, that an action may produce environmental effects which, while not significant, may, nonetheless, be desirable to mitigate. Mitigation measures for such effects should be discussed in the assessment. Furthermore, the availability of mitigation measures in a given instance may render potentially significant environmental effects insignificant. Therefore, such measures need to be identified in the environmental assessment, the document on which a determination of significancy of effects for an action is made.

The commenter also stated that it is CEQ's position that only physical effects on the environment itself are covered by the EIS requirement of NEPA.

The Commission notes that the Council's view as reflected in its NEPA regulations is that not only are the natural and physical environmental effects of an action required to be analyzed in an EIS but also aesthetic, economic, social, cultural, historic, and health effects which interrelate with natural or physical effects. (See §§ 1508.8 and 1508.14.) The Commission's implementing procedures recognize that effects other than ecological effects should be subject to environmental review; for example, § 1021.5(b)(1) states that CPSC regulatory actions dealing with health risks have the potential for producing environmental effects and therefore, will normally require environmental assessments.

The Final Procedures

The final environmental review procedures, with one clarification discussed below, are the same as the procedures proposed on October 31,

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1979. In accordance with § 1507.3 of CEQ's NEPA regulations, the final procedures have been submitted to CEQ for review and CEQ has determined that the procedures conform with the NEPA regulations.

The procedures set forth below will be effective on November 20, 1980. The procedures, when effective, supersede the interim NEPA procedures issued by the Commission on May 18, 1976. (16 CFR Part 1021; 42 FR 25494.) The procedures, a few highlights of which are discussed more fully in the preamble to the proposed version of the procedures, are essentially self-explanatory. They provide for the identification of CPSC actions which: Require the preparation of various environmental documents; designate the official reponsible for CPSC compliance with environmental review requirements; assure coordination of the environmental review process with CPSC procedures; describe the content of necessary documents; and provide for obtaining information and comment from public agencies and interested persons.

The Commission has made one clarification to the proposed procedures in the final version below. Section 1021.5(c) of the proposed and final procedures lists those categories of CPSC actions ("categorical exclusions") which normally have no potential for affecting the human environment and for which neither an environmental assessment nor an environmental impact statement is required. The proposal document listed in this category, § 1021.5(c)(4), administrative adjudications which are primarily law enforcement proceedings; this provision is continued in the final version of the procedures. However, the proposal did not specifically refer to the issuance by the Commission of subpoenas or general and special orders, actions which are in the nature of law enforcement, as being categorical exclusions. Since subpoenas and general and special orders are intended only for information-gathering purposes and respondents are required to take no action other than to report to the Commission, the Commission believes it is appropriate that these information-gathering tools be treated as categorical exclusions under CPSC procedures. The Commission has, therefore, added a new subsection (§ 1021.5(c)(7)) in the final version of the procedures generally excluding the issuance of subpoenas and orders from the preparation of environmental documents.

Conclusion

The Commission has been operating under the interim environmental review procedures referred to above for over three years. As indicated in the proposal documents, the new CPSC environmental review procedures follow the interim rules to the maximum extent possible consistent with the Council's new NEPA regulations. The Commission found the interim procedures to be an effective way of carrying out its NEPA responsibilities. The Commission believes that the new procedures below will, similarly, prove to be a workable approach to integrating Commission activities with the requirements of NEPA.

Accordingly, under provisions of the National Environmental Policy Act (Pub. L. 91–190, 42 U.S.C. 4321–4347, as amended by Pub. L. 94–83, August 9, 1975) and the Regulations issued by the President's Council on Environmental Quality (40 CFR Part 1500 et seq., 53 FR 55978, November 29, 1978), the Commission revises Part 1021 of Title 16, Chapter II, Subchapter A, to read as follows:

PART 1021—ENVIRONMENTAL REVIEW

Subpart A—General

Sec.

1021.1 Purpose.
1021.2 Policy.
1021.3 Definitions.
1021.4 Overview of environmental review process for CPSC actions.
1021.5 Categories of CPSC action.

Subpart B—Procedures

1021.6 Responsible official.
1021.7 Coordination of environmental review with CPSC procedures.
1021.8 Legislative proposals.
1021.9 Public participation, notice and comment.
1021.10 Emergencies.
1021.11 Information regarding NEPA compliance.

Subpart C—Contents of Environmental Review Documents

1021.12 Environmental assessment.
1021.13 Finding of no significant impact.
1021.14 Environmental impact statement.

Authority: National Environmental Policy Act (Pub. L. 91–190, 83 Stat. 852, 42 U.S.C 4321–4347, as amended by Pub. L. 94–83, August 9, 1975) and Regulations issued by the President's Council on Environmental Quality (40 CFR Part 1500 et seq., 43 FR 55978, November 29, 1978).

Subpart A—General

§ 1021.1 Purpose.

This part contains Consumer Product Safety Commission procedures for review of environmental effects of Commission actions and for preparation of environmental impact statements (EIS) and related documents. These procedures supersede any Commission procedures previously applicable. The procedures provide for identification of effects of a proposed action and its alternatives on the environment; for assessment of the significance of these effects; for consideration of effects at the appropriate points in the Commission's decision-making process; and for preparation of environmental impact statements for major actions significantly affecting the environment. These procedures are intended to implement the Council on Environmental Quality's final regulations of November 29, 1978 (43 FR 55978; 40 CFR Part 1500, et seq.) concerning agency compliance with the National Environmental Policy Act, as amended (NEPA) (15 U.S.C. 4321–4347 as amended by Pub. L. 94–83, August 8, 1975).

§ 1021.2 Policy.

It is the policy of the Commission to weigh and consider the effects upon the human environment of a proposed action and its reasonable alternatives. Actions will be designed to avoid or minimize adverse effects upon the quality of the human environment wherever practicable.

§ 1021.3 Definitions.

(a) The term "CPSC actions" means rulemaking actions; enforcement actions; adjudications; legislative proposals or reports; construction, relocation, or renovation of CPSC facilities; decisions on petitions; and any other agency activity designated by the Executive Director as one necessitating environmental review.

(b) The term "Commission" means the five Commissioners of the Consumer Product Safety Commission.

(c) The term "CPSC" means the entire organization which bears the title Consumer Product Safety Commission.

(d) The term "NEPA regulations" means the Council of Environmental Quality regulations of November 29, 1978 (43 FR 55978) for implementing the provisions of the National Environmental Policy Act, as amended (42 U.S.C 4321, et. seq).

(e) The term "environmental review process" refers to all activities associated with decisions to prepare an environmental assessment, a finding of no significant impact, or an environmental impact statement.

(f) The definitions given in Part 1508 of the Council's NEPA regulations are applicable to this Part 1021 and are not repeated here.

§ 1021.4 Overview of environmental review process for CPSC actions.

The environmental review process normally begins during the staff development of a proposed action and progresses through the following steps:

(a) *Environmental assessment* (section 1508.9 of the NEPA regulations). The assessment is initiated along with the staff development of a proposal and the identification of realistic alternatives. The assessment shall be available to the Commission before the Commission votes on a proposal and its alternatives. Its purpose is to identify and describe foreseeable effects on the environment, if any, of the action and its alternatives. The assessment culminates in a written report. This report generally contains analyses of the same categories of information as would an EIS, but in a much less detailed fashion. (See § 1021.10(a), below.) It contains sufficient information to form a basis for deciding whether effects on the environment are likely to be "significant." (See section 1508.27 of the NEPA regulations.).

(b) *Decision as to significance of effects on the environment.* This decision is made by the Executive Director of the CPSC and is based upon the results of the environmental assessment as well as any other pertinent information. If the effects are significant, CPSC publishes in the Federal Register a notice of intent to prepare an environmental impact statement. (See § 1508.22 of the NEPA regulations.) If not, a finding of no significant impact is prepared. (Section 1508.13 of the NEPA regulations.)

(c) *Finding of no significant impact.* This is a written document which gives reasons for concluding that the effects of a proposed action, or its alternatives, on the environment will not be significant. Together with the environmental assessment, it explains the basis for not preparing an EIS. The finding of no significant impact is signed by the Executive Director. The finding of no significant impact and the environmental assessment accompany the proposed action throughout the Commission decision-making process.

(d) *Draft environmental impact statement.* The content of a draft EIS is described in § 1021.12, below. For a particular proposal, the breadth of issues to be discussed is determined by using the scoping process described in section 1501.7 of the NEPA regulations. The draft EIS pertaining to a proposed rule is before the Commission at the time it considers the proposed action and is available to the public when the notice of proposed rulemaking is published or as soon as possible thereafter. In appropriate instances, the Federal Register preamble for a proposed rule may serve as the draft EIS. The draft EIS shall accompany the proposed action throughout the remainder of the Commission decision-making process.

(e) *Final EIS.* The content of this document is described in § 1021.12. A final EIS responds to all substantive comments on the draft statement. It is before the Commission when it considers a final action.

(f) *Supplemental statements.* When CPSC makes changes in the proposed action that are important to environmental issues or when there is significant new environmental information, the Executive Director instructs CPSC staff to prepare supplements to either the draft or final EIS (See § 1502.9(c) of the NEPA regulations).

(g) *Record of decision.* (Sections 1505.2 and 1506.1 of the NEPA regulations.) At the time of a decision on a proposed action which involves an EIS, CPSC prepares a written record of decision explaining the decision and why any alternatives discussed in the EIS were rejected. This written record is signed by the Secretary of the Commission for the Commission. No action going forward on the proposal may be taken until the record of decision is signed and filed in the Office of the Secretary of the Commission.

§ 1021.5 Categories of CPSC actions.

(a) There are no CPSC actions which ordinarily produce significant environmental effects. Therefore, there are no actions for which an environmental impact statement is normally required.

(b) The following categories of CPSC actions have the potential of producing environmental effects and therefore, normally require environmental assessments but not necessarily environmental impact statements:

(1) Regulatory actions dealing with health risks.

(2) Actions requiring the destruction or disposal of large quantities of products or components of products.

(3) Construction, relocation, or major renovation of CPSC facilities.

(4) Recommendations or reports to Congress on proposed legislation that will substantially affect the scope of CPSC authority or the use of CPSC resources, authorize construction or razing of facilities, or dislocate large numbers of employees.

(5) Enforcement actions which result in the widespread use of substitute products, which may present health risks.

(c) The following categories of CPSC actions normally have little or no potential for affecting the human environment; and therefore, neither an environmental assessment nor an environmental impact statement is required. (These categories are termed "categorical exclusions" in the NEPA regulations; see §§ 1507.3(b)(2) and 1508.4):

(1) Rules or safety standards to provide design or performance requirements for products, or revision, amendment, or revocation of such standards.

(2) Product certification or labeling rules.

(3) Rules requiring poison prevention packaging of products or exempting products from poison prevention packaging rules.

(4) Administrative proceedings to require individual manufacturers to give notice of and/or to correct, repair, replace, or refund the purchase price of banned or hazardous products. Other administrative adjudications which are primarily law enforcement proceedings.

(5) Recommendations or reports to Congress on proposed legislation to amend, delete or add procedural provisions to existing CPSC statutory authority.

(6) Decisions on petitions for rulemaking.

(7) Issuance of subpoenas, general orders, and special orders.

(d) In exceptional circumstances, actions within category in paragraph (c) of this section ("categorical exclusions") may produce effects on the human environment. Upon a determination by the Executive Director that a normally excluded proposed action may have such an effect, an environmental assessment and a finding of no significant impact or an environmental impact statement shall be prepared.

Subpart B—Procedures

§ 1021.6 Responsible official.

(a) The Executive Director of the CPSC shall have the responsibility to ensure that the Commission's policies and procedures set forth in this part are carried out. He or she shall have the following specific powers and duties:

(1) To ensure that CPSC environmental review is conducted in accordance with the NEPA regulations as well as this Part 1021.

(2) To evaluate the significance of effects of a CPSC action on the environment and to determine whether a finding of no significant impact or an EIS should be prepared.

(3) To determine when a categorical exclusion requires environmental

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review because of exceptional circumstances indicating that the otherwise excluded action may produce an environmental effect.

(4) To instruct CPSC staff to prepare supplements to either draft or final EIS's where there is new environmental information or when CPSC makes changes in a proposed action that are important to environmental issues.

(5) To ensure that environmental documents are before the Commission at all stages of review of proposed action.

(6) To make provisions for soliciting public comment on the anticipated effects on the environment of proposed CPSC actions and their reasonable alternatives at any stage of the environmental review process, whenever he or she decides that such comment will be helpful. The Executive Director, for example, shall have the power to require that provision for soliciting such comments, written or oral, be included in any announcement of a public hearing on proposed rulemaking or on the merits of a petition for rulemaking.

(7) To call upon all resources and expertise available to CPSC to ensure that environmental review is accomplished through an interdisciplinary effort.

(8) To delegate any of his or her powers and duties, other than paragraphs (a) (2) and (3) of this section, to any officer or employee of the CPSC.

§ 1021.7 Coordination of environmental review with CPSC procedures.

(a) The Commission shall consider all relevant environmental documents in evaluating proposals for Commission action. The preparation and completion of assessments and statements required by this part shall be scheduled to assure that available environmental information is before the Commission at all appropriate stages of development of CPSC actions along with technical and economic information otherwise required. The range of alternatives discussed in appropriate environmental documents shall be encompassed by the range of alternatives considered by the Commission for an action.

(b) An environmental assessment on a proposed rulemaking action requiring environmental review shall be available to the commission before the Commission votes on a proposed rule, and its alternatives. If the Executive Director determines that an EIS is needed, the draft EIS shall normally be before the Commission at the time it votes to publish a proposed rule. A final EIS shall be before the Commission when it considers final action on a proposed rule. Relevant environmental documents shall accompany the proposed rulemaking action throughout the Commission's decisionmaking process.

(c) Draft EISs or findings of no significant impact together with environmental assessments shall be made available to the public for comment at the time of publication in the **Federal Register** of CPSC proposals for regulatory action requiring environmental review or promptly thereafter. Pursuant to § 1506.10 of the NEPA regulations, no decision on a proposed action shall be made by the Commission until the later of 90 days after the Environmental Protection Agency (EPA) has published a notice announcing receipt of the draft EIS or 30 days after EPA announces receipt of the final EIS. These time periods may run concurrently. In addition, with regard to rulemaking for the purpose of protecting the public health and safety, the Commission may waive the 30 day period and publish a decision on a final rule simultaneously with publication by EPA of the notice of availability.

(d) Whenever the Commission decides to solicit offers by an outside person or organization to develop a proposed consumer product safety standard in accordance with section 7 of the Consumer Product Safety Act (15 U.S.C. 2056) and the Executive Director has determined that environmental review is needed, the Executive Director shall recommend to the Commission whether the "offeror" should perform an environmental assessment during development of the proposed standard. In making this recommendation, the Executive Director shall take into account the resources of the "offeror", including the expertise and money available to it. If the Commission decides that the "offeror" should perform an assessment, the agreement between the Commission and the offeror shall so provide. CPSC, however, shall independently evaluate any assessment prepared and shall take responsibility for the scope and content of the assessment.

(e) CPSC adjudications are primarily law enforcement proceedings and therefore are not agency actions within the meaning of NEPA. (See § 1508.18(8) of the NEPA regulations.) However, in CPSC formal rulemaking proceedings, all available environmental information, including any supplements to a draft or final EIS, shall be filed in the Office of the Secretary and shall be made part of the formal record of the proceeding.

§ 1021.8 Legislative proposals.

Draft EISs on legislative proposals which may significantly affect the environment shall be prepared as described in § 1506.8 of the NEPA regulations. The draft EIS, where feasible, shall accompany the legislative proposal or report to Congress and shall be available in time for Congressional hearings and deliberations. The draft EIS shall be forwarded to the Environmental Protection Agency in accordance with § 1506.9 of the NEPA regulations. Comments on the legislative statement and CPSC's responses shall be forwarded to the appropriate Congressional committees.

§ 1021.9 Public participation, notice, and comment.

(a) Information and comments are solicited from and provided to the public on anticipated environmental effects of CPSC actions as follows:

(1) Promptly after a decision is made to prepare a draft EIS, a notice of intent to prepare the draft EIS shall be published in the CPSC Public Calendar and in the **Federal Register**. The notice shall state the nature of the proposed action and available alternatives and shall describe the planned scoping process. The notice shall solicit information and comment by other governmental agencies and the public.

(2) As soon as practicable after a finding of no significant impact is completed, a copy of the finding together with the environmental assessment report shall be forwarded to the Office of the Secretary of the Commission to be made available to the public. Any information and comments received from the public on the documents will be considered and will accompany the documents throughout the CPSC decisionmaking process, but comments will not ordinarily be answered individually.

(3)(i) Upon completion of a draft EIS, a notice of its availability for comment should be published in the CPSC Public Calendar and in the **Federal Register**. Copies of the draft EIS shall be filed with the Environmental Protection Agency (EPA) in accordance with § 1506.9 of the NEPA regulations. The length of the comment period on the draft EIS shall be stated in the notice of availability and on the cover of the draft EIS. The comment period, in accordance with § 1506.10 of the NEPA regulations, shall be a minimum of 45 days from the date the notice of receipt of the draft EIS is published in the **Federal Register** by EPA. It should also be stated in the CPSC notice that comments received during the comment period will be addressed in the final EIS, whereas late comments will be considered to the extent practicable, and that all comments will be appended to the final EIS.

(ii) Copies of the draft EIS shall be sent to public and private organizations known by CPSC to have special expertise with respect to the environmental effects involved, those who are known to have an interest in the action, and those who request an opportunity to comment. Also, copies shall be circulated for comment to Federal, State, and local agencies with jurisdiction by law and special expertise with respect to environmental effects involved. Part 1503 of the NEPA regulations shall be consulted for further details of this procedure.

(iii) Draft EIS's shall be available to the public in the Office of the Secretary at Commission headquarters.

(4) Upon completion of a final EIS, a notice of its availability in the Office of the Secretary, shall be published in the CPSC Public Calendar and if deemed appropriate, in the **Federal Register**. Copies of the final EIS shall be forwarded to EPA and one copy shall be sent to each entity or person who commented on the draft EIS.

(5) A list of EIS's under preparation and of EIS's or findings of no significant impact and environmental assessments completed shall be available to the public in the Office of the Secretary, at Commission headquarters. The list shall be continuously updated.

(6) In addition to publication in the CPSC Public Calendar and the **Federal Register**, notices called for by this section may also be publicized through press releases or local newspapers, whenever appropriate.

§ 1021.10 Emergencies.

Where emergency circumstances make it necessary to take an action without observing all the provisions of these implementing procedures or the NEPA regulations, CPSC will consult with the Council on Environmental Quality about alternative arrangements.

§ 1021.11 Information regarding NEPA compliance.

Interested persons may contact the Commission's Office of the Executive Director (301–492–6550) for information regarding CPSC NEPA compliance.

Subpart C—Contents of Environmental Review Documents

§ 1021.12 Environmental assessment.

(a) An environmental assessment shall first briefly describe the proposed action and realistic alternative actions. Next, it shall identify all effects on the environment that can be expected to result from the proposed and alternative actions. After each anticipated effect is identified, it shall be described as fully as can be done with available data in order to show its magnitude and significance. Sources of information for assessment include CPSC staff studies and research reports, information gathered at hearings or meetings held to obtain the views of the public on the proposed action, and other information received from members of the public and from governmental entities.

(b) The assessment shall identify and describe any methods or approaches which would avoid or minimize adverse effects on the environment.

§ 1021.13 Finding of no significant impact.

(a) A finding of no significant impact shall cite and be attached to the environmental assessment upon which it is based. It shall refer to anticipated effects upon the environment identified in the environmental assessment and give the reason(s) why those effects will not be significant. The final paragraph of the finding shall give the reasons why the overall impact on the environment is not regarded as significant.

(b) The signature of the Executive Director shall appear at the end of the finding of no significant impact.

§ 1021.14 Environmental impact statement.

(a) Draft and final EIS's, unless there is a compelling reason to do otherwise, shall conform to the recommended format specified in § 1502.10 of the NEPA regulations and shall contain the material required by §§ 1502.11–1502.18 of those regulations.

(b) It may be necessary to include in an EIS a description of effects which are not effects on the natural or physical environment, but rather are, for example, purely economic or health effects. For this reason, an EIS may include issues and facts that are thoroughly analyzed in other comprehensive CPSC documents such as hazard analyses, economic impact analyses, or analyses of impact on particular age groups among consumers. In such cases, the EIS shall not duplicate the other documents, but rather shall cite and summarize from them. A list of background documents and sources of data cited in the EIS shall appear at the end of every EIS.

Dated: October 15, 1980.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 80-32697 Filed 10-20-80; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF STATE

Office of the Secretary

22 CFR Part 142

[Departmental Reg. 108.797]

Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Assistance

AGENCY: Department of State

ACTION: Final rule.

SUMMARY: This regulation sets forth policies and procedures to assure nondiscrimination on the basis of handicap in programs and activities in which the Department of State extends financial assistance. The rule implements Section 504 of the Rehabilitation Act of 1973, as amended, and Executive Order 11914, which relate to nondiscrimination toward handicapped persons. The rule follows the guidelines established by the Department of Health and Human Services, for carrying out the provisions of E.O. 11914 (43 FR 2132, January 13, 1978).

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Paul M. Coran, Office of the Legal Adviser, United States Department of State, 2201 C Street, N.W., Washington, D.C. 20520, (202) 632–3022.

SUPPLEMENTARY INFORMATION: On April 11, 1979, the Department of State published a proposed rule implementing Section 504 of the Rehabilitation Act of 1973, as amended [44 FR 21661].

The rule implements Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, with regard to federal financial assistance administered by the Department of State. Section 504 prohibits qualified handicapped persons from being denied the benefits of, or participation in, any federally assisted program. The rule applies to all recipients of financial assistance from the Department of State including organizations which receive nonreimbursed or partially reimbursed personnel assignments from the Department of State, but no funds. The programs to which this rule applied are set forth in Appendix A.

The rule was reviewed by the Office of Civil Rights, DHEW, for compliance with Executive Order 11914, and the Architectural and Transportation Barriers Compliance Board was consulted pursuant to 45 CFR Section 85.7.

Following is a summary of the principal comments and substantive revisions to the proposed regulation.

1. Several individuals and an organization urged that the rule be amended to encompass Department of State financial assistance to private elementary and secondary schools operating and educating American and other students abroad. The Department believes the suggested amendment to be beyond the scope of Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which applies only to qualified handicapped individuals ". . . in the United States." Section 142.2 has been revised, however, to reflect the meritorious suggestions of one commentator that programs carried on in part or in whole abroad might directly affect handicapped individuals in the United States.

2. Several organizations commented persuasively that the proposed regulation dealing with recipient communications with and accommodation to individuals with impaired vision or hearing would be more effective and provide better guidance to recipients if it set forth specifically the types of compensation modes envisioned; Sections 142.4(e), 142.6(a), 142.12(b), 142.16(b), and 142.44(d) have been revised accordingly.

3. One organization suggested that equitable and logical considerations do not warrant the exclusion from the requirement for recipient adoption of grievance procedures, complaints from applicants for employment or from applicants for admission to post-secondary educational institutions. The Department now concurs in that view and has revised Section 142.7 (b), accordingly.

4. One organization commented that the proposed regulation regarding recipient screening processes too narrowly focused on neutralizing the effects of impaired sensory, manual, or speaking skills, which unwarrantedly would not encompass such conditions as dyslexia. To remove any possibility of unjustified omission, Sections 142.13(b), 142.42(b)(3), and 142.44(c) have been revised to encompass generally the impairment of skills which results from handicaps.

5. One organization's comments opposed categorically the alternative of home visits for program accessibility as set forth in Section 142.16(b). The Department has decided to retain this provision for home visit program accessibility to accommodate the hopefully exceptional circumstance where existing facilities will not afford program assessibility to a beneficiary.

6. One organization observed that Sections 142.6(c), Self-evaluation, and 142.16(d) Transition plans are integrally connected but procedurally infirmed by 142.6(c) prescribing one year for self-evaluation and modification of offensive policies and practices, while Section 142.16(d) requires a program accessibility transition plan within six months from the effective date of this rule. The observed conflict is well taken and Section 142.16(d) has been revised accordingly to provide for a six month time period for self-evaluation.

7. One organization suggested, with merit, that a recipient's transition plan should include a list of persons and organizations consulted in the process of plan formulation. Adoption of this suggestion is desirable as it would encourage recipients to broaden their outreach to all interested parties. Section 142.16(d) has been revised accordingly.

8. The Architectural and Transportation Barriers Compliance Board ("ATBCB") through consultation pursuant to 45 CFR 85.7, made several suggestions which have been adopted in this final rule. Accordingly, 142.17(a), (b) and (c) have been modified to reflect general requirements of the Architectural Barriers Act, 42 U.S.C. 4151 *et seq.*

In consideration of the foregoing, part 142 is hereby added to Title 22 of the Code of Federal Regulations as set forth below:

PART 142—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

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142.1 Purpose.
142.2 Application.
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Subpart D—Postsecondary Education

142.41 Application of this subpart.
142.42 Admissions and recruitment.
142.43 Treatment of students; general.
142.44 Academic adjustments.
142.45 Housing.
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142.47 Nonacademic services.
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Subpart E—Health, Welfare, Social, and Other Services

142.61 Application of this subpart.
142.62 Health, welfare, social, and other services.
142.63 Drug and alcohol addicts.
142.64–1432.69 [Reserved].

Subpart F—Procedures

142.70 Procedures.
142.71—142.99 [Reserved]
Appendix A—Grants and activities to which this part applies.

Authority: Sec. 504, Rehabilitation Act of 1973, Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794); Sec. 11(a), Rehabilitation Act; Amendments of 1974, Pub. L. 93–516, 88 Stat. 1619 (29 U.S.C. 706); amendments of 1978, Pub. L. 95–602.

Subpart A—General Provisions

§ 142.1 Purposes.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

§ 142.2 Application.

This part applies to all programs directly affecting handicapped individuals in the United States carried on by recipients of Federal financial assistance pursuant to any authority held or delegated by the Secretary of State, including the Federally-assisted programs and activities listed in Appendix A of this part. (Appendix A may be revised from time-to-time by notice in the **Federal Register**.) It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of this regulation, even if the application for such assistance is approved prior to such effective date. This part does not apply to:

(a) Any Federal financial assistance by way of insurance or guaranty contracts;

(b) Money paid, property transferred or other assistance extended under any such program before the effective date of this part;

(c) Any assistance to any individual who is the ultimate beneficiary under any such program; and

(d) Any procurement of goods or services, including the procurement of training. This part does not bar selection and treatment reasonably related to the foreign affairs objective or such other authorized purpose as the Federal assistance may have. It does not bar selections which are limited to particular groups where the purpose of the program calls for such a limitation, nor does it bar special treatment including special courses of training, orientation or counseling consistent with such purpose.

§ 142.3 Definitions.

As used in this part, the term:

(a) "Executive Order" means Executive Order 11914, entitled "Nondiscrimination with Respect to the Handicapped in Federally Assisted Programs," issued April 28, 1976.

(b) "The Act" means the Rehabilitation Act of 1973, Pub. L. 93–112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93–516, and the Rehabilitation Act of Amendments of 1978, Pub. L. 95–602.

(c) "Section 504" means section 504 of the Rehabilitation Act of 1973, Pub. L. 93–112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93–516, 29 U.S.C. 794: amendments of 1978, Pub. L. 95–602.

(d) "Department" means the Department of State and includes each of its organizational units. It does not include the Agency for International Development.

(e) "Secretary" means the Secretary of State or any officer or employee of the Department to whom the Secretary has heretofore delegated, or to whom the Secretary may hereafter delegate, the authority to act under the regulations in this part.

(f) "Recipient" means any State or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance and any sovereign foreign government.

(g) "Applicant for Assistance" means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition or becoming a recipient.

(h) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), cooperative agreement, or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(i) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(j) "Handicapped person". (1) means any person who: (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section, the phrase:

(i) "Physical or mental impairment" means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness and drug addiction and alcoholism.

(ii) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) "Has a record of such an impairment" means has a story of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) "Is regarded as having an impairment" means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairments, or (C) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

(k) "Qualified handicapped person" means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to public pre-school, elementary, secondary, or adult educational services, a handicapped person, (i) of an age during which nonhandicapped persons are provided such services, (ii) of any age during which it is mandatory under State law to provide such services to handicapped persons, or (iii) to whom a State is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standard requisite to admission or participation in the recipient's education program or activity;

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the recipient of such services.

(l) "Handicap" means any conditions or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section.

§ 142.4 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

(b) *Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

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(iii) Provide a qualified handicapped person with aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped person unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to any agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services to be effective, are not required to produce identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped person equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) that perpetuate the discrimination with respect to another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location or a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance of (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part with Federal financial assistance.

(c) *Programs limited by Federal law.* The exclusion of a handicapped person from the benefits or a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

(d) Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

(e) Recipients shall ensure that communications with their applicants, employees, and handicapped persons participating in their programs and activities, or receiving aids, or benefits of services, are available to persons with impaired vision and hearing in appropriate modes, including braille, enlarged type, sign language and telecommunication devices for the deaf.

§ 142.5 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance on a form specified by the Secretary, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) *Duration of obligations.* (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purposes for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (c)(1) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided by the Department in the form of real property or interest in real property, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing facilities on the property for the purposes for which the property was transferred, the Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as the Secretary deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

§ 142.6 Remedial action, voluntary action, and self-evaluation.

(a) *Remedial action.* (1) If the Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 of the Act or this part, the recipient shall take such remedial action as the Secretary deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 of the Act or this part and where another recipient exercises control over the recipient that has discriminated, the Secretary, where appropriate, may require either or both recipients to take remedial action.

(3) The Secretary may, where necessary to overcome the effects of discrimination in violation of section 504 of the Act or this part, require a recipient to take action (i) with respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred, or (ii), with respect to handicapped persons who would have been participants in the program had the discrimination not occurred.

(b) *Voluntary action.* A recipient may take steps, in addition to any action required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.* (1) A recipient shall, within six months of the effective date of this part:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Secretary upon request: (i) A list of the interested persons consulted, (ii) a description of areas examined and any problems identified, and (iii) a description of any modifications made and of any remedial steps taken.

§ 142.7 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A recipient that employs 15 or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of grievance procedures.* A recipient that employs 15 or more persons shall adopt grievance procedures that incorporate appropriate due process for the prompt and equitable resolution of complaints alleging any action prohibited by this part.

§ 142.8 Notice.

(a) A recipient shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 of the Act or this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to Sec. 142.7(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include but are not limited to the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publications, distribution of memoranda or other written communications; and with persons with impaired vision and hearing, through appropriate modes including braille, enlarged type, sign language, and telecommunication devices for the deaf.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of the paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

§ 142.9 Administrative requirements for small recipients.

The Secretary may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with § 142.7, in whole or in part, when the Secretary finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

§ 142.10 Effect of State or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any State or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

Subpart B—Employment Practices

§ 142.11 Discrimination prohibited.

(a) *General.* (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity receiving Federal financial assistance.

(2) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(3) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. This includes relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(b) *Specific activities.* The provisions of this part apply to:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right to return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classification, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

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§ 142.12 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of the program.

(b) Reasonable accommodation may include: (1) Making facilities used by employees readily accessible to and usable by handicapped persons, and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number and type of facilities, and size of budget;

(2) Job restructuring, part-time or modified work schedules, acquisition and or modification of equipment of devices such as telecommunication devices for the deaf, the provision of readers or interpreters and other similar actions including the use of braille, enlarged type, and sign language, when appropriate.

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

§ 142.13 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless:

(1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and

(2) Alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Secretary to be available.

(b) A recipient shall select and administer tests concerning employment to ensure that when administered to any applicant or employee who has a handicap that impairs sensory, manual, speaking, or other skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever factor the test purports to measure, rather then reflecting the applicant's impaired sensory, manual, speaking, or other skills (except where those skills are the factors that the test purports to measure).

§ 142.14 Pre-employment inquiries.

(a) Except as provided in paragraph (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to 142.6(a), when a recipient is taking voluntary action to overcome the effect of conditions that resulted in limited participation in its federally assisted program or activity pursuant to 142.6(b), or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped: *Provided,* that:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally, if no written questionnaire is used, that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that is will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty. *Provided,* that: (1) All entering employees are subjected to such an examination regardless of handicap, and (2) the results of such an examination are used only in accordance with the requirement of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodation;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

Subpart C—Program Accessibility

§ 142.15 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which the part applies.

§ 142.16 Existing facilities.

(a) *Program accessibility.* A recipient shall operate each program or activity to which this part applies so that the program or activity when viewed in its entirety is readily accessible to and usable by handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of an existing facility accessible to and usable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirement of paragraph (a) of this section through such means as the addition of equipment (e.g., telecommunication device for the deaf) redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirement of 142.18, or any other method that results in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) *Time period.* A recipient shall comply with the requirement of

paragraph (a) of this section within 60 days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the person responsible for implementation of the plan; and

(5) A list of all handicapped persons and organizations consulted in the plan formulation process.

(e) *Notice.* The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

§ 142.17 New consiruction.

(a) *Design and construction.* Each facility or part of the facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part; or since 1968, pursuant to the Architectural Barriers Act, for federally funded construction (in whole or in part).

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this pact shall, subject to the standards set forth in 41 CFR 101–19.6 *et seq.,* be altered in such a manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) American National Standards Institute accessibility standards: Design, construction, or alteration of facilities in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc. (ANSI A117.1–1969)(R1971) (Copies obtainable from American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.), is incorporated by reference in this part, and shall constitute compliance with paragraphs (a) and (b) of this section. Departures from particular requirements of those standards by the use of other methods shall be permitted only by special waiver or modification by the appropriate standard setting agency (the General Services Administration, Department of Housing and Urban Development, Department of Defense, United States Postal Service), after application by the Secretary, and upon a determination that a waiver or modification is clearly necessary.

§§ 142.18–142.40 [Reserved]

Subpart D—Postsecondary Education

§ 142.41 Application of this subpart.

Subpart D applies to postsecondary education programs and activities, including postsecondary vocational education programs and activities, that receive or benefit from Federal financial assistance from the Department of State, and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

§ 142.42 Admissions and recruitment.

(a) *General.* Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.

(b) *Admissions.* In administering its admission policies, a recipient to which this subpart applies:

(1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted;

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless (i) the test or criterion, as used by the recipient, has been validated as a predictor of success in the education program of activity in question and (ii) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Secretary to be available;

(3) Shall assure itself that (i) admissions tests are selected and administered so as to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, speaking or other skills (except where those skills are the factors that the test purports to measure); (ii) admissions tests that are designed for persons with impaired sensory, manual, speaking or other skills are offered as often and in as timely a manner as are other admissions tests; and (iii) admissions tests are administered in facilities that, are accessible to handicapped persons; and

(4) Except as provided in paragraph (c) of this section, may not make preadmission inquiry as to whether an applicant for admission is a handicapped person but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation.

(c) Preadmission inquiry exception. When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 142.6(a) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 142.6(b), the recipient may invite applicants for admissions to indicate whether and to what extent they are handicapped; *Provided,* that: (1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.

(d) *Validity studies.* For the purpose of paragraph (c)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the

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education program or activity in question in order to monitor the general validity of the test scores.

§ 142.43 Treatment of students; general.

(a) No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational, training, housing, health, insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education program or activity to which this subpart applies.

(b) A recipient to which this subpart applies that considers participation by students in education programs activities not operated wholly by the recipient as part of, or equivalent to, an education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.

(d) A recipient to which this subpart applies shall operate its programs and activities in the most integrated setting appropriate.

§ 142.44 Academic adjustments.

(a) *Academic requirements.* A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discrimination, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

(b) *Other rules.* A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) *Course examinations.* In its examinations or other procedures for evaluating students' academic achievement in its program, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, speaking or other skills as will best ensure that the results of the evaluation represent the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, speaking or other skills (except where such skills are the factors that the test purports to measure).

(d) *Auxiliary aids.* (1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity operated by the recipient because of the absence of educational auxiliary aids for students with impaired sensory, manual, speaking or other skills.

(2) Auxiliary aids may include taped texts, interpreters, telecommunication devices for the deaf or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

§ 142.45 Housing.

(a) *Housing provided by the recipient.* A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others. At the end of the transition period provided for in subpart C of this part, such housing shall be available in sufficient quantity and variety so that the scope of handicapped students' choice of living accommodation is, as a whole, comparable to that of nonhandicapped students.

(b) *Other housing.* A recipient that assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

§ 142.46 Financial and employment assistance to students.

(a) *Provisions of financial assistance.* (1) In providing financial assistance of qualified handicapped persons, a recipient to which this subpart applies may not:

(i) On the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate; or

(ii) Assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped persons on the basis of handicap.

(2) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.

(b) *Assistance in making available outside employment.* A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that such employment opportunities, as a whole, are made available in a manner that would not violate subpart B if they were provided by the recipient.

(c) *Employment of students by recipients.* A recipient that employs any of its students may not do so in a manner that violates subpart B.

§ 142.47 Non-academic services.

(a) *Physical education and athletics.* (1) In providing physical education courses, athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors intercollegiate, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separate or differentiation is consistent with the requirements of 142.43(d) and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(b) *Counseling and placement services.* A recipient to which this subpart applies that provides personal, academic or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

(c) *Social organizations.* A recipient that provides significant asssistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such organizations do not permit discrimination otherwise prohibited by this subpart.

§§ 142.48–142.60 [Reserved]

Subpart E—Health, Welfare, Social, and Other Services

§ 142.61 Application of this subpart.

Subpart E applies to health, welfare, social and other programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of such programs or activities.

§ 142.62 Health, welfare, social, and other services.

(a) *General.* In providing health, welfare, social and other services or benefits, a recipient may not, on the basis of handicap:

(1) Deny a qualified handicapped person these benefits or services;

(2) Afford a qualified handicapped person an opportunity to receive benefits or services that are not equal to those offered nonhandicapped persons;

(3) Provide a qualified handicapped person with benefits or services that are not as effective (as defined in 142.4(b)) as the benefits or services provided to others;

(4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or

(5) Provide different or separate benefits or services to handicapped persons except where necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

(b) *Notice.* A recipient that provides notice concerning benefits or services or written material concerning waivers of rights or consent to treatment shall take such steps as are necessary to ensure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.

(c) Emergency treatment for the hearing impaired. A recipient hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care.

(d) *Auxiliary aids.* (1) A recipient to which this subpart applies that employs 15 or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, speaking or other skills (where necessary) to afford such persons an equal opportunity to benefit from the service in question.

(2) The Secretary may require recipients with fewer than 15 employees to provide auxiliary aids where the provision of aids would not significantly impair the ability of the recipient to provide its benefits or services.

(e) For the purpose of this paragraph, auxiliary aids may include brailled and taped material, interpreters, and other aids for persons with impaired hearing or vision.

§ 142.63 Drug and alcohol addicts.

A recipient to which this subpart applies that operates a general hospital or outpatient facility may not discriminate in admission or treatment against a drug or alcohol abuser or alcoholic who is suffering from a medical condition, because of the person's drug or alcohol abuse or alcoholism.

Subpart F—Procedures

§ 142.70 Procedures.

The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in 22 CFR subchapter 0, Part 14.

Dated: October 9, 1980.

Ben H. Read,

Under Secretary of State for Management, Department of State.

Appendix A—List of Affected Programs

Programs of Financial Assistance Administered by the Department of State Subject to Handicap Discrimination Regulations.

1. Resettlement of Refugees in the United States Under the Migration and Refugee Assistance Act of 1962, as amended (22 U.S.C. 2601 *et seq.* (1976)).

2. Non-reimbursable assignment of Foreign Service officers to State or local governments, public schools, community colleges, and other public or private nonprofit organizations designated by the Secretary of State (section 576 of the Foreign Service Act of 1946, as amended; 22 U.S.C. 966 (1976)).

3. Diplomat-in-Residence Program of the Foreign Service Institute under title VII of the Foreign Service Act of 1946, as amended (22 U.S.C. 1041, *et seq.* (1976)).

[FR Doc. 80-32790 Filed 10-20-80; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 151

General Grazing Regulations; Livestock Trespass

October 7, 1980.

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Final rule.

SUMMARY: On pages 6955 and 6956 of the **Federal Register** of January 31, 1980 there was published a proposed rule that would revise § 151.24 to strengthen the means of coping with livestock grazing trespass on Indian lands. The intended effect of this action is to assure compliance with a decision of the United States Court of Appeals for the Eighth Circuit while enforcing the per diem penalty in the other circuits; to discourage unauthorized use and abuse of Indian trust lands, and to provide for reimbursement of all expenses incurred in gathering, impounding, caring for, and disposing of trespass livestock. We are now issuing the proposal as a Final Rule.

DATES: The revised § 151.24, shall become effective November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Dan Renteria, Division of Water and Land Resources, Office of Trust Responsibilities, Bureau of Indian Affairs, Washington, D.C. 20245. Telephone: (202) 343–4004.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to the authority of 25 U.S.C. 466 and 25 U.S.C. 179, delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8. The primary author of this document is George Davis, Office of Trust Responsibilities, (202) 343–4004.

The Department of the Interior has determined that this document is not a significant rule and does not require a

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regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

The Department of the Interior has determined that this revision does not significantly affect the quality of the environment and does not require an environmental impact statement under Section 102 (2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(c).

The proposed rule invited comments and interested persons were given until April 29, 1980 to submit comments, suggestions or objections to the proposed regulation revision. Comments were received from twenty-eight individuals or groups. Twelve commentors felt that the trespass rule should also apply to fee patented lands. The response is that the Bureau does not have jurisdiction on fee patented lands and the aggrieved would have recourse to the state courts and trespass laws. Several comments indicated a need for some type of immediate action when there was imminent danger of severe crop or forage damage. As a result of these comments and careful consideration of the problem, a fourth section was added to § 151.24(f) to permit immediate impoundment. Several comments recommended that the lessee be considered for reimbursement for crop or forage damage caused by trespassing livestock. A phrase was added to § 151.24(b) to permit the payment of damages to a lessee for forage or crops consumed or destroyed by trespassing livestock. Other comments were of a general nature and to bring attention to some editorial changes and corrections.

Section 151.24 of Subchapter N, of Chapter I, of Title 25, of the Code of Federal Regulations is revised to read as follows:

§ 151.24 Livestock trespass.

(a) *Acts prohibited on Indian trust, restricted or Government lands.* The following acts are prohibited on Indian trust or restricted lands under the jurisdiction of the Bureau of Indian Affairs:

(1) The grazing upon or driving across any individually owned, tribal, or Government lands of any livestock without an approved grazing or crossing permit.

(2) Allowing livestock to drift and graze on trust or restricted Indian lands without an approved permit.

(3) The grazing or livestock upon trust or restricted Indian lands within an area closed to grazing of that class of livestock.

(4) The grazing of livestock by permittee upon an area of trust or restricted Indian lands withdrawn from use for grazing purposes to protect it from damage by reason of the improper handling of livestock, after the receipt of notice from the Superintendent of such withdrawal, or refusal to remove livestock upon instructions from the Superintendent when an injury is being done to the Indian lands by reason of improper handling of livestock.

(b) *Unauthorized grazing.* The owner of any livestock grazing in trespass on trust or restricted Indian lands is liable to a penalty of $1 per head for each animal thereof for each day of trespass (except in North Dakota, South Dakota, Nebraska and Minnesota where the penalty shall be $1 per head of cattle regardless of the number of days of trespass), together with the reasonable value of the forage consumed by their livestock and damages to property injured or destroyed, and for expenses incurred in impoundment and disposal. The Superintendent shall take action to collect all such penalties and damages, reimbursement for expenses incurred in impoundment and disposal, and seek injunctive relief when appropriate. All payments for such penalties and damages shall be credited to the landowners where the trespass occurs except that the value of forage or crops consumed or destroyed may be paid to the lessee of the lands not to exceed the rental paid, and reimbursement for expenses incurred in impoundment and disposal shall be credited as appropriate.

(c) *Notice and order to remove.* (1) When it has been determined that a violation exists and the owner of the unauthorized livestock is known, written notice shall be served upon the alleged violator or his agent by certified mail with return receipt requested, or personal delivery and a copy of the notice shall be sent to any know lien holder.

The notice shall set forth the act consituting the violation, the legal description of the land where the livestock were observed, the verification of brands in the State Brand Book, and the regulation alleged to have been violated. The notice shall also instruct the alleged violator to remove the livestock within a specified time, allow a specified time from receipt of the notice to show that there has been no violations, or to make settlement under § 151.24(d). If the alleged violator fails to comply with the notice, the Superintendent may impound the livestock under § 151.24(f).

(2) When neither the owner of the unauthorized livestock nor his representative is known, the Superintendent may proceed to impound the livestock under § 151.24(f).

(d) *Settlement.* The amount due the Indian landowner and/or the United States in settlement for unauthorized grazing use shall be determined by the Superintendent as follows:

(1) A penalty of $1 for each animal thereof for each day of trespass, except in the States of Minnesota, Nebraska, North Dakota, and South Dakota where the penalty shall be $1 for each animal without regard to the number of days of trespass.

(2) A reasonable value of forage consumed based upon the average rate received per month for comparable grazing privileges on the reservation for the kind of livestock concerned, or the estimated commercial value for such privileges if no comparable grazing privileges are sold.

(3) Damages to Indian or Government property injured or destroyed.

(4) All expenses incurred in gathering, impounding, caring for, and disposing of livestock in cases which necessitate impoundment under § 151.24(f).

(5) Neither the imposition of any civil penalty nor any action by the Secretary of the Interior shall preclude either any civil action by the United States, an Indian, or an Indian tribe for damages caused by trespassing livestock or prosecution for any offense involved with such trespass.

(e) *Demand for payment.* Where the livestock have been removed, but satisfactory settlement has not been made within the time prescribed under § 151.24(c), a certified letter, return receipt requested, shall be sent or personally delivered to the livestock owner or his agent, and a copy of the letter shall be sent to any know lien holder. The letter shall demand immediate settlement and advise the violator that unless settlement is received within five working days from date of receipt, the case may be referred to the Department of Justice for appropriate action.

(f) *Impoundment and disposal.* Unauthorized livestock remaining on trust or restricted Indian or Government lands which are not removed therefrom within the period prescribed in § 151.24(c) may be impounded and disposed of by the Superintendent as provided herein:

(1) A written notice of intent to impound shall be sent by certified mail, return receipt requested, or personally delivered to the owner, or his agent, and a copy of the notice shall be sent to any known lien holder. Any time after five days of delivery of the notice, the unauthorized livestock may be impounded.

(2) Where the owner or his agent is unknown, or a known owner or his agent refuses to accept delivery of the notice, a notice of intent to impound shall be published in a local newspaper, posted at the nearest community building and tribal council headquarters, and at a post office near the Indian or Government lands involved. Any time after five days of posting of the notice, the unauthorized livestock may be impounded.

(3) Unauthorized livestock that are owned by persons given notice under paragraphs (1) and (2) of this subsection may be impounded without further notice any time within the 12-month period following the effective date of a notice given under this subsection.

(4) Where there is imminent danger that trespassing livestock will severely injure a growing or harvestable crop or substantially destroy the range forage, the livestock may be impounded immediately.

(g) *Notice of public sale.* Following the impoundment of unauthorized livestock, a notice of sale of impounded livestock shall be published in a local newspaper, posted at the nearest community building and tribal council headquarters, and at a post office near the Indian or Government lands involved. The notice will describe the livestock and specify the date, time and place of sale. The date set shall be at least five days after the publication and posting of such notice. Any known owners or agents and known lien holders shall be notified in writing by certified mail, return receipt requested, or by personal delivery of the sale, and the procedure by which the impounded livestock may be redeemed prior to the sale as described in § 151.24(h).

(h) *Redemption.* Any owner or known lien holder of the impounded livestock may redeem them at any time before the time set for the sale by submitting proof of ownership and the settlement of all obligations described in § 151.24(d).

(i) *Sale.* If the livestock are not redeemed before the time fixed for their sale, they shall be sold at public sale to the highest bidder. If a satisfactory bid is not received, the livestock may be reoffered for sale, condemned and destroyed, or otherwise disposed of. When livestock are sold by the Superintendent pursuant to these regulations, he shall furnish the purchaser a bill of sale or other written instrument evidencing the sale.

(j) *Distribution of proceeds.* The net proceeds of the sale, after deduction of the prescribed penalty and the deduction of the necessary costs and expenses of the Secretary of the Interior as provided in § 151.24(d), shall be paid to the owner of the animal upon satisfactory proof of ownership submitted within six months of the date of the sale. Net proceeds of the sale of an animal, not paid to the owner, shall be deposited in the United States Treasury to the credit of the landowners where the trespass occurred.

Philip S. Deloria,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 80-32430 Filed 10-20-80; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) to reflect that the Secretary of the Navy has determined that USS *RIDDLE* (CG 34) is a vessel of the Navy which, due to its special construction and purpose cannot comply fully with 72 COLREGS, Annex I, Section 2(f) pertaining to the placement of masthead lights over all other lights and obstructions; 72 COLREGS, Rule 21(a) pertaining to the arc of visibility of the forward masthead lights; and, 72 COLREGS, Rule 23(a)(j) pertaining to the requirement for a forward masthead light, without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: October 21, 1980.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Charles Stanley Prentace, JAGC, USN, Admiralty Division, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexander, Virginia 22332, Telephone No. (202) 325-9744.

SUPPLMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605 and Executive Order 11964, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS *BIDDLE* (CG 34) is a ship of the Navy which, due to its special construction and purpose cannot comply fully with 72 COLREGS, Annex I, Section 2(f) pertaining to the placement of masthead lights over all other lights and obstructions; 72 COLREGS, Rule 21(a) pertaining to the arc of visibility of the forward masthead lights; and, 72 COLREGS, Rule 23(a)(i) pertaining to the requirement for a forward masthead light. Full compliance with these provisions would interfere with the special functions of the ship. The Secretary of the Navy has also certified that the lights previously mentioned are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to the public interest since it is based on technical findings that the placement of lights on this ship in a manner different from that prescribed herein will adversely affect the ship's ability to perform its military function. Accordingly, 32 CFR Part 706 is amended as follows:

§ 706.2 [Amended]

1. Table Four is amended to reflect certifications issued by the Secretary of the Navy by inserting the following new note 14.

14. On USS *Biddle* the arc of visibility of the forward masthead light may be obscured through 1.4 degree arcs of visibility at 017 and 343 degrees relative to the ship's head.

Dated: October 17, 1980.

Edward Hidalgo,

Secretary of the Navy.

[FR Doc. 80-33007 Filed 10-20-80; 8:45 am]

BILLING CODE 3810-71-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 5922]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fifth column of the table.

V 45 OCT 21 80 UMI

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Federal Insurance Administrator has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance." This program is subject to procedures set out in OMB Circular A–95.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified
California	San Bernardino	Colton, city of	060273A	Sept. 17, 1980, suspension withdrawn	June 7, 1974.
Do	Tehama	Tehama, city of	060400A	....do	Dec. 24, 1974.
Colorado	Eagle	Minturn, town of	080053B	....do	Aug. 16, 1974 and Apr. 4, 1976.
Connecticut	New London	Noank fire district	090129A	....do	Feb. 21, 1975.
Florida	Seminole	Sanford, city of	120294B	....do	Aug. 16, 1974. June 28, 1974 and Feb. 20, 1976.
Illinois	Cook	Alsip, village of	170055C	....do	Mar. 22, 1974, Mar. 26, 1976, and June 2, 1978.
Do	Henry	Colona, village of	170749A	....do	Oct. 29, 1976.
Do	....do	Lisle, village of	170211B	....do	July 8, 1973 and Nov. 8, 1974.
Iowa	Clinton	Clinton, city of	190088B	....do	June 28, 1974 and Sept. 17, 1976.
Kentucky	Kenton	Independence, city of	210240B	....do	Feb. 8, 1974 and July 16, 1976.
Michigan	St. Clair	Cottrellville, township of	260196B	....do	Apr. 12, 1974 and Dec. 31, 1976.
New Jersey	Passaic	Hawthorne, borough of	340400B	....do	Nov. 30, 1973 and July 16, 1976.
Do	Camden	Lindenwold, borough of	340137B	....do	Nov. 22, 1974 and June 18, 1976.
Do	....do	Stratford, borough of	340146B	....do	Mar. 22, 1974 and July 16, 1976.
Ohio	Cuyahoga	Bedford Heights, city of	390096B	....do	Mar. 22, 1974 and Apr. 30, 1976.
Do	....do	Maple Heights, city of	390114B	....do	Feb. 8, 1974 and Apr. 9, 1976.
Oregon	Jackson	Gold Hill, city of	410094B	....do	Jan. 9, 1974 and Jan. 2, 1976.
Pennsylvania	Delaware	Aldan, borough of	420401B	....do	Aug. 26, 1974 and June 11, 1976.
Do	Lycoming	Cummings, township of	420638B	....do	Aug. 30, 1974 and July 2, 1976.
Do	....do	Eldred, township of	421839A	....do	Nov. 8, 1974.
Do	Luzerne	Hollenback, township of	421831A	....do	Dec. 13, 1974.
Do	Lycoming	Lycoming, township of	420644C	....do	May 17, 1974, Aug. 20, 1976, and Nov. 19, 1976.
Do	Delaware	Newtown, township of	420691B	....do	Jan. 23, 1974 and June 11, 1976.
Do	Lycoming	Upper Fairfield, township of	420660B	....do	Jan. 13, 1978.
Texas	Tarrant	Saginaw, city of	480610B	....do	Mar. 9, 1974 and Sept. 24, 1976.
Do	Dallas	Wilmer, city of	480190B	....do	Feb. 1, 1974 and June*11, 1976.
Virginia	Wise	Appalachia, town of	510319B	....do	May 10, 1974 and June 25, 1976.
Illinois	Du Page	Clarendon Hills, village of	170203B	Sept. 27, 1980, suspension withdrawn	Mar. 8, 1974 and Dec. 16, 1976.
				....do	
Texas	Kaufman	Kemp, city of	480412A	Sept. 18, 1980, emergency, Sept. 16, 1980, regular.	Apr. 23, 1976.
Pennsylvania	Warren	Sugar Grove, township of	422549	Sept. 18, 1980, emergency	Jan. 24, 1975.
Georgia	Gwinnett	Suwanee, city of	130328	Sept. 22, 1980, emergency	Apr. 4, 1975.
Kentucky	Carlisle	Arlington, city of	210362—New	....do	
North Carolina	Pitt	Unincorporated areas	370372A	....do	June 30, 1978.
Texas	Taylor	....do	481014A	....do	Nov. 29, 1977.
South Carolina	Pickens	Clemson, city of	450238A	....do	Dec. 15, 1978.
Texas	Cameron	Primera, city of	48119B	Sept. 18, 1980, emergency	
Arkansas	Pulaski	Alexander, city of	050377	Sept. 26, 1980, emergency	Apr. 18, 1975.
Texas	Red River	Avery, city of	480983	....do	Aug. 13, 1976.
North Carolina	Sampson	Autryville, town of	370358	Sept. 29, 1980, emergency	July 25, 1975.
Pennsylvania	Greene	Freeport, township of	422432	....do	Jan. 3, 1975.
New York	Wyoming	Wethersfield, town of	361246	Sept. 30, 1980, emergency	Dec. 13, 1974.
North Carolina	Buncombe	Asheville, city of	370032A	June 30, 1976, emergency, July 16, 1980, regular, July 16, 1980, suspended, Sept. 19, 1980, reinstated.	Apr. 2, 1976.
Pennsylvania	Luzerne	Black Creek, township of	420598B	Mar. 9, 1973, emergency, Sept. 3, 1980, regular, Sept. 3, 1980, suspended, Sept. 23, 1980, reinstated.	May 31, 1974 and May 14, 1976.
Do	McKean	Eldred, township of	421854A	Aug. 21, 1974, emergency, Sept. 3, 1980, regular, Sept. 3, 1980, suspended, Sept. 23, 1980, reinstated.	Nov. 15, 1974.
Do	Luzerne	Lake, township of	421833A	Oct. 24, 1975, emergency, Sept. 3, 1980, regular, Sept. 3, 1980, suspended, Sept. 23, 1980, reinstated.	Nov. 22, 1974.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified
Do	Mifflin	Oliver, township of	421882A	Aug. 29, 1975, emergency, Sept. 17, 1980, regular, Sept. 17, 1980, suspended, Sept. 29, 1980, reinstated.	Feb. 14, 1975.
Do	Luzerne	Jackson, township of	42061OB	Mar. 16, 1973, emergency, Sept. 17, 1980, regular, Sept. 17, 1980, suspended, Sept. 29, 1980, reinstated.	June 10, 1977.
Connecticut	Middlesex	Clinton, town of	090061B	Sept. 30, 1980, suspension withdrawn	Dec. 1, 1974 and Mar. 4, 1977.
Idaho	Canyon	Parma, city of	160039C	....do	May 17, 1974 and June 4, 1976.
Indiana	Clark	Unincorporated areas	180426A	....do	Feb. 24, 1978.
Louisiana	Lafayette	Lafayette, city of	220105C	....do	Mar. 1, 1974 and July 17, 1979.
Maine	Kennebec	Farmingdale, town of	230164B	....do	Aug. 2, 1974 and Sept. 3, 1976.
Massachusetts	Middlesex	Holliston, town of	250195B	....do	Aug. 2, 1974 and Nov. 5, 1976.
DO	Franklin	Northfield, town of	250060B	....do	Aug. 9, 1974 and June 19, 1979.
Michigan	Eaton	Dimondale, village of	260333A	....do	Oct. 17, 1975.
Minnesota	Anoka	Andover, city of	270689A	....do	Dec. 17, 1976.
Mississippi	Simpson	Mendenhall, city of	280159B	....do	June 14, 1974, Oct. 17, 1975, and Sept. 1, 1978.
Nebraska	Seward	Seward, city of	310210B	....do	June 14, 1974 and Jan. 2, 1976.
Nevada	Clark	Las Vegas, city of	325276B	....do	Dec. 3, 1976.
New Jersey	Bergen	Emerson, vorough of	340030B	....do	June 15, 1973 and Oct. 21, 1977.
North Dakota	Cass	Harwood, city of	380338A	....do	
Ohio	Hamilton	Amberley, village of	390206A	....do	
Do	Summit	Hudson, village of	390660B	....do	Mar. 29, 1974 and June 25, 1976.
Oklahoma	Grady	Chickasha, city of	400234B	....do	May 24, 1974 and May 21, 1976.
Do	Bryan	Durant, city of	400460B	....do	May 10, 1974 and Feb. 13, 1976.
Oregon	Jackson	Central Point, city of	410092B	....do	June 21, 1974 and Jan. 2, 1976.
Do	Union	La Grande, city of	410260B	....do	Nov. 30, 1973 and Oct. 15, 1976.
Pennsylvania	Westmoreland	Arnold, city of	420870B	....do	June 14, 1974 and June 18, 1976.
Do	Luzerne	Ashley, borough of	420596B	....do	April 5, 1974 and June 11, 1976.
Do	Chester	East Caln, township of	421477B	....do	Oct. 18, 1974 and May 28, 1976.
Do	Allegheny	Emsworth, borough of	420034B	....do	Dec. 3, 1976.
Do	Bucks	Falls, township of	420188A	....do	May 18, 1973.
Do	Lycoming	Gamble, township of	420974B	....do	Feb. 22, 1974 and July 8, 1977.
Do	Susquehanna	Great Bend, borough of	422068A	....do	Sept. 20, 1974.
Do	....do	Hallstead, borough of	422069A	....do	Nov. 22, 1974.
Do	Blair	Huston, township of	422332A	....do	Jan. 10, 1975.
Do	Lycoming	Muncy Creek, township of	420650B	....do	Aug. 23, 1974 and Feb. 27, 1976.
Do	Lancaster	Pequea, township of	421779A	....do	Oct. 22, 1976.
Do	Blair	Taylor, township of	421394A	....do	Jan. 17, 1975.
Do	Luzerne	Union, township of	421836A	....do	Jan. 17, 1975.
Tennessee	Smith	Carthage, city of	470176B	....do	Aug. 2, 1974 and July 30, 1976.
Do	Roane	Unincorporated areas	470267D	....do	Dec. 23, 1977.
Texas	Houston	Crockett, city of	480359C	....do	May 10, 1974, Jan. 16, 1976, and Feb. 18, 1977.
Do	Dallas	Framers Branch, city of	480174B	....do	April 12, 1974 and Feb. 15, 1978.
Vermont	Essex	Canaan, town of	500046B	....do	May 31, 1974 and Mar. 4, 1977.
Wisconsin	Dane	Madison, city of	550083B	....do	Mar. 8, 1974 and Sept. 5, 1975.
Do	....do	Oregon, villege of	550089B	....do	May 24, 1974 and Aug. 6, 1976.
Do	Racine	Wind Point, village of	550355B	....do	June 28, 1974 and Sept. 24, 1976.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: October 3, 1980.

Gloria M. Jimenez,
Federal Insurance Administrator.

[FR Doc. 80–32470 Filed 10–20–80; 8:45 am]

BILLING CODE 6718–03–M

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44 CFR Part 64

[Docket No. FEMA 5923]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fifth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, Phone: (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line 800–424–8872, Room 5150,

451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Federal Insurance Administrator has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance." This program is subject to procedures set out in OMB Circular A–95.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	County	Location	Community No.	Effective date of authorization of sale of flood insurance for area	Hazard area identified
Texas	Kaufman County	Kemp, city of	480412	800918 emerg., 800918 reg	760423
Arkansas	Jackson County	Diaz, city of	050100	750512 emerg., 800917 reg	740308
California	San Bernardino County	Colton, city of	060273	740115 emerg., 800917 reg	0
California	Riverside County	Lake Elsinore, city of	060636	750613 emerg., 800917 reg	740628
California	Tehama County	Tehama, city of	060400	750210 emerg., 800917 reg	741224
Colorado	Eagle County	Minturn, town of	080053	750926 emerg., 800917 reg	740816
Connecticut	New London County	Noank fire district	090129	730925 emerg., 800917 reg	750221
Connecticut	New Haven County	North Haven, town of	090088	730713 emerg., 800917 reg	740524
Florida	Seminole County	Sanford, city of	120294	750121 emerg., 800917 reg	740816
Illinois	Cook County	Alsip, village of	170055	750113 emerg., 800917 reg	740322
Illinois	Henry County	Colona, village of	170749	780707 emerg., 800917 reg	781029
Illinois	Du Page County	Lisle, village of	170211	730706 emerg., 800917 reg	740315
Indiana	Morgan County	Brooklyn, town of	180402	751119 emerg., 800917 reg	731207
Iowa	Scott County	Buffalo, city of	190241	740926 emerg., 800917 reg	740301
Iowa	Clinton County	Clinton, city of	190088	740911 emerg., 800917 reg	740626
Kentucky	Kenton County	Independence, city of	210240	741010 emerg., 800917 reg	740208
Maryland	Frederick County	Emmitsburg, town of	240029	750508 emerg., 800917 reg	740329
Michigan	St. Clair County	Cottrellville, township of	260196	740412 emerg., 800917 reg	740412
Michigan	Macomb County	New Haven, Village of	260448	750725 emerg., 800917 reg	750711
Mississippi	Rankin County	Brandon, city of	280143	741212 emerg., 800917 reg	740607
New Jersey	Passaic County	Hawthorne, borough of	340400,	730628 emerg., 800917 reg	731130
New Jersey	Camden County	Lindenwold, borough of	340137	760112 emerg., 800917 reg	741122
New Jersey	Camden County	Stratford, borough of	340146	750321 emerg., 800917 reg	740322
Ohio	Cuyahoga County	Bedford Heights, city of	390096	750611 emerg., 800917 reg	740322
Ohio	Cuyahoga County	Maple Heights, city of	390114	750722 emerg., 800917 reg	740208
Ohio	Cuyahoga County	North Royalton, city of	390121	740116 emerg., 800917 reg	740329
Oklahoma	Caddo County	Anadarko, city of	400018	750703 emerg., 800917 reg	740215
Oklahoma	Garvin County	Pauls Valley, city of	400246	761209 emerg., 800917 reg	770705
Oregon	Jackson County	Gold Hill, city of	410094	740805 emerg., 800917 reg	740109
Pennsylvania	Delaware County	Aldan, borough of	420401	740828 emerg., 800917 reg	731228
Pennsylvania	Lycoming County	Cummings, township of	420638	730606 emerg., 800917 reg	740830
Pennsylvania	Lycoming County	Eldred, township of	421839	740620 emerg., 800917 reg	741108
Pennsylvania	Erie County	Harborcreek, township of	421134	740409 emerg., 800917 reg	740913
Pennsylvania	Luzerne County	Hollenback, township of	421831	750930 emerg., 800917 reg	741213
Pennsylvania	Luzerne County	Jackson, township of	420610	730318 emerg., 800917 reg	770610
Pennsylvania	Lycoming County	Lycoming, township of	420644	730504 emerg., 800917 reg	740517
Pennsylvania	Delaware County	Newtown, township of	420991	720915 emerg., 800917 reg	740123
Pennsylvania	Mifflin County	Oliver, township of	421882	750829 emerg., 800917 reg	750214
Pennsylvania	Lycoming County	Pine, township of	420954	731004 emerg., 800917 reg	740726
Pennsylvania	Lycoming County	Upper Fairfield, township of	420660	730515 emerg., 800917 reg	780113
Texas	Tarrant County	Everman, city of	480584	750701 emerg., 800917 reg	731217
Texas	Tarrant County	Saginaw, city of	480610	760416 emerg., 800917reg	740308
Texas	Dallas County	Wilmer, city of	480190	750602 emerg., 800917 reg	740201
Virginia	Wise County	Appalachia, town of	510318	750327 emerg., 800917 reg	740510
West Virginia	Harrison County	Nutter Fort, town of	540059	750310 emerg., 800917 reg	740315
Wisconsin	Sauk County	Sauk County*	550391	730907 emerg., 800917 reg	780714
Alabama	Jefferson County	Mulga, town of	010129	751003 emerg., 800918 reg	740920
California	Riverside County	Coachella, city of	060249	790911 emerg., 800930 reg	740517
California	Marin County	Sausalito, city of	060182	741010 emerg., 800930 reg	740517
Connecticut	Middlesex County	Clinton, town of	090061	730302 emerg., 800930 reg	740201
Connecticut	New London County	Stonington, Town of	090108	750528 emerg., 800930 reg	741018
Idaho	Canyon County	Parma, city of	160039	760727 emerg., 800930 reg	740517
Indiana	Clark County	Clark County*	180426	750915 emerg., 800930 reg	780224
Louisiana	Lafayette Parish	Lafayette, city of	220105	730807 emerg., 800930 reg	740301
Maine	Kennebec County	Farmingdale, town of	230164	750417 emerg., 800930 reg	740802
Maryland	Frederick County	Walkersville, town of	240032	740612 emerg., 800930 reg	740628
Massachusetts	Barnstable County	Harwich, town of	250008	731210 emerg., 800930 reg	740719
Massachusetts	Middlesex County	Holliston, town of	250185	751205 emerg., 800930 reg	740802

State	County	Location	Community No.	Effective date of authorization of sale of flood insurance for area	Hazard area identified
Massachusetts	Franklin County	Northfield, town of	250124	750815 emerg., 800930 reg	740809
Massachusetts	Middlesex county	Watertown, town of	250223	741205 emerg., 800930 reg	740628
Massachusetts	Norfolk County	Weymouth, town of	250257	721215 emerg., 800930 reg	740614
Michigan	Eaton County	Dimondale, village of	260333	760921 emerg., 800930 reg	751017
Minnesota	Anoka County	Andover, city of	270689	760623 emerg., 800930 reg	761217
Mississippi	Simpson County	Mendenhall, city of	280159	731019 emerg., 800930 reg	740614
Mississippi	Simpson County	Simpson County*	280281	790615 emerg., 800930 reg	771021
Nebraska	Seward County	Seward, city of	310210	740920 emerg., 800930 reg	740614
Nevada	Clark County	Las Vegas, city of	325276	740816 emerg., 800930 reg	761203
New Jersey	Bergen County	Emerson, borough of	340030	720225 emerg., 800930 reg	730615
New York	Suffolk County	East Hampton, village of	360795	730601 emerg., 800930 reg	731226
North Dakota	Cass County	Harwood, city of	380338	780411 emerg., 800930 reg	0
Ohio	Hamilton County	Amberley, village of	390206	731116 emerg., 800930 reg	0
Ohio	Summit County	Hudson, village of	390660	750519 emerg., 800930 reg	740329
Oklahoma	Grady County	Chickasha, city of	400294	740115 emerg., 800930 reg	740524
Oklahoma	Bryan County	Durant, city of	400460	750520 emerg., 800930 reg	740510
Oregon	Jackson County	Central Point, city of	410092	740918 emerg., 800930 reg	740621
Oregon	Jackson County	Eagle Point, city of	410093	740605 emerg., 800930 reg	741018
Oregon	Union County	La Grande, city of	410260	740206 emerg., 800930 reg	731130
Oregon	Jackson County	Shady Cove, city of	410099	740823 emerg., 800930 reg	740823
Pennsylvania	Westmoreland County	Arnold, city of	420870	740531 emerg., 800930 reg	740614
Pennsylvania	Luzerne County	Ashley, borough of	420596	741213 emerg., 800930 reg	740405
Pennsylvania	Allegheny County	Braddock, borough of	420015	750121 emerg., 800930 reg	740329
Pennsylvania	Chester County	East Caln, township of	421477	741010 emerg., 800930 reg	741018
Pennsylvania	Allegheny County	Emsworth, borough of	420034	750620 emerg., 800930 reg	761203
Pennsylvania	Bucks County	Falls, township of	420188	720721 emerg., 800930 reg	730518
Pennsylvania	Lycoming County	Gamble, township of	420974	730801 emerg., 800930 reg	740222
Pennsylvania	Susquehanna County	Great Bend, borough of	422068	750121 emerg., 800930 reg	740920
Pennsylvania	Susquehanna County	Hallstead, borough of	422069	750702 emerg., 800930 reg	741122
Pennsylvania	Blair County	Huston, township of	422332	760206 emerg., 800930 reg	75011C
Pennsylvania	Lycoming County	Muncy Creek, township of	420650	740823 emerg., 800930 reg	740823
Pennsylvania	Westmoreland County	North Belle Vernon, borough of	422162	780307 emerg., 800930 reg	741129
Pennsylvania	Lancaster County	Pequea, township of	421779	750124 emerg., 800930 reg	761022
Pennsylvania	Blair County	Taylor, township of	421394	750725 emerg., 800930 reg	750117
Pennsylvania	Luzerne County	Union, township of	421836	760216 emerg., 800930 reg	750117
Pennsylvania	Montgomery County	Upper Pottsgrove, township of	421910	741010 emerg., 800930 reg	741025
Pennsylvania	Chester County	Uwchlan, township of	421492	741011 emerg., 800930 reg	740906
Pennsylvania	Westmoreland County	Vendergrift, borough of	420904	741009 emerg., 800930 reg	740614
Tennessee	Smith County	Carthage, city of	470176	740502 emerg., 800930 reg	740802
Tennessee	Roane County	Roane County*	470267	741021 emerg., 800930 reg	771223
Texas	Bexar County	Castle Hills, city of	480037	731031 emerg., 800930 reg	740524
Texas	Houston County	Crockett, city of	480359	750624 emerg., 800930 reg	740510
Texas	Hill County	Hillsboro, city of	480351	751107 emerg., 800930 reg	741025
Texas	Kaufman County	Terrell, city of	480416	760616 emerg., 800930 reg	741220
Vermont	Essex County	Canaan, town of	500046	750721 emerg., 800930 reg	740531
Vermont	Washington County	Fayston, town of	500326	750812 emerg., 800930 reg	0
Wisconsin	Dane County	Madison, city of	550083	750717 emerg., 800930 reg	740308
Wisconsin	Dane County	Oregon, village of	550089	740526 emerg., 800930 reg	740524
Wisconsin	Racine County	Wind Point, village of	550355	750316 emerg., 800930 reg	740628

Total is: 107.

Asterisk refers to county only.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: October 3, 1980.

Gloria M. Jimenez,
Federal Insurance Administrator.

[FR Doc. 80–32472 Filed 10–20–80; 8:45 am]
BILLING CODE 6718–03–M

44 CFR Part 65

[Docket No. FEMA 5919]

List of Communities With Special Hazard Areas Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities with areas of special flood, mudslide, or erosion hazards as authorized by the National Flood Insurance Program. The identification of such areas is to provide guidance to communities on the reduction of property losses by the adoption of appropriate flood plain management or other measures to minimize damage. It will enable communities to guide future construction, where practicable, away from locations which are threatened by flood or other hazards.

EFFECTIVE DATES: The effective date shown at the top right of the table or 30 days after the date of this **Federal Register** publication (November 20, 1980), whichever is later.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line 800–424–8872, Room 5150, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The Flood Disaster Protection Act of 1973 (Pub. L. 93–234) requires the purchase of flood insurance on and after March 2, 1974, as a condition of receiving any form of Federal or federally related financial assistance for acquisition or construction purposes in a identified flood plain area having special flood hazards that is located within any community participating in the National Flood Insurance Program.

One year after the identification of the community as flood prone, the requirement applies to all identified special flood hazard areas within the United States, so that, after that date, no such financial assistance can legally be provided for acquisition and construction in these areas unless the

community has entered the program. The prohibition, however, does not apply in respect to conventional mortgage loans by federally regulated, insured, supervised, or approved lending institutions.

This 30 day period does not supersede the statutory requirement that a community, whether or not participating in the program, be given the opportunity for a period of six months to establish that it is not seriously flood prone or that such flood hazards as may have existed have been corrected by floodworks or other flood control methods. The six months period shall be considered to begin 30 days after the date of publication in the **Federal Register** (November 20, 1980) or the effective date of the Flood Hazard Boundary Map, whichever is later. Similarly, the one year period a community has to enter the program under section 201(d) of the Flood Disaster Protection Act of 1973 shall be considered to begin 30 days after publication in the **Federal Register** (November 20, 1980) or the effective date of the Flood Hazard Boundary Map, whichever is later.

This identification is made in accordance with Part 64 of Title 44 of the Code of Federal Regulations as authorized by the National Flood Insurance Program (42 U.S.C. 4001–4128).

Section 65.3 is amended by adding in alphabetical sequence a new entry to the table:

BILLING CODE 6718-03-M

§ 65.3 List of communities with special hazard areas (FHBMs in effect).

EFFECTIVE DATE October 3, 1980

1 State	2 Ident. Number	3 Community Name County Name	4 Panels Printed (# and Suffix)	5 Inland/ Coastal	6 Hazard	7 60.3 Code	8 Program Status	9 Status of FHBM	9 Status of FIRM	10 Previous Map Dates FHBM	10 Previous Map Dates FIRM	11 Revision Code(s)	12 Rescission	13 Floodways Panels Printed	14 Location of Map Repository
OH	390295	Village of Adena (Harrison & Jefferson Cos.)	0001A	I	FL	B	1	3		7/23/76	N/A	9 10 16	N/A	N/A	June McKim, Mayor Box 448 Adena, OH 43901 Phone: (614)-546-3536
PA	421333	Township of Broad Top (Bedford Co.)	Index 0001A 0003A 0005A	I	FL	B	1	3		1/17/75	N/A	9 10 16	N/A	N/A	Donald Graffious, Chairman Twp. Board of Supervisors Township Building Defiance, PA 16633 Phone: (814)-928-4661
PA	421688	Township of Cromwell (Huntingdon Co	Index 0002A 0003A 0004A	I	FL	B	1	3		12/27/74	N/A	9 10 16	N/A	N/A	Robert Sheets, Chairman Twp. Board of Supervisors RD Orbisonia, PA 17243 Phone: (814)-447-3857
PA	421338	Township of Harrison (Bedford Co.)	Index 0001A 0003A	I	FL	B	1	3		1/24/75	N/A	9 10 16	N/A	N/A	William Garland, Chairman Twp. Board of Supervisors RD 1 Buffalo Mills, PA 15534 Phone: (814)-623-9779
PA	421731	Township of McClelmont (Jefferson Co.)	Index 0001A 0002A 0003A	I	FL	B	1	3		1/24/75	N/A	9 10 16	N/A	N/A	Larry Carlson, Chairman Twp. Board of Supervisors Anita, PA 15711 Phone: (814)-938-5539

EFFECTIVE DATE October 7, 1980

1 STATE	2 IDENT. NUMBER	3 COMMUNITY NAME & COUNTY NAME	4 PANELS PRINTED (# AND SUFFIX)	5 INLAND/ COASTAL	6 HAZARD	7 60.3 CODE	8 PROGRAM STATUS	9 STATUS OF FHBM	9 STATUS OF FIRM	10 PREVIOUS MAP DATES FHBM	10 PREVIOUS MAP DATES FIRM	11 REVISION CODE(S)	12 RESCISSION	13 FLOODWAYS PANELS PRINTED	14 LOCATION OF MAP REPOSITORY
LA	220223	Town of Delcambre (Vermilion and Iberia Parishes)	01A	I	FL	8	1	3		4-5-74	N/A	8 9 10	N/A	N/A	The Honorable Willie J. Landry Mayor, Town of Delcambre 107 North Railroad Street Delcambre, LA 70528 (318) 685-4462

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EFFECTIVE DATE October 10, 1980

1 State	2 Ident. Number	3 Community Name County Name	4 Panels Printed (# and Suffix)	5 Inland/ Coastal	6 Hazard	7 60.3 Code	8 Program Status	9 Status of FHBM	9 Status of FIRM	10 Previous Map Dates FHBM	10 Previous Map Dates FIRM	11 Revision Code (S)	12 Rescission	13 Floodways Panels Printed	14 Location of Map Repository
PA	422394	Twp. of Rockdale (Crawford Co.)	Index 0001A 0002A 0003A 0004A	I	FL	B	1	3	I	1/10/75	N/A	9 10 16	N/A	N/A	Elmer W. Zilhaver, Chairman Twp. Board of Supervisors Municipal Building RD 3 Cambridge Springs, PA 16403 Twp. Building (814) 398-2967 Home (814) 398-2531
PA	422396	Twp. of Sadsbury (Crawford Co.)	Index 0001A 0002A	I	FL	B	1	3	I	1/24/75	N/A	9 10 16	N/A	N/A	Richard Miller, Chairman Twp. Board of Supervisors Municipal Building RD 2 Conneaut Lake, PA 16316 Twp. Building (814) 382-9579 Home (814) 382-8282
NJ	340029	B. of Edgewater (Bergen County)	0005 B	I	FL	D	1	3	1	8/2/74 4/30/76	NA	10	N/A	N/A	Charles Susskind, Clerk Borough Hall 916 River Road Edgewater, New Jersey 07020

EFFECTIVE DATE October 17, 1980

1 State	2 Ident. Number	3 Community Name County Name	4 Panels Printed (# and Suffix)	5 Inland/ Coastal	6 Hazard	7 60.3 Code	8 Program Status	9 Status of FHBM	9 Status of FIRM	10 Previous Map Dates FHBM	10 Previous Map Dates FIRM	11 Revision Code (S)	12 Rescission	13 Floodways Panels Printed	14 Location of Map Repository
PA	421607	Twp. of Benzinger (Elk Co.)	Index 0001A 0002A 0003A 0004A	I	FL	B	1	3	I	4/11/75	N/A	9 10 16	N/A	N/A	Gerald Mahoney Chairman, Twp. Board of Supervisors Municipal Building P.O. Box 224 St. Mary's, PA 15857 Phone: (814) 781-1274
PA	422473	Twp. of Corydon (McKean Co.)	Index 0001A 0002A 0003A	I	FL	B	1	3	I	4/ 4/75	N/A	9 10 16	N/A	N/A	Floyd Cornelius Chairman, Twp. Board of Supervisors Municipal Building 2474 W. Washington St. Bradford, PA 16701 Phone: (814) 362-1978
PA	421528	Twp. of Lawrence (Clearfield Co.)	Index 0001A 0002A 0003A 0004A 0005A 0006A	I	FL	B	1	3	I	4/11/75	N/A	9 10 16	N/A	N/A	James Wisor Chairman, Twp. Board of Supervisors Municipal Building Box 506 Clearfield, PA 16830 Phone: (814) 765-7302
PA	421732	Twp. of Oliver (Jefferson Co.)	Index 0001A 0002A	I	FL	B	1	3	I	12/13/74	N/A	9 10 16	N/A	N/A	Glenn Bodenhorn Chairman, Twp. Board of Supervisors Box 26 Coolspring, PA 15730 Phone: (814) 849-2670

EFFECTIVE DATE October 21, 1980

1 STATE	2 IDENT. NUMBER	3 COMMUNITY NAME & COUNTY NAME	4 PANELS PRINTED (# AND SUFFIX)	5 INLAND/ COASTAL	6 HAZARD	7 60.3 CODE	8 PROGRAM STATUS	9 STATUS OF FHBM	9 STATUS OF FIRM	10 PREVIOUS MAP DATES FHBM	10 PREVIOUS MAP DATES FIRM	11 REVISION CODE(S)	12 RESCISSION	13 FLOODWAYS PANELS PRINTED	14 LOCATION OF MAP REPOSITORY
WA	530114	Town of Wilbur (Lincoln County)	0001B	1	FL	B	1	3	I	6-7-74 1-9-76	N/A	9 10	N/A	N/A	The Honorable Jacki Holy Mayor, Town of Wilbur P.O. Box 214 Wilbur, WA 99185 (509) 647-5821

EFFECTIVE DATE October 24, 1980

1 State	2 Ident. Number	3 Community Name County Name	4 Panels Printed (# and Suffix)	5 Inland/ Coastal	6 Hazard	7 60.3 Code	8 Program Status	9 Status of FHBM	9 Status of FIRM	10 Previous Map Dates FHBM	10 Previous Map Dates FIRM	11 Revision Code (S)	12 Rescission	13 Floodways Panels Printed	14 Location of Map Repository
PA	420263	Borough of Howard (Centre Co.)	0001B	I	FL	B	1	3	I	5/31/74 5/14/76	N/A	9 10 16	N/A	N/A	John Tressler, Mayor Borough Hall Howard, PA 16841 Phone: (814) 625-2540
PA	421197	Township of Miles (Centre Co.)	Index 0001B 0002B 0003B 0004B 0005B 0006B	I	FL	B	1	3	I	9/13/74 6/25/76	N/A	9 10 16	N/A	N/A	Robert Tyson, Chairman Twp. Board of Supervisors Municipal Building Rebersburg, PA 16872 Phone: (814) 349-8394
PA	421633	Township of North Union (Fayette Co.)	Index 0001A 0003A	I	FL	B	1	3	I	12/27/74	N/A	9 10 16	N/A	N/A	Carman Galderisi, Chairman Twp. Board of Supervisors RD 2, Box 444 Lemont Furance, PA 15456 Phone: (412) 438-7506
PA	421466	Township of Penn (Centre Co.)	Index 0001A 0002A	1	FL	B	1	3	I	12/13/74	N/A	9 10 16	N/A	N/A	Robert Bowersox, Chairman Twp. Board of Supervisors Coburn, PA 16832 Phone: (814) 349-8395
PA	421468	Township of Rush (Centre Co.)	Index 0001A 0002A 0003A 0004A 0006A 0007A 0009A	I	FL	B	1	3	I	12/20/74	N/A	9 10 16	N/A	N/A	Rodger Cartright, Chairman Twp. Board of Supervisors Sandy Ridge, PA 16677 Home Phone: (814) 342-6312 Work Phone: (814) 865-9171

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EFFECTIVE DATE October 28, 1980

1 STATE	2 IDENT. NUMBER	3 COMMUNITY NAME / COUNTY NAME	4 PANELS PRINTED (# AND SUFFIX)	5 INLAND/ COASTAL	6 HAZARD	7 60.3 CODE	8 PROGRAM STATUS	9 STATUS OF FHBM	9 STATUS OF FIRM	10 PREVIOUS MAP DATES FHBM	10 PREVIOUS MAP DATES FIRM	11 REVISION CODE(S)	12 RESCISSION	13 FLOODWAYS PANELS PRINTED	14 LOCATION OF MAP REPOSITORY
UT	490210	City of Lindon (Utah County)	00018	I	FL	B	4	3	1	6-21-77	N/A	8 9 10	N/A	N/A	Mr. Mark Palesh City Manager 383 West Lakeview Road Lindon, UT 84062 (801) 785-5043

EFFECTIVE DATE October 31, 1980

1 State	2 Ident. Number	3 Community Name County Name	4 Panels Printed (# and Suffix)	5 Inland/ Coastal	6 Hazard	7 60.3 Code	8 Program Status	9 Status of FHBM	9 Status of FIRM	10 Previous Map Dates FHBM	10 Previous Map Dates FIRM	11 Revision Code(s)	12 Rescission	13 Floodways Panels Printed	14 Location of Map Repository
PA	421689	Twp. of Dublin (Huntingdon Co.)	Index 0001A 0002A	I	FL	B	1	3	1	12/13/74	N/A	9 10 16	N/A	N/A	Galen Kling, Chairman Twp. Board of Supervisors R.D. Shade Gap, PA 17255 Phone: (814) 259-3371
PA	421608	Twp. of Fox (Elk Co.)	Index 0002A 0003A	I	FL	B	1	3	1	11/15/74	N/A	9 10 16	N/A	N/A	Gerald Huff, Chairman Twp. Board of Supervisors Municipal Building Irish Town Road Kersey, PA 15846 Phone: (814) 885-8450
PA	421348	Twp. of Napier (Bedford Co.)	Index 0003A 0004A 0005A	I	FL	B	1	3	1	1/31/75	N/A	9 10 16	N/A	N/A	Harry Miller, Chairman Twp. Board of Supervisors R.D. 1 Schellsburg, PA 15559 Phone: (814) 733-2930

BILLING CODE 6718-03-C

Community Map Actions

(Codes: Where no entry is necessary use N/A)

Column Code:

1. Two letter state designator.
2. FIA Community 6-digit identity number.
3. Community name; County(ies) name.
4. Four digit number and suffix of each FIRM or FHBM panel printed.
5. INL/Coast
   I—Inland
   C—Coastal
6. Hazard
   FL—Flood
   MS—Mudslide
   ER—Erosion
   NF—Non Flood Prone
   MF—Minimally Flood Prone
7. 60.3 Code
   A—Special Hazard not defined, no elevation data (No FHBM)
   B—Special Hazard Designated, no elevation data (FHBM)
   C—FIRM, No Floodway or Coastal High Hazard
   *D—FIRM, Regulatory Floodway Designated
   *E—FIRM, Coastal High Hazard
   *Dual entry is available.
8. Program Status
   1—Emergency
   2—Regular
   3—Not participating, no map
   4—Not participating, with map
   5—Withdrew
   6—Suspended
9. FHBM Status
   1—Never mapped
   2—Original
   3—Revised
   4—Rescinded
   5—Superseded by firm
9. Firm Status
   1—Never mapped
   2—Original
   3—Revised
   4—Rescinded
   5—All zone C—No published firm
   6—All zone A and C—No elevations determined
10. Dates of all previous maps
11. Revision codes
    1. 1916 BFE (Based Flood Elevation) Decrease
    2. 1916 BFE Increase
    3. 1916 SFHA (Special Flood Hazard Area) Change
    4. Change of Zone Designation; revised FIRM
    5. Curvilinear
    6. 1914 Incorporation
    7. 1914 Discorporation
    8. 1914 Annexation
    9. SFHA Reduction
    10. Non-1916 SFHA Increase Without Numbered Zones
    11. Non-1916 SFHA Increase with Numbered Zones
    12. Drafting Correction; Printing Errors
    13. Suffix Change ONLY
    14. Change to Uniform Zone Designations (7/1/74)
    15. Revisions Withdrawn
    16. Refunds Possible
    17. Letter of Map Amendment (1916)
    18. Letter of Map Amendment (1916 without Federal Register publication)
    19. Federal Register Omission
    20. Attention. A previous map (or maps) has been rescinded or withdrawn for this community. This may have affected the sequence of suffixes.
    21. Miscellaneous
13. List of numbered floodway panels printed
14. Address of community map repository.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: October 6, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-32488 Filed 10-20-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the nation.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Federal Emergency Management Agency, Federal Insurance Administration, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872 (in Alaska and Hawaii call Toll Free (800) 424–9080), Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determinations of flood elevations for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

The final base (100–year) flood elevations for selected locations are:

Final Base (100-Year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Pennsylvania	Township of Brown, Lycoming County (Docket No. FEMA-5726).	Pine Creek	Downstream Corporate Limits	*722
			Township Route 755 (Upstream)	*744
			State Route 414 (Upstream)	*759
			Township Route 762 (Upstream)	*796
			Conrail (Upstream)	*808
			Approximately 6,200' upstream of Conrail Bridge	*818
Maps available at the residence of Ms. Kathryn Kreighbaum, Cedar Run, Pennsylvania.				

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Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Pennsylvania	Ridgebury, Township, Bradford County (Docket No. FI-5358).	Bentley Creek	Downstream Corporate Limits	*872
			Pennsylvania Legislative Route 08068 (Upstream)	*957
			Confluence of Justice Run	*1,008
			U.S. Township Route 374 (Downstream crossing)	*1,031
			Pennsylvania Legislative Route 08144 (Upstream)	*1,056
			Township Route 374 (Upstream crossing)	*1,103
			Approximately 280 feet downstream of Ridgebury Road	*1,142
		Three Falls Glen	Township Route 374	*969
		Justice Run	Township Route 374	*1,018
			Approximately 380 feet downstream of Monkey Run Road	*1,125
		Buck Creek	Pennsylvania Legislative Route 08059	*1,129
			Approximately 5,600 feet above mouth	*1,158
Texas	Katy, City, Fort Bend County, Waller County, Harris County, (Docket No. FI-5660).	Cane Island Branch	Southern Corporate Limits	*133
			Interstate Highway 10 (upstream)	*135
			First Street (upstream)	*142
			Tenth Street	*143
			Franz Road (upstream)	*147
			Morton Road (upstream)	*153
			Northern Corporate Limits	*158
	Maps available at the City Hall, Katy, Texas.			
Virginia	Pound, Town, Wise County (Docket No. FEMA-5738).	Pound River	Downstream Corporate Limits	*1,549
			*Confluence of Bold Camp Creek	*1,556
			*Confluence of South Fork Pound River	*1,558
		North Fork Pound River	U.S. Route 23 Bypass	*1,558
		South Fork Pound River	Bridge Street	*1,558
		Bold Camp Creek	Confluence with Pound River	*1,558
		Bad Creek	Downstream Corporate Limits	*1,601
			Upstream Corporate Limits	*1,625
		Tributary No. 1 to Bad Creek	State Route 630	*1,607
			Private Drive approximately 300' upstream from State Route 630 (Upstream).	*1,611
		Indian Creek	Business Route 23	*1,556
			Upstream Corporate Limits	*1,591
	Maps available at the Town Hall, P.O. Box 426, Pound, Virginia 24279.			

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator).

Issued: September 18, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-32469 Filed 10-20-80; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Parts 1321 and 1328

Grants for State and Community Programs on Aging; Grants to Indian Tribes for Social and Nutrition Services

AGENCY: Office of Human Development Services (OHDS), HHS.

ACTION: Final rule.

SUMMARY: This amendment corrects inadvertent errors in the provisions of the regulations pertaining to legal services that incorporate the Legal Services Corporation Act (LSC) regulations. Present regulations are unclear with respect to the circumstances under which attorneys and employees engaged in legal services funded under parts 1321 and 1328 may engage in fee generating work, voter registration, legislative representation, public demonstrations, strikes, boycotts, and picketing. The regulations could be interpreted to preclude any such activity, even when the employees and attorneys performed the activities after hours on their own time, or using funds other than Older Americans Act funds. They could also be interpreted to interfere with an attorney's provision of legal assistance to a client. These interpretations would be more restrictive than the comparable LSC regulations. It has never been our intention to impose restrictions on attorneys and employees of legal service providers that are more restrictive than those imposed under the LSC regulations. This amendment conforms the Title III and Title VI regulations to the LSC regulations.

EFFECTIVE DATE: October 21, 1980.

FOR FURTHER INFORMATION CONTACT:
Mr. Frederick Luhmann, Chief, Division of State and Community Programs, HHS North Building, Room 4650, 330 Independence Avenue, S.W., Washington, D.C. 20201, (202) 245–0004.

SUPPLEMENTARY INFORMATION: Section 307(a)(15)(A)(ii) of the Older Americans Act, as added by Pub. L. 95–478, provides that recipients of funds under Title III for legal services will be subject to those specific restrictions and regulations promulgated under the Legal Services Corporation (LSC) Act that the Commissioner decides are appropriate. Section 604(a)(10) of the Act, also added by Pub. L. 95–478, requires that legal services be made available under direct grants to Indian tribes substantially in compliance with the provisions of Title III relating to legal services. Proposed regulations implementing Title III as amended by Pub. L. 95–478 were published on July 31, 1979 (44 FR 45032). We included those LSC regulatory requirements that we thought were clearly appropriate: those restricting outside employment and partisan political activity, those requiring special language skills, and those requiring disclosure of operating policies and other general information. We specifically solicited comments on the appropriateness of incorporating any additional LSC regulations. Proposed regulations implementing Title VI were published on December 5, 1979 (44 FR 70064). We incorporated substantially the same LSC requirements in the Title VI proposed regulations.

We received several comments on the Title III regulations recommending the addition of certain LSC requirements. In response to these comments, we added LSC restrictions on voter registration activity, fee generating cases, legislative representation, picketing, demonstrations, boycotts, and other disturbances. (See section 1321.151(c)(3)(iii)(D), (vi), (vii), and (viii)). The LSC restrictions are found at 45 CFR 1608.4(b), 1608.6(c), 1609.3, 1612.4 and 1612.2(a). We intended to conform our requirements to the LSC regulations. However, in drafting these additional requirements, which were published in final on March 31, 1980, (45 FR 21126), we did not make clear, as do the LSC regulations, that we intended the restrictions to apply in each case *only* to activities funded under this part. We also did not add the important LSC exemption for activities conducted in the course of representing a client. Since it was not our intention to attempt to restrict these types of activities when they would not be restricted under the LSC regulations, we are correcting the Title III regulations.

We incorporated the same additional requirements in the final Title VI regulations, which were published on July 18, 1980 (45 FR 48380). The requirement with respect to legislative representation conforms to the LSC regulations. The others do not. Accordingly, we are also correcting the Title VI regulations.

We also added in the final Title III and Title VI regulations LSC restrictions on rioting, civil disturbances, and other illegal activities. Those restrictions apply to any employee at any time, and have been included in this correction notice as they appear in the LSC regulations at 45 CFR 1612.2(b).

Waiver of Proposed Rulemaking

Present regulations are unclear with respect to the circumstances under which attorneys and employees engaged in legal services funded under parts 1321 and 1328 may engage in fee generating work, voter registration, legislative representation, public demonstrations, strikes, boycotts, and picketing. The regulations could be interpreted to preclude any such activity, even when the employees and attorneys performed the activities after hours on their own time, or using funds other than Older Americans Act funds. They could also be interpreted to interfere with an attorney's provision of legal assistance to a client. These interpretations would be more restrictive than the comparable LSC regulations. It has never been our intention to impose restrictions on attorneys and employees of legal service providers that are more restrictive than those imposed under the LSC regulations, and this correction will simply conform the regulations to our intent.

We are very concerned that the present regulations will be interpreted to prohibit activity that we did not intend to prohibit. We think that it is essential to correct the regulations as soon as possible, so that attorneys and employees providing legal services under the Act are not deterred from engaging in activities that we did not intend to prohibit. Accordingly, we find that there is good cause to waive the Notice of Proposed Rulemaking.

Date: October 10, 1980.

Robert Benedict,

Commissioner on Aging.

Approved: October 10, 1980.

Kathryn Morrison,

Acting Assistant Secretary for Human Development Services.

Approved: October 16, 1980.

Patricia Roberts Harris,

Secretary of Health and Human Services.

(Titles III and VI of the Older Americans Act, 42 U.S.C. 3021–3030(g) and 3057. (Catalog of Federal Domestic Assistance Program Numbers: 13.633 Special Programs for Aging Title III Parts A and B—Grants on Aging))

I. Part 1321, § 1321.151, paragraph (c)(3) is amended by revising (iii) and (v)–(viii) and by adding a new (ix) and (x) to read as follows:

§ 1321.151 Legal services.

* * * * *

(C) * * *

(3) Each legal service provider must—

* * * * *

(iii) Ensure that while employed under this part, no employee and no staff attorney of the provider at any time—

(A) Uses official authority or influence for the purpose of interfering with or affecting the results of an election or nomination for office, whether partisan or nonpartisan;

(B) Directly or indirectly coerce, attempts to coercec command or advise an employee of any provider to pay, land, or contribute anything of value to a political party, or committee, organization, agency or person for political purposes; or

(C) Is a candidate for partisan elective public office.

* * * * *

(vi) Ensure that legal services are not provided using funds under this part in fee generating cases, as defined in 45 CFR 1609.2 unless adequate representation is unavailable from private attorneys;

(vii) Ensure that no funds under this part are used to directly or indirectly engage in activities intended to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative body or State proposals by initiative petition except where—

(A) Representation by a provider for a client is necessary with respect to such client's rights and responsibilities (except that no employee shall solicit a client in violation of professional responsibilities for the purpose of making such representation possible), or

(B) A governmental agency legislative body, committee or member thereof requests the provider to testify, draft or review measures or to make representations to such agency, body, committee or member, or is considering a measure directly affecting the activities of a provider under this part; and

(viii) Ensure that, while providing legal services funded under this part, no employee of the provider knowingly participates in any public demonstration, picketing, boycott, or strike, except as permitted by law in connection with the employee's own employment situation.

(ix) Ensure that, while employed under this part, no employee of the provider at any time knowingly participates in any:

(A) Rioting or civil disturbance;

(B) Activity in violation of an outstanding injunction of any court of competent jurisdiction; or

(C) Any other illegal activity that is inconsistent with an employee's responsibilities under the Act, these regulations, or the Code of Professional Responsibility; and

(x) Ensure that, while providing legal services funded under this part, no

attorney or employee of the provider engages in any voter registration activity.

2. Part 1321, § 1321.151, paragraph (c), is amended to add a subparagraph (5) to read as follows:

* * * * *

(c) *Conditians legal service providers must meet.* * * *

(5) Nothing in this section is intended to prohibit an attorney or staff attorney from providing any form of legal assistance to an eligible client, or to interfere with the fulfillment of any attorney's professional responsibilities to a client.

* * * * *

3. Part 1328, § 1328.23, paragraph (b)(3) is amended by revising (iv), (vii), and (ix) and by adding a new (x) to read as follows:

§ 1328.23 Legal services.

* * * * *

(b) * * *

(3) Each legal service provider must—

* * * * *

(iv) Ensure that, while providing legal services funded under this part, no attorney and no employee of the provider engages in any voter registration activity;

* * * * *

(vii) Ensure that legal services are not provided using funds under this part in fee generating cases, as defined in 45 CFR 1609.2 unless adequate representation is unavailable from private attorneys;

* * * * *

(ix) Ensure that, while providing legal services funded under this part, no employee of the provider knowingly participates in any public demonstration, picketing, boycott, or strike, except as permitted by law in connection with the employee's own employment situation; and

(x) Ensure that, while employed under this part, no employee of the provider at any time knowingly participates in any:

(A) Rioting or civil disturbance;

(B) Activity in violation of an outstanding injunction of any court of competent jurisdiction; or

(C) Any other illegal activity that is inconsistent with an employee's responsibilities under the Act, these regulations, or the Code of Professional Responsibility.

* * * * *

4. Part 1328, § 1328.23, paragraph (b) is amended to add a new subparagraph (5) to read as follows:

* * * * *

(b) * * *

(5) Nothing in this section is intended to prohibit an attorney or staff attorney from providing any form of legal assistance to an eligible client, or to interfere with the fulfillment of any attorney's professional responsibilities to a client.

* * * * *

[FR Doc. 80-32973 Filed 10-20-80; 8:45 am]
BILLING CODE 4110-92-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 79-267; RM-3342]

FM Broadcast Stations in DeSoto and Potosi, Mo.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule (report and order).

SUMMARY: Action taken herein substitutes Channel 249A for Channel 261A at Potosi, Missouri, and reassigns Channel 261A to DeSoto, Missouri, in response to a petition filed by Pinckney Cole. DeSoto would receive a first FM assignment.

EFFECTIVE DATE: November 21, 1980.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Molly Pauker, Broadcast Bureau (202) 632-6302.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (DeSoto and Potosi, Missouri), BC Docket No. 79-267, RM-3342.

Report and Order—Proceeding Terminated

Adopted: October 6, 1980.

Released: October 16, 1980.

1. The Commission has before it a *Notice of Proposed Rule Making*, adopted October 16, 1979, proposing the reassignment of Channel 261A from Potosi, Missouri, To DeSoto, Missouri, and the substitution of Channel 249A at Potosi. The *Notice* was issued in response to a petition filed by Pinckney Cole ("Cole"). Channel 261A can be assigned to DeSoto in conformity with the Commission's minimum distance separation requirements, provided that the site is located approximately 12.6 kilometers (7.8 miles) southwest of DeSoto.[1] Cole has affirmed his intent to apply for Channel 261A, if assigned to DeSoto. With respect to Potosi, Channel 249A can be assigned there, provided that the transmitter of a station serving that community on the channel is located approximately 11 kilometers (7 miles) southwest of the community.

2. Comments on the proposed assignment to DeSoto and substitution at Potosi have been filed by petitioner Cole; by Florissant Broadcasting Co., Inc. ("Florissant"), licensee of FM Station KSCF (Channel 246), Florissant, Missouri; by Mid Central Broadcasting Co., Inc. ("Mid Central"), licensee of AM Station KYRO, Potosi, Missouri; by Laclede Radio, Inc. ("Laclede"), licensee of FM Station WZEN (Channel 262), Alton, Illinois; and by WIL Music, Inc. ("WIL"), licensee of Station WIL-FM (Channel 222), St Louis, Missouri. Reply comments were filed by Cole, Mid Central and WIL.

3. In comments, Florissant opposes the substitution of Channel 249A for Channel 261A at Potosi, on the grounds that the proposed substitution would prevent it from upgrading its facilities for Station KSCF on Channel 246. Florissant complains that Station KSCF's present site is inadequate, inaccessible and unsatisfactory, and tells us that it could solve these problems by relocating in Missouri, where it would be permitted to upgrade to Class C facilities. However, we are told that the proposed substitute channel for Potosi would preclude such a move. Florissant also points out that the assignment of Channel 249A to Potosi would have a similar effect on Station KSLQ, St. Louis. Florissant advocates deletion of Channel 261A from Potosi, without any substitution. Mid Central Opposes deletion of Channel 261A from Potosi, since it plans to apply for that channel and co-locate the facilities with Station KYRO(AM) in Potosi. Spacing requirements would prevent co-location, were Channel 249A assigned to Potosi, and Mid Central asserts that the expense of separate sites would prove prohibitive. In reply comments, Mid Central amplified its concerns about the assignment of Channel 249A to Potosi, contending that a transmitter using that frequency would have to be sited in the Clark National Forest, an uninhabited woodland with no readily available source of power, from which a city-grade signal could not be provided for all of Potosi. WIL supports the substitute assignment of Channel 249A to Potosi, since the Channel 224A alternative would preclude a site change it anticipates. WIL also points out that if Channel 224A is substituted providing for the Florissant proposed site change, a first local aural service to Steelville, Missouri, would be precluded. See footnote 5, *infra*. Cole filed comments and reply comments affirming his interest in the assignment of Channel 261A to DeSoto. Laclede opposes the reassignment of Channel 261A to DeSoto arguing that the proposed allocation would cause interference to Station WZEN as well as inhibit its future growth.

4. We have considered the positions taken by all parties in this procedding. With respect to the assignment of Channel 261A to DeSoto, we find that the proposal has merit. Cole submitted engineering data which indicates that a transmitter located approximately 7.8 miles from the community could provide the required 3.16 mV/m signal, operating with 3 kW at 300 feet above average terrain. This could provide a first local FM and nighttime aural service to approximately 6,000 local citizens, as well as the first FM service located in Jefferson County, whose population is over 105,000.[2] As to Laclede's claim that this outlet would cause interference to Station WZEN, we need not concern ourselves with such allegations, as long as the proposed facility would provide the protection established by our minimum distance separation requirements, as Cole's proposal does. In addition, we find Laclede's stated concern that its anticipated relocation south to reach more of St. Louis would be precluded by the assignment of Channel 261A to DeSoto to be an inadequate reason when the effect would be to prevent an assignment which could provide a first local FM service to DeSoto.[3]

5. With respect to Potosi, our alternatives are to leave Channel 261A assigned to that community, substitute Channel 224A there, or substitute Channel 249A there. Mid Central states that it plans to file an application for Channel 261A in Potosi, and that it may be precluded from filing for any other channel that might be assigned there, due to site restrictions which would make it impossible for it to co-locate an FM facility with its AM station, KYRO. However, to date we have received no such application from Mid Central, and we believe it would be inefficient use of the FM spectrum to hold channels open based upon parties' bald assertions, without more, of future plans. While Channel 261A could provide Potosi with its first local FM outlet, the pleadings indicate that Channels 224A and 249A could also fulfill this function, and our failure to assign Channel 261A to DeSoto will leave that community without an opportunity for a first local FM service.

6. Substitution of Channel 224A in Potosi would result in short spacing to the proposed new location of Station WIL (Channel 222), St. Louis.[4] WIL's application for this modification is currently on file with the Commission. Furthermore, the transmitter of a station operating on Channel 224A in Potosi would have to be sited approximately 11 kilometers (7 miles) southwest of the community in a large, uninhabited wooded area where access to telephone and electrical power lines is not assured. Finally, it is not clear that a facility operating at this site could provide the necessary 70 dBu contour over the entire community. While we need not let a party's site preference preclude an assignment which could provide first local service to a community, it appears that, in this instance, another alternative can facilitate all competing concerns, WIL's site preference and first FM allocations both to Potosi and DeSoto. This result would maximize the public benefits.

7. Substitution of Channel 249A in Potosi would prevent Mid Central from co-locating an FM facility with its AM Station KYRO, which may well preclude it from applying for an FM channel there altogether. Mid Central could provide Potosi with a first local FM service; however, since no such application has been filed to date, it is difficult to determine how serious is their intent to do so. Florissant complains that the assignment of Channel 249A to Potosi would preclude it from relocating its transmitter in Zone 2, which would permit it to upgrade from Class B to Class C facilities.[5] However, not only was Florissant's previous attempt to do so denied by the Commission (*Memorandum Opinion and Order*, FCC 77-237, 40 RR 2d 470 (1977)), but we currently have no such application on file. Florissant adds that Station KSLQ would be somewhat restricted from moving its transmitter south by the assignment of Channel 249A at Potosi. Having no indication that KSLQ intends such an action, we need give no particular weight to this allegation. We reiterate here that we are extremely reluctant to accord any particular significance to the mere assertions of future intentions of parties who have initiated no formal proceeding at the Commission with respect to their stated purposes. This is not the case with WIL since it has applied for a site change for its station (see paragraph 6). Finally, we note that a station operating on Channel 249A in Potosi would be subject to approximately the same site restriction as one operating on Channel 224A (11 kilometers (7 miles) southwest of the community). While the availability of electrical power and the ability of a Class A facility to provide a city-grade signal to all of Potosi from this location have not been definitively established, we nevertheless believe that the public interest would be best served by the assignment of Channel 249A to Potosi. Mid Central has expressed some interest in applying for an FM channel there, and it is against out policy to delete an unoccupied assignment without providing a substitute channel in a community where there is a modicum of interest in the establishment of FM service. See *Martin, Kentucky*, 43 FR 54097, published November 20, 1978, 44 RR 2d 971; cf. *Canton and Raymond, Mississippi*, 31 RR 2d 1455 (1974).

8. In light of the foregoing, we believe that the public will be best served by the assignment of Channel 261A to DeSoto, where we have assurances that Cole intends to provide a first FM service to the community, and the substitute assignment of Channel 249A to Potosi, where a first local FM service could be provided to that community.

9. Accordingly, it is ordered, That effective November 21, 1980, § 73.202(b) of the Commission's rules, the FM Table of Assignments, is amended, with respect to DeSoto and Potosi, Missouri, as follows:

City and Channel No.
DeSoto, Missouri—261A
Potosi, Missouri—249A

10. Authority for the action taken herein is contained in Sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Commission's rules.

11. It is further ordered, that this proceeding is terminated.

12. For further information concerning this proceeding contact Molly Pauker, Broadcast Bureau, (202) 632-6302.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; (47 U.S.C. 154, 155, 303))

[1] The pleadings raised some question as to whether Cole would be able to cover DeSoto with a city-grade signal at this distance, using Class A facilities. Engineering data filed by Cole with his comments on the *Notice* indicated that the city-grade signal would extend approximately 0.1 mile beyond the city limits of DeSoto.

[2] Engineering analysis reveals that Cole's proposed facility will provide a 1 mV/m contour over Potosi, as well.

[3] See *Cape Girardeau, Missouri*, 54 F.C.C. 2d 996 (1975).

[4] The distance between Potosi and WIL's proposed new site is approximately 69 kilometers (43 miles). The required separation for second channel adjacencies is 104 kilometers (65 miles).

[5] Although we may not formally take account of it in this proceeding, we note that moving the KSCR transmitter into Zone 2 would preclude the assignment of Channel 244A to Steelville, Missouri (RM-3489), where it could provide a first local FM service.

V 45 O C 21 80 UMI

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 80-32795 Filed 10-20-80; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 80-37; RM-3259; RM-3646]

FM Broadcast Stations in Olympia and Chehalis, Wash.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule (report and order).

SUMMARY: This action assigns Class C Channel 241 to Olympia, Washington, as its first FM channel assignment in response to a petition filed by Washington Oregon Broadcasting, Inc. A counterproposal requesting the assignment of the same channel to Chehalis, Washington, filed by Premier Boradcasters, Inc., was denied.

EFFECTIVE DATE: November 17, 1980.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: John F. Kamp, Broadcast Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Olympia, and Chehalis, Washington [1]), BC Docket No. 80-37, RM-3259, RM-3646.

Report and Order—Proceeding Terminated

Adopted: October 2, 1980.

Released: October 21, 1980.

1. The Commission herein considers the *Notice of Proposed Rule Making*, adopted January 29, 1980, 45 FR 8674, published February 28, 1980, instituted in response to a request by Washington Oregon Broadcasting, Inc. ("petitioner"), to assign FM Channel 241 to Olympia, Washington, as a first FM assignment to that city. Comments were filed by the petitioner; by KGY, Inc. ("KGY"), licensee of Station KGY(AM), Olympia; and by Mr. Michael F. Marohn ("Marohn"). Reply comments were filed by the petitioner, and Marohn. A counterproposal was submitted by Premier Broadcasters, Inc. ("Premier"), licensee of Station KIT(AM), Seattle, Washington, seeking the assignment of Channel 241 to Chehalis, Washington, as a first commercial FM assignment to that city.[2] KIXI, Inc. ("KIXI"), submitted a reply to the counterproposal. Petitioner submitted a motion to accept additional pleadings after expiration of the comment periods.[3]

2. The following comments were made by the respective parties in response to the *Notice of Proposed Rule Making*. Petitioner reaffirmed its intention to file an application for use of the channel if it is assigned to Olympia, as proposed. KGY alleged that petitioner's proposed site is short spaced by approximately 6 kilometers (3.8 miles) to the co-channel 241 allocation in North Vancouver, British Columbia. KGY's engineers explored other sites and found none able to provide adequate city grade coverage to Olympia, under § 73.315(a) of the Commission's rules. KGY, therefore, suggested that if an assignment were made in the area, that the channel be assigned to Centralia or Chehalis, Washington, which are smaller cities located near the proposed antenna site. Marohn, an Olympia citizen who has assembled a group of local business people to apply for a new Olympia station, supported the assignment to Olympia, but said that the Commission should not specify the antenna location as part of the allocation process. Marohn believed that although the proposed site and alternative sites would be short-spaced, the issue should be resolved as part of the licensing process.

3. Premier's counterproposal cited the engineering data submitted by KGY detailing presumed difficulties with the petitioner's proposed site, and agreed with KGY that Centralia or Chehalis would be a "more reasonable" assignment for Channel 241. Premier argued that Chehalis is also without an FM assignment, and that because the antenna would have to be located in approximately the same location as for Olympia, the assignment of 241 at Chehalis, would provide substantially similar first and second FM service in the area. Meanwhile, Premier argued that Olympia already receives substantial service from stations allocated to Seattle and Tacoma, while the only FM service in the Centralia/Chehalis area is provided by one commercial station—Channel 275, KELA-FM.

4. In its reply to the Premier counterproposal, Marohn argued that the public interest would be better served by assigning 241 to Olympia. He emphasized that Olympia is considerably larger than Chehalis, and is the state capital, but with no commercial FM service. Meanwhile, according to Marohn, Chehalis is served as part of a dual market by KELA-FM in Centralia. (Centralia is about 4.5 kilometers (3 miles) north of Chehalis.) Marohn states that local service is the most important aspect of this proceeding, and that the Premier counterproposal would result in four commercial broadcast outlets with 24-hour service to the Chehalis/Centralia market, while much larger Olympia would be limited to two such outlets, both AM.

5. Petitioner filed reply comments directed both to the comments of KGY and to the counterproposal of Premier. Petitioner noted that the KGY engineering statement indicating that the proposed site would be short-spaced is in error because it relies on the wrong coordinates for Canadian Station CKO-4, occupying Channel 241 at North Vancouver. Petitioner submitted an engineering report using the coordinates which indicates that the proposed site is not short-spaced. Petitioner also re-submitted its earlier engineering statement to dispute KGY's contention that the proposed site would not provide an adequate city grade signal to all parts of Olympia. Petitioner also asserted that if a local channel is deemed necessary for Chehalis, Channel 289A could be assigned there under the standards proposed in the *Notice of Proposed Rule Making* adopted February 28, 1980, investigating increased assignments on the FM radio band.[4]

6. KIXI also filed reply comments on the Premier counterproposal. KIXI supported the use of Channel 241 at Chehalis, rather than at Olympia, based largely on engineering studies indicating inadequate city grade signal coverage of Olympia from petitioner's proposed site. KIXI engineers used the appropriate coordinates for the Canadian channel at North Vancouver, and stipulated that the petitioner's site meets the applicable requirements of § 73.313 of the Commission's Rules for adequate city grade coverage of Olympia. KIXI argued, however, that the Commission can and should rely on alternative measurement methods, citing *In Re WATR-TV*, 21 RR 2d 675, as authority. Using such alternative methods KIXI asserted that the proposed site would not provide adequate coverage despite technical compliance with Commission requirements.

7. After careful and extensive review of all the issues in this case, the Commission believes that the assignment of Channel 241 to Olympia would best serve the public interest. First, the matter of the adequacy of the petitioner's proposed site must be addressed. KGY, Marohn, and Premier variously asserted that the petitioner's proposed antenna site is either short-spaced or otherwise inadequate for coverage to Olympia. A Commission staff study confirms petitioner's contention that its proposed site is not short-spaced, and that it meets adequate city grade coverage for all parts of Olympia. KGY apparently made a calculation error in finding petitioner's proposed site short-spaced to Station CKO-4 (Channel 241), North Vancouver. The error invalidates the engineering study, and removes the KGY objection, and those of Marohn and Premier relying on KGY's engineering report, from our consideration. For the same reasons, it is not necessary to consider the alternative antenna site suggested by Mr. Marohn, nor his suggestion that no site be specified in this procedure.

8. The remaining objection to the proposed site is that interposed by KIXI in its favorable reply to the Premier counterproposal. KIXI correctly stated that the proposed site meets the coverage requirements of Section 73.313, but argued that the Commission can and should rely on additional measurement devices and other measurement data in this proceeding. We find KIXI's reliance on *In Re WATR-TV* misplaced for several reasons. *In Re WATR-TV* is a UHF-TV case, not FM radio, and it involves a request for a facility change for an existing station, rather than a petition for an assignment. Even more important is the distinguishing *use* of the data in that case. There the Review Board denied a request by WATR for changes in antenna location and height, and increased power that would have amounted to a *de facto* reallocation of the channel from Waterbury to New Haven, Connecticut. The denial was supported by several alternative grounds, only one of which involved data previously not recognized by the Commission. Furthermore, the data accepted there only confirmed the uncontradicted fact that if the proposed changes would have been authorized, WATR would have substantially decreased its service to its city of license.[5] Acceptance and use of the alternative data as suggested here could have a dispositive rather than a collateral effect on the outcome here. To do so could raise the possibility of denying a petition based on standards and measuring devices not a part of our published rules while that petition apparently meets all standards which we have previously adhered to. If our published standards are not adequate (and we are not persuaded by these pleadings of their inadequacy), we think that a general rule making would be a preferable method for modification.

9. Therefore, considering the items in the previous two numbered paragraphs, there appears to be no valid technical reason to reject the original proposal submitted in our *Notice of Proposed Rule Making*. Accepting this, the mutually exclusive counterproposal to assign Channel 241 to Chehalis can be addressed and compared to the original proposal.

10. *Comparative Data.*—(a) *Communities.* Olympia (pop. 23,110),[6] is the capital of the State of Washington. It is also the seat of Thurston County (pop. 76,894). Chehalis (pop. 5,727) is the seat of Lewis County (pop. 45,467).

(b) *Local Aural Service.* Olympia is served by AM Stations KGY and KITN, and noncommercial educational KOAS-FM (Channel 207A). Chehalis is served by AM Stations KELA and KITI.

(c) *Preclusion.* Because the channel has only a restricted area in which the assignment can be made, the site of the tower for either community of license would be about the same. Therefore the preclusive impact cited in the *Notice of Proposed Rule Making* would be approximately the same for either community of license.

(d) *First and Second FM Service.* Olympia—petitioner proposes facilities of 100 kW power and an antenna height of 430 meters (1,410 feet) which would provide:

Service	Persons	Area
1st FM	30,100	7,644 sq. km. (2,940 sq. mi.)
2nd FM	72,700	6,240 sq. km. (2,400 sq. mi.)

Premier's data is incomplete but states that operating with 100 kW power and 152 meters (500 feet) at a different site would provide similar first or second FM service. Its engineering analysis states:

Service	Persons	Area
1st FM	Not stated	2,779 sq. km. (1,073 sq. mi.)
2nd FM	Not stated	1,922 sq. km. (742 sq. mi.)

11. Although this in some respects appears to be a close case, the weight of the comparative evidence persuades us that Olympia, rather than Chehalis, is the most appropriate city of assignment. Most important is that Olympia, a state capital with over 23,000 inhabitants, will hereby be authorized its first local FM commercial service. Beyond this the comparative data indicate that the Olympia proposal will provide a first and second FM service to approximately three times the area as that of the Chehalis proposal. Although population comparisons for these areas are not available, they are apparently sparsely populated areas which in light of the limited availability of additional frequencies may be very difficult to serve in the future.

12. Canadian concurrence in the assignment have been obtained.

13. In view of the foregoing, it is ordered, That effective November 17, 1980, the FM Table of Assignments (§ 73.202(b) of the Commission's rules) is amended with regard to the following community:

City and Channel No.
Olympia, Washington, 241

14. Authority for action taken herein is contained in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules.

15. It is further ordered, that the counterproposal filed by Premier Broadcasters, Inc. to assign Channel 241 to Chehalis, Washington, is denied.

16. It is further ordered, that this proceeding is terminated.

17. For further information concerning this proceeding, contact John F. Kamp, Broadcast Bureau, (202) 632-9660.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; (47 U.S.C. 154, 155, 303))

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 80-32796 Filed 10-20-80; 8:45 am]

BILLING CODE 6712-01-M

[1] The latter community has been added to the caption.

[2] Public Notice of this filing was given on May 7, 1980, Report No. 1227.

[3] After expiration of the filing period, petitioner filed a Motion to Accept Additional Pleadings to the reply comments filed by KIXI. Petitioner argued that the KIXI reply comment was more in the nature of a comment on the *Notice* than on the counterproposal of Premier. Inasmuch as the KIXI comment is an appropriate reply to the Premier counterproposal, and that the Commission staff study adequately addresses the KIXI comment, we find no compelling public interest reason to accept the late filing of petitioner and we shall not consider it herein.

[4] *In Re Modification of FM Broadcast Station Rules to Increase the Availability of Commercial FM Broadcast Assignments*, BC Docket No. 80-90, 45 FR 17602, published March 19, 1980.

[5] *In Re WATR-TV*, 21 RR 2d 675, 678.

[6] Population figures are taken from the 1970 U.S. Census.

47 CFR Part 73

[BC Docket No. 80-106; RM-3327]

FM Broadcast Station in Livingston, Mont.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule (report and order).

SUMMARY: Action taken herein substitutes a Class C FM channel for a Class A FM channel in Livingston, Montana, and modifies the license of petitioner, Yellowstone Broadcasting Service, Inc. The Class C channel would provide a substantial first and second FM and second nighttime aural service.

EFFECTIVE DATES: November 17, 1980.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION: In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations, (Livingston, Montana), BC Docket No. 80-106, RM-3327.

Report and Order—Proceeding Terminated

Adopted: October 2, 1980.

Released: October 15, 1980.

1. The Commission has under consideration a *Notice of Proposed Rule Making*, 45 FR 19574, published March 26, 1980, proposing the substitution of Class C Channel 248 for Channel 249A at Livingston, Montana, in response to a petition filed by Yellowstone Broadcasting Service, Inc. ("petitioner"), licensee of FM Station KYBS (Channel 249A). The *Notice* also proposed to delete Channel 249A from Livingston to avoid short-spacing and intermixture. Petitioner submitted supporting comments reaffirming its intent to apply for the channel, if assigned.

2. Livingston (pop. 6,883),[1] seat of Park County (pop. 11,197), is located approximately 153 kilometers (96 miles) southeast of Butte, Montana. It is served locally by daytime-only AM Station KPRK and FM Station KYBS (Channel 249A).

3. Petitioner asserts that a wide area coverage Class C facility would permit expansion of FM service to unserved areas by providing a first FM service to 9,868 persons, a second FM service to 4,352 persons, and a second nighttime aural service to 9,581 persons. Petitioner submitted a listing of alternate channels available to the communities precluded by the Class C assignment, as requested in the *Notice*.

4. The Canadian Government has given its concurrence to the proposed assignment of Channel 248 to Livingston, Montana.

5. In view of the above, the Commission believes that the public interest would be served by the proposed substitution of channels since significant first and second FM and second nighttime aural services would be provided to a substantial population. We have also authorized in paragraph 8, *infra*, a modification of petitioner's license for Station KYBS (FM) to specify Channel 248, since there has been no other expression of interest in the Class C channel.

6. In view of the foregoing, it is ordered, that effective November 17, 1980, § 73.202(b) of the Commission's rules, the FM Table of Assignments, is amended, with respect to the community listed below as follows:

City and Channel No.
Livingston, Montana, 248

7. Authority for the action taken herein is contained in Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Section 0.281 of the Commission's Rules.

8. It is further ordered, that pursuant to Section 316(a) of the Communications Act of 1934, as amended, the outstanding license held by Yellowstone Broadcasting Services, Inc., for Station KYBS (FM), Livingston, Montana, is modified, effective November 17, 1980, to specify operation on Channel 248 instead of 249A. The licensee shall inform the Commission in writing no later than November 17, 1980, of its acceptance of this modification. Station KYBS (FM) may continue to operate on Channel 249A for one year from the effective date of this action or until it is ready to operate on Channel 248, whichever is earlier, unless the Commission sooner directs, subject to the following conditions:

(a) At least 30 days before commencing operations on Channel 248, the licensee of Station KYBS (FM) shall submit to the Commission the technical information normally requested of an applicant for Channel 248.

(b) At least 10 days prior to commencing operation on Channel 248, the licensee of Station KYBS (FM) shall submit measurement data required of an applicant for a broadcast license; and

(c) The licensee of Station KYBS (FM) shall not commence operation on Channel 248 without prior Commission authorization.

9. It is further ordered, that this proceeding is terminated.

10. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-9660.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; (47 U.S.C. 154, 155, 303))

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 80-32797 Filed 10-20-80; 8:45 am]

BILLING CODE 6712-01-M

[1] Population figures are taken from the 1970 U.S. Census.

47 CFR Part 73

[Docket No. 20576; RM-2467; RM-2468; RM-2578; RM-3192; RM-3300; RM-3301]

FM Broadcast Stations in Franklin and Keene, N.H. and Bennington and Brattleboro, Vt. Also Concord, Conway, Hinsdale, Littleton, Meredith, Plymouth, Rochester, and Wolfeboro, N.H., Skowhegan, Maine, and Lyndon, Vt.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule (report and order).

SUMMARY: This action assigns six new FM channels to various communities in New Hampshire and Vermont and makes other changes in the FM Table of Assignments to communities in the area, including Maine, in response to separate petitions for new assignments.

EFFECTIVE DATE: November 17, 1980.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Molly Pauker, Broadcast Bureau, Area 202: 632-6302.

SUPPLEMENTARY INFORMATION:

In the matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Franklin and Keene, New Hampshire and Bennington and Brattleboro, Vermont. Also Concord, Conway, Hinsdale, Littleton, Meredit, Plymouth, Rochester, and Wolfeboro, New Hampshire, Skowhegan, Maine and Lyndon, Vermont.),[1] Docket No. 20576, RM-2467, RM-2468, RM-2578, RM-3192, RM-3300, RM-3301.

Report and Order—Proceeding Terminated

Adopted: October 3, 1980.

Released: October 23, 1980.

1. Before the Commission is the *Further Notice of Proposed Rule Making and Orders to Show Cause* in the above-captioned proceeding, adopted October 27, 1978. (43 FR 51652). This document basically proposed three alternative assignment plans encompassing several New England communities. The primary difference among the plans was as follows: *Option one* involves deletion of Channel 287 from Plymouth, New Hampshire and substitution of a Class A channel at Meredith, New Hampshire; *Option two* retains Channel 287 at Plymouth; and *Option three* simply deletes Channel 287 from Plymouth with no substitution. Each option also would assign FM channels to other communities, in response to demand therefrom, as spacing considerations permit. In the *Further Notice*, the Commission specifically requested comment on deletion of the Class C channel from Plymouth, interest in a Class A assignment at Meredith and commitment to apply for a Class A channel at Littleton, New Hampshire. *Orders to Show Cause* were issued against Strafford Broadcasting Corporation, permittee of Station WWNH-FM Rochester, New Hampshire, asking why it should not be required to modify its permit from Channel 244A to 288A,[2] and against North Country Communications, Inc., asking why its license for Station WNCS (FM), Montpelier, Vermont, should not be modified from Channel 244A to 276A.[3]

2. Comments were received from Northeast Communications Corporation ("Northeast"), proponent of the assignment of Channel 232A to Franklin, New Hampshire; North Country Radio, Inc. ("North Country Radio"), licensee of Station WBNC-FM (Channel 228A), Conway, New Hampshire; Thomas M. Pancoast ("Pancoast)", proponent of the assignment of Channel 288A to Littleton, New Hampshire; Profile Broadcasting Company, Inc. ("Profile"), licensee of Station WLTN (AM), Littleton, New Hampshire; Stereo Corporation ("Stereo"), licensee of Station WBLM (Channel 298), Lewiston-Auburn, Maine; Radio Wolfeboro, Inc. ("Radio Wolfeboro") proponent of a Class A assignment at Wolfeboro, New Hampshire; Lakes Region Broadcasting Corporation ("Lakes Region"), applicant for the use of Channel 287 at Meredith, New Hampshire, under the Commission's 15-mile rule, § 73.203(b); Alpine Broadcasting Corporation ("Alpine"), licensee of Station WHOM, Mt. Washington, New Hampshire; Strafford Broadcasting Corporation ("Strafford"), permittee of Station WWNH-FM, Rochester, New Hampshire, and North Country Communications, Inc. ("North Country Communications"), licensee of Station WNCS (FM) Montpelier, Vermont. Several parties filed conflicting petitions in time to be considered as counterproposals in this proceeding. They are Lyndon State College ("Lyndon State"), proposing the assignment of Channel 288A to Lyndon, Vermont; Lloyd F. Simon and Edward F. Perry ("Simon and Perry"), proposing the assignment of either Channel 287 or 288A to Concord, New Hampshire; and Brian Dodge on behalf of We Trust in Jesus, Inc. ("We trust in Jesus"), proposing the assignment of Channel 285A to Hinsdale, New Hampshire. Reply comments were filed by Lyndon State, Simon and Perry, North Country Radio, Radion Wolfeboro, Northeast, Pancoast and Pemigewasset Broadcasters, Inc. ("Pemigewasset"), licensee of Stations WPNH (AM) and WPNH-FM (Channel 261A), Plymouth, New Hampshire.

3. In the *Notice of Proposed Rule Making* (40 FR 34393 (1975)) and the *Further Notice*, we reviewed the demographic data of several of the communities under consideration herein. However, for purposes of comparison, we believe it will be useful to reiterate the information, as follows.

Community	Population[4]	Present service
Concord, N.H	30,022	Stations WKXL (AM), WKXL (FM) (Channel 272A) and WSPS (FM) (non commercial).
Franklin, N.H	7,292	None.
Hinsdale, N.H	3,276	None.
Littleton, N.H	5,290	Station WLTN (AM).
Meredith, N.H	2,904	None.
Wolfeboro, N.H	3,036	Station WASR (AM)—daytime only.
Lyndon, Vt	3,705	None.

[4] Population figures are based upon 1970 U.S. Census data.

Various parties have affirmed their intent to apply for a channel in each of the above communities.[5]

4. Northeast, without taking a position on the three options set out in the *Further Notice*, pointed out in comments and reply comments that the assignment of Channel 232A to Franklin, New Hampshire, is compatible with all three plans outlined in the *Further Notice* and urged that we therefore proceed with this assignment, regardless of the outcome of the other proposals under consideration herein.

5. The comments generally favored option one or three, both of which would involve deletion of Channel 287 from Plymouth. The only party which continued to support retention of Channel 287 at Plymouth was Lakes Region, whose application to use that channel at Meredith is pending. Lakes Region, in comments, reviewed the history of the assignment of Channel 287 to Plymouth. It averred that the retention of the channel there would be the least disruptive of the alternatives, as well as the best way to serve the public interest, since it would afford New Hampshire with its only Class C FM assignment.[6] This mountainous region can receive only fragmented coverage from Class A facilities, according to Lakes Region even though certain communities such as Littleton would be precluded from having their own local station.[7]

6. Reply comments filed by Pemigewasset took issue with several of Lakes Region's assertions. Pemigewasset argued that the four first local Class A FM services, which option three could provide, would best serve the public interest. It favored option three over option one because no interest in a Class A assignment in either Plymouth or Meredith has been manifested, and, lacking such, it would seem unduly burdensome on the Rochester permittee to be required to change frequencies.[8] In addition, Pemigewasset pointed out that Station WHOM is licensed to Mt. Washington, New Hampshire, as a Class C station, so that Lakes Region's proposed facility would not be the first wide area outlet in the state.[9] Indeed, Pemigewasset disputed the need in a small community such as Meredith for a high-powered

[1] This last group of communities has been added to the caption.

[2] The assignment of Channel 244A to Meredith, New Hampshire, would require this substitution.

[3] This substitution would be required by the assignment of Channel 287 to Meredith, New Hampshire, or the assignment of Channel 244A to Plymouth, which was not proposed, but suggested. See *Further Notice*, n. 12.

[5] Simon and Perry seek the assignment of either a Class A or B frequency in Concord, New Hampshire.

[6] Lakes Region apparently failed to notice that Station WHOM operates on Class C Channel 235, Mt. Washington, New Hampshire.

[7] Lakes Region further suggested that the unoccupied Channel 272A could be deleted from Randolph, Vermont, and reassigned to Littleton. However, a late-filed pleading indicated an interest in that channel at Randolph. We also have under consideration a proposal to assign Channel 272A to St. Johnsbury, Vermont. See RM-3354. Since this petition was filed too late to be considered in this proceeding, we are considering it separately.

[8] Strafford, the Rochester permittee, had no objection to changing frequencies; however, its comments stated that its antenna and transmitter for channel 244A had already been ordered previous to the Commission's *Order to Show Cause*, and it feels entitled to reimbursement therefor. It also evinced a desire to go on the air pending the outcome of this proceeding.

[9] Alpine, licensee of Station WHOM, filed comments arguing that the first local services which could be provided by option three makes it by far the most attractive alternative.

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facility. Finally, Pemigewasset questioned whether Lakes Region would be able to meet the financial qualifications to obtain a construction permit, in light of the fact that its parent company, Browning Laboratories, Inc., went into receivership in December 1978, and a creditor filed a petition in bankruptcy against Browning in early 1979.[10]

7. North Country Radio reiterated its previously stated objections to changing the frequency of Station WBNC–FM (Channel 228A), Conway, New Hampshire, to Channel 296A.[11] These include alleged interference related to the operation of Station WCAN–TV (Channel 13), Portland, Maine, and Station WBLM (FM) (Channel 298), Lewiston, Maine. In response to the other issues raised in the *Further Notice*, North Country Radio's analysis of the three proposed options favored options one and three. Option one, North Country Radio pointed out, is preferable to option three to the extent that it could provide the first local service to four communities; however, it would impose hardship on the Rochester permittee required to change frequencies, especially absent interest in a Class A facility at Meredith. In comments and reply comments, North Country Radio argued that if Lakes Region were truly interested in serving Meredith, it would be satisfied with a Class A frequency there, a sentiment shared by several of the commenters. North Country Radio also disputed the need for a regional station in the area. Stereo Corporation, licensee of Station WBLM (FM) (Channel 298), Lewiston-Auburn, Maine, also reiterated its opposition to option two, essentially in view of the need for the Conway frequency change.[12]

8. Wolfeboro Radio, in comments and replies, strongly supported the concept of Class A channels for the several communities under consideration herein, favoring option one and noting option three as its second choice, if it is decided that Meredith does not warrant an assignment. Wolfeboro Radio indicated its intent to apply for a construction permit at Wolfeboro and to provide its share of whatever reimbursement is required as a result of substitutions generated by this proceeding.

9. Pancoast supported options one and three, because they both propose the assignment of Channel 288A to Littleton, for which Pancoast would like to apply. Profile's comments took substantially the same position. Lyndon State College, in comments and replies, sought the assignment of Channel 288A to Lyndon, Vermont, instead, and suggested Channel 272A or 292A for Littleton. Pancoast's reply comments indicated that he would apply for either of these frequencies, as well as Channel 288A. Both of these parties advocated deletion of Channel 287 from Plymouth.

10. Simon and Perry, in comments and replies, asked that the Commission assign either Channel 287 or 288A to Concord, New Hampshire, which would require deletion of Channel 287 from Plymouth. Simon and Perry argued that given the comparable sizes of Plymouth and Concord that the assignment of a high-powered facility to Concord would be more justified. They allege that intermixture would not be a problem, since the existing Class A Station WKXL-FM could apply for Channel 287.[13] Although either Concord assignment would preclude the assignment of Channel 288A to Littleton, Simon and Perry assert that Channel 292 could be assigned instead.

11. We Trust in Jesus supported the deletion of Channel 287 from Plymouth, and cited the additional first local FM service to several communities, which this could facilitate, as its reason. It also favored a Class B assignment for Concord, but opposed the Montpelier substitution. North Country Communications, licensee of Station WNCS (FM), Montpelier, Vermont, urged the assigned of Channel 244A to Meredith, and not Plymouth, so that WNCS would not be required to change frequencies from Channel 244A to 276A.

12. The central element in this proceeding is whether or not it would be in the public interest to delete Channel 287 from Plymouth. We have previously reviewed the history of that assignment,[14] and we need not reiterate here. We merely note briefly that Channel 287 was assigned to Plymouth on the basis of Lakes Region's affirmation of its intent to apply to build a facility there. While it is indeed permissible under our rules for Lakes Region to apply to use the frequency at Meredith, we must nevertheless consider the propriety of a high-powered facility at Meredith, in evaluating the broadcast needs of the several communities involved in the instant proceeding. We find convincing the allegation of several parties that Lakes Region's interest in a Class C facility at Meredith stems not from an interest to serve that community, but larger communities in the vicinity. Although Lakes Region was requested to explain its decision to apply for Meredith when it had originally asked for a Plymouth assignment, it failed to do so. In our opinion, a Class A facility would be better suited to a community of 2,904, especially where, as in this case, a higher-powered station could provide only minimal second FM service.[15] However, neither Lakes Region nor any other party has manifested an interest in a Class A assignment at Meredith. Nor does Lakes Region appear to be interested in a Class A facility at Plymouth, which would be more in keeping with the current situation there, i.e., the existence of Class A Station WPNH–FM at Plymouth. Finally, we disagree with Lakes Region's assessment that this area is in need of a regional station. We concur with the characterization of North Country Communications, echoed by several other parties, that northern New England as a region of small communities separated by rough terrain, is an area far better suited to a series of Class A assignments, which can provide local service to individual communities. Local weather reports, for example, would appear to be a greater benefit to the citizens of most of these communities than a high-powered regional facility. While the sentiment in favor of deletion of Channel 287 expressed in the majority of the comments is not conclusive in our judgment, it is persuasive, especially in light of our own belief that first local service is an important priority for these communities.

13. Another factor which warrants consideration is the existence of outstanding orders which would require reimbursement by the eventual permittee of Channel 287 at Plymouth or Meredith for the frrequency changes of Station WTOS–FM, Skowhegan, Maine, and Station WCNL–FM, Newport, New Hampshire. Although we are not here called upon to pass judgment on Lakes Region's financial qualifications to obtain a broadcast license, the evidence of the parent company's insolvency, as noted in the comments of Pemigewasset, cannot but cast doubt upon Lakes Region's ability to provide the requisite reimbursement, not to mention finance the construction of a high-powered broadcast facility.

14. On balance, we believe the public interest would be best served by the deletion of Channel 287 at Plymouth and the assignment of Class A channels to those communities in which interest has been manifested, to wit; Concord, Franklin, Hinsdale, Littleton, Lyndon and Wolfeboro. This will provide first FM service for the five latter communities and a second FM outlet for Concord. Since no interest has been affirmed at Meredith, we are not assigning a channel there. We are also not making a second FM assignment at Keene, since Monadnock Broadcasting Corporation, the original petitioner there, did not file comments indicating a continuing interest in the assignment. This leaves Channel 285A available to be assigned to Hinsdale (that channel could not have been assigned to both Keene and Hinsdale, due to spacing requirements). Although deletion of Channel 287 from Plymouth makes it possible to assign that channel to Concord, we believe a Class A channel is more appropriate for that community, in light of the intermixture a Class B facility there would create. Indeed, our general conclusion regarding the need for or desirability of a facility at Plymouth applies equally as well to Concord. The facts of the instant case differ from those in *Rome, New York*. See footnote 13, *supra*. There the Commission made an exception to its policy against intermixture and assigned a Class B channel to a community having one Class A assignment already. This was found to be justified primarily by the fact that there was no other Class A channel available for assignment to the community. In addition, the petitioner for the Class B assignment stated that it would apply for the Class A channel, should the existing Class A licensee choose to modify it operation onto the Class B frequency. Although Simon and Perry liken this situation to their own, the existence of a second Class A channel available for assignment to Concord makes it unnecessary for us to override our policy against intermixture there. Further, the intermixture which would be created there without overriding public benefit such as first or second FM service weighs against the Class B assignment. Instead a second Class A channel for which Simon and Perry have stated they would apply will be assigned as a second FM assignment.

15. Staff analysis has derived the following series of assignments, which, we believe, will best satisfy the various petitioners in this proceeding, as well as best serve the public. Channel 288A can be assigned to Concord, New Hampshire, with a site restriction of 1.3 kilometers (.8 miles) north of Concord. Channel 232A can be assigned to Frankin, New Hampshire, with a site restriction of 10.4 kilometers (6.5 miles) southwest of the community. Channel 285A can be assigned to Hinsdale, New Hampshire, with a site restriction of 6.4 kilometers (4 miles) west/northwest of Hinsdale. Channel 292A can be assigned to Lyndon, Vermont, at a site 9.6 kilometers (6 miles) east of the community.[16] Channel 285A can be assigned to Wolfeboro, New Hampshire. Canadian concurrence has been obtained for all the above assignments. The Commission has received at least one expression of interest in each of them.

16. This plan offers the additional benefit of eliminating the need for frequency changes at Conway or Rochester, New Hampshire, or Brattleboro or Montpelier, Vermont. Further, when Channel 287 was assigned to Plymouth, Station WTOS–FM, Skowhegan, Maine, on Channel 286 was modified to specify Channel 294. Nevertheless, the station did not in fact change frequencies, and continues to operate on Channel 286. The Table of Assignments can now be amended to reflect this fact, and no reimbursement will be required for Skowhegan. However, Station WCNL–FM, Newport, New Hampshire, did change frequencies as a result of the Plymouth assignment, and, as we stated in the *Further Notice*, we would expect the parties benefiting from the deletion of that channel from Plymouth to provide reimbursement for Newport. The direct beneficiaries are the eventual permittees at Concord (Channel 288A), and Wolfeboro (Channel 285A), the assignments which could not have been made without the Plymouth deletion.

17. Authority for the action taken herein is contained in sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules.

18. In view of the foregoing, it is ordered, that, effective November 17, 1980, § 72.202(b) of the Commission's rules, the FM Table of Assignments, is amended as follows, with respect to the following communities:

City and Channel Number
Skowhegan, Maine—286
Concord, New Hampshire—272A, 288A
Franklin, New Hampshire—232A
Hinsdale, New Hampshire—285A
Littleton, New Hampshire—292A
Plymouth, New Hampshire—261A
Wolfeboro, New Hampshire—285A
Lyndon, Vermont—252A

19. It is further ordered that this proceeding is terminated.

20. For further information concerning this proceeding, contact Molly Pauker, Broadcast Bureau, (202) 632-6302.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; (47 U.S.C. 154, 155, 303))

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules, Broadcast Bureau.

[FR Doc. 80-32798 Filed 10-20-80; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Changes in Shooting Hours for Dove Hunting in Florida, Corrections in California Goose Hunting and Maryland Scaup Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: On August 21, 1980, the Service published in the **Federal Register** seasons, limits, and shooting hours for mourning doves and certain other migratory game birds. At Florida's request, the Service amends § 20.103(a) of 50 CFR Part 20 to allow shooting hours from one-half hour before sunrise to sunset for mourning doves in Florida during the periods November 8 through November 23, 1980, and December 13, 1980, through January 4, 1981. Two minor corrections are made in the final late season hunting regulations for geese in portions of California under § 20.105(d), which was published in the

[10] We do not as a rule pass judgment on the financial qualifications of potential applicants at the rule making stage; however, we believe that these facts, which appear to be verified by the receivership indenture and bankruptcy petition which Pemigewasset attached to its pleading, are especially significant in this instance, since the ultimate permittee of Channel 287 at either Plymouth or Meredith is already under obligation to provide reimbursement for frequency changes at Skowhegan, Maine, and Newport, New Hampshire. *Winchendon, Mass.* 46 FCC 2d 221 (1974).

[11] An *Order to Show Cause* requesting this information was issued against North Country Radio; the assignment of Channel 228A to Wolfeboro, proposed in option two, required this substitution.

[12] In order to facilitate its desired plan to upgrade its Class B station to Class C facilities on Channel 298, Stereo would be required to relocate its transmitter site from Zone I to Zone II, its attempts to obtain a waiver of the rules having been unsuccessful. Channel 298A in Conway would be short spaced to Stereo's proposed new site.

[13] Citing *Rome, N.Y.*, Docket 20863, 43 FR 10343, March 13, 1978.

[14] See *Further Notice*, paragraph 6; and see *Skowhegan, Maine*, 32 FCC 2d 338 (1972); *Winchendon, Massachusetts*, 46 FCC 2d 221 (1974).

[15] The provision of a second FM service to approximately 800 persons was the primary basis for the Plymouth assignment. However, that assignment would no longer provide nearly that much second FM service due to a transmitter site move by an existing station, the Plymouth Class A assignment and the Franklin Class A assignment adopted herein.

[16] Canadian concurrence has been obtained for this short spaced assignment.

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Federal Register on September 16, 1980, and a correction is made in the special scaup season area of Maryland, under § 20.105(f) of the same Federal Register document.

DATE: Effective on October 21, 1980.

FOR FURTHER INFORMATION CONTACT:
John P. Rogers, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Room 555, Matomic Building, 1717 H Street, NW., Washington, D.C., telephone 202–254–3207.

SUPPLEMENTARY INFORMATION: On August 21, 1980, the Service published in the Federal Register (45 FR 55960) seasons, limits, and shooting hours for mourning doves and certain other migratory game birds. In the table under § 20.103(a), Mourning Doves—Eastern Management Unit, the shooting hours for Florida were published as 12 noon to sunset. Officials of the Florida Game and Fresh Water Fish Commission have since notified the Service of their desire to change their framework selection from half-day hunting (noon to sunset) to full-day hunting (one-half hour before sunrise to sunset) during their second and third split seasons for mourning doves. The Service concurs with this change as full-day hunting was offered as an option to the States of the Eastern Management Unit in the Final Regulations Frameworks for 1980–81 Early Hunting Seasons on Certain Migratory Game Birds published in the Federal Register on July 22, 1980. (45 FR 49063).

This final rulemaking also corrects two minor errors in the final late season hunting regulations for geese in portions of California under § 20.105(d), which was published at 45 FR 61543 in the Federal Register dated September 16, 1980. In the Northeastern Zone, for the November 1–Jan. 18 season, the parenthetical limits following "Geese" are corrected to read: "(including no more than 2 dark or 2 white geese)" instead of "(including no more than 2 dark or 2 white geese in the daily bag)". In the Balance-of-the-State Zone, the season dates for dark geese in the San Joaquin Valley Area are corrected to read "November 1–November 22." instead of "November 1–November 23."

A correction is made in the special scaup only season of Maryland under § 20.105(f), which was published at 45 FR 61545. The parenthetical wording "(outside sea duck zone)", following "Maryland", is deleted. Elsewhere in § 20.105(f) reference is made to the applicable areas being described in State regulations.

Exception From Executive Order 12044 and 43 CFR 14

As discussed in the Federal Register dated February 29, 1980 (45 FR 13530), the Assistant Secretary for Fish and Wildlife and Parks has concluded that the ever decreasing time frames in the regulatory process are mandated by the Migratory Bird Treaty Act and the Administrative Procedure Act. The regulatory process simply has no remaining flexibility in its timetable between the accumulation of critical summer survey data and the publication of the revised proposed rulemakings. Compliance with the determination of significance and regulatory analysis criteria established under Executive Order 12044 would simply not be possible if the fall hunting season deadlines are to be achieved.

Consequently, the Assistant Secretary for Fish and Wildlife and Parks has approved the exemption of these annual migratory bird hunting regulations from the procedures of Executive Order 12044 and 43 CFR 14 which is provided for in sections 6(b)6 and 14.3(f), respectively.

The Service finds that notice of proposed rulemaking is impractical, unnecessary, and contrary to the public interest. Because of the need to expedite the implementation of this amendment and corrections in order to communicate the regulations changes to hunters in Florida, California, and Maryland, the Service finds that "good cause" exists within the terms of 5 U.S.C. § 553(d)(3) of the Administrative Procedure Act, and these regulations will therefore take effect immediately upon publication.

Authorship

The primary author of this final rule is Henry M. Reeves, Office of Migratory Bird Management, working under the direction of John P. Rogers, Chief.

1. Section 20.103, paragraph (a), is amended as follows:

§ 20.103 Seasons, limits, and shooting hours for mourning and white-winged doves and wild pigeons.

* * * * *

(a) *Mourning Doves—Eastern Management Unit.*

* * * * *

Seasons in—	Dates
. . .	. . .
Florida:	
12 noon to sunset	Oct. 4–Nov. 2.
One-half hour before sunrise to sunset.	Nov. 8–Nov. 23 and Dec. 13–Jan. 4.
. . .	. . .

2. Section 20.105, paragraphs (d) and (f) are corrected to read as follows:

§ 20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

* * * * *

(d) *Waterfowl and coots in Atlantic, Mississippi, Central and Pacific Flyways.*

Pacific Flyway

	Season dates	Limits: Bag	Limits: Possession
. . .	. . .	. . .	. . .
Arizona (1):			
. . .	. . .	. . .	. . .
California:			
Northeastern Zone:			
Ducks	Oct. 18 to Jan. 18	7	14
Geese	Oct. 18 to Oct. 31	1	1
Geese (including no more than 2 dark or 2 white geese).	Nov. 1 to Jan. 18	3	3
Brant	Jan. 17 to Feb. 22	4	8
. . .	. . .	. . .	. . .
Balance-of-State Zone:			
Ducks	Oct. 18 to Jan. 18	7	14
Geese		4	4
Including no more than:			
Dark			
Counties of Del Norte and Humboldt	Closed season		
Sacramento Valley Area (2)	Dec. 15 to Jan. 18	2	4
San Joaquin Valley Area (3)	Nov. 1 to Nov. 22	2	4
Remaining areas	Nov. 1 to Jan. 18	2	4
White	Nov. 1 to Jan. 18	2	4
Brant	Jan. 17 to Feb. 22	4	8

* * * * *

(f) *Scaup only season.*

* * * * *

Seasons in the Atlantic Flyway

* * * * *

Maryland.....Nov. 29–Dec. 13.

* * * * *

Dated: October 15, 1980.

Robert S. Cook,
Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 80-32696 Filed 10-20-80; 8:45 am]
BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 45, No. 205
Tuesday, October 21, 1980

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 351

Reduction in Force; Qualifications for Assignment

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: This regulation would clarify the conditions under which agencies may formally designate positions as trainee or development positions for reduction in force purposes. In addition, this regulation would clarify the conditions under which an employee could be assigned to a formally designated trainee or development position in reduction in force competition. This regulation is being proposed in response to requests from agencies that OPM clarify its reduction in force instructions covering trainee and developmental positions.

DATE: Written comments will be considered if received no later than December 22, 1980.

ADDRESS: Send or deliver written comments to Associate Director, Staffing Services, Office of Personnel Management, 1900 E Street NW., Room 6526, Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT:
Ted Dow or Tom Glennon, (202) 632–4422.

SUPPLEMENTARY INFORMATION:

Background

OPM receives many inquiries from agencies asking for assistance in determining both (1) which positions may be formally designated as trainee or developmental positions for the purpose of establishing competitive levels under § 351.403, and (2) how trainee and developmental positions are used in the determination of employee assignment rights under Subpart G of part 351 of this title. At present, these provisions are set forth in paragraph 7–6a of FPM Chapter 351.

Explanation of Proposed Regulation

OPM is proposing to set forth the provisions covering trainee and developmental position in Part 351 of this title in order to simplify and clarify how agencies determine employee retention rights. These proposed changes do not represent any change in OPM's reduction in force policies.

Specifically, OPM proposes to add § 351.701(e), which (1) provides that an agency may formally designate a position in a program having specific characteristics as a trainee or developmental position for reduction in force purposes, and (2) sets forth the qualifications which an employee must meet in order to be considered for assignment under Subpart G of Part 351 of this title to a formally designated trainee or developmental position.

OPM has determined that this is a significant regulation for the purposes of E.O. 12044.

Office of Personnel Management.
Beverly M. Jones,
Issuance System Manager.

Accordingly, OPM Proposes to amend Title 5, Code of Federal Regulations, by adding § 351.701(e) to read as follows:

§ 351.701 Qualifications for assignment.

* * * * *

(e) An agency may formally designate a position in a program with all of the following characteristics as a trainee or developmental position:

(1) The program must have been designed to meet the agency's needs and requirements for the development of skilled personnel;

(2) The program must have been formally designated, with its provisions made known to employees and supervisors;

(3) The program must be developmental by design, offering planned growth in duties and responsibilities, and providing advancement in recognized lines of career progression; and

(4) The program must be fully implemented, with the participants chosen through standard selection procedures.

To be considered qualified for assignment under § 351.603 to a formally designated trainee or developmental position in a program having all of the characteristics covered in paragraphs (e)(1), (e)(2), (e)(3) and (e)(4) of this section, an employee must meet all of the conditions required for selection and entry into the program.

(5 U.S.C. 1302, 3502)

[FR Doc. 80-32691 Filed 10-20-80; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1944

[FCDA No. 10.410 Low- to Moderate-Income Housing Loans]

Housing-Mobile Home and Mobile Home Site Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Farmers Home Administration (FmHA) requests public comment and input for regulations for FmHA to implement a program to finance mobile homes and mobile home sites. This advance notice of proposed rulemaking will assist FmHA to more fully implement Section 527 of the Housing Act of 1949. The implementation of this regulation will allow FmHA to make loans for mobile homes and mobile home sites to assist rural families to obtain decent, safe, and sanitary dwellings.

DATES: Comments must be received on or before December 22, 1980.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6346, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT:
Mr. Reed J. Petersen, Acting Director, Guaranteed and Special Authorities Loan Division, USDA, FmHA, Room 5349, South Agriculture Building, 14th and Independence Ave. SW, Washington, DC 20250, telephone 202 447–4295.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in

Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified significant. This notice is a result of Section 527, Housing Act of 1949, as amended, which defines "housing" for FmHA housing program purposes as including "mobile home and mobile home sites."

With respect to mobile homes and mobile home sites financed, the Secretary of Agriculture shall prescribe minimum property standards to assure the livability and durability of the mobile home and the suitability of the site on which it is to be located and obtain assurances from the borrower that the mobile home will be placed on a site which complies with standards prescribed by the Secretary of Agriculture and with applicable local requirements.

In accordance with Section 527, loans under this program for the purchase of mobile homes and sites shall be made on the same terms and conditions as are applicable under section 2 of the National Housing Act to obligations financing the purchase of mobile homes and lots on which to place such homes.

This instruction does not directly affect any FmHA programs or projects which are subject to A-95 clearinghouse review.

(42 USC 1480; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, CFR 270)

Dated: October 15, 1980.

James E. Thornton,

Associate Administrator, Farmers Home Administration.

[FR Doc. 80-32722 Filed 10-20-80; 8:45 am]

BILLING CODE 3410-07-M

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Reg. B; Docket No. R-0203]

Equal Credit Opportunity; extension of Comment Period

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rulemaking: Extension of comment period.

SUMMARY: By notice published on August 26, 1980 (45 FR 56818), the Board of Governors of the Federal Reserve System requested comment on two interpretations of Regulation B concerning consideration of income and disclosure of reasons for adverse action. The agency has received a number of requests for an extension of the comment period. In light of the Board's desire to encourage public participation in this matter, the comment period is extended to December 22, 1980.

DATES: Effective date: October 14, 1980. The comment period is extended to December 22, 1980.

ADDRESS: Comments (which should refer to Docket No. R-0203) may be mailed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or may be delivered to Room B-2223 in the Board Building, 20th Street and Constitution Avenue, N.W., Washington, D.C., between 8:45 a.m. and 5:15 p.m. on business days. Comments may be reviewed in Room B-1122 of the Board Building during those same hours.

FOR FURTHER INFORMATION CONTACT: Stanley D. Mabbitt, Staff Attorney, Division of Consumer and Community Affairs (202-452-3867), Board of Governors of the Federal Reserve System.

By order of the Board of Governors, acting through its Secretary under delegated authority, October 14, 1980.

Theodore E. Allison,

Secretary of the Board.

[FR Doc. 80-32733 Filed 10-20-80; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. 8940]

Control Data Corp., et al.; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of proceedings before the U.S. District Court for the Fourth Division of the District of Minnesota and the F.T.C., regarding alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, accepted subject to final Commission approval, would require, among other things, two Bloomington, Minn. sellers of training courses to cease misrepresenting the purpose, significance or results of entrance examinations or aptitude tests; the qualifications or prerequisites necessary to obtain employment in the computer field or in any other field; and the cost and effectiveness of their job-placement services. The companies would be required to give prorated refunds to students who fail to complete their courses, or to compute the amount of money owed to them by students on a prorated basis. Students having unresolved complaints against the companies would have to be provided, on a shared-cost basis, with an impartial arbitration service empowered to order payment of refunds to those eligible. Additionally, the order would require that individuals selling training courses display nameplates identifying them as "Sales Representatives;" and that the firms institute a surveillance program designed to detect those parties who fail to comply with the terms of the order.

DATE: Comments must be received on or before December 22, 1980.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and Pennsylvania Ave. NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/PM, Walter Gross III, Washington, D.C. 20580. (202) 523-3911.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

Agreement To Settle Litigation

Whereas Control Data Corporation and Automation Institute of America, Inc. (hereinafter referred to jointly as "Plaintiffs") have filed in the United States District Court, District of Minnesota, Fourth Division, a civil action, Docket No. 4-78 Civ. 402, seeking declaratory and injunctive relief against the Federal Trade Commission ("Commission");

Whereas Plaintiffs have previously been served by the Commission with an Administrative Complaint instituting an administrative proceeding known as Docket No. 8940, charging Plaintiffs with violation of Section 5 of the Federal Trade Commission Act and providing Plaintiffs with a form of an Order to Cease and Desist believed warranted by the Commission under the circumstances of the Administrative Complaint; and

Whereas Plaintiffs and the Commission desire to settle the litigation in Docket No. 4-78 Civ. 402 and all administrative proceedings pending against Plaintiffs at the Commission in Docket No. 8940;

Now Therefore, in consideration of the premises, Plaintiffs and the Commission agree as follows:

1. Plaintiff Control Data Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 8100—34th Avenue South in the city of Bloomington, State of Minnesota. Plaintiff Automation Institute of America, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California with its offices and principal place of business located at 8100—34th Avenue South in the city of Bloomington, State of Minnesota.

2. Plaintiffs have been served with the Commission's Complaint charging them with violation of Section 5 of the Federal Trade Commission Act, together with a form of the Order to Cease and Desist the Commission believed warranted in the circumstances.

3. Plaintiffs admit all jurisdictional facts set forth in the Commission's Administrative Complaint.

4. Plaintiffs waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise challenge or contest the validity of the order entered pursuant to this Agreement.

5. This Agreement is for settlement purposes only and does not constitute an admission by Plaintiffs that the law has been violated in any respect, including, but not limited to, the acts and practices alleged in the Commission's Administrative Complaint.

6. This Agreement will be of no force and effect unless and until the United States District Court, District of Minnesota, Fourth Division, approves it as a final and binding settlement of the litigation pending before that court, Docket No. 4-78 Civ. 402.

7. Within 90 days of approval of this agreement by the United States District Court, District of Minnesota, Fourth Division, as a binding settlement of the litigation known as Docket No. 4-78 Civ. 402, the Commission will place on the public record for a period of sixty (60) days (or such other period as the Commission may determine pursuant to its rules) this Agreement, the Order contained herein, and information in respect thereto as provided by Rule 3.25 of the Commission's Rules of Practice, 16 C.F.R. § 3.25. Within a reasonable time from the end of the aforesaid 60-day period, the Commission shall inform Plaintiffs in writing either that it accepts or that it rejects the Order contained herein as a final and complete resolution of all administrative proceedings in Docket 8940 pending against Plaintiffs at the Commission.

8. If the Commission accepts the Order as provided in paragraph 7 above, it will, as soon as is reasonably practicable, issue the Order contained herein in final disposition of the administrative proceedings pending against Plaintiffs. When so issued, the Order Contained herein shall have the same force and effect, and may be altered, modified or set aside in the same manner and within the same time provided by statute for other Orders. The Order shall become final upon service. Mailing of the order to Plaintiffs' principal place of business, certified mail, return receipt requested, shall constitute service. Plaintiffs waive the right to any other manner of service.

9. If the Commission rejects the Order as provided in paragraph 7 above, as soon as is reasonably practicable, it shall either dismiss all proceedings against Plaintiffs or return the administrative proceedings against Plaintiffs to adjudicative status for further administrative procedures pursuant to the Commission's Rules of Practice. In no event shall the Commission assert the existence or efficacy of any former Consent Order proffered by Plaintiffs. If the Commission rejects the Order, nothing contained in this Agreement or in the Order contained herein shall constitute or be deemed to constitute a waiver or relinquishment of any sort by Plaintiffs of any defenses to Commission action heretofore raised by Plaintiffs before the Commission or in Docket No. 4-78 Civ. 402.

10. In construing the terms of the Order contained herein, the Administrative Complaint may be used. No agreement, understanding, representation or interpretation not contained in the Order or in this Agreement may be used to vary or contradict the terms of the Order.

11. Plaintiffs have read the Commission's Administrative Complaint and this Agreement, and they understand that once the Order contained herein has been served, they will be required by law to file one or more compliance reports showing that they have complied with all provisions of that Order and they may be held liable for a civil penalty in the amount provided by law for each violation of the Order after it becomes final.

12. The civil action, Docket No. 4-78 Civ. 402, pending before the United States District Court, District of Minnesota, Fourth Division, shall upon this Agreement become final, be dismissed.

13. In resolution of all administrative proceedings pending against Plaintiffs in Docket No. 8940, the parties hereby adopt for treatment by the Commission as specified above, this Agreement containing the following Consent Order to Cease and Desist.

This Agreement containing Consent Order is adopted for settlement purposes only and does not constitute, and shall not be deemed to constitute, (1) a waiver or relinquishment in whole or in part by Plaintiffs of (i) the right to challenge in accordance with appropriate legal procedures the Commission's Trade Regulation Rule for Proprietary Vocational and Home Study Schools, promulgated by the Commission on December 28, 1978, at 43 Fed. Reg. 60817, 16 C.F.R. Part 438, or (ii) any legal argument or defense of any kind which could now be raised in such a challenge, or (2) a waiver or relinquishment in whole or in part by the Commission of any legal argument or defense it could otherwise raise with regard to a legal challenge to the aforesaid Trade Regulation Rule.

Consent Order To Cease and Desist

Definitions

The terms "course," "course of study," or "course of study, training or instruction," as used in this Order, shall be defined as an entry-level vocational course of instruction, which shall mean the following: any course of instruction designed to prepare the graduates of such course for positions of employment available to persons who possess no prior training or experience other than that gained from the course of instruction. This definition of "course," "course of study," or "course of study, training or instruction," shall not constitute, nor be deemed to constitute, an interpretation or evidence of interpretation of any definition contained in the Commission's Trade Regulation rule governing proprietary, vocational and home study schools (16 CFR § 438.1 (1979)). The definition of "course," "course of study," or "course of study, training or instruction," for purposes of the Order, shall not include any course offered or sold to employers for the use of their employees or their families.

The term "respondents," as used herein, shall mean Control Data

Corporation and Automation Institute of America, Inc.

I

It is ordered that respondents Control Data Corporation, a corporation, and Automation Institute of America, Inc., a corporation, their successors, assigns, officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, franchisee, licensee, distributor or other device, in connection with the creating, advertising, promoting, offering for sale, sale or distribution of any course of study, training or instruction in the field of electronic data processing or any other course offered to the public in any field in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, orally, visually, in writing or in any manner, directly or by implication, that:

(a) College education or training beyond a high school diploma is not necessary or advantageous for the placement of any person as a programmer in the field of electronic data processing, or that any person with only a high school education or its equivalent may achieve employment as a programmer in the electronic data processing field; unless in each and every such instance it is disclosed, in immediate and conspicuous conjunction therewith, that college education or training beyond a high school diploma may be advantageous for placement as a programmer in the field of electronic data processing because some employers require such education or training for programming; or misrepresenting, orally, in writing or in any manner, any qualification or prerequisite necessary to achieve employment in any field or position;

(b) Any entrance examination or aptitude test determines whether or not a person will achieve employment in the field of electronic data processing; or misrepresenting, orally, in writing, or in any manner the meaning, purpose, benefit, significance or use of any entrance examination, aptitude test or the results thereof;

(c) Most people who take any entrance examination or aptitude test do not achieve a passing or qualifying grade or score, or score lower on such test than the particular applicant, unless such respondent so representing has, in each and every instance, statistically valid data to verify such representation; or misrepresenting, orally, in writing, or in any manner the pass or fail rate of any such entrance examination or aptitude test, or the score attained by any individual relative to, or compared with, grades or scores attained by any other or all other persons taking such entrance examination or aptitude test;

(d) Systems Analysis is an entry-level employment objective of any course of instruction offered by either respondent, unless such is the fact; or misrepresenting, orally, in writing, or in any manner, including the use of course names, descriptions or occupational objectives, the nature or type of position for which a graduate of any course of instruction may be qualified or in which such a graduate may achieve employment upon completion of the course of instruction;

(e) It is unnecessary for any graduate of any course of instruction offered by either respondent actively to seek employment through any source other than that made available by such respondent's placement service; or misrepresenting, orally, in writing, or in any manner, the capabilities, functions or performance of any placement service, or the duties, obligations or responsibilities of any person who seeks placement assistance;

(f) The placement assistance furnished by either respondent is free or without cost; or misrepresenting, orally, in writing, or in any manner, the cost of any placement assistance or service;

(g) Any graduate of any course of instruction offered by either respondent is assured of employment in any position for which training has been offered; or misrepresenting orally, in writing, or in any manner, the degree of ease or difficulty associated with obtaining employment or the effectiveness of any placement service in obtaining employment for either respondent's graduates;

(h) Any person engaged in connection with the promotion, offering for sale, sale, distribution or other marketing function for any course of instruction is a vocational counselor or is in any position not associated with marketing such course of instruction; or misrepresenting orally, in writing, or in any manner, the manner of compensation, training, experience, title, status, qualifications, or functions of any such person so engaged; or misrepresenting in any manner the nature of the relationship between anyone associated with the marketing of any course of instruction and any prospective student of such course of instruction.

II

It is further ordered that, if the provisions of Sections 438.4 through 438.6 of the Commission's Trade Regulation Rule for Proprietary Vocational and Home Study Schools (16 CFR § 438 (1979)), pertaining to "Cancellation and Refund Procedures After Cooling-Off Period" are not effective when this Order becomes effective, or are subsequently set aside or otherwise annulled by any court of law or Congressional Act, those provisions, as set forth in Appendix A,[1] shall immediately be incorporated into this Order. Additionally, if the provisions of § 438.3(f) of the Rule are not effective when this Order becomes effective, or are subsequently set aside or otherwise annulled by any court of law or Act of Congress, those provisions, as also set forth in Appendix A, shall immediately be incorporated into this Order but only to the extent that the Section applies to express jobs or earnings claims. The foregoing provisions will remain a part of this Order only for such periods as they, or any requirements which pertain to refunds in the event of cancellation after cooling-off, are not part of any Trade Regulation Rule which may be in effect thereafter. With the exception of the definition of "course" (§ 438.1(c)), all definitions in the Rule necessary to carry out the purpose of the provisions above will be incorporated into the Order in the same manner as set forth above. The requirements of this Part shall be subject to, and governed by, the understandings expressed in Appendix B attached hereto.

III

It is further ordered that: 1. Each respondent shall agree, in writing, in any enrollment contract, or other agreement to furnish educational instruction services, with each enrollee in each course covered by this Order, to and shall:

A. Provide each such enrollee with the right to request, at any time during the period beginning with the date of enrollment and ending ninety (90) days following such enrollee's disenrollment, termination, or graduation from such course of instruction, informal resolution of a claim, filed in the form of a completed, signed Student Complaint Questionnaire, a blank copy of which is attached hereto as Appendix C,[2] which questionnaire must be received by respondent at the address designated on the Questionnaire within such ninety (90) day period, when:

(i) Such claim is based upon an alleged representation or promise, either express or implied, made by a representative of such respondent in connection with such enrollee's enrollment, which representation or promise was allegedly a significant factor in leading such enrollee to enroll in such course of instruction; and

(ii) Such representation or promise allegedly was not fulfilled by such respondent and allegedly resulted in a serious diminution of a significant value or benefit of such course of instruction to such enrollee.

B. Arbitrate, at the election and upon the demand of such enrollee, such claim under the supervision of the American Arbitration Association and in accordance with and subject to the Rules and Procedures for Arbitration, and to the extent not inconsistent therewith, the Rules of the American Arbitration Association, as may be

[1] See 43 FR 60617 (December 28, 1978).

[2] Not reproduced herein for reasons of economy. Copies filed with the original document.

amended from time to time, both attached hereto as Appendix D[2] under the circumstances and subject to the conditions set forth therein;

C. Provide the right, in the event such arbitration results in an award favorable to such enrollee, to have judgment entered upon such award by any court of competent jurisdiction, subject to the right of judicial review.

2. Contemporaneous with the making of the agreement required by Paragraph 1 of this Part of this Order, each respondent shall provide each enrollee in any course described in said Paragraph 1 with the following information in a complete, clear and concise manner (a copy of the document containing such information is attached hereto as Appendix E[2]):

(i) the method for initiating the complaint resolution procedures described in Paragraphs 1 and 3 of this Part of this Order;

(ii) the cost and consequences of such complaint resolution procedures;

(iii) the designation of the location where the "Student Complaint Questionnaire" form, described in said Paragraph 3, may be obtained;

(iv) the name and mailing address of the person or persons designated by such respondent to receive such completed, signed Questionnaire;

(v) the instruction that any Questionnaire submitted to such designee or any acceptance of alternative or partial relief should be submitted, via certified mail, return receipt requested, to provide such enrollee with a record of the date such correspondence was received by such designee; and

(vi) the complete text of the Rules and Procedures for Arbitration, and to the extent not inconsistent therewith, the Rules of the American Arbitration Association, as may be amended from time to time, both attached hereto as Appendix D.

3. A. Each respondent shall (i) provide, upon request, such Student Complaint Questionnaire to any enrollee in any course of instruction described in Paragraph 1 of this Part of this Order and (ii) make available for such enrollee's inspection and copying the isntructions and explanation, attached hereto as Appendix E, and a copy of the Rules and Procedures for Arbitration, and to the extent not inconsistent therewith, the Rules of the American Arbitration Association, as may be amended from time to time, both attached hereto as Appendix D, at a designated, accessible location at each of their educational facilities offering any such course of instruction.

B. In the event a designated representative of either respondent receives a completed, signed Questionnaire from any such enrollee, such respondent shall, within five (5) business days following such designee's receipt of such Questionnaire, mail a written acknowledgment of receipt to such enrollee stating the date on which such Questionnaire was received.

C. Within thirty (30) days of said designee's receipt of a completed, signed Questionnaire, such respondent shall elect to grant and/or deny in whole or in part the relief requested by such enrollee and shall mail to such enrollee a written statement of its decision. In the event said decision denies the relief requested, either in whole or in part, and/or offers a form of relief other than that requested, said written statement shall also include a brief statement of the reasons for such denial and/or offer of alternative relief. In the event such respondent elects to grant part of the requested relief or a form of relief other than that requested, such respondent shall grant such enrollee at least fifteen (15) days within which to place in the mail written notification of his or her acceptance of such proffered relief in full satisfaction of such enrollee's claim, and shall so inform such enrollee.

D. In the event such respondent elects to grant all of the relief requested by such enrollee, such respondent shall effect the granting or, as the facts require, commence the granting of such relief within forty-five (45) days of its designee's receipt of the completed, signed Questionnaire. In the event such enrollee elects to accept partial or alternative relief, such respondent shall effect or, as the facts require, commence the granting of such relief within fifteen (15) days of receipt of such enrollee's acceptance of such relief.

4. Neither respondent shall fail to: A. Within the time periods provided in this Part of this Order, make refund, effect cancellation of future monetary obligation(s), or provide such other relief as such respondent may offer and which the enrollee accepts:

(i) to any enrollee who complies with the procedures for filing a claim as set forth in this Part, and to whom such respondent agrees to provide relief; or

(ii) to any student who invokes arbitration pursuant to this Order, and who receives an award pursuant thereto which is not moved for judicial review by either party within the time limit prescribed by applicable state law; or

B. Adhere to the Rules and Procedures for Arbitration, and to the extent not inconsistent therewith, the Rules of the American Arbitration Association, as may be amended from time to time, both attached hereto as Appendix D, which are incorporated by reference within the terms of this Order.

C. Create and maintain, for a period ending three (3) years after the use of the enrollment contract or agreement described below is terminated, or after an enrollee executes a document acknowledging receipt of the instructions and explanation described below, and during such time period make available for inspection and copying by Commission staff members upon reasonable notice and during regular business hours, and after compliance with any federal law concerning the privacy or confidentiality of student records when applicable and necessary to do so:

(i) a copy of each different form of enrollment contract, or other agreement to furnish educational instruction services for each course covered by Parts I and II of this Order;

(ii) a copy of each different document containing any information incorporated by reference in such contract or agreement pertaining to the requirements of this Part of this Order; and

(iii) for each enrollee in each such course of instruction, a copy of the document executed by such enrollee at the time of enrollment acknowledging receipt of the instructions and explanation, described in Paragraph 2 of Part III of this Order and attached as Appendix E, for initiating the complaint resolution procedures set forth in this Part of this Order.

D. Create for each enrollee who has initiated the complaint resolution procedures set forth in this Part of this Order each adequate record described below, where applicable to fully document each action taken in such complaint resolution procedure, and maintain such records for a period of three (3) years after the last action taken in connection with such enrollee's initiation of such procedures, and within said time period make each such record available for inspection and copying by Commission staff members upon reasonable notice and during regular business hours and after compliance with any federal law concerning the privacy or confidentiality of student records, when applicable and necessary to do so:

(i) which reveal the full and complete content of: (a) the completed, signed Student Complaint Questionnaire submitted by such enrollee to either respondent as described in Paragraph 3.B. of this Part of this Order, and

(b) each item of correspondence required or described in this Part of this Order respecting such Questionnaire,

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and which reveal the dates each such item of correspondence was mailed and/or received, as required by this Part of this Order;

(ii) which demonstrate that any relief granted in connection with such Questionnaire pursuant to Paragraph 3.D. of this Part of the Order was effected or commenced within the time periods prescribed in said Paragraph;

(iii) which reveal the full and complete content of the notice of initiation of arbitration proceedings by such enrollee pursuant to this Part of this Order, received by such respondent from the American Arbitration Association, including full and complete content of the copy of the Student Complaint Questionnaire submitted by such enrollee to initiate arbitration and of all documents attached thereto;

(iv) which reveal the full and complete content of each document submitted to the arbitrator by such respondent in connection with such arbitration proceeding and, when a copy is provided to such respondent, each document submitted by such enrollee to the arbitrator in connection with such arbitration proceeding;

(v) which reveal the full and complete content of the written award of the arbitrator concluding such arbitration proceeding, including any simple statement of reasons accompanying such award;

(vi) which reveal the full and complete content of each petition filed by such respondent or such enrollee to have such award reviewed by any court of competent jurisdiction, and the final decision of such court in disposition of such petition; and

(vii) which demonstrate that such respondent has timely effected the granting of the relief awarded to such enrollee by the arbitrator in such arbitration proceeding.

IV

1. *It is further ordered that:* (a) Respondents herein deliver a copy of this Decision and Order to each of their present and future franchisees, licensees, employees, sales representatives, agents, solicitors, independent contractors and any other person who promotes, offers for sale, sells or distributes any course of instruction included within the scope of this Order, provided, however, that respondents shall have no obligation to deliver a copy of this Decision and Order to:

(i) Any public or non-profit, degree-granting educational institution; any professional or trade association; any federal, state or local governmental agency; or any employer when and to the extent that a course is offered or sold to employers for the use of employees or their families; or

(ii) Any person or entity whose sales, marketing, advertising and promotional practices are not directed, controlled or approved by either respondent or subject to either respondent's direction, control, or approval; or

(iii) Any person or entity that does not receive any sales, marketing, advertising or promotional advice, instrumentalities, training or materials from either respondent, directly or indirectly, *excepting* sales, marketing, advertising and promotional advice, instrumentalities, training and materials solely relating to and concerning (A) the technical aspects, features, characteristics or properties of any equipment, including any programing materials, received from either respondent, or (B) the content, organization or educational purpose (other than achieving or obtaining employment) of any course of instruction, including any tests or other similar teaching or educational materials, received from either respondent;

provided, further, however, and notwithstanding the foregoing exemptions, that respondents shall deliver a copy of this Decision and Order to:

(i) Any person or entity, other than those referenced in subparagraph 1(a)(i) above, that either respondent licenses to use any of the names Control Data Corporation, Control Data, Control Data Institute, or Automation Institute, or any other name either respondent may designate its corporate entity or any franchised educational facility offering a course of study, training, or instruction, as all or part of the name of such person's or entity's educational institution; or

(ii) Any person, or any entity formed by any such person or persons, who purchases any of respondents' Control Data Institutes, Automation Institutes or any other facility offering any course covered by Parts I and II of this Order, and who prior to such purchase was engaged as an employee or agent of either respondent in managing, controlling, administering, or in selling, marketing, advertising, or promoting for the headquarters management or any facility of Control Data Institute or Automation Institute.

(b) Respondents herein provide each person or entity not exempted from subparagraph (a) of this Paragraph with a form statement, a copy of which shall be signed by such person or on behalf of such entity and returned to respondents, clearly stating their intention to be bound by and to conform their business practices to the requirements of this Order; retain such statement during the period such person or entity is so engaged; and, upon reasonable notice and during regular business hours, make such statement available to the Commission's staff for inspection and copying;

(c) Respondents herein inform each of the persons or entities subject to subparagraph (a) of this Paragraph that respondents will not use or engage or will terminate the use or engagement of the services relating to matters within the scope of this Order of any such person or entity unless such person or entity agrees to and does file notice with respondents that they will be bound by the provisions contained in this Order;

(d) If any person or entity subject to subparagraph (a) of this Paragraph fails to agree to file the form provided for in subparagraph (b) of this Paragraph with respondents and be bound by the provisions of this order, respondents shall not use or engage, or continue the use or engagement of, said person or entity to promote, offer for sale, sell or distribute any course of instruction included with the scope of this Order;

(e) Respondents herein inform each of the persons or entities subject to subparagraph (a) of this Paragraph that respondents are obligated by this Order to discontinue dealing with or to terminate the use or engagement of persons or entities, to provide, offer for sale, sell or distribute any course of instruction within the scope of this Order, who continue the use of any deceptive acts or practices prohibited by this Order;

(f) Respondents herein institute a program of continuing surveillance designed to reveal whether the business practices of each such person or entity subject to subparagraph (a) of this Paragraph conform to the requirements of this Order; and

(g) Respondents herein discontinue dealing with or terminate the use or engagement of any person or entity subject to subparagraph (a) of this Paragraph, to promote, offer for sale, sell or distribute any course of instruction within the scope of this Order, as revealed by the aforesaid program of surveillance, who continues any act or practice prohibited by this Order.

2. It is further ordered that respondents, in connection with the advertising, promotion, offer for sale, sale or distribution of any course of study, training or instruction:

(a) provide each of their sales representatives with a name plate clearly and conspicuously bearing the sales representative's name and legend "Sales Representative," and place said name plate in each such sales representative's office in a conspicuous manner so that it will be clearly visible to any applicant communicating with such sales representative; and

(b) present to each applicant or prospective student, immediately prior to the commencement of the initial interview or sales presentation with any sales representative of either respondent during which the purchase of or enrollment in any such course of instruction offered by either respondent is discussed, a business card containing, in a clear and conspicuous manner, located in the approximate center of said card, in eleven-point type of the same style and in the same color ink, the following information and none other:

(i) the name of the sales representative; and

(ii) the designation, "Sales Representative,"

except that such card may also contain in the approximate lower half of such card, the logo-type of the appropriate respondent and, in not more than eight-point type, the name of such respondent and the name, address and telephone number of the educational facility.

3. *It is further ordered* that Part I of this Order shall become effective immediately upon this Order becoming final; and that all other parts of this Order shall become effective 90 days after this Order becomes final.

4. *It is further ordered* that the respondents shall forthwith distribute a copy of this Order to each of their domestic operating divisions.

5. *It is further ordered* that the respondents notify the Commission at least thirty (30) days prior to any proposed change in either of the corporate respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the respondents which may affect compliance obligations arising out of this Order.

6. *It is further ordered* that, in addition to all other reports required by this Order, the respondents, within sixty (60) days after service upon them of this Order, shall file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Control Data Corp., et al. (Docket No. 8940)

Analysis of Provisionally Accepted Consent Order To Aid Public Comment

The Complaint was issued on October 3, 1973 against Control Data Corporation and its wholy-owned subsidiary, Automation Institute of America, Inc., both located at 8100 34th Ave., South Bloomington, Minnesota. The matter was withdrawn from adjudication for the purpose of allowing the Commission to consider an Order to Cease and Desist which was offered by the parties in the settlement of the case. After additional negotiation, the Commission has considered an Agreement and has provisionally accepted it.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period become part of the public record. After sixty (60) days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Agreement's proposed Order.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the proposed Agreement and Order or to modify in any way their terms.

Allegations in the Complaint

The Complaint alleges that in 1969 through 1971 respondents represented, contrary to fact, through advertising and/or by the statements of sales personnel:

That there is an urgent need or demand for respondents' graduates in positions for which respondents trained them, and that respondents had a reasonable basis for such representation;

That all or substantially all of respondents' graduates are able to secure positions for which respondents trained them;

That respondents has a reasonable basis to conclude that a substantial number of respondents' graduates would be hired by certain industrial corporations and government agencies;

That a college education is not necessary or advantageous for placement of respondents' graduates in positions for which they were trained;

That the position of systems analyst is an entry-level employment objective of respondents' course of instruction;

That the only thing necessary for placement of respondents' graduates as programmers in scientific applications is the completion of respondents' course of instruction in computer programming;

That respondents' entrance examination tests determine whether a person has the aptitude to sucessfully work as a programmer or a technician;

That respondents have a reasonable basis to conclude that persons who take respondents' aptitude tests fail to qualify or show less aptitude for respondents' courses of instruction than the particular applicant being tested;

That respondents have a reasonable basis to conclude that a substantial percentage of persons graduating from respondents' courses earn twice as much as they were earning when they enrolled in respondents' courses;

That respondents have a reasonable basis to conclude that a substantial percentage of persons graduating from respondents' courses earn salaries that match or exceed the salaries of college graduates; and

That the placement service furnished by respondents is free.

The Complaint further alleges that respondents have held out commissioned sales persons to be qualified or trained vocational counselors. The Complaint also alleges that respondents have used misleading course names and descriptions. The Complaint further alleges that respondents have offered their courses of instruction without disclosing the following material facts: placement of graduates, identifies of employers hiring such graduates, intital salaries earned by such graduates and attrition rates for courses of instruction.

The complaint further alleges that respondents' failure to disclose material facts and the use of unfair or deceptive acts and practices have caused persons to enroll in courses of instruction whose value to such persons for future employment was virtually worthless.

Proposed Consent Agreement

This order applies to entry-level courses of vocational instruction, i.e. courses designed to prepare persons for positions of employment where they do not have prior training or experience.

Part I

Part I of the Consent Agreement contains provisions regulating the use of the representations alleged in the Complaint to be false, misleading and deceptive. Paragraph 1, subparagraphs (a)–(i) restricts the manner in which respondents may make certain representations to the public. Respondents must cease and desist from representing, directly or by implication, that:

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College, advanced training or other prerequisites are not advantageous when, in fact, they are;

An aptitude test determines a person's potential for achievement when this is not the case;

Most people who take a similar aptitude test score lower than the particular applicant, when such is not the case;

Systems analysis is an entry-level employment objective of any course of instruction offered by respondents, unless this is the case, or otherwise misrepresent the extent or nature of a graduate's qualifications for achieving employment in the field of study;

Graduates do not need to seek employment assistance by any other means than the school's placement service, or misrepresent the extent or nature of placement assistance provided;

The placement assistance is without cost, when this is not the case;

Graduates are assured of employment, when such is not the case, or

A person offering courses for sale is anything other than a person offering courses for sale.

Part II

Part II of the Consent Agreement automatically incorporates the pro rata refund provision and the requirement for prior substantiation of job demand claims contained in the 1978 Vocational School Trade Regulation Rule when the rule is not in effect. All provisions of this proposed rule pertaining to cancellation and refund procedures after the cooling-off period are therefore incorporated into this order regardless of whether the rule, in whole or in part, becomes effective. Under this part, respondents will be bound to calculate the obligation of a student who drops out of a course on a strict pro rata basis. This means that the student only has to pay for that part of the course which came before he or she dropped out.

Part III

Part III of the Consent Agreement includes dispute resolution and arbitration procedures. This part invests in enrollees the right to request informal resolution of claims from the date of enrollment to ninety days after graduation or termination.

Complaints for which a student may follow this course of action include claims based upon express or implied promises or representations used to induce students to enroll which were not fulfilled.

Paragraph 2 of this part further obligates respondents to arbitrate if requested by the enrollee. Information on procedures for initiating complaints and related costs must be provided by respondents to all enrollees.

Paragraph 3 further outlines respondents' responsibilities to make information available, acknowledge receipt of complaints, make timely decisions as to the relief requested and notify the enrollee promptly of the decision.

Under Paragraph 4 respondents must provide the relief agreed upon and must adhere to the dispute resolution procedures described. Respondents must also keep records documenting each action taken according to these complaint resolution procedures.

Part IV

This part contains the compliance provision of the consent agreement.

Paragraph 1 orders respondents to deliver copies of the consent agreement to present and future franchisees, other employees and to other parties related to respondents' business, as detailed in this Part.

Paragraph 2 orders that sales representatives be conspicuously represented as such, partially through display of name plates and business cards which bear the designation, "Sales Representative."

Paragraph 3 makes Part I of the Order effective upon becoming final and makes the entire order final 90 days thereafter.

Paragraph 4 orders respondents to distribute a copy of this Order to each of their domestic operating divisions.

Paragraph 5 requires respondents to notify the Commission 30 days prior to corporate changes such as dissolution, creation of subsidiaries, or other changes in corporate status which may affect compliance with this Order.

Finally, Paragraph 6 requires that within 60 days after service respondents must file a report detailing the manner and form of their compliance.

Carol M. Thomas,

Secretary.

Appendix A

Note.—Appendix A filed as part of the original document.

Appendix B

The Consent Order to which this Appendix B is attached has been entered into in reliance on, and shall be governed by, the following understandings:

(1) References in the provisions of the Trade Regulation Rule incorporated in Part II (or in the mandated notices or contractual provisions they prescribe) to cooling-off requirements, to disclosure requirements, or to other requirements contained in other sections of the Trade Regulation Rule not incorporated in Part II, shall not be deemed to impose by implication or otherwise any obligations on Control Data Corporation or Automation Institute of America, Inc.

(2) Control Data offers a number of courses which are described in terms of number of hours the average student takes to complete the course. Pro rata refunds for such courses will be calculated on the basis of such numbers of hours. When a student completes all the academic requirements of the course in fewer than such hours, no pro rata refund will be required.

(3) The constructive notice provisions of the Trade Regulation Rule, as incorporated in the Consent Order, are not intended to limit or preempt school academic requirements. Thus, a student absent without excuse or permission for five consecutive days could be, under applicable school rules, no longer in good standing, and readmission would not be required.

(4) The notice requirement of § 438.6 of the Trade Regulation Rule, as incorporated in the Consent Order, is satisfied by the mailing of a copy of the contract containing the cancellation provisions prescribed by § 438.5.

Appendix C

Appendix D

Appendix E

Note.—Appendices C, D, and E are filed as part of the original document.

[FR Doc. 80-32783 Filed 10-20-80; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33-6247, File No. S7-857]

Exemption From Registration of Interests and Participations in Certain H.R. 10 Plans

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to adopt a rule that would provide an exemption from the registration requirements of the Securities Act of 1933 for interests and participations issued in connection with the tax-qualified retirement plans commonly called "H.R. 10" plans of certain partnerships that meet the criteria set forth in the proposed rule. Because H.R. 10 plans are not entitled to the exemption from registration available to the tax-qualified retirement plans of certain employers, many such plans have applied for and received exemptions from such registration requirements. The proposed rule, if adopted, would obviate the need for such applications for H.R. plans that meet the criteria set forth in the rule.

DATE: Comments should be submitted on or before December 15, 1980.

ADDRESSES: Persons wishing to submit written comments should file 10 copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C., 20549. All submissions should refer to File No. S7-857 and will be available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mary A. Cole, (202) 272-2057, Office of Compliance and Insurance Products, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is publishing for comment Proposed Rule 180 (17 CFR 230.180) under the Securities Act of 1933 (the "Act") (15 U.S.C. 77a-77aa). Proposed Rule 180, if adopted, would provide an exemption from the registration requirements of Section 5 of the Act (15 U.S.C. 77e) for interests and participations issued in connection with the H.R. 10 plans of partnerships that meet certain criteria.

Background

Section 3(a)(2) of the Act (15 U.S.C. 77c(a)(2)) provides an exemption from the registration requirements of the Act for interests and participations issued in connection with certain employee benefit plans qualified under Section 401 of the Internal Revenue Code (the "Code"). However, the exemption does not apply to plans that cover self-employed persons as defined in Section 401(c)(1) of the Code. Plans covering such self-employed persons are generally referred to as "Keog" or "H.R. 10" plans. Plans of partnerships are generally H.R. 10 plans since partners are self-employed persons within the meaning of Section 401(c)(1). Section 3(a)(2) of the Act provides, however, that the Commission may exempt from the provisions of Section 5 of the Act, by rule, regulation or order, any interest or participation issued in connection with a pension or profit-sharing plan that covers such self-employed persons, if and to the extent that the Commission determines this to be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. The Commission itself has exercised its exemptive authority with respect to such plans five times, granting orders of exemption to three law firms, an accounting firm, and an investment banking firm, each of which is organized as a partnership. Under a grant of delegated authority, the Commission's Division of Investment Management (the "Division") has issued to approximately 70 large partnerships, mostly law firms, orders of exemption from Section 5 of the Act for interests or participations in their pension or profit-sharing plans. If the proposed rule is adopted, the need for such applications should be greatly reduced.

Summary of the Proposed Rule

The proposed rule is divided into two parts. Part (a) deals with the participation interests of plans in the collective investment vehicles in which such plans invest their assets, and part (b) deals with the participation interests of employees in their respective plans.[1]

Paragraph (a) of Proposed Rule 180 would exempt interests or participations in certain investment media sold to H.R. 10 plans where: (1) The plan covers employees of a single employer or is a single plan covering employees of interrelated partnerships; and (2) either (i) the employer is a financially sophisticated law firm, accounting firm or investment banking firm, or (ii) the employer has secured independent expert advice in connection with its plan.[2] The investment media covered by paragraph (a) are: (1) Any single trust; (2) a collective trust fund maintained by a bank; and (3) a separate account maintained by an insurance company.[3]

Paragraph (b) of Proposed Rule 180 would exempt any interest or participation in an H.R. 10 plan if the assets of such plan are invested in a single trust, a collective trust fund maintained by a bank, separate account maintained by an insurance company, or in an annuity contract funded through the general account of an insurance company. The H.R. 10 plan would be entitled to the exemption provided for in paragraph (b) only if interests or participations in the funding media in which the plan invests are exempt from the registration requirements of the Act pursuant to paragraph (a) of Proposed Rule 180 or any other rule, regulation or provision of the Act or if such interests or participations are registered under the Act.

Discussion of Proposed Rule 180

Two Interests Exempted

The proposed rule recognizes that two securities are created when a plan invests in a trust or separate account. These are the interest of the beneficiary in the plan and the interest of the plan in the trust or separate account in which plan assets are invested.

Over the past four years, the Commission and, pursuant to delegated authority, the Division have granted exemptive relief under Section 3(a)(2) to such plans for interests in the plans. Typically, applications for orders under Section 3(a)(2) are filed on behalf of the plans themselves and not on behalf of the underlying funding media.

In order to resolve any uncertainty regarding the status of either interests or participations in plans or interests of plans in funding media, the proposed rule exempts both from the Section 5 registration requirements. The Commission believes that the language of the statute is broad enough to authorize it to adopt a rule recognizing that two securities are created, and providing means for exempting both.[4]

Funding Media

Section 3(a)(2) of the Act exempts "any interest or participation in a single or collective trust fund maintained by a bank." The language makes it unclear whether a single trust must be maintained by a bank in order for the exemption to be available. However, the legislative history makes clear that Congress intended, in drafting this section, to conform it in all material respects to Section 3(c)(11) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(11)). Since that provision clearly exempts single trusts whether or not maintained by a bank, the

[1] A bill recently passed by Congress (H.R. 7554, 96th Cong. 2d Sess., § 701, 126 Cong. Rec. 10207, October 1, 1980) would amend Section 3(a)(2) of the Act in several respects. If the bill is enacted into law, the Commission will amend Proposed Rule 180 to reflect the changes in Section 3(a)(2).

[2] The Commission understands that, since most, if not all, H.R. 10 plans are covered by the Employee Retirement Income Security Act of 1974 ("ERISA"), the reporting and disclosure requirements and fiduciary standards thereof will provide a partial substitute for the protections registration under the Act would provide.

[3] H.R. 7554 referred to in Footnote 1 would amend Section 3(a)(2) of the Act to make the exemption available to insurance company general account contracts.

[4] Specifically, the applicable language of Section 3(a)(2) reads:

"The Commission, by rules, regulations or order, shall exempt from the provisions of Section 5 of this title any interest or participation issued in connection with a pension, profit-sharing, or annuity plan * * *"

In this connection, see Securities Act Release No. 6188 (February 1, 1980) published in the Federal Register at 45 FR 8960 (Feb. 11, 1980), in which the Commission's Division of Corporation Finance expressed the view that two securities are issued in connection with H.R. 10 plans.

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Commission has interpreted Section 3(a)(2) as not requiring that a single trust be maintained by a bank. The Commission believes it desirable that Proposed Rule 180 leave no doubt on the issue; therefore, the proposed rule applies to "(a)ny interest or participation in a single trust or in a collective trust fund maintained by a bank * * *."[5]

Single Plan

The legislative history of Section 3(a)(2) of the Act indicates that, in excluding interests in H.R. 10 plans from the exemption from registration provided by that provision, Congress was primarily concerned with interests in collective investment vehicles for the assets of H.R. 10 plans of more than one employer.[6] The concern was that sponsoring financial institutions would mass market their products to numerous unrelated self-employed persons for whom such prototype plans might not be suitable. Recognizing this concern, the Commission has included in the proposed rule a condition that the plan cover employees of a single employer. However, the proposed rule treats the plans of interrelated partnerships as plans of single employers. The Commission has granted exemptive orders under Section 3(a)(2) to several partnerships which encompass individual offices in various cities because they do not appear to present the risks with which Congress was concerned.

Financial Sophisticotion

Subsection (a)(2) of the proposed rule sets as a condition for exemption either that the employer be a "law firm, accounting firm or investment banking firm that is engaged in furnishing services of a type that involves such knowledge and experience in financial and business matters that the employer is able to represent adequately its interests and those of its employees," or that the employer obtain "the advice of an expert that (A) is not affilitated directly or indirectly with the employer and (B) is, by virtue of its knowledge and experience in financial and business matters, able to represent adequately the interests of the employer and its employees."

Congress gave a statutory exemption from Securities Act registration with respect to certain types of qualified plans, but left it to the Commission to determine whether, and to what extent, to exempt H.R. 10 plans. The legislative history indicates that H.R. 10 plans were not exempted automatically "because of their fairly complex nature as an equity investment and because of the likelihood that they could be sold to self-employed persons, unsophisticated in the securities field."[7] Accordingly, in processing applications with respect to H.R. 10 plans, the Commission and the Division have sought assurance that applicants were sufficiently sophisticated to be able to protect adequately their interests and those of their employees or that they received the advice of experts who were financially sophisticated. In practice, the bulk of the applications filed for exemptive orders have involved law firms, accounting firms, and investment banking firms where the plans cover principals of the partnerships who are professionals offering legal or financial services which necessarily involve financially sophisticated and complex matters and which plans, therefore, do not appear to present the risks with which Congress was concerned. In addition, an exemptive order has been granted to another type of partnership that secured the advice of an independent expert.[8]

The proposed rule is intended to codify the Commission's administrative experience and, therefore, is drafted to cover those types of entities with respect to which exemptions have been granted: Law firms, accounting firms, investment banking firms, and other firms which rely on independent experts. The substantive requirement of knowledge and experience in financial and business matters sufficient to enable adequate representation of the interests of plan participants addresses the concerns of Congress as indicated in the legislative history. That standard is similar to that which Rule 146 under the Act (17 CFR 230.146) establishes with respect to offerees and offeree representatives.

Text of Proposed Rule 180

Part 230 of Chapter II of Title 17 of the Code of Federal Regulations is proposed to be amended by adding § 230.180 to read as follows:

§ 230.180 Exemption from registration of interests and participations in certain H.R. 10 plans.

(a) Any interest or participation in a single trust or in a collective trust fund maintained by a bank or in a separate account maintained by an insurance company, issued in connection with a pension or profit-sharing plan that meets the requirements for qualification under Section 401 of the Internal Revenue Code of 1954 or an annuity plan that meets the requirements for the deduction of the employer's contribution under section 404(1)(2) of such Code, which plan covers employees, some or all of whom are employees within the meaning of section 401(c) of such Code, shall be exempt from the provisions of section 5 of such Act if each of the following terms and conditions is met:

(1) The plan covers employees of a single employer or the plan is a single plan covering employees of interrelated partnerships;

(2)(i) the employer is a law firm, accounting firm or investment banking firm that is engaged in furnishing services of a type that involves such knowledge and experience in financial and business matters that the employer is able to represent adequately its interests and those of its employees; or (ii) in connection with the plan, the employer has obtained the advice of an expert that (A) is not affiliated directly or indirectly with the employer and (B) is, by virtue of its knowledge and experience in financial and business matters, able to represent adequately the interests of the employer and its employees.

(b) Any interest or participation in a pension or profitsharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954 which covers employees, some or all of whom are employees within the meaning of section 401(c)(1) of such Code, shall be exempt from the provisions of section 5 of the Act if all the assets of the plan are held in a single trust, in a collective trust fund maintained by a bank, in a separate account maintained by an insurance company or by a life insurance company under an annuity contract issued to the plan or its trustee, *Provided*, That the interests or participations held by the plan in each of the said issuers are either registered under section 5 of the Act or exempt from the provisions of said section 5 under paragraph (a) of this section or by statute or other rule or regulation.

Statutory basis: Rule 180 is proposed pursuant to the provisions of section 3(a)(2) (15 U.S.C. 77c(a)(2) of the Act.

[5] H.R. 7554 referred to in Footnote 1 would amend Section 3(a)(2) of the Act to make clear that the exemption is available to single trust funds whether or not maintained by a bank.

[6] S. Rep. No. 194, 91st Cong., 2d Sess. 27–28 (1970); H.R. Rep. No. 1382, 91st Cong., 2d Sess. 44 (1970).

[7] S. Rep. No. 194, 91st Cong., 2d Sess. 27–28 (1970); H.R. Rep. No. 1382, 91st Cong., 2d Sess. 44 (1970).

[8] Monroe Clinic Employees' Retirement Plan, Securities Act Release No. 6174 (January 9, 1980) published in the SEC Docket, Vol. 19, No. 3 (January 22, 1980) p. 142.

By the Commission.
October 14, 1980.
George A. Fitzsimmons,
Secretary.
[FR Doc. 80-32694 Filed 10-20-80; 8:45 am]
BILLING CODE 8010-01-M

17 CFR Part 270

[Release No. IC-11391, File No. S7-854]

Individualized Investment Management Services

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The commission proposes to adopt a rule under the Investment Company Act of 1940 which would deem investment management services which provide their clients with individualized treatment not to be investment companies. The proposed rule would provide a "safe habor" for any investment manager affording its clients individualized treatment. Under such circumstances, regulation of investment management services under the Investment Company Act of 1940 would appear to be unnecessary.

DATE: Comments must be received by January 9, 1981.

ADDRESSES: Send comments in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. (Refer to File No. S7–854.) All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Arthur J. Brown, Special Counsel, (202) 272–2048, or Mark J. Mackey, Esq., Investment Company Act Study Group, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, (202) 272–3041.

SUPPLEMENTARY INFORMATION: The Commission today proposed for public comment a new rule 3a–4 (17 CFR 270.3a–4) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) ("Act"), concerning individualized investment management services. The proposed rule was developed by the Division of Investment Management's Investment Company Act Study Group in the context of its re-examination of the regulation of investment companies.

Background

In 1970, the Commission instituted an injunctive action against First National City Bank's ("FNCB") Special Investment Advisory Service ("SIAS"). The SIAS arrangement involved discretionary accounts managed so that clients who shared the same general investment objective received substantially the same investment advice. Although each client had his own account with the broker used by SIAS and each owned specified securities, the Commission alleged that SIAS was an investment company within the meaning of section 3(a) of the Act, and that participations in the arrangements were securities required to be registered under the Securities Act of 1933 (15 U.S.C. 77a et seq.) ("Securities Act").[1]

Subsequently, in response to no-action requests, the Commission's staff took the position that registration under the Act would be required if an investment adviser provided substantially the same or substantially overlapping advice, on a discretionary basis, to each account or to a discernible group of accounts.[2] This position was taken generally in connection with the offering of small account investment management services which had been made economically feasible through the increased use of computers, and reflected the staff's concern that computer systems not be used to facilitate the operation of small account investment management services in a manner that would make them the functional equivalent of investment companies without providing the investor protections afforded by the Act.

As a result of these developments, the Advisory Committee on Investment Management Services for Individual Investors ("Advisory Committee") was formed to assist the Commission in developing clearer policies and guidelines.[3] The Advisory Committee identified the significant distinctions between individualized and non-individualized services. It concluded that the promotion and operation of a discretionary investment management service may involve a public offering of securities which should be registered under the Securities Act if the service generally solicits clients and gives substantially the same advice to all clients.[4] However, the Advisory Committee also concluded that registration under the Securities Act should not be considered necessary when investment management services are individualized. It was the Advisory Committee's view that "a client of an investment manager who receives the full complement of fiduciary attention and protection does not need the protection of a Securities Act prospectus."[5] However, with respect to the Act, it was the Advisory Committee's view that, whether or not individualization is afforded, an investment company is not created where clients retain all the incidents of ownership of the securities in their portfolios, and there is thus no pooling of assets in the conventional sense.[6]

[1] See SEC v. First National City Bank, SEC Litigation Release No. 4534 (Feb. 6, 1970). FNCB agreed to a stipulation and consent order providing for the discontinuance of SIAS, but it was permitted to operate a non-discretionary service for small investors who could select from among three or more brokers to carry their accounts rather than be limited to a single specified broker.

[2] Wheat & Co., Inc., (1971–1972 Transfer Binder) Fed. Sec. L. Rep. (CCH) ¶78,358; Finanswer America Investment, Inc., (1970–1971 Transfer Binder) Fed. Sec. L. Rep. (CCH) ¶78,111; Jacobs Persinger & Parker, (1970–1971 Transfer Binder) Fed. Sec. L. Rep. (CCH) ¶76,053.

[3] Investment Company Act Release No. 7423 (Oct. 12, 1972). The Advisory Committee's report was published in January 1973.

[4] Advisory Committee Report at 23. In this connection, the Advisory Committee stated:

A service which purports to furnish investment management but does not tailor the advice given to the particular needs of the client creates an impersonal relationship. The fortunes of the client depend on no factors other than the ability of the investment adviser to make a profit. The client stands in substantially the same position as other clients. Such an arrangement is basically an investment in a common enterprise for profit. The person offering such a service is acting as a promoter of discretionary accounts. That situation is in stark contrast to the confidential professional relationship between the investment manager and the client where the manager is furnishing investment advice on the basis of the individual needs of each client.

Advisory Committee Report at 23–24.

[5] Advisory Committee Report at 24. In this connection, the Advisory Committee suggested various criteria to assist in the determination of what constitutes individualized service or advice. It also recommended that clients of those services not subject to Securities Act registration receive an information statement disclosing material facts concerning the service offered.

[6] The Advisory Committee urged that any investor protection problems presented by such non-pooled investment management services be dealt with by appropriate disclosure and other guidelines and rules under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.) ("Advisers Act").

Subsequently, the Commission brought an administrative proceeding against a registered investment adviser for violations of the antifraud provisions of the Advisers Act and the Securities Exchange Act of 1934, alleging that the adviser did not provide its clients with personalized treatment despite representations by the adviser to the contrary. In its offer of settlement, which was accepted by the Commission, the adviser, among other things, agreed to develop standards and procedures designed to assure that each advisory client would receive individualized treatment. Investment Advisers Act Release No. 449 (Mar. 28, 1975). Similarly, the Commission recently censured another registered investment adviser for violation of section 206 of the Advisers Act in an administrative proceeding in which it was alleged that the adviser failed to accurately disclose to its clients the amount of individuelized treatment they would receive, and the extent to which investment decisions for those clients would be based upon "model portfolios." Investment Advisers Act Release No. 658 (Jan. 16, 1979).

Discussion

The Commission is aware that the law is unclear on the issue of whether discretionary advisory arrangements between investors and an investment adviser are securities. This conflict results from differing interpretations afforded the words "common enterprise" which appear in the definition of the term "investment contract" expounded in *SEC* v. *W. J. Howey Co.*[7] Some courts require a pooling of clients' funds in order for a common enterprise, and thus a security, to exist.[8] However, other courts have defined a common enterprise to be "one in which the fortunes of the investor are interwoven with and dependent upon the efforts and success of those seeking the investment or of third parties."[9] The Commission notes that an investment management service operating in a jurisdiction following this latter approach might be held to be an "issuer" of securities, which, in turn, would be an "investment company" if it were found to be engaged primarily in the business of investing and trading in securities.[10] However, faced with an identical factual situation, a court in a jurisdiction which requires a pooling of funds for a common enterprise to exist might arrive at a different conclusion.

On the other hand, in the context of investment management services, a group of advisory accounts under common investment management would appear to satisfy the common enterprise element of the *Howey* test under all the facts and circumstances when they have the following characteristics: First, the advisory accounts are discretionary;[11] second, the investors receive substantially the same or substantially overlapping investment advice; third, the investment advice is not "individualized."[12] An adviser must often provide its clients with nonindividualized advice to make an investment management service economically feasible.

Therefore, an investment management service having those characteristics should be found to be an issuer of securities to its clients which is engaged primarily in the business of investing, reinvesting and trading in securities. Nevertheless, because the law in this area has not yet been fully developed, the Commission does not believe it would be appropriate at this time to adopt a rule defining which investment management services must register as investment companies under the Act.[13] Instead, the Commission has decided to propose a rule which would provide a safe harbor for any investment management service affording its clients individualized treatment. When an investment manager differentiates among its clients based upon their unique goals and needs, the likelihood is substantially reduced of a common enterprise existing *de facto* amongst all investment adviser's clients. In this respect, the economic relationship created is more closely akin to a personal service contract than to a participation in a business venture.[14]

Proposed Rule

The Commission proposes to adopt rule 3a–4 under the Act which would deem an investment management service providing its clients with individualized treatment not to involve the creation of an investment company, notwithstanding that the accounts managed by the service are discretionary and receive substantially the same investment advice.[15] The relief provided by the proposed rule would be available to any investment management service which meets the rule's requirements, regardless of the size of the accounts managed by the service.

The proposed standards of individualization were modeled after, generally, the treatment investment counselors have traditionally provided their clients.[16] Specifically, the proposed rule would require the service to furnish continuous advice as to the investment of funds on the basis of the individual needs of each such client.[17] This requirement would ordinarily entail consideration, before a transaction is effected, of each client's account and his financial and personal data in order to determine whether the transaction

[7] "The test is whether the scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others." 328 U.S. 293, 301 (1946).

[8] See, e.g., *Hirk* v. *Agri-Research Council, Inc.*, 561 F.2d 99 (7th Cir. 1977); *Curran* v. *Merrill Lynch, Pierce, Fenner and Smith, Inc.*, No. 77–1300 (6th Cir. May 12, 1980).

[9] See, e.g., *SEC* v. *Continental Commodities Corp.*, 497 F.2d 516, 522 (5th Cir. 1974).

[10] See section 3(a)(1) of the Act which defines "investment company" as any issuer which is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities; section 2(a)(22) of the Act which defines an "issuer" as every person who issues or proposes to issue any security, or has outstanding any security which it has issued; section 2(a)(28) of the Act which provides that "person" means a natural person or a company; and section 2(a)(8) of the Act which defines "company" to include a corporation, a partnership, an association, a joint stock company, a trust, a fund or any organized group of persons whether incorporated or not. In this regard, the discretionary advisory accounts, taken together, might be "an organized group of persons" and therefore a "company." See *Prudential Insurance Co.* v. *SEC*, 326 F.2d 383 (3d Cir.), cert. denied, 377 U.S. 953 (1964); and *SEC.* v. *First National City Bank*, supra.

[11] As used herein, discretionary accounts refer to all accounts other than those in which the investor both has the authority to accept or reject the investment manager's recommendations, and in fact exercises a judgment with respect to each such recommendation, regardless of whether the arrangement is labelled "discretionary" or "nondiscretionary."

[12] The concept of individualization has a basis in the term "investment supervisory services" which is defined in section 202(a)(13) of the Advisers Act as "the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client." This definition has been interpreted to some extent by Item 1(a) of Form ADV Part II for registration under the Advisers Act, which lists various factors an adviser rendering such services considers in formulating its advice, such as the nature and amount of other assets, investments and insurance, and the nature and extent of the personal and family obligations of each client. It is also relevant that the personal and confidential relationship between an investment manager and his clients was emphasized by members of the industry at the Congressional hearings in 1940. See, e.g., Hearings on S. 3580, Subcomm. on Securities and Exchange, Senate Comm. on Banking and Currency, 76th Cong., 3d Sess., pt. 2 at 713, 719 (1940).

[13] However, the Commission is prepared to take appropriate enforcement action against those investment management services which it believes, under all the facts and circumstances, have created unregistered investment companies within the meaning of the Act.

[14] The Commission is aware that investment management services for large accounts traditionally have been offered to the public without registration under either the Securities Act or the Act, apparently on the basis of their clients receiving individualized treatment and the investment manager being sufficiently aware of each client's needs that he can properly fulfill his fiduciary duties.

[15] In this connection, the Commission's Division of Corporation Finance has indicated that, if the proposed rule were adopted, that Division would take the view that discretionary advisory arrangements meeting the requirements of the rule should not be regarded themselves as securities for purposes of the Securities Act.

[16] The Advisory Committee recommended various criteria to assist in the determination of what constitutes individualized treatment or advice. Among other things, the criteria would include adequate screening by the investment manager of prospective clients to determine whether the service is appropriate for them and to ascertain and suggest reasonable investment objectives for clients. In order to do this, investment managers would have to obtain comprehensive financial and other information from prospective clients and make sure that such information is kept current. The investment manager would be required to give clients reasonable access to information on the status of their accounts and some leeway in excluding certain types of securities from their portfolios (e.g., liquor, drugs and tobacco company stocks). Any across-the-board or other mechanical methods for selection of securities for accounts would be precluded. However, the use of a model portfolio by an investment manager would not be necessarily inconsistent with the rendering of individual treatment, if it is used only as a guide for selecting securities for clients. Advisory Committee Report at 27–32.

[17] Proposed rule 3a–4(a). In this regard, the Commission expects that the client's account would be managed by persons capable of analyzing those individual needs in the context of making the investment decision.

would be appropriate for that particular client.[18]

Since in most cases model portfolios do not take the individual needs and goals of each client into consideration, their use would appear to be presumptively inconsistent with individualized treatment. Similarly, the practice of simply categorizing clients in terms of general investment objectives, and mechanically treating clients within the same category in the same fashion, would also appear to be presumptively inconsistent with individualized treatment. However, the mere existence of portfolio similarities among accounts would not necessarily establish that the investment manager was not rendering investment advice on the basis of the individual needs and goals of each client. In this regard, the Commission is aware that providing dissimilar treatment merely to avoid the appearance of nonindividualized treatment could detract seriously from the quality of investment management by causing possibly unsuitable recommendations to be made to some accounts.

To ensure that the investment manager is in a position to evaluate the portfolios of his clients in light of their changing needs and circumstances, the proposed rule would require a significant amount of contact between the investment manager and his client.[19] Having such contact would not necessarily result in an investment manager providing individualized treatment; that would depend on the actual operation of the investment management service. However, having such contact should enable the investment manager to provide individualized treatment to advisory clients. In this regard, the proposed rule would require the investment manager to provide prospective clients with an initial interview.[20] This interview would give the investment manager an opportunity, among other things, to discuss with the client any financial or other personal information he furnished to the manager in writing, to ascertain the degree of risk the client is willing to take, and to discover other factors which would be difficult to obtain from a written report. Where practical, such an interview should be conducted in person.

Beyond the initial interview, the proposed rule would require that the investment manager interview his clients at least annually, determine at least quarterly whether there have been changes in the client's financial status, and provide the client with a statement of the account on a quarterly basis.[21] Moreover, under the proposed rule, the investment manager would be required to be available on a reasonable basis both for consultation (e.g., if a client needs cash for some purpose, he should be able to obtain the investment manager's recommendation on how to obtain the needed money) and to answer questions from clients who desire explanations concerning the administration of their accounts and their financial situation or investment needs.[22]

Finally, the proposed rule would require that each client of the service maintain to the extent reasonably practicable every indicia of ownership over the funds that the client placed under management, including the right to withdraw, hypothecate, vote or pledge securities[23] and the receipt of a notification (such as a confirmation) of each security transaction for his account.[24] Similarly, the client would have to be given the opportunity and authority to determine whether to refrain from purchasing particular securities otherwise generally purchased by the investment manager.[25]

The Commission is aware that compliance with the proposed standards of individualization might make it difficult to mange profitably accounts below a certain dollar amount. However, in view of the wide variations in efficiency among investment management service, the Commission does not propose to specify a minimum account size which must be maintained; rather, the Commission believes that any such minimum account size should be determined by each adviser in the context of its own circumstances.[26]

Text of Proposed Rule

It is proposed to amend Part 270 of Chapter II of Title 17 of the Code of Federal Regulations by adding § 270.3a–4 to read as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

§ 270.3a–4 Individualized investment management services.

Notwithstanding section 3(a) of the Act, an investment manager will be deemed not to create an investment company within the meaning of the Act: *Provided*, That:

(a) Such investment manager furnishes continuous advice as to the investment of funds on the basis of the individual needs of each client;

(b) A person who is authorized to make investment decisions regarding the client's account:

(1) At the opening of the account, and at least annually thereafter, interviews the client regarding the client's financial situation and individual needs;

(2) At least quarterly, attempts to determine whether there has been any change in the client's financial situation and individual needs;

(3) At least quarterly, provides the client with a statement of the account; and

(4) During normal business hours, is reasonably available to the client for consultation regarding the administration of the client's account and financial situation or investment needs;

(c) Each client of the investment manager maintains to the extent reasonably practicable every indicia of ownership of such funds, including:

(1) The right to withdraw, hypothecate, vote or pledge securities; and

(2) The receipt of a notification of each security transaction; and

(d) Each client of the investment manager has the opportunity and authority to instruct the adviser to refrain from purchasing particular

[18] In certain cases, such as an investment manager's research indicating that a particular security held by several clients will almost certainly decline in value quickly, it may be appropriate to sell that security on behalf of all accounts without first reviewing the status of each such account. The Commission does not believe such "emergency" situations are necessarily inconsistent with providing individualized service.

[19] Such contact should be directly between the investment manager and his client. The use of intermediaries by the investment manager, such as having clients direct inquiries through brokers, appears to be inconsistent with the concept of individualized investment management services.

[20] Proposed rule 3a–4(b)(1).

[21] Proposed rule 3a–4(b)(1), (2) and (3). If a client does not avail himself of the opportunity to initiate contact with the investment manager, the manager would be expected to make reasonable efforts to contact that client for the purpose of maintaining current information. At a minimum, the investment manager should write the client requesting current information on that client's financial status, and, if there is no response, the manager should follow-up the letter with a telephone call.

[22] Proposed rule 3a–4(b)(4).

[23] Proposed rule 3a–4(c)(1).

[24] Proposed rule 3a–4(c)(2).

[25] Proposed rule 3a–4(d). For example, the client would have to be able to elect whether to exclude securities such as liquor, drug and tobacco company stocks from his account, or to decide whether his account should invest in fewer numbers of securities than the number the investment manager typically invests in for his clients.

[26] In addition, the ratio of investment managers to clients can be an important indication of whether individualized treatment is being provided. Here too, however, in view of the variables involved in the administration of accounts, such as the number and quality of support and research personnel which may be available to assist the investment manager, the Commission does not propose specifying a maximum number of accounts per investment manager.

securities which otherwise might be purchased.

Statutory Basis: Proposed rule 3a–4 is promulgated pursuant to the provisions of section 6(c) (15 U.S.C. 80a–6(c)) and 38(a) (15 U.S.C. 80a–37(a)) of the Act.

By the Commission.

George A. Fitzsimmons,

Secretary.

October 10, 1980.

[FR Doc. 80-32693 Filed 10-20-80; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 732

Procedures and Criteria for Approval or Disapproval of State Program Submissions

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Cancellation of public hearing.

SUMMARY: The Office of Surface Mining has cancelled the public hearing scheduled for October 21, 1980, on the proposed rule to amend 30 CFR Part 732 to allow States to enact laws and regulations after the deadline for resubmission of an initially disapproved program.

DATE: The public comment period on the proposed rule remains open until October 31, 1980.

FOR FURTHER INFORMATION CONTACT: Andy Caraker, State and Federal Programs, Telephone (202) 343–5335.

SUPPLEMENTARY INFORMATION: On October 1, 1980, the Department of the Interior published a proposed rule to amend 30 CFR 732.13 to allow a State to enact laws and regulations until the date established for the Secretary to make the final decision on its revised program, provided that the law or regulation is submitted to the appropriate OSM Regional Director at least fifteen days prior to that date in the exact from in which it has been or will be enacted (45 FR 64961–64962). The proposed rule also provides a public review and comment period of at least ten days on such laws or regulations prior to the Secretary's decision.

A public hearing on the proposed rule was scheduled for October 21, 1980, contingent upon one or more persons expressing to OSM by October 16, 1980, an interest in participating (*see* 45 FR 64961). As of the close of business October 16, 1980, no person had expressed such an interest. Accordingly, the public hearing is cancelled.

Dated: October 16, 1980.

Toney Head, Jr.,

Assistant Director, Management and Budget.

[FR Doc. 80-32821 Filed 10-20-80; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL 1637-5]

Approval and Promulgation of Implementation Plans; State of Vermont; Lead State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking

SUMMARY: Revisions to the Vermont State Implementation Plan (SIP) have been submitted to the Environmental Protection Agency (EPA) by the Governor's designee. The intended effect of these revisions is to provide for the attainment and maintenance of the National Ambient Air Quality Standard for lead in Vermont. EPA is proposing to approve the revisions.

The EPA invites public comments on these revisions and the consistency of the revisions with respect to the requiements of the Clean Air Act.

DATES: Comments may be submitted up to November 20, 1980.

ADDRESSES: Comments may be sent to: John Hanisch, Chief, Mobile Source Section, Room 1903, J. F. Kennedy Federal Building, Boston, Massachusetts 02203.

Copies of the proposed revisions are available for public inspection during normal business hours at the following locations: Air and Hazardous Materials Division, Room 1903, J. F. Kennedy Building, Boston, Massachusetts 02203; Air and Solid Waste Programs, State Office Building, Montpelier, Vermont 05602 and the Public Information Reference Unit, Room 2404 (EPA Library), 401 M Street, S.W., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: John Hanisch, Chief, Mobile Source Section, Room 1903, J. F. Kennedy Federal Building, Boston, Massachusetts 02203, (617) 223–5630

SUPPLEMENTARY INFORMATION:

Background

On October 5, 1978 EPA promulgated primary and secondary National Ambient Air Quality Standards for lead (43 FR 46246). Section 110 of the Clean Air Act, amended in August 1977, Pub. L. No. 95–95, requires States to adopt and submit to the EPA Administrator, within nine months after promulgation of a National Ambient Air Quality Standard, a plan for attainment and maintenance of the Standard in their area. EPA has set forth the requirements of an approvable lead State Implementation Plan in 40 CFR Part 51 (43 FR 46246). These provisions require the submission of air quality data, emissions data, a control strategy, air quality modeling, and a demonstration that the Standard will be attained within the time frame specified by the Clean Air Act.

Description of the Proposed SIP Revisions

On June 24, 1980, the Secretary of the Agency of Environmental Conservation, the Governor's official designee, submitted revisions to Vermont's State Implementation Plan to attain and maintain the federal standard for lead. The revisions include a discussion of measured lead air quality data, a base year emission inventory for stationary, mobile and areas sources, a projected emissions inventory for mobile and area sources and a control stategy for reducing ambient lead emissions.

The summary presented indicates that Vermont is attainment for the lead standard. the control strategies for reducing lead emissions and maintaining the standard are a phase-down in the lead content of gasoline, improved fleet economy and the phaseout of older vehicles. Mobile and area source projections from the base year of 1975 (used instead of 1974 because this is the year the state had its most comprehensive data base for computation of these sources) to 1990 show a marked decline in lead emissions.

The base year inventory for stationary sources shows that only one point source exists in Vermont and no significant growth in this category is anticipated. Monitoring at this source, Globe Union in Bennington, which manufacturers lead acid storage batteries, indicates that emissions are not violating the lead standard. However, dispersion modelling predicts a possible violation. Because of the discrepancy, two hi-volume sampling monitors have been placed at the site to assist in calibrating the model and in verifying the attainment status of the area. They are run on a 3 day schedule and a determination of the quantities on the filters will be made using the Reference Method in 40 CFR Part 60, Appendix G. An evaluation of the results of this study should be submitted to EPA in 1981.

The plan does not, in itself, contain a regulation for the review of new sources of lead emissions, as required by 40 CFR 51.18. However, Vermont intends to review new lead sources and modifications of existing lead sources under the new source review regulations which were approved by EPA as part of the Vermont SIP at 45 FR 10775 (February 19, 1980). Authority to review new and modified sources of lead emissions is provided by Vermont regulation 5–231 (4), which has also been approved by EPA. A letter indicating the state's intent to subject to review any point source which emits 5 tons or more of lead is included with the submittal.

EPA's Proposed Action

EPA has evaluated the Vermont plan by comparing it with the requirements for an approvable lead SIP, as set forth in 40 CFR Part 51. As a result of this evaluation, EPA proposes to approve the plan.

The requirements of 40 CFR 51.80 provide that the plan must contain a demonstration of attainment for any area which has exceeded the Standard since January 1, 1974, including a demonstration that the measures, rules, and regulations contained in the plan are adequate to attain the Standard within the time frame specified in the Clean Air Act. As discussed above, Vermont is currently in attainment for the lead standard although a special study is underway in Bennington and an evaluation including an attainment demonstration or control stategies will be submitted to EPA in 1981.

Public Comments

Under Section 110 of the Clean Air Act as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove the regulations submitted as revisions to the SIP. The Regional Administrator hereby issues this notice setting forth these revisions as proposed rulemaking and advises the public that interested persons may participate by submitting written comments to the Region I Office. Comments received on or before (30 days after publication) will be considered. Comments received will be available for public inspection at the EPA Region I Office and at the locations listed in the Addresses Section of this notice.

The Administrator's decision to approve or disapprove the proposed revisions will be based on the comments received and on a determination whether the amendments meet the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

The Agency of Environmental Conservation has certified that the public hearing requirements of 40 CFR 51.4 have been met.

EPA has determined that this regulation is "specialized" and therefore, not subject to the procedural requirements of Executive Order 12044.

(Sections 110 and 301(a) of the Clean Air Act as amended (42 U.S.C. Sections 7410 and 7610(a)))

Dated: October 6, 1980.

Leslie A. Carothers,

Acting Regional Administrator.

[FR Doc. 80-32746 Filed 10-20-80; 8:45 am]

BILLING CODE 6560-26-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-5047]

National Flood Insurance Program; Revision of Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Town of Merrillville, Lake County, Indiana.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in 44 FR 6451 on or about February 1, 1979, and hence supersedes those previously published rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in each community.

ADDRESSES: Maps and other information showing the detailed outlines of the floodprone areas and the proposed flood elevations are available for review at the Planning and Building Department, Town Hall, 13 West 73rd Street, Merrillville, Indiana.

Send comments to: Honorable Richard Wayte, President of the Merrillville Town Board, 13 West 73rd Street, Merrillville, Indiana 46410.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Federal Emergency Management Agency, Federal Insurance Administration, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the Town of Merrillville, Lake County, Indiana, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations are:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)
Indiana	Merrillville, Town, Lake County	Deep River	Downstream Corporate Limits	*647
			Upstream side of Randolph Street	*654
			Upstream side of Grand Boulevard	*661
			Upstream side of Cheesie System	*664
			Upstream side of Clay Street	*668
			Upstream side of Colorado Street	*672
			101st Avenue	*675

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)
		Turkey Creek	Interstate Route 65	*613
			Upstream side 61st Avenue	*614
			Upstream side of State Route 53	*616
			Upstream side of Grand Trunk Western Railroad	*620
			Upstream Corporate Limits	*625
		Meadowdale Lateral	Confluence with Turkey Creek	*620
			Upstream side of Grand Trunk Western Railroad	*625
			61st Avenue	*625
		Chapel Manor Lateral	Confluence with Turkey Creek	*618
			Upstream side of 68th Place	*625
			Upstream side of Chessie System	*633
			Upstream side of State Route 53	*640
			Upstream side of Highland Road	*649
			Downstream side of Delaware Place	*654
			Upstream side of 80th Place	*654
			750' upstream of 80th Place	*666
		Kaiser Ditch	Confluence with Turkey Creek	*621
			Upstream side of 73rd Avenue	*628
			1,450' upstream of 73rd Avenue	*630

Maps available at the Planning and Building Department, Town Hall, 13 West 73rd Street, Merrillville, Indiana.

Send comments to the Honorable Richard Wayte, President of the Merrillville Town Board, 13 West 73rd Street, Merrillville, Indiana 46410.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: September 18, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-32540 Filed 10-20-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA 5917]

National Flood Insurance Program; Proposed Base Flood Elevation and Zone Designation for the City of Attleboro, Mass.

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevation and zone designation described below. The proposed base flood elevation and zone designation will be the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Map and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevation and zone designation are available for review at the Mayor's Office, City Hall, Attleboro, Massachusetts. Send comments to: The Honorable Gerald J. Keane, Mayor, City of Attleboro, City Hall, 29 Park Street, Attleboro, Massachusetts 02703.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation and Engineering Office, National Flood Insurance Program, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755–6570 or toll free line (800) 424–8872 or (800) 424–8873.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed base flood elevation (100-year flood) and zone designation for the City of Attleboro, Massachusetts in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4 (a) (presently appearing at its former Section, 24 CFR 1917.4 (a)).

The base flood elevation and zone designation together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. The proposed elevation and zone will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed 100-year flood elevations and zone designation for selected locations are:

Source of flooding	Location	Elevation in feet	Zone
Sweedens Swamp...	Between Newport Avenue, Washington Street and Interstate 95.	77	A4

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator.)

Issued: September 5, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-32551 Filed 10-20-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA 5918]

National Flood Insurance Program; Proposed Boundaries, Base Flood Elevations and Zone Designations for the City of South Fulton, Tenn.

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed boundaries, base flood elevations and zone designations described below. The proposed boundaries, base flood elevations and zone designations will be the basis for the flood plain managment measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Map and other information showing the detailed outlines of the flood-prone areas and the proposed boundaries, base flood elevations and zone designations are available for review at the Mayor's Office, City Hall, South Fulton, Tennessee. Send comments to: The Honorable Paul Blalock, Mayor, City of South Fulton, 134 Broadway, Post Office Box 639, South Fulton, Tennessee 42401.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation and Engineering Office, National Flood Insurance Program, 451 Seventh Street SW., Washington, D.C. 20410 (202) 755–6570 or toll free line (800) 424–8872 or (800) 424–8873.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed boundaries, base flood elevations (100-year flood) and zone designations for the City of South Fulton, Tennessee, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4 (a) (presently appearing at its former Section, 24 CFR 1917.4 (a)).

The boundaries, base flood elevations and zone designations together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. The proposed boundaries, elevations and zones will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed 100-year flood elevations and zone designations for selected locations are:

Source of flooding	Location	Elevation in feet (NGVD)	Zone
Harris Fork Creek and South Fulton Branch.	Between Jackson Purchase Place and the northeastern corporation limit.	350–369	A3

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator.)

Issued: September 5, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-32553 Filed 10-20-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5912]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) elevations listed below and proposed changes to base flood elevations for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872 (in Alaska and Hawaii call Toll Free Line (800) 424–9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determination of base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 and Section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67.4(a) (presently appearing at its former Title 24, Chapter 10, Part 1917.4(a)).

These elevations, together with the flood plain management measures required by section 60.3 (formerly Section 1910.3) of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Proposed Base (100-Year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Louisiana	Unincorporated areas of Acadia Parish.	Bayou des Canes	Just upstream of Louisiana State Highway 100	*16
		North Bayou Mallet	Just upstream of L.A. Highway 3123	*36
		Eunice South Ditch	Just downstream of Louisiana State Highway 3116	*38
		Morse Lateral	Just upstream of Louisiana Highway 1115	*12
			Just upstream of Louisiana Highway 92	*14
		Mermentau River	Just downstream of the Town of Mermentau's Corporate limits	*13
		Bayou Plaquemine Brule	Just upstream of Louisiana Highway 13	*21
Maps available for inspection at Acadia Parish Secretary's Office, Parish Courthouse Building, Court Circle, Third Floor, Crowley, Louisiana.				
Send comments to Honorable Howard A. Duncan, President Policy Jury, or Mr. Terry LaConte, Secretary of Police Jury, P.O. Box 370, Crowley, Louisiana 70526.				
Louisiana	Town of Coushatta, Red River Parish.	Channel 1	Just upstream of Coushatta Red Oak Road (State Highway 410	*133
			Just upstream of U.S. Highway 84	*140
		Channel 2	Approximately 350 feet upstream of confluence with Channel 1	*142
		Channel 3	Approximately 650 feet upstream of confluence of Channel 5	*142
		Channel 4	Approximately 150 feet upstream of confluence with Channel 1	*141
		Channel 5	Approximately 400 feet upstream of confluence with Channel 3	*142
Maps available for inspection at City Hall, Alonzo Street, Coushatta, Louisiana 71019.				
Send comments to Mayor Truman Crawford, City Hall, Alonzo Street, Coushatta, Louisiana 71019.				
Louisiana	Unincorporated areas of Pointe Coupee Parish.	Bayou Pond	Approximately 1,000 feet upstream of confluence with Portage Canal	*31
		Bayou Pond Lateral Number 3	Approximately 1,000 feet upstream of confluence with Portage Canal	*31
		False Bayou	Just upstream of Louisiana 413 Bridge	*22
			Just upstream of Texas and Pacific Railroad Bridge	*29
		False Bayou Lateral	Approximately 1,000 feet upstream of confluence with False Bayou	*29
		Patin Dyke Lateral	Just upstream of confluence with False Bayou	*21
		Discharge Bayou	Just upstream of Louisiana 413 Birdge	*21
		Bayou Grosse Tete	Just upstream of confluence with Bayou Fordache	*19
		Bayou Fordoche	Approximately 2,000 feet upstream of confluence with Bayou Grosse Tete.	*20
		Bayou Black	Just upstream of Missouri Pacific Railroad Bridge	*28
			Just upstream of U.S. 190	*28
Maps available for inspection at the Office of the President of the Pointe Coupee Police Jury, Parish Courthouse, New Roads Road, to Mr. Martin's Office, President, New Roads, Louisiana 70760.				
Send comments to Mr. Martin, President of Pointe Coupee Police Parish or Mr. Junies W. Hursh, Vice President of Parish Police Jury, Pointe Coupee Parish Courthouse, P.O. Drawer J. New Roads, Louisiana 70760.				
Louisiana	City of Ruston, Lincoln Parish	Chautauqua Creek	Just upstream of West Kentucky Avenue	*202
		Choudrant Creek	Just upstream of Illinois Central Railroad	*211
		Colvin Creek	Just upstream of Frazier Road	*188
			Just upstream of East Kentucky Avenue	*208
		Colvin Creek Tributary	Just upstream of East Kentucky Avenue	*205
		Shephard Creek	Just upstream of Vaughn Avenue	*267
Maps available for inspection at Inspection Station, City Hall, 401 N. Trenton St., Ruston, Louisiana 71270.				
Send comments to Mayor John W. Perritt, City Hall, 401 N. Trenton Street, Ruston, Louisiana 71270.				
Louisiana	City of Springhill, Webster Parish	Little Crooked Creek	Just upsteam of 7th Street Southeast	*217
			Just upstream of Machen Drive	*226
			Just upsteam of Welcome Road	*230
		West Branch of Little Crooked Creek.	Just downstream of Kansas City Southern Railroad	*227
			Just downstream of 7th Street Southwest	*237
		East Branch of Little Crooked Creek.	Approximate 250 feet upstream of Jessica Drive	*233
Maps available for inspection at City Hall, 101 Machen Drive, Springhill, Louisiana 71075.				
Send comments to Mayor Johnny Herrington, or Mayor Pro-Tem, Ernest Gore, City Hall, 101 Machen Drive, Springhill, Louisiana 71075.				
Louisiana	Town of Vinton, Calcasieu Parish	Hampton Coulee	Just upsteam of Southern Pacific Railroad	*12
			Just upstream of West Street	*14
		Vinton Drainage Canal	Just downstream of West Street	*11
Maps available for inspection at Town Hall, 1200 Horridge Street, Vinton, Louisiana 70668.				
Send comments to Mayor Raywood LeMaire or Mr. E. L. Bahnsen, Superintendent of Public Works, Town Hall, 1200 Horridge Street, Vinton, Louisiana 70668.				
Maine	North Yarmouth, Town, Cumberland County.	Royal River	Downstream Corporate Limits	*84
			Upstream of State Route 9	*89
			Upstream of Mill Road	*94
			Upstream Corporate Limits	*96
Maps available at the North Yarmouth Town Hall, R.F.D. 2, Cumberland Center, Maine.				
Send comments to Honorable Scott W. Seever, Chairman of the North Yarmouth Board of Selectmen, R.F.D. 2, Cumberland Center, Maine 04021.				
Maine	South Portland, City, Cumberland County.	Atlantic Ocean	East Shoreline	*9
			Mouth of Fore River	*9
			Upstream Corporate Limits	*10
		Long Creek	Confluence with Fore River	*10
			Upstream Clark Pond Dam	*25
			Upstream Foden Road	*33
			Upstream Maine Turnpike	*44
			Upstream Corporate Limits	*46

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Red Brook	Confluence with Long Creek	*25
			Upstream of Interstate 295	*38
			Upstream of Corporate Limits	*47
		Trout Brook	Confluence with Fore River	*10
			Upstream of Broadway Avenue	*16
			Upstream of Fessenden Avenue	*26
			Upstream of Boothby Avenue	*32
			Upstream of Providence Avenue	*46
			Upstream of Sawyer Street	*51
			Upstream of Spurwick Avenue	*53
Maps available at the City Hall, 25 Cottage Road, South Portland, Maine.				
Send comments to the Honorable Sidney Schwartz, Mayor of South Portland, South Portland Town Hall, 25 Cottage Road, South Portland, Maine.				
Massachusetts	Fall River, City, Bristol County	Mount Hope Bay	At Tiverton	*15
			Fall River Corporate Limits to U.S. Route 6 Bridge	*15
		Taunton River	U.S. Route 6 Bridge to Fall River Corporate Limits	*15
Maps available at the City Clerk's Office, Fall River City Hall, 1 Government Center, Fall River, Massachusetts.				
Send comments to the Honorable Carlton Viveiros, Mayor of Fall River, Fall River City Hall, 1 Government Center, Fall River, Massachusetts 02722.				
Massachusetts	(C), Gardner, Worcester County	Otter River	About 475 feet downstream confluence of Bailey Brook (at downstream corporate limit).	*894
			Just downstream of Turner Street	*900
			Just downstream of Otter River Dam	*904
			Just upstream of Otter River Dam	*914
			Just upstream of West Broadway Street	*922
			About 160 feet upstream confluence of Mahoney Brook (at upstream corporate limit).	*923
		Perley Brook	At confluence with Otter River	*918
			Just downstream of Parker Pond Dam	*959
			Just upstream of Parker Pond Dam	*966
			Just downstream of Perley Brook Reservoir lower dam	*976
			Just upstream of Perley Brook Reservoir lower dam	*986
			At downstream end of Clark Street culvert	*987
			Just upstream of Clark Street	*1,026
			About 100 feet downstream of abandoned railroad bridge	*1,036
			Just upstream of abandoned railroad bridge	*1,044
			Just upstream of Stone Street bridge	*1,054
			Just downstream Wheeler Street	*1,054
		Pond Brook	At confluence with Otter River	*923
			Just downstream of Mancia Drive	*952
			Just upstream of Mancia Drive	*962
			Just downstream of Risley Street bridge	*982
			Just upstream of Risley Street	*985
			About 940 feet upstream of Risley Street	*987
			About 980 feet upstream of Risley Street	*992
		Mahoney Brook	At confluence with Otter River	*923
			Just downstream of Mahoney Brook Dam	*947
			Just upstream of Mahoney Brook Dam	*953
			Just downstream of Ramsdale Pond Dam	*992
			Just upstream of Ramsdale Pond Dam	*1,000
			Just upstream of unnamed road (upstream of Winter Street)	*1,012
			Just downstream of Traverse Street	*1,014
			Just upstream of Traverse Street	*1,019
			Just upstream of covered bridge	*1,029
			About 0.4 mile upstream Partridge Street (downstream of dirt road culvert).	*1,061
			Just upstream of dirt road culvert	*1,067
			Just upstream of Partridge Street (upstream crossing)	*1,073
		Wilder Brook	At confluence with Perley Brook	*966
			Just upstream of Keys Road bridge	*973
			Just upstream of Clark Street bridge	*981
			About 800 feet upstream of Clark Street bridge	*981
		Baker Brook	At confluence with Mahoney Brook	*1,000
			Just upstream of Union Street	*1,003
			Just downstream of Providence and Worcester Railroad	*1,003
			Just upstream of Providence and Worcester Railroad	*1,009
			About 0.17 mile upstream Baker Brook Dam	*1,009
		Foster Brook	At confluence with Mahoney Brook	*1,025
			Just upstream of Temple Street	*1,046
			Just downstream of Murdock Pond Dam	*1,048
			Just upstream of Murdock Pond Dam	*1,055
			Just upstream of Betty Springs Road	*1,093
			About 500 feet upstream of Betty Springs Road	*1,094
			About 550 feet upstream of Betty Springs Road	*1,102
		Greenwood Brook	At confluence with Mahoney Brook	*1,052
			About 160 feet upstream of Partridge Street	*1,052
Maps available for inspection at the City Clerk's Office, City Hall, Gardner, Massachusetts.				
Send comments to Honorable Gerald St. Hillairre, Mayor, City of Gardner, City Hall, Gardner, Massachusetts 01440.				

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Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Massachusetts	New Marlborough, Town, Berkshire County.	Lake Buel	Entire Shoreline within Community	*913
		Konkapot River	Approximately 150' downstream Mill River-Southfield Road	*815
			Downstream Granite Block Dam	*830
			Upstream Granite Block Dam	*840
			Downstream Mill River-Great Barrington Road	*850
			Upstream Mill River-Great Barrington Road	*867
			Upstream Hartsville-Mill River Road	*896
			Upstream Adsit Crosby Road	*906
			Confluence of Lake Buel Tributary	*913
			Upstream State Route 57	*923
			Approximately 1,250' upstream State Route 57	*950
			Upstream Corporate Limits	*1,002
	Maps available at the New Marlborough Town Hall, Mill River, Massachusetts.			
	Send comments to the Honorable Gerald Stevens, Chairman of the Board of Selectmen of New Marlborough, Town Hall, Mill River, Massachusetts 01244.			
Massachusetts	North Adams, City, Berkshire County.	Bowerman Creek	Approximately 1,000' downstream of Church Street	*715
			Approximately 200' downstream of Church Street	*725
			Approximately 40' upstream of Church Street	*735
			Approximately 150' upstream of Church Street	*745
		Hoosic River	Downstream Corporate Limits	*611
			Approximately 300' upstream of Ashton Avenue	*619
			Downstream of Barber Dam	*624
			Upstream of Barber Dam	*629
			Upstream of State Route 2 (lower crossing)	*635
			Biltmore Avenue (extended)	*639
			Confluence of Notch Brook	*644
			Upstream of State Route 2 (upstream crossing)	*652
			Upstream of B&M Railroad	*660
			Fairgrounds Avenue (extended)	*670
			Upstream of Brown Street	*680
		North Branch Hoosic River	Magnolia Terrace (extended)	*685
			Upstream of Marshal Street	*695
			Upstream of Holden Street	*701
			Downstream of Eagle Street	*715
			Upstream of Lower Union Street	*726
			Approximately 800' upstream of Lower Union Street	*738
			Upstream of Upper Union Street	*750
			Approximately 500' upstream of Upper Union Street	*760
			Downstream of Hoosic Cotton Mill Dam	*770
			Upstream of Hoosic Cotton Mill Dam	*787
			Upstream of Eclipse Dam	*826
			Upstream of Weir (approximately 950' downstream from Beaver Street.	*837
			Upstream of Beaver Street (lower crossing)	*840
			Downstream of Beaver Street (upper crossing)	*857
			Bluff Street (extended)	*865
			End of Crest Street	*880
			Upstream Corporate Limits	*891
		Notch Brook	70' upstream face of Barbour Street extension culvert	*658
			Upstream of spillway	*671
			Pershing Street (extended)	*680
			Downstream of Notch Road	*692
		South Brench Hoosic River	Upstream of Sprague Bridge No. 1	*686
			Upstream of East Main Street	*691
			Upstream of Boston and Maine Yard Road	*701
			Upstream of Hunter Foundry Road	*711
			Confluence of Bowerman Creek	*715
			Upstream Corporate Limits	*721
	Maps available at Town Court, 10 Main Street, City of North Adams, Massachusetts 01247.			
Massachusetts	Whitman, Town, Plymouth County	Shumatuscacant River	Approximately 3,130' downstream of South Avenue	*65
			Approximately 60' downstream of Essex Street	*74
		Shumatuscacant Tributary	Approximately 240' upstream of Conrail Bridge	*65
			Approximately 680' upstream of South Avenue	*74
		Meadow Brook Tributary	Confluence with Meadow Brook	*78
			Approximately 525' upstream of Auburn Street	*88
			Approximately 3,625' upstream of Auburn Street	*94
		Meadow Brook	Approximately 1,880' downstream of Auburn Street	*79
			Approximately 2,230' upstream of Auburn Street	*90
	Maps available at the Town Manager's Office, Whitman Town Hall, P.O. Box 426, Whitman, Massachusetts.			
	Send comments to Honorable Emmett Hayes, Chairman of the Board of Selectmen of Whitman, Town Hall, P.O. Box 426, Whitman, Massachusetts 02382.			
Michigan	(Twp.), Caledonia, Kent County	Thornapple River	At downstream corporate limit	*669
			About 0.75 mile upstream 68th Street	*682
			About 0.3 mile downstream of Aleska Avenue	*703
			About 0.74 mile upstream 100th Street	*706
	Maps available for inspection at the Township Hall, Caledonia, Michigan.			
	Send comments to Honorable Phillip Daterna, Supervisor, Township of Caledonia, 9696 Whitneyville Road, Alto, Michigan 49302.			
Michigan	(C). Detroit, Wayne County	Detroit River	Confluence of River Rouge	*578
			Upstream corporate limits	*578

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Shallow Flooding (Overflow from Detroit River).	Intersection of Essex Avenue and Piper Avenue	#2
			Intersection of Essex Avenue and Manistique Avenue	#2
			About 900 feet north of Freud Avenue along St. Clair Avenue	#2
	Maps available for inspection at the Department of Planning, City Hall, 3400 Cadillac Tower, Detroit, Michigan.			
	Send comments to Honorable Coleman Young, Mayor, City of Detroit, City Hall, 3400 Cadillac Tower, Detroit, Michigan 48226.			
Michigan	(C), Pinconning, Bay County	Pinconning River	About 0.5 mile downstream of Water Street	*591
			At upstream corporate limit	*595
	Maps available for inspection at the City Hall, 208 Manitou Street, Pinconning, Michigan.			
	Send Comments to Honorable W. W. Evans, Mayor, City of Pinconning, City Hall, 208 Manitou Street, Pinconning, Michigan 48650.			
Minnesota	(C), Arden Hills, Ramsey County	Valentine Lake	Shoreline	*881
		Lake Josephine	Shoreline	*886
		Lake Johanna	Shoreline	*879
		Little Lake Johanna	Shoreline	*879
		Valentine Lake Discharge Channel.	About 1,490 feet downstream of County Road E 2	*878
			Just upstream of County Road E 2	*880
			At Valentine Lake	*881
		Lake Josephine Discharge Channel.	At Lake Johanna	*879
			Just downstream of State Highway 51	*880
			Approximately 90 feet upstream from Hamline Avenue	*881
			AT Lake Josephine	*886
		Lake Johanna—Little Lake Johanna Discharge Channel.	At Lake Johanna	*879
			At Little Lake Johanna	*879
	Maps available for inspection at the City Hall, 1450 West Highway 96, Arden Hills, Minnesota.			
	Send comments to Honorable Henry J. Crepeau, Jr., Mayor, City of Arden Hills, City Hall, 1450 West Highway 96, Arden Hills, Minnesota 55112.			
New Jersey	Fair Lawn (Borough), Bergen County.	Passaic River	Intersecton of Chittendon Road and River Road	*37
			Intersection of Passaic River and center of Maple Avenue	*42
		Diamond Brook	Intersection of Diamond Brook and center of Harristown Road	*49
		Henderson Brook	70 feet downstream from center of State Highway 208	*54
			Intersection of McBride Avenue and Pollitt Drive	#1
		Saddle River	Intersection of Saddle River and center of Red Mill Road	*46
			Intersection of Saddle River and the Dam	*55
		Jordan Brook	70 feet upstream from center of Well Drive	*57
		Beaver Dam Brook	Intersection of Beaver Dam and center of Paterson Street	*51
	Maps available for inspection at Municipal Building, 8-01 Fair Lawn Avenue, Fair Lawn, New Jersey.			
	Send comments to Honorable Louis Raffiani, 8-01 Fair Lawn Avenue, Fair Lawn, New Jersey 07410.			
New Jersey	Franklin, Township, Hunterdon County.	Capoolang Creek	3,970' downstream of Quakertown Road	*345
			2,570' downstream of Quakertown Road	*357
			1,850' downstream of Quakertown Road	*363
			Downstream of Quakertown Road	*386
			450' upstream of Quakertown Road	*395
			1,130' upstream of Quakertown Road	*405
			1,910' upstream of Quakertown Road	*415
			2,645' upstream of Quakertown Road	*425
		Tributary A	Downstream of Conrail	*172
			1,500' upstream of Conrail	*183
			Sidney Road	*192
			1,895' upstream of Sidney Road	*205
			Pittstown Road	*215
	Maps available at the Municipal Building, Sidney Road, Franklin, New Jersey.			
	Send comments to Honorable Phyllis Elston, R. D. 1, Annandale, New Jersey 08801.			
New Jersey	Glen Rock (Borough), Bergen County.	Diamond Brook	50 feet upstream of center of Conrail crossing	*56
			At center of Rutland Road crossing	*80
		Hohokus Brook	30 feet upstream of center of the pedestrian bridge	*81
			At center of Grove Street crossing	*65
		Saddle River	600 feet east of the intersection of Leigh Terrace and Franklin Place	*55
	Maps available for inspection at Municpal Building, Glen Rock, New Jersey.			
	Send comments to Honorable Charles Lagos, Municipal Building, Glen Rock, New Jersey 07422.			
New Jersey	North Haledon (Borough), Passaic County.	Molly Ann Brook	20 Feet upstream from center of Oldham Dam	*204
			Intersection of Molly Ann Brook and center of High Mountain Road	*277
			70 feet upstream from center of Sicomac Road	*364
			20 feet upstream from center of Haledon Reservoir Dam	*415
		Molly Ann Brook Tributary 3	Intersection of Molly Ann Brook Tributary 3 and center of High Mountain Road.	*216
		Molly Ann Brook Tributary 4	170 feet south of the intersection of Walray Avenue and Manor Road	*273
			Intersection of Molly Ann Brook Tributary 4 and center of De Roon Avenue.	*219
			30 feet upstream from center of Manchester Avenue	*303
			20 feet upstream from center of Motta Avenue	*382
		Squaw Brook	Intersection of Squaw Brook and center of High Mountain Road	*255
			15 feet upstream from center of Saw Mill Road	*349
			20 feet upstream from center of Squaw Brook Road	*404

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Glen Place Brook	15 feet upstream from center of High Mountain Road	*303
			10 feet upstream from center of Dam	*475
			Intersection of Glen Place Brook and the upstream corporate limit	*612
		Molly Ann Brook Tributary 6	15 feet upstream from center of Graham Avenue	*358
			150 feet southeast of the intersection of Romaine Drive and Pleasant View Drive.	*408

Maps available for inspection at 103 Overlook Avenue, North Haledon, New Jersey.

Send comments to Honorable John Carbone, 103 Overlook Avenue, North Haledon, N.J. 07508.

New York	Cheektowaga, Town, Erie County.	Ellicott Creek	Downstream Corporate Limits	*682
			Upstream Youngs Road	*691
			Upstream Corporate Limits	*700

Maps available at the Town Engineer's Office, Cheektowaga Town Hall, Broadway and Union Road, Cheektowaga, New York.

Send comments to Honorable Kenneth Meyers, Cheektowaga Town Supervisor, Broadway and Union Road, Cheektowaga, New York 14227.

New York	Chenango, Town, Broome County	Castle Creek	Upstream of U.S. Route 11 (Lower Crossing)	*856
			200' upstream of Interstate 81	*862
			1,080' upstream of Interstate 81	*870
			140' downstream of U.S. Route 11 (Upper Crossing)	*880
			600' upstream of U.S. Route 11 (Lower Crossing)	*885
		Chenango River	Downstream Corporate Limits	*852
			Confluence of Castle Creek	*855
			Upstream of State Route 12A	*860
			Peninsula Drive (Extended)	*864
			Airport Road (Extended)	*876
			Shore Acres Drive (Extended)	*880
			Willette Park Road (Extended)	*890
			Upstream Corporate Limits	*898

Maps available at the Town Hall, 1137 Front Street, Binghamton, New York.

Send comments to Honorable Oscar Wormuth, Supervisor, Town Hall, 1137 Front Street, Binghamton, New York 13905.

New York	East Syracuse, Village, Onandaga County.	South Branch Ley Creek	State Route 290	*404
			Downstream crossing of Conrail	*406
			Burnet Avenue	*409
			Upstream crossing of Conrail	*410
			Interstate Route 690	*411
			Above 2nd crossing of Access Road at upstream Corporate Limits	*413
		Butternut Creek	Area north of Dewitt Yards in northeastern corner of East Syracuse	*410
			Area between Interstate 690 and State Route 290 in southeast corner of East Syracuse.	*414
			Area between access roads to Interstate 690 in southeast corner of East Syracuse.	*417

Maps available at the Municipal Building, 204 North Center Street, East Syracuse, New York.

Send comments to Honorable Richard Benack, Mayor, Municipal Building, 204 North Center Street, East Syracuse, New York 13057.

New York	Fenton, Town, Broome County	Chenango River	Downstream Corporate Limits	*852
			Van Lane (Extended)	
			Upstream of State Route 12A	*860
			300' southeast of junction of State Route 7 and Interstate 88 (Extended).	*865
			Confluence of Osborne Creek	*869
			Port Street (Extended)	*872
			Stony Brook Road (Extended)	*878
			Bend of Rodgers Road (Extended)	*879
			Upstream of Gaging Station	*888
			Marshman Road (Extended)	*895
			Upstream of State Route 79	*900
			Upstream Corporate Limits	*901
		Osborne Creek	Confluence with Chenango River	*869
			Upstream of State Route 369	*871
			Private Drive off State Route 369 (Extended)	*879
			Confluence of Ballyhack Creek	*885
			Upstream of Ballyhack Road	*889
			Approximately 1,450' upstream from Ballyhack Road	*900
			Approximately 2,170' upstream from Ballyhack Road	*910
			Approximately 2,900' upstream from Ballyhack Road	*920
			Approximately 4,370' upstream from Ballyhack Road	*930
			Approximately 6,750' upstream from Ballyhack Road	*950
			Approximately 8,930' upstream from Ballyhack Road	*970
			Approximately 10,810' upstream from Ballyhack Road	*990
			Approximately 11,990' upstream from Ballyhack Road	*1,000
			Upstream Corporate Limits	*1,011
		Page Brook	Confluence with Chenango River	*877
			400' downstream from Rodgers Road	*880
			100' upstream from Rodgers Road	*884
			1,070' upstream from Rodgers Road	*887

Maps available at the Town Hall, Park Street, Port Crane, New York.

Send comments to Honorable Donald J. Grunder, Supervisor, Town Hall, Park Street, Port Crane, New York 13833.

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
New York	Greene, Village, Chenango County.	Chenango River	Downstream Corporate Limits	*911
			250' downstream from State Route 206	*912
			Upstream Corporate Limits	*913

Maps available at the Village Hall, 51 Genesee Street, Greene, New York.

Send comments to Honorable Thomas J. Wynn, Mayor, Village Hall, 51 Genesee Street, Greene, New York 13778.

New York	Hilton Village, Monroe County	Salmon Creek	Downstream Corporate Limits	*259
			Upstream side of Conrail	*261
			Upstream side of Howey Avenue	*266
			Upstream Corporate Limits	*268

Maps available at the Village Hall, 24 Main Street, Hilton, New York 14468.

Send comments to Honorable Thomas Younker, Village Hall, 24 Main Street, Hilton, New York 14468.

New York	North Tarrytown, Village, Westchester County.	Hudson River	Entire shoreline	*8

Maps available at the Municipal Building, 28 Beekman Avenue, North Tarrytown, New York.

Send comments to Honorable Philip E. Zegarell, Mayor, 28 Beekman Avenue, North Tarrytown, New York 10591.

New York	Piermont, Village, Rockland County.	Sparkill Creek	Downstream Corporate Limits	*8
			Paradise Avenue	*8
			State Route 9W	*22
			Upstream Corporate Limits	*23

Maps available at Village Hall, 478 Piermont Avenue, Piermont, New York.

Send comments to Honorable Mary C. Bryan, Mayor 478 Piermont Avenue, Piermont, New York 10968.

New York	Seneca Falls, Village, Seneca County.	Seneca River	Downstream of Van Cleef Lake Dam	*386
			Upstream side of Van Cleef Lake Dam	*431
			Upstream Corporate Limits	*432
		Sampson Creek	Upstream side of Bayard Street culvert	*435
			Upstream side of Bridge Street	*437
			Downstream side of Swaby Street	*442
			Downstream side of Toledo	*445
			Upstream side of Toledo Street	*448
			60' upstream of Private Road	*453
			Shamrock Avenue (extended)	*457
			Upstream Corporate Limits near Conrail crossing	*459
		Black Brook	Downstream Corporate Limits	*475
			Upstream Corporate Limits at Black Brook Road	*477
		Bentons Creek	Confluence with Sampson Creek	*435
			Upstream side of Ovid Street	*437
			Upstream side of Garden Street	*438
			Upstream of Chaplin Street	*442
			Seneca Manor Drive (extended)	*452
			Downstream of Conrail	*454

Maps available at the Village Hall, 136 Falls Street, Seneca Falls, New York.

Send comments to the Honorable Robert S. Freeland, 136 Falls Street, Seneca Falls, New York 13148.

New York	South Corning, Village, Steuben County.	Chemung River	Downstream Corporate Limits	*918
			Upstream Corporate Limits	*920

Maps available at Village Office, 1 Clark Street, Corning, New York.

Send comments to the Honorable Robert S. Smoogen, Mayor, 1 Clark Street, Corning, New York 14830.

New York	Sterling, Town, Cayuga County	Lake Ontario	Entire shoreline	*249

Maps available at the Town Clerk's Office, Sterling Center Road, Sterling, New York.

Send comments to Honorable Marion Teachoud, R.D. 1, Box 19, Martsville, New York 13111.

New York	West Monroe, Town, Cayuga County.	Lake Oneida	Entire shoreline	*375
		Slocum Creek	Old railroad grade	*392
			Downstream side of State Route 49	*395
			120' upstream of State Route 49	*398
			Foster Road	*406
			1,990' upstream of Foster Road	*414
			700' downstream of County Route 11	*422
			Downstream of County Route 11	*436
			90' upstream of County Route 11	*444

Maps available at the Town Hall, West Monroe, New York.

Send comments to Arlene Caiella, Town Supervisor, P.O. Box 4, West Monroe, New York 13167.

New York	Wyoming, Village, Wyoming County.	Oatka Creek	Downstream Corporate Limits	*948
			Downstream side of Main Street	*953
			Upstream side of Main Street	*955
			Upstream Corporate Limits	*955

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Wyoming Gulf Brook	Confluence with Oatka Creek	*954
			750' upstream of confluence with Oatka Creek	*960
			Downstream side of Academy Street	*988
			Upstream side of Academy Street	*993
			Upstream Corporate Limits	*1,001
	Maps available at the Village Clerk's Office, 50 Main Street, Wyoming, New York.			
	Send comments to Honorable Howard Ridal, Village Hall, 50 Main Street, Wyoming, New York 14591.			
North Dakota	Cavalier (City), Pembina County	Tongue River	Intersection of Bjornson Drive and River Street	*890
			Intersection of Busse Lane and Bjornson Drive	*894
		Breakout Flow Into Southwest Coulee.	At south end of the Cavalier Airport runway	*889
	Maps available for inspection at City Hall, Cavalier, North Dakota.			
	Send comments to Honorable Jack McPherson, P.O. Box 446, Cavalier, North Dakota 58220.			
North Dakota	Cavalier (Township), Pembina County.	Tongue River	Confluence with Breakout Flow Into Southwest Coulee	*906
		Breakout Flow Into Southwest Coulee.	Intersection of Coulee and Burlington Northern Railroad	*885
	Maps available for inspection at Route 1, Box 109A, Cavalier, North Dakota.			
	Send comments to Honorable John Schroeder, Route 1, Box 180, Cavalier, North Dakota 58220.			
North Dakota	Horace (City), Cass County	Sheyenne River	Intersection of Park Drive and Sheyenne Drive	*918
			Intersection of Center Avenue and Nelson Street	#2
	Maps available for inspection at City Hall, Horace, North Dakota.			
	Send comments to Honorable Donald Goerger, P.O. Box 707, Horace, North Dakota 58047.			
North Dakota	Mapleton (City), Cass County	Maple River	1,500 feet upstream from center of Main Street	*907
	Maps available for inspection at City Hall, Mapleton, North Dakota.			
	Send comments to Honorable Arnold Grindberg, Box 532, Mapleton, North Dakota 58059.			

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: September 24, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-32542 Filed 10-20-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5883]

National Food Insurance Program; Proposed Flood Elevation Determinations; Correction

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Town of Hamburg, Erie County, New York, previously published at 45 FR 55487 on August 20, 1980.

EFFECTIVE DATE: October 21, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Federal Emergency Management Agency, Federal Insurance Administration, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872 (In Alaska and Hawaii call Toll Free Line (800) 424–9080), Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Town of Hamburg, Erie County, New York, previously published at 45 FR 55487 on August 20, 1980, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

The Flood Insurance Study and Rate Maps for the Town of Hamburg, New York, correctly showed Lake Erie as a Source of Flooding. However, that source was inadvertently omitted from the notice of proposed flood elevation determination. In order for the flooding sources and locations to be correctly identified with the Flood Insurance Study and Rate Map for the Town of Hamburg, Erie County, New York, the proposed notice should be amended to read as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
New York	Hamburg, Town, Erie County	Eighteen Mile Creek	Approximately 400' downstream of Lake Shore Road	*580
			State route 5 (upstream)	*588
			Norfolk and Western Railway upstream	*610
			Route 20 downstream at Corporate Limits	*623
			Coincident with Corporate Limits (approximately 400' downstream of South Creek Road.	*714
			Conrail (upstream)	*745
			Pierce Avenue (upstream)	*756
			Corporate Limits (Village of Hamburg)	*768
			Carpenter Road (extended)	*791
			Upstream Corporate Limits	*802
		Hampton Brook	Confluence with Eighteen Mile Creek	*764
			Upstream Corporate Limits	*782
		Eighteen Mile Creek North Branch.	Confluence with Eighteen Mile Creek	*798
			Upstream Corporate Limits	*802
		Eighteen Mile Creek South Branch.	Confluence with Eighteen Mile Creek	*799*805
			Approximately 620' upstream of Farm Road	
		Buttermilk Falls Creek	Approximately 60' downstream of North Creek Road	*696
			North Creek Road upstream	*707
			Approximately 90' upstream of Lakeview Road	*731
		Berricks Creek	Confluence with Lake Erie	*581
			Mt. Vernon Parkway (downstream)	*609
			Mt. Vernon Parkway (upstream)	*617
			Norfolk & Western Railway (upstream)	*639
			U.S. Route 20 upstream	*692
			Upstream Corporate Limits	*752
		Waterfalls Village Creek	Confluence with Lake Erie	*581
			Conrail (downstream)	*608
			Norfolk & Western Railway (upstream)	*627
			Approximately 250' upstream of Howard Road	*670
		Foster Brook	Confluence with Lake Erie	*581
			State Route 75 upstream	*590
			Conrail downstream	*597
			Conrail upstream	*610
			U.S. Route 20 upstream	*716
			Sowles Road upstream	*742
			Approximately 120' upstream of Maslov Drive	*793
		Rush Creek	Conrail upstream	*628
			South Park Avenue upstream	*655
			State Route 20 upstream	*668
			Bayview Road upstream	*726
			Clark Road downstream	*796
			Downstream South Abbott Road at Corporate Limits	*845
		South Branch	Downstream Corporate Limits	*602
		Smokes Creek	Lake Avenue (upstream)	*620
			Upstream Corporate Limits	*646
		Tributary to South Branch Smokes Creek.	Confluence with South Branch Smokes Creek	*626
			Milestrip Road	*669
			Nile Road (upstream)	*680
			Approximately 950' upstream of Nile Road	*683
		Lake Erie	Shoreline southwest of Cloverbank Road (extended)	*580
			Shoreline northeast of Cloverbank Road (extended)	*581

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: September 19, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-32541 Filed 10-21-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5817]

National Flood Insurance Program; Proposed Flood Elevation Determinations; Correction

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Carmel, Hamilton County, Indiana, previously published at 45 FR 31433 on May 13, 1980.

EFFECTIVE DATE: October 21, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872 (In Alaska and Hawaii call Toll Free Line (800) 424–9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Carmel, Hamilton County, Indiana previously published at 45 FR 31433 on May 13, 1980, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)). Under the Source of Flooding of Carmel Creek, the elevation 740 feet which corresponds to the location described as, "Approximately 600 feet upstream of East 96th Street," has been changed. The elevation should be 741 feet. The Flood Insurance Study (FIS) and Flood Insurance Rate Map were correct as printed. The listing appears correctly as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Indiana	(C) Carmel, Hamilton County	Carmel Creek	Approximately 600 feet upstream of East 96th Street	*741

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: September 26, 1980.

Gloria M. Jiminez,

Federal Insurance Administrator.

[FR Doc. 80-32552 Filed 10-20-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5845]

National Flood Insurance Program; Proposed Flood Elevation Determinations; Correction

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Unincorporated Areas of Dakota County, Minnesota, previously published at 45 FR 46114 on July 9, 1980.

EFFECTIVE DATE: October 21, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program (202) 426–1460 or Toll Free Line (800) 424–8872. (In Alaska and Hawaii call Toll Free Line (800) 424–9080.) Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Unincorporated Areas of Dakota County, Minnesota previously published at 45 FR 46114 on July 9, 1980, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)).

The Source of Flooding of Mississippi River should be added, with the following location descriptions and elevations: "About 2.8 miles downstream of Goodhue County boundary," 688 feet, and "At City of Rosemount eastern corporate limits," 697 feet.

Under the Source of Flooding of Vermillion River, the location described as, "At downstream county boundary" has been changed. The location should read, "About one mile downstream Chicago, Milwaukee, St. Paul and Pacific Railroad." The corresponding elevation of 689 feet remains unchanged. Also under Vermillion River, the location described as, "Just upstream from 170th Street East" has been changed. The location should read, "About 300 feet upstream from 170th Street." The corresponding elevation of 815 feet remains unchanged.

The accompanying Flood Insurance Study (profile) and Flood Insurance Rate Map have been revised to reflect these changes. The listing appears correctly as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Minnesota	(Uninc.) Dakota County	Mississippi River	About 2.8 miles downstream of Goodhue County boundary	*688
			At City of Rosemount eastern corporate limits	*697
		Vermillion River	About one mile downstream Chicago, Milwaukee, St. Paul and Pacific Railroad.	*689
			About 300 feet upstream from 170th Street	*815

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: September 18, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-32539 Filed 10-20-80; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Part 305

Child Support Enforcement Program; Audit and Penalty

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Noice of Proposed Rulemaking.

SUMMARY: States which are determined by means of an annual audit to have failed to have an effective child support program in the audit period are subject to a reduction in Federal funds for the Aid to Families with Dependent Children (AFDC) program. The Department of Health and Human Services is proposing a new "substantial compliance" test to determine whether a State has failed to have an effective Child Support Enforcement program meeting the statutory requirements. The Department is proposing that this "substantial compliance" standard be used to evaluate the results of all child support enforcement audits conducted to date in order to determine if a penalty should be imposed.

DATE: Consideration will be given to written comments received by December 22, 1980.

ADDRESS: Address comments to: Director, Office of Child Support Enforcement; Department of Health and Human Services; 6110 Executive Blvd., 9th Floor; Rockville, Maryland 20852; ATTN: Policy Branch. Agencies and organizations are requested to submit comments in duplicate. The comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m., in Room 1010 of the Department's offices at the address above.

FOR FURTHER INFORMATION CONTACT: Steve Henigson, Chief, Policy Branch; OCSE; phone (301) 443–2910.

SUPPLEMENTARY INFORMATION:

Background

Section 452(a)(4) of the Social Security Act requires that, not less often than annually, the Office of Child Support Enforcement conduct a complete audit of the IV–D program in each State to determine whether the actual operation of the program conforms to the requirements of the statute. Section 403(h) of the Act requires that the amount payable to any State for its AFDC program for a fiscal year shall be reduced by 5 percent if the State is found, as a result of the annual audit, to have failed to have an effective IV–D program operated in conformity with an approved State plan.

HEW published final Audit and Penalty Regulations on December 20, 1976 (41 FR 55348), providing for an annual audit, establishing audit standards, establishing criteria for an effective program, and providing for imposition of the penalty. These regulations were effective for the first audit period required by statute, January 1, 1977 through September 30, 1977, and for subsequent audit periods which correspond to the Federal fiscal year.

Current Regulations

The 1976 regulations define an effective program as one that is in compliance with each of 17 title IV–D State plan requirements and two related title IV–A (AFDC) program requirements. These regulations require the States to have written procedures to carry out each of the State plan requirements and to be using the written procedures. In order to pass the audit, a State must be meeting every requirement. The regulations weigh each of the 19 criteria equally regardless of the importance of the requirement to the State's implementation of an effective program. Thus, if a State is determined to have failed any one criterion, no matter how technical, the regulations provide no discretion regarding the application of the penalty.

Application of the Current Regulations

OCSE has now completed work on the audit for the first audit period, January 1, 1977 through September 30, 1977. In its item by item review of each of the audit criteria under the current regulation, OCSE determined that all States were in substantial compliance with most of their State IV–D plan requirements. Nevertheless, since each State was required to meet all of the title IV–D State plan requirements, a significant number of States would have been penalized because they failed to meet a single State plan requirement even if the failure to comply had no significant impact on the overall effectiveness of the State's program. The Department believes that in light of the emphasis placed by Congress on program effectiveness, the newness of the program and the difficulties encountered by the States in implementing it, Congress would not have intended this result.

Proposed Regulations

Having reviewed the results of the first audit, the Department has concluded that the current audit regulations impose an unrealistic burden on the States. By placing a State in Jeopardy of being penalized for failure to meet just one audit criterion, the current regulations do not carry out what we believe to be the intent of Congress in establishing the audit and penalty provisions of title IV–D. The Department is therefore proposing to revise 45 CFR 305.20, Audit criteria, to require "substantial compliance" with the requirements of Section 402(a)(27) of the Social Security Act, rather than compliance with each title IV–D State plan provision as required by the existing regulations. We are also proposing a conforming change to 45 CFR 305.50, Penalty for failure to have an effective child support enforcement program, to specify "substantial compliance" for penalty purposes.

These proposed regulations provide a substantial compliance standard as the basis for determining whether States have effective IV–D programs. Under this standard, the Department would have greater discretion in the application of the penalty, so that States which operate effective programs but are nonetheless technically out of compliance with one or more requirements will not automatically be subject to a penalty. Thus the penalty will be reserved for those State IV–D programs which are not in substantial compliance with the Federal statute and regulations. The Department believes that this approach is both closer to the Congressional intent of the audit and penalty provision and more equitable in its treatment of State compliance problems.

Application of the Proposed Regulations

The Department is proposing to use the new substantial compliance standard in evaluating the results of all audits conducted to date in order to determine if a penalty should be imposed. Because no determinations have yet been made by the Secretary

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under the requirements of Section 403(h) of the Act, this new standard will enable the Department to review pending and subsequent audit results under a substantial compliance standard.

In consideration of the foregoing, 45 CFR Part 305 is amended to read as follows:

A. Section 305.20 is revised to read as follows:

§ 305.20 Audit criteria.

For purposes of meeting the requirements of Section 403(h) of the Act and of this part, the State must operate its IV–D program in substantial compliance with the requirements of Section 402(a)(27) of the Act. Substantial compliance with Section 402(a)(27) will be determined by examining:

(a) The following title IV–D State plan requirements:

Statewide operation. (45 CFR 302.10)
State finanical participation. (45 CFR 302.11)
Single and separate organizational unit. (45 CFR 302.12]
Establishing paternity. (45 CFR 302.31(a)]
Support obligations. (45 CFR 302.50)
Enforcement of support obligation. (45 CFR 302.31(b)]
Child support payments to the IV–D agency. (45 CFR 302.32]
Distribution of child suport payments. (45 CFR 302.51]
Payments to the family. (45 CFR 302.38)
Incentive payments. (45 CFR 302.52)
Individuals not otherwise eligible. (45 CFR 302.33)
Cooperation with other State. (45 CFR 302.36)
State partent locator service. (45 CFR 302.35)
Cooperative arrangements. (45 CFR 302.34)
Reports and maintenance of records. (45 CFR 302.15)
Fiscal policies and accountability. (45 CFR 302.14)
Safeguarding information. (45 CFR 302.18); and

(b) The title IV–A State plan requirements regarding prompt notice from the IV–A agency to the IV–D agency for cases in which AFDC is furnished with respect to a child who has been abandoned or deserted by a parent (45 CFR 235.70), and assignment of rights to support (45 CFR 232.11).

B. Section 305.50(a) is amended to read as follows:

§ 305.50 Penalty for failure to have an effective child support enforcement program.

(a) Pursuant to sections 403(h) and 404(d) of the Act, if a State if found by the Secretary, on the basis of the audit described in this part, to have failed to have an effective child support enforcement program substantially meeting the requirements of section 402(a)(27) of the Act, as implemented by Part 302 of this chapter and this part, total payment to the State under title IV–A of the Act shall be reduced by 5 percent of such payments.

* * * * *

Note.—The Office of Child Support Enforcement has determined this document does not require preparation of a Regulatory Analysis as described by Executive Order 12044.

The proposed regulations are to be issued under the authority of Section 1102 of the Social Security Act, 49 Stat. 647 (42 U.S.C. 1302) and Section 452(a) of the Social Security Act, 83 Stat. 2351 (42 U.S.C. 652(a)).

(Catalog of Federal Domestic Assistance Program No. 13.679, Child Support Enforcement Program)

Dated: August 22, 1980.

William J. Driver,

Director, Office of Child Support Enforcement.

Approved: October 14, 1980.

Patricia Roberts Harris.

Secretry.

[FR Doc. 80-32806 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-07-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 80-586; RM-3628]

FM Broadcast Stations in Farwell and Morton, Tex.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: This action proposes to assign Channel 222 to Farwell, Texas, and to reassign unused Channel 252A from Farwell to Morton, Texas, in response to a petition filed by Best Broadcasting Company, Inc.

DATES: Comments must be filed on or before November 28, 1980, and reply comments must be filed on or before December 18, 1980.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Joaquin Cantu, Broadcast Bureau, (202) 632–9660.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), *Table of Assignments,* FM Broadcast Stations (Farwell and Morton, Texas, BC Docket No. 80–586, RM–3628.

Adopted: September 29, 1980.
Released: October 9, 1980.

1. *Petitioner, Proposal, Comments.* A petition for rule making was filed by Best Broadcasting Company, Inc. on February 26, 1980, proposing the assignment of Channel 222 to Farwell, Texas, and the reassignment of unused Channel 252A from Farwell to Morton, Texas.[1] Best Broadcasting indicated its intent to apply for Channel 222, if assigned to Farwell, and to operate it as a Class C facility if granted the license. No responses to the petition have been filed.

2. *Community Data:* Farwell, Texas, is the seat of Parmer County and is located in the Texas Panhandle along the Texas-New Mexico border, 90 miles southwest of Amarillo, Texas. Morton, Texas, the seat of Cochran County, is located 50 miles southeast of Farwell.

3. According to figures from the U.S. Census, 1970, Farwell accounts for 1,185 of Parmer County's 10,509 residents, while Morton accounts for 2,738 of Cochran County's 5,326 residents.

4. Farwell, Texas, presently receives local aural service from only one daytime AM station, KZOL (1570 kHz). FM Channel 252A has been allocated to that community but remains unused. Morton, Texas, is served by one daytime-only AM station, KRAN (1280 kHz). No FM channels are presently assigned to Morton.

5. *The Need for the Proposed Assignments:* In order to demonstrate a need for the assignment of Channel 222 to Farwell, Best Broadcasting submitted economic and demographic data describing the principal commercial and social activity in that community and in the areas to be served under the proposal. The data indicate that Farwell is an agricultural, trade, and cultural center for a large, and otherwise sparsely populated, region.

6. *Preclusion Considerations:* The assignment of Channel 222 to Farwell, will cause preclusion to communities, on commercial channels, as follows: Channel 221A (within 105 miles); Channel 222 (within 180 miles—generally to the northeast); Channel 223 (insignificant preclusion); Channel 224A (within 65 miles—generally to the southwest); Channel 225 (no preclusion). According to petitioner, the following communities having a population exceeding 2,000 persons, fall within the area which would be precluded by a grant of the proposed assignment of Channel 222 to Farwell: *Texos:* Amarillo, Canyon, Dalhart, Dimmit, Floydada, Hereford, Morton, Muleshoe, Panhandle, Quannah, Tulia; *New Mexico:* Clayton, Clovis, Portales. Petitioner should indicate alternative available channels for those communities without an FM assignment (Dimmit and Panhandle).

[1] The Commission published a Public Notice of the Best Broadcasting petition on April 11, 1980 (Report No. 1223).

7. *Other Considerations:* Although Best Broadcasting proposes to locate its transmitter facility at Farwell, the Commission's own analysis indicates that, due to site restrictions, the Channel 222 transmitter must be located 30.3 kilometers (18.9 miles) northeast of Farwell. Petitioner's *Roanoke Rapids* [2] *Anamoso* [3] showing indicates that the proposed assignment to Farwell would provide a first FM and nighttime aural service to 5,000 square kilometers (1,900 square miles) with a population of 15,934 persons and a second FM and nighttime aural service to 1,700 square kilometers (654 square miles) with a population of 3,548 persons. These figures would be reduced, however, by assuming reasonable facilities [4] for KKQQ and KTQM–FM (75 kW, 500 feet AAT) in Clovis, New Mexico, and reasonable facilities for KMUL–FM (3 kW, 300 feet AAT) in Muleshoe, Texas. Petitioner should modify its showing accordingly.

8. As stated earlier, petitioner has proposed the reassignment of Channel 252A from Farwell to Morton, Texas. However, we would not assign Channel 252A in the absence of an expression of interest for it in Morton. While we find no obstacle to proposing the reassignment for the purpose of soliciting interest, such expression of interest would be necessary before the assignment could be made.

9. *Conclusion:* In view of the foregoing, the Commission proposes to amend its FM Table of Assignments (§ 73.202(b) of the Commission's rules) for the communities listed below as follows:

City	Channel No.	
	Present	Proposed
Farwell, Tex	252A	222
Morton, Tex		252A

10. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

11. Interested parties may file comments on or before November 28, 1980, and reply comments on or before December 18, 1980.

12. For further information concerning this proceeding, contact Joaquin R. Cantu, Broadcast Bureau, (202) 632–9660. However, members of the public should note that form the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentations required by the Commission.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[2] 9 F.C.C. 2d 672 (1967).

[3] 46 F.C.C. 2d 520 (1974).

[4] The *Roanoke Rapids* criteria call for an assumption of reasonable facilities where these are greater than the existing facilities.

Appendix

[BC Docket No. 80–586; RM–3628]

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is poposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counter proposals advanced in this proceeding itself will be considered, if advanced in intial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submisisons by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commisison.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties duing regular business hours in the Commisison's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 80-32807 Filed 10-20-80; 8:45 am]

BILLING CODE 6712-01-M

47 CFR—Part 73

[BC Docket No. 80–606; RM–3638]

TV Broadcast Station in Rio Grande City, Tex.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes the assignment of UHF television Channel 40 to Rio Grande City, Texas, in response to a petition filed by Antonio L. Garza. The proposed station could provide a first local television service to Rio Grande City.

DATES: Comments must be filed on or before December 2, 1980, and reply comments on or before December 22, 1980.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.606(b) Table of Assignments, Television Broadcast Stations (Rio Grande City, Texas), BC Docket No. 80-606, RM-3638.

Adopted: October 3, 1980.

Released: October 16, 1980.

1. The Commission has before it a petition for rule making [1] filed by Antoniq L. Garza ("petitioner"), which seeks the amendment of Section 73.606(b) of the Commission's Rules, the Television Table of Assignments, by the reassignment of UHF Channel *44 from Harlingen, Texas, to Rio Grande City, Texas, deleting the reservation for noncommercial educational use *or* the assignment of a different channel to Rio Grande City. Petitioner states that he will apply for the channel assigned. Oppositions to the proposal were filed by the Association for Public broadcasting ("APB") and the City of Harlingen, Texas ("Harlingen").

2. Rio Grande City (pop. 5,676),[2] seat of Starr County (pop. 17,707), is located in south Texas, near the Mexican border, approximately 210 kilometers (130 miles) southwest of Corpus Christi. It has no local television service.

3. Petitioner claims that Rio Grande City has experienced an enormous growth in the past five years. The proposed assignment would allow for a broadcast facility that would operate as a bilingual commercial station.

4. Both APB and Harlingen, in opposition, argue that the petitioner offers no support for his request to delete the noncommercial educational reservation on Channel *44. they suggest that an alternate channel assignment should be found for commercial use, thereby, retaining Channel *44 for future noncommercial educational use at Harlingen. They take no position on the need to assign a UHF channel to Rio Grande City.

5. We have found no justification for deleting Channel *44 at Harlingen, in view of the fact that another channel (Channel 40) is available for assingment to Rio Grande City. The assignment of Channel *44 to Rio Grande City would require a transmitter site to bve located at least 38 kilometers (24 miles) northeast of the city to meet international distance separation requirements. Channel 40 may be assigned to Rio Grande City without a site restriction and provide an oportunity for a first local television station. Petitioner has not provided information about the need for a television station at Rio Grande City. He should do so in comments to this proposal.

6. Since Rio Grande City is located within 320 kilometers (199 miles) of the U.S. Mexican border, the proposed assignment of Channel 40 requires coordination with the Mexican Government.

7. Comments are invited on the following proposal to amend the Television Table of Assignments with regard to the city of Rio Grande City, Texas, as follows:

City	Channel No.	
	Present	Proposed
Rio Grande City, Tex		40

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

9. Interested parties may file comments on or before December 2, 1980, and reply comments on or before December 22, 1980.

10. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-9660. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the commission or oral presentation required by the Commission.

Federal Communications Commission.

Henry L. Baumann.

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

[BC Docket No. 80-606; RM-3638]

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended and Section 0.281(b)(6) of the Commission's rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See §1.420(a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 80-32799 Filed 10-20-80; 8:45 am]

BILLING CODE 6712-01-M

[1] Public Notice of the petition was given on April 25, 1980, Report No. 1226.

[2] Population figures are taken from the 1970 U.S. Census.

47 CFR Part 73

[BC Docket No. 80-606; NM-3623]

FM Broadcast Station in Alliance, Nebr.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking and order to show cause.

SUMMARY: Action taken herein proposes the assignment of Class C Channels 271 and 290 to Alliance, Nebraska, and modification of the license for Station KFAH, currently operating on Channel 221A, to specify Class C Channel 290, in response to a petition filed by Nebraska Rural Radio Association. The proposed Class C channels could provide first and second service to a large area and population.

DATES: Comments must be filed on or before December 2, 1980, and reply comments must be filed on or before December 22, 1980.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

Adopted: October 1, 1980.

Released: October 20, 1980.

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations (Alliance, Nebraska), BC Docket No. 80-606; RM-3623.

1. *Petitioner, Proposal, Comments.* (a) A petition for rule making [1] was filed by Nebraska Rural Radio Association ("petitioner"), licensee of Stations KRVN and KRVN-FM, Lexington, Nebraska, proposing the assignment of Class C Channel 271 to Alliance, Nebraska, and modification of the license on Channel 221A in Alliance to specify Class C Channel 290. An opposition to the proposal was filed by Tracy Corporation (licensee of KMOR-FM, Scottsbluff, Nebraska), to which petitioner responded.

(b) The channel can be assigned in conformity with the minimum mileage separation requirements.

(c) Petitioner states it will apply for the channel, if assigned.

2. *Community Dota*—(a) *Location.* Alliance, seat of Box Butte County, is located approximately 584 kilometers (365 miles) west of Omaha, Nebraska.

(b) *Population.* Alliance—6,862,[2] Box Butte County—10,094.

(c) *Present Aural Broadcast Service.* Alliance is served locally by fulltime AM Station KCOW and FM Station KFAH (Channel 221A).

3. *Economic Considerations.* Petitioner states that the economy is based on agriculture. It further states that Alliance, as the largest community in Box Butte County, comprises 68% of its population and 100% of the urban population. Petitioner claims that it has experienced a sustained population growth, which has been accompanied by an upswing in its economy. Demographic and economic information has been submitted to demonstrate the need for a second FM assignment.

4. In opposition, Tracy Corporation contends that the rural areas around Alliance are decreasing in population, that this area is adequately served by Class A Station KFAH and other Class C stations licensed to nearby cities, and there is insufficient economic population support for a Class C Assignment. It states that the proposed assignments would preclude 38 communities of 1,000 or more population on Channels 268 through 274. Tracy claims that the petitioner has presented no evidence or legal precedent to demonstrate that the Commission should make an exception to its policy of assigning Class A channels to small communities. It also cites several cases in which an exception was permitted but were allegedly distinguishable by the greater populations and areas proposed to be served.

5. Petitioner, in response, argues that it submitted extensive data regarding Alliance's population and economy, which demonstrated its growth and a need for a Class C assignment. It states that its engineering report included the information on channels available for communities precluded by the assignment. Furthermore, the cited cases are not contrary to the request here, according to the petitioner. Rather, they involved the same concept of growth and wide area coverage needs as appears here. Petitioner asserts that Tracy's allegations are motivated by its desire to protect its own economic interests.

6. *Preclusion Studies*—(a) *Channel 271.* The preclusion study for Channel 271 was conducted assuming the transmitter was located in the center of the city. Assignment of Channel 271 would cause preclusion on Channel 268 within a 65 mile radius, Channel 269A within a 65 mile radius, Channel 270 within a 150 mile radius, Channel 271 within a 180 mile radius, Channel 272A within a 105 mile radius, Channel 273 within a 65 mile radius, and Channel 274 within a 65 mile radius. The petitioner lists available assignments for precluded communities of over 1,000 population.

(b) *Channel 290.* The preclusion study for Channel 290 was conducted assuming the transmitter was located in the center of the city. The assignment of Channel 290 to Alliance will cause preclusion on Channel 287 within 65 miles, Channel 288A within 65 miles, Channel 289 within 150 miles, Channel 290 within 180 miles, Channel 291 within 150 miles, Channel 292A within 65 miles, and Channel 293 within 65 miles. Petitioner claims that alternate channels are available in the precluded areas.

7. Petitioner's engineering statement indicates that Channel 271 at Alliance would provide a first FM and first nighttime aural service to 1,313 persons in a 5,081 square kilometers (1,962 sq. mile) area. It will also provide a second FM and nighttime aural service to 1,603 persons in a 2,670 square kilometers (1,031 sq. mile) area. Petitioner, however, did not take into account the unused Channel 234 assignment in Chadron, Nebraska. Taking this into account substantially reduces the second service figures.

8. Although it has been general Commission policy to assign Class C channels only to larger communities, exceptions have been made when the assignment would result in an FM station which would provide first or second FM service to a significant area and population. Petitioner has stated that the proposed assignments would provide a first and second service. Although Tracy cites cases involving larger first FM and aural service, we do not have an established level of such services and, in fact, we have made exceptions for Class C assignments in cases where there was less or no first FM service.

9. In proposing a second Class C assignment as a substitute for the existing Class A channel, intermixture

[1] Public Notice of the petition was given on March 31, 1980, Report No. 1221.

[2] Population figures are taken from the 1970 U.S. Census.

V 4 5 O C 2 1 8 0 UMI

of classes of channels would be avoided, thus maintaining a competitive balance which the Commission seeks to achieve in its policy against intermixture. Therefore, it has been our policy to propose to modify the existing Class A station to a Class C channel, see *Mitchell, South Dakota*, 62 F.C.C. 2d 70 (1976).

10. Since Station KFAH(FM) would be affected if we were to follow the *Mitchell* precedent, it must be given an opportunity to indicate whether it consents to or is opposed to the proposed change of its channel assignment, and this *Order to Show Cause* is adopted for that purpose. Its general comments on the appropriateness of the proposal are also invited.

11. Station KFAH will be entitled to be reimbursed for the reasonable expenses of the change in frequency only, not for the necessary upgrading in facilities. See *Mitchell, South Dakota, supra; Gillette, Wyoming*, Docket 21119, 42 FR 47557 (1977), and *Iron Mountain, Michigan, supra*. The reimbursement would come from the ultimate permittee of Channel 271 if assigned.

12. Finally, if another interest were expressed in a Class C channel, Channel 271 would be available for application. Accordingly, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules, with regard to the community below, as follows:

City	Channel No.	
	Present	Proposed
Alliance, Nebr.	221A	271,290

13. It is ordered, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Fortner-Hill Broadcasting, Inc., licensee of Station KFAH, Alliance, Nebraska, shall show cause why its license should not be modified to specify operation on Channel 290, if the Commission determines that the public interest would best be served by adopting the proposed assignment.

14. Pursuant to § 1.87 of the Commission's rules and regulations, Station KFAH may, not later than December 2, 1980, request that a hearing be held on the proposed modification. Pursuant to § 1.87(f), if the right to request a hearing is waived, Station KFAH may, not later than December 2, 1980, file a written statement showing with particularity why its license should not be modified as proposed in this *Order to Show Cause*. In this case, the Commission may call on Station KFAH to furnish additional information, designate the matter for hearing, or issue, without further proceedings, an *Order* modifying the license as provided in the *Order to Show Cause*. If the right to request a hearing is waived and no written statement is filed by the date referred to above, Station KFAH will be deemed to consent to modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the channel changes mentioned above are found to be in the public interest.

15. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

16. Interested parties may file comments on or before December 2, 1980, and reply comments on or before December 22, 1980.

17. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632–9660. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until it is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

18. It is further ordered, That the Secretary of the Commission SHALL SEND a copy of this *Order* by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to Fortner-Hill Broadcasters, Inc., 221 East 3rd Street, Alliance, Nebraska 69301, the party to whom the *Order to Show Cause* is directed.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

[BC Docket No. 80–606; RM–3623]

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, IT IS PROPOSED TO AMEND the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 80-32801 Filed 10-20-80; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 80–607; RM–3641]

TV Broadcast Stations In Madisonville, Owensboro and Princeton, Ky., Proposed Changes In Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rule Making.

SUMMARY: In response to petitions filed by Life Anew Ministries and Apple Media Associates, this action proposes two UHF television assignment plans for Owensboro, Kentucky, Madisonville, Kentucky, and Princeton, Kentucky.

DATES: Comments must be filed on or before December 2, 1980, and reply comments must be filed on or before December 22, 1980.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Joaquin R. Cantu, Broadcast Bureau, (202) 632–9660.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.606(b) Table of Assignments, Television Broadcast Stations, (Madisonville, Owensboro, and Princeton, Kentucky), BC Docket No. 80–607, RM–3641.

Adopted: October 1, 1980.

Released: October 20, 1980.

1. The Commission has before it a petition for rule making [1] submitted on March 26, 1980, by Life Anew Ministries ("LAM"), proposing that the Commission reassign UHF television Channel 19 from Owensboro, Kentucky to Madisonville, Kentucky, and substitute UHF television Channel 48 at Owensboro. Madisonville would receive a first commercial television channel assignment. In response to the LAM petition, Apple Media Associates ("AMA") petitioned for the reassignment of Channel 19 from Owensboro to Princeton, Kentucky, instead, as a first commercial TV assignment.[2]

2. The communities of Madisonville, Owensboro and Princeton are all located in western Kentucky. Madisonville (population 15,332),[3] seat of Hopkins County (population 38,167), is located approximately 180 kilometers (115 miles) southwest of Louisville, Kentucky. Owensboro (population 50,329), seat of Davies County (population 79,486), is located approximately 60 kilometers (37 miles) northeast of Madisonville. Princeton (population 6,292), seat of Caldwell County (population 13,179), is located approximately 45 kilometers (28 miles) southwest of Madisonville.

3. Madisonville presently receives local television broadcast service from Station WKMA (UHF TV Channel 35), a reserved noncommercial educational television channel. The community has no other channel assigned to it. Princeton has no television channel assignment.

4. In support of the proposed reassignment of Channel 19 from Owensboro to Madisonville, LAM indicates that it has equipment available to it which can be utilized in operating Channel 19, but which is not capable of operating on a higher UHF channel. In addition, petitioner LAM also asserts that the proposed reassignment to Madisonville would serve the public interest for a number of reasons. For example, petitioner presented economic and demographic data pertinent to demonstrating the need for, and viability of, a commercial UHF television station in Madisonville. It stated that Channel 19 can be used at Madisonville, meeting the minimum distance separation requirements as set forth in the Commission's Rules, once Channel 19 is deleted from Owensboro. Moreover, according to petitioner's engineering analysis, several channels meeting the minimum distance separation requirements, including Channel 48, as proposed, can be substituted for Channel 19 at Owensboro. Petitioner further states that Commission records indicate that no person has shown any interest in applying for the use of Channel 19 at Owensboro since the early 1950's. These facts, argues petitioner, tied to an expressed interest in the channel assignment at Madisonville, warrant a grant of the proposed amendment to the Commission's Television Table of Assignments.

5. By comparison, AMA's petition can properly be described as a bare statement of opposition to the LAM proposal and a request that Channel 19 be assigned to Princeton rather than to Madisonville. The AMA petition makes no attempt to demonstrate a public need for the assignment; nor does it suggest any reason which would reasonably permit the Commission to conclude that Princeton is a particularly well-suited location for Channel 19. Moreover, the AMA petition contains no expression of intent on the part of any person to apply for Channel 19 at Princeton, should the assignment be approved.

6. However, consistent with the statutory mandate set forth in the Communications Act of 1934—to apportion the airwaves in a "fair, efficient, and equitable" [4] manner—the Commission has no intention of foreclosing to any of the Communities involved here the possibility of receiving a local television assignment. Thus the Commission has elected to proceed with both requests. Information submitted by petitioner LAM and the Commission's own investigation, indicates that there are a number of channels potentially available to each community involved in this proceeding.[5] By virtue of this *Notice of Proposed Rule Making*, we shall seek comments on the proposal to assign Channel 19 and on why another channel would not serve either community's needs equally well. Of course, in adopting either of the proposed plans, the Commission will apply its longstanding policy of refusing to consider the relative desirability of the channels available. Accordingly, pursuant to this *Notice of Proposed Rule Making*, petitioners are requested to come forward with information to support their respective mutually exclusive proposals in order that the Commission will be in a better position to meaningfully assess the comparative strengths and weaknesses of each proposal.

7. In view of the foregoing, the Commission is of the opinion that alternative proposals are in order, Accordingly, it is proposed to amend § 73.606(b) of the Commission's rules, the Television Table of Assignments, as follows:

[1] The Commission published a Public Notice of the petition on April 25, 1980, Report No. 1226.

[2] This petition has been incorporated into the RM–3641 proceeding.

[3] Population figures taken from the 1970 U.S. Census.

[4] 47 U.S.C. Section 307(b).

[5] For example, should Channel 19 be retained by Owensboro or assigned to Madisonville, the community of Princeton would have available to it Channels 54, 55, 56 or 57 and possibly others. Similarly, should Channel 19 be assigned to Princeton, Madisonville would have Channels 47, 48, 57, 61, or 69 available to it.

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Plan I

City	Channel No.	
	Present	Proposed
Madisonville, Kentucky	*35–	19–, *35–
Owensboro, Kentucky	19–, 31–	31–, 48
Princeton, Kentucky		54–

Plan II

City	Channel No.	
	Present	Proposed
Madisonville, Kentucky	*35–	*35–, 57+
Owensboro, Kentucky	19–, 31–	31–, 48
Princeton, Kentucky		19–

8. The Commission's authority to institute rule making proceedings, showing required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

9. Interested parties may file comments on or before December 2, 1980, and reply comments on or before December 22, 1980.

10. For further information concerning this proceeding, contact Joaquin R. Cantu, Broadcast Bureau (202) 632–7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

[BC Docket No. 80–607 RM–3641]

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 80-32802 Filed 10-20-80; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR—Part 73

[BC Docket No. 80–609; RM–3636]

FM Broadcast Station in Hilton Head Island, S.C.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: This action proposes to assign Channel 288A to Hilton Head Island, S.C. as that community's second FM assignment in response to petitions filed by Santee-Cooper Broadcasting Company and by Leonard Stevens.

DATE: Comments must be filed on or before December 2, 1980 and reply comment must be filed on or before December 22, 1980.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION: Joaquin Cantu, Broadcast Bureau (202) 632–9660.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Hilton Head Island, South Carolina), BC Docket No. 80–609, RM–3636.

Adopted: October 2, 1980.

Released: October 17, 1980.

1. *Petitions, Proposals, Comments:* Petitions for rulemaking were filed by Santee-Cooper Broadcasting Company on March 14, 1980, and by Leonard Stevens on June 30, 1980, proposing the assignment of Class A Channel 288 to Hilton Head Island, Beaufort County, South Carolina, as that Community's second commercial FM channel.[1] An opposition to the proposal was filed with the Commission by the Hilton Head Radio Corporation, licensee of Station WHHR (FM), Hilton Head Island, on May 12, 1980.

2. *Community Data:* Hilton Head Island is an unincorporated community located in the southeastern corner of South Carolina. It is situated within Beaufort County, which, according to a 1978 population count reported by petitioner Leonard Stevens, had 61,882 residents. Under a "special census" conducted in 1980, the Island itself had a population of 10,470 permanent residents. In addition, the Island draws in excess of one-half million visitors annually.

3. The Hilton Head Island community presently receives local aural service from one FM station, WHHR (Channel 292A), although competing applications are currently pending for a new AM broadcast station to operate on 1130 kHz at Hilton Head.[2]

4. *The Need for an Additional Assignment:* In order to establish the need for an additional FM assignment at Hilton Head as required by the Commission's *Policy to Govern Requests for Additional FM Assignments,*[3] petitioners submitted economic and demographic data describing the principal social and commercial activities on the Island. The data indicate that the Island's commerce is strongly influenced by the health of the tourist trade. However, trades such as banking and construction are also very important. Moreover, petitioners chronicled in detail the rapid recent development of the area and projected a continuation of present growth trends.

5. Hilton Head Radio Corporation, on the other hand, opposes the proposed assignment, arguing that petitioner's data is incapable of supporting any finding of need for the additional channel. Moreover, it points to the aural service which it provides to Hilton Head (as licensee of WHHR), to the service provided by existing facilities located at Beaufort, South Carolina, and Savannah, Georgia, and to the potential new AM service, as the basis for its conclusion that "the Island is adequately served by a plethora of radio broadcast signals which obviate the need for an additional FM service in a small island community."

6. In the *Policy Statement,* the Commission declared that all future assignments must be made "consistent with a clear showing that the proposal will result in a fair and equitable distribution of available facilities, with due regard to the future needs of all communities." A policy of continuing reexamination to assess the extent to which the Commission's practices are achieving its objectives has long characterized its involvement in the FM assignment area. *Notice of Inquiry, Notice of Proposed Rule Making and Memorandum Opinion and Order,* FCC 61–833, 26 FR 6130 (adopted June 21, 1961 and issued July 5, 1961). For example, present Commission policy favors a presumption of need for the proposed assignent whenever a petitioner makes a reasonable showing, reflecting a preference for initiating service on an otherwise dormant channel at the earliest practicable time and a reliance on means such as public notice to communities precluded by a proposed assignment to generate counterproposals for the assignment. But the standard promulgated in the *Policy Statement* remains. A petitioner who seeks to assign an FM channel to a particular community must convince the Commission that an additional channel in that community would be "fair, efficient and equitable."

7. However, regardless of the standard ultimately to be satisfied in proving the existence of community need, and regardless of the actual merits of the instant petitions in meeting the standard, the rule making proposals before us should not be denied at this stage of the proceeding. The Commission's rules and longstanding practices regarding FM Table of Assignment rule making cases give to petitioners such as Santee-Cooper and Leonard Stevens an opportunity to answer all questions raised in a *Notice of Proposed Rule Making.*

8. Similarly, Hilton Head Radio Corporation's assertion that the Island presently receives adequate aural service from existing facilities does not, in itself, constitute sufficient reason to deny the petitions for rule making at this point in the proceedings. Indeed, inasmuch as the assignment of a second FM channel to Hilton Head Island falls within the Commission's population guidelines,[4] it would appear that opponents face the more stringent burden than merely overcoming a presumption of need.

9. *Preclusion Studies, Engineering Statements:* Neither petitioner has submitted the information required by the Commission to assist it in notifying communities which would be precluded by a grant of the proposed assignment. The Leonard Stevens' petition does state, however, that it has requested its consulting communications engineer to prepare for submission a statement indicating the area of preclusion which would result from a grant of the proposed assignment. We expect a preclusion study be filed in comments by either or both petitioners.

10. Petitioner Leonard Stevens' engineering statement indicates that the assignment of Channel 288A to Hilton Head Island, as proposed, will provide a new FM service of 60 dBu or greater strength to 24,000 persons in an area of 427 square miles—assuming a maximum Class A facility of 300 feet AAT at 3 kW. Petitioner Santee-Cooper adds that the proposed assignment will necessitate no modification of any channel number nor any deletion of channel presently assigned in the Commission's FM Table of Assignments. Moreover, it appears that the channel can be assigned to Hilton Head Island in conformity with the minimum distance separation requirements between stations.

11. In view of the foregoing, the Commission proposes to amend its FM Table of Assignments, § 73.202(b) of the Commission's Rules as follows:

City	Channel No.	
	Present	Proposed
Hilton Head Island, South Carolina	292A	288A, 292A

12. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

13. Interested parties may file comments on or before December 2, 1980, and reply comments on or before December 22, 1980.

14. For further information concerning this proceeding, contact Joaquin Cantu, Broadcast Bureau, (202) 632–9660. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentations required by the Commission.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and

[1] The Commission published a Public Notice of the Santee-Cooper petition on April 11, 1980 (Report No. 1223). The Leonard Stevens' petition is being treated as comments in this proceeding.

[2] Coastal Empire Broadcasting Company, Inc., File No. BP–20620; Thomas H. Harvey III and James N. Richardson, Jr., d/b/a Calibogue Broadcasting Company, Inc., File No. BP–20630; and E. Justin Love and Larry D. Benes, d/b/a Hilton Head Media, File No. 780728AC.

[3] 8 FCC 2d 79 (1967) (Hereinafter "Policy Statement.").

[4] *Notice of Inquiry and Notice of Proposed Rule Making,* FCC 80–168 (April 16, 1980), *citing Second Further Notice of Proposed Rule Making,* 40 FCC 728 (1962).

307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b), and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 80-32803 Filed 10-21-80; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 90

[PR Docket No. 80-605; FCC 80-566]

Amendment of Rules and Regulations To Permit the Use of 12.5 kHz Offset Assignments in the 450-470 MHz Band in the Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rule Making proposes making the 12.5 kHz offset frequencies lying between regularly assigned channels in the 450-470 MHz band available to all private land mobile services as is already being done in the Business Radio Service. It comes as a response to a petition filed by the Central Committee on Communications of the American Petroleum Institute and requests for expansion of the Commission's action by several other radio service associations. Adoption of this proposal could make over 300 additional interstitial channels available for systems requiring limited coverage.

DATES: Comments by: November 5, 1980; reply comments by: November 15, 1980.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Emmett H. Pritchard or Arthur C. King, Private Radio Bureau, (202) 632-6497.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of Subpart D of Part 90 of the Commission's rules and regulations to permit the use of 12.5 kHz offset assignments in the 450-470 MHz band in the Private Land Mobile Radio Services, PR Docket No. 80-605, RM-3569.

Adopted: October 3, 1980.

Released: October 20, 1980.

1. The Commission has before it a petition (RM-3569) filed on January 22, 1980, by the Central Committee on Telecommunications of the American Petroleum Institute (API). The petition asks for amendment of the Petroleum Radio Service rules to permit the use of frequency assignments which are spaced 12.5 kHz from regularly assignable channels in the 450-470 MHz band.[1]

2. In support of its request, API notes that the use of 12.5 kHz offset assignments in this band is not a new concept, and has long been allowed in the Business Radio Service.[2] It also points out that the "primary" channels in this band are extensively used and that additional communications needs for low power operations could be accommodated on offset assignments. This would have the added benefit, API notes, of allowing the offsets to serve low power needs, and freeing the primary assignments to accommodate "wide-area" communications systems.

Additionally, API argues that a particular requirement of the petroleum and natural gas industries is related to the technological advances which allow increased remote control and monitoring of operations and functions in petroleum refinery and natural gas processing plants. API points out there is a continuing need for radio channels to accommodate these remote monitoring and control capabilities, and permitting low-power fixed point-to-point communications on the offset frequencies would contribute to satisfying this. Finally, API notes, that there are numerous areas of activity (e.g., offshore production platform complexes, marine terminals, pipeline terminals, gas treatment plants and refineries) where these offsets could be satisfactorily used on a non-interference basis and that, if the Commission were to authorize the use of offsets in this band, otherwise fallow spectrum could be effectively used in the public interest.

3. In response to API's petition the following parties submitted comments: the Association of American Railroads (AAR); Forest Industries Telecommunications (FIT); the Manufacturers Radio Frequency Advisory Committee (MRFAC); the Utilities Telecommunications Council (UTC); the Special Industrial Radio Service Association (SIRSA) and API. All of the parties supported API's petition, and all noted eligibles in their own radio services had similar requirements which could be met

[1] The normal channel spacing in this band is 25 kHz.

[2] Operations on "offsets" in the Business Radio Service are low power in nature and are accorded secondary, non-interference status vis-a-vis the operations on adjacent "primary" channels. See 47 CFR 90.75(d)(4).

through the use of offsets in the 450-470 MHz band. All requested that the proceeding be enlarged to include their own radio services.[3]

Background

4. In 1968 in Docket No. 13847, the Commission amended the Business Radio Service rules to incorporate a new concept for frequency assignments in this service in the 450-470 MHz range. There, in response to demonstrated requirements for low-power multiple frequency operations within the boundaries of manufacturing plants, or other confined areas, the Commission authorized the use of "offset assignments" or channels separated by 12.5 kHz from the regularly assignable 25 kHz channels available in this band. All use of these offsets was on a secondary non-interference basis.[4] The concept was expanded in 1975 in Docket No. 19478 to permit the use of offset assignments in other areas (e.g., race tracks and construction sites) and to eliminate the so-called "industrial complex" restriction.[5]

5. As API notes in its petition, this approach has worked well in the Business Radio Service and it has become apparent to licensees in the Petroleum and other radio services who are also eligible in the Business Radio Service that the use of low power offset channels can provide highly effective communications in numerous instances where conventional higher power assignments are not essential. Consequently, the use of offset frequencies in the Business Radio Service is substantial.[6] However, because of the heavy usage of "primary" frequencies in the Business Radio Service, in many areas of the country a general "saturation" point of offset use has been reached.[7]

Proposal

6. We have considered the petition and the comments and we believe the petition should be granted. This method of operation has been efffective in the Business Radio Service, and we believe it has application in the other radio services as well, as evidenced by the comments supporting this proposal. We are therefore proposing to expand the proposal to include all of the private land mobile services with allocations in the 450-470 MHz band.

7. The rules being proposed in the attached Appendix would delete § 90.75(d)(4) and substitute a new Section 90.267 of the rules. The proposed rules would allow the use of 12.5 KHz offsets at 450-470 MHz in all of the private land mobile radio services in which frequencies in this band are assigned. The use of these frequencies would be on a secondary, non-interference basis to regularly assigned adjacent frequency operations and interservice frequency coordination is required where appropriate. The maximum power output for unmodulated carrier would be 2 watts or less. We also continue not to authorize wide area operation. Additionally, we would require of all private land mobile systems operating in the 450-470 MHz band on offsets that fixed or mobile relay stations be limited to 10 watts ERP. Finally, we point out that we have an on-going proceeding looking at narrow band technologies and should these technologies eventuate nothing in this proposal should be construed as precluding their adoption.[8] Indeed, if such narrow band technologies are introduced in the 450-470 MHz band, operations on the offset frequencies might very well become secondary to any narrow band systems that might be authorized.

8. Accordingly, we propose to delete § 90.75(d)(4) of the rules and to add a new § 90.267 to extend the use of 12.5 kHz offset frequency assignments in the UHF range in the Private Land Mobile Radio Services. The specific rules are set out in the attached Appendix.

9. The authority for issuing this Notice of Proposed Rulemaking is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

10. Pursuant to procedures set out in § 1.415 of the Commission's rules, 47 CFR 1.415, interested persons may file comments on or before November 5, 1980, and reply comments on or before November 15, 1980. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

11. In accordance with the provisions of § 1.419 of the Commission's rules, 47 CFR 1.419, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its beadquarters in Washington, D.C.

12. For further information contact Emmett Haines Pritchard, Federal Communications Commission, Private Radio Bureau, Rules Division, Washington, D.C. 20554 (202) 632-6497.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

It is proposed that 47 CFR Part 90 be amended as follows:

§ 90.75 [Amended]

1. The present § 90.75(d)(4) is removed and § 90.75(d)(5) is renumbered to become the new § 90.75(d)(4).

2. A new § 90.267 is added to read as follows:

§ 90.267 Assignment and use of 12.5 kHz frequency offsets.

(a) Frequencies separated by 12.5 kHz from regularly assignable frequencies in the 450-470 MHz band, which are listed in the table at paragraph (b) of this section may be assigned in the land mobile services in accordance with the following conditions.

[3] FIT, for example, pointed out that these offsets could be used in the logging industry for signaling to control equipment operations and movement of felled trees in dangerous and remote areas. MRFAC stressed that licensees in the Manufacturers Radio Service could employ these offsets for low power systems at locations within the confines of plant facilities. SIRSA noted their potential application in the construction of dams and bridges and the operation of open-pit mines. UTC saw applications in powerplants, coal gasification sites and synthetic natural gas plants. AAR felt the offsets could be successfully used in railroad yards and terminals for the remote control of locomotives.

[4] *See Frequency Allocations 450-470 Mc/s Band, Second Report and Order, Docket No. 13847,* 11 FCC 2d 648 (1968).

[5] *See Second Report and Order, 450-470 MHz, Business Radio Service, Docket No. 19478,* 56 FCC 2d 1004 (1975).

[6] See footnote 2, API Petition for Rule Making. Source: 1978 Year-end compilation of the National Association of Business and Educational Radio, Inc.'s geographic divisions reflecting offset assignments in the Business Radio Service.

[7] Heavy use of the primary assignments severely restricts potential use of the adjacent 12.5 kHz offset assignments, which are afforded no protection from primary operations, because higher powered adjacent primary operations in close proximity to the potential offset area of operation produce sufficient interference to preclude use of low power offset assignments.

[8] Notice of Inquiry, Docket No. 80-440, FCC No. 80-484, 45 FR 63305, adopted August 1, 1980, released September 9, 1980.

(1) All stations shall be licensed as mobiles but they may serve the functions of base, fixed, or mobile stations. Such stations are limited to 2 watts output power.

(2) All operations shall be on a secondary, noninterference basis to regularly assigned adjacent frequency operations and shall be entitled to no protection from such stations.

(3) Wide area operations will not be authorized. The area of normal day-to-day operations shall be described in the application in terms of a maximum distance from a geographic center (latitude and longitude).

(4) Mobile stations, when used as fixed stations, shall be exempt from any limitations on the number of frequencies assignable contained elsewhere in Part 90.

(5) Antennas of mobile stations used as fixed stations communicating with one or more associated stations located within 45 degrees of azimuth shall be directional and have a front to back ratio of at least 15 dB. Except as provided below, the height of the antenna used at any mobile station serving as a base, fixed mobile relay station may not exceed 7 m. (20 ft). above the ground.

(i) No limit shall be placed on the length or height above ground or any commercially manufactured radiating transmission line when the transmission line is terminated in a nonradiating load and is routed at least 7 m. (20 ft.) interior to the edge of any structure or is routed below ground level.

(ii) Sea-based stations may utilize antennas mounted not more than 7 m. (20 ft.) above the man-made supporting structure, excluding antenna structures.

(iii) Fixed and mobile stations are limited to 10 watts ERP.

(6) To assure compatibility with regularly assigned adjacent frequency operations, coordination requirements set forth in Section 90.175 apply to the use 12.5 kHz frequency offsets. Where availability is indicated in more than one service in the table, frequency coordination is required in all such services. See Section 90.555(a) for identification of service abbreviations.

(b) Frequencies available for assignment under this section are as follows:

Offset Channels Available in Services Indicated

[Frequency]

451.0375	IW
451.0625	IW
451.0875	IW
451.1125	IW
451.1375	IW
451.1625	IF, IP, IT, IW, IX
451.1875	IF, IP, IT, IX

Offset Channels Available in Services Indicated—Continued

[Frequency]

451.2125	IF, IP, IT, IW, IX
451.2375	IF, IP, IT, IW, IX
451.2625	IF, IP, IT, IW, IX
451.2875	IF, IP, IT, IW, IX
451.3125	IT
451.3375	IT
451.3625	IF, IP, IT, IW, IX
451.3875	IF, IP, IT, IW, IX
451.4125	IF, IP, IT, IW, IX
451.4375	IF, IP, IT, IW, IX
451.4625	IF, IP, IT, IW, IX
451.4875	IF, IP, IT, IW, IX
451.5125	IF, IP, IT, IW, IX
451.5375	IF, IP, IT, IW, IX
451.5625	IF, IP, IT, IW, IX
451.5875	IF, IP, IT, IW, IX
451.6125	IF, IP, IT, IW, IX
451.6375	IF, IP, IT, IW, IX
451.6625	IF, IP, IT, IW, IX
451.6875	IF, IP, IT, IW, IX
451.7125	IF, IP, IS
451.7375	IF, IP, IS
451.7625	IF, IP, IS
451.7875	IS
451.8125	IS
451.8375	IS
451.8625	IS
451.8875	IS
451.9125	IS
451.9375	IS
451.9625	IS
451.9875	IS
452.0125	IS
452.0375	IS, LX
452.0625	IS, LX
452.0875	IS, LX
452.1125	IS, LX
452.1375	IS, LX
452.1625	IS, LX
452.1875	IS, LX
452.2125	IS, LX
452.2375	LX
452.2625	LX
452.2825	LX
452.3125	LX
452.3375	LM, LR, LX
452.3625	LM, LR, LX
452.3875	LM, LR, LX
452.4125	LM, LR, LX
452.4375	LM, LR, LX
452.4625	LM, LR, LX
452.4875	LM, LR, LX
452.5125	LA, LX
452.5375	LA
452.5625	LA
452.5875	LA
452.6125	LA, LM
452.6375	LM
452.6625	LM
452.6875	LM
452.7125	LM
452.7375	LM
452.7625	LM, LR
452.7875	LM, LR
452.8125	LM, LR
452.8375	LM, LR
452.8625	LM, LR
452.8875	LM, LR
452.9125	LR
452.9375	LR
452.9625	IY, LR
452.9875	IY
453.0125	PL, PS, IY
453.0375	PF, PH, PL, PO, PP
453.0625	PF, PH, PL, PO, PP
453.0875	PF, PH, PL, PO, PP
453.1125	PF, PH, PL, PO, PP
453.1375	PF, PH, PL, PO, PP
453.1625	PF, PH, PL, PO, PP
453.1875	PF, PH, PL, PO, PP
453.2125	PF, PH, PL, PO, PP
453.2375	PF, PH, PL, PO, PP
453.2625	PF, PH, PL, PO, PP
453.2875	PF, PH, PL, PO, PP
453.3125	PF, PH, PL, PO, PP
453.3375	PF, PH, PL, PO, PP
453.3625	PF, PH, PL, PO, PP
453.3875	PF, PH, PL, PO, PP
453.4125	PF, PH, PL, PO, PP
453.4375	PF, PH, PL, PO, PP
453.4625	PF, PH, PL, PO, PP
453.4875	PF, PH, PL, PO, PP
453.5125	PF, PH, PL, PO, PP

Offset Channels Available in Services Indicated—Continued

[Frequency]

453.5375	PF, PH, PL, PO, PP
453.5625	PF, PH, PL, PO, PP
453.5875	PF, PH, PL, PO, PP
453.6125	PF, PH, PL, PO, PP
453.6375	PF, PH, PL, PO, PP
453.6625	PF, PH, PL, PO, PP
453.6875	PF, PH, PL, PO, PP
453.7125	PF, PH, PL, PO, PP
453.7375	PF, PH, PL, PO, PP
453.7625	PF, PH, PL, PO, PP
453.7875	PF, PH, PL, PO, PP
453.9125	PF, PH, PL, PO, PP
453.9375	PF, PH, PL, PO, PP
453.9625	PF, PH, PL, PO, PP
453.9875	PL, IP
454.0125	Not available (adjacent to Domestic Public)
454.025–454.975	Domestic Public
455.050–455.950	Broadcast Aux.
456.0125	Not available (adjacent to Broadcast Aux.)
456.0375	IW
456.0625	IW
456.0875	IW
456.1125	IW
456.1375	IW
456.1625	IF, IP, IT, IW, IX
456.1875	IF, IP, IT, IW, IX
456.2125	IF, IP, IT, IW, IX
456.2375	IF, IP, IT, IW, IX
456.2625	IF, IP, IT, IW, IX
456.2675	IF, IP, IT, IW, IX
456.3125	IT
456.3375	IT
456.3825	IF, IP, IT, IW, IX
458.3875	IF, IP, IT, IW, IX
456.4125	IF, IP, IT, IW, IX
456.4375	IF, IP, IT, IW, IX
456.4625	IF, IP, IT, IW, IX
456.4875	IF, IP, IT, IW, IX
456.5125	IF, IP, IT, IW, IX
458.5375	IF, IP, IT, IW, IX
456.5625	IF, IP, IT, IW, IX
456.5875	IF, IP, IT, IW, IX
456.6125	IF, IP, IT, IW, IX
458.6375	IF, IP, IT, IW, IX
458.6625	IF, IP, IT, IW, IX
456.6875	IF, IP, IT, IW, IX
456.7125	IF, IP, IS
456.7375	IF, IP, IS
458.7625	IF, IP, IS
456.7875	IS
458.8125	IS
456.6375	IS
458.8625	IS
458.8875	IS
456.9125	IS
458.9375	IS
458.9625	IS
456.9875	IS
457.0125	IS
457.0375	IS, LX
457.0625	IS, LX
457.0875	IS, LX
457.1125	IS, LX
457.1375	IS, LX
457.1625	IS, LX
457.1875	IS, LX
457.2125	LX
457.2375	LX
457.2625	LX
457.2875	LX
457.3125	LM, LR, LX
457.3375	LM, LR, LX
457.3625	LM, LR, LX
457.3875	LM, LR, LX
457.4125	LM, LR, LX
457.4375	LM, LR, LX
457.4625	LM, LR, LX
457.4875	LM, LR, LX
457.5125	IB, LX
457.5375	IB
457.5625	IB
457.5875	IB
457.6125	IB, LM
457.6375	LM
457.6625	LM
457.6875	LM
457.7125	LM
457.7375	LM
457.7625	LM, LR
457.7875	LM, LR
457.8125	LM, LR

Offset Channels Available in Services Indicated—Continued

[Frequency]

457.8375	LM, LR
457.8625	LM, LR
457.8875	LM, LR
457.9125	LR
457.9375	LR
457.9625	IY, LR
457.9875	IY
458.0125	PS, IY
458.0375	PF, PH, PL, PO, PP, PS
458.0625	PF, PH, PL, PO, PP, PS
458.0875	PF, PH, PL, PO, PP, PS
458.1125	PF, PH, PL, PO, PP, PS
458.1375	PF, PH, PL, PO, PP, PS
458.1625	PF, PH, PL, PO, PP, PS
458.1875	PF, PH, PL, PO, PP, PS
458.2125	PF, PH, PL, PO, PP
458.2375	PF, PH, PL, PO, PP
458.2625	PF, PH, PL, PO, PP
458.2875	PF, PH, PL, PO, PP
458.3125	PF, PH, PL, PO, PP
458.3375	PF, PH, PL, PO, PP
458.3625	PF, PH, PL, PO, PP
458.3875	PF, PH, PL, PO, PP
458.4125	PF, PH, PL, PO, PP
458.4375	PF, PH, PL, PO, PP
458.4625	PF, PH, PL, PO, PP
458.4875	PF, PH, PL, PO, PP
458.5125	PF, PH, PL, PO, PP
458.5375	PF, PH, PL, PO, PP
458.5625	PF, PH, PL, PO, PP
458.5875	PF, PH, PL, PO, PP
458.6125	PF, PH, PL, PO, PP
458.6375	PF, PH, PL, PO, PP
458.6625	PF, PH, PL, PO, PP
458.6875	PF, PH, PL, PO, PP
458.7125	PF, PH, PL, PO, PP
458.7375	PF, PH, PL, PO, PP
458.7625	PF, PH, PL, PO, PP
458.7875	PF, PH, PL, PO, PP
458.8125	PF, PH, PL, PO, PP
458.8375	PF, PH, PL, PO, PP
458.8625	PF, PH, PL, PO, PP
458.8875	PF, PH, PL, PO, PP
458.9125	PF, PH, PL, PO, PP
458.9375	PF, PH, PL, PO, PP
458.9625	PF, PH, PL, PO, PP
458.9875	PL, IP
459.0125	(Not available, adjacent to Domestic Public)
459.025–459.975	Domestic Public
459.9875	(Not available, adjacent to Domestic Public)
460.0125	PP
460.0375	PP
460.0625	PP
460.0875	PP
460.1125	PP
460.1375	PP
460.1625	PP
460.1875	PP
460.2125	PP
460.2375	PP
460.2625	PP
460.2875	PP
460.3125	PP
460.3375	PP
460.3625	PP
460.3875	PP
460.4125	PP
460.4375	PP
460.4625	PP
460.4875	PF
460.5125	
460.5375	
460.5625	
460.5875	
460.6125	PF
460.6375	PF, IB
460.6625	IB
460.6875	IB
460.9125	IB
460.9375	IB
460.9625	IB
460.9875	IB
461.0125	IB
461.0375	IB
461.0625	IB
461.0875	IB
461.1125	IB
461.1375	IB
461.1625	IB
461.1875	IB
461.2125	IB

Offset Channels Available in Services Indicated—Continued

[Frequency]

461.2375	IB
461.2625	IB
461.3875	IB
461.4125	IB
461.4375	IB
461.4625	IB
461.4875	IB
461.5125	IB
461.5375	IB
461.5625	IB
461.5875	IB
461.6125	IB
461.6375	IB
461.6625	IB
461.6875	IB
461.7125	IB
461.7375	IB
461.7625	IB
461.7875	IB
461.8125	IB
461.8375	IB
466.0125	IB
466.0375	IB, IX
467.2125	IX
467.2375	IX
467.2625	IX
467.2875	IX
467.3125	IX
467.3375	IX
467.3625	IX
467.3875	IX
467.4125	IX
467.4375	IX
467.4625	IF, IP, IT, IW, IX
467.4875	IF, IP, IT, IW, IX
467.5125	IF, IP, IT, IW, IX
467.5375	Not available, adjacent to General Mobile
467.550–467.475	(Not available—General Mobile)
467.7625	Not available, adjacent to General Mobile
467.7875	IB
467.8125	IB
467.8375	IB
467.8625	IB
467.8875	IB

Offset Channels Available in Services Indicated—Continued

[Frequency]

487.9125	IB
487.9375	PS, IF
467.9625	PS
467.9875	PS
467.0125	PS
467.0375	PS
467.0625	PS
467.0875	PS
467.1125	PS
461.8625	IB
461.8875	IB
461.9125	IB
461.9375	IB
461.9625	IB
461.9875	IB
462.0125	IB
462.0375	IB
462.0625	IB
462.0875	IB
462.1125	IB
462.1375	IB
462.1625	IB
462.1875	IB, IX
462.2125	IX
462.2375	IX
462.2625	IX
462.2875	IX
462.3125	IX
462.3375	IX
462.3625	IX
462.3875	IX
462.4125	IX
462.4375	IX
462.4625	IF, IP, IT, IW, IX
462.4675	IF, IP, IT, IW, IX
462.5125	IF, IP, IT, IW, IX
462.5375	Not available, adjacent to General Mobile
462.550–462.725	(Not available—General Mobile)
462.7375	Not available, adjacent to General Mobile
462.7625	IB
462.7875	IB
462.8125	IB
462.8375	IB
462.8625	IB
462.8875	IB
462.9125	IB
462.9375	IB
462.9625	IB
462.9675	IB
463.0125	IB
463.0375	IB
463.0625	IB
463.0875	IB
463.1125	IB
463.1375	IB
463.1625	IB
463.1875	IB
463.2125	IB
463.2375	IB
463.2625	IB
463.2875	IB
463.3125	IB
463.3375	IB
463.3625	IB
463.3875	IB
463.4125	IB
463.4375	IB
463.4625	IB
463.4875	IB
463.5125	IB
463.5375	IB
463.5625	IB
463.5875	IB
463.6125	IB
463.6375	IB
463.6625	IB
463.6875	IB
463.7125	IB
463.7375	IB
463.7625	IB
463.7875	IB
463.8125	IB
463.8375	IB
463.8625	IB
463.8875	IB
463.9125	IB
463.9375	IB
463.9625	IB
463.9875	IB
464.0125	IB
464.0375	IB

Offset Channels Available in Services Indicated—Continued

[Frequency]

464.0625	IB
464.0875	IB
464.1125	IB
464.1375	IB
464.1825	IB
464.1875	IB
464.2125	IB
464.2375	IB
464.2625	IB
464.2875	IB
464.3125	IB
464.3375	IB
464.3625	IB
464.3875	IB
464.4125	IB
464.4375	IB
464.4625	IB
464.4875	IB
464.5125	IB
464.5375	IB
464.5625	IB
464.5875	IB
464.6125	IB
464.6375	IB
464.6625	IB
464.6875	IB
464.7125	IB
464.7375	IB
464.7625	IB
464.7875	IB
464.8125	IB
464.8375	IB
464.8625	IB
464.8875	IB
464.9125	IB
464.9375	IB
464.9625	IB
464.9875	IB
465.0125	PP
465.0375	PP
465.0625	PP
465.0825	PP
465.1125	PP
465.1375	PP
465.1625	PP
465.1875	PP
465.2125	PP
465.2375	PP
465.2625	PP
465.2875	PP
465.3125	PP
465.3375	PP
465.3625	PP
465.3875	PP
465.4125	PP
465.4375	PP
465.4625	PP
465.4875	PP
465.5125	PF, PP,PS
465.5375	PF, PP,PS
465.5625	PF, PP,PS
465.5875	PF
465.6125	PF
465.6375	PF, IB
465.6625	IB
465.6875	IB
465.7125	IB
465.7375	IB
465.7625	IB
465.7875	IB
465.8125	IB
465.8375	IB
465.8625	IB
465.8875	IB
465.9125	IB
465.9375	IB
465.9625	IB
465.9875	IB
468.1375	PS
468.1625	PS
468.1875	PS
468.2125	IB
468.2375	IB
468.2625	IB
468.2875	IB
468.3125	IB
468.3375	IB
468.3625	IB
468.3875	IB
468.4125	IB
468.4375	IB
468.4625	IB
468.4875	IB

Offset Channels Available in Services Indicated—Continued

[Frequency]

468.5125	IB
468.5375	IB
468.5625	IB
468.5875	IB
468.6125	IB
468.6375	IB
468.6625	IB
468.6875	IB
468.7125	IB
468.7375	IB
468.7625	IB
468.7875	IB
468.8125	IB
468.8375	IB
468.8625	IB
468.8875	IB
468.9125	IB
468.9375	IB
468.9625	IB
468.9875	IB
469.0125	IB
469.0375	IB
469.0625	IB
469.0875	IB
469.1125	IB
469.1375	IB
469.1625	IB
469.1875	IB
469.2125	IB
469.2375	IB
469.2625	IB
469.2875	IB
469.3125	IB
469.3375	IB
469.3625	IB
469.3875	IB
469.4125	IB
469.4375	IB
469.4625	IB
469.4875	IB
469.5125	IB
469.5375	IB
469.5625	IB
469.5875	IB
469.6125	IB
469.6375	IB
469.6625	IB
469.6875	IB
469.7125	IB
469.7375	IB
469.7625	IB
469.7875	IB
469.8125	IB
469.8375	IB
469.8625	IB
469.8875	IB
469.9125	IB
469.9375	IB
469.9625	IB

[FR Doc. 80-32800 Filed 10-20-80; 8:45 am]

BILLING CODE 6712-01-M

V 4 5 O C 2 1 8 0 UMI

Notices

Federal Register
Vol. 45, No. 205
Tuesday, October 21, 1980

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

Cooperative Imported Fire Ant Program; Draft Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of intent to prepare a Draft Cooperative Imported Fire Ant Program Environmental Impact Statement; and notice of public meeting.

SUMMARY: This give notice that this Department intends to prepare a Draft Cooperative Imported Fire Ant Program Environmental Impact Statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, by Plant Protection and Quarantine, Animal and Plant Health Inspect Service. The draft is scheduled for completion by December 30, 1980.

To provide opportunity for participation in the development of the draft environmental impact statement (DEIS), comments are invited from all interested members of the public and from State and local agencies which administer plant pest control regulatory programs or are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any national program issue, or environmental impact involved. Additionally, a public metting will be held to provide for public participation to discuss the proposed DEIS as well as the future direction of the imported fire ant control program.

DATES: Comments must be received on or before December 5, 1980. The public meeting will be held on November 18, 1980, starting at 9:00 a.m.

ADDRESSES: The pulic meeting will be held in the Ramada Inn, 845 North Central Avenue, Hapeville, Georgia. Written comments concerning matters pertaining to the proposed DEIS should be addressed to the Pest Program Development Staff, Plant Protect and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, Hyattsville, MD 20782, by December 5, 1980.

FOR FURTHER INFORMATION CONTACT: B. Glen Lee, 301–436–8745. Interested persons ar invited to submit written comments concerning the proposed DEIS. Comments should bear a reference to the date and page numbers of this issue of the **Federal Register.** All written comments made pursuant to this notice will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 630, Hyattsville, MD 20782, during regular hours of business, 8 a.m. to 4.30 p.m., Monday through Friday, except holidays.

Background

The imported fire ant is an insect pest not native to the United States. An aggressive mound builder with a vicious sting, it is a pest of agriculture, a health hazard, and a nuisance to anyone living in heavily infested areas. When disturbed, imported fire ants will attack both humans and animals. The ant has spread throughout the Southeastern United States and currently infests 230,000,000 acres in nine States. Without an environmentally safe and biologically effective insecticide for areawide control since 1977, populations have increased to high levels in parts of the nine States. Infestations are often of such an extent as to be beyond the capability of individuals to handle. Therefore, the Department plans in conjunction with cooperating State Departments of Agriculture to conduct control/suppression treatments by aerial, ground, and individual mound application of Amdro.

Amdro has been tested extensively by the American Cyanamid Company and the U.S. Department of Agriculture for several years. During two years of intensive field testing by the U.S. Department of Agriculture, Amdro was found to be effective against the ant, to degrade rapidly in sunlight, not to leach in the soil, and to be degraded by soil microorganisms. Environmental components collected in treated areas were analyzed and found to contain no residues of the insecticide. Amdro is considered to be an environmentally safe and biologically effective material.

Applications of Amdro will be made only in areas where surveys have been conducted and are known to contain populations of imported fire ants. All applications are to be made in accordance with the approved label.

Done at Washington, D.C., this 16th day of October 1980.

William F. Helms, Acting

Deputy Administrator, Plant Protection and Quarantine, Animol and Plont Health Inspection Service.

[FR Doc. 80-32759 Filed 10-20-80; 8:45 am]

BILLING CODE 3410-34-M

Office of the Secretary

National Advisory Council on Small Community and Rural Development; Proposed Establishment

Notice is hereby given that the Secretary of Agriculture proposes to establish the National Advisory Council on Small Community and Rural Development.

The purpose of the Council will be to recommend solutions to problems affecting rural America in the areas of housing, health, water and sewer, education, human services, job creation, economic development, energy, transportation and communications, capacity building, natural resources, and recreation and cultural resources. Meetings of the Council will be open to the public.

The establishment of the Council is in the public interest in connection with the duties of the Department.

Persons wishing to comment on the proposed establishment of the Council or desiring additional information concerning it may contact Tom Burgum, Deputy Assistant Secretary for Rural Development, U.S. Department of Agriculture, Washington, D.C. 20250, telephone 202–447–5277. The Committee Management Secretariat has authorized less than 15 days notice.

Joan S. Wallace,

Assistant Secretary for Administration.

October 16, 1980.

[FR Doc. 80-32750 Filed 10-20-80; 8:45 am]

BILLING CODE 3410-07-M

Rural Electrification Administration

San Miguel Electric Co-op., Inc., Jourdanton, Tex.; Proposed Loan Guarantee

Under the authority of Pub. L. 93–32 (87 Stat. 65), and in conformance with applicable policies and procedures as set forth in REA Bulletin 20–22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $51,840,000 to San Miguel Electric Cooperative, Inc. (San Miguel), of Jourdanton, Texas. This loan guarantee will provide supplemental funds needed to complete San Miguel's 400 MW lignite-fired generating plant and associated lignite strip mine.

Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed program, including the engineering and economic feasibility studies and the proposed schedule for the advances to the borrower of the guaranteed loan funds from Mr. Mac A. Coalson, President, San Miguel Electric Cooperatives, Inc., P.O. Box 280, Jourdanton, Texas 78206.

In order to be considered, proposals must be submitted by November 20, 1980 to Mr. Coalson. The right is reserved to give such consideration and make such evaluation or other disposition of all proposals received as San Miguel and REA deem appropriate.

Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20–22 are available from the Director, Office of Information and Public Affairs, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 10th day of October, 1980.

Robert W. Feragen,

Administrator, Rural Electrification Administration.

[FR Doc. 80–32587 Filed 10–20–80; 8:45 am]

BILLING CODE 3410–15–M

ARMS CONTROL AND DISARMAMENT AGENCY

National Environmental Policy Act and Executive Order 12114; Proposed Implementing Procedures

AGENCY: U.S. Arms Control and Disarmament Agency.

ACTION: Notice of Proposed Implementing procedures for the National Environmental Policy Act and Executive Order 12114.

SUMMARY: The U.S. Arms Control and Disarmament Agency (the Agency) proposes to adopt internal procedures to implement the National Environmental Policy Act in accordance with the regulations of the Council on Environmental Quality, published in the **Federal Register** on November 29, 1978 (43 FR 55978) and to implement Executive Order 12114, entitled Environmental Effects Abroad of Major Federal Actions, published in the **Federal Register** on January 9, 1979 (44 FR 1957).

DATE: Comments or suggestions should be submitted in writing on or before November 28, 1980.

ADDRESS: Send comments to: Office of the General Counsel, U.S. Arms Control and Disarmament Agency, Washington, D.C. 20451.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond O. Waters, Office of the General Counsel, U.S. Arms Control and Disarmament Agency, Washington, D.C. 20451 (202–632–0760).

SUPPLEMENTARY INFORMATION: On June 19, 1980 the Agency published in the **Federal Register** (45 FR 39320) proposed implementing procedures for the National Environmental Policy Act and Executive Order 12114. Comments were received from the State Department which pointed out that the proposed procedures did not make it clear that the National Environmental Policy Act and Executive Order 12114 rest on differing legal bases and that the procedures relating to preparation of environmental documents for each should be separate. No other comments were received. In response to the comments the proposed procedures have been revised. Because of the nature of the revision, the Agency believes that it is best to put the revised proposed procedures out for comment rather than adopt the procedures as final.

Dated: October 15, 1980.

James T. Hackett,

Administrative Director.

U.S. Arms Control and Disarmament Agency

National Environmental Policy Act and Executive Order 12114; Proposed Implementing Procedures

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III. Categories of actions.
IV. General procedures for environmental review.
V. Determining the need for environmental impact statements.
VI. Exceptions.
VII. Cooperation with other agencies.

I. General

These procedures implement within the United States Arms Control and Disarmament Agency (the Agency) Section 102(2) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)), Section 309 of the Clean Air Act as amended (42 U.S.C. 7609), Executive Order 12114 (E.O. 12114) dated January 4, 1979, and the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (the Regulations) published by the Council on Environmental Quality (CEQ) on November 29, 1978 (43 FR 55978, 40 CFR Parts 1500–1508), incorporated herein by reference. The procedures relating to preparation of documents under NEPA and under E.O. 12114 are presented separately in these procedures as the actions to be taken rest on differing legal bases. The CEQ Regulations will be followed by the responsible Agency officials in complying with policies and provisions of the NEPA and Section 309 of the Clean Air Act. E.O. 12114 will be followed as appropriate. The requirements of these procedures are in addition to, and not a substitute for, any environmental analyses or consultations required by any international obligations of the United States.

II. Timing of Environmental Analyses and Responsibility of Agency Officials

The environmental analysis and review for a proposed Agency action shall be conducted as early as practicable so as to be timely, but late enough in the decision-making process so as to be relevant to the decision-making.

The Office of the General Counsel (GC) has primary responsibility for the Agency's compliance with the requirements of NEPA. GC will provide policy direction, guidance and leadership within the Agency for implementing these procedures. GC will also be responsible for coordination of preparation of environmental assessments, environmental impact statements, and concise environmental reviews, by the Agency, bureau or office having operational responsibility, for all proposed Agency actions for which they are required in accordance with the NEPA, Executive Order 12114 and these implementing procedures.

Other Agency, bureaus and offices having operational responsibility over a proposed major action subject to the NEPA which is not categorically excluded from the requirements for environmental impact statements, or which become aware of planning for such an action by private applicants or other non-Federal entities before Agency involvement, shall inform GC of the proposed action. In order to determine whether the proposed action will require an environmental impact statement, GC will coordinate the preparation of an environmental assessment by the bureau or office having operational responsibility. Where appropriate to supplement the work of assessing the environmental effect of the proposed action, information will be solicited from other parts of the Agency, from other Federal, State, or local Government agencies with jurisdiction by law or special expertise with respect to any environmental effect involved, or from private individuals or organizations.

III. Categories of Actions

1. *Actions Normally Requiring Environmental Impact Statements.* It is not expected that any actions of this Agency will normally require preparation of an environmental impact statement.

NEPA

Any Agency action deemed to have a "significant effect upon the quality of the human environment" in the United States shall require an environmental impact statement. Considerations to be used in determining significance are given in § 1508.27 of the CEQ Regulations.

E.O. 12114

Any Agency action significantly affecting the environment of the global commons outside the jurisdiction of any nation shall require appropriate action under E.O. 12114.

2. *Actions Categorically Excluded from Preparation of Environmental Documents.*

NEPA

Categorical exclusion is defined in Section 1508.4 of the CEQ Regulations and provides for excluding from environmental review under these implementing procedures actions which have no significant impact on the quality of the domestic human environment. Neither an environmental assessment nor an environmental impact statement is required for such actions.

Even though an action may be categorically excluded from the need for a formal environmental assessment or environmental impact statement, if the environmental analysis conducted during the earliest planning for the action shows the possibility for significant environmental effects, an environmental assessment will be prepared. Based upon the assessment, a determination will be made whether to prepare an environmental impact statement.

The Agency conducts and contracts for research that is largely directed towards acquiring a fund of theoretical and practical knowledge for arms control and disarmament policy formulation, and the conduct of such research does not individually or cumulatively have a significant effect on the environment. Therefore research that has been reviewed for environmental effects and is determined to be research solely directed at acquiring a fund of theoretical and practical knowledge for arms control and disarmament policy formulation will be categorically excluded from the requirements for environmental assessments and environmental impact statements.

E.O. 12114

Actions may also be categorically excluded under Section 2–5c of E.O. 12114.

3. *Actions Normally Requiring Environmental Assessments.* Any Agency action which may significantly affect the human environment of the United States, and which is not one normally requiring an environmental impact statement or is not categorically excluded, shall require the preparation of an environmental assessment.

4. *Actions Normally Requiring Concise Environmental Reviews.* Any Agency action falling within the categories described in Sections 2–3(b) (c) and (d) of E.O. 12114, shall require the preparation of a concise environmental review, provided however that if a relevant and adequate document described in Section 2–4(a) of E.O. 12114 already exists no concise environmental review need be prepared.

5. *Exempted Actions Under E.O. 12114.* Any Agency action falling within actions found in Section 2–5 (a) or (c) of E.O. 12114, will be exempt from the requirements for preparation of environmental documents, except to the extent limited by Section 2–5(d).

6. *Amendments and Mofifications.* As experience is gained in implementing these procedures the Agency may amend the above categories of action. Such amendments will be prepared by GC, published in the **Federal Register**, and made available for review and comment in the same manner as these procedures.

IV. General Procedures for Environmental Review

In reviewing their actions for environmental effects, Agency officials will use the NEPA and Executive Order 12114 processes. Early in the process of considering an action, the bureau or office having operational responsibility will review it for potential environmental effects. This review shall be early enough to be useful in formulating, reviewing, and deciding upon proposed actions. If it is determined that the action could have potential environmental effects then the action should be further reviewed by the bureau or office having operational responsibility in consultation with GC to determine if it falls under NEPA or E.O. 12114. After that determination, then the procedures set forth below will be followed:

NEPA

Any action which is under NEPA should be reviewed to determine which of the following basic categories of action it falls under:

(1) Actions normally requiring environmental impact statements;

(2) Actions categorically excluded from environmental statements; and

(3) Actions normally requiring environmental assessments.

If the action normally requires an impact statement, the statement process will be initiated without preparing an environmental assessment. If the action is categorically excluded, no further immediate environmental review is needed. If an environmental assessment is required, GC will coordinate the preparation of an environmental assessment by the bureau or office having operational responsibility for the proposed action.

If the environmental assessment shows that the environmental effects of the action may be "significant", the Agency is required to prepare an environmental impact statement. If the effects are found to be insignificant,

then the Agency should make a "finding of no significant impact" which completes the environmental review. The "finding of no significant impact" shall be made available to the affected public as required by Section 1501.4(a)(1) of the CEQ Regulations.

If an impact statement is required, the Agency will issue a "notice of intent" to prepare a statement. GC, and the bureau or office having operational responsibility, will then commence the "scoping process" to determine the proper content ("scope") of the statement.

The bureau or office having operational responsibility for the proposed action then prepares a "draft" environmental impact statement in consultation with GC which is filed for comment with the Environmental Protection Agency (EPA) and circulated for at least 45 days to Government agencies with jurisdiction by law or with special expertise with respect to any environmental impact involved, and among the public. Upon circulation of a draft environmental impact statement to the EPA, comments shall be requested under both the NEPA and Section 309 of the Clean Air Act. Notice of the draft statement's availability will be published in the **Federal Register** as a public notice. GC shall arrange for the publication.

After considering comments and revising the draft environmental impact statement, the Agency will file and circulate a "final" environmental impact statement at least 30 days before making a final decision on the action. In any case where comments are not received in sufficient time to allow consideration in final policy decisions, they should be considered in future decision-making in similar areas of policy.

Relevant environmental documents including environmental impact statements and environmental assessments, as well as comments and responses shall be part of the record in formal rulemaking or adjudicatory proceedings. In all cases such documents shall accompany the proposal through existing agency review processes so that Agency officials use the information contained therein in making decisions.

The decisionmaker shall consider all alternatives discussed in the relevant environmental documents. This is as required by § 1505.1 of the CEQ Regulations. After a decision is made on the action, GC will prepare and the Agency will make available a formal "record of decision" as required by § 1505.2 of the CEQ Regulations.

Modifications for the comment time period and for emergency situations may be made in accordance with § 1506.4 of the CEQ Regulations.

A final environmental impact statement shall be supplemented when a substantial change is made in the proposed action or when significant new information on the environmental impacts comes to the Agency's attention. A Supplemental Statement should be prepared, circulated and approved in accordance with the provisions of § 1502.9 of the CEQ Regulations. If there are reasons not to prepare a Supplemental Statement when one ordinarily would be called for, the bureau or office having operational responsibility should consult with GC and subsequently with the CEQ on the matter.

E.O. 12114

Any action which is determined by the initial review to be under E.O. 12114 should be further reviewed to determine if the action would fall within one of the categories set forth in Section 2–3 of E.O. 12114, or would fall within one of the categories of exempt actions set forth in Section 2–5 of E.O. 12114.

If it has been determined that the action would fall under Subsection 2–3(a) then an environmental impact statement (2–4(a)(i)) will be prepared.

If it has been determined that the action would fall either under Subsection 2–3(b) or (c) then it will be further determined whether an environmental study (2–4(a)(ii)) or a concise envornmental review (2–4(a)(iii)) will be prepared.

If it has been determined that the action would fall under Subsection 2–3(d) then it will be further determined whether an environmental impact statement (2–4(a)(i)), an environmental study (2–4(a)(ii)), or a concise envorinmental review (2–4(a)(iii)) will be prepared.

Determinations as to what category of Section 2–3 an action falls under, determinations as to what documents under Section 2–4(a) will be prepared, and determinations as to whether an action is exempt under Section 2–5, will be made by the bureau or office having operational responsibility for the proposed action in consultation with GC. GC will coordinate the preparation of any document under Section 2–4(a) by the bureau or office responsible, and in case an action is determined to fall under Subsection 2–3(d) will coordinate the necessary consultations with the CEQ and the Secretary of State.

In cases where an action is exempt under Section 2–5 the bureau or office having operational responsibility, in consultation with GC, will prepare a memorandum stating the exemption and the reasons for it. If the exemption is necessary to meet emergency circumstances, or involves exceptional foreign policy or national security sensitivities or other such special circumstances, then GC will coordinate consultations with the Department of State and with CEQ.

If a document described in Section 2–4(a) already exists, then the Agency need not prepare a new one. GC will coordinate with other Federal agencies with relevant environmental jurisdiction or expertise to provide for appropriate utilization of their resources in order to avoid duplication of effort.

GC shall, as soon as feasible, inform other Federal agencies with relevant expertise of the availability of environmental documents prepared under E.O. 12114. GC shall also coordinate, through appropriate procedures, with the Department of State in order to determine when an affected foreign nation shall be informed in accordance with Section 3–2 of E.O. 12114.

If an environmental impact statement (2–4(a)(i)) is to be prepared, the bureau or office having operational responsibility, in consultation with GC, shall prepare it and to the extent possible and consistent with these implementing procedures, should follow the procedures set forth in these implementing procedures for the preparation of environmental impact statements under NEPA.

If an environmental study (2–4(a)(ii)) is to be prepared, the bureau or office having operational responsibility, in consultation with GC, shall prepare it. The environmental study should normally include a brief discussion of the action proposed and of the anticipated environmental impacts as well as possible measures that could be taken to mitigate harmful environmental effects.

If a concise environmental review (2–4(a)(iii)) is to be prepared, the bureau or office having operational responsibility, in consultation with GC, shall prepare it. The concise environmental review should consider the key environmental issues and effects involved in the proposed action. It should also include the same basic elements as an environmental study as discussed above.

The bureau or office having operational responsibility shall revise or supplement any environmental document prepared under E.O. 12114 if before the final decision is taken on the proposed action significant new circumstances or information which has a bearing on the proposed action is made known to that bureau or office.

V. Determining the Need for Environmental Impact Statements

For each action meeting the criteria of Section III.3 of these implementing procedures, and for other actions as required, GC shall coordinate the preparation, by the bureau or office having operational responsibility, of an environmental assessment as required by § 1510.3 of the CEQ Regulations, and on the basis of that assessment, determine if an environmental impact statement is required. If it is determined by GC that the proposed action would have a significant effect on the human environment of the United States, an environmental impact statement should be prepared. If the determination is that the proposed action would have no significant effect on the human environment, a "finding of no significant impact", as required by § 1508.14 of the CEQ Regulations, shall be made and this finding made available to the affected public.

In assessing the need for impact statements regarding any particular action, the following guidelines will be considered:

(1) The Agency is responsible for determining whether environmental impact statements are required and for preparing such statements with respect to Federal actions for which the Agency is solely responsible or for which it has been designated as the "lead agency", as defined in Section 1508.16 of the CEQ Regulations. However this does not encompass combat or combat-related activities in a combat zone, or activities covered by Section 36 of the Arms Control and Disarmament Act (Sec. 146 of Pub. L. 94–141, 22 U.S.C. 2576). Although the Agency conducts activities related to the preparation for and managmeent of U.S. participation in international negotiations in the arms control and disarmament field, these functions are subject to the direction of the Secretary of State (see 22 U.S.C. 2551(b), 22 U.S.C. 2574(a), and the Department of State Circular 175 Procedure (11 FAM 720)). Thus, in the case of international agreements and the actions leading to them, the Agency is not responsible for determining whether the NEPA is applicable or whether environmental impact statements are required. (For Department of State environmental impact statement procedures, see Department of State Regulations for Implementing the Procedural Provisions of the NEPA (44 FR 66838)). However, when an environmental impact statement is determined under the appropriate procedures to be required for an arms control and disarmament agreement, the Agency will ordinarily be the "lead agency" for the preparation of the statement.

(2) The Agency is responsible for determining whether environmental impact statements are required for its research projects and for preparing such statements for those projects which constitute major Federal actions significantly affecting the quality of the human environment.

(3) Mandatory actions (i.e. those for which no alternatives are available) required under any treaty or international agreement to which the United States is a party, or required by the decisions of international organizations, authorities, conferences, or consultations in which the United States is a member or participant will not be considered major Federal actions for purposes of the NEPA.

(4) Indirect effects of Agency activities can lead to a need to file an environmental impact statement. In some such instances, the Agency might be the lead agency responsible for the preparation of such a statement. However, in most cases, another agency will be responsible since the action of this Agency will merely permit rather than require action by the other agency or will leave open the manner in which the actions of the other agency will be performed. For example, projects such as the destruction of weapons in accordance with the provisions of an international arms control agreement would be the subject of environmental impact statements, if otherwise required, prepared by the Department of Defense, the Department of State, or another lead agency. In some cases, joint preparation of the statement by two or more agencies may be appropriate.

VI. Exceptions

NEPA

The nature of negotiations and relations at the international level may make it necessary to depart in some instances from the procedures in the CEQ Regulations. CEQ foresaw the need for such departures in §§ 1507.3(c) and 1506.11 of the CEQ Regulations. Exceptions applicable to the Agency are set forth below:

(a) The statements and other materials written to comply with the NEPA should not normally include any classified or administratively controlled material. However, there may be situations where such statements and memorandum cannot adequately discuss environmental effects without including material classified or administratively controlled under the provisions of Executive Order 12065, 22 CFR Part 605, and the ACDA Security and Classification Handbook. In any event, however, those portions of any statement which are not classified or administratively controlled shall be made available to the public unless the material thus disclosed would be distorted or incomprehensible.

(b) Every attempt will be made to comply with the 30-day and 90-day periods which § 1506.10(b) of the CEQ Regulations requires between submission of statements and final action. Where schedules of international conferences or other factors make this impossible, the Agency will consult with the CEQ concerning appropriate modifications by the Agency of these minimum arrangements for the availability of environmental impact statements.

(c) Normally, agencies consulted in accordance with Section IV of these implementing procedures shall be allowed 45 days for reply. However, if it becomes necessary to reduce these periods the Agency will consult with the CEQ concerning appropriate modifications of these minimum arrangements for the availability of environmental impact statements. When this is the case, all agencies to which the draft statement has been sent will be informed by GC of the reduced time period. The reduced time period must also be included in the public notice published in the **Federal Register**.

(d) Section 1506 of the CEQ Regulations establishes requirements for providing public information on Federal actions and impact statements and envisions use of public hearings when substantial controversy surrounds a proposed action or a request for such a hearing has come from another agency with jurisdiction over the action supported by reasons why the hearing would be helpful. Public hearings will be employed by the Agency following the circulation of each draft environmental impact statement under the circumstances outlined above, unless it is determined that the requirements of

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carrying on international relations, including the constraints of time and the posture of the United States in negotiations, do not allow such hearings to be carried out without prejudice to the national interest. The provisions of the Administrative Procedure Act do not apply to hearings involving "foreign affairs functions"; however, in each case where hearings are employed in accordance with this paragraph, a public notice of the hearings shall be published in the **Federal Register** indicating the time and place of the hearing and the matters to be considered, and the draft environmental impact statement shall be made available to the public at least 15 days prior to the hearings. Where possible, notice of hearings in the **Federal Register** and circulation of draft impact statements should occur 30 days before the hearings. GC shall determine the nature and the procedures to be employed for such hearings, shall arrange for the hearing and the publication of the prescribed notice, and shall conduct the hearings. If such hearings cannot be carried out, arrangements should still be made, where practicable, for an expedited opportunity for members of the public to present their views orally. The public at all times can obtain information or get status reports on environmental impact statements and other elements of the NEPA process from the Office of the General Counsel, U.S. Arms Control and Disarmament Agency, 320 21st Street, NW., Washington, D.C. 20451.

E.O. 12114

Appropriate modifications in the contents, timing and availability of environmental documents prepared under E.O. 12114 may be made where necessary under the circumstances set forth on Section 2–5(b) of E.O. 12114.

Environmental documents written under E.O 12114 should also not normally include classified or administratively controlled material. However, there may be situations where such documents cannot adequately discuss environmental effects without such materials. If possible the classified or administratively controlled materials will be confined to a classified annex. In any event, however, those portions of any statement which are not classified nor administratively controlled shall be made available to the public unless the material thus disclosed would be distorted or incomprehensible.

VII. Cooperation With Other Agencies

GC shall ensure that Agency officials have an opportunity to cooperate with other agencies and individuals. It shall ensure that the Agency reviews the draft and final impact statements submitted for review by other agencies as required by § 1502.19 of the CEQ Regulations. Where appropriate and to eliminate duplication of work it shall seek to prepare joint analyses, assessments and statements with other Federal or State agencies. Where possible GC will arrange for the Agency to "adopt" statements prepared by other agencies as permitted by § 1506.3 of the CEQ Regulations. It shall seek to work out lead agency responsibilities for preparing environmental documents as required by § 1501.5 of the CEQ Regulations and Section 3–3 of E.O. 12114.

GC shall, to the maximum extent possible, insure that the conduct of environmental analyses, assessments, and any impact statement preparation is done concurrently with environmental reviews required by the following:

(1) The National Historic Preservation Act of 1966 (Section 106), 16 U.S.C. 470(f), which requires identification of National Register properties, eligible properties, or properties which may be eligible for the National Register within the area of the potential impact of a proposed Agency action. Evaluation of the impact of a proposed Agency action on such properties shall be discussed in draft environmental impact statements and transmitted to the Advisory Council on Historic Preservation for comment.

(2) The Endangered Species Act (Section 7), 16 U.S.C. 1531 *et seq.* which requires identification of and consultation on aspects of a proposed Agency action that may affect listed species or their habitat. A written request for consultation, along with the draft environmental impact statement, shall be conveyed to the Regional Director of the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate, for the region in the United States where the proposed action will be carried out.

(3) Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands). These Executive Orders seek to protect floodplains and wetlands by requiring agencies proposing actions which might affect such areas to consider *inter alia* environmental effects, and to provide opportunity for public review of such proposals. An evaluation of any such Agency actions shall be discussed in draft environmental impact statements and transmitted to the U.S. Water Resources Council or the CEQ, as appropriate, for comment.

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DEPARTMENT OF COMMERCE

Bureau of the Census

Census Undercount Adjustment: Basis for Decision

Note.—This document was originally published in the issued of October 20, 1980. It is repulished at the request of the agency.

The following report sets forth the basic assumptions related to a decision on whether, when, and how to adjust 1980 census results for possible undercoverage of the population. This report was developed prior to Judge Gilmore's decision on the suit brought by the City of Detroit and does not analyze the issue of adjusting the population count for apportionment purposes.

This report provides information on the process that the Bureau is following in order to arrive at a decision which considers all relevant information. The report is structured in terms of critical assumptions, supporting information, and rebuttals to those assumptions. Its purposes are (1) to distill into meaningful information 2 years of deliberation on the issues, and (2) to provide a direct and practical response mechanism for a final round of comment and discussion before decisions are made later this year.

The Bureau is interested in any reactions or comments on particular parts of the report as well as general comments. Any information—either supporting or rebutting—is welcomed as input to the final decision. However, as the Bureau is under very tight deadlines for the decision, please submit any comments to the Director, Bureau of the Census, Washington, D.C. 20233, by October 31, 1980.

Dated: October 13, 1980.

Vincent P. Barabba,

Director, Bureau of the Census.

Section and Subject

A—Introduction
B—Procedures for Arriving at the Basis for Decision
C—The Basic Question and Critical Assumptions
D—Factors that Prevent Adjustment for Apportionment Purposes
Appendix A—Memorandum from the Secretary of Commerce to the Director of the Bureau of the Census
Appendix B—Assumptions Discussed at the Second Census Undercount Workshop
Appendix C—References and Background Material

Section A—Introduction

A substantial body of knowledge has been developed over several decades as to the accuracy and completeness of decennial censuses. There is also, now, wide recognition that the shortcomings of census enumerations and the resulting statistics may have adverse consequences for the end uses of census data, even though the census remains, in our judgment, the most comprehensive and uniform statistical profile that our free society can achieve.

Through its own evaluation work, the Bureau has produced estimates of census undercount for the past three censuses; the preferred estimates were 3.3 percent in 1950, 2.7 percent in 1960, and 2.5 percent in 1970. For the 1970 census, the principal evaluation studies show that the most plausible estimates of undercoverage were 1.9 percent for the White population and 7.7 percent for the Black population, with variations in coverage among geographic areas and for age/sex categories.

For the 1980 census, the Post Enumeration Program (PEP) is intended to expand our knowledge of the levels and types of census undercoverage. Certain studies, for example, are designed to develop reasonable estimates of undercount for the Hispanic population, and possibly other minority groups, and for subnational areas such as the States and selected substate areas.

Census undercoverage has always been a concern of elected officials—Federal, State, and local. During the 19th century, when there was no systematic knowledge of undercount, communities and their elected representatives nonetheless called attention to perceived deficiencies in the decennial censuses that they believed shortchanged them of monies, prominence, prosperity, or political representation. For the 1980 census, these concerns have focused largely on political representation and the distribution of Federal funds to State and local governments. Because of these real concerns and the increasing ability of statisticians to measure census coverage, proposals have emerged to adjust census figures so that the "whole number of persons" would include those omitted from the actual enumeration.

For the past two years, the Bureau has committed itself to deal with the undercount adjustment issue in a careful, systematic, and open way, so that decisions on the questions of whether, when, and how to adjust would be clearly understood, if not embraced, by all affected individuals and groups (see section B).

The debates about undercount adjustment have also found expression in legislative proposals and lawsuits. On September 25, 1980, a Federal District Court judge issued an opinion which, if

sustained, would require adjustments for apportionment purposes and reserve to the court a decision on whether the statutory deadline of December 31, 1980, for reporting census figures to the President should be extended until acceptable adjusted data are compiled. The Bureau has considered the extent to which adjustment for apportionment purposes is permissible and feasible, and it has been our view that Federal Statutes do not permit adjustment for that purpose, and that it is not operationally feasible to do so within the time constraints set by law. These aspects of the adjustment issue are discussed in section D of this report, which was prepared prior to the September 25th opinion.

Discussions about adjustment will continue, regardless of the outcome of litigation. In the following section (C) we concentrate on the most critical assumptions that we believe provide the basis for decisions about adjustment. These assumptions represent a wide range of contributions made by many individuals and organizations outside the Bureau as well as through the two workshops. The Bureau is responsible for selection of the assumptions that are discussed here as most important. We invite reaction and comment on these assumptions.

Review of this report will be concurrent with the processing and tabulating phases of the 1980 census which will result in the transmittal of the count of the total population of each State to the President in December 1980. The magnitude of census undercount in 1980, as well as its distribution among geographic areas or population characteristics, has not yet been determined. The earliest information we will have on 1980 undercount will be rough approximations subject to later revision. While those approximations can also impinge on the decisions, based on what we now know, they will not alter the critical assumptions on which the decision should be made.

Section B. Procedures for Arriving at a Decision on Undercount Adjustment

The Bureau has established a procedure for considering undercount adjustment where it might be permitted by law, time schedules and resource availability, and supported by professional judgment. The procedure that is being followed is outlined below:

Initially, the Secretary of Commerce requested that the National Academy of Sciences review and evaluate the 1980 census data collection plans, including the undercount adjustment issue. A special panel convened by the Academy conducted the desired research and issued a report stating the judgment, among other things, that on balance an improvement in equity would be achieved through an adjustment. The panel did not recommend either a particular technique for adjustment or that adjusted figures be used for legislative apportionment. At the same time, the panel pointed out that the application of an adjustment methodology has arbitrary features and that the figures for some areas would be further from the correct population than the actual census count.

Next, the Bureau conducted a 3-day intensive workshop in September 1979 at which Bureau staff members attempted to surface all assumptions that would underlie a decision on whether providing a set of adjusted data is desirable and feasible. Technical and policy issues were identified and recommendations were made for additional information needed to make the final decision.

Third, the Bureau hosted a Conference on Census Undercount in late February of this year. Attended by a diverse body of professionals from academic, business, Federal and local governmental, and legal communities, the Conference was successful in presenting research results and in eliciting opinions on a wide range of topics related to the undercount issue. A discussion of invited papers followed each presentation, thereby affording the Bureau staff insight into the concerns of individuals viewing undercount adjustment from differing perspectives. The Bureau issued a report on the undercount conference that presented all papers in full and summaries of the discussions.

Fourth, during the first week of September, the Bureau conducted a second workshop to facilitate the concluding process of decisionmaking. Analyses of our ability and the time required to produce adjusted data, guidelines for deciding the issue and the legal aspects and possible implications of providing adjusted data were prepared for this workshop. The purpose of the workshop was to integrate the issues which had surfaced and to reach a consensus as to a final set of critical assumptions which must underlie the ultimate decision. The findings of that workshop are being made available for public comment in this document.

Finally, by November/December of this year, consonant with the instruction from the Secretary of Commerce to the Director of the Bureau of the Census, (see Appendix A) and based on all the information obtained through the preceding steps and on any preliminary assessment of census coverage, the

Bureau will decide whether or not adjusted data can or should be made available for official uses *other than apportionment.* If the decision is to provide data adjusted for the estimated undercount, the questions of when and how an adjustment is to be made, how the data will be presented, and how the data will be used in postcensal estimates programs will also be assessed.

With respect to its two workshops, the Bureau adopted a proven process for dealing with ill-structured problems. In this process, participants are divided into groups according to contrasting views and positions. Each group surfaces assumptions, and challenges the assumptions of other groups. Through this exercise, a wide range of views and issues emerge, and these are coupled to facts that strengthen or weaken specific assumptions as well as affect the individuals or segments of the public that support those assumptions and have perceived stakes in the outcome of the decision process. The published report from the September workshop expressed this wide range of assumptions and stakeholders.

Section C—The Basic Question and Critical Assumptions

As noted in the introduction and discussed fully in section D, we have argued that Federal statues do not permit us to adjust census results for purposes of apportionment, and are convinced that it is not operationally feasible to do so in accordance with timing requirements as set forth in Federal law.

Issues concerning adjustment go well beyond these purposes, however, and the resolution of those issues will have consequences throughout the decade. Principal among them is the distribution of Federal and State revenues to subordinate units of government on the basis of decennial census data, and on population and income estimates compiled regularly between censuses from other sources and linked in various ways to census results.

Through the workshop process many issues and assumptions were thoroughly discussed and debated (see Appendix B). This section examines only those considered most critical in making the decisions on whether, when, and how to adjust, without extensive discussion of specific end uses of census information. The format for discussing the critical assumptions provides key premises, supporting information, and possible rebuttals to the assumption. This approach is intended to encourage the reader to act to specific as well as general points; to defend, reject, or modify assumptions; or to present counterarguments. Although predispositions are not entirely avoidable, we have attempted to develop an approach that provides a reasonably neutral framework for comment.

The assumptions are examined with reference to this basic question: *Should the Census Bureau adjust the 1980 census results for purposes other than apportionment?*

A "Yes" answer to this question requires that certain critical assumptions be accepted as plausible.

If, however, the assumptions are rejected because the rebuttals are considered stronger, then the answer to this question should be "No."

These assumptions are organized around three broad premises and supporting statements shown on the following page and discussed later in terms of specific assumptions and rebuttals beginning on the pages noted in the margin. Background materials are listed in Appendix C.

Critical Assumptions

I. The Census Bureau has the capability to develop statistically acceptable and programmatically useful procedures for adjustments.

a. We will have a data base from evaluation studies that is substantially improved from previous censuses.

b. The Bureau has in the past demonstrated the ability to develop acceptable procedures to meet similar challenges.

II. It is the responsibility of the Bureau to take an active role in developing methodology and providing adjusted data.

a. Other options (anyone who chooses can adjust), though plausible, do not meet societal needs for accuracy, credibility, and consistency.

b. The Bureau is best equipped to apprise society of the limitations of adjusted census data.

III. The Census Bureau will be able to produce a series of adjusted census figures that are statistically acceptable for various geographic levels and various characteristics as they become technically feasible; the Bureau will continue to produce additional estimates during the decade.

a. Adjustments to headcounts that produce more accurate figures are desirable; information obtained from evaluation studies will provide partial adjustments for large geographic areas rather than all geographic areas at one point in time.

b. Acceptable adjustments for measures of population characteristics are also desirable; results of evaluation

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studies will provide for only limited adjustments for characteristics, but additional research throughout the decade may permit extending the range of characteristics for which satisfactory adjustments could be produced.

c. An acceptable adjustment that includes adjusting for uncounted undocumented aliens will not be possible at the time adjustment for other groups is; however, the inability to adjust for every group does not take away the responsibility to adjust for those for which data are available. During the decade, further information may become available to enable adjustment for undocumented aliens.

The following assumptions deal with the broad premise:

The Census Bureau has the capability to develop statistically acceptable and programmatically useful procedures for adjustments.

Critical Assumption

The Census Bureau will continually examine, evaluate, and share its understanding of undercoverage throughout the decade.

Basis of Assumption

The Bureau has the responsibility to continue to improve the state of the art by striving to achieve greater statistical accuracy in coverage estimates.

Supporting Information

1. The Bureau has historically advanced the level of knowledge regarding undercoverage estimates.
2. An ongoing program permits expansion of the number and kinds of areas covered and would contribute to accuracy as more data and refined methods are employed.
3. The continuing reevaluation of coverage provides the flexibility to respond to methodological advances, new data, and changes in policies, programs, and enabling legislation.
4. This policy is in line with the traditional approach of revising and improving current data series.
5. Work is continuing on the development of undercoverage estimates for Hispanics, since this group may be affected by specific programs.
6. The present schedule of research and evaluation work calls for different pieces of information to become available at different points in time.

Reubttal

1. Once a revision is made, reevaluation will result in increased demands for revised numbers, and this will lead to confusion among data users as to which data sets should be used for various purposes.
2. The Bureau often neglects to anticipate the broad consequences of an issue. Thus an announcement of new findings which the Bureau regards merely as technical improvements may have widespread impact that the Bureau fails to recognize in advance.
3. Lack of congressional or administration support could result in budgetary constraints limiting the Bureau's work in this area.
4. Changes in type of funding or a reduction in funding for the census count in 1990 may occur if, for example, Congress argues that based upon 1980 results, adjustments are cheaper *and* more accurate.
5. The census is recognized to be the best measure of the U.S. population. Doing anything to that count might not necessarily improve it.

Critical Assumption

The Census Bureau has the ability to develop a statistical and analytical methodology which will permit adjustment of *critical variables* (e.g., selected subnational geographic units and selected characteristics) in a timely fashion.

Basis of Assumption

In the past, when the Census Bureau has been confronted with a significant information need, it has been able, over time, to develop a statistically acceptable procedure for generating the required information.

Supporting Information

1. The need for credible employment statistics during the Depression era was the impetus for the development of sample survey methodology leading to the Current Population Survey.

General Revenue Sharing generated the need for current estimates of the population for 39,000 general-purpose governments.

3. The Bureau has experimented with and tested the following methodologies which have shown some promise:
   a. Matching studies
   b. Demographic analysis
   c. Regression analysis or refined synthetic estimation
4. The Bureau is supporting research related to adjustment methodologies.
5. The Bureau has been able to rearrange priorities to expedite carrying out the Post Enumeration Program.
6. The Bureau will have available throughout the next 3 years the results of the Post Enumeration Program, which should provide the following:
   a. Estimates of undercount for total population at the State level.
   b. Estimates of undercount by region for age, sex, race, and Hispanic origin.
   c. Information about undercount related to income, education, labor force, urban vs. rural, and metropolitan vs. nonmetropolitan areas that could be used in regression analysis or in refined synthetic estimation.

Rebuttal

1. Although the need to generate "adjusted" totals for geographic subdivisions has existed for the past couple of decades, the Bureau has not yet developed a procedure it is willing to implement today.
2. Results of the 1980 census test program, especially for Oakland and Richmond, indicate there are a number of difficulties in the match studies that still need to be resolved.
3. There is a stated concern within the professional statistical community that the techniques being developed are at the "frontier" and are not yet ready for implementation.

Critical Assumption

A Census Bureau adjustment procedure would be recognized as equitable, legally acceptable, meeting professional standards, and providing users with more accurate data.

Basis of Assumption

In the past, the need to provide adjustment procedures to take care of nonresponse and undercoverage biases has resulted in the development of statistically acceptable and useful procedures.

Supporting Information

1. Survey undercoverage in the Current Population Survey is adjusted for by using the ratio of survey estimates to independently derived population control totals. (The control totals are based on previous census data, which do not include adjustments for undercoverage in the census.
2. To improve coverage in the 1976 Census of Agriculture, a direct enumeration of an area sample was used to supplement mailing lists. Since the sample data provided reliable estimates for State totals only, data for lower levels were not adjusted. Both adjusted State totals and unadjusted data below the State level were published. The size of the adjustment from the area sample was also published with the adjusted State data.
3. There currently is being developed an adjustment procedure (based on direct estimates of the undercount) for the national and State levels, using data which will be available from demographic analysis and the Post Enumeration Program.
4. A study of the effect of population adjustment on General Revenue Sharing allocations in two States showed that most areas tended to move in the direction of their "proper" allotment (although this means a decrease in allotment for most areas), "proper" being determined by both population and income adjustments.
5. The National Academy of Sciences' panel on decennial census plans concluded that "inequities resulting from the geographic differentials in the decennial census undercount could be reduced by adjustment of the data for underenumeration."

6. The courts, in the past, have upheld Bureau procedures because they could be shown to be neither arbitrary nor capricious.

Rebuttal

1. Currently there is no adequate methodology for measuring the quality (limitations) of adjusted figures at geographic levels below the State.
2. Studies of synthetic estimates have shown that any areas with undercount rates much above or below the national average would be adjusted in such a way that error rates for those areas would be high.
3. Estimates from demographic analysis are subject to unknown errors, especially in the net immigration component.
4. Examination of the effects of an adjustment procedure on allocation of funds will result in the realization that there are more "losers" than "winners."

The following assumptions deal with the broad premise:

It is the responsibility of the Bureau to take an active role in developing methodology and providing adjusted data.

Critical Assumption

The Census Bureau is recognized as having the ability to objectively make and defend the appropriate decision on whether or not to adjust. If adjustments are to be made, the Census Bureau should formulate the procedures. This will promote a high standard of statistical rigor and encourage the appropriate use of census results.

Basis of Assumption

The Bureau has long been recognized as an agency of unquestioned integrity. It has a history of systematically studying the undercount problem and took the lead in bringing the issue into the open. The Bureau has the appropriate technical skills, resources, and specialized knowledge to develop and implement a procedure for adjusting census data.

Supporting Information

1. Bureau leadership in this area will enhance the credibility of the results, in view of the Bureau's accumulation of information on the undercount not shared by other organizations.
2. Official statistics issued by the Bureau are accepted by the public as impartial and free of vested interests.
3. Legislators, program administrators, and courts of law give sanction to census data as official Government statistics.
4. Affected parties have strongly expressed their opinions that the Bureau should make the adjustment. No one has questioned the Bureau's competence in this area, nor its objectivity or integrity.
5. Through conferences and workshops, the Bureau encouraged discussion and debate on the adjustment issue so that all relevant information could be considered in arriving at a sound decision.
6. A large-scale Post Enumeration Program is in place and funded; it will provide the necessary information for adjustments for States and other subnational areas.

Rebuttal

1. Census statistics are in the public domain; users are free to accept, modify, or reject them (and sometimes do).
2. The judiciary has not always prescribed the use of decennial census figures when superior data are available from a source other than the Census Bureau.
3. Census data are used for a multitude of purposes; adjusted data are not appropriate for all of them. The responsibility for proper use of data, including appropriate adjustments, rests with the user.
4. There are other reputable institutions that can produce adjusted census data which would be acceptable for many purposes.
5. Equity is essentially a political issue, and the decision whether or not to adjust census data should be made by Congress, not by the Census Bureau.

Critical Assumption

A simple synthetic adjustment procedure would not satisfy the Census Bureau's standards for accuracy.

Basis of Assumption

The Bureau implements new statistical methods only when certain general standards of data quality can be statisfied.

Supporting Information

1. A most important criterion is that there should be some knowledge of the limitations of the data to reduce misuse of statistics that are not fully reliable.
2. The Bureau's analyses of 1970 census undercount show that geographic variation is substantial. The simple synthetic method is not sensitive to this variation, and can, in fact, introduce serious defects not present in the unadjusted data.
3. If the undercount for specific age/race/sex groups were the same among subunits below the national level, the method would be acceptable.
4. The simple synthetic method is dependent on readily available independent estimates of undercount for population subgroups, and therefore provides no direct means for adjusting for the undercount of Hispanics.
5. Bureau research, and comparable studies by Canada for its census, demonstrate that adjustments by this method would produce more errors than superior methods that can be refined as more information is available from evaluation projects.

Rebuttal

1. The simple synthetic method is uncomplicated, easily understood, and timely. Its use would produce acceptable results on the average.
2. In view of the important and immediate uses of census results, adoption of the simple synthetic method will produce adjusted data quickly, and such data will correct for some of the most serious defects of unadjusted data.
3. The Bureau has an obligation to reduce statistical inequity even through the method used may not satisfy its highest standards of data quality.
4. The National Urban League recommends that synthetic adjustments be used for States and local areas and that the national undercount rate for Blacks be used for subnational adjustment for the Hispanic undercount.
5. Application of the simple synthetic method requires only that the null hypothesis be satisfied—that there is no *statistically significant* difference in undercoverage rates among geographic areas.
6. Alternatives to the synthetic method depend partly on demographic analysis, for which a number of questionable assumptions must be made to derive national undercount estimates.
7. According to the National Commission on Employment and Unemployment Statistics, adjustments for undercount in labor force statistics by use of the synthetic method would be smaller in magnitude that the adjustments the Census Bureau traditionally makes to account for underreporting of income and unemployment in its Current Population Survey.

The following assumptions deal with the broad premise:

The Census Bureau will be able to produce a series of adjusted census figures that are statistically acceptable for various geographic levels and various characteristics as they become technically feasible; the Bureau will continue to produce additional estimates during the decade.

Critical Assumption

Recognizing the present limits of technical feasibility, affected parties will accept and find useful initial adjustments for larger geographic areas only, despite program requirements for data for smaller areas.

Basis of Assumption

The demand for statistical adjustment of decennial census data stems in large part from the conviction that differential population undercoverage, especially of minorities such as the Black and

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Spanish-origin populations, produces serious inequity in the administration of Federal and State programs, especially those which distribute funds according to statistical formulas. Adjustment for States and large metropolitan areas, which should be feasible by 1982, will be an important step toward improved program administration.

Supporting Information

Population data, both counts and characteristics, are key elements in many formulas used to distribute billions of dollars in Federal funds annually.

2. Partial adjustments, such as for selected geographic areas and key characteristics, would satisfy some program requirements.

3. About one-third of the population lives in the 30 largest SMSA's for which adjustment is expected to be feasible within 2 years.

Rebuttal

1. Limited adjustments are not adequate:

a. An adjustment would be of dubious utility unless it applied to all geographic levels for which stakeholders have a program interest.

b. Many Federal agencies indicate that adjustment should be applied to all levels for which they have program responsibility.

2. Census results without adjustment are adequate; unadjusted census data have been valuable in the past and will continue to be useful, partly because they provide internally consistent figures for use in program administration and formula grants.

3. The Census Bureau should be in the counting business. Its staff is the most competent and highly regarded in that field.

4. Going beyond an absolute count would be to go outside of the mission of the Census to try to solve the problems of society.

Critical Assumption

No currently available adjustment procedure will provide more accurate numbers than the actual counts for *all* units of government or down to the block level; therefore, adjustments to relevant geographic levels must be made over time as procedures are refined geographically.

Basis of Assumption

None of the currently known procedures have been tested for their capability to measure the undercount at all levels for all units of government.

Supporting Information

1. There is a stated concern within the professional statistical community that the techniques being developed are still in the experimental stage and are not yet ready for implementation.

2. Canadian experience with reverse record checks indicates that simple synthetic adjustment might not be appropriate for geographic subdivisions below the regional level.

3. Comparisons of demographic estimates for States with those computed by synthetic methods also raise doubts about the accuracy of synthetic adjustment for small areas.

4. Demographic estimates are available only for the Nation and are still developmental for the States.

5. Standards against which to measure and evaluate adjustment procedures are not yet available for the smallest geographic areas.

6. To make estimates for every unit of government involves an assumption that undercount rates from the sample area apply to areas not in the sample.

7. Even though more accurate numbers cannot be provided for all units, it is important to increase the accuracy of as many as possible; improving the level of accuracy of some numbers is better than leaving them alone. Demographic estimates of national undercount by age, sex, and race will be available in the spring of 1981. Estimates of the undercount, based on evaluation studies, for the States, the 30 largest SMSA's, and 10 cities, and for the Hispanic undercount at the national level, will be available in late 1981, and improvements in these estimates will be possible by 1983.

Rebuttal

1. Adjustments for smaller geographic areas could be made using various synthetic or regression techniques. Although the data might be of unknown accuracy, at least a complete set of "official" data would be available for program administration.

2. Multiple series of adjusted census data may be unacceptable to users of census data.

3. The Census Bureau may not be capable of handling the workload required to produce multiple sets of printed and taped census figures.

4. There would be "numerator-denominator" difficulties in Federal program implementation where unadjusted and adjusted figures had to be combined to produce rates and ratios for program analysis or fund allocation formulas.

5. Because of difficulties in producing small area detail counts and characteristics, publication of official data could be delayed with corresponding adverse effects on timely application of census results for policy planning and program implementation.

Critical Assumption

In order for adjustment to improve program effectiveness, program agencies will require adjustment for key demographic characteristics such as age and income; adjustment for a limited number of key characteristics will satisfy the most important program needs.

Basis of Assumption

Agencies are dependent on accurate distributions of the population by certain demographic characteristics in order to carry out major program goals.

Supporting Information

1. Adjustment for some areas and not others is acceptable for many programs.

2. Legislated programs are often targeted at specific segments of the population; for example, the Elementary and Secondary Education Act allocates funds on the basis of the number of children ages 5 through 17 in low-income families.

3. The distribution of General Revenue Sharing funds could be adjusted if and when adjustment factors are available for all geographic areas and for income.

4. Among the characteristics most commonly incorporated into funding formulas are race, age, per capita income, family income, and employment and unemployment.

Rebuttal

1. No timely adjustments are feasible:

a. Current methodology does not produce estimates of acceptable quality for the adjustment of characteristics.

b. The time it may take to implement an adjustment of this type will not satisfy agency needs for timely data.

2. A few adjustments are not enough:

a. Different adjustment techniques must be used for various characteristics. This will result in a combination of adjustment procedures ranging from very sophisticated to simple raking, and therefore there may be inconsistencies in the data.

b. Program agencies have indicated the need for adjustment of many characteristics and will press for adjustment of more than a limited number of key characteristics.

Critical Assumption

Given the estimated magnitude of the undocumented-alien population and the fact that the Bureau's policy is to count all residents, it is important to include the development of an estimate of their "true" number as part of the 1980 census evaluation and statistical adjustment program.

Basis for Assumption

The stated policy of the Census Bureau is to enumerate all U.S. residents, regardless of legal status.

Supporting Information

1. Current interpretation of the Constitution indicates that the census should enumerate all residents.

2. Determining the legal status of respondents would be a complex legal undertaking and is not feasible or appropriate in a statistical activity such as the census.

3. Ultimately, a valid estimate of the undercount by demographic methods cannot be made without an estimate of undocumented residents in the estimate of the "true" population. Since some undocumented residents were likely to have been counted in the 1980 population census, they must also be accounted for in the national population estimates for consistency in making an adjustment.

4. Users of census data require complete information about all residents of the United States and its subnational areas.

5. Undocumented residents have an impact on economic and political life in the United States.

6. The speculative estimates of undocumented residents indicate this group may be a significant portion of the population. The number could be as high as several million.

7. Because of their reported concentration in certain areas of the country, the underenumeration of undocumented aliens could reduce political representation and funds allocated to certain States and cities.

Rebuttal

1. The Bureau does not now have a methodology to estimate the number of undocumented residents nationally or for geographic subdivisions, and the available evidence indicates an uneven geographic distribution of such persons.

2. It may not be possible to derive an estimate of undocumented immigrants to include in the estimated "true" population.

3. Including undocumented residents in the census or the undercount estimates may not be acceptable to Congress.

4. Even if no method is available to adjust for an undercount of undocumented aliens, that does not relieve the Bureau of the responsibility to adjust for other groups for which estimates are available.

Section D. Factors That Prevent Adjustment for Apportionment

The purpose of this statement is to summarize in nonlegal and nontechnical language the Census Bureau's position on the subject of statistical adjustment of the 1980 Decennial Census counts to be used to reapportion the U.S. House of Representatives.

The need for this statement arises from public confusion—generated by various lawsuits and attendant publicity—as to whether the Bureau could legally or operationally make such adjustments. The statement was prepared for the Undercount Adjustment Workshop held September 2–5, and, therefore, was completed before a decision was rendered in the Detroit suit.

The Issue

For a variety of reasons, not all persons are counted in the census. The 1970 census figures, for example, are estimated by one technique to have fallen about 2½ percent below the "true" population. All earlier censuses, going back to the first enumeration in 1790, are believed to have had net underenumeration. The courts have indirectly addressed the issue of underenumeration and concluded that officially released (albeit incomplete or not final) census results are appropriate for apportionment and redistricting.[1]

Knowledge of the extent and character of census undercounts has expanded considerably in the past two decades and with that expansion of knowledge there has been a growing intgrest in the possibility of adjusting both national and local area census counts to include statistical estimates of omissions. The specific issue is whether it is possible and appropriate to adjust 1980 census counts that will be used to reapportion seats in the House of Representatives among the States and to redistrict within States. This issue has two key parts:

1. Would it be legal?

2. If legal, would it be operationally feasible?

The answer to both questions is no.

The Legal Foundation

Statistical programs of the Federal Government, such as the Decennial Censuses of Population and Housing (hereafter, census) are authorized, controlled, and ultimately accountable within a specific legal framework. In the case of the census, the foundation and specific constraints are established in Article 1, Section 2 of, and the 14th Amendment to, the Constitution. The Constitution also confers full authority for the determination of census procedures on the Congress.[2] Congress, in turn, has delegated the responsibility for the conduct and content of the census to the Secretary of Commerce and to the Director of the Bureau of the Census; this statutory delegation is found in Title 13 of the U.S. Code (hereafter, Title 13). The delegation of responsibility for procedural and other matters has been tested in court and upheld.[3] This broad delegation of authority is, of course, subject to both specific and general constraints arising from the Constitution, Title 13 and other statutes.

[1] *Asbury Park Press, Inc. v. Wooley*, 33 (1960) and *East Chicago v. Stans*, Civil No. 70–H–156 (1970).

[2] *Bethel Park v. Stans*, 449 F.2d 575 (1971).

[3] *Quon v. Stans, 309 F. Supp 604 (1970).*

In discharging its mandated responsibilities the Bureau of the Census (hereafter, Bureau) also faces other constraints. Important among these are the current state of census-taking technology and the state of knowledge in the statistical and demographic professions, the availability of adequate budgetary and other resources (including, particularly, a sufficient number of effective enumerators), public attitudes toward the census and government information collection in general, and various time constraints.

Paramount among time constraints are the statutory requirements that the Congress be notified of the population court by State and the appropriate number of Representatives for each State within one week after the opening of the next session of Congress after Census Day (or roughly 9½ to 10 months from Census Day)[4] and that local area data for redistricting within States be provided no later than one year after Census Day (April 1, 1981).[5]

Constitutional Provisions

Article I, Section 2, of the Constitution states:

Representatives * * * shall be apportioned among the several states which may be included with this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of Free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three-fifths of all other Persons. The actual Enumeration shall be made within three Years ater the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct.

The term, "actual Enumeration", means a census or a headcount. A "census" has been judicially defined as "an official enumeration of the inhabitants with details of sex, age, family, etc., and the public record thereof * * * A 'census' is not an estimate of the population."[6] The legal definition does not differ from the common or historical usage.[7]

This original population base for apportionment was revised with the abolition of slavery; the fourteenth amendment to the Constitution modified the first sentence to provide that:

[4] Title 2. U.S. Code

[5] Title 13, U.S. Code

[6] *Union Electric Co. v. Curie River Electric Coop., Inc.*, 571 S.W. 2nd 790, 794 (Mo. App. 1978). See also, *State v. Nabours*, 286 P. 2d 752, 755, 1955 (to "enumerate means 'to designate' or specifically mention, in detail, or reckon singly.")

[7] *Webster's Third New International Dictionary*, p. 361 (1976) ed.; *New English Dictionary On Historical Principles*, p. 219–20 (1893).

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Representatives shall be apportioned among the several States according to their respective numbers, *counting* the whole number of persons in each State, excluding Indians not taxed.

Since the passage of the income tax law, there are no longer any Indians not taxed who are to be excluded from the apportionment population, so that it now includes the "whole number of persons" in each State to be arrived at by an "actual Enumeration" or count.

In the phrase, "in such manner as they shall by Law direct.", the Constitution grants to Congress the authority to determine the manner and, hence, methods by which the census shall be taken. The Congress, through enactment of Title 13, has legislatively delegated the determination of the manner and methods of conducting the census to the Secretary of Commerce and the Director of the Bureau of the Census.

Title 13, U.S. Code

In its delegation of authority in Title 13, the Congress explicitly authorized the use of sampling as a means of estimating characteristics of the population. Section 141(a) of Title 13, which requires that the decennial census be taken, provides:

> The Secretary shall, in the year 1980 and every 10 years thereafter, take a decennial census of population as of the first day of April of such year, which date shall be known as the "decennial census date", in such form and content as he may determine, including the use of sampling procedures and special surveys.

At the same time, in Section 195 of Title 13, the Congress expressly prohibited the use of sampling in the apportionment process, saying:

> Except for the determination of population for purposes of apportionment of Representatives in Congress among the several States, the Secretary shall, if he considers it feasible, authorize the use of the statistical method known as "sampling" in carrying out the provisions of this title.

Thus, Title 13 clearly continues the constitutional mandate and historical precedent of using the "actual Enumeration" for purposes of apportionment, while eschewing estimates based on sampling or other statistical procedures, no matter how sophisticated.

There are, of course, methods other than sampling for estimating population and some have argued that the exclusion of sampling does not cover such alternatives. There are two relevant responses:

First, alternative methods for undercount adjustment were discussed in a General Accounting Office (GAO) report [8] to the House Committee on Post Office and Civil Service in a manner that underscored their developmental and experimental status. Although the GAO report recommended greater efforts to adjust for undercounts, the Committee did not authorize use of such adjustment techniques under Title 13, thus continuing the requirement of use of the actual enumeration.

Second, and perhaps more importantly, the framers of the Constitution drew a clear distinction between an "actual Enumeration" and an estimate, regardless of its underlying methods. In the absence of an "actual Enumeration," seats were apportioned in the first House of Representatives based upon what was characterized as "a mere conjecture" of population, which was contrasted to the more "precise standard" anticipated from the later census.[9]

Congressional Intent

The legislative history of Title 13 makes it eminently clear that sampling was not to be used in apportionment. Relative to the initial enactment of section 195, the relevant House report states: [10]

> Section 195 provides that the Secretary of Commerce may authorize the use of the statistical method known as sampling in carrying out the purpose of Title 13, if he deems it appropriate. However, section 195 does not authorize the use of sampling procedures in connection with apportionment of Representatives.
>
> The purposes of section 195 in authorizing the use of sampling procedures is to permit the utilization of something less than a complete enumeration, as implied by the word "census," when efficient and accurate coverage may be effected through a sample survey. Accordingly, except with respect to apportionment, the Secretary of Commerce may use sampling procedures when he deems it advantageous to do so.

Furthermore, enactment of section 195 was at the specific request of the Department of Commerce to provide authority to use sampling in the context of the overall census enumeration to achieve economies of operation. Thus, in the context of an understanding that an actual enumeration was required for apportionment purposes, the Congress granted authority for the use of sampling for other purposes.

The Congress had an opportunity in the 1976 amendments to Title 13 to consider expansion or alteration of section 195 and, even in the presence of recommendations to do so, chose not to modify section 195 to permit any undercount adjustment or correction. The continuation of the longstanding actual enumeration requirement is fully binding on census activities.

Other Opportunities for Congressional Action

In meeting its oversight responsibilities, the Congress has had ample opportunity to instruct the Bureau to make adjustments for underenumeration. The clearest such opportunity occurred in 1977, when the House Committee on Post Office and Civil Service considered, but chose not to report, H.R. 10386. In its final form this bill would have provided for "corrections" of the actual enumeration and, thereby, relaxed the obligation for an actual census.[11] H.R. 9623 and H.R. 8871, the precursors of H.R. 10386, were the subject of subcommittee hearings in which the proposal to require undercount "corrections" and other proposed changes in Title 13 were discussed extensively.[12]

The frequent Congressional hearings concerned with the census in particular, and the Bureau's programs in general, have provided ample opportunity for the Congress to consider undercount adjustments. In no instance has a proposal to adjust census results gone beyond a full Committee. When consulted, the Bureau has steadfastly maintained that, even if it were legal, a statistically defensible underenumeration adjustment of the census counts to be used for apportionment was not possible given statutory time constraints and the experimental and developmental character of possible undercount adjustment techniques.

Operational Feasibility

The issue is not just—or even—whether an adjustment should be done. Rather, it is whether an appropriate adjustment could be done within the time deadlines posed by statute. Tabulation of the total population by States required for the apportionment of Representatives in Congress must be completed and reported to the President by December 31, 1980. Tabulations for political subdivisions in the various States must be reported to the States by April 1, 1981. For the following reasons, it is the judgment of the Bureau that

[8] Comptroller General of the United States, *Report to the House Committee on Post Office and Civil Service on Programs to Reduce the Decennial Census Undercount*, B-78395 (May 5, 1976), p. 21-22.

[9] See Ferrand, *Records of the Federal Convention of 1787*, Vol. 1, p. 578-9.

[10] H.R. Rep. No. 85-1043, 85th Cong., 1st. Sess. (1957), p. 10.

[11] See, Section 143., "Corrections in census counts, H.R. 10386, 95th Congress, 1st. Sess. (1977), p. 9-11.

[12] See hearings on H.R. 8871, Hearing before the Subcommittee on Census and Housing, 95th Congress, 1st Sess., No. 95-46, (1977).

such adjustment to the counts to be used for apportionment would not be operationally feasible within the statutory time constraints.

At the minimum, such adjustment would require:

1. A reliable estimate of the undercount with specific estimates for such demographic, socioeconomic, administrative, and geographic subgroups as were needed for a pre-agreed adjustment methodology. At best, preliminary estimates of the undercount based on demographic analysis (race, sex and age) should be available around April 1, 1981. Preliminary estimates of the undercount would, of course, be subject to revisions, and, based on past experience, such revisions might be large.

2. Completion of the special data development efforts necessary to estimate State level undercounts by match studies and selected other analyses. This is necessary to address the problem of differential geographic undercounts arising from operational or other nondemographic factors. Fully tabulated data from these efforts will not be available until the fall of 1981 at the earliest. These activities involve direct matches of census returns with other surveys, some of which are not scheduled for collection until January 1, 1981, and includes sifting through the entire census file; a file that is expected to include records for more than 85 million households and more than 222 million individuals. It is impossible to complete the requisite work in time for the use of any adjusted data for Congressional apportionment among and within the States.

3. To properly lay the foundation for public, congressional, legal, and administrative acceptance of adjusted census counts for any purpose, there must be a suitable interval for statisticians, demographers, and the widely interested user community both to study and analyze the methodology to be used, and to assess the evidence in support of that methodology vis-a-vis alternative techniques. It is essential that this step engage the best minds and most interested users outside the Bureau as well as incorporate the best work within the Bureau.

4. Finally, it is essential that the Bureau be prepared to fully defend the accuracy of the chosen adjustment. The courts have long recognized the census counts as having a "presumptive correctness" and that alternatives that might be considered for redistricting would have to exhibit "clear, cogent and convincing evidence" to support their validity.[13] The Bureau has always adopted similar criteria in reaching decisions on new methods. In the case of undercount adjustment for apportionment purposes, because the first three conditions could not be met within the statutory time deadlines, *no* clear, cogent or convincing evidence could possibly be provided.

Operational Facets of "Actual Enumeration"

The 1980 census data covering the vast majority of Americans will result from a pure count in the full tradition and practice of actual enumeration. That is, the individual form will be completed (generally by a family respondent), checked for omissions or errors, and sent through a device which derives the statistical information and puts it into the Bureau's computer. The computer, in turn, prints the necessary tabulations for reapportionment calculations, and, later, for other statistical purposes. In enumeration and processing, however, there are situations which require error corrections or special efforts to ensure that the most accurate and complete count is achieved. Error correction and coverage improvement in the 1980 census requires information gained in the enumeration process as to the existence of a person or household at a specific location.

Substitution for Enumeration and Processing Reasons

Substitution is the process by which all the characteristics for one enumerated person are used during data processing to describe another enumerated person whose characteristics are unknown. This process has been used in previous censuses. Substitution is being used in the 1980 census as follows:

Close-out. After repeated visists by an enumerator to a housing unit known to be occupied, the enumerator is instructed, as a last resort, to determine at least the number of persons living in the unit as well as housing characteristics. This is usually obtained from neighbors, building manager, or other knowledgeable persons. The census form is identified as a "close-out" in machine readable form and the number of occupants is entered. During processing, characteristics are "substituted" by the computer for each person in a "close-out" household. If the number of occupants is unknown, an entire set of characteristics for a neighboring household is substituted. (The specific field guidelines for such procedures are described in the 1980 Census operations manuals).

Unreadable questionnaires. Occasionally during shipment or the processing of data, census forms are lost, destroyed, or damaged so as to be unreadable by the machine. In such instances, replacement questionnaires are entered into the system that indicate the number of persons, if any, in the living quarters. When possible, this information is obtained from master control counts for each address that is entered by the field staff during the actual census. By "reading" the replacement questionnaires, the characteristics for these enumerated persons are "substituted" by the computer from information reported for other persons. When master control counts are not available or the number of damaged forms is small, both the numbers and characteristics are substituted. In 1970, characteristics for more than 3 million enumerated persons were "substituted" for the two reasons described above. In 1980, the Bureau expects to hold substitution for these reasons to about 2¼ million persons.

Coverage Improvement—1980 and 1970

The Bureau's extensive coverage improvement program for the 1980 census is discussed in detail in a recent article by Peter Bounpane and Clifton Jordan of the Bureau staff.[14] Of the substantial improvements over 1970 procedures, two aspects of the 1980 coverage improvement program deserve special mention in the instant situation: The vacancy recheck and the post-enumeration post office check in conventional areas.

Vacancy Recheck. As the proportion of single, 2-person and 2-worker households has increased along with greater mobility, there has been growing difficulty in obtaining a census report for each occupied dwelling unit. One aspect of this problem has been a tendency on the part of enumerators to judge that a dwelling unit is vacant when, in fact, the residents were simply not home at the times the enumerator called. A special survey taken in the closing phase of the 1970 census showed that about one of every ten dwelling units classified as vacant by enumerators was actually occupied. Because the potential for even greater underenumeration from this type of situation grew during the 1970's and was clearly shown in the Bureau's intercensal surveys, a special, intensive

[13] *Dixon v. Hassler*, 412 Supp. 1036, 1976.

[14] "Plans For Coverage Improvement in the 1980 Census", *Papers and Proceedings of the Sociol Statistics Section of the American Statistical Association*, 1978.

recanvass of every dwelling unit classified as vacant is being undertaken in the 1980 census. Persons identified as omitted in this followup effort will, of course be added to the count.

In 1970, the magnitude of the problem of misclassification of dwelling units as vacant did not become apparent until initial field work had been largely completed. At that time, the cost, complexity, and delays associated with a recanvass would have delayed census processing to a point where the counts for apportionment probably would not have been available within the required time period. To correct this problem, a carefully designed and monitored program of substitution for units with a high probability of being occupied was used.[15] This use of substitution was of considerable concern within the Bureau and, even though the courts had regularly decided that the procedures used in the 1970 census were within the meaning of the Constitution and neither arbitrary nor capricious, a decision was made to recanvass completely in 1980, eliminating the need for the 1970-type activity.

The Post-Enumeration Post Office Check. About 5 percent of the 1980 population count is expected to be found in rural or remote areas where enumerators visit the household and complete or check the census form on the spot. The Bureau has learned that dwelling units are more likely to be completely missed than in urban areas. The Bureau, therefore, again enlisted the aid of the U.S. Postal Service in an effort to identify missed households. In 1980, a census enumerator will make an on-the-spot check of missed units as indicated by the post-enumeration postal service check. As with the vacancy check, this procedure will take place before the local census office is closed and any persons that were missed will be added to the count.

In 1970, by contrast, the timing and budgetary situation did not permit a direct canvass of post-office identified misses. Consequently, limited substitution was used in the South where the miss problem was most pronounced.[16] Because field procedures permit a direct early visit, no such substitution will be used in the 1980 census.

[15] See, Joseph Waksberg and Margaret A. giglitto, *The Effect Of Special Procedures To Improve Coverage In The 1970 Census. April 1973; and Bureau of the Census, Effect Of Special Procedures To Improve Coverage In The 1970 Census,* PHC(E)–6.

[16] *Effect of Special Procedures To Improve Coverage In The 1970 Census,* PHC(E)–6.

Coverage Improvement Vis-a-Vis Undercount Adjustment

Coverage improvement in the 1980 Census will rely almost entirely on strict observation by Bureau employees in reference to master control counts, rechecks or special recanvass procedures. *By contrast,* undercount adjustment means direct additions of persons to the basic count by statistical means alone, without any direct evidence of the actual existence of the persons or of the dwelling units in which they may reside. A variety of techniques are available for such adjustments, but they have the common characteristic of assigning individuals to a specific geographic area. Such assignments would have an uncertain effect on accuracy; they may make the resulting estimates for the majority of areas less accurate even as they bring the national total closer to the "true" population. As indicated by the proceedings of the Conference on Census Undercount,[17] there is no consensus on an optimal procedure for such allocation.

May 13, 1980.

Appendix A

Memorandum For: Vincent Barabba, Director, Bureau of the Census.

Through: Courtenay M. Slater (C.M.S.), Chief Economist for the Department of Commerce.

Subject: 1980 Census: Statistical Adjustment for Undercoverage.

Apparent undercoverage in previous decennial censuses has led to widespread interest in the possibility of statistical adjustments to the 1980 census data. Extraordinary efforts have been undertaken by the Census Bureau to achieve the most complete coverage possible in 1980. The extent of any undercount will not be known for some months. You are now engaged in an active and systematic process of examining the validity of various methods of measuring and analyzing a possible undercount in the 1980 Census, as well as the desirability of making adjustments once the existence and extent of an undercount is determined. This process should continue with the following guidelines.

1. Planning for and execution of a program to evaluate census data should continue to be given high priority by the Bureau and should proceed as expeditiously as is consistent with good professional standards.

2. There should be full and frequent consultation with the Chief Economist and the General Counsel throughout this process.

3. Federal agencies and interested parties among the general public should be kept informed regarding the Bureau's examination of this issue and should be given adequate opportunity to comment on the approach being taken by the Bureau.

The culmination of this process should be a decision by the Director of the Census Bureau on whether and how any statistical adjustment should be made to 1980 census data. This decision should take full cognizance of the importance of:

(1) the need for confidence that any adjustment will produce more accurate information regarding the distribution of the population and the relevant characteristics of that population;

(2) the defensibility of any adjustment methodology that may be used;

(3) a continued public perception of the accuracy, reliability, and objectivity of census data; and

(4) the very great public need for accurate and timely data about the U.S. population and its characteristics.

Even if there were some basis for an adjustment of the population count to be used for apportionment of the House of Representatives, I do not believe that any adjustment can be made prior to the statutory deadline for the delivery of this information to the President. I do expect, however, that by the end of this calendar year, or shortly thereafter, you will be prepared to announce a decision on adjusting the census data for other uses.

I should appreciate receiving from you a detailed description of the process to be followed in arriving at the above decision, and shall expect you to take direct personal charge of this process.

Philip M. Klutznick,

Secretary of Commerce.

Appendix B—Assumptions Discussed at the Second Census Undercount Workshop

1. A simple synthetic adjustment procedure would be timely.

2. The courts will accept adjusted Census Bureau numbers.

3. Any adjustment of the census counts will increase the demand for further adjustments for racial, ethnic, and socioeconomic groups.

4. The Census Bureau will continually examine, evaluate, and share its understanding of undercoverage throughtout the decade.

5. The nature of the Congressional legislative stucture and process, and knowledge of the complexity in determining gains and losses, will lead to maintaining the status quo, i.e., the use of *straight counts.*

6. Any adjustment procedure implies two sets of population counts—one adjusted and the other unadjusted.

7. There would be "numerator-denominator" difficulties in the use and interpretation of census data if not all census figures are adjusted.

8. The Census Bureau has to take into account the major uses of its data in making its decision whether or not to adjust.

9. Minorities will insist on complete adjustments at the lowest geographic levels, because they believe that this will bring them closer to the truth and equity in funds allocation.

10. The Census Bureau has the ability to develop a statistical and analytical methodology which will permit adjustment of *critical variables* (e.g., selected subnational geographic units and selected characteristics) in a timely fashion.

11. The Census Bureau can change operational procedures to improve timeliness, detail, etc., of a complex procedure for adjustment of census counts.

12. A simple synthetic adjustment procedure will not meet Census Bureau standards for accuracy.

13. Major users of census data are capable of using multiple sets of data.

14. Given the estimated magnitude of the undocumented resident population and the fact that our policy was to count all residents, it is important to attempt to incorporate an allowance for this group in the expected (i.e., corrected) population and hence in the estimates of the undercount.

15. Given the potential for reducing the great uncertainty in our estimates of the undocumented resident population over time, the estimates of undercoverage will need to be modified with the passage of time for this reason.

16. The confidence of the Census Bureau to make a decision, to defend its position vis-a-vis stakeholders, and in its technical abilities has improved.

17. The Census Bureau is less hypersensitive to pressure applied by stakeholders.

18. All stakeholders must act through the Courts, Congress or the Administration.

19. It is assumed that the selected adjustment procedure will be accepted by stakeholders.

20. The anticipated reactions of segments of the public should not be the driving force behind the Bureau's decision to adjust or not to adjust.

21. If adjustments are to be made, the Census Bureau should formulate the procedures. This will promote a high standard of statistical rigor and encourage the appropriate use of census results.

22. Local area data required by Federal programs must be of sufficient quality to be credible in the courts.

23. Adjustment of census data would respond to widely expressed public policy needs.

24. In order for adjustment to improve program effectiveness, program agencies will require adjustment for key demographic characteristics, such as age and income, as well as for total population counts; however, adjustment for a limited number of key characteristics will satisfy the most important program needs.

25. The Administration will view support of the use of straight census counts to be consistent with expenditures for coverage improvement.

26. The Census Bureau has the ability to develop a statistical and analytical methodology which will permit adjustment of critical variables within 3 years of the census.

27. Regardless of the adjustment procedure used, there is currently no adequate methodology for measuring the quality of the adjusted figures.

28. Bureau professional staff would support the use of actual census counts rather than adjusted figures until the methodology area determines that there is a statistically acceptable adjustment technique.

29. Most stakeholders will expect that an adjustment procedure will be applied to all levels for which they have program interest.

30. No currently available adjustment procedure will provide more accurate numbers than the actual census counts for all units of government.

31. If an adjustment to census data is made, minorities other than Blacks will expect the Bureau to develop separate adjustment ratios to cover their populations.

32. An adjustment procedure would receive initial support from a wide range of stakeholders; however, there will be active opposition to the adjustment as the effects become known.

33. Pressure for a timely adjustment may force the Bureau to make an adjustment that does not make use of the information that will become available from the full set of evaluation studies. As more information becomes available, additional adjustments will be called for. Multiple adjustments could lead to more litigation.

34. A Bureau decision to adopt an adjustment procedure that is not statistically defensible is a step toward politicizing the Bureau.

35. Adjustment of census counts will result in the perception that the Bureau has changed the numbers for political purposes.

36. Adjustment of 1980 census data will raise serious doubts about whether the current investment in data collection should be repeated for the next census, whether the costs of data collection for surveys and other censuses are cost effective, and whether rigorous statistical standards for data quality are necessary. Concerns about response burden could intensify and the high levels of respondent cooperation could diminish.

Appendix C—References and Background Material

Discussion Toward the 1980 Undercount Adjustment Decision

1. Bounpane, Peter, and Mayer Zitter. "Technical Issues in Adjusting for the Census Undercount," presented at the 1980 Annual Meeting of the American Statistical Association, Houston, Texas: August 11–14, 1980.

2. Letter to the Honorable William Lehman, Chairman, Subcommittee on Census and Population, House Committee on Post Office and Civil Service, from the Comptroller General of the United States, November 9, 1978, GGD–79–7.

3. National Academy of Sciences, National Research Council, Assembly of Behavioral and Social Sciences, Committee on National Statistics, Panel on Decennial Census Plans. *Counting the People in 1980: An Appraisal of Census Plons.* Washington, DC: 1978.

4. Passel, Jeffrey S. and Jacob S. Siegel. "Measuring the Coverage of the Hispanic Population of the United States in the 1970 Census by Demographic Analysis," revised version of a paper presented at the 1979 Annual Meeting of the Southwestern Social Science Association, Fort Worth, Texas: March 28–31, 1979.

5. Siegel, Jacob S., Jeffrey S. Passel and J. Gregory Robinson. "Preliminary Review of Existing Studies of the Number of Illegal Residents in the United States," Working paper for the research staff of the Select Commission on Immigration and Refugee Policy. January 1980.

6. U.S. Bureau of the Census. *Conference on Census Undercount, Proceedings of the 1980 Conference,* Washington, DC: July 1980. See especially:

"The Census Bureau Experience and Plans," Jacob S. Siegel and Charles D. Jones

"Adjusting for Decennial Census Undercount: An Environmental Impact Statement," Peter K. Francese

"The Impact of Census Undercoverage on Federal Programs," Courtenay M. Slater

"The Impact of the Undercount on State and Local Government Transfers," Herrington J. Bryce

"Should the Census Count Be Adjusted for Allocation Purposes: Equity Considerations," Ian P. Fellegi

7. U.S. Bureau of the Census. "Coverage of Population in the 1970 Census and Some Implications for Public Programs," *Current Population Reports,* Series P–23, No. 56, Washington, DC: U.S. Government Printing Office, 1975.

8. U.S. Bureau of the Census. 1970 Census of Population and Housing, *Evaluation* and Research Program, "Estimates of Coverage of Population by Sex, Race, and Age: Demographic Analysis" Issued February 1974, Reprinted June 1976.

9. U.S. Bureau of the Census. *Proceedings of the Census Undercount Workshop, September 5–8, 1979,* Washington, DC: October 2, 1979.

Framework for the Decisionmaking Process

10. Mason, Richard O. and Ian I. Mitroff, *A Primer for SAST: Strategic Assumption Testing and Surfacing for Strategic Manogement.*

11. Toulmin, Stephen, Richard Rieke and Allan Janik. *An Introduction to Reasoning.* New York: Macmillan Publishing Co., Inc., 1979.

[FR Doc. 80–32557 Filed 10–17–80; 8:45 am]

BILLING CODE 3510–07–M

[17] *Conference On Census Undercount.* July 1980.

Foreign-Trade Zones Board

[Docket No. 16–80]

Foreign-Trade Zone No. 33, Allegheny County, Pa.; Expansion Within RIDC Park West

Notice is hereby given that an application has been submitted to the Foreign-Trade Zones Board (the Board) by the Regional Industrial Development Corporation of Southwestern Pennsylvania (RIDC), a Pennsylvania non-profit corporation and grantee of Foreign-Trade Zone No. 33, requesting authority to include three additional sites in its industrial park zone near the Greater Pittsburgh International Airport, Allegheny County, within the Pittsburgh Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on October 14, 1980. RIDC was

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established in 1955 as a non-profit development corporation to create employment opportunities through industrial development in the greater Pittsburgh area. The corporation is authorized to sponsor and operate foreign-trade zones under Pennsylvania Act No. 126 (approved June 10, 1935, Pub. L. 291).

Zone No. 33 was authorized by the Board on November 9, 1977 (Board Order 124) as a warehouse/distribution facility on a 6-acre site within the RIDC Park West, a 340-acre industrial park in the Townships of Findlay and North Fayette, Allegheny County. The original plan called for expansion of the zone within Park West based upon the needs of tenants.

The present application requests zone status for Parcels 6, 7, and 9 within the industrial park. Each parcel will be owned and operated by an American subsidiary of a foreign company planning to shift assembly operations to the U.S. from abroad. Each company's operation is designed to serve markets throughout the western hemisphere, thus creating a potential for exports.

Parcel 6, a 13.6-acre site, will be occupied by Eickhoff America Corporation, a subsidiary of Gebr Eickhoff of Bochum, West Germany. Eickhoff plans to construct a 39,000 square foot building to assemble shearing machines for the mining industry. Although the company will import certain components, it expects to use an increasingly larger share of American-produced components.

Parcel 7, on 7.3 acres, will contain the operations of North America Cerutti Technical and Commerical Organization, Inc., a subsidiary of Officine Mecconiche Giovanni Cerutti, S. p. A. of Casale Monferrato, Italy. North America Cerutti plans to assemble rotogravure printing presses in a 26,000 square foot building. Initially, the company will import component parts, gradually shifting to American-made parts.

Parcel 9, on a 9.3-acre site, will be occupied by National Draeger, Inc., a subsidiary of Draegerwerk AG of Luebeck, West Germany. Draeger is building an 11,000 square foot building for the assembly of diving, breathing protection, and gas detection equipment. Importing core parts, the company plans to manufacture certain components and purchase standard, American-made parts to complete the products.

In accordance with the Board's regulations, an Examiners Committee has been appointed to investigate the application and report thereon to the Board. The committee consists of Hugh J. Dolan (Chairman), Administrative Law Judge, Office of the Secretary, U.S. Department of Commerce, Washington, D.C. 20230; John Noon, Director, Inspection and Control, U.S. Customs Service, Region III, 40 S. Gay Street, Baltimore, Maryland 21202; and Colonel Joseph A. Yore, District Engineer, U.S. Army Engineer District Pittsburgh, Federal Building, 1000 Liberty Ave., Pittsburgh, Pennsylvania 15222.

Comments concerning the proposed zone expansion are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before November 14, 1980.

A copy of the application is available for public inspection at each of the following locations:

Office of the Director, U.S. Department of Commerce District Office, 2002 Federal Building, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222;

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and E Streets, NW., Room 2006, Washington, D.C. 20230.

Dated: October 15, 1980.

John J. Da Ponte, Jr.,

Executive Secretary, Foreign-Trade Zones Board.

[FR Doc. 80-32630 Filed 10-20-80; 8:45 am]

BILLING CODE 3510-25-M

International Trade Administration

Semiconductor Technical Advisory Committee, Microcircuit Subcommittee; Change in Meeting Agenda

AGENCY HOLDING THE MEETING: International Trade Administration.

Federal Register **CITATION OF PREVIOUS ANNOUNCEMENT:** 45 FR 66786.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., October 22, 1980.

CHANGES IN THE MEETING: 9:00 a.m., October 22, 1980.

Dated: October 16, 1980.

Saul Padwo,

Acting Director, Office of Export Administration, International Trade Administration.

[FR Doc. 80-32629 Filed 10-20-80; 8:45 am]

BILLING CODE 3510-25-M

Semiconductor Technical Advisory Committee, Semiconductor Manufacturing Materials and Equipment Subcommittee; Change in Meeting Agenda

Agency holding the meeting: International Trade Administration.

Federal Register citation of previous announcement: 45 FR 66787.

Previously announced time and date of the meeting: 11:00 a.m., October 22, 1980.

Changes in the meeting: 9:30 a.m., October 22, 1980.

Dated: October 16, 1980.

Saul Padwo,

Acting Director, Office of Export Administration, International Trade Administration.

[FR Doc. 80-32628 Filed 10-20-80; 8:45 am]

BILLING CODE 3510-25-M

President's Export Council; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the President's Export Council will be held on Wednesday, November 12, 10:30 a.m., in Room B 338-339, Rayburn House Office Building, Washington, D.C. The President's Export Council was initially established by Executive Order 11753 of December 20, 1973, subsequently extended by Executive Order 11827 of January 4, 1975, Executive Order 11948 of December 20, 1976, and Executive Order 12110 of December 28, 1978. The President's Export Council was reconstituted by Executive Order 12131 of May 4, 1979, to advise the President on matters relating to United States export trade, including advice on the implementation of the President's National Export Policy.

The agenda for the meeting will be as follows:

Welcoming remarks and brief introduction.

Remarks by Cabinet level attendees, Senators and Congressmen.

Discussion of the Council's Report to the President.

Other organizational business, announcements and plans for next meeting.

A limited number of seats at the meeting will be available to the public on a first-come basis. The public may file written statements with the subcommittee before or after each meeting. Oral statements may be presented at the end of the meeting to the extent that time is available.

Copies of the minutes of the meeting and further information concerning the President's Export Council may be obtained from Ms. Wendy Haimes or Ms. Elizabeth Ruskin, room 4015B, U.S. Department of Commerce, Washington, D.C. 20230, telephone (202) 377-5719.

Dated: October 8, 1980.

Peter G. Gould,

Deputy Assistant Secretary for Export Development.

[FR Doc. 80-32585 Filed 10-20-80; 8:45 am]

BILLING CODE 3510-25-M

Zamilco International, Inc.

The Office of Antiboycott Compliance, International Trade Administration, U.S. Department of Commerce, having determined to initiate administrative proceedings pursuant to Section 11(c) of the Export Administration Act of 1979 (Pub. L. 96-72, to be codified at 50 U.S.C. app § 2401, *et seq.*) (the Act) Zamilco International, Inc. (Zamilco) based on allegations that Zamilco violated the Export Administration Regulations (15 CFR Part 368, *et seq.* (1979)) promulgated pursuant to the Export Administration Act of 1969, as amended, [50 U.S.C. app § 2401, *et seq.* (1976 & Supp I 1977)]; and

The Department and Zamilco having entered into a Consent Agreement whereby Zamilco agreed to settle this matter by the payment of a civil penalty in the amount of $32,000; and

The Deputy Assistant Secretary for Export Administration having approved the terms of the Consent Agreement;

It is therefore ordered,

First, that Zamilco within 20 days of the service of this Order, pay to the Department, pursuant to Section 11(c)(1) of the Act, the civil penalty in the amount of $11,000;

Second, that Zamilco six months after the date of entry of this Order pay to the Department, pursuant to Section 11(c)(1) of the Act, the civil penalty in the amount of $11,000;

Third, that payment of the remaining $10,000 by Zamilco shall be suspended for a period of one year from the date of entry of this Order, with payment of the suspended fine to be waived at the end of the probation period provided that there are no further violations by Zamilco of the antiboycott provisions of the Act or Part 369 of the Regulations (including timely reporting under Section 369.6 of the Regulations), or of this Order (including the missing of a payment or late payment).

Fourth, that Zamilco shall, to the extent that it has not already done so, undertake the following corrective measures to ensure its future compliance with the antiboycott provisions of the Export Administration Regulations:

a. Zamilco agrees that it will promptly issue to all of its employees involved in international sales information to acquaint them with Part 369 of the Regulations and written instructions directing strict compliance with such regulations.

b. Zamilco shall establish a final review procedure for all documents to or communications with customers in boycotting countries. Such review shall be conducted by one person who has been instructed about the requirements of the Act and Regulations and who will receive internal communications regarding compliance procedures.

c. Zamilco will promptly institute an internal reporting system and educate its employees as to the importance of following designated procedures with respect to reporting of all reportable request to the Department and with respect to taking appropriate exception to requests, compliance with which is prohibited, and which may occur on orders, letters of credit, requests for quotations, instructions from customers, correspondence, etc.

d. Zamilco shall submit a report to the Office of Antiboycott Compliance within one month after the date of entry of this Order, which shall include documentation evidencing in detail the steps it has taken to implement the corrective steps specified in this Order.

Fifth, that the Consent Agreement, the proposed Charging Letter and this Order to be made public;

Sixth, that one year from the date of entry of this Order Zamilco shall make available for inspection by the Office of Antiboycott Compliance at the firm's premises all documentation pertaining to Zamilco's business transactions and business contacts with boycotting countries.

Entered this date: October 9, 1980.

Eric L. Hirschhorn,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 80-32735 Filed 10-20-80; 8:45 am]

BILLING CODE 3510-25-M

Imported Steel Mill Products Trigger Price Mechanism: Fourth-Quarter 1980 Trigger Prices and Reviews of Requests for Changes in Product Coverage

AGENCY: Department of Commerce.

ACTION: Announcement of fourth-quarter 1980 trigger price levels and of a review of pending requests for adding or deleting products from trigger price coverage.

SUMMARY: The Department of Commerce hereby announces that fourth-quarter 1980 trigger price bases and extras for steel mill products covered by the steel trigger price mechanism (TPM) will, on average, be about 12 percent higher, and TPM freight rates generally $3 to $8 higher (depending on the port of entry), than second-quarter 1980 trigger price levels.

The Department uses trigger prices to monitor the prices of steel mill product imports for possible initiation of dumping investigations. The Department also announces its review of various requests for the addition/deletion of certain products from trigger price coverage.

SUPPLEMENTARY INFORMATION: On October 8, 1980 (45 FR 66833), the Department of Commerce published its intension to reinstate the TPM on or before October 21, 1980. The fourth-quarter trigger prices announced in this notice will apply to steel products entering the United States on or after October 21. Imports that were sold pursuant to a binding purchase contract, with a fixed price to an unrelated purchaser, entered into prior to September 5, and exported to the United States on or before November 5, 1980 will not be subject to the TPM.

Fourth-quarter trigger price bases and extras for those steel mill products manufactured principally by integrated steel producers will be 12.1 percent higher than their second-quarter 1980 trigger price levels. Trigger base prices and extras of those steel mill products manufactured principally by electric furnace producers will be 9.8 percent to 14.9 percent higher, depending on the product, than their second-quarter levels: Trigger price bases and extras for Group A (Equal Angle) electric furnace products will be 13.3 percent higher than the second-quarter levels; Group B (Flat Bars) 9.8 percent higher; and Group C (Rebars), 14.9 percent higher. The trigger price bases for stainless steel wire products will be about 11 percent higher and the extras about 4 percent higher than the second-quarter 1980 levels. (See Table 3 for a list of fourth-quarter trigger prices).

In order to minimize the impact of exchange rate fluctuations on TPM levels, the dollar/yen exchange rate used to convert Japanese steel producers' yen production costs to dollars was the average of the last 36 months (September 1977 through August 1980). On this basis, the exchange rate used in the Department's fourth-quarter 1980 production cost estimate is 223 yen to the dollar.

I. Production Costs

A. Integrated Producers

The last time integrated steel production costs were estimated for the TPM was November 1979. Second-quarter 1980 trigger prices, announced

March 19, 1980, were maintained by the Department of Commerce at their first-quarter 1980 levels without a re-calculation of the production cost estimate.

The first-quarter 1980 trigger price levels were 4 percent higher than estimated Japanese steel production costs (due to use of the flexibility band to offset exchange rate fluctuations); therefore, the 12.1 percent increase in the trigger price levels of the integrated steel mill products reflects a 16.6 percent or $63 per metric ton increase in the TPM estimate of Japanese integrated steel mill manufacturers' production costs (see Table 1, below). About $8 of the increase in the production cost estimate results from a change in the dollar/yen ratio used for the fourth-quarter estimate. Another $24 results from increases in energy costs (particularly electricity), and increases in the costs of iron ore and labor. New iron ore, coking coal and labor contracts were signed last Spring. Increases in other raw materials, other expenses, depreciation, and interest costs together accounted for the remaining increase.

Table 1.—*Japanese Productions Cost Estimate: Integrated Steel Producers 1st and 4th Quarter, 1980*

[U.S. dollars per metric ton of finished product]

	First quarter	Fourth quarter
Basic raw materials	$139.23	$161.36
Other raw materials	62.66	77.23
Labor	87.19	92.57
Other expenses	26.75	32.68
Depreciation	26.58	36.19
Interest	23.10	26.62
Profit [1]	25.27	29.11
Yield credit	(11.15)	(12.93)
Total cost $/MT	379.63	442.83
Total cost $/NT	344.40	401.73

[1] Profit = .08 (Raw materials + labor + other expenses).

B. Electric Furnace Producers

As with the production cost increase for integrated producers, about 10 percent of the increase in electric furnace production costs was caused by the appreciation of the yen relative to the dollar. Two-thirds of the increase resulted from increases in the price of scrap and energy (fuel oil and electricity). The remaining cost factors together accounted for 20 to 30 percent of the increase. (See Table 2 below for a comparison of first-quarter 1980 and fourth-quarter 1980 production costs by component for each of the three electric furnace product groups.)

C. Stainless Steel Wire Production Costs

Commerce's dollar-valued estimate of the current production costs of Japan's stainless steel wire producers increased by an average of about 11 percent over second-quarter 1980 trigger prices. The second-quarter production cost estimate incorporates, among other things, increases in the price of Japanese stainless steel wire drawers of stainless steel rod, and increases in labor and energy costs.

II. Product Adjustment

Based on data submitted by the Japanese Ministry of International Trade and Industry and additional data collected by the TPM task force, Commerce is revising the width-thickness-coating extras for galvanized steel sheet. The revised width-thickness-coating extras may be found on the page 27–5 of the *Trigger Price Manual: Fourth-Quarter 1980.* This page of the *Manual* is also issued as a part of this notice. (See Table 4.)

III. Freight Charges

TPM trigger prices are an estimate of the production costs of Japanese steel manufacturers plus the cost of transporting and landing the steel in the United States; hence, to the production costs described above and reflected in trigger price bases and extras must be added charges for freight, interest, handling and insurance. The only element of these charges that has changed from their second-quarter 1980 level is the freight charge.

The cost of shipping steel from Japan to the United States has increased primarily because of increases in the price of fuel oil. As a result, TPM freight rates will generally increase for steel mill product imports entering the Pacific Coast by $3 per metric ton, freight rates for imports entering Gulf Coast and Atlantic Coast ports by $5 per metric ton, and freight rates for imports entering Great Lakes ports by $8 per metric ton. (See Table 3 for a listing of fourth-quarter 1980 TPM freight charges.)

IV. Changes in Trigger Prices for Specific Product Categories

Under the fourth-quarter 1980 trigger prices, Commerce will retain the product coverage and cost coefficients for specific products used for the second-quarter 1980 trigger prices. Commerce has, however, received requests to expand TPM coverage of grain oriented electrical steels, specialty wire, and specialty steel products. Additionally, Commerce has received requests to delete wire nails, oil country tubular goods, and wire rod from coverage under the TPM.

Any party interested in commenting on these requests should submit written comments as soon as possible, and no later than November 10, 1980, to F. Lynn Holec, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. Comments should focus on the economic factors involved.

Public notice of and opportunity for comment on any additional requests for review of product coverage under TPM and for changes in the cost coefficients will be provided.

Commerce will maintain these requests in a public file. Anyone submitting business confidential information should clearly so label the confidential portion of their submissions.

Japanese Steel Production Cost Estimates: Electric Furnace Products 1st and 4th Quarters 1980

	Group A [1]		Group B [2]		Group C [3]	
	1st quarter	4th quarter	1st quarter	4th quarter	1st quarter	4th quarter
Basic raw materials	$166.11	$201.67	$181.34	$209.65	$166.49	$199.75
Other raw materials	32.60	36.83	35.12	39.44	32.02	35.62
Labor	26.71	29.71	28.71	33.37	20.81	27.03
Other expenses	10.46	11.13	16.09	15.64	12.66	13.88
Depreciation	6.53	8.24	9.01	9.65	5.93	6.52
Interest	5.91	6.61	6.77	9.89	5.94	8.53
Profit [4]	18.84	22.35	20.90	23.85	18.56	22.10
Scrap credit	(2.82)	(3.44)	(2.42)	(3.14)	(2.58)	(2.97)
Total $/MT	263.94	311.10	295.52	337.35	259.83	310.46
Total $/NT	239.44	282.23	268.09	308.04	235.72	281.65

[1] Group A products are equal angles, unequal angles, channels, and I-beams.
[2] Group B products are hot rolled strip from bar mills; merchant quality flat bars, hot rolled round bars, squares, and round cornered squares; and bar size channels.
[3] Group C products are concrete reinforcing bars, plain and deformed.
[4] Profit=.08 (Raw materials + labor + other expenses).

Table 3.—*Product Base Prices for Shipment Exported During Fourth Quarter 1980*

[All figures in dollars per metric ton]

Page [1]	Product	Fourth quarter 1980 base prices	Fourth quarter ocean freight			
			P.	G.	A.	L.
2–1	Wire rods commercial quality AISI 1008	360	34	41	49	62
2–2	Wire rods welding quality AISI 1008	361	34	41	49	62
2–3	Wire rods high carbon AISI 1085	417	34	41	49	62
2–5	Wire rods cold heading quality AISI 1038	432	34	41	49	62
2–7	Wire rods cold finished bar quality	432	34	41	49	62
2–9	Spheroidized annealed Mo alloy steel wire rod AISI 4037	629	67	84	87	98
2–13	Spheroidized annealed Si-Mn-Cr high carbon steel wire rod AISI 9254	603	67	84	87	98
2–15	Spheroidized annealed high carbon Cr steel wire rod AISI 52100	693	67	84	87	98
3–1	Wide flange beams and bearing piling ASTM A–36 12" x 12"	349	36	45	52	66
3–4	Standard carbon steel channels ASTM A–36 [2]	318	32	41	44	54
3–6	Unequal leg carbon steel angles ASTM A–36 [2]	334	32	41	44	54
3–8	Equal leg carbon steel angles ASTM A–36 [2]	300	32	41	44	54
3–10	Standard carbon steel "I" beams ASTM A–36 [2]	366	32	41	44	54
4–1	Sheet piling ASTM A–328 arch web PDA–27	395	36	45	49	66
5–1	Steel plates ASTM A–36 ½" x 80" x 240"	361	34	40	46	50
6–1	Heavy carbon steel rails AREA 115, 132 or 136 (40')	401	35	42	50	66
6–3	Light rails 60 lbs./yd	395	42	50	53	63
6–5	Tie plates	402	48	54	64	73
8–1	Plain and deformed carbon steel concrete reinforcing bars ASTM A–615 [4]	298	32	41	44	54
9–1	Hot rolled carbon steel bar size channel ASTM A–36 [2]	427	32	41	44	54
10–11	Rolled carbon bars special quality AISI 1045	457	33	41	44	54
10–3	Merchant quality hot rolled carbon steel squares and round cornered squares ASTM–36 or AISI 1020 * * *	357	32	41	44	54
10–5	Merchant quality hot rolled carbon steel round bar ASTM A–36 or AISI 1020 * * *	357	32	41	44	54
10–7	Merchant quality carbon steel flat bars ASTM A–36 or AISI 1020 * * *	324	32	41	44	54
11–1	Hot rolled Ni-Cr-mo alloy steel round bar AISI 8620	528	58	66	78	98
11–6	Spheroidize annealed high carbon Cr steel round bar AISI 52100	590	58	66	78	98
12–1	Cold finished carbon steel round bar AISI 1008 through 1029	529	39	50	55	77
12–2	Cold finished round steel bar AISI 1212 through 1215	597	39	50	55	77
12–3	Cold finished round steel bar AISI 12L14 and 12L15	627	39	50	55	77
12–5	Cold finished, Ni-Cr-No-alloy steel round bar AISI 6620	528	58	66	78	98
12–7	Cold finished spheroidized annealed, high carbon Cr steel round bar, AISI 52100, 50100, 51100	590	58	66	78	98
14–1	ERW Carbon steel pressure tubing for use in boilers, heat exchangers, condensers, etc.	590	(*)	(*)	(*)	(*)
14–6	Continuous butt welded standard pipe	448	(*)	(*)	(*)	(*)
14–8	ERW pipe, exlcuding oil well casing, wihtout coupling	470	(*)	(*)	(*)	(*)
14–13	Submerged arc welded pipe	509	(*)	(*)	(*)	(*)
14–16	ERW structural tubing to ASTM A–500 grades, A, B and C	439	(*)	(*)	(*)	(*)
14–22	ERW standard pipe	455	(*)	(*)	(*)	(*)
14–24	Electric resistance welded standard pipe ASTM A–120 (larger sizes)	(*)	(*)	(*)	(*)	(*)
14–28	Piling pipe ASTM A–252	396	(*)	(*)	(*)	(*)
14–30	Electric resistance welded hot dipped galvanized fence pipe and tubing in plain ends	(*)	(*)	(*)	(*)	(*)
14–32	ERW mechanical tubing ASTM A–513	529	(*)	(*)	(*)	(*)
15–1	Seamless carbon steel oil well casing, not threaded, up to 7" in outside diameter	495	(*)	(*)	(*)	(*)
15–4	Seamless carbon steel oil well casing, not threaded 7 inches and over in outside diameter	491	(*)	(*)	(*)	(*)
15–7	Seamless carbon steel oil well casing, threaded 7 and coupled inches and over in outside diameter	557	(*)	(*)	(*)	(*)
15–10	Seamless carbon steel oil well casing, threaded and coupled, up to 7 inches in outside diameter	563	(*)	(*)	(*)	(*)
15–13	Electric resistance welded carbon steel oil well casing, not threated	492	(*)	(*)	(*)	(*)
15–15	Electric resistance welded carbon steel oil well casing, threaded	(*)	(*)	(*)	(*)	(*)
15–17	Seamless carbon steel pressure tubing suitable for use in boilers, superheaters, heat exchangers, condensers, refining furnaces, feed water heaters, cold finish	946	(*)	(*)	(*)	(*)
15–43	Seamless carbon steel oil well tubing EUE with threading and coupling	742	(*)	(*)	(*)	(*)
15–45	Seamless carbon steel line pipe	506	(*)	(*)	(*)	(*)
15–48	Hot rolled high carbon Cr steel tube suitable for use in manufacture of ball or roller bearings AISI 52100	719	72	84	100	113
15–49	Cold rolled high carbon Cr steel tube suitable for use in manufacture of ball or roller bearings AISI 52100	1069	70	84	100	113
15–50	Seamless stainless steel round ornamental tube AISI TP 304, 1¼ x 0.049"	2425	68	81	101	115
15–52	Seamless stainless steel square ornamental tube AISI TP 304, 1½ x 1½ x 0.065"	2643	68	81	101	115
16–1	Cold heading round wire AISI 1018 killed 0.192" hard drawn	539	50	59	61	79
16–1	Cold heading drawn from annealed rods	612	50	59	61	79
16–1	Cold heading drawn from spheroidized annealed rode	627	50	59	61	79
16–1	Cold heading anneal in process	631	50	59	61	79
16–1	Cold heading spheroidize anneal in process	642	50	59	61	79
16–1	Cold heading anneal in process and drawn from annealed rods	680	50	59	61	79
16–1	Cold heading spheroidize anneal in process and drawn from annealed rods	693	50	59	61	79
16–1	Cold heading anneal at finish size	612	50	59	61	79
16–1	Cold heading spheroidize anneal at finish size	627	50	59	61	79
16–1	Cold heading anneal at finished size and drawn from annealed rods	661	50	59	61	79
16–1	Cold heading spheroidize anneal at finished size and drawn from annealed rods	678	50	59	61	79
16–4	Bright basic round wire AISI 1008 Number 8 gauge rimmed	444	49	57	60	79
16–5	Galvanized iron round wire AISI type I coating Number 8 gauge	558	49	56	60	79

Table 3.—*Product Base Prices for Shipment Exported During Fourth Quarter 1980—Continued*

[All figures in dollars per metric ton]

Page [1]	Product	Fourth quarter 1980 base prices	Fourth quarter ocean freight			
			P.	G.	A.	L.
16–8	Round baling wire 14.50	620	49	56	60	79
16–9	Cold finished spheroidize annealed, Si-Mn-Cr high carbon steel wire AISI 9254	603	67	84	87	98
16–11	Cold finished spheroidized annealed Mo alloy steel wire AISI 4037	629	67	84	87	98
16–13	High carbon Cr steel wire in coil AISI 52100, 50100, 51100, suitable for use in manufacture of ball or roller bearings	941	67	84	87	98
16–15	Upholstery spring wire automatic coiling and knotting type	555	47	62	64	81
16–16	Mechanical spring wire ASTM A–227 and A–648	585	47	62	64	81
16–17	Oil tempered steel spring wire ASTM A–229	589	47	62	64	81
16–18	Carbon steel valve spring quality ASTM A–230	979	97	115	115	121
16–19	Automobile tire bead wire	686	100	116	116	122
16–20	Galvanized core wire for A.C.S.R. ASTM B 498 class "A"	732	59	68	70	84
16–21	Stainless steel wire	[8]	[8]	[8]	[8]	[8]
19–1	Field Fence	669	51	65	70	79
20–1	Wire Nails Bright Common 20d #6 $1^{3}/_{4}$ x 4"	518	51	65	70	79
21–1	Barbed Wire 2 Ply, 12.50	704	51	65	70	79
22–1	Black Plate ASTM A625–76 0.0083" x 34" x Coil	463	32	36	42	54
23–1	Elecrolytic Tin Plate SR–25/25 75L x 34" x C	828	35	42	46	56
25–1	Hot Rolled Steel Sheets ASTM A–569 0.121" x 48" x Coil	319	32	38	42	52
25–2	Hot Rolled Steel Band ASTM 569 0.121" x 48" x Coil	305	32	38	42	52
26–1	Electrical Steel Sheets Grain Oriented M–4 0.012" x 33" x C	1305	35	42	49	56
26–3	Electrical Steel Sheets Non Oriented M–45 0.018" x 36" x C	728	35	42	49	56
26–5	Cold Rolled Sheets ASTM A–366 1.0 m/-m x 48" x C	400	32	38	42	52
27–1	Electro Galvanized Sheets EGC 10g/M 1.0 m/m x 48" x C	473	33	38	42	55
27–4	Galvanized Sheet ASTM A525G90	475	32	38	42	55
29–1	Hot Rolled Carbon Steel Strip Produced on Bar Mills Cut Lengths [3]	362	32	41	44	54
29–3	Hot Rolled Carbon Steel Strip Produced on Sheet Mills, Coils Only	312	32	41	44	54
32–1	Tin Free Steel Sheets SR 75L x 34" x C	537	35	42	46	55

[1] Page references are to the Trigger Price Manual published by the Department of Commerce. The first figure of each page reference corresponds to the AISI product category of that product.
[2] Electric Furnace, Group A.
[3] Electric Furnace, Group B.
[4] Electric Furnace, Group C.
[5] Deleted, see Rev. 14–22.
[6] Deleted, see Rev. 15–13.
[7] See freight table.
[8] See attached pages 16–21 through 16–33.

Table 4.—*Pages From the Trigger Price Manual 4th Quarter 1980*

AISI category and TPM manual page reference	Product description	Revision
14–2	Pipe and tube products.	Fourth quarter freight rates.
16–22	Stainless steel wire.	Fourth quarter base prices and extras.
27–4	Galvanized sheets	Revised thickness/width/coating extras.

Dated: October 10, 1980.

John D. Greenwald,

Deputy Assistance Secretary for Import Administration.

Freight Charges on Pipe and Tube Products

[Dollars per metric ton—Applies to all products in category 14 and 15]

Freight	Pacific	Gulf	Atlantic	Great Lakes
Pipe (up to 40') Outside diameter up to:				
4"	36	50	52	87
5"	38	50	52	87
6"	40	51	52	69
8"	41	52	54	71
10"	42	53	54	73
12"	43	54	56	75
14"	44	56	56	77
16"	44	57	59	78
18"	45	58	59	80
20"	46	60	62	82
22"	48	62	66	85
24"	49	64	67	87
26"	50	65	70	89
28"	52	66	70	92

Freight Charges on Pipe and Tube Products

Freight	Pacific	Gulf	Atlantic	Great Lakes
Pipe (up to 40') Outside diameter up to:				
30"	54	87	70	94
32"	56	66	72	96
34"	57	70	73	98
36"	59	72	75	102
36"	62	75	78	104
40"	64	79	82	108
42"	67	83	85	112
44"	70	85	88	118
46"	75	89	92	121
48"	78	92	95	125

Group I.—*Annealed Wire*

[Annealed: The condition of soft wire in which there is no further cold drawing after the last annealing treatment. Wire of this temper is made by annealing in open fired furnaces or molten salt followed by annealing in open fired furnaces or molten salt followed by pickling, which produces a clean gray matte finish. It is also made with a bright by annealing wet, oil or grease drawn wire in a protective atmosphere, and is sometimes described as bright annealed wire.]

Grade	4th quarter, 1980 dollars per metric ton wire base price
301	2,233
302	2,178
303	2,288
304	2,233
305	2,428
310	4,213
314	4,993
316	3,333
316–L	3,528

Group I.—*Annealed Wire*—Continued

[Annealed: The condition of soft wire in which there is no further cold drawing after the last annealing treatment. Wire of this temper is made by annealing in open fired furnaces or molten salt followed by annealing in open fired furnaces or molten salt followed by pickling, which produces a clean gray matte finish. It is also made with a bright by annealing wet, oil or grease drawn wire in a protective atmosphere, and is sometimes described as bright annealed wire.]

Grade	4th quarter, 1980 dollars per metric ton wire base price
317	3,863
317–L	4,076
304–L	2,426
17–4PH [1]	2,591
308	2,398
308–L	2,591
309	3,003
309–L	3,196
321	2,591
312	NA
302 HQ (16–19LW) [2]	2,371
347	2,948
384	2,893
15–5PH [3]	NA
409	1,639
410	1,309
416	1,276
420	1,364
430	1,364
430–F	1,584
434	1,694
434–A	1,474
446	1,969

[1] May also be designated as type 630 or as UNS 17400.
[2] May also be designated as type 302 CU and as 306.
[3] May also be designated as typed XM–12 and UNS 15500.
NA=Not available.

Group I.—*Annealed Wire*

[Dollars per metric ton]

Size [1]	4th quarter, 1980, size extras		
	300 series and 17–7PH	400 series	17–4PH 15–5PH
.574" to .703"	202	517	202
.501" to .573"	202	517	202
.500"	218	517	219
.375" to .499"	237	517	237
.3125" to .374"	253	517	253
.250" to .312"	339	517	339
.234" to .249"	365	517	385
.216" to .233"	437	556	437
.200" to .215"	603	603	603
.185" to .199"	621	632	621
.170" to .184"	636	660	636
.155" to .169"	648	669	648
.142" to .154"	666	816	666
.128" to .141"	694	842	694
.113" to .127"	774	1,040	688
.099" to .112"	894	1,129	721
.086" to .098"	961	1,194	752
.076" to .085"	1,039	1,259	787
.067" to .075"	1,094	1,318	949
.058" to .066"	1,194	1,360	1,107
.051" to .057"	1,243	1,400	1,158
.044" to .050"	1,290	1,442	1,206
.038" to .043"	1,401	1,484	1,316
.033" to .037"	1,518	1,651	1,433
.030" to .032"	1,575	1,763	1,575
.027" to .029"	1,727	NA	1,900
.024" to .026"	1,669	NA	1,869
.021" to .023"	2,011	NA	2,016
.019" to .020"	2,153	NA	2,153
.018"	2,293	NA	2,293
.017"	2,326	NA	2,326
.016"	2,366	NA	2,366
.015"	2,478	NA	2,478
.014"	2,606	NA	2,606
.013"	2,718	NA	2,718
.012"	2,836	NA	2,836
.011"	2,948	NA	2,948
.010"	3,217	NA	3,217
.009"	3,340	NA	3,340
.008"	3,492	NA	3,492
.0075"	3,649	NA	3,649

Group I.—*Annealed Wire*—Continued

[Dollars per metric ton]

Size [1]	4th quarter, 1980, size extras		
	300 series and 17–7PH	400 series	17–4PH 15–5PH
.007"	3,818	NA	3,818
.0065"	4,209	NA	4,209
.006"	4,857	NA	4,857
.00575"	5,105	NA	5,106
.0055"	5,554	NA	5,554
.00525"	6,451	NA	6,451
.005"	6,618	NA	6,618
.00475"	6,730	NA	6,730
.0045"	6,954	NA	6,954
.00425"	7,572	NA	7,572
.004"	8,132	NA	8,132
.00375"	17,098	NA	17,098
.0035"	20,405	NA	20,405
.00325"	23,318	NA	23,318
.003"	26,232	NA	26,232
.0027"	27,186	NA	27,186
.0025"	28,307	NA	28,307
.002"	36,712	NA	36,712

[1] All intermediate sizes to take next higher price.
NA=Not available.

Deduction to allow for absence of annealing and pickling (cold drawn "bar" in wire gauges):

[Dollars per metric ton]

Size Range	Deduction
.703" through .375"	74
.374" through .216"	78
.215" through .187"	101

Group II.—*Hard/Spring Wire*

[Annealed: A condition of wire drawn several drafts as required to produce the high tensile strengths required for such products as spring wire.]

Grades	4th quarter, 1980 dollars per metric ton wire base price
301	2,233
302	2,178
303	2,288
304	2,233
305	2,426
310	4,213
314	4,983
316	3,333
316–L	3,526
317	3,883
317–L	4,076
321	2,591
17–4PH [1]	2,591
17–7PH [2]	3,333
330	NA
306	2,398
308–L	2,591
309	3,003
309–L	3,196
312	NA
302 HQ (18–18LW) [3]	2,371
347	2,948
384	2,893
15–5PH [4]	NA
409	1,639
410	1,309
418	1,276
420	1,364
430	1,364
430–F	1,584
434	1,694
434–A	1,474
446	1,969

[1] May also be designated as type 630 or as UNS 17400.
[2] May also be designated as type 631 and UNS 17700.
[3] May also be designated as type 302 CU and as 306.
[4] May also be designated as type XM–12 and UNS 15500.
NA=Not available.

Group II.—*Hard/Spring Wire*

[Dollar per metric ton]

Size [1]	4th quarter, 1980, size extras	
	300 series and 17–7PH	400 series
Over 0.375"	669	NA
.3125" to .374"	669	NA
.250" to .312"	669	NA
.234" to .249"	669	NA
.216" to .233"	699	NA
.200" to .215"	699	NA
.185" to .199"	669	NA
.170" to .184"	669	NA
.155" to .169"	669	NA
.142" to .154"	646	NA
.128" to .141"	646	NA
.113" to .127"	646	NA
.099" to .112"	681	NA
.086" to .098"	752	NA
.076" to .085"	807	NA
.067" to .075"	873	NA
.058" to .066"	967	NA
.051" to .057"	1,162	NA
.044" to .050"	1,332	NA
.038" to .043"	1,401	NA
.033" to .037"	1,536	NA
.030" to .032"	1,607	NA
.027" to .029"	1,935	NA
.024" to .026"	2,112	NA
.021" to .023"	2,322	NA
.019" to .020"	2,598	NA
.018"	3,142	NA
.017"	3,418	NA
.016"	3,502	NA
.015"	3,586	NA
.014"	3,754	NA
.013"	3,693	NA
.012"	4,171	NA
.011"	5,338	NA
.010"	5,478	NA
.009"	5,700	NA
.008"	5,889	NA
.007"	[2]	NA
.0065"	[2]	NA
.006"	[2]	NA
.00575"	[2]	NA
.0055"	[2]	NA
.00525"	[2]	NA
.005"	[2]	NA
.00475"	[2]	NA
.0045"	[2]	NA
.00425"	[2]	NA
.004"	[2]	NA
.00375"	[2]	NA
.0035"	[2]	NA
.00325"	[2]	NA
.003"	[2]	NA
.0027"	NA	NA
.0025"	NA	NA
.002"	NA	NA

[1] All intermediate sizes to take next higher price.
[2] Under Review.
NA=Not available.

Group III(a).—*Soft/Intermediate Wire*

[Soft/Intermediate: A condition of wire drawn one or more drafts after annealing as required to produce minimum strength or hardness. The properties of such wire can be varied between those of soft temper and those approaching spring temper wire. Wire in this temper is usually produced in a variety of dry drawn tempers. Cold heading wire, by example, belongs in this group.]

Grades	1st quarter, 1980 dollars per metric tons wire base price
301	2,233
302	2,178
302 (302HQ, 18–9LW)	2,371
303	2,288
304	2,233
305	2,426
310	4,213
314	4,983

Group III(a).—*Soft/Intermediate Wire*—Continued

[Soft/Intermediate: A condition of wire drawn one or more drafts after annealing as required to produce minimum strength or hardness. The properties of such wire can be varied between those of soft temper and those approaching spring temper wire. Wire in this temper is usually produced in a variety of dry drawn tempers. Cold heading wire, by example, belongs in this group.]

Grades	1st quarter, 1980 dollars per metric tons wire base price
316	3,333
316–L	3,526
317	3,883
317–L	4,078
321	2,591
17–4PH [1]	2,591
330	NA
308	2,398
308–L	2,591
309	3,003
309–L	3,196
312	NA
347	2,948
384	2,893
15–5PH [2]	NA
409	1,639
410	1,309

	4th quarter, 1980 dollars per metric tons wire base price
416	1,276
420	1,364
430	1,364
430–F	1,584
434	1,694
434–A	1,474
446	1,969

[1] May also be designated as type 630 or as UNS 17400.
[2] May also be designated as type XM–12 and UNS 15500.
NA = Not available.

Group III(b).—*Soft/Intermediate Wire*

[Dollars per metric ton]

Size [1]	4th quarter, 1980, size extras: 300 series and 17–7PH	400 series	17–4PH 15–5PH
Over .375"	448	314	448
.3125" to .374"	448	314	448
.250" to .312"	448	326	448
.234" to .249"	448	349	448
.216" to .233"	448	371	448
.200" to .215"	448	401	448
.185" to .199"	555	429	555
.170" to .184"	583	452	583
.155" to .169"	612	491	612
.142" to .154"	633	554	633
.128" to .141"	684	661	684
.113" to .127"	820	736	820
.099" to .112"	900	837	900

Group III(b).—*Soft/Intermediate Wire*—Cont.

[Dollars per metric ton]

Size [1]	4th quarter, 1980, size extras: 300 series and 17–7PH	400 series	17–4PH 15–5PH
.086" to .098"	952	864	952
.076" to .085"	1,061	915	1,061
.067" to .075"	1,168	999	1,168
.058" to .066"	1,275	1,211	1,275
.051" to .057"	1,321	1,431	1,321
.044" to .050"	1,372	1,472	1,372
.038" to .043"	1,490	1,528	1,490
.033" to .037"	1,582	1,707	1,582
.030" to .032"	1,686	1,815	1,686
.027" to .029"	1,842	NA	1,842
.024" to .026"	1,990	NA	1,990
.021" to .023"	2,142	NA	2,142
.019" to .020"	2,285	NA	2,285

[1] All intermediate sizes to take net higher price.

Material provided uncoated or coated with lime (or equivalent to lime) and/or soap will carry no extra. Other coatings require an appropriate extra where additional costs are involved.

Metallic coatings include copper, nickel, and lead. Non-metallic coatings include plastics, molybdenum disulfide, etc.

Coating Extras.—*4th Quarter, 1980*

[Dollars per metric ton]

Size range	Type of coating: Oxide	Metallic: Copper	Metallic: Nickel	Nonmetallic
Over .155"	None	113	35	24
.154" to .099"	None	170	35	24
.098" to .063"	None	226	47	32
.062" to .041"	None	NA	73	49
.040" to .030"	None	NA	100	63
.029" to .025"	None	NA	100	63
.024" to .020"	None	NA	135	91
.019" to .015"	None	NA	171	121
.014" to .010"	None	NA	211	147

Finish Extras.—*4th Quarter, 1980*

Size range [1]	Centerless ground—300 series, 17–7PH, 400 series, 17–4PH, and 15–5PH	Centerless ground and polished—300 series, 17–7PH, 400 series, 17–4PH, and 15–5PH
.703" to .595"	487	613
.594" to .501"	487	613
.500"	538	681
.499" to .375"	550	703
.374" to .3125"	550	703
.3124" to .250"	550	703

Finish Extras.—*4th Quarter, 1980* — Cont.

Size range [1]	Centerless ground—300 series, 17–7PH, 400 series, 17–4PH, and 15–5PH	Centerless ground and polished—300 series, 17–7PH, 400 series, 17–4PH, and 15–5PH
.249" to .234"	846	1,027
.233" to .216"	846	1,027
.215" to .200"	935	1,141
.199" to .185"	1,093	1,322
.164" to .170"	1,288	1,531
.169" to .155"	1,543	1,804
.154" to .142"	1,797	2,059
.141" to .128"	2,116	2,376
.127" to .113"	2,649	2,933
.112" to .093"	5,394	5,938

[1] All intermediate sizes to take next higher price.
17–4PH to be included in 400 series.
Straightening and cut to length extras are already included in the above finish extras in case of centerless ground and polished.

Tolerance Extras.—*4th Quarter, 1980*

[Dollars per metric ton]

Standard: AISI or JIS Specification	
Diameter tolerance:	
Standard	$0
Not less than ½ standard	105
Closer than ½ to ¼ standard	(1)
Closer than ¼ standard	(2)
Straightening and cut to length extras:	
Size range:	
.703" to .595"	102
.594" to .501"	102
.500"	102
.499" to .375"	128
.374" to .3125"	128
.3124" to .170"	231
.169" to .099"	576
.098" to .051"	1667
.050" to .032"	1923
Length:	
Under 12"	90
12" to under 18"	58
18" to under 24"	58
24" to under 30"	38
30" to under 36"	38
36" to under 48"	38
48" to under 60"	38
60" to under 72"	38
72" to under 120"	32
120" to under 168"	32
168" to under 192"	32
192" to under 216"	32
216" to under 240"	32
240" to under 264"	25
264" to under 288"	25
288" to 316"	25
Packaging Extras:	
Type:	
Bundle	28
Wooden Boxes	94
Fibre Drums	86
Coil Carriers	28
Spools: Sizes under .020"	167
Both Spools and Wooden Boxes:	
Sizes .020" and greater	94
Sizes under .020"	261

[1] 25 pct. of size extra.
[2] 50 pct. of size extra.

Extras for Galvanized Steel Sheet

1. Price base.
Quality: Commercial.
Size: CSG23 (under .032" through .029") x over 42" through 48" x coil.
Coating: G90.
Weighing: Actual.
2. Extras for other than price base products (Unit: US$ per M/T).
(1) Thickness/width/coating.

Thickness (inches)	Width (inches): 24<W<30	30<W<36	36<W<42	42<W<48	48<W<60	Coating: 0.6 oz/ft²	G60
0.130 and thicker	–92	–92	–92	–92			–2
0.129–0.116	–75	–75	–75	–75	–73		–2
0.115–0.101	–72	–72	–72	–72	–69		–2
0.100–0.066	–68	–66	–71	–71	–68		–2

Extras for Galvanized Steel Sheet—Continued

Thickness (inches)	Width (inches): 24<W<30	30<W<36	36<W<42	42<W<48	48<W<60	Coating: 0.6 oz/ft²	G60
0.085–0.075	–51	–51	–53	–53	–51		–3
0.074–0.067	–47	–47	–51	–51	–47		–3
0.066–0.061	–45	–45	–47	–47	–45		–6
0.060–0.055	–24	–24	–27	–27	–24		–6
0.054–0.049	–21	–21	–20	–23	–21	–16	–7
0.048–0.043	–16	–18	–21	–21	–18	–17	–7
0.042–0.038	–14	–14	–16	–16	–14	–21	–8
0.037–0.035	–9	–9	–12	–12	–5	–21	–8
0.034–0.032	–7	–7	–9	–9	–6	–22	–9
0.031–0.029	–3	–3	–6	–6	0	–22	–9
0.028–0.026	24	24	22	22	31	–25	–13
0.025–0.023	27	27	25	30	39	–25	–13
0.022–0.021	65	65	65	69	80	–27	–17
0.020–0.019	62	62	62	74		–27	–17
0.018–0.017	88	88	88	108		–28	–20
0.016	91	91	103	117		–28	–20
0.015	92	92	110	121		–30	–22
0.014	116	111	117	132		–30	–22
0.013	116	123	123	136		–30	–22

Width under 24"—Subject to negotiation.
Culvert stock coating extra use in conjunction with width/thickness extra from above chart.

0.159 and thicker	$16
0.158–0.129	17
0.128–0.101	22
0.100–0.072	29
0.071–0.057	35
0.056–0.046	43

[FR Doc. 80-32429 Filed 10-20-80; 8:45 am]
BILLING CODE 7020-02-M

National Oceanic and Atmospheric Administration

Bureau of Fisheries, New York State Department of Environmental Conservation; Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217–222).

1. Applicant:

a. Name: Bureau of Fisheries, New York State Department of Environmental Conservation.

b. Address: 50 Wolf Road, Albany, New York 12233.

2. Type of Permit: Scientific Purposes.

3. Names and Number of Animals: Shortnose sturgeon (Acipenser brevirostrum)—500.

4. Type of Take: Shortnose sturgeon incidentally taken in the course of gamefish study will be weighed, measured, and released. Dead specimens will be retained, preserved and deposited in scientific collections.

5. Location of Activity: Hudson River, New York.

6. Period of Activity: 5 Years.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, on or before November 20, 1980. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 ELm Street, Gloucester, Massachusetts 01930.

Dated: October 14, 1980.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 80-32760 Filed 10-20-80; 8:45 am]
BILLING CODE 3510-22-M

Department of Game, State of Washington; Issuance of Permit

On July 8, 1980, Notice was published in the Federal Register (45 FR 45937), that a application had been filed with the National Marine Fisheries Service by the State of Washington, Department of Game, 53 Portway Street, Astoria, Oregon 97103 to take 150 Pacific harbor seals by killing; to tag 100 harbor seals of which 25 adults may be radio-tagged; to census pinniped populations which may inadvertently harass 50 California sea lions and 50 Northern Sea lions; and to salvage marine mammals killed incidental to commercial fishing operations.

Notice is hereby given that on October 10, 1980, the National Marine Fisheries Service issued a Scientific Research Permit, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) to the State of Washington, Department of Game subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Northwest Region, 1700 Westlake Avenue, North, Seattle, Washington, 98109.

Dated: October 10, 1980.

Terry L. Leitzell,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 80-32761 Filed 10-20-80; 8:45 am]
BILLING CODE 3510-22-M

Office of the Secretary

[Dept. Organization Order 10-1, Amdt. 6]

Assistant Secretary for Productivity, Technology, and Innovation; Statement of Organization and Function and Delegation of Authority

Effective date: September 26, 1980.

This order effective September 26, 1980 further amends the material appearing at 41 FR 18536 of May 5, 1976, 41 FR 26593 of June 28, 1976, 42 FR 40963 of August 12, 1977, 43 FR 39167 of September 1, 1978, 44 FR 63127 of November 2, 1979, and 45 FR 6141 of January 25, 1980.

Department Organization Order 10-1 of April 9, 1976 is hereby further amended as shown below. The purpose of this amendment is to change the title of the Assistant Secretary for Science and Technology to the Assistant Secretary for Productivity, Technology, and Innovation.

1. *Section 2. Administrative Designation,* is revised to read as follows:

Section 2. Administrative Designation.

"The position of Assistant Secretary of Commerce, established by the Act of February 16, 1962, (Pub. L. 87-405; 15 U.S.C. 1507) shall be designated as the Assistant Secretary for Productivity, Technology, and Innovation. The Assistant Secretary is appointed by the President by and with the advice and consent of the Senate."

2. All Department Orders referring to the Assistant Secretary for Science and Technology are hereby constructively amended to refer to the Assistant Secretary for Productivity, Technology, and Innovation.

Elsa A. Porter,

Assistant Secretary for Administration.

[FR Doc. 80-32686 Filed 10-20-80; 8:45 am]

BILLING CODE 3510-17-M

[Dept. Organization Order 35-1A, Amdt. 4]

Bureau of Economic Analysis; Statement of Organization and Functions and Delegation of Authority

Effective date: September 26, 1980.

This order effective September 26, 1980 further amends the material appearing at 40 FR 42766 of September 16, 1975, 41 FR 8520 of February 27, 1976, 42 FR 23676 of May 10, 1977, and 43 FR 43534 of September 26, 1978.

Department Organization Order 35-1A of August 4, 1975 is hereby further amended as shown below. The purpose of this amendment is to delegate to the Director, BEA the Secretary's authority to issue regulations for BEA to carry out its functions under the International Investment Survey Act of 1976.

1. In *Section 3. Delegation of Authority,* a. Subparagraph .01d. is deleted; subparagraph .01e. is relettered as .01d., and is revised to read as follows:

"d. Executive Order 11961 of January 19, 1977, as amended by Executive Order 12013 of October 7, 1977, which delegates to the Secretary of Commerce the authority of the President under Sections 4(a) (1), (2), (3), and (4), and 4(b), of the International Investment Survey Act of 1976 (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3106). The functions thereunder shall be carried out in coordination with the Under Secretary for International Trade (Department Organization Order 10-3), including, to the extent feasible, the division or assignment of responsibilities. All regulations established by BEA to carry out its functions under the Act, shall be issued by the Director in consultation with the Under Secretary for International Trade. All reports to be submitted to the Congress required to be undertaken pursuant to the Act, shall be issued by the Secretary."

b. In pen and ink, add the word "and" after the semicolon in subparagraph .01c.

2. This amendment supersedes amendment 3 of August 23, 1978.

Elsa A. Porter,

Assistant Secretary for Administration.

[FR Doc. 80-32689 Filed 10-20-80; 8:45 am]

BILLING CODE 3510-17-M

[Dept. Organization Order 15-3]

Office of Public Affairs: Statement of Organization and Functions and Delegations of Authority

Effective date: September 26, 1980.

This order effective September 26, 1980 supersedes the material appearing at 43 FR 15479 of April 13, 1978 and 45 FR 64615 of September 30, 1980.

Section 1. Purpose

.01 This Order prescribes the responsibilities and functions of the Office of Public Affairs.

.02 This revision reflects a general update of the organization and functions of the Office, including the transfer of editorial review functions to the Departmental Office of Publications, retention of the publication policy review function, establishment of an Information Center, and increased responsibilities of the Deputy Director.

Section 2. General

The Office of Public Affairs (the "Office"), which is continued as a Departmental office, is headed by the Director of Public Affairs. The Director reports and is responsible to the Secretary; is the principal adviser to the Secretary on public affairs matters; and is responsible for the overall public information program of the Department. The Director serves as the primary liaison for the Department with other Government agencies, and provides functional supervision to the public information offices in the Department's operating units.

Section 3. Functions

The Office of Public Affairs shall:

a. Plan, develop, and implement a coordinated public information program throughout the Department;

b. Prepare and issue press releases and radio/TV material on matters involving the Secretary or Deputy Secretary, and other officials in the Office of the Secretary, as appropriate;

c. Provide, or supervise the provision of, other public affairs services required by the Secretary, Deputy Secretary, and other officials of the Department, including the handling of news conferences, arranging for radio and television broadcasts, and arranging personal appearances;

d. Review and approve for release all:

1. News items and related materials;

2. Speeches;

3. Publications (to the extent specified in subparagraph 4.01a. of this Order);

4. Audiovisual materials for external use; and

5. Advertising programs for public affairs purposes produced in the Department.

e. Provide, as appropriate, editing, editorial policy review, and technical advice and assistance to the operating units with respect to the materials listed in subparagraph d, above;

f. Maintain liaison with the White House Office of the Press Secretary to the President and the counterpart offices in other Government agencies, to promote consistency and coordination between the Department's public information activities and those of the entire Executive Branch;

g. Provide liaison with outside public groups and organizations concerned with the Department's activities, including operation of a Department Information Center;

h. Compile, review, and edit Departmental annual reports;

i. Advise and assist the Office of the Secretary, and other offices as appropriate, by providing information, analysis, and news services concerning press and radio/TV coverage of Department activities;

j. Authorize the scheduling of news conferences proposed by operating units and provide such staff assistance as may be appropriate;

k. Exercise functional supervision of the public information activities of the operating units, whether performed by information staffs or otherwise;

l. Review and evaluate the effectiveness of public affairs functions in the operating units, and furnish the results of such evaluation to the Secretary and the head of the operating unit concerned;

m. Advise the heads of operating units concerning the selection of persons to fill all positions at GS-13 or above in public information offices in the operating units; provide clearance with respect to such individuals;

n. Review and evaluate all Freedom of Information Act letters of appeal in accordance with section 5.04b. of DAO 205-12, and clear the proposed reply to each such appeal; and

o. Develop briefing books in connection with news conferences and for official travel by Secretary or Deputy Secretary.

Section 4. Organization

Under the direction and supervision of the Director, the functions of the Office shall be organized and carried out as provided below, (with the exception of preparation of speeches for the Secretary, Deputy Secretary, and other high level Departmental officials, which will be personally supervised by the Director).

.01 The Deputy Director of Public Affairs assists the Director in the performance of responsibilities and performs the duties of the Director in the latter's absence. The Deputy Director directly supervises the following activities:

a. Publications policy review, which includes the review of all proposed Departmental publications to insure the appropriate policy content.

b. Coordination of program briefings to the Secretary and Deputy Secretary prior to their national and international appearances.

c. Evaluation of the Secretary's and senior staff's speech invitations and operation of a Speakers Bureau to provide, where appropriate, spokespersons for the Department to groups and organizations which request them.

d. Development, implementation, and administration of the "Advance System", which will provide for prior arrangements and necessary liaison for public appearances by the Secretary and Deputy Secretary.

e. Direction of Public Affairs fields operations, including the conduct of public affairs liaison with the Secretarial Representatives.

f. Evaluation of all Freedom of Information requests from the media. (Information copies of such requests will be furnished the Office of Public Affairs by the FOIA facilities of the Department.)

g. Preparation of the Department's Annual Report.

h. Development of communication plans for the Department.

.02 The *Special Projects Division* is responsible for:

a. Assigning, editing, and arranging for publication of articles relating to the Department.

b. Handling Presidential/Secretarial messages to organizations and individuals.

c. Providing a focal point for public outreach through an *Information Center.*

d. Providing an *Audiovisual Branch* which is responsible for the coordination and control of technical and editorial quality of audiovisual materials produced by the Department, including the approval of proposed audiovisual productions, developing specifications and guidelines and providing technical consultation for the procurement of audiovisual equipment, placement of audiovisual equipment for in-house meetings and conferences, and the coordination of Commerce exhibits. The Branch consists of:

1. An *Audiovisual Technical Staff,* which will:

(a) Provide audiovisual services for the Secretary and Deputy Secretary, and other elements of the Office of the Secretary.

(b) Provide advice and assistance to Departmental offices and opperating units on the technical aspects of audiovisual production.

(c) Provide advice and suitable audiovisual equipment to be used in conference rooms.

2. An *Audiovisual Review Committee,* composed of audiovisual specialists from operating units of the Department, which:

(a) Reviews for approval of technical and editorial quality and policy content all proposed film productions, slide shows, or other audiovisual productions that will be used for public viewing.

(b) Reviews for approval requests for major audiovisual equipment for the entire Department to insure quality, compatibility, and elimination of duplicate equipment.

(c) Recommends guidelines for developing, producing, procuring, and distributing audiovisual materials.

(d) Assists operating units with technical advice.

3. An *Exhibit Committee,* composed of exhibit specialists from operating units of the Department, which:

(a) Considers exhibit events for joint participation by the Department's exhibiting units.

(b) Decides purchases of exhibit materials for joint exhibits.

e. Developing and implementing special public affairs projects, as assigned, which are not the responsibility of other elements of the Office.

.03 The *News Relations Division* is responsible for relationships with the media. The Division shall consist of:

a. A *News Room,* which is responsible for:

1. Coordinating media interviews.

2. Providing liaison with and assistance to representatives of the press on a day-to-day basis.

3. Reviewing and approving for issuance press releases from operating units.

4. Preparing press releases, articles, and other materials on Department-level matters.

5. Advising and assisting the public information staffs in the operating units in preparation and distribution of releases and material.

b. A *Broadcast Branch,* which will be responsible for:

1. Developing and producing radio/TV news and features, including the Department's Spotmaster service.

2. Evaluating and determining what news or feature items will be disseminated to radio and television.

3. Advising and assisting the Departmental offices and operating units in the use of the Department's radio facilities.

Section 5. The Public Affairs Council

The Public Affairs Council, headed by the Director of Public Affairs, shall consist of the head of the public information function in each operating unit. The Council shall:

a. Serve as a coordinating mechanism for disseminating Department policy concerning public affairs matters.

b. Advise the Director with respect to public information problems and developments.

c. Coordinate, as assigned, major public affairs projects affecting all elements of the Department.

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d. Represent the views of the heads of the operating units in discussions with the Director of Public Affairs.

Elsa A. Porter,

Assistant Secretary for Administration.

[FR Doc. 80-32687 Filed 10-20-80; 8:45 am]

BILLING CODE 3510-17-M

[Dept. Organization Order 10-3, Amdt. 1]

Under Secretary for International Trade; Statement of Organization and Function and Delegation of Authority

Effective date: September 26, 1980.

This order effective September 26, 1980 amends the material appearing at 45 FR 6141 of January 25, 1980.

Department Organization Order 10-3 of January 2, 1980 is hereby amended as shown below. The purpose of this amendment is to delegate to the Under Secretary the Secretary's authority to issue regulations for ITA to carry out its functions under the International Investment Survey Act of 1976.

In Section 4. Delegation of authority, Subparagraph .01ii. of Section 4. is revised to read as follows:

"ii. Executive Order 11961 of January 19, 1977, as amended by Executive Order 12013 of October 7, 1977, which delegates to the Secretary of Commerce the authority of the President under Sections 4(a) (1), (2),.(3), (4), and 4(b) of the International Investment Survey Act of 1976, (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108). The functions thereunder shall be carried out in coordination with the Bureau of Economic Analysis, Office of the Chief Economist (Department Organization Order 35-1A), including, to the extent feasible, the division or assignment of responsibilities. All regulations established by ITA to carry out its functions under the Act shall be issued by the Under Secretary for International Trade in consultation with the Director, Bureau of Economic Analysis. All reports to be submitted to the Congress required to be undertaken pursuant to the Act, shall be issued by the Secretary."

Elsa A. Porter,

Assistant Secretary for Administration.

[FR Doc. 80-32688 Filed 10-20-80; 8:45 am]

BILLING CODE 3510-17-M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 80-2]

Imperial Carpets, Inc.; Prehearing Conference

Notice is hereby given that a prehearing conference in the above entitled matter will be held on Friday, October 31, 1980 at 10:00 a.m. in Hearing Room 2, Gelman Building, 2120 L Street, N.W., Washington, D.C., before the undersigned administrative law judge.

The issues presented by the complaint in this proceeding are as follows:

1. Whether respondents have failed to meet the acceptance criterion of the Standard for the Surface Flammability of Carpets and Rugs, 16 CFR Part 1630, Subpart A.

2. Whether the alleged practices of respondents are unlawful and constitute unfair medthods of competition and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

The agenda for this prehearing conference includes a discussion of the following:

(1) Pending discovery requests.

(2) Consideration of the possibility of settling this case.

(3) Setting a schedule for the filing of all prehearing motions besides those going to discovery.

(4) Establishing a schedule for the exchange of witness lists, expected testimony, and documents.

(5) Setting a firm date for start of formal hearings.

Morton Needelman,

Administrative Law Judge.

October 8, 1980.

[FR Doc. 80-32626 Filed 10-20-80; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Medical Research and Development Advisory Panel Ad Hoc Study Group on Medicinal Chemistry; Partially Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463), announcement is made of the following Committee meeting:

Name of Committee: United States Army Medical Research and Development Advisory Panel Ad Hoc Study Group on Medicinal Chemistry.

Date of Meeting: 14 November 1980.

Time and Place: 0845 hrs, Room 3092, Walter Reed Army Institute of Research, Washington, DC.

Proposed Agenda: This meeting will be open to the public on 14 November 1980 from 0845 to 1015 to discuss the scientific research program of the Medicinal Chemistry Branch, Walter Reed Army Institute of Research. Attendance by the public at open sessions will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S. Code and Section 10(d) of P.L. 92-463, the meeting will be closed to the public from 1015 to 1630 for the review, discussion and evaluation of individual programs and projects conducted by the U.S. Army Medical Research and Development Command, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Howard Moyes, Associate Director for Research Management, Walter Reed Army Institute of Research, Building 40, Room 1111, Walter Reed Army Medical Center, Washington, DC 20012 (202/576-3061) will furnish committee summary minutes, roster of Committee members and substantive program information.

For the Commander.

Harry G. Dangerfield, M.D.,

Colonel, MC, Deputy Commander.

[FR Doc. 80-32712 Filed 10-20-80; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board.

Dates of Meeting: November 13 and 14, 1980.

Place: U.S. Army Combined Arms Combat Development Agency, Fort Leavenworth, Kansas.

Time: 0830-1630 hours, 13 Nov 80; and 0830-1200 hours, 14 Nov 80.

Proposed Agenda:

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. An Army Science Board Ad Hoc Sub-Group will meet to receive briefings on and examine Army plans to use modern instrumentation technology to evaluate unit exercises at the Army's National Training Center.

Persons desiring to attend the meetings should contact the Army Science Board, (202) 697-9703, for specific room location.

Helen Pipon,

Administrative Officer.

[FR Doc. 80-32705 Filed 10-20-80; 8:45 am]

BILLING CODE 3710-08-M

Office of the Secretary

Defense Science Board Task Force on ECM; Advisory Committee Meeting

The Defense Science Board Task Force on ECM will meet in closed session November 12-13, 1980 at the Pentagon, Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

The Task Force will discuss potential technical solutions to several current problems in electronic countermeasures.

In accordance with 5 U.S.C. App. I section 10(d) (1976), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976); and that accordingly, this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

October 16, 1980.

[FR Doc. 80-32763 Filed 10-20-80; 8:45 am]

BILLING CODE 3810-70-M

Privacy Act of 1974; Amendments to Systems of Records

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice of amendments to systems of records.

SUMMARY: The Defense Logistics Agency (DLA) proposes to amend three systems of records subject to the Privacy Act of 1974. The specific changes to the systems being amended are set forth below followed by the systems published in their entirety as amended.

DATES: Proposed actions shall be effective November 20, 1980 unless public comments result in a contrary determination requiring republication for further comments.

ADDRESS: Send any comments to the system manager identified in the record system notice.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Smith, Chief, Administrative Management Division (DLA-XA), Defense Logistics Agency, HQ DLA, Cameron Station, Alexandria, Va. 22314, Telephone 202-274-6250.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's systems of records inventory as prescribed by the Privacy Act of 1974, 5 U.S.C. 552a(e)(4), have been published in the Annual Compilation at 44 FR 74719, December 17, 1979. The systems of records being amended are not deemed to be within the purview of 5 U.S.C. 552a(o) of the Privacy Act which requires submission of a new or altered system report to Office of Management and Budget guidance set forth in the **Federal Register** (40 FR 45877) on October 3, 1975.

October 15, 1980.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Service, Department of Defense.

Amendments

S322.10DLA-LZ

System name:

322.10 Defense Manpower Data Center Data Bases (44 FR 74740) December 17, 1979.

Changes:

Categories of individuals covered by the system:

Add "individuals receiving Veterans Administration Disability Benefits or having entitlement to VA medical care."

Routine uses:

Add new Routine use; "To the Office of Child Support Enforcement, Department of Health Education and Welfare, pursuant to Pub. L. 93-647, for the purpose of assisting state child support enforcement offices in locating absent parents in order to establish and/or enforce child support obligations."

Add new Routine use; "To the Director of the Selective Service System for use in wartime or emergency mobilization and for mobilization planning."

Add new Routine use; "To the Veterans Administration for analysis of the costs to the individual of military service connected disabilities."

S322.20DLA-LZ

System name:

322.20 Reenlistment Eligible File (RECRUIT) (44 FR 74742) December 17, 1979.

Changes:

System location:

Delete: "Manpower Research and Data Analysis Center" and insert "Manpower Data Center".

Categories of individuals covered by the system:

Delete: "and who are eligible for immediate reenlistment.".

Routine uses:

Delete: "Manpower Research and Data Analysis Center" and insert "Defense Manpower Data Center".

System manager(s) and address:

Delete: "Director, Manpower Research and Data Analysis Center" and insert "Chief, On-Line Systems Division, Defense Manpower Data Center".

Notification procedure:

Delete: "Manpower Research and Data Analysis Center, 300 N. Washington St., 7th Floor, Alexandria, VA 22314, Telephone: Area Code 703/325-0490" and insert "Defense Manpower Data Center, 550 Camino El Estero, Monterey, California 93940, Telephone: Area Code 408/375-4131."

Record access procedures:

Delete: "Manpower Research and Data Analysis Center, 300 N. Washington St., Alexandria, VA 22314" and insert "Defense Manpower Data Center, 550 Camino El Estero, Monterey, California 93940."

S322.35DLA-LZ

System name:

322.35 Survey Data Base (44 FR 74743) December 17, 1979

Changes:

System location:

Delete: "Manpower Research and Data Analysis Center" and insert "Defense Manpower Data Center".

Categories of individuals covered by the system:

Delete: "." and insert "and is part of the survey program of the recruiting market research program."

Routine uses:

Delete: "Research and Data Analysis Center" and insert "Defense Manpower Data Center."

System manager(s) and address:

Delete: "Director, Manpower Research and Data Analysis Center, 550 Camino El Estero, Monterey, California 93940" and insert "Chief, Defense Manpower Data Center, 300 North Washington Street, Alexandria, Virginia 22314."

Notification procedure:

Delete: "Chief, Market and Survey Research Division, Manpower Research and Data Analysis Center" and insert "Chief, Defense Manpower Data Center."

Record access procedures:

Delete: "Chief, Market and Survey Research Division" and insert "Chief, Defense Manpower Data Center."

S322.10DLA-LZ

SYSTEM NAME:

322.10 Defense Manpower Data Center Data Base.

SYSTEM LOCATION:

Primary location: W. R. Church Computer Center, Navy Postgraduate School, Monterey, CA 93940.

Back-up locations for processing: Air Force Data Services Center, Room 1D167, The Pentagon, Washington, D.C. 20330.

U.S. Army Management Systems Support Agency, Room BD972, The Pentagon, Washington, D.C. 20310.

National Military Command Systems Support Center, Room BE685, The Pentagon, Washington, D.C. 20331.

Back-up files maintained at two offices of the Defense Manpower Data Center, 7th Floor, 300 N. Washington St., Alexandria, VA 22314 and 2nd Floor, 550 Camino El Estero, Monterey, CA 93940.

Selected historic files are maintained at Air Force Data Services Center, Room 1D167, The Pentagon, Washington, D.C. pursuant to court order in IBM anti-trust case. These files will be withdrawn from current location when legally permissible.

Decentralized segments—Military personnel centers of the services; selected civilian contractors with research contracts in manpower area; other Federal agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All officers and enlisted personnel who served on active duty from July 1, 1968 and later; or who have been a member of a reserve component since July 1975; or are retired military, participants in Project 100,000 and project transition and the evaluation control groups for these programs; all individuals examined to determine eligibility for military service at an Armed Forces Entrance and Examining Station from July 1, 1970, and later; DoD civilian employees or civilian employees separated since January 1, 1971; all veterans who have utilized Vietnam-era or GI Bill education and training entitlements, who visited a State Employment Service office since July 1, 1971, or who participated in a Department of Labor special training program since July 1, 1971; all individuals who ever participated in an educational program sponsored by the U.S. Armed Forces Institute, all individuals who participated in the Armed Forces Vocational Aptitude Testing Programs at the high school level since September 1969, individuals who responded to various paid advertising campaigns seeking enlistment information since July 1, 1973; participants in the DHEW, Office of Education and Longitudinal Survey, individuals responding to Recruiting Advertisements since January 1978; individuals receiving Veterans Administration Disability Benefits or having entitlement to VA medical care.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Service Number, Selective Service Number, Social Security Account Number, demographic information such as hometown, age, sex, race, and educational level; civilian occupational information, military personnel information such as rank, length of service, military occupation; aptitude scores, post-service education, training, and employment information for veterans; participating in various inservice education and training programs, military hospitalization records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The purpose of the system of records is to provide a longitudinal statistical analysis capability for accessing military manpower trends and evaluation programs impacting of military personnel, potential enlistees, and veterans.

Defense Manpower Data Center—used to analyze accession patterns and trends, promotion and occupation patterns and trends, loss patterns and trends, qualification rates, effectiveness of recruiting programs, participation in education and training programs, force characteristics, post-service experiences of veterans, evaluation of military special pays and bonuses; evaluation of special programs affecting military personnel; to select sample population for surveys; to provide statistical data to OMB, GAO, the Military Services, DoD civilian contractors, educational institutions and other Federal agencies.

Personnel Research and Personnel Management activities of the Military Services—uses are same as those specified above.

Veterans Administration, Management Sciences Staff, Reports and Statistics Service, Office of the Comptroller—used to select sample for surveys asking veterans about the usa of veterans benefits and satisfaction with VA services, and to validate eligibility for VA benefits.

Office of Research and Statistics, Social Security Administration—used for statistical analyses of impact of military service and use of GI Bill benefits on long term earning.

DoD Civilian Contractors—used by contractors performing research on manpower problems for statistical analyses.

Aggregate data and/or individual records in the record system may be transferred to other Federal agencies having legitimate use for such information and applying appropriate safeguards to protect data so provided.

Records may be disclosed to the Civil Service Commission concerning pay, benefits, retirement deductions; and other information necessary for the Commission to carry out its Government-wide personnel management functions.

Any record contained in the system of records may be transferred to any other component of the Department of Defense having the need-to-know in the performance of official business.

Name and address information of former military personnel obtained from the Veterans Administration or the Military Department may be released to a number of DoD Components for use in attempting to recruit and reenlist prior service personnel through direct contact methods. These components are as follows: U.S. Army Recruiting Command; U.S. Army Forces Command; Navy Recruiting Command; Chief of Naval Personnel; Chief of Naval Reserve; U.S. Air Force Recruiting Service; U.S. Air Force Tactical Air Command; Headquarters Air Force Reserve; National Guard Bureau; Headquarters, U.S. Marine Corps; District Directors, U.S. Marine Corps; Commanding General 4th Marine Division; Commanding General, 4th Marine Air Wing; Commandant, U.S. Coast Guard.

Information on the name, rank, social security accounting number, duty station, birth date, retirement date, and retirement annuity may be disclosed to the Department of Health, Education, and Welfare (DHEW) for the following purposes:

To the Office of Education, DHEW, for the purpose of identifying individuals who appear to be in default on their guaranteed student loans so as to permit the DHEW to take action, where appropriate, to accelerate recoveries of defaulted loans.

To the Bureau of Supplemental Security Income, Social Security Administration, DHEW, in order to verify and adjust as necessary payments made to active and retired military members under the Supplemental Security Income Program.

To the Office of the Inspector General, DHEW, for the purpose of identifying and investigating DoD employees (military and civilian) who may be improperly receiving funds under the Aid for Families of Dependent Children program.

To the Office of Child Support Enforcement, Department of Health Education and Welfare, pursuant to PL93–647, for the purpose of assisting state child support enforcement offices in locating absent parents in order to establish and/or enforce child support obligations.

To the Director of the Selective Service System for use in wartime or emergency mobilization and for mobilization planning.

To the Veterans Administration for analysis of the costs to the individual of military service connected disabilities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic computer tape.

RETRIEVABILITY:

Retrievable by name, SSAN, age, occupation, or any other data element contained in system.

SAFEGUARDS:

Primary location—at W. R. Church Computer Center, tapes are stored in a locked cage in machine room, which is a controlled access area; tapes can by physically accessed only by computer center personnel and can be mounted for processing only if the appropriate security code is provided.

At back-up locations in Alexandria, VA And Monterey, CA tapes are stored in rooms protected with cypher locks, buildings are locked after hours, and only properly cleared and authorized personnel have access.

The Air Force Data Services Center, the U.S. Army Management Systems Support Agency, and the National Command Systems Support Center are all TOP SECRET facilities.

RETENTION AND DISPOSAL:

Files constitute a historical data base and are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief, Defense Manpower Data Center (DMDC), 550 Camino El Estero, Monterey, CA 93940.

NOTIFICATION PROCEDURE:

Information may be obtained from: Deputy Chief, Defense Manpower Data Center, 550 Camino El Estero, Monterey, CA 93940. Telephone: Area Code 408/646–2951.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to Deputy Chief, Defense Manpower Data Center (DMDC), 550 Camino El Estero, Monterey, CA 93940.

Written requests for information should contain the full name, Social Security Account Number, date of birth, and current address and telephone number of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as drivers license, or military or other ID card.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSTEM MANAGER.

RECORD SOURCE CATEGORIES:

The Military Services, the Veterans Administration, the Office of Education of the Department of HEW, from individuals via survey questionnaires, the Department of Labor, the Civil Service Commission.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

S322.20DLA-LZ

SYSTEM NAME:

322.20 Reenlistment Eligible File (RECRUIT).

SYSTEM LOCATION:

Primary location: W. R. Church Computer Center, Naval Postgraduate School, Monterey, CA 93940.

Back-up file: Department of Defense Manpower Data Center, 7th Floor, 300 N. Washington St., Alexandria, VA 22314.

Back-up file: Department of Defense Manpower Data Center, 5450 Camino El Estero, Monterey, CA 93940.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former enlisted personnel of the military services who separated from active duty during the immediately preceding forty-eight months.

CATEGORIES OF RECORDS IN THE SYSTEM:

Social Security Account Number, Name, Service, Date of Birth and Date of Separation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The purpose of the system is to assist recruiters in reenlisting prior-service personnel.

Department of Defense Manpower Data Center, used to provide to recruiters in the military service and the Coast Guard information on individuals eligible for immediate reenlistment; for statistical analyses of prior-service reenlistment trends and of demographic characteristics of applicants for reenlistment; such analyses may require merging with other record systems.

Any individual records contained in the system might be transferred to any component of the Department of Defense having a need to know in the performance of official business.

Any record may be disclosed to law enforcement or investigatory authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Most recent thirty-six months separation stored on magnetic disc; full forty-eight months stored on magnetic tape.

RETRIEVABILITY:

Retrievable by Social Security Account Number.

SAFEGUARDS:

DISC File is protected by password access and hard-wire system.

Alexandria, Virginia location has tape storage areas in locked room accessible only to authorized personnel; building is locked after hours.

Monterey, California location has tape storage area in locked room accessible only to authorized personnel; building is locked after hours.

Recruiters making telephone inquiries must have valid recruiter identification and call back number.

RETENTION AND DISPOSAL:

Records more than forty-eight months old are purged from the system.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, On-Line Systems Division, Defense Manpower Data Center, 550 Camino El Estero, Monterey, California 93940.

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NOTIFICATION PROCEDURE:

Information may be obtained from: Manager, RECRUIT System, Defense Manpower Data Center, 550 Camino El Estero, Monterey, California 93940, Telephone: Area Code 408/375–4131.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Manager, RECRUIT System, Defense Manpower Data Center, 550 Camino El Estero, Monterey, California 93940.

Written request for information should contain the full name, current address, telephone number, Social Security Account Number, and date of separation of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSTEM MANAGER.

RECORD SOURCE CATEGORIES:

The data contained in the system are obtained from the Army, Navy, Air Force, Marine Corps, and Coast Guard.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

S322.35DLA-LZ

SYSTEM NAME:

322.35 Survey Data Base.

SYSTEM LOCATION:

Primary location: W. R. Church Computer Center, Naval Postgraduate School, Monterey, CA 93940.

Decentralized locations for back-up files: Department of Defense, Defense Manpower Data Center, 7th Floor, 300 N. Washington St., Alexandria, VA 22314 and 2nd Floor, 550 Camino El Estero, Monterey, CA 93940.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who were selected at random for survey administration and who completed survey forms. Survey data is collected on a periodic basis. Current data were collected at selected Armed Forces Entrance and Examining Stations (AFEES), during September 1974, May 1975, or since January 1975; additional data were collected by Gilbert Youth Organization (civilian contractor) in nation-wide surveys during May or November 1973, or May or November 1974 and is part of the survey program of the recruiting market research program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Social Security Account Number, and responses to survey items dealing with attitudes toward the military.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The purpose of the file is to sample attitudes toward enlistment in the military and determine reasons for enlistment decisions.

Manpower Data Center: Used to analyze trends in enlistment motivation, attitudes toward military service, attractiveness of various enlistment incentives; survey files are linked with military personnel inventory, gain and loss files to statistically relate survey data to later advancement, attritions, and reenlistment patterns.

Any individual record in the system may be transferred to any component of the Department of Defense having the need to know in the performance of official business.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic Computer Tape.

RETRIEVABILITY:

Records can be retrieved by Service of accession, period of survey, race, sex, education level, or Social Security Account Number.

SAFEGUARDS:

Tapes stored at the primary location are kept in a locked storage cage in a controlled access area; tapes stored at the back-up locations are kept in locked storage areas in buildings which are locked after hours.

RETENTION AND DISPOSAL:

Records are permanent. Survey answer sheets which are opscanned to create tape are destroyed after tape is created.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Defense Manpower Data Center, 300 N. Washington St., Alexandria, VA 22314.

NOTIFICATION PROCEDURE:

Information may be obtained from Chief, Defense Manpower Data Center, 300 N. Washington St., 7th Floor, Alexandria, VA 22314. Telephone: Area Code 703/325–0490.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Chief, Defense Manpower Data Center, 300 N. Washington St., Alexandria, VA 22314.

Written requests for information should contain the full name, Social Security Account Number, and current address and telephone number of the individual. In addition, the approximate date and location where the survey was completed should be provided.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license or military or other ID card.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSTEM MANAGER.

RECORD SOURCE CATEGORIES:

The survey information is provided by the individual; additional data which are linked to survey data as described in the routine uses section, are obtained from the military services.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 80-32715 Filed 10-20-80; 8:45 am]

BILLING CODE 3620-01-M

DEPARTMENT OF EDUCATION

National Advisory Council on Bilingual Education; Meeting

AGENCY: National Advisory Council on Bilingual Education.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming meetings of the National Advisory Council on Bilingual Education. Notice of these meetings is required under the Federal Advisory Committee Act (5 U.S.C. Appendix 1, 10(a)(2)). This document is intended to notify the general public of their opportunity to attend.

DATES: November 8, 9, and 10, 1980, 9:00 a.m.–5:00 p.m.

ADDRESS: Council meetings will be held at the Fort Brown Motor Hotel, 1900 E. Elizabeth Street, Aztec Room, Brownsville, Texas 78520. For further information contact: Joan Cassidy, Office of Bilingual Education and Minority Languages Affairs, Reporters Building, Room 421, Department of Education, 400 Maryland Avenue, S.W., Washington, DC 20202 (202–245–2595).

The National Advisory Council on Bilingual Education is established under Section 732(a) of the Bilingual Education Act (20 U.S.C. 3242) to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act.

The meetings of November 8, 9, and 10, 1980 will be open to the public beginning at 9:00 a.m.

November 8, 1980: A meeting of the Council on the following subjects is scheduled from 9:00 a.m. until 5:00 p.m. The proposed agenda includes the following:

Business Meeting

a. Call to Order
b. Approval of Minutes
c. Chairperson's Report
d. Committee Reports
e. Ad Hoc Reports
11:00–12:30—Review of Denver Meeting
1:30–3:00—Establish New Committees
3:00–4:30—Discuss Annual Report
4:30–5:00—Public Participation

November 9, 1980: The proposed agenda includes the following:
9:00–5:00—OBEMLA Director's Report.
a. Update on Lau
b. Part C
c. Bilingual Vocational Education
d. Refugee Issues
e. 1980–81 Funding Process: (1) Reader Selection, (2) Problems in Funding, (3) Funding Procedures, (4) Breakdown on Applications
f. Discussion on OBEMLA Reorganization

November 10, 1980: The proposed agenda includes the following:
9:00–11:30—Old Business: Action Items; New Business: Action Items; Agenda for next meeting; Public Participation.
1:00–until—Committee Meetings
Adjournment.

Records will be kept of all Council proceedings and shall be available for public inspection after approval, by the Full Council, of said records has been obtained. These records will be available in Room 421, Reporters Building, 300 7th Street, S.W., Washington, DC. Written requests for such records should be sent to 400 Maryland Avenue, S.W., Reporters Building, Room 421, Washington, DC 20202. Stop number REP 421.

In the event that the proposed agenda is completed prior to the projected date or time, the Council will adjourn the meeting.

Signed at Washington, DC on October 16, 1980.

Joan E. Cassidy,

Program Delegate, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 80-32701 Filed 10-20-80; 8:45 am]

BILLING CODE 4000-01-M

Advisory Panel on Financing Elementary and Secondary Education; Meeting

AGENCY: Advisory Panel on Financing Elementary and Secondary Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Panel on Financing Elementary and Secondary Education. It also describes the functions of the Panel. Notice of this meeting is required under the Federal Advisory Committee Act, section 10(a)(2). This document is intended to notify the general public of its opportunity to attend.

DATE: November 6, 7, and 8, 1980.

ADDRESS: November 6 and 7, Hubert H. Humphrey Auditorium, 200 Independence Avenue, SW., Washington, D.C. and November 8, Bunker Hill Room, Hyatt Regency Washington Hotel, 400 New Jersey Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Will S. Myers, Executive Director, Advisory Panel on Financing Elementary and Secondary Education, 1325 G Street, NW., Suite 710, Washington, D.C. 20005, (202) 724–0875.

SUPPLEMENTARY INFORMATION: The Advisory Panel on Financing Elementary and Secondary Education is established under Section 1203, Title XII of the Education Amendments of 1978 (Pub. L. 95–561). The Panel is directed to provide the Secretary and the Congress with periodic advice and counsel concerning public policies on raising and distributing revenues to support elementary and secondary education. The views and recommendations of the Advisory Panel shall provide periodic advice to the Secretary concerning the conduct of studies authorized by Section 1203 and make interim reports to the President and the Congress in 1980, 1981, and 1982 on the results of the studies conducted. The Advisory Panel shall also provide comments on the Secretary's annual reports and such additional recommendations for legislation or other apropriate action to the Congress no later than sixty days after submission of such reports.

The meeting of the Panel will be open to the public on November 6 and 8 from 10:00 a.m. to 5:00 p.m., and on November 7 from 10:00 a.m. to 3:00 p.m.

The agenda for the meeting will include the following items:

1. Discussion of alternative Federal roles in financing elementary and secondary education.
2. Adoption of subject matter areas and schedule of hearings and meetings through February 1983.
3. Status report on the School Finance Project.
4. Management of Panel affairs.

On Friday, November 7 from 3:00 p.m. to 5:00 p.m., the meeting will be closed to the public, if necessary, to discuss internal personnel rules and practices. This meeting will be closed under the authority of the Federal Advisory Committee Act, section 10(d) and under the Government in the Sunshine Act, 5 U.S.C. 522b(c), exemption (2).

A record of the proceedings including a summary of the closed session which are informative to the public consistent with the policy of 5 U.S.C. 552b(c) shall be available for public inspection at the offices of the Advisory Panel on Financing Elementary and Secondary Education, located at 1325 G Street, NW., Suite 710, Washington, D.C. 20005, within 14 days following the session.

Signed at Washington, D.C. on September 29, 1980.

Will S. Myers,

Executive Director, Advisory Panel on Financing Elementary and Secondary Education.

[FR Doc. 80-32747 Filed 10-20-80; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

National Petroleum Council, Coordinating Subcommittee of the Committee on Arctic Oil and Gas Resources; Meeting

Notice is hereby given that the Coordinating Subcommittee of the Committee on Arctic Oil and Gas Resources will meet in December 1980. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Arctic Oil and Gas Resources will analyze the various issues bearing on expeditious resource development of this promising frontier area. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location and agenda of the Coordinating Subcommittee meeting follows:

The fourth meeting of the Coordinating Subcommittee will be held on Friday, December 5, 1980, starting at 10:00 a.m., in the Board Room of DeGolyer and MacNaughton, 400 One Energy Square, Dallas, Texas.

V 45 C 21 80 UMI

The tentative agenda for the meeting follows:

1. Introductory remarks from Chairman and Government Cochairman.
2. Review the progress of the task groups.
3. Discuss the timetable of the Coordinating Subcommittee.
4. Discuss any other matters pertinent to the overall assignment of the Coordinating Subcommittee.

The meeting is open to the public. The Chairman of the Coordinating Subcommittee is empowered to conduct the meeting in a fashion that will, in his judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Coordinating Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform L. A. Vickers, Office of Oil and Natural Gas, Resource Applications, 202/633–8383, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on October 10, 1980.

R. D. Langenkamp,

Deputy Assistant Secretary, Resource Development and Operations, Resource Applications.

October 10, 1980.

[FR Doc. 80-32764 Filed 10-20-80; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, Coordinating Subcommittee of the Committee on Environmental Conservation; Meeting

Notice is hereby given that the Coordinating Subcommittee of the Committee on Environmental Conservation will meet in November 1980. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Environmental Conservation will analyze the environmental problems of the oil and gas industries and the impact of current environmental control regulations on the availability and costs of petroleum products and natural gas. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location and agenda of the Coordinating Subcommittee meeting follows:

The Coordinating Subcommittee will hold its second meeting on Thursday, November 6, 1980, starting at 10:00 a.m., in the Conference Room of the National Petroleum Council, 1625 K Street, NW., Washington, D.C.

The tentative agenda for the meeting follows:

1. Review assignments from the NPC Committee on Environmental Conservation.
2. Discuss study assignments for the task groups.
3. Discuss schedule of Subcommittee and task group activities.
4. Discuss any other matters pertinent to the overall assignment from the Secretary.

The meeting is open to the public. The Chairman of the Coordinating Subcommittee is empowered to conduct the meeting in a fashion that will, in his judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Coordinating Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform L. A. Vickers, Office of Oil and Natural Gas, Resource Applications, 202/633–8383, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on October 10, 1980.

R. D. Langenkamp,

Deputy Assistant Secretary, Resource Development & Operations Resource Applications.

October 10, 1980.

[FR Doc. 80-32765 Filed 10-20-80; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95–621), signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate cost of gas to the industrial facility does not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA of 1978, Section 204 (e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and a high cost gas incremental pricing threshold which are to be effective November 1, 1980. These prices are based on the prices of alternative fuels.

For further information contact: Leroy Brown, Jr., Energy Information Administration, Federal Building, 12th & Pa. Ave., NW., Rm. 4121, Washington, D.C. 20461, (202) 633–9710.

Section I. Alternative Fuel Price Ceilings

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. The price ceiling is expressed in dollars per million British Thermal Units (BTU's). The method used to determine the price ceilings is described in Section III.

State	Dollars per million BTU's
Alabama	3.16
Arizona	2.81
Arkansas	3.24
California	2.75
Colorado	2.71
Connecticut	3.39
Delaware	3.24
Florida	3.01
Georgia	3.14
Idaho	3.32
Illinois	2.54
Indiana	2.54
Iowa	2.91
Kansas	2.43
Kentucky	3.49
Louisiana	2.53
Maine	3.45
Maryland	3.37
Massachusetts	3.41
Michigan	2.98
Minnesota	2.84
Mississippi	2.78
Missouri	2.90
Montana	2.62
Nebraska	2.83
Nevada	2.81
New Hampshire	3.44
New Jersey	3.26
New Mexico	2.27
New York	3.23
North Carolina	3.12
North Dakota	2.98
Ohio	2.11
Oklahoma	3.27
Oregon	3.04
Pennsylvania	3.40
Rhode Island	3.44
South Carolina	3.16
South Dakota	3.10
Tennessee	3.37
Texas	3.26
Utah	2.71
Vermont	3.66
Virginia	3.15
Washington	2.86
West Virginia	2.88
Wisconsin	2.77
Wyoming	2.63

Section II. Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during August 1980 was $33.22 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, Section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective November 1, 1980, is $7.45 per million BTU's.

Section III. Method Used To Compute Price Ceilings

The FERC, by Order No. 50, issued on September 28, 1979, in Docket No. RM79–21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 81, issued in the same docket on May 7, 1980, established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings until November 1, 1981.

A. Data Collected

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1% sulfur content by weight) residual fuel oil: For each selling price, the number of gallons sold to large industrial users in the months of June 1980, July 1980 and August 1980.[1] All reports of volume sold and price were identified by the State into which the oil was sold.

[1] Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State or Local) and the military are excluded.

B. Method Used To Determine Alternative Price Ceilings

(1) Calculation of Volume-Weighted Average Price

The prices which will become effective November 1, 1980, (shown in Section I) are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, June 1980, July 1980, and August 1980. Reported prices for sales in June 1980 were adjusted by the percent change in the nationwide volume-weighted average price from June to August 1980. Prices for July 1980 were similarly adjusted by the percent change in the nationwide volume-weighted average price from July to August 1980. The volume-weighted 3-month average of the adjusted June 1980 and July 1980, and the reported August 1980 prices were then computed for each State.

(2) Adjustment for Price Variation

States were grouped into the regions identified by the FERC (see Section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in Section III.B.(1) above) for each State was adjusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

(3) Calculation of Ceiling Prices

The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in Section III.B.(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in Section III.B.(2)) was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State's alternative fuel price ceiling base. The appropriate lag adjustment factor (as discussed in Section III.B.(4)) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million Btu's).

(4) Lag Adjustment

The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* publication provides timely information relative to the subject. The prices found in *Platt's Oilgram Price Report* publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 21 cities throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 high sulfur residual fuel oil for the ten trading days ending October 10, 1980, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of August 1980. A regional lag adjustment factor was similarly calculated for four regions. These are: one for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G combined and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in Section III.B.(3).

C. Listing of States by Region

States were grouped by the FERC to form eight distinct regions as follows:

Region A: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.
Region B: Delaware, Maryland, New Jersey, New York, and Pennsylvania.
Region C: Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia.
Region D: Illinois, Indiana, Kentucky, Michigan, Ohio, West Virginia, and Wisconsin.
Region E: Iowa, Kansas, Missouri, Minnesota, Nebraska, North Dakota, and South Dakota.
Region F: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.
Region G: Colorado, Idaho, Montana, Utah, and Wyoming.

Region H: Arizona, California, Nevada, Oregon, and Washington.

Issued in Washington, D.C., on October 16, 1980.

Jimmie Petersen,

Acting Administrator, Energy Information Administration.

[FR Doc. 80-32813 Filed 10-20-80; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-FC-80-030; ERA Case No. 51998-2322-07-22]

Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Acceptance of Exemption Petition.

SUMMARY: On March 27, 1980, Nevada Power Company (Nevada Power) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Eneregy (DOE) seeking a permanent peakload powerplant exemption from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) [42 U.S.C. 8301 *et seq.*) The Act prohibits the use of petroleum or natural gas in new powerplants. Criteria for petitioning for a permanent peakload powerplant exemption from the prohibitions of FUA are published at 10 CFR 501.3 and 503.41.

Nevada Power proposes to install an 86,566 kilowatt natural gas/oil-fired gas combustion turbine unit to be known as Clark Unit No. 7, and certifies that the unit will be operated solely as a peakload powerplant and will be operated to meet peakload demand for the life of the plant.

ERA has accepted this petition pursuant to 10 CFR 501.3 and 501.63. In accordance with the provisions of Sections 701(c) and (d) of FUA, and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this matter, and any interested person may submit a written request that ERA convene a public hearing.

DATES: Written comments are due on or before December 5, 1980. A request for a public hearing may be made by any interested person within this same 45 day period.

ADDRESSES: Fifteen copies of written comments shall be submitted to: Department of Energy, Case Control Unit, Box 4629, Room 2313, 2000 M Street, NW., Washington, D.C. 20461.

Docket Number ERA-FC-80-030 should be printed clearly on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

William L. Webb, Office of Public Information Economic Regulatory Administration, Department of Energy, 2000 M Street, NW., Room B-110, Washington, D.C. 20461, Phone (202) 653-4055.

Louis T. Krezanosky, New Powerplants Branch, Economic Regulatory Administration, Department of Energy, 2000 M Street, NW., Room 3012 B, Washington, D.C. 20461, Phone (202) 653-4208.

Marilyn Ross, Office of General Counsel, Department of Energy, 6G-087 Forrestal Building, Washington, D.C. 20461, Phone (202) 252-2967.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. Nevada Power has filed a petition for a permanent peakload powerplant exemption to use natural gas or petroleum as a primary energy source.

As part of its petition, Nevada Power submitted a sworn statement by a duly authorized officer, Mr. J. H. Zornes, Vice President, Generation, as required by 10 CFR 503.41(b)(1). In his statement, Mr. Zornes certified that the proposed natural gas/oil-fired combustion turbine will be operated solely as a peakload powerplant and will be operated only to meet peakload demand for the life of the plant.

Mr. Zornes also certified that the maximum design capacity of the powerplant is 86,566 kilowatts and that the maximum generation that will be allowed during any 12-month period is the design capacity times 1,500 hours or 129,849,000 Kwh.

Under the requirements of 10 CFR 503.41(a)(2)(ii), if a petitioner proposes to use natural gas or to construct a powerplant to use natural gas in lieu of an alternate fuel as a primary energy source, he must obtain a certification from the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency. This certification must state that the use by the powerplant of any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is or would be exceeded. However, since ERA has determined that there are no presently available alternate fuels which may be used in the proposed powerplant, no such certification can be made. The certification requirement is therefore waived with respect to this petition.

ERA retains the right to request additional relevant information from Nevada Power at any time during the pendency of these proceedings where circumstances or procedural requirements may require.

The public file, contraining documents on these proceedings and supporting materials, is available for inspection upon request at: ERA, Room B-110, 2000 M Street, NW., Washington, D.C. 20461, Monday-Friday, 8:00 a.m.—4:30 p.m.

Issued in Washington, D.C., on October 14, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-32858 Filed 10-20-80; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[SA-FRL-1639-8]

Science Advisory Board, Clean Air Scientific Advisory Committee; Cancellation of Open Meeting

Notice is hereby given in accordance with Public Law 92-463 that the meeting of the Subcommittee on Carbon Monoxide, Clean Air Scientific Advisory Committee of the Science Advisory Board scheduled to be held on October 27, 1980, starting at 10 am in Room 3906 in the Mall of EPA Headquarters, 401 M Street, SW, Washington, D.C. 20460 is cancelled.

This meeting was cancelled because the conflict of scheduling between two Science Advisory Board committees. For further information contact Mr. Terry F. Yosie, Staff Officer (202) 755-0263.

Dated: October 17, 1980.

Richard M. Dowd,

Director, Science Advisory Board.

[FR Doc. 80-32887 Filed 10-20-80; 8:45 am]

BILLING CODE 6560-34-M

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Administration

Advisory Committee on Financial Reporting for the Executive Office of the President

In accordance with the provisions of the Federal Advisory Committee Act and Office of Management and Budget Circular A-63, the Office of Administration publishes notice that the Advisory Committee on Financial Reporting for the Executive Office of the President has been renewed for an additional two years. A description of the Committee's purpose and functions was published in the Federal Register on October 19, 1978. Comments should be directed to the Assistant to the Director for Audit and Assessment, Office of Administration, 726 Jackson Place, NW, Washington, D.C. 20503, telephone number 202 395-6877.

Sarah T. Kadec,

Deputy Director.

[FR Doc. 80-32718 Filed 10-20-80; 8:45 am]

BILLING CODE 3115-01-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 80-604; FCC 80-569]

American Telephone & Telegraph Co.; Revisions to Tariff; Memorandum Opinion and Order Instituting Investigation

Adopted: October 3, 1980.

Released: October 16, 1980.

In the matter of the American Telephone and Telegraph Company, Revisions to Tariff FCC Nos. 260 and 267, Maintenance of Service Charge Associated with Private Line Service and Dataphone Digital Service, Transmittal No. 13512.

By the Commission:

1. Before the Commission is a petition by Aeronautical Radio, Inc. (ARINC) seeking suspension and investigation of revisions filed by the American Telephone and Telegraph Company (AT&T) to Tariffs FCC Nos. 260 and 267.[1] These revisions, scheduled to become effective on October 5, 1980, provide for an increase in the maintenance of service charge found in AT&T's Private Line and Dataphone Digital Service (DDS) tariffs.[2] For the reasons explained below, we will deny the petition and permit the revisions to become effective. However, we are instituting on our own motion an investigation to determine whether AT&T is engaged in an unreasonable and unlawfully discriminatory tariff practice under the Communications Act by imposing a separate maintenance charge under its Private Line and DDS tariffs where customer provided equipment is involved, while at the same time including costs for comparable maintenance functions in bundled rates applicable to customers with AT&T provided equipment.

2. In seeking suspension and investigation, ARINC contends that the tariff revisions raise questions under Section 201(b) of the Communications Act, 47 U.S.C. § 201(b), regarding the reasonableness of the proposed increased rate levels for the maintenance of service charge. In support of this contention, ARINC argues that the magnitude of the rate increase is unfair and inequitable when considered in connection with AT&T tariff limitations on its liability to customers who incur maintenance expenses attributable to problems with AT&T's service.[3] ARINC additionally asserts that suspension and investigation are warranted because AT&T has failed to comply with Section 61.38 of the Commission's Rules by not providing an explicit explanation and justification of the rate increase. For its part, AT&T disagrees with ARINC that it has failed to comply with Section 61.38 and further submits that ARINC's remaining arguments are not relevant to the lawfulness of the proposed increase in the maintenance of service charge.

3. The Commission will suspend and investigate a tariff filing where it finds significant questions of lawfulness exist. However, in the present instance, we find that ARINC's main argument, that the proposed maintenance of service charge is disproportionately high in relation to AT&T's liability limitation, does not bring into question the reasonableness, and therefore the lawfulness, of the proposed rate levels for the maintenance of service charges. This conclusion stems from the fact that the maintenance of service charge and AT&T's liability limitation, as set forth in separate and distinct tariff provisions, have different underlying purposes. The maintenance of service charge, to be reasonable, must be based on AT&T's cost of providing this service.[4] Unlike the maintenance of service charge, AT&T's liability limitation is not a service charge but an assessment against AT&T to compensate a customer for expenses incurred as a result of nonintentional torts or service failures by AT&T. Furthermore, this assessment does not purport to reflect the full or even a substantial part of a customer's potential consequential losses or additional expenses. In any case, a common carrier has the right to reasonably limit liability and the resonableness of the liability limitation rests in striking a balance between the rights of aggrieved customers and the public interest in the provision of telephone service at the lowest possible cost.[5] Since it is evident that AT&T's liability limitation has no bearing on whether the proposed maintenance of service charge is at a reasonable level, we find that ARINC's arguments in this regard do not warrant suspension and investigation of the proposed tariff revisions.

4. As for ARINC's contention that AT&T has failed to comply with Section 61.38 of the Commission's Rules, we note that ARINC has failed to state in what respects AT&T's Section 61.38 support material is deficient. For this reason alone the contention fails. In any event, our independent analysis indicates that AT&T's support material complies with Section 61.38 requirements.

5. Although we are denying ARINC's petition and allowing these revisions to become effective, we are concerned that AT&T may be engaged in a discriminatory and unreasonable tariff practice when charging customers of non-AT&T equipment for maintenance service. AT&T's current maintenance of service charge involves maintenance functions and costs associated with isolating a trouble condition on the premises of a non-AT&T equipment customer. It applies only in instances where the trouble condition is found in the customer provided equipment. If, however, the problem is found to be in the connecting AT&T private line, there is no charge. In this latter case, the costs associated with these maintenance functions are presumably absorbed in the customer's private line rates. When a customer who leases both equipment and private line from AT&T calls upon AT&T to isolate a trouble condition, similar maintenance functions are performed and costs incurred. Nevertheless, under this scheme the AT&T equipment customer will incur no

[1] ARINC additionally asks the Commission to impose an accounting order on AT&T in connection with these revisions. Also before us is an opposition by AT&T and letters from Universal Electric Company, Levino Shipping Company, and Management Cybernetics protesting the increased maintenance of service charge.

[2] The maintenance of service charge applies to a customer requested visit by an AT&T repairperson to isolate a trouble condition which is subsequently found to be in non-telephone company provided equipment or facilities used in connection with AT&T's private line services or DDS. The revisions would increase the maintenance of service charge to $80 from current rates of $11.35 for private line service and $27.05 for DDS.

[3] Except for willful misconduct, AT&T's tariffs limit liability "to an amount equal to the proportionate charge for the service for the period during which the service was affected." Tariff F.C.C. No. 260 § 2.1.3(A) and Tariff No. 267 § 2.4.2.(A). Additionally, AT&T's tariffs provide for a service interruption credit to compensate for loss. ARINC notes that AT&T's maximum liability for a customer's expenses relating to failure for one day of a typical 50-mile private line circuit would be $7.80.

[4] See, *Associated Press*, 55 FCC 2d 220, 222 (1975).

[5] See, *AT&T*, 76 FCC 2d 195, 198 (1980).

charge for isolating the trouble condition whether or not the fault lies with the equipment. Here, by contrast to the situation involving customer provided equipment, the cost of comparable maintenance functions must be recovered through both equipment and private line rates.

6. What becomes apparent from the foregoing is that AT&T's practice of including these maintenance functions with other service functions in bundled rate elements where AT&T equipment is involved precludes the Commission and the public from ascertaining whether unreasonable or unlawfully discriminatory charges are being levied against non-AT&T equipment customers for the performance of similar maintenance functions. For example, although the cost support material submitted by AT&T to justify the increase in the maintenance of service charge for non-AT&T equipment customers appears to justify the level of the charge, we note that AT&T has not filed a corresponding increase in its bundled rates for comparable maintenance functions being performed for AT&T equipment users. Although this may indicate that comparable charges are not being assessed for similar maintenance functions, the ability to determine whether and to what extent this is the case is impeded by AT&T's selective rate element bundling practice which prevents tracking of maintenance function costs. Furthermore, we believe that this disparate treatment of AT&T and non-AT&T equipment customers when charging for maintenance service functions could also have anticompetitive marketing implications against sellers of non-AT&T equipment. In recent years, this Commission has opened the terminal equipment market to competitive forces by permitting the attachment of customer provided equipment to the national telephone network.[6] We must ensure that tariff practices, such as the selective imposition of a separate maintenance charge where customer provided equipment is at fault, do not become a vehicle for discriminating against customers who provide their own equipment.

7. In *AT&T-Private Line Rate Structure (Notice)*, 74 FCC 2d 226 (1979), we instituted an inquiry and proposed rulemaking of AT&T tariff practices which we found to result in confusing, overly complex, and inconsistent service offerings and rate structures in all AT&T's private line tariffs. Among the tariff practices we considered to be unreasonable and unduly discriminatory was selective rate element bundling. There too we noted how this practice precludes the Commission and communications customer from ascertaining the true charges associated with various communications service functions. We ordered AT&T to submit a rate and tariff restructuring proposal to cure such unreasonable and discriminatory tariff practices. AT&T has since submitted a rate and tariff restructuring proposal which is now under consideration. Although the *Notice* was silent as to the final rate structure configurations themselves, AT&T was required to follow certain proposed rules and give recognition to certain principles which were set forth in the *Notice*. Among these was the requirement that once a service function is shown as a separate rate element in one rate schedule, it must be shown in like manner in all other schedules in which it appears. Keeping this principle in mind and recognizing the potential unlawfully discriminatory and anticompetitive effects of AT&T's practice of selectively unbundling maintenance charges, we believe that inquiry into this specific issue is warranted independent of our broader and more general treatment of AT&T's private line rate structures.

8. Therefore, we are here instituting on our own motion an investigation to determine whether AT&T is engaged in an unreasonable and unlawfully discriminatory tariff practice under Sections 201 and 202 of the Communications Act, 47 U.S.C. 201 and 202, by imposing under its Private Line and DDS tariffs a separate maintenance charge where customer provided equipment is involved, while at the same time imposing no charge for comparable maintenance functions except in bundled rates applicable to customers of AT&T equipment.[7] Should comments submitted by all interested parties show that inclusion of maintenance functions in bundled rate elements is an unreasonable and unlawfully discriminatory practice, we will consider ordering AT&T to unbundle its equipment rates and represent as a separate rate element within its Private Line and DDS tariffs all maintenance functions currently included in its maintenance of service charge applicable to customer provided equipment.[8]

9. We believe the questions raised here can be satisfactorily and promptly addressed and resolved through the use of written comment procedures. AT&T will have the burden of proving the questioned practice just, reasonable and not unduly discriminatory under Sections 201 and 202 of the Act.

10. Accordingly, it is ordered, that the petition filed by ARINC for suspension and investigation of revisions to AT&T Tariffs FCC Nos. 260 and 267 submitted under Transmittal No. 13512 is denied.

11. It is further ordered, that pursuant to the provisions of Sections 4(i), 4(j), 201, 202, 203, 204, 205, and 403 of the Communications Act, 47 U.S.C. 154(i), 154(j), 201, 202, 203, 204, 205, and 403, an investigation is hereby instituted into the foregoing matters.

12. It is further ordered, that AT&T and all interested persons wishing to participate may file comments on or before November 17, 1980. Reply comments shall be filed on or before December 15, 1980.

13. It is further ordered, that the Chief, Common Carrier Bureau is delegated authority to require the submission of additional information, make further inquiries, and modify dates and procedures, if necessary, to provide for a fuller record and more efficient proceeding.

14. It is further ordered, that the Secretary will cause this Memorandum Opinion and Order to be published in the Federal Register.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 80-32736 Filed 10-20-80; 8:45 am]
BILLING CODE 6712-01-M

[6] See, Part 68 of the Commission's Rules and *Second Computer Inquiry*, 77 FCC 2d 384 (1980).

[7] We stress that we are not investigating the actual rate levels at this time. Instead, we are calling into question a tariff practice which we believe may prevent comparison of the charges imposed upon two classes of customers for similar maintenance functions.

[8] Since AT&T's maintenance of service charge does not include the actual repair of customer provided equipment, this latter function would not necessarily have to be unbundled from AT&T's equipment rates.

[BC Dockets Nos. 80-628 and 80-629, Files Nos. BPED-2613 and BPED-2617]

Arkansas University and Arkansas Broadcasting Foundation, Inc.; Hearing Designation Order

Adopted: October 6, 1980.
Released: October 21, 1980.

In the matter of applications of the Board of Trustees of the University of Arkansas on behalf of the University of Arkansas at Little Rock, Little Rock, Arkansas, Req: 88.3 MHz, Channel 202, 100kW (H&V), 822.2 feet; Arkansas Broadcasting Foundation, Inc., Little Rock, Arkansas, Req: 88.3 MHz, Channel

202, 100kW (H&V), 768 feet for construction permits for a new non-commercial educational FM station.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications filed by The Board of Trustees of The University of Arkansas on Behalf of the University of Arkansas at Little Rock (University) and the Arkansas Broadcasting Foundation, Inc.

2. *University.* Applicants for new broadcast stations are required by Section 73.3580(f) of the Commission's Rules to give local notice of the filing of their applications. They must then file with the Commission the statement described in Section 73.3580(h) of the Rules. We have no evidence that the University published the required notice. To remedy this deficiency, it will be required to publish local notice of its application and to file a statement of publication with the presiding Administrative Law Judge.

3. Analysis of the financial data submitted by the University reveals that $120,944 will be required to construct the proposed station and operate for three months, itemized as follows:

Equipment	$96,694
Building	3,000
Operating costs (3 months)	21,250[n,s]
Total	120,944

The applicant plans to finance construction and operation with $24,923 in state appropriations and a $74,770 grant from HEW-EBFP. The University has not shown that the grant from HEW-EBFP will be available. Therefore only $24,923 has been shown to be available to the University. A limited financial issue will be specified.

4. The University has failed to comply with the requirements of the *Primer on Ascertainment of Community Problems by Noncommercial Educational Broadcast Applicants*, 58 FCC 2d 526 (1976). In Exhibit 9 of its application, UALR stated that an ascertainment of community leaders would be accomplished and submitted as an amendment to the application. Commission records do not show that this amendment was submitted. Accordingly, a general ascertainment issue will be specified.

5. Neither applicant has indicated whether an attempt has been made to negotiate a share-time arrangement. Therefore, an issue will be specified to determine whether a share-time arrangement between the applicants would be the most effective use of the frequency and thus better serve the public interest. *Granfalloon Denver Educational Broadcasting, Inc.*, 43 FR 49560, published October 24, 1978. In the event that this issue is resolved in the affirmative, an issue will also be specified to determine the nature of such an arrangement. It should be noted that our action specifying a "share-time issue" is not intended to preclude the applicants, either before the commencement of the hearing or at any time during the course of the hearing, from participating in negotiations with a view toward establishing a share-time agreement between themselves.

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, That, pursuant to Secton 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to the University of Arkansas at Little Rock:

(a) The source and availability of additional funds over and above the $24,923 indicated; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

2. To determine the efforts made by the University to ascertain the community needs and problems of the area to be served and the means by which the applicant proposes to meet those needs and problems.

3. To determine whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest, and, if so, the terms and conditions thereof.

4. To determine the extent to which each of the proposed operations will be integrated into the overall educational operation and objectives of the respective applicants; or whether other factors in the record demonstrate that one applicant will provide a superior FM educational broadcast service.

5. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, That the University of Arkansas at Little Rock shall file a statement with the presiding Administrative Law Judge showing compliance with the public notice requirements of Section 73.3580(f) of the Commission's Rules.

9. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

10. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594(g) of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

Federal Communications Commission.
Jerold L. Jacobs,
Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 80-32737 Filed 10-20-80; 8:45 am]
BILLING CODE 6712-01-M

[CC Dockets Nos. 80-612 and 80-813, File Nos. 3842-CM-P-78 and 740-CM-P-79]

Microband Corp. of America and Multipoint Network Corp.; Hearing Designation Order

Adopted: October 6, 1980.
Released: October 14, 1980.

In the matter of applications of Microband Corporation of America and Multipoint Network Corporation for construction permits in the multipoint distribution service for a new station in the Scranton-Wilkes Barre, Pennsylvania area.

By the Chief, Common Carrier Bureau:

1. The Commission has before it the above-referenced application of Microband Corporation of America, filed on September 28, 1978 (accepted on Public Notice October 10, 1978) and the application of Multipoint Network Corporation filed on December 6, 1978 (accepted on Public Notice December 26, 1978). Both applications are for a construction permit in the Multipoint Distribution Service and both propose to operate on Channel 1 in the Scranton-Wilkes Barre, Pennsylvania area. The applications are therefore mutually exclusive and require comparative consideration. Both applications have been amended as a result of informal requests by the Commission staff for

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additional information, and no petitions to deny or other objections to either of the applications have been filed.

2. Upon review of the captioned applications, we find that both applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, That pursuant to 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(e) and Section 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, That Microband Corporation of America, Multipoint Network Corporation and the Chief, Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of Section 1.221 of the Commission's Rules.

Thomas J. Casey,

Deputy Chief, Operations, Common Carrier Bureau.

[FR Doc 80-32738 Filed 10-20-80; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket Nos. 80-630 and 80-631, File Nos. BPH-790329AC and 790808AE]

Mountain View Broadcasting Corp. and White River Broadcasting Co.; Hearing Designation Order

Adopted: October 6, 1980.

Released: October 20, 1980.

In the matter of applications of Mountain View Broadcasting Corporation, Mountain View, Arkansas, Req: 103.3 MHz, Channel 277C 100 kW (H&V), 947 feet (BC Docket No. 80-630, File No. BPH-790329AC), and The White River Broadcasting Company, Mountain View, Arkansas, Req: 103.3 MHz, Channel 277C 100 kW (H&V), 955 feet (BC Docket No. 80-631, File No. BPH-790808AE) for a construction permit for a new FM station.

By Chief, Broadcast Bureau:

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications of Mountain View Broadcasting Corporation (Mountain) and The White River Broadcasting Company for a construction permit for a new FM Station.

2. *Mountain.* Analysis of the financial data submitted by Mountain reveals that $214,615 will be required to construct the proposed station and operate for three months, itemized as follows:

Equipment	$149,000
Grand National Bank loan repayments including interest (5 months)	26,665
Miscellaneous	16,500
Operating costs (3 months)	22,450
Total	214,615

The applicant plans to finance its proposal from the following sources:

Grand National Bank loan	$200,000
First National Bank of Batesville loan	125,000
Bank of Mountain View loan	10,000
Shareholders' contributions	40,000
Existing capital	800
Total	375,800

The loan commitment from the First National Bank expired, by its own terms, on February 22, 1980. Mountain has not documented its shareholders' agreements to contribute $40,000, for example, by submitting copies of the agreements. Since the applicant has only documented $210,800 in funds available to meet a requirement of $214,615, a financial issue will be specified.

3. *Other matters.* Data submitted by the applicants indicate that there would be a significant difference in the populations which would receive service from the proposals since the applicants have specified slightly different areas to be served. Consequently, for the purpose of comparison, the populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to either of the applicants.

4. Except as indicated by the issue specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, IT IS ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Mountain View Broadcasting Corporation:

(a) the source and availability of additional funds over and above the $210,800 indicated; and

(b) in light of the evidence adduced pursuant to (a) above, whether the applicant is financially qualified to construct and operate the proposed station.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

6. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this order.

7. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594(g) of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

Federal Communications Commission.

Jerold L. Jacobs,

Chief, Broadcast Facilities Division.

[FR Doc. 80-32739 Filed 10-20-80; 8:45 am]

BILLING CODE 6712-01-M

[1] Consideration of these factors shall be made in light of the Commission's discussion in *Applications of Frank K. Spoin*, 77 FCC 2d 20 (1980).

[BC Dockets Nos. 80-624 and 80-625, File Nos. BPH-790521AB and BPH-790831AF]

Rainbow Broadcasting Corp. and Brown Broadcasting Enterprises, Inc.; Hearing Designation Order

Adopted: October 6, 1980.

Released: October 17, 1980.

In the matter of applications of Rainbow Broadcasting Corporation, Lincoln City, Oregon, Req: 96.7 MHz, Channel 244 .610 kW (H&V), 670 feet; Brown Broadcasting Enterprises, Inc., Lincoln City, Oregon, Req: 96.7 MHz, Channel 244 3 kW (H&V), 300 feet. For construction permit for a new FM station.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications filed by Rainbow Broadcasting Corporation (Rainbow) and Brown Broadcasting Enterprises, Inc. (Brown).

2. *Rainbow.* In paragraph 5 of the June 4, 1980 amendment Charles Rowe-Rook is listed as owning 51% of Rainbow stock while in Table I of Form 301 as originally filed he is listed as owning 50%. Accordingly, Rainbow will be required to file a statement resolving this discrepancy with the presiding Administrative Law Judge.

3. Rainbow proposes independent programming while Brown proposes to duplicate some of the programming of its commonly-owned station, KCBH(AM). Therefore, evidence regarding program duplication will be admissible under the standard comparative issue. When duplicated programming is proposed, the showing permitted will be limited to evidence concerning the benefits to be derived from the proposed duplication which would offset its inefficiency. *Jones T. Sudbury*, 8 FCC 2d 360, 10 RR 2d 114 (1967).

4. Data submitted by the applicants indicate that there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, for the purpose of comparison, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications, if either, should be granted.

7. It is further ordered, That, Rainbow Broadcasting Corporation file a statement of Charles Rowe-Rook's ownership interest with the presiding Administrative Law Judge.

8. It is further ordered, That in the event the application of Brown Broadcasting Enterprises, Inc. is granted, it is subject to the condition that if the Commission ultimately adopts a rule prohibiting commonly owned AM and FM stations in the same market, Brown will divest itself of either its AM station or FM station in accordance with the requirements established in such rulemaking proceeding.

9. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

10. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594(g) of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

Federal Communications Commission.

Jerold L. Jacobs,

Chief, Broadcast Facilities, Division Broadcast Bureau.

[FR Doc. 80-32740 Filed 10-20-80; 8:45 am]

BILLING CODE 6712-01-M

[BC Dockets Nos. 80-626 and 80-627, Files Nos. BPH-781101AF and BPH-790328AJ]

R & S Broadcasting Co., Inc., and Summersville, W. Va.; Hearing Designation Order

Adopted: October 6, 1980.

Released: October 20, 1980.

In the matter of applications of R & S Broadcasting Company, Inc. Summersville, West Virginia, Req: 92.9 MHz, Channel 225 30.9 kW (H&V) 656 feet; Bright Broadcasting Corporation, Summersville, West Virginia, Req: 92.9 MHz, Channel 225 6.67 kW (H&V) 1305 feet. For construction permit for a new FM station.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications filed by R&S Broadcasting Company, Inc. (R&S) and Bright Broadcasting Corporation (Bright).

2. *R&S.* The applicant's transmitter site is short-spaced for one mile with the reference point for Mullens, West Virginia and with the pending application of Slab Fork Broadcasting Company, Mullens, West Virginia. For this reason, R&S has requested a waiver of Section 73.207(a) of the Commission's Rules.[1] Normally, when one application in a mutually exclusive group is short-spaced with an existing station, we give the applicant 30 days to amend to a non-short-spaced site, or face dismissal. This policy will not be applied in the present case since R&S is short-spaced and timely filed with another pending application, whose status depends on the outcome of a comparative hearing. Thus, we had a choice of either consolidating the Summersville and Mullens/Pineville applications for hearing in a single proceeding or conducting what would normally be two distinct hearings. Because of the Section 307(b) issue presented in the Mullens/Pineville case, we believe that the public interest would be better served by holding two separate hearings. Finally, because R&S's site is short-spaced with the Mullens reference point and the Slab Fork application by only one mile, we will waive Section 73.207(a).

[1] Section 73.207(a) specifies the minimum milage separations between co-channel and adjacent-channel stations on commercial channels.

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3. R&S has not provided us with a current FAA clearance. Accordingly, an appropriate issue will be specified.

4. R&S submitted substantially the same application on January 31, 1978. The applicant conducted ascertainment surveys in August and September, 1977. On January 23, 1978, the Commission dismissed the R&S application because of a minor violation of the short-spacing criteria of Section 73.207(a). As a result of certain technical criteria explained in *Report and Order*, Docket No. 21037, adopted May 2, 1977; *Erratum*, Docket No. 21037, released September 11, 1979, the applicant was encouraged by the staff to resubmit its application. R&S did so on November 1, 1978. Thus, the ascertainment surveys were conducted more than 6 months before the filing of the instant application. However, under the circumstances, we will not specify an issue.

5. *Bright.* The applicant has requested a waiver of Section 73.210(a) of the Commission's Rules to permit its main studio to be located outside the city of license. We will not rule on the request at this juncture. Rather, an issue will be specified so that the matter may be explored in hearing.

6. The applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by R&S would constitute a hazard to air navigation.

2. To determine whether good cause exists for Bright to locate its main studio outside its community of license as required by Section 73.210(a) of the Commission's Rules.

3. To determine which of the proposals would, on a comparative basis, better serve the public interest.

4. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if either, of the applications should be granted.

8. It is further ordered, That the petition of R&S for waiver of Section 73.207(a) of the Commission's Rules is granted.

9. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

10. It is further ordered, That the Federal Aviation Administration is made a party to the proceeding.

11. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

Federal Communications Commission.

Jerold L. Jacobs,

Chief, Broadcast Facilities Division.

[FR Doc. 80-32741 Filed 10-20-80; 8:45 am]

BILLING CODE 6712-01-M

[CC Dockets Nos. 80-617 and 80-618, Files Nos. 2437-CM-P-73 and 2438-CM-P-73]

Southeast Mobilphone, Inc., and Chattanooga Signal Corp.; Memorandum Opinion and Order

Adopted: October 6, 1980.

Released: October 14, 1980.

In the matter of applications of Southeast Mobilphone, Inc.(CC Docket No. 80-617, File No. 2437-CM-P-73) and Chattanooga Signal Corporation (CC Docket No. 80-618, File No. 2438-CM-P-73) for construction permits in the multipoint distribution service for a new station at Chattanooga, Tennessee.

By the Chief, Common Carrier Bureau:

1. The Commission has before it the above-referenced application of Southeast Mobilphone, Inc., filed on October 4, 1972 (Accepted on Public Notice October 16, 1972) and the application of Chattanooga Signal Corporation filed on October 4, 1972 (Accepted on Public Notice October 16, 1972).[1] Both applications are for a construction permit in the Multipoint Distribution Service and both propose to operate on Channel 1 in Chattanooga, Tennessee. The applications are therefore mutually exclusive and require comparative consideration. Both applications have been amended as a result of informal requests by the Commission staff for additional information, and no petitions to deny or other objections to either of the applications have been filed.

2. Upon review of the captioned applications, we find that both applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(e) and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [2]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, that Southeast Mobilphone, Inc., Chattanooga Signal Corporation and the Chief, Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, that parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of Section 1.221 of the Commission's Rules.

Thomas J. Casey,

Deputy Chief, Operations, Common Carrier Bureau.

[FR Doc 80-32742 Filed 10-20-80; 8:45 am]

BILLING CODE 6712-01-M

[1] Chattanooga Signal Corporation's application (File No. 2438-CM-P-73) was dismissed without prejudice on May 18, 1977, pursuant to Section 21.17 (a), (b), (e) and (f) of Commission's Rules. Application for Review was filed pursuant to Section 1.115 of the Rules on June 13, 1977. On June 27, 1977, Texas Microwave, Inc. filed an "Opposition to Application for Review." The Commission reinstated *nunc pro tunc* application File No. 2438-CM-P-73 by Memorandum Opinion and Order, adopted on December 4, 1979 and released December 10, 1979 (Mimeo 79-811, #15266).

[2] Consideration of these factors shall be made in light of the Commission's discussion in *Applications of Frank K. Spain*, 77 FCC 2d 20 (1980).

[CC Dockets Nos. 80-614 and 80-615, Files Nos. 22-CM-P-73 and 562-CM-P-73]

Southeast Mobilphone, Inc., et al.; Memorandum Opinion and Order

Adopted: October 6, 1980.

Released: October 14, 1980.

In the matter of applications of Southeast Mobilphone, Inc., (CC Docket No. 80-614, File No. 22-CM-P-73) and Midwest Corporation (CC Docket No. 80-615, File No. 562-CM-P-73) and Knoxville Signal Corporation (CC Docket No. 80-616, File No. 1703-CM-P-73) for construction permits in the multipoint distribution service for a new station at Knoxville, Tennessee.

By the Chief, Common Carrier Bureau:

1. The Commission has before it the above-referenced application of Southeast Mobilphone, Inc., filed on July 7, 1972 [accepted on Public Notice July 17, 1972]; the application of Midwest Corporation, filed on July 26, 1972 (accepted on Public Notice August 7, 1972) and the application of Knoxville Signal Corporation, filed on September 14, 1972 (accepted on Public Notice September 25, 1972).[1] These applications are for a construction permit in the Multipoint Distribution Service and they propose to operate on Channel 1 in Knoxville, Tennessee. The applications are therefore mutually exclusive and require comparative consideration. These applications have been amended as a result of informal requests by the Commission staff for additional information, and no petitions to deny or other objections to any of the applications have been filed.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(e) and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291 the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent order, to determine, on a comparative basis, which of these applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [2]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, that Southeast Mobilphone, Inc., Midwest Corporation, Knoxville Signal Corporation and the Chief, Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, that parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of Section 1.221 of the Commission's Rules.

Thomas J. Casey,

Deputy Chief, Operations, Common Carrier Bureau.

[FR Doc. 80-32743 Filed 10-20-80; 8:45 am]

BILLING CODE 6712-01-M

[1] Knoxville Signal Corporation's application (File No. 1703-CM-P-73) was dismissed without prejudice on May 18, 1977, pursuant to Sections 21.7 (a), (b), (e), and (f) of Commission's Rules. An application for Review was filed pursuant to Section 1.115 of the Rules on June 13, 1977. On June 27, 1977, Texas Microwave, Inc. filed an "Opposition to Application for Review." The Commission reinstated *nunc pro tunc* application File No. 1703-CM-P-73 by Memorandum Opinion and Order, adopted on December 4, 1979 and released December 10, 1979 (Mimeo 79-811 No. 15266).

[2] Consideration of these factors shall be in light of the Commission's discussion in *Applications of Frank K. Spain*, 77 FCC 2d 20 (1980).

[BC Docket No. 80-622 and 80-623, Filed Nos. BPH-780822AA and BPH-790112AF]

Wuenschel Broadcasting Co., Inc. and Manzano Broadcasting Inc., Hearing Designation Order

Adopted: September 30, 1980.

Released: October 17, 1980.

In the matter of applications of Wuenschel Broadcasting Company, Inc. Belen, New Mexico, Req: 97.7 MHz, Channel 249 3kW (H&V), 278 feet (BC Docket No. 80-622, File No. BPH-780822AA) and Manzano Broadcasting Incorporated Belen, New Mexico, Req: 97.7 MHz, Channel 249 3kW (H&V), 57 feet (BC Docket No. 80-623, File No. BPH-790112AF) for construction permit for a new FM station.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications filed by Wuenschel Broadcasting Co., Inc. (Wuenschel) and Manzano Broadcasting Incorporated (Manzano).[1]

2. *Wuenschel.* Analysis of the financial data submitted by Wuenschel reveals that $69,670 will be required to construct the proposed station and operate for three months, itemized as follows:

Equipment	$51,680
Other	2,500
Operating costs (three months)	15,490
Total	69,670

Wuenschel plans to finance construction and operation with $54,000 in existing capital and a $100,000 SBA loan. To obtain the $100,000 SBA loan, Wuenschel is required to inject $54,000. To meet this requirement, applicant intends to rely upon $5,000 from Shalako Communications, Inc.; $1,176.80 from Fred Wuenschel; and $17,951 in pre-paid expenses. Nothing has been submitted to show that Shalako communications, Inc. is either committed to or has the $5,000 to pay Wuenschel. Fred Wuenschel has failed to submit an individual balance sheet or financial statement as required by paragraph 4(b) of Section III of Form 301. The June 26, 1978 financial statement was jointly submitted by Fred and Patricia Wuenschel prior to their divorce. In order to demonstrate his ability to contribute funds, Fred Wuenschel will be required to submit an updated individual financial statement. Lastly, $17,951.07 in pre-paid expenses is not reflected in estimated costs. Accordingly, since the SBA loan of $100,000 is conditioned upon Wuenschel's ability to raise $54,000, it has failed to show the necessary documentation to support more than $29,892 available to meet the $69,670 required for construction and operation. A limited financial issue will therefore be specified.

3. *Manzano.* Applicants for new broadcast stations are required by Section 73.3580(f) of the Commission's

[1] Manzano's August 26, 1980 petition for leave to amend will be granted and the amendment accepted to correct an error in shareholdings because the information is required by Section 1.65 of the Rules, will not afford a comparative advantage to Manzano, and will not prejudice any other party.

Rules to give local notice of the filing of their applications. They must then file with the Commission the statement described in Section 73.5380(h) of the Rules. We have no evidence that Manzano published the required notice. To remedy this deficiency, Manzano will be required to publish local notice of its application, if it has not already done so, and to file a statement of publication with the presiding Administrative Law Judge.

4. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, for the purpose of comparison, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

5. Except as indicated above, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, it is ordered, that, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine with respect to Wuenschel Broadcasting Co., Inc.:

(a) the source and availability of additional funds over and above the $29,892 indicated; and

(b) whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

(2) To determine which of the proposals would, on a comparative basis, better serve the public interest.

(3) To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. It is further ordered, that Manzano Broadcasting Incorporated shall file a statement with the presiding Administrative Law Judge showing compliance with the public notice requirements of Section 73.3580(f) of the Commission's Rules.

8. It is further ordered, that the petition for leave to amend filed by Manzano Broadcasting Incorporated is granted, and the August 26, 1980 amendment is accepted.

9. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

10. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594(g) of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

Federal Communications Commission.

Jerold L. Jacobs,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 80-32744 Filed 10-20-80; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1252]

Petitions for Reconsideration of Actions in Rule Making Proceedings

October 15, 1980.

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to 47 CFR 1.429(e). Oppositions to such petitions for reconsideration must be filed within 15 days after publication of this Public Notice in the Federal Register. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of rules to provide for emergency medical service (EMS) communications systems requirements. (RM-3500)

Rule section: Part 90.

Filed by: Joan Claybrook, Administrator for Department of Transportation (National Highway Traffic Safety Administration) on 10-2-80.

Subject: Modification of procedures for dealing with applications for review of staff actions in non-hearing matters. (RM-3157)

Rule section: 1.115.

Filed by: John H. Midlen, Jr., Attorney for The Way of Life Television Network, Inc. on 9-26-80.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-32778 Filed 10-20-80; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10218; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before November 10, 1980. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No.: T-2590-8.

Filing Party: Francis D. Barrett, Curry and Dolan, Counsellors at Law, 716 Southern Building, Washington, D.C. 20005.

Summary: Agreement No. T-2590-8, between the Albany Port District Commission (Port) and United Brands Company modifies the parties' basic agreement providing for the use of certain office space and the preferential use of certain storage space at Transit Shed No. 2, Albany, New York. The purpose of the modification is to exercise the seventh option to renew the initial term of the agreement by: (1) extending the term from December 1, 1980, until November 30, 1981;

and (2) increasing the amount of compensation paid to Port from $26,250 to $27,750.

Agreement No.: T-3928.

Filing Party: Leslie E. Still, Jr., Senior Deputy City Attorney, Harbor Branch Office, Harbor Administration Building, P.O. Box 570, Long Beach, California 90801.

Summary: Agreement No. T-3928, between the City of Long Beach (City) and Atlantic Richfield Company (A.R.Co.) provides for the 40-year lease by A.R.Co., upon completion of certain tanker terminal improvements, of Berths 120-121, Pier E, at Long Beach, California. The premises will be used for the receipt, handling, unloading, transporting and other disposition of crude oil, petroleum, and refined products by A.R.Co. A.R.Co. further agrees that the premises shall not be used in connection with furnishing terminal facilities or services to common carriers or carriers by water. A.R.Co. shall pay City a guaranteed annual minimum compensation and accrued tariff charges for dockage and wharfage, subject to certain apportionments. Upon completion of terminal improvements, this agreement will terminate Agreement No. T-639.

Dated: October 16, 1980.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 80-32854 Filed 10-20-80; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 226]

A. V. Berner & Co., Inc.; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.9 of Federal Maritime Commission General Order 4 further provides that a license will be automatically revoked or suspended for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of A. V. Berner & Company, Incorporated, 107 Washington Street, New York, NY 10006, FMC No. 226, was cancelled effective September 28, 1980.

By letter dated September 4, 1980, A. V. Berner & Company, Incorporated was advise by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 226 would be automatically revoked or suspended unless a valid surety bond was filed with the Commission.

A. V. Berner & Company, Incorporated has failed to furnish a valid surety bond.

By virture of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised), section 5.01(d) dated August 8, 1977;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 226 be and is hereby revoked effective September 28, 1980.

It is ordered, that Independent Ocean Freight Forwarder License No. 226, issued to A. V. Berner & Company, Incorporated be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the Federal Register and served upon A. V. Berner & Company, Incorporated.

Robert G. Drew,

Director, Bureau of Certification and Licensing.

[FR Doc. 80-32856 Filed 10-20-80; 8:45 am]

BILLING CODE 6730-01-M

Meiko Warehousing, Inc., et al. Independent Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

Meiko Warehousing, Inc., 2220 East Carson St., Long Beach, CA 90810.

Officers: Jiro Takahashi, President/Director, Naoharu Miwa, Vice President/Secretary/Director, Nobuyoshi, Yonemori, Treasurer, Ichimatsu Torii, Director, Keiichi Kawakatsu, Director, Kenzo Asami Director, Fusao Onishi, Director.

Les Lewis (Leslie David Lewis, dba), P.O. Box 59681, Dallas, TX 75229.

Ryuichiro Ishida dba Ace AirMarine Transport, 2874 Theresa Court, Castro Valley, CA 94546.

Dated: October 16, 1980.

By the Federal Maritime Commission.

Francis C. Hurney,

Secretory.

[FR Doc. 80-32657 Filed 10-20-80; 8:45 am]

BILLING CODE 6730-01-M

Toko Kalun Kaisha, Ltd./Korea Line Corp. Space Charter Agreement; Cancellation

Filing Party: Dennis N. Barnes, Morgan, Lewis & Bockius, 1800 M Street, N.W., Washington, D.C. 20036.

Agreement No. 10329.

Summary: On September 3, 1980, the Commission received notification of the termination of Agreement No. 10329 by the member parties. The termination was effective as of September 3, 1980, the date of receipt of the notice.

Dated: October 16, 1980.

By order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 80-32655 Filed 10-20-80; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Batavia Banc Corp.; Formation of Bank Holding Company

Batavia Banc Corporation, Chicago, Illinois, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Batavia Bank, Batavia, Illinois. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than November 14, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 14, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32663 Filed 10-20-80; 8:45 am]

BILLING CODE 6210-01-M

Cutler Corp.; Proposed Retention of Lending and Insurance Agency Activities

Cutler Corporation, Newport, Minnesota, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to continue to engage in the activities of making or acquiring loans for its own account and conducting a general insurance agency activity in a town having a population under 5,000. These activities would be performed from offices of Applicant's subsidiary in Green Isle, Minnesota, and the

geographic areas to be served are Washington County, Minnesota. Such activities have been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minnesota.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than November 12, 1980.

Board of Governors of the Federal Reserve System, October 14, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32661 Filed 10-20-80; 8:45 am]

BILLING CODE 6210-01-M

First Banc Group, Inc.; Formation of Bank Holding Company

First Banc Group, Inc., Centralia, Illinois, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 100 per cent of the voting shares of First National Bank and Trust Company, Centralia, Illinois. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than November 14, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 14, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32664 Filed 10-20-80; 8:45 am]

BILLING CODE 6210-01-M

Nebo Corp., Pisgah, Iowa; Proposed Retention of Assets by a Bank Holding Company Engaged in Nonbanking Activities

Nebo Corporation, Pisgah, Iowa, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to retain the assets of its general insurance business.

Applicant states that the proposed subsidiary would continue to engage in the sale of general insurance in a town with a population of less than 5,000. These activities would be performed from offices of Applicant in Pisgah, Iowa, and the geographic area to be served is Pisgah, Iowa. Such activities have been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflict of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors of the Federal Reserve Bank of Chicago.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than November 12, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 14, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32662 Filed 10-20-80; 8:45 am]

BILLING CODE 6210-01-M

Norwood Bancshares, Inc.; Formation of Bank Holding Company

Norwood Bancshares, Inc., Norwood, Minnesota, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 88.9 percent or more of the voting shares of the Citizens State Bank of Norwood, Norwood, Minnesota. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 12, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 10, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32665 Filed 10-20-80; 8:45 am]

BILLING CODE 6210-01-M

Owenton Bancorp, Inc.; Formation of Bank Holding Company

Owenton Bancorp, Inc., Owenton, Kentucky, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of Peoples Bank & Trust Company Owenton, Owenton, Kentucky. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be

received not later than November 13, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 14, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32666 Filed 10-20-80; 8:45 am]

BILLING CODE 6210-01-M

Worcester Bancorp, Inc.; Proposed Acquisition of Wornat Development Corp.

Worcester Bancorp, Inc., Worcester, Massachusetts, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to retain its interest in Wornat Development Corporation, Worcester, Massachusetts.

Applicant proposes to continue to engage in lending activities in connection with the liquidation of real estate acquired by Wornat Development Corporation in satisfaction of debts previously contracted, specifically the retention of loans receivable and making loans to facilitate such liquidation. These activities will continue to be performed from offices in Worcester, Massachusetts, and the geographic areas to be served are Massachusetts and Vermont. Such activities have been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Boston.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than November 7, 1980.

Board of Governors of the Federal Reserve System, October 14, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32660 Filed 10-20-80; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Early Termination of the Waiting Period of the Premerger Notification Rules; Correction

AGENCY: Federal Trade Commission.

ACTION: Correction.

SUMMARY: This document corrects a Commission document previously published in the Federal Register on Thursday, Oct. 2, 1980, by adding language inadvertently omitted from the Summary.

DATE: The correction is effective October 21, 1980.

FOR FURTHER INFORMATION CONTACT: FTC/CDM, Naomi Licker, Washington, D.C. 20580, (202) 523-3894.

SUPPLEMENTARY INFORMATION: In FR Doc. 80-30753, appearing in Federal Register issue for Thursday, Oct. 2, 1980, 45 FR 65316, in the "SUMMARY:", language was inadvertently omitted from line 6. Therefore, line 6 should read:

"Agency Management Systems, an asset of Seibels Bruce & Co. from"

Carol M. Thomas,

Secretary.

[FR Doc. 80-32781 Filed 10-20-80; 8:45 am]

BILLING CODE 6750-01-M

COMMISSION OF FINE ARTS

Meeting; Projects Affecting Appearance of Washington, D.C.

The Commission of Fine Arts will next meet in open session on Tuesday, November 4, 1980, at 10:00 a.m. in the Commission's offices at 708 Jackson Place, N.W., Washington, D.C. 20006 to discuss various projects affecting the appearance of Washington, D.C.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address.

Dated in Washington, D.C., October 14, 1980.

Charles H. Atherton,

Secretary.

[FR Doc. 80-32711 Filed 10-20-80; 8:45 am]

BILLING CODE 6330-01-M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on October 15, 1980. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the Federal Register is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed NRC request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before November 10, 1980, and should be addressed to Mr. John M. Lovelady, Senor Group Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

Nuclear Regulatory Commission

The NRC requests an extension-without-change clearance for all application, recordkeeping and reporting requirements contained in 10 CFR Part 70, Domestic Licensing of Special Nuclear Material. These regulations govern the requirements for the issuance of licenses to receive title to, own, acquire, deliver, receive, possess, use or transfer special nuclear material. The regulations were issued pursuant to the Atomic Energy Act of 1954, as amended, and Title II of the Energy Reorganization Act of 1974. Respondents and respondent burdens vary from section to section. NRC states that the total estimated burden anticipated for all respondents is 116,797 hours annually,

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and applicants and licensees are expected to number 539.

Norman F. Heyl,

Regulatory Reports Review Officer.

[FR Doc. 80-32770 Filed 10-20-80; 8:45 am]

BILLING CODE 1610-01-M

GENERAL SERVICES ADMINISTRATION

Intent to Prepare Environmental Impact Statement and Notice of Three Scoping Meetings for the Historic U.S. Courthouse Renovation and Annex Construction, Charleston, South Carolina.

AGENCY: General Services Administration.

ACTION: Construction of a 39,000-gross-square-foot Courthouse Annex, repair and alteration of the existing Post Office and Courthouse; Charleston, South Carolina.

PURPOSE: To provide space for the U.S. District Court and court-related activities.

FOR FURTHER INFORMATION CONTACT: William H. Capes, Public Buildings Service (4PG), General Services Administration, Region 4, 75 Spring Street, SW, Atlanta, GA 30303, (404) 221-3080.

SUMMARY: 1. Description of the Proposed Action: The proposed Courthouse Annex consists of approximately 39,000 gross square feet to house the U.S. District Court and court-related activities necessitated by the addition of two new U.S. District Court Judges to be domiciled in Charleston, South Carolina. The site for the project is located to the rear of the existing Post Office and Courthouse (PO & CT) and is owned and operated by the General Services Administration.

The proposal also includes the repair and alteration of the PO & CT necessitated by the construction of an on-site annex. The alterations are also necessary as the two buildings will be physically connected. The PO & CT is listed on the *National Register of Historic Places* and is within a historic district also listed on the *National Register.*

2. Description of Alternatives: The alternatives to be considered include the following:

a. Federal construction on Government-owned land to the rear of the PO & CT.

b. Acquisition of leased space.

c. Purchase of an existing building including properties of historic, architectural or cultural significance.

d. Federal construction on a site adjacent to the PO & CT.

e. Maintenance of the status quo.

3. Public participation in the EIS Process: Full participation by interested Federal, state and local agencies, as well as all other interested organizations and individuals, is invited.

An Environmental Assessment has been prepared, and the significant items to be discussed in the EIS presently include the following:

a. Historic environment, including reference to Section 106 of the National Historic Preservation Act of 1966.

b. Effects on transportation and parking within the site and proximate area.

c. Effects on local zoning.

d. Natural hazards including 100-year floodplain and seismic activity.

The Environmental Assessment and other information is available for review. For an appointment, contact W. H. Capes, General Services Administration, on (404) 221-3080.

4. Scoping: The General Services Administration will sponsor three scoping meetings to determine the scope of the Draft EIS. The meetings will be held on Thursday, October 23, 1980, at the Federal Building, 334 Meeting Street, Charleston, South Carolina, in Room 333. The first meeting, which will be for public officials, will be held from 9:00 a.m. to 10:00 a.m. The second meeting, which will be for historic preservation interest groups, will be held from 10:30 a.m. to 11:30 a.m. The final meeting, which will be for the general public, will be held from 1:00 p.m. to 2:00 p.m.

All interested parties are encouraged to attend the appropriate meeting. If you wish to comment and are unable to attend a scoping meeting, written comments will be accepted until November 6, 1980.

5. Timing: It is expected that the Draft EIS will be available for public review within three months.

6. Request for copies of the Draft EIS: All interested persons or organizations are encouraged to submit their names and addresses to the person indicated above for inclusion on the distribution list for the Draft EIS.

Paul L. Allison,

Acting Regional Administrator.

October 8, 1980.

[FR Doc. 80-32710 Filed 10-20-80; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Durg Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meetings are announced:

Psychopharmacologic Drugs Advisory Committee

Date, time, place. November 6, 9 a.m., Conference Rm. M, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 4 p.m.; Cynthia Rushing, Bureau of Drugs (HFD-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3800.

General function of the Committee. The Committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational drugs for use in the practice of psychiatry and related fields.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee.

Open Committee discussion. The Committee will discuss proposed revisions to the guidelines for clinical evaluation of antidepressant drugs guidelines for clinical evaluation of antianxiety drugs; and will also discuss Restoril (NDA 18-163).

Applications for reimbursement. Must be received by October 27, 1980.

Oncologic Drugs Advisory Committee

Date, time, and place. November 7, 9 a.m., Conference Room A, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, 9 a.m. to 11:15 a.m.; open public hearing, 11:15 a.m. to 12:15 p.m.; open committee discussion, 1 p.m. to 5 p.m.; Ann Greenstein, Bureau of Drugs (HFD-150),

Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5197.

General function of the Committee. The Committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational drugs for use in the treatment of cancer.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee.

Open Committee discussion. The Committee will discuss Ifosphamide (NDA 17-275, Mead Johnson) and Vindesine (NDA 18-348, Eli Lilly).

Applications for reimbursement. Must be received by October 27, 1980.

Miscellaneous External Drug Products Panel

Date, time, and place. November 7 and 8, 9 a.m., Conference Room C, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD (November 7), Pennsylvania Room, Holiday Inn, Bethesda, MD (November 8).

Type of meeting and contact person. Open public hearing November 7, 9 a.m. to 10 a.m.; open committee discussion, November 7, 10 a.m. to 4:30 p.m., November 8, 9 a.m. to 4:30 p.m.; John T. McElroy, Bureau of Drugs (HFD-510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1430.

General function of the Committee. the Committee reviews and evaluates data on the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. Those who wish to make such a presentation should notify the contact person before November 1, 1980, and submit a brief statement of the general nature of the data, information, or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

Open Committee discussion. The Panel will review data submitted pursuant to the over-the-counter (OTC) review's call for data for this Panel (see also 21 CFR 330.10(a)(2)). The Panel will be reviewing, voting on, and modifying the content of summary minutes and categorization of ingredients and claims.

Applications for reimbursement. Must be received by October 27, 1980.

Miscellaneous Internal Drug Products Panel

Date, time, and place. November 15 and 16, 9 a.m., Sheraton Inn, Silver Spring, MD.

Type of meeting and contact person. Open public hearing, November 15, 9 a.m., to 10 a.m.; open committee discussion, November 15, 10 a.m. to 4:30 p.m., November 16, 8 a.m. to 3 p.m.; John R. Short, Bureau of Drugs (HFD-510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6156.

General function of the Committee. The Committee reviews and evaluates data on the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. Those who wish to make such a presentation should notify the contact person before November 10, 1980, and submit a brief statement of the general nature of the data, information, or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

Open committee discussion. The Panel will review data submitted pursuant to the over-the-counter (OTC) review's call for data for this Panel (see also 21 CFR 330.10(a)(2)). The Panel will be reviewing, voting on, and modifying the content of summary minutes and categorization of ingredients and claims.

Applications for reimbursement. Must be received by November 3, 1980.

Drug Abuse Advisory Committee

Date, time, and place. November 17, 9 a.m., Holiday Inn, Lobby Room, 5520 Wisconsin Avenue, Chevy Chase, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 4:30 p.m.; Robert C. Nelson, Bureau of Drugs (HFD-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3504.

General function of the Committee. The Committee advises on the scientific and medical evaluation of information gathered by the Department of Health and Human Services and the Department of Justice on the safety, efficacy, and abuse potential of drugs and recommends actions to be taken on the marketing, investigation, and control of such drugs.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee.

Open Committee discussion. The Committee will discuss the evaluation of the Drug Enforcement Administration's control recommendations for phendimetrazine, phentermine, and diethylpropion.

Applications for reimbursement. Must be received by November 3, 1980.

Orthopedic Device Section of the Surgical and Rehabilitation Devices Panel

Date, time, and place. November 19, 9 a.m., Rm. 425A, 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 5 p.m.; James G. Dillon, Bureau of Medical Devices (HFK-410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7156.

General function of the Committee. The Committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes appropriate recommendations for their regulation.

Agenda—Open public hearing. Interested persons are encouraged to present data, information, or views, orally or in writing, on issues pending before the Committee. Those who wish to make formal presentations should notify the contact person by November 5, 1980, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also in indication of the approximate time required to make their comments.

Open Committee discussion. FDA staff will present to the Section the proposed classification recommendations for orthopedic devices. The Section will also review and make recommendations on the classification of (1) constrained hip prostheses (metal), (2) constrained hip prostheses (metal/polymer), (3) femoral (hip) resurfacing prostheses, (4) acetabular (hemi-hip) prostheses (metal), (5) glenoid (hemi-shoulder) prostheses, (6) constrained femorotibial (knee) trunnion-bearing prostheses, (7) AC-powered cast application/removal instruments, (8) manual cast application/removal instruments, (9) cast components. The Section will also review and discuss the draft preclinical guidelines for orthopedic prosthetic devices if time permits.

Applications for reimbursement. Must be received by November 4, 1980.

Science Advisory Board (Mutagenesis Subcommittee)

Date, time, and place. November 21, 8 a.m., Bldg. 13, National Center for Toxicological Research, Jefferson, AR.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m.; open committee discussion, 9 a.m. to 4 p.m.; Lawrence Fishbein, National Center for Toxicological Research, Jefferson, AR 72079, 501–541–4390.

General function of the Committee. The Board advises on establishment and implementation of a research program that will assist the Commissioner of Food and Drugs and the Administrator, Environmental Protection Agency, in fulfilling their regulatory responsibilities.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the Board.

Open Committee discussion. The Board will discuss the update of the heritable translocation program: the biochem/genetic data from experiment 309 "Development of Enzyme Activity Profiles on NCTR Microlesion Assay Enzyme Battery for C57BL/6N Strain"; and the effects of altered liver function following alcohol intoxication on metabolism of premutagens and precarcinogens.

Applications for reimbursement. Must be received by November 4, 1980.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in the **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Administrative Proceedings Staff (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

Applications for reimbursement for participation in the meetings listed above should be sent to the Office of Consumer Affairs (HFE–90), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, rather than to the Hearing Clerk as prescribed in § 10.210 of the regulations (21 CFR 10.210). If you wish to submit an application or wish more information regarding the reimbursement program, please call 301–443–5006.

FDA has established expedited procedures for review of any application for reimbursement for participation in the meetings announced in this notice. The Office of Consumer Affairs, FDA, will file any application for reimbursement for participation in the meetings announced in this notice in the docket for this notice.

Dated: October 14, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–32492 Filed 10–20–80; 8:45 am]

BILLING CODE 4110–03–M

[Docket No. 75F–0355]

Aspartame; Availability of Board of Inquiry Decision

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces the availability of the decision of the Public Board of Inquiry concerning the safety of aspartame.

ADDRESS: Single copies of the decision are available from the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Ted Herman, Compliance Regulations Policy Staff (HFC–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3480.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 1, 1979 (44 FR 31716), the agency announced that a hearing before a Public Board of Inquiry would be held on the issues raised by objections to the food additive regulation approving the use of aspartame, a low-calorie sweetener. A notice published in the **Federal Register** of January 15, 1980 (45 FR 2908) announced that the hearing would begin January 30, 1980. That hearing began as scheduled, and the Board has now rendered its decision, pursuant to 21 CFR 13.30(j).

The Board concluded that aspartame should not be approved for use in foods. The Board based its conclusion on scientific data suggestive of aspartame's potential for causing brain tumors in laboratory rats. The Board stated that further studies were needed to completely resolve the issue.

Single copies of the Public Board of Inquiry decision are available from the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

Upon objections raised by any of the participants at the hearing, the Board's decision will be reviewed by the Commissioner of Food and Drugs. The Commissioner will then issue a final decision either approving or disapproving the use of aspartame. The final decision, when reached, will be announced publicly.

Dated: October 14, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–32494 Filed 10–20–80; 8:45 am]

BILLING CODE 4110–03–M

[Docket No. 80N–0408]

Blood Plasma Donor Center, Inc.; Revocation of U.S. License No. 539

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the revocation on July 17, 1980, of the establishment license (U.S. License No. 539) and product license issued to the Blood Plasma Donor Center, Inc., for the manufacture of Source Plasma (Human). Because of significant deviations from the biologics regulations in the manufacture of this biological product, the manufacturer requested that the licenses be revoked.

EFFECTIVE DATE: The revocation of the establishment and product licenses was effective on July 17, 1980.

FOR FURTHER INFORMATION CONTACT: Paul K. Hiranaka, Bureau of Biologics (HFB–620), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301–443–1306.

SUPPLEMENTARY INFORMATION: FDA has revoked the establishment license (U.S. License No. 539) and product license issued to the Blood Plasma Donor Center, Inc., 2021 Main St., Kansas City, MO 64108, for the manufacture of Source Plasma (Human).

An inspection of this establishment on February 28 through March 5, 1980, by FDA investigators, revealed numerous deviations from the requirements of 21 CFR Parts 600, 606, and 640, including but not limited to, the collection of more than the maximum permissible amount of whole blood from donors at one time (21 CFR 640.65(b)(5)). Because these deviations were determined by the agency to constitute a danger to the health of donors, the firm's establishment and product licenses were suspended on March 10, 1980.

On May 8, 1980, the firm was allowed to resume limited operation for the purpose of a reinspection. The reinspection took place June 10 through 13, 1980 and revealed many of the same deviations from the regulations cited in previous inspections.

Following the reinspection, FDA issued a letter informing the firm of the agency's intention to publish a Notice of Opportunity for Hearing and its intent to revoke the firm's establishment and product licenses. Before further regulatory action was taken, the firm requested that its establishment and product licenses be revoked and waived the opportunity for a hearing under § 601.5(a) (21 CFR 601.5(a)). The agency has granted the request.

Accordingly, under § 12.38 (21 CFR 12.38) and section 351 of the Public Health Service Act (42 U.S.C. 262) and the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Director, Bureau of Biologics (21 CFR 5.68), U.S. License No. 539 issued to the Blood Plasma Donor Center, Inc., and the product license for the manufacture of Source Plasma (Human) were revoked by letter dated July 17, 1980. This notice of revocation is published under § 601.8 (21 CFR 601.8).

Dated: October 9, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–32493 Filed 10–20–80; 8:45 am]

BILLING CODE 4110–03–M

[Docket No. 80F–0374]

General Foods Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: General Foods Corp. has filed a petition proposing to amend the food additive regulations to provide for the safe use of polysorbate 80 as a surfactant and wetting agent for natural and artificial colors intended for use in food.

FOR FURTHER INFORMATION CONTACT: Carl L. Giannetta, Bureau of Foods (HFF–334), Food and Drug Administration 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)), notice is given that a petition (FAP 9A3461) has been filed by General Foods Corp., Technical Center, 250 North St., White Plains, NY 10625, proposing that § 172.840 *Polysorbate 80* (21 CFR 172.840) be amended to provide for the safe use of polysorbate 80 as a surfactant and wetting agent for natural and artificial colors, intended for use in breakfast cereals.

The potential environmental impact of this action is being reviewed. If the Food and Drug Administration (FDA) finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of FDA's finding of no significant impact and the evidence supporting that document will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: October 7, 1980.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 80–32491 Filed 10–20–80; 8:45 am]

BILLING CODE 4110–03–M

Circulatory System Devices Panel; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meeting is announced:

Circulatory System Devices Panel

Date, time, and place. November 3, 8:30 a.m., Room 339A, 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m.; open committee discussion, 9:30 a.m. to 12 p.m.; closed committee deliberations, 1 p.m. to 4 p.m.; Glenn A. Rahmoeller, Bureau of Medical Devices (HFK–450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7156.

General function of the Committee. The Committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes appropriate recommendations for their regulation.

Agenda—Open public hearing. Those desiring to make formal presentations should notify the contact person by October 22, 1980, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their comments.

Closed Committee deliberations. The Panel will review trade secret data from one or more applications for premarket approval. This portion of the meeting will be closed to permit discussion of trade secret data (5 U.S.C. 552b(c)(4)).

Applications for reimbursement. Must be received by October 27, 1980.

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting

involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Administrative Proceedings Staff (HFA–305), Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

Applications for reimbursement for participation in the meeting listed above should be sent to the Office of Consumer Affairs (HFE–90), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, rather than to the Hearing Clerk as prescribed in § 10.210 of the regulations (21 CFR 10.210). If you wish to submit an application or wish more information regarding the reimbursement program, please call 301–443–5006.

FDA has established expedited procedures for review of any application for reimbursement for participation in the meeting announced in this notice. The Office of Consumer Affairs, FDA, will file any application for reimbursement for participation in the meeting announced in this notice in the docket for this notice.

Dated: October 9, 1980.

Jere E. Goyan,

Commissioner of Food and Drugs.

[FR Doc. 80-32632 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 80D-0378]

Source Plasma (Human); Revision of Guideline for Immunization of Source Plasma (Human) Donors With Blood Group Substances

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the availability of a revised guideline for immunization of Source Plasma (Human) donors with Blood Group Substances.

ADDRESS: Written comments and requests for a copy of the revised guideline (identified with the Hearing Clerk docket number found in brackets above) to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, Bureau of Biologics (HFB–620), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301–443–1306.

SUPPLEMENTARY INFORMATION: A notice published in the Federal Register on May 17, 1977 (42 FR 25381) announced the availability of a guideline entitled "Guidelines for Immunization Schedules for Source Plasma (Human) Donors." The guideline contains a schedule for administration of primary and booster doses of Blood Group Substances. These products are administerd to donors to raise their antibody levels against Blood Group Substances. Donors who respond to immunization are plasmapheresed, and the plasma is further processed into Anti-A and Anti-B Blood Grouping Sera.

On the basis of new data received in product license amendments the FDA's Bureau of Biologics is revising the guideline, now entitled "Guidelines for Immunization of Source Plasma (Human) Donors with Blood Substances." The immunization schedule has been changed to specify that a booster dose is to be administered only if both of the following criteria are met: (1) the serum isoagglutinin titer is less than 1:256 and (2) more than 1 year has passed since the previous immunization. The revised guideline also permits the administration of Blood Group Substances only to healthy males, or to females in good health who are either physiologically or surgically incapable of childbearing. This is a necessary precaution to preclude the possibility that immunized women of childbearing age, with elevated isoagglutinin titers, could give birth to infants afflicted with hemolytic disease of the newborn.

Single copies of the revised guideline are available from the office of the Hearing Clerk, at the above-mentioned address.

Interested persons may submit written comments on the guideline to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Such comments will be considered in determining whether further amendments to or revisions of this guideline is warranted. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m.and 5 p.m., Monday through Friday.

Dated: October 14, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-32631 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

Health Care Financing Administration

Medicare Program; Reimbursement for Costs Incurred In Relation to Union Activities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of policy interpretation.

SUMMARY: This notice invites public comment on current HCFA policy with respect to Medicare reimbursement for provider costs incurred with respect to union activities. Our current policy interprets "costs related to patient care" to exclude costs incurred by Medicare providers in attempting to influence their employees on the subject of organizing and joining trade unions. The purpose of this notice is to serve as a general restatement of our policy and to provide an opportunity for public comment and suggestions on this issue.

DATE: To assure consideration, comments should be mailed by December 22, 1980.

ADDRESS: Address comments in writing to: Administrator, Department of health and Human Services, Health Care Financing Administration, P.O. Box 17073, Baltimore, Maryland 21235.

If you prefer, you may deliver your comments to Room 309–G Hubert Humphrey Building, 200 Independence Ave, S.W., Washington D.C., or to Room 789, East High Rise Building, 6401 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to BPP–100–N. Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection, beginning approximately two weeks after publication, in Room 309–G of the Department's office at 200 Independence Ave, S.W., Washington, D.C., 20201 on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202–245–7890).

FOR FURTHER INFORMATION CONTACT: William Goeller, 301–597–1802.

SUPPLEMENTARY INFORMATION: The Medicare provisions of the Social Security Act provide that health care providers participating in the Medicare program will be reimbursed for the reasonable cost of furnishing covered services to Medicare beneficiaries. The statute further provides that determinations of "reasonable cost" will be made in accordance with the Medicare regulations, which establish the methods of calculating costs and the items to be included in the calculations (42 U.S.C. 1396x(v)(1)(A)).

One of the provisions of these regulations is the general requirement that the determination of reasonable cost must be based on costs related to the delivery of health care to Medicare beneficiaries. To the extent a provider's operating costs included amounts not related to patient care, such amounts will not be allowable under Medicare. (42 CFR 405.451). HCFA has interpreted this provision to preclude reimbursement for costs incurred by providers for the purpose of persuading their employees not to form a collective bargaining unit or not to join a trade union. HCFA believes that such costs are clearly unrelated to patient care and, therefore, not allowable under the statute and regulations. However, HCFA also believes that costs incurred to carry out the provider's obligations under a collective bargaining agreement are directly related to its delivery of appropriate health care and, therefore, are reimbursable under Medicare.

HCFA issued a policy statement on this point in June 1979, because it had received questions that raised concern whether providers were reporting costs in accordance with our position. This statement appears in the *Provider Reimbursement Manual*, section 1280, as follows:

2180.1 Persuasion of Employees.— Costs incurred for activities directly related to influencing employees regarding their right to organize or not to organize and to form a union or to join an existing union are not related to patient care and, therefore, are not allowable costs. Such costs are unallowable whether such activities are performed directly by the provider or through an independent contractor, consultant or outside attorney.

Example: The costs applicable to a consultant who furnishes literature opposing union membership for provider employees or furnishes training to provider management to oppose employee membership in labor organizations are not allowable costs.

2180.2 Collective Bargaining.— Reasonable expenses incurred by a provider for collective bargaining and related activities are allowable costs. Contract negotiations and any procedures which flow from enforcement of contract terms, whether in a collective or individual setting, are necessary to maintain the continued operation of the provider and, thus, are a precondition for the delivery of health services.

Example: The cost of the services of management's representative in collective bargaining activities is an allowable cost.

These two policy statements, and the examples given, represent two widely separate points of what we view as a spectrum of activities related to personnel management. We have not had occasion to review the application of our general policy to factual situations on the spectrum between these two points. Therefore, we believe it would be useful if we sought the viewpoints and suggestions of individuals and agencies outside the Department regarding these and other situations. Moreover, we have been requested, by providers and hospital associations, to review our policy statement further. We have agreed to do so, and seek broad public participation in that review.

Because the instruction quoted above represents HCFA's traditional interpretation of the requirements contained in the statute and regulations, and does not impose new or additional substantive requirements, the rulemaking provisions of the Administrative Procedure Act do not require HCFA to publish a notice of proposed rulemaking or to provide an opportunity for public comment on the policy. While HCFA normally gives participating providers actual notice of

reimbursement policies through the *Provider Reimbursement Manual*, for the reasons stated in the previous paragraph, we have decided to publish this notice in the **Federal Register** to solicit comments from interested members of the public, to determine whether changes or further development of existing policy are appropriate.

(Secs. 1102, 1861(v)(1), 1866(a), and 1871 of the Social Security Act; 42 U.S.C. 1302, 1395f(b), 1395x(v)(1), 1395cc(a), and 1395hh)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: October 14, 1980.

Howard Newman,

Administrator, Health Care Financing Administration.

[FR Doc. 80-32775 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-35-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Oklahoma; Briefing by the Regional Coal Team for the Western Interior Coal Production Region

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Announcement of Western Interior Regional Coal Team Briefing.

SUMMARY: The second briefing of the regional coal team (RCT) for the Western Interior Coal Region, Oklahoma Subregion, is being held in accordance with the Federal coal management regulations, 43 CFR 3400. The team will review industry expressions of interest, the new Coal Resource Occurrence/Coal Development Potential (CRO/CDP) maps, and additional information developed by Geological Survey (GS), Bureau of Land Management (BLM) and the State of Oklahoma. The RCT will consider this information to develop its recommendations for proceeding with Federal coal activity planning. Public attendance is welcome at the Regional Coal Team Briefing.

DATE: November 19, 1980, 9:00 a.m.

ADDRESS: The regional coal team briefing will be held in the Crystal Room at the Ramada Inn West, 800 South Meridian, Oklahoma City, Oklahoma 73108, (405) 943–8551.

FOR FURTHER INFORMATION CONTACT:

H. Robert Moore, Regional Coal Team Chairman, (202) 343–4636.

Dated: October 16, 1980.

Ed Hastey,

Associate Director.

[FR Doc. 80-32684 Filed 10-20-80; 8:45 am]

BILLING CODE 4310-84-M

[AA-8585]

Alaska Native Claims Selection

This decision approves lands located on Chisik Island in the Tuxedni National Wildlife Refuge in Alaska for conveyance to the heirs of Elizabeth M. Haynes as a Native Primary Place of Residence.

On November 26, 1973, Elizabeth M. Haynes filed selection application AA–8585, as amended, under the provisions of Sec. 14(h)(5) and Sec. 14(h)(7) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704–705; 43 U.S.C. 1601, 1613(h)(5), 1613(h)(7) 1976)) (ANCSA), for the surface estate of certain lands within the Tuxedni National Wildlife Refuge (Executive Order 1039, February 27, 1909, as amended, located on Chisik Island.

Section 14(h)(5) of ANCSA authorized the conveyance to an individual Alaskan Native of the surface estate in not to exceed 160 acres of land occupied as a primary place as residence on August 31, 1971. Section 14(h)(7) further provides that such occupied lands located within the National Wildlife Refuge System may be conveyed for the purpose set forth in Sec. 14(h)(5).

As to the lands described below, the application, as amended, is properly filed and meets the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

The applicant, Elizabeth M. Haynes, is deceased. Her date of death was January 2, 1978. In view of the foregoing, the surface estate of the following described lands, aggregating approximately 160 acres, is considered proper for acquisition by the heirs of Elizabeth M. Haynes and is hereby approved for conveyance pursuant to Secs. 14(h)(5) and 14(h)(7) of ANCSA:

Tuxedni National Wildlife Refuge

Seaward Meridian, Alaska (Unsurveyed)

That portion of Chisik Island located within:

T. 1 N., R. 19 W. (Protracted)
Sec. 17 (fractional) S½N½SW¼NE¼, (fractional) S½SW¼NE¼, (fractional) S½S½NE¼NW¼, (fractional) S½NW¼, N½NE¼SW¼, N½S½NE¼SW¼, (fractional) NW¼SW¼, (fractional) NW¼NE¼SE¼, (fractional) N½SW¼NE¼SE¼, (fractional) N½NW¼SE¼, and N½S½NW¼SE¼.
Aggregating approximately 160 acres.

The conveyance issued for the surface estate of the lands described above shall contain the following reservation to the United States:

The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accuring unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704–705; 43 U.S.C. 1601, 1613(h)(5), 1613(h)(7)).

The grant of the above-described lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the unsurveyed lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g))), contract, perimit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)(2)) (ANCSA), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law; and

3. Requirements of Sec. 22(g) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 714; 43 U.S.C. 1601, 1621(g)), that the above-described lands which were within the boundaries of the Tuxedni National Wildlife Refuge on December 18, 1971, remain subject to the laws and regulations governing use and development of such refuge.

Pursuant to Sec. 14(h)(5) of ANCSA, conveyance of the subsurface estate of the lands described above shall be issued to Cook Inlet Region, Inc., when conveyance is granted to the heirs of Elizabeth M. Haynes for the surface estate, and shall be subject to the same conditions as the surface conveyance.

There are no inland water bodies considered to be navigable within the above described lands.

There are no easements to be reserved to the United States pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510, with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501. The time limits for filing an appeal are:

1. Parties receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, and parties who failed or refused to sign the return receipt shall have until November 20, 1980 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

Heirs of Elizabeth M. Haynes (unprobated):
Agnes Ulrich (Mork), General Delivery, Pelican, Alaska 99832.
Marie Laws (Mork), General Delivery, Pelican, Alaska 99832.
Anna Breseman (Mork), General Delivery, Pelican, Alaska 99832.
William Mork, General Delivery, Pelican, Alaska 99832.
Elmer Mork, General Delivery, Pelican, Alaska 99832.
Raymond Mork, General Delivery, Pelican, Alaska 99832.
Mary Darby, P.O. Box 223, Wasilla, Alaska 99687.
Kelly Darby, P.O. Box 223, Wasilla, Alaska 99687.
Aaron Darby, P.O. Box 223, Wasilla, Alaska 99687.
Ramona Owens, 577 Penitencia, Apt. 4, Milpitas, California 95035.
Russell Owens, 577 Penitencia, Apt. 4, Milpitas, California 95035.
Donny Joe Owens, 577 Penitencia, Apt. 4, Milpitas, California 95035.
Oscar R. Haynes, Jr., 1200 West Dimond, Space 1431, Anchorage, Alaska 99502.
Claudine Haynes, 1200 West Dimond, Space 1431, Anchorage, Alaska 99502.
Marina Haynes, 1200 West Dimond, Space 1431, Anchorage, Alaska 99502.
Oscar R. Haynes III, 1200 West Dimond, Space 1431, Anchorage, Alaska 99502.
Machelle Haynes, 1200 West Dimond, Space 907, Anchorage, Alaska 99502.
Mary Dapello, 1021 Vineland Avenue, LaPuente, California 91748.
Cook Inlet Region, Inc., P.O. Drawer 4–N, Anchorage, Alaska 99509.
State of Alaska, Department of Natural Resources, Division of Research and Development, 323 East Fourth Avenue, Anchorage, Alaska 99501.

Ann Johnson,

Chief, Branch of Adjudication.

[FR Doc. 80-32852 Filed 10-20-80; 8:45 am]

BILLING CODE 4310-84-M

[F-14866-A]

Alaska Native Claims Selection

The purpose of this decision is to modify page 7 of the decision dated September 30, 1980.

Page 7—T. 17 N., R. 93 W., Seward Meridian, Alaska (Unsurveyed)

The description for Secs. 10 to 18 now reads:
Secs. 10 to 14, inclusive, all;
Secs. 17 and 18 (fractional), excluding Manayagavik Slough.

The description is hereby corrected and modified to read:
Secs. 10 to 14, inclusive, all;
Secs. 15 and 16, excluding Manayagavik Slough;
Secs. 17 and 18 (fractional), excluding Manayagavik Slough.

Except as modified by this decision, the decision of September 30, 1980, stands as written.

Ann Johnson,

Chief, Branch of Adjudication.

[FR Doc. 80-32853 Filed 10-20-80; 8:45 am]

BILLING CODE 4310-84-M

Phoenix District, Phoenix/Lower Gila Resource Areas Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Pub. L. 92–463 that a meeting of the Phoenix/Lower Gila Resource Areas (Phoenix District) Grazing Advisory Board will be held on Wednesday, November 12, 1980.

The meeting will begin at 9:00 a.m. in the conference room of the Bureau of Land Management Office, 2929 West Clarendon Avenue, Phoenix, Arizona 85017.

The agenda for the meeting will include:

1. Status of the Planning and Grazing Environmental Statement.

2. Allotment Management Plan preparation and implementation.

3. Review of proposed range improvement projects for F.Y. 1981.

4. Effects of the Wilderness Programs on Allotment Management Plans and Range Improvements.

5. Experimental Stewardship Program.

6. Arrangements for future meetings—timing and agenda items.

The meeting is open to the public. Anyone wishing to make oral or written statements to the Board is requested to do so through the office of the District Manager, 2929 West Clarendon Avenue, Phoenix, Arizona 85017 at least seven days prior to the meeting date.

Summary minutes of the Board meeting will be maintained in the District Office and be made available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: October 3, 1980.

Barry D. Stallings,

Acting District Manager.

[FR Doc. 80-32914 Filed 10-20-80; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Endangered Species Permit; Receipt of Application

Applicant: Connell Metcalf & Eddy, Inc., 1320 South Dixie Highway, P.O. Box 341939, Coral Gables, FL 33134.

The applicant requests a permit to take (harass or possibly kill) captive-bred hatchling American crocodiles (*Crocodylus acutus*) in a laboratory experiment for scientific research and enhancement of survival.

Documents and other information submitted with this application are available to the public during normal business hours in Room 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wilflife Service (WPO), P.O. Box 3654, Arlington, VA 22203.

This application has been assigned file number PRT 2–7190. Interested persons may comment on this application on or before November 20, 1980, by submitting written data, views, or arguments to the Director at the above address. Please refer to the file number when submitting comments.

Dated: October 16, 1980.

Larry LaRochelle,

Acting Chief, Permit Branch, Federal Wildlife Permit Office, Fish and Wildlife Service.

[FR Doc. 80-32751 Filed 10-20-80; 8:45 am]

BILLING CODE 4310-55-M

V 45 O C 21 80 UMI

Endangered Species Permit; Receipt of Application

Applicant: Regional Director, Region 4, U.S. Fish & Wildlife Service, 75 Spring St., SW., Atlanta, GA 30303.

The applicant requests a permit to conduct activities identified in the Snail darter (*Percina tanasi*) Recovery Plan for enhancement of propagation and survival. These activities may include, but will not necessarily be limited to, the following activities: (1) mark, release and recapture; (2) transplants to establish new populations; (3) surveys to document reproductive success; and (4) artificial propagation for use in temporarily supplementing natural reproduction, or for establishing new populations.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), P.O. Box 3654, Arlington, VA 22203.

This application has been assigned file number PRT 2–1412. Interested persons may comment on this application on or before November 20, 1980 by submitting written data, views, or arguments to the Director at the above address. Please refer to the file number when submitting comments.

Dated: October 6, 1980.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office, Fish and Wildlife Service.

[FR Doc. 80-32754 Filed 10-20-80; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Receipt of Application

Applicant: Regional Directors, Region 4, U.S. Fish and Wildlife Service, 75 Spring St., SW., Atlanta, GA 30303.

The applicant requests a permit to conduct activities identified in the Snail darter (*Percina tanasi*) Recovery Plan for enhancement of propagation and survival. These activities may include, but will not necessarily be limited to, the following activities: (1) Mark, release and recapture, (2) transplants to establish new populations, (3) surveys to document reproductive success, and, (4) artificial propagation for use in temporarily supplementing natural reproduction, or for establishing new populations.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), P.O. Box 3654, Arlington, VA 22203.

This application has been assigned file number PRT 2–1412. Interested persons may comment on this application on or before November 20, 1980, by submitting written data, views, or arguments to the Director at the above address. Please refer to the file number when submitting comments.

Dated: October 16, 1980.

Larry LaRochelle,

Acting Chief, Permit Branch, Federal Wildlife Permit Office, Fish and Wildlife Service.

[FR Doc. 80-32755 Filed 10-20-80; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Receipt of Application

Applicant: Mark Louis Weber, 4728 Vista Road, Manitowoc, WI 54220.

The applicant requests a permit to purchase 4 scarlet-chested parakeets (*Neophema splendida*) from Ms. Ethel Meyers from San Gabriel, California. These birds were captive bred and will be used in a captive breeding program.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), P.O. Box 3654, Arlington, VA 22203.

This application has been assigned file number PRT 2–7167. Interested persons may comment on this application on or before November 20, 1980 by submitting written data, views, or arguments to the Director at the above address. Please refer to the file number when submitting comments.

Dated: October 15, 1980.

Larry LaRochelle,

Acting Chief, Permit Branch, Federal Wildlife Permit Office, United States Fish and Wildlife Service.

[FR Doc. 80-32756 Filed 10-20-80; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Receipt of Application

Applicant: Nichols Cactus Nursery, 570 S. Hughes, Fresno, CA 93706.

The applicant requests a permit to sell endangered cacti in interstate commerce. All plants will be of cultivated origin, grown from seed or by vegetative propagation at their nursery.

Care during transport has been indicated by the Applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), P.O. Box 3654, Arlington, VA 22203.

This application has been assigned file number PRT 2–7141. Interested persons may comment on this application on or before November 20, 1980 by submitting written data, views, or arguments to the Director at the above address. Please refer to the file number when submitting comments.

Dated: October 10, 1980.

Larry LaRochelle,

Acting Chief, Permit Branch, Federal Wildlife Permit Office, Fish and Wildlife Service.

[FR Doc. 80-32757 Filed 10-20-80; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Receipt of Application

Applicant: Patuxent Wildlife Research Center, U.S. Fish and Wildlife Service, Laurel, MD 20811.

The applicant requests a permit to import parts or products (e.g. blood, feces, feathers, tissue samples, etc.) of Andean condors *(Vultur gryphus)* collected in Peru for scientific research.

Documents and other information submitted with this application are available to the public during normal business hours in Room 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), P.O. Box 3654, Arlington, VA 22203.

This application has been assigned file number PRT 2–7149. Interested persons may comment on this application on or before November 20, 1980, by submitting written data, views, or arguments to the Director at the above address. Please refer to the file number when submitting comments.

Dated: October 7, 1980.

Fred L. Bolwahnn,

Acting Chief, Permit Branch, Federal Wildlife Permit Office, Fish and Wildlife Service.

[FR Doc. 80-32758 Filed 10-20-80; 8:45 am]

BILLING CODE 4310-55-M

Marine Mammal Permits; Receipt of Application; Correction

Applicant: Director, National Fish and Wildlife Laboratory, National Museum of Natural History, Washington, D.C. 20560.

On September 16, 1980 a Notice of Application from the National Fish and Wildlife Laboratory for a marine mammal permit to authorize the taking of West Indian manatees (*Trichechus manatus*) was published in **Federal Register** Volume 45, page 61373. Two corrections need to be made to the Notice.

Item No. 3, Name and Number of Animals should have read: West Indian manatees (*Trichechus manatus*)—20 plus all that are found dead, sick or injured.

Item No. 5, Location of Activity was in error and should have read: St. Johns River except sick or injured manatees may be taken wherever found in southeastern U.S.

All other information in this Notice of September 16, 1980, is correct.

Dated: October 7, 1980.

Fred L. Bolwahnn,

Acting Chief, Permits Branch, Federal Wildlife Permit Office, Fish and Wildlife Service.

[FR Doc. 80-32752 Filed 10-20-80; 8:45 am]

BILLING CODE 4310-55-M

Marine Mammal Permits; Receipt of Application; Correction

Applicant: Director, National Fish and Wildlife Laboratory, National Museum of Natural History, Washington, D.C. 20560.

On September 16, 1980 a Notice of Application from the National Fish and Wildlife Laboratory for a marine mammal permit to authorize the taking of West Indian manatees (*Trichechus manatus*) was published in **Federal Register** Volume 45, page 61373. Two corrections need to be made to the Notice.

Item No. 3, Name and Number of Animals should have read: West Indian manatees (*Trichechus manatus*)—20 plus all that are found dead, sick or injured.

Item No. 5, Location of Activity was in error and should have read: St. Johns River except sick or injured manatees may be taken wherever found in southeastern U.S.

All other information in this Notice of September 16, 1980, is correct.

Dated: October 16, 1980.

Fred L. Bolwahnn,

Acting Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 80-32753 Filed 10-20-80; 8:45 am]

BILLING CODE 4310-55-M

Heritage Conservation and Recreation Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before October 10, 1980. Pursuant to § 1202.13 of 36 CFR Part 1202, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, Heritage Conservation and Recreation Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by November 5, 1980.

Carol Shull,

Acting Chief, Registration Branch.

CALIFORNIA

Alameda County

Alameda, *First Presbyterian Church Sanctuary Building,* 2001 Santa Clara Ave.

Los Angeles County

Hollywood, *Hollywood Studio Club,* 1215 Lodi Pl.

Long Beach, *Pacific Coast Club,* 850 E. Ocean Blvd.

Monterey County

Pacific Grove, *Gosby House Inn,* 643 Lighthouse Ave.

Orange County

Anaheim, *Stanton, Phillip Ackley, House,* 2200 W. Sequoia Ave.

San Joaquin County

Stockton, *Commercial and Savings Bank,* 343 Main St.

Sonoma County

Sonoma, *Sonoma Grammer School,* 276 E. Napa St.

IDAHO

Ada County

Boise, *Lower Main Street Commercial Historic District,* Main St. between 10th and 12th Sts.

Boise, *Tuttle, Bishop, House,* 512 N. 8th St.

Cassia County

Albion, *Albion Normal School Campus,* Off ID 77.

Custer County

Challis Multiple Resource Area. This area includes: Challis, *Old Challis Historic District,* Bounded by Valley and Pleasant Aves., 2nd and 3rd Sts.; *Board-and-Batten Commercial Building,* Main Ave.; *Building at 247 Pleasant Avenue; Buster Meat Market,* Main Ave.; *Bux's Place,* 321 Main Ave.; *Challis Cold Storage,* Main Ave.; *Challis High School,* Main Ave.; *Chivers, Bill House,* 3rd St.; *Chivers, Thomas, Cellar,* Challis Creek Rd.; *Chivers, Thomas, House,* Challis Creek Rd.; *Custer County Jail,* Main Ave.; *False-Front Commercial Building,* Main Ave.; *Hosford, Emmett, House,* 3rd St.; *I.O.O.F. Hall,* Main Ave.; *McKendrick House,* 4th St.; *Peck, Bill, House,* 16 Main Ave.; *Penwell House,* North Ave.; *Rowles, Donaldson, House,* North Ave.; *Smith, Henry, House,* 5th St.; *Stone and Log Building,* Pleasant Ave.; *Stone Building,* 3rd St.; *Twin Peaks Sports,* Main Ave.; *Wilkinson, Clyde, House,* 9th St.

Valley County

McCall, *McCall Building,* 310 E. Lake St.

INDIANA

Allen County

Fort Wayne, *Feustel, Robert M., House,* 4104 W. Taylor St.

KENTUCKY

Barren County

Glasgow vicinity, *Page, William, House,* S of Glasgow off KY 249

Boyle County

Danville vicinity, *Boyle, Judge John, House,* N of Danville on Bellows Mill Rd.

Campbell County

Newport, *St. Paul's Episcopal Church,* 15 Court Pl.

Franklin County

Frankfort, *Meagher, John, House,* 507 W. 2nd St.

Mercer County

Harrodsburg, *Daniel, Benjamin, House,* NE of Harrodsburg off KY 68

Shelby County

Shelbyville vicinity, *Undulata (Weissinger Farm)* S of Shelbyville on Old Zaring Mill Rd.

Taylor County

Campbellsville, *Merchant's Hotel,* 102 E. Main St.

Trigg County

Cadiz vicinity, *Dawson, Thomas, House,* S of Cadiz

LOUISIANA

East Baton Rouge Parish

Baton Rouge, *Manship House,* 2250 Kleinert Ave.

V 45 O C 21 80 UMI

Rapides Parish

Cheneyville vicinity, *Walnut Grove*, E of Cheneyville.
Glenmora vicinity, *Britt Place*, E of Glenmora on Lake Cocodrie Rd.

St. Mary Parish

Franklin, *St. Mary's Episcopal Church*, 805 1st St.

Tangipahoa Parish

Hammond vicinity, *Carter House*, S of Hammond on Happywoods Rd.

Webster Parish

Minden, *Webster Parish Library Building*, 521 E. West St.

MICHIGAN

Gogebic County

Ironwood, *Ironwood City Hall*, McLeod Ave. and Norfolk St.

Washtenow County

Ann Arbor, *Michigan Theater Building*, 521–609 E. Liberty St.

MINNESOTA

Beltrami County

Bemidji, *Bemidji Public Library*, 426 Bemidji Ave.

Goodhue County

Red Wing, *St. James Hotel and Buildings*, Bush and Main Sts.

NEW MEXICO

Bernalillo County

Alameda, *Tafoya, Domingo, House*, 10021 Edith Blvd., NE.
Albuquerque, *Davis House*, 704 Parkland Circle, SE.
Albuquerque, *Cladding, James N., House*, 634 Cedar St., NE.
Albuquerque, *McAvoy, Harry W., House*, 1401 Las Lomas Rd., NE.
Albuquerque, *Old Post Office*, 123 4th St.
Albuquerque, *Springer Building*, 121 Tijeras Ave., NE.

OKLAHOMA

BUILDINGS IN TULSA, OKLAHOMA DESIGNED BY GEORGE WINKLER THEMATIC RESOURCES. Reference—see individual listings under Tulsa County.
SITES RELATING TO INDIAN ACCULTURATION IN NORTHCENTRAL OKLAHOMA THEMATIC RESOURCES. Reference—see individual listings under Kay, Lincoln, Noble and Osage Counties.

Cleveland County

Norman, *Rickner's*, 575 University Blvd.

Kay County

Ponca City, *Soldani Mansion*, 819 E. Central St.
Ponca City vincinity, *Ponca Indian Agency and Boarding School (Sites Relating to Indian Acculturation in Northcentral Oklahoma Thematic Resources)* S of Ponca City

Le Flore County

Bokoshe vincinity, *Milton Socialist Colony*, SW of Bokoshe

Lincoln County

Cushing vicinity, *One Way Baptist Church (Sites Relating to Indian Acculturation in Northcentral Oklahoma Thematic Resources)* SE of Cushing on OK 99

McCurtain County

Broken Bow vicinity, *Tiner School* E of Broken Bow

Noble County

Red Rock vincinity, *Otoe-Missouria Indian Agency and Boardingschool (Sites Relating to Indian Acculturation in Northcentral Oklahoma Thematic Resources)* NE of Red Rock

Oklahoma County

Oklahoma City, *Eighth Street Methodist Church*, 701 NW. 8th St.
Oklahoma City, *University Heights School*, 6231 N. Western Ave.

Osage County

Grayhorse, *Grayhorse Indian Reserve (Sites Relating to Indian Acculturation in Northcentral Oklahoma Thematic Resources)* Off OK 18
Pawhuska, *Osage Superintendent's House (Sites Relating to Indian Acculturation in Northcentral Oklahoma Thematic Resources)* 621 Grandview Ave.

Payne County

Stillwater, *Berry, James E., House*, 502 S. Duck St.

Pittsburg County

McAlester, *McAlester Scottish Rite Temple*, 2nd St. and Adams Ave.

Rogers County

Claremore, *Hotel Will Rogers*, 524 W. Will Rogers Blvd.

Tulsa County

Tulsa, *Halliburton-Abbott Building*, 504 S. Boulder Ave.
Tulsa, *Kendall Elementary School (Buildings in Tulsa, Oklahoma Designed by George Winkler Thematic Resources)* 715 S. Columbia Ave.
Tulsa, *Monhattan Court (Buildings in Tulsa, Oklahoma Designed by George Winkler Thematic Resources)* 1020 S. Cincinnati Ave. and 115 E. 11th St.
Tulsa, *Trinity Episcopal Church (Buildings in Tulsa, Oklahoma Designed by George Winkler Thematic Resources)* 501 S. Cincinnati Ave.

OREGON

Clackomos County

Damascus, *Damascus School*, 14711 SE. Anderson Rd.

Clatsop County

Astoria, *Flavel, Capt. George, House and Carriage House*, 441 8th St.

Columbia County

Scappoose, *Watts, James Grant, House*, 206 SE 1st St.

Jackson County

Central Point, *Central Point Public School*, 450 S. 4th St.

SOUTH CAROLINA

Anderson County

Belton, *Chamberlain-Kay House*, 205 River St.

Berkeley County

Cordesville vicinity, *Richmond Plantation*, SE of Cordesville

Calhoun County

St. Matthews vicinity, *Houser, David, House*, W of St. Matthews on U.S. 176

Charleston County

Charleston, *Cigar Factory*, Bounded by E. Bay, Columbus, Blake, and Drake Sts.
Charleston vicinity, *Barnwell House (Prospect Hill Plantation)* S of Charleston
McCellanville vicinity, *Wedge, The*, NE of McCellanville

Chester County

Great Falls, *Great Falls Depot*, Republic St.
Great Falls, *Republic Theater*, 806 Dearborn St.

Colleton County

Walterboro, *Hickory Valley Historic District*, Roughly bounded by Ireland Creek, Jeffries Blvd., Wichman, Verdier, and Ivanhoe Sts.

Fairfield County

RIDGEWAY MULIPLE RESOURCE AREA. This area includes: Ridgeway, *Ridgeway Historic District*, U.S. 21 and SC 34; *Ruff's Chapel, U.S. 21 and SC 34; Wilson, Monroe, House*, Railroad Ave. and SR S20–20

Georgetown County

Murrells Inlet, *Murrells Inlet Historic District*, Off U.S. 17

Greenville County

Greenville, *Old Textile Hall*, 322 W. Washington St.

Kershaw County

Camden vicinity, *Mulberry Plantation*, S of Camden on U.S. 521

McCormick County

Mount Carmel vicinity, *Calhoun Mill*, 3 mi. NE of Mount Carmel

Oconee County

Walhalla, *St. John's Lutheron Church*, 301 W. Main St.

TENNESSEE

Bradley County

Cleveland, *Tipton-Fillauer House*, 63 Broad St., NW.

Clairborne County

Speedwell vicinity, *Kincaid House*, NE of Speedwell on Russell Lane

Davidson County

Nashville, *Frost Building (Sunday School Board of the Southern Baptist Convention)* 161 8th Ave. N.

Greene County

Greenville, *Tusculum College Historic District*, U.S. 11 and TN 107

Grundy County

Altamont, *Northcutt House*, TN 56
Monteagle, *DuBose Memorial Church Troining School*, Fairmont and College Sts., NE.

Hamilton County

Chattanooga, *Faxon-Thomas Mansion*, 10 Bluff View Ave.

Henry County

Paris, *Grove, E. W.-Henry County High School*, Grove Blvd.

Knox County

Knoxville, *Williams, Col. John, House*, 2325 Dandridge Ave.

Shelby County

Memphis, *Memphis Trust Building*, 12 S. Main St.

Sumner County

Cottontown, *Bridol House*, TN 25

Washington County

Limestone vicinity, *Telford, Thomos, House*, SE of Limestone on Old Jonesboro Water Plant Rd.

Wilson County

Lebanon vicinity, *Campbell, Dr. John Owen, House*, W of Lebanon on U.S 70

UTAH

Coche County

Clarkston vicinity, *Harris, Martin, Gravesite*, N of Clarkston

Summit County

Park City, *Park City Community Church*, 402 Park Ave.

Washington County

St. George, *Woodward School*, 100 West and Tabernacle Sts.
Washington, *Washington School*, Main and Telegraph Sts.

VIRGIN ISLANDS

St. Croix Island

Christiansted vicinity, *Estate La Reine*, Nos. 20 Kings Quarter and 19 Queens Quarter

[FR Doc. 80-32356 Filed 10-20-80; 8:45]
BILLING CODE 4310-03-M

National Park Service

Santa Monica Mountains National Recreation Area Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal advisory Committee act that a meeting of the Santa Monica Mountains National Recreation Area Advisory Commission will be held on November 13, 1980 at 9:30 a.m. at the American Legion Hall, 5320 Fallbrook, Woodland Hills, CA.

The Advisory Commission was established by Pub. L. 95–625 to provide for free exchange of ideas between the National Park Service and the public to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service in Los Angeles and Ventura Counties.

Members of the Commission are as follows:

Dr. Norman P. Miller, Chairperson
Honorable Marvin Braude
Ms. Sarah Dixon
Ms. Margot Feuer
Dr. Henry David Gray
Mr. Edward Heidig
Mr. Frank Hendler
Ms. Mary C. Hernandez
Mr. Mike Levett
Ms. Susan Barr Nelson
Mr. Carey Peck
Mr. Donald Wallace
Ms. Marilyn Whaley Winters

The major agenda items include the election of the Vice Chairperson, the Superintendent's status report, an update from the General Management Plan committees, a discussion on planning and land acquisition matters relating to lands owned by Los Angeles City, Los Angeles County, California State, and the National Park Service. There will be time available for the public to review the draft General Management Plan with the National Park Service staff.

The meeting is open to the public. Any member of the public may file with the Commission a written statement concerning issues to be discussed.

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact the Superintendent, Santa Monica Mountains National Recreation Area, 23018 Ventura Boulevard, Woodland Hills, California 91364.

Minutes of the meeting will be available for public inspection by December 12, 1980, at the above address.

Dated: October 9, 1980.

Robert S. Chandler,

Superintendent, Santa Monico Mountoins National Recreation Area.

[FR Doc. 80-32634 Filed 10-20-80; 8:45 am]
BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Petition To Designate Certain Federal Lands Unsuitable for Surface Coal Mining Operations; Extension of Time for Filing Comments

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior, Washington, D.C. 20240.

ACTION: Extension of public comment period on petition to designate Federal lands unsuitable for surface coal mining operations.

SUMMARY: The Office of Surface Mining is hereby reopening the public comment period on a petition to designate as unsuitable for surface coal mining operations certain Federal lands within the Monongahela National Forest, located in the watershed of Shavers Fork from Cheat Bridge, Randolph County, to Parsons, Tucker County, West Virginia.

At the request of interested parties, the time limit within which written statements must be submitted is being reopened until January 2, 1981.

ADDRESS: Written comments must be mailed or hand-carried to the Division of State and Federal Programs, Office of Surface Mining, Region I, 603 Morris Street, Charleston, West Virginia 25301. The file on the petition is available for public review during normal working hours at the above address of OSM, Region I and also at the United States Forest Service Headquarters, Sycamore Street, Elkins, West Virginia. Copies of the petition and the information sheet presenting the issues to be studied may be obtained from OSM, Region I, at the address given above.

FOR FURTHER INFORMATION CONTACT: Mr. David Halsey, Division of State and Federal Programs, Office of Surface Mining, Region I, 603 Morris Street, Charleston, West Virginia 25301; telephone, (304) 342–8125.

SUPPLEMENTARY INFORMATION: The purpose of this extension is to allow interested parties additional time to submit statements and information on the matters to be analyzed in detailed statement to be issued by the Regional Director, Region I, pursuant to Section 522(d) of the Surface Mining Control and Reclamation Act of 1977 and the rules in 30 CFR 769.17(e). These matters are (1) the potential coal resources of the area involved in petition; (2) the demand for such coal resources; and (3) the impact of the requested designation on the environment, the economy, and the supply of coal.

A public meeting was held on August 12, 1980, to identify relevant issues and to solicit information from the public on a petition to designate as unsuitable for surface coal mining certain Federal lands within the Monongahela National Forest, located in the watershed of Shavers Fork from Cheat Bridge, Randolph County, to Parsons, Tucker County. The petitioner is the West Virginia Highlands Conservancy. The location of the petitioned lands was

given in the notice of receipt of the complete petition published in the **Federal Register** on June 19, 1980, (45 FR 41542). Notice of the public meeting and intent to prepare a detailed statement was published in the **Federal Register** on August 7, 1980, (45 FR 52469–53470).

At the public meeting held on August 12, 1980, in Elkins, West Virginia, several commenters stated that the August 15, 1980, deadline for comments did not allow sufficient time to prepare information for submission. There was also much confusion concerning the August 15, 1980, deadline, versus the comment deadline one week after the public hearing on the petition to be held in February, 1981. To resolve these concerns, this notice extends the August 15, 1980, date for public comments on the issues to be addressed in the proposed detailed statement to January 2, 1981. Comments must be received in the Regional Office by 5:00 p.m. This new deadline will apply only to comments suggesting issues which should be included in the lands unsuitable study and detailed statement required by Section 522(d). Comments on issues relating to the petition itself will continue to be accepted until the end of February, 1981, after the public hearing on the petition.

Dated: October 7, 1980.

R. Bruce Carroll,

Acting Assistant Director, State and Federal Programs, Washington, D.C.

[FR Doc. 80-32672 Filed 10-20-80; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register**. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F–65

The following applications were filed in region 1. Send protests to: Interstate Commerce Commission, Regional Authority Center, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 151864 (Sub-1–1TA), filed September 30, 1980. Applicant: T. J. VESCE, INC., P.O. Box 425, Chestertown, NY 12817. Representative: Robert J. Ellsworth, P.O. Box 425, Chestertown, NY 12817. *Contract carrier:* irregular routes: (1) *Log homes & building products needed for their erection,* from Chestertown, NY to points in the US. Supporting shipper: Lincoln Logs Ltd., Route 9, Chestertown, NY 12817.

MC 146933 (Sub-1–2TA), filed September 30, 1980. Applicant: BRANT TRANSPORTATION, INC., 38 Tower Avenue, South Weymouth, MA 02190. Representative: Robert G. Parks, 20 Walnut Street, Suite 101, Wellesley Hills, MA 02181. *Contract carrier:* irregular routes: *Structural steel shapes,* between points in CT, DE, MD, ME, NE, NJ, NY, PA, RI, and VT. Supporting shipper: L. Antonelli Iron Works, Inc., 187 Willard Street, Quincy, MA 02196.

MC 151972 (Sub-1–1TA), filed September 29, 1980. Applicant: JOSEPH FORNINO, d/b/a PARAMOUNT FRUIT, 272 Tolland Street, East Hartford, CT 06108. Representative: John J. Fay, Esq., 663 Maple Avenue, Hartford, CT 06114. *Contract carrier:* irregular routes: *Bakery products* between East Hartford, CT, on the one hand, and, on the other, points and places in MA, RI, NY, NH, and PA, under continuing contract(s) with Hartford East Corp. Supporting shipper: Hartford East Corp., 122 Park Avenue, East Hartford, CT 06108.

MC 120547 (Sub-1–1TA), filed September 29, 1980. Applicant: PARKER'S EXPRESS, INC., 21 Parker Drive, Avon, MA 02322. Representative: John F. O'Donnell, Barrett and O'Donnell, 60 Adams St., P.O. Box 238, Milton, MA 02187. *General commodities, (except household goods as defined by the Commission and Classes A & B explosives)* between points in CT, MA, ME, NH, RI, VT, Putnam, Westchester, Dutchess, Columbia, Rensselaer, Schenectady, Albany, Greene, Rockland, Ulster, Orange counties, NY. Supporting shipper(s): There are 11 statements in support of the application which may be examined at the I.C.C. Regional Office in Boston, MA.

MC 65491 (Sub-1–3TA), filed September 29, 1980. Applicant: GEORGE W. BROWN, INC., 1475 East 222nd Street, Bronx, NY 10469. Representative: William Biederman, 371 Seventh Avenue, New York, NY 10001. *Steel coils* between Milford, CT and Sharon, PA. Supporting shipper: The Eastern Steel Metal Co., One Eastern Steel Rd., Milford, CT 06460.

MC 144598 (Sub-1–2TA), filed October 3, 1980. Applicant: C & J TRANSPORT, INC., P.O. Box 42, North Vassalboro, ME 04962. Representative: R. Emery Clark, 366 Executive Building, 1030 15th St., N.W., Washington, DC 20005. *Wood and steel garage doors and materials, supplied, articles and equipment used in the manufacture, production and distribution thereof,* (1) from those points in the U.S. located in and east of MN, IA, MO, AR and LA, to Sudbury, MA, and (2) from Sudbury, MA to points in ME. Supporting shipper: New England Door Corporation, 25 Union Ave., Sudbury, MA 01776.

MC 2860 (Sub-1–16TA), filed October 3, 1980. Applicant: NATIONAL FREIGHT, INC., 71 West Park Avenue, Vineland, NJ 08360. Representative: Gerald S. Duzinski, 71 West Park Avenue, Vineland, NJ 08360. *Bakery Goods, foodstuffs and material, equipment and supplies used in the manufacture, sale and distribution thereof,* between points in Meriwether County, GA on the one hand, and, on the other, points in Norfolk County, MA; Erie and Niagara Counties, NY; and Cumberland County, PA. Supporting shipper: Nabisco, Inc., East Hanover, NJ 07936.

MC 151773 (Sub-1–9TA), filed October 1, 1980. Applicant: CARGO TRANSPORT, INC., 100 Garfield Avenue, P.O. Box 268, Somerville, MA 02143. Representative: William F. Mix, 153 Grove Street, Lexington MA 02173. *Foodstuffs, frozen or other than frozen, and material, supplies and equipment*

used in the manufacture, sale and distribution thereof (except commodities in bulk), between Boston and its commercial zone, on the one hand, and on the other, points in the U.S. Supporting shipper: Louise's Ravioli Co., Inc. 370 Commercial St., Malden, MA 02148.

MC 123233 (Sub-1–7TA), filed October 3, 1980. Applicant: PROVOST CARTAGE INC., 7887 Grenache Street, Ville d'Anjou, PQ, CD H1J 1C4. Representative: J. P. Vermette, 7887 Grenache Street, Ville d'Anjou, PQ, CD H1J 1C4. *Alcoholic beverages, in bulk, in tank vehicles,* from Lawrenceburg, IN, to the Ports of Entry on the International Boundary Line between the U.S. and CD located in MI and NY. Supporting shipper: Schenley Distillers Inc., 36 East Fourth Street, Cincinnati, OH 45202.

MC 145148 (Sub-1–2TA), filed October 3, 1980. Applicant: SUTTER TRUCKING & EQUIPMENT, INC., 277 Versailles Road, Irving, NY 14081. Representative: John M. Panara, 4388 Clark Street, Hamburg, NY 14075. *Contract carrier:* irregular routes: *Granulated slag in bags,* from the facilities of H. B. Reed Co. at or near Moundsville, WV to points in the state of NY on or west of Interstate Hwy 81. Supporting shipper: H. B. Reed Co., 8149 Kennedy Avenue, Highland, IN 46322.

MC 142603 (Sub-1–10TA), filed October 2, 1980. Applicant: CONTRACT CARRIERS OF AMERICA, INC., P.O. Box 1968, Springfield, MA 01101. Representative: Raymond A. Richards, 35 Curtice Park, Webster, NY 14580. *Contract carrier:* irregular routes: *Plastic and plastic products materials, equipment and supplies used in the manufacture, sale and distribution of plastics and plastic products,* between Middlesex County, MA and points in the U.S., under continuing contract(s) with W. B. C. Extrusion Products, Inc. Supporting shipper: W. B. C. Extrusion Products, 178 Bridge St., Lowell, MA 01852.

MC 35335 (Sub-1–3TA), filed October 1, 1980. Applicant: COOPER–JARRETT, INC., Hanover Plaza, Morristown, NJ 07960. Representative: William J. Hanlon, Esq., Hanover Plaza, Morristown, NJ 07960. *General commodities (except household goods and explosives),* between Cincinnati, OH and points in TX and OK. Applicant requests tacking at Cincinnati, OH with the remainder of its authority. Supporting shipper(s): There are 10 statements in support attached to the application which may be examined at the I.C.C. Regional Office in Boston, MA.

MC 148503 (Sub-1–1TA), filed September 26, 1980. Applicant: BERKSHIRE CHEMICAL HAULERS, INC, 1 Cook Street, Adams, MA 01220. Representative: Wesley S. Chused, 15 Court Square, Boston, MA 02108. *Fuel oils and kerosene, in bulk,* from Rensselaer and Glenmont, NY to points in Berkshire County, MA. Supporting shipper: H. A. George & Sons Fuel Corp., 651 Ashland Street, North Adams, MA 01220.

MC 140379 (Sub-1–2TA), filed September 26, 1980. Applicant: TRANSPORT SERVICE, INC., 216 Amaral Street, P.O. Box 4167, East Providence, RI 02914. Representative: Jeffrey A. Vogelman, Suite 400, Overlook Bldg., 6121 Lincolnia Road, Alexandria, VA 22312. *Contract carrier:* irregular routes: *Brass tubing, copper tubing, aluminum tubing, brass wire, copper wire, and aluminum wire* between the facilities of United Wire & Supply Corp. located at or near Cranston, RI, on the one hand, and, on the other, the facilities of or utilized by United Wire & Supply Corp. located at South Holland, IL and the facilities of or utilized by Central Steel & Wire Co. located at Chicago, IL. Supporting shipper: United Wire & Supply Corp., 1497 Elmwood Avenue, Cranston, RI 02910.

MC 149367 (Sub-1–3TA), filed October 1, 1980. Applicant: TRAFIK SERVICES, INC., 11 Newark Street, Providence, RI 02908. Representative: A. Joseph Mega, 11 Newark Street, Providence, RI 02908. *Contract carrier:* irregular routes: *Chemical, Pharmarceuticals, Herbicides, including hazardous waste, raw materials and supplies used in the production of such commodities,* between all points in the U.S. Supporting shipper: American Hoechst Corporation, 129 Quidnick Road, Coventry, RI 02816.

MC 152063 (Sub-1–1TA), filed September 26, 1980. Applicant: P.E.G. TRUCKING, INC. 600 Washington Street, Wrentham, MA 02093. Representative: Samuel L. Watts, Vice President Consulting Services, 600 Washington Street, Wrentham MA 02093. *Industrial sprinkler systems and parts thereof and materials, equipment and supplies used in manufacture, sale, installation, and distribution of the above products,* between points in Iredell and Rowan Counties, NC, Dallas and Lubbock Counties, TX, Los Angeles County, CA, on the one hand, and, on the other, points in the US (except AK and HI). Supporting shipper: Grinnell Fire Protection Sys. Co., Inc., 10 Dorrance Street, Providence, RI 02903.

MC 143127 (Sub-1–23TA), filed October 6, 1980. Applicant: K. J. TRANSPORTATION, INC., 6070 Collett Road, Victor, NY 14564. Representative: Linda A. Calvo, 6070 Collett Road, Victor, NY 14564. *Paper articles,* from WI to points in the US in and east of ND, SD, NE, CO, OK and TX (except WI). Supporting shipper: Phillip Morris Industrial, Inc., 4200 N. Holton St., Milwaukee, WI 53201.

MC 142603 (Sub-1–11TA), filed October 6, 1980. Applicant: CONTRACT CARRIERS OF AMERICA, INC., P.O. Box 1968, Springfield, MA 01101. Representative: Stephen J. Habash, 100 E. Broad St., Columbus, OH 43215. *Contract carrier:* irregular routes: *General commodities (except household goods as defined by the Commission and Classes A and B explosives),* between points in the US under continuing contracts with Gulf & Western Industries, Inc., and its subsidiaries. Supporting shipper: Gulf & Western Industries, Inc., One Gulf & Western Plaza, New York, NY 10023.

MC 152051 (Sub-1–1TA), filed October 1, 1980. Applicant: A. HUTTAR & SONS, INC., 300 Cedar Court, Belle Mead, NJ 08502. Representative: Zoe Ann Pace, Esq., Zelby, Burstein, Hartman & Burstein, Suite 2373, One World Trade Center, New York, NY 10048. *Contract carrier:* irregular routes: *Salt, salt products, food seasoning compounds and materials and supplies used in the manufacture, packaging, marketing and distribution of salt and salt products,* between all points in NJ, NY and PA, restricted to traffic originating at or destined to the facilities of Morton Salt, division of Morton Norwich. Supporting shipper: Morton Salt Division of Morton Norwich Prod. Inc., 110 N. Wacker Dr., Chicago, IL 60606.

MC 143110 (Sub-1–2TA), filed October 6, 1980. Applicant: K AND B EXPRESS, INC., P.O. Box 801, Union, NJ 07083. Representative: A. Dayton Schell, 6 Eileen Way, Edison, NJ 08817. *Contract carrier:* irregular routes: *General Commodities,* between points in AZ, CO, CA, DE, FL, GA, IA, ID, IL, IN, KS, MD, MI, MN, MO, NE, NJ, NY, NC, OH, OR, PA, SC, TN, TX, UT, VA, WA, WI and WV, under a continuing contract with ABD–TNT and/or Acme Fast Freight, Inc., of Los Angeles, CA 90031. Supporting shipper: ABC–TNT and Acme Fast Freight, 2110 Alhambra Ave., Los Angeles, CA 90031.

MC 152065 (Sub-1–1TA), filed October 1, 1980. Applicant: McCOURT TRANSPORTATION, INC., 303 Hopkins Street, Buffalo, NY 14220. Representative: Robert D. Gunderman, Esq. Suite 710, Statler Building, Buffalo, NY 14202. *Contract carrier:* irregular routes: *Passengers (Veteran's Administration Beneficiaries),* between the Veteran's Administration Medical

Center in Buffalo, NY, on the one hand, and, on the other, points in PA. Supporting shipper: Veteran's Administration Medical Center, 3495 Bailey Avenue, Buffalo, NY 14215.

MC 152097 (Sub-1–1TA), filed October 7, 1980. Applicant: UNITED CONTRACT CARRIER, INC., P.O. Box 355, Rear, 400 Brook Street, Rocky Hill, CT 06067. Representative: Hugh M. Joseloff, P.O. Box 3258, Hartford, CT 06103. *Contract carrier:* irregular routes: *General commodities, including equipment, materials and supplies as are dealt in and used by retail department stores* between the facilities and subsidiaries of Ames Department Stores, Inc. in CT, DE, NH, NJ, NY, ME, MD, MA, PA, VT, OH, and FL on the one hand, and, on the other, all points in the US (excluding AK and HI) under a continuing contract with Ames Department Stores, Inc. Supporting shipper: Ames Department Stores, 2418 Main Street, Rocky Hill, CT 06067.

MC 152098 (Sub-1–1TA), filed October 7, 1980. Applicant: OAKHURST TRANSPORTATION, INC., 175 Oakhurst Street, Lockport, NY 14094. Representative: James E. Brown, 36 Brunswick Road, Depew, NY 14043. *Petroleum products and antifreeze in bulk in tank vehicles and petroleum products in cans in boxes* between points in DC, NJ, NY, OH and PA, under continuing contracts with Wylie Lubricants, Inc., Buffalo, NY. Supporting shipper: Wylie Lubricants, Inc., 851 Delaware Ave., Buffalo, NY 14202.

MC 145914 (Sub-1–6TA), filed October 7, 1980. Applicant: COASTAL TRUCK LINE, INC., How Lane, P.O. Box 600, New Brunswick, NJ 08903. Representative: Herbert Burstein, Esq., Zelby, Burstein, Hartman & Burstein, Suite 2373, One World Trade Center, New York, NY 10048. *Contract carrier:* irregular routes: *Such commodities as are dealt in by wholesale, retail and chain grocers and food business houses (except commodities in bulk),* between all points in the States of FL, GA, NC, SC, VA, WV, MD, DE, District of Columbia, PA, NY, NJ, CT, RI, MA, ME, NH, VT on the one hand, and, on the other, the facilities of the Wakefern Food Corporation at Wallkill, NY, and Elizabeth & Edison, NJ. Supporting shipper: Wakefern Food Corp., 600 York Street, Elizabeth, NJ 07207.

MC 151639 (Sub-1–2TA), filed October 7, 1980. Applicant: COMMAND TRANSPORTATION INC., 280 Eastern Avenue, Chelsea, MA 02150. Representative: Wesley S. Chused, 15 Court Square, Boston, MA 02108. *General commodities, (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and commodities requiring special equipment),* between Framingham, Clinton, Mansfield and Stoughton, MA, on the one hand, and, on the other, points in the US in and east of WI, IL, KY, TN, and MS, restricted to traffic originating at or destined to the facilities of Zayre Corp. Supporting shipper: Zayre Corp., Famingham, MA 01701.

The following applications were filed in Region 2. Send protests to: ICC, Federal Reserve Bank Bldg., 101 N. 7th St., Room 620, Philadelphia, PA 19106.

MC 114569 (Sub-II–30TA), filed September 17, 1980. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, PA 17072. Representative: N. L. Cummins (same as Applicant). *Such commodities as are dealt in by retail, wholesale and institutional suppliers* (except in bulk, in tank vehicles) between points in Berks, Franklin, Adams, Perry, York, Cumberland, Lancaster, Dauphin, Lebanon, Northumberland, and Bradford Counties, PA on the one hand, and, on the other, points in the U.S. (except AK and HI), restricted to traffic originating at or destined to points in the named PA counties for 270 days—an underlying ETA seeks 120 days authority. Supporting shippers: There are six (6) supporting shippers. Their statements may be examined at the I.C.C. office in Philadelphia, PA.

MC 151709 (Sub-II–1TA), filed September 16, 1980. Applicant: U.S. SERVICES, INC., 470 Mall Circle Dr., Monroeville, Pa. 15146. Representative: Michael J. Peretto (address same as applicant). *Chemical wastes, in bulk, in drum loads, and tank vehicles, for treatment and/or disposal,* from Koppers Bridgeville, PA., Alleg. Co., to South Carolina SCA Services Inc. Pinewood, South Carolina, Sumter County, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Koppers Co., Inc., 850 Koppers Bldg., Pgh., PA.

MC 45764 (Sub-II–3TA), filed September 17, 1980. Applicant: ROBBINS MOTOR TRANSPORTATION, INC., Industrial Hwy & Saville Ave., Eddystone, Pa. 19013. Representative: Edward Kells (same as applicant). *Machinery, electric copper cathodes, wire, nonferrous metal products, and articles requiring special equipment because of size or weight, in foreign commerce,* between Eagle Pass and Laredo, TX on the one hand, and on the other East St. Louis, IL Kenosha, WI Franklin, KY Carrolton, GA South Bay, FL Buffalo and New York, NY Baltimore, MD and Philadelphia, PA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: Nacional De Cobre, S.A., Poniente 134 #719, Mexico 16, D.F.

MC 21866 (Sub-2–31TA), filed September 15, 1980. Applicant: WEST MOTOR FREIGHT, INC., 740 S. Reading Ave., Boyertown, PA 19512. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. *Automotive parts, accessories and supplies, and equipment* used in the distribution of the foregoing commodities, between the facilities of Chrysler Corporation, Service and Parts Division, at points in MI, on the one hand, and, on the other, Tappan, NY, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Chrysler Corp., Service and Parts Div., 26311 Laurence Ave., Center Line, MI 48015.

MC 116763 (Sub-II–37TA), filed September 15, 1980. Applicant: CARL SUBLER TRUCKING, INC., North West St., Versailles, OH 45380. Representative: Gary J. Jira (same as Applicant). *(1) Such commodities as are dealt in by discount and variety stores, and (2) materials, equipment and supplies used in the manufacturing and distribution of health and beauty aids* (Restricted in (1) and (2) above against the transportation of commodities in bulk, in tank vehicles) Between the facilities of Gibson Coop Warehouse, Inc., located at or near Dallas, TX, on the one hand, and on the other, points in the United States (except AK & HI). Restricted to traffic originating at or destined to the above named facilities, for 270 days. Supporting shipper: Gibson Coop. Warehouse, Inc., 12344 E. Northwest Highway, Dallas, TX.

MC 116763 (Sub-II–36TA), filed September 15, 1980. Applicant: CARL SUBLER TRUCKING, INC., North West St., Versailles, OH 45380. Representative: Gary J. Jira (same as Applicant). *General commodities* (except commodities in bulk, in tank vehicles, used household furniture, commodities the transportation of which because of size or weight requíre the use of special equipment, automobiles, trucks and buses as described in the Report in Descriptions in Motor Carrier Certificates, 61MCC 209 and 766, and explosives), between points in the United States (except AK and HI), for 270 days. Restricted to the transportation of traffic originating at or destined to the facilities of Bio Lab, Inc., its customers or suppliers. Supporting shippers: Bio Lab, Inc., Division of Lanza, 1730 Dogwood Drive, Conyers, GA 30207.

MC 146320 (Sub-II–3TA), filed September 15, 1980. Applicant: CHARLES A. STOECKLER, INC., 3 Spring St., Wilkes Barre, PA 18702. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor PA 18517. Contract carrier, irregular routes, (1) *Printed matter* (2) *Materials, supplies and equipment* used in the manufacture, distribution of printed matter (1) From Luzerne County, PA to points in the US (except AK & HI) (2) on return, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Putnam Publishing Group, Berkley/Jove Publ. Grp., 200 Madison Ave., New York, N.Y. 10016.

MC 116763 (Sub-II–35), filed September 15, 1980. Applicant: CARL SUBLER TRUCKING, INC., North West St., Versailles, OH 45380. Representative: Gary J. Jira (same as applicant) *General Commodities* (except households goods as defined by the Commission, Classes A & B explosives and commodities in bulk, in tank vehicles, Standard Transportation Commodity Code No. 51), between points in the U.S. in and east of MN, IA, MO, OK and TX, for 270 days. Restricted to the transportation of traffic originating at or destined to the facilities of Marvil Products Company, or its customers or suppliers. Supporting shipper(s): Marwil Products Company, 63 Elm Street, Ft. Loramie, OH 45845.

MC 30237 (Sub-II–9), filed September 15, 1980. Applicant: YEATTS TRANSFER CO., P.O. Box 666, Altavista, VA 24517. Representative: Eston H. Alt, P.O. Box 666, Altavista, VA 24517. *New Furniture,* from Spencer and Debois Counties, IN, and Warsaw, KY, to points in CT, DE, DC, ME, MD, MA, NJ, NH, NY, NC, PA, RI, SC, VT, VA and WV, for 270 days. An underlying ETA seeks 120 days. Supporting shipper(s): (1) Indiana Desk Co., Jasper, IN 47546; (2) Jasper Desk Co., P.O. Box 111, Jasper, IN 47546; (3) Jasper Cabinet Co., P.O. Box 69, Jasper, IN 47546; (4) Indiana Desk Co., Jasper, IN 47546; (5) Jasper Chair Co., Jasper, IN 47546; (6) Hoosier Desk Co., 310 Mill St., Jasper, IN 47546; (7) Dale Cabinet Co., Dale, IN 47523; (8) Mellin Quincy Mfg. Co., Jasper, IN 47546; (9) Jofco, Inc., Jasper, IN 47546; (10) Warsaw Furn. Co., Warsaw, KY 41095.

MC 147021 (Sub-II–2TA), filed September 18, 1980. Applicant: C. SUMMERS, INC., 112 Spruce St., Elizabethville, PA 17023. Representative: John W. Frame, Box 626, 2207 Old Gettysburg Road, Camp Hill, PA 17011. *Foodstuffs,* between the facilities of Iceland Seafood Corporation, Camp Hill, PA, on the one hand, and, on the other, points in DE, MD, NJ, NY, OH, VA, WV and DC for 270 days. Supporting shipper: Iceland Seafood Corp., 1250 Slatehill Rd., Camp Hill, PA 17011.

MC 21866 (Sub-II–32TA), filed September 19, 1980. WEST MOTOR FREIGHT, INC., 740 South Reading Ave., Boyerton, PA 19512. Representative: Leonard A. Jaskiewicz, 1730 M Street NW., Washington, D.C. 20036. (1) *Plastic products,* from Seneca, SC, (2) *Rubber products,* from Kingstree, SC, (3) *Steel products,* from Canfield and Martins Ferry, OH and Malvern, PA, and (4) *Aluminum products,* from Lincoln Park, MI, to the facilities of Kingston-Warren Corp. located at or near Newfields, NH for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Kingston-Warren Corp. Route 85, Newfields, NH 03856.

MC 119632 (Sub-II–16TA), filed September 19, 1980. Applicant: REED LINES, INC., 634 Ralston Ave., Defiance, OH 43512. Representative: Wayne C. Pence (same as applicant). *General Commodities* (except household goods as defined by the Commission and Class A and B explosives), between all points in the U.S. in and east of MN, IA, MO, AR and LA. Restricted to traffic originating at or destined to facilities of Forty-Eight Insulation, Inc., Pittsburgh Corning Corporation, Ovaltine Products, Inc., and T. G. & Y Stores Co. Supporting Shippers: Forty-Eight Insulations, Inc., P.O. Box 1148, Aurora, IL 60507, Pittsburgh Corning Corporation 800 Presque Isle Drive, Pittsburgh, PA 15239, Ovaltine Products, Inc., 150 S. Monterey, Villa Park, IL 60181, T. G. & Y. Stores Co., Box 25964, Oklahoma City, OK 73125, for 270 days.

MC 142976 (Sub-II–3TA), filed October 2, 1980. Applicant: JOHN D. PERFETTI, R.D. #4 Box 265C, Blairsvile, PA 15717. Representative: Eugene A. Waszkiewicz, P.O. Box 8315, Pittsburgh, PA 15218. *Contract; irregular: (a) Iron and Steel Articles, (b) Materials, Equipment and Supplies used in the manufacture and process of commodities in Paragraph (a)* between points in the US (except AK and HI) under a continuing contract with Standard Steel Co. for 270 days. Underlying ETA seeks 120 days authority. Supporting shipper(s): Standard Steel Co., 107 Gertrude St., Latrobe, PA 15650.

MC 136343 (Sub-II–14TA), filed October 2, 1980. Applicant: MILTON TRANSPORTATION, INC., P.O. Box 355, Milton, PA 17847. Representative: Herbert R. Nurick, P.O. Box 1166, Harrisburg, PA 17108. *Toilet preparations and cleaning products in boxes* between pts. in the U.S. in and east of WI, IL, KY, TN and MS for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Minnetonka, Inc., Johnathan Industrial Center, Chaska, MN 55318.

MC 152072 (Sub-II–1TA), filed October 2, 1980. Applicant: PHILLIPS BROS. WAREHOUSING & DISTRIBUTING CORP., 25 Thomas Ave., Baltimore, MD 21225. Representative: Robert L. Cope, Suite 501, 1730 M Street NW., Washington, DC 20036. *Contract; irregular: General Commodities (except household goods as defined by the Commission, and Classes A and B explosives)* between points in DE, MD, NJ, NY, and PA, under continuing contract(s) with Stereo Equipment Sales, Inc., for 270 days. An underlying ETA seeks 120 days. Supporting shipper: Stereo Equipment Sales, Inc. of Baltimore, MD, 6730 Santa Barbara Court, Baltimore, MD 21227.

MC 107012 (Sub-II–87TA), filed October 2, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same as applicant). *Toys and games* from the facilities of Fisher-Price Toys at or near Brownsville, TX, to the facilities of Fisher-Price Toys at or near Murray, KY for 270 days. An underlying ETA seeks 120 days authority. Supporting Shipper: Fisher-Price Toys, 636 Girard Ave., East Aurora, NY 14052.

Note.—Common control may be involved.

MC 107012 (Sub-II–88TA), filed October 3, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same as applicant). *Such commodities as are utilized in and incidental to the operation of a resturant (except frozen foods)* from the facilities of Hardees Food Systems, Inc., at or near Rocky Mount, NC, to points in AL, DE, FL, GA, IA, KY, LA, MD, MN, ND, NJ, PA, SC, SD, TN, VA and WV for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Hardee's Food System, Inc., P.O. Box 1619, 1233 North Church, Rocky Mount, NC 27801.

Note.—Common control may be involved.

MC 151235 (Sub-II–1TA), filed October 1, 1980. Applicant: A & B BUS COMPANY, 2919 Rhode Island Ave., NE., Washington, DC 20018. Representative: Peter R. Gilbert 1919 Pennsylvania Ave. NW., Suite 850, Washington, DC 20006. *Passengers and their baggage, in the same vehicle with passengers, in round trip charter and special operations,* beginning and ending at points in the Washington, DC commercial zone, and extending to pts. in and east of MN, IA, MO, AR and LA, for 270 days. An underlying ETA seeks

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120 days authority. Supporting shippers: There are 14 statements in support attached to this application. They may be examined at the ICC Regional Office in Philadelphia, PA.

MC 142864 (Sub-II–4TA), filed September 2, 1980. Originally published in Federal Register dated September 8, 1980. Applicant: RAY E. BROWN TRUCKING, INC., P.O. Box 501, Massillon, OH 44646. Representative: Jerry B. Sellman, 50 W. Broad St., Columbus, OH 43215. *Edible tallow, lard, shortening, vegetable oil, cooking or salad oil, and margarine,* between Kankakee County, IL, on the one hand, and, on the other, pts. in the states of CT, DE, MA, ME, MD, NH, NJ, NY, OH, PA, RI, VA, VT, WV and DC. for 270 days. An underlying ETA seeks 120 authority. Supporting shipper: Bunge Edible Oil Corp., Box 192, Kankakee, IL 60901. The purpose of this republication is to change ND to MD.

MC 117851 (Sub-II–2TA), filed October 1, 1980. Applicant: JOHN CHEESEMAN TRUCKING, INC., 501 N. First St., Ft. Recovery, OH 45846. Representative: Earl N. Merwin, 85 E. Gay St., Columbus, OH 43215. Contract irregular: *General commodities (except household goods as defined by the Commission and Classs A and B explosives),* between points in the U.S., under a continuing contract(s) with Ingersoll-Rand Company and its subsidiaries, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Ingersoll-Rand Co., 277 Park Ave, New York, NY 10017.

MC 110525 (Sub-II–17TA), filed October 1, 1980. Applicant: CHEMICAL LEAMAN TANK LINES, INC., 520 E Lancaster Ave., Downingtown, PA 19335. Representative: Thomas J. O'Brien (same as applicant). *Limestone and limestone products* from Union County, TN to AL, FL, GA, IN, KY, MS, NC, OH, SC, VA, WV for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Tenn-Luttrell Lime Co., P.O. Box 69, Luttrell, TN 37779.

MC 2605 (Sub-II–6TA), filed October 1, 1980. Applicant: COMMERCIAL TRANSPORTATION, INC., 2300 E. Adams Ave., Philadelphia, PA 19124. Representative: Donald J. Campanile (same as applicant). *Paper and paper products and things used by the manufacturers thereof,* between Phila., PA, and Decatur, IL, Ft. Wayne and Indianapolis, IN, Kansas City and St. Louis, MO, Kalamazoo, Lansing, Vicksburg, Grand Rapids, and Battle Creek, MI for 270 days. Applicant intends to tack with authority held under MC–2605. An underlying ETA seeks 120 days authority. Supporting shipper: Simpson Paper Co., Miquon, PA.

MC 151903 (Sub-II–1TA), filed October 1, 1980. Applicant: D. T. ENTERPRISES, INC., 4632 Grove Ave., Richmond, VA 23226. Representative: Robert R. Kaplan, P.O. Box 12065, Richmond, VA 23241. Contract, irregular: *Rock wool insulation, insulation materials and other general commodities which may be hauled in conventional trailers, except in tank vehicles,* between Woodbridge, VA and all pts. in the U.S. and Canada, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: United Rockwool, Inc., P.O. Box "R", Woodbridge, VA 22194.

MC 139242 (Sub-II–1TA), filed October 2, 1980. Applicant: D & T LIMOUSINE SERVICE, INC., 15753 Puritas Ave., Cleveland, OH 44135. Representative: Robert E. Lange (same as applicant). Contract, irregular: *Passengers who are employees of Consolidated Rail Corporation or The Baltimore & Ohio Railroad. Special operations are proposed.* Employees of the Consolidated Rail Corporation, between pts. along the railroad's right of way in IL, KY, MO (St. Louis County), NY (Erie and Niagara Counties), and WV; and employees of the Baltimore & Ohio Railroad Co., between pts. in OH and IN and pts. along the railroad's right of way in IL, KY, MI, and WV, for 270 days. An underlying ETA seeks 120 days authority. Applicant intends to tack. Supporting shippers: Consolidated Rail Corp., 1528 Walnut St., Phila., PA, Baltimore & Ohio Railroad, 34 S. Main St., Akron, OH 44308.

MC 149043 (Sub-II–4TA), filed October 1, 1980. Applicant: EASTERN TANK LINES, INC., 5536 Brentlinger Dr., Dayton, OH 45414. Representative: H. Neil Garson, 3251 Old Lee Hwy., Fairfax, VA 22030. *Liquid sugar and blends of liquid sugar,* between pts. in OH and pts. in AL, CT, DE, FL, GA, IL, IN, KY, ME, MD, MA, MI, MS, NH, NJ, NY, NC, PA, RI, SC, TN, VT, VA, WV, WI, and DC, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Cargill, Inc., Box 1400–A, 3201 Needmore Rd., Dayton, OH 45414.

MC 47336 (Sub-II–1TA), filed October 2, 1980. Applicant: ECLIPSE MOTOR LINES, INC., 605 S. First St., Martins Ferry, OH 43935. Representative: Joseph S. Zaccirey (same as applicant). *Iron and steel articles,* from Bridgeport, OH to Brooklyn, NY and returning, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Ohio Valley Metals, Inc., 925 National Rd., Bridgeport, OH.

MC 130938 (Sub-II–1TA), filed October 3, 1980. Applicant: C & H TRUCK—BROKERS, INC., P.O. Box 236, Harrington, DE. 19952. Representative: John A. Guernsey, 2001 The Fidelity Bldg., Phila., PA 19109. *Foodstuffs,* between points in Caroline, Dorchester, Queen Annes, Talbot, Wicomico, Worcester, Baltimore and Somerset Counties, MD; Sussex, Kent and New Castle Counties, DE; Northampton and Accomack Counties, VA; Chester, Philadelphia, Lancaster and York Counties, PA; Camden County, NJ and Queens County, NY; on the one hand and points in AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY, for 270 days. Supporting shippers: American Original Clam Co., Seaford, DE 19973; KMC Foods, Inc., P.O. Box 298, Queen Anne, MD 21657.

MC 86690 (Sub-II–1TA), filed October 6, 1980. Applicant: BOND TRANSFER CO., INC., 1301 Towson St., Baltimore, MD 21230. Representative: Michael R. Werner, P.O. Box 1409, 167 Fairfield Rd., Fairfield, NJ 07006. *Contract; irregular: Garment hangers, and materials, supplies and equipment used in the manufacture, sale and distribution of garment hangers,* between pts. in MD, NY and NJ, under continuing contract(s) with The Cleaners Hanger Co., Baltimore, MD, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: The Cleaners Hangers Co., 8801 Wise Ave., Baltimore, MD 21222.

MC 86690 (Sub-II–2TA), filed October 6, 1980. Applicant: BOND TRANSFER CO., INC., 1301 Towson St., Baltimore, MD 21230. Representative: Michael R. Werner, P.O. Box 1409, 167 Fairfield Rd., Fairfield, NJ 07006. Contract, irregular: *Such commodities as are dealt in by wholesale, retail and chain grocery and food business houses, and materials, supplies and equipment used in the conduct of such business,* between all pts. in MD, VA, NY, NJ, PA, DE, CT, MA, and DC for 270 days. Under continuing contracts with B. Green & Co.; Giant Foods, Inc.; Doxsee Food Corp.; Specialty Candy Co., Inc.; and The Great Atlantic and Pacific Tea Co. An underlying ETA seeks 120 days authority. Supporting shippers: There are 5 supporting shippers. Their statements may be viewed at the ICC Regional Office, Phila., PA.

MC 94265 (Sub-II–22TA), filed October 6, 1980. Applicant: BONNEY MOTOR

EXPRESS, INC., P.O. Box 305—Rt. 460 W., Windsor, VA. 23487. Representative: Olin C. Cooper, Jr. (same as applicant). *Meats, meat products and meat by-products, and articles distributed by meat packing houses as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (Except hides);* from Bartholomew County, IN to pts. in VA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: R.M. Felts Packing Co., Box 199, Ivor, VA 23866.

MC 94265 (Sub-II–23TA), filed October 7, 1980. Applicant: BONNEY MOTOR EXPRESS, INC., P.O. Box 305—Rt. 460 W., Windsor, VA. 23487. Representative: Olin C. Cooper, Jr. (same as applicant). *Foodstuffs, (except in bulk);* from Hall County, GA, to points in AL, DC, MD, TN, KY, OH, MI, IN, IL, FL, NC, SC, VA, WV, PA for 270 days. Supporting shipper: Lazy Acres Farms, Division of Almark, Inc., 3434 Keith Bridge Rd., Gainesville, GA 30501.

MC 138438 (Sub-II–21TA), filed October 6, 1980. Applicant: D. M. BOWMAN, INC., Rt. 2, Box 43A1, Williamsport, MD 21795. Representative: Edward N. Button, 580 Northern Ave., Hagerstown, MD 21740. *General commodities, in truck load lots, and materials and supplies and accessories used in the manufacture and distribution thereof,* between all pts. in the US (except AK and HI), for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Atlantic Cabinet Corp, P.O. Box 100, Williamsport, MD 21795.

MC 152103 (Sub-II–1TA), filed October 6, 1980. Applicant: CLYDE HOSTUTLER, t/a CLYDE'S TRANSFER, 604 Aquarius Dr., Mechanicsville, VA 23111. Representative: Calvin F. Major, 200 W. Grace St., Richmond, VA 23220. *Precast and prestressed concrete and raw materials of steel, i.e., coils, wire mesh, rebar, flat bars and shapes used in the manufacture of the precast and prestressed concrete,* from the states of VA and MD to pts. in DC, NC, DE, PA, VA and MD and from the states of DC, NC, DE, PA, VA and MD to VA and MD, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Concrete Structures, Inc., P.O. Box 27192, Richmond, VA 23261.

MC 119793 (Sub-II–2TA), filed October 6, 1980. Applicant: DEWEY L. WILFONG, d.b.a. D & W TRUCK LINES, 209 1st St., Parsons, WV 26287. Representative: Michael D. Bromley, 605 McLachlen Bank Bldg., 666 11th St., NW, Washington, DC 20001. Contract, irregular: *Material, equipment and supplies used in the manufacture, distribution, or sale of charcoal briquettes, fireplace logs, and wood chips, in bulk,* from points in the U.S. (except AK and HI), to Dothan, AL; Burnside, KY; Belle, MO; Fairless Hills, PA; and Parsons, WV; restricted to transportation of traffic under a continuing contract(s) with the Kingsford Co., Louisville, KY, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: The Kingsford Co., 1700 Commonwealth Bldg., P.O. Box 1033, Louisville, KY 40201.

MC 123255 (Sub-II–4TA), filed October 9, 1980. Applicant: B & L MOTOR FREIGHT, INC., 1984 Coffman Rd., Newark, OH 43055. Representative: C. F. Schnee, Jr., 1984 Coffman Rd., Newark, OH 43055. *Mineral Wool Insulation, mineral wool products, fiberglass insulation and fiberglass products, material and supplies useful in the production of above* between the facilities of Guardian Insulation Div. of Guardian Industries at or near Huntington, IN to points in and east of the States of ND, SD, NE, KS, OK, and TX. An underlying ETA seeks 120 days authority. Supporting shipper: Guardian Insulation, Div. of Guardian Industries, 701 N. Broadway, Huntington, IN 46750.

MC 150735 (Sub-II–1TA), filed October 9, 1980. Applicant: BESTWAY TRANSPORT CO., Rt. No. 2, Willard, OH 44890. Representative: L. S. Witherspoon, 88 E. Broad St., Columbus, OH 43215. *Meats, meat products, meat by-products, and articles distributed by meat packing houses,* as described in Sections A & C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 between points in Erie County, OH, on the one hand, and, on the other, points in the US., for 270 days. Supporting shipper: J. H. Routh Packing Co., 4413 W. Bogart Rd., Sandusky, OH 44870.

MC 150511 (Sub-II–4TA), filed October 9, 1980. Applicant: BETTER HOME DELIVERIES, INC., 3700 Park East Dr., Cleveland, OH 44122. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114. *Contract,* irregular: *Such merchandise as is dealt in by retail department stores, restricted to residential deliveries,* for 270 days, between Farmingdale, NY, on the one hand, and, on the other, points in NJ on and north of Rte. 33, under continuing contract(s) with J. C. Penney Company, Inc. Supporting shipper: J. C. Penney Company, Inc., 1122 Route 22, Mountainside, NJ 07091.

MC 142559 (Sub-II–19TA), filed October 9, 1980. Applicant: BROOKS TRANSPORTATION, INC., 3830 Kelley Ave., Cleveland, OH 44114. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215. *(1) Such commodities as are dealt in by the manufacturers and distributors of audio and electronic systems and (2) materials, equipment and supplies used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk)* between Los Angeles, CA and West Carrollton, OH, including points in their respective Commercial Zones, on the one hand, and, on the other, points in and east of MN, IA, KS, MO, OK and TX for 270 days. Supporting shipper: Superscope, Inc., 20525 Nordhoff St., Chatsworth, CA 91311.

MC 144982 (Sub-II–5TA), filed October 6, 1980. Applicant: OHIO PACIFIC EXPRESS, INC., 683 East Broad St., Columbus, OH 43215. Representative: Harry F. Horak, Suite 115, 5001 Brentwood Stair Rd., Fort Worth, TX 76112. *Bucket and dipper teeth, and garden shears,* from Corona, CA to Niles, OH for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Corona Clipper Co., 14200 E. Sixth St., Corona, CA 91720.

MC 152065 (Sub-II–2TA), filed October 6, 1980. Applicant: MITCHELL TRANSPORT, INC., 6500 Pearl Rd., P.O. Box 30248, Cleveland, OH 44130. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114. *Contract; irregular: Coal, limestone and sand,* from points in PA, VA and WV to the facilities of Alpha Portland Cement Co. at Lime Kiln, MD, under continuing contract(s) with Alpha Portland Cement Co. for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Alpha Portland Cement Co., 4120 Buckeytown Pike, Frederick, MD 21701.

MC 107403 (Sub-II–32TA), filed October 7, 1980. Applicant: MATLACK, INC., 10 W. Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr. (same as applicant). *Monoisopropyl Biphenol, in bulk, in tank vehicles,* from Wellford, SC to Vancouver, WA for 270 days. Supporting shipper(s): Boise Cascade Corp., P.O. Box 2885, Portland, OR 97208.

MC 107012 (Sub-II–91TA), filed October 7, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Bruce W. Boyarko (same as applicant). *Mottresses,* from Richmond, VA to points in NJ and NY for 270 days. An underlying ETA seeks authority for 120 days. Supporting shipper: T.E.U. Inc., 1309 Exchange Alley, Richmond, VA 23219.

Note.—Common control may be involved.

MC 107012 (Sub-II–89TA), filed October 8, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same as applicant). *Duct work, pipe, and fittings for pipe and air ducts* from the facilities of Western Engineering and Supply Co. at or near Kansas City, MO to points in the United States (except AK and HI) for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Western Engineering and Supply Co., 2007 East 19th, Kansas City, MO 64127.

Note.—Common control may be involved.

MC 107012 (Sub-II–90TA), filed October 7, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Bruce W. Boyarko (same as applicant). *Respiratory therapy equipment, and supplies, parts and accessories for respiratory therapy equipment,* from Temecula, CA to Wadsworth, OH for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Hudson Oxygen Therapy Sales Co., 27711 Diaz Road, Temecula, CA 92390.

Note.—Common control may be involved.

MC 107012 (Sub-II–93TA), filed October 9, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy. 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same as applicant). *Parts, materials and supplies used in the manufacture, maintenance, and distribution of air conditioners, humidifiers, and dehumidifiers,* from Cullman, AL; Fort Wayne, IN; Somerset, KY; Tecumseh, MI; Tupelo, MS; Cleveland, Lima, Marion and Upper Sandusky, OH; Pittsburgh, PA; and Richmond, VA to Edison, NJ for 270 days. Supporting shipper: Edison Products Co. NJ, Division White Consolidated Industries, Route 27 at Vineyard Road, Edison, NJ 08817.

Note.—Common control may be involved.

MC 124111 (Sub-II–9TA), filed October 9, 1980. Applicant: OHIO EASTERN EXPRESS, INC., 300 W. Perkins Ave., Sandusky, OH 44870. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215. *Meats, meat products and meat by-products as described in Section A of Appendix I to the Report in Descriptions in Motor Carrier Certificate 61 MCC 209 and 766* from Pt. Newark, NJ; New York, NY; Philadelphia, PA; Norfolk, VA; and new Haven, CT, including pts. in their respective Commercial Zones, to pts. in and east of MN, IA, MO, AR and TX for 270 days. An underlying ETA seeks 120 days authority. Supporting Shippers: Mastan Trading Co., 201 Penn Ctr. Blvd., Pittsburgh, PA 15235. Thomas Brothwick, Inc., 2 Penn Plaza, New York City, NY 10170. Tupman Thurlo, Inc., 420 Lexington Ave., New York City, NY 10170. A. J. Cunningham Packing Corp., 1778 Heritage Dr. Quincy, MA 02171.

MC 151892 (Sub-II–1TA), filed October 1, 1980. Applicant: FOX DISTRIBUTION CO., INC., 8660 Cherry Lane, Laurel, MD 20810. Representative: Walter T. Evans, 7981 Eastern Ave., Silver Spring, MD 20910. Contract carrier, irregular routes, *such commodities as are dealt in by wholesale, retail and/or chain, grocery, food business houses and drug houses,* between Laurel, MD, on the one hand, and, on the other, points in DE, DC, MD, NJ, PA and VA for 270 days under continuing contracts with Alberto-Culver Company, American Cyanamid Company, Clairol, Inc., and Proctor and Gamble Distributing Company. An underlying ETA seeks 120 days authority. Supporting shippers: Alberto-Culver Company, 2525 Armitage Ave., Melrose Park, IL 60160. American Cyanamid Company, Berden Ave., Wayne, NJ 07470. Clairol, Inc., 1 Blachley Road, Stamford, CT 06902. Proctor and Gamble Distributing Co., P.O. Box 599, Cincinnati, OH 45201.

MC 152032 (Sub-II–1TA), filed September 30, 1980. Applicant: JOHN P. SNYDER, SR., dba FLYER LIMOUSINE SERVICE, Box 2348, R.D. No. 1, Jonestown, PA 17038. Representative: Thomas A. Behney, Farmer's Trust Company Bldg., 815 Cumberland St., Lebanon, PA 17042. *Passengers and their baggage in the same vehicle, in special and charter operations,* between Lebanon County, PA and Derry Township, Dauphin County, PA, on the one hand, and, on the other, Atlantic City, NJ, for 270 days. Supporting shipper(s): Irwin M. Gensler, Jr., 119 N. College St., Myerstown, PA. John W. Feeser, 725 Cumberland St., Lebanon, PA 17042.

MC 150432 (Sub-II–5TA), filed September 30, 1980. Applicant: H & M TRANSPORTATION, INC., U.S. 42 & 70, London, OH 43140. Representative: Owen B. Katzman, 1828 L Street, N.W., Suite 1111, Washington, DC 20036. Contract-irregular: *Iron and steel articles* from North East, PA, to points in the USA (except AK and HI), under a continuing contract with Ridg-U-Rak, Inc., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Ridg-U-Rak, Inc., P.O. Box 150, North East, PA 16428.

MC 150939 (Sub-II–6TA), filed October 2, 1980. Applicant: GEMINI TRUCKING, INC., 1533 Broad St., Greensburg, PA 15601. Representative: William A. Gray, 2310 Grant Bldg., Pittsburgh, PA 15219. *Toys and games, electronic games, home entertainment games, skateboards and related accessories, and materials, equipment and supplies used in the manufacture, sale and distribution thereof,* between the facilities of Mattel Toys, Division of Mattel, Inc. at or near City of Industry, CA and Edison, NJ on the one hand, and, on the other, points in the US, under continuing contract(s) with Mattel Toys, Division of Mattel, Inc. An underlying ETA seeks 120 days. Supporting shipper: Mattel Toys, Division of Mattel, Inc., 5150 Rosecrans Avenue, Hawthorne, CA 90250.

MC 150939 (Sub-II–7TA), filed October 2, 1980. Applicant: GEMINI TRUCKING, INC., 1533 Broad St., Greensburg, PA 15601. Representative: William A. Gray, Esq., 2310 Grant Bldg., Pittsburgh, PA 15219. *Automobile accessories and materials, equipment and supplies used in the manufacture and distribution of automobile accessories,* between the facilities of Mark Fore Vatco, Division of Beatrice Foods Co., in MA and MN on the one hand, and, on the other, points in the US under a continuing contract(s) with Mark Fore Vatco, Division of Beatrice Foods Co. of Chelsea, MA. An underlying ETA seeks 90 days authority. Supporting shipper: Mark Fore Vatco, Division of Beatrice Foods Co., Forbes Industrial Park, Chelsea, MA 02150.

The following applications were filed in Region 3. Send protests to ICC, Regional Authority Center, P.O. Box 7600, Atlanta, GA 30357.

MC 145461 (Sub-3–1TA), filed September 29, 1980. Applicant: TENNESSEE-TEXAS EXPRESS, INC., P.O. Box 888, Gallatin, TN 37066. Representative: Thomas A. Stroud, 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. *Common* carrier: regular: *General Commodities,* (with the usual exceptions), (1) between Nashville, TN and Beaumont, TX: from Nashville over Interstate Hwy 40 to Little Rock, AR, then over Interstate Hwy 30 to Dallas, TX, then over Interstate Hwy 45 to Houston, TX, then over Interstate Hwy 10 to Beaumont, TX, and return over the same route, serving the intermediate point of Memphis, TN for purposes of interchange only, Dallas and Houston, TX; without restriction, Ft. Worth as an off-route point, and the junction of Interstate Hyw 30 and U.S. Hwy 259, at or near Bassett, TX, for purposes of joinder only; (2) between Houston, TX and the junction of U.S. Hwy 259 and Interstate Hwy 30, at or near Bassett, TX: from Houston, TX over U.S. Hwy 59 to Henderson, TX, then over U.S. Hwy 259 to its junction with Interstate Hwy 30, and return over the same route, serving Lufkin, TX and Longview, TX, as intermediate points, and serving the junction of U.S. Hwy 259 and Interstate Hwy 30 for purposes of joinder only; and (3) between Beaumont, TX and the junction of U.S. Hwy 259 and Interstate Hwy 30, at or near Bassett, TX, and return over the same route serving the intermediate points of Lufkin, TX and Longview, TX: from Beaumont, TX over U.S. Hwy 69 to Lufkin, TX, then over U.S. Hwy 59 to Henderson, TX then over U.S. Hwy 259 to its junction with Interstate Hwy 30. Restriction: Service at Memphis, TN and points in its commercial zone is restricted against the handling of traffic which originates at, is destined to, or interlined at Nashville, TN and points in its commercial zone. Restriction: Restricted against providing local service between authorized points in Texas. Applicant intends to interline at Nashville, TN; Memphis, TN; Dallas, TX; Houston, TX; Ft. Worth, TX; and Beaumont, TX. There are 27 statements in support of this application which may be examined at the ICC Regional office in Atlanta, GA.

MC 136123 (Sub-3–10TA), filed October 3, 1980. Applicant: MEAT DISPATCH, INC., P.O. Box 1058, Palmetto, FL 33561. Representative: William L. Beasley (same as above). *Bread making compounds, materials, parts, equipment and supplies used in the bakery industry,* between the facilities of Lewis Brothers Bakery, Inc., located at or near Evansville, IN, Kokomo, IN, Ft. Wayne, IN, Anna, IL, Cape Girardeau, MO, Murfreesboro, TN, and points in FL, GA, KS, MO, PA, IA, IL, TN, and KY. Supporting shipper: Lewis Brothers Bakery, Inc., 500 N. Fulton Ave., Evansville, IN 47710.

MC 56679 (Sub-3–22TA), filed October 2, 1980. Applicant: BROWN TRANSPORT CORP., 352 University Ave., SW., Atlanta, GA 30310. Representative: Leonard S. Cassell (same address as applicant). *Bottles, glass,* between AL, AR, LA, TX, TN, KY, MS, MO, GA, FL, NC, SC, VA, IL, ND, SD, ID, IN, MI, OH, WV, ME, MA, NH, VT, NY, NJ, RI, PA, DC, IA, KS, NE, WI, MN, UT, CO, AZ, and NM. Restricted to traffic originating at or destined to the facilities of Chattanooga Glass Co. Supporting shipper: Chattanooga Glass Co., Inc., Chattanooga, TN.

MC 144011 (Sub-3–2TA), filed October 2, 1980. Applicant: HALL SYSTEMS, INC., 214 So. 10th St., Birmingham, AL 35233. Representative: George M. Boles, 727 Frank Nelson Bldg., Birmingham, AL 35203. *Common* carrier: regular: *General Commodities,* (1) between Atlanta, GA, and Birmingham, AL, from Atlanta over U.S. Hwys 78 and Interstate 20 to Birmingham; (2) between Atlanta, GA, and New Orleans, LA, from Atlanta over U.S. Hwys 29 and Interstate 85 to Montgomery, AL, then over U.S. Hwys 31 and Interstate 65 to Mobile, AL, then over U.S. Hwys 90 and Interstate 10 to New Orleans; (3) between all points in the commercial zones of New Orleans, LA, Atlanta, GA, and Birmingham, Montgomery and Mobile, AL. Applicant intends to interline at Birmingham, Montgomery and Mobile, AL, Atlanta, GA, and New Orleans, LA, and to tack with its existing authority at New Orleans, LA, and Birmingham, AL. There are 44 statements in support attached to this application which may be examined at the I.C.C. Regional Office in Atlanta, GA.

MC 134064 (Sub-3–7TA), filed October 3, 1980. Applicant: INTERSTATE TRANSPORT, INC., 1600 Highway 129 South, Gainesville, GA 30505. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. (1) *Malt beverages (except in bulk), and (2) Materials, equipment and supplies used in the manufacture, sale, and distribution of the commodities named in (1) above (except in bulk),* from the facilities of The Stroh Brewery Company at or near Detroit, MI and Perrysburg, OH to points in the U.S. in and east of WI, IL, KY, TN, MS and LA. Supporting shipper: The Stroh Brewery Company, 1 Stroh Drive, Detroit, MI 48226.

MC 106074 (Sub-3–13TA), filed October 3, 1980. Applicant: B AND P MOTOR LINES, INC., Shiloh Rd. and U.S. Hwy. 221, S., P.O. Box 727, Forest City, NC 28043. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. *Kitchen cabinets,* from Nashville, TN, to points in CA, NV, AZ, UT, NM, CO, TX, OK, KS, NE, SD, ND, MN, IA, MO, IL, WI, MI, IN, OH and FL. Supporting shipper: Kabinart Corp., P.O. Box 110774, Nashville, TN 37211.

MC 144225 (Sub-3–1TA), filed October 2, 1980. Applicant: JADEEL TRUCKING, INC., 8333 W. McNab Road, Tamarac, FL 33321. Representative: Raymond P. Keigher, Esquire, 401 E. Jefferson St., Suite 102, Rockville, MD 20850. *Contract: Irregular: new furniture,* from points in AR, CA, FL, GA, IN, KY, LA, MS, NC, OH, SC, TN, TX, VA, and WV, to Elizabeth, NJ, under continuing contract(s) with Seaman Furniture, Inc., of Carle Place, NY. Supporting shipper: Seaman Furniture, Inc., 393 Old County Road, Carle Place, NY 11514.

MC 140025, (Sub-3–2TA), filed October 3, 1980. Applicant: L & T, INC., 2650 West Beaver St., Jacksonville, FL 32205. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202. (1) *Bakery Goods* from Jacksonville, FL to points in MD, NH, NY and PA, and (2) *General Commodities (except household goods as defined by the Commission, commodities in bulk, and Classes A and B explosives),* between Jacksonville, FL, on the one hand, and, on the other, points in AL, DE, FL, GA, MD, MS, NJ, NC, SC, TN and VA. Supporting shippers: Eastern Distribution, Inc., 555 Heckscher Dr., Jacksonville, FL 32226; Duval Bakery Products, 1733 Evergreen Ave., Jacksonville, FL 32206.

MC 151646 (Sub-3–1TA), filed October 2, 1980. Applicant: MISS-ALA DISTRIBUTORS, INC., Highway 45 South, P.O. Box 1728, Columbus, MS 39701. Representative: Peter A. Greene, 900 17th Street, N.W., Washington, DC 20006. (1) *Paper, paper products and wood pulp;* (2) *Lumber and wood products;* and (3) *Equipment, materials and supplies used in the manufacture and distribution of the commodities named in (1) and (2) above,* between facilities of Weyerhaeuser Co., Inc., in NC, on the one hand, and, on the other, points in AL, CT, DE, FL, GA, ME, MA, MD, MS, NH, NJ, NY, PA, RI, SC, TN, VT, VA, and WV. Supporting shipper: Weyerhaeuser Co., Inc., P.O. Box 787, Plymouth, NC 27962.

MC 115793 (Sub-3–1TA), filed October 2, 1980. Applicant: LENOIR TRANSFER COMPANY, INC., P.O. Box 696, Lenior, NC 28645. Representative: C. Douglas Woods (same as applicant). *New furniture, parts, and materials and supplies, used in the manufacturing of furniture and furniture parts (except commodities in bulk),* from points in NC to Caldwell & Catawba Counties, NC, for subsequent movement in interstate commerce. Supporting shippers: Cook's Transfer & Storage Co., Inc., Lenoir, NC; Terminal Freight Cooperative Asso., 1430 Branding Lane, Lane-Downers Grove, IL 60515; and Singer Furniture Co., P.O. Box 5337, Roanoke, VA 24012.

MC 111302 (Sub-3–7TA), filed October 2, 1980. Applicant: HIGHWAY TRANSPORT, INC., P.O. Box 10108, Knoxville, TN 37919. Representative: David A. Petersen (same address as applicant). *Liquid chemicals, in bulk, in tank vehicles,* from Houston, Texas City and Freeport, TX, and Baton Rouge and Lake Charles, LA to points in AL, FL, GA, LA, MS, NC, SC, and TN. Supporting shippers: Westvaco Corporation, P.O. Box 643, Winder, GA 30680 and Calloway Chemicals, P.O. Box 2335, Columbus, GA 39102.

MC 127478 (Sub-3–1TA), filed October 2, 1980. Applicant: WILLIAM M. HAYES

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d.b.a., HAYES TRUCKING CO., Box 31, Winterville, GA 30683. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Boulevard, Atlanta, GA 30349. *Frozen food stuff,* From the facilities of the Kitchens of Sara Lee at New Hampton, IA and Deerfield, IL to points in NC and SC. Supporting shipper: Kitchens of Sara Lee, 500 Waukegan Road, Deerfield, IL 60015.

MC 151895 (Sub-3–1TA), filed October 2, 1980. Applicant: SISKEY HAULING CO., INC., 1490 Bankhead Highway, Mableton, GA. Representative: John W. Greer, 803 Healey Building, Atlanta, GA. *Coke, in dump trucks* from Decatur, Florence, Guntersville and Sheffield, AL, and Chattanooga and Knoxville, TN, to the states of AL, GA, MS, and TN, with prior movement via water transportation. Supporting shipper: Koch Carbon, Inc., 888 Worcester Street, Wellesley, MA 02181.

MC 2934 (Sub-3–13TA), filed October 2, 1980. Applicant: AERO MAYFLOWER TRANSIT CO., INC., 9998 North Michigan Road, Carmel, IN 46032. Representative: James L. Beattey, 300 E. Fall Creek Pkwy., Suite 403, Indianapolis, IN 46205. *Stereos and component parts,* between Santa Claus, IN, and points and places in the States of AL, AR, CT, DE, DC, FL, GA, IL, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA, WV and WI. Supporting shipper: Sound Design, Inc., P.O. Box 61, Santa Claus, IN 47579.

MC 138882 (Sub-3–26TA), filed October 2, 1980. Applicant: WILEY SANDERS TRUCK LINES, INC., P.O. Drawer 707, Troy, AL 36081. Representative: John J. Dykema (same as applicant). (1) *Insulation, insulation materials, tile, wallboard, and construction and building materials (except in bulk),* and (2) *materials, equipment and supplies used in the manufacture, sale, and distribution of commodities named in (1) above,* between the facilities of Goodsons' Manufacturing Corp. located at or near Bloutstown, FL, on the one hand, and, on the other, points in the US (except AK and HI). Supporting shipper: Goodsons' Manufacturing Corp., P.O. Box 504, Bloutstown, FL 32424.

MC 1380 (Sub-3–2TA), filed October 2, 1980. Applicant: COLONIAL MOTOR FREIGHT LINE, INC., P.O. Box 7027, High Point, NC 27264. Representative: Max H. Towery (same address as above). *General commodities with usual exceptions* between NC, SC, VA and MD. There are 88 statements in support of this application which may be examined at the ICC Regional office in Atlanta, GA. Applicant intends to tack with existing authority and to interline with other carriers at Baltimore, MD, Richmond, VA, High Point, NC, Greensboro, NC, Charlotte, NC, and Greenville, SC.

MC 111548 (Sub-3–3TA), filed October 2, 1980. Applicant: SHARPE MOTOR LINES, INC., P.O. Box 517, Hildebran, NC 28637. Representative: Edward G. Villalon, 1032 Pennsylvania Bldg., Pennsylvania Ave. & 13th St. NW., Washington, D.C. 20004. *Furniture or fixtures and materials and supplies used in the manufacture thereof* (1) Between Alamance, Rowan, Montgomery, Stanley, Chatham, Ashe, Randolph, Davidson, Guilford, Orange, and Forsyth counties, NC, on the one hand, on the other points in IL, IN, CT, MA, RI, and WI. (2) Between Burke, Caldwell, Lincoln, Catawba, Alexander, Wilkes, McDowell, Cleveland, Davie, and Iredell counties, NC, on the one hand, and, on the other points in WI. Supporting shippers: There are forty-one statements in support attached to this application which may be examined at the ICC Regional Office in Atlanta, GA.

MC 124887 (Sub-3–8TA), filed October 2, 1980. Applicant: SHELTON TRUCKING SERVICE, INC., Route 1, Box 230, Altha, FL 32421. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *Primary Metal Articles,* between Harris County, TX, on the one hand, and, on the other, points in AL, AR, FL, GA, LA, MS, MO and OK. Supporting shipper: Texas Pipe & Supply Company, 2330 Holmes Road, Houston, TX 77051.

MC 129291 (Sub-3–2TA), filed October 2, 1980. Applicant: McDANIEL MOTOR EXPRESS, INC., 1115 Winchester Road, Lexington, KY 40505. Representative: William L. Willis, Attorney-at-Law, 708 McClure Building, Frankfort, KY 40601. *Common carrier, regular routes: General commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* between Lexington, KY, and Atlanta, GA: From Lexington, KY, over Interstate Hwy 75 to Atlanta, GA, and return over the same route, serving no intermediate points.

Note.—Applicant intends to tack the authority sought to its existing authority in MC 129291, and to interline with other carriers at Louisville, Maysville, Lexington and Danville, KY, and Aberdeen, OH. There are 6 statements in support which may be examined at the I.C.C. Regional Office in Atlanta, GA.

MC 146646 (Sub-3–31TA), filed October 2, 1980. Applicant: BRISTOW TRUCKING CO., INC., P.O. Box 6355 A, Birmingham, AL 35217. Representative: James W. Segrest (same address as applicant). *Plastic articles equipment and supplies used in the manufacture and distribution of plastic articles.* Between the facilities of Mobil Chemical Co., Plastics Division, and points in the U.S. (except AK and HI). Supporting shipper: Mobil Chemical Co., Plastic Division, Macedone, NY 14502.

MC 146402 (Sub-3–9TA), filed October 2, 1980. Applicant: CONALCO CONTRACT CARRIERS, INC., P.O. Box 968, Jackson, TN 38301. Representative: Charles W. Teske (address same as applicant). (1) *Water closets, lavatories, urinals and hand portable toilets and* (2) *parts and accessories used in the installation and maintenance of the commodities in (1) above* from the facilities of Mansfield Sanitary Inc. at Perrysville, OH and Ripley Township (Holmes County), OH to points in AL, AR, CO, CT, DE, FL, GA, IA, IL, IN, KS, KY, LA, MA, ME, MD, MI, MN, MO, MS, NC, ND, NE, NH, NJ, NY, OK, PA, RI, SC, SD, TN, TX, VA, VT, WV, WI, and DC. Supporting shipper: Mansfield Sanitary Inc., 150 First Street, Perrysville, OH 44864.

MC 138177 (Sub-3–1TA), filed October 2, 1980. Applicant: BROWN TRUCKING, INC, 7622 Apple Valley Rd., Germantown, TN 38138. Representative: John Paul Jones, P.O. Box 3140, Memphis, TN 38103. *General commodities, (with the usual exceptions),* between AR, AL, FL, GA, IL, KY, LA, MS, MO, NC, SC, OK, TN and TX. Supporting shipper: Mid-South Terminals Corp., 1145 Channel Ave., Memphis, TN 38113.

MC 115841 (Sub-3–27TA), filed September 29, 1980. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., McBride Lane, P.O. Box 22188, Knoxville, TN 37922. Representative: Michelene Good (same as above). *Foodstuffs (except commodities in bulk),* from Bogart, GA to points in CA, IL, IN, KS, MI, NC, NJ, NY, OH, OK, OR, PA, SC, TN, TX, WI, FL, MN, VA, WV, MD, LA, and MS. Supporting shipper: Benson's Old Home Kitchens, P.O. Box 428, Bogart, GA 30622.

MC 126899 (Sub-3–1TA), filed September 29, 1980. Applicant: USHER TRANSPORT, INC., 3925 Old Benton Road, P.O. Box 3156, Paducah, KY 42001. Representative: George M. Catlett, 708 McClure Building, Frankfort, KY 40601. *Asphalt in bulk in tank vehicles,* from Kuttawa, KY, to points in IL on and South of Hwy. 36 and North of U.S. Hwy. 50. Supporting shipper: Ashland Petroleum Company, Division of

Ashland Oil, Inc., P.O. Box 391, Ashland, KY 41101.

MC 25798 (Sub-3–6TA), filed September 30, 1980. Applicant: CLAY HYDER TRUCKING LINES, INC., P.O. Box 1186, Auburndale, FL 33823. Representative: Tony G. Russell (same address as applicant). *Building materials* from Auburndale, FL to points in the U.S. (except AK and HI). Supporting shipper: Raylor Building Products, P.O. Box 1307, Auburndale, FL 33823.

MC 146281 (Sub-3–15TA), filed September 29, 1980. Applicant: SILVER FLEET EXPRESS, INC., 4521 Rutledge Pike, P.O. Box 6110, Knoxville, TN 37914. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004. *Contract* Carrier: Irregular Routes: *Foodstuffs,* between points in LA, on the one hand, and, points in that part of TN, on and east of U.S. Hwy 27. Restricted to traffic moving under continuing contract with Lloyd and Sheffer Co. Supporting shipper(s): Lloyd and Sheffer, P.O. Box 1471, Knoxville, TN 37901.

MC 144913 (Sub-3–1TA), filed September 29, 1980. Applicant: COMPTON TRUCKING, INC., 5300 Kennedy Rd., Forest Park, GA 30050. Representative: Richard M. Tettelbaum, Fifth Floor, Lenox Towers, S, 3390 Peachtree Rd., N.E., Atlanta, GA 30326. *Contract* Carrier; Irregular Route; *Textile chemicals and materials, equipment and supplies used in the manufacture thereof (except in bulk),* from Decatur, IL; Indianapolis, IN and Houston, TX to Fulton County, GA, under continuing contract(s) with Seydel International, Inc. Supporting shipper: Seydel International, Inc., 80 Broad St., N.W., Atlanta, GA 30303.

MC 136123 (Sub-3–8TA), filed September 29, 1980. Applicant: MEAT DISPATCH, INC., P.O. Box 1058, Palmetto, FL 33561. Representative: William L. Beasley (same as above). *Commodities as are dealt in by bonded warehouses,* between points in and east of ND, SD, NB, KA, OK, and TX for the account of Southeastern Bonded Warehouses of Atlanta, GA. Supporting shipper: Southeastern Bonded Warehouses, Inc., 5180 Phillip Lee Dr., S.W., Atlanta, GA 30336.

MC 146516 (Sub-3–1TA), filed September 30, 1980. Applicant: ALEXANDER TRUCKING CO., INC., P.O. Box 6243, Dothan, AL 36301. Representative: Daniel O. Hands, Suite 200, 205 West Touhy Av., Park Ridge, IL 60068. *Bananas, in shipper owned containers,* from the facilities of Chiquita Brands, Inc., at Gulfport, MS to Houston, TX. Supporting shipper: Chiquita Brands, Inc., 15 Mercedes Drive, Montvale, NJ 07645.

MC 145213 (Sub-3–3TA), filed September 30, 1980. Applicant: DEEP SOUTH TRUCKING, INC., Hwy 11 North, Post Office Box 304, Purvis, MS 39475. Representative: Kent F. Hudson, 202 Main Street, Post Office Box 696, Purvis, MS 39475. *Contract carrier,* irregular routes, *welding wire and electodes,* between Harrison County, MS, on the one hand and on the other, points in York County, PA, and White County, IN. Supporting shipper: Dealers Wholesale Welding Supply, Inc., P.O. Box 470072, Dallas, TX 75247.

MC 147148 (Sub-3–1TA), filed September 29, 1980. Applicant: GOLDEN TRIANGLE TRANSPORTATION, INC., Highway 82 East, P.O. Box 2043, Columbus, MS 39701. Representative: John A. Crawford, P.O. Box 22567, Jackson, MS 39205. *Contract;* regular; *Steel pails and paint raw materials* between points in TX and LA, on the one hand, and, on the other, points in IL and OH, under continuing contract or contracts with Ribelin Sales, Inc. Supporting shipper: Ribelin Sales, Inc., 7788 Blankenship Dr., Houston, TX 77055.

MC 143956 (Sub-3–13TA), filed September 30, 1980. Applicant: GARDNER TRUCKING CO., INC., P.O. Drawer 493, Walterboro, SC 29488. Representative: Steven W. Gardner, 3574 Piedmont Road, Atlanta, Georgia 30305. *Such commodities as are dealt in or used by automotive supply dealers* between points in MS, TN, and TX on the one hand, and SC on the other hand. Supporting shipper: Stroble Oil and Tire Co., 1101 N. Main Street, Summerville, SC 29483.

MC 115093 (Sub-3–2TA), filed September 29, 1980. Applicant: MERCURY MOTOR EXPRESS, INC., 2511 North Grady Ave. (P.O. Box 23406), Tampa, FL 33607 (33623). Representative: Joseph W. Watson (same as above). *General Commodities (except household goods as defined by the Commission and Classes A and B explosives);* (1) Between points in AL, CT, DC, DE, FL, GA, MA, MD, NC, NJ, NY, PA, RI, SC, TN, VA and WV, restricted to traffic having a prior or subsequent movement by water. Supporting shipper: There are approximately 43 statements of support which may be examined at the ICC Regional Office, Atlanta, GA.

Note.—Applicant intends to interline with other carriers at Atlanta, GA, Charlotte, NC, Harrisburg, PA, Pittsburgh, PA, Scranton, PA, Birmingham, AL, Philadelphia, PA and New Haven, CT.

MC 146646 (Sub-3–30TA), filed September 29, 1980. Applicant: Bristow Trucking Co., Inc., P.O. Box 6355 A, Birmingham, AL 35217. Representative: James W. Segrest (same address as applicant). *Kitchen cabinets, vanities, shelf units and materials, equipment and supplies used in the production of described commodities* Between points in the U.S. (except AK and HI) restricted to the transportation of traffic originating at or destined to the facilities of Triangle Pacific Corp. Supporting shipper: Triangle Pacific Corp., 16803 Dallas Parkway, Dallas, TX 75248.

MC 151803 (Sub-3–1TA), filed September 29, 1980. Applicant: SOUTHERN EXPRESS, INC., 860 W. Main Street, Spartanburg, SC 29301. Representative: Joseph M. Epting, Attorney at Law, P.O. Box 11414, Columbia, SC 29211. *Wearing apparel and material, supplies and equipment used in the manufacturing of wearing apparel* between GA and SC, and New York, NY and its Commercial Zone. There are 6 statements in support attached to this application which may be examined at the I.C.C. Regional Office in Atlanta, GA.

MC 118831 (Sub-3–7TA), filed September 29, 1980. Applicant: CENTRAL TRANSPORT, INCORPORATED, P.O. Box 7007, High Point, North Carolina 27264. Representative: Ben H. Keller, III (same address as applicant). *Dimethyl Terephthalate, in bulk, in tank vehicles,* from Old Hickory, TN to points in NY. Supporting shipper: E. I. DuPont de Nemours & Company, 1007 Market Street, Wilmington, DE 19898.

MC 31675 (Sub-3–17TA), filed October 2, 1980. Applicant: NORTHERN FREIGHT LINES, INC., P.O. Box 34303, Charlotte, N.C. 28234. Representative: Garland V. Moore (same as above). *Plastic Flakes, Granules, Lumps, Pellets, Powder or Solid Mass* from the facilities of Arco Polymers, Inc. at Monaca, PA, Beaumont, Houston, Orange, LaPorte and Pt. Arthur, TX to points in the U.S. except points in AK and HI. Supporting shippers: Arco Polymers, Inc., 1500 Market Street, Philadelphia, PA 19101.

MC 31675 (Sub-3–18TA), filed October 18, 1980. Applicant: NORTHERN FREIGHT LINES, INC., P.O. Box 34303, Charlotte, N.C. 28234. Representative: Garland V. Moore (same as above). *Concrete products* from facilities of Florence Concrete Products, Inc., Florence, SC and Sumter, SC to points in NC and GA. Supporting shipper(s): Florence Concrete Products, Inc., P.O. Box 5506, Florence, SC 29502.

MC 31675 (Sub-3–19TA), filed September 29, 1980. Applicant:

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NORTHERN FREIGHT LINES, INC., P.O. Box 34303, Charlotte, N.C. 28234. Representative: Garland V. Moore (same as above). *Brass, bronze or copper rod, wire, castings, tube or any other brass, bronze or copper articles* from Ansonia and Waterbury, CT, to points in AL, FL, GA, NC, SC, TN and VA. Supporting shipper(s): The Anaconda Company, 414 Meadow Street, Waterbury, CT. 06702.

MC 128720 (Sub-3–11TA), filed October 2, 1980. Applicant: MERCHANTS FREIGHT LINE, INC., 1185 Omobundro Dr., Nashville, TN 37210. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St., NW., Washington, DC 20004. *General Commodities (except commodities of unusual value, classes A&B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment),* between points in TN, on the one hand, and, on the other, points in KY. *Note:* Applicant intends to interline at Nashville, Knoxville, Memphis, Chattanooga, and Louisville. Supporting shipper(s): There are 126 shippers supporting this application.

MC 139323 (Sub-3–1TA), filed August 26, 1980. Republication—Originally published in Federal Register of September 10, 1980, page 59658, volume 45, No. 177. Applicant: KARS TRANSPORT, INC., 3333 NW 116th St., Miami, FL 33167. Representative: Gerard J. Donovan, 4791 SW 82nd Ave., Davie, FL 33328. *General Commodities (except cement, commodities of unusual value, Classes A and B explosives, household goods as defined by the Commission, and commodities in bulk)* between all points in FL. Applicant intends to interline at Miami, Tampa, Orlando, and Jacksonville, FL. Supporting shippers: There are 11 statements in support attached to this application which may be examined at the ICC Regional Office in Atlanta, GA.

Note.—Applicant intends to tack with existing authority MC 139323 (Sub-5).

MC 121598 (Sub-3–1TA), filed August 26, 1980. Republication—originally published in Federal Register of September 10, 1980, page 59658, volume 45, No. 177. Applicant: SHELBYVILLE EXPRESS, INC., P.O. Box 187, Shelbyville, TN 37160. Representative: James G. Caldwell, P.O. Box 100906, Nashville, TN 37210. *General commodities, Regular Routes, (except those of unusual value, classes A & B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* (1) between Nashville, TN and Lewisburg, TN, serving all intermediate points from Nashville over US Highway 31A–41A to Kirkland, TN thence over US Highway 31A to Lewisburg, TN and return; (2) Between Nashville, TN and Lewisburg, TN serving all intermediate points from Nashville, TN over Interstate 65 to its junction with TN Highway 50 thence over TN Highway 50 to Lewisburg, TN and return; (3) Between Shelbyville, TN and Lewisburg, TN serving all intermediate points from Shelbyville over TN Highway 64 to its junction with US Highway 31A thence over US Highway 31A to Lewisburg, TN and return; (4) Between Lewisburg, TN and Ardmore, TN serving all intermediate points from Lewisburg over US Highway 31A to its junction with Interstate 65 thence over Interstate 65 to its junction with US Highway 31, thence over US Highway 31 to Ardmore, TN and return. Applicant intends to tack with MC 121598 and interline at Nashville, TN and Memphis, TN. Supporting shippers: There are 14 statements of support which may be examined at the I.C.C. Regional Office, Atlanta, GA.

MC 121654 (Sub-3–11TA), filed September 29, 1980. Applicant: COASTAL TRANSPORT & TRADING CO., P.O. Box 7438, Savannah, GA 31408. Representative: Alan E. Serby, Esq., 3390 Peachtree Rd., NE., 5th Floor, Lenox Towers South, Atlanta, GA 30326. *Textiles and Textile Products* from Opp, AL to Leominster, MA. Supporting shipper: Vertipile, Inc., Mohawk Drive, Leominister, MA 01453.

MC 116254 (Sub-3–19TA), filed September 29, 1980. Applicant: CHEM-HAULERS, INC., P.O. Box 339, Florence, AL 35631. Representative: Mr. M. D. Miller (same address as above). *Wood Burning Stoves or Ranges, Iron or Steel, and Accessories thereof,* from Chattanooga, TN, to AL, AR, CT, DE, DC, FL, GA, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, VT, VA, WV, WI. Supporting shipper: Tennessee Machine Works, 1103 Latta Street, Chattanooga, TN 37411.

MC 25798 (Sub-3–5TA), filed September 30, 1980. Applicant: CLAY HYDER TRUCKING LINES, INC., P.O. Box 1186, Auburndale, FL 33823. Representative: Tony G. Russell (same address as applicant). *Foodstuffs* from Memphis, TN to points in the U.S. (except AK and HI). Supporting shipper: Adams Packing Associates, Inc., P.O. Box 37, Auburndale, FL 33823.

MC 152059 (Sub-3–1TA), filed September 29, 1980. Applicant: RAPID TRANSFER & STORAGE, INC., 4725 NW 72d St., Miami, FL 33166. Representative: Richard B. Austin, 320 Rochester Building, 8390 53d St., Miami, FL 33166. *New and used furniture, crated, crated household goods and automotive, industrial, tractor and engine parts, crated and uncrated,* from New York, NY, and Elizabeth and Newark, NJ, *restricted* to traffic having a continuing movement in foreign commerce at Miami, FL. Supporting shipper: Sleepworld Industries, Inc., 16725 NW 20th Ave., Miami, FL; Andes Express Packing & Shipping Corp., 89–01 Roosevelt Ave., Jackson Heights, NY; Swiss-American Forwarders, Inc., 7807 NW 72d Ave., Miami, FL; Embarques Mundo Packing & Shipping, Inc., 37–63 90th St., Jackson Heights, NY.

MC 151764 (Sub-3–1TA) filed, September 29, 1980. Applicant: O. D. WATSON, d.b.a., O. D. WATSON TRUCKING, Route 2, Box 330, Lucama, NC, 27851. Representative: O. D. Watson (same address as applicant). *Contract,* irregular routes, *electrical switchgear and circuit breakers and materials and supplies used in the manufacture and distribution of electrical switchgear and circuit breakers* between points in Wake County, NC, on the one hand, and, on the other, points in the U.S. except Alaska and Hawaii under a continuing contract or contracts with Siemens-Allis, Inc., 801 South 60 St., West Allis, WI 53214. Shipper: Siemens-Allis, Inc., 801 South 60 St., West Allis, WI 53214.

MC 128305 (Sub-3–8) filed, September 29, 1980. Applicant: BOYD BROTHERS TRANSPORTATION CO., INC., R.D. 1, Box 18, Clayton, AL 36016. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *(1) Highway marking spheres and strip glass, ballotini, broken glass, and plastic and metal articles (except commodities in bulk in tank vehicles); and (2) Materials, equipment, and supplies used in the manufacture and sale of the commodities named in (1) above (except commodities in bulk in tank vehicles),* between points in the U.S. (except AK and HI). Restricted to shipments originating at or destined to the facilities of Potters Industries, Inc. and its subsidiaries. Supporting shipper(s): Potters Industries, Inc., 377 Route 17, Hasbrouck Heights, NJ 07604.

MC 141837 (Sub-3–1TA) filed, September 30, 1980. Applicant: ELLIS AG SERVICE, INC., 208 Fairway Circle, Andalusia, AL 36420. Representative: Selwyn H. Ellis, president (same address as applicant). *Lumber, treated and untreated, and poles, treated and untreated,* from the facilities of TMA Forest Products, Lockhart, AL, to the Alabama State Docks, Mobile County, AL, for subsequent movement by water.

and points in FL. Supporting shipper: TMA Forest Products Group, P.O. Box 1487, Ansalusia, AL 36420.

Note.—Applicant intends to tack this authority with its existing authority in MC 141837.

MC 146226 (Sub-3–3TA) filed, September 29, 1980. Applicant: J & P TRUCKING CO., INC., P.O. Box 457, Lincolnton, NC 28092. Representative: Dwight L. Koerber, Jr., P.O. Box 1320, 110 N. 2nd St., Clearfiel, PA 18830. *Corrugated boxes, liners, and dividers,* from Gastonia, NC to Memphis, TN, and Conway, AR. Supporting shipper: Westvaco Corp., P.O. Box 728, Gastonia, NC 28052.

MC 126139 (Sub-3–1TA) filed, September 30, 1980. Applicant: AARON SMITH TRUCKING COMPANY, INC., P.O. Box 208, Dudley, NC 28333. Representative: John N. Fountain, Attorney at Law, P.O. Box 2246, Raleigh, NC 27602. *Materials, supplies and equipment used in the handling, marketing, packaging, prizing, redrying, shipping or storing of tobacco leaves or stems, loose or in packages,* between points and places in FL, GA, SC, NC, VA, MD, PA, KY, TN, WV, MO, OH, and IN. Supporting shippers: There are six supporting shipper statements attached to this application, which may be examined at the Atlanta, GA Authority Center.

MC 145508 (Sub-3–1TA) filed, September 29, 1980. Applicant: A M & M, INCORPORATED, P.O. Box 1627, Jackson, TN 38301. Representative: R. Connor Wiggins, Jr., Suite 909, 100 N. Main Bldg., Memphis, TN 38103. *Contract* carrier: Irregular: *General Commodities (except those of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment)* between the facilities of ITT Grinnell Corporation or its subsidiaries at points in the U.S. (except AK and HI) on the one hand, and, on the other, points in the U.S. (except AK and HI), under a continuing contract or contracts with ITT Grinnell Corporation or its subsidiaries. Supporting shipper: ITT Grinnell Corporation, 260 West Exchange St., Providence, RI 02901.

MC 151793 (Sub-3–1TA), filed October 1, 1980. Applicant: MUSIC CITY TRUCKING, INC., 620 N. Dickerson Road, Goodlettsville, TN. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St., NW., Washington, DC 20004. *Printed matter and materials, supplies and equipment used in the manufacture thereof,* between Nashville, TN, on the one hand, and, on the other, points in WA, OR, ID, CA, NV, AZ, UT, CO, KS, TX, OK, LA, AR, MS, IL, IN, OH, St. Paul, MN, Detroit, MI, and Milwaukee, WI. Supporting shipper(s): Baird Ward Printing Co., P.O. Box 539, Nashville, TN 37202.

MC 115917 (Sub-3–1TA), filed October 1, 1980. Applicant: UNDERWOOD & WELD COMPANY, INC., P.O. Box 247, Crossnore, NC 28616. Representative: Wilmer B. Hill, Suite 805, 666 Eleventh Street NW., Washington, DC 20001. *Olivine,* from points in Jackson and Clay Counties, NC to points in the U.S., except AK and HI. Supporting shipper: National Olivine Company, P.O. Box 180, Dillsboro, NC 28725.

MC 111045 (Sub-3–4TA), filed October 1, 1980. Applicant: REDWING CARRIERS, INC., P.O. Box 426, Tampa, FL 33601. Representative: L. W. Fincher (same address as applicant). *Lime,* between Duval County, FL and points in GA. Supporting shipper: Martin Marietta Cement—Southern Division, 1800 Daniel Bldg., Birmingham, AL 35233.

MC 129712 (Sub-3–6TA), filed October 1, 1980. Applicant: GEORGE BENNETT MOTOR EXPRESS, INC., P.O. Box 569, McDonough, GA 30253. Representative: Frank D. Hall, Postell & Hall, P.C., Suite 713, 3384 Peachtree Rd. NE., Atlanta, GA 30326. Contract, irregular, *(1) New furniture; (2) furniture parts; and (3) materials, equipment and supplies used in the manufacture and distribution of furniture,* between the facilities of S. K. Products Corp., located at or near Atlanta, GA; Chicago, IL; Clifton, NJ; and, Houston, TX, on the one hand, and, on the other, all points in the U.S. (except AK and HI). Supporting shipper: S. K. Products Corp., 5355 Bucknell Dr., Atlanta, GA, 30378.

MC 2900 (Sub-3–20TA), filed October 1, 1980. Applicant: RYDER TRUCK LINES, INC., 2050 Kings Road, P.O. Box 2408–R, Jacksonville, FL 32203. Representative: S. E. Somers, Jr. (same address as applicant). *Electric motors, starters and rotors, and material used in the manufacture thereof,* between Gibson County, TN, on the one hand, and, on the other, points in the U.S. Supporting shipper: Copeland Electric Corporation, 957 W. Mullins, Humboldt, TN 38343.

MC 129291 (Sub-3–1TA), filed October 1, 1980. Applicant: McDANIEL MOTOR EXPRESS, INC., 1115 Winchester Road, Lexington, KY 40505. Representative: William L. Willis, 708 McClure Building, Frankfort, KY 40601. *Common carrier, regular routes,* transporting *general commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requring special equipment),* between Lexington, KY and Berea, KY serving all intermediate points (1) from Lexington, KY over U.S. Hwy 25 to Berea, KY and return over the same route, and (2) from Lexington, KY over I–75 to Berea, KY and return over the same route. Supporting shippers: Stewart Truck Line, Inc., P.O. Box 109, Dry Ridge, KY 41035; Bowling Green Express, Inc., Plum Springs Road, P.O. Box 66, Bowling Green, KY 42101; Crawford Gas and Appliances, Inc., Big Hill Avenue, Richmond, KY; Richmond Paint Center, #1 Southern Hills Plaza, Richmond, KY; and Madison Grocery Company, Inc., U.S. 25 South, P.O. Box 580, Richmond, KY.

Note.—Applicant intends to tack the authority sought with its existing authority in MC 129291 and subs thereunder, and to interline with other carriers at Louisville, Lexington and Maysville, KY, and Aberdeen, OH.

MC 109708 (Sub-3–10TA), filed September 4, 1980. Republication—Originally published in Federal Register of September 17, 1980, page 61813, volume 45, No. 182. Applicant: INDIAN RIVER TRANSPORT COMPANY, INC., P.O. Box AG, Dundee, FL 33838. Representative: John J. Harned (same address as above). *Liquid foodstuffs and liquid edible food by products, in bulk in tank vehicles* between Cowety County, GA on the one hand, and points in the U.S. in and east of ND, SD, NE, KS, and TX on the other. Supporting shipper: Nature's Best Food Products, Inc., 50 Amlajack Blvd., Shenandoah, GA 30265.

MC 119777 (Sub-3–18TA), filed October 9, 1980. Applicant: LIGON SPECIALIZED HAULER, INC., Highway 85 East, Madisonville, KY 42431. Representative: Carl U. Hurst, P.O. Drawer "L", Madisonville, KY 42431. *Metal articles,* from the facilities of Southwest Tube Manufacturing Co., Inc. at or near Sand Springs, OK to points in the U.S. Supporting shipper: Southwest Tube Manufacturing Co., Inc., P.O. Box 100, 1800 S. 83rd W. Avenue, Sand Springs, OK 74063.

MC 31675 (Sub-3–21TA), filed October 9, 1980. Applicant: NORTHERN FREIGHT LINES, INC., P.O. Box 34303, Charlotte, NC 28234. Representative: Garland V. Moore (same as above). *Steel, sheet or coils,* from the facilities of Baldwin Steel Co., at or near Jersey City, NJ to points in and east of LA, MS, TN, KY, IL, WI, and MI. Supporting shipper(s): Baldwin Steel Co., 500 State Hwy. No. 440, Jersey City, NJ 07305.

MC 128095 (Sub-3–6TA), filed October 9, 1980. Applicant: IBCO TRUCK LINE, INC., P.O. Box 1402, Tupelo, MS 38801. Representative: Robert L. McArty, P.O. Box 22628, Jackson, MS 39205. (1) *New*

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furniture and furniture parts from Neosho, MO to points in and east of WI, IL, MO, AR, and LA (except FL); and (2) *materials, equipment and supplies* used in the manufacture, distribution and sale of the commodities in (1) above (except commodities in bulk), in the reverse direction. Supporting shipper: La-Z-Boy Midwest, Howard Bush Drive, Neosho, MO 64850.

MC 31389 (Sub-3-7TA), filed October 9, 1980. Applicant: McLEAN TRUCKING COMPANY, 1920 West First Street, Winston-Salem, NC 27104. Representative: Daniel R. Simmons, P.O. Box 213, Winston-Salem, NC 27102. *Common* carrier: Regular: *General commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* serving the facilities of Candle-Lite, Inc., a subsidiary of Lancaster Colony Corp., located at or near Leesburg, OH, as an off-route point in conjunction with applicant's presently authorized regular route operations. Supporting shipper: Lancaster Colony Corporation, 37 West Broad Street, Columbus, OH 43215.

Note.—Applicant intends to tack with existing authority and to interline at its 204 terminals now in existence throughout its system. The listing of the interline points may be examined at the Regional Center, Atlanta, GA.

MC 145072 (Sub-3-10TA), filed October 7, 1980. Applicant: M. S. CARRIERS, INC., 1797 Florida Street, Memphis, TN 38109. Representative: Michael S. Starnes (same address as applicant). *(1) Such merchandise as is dealt in by wholesale, retail, and chain discount stores and wholesale food houses and, (2) materials, ingredients, equipment, and supplies used in the development, manufacture, distribution, and sale of items named above, (except commodities in bulk);* between points in AL, AR, CA, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, NJ, NC, OH, OK, PA, SC, TN, TX, VA, WVA, WI. Supporting shippers: There are 12 statements in support attached to this application which may be examined at the I.C.C. Regional Office in Atlanta, GA.

MC 151989 (Sub-3-1TA), filed October 7, 1980. Applicant: TODD TRANSPORTATION COMPANY, 421 Garrard Street, Covington, KY 41011. Representative: Stephen D. Strauss, 2613 Carew Tower, Cincinnati, OH 45202. Contract carrier; irregular; *General commodities, except Class A & B explosives, household goods, commodities in bulk* (1) between points in IN, KY and OH, on the one hand, and, on the other, the facilities of H. J. Hosea and Sons Company at Wilder, KY and (2) between the facilities of H. J. Hosea and Sons Company at Wilder, KY, on the one hand, and, on the other, New York, NY; Baltimore, MD; and Savannah, GA. Both (1) and (2) restricted to movements in intermodal containers having a prior or subsequent movement by water in foreign commerce. Supporting shipper; H. J. Hosea and Sons Company, P.O. Box 296, Newport, KY 41072.

MC 143059 (Sub-3-19TA), filed October 9, 1980. Applicant: MERCER TRANSPORTATION CO., P.O. Box 35610, Louisville, KY 40232. Representative: Janice K. Taylor (same address as applicant). *Lumber or wood products and forest products,* between Los Angeles County, CA, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: National Plywood Inc., P.O. Box 9340, Long Beach, CA 90810.

MC 19537 (Sub-3-1TA), filed October 3, 1980. Applicant: CLARK TRUCK LINE, INC., 628 Carnation Street, Tupelo, MS 38801. Representative: A. Doyle Cloud, Jr., 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. Common, regular; *General commodities, (with the usual exceptions),* (1) between Tupelo, MS and New Albany, MS, serving all intermediate points and their commercial zones. From Tupelo, MS over U.S. Hwy 78 to New Albany, MS and return over the same route, (2) between Pontotoc, MS and Sherman, MS and its commercial zones. From Pontotoc, MS over Hwy 9 to Sherman, MS. Applicant requests to tack this authority to authority held by him and to interline at Tupelo, MS, Pontotoc, MS and Memphis, TN. Supporting shipper: There are 11 statements of support attached to this application which may be examined at the I.C.C. Regional Office in Atlanta, GA.

MC 152142 (Sub-3-1TA), filed October 3, 1980. Applicant: DALLAS M. CRONRATH d/b/a, D & A TRANSPORT, P.O. Box 974, Ft. Pierce, FL 33450. Representative: Dallas M. Cronrath (same as above). *PVC (plastic) fitting for plumbing and/or irrigation use and/or PVC granules, except in tank or bulk,* from Ft. Pierce, FL to CA, CO, OK, TX, IL, IN, MI, GA, SC, PA, NY and from Kalamazoo, MI; Baton Rouge, LA; Tiptonville, TN; New Castle and Delaware City, DE to Ft. Pierce, FL. Supporting shipper: Colonial Engineering, Inc., 4000 Metzger Road, P.O. Box 699, Ft. Pierce, FL 33450.

MC 150700, (Sub-3-2TA), filed October 6, 1980. Applicant: OLIN WOOTEN TRANSPORT CO., INC., P.O. Box 731, Hazlehurst, GA 31539. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *Paper and Paper Products,* from the facilities of Gilman Paper Company at St. Marys, GA, to all points in the U.S. in and east of ND, SD, NE, KS, OK and TX. Supporting shipper: Gilman Paper Company, P.O. Box 520, St. Marys, GA 31558.

MC 119777 (Sub-3-19TA), filed October 9, 1980. Applicant: LIGON SPECIALIZED HAULER, INC., Highway 85—East, Madisonville, KY 42431. Representative: Carl U. Hurst, P.O. Drawer "L", Madisonville, KY 42431. *(1) Electric motors, transformers, form material, structural steel, and (2) Materials, equipment and supplies (except in bulk) used in the manufacture or distribution of (1) above,* between points in the United States (except AK and HI). Restricted to shipments originating at or destined to the facilities of A & H Electric, Inc. or its suppliers or customers. Supporting shipper: A & H Electric, Inc., 13759 E. Apache, Tulsa, OK 74116.

MC 149012 (Sub-3-1TA), filed October 7, 1980. Applicant: GROVER F. BOYD, d/b/a, GROVER F. BOYD TRUCKING COMPANY, P.O. Box 67, Emelle, AL 35459. Representative: David A. Reid, P.O. Box 149, Livingston, AL 35470. *Hazardous and non-hazardous wastes* from points in and East of MN, IA, KS and NM to Emelle, AL, excluding authority to transport said commodities having an immediately prior or subsequent movement by rail or water from points in LA, MS, TN and points in FL West of the Apalachicola River. Supporting shipper: Chemical Waste Management, Inc., P.O. Box 55, Emelle, AL 35459.

MC 152140 (Sub-3-1TA), filed October 3, 1980. Applicant: GRIMES TRUCKING COMPANY, 600 N. Ellis Road, P.O. Box 37587, Jacksonville, FL 32205. Representative: William E. Scheu, 1600 Atlantic Bank Building, P.O. Box 479, Jacksonville, FL 32201. *Foodstuffs, canned, prepared, preserved, dry or refrigerated; cooking or edible oils, matches, oleomargarine, shortening* (except commodities in bulk), all having an immediate prior or subsequent movement by water, rail or truck: between all points in the bounds of Duval, Nassau, Baker, Union, Bradford, Alachua, Marion, Lake, Orange, Seminole, Osceola, Brevard, Volusia, Flagler, Putnam, St. Johns, Clay, Palm Beach, Broward, Dade, Pinellas, Hillsborough, Polk and Columbia Counties, FL. Supporting shipper: Hunt-Wesson Foods, Inc., P.O. Box 61770, New Orleans, LA 70161.

MC 144069 (Sub-3-10TA), filed October 7, 1980. Applicant: FREIGHTWAYS, INC., P.O. Box 5204, Charlotte, NC 28225. Representative: W. T. Trowbridge (same address as applicant). *Building materials* between Horry County, SC; on the one hand, and on the other, points in and east of WI, IL, KY, TN, and MS. Supporting shippers: Grayco Steel Corporation, P.O. Box 1346, Myrtle Beach, SC 29577 and New South Forest Industries, P.O. Box 1505, Conway, SC 29526.

MC 146646 (Sub-3-33TA), filed October 7, 1980. Applicant: BRISTOW TRUCKING CO., INC., P.O. Box 6355 A, Birmingham, AL 35217. Representative: James W. Segrest (same address as applicant). *(1) Washing, cleaning, scouring compounds, dispensers, and (2) materials, equipment and supplies used in the manufacture, sales and distribution of commodities in (1) above.* Between the facilities, warehouses, and distribution centers of the Calgon Corporation and points in the U.S. (except AK and HI). Supporting shipper: Calgon Corporation, P.O. Box 14584, St. Louis, MO 63178.

MC 56679 (Sub-3-23TA), filed October 7, 1980. Applicant: BROWN TRANSPORT CORP., 352 University Ave., SW, Atlanta, GA 30310. Representative: David L. Capps, P.O. Box 6985, Atlanta, GA 30315. *Fertilizers (except in bulk),* between Norfolk, VA and points in its commercial zone and Paris and Lexington, KY. Supporting shipper: Schenkers International Forwarders, Inc., 300 East Main St., Suite 920, Norfolk, VA 23510.

MC 144503 (Sub-3-4TA), filed October 3, 1980. Applicant: ADAMS REFRIGERATED EXPRESS, INC., P.O. Box F, Forest Park, GA 30050. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Boulevard, Atlanta, GA 30349. (1) *Fiberboard corrugated KD boxes, fiberboard boxes, bottles carrying boxes other than corrugated KD boxes flat, plastic articles, steel drums, fiber drums, pulpboard, not corrugated, fiberboard cans, and containers* from the plantsite and facilities of Container Corp. of America at Stone Mountain, GA, Atlanta Southwest Industrial Park at or near Atlanta, and Lithonia, GA, Fernandina Beach, FL, Greensboro, NC, Nashville, Chattanooga, and Knoxville, TN and Caroll Stream, IL to points in the U.S., except AK and HI. (2) *Material, supplies and equipment used in the manufacture and distribution of commodities in one (1) above (except in bulk)* between points in the U.S., except AK and HI, to the plantsite and facilities of Container Corp. of America named in one (1) above. Supporting shipper: Container Corp. of America, P.O. Box 1225, Stone Mountain, GA 30086.

MC 148075 (Sub-3-3TA), filed October 3, 1980. Applicant: CECIL E. KING, JR. d/b/a CECIL KING TRUCKING, Route 2, Seagrove, NC 27341. Representative: Francis J. Ortman, 7107 Wisconsin Ave., Suite 605, Washington, DC 20014. Contract, irregular; *Flour, in cartons,* from Knoxville, TN to points in NC, SC, GA, FL, AL, MS, LA, TX, MO, KY, WV, IA, PA, VA, NV, KS, and CA. Supporting shipper: The White Lily Foods Company, 108 Depot Avenue, NE, Knoxville, TN 37901.

MC 118831 (Sub-3-10TA), filed October 6, 1980. Applicant: CENTRAL TRANSPORT, INCORPORATED, P.O. Box 7007, High Point, NC 27264. Representative: Ben H. Keller, III (same address as applicant). *Petroleum Products, in bulk, in tank vehicles,* from Lima, OH to Charlotte, NC. Supporting shipper: Standard Oil Company, 1510 Rockefeller Building, 614 Superior Avenue, Cleveland, OH 44113.

MC 115093 (Sub-3-3TA), filed October 9, 1980. Applicant: MERCURY MOTOR EXPRESS, INC., 2511 N. Grady Ave., Tampa, FL 33607. Representative: Joseph W. Watson (same as above). *General Commodities (except household goods as defined by the Commission and Classes A and B explosives);* between points in NC, on the one hand, and, on the other, points in CT, DC, DE, MA, MD, NC, NJ, NY, PA, RI, TN, VA and WV. Supporting shipper: There are approximately 64 statements of support which may be examined at the ICC Regional Office, Atlanta, GA.

Note.—Applicant intends to interline with other carriers at Charlotte and Raleigh, NC and Philadelphia and Pittsburgh, PA.

MC 135895 (Sub-3-16TA), filed October, 6, 1980. Applicant: B & R DRAYAGE, INC., P.O. Box 8534, Battlefield Station, Jackson, MS 39204. Representative: Douglas C. Wynn, Wynn, Bogen & Mitchell, P.O. Box 1295, Greenville, MS 38701. (1) *Paper and paper articles, and plastic and plastic articles and (2) equipment, materials and supplies used in the manufacture, sale and distribution of commodities described in (1) above (except commodities in bulk and those requiring special equipment)* between points in the U.S. in and East of ND, SD, NE, CO & NM. Restricted to transportation of traffic originating at or destined to the facilities or subsidiaries of Stone Container Corporation. Supporting shipper(s): Stone Container Corporation, 360 North Michigan Avenue, Chicago, IL 60601.

MC 144827 (Sub-3-16TA), filed October, 8, 1980. Applicant: DELTA MOTOR FREIGHT, INC., P.O. Box 18423, Memphis, TN 38118. Representative: R. Connor Wiggins, Jr., Suite 909, 100 N. Main Bldg., Memphis, TN 38103. *Disposable surgical products, material and packs* from facilities of Searle Medical Products USA, Inc., at or near Douglas, AZ, to Columbus, MS. Supporting shipper: Will Ross Division of Searle Medical Products USA, Inc., P.O. Box 47370, Dallas, TX, 75247.

MC 126736 (Sub-3-3TA), filed October, 2, 1980. Applicant: FLORIDA ROCK & TANK LINES, INC., 155 East 21st Street, Jacksonville, FL 32201. Representative: L.H. Blow (same as above). *Petroleum and petroleum products,* in bulk, in tank vehicles from points in Bay County, FL, to points in GA and AL. Supporting shipper: Bainbridge Supply Company, Inc., P.O. Box 1239, Bainbridge, GA 31717, and Southern Supply Company, Inc., 2609 Westgate Parkway, Dothan, AL 36302.

MC 109708 (Sub-3-11TA), filed October, 7, 1980. Applicant: INDIAN RIVER TRANSPORT CO., d.b.a. INDIAN RIVER TRANSPORT, INC., P.O. Box AG, Dundee, FL 33838. Representative: Greg A. Dickinson, Suite 610, 7171 Mercy Road, Omoha, NE 68106. *Apple juice,* from MD, NY, PA and WV to Flemington, NJ. Supporting shipper: Johanna Farms, Inc. P.O. Box 272, Flemington, NJ 08822.

MC 147127 (Sub-3-9TA), filed October, 7, 1980. Applicant: McLAURIN TRUCKING COMPANY, P.O. Box 26506, Charlotte, NC 28213. Representative: Donald J. Balsley, 2310 Grant Building, Pittsburg, PA 15219. *Paper products,* from points in Mecklenburg County, NC to points in SC. Supporting shipper: Scott Paper Company, Scott Plaza II, Philadelphia, PA 19113.

MC 147547 (Sub-3-3TA), filed October, 6, 1980. Applicant: R & D TRUCKING COMPANY, INC., Church Road, Lauderdale Industrial Park, Florence, AL 35630. Representative: Roland M. Lowell, 618 United American Bank Building, Nashville, TN 37219. *Paper and paper products,* from the facilities of Champion International Corporation at or near Courtland, AL to points in AZ, CA, CO, NM, OR and UT. Restricted against transportation of commodities in bulk. Supporting shipper: Champion International Corporation, Knightsbridge Drive, Hamilton, OH 45020.

MC 126305 (Sub-3-9TA), filed October 7, 1980. Applicant: BOYD BROTHERS TRANSPORTATION COMPANY, INC., RFD 1, Box 18, Clayton, AL 36016. Representative: George A. Olsen, P.O.

Box 357, Gladstone, NJ 07934. *Metal Cans, Metal Cans with Closures, and Closures,* between points in AL, GA, FL, TN, MS, LA, NC, SC, TX, and AR. Supporting shipper: Continental Can Company, 22 Executive Park West, N.E., Atlanta, GA 30329.

MC 138635 (Sub-3–11TA), filed October 7, 1980. Applicant: CAROLINA WESTERN EXPRESS, INC., P.O. Box 3995, Gastonia, NC 28052. Representative: W. C. Sutton (address same as applicant). (1) *Automobile parts and (2) materials, equipment and supplies used in the manufacture, sale and distribution of the commodities named in (1) above,* between points in the U.S. Supporting shipper: Nissan Motor Corporation in U.S.A., 745 Compton Blvd., Compton, CA 90220.

MC 31389 (Sub-3–6TA), filed October 8, 1980. Applicant: McLEAN TRUCKING COMPANY, 1920 West First Street, Winston-Salem, NC 27104. Representative: Daniel R. Simmons, P.O. Box 213, Winston-Salem, NC 27102. *Common carrier:* Regular: *General commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* serving the facilities of Halstead Industrial Products, at or near Colt, AR, as an off-route point in connection with applicant's regular route operations. Supporting shipper: Halstead Industrial Products, Division of Halstead Industries, P.O. Box 309, Wynne, AR 72396.

Note.—Applicant intends to tack with existing authority and to interline at its 204 terminals now in existence throughout its system. The listing of the interline points may be examined at the Regional Authority Center, Atlanta, GA.

MC 123812 (Sub-3–1TA), filed October 6, 1980. Applicant: SULLIVAN FREIGHT LINES, INC., C–4 Congress Parkway, Athens, TN 37303. Representative: Blaine Buchanan, 1024 James Building, Chattanooga, TN 37402. *Rough iron and steel castings, forgings, and iron and steel articles* from Waupaca and Marinette, WI, St. Joseph and Jackson, MI, Carrollton, KY, and Charles City, IA to the facilities of the Budd Company at or near Johnson City, TN. Supporting shipper: The Budd Company, 506 Milligan Highway, Johnson City, TN 37601.

MC 121699 (Sub-3–4TA), filed October 6, 1980. Applicant: VOLUNTEER EXPRESS, INC., 404 Arlington Ave., P.O. Box 100886, Nashville, TN 37210. Representative: Walter Harwood, P.O. Box 15214, Nashville, TN 37215. *General commodities, except classes A and B explosives, household goods, commodities in bulk, and articles requiring special equipment,* between points in the contiguous United States which originate at or are destined to the facilities of CBS, Inc., and/or its suppliers. Supporting shipper: CBS, Inc., 1515 Broadway, New York, NY 10036.

MC 121654 (Sub-3–13TA), filed October 6, 1980. Applicant: COASTAL TRANSPORT & TRADING CO., P.O. Box 7438, Savannah, GA 31408. Representative: Alan E. Serby, Esq., 3390 Peachtree Rd., NE., 5th Floor-Lenox Towers South, Atlanta, GA 30326. *Malt Beverages (except in bulk)* from facilities of Joseph Schlitz Brewing Company at or near Winston Salem, NC to points in VA, PA, DC, MD, NJ, DE, NY, RI, CT, ME, VT, MA, and NH. Supporting shipper: Joseph Schlitz Brewing Company, P.O. Box 614, Milwaukee, WI 53201.

MC 121654 (Sub-3–12TA), filed October 6, 1980. Applicant: COASTAL TRANSPORT & TRADING CO., P.O. Box 7438, Savanna, GA 31408. Representative: Alan E. Serby, Esq., 3390 Peachtree Rd., NE., 5th Floor-Lenox Towers South, Atlanta, GA 30326. *General Commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, and commodities in bulk, in tank vehicles)* between points in the states of AL, AR, CT, DE, FL, GA, MD, MA, MS, NJ, NY, NC, OH, PA, RI, SC, TN, TX, VT, VA, WV and DC restricted to transportation of shipments originating at or destined to facilities of Owens-Corning Fiberglas Corporation. Supporting shipper: Owens-Corning Fiberglas Corp., Fiberglas Tower, Toledo, OH 43659.

MC 145857 (Sub-3–1TA), filed October 6, 1980. Applicant: K & R TRUCKING CO., P.O. Box 63, Dacus Road, Preston, GA 31824. Representative: John C. Bach, 1400 Candler Building, Altanta, GA 30303. *Lumber, pallets, wooden boxes, and railroad ties,* (1) from points in Stewart County, GA to points in AL, FL, KY, NC, SC and TN; and (2) from points in Webster and Sumter Counties, GA to points in FL. Supporting shippers: Greentree Manufacturing Company, P.O. Box 205, Lumpkin, GA 31815; Kustom Kut, Inc., P.O. Box 1502, Americus, GA 31709; St. Regis Allied Operations, P.O. Box 36A, Lumpkin, GA 31815; Sullivan Lumber, Inc., P.O. Box 31, Preston, GA 31824.

MC 107478 (Sub-3TA), filed October 8, 1980. Applicant: OLD DOMINION FREIGHT LINE, INC., Post Office Box 2006, High Point, NC 27261. Representative: C. T. Harris, 506 Mayo Street, Wilson, NC 27893. *Plastic articles and materials, equipment, and supplies used in the manufacture, distribution, and sale of plastic articles* (1) between points in Richmond County, GA and Aikens and Spartanburg Counties, SC, and (2) between the points in (1) above, on the one hand, and, on the other, points in the U.S., except AK and HI. Supporting shipper: Amoco Foam Products, 2111 Powers Ferry Road, Atlanta, GA 30339.

MC 152043 (Sub-3–1TA), filed October 3, 1980. Applicant: CLYDE SAULS, d.b.a., CLYDE SAULS TRUCKING, 2702 Wyndham Lane, Orlando, FL 32808. Representative: James E. Wharton, Suite 811, Metcalf Building, 100 South Orange Avenue, Orlando, FL 32801. *Floor tile, vinly and asbestos, flood strips, and adhesives used in the installation of same* from Harris County, TX to points in FL. Supporting shipper: Florida Flooring Distributors, Inc., 7570 Currency Drive, Orlando, FL 32809.

MC 120981 (Sub-3–2TA), filed October 3, 1980. Applicant: BESTWAY EXPRESS, INC., 905 Visco Drive, Nashville, TN 37210. Representative: George M. Catlett, Suite 708, McClure Building, Frankfort, KY 40601. *General commodities (except commodities in bulk, classes A and B explosives, household goods as defined by the Commission, commodities of unusual value, and those requiring special equipment),* between points in Boyle County, ky, on the one hand, and, on the other, points in Macon County, TN. Supporting shipper: American Greetings Corp., 10500 American Rd., Cleveland, OH 44144.

MC 150235 (Sub-3–7TA), filed October 3, 1980. Applicant: POWELL TRUCKING COMPANY, INC., Route 3, Box 13, Sumrall, MS 39482. Representative: John A. Crawford, 17th Floor Deposit Guaranty Plaza, P.O. Box 22567, Jackson, MS 39205. *Iron, steel and iron and steel articles* between points in Cook County, IL and Liberty County, TX, on the one hand, and, on the other, points in LA, MS, AL and TX. Supporting shippers: Klemp Corporation, P.O. Box 818, Dayton, TX 77535; A. Finkl & Son Co., 2011 N. Southport Avenue, Chicago, IL 60614.

MC 150420 (Sub-3–1TA), filed October 3, 1980. Applicant: WES-FLO CO., INC., P.O. Box 17401, Tampa, FL 33682. Representative: James E. Wharton, Suite 811, Metcalf Building, 100 South Orange Avenue, Orlando, FL 32801. *General commodities (except of articles of unusual value, household goods as defined by the Commission, commodities in bulk, Classes A and B explosives, and articles which, by reason of size or weight, require specialized handling and equipment)* between Jacksonville, FL, on the one hand, and, on the other, all points in FL restricted to traffic having a prior or subsequent movement by rail in interstate commerce. Supporting shipper: Southern Railway, 920 15th Street NW., Washington, DC 20005.

MC 128095 (Sub-3–5TA), filed October 8, 1980. Applicant: IBCO TRUCK LINE, INC., P.O. Box 1402, Tupelo, MS 38801. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205. *Plastic cartons and containers* between Temple, TX and Kissimmee, FL on the one hand, and, on the other, AL, AR, GA, LA, MS, NC, SC, and TN. Supporting shipper: Belleview, Inc., P.O. Box 615, Hollis, NH 03049.

MC 152131 (Sub-3–1TA), filed October 8, 1980. Applicant: BRAVE TRANSPORT, INC., 3181 Bankhead Highway, Atlanta, GA 30326. Representative: John C. Bach, 1400 Candler Building, Atlanta, GA 30303. (1) *Steel coil and sheet;* (2) *aluminum coil and sheet;* and (3) *steel and aluminum articles,* between the facilities of All Metals Service & Warehousing, Inc. at or near Marietta, GA, on the one hand, and points in the U.S. in and east of ND, SD, NE, KS, OK and TX, on the other. Supporting shipper: All Metals Service & Warehousing, Inc., 880 Industrial Park Blvd., Marietta, GA 30062.

MC 138157 (Sub-3–30TA), filed October 7, 1980. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 South Market Street, Chattanooga, TN 37410. Representative: Patrick E. Quinn, P.O. Box 9596, Chattanooga, TN 37412. *Stovepipe, chimneys, ducts, flashings, metal articles, stoves, and materials, equipment, and supplies used in the manufacture and distribution of these commodities* between Redwood City, CA and Vicksburg, MS on the one hand, and, on the other, points in the United States (except AK and HI). Restricted to traffic originating at or destined to the facilities of Dura-Vent Corporation and further restricted against the transportation of commodities in bulk. Supporting shipper: Dura-Vent Corporation, 2525 El Camino Real, Redwood City, CA 94064.

MC 138157 (Sub-3–3TA), filed October 7, 1980. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 South Market Street, Chattanooga, TN 37410. Representative: Patrick E. Quinn, P.O. Box 9596, Chattanooga, TN 37412. *Floor covering materials and materials, equipment, and supplies used in the installation of floor covering materials* between Conyers, GA on the one hand, and, on the other, points in and east of MT, WY, CO and NM. Restricted to traffic originating at or destined to the facilities of Roberts Consolidated Industries, Inc. Supporting shipper; Roberts Consolidated Industries, Inc., 600 North Baldwin Park Boulevard, City of Industry, CA 91749.

MC 146451 (Sub-3–23TA), filed October 3, 1980. Applicant: WHATLEY-WHITE, INC., 230 Ross Clark Circle, NE., Dothan, AL 36302. Representative: William K. Martin, P.O. Box 2069, Montgomery, AL 36197. *Tires, tubes, tread rubber, and accessories,* from points in and east of ND, SD, NE, KS, OK and TX to points in AL, FL and GA. There are four supporting statements which may be examined at the ICC Regional Office, Atlanta, GA.

MC 118831 (Sub-3–8TA), filed October 8, 1980. Applicant: CENTRAL TRANSPORT, INCORPORATED, P.O. Box 7007, High, NC 27264. Representative: Ben H. Keller III (same address as applicant). *Salt cake, in bulk, in hopper type vehicles,* from Baltimore, MD to West Point, VA. Supporting shipper: Ashland Chemical Company, P.O. Box 2218, Columbus, OH 43218.

MC 143059 (Sub-3–18TA), filed October 6, 1980. Applicant: MERCER TRANSPORTATION CO., P.O. Box 35610, Louisville, KY 40232. Representative: Janice K. Taylor, Manager of Commerce (same address as applicant). *General commodities (except household goods as defined by the Commission and Classes A and B explosives)* between points in Sullivan County, PA, on the one hand, and, on the other, points in the U.S. Supporting shipper: Nuclear Fallout Bomb Shelter & Supply Const. Co.

MC 125368 (Sub-3–12TA), filed October 8, 1980. Applicant: CONTINENTAL COAST TRUCKING CO., INC., P.O. Box 26, Holly Ridge, NC 28445. Representative: Roland M. Lowell, 618 United American Bank Bldg., Nashville, TN 37219. To transport *Plastic Products* between the facilities of Package Development Corp., Shawnee Mission, KS, on the one hand, and, on the other, points in the U.S., except AK and HI. Supporting shipper: Package Development Corp., 5420 W. 61st. Place, Shawnee Mission, KS 66205.

MC 138308 (Sub-3–16TA), filed October 8, 1980. Applicant: KLM, INC., P.O. Box 6098, Jackson, MS 39208. Representative: Robert L. McArty, P.O. Box 22628, Jackson, MS 39205. *Pneumatic tires and tubes* from Findlay and Perrysburg, OH to points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA and WY. Supporting shipper: Cooper Tire & Rubber Company, P.O. Box 550, Findlay, OH 45850.

MC 145072 (Sub-3–8TA), filed October 6, 1980. Applicant: M. S. CARRIERS, INC., 1797 Florida Street, Memphis, TN 38109. Representative: Michael S. Starnes (same address as applicant). *Electronic equipment, and materials, equipment and supplies used in the manufacture, sale, and distribution thereof;* between the facilities of Consumer Electronics (i.e. Electronic Components Group and Entertainment Products Group), GTE Products Corporation, located at or near Ottawa, OH, Seneca Falls, NY, Smithfield, NC, Batavia, NY, Williamsport, PA, Emporium, PA, Altoona, PA, Muncie, PA, Laredo, TX, El Paso, TX, on the one hand, and, on the other, points in and east of TX, OK, KS, IA, MO, and MN. Supporting shipper: Consumer Electronics (i.e. Electronic Components Group and Entertainment Products Group), GTE Products Corp., Johnston Street, Seneca Falls, NY 13148.

MC 142592 (Sub-3–1TA), filed October 6, 1980. Applicant: H. L. STANSELL, INC., 1221 U.S. Alternate Highway 19, Palm Harbor, FL 33563. Representative: David C. Venable, Suite 805, 666 Eleventh Street, NW., Washington, DC 20001. *Foodstuffs, paper and paper products, metal articles, plastic articles and materials, supplies and equipment* dealt in and used by bakers and bakeries, from points in the U.S. (except AK and HI) to points in FL. Supporting shipper: Rainbow Products Company, 12995 Automobile Blvd., Clearwater, FL 33520.

MC 146646 (Sub-3–32TA), filed October 6, 1980. Applicant: BRISTOW TRUCKING CO., INC., P.O. Box 6355 A, Birmingham, AL 35217. Representative: James W. Segrest (same address as applicant). *(1) Plastic film (2) materials, equipment and supplies used in the manufacture sales, and distribution of commodities named in (1) above.* Between the facilities of St. Regis Paper Company, Birmingham, AL and points in and East of WI, IL, MO, and TX also between Birmingham, AL and CA and WA. Supporting shipper: St. Regis Paper Company, 2700 Seventh Ave., Birmingham, AL 35203.

MC 126305 (Sub-3–10TA), filed October 8, 1980. Applicant: BOYD BROTHERS TRANSPORTATION COMPANY, INC., RFD 1, Box 18, Clayton, AL 36016. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Paper, paper products, parts and supplies used in connection therewith,* between facilities of Alabama Kraft Company, Division of Georgia Kraft located at or near

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Cottonton, AL, and points in the U.S. in and east of ND, SD, NE, KS, OK, and TX. Supporting shipper: Alabama Kraft Company, P.O. Box 940, Phenix City, AL, 36867.

MC 143434 (Sub-3–1TA), filed October 8, 1980. Applicant: CHARLES McALPIN d.b.a. CHARLES McALPIN TRUCKING, 1420 Danville Rd., SW., Decatur, AL 35601. Representative: D. H. Markstein, Jr., 512 Massey Building, Birmingham, AL 35203. *Paper and paper products* between Lawrence County, AL on the one hand, and, on the other, points in the 48 contiguous United States. Supporting shipper: Champion International Corporation, Knightsbridge Drive, Hamilton, OH 45020.

The following protests were filed in Region 4. Send protests to: Consumer Assistance Center, Interstate Commerce Commission, 219 South Dearborn Street, Room 1304, Chicago, IL 60604.

MC 152082 (Sub-4–1TA), filed October 6, 1980. Applicant: R. C. SERVICE, INC., P.O. Box 823, Bensenville, IL 60106. Representative: Elaine M. Conway, 10 S. LaSalle St., Chicago, IL 60603. *Contract, irregular: General commodities,* between points in the United States, moving under continuing contracts with Always Air Freight, Inc. An underlying ETA seeks 120 days authority. Supporting shipper: Al-ways Air Freight, Inc., 802 E. Irving Park Rd., Bensenville, IL, 60106.

MC 146753 (Sub-4–5TA), filed October 7, 1980. Applicant: SAM YOUNG, INC., P.O. Box 337, Wolcott, IN 47995. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street, NW., Washington, DC 20001. *Such commodities as are used or dealt in by manufacturers or distributors of sound recordings* from points in FL to Santa Maria, CA; Carrollton, GA; Danbury and West Haven, CT; Terre Haute, IN and Pitman, NJ. Restricted to traffic originating at or terminating at the facilities of CBS Record, Division, U.S. CBS, Inc. Supporting shipper: CBS Records Division, U.S., CBS, Inc., 51 West 52nd Street, New York, NY 10019.

MC 148751 (Sub-4–5TA), filed October 7, 1980. Applicant: LINCOLN FREIGHT LINES, INC., P.O. Box 427, Lapel, IN 46051. Representative: Norman R. Garvin, 1301 Merchants Plaza, East Tower, Indianapolis, IN 46204. *Containers,* from Franklin, IN and Columbus, OH, to points in IN, IL, IA, KY, MI, MN, MO, NY, NC, OH, OK, PA, SC, TN, VA, and WI; and *materials, equipment and supplies* used in the manufacture, sale and distribution of containers, in the reverse direction. Supporting shipper: Hoover Universal, Inc., R. R. #2, Tri-Port Road, Georgetown, KY 40324.

MC 70557 (Sub-4–7TA), filed October 7, 1980. Applicant: NIELSEN BROS. CARTAGE CO., INC., 4819 West Homer St., Chicago, IL 60639. Representative: Carl L. Steiner, 39 South LaSalle St., Chicago, IL 60603. *Clay and Clay Products (Except in Bulk)* From Olmsted, IL, and Paris, TN, to points in FL. Supporting shipper: Lowe's, Inc., 348 South Columbia St., South Bend, IN 46601.

MC 145394 (Sub-4–10TA), filed October 8, 1980. Applicant: A & B FREIGHT LINE, INC., 4805 Sandy Hollow Road, Rockford, IL 61109. Representative: James A. Spiegel, Esq., Olde Towne Office Park, 6425 Odana Road, Madison, WI 53719. *Contract; irregular; Automobile parts and supplies* used in the manufacture of automobiles, to Belvidere, IL, from points in IN. Restricted to transportation performed under a continuing contract(s) with Chrysler Corporation. An underlying ETA seeks 120 days authority. Supporting shipper: Chrysler Corporation, Belvidere Assembly Plant, Belvidere, IL 61008.

MC 120364 (Sub-4–11TA), filed October 8, 1980. Applicant: A & B FREIGHT LINE, INC., 4805 Sandy Hollow Road, Rockford, IL 61109. Representative: James A. Spiegel, Esq., Olde Towne Office Park, 6425 Odana Road, Madison, WI 53719. Common, Regular; *General commodities* (except those of unusual value, dangerous articles, commodities requiring special equipment, frozen foods, motor vehicles, and farm equipment and supplies) between Dodge, Green, Jefferson, Rock and Walworth Counties, WI, on the one hand, and on the other hand, the Commercial Zone of Chicago, IL, (as defined by the Commission) and points within IL bounded by a line beginning at the IL-WI state line and extending southerly on IL Hwy. 78, then to junction with IL Hwy. 88, then on IL Hwy. 88 to junction with IL Hwy. 92, then easterly on IL Hwy. 92 to junction with U.S. Hwy. 34, then easterly on U.S. Hwy. 34 to junction with IL Hwy. 59, then northerly on IL Hwy. 59 to junction with IL Hwy. 83 to the IL-WI state line, then west on the state line to the place of beginning, including the IL points outside said geographic area of Des Plains, Mt. Prospect, Palatine, Arlington Heights, Elizabeth, Savanna, Mundelein, Round Lake, Woodbine, Apple River, Waukegan, Hanover, North Chicago, Galena, and Scales Mounds, IL. An underlying ETA seeks 120 days authority. There are 11 supporting shippers.

MC 147825 (Sub-4–2TA), filed October 8, 1980. Applicant: VERNE'S AUTO SALES, INC., 2804 Neva Road, Antigo, WI 54409. Representative: Michael J. Wyngaard, 150 East Gilman Street, Madison, WI 53703. *Pallets, pallet parts, lumber, lumber products, skids, ties, timbers and posts,* between points in WI and the Upper Peninsula of MI, on the one hand, and, on the other, points in AR, CO, IA, IL, IN, KS, KY, MI, MN, MO, NC, NM, OH, OK, SC, TN, TX and WI, for 270 days. Underlying ETA seeks 120 days authority. Supporting shipper: Great Lakes Hardwood Lumber Co., Inc., 2234 Neva Road, Antigo, WI 54409.

MC 124054 (Sub-4–1TA), filed October 8, 1980. Applicant: MERLIN HERRMANN, 510 E. Dodge, Luverne, MN 56156. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *Contract,* irregular: *Livestock keeping and feeding systems and materials, supplies and equipment used in the manufacture of such commodities (except commodities in bulk),* between points in the U.S., under continuing contracts with A.R. Wood Manufacturing Company of Luverne, MN. An underlying ETA seeks 120 days authority. Supporting shipper: A.R. Wood Manufacturing Company, P.O. Box 218, Luverne, MN 56156.

MC 118696 (Sub-4–28TA), filed October 8, 1980. Applicant: FERREE FURNITURE EXPRESS, INC., 252 Wildwood Road, Hammond, IN 46324. Representative: John F. Wickes, Jr., 1301 Merchants Plaza, Indianapolis, IN 46204. *New furniture and materials, equipment, and supplies used in the manufacture, distribution and sale thereof,* between Dubois County, IN, on the one hand, and, on the other, points in and east of ND, SD, NE, KS, OK, and TX. An underlying ETA seeks 120 days authority. Supporting shippers: Office Furniture, Division of Kimball International, Inc., 1549 Royal Streeet, P.O. Box 460, Jasper, Indiana 47546; and Jasper Stylemasters, Division of Kimball International, Inc., P.O. Box 520, Jasper, IN 47546.

MC 124078 (Sub-4–37TA), filed October 7, 1980. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. *Fluorspar,* from Hardin County, IL to Atlanta, GA. An underlying ETA seeks 120 days authority. Supporting shipper: Armstrong Glass Co., 1320 Ellsworth Industrial Dr., Atlanta, GA 30318.

MC 78266 (Sub-4–11TA), filed October 7, 1980. Applicant: ADMIRAL-MERCHANTS MOTOR FREIGHT, INC., 2625 Territorial Road, St. Paul, MN 55114. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *Sodium chloride (common salt)* from the plantsite of Cutler-Magner Company at Duluth, MN to points in IL, IA, MI, ND, SD, and WI. An underlying ETA seeks 120 days authority. Supporting shipper: Cutler-Magner Company, 12th Avenue West & Waterfront, Duluth, MN 55806.

MC 116328 (Sub-4–1). Applicant: CROSS & MURRAY, INC., 710 Third Avenue North, Minneapolis, MN 55403. Representative: Timothy H. Butler and Lindquist & Vennum, 4200 IDS Center, 80 South 8th Street, Minneapolis, MN 55402. *Edible corn syrup, liquid sugar and blends thereof,* in bulk, in tank vehicles from Minneapolis, MN to all points and places in the States of IA, SD, and NE. Supporting shipper: Archer Daniels Midland Company, Foxhill Office Building, Suite 218, 4550 West 109th Street, Overland Park, KS 66211.

MC 78266 (Sub-4–10TA), filed October 7, 1980. Applicant: ADMIRAL-MERCHANTS MOTOR FREIGHT, INC., 2625 Territorial Road, St. Paul, MN 55114. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *Furnaces, house heating, hot air* from the facilities of Mammoth Division-Lear Seigler, Inc. at Plymouth, MN to all points in the U.S. An underlying ETA seeks 120 days authority. Supporting shipper: Mammoth Division-Lear Seigler, Inc., 13120–B County Road 6, Minneapolis, MN 55441.

MC 139276 (Sub-4–4TA), filed October 7, 1980. Applicant: ALOHA FREIGHTWAYS, INC., 1069 Bryn Mawr Avenue, Bensenville, IL 60106. Representative: Grace Kasallis (same address as applicant). *Contract, irregular; iron and steel articles* between Chicago, IL to all points in the U.S. (except AK and HI). An underlying ETA seeks 120 days authority. Supporting shipper: Harrington & King Perforating Co., Inc., 5655 W. Fillmore Street, Chicago, IL 60644.

MC 145894 (Sub-4–1TA), filed October 8, 1980. Applicant: EQUIPMENT SUPPLIES, INC., 7736 W. 62nd Place, Summit, IL 60501. Representative: Stephen H. Loeb, Suite 2027, 33 North LaSalle Street, Chicago, IL 60602. *General commodities* (except Classes A and B explosives, household goods and commodities in bulk), between Chicago, IL, and points in its commercial zone, on the one hand, and, on the other, points in KY, MO, MN, OH, New York, NY, Newark, NJ, and Baltimore, MD, restricted to the transportation of shipments having a prior or subsequent movement by rail or water. Supporting shipper: There are 6 statements of support.

MC 126555 (Sub-4–22), filed October, 8, 1980. Applicant: UNIVERSAL TRANSPORT, INC., P.O. Box 3000, Rapid City, SD 57709. Representative: Stockton and Lewis, The 1650 Grant Street Building, Denver, CO 80203. *Steel and steel articles:* Between SD, MN, ND, MT, WY, IA, NE, CO, UT, IL, IN, NV, KS, WI, OH, PA, MI, MO, OK, TX, LA, AR, NM, AZ, ID, WA, OR. Supporting shipper: Egger's Steel, 909 S. Seventh Avenue, Sioux Falls, S.D. 57101.

MC 105407 (Sub-4–1TA), filed October, 2, 1980. Applicant: HANNIBAL QUINCY TRUCK LINES, INC., 3820 Wisman Lane, Quincy, Ill 62301. Representative: L. F. Blackstun (same address as applicant). *General commodities (except Class A and B explosives, commodities in bulk, used household goods, articles of unusual value and commodities which because of size and weight require the use of special equipment)* to serve the plant site of the Associated Electric Cooperative, Inc., at Thomas Hill, MO, as an off route point in connection with applicant's authorized regular route operation to and from Moberly, MO. Supporting shippers: Associated Electric Cooperative, Inc., P.O. Box 158, Moberly MO. 65270; B. W. Construction Co., P.O. Box 130, Huntsville, MO. 65259; Roberts & Schaefer, P.O. Box 80, Huntsville, MO. 65259.

MC 145204 (Sub-4–1), filed October, 7, 1980. Applicant: TVF SECURITY CO., INC., P.O. Box 815, Warsaw, IN 46580. Representative: Woodrow A. Everly (same as applicant). *Printed Matter, Paper and Plastic Articles, Food Stuffs not frozen, materials, equipment, and supplies therefore;* from and to points in and east of ND, SD, NE, KS, OK, and TX. An underlying ETA seeks 120 days authority. Supporting shippers: Maryland Cup Corporation-Sweetheart Cup Corporation, 7575 S. Kostner Ave., Chicago, IL 60652; Little Crow Milling Co., Inc., d.b.a. Little Crow Foods, Detroit and Market Streets, Warsaw, IN 46580; Bertsch Vending Co., Inc., 220 N. Parker Street, Warsaw, IN 46580.

MC 119704 (Sub-4–7), filed October, 7, 1980. Applicant: R.A. HARRIS & SONS, INC., 3501—22nd Street, Menominee, MI 49858. Representative: Dennis R. Harris, 3423—22nd Street, Menominee, MI 49858. *Polyethylene Liners* (except commodities in bulk), from Oconto, WI to points in ND, SD, NE, KS, MN, IA, MO, MI, IL, IN, OH, KY & PA under continuing contract(s) with WI Film & Bag, Inc., of Oconto, WI. Supporting shipper: Wisconsin Film & Bag, Inc., Oconto, WI.

MC 119654 (Sub-4–5TA), filed October, 7, 1980. Applicant: HI-WAY DISPATCH, INC., P.O. Box 509, Marion, IN 46952. Representative: Norman R. Garvin, 1301 Merchants Plaza, East Tower, Indianapolis, IN 46204. (1) *Chemicals,* (except in bulk), and (2) *Materials, equipment and supplies* used in the manufacture, sale and distribution thereof (except commodities in bulk), between points in IL, IN, KY, MI, MO, OH, WI, and those points in PA on and west of a line beginning at the NY–PA State line, and extending along U.S. Hwy. 219 to junction U.S. Hwy. 119, and then along U.S. Hwy 119 to the PA–MD State line. An underlying ETA seeks 120 days authority. Supporting shipper: Mays Chemical Company, Inc., 7202 North Shadeland Avenue, Suite 111, Indianapolis, IN 46250.

MC 107295 (Sub-21TA), filed October 7, 1980. Applicant: PRE-FAB TRANSIT CO., P.O. Box 146, Farmer City, IL 61842. Representative: Duane Zehr (same address as applicant). *Aerospace ground equipment and accessories thereto, and airport ground support equipment* between all points in the United States (except Alaska and Hawaii). Supporting shipper: Cavco of Florida, Inc., 2001 Ninth Avenue, Vero Beach, FL 32960.

MC 108449 (Sub-4–4TA), filed October 7, 1980. Applicant: INDIANHEAD TRUCK LINE, INC., 1947 West County Road C, St. Paul, MN 55113. Representative: W. A. Myllenbeck, P.O. Box 43355, St. Paul, MN 55164. *General Commodities,* except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment (except those requiring temperature control) and those injurious or contaminating to other lading, serving points in St. Joseph County, MI and points in IN in the area east and north of a line beginning at the IN-MI border and extending along U.S. Highway 31 south to its junction with IN State Highway 26, thence easterly along IN State Highway 26 to the IN-OH State Line; thence northerly along the IN-OH State Line to the junction of the IN-MI State Line; thence westerly along the IN-MI State Line to the point of beginning, including points on the indicated portions of the highways specified, as off-route points in connection with carriers' present authorized regular routes. There are 32 supporting shippers.

MC 120737 (Sub-4–8TA), filed October 6, 1980. Applicant: STAR DELIVERY & TRANSFER, INC., P.O. Box 39, Canton, IL 61520. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602. *Cast iron products, and materials, equipment and supplies used in the manufacture and distribution of cast*

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iron products (except commodities in bulk), between Florence, NJ, on the one hand, and, on the other, points in AL, GA, IL, IN, IA, KS, KY, MI, MN, MO, NC, NE, OH, SC, TN, VA, WI and WV, restricted to the transportation of shipments originating at or destined to the facilities of Griffin Pipe Products Co. An underlying ETA seeks 120 days authority. Supporting shipper: Griffin Pipe Products Co., 2000 Spring Rd., Oak Brook, IL 60521.

MC 43421 (Sub-4–1TA), filed October 6, 1980. Applicant: DOHRN TRANSFER COMPANY, 4016 Ninth St., P.O. Box 1237, Rock Island, IL 61201. Representative: Leonard R. Kofkin, 39 South LaSalle St., Chicago, IL 60603. *Common, Regular, General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), serving Decatur, IL as an off-route point in connection with applicant's present regular route authority. Applicant also seeks an underlying ETA for 120 days. Supporting shipper: Caterpillar Tractor Co., 100 N.E. Adams Street, Peroia, IL 61629.

MC 441 (Sub-4–1TA), filed October 7, 1980. Applicant: HINTON MOTOR SERVICE, INC., 1410 Gardner Expressway, Quincy, IL 62301. Representative: Michael W. O'Hara, 300 Reisch Building, Springfield, IL 62701. *Contract* irregular: *Beer* from St. Louis, MO to Quincy and Macomb, IL. Restricted to traffic moving under continuing contract with The Rinella Company. An underlying E/T/A seeks 120 days authority. Supporting shipper: The Rinella Company, 2001 Seminary Road, Quincy, IL 62301.

MC 148153 (Sub-4–1TA), filed October 6, 1980. Applicant: WALBON AND COMPANY, INC., 3242 Old Highway 8, Minneapolis, MN 55418. Representative: Stanley C. Olsen, Jr., 7400 Metro Boulevard, Suite 411, Edina, MN 55435. *Contract;* irregular: *Dairy products, fruit drinks, and materials, equipment and supplies used in the manufacture and distribution thereof,* between Hennepin County, MN, on the one hand, and, on the other, points in IA, ND, SD, and WI, under continuing contract(s) with Superior Dairies/Superior Dairy Fresh Milk Co. Supporting shipper: Superior Dairies/Superior Dairy Fresh Milk Co., 2112 Northeast Broadway, Minneapolis, MN 55413.

MC 152093 (Sub-4–1TA), filed October 6, 1980. Applicant: DALLAS MOSER, d.b.a. DALLAS MOSER TRANSPORTERS, 1528 West Lancaster Street, Bluffton, IN 46714. Representative: James bouril, 120 West Madison—Suite 1308, Chicago, IL 60602. *Motor homes and automobiles in driveaway service and travel trailers in truckaway service,* between points in Adams County, IN; Elkhart County, IN; Cass County, MI; Williams County, OH and Northumberland County, PA, on the one hand, and, on the other, points in the U.S., including AK, but excluding HI. An underlying ETA seeks 120 days authority. There are 17 supporting shippers.

MC 52657 (Sub-4–3TA), filed October 6, 1980. Applicant: ARCO AUTO CARRIERS, INC., 16 West 151 Shore Court, Burr Ridge, IL 60521. Representative: Anthony E. Young, 29 S. LaSalle St., Chicago, IL 60603. *New automobiles, in secondary movements, in truckaway service* between points in AR, CT, DE, KS, KY, LA, ME, MD, MA, MN, MS, MO, MT, NE, NH, NJ, NY, NC, ND, OH, PA, RI, SD, TN, UT, VT, VA, WV, WI. WY and DC. An underlying ETA seeks 120 days authority. Supporting shipper: American Motors Corporation, 14250 Plymouth Rd., Detroit, MI 48232.

MC 139276 (Sub-4–3TA), filed October 6, 1980. Applicant: ALOHA FREIGHTWAYS, INC., 1069 Bryn Mawr Avenue, Bensenville, IL 60106. Representative: Grace Kasallis (same address as applicant). *Contract,* Irregular; *Steel sheets or coils coated or uncoated* between Walbridge, OH to all points in the U.S. except AK and HI. Supporting shipper: Pre Finish Metals, Inc., 30610 E. Broadway, Walbridge, OH 43465.

MC 143776 (Sub-4–8TA), filed October 3, 1980. Applicant: C.D.B., INCORPORATED, 155 Spaulding, S.E., Grand Rapids, MI 49506. Representative: Karl L. Gotting, 1200 Bank of Lansing Building, Lansing, MI 48933. *Chemicals and plastic products other than expanded (except in bulk, tank vehicles) and miscellaneous equipment and supplies* from the facilities of Dow Chemical U.S.A. of Midland, MI to Kansas City, MO. Supporting shipper: Dow Chemical U.S.A., 690 Building, Midland, MI 48640.

MC 146976 (Sub-4–5TA), filed October 6, 1980. Applicant: FOREWAY TRANSPORTATION, INC., 8633 Lake Michigan Drive, Allendale, MI 49401. Representative: D. Richard Black, Jr., 7610 Cottonwood Drive, Jenison, MI 49428. *Printing paper, other than newsprint, pulpboard and materials used in the manufacture and distribution thereof,* from Muskegon, MI, facilities of S. D. Warren Paper Co., a division of Scott Paper Co., to and from WV, VA, DE, CT, RI, MA, VT, NH, ME. Supporting shipper: S. D. Warren Paper Co., 2400 Lakeshore Drive, Muskegon, MI 49443.

MC 145454 (Sub-4–1TA), filed October 6, 1980. Applicant: SOUTHERN REFRIGERATED TRANSPORTATION COMPANY, INC., 7336 West 15th Ave., Gary, IN 46406. Representative: Anthony E. Young, 29 S. LaSalle St., Suite 350, Chicago, IL 60603. *Frozen and unfrozen juice and concentrate products* from points in FL to points in IL, MI, IN, IA, MN, and WI. An underlying ETA seeks 120 days authority. Supporting shipper: Certified Grocers of Illinois, Inc. 4800 South Central Ave., Chicago, IL 60638.

MC 144889 (Sub-4–1TA), filed October 6, 1980. Applicant: RONWAL TRANSPORTATION, INC., 2600 Calumet Avenue, Hammond, IN 46320. Representative: Walter C. Rymarowicz (same address as applicant). *Iron and steel articles* between points in Putnam County, IL on the one hand, and on the other, points in MI. Supporting shipper: Jones & Laughlin Steel Corporation, P.O. Box 325, Hennepin, IL 61327.

MC 150513 (Sub-4–1TA), filed October 6, 1980. Applicant: ASHLEY TRAVEL, INC., 221 West State Street, Ashley, IN 46705. Representative: Robert D. Colestock, 323 West Berry Street, Fort Wayne, IN 46802. *Passengers and their baggage* from: Points in the State of IN to: The continental U.S., including AK, but excluding HI, and return. Supporting shipper(s): Bell Tours, Inc., 6433 East Washington Street, Indianapolis, IN 46219; Ashley Travel, Inc., 221 West State Street, Ashley, IN, 46705.

MC 152073 (Sub-4–1TA), filed October 3, 1980. Applicant: DENVER NETTLES TRUCKING, INC., 1148 Denver Dr., Carpentersville, IL 60110. Representative: Philip A. Lee, 120 W. Madison St., Chicago, IL 60602. Contract; Irregular *Wire Products; Bean bag chairs, plastic articles, steel-racks and expanded foam beads; tractor parts, wooden pallets and lumber.* Between, IL., MI., WI., IN., IA., OH. Supporting shipper: NOW PRODUCTS, INC., 619 Thomas Dr., Bensenville, IL 60106; Shaped Wire, Inc., 3655 E. Illinois Ave., St. Charles, IL 60174; Protopak Engineering Corp., 2650 American Lane, Elk Grove Village, IL 60007.

MC 4483 (Sub-4–3TA), filed October 6, 1980. Applicant: MONSON TRUCKING, INC., R.R. No. 1, Red Wing, MN 55066. Representative: James E. Ballenthin, 630 Osborn Building, St. Paul, MN 55102. *Beverages and empty beverage containers,* between Eau Claire, WI and Duluth, MN. A underlying E.T.A. seeks 120 day authority. Supporting shipper: Twin Port 7 Up Co., 212 N. 40th Ave., West, Duluth, MN. 55809.

The following applications were filed in Region 5. Send protests to: Consumer Assistance Center, Interstate Commerce Commission, Post Office Box 17150, Fort Worth, TX 76102.

MC 200 (Sub-5–56TA), filed October 6, 1980. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing Road, Kansas City, MO 64141. Representative: H. Lynn Davis (same address as applicant). Common; Regular. *(a) Catalogs, magazines, and printed matter, and (b) materials and supplies used in the manufacture and distribution of commodities named in (a) above (except commodities in bulk),* serving Sparta, IL as an off-route point in connection with carriers regular route authority. Applicant intends to tack. Supporting shipper: World Color Press, Inc., P.O. Box 1248, Effingham, IL 62401.

MC 11592 (Sub-5–4TA), filed October 6, 1980. Applicant: BEST REFRIGERATED EXPRESS, INC., P.O. Box 7365, 824 Livestock Exchange Bldg., Omaha, NE 68107. Representative: F. E. Myers, P.O. Box 7365, Omaha, NE 68107. *Meats, meat products, meat by-products and articles distributed by meat-packing houses, as defined in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except commodities and hides in bulk, in tank vehicles).* From: Sedwick County in KS to: Points in NH, MA, RI, CT, NY, PA, NJ, DE, MD, VA, WV, KY and DC. Supporting shipper: Dubuque Packing Company, P.O. Box 4225, Wichita, KS 67214.

MC 29910 (Sub-5–53TA), filed October 6, 1980. Applicant: ABF FREIGHT SYSTEM, INC., 301 South Eleventh Street, Fort Smith, AR 72901. Representative: Joseph K. Reber (address same as applicant). Common, Regular. *General commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment),* (1) Between Atlanta, Ga and New Orleans, LA: From Atlanta over U.S. Hwy 29 to junction U.S. Hwy 80, then over U.S. 80 to Montgomery, AL, then over U.S. Hwy 31 to Mobile, AL, then over U.S. Hwy 90 to New Orleans, and return over the same route; (2) Between Atlanta, Ga and Dallas, TX: From Atlanta over U.S. Hwy 78 to Birmingham, AL, then over U.S. Hwy 11 to junction U.S. Hwy 80, then over U.S. Hwy 80 to Dallas, and return over the same route; (3) Between Mobile, AL and Houston, TX: From Mobile over Interstate Hwy 10 to junction Interstate Hwy 12, then over Interstate Hwy 12 to junction Interstate Hwy 10, then over Interstate Hwy 10 to Houston, and return over the same route. Applicant intends to tack and interline. Supporting shippers: 10.

MC 41432 (Sub-5–6TA), filed October 6, 1980. Applicant: EAST TEXAS MOTOR FREIGHT LINES, INC., 2355 Stemmons Freeway (P.O. Box 10125), Dallas, TX 75207 (214–638–2280). Representative: Wayland Little, Director of Commerce, Registered Practitioner (address same as applicant). Common; Regular. *General commodities, except those of unusual value, Classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment,* serving Santo, TX and the facilities of Heart of America, Inc., located at or near Santo, TX, as an off-route point in connection with carrier's authorized regular route operation between Fort Worth, TX, and El Paso, TX. Applicant intends to tack with existing authority and to interline. Supporting shipper: Heart of America, Inc., P.O. Box 55, Santo, TX 76472.

MC 76400 (Sub-5–15TA), filed October 6, 1980. Applicant: BEAUFORT TRANSFER COMPANY, P.O. Box 151, Gerald, MO 63037. Representative: Ernest A. Brooks II, 1301 Ambassador Bldg., St. Louis, MO 63101. *Such commodities as are dealt in by stationery and office supply stores,* from Parsippany, NJ and Garden City, NY, to Union, MO. Supporting shipper: Esselte Pendaflex Corporation, 71 Clinton Rd., Garden City, NY 11530.

MC 106398 (Sub-5–46TA), filed October 6, 1980. Applicant: NATIONAL TRAILER CONVOY, INC., 705 South Elgin, Tulsa, OK 74120. Representative: Gayle Gibson, National Trailer Convoy, Inc., 705 South Elgin, Tulsa, OK 74120. *Roofing, materials and supplies* from the facilities of National Tile Industries, Inc., at Shawnee, OK, to all points in the United States (except AK and HI). Supporting shipper: National Tile Industries, Inc., 706 West Independence, Shawnee, OK 74801.

MC 111231 (Sub-5–11TA), filed October 6, 1980. Applicant: JONES TRUCK LINES, INC., 610 East Emma Ave., Springdale, AR 72764. Representative: James H. Berry (same as applicant). *Clay and clay products and equipment, materials and supplies used in the manufacture, packaging and distribution of clay products; and materials used in the manufacture and composition of Urethane; equipment and items used in the manufacture and application of Urethane; jointing materials used in the installation of both clay and Urethane products* between Jefferson County, AL; Mantee County, FL; Fulton County, GA; Webster County, GA; Webster County, IA; Crawford County, KS; Lauderdale County, MS; Jackson County, MO; Bowie and Bexar Counties, TX on the one hand, and, on the other, points in the States of AL, AR, AZ, FL, GA, IL, IA, KS, KY, LA, IN, MN, MS, MO, NE, NM, NC, OK, SC, TN, TX, VA, WV and WI on the other hand. Supporting shipper: Dickey Co., Inc., P.O. Box 6, Pittsburg, KS 66762.

MC 111231 (Sub-5–12TA), filed October 6, 1980. Applicant: JONES TRUCK LINES, INC., 610 East Emma Ave., Springdale, AR 72764. Representative: Don A. Smith, P.O. Box 43, 510 North Greenwood Avenue, Fort Smith, AR 72902. *Roofing and roofing materials (except commodities in bulk)* between Phillips County, KS on the one hand, and, on the other, points in the States of CO, NE, ND, SD, IA, MN, WI, OK, MO, WY, NM, and IL. Supporting shipper: Tamko Asphalt Products, Inc., 220 West 4th Street, Joplin, MO 64801.

MC 114284 (Sub-5–7TA), filed October 6, 1980. Applicant: FOX-SMYTHE TRANSPORTATION CO., 1700 S. Portland, P.O. Box 82307, Oklahoma City, OK 73148. Representative: M. W. Thompson, P.O. Box 82307, Oklahoma City, OK 73148. *Meat, meat products, meat by-products, and articles distributed by meat packinghouses as described in Section A and C of appendix I, to the report in descriptions in motor carrier certificates 61 M.C.C. 209 and 766* from facilities utilized by Service Packing Company and Best Western Foods, Inc. at or near Tulsa, OK, to points in AZ, AR, CA, CO, IL, IA, KS, MN, MO, NE, NM, SD, TX, and WI. Supporting shippers: Service Packing Co. and Best Western Foods, Inc., 3920 East Pine, Tulsa, OK.

MC 120257 (Sub-5–1TA), filed October 6, 1980. Applicant: K. L. BREEDEN & SONS, INC., P.O. Box 4267, Lone Star, TX 75668. Representative: Bernard H. English, 6270 Firth Road, Fort Worth, TX 76116. *(1) Machinery, equipment, materials and supplies used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, and machinery, materials, equipment and supplies used in, or in connection with the construction, operation, repair, servicing, maintenance and dismantling of pipe lines, including the stringing and picking up thereof, (2) earth drilling machinery and equipment, and machinery, equipment, materials, supplies and pipe incidental to, used in,*

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or in connection with (a) the transportation, installation removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites and (d) the injection or removal of commodities into or from holes or wells, between points in CO, KS, LA, MT, NM, OK, TX, UT and WY. Supporting shipper: 12.

MC 134906 (Sub-5-1TA), filed October 6, 1980. Applicant: CAPE AIR FREIGHT, INC., P.O. 161, Shawnee Mission, KS 66201. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. *General commodities (except aritcles of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* between points In TX and New Orleans, LA. Note: Applicant intends to tack with existing authority in MC-134906 and Subs thereunder for movements beyond. Supporting shipper: Arch Air Freight, Inc., P.O. Box 20111 AMF, New Orleans, LA 70141; Air-Land, La Fon Airpark, New Orleans International Airport, New Orleans, LA 70141; Circle Airfreight Corporation, P.O. Box 20060, New Orleans International Airport, New Orleans, LA 70141.

MC 135419 (Sub-5-3TA), filed October 6, 1980. Applicant: CONTAINER CARRIER CORPORATION, 301 South Eleventh Street, Fort Smith, AR 72901. Representative: Mr. William D. Hendrix, P.O. Box 48, Fort Smith, AR 72902. *Charcoal briquetts, and material, equipment, and supplies used in the manufacture, sale, and distribution of charcoal briquetts,* between AR, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Cotter Charcoal Company, P.O. Box 100, Cotter, AR 72626.

MC 135797 (Sub-5-71TA), filed October 6, 1980. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant, Esq. (address same as applicant). *Hydrated alumina,* from points in the U.S. (except AK and HI) to Orange County, CA. Supporting shipper: TAVCO, 23312 Palawan Circle, Laguna Niguel, CA 92677.

MC 135797 (Sub-5-72TA), filed October 6, 1980. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant, Esq. (address same as applicant). *Plastic articles,* between Sedgwick County, KS on the one hand, and, on the other points in the U.S. (except AK and HI). Supporting shipper: Ritricia Plastic, 818 East Funston, Wichita, KS 67211.

MC 136786 (Sub-5-34TA), filed October 6, 1980. Applicant: ROBCO TRANSPORTATION, INC., 4475 NE. 3rd Street, Des Moines, IA 50313. Representative: Stanley C. Olsen, Jr., Gustafson & Adams, P.A., 7400 Metro Boulevard, Suite 411, Edina, MN 55435. *Furniture and furniture parts, and materials and supplies used in the manufacture and distribution thereof,* between Atlanta, GA, Clifton, NJ, Alsip, IL, Houston, TX and Morristown, TN; 2) between Atlanta, GA, on the one hand, and, on the other, points, in AL, FL, KY, NC, SC, VA, and WV; and 3) between Alsip, IL, on the one hand, and, on the other, points in IN, IA, KS, MI, MN, MO, NE, ND, OH, SD and WI. Supporting shipper: S K Products Corp., 5355 Bucknell Drive SW, Atlanta, GA 30378.

MC 139495 (Sub-5-7TA), filed October 6, 1980. Applicant: NATIONAL CARRIERS, INC., P.O. Box 1358, Liberal, KS 67901. Representative: Herb Dubin, Baskin and Sears, 2nd Floor, 818 Connecticut NW., Washington, D.C. 20006. *Alcoholic beverages (except in bulk),* from Lynchburg, TN to Amarillo, Corpus Christi, Dallas, El Paso, Ft. Worth, Houston, Odessa and San Antonio, TX. Supporting shipper: Jack Daniels Distillery, 1010 W. Mockingbird, Suite 160, Dallas, TX 75247.

MC 139923 (Sub-5-3TA), filed October 6, 1980. Applicant: MILLER TRUCKING COMPANY, INC., P.O. Box Drawer D, Stroud, OK 74079. Representative: Daniel O. Hands, Suite 200, 205 West Touhey Avenue, Park Ridge, IL 60068. *Such commodities as are dealt in or used by bakery supply companies (except in bulk),* from Dolton, IL, and Kansas City, KS to points in AZ, CA, CO, ID, IL, IN, IA, KS, LA, MI, MN, MO, MT, NE, NV, NY, NM, ND, OH, OK, OR, PA, SD, TX, UT, WA, and WY. Supporting shipper: Breddo Food Products Corporation, 18th and Kansas City, KS 66105.

MC 140665 (Sub-5-38TA), filed October 6, 1980. Applicant: PRIME, INC., P.O. Box 4208, Springfield, MO 65804. Representative: Clayton Geer, P.O. Box 786, Ravenna, OH 44266. *Materials, equipment and supplies used in the manufacture of automotive care products (except in bulk),* from points in the U.S. (except AK and HI) to the facilities utilized by Union Carbide Corporation at or near Paulsboro, NJ, Milford, CT, Wyoming, NY, Middlebury, VT, North Warren, Logans Ferry, New Kensington and East Butler, PA, Hamilton, OH, Danville, IL, Holland, Owosso and Wixom, MI, Chicago, IL, Milwaukee and Edgerton, WI, Alsip, IL Freehold NJ, Texas City, TX, and Torrance, CA. Supporting shipper: Union Carbide Corporation, 270 Park Avenue, New York, NY 10017.

MC 142364 (Sub-5-8TA), filed October 6, 1980. Applicant: KENNETH SAGELY TRUCKING COMPANY, Post Office Box 368, Van Buren, AR 72956. Representative: Don Garrison, Esq., Post Office Box 1065, Fayetteville, AR 72701. *Furniture and Furniture Parts, Materials and Supplies* used in the manufacture and distribution thereof (except in bulk), between Atlanta, GA; Clifton, NJ; Chicago, IL; and Houston, TX, on the one hand, and, on the other points in the United States (except AK, HI, ID, MT, NV, OR, UT, WA and WY). Supporting shipper: SK Products Corporation, 5355 Bucknell Drive SW., Atlanta, GA 30378.

MC 144622 (Sub-5-52TA), filed October 6, 1980. Applicant: GLENN BROS. TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: J. B. Stuart, P.O. Box 179, Bedford, TX 76021. *Foodstuffs (except in bulk),* from the facilities of Rudy's Farms at Little Rock, AR to Los Angeles, CA; Port Allen, LA; Kansas City, MO; and Grand Prairie, TX. Supporting shipper: Rudy's Farms, 2424 Music Valley Drive, Nashville, TN 37214.

MC 147196 (Sub-5-14TA) filed October 6, 1980. Applicant: ECONOMY TRANSPORT, INC., P.O. Box 50262, New Orleans, LA 70150. Representative: Donald A. Larousse, P.O. Box 50262, New Orleans, LA 70150. Contract: Irregular. *Iron and Steel Cable Chain, Fittings and Related Acessories,* between Harrison County, Texas, on the one hand, and, on the other, the 48 States, under a continuing contract or contracts with Gulf Coast Wire Rope, Inc., Pasadena, TX Supporting shipper: Gulf Coast Wire Rope, Inc., P.O. Box 1111, Pasadena, TX 77501.

MC 147536 (Sub-5-7TA), filed October 6, 1980. Applicant: D. L. SITTON MOTOR LINES, INC., P.O. Box 1567, Joplin, MO 64801. Representative: David L. Sitton, P.O. Box 1567, Joplin, MO 64801. *Beverages, food products, materials and supplies used in the manufacture and distribution of beverages and food products,* between points in Okmulgee County, OK, on the one hand, and, on the other, points in AR, KS, LA, MS, MO, and TX. Supporting shipper: King Cola Southwest, Inc., P.O. Box 1810, Nashville, AR 71852.

MC 150592 (Sub-5-3TA), filed October 6, 1980. Applicant: SUNFLOWER CARRIERS, INC., P. O. Box 561, York, NE 68467. Representative: David R. Parker, P.O. Box 81228, Lincoln, NE 68501. *Such commodities as are dealt in by cold storage warehouses,* between York, NE, on the one hand, and, on the other, points in the United States (except AK and HI). Supporting shipper: York Cold Storage Co., Joe Waller, General Manager and President, 14th & Division, York, NE 68467.

MC 150783 (Sub-5-12TA), filed October 6, 1980. Applicant: SCHEDULED TRUCKWAYS, INC., Post Office Box 757, Rogers, AR 72756. Representative: Ronnie Sleeth, (same as applicant). *Foodstuffs (except commodities in bulk or in tank vehicles)* from the plantsite of Adams Packing Ass'n., Inc. at or near Memphis, TN to points in the U.S. (except AK and HI). Supporting shipper: Adams Packing Ass'n., Inc., P.O. Box 37, Auburndale, FL 33823.

MC 151485 (Sub-5-2TA), filed October 6, 1980. Applicant: DOUBLE-JAY Enterprises, INC., Route 1, Box 90, Kerney, MO 64060. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. *Foodstuffs, in packages,* from the facilities of R. B. Rice Sausage Company, at or near Kansas City, Joplin, and St. Louis, MO, to points in FL, AL, GA, KY, OH, SC, TN, OK, TX, KS, and CA. Supporting shipper: R. B. Rice Sausage, Inc., P.O. Box 238, Lees Summit, MO 64063.

MC 151637 (Sub-5-3TA), filed October 6, 1980. Applicant: LARRY BREEDEN TRUCKING, INC., 1301 Fayetteville Road, Van Buren, AR 72956. Representative: Don Garrison, Esq., Post Office Box 1065, Fayetteville, AR 72701. *Furniture Parts and Materials, Equipment and Supplies used in the manufacture thereof*-Between the facilities of Leggett-Platt Incorporated, at or near Aurora, Carthage and Springfield, MO, on the one hand, and, on the other, Phoenix, AZ; Denver, Co; Clearfield, UT; and, points in CA. Supporting shipper: Leggett-Platt Incorporated, Post Office Box 757, Carthage, MO 64836.

MC 151637 (Sub-5-4TA), filed October 6, 1980. Applicant: LARRY BREEDEN TRUCKING, INC., 1301 Fayetteville Road, Van Buren, AR 72956. Representative: Don Garrison, Esq., Post Office Box 1065, Fayetteville, AR 72701. *Innersprings, Filler Products and materials, equipment and supplies used in the manufacture of bedding:* between Denver, CO; Lakeland, FL; Carthage, MO; and, Brenham, TX, on the one hand, and, on the other, points in CO, FL, IL, IN, KY, MO, NC, NJ, NM, NY, OH, PA, SC, TN, TX, UT, VA, WA and WV. Supporting shipper: Steadley Company, Inc., 200 River Street, Carthage, MO 64836.

MC 151819 (Sub-5-2TA), filed October 6, 1980. Applicant: CARGO MASTER, INC., 917 S. Harwood St., Dallas, TX 75201. Representative: D. Paul Stafford, Suite 1125, Exchange Pk., P.O. Box 45538, Dallas, TX 75245. *Paper, in rolls or packages* between Dallas, TX, Lockport, LA and Calhoun, TN, and points in AL, AR, AZ, CA, CO, FL, GA, IA, KY, KS, LA, MO, MS, NE, NC, NM, NV, OK, SC, TN, TX and UT. Supporting shipper: Papertech, Inc., 4924 Woodall, Dallas, TX 75247.

MC 151996 (Sub-5-1TA), filed October 6, 1980. Applicant: M & S TRANSPORTATION, INC., Route 3, Box 8B, Lonoke, AR 72086. Representative: James M. Duckett, 411 Pyramid Life Building, Little Rock, AR 72201. *Beer (except in bulk),* from Golden, CO to the facilities of Coors of Central Arkansas, at Little Rock, AR. Supporting shipper: Coors of Central Arkansas, Little Rock, AR.

MC 152089 (Sub-5-2TA), filed October 6, 1980. Applicant: BEATRICE FREIGHT LINE, INC., 1935 Park Boulevard, Lincoln, NE 68502. Representative: Jack L. Shultz, P.O. Box 82028, Lincoln, NE 68501. (1) *Foodstuffs, printed material and books,* from Lancaster County, NE to points in CA, CO, GA, IL, IN, KS, LA, MN, MO, OH, OK, TN, TX, WI and WY; and (2) *Material, equipment and supplies utilized in the manufacture and sale of commodities* in (1) above, from points in CA, CO, GA, IL, IN, KS, LA, MN, MO, OH, OK, TN, TX, WI and WY to Lancaster County, NE. Supporting shippers: Gooch Milling & Elevator, P.O. Box 81308, Lincoln, NE 68501; Ovaltine Products, Inc., South Industrial Park, Lincoln, NE 68512; and Nebraska Book Company, Wholesale Division, 6400 Cornhusker Highway, Lincoln, NE 68507.

MC 152091 (Sub-5-1TA), filed October 6, 1980. Applicant: CHARLES STULTS, d.b.a. C.O.S. TRUCKING, Route 1, Verona, MO 65769. Representative: Bruce McCurry, Dickey, Allemann & McCurry, 910 Plaza Towers, Springfield, MO 65804. *Wood, lumber, wooden slabs, wood by-products* from Lawrence County, MO to Hill County, TX and Scott County, IA. Supporting shipper: Mid-West Hardwood, Inc., Route 1, Wentworth, MO.

The following applications were filed in Region 6. Send protests to: Interstate Commerce Commission, Region 6 Motor Carrier Board, P.O. Box 7413, San Francisco, CA 94120.

Republication

MC 52914 (Sub-6-3TA), filed September 12, 1980. Applicant: FITCHETT TRUCK LINES, INC., P.O. Box 10799, Portland, OR 97210. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Av., Portland, OR 97210. *General commodities* (except Classes A and B explosives), *in containers and trailers* between Portland, OR on the one hand and points in OR on the other hand, restricted to shipments having prior or subsequent movement by water, air, freight forwarder or cooperative, for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: Sysco NW, 12970 S.W. Hall Blvd., Tigard, OR; Crowley Maritime Corporation, 6208 N. Ensign St., Portland, OR; Acme Fast Freight, Inc., 1617 S.E. Water, Portland, OR; ABC Trans National, Inc., 1613 S.E. Water, Portland, OR.

MC 116544 (Sub-6-16TA), filed October 2, 1980. Applicant: ALTRUK FREIGHT SYSTEMS INC., 1703 Embarcadero Road, Palo Alto, CA 94303. Representative: Richard G. Lougee, P.O. Box 10061, Palo Alto, CA 94303. *Foodstuffs; commodities as are dealt in by chain grocery and food business houses; equipment, materials, supplies, and machinery* used in the production and distribution of the commodities above between points in FL on the one hand, and, on the other, points in OR, WA, ID, and all points in and East of MI, IN, KY, TN, and AL, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Citrus Central, Inc., P.O. Box 17774, Orlando, FL 32860.

MC 148018 (Sub-6-1TA), filed October 3, 1980. Applicant: JAMES S. BATT d.b.a. BATT TRUCKING, INC., P.O. Box 921, Caldwell, ID 83605. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. *Contract carrier,* Irregular routes: (1) *Building materials* from points in ID, MT, WA, to points in CA; (2) *Lumber and lumber mill products,* from points in ID, and OR to points in CA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: American Wood Products, Inc., P.O. Box 1003, Caldwell, ID 83605 Northwest Forest Products, Inc., 1202 Power, Lewiston, ID 83501.

MC 152083 (Sub-6-1TA), filed October 2, 1980. Applicant: COLUMBIA TRANSPORTATION, INC., 6615 E. Marginal Way S., Seattle, WA 98108. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055. *Contract carrier,* irregular routes: *steel pipe and tubing,* from the Los Angeles, CA, commercial zone to points

in OR and WA for the account of Rain Industries, Inc., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Rain Industries, Inc., 10308 N.E. 10th, Bellevue, WA 98004.

MC 115826 (Sub-6-18TA), filed October 2, 1980. Applicant: W. J. DIGBY, INC., 6015 East 58th St., Commerce City, CO 80022. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. *Meats, meat products, meat by-products and articles distributed by meat packinghouses as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk),* from Lubbock, TX and points within a 125 mile radius of Lubbock, TX to points in ID, MT, OR, UT and WA, for 270 days. Supporting shipper: Western Excel Distributors, P.O. Box 17378, Portland, OR 97217.

MC 149364 (Sub-6-4TA), filed September 30, 1980. Applicant: DOUDELL TRUCKING COMPANY, 555 E. Capital Ave., Milpitas, CA 95106. Representative: Ronald C. Chauvel, 100 Pine St. #2550, San Francisco, CA 94111. *Contract carrier,* Irregular routes: *Evaporative air coolers and components thereof* between Phoenix, AZ and AZ, CA, NV, UT, NM, under continuing contracts with Phoenix Manufacturing, Inc. for 270 days. Supporting shipper: Phoenix Manufacturing, Inc., 415 S. 7th St., Phoenix, AZ 85036.

MC 134484 (Sub-6-1TA), filed October, 2, 1980. Applicant: EDWARDS BROS., INC., P.O. Box 1684, Idaho Falls, ID 83401. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. *Meat meat products, meot by-products and articles distributed my meat packinghouses as described in Sections A & C of Appendix I to the report in Descriptions on Motor Carrier Certificates, 61 MCC 209 and 766 (except hides and commodities in bulk)* from the facilities of Iowa Beef Processors, Inc. In Walla Walla County, WA and Boise, ID to points in the U.S. in and west of ND, SD, NE, KS, OK, and TX (except HI and AK), for 270 days Supporting shipper: Iowa Beef Processors, Inc., Dakota City, NE 68731.

MC 125433 (Sub-6-37TA), filed October, 1, 1980. Applicant: F-B TRUCK LINE COMPANY, 1945 South Redwood Rd, Salt Lake City, UT 84104. Representative: John B. Anderson (same as applicant). *Building Materials and Building Products* between the facilities of Elk Corporation of Texas at or near Ennis, Texas on the one hand, and, on the other, points in the United States (except AK), for 270 days. Supporting shipper: Elk Corporation of Texas, P.O. Box 500 Ennis, TX 75119.

MC 125433 (Sub-6-38TA), filed October, 1, 1980. Applicant: F-B TRUCK LINE COMPANY, 1945 South Redwood Rd, Salt Lake City, UT 84104. Representative: John B. Anderson (same as applicant). *Furniture, plastic and metal combination, meterials and supplies used in the manufacture thereof* between the facilities of Artco-Bell Corporation at or near Temple, Texas, on the one hand, and, on the other, all points in the United States (except AK), for 270 days. Supporting shipper: Artco-Bell Corporation, P.O. Box 608, Temple, Texas 76501.

MC 152084 (Sub-6-1TA), filed October, 3, 1980. Applicant: KNUTSON CARPET HUT, INC., 1900 Virginia Ave., North Bend, OR 97459. Representative: Lawrence V. Smart, Jr., 419 N. W. 23rd Ave., Portland, OR 97210. *Carpeting,* from Rome and Dalton, GA, and points in their commercial zones, to points in OR and WA, for 270 days. Supporting shippers: Coronet Carpet Industries, Route 1, Box 394-51, Amity, OR 97101. Trend Carpet Mills, 7250 S. W. 140th Ave., Beaverton, OR 97005.

MC 43685 (Sub-6-3TA), filed October 2, 1980. Applicant: MERCER TRUCKING COMPANY, INC., P.O. Box 11585, Spokane, WA 99211. Representative: Marshall Hanning (same as above). *Lumber, veneer, forest products, and building materials,* between points in Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield; Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima counties, WA; Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone counties, ID; and the international boundary with British Columbia, on the one hand; And points in CA, and in Clark and Washoe counties, NV, on the other hand, for 270 days. Supporting shippers: There are 10 shippers. Their statements may be examined at the Regional Office listed.

MC 117589 (Sub-6-3TA), filed October 3, 1980. Applicant: PROVISIONERS FROZEN EXPRESS, INC., 3801 7th Ave. S., Seattle, WA 98108. Representative: Michael D. Duppenthaler, 211 South Washington St., Seattle, WA 98104. *Meat, meat products, meot by-products and articles distributed by meat packinghouses as described in Section A of Appendix I to the Report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except commodities in bulk),* between Seattle, WA and points in CO on the one hand, and, on the other, points in WA, OR, ID and MT, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Sound Meat Distributors Co., 7936 Occidental Ave South, Seattle, WA 98108.

MC 124892 (Sub-6-21TA), filed October 1, 1980. Applicant: SAMMONS TRUCKING, P.O. Box 4347, Missoula, MT 59806. Representative: James B. Hovland, Suite M-20, 400 Marquette Ave., Minneapolis, MN 55401. *Industrial chemicals (except in bulk),* from Peoria, IL and the respective commercial zones of Chicago, IL and Minneapolis, MN to Aberdeen and Sioux Falls, SD, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Dakota Chemical Company, Box 918, Aberdeen, SD 57401.

MC 141867 (Sub-6-7TA), filed October 2, 1980. Applicant: SPECIALIZED TRUCKING SERVICE, INC., 2301 Milwaukee Way, Tacoma, WA 98421. Representative: Jack R. Davis, 1100 IBM Building, Seattle, WA 98101. *Commodities that are dealt in or used by manufacturers of doors and other building materials* between Chelan County, WA and points, in AZ, CA, NV, NM, OR, UT, WA, CO, KS, TX, MO, OK, and ID for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Columbia Steel Door, 1028 S. Columbia St., Wenatchee, WA 98801.

MC 139857 (Sub-6-1TA), filed October 2, 1980. Applicant: T.W. TRANSPORT, INC., P.O. Box 3347 Terminal Annex, Spokane, WA 99220. Representative: George H. Hart, 1100 IBM Bldg., Seattle, WA 98101. *Such commodities or such merchandise as are dealt in or used by wholesale, retail and chain grocery and food business houses;* and *such materials, supplies and equipment used in connection with or incidental to the operation of wholesale, retail and chain grocery and food business houses* between points in CA, OR and WA for 270 days. Supporting shippers: S.E. Rykoff & Co., Inc., 421 N. Freya St., Spokane, WA 99202; Equinox Food Exchange, Inc., Hunters Star Rte., Springdale, WA 99173; Commercial Creamery Co., 159 S. Cedar, Spokane, WA 99204; Olympic Foods, Inc., P.O. Box 3627, Spokane, WA 99220.

MC 151611 (Sub-6-3TA), filed September 30, 1980. Applicant: WAYFARE TRUCKING, INC., 725 Industrial Way, Port Hueneme, CA 93041. Representative: Ronald C. Chauvel, 100 Pine St., No. 2550, San Francisco, CA 94111. *Contract Carrier,* Irregular routes: *Metal products, nickel powder, castings and welding rod* from Isleta, NM to the Los Angeles, CA

Commercial Zone under continuing contract(s) with Wall Colmonoy Corporation, for 270 days. An underlying ETA seeks 120 day authority. Supporting shipper: Wall Colmonoy Corporation, P.O. Box 311, Isleta, NM 87022.

MC 141804 (Sub-6-802TA), filed October 2, 1980. Applicant: WESTERN EXPRESS, Division of Interstate Rental, Inc., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same as applicant). *Plastic articles and materials, equipment and supplies used in the manufacture, distribution, and sale thereof,* Restricted to Amoco Foam Products traffic between Aiken County, SC, Spartanburg County, SC, Frederick County, VA, Chippewa County, WI, and Eau Claire County, WI on the one hand, and, on the other, points in the U.S. (except AK and HI), for 270 days. Supporting shipper: Amoco Foam Products Co., 2111 Powers Ferry Road, N.W., Suite 200, Atlanta, GA 30099.

MC 148526 (Sub-6-2TA), filed October 3, 1980. Applicant: WORLD WIDE JOYE TOURS, INC., 4576 N. Bendel, Fresno, CA 93711. Representative: William R. Daly, P.O. Box 20521, San Diego, CA 92120. *Passengers and their baggage in the some vehicle* on escorted, lectured, sightseeing chartered tours and/or special operations tours, beginning and ending in Fresno and Madera Counties, CA and extending to all points in the U.S., including AK, but excluding HI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers: There are 652 supports. Their statements may be examined at the Regional office listed.

MC 143775 (Sub-6-29TA), filed October 1, 1980. Applicant: PAUL YATES, INC., P.O. Box 1059, Glendale, AZ 85301. Representative: Michael R. Burke (same address as applicant). *Such commodities as are dealt in by retail department stores, including garments on hangers,* from points in the U.S. (except AK and HI), to the facilities of Fashion Bar, Inc., at Denver, CO, and points in its commercial zone for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Fashion Bar, 695 S. Broadway, Denver, CO 80209.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-32569 Filed 10-20-80; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247.

Special rule 247 was published in the **Federal Register** of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before December 5, 1980 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OPI-049

Decided: Oct. 10, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 200 (Sub-500F), filed October 2, 1980. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing Rd., Kansas City, MO 64141. Representative: H. Lynn Davis (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Rival Mfg. Co., its affiliates, subsidiaries, or vendors.

MC 200 (Sub-501F), filed October 2, 1980. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing Rd., Kansas City, MO 64141. Representative: H. Lynn Davis (same address as applicant). Transporting *medical supplies* (except commodities in bulk), between Cincinnati, OH and Carlsbad, CA, restricted to traffic originating at or destined to the facilities used by Dyna-Med, Inc., its suppliers, or vendors.

MC 2900 (Sub-437F), filed September 29, 1980. Applicant: RYDER TRUCK LINES, INC., 2050 Kings Rd., P.O. Box 2408, Jacksonville, FL 32203. Representative: John C. Bradley, Suite 1301, 1600 Wilson Blvd., Arlington, VA 22209. *Over regular routes,* transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), (1) between Sault Ste. Marie, MI, and Everett, WA, over U.S. Hwy 2, (2) between E. Dubuque, IL, and Boise, ID, over U.S. Hwy 20, (3) between Manitowoc, WI, and Seattle, WA, over U.S. Hwy 10, (4) between Owatonna, MN, and Greybull, WY, over U.S. Hwy 14, (5) between E. Clinton, IL, and Portland, OR, over U.S. Hwy 30, (6) between Eastport and Payette, ID, over U.S. Hwy 95, (7) between Williston, ND, and Denver, CO, over U.S. Hwy 85, (8) between Sweetgrass, MT, and Pocatello, ID, over U.S. Hwy 91, (9) between Minot, ND, and North Platte, NE, over U.S. Hwy 83, (10) between Great Falls, MT, and Cheyenne, WY, over U.S. Hwy 87, (11) between Pembina, ND, and Columbus, NE, over U.S. Hwy 81, (12) between Albert Lea, MN, and Worland, WY, over U.S. Hwy 16, (13) between Minneapolis, MN, and Billings, MT, over U.S. Hwy 12, (14) between St. Ignace and South Haven, MI, over U.S. Hwy 31, (15) between Mackinaw City and Detroit, MI, from Mackinaw City over U.S. Hwy 23 to Flint, then over MI Hwy 21 to Port Huron, then over U.S. Hwy 25 to Detroit,

and return over the same route, (16) between International Falls, MN, and Lacrosse, WI, over U.S. Hwy 53, (17) between Hurley and Stevens Point, WI, over U.S. Hwy 51, (18) between Marquette, MI, and Manitowoc, WI, from Marquette over U.S. Hwy 41 to Green Bay, WI, then over U.S. Hwy 141 to Manitowoc, and return over the same route, (19) between Mackinaw City and Clare, MI, over U.S. Hwy 27, and (20) between Belt, MT, and Montpelier, ID, over U.S. Hwy 89, serving all intermediate points and points in ID, MI, MN, MT, ND, SD, WI, and WY, as off-route points in routes (1) through (20) above.

Note.—Applicant intends to tack this authority with its existing regular and irregular route authority.

MC 15511 (Sub-31F) filed October 2, 1980. Applicant: CARSTENSEN FREIGHT LINES, INC., P.O. Box 878, Hwy. 30, West, Clinton, IA 52732. Representative: Paul J. Maton, 10 S. LaSalle St., Chicago, IL 60603. *Over regular routes,* transporting *general commodities* (except those of unusual value, classes A and B explosives, commodities in bulk, household goods as defined by the Commission, and those requiring special equipment), (1) between Davenport and Muscatine, IA, over U.S. Hwy 61, serving all intermediate points, (2) between Muscatine, IA, and junction U.S. Hwy 30 and IA Hwy 38, over IA Hwy 38, serving all intermediate points, (3) between Rock Island, IL, and Muscatine, IA, over IL Hwy 92, serving all intermediate points, (4) between Davenport and Coralville, IA, over U.S. Hwy 6, serving the intermediate points of Iowa City, Durant, and Wilton, (5) between Cedar Rapids and Iowa City, IA, from Cedar Rapids over Interstate Hwy 380 to its junction with U.S. Hwy 6, then over U.S. Hwy 6 to Iowa City, as an alternate route for operating convenience only, and (6) between Cedar Rapids and Iowa City, IA, from Cedar Rapids over IA Hwy 149 to Amana, then over IA Hwy 220 to its junction with U.S. Hwy 218, then over U.S. Hwy 218 to Iowa City, and return over the same route, serving all intermediate points.

MC 29910 (Sub-293F), filed October 3, 1980. Applicant: ABF FREIGHT SYSTEM, INC., 301 South Eleventh Street, Fort Smith, AR 72910. Representative: Joseph K. Reber (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Santa Cruz, CA, Charleston, SC, Cape Canaveral, FL, Simsbury, CT, and Crane, IN.

MC 29910 (Sub-294F), filed October 6, 1980. Applicant: ABF FREIGHT SYSTEM, INC., 301 South Eleventh Street, Fort Smith, AR 72901. Representative: Joseph K. Reber (same address as applicant). Transporting (1) *Clay products,* and (2) *materials, equipment and supplies* used in the manufacture and distribution of clay products, between points in Lonoke County, AR, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 44801 (Sub-18F), filed October 6, 1980 Applicant: DICK HARRIS AND SON TRUCKING CO., INC., P.O. Box 10277, 4000 Harris Lane, Lynchburg, VA 24506. Representative: Morton E. Kiel, Suite 1832, 2 World Trade Center, New York, NY 10048. Transporting *general commodities* (except household goods as defined by the Commission, classes A and B explosives, and commodities in bulk), between points in VA, on the one hand, and, on the other, points in DE, GA, IL, IN, KY, MD, MI, NJ, NY, NC, OH, PA, SC, TN, VA, WV, and DC.

MC 48221 (Sub-29F), filed September 26, 1980. Applicant: W.N. MOREHOUSE TRUCK LINE, INC., 4010 Dahlman Avenue, Omaha, NE 68107. Representative: Paul D. Kratz, Suite 610, 7171 Mercy Road, Omaha, NE 68106. Transporting *such commodities* as are dealt in or used by manufacturers, distributors, and retailers of automobile supplies and livestock care products, between points in CO, IL, IN, IA, KS, MI, MO, NE, NM, ND, OK, OH, SD, TX, WI, WY, and UT, on the one hand, and, on the other, points in Douglas County, NE, and Pottawattamie County, IA.

MC 60251 (Sub-14F), filed October 2, 1980. Applicant: P & D TRANSPORTATION, INC., Connell Highway, Newport, RI 02840. Representative: Frederick T. O'Sullivan, P.O. Box 2184, Peabody, MA 01960. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 61440 (Sub-200F), filed October 1, 1980. Applicant: LEE WAY MOTOR FREIGHT, INC., 3401 N.W. 63rd Street, Oklahoma City, OK 63116. Representative: Richard H. Champlin, P.O. Box 12750, Oklahoma City, OK 73157. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the U.S. (except AK and HI).

MC 65491 (Sub-11F), filed October 3, 1980. Applicant: GEORGE W. BROWN, INC., 1475 East 222nd Street, Bronx, NY 10469. Representative: William Biederman, 371 Seventh Avenue, New York, NY 10001. Transporting (1) *paper and paper products* and (2) *materials, equipment, and supplies* used in the manufacture of paper and paper products (except commodities in bulk, and those requiring special equipment), between Lockhaven, PA, on the one hand, and, on the other, points in NY, NJ, MD, VA, ME, NH, VT, OH, and MI.

MC 85530 (Sub-9F), filed October 2, 1980. Applicant: BLALOCK TRUCK LINE, INC., P.O. Box 734, Charleston, SC 29402. Representative: Wilmer B. Hill, 805 McLachlen Bank Bldg., 666 Eleventh Street NW., Washington, DC 20001. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Savannah, GA, and points in Charleston County, SC, on the one hand, and, on the other, points in GA, and those points in NC on and east of a line beginning at the NC–SC state line and extending along U.S. Hwy 21 to Charlotte, NC, then along U.S. Hwy 29 to Greensboro, NC, then south of a line extending along U.S. Hwy 70 to Morehead City, NC.

MC 95920 (Sub-67F), filed September 30, 1980. Applicant: SANTRY TRUCKING CO., a corporation, 10505 N.E. 2nd Ave., Portland, OR 97211. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055. Transporting *chemicals and plastics* (except commodities in tank or hopper-type vehicles), between points in the U.S., under continuing contract(s) with Union Carbide Corporation, of San Francisco, CA.

MC 110380 (Sub-21F), filed September 30, 1980. Applicant: BERSCHENS OF MADISON, INC., P.O. Box 187, Verona, WI 53593. Representative: James A. Spiegel, Olde Towne Office Park, 6425 Odana Road, Madison, WI 53719. Transporting *automotive parts, automotive equipment, and automotive supplies,* between points in WI, and those in the Upper Peninsula of MI, restricted to traffic originating at or destined to the facilities of General Automotive Parts Corporation, dba NAPA Distribution Center.

MC 117730 (Sub-80F), filed October 2, 1980. Applicant: KOUBENEC MOTOR SERVICE, INC., Route 47, Huntley, IL 60142. Representative: Stephen H. Loeb, Suite 2027, 33 N. LaSalle St., Chicago, IL

60602. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in the U.S., restricted to traffic originating at or destined to the facilities of Abbott Laboratories and its subsidiaries. Condition: Issuance of a certificate in this proceeding is subject to coincidental cancellation at applicant's written request of Certificate No. MC 117730 (Sub-29F).

MC 117851 (Sub-34F), filed October 2, 1980. Applicant: JOHN CHEESEMAN TRUCKING, INC., 501 N. First St., Fort Recovery, OH 45846. Representative: Earl N. Merwin, 85 E. Gay St., Columbus, OH 43215. Transporting *General commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with Ingersoll-Rand Company and its subsidiaries, of New York, NY.

MC 131050F filed September 29, 1980. Applicant: MICHAUD TRAILWAYS TOURS, INC., 63 Jefferson Ave., Salem, MA 01970. Representative: Robert G. Parks, 20 Walnut St., Suite 101, Wellesley Hills, MA 02181. As a *broker,* at Salem, MA, in arranging for the transportation of *passengers and their baggage,* in special or charter operations, between points in the U.S.

MC 135441 (Sub-1F), filed September 26, 1980. Applicant: M.C. TRUCKING CO., INC., 500 Mohican Road, Pennsauken, NJ 08110. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. Transporting (1) *copper and copper products* and (2) *materials, equipment and supplies* used in the manufacture and distribution of copper and copper products (except commodities in bulk), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities utilized by Hatfield Wire and Cable, Division of Continental Copper and Steel Industries, Inc.

MC 144061 (Sub-16F), filed October 3, 1980. Applicant: SICOMAC CARRIERS, INC., 1107 Goffle Road, Hawthorne, NJ 07506. Representative: Jack L. Schiller, 345 Webster Avenue, Brooklyn, NY 11230. Transporting (1) *stabilizers and chemicals,* and (2) *materials* used in the manufacture of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Argus Chemical Corporation, of Brooklyn, NY.

MC 145950 (Sub-85F), filed October 2, 1980. Applicant: BAYWOOD TRANSPORT, INC., 2611 University Parks Drive, Waco, TX 76706. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St. NW., Washington, DC 20001. Transporting (1) *plastic laminated panel particleboard,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of (1) above, between Temple, TX, on the one hand, and, on the other, points in the U.S.

MC 150790 (Sub-2F), filed October 2, 1980. Applicant: ALLIANCE MOVING AND STORAGE, INC., 13150 Pavilion Lane, Fairfax, VA 22310. Representative: Jacob P. Billig, 2033 K Street NW., Washington, DC 20006. Transporting *household goods,* as defined by the Commission, (1) between points in MD, VA, and DC, on the one hand, and, on the other, points in the U.S. and (2) between points in VA, MD, and DC.

MC 150951 (Sub-1F), filed October 6, 1980. Applicant: CRANSTON TRUCKING COMPANY, a corporation, 1381 Cranston Street, Cranston, RI 02920. Representative: A. Joseph Mega, 11 Newark Street, Providence, RI 02908. Transporting *such commodities* as are dealt in by retail department stores, between points in the U.S., under continuing contract(s) with the Charlotte Freight Association, of Charlotte, NC.

MC 152001 (Sub-1F), filed September 30, 1980. Applicant: HALL'S SPECIALTIES, INC., R.R. 1, Laotto, IN 46763. Representative: Berton W. O'Bryan, Suite 800 Circle Tower, Five East Market St., Indianapolis, IN 46204. Transporting *anhydrous ammonia* (except fertilizer) and *fertilizer* between points in OH, those in IN, on and north of U.S. Hwy 50, and those in MI, on and south of Interstate Hwy 94.

MC 152060F filed October 1, 1980. Applicant: JACK FROST DBA JACK FROST TRUCKING, 6501 Fiesta Street, P.O. Box 12765, El Paso, TX 79912. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. Transporting (1) *foodstuffs,* (2) *meats, meat products, meat byproducts and articles disturbed by meat packing houses,* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766, and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above, between points in El Paso County, TX, on the one hand, and, on the other, points in AZ, CA, CO, ID, NV, NM, OR, UT and WA.

Volume No. OP1–051

Decided: Oct. 14, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 2860 (Sub-209F), filed October 8, 1980. Applicant: NATIONAL FREIGHT, INC., 71 West Park Avenue, Vineland, NJ 08360. Representative: Gerald S. Duzinski (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., restricted to traffic originating at or destined to the facilities of PPG Industries, Inc.

MC 11220 (Sub-221F), filed October 8, 1980. Applicant: GORDONS TRANSPORTS, INC., 185 West McLemore Avenue, Memphis, TN 38101. Representative: James J. Emigh, P.O. Box 59, Memphis, TN 38101. Transporting (1) *carbon black,* and (2) *materials, equipment and supplies* used in the manufacture and distribution of carbon black (except commodities in bulk), between points in St. Mary Parish, LA, on the one hand, and on the other, points in AL, AR, GA, IL, IN, IA, KS, KY, MI, MN, MS, MO, OH, OK, TN, WV, and WI.

MC 35320 (Sub-614F), filed October 8, 1980. Applicant: T.I.M.E.–DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Transporting *general commodities* (except classes A and B explosives, and household goods as defined by the Commission), serving Birmingham, AL, as an off-route point in connection with carrier's otherwise authorized regular-route operations.

MC 53841 (Sub-45F), filed October 6, 1980. Applicant: W. H. CHRISTIE & SONS, INC., Box 517, East State Street, Knox, PA 16232. Representative: John A. Pillar, 1500 Bank Tower, 307 Fourth Avenue, Pittsburgh, PA 15222. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between Knox, PA, on the one hand, and, on the other, points in the U.S.

MC 115841 (Sub-774F), filed October 7, 1980. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., McBride Lane, P.O. Box 22168, Knoxville, TN 37922. Representative: Richard L. Hollow (same address as applicant). Transporting *paper bags, pulpboard, and wrapping paper,* between points in Chatham County, GA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 120021 (Sub-4F), filed October 6, 1980. Applicant: THE COTTER MOVING & STORAGE CO., a corporation, 265–273 West Bowery Street, Akron, OH 44308. Representative: Thomas R. Kingsley,

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10614 Amherst Avenue, Silver Spring, MD 20902. Transporting *household goods,* as defined by the Commission, (1) between those points in the U.S. on and east of U.S. Hwy 85, and (2) between those points in the U.S. on and east of U.S. Hwy 85, on the one hand, and, on the other, those points in the U.S. west of U.S. Hwy 85.

Note.—The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application for approval of common control under 49 U.S.C. 11343, or submit an affidavit indicating why such approval is unnecessary.

MC 127580 (Sub-8F), filed October 7, 1980. Applicant: HALE TRUCKING, INC., P.O. Box 177, Roswell, NM 88201. Representative: Michael T. Worley, P.O. Box 550, Roswell, NM 88201. Transporting *construction materials,* between points in the U.S., under continuing contract(s) with Georgia-Pacific Corporation of Portland, OR.

MC 129950 (Sub-4F), filed October 7, 1980. Applicant: CONSOLIDATED TRUCK SERVICE, INC., One Scout Avenue, South Kearny, NJ 07032. Representative: Janis Pulton (same address as applicant). Transporting (1) *electrical appliances,* and (2) *materials and equipment* used in the manufacture of electrical appliances, between points in the U.S., under continuing contract(s) with Van Wyck International, Inc., of Minneola, NY.

MC 135971 (Sub-3F), filed October 3, 1980. Applicant: SOLIVRAC SERVICES, INC., 90 du Souis-Bois, Beauport, Quebec, Canada G1E 5Z6. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02106. In foreign commerce only, transporting *cement,* in bulk, from ports of entry on the international boundary line between the U.S. and Canada in ME, NH, VT and NY, to points in NH, VT, and NY.

MC 141641 (Sub-12F), filed October 8, 1980. Applicant: WILSON CERTIFIED EXPRESS, INC., P.O. Box 3326, Des Moines, IA 50316. Representative: Greg A. Dickinson, Suite 610, 7171 Mercy Road, Omaha, NE 68106. Transporting (1) *retail store fixtures,* and (2) *materials, equipment, and supplies* used in the manufacture of retail store fixtures, between points in Douglas County, NE, Jackson County, AL, Snyder County, PA, and San Bernardino County, CA, on the one hand, and, on the other, points in the U.S.

MC 144061 (Sub-17F), filed October 3, 1980. Applicant: SICOMAC CARRIERS, INC., 1107 Goffle Road, Hawthorne, NJ 07506. Representative: Jack L. Schiller, 345 Webster Avenue, Brooklyn, NY 11230. Transporting (1) *liquid chemicals,* in bulk, and (2) *materials* used in the manufacture of liquid chemicals, in bulk, between points in the U.S., under continuing contract(s) with Whittaker Corporation—Heico Division, of Delaware Water Gap, PA.

MC 145130 (Sub-2F), filed October 6, 1980. Applicant: ATICO TRANSPORT, INC., 6700 S. LeClaire Avenue, Chicago, IL 60638. Representative: James C. Hardman, 33 N. LaSalle Street, Chicago, IL 60602. Transporting *chemicals* (except in bulk), from the facilities of Emery Industries, Inc., at or near St. Bernard and Cincinnati, OH, to points in NJ, Baltimore, Harford, Cecil, Frederick, and Howard Counties, MD, Bucks, Philadelphia, Lehigh, Berks, Lancaster, and Chester Counties, PA, Lake, Cook, DuPage, Kane, Kendall, and Will Counties, IL, and Lake, Porter, LaPorte, and St. Joseph Counties, IN.

MC 145750 (Sub-3F), filed October 6, 1980. Applicant: CHARLES SIZEMORE d.b.a. C. S. TRUCK SERVICE, 930 Caroline Street, O'Fallon, IL 62269. Representative: Charles Sizemore (same address as applicant). Transporting (1) *dairy products, sherberts, and ice cream novelties,* and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Prairie Farm Dairy, Inc., of O'Fallon, IL.

MC 147400 (Sub-4F), filed October 6, 1980. Applicant: RAEMARC, INC., 1903 Chickory Road, P.O. Box 1203, Racine, WI 53403. Representative: Rolfe E. Hanson, 121 West Doty Street, Madison, WI 53703. Transporting (1) *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), and (2) *empty containers,* between points in Cook County, IL, and Milwaukee, Racine, and Kenosha Counties, WI, on the one hand, and, on the other, points in IA, IL, IN, KS, MI, MO, OH, and WI, restricted in (1) above to traffic having an immediately prior or subsequent movement by rail or water.

MC 147421 (Sub-1F), filed October 3, 1980. Applicant: J. N. L'HEUREUX INC., 95 College Avenue, Waterville, ME 04901. Representative: Daniel J. L Heureux (Same address as applicant). Transporting (1) *malt beverages,* (2) *wine* and (3) *carbonated bevereges,* between points in the U.S., under continuing contract(s) with Colonial Distributors, Inc., of Waterville, ME.

MC 149400 (Sub-1F), filed October 3, 1980. Applicant: BICENTENNIAL TRANSPORT, INC., 317 North Point Boulevard, Baltimore, MD 21224. Representative: Leonard A. Jaskiewicz, 1730 M Street, N.W., Washington, DC 20036. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in MD, on the one hand, and, on the other, points in CT, DE, FL, GA, IL, IN, MA, NC, NJ, NY, OH, PA, SC, VA, WV, and DC.

MC 151710 (Sub-1F), filed September 30, 1980. Applicant: SCOT TRUCKING & CONSOLIDATING CORP., 20036 South 71st Street, Philadelphia, PA 19142. Representative: Robert L. Cope, Suite 501, 1730 M Street, NW., Washington, DC 2000. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with East-West Shippers Association, Inc., of Chicago, IL.

MC 151710 (Sub-2F), filed September 30, 1980. Applicant: SCOT TRUCKING & CONSOLIDATING CORP., 2000 South 71st Street, Philadelphia, PA 19142. Representative: Robert L. Cope, Suite 501, 1730 M Street, N.W., Washington, DC 20036. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with West Coast Shippers Association, Inc., of Philadelphia, PA.

MC 150700 (Sub-3F), filed October 6, 1980. Applicant: OLIN WOOTEN TRANSPORT CO., INC., P.O. Box 731, Hazlehurst, GA 31539. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. Transporting *paper and paper products,* between St. Marys, GA, on the one hand, and, on the other, those points in the U.S. in and east of TX, OK, KS, NE, SD, and ND.

Volume No. OP1–053

Decided: October 15, 1980.
By the Commission, Review Board Number 2, Members Chandler, Eaton, and Liberman.

W–81 (Sub-4F), filed August 22, 1980, and previously noticed in Federal Register issue of September 16, 1980. Applicant: McALLISTER LIGHTERAGE LINE, INC., 17 Battery Place, New York, NY 10004. Representative: Peter A. Greene, 900 17th Street, N.W., Washington, DC 20006. To operate as a *common carrier,* by water, by non-self-propelled vessels with the use of separate towing vessels in the transportation of *general commodities,* and by towing vessels in the performance of *general towage,* between ports and points along the Atlantic Coast and inland waterways from MA to NC, on the one hand, and, on the

other, ports and points in SC. Condition: This is a major regulatory action and requires preparation of a statement of energy impact under the provisions of 49 CFR 1106.5(a)(6). Accordingly, applicant must submit the information required by 49 CFR 1106.7(a). Upon submission of such information, an appropriate statement of energy impact will be prepared.

Note.—This republication correctly reflects the full scope of the authority sought and imposes a condition required by 49 CFR 1106.5(a).

Volume No. OP3–043

Decided: October 9, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill.

MC 14935 (Sub-8F), filed September 29, 1980. Applicant: MARTIN'S MOTOR FREIGHT, INC., 620–28 Christian St., Philadelphia, PA 19147. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. Transporting *iron and steel articles,* and *textile bi-products,* between Annapolis and Baltimore, MD, New York, NY, and Philadelphia, PA, on the one hand, and, on the other, New York, NY, points in DE, MD, NJ, DC, and those in PA in and east of Franklin, Perry, Juniata, Mifflin, Centre, Clinton, and Tioga Counties.

MC 32775 (Sub-20F), filed September 29, 1980. Applicant: HERMANN FORWARDING COMPANY, a corporation, P.O. Box 1, North Brunswick, NJ 08902. Representative: Maxwell A. Howell, 1100 Investment Bldg., 1511 K St., NW., Washington, DC 20005. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household good as defined by the Commission, commodities in bulk, and commodities requiring special equipment), between points in Berks, Carbon, Lehigh, Susquehanna, Luzerne, Lebanon, Lackawanna, Monroe, Northampton, York, Dauphin, Lancaster, and Wayne Counties, PA, Suffolk, Oneida, Broome, Oswego, Orange, Rockland, Sullivan, Montgomery, Schoharie, Erie, Herkimer, Putnam, Ulster, Dutchess, Greene, Columbia, Albany, Rensselaer, Schenectday, Monroe and Niagara Counties, NY, Cecil, Harford, Baltimore, Baltimore City, Howard, Montgomery, Anne Arundel and Prince George Counties, MD, those in NJ, DE, and DC.

Note.—Applicant intends to tack this authority with its existing authority.

MC 34564 (Sub-26F), filed September 29, 1980. Applicant: ADOLPH J. DAROSKA, 50 Concord Hill, Pittsfield, NH. Representative: (same as above). Transporting (1) *fertilizer* and (2) *supplies* used in the manufacture of fertilizer, between points in ME and VT, on the one hand, and, on the other, points in NH, MA, RI, CT, VT and ME.

MC 73165 (Sub-526F), filed September 29, 1980. Applicant: EAGLE MOTOR LINES, INC., 830 North 33rd St., Birmingham, AL 35222. Representative: R. Cameron Rollins, P.O. Box 11086, Birmingham, AL 35202. Transporting (1) *heat exchangers* and *heat equalizers,* (2) *air, gas and liquid moving and conditioning equipment,* and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) and (2), between points in Fayette County, KY, on the one hand, and, on the other, points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 73165 (Sub-527F), filed October 2, 1980. Applicant: EAGLE MOTOR LINES, INC., 830 North 33rd St., Birmingham, AL 35222. Representative: R. Cameron Rollins, P.O. Box 11086, Birmingham, AL 35202. Transporting (1) *commodities,* which because of size or weight require the use of special equipment and (2) *self-propelled articles,* between points in Crittenden County, AR and Shelby County, TN, on the one hand, and, on the other, points in AL, TX, GA, MS, SC, TN and WI.

MC 106074 (Sub-159F), filed September 29, 1980. Applicant: B AND P MOTOR LINES, INC., Shiloh Rd. and U.S. Hwy. 221 S., Forest City, NC 28043. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. Transporting *kitchen cabinets,* from Nashville, TN to points in CA, NV, AZ, UT, NM, CO, TX, OK, KS, NE, SD, ND, MN, IA, MO, IL, WI, MI, IN, OH, and FL.

MC 116544 (Sub-222F), filed October 1, 1980. Applicant: ALTRUCK FREIGHT SYSTEMS INC., 1703 Embarcadero Rd., Palo Alto, CA 94303. Representative: Richard G. Lougee, P.O. Box 10061, Palo Alto, CA 94303. Transporting *meats, meat products, meat by-products,* and *such commodities* as are dealt in or used by meat packing houses, between points in Fort Morgan County, CO, on the one hand, and, on the other, points in the U.S.

MC 124905 (Sub-5F), filed September 29, 1980. Applicant: GARY W. GRAY, P.O. Box 48, Delaware, NJ 07823. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517. Transporting *scrap metal,* from Easton, PA, to Port Newark, Newark, Perth Amboy, Raritan, and Florence, NJ.

MC 126305 (Sub-147F), filed September 29, 1980. Applicant: BOYD BROTHERS TRANSPORTATION CO., INC., RFD 1, Box 16, Clayton, AL 36016. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Transporting (1) *alcoholic beverages* and (2) *equipment, materials and supplies* used in or in connection with alcoholic beverage, from Schenley, PA, to Jacksonville and Pensacola, FL.

MC 126305 (Sub-148F), filed September 30, 1980. Applicant: BOYD BROTHERS TRANSPORTATION CO., INC., RFD 1, Box 18, Clayton, AL 36016. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Transporting *metol cans, and closures,* between points in AL, GA, FL, TN, MS, LA, NC, SC, TN, and AR.

MC 126305 (Sub-149F), filed September 30, 1980. Applicant: BOYD BROTHERS TRANSPORTATION CO., INC., RFD 1, Box 18, Clayton, AL 36016. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Transporting (1) *paper and paper products,* and (2) *parts and supplies* for the commodities in (1), between facilities of Alabama Kraft Company, Division of Georgia Kraft at or near Cottonton, AL, on the one hand, and, on the other, points in that part of the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 128294 (Sub-13F), filed September 29, 1980. Applicant: NITEHAWK EXPRESS, INC., 2334 University Avenue, St. Paul, MN 55114. Representative: Joseph J. Dudley, W–1260, First National Bank Bldg., St. Paul, MN 55101. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), between points in the U.S. (except AK and HI), under continuing contract(s) with Northrup King Co., of Minneapplis, MN.

MC 134085 (Sub-5F), filed September 29, 1980. Applicant: AIM INDUSTRIES, INC., 330 Manhattan Avenue, Jersey City, NJ 07307. Representative: Lawrence S. Burnstein, Suite 2373, One World Trade Center, New York, NY 10048. Transporting *general commodities* (except (a) non inflammable liquids in bulk, in tank vehicles; and (b) automobiles, trucks, chassis, bodies and cabs), between New York, NY, and points in MA, CT, PA and NJ, restricted to traffic having an immediately prior or subsequent movement by water. Condition: To the extent this certificate authorizes the transportation of classes A and B explosives, it shall be limited to a period expiring 5 years from the date of issuance.

MC 134405 (Sub-102F), filed October 2, 1980. Applicant: BACON TRANSPORT

COMPANY, a corporation, P.O. Box 1134, Ardmore, OK 73401. Representative: Wilburn L. Williamson, Suite 815-East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. Transporting *sand*, in bulk, between points in Johnston County, OK, on the one hand, and, on the other, points in AL and ND.

MC 134755 (Sub-126F), filed September 30, 1980. Applicant: CHARTER EXPRESS, INC., P.O. Box 3772, Springfield, MO 65804. Representative: S. Christopher Wilson (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in AR, IN, MI, VA, KY, NC, WV, NE, MO, IL, TX, NY, CO, PA, and OH, on the one hand, and, on the other, points in the U.S.

MC 133808 (Sub-59F), filed October 1, 1980. Applicant: LONE STAR CARRIERS, INC., Route 1-Box 48, Tolar, TX 76476. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72701. Transporting *chemicals*, between the facilities of National Starch & Chemical Corporation, at Meredosia, IL, on the one hand, and, on the other, points in the U.S.

MC 147034 (Sub-3F), filed September 29, 1980. Applicant: ALBANESE TRANSPORT, INC., 3537 Apulia Road, Jamesville, NY 13078. Representative: Donald G. Hichman, R.D. #1, Box 7, Union Springs, NY 13160. Transporting (1) *chemicals* (except in bulk), from points in Onondaga County, NY, to points in AR, FL, GA, IL, LA, NJ, PA, TX, and VA; and (2) *materials and supplies* used in the manufacture and distribution of chemicals (except commodities in bulk), in the reverse direction.

MC 148035 (Sub-7F), filed September 29, 1980. Applicant: QUANDT TRANSPORT SERVICE, INC., 2606 North 11th Street, Omaha, NE 68110. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Road, Omaha, NE 68106. Transporting *liquid feed and liquid feed ingredients*, between Omaha, NE, on the one hand, and, on the other, points in IA, KS, MN, MO, and SD.

MC 149574 (Sub-1F), filed September 30, 1980. Applicant: PROUD SPIRIT REFRIGERATED EXPRESS, d.b.a. RICHARD R. COURNOYER, 51 Wrentham Rd., Bellingham, MA 02019 Representative: James F. Martin, Jr., 8 W. Morse Rd., Bellingham, MA 02019. Transporting *food and kindred products* as described in Item (20) of the Standard Transportation Commodity Code, from points in Suffolk County, MA, to points in the U.S.

MC 150515F, filed September 26, 1980. Applicant: T.W.C. TRUCKING, INC., 5086 Bangor, Kingsburg, CA 93631. Representative: Edward L. Fanucchi, 2409 Merced St., Suite No. 3, Fresno, CA 93721. Transporting *rough iron and steel castings* (except in bulk), between points in the U.S., under continuing contracts, with North American Foundry, of Fort Smith, AR.

Volume No. OP3-045

Decided: October 9, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill.

MC 134734 (Sub-32F), filed September 9, 1980. Applicant: NATIONAL TRANSPORTATION, INC., 10610 South 144th St., Omaha, NE 68137 Representative: L. N. Fauss, P.O. Box 37096, Omaha, NE 68137. Transporting (1) *such commodities* as are dealt in or used by grocery and food business houses, (except commodities in bulk), between points in the U.S., under continuing contract(s) with General Foods Corporation, of White Plains, NY.

MC 146174 (Sub-9F), filed October 1, 1980. Applicant: PD EXPRESS, INC., 817 West Fifth Ave., Columbus, OH 43212. Representative: David H. Rowe (same address as applicant). Transporting *containers and container ends*, and *materials, equipment, and supplies* used in the manufacture and distribution of shortening and margarine products, from points in OH to points in Kankakee County, IL.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-32667 Filed 10-20-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the **Federal Register** on July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings:

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before December 5, 1980 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP1-050

Decided: October 10, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 152040F, filed September 29, 1980. Applicant: JOHN FRANK BETTAZZA and CHERIE MARIE BETTAZZA, P.O. Box 127, Artois, CA 95913. Representative: Lawrence Marquette, P.O. Box 711, Pebble Beach, CA 93953. Transporting *food and other edible products* (including edible byproducts but excluding alcoholic beverages and

drugs) *intended for human consumption, agricultural limestone and other soil conditioners, and agricultural fertilizers*, if such transportation is provided with the owner of the motor vehicle in such vehicle, except in emergency situations, between points in the U.S.

MC 149570F, filed September 29, 1980. Applicant: KMD, INC., 18628 72nd Avenue South, Kent, WA 98031. Representative: Rebecca L. Bogard, 2000 IBM Bldg., Seattle, WA 98101. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

Volume No. OP1-052

Decided: October 14, 1980

By the Commission Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 142310 (Sub-29F), filed October 7, 1980. Applicant: H. O. WILDING, INC., Box 56, Nelsonville, WI 54458. Representative: Wayne W. Wilson, 150 East Gilman St., Madison, WI 53703. Transporting *general commodities* (except used household goods, hazardous or secretive materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 144910 (Sub-17F), filed October 3, 1980. Applicant: TY PRUITT TRUCKING, INC., 6717 Quad Ave., Baltimore, MD 21237. Representative: Chester A. Zyblut, 3666 Executive Bldg., 1030 Fifteenth St., N.W., Washington, DC 20005. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions) for the U.S. Government, between points in U.S.

MC 146360 (Sub-26F), filed September 22, 1980. Applicant: FLOYD SMITH, JR. TRUCKING, INC., P.O. Box 26656, Oklahoma City, OK 73126. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 146360 (Sub-27F), filed September 2, 1980. Applicant: FLOYD SMITH, JR. TRUCKING, INC., P.O. Box 26656, Oklahoma City, OK 73126. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 152090F, filed October 3, 1980. Applicant: CENTRAL PETROLEUM CORP., 309½ East Nolman, P.O. Box 506, Centralia, IL 62801. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701. Transporting *residual oil, crude oil, fuel oil, and waste oil* between points in AR, IA, IL, IN, KS, KY, MO, NE, OK, and WI.

MC 149260 (Sub-1F), filed October 8, 1980. Applicant: ASSOCIATED COURIERS, INC., 35 S. Grady Way, Suite 237, Renton, WA 98055. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055. Transporting *shipments weighing 100 pounds or less*, if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

Volume No. OP3-040

Decided: October 7, 1980.

By the Commission, review Board Number 2, Members Chandler, Eaton, and Liberman.

MC 2095 (Sub-32F), filed September 26, 1980. Applicant: KEIM TRANSPORTATION, INC., P.O. Box 226, Sabetha, KS 66534. Representative: Clyde N. Christey, Ks Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. Transporting *general commodities* (except used household goods, hazardous or secret materials and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 136295 (Sub-2F), filed September 26, 1980. Applicant: EXPRESSWAY MESSENGER SERVICE, INC., 2424 Maryland Avenue, Baltimore, MD 21218. Representative: Edward N. Button, 560 Northern Ave., Hagerstown, MD 21740. Transporting (1) *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions) for the United States Government, between points in the U.S., and (2) *shipments weighing 100 pounds or less*, if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 140744 (Sub-17F), filed September 26, 1980. Applicant: ARTIC AIR TRANSPORT, INC., 853 West Main Street, Mondovi, WI 54755. Representative: Wayne W. Wilson, 150 East Gilman Street, Madison, WI 53703. Transporting *general commodities* (except used household goods, hazardous or secretive materials, and sensitive weapons and munitions) for the United States Government, between points in the U.S.

MC 141664 (Sub-1F), filed September 26, 1980. Applicant: RAY HOLLAND, 13101 El Road, Little Rock, AR 72206. Representative: James M. Duckett, 411 Pyramid Life Bldg., Little Rock, AR 72201. Transporting *food and other edible products* (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, *agricultural limestone* and *other soil conditioners*, and *agricultural fertilizers*, if such transportation is provided with the owner of the motor vehicle in such vehicle, except in emergency situations, between points in the U.S.

MC 152044 (Sub-1F), filed September 29, 1980. Applicant: FLOYD JUENGER, INC., 611 South Jefferson Street, Mascoutah, IL 62258. Representative: Douglas G. Brown, The INB Center—Suite 555, One North Old State Capitol Plaza, Springfield, IL 62701. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions) for the U.S. Government, between points in the U.S.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-32668 Filed 10-20-80; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 311]

Expedited Procedures for Recovery of Fuel Costs

Decided: October 15, 1980.

In our recent decisions, a 13-percent surcharge was authorized on all owner-operator traffic, and on all truckload traffic whether or not owner-operators were employed. We ordered that all owner-operators were to receive compensation at this level.

The weekly figures set forth in the appendix for transportation performed by owner-operators and for truckload traffic is 13.2-percent. We are authorizing that the 13-percent surcharge for this traffic remain in effect, and that all owner-operators are to receive compensation at this level.

No change is authorized in the 2.3-percent surcharge on less-than-truckload (LTL) traffic performed by carriers not utilizing owner-operators, the 1.3-percent surcharge for United Parcel Service, nor in the 4.9-percent surcharge authorized for the bus carriers.

The Computer & Business Equipment Manufacturers' Association filed on April 16, 1980, a petition for leave to intervene and a motion for modification of the X-311 procedures. The petition is

V 45 O C 21 1980 UMI

granted. The motion is presently being considered.

Notice shall be given to the general public by mailing a copy of this decision to the governor of each State and to the Public Utilities Commissions or Boards of each State having jurisdiction over transportation, by depositing a copy at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection and by delivering a copy to the Director, Office of the Federal Register for publication therein.

It is ordered:

This decision shall become effective Friday 12:01 a.m. October 17, 1980.

Division 1, Commissioners Clapp, Gresham, and Alexis. Commissioner Alexis absent and not participating.

Agatha L. Mergenovich,
Secretary.

Appendix—Fuel Surcharge

Base Date and Price Per Gallon (Including Tax): January 1, 1979—63.5 cents.

Date of Current Price Measurement and Price Per Gallon (Including Tax): October 14, 1980—113.1 cents.

Average Percent: Fuel Expenses (Including Taxes) of Total Revenue

(1) From transportation performed by owner-operators (apply to all truckload rated traffic)	(2) Other (including less-than-truckload traffic)	(3) Bus carriers	(4) UPS
16.9%	2.9%	6.3%	3.3%
	Percent Surcharge Developed		
13.2%	2.3%	4.9%	[1] 2.1%
	Percent Surcharge Allowed		
13.0%	2.3%	4.9%	[2] 1.3%

[1] The percentage surcharge developed for UPS is calculated by applying 81 percent of the percentage increase in the current price per gallon over the base price per gallon to UPS average percent of fuel expense to revenue figure as of January 1, 1979 (3.3 percent).

[2] The developed surcharge is reduced 0.8 percent to reflect fuel-related increases already included in UPS rates.

[FR Doc. 80-32671 Filed 10-20-80; 8:45 am]
BILLING CODE 7035-01-M

[AB 179 (SDM)]

Apache Railway Co.; Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the The Apache Railway Company has filed with the Commission its amended color-coded system diagram map in docket No. AB 179 (SDM). The Commission on October 8, 1980, received a certificate of publication as required by said regulation which is considered the effect date on which the system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each State in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 179 (SDM).

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-32670 Filed 10-20-80; 8:45 am]
BILLING CODE 7035-01-M

[AB 182 (SDM)]

Youngstown & Northern Railroad Co.; Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the Youngstown & Northern Railroad Company has filed with the Commission its amended color-coded system diagram map in docket No. AB 182 (SDM). The Commission on October 1, 1980, received a certificate of publication as required by said regulation which is considered the effective date on which the system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 182 (SDM).

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-32669 Filed 10-20-80; 8:45 am]
BILLING CODE 7035-01-M

INTERNATIONAL JOINT COMMISSION, UNITED STATES AND CANADA

Phosphorus Management for the Great Lakes; Public Hearings

The International Joint Commission will conduct public hearings at the times and places noted below to obtain the public's views on phosphorus management questions in light of the task force report titled, "Phosphorus Management for the Great Lakes". The report was prepared for the IJC's Great Lakes Science Advisory Board and the Great Lakes Water Quality Board.

At the request of Governments, this special report has been forwarded to the Governments of Canada and the United States without review or comment from the Commission or its Boards. These Boards will be commenting on the report for the International Joint Commission and the Commission also wishes to hear the views of the public before reporting to the Governments on the question of phosphorus management in the Great Lakes Basin. Governments are presently involved in discussions preparatory to establishing load allaocations and compliance schedules for phosphorus as called for in the Great Lakes Water Quality Agreement signed by Canada and the United States.

When the IJC reported to Governments in 1979 on the subject of Pollution of the Great Lakes From Land Use Activities, it indicated that additional recommendations concerning phosphorus would be provided upon completion of the special task force report. Now that the report is available, the International Joint Commission is following its usual practice of seeking the public's views before reporting to Governments.

Copies of the task force report may be obtained without charge from the IJC Regional Office at 100 Ouellete Avenue, Windsor, Ontario N9A 6T3. Many libraries and municipal offices throughout the Great Lakes Basin also have copies for reference.

The hearings are international in nature and citizens of the United States and Canada may participate at both hearings. If a written statement will take longer than ten (10) minutes to present, a summary statement should be given and the full statement submitted for the record. When a written statement is presented, extra copies should be provided, if possible, for distribution to the news media and for Commission purposes. Those unable to attend may also mail written submissions to the Commission offices in Ottawa or Washington and these will become part of the record.

Times and Places of Hearings

November 19: 2–4 p.m.; 7–9 p.m., Cleary Auditorium, Windsor, Ontario.

November 20: 2–4 p.m.; 7–9 p.m., Embassy Room, Buffalo Statler Hotel, Buffalo, New York.

David A. LaRoche,
Secretary, U.S. Section.

October 9, 1980.

[FR Doc. 80-32568 Filed 10-20-80; 8:45 am]
BILLING CODE 4710-14-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-80-136-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburg, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations) to its Robinson Run No. 95 Mine located in Harrison County, West Virginia, in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. Rectifiers are located along an older haulage that is congested with major falls and severe water problems.

2. The haulage is ventilated with intake air, and there are no effective return airways in the immediate vicinity.

3. The intake air passing the rectifiers does not go directly to an active working section.

4. As an alternative to the application of 30 CFR 75.1105, the petitioner proposes to:

a. House the rectifier in a fire-proof building,

b. Install an automatic fire suppression device in the rectifier station. The device would be activated by sensors over the rectifier,

c. Install an automatic closing steel door. The door closure device would be activated by a heat sensor.

d. Prohibit storage of oil and other combustible material in the rectifier station,

e. Comply with all other requirements for underground electrical circuits, and

f. Conduct inspections of the facility according to the Federal Mine Safety and Health Act of 1977.

5. The petitioner alleges that the proposed alternative to application of 30 CFR 75.1105 will at all times guarantee no less than the same measure of protection as would be provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before November 20, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: October 10, 1980.

Frank A. White,
Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-32734 Filed 10-20-80; 8:45 am]
BILLING CODE 4510-43-M

Office of the Secretary

[TA-W-10,512]

Acme Carbide Die, Inc.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 2, 1980 in response to a worker petition received on August 19, 1980 which was filed on behalf of workers and former workers producing carbide cold forming dies at Acme Carbide Die, Incorporated, Melvindale, Michigan.

On August 13, 1980, a petition was filed on behalf of the same group of workers (TA–W–10,351).

Since the identical group of workers is the subject of the ongoing investigation TA–W–10,351, a new investigation would serve no purpose. Consequently, this investigation has been terminated.

Signed at Washington, D.C. this 10th day of October 1980.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-32726 Filed 10-20-80; 8:45 am]
BILLING CODE 4510-28-M

[TA-W-9334]

D'Alonzo-Lancaster, Inc.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 14, 1980 in response to a worker petition received on July 1, 1980 which was filed on behalf of workers at the D'Alonzo-Lancaster, Incorporated, Philadelphia, Pennsylvania. The workers produce men's custom tailored clothing.

In a letter dated September 8, 1980, the manager of the Almagamated Clothing and Textile Workers Union/ Philadelphia Joint Board requested withdrawal of the petition. The petitioner concurred with this request for withdrawal of the petition. On the basis of this withdrawal, continuing the investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 10th day of October 1980.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-32729 Filed 10-20-80; 8:45 am]
BILLING CODE 4510-28-M

[TA-W-7665]

Dana Corp., Negative Determination Regarding Application for Reconsideration

By an application dated July 21, 1980, the petitioner requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of former workers producing light truck frames at Dana Corporation's Ecorse, Michigan plant. The determination was published in the Federal Register on June 27, 1980, (45 FR 43488).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The petitioner claims that Dana Corporation's Ecorse, Michigan plant is to be closed permanently with its production of light truck frames being shifted to Dana's Canadian subsidiaries for shipment back into the U.S. It is also claimed that significant amounts of frames have been imported back into the U.S. from Canadian facilities.

The Department's review showed that the workers at Dana's Ecorse, Michigan plant did not meet the "contributed importantly" test of the Trade Act of 1974. The only customer of the Ecorse plant indicated decreased purchases of imported truck frames in the first four months of model year (MY) 1980 compared to the same period of MY 1979. This customer's only foreign source of light truck frames is the Dana-Hayes plant in Ontario which showed production declines of light truck frames in calendar year 1979 compared to 1978 and in the first four months of 1980 compared to the same period in 1979. Dana has no other foreign plants which produce light truck frames.

The Department notes that Dana's Ecorse, Michigan plant closed on June 4, 1980 and that the production from one of

Signed at Washington, D.C. this 10th day of October 1980.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-32729 Filed 10-20-80; 8:45 am]
BILLING CODE 4510-28-M

its three lines of light truck frames was shifted to another domestic facility of Dana. Production from the other two lines was stopped because of a lack of orders. Production swings at Dana's Ecorse plant and the Dana-Hayes plant in Canada have generally run in tandem over the past 18 months reflecting the light truck market as both plants showed production declines in 1979 compared to 1978 and in the first four months of 1980 compared to the same period in 1979. Production of light trucks in the U.S. declined in 1979 compared to 1978 and in the first four months of 1980 compared to the same period in 1979.

The Department did not find increased amounts of light truck frames being imported into the U.S. from Canada which contributed importantly to the decline in employment and production or sales at the Dana Corporation's Ecorse, Michigan plant.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 8th day of October 1980.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 80-32725 Filed 10-20-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-9026; 9246-48; 9250-51; 9253; 10,733; 10,735; 10,743-44; 10,748; 10,757; 10,761; 10,763; 10,766; 10,771-72; 10,775; 10,778; 10,781; 10,797; 10,799; 10,801-14; 10,818-44; 10,846-48]

General Motors Corp.; Certifications Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. It is determined in this case that all of the requirements have been met.

Investigations were initiated on June 30, July 14 and September 15, 1980 in response to petitions which were filed on behalf of workers at the support facilities of General Motors Corporation listed in the Appendix.

Since workers at these facilities did not produce an article within the meaning of Section 222(3) of the Trade Act, they may be certified only if their separation was importantly caused by a reduced demand for their services from a firm which produces an article and which is related to the service workers' firm by ownership or by a substantial degree of proprietary control, or if the workers are determined to be *de facto* (according to the facts of the case) employees of the producing firm. In addition, the reduction in demand for their services must be determined to have originated at a production facility whose workers independently meet the statutory criteria for certification, and that reduction must directly relate to the product adversely affected by increased imports.

The Department has determined that increased imports contributed importantly to the decline in sales or production and to total or partial separations of workers at 19 of General Motors Corporation's car and truck assembly plants (TA-W-6783, 6917, 6999-7000, 7009, 7015-16, 7059, 7071, 7073-76, 7078-82, 8613). Workers at these plants are engaged in production of one or more of the following car or truck lines: mid-size, standard and luxury/specialty cars, pick-up trucks, vans, and general utility vehicles. The Department also certified workers at 68 GM component parts plants and support facilities as eligible for trade adjustment assistance (TA-W-6705, 6877, 7001-04, 7004A, 7005, 7007-08, 7010-14, 7018-19, 7021-24, 7026-33, 7035-41, 7044-46, 7048-50, 7052-53, 7055-57, 7065-68, 7070, 7305, 7603, 7782, 8017, 8105-07, 8572, 8581, 8609-12, 8614, 9249 and 9252).

During the course of the investigation, it was established that the facilities listed in the appendix perform activities which primarily support the sales and production of GM vehicles which have been subject to import injury. Therefore, each of these facilities is substantially integrated into the production of trade-impacted GM car and trucks lines.

Because U.S. auto manufacturers redesigned most of their automobiles and/or introduced completely new models from MY 1979 to MY 1981, the composition and distinguishable feature of each market class of vehicles has changed substantially. As a result, the continuation of the recent impact of import competition that existed in MY 1979 and 1980 may not continue in MY 1981.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with mid-size, standard and luxury/specialty automobiles, vans, utility vehicles and pick-up trucks produced at final assembly plants of General Motors Corporation contributed importantly to the decline in sales or production and to the total or partial separation of workers at the support facilities listed in the appendix. In accordance with the provisions of the Act, I make the following certification:

All workers of the support facilities of General Motors Corporation listed in the appendix who became totally or partially separated from employment on or after the impact date listed in the Appendix and before November 1, 1980 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 10th day of October 1980.

James F. Taylor,

Director, Office of Management Administration and Planning.

Appendix

General Motors Corp.

TA-W-	Facility and location	Impact date
9,026	Central office, Warren, MI	May 1, 1980.
9,246	Chevrolet Motor Division, central office, Warren, MI.	Feb. 1, 1980.
9,247	GM Assembly Division, central office, Westland, MI.	Do.
9,248	GM Assembly Division, central office, Warren, MI.	Do.
9,250	Central office, New York, NY	Do.
9,251	Central office, Detroit, MI	Jan. 1, 1980.
9,253	Chevrolet Motor Division, commercial accounting center, Warren, MI.	May 1, 1980.
10,733	GM proving grounds, Mesa, AR	June 1, 1980.
10,735	Central office, Los Angeles, CA	July 1, 1980.
10,743	Central office, Denver, CO	Do.
10,744	Central office, Washington, DC	June 1, 1980.
10,748	Central office, Chicago, IL	July 1, 1980.
10,757	Central office, Flint, MI	Do.
10,761	GM proving grounds, Milford, MI	June 1, 1980.
10,763	Central office, Livonia, MI	July 1, 1980.
10,766	Central office, St. Louis, MO	Do.
10,771	Central office, Union, NJ	Do.
10,772	Central office, Moorestown, NJ	Do.
10,775	Central office, Tarrytown, NY	Do.
10,778	Central office, Cincinnati, OH	Do.
10,781	Central office, Dayton, OH	Do.
10,797	Central office, Fairfax, VA	Do.
10,799	Central office, Milwaukee, WI	Do.
10,801	Central office, Detroit, MI	Feb. 1, 1980.
10,802	Regional sales office, Detroit, MI	May 1, 1980.
10,803	Zone and regional offices, Atlanta, GA.	Apr. 1, 1980.
10,804	Zone and regional offices, Tarrytown, NY.	Do.
10,805	Zone and regional offices, Sharonville, OH.	Do.
10,806	Zone and regional offices, Irving, TX.	Jan. 1, 1980.
10,807	Zone and regional offices, Fremont, CA.	July 1, 1979.
10,808	Zone and regional offices, Oakbrook, IL.	Mar. 1, 1980.
10,809	Zone and regional offices, Rockville, MD.	Apr. 1, 1980.
10,810	Zone sales office, Homewood, AL	May 1, 1980.
10,811	Zone sales office, Tempe, AZ	June 1, 1980.
10,812	Zone sales office, Santa Monica, CA.	Apr. 1, 1980.
10,813	Zone sales office, San Diego, CA	Aug. 1, 1979.

General Motors Corp.—Continued

TA-W-	Facility and location	Impact date
10,814	Zone sales office, Denver, CO	Oct. 1, 1979.
10,818	Zone sales office, Indianapolis, IN	Do.
10,819	Zone sales office, Des Moines, IA	May 1, 1980.
10,820	Regional sales office, Overland Park, KS.	Oct. 1, 1979.
10,821	Zone sales office, Lenexa, KS	Do.
10,822	Zone sales office, Louisville, KY	Sept. 1, 1979.
10,823	Zone sales office, Metairie, LA	Apr. 1, 1980.
10,824	Zone sales office, Westwood, MA	May 1, 1980.
10,825	Zone sales office, Southfield, MI	Do.
10,826	Zone sales office, Grand Blanc, MI	Sept. 1, 1979.
10,827	Zone sales office, Edina, MN	June 1, 1980.
10,828	Zone sales office, Maryland Heights, MO.	Do.
10,829	Zone sales office, Omaha, NE	May 1, 1980.
10,830	Zone sales office, Parsippany, NJ	May 1, 1980.
10,831	Zone sales office, Bethpage, Long Island, NY.	June 1, 1980.
10,832	Zone sales office, Syracuse, NY	Sept. 1, 1979.
10,833	Zone sales office, Cheektowaga, NY.	Apr. 1, 1980.
10,834	Zone sales office, Charlotte, NC	Do.
10,835	Zone sales office, Fargo, ND	May 1, 1980.
10,836	Zone sales office, Parma, OH	Do.
10,837	Zone sales office, Oklahoma City, OK.	June 1, 1980.
10,838	Zone sales office, Beaverton, OR	Sept. 1, 1979.
10,839	Zone sales office, Carnegie, PA	June 1, 1980.
10,840	Zone sales office, Wormleysburg, PA.	Do.
10,841	Zone sales office, King of Prussia, PA.	May 1, 1980.
10,842	Zone sales office, Memphis, TN	Sept. 1, 1979.
10,843	Zone sales office, Houston, TX	May 1, 1980.
10,844	Zone sales office, Salt Lake City, UT.	Oct. 1, 1979.
10,846	Zone sales office, Bellevue, WA	Sept. 1, 1979.
10,847	Zone sales office, Charleston, WV	Do.
10,848	Zone sales office, Brookfield, WI	Oct. 1, 1979.

[FR Doc. 80-32726 Filed 10-20-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-10,734; 10,736-42; 10,745-47; 10,749-56; 10,758-60; 10,762; 10,764-65; 10,767-70; 10,773-74; 10,776-77; 10,779-80; 10,782-96; 10,798; 10,800; 10,815-17; 10,845]

General Motors Corp.; Negative Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely.

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The investigation was initiated on September 15, 1980 in response to a petition which was filed on behalf of workers at the support facilities of General Motors Corporation listed in the appendix.

The investigation revealed that criterion (1) has not been met.

Evidence developed during the course of the investigation revealed that significant total or partial separations did not occur at the 56 facilities listed in the appendix.

Fifty-one of these are GM Central Office locations which did not experience layoffs in 1980 through June. No layoffs are scheduled for these locations in the foreseeable future.

The remaining 5 facilities (TA-W-10,800; 10,815-17; 10,845) are part of the Chevrolet Motor Division. Average employment at each of these facilities either increased or remained the same during the first 10 months of MY 1980 compared with the same MY 1979 period. Employment was virtually unchanged at each facility through the first 10 months of MY 1980. None of these facilities anticipate layoffs in the foreseeable future.

Conclusion

After careful review, I determine that all workers of the support facilities of General Motors Corporation listed in the appendix are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 10th day of October 1980.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 80-32727 Filed 10-20-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-8432]

Standard Metals Co., Inc.; Termination of investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 2, 1980 in response to a worker petition received on May 12, 1980 which was filed on behalf of workers of Standard Metals Company, Incorporated, Junction City, Kentucky. Workers at the firm produce coal processing machinery.

The petitioner requested withdrawal of the petition in a letter dated September 26, 1980. On the basis of the withdrawal, continuing the investigation would serve no purpose. Consequently the investigation has been terminated.

Signed at Washington, D.C., this 10th day of October 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-32730 Filed 10-20-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-10,377]

Tela Tool Corp.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 25, 1980 in response to a worker petition received on August 15, 1980 which was filed by the United Auto Workers, Local 157 on behalf of workers and former workers producing automobile machine tooling at Tela Tool Corporation, Romulus, Michigan.

In a letter dated September 2, 1980, the petitioner requested withdrawal of the petition. On the basis of the withdrawal, continuing the investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 10th day of October 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-32731 Filed 10-20-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-10,592]

Whittaker Corp., Steel Strip Division, Sherwood Avenue Plant; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 5, 1980, in response to a worker petition received on August 19, 1980, which was filed on behalf of workers and former workers of the Whittaker Corporation; Steel Strip Division; Sherwood Avenue plant; Detroit, Michigan.

On May 2, 1980, a petition was filed on behalf of the same group of workers (TA-W-8124).

Since the identical group of workers is the subject of the ongoing investigation (TA-W-8124) a new investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C., this 10th day of October 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-32732 Filed 10-20-80; 8:45 am]

BILLING CODE 4510-28-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (80-70)]

NASA Advisory Council (NAC), Informal Ad Hoc Solar System Exploration Committee; Meeting

The NASA Advisory Council's Informal *Ad Hoc* Solar System Exploration Committee will meet on November 10, 1980, in the Board of Trustee's Room in the Millikan Library, at the California Institute of Technology, Pasadena, California 91125. All sessions will be open to the public up to the seating capacity of the room employed. The meeting room to be used seats 32 persons, including committee members and invited meeting participants. Visitors will be requested to sign a visitor's register.

The Informal *Ad Hoc* Solar System Exploration Committee was established under the NASA Advisory Council to translate the scientific strategy developed by the Committee on Planetary Exploration (Complex) into a realistic, technically sound sequence of missions consistent with that strategy and with resources expected to be available for solar system exploration. The committee will report its findings to the Council and to NASA. The chairperson of the committee is Dr. John E. Naugle, and the committee is composed of four other members of the Council and its standing committees, who will meet with about 9 other invited participants and certain NASA personnel. The agenda for this meeting is given below. For further information, please contact Mrs. Diane M. Mangel, National Aeronautics and Space Administration, Washington, DC 20546 (202/755-3728).

Agenda

8:30 a.m.–10:30 a.m.: Introduction
10:30 a.m.–12:00 noon: Planning Status
1:00 p.m.–4:00 p.m.: Alternate Planning
4:00 p.m.–5:00 p.m.: Summary

Russell Ritchie,
Deputy Associate Administrator for External Relations.

October 15, 1980.

[FR Doc. 80-32621 Filed 10-20-80; 8:45 am]

BILLING CODE 7510-01-M

[Notice (80-69)]

NASA Advisory Council (NAC) Space and Terrestrial Applications Advisory Committee (STAAC); Meeting Cancellation

The scheduled meeting on October 23 and 24, 1980, of the Ad Hoc Informal Advisory Subcommittee on Weather, Climate and Oceans, published in the **Federal Register** on October 7, 1980, (45 FR 66534), has been cancelled. The meeting may be rescheduled in late November.

For further information regarding the meeting, please contact Mr. William Bishop, Deputy Director, Environmental Observations Division, National Aeronautics and Space Administration, Washington, DC 20546 (202/755-8604).

Frank J. Simokaitis,
Acting Associate Administrator for External Relations.

October 15, 1980.

[FR Doc. 80-32622 Filed 10-20-80; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Museum Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Museum Panel to the National Council on the Arts will be held November 2, 1980 at the San Francisco Hilton California Room from 1:00 p.m.–4:00 p.m. and November 3, 1980, at the San Francisco Museum of Modern Art from 9:00 a.m.–5:00 p.m.

A portion of this meeting will be open to the public on November 2, 1980 from 1:00 p.m.–4:00 p.m. for the discussion of a joint meeting with the Western Association of Art Museums and the Western Regional Conference of the AAM.

The remaining sessions of this meeting on November 3, 1980, from 9:00 a.m.–5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these session will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

Dated: October 8, 1980.

John H. Clark,
Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 80-32707 Filed 10-20-80; 8:45 am]

BILLING CODE 7537-01-M

Music Panel (Chorus Section); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Panel (Chorus Section) to the National Council on the Arts will be held November 5–8, 1980, from 9:00 a.m. to 5:30 p.m. and November 5, 1980, from 9:00 a.m. to 11:30 a.m. in room 1426, Columbia Plaza Office Complex, 2401 E Street N.W., Washington, D.C.

A portion of this meeting will be open to the public on November 5–8, 1980 from 9:00 a.m. to 5:30 p.m. for the Discussion of National Choral Festival.

The remaining sessions of this meeting on November 5, 1980, from 9:00 a.m. to 11:30 a.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

Dated: October 8, 1980.

John H. Clark,
Director, Office of Council and Panel Operation, National Endowment for the Arts.

[FR Doc. 80-32709 Filed 10-20-80; 8:45 am]

BILLING CODE 7537-01-M

Music Panel (Orchestra Section); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Panel (Orchestra Section) to the National Council on the Arts will be held November 17–19, 1980 from 9:00 a.m. to 5:30 p.m. and November 20, 1980 from 9:00 a.m. to 3:30 p.m., in room 1426, Columbia Plaza Office Complex, 2401 E St., N.W., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b, of Title United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

Dated: October 8, 1980.

John H. Clark,
Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 80-32708 Filed 10-20-80; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Permit Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, D.C. 20550. Telephone (202) 357-7934.

SUPPLEMENTARY INFORMATION: On August 29, 1980, the National Science Foundation published a notice in the **Federal Register**, page 57800 of permit applications received. On October 2, 1980 a permit was issued to Donald B. Siniff.

Charles E. Myers,
Permit Office, Division of Polar Programs.

[FR Doc. 80-32706 Filed 10-20-80; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Applications for Licenses To Export/Import; Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public Notice of Receipt of an Application", please take notice that the Nuclear Regulatory Commission has received the following application(s) for export/import licenses. A copy of each application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H St., N.W., Washington, D.C.

A request for a hearing or a petition for leave to intervene may be filed by November 20, 1980. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, the Secretary, U.S. Nuclear Regulatory Commission and the Executive Secretary, Department of State, Washington, D.C. 20520.

In its review of applications for license to export production or utilization facilities, special nuclear material or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported.

Dated this day October 7, 1980 at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

James R. Shea,
Director, Office of International Programs.

Name of applicant, date of application, date received, application number	Material type	Material in kilograms		End-use	Country of destination
		Total element	Total isotope		
Transnuclear, 08/25/80, 08/26/80, XSNMO1721	45.4% enriched uranium	7.508	3.409	Will be used as fuel in FRM Reactor at Garching.	West Germany.
Transnuclear, 09/08/80, 09/09/80, XSNMO1725	93.3% enriched uranium	4.371	4.078	Fuel for the ASTRA Reactor	Austria.
Transnuclear, 09/08/80, 09/09/80, XSNMO1726	19.95% enriched uranium	33.000	6.584	Fuel for the ASTRA Reactor	Austria.
Mitsui & Co., 09/05/80, 09/09/80, XSNMO1730	3.95% enriched uranium	22,475	626	Routine reload for Hamaoka Unit 2.	Japan.
General Electric, 09/04/80, 09/10/80, XSNMO1731	3.1% enriched uranium	9,675	265	Routine reload for Tsuruga	Japan.
Mitsubishi Int'l, 09/12/80, 09/17/80, XSNMO1734	2.85% enriched uranium	11,823	337	Routine reload for Takahama Unit 1.	Japan.
Mitsubishi Int'l, 09/12/80, 09/17/80, XSNMO1735	3.25% enriched uranium	15,141	493	Routine reload for Ohi Unit 2	Japan.
Nissho-Iwai America, 09/15/80, 09/22/80, XSNMO1736	12.18% enriched uranium	456.138	55.558	Fuel for JOYO Fast Breeder Reactor.	Japan.
Mitsubishi Int'l, 09/19/80, 09/26/80, XSNMO1738	2.0% enriched uranium	14,613	359	Routine reload fuel for Mihama Unit 1.	Japan.
Edlow Int'l, 09/24/80, 09/25/80, XSNMO1740	2.71% enriched uranium	19,858.8	487.3	Routine reload for Tarapur	India.
Edlow Int'l, 09/02/80, 09/03/80, XUO8508	Natural uranium	117,319		For storage purposes only for ultimate use in the Grohnde Reactor.	West Germany.

[FR Doc. 80-32644 Filed 10-20-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-155 and 50-255]

Consumers Power Co.; Issuance of Amendments To Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 35 to Facility Operating License No. DPR-6 for the Big Rock Point Nuclear Plant and Amendment No. 61 to Provisional Operating License No. DPR-20 for the Palisades Plant to Consumers Power Company (the licensee). The Big Rock Point Plant is located in Charlevoix County, Michigan and the Palisades Plant is located in Van Buren County, Michigan. The amendments are effective

as of the date of issuance and are to be fully implemented within 30 days of Commisson approval in accordance with the provisions of 10 CFR 73.40(b).

The amendments and license conditions to include the Commission-approved Safeguards Contingency Plan as part of the licenses.

The licensee's filing complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendments.

The licensee's filing dated July 11, 1980 (transmitted by letter dated July 24, 1980) is being withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR 9.12.

For further details with respect to this action, see (1) Amendment Nos. 35 and 61 to License Nos. DPR–6 and DPR–20, respectively, and (2) the Commission's related letter to the licensee dated October 1, 1980. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Charlevoix Public Library, 107 Clinton Street, Charlevoix, Michigan 49720 (Big Rock Point) and at the Kalamazoo Public Library, 315 South Rose Street, Kalamazoo, Mighigan 49006 (Palisades Plant). A copy of items (1) and (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this first day of October, 1980.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 80–32637 Filed 10–20–80; 8:45 am]

BILLING CODE 7590–01–M

[Dockets Nos. 50–269, 50–270 and 50–287]

Duke Power Co., Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 87, 87 and 84 to Facility Operating Licenses Nos. DPR–38, DPR–47 and DPR–55, respectively, issued to Duke Power Company, which revised the Technical Specifications for operation of the Oconee Nuclear Station, Units Nos. 1, 2 and 3, located in Oconee County, South Carolina. The amendments are effective as of the date of issuance.

These amendments revise the Station's Common Technical Specifications as applicable only to Oconee Units 2 and 3 by modifying the reactor vessel pressure-temperature operating limit curves to enable the extension of reactor vessel operation for 4 to 5 effective full power years.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated July 22, 1980, (2) Amendments Nos. 87, 87, and 84 to Licenses Nos. DPR–38, DPR–47 and DPR–55, respectively, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Oconee County Library, 201 South Spring Street, Walhalla, South Carolina. A copy of items (2) and (3) may be obained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 7th day of October 1980.

For the Nuclear Regulatory Commission.

Robert W. Reid,

Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 80–32641 Filed 10–20–80; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–498A, 50–499A and 50–445A, 50–446A]

Houston Lighting & Power Co., et al. (south Texas Project, Units 1 and 2) and Texas Utilities Generating Co., et al. (Comanche Peak Steam Electric Station, Units 1 and 2); Special Prehearing Conference

October 14, 1980.

Please take notice that a special prehearing conference will be held in this consolidated proceeding on Thursday, October 23, 1980, commencing at 10:00 a.m., local time, at the Nuclear Regulatory Commission Hearing Room, located at 4350 East-West Highway, 5th Floor, Bethesda, Maryland 20014.

This conference will consider all pending motions, requests suggestions, reports and the like, including without limitations thereto all aspects of proposed settlements or stipulations, conditions and comments on negotiated agreements; and adequacy under prior orders of trials briefs, lists of witnesses and exhibits, and summaries of testimony. No further responsive statements or briefs will be required of the parties until after these matters have been considered and ruled on by the Board at or after the prehearing conference.

Dated at Bethesda, Maryland, this 14th day of October 1980.

It is so ordered.

For the Atomic Safety and Licensing Board.

Marshall E. Miller,

Chairman.

[FR Doc. 80–32639 Filed 10–20–80; 8:45 am]

BILLING CODE 7590–01–M

[Byproduct Material License No. 48–04585–01]

Lakeview Hospital; Rescission of Suspension Order and Confirmatory Order To Modify License

I

Lakeview Hospital, 10010 West Blue Mound Road, Wauwatosa, Wisconsin (the "licensee") is the holder of Byproduct Material License No. 48–04585–01 (the "licensee") issued by the Nuclear Regulatory Commission (the "Commission"). the license authorizes the possession of byproduct material and is use for medical diagnostic purposes. The license was originally issued on January 19, 1959 and has been amended periodically since. The expiration date of the license is January 31, 1985.

II

In response to an allegation of improper use of radiactive materials at Lakeview Hospital, an investigation was conducted into the Licensee's activities by representatives of the NRC Region III office (Glenn Ellyn, Illinois) on August 1, 6 and 7, 1980. The investigation showed the existence of a number of apparent items of noncompliance. This finding resulted in the issuance to the licensee on August 11, 1980 of an Order Suspending License, effective immediately, and an Order to Show Cause why the license should not be revoked.

III

By letter dated September 4, 1980 the licensee responded to the Order to Show Cause and Order Suspending License. In the September 4, 1980 response, the licensee denied four of the apparent items of noncompliance set forth in Section II of that Order, admitted the remaining items, and provided a description of corrective actions to achieve greater control over licensed activities. The NRC's response to the specific items of noncompliance which were denied by the licensee have been addressed elsewhere (See Enclosure 1 to letter from V. Stello to Lakeview Hospital dated October 8, 1980.) However, even in areas where the licensee denied the specific items of noncompliance, corrective action was proposed to assure that similar noncompliance would not occur in the future.

IV

After a careful review of the licensee's September 4, 1980 resonse, it was determined that further clarification was needed on the controls to be instituted by the licensee to assure that licensed activities will be performed safely and in accordance with regulatory requirements. Accordingly, on September 12, 1980, members of the NRC Region III staff met with licensee representatives at the NRC Region III office in Glen Ellyn, Illinois. Subsequent to the meeting, the licensee provided supplemental information on September 16, 1980 proposing additional corrective measures. The proposed corrective measures as supplemented appear to be adequate to assure sufficient management control of the licensee's byproduct materials program. Based on the licensee's implementation of this corrective action, as required by this Order, the Order Suspending License, dated August 11, 1980, is hereby rescinded.

V

As noted above, the licensee has proposed certain measures as corrective actions in response to the noncompliance alleged in the August 11, 1980 Order. In view of the seriousness of the circumstances surrounding this matter, it is appropriate to confirm the licensee's commitments by order. Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Part 2, 20, 30 and 35, License No. 48–04585–01 is hereby modified, effective immediately, to include, as conditions thereof, the statements, representations, and procedures contained in the letters submitted to the NRC dated September 4, and September 16, 1980.

VI

Any person who has an interest affected by the license modifications ordered in Section V above may request a hearing within twenty-five (25) days of the date of this Order. Any request for a hearing will not stay the effectiveness of this Order. any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the Executive Legal Director at the same address. A request for a hearing should describe specifically the nature of the petitioner's interest and the manner in which the petitioner's interest is affected by the ordered license modifications. If a hearing is requested by a person who has an interest affected by the license modifications, the Commission will issue an order designating the time and place of any such hearing.

If a hearing is held, the issue to be considered at such a hearing shall be whether the licensee should be modified to include the conditions set forth in section V of this Order.

Activities under the license on terms consistent with this Order are not stayed by the pendency of any proceeding on the Order.

Effective Date: October 8, 1980. Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Director, Office of Inspection and Enforcement.

[FR Doc. 80–32646 Filed 10–20–80; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–311]

Public Service Electric & Gas Co., Philadelphia Electric Co., Delmarva Power & Light Co., and Atlantic City Electric Co.; Issuance of Amendment To License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 3 to License No. DPR-75, issued to Public Service Electric and Gas Company, Philadelphia Electric Company, Delmarva Power and Light Company and Atlantic City Electric Company (the licensees), which revised Technical Specifications for operation of the Salem Nuclear Generating Station, Unit No. 2 (the facility) located in Salem County, New Jersey. The amendment is effective as of the date of issuance.

The amendment deletes the requirement for Public Service Electric and Gas Company to plug certain tubes in the steam generators prior to exceeding 5 percent power, approves an organizational change to establish a new Radiation Protection Department, and revises the Technical Specification concerning High Radiation Area.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the two letters of application for amendment both dated August 22, 1980, (2) Amendment No. 3 to License No. DPR-75, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 10th day of October, 1980.

For the Nuclear Regulatory Commission.

B. C. Buckley,

Acting Chief Licensing Branch No. 3, Division of Licensing.

[FR Doc. 80-32642 Filed 10-20-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-327; DD-80-31]

Tennessee Valley Authority (Sequoyah Nuclear Plant, Unit 1); Director's Decision

October 8, 1980.

By petition dated May 29, 1980, "The Nuclear Regulatory Commission" (TNRC, a five-member musical group) requested that the Nuclear Regulatory Commission (NRC) revoke the license issued to conduct the low power test program at the Sequoyah facility in order to protect the public health and safety. The petition also requested such other action as may be proper. This request has been considered under the provisions of 10 CFR 2.206 of the Commission's regulations. Notice of receipt of the petition was published in the Federal Register on July 3, 1980 (45 FR 45429).

TNRC's concern with respect to low power operation was based upon the potential failure of the ice-condenser pressure suppression containment system employed at the Sequoyah facility. Containment integrity is not a safety concern during the conduct of low power testing. The issue of containment integrity during low power testing was examined by the NRC staff. The staff considered whether a loss-of-coolant accident from low power operations would likely lead to significant metal-water reaction (and hydrogen generation) even under severely degraded ECCS conditions. It was concluded that there is time available to take corrective action to cool the core before there is any substantial hydrogen generation.[1] Also, the potential for the release of radioactivity, should the containment fail, is virtually non-existent since the power levels during the low power testing do not exceed five percent of full power and the one-week test program would produce insignificant amounts of radioactivity. This program has been completed at the Sequoyah facility without endangering the public health and safety.

TNRC also expressed a concern in its petition that the Sequoyah containment building could provide inadequate protection in the event of a TMI-2 type incident. A TMI-2 type incident could produce large amounts of hydrogen in the Sequoyah containment. Should a combustion pressure spike of the magnitude experienced at TMI-2 occur, the Sequoyah containment pressure rating could ber exceeded resulting in a loss of containment. TNRC noted in its petition that, in light of operating experience obtained at TMI-2, a multiple-failure accident sequence with significant core damage, hydrogen liberation and combustion, and major metal-water reactions, must be regarded as a plausible occurrence.

This concern was intensively studied by the NRC staff, the Advisory Committee on Reactor Safeguards (ACRS) and the Commission prior to the issuance of the Sequoyah full power license which occurred on September 17, 1980. Specifically, the Commission had before it:

1. SECY 80-107, Proposed Interim Hydrogen Control Requirements for Small Containments, dated February 22, 1980.
2. SECY 80-107A, Additional Information Re: Proposed Interim Hydrogen Control Requirements, dated April 22, 1980.
3. SECY 80-107B, Additional Information Re: Proposed Interim Control requirements, dated June 20, 1980.
4. Supplement No. 1 to Safety Evaluation Report Related to Operation of Sequoyah Nuclear Plant Units 1 and 2 (Page 11.B-1), dated Febraury 1980. (NUREG-0011)
5. Supplement No. 2 to Safety Evaluation Report Related to Operation of Sequoyah Nuclear Plant Units 1 and 2 (Page 22.2-27), dated August 1980. (NUREG-0011)
6. Supplement No. 3 to Safety Evaluation Report Related to Operation of Sequoyah Nuclear Plant Units 1 and 2, dated September 1980. (NUREG-0011)
7. ACRS letter on Sequoyah Nuclear Plant, dated September 8, 1980.

These documents and reports embrace the concerns raised by TNRC in its petition. The conclusion reached by both the NRC staff and the ACRS was that full power licensing of Sequoyah facility need not await completion of ongoing work related to hydrogen control measures for the Sequoyah-type of containment.[2]

After due consideration of this issue, the Commission approved on September 17, 1980 the issuance by the Director of the Office of Nuclear Reactor Regulation of a full-power facility operating license for Sequoyah Nuclear Plant, Unit 1, subject, however, to the following conditions relative to hydrogen control measures:

(a) By January 31, 1981, TVA shall by testing and anlysis show to the satisfaction of the NRC staff that an interim hydrogen control system will provide with reasonable assurance protection against breach of containment in the event that a substantial quantity of hydrogen is generated.

(b) For operation of the facility beyond January 31, 1982, the Commission must confirm that an adequate hydrogen control system for the plant is installed and will perform its intended function in a manner that provides adequate safety margins.

(c) During the interim period of operation, TVA shall continue a research program on hydrogen control measures and the effects of hydrogen burns on safety functions and shall submit to the NRC quarterly reports on that research program.

In my judgement, the analyses performed by the NRC staff and accepted by the Commission, as described in the documents referenced above, in conjunction with the license conditions imposed on the Sequoyah facility, adequately address the concerns raised in your petition and, on these bases, I deny your petition.

A copy of this Decision and its attachments will be placed in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555 and the Local Public Document Room for the Sequoyah facility, located at the Chattanooga Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

A copy of this Decision will also be filed with the Secretary for the Commission for its review in accordance with 10 CFR § 2.206(c) of the Commission's regulations.

As provided in 10 CFR § 2.206(c) of the Commission's regulations, this Decision will constitute the final action of the Commission twenty (20) days after the date of issuance, unless the Commission, on its own motion, institutes a review of this Decision within that time.

Dated at Bethesda, Maryland, this 8th day of October, 1980.

Harold R. Denton,

Director, Office of Nuclear Regulation.

[FR Doc. 80-32645 Filed 10-20-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-338]

Virginia Electric & Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 20 to Facility Operating License No. NPF-4 issued to the Virginia Electric and Power Company (the licensee) for operation of the North Anna Power Station, Unit No. 1 (the facility) located in Louisa County, Virginia. The amendment is effective as of the date of issuance and is to be fully implemented within 30 days of Commission approval in accordance with the provisions of 10 CFR 73.40(b).

The amendment revises a license condition to include the Commission approved Safeguards Contingency Plan as part of the license.

The licensee's filings comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendment.

The licensee's filings dated November 30, 1977, September 25, October 25, 1978, January 12, February 16, 1979 and May 1, 1980 are being withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR § 9.12.

For further details with respect to this action, see (1) Amendment No. to Facility Operating License NPF-4 and (2) the Commission's related letter to the licensee dated October 3, 1980. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the Board of Supervisor's Office, Louisa County Courthouse, Louisa, Virginia 23093 and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

A copy of these items may be obtained upon request to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 3rd day of October 1980.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief Operating Reactors Branch No. 3 Division of Licensing.

[FR Doc. 80-32643 Filed 10-20-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-266 and 50-301]

Wisconsin Electric Power Co.; Granting of Relief From ASME Section XI Inservice Testing Requirements

The U.S. Nuclear Regulatory Commission (the Commission) has granted relief from certain requirements of the ASME Code, Section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components" to Wisconsin Electric Power Company. The relief relates to the revised inservice testing program for pumps and valves for Point Beach Nuclear Plant, Units 1 and 2, located in Two Creeks, Wisconsin. The ASME Code requirements are incorporated by reference into the Commission's rules and regulations in 10 CFR Part 50. The relief is effective as of its date of issuance, and is similar to that granted on August 26, 1977 for Unit 1 and October 25, 1979 for Unit 2.

The relief consists of exemption from the requirements for measuring certain parameters in the Pump Testing Program and revised schedules for conducting valve stroking tests in the Valve Testing Program.

The request for relief complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the letter granting relief. Prior public notice of this action was not required since the granting of this relief from ASME Code requirements does not involve a significant hazards consideration.

The Commission has determined that the granting of this relief will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

For further details with respect to this action, see (1) the requests for relief (2) dated July 25, 1980 and (3) the Commission's letter to the licensee dated September 30, 1980.

The items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Joseph Mann Library, 1516 16th Street, Two Rivers, Wisconsin 54241. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 30th day of September 1980.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief Operating Reactors Branch No. 3 Division of Licensing.

[FR Doc. 80-32640 Filed 10-20-80; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Procedures and Administration; Meeting

The ACRS Subcommittee on Procedures and Administration will hold a meeting on November 5, 1980 in Room 1046, 1717 H St., NW, Washington, DC to discuss proposed changes in the ACRS role to strengthen its position in the regulatory process.

In accordance with the procedures outlined in the Federal Register on October 7, 1980 (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Wednesday, November 5, 1980—4:30 p.m. until approximately 6:30 p.m.: Members of the Subcommittee, along with any of its consultants who may be present, and ACRS Staff members will exchange views regarding items proposed as methods to strengthen the role of the ACRS in the regulatory process.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Raymond F. Fraley (telephone 202/634-3265) between 8:15 a.m. and 5:00 p.m., Eastern Time.

Dated: October 15, 1980.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 80-32640 Filed 10-20-80; 8:45 am]

BILLING CODE 7590-01-M

[1] Supplement No. 1 to Safety Evaluation Report related to operation of Sequoyah Nuclear Plant, Page 11.B-1.

[2] Supplement 3 to Safety Evaluation Report related to operation of Sequoyah Nuclear Plant (Page 22.2-1) and ACRS letter of September 8, 1980.

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Advisory Committee on Reactor Safeguards, Subcommittee on Regulatory Activities; Meeting

The ACRS Subcommittee on Regulatory Activities will hold a meeting on November 5, 1980 in Room 1046, 1717 H St., NW, Washington, DC. Notice of this meeting was published September 18, 1980.

In accordance with the procedures outlined in the Federal Register on October 7, 1980 (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Wednesday, November 5, 1980—The meeting will commence at 8:45 a.m.: The Subcommittee will hear presentations from the NRC Staff and will hold discussions with this group pertinent to the following:

(1) Regulatory Guide 1.12, Revision 2, "Instrumentation for Earthquakes"

(2) Regulatory Guide 1.97, Revision 2, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident" (Post Comment)

(3) Proposed Amendment to 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," on Interim Requirements Related to Hydrogen Control and Certain Degraded Core Conditions (Pre Comment)

Other matters which may be of a predecisional nature relevant to reactor operation or licensing activities may be discussed following this session.

Persons wishing to submit written statements regarding Regulatory Guide 1.97, Revision 2, may do so by providing a readily reproducible copy to the Subcommittee at the beginning of the meeting. However, to insure that adequate time is available for full consideration of these comments at the meeting, it is desirable to send a readily reproducible copy of the comments as far in advance of the meeting as practicable to Mr. Sam Duraiswamy, the Designated Federal Employee for the meeting, in care of ACRS, Nuclear Regulatory Commission, Washington, DC 20555 or telecopy them to the Designated Federal Employee (202/634-3319) as far in advance of the meeting as practicable. Such comments shall be based upon documents on file and available for public inspection at the NRC Public Document Room, 1717 H St., N.W., Washington, DC 20555.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Mr. Sam Duraiswamy, (telephone 202/634-3267) between 8:15 a.m. and 5:00 pm., Eastern Time.

Dated: October 15, 1980.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 80-32850 Filed 10-20-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-293]

Boston Edison Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 43 to Facility Operating License No. DPR-35, issued to Boston Edison Company (the licensee), which revised the license for operation of the Pilgrim Nuclear Power Station, Unit No. 1 (the facility), located in Plymouth, Massachusetts. The amendment is effective as of the date of issuance and is to be fully implemented within 30 days of Commission approval in accordance with the provisions of 10 CFR 73.40(b).

The amendment adds license conditions to include the Commission-approved Safeguards Contingency Plan as part of the license.

The licensee's filing complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which is set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

The licensee's filing dated April 5, 1979, revised by letter dated December 20, 1979, and April 22, 1980, is being withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR 9.12.

For further details with respect to this action, see (1) Amendment No. 43 to License No. DPR-35 and (2) the Commission's related letter to the licensee dated October 3, 1980. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Plymouth Public Library on North Street in Plymouth, Massachusetts 02360. A copy of items (1) and (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 3rd day of October, 1980.

For the Nuclear Regulatory Commission.

Thomas A. Ippolito,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 80-32789 Filed 10-20-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-409]

Dairyland Power Cooperative; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 21 to Provisional Operating License No. DPR-45, issued to Dairyland Power Cooperative (the licensee), which revised the license for operation of the LaCrosse Boiling Water Reactor located in Vernon County, Wisconsin. The amendment is effective as of its date of issuance, and is to be fully implemented within 30 days of Commission approval in accordance with the provisions of 10 CFR 73.40(b).

The amendment adds a license condition to include the Commission-approved Safeguards Contingency Plan as part of the license.

The licensee's filing complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

The licensee's filing dated September 5, 1979 (transmitted by letter dated September 12, 1979) is being withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR 9.12.

For further details with respect to this action, see (1) Amendment No. 21 to license No. DPR-45, and (2) the Commission's related letter to the licensee dated September 25, 1980. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and the LaCrosse Public Library, 800 Main Street, LaCrosse, Wisconsin 54601. A copy of items (1) and (2) may be obtained by request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 25th day of September 1980.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 80-32785 Filed 10-20-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

Jersey Central Power & Light Co.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 51 to Provisional Operating License No. DPR-16, issued to Jersey Central Power & Light Company (the licensee), which revised the license for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey. The amendment is effective as of its date of issuance and is to be fully implemented within 30 days of Commission approval in accordance with the provisions of 10 CFR 73.40(b).

The amendment adds a license condition to include the Commission

Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 6th day of October, 1980.

For the Nuclear Regulatory Commission.

Thomas A. Ippolito,

Chief Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 80-32788 Filed 10-20-80; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-339]

Errata to Virginia Electric & Power Co.; Issuance of Facility Operating License

On August 25, 1980, a notice was published in the **Federal Register** (45 FR 56476) concerning the issuance of a full power license (100 percent power) for the North Anna Power Station, Unit No. 2. The notice made the following documents available to the public:

For further details with respect to this action, see (1) Facility Operating License NPF-7, and (2) the Commission's related Safety Evaluation, NUREG-0053, Supplement Nos. 11 and 12, dated August 1980.

These items are available for public inspection at the Commission's Public Document Room 1717 H Street, N.W., Washington, D.C., and at the local public document rooms in the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901 and at the Office of the Board of Supervisors, Louisa County Courthouse, P.O. Box 27, Louisa, Virginia 23093. A copy of item 1 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing, Office of Nuclear Reactor Regulation. Copies of item 2 may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

The above-mentioned paragraphs have been revised to include additional documents available to the public. Accordingly, the Commission has issued the following replacement for the August 25, 1980 notice:

The U.S. Nuclear Regulatory Commission (the Commission) has issued Facility Operating License NPF-7, issued to the Virginia Electric and Power Company (VEPCO), which authorizes operation of the North Anna Power Station, Unit 2 at reactor core power levels not in excess of 2775 megawatts thermal (100 percent power) in accordance with the provisions of the license and the Technical Specifications.

The North Anna Power Station, Unit 2 is a pressurized water nuclear reactor located at the licensee's site near Mineral in Louisa County, Virginia. The license is effective as of its date of issuance.

"

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license was issued in the **Federal Register** on May 25, 1973 (38 FR 13772).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by this license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see (1) Facility Operating License NPF-7 complete with Technical Specifications; (2) License for Fuel Loading and Low Power Testing, NPF-7, dated April 11, 1980 and Amendments 1 and 2 thereto, dated July 3, 1980 and August 18, 1980, respectively; (3) the report of the Advisory Committee on Reactor Safeguards, dated January 17, 1977; (4) the Office of Nuclear Reactor Regulation's Safety Evaluation Report, dated June 4, 1976, and Supplements 1 through 12; (5) the Final Safety Analysis Report and Amendments thereto; (6) the Final Environmental Statement, dated April 1973; and Addendum 1 and Errata thereto, dated November 1976 (NUREG-0134) and Addendum 2, dated August 1980 (NUREG-0134); (7) the Environmental Report, dated June 17, 1970 and supplements thereto; and (8) the Assessment of Floodplain Aspects of the North Anna Power Station, Unit 2, dated August 21, 1980.

Items 1, 2, 3, and 8 are available upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing. Copies of items 4 and 6 may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and all items 1 through 8 are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the local public document rooms in the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901 and at the Office of the Board of Supervisors, Louisa County Courthouse, P.O. Box 27, Louisa, Virginia 23093.

Dated at Bethesda, Maryland, this 6th day of October 1980.

For the Nuclear Regulatory Commission.

B. J. Youngblood,

Chief, Licensing Branch No. 1, Division of Licensing.

[FR Doc. 80-32786 Filed 10-20-80; 8:45 am]
BILLING CODE 7590-01-M

Regulatory Guide; Notice of Withdrawal

The Nuclear Regulatory Commission staff has withdrawn Regulatory Guide 1.101, Revision 1, "Emergency Planning for Nuclear Power Plants," which was issued in March 1977 to provide guidance to applicants for developing the emergency plans required in Final Safety Analysis Reports for nuclear power plants.

Since the guide was issued, the NRC has undertaken a formal reconsideration of the role of emergency planning in ensuring the continued protection of the public health and safety in areas around nuclear power plants. The Commission began this reconsideration in recognition of the need for more effective emergency planning and in response to the TMI accident and to reports issued by responsible offices of government and the NRC's Congressional oversight committees. As a result of this effort, the Commission has upgraded its requirements for emergency preparedness in amendments to 10 CFR Part 50 that were published in the **Federal Register** on August 19, 1980 (45 FR 55402). Revision 1 of Regulatory Guide 1.101 does not reflect these new requirements.

The information contained in the amendments and in NUREG-0654 (FEMA-REP-1), "Criteria for Preparation and Evaluation of Radiological Emergency Response Plan and Preparedness in Support of Nuclear Power Plants," which has been published for interim use and comment, will be used to completely revise Regulatory Guide 1.101. NUREG-0654 is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. It may also be purchased at current rates through the GPO Sales Program, Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Publications Sales Manager, or from the National Technical Information Service, Springfield, VA 22161.

Regulatory guides are developed to describe and make available to the public methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems. Guides may be withdrawn when they are superseded by the Commission's regulations, when equivalent recommendations have been incorporated in applicable approved codes and standards, or when changes in methods and techniques or in the need for specific guidance have made them obsolete.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 6th day of October 1980.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Standards Development.

[FR Doc. 80-32789 Filed 10-20-80; 8:45 am]
BILLING CODE 7590-01-M

PRESIDENT'S COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS IN MEDICINE AND BIOMEDICAL AND BEHAVIORIAL RESEARCH

Public Meeting

Notice is hereby given, pursuant to Section 10(a)(2) of the Federal Advisory Committees Act, that the fifth meeting of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research will be held in Room 2010 of the New Executive Office Building, 1726 Jackson Place, N.W., Washington, D.C., from 9:00 a.m., to 5:30 p.m. on Friday, November 7, 1980 and from 8:30 a.m. to 4:00 p.m. on Saturday, November 8, 1980.

The meeting will be open to the public, subject to limitations of available space. The agenda of this Commission meeting will include among other things, the following topics: the adequacy and appropriateness of rules governing research involving human subjects funded or regulated by the Federal Government; ethical issues in the availability of health services; consideration of draft working paper on the advisability of a uniform definition of death.

During the afternoon of Friday November 7, one-half hour will be devoted to comments from the floor on the subject of any of the agenda items, limited to three minutes per comment. Written suggestions and comments will be accepted from those who are able to speak because of the constraints of time or those unable to attend the meeting.

Records shall be kept of all Commission proceedings and will be available for public inspection at the Commission's office, located in Suite 555, 2000 K Street, N.W., Washington, D.C. 20006.

For further information, contact Andrew Burness, Public Information Officer, at (202) 653-8051.

Alexander M. Capron,

Executive Director.

[FR Doc. 80-32719 Filed 10-20-80; 8:45 am]
BILLING CODE 6820-AV-M

RADIATION POLICY COUNCIL

[AS-FRL 1638-4]

Request for Comments on the 1981-83 Agenda of the U.S. Radiation Policy Council

SUMMARY: On September 25, 1980, the U.S. Radiation Policy Council adopted a preliminary long-term agenda of issues it plans to address in the 1981-83 time period. The Council invites public comment on the agenda. Written comments must be received by the Council no later than Friday, December 5, 1980. Oral comments may be made at a meeting with the public scheduled for Thursday, December 4, 1980 in Washington, D.C.

BACKGROUND: The Council has engaged in an extensive process to develop an agenda of substantive, policy-oriented issues to address in the 1981-83 time period. To obtain suggestions, the Council held meetings with the public in Washington, D.C.; Boston, Massachusetts; Denver, Colorado; San Francisco, California; and Atlanta, Georgia. The Council and its member agencies requested suggestions through two **Federal Register** notices (May 23, 1980 and June 27, 1980) and through mailings to more than 12,000 individuals and groups. The Council also contacted Federal agencies for their suggestions.

In total about 150 different issues were raised. A number of these were clearly the responsibility of a single agency and were referred to that agency for consideration. A number of the issues concerned low-level radioactive waste disposal, radon in structures, radiological emergencies, and public information and education. As the Council has taken action on the first two issues and has work underway on the last two issues, these four issues are not included on the preliminary long-term agenda at this time.

The remaining issues formed the bases for nine broad policy issues, presented in the next section, that the Council adopted as its preliminary 1981-83 agenda at its September 25 meeting.

PRELIMINARY AGENDA: The preliminary agenda consists of the following issues:

- Principles and concepts of radiation protection;
- Standards-setting processes;
- Roles and function of Federal agencies;
- Radiation exposure reduction;
- Data base and methodologies;
- Federal/State relationships;
- Facility monitoring and surveillance;
- Scientific and technical personnel needs; and
- Building construction and land use controls.

These issues are discussed in more detail below.

Principles and Concepts of Radiation Protection

Objective: To develop a Federal policy statement that enunciates a set of basic principles and concepts and that will guide Federal programs in providing and assessing radiation protection.

Discussion: Current Federal policy on radiation protection is limited in scope. It exists primarily in Federal guides published in the 1960's. While several of these guides remain valid today, new issues have been raised concerning the adequacy of protection and the basis for establishing standards and regulations. Therefore, the Council intends to take up the development of a Federal policy statement on these issues.

Among the possible topics to be addressed are:

—Should radiation protetion policies be based on some inherent level of risk, e.g., risk associated with natural background radiation? At the levels of exposure generally experienced, are there meaningful ways to express degrees of risk and to compare risks at different levels of exposure?

—To what extent should tradeoffs between risks and benefits be used in setting policy? How should the concept of "as low as reasonably achievable" (ALARA) be applied?

—How can the concept of *de minimus non curat lex* be applied in radiation protection, e.g., to radioactive wastestreams and to radiation exposure?

—How should protection efforts factor in differences in population characteristics, e.g., radiosensitivity, protection for current vis-a-vis future generation, protection of individuals or specific subgroups vis-a-vis the total propulation, and "prudent conservatism" in considering uncertainties in risk estimates?

—How can degrees of radioactivity or radiation exposure be defined in a consistent and publicly understandable manner, e.g., low-level or high-level waste, low-level exposure, etc.?

The following tasks also will have to be undertaken:

—Evaluate the feasibility of developing a uniform Federal policy on radiation protection.

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—Recommend an effective means of developing and issuing this policy.
—Prepare or support the preparation of a policy statement, contingent upon achievement of the previous two tasks.

Standards-Setting Processes

Objective: To examine the current processes for setting radiation protection standards and to determine how they might be improved and made more consistent.

Discussion: A number of Federal agencies presently have authority to set radiation protection standards, including the Departments of Health and Human Services, Labor, and Transportation and the Environmental Protection Agency, Nuclear Regulatory Commission, and Consumer Product Safety Commission. In addition, standards set by these agencies influence programs in a number of other agencies, including the Departments of Housing and Urban Development and Energy and the Federal Emergency Management Agency. These varied authorities and responsibilities are based on numerous laws, though most relate to a guidance function presently the responsibility of EPA. In developing this guidance, EPA draws upon current scientific and technical information and embraces, where possible, social and economic considerations.

As the Libassi Task Force pointed out, the current standards-setting procedure generates numerous problems, and examination of the entire standards-setting process seems necessary.

Among the possible topics to be addressed are:

—Examine the preparation of guidance documents and their use in setting standards over the last 20 years.
—Determine the current feasibility of the guidance function as the basic Federal approach to setting all radiation protection standards.
—If data analyses, guidance-development, and actual standards-setting are to be carried out by separate agencies, develop procedures to assure consistent application of data and guidance in the setting of standards.
—If each agency is to be responsible for interpreting the data in its standards-setting process, develop procedures for assuring consistency in the resulting standards.
—If Radiation Protection Guides are to continue being used, determine how they should be applied in a performance standard as opposed to an environmental standard.
—Determine how the standards-setting process can be monitored to assure protection for all groups in a consistent fashion.
—Establish whether substantially greater efficiency and effective protection can be achieved by seeking changes in current laws and executive orders that would identify agency responsibilities for establishing radiation protection standards.

Roles and Functions of Federal Agencies

Objective: To delineate the statutory responsibilities of Federal agencies and the manner and extent to which they are being carried out, with a view either to recommending changes in the laws and Executive Branch directives on agency responsibilities, or to suggesting external means of coordination to improve consistency and efficiency.

Discussion: Federal policies on radiation protection have developed piecemeal over a period of 33 years, starting with the Atomic Energy Act of 1947, when virtually all Federal activities were in the interest of national security. The introduction of licensing followed in 1954. The need for interagency coordination led to the creation of the Federal Radiation Council in 1960. The regulation of manufacturers started with the Electronic Product Radiation Safety Act of 1967, and in 1972 OSHA was given responsibility for regulating those sources of radiation in the workplace *not* covered by other statutes. Along the line, the Departments Transportation, Defense, and Agriculture and the Food and Drug Administration, the Mine Safety and Health Administration, the Environmental Protection Agency, the National Institute of Occupational Safety and Health, and the Federal Emergency Management Agency were given authority to address various other facets of radiation protection.

The resulting maze of functions and responsibilities within the Federal establishment appears to have fragmented Federal radiation protection efforts, created undue administrative difficulties for those being regulated, and bewildered the public. The need for a comprehensive study of Federal radiation protection roles was demonstrated by the confusion that surrounded the emergency at Three Mile Island. No Federal voice spoke with authority, and a jumble of Federal, state and local authorities sought to fill the void.

The states also have major responsibilities in radiation protection. The role of the Federal government vis-a-vis the states will be examined in the policy issue on Federal/State relationships. That policy development activity will be coordinated closely with this task.

Among the possible topics to be addressed are:

—Develop a definitive inventory of Federal activities that would pinpoint the gaps in the radiation-protection matrix, e.g., regulation of naturally-occurring and accelerator-produced radioactive materials, and overlapping responsibilities.
—Determine which radiation protection functions are appropriate for what agencies, e.g., should an agency that promotes the use of radiation be responsible for regulatory activities, or for research on possible detrimental effects on radiation, and develop criteria for assigning responsibilities.
—Examine current legislative requirements and suggest, where appropriate, recommendations for legislative changes.
—Explore whether certain classes of activities (control, monitoring or research) can be coalesced in a single lead agency, or whether better mechanisms exist for assuring coordination of similar activities.
—Determine if agency responsibility can be assigned on the basis of source of radiation, by types of persons exposed, or by location of exposure.

Radiation Exposure Reduction

Objective: To rank the main sources of radiation, as well as the groups for which exposure reduction is feasible, and to assure that adquate policies and plans are developed for reducing exposure.

Discussion: The Interagency Task Force on the Health Effects of Ionizing Radiation (the Libassi Task Force), through its Work Group on Exposure Reduction, identified a number of opportunities for reducing exposure to radiation. The feasibility and cost-effectiveness of each opportunity need to be evaluated and a strategy for exposure-reduction efforts needs to be developed. Clearly one source of exposure that should be targeted for concerted action is medical and dental radiation.

Among the possible topics to be addressed are:

—Review findings of existing surveys and studies to assure that all significant sources of exposure or potential exposure to individuals, specific groups, and the general population have been identified and quantified so far as possible, and determine which merit priority attention.

—Develop criteria for determining where it is most feasible to reduce or limit radiation exposure.
—Examine whether there are special subgroups of the population with either higher risks or higher exposure levels than the general population that need to be targeted for exposure reduction.
—Examine how baseline data on exposure levels might be gathered.
—Determine what, if any, role radiation-exposure registries can play in promoting exposure reduction; is there a need for registries of temporary or transient workers, of persons receiving radiation for medical and dental purposes, of nurses and technicians in hospitals who are currently not monitored although exposed to radiation?
—Decide if improvements in personnel monitoring would lead to significant reduction in exposure. Are there particular groups of the population that should be monitored closely?
—Analyze whether making standards more restrictive for workers and/or for the general public would result in exposure reduction.
—Determine if ALARA should be applied more widely.
—Study whether exposure limits should be developed for workers in emergency situations.

Data Base and Methodologies

Objective: To establish policies that assure an adequate, scientifically valid data base for radiation policy decisions and for public understanding, and that assure a consistent methodology for determining health effects.

Discussion: A sound data base and methodologies for interpreting the data, particularly on health effects, are essential to making informed radiation policy decisions. Groups outside the government have questioned the validity of the current data base; in addition, the fact that different agencies use different methodologies in arriving at technical decisions can lead to confusion on the part of the public. The Interagency Radiation Research Committee may undertake work in this area, so any RPC effort would need to be closely coordinated with the IRRC.

Among the possible topics to be addressed are:

—Is the existing knowledge base adequate for major radiation protection policy decisions? Are there gaps in the knowledge base where the necessary data could be obtained in three to five years?
—Would any special studies, such as epidemiological investigations of airline personnel, county-by-county radon levels, etc., add needed information?
—Do any particular research disciplines need to be strengthened before data-base inadequacies can be overcome?
—What impediments hinder data collection? Are any policies feasible to improve access to basic data or to minimize widely divergent interpretations of data?
—Should data on radiation exposure from all sources be centralized in order to be readily available for extensive research activities? How can this be done while still protecting individual privacy? Are there other ways to obtain these data?
—How do different methodologies or ways of handling data affect policy decisions? What can be done to assure consistent policy decisions and public understanding when different methodologies are used? Specific methodologies to be examined include: dose models to predict health effects, taking into account potential future health hazards; risk-benefit analyses; and computation of cumulative doses from radionuclides that persist for several generations.

Federal/State Relationships

Objective: To improve the coordination of radiation protection activities between the Federal government and state governments.

Discussion: Except where preempted or assumed by the Federal government, state governments regulate the hazards to workers, the public, and the environment resulting from the production or use of radiation within their borders. For example, states may regulate the use of naturally-occurring and accelerator-produced radioactive material (NARM) and medical and industrial applications of x-ray machines and accelerators, microwave, laser, and ultrasound sources.

One example of Federal preemption is the Nuclear Regulatory Commission's preemptive regulatory authority over licensing of nuclear reactors and over byproduct, source and special nuclear material. However, the Atomic Energy Act of 1954, as amended, authorizes the NRC to enter into agreements allowing qualified states to assume regulatory responsibility over byproduct material and source material and small quantities of special nuclear material. Currently, 26 states qualify as NRC Agreement States.

Another example of Federal preemption is the Department of Labor's regulatory authority over the development and enforcement of occupational safety and health standards. However, the Occupational Safety and Health Act of 1970 authorizes the Secretary of Labor to approve plans from any state for the development and enforcement of occupational safety and health standards. Presently, 24 state plans which include regulation of ionizing radiation have been approved by the Secretary of Labor.

In addition, several Federal agencies support and participate in the activities of the Conference of State Radiation Control Program Directors (an organization of the 50 states, the territories, and certain local governments) whose objective is to provide a coordinated approach to Federal/State relationships concerning radiation control.

Over the past few years, state interest in the regulation of radiation has grown. Areas of particular interest to the states include: nuclear reactor regulation, emergency preparedness, radioactive waste disposal, and decommissioning of facilities that use radioactive materials. This increasing interest underscores the need for closer coordination between Federal and state programs.

While there is and will continue to be a deversity of state interests and capabilities in radiation protection, the existing set of Federal/State programs, authorities, and responsibilities needs to be examined with a view towards satisfying state interests and clarifying Federal responsibilities. In examining this issue, the RPC will need to work closely with the State Planning Council on Radioactive Waste Management.

Among the possible topics to be addressed are:

—What institutional and administrative problems do states encounter in working with the Federal government on radiation protection?
—Is it possible to better define the appropriate roles of Federal, state and local governments in developing radiation protection standards, in regulating the siting and operation of facilities (including surveillance, monitoring, enforcement, and emergency planning activities), and in determining research agendas?
—How can coordination be improved between Federal and state governments in areas where the Federal government exercises preemption?
—How can the Federal government assist state and local governments in assuming their roles?

Facility Monitoring and Surveillance

Objective: To determine the roles of Federal agencies, state governments, and non-Federal groups in monitoring and surveillance of Federal and non-Federal facilities where the potential

exists for release of radioactive material to the environment.

Discussion: Although many agencies have responsibilities for the monitoring and surveillance of Federal and independent facilities, there is concern that these responsibilities are not fully coordinated or exercised efficiently. Agencies are involved in a variety of monitoring and surveillance activities, such as making measurements; developing radiation-detection devices and measurement protocols; overseeing measurement activities of facility operators; certification; and instrument calibration—yet no overall policy governs facility monitoring and surveillance.

Among the possible topics to be addressed are:

—Should independent monitoring be carried out in Federal facilities and/or non-Federal facilities? If the measurements are made by the facility operator, should there be active independent oversight or surveillance of the monitoring? Should the Federal government develop a broad set of quality-assurance guidelines to be used where there is not independent monitoring?
—Should all occupational monitoring of Federal facilities be conducted by the Occupational Safety and Health Administration? Would OSHA have the capability to carry out the monitoring or oversight of such activities?
—Should EPA or another Federal agency coordinate a national environmental radiation monitoring program and provide funds, guidance and technical assistance to the states? If so, what should be the characteristics of the program?
—What role, if any, should states and non-governmental public groups play in monitoring and surveillance activities of Federal facilities or Federally-regulated facilities?

Scientific and Technical Personnel Needs

Objective: To review the requirements for scientific and technical personnel in radiation activities and to propose an appropriate role for the Federal government in meeting these needs.

Discussion: The need for trained radiation protection experts to work in such areas as medical facilities and nuclear fuel cycle facilities (including power plants) and radiation monitoring and control has increased and a potential shortage may occur. For example, based on the most recent estimates, the requirement for professionals and technicians in health physics is expected to grow at a rate of 7% annually in the period 1980–1985, yet not that many people are now entering the field.

The personnel problem crosses all institutional boundaries, but no focal point exists for planning, developing and implementing personnel development strategies.

Among the possible topics to be addressed are:

—Preparation of a current estimate of future personnel needs and an estimate of the sources of such needs.
—Examination of both Federal and non-Federal means of assuring adequate numbers of properly trained personnel, if a shortage appears likely.

Building Construction and Land Use Controls

Objective: To determine if land use controls would be appropriate in areas of high, naturally-occurring or technologically-enhanced radioactivity, or near potential radioactive hazards, such as nuclear power plants and other nuclear facilities. To determine whether standards applicable to the use of building materials containing radioactive materials should be developed at this time, and to provide guidance, if necessary, for such standards development.

Discussion: During the past several years the Federal government has become involved in a number of incidents where naturally-occurring or technologically-enhanced radioactivity has posed particular threats to human health. The first recognition of this problem was in Grand Junction, Colorado where uranium mill tailings were used as foundation material, and as a sand substitute in concrete mix and the manufacture of concrete building blocks. As a result, approximately 1,000 homes, public buildings and commercial structures have been affected with high indoor concentrations of radon gas. Additional problems have been identified more recently on land reclaimed from other types of mining or sites of mill tailings in Southwest Florida; Butte and Anaconda, Montana; Edgemont, South Dakota; and Cannonsburg, Pennsylvania. Some aspects of this problem are already being addressed in response to the task force report on radon in structures. However, other more generic issues still need to be examined.

Another concern is to determine what constitutes an adequate distance for separating inhabited structures from nuclear power plants or other nuclear facilities. The solution to this problem involves potential exclusion zones and/or local land use restrictions.

Among the possible topics to be addressed are:

—What are acceptable levels for radioactivity in inhabited structures?
—What constitutes an acceptable distance from a nuclear facility? What process should be used to establish these levels and distances?
—What, if any, actions should the Federal government take to rectify situations where hazards already exist, and how can these actions be made consistent in specific situations?
—What can the Federal government do to develop adequate guidance in a timely fashion for manufacturers of construction materials, building contractors, and state and local governments?

REQUEST FOR COMMENTS: The Council invites public comment on this preliminary agenda. Oral comments can be made at a meeting with the public to be held on Thursday, December 4, 1980, at 9:00 a.m. in: Room 2010, New Executive Office Building, 726 Jackson Place, N.W., Washington, D.C.

Persons wishing to speak at this meeting should notify the Council (at the address or phone number listed below) by Monday, December 1, 1980. Written comments should be sent directly to the Council at the address listed below and should be received by Friday, December 5, 1980.

After reviewing comments from the public, the Council anticipates adopting the final agenda at its next meeting scheduled for December 18, 1980.

FOR FURTHER INFORMATION CONTACT: U.S. Radiation Policy Council, Room 3026, New Executive Office Building, 726 Jackson Place, N.W., Washington, D.C. 20503 (202) 395–4931.

Carl R. Gerber,

Director, U.S. Radiation Policy Council.

[FR Doc. 80-32792 Filed 10-20-80; 8:45 am]

BILLING CODE 6560-36-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 11397; 812-4717]

Algemene Bank Nederland N.V.; Application for an Order Exempting Applicant From All Provisions of Investment Company Act

October 15, 1980.

In the matter of Algemene Bank Nederland N.V., c/o Michael F. Orr, Esq., Milbank, Tweed, Hadley & McCloy, 1 Chase Manhattan Plaza, New York, New York 10005 (812–4717).

Notice is hereby given that Algemene Bank Nederland N.V. ("Applicant") filed an application on August 22, 1980, and

an amendment thereto on October 3, 1980, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all the provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below.

Applicant states that it is a commercial bank organized under the laws of The Netherlands by an instrument of incorporation on February 7, 1825, and that it is one of the largest commercial banks in the world and the largest in The Netherlands. Applicant's registered head office is at 32, Vijzelstraat, P.O. Box 669, Amsterdam, The Netherlands. As of the end of March 1980, Applicant operated 712 branches in The Netherlands and had branches and affiliates in 42 foreign countries. In the United States Applicant maintains bank branches in New York, Chicago, Pittsburgh and Los Angeles; banking agencies in San Francisco and Atlanta; a subsidiary, LaSalle Nationl Bank, in Chicago; and a representative office in Houston.

The application states that in addition to its primary business of receiving deposits and making loans, Applicant is engaged in providing a wide range of banking services, including assistance in foreign exchange transactions, Eurocurrency business, letters of credit, international payments, trade and investment information, stock exchange trading, individual portfolio management and mangement of a number of investment funds, securities safekeeping and new issue business. As of December 31, 1979, Applicant's total consolidated assets amounted to $45,529, 553,000; deposits (savings accounts plus fixed-term deposits plus creditors) amounted to $40,157,253,000, and shareholders' equity and subordinated loans amounted to $1,822,543,000. As of December 31, 1979, approximately 70 percent of Applicant's total consolidated assets related to business conducted in and from the Netherlands. On the same date it had outstanding 5,947,184 ordinary shares (of which a small percentage were registered) and 30 priority shares.

Applicant represents that it is extensively regulated pursuant to Dutch banking laws which include supervision by the Minister of Finance of The Netherlands and by De Nederlandsche Bank N.V. ("Central Bank"), the central bank of The Netherlands. The application states that various aspects of Applicant's business, including capital and reserves, solvency, liquidity, investments and loans are subject to regulation in The Netherlands. According to the Applicant, the Revised Act on the Supervision of the Credit System ("ASCS") embodies the principal characteristics in respect of the supervision of Dutch credit institutions, viz. *Monetary supervision, Prudential control* and *Structural supervision*. Applicant, as qualifying as a "universal bank" as defined by the ASCS, is subject to the fullest extent to the provisions of the ASCS. The Central Bank is charged with the implementation of these three aspects of banking supervision, although its responsibilities regarding structural policy are shared with the Minister of Finance. According to the application, the Central Bank regularly examines Dutch credit institutions and requires reports in a specified form on a monthly basis, as part of its regulatory and supervisory function.

The application also states that Applicant's branches and agencies in the United States are licensed by state banking authorities under the banking laws of the states in which such branches and agencies are located. Applicant's branches and agencies are examined by such state banking authorities, and must obseve the banking regulations of such states. In addition, Applicant's subsidiary, LaSalle National Bank, is subject to all legal requirements, including supervision and examination by the Comptroller of the Currency, which are applicable to national banks. By reason of its ownership of LaSalle, Applicant itself is registered with the Federal Reserve Board as a bank holding company, and Applicant is restricted under the Bank Holding Company Act from acquiring another bank outside of Illinois and is subject to restrictions on business and investments it may have in the United States outside the banking sector.

Applicant proposes to issue and sell unsecured short-term promissory notes of the type generally referred to as commercial paper ("notes") in the United States. The notes will be in bearer form, denominated in United States dollars, of prime quality and issued in minimum denominations of $100,000. They will be direct liabilities of Applicant and will rank *pari passu* among themselves and equally with all other unsecured unsubordinated idebtedness of Applicant, including deposit liabilities and superior to the rights of shareholders. Applicant states that the notes will provide it with an alternative source of funding to meet its United States dollar requirements. The aggregate principal amount of notes to be outstanding at any one time is not expected to exceed $300 million.

Applicant states that the terms of the notes and the use of the proceeds of the notes to finance current transactions will be such as to qualify them for the exemption from registration under the Securities Act of 1933 ("1933 Act"), as amended, provided by Section 3(a)(3) of the 1933 Act. Applicant will not issue and sell the notes until it has received an opinion of its legal counsel in the United States to the effect that, under the circumstances of the proposed offering, the notes would be entitled to such exemption. Applicant does not request review or approval of such opinion letter and the Commission expresses no opinion as to the availability of any such exemption. Applicant further represents that the presently proposed issue of notes, and any future issue of such debt securities in the United States, shall have received prior to issuance one of three highest investment grade ratings from at least one of the nationally recognized United States statistical rating organizations, and that its American counsel shall have certified that such rating has been received.

The notes will be issued and sold by Applicant through one or more commercial paper dealers in the United States to institutional investors and other entities and individuals who normally purchase commercial paper notes. However, the notes will not be advertised or otherwise offered for sale to the general public. Applicant undertakes to ensure that the dealer or dealers will provide each offeree of the notes, prior to any sale of notes to such offeree, with (i) a memorandum which describes the business of Applicant, (ii) the most recent publicly available fiscal year-end balance sheet and income statement of Applicant, which shall have been audited in such manner as is customarily done for Applicant by its auditors (to be included in (i)), and (iii) the most recent publicly available unaudited semi-annual financial statements of Applicant. Such memorandum will be updated periodically to reflect material changes in Applicant's business and financial status. The memorandum will be at least as comprehensive as those customarily used in offering commercial paper in the United States. Such memorandum will describe the material differences between the accounting principles applied by Applicant in the preparation of its financial statements and generally accepted accounting principles as employed by commercial banks in the United States. Applicant consents to

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any order granting the relief requested pursuant to Section 6(c) of the Act being expressly conditioned upon Applicant's compliance with all of its undertakings regarding disclosure documents.

The application states that Applicant will appoint a bank in the United States as its authorized agent to issue the notes from time to time and will appoint such bank to accept any service of process in any action based on the notes and instituted in any State or Federal court by the holder of any note. Applicant will accept the jurisdiction of any State or Federal court in the City and State of New York in respect of any such action. Such appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due with respect to the notes have been paid by Applicant. Applicant will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of the notes or otherwise. Applicant similarly represents that it will consent to jurisdiction and will appoint an agent for service of process in suits arising from any other future offer of debt securities that it may make in the United States.

Applicant states that in the future it might offer other debt securities for sale in the United States. Except for deposit taking or other ordinary commercial banking activities of Applicant's bank branches, banking agencies and subsidiaries in the United States, any future offerings of Applicant's securities in the United States will be done on the basis of disclosure documents at least as comprehensive in their description of Applicant, its business and its financial statements, as the dealer's memorandum referred to above. In no event will such disclosure documents be less comprehensive than is customary for United States offerings of similar debt securities. Applicant undertakes to ensure that such disclosure documents will be provided to each offeree who has indicated an interest in the securities then being offered by Applicant, prior to any sale of such securities to such offeree, except that in the case of an offering made pursuant to a registration statement under the 1933 Act, such disclosure documents will be provided to such persons and in such manner as may be required by such Act and the rules and regulations thereunder.

Section 3(a)(3) of the Act defines investment company to mean "any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 percent of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis."

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons securities, or transactions from any provision or provisions of the Act or of any rule or regulation under the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant requests an order pursuant to Section 6(c) of the Act exempting it from all provisions of the Act because of uncertainty as to whether a foreign commercial bank such as Applicant would be considered an investment company as defined under the Act. Applicant states that absent an exemption a foreign bank would be denied ready access to the credit markets in the United States, a result said to be both inherently inequitable and in direct conflict with the objective of the International Banking Act of 1978. Applicant also states that an exemptive order here is both necessary and appropriate because it affords foreign banks access to a source of dollars which is necessary in view of their activities in the Eurodollar market and because it would benefit U.S. investors by making available to them additional opportunities for investment in short term, prime quality securities. Applicant asserts that its activities are extensively regulated by the Dutch banking authorities and that the limitations imposed by Dutch laws as to liquidity and solvency afford substantial protection to investors in debt securities. The application further claims that a commercial bank, such as itself, is substantially different from the typical investment company that Congress intended the Act to regulate, and that Applicant's activities do not lend themselves to the abuses which the provisions of the Act were designed to prevent. Finally, Applicant states that granting its requested order will not give it any advantage over U.S. banks in the issuance of commercial paper.

Notice is further given that any interested person may, not later than November 10, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of any attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-32702 Filed 10-20-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21745; 70-6510]

Blackstone Valley Electric Co.; Proposed Amendment of Preferred Stock Provisions and Order Authorizing Solicitation of Proxies

October 15, 1980.

In the matter of Blackstone Valley Electric Company, Washington Highway, P.O. Box 111, Lincoln, Rhode Island 02865 (70–6510).

Notice is hereby given that Blackstone Valley Electric Company ("BVEC"), an electric utility subsidiary company of Eastern Utilities Associates, a registered holding company, has filed a declaration with this Commission, pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, and 12(e) thereof and Rules 62 and 65 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

The declaration states that the provisions relating to the issuance and the terms, limitations and relative rights and preferences of the preferred stock of BVEC are set out in the Preferred Stock Provisions. The Preferred Stock Provisions provide that, except with the consent of a majority of the preferred stock then outstanding, the amount of unsecured indebtedness of BVEC having maturities of less than ten years which the company may issue or assume shall not exceed 10% of the sum of the principal amount of all bonds and other securities representing secured indebtedness and the capital (including premiums on capital stock) and surplus of the company and that the amount of all unsecured indebtedness of the company issued or assumed shall not exceed 20% of such sum.

BVEC proposes to amend the Preferred Stock Provisions and intends to hold a special meeting of the holders of its preferred stock on November 20, 1980, to permit such shareholders to consider and act upon a proposal to authorize BVEC, for a five year period, to issue or assume unsecured indebtedness having maturities of less than ten years in excess of the present 10% limitation thereon. Under the applicable provisions of the Preferred Stock Provisions, adoption of the proposal with respect to the short-term unsecured debt limitation requires the affirmative vote of a majority of the total number of outstanding shares of BVEC's preferred stock (which consists of two series) voting as a single class.

In connection with the special meeting to be held on November 20, 1980, BVEC proposes to solicit proxies seeking the affirmative vote of holders of its preferred stock with respect to the above-described amendment to the Preferred Stock Provisions.

It is stated that no state or federal commission, other than this Commission, has jurisdiction over the proposed transactions. A statement of the fees and expenses to be incurred in connection with the proposed transactions is to be filed by amendment. BVEC has filed its proxy solicitation material and requests that the effectiveness of its declaration with respect to the solicitation be accelerated as provided in Rule 62.

Notice is further given that any interested person may, not later than November 10, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rules 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

It appearing to the Commission that BVEC's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith pursuant to Rule 62 and that jurisdiction should be reserved with respect to the expenses thereof:

It is ordered that the declaration regarding the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith pursuant to Rule 62, and that jurisdiction be, and it hereby is, reserved with respect to the expenses thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-32704 Filed 10-20-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21746; 70-6508]

Louisiana Power & Light Co.; Proposed Issuance and Sale of First Mortgage Bonds at Competitive Bidding

October 15, 1980.

In the matter of Louisiana Power & Light Company, 142 Delaronde Street, New Orleans, Louisiana 70174 (70–6508).

Notice is hereby given that Louisiana Power & Light Company ("Louisiana"), an electric utility subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the following proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Louisiana proposed to issue and sell, subject to the competitive bidding requirements of Rule 50, up to $100,000,000 principal amount of its first mortgage bonds of a new series having a term of not less than five years nor more than thirty years. The interest rate of the bonds (which will be a multiple of ⅛th of 1%) and the price, exclusive of accrued interest, to be paid to Louisiana for the bonds (which will not be less than 98% nor more than 101¼% of the principal amount thereof) will be determined by competitive bidding. The bonds will be issued under Louisiana's Mortgage and Deed of Trust, dated as of April 1, 1944, to The Chase Manhattan Bank (National Association), Trustee, as heretofore supplemented by various indentures and as it is to be further supplemented by a Twenty-eighth Supplemental Indenture to be dated as of the first day of the calendar month in which the bonds are issued. The supplemental indenture will include a prohibition, for a period of not more than five years, against refunding the bonds, directly or indirectly, with funds borrowed at a lower effective interest cost.

Louisiana will use the net proceeds derived from the sale of the bonds to pay, inpart, short-term borrowings estimated to total $120,000,000 at the time the proceeds are received, to finance, in part, Louisiana's construction program (estimated to total approximately $263,800,000 in 1980), and for other corporate purposes.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $220,000, including legal fees of $51,500 and auditor's fees of $9,800. The fee of counsel for the purchasers of the bonds is estimated at $19,000 and will be paid by the successful bidders. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than November 17, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated

address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A Fitzsimmons,

Secretary.

[FR Doc. 80-32703 Filed 10-20-80; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Proposed License No. 06/06-0241]

Aspen Financial Corp.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR Section 107.102 (1980)) under the name of Aspen Financial Corporation, Suite 300, 654 East Northbelt, Houston, Texas 77060, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*), and the Rules and Regulations promulgated thereunder.

The proposed officers, directors and shareholders of the Applicant are as follows:

William E. Dueease III, 5415 Havenwoods, Houston, TX 77066; President, Treasurer and Director; 71.3 percent Shareholder.
Julie Ann Dueease, 5415 Havenwoods, Houston, TX 77066; Vice President and Secretary.
Carl L. Norton, 3112 Locke Lane, Houston, TX 77019; Director, 9.9 percent Shareholder.
Earl R. Hagaman, 14113 Bronte Drive, Whittier, California 90602; Director; 18.8 percent Shareholder.

There will be one class of stock authorized: one million shares of common stock. Initially, only 50,500 shares will be issued with a resultant private capital of $505,000. Applicant proposes to conduct its operations principally in the State of Texas.

Matters involved in SBA's consideration of the application include the general business reputation and character of shareholders and management, and the probability of successful operation of the new company in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 15 days from the date of publication of this notice, submit to SBA, in writing, comments on the proposed licensing of this company. Any such communications should be addressed to: Acting Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of this notice shall be published by the Applicant in a newspaper of general circulation in Houston, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 11, 1980.

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 80-32772 Filed 10-20-80; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0239]

Mapleleaf Capital Corp.; Issuance of License To Operate as a Small Business Investment Company

On August 25, 1980, a notice was published in the **Federal Register** (45 FR 56490) stating that an application had been filed by Mapleleaf Capital Corporation, Suite 1207, 201 Wilcrest Drive, Houston, Texas, 77042, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1980)), for a license to operate as a small business investment company (SBIC).

Interested parties were given until the close of business September 9, 1980, to submit their written comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, and after having considered the application and all other information, SBA issued License No. 06/06-0239 on October 6, 1980, to Mapleleaf Capital Corporation, to operate as an SBIC.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 11, 1980.

Peter F. McNeish,

Acting Associate Administrator for the Investment.

[FR Doc. 80-32771 Filed 10-20-80; 8:45 am]

BILLING CODE 8025-01-M

[Proposed License No. 09/09-5265]

Pacific Capital Fund, Inc.; Application for License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*), has been filed by Pacific Capital Fund, Inc. (Applicant) with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1980).

The officers, directors and stockholders of the Applicant are as follows:

Victor H. Gallego, President, Director General Manager and .994% Stockholder, 3227 Adelaide Way, Belmont, CA 94402.
Oscar C. Ongpin, Secretary, Chief Financial Officer, Director and .006% Stockholder, 1532 Tarrytown, San Mateo, CA 94401.
Jose Luis C. Cervero, Assistant Secretary and Director, 482 Fatham Court, Redwood City, CA 94065.
Benedicto V. Yujuico, Director and 50% Stockholder, 69 Santiago Avenue, Atherton, CA 94025.
Teresita M. Yujuico, Director and 49% Stockholder, 69 Santiago Avenue, Atherton, CA 94025.

The Applicant, a California corporation, with its principal place of business at 500 Airport Boulevard, Suite 400, Burlingame, California 94010, will begin operations with $1,000,000 of paid-in capital and paid-in surplus from the sale of 1,006,000 shares of common stock.

The Applicant will conduct its activities principally in the State of California.

Applicant intends to provide assistance to all qualified socially or economically disadvantaged small business concerns as the opportunity to profitably assist such concerns is presented.

As a small business investment company under Section 301(d) of the Act, the Applicant has been organized and charted solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadavantages.

Matters involved in SBA's consideration of the Applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the Applicant under this management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than November 5, 1980, submit to SBA written comments on the proposed Applicant. Any such communication should be addressed to the Acting Associate Administrator for Investment, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Burlingame, California.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 10, 1980.

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 80-32773 Filed 10-20-80; 8:45 am]

BILLING CODE 8025-01-M

Region V Advisory Council; Public Meeting

The Small Business Administration Region V Advisory Council, located in the geographical area of Madison, Wisconsin, will hold a public meeting from 9:00 a.m. to 12:00 noon, Wednesday, November 19, 1980, at the Milwaukee Athletic Club, Rooms B and C (5th Floor), 758 North Broadway, Milwaukee, Wisconsin, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

FOR FURTHER INFORMATION: Write or call Curtis A. Charter, District Director, U.S. Small Business Administration, 212 East Washington Avenue, Room 213, Madison, Wisconsin 53703 (608) 264-5267.

Dated: October 15, 1980.

Michael B. Kraft,

Deputy Advocate for Advisory Councils.

[FR Doc. 80-32774 Filed 10-20-80; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 727]

Participation of Private-Sector Representatives on U.S. Delegations

As announced in Public Notice No. 623 (43 FR 37783), August 24, 1978, the Department is submitting its September 1980 list of U.S. accredited Delegations which included private-sector representatives.

Publication of this list is required by Article IV(c)(4) of the guidelines published in the **Federal Register** on August 24, 1978.

Dated: October 9, 1980.

John W. Kimball,

Director, Office of International Conferences.

United States Delegation to the Sixth United Nations Congress on Crime Prevention and Treatment of Offenders, Caracas, August 25-September 5, 1980

Representative

The Honorable Charles B. Renfrew, Deputy Attorney General, Department of Justice.

Alternate Representatives

The Honorable Norman A. Carlson, Director, Bureau of Prisons, Department of Justice.
The Honorable Ronald Gainer, Deputy Assistant Attorney General, Office for Improvements in the Administration of Justice, Department of Justice.

Congressional Advisers

The Honorable John Conyers, Jr., United States House of Representatives.
The Honorable Robert F. Drinan, United States House of Representatives.

Congressional Staff Advisers

Timothy A. Boggs, Legislative Assistant, Judiciary Committee, United States House of Representatives.
Gregory Hayden, Counsel to the Sub-Committee on Crime, Judiciary Committee, United States House of Representatives.
Steven Raikin, Counsel to the Sub-Committee on Crime, Judiciary Committee, United States House of Representatives.

Judicial Advisers

The Honorable James M. Burns, Chief Judge, U.S. District Court of Oregon.
The Honorable Carl Moultrie, Chief Judge, Superior Court of the District of Columbia, Department of Justice.
The Honorable Robert C. Murphy, Chief Judge, State of Maryland Court of Appeal.
The Honorable Robert J. Sheran, Chief Judge, Supreme Court of Minnesota.
The Honorable Gerald B. Tjoflat, Judge, U.S. Court of Appeals, Fifth Circuit.

Advisers

The Honorable Allen Breed, Director, National Institute of Corrections, Department of Justice.
The Honorable Homer Broome, Administrator, Law Enforcement Assistance Administration, Department of Justice.
H. Lee Colwell, Executive Assistant Director, Federal Bureau of Investigation.
The Honorable Mathea Falco, Assistant Secretary for International Narcotics Matters, Department of State.
Philip K. Johnson, Political Counselor, United States Embassy, Caracas.
The Honorable Audrey Kaslow, Commissioner, United States Parole Commission, Department of Justice.
Jacob Nena, Governor, Kosrae District, Trust Territory of the Pacific Islands.
Harry S. Scarr, Administrator, Federal Justice Research Program, Office for Improvements in the Administration of Justice, Department of Justice.
The Honorable Ira M. Schwartz, Administrator, Office of Juvenile Justice and Delinquency Prevention, Department of Justice.
Norman T. Shaft, Office of Human Rights Affairs, Bureau of International Organization Affairs, Department of State.
Charles F. Welford, Deputy Administrator, Federal Justice Research Program, Department of Justice.

Private Sector Advisers

Alfred Blumstein, Professor of Urban Affairs, Carnegie-Mellon University, Pittsburgh, Pennsylvania.
Norman Darwick, Executive Director, International Association of Chiefs of Police, Gaithersburg, Maryland.
Marvin F. Wolfgang, Professor of Criminology and Criminal Law, University of Pennsylvania, Philadelphia, Pennsylvania.

U.S. Delegation, 25th Session, Subcommittee on Subdivision Stability and Load Lines, Intergovernmental Maritime Consultative Organization (IMCO), London, September 15-19, 1980

Representative

William A. Cleary, Chief, Ship Characteristics Branch, Office of Merchant Marine Safety, United States Coast Guard, Department of Transportation.

Alternate Representative

Kevin A. Feeney, LCDR, USCG, Ship Characteristics Branch, Office of Merchant Marine Safety, United States Coast Guard, Department of Transportation.

Adviser

Zelvin Levine, Office of Advanced Ship Development, Maritime Administration, Department of Commerce.

Private Sector Advisers

Edward H. Middleton, Technical Advisor, Maritime Institute for Research and Industrial Development, Washington, D.C.
Thomas F. Robinson, Technical Manager, Bethlehem Steel Corporation; Central Technical Division—Shipbuilding, Sparrows Point, Maryland.

U.S. Delegation to the International Coffee Organization Meetings of the Council and Executive Board, London, September 15-26, 1980

Representative

Michael Calingaert, Deputy Assistant Secretary for International Resources and

Food, Bureau of Economic and Business Affairs, Department of State.

Alternate Representative

James A. Truran, Office of the Trade Representative, Executive Office of the President.

Advisers

Milton Anderson, Foreign Agricultural Service, Department of Agriculture.
Ralph Ives, Resources Policy Division, Department of Commerce.
Paul P. Pilkauskas, United States Embassy, London.
James Woolwine, Tropical Products Division, Bureau of Economic and Business Affairs, Department of State.

Private Sector Advisers

George E. Boecklin, President, National Coffee Association, New York, New York, Sept. 15, 17, 19.
John C. K. Buckley, Vice President, Purchasing, Nestle Company, Inc., White Plains, New York, Sept. 15, 18.
Kenneth R. Dunnivant, Vice President, Proctor and Gamble, Cincinnati, Ohio, Sept. 22, 25.
John Heuman, President, Coffee & Food Manufacturing Division, CFS Continental, Inc., Chicago, Illinois, Sept. 23, 25.
Paul Keating, Vice President, General Foods Corporation, New York, New York, Sept. 19, 22, 24.
Esward Rosen, President, Coffee Division, ACLI International, Inc., White Plains, New York, Sept. 23, 24.
John W. Schimelpfenig, Machado and Company, New York, New York, Sept. 23, 26.
Andrew A. Scholtz, President, Scholtz and Company, New York, New York, Sept. 16, 17, 22.
Izadore Michael Schulman, Law Center, University of Southern California, Los Angeles, California.
Marvin Schur, President, J. Aron and Company, New York, New York, Sept. 16, 18, 19.
H. Grady Tiller, Vice President, Director of Purchasing, The Coca Cola Company, Foods Division, Houston, Texas, Sept. 24, 25.

U.S. Delegation to the Insurance Committee Working Group on LDCS, Organization For Economic Cooperation and Development (OECD), Paris, September 18–19, 1980

Representative

Albert N. Alexander, Director, International Services Division, Department of Commerce.

Private Sector Adviser

Edwin A. Sterns, International Insurance Advisory Council, Chamber of Commerce of the United States, Washington, D.C.

U.S. Delegation to the Joint Meeting of the Working Party on Facilitation of International Trade Procedures, Group of Experts on Data Requirements and Documentation, Group of Experts on Automatic Data Processing and Coding, Economic Commission for Europe (ECE), Geneva, September 20–26, 1980

Representative

William R. Myers,
Peter Keller,
Director, Office of Facilitation, Department of Transportation.

Adviser

U.S. Mission, Geneva.

Private Sector Advisers

Arthur E. Baylis, Executive Director, National Committee on International Trade Documentation, New York, New York.
Edward A. Guilbert, President, Transportation Data Coordinating Committee, Washington, D.C.

U.S. Delegation to the Fifth Consultative Meeting, London Ocean Dumping Convention, Intergovernmental Maritime Consultative Organization (IMCO), London, September 22–26, 1980

Representative

William N. Hedeman, Jr., Director, Office of Environmental Review, Environmental Protection Agency.

Alternate Representative

Alan B. Sielen, Acting Director, Oceans and Regulatory Division, Office of International Activities, Environmental Protection Agency.

Advisers

William Brewer, Jr., Special Assistant to the Administrator, National Oceanic and Atmospheric Administration, Department of Commerce.
Robert M. Engler, Corps of Engineers, United States Army.
John Simmons, Shipping Attache, American Embassy, London.
Thaddeus A. Wastler, Chief, Marine Protection Branch, Office of Water and Waste Management, Environmental Protection Agency.
Phyllis N. Windle, Office of Environment and Health, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State.

Private Sector Adviser

Kenneth S. Kamlet, Counsel, National Wildlife Federation, Washington, D.C.

U.S. Delegation to the Committee on Invisibles and Financing Related to Trade, United Nations Conference on Trade and Development (UNCTAD), Geneva, September 29—October 3, 1980

Representatives

Vincent Travaglini, Acting Deputy Assistant Secretary for Finance, Investment and Services, Department of Commerce.

Alternate Representative

Edith Bruce, United States Mission, Geneva.
Edwin A. Sterns, International Insurance Advisory Council, Chamber of Commerce of the United States.

U.S. Delegation to the 22nd Session, Subcommittee on Radio Communications of the Intergovernmental Maritime Consultative Organization (IMCO), London, September 29—October 3, 1980

Representative

James G. Williams, Commander, USCG, Chief, Telecommunications Management Division, United States Coast Guard, Department of Transportation.

Alternate Representative

Richard F. Carlson, Lt. USCG, Chief, Systems Development and Technology Branch, United States Coast Guard, Department of Transportation.

Advisers

Gordon F. Hempton, Captain, USCG (Ret), Special Assistant, Private Radio Bureau, Federal Communications Commission.
Earl J. Holliman, Chief, Frequency Management Staff, United States Coast Guard, Department of Transportation.
Robert C. McIntyre, Engineer, Federal Communications Commission.
Lawarence M. Palmer, International Staff, Federal Communications Commission.

Private Sector Advisers

M. Harvey Strichartz, American Radio Association, New York, New York.
Kenneth P. Wenthen, Maritime Services Committee, New York, New York.

U.S. Delegation to the Workshop on Resettlement of Refugees From Indo China, United Nations High Commissioner for Refugees (UNHCR), Geneva, Sepatember 29–October 3, 1980

Representative

Carol Pratt Hecklinger, Assistant Coordinator for Domestic Programs, Office of the U.S. Coordinator for Refugee Affairs, Department of State.

Alternate Representative

Margaret Carpenter, Assistant Coordinator for Congressional and Public Affairs, Office of the U.S. Coordinator for Refugee Affairs, Department of State.

Advisers

Joseph Coleman, Program Development Officer, Office of the U.S. Coordinator for Refugee Affairs, Department of State.
Douglas Hunter, Political Officer, United States Mission to the United Nations, Geneva.
Kenneth Quinn, Administrative Assistant to Governor of Iowa, Des Moines, Iowa.
Lionel Rosenblatt, Refugee Coordinator, United States Embassy, Bangkok.
Frank Sieverts, Minister-Counselor for Humanitarian and Refugee Affairs, United States Mission to the United Nations, Geneva.
Mary Spillane, Director of Operations, Office of Refugee Resettlement, Department of Health and Human Services.
Roger Winter, Director, Office of Refugee Resettlement, Department of Health and Human Services.

Private Sector Advisers

Edward Ferguson, Lutheran Immigration and Refugee Center, Indochinese Cultural and Service Center, Portland, Oregon.
Christine Gaffney, Assistant Director, American Council for Nationalities Service, New York, New York.
Pho Ba Long, Co-Director of the Orientation Resource Center, Center for Applied Linguistics, Washington, D.C.
John McCarthy, Executive Director, Migration and Refugee Services, United States Catholic Conference, Washington, D.C.
Robert J. Stein, Director, Indochina Refugee Action Center, Washington, D.C.

[FR Doc. 80-32749 Filed 10-20-80; 8:45 am]
BILLING CODE 4700-19-M

[Public Notice CM-8/333]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Meeting

The Panel on Bulk Cargoes under the SOLAS Subcommittee Working Group on Containers and Cargoes will conduct an open meeting at 10:00 a.m. on Wednesday, November 12, 1980 in Room 6332 of the Nassif Building, 7th and D Sts., S.W., Washington, D.C. 20590.

The purpose of the meeting will be to:

—review the draft US paper on Direct Reduced Iron prepared for submission to the next session of the Subcommittee on Containers and Cargoes; and

—review all papers received from the IMCO Secretariat for the next session of the Subcommittee on Containers and Cargoes.

For further information contact Mr. Donald L. Ewing, USCG (G-MMT-5/12), Washington, D.C. 20593. Tel: (202) 426-2188 or Captain S. Fraser Sammis, National Cargo Bureau, Inc., Suite 2757, One World Trade Center, New York, N.Y. 10048. Tel: (212) 432-1280.

Dated: October 2, 1980.

John Todd Stewart,

Chairman, Shipping Coordinating Committee.

[FR Doc. 80-32713 Filed 10-20-80; 8:45 am]
BILLING CODE 4710-07-M

[Public Notice CM-8/334]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Meeting

The Subcommittee on Safety of Life at Sea Working Group on the Carriage of Dangerous Goods will conduct an open meeting at 9:30 a.m. on November 6, 1980 in Room 3201 of the Coast Guard Headquarters Building, 2100 Second Street, S.W., Washington, D.C. 20593.

The purpose of the meeting will be to:

—discuss the Report of the XXXI Session of the IMCO Subcommittee on the Carriage of Dangerous Goods;

—discuss United States positions on matters concerning the Carriage of Dangerous Goods to be considered at the XLIII Session of the IMCO Maritime Safety Committee;

—discuss the progress of IMCO activities of a continuing nature such as implementation of the IMDG Code.

Requests for further information on the meeting should be direced to: Lt. Kevin J. Eldridge, USCG (G-MHM-2), 2100 Second St., S.W., Washington, D.C. 20593. Tel: (202) 426-1577.

Dated: October 2, 1980.

John Todd Stewart,

Chairman, Shipping Coordinating Committee.

[FR Doc. 80-32714 Filed 10-20-80; 8:45 am]
BILLING CODE 4710-07-M

DEPARTMENT OF TREASURY

Privacy Act of 1974; Revised System of Records

AGENCY: Office of the Secretary, Department of the Treasury.

ACTION: Notice of intent to revise Privacy Act Systems of Records.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974 (5 U.S.C. 552a) the Assistant Secretary (Domestic Finance) gives notice of the proposed revision and update of the information contained in previous notices for system Treasury/OS 00.011, Office of Domestic Finance, General Correspondence (45 FR 18666), March 21, 1980. This revision updates three data elements; the policies and practices for storing, retrieving, and disposing of records in the system, the System manager, and the record access procedures. This revision does not constitute an expansion of the system involved.

DATES: Public comments on this system of records must be received on or before November 20, 1980. If no public comments are received, to which the Department publishes a revision to incorporate comments, this system of records will become effective November 21, 1980.

ADDRESS: Department of the Treasury, Office of the Assistant Secretary (Domestic Finance), Administrative Office, Room 1204, 1500 Pennsylvania Ave., NW, Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT:

Mr. Anthony L. Conques, Administrative Officer, Office of the Assistant Secretary (Domestic Finance), Department of the Treasury, Room 1204, 1500 Pennsylvania Avenue, NW., Washington, D.C. 20220, 202-566-5152.

Dated: October 14, 1980.

Walter J. McDonald,

Assistant Secretary (Administration).

TREASURY/OS 00.011

SYSTEM NAME:

Office of Domestic Finance, General Correspondence-Treasury/OS

* * * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Locator file system stored in small desk top file box. The files are stored in a locked file cabinet in the Administrative Office.

RETRIEVABILITY:

Files are indexed by name of correspondent, subject, and an interoffice correspondence code.

SAFEGUARDS:

Files are locked during non-business hours and are stored in a physically secure building.

RETENTION AND DISPOSAL:

Correspondence is retained for one year, at which time it is destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, for the Office of the Assistant Secretary (Domestic Finance), Room 1204, Main Treasury Building, 1500 Pennsylvania Avenue, Washington, D.C. 20220.

* * * * * *

RECORD ACCESS PROCEDURES:

Chief, Disclosure Branch, Room 1322, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

* * * * * *

[FR Doc. 80-32717 Filed 10-21-80; 8:45 am]
BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on November 21, 1980, at 1:00 p.m., the Veterans Administration Regional Office Station Committee on Educational Allowances shall at Estes Kefauver Federal Building—U.S. Courthouse, Room A-220, 110 Ninth Avenue, South, Nashville, Tennessee, conduct a hearing to determine whether Veterans Administration benefits to all

eligible persons enrolled in Draughon's Junior College, 6204 Baum Drive, Knoxville, Tennessee, should be discontinued, as provided in 38 C.F.R. 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the Committee at that time and place.

Dated: October 8, 1980.

R. S. Bielak,

Director, VA Regional Office, Nashville, Tenn.

[FR Doc. 80-33085 Filed 10-20-80; 8:45 am]

BILLING CODE 8320-01-M

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Sunshine Act Meetings

Federal Register
Vol. 45, No. 205
Tuesday, October 21, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL COMMUNICATIONS COMMISSION.

The Federal Communications Commission will hold a Special Open Meeting on the subject listed below on Monday, October 20, 1980 at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Agenda, Item No., and Subject

General—1—*Title:* Network Inquiry Final Report. *Summary:* The Network Inquiry will present its Final Report to the Commission. The Inquiry Staff will also present its responses to comments on the Inquiry's preliminary reports. The Final Report is designed principally to address the policy questions raised for the Commission by the changes which are taking place in the television industry. These deal with entry policy, ownership policy, regulation of existing and new kinds of networks and Commission jurisdiction over networking.

The prompt and orderly conduct of commission business did not permit prior notice of this Special Meeting.

The prompt and orderly conduct of Commission business requires that less than 7-days notice be given.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: October 15, 1980.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[S-1926-80 Filed 10-16-80; 3:50 pm]

BILLING CODE 6712-01-M

2

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published October 10, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., October 22, 1980.

CHANGE IN MEETING: The following items have been added:

Item number, Docket Number, and Company

ER-7: ER78-517, Connecticut Light & Power Co.

M-11: GP81- . USGS at Metairie, Louisiana, well category determination, Mesa Petroleum Co., JD80-56544.

RP-2: RP79-64, Florida Gas Transmission Co.

Kenneth F. Plumb,

Secretary.

[S-1927-80 Filed 10-17-80; 1:22 pm]

BILLING CODE 6450-85-M

3

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

October 15, 1980.

TIME AND DATE: 10 a.m., Wednesday, October 22, 1980.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Secretary of Labor on behalf of Larry Long v. Island Creek Coal Co., & Langley & Morgan Contracting Co., Docket No. VA 79-81-D (Petition for Discretionary Review—issues include whether substantial evidence supports finding of violation of section 105(d) of the 1977 Mine Act.)

2. Jackie Ray Hammonds v. National Mines Corporation, Docket No. KENT 79-345-D (Petition for Discretionary Review—issues include whether default was appropriate.)

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, 202-653-5632.

[S-1925-80 Filed 10-16-80; 3:19 pm]

BILLING CODE 6820-12-M

4

FEDERAL RESERVE SYSTEM.

Committee on Employee Benefits of the Board of Governors

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to Federal Register on Tuesday, October 14, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11 a.m., Wednesday, October 22, 1980.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting: 1. Retirement credit for periods of disability retirement.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: October 17, 1980.

Theodore E. Allison,

Secretary of the Board.

[S-1929-80 Filed 10-17-80; 2:45 pm]

BILLING CODE 6210-01-M

5

FEDERAL RESERVE SYSTEM.

TIME AND DATE: 10 a.m., Monday, October 27, 1980.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204.

Dated: October 17, 1980.

Theodore E. Allison,

Secretary of the Board.

[S-1928-80 Filed 10-17-80; 2:38 pm]

BILLING CODE 6210-01-M

6

[NM-80-36]

NATIONAL TRANSPORTATION SAFETY BOARD.

TIME AND DATE: 9 a.m., Tuesday, October 28, 1980.

PLACE: NTSB Board Room, National Transportation Safety Board, 800 Independence Avenue SW., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Pipeline Accident Report*—Pipelines of Puerto Rico, Inc., Petroleum Products Pipeline Rupture and Fire, Bayamon, Puerto Rico, January 30, 1980, and *Recommendations* to the Pipelines of Puerto Rico, Inc., the Public Service Commission of the Commonwealth of Puerto Rico, the Governor of the Commonwealth of Puerto Rico, the Puerto Rico Telephone Company, and the Research and Special Programs Administration of the U.S. Department of Transportation.

2. *Special Investigation Report*—Increased Shipper Involvement in Hazardous Materials Transportation.

3. *Safety Effectiveness Evaluation*—The Improvement of Nighttime Conspicuity of Railroad Trains.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming, 202–472–6022.

October 17, 1980.

[S–1933–80 Filed 10–17–80; 3:21 pm]

BILLING CODE 4910–58–M

7

[OP0401]

PAROLE COMMISSION.

(Commissioners presently maintaining offices at Washington, D.C. Headquarters)

TIME AND DATE: 9:30 a.m., Friday, October 17, 1980.

PLACE: Room 724, 320 First Street NW., Washington, D.C. 20537.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

CHANGES IN THE MEETING: On October 16, 1980, the Commission determined that the above meeting be continued to 9:30 a.m. on Monday, October 20, 1980 for consideration of case referrals from Regional Commissioners. The above change is being announced at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Analyst, National Appeals Board, U.S. Parole Commission (202) 724–3094.

[S–1930–80 Filed 10–17–80; 3:13 pm]

BILLING CODE 4410–01–M

8

[OP0401]

PAROLE COMMISSION.

TIME AND DATE:

9 a.m.–5:30 p.m., Monday, October 27.

9:30 a.m.–12:30 p.m., Tuesday, October 28, 1980.

PLACE: Room 500, 320 First Street NW., Washington, D.C. 20537.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Appeals to the Commission of approximately 17 cases decided by the National Commissioners pursuant to a reference under 28 CFR § 2.17 and appealed pursuant to 28 CFR § 2.27. These are all cases originally heard by examiner panels wherein inmates of Federal Prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Analyst (202) 724–3094.

[S–1931–80 Filed 10–17–80; 3:14 pm]

BILLING CODE 4410–01–M

9

[OP0401]

PAROLE COMMISSION.

TIME AND DATE:

1:30 p.m.–5:30 p.m., Tuesday, October 28, 1980.

9:30 a.m.–5:30 p.m., Wednesday, October 29, 1980.

PLACE: Room 500, 320 First Street, NW., Washington, D.C. 20537.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Reports from Chairman and Commissioners.

2. Topics involving the U.S. Probation Service.

a. Classification for Supervision purposes.

b. Presence of Probation Officers at Preliminary Interviews/Reduction in field staff/workload.

3. Representatives at Original Jurisdiction Appeals and Regional Appellate Hearings.

4. Proposed modification of definitions and ratings concerning manslaughter.

5. Modification of guidelines for termination of supervision.

6. Proposed Revision of the Salient Factor Score.

7. Declassification of Original Jurisdiction Cases.

8. Commission Recommendations for release Through a Community Treatment Center.

9. "Superior Program Achievement" Report on Research during the first six months of implementation.

10. Witness Protection Cases—planning.

11. A. Codefendant Disparity; B. Correction of Errors.

12. Early Release with Restitution as a Condition of Parole.

13. Clarification of the rating of Drug Conspiracy cases.

14. Clarification of rulings on executing warrants on parole violator terms

15. Search and Seizure.

16. Ancient Prior record—definition and effect.

17. Administrative Reviews—Method of Handling.

18. Refusal of Inmates to accept parole conditions and/or sign parole release agreements.

19. Proposed revisions of 28 C.F.R. § 2.23—Examiner recommendations.

20. Proposed revisions of 28 C.F.R. § 2.24—Allowing for a rehearing prior to a final decision to assess adverse information.

21. *Consent Agenda.*

The following Consent Agenda items if specifically requested to be opened for discussion at the meeting.

Policy and procedures Memoranda Issued Since Last Meeting or Issued but not Previously Approved.

(a) 80/17: Dispositional Revocation Regulation.

(b) 8/18: Rescission Guidelines.

(c) 80/19: Conditions of Parole.

(d) 80/21: Specificity in Case Evaluation.

22. Proposed Policy and Procedure Memorandum: Forfeiture of Street Time for Mexican and Canadian Sentenced Parole Violators.

23. Ratification of Emergency Rule concerning Sentence Aggregation.

24. Proposed revisions of language in the following rules:

(a) 28 CFR § 2.28(f)—Providing for an automatic stay of the release date upon referral under this section.

(b) 28 CFR § 2.44—Concerning the effect of issuing a warrant on the running of the sentence.

CONTACT PERSON FOR MORE INFORMATION: Barbara Meierhoefer, Research Analyst (202) 724–3095.

[S–1932–80 Filed 10–17–80; 3:14 pm]

BILLING CODE 4410–01–M

10

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government Sunshine Act, Pub. L. 94–409, that the Secruities and Exchange Commission will hold the following meetings during the week of October 20, 1980, in Room 825, 500 North Capitol Street, Washington, D.C.

Closed meetings will be held on Tuesday, October 21, 1980 at 10:00 a.m. and on Wednesday, October 22, 1980, following the 10 a.m. open meeting.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 522b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402(a)(4)(8)(9)(i) and (10).

Chairman Williams and Commissioners Loomis, Evans, and Friedman determined to hold the aforesaid meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, October 21, 1980, at 10:00 a.m., will be:

Formal orders of investigation.

Access to investigative files by Federal, State, or Self-Regulatory authorities.

Settlement of injunctive action.

Litigation matters.

Freedom of Information Act appeals.

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Institution and settlement of administrative proceedings of an enforcement nature.

Settlement of administrative proceeding of an enforcement nature.

Regulatory matter bearing enforcement implications.

Opinions.

Proposed orders in administrative proceedings of an enforcement nature.

The subject matter of the closed meeting scheduled for Wednesday, October 22, 1980, following the 10:00 a.m. open meeting, will be:

Institution of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Regulatory matter bearing enforcement implications.

The subject matter of the open meeting scheduled for Wednesday, October 22, 1980, at 10 a.m., will be:

1. Consideration of whether to adopt Rules 12b–1 and 17d–3 and amendments to Form N–1 under the Investment Company Act of 1940, which would: (1) establish conditions under which registered open-end management investment companies could directly or indirectly finance distribution of their own shares; (2) provide, where applicable, an exemption from the requirement of prior Commission approval for certain transactions complying with rule 12b–1; and (3) obtain appropriate disclosure about funds bearing distribution expenses. For further information, please contact Richard Grant at (202) 272–2041.

2. Consideration of whether to approve a proposed response by the Division of Investment Management to a letter from the American Council of Life Insurance which requested reconsideration and clarification of certain issues discussed in the Commission's General Statement of Policy Regarding Exemptive Provisions Relating to Annuity and Insurance Contracts. For further information, please contact Laura A. Boughan at (202) 272–2060.

3. Consideration of whether to grant the request of Rogers & Wells for a waiver of imputed disqualification pursuant to 17 CFR 200.735–8(e). For further information, please contact Myrna Siegel at (202) 272–2430.

4. Consideration of whether to grant the application of Ernest Cummins and Lauren H. Peppler for relief pursuant to Rule 252(f) of Regulation A. For further information, please contact Thomas J. Baudhuin at (202) 272–2644.

5. Consideration of whether to issue a release setting forth the new procedures for responding to no-action and interpretative letters by the Division of Corporation finance. For further information, please contact William E. Morley at (202) 272–2573.

6. Consideration of whether to grant the application of Thomas D. Sullivan to permanently modify the Commission's order dated April 22, 1977 which, among other things, prohibits him from acting as an underwriter and participating in underwritings of municipal and other securities, restricts his business in municipal securities to transactions with financial institutions and broker-dealers, and limits municipal serurities sold by him to those with a "Baa" or better rating. For further information, please contact John Courtade at (202) 272–2985.

7. Consideration of whether to issue a release requesting public comment on proposed amendments to Rule 463 of Regulation C and related Form SR (Report of Sales of Securities and Use of Procedures Therefrom) under the Securities Act of 1933. The purpose of the amendments is to enable the commission to provide investors and the staff with more meaningful information concerning first-time offerings, direct distributions and best efforts underwritings. For further information, please contact Elizabeth K. Norsworthy at (202) 272–2589 or Jeffry L. Davis at (202) 272–2850.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Marcia Macharg at (202) 272–2468.

October 16, 1980.

S–1924–80 Filed 10–16–80; 3:18 pm

BILLING CODE 8010–01–M

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federal register

Tuesday
October 21, 1980

Part II

Department of Health and Human Services

Food and Drug Administration

General Hospital and Personal Use Devices; Classification Regulations

V 45 C 21 80 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 880

[Docket No. 78N-1267]

General Hospital and Personal Use Devices; General Provisions

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: Food and Drug Administration (FDA) is issuing a final rule regarding general provisions applicable to the classification of general hospital and personal use devices. The preamble to this rule responds to general comments received on the proposals regarding classification of general hospital and personal use devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 24, 1979 (44 FR 49844), FDA published a proposed regulation containing general provisions applicable to the classification of general hospital and personal use devices. The preamble to the regulation described the development of the proposed regulations classifying general hospital and personal use devices and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel), an FDA advisory committee that makes recommendations to FDA concerning the classification of general hospital and personal use devices. FDA also published in that issue of the **Federal Register** individual proposed regulations to classify 99 general hospital and personal use devices. FDA provided a period of 60 days for interested persons to submit written comments on these proposals.

Comments on Classification Proposals

Elsewhere in this issue of the **Federal Register**, FDA is issuing final regulations classifying 94 individual general hospital and personal use devices. FDA is responding to specific comments regarding the classification of individual devices in the final regulations for these devices.

Several general comments were received regarding the process used for publishing classification regulations for general hospital and personal use devices. The agency is responding to these general comments below:

1. A comment stated that whenever a device is exempted from other good manufacturing practice (GMP) regulatory sections in the Code of Federal Regulations (CFR), it should also be exempted from §§ 820.180 and 820.198 (21 CFR 820.180 and 820.198) relating to records and complaint files.

The agency disagrees with the comment. As stated in the proposed general provisions, the agency has determined that no exemption from the device GMP regulation will extend to § 820.180, with respect to general requirements concerning records, or § 820.198, with respect to complaint files. The agency believes that granting exemption from these sections would not be in the public interest, and that compliance with these sections is not unduly burdensome for device manufacturers. To ensure that device manufacturers have adequate systems for complaint investigation and followup, all manufacturers are required to comply with the complaint file requirement. The purpose of requiring all device manufacturers to comply with the general requirements concerning records is to ensure that FDA has access to the complaint files, can investigate device-related injury reports and complaints about product defects, may determine whether the manufacturer's corrective actions are adequate, and may determine whether the exemption from other sections of the GMP regulation is still appropriate.

2. The comment also stated that FDA's intent in not granting an exemption from § 820.180 is unclear and that the agency's decision not to grant this exemption could be construed to mean that FDA wants manufacturers to maintain all records referred to throughout the GMP regulation, even though the device would be exempt from all other GMP requirements except the requirements to maintain and grant access to complaint files.

FDA disagrees with the comment's view that the agency's intent in refusing to exempt manufacturers from § 820.180 is unclear. The discussion above and in the proposed regulation clearly states FDA's intent regarding this section, which is to assure FDA access to complaint files.

3. A comment agreed with the proposed exemption from certain sections of the GMP regulation for five devices. These devices are the elastic bandage (Docket No. 78N-1287), therapeutic medical binder (Docket No. 78N-1295), cast cover (Docket No. 78N-1343), skin pressure protector (Docket No. 78N-1353), and protective restraint (Docket No. 78N-1358).

No change is needed in the regulations on these devices in order to respond to this comment.

4. A comment stated that the device registration and listing product code should be included in the list of general hospital and personal use devices to assist in the identification of the devices.

Although the suggestion in the comment has merit, practical problems prevent its adoption. Some manufacturers have become accustomed to identifying a device by its registration and listing name and three-letter code used for purposes of device listing under section 510 of the act (21 U.S.C. 360). However, FDA is still making changes in the names and identifications of generic types of devices in the classification regulations for all devices for which final regulations have not been published. Because FDA has not used the present device registration and listing names in the proposed and final classification regulations, FDA has prepared an index of names of generic types of medical devices used in classification regulations to aid a manufacturer in matching its device with the proper classification regulation. The index shows the device registration and listing product code for each device reviewed by a classification panel and the corresponding name of the generic type of device and classification panel in which the device classification will be published in the **Federal Register**. The agency announced the availability of this index in the **Federal Register** of March 6, 1979 (44 FR 12269). If necessary, this index will be updated, and the availability of the revised index will be reannounced in the **Federal Register**. FDA believes that, because this index is available, it is unnecessary to include or cross-reference the present device registration and listing name and product code in the classification regulations. In the future, following publication of most of the device classification regulations, the agency will revise and reissue the device registration and listing product code, so the device names to be used for registration and listing correspond to the device names in the final device classification regulations.

5. A comment stated that general purpose hospital mattresses without medical claims in their labeling are not medical devices because they are not covered by the statutory definition of a medical "device." The comment stated that general purpose hospital mattresses are essentially identical to interspring and urethane foam mattresses sold for residential and other uses.

The comment is largely correct. A general purpose hospital matress that is not intended for a medical purpose is not considered a "device" under section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)). Because FDA is unaware of general purpose hospital mattresses which are intended for medical purposes, FDA is not publishing a classification regulation for those products.

FDA also has clarified several regulations classifying products that have both medical and nonmedical uses. FDA will regulate a multipurpose product as a medical device if it is intended for a medical purpose, that is, for "use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease," or "to affect the structure or any function of the body." Section 201(h) of the act. FDA will determine the intended use of a product based upon the expressions of the person legally responsible for its labeling and by the circumstances surrounding its distribution. The most important factors the agency will consider in determining the intended use of a particular product are the labeling, advertising, and other representations accompanying the product. Products that have medical uses only are clearly intended for medical purposes and, therefore, will be regulated as medical devices whether or not medical claims are made for them.

Exemptions for Class I Devices

FDA proposed to exempt 28 generic types of general hospital and personal use devices from premarket notification procedures under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)) and Subpart E of Part 807 of the regulations, which implements section 510(k) of the act.

FDA also proposed to exempt 31 generic types of general hospital and personal use devices from certain requirements of the GMP regulation in Part 820.

The agency is exempting two additional generic types of devices from premarket notification procedures and from certain requirements of the GMP regulation, if the devices are not labeled or otherwise represented as sterile, in the final classification regulations for these two devices that are published elsewhere in this issue of the **Federal Register**. These devices are medical absorbent fibers (Docket No. 78N-1303) and specimen containers (Docket No. 78N-1342). The final regulation for each of these devices exempts the device from all requirements of the GMP regulation with the exception of §§ 820.180 and 820.198 relating to records and complaint files. The agency has determined that exemption of any device from §§ 820.180 and 820.198 for the reasons given above in comment/response number one.

Guidelines for Preparing Petitions Requesting Exemption or Variance From the Device GMP Regulation for Devices Classified Into Either Class I or Class II

FDA has prepared guidelines on the procedures that should be followed by persons who wish to submit petitions for exemption or variance from the device GMP regulation. These petitions may be submitted in accordance with provisions of section 520(f)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360j(f)(2)). The agency announced the availability of the guidelines in a notice published in the **Federal Register** on Friday, January 18, 1980 (45 FR 3671). FDA has granted two manufacturers' petitions for exemption from the GMP regulation for four general hospital and personal use devices (Docket Nos. 79P-0290, 79P-0292, 79P-0294, and 79P-0320), if these devices are not labeled or otherwise represented as sterile. The exemptions did not extend to § 820.180, with respect to general requirements concerning records, or § 820.198, with respect to complaint files. These actions are described in more detail in the preambles to individual final regulations for the four devices:

Device name	Docket No.
Elastic bandage	78N-1287
Therapeutic scrotal support	78N-1324
Disposable bedding	78N-1333
Patient examination gloves	78N-1347

Minor Changes Made in Final Regulations

FDA is making minor changes in the names of some devices or in their identification for clarification purposes. Additionally, the agency is adding an explanation in § 880.1 that references in Part 880 to other regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

Final Regulations Not Published at This Time

The agency is not publishing the final regulations for the following devices at this time:

Device name	Docket No.	Disposition
Urine collection bags for infants	78N-1286	To be published with Gastroenterology-Urology Devices.
Naso-gastric tubes	78N-1327	To be published with Gastroenterology-Urology Devices.
Infant oxygen hoods	78N-1305	Was published with Anesthesiology Devices (44 FR 63396).
I.V. set stopcocks	78N-1323	See 78N-1309 published elsewhere in this issue of the Federal Register.
Fluid delivery tubing	78N-1328	See 78N-1309 published elsewhere in this issue of the Federal Register.

Separate termination notices will be published in the **Federal Register** for the above docket numbers at a later time.

Changes in Classification in Final Orders

Based on the comments received and on additional consideration of the information before the agency, FDA has classified each of several devices into a different class from that originally proposed. Changes in classification were made in each of the following regulations with respect to all or some devices subject to the regulation: Pressure infusor for I.V. bags (Docket No. 78N-1380) and medical support stockings (Docket No. 76N-1322). FDA does not believe that it is necessary to issue a new proposal concerning these decisions. The purpose of publishing a proposal and soliciting comments is to enable the agency to determine whether its proposed classification of a device was correct. After reviewing the comments submitted on a proposal, the agency may be persuaded that its proposed classification is incorrect. Persons interested in the classification process should therefore anticipate that in a final regulation a device may be placed in a class different from the one originally proposed. This possibility was specifically identified in the proposed general provisions for general hospital and personal use devices (see 44 FR 49844). Persons who disagree with a final classification for a device may petition for reclassification of the device under Subpart C of Part 860 (21 CFR Part 860).

Changes in Device Advisory Committee Names

On April 28, 1978, the agency terminated all of the device classification panels, and then reestablished them with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). The General Hospital and

Personal Use Device Classification Panel was terminated, and its functions are now conducted by the General Hospital and Personal Use Device Section of the General Medical Devices Panel.

Classification Regulations Published to Date

The following table shows the current structure of the advisory committees involved with the classification of medical devices and a list of all proposed and final classification regulations published to date:

Panel/section name	Publication date in FEDERAL REGISTER
Circulatory Systems Devices Panel	March 9, 1979, 44 FR 13284–13434 (proposals); February 5, 1980, 45 FR 7904–7971 (final regulations).
Clinical Chemistry and Hematology Devices Panel:	
Clinical Chemistry Device Section	
Clinical Toxicology Device Section	
Hematology and Pathology Device Section	September 11, 1979, 44 FR 52950–53063 (proposals); September 12, 1980, 45 FR 60576–60651 (final regulations).
General Medical Devices Panel:	
General Hospital and Personal Use Device Section.	August 24, 1979, 44 FR 49844–49954 (proposals).
Gastroenterology-Urology Device Section	
Immunology and Microbiology Devices Panel:	
Immunology Device Section	April 22, 1980, 45 FR 27204–27359 (proposals).
Microbiology Device Section	April 22, 1980, 45 FR 27204–27359 (proposals).
Obstetrics-Gynecology and Radiologic Device Panel:	
Obstetrics-Gynecology Device Section	April 3, 1979, 44 FR 19694–19971 (proposals); February 26, 1980, 45 FR 12682–12720 (final regulations).
Radiology Device Section	
Ophthalmic, Ear, Nose, and Throat, and Dental Devices Panel:	
Ophthalmic Device Section	
Ear, Nose, and Throat Device Section	
Dental Device Section	
Respiratory and Nervous System Devices Panel:	
Anesthesiology Device Section	November 2, 1979, 44 FR 63292–63426 (proposals).
Neurological Device Section	November 28, 1978, 43 FR 54640–55732 (proposals); September 4, 1979, 44 FR 51726–51778 (final regulations).
Surgical and Rehabilitation Devices Panel:	
Physical Medicine Device Section	August 28, 1979, 44 FR 50458–50537 (proposals).
Orthopedic Device Section	
General and Plastic Surgery Device Section	

List of General Hospital and Personal Use Devices

The following is a list of general hospital and personal use devices being classified in final regulations published elsewhere in this issue of the Federal Register. The list shows the section in the Code of Federal Regulations under which the regulation classifying the device is being codified, the docket number of the classification regulation, and the classification of each device.

Subpart C—General Hospital and Personal Use Monitoring Devices

Section	Device	Docket No.	Class
880.2200	Liquid crystal forehead temperature strip	78N-1268	II
880.2400	Bed-patient monitor	78N-1269	I
880.2420	Electronic monitor for gravity flow infusion systems	78N-1270	II
880.2440	Neonatal ventilatory effort monitor (apnea detector)	78N-1271	II
880.2450	Electrically powered spinal fluid pressure monitor	78N-1272	II
880.2500	Spinal fluid manometer	78N-1273	II
880.2700	Stand-on patient scale	78N-1274	I
880.2720	Patient scale	78N-1275	I, II
880.2740	Surgical sponge scale	78N-1276	I
880.2800	Sterilization process indicator	78N-1277	II
880.2900	Clinical color change thermometer	78N-1279	II
880.2910	Clinical electronic thermometer	78N-1280	II
880.2920	Clinical mercury thermometer	78N-1281	II

Subparts D and E—[Reserved]

Subpart F—General Hospital and Personal Use Therapeutic Devices

Section	Device	Docket No.	Class
880.5025	I.V. container	78N-1284	II
880.5045	Medical recirculating air cleaner	78N-1285	II
880.5075	Elastic bandage	78N-1287	I
880.5090	Liquid bandage	78N-1288	I
880.5100	AC-powered adjustable hospital bed	78N-1289	II
880.5110	Hydraulic adjustable hospital bed	78N-1290	I
880.5120	Manual adjustable hospital bed	78N-1291	I
880.5130	Infant radiant warmer	78N-1292	III
880.5140	Pediatric hospital bed	78N-1293	II
880.5150	Nonpowered flotation therapy mattress	78N-1294	I
880.5160	Therapeutic medical binder	78N-1295	I
880.5180	Burn sheet	78N-1297	I
880.5200	Intravascular catheter	78N-1298	II
880.5210	Intravascular catheter securement device	78N-1299	I
880.5240	Medical adhesive tape and adhesive bandage	78N-1301	I
880.5270	Neonatal eye pad	78N-1302	I
880.5300	Medical absorbent fiber	78N-1303	I
880.5400	Neonatal incubator	78N-1305	II
880.5410	Neonatal transport incubator	78N-1307	II
880.5420	Pressure infusor for an I.V. bag	78N-1380	I
880.5430	Nonelectrically powered fluid injector	78N-1308	II
880.5440	Intravascular administration set	78N-1309	II
880.5450	Patient care reverse isolation chamber	78N-1310	II
880.5475	Jet lavage	78N-1311	II
880.5500	AC-powered patient lift	78N-1312	II
880.5510	Non-AC-powered patient lift	78N-1313	I
880.5550	Alternating pressure air flotation mattress	78N-1314	II
880.5560	Temperature regulated water mattress	78N-1315	II
880.5570	Hypodermic single lumen needle	78N-1316	II
880.5630	Nipple shield	78N-1317	I
880.5640	Lamb feeding nipple	78N-1318	I
880.5680	Pediatric position holder	78N-1319	I
880.5700	Neonatal phototherapy unit	78N-1320	III
880.5725	Infusion pump	78N-1321	II
880.5740	Suction snakebite kit	78N-1381	I
880.5760	Chemical cold pack snakebite kit	78N-1382	III
880.5780	Medical support stocking	78N-1322	I, II
880.5820	Therapeutic scrotal support	78N-1324	I
880.5860	Piston syringe	78N-1325	II
880.5950	Umbilical occlusion device	78N-1329	I

Subpart G—General Hospital and Personal Use Miscellaneous Devices

880.6025	Absorbent tipped applicator	78N-1330	I
880.6050	Ice bag	78N-1332	I
880.6060	Medical disposable bedding	78N-1333	I
880.6070	Bed board	78N-1334	I
880.6080	Cardiopulmonary resuscitation board	78N-1335	I
880.6085	Hot/cold water bottle	78N-1336	I
880.6100	Ethylene oxide gas aerator cabinet	78N-1338	II
880.6140	Medical chair and table	78N-1340	I
880.6150	Ultrasonic cleaner for medical instruments	78N-1341	I
880.6175	Specimen container	78N-1342	I
880.6185	Cast cover	78N-1343	I
880.6190	Mattress cover for medical purposes	78N-1344	I
880.6200	Ring cutter	78N-1345	I
880.6230	Tongue depressor	78N-1346	I
880.6250	Patient examination glove	78N-1347	I
880.6265	Examination gown	78N-1348	I
880.6280	Medical insole	78N-1383	I
880.6320	AC-powered medical examination light	78N-1384	II
880.6350	Battery-powered medical examination light	78N-1350	I
880.6375	Patient lubricant	78N-1351	I
880.6430	Liquid medication dispenser	78N-1386	I
880.6450	Skin pressure protector	78N-1353	I
880.6500	Medical ultraviolet air purifier	78N-1354	II
880.6710	Medical ultraviolet water purifier	78N-1355	II
880.6730	Body waste receptacle	78N-1356	I
880.6740	Vacuum-powered body fluid suction apparatus	78N-1357	II
880.6760	Protective restraint	78N-1358	I
880.6775	Powered patient transfer device	78N-1359	II
880.6785	Manual patient transfer device	78N-1360	I
880.6800	Washer for body waste receptacles	78N-1361	I
880.6820	Medical disposable scissors	78N-1362	I
880.6850	Sterilization wrap	78N-1363	II
880.6860	Ethylene oxide gas sterilizer	78N-1364	II
880.6870	Dry-heat sterilizer	78N-1365	II
880.6880	Steam sterilizer	78N-1366	II
880.6900	Hand-carried stretcher	78N-1367	I
880.6910	Wheeled stretcher	78N-1368	II
880.6920	Syringe needle introducer	78N-1369	II
880.6950	Irrigating syringe	78N-1388	I
880.6970	Liquid crystal vein locator	78N-1371	I
880.6980	Vein stabilizer	78N-1372	I

Patient Information

FDA is considering requiring the development and dissemination of information for patients and consumers about the uses, benefits, and risks of medical devices. For example, patient information has already been required by FDA for intrauterine devices and hearing aids. In addition, the Bureau of Radiological Health is conducting a consumer education program on x-rays that includes posters on the effects of radiation during pregnancy and the distribution of x-ray record cards.

FDA believes that patient information is needed if: (1) There is a choice among alternatives of which the patient should be aware; (2) There are substantial risks or discomforts associated with the product; (3) The cost of the product is significant; (4) There is a need for the patient to strictly adhere to a specific treatment regimen; and (5) There is substantial public or professional controversy about the device or its related procedures.

FDA can require that manufacturers make medical device information available to providers for their use and the use of their patients through the premarket approval or standards setting processes as well as the general control provisions of the Federal Food, Drug, and Cosmetic Act. The mechanisms available to FDA to provide patient information for devices include: (1) Labeling for restricted and nonrestricted devices; (2) Patient and provider information; and (3) Consumer and patient education programs.

FDA has tentatively identified several general hospital and personal use devices for which patient information may be required. Other general hospital and personal use devices may be identified in the future, after the criteria for selection of devices needing patient information have been further refined. The devices that have been identified so far are listed below:

Device	Docket No.
1. Liquid crystal forehead temperature strip	78N-1268
2. Ventilatory effort monitor (apnea detector for home use)	78N-1271
3. Infant radiant warmer	78N-1291
4. Nonelectrically powered fluid injector (for home use)	78N-1308
5. Infusion pump (for home use)	78N-1321
6. Suction snakebite kit	78N-1381
7. Chemical cold pack snakebite kit	78N-1382
8. Neonatal phototherapy unit	78N-1320

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Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs amends Chapter I of Title 21 of the Code of Federal Regulations by adding new Part 880, Subpart A, to read as follows:

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

Subpart A—General Provisions

Sec.
880.1 Scope.

Authority: Secs. 513, and 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, and 371(a)).

Subpart A—General Provisions

§ 880.1 Scope.

(a) This part sets forth the classification of general hospital and personal use devices intended for human use.

(b) The identification of a device in a regulation in this part is not a precise description of every device that is, or will be, subject to the regulation. A manufacturer who submits a premarket notification submission for a device under Part 807 may not show merely that the device is accurately described by the section title and identification provision of a regulation, but shall state why the device is substantially equivalent to other devices as required by § 807.87.

(c) To avoid duplicative listings, a general hospital and personal use device that has two more types of uses (e.g., used both as a diagnostic device and as a therapeutic device), is listed in the subpart representing one use of the device, rather than in two or more subparts.

(d) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

Effective date. This regulation is effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31540 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1268]

General Hospital and Personal Use Devices; Classification of Liquid Crystal Forehead Temperature Strips

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying liquid crystal forehead temperature strips into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49852) a proposed regulation to classify liquid crystal forehead temperature strips into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA. No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 by adding new Subpart C and new § 880.2200, to read as follows:

Subpart C—General Hospital and Personal Use Monitoring Devices

§ 880.2200 Liquid crystal forehead temperature strip.

(a) *Identification.* A liquid crystal forehead temperature strip is a device applied to the forehead that is used to indicate the presence or absence of fever, or to monitor body temperature changes. The device displays the color changes of heat sensitive liquid crystals corresponding to the variation in the surface temperature of the skin. The liquid crystals, which are cholesteric esters, are sealed in plastic.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31541 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1269]

General Hospital and Personal Use Devices; Classification of Bed-Patient Monitors

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying bed-patient monitors into class I (general controls). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49854) a proposed regulation to classify bed-patient monitors into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart C by adding new § 880.2400, to read as follows:

§ 880.2400 Bed-patient monitor.

(a) *Identification.* A bed-patient monitor is a battery-powered device placed under a mattress and used to indicate by an alarm or other signal when a patient attempts to leave the bed.

(b) *Classification.* Class I (general controls).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31542 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1270]

General Hospital and Personal Use Devices; Classification of Electronic Monitors for Gravity Flow Infusion Systems

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying electronic monitors for gravity flow infusion systems into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49044), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49855) a proposed regulation to classify electronic monitors for gravity flow infusion systems into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart C by adding new § 880.2420, to read as follows:

§ 880.2420 Electronic monitor for gravity flow infusion systems.

(a) *Identification.* An electronic monitor for gravity flow infusion systems is a device used to monitor the amount of fluid being infused into a patient. The device consists of an electronic transducer and equipment for signal amplification, conditioning, and display.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31540 Filed 10-20-80; 8:45 am]

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21 CFR Part 880

[Docket No. 78N-1271]

General Hospital and Personal Use Devices; Classification of Neonatal Ventilatory Effort Monitors (APNEA Detectors)

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying neonatal ventilatory effort monitors (apnea detectors) into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the Federal Register of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the Federal Register (44 FR 49856) a proposed regulation to classify neonatal ventilatory effort monitors (apnea detectors) into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the identification of the device to clarify its use. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-548 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart C by adding new § 880.2440, to read as follows:

§ 880.2440 Neonatal ventilatory effort monitor (apnea detector).

(a) *Identification.* A neonatal ventilatory effort monitor (apnea detector) is a device that monitors the ventilatory efforts (body movements necessary to move or attempt to move air in and out of the lungs) of an infant by a health care provider by means of a motion sensitive transducer, a change of thoracic impedance, or other suitable means. An abnormal pause in breathing efforts may be detected by the device, which activates an alarm. The device may include movement transducers, thoracic impedance electrodes, and electronic signal amplification, conditioning, and display equipment.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31544 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 880

[Docket No. 78N-1272]

General Hospital and Personal Use Devices; Classification of Electrically Powered Spinal Fluid Pressure Monitors

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying electrically powered spinal fluid pressure monitors into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the Federal Register of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Panel). FDA also published in that issue of the Federal Register (44 FR 49857) a proposed regulation to classify AC-powered spinal fluid pressure monitors into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA. No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the name and the identification of the device to clarify the range of devices included in the generic class covered by this rule. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart C by adding new § 880.2460, to read as follows:

§ 880.2460 Electrically powered spinal fluid pressure monitor.

(a) *Identification.* An electrically powered spinal fluid pressure monitor is an electrically powered device used to measure spinal fluid pressure by the use of a transducer which converts spinal fluid pressure into an electrical signal. The device includes signal amplification, conditioning, and display equipment.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31545 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 880

[Docket No. 78N-1273]

General Hospital and Personal Use Devices; Classification of Spinal Fluid Manometers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issing a final rule classifying spinal fluid manometers into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the Federal Register of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the Federal Register (44 FR 49858) a proposed regulation to classify spinal fluid pressure manometers into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the name and identification of the device to eliminate redundancy. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart C by adding new § 880.2500, to read as follows:

§ 880.2500 Spinal fluid manometer.

(a) *Identification.* A spinal fluid manometer is a device used to measure spinal fluid pressure. The device uses a hollow needle, which is inserted into the spinal column fluid space, to connect the spinal fluid to a graduated column so that the pressure can be measured by reading the height of the fluid.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31546 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 880

[Docket No. 78N-1274]

General Hospital and Personal Use Devices; Classification of Stand-On Patient Scales

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying stand-on patient scales into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the Federal Register of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the Federal Register (44 FR 49859) a proposed regulation to classify stand-on patient scales into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the identification of the device to clarify that the rule applies to only those devices that are intended for medical purposes. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs, Part

880 is amended in Subpart C by adding new § 880.2700, to read as follows:

§ 880.2700 Stand-on patient scale.

(a) *Identification.* A stand-on patient scale is a device intended for medical purposes that is used to weigh a patient who is able to stand on the scale platform.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31547 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 880

[Docket No. 78N-1275]

General Hospital and Personal Use Devices; Classification of Patient Scales

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying mechanical and battery powered patient scales into class I (general controls) and AC-powered patient scales into class II (performance standards). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATES: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49860) a proposed regulation to classify patient scales into class I (general controls) for mechanical patient scales and class II (performance standards) for AC-powered patient scales. A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the identification of the device to clarify that the rule applies to only those devices that are intended for medical purposes and also that the rule applies to battery powered patient scales intended for medical purposes. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart C by adding new § 880.2720, to read as follows:

§ 880.2720 Patient scale.

(a) *Identification.* A patient scale is a device intended for medical purposes that is used to measure the weight of a patient who cannot stand on a scale. This generic device includes devices placed under a bed or chair to weigh both the support and the patient, devices where the patient is lifted by a sling from a bed to be weighed, and devices where the patient is placed on the scale platform to be weighed. The device may be mechanical, battery powered, or AC-powered and may include transducers, electronic signal amplification, conditioning and display equipment.

(b) *Classification.* (1) Class I (general controls) for a mechanical or battery powered patient scale.

(2) Class II (performance standards) for an AC-powered patient scale.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31548 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 880

[Docket No. 78N-1276]

General Hospital and Personal Use Devices; Classification of Surgical Sponge Scales

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying surgical sponge scales into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49862) a proposed regulation to classify surgical sponge scales into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart C by adding new § 880.2740, to read as follows:

§ 880.2740 Surgical sponge scale.

(a) *Identification.* A surgical sponge scale is a nonelectrically powered device used to weigh surgical sponges that have been used to absorb blood during surgery so that, by comparison with the known dry weight of the sponges, an estimate may be made of the blood lost by the patient during surgery.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820 with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31549 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 880

[Docket No. 78N-1277]

General Hospital and Personal Use Devices; Classification of Sterilization Process Indicators

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying sterilization process indicators into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49862) a proposed regulation to classify sterilization indicators into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

Ten comments were received. The following is a summary of the comments and the agency's responses to them:

1. A comment disagreed that sterilization indicators be classified into class II. The comment suggested that this device be classified into class I and be exempt from premarket notification and the good manufacturing practices regulation (GMP's). The comment stated that the application of the GMP regulation is unlikely to improve the safety and effectiveness of the device.

FDA believes that sterilization indicators (sterilization process indicators) are properly classified into class II, for the reasons given in the proposal. The comment did not submit any additional data or information that were not considered by the agency before publishing the proposal to classify sterilization indicators into class II. Therefore, the agency disagrees with this comment.

2. Six comments objected to the treatment of biological sterilization indicators and physical/chemical sterilization indicators as a single generic category and recommended that each type of indicator be placed in a separate category. Eight comments objected to the proposed name and identification of sterilization indicators. The comments stated that these devices are not indicators of sterility. The comments suggested several names and identifications for these devices.

FDA does not believe that it is necessary to have two separate classification regulations for the two types of sterilization indicators. The agency has decided to change the name of this device from "sterilization indicators" to "sterilization process indicators." The agency agrees with the comment to identify separately biological sterilization process indicators and physical/chemical sterilization process indicators but concludes this can be done within one regulation.

3. One comment argued that sterilization indicators are not medical devices because these products are manufacturing tools used in the industrial process of obtaining a finished device and they do not meet the definition of "device."

FDA agrees that sterilization indicators (sterilization process indicators) used by manufacturers in the manufacture of sterile devices are not considered to be for medical purposes and thus are not accessories to medical devices. However, sterilization process indicators used by health care providers, such as hospitals, are considered to be for medical purposes and thus are accessories to medical devices and therefore are themselves medical devices under section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)). Therefore, FDA has made changes in the identification to clarify that this rule applies to only sterilization process indicators used by health care providers. Accordingly, the proposed regulation to classify this device is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device

advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart C by adding new § 880.2800, to read as follows:

§ 880.2800 Sterilization process indicator.

(a) *Biological sterilization process indicator*—(1) *Identification.* A biological sterilization process indicator is a device intended for use by a health care provider to accompany products being sterilized through a sterilization procedure and to monitor adequacy of sterilization. The device consists of a known number of microorganisms, of known resistance to the mode of sterilization, in or on a carrier and enclosed in a protective package. Subsequent growth or failure of the microorganisms to grow under suitable conditions indicates the adequacy of sterilization.

(2) *Classification.* Class II (performance standards).

(b) *Physical/chemical sterilization process indicator*—(1) *Identification.* A physical/chemical sterilization process indicator is a device intended for use by a health care provider to accompany products being sterilized through a sterilization procedure and to monitor one or more parameters of the sterilization process. The adequacy of the sterilization conditions as measured by these parameters is indicated by a visible change in the device.

(2) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31550 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1279]

General Hospital and Personal Use Devices; Classification of Clinical Color Change Thermometers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying clinical color change thermometers into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the Federal Register of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the Federal Register (44 FR 49863) a proposed regulation to classify clinical color change thermometers into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the identification of the device to clarify the operating principle of the device. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart C by adding new § 880.2900, to read as follows:

§ 880.2900 Clinical color change thermometer.

(a) *Identification.* A clinical color change thermometer is a disposable device used to measure a patient's oral, rectal, or axillary (armpit) body temperature. The device records body temperature by use of heat sensitive chemicals which are sealed at the end of a plastic or metal strip. Body heat causes a stable color change in the heat sensitive chemicals.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31551 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1280]

General Hospital and Personal Use Devices; Classification of Clinical Electronic Thermometers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying clinical electronic thermometers into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the Federal Register of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel

(formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the Federal Register (44 FR 49864) a proposed regulation to classify clinical electronic thermometers into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

Two comments were received. Both comments agreed with the proposal to classify clinical electronic thermometers into class II, and both comments made remarks pertinent to the development of performance standards for these devices.

FDA appreciates the concern expressed in these comments about the development of performance standards for this device. At a future date, the agency will initiate proceedings to adopt performance standards for this device, as well as for other devices that are classified into class II. At that time, the agency will publish an appropriate notice in the Federal Register seeking comments on that proceeding. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 880 is amended in Subpart C by adding new § 880.2910, to read as follows:

§ 880.2910 Clinical electronic thermometer.

(a) *Identification.* A clinical electronic thermometer is a device used to measure the body temperature of a patient by means of a transducer coupled with an electronic signal amplification, conditioning, and display unit. The transducer may be in a detachable probe with or without a disposable cover.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31552 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1281]

General Hospital and Personal Use Devices; Classification of Clinical Mercury Thermometers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying clinical mercury thermometers into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the Federal Register of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the Federal Register (44 FR 49865) a proposed regulation to classify clinical mercury thermometers into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

One comment was received which identified several risks to health not discussed in the proposal. The risks identified were due to misuse of the device and improper cleaning of the device. As stated in the preamble to the proposed general provisions for general hospital and personal use devices (44 FR 49844), the agency recognizes that not all possible risks to health are identified in the classification recommendations and the proposed FDA regulations. Future regulations establishing performance standards under section 514 of the act (21 U.S.C. 360) may identify other risks to health that are to be addressed by FDA requirements in addition to those identified in the Panel recommendation and classification regulations. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart C by adding new § 880.2920, to read as follows:

§ 880.2920 Clinical mercury thermometer.

(a) *Identification.* A clinical mercury thermometer is a device used to measure oral, rectal, or axillary (armpit) body temperature using the thermal expansion of mercury.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31553 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1284]

General Hospital and Personal Use Devices; Classification of I.V. Containers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final

rule classifying I.V. containers into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49866) a proposed regulation to clasify I.V. containers into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the identification of the device to clarify clear that the rule also applies to containers made of plastic or glass that are intended to be used for holding fluids for intravascular infusion. Accordingly, the proposed regulation is being adopted with this change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 by adding new Subpart F and new § 880.5025, to read as follows:

Subpart F— General Hospital and Personal Use Therapeutic Devices

§ 880.5025 I.V. container.

(a) *Identification.* An I.V. container is a container made of plastic or glass used to hold a fluid mixture to be administered to a patient through an intravascular administration set.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31554 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1285]

General Hospital and Personal Use Devices; Classification of Medical Recirculating Air Cleaners

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying medical recirculating air cleaners into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49867) a proposed regulation to classify recirculating air cleaners into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

1. A comment disagreed with the risks to health cited by the Panel and submitted that a standard for recirculating air cleaners was not necessary and that the device should be classified into class I. The comment further stated that the risk of ineffective particle removal could be addressed by labeling, that the risk of burns and electric shock from contact with the device was no greater than other common appliances such as table lamps, and that the Panel concern about ozone toxicity was already addressed by an FDA regulation (21 CFR 801.415).

The agency disagrees with the comment that the device be classified into class I and that the risk of ineffective particle removal can be addressed by labeling. FDA believes that a standard is needed to assure the effectiveness of the device. A standard is also necessary to protect against electrical shock and unnecessary electric arcing with subsequent ozone production and to avoid burns should a patient or attendant personnel contact an inadequately designed or constructed unit. Like FDA, the Panel believed that general controls would not provide adequate control of these potential hazards and that a performance standard is necessary for this device. If a standard addressing the risks to health presented by this device is now in existence or is developed in the future, the agency will consider adopting it rather than developing a separate FDA standard.

2. Two comments were concerned that the rule might apply to recirculating air cleaners that are not used for medical purposes.

FDA agrees with this comment and has made minor changes in the name and identification to make it clear that the rule applies only to those devices that are intended to be used for medical purposes. Accordingly, the proposed regulation is being adopted with this change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5045, to read as follows:

§ 880.5045 Medical recirculating air cleaner.

(a) *Identification.* A medical recirculating air cleaner is a device used to remove particles from the air for medical purposes. The device may function by electrostatic precipitation or filtration.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 31555 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1287]

General Hospital and Personal Use Devices; Classification of Elastic Bandages

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying elastic bandages into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49869) a proposed regulation to classify elastic bandages into class I (general controls). A period of 60 days was provided for interested persons to submit written comments to FDA.

Two comments were received. The comments agreed with the proposed classification and proposed exemption for elastic bandages. Accordingly, the proposed regulation is being adopted with only a minor editorial change.

The agency has determined that compliance with the GMP regulation, except for § 820.180 (general requirements concerning records) and § 820.198 (complaint files), is not required to assure that elastic bandages will be safe and effective and otherwise in compliance with the act. The agency has based its determination on available information about current practices used in the manufacture of the device and user experience with the device. The agency is not exempting manufacturers of elastic bandages from the requirements of §§ 820.180 or 820.198 because it has determined that compliance with these sections is in the public interest and will be unduly burdensome for device manufacturers.

There are two procedures by which FDA may exempt a manufacturer of a device from complying with any or all of the requirements of the GMP regulation. First, a manufacturer of a device subject to any requirement under the GMP regulation may petition the agency pursuant to section 520(f)(2)(A) of the act (21 U.S.C. 360j(f)(2)(A)) for an exemption or variance from the requirement. An exemption granted in response to such a petition applies only to the manufacturer who submitted the petition. Second, in classifying a medical device into class I under section 513 of the act (21 U.S.C. 360c), the agency may determine that certain of the requirements of the GMP regulation shall not apply to the device. In that instance, the exemption applies to all manufacturers of the generic type of device that is the subject of the classification regulation. The agency may grant an exemption under either procedure only if it determines that compliance with the requirement is not necessary to assure that the device will be safe and effective and otherwise in compliance with the act.

The agency previously granted a manufacturer's petition (79P-0292) for exemption of its "wraparound wrist brace" from the requirement of the GMP regulation, except § 820.180 (general requirements concerning records) and § 820.198 (complaint files). As explained above, that exemption applied only to the petitioner. In this regulation classifying elastic bandages, FDA is exempting from certain sections of the GMP regulation all manufacturers of this generic type of device. This action is consistent with the agency's policies and criteria from exemption discussed in the preamble to the proposed general provisions for this Part, published in the **Federal Register** of August 24, 1979 (44 FR 49844). Additional information regarding the procedures for petitioning for exemptions or variances from the GMP regulation is available, as described in a notice published in the **Federal Register** of January 18, 1980 (45 FR 3671).

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5075, to read as follows:

§ 880.5075 Elastic bandage.

(a) *Identification.* An elastic bandage is a device consisting of either a long flat strip or a tube of elasticized material that is used to support and compress a part of a patient's body.

(b) *Classification.* Class I (general controls). The device is exempt from premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements

concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31556 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1288]

General Hospital and Personal Use Devices; Classification of Liquid Bandages

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying liquid bandages into class I (general controls). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49870) a proposed regulation to classify liquid bandages into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the identification of the device to clarify that the rule also applies to those devices that contain powder and liquid combinations. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)), and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5090, to read as follows:

§ 880.5090 Liquid bandage.

(a) *Identification.* A liquid bandage is a sterile device that is a liquid, semiliquid, or powder and liquid combination used to cover an opening in the skin or as a dressing for burns. The device is also used as a topical skin protectant.

(b) *Classification.* Class I (general controls).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31557 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1289]

General Hospital and Personal Use Devices; Classification of AC-Powered Adjustable Hospital Beds

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying AC-powered adjustable hospital beds into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Classification Device Panel). FDA also published in that issue of the **Federal Register** (44 FR 49871) a proposed regulation to classify AC-powered adjustable hospital beds into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5100, to read as follows:

§ 880.5100 AC-powered adjustable hospital bed.

(a) *Identification.* An AC-powered adjustable hospital bed is a device intended for medical purposes that consists of a bed with a built-in electric motor and remote controls that can be operated by the patient to adjust the height and surface contour of the bed. The device includes movable and latchable side rails.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31558 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1290]

General Hospital and Personal Use Devices; Classification of Hydraulic Adjustable Hospital Beds

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying hydraulic adjustable hospital beds into class I (general controls). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49871) a proposed regulation to classify hydraulic adjustable hospital beds into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5110, to read as follows:

§ 880.5110 Hydraulic adjustable hospital bed.

(a) *Identification.* A hydraulic adjustable hospital bed is a device intended for medical purposes that consists of a bed with a hydraulic mechanism operated by an attendant to adjust the height and surface contour of the bed. The device includes movable and latchable side rails.

(b) *Classification.* Class I (general controls).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 31559 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1291]

General Hospital and Personal Use Devices; Classification of Manual Adjustable Hospital Beds

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying manual adjustable hospital beds into class I (general controls) and exempting manufacturers of the device from certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49872) a proposed regulation to classify manual adjustable hospital beds into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5120, to read as follows:

§ 880.5120 Manual adjustable hospital bed.

(a) *Identification.* A manual adjustable hospital bed is a device intended for medical purposes that consists of a bed with a manual mechanism operated by an attendant to adjust the height and surface contour of

the bed. The device includes movable and latchable side rails.

(b) *Classification.* Class I (general controls). The device is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31560 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1292]

General Hospital and Personal Use Devices; Classification of Infant Radiant Warmers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying infant radiant warmers into class III (premarket approval). The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application that includes information concerning safety and effectiveness tests for the device. Each premarket approval application must be submitted to FDA on or before May 31, 1983, or 90 days after promulgation of a separate regulation requiring premarket approval of the device, whichever occurs later. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49873) a proposed regulation to classify infant radiant warmers into class III (premarket approval). A period of 60 days was provided for interested persons to submit comments to FDA.

A comment stated that infant radiant warmers should be classified into class II (performance standards) rather than class III (premarket approval). The comment stated that the device has been maintaining skin temperatures safely and effectively for the past 10 years. The comment stated that many of the potential hazards mentioned in the proposal are either covered by existing voluntary standards (e.g., electrical standards) or would be covered by the Association for the Advancement of Medical Instrumentation (AAMI) draft standard for radiant warmers. With respect to the risk identified by the Panel of insensible water loss associated with the use of infant radiant warmers, the comment stated that this risk is well known to the medical community and requires medical management. Users could be informed of the risk through required product labeling. The comment disagreed with the proposal's statement that insufficient information exists to assess the possibility of eye damage. The comment stated that the Panel reviewed a study which found no eye damage up to 40 days after the infant is removed from the radiant warmer.

FDA disagrees with the comment that infant radiant warmers should be classified into class II. The agency is concerned about possible long term effects of infrared radiation on the skin and eyes of infants. The agency agrees that short term studies have found no eye damage to the infant up to 40 days after removal from the warmer. The agency also agrees that most of the risks to health presented by the device can be addressed by labeling or by a standard as suggested by the comment. However, the agency is not aware of any data or information concerning long term effects of infrared radiation on the skin and eyes of infants, and the comment did not present any new data or information which were not considered by the agency prior to publication of the proposal to classify infant radiant warmers into class III. The agency has decided that the device should be classified into class III until this data or information is available. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5130, to read as follows:

§ 880.5130 Infant radiant warmer.

(a) *Identification.* An infant radiant warmer is a device consisting of an infrared heating element intended to be placed over an infant to maintain the infant's body temperature by means of radiant heat. The device may also contain a temperature monitoring sensor, a heat output control mechanism and an alarm to alert operators of the device's failure. The device may be placed over a pediatric hospital bed or it may be built into the bed as a complete unit.

(b) *Classification.* Class III (premarket approval).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31561 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1293]

General Hospital and Personal Use Devices; Classification of Pediatric Hospital Beds

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying pediatric hospital beds into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA Published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49875) a proposed regulation to classify pediatric hospital beds into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5140, to read as follows:

§ 880.5140 Pediatric hospital bed.

(a) *Identification.* A pediatric hospital bed is a device intended for medical purposes that consists of a bed or crib designed for the use of a pediatric patient, with fixed end rails and movable and latchable side rails. The contour of the bed surface may be adjustable.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31572 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1294]

General Hospital and Personal Use Devices; Classification of Nonpowered Flotation Therapy Mattresses

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying nonpowered flotation therapy mattresses into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49876) a proposed regulation to classify nonpowered flotation therapy mattresses into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

One comment was received. The comment agreed with the classification and exemptions set forth in the proposed regulation. The comment also stated that there are mattresses made of foam which appear to be functionally equivalent to mattresses containing air or fluid and that other mattresses with foam and metal or plastic support structrues could be functionally equivalent.

FDA agrees with the comment and the agency has made minor changes in the identification of the device to make it clear that the rule applies to all nonpowered flotation therapy mattresses for medical purposes that are designed to support a patient and avoid excess pressure on local body areas.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5150, to read as follows:

§ 880.5150 Nonpowered flotation therapy mattress.

(a) *Identification.* A nonpowered flotation therapy mattress is a mattress intended for medical purposes which contains air, fluid, or other materials that have the functionally equivalent effect of supporting a patient and avoiding excess pressure on local body areas. The device is intended to treat or prevent decubitus ulcers (bed sores).

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31563 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1295]

General Hospital and Personal Use Devices; Classification of Therapeutic Medical Binders

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying therapeutic medical binders into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the Federal Register of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the Federal Register (44 FR 49877) a proposed regulation to classify therapeutic medical binders into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

Two comments were received. The comments agreed with the proposed classification and proposed exemption for therapeutic medical binders. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the Federal Register of May 19, 1976 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5160, to read as follows:

§ 880.5160 Therapeutic medical binder.

(a) *Identification.* A therapeutic medical binder is a device, usually made of cloth, that is intended for medical purposes and that can be secured by ties so that it supports the underlying part of the body or holds a dressing in place. This generic type of device includes the abdominal binder, breast binder, and perineal binder.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notifiction procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31564 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1297]

General Hospital and Personal Use Devices; Classification of Burn Sheets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying burn sheets into class I (general controls). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the Federal Register of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the Federal Register (44 FR 49878) a proposed regulation to classify burn sheets into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the identification of the device to make it clear that the rule applies to those devices that are intended to be used to provide warmth, to absorb wound exudate, and serve as a barrier against contaminants. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5180, to read as follows:

§ 880.5180 Burn sheet.

(a) *Identification.* A burn sheet is a device made of a porous material that is wrapped aroung a burn victim to retain body heat, to absorb wound exudate, and to serve as a barrier against contaminants.

(b) *Classification.* Class I (general Controls).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31565 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1298]

General Hospital and Personal Use Devices; Classification of Intravascular Catheters

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying intravascular catheters into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the Federal Register of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the Federal Register (44 FR 49879) a proposed regulation to classify intravascular catheters into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

1. The comment received disagreed with the recommendation of the General Medical Devices Panel that all intravascular catheters should be radiopaque. The comment stated that catheters that are not radiopaque often have superior antithrombogenic characteristics and may be more desirable in some circumstances. The comment stated further that radiopacity of a catheter was not necessarily sufficient to identify a piece of a catheter in an X-ray of the thoracic area.

FDA agrees that radiopacity may not always be desired in an intravascular catheter and that in some circumstances an X-ray would not show a radiopaque piece of catheter. However, this issue will be resolved during the standards setting process for intravascular catheters.

2. The comment also stated that the term "metal" should be removed from the definition as it was not compatible with the recommendation of the Panel that the device be flexible.

The agency recognizes that things made of metal are usually not flexible. Therefore, the agency has made minor changes in the identification of this device to clarify the reference to metal. The comment also suggested that the statement of the Panel that intravascular catheters were life supporting should be deleted because the supplemental data sheet from the General Medical Devices Panel and the Circulatory Systems Devices Panel indicated that the Panels did not consider this device to be life supporting. The agency has reviewed the supplemental data sheets of the General Medical Devices Panel and of the Circulatory Systems Devices Panel for this device. FDA finds that the intravascular catheter was designated as a life supporting device by the Circulatory Systems Devices Panel and thus the agency disagrees with the comment's suggestion to delete the statement that the intravascular catheter is a life-supporting device.

The agency has made minor changes in the identification of the device for clarity. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5200, to read as follows:

§ 880.5200 Intravascular catheter.

(a) *Identification.* An intravascular catheter is a device that consists of a slender tube and any necessary connecting fittings and that is inserted into the patient's vascular system for short term use (less than 30 days) to sample blood, monitor blood pressure, or administer fluids intravenously. The device may be constructed of metal, rubber, plastic, or a combination of these materials.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31566 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1299]

General Hospital and Personal Use Devices; Classification of Intravascular Catheter Securement Devices

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying intravascular catheter securement devices into class I (general controls). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49880) a proposed regulation to classify intravascular catheter securement devices into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No written comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes to the name and identification for clarity. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5210, to read as follows:

§ 880.5210 Intravascular catheter securement device.

(a) *Identification.* An intravascular catheter securement device is a device with an adhesive backing that is placed over a needle or catheter and is used to keep the hub of the needle or the catheter flat and securely anchored to the skin.

(b) *Classification.* Class I (general controls).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31567 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1301]

General Hospital and Personal Use Devices; Classification of Medical Adhesive Tapes and Adhesive Bandages

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying medical adhesive tapes and adhesive bandages into class I (general controls). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49881) a proposed regulation to classify adhesive tapes and bandages into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

One comment was received. The comment disagreed with placing adhesive tapes in the same generic class as bandages, stating that the devices are dissimilar and have different applications and therefore should be separate generic classes. The comment further stated that adhesive tape is usually marketed as a nonsterile device and that experience indicates that the application of the good manufacturing practices regulation would not necessarily improve the safety or effectiveness of the device and that adhesive tape should be placed in a separate generic class and exempt from premarket notification and good manufacturing practice requirements. The comment agreed with the proposed classification for bandages.

FDA has carefully considered this comment and realizes that some confusion may have arisen. The agency has made a change in the name of the device to "medical adhesive tape and adhesive bandage" for clarification. Further the agency has decided it is not necessary to place medical adhesive tapes in a separate generic category from adhesive bandages. The agency believes that it is necessary to have control over the adhesives used in these devices and does not propose to exempt adhesive tapes and adhesive bandages from the requirements of the good manufacturing practices regulation. The agency believes that it is necessary to have knowledge of any new adhesives used in these devices and disagrees with the comment to exempt adhesive tapes or adhesive bandages from premarket notification under section 510(k) of the Federal Food, Drug, and Cosmetic Act.

Accordingly, the proposed regulation is being adopted with changes clarifying the name of the device and its use for medical purposes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371 (a))) and under authority delegated to him (21 CFR 5.1) the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new 880.5240, to read as follows:

§ 880.5240 Medical adhesive tape and adhesive bandage.

(a) *Identification.* A medical adhesive tape or adhesive bandage is a device intended for medical purposes that consists of a strip of fabric material or plastic, coated on one side with an adhesive, and may include a pad of surgical dressing without a disinfectant. The device is used to cover and protect wounds, to hold together the skin edges of a wound, to support an injured part of the body, or to secure objects to the skin.

(b) *Classification.* Class I (general controls).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31568 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1302]

General Hospital and Personal Use Devices; Classification of Neonatal Eye Pads

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying neonatal eye pads into class I (general controls) and exempting manufacturers of the device from certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49882) a proposed regulation to classify neonatal eye pads into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5270, to read as follows:

§ 880.5270 Neonatal eye pad.

(a) *Identification.* A neonatal eye pad is an opaque device used to cover and protect the eye of an infant during therapeutic procedures, such as phototherapy.

(b) *Classification.* Class I (general controls). If the device is not labeled or otherwise represented as sterile, it is exempt from the good manufacturing practice regulation Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31569 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1303]

General Hospital and Personal Use Devices; Classification of Medical Absorbent Fibers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying medical absorbent fibers into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49883) a proposed regulation to classify medical absorbent fibers into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

1. One comment was received. The comment suggested that a distinction be made between those absorbent fibers intended for medical purposes and those absorbent fibers intended solely for cosmetic purposes.

FDA agrees that absorbent fibers that are intended solely for cosmetic purposes should not be included in this regulation, and has made minor changes in the identification of the device to distinguish absorbent fibers intended to be used for medical purposes from those intended to be used for cosmetic purposes.

2. The comment also objected to the panel recommendation that the device should meet the United States Pharmacopeia (USP) requirements for absorbency and purity of absorbent (purified) cotton. The comment stated that the identification did not require the absorbent fiber to be 100 percent cotton, and synthetic fiber also could be included.

FDA believes that it was the Panel's intention that this recommendation apply only to a device that is labeled pure cotton.

3. The comment also requested exemption from the good manufacturing practices regulation (GMP) and premarket notification requirements for those devices not labeled as sterile because it was claimed that defects relating to safety and effectiveness would be readily apparent to the user and that safety and effectiveness would not be increased by the application of the GMP regulation.

FDA agrees with this comment, and has decided that manufacturers of medical absorbent fiber be subject to registration and device listing under section 510 (a) through (j) of the act, but exempt from premarket notification under section 510(k) of the act and Subpart E of Part 807 of the regulations (21 CFR Part 807). The agency believes that it is not necessary for the protection of the public health that FDA receive premarket notification submissions concerning medical absorbent fibers. The agency does not at this time anticipate that premarket approval will be required for this device. The agency believes that the semiannual updating of device listing under section 510(j)(2) will provide FDA with adequate notice concerning new products within this generic type of device.

FDA also has decided that a manufacturer of this device who does not label or otherwise represent it as sterile be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 with respect to general requirements concerning records, and § 820.198 with respect to complaint files. The agency believes that manufacturers of a medical absorbent fiber, even when it is not labeled or otherwise represented as sterile, must still be required to comply with the complaint requirements to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of medical absorbent fibers must still be required to comply with the general requirements concerning records to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, determine whether the manufacturer's corrective actions are adequate, and determine whether the exemption from other sections of the GMP regulation is still appropriate. A manufacturer of medical absorbent fibers that are labeled or otherwise represented as sterile is, in the manufacture of this device, subject to the GMP regulation in its entirety. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5300, to read as follows:

§ 880.5300 Medical absorbent fiber.

(a) *Identification.* A medical absorbent fiber is a device intended for medical purposes that is made from cotton or synthetic fiber in the shape of a ball or a pad and that is used for applying medication to, or absorbing small amounts of body fluids from, a patient's body surface. Absorbent fibers intended solely for cosmetic purposes are not included in this generic device category.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31570 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1306]

General Hospital and Personal Use Devices; Classification of Neonatal Incubators

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying neonatal incubators into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49884) a proposed regulation to classify neonatal incubators into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the identification of the device to clarify that the term "nursing" refers to care by nursing personnel and not to feeding an infant. Accordingly, the proposed regulation is being adopted with this change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5400, to read as follows:

§ 880.5400 Neonatal incubator.

(a) *Identification.* A neonatal incubator is a device consisting of a rigid boxlike enclosure in which an infant may be kept in a controlled environment for medical care. The device may include an AC-powered heater, a fan to circulate the warmed air, a container for water to add humidity, a control valve through which oxygen may be added, and access ports for nursing care.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31571 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1307]

General Hospital and Personal Use Devices; Classification of Neonatal Transport Incubators

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying neonatal transport incubators into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49885) a proposed regulation to classify neonatal transport incubators into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5410, to read as follows:

§ 880.5410 Neonatal transport incubator.

(a) *Identification.* A neonatal transport incubator is a device consisting of a portable rigid boxlike enclosure with insulated walls in which an infant may be kept in a controlled environment while being transported for medical care. The device may include straps to secure the infant, a battery-operated heater, an AC-powered battery charger, a fan to circulate the warmed air, a container for water to add humidity, and provision for a portable oxygen bottle.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31572 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1380]

General Hospital and Personal Use Devices; Classification of Pressure Infusors for I.V. Bags

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying pressure infusors for I.V. bags into class I (general controls). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49886) a proposed regulation to classify pressure infusors for I.V. bags into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

A comment disagreed with the proposal to classify this device into class II (performance standards). The comment stated that the pressure indicated by the device and applied to the I.V. bag was not necessarily the pressure in the I.V. bag and was not the pressure at the injection site. Also, the comment stated that it was not normally necessary to know the pressure of fluid exiting the I.V. bag, and that the risk of air embolism was related to pressurizing

a rigid I.V. container rather than external pressure applied on an I.V. bag.

FDA agrees with the comment that a pressure infusor for I.V. bags presents minimal risk of air embolism. The agency believes that the accuracy of the pressure exerted on the bag as shown by the pressure gauge can be addressed in the labeling.

Accordingly, the agency is classifying the device into class I in the final rule instead of into class II as proposed. For the reasons stated in the general regulation on general and personal use devices, published elsewhere in this issue of the **Federal Register**, FDA does not believe that it is necessary to issue a new proposal concerning this decision. Persons who disagree with classifying pressure infusors for I.V. bags into class I may petition for reclassification of the device under Subpart C of Part 860 (21 CFR Part 860) of the classification procedures regulation. Accordingly, the proposed classification is being adopted with this change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22873). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5420, to read as follows:

§ 880.5420 Pressure infusor for an I.V. bag.

(a) *Identification.* A pressure infusor for an I.V. bag is a device consisting of an inflatable cuff which is placed around an I.V. bag. When the device is inflated, it increases the pressure on the I.V. bag to assist the infusion of the fluid.

(b) *Classification.* Class I (general controls).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31573 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1308]

General Hospital and Personal Use Devices; Classification of Nonelectrically Powered Fluid Injectors

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying nonelectrically powered fluid injectors into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49887) a proposed regulation to classify nonelectrically powered fluid injectors into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No Comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes to the identification of the device to clarify its use. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22873). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5430, to read as follows:

§ 880.5430 Nonelectrically powered fluid injector.

(a) *Identification.* A nonelectrically powered fluid injector is a nonelectrically powered device used by a health care provider to give a hypodermic injection by means of a narrow, high velocity jet of fluid which can penetrate the surface of the skin and deliver the fluid to the body. It may be used for mass inoculations.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055; 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31574 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1309]

General Hospital and Personal Use Devices; Classification of Intravascular Administration Sets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying intravascular administration sets into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49888) a proposed regulation to classify intravascular administration sets into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

1. One comment recommended that infusion line filters be placed into a separate generic classification instead of grouping it in the intravascular administration set category. The comment stated that I.V. set stopcocks and intravascular catheters are also connected to the infusion line tubing of the intravascular administration set, but these products have been treated as separate generic categories. The comment also stated that no rationale was provided for including infusion line filters with intravascular administration sets.

FDA disagrees with the comment that infusion line filters should be a separate generic category. The agency believes that infusion line filters are used only with an intravascular administration set and should be treated as part of the same generic class. The agency agrees with the comment that I.V. set stopcocks (Docket No. 78N–1323 (44 FR 49904)), and fluid delivery tubing (Docket No. 78N–1328 (44 FR 49909)), both of which were proposed as separate generic categories, are also used only with intravascular administration sets. Therefore, the agency is grouping these devices into the generic category of intravascular administration sets.

2. The comment also stated that identifying an infusion line filter as "a component of an intravascular administration set" is unclear. The comment stated that the only definition of component that is available is in § 820.3 (21 CFR 820.3) of the GMP regulation.

FDA agrees that the use of the term "component" in the proposal can be confusing. In the proposal, the agency used this term to mean a part of a system. The agency has removed the term component from the final classification regulation for intravascular administration sets.

3. The comment also stated that some manufacturers of infusion line filters do not manufacture intravascular administration sets and that it would be unnecessary for them to be involved in standards deliberation on sets when their prime concern is the filter itself.

FDA believes that a performance standard for intravascular administration sets would not necessarily include a performance standard for infusion line filters. However, this issue will be resolved during the standards setting process for intravascular administration sets.

The agency has made minor changes in the name and identification of intravascular administration sets to reflect the above changes. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668 and May 26, 1978 (43 FR 22672 and 22873). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5440, to read as follows:

§ 880.5440 Intravascular administration set.

(a) *Identification.* An intravascular administration set is a device used to administer fluids from a container to a patient's vascular system through a needle or catheter inserted into a vein. The device may include the needle or catheter, tubing, a flow regulator, a drip chamber, an infusion line filter, an I.V. set stopcock, fluid delivery tubing, connectors between parts of the set, a side tube with a cap to serve as an injection site, and a hollow spike to penetrate and connect the tubing to an I.V. bag or other infusion fluid container.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31575 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1310]

General Hospital and Personal Use Devices; Classification of Patient Care Reverse Isolation Chambers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying patient care reverse isolation chambers into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulation classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49890) a proposed regulation to classify patient care reverse isolation chambers into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA. No comments have been received regarding the proposed regulation to classify this device.

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Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5450, to read as follows:

§ 880.5450 Patient care reverse isolation chamber.

(a) *Identification.* A patient care reverse isolation chamber is a device consisting of a roomlike enclosure designed to prevent the entry of harmful airborne material. This device protects a patient who is undergoing treatment for burns or is lacking a normal immunosuppressive defense due to therapy or congenital abnormality. The device includes fans and air filters which maintain an atmosphere of clean air at a pressure greater than the air pressure outside the enclosure.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31578 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1311]

General Hospital and Personal Use Devices; Classification of Jet Lavages

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying jet lavages into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49891) a proposed regulation to classify jet lavages into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–548 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5475, to read as follows:

§ 880.5475 Jet lavage.

(a) *Identification.* A jet lavage is a device used to clean a wound by a pulsatile jet of sterile fluid. The device consists of the pulsing head, tubing to connect to a container of sterile fluid, and a means of propelling the fluid through the tubing, such as an electric roller pump.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31577 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1312]

General Hospital and Personal Use Devices; Classification of AC-Powered Patient Lifts

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying AC-powered patient lifts into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49892) a proposed regulation to classify AC-powered patient lifts into class II (performance standards). A period of 60 days was provided for interested persons to submit written comments to FDA.

No written comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5500, to read as follows:

§ 880.5500 AC-powered patient lift.

(a) *Identification.* An AC-powered lift is an electrically powered device either fixed or mobile, used to lift and transport patients in the horizontal or other required position from one place to another, as from a bed to a bath. The device includes straps and slings to support the patient.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31578 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1313]

General Hospital and Personal Use Devices; Classification of Non-AC-Powered Patient Lifts

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying non-AC-powered patient lifts into class I (general controls). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49893) a proposed regulation to classify non-AC-powered patient lifts into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA. No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5510, to read as follows:

§ 880.5510 Non-AC-powered patient lifts.

(a) *Identification.* A non-AC-powered patient lift is a hydraulic, battery, or mechanically powered device, either fixed or mobile, used to lift and transport a patient in the horizontal or other required position from one place to another, as from a bed to a bath. The device includes straps and a sling to support the patient.

(b) *Classification.* Class I (general controls).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31579 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1314]

General Hospital and Personal Use Devices; Classification of Alternating Pressure Air Flotation Mattresses

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying alternating pressure air flotation mattresses into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49893) a proposed regulation to classify alternating pressure air flotation mattresses into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA. No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed

regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5550, to read as follows:

§ 880.5550 Alternating pressure air flotation mattress.

(a) *Identification.* An alternating pressure air flotation mattress is a device intended for medical purposes that consists of a mattress with multiple air cells that can be filled and emptied in an alternating pattern by an associated control unit to provide regular, frequent, and automatic changes in the distribution of body pressure. The device is used to prevent and treat decubitus ulcers (bed sores).

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31580 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1315]

General Hospital and Personal Use Devices; Classification of Temperature Regulated Water Mattresses

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying temperature regulated water mattresses into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49894) a proposed regulation to classify heated water mattresses into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only minor clarifying changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5560, to read as follows:

§ 880.5560 Temperature regulated water mattress.

(a) *Identification.* A temperature regulated water mattress is a device intended for medical purposes that consists of a mattress of suitable size, filled with water which can be heated or in some cases cooled. The device includes electrical heating and water circulating components, and an optional cooling component. The temperature control may be manual or automatic.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31581 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1316]

General Hospital and Personal Use Devices; Classification of Hypodermic Single Lumen Needles

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying hypodermic single lumen needles into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49895) a proposed regulation to classify hypodermic single lumen needles into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the identification of the device to make it clear that the tube is hollow and constructed of metal, and that the tube is joined to a female connector (hub) which fits the male connector (nozzle) of a piston syringe or an intravascular administration set. Accordingly, the proposed regulation is being adopted with these and other minor clarifying changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5570, to read as follows:

§ 880.5570 Hypodermic single lumen needle.

(a) *Identification.* A hypodermic single lumen needle is a device intended to inject fluids into, or withdraw fluids from, parts of the body below the surface of the skin. The device consists of a metal tube that is sharpened at one end and at the other end joined to a female connector (hub) designed to mate with a male connector (nozzle) of a piston syringe or an intravascular administration set.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31582 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1317]

General Hospital and Personal Use Devices; Classification of Nipple Shields

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying nipple shields into class I (general controls). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49896) a proposed regulation to classify nipple shields into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

One comment was received. The comment suggested that the identification of the device be changed to clarify that nursing pads, which are disposable absorbent pads intended to protect a lactating woman's clothing from being stained with milk, are not included in this proposed rule. The comment also requested confirmation that nursing pads are not considered by FDA to be medical devices.

FDA agrees with this comment and has made minor changes to the identification of the device to make it clear that nursing pads are not included in this generic device. FDA does not consider nursing pads that are intended solely to protect a lactating woman's clothing from being stained with milk to be medical devices. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5630, to read as follows:

§ 880.5630 Nipple shield.

(a) *Identification.* A nipple shield is a device consisting of a cover used to protect the nipple of a nursing woman. This generic device does not include nursing pads intended solely to protect the clothing of a nursing woman from milk.

(b) *Classification.* Class I (general controls).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31583 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1318]

General Hospital and Personal Use Devices; Classification of Lamb Feeding Nipples

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying lamb feeding nipples into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and

certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the Federal Register of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the Federal Register (44 FR 49897) a proposed regulation to classify lamb feeding nipples into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the identification of the device to make it clear that the rule applies only to those devices that are intended for use as a feeding nipple for infants with oral or facial abnormalities. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5640, to read as follows:

§ 880.5640 Lamb feeding nipple.

(a) *Identification.* A lamb feeding nipple is a device intended for use as a feeding nipple for infants with oral or facial abnormalities.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31584 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1319]

General Hospital and Personal Use Devices; Classification of Pediatric Position Holders

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying pediatric position holders into class I (general controls) and exempting manufacturers of the device from certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the Federal Register of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the Federal Register (44 FR 49898) a proposed regulation to classify infant position holders into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the name and identification of the device to make it clear that the rule applies to those devices that are used to hold children as well as those used to hold infants. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5680, to read as follows:

§ 880.5680 Pediatric position holder.

(a) *Identification.* A pediatric position holder is a device used to hold an infant or a child in a desired position for therapeutic or diagnostic purposes, e.g., in a crib under a radiant warmer, or to restrain a child while an intravascular injection is administered.

(b) *Classification.* Class I (general controls). The device is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.160, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31585 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1320]

General Hospital and Personal Use Devices; Classification of Neonatal Phototherapy Units

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying neonatal phototherapy units into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the Federal Register of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the Federal Register (44 FR 49899) a proposed regulation to classify neonatal phototherapy units into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA. No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5700, to read as follows:

§ 880.5700 Neonatal phototherapy unit.

(a) *Identification.* A neonatal phototherapy unit is a device used to treat or prevent hyperbilirubinemia (elevated serum bilirubin level). The device consists of one or more lamps that emit a specific spectral band of light, under which an infant is placed for therapy. This generic type of device may include supports for the patient and equipment and component parts.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31586 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1321]

General Hospital and Personal Use Devices; Classification of Infusion Pumps

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying infusion pumps into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the Federal Register of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the Federal Register (44 FR 49900) a proposed regulation to classify infusion pumps into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

A comment agreed with classifying infusion pumps into class II. A manufacturer's comment expressed concern that its device, although functioning to infuse fluids into the body, did not fit the identification statement for infusion pumps. The manufacturer's device uses elastomeric force to drive the fluid into the body and was a complete system not requiring additional components. The comment suggested that a new device category should be established for such integrated infusion systems.

FDA disagrees with the suggestion that a new category for integrated infusion systems using an elastomeric pump be established. However, the agency has made minor changes in the identification of the device to include such integrated infusion systems. Further, different performance standards may be required for the different categories of infusion pumps included in the rule. This issue will be resolved during the standards setting process for infusion pumps.

The agency has made minor changes in the identification of the device to clarify the use and the range of devices included in this generic class. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 212668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions,

published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5725, to read as follows:

§ 880.5725 Infusion pump.

(a) *Identification.* An infusion pump is a device used in a health care facility to pump fluids into a patient in a controlled manner. The device may use a piston pump, a roller pump, or a peristaltic pump and may be powered electrically or mechanically. The device may also operate using a constant force to propel the fluid through a narrow tube which determines the flow rate. The device may include means to detect a fault condition, such as air in, or blockage of, the infusion line and to activate an alarm.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31587 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1381]

General Hospital and Personal Use Devices; Classification of Suction Snakebite Kits

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying suction snakebite kits into class I (general controls). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49901) a proposed regulation to classify suction snakebite kits into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA. No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5740, to read as follows:

§ 880.5740 Suction snakebite kit.

(a) *Identification.* A suction snakebite kit is a device consisting of a knife, suction device, and tourniquet used for first-aid treatment of snakebites by removing venom from the wound.

(b) *Classification.* Class I (general controls.).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31558 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1382]

General Hospital and Personal Use Devices; Classification of Chemical Cold Pack Snakebite Kits

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying chemical cold pack snakebite kits into class III (premarket approval). The effect of classifying a device into class III is to require each manufacturer of the device to submit to FDA a premarket approval application that includes information concerning safety and effectiveness tests for the device. Each application must be submitted to FDA on or before May 31, 1983 or 90 days after promulgation of a separate regulation requiring premarket approval of the device, whichever occurs later. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49902) a proposed regulation to classify chemical cold pack snakebite kits into class III (premarket approval). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5760, to read as follows:

§ 880.5760 Chemical cold pack snakebite kit.

(a) *Identification.* A chemical cold pack snakebit kit is a device consisting of a chemical cold pack and tourniquet used for first-aid treatment of snakebites.

(b) *Classification.* Class III (premarket approval).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31589 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1322]

General Hospital and Personal Use Devices; Classification of Medical Support Stockings

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying into class II (performance standards) medical support stockings intended to prevent the pooling of blood in the legs and classifying into class I (general controls) medical support stockings intended for general medical purposes and exempting manufacturers of the class I device from certain requirements of the good manufacturing practice regulation. The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices, except for certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49903) a proposed regulation to classify medical support stockings into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

1. One comment suggested that the Cardiovascular Device Classification Panel (now the Circulatory System Devices Panel) and the General Hospital and Personal Use Device Classification Panel had considered two different types of medical support stockings. The comment agreed with the recommendation of the Cardiovascular Device Classification Panel that medical support stockings intended to prevent pooling of blood in the legs should be classified into class II. The comment further stated that improper compression, due to poor stocking design or a failure to fit and apply stockings correctly, could produce adverse effects on the patient due to excessive blood flow restriction. The comment suggested that the General Hospital and Personal Use Device Classification Panel had considered a different type of device, perhaps a nonprescription stocking, as the Panel had not identified any risks to health.

FDA agrees with the comment that there are some differences between the medical support stockings discussed by the two classification panels. FDA has made changes in the identification of the device to distinguish medical support stockings that are specifically designed and fitted to a patient to prevent pooling of blood in the legs, medical support stockings for other therapeutic purposes, and those general purpose support stockings that are not intended for medical purposes. The last category of stockings is not considered to consist of medical devices. The agency also agrees with the comment that medical support stockings that are intended to be used in the prevention of the pooling of blood in the legs should be classified into class II. Medical support for medical purposes should be classified into class I. The final regulation so provides.

2. Two comments agreed with the proposal to classify medical support stockings into class I. One of them requested that the device be exempt from premarket notification and the good manufacturing practices regulation (GMP) if it is not used for the prevention of pooling of blood in the lower limbs because the General Hospital Panel did not identify any risk to health of the device and, therefore, it is not necessary to subject it to the requirements of premarket notification and the GMP regulation.

The agency disagrees with the comment that medial support stockings be exempt from premarket notification, but agrees with the comment that manufacturers of medical support stockings that are not labeled or otherwise intended for use in the prevention of pooling of blood in the legs should be exempt from the device GMP regulation under section 520(f) of the act (21 U.S.C. 360j(f)). The agency has decided that a manufacturer of this device be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority

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delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5780, to read as follows:

§ 880.5780 Medical support stocking.

(a) *Medical support stocking to prevent the pooling of blood in the legs*—(1) *Identification.* A medical support stocking to prevent the pooling of blood in the legs is a device that is constructed of elastic material and designed to apply controlled pressure to the leg and that is intended for use in the prevention of pooling of blood in the leg.

(2) *Classification.* Class II (performance standards).

(b) *Medical support stocking for general medical purposes*—(1) *Identification.* A medical support stocking for general medical purposes is a device that is constructed of elastic material and designed to apply controlled pressure to the leg and that is intended for medical purposes other than the prevention of pooling of blood in the leg.

(2) *Classification.* Class I (general controls). The device is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31590 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1324]

General Hospital and Personal Use Devices; Classification of Therapeutic Scrotal Supports

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying therapeutic scrotal supports into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49905) a proposed regulation to classify therapeutic scrotal supports into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

Two comments were received. Both agreed with the classification for this device. One comment suggested that the identification clearly state that supports worn for comfort and during physical activity and not associated with any medical use are not included in this generic device.

FDA agrees with these comments and has made minor changes in the name and the identification of the device to clarify that the rule applies only to those devices that are intended for medical purposes. Accordingly, the proposed regulation is being adopted with these changes.

The agency has determined that compliance with the GMP regulation, except for § 820.180 (general requirements concerning records) and § 820.198 (complaint files), is not required to assure that therapeutic scrotal supports will be safe and effective and otherwise in compliance with the act. The agency has based its determination on available information about current practices used in the manufacture of the device. The agency is not exempting manufacturers of therapeutic scrotal supports from the requirements of §§ 820.180 or 820.198 because it has determined that compliance with these sections is in the public interest and will not be unduly burdensome for device manufacturers.

There are two procedures by which FDA may exempt a manufacturer of a device from complying with any or all of the requirements of the GMP regulation. First, a manufacturer of a device subject to any requirement under the GMP regulation may petition the agency pursuant to section 520(f)(2)(A) of the act (21 U.S.C. 360j(f)(2)(A)) for an exemption or variance from the requirement. An exemption granted in response to such a petition applies only to the manufacturer who submitted the petition. Second, in classifying a medical device into class I under section 513 of the act (21 U.S.C. 360c), the agency may determine that certain of the requirements of the GMP regulation shall not apply to the device. In that instance, the exemption applies to all manufacturers of the generic type of device that is the subject of the classification regulation. The agency may grant an exemption under either procedure only if it determines that compliance with the requirement is not necessary to assure that the device will be safe and effective and otherwise in compliance with the act.

The agency previously granted a manufacturer's petition (79P–0294) for exemption of its "scrotal support" from the requirement of the GMP regulation, except § 820.180 (general requirements concerning records) and § 820.198 (complaint files). As explained above, that exemption applies only to the petitioner. In this regulation classifying therapeutic scrotal supports, FDA is exempting from certain sections of the GMP regulation all manufacturers of this generic type of device. This action is consistent with the agency's policies and criteria for exemption discussed in the preamble to the proposed general provisions for this Part, published in the **Federal Register** of August 24, 1979 (44 FR 49844). Additional information regarding the procedures for petitioning for exemptions or variances from the GMP regulation is available, as described in a notice published in the **Federal Register** of January 18, 1980 (45 FR 3671).

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5820, to read as follows:

§ 880.5820 Therapeutic scrotal support.

(a) *Identification.* A therapeutic scrotal support is a device intended for medical purposes that consist of a pouch attached to an elastic waistband and that is used to support the scrotum (the sac that contains the testicles).

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31591 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1325]

General Hospital and Personal Use Devices; Classification of Piston Syringes

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying piston syringes into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49906) a proposed regulation to classify piston syringes into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA. No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with minor editorial changes only.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register**.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5860, to read as follows:

§ 880.5860 Piston syringe.

(a) *Identification.* A piston syringe is a device intended for medical purposes that consists of a calibrated hollow barrel and a movable plunger. At one end of the barrel there is a male connector (nozzle) for fitting the female connector (hub) of a hypodermic single lumen needle. The device is used to inject fluids into, or withdraw fluids from, the body.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31592 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1329]

General Hospital and Personal Use Devices; Classification of Umbilical Occlusion Devices

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying umbilical occlusion devices into class I (general controls). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49909) a proposed regulation to classify umbilical occlusion devices into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further

information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.5950, to read as follows:

§ 880.5950 Umbilical occlusion device.

(a) *Identification.* An umbilical occlusion device is a clip, tie, tape, or other article used to close the blood vessels in the umbilical cord of a newborn infant.

(b) *Classification.* Class I (general controls).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31593 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1330]

General Hospital and Personal Use Devices; Classification of Absorbent Tipped Applicators

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying absorbent tipped applicators into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the Federal Register of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the Federal Register (44 FR 49910) a proposed regulation to classify absorbent tipped applicators into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 by adding new Subpart G and new § 880.6025, to read as follows:

Subpart G—General Hospital and Personal Use Miscellaneous Devices

§ 880.6025 Absorbent tipped applicator.

(a) *Identification.* An absorbent tipped applicator is a device intended for medical purposes that consists of an absorbent swab on a wooden, paper, or plastic stick. The device is used to apply medications to, or to take specimens from, a patient.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31594 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1332]

General Hospital and Personal Use Devices; Classification of Ice Bags

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying ice bags into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the Federal Register of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the Federal Register (44 FR 49912) a proposed regulation to classify ice bags into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6050, to read as follows:

§ 880.6050 Ice bag.

(a) *Identification.* An ice bag is a device intended for medical purposes that is in the form of a container intended to be filled with ice that is used to apply dry cold therapy to an area of the body. The device may include a holder that keeps the bag in place against an external area of the patient.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31595 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1333]

General Hospital and Personal Use Devices; Classification of Medical Disposable Bedding

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying medical disposable bedding into class I (general controls) and exempting manufacturers of the device from certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for certain requirements of the good manufacture in practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the Federal Register of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the Federal Register (44 FR 49913) a proposed regulation to classify disposable bedding into class I (general controls). A period of 60 days was provided for interested persons to submit written comments to FDA.

One comment was received. The comment suggested that disposable bedding should not be considered a medical device. The comment said that disposable bedding is not recognized in the National Formulary (NF) or the United States Pharmacopeia (USP) and that it does not meet the definition of "device" in the Federal Food, Drug, and Cosmetic Act. The comment also stated that non-disposable bedding and other articles such as face cloths and towels are not considered devices.

FDA agrees with the comment that not all disposable bedding are devices. FDA points out, however, that inclusion in the NF or the USP is only one of three criteria for treatment as a "device." See section 201(h) of the act (21 U.S.C. 321(h)). the agency has made minor changes in the name and the identification of the device to make clear that the rule applies only to disposable bedding that is intended to be used for medical purposes. Accordingly, the proposed regulation is being adopted with these changes.

The agency has determined that compliance with the GMP regulation, except for § 820.180 (general requirements concerning records) and § 820.198 (complaint files), is not required to assure that medical disposable bedding will be safe and effective and otherwise in compliance with the act. The agency has based its determination on available information about current practices used in the manufacture of the device. the agency is not exempting manufacturers of medical disposable bedding from the requirements of §§ 820.180 or 820.198 because it has determined that compliance with these sections is in the public interest and will not be unduly burdensome for device manufacturers.

There are two procedures by which FDA may exempt a manufacturer of a device from complying with any or all of the requirements of the GMP regulation. First, manufacturer of a device subject to any requirement under the GMP regulation may petition the agency pursuant to section 520(f)(2)(A) of the act (21 U.S.C. 360j(f)(2)(A)) for an exemption or variance from the requirement. An exemption granted in response to such a petition applies only to the manufacturer who submitted the petition. Second, in classifying a medical device into class I under section 513 of the Act (21 U.S.C. 360c), the agency may determine that certain of the requirements of the GMP regulation shall not apply to the device. In that instance, the exemption applies to all manufacturers of the generic type of device that is the subject of the classification regulation. The agency may grant an exemption under either procedure only if it determines that compliance with the requirement is not necessary to assure that the device will be safe and effective and otherwise in compliance with the act.

The agency previously granted a manufacturer's petition (79P-0290) for exemption of its "waterproof sheeting" from the requirement of the GMP regulation, except § 280.180 (general requirements concerning records) and § 820.198 (complaint files). As explained above, that exemption applies only to the petitioner. In this regulation

classifying medical disposable bedding, FDA is exempting from certain sections of the GMP regulation all manufacturers of this generic type of device. This action is consistent with the agency's policies and criteria for exemption discussed in the preamble to the proposed general provisions for this Part, published in the **Federal Register** of August 24, 1979 (44 FR 49844). Additional information regarding the procedures for petitioning for exemptions or variances from the GMP regulation is available, as described in a notice published in the **Federal Register** of January 18, 1980 (45 FR 3671).

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a) 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6060, to read as follows:

§ 880.6060 Medical disposable bedding.

(a) *Identification.* Medical disposable bedding is a device intended for medical purposes to be used by one patent for a period of time and then discarded. This generic type of device may include disposable bedsheets, bedpads, pillows and pillowcases, blankets, emergency rescue blankets, or waterproof sheets.

(b) *Classification.* Class I (general controls). If the device is not labeled or otherwise represented as sterile, it is exempt from the good manufacturing practice regulation in Part 820, with exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31596 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1334]

General Hospital and Personal Use Devices; Classification of Bed Boards

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying bed boards into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49914) a proposed regulation to classify bed boards into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6070, to read as follows:

§ 880.6070 Bed board.

(a) *Identification.* A bed board is a device intended for medical purposes that consists of a stiff board used to increase the firmness of a bed.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31597 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR PART 880

[Docket No. 78N-1335]

General Hospital and Personal Use Devices; Classification of Cardiopulmonary Resuscitation Boards

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying cardiopulmonary resuscitation boards into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49915) a proposed regulation to classify cardiopulmonary resuscitation boards into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA. No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6080 to read as follows:

§ 880.6080 Cardiopulmonary resuscitation board.

(a) *Identification.* A cardiopulmonary resuscitation board is a device consisting of a rigid board which is placed under a patient to act as a support during cardiopulmonary resuscitation.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31598 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1336]

General Hospital and Personal Use Devices; Classification of Hot/Cold Water Bottles

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying hot/cold water bottles into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49916) a proposed regulation to classify hot/cold water bottles into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6085, to read as follows:

§ 880.6085 Hot/cold water bottle.

(a) *Identification.* A hot/cold water bottle is a device intended for medical purposes that is in the form of a container intended to be filled with hot or cold water to apply heat or cold to an area of the body.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31599 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1338]

General Hospital and Personal Use Devices; Classification of Ethylene Oxide Gas Aerator Cabinets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying ethylene oxide gas aerator cabinets into class II performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the Federal Register of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the Federal Register (44 FR 49917) a proposed regulation to classify aerator cabinets into class II (performance standards). A period of 60 days was provided for interested persons to submit written comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the name and identification of the device to clarify that the device is intended for use by a health care provider to remove ethylene oxide gas and that this generic class of device may include a heater to warm the circulating air. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6100, to read as follows:

§ 880.6100 Ethylene oxide gas aerator cabinet.

(a) *Identification.* An ethyene oxide gas aerator cabinet is a device that is intended for use by a health care provider and consists of a cabinet with a ventilation system designed to circulate and exchange the air in the cabinet to shorten the time required to remove residual ethylene oxide (ETO) from wrapped medical devices that have undergone ETO sterilization. The device may include a heater to warm the circulating air.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31600 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 880

[Docket No. 78N-1340]

General Hospital and Personal Use Devices; Classification of Medical Chairs and Tables

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying medical chairs and tables into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the Federal Register of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the Federal Register (44 FR 49918) a proposed regulation to classify medical chairs and tables into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only minor clarifying changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6140, to read as follows:

§ 880.6140 Medical chair and table.

(a) *Identification.* A medical chair or table is a device intended for medical purposes that consists of a chair or table without wheels and not electrically powered which, by reason of special shape or attachments, such as food trays or headrests, or special features such as a built-in raising and lowering mechanism or removable arms, is

intended for use of blood donors, geriatric patients, or patients undergoing treatment or examination.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31601 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 880

[Docket No. 78N-1341]

General Hospital and Personal Use Devices; Classification of Ultrasonic Cleaners for Medical Instruments

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying ultrasonic cleaners for medical instruments into class I (general controls). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the Federal Register of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the Federal Register (44 FR 49919) a proposed regulation to classify ultrasonic cleaners for medical instruments into class I. A period of 60 days was provided for interested persons to submit comments to FDA.

1. Four comments disagreed with the treatment of ultrasonic cleaners as medical devices. The comments stated that the manufacturers of ultrasonic cleaners often do not know and cannot control the ultimate use of these products, and that the majority of them are used in industrial situations and are without medical claims.

FDA agrees with these comments. The agency considers only those ultrasonic cleaners that are intended for cleaning medical instruments to be medical devices.

2. Two comments stated that FDA had previously removed ultrasonic cleaners from the list of medical devices.

FDA confirms that ultrasonic cleaners that are not intended for cleaning medical instruments have been removed from the list of medical devices.

3. One comment suggested that ultrasonic cleaners for medical instruments should be exempt from premarket notification because ultrasonic cleaners have been manufactured for more than thirty years and a premarket notification of a manufacturer's intent to market the device is unnecessary. The comment also suggested that the device be exempt from the good manufacturing practice regulation because the quality of the device is easily discernible and defects are readily apparent to the user.

FDA disagrees with this comment. The agency believes that it is necessary for the protection of the public health that FDA receive premarket notification submissions concerning ultrasonic cleaners medical instruments. The agency also believes that manufacturers of the device must comply with the good manufacturing practice regulation to assure safety and effectiveness of the device.

4. One comment objected to the panel recommendation that the device be labeled advising the user to check periodically the level of energy emitted by the device, maintaining that this was unnecessary because it could be readily observed if the device was functioning and that any failure would probably be so catastrophic that the device would cease to function.

FDA believes that it is prudent to check all electronic medical devices periodically even if many failures are readily apparent.

5. A comment stated that the cleaning ability of an ultrasonic cleaner was in large measure dependent on the particular cleaning solution used and that health hazards are more likely from the solution than the device.

FDA agrees that the cleaning solution used in an ultrasonic cleaner for medical instruments is important in the cleaning process but believes the cleaning power of the solution is also dependent upon the proper operation of the ultrasonic cleaner.

The agency has made minor changes in the identification of the device to clarify that the rule applies only to those devices that are intended for cleaning medical instruments. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52, Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6150, to read as follows:

§ 880.6150 Ultrasonic cleaner for medical instruments.

(a) *Identification.* An ultrasonic cleaner for medical instruments is a device intended for cleaning medical instruments by the emission of high frequency soundwaves.

(b) *Classification.* Class I (general controls).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31602 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 880

[Docket No. 78N-1342]

General Hospital and Personal Use Devices; Classification of Specimen Containers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying specimen containers into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49920) a proposed regulation to classify specimen containers into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

One comment agreed with the proposal that specimen containers be classified into class I, and suggested that nonsterile specimen containers, but not sterile specimen containers, be exempted from premarket notificaiton requirements and the good manufacturing practice (GMP) regulation. The comment stated that the safety and effectiveness of a nonsterile specimen container is not improved by manufacture in accordance with the GMP regulation and that all defects occurring in a nonsterile specimen container are readily discernible to the user. The comment further stated that because there is not much risk in the use of nonsterile specimen containers, there is no need to require premarket notifications under section 510(k) prior to their introduction into the market. The comment also stated that FDA could protect the public health by requiring registration and listing information for manufacturers of nonsterile specimen containers.

FDA agrees with the comment and has also decided that it is not necessary for the protection of the public health to receive premarket notification submissions concerning sterile specimen containers. The agency believes that the semiannual updating of device listing under section 510(j)(2) will provide FDA with adequate notice concerning new products within this generic type of device. Therefore, the agency has decided to exempt manufacturers of specimen containers from premarket notification under section 510(k) of the act and Subpart E of Part 807 of the regulations (21 CFR Part 807). The agency does not at this time anticipate that premarket approval will be required for this device.

The agency has also decided that a manufacturer of a specimen container who does not label or otherwise represent it as sterile be exempt, in the manufacture of the device, from all requirements in the GMP regulation except § 820.180 with respect to general requirements concerning records, and § 820.198 with respect to complaint files. The agency believes that a manufacturer of a specimen container, even when it is not labeled or otherwise represented as sterile, must still be required to comply with the complaint file requirements to ensure that these manufacturers have adequate systems for complaint investigation and followup. The agency also believes that manufacturers of specimen containers also must still be required to comply with the general requirements concerning records to ensure that FDA has access to complaint files, can investigate device-related injury reports and complaints about product defects, and determine whether the exemption from other sections of the GMP regulation is still appropriate. A manufacturer of a specimen container that is labeled or otherwise represented as sterile is, in the manufacture of this device, subject to the GMP regulation in its entirety. Accordingly, the proposed regulation is being adopted with these changes.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 880 is amended in Subpart G by adding new § 880.6175, to read as follows:

§ 880.6175 Specimen container.

(a) *Identification.* A specimen container is a device intended for medical purposes, that may be labeled or otherwise represented as sterile and that is used for the collection and transport of body waste, body exudate, or tissue samples.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it is also exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31603 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 880

[Docket No. 78N-1343]

General Hospital and Personal Use Devices; Classification of Cast Covers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying cast covers into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49921) a proposed regulation to classify cast covers into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

One comment was received. The comment agreed with the proposed classification and proposed exemption for cast covers. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6185, to read as follows:

§ 880.6185 Cast cover.

(a) *Identification.* A cast cover is a device intended for medical purposes that is made of waterproof material and placed over a cast to protect it from getting wet during a shower or a bath.

(b) *Classification.* Class I (general controls). The device is exempt from premarket notification procedures in Subpart 807. If the device is not labeled or otherwise represented as sterile it is also exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31604 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 880

[Docket No. 78N-1344]

General Hospital and Personal Use Devices; Classification of Mattress Covers for Medical Purposes

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying mattress covers for medical purposes into class I (general controls) and exempting manufacturers of the device from certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49922) a proposed regulation to classify mattress covers into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

One comment was received. The comment stated that the device is usually used to protect a mattress and that for this intended use it does not fit the definition of "device" in the Federal Food, Drug, and Cosmetic Act. The comment recommended that the classification name of the device be changed to a name more descriptive of the products that may fit this definition and that the identification of the device be clarified to eliminate those mattress covers that do not fall within this definition.

FDA has carefully considered this comment and agrees that the majority of mattress covers are intended solely to protect the mattress and are not intended for medical purposes. Therefore, the agency has made minor changes in the name and the identification of the device to clarify that the rule applies only to those devices that are intended for medical purposes. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6190, to read as follows:

§ 880.6190 Mattress cover for medical purposes.

(a) *Identification.* A mattress cover for medical purposes is a device intended for medical purposes that is used to protect a mattress. It may be electrically conductive or contain a germicide.

(b) *Classification.* Class I (general controls). If the device is not labeled or otherwise represented as sterile, it is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31605 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 880

[Docket No. 78N-1345]

General Hospital and Personal Use Devices; Classification of Ring Cutters

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying ring cutters to class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49923) a proposed regulation to classify ring cutters into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6200, to read as follows:

§ 880.6200 Ring cutter.

(a) *Identification.* A ring cutter is a device intended for medical purposes that is used to cut a ring on a patient's finger so that the ring can be removed. The device incorporates a guard to prevent injury to the patient's finger.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820 with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31606 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 880

[Docket No. 78N-1346]

General Hospital and Personal Use Devices; Classification of Tongue Depressors

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying tongue depressors into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49924) a proposed regulation to classify tongue depressors into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA. No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6230, to read as follows:

§ 880.6230 Tongue depressor.

(a) *Identification.* A tongue depressor is a device intended to displace the tongue to facilitate examination of the surrounding organs and tissues.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31607 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 880

[Docket No. 78N-1347]

General Hospital and Personal Use Devices; Classification of Patient Examination Gloves

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying patient examination gloves into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49926) a proposed regulation to classify patient examination gloves into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

The agency has determined that compliance with the GMP regulation, except for § 820.180 (general requirements concerning records) and § 820.198 (complaint files), is not required to assure that patient examination gloves will be safe and effective and otherwise in compliance with the act. The agency has based its determination on available information about current practices used in the manufacture of the device and user experience with the device. The agency is not exempting manufacturers of patient examination gloves from the requirements of §§ 820.180 or 820.198 because it has determined that compliance with these sections is in the public interest and will not be unduly burdensome for device manufacturers. Accordingly, the proposed regulation is being adopted with these changes.

There are two procedures by which FDA may exempt a manufacturer of a device from complying with any or all of the requirements of the GMP regulation. First, a manufacturer of a device subject to any requirement under the GMP regulation may petition the agency pursuant to section 520(f)(2)(A) of the act (21 U.S.C. 360j(f)(2)(A)) for an exemption or variance from the requirement. An exemption granted in response to such a petition applies only to the manufacturer who submitted the petition. Second, in classifying a medical device into class I under section 513 of the act (21 U.S.C. 360c), the agency may determine that certain of the requirements of the GMP regulation shall not apply to the device. In that instance, the exemption applies to all manufacturers of the generic type of device that is the subject of the classification regulation. The agency may grant an exemption under either procedure only if it determines that compliance with the requirement is not necessary to assure that the device will be safe and effective and otherwise in compliance with the act.

The agency previously granted a manufacturer's petition (79P-0320) for exemption of its "nonsterile patient examination gloves" from the requirement of the GMP regulation, except § 820.180 (general requirements concerning records) and § 820.198 (complaint files). As explained above, that exemption applied only to the petitioner. In this regulation classifying patient examination gloves, FDA is exempting from certain sections of the GMP regulation all manufacturers of this generic type of device. This action is consistent with the agency's policies and criteria for exemption discussed in the preamble to the proposed general provisions for this Part, published in the **Federal Register** of August 24, 1979 (44 FR 49844). Additional information regarding the procedures for petitioning for exemptions or variances from the GMP regulation is available, as described in a notice published in the **Federal Register** of January 18, 1980 (45 FR 3671).

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6250, to read as follows:

§ 880.6250 Patient examination glove.

(a) *Identification.* A patient examination glove is a disposable device intended for medical purposes that is worn on the examiner's hand or finger to prevent contamination between patient and examiner.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it is also exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31608 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

V 45 O C 21 80 UMI

21 CFR Part 880

[Docket No. 78N-1348]

General Hospital and Personal Use Devices; Classification of Examination Gowns

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying examination gowns into class I (general control) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49927) a proposed regulation to classify examination gowns into class I (general controls). A period of 60 days was provided for interested persons to submit written comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6265, to read as follows:

§ 880.6265 Examination gown.

(a) *Identification.* An examination gown is a device intended for medical purposes that is made of cloth, paper, or other material that is draped over or worn by a patient as a body covering during a medical examination.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31609 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1383]

General Hospital and Personal Use Devices; Classification of Medical Insoles

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying Medical insoles into class I (general controls). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49928) a proposed regulation to classify medical insoles into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6280, to read as follows:

§ 880.6280 Medical insole.

(a) *Identification.* A medical insole is a device intended for medical purposes that is placed inside a shoe to relieve the symptoms of athlete's foot infection by absorbing moisture.

(b) Classification. Class I (general controls).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31610 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1384]

General Hospital and Personal Use Devices; Classification of AC-Powered Medical Examination Lights

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying AC-powered medical examination lights into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49929) a proposed regulation to classify AC-powered examination lights into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the name and identification of the device to clarify that the rule applies only to those devices that are intended to be used for medical purposes. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 890.6320, to read as follows:

§ 890.6320 AC-powered medical examination light.

(a) *Identification.* An AC-powered medical examination light is an AC-powered device intended for medical purposes that is used to illuminate body surfaces and cavities during a medical examination.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31811 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1350]

General Hospital and Personal Use Devices; Classification of Battery-Powered Medical Examination Lights

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying battery-powered medical examination lights into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 880 is amended in Subpart G by adding new § 880.6350, to read as follows:

§ 880.6350 Battery-powered medical examination light.

(a) *Identification.* A battery-powered medical examination light is a battery-powered device intended for medical

purposes that is used to illuminate body surfaces and cavities during a medical examination.

(b) *Classification.* Class I (general controls). The device is exempt from premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31612 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1351]

General Hospital and Personal Use Devices; Classification of Patient Lubricants

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying patient lubricants into class I (general controls). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49931) a proposed regulation to classify patient lubricants into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA. No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6375, to read as follows:

§ 880.6375 Patient lubricant.

(a) *Identification.* A patient lubricant is a device intended for medical purposes that is used to lubricate a body orifice to facilitate entry of a diagnostic or therapeutic device.

(b) *Classification.* Class I (general controls).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31613 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1386]

General Hospital and Personal Use Devices; Classification of Liquid Medication Dispensers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying liquid medication dispensers into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49932) a proposed regulation to classify liquid medication dispensers into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6430, to read as follows:

§ 880.6430 Liquid medication dispenser.

(a) *Identification.* A Liquid medication dispenser is a device intended for medical purposes that is used to issue a measured amount of liquid medication.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31614 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1353]

General Hospital and Personal Use Devices; Classification of Skin Pressure Protectors

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying skin pressure protectors into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49933) a proposed regulation to classify skin pressure protectors into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA. Two comments were received. The comments agreed with the proposed classification and proposed exemption for skin pressure protectors. Accordingly, the proposed regulation is being adopted with only a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6450, to read as follows:

§ 880.6450 Skin pressure protectors.

(a) *Identification.* A skin pressure protector is a device intended for medical purposes that is used to reduce pressure on the skin over a bony prominence to reduce the likelihood of the patient's developing decubitus ulcers (bedsores).

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31615 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1354]

General Hospital and Personal Use Devices; Classification of Medical Ultraviolet Air Purifiers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying medical ultraviolet air purifiers into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49935) a proposed regulation to classify medical ultraviolet air purifiers into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made changes in the name and the identification of the device to clarify that the rule applies only to those devices that are intended for medical purposes. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished

them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1976 (43 FR 21666, 21667, and 21668) and May 26, 1976 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6500, to read as follows:

§ 880.6500 Medical ultraviolet air purifier.

(a) *Identification.* A medical ultraviolet air purifier is a device intended for medical purposes that is used to destroy bacteria in the air by exposure to ultraviolet radiation.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31616 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1355]

General Hospital and Personal Use Devices; Classification of Medical Ultraviolet Water Purifiers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying medical ultraviolet water purifiers into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49935) a proposed regulation to classify ultraviolet water purifiers into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the name and identification of the device to clarify the rule applies only to those devices that are intended for medical purposes. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1976 (43 FR 21666, 21667, and 21668) and May 26, 1976 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6710, to read as follows:

§ 880.6710 Medical ultraviolet water purifier.

(a) *Identification.* A medical ultraviolet water purifier is a device intended for medical purposes that is used to destroy bacteria in water by exposure to ultraviolet radiation.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31617 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1356]

General Hospital and Personal Use Devices; Classification of Body Waste Receptacles

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying body waste receptacles into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49936) a proposed regulation to classify body waste receptacles into class I (general controls). A period of 60 days was provided for interested persons to submit written comments to FDA.

No written comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only minor clarifying changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1976 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provision, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6730, to read as follows:

§ 880.6730 Body waste receptacle.

(a) *Identification.* A body waste receptacle is a device intended for medical purposes tht is not attached to the body and that is used to collect the body wastes of a bed patient.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31618 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1357]

General Hospital and Personal Use Devices; Classification of Vaccuum-Powered Body Fluid Suction Apparatus

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying vacuum-powered body fluid suction apparatus into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49938) a proposed regulation to classify vacuum-powered body fluid suction apparatus into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only a minor editorial change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22873). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6740, to read as follows:

§ 880.6740 Vacuum-powered body fluid suction apparatus.

(a) *Identification.* A vacuum-powered body fluid suction apparatus is a device used to aspirate, remove, or sample body fluids. The device is powered by an external source of vacuum. This generic type of device includes vacuum regulators, vacuum collection bottles, suction catheters and tips, connecting flexible aspirating tubes, rigid suction tips, specimen traps, noninvasive tubing, and suction regulators (with gauge).

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioter for Regulatory Affairs.

[FR Doc. 80-31619 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1358]

General Hospital and Personal Use Devices; Classification of Protective Restraints

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying protective restraints into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification

Panel). FDA also published in that issue of the **Federal Register** (44 FR 49939) a proposed regulation to classify protective restraints into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

Two comments were received. The comments agreed with the proposed classification and proposed exemption for protective restraints. Accordingly, the proposed regulation is being adopted with a minor clarifying change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6760, to read as follows:

§ 880.6760 Protective Restraint.

(a) *Identification.* A protective restraint is a device, usually a wristlet, anklet, or other type of strap, that is intended for medical purposes and that limits a patient's movements to the extent necessary for treatment, examination, or protection of the patient.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device is also exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31620 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 880

[Docket No. 78N-1359]

General Hospital and Personal Use Devices; Classification of Powered Patient Transfer Devices

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying powered patient transfer devices into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49941) a proposed regulation to classify AC-powered patient transfer devices into class II (performance standards). A period of 60 days was provided for interested persons to submit written comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the name and identification of the device to clarify the range of devices included in the generic class covered by this rule. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19,1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6775, to read as follows:

§ 880.6775 Powered patient transfer device.

(a) *Identification.* A powered patient transfer device is a device consisting of a wheeled stretcher and a powered mechanism that has a broad, flexible band stretched over long rollers that can advance itself under a patient and transfer the patient with minimal disturbance in a horizontal position to the stretcher.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31621 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 880

[Docket No. 78N-1360]

General Hospital and Personal Use Devices; Classification of Manual Patient Transfer Devices

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying manual patient transfer devices into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49941) a proposed regulation to classify manual patient transfer devices into class I (general controls). A period of 60 days was provided for interested persons to submit written comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6785, to read as follows:

§ 880.6785 Manual patient transfer device.

(a) *Identification.* A manual patient transfer device is a device consisting of a wheeled stretcher and a mechanism on which a patient can be placed so that the patient can be transferred with minimal disturbance in a horizontal position to the stretcher.

(b) *Classification.* Class I (general controls). The device is exempt from premarket notification procedures in Subpart E of Part 807. The divice also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31622 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 880

[Docket No. 78N-1361]

General Hospital and Personal Use Devices; Classification of Washers for Body Waste Receptacles

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying washers for body waste receptacles into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49942) a proposed regulation to classify washers for body waste receptacles into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No written comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only minor clarifying changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6800, to read as follows:

§ 880.6800 Washers for body waste receptacles.

(a) *Identification.* A washer for body waste receptacles is a device intended for medical purposes that is used to clean and sanitize a body waste receptacle, such as a bedpan. The device consists of a wall-mounted plumbing fixture with a door through which a body waste receptacle is inserted. When the door is closed the body waste receptacle is cleaned by hot water, steam, or germicide.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. The device also is exempt from the good manufacturing practice regulation in Part 820 with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31623 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 880

[Docket No. 78N-1362]

General Hospital and Personal Use Devices; Classification of Medical Disposable Scissors

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying medical disposable scissors into class I (general controls) and exempting manufacturers of the device from premarket notification procedures. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49944) a proposed regulation to classify medical disposable scissors into class I (general controls). A period of 60 days was provided for comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the name and identification of the device to make it clear that the rule applies only to those devices that are intended for medical purposes. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to the commissioner of Food and Drugs (21 CFR 5.1), Part 880 is amended in Subpart G by adding new § 880.6820, to read as follows:

§ 880.6820 Medical disposable scissors.

(a) *Identification.* Medical disposable scissors are disposable type general cutting devices intended for medical purposes. This generic type of device does not include surgical scissors.

(b) *Classification.* Class I (general controls). The device is exempt from premarket notification procedures in Subpart E of Part 807.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31624 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 880

[Docket No. 78N-1363]

General Hospital and Personal Use Devices; Classification of Sterilization Wraps

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying sterilization wraps into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (4 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49945) a proposed regulation to classify sterilization wraps into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

One comment was received. The comment agreed with the proposal to classify sterilization wraps into class II.

The agency has made minor changes to the identification of the device to clarify that the rule applies only to those sterilization wraps that are intended for use by health care providers, such as hospitals and physicians. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6850, to read as follows:

§ 880.6850 Sterilization wrap.

(a) *Identification.* A sterilization wrap (pack, sterilization wrapper, bag, or accessories, is a device intended to be used to enclose another medical device that is to be sterilized by a health care provider. It is intended to allow sterilization of the enclosed medical device and also to maintain sterility of the enclosed device until used.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31625 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 880

[Docket No. 78N-1364]

General Hospital and Personal Use Devices; Classification of Ethylene Oxide Gas Sterilizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying ethylene oxide gas sterilizers into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49946) a proposed regulation to classify ethylene oxide gas sterilizers into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

A comment from the United States Environmental Protection Agency (EPA) stated that ethylene oxide gas (ETO) sterilant is currently regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The EPA regulates self-contained portable ETO gas sterilizers and these portable sterilizers are registered with EPA. This registration involves a preregistration efficacy evaluation and a hazard evaluation with respect to the operation of the device. EPA believes that FDA's regulation delineate clearly the responsibilities of the two agencies.

FDA and EPA are currently discussing the regulation of this device and its accessories and will develop and publish in the **Federal Register** a Memorandum of Understanding concerning each agency's responsibility for the regulation of this device. Until the Memorandum of Understanding is published, EPA will continue to be principally responsible for regulating ETO sterilants and self-contained portable ETO gas sterilizers. FDA will be principally responsible for regulating nonportable ETO gas sterilizers which are intended for use by health care providers, such as hospitals and physicians, for sterilizing medical products. In the **Federal Register** of June 23, 1978, FDA published a proposed rule that would impose restrictions on the continued use of ETO as a sterilant for certain drug products and medical devices for human use. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), to the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6860, to read as follows:

§ 880.6860 Ethylene oxide gas sterilizer.

(a) *Identification.* An ethylene gas sterilizer is a nonportable device intended for use by a health care provider that uses ethylene oxide (ETO) to sterilize medical products.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31626 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 880

[Docket No. 78N-1365]

General Hospital and Personal Use Devices; Classification of Dry-Heat Sterilizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying dry-heat sterilizers into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK-470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49947) a proposed regulation to classify dry-heat sterilizers into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the identification of the device to clarify that the rule applies only to those dry-heat sterilizers that are intended for use by a health care provider. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished

them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6870, to read as follows:

§ 880.6870 Dry-heat sterilizer.

(a) *Identification.* A dry-heat sterilizer is a device that is intended for use by a health care provider to sterilize medical products by means of dry heat.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31627 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1366]

General Hospital and Personal Use Devices; Classification of Steam Sterilizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying steam sterilizers into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49948) a proposed regulation to classify steam sterilizers into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. However, the agency has made minor changes in the identification of the device to clarify that the rule applies only to those devices that are intended for use by a health care provider. Accordingly, the proposed regulation is being adopted with these changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6880, to read as follows:

§ 880.6880 Steam sterilizer.

(a) *Identification.* A steam sterilizer (autoclave) is a device that is intended for use by a health care provider to sterilize medical products by means of pressurized steam.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31628 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1367]

General Hospital and Personal Use Devices; Classification of Hand-Carried Stretchers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying hand-carried stretchers into class I (general controls) and exempting manufacturers of the device from certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49949) a proposed regulation to classify hand-carried stretchers into class I (general controls). A period of 60 days was provided for interested persons to submit written comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure.

FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart F by adding new § 880.6900, to read as follows:

§880.6900 Hand-carried stretcher.

(a) *Identification.* A hand-carried stretcher is a device consisting of a lightweight frame, or of two poles with a cloth or metal platform, on which a patient can be carried.

(b) *Classification.* Class I (general controls). The device is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and §820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31629 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1368]

General Hospital and Personal Use Devices; Classification of Wheeled Stretchers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying wheeled stretchers into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49949) a proposed regulation to classify wheeled stretchers into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA. No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the **Federal Register** of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the **Federal Register.**

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6910, to read as follows:

§ 880.6910 Wheeled stretcher.

(a) *Identification.* A wheeled stretcher is a device consisting of a platform mounted on a wheeled frame that is designed to transport patients in a horizontal position. The device may have side rails, supports for fluid infusion equipment, and patient securement straps. The frame may be fixed or collapsible for use in an ambulance.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31630 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1369]

General Hospital and Personal Use Devices; Classification of Syringe Needle Introducers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying syringe needle introducers into class II (performance standards). The effect of classifying a device into class II is to provide for the future development of one or more performance standards to assure the safety and effectiveness of the device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the **Federal Register** of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the **Federal Register** (44 FR 49951) a proposed regulation to classify syringe needle introducers into class II (performance standards). A period of 60 days was provided for interested persons to submit comments to FDA. No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes

in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6920, to read as follows:

§ 880.6920 Syringe needle introducer.

(a) *Identification.* A syringe needle introducer is a device that uses a spring-loaded mechanism to drive a hypodermic needle into a patient to a predetermined depth below the skin surface.

(b) *Classification.* Class II (performance standards).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31631 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1388]

General Hospital and Personal Use Devices; Classification of Irrigating Syringes

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying irrigating syringes into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the Federal Register of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the Federal Register (44 FR 49951) a proposed regulation to classify irrigating syringes into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted with only minor editorial changes.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6960, to read as follows:

§ 880.6960 Irrigating syringe.

(a) *Identification.* An irrigating syringe is a device intended for medical purposes that consists of a bulb or a piston syringe with an integral or a detachable tube. The device is used to irrigate, withdraw fluid from, or instill fluid into, a body cavity or wound.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it also is exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31632 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1371]

General Hospital and Personal Use Devices; Classification of Liquid Crystal Vein Locators

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying liquid crystal vein locators into class I (general controls). The effect of classifying a device into class I is to require that the device meet only the general controls applicable to all devices. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the Federal Register of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the Federal Register (44 FR 49953) a proposed regulation to classify liquid crystal vein locators into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA. No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6970, to read as follows:

§ 880.6970 Liquid crystal vein locator.

(a) *Identification.* A liquid crystal vein locator is a device used to indicate the location of a vein by revealing variations in the surface temperature of the skin by displaying the color changes of heat sensitive liquid crystals (cholesteric esters).

(b) *Classification.* Class I (general controls).

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31633 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 880

[Docket No. 78N-1372]

General Hospital and Personal Use Devices; Classification of Vein Stabilizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule classifying vein stabilizers into class I (general controls) and exempting manufacturers of the device from premarket notification procedures and certain requirements of the good manufacturing practice regulation. The effect of this rule is to require that the device meet only the general controls applicable to all devices, except for the premarket notification procedures and certain requirements of the good manufacturing practice regulation. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Lillian L. Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

SUPPLEMENTARY INFORMATION: FDA published in the Federal Register of August 24, 1979 (44 FR 49844), a proposed regulation explaining the development of the proposed regulations classifying general hospital and personal use devices, the medical device classification procedures, and the activities of the General Hospital and Personal Use Device Section of the General Medical Devices Panel (formerly the General Hospital and Personal Use Device Classification Panel). FDA also published in that issue of the Federal Register (44 FR 49953) a proposed regulation to classify vein stabilizers into class I (general controls). A period of 60 days was provided for interested persons to submit comments to FDA.

No comments have been received regarding the proposed regulation to classify this device. Accordingly, the proposed regulation is being adopted without change.

On April 28, 1978, the agency terminated all of the device classification panels and reestablished them with the same functions, but with new names and with a new structure. FDA published notices of these changes in the Federal Register of May 19, 1978 (43 FR 21666, 21667, and 21668) and May 26, 1978 (43 FR 22672 and 22673). Further information regarding the device advisory committees and a list of their new names may be found in the preamble to the general provisions, published elsewhere in this issue of the Federal Register.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner of Food and Drugs is amending Part 880 in Subpart G by adding new § 880.6980, to read as follows:

§ 880.6980 Vein stabilizer.

(a) *Identification.* A vein stabilizer is a device consisting of a flat piece of plastic with two noninvasive prongs. The device is placed on the skin so that the prongs are on either side of a vein and hold it stable while a hypodermic needle is inserted into the vein.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in Subpart E of Part 807. If the device is not labeled or otherwise represented as sterile, it is also exempt from the good manufacturing practice regulation in Part 820, with the exception of § 820.180, general requirements concerning records, and § 820.198, with respect to complaint files.

Effective date. This regulation shall be effective November 20, 1980.

(Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)))

Dated: September 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-31634 Filed 10-20-80; 8:45 am]

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Tuesday
October 21, 1980

Part III

Department of Health and Human Services

Public Health Service

Health Systems Agency and State Health Planning and Development Agency Reviews; Certificate of Need Programs

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Parts 122 and 123

Health Systems Agency and State Health Planning and Development Agency Reviews; Certificate of Need Programs

AGENCY: Public Health Service, HHS.
ACTION: Final regulations.

SUMMARY: These rules amend the Public Health Service regulations on health systems agency and State health planning and development agency (State Agency) certificate of need reviews. These final regulations implement changes to Title XV of the Public Health Service Act made by the Health Planning and Resources Development Amendments of 1979 (Pub. L. 96–79). Under the amended provisions of the Public Health Service Act, the planning agencies are required to review and determine the need for proposed capital expenditures, institutional health services and major medical equipment. These regulations set forth the minimum requirements for satisfactory certificate of need programs.

EFFECTIVE DATE: These regulations are effective on October 21, 1980, subject to the discussion set forth under the "Supplementary Information" heading below.

FOR FURTHER INFORMATION CONTACT: Carol M. Larson, Chief, Certification Programs Branch, Division of Regulatory Activities, Bureau of Health Planning, 3700 East-West Highway, Room 6–50, Hyattsville, Maryland 20782, (301) 436–6140.

SUPPLEMENTARY INFORMATION: On March 26, 1980, the Department published in the Federal Register (45 FR 20026) a Notice of Proposed Rulemaking to revise the regulations governing certificate of need programs (42 CFR 122.301 et seq. and 123.401 et seq.). These changes are required to implement recent changes to Title XV of the Public Health Service Act ("the Act") enacted by the Health Planning and Resources Development Amendments of 1979 (Pub. L. 96–79). The Department gave interested persons 60 days to submit comments on the proposed amendments to the regulations. The Secretary has revised the rules in response to those comments.

Under section 1523(a)(4)(B) of the Act, State Agencies are required to administer certificate of need programs which (1) apply to the obligation of capital expenditures, the offering of new institutional health services, and the acquisition of major medical equipment, and (2) are consistent with standards established by the Secretary by regulation. Under section 1513(f) of the Act, health systems agencies are to review and make recommendations to the State Agency concerning the need for a proposed project subject to certificate of need review. Because of the changes to the statutory requirements for these certificate of need programs under Title XV of the Act, it has been necessary for the Secretary to revise existing regulations to permit States to comply with the amended statute.

The changes made by Pub. L. 96–79 to the existing certificate of need program are primarily technical in nature. The basic requirements for satisfactory certificate of need programs, which were established by the National Health Planning and Resources Development Act of 1974, have been retained. Building on the structure of the existing certificate of need program, these statutory amendments (1) expand the procedural requirements, by adding, for example, a requirement for judicial review, (2) add several criteria to those that health planning agencies must consider in their review of applications, and (3) clarify, with some changes, the projects for which certificate of need approval must be obtained. Accordingly, the Secretary believes the economic impact of the regulations implementing these statutory changes will be minimal.

More than 350 comments were received in response to the Notice of Proposed Rulemaking and have been considered in drafting this final rule. A number of these offered changes to the proposed rules that could not be accepted because they would contravene specific provisions of the Act. For example, a commenter suggested that all bed changes be subject to certificate of need review, not just those associated with the obligation of a capital expenditure. This suggestion would require coverage of certain activities not required by the Act (see sections 1527(a)(1)(B) and 1531(6) of the Act) and cannot be accepted. Other commenters opposed the exemption of certain health maintenance organizations (HMOs) from certificate of need review. The regulations have retained this exemption because it is expressly required by section 1527(b)(1)(A).

A number of comments were also received on sections of the existing regulations which were not proposed to be modified. The Secretary, nevertheless, has responded to these comments as well, in order to clarify any confusion in the meaning of these regulations.

In revising these regulations the Secretary has intended to give each State substantial flexibility in determining how its certificate of need program will be implemented. For this reason, the Secretary has rejected many suggestions that additional program requirements be imposed on the States. In these areas, the Secretary believes States are better able to decide the manner in which the basic requirements of the regulations should be carried out in their States. As a further general observation, the Secretary notes that the States are free to exceed the minimum requirements of these regulations, except in the few cases where this is prohibited (see, for example, the provisions regarding the coverage of HMOs, in § 123.405).

In addition to the regulations themselves, this document contains a summary below of the major issues raised in their development, and an Appendix which includes a section-by-section analysis of the comments received. The major issues which were raised in the development of the rules are as follows:

Substantial Change in Services

These regulations require that under certain circumstances, terminations of existing services, as well as the additions of new health services, be subject to certificate of need reviews. This conforms to the Department's interpretation of section 1531(6)(B)(ii)(III) that a capital expenditure is required to be reviewed if it "substantially changes the services of a facility." This provision, in conjunction with the requirement that a new service which entails an annual operating cost of at least $75,000 also be subject to review, results in certificate of need coverage of health services as follows:

(1) The addition of a health service must be reviewed if it is either associated with a capital expenditure (in any amount) or entails an annual operating cost of at least $75,000.

(2) The termination of a health service must be reviewed if it is associated with a capital expenditure (in any amount).

Subsequent Reviews

These regulations slightly revise the requirement at § 123.404(d)(1) for reviews of changes to an approved capital expenditure. The proposed regulations required that these "changes" include not only changes to the bed capacity and the addition or termination of a health service, but also expansions and reductions of health services as well as any other substantial change to the project. Although most commenters agreed that there is a need for subsequent reviews where substantial changes in an approved project take place, they also argued that the proposed language was too broad and presented implementation problems. Accordingly, the Department has revised the language of the proposed regulations to require subsequent reviews of approved capital expenditures only where there are changes in the bed capacity of the facility (by ten beds or ten percent, whichever is less) or there is an addition or termination of a health service.

Research Activities

The extent to which research activities are subject to certificate of need reviews has caused some confusion. The Secretary reiterates that certificate of need programs are required to cover only the obligation of a capital expenditure by or on behalf of a health care facility, the offering of a new institutional health service and the acquisition of major medical equipment. Only clinically related services are included in the definition of institutional health services; consequently, research services *per se* are not required to be subject to review. Capital expenditures are required to be reviewed only if they are made by or on behalf of a health care facility. Major medical equipment acquired for research purposes need not be subject to review if the equipment will not be used to provide services to inpatients of a hospital. (See the discussion of these points in the Appendix.)

Health Maintenance Organizations (HMOs)

A large number of comments dealt with the limitations which the regulations imposed on planning agency reviews of HMO proposals. The authority of the planning agencies to review HMO proposals is limited by the statute. Consequently, the final regulations continue to follow the statute closely and have been revised only to clarify provisions which appeared in the proposed rule.

Access

The responsibility of the planning agencies for considering the needs of underserved populations was emphasized in the proposed regulations. The public's response to those proposed provisions was largely positive, pointing out that, with this specific direction in regulation, the planning agencies could now better address the needs of the medically underserved. However, many other commenters argued that the Department had exceeded its authority in detailing the access considerations. The Secretary has concluded that the Act authorizes this emphasis and has retained in these final regulations detailed considerations regarding access contained in the proposed rule and the requirement for written findings on approved projects. The final regulations have been changed to require that the State Agency take into account the accessibility of the facility as a whole in making its written findings on the accessibility of the proposed project. The Department continues to be concerned about the needs of the medically underserved, and believes that the certificate of need program can contribute to improved accessibility to health care of the medically underserved. Accordingly, the Department will be monitoring planning agency performance in implementing the access provisions to determine whether changes to these regulations are warranted.

Effective Date Provisions

State Agencies are required, among other things, to administer satisfactory certificate of need programs in order to be fully designated under section 1521(b)(3) of the Act. There have been, over time, several statutory and regulatory amendments modifying the requirements for satisfactory certificate of need programs, each amendment with its own effective date. Because of the confusion which this may engender, the Department has briefly outlined below the requirements, discussed how they are related to each other and explained how these requirements relate to the requirements for designation of State Agencies under section 1521 of the Act. (For a detailed discussion of these requirements, see the Appendix to the March 26 Notice of Proposed Rulemaking, 45 FR 20043–20044.)

The continued eligibility of the State and of entities within the State for certain Federal health funding depends on there being a fully designated State Agency by a date determined by the State's legislative schedule. This date, hereinafter referred to as the "effective date," is determined as follows: (1) If the legislature of the State was in regular session on October 4, 1979, and continued in session for at least twelve months from that date, the effective date is October 4, 1980; (2) for all other States, the effective date is twelve months from the date of the beginning of the first regular session of the legislature commencing after October 4, 1979. Each State is required to enact, by whichever effective date is applicable, all legislation necessary to implement the requirements of the amended Act.

In the Notice published in the Federal Register on February 22, 1980, the Secretary asked each State Agency to identify those portions of Title XV of the amended Act pertaining to certificate of need which did not require legislative change by their respective States (section 129 of Pub. L. 96–79). In addition to a list identifying those sections not requiring legislative change, State Agencies were asked to submit a timetable showing how they would implement these changes within the six months following publication of these final regulations (i.e., by (six months from publication date)).

The Secretary is requiring, with respect to the provisions requiring State legislative action, that each State complete the administrative action necessary to implement its legislation (i.e., have a functioning certificate of need program meeting the new requirements) within six months of the date of enactment of its legislative amendments, or by the effective date (as described in the preceding paragraph) applicable to that State, whichever is later. This deadline is referred to below as the "implementation date."

In the Notice published February 22, 1980, and in the Appendix to the proposed regulations published March 26, 1980, the Secretary delineated four options with respect to certificate of need programs from which States could

choose to satisfy the certificate of need portion of the requirements for full designation of their State Agencies. They were satisfying (1) the Federal regulatory requirements effective prior to the April 1979 amendments to the certificate of need regulations; (2) the certificate of need requirements, as amended by the April 2 and April 25, 1979 regulations; (3) the statutory requirements of the Act, as amended by Pub. L. 96–79; or (4) the requirements of these final regulations as soon after their publication as possible. At that time, the Secretary strongly urged States to choose option 3 and amend existing certificate of need legislation or enact new legislation to satisfy the requirements of the Act as amended by Pub. L. 96–79.

The Secretary urges those States without conforming programs to bring their programs into compliance with these regulations as soon as possible. While it is possible that the Congress will postpone the effective date of that portion of Pub. L. 96–79 pertaining to certificate of need, until that time States with non-conforming certificate of need programs may be subject to a reduction of Federal funds under section 1521(d) of the Act. Moreover, regardless of any new time limit Congress may establish with respect to provisions requiring State legislative action, States will still be required, as a condition of obtaining or maintaining their full designation status, to implement those changes not requiring legislative amendments within six months of publication of these final regulations.

Section 1122 of the Social Security Act

The Secretary is revising the regulations formerly at 42 CFR Part 100, (to be recodified at 42 CFR Part 125) implementing section 1122 of the Social Security Act, "Limitation on Federal Participation for Capital Expenditures," to conform as closely as possible to the applicable portions of the certificate of need program. The revised section 1122 regulations will soon be published in the **Federal Register**. The coverage portions of the two programs differ in some respects because the statutes themselves have different requirements. The procedural and criteria-related requirements for section 1122 reviews are, to the extent possible, consistent with the minimum Federal requirements for State certificate of need programs. Thus, the administration of the section 1122 program will not interfere with a State's development or operation of a certificate of need program complying with Federal requirements. The Department is revising the procedures section of the regulations governing section 1122 reviews to meet this objective. Moreover, the regulations will provide that the Secretary may approve a request for an exception to any procedure required under those regulations if the exception is for the purpose of obtaining consistency with a State certificate of need program. In addition, the State designated planning agency (which is the State Agency for those States having both section 1122 review programs and certificate of need programs) will be required, in conducting its reviews under the section 1122 review program, to use, among others, the standards and criteria developed under the Act for its certificate of need program.

Accordingly, 42 CFR Part 122, Subpart D, and 42 CFR Part 123, Subpart E, are amended in the manner set forth below.

Dated: September 30, 1980.

Julius B. Richmond,

Assistant Secretary for Health.

Approved: October 10, 1980.

Patricia Roberts Harris,

Secretary.

PART 122—HEALTH SYSTEMS AGENCIES

1. Part 122 of Title 42 CFR, is amended by revising Subpart D to read as follows:

Subpart D—Certificate of Need Reviews

Sec.

122.301 Definitions.
122.302 Purpose and applicability.
122.303 General.
122.304 Scope of certificate of need review programs.
122.305 Health maintenance organizations.
122.306 Required recommendations.
122.307 Adoption and public notice of review procedures and criteria.
122.308 Procedures for health systems agency review.
122.309 Exceptions to use of procedures.
122.310 Criteria for health systems agency review.
122.311 Required findings on access.

Authority: Section 215 of the Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); sections 1501–1532 of the Public Health Service Act, 93 Stat. 592–630 (42 U.S.C. 300k–1—300n–1).

Subpart D—Certificate of Need Reviews

§ 122.301 Definitions.

Terms used in this subpart shall have the meanings given them in Subpart A of this Part and § 123.401 of this title.

§ 122.302 Purpose and applicability.

(a) Section 1513(f) of the Act requires each health systems agency to assist State Agencies in carrying out certificate of need programs under section 1523(a)(4)(B) of the Act. In doing so, health systems agencies are required to review and make recommendations to the appropriate State Agency respecting the need within the health service area for capital expenditures, new institutional health services, and major medical equipment.

(b) Section 1532(a) of the Act requires that in performing its review functions under section 1513(f) of the Act, each health systems agency shall (except to the extent approved by the Secretary) follow procedures and apply criteria developed and published by the health systems agency in accordance with regulations of the Secretary. This subpart sets forth requirements respecting these procedures and criteria.

§ 122.303 General.

Each recommendation by the health systems agency to a State Agency to issue or not to issue a certificate of need or to withdraw a certificate of need must be based solely (a) on the review by the health systems agency conducted in accordance with procedures and criteria it has adopted under this subpart and (b) on the record of the administrative proceedings held on the application for the certificate or the State Agency proposal to withdraw the certificate.

§ 122.304 Scope of certificate of need review programs.

Each health systems agency shall conduct reviews of projects located or proposed to be located within its health service area and which are subject to review under the State certificate of need program under Subpart E of Part 123 of this title.

§ 122.305 Health maintenance organizations (HMOs).

(a) *Inclusion in health plans.* If an HMO or a health care facility which is controlled, directly or indirectly, by an HMO applies for a certificate of need, the health systems agency shall not recommend denial of the certificate of need (or otherwise make a finding under this subpart that the project is not needed) solely because the proposal is not discussed in the applicable health systems plan, annual implementation plan, or State health plan.

(b) *Required recommendation to approve.* Notwithstanding general review criteria established in accordance with § 123.412 of this title, if an HMO or a health care facility which is controlled, directly or indirectly, by an HMO applies for a certificate of need, the health systems agency shall recommend issuance of the certificate of need if it finds (in accordance with § 123.412(a)(13) of this title) that

(1) Issuance of the certificate of need is required to meet the needs of the members of the HMO and of the new members which the HMO can reasonably be expected to enroll, and

(2) The HMO is unable to provide, through services or facilities which can reasonably be expected to be available to the HMO, its institutional health services in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO and which makes these services available on a long-term basis through physicians and other health professionals associated with it.

§ 122.306 Required recommendations.

Under § 123.407 of this title, if an application is made for a certificate of need for a capital expenditure, a certificate of need must be issued if

(a) The capital expenditure is required to eliminate or prevent safety hazards, or to comply with licensure, certification, or accreditation standards, and

(b) If the State Agency determines (1) that the facility or service for which the capital expenditure is proposed is needed, and (2) that the obligation of the capital expenditure is consistent with the State health plan. For those applications for which approval is sought under § 123.407 of this title, the health systems agency is required to make recommendations to the State Agency on whether the project meets the conditions in § 123.407(a).

Explanatory note.—For applications which meet the requirements of § 123.407(a), the health systems agency shall use procedures and apply criteria (to the extent applicable to enable it to make a recommendation on need) as required by this subpart. Health systems agencies may wish to expedite the reviews of applications intended to correct deficiencies which pose a threat to the public health. In so doing, health systems agencies may use any exceptions to the required review procedures which have been approved under § 122.309. See also the explanatory note which follows § 123.407.

§ 122.307 Adoption and public notice of review procedures and criteria.

(a) Each health systems agency shall adopt, and review and revise as necessary, review procedures and criteria in accordance with the requirements of this subpart prior to conducting reviews.

(b) Before adopting the review procedures and criteria required by this subpart or any revisions of the procedures and criteria, the health systems agency shall give interested persons an opportunity to offer written comments on the procedures and criteria, or any revisions thereof, which it proposes to adopt.

(1) The health systems agency shall distribute copies of its proposed review procedures and criteria, and proposed revisions to them, to the agencies and other entities with which the health systems agency must coordinate its activities under section 1513(d) of the Act and its Designation Agreement; to units of general purpose local government within its health service area; to the State Agency and Statewide Health Coordinating Council of each State in which all or any part of the agency's health service area is located; to health systems agencies in contiguous health service areas; and to any agency which establishes rates for health care facilities or HMOs in its health service area.

(2) The health system agency shall publish, in one or more newspapers of general circulation in its health service area, a notice stating that review procedures and criteria, or revisions to them, have been proposed for adoption and are available at specified addresses for inspection and copying.

(3) A health system agency may request from the Secretary an exception to the requirement of paragraph (b)(2) of this section. The request must be in writing and must contain a detailed explanation of the reasons for the request and of the substitute publication procedures that the agency intends to follow if the exception is approved. The Secretary may grant an exception if the Secretary determines that the proposed substitute procedures do not adversely and substantially affect the rights of affected persons.

(c) Each health systems agency shall distribute copies of its adopted review procedures and criteria, and any revisions to them, to the agencies and other entities specified in paragraph (b)(1) of this section, to the Secretary, and to other persons upon request.

§ 122.308 Procedures for health systems agency review.

(a) The procedures adopted and used by a health systems agency for conducting the reviews covered by this subpart must include at least the following:

(1) *Review schedule.* Review of applications in accordance with a schedule established by the State Agency under § 123.410(a)(1) of this title, including the consideration together of applications that have been batched (see § 123.410(a)(1)) under the State Agency schedule.

(2) *Notification of the beginning of a review.* Timely written notification to affected persons and to the State Agency of the beginning of a review, and, if a person has asked the health systems agency to place the person's name on a miling list maintained by the health systems agency, notification to the person. Notification must include the proposed schedule for the review, the period within which a public hearing held by the health systems agency under paragraph (a)(8) of this section may be requested by affected persons (as defined in § 123.401 of this title), and the manner in which notification will be provided of the time and place of any hearing so requested.

(i) For purposes of this paragraph, the date of notification is the date on which the notice is sent or the date on which the notice appears in a newpaper of general circulation, whichever is later.

(ii) Written notification to members of the public and third party payers may be provided through newspapers of general circulation in the health service area and public information channels; notification to all other affected persons must be by mail (which may be as part of a newsletter).

(3) *Review period.* Schedules which provide that no review shall take longer than the period specified by the appropriate State Agency under § 123.410(a)(3) of this title. If, after a review has begun, the health systems agency requires the applicant to submit additional information, it shall give the applicant at least fifteen days to submit the information. The health systems agency shall notify the applicant that the applicant may request that the State Agency extend the review period at least fifteen days.

(4) *Information requirements.* Provision for persons subject to a review to submit to the health systems agency, in the form and manner and containing the information which the health systems agency shall prescribe and publish, and information that the health systems agency may require concerning the subject of the review.

(i) The information requirements may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed.

(ii) The health systems agency may require no information of a person subject to review which is not prescribed and published as being required.

(iii) The health systems agency shall develop procedures to ensure that requests for information in connection with a review under this subpart are limited to only that information which is necessary for the health systems agency to perform the review.

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(5) *Periodic reports.* Submission of periodic reports by providers of health services and other persons subject to review respecting the development of proposals subject to review.

(6) *Written findings.* Provision for written findings (including, as applicable, the required findings under § 122.305(b)) which state the basis for any recommendation made by the health systems agency. The health systems agency shall send written findings to the applicant and to the State Agency for the State in which the project is proposed, and to others upon request. In the case of a projet proposed by an HMO, the health systems agency shall also send these written findings to the appropriate regional office of the Department of Health and Human Services at the time they are sent to the applicant.

(7) *Notificotion of the status of a review.* Timely notification, upon request, of providers of health services and other persons subject to review under this subpart of the status of the health systems agency review, findings made in the course of the review, and other appropriate information respecting the review.

(8) *Public hearing in the course of review.* Provision for a public hearing in the course of review (and before the health systems agency makes its recommendation to the State Agency) if requested by an affected person.

(i) Health systems agencies shall provide at least 15 days from the date of written notification of the beginning of a review (see paragraph (a)(2) of this section) within which a public hearing during the course of the review may be requested by affected persons.

(ii) The health systems agency may not impose fees for the hearing.

(iii) When a hearing is requested, the health systems agency shall, prior to the hearing, provide notice of the hearing, in accordance with its procedure adopted under paragraph (a)(2) of this section.

(iv) The health systems agency shall provide an opportunity for any person to present oral or written arguments and evidence relevant to the matter which is the subject of the hearing.

(v) In cases where a State Agency has delegated to the health systems agency the authority to hold hearings under § 123.410(a)(8) of this title, the health systems agency shall follow the procedures of that paragraph.

(9) *Annual reports of the health systems agency.* Preparation and publication, at least annually, of reports by the health systems agency of the reviews being conducted (including a statement concerning the status of each review) and of the reviews completed by the agency since the publication of the last report and a general statement of the findings and recommendations made in the course of those reviews.

(10) *Public access.* Access by the general public to all applications reviewed by the health systems agency and to all other written materials essential to any health systems agency review.

(11) *Conflicts of interest.* In the exercise of any reviews under this subpart, no member of a governing body, executive committee, or any entity appointed by a governing body or executive committee may vote on any matter respecting an applicant with which the member has (or within the twelve months preceding the vote, had) any substantial ownership, employment, medical staff, fiduciary, contractual, creditor, or consultative relationship. A governing body, executive committee, and any entity appointed by a governing body or executive committee shall require each of its members who has or has had such a relationship to make a written disclosure of the relationship before any action is taken by the body, committee, or entity with respect to the applicant and to make the relationship public at any meeting in which action is to be taken with respect to the applicant.

(12) *Coordination within an SMSA.* Each health systems agency whose health service area includes part of a standard metropolitan statistical area (as determined by the Office of Management and Budget) shall coordinate its certificate of need review activities with all other health systems agencies whose health service areas include part of the standard metropolitan statistical area. This coordination shall include at least an opportunity to offer written comments on the procedures and criteria, or any revisions thereof, which it proposes to adopt in accordance with § 122.307.

(b) Procedures adopted for reviews in accordance with paragraph (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed.

(c) The procedures may provide that the requirements of paragraph (a)(2) of this section shall be considered satisfied if the appropriate State Agency, in providing notice of the beginning of the review under § 123.410(a)(2) of this title, provides the information described in paragraph (a)(2) of this section.

(d) The procedures may provide that the requirements of paragraph (a) (4) or (5) of this section shall be considered satisfied if the appropriate State Agency has provided for the corresponding procedure found at § 123.410(a) (4) or (5) of this title.

§ 122.309 Exceptions to use of procedures.

(a) The Secretary may approve an exception to any of the required review procedures under § 122.308 either in response to a written request from the health systems agency or as a general exception of which any health systems agency may avail itself. In approving a general exception the Secretary will establish substitute procedures where appropriate. Before availing itself of a general exception approved by the Secretary, the health systems agency shall follow the notice and comment procedures of § 122.307(b).

(b) Before submitting a written request for an exception under this section, the health systems agency shall follow the notice and comment procedures of § 122.307(b) and shall submit to the Secretary with its request copies of all comments which it receives. Before approving the request, the Secretary will (1) review copies of the comments submitted by the health systems agency and, (2) determine that the procedures to be used are consistent with the purposes of the Act and will not adversely and substantially affect the rights of affected persons.

(c) The health systems agency shall, in accordance with the requirements of § 122.307(c), distribute a notice of the approved exceptions and of any substitute procedures established under this section.

§ 122.310 Criteria for health systems agency review.

(a) The health systems agency shall adopt, and use as applicable, specific criteria for conducting the reviews covered by this subpart. The criteria must be based at least on the general considerations listed under § 123.412(a) of this title, except that in the case of an HMO or an ambulatory care facility or health care facility controlled, directly or indirectly, by an HMO or combination of HMOs, the criteria must be based only on the considerations set forth in § 123.412(a)(13) of this title. The health systems agency may not adopt any additional criteria which are inconsistent with those criteria based on the general considerations listed under § 123.412(a).

(b) Health systems agencies shall apply all applicable criteria based on the considerations listed at § 123.412. Criteria adopted for reviews in accordance with paragraph (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed.

§ 122.311 Required findings on access.

(a) For each project described in § 123.413(a) of this title for which the health systems agency recommends issuance of a certificate of need, the health systems agency shall make a written finding (which must take into account the current accessibility of the facility as a whole) on the extent to which the project will meet the health systems agency's criteria based on the considerations in § 123.412(a) (5) and (6).

PART 123—STATE HEALTH PLANNING AND DEVELOPMENT AGENCIES

2. Part 123 of Title 42 CFR, is amended by revising Subpart E to read as follows:

Subpart E—Certificate of Need Reviews

Sec.
123.401 Definitions.
123.402 Purpose and applicability.
123.403 General.
123.404 Scope of certificate of need review programs.
123.405 Health maintenance organizations.
123.406 Notice of intent.
123.407 Required approvals.
123.408 Enforcement.
123.409 Adoption and public notice of review procedures and criteria.
123.410 Procedures for State Agency review.
123.411 Exceptions to use of procedures.
123.412 Criteria for State Agency review.
123.413 Required findings on access.

Authority: Section 215 of the Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); sections 1501–1532 of the Public Health Service Act, 93 Stat. 592–630 (42 U.S.C. 300k–1—300n–1).

Subpart E—Certificate of Need Reviews

§ 123.401 Definitions.

In addition to the terms defined in Subpart A of this Part, as used in this subpart:

The term "affected persons" includes, at a minimum, the applicant; the health systems agency for the health service area in which the proposed project is to be located; health systems agencies serving contiguous health service areas or located within the same standard metropolitan statistical area; any person residing within the geographic area served or to be served by the applicant; any person who regularly uses health care facilities within that geographic area; health care facilities and health maintenance organizations (HMOs) located in the health service area in which the project is proposed to be located which provide services similar to the services of the facility under review; health care facilities and HMOs which, prior to receipt by the agency of the proposal being reviewed, have formally indicated an intention to provide similar services in the future; third party payers who reimburse health care facilities for services in the health service area in which the project is proposed to be located; and any agency which establishes rates for health care facilities or HMOs located in the health service area in which the project is proposed to be located.

The term "capital expenditure" means an expenditure made by or on behalf of a health care facility which under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance.

The term "expenditure minimum for capital expenditures" means $150,000 for the twelve-month period beginning October 1, 1979, and for each twelve-month period thereafter, $150,000 or, at the discretion of the State, the figure in effect for the preceding twelve-month period, adjusted to reflect the change in the preceding twelve-month period in the Department of Commerce Composite Construction Cost Index.

The term "expenditure minimum for annual operating costs" means $75,000 for the twelve-month period beginning October 1, 1979, and for each twelve-month period thereafter, $75,000 or, at the discretion of the State, the figure in effect for the preceding twelve-month period, adjusted to reflect the change in the preceding twelve-month period in the Department of Commerce Composite Construction Cost Index.

The term "health" includes physical and mental health.

The term "health care facility" means hospitals, skilled nursing facilities, kidney disease treatment centers (including freestanding hemodialysis units), intermediate care facilities, rehabilitation facilities, and ambulatory surgical facilities, but does not include Christian Science sanatoriums operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts. Further:

(1) The term "hospital" means an institution which primarily provides to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. This term also includes psychiatric and tuberculosis hospitals.

(2) The term "psychiatric hospital" means an institution which primarily provides to inpatients, by or under the supervision of a physician, specialized services for the diagnosis, treatment and rehabilitation of mentally ill and emotionally disturbed persons.

(3) The term "tuberculosis hospital" means an institution which primarily provides to inpatients, by or under the supervision of a physician, medical services for the diagnosis and treatment of tuberculosis.

(4) The term "skilled nursing facility" means an institution or a distinct part of an institution which primarily provides to inpatients skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons.

(5) The term "intermediate care facility" means an institution which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility provides, but who because of their mental or physical condition require health related care and services (above the level of room and board).

(6) The term "rehabilitation facility" means an inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under competent professional supervision.

(7) The term "ambulatory surgical facility" means a facility, not a part of a hospital, which provides surgical treatment to patients not requiring hospitalization. The term does not include the offices of private physicians or dentists, whether for individual or group practice.

Explanatory note.—Where a hospital is part of a larger institution, such as a university, the components of the larger institution (e.g., a component conducting medical research) not related to the hospital need not be considered part of the hospital, whether or not the hospital is a distinct legal entity. Similarly, where there is a legal entity, the primary activity of which is operating a hospital, but which also operates a distinct research component, the research component need not be considered part of the hospital. In these cases the component conducting medical research that is distinct from the hospital and that neither provides inpatient services nor uses revenues derived from patient charges at the hospital to finance its operations need not be considered part of the hospital. (Also see the explanatory note following § 123.404(a)(1) for a discussion of circumstances in which capital expenditures by the non-hospital components are subject to review.)

The term "health maintenance organization" or "HMO" means a public or private organization organized under

the laws of any State, (1) which is a qualified health maintenance organization under section 1310(d) of the Act, or (2) which:

(i) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: usual physician services, hospitalization, laboratory, x-ray, emergency and preventive services, and out of area coverage; and

(ii) Is compensated (except for copayments) for the provision of the basic health care services listed in paragraph (2)(i) of this definition to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided; and

(iii) Provides physicians' services primarily (A) directly through physicians who are either employees or partners of the organization, or (B) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

The term "health services" means clinically related (i.e., diagnostic, treatment, or rehabilitative) services, and includes alcohol, drug abuse, and mental health services.

The term "major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used to provide medical and other health services and which costs more than $150,000. This term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services, if the clinical laboratory is independent of a physician's office and a hospital and has been determined under title XVIII of the Social Security Act to meet the requirements of paragraphs (10) and (11) of section 1861(s) of that Act. In determining whether medical equipment costs more than $150,000, the cost of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to acquiring the equipment shall be included. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value.

Note.—The acquisition of equipment which does not meet the definition of major medical equipment and thus is not subject to review under § 123.404(a)(4), will be subject to review if it meets any other requirement under § 123.404(a).

The term "person" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), a State, a political subdivision or an instrumentality (including a municipal corporation) of a State, or any legal entity recognized by the State.

The term "physician" means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by a State.

§ 123.402 Purpose and applicability.

(a) Section 1523(a)(4)(B) of the Act requires each State health planning and development agency (State Agency) to administer a State certificate of need program which (1) applies to the obligation of capital expenditures within the State, the offering within the State of new institutional health services, and the acquisition of major medical equipment, and (2) is consistent with regulations of the Secretary. This subpart sets forth the requirements and standards that a State certificate of need program must meet. A State certificate of need program may include additional provisions not inconsistent with the requirements of this subpart.

(b) Section 1532(a) of the Act requires that in performing its review functions under section 1523(a)(4)(B) of the Act, each State Agency shall (except to the extent approved by the Secretary) follow procedures, and apply criteria, developed and published by the State Agency in accordance with regulations of the Secretary. This subpart sets forth requirements respecting these procedures and criteria.

§ 123.403 General.

(a) Each State Agency shall administer within the State a certificate of need program meeting the requirements of this subpart.

(b) Only the State Agency (or the appropriate administrative or judicial review body) may issue, deny or withdraw certificates of need, grant exemptions from certificate of need reviews, or determine that certificate of need reviews are not required.

(c) In issuing or denying certificates of need or in withdrawing certificates of need, the State Agency shall take into account recommendations made by health systems agencies under Subpart D of Part 122 of this title.

(d) Each decision of the State Agency (or the appropriate administrative or judicial review body) to issue a certificate of need must be consistent with the State health plan, except in emergency circumstances that pose an imminent threat to public health.

(e) Each decision of a State Agency to issue, deny, or withdraw a certificate of need must be based (1) on the review by the State Agency conducted in accordance with procedures and criteria it has adopted under this subpart, and (2) on the record of the administrative proceedings held on the application for the certificate or the State Agency's proposal to withdraw the certificate. Each decision of a State Agency to grant or deny an exemption under § 123.405 (HMOs) must be made in accordance with the State Agency's procedures for reviewing applications for exemptions and must be based solely on the record of the administrative proceedings held on the application.

§ 123.404 Scope of certificate of need review programs.

(a) *Required coverage.* The State certificate of need program must apply to the obligation of capital expenditures, the offering of new institutional health services, and the acquisition of major medical equipment. For purposes of this subpart, "the obligation of capital expenditures, offering of new institutional health services, and acquisition of major medical equipment" means the following:

(1) *Capital expenditures that exceed the expenditure minimum.* The obligation by or on behalf of a health care facility of any capital expenditure (other than to acquire an existing health care facility) that exceeds the expenditure minimum for capital expenditures (or any lesser amount the State may specify). The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort and consulting and other services) essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made shall be included in determining if the expenditure exceeds the expenditure minimum. As to the obligation of a capital expenditure to acquire an existing health care facility, see paragraph (a)(5) of this section.

Explanatory note.—Expenditures by a component of a larger institution, such as a university, which is distinct from a separate health care facility component, such as the university's hospital, need not be viewed as being "by a health care facility" for purposes of this section. Thus, a capital expenditure by a university medical school that is a distinct component of the university need not be considered to be "by" the hospital of the university. In finding that the medical school is distinct, the State Agency should find at least that the revenues derived from patient charges at the hospital of the university are not used for operating expenses of the medical school. If a capital expenditure exceeds the expenditure minimum, for it to be required to be subject to review, the State Agency must find that it is "on behalf of" a health care facility. Such an expenditure is also required to be subject to review if it is for the acquisition of major medical equipment and meets the conditions set forth in § 123.404(a)(4) of this subpart. The same analysis would apply to a distinct research component of a legal entity, the primary activity of which is operating a hospital.

(2) *Bed capacity.* The obligation of any capital expenditure by or on behalf of a health care facility which—(i) increases or decreases the total number of beds, (ii) redistributes beds among various categories, or (iii) relocates beds from one physical facility or site to another—by ten beds or ten percent, whichever is less, in any two-year period.

(3) *Health services.* (i) The obligation of any capital expenditure by or on behalf of a health care facility which is associated with (A) the addition of a health service which was not offered by or on behalf of the facility within the previous twelve months, or (B) the termination of a health service which was offered in or through the facility; or

(ii) The addition of a health service which is offered by or on behalf of the health care facility which was not offered by or on behalf of the facility within the twelve-month period before the month in which the service would be offered, and which entails annual operating costs of at least the expenditure minimum for annual operating costs.

(4) *Major medical equipment.* (i) The acquisition by any person of major medical equipment that will be owned by or located in a health care facility; or

(ii) The acquisition by any person of major medical equipment not owned by or located in a health care facility, if (A) the notice of intent required by § 123.406(a) is not filed in accordance with that paragraph, or (B) the State Agency finds, within 30 days after the date it receives a notice in accordance with § 123.406(a), that the equipment will be used to provide services for inpatients of a hospital.

(iii) An acquisition of major medical equipment need not be reviewed if it will be used to provide services to inpatients of a hospital only on a temporary basis in the case of (A) a natural disaster, (B) a major accident, or (C) equipment failure.

(iv) A State program may cover major medical equipment not owned by or located in a health care facility beyond the minimum coverage required by this subparagraph; however, after September 30, 1982, the certificate of need program of a State may not be changed to include additional requirements for coverage of this equipment.

(5) *Acquisitions of health care facilities.* (i) Except as provided in § 123.405(b) (HMOs), the obligation of a capital expenditure by any person to acquire an existing health care facility (A) if the notice of intent required at § 123.406(b) is not filed in accordance with that paragraph, or (B) if the State Agency finds, within 30 days after the date it receives a notice in accordance with § 123.406(b), that the services or bed capacity of the facility will be changed in being acquired.

(ii) Each State Agency shall specify, for purposes of the preceding sentence, what activities result in a change in the services or bed capacity of a health care facility; however, these activities must include at least (A) a change in bed capacity as described in paragraph (a)(2) of this section, (B) the addition of a health service which was not offered by or on behalf of the facility within the previous twelve months, and (C) the termination of a health service which was offered by or on behalf of the facility.

(b) *Leases, donations, and transfers.* An acquisition by donation, lease, transfer, or comparable arrangement must be reviewed if the acquisition would be subject to review under paragraph (a) of this section if made by purchase. An acquisition for less than fair market value must be reviewed if the acquisition at fair market value would be subject to review under paragraph (a) of this section.

(c) *Incurring an obligation.* No person may incur an obligation for a capital expenditure that is subject to review under paragraphs (a)(1), (a)(2), (a)(3)(i), or (a)(5) of this section without obtaining a certificate of need for the capital expenditure. An obligation for a capital expenditure is considered to be incurred by or on behalf of a health care facility: (1) When a contract, enforceable under State law, is entered into by or on behalf of the health care facility for the construction, acquisition, lease or financing of a capital asset; or (2) When the governing board of the health care facility takes formal action to commit its own funds for a construction project undertaken by the health care facility as its own contractor; or (3) In the case of donated property, on the date on which the gift is completed under applicable State law.

Note.—A State may consider an obligation for a capital expenditure which is contingent upon issuance of a certificate of need not to be incurred until the certificate of need is issued.

(d) *Subsequent reviews.*—(1) *Capital expenditures.* The State program must provide as follows: A proposed change in a project associated with a capital expenditure for which the State Agency has previously issued a certificate of need will require review if the change is proposed within one year (or any longer period established under the State Program) after the date the activity for which the expenditure was approved is undertaken. (As an illustration, where a hospital receives approval to construct a new wing for its facility, the hospital will "undertake the activity" when it begins to provide services in the wing.) This subparagraph applies to changes associated with capital expenditures that were subject to review under paragraph (a)(1), (a)(2) or (a)(3)(i) of this section. A review is required under this subparagraph whether or not a capital expenditure is associated with the proposed change. A "change in a project" shall include, at a minimum, any change in the bed capacity of a facility as described in paragraph (a)(2) of this section, and the addition or termination of a health service.

Explanatory note.—Examples that illustrate coverage required by this paragraph are as follows: (1) A certificate of need is obtained for the obligation of a capital expenditure which results in the addition of ten psychiatric beds. Within one year, those beds are proposed to be converted to pediatric beds. Certificate of need review is required for the conversion, regardless of whether this later activity is associated with a capital expenditure. (2) A certificate of need is obtained for the obligation of a capital expenditure which results in the addition of a new psychiatric service. Within one year, this service is proposed to be converted to a new pediatric service. Certificate of need review is required, regardless of whether a capital expenditure associated with the new service will be incurred or annual operating costs of at least the expenditure minimum will result.

(2) *Major medical equipment.* If a person acquires major medical equipment not located in a health care facility without a certificate of need and proposes at any time to use that equipment to serve inpatients of a hospital the proposed new use must be reviewed unless the use is one described in paragraph (a)(4)(iii) of this section.

(3) *Existing facilities.* If a person acquires an existing health care facility without a certificate of need and proposes to change within one year after the acquisition (or any longer period of time established under the State program) the services or bed capacity of the facility, the proposed change must be reviewed if it would have required review under paragraph (a)(5) of this section originally.

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(e) *Dissemination of scope of coverage.* Before reviewing any project not previously within the scope of the State program's coverage, each State Agency shall disseminate to all health systems agencies, health care facilities, and HMOs within the State, and shall publish in one or more newspapers of general circulation in the State, a description of the scope of coverage of its program. The description must include at least the coverage required by § 123.404 and § 123.405 of this subpart. Whenever the scope of coverage is revised, the State Agency shall disseminate and publish a revised description of it.

§ 123.405 Health maintenance organizations (HMOs).

(a) *Required coverage.* With respect to an HMO or a health care facility controlled, directly or indirectly, by an HMO or combination of HMOs, the State Agency shall review any activity specified in § 123.404 which is undertaken by or on behalf of an inpatient health care facility (unless these activities are exempt under paragraph (b)(1) of this section). In addition, the State Agency shall review the acquisition of major medical equipment by an ambulatory care facility of an HMO to the extent required by § 123.404(a)(4) and § 123.404(d)(2) (unless the acquisition is exempt under paragraph (b)(1) of this section). A State program may not exceed the coverage specified in this paragraph.

Explanatory note.—A list of examples illustrating this coverage follows: (1) Major medical equipment acquired by HMOs which is not owned by or located in a health care facility and which is used primarily for inpatients of a hospital must be reviewed (unless the project is exempt); further, major medical equipment acquired by an HMO and located in a health care facility must be reviewed (unless the project is exempt). (2) A capital expenditure for an ambulatory clinic proposed by an HMO which expenditure is not proposed by or on behalf of an inpatient health care facility is not subject to review. (3) The establishment of an HMO is not subject to certificate of need review. (4) Any capital expenditure exceeding the expenditure minimum by or on behalf of an HMO's inpatient health care facility must be reviewed (unless the project is exempt). (5) A capital expenditure for the addition of ten beds to an HMO's hospital must be reviewed (unless the project is exempt).

(b) *Exemptions.*—(1) *Exemptions from review.* (b)(1) The State Agency shall exempt from review any activity described in paragraph (a) of this section if the applicant meets the requirements of paragraph (b)(2) of this section and if the activity is proposed to be undertaken by:

(i) An HMO or a combination of HMOs if (A) the HMO or combination of HMOs has, in the service area of the HMO or the service areas of the HMOs in the combination, an enrollment of at least 50,000 individuals, (B) the facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to the enrolled individuals, and (C) at least 75 percent of the patients who can reasonably be expected to receive the health service will be individuals enrolled with the HMO or HMOs in the combination; or

(ii) A health care facility if (A) the facility primarily provides or will provide inpatient health services, (B) the facility is or will be controlled, directly or indirectly, by an HMO or a combination of HMOs which has, in the service area of the HMO or service areas of the HMOs in the combination, an enrollment of at least 50,000 individuals, (C) the facility is or will be geographically located so that the service will be reasonably accessible to the enrolled individuals, and (D) at least 75 percent of the patients who can reasonably be expected to receive the health service will be individuals enrolled with the HMO or HMOs in the combination; or

(iii) A health care facility (or portion thereof) if (A) the facility is or will be leased by an HMO or combination of HMOs which has, in the service area of the HMO or the service areas of the HMOs in the combination, an enrollment of at least 50,000 individuals and, on the date the application is submitted under paragraph (b)(2) of this section, at least fifteen years remain in the term of the lease, (B) the facility is or will be geographically located so that the service will be reasonably accessible to the enrolled individuals, and (C) at least 75 percent of the patients who can reasonably be expected to receive the health service will be individuals enrolled with the HMO.

(2) *Application for exemption.* (i) An activity of an HMO, combination of HMOs, or health care facility shall not be exempt under paragraph (b)(1) of this section unless—

(A) The applicant has submitted, at the time and in the form and manner prescribed by the State Agency, an application for an exemption to the State Agency and the appropriate health systems agency,

(B) The application contains the information respecting the HMO, combination, or facility and the proposed offering, acquisition, or obligation that the State Agency may require to determine if the HMO or combination meets the requirements of paragraph (b)(1) of this section or the facility meets or will meet those requirements, and

(C) The State Agency approves the application.

(ii) The State Agency shall approve an application submitted under this paragraph if the applicable requirements of paragraph (b)(1) of this section have been met or will be met on the date the proposed activity for which an exemption was requested will be undertaken.

(3) *Sale, lease, acquisition, or use of exempt facilities or equipment.* The State program must provide that a health care facility (or portion thereof) or medical equipment for which an exemption was granted under paragraph (b)(1) of this section may not be sold or leased, a controlling interest in the facility or equipment or in a lease of the facility or equipment may not be acquired, and a health care facility described in paragraph (b)(1)(iii) of this section which was exempted under paragraph (b)(1) of this section may not be used by any person other than the lessee described in paragraph (b)(1)(iii), unless,

(i) The State Agency issues a certificate of need for the sale, lease, acquisition, or use, or

(ii) The State Agency determines, upon application, that (A) the entity which intends to buy or lease the facility or equipment, or acquire the controlling interest in it, or which intends to use it, is an HMO or a combination of HMOs which meets the requirements of paragraph (b)(1)(i)(A) of this section; and (B) with respect to the facility or equipment, the entity meets the requirements of paragraph (b)(1)(i) (B) and (C) of this section or of paragraph (b)(1)(ii) (A) and (B) of this section.

(4) *Method of payment.* The method of payment for services (i.e., prepaid or fee-for-service) is not relevant in determining whether an activity is subject to review under this subpart.

(c) *Inclusion in health plans.* If an HMO or a health care facility which is controlled, directly or indirectly, by an HMO applies for a certificate of need, a State Agency may not disapprove the application solely because the proposal is not discussed in the applicable health systems plan, annual implementation plan, or State health plan.

(d) *Required approval.* Notwithstanding general review criteria established in accordance with § 123.412, if an HMO or a health care facility which is controlled, directly or indirectly, by an HMO applies for a certificate of need, the State Agency shall approve the application if it finds (in accordance with § 123.412(a)(13)) that (1) approval of the application is required to meet the needs of the members of the HMO and of the new members which the HMO can reasonably be expected to enroll, and (2) the HMO is unable to provide, through services or facilities which can reasonably be expected to be available to the HMO, its health services in a reasonable and cost-effective manner which is consistent with the basic method of operations of the HMO and which makes these services available on a long-term basis through physicians and other health professionals associated with it.

(e) *Sale, acquisition, or lease of approved facilities or equipment.* The State program must provide that except as provided in paragraph (b)(2) of this section and notwithstanding § 123.406, a health care facility (or portion thereof) or medical equipment for which a certificate of need was issued under this section may not be sold or leased, and a controlling interest in the facility or equipment or in a lease of the facility or equipment may not be acquired, unless the State Agency issues a certificate of need for the sale, acquisition, or lease.

§ 123.406 Notice of intent.

The State program must provide as follows: (a) *Major medical equipment.* At least 30 days before any person enters into a contract to acquire major medical equipment which will not be owned by or located in a health care facility, the person shall notify the State Agency of the State in which the equipment will be located and the appropriate health systems agency of the person's intent to acquire the equipment and of the use that will be made of the equipment (see § 123.404(a)(4)(ii)). The notice must be in writing and contain all information the State Agency requires in accordance with § 123.410(a)(4).

(b) *Acquisition of health care facilities.* At least 30 days before any person acquires or enters into a contract to acquire an existing health care facility, the person shall notify the State Agency of the State in which the facility is located and the appropriate health systems agency of the person's intent to acquire the facility and of the services to be offered in the facility and its bed capacity (see § 123.404(a)(5)). The notice must be made in writing and must contain all information the State Agency requires in accordance with § 123.410(a)(4).

(c) *Construction projects.* The State Agency shall have procedures for persons proposing construction projects to submit to the State Agency and the appropriate health systems agency, as early as possible in the course of planning the project, a notice of intent in as much detail as may be necessary to inform the agencies of the scope and the nature of the project.

§ 123.407 Required approvals.

(a) Except as provided in paragraph (b) of this section, the State Agency shall issue a certificate of need for a proposed capital expenditure if (1) the capital expenditure is required (i) to eliminate or prevent imminent safety hazards as defined by Federal, State, or local fire, building, or life safety codes or regulations, or (ii) to comply with State licensure standards, or (iii) to comply with accreditation or certification standards which must be met to receive reimbursement under Title XVIII of the Social Security Act or payments under a State plan for medical assistance approved under Title XIX of that Act, and (2) the State Agency has determined that (i) the facility or service for which the capital expenditure is proposed is needed, and (ii) the obligation of the capital expenditure is consistent with the State health plan.

Explanatory note.—For applications which meet the requirements of § 123.407(a), the State Agency shall use procedures and apply criteria (to the extent they are appropriate to determine need) as required by this subpart. If the State Agency determines that the facility or service for which the expenditure is proposed is not needed (and thus that the expenditure to correct the deficiency is not needed), it must deny the certificate of need as required by § 123.408(a). If the State Agency determines that the expenditure is not consistent with the State health plan, it must deny the certificate of need unless there is an emergency that poses an imminent threat to public health (see § 123.403(d)). Even in such a case, there is no requirement that the State Agency issue a certificate of need. The State Agency should consider alternative means of dealing with the threat to public health. State Agencies may wish to expedite the review of applications intended to correct deficiencies which pose a threat to the public health. In so doing, State Agencies may use any exceptions to the required review procedures which have been approved under § 123.411.

(b) Those portions of a proposed project which are not required to eliminate or prevent safety hazards or to comply with certain licensure, certification, or accreditation standards are subject to review using the criteria developed under § 123.412.

§ 123.408 Enforcement.

(a) The State certificate of need program must provide that (1) State Agencies may only issue a certificate of need for those obligations of capital expenditures, offerings of institutional health services, and acquisitions of major medical equipment which are found to be needed; and (2) persons may only obligate capital expenditures, offer institutional health services or acquire major medical equipment after a certificate of need is issued or an exemption under § 123.405(b) is obtained; and (3) persons may not obligate capital expenditures, offer institutional health services, or acquire major medical equipment if a certificate of need authorizing that obligation, offering, or acquisition has been withdrawn by the State Agency.

(b) The State certificate of need program must provide sanctions, such as the denial or revocation of a license to operate, civil or criminal penalties, or injunctive relief, which the Secretary finds sufficient to ensure compliance with paragraph (a) of this section.

§ 123.409 Adoption and public notice of review procedures and criteria.

(a) Each State Agency shall adopt, and review and revise as necessary, review procedures and criteria in accordance with the requirements of this subpart prior to conducting reviews.

(b) The State Agency, the Statewide Health Coordinating Council, and the health systems agencies within the State shall cooperate in the development of procedures and criteria under this subpart to the extent appropriate to achieve efficient reviews and consistent criteria for reviews.

(c) Before adopting the review procedures and criteria required by this subpart or any revisions of the procedures and criteria, the State Agency shall give interested persons an opportunity to offer written comments on the procedures and criteria, or any revisions thereof, which it proposes to adopt.

(1) The State Agency shall distribute copies of its proposed review procedures and criteria, and proposed revisions thereof, to Statewide health agencies and organizations, the Statewide Health Coordinating Council, each health systems agency for a health service area located in the State, and any agency which establishes rates for health care facilities or HMOs in the State.

(2) The State Agency shall publish, in one or more newspapers of general circulation in the State, a notice stating that review procedures and criteria, or revisions thereof, have been proposed for adoption and are available at specified addresses for inspection and copying.

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(3) A State Agency may request from the Secretary an exception to the requirement of paragraph (c)(2) of this section. The request must be in writing and must contain a detailed explanation of the reasons for the request and of the substitute publication procedures that the agency intends to follow if the exception is approved. The Secretary may grant an exception if the Secretary determines that the proposed substitute procedures do not adversely and substantially affect the rights of affected persons.

(d) Each State Agency shall distribute copies of its adopted review procedures and criteria, and any revisions thereof, to the agencies and organizations specified in paragraph (c)(1) of this section and to the Secretary, and shall provide copies to other persons upon request.

§ 123.410 Procedures for State Agency review.

(a) The procedures adopted and used by a State Agency for conducting the reviews covered by this subpart must include at least the following:

(1) *Schedules for submitting applications.* Establishment of a schedule for submission of applications to the State Agency. The schedule must provide for the review of all completed applications pertaining to similar types of services, facilities, or equipment affecting the same health service area to be considered in relation to each other ("batched") at least twice a year.

(i) Applications which satisfy the requirements of § 123.407(a) for required approval are not required to be batched.

(ii) With respect to health services, the State Agency shall, unless the State establishes other categories satisfactory to the Secretary, batch applications at least according to the following categories: general medical-surgical, psychiatric, obstetric, pediatric, skilled nursing, and intermediate care. State Agencies may subdivide these categories and may establish additional categories.

(2) *Notification of the beginning of a review.* Timely written notification to affected persons of the beginning of a review, and, if a person has asked the State Agency to place the person's name on a mailing list maintained by the State Agency, notification to the person. Notification must include the proposed schedule for the review, the period within which a public hearing during the course of the review may be requested by affected persons, and the manner in which notification will be provided of the time and place of any hearing so requested.

(i) For purposes of this subparagraph, the date of notification is the date on which the notice is sent or the date on which the notice appears in a newspaper of general circulation, whichever is later.

(ii) Written notification to members of the public and third party payers may be provided through newspapers of general circulation in the health service area and public information channels; notification to all other affected persons must be by mail (which may be as part of a newsletter).

(3) *Review period.* Schedules which provide for starting reviews in a timely fashion and which establish the period within which the State Agency will approve or disapprove applications for certificates of need and for exemptions under § 123.405(b).

(i) If, after a review has begun, the State Agency or the health systems agency requires the applicant to submit additional information, that agency shall give the applicant at least fifteen days to submit the information, and upon request of the applicant, the State Agency shall extend its review period at least fifteen days. This extension must apply to all other applications which have been batched with the application for which additional information is required.

(ii) The schedule must provide that no certificate of need review shall, to the extent practicable, take longer than 90 days from the date that notification is sent to all affected persons under paragraph (a)(2) of this section to the date of the written findings made under paragraph (a)(6) of this section. The State Agency shall adopt criteria acceptable to the Secretary for determining when it would not be practicable to complete a review within 90 days.

(iii) The schedule must set forth the period within which the appropriate health systems agency shall complete its review under § 122.308(a)(3) of this title, and provide its recommendation with respect to the project to the State Agency. However, the period allotted by the State Agency to the health systems agency for completion of its review and submission of its recommendation may not be less than 60 days, except with the written consent of the health systems agency.

(4) *Information requirements.* Provision for persons subject to a review to submit to the State Agency, in the form and manner and containing the information which the State Agency shall prescribe and publish, any information that the State Agency may require concerning the subject of the review.

(i) The information requirements may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed.

(ii) The State Agency may require no information of a person subject to review which is not prescribed and published as being required.

(iii) The State Agency shall develop procedures to ensure that requests for information in connection with a review under this subpart are limited to only that information which is necessary for the State Agency to perform the review.

(5) *Periodic reports.* Submission of periodic reports by providers of health services and other persons subject to review respecting the development of proposals subject to review.

(6) *Written findings and conditions.* Provision for written findings (including, as appropriate, the required findings under § 123.405(d) and § 123.413(a)) which state the basis for any final decision made by the State Agency. When a certificate of need is to be issued, these findings must include the finding of need required by § 123.408(a)(1). The State Agency may not make its final decision subject to any condition unless the condition directly relates to criteria established under § 123.412 or criteria prescribed by regulation by the State Agency in accordance with an authorization under State law. The State Agency shall send written findings to the applicant and to the health systems agency for the health service area in which the project is proposed, and shall make them available to others upon request. In the case of a project proposed by an HMO, the State Agency shall also send these written findings to the appropriate regional office of the Department of Health and Human Services at the time these are sent to the applicant.

(7) *Notification of the status of a review.* Timely notification, upon request, of providers of health services and other persons subject to review under this subpart of the status of the State Agency review, findings made in the course of the review, and other appropriate information respecting the review.

(8) *Public hearing in the course of review.* Provision for a public hearing in the course of agency review (and before the State Agency makes its decision) if requested by any affected person.

(i) The State Agency shall provide at least 30 days from the date of written notification of the beginning of a review (see paragraph (a)(2) of this section) within which a public hearing during the course of the review may be requested. The State Agency shall, prior to the hearing, provide notice of the hearing, in accordance with its procedure adopted under paragraph (a)(2) of this section.

(ii) In a hearing, any person shall have the right to be represented by counsel and to present oral or written arguments and evidence relevant to the matter which is the subject of the hearing. Any person affected by the matter may conduct reasonable questioning of persons who make relevant factual allegations.

(iii) The agency shall maintain a verbatim record of the hearing.

(iv) The agency may not impose fees for the hearing.

(v) Paragraph (c) of this section provides that the requirement for a public hearing in the course of review is satisfied if the State Agency delegates the hearing responsibility to the appropriate health systems agency and the health systems agency follows the procedures required by this subsection. In the event that a person qualifying under the State Agency definition of "affected person" is not provided an opportunity for a public hearing by the health systems agency, due to a difference in that agency's definition of "affected persons," the State Agency must provide that person an opportunity for a public hearing.

(9) *Ex parte contacts.* Provision that, after the commencement of a hearing under paragraphs (a)(8) and (a)(11) of this section and before a decision is made, there shall be no ex parte contacts between (i) any person acting on behalf of the applicant or holder of a certificate of need, or any person opposed to the issuance or in favor of withdrawal of a certificate of need and (ii) any person in the State Agency who exercises any responsibility respecting the application or withdrawal.

(10) *Statement of reasons.* Provision that if the State Agency makes a decision which is inconsistent with a recommendation made by the health systems agency, the goals of the applicable health systems plan, or the priorities of the applicable annual implementation plan, the State Agency shall submit to the health systems agency and to the applicant a written, detailed statement of the reasons for the inconsistency.

(11) *Public hearings for reconsideration of a State Agency decision.* Provision that any person may, for good cause shown, request in writing a public hearing for purposes of reconsideration by the State Agency of its decision.

(i) The agency may not impose fees for the hearing.

(ii) For purposes of this subparagraph, a request for a public hearing shows good cause if it (A) presents significant relevant information not previously considered by the State Agency which, with reasonable diligence, could not have been presented before the State Agency made its decision, (B) demonstrates that there have been significant changes in factors or circumstances relied upon by the State Agency in reaching its decision, (C) demonstrates that the State Agency has materially failed to follow its adopted procedures in reaching its decision, or (D) provides any other basis which the State Agency determines constitutes good cause.

(iii) To be effective, a request for a hearing must be received within 30 days of the State Agency decision, and the hearing must commence within 30 days of receipt of the request, except that where any different time periods for these procedures are established under State law, the latter shall govern.

(iv) The State Agency shall send notification of the public hearing, prior to the date of the hearing, to the person requesting the hearing, the person proposing the project and the health systems agency for the health service area in which the project is proposed, and to others upon request.

(v) The State Agency shall make written findings which state the basis for its decision within 45 days after the conclusion of the hearing, except that where any different time period is established under State law, the latter shall govern.

(vi) A decision of the State Agency following a public hearing under this subparagraph shall be considered a decision of the State Agency for purposes of paragraphs (a)(6), (7), (10), (13), (14), and (15) of this section.

Note.—Nothing in these regulations requires that a person must request a public hearing for reconsideration of a State Agency decision before obtaining administrative review (see paragraph (a)(13) of this section) or judicial review (see paragraph (a)(14) of this section). However, it is possible that applicable State law imposes such a requirement.

(12) *Maximums on capital expenditures.* Provision that, in issuing a certificate of need, the State Agency shall specify the maximum capital expenditure which may be obligated under the certificate. The State Agency shall (i) prescribe the method used to determine capital expenditure maximums, (ii) establish procedures to monitor capital expenditures obligated under certificates, and (iii) establish procedures to review projects for which the capital expenditure maximum is exceeded or expected to be exceeded.

(13) *Administrative review.* Provision that upon request of any affected person, the decision of the State Agency to issue, deny, or withdraw a certificate of need or to grant or deny an exemption shall be administratively reviewed, under an appeals mechanism consistent with State law governing the practices and procedures of administrative agencies, or, if there is no such State law, by an entity (other than the State Agency) designated by the Governor.

(i) To be effective, the request must be received within 30 days of the State Agency decision, and the review must commence within 30 days of receipt of the request, except that where any different time periods for these procedures are established under State law governing the practices and procedures of administrative agencies, the latter shall govern.

(ii) The decision of the reviewing agency must be made in writing within 45 days after the conclusion of the review, except that where any different time period is required under State law governing the practices and procedures of administrative agencies, the latter shall govern. The State Agency shall send these written findings to the person proposing the project, the person requesting the review, the appropriate health systems agency, and to others upon request.

(iii) The decision of the reviewing agency shall be considered the final decision of the State Agency. However, if permitted by applicable State law, the reviewing agency may remand the matter to the State Agency for further action or consideration.

Note.—Nothing in these regulations requires that a person must request administrative review before obtaining judicial review (see paragraph (a)(14) of this section). However, it is possible that applicable State law imposes such a requirement.

(14) *Judicial review.* Provision that any person adversely affected by a final decision of a State Agency with respect to a certificate of need or an application for an exemption may, within a reasonable period of time after the decision is made (and any administrative review of it completed), obtain judicial review of it in an appropriate State court.

(i) The State court shall affirm the decision of the State Agency unless it finds it to be arbitrary or capricious or not made in compliance with applicable law.

(ii) For purposes of this subparagraph, "person adversely affected" shall include the State Agency, any person who meets the definition of "affected person" in § 123.401, and any person

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who participated in the proceeding before the State Agency.

(15) *Annual reports of the State Agency.* Preparation and publication, at least annually, of reports by the State Agency of the reviews being conducted (including a statement concerning the status of each review) and of the reviews completed by the agency since the publication of the last report and a general statement of the findings and decisions made in the course of those reviews.

(16) *Public access.* Access by the general public to all applications reviewed by the State Agency and to all other written materials essential to any State Agency review.

(17) *Failure to act on an application within the required time.* Provision that if the State Agency fails to approve or disapprove an application for a certificate of need or an exemption under § 123.405(b) within the applicable period, the applicant may, within a reasonable period of time following the expiration of that period, bring an action in an appropriate State court to require the State Agency to approve or disapprove the application. A certificate of need or an exemption may not be issued or denied solely because the State Agency failed to reach a decision.

(18) *Withdrawal of a certificate of need.* Provision that an application for a certificate of need shall specify the time the applicant will require to make the service or equipment available or to complete the project and a timetable for making the service or equipment available or to complete the project. After the issuance of a certificate of need, the State Agency shall periodically review the progress of the holder of the certificate in meeting the timetable specified in the approved application. If on the basis of this review the State Agency determines that the holder of a certificate is not meeting the timetable and is not making a good faith effort to meet it, the State Agency may, after considering any recommendation made by the appropriate health systems agency, withdraw the certificate. In withdrawing a certificate of need, the State Agency shall follow the procedures at paragraph (a)(2), (6), (7), (8), (9), (10), (11), (13), (14), and (15) of this section.

(b) Procedures adopted for reviews in accordance with paragraph (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed.

(c) The procedures may provide that the requirements of paragraph (a) (4) or (5) of this section shall be considered satisfied if the appropriate health systems agency has provided for the corresponding procedure found at § 122.308(a) (4) or (5) of this title. The procedures of paragraph (a)(8) of this section shall be considered satisfied if the State Agency delegates the hearing responsibility to the appropriate health systems agency and the health systems agency follows the procedures at paragraph (a)(8) of this section.

§ 123.411 Exceptions to use of procedures.

(a) The Secretary may approve an exception to any of the required review procedures under § 123.410 either in response to a written request from a State Agency or as a general exception of which any State Agency may avail itself. In approving a general exception, the Secretary will establish substitute procedures where appropriate.

(b) Before availing itself of a general exception approved by the Secretary, the State Agency shall follow the notice and comment procedures of § 123.409(c). Before submitting a written request for an exception under this section, the State Agency shall follow the notice and comment procedures of § 123.409(c) and shall submit to the Secretary with its request copies of all comments which it receives. Before approving the request, the Secretary will (1) review copies of the comments submitted by the State Agency and (2) determine that the procedures which will be used are consistent with the purposes of the Act and will not adversely and substantially affect the rights of affected persons.

(c) The State Agency shall, in accordance with the requirements of § 123.409(d), distribute a notice of the approved exceptions and of any substitute procedures established under this section.

§ 123.412 Criteria for State Agency review.

(a) The State Agency shall adopt, and use as applicable, specific criteria for conducting the reviews covered by this subpart. The criteria must be based only on the following general considerations, except that the State Agency may include any additional criteria which it prescribes by regulation in accordance with an authorization under State law. In the case of an HMO or an ambulatory care facility or health care facility controlled, directly or indirectly, by an HMO or combination of HMOs, the criteria must be based only on the considerations set forth in paragraph (a)(13) of this section.

(1) The relationship of the health services being reviewed to the applicable health systems plan, annual implementation plan, and State health plan.

(2) The relationship of services reviewed to the long-range development plan (if any) of the person providing or proposing the services.

(3) The availability of less costly or more effective alternative methods of providing the services to be offered, expanded, reduced, relocated, or eliminated.

(4) The immediate and long-term financial feasibility of the proposal, as well as the probable effect of the proposal on the costs of and charges for providing health services by the person proposing the service.

(5)(i) The need that the population served or to be served has for the services proposed to be offered or expanded, and the extent to which all residents of the area, and in particular low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups, and the elderly, are likely to have access to those services.

(ii) In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the need that the population presently served has for the service, the extent to which that need will be met adequately by the proposed relocation or by alternative arrangements, and the effect of the reduction, elimination or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups, and the elderly, to obtain needed health care.

(6) The contribution of the proposed service in meeting the health related needs of members of medically underserved groups which have traditionally experienced difficulties in obtaining equal access to health services (for example, low income persons, racial and ethnic minorities, women, and handicapped persons), particularly those needs identified in the applicable health systems plan, annual implementation plan, and State health plan as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the State Agency shall consider:

(i) The extent to which medically underserved populations currently use the applicant's services in comparison to the percentage of the population in the applicant's service area which is medically underserved, and the extent to which medically underserved populations are expected to use the proposed services if approved;

(ii) The performance of the applicant in meeting its obligation, if any, under any applicable Federal regulations

requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs receiving Federal financial assistance (including the existence of any civil rights access complaints against the applicant);

(iii) The extent to which Medicare, Medicaid and medically indigent patients are served by the applicant; and

(iv) The extent to which the applicant offers a range of means by which a person will have access to its services (e.g., outpatient services, admission by house staff, admission by personal physician).

Note.—Where appropriate, the State Agency may also consider other access issues, such as: (1) the extent to which the applicant grants medical staff privileges to physicians who serve the medically underserved; and (2) the extent to which the applicant takes action necessary to remove barriers that limit access to the health services of the applicant. These barriers may include unavailability of public transportation; absence of translation services where a substantial portion of the population of the health service area does not speak English as its primary language; building designs that substantially hinder use of the facility; and financial barriers (e.g., pre-admission deposits).

(7) The relationship of the services proposed to be provided to the existing health care system of the area in which the services are proposed to be provided.

(8) The availability of resources (including health personnel, management personnel, and funds for capital and operating needs) for the provision of the services proposed to be provided and the need for alternative uses of these resources as identified by the applicable health systems plan, annual implementation plan or State health plan.

(9) The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services.

(10) The effect of the means proposed for the delivery of health services on the clinical needs of health professional training programs in the area in which the services are to be provided.

(11) If proposed health services are to be available in a limited number of facilities, the extent to which the health professions schools in the area will have access to the services for training purposes.

(12) Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. These entities may include medical and other health professions schools, multidisciplinary clinics and specialty centers.

(13) The special needs and circumstances of HMOs. These needs and circumstances shall be limited to:

(i) The needs of enrolled members and reasonably anticipated new members of the HMO for the health services proposed to be provided by the organization; and

(ii) The availability of the new health services from non-HMO providers or other HMOs in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO. In assessing the availability of these health services from these providers, the agency shall consider only whether the services from these providers:

(A) Would be available under a contract of at least five years duration;

(B) Would be available and conveniently accessible through physicians and other health professionals associated with the HMO. (For example—whether physicians associated with the HMO have or will have full staff privileges at a non-HMO hospital);

(C) Would cost no more than if the services were provided by the HMO; and

(D) Would be available in a manner which is administratively feasible to the HMO.

(14) The special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages.

(15) In the case of a construction project—

(i) The costs and methods of the proposed construction, including the costs and methods of energy provision, and

(ii) The probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project and on the costs and charges to the public of providing health services by other persons.

(16) The special circumstances of health care facilities with respect to the need for conserving energy.

(17) In accordance with section 1502(b) of the Act, the factors which affect the effect of competition on the supply of the health services being reviewed.

(18) Improvements or innovations in the financing and delivery of health services which foster competition, in accordance with section 1502(b) of the Act, and serve to promote quality assurance and cost effectiveness.

(19) In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed.

(20) In the case of existing services or facilities, the quality of care provided by those facilities in the past.

(21) When an application is made by an osteopathic or allopathic facility for a certificate of need to construct, expand, or modernize a health care facility, acquire major medical equipment, or add services, the need for that construction, expansion, modernization, acquisition of equipment, or addition of services shall be considered on the basis of the need for and the availability in the community of services and facilities for osteopathic and allopathic physicians and their patients. The State Agency shall consider the application in terms of its impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship, and residency training levels.

Explanatory note.—This provision seeks to ensure that the need for and availability of services and facilities for osteopathic physicians and patients will be considered.

(b) State Agencies shall apply all applicable criteria based on the considerations listed at § 123.412. Criteria adopted for reviews in accordance with paragraph (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed.

§ 123.413 Required findings on access.

(a) Under § 123.412(a) (5) and (6), the State Agency is required to develop criteria based on considerations relating to the need of the population to be served for the proposed project and the extent to which the residents of the area will have access to the project. For each project it approves, the State Agency shall make a written finding (which shall take into account the current accessibility of the facility as a whole) on the extent to which the project will meet the State Agency's criteria developed based on the considerations in § 123.412(a) (5) and (6), except in the following cases:

(1) Where the project is one described in § 123.407(a) (projects to eliminate or prevent certain imminent safety hazards or to comply with certain licensure or accreditation standards); or

(2) Where the project is a proposed capital expenditure not directly related

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to the provision of health services or to beds or major medical equipment; or

(3) Where the project is proposed by or on behalf of an HMO or a health care facility which is controlled, directly or indirectly, by an HMO.

Explanatory note.—When a project is approved, then in addition to the written findings required by § 123.410(a)(6), to the extent that a project does not fall within one of these exceptions, a written finding under § 123.413 regarding the criteria on need and access developed under § 123.412(a) (5) and (6) is required. Examples of when the written finding is required as to whether a project satisfies the State Agency's criteria for need and access are as follows: (1) The applicant proposes to make a capital expenditure of $400,000 required solely to comply with State licensure standards. The written finding is not required. (2) The applicant proposes to provide a new coronary care service with annual operating costs of more than the expenditure minimum. The written finding is required if the project is approved. (3) The applicant proposes to make a capital expenditure of $200,000 to repave its parking lot, or to acquire computerized data processing equipment, or to repair or upgrade its heating or air conditioning equipment. The written finding is not required. (4) The applicant proposes to make a capital expenditure to add fifteen beds to its obstetrical ward. The written finding is required if the project is approved. (5) The applicant proposes to make a capital expenditure to renovate the pediatric ward of its facility. If the project is approved, a written finding is required because the project is directly related to the provision of health services.

(b) In any case where the State Agency finds that an approved project does not satisfy the State Agency's criteria based on the considerations in § 123.412(a) (5) or (6), it may, if it approves the application, impose the condition that the applicant take affirmative steps to meet those criteria.

(c) When this written finding is required, the State Agency, in evaluating the accessibility of the project, must take into account the current accessibility of the facility as a whole. If the State Agency disapproves a project for failure to meet the need and access criteria, it must so state in its written findings under § 123.410(a)(6).

(d) In any case where the State Agency finds that a project does not satisfy the State Agency's criteria based on the considerations in § 123.412(a) (5) or (6), it shall so notify in writing the applicant and the appropriate Regional Office of the Department of Health and Human Services.

Appendix—Section-by-Section Analysis of Comments and Changes

Editorial Note.—The following appendix will not appear in the Code of Federal Regulations.

§ 123.401 Definitions.

Many commenters suggested that the Department define a number of additional terms used in the regulations. The Secretary believes that the list of terms currently defined in § 123.401 is sufficient. Where necessary State Agencies may define additional terms or amplify the existing definitions.

Many persons commented on the definition of "affected persons." Some commenters suggested that the Secretary allow States to define this term, and other commenters said this term should be more limited, e.g., limited to persons in the same health service area as the project. Most commenters, however, supported the term as defined because a broad definition will provide a sufficient opportunity for consumers of health care to participate in certificate of need reviews. The Secretary has rejected the suggestions to limit this definition. The broad definition in the proposed regulations follows the definition suggested in the Report of the Senate Committee on Labor and Human Resources (See S. Rep. No. 96, 96th Cong., 1st Sess., p. 72 (1979).). However, in these final regulations the definition of "affected person" has been revised to accommodate two concerns raised by the commenters. First, health systems agencies located within the same standard metropolitan statistical area as the proposed project are now included within the definition to ensure that all health systems agencies within a standard metropolitan statistical area coordinate their activities (see section 1513(d)(2) of the Act). Second, the language in the proposed rule effectively limited affected persons to, among others, members of the public to be served by the proposed project. Thus, where a proposed project involves a service closure or where the applicant intends to serve only a limited population, some parties at interest would not technically be "affected persons." Accordingly, the definition now includes other health systems agencies in a standard metropolitan statistical area as well as persons in the geographic area served or to be served by the project and persons who regularly use health care facilities in the geographic area.

Several commenters suggested that third party payers be included in the definition of "affected persons." The Secretary has accepted this suggestion and has added "third party payers who reimburse health care facilities for services in the health service area in which the project is proposed to be located" to the definition of affected persons.

Several commenters noted that "annual operating costs" had not been defined. The Secretary has decided that "annual operating costs" should be calculated on the basis of generally accepted accounting principles and suggests that States apply these principles in determining annual operating costs.

Most commenters supported the Department of Commerce Composite Construction Cost Index as an index that would reflect the rate of inflation for capital expenditures in the health care industry. However, a number of respondents wrote that this Index does not specifically reflect hospital or health care-related construction. Although the Index is not specifically designed for construction in the health care industry, it is a reasonably accurate gauge of the inflation of construction rates in general. Other commenters said that this Index is not applicable or useful for estimating price changes to major medical equipment. The Secretary will not designate an index for purchases of major medical equipment because the statute has established a fixed minimum expenditure threshold for major medical equipment at $150,000. A number of others were concerned that the Composite Construction Cost Index would be applied to non-construction related applications. This is correct; however, the Secretary believes the Index will still be useful as a general economic indicator in adjusting the expenditure minimum. In addition, no more precise index permitted by the Act exists.

The Department received several suggestions on the index to be used in adjusting the $75,000 baseline figure for annual operating costs, including the National Hospital Input Price Index and the American Hospital Association Market Basket Index. The Secretary is unable to accept these suggestions because section 1531(5) of the Act requires that this Index be one that is developed or maintained by the Department of Commerce. The Secretary recognizes that the Department of Commerce does not maintain an index for adjusting operating costs. However, the Secretary has decided to use the Department of Commerce Composite Construction Cost Index until section 1531(5) is amended to eliminate this requirement or until a more appropriate Department of Commerce index is available. If section 1531(5) is amended to delete the requirement that the index be from the Department of Commerce, the Secretary intends to adopt the Department of Health and Human Services' National Hospital Input Price Index because the Secretary believes it best reflects the rate of change for hospital operating costs.

One commenter questioned the exclusion of Christian Science sanatoriums under certificate of need. The Secretary has chosen to retain this exclusion, which has been a program requirement since certificate of need regulations were first published in 1977. Although Christian Science sanatoriums are excluded from the definition of a "health care facility", States are free to exceed the minimum coverage in this area, and to require the review of activities of Christian Science sanatoriums.

A number of commenters suggested that the definition of "health care facility" be expanded to include any facility that provides specialized health services, such as home health agencies; freestanding emergency rooms; mental health, alcoholism, and drug abuse facilities; birthing centers; hospices; medically-oriented day care centers; and primary care clinics. The Secretary has decided to include only those facilities specified in section 1531(5) of the Act and in the previous certificate of need regulation dated April 2, 1979. The Secretary notes that some of these facilities may be included under the definition of one of the health care facilities defined in the regulations, such as an intermediate care facility or an ambulatory surgical facility. States may require reviews of proposals by other facilities if they wish to do so (with limitations on reviews of HMOs, as specified in § 123.405).

One commenter suggested that the definitions of "skilled nursing facility" and "intermediate care facility" be made consistent with sections 1861(j) and 1905(c) of the Social Security Act. To ensure comprehensive coverage of all skilled nursing facilities, the Secretary has decided not to accept this recommendation because Section 1861(j) limits its definition to an institution "which has in effect a transfer agreement with one or more hospitals." The Secretary notes that the definition of intermediate care facilities in this regulation is substantially the same as the definition in section 1905(c). The Secretary has not accepted the proposed limitation because it would exclude from coverage facilities that are not licensed by the State.

Another commenter questioned whether inpatient intermediate care facilities for the developmentally disabled were subject to review. In general, facilities for the developmentally disabled and the mentally retarded are subject to certificate of need review only if they fall within the definition of "health care facility" listed in §123.401. Thus, an inpatient rehabilitation facility for the developmentally disabled would be subject to review, whereas a day care center which serves developmentally disabled persons would not be subject to review.

One commenter noted that the definition of rehabilitation facility in the proposed regulations differed from the definition in the Act. The Secretary has deleted the word "health" from the proposed definition, thus making it the same as the statutory definition.

Many commenters suggested that the definition of "ambulatory surgical facility" be clarified to specify that all ambulatory surgical facilities are subject to review, whether or not these facilities are associated with a hospital. The Secretary has not accepted this change because it is unnecessary. Any reviewable activity of an ambulatory surgical facility that is part of a hospital would be subject to review as a capital expenditure or as a new health service offered by or on behalf of the hospital.

Several commenters requested the rationale for covering freestanding surgical facilities. Because surgical costs are a major component of health care costs, the Secretary believes that certain activities undertaken by any entity offering surgical services (whether on an ambulatory or inpatient basis) should be subject to review. To cover surgical services in one setting and not the other would substantially diminish a State's ability to limit the offering of surgical services to those that are needed.

A number of other commenters suggested that the offering of surgery in a physician's office should be subject to certificate of need review if that physician extends surgical privileges in his office to other physicians in the community. To review these activities for every physician's office that meets this condition would be unreasonable given that only a small portion of the services offered by the office may be surgical. For this reason, the Secretary has not adopted this suggestion. States may, of course, exceed the minimum requirements of these regulations and cover physicians' offices if they believe there is reason to do so.

In reference to the definition of the term "health maintenance organization" (HMO), one respondent suggested that HMOs not qualified under section 1310(d) of the amended Act ought to apply to the appropriate State Agency to determine if they meet the proposed definition of an HMO. The Secretary believes that this is unnecessary. Each State Agency is responsible for deciding which entities are subject to review under its certificate of need program and which entities are entitled to review under the special provisions of these regulations regarding HMOs.

Although most respondents supported the basic definition of "health services," several said the definition was too vague because the specific clinical services that, if added or deleted, would result in a "substantial change in services" are not named. The Secretary has decided to leave the determination of specific clinical services to the States because each State should have the flexibility to specify these services.

Many persons commented on the specific inclusion of diagnostic radiological health services. Some argued that the distinction between fixed and mobile head and body computerized tomographic (CT) scanning equipment is artificial. The Secretary has decided that specific reference to one service, such as diagnostic radiological health services, need not be included in the general definition of a health service and has deleted all reference to this service in the definition. Thus, each State may determine whether fixed and mobile or head and body CT scanners provide different services. The Secretary points out that the acquisition of most CT scanning equipment will be subject to certificate of need review as an obligation of a capital expenditure which exceeds the expenditure maximum, the offering of a new institutional health service, or the acquisition of major medical equipment.

One commenter suggested that the Department clarify the definition of "major medical equipment" so that single pieces of totally unrelated diagnostic or therapeutic equipment which individually are valued at less than $150,000 not be subject to certificate of need review. The Secretary agrees that only single units or functionally-related units of equipment costing more than $150,000 should be included under the definition of major medical equipment and has accordingly revised this definition.

§§ 122.303 and 123.403 General.

Several commenters were concerned with the requirement at § 123.403(d) that each decision to issue a certificate of need be consistent with the State health plan; some suggested that under the current language an application not covered in the State health plan would have to be denied and that the use of the term "must not be inconsistent with" would allow more flexibility for consideration of an application on its individual merit even though it is not specifically identified in the plan. Others

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pointed out that the State health plan could conflict with health systems plans, which are updated or revised more often and tend to be more specific.

The language in the regulation does not require that a proposed project which is not discussed in the applicable State health plan be considered inconsistent with the State health plan. Thus, a certificate of need application need not be denied solely because the service or equipment under review is not specifically referred to in the plan; rather, the issue is whether the proposal is consistent with what the State health plan does provide.

The Department recognizes that there may at times be inconsistencies between the State health plan and health systems plans. Some time may pass between the adoption or revision of a health systems plan and adoption or revision of a State health plan, and also between the adoption or revision of a State health plan and conforming revisions in a health systems plan. During these times, the two plans may be inconsistent. However, under section 1527(a)(5) of the Act, certificate of need decisions are required to be consistent with the State health plan.

Under § 123.403(d), a certificate of need decision need not be consistent with the State health plan in "emergency circumstances that pose an imminent threat to public health." The Secretary notes that emergency circumstances that pose a threat to the public health are situations which threaten the safety of patients or impair the ability of the facility to operate. Examples include situations in which the facility has been substantially damaged by a fire, storm or other disaster, or in which the services of the facility have been impaired as a result of the breakdown of vital equipment (such as a boiler).

Section 123.403(e) requires that the State Agency's decision be based on the record of administrative proceedings held on the application. Several commenters asked that this provision be clarified. Administrative proceedings include the public hearing of § 123.410(a)(8) and the reconsideration hearing of § 123.410(a)(11), if requested. Further, health systems agency recommendations and any other documents submitted in connection with the application are part of the record of administrative proceedings. If the health systems agency holds a hearing on behalf of the State Agency, the records of this proceeding are also part of the administrative record.

§ 123.404 Scope of certificate of need review programs.

One commenter stated that the proposed regulations leave too much discretionary power to the States, and recommended that State discretion be limited to the maximum extent possible. The Secretary has not accepted this recommendation. The focus of certificate of need programs has always been and should continue to be at the State level. The appropriate Federal role is to establish basic minimum requirements for State certificate of need programs and to leave to States the discretion to exceed these requirements where they conclude it is appropriate.

The Secretary notes that the Act specifies two areas where States may not exceed the requirements of the statute. First, section 1527(e)(1)(B) of the Act provides that States may not expand their coverage of major medical equipment after September 30, 1982 (see § 123.404(a)(4)(ii)). Second, with respect to certain HMOs and certain HMO facilities, section 1527(b) limits this coverage and section 1527(b)(1) states conditions which, if met, require the State to exempt a project from review (see § 123.405). In all other areas, States may exceed the minimum requirements established by the Department in the amended certificate of need regulations.

Research and Training Activities. Based on the comments submitted, the Department has clarified the coverage of research and training activities. It has done so by revising the definition of "major medical equipment" and by adding two explanatory notes to the text of the regulations.

The Secretary notes that three basic activities are subject to certificate of need review: (1) acquistion of major medical equipment (§ 123.404(a)(4)), (2) the offering of a new health service (§ 123.404(a)(3)(ii)) by or on behalf of a health care facility, and (3) obligations for certain capital expenditures by or on behalf of a health care facility (§ 123.404(a) (1), (2), and (3)(i)). Research activities that do not involve the provision of services would not involve major medical equipment or new health services. Therefore, these activities would be reviewable only if they satisfy the capital expenditure threshold, which states that the capital expenditure must be "by or on behalf of" a health care facility. If these research activities are undertaken by an entity which is legally separate from a health care facility and which does not meet the definition of a health care facility, these activities would not be considered "by" a health care facility. As long as these research activities are not considered to be "on behalf of" a health care facility, the activities by this distinct entity would not be subject to review.

A separate question arises, however, when the research and training activities are carried out within the same legal entity as the hospital. In one case, there may be a situation in which one legal entity, such as a university, includes, for example, three distinct health-related components: a hospital, a medical school, and a biomedical research component. In a second case, there may be a legal entity whose primary activity is operating a hospital, but which also operates a research component and a physicians' office building as distinct components. In these cases, States are not required to regard all of the activities of the larger entity and its various components as being subject to review in accordance with these regulations. Rather, it is the responsibility of State Agencies to decide whether the activities of the larger entity or its components are considered to be "by" a health care facility. If a research component is not engaged in providing health services to inpatients, and does not use revenues derived from patient charges to finance its operations, a State Agency might conclude that the activities of the research component are not "by" a health care facility.

For example, in the first case described, if the medical school were to make a capital expenditure for renovations, the expenditure would not have to be considered "by" a health care facility. If this expenditure is not "on behalf of" the hospital, the capital expenditure would not be subject to review under the capital expenditure threshold (§ 123.404(a)(1)). In the second case, should the legal entity make a capital expenditure to expand the power plant of the physicians' office building, it need not be reviewable. Both of these examples assume that the component at issue does not provide health services to inpatients and that the revenues derived from patient charges do not subsidize the component's operations.

The acquistion of major medical equipment, however, may involve a more complex analysis. However, it should be noted, first, that the definition of "major medical equipment" in § 123.401 states that the equipment must be "* * * used to provide medical and other health services. * * *" Thus, equipment used solely for research with non-humans, or equipment used, for example, to conduct research on human tissues with no provision of medical care as part of the research, need not be required to be subject to review under § 123.404(a)(4), although if it were

acquired by the hospital component of the institution through a capital expenditure exceeding the expenditure minimum, it would be required to be subject to review under § 123.404(a)(1). The Department has revised the definition of this term accordingly. However, if the equipment meets the definition of "major medical equipment" and is to be used to provide services to inpatients of the hospital, then it is required to be subject to review even if it is being acquired by the medical school or research facility component.

State Agencies should also be alert to changes in the use of major medical equipment the acquisition of which previously was not subject to review. Should that equipment later be converted to be used for providing services to inpatients of a hospital, that new use would be subject to review under § 123.404(d), "Subsequent reviews."

The Secretary emphasizes that the Department will closely monitor and evaluate the planning agencies' determinations of which activities of components of a health-related institution or larger legal entity are not being reviewed. Should the Department conclude that the agencies are inappropriately exempting from review activities which should be reviewed, this will be a factor in the assessment of the agencies' performance for purposes of renewing their designation agreements under section 1521 of the Act.

To the extent that any research or training activity is required to be subject to review under § 123.404, it would, of course, be reviewed under criteria developed in accordance with these regulations. These criteria would include criteria based on the considerations in § 123.412, and in particular those at § 123.412(a)(10) relating to the clinical needs of health professional training programs, § 123.412(a)(12) relating to the special needs and circumstances of entities serving individuals outside of the health service area, and § 123.412(a)(14) relating to the special needs and circumstances of biomedical and behavioral research projects.

One commenter recommended that mergers, management transfers and relocations of health care facilities be required to be subject to certificate of need review. The Secretary has determined that these activities are required to be reviewed only to the extent that they are covered under § 123.404(a).

Another commentor suggested that the Secretary clarify in the regulations that the construction, development or other establishment of a new health care facility is required to be subject to certificate of need review. These suggestions cannot be accepted because there is no basis in the statute for covering these activities unless they result in an activity which is described at § 123.404 of the Federal regulations. The Secretary notes that in most cases, the establishment of a new health care facility or relocation of an existing health care facility will be associated with a capital expenditure which exceeds the expenditure minimum, or which results in the addition of a new service.

The Department addresses below comments on specific issues within § 123.404.

(A) *Capital Expenditures that Exceed the Expenditure Minimum* (§ 123.404(a)(1)). Capital expenditures by or on behalf of a health care facility which exceed the expenditure minimum are required to be subject to certificate of need review. One commenter has requested clarification of the term "by or on behalf of." The term includes capital expenditures made by the facility itself, as well as capital expenditures made by other persons which assist the facility in offering services to its patients. For example, if a private physician who is leasing office space from a hospital plans to obligate a capital expenditure which exceeds the expenditure minimum, and this expenditure will result in the provision of services to patients of the facility, then that expenditure would be considered "on behalf of" the facility and would be required to be reviewed. The Secretary notes that, with respect to acquisitions of major medical equipment, all equipment which will be "located in" a health care facility is required to be reviewed, regardless of whether the equipment will be owned by the facility or by persons who lease space within the facility.

The Secretary has clarified the term "cost" when used in connection with capital expenditures based on Congressional intent as derived from the legislative history (See H.R. Rep. No. 190, 96th Cong., 1st Sess., p. 75 (1979) and S. Rep. No. 96, 96th Cong., 1st Sess., p. 74 (1979).) The capital expenditure threshold includes the value of all preliminary work even if the work is done by the applicant without purchasing those services from an outside source.

One commenter requested clarification regarding the requirement at § 123.404(a)(1) that the cost of plans be included in determining whether an expenditure exceeds the expenditure minimum. The term "plans" refers to the institution's architectural and other specific plans for a proposed expenditure. General long-range planning by a health care facility is not discouraged, and is not included in determining if an expenditure exceeds the expenditure minimum.

(B) *Bed Capacity* (§ 123.404(a)(2)). Several commenters objected to the proposed requirement at § 123.404(a)(2) that certain reductions in the total bed capacity of a health care facility be required to be subject to certificate of need review. The amended Act requires a certificate of need for a capital expenditure which "substantially changes" the bed capacity of a health care facility. The Secretary believes this applies to decreases as well as increases in total bed capacity. By requiring that substantial decreases in total bed capacity be subject to certificate of need review, the Department intends that beds in health care facilities will be eliminated only if they are not needed, or if reasonable alternatives for providing care, especially to the medically underserved, are in place. The Secretary recognizes that there may be instances where quick bed reductions are necessitated by licensing requirements or bankruptcy. In these instances, the Secretary encourages States to conduct expedited reviews (which may require obtaining an exception, under § 123.411, to required procedures).

A few commenters asked that the redistribution of beds among various categories not be required to be subject to certificate of need review, since redistributions will not increase the overall supply of beds. The Secretary has not accepted this recommendation, because substantial redistributions of beds may affect the delivery and cost of health services.

Many commenters disagreed with the definition of a "substantial change in bed capacity" as changes of ten beds or ten percent of the total bed capacity, whichever is less, over a two-year period. While some commenters stated the requirement should be more stringent, covering all changes in bed capacity, others said that the requirement should be less stringent, arguing that changes of only ten beds or ten percent do not warrant review. After considering all of the above comments, the Secretary has decided to retain the proposed provision, which was included in the Department's previous regulations. The Secretary has concluded that the current requirement is reasonable, but reminds States that they are free to require review of bed changes beyond those required by the Federal regulations.

Two commenters suggested that the regulations be revised to require a

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certificate of need prior to changes in the licensed number of beds (rather than the total number of beds). However, since individual States have different licensing requirements, and not all beds in each State are necessarily licensed, the Secretary has decided to not to accept this suggestion.

One commenter recommended that renal dialysis stations not be considered beds for purposes of certificate of need. As with the previous certificate of need regulations, each State should determine whether to include renal dialysis stations in the definition of a "bed". Further, the Secretary notes that even if a State does not define a "bed" to include renal dialysis stations, the addition or termination of renal dialysis stations may be required to be reviewed under § 123.404(a)(3) as the addition or termination of a "health service."

(C) *Health Services.* (§ 123.404(a)(3)). Many commenters objected to the proposed requirement that capital expenditures which result in the termination of a health service be subject to certificate of need review. Sections 1527 and 1531(6) of the Act require a certificate of need for a capital expenditure which "substantially changes the services" of a health care facility. The Secretary has decided that this language applies to terminations, as well as additions, of health services. Defining a "substantial change" to include terminations of health services will permit State Agencies to conduct reviews with the goal of retaining the availability and accessibility of existing health services, especially to the poor and the medically underserved.

Several commenters requested that increases and reductions in health services, as well as additions and terminations, be required to be subject to certificate of need review under § 123.404(a)(3). The Department has not adopted this suggestion because of the problems in administering such a requirement. First, it is difficult to distinguish a conscious decision to increase or decrease a health service from those increases or reductions that are due to seasonal variations or changing usage patterns within the facility. Additionally, it is frequently difficult to measure incremental changes in a health service. An increase or decrease in a health service may be measured by a change in the number of patients, a change in the number of personnel, a change in annual operating costs, or perhaps by some other indicator. The Secretary notes that although increases and reductions in services are not explicitly required to be subject to certificate of need review, those increases and reductions which are associated with a bed change of ten beds or ten percent over a two-year period are required to be reviewed under § 123.404(a)(2). Finally, States are free to exceed the requirements of the Federal regulations and specify in their State programs that increases and reductions in health services are required to be subject to certificate of need review.

Several commenters requested that the addition of a health service not be subject to certificate of need review if it represents only a technological or scientific improvement of a health service currently being offered in the facility. The Secretary would like to clarify that under § 123.404(a)(3) (i)(A) and (ii), additions to existing services are not required to be reviewed. A State is not required to review under this service threshold an improvement to a service already being offered in a health care facility. On the other hand, a technological improvement, the addition of which would be considered a new service, would be subject to review if a capital expenditure was associated with it or the expenditure minimum for operating costs was met.

Several commenters recommended that § 123.404(a)(3)(i) of the regulations be revised to refer to capital expenditures "associated with" the addition or termination of a health service, rather than capital expenditures "which result in" the addition or termination. Frequently, a service is terminated before the capital expenditure is obligated. In this case, there is some question whether the expenditure "results in" a change of service. To avoid this ambiguity, this suggestion has been accepted. Thus, it is clear under the revised language that if a termination is associated with a capital expenditure, it is required to be subject to certificate of need review, regardless of whether the capital expenditure will be obligated before or after the termination.

Several commenters submitted questions concerning the meaning of "health services * * * offered in or through" a health care facility (at § 123.404(a)(3)). One commenter suggested removal of the term "in," stating that health services offered by physicians who lease office space in a health care facility should not be required to be reviewed. Because of the confusion that arose from the use or the term "on or through", the Department has revised this section to use instead the term "by or on behalf of". In the Department's view, use of this term subjects to review those services which properly should be reviewed: services offered by a health care facility or on its behalf. Thus, services of a physician would not be subject to review merely because the physician provided those services in space leased within a hospital. However, if these services are offered to inpatients of the hospital, then the services would be offered on behalf of the hospital, and the State Agency would determine whether they meet the service threshold of § 123.404(a)(3).

(D) *Major Medical Equipment* (§ 123.404(a)(4)). Many commenters questioned the exemption for major medical equipment used to provide inpatient services only on an "occasional and irregular" basis. Several respondents suggested that there be no exceptions to the requirement, based on section 1527(e) of the amended Act, that major medical equipment which will provide services to inpatients of a hospital be required to be subject to certificate of need review. Others recommended that the regulations be revised to specify that a certificate of need is not needed if the equipment will only be used for inpatients of a hospital in "emergency" situatons. Finally, a few commenters said that the term "occasional and irregular" is open to misuse and should be further defined or elaborated on in the final regulations.

Having considered the above comments, the Secretary has revised the regulations to specify that a certificate of need will not be required if the major medical equipment will be used to provide services to inpatients only "on a temporary basis in the case of natural disaster, major accident, or equipment failure." The Secretary believes it is unreasonable to require a certificate on need for major medical equipment which will serve inpatients only in the extreme circumstances listed above, and is therefore unwilling to eliminate this exception entirely, as some commenters recommended.

Section 123.404(a)(4)(i) of the regulations states that major medical equipment "owned by or located in" a health care facility is required to be subject to certificate of need review. One commenter asked for clarification as to whether this applies to a physician who is leasing space from a hospital, either within the facility itself or in a hospital-owned office building. Major medical equipment acquired by a physician who leases space within a health care facility is required to be subject to certificate of need review, because the equipment will be located in the health care facility. However, equipment acquired by a physician in a hospital-owned office building is only required to be subject to certificate of need review under this threshold if the equipment will be used to serve inpatients of a hospital.

When any person proposes to acquire major medical equipment (not owned by or located in a health care facility), whether or not that person intends that the equipment will serve inpatients of a hospital, that person must submit a notice of intent under § 123.406(a) to the State Agency and the appropriate health systems agency.

The Secretary has clarified the term "cost" when used in relation to the acquisition of major medical equipment to cover situations involving trade-ins, donations, or other transfers in which medical equipment is acquired for less than fair market value, but would have required review if acquired at fair market value. In this case, if a facility trades in a head scanner with a value of $150,000 for a body scanner with a value of $280,000 and the facility spends only $130,000, the acquisition is still reviewable based on the fair market value of the new equipment.

For the discussion of the coverage provisions relating to the acquisition of major medical equipment for research purposes, see the "Research and Training Activities" section above.

(E) *Acquisitions of Health Care Facilities* (§ 123.404(a)(5)). The obligation by any person of a capital expenditure to acquire an existing health care facility is required to be subject to review if a notice of intent is not submitted or if the acquisition will result in a change in the services or bed capacity of the facility to be acquired. One commenter asked whether the whole transaction is reviewable, or just the change in services or bed capacity. Under section 1527(d) of the amended Act (and § 123.404(a)(5) of the regulations), an obligation of a capital expenditure to acquire a health care facility must be reviewed under the specified circumstances. This means the entire acquisition is subject to review, not just the change in services or bed capacity.

One commenter recommended that the State Agency be required to consult with health systems agencies prior to extending certificate of need coverage of acquisitions of health care facilities beyond that required by the Federal regulations. While the adoption of procedures and criteria by a State Agency must by statute be done in consultation with health systems agencies, the Secretary has chosen not to adopt this suggestion for the scope of coverage of certificate of need programs. The scope of State certificate of need programs is in most cases established in State law, and the Secretary is confident that this process provides ample opportunity for involvement by interested parties, including health systems agencies. In those instances where the scope of coverage is developed through State implementing regulations, State laws governing the practices and procedures of administrative agencies should provide ample opportunity for public comment.

One commenter asked what happens if a State Agency fails to render a decision within 30 days of receiving a notice of intent. For acquisitions of health care facilities, as well as for acquisitions of major medical equipment, if the State Agency fails to determine within 30 days that the proposed acquisition is subject to review, the health care facility (or major medical equipment) may be acquired without a certificate of need. The Secretary notes that the 30-day review period does not begin until the State Agency receives a notice containing all the information the State Agency requires. Receipt of an incomplete notice does not cause the 30-day review period to begin. In addition, should the person acquiring the facility in fact change the services or bed capacity of the facility, the change may be required to be subject to review under § 123.404(d)(3), "subsequent reviews," even if the State Agency failed to rule on the notice of intent during the 30-day period.

Acquisitions of existing health care facilities may also be required to be reviewed in accordance with section 1122 of the Social Security Act. Those persons in States which participate in the section 1122 review program should check the requirements under that program for review of acquisitions of health care facilities.

(F) *Leases, Donations and Transfers* (§ 123.404(b)). One respondent recommended that in the case of acquisitions by donation, lease or transfer, State Agencies be required to conduct expedited reviews. The Secretary believes that each State Agency should determine whether to conduct expedited reviews for leases, donations, and transfers. Those State Agencies wishing to conduct expedited reviews in a manner inconsistent with the procedural requirements of § 123.410 must first receive an exception under § 123.411 to do so.

One commenter asked who should determine the "fair market value" of equipment acquired by lease, transfer or donation. It is the responsibility of each State Agency to determine coverage under its certificate of need program; therefore, the State Agency would be responsible for determining the fair market value of such equipment. The Secretary notes that an acquisition by purchase for less than fair market value must be reviewed if the acquisition at fair market value would be subject to review under § 123.404(a).

(G) *Incurring an Obligation* (§ 123.404(c)). The proposed rule (at § 123.404(c)) specified that the term "obligation," when used in connection with capital expenditures, includes "commitments made for financing a proposed project." Several commenters requested a more complete definition of the term "obligation." Accordingly, the Secretary has decided to define an obligation of a capital expenditure as it is defined in the regulations governing section 1122 of the Social Security Act. The title of § 123.404(c) has been revised to reflect this change. The Secretary notes that under this paragraph a State Agency may conclude that an "obligation" has not been incurred when a contract is entered into that is conditioned upon issuance of a certificate of need. In all other instances, an "obligation" may not be made until after the issuance of a certificate of need.

Many commenters asked whether a person may issue bonds to raise funds for a proposed activity prior to the issuance of a certificate of need. Included in the definition of an obligation is an enforceable contract for the "financing of a capital asset." If under State law the bond instruments or any related documents that are used to finance the expenditure are enforceable contracts, an obligation would be incurred when the contract ws entered into. As noted above, an obligation may not be incurred until after a certificate of need is issued.

(H) *Subsequent Reviews* (§ 123.404(d)). Many commenters questioned the proposed requirement at § 123.404(d)(1) that after a certificate of need is issued for a capital expenditure, certain changes proposed in the approved activity within one year after the date that activity is undertaken must be reviewed.

Several commenters were opposed to the definition of a "change in a project." Specifically, many commenters stated that the term "and any other substantial change to the project" is too broad and should be eliminated. Others stated that a minor "expansion or reduction of an existing health service" should not be required to be reviewed. The Secretary agrees with these comments, and has therefore revised the definition of a "change in a project" to include "at a minimum, a change in the bed capacity of a facility (as described in

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§ 123.404(a)(2)), and the addition or termination of a health service." The Secretary notes, however, that States may exceed this required coverage and expand the definition of a "change in a project" to include other changes to the project.

Some commenters suggested that the one-year period be extended so that a subsequent review would be required "at any time" that the facility proposes to change an approved activity. Others recommended that the one-year period be extended for a specified period, while other commenters said that there should be no requirement for a review after issuance of a certificate of need. The purpose of this provision is to ensure that when a facility modifies a previously approved capital expenditure by substantially changing the bed capacity or services associated with the approved expenditure, review of that change will be conducted. Under § 123.404(a)(2) and (3)(i), certain bed changes and additions and terminations of services are required to be subject to review only if associated with a capital expenditure. A facility might obtain approval for a capital expenditure and then immediately modify the approved project without a subsequent capital cost. The Secretary believes that if this subsequent modification (bed or service change) is made within a short period of time following the original approval, it is reasonable to assume that the modification is "associated with" the previously approved capital expenditure and, as such, required to be subject to review under § 123.404(a)(2) or (3)(i). The Secretary believes that the one-year period is a reasonable time for this presumption to be in effect. States may, of course, provide for a longer period. In addition, the subsequent review provision does not preclude a State from concluding that a modification made later than one year after the previously approved expenditure is subject to review if it concludes that the subsequent change is "associated with" the earlier capital expenditure.

With respect to subsequent reviews associated with approved capital expenditures, a few commenters asked whether a requirement for a subsequent review invalidates a previous certificate of need approval. Under § 123.404(d)(1), only proposed changes to approved projects are required to be subject to review. The activity for which the initial approval was granted need not be subject to review again.

Several commenters questioned the authority of the Secretary to require subsequent reviews of acquisitions of major medical equipment and existing health care facilities, and suggested that the Department eliminate § 123.404(d)(2) and (3) from the final regulations. These provisions are necessary to implement and administer the coverage requirements of sections 1527 (d) and (e) of the Act. Under sections 1527 (d) and (e), a proposed acquisition must be reviewed if it will result in certain activities (i.e., acquisitions of health care facilities if the beds or services of the facility will be changed; and acquisitions of major medical equipment if the equipment will be used to serve inpatients of a hospital). The provision for subsequent reviews at § 123.404(d)(2) and (3), by requiring certificate of need review if an applicant changes a proposed activity after filing a notice of intent, ensures certificate of need coverage of all those activities associated with an acquisition which are required to be covered under sections 1527 (d) and (e) of the Act, even though they may be undertaken after the notice of intent was filed.

(I) *Refinancing Activities.* Several commenters requested that a certificate of need not be required for capital expenditures which are only for refinancing an existing debt. Under sections 1527 and 1531(6) of the Act, capital expenditures by or on behalf of health care facilities in excess of the expenditure minimum are required to be subject to certificate of need review. The Secretary notes that this requirement applies to all capital expenditures obligated by or on behalf of a health care facility, which clearly include refinancing costs which would be capitalized under generally accepted accounting principles. Further, the Secretary notes that capital expenditures incurred when a debt is refinanced are required to be subject to review only if they exceed the expenditure minimum. In many instances, capital costs incurred when a debt is refinanced will be less than the expenditure minimum and will not require review. Additionally, in those cases where capital expenditures incurred in refinancing an existing debt are in excess of the expenditure minimum, and result in a net savings to the facility, the Secretary repeats the suggestion in the preamble to the proposed rules that State Agencies and HSAs conduct expedited reviews of the capital expenditures. This may require obtaining an exception, under § 123.411, to required procedures. The Secretary notes, however, that if the capital expenditure associated with refinancing an existing debt will include financing of new activities, the State Agency is required to conduct a full review of the new activities to the extent that these new activities result in the "obligation of capital expenditures, offering of institutional health services, or acquisition of major medical equipment."

§§ 122.305 and 123.405 Health maintenance organizations.

Most of the comments on §§ 122.305 and 123.405 were simply requests for clarification. A number of commenters were dissatisfied with the special consideration and exemptions for which HMOs are eligible. These considerations and exceptions, however, are required by the 1979 amendments to the Act rather than the Department's interpretation of these amendments (see section 1527(b) of the Act). In general, the Department has little latitude in setting forth the certificate of need requirements for HMOs and for health care facilities controlled by HMOs.

One commenter was concerned that the paragraph, "Required coverage," did not mirror the language of the statute precisely. The Secretary believes, however, that the requirements as specified are consistent with the statute with respect to required coverage of HMOs. Further, setting forth the requirements in a framework consistent with the general certificate of need requirements should make the program easier to administer at the State level.

A number of respondents requested clarification regarding the meaning of the terms "direct control" and "indirect control" when used in conjunction with health care facilities of HMOs. "Direct control" of a health care facility would occur by virtue of HMO ownership of the facility. As suggested by the Conference Committee which approved the 1979 amendments to the Act, "indirect control" includes situations in which a majority of the members of the board of the hospital corporation are employees, officers or directors of an HMO or in which members of the board of an HMO are the same as the members of the board of the hospital corporation. (See S. Rep. No. 309, 96th Cong., 1st Sess., p. 86 (1979).)

Several commenters stated that the requirements for program coverage of the acquisition of major medical equipment by HMOs were not explicit in § 123.405. The certificate of need requirements for major medical equipment acquired by an HMO or a health care facility controlled by an HMO are the same as those specified in § 123.404(a)(4) (unless the project is exempt from review under § 123.405(b)(1)). (See example #1 in the explanatory note following § 123.405(a).)

A number of commenters thought the examples in the explanatory note should become a part of the regulations. Since these are examples and not an exhaustive list of every type of HMO proposal, they are not included in the regulations themselves. Others stated that it is unclear whether the establishment of HMOs and their ambulatory facilities, and activities undertaken by these HMOs and ambulatory facilities, are subject to certificate of need review. In § 123.405(a), coverage is specifically limited to activities "undertaken by or on behalf of an *inpatient* health care facility" (emphasis added) and "the acquisition of major medical equipment . . . to the extent required by § 123.404(a)(4) and § 123.404(d)(2)." States may not exceed this required coverage. Accordingly, the only outpatient activity of HMOs and their ambulatory facilities which is subject to certificate of need review is the acquisition of major medical equipment, as specified in § 123.404(a)(4), and activities that are considered by or on behalf of an inpatient facility (unless the project is exempt from review under § 123.405(b)(1)). (See the examples in the explanatory note for further guidance.)

The Secretary notes that under section 1527(b) of the Act, there is no basis for differentiating between fee-for-service and prepaid components of HMOs. The method of payment for services is not relevant in determining whether an activity is subject to certificate of need review (under § 123.405(a)) or eligible for an exemption (under § 123.405(b)). Therefore, if a fee-for-service component of an HMO meets the requirements of § 123.405(b) of the regulations, it must be granted an exemption from certificate of need review. With respect to HMO projects that are not exempt under § 123.405(b), the coverage required by § 123.405(a) applies equally to fee-for-service and prepaid components of HMOs. This matter is now explicitly addressed in the regulations, at § 123.405(b)(4).

One commenter stated that § 123.405(b)(2) ("Application for exemption") did not make clear that an HMO with an enrollment of 20,000 could receive a "speculative" exemption, i.e., that the exemption must be granted if enrollment would be 50,000 at the time the service at issue will be offered. The Secretary agrees, and has revised § 123.405(b)(2)(ii) to make this point explicitly. The Secretary notes, however, that the applicant must provide sufficient information to demonstrate that the HMO or combination of HMOs will meet the applicable requirements for the exemption at the time the service will be offered.

Section 123.403(e) of the regulations requires the State Agency to grant or deny an exemption to an HMO on the basis of procedures it has adopted for this purpose. Many commenters recommended that the reviews for exemptions be completed by the State Agency in 30 days, rather than 45 days as originally recommended in the Preamble to the Notice of Proposed Rulemaking. Although the State has the authority to prescribe the time limit for reviews of exemptions, the Secretary encourages State Agencies to expedite these reviews. Since a State Agency's determination of whether the applicable requirements for an exemption have been met will be a relatively simple exercise, the Secretary agrees with the commenters that State Agencies should generally be able to complete these reviews in no more than 30 days. The Secretary suggests that in their procedures State Agencies specify a time limit (preferably 30 days or less) for reviewing exemption applications.

One commenter suggested adding a provision that State Agencies must approve applications for exemptions if the applicable conditions have been met. Although this requirement was implicit, it has been added to § 123.405(b)(2) to ensure that State Agencies do not base reviews of exemption applications on any other considerations.

Several commenters addressed the provision that a State Agency shall not disapprove an HMO-related application solely because the proposal is not discussed in applicable plans. This provision corresponds with a requirement specified at § 123.411(a)(2) of the April 2, 1979 certificate of need regulations. The Secretary continues to believe that the fact that an HMO proposal is not discussed in the applicable plans is not a sufficient reason for denying the certificate of need. Further, the Secretary notes that section 1527(b)(5) of the Act establishes special criteria against which certificate of need applications of HMOs must be reviewed (see § 123.405(d) of the regulations). An HMO-related application must be approved if it satisfies these criteria, regardless of whether the proposal is discussed in the applicable plans.

One commenter questioned why the Department deleted the section on required findings for HMOs of the April 2, 1979 regulations. This section (§ 123.411) has not been retained because of the statutory restrictions of the Act (see section 1527(b) of the Act). However, certain provisions from § 123.411 of the April 2 regulations have been included in these regulations. Specifically, the requirement at § 123.411(a)(2) of the April 2 regulations is now at § 123.405(d) ("Inclusion in health plans") and the criteria at § 123.411(b) of the April 2 regulations are now in § 123.413(a)(13) of these regulations.

§ 123.406 Notice of intent.

Three commenters recommended that the regulations be revised to provide for sanctions if the State Agency is not notified of an acquisition of major medical equipment or an existing health care facility. Additional sanctions for failure to submit the notice of intent required under § 123.406 (a) and (b) are not necessary because the sanctions required under § 123.408 apply. The sanctions apply because a certificate of need must be obtained if a notice of intent is not filed. (See § 123.404(a)(4) and (5).)

One commenter suggested some consideration of alternatives to the requirement for a notice of intent for construction projects (§ 123.406(c)). For example, in one State the rules under the certificate of need program require submission by all health care facilities of a three-year plan, providing prior notice of potential construction projects, equipment acquisition and service changes. States may use provisions such as the one cited because they are consistent with the requirement of the statute. Accordingly, they should not be characterized as "alternatives" to that requirement.

One commenter stated that "lead time" is necessary for all projects, and recommended that the regulations be revised to require a notice of intent for all certificate of need applications, not just those for construction projects. A State may adopt such a requirement consistent with the periodic report requirement under § 122.308(a)(5) and § 123.410(a)(5). These sections require the health systems agencies and State Agencies to have procedures for applicants to submit periodic reports respecting the development of proposals subject to review.

§§ 122.306 and 123.407 Required recommendations and required approvals.

Because of the confusion the term "Special reviews" generated, § 122.306 has been retitled "Required recommendations" and § 123.407, "Required approvals." The Secretary emphasizes that the purpose of this provision is not to establish a separate category of reviews. Rather, it is to

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ensure that, consistent with the statute, projects which are to rectify substantial code, licensure, or accreditation deficiencies will, under certain circumstances, be approved. The Secretary does not intend to require either that applications be submitted to a separate review process or that applications which do not meet the criteria for a required approval to be resubmitted through the normal review process. Resubmission could cause inordinate delays in projects which, while not meeting the requirements of § 123.407(a), might very well be needed for the adequate provision of health care in the area. If an application does not meet the criteria for required approval, then the planning agency should be able to arrive at a decision simply by applying all of its applicable criteria. Accordingly, the regulations have been revised and simplified to reflect this approach. An explanatory note has been added to § 123.407 to clarify planning agency responsibilities under this provision.

The Secretary is aware that the provision for required approvals is viewed in some quarters as a potentially enormous loophole for unneeded hospital replacements and renovations. However, the strict application of the provisions of § 123.407 should prevent its abuse. For this reason, the regulation at § 123.407(a) now specifies that the capital expenditure must be *required* to eliminate the code, licensure, or accreditation deficiency. Section 123.407(b), which was § 123.407(c) in the proposed rules, continues to require that any portion of a proposed capital expenditure which is not required to eliminate one of these deficiencies is not subject to the provision for required approval, but rather is subject to a regular review using the criteria developed under § 123.412.

Two commenters suggested that this section conflicts with § 123.403(d), which specifies that in emergency situations which pose a threat to the public health, a decision to issue a certificate of need, need not be consistent with the State health plan. The latter section requires that State Agencies not issue certificates of need for projects inconsistent with the State health plan except in emergencies which pose a threat to public health. Section 123.407, on the other hand, permits a State Agency to deny what would otherwise be a required approval, if the project is inconsistent with the State health plan. These sections read together permit but do not require the State Agency to issue a certificate of need for a project relating to an emergency that poses a threat to the public health even though the project is inconsistent with the State health plan. Thus, the two sections do not conflict.

Other commenters expressed concern about how a determination of need is to be made if the criteria developed under § 123.412(a) do not apply, as suggested in the Notice of Proposed Rulemaking. The Secretary, in revising § 123.407, has stated in an explanatory note following § 123.407(a) that a determination of need for the facility or service is to be made by applying the appropriate criteria developed under § 123.412. Further, the Secretary notes that the planning agencies may wish to adopt criteria for this determination of need based on utilization standards, which they should develop in line with the National Guidelines for Health Planning. Agencies may request assistance in this from the appropriate Center for Health Planning. For example, for hospitals and nursing homes, States Agencies may have criteria dealing with visits/encounters, length of stay, admission rates, patient days of care, outpatient visits, and the number of patients served. Finally, the determination by the State Agency of whether a facility or service is needed should be based on health plans. Health systems plans are required to (1) describe the number and type of resources (including facilities, personnel, major medical equipment and other resources) in the health service area, (2) state the extent to which these existing facilities are in need of modernization, closure, or conversion, and (3) identify the need for new facilities to be constructed or acquired (see section 1513(b)(2) of the Act). There may be a need, however, for a service or facility that is not identified in the health systems plan or State health plan. In such a case, the State Agency may determine that the facility or service is needed if it meets the objectives of the health systems plan and the review criteria of the State Agency.

Other commenters questioned how planning agencies will determine whether a particular project is required to comply with licensure or accreditation requirements or with government fire, building or life safety codes. Although the regulations do not specify the information to be required by planning agencies, the Secretary intends that the burden for proving that the proposal is under one of these categories be assumed by the applicant. Accordingly, when planning agencies establish these requirements they should consider requiring that applicants submit documentation from the appropriate agency that the proposed project is necessary to eliminate or prevent safety hazards, comply with State licensure standards, or comply with accreditation standards.

Two commenters were concerned about the effect of appropriateness review on reviews conducted under this section. Appropriateness reviews are reviews of existing institutional health services by health systems agencies and State Agencies and authorized by sections 1513(g) and 1523(a)(6) of the Act. Under § 123.407, planning agencies are not required to conduct appropriateness reviews in order to determine whether a facility or service is needed. However, if an appropriateness review has been conducted, the findings can and should be considered in making a determination of need under § 123.407.

A few commenters felt that if the State Agency fails to act within the required period of time, the project should be approved. The Secretary points out that the provisions of § 123.410(a)(17) apply to all applications for a certificate of need. This section requires that the State program must provide that if the State Agency fails to approve or disapprove an application for a certificate of need, the applicant may bring action in an appropriate State court to require the State Agency to approve or disapprove the application.

§ 123.408 Enforcement.

Several commenters objected to the suggestion that criminal penalties might be appropriate as a sanction to enforce certificate of need decisions. Other commenters stated that the examples listed in § 123.408(b) should, in fact, be requirements. The Secretary continues to believe that it is more appropriate for States to develop their own enforcement mechanisms to ensure that only projects which are granted certificates of need are carried out. The Secretary points out that the Department does review in detail the performance of each State Agency. The extent to which sanctions are effective is one of the measures of performance for the certificate of need function.

Other commenters raised questions about enforcement of some of the new coverage provisions. For instance, a question was raised as to whether the denial of a license to operate a service would be an effective sanction in preventing the termination of a service. Although denial of a license would obviously be inappropriate in this case, there are other sanctions, such as fines or criminal penalties, which could be used to prevent the termination of a service.

§§ 122.307 and 123.409 Adoption and public notice of review procedures and criteria.

Several commenters suggested that the Secretary add a requirement to this regulation that agencies provide multilingual notification of proposed review procedures and criteria. While an agency may do so, the Secretary believes that it would be inappropriate to require at this time that it do so. Guidance already given to health systems agencies calls attention to linguistic problems and suggests that in health service areas where the primary language of a significant percentage (10 percent) of the residents is not English, relevant portions of health systems plans and annual implementation plans should be translated into that language. Agencies should consider using this guideline with respect to proposed procedures and criteria.

§§ 122.308 and 123.410 Procedures for health systems agency and State Agency review.

§§ 122.308(a)(1) and § 123.410(a)(1) Schedules for submitting applications.

Sections 122.308(a)(1) and 123.410(a)(1) require that all completed applications pertaining to similar types of services, facilities, or equipment affecting the same health service area be considered in relation to each other (i.e., batched) at least twice a year.

Several commenters requested that the Department clarify the term "health service area". Many suggested that the health service area should relate to the institution's primary service area. Others suggested that only projects with the same target population be considered in relation to each other. The term "health service area" in this provision is defined by the statute to mean an area that has been designated by the Secretary under section 1511 of the Act as a health service area. By requiring that all similar types of proposals affecting the same health service area be considered in relation to each other, the statute does not prevent agencies from considering the different populations served by different facilities. In reviewing similar projects, a State Agency may conclude that two proposals appropriately serve different populations. In such a case, a determination of need for one project may reasonably be made without regard to the determination of need for the other project.

Several commenters suggested that the Department require State Agencies to publish the established schedule for submission of applications. The Secretary notes that under § 123.409 State Agencies are required to publish adopted procedures which must include the time schedule for submission of applications. The schedule should be published in a form and manner that will provide affected persons adequate notice of the review period. The Secretary will be evaluating the schedules established by State Agencies in order to determine whether timely notification of the review schedule is being provided.

Several commenters expressed concern that the batching requirement would create problems with coordinating review periods in those States that also perform reviews under section 1122 of the Social Security Act. The Secretary believes that this problem will be alleviated by the incorporation of the procedural requirements of section 1532 of the Public Health Service Act, including the batching requirement, into the revised section 1122 regulations to be published soon.

Many commenters suggested that the regulations be more specific as to how often a State Agency may batch proposals. The Secretary has retained the language of section 1532(b)(13)(A)(ii) of the Act, which requires that similar proposals be considered in relation to each other at least twice a year. This satisfies the statutory requirement and gives States the flexibility to batch more often if appropriate.

Many commenters expressed concern about how State Agencies that review few applications will be able to batch proposals. Regardless of the number of applications received during the scheduled period of submission, each State Agency is required (under section 1532(b)(13)(A)(iii)) to review those completed applications submitted. Thus, if only one application of a particular type is submitted, the State will consider only that application.

A few commenters suggested that the regulations specify that applications which satisfy the requirements of § 123.407 for required approvals may not be batched. The Secretary believes that it is important for the State Agency to have the option of batching certain proposals which may also meet the requirements of § 123.407. For this reason, the Secretary has retained the language of the regulations, which provides that applications which satisfy the requirement of § 123.407 may be, but are not required to be, batched.

Many commenters stated that the categories for batching of applications listed in the regulations were too broad and should be more specific. Several commenters suggested the categories should be limited to those services addressed in the health systems plan, the State health plan, or the National Guidelines for Health Planning. A few commenters also suggested that only those services which are "technologically innovative" be required to be batched. The Secretary has decided to retain the categories listed in the regulations because they provide a reasonable minimum set of categories to be used by a State Agency. This approach allows each State Agency the flexibility to establish narrower categories as appropriate. Under § 123.409, each State Agency is required to provide the public an opportunity to comment on the proposed categories of services that it will use for batching. As a basis for determining those categories of services to be batched, State Agencies might consider analyzing previous certificate of need applications in order to determine the types of services for which a substantial number of applications have been received.

Several commenters requested that the regulations specify that applications which include more than one proposed type of service, facility or equipment must not be delayed by subjecting them to review in more than one category. The Secretary encourages State Agencies to develop a method of reviewing large applications which propose establishing numerous types of services, facilities or equipment. At a minimum, however, any such method would have to require that each component of the large application be reviewed against similar equipment or services in its appropriate batch. The Secretary notes that this can be planned for in advance by the applicant, and that in any case, the decision as to a certificate of need for all the components would be made, at most, within a six-month period.

§§ 122.308(a)(2) and 123.410(a)(2) Notification of the beginning of a review.

Several commenters requested that the regulations require that the notice of the beginning of the review period be multilingual in those areas with a significant non-English speaking population. The Secretary agrees that it is important for agencies to provide multilingual notices in those areas which include a large non-English speaking population. The Secretary has decided not to include this as a regulatory requirement and calls attention to the policy guidelines regarding linguistic problems discussed in the portion of this Appendix dealing with §§ 122.307 and 123.409 (Adoption and public notice of review procedures and criteria).

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Many commenters suggested that notification of the beginning of a review be by methods other than newspapers. These commenters indicated that notice should be sent by first class mail and should be published in a more prominent section of the newspaper than in the legal notice section. A few commenters suggested deletion of the requirement that notice of the beginning of the review be published in a newspaper of general circulation. The Secretary notes that publication in a newspaper of this notice is not a requirement but that States may use another means of written notification. The Secretary has decided not to require that the notice be published in a more prominent section of the newspaper, since the price of such a notice would be prohibitive to many agencies.

Several commenters stated that the requirement for both the health systems agency and the State Agency to provide written notification of the beginning of a review period is duplicative and costly. The Secretary notes that § 122.308(c) relieves health systems agencies of this requirement if the State Agency, in performing its function under § 123.410(a)(2), provides the information required under § 122.308(a)(2).

Several commenters suggested that notice should be sent to legal service programs, welfare and social security offices, clinics, and other agencies. If these agencies want to receive notification, they may request that their names be placed on the health systems agency and State Agency mailing lists.

§§ 122.308(a)(3) and 123.410(a)(3) Review period.

Several commenters requested that the regulations require that reviews of applications which are batched may be delayed by one 15-day extension period only. Section 1532(b)(12)(c)(i) of the Act requires that, at the applicant's request, each time the planning agency requires an applicant to submit additional information after the review period has begun, the review period must be extended 15 days. The extension of the review period applies to all applications being batched. The Secretary encourages the State Agency and the health systems agency to do thorough reviews of the completeness of applications before notification of the beginning of the review. There should be infrequent requests for additional information after the application is found complete and the review period has begun. In the schedule required under § 123.410(a)(1), State Agencies are encouraged to provide ample time to determine whether additional information is necessary.

§§ 122.308(a)(4) and 123.410(a)(4) Information requirements.

Many commenters recommended that the information required to be submitted to the State Agency and the health systems agency include data on uncompensated care, community service data, and other information necessary to determine the applicant's ability and willingness to comply with requirements under Title VI (the Hill-Burton program) or XVI of the Act. The Secretary has not adopted this recommendation. The present language of the statute and the regulations permits agencies to vary the informational requirements according to the purpose for which a particular review is conducted or the type of health service being reviewed. This allows State Agencies the flexibility to require community service data, or data on uncompensated care, in those instances where such data requirements are appropriate. The Secretary notes, however, that any information required for a review must be prescribed and published by the State Agency.

Several commenters suggested that the applicant should have the right to appeal a request for information to be submitted with the application. The Secretary does not believe that it is necessary to provide for an appeal of the information requirements since these requirements must be prescribed and published by the agencies and thus would be subject to public comment under §§ 122.307 and 123.409, before the submission of the application. Several commenters suggested that information requirements be developed by the State Agency to provided for Statewide consistency. The Secretary believes that health systems agencies should have the flexibility to determine their own information requirements and has therefore not adopted this suggestion. However, the Secretary notes that health systems agencies and State Agencies are required under section 1532(a) of the Act (and § 123.409(b) of the regulations) to cooperate in the development of all review procedures.

Section 1532(b)(3) of the Act (§§ 122.308(a)(4) and 123.410(a)(4) of the regulations) requires the health systems agency and State Agency to develop procedures to ensure that requests for information are limited only to that information necessary for the agencies to perform reviews. Several commenters complained that this requirement is too vague. Some suggested that necessary information be limited to information that has a direct bearing on the project under review. The secretary has decided that planning agencies should have the flexibility to develop their own procedures and criteria for determining what information is necessary for particular reviews.

One commenter recommended that the regulations provide that in the case of an application for a medical research project, the State Agency and health systems agency may not require an applicant to submit any information which may disclose proprietary information, trade secrets or patentable inventions. Since the statute gives the State Agency and the health systems agency the discretion to determine the information necessary to perform the review, the Secretary has not included this recommendation in the regulations. Planning agencies may require that the application include information which is pertinent to the review and has been prescribed and published as being required. Potential applicants, knowing that the public will have access to any information provided in applications, and that they need provide only information that is essential to the review, should not submit information which they do not wish to be accessible to the public. If this information is properly required by an agency, however, the applicant should be aware that withholding the information may adversely affect the processing of the application.

§§ 122.308(a)(6) and 123.410(a)(6) Written findings and conditions.

Several commenters recommended that the State Agency not be allowed to make its final decision subject to any condition unless it directly relates to the service being reviewed as well as the criteria established under § 123.412 or the criteria prescribed by regulations by the State Agency. The Department has not adopted this recommendation because section 1527(a)(2) of the statute does not impose the requirement that the condition relate to the service being reviewed.

§§ 122.308(a)(8) and 123.410(a)(8) Public Hearing in the Course of Review.

One commenter recommended that a public hearing be required to be held for each certificate of need application. The Secretary has decided to retain the language of section 1532(b)(8) of the Act, which requires a public hearing "if requested by persons directly affected by the review." The Secretary notes, however, that States are free to exceed Federal requirements, and hold public hearings for all certificate of need applications.

Several commenters suggested that only one public hearing should be conducted by either the State Agency or the health systems agency. The Secretary notes that the regulations permit the holding of a single public hearing for an application. Section 123.410(c) provides that the State Agency may delegate the hearing responsibility to the appropriate health systems agency.

One commenter stated that the provision that any "affected person" (rather than any "directly affected person") may request a public hearing will lead to longer review periods and greater costs. The Secretary disagrees, as the distinction between affected persons and person directly affected is minor. By adopting the broader term, "affected person", for the purpose of notification of the beginning of a review and for requesting a public hearing in the course of a review, the Secretary has simplified the regulations and made them more consistent.

Several commenters suggested that the regulations provide that if the State Agency has delegated its public hearing responsibility to the health systems agency, it must still hold formal administrative hearings, if requested. The Secretary has determined that this provision is unnecessary, since under § 123.410(c), in the case of such a delegation, the health systems agency is required to follow the procedures for public hearings held by the State Agency.

Several commenters stated that in the case of a State Agency delegating its public hearing responsibility to a health systems agency, the additional procedures that must be followed will be very costly. The Secretary encourages State Agencies to consider whether financial support should be provided to a health systems agency that has been delegated the public hearing responsibility. Further, the Secretary notes that the health systems agency has the right to refuse the delegation of this responsibility if it believes that it will be burdensome for it to perform this function. Also, the Secretary notes that State law may prevent some State Agencies from delegating their hearing responsibilities.

§ 123.410(a)(9) Ex parte contacts.

Several commenters requested that the Department clarify the term "ex parte." A typical definition of ex parte communication, found in the Federal Administrative Procedure Act (5 U.S.C. 551(14)), is "an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding. . . ." States may wish to adopt this definition or a similar one for their certificate of need programs. It is important to note that any communications made after the commencement of the public hearing that are placed in the record of the proceedings are not ex parte and are not prohibited. Also, this provision applies to contacts with the State Agency and not with the health systems agency.

Several commenters requested that the regulations require that there be no ex parte contacts between representatives of the health systems agency and any person in the State Agency who exercises any responsibility respecting an application or its withdrawal after the commencement of a hearing. The Secretary has determined that such a revision is unnecessary, since § 123.410(a)(9) applies to health systems agency representatives when their actions are considered to be on behalf of the applicant or are considered in opposition to the issuance or in favor of the withdrawal of the certificate of need.

One commenter stated that the regulations were not clear in specifying whether the ex parte provision would apply when the health systems agency has been delegated the authority to hold the required public hearings. If the health systems agency has been delegated the public hearing function by the State Agency, the prohibition regarding ex parte contacts with the State Agency applies after the commencement of the hearing by the health systems agency. (See § 123.410(a)(8), (9), and (c).)

§ 123.410(a)(10) Statement of reasons.

One commenter suggested the deletion of the requirement that the State Agency provide a statement of reasons for decisions which are inconsistent with recommendations of the health systems agency. The commenter suggested that the regulations require a statement of reasons only for State Agency decisions which are inconsistent with the health systems plan or annual implementation plan. The Secretary believes that health systems agencies should know why State Agency decisions are inconsistent with their recommendations, and has therefore decided not to adopt this suggestion.

Another commenter recommended that a copy of the statement of reasons be sent to the applicant as well as the health systems agency. The Secretary agrees with this suggestion and has included this requirement in § 123.410(a)(10).

§ 122.308(a)(11) Conflicts of interests.

Several commenters recommended that in the case of a conflict of interest, the person be prohibited from speaking at the public hearing. One commenter suggested that the conflict of interest provision also be extended to a health systems agency member whose immediate family member is employed by the applicant. The Secretary has decided not to accept these changes. The Secretary believes that a board member who has a conflict of interest should be able to speak at a public hearing as long as that person is not entitled to vote on the matter. In addition, the Secretary believes it is the responsibility of each health systems agency to decide the circumstances in which a board member whose immediate family member is employed by the applicant should have his or her participation in the review limited. A health systems agency may adopt a stricter standard if it is not satisfied with the scope of § 122.308(a)(11).

§ 122.308(a)(12) Coordination within an SMSA.

This section, together with § 123.401, has been modified so that the other HSAs in an SMSA are given an opportunity to make recommendations on proposed projects *before* the State Agency makes its decision. The requirement on HSAs to notify other HSAs in the SMSA has been removed from § 122.308(a)(12); the definition of "affected person" in § 123.401 has been changed to include all HSAs in an SMSA. Thus State Agencies will give notification of the beginning of a review to all of these HSAs. Existing procedures in States for HSAs and State Agencies to receive copies of applications can be employed to send copies of applications to those other HSAs in an SMSA which wish to review and make recommendations on the proposed recommendations made by health systems agencies" applies to recommendations made by any HSA, including the other HSAs in an SMSA.

§ 123.410(a)(11) Public hearings for reconsideration of a State Agency decision.

Section 123.410(a)(11) requires the State Agency to offer a public hearing for reconsideration of the State Agency decision if requested by any person who has shown good cause. The Secretary has revised this subparagraph to require that a request for a public hearing will show good cause if it presents significant relevant information not previously considered by the State Agency, which with reasonable

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diligence could not have been presented before the State Agency made its decision. The Department made this change because it was unreasonable to burden the State Agency with the requirement to conduct an additional hearing when the information not previously considered should have been presented during the course of the review. The Secretary notes that because this is a minimum requirement, a State program that retains the broader, former requirement will continue to satisfy this provision.

Another commenter suggested that the State Agency provide notification of the public hearing for review of the State Agency decision by publishing a notice in the newspaper. The regulations require that the State Agency provide notification of a reconsideration hearing to the person requesting the hearing, the person proposing the project, the appropriate health systems agency, and others upon request. The Secretary believes that to require the State Agency to publish an additional notice in a newspaper would be unduly burdensome.

The Secretary has added a note after § 123.410(a)(11) to clarify that the regulations do not require that a person must request a reconsideration hearing before obtaining an administrative review (under § 123.410(a)(13)) or a judicial review (under § 123.410(a)(14)). However, State law may require that a person exhaust all administrative remedies before seeking administrative or judicial review. In such a case, interested persons should consult the State Agency to determine if this would apply to the reconsideration hearing.

§ 123.410(a)(12) Maximums on capital expenditures.

Many commenters suggested how States should establish the maximum amount of capital expenditure which may be obligated under a certificate of need. The Secretary believes that each State Agency should establish its own method of determining capital expenditure maximums. Under § 123.409, the State Agency must provide the public the opportunity to comment on its proposed method.

§ 123.410(a)(13) Administrative review.

Some commenters disagreed with the Department's position stated in the Preamble to the Notice of Proposed Rulemaking that the addition of the term "administratively" makes unacceptable the current practice in some States of having courts as the initial appeals body. These commenters interpret section 1532(b)(12)(A) of the Act as only requiring that the review be conducted under an appeals mechanism consistent with the State law governing the practices and procedures of administrative agencies. The Secretary disagrees with this interpretation. Section 1532(b)(12)(D) requires that an "administrative" appeal be provided. Thus, a State that provides only for judicial review does not meet this requirement even though judicial review is the appeals mechanism provided under State law. Moreover, Section 1532(b)(12)(E) requires that there be a separate judicial review.

Another commenter contended that this provision would be satisfied by a State Agency itself offering a rehearing of its decision. The Secretary disagrees with this interpretation, having concluded that the term "appeal" means an independent review of the State Agency's decision. In addition, because section 1532(b)(8) establishes a rehearing requirement, permitting a rehearing to meet the "appeal" requirement would render superfluous the section 1532(b)(8) provision.

One commenter requested that the Secretary clarify the scope of the administrative review requirement to provide that a "de novo" review is not allowed. The scope of administrative review is determined under State law. Therefore, a "de novo" review would be permitted if authorized under State law.

The Secretary proposed that the appeals entity may be either an entity other than the State Agency or, if permitted by State law, a person within the State Agency who did not participate in the certificate of need decision and has the authority to make a final decision on the appeal. A few commenters stated that a component of the State Agency should not be permitted to be the appeals entity. These commenters believed it would be difficult for any entity that is part of the State Agency, even though it did not participate in the certificate of need decision, to avoid pressure from the State Agency staff who took part in the certificate of need review. The Secretary does not accept this suggestion because it is possible for an independent component of the State Agency to conduct the appeal satisfactorily. A State that is concerned with the problem raised by the commenter may use an agency other than the State Agency.

One commenter recommended that the regulations specify that the State Agency may not impose fees upon the affected person requesting the administrative review if a hearing is part of the administrative review. The Secretary has not adopted this recommendation, since States should be allowed the discretion of using their existing procedures for administrative appeal. However, the Department would view as inappropriate for a State to impose a fee so excessive that it has the effect of denying persons the right to appeal a State Agency's decision.

A note has been added to § 123.410(a)(13) to clarify that nothing in the regulations requires that a person must request an administrative review before obtaining judicial review (under § 123.410(a)(14)). However, applicable State law may require that an administrative review be held before judicial review is obtained.

§ 123.410(a)(14) Judicial review.

Several commenters indicated that the definition of persons adversely affected was too broad and should be revised. A few commenters suggested that judicial review be limited to those adversely affected persons who sought administrative review of the State Agency's decision. The Secretary believes that the Department should not place this limitation on the category of persons who may request judicial review. Therefore, the definition of persons adversely affected has not been narrowed in these regulations. The Department has revised the regulations to provide for the term "person adversely affected" to include the State Agency and any person who meets the definition of adversely affected person as defined under § 123.401 or who participated in the proceedings before the State Agency. This definition provides anyone who meets the definition of affected person or who may have requested a public hearing for the purpose of reconsideration of the State Agency decision the opportunity to obtain judicial review. The State Agency was included in the definition to provide the State Agency the option of requesting judicial review when its initial decision has been revised by the entity performing the administrative review.

Several commenters suggested that any person adversely affected by a final decision of a State Agency who plans to obtain a judicial review of the decision be required to seek judicial action within 30 days after completion of an administrative review, except where a different time period is established under State law. The Secretary has decided that the determination of when a judicial review will take place should be made under State law and therefore has not adopted this recommendation. Nevertheless, States are urged to consider the need for resolving appeals expeditiously so that applicants are not faced with inordinate delays on their applications.

§§ 122.308(a)(9) and 123.410(a)(15) Annual reports of the health systems agency and the State Agency.

One commenter suggested that the annual reports should specify the reviews being conducted, completed financial statements which include the dollar amounts of the proposals reviewed, a breakout of the dollar amounts for those projects approved and disapproved, and the percentage of projects which are approved and disapproved. Another commenter suggested that the annual reports include an explanation of the decisions and recommendations made by the agency which consumers and providers could fully understand. The Secretary agrees that such information might be helpful. However, these suggestions have not been adopted because requiring such a detailed report would be unduly burdensome for some agencies. State agencies and health systems agencies may consider including the above information in their annual reports.

§ 123.410(a)(18) Withdrawal of certificate of need.

One commenter recommended the addition of a provision for the expiration of a certificate of need if the project has not commenced within one year of approval or if the project is not completed within one year of the estimated date of completion. Another commenter suggested that in the case of a certificate of need review that takes longer than 90 days, the applicant be allowed to adjust the timetable, in order to reflect delays which result from the delay in the State Agency decision. A few commenters suggested that the State Agency should review on a quarterly basis the progress of the holder of the certificate in meeting the timetable specified in the approved application. Finally, commenters also suggested that the evidence of the progress be submitted by the applicant to the appropriate health systems agency. The Secretary believes States should have discretion in determining how to implement this provision, and has therefore not adopted these recommendations.

§§ 122.308 and 123.411 Exceptions to use of procedures.

Several commenters suggested that the Secretary eliminate this entire section. The Secretary has rejected this suggestion because the Secretary believes that there are circumstances in which these procedural requirements may impose an unnecessary burden. The waiver of these requirements is appropriate when it would not substantially and adversely affect the rights of any person.

Several commenters requested that the Department delete the provision for a general exception to procedures. The Secretary does not agree with this request. The general exception provision has been created to provide agencies an opportunity to use alternate procedures established by the Department. For example, a general exception to established procedures may be necessary if the Department were to establish an expedited review procedure for energy conservation proposals. If the agency elects to avail itself of the general exception procedure, the agency is still required to follow the notice and comment requirements of §§ 122.307(b) and 123.409(c) in order to provide for public comment on its proposal to use the alternate procedure.

Many commenters requested that the requirement that the substitute procedure proposed by the agency be "less costly and more efficient" be reinstated in this section. This requirement was deleted because of the difficulty in determining whether a proposed substitute procedure is actually less costly and more efficient. The Secretary has determined that a request for an exception should only be evaluated on the basis of whether it is consistent with the purposes of the Act and whether it adversely and substantially affects the rights of affected persons.

§§ 122.310 and 123.412 Criteria.

§§ 122.310(a) and 123.412(a) General.

A commenter noted that the limitations placed on the criteria State Agencies may apply (see section 1527(a)(2) of the Act) do not apply to the health systems agencies. The Secretary acknowledges that the statute at section 1527(a) refers only to State Agencies. However, the statute requires that planning agencies use at least the criteria based on the considerations specified in the Act at section 1532(c), and that they apply those criteria developed and published in accordance with regulations of the Secretary (section 1532(a) of the Act). The Secretary emphasizes that health systems agencies and State Agencies should cooperate in the development of criteria, as required by statute at section 1532(a), to the extent appropriate to achieve efficiency in their reviews and consistency in their criteria. To enhance this coordination, the Secretary has required at § 122.310 that any additional criteria developed by the health systems agencies must not be inconsistent with those based on the considerations listed at § 123.412(a) of the amended regulations. The Secretary notes that if a health systems agency makes a review recommendation based on criteria which the State Agency may not use, the State Agency may not be able to follow the health systems agency recommendation.

§§ 122.310(b) and 123.412(b) Use of criteria.

Many commenters disagreed with the provision in the proposed regulations that the criteria adopted for reviews in accordance with the considerations specified by § 123.412(a) may vary according to the purpose for which a particular review is being conducted or the type of service reviewed. In particular, commenters stated that the access considerations listed at (a) (5) and (6) of this section should be applicable to all reviews conducted under the certificate of need program. The Secretary points out that section 1532(a) of the statute allows for criteria to vary depending on the purpose of the review or the type of health service being reviewed. However, the Secretary emphasizes that planning agencies are required to apply all criteria that are appropriate for each review. Moreover, planning agencies are required to consider the access considerations in most cases since the regulations at §§ 122.311 and 123.413 require that the agencies make written findings regarding their access criteria with respect to all applications that they recommend be approved or that they approve (with the specific exceptions made by § 123.413(a)).

A few commenters requested a specific statement informing planning agencies that they should make cost containment activities the foremost consideration when reviewing proposals. The Secretary has not accepted this suggestion since there are other, equally important considerations, for example, need, access, availability and quality.

Comments received on the specific considerations at § 123.412(a) (1) through (21) are discussed below. Technical assistance on the development of criteria based on these general considerations is available to planning agencies from the Centers for Health Planning.

§ 123.412(a)(3) Alternative methods.

One commenter suggested that this consideration should be expanded to include the question of whether the funds proposed to be spent on a given project might be better used for a different project to serve underserved

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population groups. The Secretary does not accept this suggestion since the access concerns are sufficiently addressed elsewhere under § 123.412(a) (5) and (6) of these regulations. Another commenter thought that mention of reductions or elimination of services should be stricken from the consideration. The Secretary has not accepted this suggestion because the consideration simply specifies that if the proposal is to reduce or eliminate (or to offer, expand, or relocate) a service, the agencies must consider alternative methods of providing the service. This is simply a consideration for the development of criteria, it does not itself mandate coverage of any proposal.

§§ 123.412(c) (5) and (6) Access.

Many commenters requested that planning agencies be required (1) to consider the access considerations as listed at § 123.412(a) (5) and (6) for all reviews, and (2) to deny the certificate of need if the finding is negative. The commenters reasoned that these considerations are always appropriate because the idea of community need for a service is valid only if the service will serve all the members of the community. Moreover, they pointed to congressional intent that an important concern in planning for the health of the community is whether all members of the community have access to the health care services they need. On the other hand, other commenters suggested that § 123.412(a)(5)(ii) and (6) be eliminated. Reasons given were that the Department does not have the authority to include these sections, that they overly stress the access concerns relative to the other concerns of the certificate of need review program, that relevant data are either not available or are not allowed by law to be collected, and that the questions posed by the planning agencies might look into areas that are beyond the applicant's control. Finally, other commenters requested that the Secretary place the suggested questions listed in the preamble to the proposed rules directly in the regulations.

The Secretary has determined that authority for establishing the considerations exists under section 1532(a) of the Act and that the limitations on the State Agency's authority is section 1527(a)(2) of the Act are not at issue in this regard. Section 1531(a) requires the planning agencies to apply criteria developed in accordance with the Secretary's regulations. Section 1527(a)(2) permits the State Agency to apply only certain criteria, among which are the "criteria prescribed by section 1532(c)." The access considerations in the regulations are an elaboration on the statutory considerations at section 1532 (c)(3) and (c)(6)(E). Because these considerations are directly related to the "criteria prescribed by section 1532(c)", as provided by section 1527(a)(2), State Agencies may properly apply criteria developed from them in conducting their reviews. The consideration at § 123.412(a)(5) has only added a phrase required by the amended Act at section 1532(c)(6)(E) to the former regulations (42 CFR 123.409(a)(3)). Moreover, the general consideration at § 123.412(a)(6) clarifies the former regulations covering access considerations at § 123.409(a)(13) by adding the specific factors at § 123.412(a)(6) (i) through (iv). These provisions underline the Department's commitment to ensure that the medically underserved will receive equal access to care, that the project will be accessible to the whole community, and that the community needs the proposed project.

By requiring in §§ 122.311 and 123.413 that planning agencies make written findings on these criteria for each proposal that is recommended for approval or approved (excepted projects specifically not included), the Secretary has provided that the access issue will be considered where appropriate. However, the Secretary has decided for two reasons not to require that an application be automatically disapproved when negative findings on the issue of access have been made by the planning agencies. First, the statute does not authorize the Department to require disapprovals based on these considerations. Second, access considerations, although quite important, are but 2 of 21 different factors that the agencies are to consider, as applicable, in performing individual reviews.

The presence of these access considerations in the regulations reflects the Department's concern over equitable access and encourages planning agencies to be responsive to the needs of the medically underserved. These considerations are not to be construed as requiring the planning agencies to act as enforcers of requirements under other Federal programs, e.g., fulfillment of uncompensated service obligations or obligations to provide access for the physically handicapped. Planning agencies should, however, consider the performance of health care institutions under the other Federal programs and use this information along with findings on all other appropriate criteria to determine whether a certificate of need should be issued. The Secretary has not accepted the suggestions either to place in the regulations the questions and specific data examples which appeared in the preamble to the proposed rules or to eliminate them. The planning agencies are to develop specific criteria which are appropriate to their particular areas based on the general considerations found in Federal regulations. However, the Secretary has decided to reemphasize the responsibility of the planning agencies to develop specific criteria and collect the information needed regarding these access considerations. To provide technical assistance, that part of the preamble to the proposed rules which gave specific illustrations on access questions and data is republished below (with minor changes).

The Secretary suggests that, in order to determine whether all members of the community to be served will have equal access to the service or equipment for which certificate of need approval is sought, planning agencies consider the following kinds of questions in reviewing applications: (1) If the facility (or portion thereof) to which a new service is to be added was constructed with "Hill-Burton" funds, has the applicant complied with its community service assurance? (2) Has the facility demonstrated through population-based planning a relationship between the application and need in the community for the service proposed? Would issuance of the certificate increase access for the medically underserved? Could the same expenditure be made for other services or equipment that would better serve the needs of the community? (3) Does the facility participate in Federally funded third-party reimbursement programs such as Medicare and Medicaid? (4) What portion of the poplulation of the facility's service area has received benefits under these programs? (5) Are the proportions of persons served by the facility who are minorities and handicapped in approximate parity with their proportions in the population of the facility's service area?

The Secretary has not specified the types of data the planning agencies must require from applicants. However, planning agencies must have procedures specifying what data the applicant is required to provide (see § 123.410(a)(4) for procedures regarding information which may be required of applicants). These data might include (1) the composition of the population of the applicant's actual or potential service area by race, ethnic origin and handicap; (2) estimates of high risk health indicators in the population of the applicant's service area; (3) current patient utilization data (inpatient, outpatient, and emergency room) by race, ethnic origin, handicap, Zip code and method of payment; (4) the number and percent of physicians with admitting privileges who admit patients receiving Federal and State assistance for health care; and (5) projected utilization data by race, ethnic origin, and handicap. Additionally, a State Agency might require that the applicant provide an impact analysis statement showing the anticipated effect of the proposed facility, equipment, or service on access to health care for medically underserved persons, indicating how approval of the application will reduce access barriers and the extent to which the approved facility, service, or equipment will be accessible to the medically underserved. State Agencies may wish to identify different or additional data to be required of the applicant.

Several commenters noted that a health care facility is prohibited by law from collecting some of the information that will be needed to answer the considerations under § 123.412(a)(6). The Secretary emphasizes that these regulations do not require the collection of any specific data, so that there is no problem of planning agencies complying with any such prohibitions. Whenever not prohibited by law, planning agencies should request the data required to make their specific findings, to the extent that they are not available from secondary sources.

Another commenter suggested that the criteria based on § 123.412(a)(6) be applied only when the planning agencies have the necessary data. The Secretary thinks it inappropriate to condition the use of criteria, but encourages planning agencies to base their findings on the best information available.

Commenters stated that the statute at section 1527(a)(2) does not allow planning agencies to consider the accessibility of an institution as a whole when an application is only for a specific service, or group of services. The Secretary has concluded that such a consideration is permissible under section 1527(a)(2) of the Act. That section provides that in revising an application for a certificate of need, a State Agency may consider only certain criteria, including those directly related to criteria prescribed by section 1532(c) of the Act and to criteria prescribed by regulations of the Secretary before the date of the enactment of the 1979 Amendments. Consideration of an applicant's policy toward the medically underserved is directly related to section 1532(c)(6)(E) of the Act as well as to regulations published by the Secretary on April 2, 1979 (see §§ 122.308(a)(3) & (13) and 123.409(a)(3) & (13) (44 FR 19319–19326)). The accessibility of the facility as a whole may certainly be relevant to an agency's determination of whether a specific service within the facility is accessible.

Some commenters asked what information a health care institution would be required to provide to show that the facility is accessible. As with all information required on applications, this information requirement is to be developed and published by planning agencies after appropriate public comment.

Several commenters suggested that the regulations specifically address the elderly as a group whose unique needs should be considered in certificate of need reviews. The Secretary agrees and has included "the elderly" in § 123.412(a)(5)(i) and (ii) to ensure that their needs are specifically considered.

A few commenters requested that a provision be inserted in § 123.412(a)(5)(ii) requiring planning agencies to consider the effect of a relocation, reduction or elimination of a service or facility on the employees of the institution. The Secretary has determined that such a provision is not appropriate in these considerations because this factor is not directly related to the considerations listed at section 1532(c) of the Act. However, the Secretary notes that planning agencies may consider this factor in the development of their health systems plans and State health plans. To the extent that this factor is treated within a plan, it may be considered in reviews, because the plans themselves are required to be considered in performing reviews.

Many respondents were concerned that the listing of the considerations in § 123.412(a)(6)(i) through (iv) serves to limit access considerations to these alone. Although the regulations only require the development of criteria based on the considerations listed at § 123.412(a)(6)(i) through (iv), the Secretary urges that planning agencies consider any other barriers to access that exist in their planning areas. As other commenters pointed out, this reflects Congressional intent (see H.R. Rep. No. 190, 96th Cong., 1st Sess., p. 73 (1979)). Accordingly, the Secretary has added an explanatory note listing examples of other types of access barriers which planning agencies may wish to consider.

Several commenters asked how the "applicant's service area" would be defined. This term, mentioned at § 123.412(a)(6)(i), may not be the same as the health service area. The determination of the applicant's service area is for the planning agencies to make, and the Secretary suggests that agencies use the applicant's data as appropriate. Planning agencies should define a service area according to the type of service proposed and the location of the persons who use or are expected to use that service.

A few commenters stated that the percentage of the population in the applicant's service area which is medically underserved might, for reasons unrelated to access barriers, not be the same as the percentage of the medically underserved who use or will use the proposed service (§ 123.412(a)(6)(i)). The Secretary agrees, but notes that the two figures do give some approximation of the extent to which the applicant is meeting and is likely to meet the needs of the medically underserved. Also, the comparison is but one factor to be considered, along with the others in § 123.412(a)(6), in estimating the contribution of the proposed service in meeting the needs of the medically underserved.

Another commenter suggested that the consideration at § 123.412(a)(6)(i) be changed from "the extent to which the medically underserved populations will use the proposed services if approved" to "the extent to which medically underserved populations are expected to use the proposed services if approved." The Secretary has adopted this change, since this factor must necessarily be considered prospectively.

Several commenters replied that by including the parenthetical phrase, "(including unresolved civil rights access complaints against the applicant)" at § 123.412(a)(6)(ii), the Secretary directly involves the planning agencies in proceedings which should be decided by a Federal agency or in a court of law. Moreover, commenters stated that if a planning agency considers the unresolved civil rights access complaints, it would be denying the applicant due process. The Secretary emphasizes that it is necessary for the planning agencies to use all the information available to them with respect to access issues. The existence of a civil rights access complaint may be a relevant factor for the agencies to consider in this regard. Therefore, the Secretary has retained the parenthetical reference. The Department is not suggesting that the planning agencies become enforcers of the civil rights laws or that they should resolve such complaints themselves; rather, the agencies should use this information only to the extent that it is helpful in making their findings regarding access.

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Because the use of the word "unresolved" may have been misleading in this regard, the Department has deleted the word.

With regard to § 123.412(a)(6)(iii), several respondents argued that few hospitals have the ability to control the admitting practices of physicians with privileges in their facilities. The Secretary agrees that the purpose of this subsection is not to focus planning efforts on physician practices in the area, but rather to ensure that certificate of need decisions are based upon the degree to which the applicant serves patients with limited or no ability to pay for care. The Secretary has revised the consideration accordingly, adding the term "medically indigent". The Secretary wishes to emphasize the importance of this provision. Although its focus has been changed, the provision has been rewritten to emphasize that hospitals bear an important responsibility to help ensure that needy persons in their service areas have access to health care.

Many commenters questioned the meaning of the provision regarding alternative admissions at § 123.412(a)(6)(iv). The Secretary has revised the wording of this provision in order to clarify its meaning. Under this provision planning agencies should consider the extent to which the applicant's facility is accessible to inpatients as well as to outpatients. In so doing, planning agencies should consider whether patients are admitted only by a personal physician or whether the applicant provides other ways by which a patient in need of inpatient treatment can be admitted (for example, by any physician who is treating patients at one of the hospital's outpatient clinics).

§ 123.412(a)(8) Availability of resources.

Two commenters stated that the consideration at § 123.412(a)(8) would give the planning agencies the authority to tell the applicant how best to use its resources. The Secretary notes that the Act at section 1532(c)(6) (A) and (D) requires planning agencies to consider "* * *the availability of resources* * *" and "* * *the availability of alternative uses of such resources* * *", and that these are not limited to resources under the control of the applicant. They may include, for example, personnel resources which would be employed by the applicant if a project were to be approved, but by another institution if it were not.

One commenter pointed out that there are almost always alternative uses available for a given resource, but that these uses may not be needed more than the proposed use. Section 123.412(a)(8) was intended to encourage agencies to consider whether the resources at issue should more appropriately be devoted to other, more important uses. Accordingly, the Secretary has changed this consideration from "the availability of alternative uses of these resources for the provision of other health services" to "the need for alternative uses of these resources as identified by the applicable health systems plan, annual implementation plan or State health plan."

§ 123.412(a)(10) and (11) Training programs.

The Secretary points out that projects which meet health training needs should not be approved solely on the basis of that factor, but on the application of the other criteria as well. If an area needs a particular health service, it may be appropriate that the service also serve as a medical care, medical education and medical research resource. All services need not support medical education, but enough services should be available for the training of health professionals so that duplicative services are not required to be developed primarily for educational purposes. (See H.R. Rep. No. 190, 96th. cong., 1st. Sess., p. 73 (1979).)

§ 123.412(a)(12) Special needs of providers serving more than one health service areas.

The Secretary received one comment requesting that specific reference be made in regulations to sectarian homes because they frequently serve populations drawn from a wider geographic area than that of the health service area in which they are located. The Secretary notes that congress intended that the consideration at § 123.412(a)(12) be applied to those centers of medical excellence which receive a substantial portion of their patients from beyond health service areas adjacent to the area in which the health care facility is located. (See S. Rep. No. 1285, 93rd Cong., 2nd Sess., p. 48–49 (1974).) This consideration would also apply to any sectarian home which provides health care in a similar manner. The Secretary does not believe it is necessary to list additional examples in the regulations. The criteria developed by the planning agencies should address the effect the specific application will have within the health service area, in adjacent health service areas, and also beyond these borders. The criteria are to be applied with all other applicable criteria developed from the general considerations listed at § 123.412(a).

§ 123.412(a)(13) Special needs and circumstances of HMOs.

Several commenters questioned the specific wording of this provision. The Secretary has not added any additional considerations to those in the regulations of April 2, 1979. (For a detailed explanation see the **Federal Register**, 44 FR 19311–19313.) The purpose of these considerations is to ensure that HMOs are not hampered in seeking to fulfill their obligations to provide needed services to their members, and to prevent the duplication of unneeded facilities and services by HMOs when these are available through coordination or contract with non-HMO providers.

Two commenters requested that the statement at § 123.409(c) of the April 2, 1979, regulations be added to these regulations. This statement allowed a State Agency to base its review of HMOs on criteria which considered factors other than those set forth under regulations at § 123.412(a)(13) if the Secretary approves the request. The Secretary has not accepted this suggestion, since the Act at section 1527(b)(5) states that a certificate of need must be approved if the two criteria (incorporated into the regulations at § 123.412(a)(13)) are met. Thus, no purpose would be served in having the agencies consider additional factors.

§ 123.412(a)(14) Behavioral and biomedical research projects.

The Secretary points out that this consideration would apply to many of those institutions which receive consideration under § 123.412(a)(12) (special needs of entities serving more than one health service area). When planning agencies develop criteria based on this consideration, they should concentrate on whether the costs and charges to patients of the health care facility will be affected by these research activities, the special advantages that are present, and whether a national need will be met. (See also this Appendix at § 123.401, *Definitions* and § 123.404, *Scope of coverage* for further information on certificate of need review of research activities.)

§ 123.412(a)(15) Construction projects.

One commenter suggested that the term "methods" as it appears in this provision be replaced by the term "design", since the former term is not appropriate when considering the entire project. The Secretary has not accepted this suggestion, since methods of construction includes designs. Furthermore, Congress intended that planning agencies consider the effect of construction projects on the costs and charges to the public of providing health services by other persons. (See S. Rep. No. 309, 96th. Cong., 1st. Sess., p. 79 (1979).)

§ 123.412(a)(16) Energy conservation.

One commenter suggested that this factor be strengthened to require that planning agencies give special consideration to applications which proposed energy conservation measures. The Secretary has not accepted this suggestion. Energy conservation is but one factor in determining whether a particular application should be approved. Planning agencies should consider, in developing their criteria, the National Health Priority at section 1502(a)(11) of the Act, which calls for the promotion of an effective energy conservation and fuel efficiency program for health service institutions.

§ 123.412(a)(17) and (18) Competition.

The Secretary notes that initial guidance on competition will be in the form of a monograph to include the views of various experts in the area of competition. Its purpose will be to provide assistance to planning agencies on how to incorporate factors regarding competition into plan development and project review activities. The Department will develop technical assistance materials relating how agencies have effectively identified and promoted the concept of competition in their plans.

A few commenters suggested that these two general considerations not be used until the Secretary gives further guidance on how planning agencies are to apply the factors alluded to in regulations. The Secretary has no authority to delay the implementation of these provisions. For further guidance the planning agencies may wish to contact the appropriate Center for Health Planning.

Respondents also requested further guidance on the roles of planning agencies in applying these general considerations to particular proposals. The Secretary emphasizes that it is through the development of plans that planning agencies should determine whether a specific health service responds to competitive forces, not through individual determinations as applications are being reviewed. As stated in the proposed rules, the Secretary believes that the effect of competitive forces may vary from location to location and from service to service, and that analyzing these effects may be best accomplished in the planning process at the State or local level. Congress has stated that market forces do not or will not appropriately allocate supply for inpatient health services. (See section 1502(b) of the Act and S. Rep., No. 309, 96 Cong., 1st. Sess., p. 58 (1979).)

One commenter stated that competition is inconsistent with the health planning program's attempts to promote other goals such as cost containment or access to health care. The Secretary disagrees with this assessment and points out that where market forces operate properly, price competition can make a significant contribution to containing costs.

One commenter suggested that § 123.412(a)(17) should specifically recognize psychiatric hospitals as an area in which competitive forces always exist and exempt psychiatric hospitals from the certificate of need review process. The Secretary rejects this suggestion. No institution or set of institutions which are subject to the certificate of need review program can be exempt from the review process. The effect of competition is a factor to be included in arriving at certificate of need decisions, not in exempting certain activities from review.

Some commenters stated that the Secretary should promote consumer awareness of the prices charged for the same type of health care service in a given area. Although this matter is not within the scope of these regulations, the Secretary agrees that planning agencies should play an important role in making the public aware of prices for services in their community. Moreover, the Act requires that health systems agencies, in consultation with the State Agencies, collect information on the rates charged for each of twenty-five most frequently used hospital services in the State and make this information available to the public (section 1513(h)).

§ 123.412(a)(19) Efficiency and appropriateness of existing services and facilities.

Commenters argued that the information required by this consideration is not generally available and in most cases cannot be supplied by the applicant. The Secretary notes that it may not be necessary for the applicant to provide information to planning agencies on whether other providers in the area which offer a service or operate a facility similar to the proposed service or facility do so in an efficient or appropriate manner. Planning agencies have other means to make this determination, such as relying on the results of a suitable, previously performed appropriateness review. Other commenters said that such use of an appropriateness review constitutes the development of an illegal sanction under appropriateness review. The Secretary does not believe that the use in a certificate of need review of a finding from an earlier appropriateness review constitutes a sanction under the latter. Moreover, this consideration by itself is not the sole determinant of a certificate of need review. It is to be applied with all other appropriate criteria.

One commenter suggested that this consideration be deleted because a project should be reviewed on its own merits. The Secretary agrees that the evaluation of a project should include review of a project's own merits. However, determination of the need within the community for the project requires that planning agencies look beyond the application itself to the relationship between the application and the other health care services within a given health service area and that they examine all of these in relation to the need of the population being served.

§ 123.412(a)(20) Quality of care.

Some commenters stated that planning agencies are not qualified to make a determination about the quality of care provided by a specific facility in the past. A planning agency need not become expert in medical care to assess data indicative of quality of care. While some determinations regarding quality of care may be difficult to make, and some data may not be available, there are certain actions agencies may take to assist them in making their determinations. Health systems agencies are required to coordinate their activities, including the sharing of information and data with other agencies, such as the Professional Standards Review Organizations (PSROs) (section 1513(d)(1) of the Act). PSROs routinely obtain and analyze data related to quality of care, then compare it to industry norms and the average values for the health service area.

In like manner, each State Agency can collect information from providers doing business in the State as well as other agencies of the State government. Comparison of data can indicate differences in quality of care in specific institutions as related to average values (section 1522(b)(7) of the Act).

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§ 123.412(a)(21) Osteopathic or allopathic facility applications.

Many commenters requested that the explanation which conveyed Congressional intent for this general consideration as it appeared in the annotated statute, published as an Appendix to the **Federal Register** Notice of February 22, 1980 (45 FR 12182–3), be included in either final certificate of need regulations or its preamble. The Secretary has inserted this explanation as an explanatory note following § 123.412(a)(21).

The Secretary has decided not to accept the suggestion that the phrase "notwithstanding section 1532(c) (of the Act)" be inserted at the beginning of this consideration, although this phrase appears in section 1527(f) of the Act. This phrase could be interpreted as prohibiting planning agencies from applying the criteria they have developed to determine need. Congress did not intend to exempt all osteopathic and allopathic facilities from the general considerations at section 1532(c) of the Act. To avoid this absurd result, the Department has properly characterized this as one of the considerations on which agencies are to base their criteria.

One commenter requested that the Secretary require planning agencies to consider the need for allopathic and osteopathic facilities separately. The Secretary has rejected this suggestion. Congress did not intend by placing this section in the statute to require that the planning agencies look at each of these types of medical care as separate systems. Rather, it sought to ensure that the planning program not discriminate against osteopathic facilities and practitioners, and did so by requiring that planning agencies, where appropriate, consider the need for and availability of osteopathic facilities and services. (See H.R. Rep. No. 190, 96th Cong., 1st. Sess., p. 82 (1979).)

§§ 122.311 and 123.413 Required findings on access.

Some commenters praised, while others criticized, the proposal that planning agencies be required, for certain approved applications, to make written findings on access. Some suggested that the Secretary extend the requirement to all applications, not only those that are approved. These commenters also urged that in every case the written findings take into account the current accessibility of the facility as a whole and that the three exceptions to the requirement for written findings be eliminated.

Others questioned the authority for requiring written findings on access in any case and expressed concern over placing the planning agencies in the role of civil rights compliance bodies. These commenters said that the written findings required under §§ 122.311 and 123.413 duplicated the findings required under § 123.410(a)(6) and that the emphasis that the findings place on access will reduce the importance of the other criteria. Other commenters, however, stated that the regulations should require disapproval of any applications which do not meet the access criteria, or require that affirmative action steps be imposed in these instances.

After careful consideration of the comments, the Secretary has deleted the term "where appropriate" from the requirement that the State Agency's written findings must take into account the current accessibility of the facility as a whole. Thus, a State Agency must take into account the accessibility of the facility as a whole for each project as to which it is required to make a written finding under § 123.413(a). There are several reasons for this change. The Secretary notes that the exception to the requirement for written access findings at § 123.413(a)(2) for projects not directly related to the provision of health services or to beds or major medical equipment means that a State Agency would only have to consider the "accessibility of the facility as a whole" when the project bears a direct relation to the delivery of health care. In those cases the accessibility of the facility as a whole bears, on the accessibility of the proposal under review. When access findings are required, the relevance of the access to the facility as a whole may vary from proposal to proposal. The planning agencies are required to take into account the accessibility of the facility as a whole to the extent that the accessibility of the facility as a whole bears on the accessibility of the particular project under review.

The Secretary does not agree with those commenters who contended that access findings on the facility as a whole would be inappropriate and should be prohibited. Rather, these findings are expected to be informative to the community using the services as well as to the applicant, and planning agencies are encouraged to make them whenever appropriate.

The Secretary has decided not to delete the exceptions under § 123.413(a). These involve projects for which approvals are required under § 123.407(a), projects not directly related to the provision of health services, beds or major medical equipment, and projects proposed by or on behalf of an HMO or a health care facility which is controlled, directly or indirectly, by an HMO. The statute (at section 1527 (b)(5)) specifically limits the criteria which may be applied to HMO applications. These considerations for criteria, set forth in § 123.412(a)(13) (i) and (ii), do not include the access considerations. Accordingly, since access criteria may not be applied to HMO applications, there is no basis for requiring written findings. Additionally, those projects which do not affect patient care, or are to resolve life safety code violations, are not directly related to access. Therefore, for these projects, the provision for written findings at § 123.410(a)(6) is sufficient.

Many commenters stated that the requirement for written findings would be burdensome or would duplicate the requirement at § 123.410(a)(6). The new provision at § 123.413 is not expected to duplicate other requirements in the statute and regulations. Rather, the written access findings are expected to be an important element of the general findings required at § 123.410(a)(6). The Secretary disagrees that any requirement for written findings would be burdensome. Written findings which are based on the criteria are an essential part of the planning process, rather than a burdensome diversion.

The Secretary is not requiring that written findings be provided for those projects which are disapproved. Section 123.410(a)(6) requires written findings on every agency decision or recommendation and where the access criteria are an important consideration in the disapproval, these findings would be required to state the extent to which the access criteria are not met.

The Secretary notes the Congress' desire not to establish the planning agencies in the role of civil rights enforcement bodies (see H.R. Rep. No. 190, 96th Cong., 1st Sess., p. 73 (1979)). These regulations do emphasize the role of the planning agencies in ensuring equal access by requiring that there are specific written findings whenever appropriate. However, the regulations do not require that the planning agencies disapprove or recommend disapproval of any application which does not meet the access criteria. The access criteria are important, but the Secretary reaffirms the Department's position that decisions are to be based on the application of all relevant criteria. In summary, the Secretary believes that these required findings are consistent with the Department's and Congress' concern with access. The regulations stress the importance of access but do not diminish the planning agencies' responsibility for considering a variety of factors in arriving at a decision.

While these regulations do not require State Agencies to impose conditions on certificates of need, the Secretary believes that the imposition of conditions on certificates of need can provide an important opportunity for planning agencies to improve accessibility for medically underserved populations and thereby further the national priority stated at section 1502(a)(1) of the Act. Approvals subject to such conditions permit completion of needed projects, while ensuring that these projects, if undertaken, will be accessible to underserved groups.

The Secretary notes that planning agencies, as recipients of Federal financial assistance, are subject to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. The Department has issued regulations and guidelines which provide guidance to recipients of Federal financial assistance in complying with these laws. The Department is reviewing the relationship between these statutes and regulations and the responsibilities of planning agencies with regard to project approvals. Further guidance will be issued concerning the obligations of planning agencies under these civil rights laws.

The Secretary is retaining in the regulations the provision allowing agencies to impose the condition that the applicant take affirmative steps to meet those criteria. This provision gives planning agencies no more authority than they have under the Act. In fact, if State law prohibits attaching any condition to a certificate of need, then the agencies will not be able to impose any condition. Accordingly, affirmative action plans are discretionary, and States may use them when their use serves the needs of the community best.

The regulations do not specify in any further detail the form of an affirmative action plan. If the planning agencies elect to prepare an affirmative action plan or have the applicant do so, the Secretary believes that the nature of the plan is best left to the agencies themselves, within the broad guidance that the plan be a schedule of the steps the applicant is to take to meet the access criteria.

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Tuesday
October 21, 1980

Part IV

Office of Personnel Management

Executive Personnel Financial Disclosure Requirements; Employees Responsibilities and Conduct; Final Rule

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 734 and 735

Executive Personnel Financial Disclosure Requirements; Employees Responsibilities and Conduct

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: Section 203(g) of the Ethics in Government Act of 1978, as amended (the "Act"), directs the Office of Government Ethics ("OGE") to develop and make available financial disclosure forms for reporting the information required of top-ranking personnel in the executive branch under Title II of the Act. The Office of Personnel Management is publishing final regulations establishing procedures for the filing, review and public availability of the reports filed by such officers and employees.

EFFECTIVE DATE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Norman B. Smith or Jane S. Ley at (202) 632-7642.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management ("OPM") is publishing final regulations to state in greater detail than the Act the information which must be contained in the financial disclosure report (SF 278). Typical situations are described by examples, where appropriate and practicable. The regulations cover, among other subjects, the persons required to file reports; the availability of the reports to the public; potential civil liability in the event the reports are used commercially, or for establishing credit rating or, directly or indirectly, in the solicitation of money for any political, charitable or other purpose; the requirements for qualifying a "blind" trust under the Act; limited waiver procedures; and remedial action which can be taken by agencies where the financial reports disclose conflicts of interest, actual or apparent. Proposed regulations were published in the **Federal Register** on March 25, 1980 (45 FR 19502-19518). Editorial revisions and other changes have been made in order to simplify and clarify the regulations.

Comments Received:

The notice of proposed rulemaking provided a 60-day period for public comment. OPM received comments from 27 agencies, law firms, and other organizations including labor organizations and public interest groups.

Several comments questioned various aspects of the statutory requirements of Title II of the Act. However, these regulations merely implement the financial disclosure scheme of the Act and cannot alter its fundamental principles.

Most of the comments offered specific recommendations for clarifying or modifying specific provisions of the regulations as proposed. These recommendations were analyzed for compatibility with several goals for the final regulations including: the fulfillment of the legislative intent embodied in Title II; the development of an administrative system for disclosure report preparation, processing, and review which is efficient and effective; the ability to retain and recruit Federal executives who are both capable and forthright; and the furtherance of an awareness of conflict of interest and other standards of conduct issues among members of the Executive branch.

Among the significant comments and revisions, the following may be noted:

In § 734.105(h) the definition of income has been clarified. The net distributive share of partnership income must be reported.

Regarding exceptions from the general requirement that advice-and-consent nominees file public financial disclosure reports, the exception for foreign service officers, § 734.201(c)(3), has been expanded to include foreign service officers outside of the State Department. This is appropriate in view of the manner in which their appointments are processed.

The procedural rules on the exclusion of certain Schedule C employees from public financial disclosure requirements has been clarified. Section 734.203(c)(1) requires the requesting agency to make an annual filing.

A new *Example (3)* has been added to § 734.301(a) (on reporting of income) to demonstrate that income in-kind and certain discounts are required to be treated as reportable income.

There were several inquiries on the treatment under § 734.301(b) (on reporting of purchases, sales and exchanges) of transactions essentially treated by individuals as equivalent to withdrawals and deposits in "personal savings accounts." The regulations have been amplified to provide that these transactions with respect to Treasury bills, money market mutual funds, and certificates of deposit issued by banking institutions are not deemed purchases, sales, or exchanges.

Example (1) of § 734.301(d) (on gifts and reimbursements) has been revised to correct certain technical deficiencies.

Several comments focused on the rules contained in § 734.301(d) (on reporting interests in property). Proposed examples in that provision were questioned on the grounds that it did not seem appropriate to require an entire collection of rare objects to be publicly disclosed on the basis of recurrent sales from that collection. However, section 202(a)(3) of the Act requires reporting of interests "in a trade or business, or for investment or the production of income." The test is not that there be primarily a commercial purpose for disclosure to be required, but that there is a nexus with the market. The fact that recurrent sales have occurred demonstrates that pecuniary factors are an aspect of the holdings to the individual. The sales trigger of the rule as demonstrated in revised *Example (3)* would not be activated by a collector who makes tax-free exchanges for like-kind objects, as such transactions are not considered sales.

Section 734.301(e)(1) (on reporting of liabilities) was modified to clarify that the greatest amount owed to a creditor during a reporting period is to be disclosed.

Pursuant to section 207(b) of the Act, a rule has been adopted in § 734.303(b)(3)(ii) to make the reporting of gifts received by dependent children co-extensive with the reporting otherwise required for gifts received by spouses.

In response to several comments, §§ 734.403(b)(6) and 734.404(c)(6) (on communications between interested parties and trustees) have been revised to conform to the formulation of section 202(f)(3)(c)(vi) of the Act. Accordingly, requests for distributions may be made orally. However, the interested parties may not specify whether any such distribution shall be made in cash or in kind.

The question of what should constitute a well-diversified portfolio of readily marketable securities for qualified diversified trusts was raised in connection with the formulation which appears in § 734.404(b). OPM feels that the current definition best reflects the Congressional intent and the portfolio distributions of typical appointees.

The general rules for qualified trusts have been clarified to specifically provide that the terms of such a trust are normally irrevocable. The terms may not be amended, except with prior written approval (§ 734.405(a)). A further revision clarifies that a trustee may not acquire any property from an interested party without the prior written approval of the Director of The Office of Govenment Ethics (§ 734.405(d)(2)). Accordingly, in addition to approval of a qualified trust's initial portfolio, the Director must give prior approval of any subsequent additions to the portfolio by interested parties.

In § 734.406(b), the list of persons eligible to be the independent trustee of a qualified trust has been expanded to include an investment adviser who demonstrates to the satisfaction of the Director of the Office of Government Ethics general involvement in his or her role as such an adviser in the management or control of trusts.

The effective date rule for the qualified trust provisions (§ 734.408), was modified to provide that although such provisions would generally apply to trusts qualified after October 26, 1978, these trusts could be exempted by the Director of the Office of Government Ethics from specific provisions to avoid impracticality or undue hardship.

The rules on the limitations on outside earned income of advice-and-consent appointees have been revised by amending the definition in § 734.501(b). The modifications include specific exemption of amounts received during a period when not employed by the Federal government. This resolves computation difficulties arising when there have been periods of both private and Federal employment during a calendar year.

Several comments raised objections about the requirement that law enforcement agents and other officials must file a publicly available application in order to inspect a financial disclosure report (see *Example (2)* of § 734.603(e)). However, the only exception to this requirement which was adopted relates to Special Agents of the Federal Bureau of Investigation who are conducting a criminal inquiry into possible conflict of interest violations (see § 734.603(c)).

In response to several comments on the expedited procedure for review of the public financial disclosure reports of advice-and-consent Presidential appointees (§ 734.604(c)), a new rule was added to paragraph (c)(4), regarding failure to complete the required processing within the established time limits. The rule allows the Director of the Office of Government Ethics to modify the procedure in the case of a particular department or agency upon a determination that the modification is necessary and appropriate for a class of nominees.

It should be noted that guidance as to the requirements for financial disclosure report preparation by reporting individuals is contained in the instructions which accompany the report form (SF 276).

The Office of Personnel Management has determined that this is a significant regulation for the purposes of Executive Order 12044.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, the Office of Personnel Management is amending Title 5, Code of Federal Regulations, as follows:

(1) A new Part 734 is added, to read as follows:

PART 734—EXECUTIVE PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

Subpart A—General Provisions

Sec.
734.101 Authority.
734.102 Purpose.
734.103 Agency regulations.
734.104 Policies.
734.105 Definitions.

Subpart B—Persons Required To File

734.201 General requirements for filing.
734.202 Reporting individual; defined.
734.203 Certain individuals excluded from reporting requirements.
734.204 Employment of sixty days or less.
734.205 Special waiver of reporting requirements.

Subpart C—Contents of Reports

734.301 Reports of incumbents.
734.302 Reports of other reporting individuals.
734.303 Special rules.
734.304 Property categories.

Subpart D—Trusts

734.401 Qualified trusts, general considerations.
734.402 Special rules in the case of certain trusts.
734.403 Qualified blind trusts.
734.404 Qualified diversified trusts.
734.405 Certification of trusts proposed for qualification; other matters.
734.406 Independent trustee; defined.
734.407 Special filing requirements in the case of qualified trusts.
734.408 Effective date.

Subpart E—Special Provisions

734.501 Outside earned income.
734.502 Waivers.

Subpart F—Procedure

734.601 Report forms.
734.602 Filing of reports.
734.603 Custody of and public access to reports.
734.604 Review of reports.
734.605 Advice and opinions.

Subpart G—Penalties and Remedial Action

734.701 Failure to file or falsifying reports.
734.702 Certain actions in the case of qualified trusts.
734.703 Misuse of reports.
Appendix A—Certificate of Independence.
Appendix B—Certificate of Compliance.

Authority: Titles II and IV of Pub. L. 95-521 (October 26, 1978), as amended by Pub. L. 96-19 (June 13, 1979).

Subpart A—General Provisions

§ 734.101 Authority.

The regulations in this part are issued pursuant to the authority of Titles II and IV of the Ethics in Government Act of 1978, ("the Act") (Pub. L. 95-521, as amended).

§ 734.102 Purpose.

These regulations supplement and implement Title II of the Act, set forth more specifically certain procedures provided in that title and furnish examples, where appropriate.

§ 734.103 Agency regulations.

Each agency may, subject to the prior approval of the Office of Government Ethics, issue regulations implementing this part. These regulations—

(a) Shall be consistent with the Act and with this part, and

(b) Shall impose no additional reporting requirements on individuals subject to the Act, except as may be specifically authorized by statute or by approval of the Office of Government Ethics. Requests for this approval shall be submitted in writing to the Office, setting forth the need for any additional reporting requirements by the agency involved.

§ 734.104 Policies.

(a)(1) Title II of the Ethics in Government Act of 1978 requires high-level Federal executives to disclose their personal financial interests and thereby demonstrate that they are able to carry out their duties without compromising the public trust. Public confidence in Government goes hand in hand with an open Government. Title II extends the cleansing principle of "Sunshine" to consideration of conflicts of interest.

(2) Title II, as amplified and implemented by these regulations of this Part 734, will serve to deter conflicts of interest and to identify potential conflicts of interest in the case of newcomers to Government service by providing for a systematic review of the financial holdings of both current and prospective officers and employees.

(3) Statements of income, assets and liabilities must be reported by the President and Vice President of the United States, presidential appointees, those in the Senior Executive Service, those in confidential or policymaking positions (Schedule C), and civil service employees in grades GS-16 and above (and the equivalent), including comparable officers in the uniformed and foreign services. These reports are available to the public. If anyone uses them for commercial or credit rating reasons or in connection with the

solicitation of money for any political, charitable or similar purpose, the Attorney General may institute a civil action against such a person which may result in a penalty not to exceed $5,000.

(4) The reports are not net worth statements. Only assets held as investments and certain other items must be recorded—not items for personal use, such as a residence or jewelry not held for sale. In most instances, specific values are not called for but rather items may be reported by six categories of value ranging from "$1,001 to $5,000" to "greater than $250,000" as the highest category.

(5) The reports do not cover certain contributions under the Federal Election Campaign Act or certain gifts under the Foreign Gifts Act; see § 734.301(c).

(6) Nothing in the Act or this part requiring reporting of information or the filing of any report shall be deemed to authorize the receipt of income, gifts, or reimbursements, the holding of assets, liabilities, or positions, or involvement in transactions that are prohibited by law, Executive order or regulation.

(7) Personnel below the grade of GS–16 continue to remain subject to the financial reporting requirements contained in the Office of Personnel Management's regulations contained in Part 735 of this title. These statements, however, are confidential and are not available for public inspection.

(b) The provisions of Title II of the Act and this part requiring the reporting of information shall supersede any general requirement relating to individuals specified by § 734.202, under any other provision of law or regulation on the reporting of information required for purposes of preventing conflicts of interest or apparent conflicts of interest. Such provisions of Title II and this part shall not supersede the requirements of 5 U.S.C. 7342 (relating to the Foreign Gifts Act).

§ 734.105 Definitions.

For purposes of this part:

(a) *Act.* The term "Act" means the Ethics in Government Act of 1978 (Pub. L. 95–521, as amended).

(b) *Agency.* The term "agency" means any executive department, military department, Government corporation or independent establishment or agency.

(c) *Dependent child.* The term "dependent child" means, when used with respect to any reporting individual, a son, daughter, stepson, or stepdaughter who—

(1) Is unmarried and under age 21 and is living in the household of the reporting individual, or

(2) Is a dependent of the reporting individual within the meaning of section 152 of the Internal Revenue Code of 1954.

(d) *Designated agency ethics official.* The term "designated agency ethics official" means an officer or employee who is designated by the head of the agency to administer the provisions of Title II of the Act and this part within an agency, or the delegate of such an official.

(e) *Executive branch.* The term "executive branch" includes each executive department, military department, Government corporation and independent establishment and any other entity or administrative unit in the executive branch unless such agency, entity or unit is specifically included in the coverage of Title I (relating to the legislative branch) or Title III (relating to the judicial branch) of the Act.

(f) *Gift.* The term "gift" means a payment, advance, forbearance, rendering, or deposit of money, or anything of value, unless consideration of equal or greater value is received by the donor, but does not include—

(1) Bequests and other forms of inheritance,

(2) Suitable mementos of a function honoring the reporting individual,

(3) Food, lodging, transportation, and entertainment provided by a foreign government within a foreign country or by the United States Government,

(4) Food and beverages consumed at banquets, receptions, or similar events, or

(5) Communications to the offices of a reporting individual including subscriptions to newspapers and periodicals.

(g) *Honorario.* The term "honoraria" has the meaning given such term for purposes of the Federal Election Campaign Act of 1971. An honorarium is defined in the regulations of the Federal Election Commission as a payment of money or anything of value received by an officer or employee of the Federal Government, if it is accepted as consideration or an appearance, speech, or article. The term does not include payment for or provision of actual travel and subsistence, including transportation, accommodations, and meals of an officer or employee and spouse or an aide, and does not include amounts paid or incurred for any agent's fees or commissions. See also the definitions of "Gift" in paragraph (f) and "Reimbursement" in paragraph (k) of this section.

(h) *Income.* The term "income" means all income from whatever source derived, including but not limited to the following items: Compensation for services, including fees, commissions, and similar items; gross income derived from business and net income if the individual elects to include it; gains derived from dealings in property including capital gains; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; net distributive share of partnership income; and income from an interest in an estate or trust. The term includes items, whether or not taxable for Federal income tax purposes, such as interest on municipal bonds. Generally, income means "gross income" as determined in conformity with the principles of 26 CFR 1.61–1 through 1.61–15.

(i) *Personal hospitality of any individual.* The term "personal hospitality of any individual" means hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or the family of such individual or on property or facilities owned by that individual or the family of such individual.

(j) *Personal Residence.* The term "personal residence" means any real property used exclusively as a private dwelling by the reporting individual or his or her spouse, which is not rented for any period during a calendar year. There may be more than one personal residence, and the term may include a vacation home. The term is not limited to domicile.

(k) *Reimbursement.* The term "reimbursement" means any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are—

(1) Provided by the United States Government,

(2) Required to be reported by the reporting individual under 5 U.S.C. 7342 (relating to the Foreign Gifts Act), or

(3) Required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434) (relating to reports of campaign contributions).

(l) *Relative.* The term "relative" means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, halfbrother, halfsister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be deemed to include the fiance or fiancee of the reporting individual.

(m) *Reporting individual.* For the definition of "reporting individual", see § 734.202.

(n) *Reviewing official.* The term "reviewing official" means the designated agency ethics official, the Secretary concerned, the head of the agency, or the Director, Office of Government Ethics, as the case may be.

(o) *Secretary concerned.* The term "Secretary concerned" has the meaning set forth in 10 U.S.C. 101(8) (relating to the Secretaries of the Army, Navy and Air Force, and certain other Secretaries), and, in addition, means—

(1) The Secretary of Commerce, in matters concerning the National Oceanic and Atmospheric Administration, and

(2) The Secretary of Health and Human Services, with respect to matters concerning the Public Health Service.

(p) *Value.* The term "value" means a good faith estimate of the dollar value if the exact value is neither known nor easily obtainable by the reporting individual. In the case of any interest in property, such estimation shall be made in accordance with the principles of § 734.303(a).

Subpart B—Persons Required To File

§ 734.201 General requirements for filing.

(a) *Incumbents.* A reporting individual who, during any calendar year, performs the duties of his or her position or office for a period in excess of 60 days shall file a report containing the information prescribed in Subpart C of this part on or before May 15 of the succeeding year.

(b) *New entrants.* Within 30 days of assuming a position or office described in § 734.202, a reporting individual shall file a report containing the information prescribed in subpart C of this part, unless such individual—

(1) Has left another position referred to in § 734.202 (with respect to which a report under this section has previously been filed) within the 30 days prior to his assumption of such new position, or

(2) Has already filed such a report—

(i) As a nominee for the new position, or

(ii) As a candidate for the position.

Example (1). *Y*, a GS–16 employee of the Treasury Department (who has previously filed reports in accordance with the rules of this section) terminates employment with that Department on January 12, 1980, and begins employment with the Commerce Department on February 10, 1980, in a Senior Executive Service position. *Y* is not a new entrant since she has assumed a position described in § 734.202 within thirty days of leaving another position so described. Accordingly, she need not file a new report with the Commerce Department.

Note.—While *Y* did not have to file a new report with the Commerce Department, that Department should request a copy of the report she had filed with the Treasury Department so that Commerce could determine whether or not there would be any conflicts or potential conflicts in connection with *Y's* new employment.

Example (2): If in *Example (1)*, *Y*, had left a position with the Legislative branch in which she had been compensated at a rate equal to or in excess of GS–16, *Y* would, nevertheless, be a new entrant as her former position would not have been one described in § 734.202. *Y* would have to file a report with the Commerce Department.

(c) *Nominees.* Within five days of the transmittal by the President to the Senate of the nomination of an individual to a position, appointment to which requires the advice and consent of the Senate, the individual shall file a report containing the information prescribed in Subpart C of this part. This requirement shall not apply to any individual who is nominated to a position as:

(1) A judicial officer or employee covered by section 301(b) of the Act,

(2) An officer of the uniformed services, or

(3) A foreign service officer in the State Department (or other department or agency).

See § 734.604(c), relating to expedited procedure in the case of individuals described in the first sentence of this paragraph (c); however, those individuals referred to in paragraph (c)(2) or (c)(3) of this section, shall file their reports in accordance with paragraph (b) of this section.

(d) *Candidates.* (1) Within 30 days of becoming a candidate in a calendar year for nomination or election to the office of President or Vice President, as determined by the Federal Election Commission, or

(2) On or before May 15 of that calendar year,

whichever is later, and on or before May 15 of each successive year an individual continues to be a candidate, he or she, except for an incumbent President or Vice President, shall file a report containing the information prescribed in Subpart C of this part. Notwithstanding this requirement in any calendar year in which an individual continues to be a candidate for any office but all elections for such office relating to such candidacy were held in prior calendar years, the individual need not file a report unless he or she becomes a candidate for another vacancy in that office or another office during that year.

Example (1): The Federal Election Commission determined that *P* became a candidate for President in January of 1979. *P* will be required to file a financial disclosure report on or before May 15, 1979. If *P* had become a candidate on June 1, 1979, she would be required to file a disclosure within 30 days of that date.

Example (2): If *P* withdraws from the race in March of 1980, she will not be required to file an annual disclosure report by May 15, 1980, as she has not continued to be a candidate until that date.

(e) *Termination of employment.* On or before that thirtieth day after termination of employment from a position or office described in § 734.202, a reporting individual shall file a report containing the information prescribed in Subpart C of this part for the period from the end of the calendar year with respect to which a report was last filed pursuant to paragraph (a) of this section to the date on which the individual left such office or position. Notwithstanding the preceding sentence, in a case in which the individual assumes employment in another position or office described in § 734.202 within 30 days of such termination, no report shall be required by the provisions of this paragraph. See *Example (1)* in paragraph (b) of this section.

(f) *Extensions.* The reviewing official may, for good cause shown, grant to any employee or class of employees an extension of up to 45 days. The Director, Office of Government Ethics, for good cause shown, may grant an additional extension of up to 45 days. The employee shall set forth specific reasons for an additional extension which shall be forwarded to the Director, through the reviewing official, who shall also submit his or her comments on the request.

§ 734.202 Reporting individual; defined.

For purposes of this part the term "reporting individual" includes—

(a) The President;

(b) The Vice President;

(c) Each officer or employee in the executive branch, including a special Government employee as defined in 18 U.S.C. 202, whose position is classified at GS–16 or above of the General Schedule prescribed by 5 U.S.C. 5332, or the rate of basic pay for which is fixed, other than under the General Schedule, at a rate equal to or greater than the minimum rate of basic pay fixed for GS–16; each member of a uniformed service whose pay grade is at or in excess of O–7 under 37 U.S.C. 201; and each officer or employee in any other position determined by the Director of the Office of Government Ethics to be of equal classification;

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Example (1): Foreign service officers in the State Department rated as FSO 1 or 2 must file a report since they have a rate of basic pay equal to or greater than the basic rate of pay fixed for GS–16.

(d) Each employee who is an administrative law judge appointed pursuant to 5 U.S.C. 3105;

(e) Any employee not described in paragraph (c) of this section who is in a position in the executive branch which is excepted from the competitive service by reason of being of a confidential or policymaking character;

(f) The Postmaster General, the Deputy Postmaster General, each Governor of the Board of Governors of the United States Postal Service and each officer or employee of the United States Postal Service or Postal Rate Commission whose basic rate of pay is equal to or greater than the minimum rate of basic pay fixed for GS–16; and

(g) The Director of the Office of Government Ethics and each designated agency official.

Notwithstanding the provisions of paragraph (e) of this section, any employee excluded from the reporting requirements of this part by virtue of a determination under § 734.203 shall not be deemed to be a reporting individual. For purposes of § 734.201(e), status as a reporting individual shall continue for a period of 30 days after termination of employment from a position or office to which this section applies.

§ 734.203 Certain individuals excluded from reporting requirements.

(a) *In general.* Any individual or group of individuals described in § 734.202(e) (on positions of a confidential or policymaking character) may be excluded from the reporting requirements of this part in cases in which the Director, Office of Government Ethics, determines, in his or her sole discretion, that such exclusion would not affect adversely the integrity of the Government or the public's confidence in the integrity of the Government.

(b) *Exclusion determinations.* The determination described in paragraph (a) of this section has been made for the following individuals and groups of individuals and, therefore, they may be excluded from the reporting requirements of this part pursuant to the provisions of paragraph (c) of this section:

(1) Individuals in any position classified below GS–16, or the rate of basic pay for which is less than the minimum rate of basic pay fixed for GS–16, who have no role in advising or making policy determinations with respect to agency programs or policies. For example, such individuals may include chauffeurs, private secretaries, stenographers and those who hold positions of similar nature where consistent with the basic criterion set forth in the preceding sentence.

(c) *Procedure.* (1) The exclusion of any individual from reporting requirements pursuant to this section will be effective as of the time the employing agency or other governmental entity files with the Office of Government Ethics a list and description of each position for which exclusion is sought, as well as the identity of its current occupant. Such a list showing any additions or deletions or a statement that there have been no changes must be filed annually with the Office of Government Ethics on or before May 15.

(2) In the event that the Office of Government Ethics finds that one or more positions has been improperly excluded, it will advise the agency or other governmental entity and set a date for the filing of the report.

§ 734.204 Employment of sixty days or less.

(a) *In general.* Any reporting individual who—

(1) As determined by the designated agency ethics official or Secretary concerned, in a case to which the provisions of § 734.201(b) or (e) would otherwise apply, or

(2) As determined by the Director, Office of Government Ethics, in a case to which the provisions of § 734.201(c) (on nominees) would otherwise apply, is not reasonably expected to perform the duties of his or her office or position for more than 60 days in a calendar year, shall not be subject to the reporting requirements of § 734.201(b), (c), or (e), respectively.

(b) *Exception.* Notwithstanding the provisions of paragraph (a) of this section, if the reporting individual performs the duties of his or her office or position for more than 60 days in a calendar year, the report otherwise required by—

(1) Section 734.201(b) or (c) shall be filed within 15 calendar days after the sixty-first day of that performance unless the individual has filed a request for a waiver under § 734.205(b), and

(2) Section 734.201(e) (on termination reports) shall be filed as provided in that paragraph.

§ 734.205 Special waiver of reporting requirements.

(a) *General rule.* In unusual circumstances, the Director, Office of Government Ethics, may grant a request for a waiver of any reporting requirement otherwise applicable under this part for an individual who is reasonably expected to perform, or has performed, the duties of his or her office or position for fewer than 130 days in a calendar year, but only if the Director determines that—

(1) The individual is a special Government employee (as defined in 18 U.S.C. § 202) who performs temporary duties either on a full-time or intermittent basis,

(2) The individual is able to provide services specially needed by the Government,

(3) It is unlikely that the individual's outside employment or financial interests will create a conflict of interest, and

(4) Public financial disclosure by the individual is not necessary in the circumstances.

(b) *Procedure.* (1) The individual must file a request for a waiver with the Office of Government Ethics within 10 days after—

(i) The individual knows that he or she will serve more than 60 days in any calendar year, or

(ii) The expiration of the 60 days, whichever is earlier. The request shall state the reasons the individual believes the conditions of paragraph (a)(1) through (4) of this section are met in the particular case, and the request shall be filed with the report otherwise required by this part. The report shall bear the legend at the top of page 1:

"CONFIDENTIAL: WAIVER REQUEST PENDING PURSUANT TO 5 CFR § 734.205."

(2) The Office of Government Ethics shall seek advice from the agency in which the individual serves as to its views on the justification for the waiver.

(3) In the event the waiver is granted, the report shall not be subject to the public disclosure requirements of § 734.602; however, the waiver request and grant of waiver shall be subject to those requirements. In the event that the waiver is not granted, all such legends shall be removed and the report shall be subject to the public disclosure requirements; however, the waiver request shall not be subject to those requirements.

Subpart C—Contents of Reports

§ 734.301 Reports of incumbents.

Each report filed pursuant to § 734.201(a) shall include a full and complete statement, on the form prescribed by the Office of Government Ethics and in accordance with instructions issued by the Office, on the following:

(a) *Income.*—(1) *In general.* The source and amount or value of—

(i) Income, including type of income, other than that referred to in paragraph (a)(2) of this section and other than that from current employment by the United States Government, and

(ii) Any honoraria, including the date, received during the preceding calendar year which from any source total $100 or more in value.

For special rules on spouses and dependent children, see § 734.303(b).

Example (1): The types of income which should be disclosed do include: (i) Outside earned income,

(ii) Pensions, and

(iii) A partner's net distributive share of partnership income from a commercial venture.

Example (2): An official is asked to speak at a banquet in Washington about his hobby which is unrelated to his public duties. He is given $200 for doing so. Whether or not acceptance of the payment is permitted by the regulations of his agency, the $200 received must be reported as income pursuant to paragraph (a)(1)(ii) of this section, as it is an honorarium (as defined in § 734.105(g)). The value of the meal received at the banquet need not be disclosed. (See § 734.105 (f)(4) and (g)).

Example (3): An official is a participant in a bona fide retirement plan of Coastal Airlines. Pursuant to such plan, the official and his spouse receive passage on some Coastal flights without charge; they receive passage on other flights at a discount fare. The difference between what Coastal charges members of the public generally and what the official and his wife are charged for a particular flight (if charged at all) is deemed income in-kind. Such income in-kind is required to be reported separately under paragraph (a)(1) of this section.

(2) *Certain income.* The source and type of income which consists of dividends, rents, interest, and capital gains from any source, received during the preceding calendar year which exceeds $100 in amount or value, which shall be categorized as to the total amount or value of each item in accordance with the following table:

(i) Not more than $1,000;

(ii) Greater than $1,000 but not more than $2,500;

(iii) Greater than $2,500 but not more than $5,000;

(iv) Greater than $5,000 but not more than $15,000;

(v) Greater than $15,000 but not more than $50,000;

(vi) Greater than $50,000 but not more than $100,000; and

(vii) Greater than $100,000.

Example (1): An official rents out a portion of her residence. She receives rental income of $600 from one individual for four months and $1200 from another individual for the remaining eight months of the year covered by the report. She must identify the property, and indicate the category of the amount of rent received pursuant to paragraph (a)(2) of this section.

Example (2): An official has three savings accounts with Bank A. One is in his name and earned $85 in interest. One is in a joint account with his wife and earned $120 in interest. One is in his name and his dependent daughter's name and earned $35 in interest. The official must disclose the name of the bank and the category of the total amount of interest earned from all three accounts. He must also disclose the accounts under paragraph (d) of this section if in the aggregate they total more than $5,000 in that bank.

(b) *Purchases, sales and exchanges of certain property.* A brief description (including the date) of any purchase, sale or exchange during the preceding calendar year:

(1) Of real property, other than a personal residence of the reporting individual or spouse, and

(2) Of stocks, bonds, commodities futures, and other forms of securities, which shall be categorized as to each transaction in accordance with § 734.304, in any case in which the fair market value of such property exceeds $1,000.

Notwithstanding paragraphs (b)(1) and (2) of this section, any transaction solely by and between the reporting individual, the spouse, and dependent children need not be reported. For purposes of this paragraph, transactions involving Treasury bills, money market mutual funds, and certificates of deposit issued by banking institutions are not deemed purchases, sales, or exchanges when effected at rates, terms, and conditions available generally to members of the public.

Example (1): An official sells her personal residence in Virginia for $100,000 and purchases a residence in the District of Columbia for $200,000. She realized a gain on the sale of the Virginia home of $30,000. She need not report the sale of the Virginia residence or the purchase of the D.C. residence under paragraph (b) of this section.

Example (2): An official sells his beach home in Maryland for $50,000. Because he has rented it out for one month every summer, it does not qualify as a personal residence. He must disclose the sale under paragraph (b) of this section and any capital gain realized on the sale under paragraph (a)(2) of this section.

Example (3): An official sells a ranch to his dependent daughter. The official need not report the sale under paragraph (b) of this section because it is a transaction between the reporting individual and a dependent child. If the daughter were no longer a dependent child the sale and any capital gain, except for that portion attributable to a personal residence, would have to be disclosed.

Example (4): An official sells an apartment building and realizes a loss of $100,000. He must report the sale of the building under paragraph (b) of this section, but he need not disclose the sale under paragraph (a)(2) of this section, as it did not result in a capital gain.

(c) *Gifts and reimbursements.*—(1) *In general.* The identity of the source, a brief description, and the value of all gifts (other than gifts described in paragraph (c)(2) of this section) from any source other than a relative of the reporting individual, received during the preceding calendar year which total $100 or more in value. Gifts received must be reported pursuant to the requirements of this paragraph. See § 734.104(a).

Example (1): An official accepts a print, a pen and pencil set, and a letter opener from a community service organization she has worked with solely in her private capacity. If any one of the gifts is valued at at least $100, she must disclose that gift. If any one gift is valued at less than $100 she need not report the gift unless the organization had during that same reporting year given her other item(s) whose value when aggregated would equal $100 or more. For purposes of aggregation she need not count items valued at $35 or less; see paragraph (c)(5) of this section. For method of valuation see paragraph (c)(4).

Gift 1—Print: Value $75
Gift 2—Pen and pencil set: $40
Gift 3—Letter opener: $20

The official must disclose Gifts 1 and 2, but not Gift 3.

(2) *Certain gifts.* The identity of the source, a brief description, and the value of any gifts of transportation, lodging, food, or entertainment from any source other than a relative of the reporting individual, received during the preceding calendar year which total $250 or more in value. Notwithstanding the preceding sentence, any food, lodging or entertainment received as the "personal hospitality of any individual" need not be reported. (See § 734.105(i).)

Example (1): An official receives the following items from a single source:

1. Dinner at a restaurant—$50
2. Round-trip taxi fare to meet donor at the restaurant—$15.
3. Dinner at donor's city residence—(value uncertain)
4. Round-trip airline transportation to donor's country home—$200
5. Weekend at donor's country home including duck hunting and tennis match—(value uncertain)

The official need only disclose Gifts 1 and 4. Gifts 3 and 5 need not be disclosed because they fall within the exception for "personal hospitality of an individual." (See § 734.105(i).) Gift 2 while otherwise disclosable need not be aggregated with Gifts 1 and 4 because it is valued less than $35. (See paragraph (c)(4) of this section.)

Example (2): An official accepts a number of invitations for dinner at restaurants in the

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city. The dinners are valued at more than $35 and in the aggregate are more than $250. The invitations are for purely personal reasons and are from one individual. Nevertheless, the official must report these dinners because they do not fall within the definition of "personal hospitality of any individual." See § 734.105(l). The official can request a waiver of this reporting requirement pursuant to § 734.303(g). If granted, the waiver is public.

(3) *Reimbursements.* The identity of the source, a brief description, and the value of any reimbursements not otherwise reportable under the provisions of this subpart received during the preceding calendar year which from any source total $250 or more in value from any source.

Example (1): An official is asked to speak at an out-of-town meeting on a matter which is unrelated to his official duties and his agency. The round trip air fare is more than $250. If the official pays for the ticket and is then reimbursed by the organization to which he spoke, he must disclose this reimbursement under paragraph (c)(3) of this section. If the organization simply provided the ticket, this must be disclosed as a gift under paragraph (c)(2) of this section.

(4) *Valuation of gifts and reimbursements.* The value to be assigned to a gift or reimbursement is its fair market value. For most reimbursements this will be the amount actually received. For gifts and non-cash reimbursements the value should be determined in one of the following manners:

(i) If the gift has been newly purchased or is readily available in the market, the value shall be its retail price. The reporting individual need not contact the donor but may and should contact a retail establishment selling similar items to determine the present cost in the market.

(ii) If the item is not readily available in the market, such as a piece of art, a hand-made item, or antique, the individual can, as in the case of property in § 734.303(a)(2), make a good faith estimate of the value of the item.

For purposes of this paragraph (c)(4), the term "readily available in the market" means that an item generally is available for retail purchase in the metropolitan area nearest to the official's residence.

Examples

Items such as a pen and pencil set, letter opener, leather case or engraved pen are generally available in the market and can be determined by contacting stores which sell like items and ascertaining the retail price of each.

The value of a dinner at a restaurant can either be the actual cost of the reported dinners or the approximate value of the dinner given the posted fare of the restaurant. The reporting individual need not ask the donor to see the check.

(5) *De minimis exception.* Any gift with a fair market value of $35 or less need not be aggregated for purposes of this paragraph (c). The acceptance of these gifts is subject to the restrictions imposed by Executive Order 11222 and regulations promulgated thereunder as is the acceptance of the gifts of $35 or more.

(6) *Cross-reference.* For special waiver in the case of certain gifts see § 734.303(g).

(d) *Interests in property.*—(1) *In general.* A brief description of any interest in property held at the close of the preceding calendar year in a trade or business, or for investment or the production of income, having a fair market value in excess of $1,000, which shall be categorized as to the fair market value of each item in accordance with § 734.304. Each item of real and personal property shall be disclosed separately.

(2) *Exceptions.* Notwithstanding the provisions of paragraph (d)(1) of this section, the following shall not be reported:

(i) Any personal liability owed to the reporting individual by a relative,

(ii) Personal savings accounts in a single financial institution or holdings in a single money market mutual fund, in the case of a reporting individual, spouse, and dependent children who have deposits or holdings, respectively, aggregating $5,000 or less in that institution or fund, and

(iii) A personal residence of the reporting individual or spouse.

For purposes of this paragraph (d), the term "personal savings account" means a certificate of deposit or any other form of deposit in a bank, savings and loan association, credit union, or similar financial institution.

Example (1): The following items are examples of property required to be disclosed. This list is not inclusive but is presented to show typical items:

(A) Real estate other than a personal residence of a reporting individual or spouse,

(B) Stocks, bonds, securities, and commodities contracts,

(C) Animals owned for commercial purposes,

(D) Commercial crops, those growing and those held in storage,

(E) Antiques owned for resale,

(F) Beneficial interests in trusts and estates (see § 734.303(c)),

(G) Art held for investment,

(H) Pensions and annuities, and

(I) Money market mutual funds.

Example (2): An official has a $4,000 savings account in Bank A. His wife has a $2,500 certificate of deposit issued by Bank B and his daughter has a $200 savings account in Bank C. The official does not have to disclose the deposits as the total value of the deposits in any one bank do not exceed $5,000. Nevertheless, the source and amount of interest income would have to be disclosed under paragraph (a)(2) if it exceeds $100.

Example (3): Reporting individual *R* has a collection of post-impressionist paintings which have been carefully selected over the years. From time to time, as new paintings have been acquired to add to the collection, *R* has made recurrent sales of both less desirable post-impressionist works from his collection and paintings of various schools which he acquired through inheritance. Under these circumstances, *R* would report income from sales of any paintings pursuant to paragraph (a)(2) of this section, and all the paintings he retains as interests in property pursuant to paragraph (d) of this section. The Office of Government Ethics deems recurrent sales from a collection or related holdings to remove the collection and such holdings from the exemption for purely personal items from public financial disclosure under section 202 of the Act.

Example (4): Reporting individual *R* has several commodity transactions in calendar year 1979, as follows:

Positions, date of purchase and dote of sale (includes short sales)

No. (1)–3 contracts April 1980 Gold (Comex), 4/16/79, open position [carried over to 1980]

No. (2)–2 contracts June 1980 Gold (Comex), 12/13/79, 6/19/79

No. (3)–1 contract February 1980 Gold (Comex), open position [carried over to 1980] 8/17/79

No. (4)–3 contracts August 1980 Gold (Comex), 5/13/79, 9/19/79.

(i) *Position No. (1)* is an interest in property which, since it was held as of the close of calendar year 1979, is reported under paragraph (d) of this section as an interest in property (if the $1,000 fair market value criterion of paragraph (d) is met). In accordance with standard accounting practices with respect to such interests, the fair market value of a commodity contract, for purposes of this section, is determined by the amount of the net unrealized gain or loss. This item is also reported under paragraph (b) of this section as a purchase, if the $1,000 fair market value criterion of paragraph (b) is met.

(ii) The gain or loss realized with respect to the transactions relating to *Position No. (2)* (a short sale) is reported under paragraph (b) of this section as a completed purchase and sale (if the $1,000 threshold criterion of paragraph (b) is met). With respect to a completed purchase and sale such as *Position No. (2)*, the threshold criterion is applied against the net realized gain or loss. The completed purchase and sale is also reported uder paragraph (a)(2) of this section (relating to income items), if the $100 threshold criterion of paragraph (a)(2) is met. Accordingly, if the completed purchase and sale had resulted in a loss, it would not have been reportable under paragraph (a)(2).

(iii) *Position No. (3)* (notwithstanding that it is a short sale) is an interest in property which, since it was held as of the close of calendar year 1979, is reported under paragraph (d) of this section as an interest in property (if the $1,000 threshold criterion of paragraph (d) is met). This item is also reported under paragraph (b) of this section as a sale, if the $1,000 threshold criterion of paragraph (b) is met.

(iv) The gain or loss realized with respect to the transactions relating to *Position No. (4)* is reported under paragraph (b) of this section as a completed purchase and sale (if the $1,000 threshold criterion of paragraph (b) is met). The completed purchase and sale is also reported under paragraph (a)(2) of this section (relating to income items), if the $100 threshold criterion of paragraph (a)(2) is met.

(v) It should be noted that the principles of this example are applicable with respect to the purchase and sale of options contracts.

(e) *Liabilities*—(1) *In general.* A brief description of the total liabilities owed to any creditor, other than a relative, to whom, at any time during the preceding calendar year, over $10,000 is owed, which shall be categorized as to the amount of any such liability in accordance with § 734.304. The greatest amount owed to any such creditor during such period shall be reported.

(2) *Exceptions.* Notwithstanding the provisions of paragraph (e)(1) of this section, the following shall not be reported:

(i) Any mortgage secured by a personal residence of the reporting individual or spouse,

(ii) Any loan secured by a personal motor vehicle, household furniture, or appliances, which loan does not exceed the purchase price of the item which secures it, and

(iii) Any revolving charge account with an outstanding liability which does not exceed $10,000 as of the close of that preceding calendar year.

Example (1): An official has the following loans outstanding at the end of the calendar year:

1. Mortgage on personal residence—$80,000
2. Mortgage on rental property—$50,000
3. VISA Card—$1,000
4. Master Card—$11,000
5. Loan secured by family automobile purchased for $6,200—$5,000
6. Loan secured by antique furniture purchased for $6,000—$10,000
7. Loan from parents—$20,000

Loans indicated in items 2, 4, and 6 must be disclosed. Loan 1 is exempt from disclosure because it is secured by the personal residence. Loan 3 need not be disclosed because it is considered a revolving charge account and it is less than $10,000. Loan 5 need not be disclosed because it it secured by a personal motor vehicle and is for less than the purchase price. Loan 7 need not be disclosed because the creditor is a relative.

(f) *Other positions*—(1) *In general.* Identification of all positions held, at any time during the period beginning on January 1 of the preceding calendar year and ending on the date of filing as an officer, director, trustee, partner, proprietor, representative, executor, employee, or consultant of any corporation, company, firm, partnership, trust, or other business enterprise, any non-profit organization, any labor organization, or any educational or other institution other than the United States. Notwithstanding the preceding sentence, the following need not be reported:

(i) Positions held without compensation in any religious, social, fraternal, or political entity, and

(ii) Positions solely of an honorary nature, such as those with an *emeritus* designation.

(2) *Initial reports; special rules.* In the case of a reporting individual who has not filed a report under § 734.201 during the preceding calendar year—

(i) For purposes of paragraph (f)(1) of this section, all such positions held during the preceding two calendar years shall also be reported, and

(ii) Except in the case of the President and the Vice President, identification and a brief description of the nature of the duties performed or services rendered with respect to each source of compensation which exceeded $5,000 in either of the preceding two calendar years.

Notwithstanding the provisions of paragraph (f)(2)(ii) of this section, information need not be reported which is considered confidential as a result of a privileged relationship, established by law, between the reporting individual and any person, or with respect to any person for whom services were provided by any firm or association of which the reporting individual was a member, partner, or employee, unless the individual was directly involved in the provision of such services.

Example (1): A partner or employee of a law firm who has worked on a matter involving a client from which the firm received over $5,000 in fees during a calendar year must report the name of the client only if the value of the services rendered by the partner or employee was more than $5,000. The name of the client, except in unusual situations, would not be considered confidential.

(g) *Certain agreements and arrangements.* Identification of the parties to, and a brief description including the date of any agreement or arrangement, in existence at any time during the period beginning on January 1 of the preceding calendar year and ending on the date of filing, with respect to—

(1) Future employment,

(2) A leave of absence during the period of the reporting individual's Government service,

(3) Continuation of payments by a former employer other than the United States Government, and

(4) Continuing participation in an employee welfare or benefit plan maintained by a former employer. (See 18 U.S.C. 209(b)).

§ 734.302 Reports of other reporting individuals.

(a) *New entrants, nominees, and candidates.* Each report filed under § 734.201(b), (c), or (d) shall include a full and complete statement, on the form prescribed by the Office of Government Ethics and in accordance with instructions issued by the Office, under the provisions of § 734.301, except for paragraphs (b) (relating to purchases, sales and exchanges of certain property) and (c) (relating to gifts and reimbursements) of that section; however, the following shall also be reported:

(1) *Income.* For purposes of paragraph (a) of § 734.301, relating to income, all the income items specified in that paragraph received during a period which begins on January 1 of the preceding calendar year and ends on the date on which the report is filed,

(2) *Interests in property.* For purposes of paragraph (d) of § 734.301, relating to interests in property, all the interests specified in that paragraph held during a period which begins on January 1 of the preceding calendar year and ends fewer than thirty-one days before the date on which such report is filed, and

(3) *Liabilities.* For purposes of paragraph (e) of § 734.301, relating to liabilities, all the liabilities specified in that paragraph owed during a period which begins on January 1 of the preceding calendar year and ends fewer than thirty-one days before the date on which the report is filed.

(b) *Termination reports.* Each report filed under § 734.201(e) shall include a full and complete statement, on the form prescribed by the Office of Government Ethics and in accordance with instructions issued by the Office, under the provisions of § 734.301; except that in any case in which information is required by that section to be reported for the preceding calendar year with respect to any item, transaction, or occurrence, all such information for a period which begins on January 1 of the current calendar year and ends on the date on which the report is filed, shall also be reported.

§ 734.303 Special rules.

(a) *Valuation of interests in property.* This paragraph (a) sets forth detailed rules for determining the value of interests in property for purposes of

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§ 734.301(d). A good faith estimate of value may be made in lieu of a determination under paragraph (a)(1) or (a)(2) of this section, in any case in which such a determination cannot be obtained without undue hardship or expense to the reporting individual.

(1) *Real property.* If the current value of an interest in real property or an interest in a real estate partnership is not ascertainable without an appraisal, a reporting individual may report:

(i) The date of purchase and the purchase price of the interest in the real property, or

(ii) The assessed value of the real property for tax purposes, adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of that market value.

(2) *Other property.* If the current value of any item, other than real property referred to in paragraph (a)(1) of this section, is not ascertainable without an appraisal, a reporting individual may report (as appropriate)—

(i) The book value of a corporation whose stock is not publicly traded,

(ii) The net worth of a business partnership other than a real estate partnership,

(iii) The equity value of an individually owned business,

(iv) With respect to entities not referred to in paragraph (a)(2)(i) through (iii) of this section, any recognized indication of value accompanied by a full and complete description of the method used in determining such value, or

(v) In lieu of any indication of value referred to in this paragraph (a)(2), the assessed value of any such item for tax purposes, adjusted in the manner prescribed in paragraph (a)(1)(ii) of this section.

In any case in which the assessed value for tax purposes of any item is reported under paragraph (a)(1)(ii) or (a)(2)(v) of this section, in lieu of a categorization of the fair market value of that item in accordance with § 734.304, a full and complete description of the method used in determining the assessed value shall be reported.

(b) *Spouses and dependent children.* Each report required by the provisions of this subpart shall include:

(1) *Income.* For purposes of § 734.301(a), relating to income:

(i) With respect to a spouse, only the source of items of outside earned income (as defined in § 734.501(b)) which exceed $1,000; and in the case of such items derived from a spouse's self-employment in a business or profession, only the nature of the business or profession need be reported, and

(ii) With respect to interests in property of a spouse or dependent child, only income derived from such interests which are reported or reportable pursuant to § 734.301(d).

Example (1): The spouse of a reporting individual is employed as a teller at Bank X and earns $15,000 per year. The reporting individual must disclose that the spouse is employed by Bank X; however, the individual need not report the $15,000 earnings.

Example (2): The spouse of a reporting individual is self-employed as a pediatrician. The reporting individual need only disclose that the spouse is a physician.

(2) *Purchases, sales and exchanges of certain property.* For purposes of § 734.301(b), on purchases, sales and exchanges, with respect to interests in property of a spouse or dependent child reported or reportable under § 734.301(d), any purchase, sale, or exchange specified in § 734.301(b) with respect to any such interest;

(3) *Gifts and reimbursements.* For purposes of § 734.301(c), on gifts and reimbursements, with respect to—

(i) A spouse, only gifts and reimbursements, or

(ii) A dependent child, only gifts, specified in that section received by the spouse or dependent child (to any extent) by reason of such spouse's or dependent child's relationship to the reporting individual;

Example (1): A reporting official and her spouse were taken to dinner by an individual the official dealt with as a Federal employee. The value of the spouse's dinner must be reported as a gift.

Example (2): The employer of the spouse of a reporting individual takes the spouse and such individual to dinner. The employer does not do business with the reporting individual's agency. The reporting individual is invited because of the marriage relationship. The reporting individual need not report the spouse's dinner as a gift under § 734.301(c). Only the reporting individual's dinner is reportable, if the threshold limitations of that section are satisfied.

(4) *Interests in property and liabilities.* For purposes of §.734.301 (d) and (e), on interests in property and liabilities, respectively, all information on any such interests or liabilities specified in those paragraphs of a spouse or dependent child, other than with respect to items—

(i) Which the reporting individual certifies,

(A) Represent the spouse's or dependent child's sole financial interest or responsibility, and

(B) That the reporting individual has no specific knowledge of,

(ii) Which are not in any way, past or present, derived from or related to the income, assets or activities of the reporting individual, and

(iii) From which the reporting individual neither derives, nor expects to derive, any financial or economic benefit.

Example (1): The spouse of a reporting individual has acquired some securities from money earned in a part-time job. The securities have been set aside to provide funds to contribute to the cost of a grandchild's education. The reporting individual is not familiar with the holdings. Therefore, because the grandchild's education is not a legal obligation of the reporting individual, the securities are not reportable under the rules of this paragraph (b)(4).

(c) *Trusts and estates.* Each report required by the provisions of this subpart shall include the information otherwise required by these provisions, about the holdings of and the income from any trust or other financial arrangement—

(1) From which income is received by, or

(2) With respect to which a beneficial interest in principal or income is held by,

the reporting individual, spouse, or any dependent child. Notwithstanding the preceding sentence, no information is required about a non-vested beneficial interest in the principal of an estate and, in the case of a trust referred to in § 734.402(a), only the information described in § 734.402(b) shall be reported. Since the proper application of the rules of section 202(f)(1) of the Act and paragraph (c)(2) of this section depends on all the facts and circumstances of the particular case, reporting individuals or their representatives should consult with Office of Government Ethics staff to determine the proper treatment of any non-vested beneficial interest in the principal of a trust or other financial arrangement.

(d) *Divorce and separation.* Notwithstanding any other provision of this subpart, a reporting individual shall not be required to report any information about:

(1) A spouse living separate and apart from the individual with the intention of terminating the marriage or providing for permanent separation,

(2) A former spouse or a spouse from whom the individual is permanently separated, or

(3) Any income or obligations of the individual arising from the dissolution of his or her marriage or the permanent separation from his or her spouse.

(e) *Political campaign funds.* Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed under this part.

(f) *Gifts received when not in Government employment.* In the case of a reporting individual to whom the provisions of § 734.201(a) or (e) apply, the report need not contain any information about gifts and reimbursements to which the provisions of § 734.301(c) would otherwise apply, which are received during a period in which the reporting individual was not an officer or employee of the Federal Government.

(g) *Special rule in the case of certain gifts.*—(1) *In general.* In unusual cases, a gift as defined in § 734.105(f) need not be aggregated under § 734.301(c), if the Director, Office of Government Ethics, determines:

(i) That the basis of the relationship between the grantor and grantee and the motivation for the gift are purely personal, and

(ii) That no countervailing public purpose requires public disclosure of the nature, source, and value.

In the event of any such determination, the waiver request and the grant of waiver shall be subject to the public disclosure requirements of § 734.603.

(2) *Procedure.* An individual seeking an exemption under this section shall file a request with the Office of Government Ethics which sets forth:

(i) The identity and occupation of the donor;

(ii) A statement that the relationship between the donor and the reporting individual is purely personal in nature; and

(iii) A statement that neither the donor nor any person or organization for whom the donor actually works or serves as a representative conducts business with, or is subject to regulation by, or is directly affected by action taken by, the agency which employs the reporting individual.

In the event that the immediately preceding statement cannot be made without qualification, the reporting individual may indicate those qualifications along with a statement demonstrating that he or she plays no role in any official action which might directly affect the donor or any organization for which the donor works or serves as a representative.

§ 734.304 Property categories.

(a) The valuation categories specified for property items are as follows:

(1) Not more than $5,000;

(2) Greater than $5,000 but not more than $15,000;

(3) Greater than $15,000 but not more than $50,000;

(4) Greater than $50,000 but not more than $100,000;

(5) Greater than $100,000 but not more than $250,000; and

(6) Greater than $250,000.

Subpart D—Trusts

§ 734.401 Qualified trusts; general considerations.

(a) *In general.* (1) Prior to enactment of the Act's qualified trust provisions, there was no accepted definition of a properly formulated blind trust. However, there was general agreement that the use of blind trusts frequently could ameliorate potential conflict of interest situations. An underlying concept is that if a Government official does not know the identity of his or her financial interests, his or her official actions should not be subject to collateral attack by questions of conflict of interest of the appearance of such a conflict. In other words, if the Government official does not know what he or she owns, it is impossible for him or her intentionally to take actions to benefit specifically his or her own personal interests. Therefore, the general public policy goal to be achieved through the use of blind trusts is an actual "blindness" or lack of knowledge by the Government official with respect to the holdings held in trust. In unusual cases, this goal may be deemed to have been achieved with respect to an official appointed to a position by the President, by and with the advice and consent of the Senate, where there is a general dispersion of securities held in trust among individual entities and economic sectors under circumstances in which it is unlikely that official actions taken by him will affect individual holdings to such a degree that the overall value of the entire portfolio will be materially enhanced. The result of wide diversification under the conditions prescribed is considered tantamount to actual blindness.

(2) Trusts certified under the provisions of this Subpart D are not subject to the general rules of Subpart C of this part, which normally require the public financial disclosure report of a reporting individual to indicate the contents of a trust's portfolio. Further, as described in paragraph (b)(3) of this section, in the case of trusts which are certified, the normal application of 18 U.S.C. 208 and other Federal conflict of interest laws is ameliorated by the Act in accordance with the concepts discussed in paragraph (a)(1) of this section.

(b) *Nature of qualified trusts.* The public policy concerns and objectives indicated in paragraph (a) of this section are fulfilled by the major requirements of this subpart as described in this paragraph (b). The Office of Government Ethics will apply the standards of this subpart to specific cases.

(1) *A truly independent trustee.* Under § 734.406, the individual or institution in charge of a qualified trust, and therefore of investing the assets of the trust, must be independent of the Government official in reality and appearance. The trustee must not be subject to control or influence in the administration of the trust by any interested party: the official, his or her spouse, or dependent children. Permissible trustees are limited to members of professional groups with standards of conduct governing their actions as fiduciaries (financial institutions, attorneys, accountants, investment advisers and brokers). The trustee cannot be a relative, employee, or business partner of the official, spouse, or dependent children.

(2) *A trust document meeting certain minimum standards.* Under § 734.403, regarding qualified blind trusts, and § 734.404, regarding qualified diversified trust, the trust document must, except for limited exceptions, expressly prohibit communications between the trustee and the Government official, and other interested parties, regarding the trust's holdings and activities. The trustee must be empowered to make investment decisions independent of any consultation with or control by the interested parties. Generally, communications about the trust between the interested parties and the trustee must be in writing. Copies of all written communications must be filed with the Office of Government Ethics. The trust document must also provide that the interested parties will not attempt to obtain information about the trust holdings and activities except as specifically provided therein.

(3) *Relationship to conflict of interest laws.*—(i) *Qualified blind trusts.* In the case of a qualified blind trust (§ 734.403), an asset placed in trust by an interested party is considered a financial interest of the Government official for the purposes of 18 U.S.C. 208 and any other conflict of interest statutes or regulations of the Federal Government until the party is notified by the trustee that the asset has been disposed of, or has a value of less than $1,000. Thus, the trust is considered blind only as to assets subsequently purchased by the trustee. The interested parties will have no knowledge of the trustee's acquisitions, and thus the Government official and the other interested parties will be truly blind with respect to these holdings.

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(ii) *Qualified diversified trusts.* In the case of a qualified diversified trust (§ 734.404), the trust's holdings are not deemed financial interests of the Government official for purposes of 18 U.S.C. 208 or any other Federal conflict of interest law. This type of trust may only be utilized by an official appointed by the President, by and with the advice and consent of the Senate. It must be established to the satisfaction of the Director, Office of Government Ethics, under § 734.404(b), that the assets of a diversified trust proposed for qualification consist of a well-diversified portfolio of readily marketable securities. None of the assets initially placed in the trust may consist of securities of issuers having substantial activities related to the reporting individual's primary area of responsibility.

(4) *Relationship to Subpart C reporting requirements.* Qualified trusts are not subject to the normally applicable reporting requirements of Subpart C of this part. The less inclusive rules of § 734.402(b) are applied with respect to qualified trusts pursuant to the Act.

(5) *Prior approval of trust document and assets placed in the trust.* Before a trust can be certified, every proposed trust document (see § 734.405) and proposed trustee (see § 734.406) must be approved by the Office of Government Ethics. This is essential so that the Office can ensure in advance that the proposed trust arrangement satisfies the letter and spirit of the established standards. Model qualified trust instruments are available from the Office to attorneys for their use in drafting trust agreements to be proposed for qualification.

(6) *Effective sanctions and enforcement.* Under the provisions of Subpart G of this part, civil and criminal sanctions are provided for any Government official or trustee who violates his or her obligation under a qualified trust. In addition, the Office of Government Ethics has authority under the Act to impose appropriate administrative or other sanctions.

§ 734.402 Special rules in the case of certain trusts.

(a) *In general.* Notwithstanding the provisions of Subpart C of this part, a reporting individual need not, except as otherwise provided in this subpart, report the holdings of or the source of income from any of the holdings of:

(1) Any qualified blind trust, as defined in § 734.403,

(2) Any qualified diversified trust, as defined in § 734.404, or

(3) Any "excepted trust," one:

(i) Which was not created directly by the individual, his or her spouse, or any dependent child, and

(ii) The holdings or sources of income of which the individual, his or her spouse, and any dependent child have no knowledge.

(b) *Subpart C reporting requirements*—(1) *Income.* In the case of a trust referred to in paragraph (a) of this section except for a qualified diversified trust, a reporting individual shall report the category of the aggregate amount of the trust's income attributable to the beneficial interest in the trust of the individual, his or her spouse, or any dependent child under the rules of Subpart C of this part. In the case of a qualified diversified trust, only amounts actually received in respect of such a trust by the individual, his or her spouse, or any dependent child, or applied for the benefit of any such interested party, shall be deemed income derived from the trust for purposes of this part.

(2) *Holdings and sources of income.* In the case of a trust referred to in:

(i) Paragraph (a)(1) or (a)(2) of this section, no report under Subpart C of this part on holdings and sources of income is required, or

(ii) Paragraph (a)(3) of this section, holdings and sources of income shall be reported under the rules of Subpart C of this part only to the extent that the reporting individual has reasonably specific knowledge of the holdings and sources of income.

Example (1): A reporting individual, *R*, is the beneficiary of a family trust created by his grandfather. *R*—(i) has never seen the trust instrument, (ii) receives a monthly payment of $500 from the trustee, and (iii) has been told by his grandfather that the trust assets include large holdings of Canadian mining stock. *R* does not have any further specific knowledge about the trust and its holdings, and the grandfather and trustee have declined to provide further information. This trust would be considered by the Office of Government Ethics to be an excepted trust described in paragraph (a)(3) of this section. *R* is obligated to report $6,000 as income from the trust in his annual financial disclosure report filed under Subpart C, and under § 734.301(d) he would report that he is a beneficiary of an excepted trust which he believes to have Canadian mining stock among its holdings.

Example (2): During 1979, the trustee of reporting individual *M*'s qualified diversified trust makes payments as follows:

(i) A monthly distribution of $1,000 to *M* as specified in the trust instrument,

(ii) $4,000 to *M*'s wife for medical expenses pursuant to the trustee's discretion under the terms of the trust instrument, and

(iii) $2,500 to *M*'s son for educational expenses pursuant to the trust instrument.

For 1979, $18,500 is deemed to be the income derived from the trust and should be reported under Subpart C of this part; notwithstanding, that the actual income attributable to the interests of *M*, his spouse, and dependent children in the qualified diversified trust might be a greater amount. The actual amount must be kept confidential by the trustee and, under § 734.404, not revealed to the interested parties.

Example (3): Note that $18,500 would be the income deemed to have been derived from the qualified diversified trust in *Example (2)*, even if the actual income attributable to the interests of the interested parties was less than $18,500 or even if the trust had a net loss for the year.

§ 734.403 Qualified blind trusts.

(a) *Definition.* For purposes of § 734.402, the term "qualified blind trust" means a trust certified by the Director, Office of Government Ethics, under § 734.405 which includes the provisions described in paragraph (b) of this section and has an independent trustee (as defined in § 734.406). See section 202(f)(3) of the Act.

(b) *Required provisions.* The trust instrument which establishes a trust to which this section applies must provide that—

(1) The trustee in the exercise of his or her authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(2) The trust shall not contain any asset the holding of which by an interested party is prohibited by any law or regulation;

(3) The trustee shall notify promptly the reporting individual and the Director, Office of Government Ethics, when any particular asset transferred to the trust by any interested party has been completely disposed of or when the value of that asset becomes less than $1,000;

(4) The trust tax return shall be prepared by the trustee or his or her designee, and the return and any information relating thereto, other than the trust income summarized in appropriate categories necessary to complete an interested party's tax return, shall not be disclosed publicly or to any interested party;

(5) An interested party shall not receive any report on the holdings and sources of income of the trust, except that the trustee shall—

(i) Make quarterly reports of the aggregate market value of the assets representing the interested party's interest in the trust,

(ii) Report the net income or loss of the trust and make any other reports necessary to enable the interested party to complete an individual tax return required by law, and

(iii) Provide the information described in § 734.402(b) (relating to reporting of income);

(6) Except for communications which consist solely of requests for distributions from the trust, which shall not specify whether any such distribution shall be made in cash or in kind, there shall be no direct or indirect communication between the trustee and an interested party about the trust unless the communication is in writing and unless it relates only:

(i) To the general financial interest and needs of the interested party including, but not limited to, an interest in maximizing income or long-term capital gain,

(ii) To the notification of the trustee of a law or regulation subsequently applicable to the reporting individual which prohibits the interested party from holding an asset, which notification directs that the asset not be held by the trust, or

(iii) To directions to the trustee to sell all of an asset initially placed in the trust by an interested party which in the determination of the reporting individual creates a conflict of interest or the appearance thereof due to the subsequent assumption of duties by the reporting individual but nothing in the trust instrument shall require any such direction;

(7) The interested parties shall not take any action to obtain, and shall take appropriate action to avoid receiving, information about the holdings of, and the sources of income of, the trust, including obtaining a copy of any trust tax return filed by the trustee or any information relating thereto, except for the reports and information specified in paragraph (b)(5) of this section; and

(8) The trustee and any other person designated in the trust instrument as an investment adviser shall fulfill the filing requirements of § 734.407(b) and (c).

Example (1)

(A) Professionals employed by the trustee to prepare the trust tax return should be cautioned against sending informational copies to any interested party, and

(B) An interested party who inadvertently receives in the mail a broker's confirmation of a transaction for the trust should send the confirmation to the trustee with an accompanying letter instructing the trustee to take steps to assure that the party will not receive such confirmations in the future (a copy of such a letter must be sent to the Office of Government Ethics pursuant to § 734.407(c)).

Paragraph (b)(7) of this section prohibits any activity by interested parties to obtain, directly or indirectly, any information which under the rules of this section is precluded from interested parties. The paragraph also specifically prohibits the passive receipt of precluded information by interested parties. Accordingly, interested parties and trustees, their staffs, and professionals who may be employed by them are required to exercise a high degree of diligence to safeguard against inadvertent disclosure of precluded information to the interested parties.

(c) *Transitional rule.* In the case of a trust established prior to October 26, 1978, if there is a good faith attempt to create a qualified blind trust, the trust may, under the rules of section 202(f)(7) of the Act, be certified under the provisions of § 734.405, as a qualified blind trust notwithstanding any provision of this section to the contrary.

§ 734.404 Qualified diversified trusts.

(a) *Definition.* For purposes of § 734.402, the term "qualified diversified trust" means a trust certified by the Director, Office of Government Ethics, under § 734.405 which has a portfolio as specified in paragraph (b) of this section, includes the provisions described in paragraph (c) of this section, and has an independent trustee (as defined in § 734.406). This certification may be granted only in the case of individuals described in paragraph (e) of this section. See section 202(f)(4)(B) of the Act.

(b) *Required portfolio.*—(1) *In general.* It must be established to the satisfaction of the Director, Office of Government Ethics, that the assets of the trust proposed for qualification consist of a well-diversified portfolio of readily marketable securities. Accordingly, the reporting individual, or a representative of the individual, shall provide the Director with a detailed listing of the securities proposed for inclusion in the portfolio, specifying their market values and demonstrating that the requirements of this paragraph (b) have been met. None of the assets initially placed in the trust may consist of securities of issuers having substantial activities related to the reporting individual's primary area of responsibility. No limitations are established under this paragraph with respect to—

(i) Cash, or

(ii) Debt instruments issued by the United States or its non-corporate instrumentalities.

(2) *Well-diversified.*—(i) *Portfolios which exceed $250,000.* In the case of a trust which has assets with a total market value which exceeds $250,000, the portfolio will be deemed well-diversified, for purposes of this section, unless the trust holds—

(A) Securities of any issuer which have a market value which exceeds twenty percent of the total market value of the portfolio, or

(B) Securities substantially related to any industry or economic sector which have a market value which exceeds thirty percent of the total market value of the portfolio.

Notwithstanding the preceding sentence, the Office of Government Ethics may authorize limited deviations from the standards of this paragraph (b)(2)(i) with respect to the holdings initially transferred to the trust in cases where, under all the facts and circumstances, the Office determines that overall portfolio balance has been achieved.

Example (1): In unusual circumstances involving a divorce settlement, the proposed initial portfolio of a trust with a total market value of $350,000 is determined by the Office of Government Ethics to have overall balance and is deemed well-diversified even though securities of three utilities represent 32 percent of the portfolio's total market value and the securities of one bank represent 23 percent. However, the trustee may not purchase additional utility or bank securities while the percentages of portfolio market value they represent continue to exceed the standards of paragraph (b)(2)(i) of this section.

(ii) *Portfolios which do not exceed $250,000.* The Office of Government Ethics recognizes that it is impractical in the case of smaller trusts to expect the same quantitative diversification with respect to initial holdings that is required in the case of larger trusts. Consequently, in the case of a trust which has assets with a total market value which does not exceed $250,000, the Office may authorize a lesser degree of diversification than the standards of paragraph (b)(2)(i) of this section with respect to the holdings initially transferred to the trust in cases where, under all the facts and circumstances, the Office determines that overall portfolio balance has been achieved.

Example (1): A proposed initial portfolio with a total market value of $100,000 contains four listed securities, each representing a different industry or economic sector. Two of the securities each have a market value of $24,000, and the other two securities each have a market valueof $26,000. The portfolio will be deemed to be well-diversified.

(iii) *Consultation.* Interested parties and their representatives are invited to consult with the Office of Government Ethics on the question of whether overall portfolio balance has been achieved in particular cases.

(3) *Readily marketable.* A security will be deemed readily marketable, for purposes of this section, if:

(i) Daily price quotations for the security appear regularly in newspapers of general circulation, such as the Wall Street Journal, New York Times, and Washington Post, and

(ii) The trust holds the security in a quantity which does not unduly impair liquidity.

(c) *Required provisions.* The trust instrument which establishes a trust to which this section applies must provide that:

(1) The trustee in the exercise of his or her authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(2) The trustee shall not acquire any securities in excess of the diversification standards of paragraph (b)(2)(i) of this section;

(3) The trustee shall not disclose publicly or to any interested party information as to the acquisition, retention, or disposition of any particular securities;

(4) The trust tax return shall be prepared by the trustee or his delegate, and such return and any information relating thereto shall not be disclosed to the public or to any interested party;

(5) An interested party shall not receive any report on the holdings and sources of income of the trust; except that the trustee shall:

(i) Make quarterly reports of the aggregate market value of the assets representing such interested party's interest in the trust, and

(ii) Provide the information described in § 734.402(b) (relating to reporting of income);

(6) Except for communications which consist solely of requests for distributions from the trust, which shall not specify whether any such distribution shall be made in cash or in kind, there shall be no direct or indirect communication between the trustee and an interested party about the trust unless the communication is in writing and unless it relates only—

(i) To the general financial interest and needs of the interested party (including, but not limited to, an interest in maximizing income or long-term capital gain), or

(ii) To information, documents, and funds provided by, or needed from, the interested party to effectuate the provisions of paragraph (d) of this section;

(7) The interested parties shall not take any action to obtain, and shall take appropriate action to avoid receiving, information about the holdings of, and the sources and amounts of income of the trust including obtaining a copy of any trust or personal tax return filed by the trustee or any information relating thereto, except for the reports and information specified in paragraph (c)(5) of this section; and

(8) The trustee and any other person designated in the trust instrument as an investment adviser shall fulfill the filing requirements of § 734.407(b) and (c).

With respect to paragraph (c)(7) of this section, see *Example (1)* following § 734.403(b).

(d) *Personal income tax returns.* In the case of a trust to which this section applies, the trustee shall be given power of attorney to prepare, and shall file, on behalf of any interested party the personal income tax returns and similar returns which may contain information about the trust. Appropriate Internal Revenue Service power of attorney forms shall be used for this purpose. Communications regarding decisions such as whether to file joint or separate returns, the portions of a tax obligation to be borne by each spouse, the amounts and timing of tax payments, and the sources of funds therefor, shall be subject to paragraph (c)(6)(iii) of this section.

(e) *Applicability.* The provisions of this section shall be applicable only in the case of a trust created for the benefit of a reporting individual appointed to his or her office by the President, by and with the consent of the Senate, or the spouse or dependent child of such a person. In the case of a reporting individual whose nomination is before a Senate committee, the individual must inform the Committee of his or her intention to establish a qualified diversified trust at the time his or her financial disclosure report is filed with the Committee. This notification is not required of a reporting individual who is already in office. This section is not applicable in the case of members of the uniformed services or foreign service officers in the State Department.

(f) *Transitional rule.* In the case of a trust established prior to October 26, 1978, if there is a good faith attempt to create a qualified blind trust, the trust may, under the rules of section 202(f)(7) of the Act, be certified under the provisions of § 734.405, as a qualified diversified trust, notwithstanding any provision of this section to the contrary.

§ 734.405 Certification of trusts proposed for qualification; other matters.

(a) *General rule.* In any case in which an interested party desires to have a trust certified as a qualified blind trust or qualified diversified trust under the provisions of § 734.403 or § 734.404, respectively, the party or his or her representative should consult with the Director, Office of Government Ethics (or his or her delegate), as to the appropriateness of and requirements for certification in the particular case. In order to assure timely trust certification, the interested party shall be responsible for the expeditious submission to the Office of all required documents and responses to requests for information. A trust will be certified by:

(1) The Director in the case of a qualified blind trust, or

(2) The Director in concurrence with the Attorney General in the case of a qualified diversified trust,

only if it is established to the Director's satisfaction that the requirements of section 202 of the Act and this subpart have been met and that certification in the case is consistent with the policies established by those provisions and other applicable laws and regulations. Certification shall be indicated by a letter from the Director to the interested party or his or her representative. Certification of a trust may be revoked by the Director at any time, if in his or her sole discretion, he or she determines that continued certification is no longer justified. The terms of a qualified trust are normally irrevocable. The terms may not be amended, except with the prior written approval of the Director upon a showing of necessity and appropriateness.

(b) *Absence of control by interested party.* Except as expressly approved by the Director, Office of Government Ethics, in the case of a trust proposed for certification under the provisions of § 734.403, any asset transferred to a trust under this subpart shall be free of any restriction on its transfer or sale. Accordingly, in the case of interest in tax shelters, partnerships, and close corporations, the interested party shall demonstrate to the satisfaction of the Director that, under all the facts and circumstances, the interests are free of any restriction with respect to their transfer or sale.

(c) *Interested party, defined.* For purposes of this subpart, the term "interested party" means a reporting individual, the spouse, and any dependent child in a case in which the individual, spouse, or dependent child has a beneficial interest in the principal or income of a trust proposed for certification.

(d) *Restrictions applicable to trustees.* The trustee of a qualified blind trust or qualified diversified trust shall not knowingly or negligently:

(1) Disclose any information to an interested party with respect to the trust that may not be disclosed under any provision or requirement of this subpart,

(2) Acquire any holding:

(i) Directly from an interested party without the prior written approval of the Director, or

(ii) The ownership of which is prohibited by, or not in accordance with the terms of, the trust instrument,

(3) Solicit advice from any interested party with respect to such trust, which solicitation is prohibited by any provision or requirement of this subpart or the trust instrument, or

(4) Fail to file any document required by this subpart.

(e) *Restrictions applicable to reporting individuals.* In the case of a qualified blind trust or qualified diversified trust, a reporting individual shall not knowingly or negligently:

(1) Solicit or receive any information about the trust that may not be disclosed under any provision or requirement of this subpart, or

(2) Fail to file any document required by this subpart.

§ 734.406 Independent trustee, defined.

(a) *General rule.* For purposes of this subpart, the term "independent trustee" shall include any person referred to in paragraph (b) of this section who, under all the facts and circumstances, is determined by the Director, Office of Government Ethics, in his or her sole discretion, to be independent of any interested party with respect to a trust proposed for qualification under this subpart. The Director shall indicate his or her approval of a proposed trustee, and of any person in addition to a party to the trust designated in the trust instrument as an investment adviser, by his or her signature on properly executed Certificates of Independence submitted to the Office of Government Ethics in the form prescribed by Appendix A of this part. Approval of a trustee may be revoked by the Director at any time, if, in his or her sole discretion, he or she determines that continued approval is no longer justified.

(b) *Eligible person.* A person, to be eligible to serve as a trustee under this section, must be:

(1) A financial institution, which is a "bank" as defined in 15 U.S.C. 80b–2(a)(2);

(2) An attorney, who is admitted to practice before the highest court of any jurisdiction;

(3) A certified public accountant;

(4) A "broker", as defined in 15 U.S.C. 78c(a)(4); or

(5) An "investment adviser", who is a person as defined in 15 U.S.C. 80b–2(a)(11) or who demonstrates to the satisfaction of the Director general involvement in his or her role as such an adviser in the management or control of trusts.

(c) *Requirements.* No eligible person shall be determined to be independent under this section unless that person, or any officer or employee thereof, involved or to be involved in the management or control of the trust:

(1) Is independent of and unassociated with any interested party so that that person cannot be controlled or influenced in the administration of the trust by any interested party,

(2) Is not or has not been an employee of an interested party, or any organization affiliated with any interested party and is not a partner of, or involved in any joint venture or other investment with, any interested party, and

(3) Is not a relative or any interested party.

Accordingly, an otherwise eligible person who shares in a business enterprise or other undertaking with any interested party shall not be deemed to be independent under the rules of this paragraph (c).

Example (1). Reporting individual *R* terminates his partnership in a law firm upon nomination to a full-time government position. *R* wishes to have *T*, a partner in *R's* former firm, serve as his trustee. *T* may serve as *R's* trustee.

Example (2). In *Example (1)*, *T* would have been precluded from serving as *R's* trustee if additionally:

(i) They both serve on the board of a local bank,

(ii) They are each limited partners in a tax shelter or operating business venture, or

(iii) Their spouses jointly operate a commercial venture.

Example (3). In Example (1), T would not have been precluded from serving as *R's* trustee if additionally:

(i) They both serve on a committee of their country club,

(ii) They each bought XYZ Corp. listed stock, after it was discussed by them during a golf weekend several months ago, or

(iii) *R* had purchased an office building from *T*.

§ 734.407 Special filing requirement in the case of qualified trusts.

(a) *Reporting individuals.* In the case of any qualified blind trust or qualified diversified trust, the reporting individual shall:

(1) *Execution.* Within thirty days after the trust is certified under § 734.405(a) by the Director, Office of Government Ethics, file with the Director a copy of:

(i) The executed trust instrument of the trust, and

(ii) A list of the assets which were transferred to the trust, categorized as to value in accordance with § 734.304.

The provisions of any trust filed with the Director under this paragraph which relate to the testamentary disposition of the trust assets need not be reported. If reported, the provisions shall not be subject to public disclosure.

(2) *Transfer of assets.* Within thirty days of transferring an asset, other than cash, to the trust, file a report with the Director, Office of Government Ethics, which shall briefly describe each asset, categorized as to value in accordance with § 734.304.

(3) *Dissolution.* Within thirty days of the dissolution of the thrust—

(i) File a report of the dissolution with the Director, Office of Government Ethics, and

(ii) File with the Director, a list of assets of the trust at the time of the dissolution, categorized as to value in accordance with § 734.304.

Any document filed under the requirements of this paragraph shall be subject to the public disclosure requirements of § 734.602.

(b) *Trustees.* The trustee of a qualified blind trust or qualified diversified trust, and any person in addition to a party to the trust designated in the trust instrument as an investment adviser; shall file with the Director, Office of Government Ethics, by the May 15 following any calender year during which the trust was in existence a properly executed Certificate of Compliance in the form prescribed by Appendix B of this part. In addition, the trustee shall maintain and make available for inspection by the Office of Government Ethics, as it may from time to time direct, the trust's books of account and other records and copies of the trust's tax returns for each taxable year of the trust. Any document (and the information contained therein) inspected under the requirements of this paragraph (other than a Certificate of Compliance) shall not be subject to the public disclosure requirements of § 734.602, and shall not be disclosed to any interested party.

(c) *Written communications.* In the case of any written communication with respect to a qualified blind trust or qualified diversified trust, which is described in § 734.403(b)(6) or § 734.404(c)(6), respectively, a copy of the communication shall, within five days of its date, be filed by the person initiating the communication with the Director, Office of Government Ethics. In the case of a qualified diversified trust, notwithstanding the preceding sentence, written communications not described in the third sentence of § 734.404(d) which consist entirely of reports from interested parties of their transactions and occurrences unrelated to the trust made to the trustee to

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effectuate the provisions of that section shall (in lieu of being filed with the Director) be retained by the trustee and are subject to inspection under paragraph (b) of this section.

§ 734.408 Effective date.

The provisions of this subpart shall be applicable to trusts certified as approved qualified blind trusts or qualified diversified trusts after October 26, 1978. In the case of a trust certified prior to November 1, 1980, notwithstanding the preceding sentence, the Director of the Office of Government Ethics may exempt the trust from specific provisions of this part if he or she determines, upon application of the trustee or any interested party, that exemption is necessary and appropriate to avoid impracticality or undue hardship.

Subpart E—Special Provisions

§ 734.501 Outside earned income.

(a) *Limitation.* Any reporting individual:

(1) Who occupies a full-time position in the Executive branch, appointment to which is made by the President by and with the advice and consent of the Senate, and

(2) Who is compensated at a rate of pay which equals or exceeds the lowest rate of pay specified for GS–16 of the General Schedule prescribed by 5 U.S.C. 5332,

may not have in any calendar year outside earned income attributable to that calendar year which is in excess of 15 percent of that compensation.

(b) *Defined.* For the purposes of this section, the term "outside earned income" means wages, salaries, commissions, professional fees and other compensation received for personal services actually rendered, other than for services for the United States Government described in paragraph (a) of this section. Income received

(1) By an inactive partner, or

(2) From investments with respect to which the personal services of the reporting individual are not a material factor,

shall not be deemed outside earned income for purposes of this section. The term does not include amounts received during a period in which the reporting individual was not employed as specified by paragraph (a) of this section for personal services actually rendered during the period.

(c) *Other employment limitations.* The provisions of this section shall not preclude the application of limitations on outside employment which may be imposed on employees of a particular agency.

§ 734.502 Waivers.

(a) With respect to reporting requirements: Section 201(i) of the Act authorizes the Director to grant a waiver for officers and employees if they have served fewer than 130 days in a calendar year. For the rules relating to this waiver, see § 734.205.

(b) With respect to gifts: Section 202(a)(2)(D) of the Act authorizes the Director to grant a waiver in an unusual case with respect to the necessity for aggregating gifts. For the rules relating to this waiver, see § 734.303(g).

Subpart F—Procedure

§ 734.601 Report forms.

The Office of Government Ethics makes available standard forms for reporting the information required by this part.

§ 734.602 Filing of reports.

(a) Except as otherwise provided in this section, a reporting individual shall file the report required under this part with the designated agency ethics official at the agency in which the individual:

(1) Is serving,

(2) Served prior to termination of employment, or

(3) Will serve.

The designated agency ethics official shall note on any report or supplemental report the date it is received.

(b) The President and Vice President shall file their reports with the Director of the Office of Government Ethics.

(c) Each agency shall transmit to the Director, Office of Government Ethics, copies of the reports required to be filed by:

(1) The Postmaster General,

(2) The Deputy Postmaster General,

(3) The governors of the Board of Governors of the United States Postal Service,

(4) Designated agency ethics officials,

(5) Candidates for the office of President or Vice President, and

(6) Officers and employees in, and nominees to, offices or positions which require confirmation by the Senate other than those required of members of the unformed services.

Prior to transmitting a copy of the report to the Director, the agency shall, except in the case of the designated agency ethics official's report, which shall be reviewed by the head of the agency (or his or her delegate), review the report in accordance with § 734.604(b). The Director shall forward a copy of the report of each nominee to the Senate committee considering the nomination. (See § 734.604(c) for procedures regarding the review of such reports.)

(d) The Director shall file his or her report in the Office of Government Ethics. Upon receipt, the report will be made immediately available to the public in accordance with this part.

(e) Candidates for President and Vice President identified in § 734.201(d), other than an incumbent President or Vice President, shall file their reports with the Federal Election Commission which in turn shall send copies of such reports to the Office of Government Ethics pursuant to paragraph (c) of this section.

(f) Members of the uniformed services identified in § 734.202(c), shall file their reports with the Secretary concerned.

§ 734.603 Custody of and public access to reports.

(a) Each agency shall make each report filed with it under this part available to the public in accordance with the provisions of this section, together with a copy of the official position description of the Government office or position held by the reporting individual involved, if available.

(b) This section does not require public availability of the report filed by any individual in:

(1) The Central Intelligence Agency,

(2) The Defense Intelligence Agency,

(3) The National Security Agency, or

(4) Any individual engaged in intelligence activities in any agency of the United States,

if the President finds that, due to the nature of the office or position occupied by the individual, public disclosure of the report would, by revealing the identity of the individual or other sensitive information, compromise the national interest of the United States. These individuals may be authorized, notwithstanding § 734.701(a), to file any additional reports necessary to protect their identity from public disclosure if the President first finds that such filings are necessary in the national interest.

(c) Each agency shall, within fifteen days after any report is actually received by the agency, permit inspection of the report by, or furnish a copy of the report to, any person who makes a written application stating:

(1) The person's name, occupation and address,

(2) The name and address of any other person or organization on whose behalf the inspection or copy is requested, and

(3) That the person is aware of the prohibitions on the obtaining or use of the report, as set forth in paragraph (e) of this section.

The application shall be made available to the public throughout the period during which the report itself is made available to the public. The reviewing officials and the support staffs who maintain the files, the staff of the Office of Government Ethics, and Special Agents of the Federal Bureau of Investigation who are conducting a criminal inquiry into possible conflict of interest violations need not submit the application provided for by this paragraph.

(d) The agency may require a reasonable fee, established by appropriate agency regulation, to recover the direct cost of reproduction or mailing of such report, excluding any salary of any employee involved in such process. A copy of the report may be furnished without charge or at a reduced charge if the agency determines that waiver or reduction of the fee is in the public interest. The criteria used by an agency to determine when a fee will be reduced or waived shall be established by an appropriate regulation.

(e) It is unlawful for any person to obtain or use a report—

(1) For any unlawful purpose;

(2) For any commercial purpose, other than by news and communications media for dissemination to the general public;

(3) For determining or establishing the credit rating of any individual; or

(4) For use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

Example (1): The deputy general counsel of an agency as its reviewing official (see § 734.105(n)) is responsible for reviewing the public financial disclosures filed by officials within that agency. The personnel director for that agency, not exercising functions within the ethics program, wishes to review the disclosure of an individual within the agency. The personnel director must file an application to review the disclosure. However, the supervisor of an official with whom the deputy general counsel consults with respect to matters arising in the review process need not file such an application.

Example (2): A state law enforcement agent is conducting an investigation which involves the private financial dealings of an individual who has filed a public disclosure. The agent must complete a written application in order to review or obtain a copy of the statement.

Example (3): A copy of a report is obtained by a reporter for use in a general newspaper article. This copy is seen on the reporter's desk by an editor who is in charge of a local charity drive. The editor observes that the reporting individual owns a business in his community and sends a personal note to the individual referring to the business and soliciting a contribution for the charity. This use is prohibited.

Example (4): A financial institution has received an application for a loan from an official indicating her present financial status. The official has filed a public financial disclosure with her agency. The financial institution cannot review the disclosure for purposes of checking the information contained on the report against that which appears on the application.

(f)(1) Any report filed with an agency, or transmitted to the Director, Office of Government Ethics, under this section, shall be retained by the agency or the Office of Government Ethics, or both, as the case may be. The report shall be made available to the public for a period of six years after receipt of the report. After the six-year period the report shall be destroyed unless needed in an ongoing investigation, except that in the case of an individual who filed the report under § 734.201(c) and was not subsequently confirmed by the Senate, or who filed the report under § 734.201(d) and was not subsequently elected, the report shall be destroyed one year after the individual either is no longer under consideration by the Senate or is no longer a candidate for nomination or election to the Office of President or Vice President.

(2) For purposes of paragraph (f)(1) of this section, in the case of a reporting individual with respect to whom a trust has been certified under Subpart D of this part, a copy of the qualified trust agreement, the list of assets initially placed in the trust, and all other publicly available documents relating to the trust shall be retained until the periods for retention of all other reports on the individual have lapsed under paragraph (f)(1) of this section.

§ 734.604 Review of reports.

(a) *In general.* Reports shall be reviewed by the appropriate reviewing official within 60 days after the date of filing. Reports reviewed by the Director, Office of Government Ethics, shall be reviewed within 60 days from the date each report was transmitted by the agency to OGE.

(b) *Responsibilites of reviewing officials.*—(1) *Initial review.* The reviewing official shall review each report to determine to his or her satisfaction that:

(i) Each item is completed, and

(ii) No interest or position disclosed on the form violates or appears to violate:

(A) Any applicable provision of Chapter 11 of 18 U.S.C. Part 1,

(B) The Ethics in Government Act of 1978, as amended, and the regulations promulgated thereunder,

(C) Executive Order 11222 and applicable regulations promulgated thereunder, or

(D) Any other statute or regulation applicable to the employees of the reviewing official's agency.

The reviewing official shall not sign and date the report until that determination is made. A reviewing official need not audit the report to ascertain whether the disclosures are correct; disclosures are to be taken at "face value" unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report. A report which is signed by a reviewing official, however, shall signify that the agency in which the reporting individual serves has found that the information contained in the report discloses no conflict of interest under applicable laws and regulations and that the report fulfills the requirements of this paragraph (b)(1).

(2) *Requests for additional information.* If the reviewing official believes that additional information is required, the official shall request this information indicating a date by which the information must be submitted. This additional information shall be made a part of the report.

(3) *Review on basis of additional information.* If the reviewing official concludes on the basis of the information disclosed in the report and any additional information required under paragraph (b)(2) of this section that:

(i) The report fulfills the requirements of paragraph (b)(1) of this section, the reviewing official shall sign and date the report, or

(ii) The report does not fulfill the requirements of paragraph (b)(1) of this section, the official shall:

(A) Notify the reporting individual of this opinion,

(B) Afford the reporting individual a reasonable opportunity for an oral or written response, and

(C) Determine on the basis of the response whether or not the report fulfills the requirements.

(4) *Review to determine remedial action.* If the reviewing official concludes, after following the procedure set forth in paragraph (b)(3)(ii) of this section, that:

(i) The report fulfills the requirements of paragraph (b)(1) of this section, the reviewing official shall sign and date the report and notify the reporting individual in writing that this action was taken; or

(ii) The report does not fulfill the requirements of paragraph (b)(1) of this section, the reviewing official shall:

(A) Notify the individual of that opinion,

(B) Afford the individual an opportunity for personal consultation, if practicable,

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(C) Determine what remedial action should be taken to bring the report into compliance, and

(D) Notify the individual in writing of the remedial action required, indicating a date by which that action must be taken.

Except in unusual situations which must be fully documented to the satisfaction of the reviewing official, remedial action shall be completed within 90 days from the date the individual was notified that the action would be required.

(5) *Remedial steps.* Remedial steps may include, as appropriate:

(i) Divestiture of the conflicting interest,

(ii) Restitution,

(iii) The establishment of a qualified trust under section 202(f) of the Act,

(iv) Request for an exemption under 18 U.S.C. 208(b),

(v) Recusal, or

(vi) Voluntary request by the individual for transfer, reassignment, limitation of duties or resignation.

(6) *Compliance or referral.* (i) If the reporting individual complies with a written request for remedial action required under paragraph (b)(4)(ii), the reviewing official shall indicate in the comment section of the report that this action has been taken and shall sign and date the report. The reviewing official shall send to the reporting individual written notification of the signing and of the addition of the comment to the form.

(ii) If the reporting individual does not comply with a written request for remedial action transmitted under paragraph (b)(4)(ii) of this section, the reviewing official shall notify the Office of Government Ethics and refer the matter for appropriate action to:

(A) The President, where the reporting individual is in a position, other than in the uniformed services, appointment to which requires the advice and consent of the Senate,

(B) The Secretary concerned, for a member of the uniformed services, or

(C) The head of the agency, for any other officer or employee, except in the case of the Postmaster General or Deputy Postmaster General, the Director of the Office of Government Ethics shall recommend to the Governors of the Board of Governors of the United States Postal Service the action to be taken. In unusual circumstances, the Office of Government Ethics may order corrective action as authorized by section 402(b)(9) of the Act.

(7) *Appropriate action.* Appropriate action includes changes in assigned duties or adverse action in accordance with the procedures set forth in 5 CFR Part 752.

(8) *Scope of this paragraph.* The provisions of this paragraph (b) shall not apply in the case of the President or Vice President, or a candidate or nominee for such office.

(c) *Expedited procedure in the case of individuals appointed by the President and subject to confirmation by the Senate.* Notwithstanding paragraph (a) of this section, in the case of a report filed by an individual described in § 734.201(c) who is nominated to a position, by the President, by and with the advice and consent of the Senate:

(1) The Executive Office of the President shall furnish the financial disclosure reporting forms to the nominee and shall forward the completed report to the designated agency ethics official at the agency in which the nominee will serve or is serving; or when appropriate, the nominee shall file the completed report directly with the designated agency ethics official.

(2) The designated agency ethics official shall review the report and, only after the official completes a review in accordance with paragraph (b)(1) of this section and concludes that there is no conflict of interest under applicable laws and regulations, the official shall:

(i) Attach to the report a copy of the official position description (when available) of the position to be filled by the nominee;

(ii) Personally certify the report and date the certification;

(iii) Write an opinion letter to the Director, Office of Government Ethics, certifying that there is no conflict of interest under applicable laws and regulations, and discussing:

(A) Any problems which the official encountered in reaching the conclusions upon which that certification is based and describing the resolution of the problems, and

(B) Any specific commitment, agreement, recusal, or other undertaking by the nominee to resolve any such problem through recusal, divestiture or similar action (with a copy of any such commitment, agreement, recusal, or other undertaking which has been reduced to writing to be sent to the Director as soon as it is available); and

(iv) Deliver the letter and report to the Director, Office of Government Ethics, within three days after the receipt of the report by the agency in which the nominee will serve or is serving.

(3) The Director of the Office of Government Ethics shall review the report and the letter from the designated agency official and, if satisfied that there is no unresolved conflict, the Director shall sign the report and date the approval. The Director shall submit the report with a letter to the Senate Committee involved expressing the Director's opinion that on the basis of information contained in the report the nominee is in compliance with applicable laws and regulations.

(4) If in the case of any nominee or class of nominees for any reason the expedited procedure specified in this paragraph (c) cannot be completed within the time set forth in paragraph (c)(2)(iv) of this section, the designated agency official shall inform the Director. When necessary and appropriate in the case of a class of nominees, the Director may modify the rule of that paragraph with respect to a particular department or agency.

§ 734.605 Advice and opinions.

For purposes of assisting both current and former employees in avoiding situations in which they would not be in compliance with applicable laws and regulations and to inform members of the public—

(a) The Director, Office of Government Ethics, will render advisory opinions on matters of general applicability or on important matters of first impression after, to the extent practicable, providing interested parties with an opportunity to transmit written comments on the request for the advisory opinion, and whereby such advisory opinions are compiled, published, and made available to agency ethics counselors and the public; and

(b) Each Secretary concerned and designated agency official, including the President in the case of individuals employed in the Executive Office of the President, shall maintain a list of those circumstances or situations which have resulted or may result in non-compliance with such laws or regulations; such list shall be periodically published, and shall be furnished to those individuals employed within the agency who are required to file reports under this part, however, the absence of any situation or circumstance from such a list shall not be construed as an indication that an individual in such circumstance or situation would be in compliance with such laws or regulations.

Subpart G—Penalties and Remedial Action

§ 734.701 Failure to file or falsifying reports.

(a) *Civil action.* The Attorney General may bring a civil action in any appropriate United States District Court against any individual who knowingly and willfully falsifies or who knowingly or willfully fails to file or report any information required under this part. The court in which the action is brought may assess against the individual a civil penalty in any amount, not to exceed $5,000.

(b) *Referral of cases.* The head of each agency, each Secretary concerned, or the Director, Office of Government Ethics, as the case may be, shall refer to the Attorney General the name of any individual he or she has reasonable cause to believe has willfully failed to file a report or has willfully falsified or willfully failed to file required information.

(c) *Administrative remedies.* The President, the Vice President, the Director, Office of Government Ethics, the Secretary concerned, the head of each agency, and the Office of Personnel Management, may take any appropriate personnel or other action in accordance with applicable law or regulation against any individual failing to file a report or falsifying or failing to file required information. This action includes adverse action under 5 CFR Part 752.

§ 734.702 Certain actions in the case of qualified trusts.

(a) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who knowingly and willfully violates the provisions of § 734.407(a) (1) and (2). The court in which the action is brought may assess against the individual a civil penalty in any amount, not to exceed $5,000.

(b) The Attorney General may bring a civil action in any appropriate United States District Court against any individual who negligently violates the provisions of § 734.407(a)(1) and (a)(2). The court in which the action is brought may assess against the individual a civil penalty in any amount, not to exceed $1,000.

§ 734.703 Misuse of reports.

The Attorney General may bring a civil action against any person who obtains or uses a report filed under this part for any purpose prohibited by section 205(c)(1) of the Act and § 734.603(e). The court in which the action is brought may assess against the person a penalty in any amount, not to exceed $5,000. This remedy shall be in addition to any other remedy available under statutory or common law.

Appendix A

The Certificate of Independence required by § 734.406(a) shall be executed as follows:

CERTIFICATE OF INDEPENDENCE

With respect to the trust of _____ (Settlor), which has been submitted to the Office of Government Ethics for certification pursuant to the Ethics in Government Act of 1978 (Pub. L. 95–521, as amended), the undersigned proposed Trustee of such trust, or person in addition to a party to the trust designated in the trust instrument as an investment adviser, is eligible to serve in such fiduciary capacity in accordance with section 202(f)(3)(A) of such Act:

FIRST: The undersigned is (check one)—

- ☐ a financial institution, which is a "bank" as defined in 15 U.S.C. 80b–2(a)(2);
- ☐ an attorney, who is admitted to practice before the highest court of _____;
- ☐ a certified public accountant;
- ☐ a "broker", as defined in 15 U.S.C. 78c(a)(4);
- ☐ an investment adviser, who is a person defined in 15 U.S.C. 806–2(a)(11) or who demonstrates to the satisfaction of the Director general involvement in his or her role as such an adviser in the management or control of trusts; or
- ☐ a person in addition to a party to the trust designated in the trust instrument as an investment adviser.

SECOND: The undersigned (and any officer or employee of the undersigned, involved or to be involved in the management or control of the trust)—

(A) Is independent of and unassociated with any interested party so that the undersigned (and any such officer and employee) cannot be controlled or influenced in the administration of the trust by any interested party;

(B) Is not or has not been an employee of an interested party, or any organization affiliated with any interested party and is not a partner of, or involved in any joint venture or other investment with, any interested party;

(C) Is not a relative of any interested party; and

(D) Does not share actively in a business enterprise or other undertaking with any interested party.

* * * * *

The undersigned certifies that the statements contained herein are true, complete and correct to the best of such undersigned's knowledge and belief.

Date _____
(firm) _____
By: _____
(title) _____
Approved by _____
Director, Office of Government Ethics
Date _____

Appendix B

The Certificate of Compliance required by § 734.407(b) shall be executed as follows:

CERTIFICATE OF COMPLIANCE

With respect to the qualified blind trust [qualified diversified trust] of _____ (Settlor), the undersigned, the approved Trustee of such trust or approved person in addition to a party to the trust designated in the trust instrument as an investment adviser pursuant to 5 CFR 734.406, has served in such fiduciary capacity during the calendar year _____ (or for the period beginning _____ and ending _____) and is eligible to continue in such capacity by virtue of the following:

The undersigned (and any officer or employee involved in the management or control of the trust) has not knowingly or negligently, and will not—

(A) disclose any information to an interested party with respect to such trust that may not be disclosed pursuant to 5 CFR 734.403(b)(5) (5 CFR 734.404(c)(5), in the case of a qualified diversified trust) or any other provision or requirement of Subpart D of 5 CFR Part 734,

(B) acquire any holding the ownership of which is prohibited by, or not in accordance with, 5 CFR 734.403(b)(2) (5 CFR 734.404(c)(2), in the case of a qualified diversified trust) or the terms of the trust instrument,

(C) solicit advice from any interested party with respect to such trust, which solicitation is prohibited by 5 CFR 734.403(b)(1) (5 CFR 734.404(c)(1), in the case of a qualified diversified trust) or any other provision or requirement of Subpart D of 5 CFR Part 734 or the trust instrument,

(D) fail to file any document required by 5 CFR 734.407(b) and (c) or any other provision of Subpart D of 5 CFR Part 734, or

(E) violate or fail to comply with any provision or requirement of Subpart D of 5 CFR Part 734 or the trust instrument.

* * * * *

The undersigned certifies that the statements contained herein are true, complete and correct to the best of such undersigned's knowledge and belief.

Date _____
(firm) _____
By: _____
(title) _____

PART 735—EMPLOYEE RESPONSIBILITIES AND CONDUCT

§§ 735.501–735.508 (Subpart E)—[Removed]

(2) Subpart E of 5 CFR Part 735 is revoked.

(Titles II and IV of Pub. L. 95–521 (October 26, 1978), as amended by Pub. L. 96–19 (June 13, 1979))

[FR Doc. 80–32692 Filed 10–20–80; 8:45 am]
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October 21, 1980

Part V

Department of Labor

Occupational Safety and Health Administration

Basic Program Elements for Federal Employee Occupational Safety and Health Programs; Final Rule

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1960

[Docket No. F-002]

Basic Program Elements for Federal Employee Occupational Safety and Health Programs; Final Rule

AGENCY: Occupational Safety and Health Administration, U.S. Department of Labor.

ACTION: Final rule.

SUMMARY: Executive Order 12196, issued to provide direction for the implementation of Section 19 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 668), directs the Secretary of Labor to issue a set of basic program elements to assist the various Federal agencies in carrying out their responsibilities under the act and Executive Order 12196. Executive Order 12196 went into effect October 1, 1980 and supersedes Executive Order 11807. In order to provide occupational safety and health protection for Federal employees, Section 19 imposes on the head of each Federal agency the responsibility to "establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards promulgated under Section 6." This document revises 29 CFR Part 1960, entitled Safety and Health Provisions for Federal Employees, to reflect the requirements of Executive Order 12196 and to carry out the Secretary's responsibilities under Sections 19 and 24 of the Act.

DATES: This final rule is effective October 21, 1980. For information on other related dates, see the discussion of "Effective Date" set forth in the Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Ms. Clinton M. Wright, Director, Directorate of Training, Education, Consultation and Federal Agency Programs, Room N3476, U.S. Department of Labor, Washington, D.C. 20210 (202-523-7251).

SUPPLEMENTARY INFORMATION:

1. Background

On March 12, 1980, a draft revision of 29 CFR Part 1960, newly entitled "Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters" was submitted to a task group of the Federal Advisory Council on Occupational Safety and Health (FACOSH) for consideration. On March 21 and March 28, 1980, the draft proposal of Part 1960 was submitted by the task group to all members of FACOSH for consideration and advice. This proposal was prepared by the Agency after full consideration of the views and advice of FACOSH. On May 21, 1980, in accordance with Section 1-401(c) of Executive Order 12196, the Secretary of Labor submitted this proposed revision to the Office of Management and Budget (OMB). OMB, on June 17, 1980, distributed the proposal to selected agencies for comment.

In addition, on August 15, 1980, notice was published (45 FR 54355) inviting public comment on the proposed revision of 29 CFR Part 1960. A period for receipt of written comments on the proposed revision was provided, ending September 15, 1980.

The purpose of this revision of Part 1960 is to set forth the basic program elements that each Federal agency head is to follow in establishing and maintaining an effective and comprehensive occupational safety and health program for an agency's employees. Section 1-401(c) of Executive Order 12196 requires the Secretary of Labor to promulgate these basic program elements to provide guidance to the heads of Federal agencies to carry out the terms of the Executive Order. The final rule establishes procedures and guidance, among other things, for the administration of Federal occupational safety and health programs (Subpart B), for compliance with OSHA standards (Subpart C), for inspection of agency workplaces for hazardous conditions and the abatement of such conditions where they are found to exist (Subpart D), for effective coordination and cooperation between Federal agencies in achieving a safe and healthful Federal work environment (Subpart E), for the establishment and operation of occupational safety and health committees (Subpart F), for dealing with employee allegations of reprisal (Subpart G), for training of various individuals in occupational safety and health (Subpart H), for recordkeeping and reporting (Subpart I), for evaluating Federal safety and health programs (Subpart J), and for forming and operating Field Federal Safety and Health Councils (Subpart K).

This final rule is, in most respects, the same as the proposal. Most changes are not substantive; they are largely technical or editorial in nature. In some provisions dealing with the details of agency programs, the word "should" has been substituted for the word "shall." However, it is OSHA's position that those alterations do not detract from the efficacy of the program elements and do provide the flexibility required by Section 1-401 of the Executive Order. Following is a discussion of the major issues identified in agency responses to OMB's solicitation of views and in public comments on OSHA's notice of rulemaking and OSHA's response thereto, including any major changes in the proposal.

2. Discussion

A. Agencies noted that § 1960.1(b) contained no provision for consultation with employees or their representatives prior to requesting approval from the Secretary of alternate program elements. OSHA believes that employees and employee representatives, as well as safety and health committees where established, should play a role in the development of alternate program elements. Therefore, we have changed § 1960.1(b) to require such consultation where alternate program elements are contemplated. A request that an opportunity for hearing be provided has been rejected as being inconsistent with the tenor of the Federal occupational safety and health program, with the requirement of maintaining flexibility set forth in the Executive Order, and with the basic statutory scheme of Section 19 of the Act that vests primary authority for assuring Federal employee safety and health in the heads of the separate Federal agencies. We believe employee participation is amply assured through the committee structure. Moreover, OSHA's agency evaluation program will identify any agency which does not afford adequate opportunity for employee participation.

B. Several agencies criticized Subpart G of the proposal, dealing with employee allegations of discrimination, as duplicative of existing agency and Office of Personnel Management procedures for the disposition of personnel matters. It is not our intention to impose procedures which would duplicate any efficient procedures that presently exist. Therefore, we have substantially revised Subpart G to require agency heads to have procedures to assure that employees are not subject to reprisals for participating in agency safety and health activities. The rule permits agency heads a degree of flexibility as to the details of the procedures. However, § 1960.46(b) provides that, should OSHA find through its evaluation of agency occupational safety and health programs that employee rights under the Executive Order are not being adequately protected by existing

procedures, the Secretary shall report such findings to the President by September 30, 1982, and shall recommend improvements in procedures for the investigation and resolution of allegations of reprisal. Section 1960.47 has been revised to require that safety and health committees be advised of agency activity regarding allegations of reprisal.

Finally, there was criticism of the broad language of § 1960.46 which permits an employee to refuse to work under certain circumstances. That language has been made more precise to reflect the concept that an employee may refuse to work where he or she has a reasonable belief that the task involved poses an imminent risk of death or serious physical harm coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard reporting and abatement procedures.

C. Several agencies requested that the basic program elements include a reference to Section 4(b)(1) of the OSH Act. That section, in effect, precludes the application of OSHA standards to working conditions that are addressed by other Federal agencies' standards or regulations affecting occupational safety and health. One of the purposes of Section 4(b)(1) is to avoid duplication of effort by OSHA and other Federal agencies. For example, if this request were accepted, where a Federal agency must comply with standards or regulations affecting occupational safety and health issued by another Federal agency, then OSHA standards, otherwise applicable to Federal employees under Executive Order 12196, would, by virtue of Section 4(b)(1), not be applicable to the working conditions addressed by other Federal standards.

The suggestion to include a reference to Section 4(b)(1) of the OSH Act in the basic program elements was rejected because the OSH Act and its legislative history make it clear that the provisions of the OSH Act applicable to Federal employees are Section 19 and Section 24 (statistics). Thus, OSHA is precluded from making any other provision of the OSH Act expressly applicable to the Federal employee programs.

The proposal was changed, however, to make it clear that OSHA recognizes that Federal agencies must, in certain circumstances, comply with both OSHA standards and those of other Federal agencies such as the Department of Energy (DOE). We have included in the final program elements an expressed recognition of this fact. We do not believe, however, that conflicts between OSHA standards and those of other agencies are at all common. For example, OSHA's radiation standards are identical to those of DOE. In most other cases, OSHA does not have standards dealing with hazards already addressed by the agencies' standards; for example, OSHA would have no standards dealing with flight safety of aircraft that is addressed by Federal Aviation Administration's standards and regulations.

Nevertheless, to deal with the rare case where there may be a conflict between an OSHA standard and a regulation of another agency, the final rule provides a mechanism for resolving that conflict; that is, informal coordination between the Secretary of Labor and the other affected agencies. Because conflicts of this type are rare, there is no need to include in the program elements the approach of Section 4(b)(1).

D. A question was raised concerning the definition of "employee" in § 1960.2(g), which is:

> The term "employee" as used in this part means any person, other than members of the Armed Forces, employed or otherwise suffered, permitted, or required to work by an "agency" * * *.

The question is whether the intention is to cover prisoners in Federal prisons and to give them the same recourse as Federal civilian employees. In that respect, the definition of "employee" is unchanged from the definition contained in the existing Part 1960. We purposely used a broad definition so that people like volunteers and prisoners would be protected under the safety and health program. The definition of employee with regard to the occupational safety and health program does not mean that prisoners are to be treated as employees for any other purpose. The occupational safety and health program is intended to deal with hazardous working conditions, and it is OSHA's opinion that where prisoners are employed in work similar to that outside prisons e.g., farming, laundries, machine operations, etc., all the protections open to anyone else in similar situations should apply, including the right to file a report of hazards with appropriate safety and health officials. The definition remains unchanged.

E. The Executive Order requires that agency heads shall comply with all standards issued under Section 6 of the Act, except where the Secretary approves compliance with alternative standards. Section 1960.17 of this part prescribes procedures for submitting an alternate standard to the Secretary, along with certain supporting materials, for consideration and approval. Several agencies suggested that there should be a mechanism to bypass the procedures for alternative standards where an agency chooses to apply a standard that is more stringent and, therefore, more protective of employees. We agree that in certain circumstances, where it is clear that a standard differs from a Section 6 standard only in a specific, quantitative element and provides employees greater protection, the justifications and supporting materials required in § 1960.17 should not be required as a matter of course. We have added language to § 1960.16 to omit, in certain specific and limited circumstances, automatic recourse to the approval procedures in § 1960.17. The most common situations involving limited differences are where an agency wishes to set a *lower* permissible exposure level (or threshold limit value) or where the agency wishes to monitor workplace exposures *more* frequently than the Section 6 standard requires. The third situation is where the agency wishes to apply a more recent edition of a reference standard; one newer than the existing standard incorporated into Section 6 standards (e.g., the National Electrical Code). This last exception is less clear-cut than the other examples because a reference standard in a newer edition is not always a more stringent or more protective standard; the protection may actually be weakened. Therefore, the revision to § 1960.16 requires that the Secretary be notified of these situations for several reasons. First, the Secretary's knowledge that a Federal agency is applying a stricter standard would be essential if the Secretary was making an inspection under the authority of the Executive Order. Second, the ability of an agency to comply with a more stringent standard may provide valuable information for our own standards-setting or revision processes. Also, since the newer reference-standards may, in fact, be less stringent, prior notification to the Secretary and consultation with employees will help prevent inadvertent lessening of employee protection. Finally, we have added language permitting the Secretary to require an agency to utilize the approval procedures when, after notification, by the agency, the Secretary determines that the protection afforded by the alternate standard may be inadequate. A similar approval process has also been added to § 1960.18 dealing with supplementary standards.

F. The Executive Order permits agency heads to voluntarily establish safety and health committees but requires only that, if established, the committees shall be established at the

national level and "other appropriate levels." The proposal, after consultation with the FACOSH, provided that in addition to the national level committee, committees shall be organized at individual establishments (or groupings of small establishments) and further provides that if an agency chooses to set up committees, it must establish them at *all* establishments and effectively cover *all* employees. Thus, if committees were not organized to cover *all* establishments within an agency—e.g., at every DOD installation—every establishment of that agency would be subject to unannounced inspections by the Secretary. Several agencies protested this "all or nothing" approach essentially on the grounds that it is inconsistent with the mandate of Executive Order 12196 to provide flexibility in the implementation of the agency program and it would inhibit the formation of committees. We believe that Federal employees will be adequately protected through either an establishment committee or unannounced inspections by the Secretary. Therefore, the "all or nothing" approach has been modified to preserve flexibility by permitting committees to be organized on an establishment basis with the result that only those establishments with committees will be largely free from OSHA unannounced inspections.

G. Several agencies expressed a concern that § 1960.28(b), which stated that employee reports of unsafe or unhealthful working conditions are not grievances, could be interpreted as interfering with existing collective bargaining agreements and grievance procedures. The intent of the provisions of this part is to provide workplace protection for the Federal workers as comparable as possible to that of private sector employees. The OSH Act, in the private sector, places primary responsibility for complying with OSHA standards on employers, not on employees. In the private sector, employee complaints of unsafe and unhealthful working conditions are essentially informational in nature. This information facilitates the Secretary's efforts to insure that employers comply with OSHA requirements. That principle of employer responsibility for complying with OSHA standards is carried over to the Federal employment sector. Because nothing should be included or construed as disturbing or altering that basic employer responsibility (agency-head responsibility), employee reports of unsafe or unhealthful working conditions must be treated as informational in nature. Whether or not an employee may also grieve on health and safety issues is a separate matter that does not alter the basic principle of employer responsibility to correct unsafe and unhealthful working conditions. This principle of comparability of protection is the historical basis for Executive Order 12196 and, therefore, constitutes the underlying theme for these regulations.

Therefore, our position remains unchanged in that a report of a hazardous working condition is not a grievance. However, to avoid possible confusion of a report with a grievance, we have deleted as superfluous, those references in paragraph (b) dealing with grievances.

3. Effective Date

This final rule is effective upon publication. However, agencies are given 30 days from the date of publication in which to determine whether or not to establish occupational safety and health committees pursuant to Executive Order 12196 and this Part. Within the 30 days, each agency head shall inform the Secretary, in writing, of the agency's decision to form committees or not to form committees. For those agencies which decide to establish committees, an additional period of 60 days is given in which to institute the committee structure. Within the 60 days, each agency head shall inform the Secretary, in writing, of the location and coverage of each committee. During the above time (30 days for all agencies and an additional 60 days for agencies choosing to utilize the committee system), the Secretary of Labor will not conduct unannounced inspections as provided in Section 1–401(i) of Executive Order 12196 except where the Secretary deems it necessary in the case of an imminent danger. Because Executive Order 12196 became effective October 1, 1980, and because this final rule provides the basic program elements needed by Federal agencies to implement occupational safety and health programs pursuant to the Order, it is necessary to make this final rule effective upon publication.

I find that the reasons stated above constitute good cause for making this rule effective immediately. This rule is therefore, effective on October 21, 1980.

4. Authority

This document was prepared under the direction of Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Third and Constitution Avenue, NW., Washington, D.C. 20210.

Accordingly, pursuant to Sections 19 and 24 of the Occupational Safety and Health Act of 1970 (84 Stat. 1609, 1614, 29 U.S.C. 668, 673), Secretary of Labor's Order No. 8–76 (41 FR 25059), and Executive Order 12196, Occupational Safety and Health Programs for Federal Employees, Part 1960, Chapter XVII of Title 29, Code of Federal Regulations is revised to read as follows.

Signed at Washington, D.C., this 15th day of October, 1980.

Eula Bingham,

Assistant Secretary of Labor for Occupational Safety and Health.

PART 1960—BASIC PROGRAM ELEMENTS FOR FEDERAL EMPLOYEE OCCUPATIONAL SAFETY AND HEALTH PROGRAMS AND RELATED MATTERS

Subpart A—General

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Subpart D—Inspection and Abatement

1960.25 Qualifications of safety and health inspectors and agency inspections.
1960.26 Conduct of inspections.
1960.27 Representatives of officials in charge and representatives of employees.
1960.28 Employee reports of unsafe or unhealthful working conditions.
1960.29 Accident investigation.
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1960.31 Inspections by OSHA.
1960.32–1960.33 [Reserved]

Subpart E—General Services Administration and Other Federal Agencies

1960.34 General provisions.
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Subpart F—Occupational Safety and Health Committees

1960.36 General provisions.
1960.37 Committee organization.
1960.38 Committee formation.
1960.39 Agency responsibilities.
1960.40 Establishment committee duties.
1960.41 National committee duties.
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Subpart I—Recordkeeping and Reporting Requirements

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1960.70 Reporting of serious accidents.
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1960.72 Access to records by Secretary.
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1960.74 Identification of reporting units.
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Subpart J—Evaluation of Federal Occupational Safety and Health Programs

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1960.79 Self-evaluations of occupational safety and health programs.
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Subpart K—Field Federal Safety and Health Councils

1960.84 Purpose.
1960.85 Role of the Secretary.
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1960.87 Objectives.
1960.88 Membership and participation.
1960.89 Organization.
1960.90 Operating procedures.
1960.91 [Reserved]

Authority: Secs. 19 and 24 of the Occupational Safety and Health Act of 1970 (84 Stat. 1609, 1614, (29 U.S.C. 668, 673)); Secretary of Labor's Order No. 8–76 (41 FR 25059); E.O. 12196.

Subpart A—General

§ 1960.1 Purpose and scope.

(a) Section 19 of the Occupational Safety and Health Act (the Act) contains special provisions to assure safe and healthful working conditions for Federal employees. Under that section, it is the responsibility of the head of each Federal agency to establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards promulgated under section 6 of the Act. The Secretary of Labor (the Secretary), under section 19, is to report to the President certain evaluations and recommendations with respect to the programs of the various agencies, and the duties which section 24 of the Act imposes on the Secretary of Labor necessarily extend to the collection, compilation and analysis of occupational safety and health statistics from the Federal Government. The role of the General Services Administration in this area stems from its duties as the Government's principal landlord and from its specific safety and health responsibilities under 41 CFR Part 101, Subchapter D, Federal Property Management Regulations.

(b) Executive Order 12196, Occupational Safety and Health Programs for Federal Employees, issued February 26, 1980, prescribes additional responsibilities for the heads of agencies, the Secretary, and the General Services Administrator. Among other duties, the Secretary is required to issue basic program elements in accordance with which the heads of agencies shall operate their safety and health programs. The purpose of this part is to issue these basic program elements. Although agency heads are required to operate a program in accordance with the basic program elements, those elements contain numerous provisions which, by their terms, permit agency heads the flexibility necessary to implement their programs in a manner consistent with their respective missions, sizes, and organizations. Moreover, an agency head, after consultation with agency employees or their representatives and with appropriate safety and health committees may request the Secretary to consider approval of alternate program elements; the Secretary, after consultation with the Federal Advisory Council on Occupational Safety and Health, may approve such alternate program elements.

(c) Under Executive Order 12196, the Secretary is required to perform various services for the agencies, including consultation, training, recordkeeping, inspections, and evaluations. Agencies are encouraged to seek such assistance from the Secretary as well as advice on how to comply with the basic program elements and operate effective occupational safety and health programs. Upon the request of an Agency, the Office of Federal Agency Safety and Health Programs will review proposed agency plans for the implementation of program elements.

(d) Section 19 of the Act and the Executive Order require specific opportunities for employee participation in the operation of agency safety and health programs. The manner of fulfilling these requirements is set forth in part in these program elements. These requirements are separate from but consistent with the Federal Service Labor Management Relations Statute (5 U.S.C. 71) and regulations dealing with labor-management relations within the Federal Government.

(e) Executive Order 12196 and these basic program elements apply to all agencies of the Executive Branch. They apply to all Federal employees. They apply to all working conditions of Federal employees except those involving uniquely military equipment, systems, and operations.

(f) The Executive Order and this part do not apply to employees or working conditions of employees of private contractors performing work under government contracts, regardless of whether such privately employed workers perform their duties in government owned or leased facilities with government equipment or together with government personnel. Protection of employees of private contractors is assured under the other provisions of the Act, not under Section 19. No provision of the Executive Order or this part shall be construed in any manner to relieve any private employer, including Federal contractors, or their employees of any rights or responsibilities under the provisions of the Act, including compliance activities conducted by the Department of Labor or other appropriate authority.

(g) Federal employees who work in establishments of private employers are covered by their agencies' occupational safety and health programs. Although an agency may not have the authority to require abatement of hazardous conditions in a private sector workplace, the agency head must assure safe and healthful working conditions for his/her employees. This shall be accomplished by administrative controls, personal protective equipment, or withdrawal of Federal employees from the private sector facility to the extent necessary to assure that the employees are protected.

§ 1960.2 Definitions.

(a) The term "Act" means the Occupational Safety and Health Act of 1970 (84 Stat. 1590 et seq., 29 U.S.C. 651 et seq.).

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(b) The term "agency" for the purposes of this part means an Executive Department, as defined in 5 U.S.C. 101, or any employing unit or authority of the Executive Branch of the Government. For the purposes of this part to the extent it implements section 19 of the Act, the term "agency" includes the United States Postal Service. By agreement between the Secretary of Labor and the head of an agency of the Legislative or Judicial Branches of the Government, these regulations may be applicable to such agencies.

(c) The term "agency liaison" means an agency person appointed with full authority and reponsibility to represent the occupant agency management with the official in charge of a facility or installation such as a GSA Building Manager.

(d) The term "building manager" means the person who manages one or several buildings under the authority of a Federal agency. For example, a building manager may be the GSA person who manages building(s) for GSA.

(e) As used in Executive Order 12196, the term "consultation with representatives of the employees thereof" shall include such consultation, conference, or negotiation with representatives of agency employees as is consistent with the Federal Service Labor Management Relations Statute (5 U.S.C. 71), or collective bargaining or other labor-management arrangements. As used in this part, the term "representative of employees" shall be interpreted with due regard for any obligation imposed by the aforementioned statute and any other labor-management arrangement that may cover the employees involved.

(f) The term "Designated Agency Safety and Health Official" means the individual who is responsible for the management of the safety and health program within an agency, and is so designated or appointed by the head of the agency pursuant to § 1960.6 and the provisions of Executive Order 12196.

(g) The term "employee" as used in this part means any person, other than members of the Armed Forces, employed or otherwise suffered, permitted, or required to work by an "agency" as the latter term is defined in paragraph (b) of this section.

(h) The term "establishment" means a single physical location where business is conducted or where services or operations are performed. Where distinctly separate activities are performed at a single physical location, each activity shall be treated as a separate "establishment." Typically, an "establishment" as used in this part refers to a field activity, regional office, area office, installation, or facility.

(i) The term "uniquely military equipment, systems, and operations" excludes from the scope of the order the design of Department of Defense equipment and systems that are unique to the national defense mission, such as military aircraft, ships, submarines, missiles, and missile sites, early warning systems, military space systems, artillery, tanks, and tactical vehicles; and excludes operations that are uniquely military such as field maneuvers, naval operations, military flight operations, associated research test and development activities, and actions required under emergency conditions. The term includes within the scope of the Order Department of Defense workplaces and operations comparable to those of industry in the private sector such as: Vessel, aircraft, and vehicle repair, overhaul, and modification (except for equipment trials); construction; supply services; civil engineering or public works; medical services; and office work.

(j) The term "incidence rates" means the number of injuries and illnesses, or lost workdays, per 100 full-time workers. Rates are calculated as

$$\frac{N \times 200{,}000}{EH}$$

N=number of injuries and illnessea, or number of lost workdays.
EH=total hours worked by all employees during a month, a quarter, or a calendar year.
200,000=base for 100 full-time equivalent workers (working 40 hours per week, 50 weeks per year).

(k) The term "inspection" means a comprehensive survey of all or part of a workplace in order to detect safety and health hazards. Inspections are normally performed during the regular work hours of the agency, except as special circumstances may require. Inspections do not include routine, day-to-day visits by agency occupational safety and health personnel, or routine workplace surveillance of occupational health conditions.

(l) The term "lost workday cases" means injuries and illnesses which involve days away from work and/or days of restricted work activity. "Lost workdays—away from work" means the number of workdays (consecutive or not) during which the employee would have worked but could not because of an occupational injury or illness. "Lost workdays—restricted work activity" means the number of workdays (consecutive or not) during which, because of injury or illness:

(1) The employee was assigned to another job on a temporary basis;

(2) The employee worked at a permanent job less than full time; or

(3) The employee worked at a permanently assigned job but could not perform all duties normally connected with the job.

(m) The term "representative of management" means a supervisor or management official as defined in the applicable labor-management relations program covering the affected employees.

(n) The term "medical treatment" includes treatment administered by a physician, or by licensed or registered professional personnel under standing orders of a physician, for an occupational injury or illness which does not result in days away from work or days of restricted work activity. "Medical treatment" does not include first aid treatment, even though provided by a physician or licensed or registered professional personnel. For further details and specific examples of what is considered first aid treatment versus medical treatment, see OSHA 2014, Recordkeeping and Reporting Guidelines for Federal Agencies.

(o) The term "recordable occupational injuries or illnesses" means any occupational injuries or illnesses which result in:

(1) Occupation-related deaths regardless of the time between injury and death, or the length of illness;

(2) Nonfatal occupational illnesses; or

(3) Nonfatal occupational injuries which involve one or more of the following: days away from work or days of restricted work activity; loss of consciousness; restriction of work or motion; transfer to another job; or medical treatment.

(p) The term "reporting unit" means an establishment, except as otherwise agreed between the agency and the Office of Federal Agency Safety and Health Programs, U.S. Department of Labor, as provided in § 1960.74.

(q) The term "Safety and Health Inspector" means a safety and/or occupational health specialist or other person authorized pursuant to Executive Order 12196, section 1-201(g), to carry out inspections for the purpose of Subpart D of this part, a person having equipment and competence to recognize safety and/or health hazards in the workplace.

(r) The term "Safety and Health Official" means an individual who manages the occupational safety and/or occupational health program at organizational levels below the Designated Agency Safety and Health Official.

(s) The term "Safety and Health Specialist" means a person or persons meeting the Office of Personnel Management standards for such occupations, which include but are not limited to:

Safety Manager/Specialist GS-018
Safety Engineer GS-803
Fire Protection Engineer GS-804
Industrial Hygienist GS-690
Fire Protection Specialist/Marshal GS-081
Health Physicist GS-1306
Occupational Medicine Physician GS-602
Occupational Health Nurse GS-610
Safety Technician GS-019
Physical Science Technician GS-1311
Environmental Health Technician GS-699
Air Safety Investigation Officer GS-1815
Aviation Safety Specialist GS-1825
Chemist GS-1320
Health Technician GS-645
Highway Safety Manager GS-2125

or equally qualified military, agency, or nongovernment personnel. The agency head shall be responsible for determination and certification of equally qualified personnel.

(t) The term "workplace" means a physical location where the agency's work or operations are performed.

(u) The term "imminent danger" means any conditions or practices in any workplace which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through normal procedures.

(v) The word "serious" as used in "serious hazard", "serious violation" or "serious condition" means a hazard, violation or condition such that there is a substantial probability that death or serious physical harm could result.

(w) The term "certified safety and health committee" means an agency safety and health committee that meets the provisions of section 1-3 of Executive Order 12196 and of this part, as listed and attested to by the head of each agency in writing to the Secretary.

(x) The term "reprisal" as used in this part means any act of restraint, interference, coercion or discrimination against an employee for exercising his or her rights under Executive Order 12196 and this part, or for participating in the agency's safety and health program.

§ 1960.3-1960.5 [Reserved]

Subpart B—Administration

§ 1960.6 Designation of agency safety and health officials.

(a) The head of each agency shall designate an official with sufficient authority and responsbility to represent effectively the interest and support of the agency head in the management and administration of the agency occupational safety and health program. This Designated Agency Safety and Health Official should be of the rank of Assistant Secretary, or of equivalent rank, or equivalent degree of responsibility, and shall have sufficient headquarters staff with the necessary training and experience. The headquarters staff should report directly to, or have appropriate access to, the Designated Agency Safety and Health Official, in order to carry out the responsibilities under this part.

(b) The Designated Agency Safety and Health Official shall assist the agency head in establishing:

(1) An agency occupational safety and health policy and program to carry out the provisions of section 19 of the Act, Executive Order 12196, and this part;

(2) An organization, including provision for the designation of safety and health officials at appropriate levels, with adequate budgets and staffs to implement the occupational safety and health program at all operational levels;

(3) A set of procedures that ensures effective implementation of the agency policy and program as required by section 19 of the Act, Executive Order 12196, and the program elements of this part, considering the mission, size, and organization of the agency;

(4) Goals and objectives for reducing and eliminating occupational accidents, injuries, and illnesses;

(5) Plans and procedures for evaluating the agency's occupational safety and health program effectiveness at all operational levels; and

(6) Priorities with respect to the factors which cause occupational accidents, injuries, and illnesses in the agency's workplaces so that appropriate corrective actions can be taken.

(c) The agency head shall assure that safety and health officials are designated at each appropriate level with sufficient authority and responsibility to plan for and assure funds for necessary safety and health staff, equipment, materials, and training required to ensure implementation of an effective occupational safety and health program.

§ 1960.7 Financial management.

(a) The head of each agency shall ensure that the agency budget submission includes appropriate financial and other resources to effectively implement and administer the agency's occupational safety and health program.

(b) The Designated Agency Safety and Health Official, management officials in charge of each establishment, safety and health officials at all appropriate levels, and other management officials shall be responsible for planning, requesting resources, implementing, and evaluating the occupational safety and health program budget in accordance with the regulations of the Office of Management and Budget Circular A-11 (sections 13.2(f) and 13.5(f)) and other relevant documents.

(c) Appropriate resources for an agency's occupational safety and health program shall include, but not be limited to:

(1) Sufficient personnel to implement and administer the program at all levels, including necessary administrative costs such as training, travel, and personal protective equipment;

(2) Abatement of unsafe or unhealthful working conditions related to agency operations or facilities;

(3) Safety and health sampling, testing, and diagnostic and analytical tools and equipment, including laboratory analyses;

(4) Any necessary contracts to identify, analyze, or evaluate unsafe or unhealthful working conditions and operations;

(5) Program promotional costs such as publications, posters, or films;

(6) Technical information, documents, books, standards, codes, periodicals, and publications; and

(7) Medical surveillance programs for employees.

§ 1960.8 Agency responsibilities.

(a) The head of each agency shall furnish to each employee employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm.

(b) The head of each agency shall comply with the Occupational Safety and Health Administration standards applicable to the agency.

(c) The head of each agency shall develop, implement, and evaluate an occupational safety and health program in accordance with the requirements of section 19 of the Act, Executive Order 12196, and the basic program elements prescribed in this part, or approved alternate program elements.

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(d) The head of each agency shall acquire, maintain, and require the use of approved personal protective equipment, approved safety equipment, and other devices necessary to protect employees.

(e) In order to provide essential specialized expertise, agency heads shall authorize safety and health personnel to utilize such expertise from whatever source available, including but not limited to other agencies, professional groups, consultants, universities, labor organizations, and safety and health committees.

§ 1960.9 Supervisory responsibilities.

Employees who exercise supervisory functions shall, to the extent of their authority, furnish employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm. They shall also comply with the occupational safety and health standards applicable to their agency and with all rules, regulations, and orders issued by the head of the agency with respect to the agency occupational safety and health program.

§ 1960.10 Employee responsibilities and rights.

(a) Each employee shall comply with the standards, rules, regulations, and orders issued by his/her agency in accordance with section 19 of the Act, Executive Order 12196, and this part which are applicable to his/her own actions and conduct.

(b) Employees shall use safety equipment, personal protective equipment, and other devices and procedures provided or directed by the agency and necessary for their protection.

(c) Employees shall have the right to report unsafe and unhealthful working conditions to appropriate officials.

(d) Employees shall be authorized official time to participate in the activities provided for in section 19 of the Act, Executive Order 12196, this part, and the agency occupational safety and health program.

§ 1960.11 Evaluation of occupational safety and health performance.

Each agency head shall ensure that any performance evaluation of any management official in charge of an establishment, any supervisory employee, or other appropriate management official, measures that employee's performance in meeting requirements of the agency occupational safety and health program, consistent with the employee's assigned responsibilities and authority, and taking into consideration any applicable regulations of the Office of Personnel Management or other appropriate authority. The recognition of superior performance in discharging safety and health responsibilities by an individual or group should be encouraged and noted.

§ 1960.12 Dissemination of occupational safety and health program information.

(a) Copies of the Act, Executive Order 12196, program elements published in this part, details of the agency's occupational safety and health program, and applicable safety and health standards shall be made available upon request to employees or employee representatives for review.

(b) A copy of the agency's written occupational safety and health program applicable to the establishment shall be made available to each supervisor, each occupational safety and health committee member, and to employee representatives.

(c) Each agency shall post conspicuously in each establishment, and keep posted, a poster informing employees of the provisions of the Act, Executive Order 12196, and the agency occupational safety and health program under this part. The Department of Labor will furnish the core text of a poster to agencies. Each agency shall add the following items: (1) Details of the agency's procedures for responding to reports by employees of unsafe or unhealthful working conditions, and to allegations of discrimination or reprisal due to participation in safety and/or health activities; (2) the location where employees may obtain information about the agency's occupational safety and health program, including the full text of agency occupational safety and health standards, and (3) relevant information about any agency safety and health committees. Such posters and additions shall not be altered, defaced, or covered by other material.

(d) A copy of the agency's poster shall be provided to the Secretary. If the agency needs assistance and advice on the content and development of the poster, such shall be requested of the Secretary prior to printing and distribution.

(e) Agency heads shall promote employee awareness of occupational safety and health matters through their ordinary information channels, such as newsletters, bulletins and handbooks.

§§ 1960.13–1960.15 [Reserved]

Subpart C—Standards

§ 1960.16 Compliance with OSHA standards.

Each agency head shall comply with all occupational safety and health standards issued under section 6 of the Act, or with alternate standards issued pursuant to this subpart. In complying with section 6 standards, an agency may, upon prior notification to the Secretary, prescribe and enforce more stringent permissible exposure levels or threshhold limit values and may require more frequent monitoring of exposures without recourse to the approval procedures for alternate standards described in § 1960.17. In addition, after consultation with employees and safety and health committees and prior notification to the Secretary, an agency may utilize the latest edition of a reference standard if it is more stringent than the section 6 standard. After notification, the Secretary may require the use of the approval procedures for alternate standards for any of the situations described in this paragraph.

§ 1960.17 Alternate standards.

An agency head may apply an alternate standard where deemed necessary, and shall, after consultation with employees or their representatives, including appropriate occupational safety and health committees, notify the Secretary and request approval of such alternate standards.

(a) Any request by the head of the agency for an alternate standard shall be transmitted to the Secretary.

(b) Any such request for an alternate standard shall not be approved by the Secretary unless it provides equivalent or greater protection for affected employees. Any such request shall include:

(1) A statement of why the agency cannot comply with the OSHA standard or wants to adopt an alternate standard;

(2) A description of the alternate standard;

(3) An explanation of how the alternate standard provides equivalent or greater protection for the affected employees;

(4) A description of interim protective measures afforded employees until a decision is rendered by the Secretary of Labor; and

(5) A summary of written comments, if any, from interested employees, employee representatives, and occupational safety and health committees.

§ 1960.18 Supplementary standards.

(a) In addition to complying with emergency temporary standards issued under section 6 of the Act, an agency head shall adopt such emergency temporary and permanent supplementary standards as necessary and appropriate for application to working conditions of agency employees for which there exists no appropriate OSHA standards. In order to avoid any possible duplication of effort, the agency head should notify the Secretary of the subject matter of such standard when the development of the standard begins.

(b) The agency head shall send a copy of the final draft of the permanent supplementary standard to the Secretary prior to official adoption by the agency, along with any written comments on the standard from interested employees, employee representatives, and occupational safety and health committees. If the Secretary finds the permanent supplementary standard to be adopted inconsistent with OSHA standards, or inconsistent with OSHA enforcement practices under section 5(a)(1) of the Act, the Secretary shall have 15 working days in which to notify the head of the agency of this finding. In such a case, the supplementary standard shall not be adopted, but the agency will be afforded an opportunity to resubmit a revised standard that is designed to provide adequate protection and is consistent with OSHA standards. Upon request of the agency head, the Secretary shall offer to the agency technical assistance in the development of the supplemental standard.

§ 1960.19 Other Federal agency standards affecting occupational safety and health.

(a) Where employees of different agencies engage in joint operations, and/or primarily report to work or carry out operations in the same establishment, the standards adopted under § 1960.17 or § 1960.18 of the host agency shall govern.

(b) There are situations in which the head of an agency is required to comply with standards affecting occupational safety and health issued by a Federal agency other than OSHA. For example, standards issued by the Federal Aviation Administration, the Department of Energy, or the General Services Administration may be applicable to certain Federal workplaces. Nothing in this subpart affects the duty of any agency head to comply with such standards. In addition, agency heads should comply with other standards issued by Federal agencies which deal with hazardous working conditions, but for which OSHA has no standards.

(c) Although it is not anticipated that standards of other Federal agencies will conflict with OSHA standards, should such conflict occur, the head of the agency shall inform the other Federal agency and the Secretary so that joint efforts to resolve the issues may be undertaken. However, until conflicts are resolved, agencies shall comply with the more protective of the conflicting standards.

§§ 1960.20–1960.24 [Reserved]

Subpart D—Inspection and Abatement

§ 1960.25 Qualifications of safety and health inspectors and agency inspections.

(a) Executive Order 12196 requires that each agency utilize as inspectors "personnel with equipment and competence to recognize hazards." Inspections shall be conducted by inspectors qualified to recognize and evaluate hazards of the working environment and to suggest general abatement procedures. Safety and health specialists as defined in § 1960.2(s), with experience and/or up-to-date training in occupational safety and health hazard recognition and evaluation are considered as meeting the qualifications of safety and health inspectors. For those working environments where there are less complex hazards, such safety and health specializations as cited above may not be required, but inspectors in such environments shall have sufficient documented training and/or experience in the safety and health hazards of the workplace involved to recognize and evaluate those particular hazards and to suggest general abatement procedures. All inspection personnel must be provided the equipment necessary to conduct a thorough inspection of the workplace involved.

(b) Each agency which has workplaces containing information classified in the interest of national security shall provide access to safety and health inspectors who have obtained the appropriate security clearance.

(c) All areas and operations of each workplace, including office operations, shall be inspected at least annually. More frequent inspections shall be conducted in all workplaces where there is an increased risk of accident, injury, or illness due to the nature of the work performed. Sufficient unannounced inspections and unannounced follow-up inspections should be conducted by the agency to ensure the identification and abatement of hazardous conditions.

(d) When situations arise involving multiple agencies' responsibilities for conditions affecting employee safety and health, coordination of inspection functions is encouraged.

§ 1960.26 Conduct of inspections.

(a) *Preparation.* (1) Prior to commencement of the inspection, the Safety and Health Inspector shall be provided all available relevant information which pertains to the occupational safety and health of the workplace to be inspected, including safety and health hazard reports, injury and illness records, previous inspection reports, and reports of unsafe and unhealthful working conditions.

(2) The Safety and Health Inspector shall determine in advance, where possible, the actual work procedures and conditions to be inspected, in order to have the proper equipment available to conduct an effective inspection.

(b) *Inspection.* (1) For the purpose of assuring safe and healthful working conditions for employees of agencies, the head of the agency shall authorize safety and/or health inspectors: To enter without delay, and at reasonable times, any building, installation, facility, construction site, or other area, workplace, or environment where work is performed by employees of the agency; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any agency employee, and/or any agency supervisory employee, and/or any official in charge of an establishment.

(2) If there are no authorized representatives of employees, the inspector shall consult with a reasonable number of employees during the walkaround.

(3) When, in the opinion of the inspector, it is necessary to conduct personal monitoring (sampling) of employee's work environments, the inspector may request employees to wear reasonable and necessary personal monitoring devices, e.g., noise dosimeters and air sampling pumps, for periods determined by the inspector to be necessary for complete and effective sampling of the environment.

(4) Upon request of the inspector, the employer shall encourage employees to wear the personal environmental monitoring devices during an inspection.

(5) Whenever and as soon as it is concluded on the basis of an inspection that a danger exists which could reasonably be expected to cause death or serious physical harm immediately,

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the inspector shall inform the affected employees and official in charge of the workplace of the danger. The official in charge of the workplace, or a person empowered to act for that official, shall undertake immediate abatement and the withdrawal of employees who are not necessary for abatement of the dangerous conditions. In the event the official in charge of the workplace needs assistance to undertake full abatement, that official shall promptly contact the Designated Agency Safety and Health Official and other responsible agency officials, who shall assist the abatement effort. Safety and health committees shall be informed of all relevant actions and representatives of the employees shall be so informed.

(6) At the conclusion of an inspection, the Safety and Health Inspector shall confer with the official in charge of the workplace or that official's representative, and with an appropriate representative of the employees of the establishment, and informally advise them of any apparent unsafe or unhealthful working conditions disclosed by the inspection. During any such conference, the official in charge of the workplace and the employee representative shall be afforded an opportunity to bring to the attention of the Safety and Health Inspector any pertinent information regarding conditions in the workplace.

(c) *Written reports and notices of unsafe or unhealthful working conditions.* (1) The inspector shall, in writing, describe with particularity the procedures followed in the inspection and the findings which form the basis for the issuance of any Notice of Unsafe or Unhealthful Working Conditions.

(2) Each agency shall establish a procedure for the prompt issuance of a Notice of Unsafe or Unhealthful Working Conditions. Such notices shall be issued not later than 15 days after completion of the inspection for safety violations or not later than 30 days for health violations. If there are compelling reasons why such notice cannot be issued within the 15 days or 30 days indicated, the persons described in paragraph (c)(1)(iii) of this section shall be informed of the reasons for the delay. Such procedure shall include the following: (i) Notices shall be in writing and shall describe with particularity the nature and degree of seriousness of the unsafe or unhealthful working condition, including a reference to the standard or other requirement involved; (ii) the notice shall fix a reasonable time for the abatement of the unsafe or unhealthful working condition; and (iii) a copy of the notice shall be sent to the official in charge of the workplace, the employee representative who participated in the closing conference, and/or the safety and health committee of the workplace, if any.

(3) Upon receipt of any notice of an unsafe or unhealthful working condition, the official in charge of a workplace shall immediately post such notice, or copy thereof, unedited, except for reason of national security, at or near each place an unsafe or unhealthful working condition referred to in the notice exists or existed. In addition, a notice shall be posted if any special procedures are in effect. Where, because of the nature of the workplace operations, it is not practicable to post the notice at or near each such place, such notice shall be posted, unedited, except for reason of national security, in a prominent place where it will be readily observable by all affected employees. For example, where workplace activities are physically dispersed, the notice may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location, the notice may be posted at the location from which the employees operate to carry out their activities.

(4) Each notice of an unsafe or unhealthful working condition, or a copy thereof, shall remain posted until the unsafe or unhealthful working condition has been abated or for 3 working days whichever is later. A copy of the notice will be filed and maintained for a period of five years after abatement at the establishment and made available to the Secretary upon request.

§ 1960.27 Representatives of officials in charge and representatives of employees.

(a) Safety and health inspectors shall be in charge of inspections and may interview any employee in private if the inspector deems it necessary. A representative of the official in charge of a workplace and a representative of employees shall be given an opportunity to accompany Safety and Health Inspectors during the physical inspection of any workplace, both to aid the inspection and to provide such representatives with more detailed knowledge of any existing or potential unsafe or unhealthful working conditions. The representative of employees shall be selected by the employees. Additional representatives of the official in charge and additional representatives of employees may accompany the Safety and Health Inspectors if it is determined by the inspector that such additional representatives will further aid the inspection. Different representatives of the employer and employees may be allowed to accompany the Inspector during each different phase of an inspection.

(b) Safety and health inspectors shall be authorized to deny the right of accompaniment under this section to any person whose participation interferes with a fair and orderly inspection.

(c) With regard to facilities classified in the interest of national security, only persons authorized to have access to such facilities shall be allowed to accompany a Safety and Health Inspector in such areas.

(d) Safety and health inspectors shall consult with employees concerning matters of occupational safety and health to the extent deemed necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring to the attention of the Safety and Health Inspector any unsafe or unhealthful working condition which the employee has reason to believe exists in the workplace.

§ 1960.28 Employee reports of unsafe or unhealthful working conditions.

(a) The purpose of employee reports is to inform agencies of the existence of, or potential for, unsafe or unhealthful working conditions. A report under this part is not a grievance.

(b) This section provides guidance in establishing a channel of communication between agency employees and those with responsibilities for safety and health matters, e.g., their supervisor, the agency safety and health officials, safety and health committees, safety and health inspectors, the head of the agency, or the Secretary. These channels of communication are intended to assure prompt analysis and response to reports of unsafe or unhealthful working conditions in accordance with the requirements of Executive Order 12196. Since many safety and health problems can be eliminated as soon as they are identified, the existence of a formal channel of communication shall not preclude immediate corrective action by an employee's supervisor in response to oral reports of unsafe or unhealthful working conditions where such action is possible. Nor should an employee be required to await the outcome of such an oral report before filing a written report pursuant to the provisions of this section.

(c) Any employee or representative of employees, who believes that an unsafe or unhealthful working condition exists in any workplace where such employee is employed, shall have the right and is encouraged to make a report of the unsafe or unhealthful working condition to an appropriate agency safety and health official and request an inspection of such workplace for this purpose. The report shall be reduced to writing either by the individual submitting the report or, in the case of an oral notification, by the above official or other person designated to receive the reports in the workplace. Any such report shall set forth the grounds for the report and shall contain the name of the employee or representative of employees. Upon the request of the individual making such report, no person shall disclose the name of the individual making the report or the names of individual employees referred to in the report, to anyone other than authorized representatives of the Secretary. In the case of imminent danger situations, employees shall make reports by the most expeditious means available.

(d) *Reports received by the agency.* (1) Each report of an existing or potential unsafe or unhealthful working condition should be recorded on a log maintained at the establishment. If an agency finds it inappropriate to maintain a log of written reports at the establishment level, it may avail itself of procedures set forth in § 1960.71. A copy of each report received shall be sent to the appropriate establishment safety and health committee.

(2) A sequentially numbered case file, coded for identification, should be assigned for purposes of maintaining an accurate record of the report and the response thereto. As a minimum, each establishment's log should contain the following information: date, time, code/reference/file number, location of condition, brief description of the condition, classification (imminent danger, serious or other), and date and nature of action taken.

(3) Executive Order 12196 requires that agency inspections be conducted within 24 hours for employee reports of imminent danger conditions, within three working days for potentially serious conditions, and within 20 working days for other than serious safety and health conditions. However, an inspection may not be necessary if, through normal management action and with prompt notification to employees and safety and health committees, the hazardous condition(s) identified can be abated immediately.

(4) An employee submitting a report of unsafe or unhealthful conditions shall be notified in writing within 15 days if the official receiving the report determines there are not reasonable grounds to believe such a hazard exists and does not plan to make an inspection based on such report. A copy of each such notification shall be provided by the agency to the appropriate certified safety and health committee, where established under Executive Order 12196. An agency's inspection or investigation report, if any, shall be made available to the employee making the report within 15 days after completion of the inspection, for safety violations or within 30 days for health violations, unless there are compelling reasons, and shall be made available to the Secretary or the Secretary's authorized representative on request.

(e) *Reports received by the Secretary of Labor.* (1) Agency safety and health programs must have provisions for responding to employees' reports of unsafe or unhealthful working conditions and the Secretary encourages employees to use agency procedures as the most expeditious means of achieving abatement of hazardous conditions. It is recognized, however, that employee reports may be received directly by the Secretary.

(2) When such reports are received directly from an employee or employee representative, the Secretary shall, where a certified safety and health committee exists, forward the report to the agency for handling in accordance with procedures outlined in § 1960.28(d). A copy of the response to the originator shall be sent to the Secretary.

(3) Where there is no certified safety and health committee, or when requested by half the members of a committee, the Secretary may initiate an inspection or other appropriate action. When the Secretary determines that an inspection is warranted, the Secretary shall observe the same response times as required of the agencies under the Executive Order and § 1960.28(d)(3). When the Secretary determines not to make an inspection, the report shall be forwarded to the agency for handling in accordance with procedures outlined in § 1960.28(d). A copy of the response to the originator shall be sent to the Secretary.

§ 1960.29 Accident investigation.

(a) While all accidents should be investigated, including accidents involving property damage only, the extent of such investigation shall be reflective of the seriousness of the accident.

(b) In any case, each accident which results in a fatality or the hospitalization of five or more employees shall be investigated to determine the causal factors involved. Except to the extent necessary to protect employees and the public, evidence at the scene of an accident shall be left untouched until inspectors have an opportunity to examine it.

(c) Any information or evidence uncovered during accident investigations which would be of benefit in developing a new OSHA standard or in modifying or revoking an existing standard should be promptly transmitted to the Secretary.

(d) The investigative report of the accident shall include appropriate documentation on date, time, location, description of operations, description of accident, photographs, interviews of employees and witnesses, measurements, and other pertinent information. A copy of the investigative report required by this section shall be forwarded to the official in charge of the workplace, the appropriate safety and health committee, and the exclusive employee representative, if any. The investigative report shall be made available to the Secretary or his authorized representative on request.

§ 1960.30 Abatement of unsafe or unhealthful working conditions.

(a) The agency shall ensure the prompt abatement of unsafe and unhealthful conditions. Where a Notice of an Unsafe or Unhealthful Working Condition has been issued, abatement shall be within the time set forth in the notice, or in accordance with the established abatement plan.

(b) The procedures for correcting unsafe or unhealthful working conditions shall include a follow-up, to the extent necessary, to determine whether the correction was made. If, upon the follow-up, it appears that the correction was not made, or was not carried out in accordance with an abatement plan prepared pursuant to paragraph (c) of this section, the official in charge of the establishment and the appropriate safety and health committee shall be notified of the failure to abate.

(c) The official in charge of the establishment shall promptly prepare an abatement plan with the appropriate participation of the establishment's Safety and Health Official or a designee, if in the judgment of the establishment official the abatement of an unsafe or unhealthful working condition will not be possible within 30 calendar days. Such plan shall contain an explanation of the circumstances of the delay in abatement, a proposed timetable for the abatement, and a summary of steps being taken in the interim to protect employees from being injured as a result of the unsafe or unhealthful working condition. A copy of the plan shall be sent to the safety and health committee, and, if no committee exists, to the

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representative of the employees. Any changes in an abatement plan will require the preparation of a new plan in accordance with the provisions of this section.

(d) When a hazard cannot be abated within the authority and resources of the official in charge of the establishment, that official shall request assistance from appropriate higher authority. The local safety and health official, any established committee and/or employee representatives, and all personnel subject to the hazard shall be advised of this action and of interim protective measures in effect, and shall be kept informed of subsequent progress on the abatement plan.

(e) When a hazard cannot be abated without assistance of the General Services Administration or other Federal lessor agency, the occupant agency shall act with the lessor agency to secure abatement. Procedures for coordination with the General Services Administration are contained in Subpart E of this part.

§ 1960.31 Inspections by OSHA.

(a) The Secretary or the Secretary's representatives are authorized to conduct, when the Secretary deems necessary, announced or unannounced inspections in the following situations:

(1) Where an agency has not established occupational safety and health committees or where committees no longer operate in conformance to the requirements of subpart F of this part;

(2) In response to a request from half the membership of record of any certified safety and health committee; and

(3) In response to an employee's report of an imminent danger situation, where there is a certified committee, but where the Secretary determines that neither the agency nor the committee has responded to the employee.

(b) The Secretary's inspectors or evaluators are authorized: to enter without delay, and at reasonable times, any building, installation, facility, construction site, or other area, workplace, or environment where work is performed by employees of the agency; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any employee, any supervisory employee, and/or any official in charge of an establishment.

(c) The Secretary may also make scheduled inspections as an integral part of OSHA's evaluation of an agency's safety and health program in accordance with Subpart J of this part.

(d) OSHA inspections shall follow the general format set forth for agency inspections in other applicable parts of this subpart.

§§ 1960.32–1960.33 [Reserved]

Subpart E—General Services Administration and Other Federal Agencies

§ 1960.34 General provisions.

Within six months of the effective date of this part, the Secretary of Labor and the Administrator of the General Services Administration (GSA) shall initiate a study of conflicts that may exist in their standards concerning Federal buildings, leased space, products purchased or supplied, and other requirements affecting Federal employee safety and health. Both agencies shall establish and publish a joint procedure for resolving conflicting standards. All other Federal agencies that have authority for purchasing equipment, supplies, and materials, and for controlling Government space, as well as the leasing of space, shall also be subject to the requirements of this subpart, including publication of a procedure for resolving conflicting standards.

(a) In order to assist agencies in carrying out their duties under section 19 of the Act, Executive Order 12196, and this part, the Administrator or the Administrator's designee shall:

(1) Upon an agency's request, furnish for any owned or leased space offered to a Federal agency for occupancy: (i) A report of a recent pre-occupancy inspection to identify serious hazards or serious violations of OSHA standards or approved alternate standards, and (ii) a plan for abatement of the hazards and violations discovered;

(2) Provide space which: (i) meets any special safety and health requirements submitted by the requesting agency, and (ii) does not contain either serious hazards or serious violations of OSHA standards or approved alternate standards which cannot be abated;

(3) Repair, renovate, or alter, upon an agency's request, owned or leased space in a planned and controlled manner to reduce or eliminate, whenever possible, any hazardous exposure to the occupant agency's employees;

(4) Accompany, upon request, the Secretary or the Secretary's designee on any inspection or investigation of a facility subject to the authority of the General Services Administration. Requests made for this purpose shall, whenever possible, be made at the GSA regional level in order to facilitate prompt assistance;

(5) Investigate, upon an official agency request, reports of unsafe or unhealthful conditions within the scope of GSA's responsibility. Such investigation, when requiring an on-site inspection, shall be completed within 24 hours for imminent danger situations, within three working days for potentially serious conditions, and within 20 working days for other safety and health risk conditions;

(6) Abate unsafe or unhealthful conditions disclosed by reports, investigation or inspection within 30 calendar days or submit to the occupant agency's designated liaison official an abatement plan. Such abatement plan shall give priority to the allocation of resources to bring about prompt abatement of the conditions. (GSA shall publish procedures for abatement of hazards in the Federal Property Management Regulations—41 CFR Part 101);

(7) Establish an occupancy permit program which will regulate the types of activities and occupancies in facilities in order to avoid incompatible groupings, e.g., chemical or biological laboratories in office space. GSA shall seek to consolidate Federal laboratory operations in facilities designed for such purposes;

(8) Ensure, insofar as possible, that agency safety and health problems still outstanding are resolved, or otherwise answered by acceptable alternatives prior to renegotiation of leases; and

(9) Ensure that GSA or other Federal lessor agencies' building managers maintain a log of reports of unsafe or unhealthful conditions submitted by tenants to include: date of receipt of report, action taken, and final resolution.

(b) *Product safety.* Agencies such as GSA, DOD, and others which procure and provide supplies, equipment, devices, and material for their own use or use by other agencies, except for the design of uniquely military products as set forth in § 1960.2(i), shall establish and maintain a product safety program which:

(1) Ensures that items procured will allow user agencies to use such products safely for their designed purpose and will facilitate user compliance with all applicable standards.

(2) Requires that products meet the applicable safety and health requirements of Federal law and regulations issued thereunder;

(3) Ensures that hazardous material will be labelled in accordance with current law or regulation to alert users, shippers, occupational safety and health, and emergency action personnel, and others, to basic information concerning flammability, toxicity, compatibility, first aid procedures, and normal as well as emergency handling and disposal procedures;

(4) Ensures availability of appropriate safety rescue and personal protective equipment to supply user agencies. The writing of Federal procurement specifications will be coordinated by GSA with OSHA/NIOSH as needed to assure purchase of approved products;

(5) Ensures that products recalled by the manufacturer, either voluntarily or by order from a regulatory authority, are removed from inventory. Each recall notice or order shall be forwarded to all agencies which have ordered such product from or through the procuring/supplying Federal agency, e.g., GSA, DOD, etc.;

(6) Includes preparation of FEDSTD 313, Material Safety Data Sheets (MSDS), involving all interested agencies in review to keep the standard current. MSDS provided by agencies or contractors shall meet the requirements of FEDSTD 313 and be furnished to DOD for filing and distribution.

(c) In order to assist agencies in carrying out their duties under section 19 of the Act, Executive Order 12196, and this part, the DOD operates and maintains an automated system to receive, file, reproduce, and make available MSDS data to other Federal agencies through the Government Printing Office or the National Technical Information Services.

(d) All Federal agencies shall use MSDS either provided by DOD, or acquired directly from suppliers, when purchasing hazardous materials (as defined in FEDSTD 313) for local use. These data will be used to develop detailed procedures to advise employees in the workplace of the hazards involved with the materials and to protect them therefrom.

(e) *Safety and health services.* GSA will operate and maintain for user agencies the following services:

(1) Listings in the "Federal Supply Schedule" of safety and health services and equipment which are approved for use by agencies when needed. Examples of such services are: workplace inspections, training, industrial hygiene surveys, asbestos bulk sampling, and mobile health testing; examples of such equipment are: personal protective equipment and apparel, safety devices, and environmental monitoring equipment;

(2) Rules for assistance in the preparation of agency "Occupant Emergency Plans" (formerly called "Facility Self-Protection Plans"), to be published by GSA at 41 CFR Part 101;

(3) An effective maintenance program in the Interagency Motorpool System which will ensure the safety and health of Federal employees utilizing the vehicles. Critical items to be included are: Exhaust systems, brakes, tires, lights, steering, and passenger restraint or other crash protection systems; and

(4) A rapid response system whereby agencies can alert GSA to unsafe or unhealthful items purchased or contracted for by GSA, which in turn will evaluate the reports, initiate corrective action, as appropriate, and advise use agencies of interim protective measures.

§ 1960.35 National Institute for Occupational Safety and Health.

(a) The Director of the National Institute for Occupational Safety and Health (NIOSH) shall, upon request by the Secretary, assist in: (1) Evaluations of Federal agency safety and health programs; (2) investigations of possible safety and health hazards and (3) inspections resulting from employee or committee reports of unsafe or unhealthful working conditions.

(b) The Director of NIOSH shall provide a Hazard Evaluation (HE) program for Federal agencies. This program shall be designed to respond to requests for assistance in determining whether or not safety or health hazards are present in a Federal workplace. Requests for such Hazard Evaluations may be submitted to the Director by:

(1) The Secretary of Labor;

(2) The Head of a Federal agency;

(3) An agency safety and health committee if half the committee requests such service; and

(4) Employees who are not covered by a certified safety and health committee.

(c) The Director of NIOSH may assist agencies by providing hazard alerts, technical services, training materials and conducting training programs upon request by an agency and with reimbursement.

Subpart F—Occupational Safety and Health Committees

§ 1960.36 General provisions.

(a) The occupational safety and health committees described in this subpart are organized and maintained basically to monitor and assist an agency's safety and health program. These committees assist agencies to maintain an open channel of communication between employees and management concerning safety and health matters in agency workplaces. The committees provide a method by which employees can utilize their knowledge of workplace operations to assist agency management to improve policies, conditions, and practices.

(b) Agencies may elect to establish safety and health committees meeting the minimum requirements contained in this subpart. Where such committees are not established or fail to meet the minimum requirements established by the Secretary, the Secretary is authorized by section 1–401(i) of Executive Order 12196 to conduct unannounced inspections of agency workplaces when the Secretary determines them necessary.

§ 1960.37 Committee organization.

(a) For agencies which elect to utilize the committee concept, safety and health committees shall be formed at both the national level and, for agencies with field or regional offices, at appropriate levels within the agency. To realize exemption from unannounced OSHA inspections, an agency must form a committee at the national level and at any establishment or grouping of establishments that is to be exempt, keeping the Secretary advised of the locations and activities where such committees are functioning.

(1) The principal function of the national level committee shall be to consult and provide policy advice on, and monitor the performance of, the agency-wide safety and health program.

(2) Committees at other appropriate levels shall be established at agency establishments or groupings of establishments consistent with the mission, size and organization of the agency and its collective bargaining configuration. The agency shall form committees at the lowest practicable local level. The principal function of the establishment (or local) committees is to monitor and assist in the execution of the agency's safety and health policies and program at the workplaces within their jurisdiction. Any dispute over the meaning of the term "appropriate levels" shall be resolved by the Secretary.

(b) Committees shall have equal representation of management and nonmanagement employees, who shall be members of record.

(1) Management members of both national level and establishment level committees shall be appointed in writing by the person empowered to make such appointments.

(2) Nonmanagement members of establishment level committees shall represent all employees of the establishment and shall be determined according to the following rules:

(i) Where employees are represented under collective bargaining

arrangements, members shall be appointed from among those recommended by the exclusive bargaining representative;

(ii) Where employees are not represented under collective bargaining arrangements, members shall be determined through procedures devised by the agency which provide for effective representation of all employees; and

(iii) Where some employees of an establishment are covered under collective bargaining arrangements and others are not, members shall be representative of both groups.

(3) Nonmanagement members of national level committees shall be determined according to the following rules:

(i) Where employees are represented by organizations having exclusive recognition on an agency basis or by organizations having national consultation rights, some members shall be determined in accordance with the terms of collective bargaining agreements and some members shall be selected from those organizations having consultation rights, and

(ii) Where employees are not represented by organizations meeting the criteria of paragraph (b)(3)(i) of this section, members shall be determined through procedures devised by the agency which provide for effective representation of all employees.

(c) Committee members should serve overlapping terms. Such terms should be of at least two years duration, except when the committee is initially organized.

(d) The committee chairperson shall be nominated from among the committee's members and shall be elected by the committee members. Management and nonmanagement members should alternate in this position. Maximum service time as chairperson should be two consecutive years.

(e) Committees shall establish a regular schedule of meetings and special meetings shall be held as necessary; establishment level committees shall meet at least quarterly and national committees shall meet at least annually.

(f) Adequate advance notice of committee meetings shall be furnished to employees and each meeting shall be conducted pursuant to a prepared agenda.

(g) Written minutes of each committee meeting shall be maintained and distributed to each committee member, and upon request, shall be made available to employees and to the Secretary.

§ 1960.37 Committee formation.

(a) Upon forming such committees, heads of agencies shall submit information to the Secretary concerning the existence, location, and coverage, in terms of establishments and population, of such committees, certifying to the Secretary that such committees meet the requirements of this subpart. The information submitted should include the name and telephone numbers of the chairperson of each committee, and should be updated annually as part of the annual report required by § 1960.75 to reflect any changes that may have occurred.

(b) If, upon evaluation, the Secretary determines that the operations of a committee do not meet the requirements of this subpart, the Secretary shall notify the agency and identify the deficiencies to be remedied. If the agency does not satisfy the Secretary within 90 days that the committee meets the requirements of this subpart, the committee shall not be deemed a committee under Executive Order 12196 and this part.

§ 1960.39 Agency responsibilities.

(a) Agencies shall make available to committees all agency information relevant and necessary to their duties, except where prohibited by law. Examples of such information include, but are not limited to: The agency's safety and health policies and program; human and financial resources available to implement the program; accident, injury, and illness data; epidemiological data; employee exposure monitoring data; Material Safety Data Sheets; inspection reports; reprisal investigation reports; abatement plans; NIOSH hazard evaluation reports; and internal and external evaluation reports.

(b) Agencies shall provide all committee members appropriate training as required by subpart H of this part.

§ 1960.40 Establishment committee duties.

(a) The safety and health committee is an integral part of the safety and health program, and helps ensure effective implementation of the program at the establishment level.

(b) An establishment committee formed under this subpart shall, except where prohibited by law:

(1) Monitor and assist the safety and health program at establishments under its jurisdiction and make recommendations to the official in charge on the operation of the program;

(2) Monitor findings and reports of workplace inspections to confirm that appropriate corrective measures are implemented;

(3) When requested by the agency Safety and Health Official, or when the committee deems it necessary for effective monitoring of agency establishment inspection procedures, participate in inspections of the establishment;

(4) Review internal and external evaluation reports and make recommendations concerning the establishment safety and health program;

(5) Review, and recommend changes, as appropriate, to procedures for handling safety and health suggestions and recommendations from employees;

(6) When requested by the Designated Agency Safety and Health Official, or when the committee deems it necessary, comment on standards proposed pursuant to the provisions of Subpart C of this part;

(7) Monitor and recommend changes, as required, in the level of resources allocated and spent on the establishment safety and health program;

(8) Review agency responses to reports of hazardous conditions, safety and health program deficiencies, and allegations of reprisal;

(9) Report their dissatisfaction to the Secretary if half a committee determines there are deficiencies in the establishment's safety and health program or is not satisfied with the agency's reports of reprisal investigations; and

(10) Request the Secretary to conduct an evaluation or inspection if half the members of record are not satisfied with an agency's response to a report of hazardous working conditions.

§ 1960.41 National committee duties.

National committees established under this subpart shall, except where prohibited by law:

(a) Monitor performance of the agency safety and health program and make policy recommendations to the head of the agency on the operation of the program;

(b) Monitor and assist in the development and operation of the agency's establishment committees. As the committee deems appropriate, monitor and review: Reports of inspections; internal and external evaluation reports; agency safety and health training programs; proposed agency standards; agency plans for abating hazards; and responses to reports of hazardous conditions; safety and health program deficiencies; and allegations of reprisal;

(c) Monitor and recommend changes in the resources allocated to the entire agency safety and health program;

(d) Report their dissatisfaction to the Secretary if half a committee determines there are deficiencies in the agency's safety and health program or is not satisfied with the agency's reports of reprisal investigations; and

(e) Request the Secretary to conduct an evaluation or inspection if half the members of record are not satisfied with an agency's response to a report of hazardous working conditions.

§§ 1960.42–1960.45 [Reserved]

Subpart G—Allegations of Reprisal

§ 1960.46 Agency responsibility.

(a) The head of each agency shall establish procedures to assure that no employee is subject to restraint, interference, coercion, discrimination or reprisal for filing a report of an unsafe or unhealthful working condition, or other participation in agency occupational safety and health program activities, or because of the exercise by such employee on behalf of himself or herself or others of any right afforded by section 19 of the Act, Executive Order 12196, or this part. These rights include, among other, the right of an employee to decline to perform his or her assigned task because of a reasonable belief that, under the circumstances the task poses an imminent risk of death or serious bodily harm coupled with a reasonable belief that there is insufficient time to seek effective redress through normal hazard reporting and abatement procedures established in accordance with this part.

(b) Based on the Secretary's evaluation of agencies' procedures for protecting employees from reprisal, the Secretary shall report to the President by September 30, 1982 his findings and recommendations for improvements in procedures for the investigation and resolution of allegations of reprisal.

§ 1960.47 Results of investigations.

Each agency shall keep occupational safety and health committees advised of agency activity regarding allegations of reprisal and any agency determinations thereof. Agency officials shall provide copies of reprisal investigation findings, if any, to the Secretary and to the appropriate safety and health committee.

§§ 1960.48–1960.53 [Reserved]

Subpart H—Training

§ 1960.54 Training of top management officials.

Each agency shall provide top management officials with orientation and other learning experiences which will enable them to manage the occupational safety and health programs of their agencies. Such orientation should include coverage of section 19 of the Act, Executive Order 12196, the requirements of this part, and the agency safety and health program.

§ 1960.55 Training of supervisors.

(a) Each agency shall provide occupational safety and health training for supervisory employees that includes: supervisory responsibility for providing and maintaining safe and healthful working conditions for employees, the agency occupational safety and health program, section 19 of the Act, Executive Order 12196, this part, occupational safety and health standards applicable to the assigned workplaces, agency procedures for reporting hazards, agency procedures for reporting and investigating allegations of reprisal, and agency procedures for the abatement of hazards, as well as other appropriate rules and regulations.

(b) This supervisory training should include introductory and specialized courses and materials which will enable supervisors to recognize and eliminate, or reduce, occupational safety and health hazards in their working units. Such training shall also include the development of requisite skills in managing the agency's safety and health program within the work unit, including the training and motivation of subordinates toward assuring safe and healthful work practices.

§ 1960.56 Training of safety and health specialists.

(a) Each agency shall provide occupational safety and health training for safety and health specialists through courses, laboratory experiences, field study, and other formal learning experiences to prepare them to perform the necessary technical monitoring, consulting, testing, inspecting, designing, and other tasks related to program development and implementation, as well as hazard recognition, evaluation and control, equipment and facility design, standards, analysis of accident, injury, and illness data, and other related tasks.

(b) Each agency shall implement career development programs for their occupational safety and health specialists to enable the staff to meet present and future program needs of the agency.

§ 1960.57 Training of safety and health inspectors.

Each agency shall provide training for safety and health inspectors with respect to appropriate standards, and the use of appropriate equipment and testing procedures necessary to identify and evaluate hazards and suggest general abatement procedures during or following their assigned inspections, as well as preparation of reports and other documentation to support the inspection findings.

§ 1960.58 Training of collateral duty safety and health personnel and committee members.

Within six months after October 1, 1980, or on appointment of an employee to a collateral duty position or to a committee, each agency shall provide training for collateral duty safety and health personnel and all members of certified occupational safety and health committees commensurate with the scope of their assigned responsibilities. Such training shall include: The agency occupational safety and health program; section 19 of the Act; Executive Order 12196; this part; agency procedures for the reporting, evaluation and abatement of hazards; agency procedures for reporting and investigating allegations of reprisal, the recognition of hazardous conditions and environments; identification and use of occupational safety and health standards, and other appropriate rules and regulations.

§ 1960.59 Training of employees and employee representatives.

(a) Each agency shall provide appropriate safety and health training for employees including specialized job safety and health training appropriate to the work performed by the employee, for example: Clerical; printing; welding; crane operation; chemical analysis, and computer operations. Such training also shall inform employees of the agency occupational safety and health program, with emphasis on their rights and responsibilities.

(b) Occupational safety and health training for employees of the agency who are representatives of employee groups, such as labor organizations which are recognized by the agency, shall include both introductory and specialized courses and materials that will enable such groups to function appropriately in ensuring safe and healthful working conditions and practices in the workplace and enable them to effectively assist in conducting workplace safety and health inspections. Nothing in this paragraph shall be construed to alter training provisions provided by law, Executive Order, or collective bargaining arrangements.

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§ 1960.60 Training assistance.

(a) Agency heads may seek training assistance from the Secretary of Labor, the National Institute for Occupational Safety and Health and other appropriate sources.

(b) After the effective date of Executive Order 12196, the Secretary shall, upon request and with reimbursement, conduct orientation for Designated Agency Safety and Health Officials and/or their designees which will enable them to manage the occupational safety and health programs of their agencies. Such orientation shall include coverage of section 19 of the Act, Executive Order 12196, and the requirements of this part.

(c) Upon request and with reimbursement, the Department of Labor shall provide each agency with training materials to assist in fulfilling the training needs of this subpart, including resident and field training courses designed to meet selected training needs of agency safety and health specialists, safety and health inspectors, and collateral duty safety and health personnel. These materials and courses in no way reduce each agency's responsibility to provide whatever specialized training is required by the unique characteristics of its work.

(d) In cooperation with OPM, the Secretary will develop guidelines and/or provide materials for the safety and health training programs for high-level managers, supervisors, members of committees, and employee representatives.

§§ 1960.61–1960.65 [Reserved]

Subpart I—Recordkeeping and Reporting Requirements

§ 1960.66 Purpose, scope and general provisions.

(a) The purpose of this subpart is to establish uniform requirements for the collection and compilation by agencies of occupational safety and health data, for proper evaluation and necessary corrective action and to assist the Secretary in meeting the requirement to develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics. The term "incident" as hereinafter used in this subpart, shall include all occupational injuries and illnesses.

(b) In order to perform his duties under section 19 of the Act and Executive Order 12196, particularly with respect to providing the President with current information about the Federal agency safety and health program, it is necessary that the Secretary be promptly informed of serious incidents involving agency employees as provided in § 1960.70. Assistance to agencies in the investigation of such incidents is available pursuant to the provisions of Executive Order 12196 and this subpart.

(c) Each agency shall utilize the information collected through its management information system to identify unsafe and unhealthful working conditions, and to establish program priorities.

(d) The Department of Labor shall provide Federal agencies with the forms and instructions for meeting the recordkeeping and reporting requirements specified in §§ 1960.67, 1960.68, and 1960.69.

(e) The provisions of this subpart are not intended to discourage agencies from utilizing recordkeeping and reporting forms which contain a more detailed breakdown of information than the forms provided by the Department of Labor.

(f) Information required to be submitted to the Department of Labor by this subpart may be submitted on media processable by electronic data processing equipment provided that such media comply with the requirements of the Office of Federal Agency Safety and Health Programs, U.S. Department of Labor.

(g) Information concerning occupational injuries and illnesses or accidents which, pursuant to statute or Executive Order, must be kept secret in the interest of national defense or foreign policy, shall be recorded on separate forms. Such records shall not be submitted to the Department of Labor, but may be used by the appropriate Federal agency in evaluating the agency's program to reduce occupational injuries, illnesses and accidents.

§ 1960.67 Record or log of Federal occupational injuries and illnesses.

(a) Each Federal agency shall maintain a record or log of all recordable occupational injuries and illnesses for each establishment. Except as provided in § 1960.71 (b) and (c), the log is to be maintained at the establishment.

(b) Within six working days after receiving information on a recordable occupational injury or illness, appropriate information concerning such injury or illness shall be entered on the record or log. For this purpose, OSHA Form No. 100F, or its equivalent, shall be used and shall be completed in the detail required by that form and the instructions contained therein.

(c) As a minimum, any occupational injury or illness reported by an employee on a Form CA–1 or CA–2 (except first aid cases) to the Office of Workers' Compensation Programs, Department of Labor, shall be considered recordable on the log.

§ 1960.68 Supplementary record of Federal occupational injuries and illnesses.

In addition to the record or log of Federal occupational injuries and illnesses provided for under § 1960.67, each Federal agency shall maintain a supplementary record for each occupational injury and illness. The record shall be completed within six working days after the receipt of information that a recordable occupational injury or illness has occurred. For this purpose, OSHA Form No. 101F, or its equivalent, shall be completed in the detail required by the form and the instructions therein.

§ 1960.69 Annual summaries of Federal occupational injuries and illnesses.

(a) Each Federal agency, on a calendar year basis, shall compile an annual summary of occupational injuries and illness for each reporting unit listed and submitted pursuant to § 1960.74. The summaries shall be based on the record or log of Federal occupational injuries and illnesses maintained pursuant to § 1960.67. OSHA Form No. 102F shall be used for this purpose, and shall be completed in the form and detail required by that form and the instructions contained therein.

(b) Each agency shall furnish the Department of Labor with a copy of its annual summaries compiled on the basis of reporting unit no later than 45 calendar days after the close of the calendar year.

§ 1960.70 Reporting of serious accidents.

(a) Within 48 hours after the occurrence of an employment accident, the head of the Federal agency shall report by telephone or telegraph to the Office of Federal Agency Safety and Health Programs:

(1) Any occupational accident which is fatal to one or more employees;

(2) Any occupational accident which results in the hospitalization of five or more employees;

(3) Any occupational illness which results in death;

(4) Any occupational accident involving both Federal and non-Federal employees which results in a fatality or the hospitalization of five or more such employees.

Accidents not immediately reportable, but which result in death within six months of the date of the accident, shall be reported within 48 hours of the time

the employer becomes aware of the death.

(b) The report shall relate the circumstances of the accident, names of individuals involved, any actions taken by the agency, the number of fatalities, and/or injuries and illnesses and the extent of any injuries. The Secretary may require such additional information in writing or otherwise, as he deems necessary.

§ 1960.71 Location and utilization of records and reports.

(a) The provisions of this section, dealing with the availability of information compiled pursuant to this subpart, are designed to guide agencies in providing agency employees and their representatives with the basic information necessary to assure that they can actively participate in an agency safety and health program. The provisions of this section are also designed to encourage agencies to allow agency safety and health inspectors to have direct access to the accident, injury and illness records of the establishments they are inspecting in order that they may better carry out their duties pursuant to subpart D of this part.

(b) The log and supplementary records required by §§ 1960.67 and 1960.68 shall be maintained at each establishment. Where, for reasons of efficient administration or practicality, an agency must maintain these records at a place other than at each establishment, such agency shall ensure that there is available at each establishment a copy of these records. These records shall be complete and as current as possible; in no case shall more than 45 days elapse after the recording of an illness or injury occurring in an establishment and the availability of records reflecting that injury or illness at that establishment.

(c)(1) For agencies engaged in activities such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, which may be physically dispersed, the log and supplementary records, or copies thereof, may be maintained at a place to which employees report each day.

(2) For personnel who do not primarily report or work at a single establishment, and who are generally not supervised in their daily work, such as traveling employees, technicians, engineers, etc., the log and supplementary records, or copies thereof, may be maintained at the base from which personnel operate to carry out their activities.

(d) Each Federal agency shall post a copy of the annual summary of Federal occupational injuries and illnesses for an establishment, as compiled pursuant to §§ 1960.67 or 1960.69, at such establishment, not later than 45 calendar days after the close of the calendar year, or otherwise disseminate a copy of the annual summary for an establishment in written form to all employees of the establishment. Copies of the annual summary shall be posted for a minimum of 30 consecutive days in a conspicuous place or places in the establishment where notices to employees are customarily posted. Where establishment activities are physically dispersed, the notice may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location, the notice may be posted at the location from which the employees operate to carry out their activities. Each Federal agency shall take necessary steps to ensure that such summary is not altered, defaced, or covered by other material.

(e) The head of each agency shall ensure access to establishment logs and annual summaries by establishment of Occupational Safety and Health Committees, and by that establishment's employees, former employees and employee representatives.

(f) Agency safety and health inspectors shall also have access to accident, injury and health records maintained under this subpart and in accordance with the provisions of § 1960.26(a)(1).

§ 1960.72 Access to records by Secretary.

The records required to be maintained under the provisions of this subpart shall also be available and made accessible to the Secretary or his authorized representative (including personnel of the National Institute for Occupational Safety and Health).

§ 1960.73 Retention of records.

The records and reports required to be maintained under the provisions of this subpart shall be retained by each agency for five years following the end of the calendar year to which they relate, at any location including a Federal record retention center, to which the Secretary or his authorized representative would have reasonable access. In addition, records required by OSHA standards shall be retained in accordance with those standards.

§ 1960.74 Identification of reporting units.

(a) Each Federal agency shall submit a new list identifying reporting units to the Department of Labor, ATTN: Office of Federal Agency Safety and Health Programs, no later than July 1, 1981, and shall update the list as changes occur. The list shall contain the following information:

(1) The names and addresses of each Federal reporting unit which will be covered in the records and reports required by this subpart.

(2) A brief description of any differences between an agency's internal recordkeeping and reporting system and the recordkeeping and reporting system provided by this subpart, including differing forms.

(b) Any Federal agency created or reorganized after July 1, 1981 shall submit the above information within sixty working days of commencement of operations as a new entity.

§ 1960.75 Agency annual reports.

(a) The Act and E.O. 12196 require all Federal agency heads to submit to the Secretary an annual report on their agency's occupational safety and health program, containing such information as the Secretary prescribes.

(1) Each agency shall submit to the Secretary by April 1 of each year a report describing the agency occupational safety and health program of the previous calendar year, and objectives for the current year. The report shall include a summary of the agency's self-evaluation findings as required by § 1960.78(b).

(2) The Secretary shall furnish guidelines to agency heads by January 1 each year concerning the preparation of this report for the coming year.

(3) The agency reports shall be used in the preparation of the Secretary's report to the President.

(b) The Secretary shall submit to the President by October 1 of each year a summary report of the status of the occupational safety and health of Federal employees, based on agency reports, evaluations of individual agency progress and problems in correcting unsafe and unhealthful working conditions, and recommendations for improving their performance.

§ 1960.76–1960.77 [Reserved]

Subpart J—Evaluation of Federal Occupational Safety and Health Programs

§ 1960.78 Purpose and scope.

(a) The purpose of this subpart is to establish a comprehensive program for the evaluation of Federal employee occupational safety and health programs. This subpart includes the responsibilities of agency heads in conducting self-evaluations of the effectiveness of their occupational safety and health programs, and the responsibilities of the Secretary in

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evaluating the extent to which each agency head has developed and implemented agency programs in accordance with the requirements of Executive Order 12196 and this part.

(b) Agency heads shall develop and implement a program for evaluating the effectiveness of their agency's occupational safety and health program. An annual summary report shall be submitted to the Secretary covering self-evaluations conducted during the previous year.

(c) The Secretary shall conduct a comprehensive evaluation of each Federal agency's occupational safety and health program. Evaluations shall be conducted on a regular schedule to determine the performance levels of each agency's program. The Secretary shall submit to the President each year: A summary report of the status of the occupational safety and health of Federal employees; Department of Labor evaluations, together with agency responses, of individual agency progress and problems in correcting unsafe and unhealthful working conditions, and recommendations for improving agency's performance.

§ 1960.79 Self-evaluations of occupational safety and health programs.

Agency heads shall develop and implement a program of self-evaluations to determine the effectiveness of their occupational safety and health programs. The self-evaluations are to include qualitative assessments of the extent to which their agency safety and health programs are:

(a) Developed in accordance with the requirements set forth in Executive Order 12196 and this part and,

(b) Implemented effectively in all agency field activities.

Agencies needing assistance in developing a self-evaluation program should contact the Secretary.

§ 1960.80 Secretary's evaluations of agency occupational safety and health programs.

(a) In accordance with section 1-401(h), the Secretary shall develop a comprehensive program for evaluation an agency's occupational safety and health program. To accomplish this, the Secretary shall conduct:

(1) A complete and extensive evaluation of all elements of an agency's occupational safety and health program on a regular basis;

(2) Special studies of limited areas of an agency's occupational safety and health program as deemed necessary by the Secretary; and

(3) Field reviews and scheduled inspections of agency workplaces as deemed necessary by the Secretary.

(b) The Secretary shall develop and distribute to Federal agencies detailed information on the Department of Labor's evaluation program. The information shall include, but is not limited to:

(1) The major program elements included in a complete and extensive evaluation of an agency's occupational safety and health program;

(2) The methods and factors used to determine the effectiveness of each element of an agency's program;

(3) The factors used to define "large" or "more hazardous" Federal agencies, establishments, or operations;

(4) The procedures for conducting evaluations including field visits and scheduled inspections; and

(5) The reporting format for agency heads in submitting annual summaries of their self-evaluation programs.

(c) Prior to the initiation of an agency evaluation, and Department of Labor will review the annual agency self-evaluation summary report. The Secretary will then develop a program evaluation plan before the initiation of an agency evaluation. A copy of the plan shall be furnished to the agency to be evaluated at the time of the notification of the evaluation.

(d) To facilitate the evaluation process and to insure full understanding of the procedures to be followed and the support required from the agency, the Secretary, or the Secretary's representative, shall conduct an opening conference with the agency head or designee. At the opening conference, the Secretary's authority and evaluation plan will be explained.

(e) The agency evaluation should be completed within 90 calendar days of the date of the opening conference.

(f) A report of the evaluation shall be submitted to the agency head by the Secretary within 90 calendar days from the date of the closing conference.

(g) Agency heads shall respond to the evaluation report within 60 calendar days of receipt of the report.

§ 1960.81-1960.83 [Reserved]

Subpart K—Field Federal Safety and Health Councils

§ 1960.84 Purpose.

(a) Executive Order 12196 provides that the Secretary shall "facilitate the exchange of ideas and information throughout the Government about occupational safety and health."

(b) Consistent with this objective, the Secretary will continue to sponsor and/or provide guidance for those Field Federal Safety and Health Councils now established and in operation, and establish new field councils as necessary. The field councils will consist primarily of qualified representatives of local area Federal field activities whose duties pertain to occupational safety and health, and also of representatives of recognized local labor organizations, or other civilian employee organizations, at local area Federal field activities. For the purpose of this subpart the definition of field activity will be provided by each agency.

§ 1960.85 Role of the Secretary.

(a) The Secretary shall maintain liaison with agency heads to ensure that they encourage their field activities to participate actively in field council programs. To ensure maximum participation, the field councils' annual reports to the Secretary shall provide descriptions of the degree of management and employee participation by the defined Federal field activities. The Secretary shall annually furnish each agency head with a report consolidating the information received as to the participation of the agency's several field installations in field council activities.

(b) The Secretary shall provide leadership and guidance and make available necessary equipment, supplies, and staff services to the Field Federal Safety and Health Councils to assist them in carrying out their responsibilities. The Secretary shall also provide consultative and technical services to field councils. These services shall involve aid in any phase of developing and planning programs; and in sponsoring, conducting or supporting safety and health training courses.

§ 1960.86 Establishing councils.

(a) Those field councils established and in operation prior to the effective date of this subpart will continue to function without interruption provided they are operating in accordance with the provision of their charter and this subpart.

(b) The Secretary may establish a council in any area where ten or more Federal establishments totaling 300 or more employees are located within an area having a radius of 50 miles, and there is substantial agreement among the agencies that such a council would be useful. In any such area where there is no council already established, a field representative of the Secretary may, upon his own initiative or at the request of any establishment within the area, contact representatives of all establishments within the area and encourage the organization of a field council.

(c) After a new council has been organized, officers elected, and articles of organization drafted and accepted by the council membership, a formal request for recognition as a field council shall be sent to the Secretary. Upon approval of the Articles of Organization, a charter will be issued.

(d) At the first general meeting of the council, committees should be appointed and the cooperation of all participants should be solicited to aid the functioning of committees and the successful accomplishment of the council's objectives.

§ 1960.87 Objectives.

The basic objective of field councils is to facilitate the exchange of ideas and information to assist agencies to reduce the incidence, severity and cost of occupational accidents, injuries, and illnesses. Field councils shall act on behalf of the Secretary or his designees on occupational safety and health activities in carrying out within their respective geographic areas the following functions:

(a) To act as a clearinghouse on information and data on occupational accidents, injuries, and illnesses and their prevention.

(b) To plan, organize and conduct field council meetings or programs which will give technical advice and information on occupational safety and health to representatives of participating agencies and employee organizations.

(c) To promote improvement of safety and health programs and organizations in each Federal agency represented or participating in council activities.

(d) To promote coordination, cooperation, and sharing of resources and expertise to aid agencies with inadequate or limited resources. These objectives can be accomplished in a variety of ways. For example, field councils could organize and conduct training programs for employee representatives, collateral duty and professional safety and health personnel, coordinate or promote programs for inspections, or, on request, conduct inspections and evaluations of the agencies' safety and health programs.

(e) To provide Federal Executive Boards, Federal Executive Associations, labor union organizations and other employee representatives with information on the administrative and technical aspects of safety and health programs.

(f) To evaluate the safety and health problems peculiar to local conditions and facilitate solutions to these problems through council activities.

(g) To develop a cooperative relationship with local community leaders by informing them of the existing functions and objectives of the council and by calling on them for support and participation in council meetings and activities.

§ 1960.88 Membership and participation.

(a) Each field council shall consist of the designated representatives of local Federal activities appointed by their respective activity heads, after consultation with appropriate employee representatives and appropriate certified safety and health committees.

(b) Federal agency heads should encourage each field activity having responsibility for the safety and health of agency employees to participate in the programs of these councils.

(c) Each activity head shall appoint an equal number of officially designated representatives (with designated alternates), from management and from nonmanagement employees, consistent with applicable collective bargaining arrangements.

(d) Representatives shall be selected from individuals in the following categories:

(1) Federal occupational safety and health professionals.

(2) Related Federal professionals, or collateral duty personnel. This includes persons employed in professions or occupations related to or concerned with safety and health of employees.

(3) Line management officials.

(4) Representatives of recognized Federal labor or other employee organizations.

(i) Where certified occupational safety and health committees exist, nonmanagement members of the committees shall be given the opportunity to select one individual for official appointment to field councils by the activity head.

(ii) Where employees are represented by collective bargaining arrangements, but no committee exists, nonmanagement members of field councils shall be selected from among those recommended by the exclusive bargaining representatives for official appointment to field councils by the activity head.

(iii) Where some employees in an activity are represented by collective bargaining arrangements and others are not, the agency head should solicit nominations for the agency's designated nonmanagement representative and alternate both from lawful labor organization(s) with collective bargaining status and from employees not represented through collective bargaining and should select from the nominees for official appointment as designated employee representatives on the field council.

(e) Representatives from non-Federal organizations. Associate membership may be granted to any non-Federally employed person who demonstrated interest in occupational safety and health. An associate member has no voting rights and may not hold any office.

(f) No maximum limitation shall be imposed by a council on itself, in regard to the numbers of personnel in any of the above categories that may attend meetings and/or participate in field council activities. An agency is free to have any number of individuals, in addition to the officially designated representatives participate in council activities.

(g) Only officially designated agency representatives or their alternates shall have voting privileges. All representatives and participants shall serve without additional compensation.

(h) Travel funds shall be made available equally to management and nonmanagement employee representatives.

§ 1960.89 Organization.

(a) Field council officers shall include, as a minimum, a chairperson, vice chairperson, and secretary. Officers shall be elected for a one or two-year term on a calendar year basis by a majority vote of the designated representatives. Election of officers shall be held at least 60 days before the beginning of a calendar year. The election may be conducted at a regularly scheduled meeting or by letter ballot.

(b) Each council shall notify the appropriate OSHA Regional Office and the Office of Federal Agency Safety and Health Programs of the name, agency address, and telephone number of each newly elected official.

(c) Each council shall have an Executive Committee consisting of all elected officers, chairpersons of appointed committees and the immediate past chairperson of the field council.

(d) In addition to the Executive Committee, each council shall have either a membership committee, a program committee and a finance committee, or a council official designated responsibility in these areas. Additional committees may be appointed by the chairperson for specific purposes as warranted.

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§ 1960.90 Operating procedures.

(a) The Executive Committee of each council shall meet at least 45 days before the beginning of each calendar year to approve an annual program for the council designed to accomplish the objectives and functions stated in § 1960.87. In addition, the Executive Committee shall meet periodically to ensure that the meetings and other activities of the council are being conducted as outlined in the council schedule.

(b) The council program shall include at least four meetings or activities per year dealing with occupational safety and health issues.

(c) Each field council shall submit to the Secretary or his designee by March 15 of each year a report describing the activities and programs of the previous calender year and plans for the current year. In addition, the report shall address the participation and attendance of designated representatives of the council. The Office of Federal Agency Safety and Health Programs, OSHA, shall furnish guidelines to field councils concerning the preparation of this report.

(d) Upon determination that a council is not operating in accordance with its charter and the provisions of this subpart, and after consultation with appropriate OSHA regional officials, the Secretary shall revoke the council's charter. Upon revocation of a charter, the council shall surrender all its government property to the appropriate OSHA regional official. Any continuing or future organization in the same geographical area shall not use the title Field Federal Safety and Health Council, or any derivation thereof, unless formally rechartered by the Secretary. Notification of revocation of a council's charter shall be sent to the chairperson, where identifiable, and to the appropriate OSHA Regional Office.

§ 1960.91 [Reserved]

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October 21, 1980

Part VI

Department of Health and Human Services

Food and Drug Administration

Soda Water; Standard of Identity, and—Caffeine; Deletion of GRAS Status, Proposed Declaration That No Prior Sanction Exists, and Use on an Interim Basis Pending Additional Study; Proposed Regulations

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 165

[Docket No. 80N-0439]

Soda Water; Amendment to Standard

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) proposes to amend the standard of identity for soda water to accomplish the following: (1) Designate kola nut extract, rather than caffeine from this extract or from other extracts that naturally contain caffeine, as the mandatory ingredient in "cola-" and "pepper-" type soda water beverages; (2) provide for decaffeinated "cola" or "pepper" soda water beverages under the standard of identity; (3) continue to permit the use of added caffeine in these beverages as an optional ingredient.

DATES: Comments must be received on or before December 22, 1980.

ADDRESS: Written comments, data, or information to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HFF-214), Food and Drug Administration, 200 C St., SW, Washington, DC 20204, 202-245-1164.

SUPPLEMENTARY INFORMATION: The current standard of identity for soda water (21 CFR 165.175) describes "cola-" and "pepper-" type soda water beverages as follows:

> • • • Soda water designated by any name which includes the word 'cola' or 'pepper' shall contain caffeine from kola nut extract and/or other natural caffeine-containing extracts. Caffeine may also be added to any soda water. The total caffeine content in the finished food shall not exceed 0.02 percent by weight • • •

The intent of the current standard is to require caffeine from kola nut extract or other natural sources as a mandatory ingredient in "cola-" or "pepper-" type soda waters and to allow added caffeine in these beverages as an optional ingredient. The standard sets the upper limit on the total amount of caffeine that may be present—both naturally occurring and added—at 0.02 percent by weight. The standard does not set a minimum amount of naturally occurring or added caffeine that must be present.

In conjunction with its review of the safety of caffeine as an added ingredient in food (the results of which are discussed in a notice of proposed rulemaking published elsewhere in this issue of the Federal Register, FDA has reviewed the standard of identity for soda water to determine whether the provisions of the standard relating to caffeine remain appropriate under section 401 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 341). Section 401 provides for the promulgation of food standards that "promote honesty and fair dealing in the interest of consumers."

As originally promulgated in 1966 (see 31 FR 1066; Jan. 27, 1966), the provisions of the standard of identity for soda water that relate to caffeine were based apparently on the assumptions that (1) consumers expect "cola" and "pepper" beverages to contain kola nut extract and its naturally occurring caffeine, and (2) the naturally occurring caffeine is, in some undefined sense, a characterizing ingredient of such beverages. As long as these assumptions are valid, it would be appropriate under section 401 of the act to make caffeine a mandatory ingredient in these beverages. It was not clear in 1966, however, nor is it clear now, precisely how caffeine (as opposed to the kola nut flavoring extract in which caffeine naturally occurs) actually affects the characteristics of "cola" and "pepper" soda waters, if at all.

In recent years, consumers have questioned whether it is appropriate to require "caffeine from kola nut extract and/or other natural caffeine-containing extracts" as a mandatory ingredient in "cola" and "pepper" soda waters. In 1974, Consumers Union argued that requiring caffeine in these beverages is contrary to the public health and that manufacturers should be free to produce, and consumers free to choose, decaffeinated cola and pepper drinks (Ref. 1). (See 40 FR 26266; June 23, 1975). In 1979, the Federation of Homemakers petitioned FDA on safety grounds to prohibit the use of added caffeine in all soda water beverages and to allow caffeine in "cola" and "pepper" beverages only in "trace amounts" as a natural constituent of kola nut extract or other caffeine-containing extracts (Ref. 2).

FDA has reevaluated the standard of identity for soda water and, for the reasons discussed below, the agency is proposing to amend the standard to delete the requirement that "cola" and "pepper" beverages contain "caffeine from kola nut extract and/or other natural caffeine-containing extracts." As amended, the standard would designate kola nut extract per se as the mandatory, characterizing ingredient in "cola" and "pepper" beverages and allow explicitly for these beverages to be decaffeinated. The amended standard would continue to allow the use of naturally occurring and added caffeine as optional ingredients up to a maximum total level of 0.02 percent by weight.

The primary reason for FDA's proposal is that there appears to be little or no basis for regarding caffeine per se to be a characterizing ingredient of "cola" or "pepper" beverages. First, as currently written, the standard sets no minimum level at which caffeine must be present and thus already allows the production of "cola" and "pepper" beverages that are virtually (though not completely) free of caffeine. FDA is unaware of evidence demonstrating that the minute amounts of caffeine necessary to satisfy the current standard have any functional or other characterizing effect in the beverages.

Second, at least one manufacturer, the Royal Crown Bottling Co., is marketing with apparent success a "cola" beverage that is claimed to be caffeine-free. This product, called RC-100, is not subject to the standard of identity for soda waters because it is artificially sweetened (see 21 CFR 165.175(a)) and thus a food for special dietary use (see 21 CFR 105.3(a)(2)). Nevertheless, the fact that a manufacturer can gain consumer acceptance of a "caffeine-free" cola belies the notion that consumers expect colas to contain caffeine.

Third, to an increasing extent, soda water beverages other than "cola" and "pepper" beverages contain caffeine as an optional ingredient in amounts equal to or greater than the amount of caffeine ordinarily present in the natural extract used in flavor "cola" and "pepper" beverages (Ref. 3). This fact makes it increasingly difficult to conclude that caffeine characterizes "cola" or "pepper" beverages, any more than it characterizes other soda water beverages to which it is added.

In the absence of convincing evidence that caffeine per se, rather than the kola nut extract in which it naturally occurs, is a characterizing and thus necessary ingredient of "cola" and "pepper" beverages, FDA believes it is appropriate under the standard established in section 401 of the act for promulgating food standards to allow consumers maximum opportunity to choose whether the "cola" and "pepper" beverages they buy should contain caffeine.

Individual consumers may wish to avoid caffeine for any number of personal reasons. By amending the soda water standard to provide for decaffeinated "cola" and "pepper" beverages, as proposed here, FDA would leave to consumers the decision on whether to purchase decaffeinated "cola" and "pepper" drinks.

FDA is proposing to allow the continued use of caffeine as an ingredient in soda water beverages, but that use of caffeine, as well as other food uses, may be affected in the future by the ultimate outcome of FDA's evaluation of caffeine's safety, referred to above. The changes FDA is proposing to make in the standard of identity for soda water are not intended to imply that FDA has made any final judgments about caffeine's safety, or lack of it. Those judgments will be made through the process initiated elsewhere in this issue of the Federal Register in which FDA has raised some questions about the safety of caffeine and has proposed to require the performance of additional studies needed to resolve the questions. If FDA should conclude that caffeine can no longer be used safely in soda water, it will, of course, take appropriate action to amend the standard of identity acordingly. If, on the other hand, caffeine's safety is affirmed, the changes FDA has proposed in the standard of identity would still be justified for the reasons discussed in this document.

In addition to any other aspect of this proposal on which interested persons wish to comment, FDA specifically solicits comments on the following questions:

1. Are any natural flavoring extracts other than kola nut extract used in making "cola" or "pepper" beverages? FDA knows of none and thus is proposing in the amended standard to designate only kola nut extract as the mandatory ingredient.

2. What processes are used, or may be used, in decaffeinating natural caffeine-containing extracts? What degree of decaffeination (in percentage terms) is achieved by each of these processes?

3. What additional nomenclature should be allowed, or required, to describe "cola" or "pepper" beverages that contain no added caffeine and have been made from decaffeinated kola nut extract? What degree of decaffeination should trigger the use of any additional nomenclature?

FDA periodically announces by notice in the Federal Register mandatory uniform effective dates for compliance with food labeling requirements. The current mandatory uniform effective date is July 1, 1981 (43 FR 44830; Sept. 29, 1978). The agency proposes that any final regulation based upon this proposal become effective in accordance with a new mandatory uniform effective date for compliance with food labeling requirements to be announced in a future Federal Register notice, but not sooner than 1 year after publication in the Federal Register of any final regulation based upon this proposal.

The agency has determined under 21 CFR 25.24(b)(13) (proposed December 11, 1979; 44 FR 71742), that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

References

1. Letter from Marsha B. Cohen, Attorney, Washington Office, Consumers Union, to Hearing Clerk, Food and Drug Administration, dated July 23, 1974.

2. Citizen petition submitted to Hearing Clerk, FDA, by the Federation of Homemakers (Docket No. 79P-0344/CP), dated August 30, 1979.

3. Letters (with attachments) from Dr. Howard R. Roberts, National Soft Drink Association, to Mr. Robert W. Moore, Bureau of Foods, FDA, dated September 18 and 20, 1979.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), it is proposed that Part 165 be amended by revising § 165.175 to read as follows:

§ 165.175 Soda water.

a. *Description.* Soda water is the class of beverages made by absorbing carbon dioxide in potable water. The amount of carbon dioxide used is not less than that which will be absorbed by the beverage at a pressure of one atmosphere and at a temperature of 60° F. It either contains no alcohol or only such alcohol, not in excess of 0.5 percent by weight of the finished beverage, as is contributed by the flavoring ingredient used. Soda water designed by any name which includes the word "cola" or "pepper" shall contain Kola nut extract, which may be decaffeinated. Caffeine may also be added to any soda water. The total caffeine content in the finished food shall not exceed 0.02 percent by weight. Soda water may contain any safe and suitable optional ingredient, except that vitamins, minerals, and proteins added for nutritional purposes and artificial sweeteners are not suitable for food encompassed by this standard.

(b) *Nomenclature.* (1) The name of the beverage for which a definition and standard of identity is established by this section, which is neither flavored nor sweetened, is soda water, club soda, or plain soda.

(2) The name of each beverage containing flavoring and sweetening ingredients shall appear as "soda" or "water," or "carbonated beverage," the blank to contain the word or words that designate the characterizing flavor of the soda water as prescribed in § 101.22 of this chapter.

(3) If the soda water is one generally designated by a particular common name, for example, ginger ale, rootbeer, or sparkling water, that name may be used in lieu of the name prescribed in paragraph (b)(1) and (2) of this section. For the purpose of this section, a proprietary name that is commonly used by the public as the designation of a particular kind of soda water may be used in lieu of the name prescribed in paragraph (b)(1) and (2) of this section.

(c) *Label declaration.* Each of the optional ingredients used shall be declared on the label as required by the applicable sections of Part 101 of this chapter.

Interested persons may, on or before December 22, 1980, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the above office betwee 9 a.m and 4 p.m., Monday through Friday.

Executive Order 12044 does not apply to regulations issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557). Food standards promulgated under 21 U.S.C. 341 and 371(e) fall under this exemption.

Dated: October 16, 1980.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 80-32776 Filed 10-20-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Parts 180 and 182

[Docket No. 80N-0418]

Caffeine; Deletion of GRAS Status, Proposed Declaration That No Prior Sanction Exists, and Use on an Interim Basis Pending Additional Study

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule.

SUMMARY: The Food and Drug administration (FDA) is proposing to

delete caffeine used as an added food ingredient from the list of substances that are generally recognized as safe (GRAS), to declare that no prior sanction exists for the use of caffeine as an added food ingredient, to restrict the use of caffeine as an added food ingredient to current uses and levels, and to require that the presence of caffeine as an added ingredient be reflected on the product label in the ingredient declaration. Under this proposal, the current uses of added caffeine would be permitted under an interim food additive regulation pending the completion of studies that are considered necessary to resolve questions about the safety of caffeine added to food. These questions include the potential fetotoxic and teratogenic properties of caffeine, the comparative metabolism and pharmacokinetic handling of caffeine in humans and experimental animals, the potential behavioral affects of caffeine, particularly in children, the potential reproductive effects of caffeine, and the potential carcinogenicity of caffeine. The studies FDA proposes to require include both animal studies and human epidemiological studies. In addition, there are questions that need to be addressed about the purpose for which caffeine is added to foods, especially soft drinks. This proposal does not directly affect the caffeine that occurs naturally in such foods as coffee and tea. In a related proposal published elsewhere in this issue of the Federal Register, FDA is proposing to amend the soda water standard to allow for decaffeinated cola- and pepper-type soda waters.

DATE: Comments must be received on or before December 22, 1980.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Corbin I. Miles, Bureau of Foods (HFF–335), Food and Drug Administration, 200 C St. SW, Washington, DC 20204, 202–472–4750.

SUPPLEMENTAL INFORMATION:

I. Introduction

Caffeine has been a widely consumed constitutent of the food supply for many years, both as a naturally occurring constituent of such foods as coffee, tea, and chocolate and as an added ingredient in a variety of foods and beverages, most prominently cola-type soft drinks. Despite caffeine's well-known stimulant properties, its use as an added ingredient in soft drinks and other foods has been regarded by the food industry to be generally recognized as safe (GRAS); and FDA's regulations formally list added caffeine as a GRAS ingredient in cola-type soft drinks. The GRAS status of caffeine has exempted it over the years from the food additive sections of the law and their requirement that its safety be proven to FDA by a sponsor. As part of its program to review the safety of all substances listed in its regulations as GRAS, FDA has reviewed the safety of caffeine and has identified several questions about its safety that need to be addressed. Based on these questions, FDA proposes that the use of caffeine as an added ingredient in food should no longer be considered GRAS and that a variety of scientific studies be conducted to address the safety questions. In addition, there are questions about the purpose for which caffeine is added to food, especially soft drinks, that need to be addressed.

After a background discussion on the GRAS review program and the current legal status of caffeine, this document presents the data on caffeine that raise safety questions, explains the basis for FDA's proposal to remove added caffeine from the GRAS list, and describes the studies FDA considers necessary to resolve the existing questions about caffeine's safety and function as an added food ingredient.

II. Background

A. The GRAS Review

Since 1970, FDA has been conducting a comprehensive review of the safety of those human food ingredients that are currently listed in FDA regulations as either generally recognized as safe (GRAS) (21 CFR Part 182) or subject to a prior sanction (21 CFR Part 181). This ongoing review program, commonly referred to as the "GRAS review," has resulted to date in the initiation by FDA of approximately 65 rulemaking proceedings in which the agency has proposed either to affirm the GRAS status of the substance under review (see 21 CFR Part 184) or, where appropriate, to take action to restrict or prohibit use of the substance. The actions proposed in this document with respect to caffeine are, in part, a product of the GRAS review program.

The GRAS and "prior-sanctioned" categories of food substances were established by Congress in 1958 when it enacted the Food Additives Amendment of 1958 (Pub. L. 85–929, 72 Stat. 1784–1789). In that amendment to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.), Congress defined the term "food additive," in section 201(s) of the act (21 U.S.C. 321(s)), as follows:

> (s) The term "food additive" means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use), if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include—
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> * * * * *
>
> (4) any substance used in accordance with a sanction or approval granted prior to the enactment of this paragraph pursuant to this Act, the Poultry Products Inspection Act (21 U.S.C. 451 and the following) or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71 and the following); . . .
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> * * * * *

Under this definition of "food additive," substances that are GRAS, or that are subject to a prior sanction as defined in section 201(s)(4) of the act, are not food additives and, thus, are not subject to the premarketing safety review made applicable to food additives by the Food Additives Amendment (see section 409 of the act, (21 U.S.C. 348)). Prior-sanctioned substances remain subject, however, to the general adulteration provisions in section 402 of the act, 21 U.S.C. 342, which prohibit the use of added substances that "may render [the food] injurious."

In order to clarify the food additive status of many substances that were being used in food at the time the Food Additives Amendment was enacted, and thus facilitate implementation of the new provisions requiring premarket approval of food additives, FDA established lists of substances that the agency considered to be GRAS (21 CFR Part 182) or subject to a prior sanction (21 CFR Part 181). The regulations establishing the original, partial lists of GRAS and prior-sanctioned substances became final in 1959 (see 24 FR 9368; Nov. 20, 1959) and 1960 (see 25 FR 866; Feb. 2, 1960), respectively. The law, however, did not then, nor does it now, preclude manufacturers from making their own decisions concerning the GRAS status of ingredients prior to marketing them. If FDA disagrees with a manufacturer's determination that a substance is GRAS (and thus eligible for marketing without the FDA safety review and approval required for food additives), it is FDA's legal burden to take the appropriate steps to end its use as a GRAS substance.

FDA's decisions to place substances on the original GRAS lists were based on the data available at the time the lists were established and on the then current state of knowledge in the field of toxicology. Likewise, the pre-1958 approvals by FDA and the U.S. Department of Agriculture that qualified substances for prior-sanctioned status reflected the best safety judgments that could be made at the time based on existing knowledge. During the ensuing years, however, as more data became available on the properties of particular substances and as the science of toxicology developed, it became apparent that, in order to ensure the safety of the food supply, the agency's earlier safety determinations should be reviewed and modified where appropriate. To this end, FDA initiated the GRAS review program in 1970.

To carry out the GRAS review, FDA conducted surveys of food manufacturers and searched the scientific literature to collect current data on the levels of consumption and the toxicity of substances that are listed as GRAS or subject to a prior sanction. Under a contract with FDA, the Federation of American Societies for Experimental Biology (FASEB), acting through its Select Committee on GRAS Substances (SCOGS), compiled and evaluated the data and made recommendations to the agency concerning the appropriate action to take with respect to each substance under review. In preparing its recommendations on particular substances, FASEB held public hearings to provide an opportunity for interested persons to submit additional information and to express their views about the proper regulatory status of the substance under review. A detailed discussion of the role FASEB plays in the GRAS review is provided in *Federation Proceedings*, Vol. 36, No. 11 (October 1977) (Ref. 1).

FDA reviews FASEB's evaluation of the data and its recommendations and considers any additional information not available to FASEB. The agency then makes its own determination concerning the GRAS status of the substance. The procedures and the substantive criteria FDA applies in determining and affirming the GRAS status of food ingredients are set forth in §§ 170.30, 170.35, 184.1, and 186.1 (21 CFR 170.30, 170.35, 184.1, and 186.1). (The substantive criteria will be discussed below as they apply to the use of added caffeine.)

If FDA concludes that the substance under review is GRAS, it proposes to delete the substance from the original GRAS list in Part 182 (21 CFR Part 182) and proposes a regulation for inclusion in Part 184 (21 CFR Part 184) or Part 186 (21 CFR Part 186) affirming the substance's GRAS status and specifying the conditions of use for which the substance is considered GRAS. If FDA concludes that a substance can no longer be considered GRAS, the agency's usual course of acton is to propose to delete the substance from the GRAS list and to declare that the substance is a food additive that cannot be used in food unless approved as a food additive under section 409 of the act (21 U.S.C. 348).

There is, however, an intermediate step the agency can take, under appropriate circumstances, when it decides that a substance can no longer be considered GRAS. Under Part 180 of its regulations (21 CFR Part 180), FDA can permit the use of such a substance on an interim basis, notwithstanding the safety question(s) that preclude affirming GRAS status, if the agency finds that "* * * there is a reasonable certainty that the substance is not harmful and that no harm to the public health will result from the continued use of the substance for a limited period of time while the question raised is being resolved by further study." (21 CFR 180.1(a)). Substances approved on this basis are referred to as "interim food additives." Under Part 180, FDA can condition the continued use of an interim food additive upon a commitment by interested persons to conduct the studies necessary to resolve questions about the safety or functionality of the substance.

As part of the rulemaking process FDA uses to implement the conclusions reached in the GRAS review process, FDA routinely determines whether a prior sanction exists for the substance under review. If a prior sanction for a particular use is found to exist, then, of course, the substance is exempt from regulation as a food additive, on an interim basis or otherwise.

B. Caffeine

1. *Uses and resulting human exposure.* Caffeine is a member of a class of nitrogen-containing substances known as alkaloids. Its chemical name is 1,3,7-trimethylxanthine, and its empirical formula is $C_8H_{10}N_4O_2$. In the pure state, caffeine is a white powder or a mass of glistening, white needles. Food grade caffeine is listed in the Food Chemicals Codex (2d ed., 1972) (Ref. 2) and its First Supplement (Ref. 3) as containing not less than 98.5 percent $C_8H_{10}N_4O_2$, calculated on the anhydrous basis. The limits established in the Food Chemicals Codex for impurities in food grade caffeine are arsenic (as As), not more than 3 parts per million (ppm); heavy metals, not more than 20 ppm; and lead, not more than 10 ppm. Food grade caffeine should also pass a specified test for the presence of other alkaloids.

Caffeine occurs naturally, but it can also be made synthetically. In nature, it is present at up to 1.5 percent in seeds of coffee (*Coffea arabica* L.) and up to 5 percent in the leaves of tea (*Camellia sinensis*). Caffeine is also a natural component of chocolate (*Theobroma cacao* L.) and the kola nut (*Cola acuminata* Schott and Endl. and related species). Caffeine frequently occurs in nature in association with other chemical substances related to it, such as theobromine and theophylline. Caffeine can be prepared for commercial use by extraction from coffee or tea wastes, by partial synthesis from theobromine, or by total synthesis from various starting materials. One synthetic method uses urea and chloroacetic acid as starting materials, and another uses dimethyl carbamide and malonic acid. According to the Encyclopedia of Food Technology, the primary source of the caffeine that is used as an added ingredient in food is methylation of theobromine obtained from cocoa wastes. A secondary source is solvent or water extraction from coffee beans or tea leaf waste (Ref. 4).

Caffeine is a pharmacologically active substance that is used in a number of prescription and over-the-counter drugs. The major pharmacological effect of caffeine is on the central nervous system, but it can also stimulate the heart and increase cardiac output. Caffeine with sodium benzoate is given by physicians subcutaneously or intramuscularly in dosages of 0.5 to 1.0 grams as a central nervous system stimulant. In addition to its use in prescription drugs, caffeine is the active ingredient in many over-the-counter drugs used to maintain wakefulness. The dosage level in these over-the-counter (OTC) stimulants is usually 100 mg or 200 mg per tablet. Caffeine also is used in a variety of OTC analgesic, diuretic, cold, and diet-aid preparations at single dose levels ranging from approximately 30 to 200 mg.

Caffeine is used on a limited basis as an added ingredient in several categories of nonbeverage foods, including baked goods, frozen dairy

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desserts, gelatin puddings and fillings, and soft candy, reportedly as a flavoring agent. The overwhelmingly predominant use of caffeine as an added ingredient in food, however, is in soda water beverages ("soft drinks"); and most of that use (approximately 80–90 percent) is in cola-type soft drinks (Ref. 5). FDA believes that the soft drink use of caffeine accounts for the vast majority of the estimated 2 million pounds of caffeine added to food annually in the United States. (This 2 million pounds does not include the caffeine that occurs naturally in coffee, tea, etc.) Under the current version of FDA's standard of identity for soda water beverages (21 CFR 165.175), caffeine from kola nut extract and/or other natural caffeine-containing extracts is a mandatory ingredient in "cola" or "pepper" type soda water beverages, and additional caffeine from any source, natural or synthetic, may be used as an optional ingredient in any soda water beverage (up to 0.02 percent of the finished food).

In its report to FDA on caffeine (Ref. 6), FASEB presented data concerning the levels of exposure to caffeine experienced by consumers of soft drinks. Using survey data on the frequency of consumption of these beverages among various age groups and the average serving size, and assuming a caffeine level in the beverage of 0.01 percent, FASEB reported the mean consumption of caffeine from soft drinks, among those who consume them, to be 0.17 mg/kg body weight/day in the 0 to 11 month age group; 0.49 mg/kg/day in the 1 to 5 year age group; 0.31 mg/kg/day in 6 to 11 year age group; 0.21 mg/kg/day in the 12 to 17 year age group; and 0.18 mg/kg/day in the 18 and older age group (Table III, Ref. 6). Among the heaviest consumers of soft drinks (those in the 90th to 100th percentile), FASEB found the exposure levels to be significantly higher: 1.8 mg/kg/day in the 1 to 5 year age group; 1.1 mg/kg/day in the 6 to 11 year age group; 0.71 mg/kg/day in the 12 to 17 year age group; and 0.66 mg/kg/day in the 18 and older age group (Table IV, Ref. 6). It is noteworthy that the highest exposure to caffeine from soft drinks on a mg/kg/day basis is among young children, especially those in the 1 to 5 year age group. FDA considers the FASEB data to provide reasonable estimates of the levels of human exposure to caffeine from soft drinks.

FASEB also presented data comparing the levels of caffeine exposure from soft drinks with levels of caffeine exposure from all food sources, including coffee, tea, chocolate, etc. (Ref. 6). These data show that the proportion of total caffeine exposure from soft drinks varies both among the age groups and between average and heavy consumers of soft drinks. For example, persons in the 18 and older category who consume an average amount of soft drinks get the smallest proportion of their total dietary exposure to caffeine from soft drinks: 0.18 mg/kg/day of their total 2.4 mg/kg/day exposure (or 7.5 percent) is from soft drinks (Table III, Ref. 6). On the other extreme, children in the age category of 1 to 5 years who are in the 90th to 100th percentile of consumption of soft drinks get 1.8 mg/kg/day of their total 3.0 mg/kg/day exposure (or 60 percent) from soft drinks (Table IV, Ref. 6). Limited data exist concerning exposure to caffeine among pregnant women. Based on data collected by the Market Research Corporation of America, the mean consumption of caffeine among pregnant women from coffee alone is estimated to be approximately 2.9 mg/kg/day (Ref. 7).

2. *Regulatory status of caffeine as a food ingredient.* Caffeine is one of the substances FDA included on the original GRAS list following enactment of the Food Additives Amendment of 1958 (see 26 FR 938; Jan. 31, 1961). FDA listed caffeine as GRAS for use as a multiple purpose ingredient in cola-type beverages at a level not to exceed 0.02 percent of the beverage (21 CFR 182.1180). The only other formal FDA recognition of caffeine as a human food ingredient is in the standard of identity for soda water (21 CFR 165.175), where, as mentioned above, "caffeine from kola nut extract and/or other natural caffeine-containing extracts" is included as a mandatory ingredient in all "cola"- and "pepper"-type soda water beverages. Caffeine from other sources is also permitted as an optional ingredient in all soda water beverages, at a level not to exceed 0.02 percent.

The Flavor Extract Manufacturers' Association (FEMA) lists caffeine among the substances it considers to be GRAS for general use as a flavor substance (Ref. 8).

Until now, FDA has not taken issue with the FEMA determination; and it is on the basis of its presumed GRAS status as a general use flavor substance that caffeine is currently being used on a limited basis as a flavoring agent in the nonbeverage food categories mentioned above.

As noted above, FDA heretofore has allowed the addition of caffeine to foods and beverages based on its GRAS status. Since FDA proposes in this rulemaking to declare added caffeine no longer GRAS and to regulate added caffeine as an interim food additive under section 409 of the act, the agency must resolve whether any uses of added caffeine are the subject of a prior sanction as defined in section 201(s)(4) of the act. As explained earlier, any use of caffeine that has a prior sanction is excluded from the definition of the term "food additive" and thus cannot legally be included in the interim food additive regulation FDA is proposing to adopt. Such uses would remain lawful, subject only to the general adulteration provisions of the act (see section 402(a)(1) of the act (21 U.S.C. 342)).

Although FDA was aware of the use of caffeine in cola-type soft drinks prior to enactment of the Food Additives Amendment in 1958 and, after 1911, took no regulatory action against that use, the agency does not believe that it explicitly approved that, or any other, food use of added caffeine prior to September 6, 1958. In preparing this proposal, FDA searched its files for documents that relate to the question of whether it granted a prior sanction for caffeine in food (Ref. 9). Several documents, including a March 7, 1940 FD&C Act Trade Correspondence (TC/144), support FDA's tentative conclusion that no prior sanction exists because they discourage the use of caffeine as a food ingredient. Other pre-1958 documents are more equivocal about caffeine, acknowledging its long-time use in cola beverages or stating that there is no scientific evidence that caffeine is hazardous to health as ordinarily consumed in cola drinks.

As a part of this rulemaking proceeding, FDA specifically solicits the submission of comments on the several documents discussed above (Ref. 9) as well as any other evidence relating to whether a prior sanction exists for any uses of added caffeine in food. At this time, FDA proposes to declare that no prior sanction exists for any specific use of added caffeine in food, because FDA has no evidence of the explicit approval of added caffeine that is necessary to constitute a prior sanction (see 21 CFR Part 181).

Persons who intend to assert or rely on a prior sanction for added caffeine must submit proof of its existence in response to this proposal. Under § 181.5(d) (21 CFR 181.5(d)), FDA will consider the failure of any person to come forward with proof of an applicable prior sanction in response to this proposal to constitute a waiver of the right to assert or rely on such prior sanction at any time. If, however, FDA receives acceptable new evidence of a prior sanction, or convincing comments on the documents identified above, it will modify the proposed interim food additive regulation to exclude the prior-

sanctioned use from coverage by the regulation and propose a rule to recognize the prior sanction or sanctions.

The presence of caffeine in food as an added food ingredient (as in cola-type beverages and certain other, nonbeverage foods) is to be distinguished for purposes of this document from the presence of naturally occurring caffeine in such foods as coffee, tea, and chocolate. Although the consumption of foods containing naturally occurring caffeine is widespread and, as discussed above, very significant in terms of overall human exposure to caffeine, this document deals only with the regulatory status of the added uses of caffeine. Limiting the scope of this document to added caffeine is appropriate for a number of legal and practical reasons, which are discussed in a later section of this document.

III. FASEB Report on Caffeine

Consistent with the purpose of the GRAS review program, the task assigned to FASEB by FDA was to review the existing data on caffeine and make a recommendation to FDA on whether caffeine as an added ingredient in cola-type beverages should remain on FDA's list of GRAS substances (see 21 CFR 182.1180). As noted earlier, that use of caffeine is the only one listed in FDA's GRAS regulations.

FASEB submitted its report on caffeine to FDA in May 1978. Relying on a scientific literature review on caffeine prepared under FDA's sponsorship, as well as other sources, the FASEB report summarized the available data on caffeine consumption and on the biological properties of caffeine, including data on caffeine's toxicity. Copies of the scientific literature review and the FASEB report are on file with the FDA Hearing Clerk (HFA–305), Rm. 4–65, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 (Refs. 10 and 6, respectively). Copies may be purchased from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161. The NTIS Order No. for the literature review is PB–234–894/AS; the price code is A16. For the FASEB report on caffeine, the NTIS Order No. is PB–283–441/AS, and the price code is A05.

In the opinion section of its report (Section V, Ref. 6), FASEB referred to the existing data concerning the potential mutagenicity, teratogenicity, and carcinogenicity of caffeine, as well as the data concerning other possible effects of long-term exposure to caffeine. FASEB noted that in some animal test systems, generally involving very high dosage levels, some adverse effects of these kinds have been associated with exposure to caffeine. FASEB concluded, however, that the available data concerning these effects do not demonstrate a risk to humans from exposure to caffeine as currently used in soft drinks (which the FASEB report referred to collectively as "cola-type beverages").

In explaining its ultimate conclusion that caffeine in "cola-type beverages" should no longer be considered GRAS, FASEB placed primary emphasis on the potential behavioral effects of caffeine in children. FASEB pointed out that the concerns about the behavioral effects of caffeine are less for adults "* * * than for children where there can be chronic consumption of caffeine in cola-type beverages during the period of brain growth and development. It is during this period of plasticity that the developing central nervous system is most sensitive to the effects of all aspects of the environment. The estimated levels of caffeine intake at these ages are near those levels that are known to cause central nervous system effects in adults."

Although it acknowledged that the available data are not adequate to answer the question of whether chronic exposure to caffeine in "cola-type beverages" poses a potential hazard to children and others, FASEB stated that it "* * * views with concern the continued addition of caffeine to cola-type beverages, representing as it does a unique addition to food of a pharmacologically active central nervous system stimulant." FASEB said: "* * * there is a possibility that behavioral effects in children from infancy through adolescence exist, even though these potential effects are neither adequately documented nor are their consequences clear." FASEB said further that: "A series of rigorously controlled chronic studies in appropriate species, including fetal, neonatal, and growing animals, of the immediate and ultimate behavioral and cardiovascular effects of caffeine added to the diet and given in cola-type beverages, would reduce areas of speculation."

FASEB then stated its formal conclusions as follows:

A. While no evidence in the available information on caffeine demonstrates a hazard to the public when it is used in cola-type beverages at levels that are now current and in the manner now practiced, uncertainties exist requiring that additional studies be conducted.

B. It is inappropriate to include caffeine among the substances generally recognized as safe (GRAS). At current levels of consumption of cola-type beverages, the dose of caffeine can approximate that known to induce such pharmacological effects as central nervous system stimulation.

One member of the FASEB committee that considered caffeine filed a minority report. That report will be discussed in a later section of this document.

IV. FDA's concerns About Added Caffeine

A. Introductions

FDA has carefully considered the data on caffeine discussed in the FASEB report, as well as additional data not available to FASEB at the time it prepared its report. FDA shares FASEB's concern about the addition to food of a pharmacologically active agent, including FASEB's uncertainty about the potential behavioral effects of caffeine, especially in young children. FDA also is proposing to adopt FASEB's basic conclusion that, due to questions about the safety of caffeine, it is no longer appropriate to continue the listing of added caffeine as a GRAS substance.

However, due to recently developed evidence concerning the capacity of caffeine to cause birth defects in rats, FDA's primary concern about caffeine has shifted from caffeine's potential behavioral effects to its potential teratogenicity. As explained below, much uncertainty still exists about whether caffeine actually increases the risk of birth defects in humans, but the data now available from animal studies are significant enough to be of serious concern and to justify additional research directed toward resolving as soon as possible the uncertainties about caffeine's potential teratogenicity in humans.

In addition, due for the most part to a lack of the data normally required to support the safety of a food additive rather than affirmative evidence demonstrating a potential health risk FDA is proposing to require studies addressing the capacity of caffeine to cause adverse behavorial effects, reproductive effects, and cancer. These additional studies, coupled with the studies on caffeine's potential teratogenicity, should resolve the question of caffeine's safety as a human food ingredient. Finally, FDA proposes to resolve the question of caffeine's functionality as an added ingredient in food by requiring manufacturers to identify the purpose or purposes for which caffeine is used and demonstrate that the amounts used are necessary and effective for the intended purpose(s).

The following subsections of this document present the data and information that support FDA's proposal to remove added caffeine from the

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GRAS list and that justify the studies FDA is proposing to require.

B. Teratology

1. *Animal data prior to 1979.* In 1979, FDA published a review of the reproduction and teratology studies on caffeine completed and available as of that time (Ref. 11). That review cited a number of investigations, utilizing different methods of dosing and various species and strains of animals, which have indicated that caffeine may have fetotoxic and teratogenic potential.

For example, caffeine injected intraperitoneally into pregnant mice at dose levels of 200–250 mg/kg was embryotoxic and affected palate and limb development of the fetuse (Refs. 12, 13, 14, 15). A single subcutaneous injection of mice with 200 mg/kg caffeine produced cleft palate, micrognathia, hematoma, clubfoot, and digital defects in mice (Ref. 15). Mice given a single subcutaneous injection of 300 or 400 mg/kg had offspring that exhibited digital deformities, shortened extremities, muscular development disorders, cleft palate, facial deformities, and tail and spinal column curvative (Ref. 16). Oral administration of caffeine at 50 mg/kg by intubation produced skull and facial deformities and cleft palates (Ref. 17) and digital deformities (Ref. 18), but no ectrodactyly (partly or completely missing digits) in Swiss mice (Ref. 19); 75 mg/kg caused facial deformities, anophthalmia (missing eyes), and exencephaly (Ref. 20).

Dosing of rats by intubations of caffeine gave evidence of toxicity but produced variable teratogenic responses. At 0.2 to 22.5 mg/kg, no dose-related effects were seen (Ref. 21); 30 mg/kg resulted in decreased litter size and delayed bone ossification in the offspring (Ref. 22). Offspring of rats given 125 to 150 mg/kg showed missing digits and phalanges (Refs. 18, 19); 130 mg/kg caused cleft palates (Ref. 23), and 180 mg/kg caused toxicity and cleft palates (Ref. 23) and abnormalities of an unspecified type (Ref. 24), while 240 mg/kg reportedly was lethal to the fetus (Ref. 23).

Hamsters administered with up to 30 mg/kg caffeine by intubation at days 6 to 10 of gestation showed no frank terata (Ref. 21), but rabbits dosed with 100 mg/kg caffeine exhibited ectrodactyly (Ref. 19).

Caffeine given to rats daily in tap water at 30 mg/kg produced ossification problems and underdevelopment of kidney pelvis (Ref. 22). However, 40 to 50 mg/kg appeared to have neither teratogenic nor growth-retarding effects on the offspring (Ref. 25). Caffeine given daily to mice in drinking water at up to 39 mg/kg caused no dose-related effects, although at 12 to 18 mg/kg some offspring from treated animals were underweight at weaning, and one complete litter was ectrodactylous (Ref. 26).

Caffeine in coffee at up to 38 mg/kg produced fetotoxic effects in rats, such as delayed ossification of rib and skull bones, kidney pelvis underdevelopment, decreased organ to total body weight ratio of brain, lungs, and liver, and decreased bone density of the humerous (Ref. 22).

Rats fed a dietary level of 120 mg/kg of caffeine showed reduced litter size and birth weight (Ref. 27); dietary levels up to 330 mg/kg caused increases in skeletal defects as well as soft-tissue anomalies (Reg. 28).

The FDA review (Ref. 11) noted that many of the studies had deficiencies (e.g., lack of proper control animals, small number of animals, lack of concurrent control animals, insufficient information on procedures). Moreover, many of them were conducted a decade or more ago when teratology study techniques were less developed. Despite these deficiencies, the animal studies available at the time the review was published, taken together, demonstrate clearly that, at sufficiently high levels of exposure, well above what humans are exposed to in the diet, caffeine can cause birth defects in animals. The studies were not adequate, however, to determine with any confidence a no-effect level for the teratogenic effects of caffeine in animals, i.e., the level of exposure at which no teratogenic effects are observed.

2. *FDA study.* Due to the uncertainties left by the existing animal data, FDA initiated in 1979 two teratology studies of caffeine in laboratory animals using up-to-date teratology test methods. The purpose of the two studies was to confirm whether caffeine is an animal teratogen, and, if it is, to further refine the value of the no-effect level.

Both of FDA's teratology studies of caffeine used Osborne-Mendel rats of the FDA strain. The primary difference between the two studies is in the method by which the caffeine was administered to the animals. In the first study, which is now complete, the caffeine was administered by gavage, i.e., by forced feeding of measured amounts through a stomach tube. The advantage of this method is that it permits delivery to the animal of a precise amount of the test substance. One difficulty with the gavage method of administration is that by delivering the daily dose of the test substance in one large amount, it may not accurately reflect the way humans are exposed to the test substance. In the second study, the results of which are not yet available, the caffeine was administered via drinking water consumed *ad libitum.*

In the FDA gavage study of caffeine, animals were randomly assigned to each of six dose levels: 0, 6, 12, 40, 80 and 125 mg/kg/day. Initially, 61 presumably pregnant animals were assigned to each group to allow for a final minimum of 50 pregnant dams per group. Use of excess numbers of animals to allow for false pregnancies or mating failures is normal practice. Caffeine was administered daily by oral intubation on days 0 through 19 of gestation. Concurrent control animals were administered distilled water by intubation on the same days. Six of the pregnant animals died at the highest dose level. A dose-related decrease was seen in the total maternal weight gain during gestation at all dose levels.

On day 20, the pregnant animals were sacrificed and the fetuses delivered by caesarean section. Observations recorded included the number and position of resorption sites (i.e., places in the uterus where post-implantation death has occurred), the number of fetuses (dead and alive), the number of corpora lutea, and the number of implantation sites. Two litters were totally resorbed at 80 mg/kg dose levels. Significant decreases were observed in fetal weights and crown-rump distances in both makes and females at 80 and 125 mg/kg and 4 litters were resorbed at 125 mg/kg. Other increases in resportion also were observed at the 80 and 125 mg/kg and in female fetal weight and crown-rump distance at 40 mg/kg. Extrodactyly (partially or completely missing digits) was observed only at the 80 and 125 mg/kg dose levels. The highest observed no-effect level for ectrodactyly in this study was 40 mg/kg.

Also seen at the 80 and 125 mg/kg levels were assorted skeletal anomalies including misshapen centra, missing centra, reduced dorsal arch, reduced pubis, missing hind phalanges, reduced metacarpals and reduced metatarsals. In addition, delayed ossification of the sternebrae was seen at all dose levels. No soft-tissue variations appeared to be related to caffeine intake. A manuscript describing the results of this study in full detail (Ref. 29) has been accepted for publication by the *Journal of Environmental Pathology and Toxicology.* Complete copies of the protocols on the FDA caffeine teratology studies are included in the record as Refs. 30 and 31.

The gavage study has been completely analyzed by FDA and reviewed by two groups of teratology experts from

outside the Bureau of Foods. The first group of scientific reviewers consisted of Dr. Joseph F. Holson of the National Center for Toxicological Research and Dr. Richard M. Hoar of Hoffman-LaRoche, Inc. (also President of the Teratology Society). These reviewers concluded that the two FDA teratology studies "were designed and are bing conducted by knowledgeable personnel in a thorough and professional manner. Indeed, the size of the studies makes them more 'robust' than most studies of this nature. We conclude that these studies would be judged acceptable by a peer group for an initial teratological screen." The second group of scientific reviewers consisted of Dr. Carole A. Kimmel of the National Center for Toxicological Research and Dr. K. S. Khera of the Food and Drug Directorate of Canada. These reviewers observed that "discussion * * * and a review of the manuscript describing data from the gavage study, failed to uncover any sources of error in the design or conduct of the study. This is a conventional straightforward teratorlogy study conducted in a controlled manner * * *. Inter-observer bias was controlled since Dr. Welsh alone scored all the fetal skeletons and had no prior knowledge of the dose group to which the fetuses belonged. Uniformity in subjective judgment of the subtle sternebral changes was attempted by following a diagrammatic guide * * *. The collection of food consumption data, the large sample size, the relatively wide range and the number of test doses and the highly qualified scientists involved, are all considered strong points."

The FDA gavage study raises serious concerns about caffeine because it is the first large, well-designed and controlled teratology study on caffeine to show irreversible terata (e.g., missing digits) at levels as low as 80 mg/kg, and other adverse, but probably reversible, effects at levels as low as 6 mg/kg. The levels of caffeine exposure at which these effects occurrred in the rats are not significantly greater than those humans might be exposed to in the food supply. The daily doses of 40 mg/kg (the highest observed no-effect level for ectrodactyly) and 80 mg/kg fed to the rats in the FDA gavage study equate on a body weight basis to the amount of caffeine a human female might consume in approximately 12 and 24 strong cups of coffee, respectively; six mg/kg equates to two cups (Ref. 32). in determining the significance of the FDA gavage study for humans, however, it is necessary to consider whether animal teratology studies in general and rat studies on caffeine in particular are reliable indicators of human risk.

3. *Relevance of animal teratology studies to humans.* A fundamental assumption in the estimation of the human health risks posed by chemicals is the ability to extrapolate animal test results to human response. This assumption is the cornerstone of most of FDA's decisions regarding the safety of substances in the food supply. In accepting this assumption, however, FDA does not assume that responses in animal models reflect exactly what will occur quantitatively or qualitatively in humans. What is assumed is the ability of well-designed animal studies to provde an indication of potential risk to humans. Only after careful analysis of experimental results from multiple species can a degree of confidence be ascribed to the probability that this potential risk will materialize in the human population. If it can be demonstrated scientifically, however, that a result from a particular animal study is not relevant as a predictor of human risk, then that result would not be employed in making safety assessments no matter how drastic the animal results. Ultimately, conclusions regarding the precise risk to humans for any substance can only be arrived at by using appropriate human data.

Animal cancer studies are particularly well-suited to predicting human response. This is true for a number of reasons that have come to be understood from the extremely large body of scientific evidence that bas been developed for substances having the ability to induce cancer. For the purpose of this document, however, it is necessary to focus on the problem of extrapolating teratology data from animals to humans.

Interpretation of the relevance of teratology studies to human is affected by many considerations, which combine to make the interpretation of teratology studies complex, difficult, and uncertain (Ref. 33). These considerations, which are the same whenever one attempts to extrapolate from an observed teratologic response in one species to what might be expected to occur in another, include:

1. Physiological and biochemical differences that affect the absorption, metabolism, and excretion of the substance.
2. Variability in placental barriers.
3. Differences in susceptibility to chemical interactions at the cell, tissue, organ, and organ system levels.
4. Variability in background incidence of disease.
5. Variability in the gestational development sequence.

These factors must be taken into account, to the extent the available data permit, when one attempts to assess the relevance to humans of any specific teratology study conducted in a particular species on a particular chemical. They will be discussed below as they relate to the animal studies on caffeine.

In an effort to better understand as a general matter the relevance of animal teratology studies to humans, several investigators have examined the literature to determine the extent to which known or suspected human teratogens have also been found to be teratogenic in animals (Refs. 34, 35, 36). FDA's review of the literature reveals a group of 38 compounds for which there are reports of birth defects in humans associated with intake of these compounds during pregnancy (Refs. 36, 37, 38, 39). Of these compounds, all except one have a positive study in at least one animal test species. Furthermore, over 80 percent of the compounds are positive in multiple species. The one exception is a compound that causes otological deficits in humans that would not normally be discovered in test animals at the time of caesarian sacrifice.

Among the most widely tested individual species, a positive teratologic response to the substances identified as known or suspected human teratogens was exhibited 85 percent of the time in the mouse, 80 percent in the rat, 60 percent in the rabbit, 45 percent in the hamster, and only 30 percent in the monkey. Other species have been used to test only a small number of these substances. Nevertheless, there has been a greater than 80 percent correlation with the positive human data for the dog, pig, cow, and cat.

The correlations between human response and the responses of specific species are not as good for the compounds that do not appear to be human teratogens. Of the 165 compounds for which human teratologic effects have not been reported, 28 percent appeared negative in all animal species tested and 50 percent appeared negative in multiple species. However, 41 percent of these 165 compounds appeared to be positive in more than a single animal species. For the most commonly tested species, a non-positive response to the substances for which human teratologic effects have not been reported was observed 80 percent of the time for the monkey, 70 percent for the rabbit, but only 50 percent for the rat, 35 percent for the mouse, and 35 percent for the hamster.

Taken together, these correlations between human and animal teratologic

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response tend to support the assumption that, as a general matter, positive animal teratology studies are at least suggestive of a positive human response. However, the correlations between the human and animal data on the substances that appear negative in humans suggest the limits that likely exist on the predictive power of positive animal studies. In addition, it must be emphasized that the degree of reliance that can be placed on these correlations to support the assumption that animal studies are relevant to humans is limited by the uncertainties that exist in the human data used to identify the 38 known or suspected human teratogens used in the comparisons. Most of the 38 were identified only from a limited number of adverse reactions reported by physicians. Very few have been the subject of rigorous, large-scale epidemiology studies, which provide the only basis for concluding unequivocally that a substance is a human teratogen. Similarly, the data available on the 165 substances for which teratologic effects have not been reported are not of sufficient quantity and quality to establish conclusively that all 165 are not human teratogens.

As revealed by the data just cited, a factor that complicates the use of animal studies to predict potential teratogenic response in humans is the apparent variability in response to teratogenic agents among animal species. The reasons for the apparent variability and its relevance to the reliability of animal studies for predicting human response are not well understood. It is important to realize, however, that the endpoint that is being measured (teratology) is not a single response. Unlike other toxicities, which have clear expressions (such as death, cancer, tumor, or organ damage), teratologic responses are numerous and varied and result from a continuous series of pathologic alterations during fetal development. Whether or not a particular chemical will induce a teratologic response in the fetus is dependent on a variety of factors and influences (listed above) that change from species to species. The mechanism of action in each species can also vary.

It is known that one major source of variability among species derives from the influence of the maternal organism on the way the fetus is affected by a chemical the mother ingests. The site of a chemical's teratogenic action can be primarily in the embryo, in the maternal organism and only secondarily in the embryo, or in both. Wherever the primary site of action is, however, the maternal organism always exerts some influence in determining the teratogenic or other embryotoxic effect of a substance with which it comes into contact, because it is through the mother that the substance is delivered to the fetus. The route and rate of maternal absorption are the initial determinants of the concentration in the maternal bloodstream, but of equal or greater importance is what happens to a foreign chemical after it gets into the maternal blood. For example, it may be excreted by the kidney, metabolized by the liver, kidney, or other organs, bound to protein, stored in various tissues, or it (and/or its metabolites) may simply remain in the blood plasma at varying concentrations for some period of time. The level of concentration in the blood as well as the lengths of time for which various levels are maintained are important in determining the total dosage that will be available for transfer by the placenta to the embryo or fetus.

In conclusion, it is reasonable to conclude that positive animal teratology studies are at least suggestive of potential human response. Well-conducted animal studies that show teratogenic effects at levels of exposure not substantially greater than humans might experience are sufficient to raise substantial questions about the potential risk to humans. However, at this time, no single test species can be said to predict accurately the true human response to a given chemical. Tests in multiple species may increase the predictive reliability of animal test data, but specific differences between the test species and the human system must be considered in evaluating the relevance of particular tests to humans. It is for the latter reason that FDA has reviewed carefully the available data on the comparative metabolism of caffeine, especially between humans and the rat—the species used in FDA's gavage study.

4. *Comparative metabolism of caffeine.* As the previous section indicates, well-designed animal studies that show positive results in more than one species are at least suggestive of the potential teratogenic response of a given substance in humans. As also noted above, however, there are a number of considerations that may limit the ability of any single animal teratology study to predict the response in humans. One of these considerations is the existence of physiological and biochemical differences between species that may affect the absorption, metabolism, and excretion of a substance. In the specific case of caffeine, there are preliminary indications of significant differences between the metabolism of caffeine in humans and experimental animals, although the entire range of these differences has not been thoroughly established.

The available data indicate that there are both major metabolic and pharmacokinetic differences among various species of experimental animals in which caffeine has been reported to cause teratogenic effects, and between those species and humans. For example, following a single oral dose of caffeine in humans, the major urinary metabolite is 7-methylxanthine (Refs. 40). In the rat and mouse, this metabolite is not detected, the major metabolite being 1,3,7-trimethyluric acid, a minor metabolite in man and the rabbit.

In humans, it is clear that most caffeine is first subject to 3-*N*-demethylation to yield paraxanthine (1,7-dimethylxanthine). About 1 to 2 percent of a given dose of caffeine is recovered in human urine as 4-amino-5-(*N*-methylformylamino)-1,3-dimethyluracil (Ref. 41) Callahan and colleagues have recovered 10 to 30 percent of caffeine administered to various individuals as the acetylated diaminouracil derivative (Ref. 42). This metabolite may be produced from another, as yet unidentified, metabolite.

Several factors may influence the metabolism of caffeine in humans. Smoking, which stimulates the elimination of caffeine (Ref. 43), and pregnancy, which slows the elimination of caffeine (Refs. 44, 45, 46), have yet to be investigated with regard to effects on metabolite pattern. Age is also an important factor in caffeine metabolism. The newborn human, as it develops the capacity to dispose of caffeine, also develops the adult metabolite pattern (Ref. 47).

In rats, caffeine appears to be subject to a wider array of metabolic transformations than in humans. Important reactions include oxidation at the 8-position, demethylation at *N*-1, *N*-3, and *N*-7, and hydrolytic ringclearage to the uracil derivative 4-amino-5-(*N*-methylformylamino)-1,3-dimethyluracil (Refs. 41, 48). The production in the rat of the diaminouracil derivative (30 to 40 percent of recovered metabolites or 18 to 25 percent of administered dose) and 1,3,7-trimethyluric acid (14 percent of recovered metabolites) attests to the differences in metabolic pathways and extent of conjugation of diaminouracil between the rat and human. The differences in extent of conjugation are likely to influence the rate at which the metabolites of caffeine are eliminated from the body.

Perhaps more significant than the difference in caffeine metabolite patterns between the rat and man is the fact that the rat exhibits an apparently different time profile of caffeine elimination from the plasma compared to humans. Specifically, studies on the pharmacokinetics of caffeine suggest that the rat is more likely to accumulate caffeine in the blood after repeated treatment at dose levels higher than 5 mg/kg than is the mouse, rabbit, or human. Dose-dependent kinetics in the plasma disappearance of caffeine are apparent in the rat, resulting in rapid clearance at the lower doses of 5 to 25 mg/kg. At higher doses, however, somewhere between 25 and 50 mg/kg, the time profiles of caffeine elimination by the rat and human appear to cross-over so that the rat actually appears to eliminate caffeine more slowly than the human. This comparison assumes that caffeine elimination in humans continues at a constant rate up to dose levels that are difficult to achieve experimentally in humans. In practical terms, this would mean that at dose levels on the order of those that caused irreversible terata in the FDA gavage study, the rat would maintain higher blood plasma levels of caffeine for longer periods of time than the human, and thereby increase the level and duration of the fetus' exposure to caffeine, as compared to humans.

Caffeine metabolism and pharmacokinetics also have been investgated to some extent in animals other than the rat. The mouse appears to eliminate caffeine from the plasma faster than humans at all dose levels studied (Refs. 40, 41, 44, 49). The rabbit initiates caffeine metabolism by demethylation at the *N*-3 position as in humans, but it also exhibits a dose dependent rate of caffeine elimination similar to rats (Refs. 40, 41, 44, 49). The subhuman primate *Macoca cynomolgus* initiates caffeine metabolism by demethylation of the *N*-7 position, in contrast to humans (Refs. 41, 44).

In sum, similar doses of caffeine in humans and experimental animals will result in exposure of the maternal animal and the developing fetus not only to widely different levels of caffeine, but also to different kinds and amounts of caffeine metabolites. It is not known to what extent these differences in metabolism and pharmacokinetics relate to the observed teratogenic effects in experimental animals. They do raise serious questions, however, about the ability of the animal studies—particularly in the rat—to predict the response of humans to caffeine.

At this time, there are insufficient data to determine whether caffeine *per se* and/or one of its metabolites is the causative agent for the teratogenic effects observed in experimental animals. In the absence of an answer to that question and more complete information on the comparative metabolism and pharmacokinetic handling of caffeine in human and animals, especially the rat, it is not possible to determine with confidence what, if any, potential risk exists for humans based on the existing animal teratology data on caffeine.

5. *Human teratology data.* FDA has reviewed six human epidemiological studies that deal at least in part with the teratological effects of caffeine (Refs. 50, 51, 52, 53, 54, 55). All of these studies to some degree were directly or incidentally concerned with exposure to caffeine and an increased risk of complications of pregnancy. Unfortunately, most, if not all, of these studies have methodological problems associated with them that make it difficult if not impossible to draw any reasonably valid inferences from the results. In general, these studies are flawed by a failure to control important variables that could alter study results. These variables include adequate measures of exposure (amount and length of time of caffeine consumption), intake of alcohol, smoking habits, age at pregnancy, and level of pre-natal care.

Of the six human studies, four were concerned with the dietary intake of caffeine in coffee, while the remaining two were concerned with caffeine exposure as a result of drug usage.

Nelson and Forfar (1971) (Ref. 50) report the results of a retrospective study to compare the drug consumption during pregnancy of mothers of infants with congenital abnormalities (458) compared to the drug consumption of mothers with normal infants (911). No attempt was made to determine caffeine exposure other than caffeine contained in drugs. The authors report that there was no statistically significant difference in caffeine use between the mothers who had malformed infants and those who had normal infants.

In a prospective study of some 50,000 pregnant women, Heinonen et al. (1977) (Ref. 53) identified 5,773 pregnant females who were exposed to caffeine in drug products that also contained aspirin and phenacetin. The study was not designed to address the exposure of the females to caffeine consumed as a dietary ingredient. Although the authors report an increase in birth defects in infants born to mothers who consumed caffeine with aspirin and phenacetine during pregnancy, the increase was not statistically significant, and the authors report that caffeine itself could not be associated with any of the observed effects.

In a study of the effects of tobacco, coffee, and alcohol on prematurity in pregnancy, Van den Berg (1977) (Ref. 52) found that heavy coffee drinking (seven cups or more per day) occurred in 13 percent of the study population of 8,514 pregnant females, while the incidence of such consumption among mothers of low-birth-weight infants was 21.4 percent. However, among heavy coffee drinkers, there is a large proportion of smokers (65.3 percent), and the author concluded that the coffee effect appears to be explainable by the association with smoking. No significant difference was observed in mortality rates or rates of severe congenital anomalies in the infants of females who consumed seven or more cups of coffee per day compared to those who consumed less than seven cups per day.

Mau and Netter (1974) (Ref. 50) reported the results of a study of 5,200 females who were asked to record their coffee consumption on a recall basis as none, seldom, or frequent. No attempt was made to quantify the amount of coffee consumed by number of cups or type of coffee consumed. Results of the study indicated that coffee consumption as reported was associated with a slight increase in the incidence of low birth weight infants (6.6 percent) compared to controls (4.2 percent). The authors report no significant relationship associating coffee consumption with duration of pregnancy, frequency of abortions, or birth defects.

In a study reported by Streissguth et al. (1980), (Ref. 47), some 1,529 pregnant women were observed for the effects of a variety of substances, including coffee, alcohol and tobacco, on pregnancy outcome. The study was conducted through the use of a questionnaire in which the women were asked to recall their caffeine consumption during pregnancy. Although the authors report an incidence of 4 percent for breech presentations, and an incidence of 4 percent for a previous history of spontaneous abortions and stillbirth, associated with caffeine consumption, other variables such as age of mother were no controlled for. The authors did not ascribe any significance to this finding. In addition, the finding of a history of reproductive loss in previous pregnancies may well be associated with a risk factor unrelated to caffeine exposure and certainly requires additional explanation.

In a study by Borlee, et al. (1978) (Ref. 54), which involved 202 malformed children and 175 controls matched for age, sex, and socioeconomic status, the analysis was conducted on 185 cases and 157 controls; no mention is made of

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those study subjects lost to followup. A statistically significant association was observed between cases and controls for a history of coffee drinking by mothers. The difference can be isolated, however, to those who drank over eight or more cups a day. Unfortunately, the statistical procedures are not discussed in the paper so it is difficult to determine their adequacy. However, from the number of paired comparisons presented, it appears that simple tests were used that are not suitable for this analysis in many cases. FDA attempted to utilize the proper statistical methods, but the insufficiency of the data presented in the paper made it impossible to perform the proper statistical analysis. Attempts by FDA to obtain from the authors the additional data needed to properly evaluate the study's results have not been successful to date.

From an epidemiological viewpoint, the study's consideration of a possible interaction with smoking appears incomplete. The investigators considered only the percentage of smoking mothers of malformed children; they did not consider the percentage of smoking mothers of normal children. The analysis considering medications only considers the number of medications, not the type of medications. Obviously, the type may be more important.

In a followup to this paper, published in *Science* (1980) in the form of a letter (Ref. 58), the authors of the study have gone to great lengths to advise caution in interpreting its results, citing the preliminary nature and incompleteness of the data. They feel that the data have been interpreted inappropriately by some who have placed great significance on the results.

As indicated previously, the existing human studies are severely weakened by a variety of methodological problems, which become most apparent when attempts are made to use their results to answer questions that the studies are not specifically designed to address. Attempts to quantify caffeine exposure and to relate such exposure to pregnancy outcome, without controlling for a wide variety of other variables that may represent additional risk factors for adverse pregnancy outcomes, appear to confuse rather than clarify the issues. The Interagency Epidemiologic Working Group on Special Problems in Cancer Epidemiology (IEWG) also reviewed these studies and reached the same conclusions about their adequacy as has the agency (Ref. 7).

In summary, FDA concludes that the available human studies, whether taken as a group or singly, do not conclusively determine the relationship between caffeine consumption and teratological effects.

6. *Conclusion.* The available data on the potential of caffeine to cause birth defects clearly raise substantial questions that need to be resolved by further research, but the data do not provide a sufficient basis to conclude that caffeine actually presents a risk of birth defects in humans. The source of the questions about caffeine's potential teratogenicity is the FDA gavage study in rats, which, when viewed against the background of previous animal data, clearly demonstrates that caffeine is capable of causing irreversible terata and other effects in the fetus of the rat at levels of exposure not substantially greater than human might experience from foods and drugs. However, the additional data concerning differences in the pharmacokinetics and metabolism of caffeine in animals and human raise questions about whether animal studies in general, and rat studies in particular, give a reliable indication of caffeine's potenial risk to humans. These data, coupled with the generally inconclusive results obtained in the available human data, make it premature for FDA to conclude that caffeine actually poses a risk to humans. FDA and other public health agencies have consistently urged pregnant women to be cautious in their consumption during pregnancy of any pharmacologically active substances, and this caution extends to caffeine. There is, however, insufficient evidence to conclude that caffeine will cause birth defects in humans.

C. Reproductive Function

In addition to considering data on the potential teratogenic effects of caffeine, which involve effects on the offspring, FDA has evaluated the available data relating to caffeine's potential effect on the reproductive function itself. Like the teratology data, the reproductive data raise questions that require further study, but they do not demonstrate any actual risk to humans.

1. *Animal and human data.* Several investigators have reported that caffeine has no adverse reproductive effects in animals at dose levels of 30 to 50 mg/kg body weight. Thayer and Kensler (Ref. 26) exposed four generations of male and female mice continuously to caffeine in the drinking water at levels of 4 to 5, 12 to 18, and 25 to 39 mg/kg body weight/day. No consistent, dose-related effects of caffeine on fertility, age at sexual maturity, mean litter size, weight of offspring at weaning, sex ratio, or fetal abnormalities were observed. Bachmann et al. (Ref. 25) tested the influence of chronic exposure to caffeine on the reproductivity of albino rats given a sweetened caffeine-containing beverage as the only liquid in the diet for as long as 3.5 years. The average dose was about 40 to 50 mg/kg/day. Mated at 100 days of age, the pairs were kept until the female produced no offspring for a period of 3 months after the last litter. No evidence of sterility or unusual histological changes in the male testes were observed.

In a two-generation rat study (Ref. 27) at a much higher daily dose level of caffeine (125 mg/kg body weight incorporated in the diet), progressive reduction in litter size was observed; birth weights, postnatal survival, and growth rates through lactation were decreased, but growth and survival subsequent to lactation were not affected.

Friedman et al. (Ref. 57) reported that the feeding of 0.5 percent caffeine (about 500 mg/kg) to immature Osborne-Mendel rats for 3 to 16 months can produce severe testicular atrophy and aspermatogenesis in 85 to 100 percent of the animals. However, it is to be noted that no significant testicular atrophy or dose-related pathological effects were observed in a 2-year study of rats receiving dilutions of freshly brewed coffee as the only source of liquid; doses of caffeine were equivalent to about 54, 32, and 14 mg/kg (Refs. 58 and 59).

Ax et al. (Refs. 60, 61, 62) studied the effects of dietary caffeine on the fertility, embryonic loss, and testes of the domestic fowl. Fertility was not impaired in pullets fed 0.05 percent caffeine (estimated to be about 80 mg/kg/day) but embryonic loses were about 16 percent compared to 5 percent in controls. Percentage fertility of eggs from untreated pullets inseminated with semen from mates fed continuously a diet containing 0.1 percent caffeine was measured. Semen from roosters at the start of caffeine feeding produced 30.8 percent fertile eggs. After 14 days of caffeine feeding, egg fertility was 3.3 percent. Semen output and sperm concentration also were markedly affected: by 25 days semen volume was less than one-half the volume at the start of the study and sperm count was depressed by a factor of more than 100. No semen could be collected from roosters that had received caffeine for 30 days. Removal of dietary caffeine resulted in resumption of semen production and return of egg fertility to normal levels.

A recent report by Palm et al. (Ref. 22) suggests the occurrence of some adverse reproductive effects in rats at oral dose levels of 30 to 38 mg/kg body weight. In this study, groups of 20 pregnant Sprague-Dawley rats were given approximately 9, 19, or 38 mg/kg/day caffeine (as diluted coffee in drinking water) 5 weeks prior to and during gestation; another group was given 30 mg/kg/day caffeine in the drinking water during pregnancy; and another group was given a similar dose of caffeine by oral intubation. Most pregnant animals were killed on day 19 of gestation and evaluated for teratogenicity, as discussed earlier. In addition, 5 pregnant animals from each treatment group and concurrent controls were allowed to deliver and rear their young. During the nursing period, only the coffee-treated females continued to receive caffeine. Following weaning, the F_1 generation offspring were not treated, but were bred to evaluate their ability to reproduce. The F_2 pups were examined as to gross abnormalities, mean body weight, and post-weaning survival. In the coffee-treated animals sacrificed on day 19, there was a statistically significant decrease in organ to total body weight ratio of fetal brain, lungs, and liver at the 38 mg/kg caffeine level. Fetal liver weights and lung weights were also reduced in the caffeine-gavage and caffeine-drinking water groups, respectively. Malformations were found in both control and treated animals with a small but statistically significant increase in cryptorchidism (failure of the testes to descend into the scrotum) in the groups receiving caffeine. The reproductive performance suggested that the percentage of F_1 females becoming pregnant was less than controls, but not statistically so. However, the mean number of days required to achieve pregnancy was statistically greater for the two high dose coffee groups and for the two caffeine groups when compared to the time required for control females. The etiology of this apparent reproductive effect is unclear.

Weathersbee et al. (Ref. 63) made a retrospective survey of 800 households identified by random sampling of medical records of women who had been obstetric patients in hospitals in Utah. Responses were obtained from 489 households. Approximately 75 percent of the individuals were Mormons whose use of alcohol, caffeine, and tobacco is proscribed. In 356 of the 489 households where presumably no caffeine, alcohol, or tobacco was used, there were 33 spontaneous abortions, 38 stillbirths, and 6 premature births, including 3 deaths. In 16 of the 489 households, when the woman's estimated mean daily caffeine intake was 686 mg (approximately 11 mg/kg/day) and the man's 566 mg, there were 8 spontaneous abortions, 5 stillbirths, and 2 premature births with no deaths. In 13 of the 489 households, where the woman's estimated mean daily caffeine intake was less than 400 mg (about 6.7 mg/kg/day) and the man's more than 600 mg, there were 4 spontaneous abortions, 2 stillbirths, and 2 premature births, with 1 death. In 23 of the 489 households, where mean daily caffeine intake by the man or woman was no more than 450 mg (about 7 mg/kg/day), there were no abortions, stillbirths or premature births.

Several factors weaken this study. There is a lack of attention to the fact that 311 of the 800 households selected did not participate. A variety of variables that could affect the results were not analyzed, including a comparision of Mormon women versus non-Mormon women and the differences between women who gave birth in hospitals and those who did not. In addition, the lack of a specific determinatin of caffeine consumption by women makes reliance on this study questionable. The authors concluded that a cause-and-effect relationship could not be established by this study, but suggested that excessive intake of caffeine might be a factor in spontaneous abortion and perinatal mortality.

2. *Conclusion.* The effects of caffeine on reproductive functions vary from study to study. In most of the animal studies, effects were seen only at levels of exposure significantly higher than humans would experience. The exception is the Palm study (Ref. 22). The effects seen in the Palm study at dose levels of 30 to 38 mg/kg deserve further research, but, because the animal used in the Palm study was the rat, the same questions apply here as were discussed above regarding the ability of rat data on caffeine to predict human response. The human study cited above, though adequate to raise questions worthy of further research, is also inconclusive. In sum, there is insufficient evidence to conclude that caffeine adversely affects the reproductive function in humans.

D. Carcinogenicity

1. *Animal and human data.* In a recent (1978) study by Takayama et al. (Ref. 64), the administration of 0.1 percent and 0.2 percent synthetic caffeine in the drinking water to groups of 50 male and 50 female Wistar rats was associated with a significantly increased incidence of tumors in caffeine-treated rats as compared to control animals receiving no caffeine. Significant increases in mammary adenomas and carcinomas and pituitary adenomas were observed in females given 0.2 percent caffeine. There was also a significant increase in mammary adenomas and pituitary adenomas in females given 0.1 percent caffeine. Males given 0.1 percent caffeine had a significant increase in pituitary adenomas. The incidence of adenomas and carcinomas of the thyroid was increased at both dose levels of caffeine in both sexes. There was a high incidence of uterine adenomas and carcinomas in females given 0.1 percent and 0.2 percent caffeine.

FDA has sought additional information on this study and has learned from the author that pneumonia seriously affected the survival rates of the test animals. The author also concluded that there was a nonlinear dose response found in the 0.1 and 0.2 percent test groups and that the results can only be considered preliminary. This study is being repeated (Ref. 65). FDA's Cancer Assessment Committee, located in FDA's Bureau of Foods, has reviewed this study and other available chronic studies of caffeine. FDA does not consider the Takayama study to be a conclusive study on the carcinogenicity of caffeine due to a lack of data relating to the design and conduct of the study. The reported nonlinearity of the results and the increased mortality among the test animals are not, however, sufficient reasons for rejecting the study. In the case of the dose response, the doses were close together and the early mortality from pneumonia among the test animals may have only lessened the chances for development of cancer in that group. FDA asked for additional information on the design, conduct, and results of this study from its author, but has not received sufficient information to permit reliance on the study as a definitive study on the carcinogenicity of caffeine.

In another recent study (Ref. 66), no increase in neoplastic or preneoplastic lesions was observed in groups of 20 male Osborne-Mendel rats given 0.5 percent caffeine in the diet for up to 75 weeks. The animals in this experiment were sacrificed after 75 weeks, and thus the time for tumor formation may not have been long enough for carcinogenicity to be expressed. The quality and power of the study is further undermined by the fact that only one sex was studied and that the number of animals used was not sufficient by contemporary standards for carcinogenicity testing.

In two other studies, no increase in carcinogenicity was found in rats given rations containing instant coffee (Refs. 67, 68). The animals were on test for 2 years, and their rations contained up to

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about 0.18 percent caffeine. In a lifetime study, mice given fresh brewed coffee instead of drinking water did not show an increased incidence of cancer (Ref. 69).

Human epidemiology studies have not demonstrated a causal relationship in humans between coffee drinking and cancer (Refs. 70, 71, 72, 73). Kihlman (Ref. 74) believes that most of the available evidence suggests that caffeine may have anticarcinogenic effects rather than being a carcinogen or co-carcinogen. However, a higher incidence of bladder cancer has been detected among coffee drinkers as compared to matched controls (Ref. 75), and a correlation has been perceived between coffee consumption and national mortality rates from carcinoma of the kidney (Ref. 76).

2. *Conclusion.* The data concerning the potential carcinogenicity of caffeine are inadequate and incomplete. There are no lifetime feeding studies available on caffeine that meet currently accepted toxicological testing criteria. The results of the unpublished study by Takayama, et al. (Ref. 64) suggest an association between exposure to caffeine and an increased incidence of tumors in rats, but, as noted earlier, the study is being repeated because of the problems the author identified. FDA agrees that the study should be repeated.

Other chronic and long-term animal studies have been performed, involving both caffeine and coffee as test substances, that, although not fully adequate by current standards, suggest that caffeine is not carcinogenic. Moreover, there are no acceptable epidemiological data linking human exposure to caffeine with a significant increased incidence of cancer. As explained further below, the agency believes that, in order to resolve the question of whether caffeine is carcinogenic, chronic feeding studies meeting current toxicological testing standards should be carried out in two rodent species.

Based on the currently available data, FDA cannot determine conclusively whether caffeine is, or is not, carcinogenic in animals. There is no adequate basis at this time, however, for concluding that caffeine poses any risk of cancer in humans.

E. Behavioral Effects

1. *Animal and human data.* The neuropharmacologic properties of caffeine have been under investigation for several decades. Numerous behavioral, neurochemical, and neurophysiological studies have been conducted to characterize the neuropharmacologic effects of caffeine in humans and in animals (Refs. 77, 78, 79). Most of these studies were designed to consider caffeine as a drug and have dealt with the acute or short-term (generally not longer than several weeks) effects of caffeine in the mature, adult organism. There is only limited information about the neurobehavioral effects of chronic or long-term exposure or about the effects on the young, immature organism.

In studies with adult animals, caffeine has been shown to exert varying effects on the neurochemical and neurophysiological systems and to influence such behaviors as learning and memory, motor performance, sensory function, and emotional reactivity at acute dose levels as low as 0.5 to 2.5 mg/kg (Refs. 80, 81, 82, 83). Recently, evidence of physiological withdrawal has been reported in rats following several weeks of parenteral exposure to caffeine (Ref. 84). Many of these neurobehavioral effects, with the notable exception of effects on intellectual ability, have also been shown to occur to some extent in humans following acute or short-term dosing. The usual active oral dose in man is approximately 200 to 240 mg caffeine (3 to 4 mg/kg). Its effects range from those considered therapeutically "desired," such as improved motor performance, decreased fatigue, enhanced sensory acuity, mild cerebral stimulation, or increased alertness, to those that are considered nominal or inconsequential side effects, such as irritability, nervousness, or prolonged time to fall asleep. In their review of the clinical literature, Weiss and Laties (Ref. 78) pointed out that, after acute doses of about 240 mg of caffeine and above, which clearly enhance performance, adult human subjects variably report such symptoms as nervousness, feverishness, irritability, headache, and disturbed sleep. There also occurred a significant increase in tremor. Several clinical reports described mild symptoms of withdrawal, primarily headache, following exposure to caffeine over a period of several weeks (Refs. 85, 86, 87).

Little experimental attention has been given to the consequences of prolonged dietary exposure to caffeine on the functional capacity of the nervous system. In a single study recently reported by Estler, *et al.*, (Ref. 88), caffeine was given in the drinking water to mice for 8 weeks at a daily dose of 150 mg/kg. In contrast to the effects of a single dose, prolonged exposure to the caffeine resulted in detrimental effects, including diminished capacity to perform exhaustive work (swimming) under stressful conditions, impaired thermoregulation, as well as reduced weight gain. Spontaneous activity was unaffected, and motor coordination was even facilitated. Similar detrimental effects on work capacity had been reported earlier (Ref. 89) following prolonged exposure to coffee.

Some additional insight into the potential health effects of prolonged use of caffeine or related xanthines in adult subjects can be obtained from the acute pharmacologic studies. For example, the fact that the physiological and psychological effects of a single dose of caffeine in humans were different for regular coffee drinkers and for abstainers suggests that some form of habituation or tolerance develops to the effects of caffeine from repeated exposure (Refs. 85, 86).

There are only limited empirical data that deal with the effects of caffeine on children and even less dealing with experimental animals exposed to caffeine early in life during the period of development. Most of the pediatric data have been obtained from studies attempting to determine whether caffeine, as a central nervous system stimulant, was useful in the treatment of the hyperkinetic disorder of childhood. Caffeine was usually given in capsule at daily doses of 150 to 240 mg for periods of 1 day to 3 weeks. The therapeutic efficacy of caffeine in comparison to other medication for hyperkinesis has, thus far, not been impressive. Notably, however, most of the investigators reported no accompanying adverse effects of the caffeine in the hyperkinetic subjects nor in normal children, who were included in a study by Reichard and Elder (Ref. 90) as a matched group of control subjects. one group of investigators (Ref. 91) did note slight pharmacological effects (undescribed) from caffeine. Neims and Aranda (Ref. 92) reported a study in which caffeine was given to treat apnea (temporry suspension of respiration) in premature infants over a period of several weeks. They concluded that high plasma concentrations of caffeine (5 to 18 mg per liter, and occasionally as high as 85 mg per liter) during the treatment of apnea do not predispose to neurological or intellectual impairment, and that infants are not more susceptible to the effects of caffeine than adults. This latter conclusion conflict, however, with the report by Levitt and O'Hearn (Ref. 93) that children appear to be relatively more sensitive than adults to the excitant effects of caffeine.

Only recently has any experimental information begun to appear about the neurobehavioral effects of caffeine exposure in animals during the period of growth and development. A study in rats reported some variable effects on physical development and behavioral changes in the offspring of dams exposed to caffeine in drinking water during gestation and lactation (Ref. 94). In a similar study using mice, Dews (Refs. 95) reported only nominal treatment effects. Several clinical and experimental animal studies are currently underway, or in varying stages of completion, to investigate the consequences of short-term as well as long-term exposure to caffeine on the functional neurobehavioral development of the immature organism.

As discussed more fully above, in explaining its ultimate conclusion that caffeine in "cola-type beverages" should no longer be considered GRAS, FASEB placed primary emphasis on the potential behavioral effects of caffeine in children. FASEB pointed out that the concerns about the behavioral effects of caffeine are less for adults "* * * than for children where there can be chronic consumption of caffeine in cola-type beverages during the period of brain growth and development. It is during this period of plasticity that the developing central nervous system is most sensitive to the effects of all aspects of the environment. The estimated levels of caffeine intake at these ages are near those levels that are known to cause central nervous system effects in adults."

Although it acknowledged that the available data are not adequate to answer the question of whether chronic exposure to caffeine in "cola-type beverages" poses a potential hazard to children and others, FASEB stated that it "* * * views with concern the continued addition of caffeine to cola-type beverages, representing as it does a unique addition to food of a pharmacologically active central nervous system stimulant." FASEB said: "* * * there is a possibility that behavioral effects in children from infancy through adolesence exist, even though these potential effects are neither adequately documented nor are their consequences clear. " FASEB said further that: "A series of rigorously controlled chronic studies in appropriate species, including fetal, neonatal, and growing animals, of the immediate and ultimate behavioral and cardiovascular effects of caffeine added to the diet and given in cola-type beverages, would reduce ares of speculation."

2. *Conclusion.* The discussion above concerning behavioral effects raises questions concerning the possibility that chronic exposure to caffeine in soft drinks may cause behavioral effects in children. These questions must be answered. Caffeine is the only pharmacologically active food ingredient known to FDA that is added to foods at levels that approximate those required to accomplish its pharmacological effect, in this case stimulation of the central nervous system. As FASEB pointed out, the presence of this ingredient in beverages to which children may be chronically exposed during their early developmental years raises substantial questions from a health point of view. Data from animal studies suggest that even very low (0.5 to 2.5mg/kg) acute dosage levels can influence such behaviors in test animals as learning and memory, motor performance, sensory functions, and emotional reactivity (Refs. 80, 81, 82, 83).

The problem, of course, it that very little is known about what type of behavioral effects, if any, actually occur in human infants and young children as a result of chronic, low-level exposure to caffeine; and even less is known about what significance such effects would have, if any, in terms of actual harm to children. Methods for identifying and measuring such effects and assessing their significance are not as well developed as those used to identify and assess the more conventional toxicities (e.g., acute toxicity, mutagenicity, teratogenicity, and carcinogenicity). This is due in part to the fact that, traditionally, toxicologists simply have not focused much of their attention on the potential behavioral effects of food ingredients. Another reason for the lack of attention and knowledge in this area is that pharmacologically active substances, which are most likely to pose concerns about behavioral effects, are rarely added intentionally to food; as noted earlier, caffeine may be unique in this regard. For these reasons, a broad range of additional studies is needed to identify more completely the neurophysiological effects of chronic, low-level exposure to caffeine in the young and to determine the impact of these effects on children's development and behavior.

F. Functionality

Questions must be resolved not only about the safety of caffeine but also about its functional effect as an added food ingredient. Questions about the functional effect of caffeine must be addressed because it is the policy enunciated by Congress (section 409(c)(4), 21 U.S.C. 348(c)(4)) and FDA's regulations (§ 172.5(a)(1) (21 CFR 172.5(a)(1))) that substances not be used in food in an amount that exceeds that reasonably required to accomplish the intended physical, nutritive, or other technical effect. In practice, this means that caffeine must have an identified purpose or function as an added ingredient in soft drinks and other foods and be capable of accomplishing that purpose or function at the levels at which it is used. The health purpose underlying this requirement is to preclude the needless addition of chemicals to food.

The questions that must be answered about added caffeine's functionality stem from the uncertainty about the purpose for which added caffeine is used in soft drinks and other foods. Food manufacturers, responding to the NAS/NRC survey of food manufacturers, report that caffeine is used as a flavor enhancer, flavoring agent, and synergist in soda water beverages (Ref. 96). All three of these functions are recognized by FDA's regulations (§ 170.3(e)(11), (12), and (31) (21 CFR 170.3(o)(11)(12), and (31), respectively)). In addition FDA knows that kola nut extract, which contains about 2.35 percent caffeine, is used as a flavor ingredient in cola-type soft drinks (Ref. 97). However, the amount of kola nut extract needed for flavoring provides less that 10 percent of the caffeine normally present in colas. It is not known whether the other 90 percent or more of the caffeine added to cola beverages has any flavoring effect. The only other known functional effect of caffeine in food is central nervous system stimulation. This function was not identified by food manufacturers in the NAS/NRC survey as an intended function, but the Food Chemicals Codex (2d Ed., 1972) lists the functional use of caffeine as a "central stimulation in cola-type beverages." (Ref. 2).

As discussed above, caffeine is a drug. In addition, it is the only pharmacologically active food ingedient known to FDA that is added to foods at levels that approximate those required to stimulate the central nervous system. Although it is inclear whether FDA has authority under the law to prohibit the use of a food ingredient solely because the ingredient is a stimulant, the use of any pharmacologically active substance as a food ingredient raises serious public health questions, especially where, as in the case of caffeine, the foods involved are consumed widely by children. Given these facts, FDA places great importance on identifying all the intended uses of added caffeine, especially in soft drinks, and determining whether the amount of caffeine being added to foods is

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necessary, or even useful, to accomplish the intended physical, nutritive, or other technical effects. Thus, as a condition to the continued use of caffeine in soft drinks and other foods, manufacturers will be required under the regulation FDA is proposing in this document to develop and submit to FDA data that (1) fully describe the purposes for which caffeine is added (including a delineation of the claimed "synergistic" effect), and (2) demonstrate that the amounts of caffeine being added are necessary and effective for these purposes.

V. Discussion of Options and Rationale for Proposed Action

After evaluating the existing data concerning caffeine as an added food ingredient, FDA considered which of several possible regulatory actions would be most appropriate. As discussed briefly in Section II above, the law provides the agency with three options. It can propose to affirm the GRAS status of caffeine as an added food ingredient, essentially maintaining the status quo. Alternatively, it can propose to delete added caffeine from the GRAS list and declare that added caffeine is an unapproved food additive that cannot be used in food until a regulation authorizing its use is promulgated in accordance with section 409 of the act, effectively banning added caffeine until the questions about its safety have been resolved. Finally, the agency can propose to delete added caffeine from the GRAS list but permits its continued use as an interim food additive under Part 180 (21 CFR Part 180) pending completion of the studies required to resolve the questions raised about its safety and functionality. The availability of these last two options depends as a legal matter, of course, on FDA's conclusion that the current uses of caffeine are not subject to any prior sanctions and thus that if added caffeine loses its GRAS status, it is a food additive. As noted earlier in this document, FDA is proposing to declare that no prior sanctions exist for added caffeine; but, if acceptable evidence of a prior sanction for a specific use of added caffeine is submitted in response to this proposal, FDA will propose to recognize that prior sanction and will not include that use of added caffeine in any final version of the proposed interim food additive regulation.

Based on the existing data, including the data specifically discussed in this document, FDA concludes that it would be inappropriate to affirm the GRAS status of caffeine as an added food ingredient. Under the statute, 21 U.S.C. 201(s), and FDA's regulations, 21 CFR 170.30, GRAS status is reserved for those food ingredients for which adequate data to establish safety not only exist but are commonly known throughout the segment of the scientific community that is knowledgeable about the safety of substances added to food. Under this standard, a substance cannot be GRAS if the existing data are not adequate to resolve substantial questions of safety raised by knowledgeable scientists. Although the existing data do not demonstrate a hazard to consumers from caffeine as an added food ingredient, they do raise substantial safety-related questions that must be resolved by further study. Moreover, if caffeine were to retain its GRAS status, FDA would have no mechanism for compelling the resolution of the safety questions discussed above. For these reasons, FDA is not proposing to affirm the GRAS status of added caffeine.

FDA has considered whether it would be appropriate, at this time, to prohibit future use of added caffeine by declaring it to be an unapproved food additive. The agency is proposing to reject that course. Although the existing data raise questions about the safety of caffeine, they do not demonstrate that a hazard to the public actually exists. As science progresses and as new studies are performed, it is common for questions to be raised about the safety of food ingredients. In most cases, these questions can be resolved satisfactorily by additional studies. As long as there is a reasonable certainty that no harm to the public will result from the continued use of the substance for the limited period of time required to resolve the questions, it would be inappropriate to ban the substance while the questions are being resolved. Otherwise, bans could become common occurrences, severly disrupting the food supply without a substantial likelihood of enhancing public health protection. In the case of added caffeine, FDA's judgment is that the public will be protected adequately without an immediate ban. As explained in Section IV, the existing data on caffeine raise questions about its safety, but do not demonstrate any actual risk to humans.

This leaves the last option, which FDA is proposing to adopt (assuming no prior sanction exists): deletion of added caffeine from the GRAS list and regulation of it as an interim food additive pending completion of the necessary studies. See 21 CFR 180.1 *et seq.* In proposing this course of action, FDA has carefully analyzed all the safety and functionality data available to it and, for the reasons discussed in Section IV, has concluded that substantial questions have been raised, but there is a reasonable certainty that the substance is not harmful and that no harm to the public health will result from the continued use of the substance for a limited period of time.

A primary advantage of interim regulation is that it permits FDA to require the sponsor of a substance about which questions have been raised to perform the studies necessary to resolve the questions. Performance of the studies is a condition to continued use of the substance under the interim regulation (21 CFR 180.1(c)(2)). The studies the agency is proposing to require on caffeine are described in Section VII below. These studies should resolve the existing questions about both the safety and functional effect of caffeine as an added food ingredient. The legality of FDA allowing continued use of a food additive on an interim basis while required studies are being performed has been reviewed by both the U.S. District Court and the U.S. Court of Appeals for the District of Columbia. Both have held that such an approval, given certain factual findings, is an appropriate exercise of FDA's authority. *Jacobson* v. *Edwards*, No. 445–71 (D.D.C. 1971); *aff'd* No. 71–2046 (D.C. Cir. 1972) (reported at ¶ 40,817, CCH F.D. Cosm. L. Rep.).

As mentioned above, added caffeine is currently being used in several nonbeverage food categories on the basis of an independent determination by the Flavor Extract Manufacturers' Association that caffeine is GRAS for those uses. In the course of its safety review of caffeine as an added ingredient in soft drinks, FDA has evaluated the GRAS status of caffeine for its nonbeverage uses and concludes that those uses can no longer be considered GRAS. This conclusion is based on the same data and safety concerns that justify removing caffeine in soft drinks from the GRAS list and regulating it as an interim food additive. Thus, the interim food additive regulation the agency is proposing will include the current nonbeverage uses of caffeine. When the interim food additive regulation becomes final, any uses of caffeine as an added food ingredient that are not included in the regulation will be considered unlawful.

In addition to requiring the performance of specified studies concerning the safety and functionality of caffeine, the interim regulation will require that the label of any finished food product containing added caffeine include "caffeine" in the statement of ingredients. FDA recognizes that flavors

are generally not required to be identified by name in ingredient statements (see sections 403(g) and (i) of the act (21 U.S.C. 343(g) and (i)) and §§ 101.6(b) and 101.22(h) (21 CFR 101.6(b))) and 101.22(h) and that caffeine is claimed to be used for a flavoring purpose. The food additive provisions of the act, however, authorize the agency to impose whatever labeling requirements it deems necessary to ensure safe use of an additive (see section 409(c)(1)(A) of the act, 21 U.S.C. 348(c)(1)(A)). The ingredient labeling requirement for caffeine will help ensure safety because it will make it easier for consumers to limit their exposure to caffeine in food. This can be particularly important from a safety standpoint for consumers who are already experiencing significant exposure to caffeine in coffee, tea, or chocolates, or in drug products, or who may need to exercise particular caution about consuming any pharmacologically active substances, such as pregnant women. As will be discussed further in response to a citizen's petition FDA has received concerning caffeine, the agency does not believe that the data raising safety questions are strong enough to justify requiring warning labels at this time for all food products containing caffeine. FDA is thus limiting its proposal dealing with the labeling of food products containing caffeine to that discussed above.

In an action that is related to the proposal to delete added caffeine from the GRAS list, FDA is proposing (in a separate document published elsewhere in this issue of the Federal Register) to amend the soda water standard in § 165.175 (21 CFR 165.175) to make caffeine an optional, rather than mandatory, ingredient in cola- and pepper-type soft drinks. This amendment is intended to encourage the reduction or elimination of caffeine use in these types of soft drinks.

FDA is proposing no action in this document regarding the drug products that contain caffeine, though the agency recognizes that substantial exposure to caffeine can result from the use of these drugs. The agency is in the process of considering what, if any, action is appropriate regarding caffeine-containing drug products, including possible labeling changes, based on the information currently available.

VI. Response to Minority Opinion

One member of the FASEB committee that reported to FDA on caffeine, Dr. Ralph G. H. Siu, submitted a minority opinion in which he differed with the majority's evaluation of the existing data on caffeine in soft drinks and argued that any official regulatory action concerning caffeine should be deferred pending completion of a comprehensive review of the safety of caffeine consumption from all sources, including coffee and tea (Appendix, Ref. 6). This section responds to Dr. Siu's views.

Based on its review of the biological data on caffeine, the FASEB majority concluded: "While no evidence in the available information on caffeine demonstrates a hazard to the public when it is used in cola-type beverages at levels that are now current and in the manner now practiced, uncertainties exist requiring that additional studies be conducted." Dr. Siu, however, expressed a somewhat greater degree of concern about the potential hazards posed by the use of added caffeine than the majority expressed. Like the majority, Dr. Siu did not conclude that the use of caffeine in "cola-type beverages" does in fact pose a hazard to the public. He found, instead, that: "The evidence on caffeine in cola-type beverages is insufficient to determine that the adverse effects reported are not deleterious to the public health when it is used at levels that are now current and in the manner now practiced."

As the basis for this conclusion, Dr. Siu cited several factors that parallel the concerns cited by the majority: caffeine is a widely used, psychotropic drug that acts as a central nervous system stimulant; it is the only drug consumed chronically in food at pharmacologically active levels; it has been shown in animal studies to affect a "broad array of biochemical and physiological processes;" and it is "embroiled in a number of disagreements over its potential contributions to clinical disorders." In discussing potential "clinical disorders," Dr. Siu placed more emphasis on the potential cardiovascular effects of caffeine than did the majority. In addition, Dr. Siu noted that caffeine "participates in metabolic processes in a broad and central sense in its influence on the equilibrium content of adenosine 3', 5'-cyclic monophosphate (cyclic-AMP) in the tissues." The majority did not report this effect on cyclic-AMP as one of the factors bearing on its conclusions about caffeine.

In each instance, Dr. Siu stopped short of finding that the data demonstrate an actual hazard to the public from the consumption of "cola-type beverages," but he identified several areas in which he felt existing data left particularly large areas of uncertainty. For example, in discussing the effects caffeine has on various biochemical and physiological processes, Dr. Siu said: "When singly assessed, most of these changes may with some justification be looked upon as innocuous. * * * Yet the uncertainty keeps gnawing away at the safety assurances that can be offered in the face of potential synergistic concatenations of alterations, one or more of which may initiate an unhealthy cascade." Addressing another area of concern, Dr. Siu agreed that no cause and effect relationships had been definitively established between exposure to caffeine and such "clinical disorders" as heart ailments, ulcerogenesis, mutagenicity, teratogenicity, and carcinogenicity. He spoke, however, of the need for further study to resolve the question of caffeine's potential to cause adverse effects among those who are especially susceptible to a particular effect or experience an unusually high level of exposure to caffeine.

FDA finds nothing in Dr. Siu's discussion of the available evidence on caffeine that is inconsistent with the agency's decision to propose deleting caffeine from the GRAS list and regulating it as an interim food additive. Indeed, Dr. Siu's discussion of the data supports FDA's conclusion that caffeine should no longer be considered GRAS and that additional studies are needed to resolve certain safety questions. The agency believes that the additional studies it proposes to require will provide answers to most, if not all, of the questions raised by Dr. Siu.

Ironically, Dr. Siu's apparently more serious reservations about the safety of added caffeine do not lead him to recommend more stringent regulatory actions than the FASEB majority recommended. Instead, Dr. Siu recommends that the agency defer any action on the GRAS status of caffeine as an added food ingredient: "Official reevaluation of the potential health hazard of caffeine in cola-type beverages alone should be kept open until an assessment of the safety of its consumption in all foodstuffs, individually and collectively, is completed with appropriate participation by all interested parties." (Appendix, Ref. 6). Dr. Siu makes two points in support of this recommendation.

He notes first that "cola-type beverages" are only one source of caffeine exposure and, in fact, by his estimate, account for only about a fourth of total caffeine exposure from foodstuffs (the other primary sources being, of course, foods such as coffee, tea, and chocolate that contain naturally occurring caffeine). Based on that fact,

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he contends that considering the safety of caffeine only as it is consumed from soft drinks "constitutes such an artifically bounded abstraction that the resulting conclusions can only be of limited, and even misleading, operational meaningfulness in real life." Dr. Siu's point here seems to be that ultimate judgments about the safety of dietary caffeine should be based on a consideration of caffeine exposure from all dietary sources.

Dr. Siu's second point is that "to pass judgment on cola-type beverages alone at this time may be prejudicial to coffee and other caffeine-containing foodstuffs, representatives of which had not been explicitly forewarned and who, as a consequence, had not come forward with their own data and opinion." Dr. Siu contends that any agency judgment on the safety of caffeine as an added food ingredient effectively (and unfairly) prejudges the safety of other foods, such as coffee and tea, that contain naturally occurring caffeine.

For the reasons discussed below, FDA considers the action being proposed in this document to be an appropriate and significant step toward Dr. Siu's, and the agency's, goal of a comprehensive resolution of the caffeine question.

As noted in Section II above, the purpose of the GRAS review process, out of which this document arises, is to reevaluate by modern toxicological standards, and in light of the data now available, the safety of substances that FDA had placed on the original GRAS list in the late 1950's and the early 1960's. Caffeine as an added ingredient in cola-type beverages was one such substance (see 21 CFR 182.1180); naturally occurring caffeine was not. It was thus appropriate, and in keeping with its mandate from FDA, for FASEB to focus in its recommendations on the added uses of caffeine.

As Dr. Siu correctly suggests, however, the data that make necessary a change in the regulatory status of added caffeine also raise questions about the safety of caffeine as a natural constituent of coffee, tea, chocolate, etc. These are questions that FDA must be, and is, concerned about, especially since, as Dr. Siu points out, coffee and tea account for a very substantial portion of total dietary exposure to caffeine. However, the agency faces difficulties in dealing with naturally occurring caffeine.

One of the difficulties the agency faces, and one of the primary reasons this document deals only with added caffeine, is that naturally occurring caffeine is subject to regulation by FDA on a singificantly different legal basis than is added caffeine. Unlike added caffeine, naturally occurring caffeine is not itself subject to regulation under the food additive provisions of the law (21 U.S.C. 321(s) and 409). Thus, the question of GRAS status, which FASEB and FDA have considered and answered in this proceeding with respect to added caffeine, is simply not legally relevant to naturally occurring caffeine.

FDA's traditional practice has been to regulate inherent constituents of food, such as naturally occurring caffeine, as naturally occurring "poisonous or deleterious substances" under the general adulteration provisions in section 402(a)(1) of the act (21 U.S.C. 342(a)(1)). Under those provisions, the question is not whether naturally occurring caffeine is GRAS but whether FDA can show that caffeine renders the foods in which it naturally occurs "ordinarily injurious to health." That is a burden the agency does not believe it can sustain on the basis of existing data because the data do not establish that foods containing naturally occurring caffeine cause injury when consumed in ordinary amounts by the average consumer. Thus, it would be premature for the agency to propose action now involving naturally occurring caffeine as a "poisonous or deleterious" substance.

In recommending that FDA defer any regulatory action involving added caffeine, the FASEB minority report overlooks the legal distinction between added and naturally occurring caffeine and fails to consider the limited nature of the action recommended by FASEB and proposed here by FDA. FDA proposes no restrictions on the current marketing of caffeine in any form, but rather proposes to require additional studies that will address and hopefully resolve the question of caffeine's safety as both an added and naturally occurring constituent of food. FDA's authority to require studies flows from the food additive provisions of the act, which apply directly only to the added uses of caffeine. It is thus appropriate that the legal focus of this proposal be on added caffeine.

The minority report's concern that this action on caffeine might amount to an unfair prejudgment on the safety of naturally occurring caffeine is unwarranted. The deletion of added caffeine from the GRAS list and regulation of it as an interim food additive is, by its very nature, an intermediate step. It is intended to lead to, but it is not based upon, final judgments about the safety of caffeine, whether added or naturally occurring. Final judgments about added caffeine will likely not be made at least until the required studies are completed. At that time, any interested person, including those concerned about the legal status of naturally occurring caffeine, will have an opportunity to participate and to present their views. At this point, the important concern is to begin the necessary studies.

For the foregoing reasons, FDA declines to adopt Dr. Siu's recommendation that the proposed action on added caffeine be deferred.

VII. Response to Citizen Petitions

During the course of FDA's review of the safety and regulatory status of added caffeine, which FDA initiated as part of its GRAS review program, the agency received several citizen petitions, filed unde 21 CFR 10.30, urging that certain regulatory actions be taken regarding caffeine. At the time these citizen petitions were received, FDA was actively reviewing added caffeine's regulatory status, and therefore each petitioner received a proper tentative response pursuant to 21 CFR 10.30(e)(2)(iii). Those responses generally advised each petitioner that the substance of their requests was already under active review by FDA and that the appropriate decisions would be forthcoming from the agency when the ongoing review was completed. FDA's proposals to issue an interim food additive regulation for added caffeine and to amend the standard of identity for soda water represent the agency's proposed regulatory actions resulting from that review. FDA will now provide further responses to several pending citizen petitions.

The Federation of Homemakers, Arlington, Virginia, submitted two petitions on caffeine. The first petition (No. 79P–0343/CP) requested FDA to "remove, delete and strike caffeine from the list of GRAS Food Substances, because it is not generally recognized as safe." The petition quoted the conclusion of the FASEB report on caffeine in support of the requested action (Ref. 98).

FDA indicated earlier in this document that, based on its own careful evaluation of the available safety data on caffeine, it proposes to concur with the majority conclusions of the FASEB report on caffeine, including FASEB's conclusion that caffeine added to soft drinks should no longer be considered GRAS. Therefore, FDA is proposing to delete caffeine from the list of GRAS substances in Part 182 (21 CFR Part 182), thereby granting the Federation of Homemakers first petition to the extent it can consistent with the rulemaking requirements of the administrative Procedures Act and FDA's own

procedures. A final agency decision on the GRAS status of added caffeine must, of course, await completion of this rulemaking process (see 21 CFR 170.3 et seq.). As set out in detail in this document, FDA not only proposes to remove added caffeine from the GRAS list as the Federation of Homemakers requests, but also to place it in the correct regulatory status as an interim food additive (21 CFR 180.1).

The second petition from the Federation of Homemakers (No. 79P–0344/CP) seeks to change the standard of identity for soda water (21 CFR 165.175) so as to remove added caffeine from all soda water and to limit the caffeine content of cola-type beverages to that present in kola nut extract and/or other natural caffeine-containing extracts. Under the petition, such caffeine would be an optional ingredient present in only "trace" amounts (Ref. 99).

FDA is proposing amendments to the soda water standard in a notice appearing elsewhere in this issue of the **Federal Register.** These proposed amendments are intended to accomplish the following: (1) declare that kola nut extract, not caffeine, is the mandatory ingredient in "cola" and "pepper" beverages; (2) provide for a caffeine-free "cola" or "pepper" beverage consistent with the standard; and (3) clarify the fact that added caffeine as such is an optional ingredient rather than a mandatory one, but that, as an optional ingredient, it may continue to be used.

Food standards are promulgated under section 401 of the act, 21 U.S.C. 341. The statutory standard that applies to the promulgation of any such standard is that such action " * * * will promote honesty and fair dealing in the interest of consumers * * *." The process by which a food standard is developed or amended does not normally encompass fundamental safety assessments of the proposed ingredients. The food and color additive provisions provide the statutory mechanism for the safety evaluation of such ingredients (21 U.S.C. 348 and 376, respectively). Only ingredients that are in compliance with those sections, or are otherwise exempt due to their GRAS or prior-sanctioned status, are lawful in foods for which a standard has been promulgated. FDA is proposing in this document to allow the continued use of added caffeine pursuant to an interim food additive regulation. Because added caffeine will, if the proposal is finalized, still be lawful, FDA does not believe that an adequate basis exists at this time to preclude the use of added caffeine as an optional ingredient under the standard of identity and therefore denies the Federation of Homemakers petition seeking that result.

Despite FDA's belief that added caffeine should still be allowed as an optional ingredient in these beverages, the proposed amendments to the standard of identity will allow consumers more choice in the types of "cola" or "pepper" beverages available. Even if the safety questions regarding this use of caffeine are resolved in favor of its continued use, there is an unquestioned stimulant effect from the substance. This is an effect that some consumers may wish to avoid. Allowing those consumers the freedom to choose caffeine-free "cola" or "pepper" beverages under the soda water standard clearly promotes honesty and fair dealing in the interest of consumers.

The Center for Science in the Public Interest (CSPI), Washington, DC, also has submitted a petition (No. 79P–0443/CP) concerning caffeine. The petition requests that FDA (1) issue a regulation requiring that all packages of tea and coffee that contain caffeine carry a plainly visible warning advising that consumption of the product may be harmful to the unborn children of pregnant women, and (2) initiate an educational campaign designed to inform pregnant women about the ability of caffeine to interfere with reproduction (Ref. 100). The petitioner submitted selected data on caffeine consumption by pregnant women, as well as animal and human epidemiologic data on caffeine, that the petitioner believes is an ample basis upon which to require a warning label for coffee and tea. Without such a warning, the petitioner contends that all these products are misbranded since their labels are false and misleading pursuant to 21 U.S.C. 343(a). The petition contends that the potential teratologic effects of caffeine are a "material" fact within the meaning of 21 U.S.C. 321(n) and thus that without a warning concerning this effect, these labels are, at least, misleading. FDA disagrees with this conclusion both as a matter of fact and law. As discussed below, the agency does not feel that sufficient data exist, at this time, to require such a warning.

FDA's legal authority to require a warning label on packages of coffee and tea is derived from the misbranding provisions of the Federal Food, Drug, and Cosmetic Act, which deem unlawful, among other things, any food that bears a label which is either false or misleading (21 U.S.C. 343(a)). In further defining the term "misleading," the statute states (21 U.S.C. 321(n)):

(n) If an article is alleged to be misbranded because the labeling or advertising is misleading, then in determining whether the labeling or advertising is misleading there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, or any combination thereof, *but also the extent to which the labeling or advertising fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertising relates under the conditions of use prescribed in the labeling or advertising thereof or under such conditions of use as are customary or usual.* [Emphasis added].

The statute provides the agency with the discretionary authority to enforce these provisions in a reasonable manner as it sees fit. The agency can either take judicial enforcement action against such products under sections 302, 303, and 304 of the Act (21 U.S.C. 331, 333 and 334) or initiate a rulemaking proceeding to require labeling to ensure that the food is not in violation of these statutory provisions. In either case, the burden of proof is on the agency to establish that the labeling is justified or the judicial relief requested is appropriate. This situation, where the agency has the ultimate burden of proof, must be contrasted with those statutory provisions where the agency need only raise questions or "new evidence" before the ultimate burden of proof shifts to the manufacturer. (See, for instance, the provisions for removal of a new drug, 21 U.S.C. 355(e) or new animal drug, 21 U.S.C. 360b(e).

As discussed earlier in this document, FDA does not believe that sufficient evidence exists at this time to link caffeine and an increased risk of birth defects in humans, but the agency is proposing to require the additional studies it feels are needed to better understand the human response to caffeine. Due to the state of the currently available evidence and the fact that more conclusive evidence is in the process of being obtained, FDA does not consider it appropriate at this time to require the type of warning label on caffeine-containing coffee and tea products requested in the CSPI petition.

This is not to say that the data presented by the petitioner, as well as the additional data discussed in this document, do not raise health-related questions concerning the use of caffeine, especially by pregnant women. They do raise such questions, and it is for that reason that FDA is proposing to take the regulatory action described in this document. These questions must and will be answered. Comments received on FDA's proposed regulatory action or the additional studies the agency is

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proposing to require may well provide the basis for the type of warning suggested by the petitioner. At this time, however, based on available data, the agency does not feel that it would be a reasonable or justifiable exercise of its discretion to require a warning label.

As for CSPI's second request, which is to initiate an education program directed at pregnant women to educate them concerning caffeine, FDA has concluded that certain such steps are appropriate at this time. As just discussed, the requirement of warning labels on each specific caffeine-containing coffee and tea product requires a level of evidence FDA does not believe exists on caffeine. However, the fact that the questions concerning the safety of caffeine do not provide a basis for specific product labeling does not preclude the agency from providing the public, especially pregnant women, with cautionary advice based on the scientific evidence available to date concerning caffeine. The public has an inherent right to be informed fully about the food they ingest so that they may, if they so decide, avoid foods about which safety questions have been raised. To that end, the Commissioner of Food and Drugs announced on September 4, 1980, a campaign to provide the public with information concerning the possible adverse effects of caffeine (Ref. 101). the Commissioner announced the following:

> Advice about caffeine use during pregnancy will be communicated through all PHS programs that serve pregnant women, maternal and child health projects, community health centers, migrant health and Indian health programs, and in PHS hospitals and clinics.
>
> The Surgeon General will write to health professional organizations such as the American Medical Association and the American College of Obstetricians and Gynecologists to urge them to notify their members of the latest scientific information.
>
> The Food and Drug Administration will carry this same message to health professionals through its Drug Bulletin and to the public through publications such as FDA Consumer magazine.

In addition, other mechanisms of disseminating this information, as well as ways to assess the effectiveness of this program, are being explored. FDA agrees with the petitioner that information on caffeine should be made publicly available, and it is acting accordingly.

VIII. Required Studies

The continued use of added caffeine under the proposed interim food additive regulation is conditioned on the performance of studies necessary to resolve questions concerning the safety and functionality of caffeine as an added food ingredient. The studies that must be performed are described in proposed § 180.15(e). Additional studies may be required at a later date if they are found necessary to resolve questions raised, or not completely resolved, by the studies described in proposed § 180.15(e). FDA attaches particular importance to resolution of the question of the teratogenic potential of caffeine in humans (§ 180.15(e)(2)). The currently existing information relating to the teratogenic effects of caffeine provides an insufficient basis to determine whether caffeine *per se* and/or one of its metabolites is the causative agent for the teratogenic effects observed in experimental animals. Studies addressing this question need to be conducted. It is also important to determine through appropriate pharmacokinetic and metabolic studies the differences between the ways caffeine is handled by humans and animals, and specifically, whether any of the known metabolites of caffeine that may be teratogenic in experimental animals are formed by humans. Also, if unique metabolites are formed by humans, it is important to determine whether these compounds are teratogenic or otherwise toxic in experimental animals. During the period that these studies are being carried out, FDA also will require that appropriate epidemiology studies be carried out (§ 180.15(e)(6)). The details of the design and performance of these studies should be worked out in consultation with the FDA.

It is recognized that this will require an extensive program of synthesis and testing of a large number compounds. The precise sequence and design of the studies is a matter on which FDA specifically solicits comments. The agency is prepared to work closely with those conducting the needed research to ensure that it is done in a logically ordered, well-focused manner calculated to resolve the outstanding questions as efficiently and promptly as possible.

FDA shares the concern of FASEB about the neurobehavioral effects of caffeine consumption in young children. Information is needed concerning the immediate and latent effects of prenatal and postnatal exposure to caffeine on the functional development of the immature nervous system (§ 180.15(e)(3)). Special attention should be given to the effects of prolonged or continous exposure to caffeine in the developing offspring. The neurobehavioral testing should consider multiple criteria of nervous system function, including behavioral, neurophysiological, and morphochemical measures. Both clinical studies with children and experimental studies with suitable animal species should be conducted. Clinical studies should identify and make use of intake levels of caffeine. In addition to data on the effects of caffeine in the developing organism, additional clinical and experimental information is needed concerning the neurobehavioral sequellae of prolonged or continuous exposure to caffeine in the adolescent, adult, and aged organisms, with some attention being given to the withdrawal phenomenon. Selection of the appropriate animal models for these studies should await completion of the studies needed to better understand the coparative metabolism and pharmacokinetics of caffeine in animals and humans.

In order to reflect the usual mode of exposure in man, the studies should use the diet (i.e., feed or drinking water) as the principal route of administration of caffeine. However, some attempt should be made to determine whether the neurobehavioral effects from prolonged dietary intake, whch generally results in exposure being spread out over the entire day, are substantially different from those resulting from repeated intubation, as might occur when one rapidly drinks a bottle of a caffeine-containing soft drink.

FDA understands that several studies of the possible carcinogenicity of caffeine are currently underway. Thus, rather than require that additional studies be undertaken immediately, the agency is proposing to require initially that persons who intend to rely on the ongoing studies to demonstrate the safety of caffeine submit details of the design and conduct of the studies to FDA (proposed § 180.5(e)(4)). This will allow the agency to determine if the on-going studies are found to be deficient by current standards, additional studies will be required.

To adequately resolve the carcinogenicity question, and also determine whether caffeine can cause other long-erm effects (proposed § 180.15(e)(5)), chronic feeding studies meeting current toxicological testing standards must be carried out in two appropriate species. Such studies should be designed to test for carcinogenicity as well as other possible chronic pathologic effects. At least one of the studies should involve in utero exposure, and both studies should include feeding of at least three dose levels of caffeine. In addition, a 1-year feeding study involving feeding of at least three dose levels of caffeine should be carried out in the dog or other appropriate nonrodent species.

Due to the uncertainty about the purpose(s) for which caffeine is added to various foods and about whether caffeine is effective for its claimed flavoring purpose, the agency is proposing to require that data be developed and submitted to FDA that (1) fully describe the purpose(s) for which caffeine is added to each food covered by the interim regulation, and (2) demonstrate that the amount of caffeine added to each food is necessary and effective for each purpose(s) (proposed § 180.15(e)(7)). In the case of cola- and pepper-type soft drinks, in which kola nut extract is a mandatory ingredient, the functionality data should distinguish clearly between the caffeine that is present as a component of the kola nut extract and the caffeine that is added over and above that present in kola nut extract. It is the latter caffeine whose functionality must be demonstrated.

In accordance with § 180.1 (21 CFR 180.1), the primary responsibility for performing the required studies on caffeine rests on interested persons outside the agency. FDA will, however, work closely with those who agree to undertake the required studies to help ensure that the studies are designed and executed in a way that will be most likely to produce the scientific evidence needed to resolve the existing safety questions about caffeine. If the appropriate commitment to undertake the required studies, or submit the required data and information, are not made to FDA within 60 days after the effective date of a final regulation based on this proposal, an order shall be published immediately in the Federal Register revoking the interim food additive regulation effective upon publication (see § 180.1(c)(2)). Similarly, the interim regulation will be revoked if persons performing the required studies fail to submit the twice-yearly progress reports required in § 180.1(c)(3).

The agency has determined under 21 CFR 25.24(b)(6) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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101. Goyan, J.E. statement by the Commissioner of Food and Drugs, September 4, 1980, (P80–36), page 3.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs, 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drug (21 CFR 5.1), it is proposed that Parts 180 and 182 be amended as follows:

PART 180—FOOD ADDITIVES PERMITTED IN FOOD ON AN INTERIM BASIS OR IN CONTACT WITH FOOD PENDING ADDITIONAL STUDY

1. Part 180 is amended in Subpart B by adding new § 180.15 to read as follows:

§180.15 Caffeine.

(a) Caffeine ($C_8H_{10}N_4O_2$ CAS Reg. No. 58–08–2) is the alkaloid 1,3,7-trimethylxanthine. Caffeine is prepared by extraction from coffee or tea, by partial synthesis from theobromine, by total synthesis from uria and cyanoacetic acid or by total synthesis from dimethyl carbamide and malonic acid.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 2d ed. (1972),[1] as amended by the First Supplement (1974),[1] which is incorporated by reference.

(c) The ingredient is used directly in food, as served, at levels not to exceed the following maximum levels:

Food categories	Parts per million (ppm)	Function
Soda water, section 165.175 of this chapter	200	Flavor enhancer, section 170.3(o)(11) of this chapter. Flavoring agent, section 170.3(o)(12) of this chapter. Synergist, section 170.3(o)(31) of this chapter.
Baked goods, section 170.3(n)(1) of this chapter	400	Flavoring agent, section 170.3(o)(12) of this chapter.
Frozen dairy desserts and mixes, section 170.3(n)(20) of this chapter.	400	Do.
Gelatins, puddings and fillings, section 170.3(n)(22) of this chapter.	400	Do.
Soft candy, section 170.3(n)(38) of this chapter	400	Do.

(d) To ensure safe use of the additive, in addition to other information required by the act:

(1) The label of the additive and any intermediate mix shall bear—

(i) The name of the additive; and

(ii) A statement of the concentration of the additive (expressed as "caffeine") in any intermediate mix, or other information to permit a food processor to determine independently that use of the ingredient will comply with this section.

(iii) Adequate directions for use to provide a final food product that complies with the provisions of this section.

(2) The ingredient statement of any finished food product containing the additive shall include the name of the additive, i.e., "caffeine".

(e) In accordance with § 180.1, adequate and appropriate studies shall be performed to resolve existing questions about the safety of the food additive. These studies shall include:

(1) Pharmacokinetic studies, both acute and chronic, in human volunteers and in appropriate animal species, including the rat, to determine the comparative patterns of absorption, biotransformation, and excretion of caffeine in humans and animals.

(2) Studies necessary to determine whether the teratogenic effects of caffeine seen in rats are caused by caffeine *per se* or by one of its metabolites, and whether any metabolities of caffeine that are unique to humans are teratogenic in appropriate animal models.

(3) Multigeneration reproductive and neurobehavioral studies in appropriate animal models to resolve questions about the effects of prolonged exposure to caffeine on the mammalian nervous system. Questions related to reproduction include the significance of testicular atrophy reported in rats and other potential reproductive effects. Neonates and adult rats from this study should be examined by various procedures for evaluating neuropharmacological effects and functional behavioral effects such as altered conditioning response, summary reflexes, continuous motor activity, and neurochemical analysis.

(4) Definitive chronic feeding studies in two appropriate species that will be adequate to resolve questions that have been raised about the potential carcinogenicity of caffeine. Sponsors of ongoing chronic feeding studies of caffeine in rats shall submit details of the design and conduct of these studies to the Food and Drug Administration so that it can be determined whether they meet current standards for long-term feeding studies and will satisfy the requirements of this regulation. If ongoing studies are determined to be inadequate, additional carcinogenicity studies will be required.

(5) Chronic feeding studies to determine whether caffeine can cause chronic, pathologic effects other than cancer.

(6) Appropriate epidemiology studies on caffeine performed in accordance

[1] Copies may be obtained from: National Academy of Sciences, 2101 Constitution Ave., Washington, DC 20037.

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with the epidemiology guidelines of the Interagency Regulatory Liaison Group, which may be obtained from: FDA/ Bureau of Foods (HFF-330), 200 C St., SW, Washington, DC 20204.

(7) Appropriate studies demonstrating the technical effect for which added caffeine is used in soda water and other foods.

(f) Interested persons shall agree in writing to undertake the studies, or submit the information, referred to in paragraph (e) of this section by (60 days after date of publication of the final regulation in the **Federal Register**). Continued use of caffeine is contingent on the timely filing of adequate progress reports of such tests as specified in § 180.1(c)(3) and no indication of an increased risk to public health during the test period.

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

§ 182.1180 [Revoked]

2. Part 182 is amended by revoking § 182.1180 *Caffeine.*

Interested persons may, on or before December 22, 1980, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Dockets Management Branch, Food and Drug Administration.

Dated: October 16, 1980.

Mark Novitch,

Acting Commissioner of Food and Drugs.

Note.—Incorporations by reference were approved by the Director of the Office of the Federal Register on July 10, 1973 and June 27, 1977, and are on file in the Federal Register Library.

[FR Doc. 80-32777 Filed 10-20-80; 8:45 am]

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federal register

Tuesday
October 21, 1980

Part VII

Department of Health and Human Services

Food and Drug Administration

Menstrual Tampons; User Labeling; Proposed Rule

V 45 OC 21 80 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 801

[Docket No. 80N-0425]

Menstrual Tampons; User Labeling

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a proposed rule which, if adopted, would require a statement in the labeling of menstrual tampons warning users that toxic shock syndrome (TSS), a rare but serious and sometimes fatal disease, is associated with the use of tampons. the proposed warning statement would advise tampon users how they could almost entirely eliminate or greatly reduce the risk of TSS. The proposed warning statement would also advise tampon users of steps to take if the symptoms of the disease appear.

DATES: Written comments on or before November 20, 1980. FDA intends that the final regulations will be effective 60 days after the date of publication of the final rule.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Lawrence Kobren, Bureau of Medical Devices (HFK-310), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7222.

SUPPLEMENTARY INFORMATION. Toxic shock syndrome (TSS) is a recently recognized disease that occurs most often in menstruating women under 30. TSS is closely associated with the use of tampons. The disease is serious and can result in death. TSS is believed to be caused by a bacterium, *Staphylociccus aureus.* The early symptoms typically begin with a high fever (102° F or higher), and vomiting, or profuse watery diarrhea. TSS is sometimes accompanied by sore throat, headache, and muscle pain. The disease is characterized by a rapid drop in blood pressure and shock. The patient usually develops a sunburn-like rash with redness of the eyes followed within 7 to 10 days by shedding of the skin of the palms of the hands and the soles of the feet. Based on information from the Centers fro Disease Control (CDC), the incidence of the disease originally was estimated at approximately 3 cases per 100,000 population (Ref. 1). According to more recent information, however, this incidence may be an understatement due to under-reporting and other factors; data collected by the Utah State Department of Health show that, in Utah, the incidence of TSS is 10–15 cases per 100,000 population (Ref. 4). The mortality rate for persons contracting the disease is estimated to be approximately 13 percent (Ref. 1).

CDC initially published a report concerning TSS in its May 23, 1980, *Morbidity and Mortality Weekly Report (MMWR) (Ref. 1).* This report described the syndrome and reported that 52 of 55 cases (95 percent) of the newly recognized illness had occurred in women. The other three cases were in men and children. A menstrual history was obtained from 40 of the 52 women. Of those 40 women, 38 had onset of illness during the first 5 days of menses.

Following the May 23, 1980 report, CDC, the Wisconsin State Department of Health, and the Utah State Department of Health designed and instituted separate case control studies to look at various products associated with the menstrual cycle. The results of these studies were reported in the June 27, 1980, MMWR (Ref. 2). These studies also showed the association of TSS with the use of tampons by women during their menstrual period.

Individual tampon brands were not identified in the data published in the June, 1980 MMWR publication. CDC designed a second retrospective case control study which focused on brands and was based on recent cases. This study compared 50 cases of TSS occurring during July and August, 1980, with 150 control cases (women who had not had the disease during their menses in July and August). The results of the second retrospective case control study were reported to FDA on September 12, 1980. The study showed that: (1) all TSS women had used tampons during their menstrual period as compared to 125 of the 150 controls; (2) 70 percent of the TSS women and 30 percent of the controls used Rely® brand tampons; and (3) reported TSS cases were associated with the use of all five brands of tampons used by women in the study (Rely®, Playtex®, Kotex®, Tampax®, and O.B.®) (Ref. 3). The Rely® tampon was subsequently removed from the market by the manufacturer under a consent agreement with FDA.

On September 22, 1980, the results of a separate case control study conducted by the Utah State Department of Health were reported to FDA. This study included 24 women diagnosed as having TSS and 71 women used as controls. One hundred percent of the TSS women used tampons compared to 80 percent of the control women. The Utah data indicate that Rely® was associated with TSS more frequently than were other brands of tampons.

Also, on September 22, 1980, the Minnesota State Department of Health reported the preliminary results of its independent case control study to FDA (Ref. 5). The data in this study confirmed the results of the CDC and Utah studies that tampon use is associated with TSS. However, the Minnesota data did not indicate that Rely® was associated with TSS more frequently than were other brands of tampons.

While the scientific evidence indicates that the causative agent of TSS is *Staphylococcus aureus,* the pathogenesis (origination and development of the disease) in menstruating women is not fully understood.

From January 1980 through October 16, 1980, 408 cases of TSS have been reported to CDC, 40 of which resulted in death. Although two of the studies above identified Rely® as the tampon most associated with TSS, all tampon brands have been associated with the disease (Refs. 4 and 5).

This proposal would provide that any tampon that is not labeled as required by the regulation and that is introduced or delivered for introduction into commerce after the effective date of the regulation, would be misbranded under sections 502(a) and 201(n) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(a) and 321(n)).

Section 502(a) of the act provides that a device is misbranded if "its labeling is false or misleading in any particular." Section 201(n) of the act provides that, in determining whether labeling is misleading,

> [T]here shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, or any combination thereof, but also the extent to which the labeling * * * fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling * * * relates under the conditions of use prescribed in the labeling * * * or under such conditions of use as are customary or usual.

Based on the evidence summarized above of the increased risk of TSS associated with the use of tampons, FDA believes that failure to warn consumers of that risk in the labeling of tampons constitutes omission of a material fact about the products. Any such omission would render the labeling for the products "false or misleading" and the products, therefore, misbranded. The courts have upheld FDA's authority to prevent false and misleading labeling by promulgating regulations requiring label warnings and other affirmative disclosures, *see, e.g., Cosmetic Toiletry & Frangrance Ass'n.* v. *Schmidt* 409 F. Supp. 57 (D.D.C. 1976) *aff'd without opinion,* Civil No. 75-1715 (D.C. Cir. August 19, 1977) even in the absence of a proven cause and effect relationship between product usage and harm. *Council for Responsible Nutrition* v. *Goyan,* Civil No. 80-1124 (D.D.C. August 1, 1980).

FDA recognizes that the proposed warning differs from the one the Acting Director of the Bureau of Medical Devices by telegram dated September 26, 1980, asked manufacturers to use voluntarily. FDA is considering whether changes in that language are necessary to ensure that consumers are adequately apprised of the risk of TSS associated with the use of tampons, the seriousness and symptoms of the disease, the actions consumers should take if those symptoms occur, and the measures consumers can take either nearly to eliminate or significantly to reduce the risk of TSS.

FDA advises that manufacturers who have already taken voluntary action to adopt the warning suggested in the September 26 telegram or who adopt the warning proposed in this document will be given a reasonable period of time if any final rule is issued to adopt the final language of the warning in their tampon labeling. FDA, therefore, invites comments on whether 60 days after the date of publication of any final rule is a reasonable period of time for revision of a warning statement. FDA expects persons who request a shorter or longer effective date to support their requests with data and information, as well as opinion and argument.

FDA recognizes that a warning statement in the labeling of tampons is not the only requirement FDA may impose to ensure that consumers are informed about TSS. FDA, therefore, invites comments on the following questions.

1. In addition to or in lieu of a warning statement, should FDA require manufacturers to include in each package of tampons a user package insert providing more information about TSS in particular and tampon use in general? If so, what, if anything, should FDA require manufacturers to print on the outside of each package of tampons to alert consumers to the existence of a user package insert inside the package? What topics should a user package insert address? What information about TSS not included in the proposed warning should be presented in a package insert?

2. In addition to or in lieu of a warning statement or a user package insert, should FDA require manufacturers to provide retail establishments warning notices about TSS for display at the point of sale?

3. In addition to or in lieu of a warning statement, a user package insert or a point of sale warning notice, should FDA require manfacturers to provide retail establishments TSS brochures or pamphlets for consumers to obtain at the point of sale.

4. Proposed § 801.430(e) provides that any menstrual tampon that is not labeled as requred by the regulation and that is introduced or delivered for introduction into commerce after the effective date would be misbranded. The regulation would thus require that persons who reintroduce or redeliver tampons for introduction into commerce after the effective date, relabel the products before shipment. Is this necessary? Are there alternative means by which FDA can assure that the consumer is made aware of the information in the warning?

5. What, if any, statements about TSS or tampon use should FDA prohibit in the label of labeling of tampons?

6. Should FDA establish a procedure by which a manufacturer may petition FDA to grant an exemption from the requirements of any final rule? If so, what criteria should FDA apply in determining whether to grant an exemption?

The background information on which this proposed regulation is based is on file in FDA's Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday. On October 10, 1980, the Obstetrics-Gynecology Device Section of the Obstetrics-Gynecology and Radiologic Devices Panel, and FDA advisory committee, held an open discussion of issues related to tampon use. Data submitted to the Panel and the transcript of the Panel meeting will be included in the background information as soon as it is available.

FDA believes that the association of tampons with TSS is a public health problem that needs to be dealt with promptly. The agency, therefore, finds in accordance with § 10.40(b)(2) (21 CFR 10.40(b)(2)) that good cause exists to reduce the comment period for this proposal from 60 to 30 days.

The agency has determined under 21 CFR 25.24(d)(13) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

References

1. Epidemiologic Notes and Reports: Toxic-Shock Syndrome—United States, *Morbidity and Mortality Weekly Report,* Center for Disease Control, May 23, 1980, Vol. 29, No. 20.

2. Epidemiologic Notes and Reports: Follow-up on Toxic-Shock Syndrome—United States, *Morbidity and Mortality Weekly Report,* Center for Disease Control, July 27, 1980, Vol. 29, No. 25.

3. Epidemiologic Notes and Reports: Follow-up on Toxic-Shock Syndrome, *Morbidity and Mortality Weekly Report,* Center for Disease Control, September 19, 1980, Vol. 29, No. 37.

4. TSS Study by the Utah State Health Department, "September 22, 1980."

5. TSS Study by the Minnesota State Health Department, (undated).

Therefore, under the Federal Food Drug, and Cosmetic Act (secs. 201(n) 502, 701(a), 52 Stat. 1041 as amended, 1050–1051 as amended, 1055 (21 U.S.C. 321(n), 352, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), it is proposed that Part 801 be amended by adding new § 801.430, to read as follows:

§ 801.430 User labeling for menstrual tampons.

(a) This section applies to scented or scented deodorized menstrual tampons as identified in § 884.5460 and unscented menstrual tampons as identified in § 884.5470 of this chapter.

(b) Examination of available data shows that the occurrence of toxic shock syndrome, a rare but serious disease, is associated with the use of menstrual tampons. To protect the public and to minimize the serious effects of toxic shock syndrome, menstrual tampons must be labeled with a warning that alerts users to the risk of toxic shock syndrome and encourages them to obtain prompt medical attention when the early symptoms of the disease are observed.

(c) The warning statement required by paragraph (d) of this section shall appear prominently and conspicuously on the principal display panel of the package label. The warning statement shall be printed in bold letters and shall be enclosed by lines forming a rectangle in an area separated from other written printed or graphic matter. The height of the printed letters comprising the warning statement required by this section shall not be less than 1/16 of an inch.

(d) The warning statement shall read:

WARNING: Tampons have been associated with Toxic Shock Syndrome, a rare disease that can be fatal. You can almost entirely avoid the risk of getting this disease

by not using tampons. You can reduce the risk by using tampons on and off during your period. If you have a fever of 102° or more, and vomit or get diarrhea during your period, remove the tampon at once and see a doctor right away.

(e) Any menstrual tampon that is not labeled as required by this section and that is introduced or delivered for introduction into commerce after (a date 60 days after date of publication of a final rule) is misbranded pursuant to sections 502(a) and 201(n) of the act.

Interested persons may, on or before November 20, 1980 submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Dockets Management Branch docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, as amended by Executive Order 12221, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Dockets Management Branch, Food and Drug Administration.

Dated: October 16, 1980.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 80-32881 Filed 10-20-80; 8:45 am]

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federal register

Tuesday
October 21, 1980

Part VIII

Department of the Interior

Fish and Wildlife Service

Final Findings for Export of American Alligator and American Ginseng Taken in 1980-1981 Season

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 23 and 810

Final Findings for Export of American Alligator and American Ginseng Taken in 1980–81 Season

AGENCY: U.S. Fish and Wildlife Service.

ACTION: Notice of final findings.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora is a treaty regulating the international shipment of certain wildlife and plant species. Under the Convention, exports of wildlife or plants listed in Appendix I or II may occur only if a Scientific Authority has advised a permit-issuing Management Authority that such exports will not be detrimental to the survival of the species, and if a Management Authority is satisfied that the wildlife or plants were not obtained in violation of laws for their protection.

The Service must make such decisions with respect to the American alligator and American ginseng, both of which are included in Appendix II. This notice announces the Scientific Authority and Management Authority decisions concerning export of specimens of these species taken in the 1980–81 season. These findings for export are made on a state-by-state basis for all specimens taken in a particular season, considering all available information on the population status, management and utilization of the species.

DATE: These final findings are effective on October 21, 1980.

ADDRESS: Please send correspondence concerning this notice to the Office of the Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240. Materials received will be available for public inspection from 7:45 a.m. to 4:15 p.m., Monday through Friday, in room 536, 1717 H Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Biological findings.—Dr. Richard L. Jachowski, Office of the Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240. telephone (202) 653–5948.

Export permits.—Mr. S. Ronald Singer, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone (703) 235–2418.

SUPPLEMENTARY INFORMATION: In carrying out the responsibilities of the United States under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Service is continuing the practice of developing general Scientific Authority and Management Authority findings on the export of certain species, applicable to all specimens taken in a particular season. This approach is more meaningful and less cumbersome than the alternative of developing findings on a permit-by-permit basis for species subject to extensive international trade.

The Service published proposed findings on the export of American alligators, American ginseng and certain other species in the September 29, 1980, **Federal Register** (45 FR 64520). That publication contained a summary of information supplied by state agencies on the biology, management, and harvest of ginseng, and it cited earlier references providing such information for the alligator.

American Ginseng (*Panax Quinquefolius*)

Criteria used by the Service in determining if the export of ginseng will not be detrimental to the survival of the species were the same as those used by the Endangered Species Scientific Authority (ESSA) in previous years:

The ESSA proposes to approve export of wild American ginseng from those states that have implemented substantial programs to conserve the species whose populations can support the harvest. Acceptable conservation programs generally must include some form of research and regulations designed to monitor the status of the state's wild populations to provide annual harvest estimates, and to control exploitation. The ESSA recognizes the recency of wild plant management in many states, and the frequent lack of management authority in state agencies. Consequently, we propose to approve export from certain states whose management agencies lack authority to limit exploitation provided those states have substantial plans for 1979 under existing authority and provided available information indicates that populations of the state can support the harvest. Several state agencies are seeking additional authority from their legislatures. The ESSA wishes to be supportive of new state programs, however, our proposal to approve export for roots harvested in 1979 should not be construed as a precedent for approval in the future.

Criteria used by the Service in determining if ginseng to be exported is not obtained in violation of state or Federal law, which is a Management Authority requirement under the CITES, were described in the September 29, 1980, **Federal Register:**

The [Service] considers the following ongoing program operating on either a mandatory or voluntary basis to be necessary to qualify a state's ginseng for export. A mandatory program administered by the State is preferable to a voluntary one, but a functional voluntary one may be acceptable if the state is working toward regulatory control.

1. An ongoing, state sponsored, American ginseng research program;
2. State certification or registration of dealers and exporters;
3. A requirement that dealers and exporters maintain a record of their commerce in ginseng;
4. A limited taking season to be established by the state to foster survival of the species; and
5. A certificate of legal taking identifying dealer, origin, year of taking, whether wild or cultivated, and weight of the shipment, attached to each export from the state. (This is required only for each export, not for each transaction within the state. This certificate must be presented to Federal officials at the point of export from the United States.)

It should be noted that the Management Authority criteria also were used for decisions on the export of ginseng harvested last year, and that they included conditions (items 1 and 4, above) related to concerns of the ESSA. In view of this, the Service has focused on items 2, 3, and 5 in making Management Authority decisions this year. Further, as with Scientific Authority criteria, the Management Authority criteria are not all absolute requirements. A certificate of legal taking is required for each export. Voluntary state programs for the registration of dealers and exporters and voluntary record-keeping are acceptable if they work and if the states are taking steps to institute mandatory registration and record-keeping.

The Service received no written comments from the public in response to the proposed 1980 export findings for ginseng. Accordingly, the Service has determined that wild or artificially propagated ginseng harvested in those states proposed for approval in the September 29, 1980, notice may be exported under the CITES. States for which export of 1980 season ginseng is approved are: Arkansas, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Minnesota, Missouri, New York, North Carolina, Ohio, Tennessee, Virginia, West Virginia, and Wisconsin. Both the Scientific Authority and Management Authority criteria are met for these states. The Management Authority will approve export of artificially propagated ginseng only from the states listed above because they have the mandatory or voluntary programs necessary to document the source of the plants.

No export is approved for wild or artificially propagated ginseng harvested in other States during the 1980 season. There is no current information on which to base Scientific Authority or Management Authority findings for Alabama, Connecticut, Maine, Massachusetts, Mississippi, New Hampshire, Oklahoma, Rhode Island, South Carolina, and Vermont. Available evidence indicates that wild populations of ginseng cannot support a commercial harvest in Delaware, Louisiana, Michigan, Nebraska, and New Jersey, thus failing to satisfy one of the Scientific Authority criteria. Management Authority criteria also are not met by these states. Pennsylvania has wild populations of ginseng that might support a limited commercial harvest, but there are no current programs of research and regulation for the species at the state level. Consequently, neither Scientific Authority nor Management Authority criteria are met for this state. Ginseng is not reported to be native to any state other than those discussed above.

American alligator (*Alligator mississippiensis*)

The Service proposed to approve the export of alligators taken in Louisiana during the 1980 commercial harvest season and in Florida under the "nuisance" alligator control program during 1980 and 1981 (see 45 FR 64535). Approval of export was proposed in view of information showing increasing alligator populations in both states, and in view of ongoing programs in both states to monitor alligator populations and to strictly regulate the harvest. The Service received no written comments in response to this proposal. The available data demonstrate that export of alligators harvested this season in Louisiana and Florida will not be detrimental to the survival of the species. Controls on the harvest and subsequent commerce in alligators insure that hides to be exported are obtained in compliance with state and Federal law.

In addition, provided that any export of American alligators is in accordance with the Service's regulations (50 CFR 17.42), which require the licensing of foreign buyers and tanners, and provided that hides are properly tagged, there is assurance that their export would not diminish the effectiveness of the CITES in controlling trade in other crocodilians. There is no evidence to indicate that the export of alligator hides taken in 1979 or in previous seasons had any such effect.

Future Rulemaking

The present findings for ginseng and alligator are effective upon publication of this notice. Findings for the export of other Appendix II species discussed in the September 29, 1980, proposal will be published in a later notice. Upon publication of that notice, the Service intends to incorporate the decisions on export of all species subject to such general findings into Part 23 of Title 50, Code of Federal Regulations.

The findings announced in this notice are effective on the date of publication in the **Federal Register**, because the harvest season for these species has begun and delaying issuance of the findings could adversely impact state conservation programs for these species. The Service also considers a delay in the effective date to be unnecessary because the findings were preceded by an opportunity for comment and because they do not substantially modify an earlier procedure or practice (43 CFR 14.5).

An environmental assessment has been prepared in conjunction with this notice. It is on file in the Service's Office of the Scientific Authority, room 536, 1717 H Street, NW., Washington, D.C. and may be examined during regular business hours.

This notice was prepared by Dr. Richard L. Jachowski, Office of the Scientific Authority (202) 653–5948.

Note.—The Service has determined that this document does not contain a significant proposal requiring preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Dated: October 17, 1980.

(Final findings for export of American Alligator and American Ginseng taken in 1980–81 season)

Lynn A. Greenwalt,

Director, Fish and Wildlife Service.

[FR Doc. 80-32948 Filed 10-20-80; 8:45 am]

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
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DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator. Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

Note: There were no items eligible for inclusion in the list of Rules Going Into Effect Today.

List of Public Laws

Last Listing October 20, 1980

This is a continuing listing of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202-275-3030).

H.R. 5451 / Pub. L. 96-453 Maritime Education and Training Act of 1980 (October 15, 1980; 94 Stat. 1997) Price $1.25.

S. 1798 / Pub. L. 96-454 Household Goods Transportation Act of 1980 (October 15, 1980; 94 Stat. 2011) Price $1.25.

H.R. 4273 / Pub. L. 96-455 To amend section 17 of the Act of July 5, 1946, as amended, entitled "An Act to provide for the registration and protection of trade-marks used in commerce, to carry out the provisions of certain international conventions, and for other purposes" (October 15, 1980; 94 Stat. 2024) Price $1.

S. 1482 / Pub. L. 96-458 Classified Information Procedures Act (October 15, 1980; 94 Stat. 2025) Price $1.

S. 1640 / Pub. L. 96-457 To extend certain authorities of the Secretary of the Interior with respect to water resources research and development and saline water conversion research and development programs, and for other purposes (October 15, 1980; 94 Stat. 2032) Price $1.

S. 1873 / Pub. L. 96-458 Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (October 15, 1980; 94 Stat. 2035) Price $1.

H.R. 8554 / Pub. L. 96-459 Maritime Appropriation Authorization Act for Fiscal Year 1981 (October 15, 1980; 94 Stat. 2042) Price $1.

H.R. 4417 / Pub. L. 96-460 Chesapeake Bay Research Coordination Act of 1980 (October 15, 1980; 94 Stat. 2044) Price $1.

S. 2320 / Pub. L. 96-461 National Bureau of Standards Authorization Act for Fiscal Years 1981 and 1982 (October 15, 1980; 94 Stat. 2049) Price $1.

H.R. 8178 / Pub. L. 96-462 Federal District Court Organization Act of 1980 (October 15, 1980; 94 Stat. 2053) Price $1.80.

S. 2412 / Pub. L. 96-463 Used Oil Recycling Act of 1980 (October 15, 1980; 94 Stat. 2055) Price $1.

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WHEN: October 22, 1980; November 19, 1980; January 21, 1981; February 25, 1981; May 13, 1981

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Pages 69847-70208

federal register

Wednesday
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Highlights

Briefings on How To Use the Federal Register—For details on briefings in **Washington, D.C.**, see announcement in the **Reader Aids** section at the end of this issue.

69904 **Nuclear Safety** FEMA adopts interim rule on planning and preparedness for peacetime nuclear emergencies; effective 10–22–80; comments by 12–22–80

69847 **Loan Programs—Agriculture** USDA/FmHA amends regulations on insured emergency loans; effective 10–22–80. comments by 12–22–80

69875 **Rural Loan Programs** USDA/FmHA amends administrative rules for all FmHA guaranteed loan programs; effective 10–22–80

69933 **Excise Taxes** Treasury/IRS proposes to update and revise rules on manufacturers and retailers excise taxes on special fuels; comments by 12–22–80

69933 **Gift Taxes** Treasury/IRS publishes proposal on transfer of life income interest and exercise of nongeneral powers of appointment; comments by 12–22–80

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Highlights

69879 **Federal Reserve System** FRS issues interpretation on reserve requirements of depository institutions; effective 11–13–80

69880 **Banks, Banking** FCA amends personnel requirements for banks and associations of the Farm Credit System; effective 10–22–80

69887 **Banks, Banking** FCA revises internal control requirements for operation of Farm Credit banks and associations; effective 10–22–80

70198 **Endangered and Threatened Wildlife** Interior/FWS proposes critical habitat for hawksbill sea turtle in Puerto Rico; comments by 1–21–81; meetings 12–2 through 12–4–80 (Part III of this issue)

70032 **Fisheries** Commerce/NOAA seeks comments on taking of bowhead whales by Indians, Aleuts, and Eskimos; comments by 12–1–80

70023 **Television** FCC considers improvements to UHF television reception; comments by 1–5–81; reply comments by 2–19–81

69911, 69915 **Securities** SEC publishes proposal regarding net capital requirements for brokers and dealers; comments by 1–15–81 (2 documents)

70033 **Freedom of Information** Administrative Conference of the United States requests information on actual instances of improper disclosure of information by Federal agencies; comments by 11–20–80

70000 **Improving Government Regulations** PADC publishes semiannual agenda of significant regulations

Privacy Act Document

70161 NRC

70169 **Sunshine Act Meetings**

Separate Parts of This Issue

70192 **Part II, Interior/FWS**
70198 **Part III, Interior, FWS**
70204 **Part IV, Interior/BLM**

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Rules and Regulations

Federal Register
Vol. 45, No. 206
Wednesday, October 22, 1980

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1865, 1945, and 1951

[F.C.D.A. No. 10.404, Emergency Loans]

Emergency Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is amending its regulations pertaining to insured Emergency (EM) Loans. This action is needed to implement the provisions of Pub. L. 96–302 and to implement other related administrative changes desired by FmHA. The primary effect of this action is to enable those applicants who can get their needed credit elsewhere to obtain an EM loss loan(s) *only*, not to exceed $500,000, from FmHA at a formula rate of interest set by the Secretary, and subject to a graduation review three years after the initial EM loan is made and every other year thereafter. Graduation reviews will be conducted to determine whether borrowers can obtain sufficient and suitable other credit to meet their credit needs. Should FmHA determine that sufficient credit is available elsewhere to meet the borrower's credit needs, the borrower will be required to obtain such credit and satisfy the financial obligations it has with FmHA. In addition, this action also implements the amendments to the Memorandum of Understanding between the Small Business Administration and FmHA.

EFFECTIVE DATE: Effective October 22, 1980. Comments must be received on or before December 22, 1980.

ADDRESSES: Submit written comments in duplicate to Joseph H. Linsley, Chief, Directives Managment Branch, Farmers Home Administration, USDA, Room 6346–S, Washington, D.C. 20250, Telephone 202–447–4057.

FOR FURTHER INFORMATION CONTACT: James E. Vollmer, Emergency Loan Officer, Farmers Home Administration, USDA, Room 5336–S, Washington, D.C. 20250, telephone 202–447–6257. The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from Mr. Joseph Linsley, Chief, Directives Management Branch, USDA, FmHA, 14th Street, and Independence Avenue, SW., Room 6348–S, Washington, D.C. 20250. Telephone: 202–447–4057.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under the procedures established in the Secretary's Memorandum 1955 to implement Executive Order 12044, and has been designated as "nonsignificant." Gordon Cavanaugh, Administrator, FmHA, has determined that an emergency situation exists which warrants publication without opportunity for a public comment period on this final action because this action is essential to enable the public to gain immediate access to the benefits provided by PL 96–302. The present economic difficulties attributable to the recent drought and other natural disasters are pervasive and pose a great burden on agricultural producers. The provisions of PL 96–302 authorize additional financial assistance to those who would not otherwise qualify for FmHA assistance, and it is in the public's best interest to implement this authority promptly. Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this emergency final action are impracticable and contrary to the public interest; and good cause is found for making this emergency final action effective less than 30 days after publication of this document in the Federal Register. Comments are solicited for 60 days after publication of this document, and this emergency final action will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the Federal Register as soon as possible.

Accordingly, Part 1865, Subparts A and B of Part 1945, and Subpart A of Part 1951 of Chapter XVIII, Title 7, Code of Federal Regulations are amended as follows:

PART 1865—ANALYZING CREDIT NEEDS AND GRADUATION OF BORROWERS

1. The introductory paragraph of § 1865.3(b) and the first sentence of § 1865.3(c) of Part 1865 are revised to read as follows:

§ 1865.3 Graduation of FmHA borrowers to other sources of credit.

* * * * *

(b) *When borrowers should be advised to refinance their FmHA indebtedness.* Borrowers, other than those indebted only for the current year's operating expense, will be advised to obtain credit from other sources to refinance their FmHA debts when the County or Area Committee and County Supervisor determine they have made sufficient progress to qualify for credit for similar purposes and periods of time from other sources in the area on reasonable rates and terms. For EM borrowers who were *able* to obtain their credit elsewhere when they received their EM actual loss loans, the initial review will be conducted three years after the loan is made and every other year thereafter. In making this determination, consideration will be given to the following factors:

* * * * *

(c) *Review of borrower's status and progress.* Each October 1, the Finance Office will furnish county offices with lists of active borrowers who have been indebted for at least three years on Emergency type (EM and EE) loans, four years on Operating (OL) loans, and six years on Real Estate (FO, SW, RL, etc.) loans.

* * * * *

PART 1945—EMERGENCY

Subpart A—Disaster Assistance—General

Table of Sections [Amended]

2. In the Table of Sections delete "Exhibit A—Agreement Between the USDA–SBA".

§ 1945.26 [Amended]

3. Section 1945.26(b) (1) and (2) are revised to read as follows:

* * * * *

(b) * * *

(1) Named by FEMA under a major disaster declaration by the President; and

(2) Declared by the SBA Administrator.

4. Section 1945.26 (c) and (d) are deleted and § 1945.26(e) is renumbered to § 1945.26(c) without change.

5. Exhibit A is deleted.

Subpart B—Emergency Loan Policies, Procedures, and Authorizations

1. Section 1945.54(a)(11) is amended to require an entity to derive over fifty percent of its *gross* income from the farming operation in order to meet the Agency's "established farmer" criterion.

2. Section 1945.54(a)(21) is amended to clarify the definition of a nonfarm enterprise as being one which provides less than 50 percent of the total *net* income from all sources (farm and nonfarm) which is needed to supplement farm income.

3. Section 1945.56 is amended to add the criteria under which the Agency may consider an applicant who *can* get credit elsewhere, for loss loan assistance only, not to exceed $500,000. Prior to passage of PL 96–302 the Agency had no authority to provide loss loan assistance to those who could obtain their credit elsewhere. Section 1945.56(a) requires the applicant's Certification Statement on Form FmHA 410–1 to be modified when the applicant certifies that other credit *can* be obtained.

Section 1945.56(b) is amended to describe the criteria under which the Agency will consider requests for Emergency loan assistance from those applicants certifying that outside credit *cannot* be obtained. Section 1945.56(b)(2)(i)(C) is amended to more closely conform with similar provisions contained in 7 CFR, Part 1945, Subpart C (Economic Emergency Loan Instruction 1945–C). This section now permits County Supervisors to waive the requirement of a written declination of credit for a request for total EM loan(s) of $300,000 or less. Section 1945.56(b)(3) is amended to delete cumbersome administrative determinations which were previously required before approval action, when nonfarm assets were involved. Section 1945.56(b)(4) is amended to clarify the conditions under which loan approval officials may require the sale of nonessential assets as a condition of loan approval for those applicants who *cannot* obtain their needed credit elsewhere. This section also describes how such proceeds from the sale of nonessential assets are to be applied to the FmHA EM debt.

4. Section 1945.61(a)(1) is amended to require applications for actual loss loans to be processed within 12 months after they are filed.

5. Section 1945.61(a)(3) is amended to clarify that applications for major adjustment and/or annual production loans may be processed within specified time frames *only* from applicants who will receive, or have received, an EM actual loss loan.

6. Section 1945.61(b) is amended to delete duplication of regulations printed on Form FmHA 1945–22, "Certification of Disaster Losses" under "Instructions to the Applicant."

7. Section 1945.62 is amended for clarity and to set out added test for credit eligibility certification criteria.

8. Section 1945.63 is amended by inserting a new opening paragraph for added clarity and by amending § 1945.63(c) to reflect amended policy on treating SBA disaster loan assistance in determining loss loan eligibility and in calculating loss loan entitlement.

9. Section 1945.66(a)(1) is amended to delete repetitive language and to limit EM actual loss loans so that the resulting farming operation is not substantially larger (due to the direct or indirect use of loan funds) than the pre-disaster operation, does not realistically project a net farm income (gross income less annual farm operating expenses) substantially greater than that of the normal operation conducted before the disaster, and is financially sound.

10. Section 1945.66(b) is amended for clarification purposes, and to require that annual production loan assistance be limited to such amounts as will ensure that the resulting farm operation is not substantially larger (due to direct or indirect use of loan funds) than the pre-disaster operation, does not realistically project net farm income (gross income less annual farm operating expenses) substantially greater than that of the normal operation conducted before the disaster, and is financially sound.

11. Section 1945.66(c) is amended for clarity. Section 1945.66(c)(2)(iv)(E) is amended to clarify the Subtitle A loan ceiling policy.

12. Section 1945.66(d) is amended to set forth the loan ceiling limitations governing annual production and major adjustment loans.

13. Section 1945.68(b)(1) is amended to clarify the terms for making annual production loans and major adjustment loans for Subtitle B (operating) purposes. This action corrects an improper cross reference citation found in the previous instruction.

14. Section 1945.66(d) amends the graduation requirements. All EM borrowers will be reviewed for graduation three years after the initial loan is made and every other year thereafter.

15. Section 1945.69(f) is amended for clarity. Section 1945.69(f)(2) deletes a sentence for clarity.

16. Section 1945.83 is amended for clarity and to add § 1945.83(b)(5) instructing Supervisors to modify the applicant's Certification Statement on Form FmHA 440–1 when the applicant certifies that credit *can* be obtained elsewhere.

17. Exhibit B is amended to implement the new Memorandum of Understanding between the Small Business Administration and the Farmers Home Administration. The following changes are the most significant as they relate to FmHA:

(a) Potential farm loan applicants suffering from disasters with a beginning incidence period occurring after July 2, 1980, should contact FmHA for an interview to determine whether they are eligible for disaster loan assistance from the FmHA. Applicants suffering production losses and/or physical losses to farm structures will be considered for FmHA assistance, and only when it is determined that such applicants cannot or would not have qualified for FmHA assistance will the SBA consider processing a loan for such assistance.

(b) When applicants need loan assistance to restore or replace their housing losses, regardless of whether or not other production losses or physical losses have been sustained, such applicants will have the option of applying to SBA or FmHA for disaster loan assistance for their housing losses. However, *in all cases,* applications for loans for production losses or physical losses to farm structures will be processed for those types of EM loan assistance in accordance with the policies described in paragraph (a) above.

Note.—Test of amendments follow signature.

PART 1951—SERVICING AND COLLECTIONS

Subpart A—Account Servicing Policies

6. Section 1951.10(a) (5) and (6) are renumbered § 1951.10(a) (6) and (7), respectively.

7. Section 1951.10 (a) (5) is added and the renumbered § 1951.10 (a)(7) is revised to read as follows:

§ 1951.10 Application of payments on Operating (OL), Emergency (EM), Economic Emergency (EE), Economic Opportunity (EO) loans to individuals, Soil and Water Conservation (SW) Coded "24", and other production type loan accounts. * * *

(a) *Rules for selection of accounts.*

* * *

(5) When nonfarm assets have been sold, the payments will be applied as set out in § 1945.56(b)(4) of Subpart B of Part 1945 of this Chapter, if they were sold as a condition for EM loan assistance.

* * * * *

(7) Employees receiving collections are authorized to make exceptions to paragraphs (a)(1), (2), and (6) of this section when it is necessary to apply a part of a payment to delinquent accounts to prevent the Federal Statute of Limitations from being asserted as a defense in suits on FmHA claims.

* * * * *

The Office of Management and Budget (OMB) has given temporary approval of all the recordkeeping and reporting requirements found in these regulations. The Agency has submitted its request to OMB seeking final approval of the recordkeeping and reporting requirements found in these regulations. These instructions do not directly affect any FmHA programs or projects which are subject to A–95 clearinghouse review.

This document has been reviewed in accordance with FmHA Instruction 1901–G, "Environmental Impact Statements." It is the determination of FmHA that this action does not constitute a major Federal Action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

(7 USC 1989; 7 CFR 2.23; 7 CFR 2.70)

Dated: September 26, 1980.

Gordon Cavanaugh,

Administrator.

Subpart B of Part 1945 is revised as follows:

Subpart B—Emergency Loan Policies, Procedures, and Authorizations

Sec.

1945.51 Introduction.
1945.52 Program objectives.
1945.53 [Reserved]
1945.54 Definitions and abbreviations.
1945.55 Relationship between FmHA and other federal agencies.
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1945.63 Determining qualifying losses, eligibility for actual loss loan(s) and the maximum amount of actual loss loan(s), annual production and major adjustment loan(s).
1945.64—1945.65 [Reserved]
1945.66 Loan purposes.
1945.67 Loan limitations and special provisions.
1945.68 Rates and terms.
1945.69 Security requirements.
1945.70—1945.72 [Reserved]
1945.73 General provisions—compliance requirements.
1945.74 [Reserved]
1945.75 Options, planning, and appraisals.
1945.76—1945.79 [Reserved]
1945.80 County committee certification.
1945.81 [Reserved]
1945.82 Loan docket preparation.
1945.83 Loan approval or rejection.
1945.84 [Reserved]
1945.85 Actions after loan approval.
1945.86—1945.87 [Reserved]
1945.88 Chattel lien search.
1945.89 Loan closing.
1945.90 Revision of the use of EM loan funds.
1945.91 [Reserved]
1945.92 Loan servicing.
1945.93—1945.100 [Reserved]
Exhibit A—Processing guide—Insured Emergency (EM) Loans
Exhibit B—Memorandum of Understanding: SBA—FmHA
Exhibit C—Memorandum of Understanding: ASCS—FmHA

Subpart B—Emergency Loan Policies, Procedures, and Authorizations

§ 1945.51 Introduction.

(a) *Policy.* This Subpart prescribes the policies, procedures, and authorizations of the Farmers Home Administration (FmHA) for making Insured Emergency (EM) Loans to farmers, ranchers, and aquaculture operators (hereinafter referred to as farmers). FmHA's policy is to make loans to any otherwise qualified applicant without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap (provided the applicant can execute a legal contract). These regulations apply to borrowers and FmHA personnel involved in making EM loans.

(b) *Program administration.* The County Supervisor is the local contact person for loan processing and servicing activities.

§ 1945.52 Program objectives.

The objective of EM loans is to provide financial assistance to cover actual losses sustained by eligible farmers, make major adjustments, and provide annual production credit so that they can maintain sound farming operations after they have sustained substantial losses as a result of an authorized disaster. EM loans are made to assist eligible disaster victims in sustaining and rehabilitating their normal operations. This objective will be accomplished through the extension of credit and such supervisory assistance as is determined necessary to achieve the objectives of the loan and protect the Government's interest. Supervisory assistance will be given in accordance with the provisions of Subpart B of Part 1924 of this Chapter.

§ 1945.53 [Reserved]

§ 1945.54 Definitions and abbreviations.

(a) *Definitions.*—(1) *Applicant.* The person or entity carrying on the farming operation at the time of the disaster and requesting EM loan assistance from FmHA.

(2) *Approval official.* An FmHA field official who has been delegated loan and grant approval authorities within applicable loan programs, subject to the dollar limitations contained in tables available in any FmHA Office (see FmHA Instruction 1901–A Exhibit C).

(3) *Aquaculture.* The husbandry of aquatic organisms in a controlled or selected environment. Aquatic organisms are fish (the term "fish" includes any aquatic gilled animal commonly known as "fish", as well as mollusks, crustaceans, or other invertebrates produced under controlled conditions—that is, feeding, tending, harvesting, and such other activities as are necessary to properly raise and market the products—in ponds, lakes, streams, or similar holding areas), amphibians, reptiles, or aquatic plants. An aquaculture operation is considered to be a farm only if it is conducted on grounds which the applicant owns, leases, or has an exclusive right to use. An exclusive right to use must be evidenced by permit issued to the applicant and the permit must specifically identify the waters available to be used by the applicant only.

(4) *Borrower.* All parties liable for the loan or any part thereof.

(5) *Calendar year.* The 12-month period beginning January 1, and ending December 31.

(6) *Consolidate.* To combine and reschedule the rates and terms of two or more EM loans made for operating purposes. This also may include a new EM loan made for operating purposes.

(7) *Cooperative.* An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of the State(s)

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in which the entity will operate a farm(s).

(8) *Corporation.* For the purpose of this Subpart, a private domestic corporation recognized as a corporation and authorized to carry on farming, ranching, or aquaculture operations under the laws of the State(s) in which the entity will operate a farm(s).

(9) *Deferment.* To postpone the payment of interest in part and/or principal in whole or in part.

(10) *Eligible area.* A county or similar political subdivision in which EM loans are made available.

(11) *Established farmer.* An individual or a principal of a legal entity who was actively participating in the operation and management of the farming operation at the time of the disaster, spends a substantial portion of time in carrying out the farming operation, and had planted a crop or had purchased livestock which were on the farm at the time of the disaster. If the applicant is a cooperative, a corporation or a partnership, it must be primarily engaged in farming, i.e., the entity applicant must derive over fifty percent (50%) of its gross income from the farming operation.

(12) *Farm.* A tract or tracts of land, improvements, and other appurtenances considered to be farm property which are used or will be used in the production of crops or livestock. This includes aquaculture operations which meet the requirements set forth in paragraph (a)(3) of this section and includes nonfarm operations which meet the requirements set forth in paragraph (a)(21) of this section. It also includes a residence which, although physically separate from the farm acreage, is ordinarily treated as a part of the farm in the local community.

(13) *Farmer.* One who conducts a farming or ranching enterprise. One who actively manages an aquatic operation or performs such duties as are necessary to properly raise and market the products of an aquatic operation. A farmer can be an individual, a cooperative, a corporation, or a partnership.

(14) *Farming enterprise.* The business of producing and marketing crops, livestock products, and aquatic organisms through the utilization and management of land, water, labor, capital, and basic raw materials.

(i) *Single enterprise.* An enterprise which constitutes an integral part of an applicant's total farming operation. The following are examples of single enterprises:

(A) Individual cash crops.

(B) Individual feed crops to be fed to, or pasture to be grazed by, livestock owned by the applicant.

(C) Individual types of livestock operations, i.e., beef, dairy, hog, poultry, and aquaculture operations.

(D) Small acreages of several cash crops may be combined to constitute a single enterprise.

(ii) *Basic part of a farming operation.* Any single enterprise which normally generates sufficient income to be considered essential to the success of the total farming operation.

(15) *Fixture.* Generally, an item attached to a building or other structure or to land in such a way that it cannot be removed without defacing or dismantling the structure, or substantially damaging the item itself.

(16) *Hazard insurance.* Includes coverage against losses due to fire, windstorm, lightning, hail, explosion, business interruption, riot, civil commotion, aircraft, vehicles, marine, smoke, builder's risk, public liability, property damage, flood or mudslide, workmen's compensation, or any similar insurance that is available and needed to protect the security, or that which is required by law.

(17) *Incidence period.* The specific date or dates during which a disaster occurred.

(18) *Insured loan.* An EM loan made directly by FmHA as lender from the Agricultural Credit Insurance Fund, and serviced by FmHA personnel.

(19) *Majority or controlling interest.* Any individual or a combination of individuals owning more than a 50 percent interest in a cooperative, corporation, or partnership.

(20) *Market value.* The amount which a willing buyer would pay a willing, but not forced, seller in a completely voluntary sale.

(21) *Nonfarm enterprise.* Any business enterprise, including a recreational enterprise, which provides less than 50 percent of the total net income from all sources (farm and nonfarm), which is needed to supplement farm income. It must provide goods or services for which there is a need and a reasonably reliable market.

(22) *Normal year's production.* The yield per acre or production per animal as established by eliminating the poorest year of the 5-year production history taken from actual farm records, Agricultural Stabilization and Conservation Service (ASCS) records of acres grown and proven (actual) yields, county averages, or State averages (where county averages are not available), immediately preceding the disaster year and averaging the remaining 4 years' production. The applicant may select the year to be eliminated. The year selected to be eliminated must be the same year for all farm enterprises and for all crops, livestock, and livestock products that constitute a part of the applicant's farming operation in that year. Average yield or production records used will be provided by the State Crop and Livestock Reporting Service, State Office of the Statistical Reporting Service (SRS), or similar State or Federal body. When this information is published by county, county averages will be used. If published only by State, the State average will be used throughout the State. A uniform source(s) will be used in each State for the yield per acre or production per animal data and the source(s) will be provided in a State supplement. For tobacco and other crops under acreage-poundage control the normal year's production will be the pounds per acre as authorized by ASCS for the disaster year.

(i) In those States where neither a county nor State average is published for an enterprise(s), the State Director, with the advice of representatives of other Federal and State Agricultural agencies, will establish county or State averages and advise County Offices of these averages in a State supplement. State Directors and Farmer Program Chiefs in adjoining States should consult with each other before releasing the figures.

(ii) If an applicant presents actual reliable records for at least 4 of the 5 years immediately preceding the disaster which verify a higher normal production than that established in accordance with paragraph (a)(22) of this section, the higher normal years' production may be used in calculating the loss.

(23) *Partnership.* An entity consisting of individuals or entities who have agreed to operate a farm. The entity must be recognized as a partnership by the laws of the State(s) in which the entity will operate a farm and must be authorized to own both real and personal property and to incur debts in its own name.

(24) *Physical loss.* Damages to or destruction of physical property including farmland (except sheet erosion); structures on the land such as buildings, fences, dams, etc.; machinery, equipment, and tools; livestock; livestock products; harvested crops; and supplies.

(25) *Principal members, stockholders, and partners.* Any member, stockholder, or partner owning or controlling a 10 percent interest in a cooperative, corporation, or partnership is considered a principal member, principal stockholder, or principal partner. If no member, stockholder, or partner owns or controls at least a 10 percent interest, all members, partners, or stockholders will be considered principal members, partners, or stockholders.

(26) *Production loss.* The reduction in normal production, directly attributable to the natural disaster, of yield per acre and/or quality of crops produced, of quantity and/or quality of livestock products produced per animal unit, and of weight gain and/or natural increase in numbers of livestock units.

(27) *Qualifying disaster.* A major disaster, Presidential Emergency, or natural disaster as defined in Subpart A of Part 1945 of this Chapter.

(28) *Qualifying physical loss.* To qualify for EM loan assistance, the damaged or destroyed physical property must be essential to the successful operation of the farm, and if it is not repaired or replaced, the farmer would be unable to continue operations on a reasonably sound basis.

(29) *Qualifying production loss.* To qualify for EM loan assistance, the production loss an applicant sustained must be equivalent to at least a 20 percent loss of normal per acre or per animal production as a result of the disaster in one basic part of the farming operation. Losses of livestock increases (i.e. calves, pigs, etc.) are considered production losses *except* when live animals are destroyed, which is considered a physical loss. Reductions in the production of livestock, livestock products or reductions in weight gains of animals due to homegrown feed crop losses will not be considered production losses when replacement feed is available to purchase, regardless of the cost of that feed. When the disaster has severely disrupted the usual feeding schedule of a livestock enterprise because of extended utility failure or inaccessibility to the livestock, losses in production of milk, eggs, weight losses, etc., may be considered as production losses. Production losses will be calculated based on the reduction from normal which occurs during the disruption period and the period needed to bring production back up to the normal level.

(30) *Reamortize.* To rearrange the payments of an EM loan made for real estate purposes within either the remaining years of the original repayment period, or, when the repayment period has been extended to the maximum statutory repayment limit, within those years.

(31) *Reschedule.* To rewrite the rates and/or terms of EM loans made for operating purposes.

(32) *Security.* Property of any kind subject to a real or personal property lien.

(i) *Basic security.* Real estate and fixtures and personal property such as foundation herds, flocks, aquatic animals and plant organisms, machinery, and equipment, serving as security and crops when crops are the only security.

(ii) *Normal income security.* All security planned to be marketed in the regular course of business unless liquidation is approved. If liquidation is approved, such security becomes basic security.

(iii) *Additional security.* All security not covered by subparagraphs (a)(32) (i) or (ii) of this section including general intangibles, accounts, and contract rights.

(33) *State or United States.* The United States itself, each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(34) *Subsequent loans.* Any EM loans processed by the Finance Office after it processed the first EM loan to a borrower. This includes any subsequent annual production loans. The disaster designation number has no effect in determining whether an EM loan is a subsequent loan.

(35) *Termination date.* The date specified in a disaster authorization which establishes the final date after which EM loan applications may no longer be received. However, applications will be accepted for EM loans after the termination date has passed if the applicant filed an application for disaster assistance with the Small Business Administration (SBA) during the period SBA would accept applications and not more than 6 months has elapsed since the FmHA's termination date.

(b) *Abbreviations.* The following abbreviations are used in this Subpart.

(1) *ASCS*—Agricultural Stabilization and Conservation Service.

(2) *ECP*—Emergency Conservation Program.

(3) *EFP*—Emergency Feed Program.

(4) *EM*—Emergency Loans.

(5) *FCIC*—Federal Crop Insurance Corporation.

(6) *FmHA*—Farmers Home Administration.

(7) *FMI*—Forms Manual Insert.

(8) *OGC*—Office of the General Counsel.

(9) *SBA*—Small Business Administration.

(10) *UCC*—Uniform Commercial Code.

(11) *USDA*—United States Department of Agriculture.

§ 1945.55 Relationship between FmHA and other federal agencies.

(a) *SBA and FmHA.* A Memorandum of Understanding between the SBA and USDA–FmHA pertaining to Disaster Loan Assistance is attached as Exhibit B.

(b) *ASCS and FmHA.* A Memorandum of Understanding between the ASCS and FmHA on Disaster Assistance is attached as Exhibit C.

(c) *FCIC and FmHA.* A Memorandum of Understanding between the FCIC and FmHA pertaining to crop insurance and exchanging information essential to the elimination of duplication of disaster compensatory benefits is Exhibit A of Subpart N of Part 2000 of this Chapter (available in any FmHA office).

§ 1945.56 The test for credit and certification requirements for availability of credit elsewhere.

(a) *Applicants who certify that other credit is available.* Applicants applying for EM actual loss loan assistance who certify they are *able* to obtain sufficient and suitable credit elsewhere to meet their actual farming and family living needs must meet the requirements set out in this section.

(1) Individual applicants or the authorized official(s) of entity applicants who submit the Form FmHA 410–1, "Application for FmHA Services," will evidence the applicant's ability to obtain needed credit elsewhere by striking through the word "unable" whenever the word appears in the certification statement at the end of the application form, writing in the word "able," and initialing above each such change.

(2) Applicants or applicants' representatives will be advised that they will be considered for an actual loss loan only. Such applicants will *not* be required to evidence compliance with the provisions of subsection (b) of this section.

(b) *Applicants who certify that other credit is NOT available.* Applicants who certify they are *not able* to obtain sufficient credit elsewhere to meet their actual farming and family living needs must meet the requirements set out in this subsection.

(1) *Test for credit for individuals and entities.* Applicants must be *unable* to obtain sufficient and suitable credit elsewhere to finance their actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time. If the

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applicant has been getting credit away from the local community where the farming operation is located, such source(s) of credit must also be contacted and considered. The applicant's equity in *all assets*, including, but not limited to, real estate, chattels, stocks, bonds, and Certificates of Deposit will be considered in determining the applicant's ability to obtain such credit from other sources. Also, the applicant must offer to pledge *all assets* as security when requesting credit from other lenders. Cooperatives, corporations, and partnerships and the principal members, principal stockholders, and principal partners, both individually and collectively, must be unable to provide the required financing from their own resources or with credit obtained from pledging those resources to other lenders. Form FmHA 1940–38, when appropriate, must be completed and filed in the applicant's County Office case folder, and any additional facts concerning the findings, in all cases, must be documented and recorded in the running case record.

(2) *Test for credit certification requirements.* Applicants will certify in writing on the application form, and the County Supervisor *shall* determine, that adequate and suitable credit is not available elsewhere to finance the applicant's actual needs at reasonable rates and terms taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time. The County Supervisor will consider all such information obtained from other lenders in making the determination, but is required to make an independent decision concerning the applicant's ability to obtain the needed credit elsewhere. Should the County Supervisor determine that the applicant can obtain the necessary credit elsewhere to meet actual needs, the applicant will be notified, in writing, that it is eligible for only actual loss loan consideration and that it must comply with the requirements set out in paragraph (a) of this section, and a new certification must be signed by the applicant indicating that it is able to obtain other credit. Should the applicant refuse to comply with the provisions of subparagraph (a)(1) of this section, the County Supervisor will record this fact in the running record and notify the applicant that EM loan assistance has been denied, the reason(s) for denial, and the applicant's right of appeal.

(i) For applicants whose total EM loan(s) request is for $300,000 or less, the following actions will be taken:

(A) Applicants will be required to apply for the credit needed from their normal lender(s) and, if their normal lender(s) is located outside the local community, from at least one agricultural lender in the local community to determine whether such lender(s) will provide the credit, either with or without the benefit of an FmHA guarantee. Form(s) FmHA 1940–38 must be completed by all lending sources contacted unless an exception is made under the provisions of subparagraph (b)(2)(i)(C) of this section. If it is determined the applicant cannot qualify for the needed credit from the lenders contacted, but one or more of them has indicated they would provide the credit with an FmHA guarantee, the applicant will be advised to file an application with that lender(s) so that a guaranteed EM loan request can be processed by the lender for consideration by FmHA. Only when the applicant is not able to obtain a loan, either with or without an FmHA guarantee, from one or more of the lending sources contacted, will the applicant be considered for an insured EM loan. If the County Supervisor believes it necessary, the action required in subparagraph (b)(2)(ii) of this section will be taken.

(B) When the County Supervisor receives letters or other written evidence, including Form FmHA 1940–38, from a lender(s) indicating that the applicant is unable to obtain satisfactory credit from that source(s), such correspondence will be included in the loan docket.

(C) If it appears from a review of the application that it would be unduly burdensome for the applicant to obtain written declinations of credit from other lenders, the County Supervisor may make an exception to this requirement, provided the County Supervisor is familiar enough with other lenders' farm loan programs to determine that no possibility exists for the applicant to obtain the credit needed from those lenders. When this conclusion is reached, the basis for it will be recorded in the running case record, and further checks will not be necessary. However, when this exception is used, the applicant's normal lender(s) *must be contacted in all cases* and the results of that contact(s) must be well documented in the running case record.

(ii) For applicants whose total EM loan(s) request is for more than $300,000, the following actions will be taken:

(A) Applicants will be required to apply at not fewer than three conventional lending sources, including the Production Credit Association or Federal Land Bank, as appropriate, in the local community. In addition, when an applicant has a net worth of $1 million or more and produces evidence that it cannot obtain the necessary credit in the local community, either with or without an FmHA guarantee, the applicant will be required to contact at least two other lending sources outside the local area. One or more of those lenders contacted must be the applicant's normal lender(s).

(B) Form FmHA 1940–38 must be completed by all lending sources contacted, returned to the county office and handled in accordance with subparagraph (b)(2)(i)(B) of this section.

(C) When the County Supervisor receives Forms FmHA 1940–38 indicating that the applicant is unable to obtain satisfactory credit, the forms will be placed in the loan docket. However, such evidence will not preclude the County Supervisor from contacting other farm lenders in the area and making an independent determination of the applicant's ability to obtain credit elsewhere.

(3) *Use of nonfarm assets when seeking other credit.* The basic objective of EM loans is, through financial assistance, to enable eligible *Farmers* to maintain a sound *farming operation* after they have sustained substantial losses as a direct result of an authorized disaster. Therefore, since the goal of EM loans is maintaining a sound *farm* economy, an applicant with holdings in *nonfarm* assets not essential to the successful operation of its *farm* will offer those assets as security for loans requested from other lenders.

(4) *Use of nonfarm assets when approving FmHA loans for those who cannot obtain credit elsewhere.* When an EM loan(s) will be made, after other lenders have declined to provide needed credit, the County Supervisor may require as a condition of loan approval that the applicant sell, within a specified time period(s), all or a part of such nonessential nonfarm assets to meet a portion of the applicant's needs in connection with processing an EM loan for the difference between the applicant's actual needs and the amount realized from the sale of the assets. If the applicant cannot sell the nonessential assets before the loan is closed, the applicant will mortgage all such assets to FmHA and agree in writing, in a manner approved by OGC, to sell them within a specified period not to exceed one year from the date of loan closing and apply the proceeds as an extra payment on the EM loan carrying the lowest interest rate, which is secured by the asset(s) being sold.

§§ 1945.57—1945.60 [Reserved]

§ 1945.61 Receiving and processing applications.

(a) *Applications.* Applications for EM loans will be received and processed as outlined in Subpart A of Part 1910 of this Chapter. Form FmHA 410–1 will be used for this purpose.

(1) Applications for EM actual loss loans will be received only in areas where EM loans are made available in accordance with Subpart A of Part 1945 of this Chapter, and must be postmarked or received in the county office before the specified termination date has passed. *These applications must be processed within twelve months after they are filed.*

(2) An applicant conducting a farming operation in different counties or locations will be considered for only one application, and will file that application in the county in which the farm headquarters is located, unless determined otherwise by the State Director. When the operation is located in more than one State, the State Directors involved will consult and determine which State will process the application and service the loan(s).

(3) Applications for initial EM major adjustment and/or initial annual production loans may be processed only from applicants who will receive, or have received, an EM actual loss loan(s) and are unable to obtain their needed credit elsewhere. *Such applications may not be received later than twelve months after the disaster authorization date and must be processed within one full calendar year after they are filed.*

(4) Applications for subsequent EM annual production loans may be processed from indebted EM borrowers annually for such periods after the disaster year as indicated in section 1945.66(b)(2) of this Subpart, so long as the borrower is unable to obtain the needed production credit from other sources. Former EM borrowers who have paid their EM loan(s) in full, before the periods specified in section 1945.66(b)(2) of this Subpart have expired, and who cannot obtain sufficient credit elsewhere, may obtain subsequent EM loans for annual production purposes to satisfy their production credit needs, provided the loans are made within the authorized periods.

(5) Provided applicants would have been eligible for EM actual loss loans, applications may be received from indebted SBA disaster loan borrowers for annual production and/or major adjustment loan(s) for up to twelve months after the FmHA disaster authorization date. Such applications must be processed within one full calendar year after they are filed.

(6) Applications may be received and processed from FmHA EM loan borrowers or SBA disaster loan borrowers for that portion of the maximum actual loss loan originally authorized, but not requested initially from FmHA or SBA, provided the application is *received within twelve months of the disaster authorization date.*

(7) Applications for subsequent EM major adjustment loans to complete items financed with initial EM major adjustment loans may be received and processed only *within one full calendar year after the intial* application for major adjustment assistance is filed.

(8) Applicants who are determined to be *ineligible* for an EM actual loss loan may be considered for other types of FmHA farm loans, when appropriate.

(b) *Statement of losses.* Applicants' statements of loss or damage will be obtained in support of their applications by having them complete Form FmHA 1945–22, "Certification of Disaster Losses."

(c) *ASCS Verification of Farm Acreages, Production and Benefits.* From information obtained on Form FmHA 1945–22, the County Supervisor will send a separate Form FmHA 1945–29, "ASCS Verification of Farm Acreages, Production and Benefits," to the appropriate ASCS county office for each ASCS farm number that the applicant has certified constituted a part of the disaster year's operation.

(d) *Evidence of operation.* If the applicant is a cooperative, corporation or partnership, it will provide evidence that it was operating as a qualifying farming entity at the time the disaster loss occurred, or has changed its form in accordance with section 1945.62(j) of this Subpart, after the loss occurred. The following information will be obtained and included in the loan docket:

(1) A complete list of members, stockholders or partners showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership, or stock held in the cooperative or corporation by each, or the percentage of interest held in the partnership by each.

(2) A current personal financial statement (not over 30 days old at the time of filing the application) from each of the principal members of a cooperative, principal partners of a partnership or principal stockholders of a corporation. Any other member, stockholder or partner whose financial statement, in the judgment of the loan approval official, is pertinent to consideration of the financial strength of the cooperative, corporation, or partnership will also be required to provide personal financial statements.

(3) A current financial statement (not over 30 days old at the time of filing the application) from the cooperative, corporation, or partnership itself.

(4) A copy of the cooperative's or corporation's charter, or written partnership agreement, articles of incorporation and by-laws, certificate or evidence of current registration (good standing), and a resolution(s) adopted by the board of directors, members or stockholders authorizing specified officers of the cooperative or the corporation to apply for and obtain the desired loan and execute required debt, security, and other instruments and agreements.

(5) A copy of any written lease, contract, or agreement entered into by the cooperative, corporation or partnership which may be pertinent to a consideration of its application. When a written lease is not obtainable, a statement setting forth the terms and conditions of the agreement will be included in the loan docket.

§ 1945.62 Eligibility requirements.

To be eligible for EM loan assistance, applicants must meet the following requirements:

(a) *Test for credit.* All applicants will certify in writing at the end of Form FmHA 410–1, whether or not adequate and suitable credit is available elsewhere to finance their actual needs.

(1) Applicants who filed EM applications *on or before July 2, 1980,* requesting actual loss loan assistance based on FmHA disaster designations having beginning incidence period dates *on or before July 2, 1980,* must meet the "credit elsewhere" requirement set out in section 1945.56(b) of this Subpart. Applicants who filed *after* July 2, 1980, based on disaster incidence period dates *on or before July 2, 1980,* must also meet the requirement of section 1945.56(b) of this Subpart.

(2) Applicants who filed EM applications *after July 2, 1980,* requesting actual loss loan assistance, based on FmHA disaster designations having beginning incidence period dates *after July 2, 1980,* may meet the requirements set out in either section 1945.56(a) *or* section 1945.56(b) of this Subpart.

(3) Applicants requesting EM annual production and/or EM major adjustment loan assistance must meet the requirements set out in section 1945.56(b) of this Subpart.

(b) *Citizenship.* (1) An individual applicant must be a citizen of the United States (see section 1945.54(a)(33) of this

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Subpart for the definition of "United States").

(2) A cooperative, corporation or partnership applicant must meet the requirements set out in sections 1945.54 (a)(7), (a)(8) or (a)(23) of this Subpart. In addition, more than a 50 percent interest in the cooperative, corporation or partnership must be owned by United States citizens (see section 1945.54(a)(33) of this Subpart for the definition of "United States"). The member, stockholder or partner who manages the farming operation must be a United States citizen. Also, if another entity owns *any* interest in the applicant entity, more than a 50 percent interest in that other entity must be owned by a United States citizen(s).

(c) *Established farmer.* An applicant must be an established farmer (as defined in section 1945.54(a)(11) of this Subpart) doing business either as an owner-operator or tenant-operator. An applicant who conducts the farming operation as an individual must manage the farming operation.

If the applicant is a cooperative, corporation or partnership, it must derive over fifty percent (50%) of its gross income from farming, and at least one principal member, principal stockholder or principal partner must manage the farming operation. Also, the entity must be authorized to conduct the farming operation(s) in the State(s) in which the farming operation is conducted. One who does not devote full time to the farming operation may be considered the manager provided that person, (1) visits the farm at sufficiently frequent intervals to exercise control over the farming operation, (2) makes decisions and gives directions on how the operation(s) should be run, and (3) sees that the operation is being carried on properly. Any applicant that employs an outside full-time hired manager or management service does not qualify as an established farmer, regardless of the number of visits made by the individual applicant or the principal member, principal stockholder or principal partner.

(1) An estate or trust; a corporation with over 50 percent of the ownership held by an estate, trust, another corporation, or a partnership; a partnership with over 50 percent of the ownership held by an estate, trust, corporation or another partnership is not considered to be an established farmer for EM loan purposes.

(2) An individual engaged in a joint farming operation and/or owning an undivided interest in the property of such an operation is not considered to be an established farmer for EM loan purposes.

(3) Integrated livestock, poultry, and fish processors who operate primarily and directly as commercial businesses through contracts or business arrangements with farmers are not considered to be established farmers and are not eligible. However, a grower under contract with an integrator or processor is considered an established farmer even though the applicant operates through a contract arrangement with an integrated processor, provided the operation is not managed by an outside full-time hired manager or management service. Farmers operating through contract may be considered for EM physical loss loan eligibility. However, eligibility for and the amount of their production losses will be determined from the applicant's share of the agricultural production as set forth in the contract.

(d) *Operate in a disaster area.* An applicant for an actual loss loan must have sustained qualifying losses in an area in which the availability of EM loans for actual losses has been determined in accordance with Subpart A of Part 1945 of this Chapter and has filed an application before the expiration of the termination date.

(e) *Losses.* An applicant must have suffered qualifying production and/or physical losses to be eligible for an actual loss loan. Production losses must be to property in which the applicant has an ownership interest or an interest in which a security interest may be obtained. Physical losses must be to property in which the applicant has an ownership interest. See section 1945.63 of this Subpart for the methods of determining qualifying losses.

(f) *Legal capacity.* An applicant must possess the legal capacity to contract for the loan.

(g) *County committee certification.* The county committee will certify that the applicant meets the following additional eligibility conditions by using Form FmHA 440–2, "County Committee Certification or Recommendation:"

(1) An applicant must possess the training and/or experience, character (emphasizing repayment ability and reliability), industry and ability necessary to carry out the proposed farming operations to assure a reasonable prospect of success with the assistance of the loan, and

(2) The applicant will honestly endeavor to carry out the undertakings and obligations required of the applicant in connection with the loan.

(h) *Intent to continue farming.* An applicant must show an intent to continue the operation after the disaster. Those applicants who were required to stop temporarily because of the disaster loss or damage to their operations, but intend to continue farming with EM loan assistance meet this requirement.

(i) *EM Loan(s) to cooperatives, corporations, or partnerships.* When an EM loan is made to a cooperative, corporation, or partnership, only one initial EM actual loss loan can be made to the entity constituting the farming operation to cover the losses per disaster. However, an individual member, stockholder, or partner may obtain a separate EM actual loss loan to cover losses to a *separate farming operation* which the applicant conducts as an individual on a different farm tract.

(j) *Change in the form of an applicant.* A change in the form of an applicant between the time of a qualifying loss and the time an EM loan is closed does *not* make the applicant ineligible for EM loan assistance. (Examples of changes in form are as follows. An entity may split into its individual members or into more than one entity. One or more individuals may leave an entity. An individual may incorporate. A partnership may become a corporation, a cooperative, or another partnership. A corporation may become a partnership, a cooperative, or another corporation. A cooperative may become a partnership, a corporation, or another cooperative. Joint operators may become a partnership, a corporation, a cooperative or may split into individual members.) Such an applicant is eligible for EM loan assistance subject to *all* of the following limitations and qualifications:

(1) The applicant must meet all FmHA eligibility requirements at the time of loan closing.

(2) The applicant must *not* conduct an operation substantially larger in physical size than the operation at the time of the disaster.

(3) In the case of an entity applicant, all of the people who have an interest in the entity must have had an ownership interest (or an interest in which a security interest could be obtained) in the operation at the time of the disaster and/or must be heirs of those who had an ownership interest (or an interest in which a security interest could be obtained) in the operation at the time of the disaster. Heirs have to have been participating in the operation at the time the disaster occurred and have to be engaged in farming the operation at the time of loan approval.

(4) In the case of an individual applicant, that person must have had an ownership interest (or an interest in which a security interest could be obtained) in the operation at the time of the disaster and/or must be an heir of those who had an ownership interest (or an interest in which a security interest could be obtained) in the operation at the time of the disaster. An heir has to have been participating in the operation at the time the disaster occurred and has to be engaged in farming the operation at the time of loan approval.

(5) To determine the amount of an actual loss loan an applicant may receive, first calculate the actual loss suffered by the operation as it existed at the time of the disaster, in accordance with section 1945.63 of this Subpart. Then look at the individual applicant *or* the individual members, partners or stockholders of an entity applicant and determine each person's percentage of ownership interest (or interest in which a security interest could be obtained) in the operation as it existed at the time of the disaster. For an entity applicant, add the individual percentages together. Multiply the actual loss suffered by the operation as it existed at the time of the disaster by this percentage figure; the result is the amount of actual loss loan the applicant may receive. For example, if one partner withdraws from a four-partner partnership (each person owning a 25% interest), the remaining three partners are eligible for 75 percent of the actual loss suffered by the operation as it existed at the time of the disaster.

(6) The applicant may receive FmHA annual production and/or major adjustment assistance needed to conduct a sound farming operation in accordance with the loan purposes authorized in this Subpart.

(k) *Annual production and major adjustment loans.* For an applicant to be eligible for an annual production and/or major adjustment loan(s) the qualifying losses (as determined in accordance with section 1945.63 of this Subpart) and the actual loss must have had such an impact on the farming operation that an annual production and/or major adjustment loan(s) is actually needed to permit the applicant to continue the operation on a sound basis.

§ 1945.63 Determining qualifying losses, eligibility for actual loss loan(s) and the maximum amount of actual loss loan(s), annual production and major adjustment loan(s).

Disaster losses will be reported by applicants on Form FmHA 1945–22, "Certification of Disaster Losses," which states the physical and production losses suffered as the result of the qualifying disaster. The applicant will report, on Form FmHA 1945–22, total acres and actual yields for *all* crops planted and/or grown in the disaster year, and the number of *all* animal units and production per animal unit being maintained at the time of the disaster. This information will come from the applicant's own records or from ASCS records of acres grown and proven actual yields in the disaster year. Applicants will also report their previous 5-year production levels as set forth in subsection (a) of this section. This form will be completed and submitted to the county office with the application, as soon as the losses and/or damages can be accurately assessed. The information provided by applicants on Form FmHA 1945–22 will be the primary basis for FmHA's calculation of qualifying losses, eligibility for EM actual loss loan(s) based on production losses, and an applicant's maximum amount of actual loss loan eligibility. Therefore, applicants are required to certify, subject to penalties of law, that the accuracy and completeness of the information provided on Form FmHA 1945–22 can be supported by written records. Applicants will be asked to identify on that form one or more farming enterprises they consider basic to the success of their total farming operation, and in which they have suffered a loss. When an applicant's certified production loss claims seem unreasonable, they will be verified. Physical loss claims will be verified by requiring the applicant to funish evidence of ownership and proof of the property loss or damage. Proof of ownership could be by deeds, mortgages, financial statements, insurance policies, and the like. Proof of the loss or damage could be by the applicants' own pictures, written certification by other persons or, when practical, by visual inspections by FmHA employees.

(a) *Production losses.* (1) Applicants have several options under which their normal year's production may be reported and calculated for the farm currently being operated. (References herein to "County averages" is taken to be "State averages" when State averages are set in accordance with section 1945.54(a)(22) of this subpart).

(i) Applicants may elect to use their own accurate farm records of acres grown and yields obtained for all crops; and the number of all animal units and production per unit for all livestock being maintained at the time of the disaster, for the 5 years immediately preceding the disaster year.

(ii) Applicants may elect to accept county average yields per acre for crops and county average production per animal unit for livestock and livestock products which have been established as set forth in section 1945.54(a)(22) of this Subpart for the 5 years immediately preceding the disaster year. When this option is selected, applicants need provide only the number of acres and yield per acre for each crop grown and the production per animal unit produced for all livestock being maintained in the disaster year.

(iii) Applicants may elect to use applicant's ASCS records of acres grown and proven (actual) yields for crops grown in the 5 years immediately preceding the disaster year. For tobacco and other crops under acreage-pounding control, the normal year's production will be the pounds per acre as authorized by ASCS for the disaster year.

(iv) Applicants may elect to combine their own farm records and the ASCS records of acres grown and proven actual yields when neither the applicant nor ASCS can provide records of acres grown and proven (actual) yields for every crop grown in the 5 years immediately preceding the disaster year.

(v) Applicants may elect to combine the county average and the ASCS records of acres grown and proven (actual) yields when neither the county averages nor the ASCS can provide complete records for every crop grown in the 5 years immediately preceding the disaster year.

(vi) When none of the options in subparagraphs (a) (i), (ii), (iii), (iv), or (v) of this section can be used, applicants may be permitted to use combinations of their own records, ASCS records of acres grown and proven (actual) yields, and county averages provided:

(A) The applicant has been farming for fewer than 6 production years, or

(B) The applicant operated a different farm or conducted farming enterprises different from those conducted in the disaster year for one or more years of the 5 years prior to the disaster year.

(2) FmHA loan official(s) will complete Form FmHA 1945–26, "Calculation of Actual Losses."

(i) Production loss calculations will use the same established unit prices for the disaster year and the normal year in computing the dollar value of each enterprise. Unit prices will be established in accordance with subparagraph (a)(2)(iii) of this section. Production loss calculations will use those crop production yields and production per animal unit records authorized in accordance with section 1945.54(a)(22) and section 1945.63 of this Subpart.

(ii) Actual disaster year and normal year production information for only those enterprises in which a loss occurred will be transposed from Form FmHA 1945–22 for each crop grown in

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the disaster year and each livestock enterprise maintained at the time of the disaster, to the appropriate places on Form FmHA 1945–26. The FmHA official completing Form FmHA 1945–26 is responsible for verifying loss information provided by the applicant when there is any question concerning the accuracy of such information. Information obtained from ASCS on Form FmHA 1945–29 will be cross checked with information provided by the applicant on Form FmHA 1945–22. Any discrepancies will be checked out and the correct information will be recorded in the County Office case file. When the applicant's disaster loss is due to a reduction in *quality* that can be substantiated rather than due to a reduction in *quantity*, the applicant will be given credit for this by adjusting actual production downward enough to compensate for the quality loss.

(iii) The gross dollar amount of production losses will be computed for each basic part of the farming operation by calculating the value of the disaster year's production and subtracting that amount from the calculated production value in the normal year. Unit prices for agricultural commodities for the disaster used in these calculations will be established by the FmHA State Director from the current year's market price for the commodity involved if available, otherwise the prices will be for the calendar year immediately preceding the disaster year and distributed to all County Offices affected by the disaster. These prices (current or past calendar years) will be determined by averaging the market price for each commodity, on a countywide basis, if available, or on a Statewide basis.

If Statewide figures are not available, the State Director will consult with other agricultural agency representatives and agricultural leaders in the local area before establishing commodity prices. State Directors and Farmer Program Chiefs in adjoining States should consult each other before releasing the figures. These prices will be based on information provided by the State Crop and Livestock Reporting Service, the State Office of the SRS, USDA, or similar State or Federal agency or body. These prices will be established when EM actual loss loans are authorized and, once established, will not be changed for determining the production actual loss loan entitlement under that disaster authorization.

(iv) The amount of the actual production loss will be determined by subtracting all compensatory disaster payments which are related to the disaster and which have been received or will be received, *i.e.*, crop insurance claims settlements, ASCS disaster program payments or any other compensation *for thot enterprise* from the gross dollar amount of production losses (as determined in subparagraph (a)(2)(iii) of this section). For tobacco and other crops under acreage-poundage control the under produced pounds have a value since it can be sold or produced in future years. Therefore, the value of this under produced poundage must be subtracted from the loss. The locally established price will be used.

(v) The actual production loss for each basic part of the farming operation will be divided by the previously calculated normal year's gross income for that enterprise. This establishes the percentage reduction in production from normal for that enterprise. If the percentage loss in *any* basic part of the farming operation equals or exceeds 20 percent, the applicant is eligible for EM actual loss loan assistance.

(vi) Once eligibility is established, the total production loss sustained by the applicant and directly attributable to the disaster is computed by adding the actual dollar amount of production losses of *all* single enterprises, whether or not they constitute a basic part of the farming operation, and subtracting from this total all compensatory disaster payments received or to be received and the value of any under-produced pounds.

(vii) The maximum production loss loan is limited to *90 percent* of total actual production loss sustained by the applicant. A 10 percent drop in production from normal is not considered abnormal and applicants are expected to absorb their production losses to this extent.

(viii) Losses to pasture to be grazed by livestock are production losses and may be calculated by one of three methods as follows if approved by the State Director. The State Director will decide the method(s) that will be used throughout the State to calculate losses to pasture by issuance of a State supplement.

(A) The price per acre method. The price per acre method is used to calculate pasture losses in the following manner:

(*1*) Determine the normal year gross dollar value. To calculate this, multiply *the number of acres available to be grazed for the disoster year;* by *the established rental charge per acre per month* (this figure is established by the State Director in accordance with subparagraph (a)(2)(iii) of this section); by *the average number of months grazed per year during the highest 4 out of the preceding 5 years.*

(*2*) Determine the disaster year gross dollar value. To calculate this, multiply *the number of acres grazed during the disaster year;* by *the established rental charge per acre per month* (as determined in accordance with subparagraph (a)(2)(viii)(A)(*1*) of this section); by *the number of months the livestock were able to be grazed during the disaster year.*

(*3*) Subtract the disaster year gross dollar value (see paragraph (a)(2)(viii)(A)(*2*) of this section) from the normal year gross dollar value (see paragraph (a)(2)(viii)(A)(*1*) of this section) to determine the value of pasture loss suffered during the disaster year.

(B) The charge per head or animal unit method. The charge per head or per animal unit method is used to calculate pasture losses in the following manner:

(*1*) Determine the normal year gross dollar value. To calculate this, multiply *the number of animals or animal units grazed per month during the disaster year;* by *the established rental charge per animal or per animal unit per month* (this figure is established by the State Director in accordance with subparagraph (a)(2)(iii) of this section); by *the average number of months grazed per year during the highest 4 out of the preceding 5 years.*

(*2*) Determine the disaster year gross dollar value. To calculate this multiply *the number of animals or animal units grazed per month during the disaster year;* by *the established normal rental charge per animal or per animal unit per month* (as determined in accordance with subparagraph (a)(2)(viii)(B)(*1*) of this section); by *the number of months grazed during the disaster year.*

(*3*) Subtract the disaster year gross dollar value (see subparagraph (a)(2)(viii)(B)(*2*) of this section) from the normal year gross dollar value (see subparagraph (a)(2)(viii)(B)(*1*) of this section) to determine the value of pasture loss suffered during the disaster year.

(C) The forage equivalent method. The forage equivalent method is used to calculate pasture losses in the following manner:

(*1*) Determine the normal year gross dollar value. To calculate this, multiply the *number of acres grazed during the disoster year;* by *the established price per pound or ton* (this figure is established by the State Director in accordance with subparagraph (a)(2)(iii) of this section); by *the average number of pounds or tons of forage equivalent produced per acre per year during the 4 out of the preceding 5 years for forage of the type being used in this calculation.* (The State Office will set forth the forage equivalent values to be used or the methodology to be used to derive this value in a State supplement. This information may be set forth on a countywide or statewide basis. The State Director may contact the State's Extension Service or other knowledgeable sources to assist in establishing the forage equivalent determination).

(*2*) Determine the disaster year gross dollar value. To calculate this, multiply *the number of acres grazed during the disaster year;* by *the established price per pound or ton* (this figure is established by the State Director in accordance with subparagraph (a)(2)(viii)(C)(*1*) of this section); by *the number of pounds or tons of forage equivalent produced for forage of the type being used in this calculation produced in the disaster year.* (See subparagraph (a)(2)(viii)(C)(*1*) of this section for further information.)

(*3*) Subtract the disaster year gross dollar value (see subparagraph (a)(2)(viii)(C)(*2*) of this section) from the normal year gross dollar value (see subparagraph (a)(2)(viii)(C)(*1*) of this section) to determine the value of pasture loss during the disaster year.

(ix) When a crop cannot be planted and the applicant chooses to treat the loss as a production loss, the loss will be calculated as set out in the paragraph. When a crop can be only partially planted due to a disaster *or* when perennial crops (such as fruits or nuts) already growing cannot be produced or harvested due to a disaster, the loss will be considered a production loss. Such loss will be calculated as follows: Add all income that is derived from the enterprise to the variable and fixed costs which are not incurred because of the disaster. (The cost figure will be derived from current crop enterprise budgets prepared by State Agricultural Extension Service economists, based on normal farming conditions in the area.) Subtract this figure from the value of the normal year's production. The resulting figure is the gross dollar amount of production loss.

(x) When a crop is planted and completely destroyed by a disaster, a yield of "zero" may be shown on Form FmHA 1945–22 for the disaster year only if no part of the crop could be harvested and no substitute crop could be planted and harvested. If a substitute crop is planted and harvested during the same crop year, a yield of "zero" should be shown for the original crop on Form FmHA 1945–22. On Form FmHA 1945–2, the dollar value of from the substitute crop must be subtracted from the dollar value of the normal year's production. When figuring the actual dollar amount of production losses, subtract the normal costs of harvesting and marketing which were not incurred.

(xi) When a crop cannot be planted, an applicant may treat the loss as a production loss (see subparagraph (a)(2)(ix) of this section) or as a physical loss (see subsection (b) of this section).

(xii) Eligibility for production losses to livestock enterprises will usually be based on loss of feed crops to be fed and pasture to be grazed; and such losses should be calculated as crop losses rather than livestock losses. A livestock enterprise must be a basic part of the farming operation in order for losses to feed crops to be considered as a basic enterprise in determining eligible qualifying production losses.

(xiii) Losses to crops to be fed to livestock will be established by determining the normal year's gross dollar value of feed produced for livestock and subtracting the disaster year's gross dollar value of feed produced for livestock from this figure. The difference establishes the disaster year's gross dollar loss for crops to be fed to livestock. The gross value of feed produced for livestock is derived by multiplying the number of crop acres to be fed to livestock by the yield per acre by the unit price.

(xiv) When an applicant elects to sell livestock at an earlier date or lighter weight than usual rather than purchase feed to replace that which was lost as a result of the disaster, the difference between what the sale price would have been if the livestock had been fed for the normal period and the disaster year's sale price may *not* be claimed as a loss.

(xv) Claims of production losses from the applicant will be verified by FmHA when the applicant's claims appear to be unreasonable.

(xvi) Production losses for orchard crops (fruit or nut) will be only for the crop loss due to the qualifying disaster and determined in accordance with paragraph (a)(2) of this section.

(b) *Physical losses.* (1) In order to qualify for EM loan assistance, the damaged or destroyed physical property must be essential to the successful operation of the farm and if not repaired or replaced, the farmer would be unable to continue operations on a reasonably sound basis. The financing necessary to recover from the physical loss must be actually needed to permit the applicant to continue the operation.

(2) The claimed value of all physical losses due to disaster damage or destruction must be supported by written estimates for the necessary repair or replacement requested.

(3) Physical loss loan funds can be used to pay for only contracted or hired labor and materials and supplies purchased. Labor, machinery, equipment, and materials contributed by the applicant or borrower will not be chargeable to the cost of necessary repair and replacement.

(4) Damage to or destruction of nonessential buildings, structures or other items will not be repaired or replaced with EM physical loss loan funds. Any insurance compensation received or to be received for such losses will be considered as compensation for losses to essential farm buildings, structures and other items which need to be repaired or replaced.

(5) The maximum physical loss loan(s) will be determined by subtracting all insurance claims and any other compensation received or to be received for physical disaster losses from the value of all actual physical losses caused by the disaster.

(6) The actual physical loss equals the market value at the time of the disaster for the following items lost or destroyed by or as a result of the disaster:

(i) Basic livestock.

(ii) Livestock products.

(iii) Harvested or stored crops.

(iv) Supplies on hand.

(7) The actual physical loss for farm dwellings to be used by the operator and existing labor is the lesser of:

(i) The market value of the property at the time it was damaged or destroyed; or

(ii) The amount required to repair the dwelling or replace it with one of like quality and size which will meet all applicable code requirements and which will provide permanent, adequate, decent, safe, sanitary, and modest living quarters.

(8) The actual physical loss for farm service buildings and farm real estate other than buildings is the amount required to repair the property or replace it with a building or property of like quality and capacity which will meet all applicable code requirements and which will adequately meet the needs of the farming operation. This amount cannot exceed the market value of the property at the time of the disaster.

(9) If, in addition to the maximum physical loss loan made under this Subpart, an additional loan must be made to repair, restore or replace damaged or destroyed essential farm property, it will be processed as a major adjustment loan.

(10) The actual physical loss for income-producing trees (fruit or nuts) is the cost of removing the damaged or

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destroyed trees, cleaning debris and preparing the land for replanting, plus the cost of suitable replacement trees and other expenses necessary to reestablish income-producing trees. Losses will not be determined by establishing a value for the trees destroyed or damaged. Any salvage value will be deducted from the loss. The applicant may choose to replace the damaged or destroyed trees with a different enterprise and may use actual loss loan funds for that purpose.

(11) The actual physical loss to trees (grown for timber) will be determined by establishing the value of trees less any salvage value. This estimate of value must be determined by a recognized forester who will cruise the timber and establish the value of the destroyed and damaged trees. The applicant may choose to replace the damaged tree enterprise with a different enterprise and use the actual loss loan funds for that purpose. Those applicants whose major farming enterprises are other than tree farming, but who have a wood lot that has been damaged, will have their tree losses considered as physical losses in the same manner as set forth for tree farms.

(12) The actual physical loss for crops or pasture is the cost of cleaning debris, preparing the land for replanting, seed, fertilizer, and other expenses necessary to reestablish the crops or pasture. These costs can exceed the market value of the crops or pasture at the time of the disaster.

(13) When a crop cannot be planted during the disaster year due to the disaster and the applicant chooses to treat the loss as a physical loss, the actual physical loss is limited to the cost of land preparation, other expenses incurred to the date of the disaster for crops that could not be planted, and a pro rata share of the total operation's fixed costs such as rent, taxes, and insurance. The applicant must provide an itemized list of all the claimed expenses incurred in the disaster year for those enterprises for which disaster losses are claimed. This list must be signed by the applicant. The amount of an actual loss loan cannot exceed the total itemized expenses listed by the applicant.

(14) EM actual loss loans will not be made to flood and mudslide victims to repair or replace damaged or destroyed farm dwellings or farm service buildings and their contents in areas where "National Flood Insurance" is available, except as authorized in Subpart B of Part 1806 of this Chapter (FmHA Instruction 426.2).

(15) When an applicant has *only housing* losses and is eligible for an SBA physical loss loan in an area where SBA physical loss loans are available, only SBA will make the loans for restoration or replacement of farm housing.

(c) *Compensation for losses.* Compensation for losses from a disaster through insurance, government disaster program benefits or any other disaster program relief received by an EM loan applicant, *which does not have to be repaid,* will reduce the applicant's actual loss by the amount of such compensation, and thus will be considered in determining the applicant's eligibility for EM loan assistance and the maximum amount of actual loss loan entitlement. The amount of any disaster program benefits received from ASCS, including the Emergency Livestock Feed Program (ELFP), Emergency Conservation Program (ECP), and Disaster Program payments *will* be considered as compensation for losses (ASCS Deficiency Payments are not to be considered as Compensation). The amount of any SBA physical disaster *loan* assistance received for the same disaster, based on physical and/or production losses to the same property *will not* be considered as compensation in determining the applicant's eligibility, but *will* be deducted from the applicant's actual disaster losses in determining the applicant's maximum actual loss loan entitlement.

(d) *Maximum actual loss loan.* This amount will be limited to the amount necessary to restore the farm to pre-disaster condition; however, this amount will not exceed the sum of the maximum production loss (subsection (a) of this Section) and the maximum physical loss (subsection (b) of this Section) or *$500,000* whichever is the lesser. If the applicant has also received an SBA disaster loan for the same losses, the sum of the actual loss EM loan and the SBA disaster loan cannot exceed *$500,000.* Indebted EM loan borrowers could receive later actual loss loans not to exceed *$500,000* for each additional qualifying disaster. However, for disasters occurring on or before September 30, 1978, the amount of the actual loss loan cannot exceed *$250,000* or the amount of the actual loss, whichever is the lesser.

§§ 1945.64–1945.65 [Reserved]

§ 1945.66 Loan purposes.

EM loans may be made for the following purposes:

(a) *Loans for actual losses.* (1) The amount of the maximum actual loss loan(s) in addition to the limitations contained in § 1945.63(d) of this Subpart, is further limited to the actual dollar loss, or the actual amount of essential family, farm, and nonfarm enterprise credit that the applicant needs to carry on normal operations, *whichever is the lesser.* However, actual loss loan funds will not be used to finance a nonfarm enterprise, unless such enterprise is needed to support a reasonable standard of living for the family. The use of the loss loan funds will be identified in the farm and home plan so that a determination can be made as to whether such loan(s) covered all or a portion of the actual dollar loss. Actual loss loan funds not needed immediately will be scheduled for later disbursement through the Finance Office "Loan Disbursement System". After each actual loss loan is made the resulting operation must be one which is not substantially larger (due to the direct or indirect use of loan funds) than the pre-disaster operation, does not realistically project a net farm income (gross income less annual farm operating expenses) substantially greater than that of the normal operation conducted before the disaster, and is financially sound.

(2) Actual loss loan funds may be used for any of the following:

(i) Repair or replacement of disaster damaged or destroyed farm property;

(ii) Payment of farm operating debts incurred during the disaster year;

(iii) Payment of current capital expenditure loan installments, e.g., for chattel, livestock and real estate debt payments;

(iv) Payment of essential family living expenses;

(v) Payment of current taxes due;

(vi) Payment of other current debts;

(vii) Payment on delinquent debts;

(viii) Any major adjustment loan purpose; however, refinancing of debts will be restricted to those debts (in whole or in part) that must be refinanced to provide a sound basis for making the EM actual loss loan;

(ix) Financing all or a part of the next year's production cost; and

(x) Payment of reasonable expenses customarily paid when obtaining, planning, and closing an actual loss loan, such as fees for legal, architectural and other technical services which are required to be paid by the borrower, and which cannot be paid from other funds. Loan funds also may be used to pay the borrower's share of social security taxes for labor hired by the borrower in connection with land and building development. It is not intended that this subparagraph be interpreted to include fees charged applicants by management consultants and other professionals for preparation of EM loan dockets, including farm and home plans and

other FmHA forms used in processing such loans.

(b) *Annual production purposes.* (1) When more than one annual production loan is made during the same production year, the loans will be considered a single loan. Annual production loans for operating purposes may be made by:

(i) Payment of essential annual production expenses, including annual installments of principal and interest on debts.

(ii) Payment of essential family living expenses.

(iii) Refinancing debts when the amount loaned can be expected to be repaid from income received from crops or livestock produced during the next succeeding production year.

(2) After the initial EM loan for annual production purposes is made, subsequent EM annual production loans, for subsequent production years, may be made until the borrower is able to return to normal credit sources or for the periods contained in subparagraphs (b)(2)(i) and (ii) of this section, whichever is the shorter period.

(i) Borrowers with loans outstanding for any EM purpose on or before December 15, 1979, may receive subsequent EM loans for annual production purposes, provided no more than five (5) annual subsequent EM loans are made per disaster and provided they are made within six (6) full calendar years after the disaster authorization date. This includes all EM borrowers whose EM loan was approved on or before December 15, 1979.

(ii) Borrowers not having outstanding EM loans on or before December 15, 1979, may receive subsequent EM loans for annual production purposes, provided no more than two (2) annual subsequent EM loans are made per disaster and provided they are made within three (3) full calendar years after the disaster authorization date.

This also includes borrowers indebted who are affected by a new disaster, and who do not have entitlement for more than two years under a previous disaster.

(3) After each annual production loan is made the resulting operation must be one which is not substantially larger (due to the direct or indirect use of loan funds) than the pre-disaster operation, does not realistically project a net farm income (gross income less annual farm operating expenses) substantially greater than that of the normal operation conducted before the disaster, and is financially sound.

(4) The total EM annual production loan indebtedness owed by a borrower cannot exceed the annual production and major adjustment indebtedness ceiling established in paragraph (d) of this section.

(c) *Major adjustment loans.* Major adjustment loans can be made only to assure that applicants will have a reasonable prospect of maintaining a sound farming operation after they have sustained severe losses as a result of a qualifying disaster. A major adjustment loan(s) must be necessary to permit the applicant to continue in operation on a sound basis. Major adjustment loans must assist disaster victims in sustaining or rehabilitating their normal operations until such time as they are able to return to other sources of credit. These loans can be used for any crop or livestock changes needed to achieve these objectives and to overcome financial difficulties caused by the disaster. The resulting operation must be one which is not substantially larger (due to the direct or indirect use of loan funds) than the pre-disaster operation, does not realistically project a net farm income (gross income less annual farm operating expenses) substantially greater than that of the normal operation conducted before the disaster, and is financially sound.

(1) The total major adjustment loan indebtedness owed by the borrower cannot exceed the annual production and/or major adjustment indebtedness ceiling established in subsection (d) of this section.

(2) Real estate purposes (Subtitle A). The following are authorized real estate purposes, and major adjustment loan funds may be used to:

(i) Purchase real estate necessary to (these funds may be used in conjunction with loss funds):

(A) Replace land that cannot be restored due to the disaster;

(B) Establish a new site for farm dwellings and service buildings so that the applicant can relocate outside of a flood or mudslide prone area;

(C) Provide land and water resources necessary to make a viable family farming operation; and

(D) Replace land necessary to restore an effective operation which was liquidated as a result of the disaster before an EM loan could be made.

(ii) Construct, buy, or improve buildings and facilities needed on the applicant's farm, including:

(A) The construction of an essential farm dwelling and service buildings of modest design and cost, including facilities and structures for nonfarm and recreational enterprise uses or fish farming such as docks, fish hatcheries, shooting blinds, refreshment or marketing stands, processing or assembly plants, sales buildings, repair shops, lodging facilities, trailer parks, picnic areas, target ranges, tennis courts, shuffleboard courts, golf driving ranges, campsites and modest rental housing.

(B) The improvement, alteration, repair, replacement, relocation, or purchase and transfer of such essential dwellings and service buildings, facilities, structures and fixtures that become part of the real estate or customarily pass with the farm when it is sold. This includes pollution control and energy saving devices.

(C) The purchase and/or installation of water and sewage systems and other equipment, including pollution control and energy saving devices necessary to operate a farm and/or a nonfarm enterprise, provided the items upon installation become part of the real estate, or customarily pass with the farm when it is sold.

(iii) Provide land and water development, pollution control and energy saving measures, acquire water supplies and rights, and promote the use and conservation essential to the operation of the farm and any nonfarm enterprise facilities. This includes providing fencing, drainage and irrigation facilities, basic applications of lime and fertilizer, and facilities for land clearing. This also includes establishing approved forestry practices, fish ponds, trails and lakes, improving orchards, and establishing and improving permanent hay or pasture. Sources of water may be located outside the land owned provided appropriate rights or easements are obtained to ensure that the water and rights will pass with the farm when it is sold. The funds for land and water development may include the costs of machinery and equipment needed to do the development only when the total cost of the development and machinery or equipment would not exceed the cost of contracting the work or hiring the labor and machinery needed to do it. Loan funds may be used to pay that part of the cost of facilities, improvements, and "practices" which will be paid for in connection with participation in such programs as the Agricultural Conservation or Great Plains programs only when such costs cannot be covered by purchase orders or assignments to material suppliers or contractors. If loan funds are advanced and the portion of the payment for which the funds were advanced is likely to exceed $1,000, the applicant will assign the payment to FmHA.

(A) Funds may be used for development costs on land owned with defective title provided:

(*1*) There is adequate security for the loan,

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(2) The tract with defective title is not included in the appraisal report, and

(3) Not more than $25,000 is loaned to an applicant to use for development costs on a tract with defective title.

(B) Funds may be used for real estate improvements or repairs on land leased by the applicant if all of the following conditions are met:

(1) EM loans will not be needed year after year to make substantial real estate improvements;

(2) The applicant is likely to continue to operate the farm for a sufficient period of time and under such terms as will yield a reasonable return on the investment;

(3) The applicant has reasonably secure tenure for a long enough period to enable the tenant to realize adequate benefits to justify expenditures;

(4) A written lease is obtained which provides for payment, to the tenant or assignee, for any unexhausted value of the improvement if the lease is terminated;

(5) There is adequate security for the loan; and

(6) Not more than $50,000 is loaned to a tenant for real estate improvements, repairs, or for refinancing unsecured debts clearly incurred for such purposes.

(iv) Refinance secured and unsecured debts, including FmHA debts subject to all of the following:

(A) The applicant's present creditors will not furnish credit, even with an FmHA guaranteed loan, at rates and terms the applicant can meet.

(B) When applicants request refinancing of loans owed normal lenders, such as banks, Production Credit Associations, Federal Land Banks or insurance companies, the County Supervisor will obtain early in the loan processing such lender's determination with respect to furnishing the applicant the additional credit necessary to accomplish the objectives of the EM loan and reestablish the borrower's operations on a sound basis within the borrower's ability to pay.

(C) Major adjustment loans *will not* normally be made to refinance intermediate and long-term debts. Only existing delinquent installments, plus the next installment which the applicant cannot pay, can be refinanced. In unusual circumstances, when the above refinancing is essential to enable the applicant to conduct a sound farming operation the above provisions may be waived. Ordinarily, in the case of old unsecured debts or inadequately secured debts, applicants will be requested to contact their creditor(s) and make every effort to obtain a substantial compromise reduction of such debts before they are refinanced.

(D) The County Supervisor must contact the appropriate lender; verify and document, either in the running record or by letter from the lender, the need to refinance secured debts and major unsecured debts; and determine the reason(s) the lender will not carry the debt, even with an FmHA guarantee. The unpaid balance of the debts to be refinanced will also be verified.

(E) Major adjustment loans for refinancing debts which are secured by real estate at the time of application for FmHA EM loan assistance will not exceed $300,000 principal indebtedness, regardless of the number of qualifying disasters.

(v) Pay reasonable expenses customarily paid when obtaining, planning, making and closing a loan made for real estate purposes, such as fees for legal, architectural and other technical services, which are required to be paid by the applicant, and which cannot be paid by the applicant from other resources. Loan funds may also be used to pay the borrower's share of Social Security taxes for labor hired by the borrower in connection with land and building development. It is not intended that this subparagraph be interpreted to include fees charged applicants by agricultural management consultants and other professionals for preparation of EM loan dockets, including farm and home plans and other FmHA forms used in processing such loans.

(vi) Finance a nonfarm enterprise when it will provide another source of necessary income even though the owned acreage for such enterprise is not physically located on the farmland.

(vii) Pay the first year's premium for required insurance on buildings on the property which are to serve as security for the loan. Buildings will be insured in accordance with subpart A of Part 1806 of this Chapter (FmHA Instruction 426.1), except when the appraisal report shows that the land alone adequately secures the loan. However, the applicant will be encouraged to take property insurance on essential buildings to protect the applicant's own interest. Borrowers eligible for insurance under the National Flood Insurance Act of 1968 will be advised of its availability in accordance with Subpart B of Part 1806 of this Chapter (FmHA Instruction 426.2).

(3) Operating purposes (Subtitle B). The following are authorized operating purposes and loan funds that may be used to:

(i) Purchase machinery and equipment, livestock, poultry, fur bearing and other farm animals, aquatic organisms, worms, birds, tools, bees, and supplies; or to purchase an individual's or entity's undivided interest in such items; and to pay costs incidental to reorganizing the farming system which will provide for a sound operation.

(ii) Purchase and repair essential home equipment and furnishings, pay for family living expenses and pay for home equipment repairs required by the applicant's family to sustain itself in a reasonably satisfactory manner.

(iii) Refinance secured and unsecured operating type debts in whole or in part, including existing FmHA debts.

(iv) Purchase milk base, either with or without cows, when such action is necessary to assure the borrower a satisfactory market for dairy production.

(v) Purchase grazing licenses, permits, or rights which can be validly sold and transferred.

(vi) Augment and improve existing water supplies to alleviate the adverse effects of drought and other natural disasters.

(vii) Purchase membership and stock in farm purchasing, farm marketing, or farm service-type cooperative associations, including grazing associations.

(viii) Pay a secured creditor an amount not to exceed 20 percent of the appraised market value of the essential farm and nonfarm equipment under prior lien to that creditor, or 20 percent of the amount owed to such creditor, whichever is the lesser.

(ix) Purchase a franchise, contract, or privilege when essential to the operation of the planned enterprise.

(x) Make a partial payment on crop storage and drying facilities when the Commodity Credit Corporation (CCC), through the ASCS, is providing the rest of the credit under the CCC Farm Storage and Drying Equipment Loan Program.

(xi) Pay reasonable expenses customarily paid when obtaining, planning and closing a loan made for operating purposes, i.e., fees for legal, architectural and other technical services, which are required to be paid by the applicant, and which cannot be paid by the applicant from other resources. Loan funds may also be used to pay the borrower's share of Social security taxes for the labor hired by the borrower in connection with land and building development. It is not intended that this subparagraph be interpreted to include fees charged applicants by agricultural management consultants and other professionals for preparation of EM loan dockets including farm and home plans and other FmHA forms used in processing such loans.

(d) *Annual production and major adjustment loan indebtedness ceiling.* The total annual production and major adjustment loan(s) indebtedness owed by the borrower, insured or guaranteed, cannot exceed $1,500,000 principal indebtedness at any time regardless of the number of disasters under which an applicant may qualify.

However, borrowers indebted for any EM loan on or before December 15, 1979, may receive subsequent EM annual production loans in accordance with the provisions of subsection (b) of this section in amounts necessary to continue their normal farming operation(s) without regard to this indebtedness ceiling.

(e) *Relationship with Economic Emergency (EE) loans.* When an EM loan for annual production or major adjustment purposes is made at the same time as or after an EE loan, subtract the amount of the EE loan (outstanding principal only) from $1,500,000; the result is the maximum loan which can be made for EM annual production or major adjustment purposes. However, borrowers indebted for any EM loan on or before December 15, 1979 will *not* have the amount of the EE loan subtracted from any EM subsequent annual production loan.

§ 1945.67 Loan limitations and special provisions.

(a) *Applicants involved in more than one operation.* Loans to applicants involved in more than one farming operation will be considered as follows:

(1) If an applicant, in addition to the applicant's own farm operation, owns or controls *50 percent or more* of another farm operation(s), and the applicant is actively engaged in both operations, both the applicant and the other farm operation(s) may be considered for separate loans provided the combined total does not exceed the loan limitations as set out in sections 1945.63(d), and 1945.66(d) of this Subpart.

(2) If the applicant is a cooperative, corporation, or partnership and any principal member, principal stockholder, or principal partner owns or controls *50 percent or more* of another farm operation(s) and is actively engaged in both operations, both the applicant entity and the other farm operation(s) may be considered for separate loans provided the combined total does not exceed the loan limitations as set out in sections 1945.63(d) and 1945.66(d) of this Subpart.

(3) If an applicant, including any principal member, principal stockholder, and principal partner who, in addition to the applicant's own farm operation, owns or controls less than 50 percent of another farm operation(s), and is actively engaged in a *separate* farm operation(s), the applicant and the other farm operation(s) will be considered as separate entities for application of the loan limitations.

(4) If the applicant described in paragraphs (a) (1), (2), and (3) of this section is deemed to be ineligible, such determination shall not preclude the other operation(s) in which the applicant holds an interest from being considered for an EM loan(s).

(b) *Insured and guaranteed loan making.* An insured EM loan will not be made simultaneously wilh a guaranteed EM loan or vice versa.

(c) *Refinancing guaranteed loans.* An insured loan will not be made to refinance a guaranteed loan, except when the following conditions are met:

(1) The circumstances causing the need to refinance were beyond the borrower's control.

(2) Refinancing is in the best interest of the Government.

(d) *Subsequent EM loans.* Subsequent (additional) EM loans may be made for the same purposes and under the same conditions as an initial EM loan.

(e) *New appraisals.* New "Appraisal of Real Estate Reports" are not required if the appraisal report in the file is not over two years old, unless the approval official requests a new appraisal report, or unless significant changes in the market value of real estate have occurred in an area within the two year period. Any changes in the value of real estate or chattel security will be recorded, dated and initialed by the certified appraiser on the appropriate appraisal reports in the file.

(f) *Record keeping.* EM borrowers receiving or indebted for EM loans of $100,000 or more are required to keep *hard farm records* on an approved format or use an accountant or a farm management service computer system as long as they are indebted for EM loans. EM borrowers are required to retain these records for three years. (See Subpart B of Part 1924 of this Chapter.)

(g) *Disbursement of loan funds.* Loan funds (either actual loss, annual production, or major adjustment) which will not be disbursed for specific purposes at loan closing will *not* be requested in the initial request for funds from the Finance Office. The "Loan Disbursement System" will be used to make funds available when they are actually needed. See section 1945.89 (a)(8) for instructions on the use of supervised bank accounts.

§ 1945.68 Rates and terms.

(a) *Interest rates.* Interest on the initial advance will accrue from the date of the promissory note. Interest on other advances will accrue from the date of the loan check for each such advance. Interest rates are specified in Supart A of Part 1810 of this Chapter (FmHA Instruction 440.1, Exhibit B, available at any FmHA office.)

(b) *Terms of loans.* Loans will be scheduled for repayment at such time as the FmHA approval official may determine, consistent with the purpose of and need for the loan, and in accordance with the useful life of the security and the repayment ability of the applicant, as reflected in the completed Form FmHA 431-2, "Farm and Home Plan." There must be at least an interest installment scheduled every year.

(1) *Operating purposes (Subtitle A).* Actual losses of crops, livestock and chattels; annual production; and major adjustment (Subtitle B) loans will be scheduled for repayment as follows:

(i) Terms for actual loss loans for operating purposes under section 1945.66 (a) or for major adjustment Subtitle B purposes under section 1945.66 (c)(3) of this Subpart will be for periods not to exceed 7 years. Loans may be scheduled for a longer repayment period if the FmHA approval official determines that the needs of the applicant justify a longer term. Such longer period may be approved as warranted, but cannot exceed 20 years.

This longer repayment period will be used only when the Farm and Home Plan projections indicate the applicant would be unable to repay the loan in a shorter period, taking into consideration rescheduling possibilities. The reason(s) that a term longer than 7 years is given must be documented in the county office case file.

Generally, real estate will be needed as security when the longer repayment period is authorized. When the longer term is used, rescheduling is *not authorized* to extend beyond 20 years from the date of the original note.

(ii) Loans made for annual recurring production expenses under section 1945.66(b) of this Subpart, or for payment of bills incurred for such purposes for the operating or crop year being financed, will be scheduled for repayment when the principal income from the year's operations is normally received, and will be repaid over an appropriate term consistent with this principle. *However,* the initial loan for annual recurring production purposes may be scheduled for repayment for a period up to 7 years, if additional

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security other than crops can be obtained.

(iii) Loans made to purchase or produce feed for productive livestock or livestock to be fed for the market, or to pay bills incurred for such purposes for the crop year being financed, will be scheduled for repayment when the principal income from the sale of such livestock or livestock products is planned to be received.

(iv) When conditions warrant, installments may vary in amount. However, the final installment will not be larger than the amount which can be expected to be refinanced by other agricultural lenders or be repaid within a rescheduled period of not to exceed 7 years. The applicant must be advised before the loan is closed that FmHA will review each case at the end of the initial loan term to determine if rescheduling is warranted. There is no obligation for FmHA to continue with the borrower after the expiration of the initial loan term.

(2) *Real estate purposes.* Loans made for actual losses to real estate and loans made for major adjustment (Subtitle A) purposes (section 1945.66(c)(2) of this Subpart) will normally be scheduled for repayment in not to exceed 30 years. Loans may be scheduled for a longer repayment period if the FmHA approval official determines that the needs of the applicant justify a longer repayment period. Such period may be approved as warranted but cannot exceed 40 years. The longer repayment period will only be used when the applicant would be unable to repay the loan in a shorter period. The reasons the longer period is given must be documented in the county office case file.

(3) *Repayment terms when debts are refinanced.* When secured or unsecured debts are refinanced with a major adjustment loan, the type of basic security taken will determine the terms and interest rate charged.

(i) When basic security is other than real estate, the loan may be scheduled for repayment in accordance with paragraph (b)(1) of this section and the Subtitle B purpose interest rate will be charged.

(ii) When real estate will serve as basic security, the loan may be scheduled for repayment in accordance with paragraph (b)(2) of this section and the Subtitle A purpose interest rate will be charged.

(c) *Consolidation, rescheduling, reamortization and deferral.* (1) *General requirements.* When the loan approval official determines that consolidation, rescheduling, reamortization, or deferral will assist in the orderly collection of an EM loan, the loan approval official may take such action. The requirements of this paragraph apply when a new loan is being made. If only existing loans are involved and no new loan is being made, see Subpart A of Part 1951 of this Chapter.

(i) When deferring, consolidating or rescheduling EM loans made for operating purposes, the requirements set out in Subpart A of Part 1951 of this Chapter, sections 1951.33 (b)(1) through (b)(6) must be met.

(ii) When deferring or reamortizing EM loans made for real estate purposes, the requirements of Subpart A of Part 1951 of this Chapter, section 1951.40(b) that apply to EM loans must be met.

(2) *Consolidation and rescheduling.* EM loans made for operating purposes may be consolidated or rescheduled subject to the conditions set out in Subpart A of Part 1951 of this Chapter, sections 1951.33 (d)(1) through (d)(5) and (d)(7) that apply to EM loans.

(3) *Reamortization.* Existing EM loans made for real estate purposes may be reamortized when a new EM loan is made subject to the conditions set out in Subpart A of Part 1951 of this Chapter, sections 1951.40 (b)(1)(i) through (b)(1)(iii) that apply to EM loans.

(4) *Deferral.* Installments on EM loans, including loans which are consolidated, rescheduled or reamortized may be deferred.

(i) When deferring installments on EM loans made for operating type purposes, the requirements set out in Subpart A of Part 1951 of this Chapter, section 1951.33 (e)(1) must be met.

(ii) When deferring installments on EM loans made for real estate purposes, the requirements set out in Subpart A of Part 1951 of this Chapter, section 1951.40 (b)(2) must be met.

(iii) Deferred installments on EM loans made for operating type or real estate purposes should be scheduled and repaid in accordance with Subpart A of Part 1951 of this chapter, sections 1951.33 (e)(2)(i) through (e)(2)(iv).

(5) *Terms.*—(i) *Consolidation and rescheduling.* All EM loans made for Subtitle B (operating) purposes will be repaid over a period consistent with the borrower's repayment ability, but not in excess of 7 years from the date of the consolidation or rescheduling except in special cases authorized in paragraph (b)(1) of this section, where a longer term is needed. Initial EM loans for operating type purposes may be rescheduled for up to 20 years from the date of the original note.

(ii) *Reamortization.* Existing EM loans made for real estate purposes may be reamortized in accordance with section 1951.40 (c)(1) of Subpart A of Part 1951 of this Chapter.

(6) *Interest rates.* The interest rates for consolidated, rescheduled, and reamortized loans are as follows:

(i) For consolidated, reamortized, or rescheduled *non-actual loss* loans, the current rate specified in Subpart A of Part 1810 of this Chapter (FmHA Instruction 440.1, Exhibit B, available in any FmHA office) at the time of consolidation, reamortization or rescheduling will apply.

(ii) For reamortized or rescheduled *actual loss loans,* the interest rate will not be changed from that in the original note.

(7) *Processing consolidation, rescheduling, and/or deferment.* These functions will be performed in accordance with the FMI to Form FmHA 1940–17, "Promissory Note."

(8) *Disposition of promissory notes.* The original and County Office copy of all notes that are consolidated, rescheduled, reamortized or deferred will be stamped "Consolidated," "Rescheduled," "Reamortized," or "Deferred," as appropriate, by the County Office. The original note will be filed with Form FmHA 452–2, "Reamortization and/or Deferral Agreement," when appropriate, and the copy filed in the borrower's case file. When consolidated, rescheduled, reamortized or deferred notes have been paid in full or otherwise satisfied, the notes will be handled in accordance with the provisions of Subpart A of Part 1951 and of Part 1864 (FmHA Instruction 456.1) of this Chapter.

(d) *Graduation.* Borrowers will be required to graduate when FmHA determines they are able to obtain their needed credit from conventional sources. All borrowers will be advised that they will be reviewed for graduation periodically in accordance with the graduation procedure in Part 1865 of this Chapter (FmHA Instruction 451.8, a copy of which is available in any FmHA County Office). EM borrowers will be reviewed for graduation three (3) years after their initial EM loan is made and every two (2) years thereafter, until graduation is achieved or the EM indebtedness is paid in full. Applicants who cannot get credit elsewhere will be advised during loan processing and again at loan closing that they will be required to refinance at any time when other satisfactory credit is available to them, even though their loans have not fully matured. Applicants who can get credit elsewhere will be advised during loan processing and against loan closing that they will be required to refinance at any time after the initial 3 year waiting period when other satisfactory credit is available to them, even though their loans have not fully matured.

§ 1945.69 Security requirements.

(a) *Security.* (1) The County Supervisor is responsible for seeing that adequate and proper security is obtained and maintained, and that the security instruments have been properly executed and recorded to protect the interest of the Government.

(2) Except for the modifications contained in paragraph (d)(1) of this section, security must be of such a nature and extent that repayment of the loan is reasonably assured, considering the applicant's managerial ability, soundness of the operation, and projected earnings. When a major adjustment loan for real estate purposes is made, the security will be not less than the best lien obtainable on all farm real estate and, when all other real estate security has been considered and found to be insufficient, the best lien obtainable on farm personal property will also be taken. Security for loans may include, but is not limited to the following: livestock, livestock products, crops, land, buildings, machinery, equipment, furniture, fixtures, inventory, accounts receivable, cash or special cash collateral accounts, personal and corporate guarantees, marketable securities, and cash surrender value of life insurance. Security may also include assignments of leases or leasehold interests, revenues, patents, and copyrights. In unusual cases, the loan approval official may require a co-signer or a pledge of security by a third party. Generally, a pledge of security in lieu of a co-signer is preferable.

(3) A lien will not be taken on property that cannot be made subject to a valid lien, nor will a lien be taken on subsistence livestock, household goods, and small equipment such as handtools, power lawn mowers, and other items of like type not needed for security purposes. A lien on feed crops does not have to be taken if the crops produced by the borrower are used to feed livestock, other than livestock being fed for market, and the loan is otherwise well secured.

(4) When insured and guaranteed loans are involved to the same borrower, separate security must be clearly identified for both the insured and guaranteed loans.

(b) *Personal liability.* The signatures of all principal partners of a partnership, principal members of a cooperative and principal stockholders of a corporation are required to evidence their full personal liabilities on the promissory note as individuals, except in unusual circumstances including legal disability or extended absence from the country.

(1) When the applicant is an unincorporated farm cooperative, the promissory note will be executed so as to evidence the liability of the cooperative as well as each member as an individual. This will be accomplished by typing the name of the cooperative above the space provided for signatures and having the note executed by each member of the cooperative both as a member and as an individual. To evidence the liability of the cooperative, the words "As Members" will be typed immediately beneath the name of the cooperative and each member will sign thereunder. To evidence the members' liability as individuals, the words "As Individuals" will be typed at the top of the blank space to the left of the lines for signatures, and each member will sign thereunder.

(2) When the applicant is a corporation or an incorporated cooperative, the promissory note will be executed by the corporation or cooperative acting through its authorized officials. To evidence the principal stockholders' or members' liability as individuals, each principal stockholder or member will sign the note.

(3) When the applicant is a partnership, the promissory note will be executed so as to evidence the liability of the partnership as well as each principal partner as an individual. This will be accomplished by typing the name of the partnership above the space provided for signatures and having the note executed by the members of the partnership both as partners and as individuals. To evidence liability of the partnership, the words "As Partners" will be typed immediately beneath the name of the partnership and each partner will sign thereunder. To evidence the principal partners' liability as individuals, the words "As Individuals" will be typed at the top of the blank space to the left of the lines for signatures and each principal partner will sign thereunder.

(c) *Personal and corporate guarantees.* (1) If a review of all credit factors indicates the need for additional security, the loan approval official may require additional personal and/or corporate guarantees, including guarantees from principals of parent, subsidiary or affiliated companies. The loan approval official will require that such guarantees be secured by security which has an equity value. Any security referred to in paragraph (a)(2) of this section may be used to secure the guarantees.

(2) Guarantors of applicants will:

(i) In the case of personal guarantees, provide current financial statements (not over 30 days old at time of filing), signed by the guarantors and disclosing community or homestead property.

(ii) In the case of corporate guarantees, provide current financial statements (not over 30 days old at time of filing), certified by an officer of the corporation.

(3) When security is taken under this subsection (c) of this section it will be serviced in accordance with Subpart A of Part 1962 of this Chapter, if chattels, and Subpart A of Part 1872 of this Chapter (FmHA Instruction 465.1), if real estate.

(d) *Applicant's repayment ability.* If the present market value of the security is not at least equal to the amount of the loan, the applicant's repayment ability may be considered by the loan approval official in determining whether the loan should be made. When the applicant's repayment ability is so considered, the following conditions must also be met:

(1) Adequate security is not available because of the disaster or current economic conditions;

(2) The applicant's typical year operating plan indicates ability to repay the loan in full within the proposed repayment period which may provide for a deferment if necessary; and

(3) The applicant will give a lien on all available security.

(e) *Life insurance.* If the applicant's repayment ability is considered or if the loan approval official believes it is needed as additional security, life insurance may be required for the individual borrower or for the principals and key employees of an entity borrower and will be assigned or pledged to FmHA. This life insurance may be decreasing term insurance. A schedule of life insurance available as security for the loan will be included as part of the application.

(f) *Operating purposes.* (1) Loan funds used for annual production purposes will be secured by a first lien on the crop or livestock or both, being financed with EM loan funds plus enough other security, including personal property, real estate and crop insurance, to assure that the Government's financial interest will be protected. When the applicant can provide no security other than a first lien on the crop or livestock or both, the amount of the loan will be limited to the greater of $100,000 or one-half of the estimated gross farm income planned as shown on Form FmHA 431–2, or as shown on another acceptable plan of operation based on normal production and prices authorized by the State Director for developing annual farm plans within the State. When an EM

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borrower who is indebted for an annual operating loan which is secured only by a first lien on the crop or livestock or both, needs a subsequent EM loan for annual operating purposes during the current calendar year to complete that year's farming operation and the loan is needed to protect the Government's financial interest, the $100,000 or fifty (50) percent gross income requirement will not apply, provided the loan is otherwise sound and proper.

(2) Loans made for operating purposes authorized in sections 1945.66 (a) and (b) or 1945.66(c)(3) of this Subpart will be secured by a lien on sufficient equity in livestock, crops, equipment and machinery (including trucks and automobiles) and, when necessary, other personal property to protect the Government's interest. A lien on part or all of the real estate owned by the applicant may be taken as additional security, if such additional security is needed to protect the interest of the Government. When the applicant can provide no security other than a first lien on crops or livestock or both, the policy outlined in subparagraph (f)(1) of this Section will apply. A second crop lien may be taken when it has security value and is necessary to assure repayment of the loan(s).

(3) Loans *only* for the acquisition of memberships or the purchase of stock in cooperative associations may be made on the basis of the borrower's promissory note without taking security except as follows:

(i) An assignment, pledge, or other security interest in the stock or other evidence of membership will be obtained provided it has security value. A security interest may also be taken on significant amounts of patronage, dividends or refunds or on undivided profits and other holdings. The security interest will be in the form of an assignment, pledge, or other instrument, and will be taken on FmHA forms and in the manner approved by OGC. Stock certificates and similar security will be kept in the County Office. A notation will be made on Form FmHA 1905–1, "Management System Card-Individual," showing that such security has been retained.

(ii) In individual cases, loan approval officials may require a lien on crops or chattels as additional security for a loan made for the acquisition of a membership or stock, if they determine such additional security is necessary to protect the Government's interest.

(4) The advise of the OGC will be obtained on how to perfect a security interest when milk base and grazing permits are financed or taken as security.

(5) General intangibles, accounts, or contract rights may be taken as security for production loss loans made to contract feeders, tenants with share-lease arrangements, or other farmers with similar arrangements. National Office approval will be obtained before taking such items as security for a loan.

(g) *Real estate purposes.* Loans for the purposes authorized in sections 1945.66(a) (real estate purposes only) and 1945.66(c)(2) of this Subpart will be secured by a lien on real estate. However, if the applicant does not have sufficient equity in the real estate to secure the entire amount of the loan, a lien also will be taken on personal property, plus, if necessary, a second lien on crops or livestock. An EM loan made to a tenant with a long-term lease will be secured by a lien on a transferable leasehold.

(h) *Abbreviated appraisals.* An abbreviated appraisal is one which is completed in accordance with subparagraph (h)(2)(i) of this section. See section 1945.75 of this Subpart for instructions on complete appraisals. Loans may be approved when an abbreviated appraisal is made on the property being taken as security for the loan, provided:

(1) The loan approval official determines that the applicant's equity in the security will adequately secure the EM loan.

(2) When abbreviated appraisals are prepared:

(i) For real estate, the following portions of Form FmHA 422–1, "Appraisal Report (Farm Tract)," will be completed:

The heading of the report, Item A of Part 1, Part 2, Part 3, Part 6, Part 7, and Part 8. The report will be signed and dated by an FmHA authorized appraiser.

(ii) For chattel property, Form FmHA 440–21, "Appraisal of Chattel Property," will list, identify, and show the value of each chattel item and items A through E will be completed.

(i) *Combination of real estate and chattel security.* When an EM loan is to be secured by a lien on real estate or a combination of real estate and chattels, the security will be considered "basic security." However, notwithstanding the definition in section 1945.54(a)(32) of this Subpart, when chattels are primarily relied upon as security and real estate is taken only as additional security to better protect the Government's interest in instances in which the amount of the loan does not exceed the value of the primary chattel security by more than $10,000, the additional real estate security will not be considered basic security. For all loans *over $25,000* when real estate is taken as basic security, title clearance is required. For loans of *$25,000 or less,* and for loans for which real estate is taken as additional security, only a certification of ownership and verification of equity in real estate is required. Certification of ownership may be accepted in the form of a notarized affidavit from the applicant stating who is the owner of record of the real estate in question and acknowledging all known debts, with balances owed, against the real estate. Whenever the County Supervisor is uncertain of the ownership of or debts against the real estate security, and for all loans to cooperatives, corporations, or partnerships, a title search is required.

(j) *Purchase contracts.* If the real estate offered as security is held under a purchase contract, the following conditions must exist:

(1) The applicant must be able to provide a mortgageable interest in the real estate.

(2) The applicant and the seller must agree in writing that any insurance proceeds received for real estate losses will be used only to replace or repair the damaged real estate improvements which are essential to the farming operation, used for other essential real estate improvements, or paid on the EM loan or on any prior real estate indebtedness including the purchase contract. If necessary, the applicant will negotiate with the seller to arrive at a new contract without any provisions objectionable to FmHA.

(3) If a satisfactory contract of sale cannot be negotiated or the seller refuses to enter into the agreement described in paragraph (j)(2) of this section, the applicant will make every effort to refinance the existing purchase contract. If the applicant cannot obtained refinancing from another source, an EM loan will be considered to include funds to pay off the contract.

(4) If the conditions set out in paragraphs (j)(1), (2) and (3) of this section exist and an EM loan is approved, it can be closed provided the FmHA escrow agent or designated attorney certifies on Form FmHA 427–10, "Final Title Opinion", or in separate writing that:

(i) The purchase contract is not subject to summary cancellation on default and does not contain any other provisions which might jeopardize either the Government's security position or the borrower's ability to repay the loan.

(ii) The seller has agreed, in writing, to give FmHA notice of any breach by the purchaser, and has also agreed to give FmHA the option to rectify the conditions which amount to a breach

within thirty days. The thirty days begin to run on the day FmHA receives written notice of the breach.

(k) *Prior liens which may jeopardize the Government's security position.* If any prior liens against real estate offered as security contain future advance provisions or other provisions which might jeopardize the security position of the Government or the applicant's ability to meet the obligations of these prior liens and to pay the EM loan, the prior lienholders involved must agree in writing, before the loan is closed, to modify, waive, or subordinate such objectionable provisions to the interest of the Government. However, the Government's lien may be subject to the lien of another creditor for amounts advanced or to be advanced for annual operating and family living expenses for the operating or calendar year. The County Supervisor will determine if the creditor will be required to execute Form FmHA 441–13, "Division of Income and Nondisturbance Agreement," or a similar form approved by the OGC.

(l) *Circumstances under which advance notice of foreclosure or assignment is required.* When a junior lien on real estate is to be taken as security for a loan in States where a prior lienholder may foreclose the security instrument under power of sale or otherwise and extinquish junior liens of private parties without giving junior lienholders actual notice of the foreclosure proceedings, the prior lienholder must agree in writing to give FmHA advance notice of foreclosure or assignment of the mortgage.

(m) *Hazard insurance.* Hazard insurance with a standard mortgage clause naming FmHA as beneficiary may be required for every loan made. The minimum amount of insurance required is the lesser of the replacement cost of the property being insured or the amount of the loan. If essential insurable buildings are located on the property, or if new buildings are to be erected or major improvements are to be made to existing buildings, the applicant will provide adequate hazard insurance coverage at the time of the loan closing or as of the date materials are delivered to the property, whichever is appropriate. Notwithstanding the requirements of Subpart A of Part 1806 (FmHA Instruction 426.1) of this Chapter, when the real estate appraisal report shows that the present market value of the land after deducting the value of buildings shown on the report exceeds the amount of the debt (including the EM loan) and the owner has equity equal to or exceeding the amount of the debt (including the EM loan), real estate property insurance may not be required. However, the applicant will be encouraged to obtain such insurance, if the applicant does not already have it, to protect the applicant's interest. If insurance claims for loss or damage to buildings to be replaced or repaired with loan funds are outstanding at the time the loan is approved, the applicant will be required to agree in writing that, when settlement is made, the proceeds of such claims will be used for replacement or repair of buildings, application on debts secured by prior liens, or application on the EM loan.

(n) *Special security requirements where personal possessions or home furnishings are involved.* Loan amounts borrowed for repair or replacement of personal possessions and home equipment or furnishings will be secured by a lien(s) on crops, aquatic organisms, livestock, farm machinery, essential trucks or automobiles, and/or farm real estate.

(o) *Crop insurance.* Loan approval officials may require the borrower to carry Federal or other types of crop insurance with a collateral assignment to FmHA during the repayment period of the EM loan if such insurance is available in the county. This decision should be based on the amount and type of security, other than crops, that the borrower can provide. *However, when only a crop lien is taken as security for an EM loan, the borrower will be required to carry Federal or other type of crop insurance during the repayment period of such loan if such insurance is available.* An assignment of Federal Crop Insurance proceeds will be prepared on Form FCI–20, "Collateral Assignment," furnished by the local representative of the Federal Crop Insurance Program. The assignment must be approved by the Federal Crop Insurance Corporation. An assignment of crop insurance proceeds is not required when the crop insurance policy contains a standard mortgage clause naming FmHA as mortgagee or secured party.

(p) *Indian trust lands.* EM loans which are secured by trust or restricted land will be handled as follows: USDA and the Department of the Interior have agreed that FmHA loans which are to be secured by real estate liens may be made to Indians holding land in severalty under trust patents or deeds containing restrictions against alienation, subject to statutes under which they may, with the approval of the Secretary of the Interior, give valid and enforceable mortgages on their land. These statutes include, but are not limited to, the Act of March 29, 1956 (70 Stat. 62). When a lien is to be taken on trust or restricted property in connection with a loan to be made or insured by FmHA, the local representatives of the Bureau of Indian Affairs (BIA) will furnish requested advice and information with respect to the property and each applicant. The FmHA State Director should arrange with the Area Director or other appropriate local official of the BIA as to the manner in which the information will be requested and furnished. A State supplement will be issued to prescribe the actions to be taken by FmHA personnel to implement the making of loans under these conditions.

(q) *Unpatented public lands.* See Exhibit A of Subpart A of Part 1943 of this Chapter for making EM loans to entrymen on unpatented public lands.

(r) *Taking security instruments.* The taking and filing of security instruments will be in accordance with Subpart B of Part 1941 of this Chapter (chattels and crops) and with sections 1945.69 and 1945.89 of this Subpart (real estate). The borrower must have marketable title to the property which secures the loan and FmHA must ascertain that, when the security instruments are filed, no suits are pending or threatened which would adversely affect the interest of the borrower.

(s) *Assignments and consents.* (1) The value of stock required to be purchased by Federal Land Bank (FLB) Association borrowers may be added to the recommended market value of real estate, provided:

(i) An assignment can be obtained on the stock; or

(ii) An agreement is obtained which provides that:

(A) The value of the stock at the time the FLB loan is satisfied will be applied on the FLB loan as long as any FmHA loan is outstanding, or

(B) The stock refund check is made payable to the borrower and FmHA.

(iii) In either case the total of the stock value and the recommended market value of real estate are indicated in the comments section of Form FmHA 422–1.

(2) An assignment of all or part of the applicant's share of income is required when title to a livestock or crop enterprise is held by a contractor under a written contract or when the enterprise is to be managed by the applicant under a share lease or share agreement. The contract, share lease or share agreement will be described specifically as "Contract Rights" or "Contract Rights in Livestock or Crops," (or as "Accounts" or "Accounts in Livestock or Crops," if required by a

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State supplement) and so forth, in paragraph (1)(b) of the financing statement. A form approved by OGC will be used to obtain the assignment.

(3) An assignment of income can also be taken when the County Supervisor determines it is necessary to protect FmHA's interests.

(i) Form FmHA 443–16, "Assignment of Income from Real Estate Security," will be used for assignments of real estate security income unless that form is legally inadequate in a particular State, in which case it may be adapted with the approval of OGC.

(ii) Form FmHA 441–8, "Assignment of Proceeds from the Sale of Agricultural Products," will be used for products or income in which FmHA does not have a security interest under the UCC. Other forms approved by OGC may be used when this form is not adequate.

(iii) Form FmHA 441–25, "Assignment of Proceeds from the Sale of Dairy Products and Release of Security Interest," will be used for dairy products in which FmHA has a security interest under the UCC.

(iv) Form FmHA 441–18, "Consent to Payment of Proceeds from Sale of Farm Products," will be used for products or income, except dairy products, in which FmHA has a security interest under the UCC.

(v) Forms provided by ASCS will be used for assignments of incentive and other agricultural program payments.

(4) In UCC States, an assignment of income constitutes a security agreement and should be treated accordingly.

§§ 1945.70—1945.72 [Reserved]

§ 1945.73 General provisions—compliance requirements.

(a) *Scope of operation to be financed.* No ceiling has been established on the size of operations that may be financed with EM loans. Therefore, subject to the eligibility requirements, loan amount ceilings, repayment ability, need, available security and other provisions of this Subpart, loans may be made to finance farming operations of *any size.*

(b) *Flood or mudslide hazard areas.* Flood or mudslide hazards will be evaluated whenever the farm to be financed is located in special flood or mudslide prone areas as designated by the Federal Emergency Management Agency (FEMA). Subpart B of Part 1806 of this Chapter (FmHA Instruction 426.2) will be complied with when loan funds are used to construct or improve buildings located in such areas. This will not prevent making loans on farms if the farmstead is located in a flood or mudslide prone area and funds are not included for building improvements. The flood or mudslide hazard will be recognized in the appraisal report.

(1) In identified special flood or mudslide hazard areas as designated by FEMA, the following policies are applicable for EM loans being made to finance buildings or fixtures and furnishings contained therein.

(i) If flood or mudslide insurance is available and an applicant has not taken such insurance and had flood losses, an EM actual loss loan may be made provided flood or mudslide insurance is purchased before the EM loan is closed.

(ii) If flood or mudslide insurance is available and an applicant previously received and still is indebted for an EM loan, Rural Housing Disaster (RHD), or SBA disaster loan and a condition of the loan required the obtaining of flood insurance but the applicant allowed the insurance to lapse and the applicant had new flood or mudslide losses, the applicant will be considered to be in default on the loan agreement and dealt with accordingly. If it is determined to continue with the borrower and that the EM actual loss loan should be made, flood or mudslide insurance will be obtained before the EM loan is closed.

(iii) If flood or mudslide insurance is available and an applicant had previously received an EM, RHD, or SBA disaster loan and, a condition of the loan required obtaining flood or mudslide insurance and the applicant paid the loan in full and let the insurance lapse, the applicant will be handled in accordance with paragraph (b)(1)(i) of this section.

(iv) In those areas that have been designated by FEMA as special flood or mudslide hazard areas and flood or mudslide insurance is not available or has been withdrawn by FEMA, an applicant can receive an EM actual loss loan provided the farm buildings, including the dwelling, are relocated outside the 100-year flood area.

(v) EM loans to repair or replace farm buildings, including dwellings, must meet the requirements of section 1806.25 (a) or (b) of Subpart B of Part 1806 of this Chapter (paragraph V A or B of FmHA Instruction 426.2) as applicable, or be relocated outside the 100-year flood area.

(2) When land development or improvements such as dikes, terraces, fences, and intake structures are planned to be located in special flood or mudslide prone areas, loan funds may be used subject to the following:

(i) The Corps of Engineers or the SCS will be consulted concerning:

(A) Likelihood of flooding.

(B) Probability of flood damage.

(C) Recommendations on special design and specifications needed to minimize flood and mudslide hazards.

(ii) FmHA representatives will evaluate the proposal and record the decision in the loan docket.

(c) *Civil rights.* The provisions of Subpart E of Part 1901 of this Chapter will be complied with on all loans made which involve:

(1) Funds used to finance nonfarm enterprises and recreation enterprises. Applicants will sign Form FmHA 400–4, "Nondiscrimination Agreement," in these cases.

(2) Any development financed by FmHA that will be performed by a contract or subcontract of more than $10,000.

(d) *Protection of historical and archaeological properties.* If there is any evidence to indicate the property to be financed has historical or archaeological value, the provisions of Subpart F of Part 1901 of this Chapter will apply.

(e) *Environmental impact.* If EM loans are used in populated areas to finance an operation which has relatively large feedlots or holding facilities for livestock or aquatic organisms or smaller feedlots or holding facilities which are likely to have an effect on the environment, the applicant will be requested to complete Form FmHA 449–10, "Applicant's Environmental Impact Evaluation."

(1) The provisions of Subpart G of Part 1901 of this Chapter will be followed to the extent applicable for EM loans in making decisions on operations that may have a significant impact on the environment.

(2) The County Supervisor will complete Form FmHA 440–46, "Environmental Impact Assessment," considering information provided by the applicant in Form FmHA 449–10.

(3) The County Supervisor will forward a copy of the loan application, completed FmHA Forms 449–10 and 440–46, and any other information and docket material relevant to environmental considerations to the State Director. The State Director will determine whether an environmental impact statement should be prepared based on this submittal and any other available information.

(f) *Truth in Lending—Real Estate Procedures Act.* Subpart I of Part 1901 of this Chapter applies as follows:

(1) The provisions in section 1901.401 concerning Truth in Lending apply to any EM loan made to individuals if the amount of the loan is less than $25,000 and involves credit transactions primarily for agricultural purposes including real property transactions.

(2) The provisions of the Real Estate Procedures Act outlined in section 1901.406 apply when EM funds are used involving tracts of less than 25 acres, if:

(i) Any part of the loan is used to purchase all or part of the land to be mortgaged, and

(ii) The loan is secured by a first lien on the property where a dwelling is located.

(g) *Nondiscrimination requirements.* In accordance with Federal Law, the FmHA will not discriminate against any otherwise qualified applicant on the basis of race, religion, sex, national origin, marital status, age, or physical/mental handicap, (provided the applicant can execute a legal contract), with respect to any aspect of a credit transaction. The policy statement set forth in section 1945.51(a) of this Subpart will also apply to credit transactions.

(h) *Compliance with special laws and regulations.* (1) Applicants will be required to comply with Federal, State and local laws and regulations governing building construction; diverting, appropriating, and using water including use for domestic or nonfarm enterprise purposes; installing facilities for draining land; and making changes in the use of land affected by zoning regulations.

(2) State Directors and Farmer Programs Staff members will consult with SCS, U.S. Geological Survey, State Geologist or Engineer, or any board having official functions relating to water use or farm drainage requirements and restrictions for water and drainage development. State supplements will be issued to provide guidelines which:

(i) State all requirements to be met, including the acquisition of water rights.

(ii) Define areas where development of ground water for irrigation is not recommended.

(iii) Define areas where land drainage is restricted.

(3) Applicants will comply with all local laws and regulations, and obtain any special licenses or permits needed for nonfarm, recreation, specialized or aquaculture farming enterprises.

§ 1945.74 [Reserved]

§ 1945.75 Options, planning and appraisals.

(a) *Optioning Land.* An applicant is responsible for obtaining options when purchasing real property in accordance with the provisions contained in section 1943.25(a) of Subpart A of Part 1943 of this Chapter.

(b) *Planning.* (1) Form FmHA 431–2 and Form FmHA 431–4, " Business Analysis—Nonagricultural Enterprise," when appropriate will be completed as provided in Subpart B of Part 1924 of this Chapter and in accordance with the FMI's. This planning process with the applicant is essential to making sound loans and, therefore, must receive careful attention in development of the loan docket. However, when the EM loan will be for not more than $25,000, Tables A, D, and E of Form FmHA 431–2 may be left blank and only the totals in Tables G and J should be shown, provided Form FmHA 410–1 is completed and is believed to accurately reflect the applicant's current circumstances, and no supervision is planned. The plan *will* show any major items of expenditure and the reason(s) these items are needed. In addition, when all of the loan funds are not to be disbursed at loan closing, a *Monthly Budget* will be prepared showing the specific amount to be disbursed for each associated loan purpose for each month. The funds will be disbursed through use of the loan disbursement system or, when needed, through supervised bank accounts.

(2) Development work will be planned and completed in accordance with Subpart A of Part 1924 of this Chapter. Also, the provisions of Subpart E of Part 1901 of this Chapter will be met in connection with EM loans involving recreational enterprises and the construction of buildings.

(c) *Appraisals.* (1) Real estate appraisals will be completed by an FmHA employee authorized to make farm appraisals, when real estate is taken as security. Appraisals are not required when:

(i) The amount of the EM loan is $10,000 or less, and

(ii) The loan approval official determines the loan is adequately secured without an appraisal, and

(iii) The County Supervisor indicates in the loan docket an estimate of the market value of the real estate to be taken as security.

(2) Real estate appraisals will be completed as provided in Subpart A of Part 1809 of this Chapter (FmHA Instruction 422.1).

(3) See section 1945.69 (s) (1) of this Subpart when FLB stock is to be used in establishing the recommended market value (RMV) of the real estate being appraised.

(4) When real estate is taken as additional security (for loans in which the primary security is subject to rapid depreciation or is of a high risk nature, such as crops) no appraisal report will be required for the additional security. For loans including any existing indebtedness of not more than $25,000, or for loans for actual losses of not more than $50,000, including any existing FmHA indebtedness, an appraisal report will not be required. In both instances the County Supervisor will determine that security is adequate and record the estimate of value in the running case record; showing the date the property was inspected and certifying that in the County Supervisor's opinion the estimates are correct based on knowledge of the value of comparable properties in the area. For actual loss loans of not more than $50,000, including any existing FmHA indebtedness, and appraisal is required if the value shown on the applicant's financial statement is not in keeping with comparable values in the community.

(5) A chattel appraisal will be required when chattels are taken as security.

(i) Form FmHA 440–21 will be used.

(ii) The property which will serve as security will be described in sufficient detail so it can be identified.

(iii) Its current market value or, if appropriate, the current cash value will be determined.

(6) See section 1945.69 (h) of this Subpart for instruction on using abbreviated appraisals.

§ 1945.76—1945.79 [Reserved]

§ 1945.80 County Committee certification.

The County Committee will review the application and determine whether or not the applicant meets EM loan eligibility requirements.

(a) *Certification.* If the County Committee finds the applicant eligible, it will prepare Form FmHA 440–2, "County Committee Certification or Recommendation." This form will be retained in the County Office file. The County Committee will comply with Subpart A of Part 1910 of this Chapter.

(b) *Rejection.* If the County Committee rejects the application, the County Supervisor will inform the applicant in writing of the reasons for rejection. Reasons for unfavorable action will be given in the space provided on Form FmHA 440–2 above the space for signatures. The County Committee will comply with Subpart A of Part 1910 of this Chapter. Also, the County Supervisor will complete Part III of all Forms FmHA 1945–29 to show the rejection of the application, sign, date and forward to the appropriate ASCS county office in accordance with the FMI.

(c) *Amount of EM loan assistance.* The County Committee will establish the maximum amount of credit that may be extended under the certification to meet the applicant's total actual needs for which financing has been requested.

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The applicant will not be notified of the maximum credit as certified for the calendar year by the County Committee, unless the loan(s) as requested exceeds the maximum amount previously certified.

(d) *Recertification.* If it is found, after an applicant is initially certified as eligible, that there has been an increase in the amount of EM loan assistance needed above the maximum originally certified, it will be necessary for the County Committee to again certify the applicant as eligible on the basis of the changed circumstances. When the County Committee has agreed to certify an increase over the original amount certified, a new Form FmHA 440–2 will be prepared and executed by inserting the following statement on the form: "We, the undersigned members of the County Committee, have again reviewed the applicant's situation and credit needs for the calendar year and find those needs are as indicated above rather than the amount shown on Form FmHA 440–2 dated ————————." The Form FmHA 440–2 previously executed will be retained in the case file.

§ 1945.81 [Reserved]

§ 1945.82 Loan docket preparation.

(a) *Processing guide.* See Exhibit A of this Subpart for Insured Emergency Loan Processing Guide. When a packager has developed the loan docket the County Supervisor will *fully analyze* the docket to assure it is complete and conforms with this EM loan regulation. The County Supervisor will *reverify calculations* in accordance with section 1945.83 (b) and insure that the provisions of section 1945.83 of this Subpart are met before final action is taken on the loan request.

(b) *Form FmHA 440–1, "Request for Obligation of Funds."* A separate Form FmHA 440–1 will be prepared for each EM loan which has a different interest rate and/or a different repayment period, as determined in accordance with section 1945.68 (a) and (b) of this Subpart. Also, on Form FmHA 440–1, for EM loans approved for borrowers presently indebted for an EM loan, but having new qualifying losses from a subsequent authorized disaster, the new appropriate disaster authorization number will be shown. This new number will be used for all subsequent EM loans approved, unless the borrower has new qualifying losses under a later disaster to which another disaster authorization number has been assigned.

(c) *Promissory note.* A separate promissory note will be prepared for each Form FmHA 440–1 used in approving and obligating each of the EM loans. Each scheduled installment on each promissory note will include interest in addition to principal, unless deferral is authorized in accordance with section 1945.68 (c) of this Subpart.

(d) *Lease agreements.* Generally, a copy of the lease agreement between tenant applicants and their landlords will be obtained and made a part of the loan docket. When a written lease is not obtainable, a statement setting forth the terms and conditions of the agreement which are not clearly reflected in Form FmHA 431–2 will be prepared and made a part of the loan docket.

§ 1945.83 Loan approval or rejection.

Loans will be approved in accordance with the authorities and provisions contained in this Subpart and the loan approval conditions and authorities contained in Subpart A of Part 1901 of this Chapter.

(a) *Approval after termination date for receiving actual loss loan applications.* Applications for EM actual loss loans may be processed and approved after the termination date established for receiving such applications, provided they were filed in the County Office before that termination date had expired.

(b) *Reverification before approval.* Before an EM loan is approved the following actions must be taken:

(1) A County Office employee will verify information provided by ASCS on all Forms FmHA 1945–29 in accordance with the FMI. If there have been any changes from the information originally provided and used in the loan docket preparation, appropriate changes will be made.

(2) A County Office employee will verify information provided by the Federal Crop Insurance Corporation (FCIC) regarding any insurance benefits which have been paid or will be paid. If there have been any changes from the information originally provided and used in the loan docket preparation, appropriate changes will be made.

(3) All calculations on Form FmHA 1945–22 and Form FmHA 1945–26 will be checked by a County Office clerical employee (either regular or temporary), using a calculator with a paper tape, to assure that mathematical errors are detected. The County Supervisor or designee will make any changes necessary in the loan docket, when errors are located. The paper tape will be attached to Form FmHA 1945–22 or Form FmHA 1946–26 as appropriate.

(4) A County Office employee will contact the local SBA representative, of appropriate, to determine whether the applicant has applied for or received an SBA disaster loan for the same disaster, and document the result of this discussion in the County Office case file. If the applicant has received an SBA disaster loan for the same disaster, and EM actual loss loan will *not* be approved until it is determined that the requirement of section 1945.63 (d) of this Subpart will be met. If the EM actual loss loan(s) is approved the SBA will be advised by telephone and the call confirmed in writing by the County Office.

(5) If the applicant certifies that credit can be obtained elsewhere as evidenced by compliance with the provisions set out in section 1945.62 (a) of this Subpart, the County Office will make sure that applicant's certification statement on Form(s) FmHA 440–1, "Request for Obligation of Funds," is modified. This will be done by striking through the word "unable" whenever that word appears in the certification statement and writing in the word "able." The applicant or the authorized official(s) of entity applicants must acknowledge each such change by initialing above it.

(c) *Administrative determination and responsibilities.* When the County Committee certification has been made and the reverification has been completed, the loan approval official will determine administratively whether:

(1) The applicant is eligible, likely to be successful in the proposed operations, and likely to achieve the objectives of the loan.

(2) The applicant has satisfactory tenure arrangements on the farm(s) to be operated.

(3) The proposed farm and home operations of the applicant are reasonably sound.

(4) The loan(s) being processed is proper and can be repaid from projected farm and/or non-farm income as scheduled, and that in the planned typical year the farming operation will be self sustaining.

(5) The security requirements can be met.

(6) The certification(s) required of the applicant and the County Committee have been made and are a part of the loan docket.

(7) The proposed changes to be financed by a major adjustment loan(s) are needed, and that the county office case file reflects the need for those changes.

(8) The loan meets all other FmHA requirements.

(d) *Loan docket transmitted to Administrator.* (1) Transmittal memoranda accompanying EM loan dockets requiring approval in the National Office must set forth, as a minimum, the following information:

(i) Proposed loan(s), amount(s), rate(s) of interest, and term(s) of each such loan.

(ii) Outstanding FmHA loan(s) balance(s) and the total proposed EM loan(s) indebtedness.

(iii) Status of outstanding FmHA loan(s).

(iv) Brief statements regarding:

(A) Cause and type of disaster losses.

(B) Inability to obtain other suitable credit.

(C) Purposes for which loan funds are to be used.

(D) Overall feasibility and soundness of the planned operation.

(E) Property offered as security for the loan(s).

(v) The State Director's specific positive recommendation that the requested loan(s) be approved.

(2) Loan dockets should not be forwarded to the National Office for approval unless the State Director is able to make a positive recommendation. Loan requests for which the State Director is unable to make a positive recommendation for approval, should be denied at the State level, and applicants advised of their appeal rights in accordance with Subpart B of Part 1900 of this Chapter.

(3) Memoranda transmitting problem cases, on which State Directors are only seeking National Office counsel, should also contain their thinking, their interpretation of the appropriate FmHA regulations and policies, and their recommendations on how they believe the case in question should be handled.

(e) *Loan approval.* (1) The loan approval official will date, sign and distribute Form FmHA 440–1 in accordance with the FMI and set forth any special conditions of approval, including any special security requirements, in the appropriate section on Form FmHA 440–1.

(2) The County Supervisor will complete Part III of Form FmHA 1945–29 and forward the form to the appropriate ASCS county office(s).

(f) *Rejection of loans.* (1) If a loan is rejected, the loan approval official will indicate the reasons for the rejection in the running case record.

(2) The County Supervisor will notify the applicant by letter of the reason(s) for rejection and will advise the applicant in that letter of appeal rights as set out in Subpart B of Part 1900 of this Chapter.

(3) The County Supervisor will complete Part III of Form FmHA 1945–29 and forward the form to the appropriate ASCS county office.

(4) In areas where EM loans are being made under a *major disaster declaration,* and where FEMA has advised the State Director that Section 408 grants are available, a list of applicants with physical losses, who do not qualify for EM loans, will be prepared and sent to FEMA by County Supervisors at the close of business each week. Those applicants who are not eligible for an EM loss loan because they are not farmers as defined in section 1945.54 of this Subpart will be screened and referred to SBA for disaster loan assistance. The State Director will be advised by FEMA where to send the list and the State Director will so advise the County Supervisors. The list will be prepared in the following format:

United States Department of Agriculture

Farmers Home Administration

To: ————————

The following is a list of applicants not qualifying for Farmers Home Administration's Emergency loans in ———— County during the week ending ————, 19—.

Name	*Address*

County Supervisor

§ 1945.84 [Reserved]

§ 1945.85 Actions after loan approval.

(a) *Cancellation of loan check and/or obligation.* The County Supervisor will notify the State and Finance Offices of loan cancellation by using Form FmHA 440–10, "Cancellation of Loan or Grant Check and/or Obligation," and the appropriate FMI. If a check received in the County Office is to be cancelled, the check will be returned to the Disbursing Center, U.S. Treasury Department, Post Office Box 3329, Kansas City, Kansas 66103, with a copy of Form FmHA 440–10 (see FmHA Instruction 102.1, a copy of which is available in any FmHA Office).

(b) *Cancellation of advances.* When an advance is to be cancelled the County Supervisor must take the following actions:

(1) Complete and distribute Form FmHA 440–10.

(2) When necessary, obtain a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule.

When it is not necessary to obtain a substitute promissory note, the County Supervisor will show on Form FmHA 440–10 the revised amount of the loan and the revised repayment schedule.

(c) *Increase or decrease in loan amount.* If it becomes necessary to increase or decrease the amount of the loan before closing, the County Supervisor will request that all distributed docket forms be returned to the County Office for reprocessing, unless the change is minor and replacement forms can be readily completed and submitted. In the latter case, a memorandum to that effect will be attached to the revised forms for referral to the Finance Office.

§§ 1945.86—1945.87 [Reserved]

§ 1945.88 Chattel lien search.

See Section 1941.63 of Subpart B of Part 1941 of this Chapter for regulations concerning lien searches covering chattels.

§ 1945.89 Loan closing.

(a) *Closing loans secured by real estate.*—(1) *General.* Loans secured by real estate are considered closed on the date the mortgage is filed for record. Such loans will be closed in accordance with the applicable provisions of Part 1807 of this Chapter (FmHA Instruction 427.1).

(2) *Security instruments.* Security instruments referred to in this subsection (a) are real estate mortgages or deeds of trust.

(i) FmHA real estate mortgage or deed of trust Form FmHA 427–1 (State), "Real Estate Mortgage for ————," will be used in *all* cases where real estate is taken as security.

(ii) Promissory note(s) will be prepared and completed at the time of loan closing in accordance with the FMI. If insured Rural Housing (RH) funds are advanced simultaneously with EM funds the RH loan will be evidenced by a separate note on the proper from as provided in Subpart A of Part 1822 of this Chapter (FmHA Instruction 444.1). However, all notes will be described on the same security instruments.

When a loan is closed between December 1 and January 1, the first installment will be collected at the time of loan closing unless deferment is approved.

(iii) When subsequent loans are made, a new security instrument is required only when the existing instruments do not cover all required security or do not secure the subsequent loan.

(iv) A subsequent loan for any authorized purpose may be made without taking new security instruments when the existing security instruments cover all the property required to serve as security for the subsequent loan, the State law and the language of the existing security instruments will permit the future loan advance to be secured by the existing security instruments, and the existing security instruments will provide the same lien priority for the

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subsequent loan as for the initial loan. A new security instrument will be taken if one of these requirements is not met.

(3) *Leaseholds.* Security instruments for loans secured by leaseholds will describe security in accordance with Part 1807 of this Chapter (FmHA Instruction 427.1), and the following provisions will also apply:

(i) The following language, or similar language which in the opinion of the OGC is legally adequate, will be inserted just before the legal description of the real estate:

All Borrower's right, title, and interest in and to the leasehold estate for a term of ——— years beginning on ———, 19—, created and established by a certain lease dated ———, 19—, executed by ———, as lessor(s), recorded on ———, 19—, in Book ———, page ——— of the ——— Records of said County and State, and any renewals and extensions thereof, and all Borrower's right, title, and interest in and to said Lease, covering the following real estate:

(ii) An additional covenant will be inserted in the mortgage to read as follows:

Borrower will pay when due all rents and any and all other charges required by said Lease, will comply with all other requirements of said Lease, and will not surrender or relinquish, without the Government's written consent, any of the Borrower's right, title, or interest in or to said leasehold estate or under said Lease while this instrument remains in effect.

(iii) A copy of the lease will be made part of the loan docket.

(4) *Filing or recording security instruments.* The following appropriate actions will be taken after loan closing:

(i) If the original security instrument is returned by the recording official, it will be retained in the borrower's case folder. If the original is retained by the recording official, a conformed copy, showing the date and place of recordation and the book and page number, will be prepared and filed in the borrower's case folder. A confirmed copy of the security instrument will be sent to a prior lienholder if a substantial interest is held by that lienholder, or if it is required by a working agreement provisions with that lienholder.

(ii) The original deed of conveyance, if any, and a copy of the security instrument will be delivered to the borrower.

(5) *Abstracts of Title.* Any abstract of title will be delivered to the borrower and Form FmHA 140–4, "Transmittal of Documents," will be prepared and a receipt obtained in accordance with the FMI. However, when an abstract is obtained from a third party with the understanding it will be returned, such abstract will be sent directly to the third party and a memorandum receipt will be obtained.

(6) *Requesting title service.* When the loan is approved, the County Supervisor will see that title service is requested in accordance with Part 1807 of this Chapter (FmHA Instruction 427.1), if this has not already been done.

(7) *Fees.* The borrower will pay all filing, recording, notary and lien search fees incident to loan transactions from personal or loan funds. When FmHA employees accept cash for these purposes Form FmHA 440–12, "Acknowledgment of Payment for Recording, Lien Search, and Releasing Fees," will be executed. FmHA employees will make it clear to the borrower that any fee so accepted is only for paying fees on behalf of the borrower, and is not accepted as partial payment on a loan.

(8) *Supervised bank accounts.* If a supervised bank account is required, loan funds will be deposited following loan closing. Supervised bank accounts will be established in accordance with Subpart A of Part 1902 of this Chapter. Loan funds not to be disbursed for specific purposes at loan closing and not needed within 30 days after closing, will not be requested until they are needed. The "Loan Disbursement System" will be used to request future advances at 30 day intervals or as needed. Only in unusual cases will loan funds be kept in supervised bank accounts for more than 60 days, and when such funds are placed in an interest bearing supervised bank account, the interest earned will be applied on the EM loan immediately or used for an authorized EM loan purpose, if the planned EM funds are not sufficient to cover all of the planned items.

(b) *Closing loans secured by chattels and crops.* See Subpart B of Part 1941 of this Chapter.

(c) *Loan closing review.* Immediately prior to loan closing, the FmHA official responsible for closing the loan(s) will review the file for compliance with Agency regulations.

§ 1945.90 Revision of the use of EM loan funds.

(a) *Requirements.* Loan approval officials or their delegates are authorized to approve changes in the purposes for which loan funds were planned to be used, provided:

(1) The loan, as changed, is within the respective loan approval official's authority.

(2) Such a change is for an authorized purpose and within applicable limitations.

(3) Such a change will not adversely affect either the feasibility of the operation or the Government's interest.

(4) Such a change is approved in advance of the loan funds being used for the new purpose(s).

(b) *Additional authority.* The State Director may delegate additional authority to approval officials to approve certain kinds of changes in the use of loan funds by issuing a State supplement describing such changes, provided prior approval is obtained from the National Office.

(c) *Revisions.* When changes are made in the use of loan funds, no revision will be made in the repayment schedule on the promissory note. Appropriate changes with respect to the repayment will be made in Table K of Form FmHA 431–2 and will be initialed by the borrower. The County Supervisor will also make appropriate notations in the "Supervisory and Servicing Actions" section of Form FmHA 1905–1.

§ 1945.91 [Reserved]

§ 1945.92 Loan servicing.

Loans will be serviced in accordance with Subpart A of Part 1806, Part 1863 and Subpart A of Part 1872 of this Chapter (FmHA Instructions 426.1, 425.1, and 465.1, respectively) and Subpart A of Part 1962 of this Chapter.

§ 1945.93–1945.100 [Reserved]

Exhibit A

Processing Guide

Insured Emergency (EM) Loans

I. Purpose

This Exhibit outlines the basic steps involved in processing a loan application including an application kit, and identifies the FmHA forms which should be considered for use at each step as appropriate for EM loans.

II. General

A. The forms listed in this Exhibit will be considered in development of the application. Forms designated with an "x" are required and those designated with a "*" are used when applicable.

B. Consult the appropriate Forms Manual Insert (FMI) for instructions for completion, distribution, and procedural reference for each form.

III. Application Processing

A. Application Filing. The following should be done at the time the applicants file their applications.

1. County Office Assistants (COA) normally will have the first contact with potential applicants. During these contacts the COA should:

a. Be sympathetic and sensitive to applicants' needs.

b. Set up appointments for applicants to meet with supervisory personnel.

c. Inform applicants of the last date for receiving applicants.

d. Discuss credit needs and FmHA's services.

e. Advise applicants eligible for other credit they will be considered for a *loss loan(s) only* at the rate of interest set by the Secretary; and advise applicants appearing eligible for other credit who certified they were unable to get other credit, that they will be referred to other lenders to obtain written evidence they are unable to obtain their needed credit from such other lenders.

f. Begin running case record.

g. Provide applicants with an application kit and any other instructions that are needed to help expedite processing of the application and FmHA forms to be completed.

2. The applicant kit should have a cover sheet with instructions to the applicant, as is appropriate for individuals, corporations, cooperatives and partnerships. The cover sheet will include a notice to the applicant that the completed application must be returned by the termination date shown on the cover sheet in order to be accepted and considered for EM loan assistance. The following FmHA Forms should be included in the kit: 410–1, 410–9, "Statement Required by the Privacy Act," 431–1, "Long Time Farm and Home Plan," 431–2 and 1945–22.

3. The County Office Assistant (COA) will set up a list of names and addresses for all recipients of EM applications given out. This list will be monitored daily or weekly and if an applicant does not keep a scheduled appointment, follow up will be accomplished with a letter or telephone call and recorded in the County Case File.

4. Applications should normally be acted upon by the County Committee within 15 days, and in any event, not later than 30 days from receipt of a completed application by the county office.

5. Applicants will be promptly notified in writing of their eligibility status, and if additional information is needed to make an eligibility determination, it will be requested in writing.

6. The following FmHA Forms will be used as appropriate:

Form No.	Name	Use
410–1	Application for FmHA Services	x
410–5	Request for Verification of Employment.	*
410–7	Notification to Applicant on Use of Financial Information from Financial Institution.	x
410–8	Applicant Reference Letter	*
410–9	Statement Required by the Privacy Act.	x
410–10	Privacy Act Statement to References.	*
431–1	Long-Time Farm and Home Plan	*
431–2	Farm and Home Plan	x
431–4	Business Analysis—Nonagricultural Enterprise.	*
440–32	Request for Statement of Debts and Collateral.	*
440–34	Option to Purchase Real Property	*
440–58	Estimate of Settlement Costs "Settlement Costs" Booklet.	*
443–2	Option for Purchase of Farm—Land to be Subdivided.	*
443–3	Assignment of Interest in Option (Land to be Subdivided).	*
449–10	Applicant's Environmental Impact Evaluation.	*
1940–36	Request for Lender's Verification of Loan Application.	*
1940–51	Crop-Share-Cash Farm Lease	*
1940–53	Cash Farm Lease	*
1940–55	Livestock-Share Farm Lease	*
1940–56	Annual Supplement to Farm Lease	*
1945–22	Certification of Disaster Losses	x
1945–29	ASCS Verification of Farm Acreages, Production and Benefits.	x

B. Field Visit. Notify applicant of planned visit and its purpose.

1. Verification of disaster losses.

2. Evaluate the resources available to the applicant and their adequacy in fulfilling the requirements of the proposed plan of operation, taking into consideration development work planned.

3. Obtain information needed to complete required appraisals (chattel and real estate).

4. If development is planned, discuss plans, specifications, and estimates.

5. Hold landlord-tenant meeting, if necessary, to reach an agreement on the terms of the lease, resolve any problems, etc.; record in running case record.

6. Determine security requirements and record in running case record.

7. The following FmHA forms will be used as appropriate.

Form No.	Name	Use
422–1	Appraisal Report—Farm Tract	*
422–2	Supplemental Report—Irrigation, Drainage, Levee and Minerals.	*
422–3	Map of Property	*
422–10	Appraiser's Worksheet—Farm Tracts for Study of Comparable Properties.	*
424–1	Development Plan	*
424–2	Description of Materials	*
440–13	Report of Lien Search	*
440–21	Appraisal of Chattel Property	*
1945–26	Calculation of Actual Losses	x

C. Eligibility Determination.

1. Obtain all needed application forms and other information from the applicant. Assist the applicant in completing these forms and/or in obtaining needed information, as necessary.

2. Request deed or other evidence of title.

3. Schedule meeting for County Committee, review application and determine eligibility.

4. Inform applicant of the results of Committee action.

5. The following FmHA forms will be used as appropriate:

Form No.	Name	Use
403–1	Debt Adjustment Agreement	*
440–2	County Committee Certification or Recommendation.	x

IV. *Docket Preparation:*

A. Obtain all information from the applicant, prior lienholder(s), landlord(s), etc., needed for the loan docket to be prepared.

B. Check to assure all security requirements have been or will be met by loan closing.

C. Prepare a loan narrative and enter it into the running case record.

D. The following FmHA forms will be used as appropriate:

Form No.	Name	Use
400–4	Nondiscrimination Agreement	x
427–8	Agreement with Prior Lienholder	*
440–1	Request for Obligation of Funds	x
440–4	Security Agreement (Chattels and Crops).	*
440–4A	Security Agreement (Crops)	*
440–6	Severance Agreement	*
440–15	Security Agreement (Insured Loans to Individuals).	*
440–25	Financing Statement	*
440–A25	Financing Statement (Carbon-Interleaved).	*
440–26	Consent and Subordination agreement.	*
440–41	Disclosure Statement for Loans Secured by Real Estate.	*
440–41A	Disclosure Statement for Loans Not Secured by Real Estate.	*
440–43	Notice of Right to Rescind	x
440–46	Environmental Impact Assessment	*
441–5	Subordination Agreement	*
441–8	Assignment of Proceeds from the Sale of Agricultural Products.	*
441–10	Nondisturb- ance Agreement	*
441–12	Agreement for Disposition of Jointly Owned Property.	*
441–13	Division of Income and Nondisturbance Agreement.	*
441–17	Certification of Obligation to Landlord.	*
441–18	Consent to Payment of Proceeds from Sale of Farm Products.	*
441–25	Assignment of Proceeds from the Sale of Dairy Products and Release of Security Interest.	*
443–16	Assignment of Income From Real Estate Security.	*
443–17	Agreement to Sell Nonessential Real Estate.	*

V. *Loan Approval and Closing:*

A. Loan Approval.

1. Establish loan closing conditions and enter them in the running case record.

2. Execute and distribute all forms necessary for loan approval.

3. For chattel loan—file financing statement or chattel mortage, and obtain a lien search.

4. For real estate loan—request preliminary title opinion.

B. Loan Closing.

1. Arrange for loan closing by escrow agent, designated attorney, or other authorized loan closing agent; furnish loan closing agent with appropriate instructions, forms, and other needed information for loan closing.

2. The following FmHA forms will be provided to and used by the appropriate loan closing agent, in addition to those forms listed under docket preparation which must be executed by the borrower or other party:

Form No.	Name	Use
140–4	Transmittal of Documents	*
400–1	Equal Opportunity Agreement	*
400–3	Notice to Contractors and Applicants.	*
400–6	Compliance Statement	*
402–1	Deposit Agreement	*
402–2	Statement of Deposits and Withdrawals.	*
402–5	Deposit Agreement (Non FmHA Funds).	*
426–2	Property Insurance Mortage Clause (Without Contribution).	*
427–1	Real Estate Mortgage or Deed of Trust for ———.	*
427–4	Transmittal of Title Information	*

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Form No.	Name	Use
427-5	Affidavit of Borrowers (or Transferees).	*
427-6	Affidavit of Sellers (or Transferors)	*
427-9	Preliminary Title Opinion	*
427-10	Final Title Opinion	*
427-11	Warranty Deed	*
440-45	Nondiscrimination Certificate (Individual Housing).	*
440-59	Settlement Statement	*
1940-17	Promissory Note	x
1951-4	Change in Rates and Terms	*

Exhibit B

Memorandum of Understanding Between the Small Business Administration (SBA) and the United States Department of Agriculture (USDA)—Farmers Home Administration (FmHA) Pertaining to Disaster Loan Assistance Programs

I. Preamble

Public Law 96-302, which amended the Small Business Act and the Consolidated Farm and Rural Development Act, amends Section 18 of the Small Business Act by—"(1) striking the comma after the phrase 'agriculture related industries' and inserting the following: ': *Provided*, That prior to October 1, 1983, an agricultural enterprise shall not be eligible for loan assistance under paragraph (1) of section 7(b) to repair or replace property other than residences and/or personal property unless it is declined for, or would be declined for, emergency loan assistance at substantially similar rates from the Farmers Home Administration under Subchapter III of the Consolidated Farm and Rural Development Act,' and . . . ."

This legislation makes it clear that farmers are to be directed to the FmHA for disaster loan assistance once a disaster declaration has been made as a result of disasters commencing on or after July 3, 1980.

This joint Memorandum reaffirms the mutual desire of SBA and FmHA to cooperate in the use of their respective disaster loan-making authorities to compliment the disaster program activities of each other, consistent with the basic purpose of the legislation.

It is *not* intended that this Memorandum alter the relationship that currently exists between FmHA and SBA regarding the handling of each Agencies' regular lending programs.

With respect to their regular programs, FmHA and SBA will continue, to the extent possible, to improve and expand the delivery of financial assistance to the agricultural community.

II. *Definitions*

1. *Farming* is the business of producing crops, livestock, livestock products, and aquatic organisms through the management of land, water, labor, capital and basic raw materials, e.g., seed, feed, fertilizer and fuel.

2. *Natural Disaster* (As authorized by FmHA State Directors) is a disaster caused by such natural phenomena as hurricanes, tornadoes, cyclones, excessive rainfall, floods, earthquakes, blizzards, freezes, electrical storms, snowstorms, drought, excessively high temperatures, and hail; insects where abnormal weather contributed substantially to the spreading and flourishing of such insects; fire resulting from lightning, and fires of other origins which could not be controlled because of abnormal weather; and plant and animal diseases where abnormal weather contributed substantially to such diseases spreading into epidemic stages.

3. *Physical Disaster* (As declared by the Administrator of SBA) is a disaster caused by a flood, riot, civil disorder, hurricane, tornado, storm, high water, wind-driven water, tidal wave, snowstorm, drought, fire, explosion or other catastrophic event.

4. *Major Disaster* (As declared by the President) is a disaster caused by any catastrophic event of sufficient magnitude to warrant major disaster assistance by the Federal Government, under the Disaster Relief Act of 1974.

5. *Housing Losses* are losses sustained to the farmowner's personal dwelling, tenant housing or farm labor housing and their contents, and other personal property contained therein.

6. *Agricultural Enterprises* are those businesses engaged in the production of food and fiber, ranching and raising of livestock, aquaculture, and all other farming and agricultural related industries.

7. *Credit Elsewhere:*

(a) For SBA purposes, is the availability of sufficient credit from non-Federal sources at reasonable rates and terms, taking into consideration prevailing private rates and terms in the community in or near where the disaster loan applicant transacts business for similar purposes and periods of time.

(b) For FmHA purposes, is the availability of sufficient credit elsewhere taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

8. *Federal Individual Assistance* is the Federal disaster assistance made available to private individuals and privately owned and operated agricultural enterprises as compared to public assistance disaster programs which are available to governing bodies and quasi-governing bodies of political subdivisions.

9. *Presidential Emergency* is any disaster in any part of the United States which is of such magnitude that the President makes a declaration and which requires certain Federal emergency programs to supplement State and local efforts in the preservation of lives and protection of property, public health and safety, or to avert or lessen the threat of a more severe disaster.

III. *General Guidelines*

1. The FmHA administers its financial assistance programs through its State, District and County offices.

The SBA administers its financial assistance programs through its Regional, District and Branch offices.

2. All farm disaster loss loan applications heretofore and hereafter approved by SBA will be serviced by SBA.

3. The SBA and FmHA will have substantially similar interest rates for their respective loss loans. It is agreed, therefore, that such interest rates will not differ by more than one percent per annum at any given time, and will be applied in accordance with Section 114 of Public Law 94-305; and that the FmHA Deputy Administrator for Farm and Family Programs and the SBA Associate Administrator for Financial Assistance will consult before either Agency changes its loss loan rate of interest.

4. FmHA State Directors and SBA District Directors will consult with each other when either is contemplating authorizing or recommending that an area(s) be named where farm disaster financial assistance is to be made available. Each Agency, at the National level, will notify the other in writing when such declaration or authorization is officially made.

5. FmHA State Directors and SBA District Directors will exchange addresses of their respective offices and identify the geographical area(s) served by each. This specific information will be available in all field offices of both Agencies so applicants can be referred to the appropriate offices with a minimum of delay. The FmHA uses its local county offices to administer disaster emergency programs. SBA will either establish special local offices for administering its disaster assistance programs, or utilize permanent SBA offices, as appropriate.

6. SBA Disaster Branch Offices and FmHA County Offices will cooperate to avoid overlapping and duplication of disaster benefits by exchanging loan application and loan approval information while ensuring that farmers and rural resident disaster victims receive the assistance to which they are entitled.

7. FmHA State Directors and SBA District Directors will meet on a frequency of not less than annually to review this Memorandum of Understanding, clarify and agree on each Agency's disaster program responsibilities, and plan appropriate training meetings for their respective employees to assure familiarity with and common understanding of the contents of this Memorandum of Understanding.

IV. *How Loans Are Made Available*

1. *FmHA Emergency (EM) Loans.* EM Loans will be made available in counties named by the Federal Emergency Management Agency (FEMA) as eligible for Federal Individual Assistance under a major disaster or emergency declaration by the President, or in counties where EM Loans are authorized by the FmHA State Director because of a natural disaster.

2. *SBA Disaster Loans.* SBA Physical Loss and Economic Injury Disaster Loans will, as determined to be necessary and appropriate, be made available in counties named by FEMA, as well as in counties declared by the Administrator of SBA. Economic Injury Disaster Loans, as a separate program, will be made available to nonfarm small business concerns in counties where FmHA State Directors have authorized EM Loans, and furthermore, SBA Physical Disaster Loans will be made available to those agricultural enterprises referred to SBA by FmHA pursuant to paragraph IV 4 (e) of this Memorandum of Understanding.

3. FmHA and SBA will establish a liaison at both the State Director/District Director level and the National level and periodically coordinate their activities to: (a) exchange

detailed information concerning the disaster loan programs, (b) define areas of cooperation between the two Agencies, (c) assure that their programs are serving the intended recipients, (d) establish new methods to serve the public more expeditiously, and (e) achieve maximum utilization of their respective resources.

4. The SBA and FmHA agree that the interests of agricultural enterprises will be best served, and that each Agency will achieve better utilization of available resources, through the operating guidelines discussed in this section relative to areas where these Agencies offer disaster assistance. Furthermore, National FmHA and Central SBA office representatives agree to meet on a frequency of not less than annually to review this Memorandum of Understanding, discuss matters of mutual concern relating to each Agency's disaster loan programs and to revise this document, if appropriate.

(a) When an applicant has sustained only housing and personal property losses in areas where SBA's Physical Loss Loans are available, *only* SBA will make loans for the restoration or replacement of disaster caused housing losses as defined in paragraph II 5 of this Memorandum of Understanding. When an agricultural enterprise has suffered farm production and/or physical farm losses, as well as housing losses, and SBA has not approved a physical disaster declaration for the affected area, FmHA will make the loan(s) for the production and physical farm losses as well as the housing losses.

In the event both Agencies have made their disaster assistance programs available for the area, applicants will have the option of going to FmHA *or* SBA for disaster loan assistance to restore or replace their housing losses; however, *in all cases*, farm production and farm physical loss loans will be made by FmHA, providing the applicant is otherwise eligible.

In those instances where an FmHA farm production and/or physical farm loss loan(s) is to be made, following approval of an SBA Housing Loss Loan, the SBA will upon request from FmHA, subordinate its lien to FmHA, as may be required for approval of the FmHA loss loan(s).

(b) When an applicant makes an initial inquiry for disaster assistance from SBA and farm losses are evident, the applicant will be advised of the provisions of (a) above and referred to FmHA for the needed financing based on farm losses. When an applicant makes an initial inquiry with SBA seeking disaster assistance for housing losses *only*, the applicant will be referred to FmHA for consideration whenever the losses suffered were not in an SBA authorized area. Should such an applicant be in an SBA authorized area and be denied SBA assistance because of a lack of repayment ability due to low income, the applicant may be referred to FmHA for its consideration under FmHA's 502 Rural Housing Interest Credit Loan Program, provided the applicant resides in a rural community or in a community under 20,000 population. FmHA may be able to extend interest credit assistance to such borrowers at rates as low as 1 percent under that Loan Program.

(c) In any event, potential farm loan applicants should contact FmHA for an interview to determine whether they are eligible for disaster loan assistance from the FmHA. Those not eligible will be referred to the SBA for consideration, except those discussed in paragraph (e) below. Where a referral or denial action is taken by the FmHA, the referral or denial letter to the applicant will specify the reason(s) why the disaster type assistance requested by the applicant was not made available by FmHA.

(d) Potential applicants are not to be referred back and forth between FmHA and SBA. Representatives of each Agency must be reasonably certain the disaster victim is eligible for assistance from the other agency before a referral is made.

(e) FmHA personnel will refer, by letter, those applicants ineligible for FmHA EM Loan assistance for reasons such as alien status; corporations, partnerships and cooperatives not being primarily engaged in farming; and farm owners who do not operate their farm(s). Referral letters will state the specific reason(s) for ineligibility and will include the following statement, "Applicant has been informed that applicants for SBA Physical Disaster Loan assistance must meet minimum loss criteria substantially similar to that employed by FmHA." Referrals will not be made by FmHA when the reason(s) for loan denial is based on unfavorable credit determinations (includes inadequate security), lack of repayment ability, or when it is known to FmHA that sustained disaster losses are insufficient to meet its minimum loss criteria.

(f) Disaster victims filing for financial assistance from either Agency will give written permission for FmHA and SBA to exchange all prior and current loan application and loan experience information, including appraisals. The format for this permission must be developed in compliance with the Privacy Act.

(g) Applicants filing for financial assistance from either Agency must use the forms and procedures of the Agency being requested to provide such assistance. An applicant who is denied assistance by either Agency must file a new application with the other in accordance with that Agency's forms and procedures. However, the earliest filing date of an application for losses with either Agency will constitute the filing date with regard to termination dates for receiving applications by either Agency; provided *not more than six months* has elapsed since the termination date of the second Agency contacted, at the time that Agency is requested to process an application

V. *Description of Lending Policies*

The FmHA guarantees EM Loans and also makes insured EM Loans. Guaranteed EM Loans are loans where an eligible lender advances the entire loan from its own resources and sevices the loan. The FmHA guarantees repayment to the lender of a certain percentage of any loss of principal and interest. Insured EM Loans are those made from the Agricultural Credit Insurance Fund (ACIF) by FmHA employees and serviced by FmHA employees.

The SBA makes direct, immediate participation, and guaranteed loans. direct loans are made with SBA funds only. Immediate participation loans are those in which SBA agrees to purchase a specified percentage of a loan from a lender immediately after disbursement of such loan. Guaranteed loans are made by a conventional lender from its own funds and SBA guarantees a percentage of the unpaid balance.

VI. *Loan Programs*

The Emergency and Disaster Loan Programs of FmHA and SBA are outlined in Table I which sets forth the comparative similarities and differences of each program.

VII. *Administrative Guidelines*

1. The services of FmHA and SBA, which are available to lenders and applicants are, by mutual agreement, services that each Agency would provide any eligible applicant in the normal course of business; and normally there will be no reimbursement by either Agency to the other for such services.

2. The National Office of FmHA and the Central Office of SBA will cooperate in counseling their field offices and in resolving problems in specific cases.

3. This Memorandum of Understanding in no way alters or supersedes the existing Memoranda between the two Agencies covering FmHA's regular farmer loan authorities and its Business and Industrial Loan authorities, and all of SBA's regular loan programs. However, this Memorandum replaces the previous Memorandum of Understanding on disaster type loan assistance, signed by SBA on July 21, 1977, and by FmHA on August 25, 1977.

4. This agreement may be amended at any time by written agreement of both parties.

5. This agreement shall take effect upon the later date shown below.

Dated: October 23, 1980.

Gordan Cavanaugh,

Administator Farmers Home Administration.

Dated: October 26, 1980.

A. Vernon Weaver,

Administrator, Small Business Administration.

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SBA/FmHA Memorandum of Understanding

Disaster Loan Assistance Programs

Table I.—*Comparative Similarities and Differences*

FmHA	SBA
Eligibility	
1. An individual applicant must be a citizen of the United States. For applicants which are organized as a partnership, a cooperative, or a corporation, the principal owners must be U.S. citizens; over 50 percent of the ownership of such entities must be held by U.S. citizens; and the manager of any such entity must have an ownership interest in the entity and be a U.S. citizen. Such entity must be recognized and authorized to farm in the State(s) in which it will operate a farm(s), and such entity will be in good standing in that State(s).	1. Citizenship is not required. However, use of disaster loan proceeds outside the United States or its possessions is not permitted.
2. EM loan applicants *able* to obtain their needed credit elsewhere may be considered for an *Actual Loss Loan only at a current market rate of interest.* EM Loan applicants *unable* to obtain their needed credit elsewhere, exclusive of an SBA Physical Disaster Loss Loan, may qualify for an *Actual Loss Loan(s) at 5 percent interest, and EM Annual Production and/or EM Major Adjustment Loan(s) at the current market rate of interest.*	2. Physical Disaster Loans are made to non-business loan applicants, without regard to the availability of other financing or resources, and business loan eligibility is similar. However, the SBA's judgment of the business' capacity to obtain credit elsewhere will determine the applicable interest rate. Applicants for Economic Injury Disaster Loan (EIDL) assistance *must* seek and fully utilize all alternate financing resources prior to obtaining an EIDL loan from SBA. EIDL applicants must be eligible *small* businesses according to SBA size standards.
3. The applicant must be an established farmer, rancher, or aquaculture operator, either tenant-operator or owner-operator. If the applicant is a partnership, corporation, or cooperative, it must be primarily engaged in farming; i.e., it must derive over 50 percent of its gross income from all sources from the farming operation(s), and the farming operation(s) must be managed by one or more of the principal partners, principal stockholders, or principal members.	3. Most homeowners, businesses and nonprofit institutions are eligible for Physical Disaster Loan assistance.
4. The applicant must have been conducting a farming operation(s) at the time of the disaster in a county or counties where EM Loans have been authorized.	4. The applicant must be within the disaster area as defined by the SBA disaster declaration.
5. The applicant must have suffered qualifying property damage or production losses as a direct result of the declared or authorized disaster.	5. The applicant must have suffered real or personal property damage as a direct result of the declared disaster.
6. The applicant must be of good character, have the necessary experience and/or training, industry, and ability to carry out the proposed operation.	6. Applicants must be of good character and must be able to provide reasonable assurance of loan repayment ability.
7. Will take all farm disaster applications and approve EM Loans based on disasters commencing *after July 2, 1980*, regardless of whether or not an applicant can obtain the credit needed elsewhere.	7. Will take any farm disaster applications and approve disaster loans based on disasters commencing *on or before July 2, 1980.* Applicants applying for farm disaster loans based on disasters commencing *on or after July 3, 1980*, will be referred to FmHA.
Loan Purposes	
1. For those unable to obtain credit, to cover actual losses for damaged or destroyed farm property and production; provide essential annual farm production and family living expenses; and provide the financing necessary to make adjustments in the farming operation, which will assure the return of the operation to a financially sound pre-disaster base.	1. The purpose of Physical Disaster Loans is to restore the disaster victim's home or business property, real or personal, as nearly as possible to its pre-disaster condition. No upgrading is permitted except as required for code compliance.
2. Housing losses—available under FmHA's Rural Housing Disaster Loan Program only when SBA's Physical Disaster Loan assistance is *not* available. When housing and farm losses are involved, the applicant may choose between SBA or FmHA for loan assistance on the housing loss, but all farm loss assistance will be provided by FmHA.	2. Housing losses—When only housing losses are sustained, SBA will make all Housing Loss Loans caused by the declared disaster. In those areas where both FmHA and SBA disaster programs are available, applicants may select the Agency from which they wish to obtain their Housing Loss Loan, but all applications for farm loss loans will be referred to FmHA.
3. Initial EM Annual Production Loans may be applied for up to 12 months from the disaster authorization date. Subsequent EM Annual Production Loans may be applied for up to three full calendar years after the disaster authorization date. However, EM Annual Production Loans, initial or subsequent, are *not* available to applicants who are initially *able* to obtain their needed credit elsewhere.	3. Economic Injury Disaster Loans are somewhat similar; however, the need for these loans must be specifically related to the physical disaster as declared by SBA.
4. EM Major Adjustment Loans may be applied for up to 12 months after the disaster authorization date, but are *not* available to applicants who are initially *able* to obtain their needed credit elsewhere.	4. No comparable disaster loan program; however, SBA's Regular Business Loan Program is somewhat similar.
Rates and Terms	
1. Actual Loss Loans (a) For applicants who are *able* to obtain their credit elsewhere, the interest rate for EM Actual Loss Loans is established by the Secretary of Agriculture, based on the cost of money to the Government using the statutory formula. (b) For applicants who are *unable* to obtain their credit elsewhere, the interest rates for EM Actual Loss Loans are as follows:. (1) For disasters occurring through September 30, 1978, for which loans were approved on or after October 1, 1978, the rate is 3.00 percent. (2) For disasters occurring on or after October 1, 1978, the rate is 5.00 percent. Actual Production Loss Loans are normally made for up to 7 years. Under certain circumstances loss loans for production and chattel losses may extend up to 20 years with special conditions, depending on the life expectancy of the collateral securing the loan(s). Actual Loss Loans for real estate purposes will normally be for 30 years, but may extend up to 40 years.	1. Interest rate on Physical Disaster Business Loans where credit elsewhere is available is determined by a statutory formula which is based upon the cost of money to the Government, and which will remain in effect for all disasters occurring on or after October 1, 1978, and prior to October 1, 1983. During the same period, October 1, 1978, through September 30, 1983, there is a 3 percent interest rate for losses to primary homes and personal property; and a 5 percent rate for loans to businesses, which in SBA's judgment are unable to obtain credit elsewhere. Interest rates on loans for all other purposes are based upon a statutory formula. SBA Home, Personal Property, Business, and Economic Injury Disaster Loans may have maturities of up to 30 years. However, the repayment ability of the applicant will deter nine the actual maturity of the loan.
2. Annual Production Loans—at the current prevailing market rate established periodically by the Secretary and repayable when principal income from the year's operation is normally received.	2. Interest rate for Economic Injury Disaster Loans which are similar is based upon a statutory formula.
3. Major Adjustment Loans—at prevailing current market rate as established periodically by the Secretary. Such loans for chattels are normally made for up to 7 years, and for real estate, normally up to 30 years. Under certain circumstances loans for chattels may extend up to 20 years and loans for real estate may extend up to 40 years.	3. No comparable disaster loan program.
Loan Limits	
1. In addition to the ceiling limitations listed herein, the extent of loan assistance is also limited by the amount of actual loss, potential repayment ability, collateral available, the applicant's needs and other credit factors. (a) There is a statutory limit of $500,000 per disaster per applicant for Actual Loss Loan assistance for both those who *can obtain* and those who *cannot obtain* their credit elsewhere. (b) Administrative ceilings for those who cannot obtain credit elsewhere have been established as follows:. (1) Actual Loss Loan—$500,000 per applicant per disaster designation for disasters occurring on or after October 1, 1978. (2) $250,000 per applicant per disaster designation for disasters occurring through September 30, 1978. (3) Annual Production and/or Major Adjustment Loans—$1,500,000 outstanding principal balance authorized per EM borrower, regardless of the number of disasters. A further sublimitation setting e $300,000 maximum outstanding principal balance on Major Adjustment Loans for refinancing debts, which are secured by real estate, is established within the above $1,500,000 ceiling. However, borrowers indebted for an EM Loan(s) on or before December 15, 1979, who cannot obtain credit elsewhere, may receive subsequent Annual Production Loans in amounts necessary to continue their normal operation(s) without regard to this indebtedness ceiling.	1. Home Loans—No statutory limit; however, the following administrative limits have been established: (a) $50,000 for real estate, (b) $10,000 for personal property, or (c) $55,000 for combined purposes and up to $50,000 for eligible refinancing. 2. Business Loans, Physical Disasters—No statutory limit for disasters commencing prior to enactment of Public Law 96-302, i.e., July 2, 1980; however, a $500,000 administrative limit was in effect; exceptions permitted by SBA Regional Administrator to avoid undue financial hardship. For disasters commencing on or after July 3, 1980, the *statutory* limit is $500,000 per disaster per borrower. Limit may be waived by Administrator if applicant is a major source of employment in an area suffering a major disaster declared by the President. 3. Business Loans, Economic Injury—No statutory limit, the amount of economic injury determines the size of the loan.
Graduation Policy	
1. Reviewed to determine ability to obtain credit from other credit sources after a three (3) year period following receipt of the initial EM loan, and every two (2) years thereafter, until graduation is achieved or the loan(s) is paid in full. Refinancing, when available is mandatory for borrowers who, when they received their initial loans, were unable to obtain credit from other sources.	1. Business loan applicants, who can obtain credit elsewhere (loans approved at formula rate), will be reviewed for graduation three years after a Physical Disaster Business Loan is fully disbursed, and every two years thereafter for the term of the loan. Refinancing when available, is mandatory.
Economic Injury Loans	
1. EM loans for annual production purposes are similar.	1. SBA is authorized to make Economic Injury Disaster Loans to small business concerns that have suffered cash flow problems related to the disaster. These loans are for working capital only and do not allow for any expansion.

Exhibit C

Memorandum of Understanding Between Agricultural Stobilization ond Conservotion Service and Formers Home Administration on Disaster Assistance

I. *General*

Federal agencies that provide financial assistance to farmers suffering losses as a result of a declared or authorized disaster are required to ensure that there is not duplication of benefits under other programs. Within USDA it is very important that the Agricultural Stabilization and Conservation Service (ASCS) and the Farmers Home Administration (FmHA) maintain close coordination of their assigned disaster programs.

II. *Purpose*

The purpose of this memorandum of understanding is to coordinate certain ASCS disaster activities with the FmHA actual loss emergency loan program.

III. *ASCS and FmHA Coordination on Disaster Activities to Farmers and Ranchers*

The amount of any benefits received from ASCS disaster programs, including disaster payments and cost-sharing payments under the Emergency Conservation Program Emergency Feed Program, will be considered by FmHA in determining the maximum amount of an actual loss emergency loan that a farmer can receive. This will be done in accordance with FmHA regulations.

IV. *Understanding Reached*

A. FmHA County Supervisors prior to determining the maximum amount of any actual loss emergency loan, will consult with ASCS County Executive Directors regarding ASCS disaster benefits provided or to be provided to FmHA emergency loan applicants.

B. ASCS County Executive Directors, at the request of the FmHA County Supervisor, will provide FmHA with the following information from ASCS county office records: farmland and cropland acreages on the applicant's farm(s), production on crops, and amounts of payments or assistance provided or to be provided by ASCS to such applicant. Form FmHA 1945-29, "ASCS Verification of Farm Acreage, Production, and Benefits," will be used for this purpose.

C. FmHA County Supervisor will, in a timely manner, provide ASCS county offices with the names and addresses of farmers or ranchers who have had an actual loss emergency loan approved.

D. ASCS County Executive Directors will consult with FmHA County Supervisors before issuing disaster payments to farmers or ranchers for whom Form FmHA 1945-29 has been received. Sight drafts for payments of ASCS disaster benefits for farmers and ranchers whose FmHA loan application has been approved, will be prepared to show FmHA as joint payee and forwarded to the FmHA county office.

V. *Supersedure*

This memorandum of understanding supersedes the one signed by the Administrator of FmHA on April 18, 1975, and the Administrator of ASCS on April 23, 1975.

VI. *Amendment*

This memorandum of understanding may be amended at any time by mutual consent of the agencies involved.

Dated: November 8, 1979.

Ray V. Fitzgerald,

Administrator, Agricultural Stabilization and Conservation Service.

Dated: October 30, 1979.

Gordon Cavanaugh,

Administrator, Farmers Home Administration.

[FR Doc. 80-32695 Filed 10-21-80; 8:45 am]

BILLING CODE 3410-07-M

7 CFR Part 1980

Guaranteed Loan Programs

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations pertaining to the administration of all the FmHA guaranteed loan programs. The changes involve defining local lender, requiring the lender to hold a part of the unguaranteed portion of the loan, and restricting the sale of the guaranteed loan to applicants. The intended effect of these changes is to clarify FmHA's position and strengthen the guaranteed programs. This action is taken in response to agency recommendations to correct deficiencies in the regulations as suggested by the Department's Office of Inspector General.

EFFECTIVE DATE: Effective October 22, 1980.

FOR FURTHER INFORMATION CONTACT: Darryl H. Evans, Director, Business Management and Development Division, USDA, FmHA, Washington, D.C. 20250, Telephone: (202) 447-4150.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "significant". Section 1980.13(a) and parts of Appendix B of Subpart A of Part 1980, Chapter XVIII, Title 7, Code of Federal Regulations have been amended. These

changes are made by FmHA to strengthen the Business and Industry (B&I) program. On November 23, 1979, FmHA published [in the **Federal Register** (44 FR 67134)] a notice of proposed rulemaking setting forth the proposed changes to the regulations. Interested parties were given an opportunity to submit, not later than January 21, 1980, any comments, views or recommendations regarding the proposed changes.

Discussion of Comments

The first issue dealt with redefining local lender. The FmHA indicated the proposed change will broaden lender eligibility within its guaranteed programs and should not adversely affect small local lenders participation in the program. A total of nine comments were received with majority in favor of the change. Several respondents recommended that the changes be effected only on loans closed under commitments issued after the date of publication of the final rules in the **Federal Register**. FmHA agrees with this recommendation. Two respondents suggested the 100-mile limit be expanded to the boundaries of a State. FmHA believes the lender should be located fairly close to the borrower's place of business if it is to carry out its responsibilities for servicing the loan. Having considered all comments FmHA will adopt the proposed rule without change by amending Section 1980.13(a).

The second issue involves an amendment to restrict the lender from selling a portion of the loan to the applicant or other parties which would have a vested interest. This provision is necessary to eliminate any possible conflict of interest the applicant would have when a loan is guaranteed by the Government. The respondents were unanimous in their comments recommending that FmHA implement this amendment. Therefore, FmHA will adopt without change the amendment of paragraph III A of Appendix B, Form FmHA 449-35, "Lender's Agreement."

The final issue deals with requiring the lender to hold in their own portfolio a minimum of 10 percent of each loan for Farmer Program Loans and five percent of the total loan for other loan programs. The respondents held a variety of views concerning this issue. The majority did favor the change with modification. Those respondents who did not favor the amendment represented two groups. The National Association of Home Builders expressed their concern that such a shared risk concept would have an adverse impact upon guaranteed housing loans. Four other respondents, all Mortgage Bankers, opposed the change since they do not generally invest in long-term loans. For B&I loan purposes, Mortgage Bankers represent only two percent of the lenders involved in the program. FmHA believes the shared risk concept is a key factor in strengthening the overall guaranteed programs. However, we recognized that the guaranteed housing loan program will need the backing of the Mortgage Bankers if the program is to continue to grow. Therefore, FmHA will amend its proposed rule regarding paragraph III A 3 b of Appendix B, Form FmHA 449-35 to exclude the housing program from the shared risk requirement. In addition an administrative clarification has been made in paragraph XII B, to indicate FmHA, "at its option", will proceed with liquidation . . .

Accordingly, § 1980.13(a) and parts of Appendix B of Subpart A of Part 1980 are amended as follows:

1. Section 1980.13(a) is amended and reads as follows:

§ 1980.13 Eligible lenders.

(a) *Local lenders.* Local lenders may participate by using the various sources of capital and segments of the money market to meet the necessary financing requirement for guaranteed loan programs. Except in (1), (2), and (3) below FmHA will require that a local lender be involved for each project. A local lender is a lender in or near a community where the project is or will be located who routinely provides loan services to such community. Although the project may involve other lenders, investors, or packagers, the local lender will be the lead lender and the lender for purposes of these regulations responsible for servicing and liquidation (if necessary) of the loan. The lender may use agents, correspondents, branches, financial experts, or other institutions or persons to provide expertise to assist in carrying out its responsibilities. FmHA will use the lender as the point of contact for the administration of the program.

FmHA may also permit a lender to be the lender for the loan without being local if:

(1) The lender normally makes loans in the region or geographic location in which the applicant's project being financed is located; or

(2) The lender has specific expertise in loans for the proposed project and provides evidence of such expertise to the satisfaction of FmHA; or

(3) (For B&I loans only), the lender has provided, in the past, to the applicant a substantial portion of the applicant's credit requirement on a regular basis.

* * * * *

PART 1980—APPENDIX B [AMENDED]

2. Paragraphs III A, III A 3 b and the third sentence of Paragraph of XII B of Appendix B of Subpart A of Part 1980 are amended and read as follows:

Appendix B—Form FmHA 449-35, Lender's Agreement, United States Department of Agriculture, Farmers Home Administration

* * * * *

III. *Lender's Sale or Assignment of Guaranteed Loan.*

A. The lender may retain all of the guaranteed loan. The lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portion(s) of the loan(s) to the applicant or borrower or members of their immediate families, its officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the lender desires to market all or part of the guaranteed portion of the loan, the lender may proceed under the following options:

* * * * *

3. *Participation.*

* * * * *

(b) The lender is required to hold in its own portfolio or retain a minimum of 10% for Farmer Program loans and 5% for Business and Industry program loans of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another. The lender may sell the remaining amount of the unguaranteed portion of the loan except for Farmer Program loans only through participation. However, the lender will always retain the responsibility for loan servicing and liquidation.

* * * * *

XII. *Liquidation.*

* * * * *

B. *FmHA's response to Lender's liquidation proposal.* * * *

Should FmHA and the Lender not agree on the Lender's liquidation proposal, FmHA at its option will proceed with the liquidation as follows:

* * * * *

Note.—This document has been reviewed in accordance with FmHA Instruction 1901-G, "Environmental Impact Statements." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, P.L. 91-190, an Environmental Impact Statement is not required.

(7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; Sect. 209, Title II, P.L. 95-334, 92 Stat. 432; Sect. 10, P.L. 93-357, 88 Stat. 392; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70)

Dated: May 19, 1980.

Alex P. Mercure,

Assistant Secretary for Rural Development.

[FR Doc. 80-32700 Filed 10-21-80; 8:45 am]

BILLING CODE 3410-07-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Changes in Rules of Practice Governing Discipline in Adjudicatory Proceedings

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations governing discipline in adjudicatory hearings, 10 CFR 2.713, to (1) reiterate the standard of conduct expected of participants in proceedings; (2) clarify who may appear before NRC in a representative capacity; (3) clarify and bolster the authority of the presiding officer, Appeal Board, and Commission to suspend any party or representative of a party from participation in a particular proceeding where, as a result of the party's or representative's conduct, this is necessary for the orderly conduct of the proceeding; and (4) specify special interlocutory appeal procedures governing suspensions from participation.

EFFECTIVE DATE: November 21, 1980.

FOR FURTHER INFORMATION CONTACT: Bruce A. Berson, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone (301) 492-7678.

SUPPLEMENTARY INFORMATION: On January 18, 1980, the Nuclear Regulatory Commission published in the **Federal Register** (45 CFR 3594) a proposed amendment to its regulations, 10 CFR Part 2—"Rules of Practice for Domestic Licensing Proceedings," regarding representation and conduct of attorneys in adjudicatory proceedings. Interested persons were invited to submit comments for consideration in connection with the proposed amendment by March 3, 1980.

Four comment letters were received from interested persons during the 45 day comment period. The comments addressed the following issues:

1. The necessity for the rule;
2. The standards of conduct;
3. Representation at NRC proceedings;
4. The process of appealing suspensions; and
5. Referral of suspended attorneys to the state bar.

After careful consideration, the Commission has determined that no changes to the proposed rule based on the comments are necessary. However, the Commission has revised and broadened the process of appealing suspensions and made two other minor clarifications to the rule based upon its own review. The clarifications (1) add the words "or officer" to the second sentence of § 2.713(b) following "duly authorized member" to reflect actual practice and the intent of the rule; and (2) provide for mandatory referral of an attorney suspended for more than 1 day to the appropriate state bar even in the absence of an appeal. (Issues 3 and 5 below). The revision to the process of appealing suspensions is discussed below (Issue 4).

The public comments and changes made by the Commission are discussed below.

1. Necessity for the rule: Two commenters believe the rule is unnecessary. One suggests that the presiding officer has adequate existing authority under 10 CFR 2.718, "Power of the Presiding Officer," to control the conduct of the proceeding and the other states that local authorities could be called if a true disturbance were created. Although disciplinary authority may be implied from 10 CFR 2.718(e), the Commission believes it is preferable to specifically codify such authority and the associated procedures after public notice and opportunity for comment. The Commission also believes presiding officers and other NRC tribunals should have specific authority to discipline representatives in NRC proceedings, when necessary, without routinely requesting (or waiting for a situation to require) the assistance of local law enforcement authorities, as suggested by the second commenter.

2. Standards of conduct: Three commenters express the view that the types of conduct enumerated in proposed § 2.713(c)(1) which may result in the suspension of a representative from a proceeding are vague, overly broad, or subject to abuse by a presiding officer. One commenter also states that the meaning and consequence of "censure" are not defined.

The rule is designed to be read and applied in light of its purpose. Therefore, presiding officers will generally apply judicially developed precedents governing contempt in imposing and fashioning appropriate disciplinary sanctions. Since the presiding officer is charged with conducting a fair proceeding in a reasonable and even-handed manner, he or she is expected to apply the provisions of this rule in a similar fashion. The Commission recognizes that a presiding officer might, on occasion, erroneously suspend a representative from a proceeding for conduct not warranting such action. The appeal process provided in the rule would correct any such error. Therefore, the Commission expects no abuse of the disciplinary standards.

The Commission believes the meaning and consequence of censure are self-explanatory. Censure, public or private, is generally a more appropriate remedy for an isolated instance of misconduct than suspension. In addition, the rule makes clear what conduct is expected of representatives. (See generally, ABA Code of Professional Responsibility and Ethical Considerations, EC-7-34 through and including 7-39 and 8-5.)

3. Representation at NRC proceedings: One commenter suggests that "the restriction of attorney-at-law to only those admitted to the bar of U.S. or District of Columbia Courts or the highest court of any State, territory, or possession of the United States may well work to deprive public-interest intervenors of otherwise well-qualified counsel or other legal representation." The Commission believes the restriction is appropriate because admission before one of the specified courts is generally required before an attorney may be licensed to engage in the practice of law in a particular jurisdiction.

The Commission has determined that the words "or officer" should be added to the second sentence of § 2.713(b), following "duly authorized member." The clarification makes clear that a partnership, corporation or unincorporated association may be represented by a duly authorized *officer*, as well as by a member or attorney and reflects both actual practice and the intent of the rule.

4. Process of appealing suspensions: The provisions for appealing suspensions received a number of comments. Two commenters express concern that the appeals process requires a suspended individual to overcome a presumption of guilt and establish his or her innocence. The Commission disagrees with the characterization. Although there is some presumption that the action of a lower administrative tribunal is correct, the Commission or an Atomic Safety and Licensing Appeal Board need not accede to a lower board's decision simply because it is supported by "substantial evidence" or is not "clearly erroneous." See *Duke Power Company* (Catawba

Nuclear Station, Units 1 and 2), ALAB–355, 4 NRC 397 (1976).

Another commenter recommends that a proceeding be automatically stayed whenever a representative is suspended, even for one day or less. The commenter notes that disciplinary action normally focuses on the conduct of the representative rather than the party and recommends that the "necessary to prevent injustice" standard governing the granting of a stay in § 2.714(c)(2) be deleted. She recommends instead that the party be given the option of electing either an automatic stay pending completion of the suspension (or final disposition of the appeal, if appealed) or a stay for a reasonable period of time in which to secure other representation.

The Commission believes that the proposed rule adequately protects the interests of an affected party by permitting a stay for a reasonable period of time in order to obtain other representation if necessary to prevent injustice. Whether a stay should be granted in a particular case should be left to the discretion of the presiding officer, since that individual will be most familiar with the procedural posture of the proceeding and the impact of the suspension upon the parties. Under the commenter's proposal, a lengthy suspension could translate into a day-for-day stay of the entire proceeding, even though alternative representation might be available much sooner. This could add unnecessary delay to licensing proceedings.

The commenter also suggests the establishment of an alternative appeals process in cases in which the Commission itself orders a suspension so that the Commission does not also function as the appellate body. Since the Commission acts as a collegial body in licensing proceedings, there will be no further administrative appeal of suspensions it orders. Judicial review would be available to a suspended representative. Therefore, the Commission believes an alternative appeals process is unnecessary.

One commenter suggests that the rule be amended to require the completion of an appellate hearing within 10 days of the imposition of the suspension or else the suspension should be revoked, not merely lifted. According to the commenter, this change is designed to prevent an automatic 10-day non-reviewable suspension. The Commission notes that it may not always be practical to complete a hearing within 10 days of the imposition of a suspension because the rule provides 10 days for filing an appeal. Since proposed § 2.713(c)(3) directs that a necessary hearing shall commence as soon as possible after the filing of an appeal, the Commission believes that the intent of the comment is met.

However, after its own further review, the Commission has decided to broaden and revise the process for appealing suspensions in three respects. First, an appeal of a reprimand, censure, or suspension not exceeding 1 day is authorized. The proposed rule limited review to suspensions exceeding 1 day. The Commission believes that a right to appeal any sanction imposed pursuant to this section is desirable because, at least in the case of an attorney, an administratively unappealable sanction may saddle an individual with an irrevocable, and possibly unjustified, professional "black mark." In the District of Columbia, for example, an applicant for admission to the bar must state whether he or she has been suspended, reprimanded or censured as an attorney.

Second, the Commission has revised the proposed rule to delay the effectiveness of suspensions exceeding 1 day for a period of 72 hours from the time of the suspension order to permit the suspended individual to request a stay of the sanction from the reviewing tribunal pending appeal. A timely stay request will stay the imposition of the sanction until the reviewing tribunal rules on the motion. Ten days are provided for the Commission or Appeal Board, as appropriate, to rule on the motion. All time limits will be computed in accordance with 10 CFR 2.710. Responses to the stay request from other parties will not be entertained since they have no substantial interest in the disposition of the motion. In ruling on the motion, the reviewing tribunal will consider only the first two stay factors specified in 10 CFR 2.788(e) (whether the moving party has made a strong showing that it is likely to prevail on the merits and whether the party will be irreparably injured unless a stay is granted). The third and fourth factors (harm to other parties and the public interest) are excluded because each has little bearing on the proper disposition of the motion. This mechanism is provided in a new § 2.713(c)(4).

Finally, the Commission has modified the third sentence of proposed § 2.713(c)(3) to require an Atomic Safety and Licensing Appeal Board or the Commission, as appropriate, to consider each appeal on the merits. The modification will ensure that an appeal would not be declared moot if the suspension has been "served" prior to appellate consideration.

5. Referral to the state bar: One commenter recommends deletion of the provision of proposed § 2.713(c)(3) relating to notification of the appropriate state bar(s) if an attorney's suspension is upheld at the conclusion of the appeal, since no corresponding sanctions are imposed on non-lawyers and no pattern of attorney misconduct is cited. The Commission does not agree with this recommendation. Attorneys have an independent ethical obligation under the American Bar Association's Code of Professional Responsibility to refrain from engaging in undignified or discourteous conduct when appearing before a court or administrative tribunal. (DR 7–106(c)(6)). Therefore, referral to the state bar(s) is appropriate in such cases.

However, proposed § 2.713(c)(3) implies that if an attorney receives a suspension exceeding 1 day and does not appeal, there is no referral to the state bar. The Commission has clarified the rule by requiring mandatory referral of attorneys whose suspensions exceed 1 day even when no appeal is taken. Referral should not depend upon whether an appeal is taken. Logic teaches that a suspended attorney who does not appeal may be more guilty than his peer who elects to appeal; therefore, both attorneys should be referred to the state bar if the suspension exceeds 1 day.

Pursuant to section 161(p) of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552, 553 and 555(b) of Title 5 of the United States Code, the following amendments to Title 10, Chapter 1, Code of Federal Regulations, Part 2 are published as a document subject to codification, to be effective on November 21, 1980.

Section 2.713 is revised to read as follows:

§ 2.713 Appearance and practice before the Commission in adjudicatory proceedings.

(a) Standards of Practice. In the exercise of their functions under this subpart, the Commission, the Atomic Safety and Licensing Appeal Boards, the Atomic Safety and Licensing Boards, and Administrative Law Judges function in a quasijudicial capacity. Accordingly, parties and their representatives in proceedings subject to this subpart are expected to conduct themselves with honor, dignity, and decorum as they should before a court of law.

(b) Representation. A person may appear in an adjudication on his or her own behalf or by an attorney-at-law. A partnership, corporation or unincorporated association may be represented by a duly authorized member or officer, or by an attorney-at-law. A party may be represented by an attorney-at-law provided the attorney is in good standing and has been admitted to practice before any Court of the United States, the District of Columbia, or the highest court of any State, territory, or possession of the United States. Any person appearing in a representative capacity shall file with the Commission a written notice of appearance which shall state his or her name, address, and telephone number; the name and address of the person on whose behalf he or she appears; and, in the case of an attorney-at-law, the basis of his or her eligibility as a representative or, in the case of another representative, the basis of his or her authority to act on behalf of the party.

(c) Reprimand, Censure or Suspension from the Proceeding.

(1) A presiding officer, an Atomic Safety and Licensing Appeal Board, or the Commission may, if necessary for the orderly conduct of a proceeding, reprimand, censure or suspend from participation in the particular proceeding pending before it any party or representative of a party who shall refuse to comply with its directions, or who shall be guilty of disorderly, disruptive, or contemptuous conduct.

(2) A reprimand, a censure or a suspension which is ordered to run for one day or less shall be ordered with grounds stated on the record of the proceeding and shall advise the person disciplined of the right to appeal pursuant to paragraph (c)(3) of this section. A suspension which is ordered for a longer period shall be in writing, shall state the grounds on which it is based, and shall advise the person suspended of the right to appeal and to request a stay pursuant to paragraphs (c)(3) and (c)(4) of this section. A proceeding may be stayed for a reasonable time in order for an affected party to obtain other representation if this would be necessary to prevent injustice.

(3) Anyone disciplined pursuant to this section may within ten (10) days after issuance of the order file an appeal with the Atomic Safety and Licensing Appeal Board or the Commission, as appropriate. The appeal shall be in writing and state concisely, with supporting argument, why the appellant believes the order was erroneous, either as a matter of fact or law. The Appeal Board or Commission, as appropriate, shall consider each appeal on the merits, including appeals in cases in which the suspension period has already run. If necessary for a full and fair consideration of the facts, the Appeal Board or Commission, as appropriate, may conduct further evidentiary hearings, or may refer the matter to another presiding officer for development of a record. In the latter event, unless the Appeal Board or the Commission, as appropriate, provides specific directions to the presiding officer, that officer shall determine the procedure to be followed and who shall present evidence, subject to applicable provisions of law. Such hearing shall commence as soon as possible. In the case of an attorney, if no appeal is taken of a suspension, or, if the suspension is upheld at the conclusion of the appeal, the presiding officer, the Appeal Board, or the Commission, as appropriate, shall notify the state bar(s) to which the attorney is admitted. Such notification shall include copies of the order of suspension, and, if an appeal was taken, briefs of the parties, and the decision of the Appeal Board or Commission.

(4) A suspension exceeding 1 day shall not be effective for 72 hours from the date the suspension order is issued. Within this time a suspended individual may request a stay of the sanction from the appropriate reviewing tribunal pending appeal. No responses to the stay request from other parties will be entertained. If a timely stay request is filed, the suspension shall be stayed until the reviewing tribunal rules on the motion. The stay request shall be in writing and contain the information specified in §§ 2.788(b)(1), (2) and (4) of this part. The Appeal Board or Commission, as appropriate, shall rule on the stay request within 10 days after the filing of the motion. The Appeal Board or Commission shall consider the factors specified in §§ 2.788(e)(1) and (e)(2) of this part is determining whether to grant or deny a stay application.

(Sec. 161(p), Pub. L. 83–703, 68 Stat. 948 (42 U.S.C. 2201); Sec. 201, as amended, Pub. L. 93–438, 88 Stat. 1243, Pub. L. 94–79, 89 Stat. 413 (42 U.S.C. 5841))

Dated at Washington, D.C. this 15th day of October, 1980.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 80-32818 Filed 10-21-80; 8:45]

BILLING CODE 7590-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Reg. D; Docket No. R–0328]

Reserve Requirements of Depository Institutions; Interpretation

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interpretation.

SUMMARY: Under the Monetary Control Act of 1980, "bankers' banks" are exempt from Federal reserve requirements. The Board has determined that a depository institution will be regarded as a bankers' bank if it meets certain criteria with regard to its ownership and the extent to which it does business with entities other than depository institutions. The Board has also adopted criteria that will be applied in determining whether to grant requests from bankers' banks to act as a correspondent for the pass-through of required reserves of other depository institutions.

DATE: Effective November 13, 1980.

FOR FURTHER INFORMATION CONTACT: Gilbert T. Schwartz, Assistant General Counsel (202/452–3625), Lee S. Adams, Senior Attorney (202/452–3623), Paul S. Pilecki, Attorney (202/452–3281), or Myron L. Kwast, Economist (202/452–2686), or Paul P. Burik, Economist (202/452–2556), Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Under section 19 of the Federal Reserve Act ("Act"), as amended by the Monetary Control Act of 1980 (Title I of Pub. L. 96–221), the Board has adopted the following intepretation, effective November 13, 1980, with regard to the characteristics a depository institution must possess in order to qualify for the "bankers' bank" exemption from reserve requirements contained in section 19(b)(9) of the Act. The Board also established criteria to be applied to determine whether a specific bankers' bank is qualified to act as a pass-through correspondent for nonmember depository institutions that are subject to the Act.

Effective November 13, 1980, pursuant to the Board's authority under section 19 of the Federal Reserve Act (12 U.S.C. 461 *et seq.*), Regulation D (12 CFR Part 204) is amended by adding a new § 204.121 as follows:

§ 204.121 Bankers' banks.

(a) (1) The Federal Reserve Act, as amended by the Monetary Control Act of 1980 (Title I of Pub. L. 96–221), imposes Federal reserve requirements on depository institutions that maintain transaction accounts or nonpersonal time deposits. Under section 19(b)(9), however, a depository institution is not required to maintain reserves if it:

(i) Is organized solely to do business with other financial institutions;

(ii) Is owned primarily by the financial institutions with which it does business; and

(iii) Does not do business with the general public.

Depository institutions that satisfy all of these requirements are regarded as "bankers' banks."

(2) In its application of these requirements to specific institutions, the Board will use the following standards:

(i) A depository institution may be regarded as organized solely to do business with other depository institutions even if, as an incidental part to its activities, it does business to a limited extent with entities other than depository institutions. The extent to which the institution may do business with other entities and continue to be regarded as a bankers' bank is specified in paragraph (a)(2)(iii) of this section.

(ii) A depository institution will be regarded as being owned primarily by the institutions with which it does business if 75 per cent or more of its capital is owned by other depository institutions. The 75 per cent or more ownership rule applies regardless of the type of depository institution.

(iii) A depository institution will not be regarded as doing business with the general public if it meets two conditions. First, the range of customers with which the institution does business must be limited to depository institutions, including subsidiaries or organizations owned by depository institutions; directors, officers or employees of the same or other depository institutions; individuals whose accounts are acquired at the request of the institution's supervisory authority due to the actual or impending failure of another depository institution; share insurance funds; and depository institution trade associations. Second, the extent to which the depository institution makes loans to, or investments in, the above entities (other than depository institutions) cannot exceed 10 per cent of total assets, and the extent to which it receives deposits (or shares if the institution does not receive deposits) from or issues other liabilities to the above entities (other than depository institutions) cannot exceed 10 per cent of total liabilities (or net worth if the institution does not receive deposits).

If a depository institution is unable to meet all of these requirements on a continuing basis, it will not be regarded as a bankers' bank and will be required to satisfy Federal reserve requirements on all of its transaction accounts and nonpersonal time deposits.

(b) (1) Section 19(c)(1) of the Federal Reserve Act, as amended by the Monetary Control Act of 1980 (Title I of Pub. L. 96–221) provides that Federal reserve requirements may be satisfied by the maintenance of vault cash or balances in a Federal Reserve Bank. Depository institutions that are not members of the Federal Reserve System may also satisfy reserve requirements by maintaining a balance in another depository institution that maintains required reserve balances at a Federal Reserve Bank, in a Federal Home Loan Bank, or in the National Credit Union Administration Central Liquidity Facility if the balances maintained by such institutions are subsequently passed through to the Federal Reserve Bank.

(2) On August 27, 1980, the Board announced the procedures that will apply to such pass-through arrangements (45 FR 58099). Section 204.3(i)(1) provides that the Board may permit, on a case-by-case basis, depository institutions that are not themselves required to maintain reserves ("bankers' banks") to act as pass-through correspondents if certain criteria are satisfied. The Board has determined that a bankers' bank may act as a pass-through correspondent if it enters into an agreement with the Federal Reserve to accept responsibility for the maintenance of pass-through reserve accounts in accordance with Regulation D (12 CFR 204.3(i)) and if the Federal Reserve is satisfied that the quality of management and financial resources of the institution are adequate in order to enable the institution to serve as a pass-through correspondent in accordance with Regulation D. Satisfaction of these criteria will assure that pass-through arrangements are maintained properly without additional financial risk to the Federal Reserve.

(3) In order to determine uniformly the adequacy of managerial and financial resources, the Board will consult with the Federal supervisor for the type of institution under consideration. Because the Board does not possess direct experience with supervising depository institutions other than commerical banks, and does not intend to involve itself in the direct supervision of such institutions, it will request the National Credit Union Administration to review requests from credit unions that qualify as bankers' banks and the Federal Home Loan Bank Board to review requests from savings and loan associations that qualify as bankers' banks, regardless of charter or insurance status. (The Board, itself, will consider requests from all commercial banks that qualify as bankers' banks.) If the Federal supervisor does not find the institution's managerial or financial resources to be adequate, the Board will not permit the institution to act as a pass-through correspondent. In order to assure the continued adequacy of managerial and financial resources, it is anticipated that the appropriate Federal supervisor will, on a periodic basis, review and evaluate the managerial and financial resources of the institution in order to determine whether it should continue to be permitted to act as a pass-through correspondent. It is anticipated that, with respect to state chartered institutions, the Federal supervisor may discuss the request with the institute State supervisor. The Board believes that this procedure will promote uniformity of treatment for all types of bankers' banks, and provide consistent advice concerning managerial ability and financial strength from supervisory authorities that are in a better position to evaluate these criteria for depository institutions that are not commerical banks.

(4) Requests for a determination as to whether a depository institution will be regarded as a bankers' bank for purposes of the Federal Reserve Act or for permission to act as a pass-through correspondent may be addressed to the Federal Reserve Bank in whose District the main office of the despository institution is located or to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The Board will act promptly on all requests received directly or through Federal Reserve Banks.

By order of the Board of Governors of the Federal Reserve System, October 14, 1980.

Theodore E. Allison,

Secretary of the Board.

[FR Doc. 80-32809 Filed 10-21-80; 8:45 am]

BILLING CODE 6210-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

Powers, Duties, and Responsibilities of District Farm Credit Boards

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration publishes an amendment to its regulation pertaining to the powers, duties and responsibilities of district Farm Credit boards. Under the new amendment, the personnel policies adopted by the boards for the Farm Credit institutions will include all elements of a modern human resources management program.

EFFECTIVE DATE: October 22, 1980.

FOR FURTHER INFORMATION CONTACT: Larry H. Bacon, Deputy Governor, Office of Administration, Farm Credit Administration, 490 L'Enfant Plaza, East, S.W., Washington, DC 20578 (202) 755–2181.

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published on page 45595 of the **Federal Register** of July 7, 1980, and invited comments for 60 days ending September 8, 1980. No comments were received. Accordingly, Part 611, Chapter VI of Title 12 Code of Federal Regulations is amended by revising § 611.1010(f) as follows:

PART 611—ORGANIZATION

§ 611.1010 Powers, duties, and responsibilities.

* * * * *

(f) Adopt a policy to provide direction for the district and each Farm Credit entity in the district with regard to the management of human resources. Such policy shall include a statement of the board's philosophy toward recruiting and placement, employee development and training, compensation and benefits.

* * * * *

(Secs. 5.9, 5.12, 5.18, Pub. L. 92–161, 85 Stat. 619, 620, 621, (12 U.S.C. 2243, 2246 and 2252))

C. T. Fredrickson,

Acting Governor.

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12 CFR Part 612

Personnel Administration; Policies

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration publishes amendments to its regulations pertaining to district personnel policies. The amendments address the bank's human resources management program and define Agency, board, and management responsibility and accountability for human resources management.

EFFECTIVE DATE: October 22, 1980.

FOR FURTHER INFORMATION CONTACT: Larry H. Bacon, Deputy Governor, Office of Administration, Farm Credit Administration, 490 L'Enfant Plaza East, S.W., Washington, DC 20578, (202–755–2181).

SUPPLEMENTARY INFORMATION: Part 612 governs the personnel administration of the banks and associations of the Farm Credit System. The Farm Credit Administration is reissuing these regulations pursuant to 12 U.S.C. 2243 and 2252 in a manner which will provide greater flexibility to the institutions in the management of their human resources. Various requirements in the current regulations which are covered by other applicable laws and regulations are proposed to be eliminated.

The regulation will expand the concept of responsibility and accountability of district boards and management for all aspects of bank and association human resources management programs. It provides for the updating of personnel policy manuals and requires that supervisors and employees be provided with written policies and practices. As an aspect of total human resources management, salary administration programs will have to be established which are effective and consistent with the management system of the banks. In addition, the regulation will provide for clarification of compensation plans available to bank employees.

Proposed rulemaking was published on pages 45917–45924 of the Federal Register of July 8, 1980, and invited comments for 60 days ending September 8, 1980. Comments were received from the St. Paul Federal Land Bank. The St. Paul Federal Land Bank expressed reservations that the regulation would be difficult to administer and lead to many different approaches to human resources in the district. The statement of purpose and intent states that in many cases one set of human resources management policies will be appropriate for all banks and associations within the district. The regulation leaves it to the board and supervising banks to decide whether to have one or several sets of policies and programs.

The St. Paul Federal Land Bank expressed concern regarding the reemployment of annuitants under certain circumstances (§ 612.2050). The regulation leaves it up to the district to adopt a policy that restricts reemployment of annuitants.

The St. Paul Federal Land Bank questioned the authority of FCA to approve or disapprove salary ranges for senior bank officers on a specific position basis or only as to composite ranges for all positions and if FCA plans to review bank management on its salary administration by level of authority as it relates to the president, group vice president and division vice presidents (§ 612.2080). Section 5.18(4) of the Farm Credit Act of 1971 provides that FCA shall approve the salary scales for institutions of the System except for associations and the compensation of the chief officer of such institutions. FCA approval is of the salary scale itself; however, in order to grant such approval it is necessary to know what positions are assigned to the senior officer ranges. Review of salary administration programs will be on an "overall" basis.

Chapter VI of Title 12 Code of Federal Regulations is amended by revising and recodifying Part 612 as follows:

PART 612—PERSONNEL ADMINISTRATION

Subpart A—Human Resources Management

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612.2000 Policy statement.
612.2010 Responsibility.
612.2020 District human resources management policies.
612.2030 Associations.
612.2040 Human resources forecasting.
612.2050 Staffing, training, and development.
612.2060 Performance evaluation.
612.2070 Salary administration.
612.2080 Salary and range approvals.
612.2090 Other compensation plans.
612.2100 Benefits administration.
612.2110 District retirement plans.
612.2120 Summary of requirements for Farm Credit Administration review and approval.

Subpart B—Standards of Conduct for Directors, Officers and Employees

612.2130 Director, officer and employee responsibilities and conduct.
612.2140 District and association directors.
612.2150 Soliciting support in polls for association, district, or Federal Farm Credit Board membership.
612.2160 Reports and recommendations on proposed or pending Federal legislation.
612.2170 Political activity.
612.2180 Devotion of time to official duties.
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612.2200 Reporting violations.
612.2210 Prohibited acts for salaried employees.
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612.2240 Gifts or favors from subordinates.
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612.2290 Report by personnel.
612.2300 Prohibited acts enforcement.
612.2310 Reports of transactions with directors, officers, or employees.
612.2320 Other reports to the Farm Credit Administration.
612.2330 Fidelity bonds required.

Authority: Sections 5.9, 5.12, 5.18, Pub. L. 92–161, 85 Stat. 619, 620, 621, (12 U.S.C. 2243, 2246 and 2252).

Subpart A—Human Resources Management

§ 612.2000 Policy statement—statement of purpose and intent of the human resources—management relations.

Human Resources Management is a vital element of total bank

responsibility. Every aspect of the business, from its public image to the quality of loan service received by an individual farmer, relates directly to the quality of employees selected and the adequacy of their individual training. In addition, the widely fluctuating economy, increasing costs of compensation and benefits, growing social awareness and a vast new body of legislation dealing with equal employment opportunity, manpower, safety and benefits have created unprecedented demands on the banks for effective and comprehensive human resources management systems. The intent of the revised personnel sections of the Regulations is to outline those areas that should be addressed by a bank's human resources management program in general terms, and to define Agency, board and management responsibility and accountability for human resources management. Most districts already have a district personnel policy manual and employee handbook. These will likely be adequate documentation to meet most of the requirements of these regulations. The banks are encouraged to build on this existing base by reviewing and updating the content of policy manuals and handbooks as appropriate and determining areas that will need additional emphasis under these regulations, and developing an appropriate implementation strategy. These regulations recognize that a district board also acts as a board of each of the three banks, and that the bank president, as chief executive officer, is ultimately accountable for the bank's performance. In many cases, one set of district human resources management policies will be appropriate for all three banks and associations. However, there may be valid reasons for each bank to develop its separate, but compatible, human resources management policies and programs. The selection of either approach by the district board is acceptable under these regulations. The philosophy of the regulations is to promote flexibility so that human resources management programs can be tailored to the operational requirements of the banks and associations. In addition to these regulations, each bank and association is subject to and required to comply with other Federal, State and local laws and regulations related to the employment process. This includes, but is not limited to civil rights laws, the Occupational Safety and Health Act, the Fair Labor Standards Act and regulations of the Equal Employment Opportunity Commission, Department of Labor and Internal Revenue Service. The Farm Credit Administration will not duplicate the regulatory requirements of these other agencies but may assist a bank in cases of non-compliance to attain compliance and retain its position of public trust. Because of the general nature and wording of the regulations, compliance takes on a new meaning. The Farm Credit Administration's supervision of district human resources management programs is meant to be consultative, constructive and based on professional evaluation of the effectiveness of bank and district human resources management programs in meeting management needs, rather than technical compliance of a specific program. In accordance with FCA's policy of coordinated supervision, the personnel staff will work closely with the regional supervisory staffs to ensure consistency of overall bank supervisory efforts and to avoid duplication and overlap. The Farm Credit Administration personnel staff will also work closely with examiners to assist them in determining areas to be reviewed and in collecting, analyzing and evaluating data. Such evaluations will emphasize program effectiveness and quality in meeting a bank's mission and goals and transactional review will be for the purpose of making those analyses. The Farm Credit Administration will utilize information gathered by examination and supervisory efforts to consult with and assist bank management in the effective discharge of its responsibility and in maintenance of accountability to the bank board of directors. Matters of a policy nature will be taken to the board only after proper communication with management.

§ 612.2010 Responsibility.

It is the responsibility of each bank, within the provisions of these regulations and policy direction adopted by the district board of directors under § 611–1010(f) of these regulations, to manage its human resources function, including the supervision of association human resources management, where applicable. Plans, actions, and activities shall be documented appropriately and provide adequate operational controls for routine audit and review. Each bank's human resources management system shall provide for regular reporting of information to the president and the board.

§ 612.2020 District human resources management policies.

In the interest of effective human resources management, each Farm Credit district shall issue a human resources policy manual(s), including board policies relating to the district, individual banks and the program applicable to Federal land bank and production credit associations. It shall include statements of district philosophy toward human resources management and the objectives envisioned for both employer and employee. Appropriate management and supervisory personnel shall be provided with a copy of the policy manual for guidance in managing human resources. The manual provisions shall be in accordance with applicable rules and regulations and a copy shall be submitted to the Farm Credit Administration for review. The policy manual(s) should address the followings:

(a) A general statement of human resources philosophy and objectives.

(b) Recruiting and employment practices.

(c) Employee training and development.

(d) Performance evaluation.

(e) Salary administration program.

(f) Employee benefits.

(g) Employee responsibilities and conduct.

Each employee shall be provided with a written summary such as a handbook that outlines the bank's employment practices and procedures.

§ 612.2030 Associations.

In accordance with the principle of decentralization, each Federal land bank and Federal intermediate credit bank shall develop human resources policies for associations within the district consistent with these regulations and policy direction provided by the bank board. Association human resource management programs developed within these policies shall be consistent with district policy and within parameters of required district compensation and benefits programs.

§ 612.2040 Human resources forecasting.

Plans should be made in advance by banks and associations to recruit and train qualified employees for prospective vacancies caused by turnover, business growth, approaching retirements, or other reasons that can be anticipated. Such plans should attempt to identify numbers and skill levels required by anticipated vacancies and assess the availability of the required skills in the existing work force.

§ 612.2050 Staffing, training, and development.

Under policies established by the bank boards, each bank and association shall be responsible for the design, implementation, communication, and maintenance of programs for recruitment, selection, placement, training and development of employees. The purpose of such policies and programs shall be to recruit, train, develop, effectively utilize and retain a staff competent to carry out the functions of each bank and association.

§ 612.2060 Performance evaluation.

Under policies established by the bank boards, each bank and association shall be responsible for development, implementation, communication and maintenance of effective systems for evaluating employee performance.

§ 612.2070 Salary administration.

Salary administration policies shall assure development of effective salary administration programs consistent with established district philosophy. Such programs should be developed in accordance with sound principles and techniques of salary administration.

§ 612.2080 Salary and range approvals.

(a) All salary ranges for senior officers of the banks shall be submitted to the Farm Credit Administration for approval 15 days prior to the effective date of any changes.

(b) Upon initial appointment, the salary of the chief executive officer of a bank shall be referred to the Farm Credit Administration for approval 10 days prior to release of any announcements. Changes in salary levels of such chief executive officers shall be submitted to the Farm Credit Administration for approval 10 days prior to final confirmation of changes.

(c) A copy of all personnel actions at the bank senior officer level shall be submitted to the Farm Credit Administration for record purposes.

§ 612.2090 Other compensation plans.

All plans for bank officer and employee compensation (other than wages) and any amendments to such plans shall be submitted to the Farm Credit Administration for prior approval. This includes but is not limited to incentive, bonus and deferred compensation plans. For the purposes of this section, employee benefit programs, such as medical hospital plans, group life insurance plans and other similar benefits, are not considered compensation plans.

§ 612.2100 Benefits administration.

District boards shall adopt policies governing employee benefit programs and assure that such programs are developed and based on clearly defined objectives with full coordination of benefits to eliminate coverage gaps and duplication of benefits and costs. Employee benefits should be developed as a total program including leave, retirement, and insurance programs. A degree of consistency in benefit programs between districts is desirable and the inclusion of portability provisions between districts should be an objective in formulating employee benefit programs.

(a) All employee benefits programs should be periodically reviewed in light of appropriate and competitive standards, employee need and consistency with the management objectives of the bank.

(b) The pension formula will take into consideration, directly or indirectly, present and anticipated future levels of social security benefits.

§ 612.2110 District retirement plans.

The district boards and the bank boards shall provide retirement benefits for their employees who are not under the Civil Service Retirement Act. Any such retirements plans, including thrift or savings plans, and any amendments thereto, shall be submitted for the prior approval of the Farm Credit Administration. The banks shall secure approval of the plan by the Internal Revenue Service.

§ 612.2120 Summary of requirements for Farm Credit Administration review and approval.

(a) *Requirements for review.* The following shall be submitted to the Farm Credit Administration for review:

(1) District human resources management policies and amendments (§ 612.2020).

(2) Copies of all personnel actions on bank senior officers (§ 612.2080(c)).

(b) *Requirements for approval.* The following shall be submitted to the Farm Credit Administration for prior approval:

(1) Salary ranges for bank senior officers (§ 612.2080(a)).

(2) Establishment or change of salary of bank chief executive officer (§ 612.2080(b)).

(3) All compensation plans other than wages or benefits programs and amendments thereto (§ 612.2090).

(4) Retirement and thrift plans and amendments thereto (§ 612.2110).

(c) *Periodic reports.* The Farm Credit Administration may periodically require such reports as may be needed to discharge its supervisory responsibility.

Subpart B—Standards of Conduct for Directors, Officers, and Employees

§ 612.2130 Director, officer, and employee responsibilities and conduct.

The maintenance of high standards of industry, honesty, integrity, impartiality, and conduct by directors, officers, and employees of all institutions and organizations in the Farm Credit System is essential to insure the proper performance of System business and continued public confidence in the System and all its entities. The avoidance of misconduct and conflicts of interest, either real or apparent, by all personnel is indispensable to the maintenance of these standards. All personnel shall observe both the letter and the intent of the laws, regulations, instructions, and procedures applicable to them and to entities in the System, whether issued by the Farm Credit Administration or by the entities themselves. Such written criteria, however, cannot alone provide for maximum accomplishments of the aims of the Farm Credit law. Such accomplishment must rely, in addition, on positive effort and the exercise of ingenuity and good judgment by all who have a part in carrying out the authorized Farm Credit programs. District Boards shall adopt rules and guidelines of conduct for directors and employees, which shall implement these regulations and may include other guidelines, and secure compliance therewith. District Board guidelines and instructions shall be made available to each employee, each district and association director, and each nominating committee.

§ 612.2140 District and association directors.

The democratically controlled, borrower-owned structure of the Farm Credit System makes it essential that each member of the boards of directors of the institutions of the System, as well as the officers and employees, be aware of potential conflicts of interest. Each director shall:

(a) Refrain from divulging or using for his personal benefit information acquired as a director, except in the performance of his official duties.

(b) Abstain from participating directly or indirectly in the deliberations on any question affecting his personal interests or those of his family or of any corporation or other business organization in which he has an interest.

(c) Avoid any action toward or the appearance of obtaining special advantage or favoritism in dealing with borrowers from any of the institutions of the System, or with officers or employees thereof, particularly in relation to real or personal property which any such institution owns or in which it claims a lien or other interest, and

(d) Consider the potential conflict of interest arising from his employment by.

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or directorship of, other lending institutions and his ability to impartially and objectively perfom his duties and responsibilities as a director of the Farm Credit institutions.

§ 612.2150 Soliciting support in polls for association, district, or Federal Farm Credit Board membership.

(a) No salaried officer or employee of a bank or association shall take any part, directly or indirectly, in the designation of nominees for the Federal Farm Credit Board, or in the nomination or election of members of a district Farm Credit Board, or association board, or make any statement, either orally or in writing, which may be construed as intending to influence any vote in such designations, nominations, or elections, except that a statement by such officer or employee of biographical and other data and matters relating to a candidate shall not be so construed if it is made at the request of and to the board of directors of the employing institution, or is made to the nominating committee as directed by the board of directors of an association in connection with the selection of nominees for an association election. Action shall immediately be taken, for suspension or dismissal in accordance with applicable procedures, against any such officer or employee who violates the provisions of this section.

(b) No bank or association property, transportation, communications and official stationery shall be used in the interest of any candidate, unless the same facilities and resources are simultaneously made known to and are available for use by all candidates.

(c) No director, officer, or employee shall, for the purpose of furthering the interests of any candidate, furnish or make use of Farm Credit System records which would not be available to all candidates.

§ 612.2160 Reports and recommendations on proposed or pending Federal legislation.

Any contacts on behalf of the bank or association or its board with the Office of Management and Budget with reference to proposed or pending legislation affecting the Farm Credit System shall be made through the Farm Credit Administration.

§ 612.2170 Political activity.

(a) No salaried officer, employee, or agent of a Farm Credit institution shall hold a public office or be a candidate for such office unless the bank by which he is employed or which supervises his employer has, after investigation and consideration of all facts involved, determined in writing that such candidacy or holding of public office would not bring justified criticism on the grounds of political activities or partialities or in any other manner adversely affect the best interests of the borrowers or the operations and public image of the System or any institutions thereof. All determinations made hereunder shall be reported to the board of directors of the bank concerned.

(b) No salaried employee shall take an active part or issue public statements relating to the nomination or candidacy of any person or participate in partisan political campaigns for national or statewide elective office, in any way that would implicate by support, endorsement or otherwise, his connection with the Farm Credit institution by which he is employed. This statement shall not be construed to prohibit an employee from expressing his personal opinion on political affairs or candidates or making voluntary campaign contributions.

§ 612.2180 Devotion of time to official duties.

Salaried officers, employees, and agents of Farm Credit institutions are required to devote the full business time for which they are employed to the effective accomplishment of the duties assigned them by the institutions in which they are employed. They are also expected to refrain from accepting employment or compensation for activities, even for services rendered outside the business hours for which they are employed, which might embarrass the Farm Credit institution or the Farm Credit Administration or reflect adversely upon their ability to take an unbiased and impartial view of its operations.

§ 612.2190 Nepotism.

(a) To emphasize and assist the merit system of appointments and promotions of salaried officers and employees of the institutions of the Farm Credit System, the following restrictions shall be observed:

(1) A relative of a director of a Farm Credit institution shall not serve as a salaried officer or employee of that institution.

(2) A relative of a director of a Farm Credit bank shall not serve as chief executive officer of an association supervised by that bank.

(3) A person shall not serve as a salaried officer or employee of a Farm Credit institution in any position which is directly or indirectly supervised by a relative except that this restriction shall not apply when the salaried officer or employee of an association is other than a chief executive officer and the relationship is with a director, an officer, or an employee of the supervising bank.

(4) Notwithstanding the other provisions of this paragraph (a), a person may serve as a salaried officer or employee in a position directly or indirectly supervised by a relative for a period in any calendar year not exceeding a total of 75 workdays provided that positive documented efforts have been made to recruit a qualified nonrelative for the position.

(b) The term "relative" as used in this section means parent, son, daughter, sibling, stepparent, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, uncle, aunt, first cousin, nephew, niece, spouse, parent-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandson, granddaughter, and any person having a similar relationship by marriage.

(c) Any person engaged by a Farm Credit institution to provide professional services for a fee or other compensation is considered to be within the term "salaried officer or employee" for the purpose of this section.

(d) The provisions of this section shall not preclude any persons involved in a nepotistic relationship allowable under previous regulations from continuing to serve in a position occupied by him or her on the effective date of this regulation.

(e) To prevent the creation of relationships prohibited under this regulation, the following actions shall be taken:

(1) Each bank shall establish the mechanism by which a nominee for a director position is informed of the provisions of this section. Specifically, a nominee whose election would create a prohibited relationship must be fully aware of the consequences of his or her election.

(2) Prior to the employment or promotion of a person, the institution shall determine whether a prohibited relationship would be created by the action.

(3) Stockholders shall be notified prior to any election of those nominees whose election would create a prohibited relationship.

§ 612.2200 Reporting violations.

In any instance of violation or prospective violation of § 612.2190, it is the responsibility of the related individuals to notify the employing entity's chief executive officer regarding the situation immediately upon becoming aware of it. It is the responsibility of any such officer or manager who becomes aware of such a situation, by this or any other means, to take prompt corrective action, or, if it is beyond his power or ability to do so, to request instructions from the supervising bank or the Farm Credit Administration, as appropriate.

§ 612.2210 Prohibited acts for salaried employees.

A salaried officer, employee, or agent of any institution of the Farm Credit System:

(a) Shall not participate, directly or indirectly, in the deliberation upon, or the determination of, any question affecting his personal interests, those of any person related to him by blood, marriage, or adoption, or those of any partnership, association, or any business organization in which he is directly or indirectly interested. An act shall not be deemed enjoined by this paragraph (a) if the employing institution determines that the degree of interest or relationship in question is not substantial but so trivial as to create little probability that the officer's, employee's, or agent's impartiality or judgment and action has been affected, and such determination has been reported to the board of directors of the employing institution. Such report shall be reflected in the minutes of the board meeting;

(b) Shall not use for his own personal benefit or that of another or, except in the performance of his official duties, divulge to another person any fact or information acquired, directly or indirectly, by virtue of his employment which is not generally available to the public;

(c) (1) Shall not solicit or accept, directly or indirectly, any "benefit" (i.e., salary, fee, commission, honorarium, gift, or favor):

(i) From any "borrower" (i.e., a debtor, loan applicant, or representative) of the Farm Credit institution which is his employer;

(ii) From any borrower of a Farm Credit institution supervised by his employer;

(iii) From any borrower of a Farm Credit institution which supervises his employer;

(iv) From any person who purchases real or personal property from a borrower;

(v) From any person who sells real or personal property to a borrower; or

(vi) From any person transacting business with his employer.

(2) An officer, employee, or agent may enter into the following transactions for a benefit with a person (as identified in paragraph (c)(1) of this section) if such transactions are arranged in good faith as a result of arm's-length negotiations and the fair market value of services, supplies, or products involved in any single transaction, or any series of transactions with the same person, during one calendar year does not exceed a total of $1,000:

(i) For services to be performed on a farm owned or rented by him or on other property in which he has an interest;

(ii) For the purchase of farm supplies and products to be used on a farm owned or rented by him;

(iii) For the sale of farm supplies and products on a farm owned or rented by him; or

(iv) For the rental of real property by or to him;

Provided, That for any single transaction, or any series of transactions with the same person, during one calendar year the total of which exceeds $1,000, prior written authorization of the board of directors of his employer shall be obtained. When such authorization is given, the action of the board of directors shall be reported to the bank officer designated pursuant to § 612.2230.

(3) The board of directors of the supervising bank may, in lieu of the provisions of paragraph (c)(2) of this section, prescribe a policy addressed to the transactions identified therein and submit it for approval of the Farm Credit Administration, and establish guidelines applicable to officers, employees, and agents of the bank and of associations under its supervision, which shall assure that the types and values of permitted transactions do not have a reasonable potential for conflicts of interest.

(4) An officer, employee, or agent may:

(i) Accept food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting where such officer, employee, or agent is in attendance;

(ii) Accept unsolicited advertising or promotional material such as pens, pencils, note pads, calendars, and other items of nominal value; or

(iii) Accept any benefit otherwise enjoined by this paragraph (c) if the circumstances make clear that the motivating factor for the extension of such benefit is not based on the official responsibilities of such officer, employee, or agent or of the institution by which he is employed and, in any way, connected with any business activity he is engaged in, other than an activity referred to in paragraph (c)(1) of this section, and with any business of the other person or organization concerned, and that the offer of such benefit has been reported to and its acceptance has received the prior written authorization of the board of directors of the employing institution and, if an association officer, employee, or agent is involved, by the board of directors of the supervising bank. The action of the board shall be reflected in the minutes of the board meeting and brought to the attention of the bank officer designated pursuant to § 612.2230(c).

(d) Shall not acquire, directly or indirectly (including acquistion by membership in syndicates, but not by will or inheritance):

(1) Any lands or interests therein, including mineral interests, which are owned by any Farm Credit institution or which were thus owned at any time within the preceding 12 months,

(2) Any mineral interests in lands which are mortgaged to any Farm Credit institution or which were thus mortgaged at any time within the preceding 12 months, but this shall not prohibit the acquisition of mineral interests incidentally with surface interests, or which were servered prior to the preceding 12 months from lands currently mortgaged to the institution and are owned by a person who has no interest in such lands, or

(3) Any interests in lands (including mineral interests being acquired incidentally with surface interests) which are mortgaged to any Farm Credit institution or which were thus mortgaged at any time within the preceding 12 months, without obtaining the specific prior approval of such institution's board of directors, such action shall be reported in the minutes of the board meeting.

As used in this paragraph (d), "mineral interests" means any interest in minerals, oil, or gas, including but not limited to, any right derived, directly or indirectly, from a mineral, oil, or gas lease, deed, or royalty conveyance.

(e) Shall not participate, directly or indirectly, in any transaction concerning the purchase or sale of corporate stocks or bonds, commodities, or other property for speculative purposes if such action might tend to interfere with the proper and impartial performance of his duties or bring discredit upon any Farm Credit institution. Employees are not prohibited by this paragraph from making bona fide investments. When an employee is uncertain as to whether a contemplated transaction would constitute a violation of this paragraph, he should seek the advice, in accordance with procedures adopted by the district bank, of the officer designated pursuant to § 612.2230(c).

(f) Shall not have a business relation, directly or indirectly:

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(1) With a "borrower" (i.e., a debtor, loan applicant, or representative) of the Farm Credit institution which is his employer;

(2) With a borrower of a Farm Credit institution supervised by his employer;

(3) With a borrower of a Farm Credit institution which supervises his employer;

(4) With a person who purchases real or personal property from any borrowers;

(5) With a person who sells real or personal property to any borrowers; or

(6) With a person transacting business with his employer; except in an official capacity as officer, employee, or agent of a Farm Credit institution, unless the board of directors of the employing institution, in carrying out the intention of this § 612.2210, has made a prior determination in writing that such business relation reasonably cannot be viewed as a means to influence a decision in which a Farm Credit institution has an interest. If the employing institution is an association, such determination shall be reported to and concurred in by the supervising bank. The action of the board shall be reflected in the minutes of the board meeting and brought to the attention to the bank officer designated pursuant to § 612.2230(c). Examples of such business relation include the purchase or sale of personal or real property, sale or placement of insurance, sales-barn activities, and auctioneering, appraisal, and other professional services but do not include the transactions described in paragraphs (c)(2) and (4)(iii) or transactions involving nonfarm goods purchased to meet family needs for food, clothing, and household furnishings and equipment from usual commercial sources at prices available to the public in general, or involving medical or dental services.

(g) Shall not purchase or acquire, directly or indirectly while he serves on a finance committee or subcommittee, except by will or inheritance, any interest in any obligations of the bank or banks for which he participated in establishing rates.

(h) Shall not also serve as an officer or director of an organization that transacts business with a Farm Credit institution, or of a financial institution unless the board of directors of the bank by which he is employed or which supervises his employer has determined that the involvement by such financial institution in the type of lending engaged in by the bank or his employer is so trivial as to create little probability of any significant impact upon the bank's or his employer's business, and he has agreed in writing not to participate on the financial institution's loan committee or in the deliberation upon, or determination of, any question coming before the financial institution's board which has more than nominal significance to the bank or his employer. Such action shall be reported in the minutes of the board meeting.

(i) The provisions of §§ 612.2130 and 612.2140, and not this § 612.2210, apply to directors of Farm Credit banks and associations.

§ 612.2220 Legal provision cited.

In the above connection, particular attention is directed to the following provisions of law containing the Federal penal provisions which relate particularly to officers and employees of the institutions under the supervision of the Farm Credit Administration: Sections 212, 213, 215, 216, 371, 493, 657, 658, 1006, 1011, 1013, 1014, 1907 and 1909 of title 18, United States Code.

§ 612.2230 Prohibited acts procedures.

Under a policy of its board applicable to the acts prohibited by § 612.2210 each district bank shall adopt procedures which will assure that:

(a) The provisions of § 612.2210 are brought to the attention from time to time of all officers, employees and agents of Farm Credit institutions and directors of associations in the district;

(b) All cases arising under § 612.2210 involving officers, employees, or agents of the bank, or of associations under its supervision, are brought to the attention of the bank's board;

(c) An officer of the bank is designated (1) to receive reports of all cases arising under § 612.2210 involving officers, employees, or agents of the bank and of associations under its supervision, (2) to report promptly in writing to the Deputy Governor, Office of Supervision, cases arising under paragraphs (a) through (g) thereof, (3) to record actions taken to resolve every case involving § 612.2210, and (4) to submit a semiannual report in writing of such actions to the Deputy Governor, Office of Supervision.

§ 612.2240 Gifts or favors from subordinates.

No salaried officer or employee of any Farm Credit institution shall at any time solicit contributions from other employees for a gift or present to anyone in a superior position, nor shall any such superior receive any gift or present offered or presented to him as a contribution from employees receiving a less salary than himself, nor shall any such officer or employee make any donation as a gift or present to any official superior; provided, however, that this section shall not apply to gifts of a nominal value traditionally exchanged among business associates as part of acceptable social amenities.

§ 612.2250 Borrowing from subordinates.

No salaried officer or employee shall borrow from or obtain endorsement of a note or other obligation from any subordinate employee.

§ 612.2260 Improper use of official property.

No director, officer, or employee shall use the space, personal property, communication, transportation, or other facility of a Farm Credit institution for activities or business in his personal interest or the personal interest of another, except under lease, contract, concession, or authorization in writing, pursuant to agreements and negotiations fairly arrived at and evidenced in writing, setting forth the terms and conditions of such use. Official stationery shall not be used for personal communication or for communications on controversial public matters expressing opinions which do not represent the official views of those having a responsibility for expression of official views of the institution.

§ 612.2270 Evasions and circumventions of rules of conduct.

No officer or employee shall use any scheme or device to avoid compliance with any of the rules or guidelines established under §§ 612.2130 through 612.2260 or avoid compliance with the intent of those rules through the use of subterfuge, evasions, or circumventions. Examples of acts of subterfuge or circumventions include (a) obtaining a loan or assisting another borrower to obtain a loan from a Farm Credit institution knowing that the proceeds thereof are planned to be used to provide financing for a person who is ineligible for such a loan, (b) inducing or assisting another person to obtain a loan from any institution of the System, the proceeds of which are planned to be used for the employee's benefit or for the benefit of any legal entity in which the employee has a direct or indirect personal interest.

§ 612.2280 Official loans.

Officers and employees as well as directors may receive bona fide loans to the extent that they are eligible for such loans and in strict compliance with policies and regulations governing such loans.

§ 612.2290 Report by personnel.

The director, officer, or employee involved or interested in any transaction to which §§ 612.2140 and 612.2210 are applicable shall report in writing to the appropriate officer of the interested bank or association and disclose his interest and status in the matter unless, in the case of a loan application, the application itself discloses such information. The interested bank or association is the one that is a party to the transaction and not the employing bank or association or the one on whose board the director serves, unless they happen to be the same.

§ 612.2300 Prohibited acts enforcement.

(a) The Office of Examination shall investigate any case involving an act prohibited by paragraphs (a) through (g) of § 612.2210 if it determines that such action is necessary or advisable. A copy of the investigation report shall be submitted to the president of the district bank concerned and to the officer designated as provided in § 612.2230.

(b) The bank shall, with regard to any prohibited act evidenced by the investigation report, take prompt action in a manner that will assure the integrity of the Farm Credit institution concerned and the confidence of the public in it.

(c) The board of directors of the bank shall, with regard to a case arising under paragraph (h) of § 612.2210 take prompt action to assure compliance therewith.

§ 612.2310 Reports of transactions with directors, officers, or employees.

The associations shall report transactions to which §§ 612.2140, 612.2210, 612.2270, and 612.2290 apply fully in writing to the officer of the supervising bank designated pursuant to § 612.2230(c).

§ 612.2320 Other reports to the Farm Credit Administration.

A report of any violation or possible violation of a regulation in this Subpart B shall be included in the loan transaction submission of any loan requiring the prior approval, advice or counsel of the Deputy Governor, Office of Supervision. Such report shall be made even though the report required by § 612.2230 is filed. The bank shall assure that all directors, officers and employees shall be advised of the circumstances requiring reports under this section.

§ 612.2330 Fidelity bonds required.

Provision shall be made by the banks for insurance coverage against losses by all banks and association employees through the continuation of present coverage. Bankers Blanket Bond, Standard Form No. 10, or substitute, may be used. The Act does not require a faithful performance provision in the bond coverage. The district boards shall determine that bond coverage is in an amount that will adequately protect the banks and associations, taking into consideration the increased dollar amount of assets and lending activity of these institutions.

(Secs. 5.9, 5.12, 5.18, Pub. L. 92–181, 85 Stat. 619, 620, 621, (12 U.S.C. 2243, 2246 and 2252))

C. T. Fredrickson,

Acting Governor.

[FR Doc. 80-32912 Filed 10-21-80; 8:45 am]

BILLING CODE 6705-01-M

12 CFR Part 618

Internal Controls for the Operations of Farm Credit Banks and Associations

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration publishes an amendment to its regulation pertaining to internal controls for the operations of the Farm Credit banks and associations. The existing regulation contains specific provisions as to how this function, including internal auditing, is to be performed by the institutions. By eliminating these specific requirements, the proposed will provide the district Farm Credit boards greater flexibility to establish policies for assuring the effective control over and accountability for the operations, programs and resources of these institutions.

EFFECTIVE DATE: October 22, 1980.

FOR FURTHER INFORMATION CONTACT: Larry H. Bacon, Deputy Governor, Office of Administration, Farm Credit Administration, 490 L'Enfant Plaza, S.W., Washington, DC 20578 (202) 755–2161.

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published on page 39507 of the Federal Register of June 11, 1980, and invited comments for 60 days ending August 11, 1980. No comments were received. Accordingly, Part 618, Chapter VI of Title 12 Code of Federal Regulations is amended by revising § 618.8430 as follows:

PART 618—GENERAL PROVISIONS

Subpart I—Internal Controls

§ 618.8430 Internal Controls.

(a) General. The district board shall adopt an internal control policy designed to provide direction to banks and associations in establishing effective control over and accountability for operations, programs, and resources. Board policy should include:

(1) Direction to management which ensures the fixation of responsibility for the internal control function (financial and administrative) in an officer (or officers) of the bank.

(2) Requirements that the bank adopt internal audit and control procedures, evidencing responsibility in the review and maintenance of a comprehensive and effective internal control operation.

(b) The Farm Credit Administration shall include a review and analysis of the internal control function of each bank in its supervisory and examination effort, including the reporting of policy and management weaknesses.

(Secs. 5.9, 5.12, 5.18, Pub. L. 92–181, 85 Stat. 619, 620, 621 (12 U.S.C. 2243, 2246, 2252))

C. T. Fredrickson,

Acting Governor.

[FR Doc. 80-32913 Filed 10-21-80; 8:45 am]

BILLING CODE 6705-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

[Rev. 2, Amdt. 14]

Delegations of Authority To Conduct Program Activities in the Field Offices; Correction

AGENCY: Small Business Administration.

ACTION: Final rule, correction.

SUMMARY: This corrects a final rule published in the Federal Register on September 15, 1980 (45 FR 60895). This document corrects an error in paragraph lettering.

DATES: Effective September 15, 1980.

FOR FURTHER INFORMATION CONTACT: Lee Waugh, Paperwork Management Branch, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416, (202) 653–6399.

In FR Doc. 80–28469 appearing at page 60895 in the issue for Monday, September 15, 1980, under § 101.3–2, change number "2" should read "In part X—Administrative, Section A, paragraphs 1 through 3 and paragraph 5 are amended by relettering subparagraphs h through j as l through n and adding new subparagraphs h through k as follows: * * *" in lieu of "* * * relettering subparagraphs h and i as l and m * * *."

Dated: October 15, 1980.

Oleta F. Waugh,

Federal Register Liaison Officer.

[FR Doc. 80-32915 Filed 10-21-80; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Government National Mortgage Association

24 CFR Part 300

[Docket No. R-80-882]

List of Attorneys-in-Fact

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: This amendment updates the current list of attorneys-in-fact by amending paragraph (c) of 24 CFR 300.11. These attorneys-in-fact are authorized to act for the Association by executing documents in its name in conjunction with servicing GNMA's mortgage purchase programs, all as more fully described in paragraph (a) of 24 CFR 300.11.

EFFECTIVE DATE: December 13, 1980.

ADDRESSES: Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410

FOR FURTHER INFORMATION CONTACT: Mr. William J. Linane, Office of General Counsel, on (202) 755-7186.

SUPPLEMENTARY INFORMATION: Notice and public procedure on this amendment are unnecessary and impracticable because of the large volume of legal documents that must be executed on behalf of the Association.

§ 300.11 [Amended]

1. Paragraph (c) of § 300.11 is amended by deleting the following name(s) from the current list of attorneys-in-fact:

Name and Region

Pam Andrus, Los Angeles, California
Elizabeth Brouwer-Ancher, Philadelphia, Pennsylvania

2. Paragraph (c) of § 300.11 is amended by adding the following name to the current list of attorneys-in-fact:

Name and Region

Joe E. Price, Dallas, Texas

(Sec. 309(d), National Housing Act, 12 U.S.C. 1723a(d), sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)).

Issued at Washington, D.C., September 24, 1980.

Ronald P. Laurent,

President, Government National Mortgage Association.

[FR Doc. 80-32861 Filed 10-21-80; 8:45 am]

BILLING CODE 4210-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL 1636-7]

Ambient Air Quality Surveillance; Florida: Air Quality Surveillance Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is approving the air quality surveillance plan revision submitted by the State of Florida on December 11, 1979. The revision updates Florida's State Implementation Plan (SIP) to meet EPA requirements as set forth in 40 CFR Part 58, (44 FR 27558, May 10, 1979).

The revision includes a commitment to update their monitoring network and to utilize all required quality assurance methods to ensure data accuracy. The revision also includes provisions for Emergency Episode Monitoring. Since the revision meets all EPA requirements, EPA is approving the revision.

DATE: This action is effective November 21, 1980.

ADDRESSES: Copies of the material submitted by Florida may be examined during normal business hours at the following locations:

Library, EPA Region IV, 345 Courtland Street NE, Atlanta, Georgia 30365.
Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.
Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301.

FOR FURTHER INFORMATION CONTACT: Archie Lee, Environmental Protection Agency, Region IV, 345 Courtland Street, NE, Atlanta, Georgia 30365, 404/881-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION: On May 10, 1979 (44 FR 27558) EPA promulgated ambient air quality monitoring and data reporting regulations. These regulations satisfy the requirements of Section 110(a)(2)(C) of the Clean Air Act by requiring ambient air quality monitoring and data reporting for purposes of State Implementation Plans (SIP). At the same time, EPA published guidance to the States regarding the information which must be adopted and submitted to EPA as a SIP revision which provides for the establishment of an air quality surveillance system that consists of a network of monitoring stations designated as State and Local Air Monitoring Stations (SLAMS) to measure ambient concentrations of those pollutants for which standards have been established in 40 CFR Part 50.

The State of Florida has responded by submitting to EPA on December 11, 1979, a plan for air quality surveillance. Their plan provides for the establishment of a SLAMS network such that the monitors will be properly sited and the data quality assured. The network will be reviewed annually for needed modifications and descriptions containing information such as location, operating schedule, and sampling and analysis methods will be available for public inspection.

EPA is approving the air quality surveillance plan submitted by Florida.

Under Section 307(b)(1) of the Clean Air Act, judicial review of EPA's approval of Florida's air quality surveillance plan is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "spcialized". EPA has reviewed these regulations and determined that they are specialized regulations not subject to the procedural requirements of Executive Order 12044.

(Sec. 110, Clean Air Act (42 U.S.C. 7410))

Dated: October 16, 1980.

Douglas M. Costle,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

Subpart K—Florida

In § 52.520 paragraph (c) is amended by adding subparagraph (23) as follows:

§ 52.520 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(23) The air quality surveillance plan revision was submitted by the Florida Department of Environmental Regulation on December 11, 1979 and updates Florida's SIP to meet EPA requirements as set forth in 40 CFR Part 58 (44 FR 27558, May 10, 1979).

* * * * *

[FR Doc. 80-32907 Filed 10-21-80; 8:45 am]

BILLING CODE 6560-26-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the nation.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required either to adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426-1460 or toll free line (800) 424-8872 (in Alaska and Hawaii call toll free line (800) 424-9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determination of flood elevation for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 67). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided. No appeals of the proposed base flood elevations were received from the community or from individuals within the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

The final base (100-year) flood elevations for selected locations are:

Final Base (100-Year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Alabama	City of Anderson, Lauderdale County (FEMA-5818).	Anderson Creek	Just upstream of State Highway 207	*655
			Just upstream of Betty Highway (County Highway 52)	*669
		East Fork Anderson Creek	Just downstream of State Highway 49	*671
			Just upstream of State Highway 93	*679
	Maps available for inspection at Anderson Courthouse, Anderson, Albama 35610.			
Alabama	Daphne (City), Baldwin County (FEMA-5818).	Mobile Bay	At the Spring Branch crossing of Deer Avenue	*12
			Approximately 1,600 feet shoreward from the intersection of Belrose Avenue and Old County Road.	*12
			Approximatgely 1,800 feet shoreward from the intersection of College Avenue and Old County Road.	*14
			Approximately 1,300 feet shoreward along Van Avenue from its intersection with Second Street.	*14
	Maps available for inspection at City Hall, Daphne, Alabama.			
Alabama	Town of Owens Cross Roads, Madison County (FEMA-5818).	Flint River	Just downstream of the left abutment of Carpenter Bridge (Breached) on Wilson Manns Road.	*585
	Maps available for inspection at City Hall, 2965 Old 431 Highway, Owens Cross Roads, Alabama 35763.			
Arkansas	City of Rogers, Benton County (FEMA-5828).	Turtle Creek	Just upstream of Walnut Street (U.S. Highway 71)	*1,268
			Just upstream of Dixieland Road	*1,306
			Just upstream of North 12th Place	*1,322
		Blossomway Creek	Approximately 100 feet upstream of south 13th Street	*1,312
			Approximately 120 feet downstream of Arkansas State Highway 94	*1,332
		Turtle Creek Tributary	Just downstream of Dixieland Road	*1,312
		South Fork Prairie Creek	Just downstream of Arkansas State Highway 12	*1,140
			Just upstream of Arkansas State Highway 12	*1,146
			Just upstream of Lake Atlanta Road	*1,160
	Maps available for inspection at City Hall, 212 West Elm, Rogers, Arkansas 72756.			
Illinois	(V), Crete, Will County (Docket No. FEMA-5828).	Goose Creek	Approximately 2,250 feet downstream of Douglas Lane	*686
			Just downstream of Douglas Lane	*695
			Just upstream of Douglas Lane	*698
			Just upstream of Rohe Lane	*702
			Just upstream of Highway 1 (Main Street)	*707
			Just upstream of Benton Street	*712
			Just upstream of Missouri Pacific Railroad	*714
			Just upstream of Lumber Street	*716
			Just upstream of Exchange Street	*718
			Just downstream from footbridge near Sangamon Street	*721
			Just upstream from footbridge near Sangamon Street	*726
			Approximately 1350 feet upstream from Sangamon Street at the western corporate limit.	*727
	Maps available for inspection at the Village President's Office, Village Hall, 524 Exchange Street, Crete, Illinois 60417.			
Illinois	(V), East Carondelet St. Clair County, (Docket No. FEMA-5828).	Mississippi River	About 2,400 feet downstream Davis Steet	*421
			About 840 feet upstream State Street	*422
		Shallow Flooding (Local Ponding).	Areas south of Illinois Central and Gulf Railroad	*403
			Areas north of Illinois Central and Gulf Railroad	*406
	Maps available for inspection at Village Clerk's Office, Village Hall, P.O. Box 121, East Carondelet, Illinois 62240.			

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Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Illinois	(V), Green Oaks, Lake County (Docket No. FEMA-5828).	Irondale Creek (Tributary No. 1)	About 2,400 feet downstream of Guerin Road	*663
			About 200 feet downstream Guerin Road	*677
			Just upstream of Guerin Road	*680
			Just upstream of Heatherclift Road	*683
			At the upstream corporate limit	*685
		Meadow Haven Creek (Tributary No. 2).	Just upstream of Guerin Road	*664
			About 1,700 feet upstream of Guerin Road	*670
			At the upstream corporate limit	*678
	Maps available for inspection at Oak Grove Junior High School, Green Oaks, Illinois 60048.			
Illinois	(V), Hampshire, Kane County (Docket No. FEMA-5841).	Hampshire Creek Tributary	Mouth at Hampshire Creek	*868
			Just upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad	*878
			Just upstream of Terwilliger Avenue	*881
			Just upstream of Dutchess Lane	*895
			About 1500 feet upstream of Getzelman Road	*904
	Maps available for inspection at the Village President's Office, Village Hall, 234 South State Street, Hampshire, Illinois 60140.			
Illinois	(V), Kildeer, Lake County (Docket No. FEMA-5828).	South Branch Indian Creek	At the downstream corporate limits	*749
			Just upstream of private road	*753
			Just downstream of State Route 22, east of Krueger Road	*755
		Buffalo Creek	At the downstream corporate limit	*735
			Just upstream of Andover Road	*749
			Just downstream of Cuba Road	*763
			At the corporate limits, just downstream of Quentin Road	*780
		Tributary to Buffalo Creek	About 1500 feet downstream of Middleton Drive	*740
			Just upstream of Valley Road	*748
			Just upstream of Buffalo Run	*753
			About 650 feet upstream of Buffalo Run	*755
			At the corporate limits, just downstream of Cuba Road	*787
		South Fork Tributary to Buffalo Creek.	About 300 feet downstream of Quentin Road	*772
			Just upstream of Quentin road	*777
	Maps available for inspection at Village President's Office, 22049 Chestnut Ridge Road, (P. O. Box Lake Zurich, Illinois) Kildeer, Illinois 60047.			
Illinois	(V), Tower Lakes, Lake County (Docket No. FEMA-5828).	Tower Lake Creek	At the downstream corporate limits	*737
			Just downstream of Tower Lake Dam	*740
			Just upstream of Tower Lake Dam	*749
			Just downstream of Tower Lake Inlet	*749
			Just downstream of Kelsey Road	*755
		Lake Barrington Drain	At the confluence with Tower Lake Creek	*738
			About 150 feet downstream of Kelsey Road	*753
			Just downstream of Kelsey Road	*760
		Timber Lake Drain	At the confluence with Tower Lake Creek	*749
			Just downstream of State Route 59	*750
	Maps available for inspection at Village President's Office, Village Hall, 105 South Drive, Tower Lakes, Illinois 60010.			
Indiana	(C), Noblesville, Hamilton County (Docket No. FEMA-5828).	White River	Southern extraterritorial jurisdiction	*740
			Just upstream from State Highway 234	*755
			Just upstream from Norfolk & Western Railway	*763
			At upstream extraterritorial jurisdiction	*778
		Circero Creek	At confluence with White River	*757
			Just upstream from State Highway 32	*762
			Just upstream from State Highway 38	*766
			At spillway outlet	*772
		Sand Creek	Just upstream from confluence with Mud Creek	*784
			Just upstream from upstream crossing of Cumberland Road	*791
			Just upstream from East 121st Street	*800
			Just upstream from East 131st Street	*809
			Just upstream from East 136th Street	*813
			Just upstream from Brooks School Avenue	*815
			Approximately 0.45 mile upstream from Brooks School Avenue	*818
		Mud Creek	Just upstream from East 96th Street	*780
			Just upstream from East 106th Street	*784
			Just upstream from Klepper School Road	*792
			Just upstream from East 116th Street	*801
			Approximately 1.40 miles upstream from Brooks School Avenue	*812
		Stony Creek	Just upstream from confluence with White River	*756
			Just upstream from Cumberland Road	*759
			Just upstream from State Highway 38	*774
			Just downstream from East 186th Street	*781
		Fall Creek	Just upstream from Geist Reservoir	*789
			Just upstream from Florida Road	*790
			Approximately 0.55 mile upstream from Florida Road	*795
			Just downstream from State Highway 238	*798
		Hinkle Creek	Just upstream from Morse Reservoir	*813
			Just downstream from East 216th Street	*830
	Maps available for inspection at Department of Planning, City Hall, Noblesville, Indiana. 46060.			
Iowa	(C), Vinton, Benton County (Docket No. FEMA-5828).	Cedar River	At confluence of Mud Creek	*779
			Just downstream of State Route 101	*783
			About 4,500 feet upstream of State Route 101	*785
		Hinkle Creek	Just upstream of Chicago, Rock Island and Pacific Railroad	*784
			Just upstream of U.S. Route 218	*787
			At upstream corporate limits	*789

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Mud Creek	Mouth at Cedar River	*779
			About 2,450 feet upstream of 13th Street	*779
		Tributary to Mud Creek	Mouth at Mud Creek	*779
			Just downstream of Old Shellsburg Road	*785
			Just upstream of Old Shellsburg Road	*787
			Just upstream of 2nd Avenue	*799
			Just downstream of C Avenue	*805
			Just upstream of C Avenue	*810
			Just downstream of U.S. Route 218	*811
	Maps available for inspection at City Hall, 501 First Avenue, Vinton, Iowa 52349.			
Iowa	(C), Waverly, Bremer County (Docket No. FEMA-5828).	Cedar River	About 2.5 miles downstream of Third Street Southeast	*905
			Just upstream of Third Street Southeast	*910
			Upstream side of dam, 265 feet upstream of Bremer Avenue	*915
			Just upstream of Horton Road	*918
			Northern corporate limits	*920
		Dry Run Creek	At mouth	*910
			Just downstream of Fourth Avenue Southwest	*911
			Just upstream of Second Avenue Southwest	*913
			Just upstream of West Bremer Avenue	*914
			1300 feet upstream of Second Avenue Northwest	*916
			Just upstream of Twelfth Street Northwest	*920
		Unnamed Creek	At mouth	*910
			Eastern corporate limits	*910
	Maps available for inspection at City Hall, Waverly, Iowa 50677.			
Kansas	(Uninc.), Butler County (Docket No. FEMA-5828).	Walnut River	Downstream county boundary	*1,174
			About 900 feet upstream of Douglass Road West	*1,190
			Confluence of Whitewater River	*1,222
			Just downstream of County Road 616	*1,240
			Just downstream of Haverhill Road North	*1,254
			At confluence with West Branch Walnut River	*1,262
			About 1,500 feet downstream of El Dorado Lake Dam	*1,290
		Four Mile Creek	Confluence with Walnut River	*1,207
			Just downstream of Santa Fe Lake Road	*1,225
			Just downstream of County Road 624	*1,252
			Just downstream of Rose Hill Road	*1,283
			Confluence of Brookhaven Creek	*1,290
		Brookhaven Creek	Downstream county boundary	*1,290
			580 feet upstream of upstream county boundary	*1,295
		Eight Mile Creek	Just downstream of County Road 646	*1,178
			Just upstream of Douglass Road West	*1,199
			Just upstream of County Road 638	*1,229
			Just upstream of County Road 634	*1,261
			Just upstream of Rose Hill Road	*1,294
			Just downstream of 159th Street East	*1,319
		Republican Creek	Confluence with Four Mile Creek	*1,261
			Just upstream of County Road 622	*1,272
			Just upstream of County Road 618	*1,307
			About 300 feet downstream of Interstate 35	*1,331
		Whitewater River	Just upstream of Pleasant Road	*1,226
			Just upstream of County Road 612	*1,243
			Just upstream of Missouri Pacific Railroad	*1,262
			About 1.0 mile upstream of State Highway 254	*1,264
		Dry Creek	Confluence with Whitewater River	*1,228
			Just upstream of U.S. Highway 54	*1,231
			Just downstream of Santa Fe Lake Road	*1,260
			About 2,100 feet upstream of Santa Fe Lake Road	*1,274
		West Branch Walnut River	About 3,300 feet downstream of Atchison, Topeka and Santa Fe Railway.	*1,289
			Just upstream of Interstate 35	*1,313
			Just upstream of County Road 589	*1,345
			Just downstream of County Road 585	*1,358
		Bird Creek	Confluence with Walnut River	*1,286
			Just upstream of Missouri Pacific Railroad	*1,300
			Just upstream of U.S. Highway 54	*1,358
			Just downstream of County Road 604	*1,383
		Elm Creek	Mouth at Whitewater River	*1,231
			Just downstream of Augusta Street	*1,233
	Maps available for inspection at Butler County Courthouse, County Engineer's Office, El Dorado, Kansas 67042.			
Kansas	(Uninc.), Douglas County (Docket No. FEMA-5835).	Kansas River	About 2,500 feet downstream of Township Road 25	*797
			At eastern corporate limit of City of Lawrence	*820
			About 4,000 feet downstream of Kansas Turnpike	*829
			At confluence of Oakley Creek	*845
			At Douglas and Shawnee county boundary	*862
		Wakarusa River	Mouth at Kansas River	*805
			At Atchison, Topeka and Santa Fe Railway	*807
			Just upstream of Township Road 5	*818
			Just upstream of Haskell Avenue	*825
			At U.S. Highway 59	*829
			About 2,000 feet upstream of confluence of Washington Creek	*834
		Little Wakarusa Creek	At mouth	*810
			About 0.8 mile upstream of Township Road 359	*810
			About 2.4 miles upstream of Township Road 359	*817

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Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Coon Creek	Mouth at Kansas River	*850
			About 100 feet upstream of County Road 432	*858
			About 1,200 feet upstream of confluence of Coon Creek Tributary	*861
			About 7,000 feet upstream of confluence of Coon Creek Tributary	*900
			About 3.1 miles upstream of confluence of Coon Creek Tributary	*941
		Baldwin Creek	At mouth at Kansas River	*835
			About 2100 feet upstream of County Road 1041	*836
			About 100 feet downstream of County Road 438	*839
			Just upstream of County Road 438	*842
			About 100 feet upstream of Township Road 364	*850
			Just upstream of Township Road 82	*869
			About 5725 feet upstream of confluence of Baldwin Creek Tributary	*885
			About 2.2 miles upstream of confluence of Badwin Creek Tributary	*921
		Baldwin Creek Tributary	At confluence with Baldwin Creek	*870
			About 900 feet upstream of confluence with Baldwin Creek	*871
			About 3400 feet upstream of confluence with Baldwin Creek	*887
			About 7300 feet upstream of confluence with Baldwin Creek	*930
		Quail Creek	Mouth at Yankee Tank	*832
			About 2600 feet upstream of mouth	*836
		Coal Creek	At mouth	*818
			About 575 feet upstream of County Road 459	*824
			About 150 feet downstream of County Road 460	*859
			Just upstream of County Road 480	*862
			About 1600 feet upstream of County Road 480	*863
			Just upstream of Township Road 58	*880
			Just downstream of Township Road 43	*905
		Vinland Creek	Confluence with Coal Creek	*833
			Just upstream of Township Road 87	*846
			At confluence of West Fork Vinland Creek and East Fork Vinland Creek.	*854
		East Fork Vinland Creek	Just downstream of County Road 1055	*859
			Just upstream of County Road 1055	*862
			About 4000 feet upstream of County Road 1055	*882
		West Fork Vinland Creek	Just downstream of County Road 1055	*858
			About 75 feet upstream of County Road 1055	*865
			About 1100 feet downstream of Township Road 3	*875
			About 1050 feet upstream of Township Road 3	*894
		Pleasant Grove West	At mouth at Pleasant Valley Tributary	*829
			About 0.6 mile upstream of Township Road 12–A	*839
			About 25 feet downstream of County Road 456	*851
			Just downstream of Township Road 218	*886
			Just downstream of Township Road 50	*903
			Just upstream of Township Road 50	*908
			About 50 feet downstream of Township Road 51	*920
			About 1800 feet upstream of Township Road 51	*930
		Pleasant Grove East	At mouth at Pleasant Valley Tributary	*829
			About 1050 feet upstream of Township Road 12–A	*835
			About 50 feet upstream of Township Road 1–A	*848
			About 1400 feet upstream of Township Road 1–A	*858
			Just downstream of County Road 458	*880
		Pleasant Valley Tributary	At mouth at Wakarusa River	*829
			About 2650 feet downstream of Township Road 12–A	*831
			Just upstream of Township Road 12–A	*845
			About 950 feet upstream of Township Road 12–A	*846
			About 1550 feet downstream of Township Road 216	*870
			Just downstream of Township Road 218	*884
		Naismith Creek	Mouth at Wakarusa River	*828
			At City of Lawrence corporate limits	*828
		Washington Creek	At County Road 458	*834
			About 9300 feet upstream of Township Road 239	*860
			About 800 feet upstream of confluence of Chicken Creek	*869
			About 1200 feet upstream of County Road 1039	*880
			About 100 feet upstream of County Road 1031	*905
		Washington Creek Tributary	Confluence with Washington Creek	*837
			About 650 feet upstream of Township Road 427	*843
			About 3200 feet downstream of Township Road 153	*855
			About 0.5 mile upstream of Township Road 153	*880
		Yankee Tank	Mouth at Wakarusa River	*831
			At confluence of West Branch Yankee Tank and Hidden Valley Tributary.	*833
		Hidden Valley Tributary	At southern corporate limit of City of Lawrence	*833
			Just upstream of Township Road 29–A	*834
			About 100 feet upstream of 23rd Street	*850
			About 3000 feet upstream of 23rd Street	*877
		East Branch Yankee Tank	At confluence with Yankee Tank	*832
			At Township Road 21	*834
			About 1000 feet upstream of Township Road 21	*836
		West Branch Yankee Tank	About 3100 feet upstream of confluence with Yankee Tank	*835
			About 6100 feet upstream of confluence with Yankee Tank	*841
		East Fork Tauy Creek	About 4500 feet downstream of Township Road 225	*978
			Just upstream of Township Road 51–E	*998
			At Baldwin City southern corporate limits	*1,005
			At Baldwin City northern corporate limits	*1,025
			About 3,500 feet downstream of Township Road 302	*1,029
			Just downstream of Township Road 302	*1,048
			Just upstream of Township Road 302	*1,051
			Just upstream of County Road 1,055	*1,054
			About 1,975 feet upstream of County Road 1,055	*1,069

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		East Fork Tauy Creek Tributary	At confluence with East Fork Tauy Creek	*967
			About 1,300 feet upstream of confluence with East Fork Tauy Creek	*988
			At Baldwin City southern corporate limit	*994
		Kanwaka Tributary	About 7,400 feet upstream of mouth at Clinton Lake	*923
			About 8,750 feet upstream of mouth at Clinton Lake	*950
			About 11,125 feet upstream of mouth at Clinton Lake	*975
			About 13,380 feet upstream of mouth at Clinton Lake	*1,004
		Deerfield Tributary	At Kasold Road	*859
			At confluence of West Fork Deerfield Tributary	*860
			About 200 feet downstream of Peterson Road	*874
			At Peterson Road	*878
		Atchison, Topeka and Santa Fe Tributary.	At mouth	*817
			Just downstream of Atchison, Topeka and Santa Fe Railway	*819
			Just upstream of Atchison, Topeka and Santa Fe Railway	*826
			At City of Lawrence corporate limit	*826
		Maple Grove Drainage	At northeastern county boundary	*814
			Just upstream of Union Pacific Railroad	*817
			About 100 feet upstream of second crossing of Kansas Turnpike, north of Ninth Street.	*819
			About 160 feet upstream of Township Road 88 (Fifth Street)	*822
			About 650 feet upstream of Kansas Turnpike East Lawrence Interchange.	*823
		Maple Grove Drainage West Fork.	About 800 feet downstream of U.S. Highway 59	*823
			At Township Road 23	*826
		Maple Grove Drainage East Fork	About 950 feet downstream of U.S. Highway 24–40	*823
			About 50 feet upstream of Township Road 88	*824
		Eudora East Tributary	At mouth	*805
			Just upstream of Atchison, Topeka and Santa Fe Railway	*807
			About 80 feet downstream of Township Road 66	*810
			Just upstream Township Road 86	*820
			Just downstream of Old State Highway 10	*820
			About 75 feet upstream of Old State Highway 10	*837
			About 1,000 feet upstream of southeastern corporate limit of the City of Eudora.	*840
			About 3,800 feet upstream of southeastern corporate limit of the City of Eudora.	*864

Maps available for inspection at the Douglas County Courthouse, Zoning Administrator's Office, Lawrence, Kansas 66044.

Kansas	(C), Lawrence, Douglas County (Docket No. FEMA–5828).	Kansas River	Downstream corporate limits	*820
			Just upstream of Second Street	*826
			Just downstream of Kansas Turnpike	*831
			Upstream corporate limits	*837
		Wakarusa River	Just upstream of Haskell Avenue	*825
			Just upstream of Louisiana Street	*829
			Just upstream of U.S. Highway 59	*830
			About 1.2 miles upstream of confluence of Yankee Tank Creek	*833
		Hidden Valley Tributary	Downstream corporate limits	*833
			Just downstream of limits at County Road	*834
			Just upstream of 23rd Street	*849
			About 3,000 feet upstream of 23rd Street	*877
		Quail Creek	Downstream corporate limits	*833
			Just upstream of Brush Creek Drive	*840
			Just upstream of 23rd Street	*849
			Just upstream of Quail Creek Drive	*871
			Just upstream of Alvamar Golf Course Bridge	*878
			About 1,250 feet upstream of Alvamar Golf Course Bridge	*886
		East Branch Yankee Tank Creek	Downstream corporate limits at Kasold Drive	*834
			About 3,350 feet upstream of Kasold Drive	*845
			Just upstream of 23rd Street	*851
			About 3,500 feet upstream of 23rd Street	*870
			Just upstream of 15th Street	*886
		KLWN Tributary	Downstream corporate limits	*831
			About 800 feet downstream of 31st Street	*835
			Just upstream of 31st Street	*843
			About 2,300 feet upstream of 31st Street	*863
		Naismith Creek	Downstream corporate limits	*828
			Just upstream of 27th Street	*836
			Just downstream of 23rd Street	*849
			About 240 feet upstream of 23rd Street	*855
			About 50 feet upstream of 21st Street	*864
		Belle Haven Tributary	Downstream corporate limits	*829
			Just upstream of 29th Terrace	*829
			Just upstream of 27th Terrace	*836
			About 400 feet upstream of 27th Terrace	*838
		Broken Arrow Tributary	About 2,900 feet downstream of 27th Street	*827
			Just upstream of 27th Street	*838
			About 1,350 feet upstream of 27th Street	*846
		Haskell Tributary	Downstream corporate limits	*826
			About 2,000 feet upstream of corporate limits	*828
			About 2,950 feet upstream of corporate limits	*838
		ATSF Tributary	Downstream corporate limits	*826
			Just upstream of Haskell Avenue	*827
			Just upstream of 15th Street	*834
			About 600 feet upstream of Learnard Avenue	*861
		Deerfield Tributary	Downstream corporate limits at Peterson Road	*876
			Just upstream of Princeton Boulevard	*882

Final Base (100-Year) Flood Elevations—Continued

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Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			About 250 feet upstream of Princeton Boulevard	*886
		Country Club-Hope Plaza Tributary.	Mouth at Kansas River	*830
			About 1.0 mile upstream of mouth at Kansas River	*834
		Maple Grove Drainage	About 350 feet downstream of 9th Street	*819
			Just upstream of Kansas Turnpike	*822
			2,600 feet upstream of Kansas Turnpike	*823
		Brook Street Tributary	At confluence with ATSF Tributary	*827
			Just upstream of 13th Street	*830
			Just upstream of Brook Street	*833
			Just upstream of 15th Street	*841
			About 940 feet upstream of 15th Street	*845
	Maps available for inspection at City Hall, Planning Department, 910 Massachusetts Street, Lawrence, Kansas 66044.			
Kansas	(C), Perry, Jefferson County (Docket No. FEMA-5825).	Delaware River	Within corporate limits	*850
		Kansas River	Just southeast of Cedar Street and Union Pacific Railroad	*849
			Just south of Union Pacific Railroad, about 1300 feet east of Delaware River.	*850
	Maps available for inspection at City Hall, Perry, Kansas 66073.			
Kentucky	City of Stamping Ground, Scott County (FEMA-5825).	Locust Fork	Just upstream of Main Street	*761
	Maps available for inspection at City Hall, Stamping Ground, Kentucky 40379.			
Louisiana	Town of Cheneyville, Rapides Parish (FEMA-5818).	Shallow Flooding	Southwest of Intersection of U.S. Highway 71 and State Highway 181.	*62
	Maps available for inspection at City Hall, Highway 71 and Klock Street, Cheneyville, Louisiana 71325.			
Louisiana	City of LeCompte, Rapides Parish (FEMA-5818).	Weems Canal	Just upstream of U.S. Highway 71 Northbound	*70
			Just upstream of St. Charles Street	*71
			Just upstream of Chicago Rock Island & Pacific Railroad	*73
	Maps available for inspection at City Hall, 1302 Weems Street, LeCompte, Louisiana 71346.			
Louisiana	Village of Mermentau, Acadia Parish (FEMA-5828).	Mermentau River	Just downstream of U.S. Highway 90	*14
		Unnamed Tributary to Mermentau River (Backwater from Mermentau River).	Just upstream of 13th Street	*14
	Maps available for inspection at Mermentau Post Office, First Street, P.O. Box 213, Mermentau, Louisiana 70556.			
Louisiana	City of Rayne, Acadia Parish (FEMA-5828).	Bella Avenue Canal (Shallow Flooding).	Just upstream of Jefferson Davis Avenue	*30
			Just upstream of Southern Pacific Railroad	*30
	Maps available for inspection at City Hall, 301 East Louisiana Avenue, P.O. Box 69, Rayne, Louisiana 70578.			
Louisiana	Town of Walker, Livingston Parish, (FEMA-5828).	Dumplin Creek	Just upstream of Aydell Street	*42
			Just upstream of Brannon Street	*47
			Approximately 500 feet upstream of Field Road	*49
		Dumplin Creek Tributary	Just upstream of Travis Street	*45
			Just upstream of East Railroad Avenue	*47
			Just downstream of Northern Corporate Limits	*49
		Middle Colyell Creek	Just upstream of U.S. Highway 190	*46
			Approximately 950 feet upstream of Old Corbin Road	*48
		Middle Colyell Tributary (Backwater from West Colyell Creek).	Just upstream of Interstate Highway 12	*36
			Approximately 500 feet upstream of Pleasant Ridge Drive	*38
		West Colyell Creek	Approximately 200 feet upstream of Interstate Highway 12	*36
			Approximately 200 feet upstream of U.S. Highway 190	*43
			Approximately 200 feet downstream of Illinois Central Gulf Railroad	*45
		West Colyell Tributary	Just upstream of Oak Drive	*39
			Just downstream of U.S. Highway 190	*45
	Maps available for inspection at Town Hall, Highway 190, Walker, Louisiana 70785.			
Maryland	Baltimore County (Docket No. FEMA-5768).	Beaverdam Run	Confluence with Loch Raven Reservoir	*257
			Beaver Run Lane (Upstream)	*258
			York Road (Upstream)	*259
			Beaver Dam Road (Upstream)	*269
		Roland Run	L'Hirondelle Club Road (Upstream)	*235
			Circle Road (Upstream)	*238
			Ruxton Road (Upstream)	*241
			Roland Run Avenue (Upstream)	*247
			Joppa Road (Upstream)	*257
			Thornton Ridge Road (Upstream)	*265
			Essex Farm Road (110' Downstream)	*267
			Essex Farm Road (80' Upstream)	*273
			Conrail (Downstream)	*283
			Conrail (Upstream)	*289
			Interstate Route 695 (Downstream)	*292
			Interstate Route 695 (Upstream)	*296
			Conrail (Upstream)	*303
		Tributary of Roland Run	Confluence with Roland Run	*303
			Seminary Drive (Upstream)	*309
			Morris Avenue (Upstream)	*316
			Conrail (Upstream)	*362

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Conrail Spur (Upstream)	*378
		Dead Run	County Boundary	*287
			Old Ingleside Avenue (Upstream)	*299
			Colonial Road (Upstream)	*318
			Little Creek Drive (125' Upstream)	*331
			Gwynn Oak Avenue (175' Upstream)	*337
			Woodlawn Drive (Upstream)	*348
			Whitestone Road (175' Upstream)	*361
			Interstate Route 695 (Downstream)	*362
			Belmont Avenue (Upstream)	*370
			Gordon Avenue (Upstream)	*374
			Lord Baltimore Road (Upstream)	*388
			Confluence with Dead Run	*377
		Tributary of Dead Run	1,975' upstream of confluence with Dead Run	*417
		Gwynns Falls	County Boundary	*286
			Gwynn Oak Avenue (Upstream)	*306
			Gwynn Oak Park Bridge Ruins (Upstream)	*309
			Liberty Road (Downstream)	*360
			Liberty Road (Upstream)	*368
			Essex Road (Upstream)	*378
			Buckingham Road (Upstream)	*381
			Burley Lane (Upstream)	*383
			Milford Mill Road (Upstream)	*392
			Old Court Road (Upstream)	*404
			Interstate Route 695 (Upstream)	*408
			Mt. Wilson Road (Upstream)	*416
			McDonogh Road (Upstream)	*428
			Painters Mill Road (150' Upstream)	*455
			South Dolfield Road (Upstream)	*463
			U.S. Highway 140 (Upstream)	*477
			Bonita Avenue (Upstream)	*516
			Gwynnbrook Avenue (Upstream)	*543
			Kendigs Mill Road (Upstream)	*563
			Timber Grove Road (Upstream)	*584
		Herbert Run	Harbor Tunnel Thruway (Upstream)	*18
			Chessie System (Downstream)	*27
			Chessie System (Upstream)	*44
			Washington Boulevard (Upstream)	*46
		East Branch Herbert Run	Confluence with Herbert Run	*46
			Tomday Boulevard (Upstream)	*50
			Interstate Route 25 (Upstream)	*55
			Sulphur Spring Road (Upstream)	*69
			Stephens Avenue Footbridge (Upstream)	*75
			Linden Avenue (Upstream)	*78
			Circle Drive (Upstream)	*90
			Leeds Avenue (Upstream)	*92
			Ten Oaks Road (Upstream)	*100
			Leeds Terrace (Upstream)	*101
			Maiden Choice Lane (Upstream)	*104
			Elm Ridge Avenue (Upstream)	*115
			Hooper Avenue (Upstream)	*127
			Ridge Avenue (Upstream)	*132
			Wilkens Avenue	*156
		West Branch Herbert Run	Confluence with Herbert Run	*46
			Francis Avenue (Upstream)	*51
			Interstate Route 95 (200' Upstream)	*64
			Elm Road (Upstream)	*64
			Kime Road Footbridge (Upstream)	*71
			Sulphur Spring Road (Upstream)	*84
			Shelbourne Road (75' Upstream)	*111
			Poplar Avenue (Upstream)	*122
		Redhouse Creek	Confluence with Back River	*9
			Chessie System (Downstream)	*14
			Chessie System (Upstream)	*37
			Weyburn Road (100' Upstream)	*44
			Interstate Route 95 (150' Upstream)	*55
			Hazelwood Avenue (Upstream)	*60
		Stemmers Run	Confluence with Back River	*9
			Interstate Route 695—Interchange 36 Ramps (Upstream)	*17
			Conrail (Upstream)	*20
			Chessie System (Upstream)	*26
			Golden Ring Mall Road (Upstream)	*31
			State Route 7 (175' Upstream)	*34
			Interstate Route 695—Interchange 33 Ramps (Downstream)	*49
			Interstate Route 695—Interchange 33 Ramps (Upstream)	*74
		Tributary of Stemmers Run	Confluence with Stemmers Run Interstate Route 695	*68
			Interchange 33 Ramps (Upstream)	*69
			Rossville Boulevard (Upstream)	*102
			1,600' upstream of Rossville Boulevard	*178
		Whitemarsh Run	Confluence with Bird River	*10
			Cowenton Avenue (Upstream)	*14
			U.S. Highway 40 (Upstream)	*38
			Conrail (Downstream)	*40
			Conrail (Upstream)	*52
			State Route 7 (Upstream)	*54
			Interstate Route 95 (Upstream)	*63
			Private Road 4,000' downstream of U.S. Highway 1 (Upstream)	*116
			U.S. Highway 1 (100' Downstream)	*143

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			U.S. Highway 1 (Upstream)	*156
			Grove road (bridge destroyed)	*224
			Avondale Road (Upstream)	*258
			Interstate Route 695 (Downstream)	*278
		Honeygo Run	Confluence with Whitemarsh Road	*14
			U.S. Highway 40 (Upstream)	*16
			Conrail (Downstream)	*18
			Conrail (Upstream)	*28
			State Route 7 (Upstream)	*32
			Interstate Route 95 (Downstream)	*46
			Interstate Route 95 (Upstream)	*51
			Joppa Road (Downstream)	*151
			Joppa Road (Upstream)	*159
			Cross Road (Upstream)	*173
			Chapel Road (Upstream)	*188
Maps available at the Baltimore County Office Building in the Planning Department.				
Michigan	(Chtr. Twp.), Delta, Eaton County (Docket No. FEMA-5828).	Grand River	At the western corporate limit	*803
			At the eastern corporate Limit (north of Saginaw Highway)	*817
			At the eastern corporate limit (south of Saginaw Highway)	*838
			At the southern corporate limit	*840
		Miller Creek	At the mouth at Grand River	*808
			Just downstream of Philwood Drive	*824
			Just upstream of West Saginaw Highway	*835
			Just downstream of Saint Joe Highway	*844
		Moon and Hamilton County Drain.	At the mouth at Grand River	*812
			About 3100 feet upstream of Willow Street	*819
			Just upstream of Saint Joe Highway	*838
			Just upstream of Mount Hope Highway	*855
			Just upstream of Interstate 96 (about 1300 feet downstream of Millet Highway).	*868
			About 3800 feet upstream of Millet Highway	*872
		Proposed Branch 2	At the confluence with Moon and Hamilton Drain	*841
			Just upstream of Mount Hope Highway	*860
			Just downstream of Millet Highway	*864
Maps available for inspection at the Delta Township Hall—Planning Department, 7710 W. Saginaw Street, Lansing, Michigan 48917.				
Michigan	(C), Lansing, Ingham, Clinton, and Eaton Counties (Docket No. FEMA-5835).	Grand River	Just upstream of Waverly Road (at downstream corporate limits)	*818
			Just upstream of East Michigan Avenue	*830
			Just upstream Moores Park Dam	*835
			Upstream corporate limits	*839
		Red Cedar River	Mouth at Grand River	*832
			Just upstream Aurelius Road	*836
			Upstream corporate limits	*837
		Sycamore Creek	Mouth at Red Cedar River	*836
			Just upstream Cavanaugh Road	*836
			Just downstream Jolly Road	*838
			Just upstream Interstate 96	*841
		Mud Lake Drain	Mouth at Sycamore Creek	*837
			Just upstream of Enterprise Drive	*850
			Just downstream of Willoughby Road (at upstream corporate limits)	*865
Maps available for inspection at the Planning Department, City of Lansing, City Hall, 124 W. Michigan Avenue, Lansing, Michigan 48933.				
Michigan	(Twp.), Plymouth, Wayne County (Docket No. FEMA-5828).	Tonquish Creek	Just upstream of Joy Road	*693
			Just downstream of Ann Arbor Road	*698
			Just upstream of Sheldon Road	*737
			Just upstream of Beacon Hill Drive	*766
			About 50 feet upstream of North Territorial Road	*775
		South Branch Tonquish Creek	Just upstream of Sheldon Road	*717
			Just upstream of Jo Ann Lane	*723
			Just upstream of Canton Center Road	*739
			About 40 feet upstream of Ann Arbor Trail	*761
		Johnson Drain	Just upstream of Five Mile Road	*835
			Upstream corporate limits	*844
Maps available for inspection at Township Hall, 42350 Ann Arbor, Plymouth, Michigan 48170.				
Minnesota	(C), Barnesville, Clay County (Docket No. FEMA-5835).	Whiskey Creek	At downstream corporate limit	*988
			About 100 feet upstream of 5th Street Northwest	*996
			About 100 feet downstream of Burlington Northern Railroad	*997
			Just upstream of Burlington Northern Railroad	*1,003
			About 100 feet downstream of Front Street North	*1,005
			Just upstream of Front Street North	*1,011
			Just downstream of Barnesville Lake Dam	*1,018
			Just upstream of Barnesville Lake Dam	*1,025
		Unnamed Creek	At downstream corporate limit	*992
			About 100 feet downstream of Oxidation Pond Driveway	*997
			Just upstream of Oxidation Pond Driveway	*1,002
			About 2100 feet downstream of Third Street Southwest	*1,003
			About 1100 feet downstream of Third Street Southwest	*1,014
			Just upstream of Burlington Northern Railroad	*1,023
			At upstream corporate limit	*1,030
Maps available for inspection at City Hall, P.O. Box 295, Barnesville, Minnesota 56514.				
Minnesota	(C), Fridley, Anoka County (Docket No. FEMA-5828).	Mississippi River	At the downstream corporate limit	*813
			At the upstream corporate limit	*824

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Rice Creek	Mouth at Mississippi River	*820
			Just downstream of East River Road	*820
			Just upstream of Locke Lake Dam and service road	*825
			Just downstream of Burlington Northern Railroad	*825
			About 170 feet upstream of Burlington Northern Railroad	*828
			About 80 feet downstream of University Avenue	*828
			About 80 feet upstream of University Avenue	*833
			About 4600 feet upstream of University Avenue	*835
Maps available for inspection at City Hall, 6431 University Avenue, Fridley, Minnesota 55432.				
Minnesota	(C), Glyndon, Clay County (Docket No. FEMA-5828).	Unnamed Creek	Just upstream of U.S. Highway 10	*916
			Just downstream of County Highway 72	*921
Maps available for inspection at City Hall, Glyndon, Minnesota 56547.				
Minnesota	(C); Mabel, Fillmore County (Docket No. FEMA-5835).	Riceford Creek	About 950 feet downstream of State Highway 44	*1,107
			About 60 feet downstream of State Highway 44	*1,109
			About 120 feet upstream of State Highway 44	*1,110
			About 80 feet upstream of East Prairie Avenue	*1,113
			About 500 feet downstream of County Road 28	*1,115
			Just upstream of County Road 28	*1,116
			About 60 feet upstream of County Road 28	*1,118
			About 290 feet upstream of County Road 28	*1,119
			About 150 feet downstream of western corporate limit	*1,122
			About 60 feet upstream of western corporate limit	*1,123
Maps available for inspection at City Hall, P.O. Box 425, Mabel, Minnesota 55954.				
Minnesota	(C); Pine Island, Goodhue County (Docket No. FEMA-5799).	Middle Fork Zumbro River	Eastern corporate limit	*993
			Just downstream from Douglas Trail	*994
			Just upstream from Douglas Trail	*995
			Just downstream from 8th Street	*997
		North Branch Middle Fork Zumbro River.	At confluence with Middle Fork Zumbro River	*994
			Just upstream from Douglas Trail	*995
			Just upstream from First Avenue	*997
			Just upstream from Main Street	*998
			Approximately 200 feet upstream from Main Street	*1,000
			Just downstream from Township Road	*1,004
Maps available at City Hall, P.O. Box 1000, Pine Island, Minnesota 59963				
Minnesota	(C); Proctor, St. Louis County (Docket No. FEMA-5835).	Little Elk River	Just downstream Boundary Avenue at corporate limits	*1,190
			Just upstream of pedestrian walkway located upstream of Boundary Avenue.	*1,213
			About 30 feet upstream of pedestrian walkway located downstream of 1st Street East.	*1,221
			Downstream of 1st Street	*1,227
			Just downstream of first crossing of Duluth-Missabe and Iron Range Railway.	*1,229
			Just upstream of second crossing of Duluth-Missabe and Iron Range Railway.	*1,231
			Just downstream of 2nd Street	*1,231
			Just upstream of 2nd Street	*1,235
			About 1200 feet downstream of Ugstad Road	*1,236
			About 70 feet downstream of Ugstad Road	*1,242
		Knowlton Creek	At eastern corporate limit	*1,055
			About 450 feet upstream of eastern corporate limit	*1,090
			About 1100 feet upstream of eastern corporate limit	*1,130
			About 130 feet downstream of Skyline Parkway	*1,137
			About 100 feet upstream of Skyline Parkway	*1,164
			Just upstream of Interstate 35	*1,171
			About 1020 feet upstream of Interstate 35	*1,187
			About 3190 feet upstream of Interstate 35	*1,200
			Just upstream of private drive	*1,224
			About 200 feet downstream of Frontage Drive	*1,229
			About 50 feet downstream Frontage Drive	*1,236
			Just upstream of Frontage Drive	*1,243
			At corporate limits on Ugstad Road	*1,243
			About 50 feet upstream of Ugstad Road	*1,244
Maps available for inspection at the Office of the City Clerk, City Hall, 200 Second Street, Proctor, Minnesota 55810.				
Minnesota	(C); Randall, Morrison County (Docket No. FEMA-5828)	Downstream corporate limits	Downstream corporate limits	*1,165
			Just downstream of Minnesota Avenue	*1,168
			Just upstream of State Highway 115	*1,174
			Just upstream of Third Street	*1,175
			Just upstream of Route 6	*1,177
			Northern corporate limits	*1,178
		South Branch Little Elk River	Downstream of Burlington Northern Railroad	*1,170
			Approximately 100 feet downstream of U.S. Highway 10	*1,171
			Just downstream of State Route 6 at the western corporate limits	*1,174
Maps available for inspection at City Hall, Main Street, Randall, Minnesota 56475				
Minnesota	(C), St. Francis, Anoka County (Docket No. FEMA-5828).	Rum River	About 2,000 feet upstream of downstream corporate limits	*891
			At upstream corporate limits	*906
		Seelye Brook	About 700 feet upstream of downstream corporate limits	*891
			About 700 feet downstream of Bridgestone Road	*895
			About 800 feet upstream of Bridgestone Road	*899
			At upstream corporate limits	*905

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Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		East Seelye Brook	At confluence with Seelye Brook	*884
			Just upstream Ambassador Boulevard N.W.	*899
			Just upstream private drive	*902
	Maps available for inspection at the Office of the Planning Director, City Hall, St. Francis, Minnesota 55070.			
Minnesota	(C), Whalan, Fillmore County (Docket No. FEMA-5835).	Root River	Downstream corporate limit	*786
			About 200 feet downstream of the confluence with Gribben Creek	*787
			Just upstream of Main Street	*792
			Upsteam corporate limit	*793
	Maps available for inspection at City Hall, P.O. Box 48, Whalan, Minnesota 55986.			
Missouri	Festus City, Jefferson County (Docket No. FEMA-5780).	South Tributary	Missouri Pacific Railroad	*413
			South Mill Street	*414
		North Tributary	Brierton Lane	*413
			Main Street (Upstream)	*414
			Jefferson Avenue	*432
			Central Avenue	*450
			Interstate Route 55 (Upstream)	*455
			Horine Road (Upstream)	*458
	Maps available at the City Hall, 222B Mill Street, Festus, Missouri.			
Nebraska	(V), Bennet, Lancaster County (Docket No. FEMA-5835).	Little Nemaha River	About 4,400 feet downstream of State Highway 43	*1,230
			Just downstream of State Highway 43	*1,239
			About 80 feet upstream of State Highway 43	*1,240
			About 1600 feet upstream of State Highway 43	*1,245
			About 3200 feet upstream of State Highway 43	*1,247
		Unnamed Tributary To Little Nemaha River.	At confluence with Little Nemaha River	*1,235
			About 1280 feet downstream of State Highway 43	*1,236
			About 60 feet downstream of State Highway 43	*1,240
			Just upstream of State Highway 43	*1,243
			Just downstream of Garden Street	*1,252
			About 1460 feet upstream of Garden Street	*1,257
	Maps available for inspection at the City Clerk's Residence, Bennet, Nebraska 68508.			
New Jersey	Hillsborough, Township, Somerset County (Docket No. FEMA-5813).	Raritan River	Downstream Corporate Limits	*46
			U.S. Highway 206	*48
			Raritan Dam	*52
			Beekman Lane (Extended)	*57
			Confluence with North and South Branch Raritan River	*62
		South Branch Raritan River	Confluence with Raritan River	*62
			River Road (Downstream crossing)	*69
			River Road (Upstream crossing)	*73
			Elm Street	*77
			Confluence of Neshanic River	*82
			Woodfern Road	*86
			Upstream Higginsville Road	*93
			Upstream Corporate Limits	*97
		Neshanic River	Confluence with South Branch Raritan River	*82
			Amwell Road	*87
			Upstream Montgomery Road	*92
			Private Road Bridge	*97
			Upstream Corporate Limits	*104
		Millstone River	Corporate Limits (with Borough of Manville)	*42
			Downstream Corporate Limits (with Borough of Millstone)	*43
			Upstream Corporate Limits (with Borough of Millstone)	*45
			Blackwell Mills Causeway	*46
			Corporate Limits (with Township of Montgomery)	*47
			Township Line Road (Extended)	
		Pike Run	Township Line Road	*72
			Downstream U.S. Highway 206	*81
			Upsteam U.S. Highway 206	*83
			Confluence of Pike Run Tributary	*86
			Pleasant View Road	*91
		Pike Run Tributary	Confluence with Pike Run	*86
			Upstream Pleasant View Road	*82
			3,100' upstream Pleasant View Road	*97
		Royce Brook	Downstream Corporate Limits	*42
			Confluence of Royce Brook Tributary C	*43
			Upstream Sunnymeade Road	*45
			Upstream Falcon Road	*47
			Confluence of Royce Brook Tributary B	*51
			Hamilton Road	*55
			Upstream Amwell Road	*59
			Upstream Conrail Bridge (Upstream crossing)	*64
			Confluence of Royce Brook Tributary A	*72
			Upstream Homestead Road	*78
			Pleasant View Road	*86
		Royce Brook Tributary A	Confluence with Royce Brook	*72
			Amwell Road	*75
			Auten Road	*86
			Aquarius Court	*98
			Beekman Lane	*101
		Royce Brook Tributary C	Confluence with Royce Brook	*51
			Upstream Private Bridge	*53
			Upstream U. S. Highway 206	*59
			Upstream Andria Drive	*61

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Triangle Road	*76
		Royce Brook Tributary B	Confluence with Royce Brook	*43
			Dam	*51
			Upstream U.S. Highway 26	*56
			Valley Road	*62
			Upstream Roycefield Road	*65
			Conrail	*69
	Maps available at the City Clerk's Office, Amwell Road, Neshanic, New Jersey 08853.			
New Jersey	Mount Laurel (Township), Burlington County REMA-5828.	South Branch Pennsauken Creek.	100 feet upstream from center of New Jersey Turnpike	*45
		North Branch Pennsauken Creek.	100 feet upstream from center of Interstate 295	*22
			100 feet upstream from center of Church Street	*28
			100 feet upstream from center of Union Mills Road	*36
		Evesboro Tributary	100 feet upstream from center of Church Street	*28
			100 feet upstream from center of Academy Drive	*62
		Ramblewood Tributary	Intersection of tributary and center of golf course bridge	*25
		Strawbridge Lake Tributary	100 feet upstream from center of Hooten Road	*27
		Hooten Road Tributary	100 feet upstream from center of Hooten Road	*26
		Parkers Creek	Intersection of creek and center of Creek Road	*11
			100 feet upstream from center of New Jersey Turnpike	*14
			100 feet upstream from center of New Jersey Highway 38	*19
			Intersection of creek and center of Union Mills Road	*19
		Hartford Road Tributary	At upstream opening of culvert under Larchmont Boulevard	*38
		Delaware River	Intersection of Rancocas Creek and center of New Jersey Turnpike	*11
			At confluence of Masons Creek with South Branch Rancocas Creek	*11
		Masons Creek	Intersection of Creek and New Jersey Highway 38	*12
	Maps available for inspection at 100 North Mount Laurel Road, Mount Laurel, New Jersey.			
New Mexico	City of Santa Rosa, Cuadalupe County (FEMA-5824.	Pecos River	Just upstream of Parker Avenue (HWY 66 and 84)	*4,556
			Just upstream of Southern Avenue Railroad Crossing	*4,557
		El Rito Creek	Just downstream of La Aradira	*4,575
			Just upstream of Will Rodgers Drive	*4,582
	Maps available for inspection at City Hall, 141 South 5th Street, Santa Rosa, New Mexico 84435.			
New York	Auburn, City, Cayuga County (Docket No. FI-3453).	Hunter Brook	Corporate Limits (Downstream)	*648
			Approximately 100' upstream of Conrail	*656
			Footbridge (Upstream)	*662
			McIntosh Drive (Downstream)	*667
			McIntosh Drive (Upstream)	*672
			Schwartz Road (Upstream)	*674
			Approximately 130' upstream of Grant Avenue	*682
			Franklin Street (Downstream)	*711
			Franklin Street (Upstream)	*720
			Approximately 500' upstream of North Herman Avenue	*722
			Marvin Avenue (Downstream)	*728
			Marvin Avenue (Upstream)	*733
			Driveway (Downstream)	*760
			Corporate Limits (Upstream)	*762
		Hunter Brook Tributary No. 1	Corporate Limits (Downstream)	*667
			Approximately 910' upstream of Downstream Corporate Limits	*677
			Grant Avenue (Downstream)	*695
			Approximately 140' upstream of Grant Avenue	*705
			Prospect Street (Downstream)	*719
			Prospect Street (Upstream)	*724
			Corporate Limits (Upstream)	*760
		Hunter Brook Tributary No. 2	Confluence w/Hunter Brook	*720
			Approximately 1,150' upstream of confluence w/Hunter Brook	*724
		Cold Springs Brook	Corporate Limits (Downstream)	*557
			York Street (Upstream)	*569
			Old Railroad Grade (Downstream)	*573
			Old Railroad Grade (Upstream)	*588
			Approximately 1,025' upstream of Old Railroad Grade	*590
		Owasco Outlet	Canoga Street	*559
			Aurelius Street	*585
			Division Street	*626
			Washington Street	*649
			State Street	*661
			Route 5 & 20 Arterial	*666
			North Street	*667
			Lake Avenue	*690
			State Dam (Downstream)	*704
			State Dam (Upstream)	*710
	Maps available at the City Clerk's office, 24 South Street, Memorial City Hall, Auburn, New York.			
Oklahoma	Town of Glenpool, Tulsa County (FEMA-5828).	Coal Creek	Just upstream of 126th Street	*654
			Just upstream of 141st Street	*689
			Just downstream of 151st Street	*705
		Coal Creek Tributary "A"	Approximately 150 feet upstream of 121st Street	*644
			Just downstream of Elwood Avenue	*673
		Coal Creek Tributary "B"	Just upstream of 126th Street	*664
			Approximately 100 feet downstream of South Elwood Avenue	*879
		Posey Creek	Just upstream of South Peoria Avenue	*690
			Just upstream of South 15th Street	*702
	Maps available for inspection at Town Hall, 14522 South Broadway, Glenpool, Oklahoma 74033.			

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Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Pennsylvania	Carroll, Township, York County (Docket No. FI-5621).	Yellow Breeches Creek	Downstream Corporate Limits	*414
			U.S. Route 15	*421
			Old U.S. Route 15	*421
			Legislative Route 66028	*425
		Fishers Run	Upstream Corporate Limits	*496
			Confluence with Stony Run	*482
		West Branch of Fishers Run	Confluence with Stony Run	*498
			Upstream side of Ore Bank Road	*525
			Downstream side of Mumper Lane	*555
		Stony Run	Downstream Corporate Limits	*470
			Upstream side of Chestnut Grove Road	*485
			Confluence of West Branch of Fishers Run	*498
			Confluence of Tributary A to Stony Run	*565
			Approximately 1,500 feet upstream of confluence of Tributary A to Stony Run	*569
		Tributary A to Stony Run	Confluence with Stony Run	*565
			2,250 feet upstream of confluence	*571
		Dogwood Run	Confluence with Yellow Breeches Creek	*425
			Upstream side of southernmost Conrail Track	*436
			Upstream side of Junction Road	*442
			Upstream side of Spring Lane Road	*461
			Upstream side of State Route 74 (Carlisle Road)	*469
			2,000 feet upstream of State Route 74	*484
			Upstream side of Old Mill Road	*522
			Upstream side of Dogwood Lane	*553
			Upstream side of Camp Ground Road	*578
			3,000 feet upstream of Camp Ground Road	*615
			Upstream Corporate Limits	*637
	Maps available at the Carroll Township Building, Carroll, Pennsylvania.			
Pennsylvania	Dover, Township, York County (Docket No. FEMA-5785).	Fox Run	Old Fox Run Road	*383
			Cardinal Lane	*372
			Bull Road	*364
		Tributary A to Fox Run	Upstream Corporate Limits	*401
			Park Street Upstream	*389
			Fox Run Road	*384
			Confluence with Fox Run	*383
		Tributary B to Fox Run	Butter Road (Downstream)	*407
			East Canal Road (Upstream)	*389
			Old Fox Run Road (Upstream)	*385
		Tributary C to Fox Run	Mohawk Avenue (Extended) Upstream	*404
			Thunderbird Road (Extended)	*394
			Confluence with Fox Run	*383
		Little Conewago Creek	Confluence with Honey Run	*398
			Carlisle Road	*383
		Honey Run	Taxville Road	*404
			Private Drive approximately 750 feet downstream from Taxville Road (Upstream Side).	*403
			Confluence with Little Conewago Creek	*396
		Conewago Creek	Approximately 975 feet upstream of Orts Mill Dam A	*389
			Orts Mill Dam A (Downstream)	*388
			Approximately 3,500 feet downstream of Orts Mill Dam A	*385
			Harlacher Bridge (Downstream)	*378
			Detters Mill Dam (Downstream)	*371
			Fish and Game Road (Extended) (Downstream)	*361
	Maps available at the Dover Township Building, Dover, Pennsylvania.			
Pennsylvania	Lower Southampton, Township, Bucks County (Docket No. FEMA-5796).	Neshaminy Creek	Downstream Corporate Limits	*51
			Dam No. 1 (Upstream)	*54
			Intersection of Riverview Lane w/Summit Avenue (Extended)	*55
	Maps available at the Office of the Township Manager, 1500 Desire Avenue, Feasterville, Pennsylvania.			
Pennsylvania	Moreland, Township, Lycoming County (Docket No. FEMA-5824).	Little Muncy Creek	Corporate Limits of Muncy Creek/Moreland Townships	*593
			Upstream of Glen Davis Road Bridge	*597
			Upstream of State Route 442 Bridge	*614
			Laurel Run confluence	*619
			Approximately 7,000' downstream of Legislative Route 41075 Bridge	*629
			Upstream of Legislative Route 41075 Bridge	*642
			German Run confluence	*656
			Approximately 2,000' downstream of East Arch Rider Road Bridge	*669
			Upstream of East Arch Rider Road Bridge	*679
			Approximately 3,000' upstream of East Arch Rider Road Bridge	*681
			Approximately 4,500' upstream of East Arch Rider Road Bridge	*702
			Corporate Limits of Franklin/Moreland Townships	*712
		Laurel Run	Confluence with Little Muncy Creek	*619
			Upstream of Legislative Route 453 Bridge	*623
			Approximately 1,400' upstream of Legislative Route 453 Bridge	*631
			Upstream of Hollywood Road Bridge Downstream Crossing	*644
			Upstream of Hollywood Road Bridge Upstream Crossing	*655
			Approximately 1,200' downstream of Bill Sones Road Bridge	*668
			Upstream of Bill Sones Road Bridge	*678
			Approximately 2,000' upstream of Bill Sones Road Bridge	*696
			Approximately 1,400' downstream of Baylor Road Bridge	*713
			Upstream of Baylor Road Bridge	*723
			Upstream of Houseknecht Road Bridge	*740
			Approximately 1,000' upstream of Houseknecht Road Bridge	*753

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Approximately 2,400' upstream of Houseknecht Road Bridge	*769
			Corporate Limits of Franklin/Moreland Townships	*783
		German Run	Confluence with Little Muncy Creek	*656
			1,000' downstream of East Arch Rider Road Bridge	*672
			Upstream of East Arch Rider Road Bridge	*684
			Approximately 400' downstream of Legislative Route 41076 Bridge	*697
			Upstream of Legislative Route 41076 Bridge	*707
		Tributary No. 1	Confluence with German Run	*686
			Upstream of Legislative Route 41076 Bridge	*701
			1,200' upstream of Legislative Route 41076 Bridge	*719
			Approximately 1,900' upstream of Legislative Route 41076 Bridge	*730
	Maps available at the residence of Mr. Snyder, Chairman, R. D. 1, Muncy, Pennsylvania.			
Pennsylvania	Wayne, Township, Mifflin County (Docket No. FEMA-5785).	Juniata River	Corporate Limits (Downstream)	*512
			State Route 103 Extended at Intersection with Private road	*525
			State Route 496 Extended at Intersection with Township Route 302	*533
			Pennsylvania Avenue (Upstream)	*559
			Conrail (Upstream)	*559
			Corporate Limits (Upstream)	*569
	Maps available at the residence of Mr. Cloyd Enyeart, Wayne Township Secretary, Front Street, Newton Hamilton, Pennsylvania.			
Texas	City of Commerce, Hunt County (FEMA-5824).	South Sulfur River Tributary	At the south corporate limits	*499
			Approximately 40 feet upstream of FM Highway 513	*503
	Maps available for inspection at City Hall, 1119 Alamo, Commerce, Texas 75428.			
Vermont	Williston, Town, Chittenden County (Docket No. FEMA-5824).	Winooski River	Downstream Corporate Limits	*220
			Downstream of State Route 2A	*225
			Upstream of State Route 2A	*231
			Upstream of Green Mountain Power Dam	*285
			Upstream of downstream crossing of Central Vermont Railroad	*290
			Upstream of North Williston Road	*295
			Upstream of upstream crossing of Central Vermont Railroad	*299
			Upstream Corporate Limits	*300
	Maps available at the Town Hall, Williston, Vermont.			
Washington	Washougal (City), Clark County (FEMA-5798).	Columbia River	400 Feet south intersection of A Street and 1st Street	*32
		Washougal River	300 feet northwest of intersection of J Street and 4th Street	*31
			500 feet north from intersection of G Street and 24th Street	*49
	Maps available for inspection at City Hall, 1701 C Street, Washougal, Washington.			
Wisconsin	(V), Black Creek, Outagamie County (Docket No. FEMA-5841).	Black Creek	Northwestern corporate limit	*769
			Just upstream of Soo Line Railroad	*770
			Northeastern corporate limit	770
	Maps available for inspection at the Office of the Village Clerk, Village Hall, Black Creek, Wisconsin 54106.			
Wisconsin	(V), Melvina, Monroe County (Docket No. FEMA-5835).	Little La Crosse River	About 600 feet downstream of Coles Valley Road	*871
			At upstream corporate limits	*885
	Maps available for inspection at the Village President's Home, Route #1, Cashton, Wisconsin 54619.			

(National Flood Insurance Act 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: September 18, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-32550 Filed 10-21-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the nation.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required either to adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or toll free line (800) 424–8872 (in Alaska and Hawaii call toll free line (800) 424–9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determination of flood elevation for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

The final base (100-year) flood elevations for selected locations are:

Final Base (100-Year) Flood Elevation

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
California	Burbank (City), Los Angeles County, FEMA-5765.	Shallow Flooding Areas	Intersection of Lake Street and Chestnut Street	*573
			Area between Riverside Drive and Alameda Avenue and west of Main Street.	#1
			Area north of Alameda Avenue and west of Main Street	#2
			Area along Country Club Drive 650 feet north of Via Montana	#3
	Maps available for inspection at City Hall, 275 East Olive Street, Burbank, California.			
Texas	Bunker Hill Village, City, Harris County (Docket No. FEMA-5737).	Buffalo Bayou	Vanderpool Lane	*72
	Maps available at the Bunker Hill Village City Hall, 11977 Memorial Drive, Houston, Texas.			
Virginia	Danville, City, (Docket No. FI-5190).	Dan River	Downstream Corporate Limits	*401
			Confluence of Fall Creek	*403
			First Southern Railway Bridge	*404
			Second Southern Railway Bridge	*405
			Main Street	*406
			Dam upstream from Union Street (Downstream)	*408
			Dam upstream from Union Street (Upstream)	*414
			Confluence of Sandy Creek	*421
			Confluence of Sandy River	*424
			Dam upstream from Robertson Street (Downstream)	*431
			Dam upstream from Robertson Street (Upstream)	*445
			Upstream Corporate Limit	*451
		Sandy River	Confluence with Dan River	*424
			U.S. Route 58	*425
			Old U.S. Route 58	*427
			Upstream Corporate Limit	*438
		Sandy Creek	Confluence with Dan River	*421
			U.S. Route 58	*427
			Central Boulevard	*430
			Upstream Corporate Limit	*433
		Fall Creek	Confluence with Dan River	*403
			East Thomas Street	*404
			Upstream Corporate Limit	*407
		Rutledge Creek	Confluence with Pumpkin Creek	*431
			Edmonds Street	*438
			Holland Road	*460
			Stokesland Avenue	*466
			Elizabeth Street	*489
			Upstream Corporate Limit	*567
		Jackson Branch	Confluence with Dan River	*401
			Grant Avenue	*446
			Limit of Detailed Study	*447
		Pumpkin Creek	Downstream Corporate Limit	*400
			Oakwood Road	*422
			Old Yanceyville Road	*426
			Upstream Corporate Limit	*431
	Maps available at the Municipal Building, Danville, Virginia.			
Virginia	City of Petersburg (Docket No. FEMA-5726).	Appomattox River	330 feet downstream of Northbound Interstate 95	*16
			Vepco Harvell Dam (upstream side)	*23
			State Route 36 (upstream side)	*28
			Vepco Dam (upstream side)	*38
			Upstream Crossing of Seaboard Coast Line Railroad (upstream side)	*41
		Appomattox River Navigation Channel.	Confluence of Harrison Creek	*12
		Blackwater Swamp	U.S. Route 301 (downstream side)	*16
			Downstream Corporate Limits	*123
			Upstream Route 460 (upstream side)	*126
			Norfolk and Western Railway (upstream side)	*135
			U.S. Route 301 (upstream side)	*143
			Retneg Road (downstream side)	*148
		Blackwater Swamp Tributary	Confluence with Blackwater Swamp	*138
			U.S. Route 301 (downstream side)	*144
		Harrison Creek	Confluence with Appomattox River Navigation Channel	*12
			Upstream Side Access Road (1,505 feet downstream of State Route 645).	*20
			State Route 645 (upstream side)	*30
			Norfolk and Western Railway (upstream side)	*39
			1,790 feet upstream of East Washington Street at Limit of Detailed Study.	*39
		Poor Creek	Confluence with Appomattox River Navigation Channel	*12
			First Downstream Crossing of the Norfolk and Western Railway (upstream side).	
			Upstream side of Dam	*28
			Pin Oak Avenue (upstream side)	*45
			825 feet upstream of Pin Oak Avenue (Limit of Detailed Study)	*45

Final Base (100-Year) Flood Elevation—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Lieutenant Run	Confluence with Appomattox River Navigation Channel	*15
			Upstream Side of Washington Street Culvert	*30
			Graham Road (downstream side)	*52
			Upstream Side of South Sycamore Street Culvert	*76
			Northbound Interstate 85 (upstream side)	*85
			Baylor's Lane (upstream side)	*98
			240 feet upstream of confluence of Tributary 3 (Limit of Detailed Study).	*102
		Brickhouse Run	Confluence with Appomattox River	*20
			West Bank Street (upstream side)	*27
			North Market Street (upstream side)	*43
			West Washington Street (upstream side)	*57
			South Jones Street (upstream side)	*66
			South West Street (upstream side)	*80
			West Fairground Road (upstream side)	*91
			Pleasant Lane (upstream side)	*102
			Elm Street (upstream side)	*106
			2,095 feet upstream of Elm Street	*128
		Rohoic Creek	Confluence with Appomattox River	*51
			Norfolk and Western Railway (upstream side)	*76
			Cox Road (upstream side)	*87
			Seaboard Coast Line Railroad (upstream side)	*98
			Eastbound Interstate 85 (upstream side)	*109
			State Route 142 (upstream side)	*110
	Maps available at the Office of the City Manager, Petersburg.			

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963)

Issued: October 3, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-32549 Filed 10-21-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5800]

National Flood Insurance Program; Final Flood Elevation Determinations; Correction

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule; correction.

SUMMARY: This document corrects a Notice of Final Determinations of base (100-year) flood elevations for selected locations in the City of Westbrook, Cumberland County, Maine, previously published at 45 FR 51801 on August 5, 1980.

EFFECTIVE DATE: October 22, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872 (in Alaska and Hawaii call Toll Free Line (800) 424–9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the correction to the Notice of Final Determinations of base (100-year) flood elevations for selected locations in the City of Westbrook, Cumberland County, Maine, previously published at 45 FR 51801 on August 5, 1980, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67).

Under the Source of Flooding of Presumpscot River, the elevation 35 feet which corresponds to the location described as, "At northern corporate limits," has been changed. The elevation should be 32 feet.

Under the Source of Flooding of Minnow Brook, the location described as "Approximately 2,600 feet upstream of mouth," and its corresponding elevation of 35 feet have been changed. The location should read, "Approximately 2,500 feet upstream of mouth," and the corresponding elevation should be 33 feet.

Under the Source of Flooding of Mill Brook, the elevation 35 feet which corresponds to the location described as, "Mouth at Presumpscot River." and the location described as "Just downstream of Austin Street," has been changed for both. The elevation should be 33 feet.

These changes have been made to reflect revisions made to the Final Flood Insurance Study (profile) and Flood Insurance Rate Map. The listing appears correctly as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maine	(C), Westbrook, Cumberland County.	Presumpscot River	At northern corporate limits	*32
		Minnow Brook	Approximately 2,500 feet upstream of mouth	*33
		Mill Brook	Mouth at Presumpscot River	*33
			Just downstream of Austin Street	*39

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(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: October 3, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-32547 Filed 10-21-80; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-5778]

National Flood Insurance Program; Final Flood Elevation Determination

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Deletion of final rule for the Township of Gloucester, Camden County, N.J.

SUMMARY: The Federal Insurance Administration has erroneously published the final flood elevation determination for the Township of Gloucester, Camden County, New Jersey. This notice will serve to delete that publication. Following an engineering analysis and review, a revised notice of proposed flood elevation determination will be issued.

EFFECTIVE DATE: October 22, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Federal Emergency Management Agency, Federal Insurance Administration, National Flood Insurance Program, (202) 426–1460 or toll free line (800) 424–8872 (in Alaska and Hawaii call toll free line (800) 424–9080), Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: As a result of a recent engineering analysis, the Federal Insurance Administration has determined that the notice of final flood elevation determination for the Township of Gloucester, Camden County, New Jersey, published at 45 FR 43193, on June 26, 1980, should be deleted. After a technical evaluation, a revised notice of proposed flood elevations will be issued, with a ninety-day period specified for comments and appeals.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: October 3, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-32548 Filed 10-21-80; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 351

[Docket FEMA-IAR-351]

Radiological Emergency Response Planning and Preparedness

AGENCY: Federal Emergency Management Agency.

ACTION: Interim regulation and request for comment.

SUMMARY: In accordance with a Presidential Directive, this regulation assigns Federal agency responsibilities for assisting State and local governments in emergency planning and preparedness for peacetime nuclear emergencies. Such emergencies include radiological accidents at fixed nuclear facilities and transportation accidents involving radioactive materials. This regulation establishes the Federal Radiological Preparedness Coordinating Committee which will coordinate these efforts. The Committee will be chaired by the Federal Emergency Management Agency. While public participation procedures are not necessary, FEMA is requesting comment on this rule.

DATES: This rule is effective on October 22, 1980. Written comments on this interim rule should be submitted by December 22, 1980.

ADDRESS: Send comments to: Rules Docket Clerk, Federal Emergency Management Agency, Room 801, 1725 I Street, NW., Washington, D.C. 20472.

FOR FURTHER INFORMATION CONTACT: Marshall E. Sanders, Assistant Director, Policy Planning, Radiological Emergency Preparedness Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 523–1781.

SUPPLEMENTARY INFORMATION: On December 24, 1975, a notice was published in the **Federal Register** by the Federal Preparedness Agency, General Services Administration, entitled, "Radiological Incident Emergency Response Planning; Fixed Facilities and Transportation" (40 FR 59494). The notice outlined Federal agency responsibilities in providing Federal assistance to State and local governments in their radiological emergency response planning activities.

Since December 1975, there have been organizational changes within the Federal executive branch. For example, Reorganization Plan Number 3 of 1978 established the Federal Emergency Management Agency (FEMA) and Executive Orders 12127 and 12148 implemented that plan. The Federal Preparedness Agency, Defense Civil Preparedness Agency, and Federal Disaster Assistance Administration, which were among the agencies that were given assignments under the December 24, 1975, notice are now part of FEMA. In addition, on December 7, 1979, the President directed FEMA to: Assume responsibility for all offsite nuclear emergency planning and response; develop and issue a series of interagency assignments which delineate respective agency capabilities and responsibilities, define procedures for coordination and direction for both emergency planning and response; and review State emergency plans.

Consequently, the December 24, 1975, notice has been overtaken by events and should be replaced with new documents which will: formally establish and describe the functions of the Federal Radiological Preparedness Coordinating Committee (FRPCC), previously known as the Federal Interagency Central Coordinating Committee for Radio-logical Emergency Response Planning and Preparedness; restate the agreed upon responsibilities of the Federal agencies; and carry out the December 7, 1979, directive of the President to FEMA.

This regulation assigns responsibilities to assure useful, coordinated Federal assistance and guidance for State and local government planning and preparedness. FEMA has discussed the assignment of these responsibilities with staff members of the Federal agencies involved and has received their agreement. FEMA has published a proposed rule on procedures and criteria for reviewing and approving State and local government radiological emergency plans and preparedness capabilities (45 FR 42341). Federal agency capabilities, responsibilities, and coordination procedures related to emergency planning and response by Federal agencies will be included in the National Radiological Emergency Preparedness Plan, currently under development by FEMA, pursuant to Section 304 of the Nuclear Regulatory Commission Appropriation Authorization (Pub. L. 96–295) and Executive Order 12241, September 29, 1980.

Because this rule only states the responsibilities of Federal agencies, notice and public procedure are not required by 5 U.S.C. 553. FEMA is of the view, however, that public comments would be helpful and are, therefore, solicited. To meet requirements of the President's directive of December 7, 1979, without further delay, this rule is effective immediately on an interim basis pending consideration of public comments and its publication in final form.

Interested parties may participate by submitting their views to FEMA in writing. Each comment should include the name and address of the person or organization submitting the comment and should make reference to the above cited docket number. All comments received on or before the date set will be considered in promulgating final regulations on these matters. All written comments received will be docketed and made available for public inspection at FEMA.

Accordingly, the **Federal Register** notice titled, "Radiological Incident Emergency Response Planning; Fixed Facilities and Transportation" issued by the Federal Preparedness Agency, General Services Administration, and published December 24, 1975 (40 FR 59494), is revoked. In addition, Part 351 "Radiological Emergency Response Planning and Preparedness" is added to Subchapter E, Chapter I of Title 44, Code of Federal Regulations, as follows:

PART 351—RADIOLOGICAL EMERGENCY RESPONSE PLANNING AND PREPAREDNESS

Subpart A—General

Sec.

351.1 Purpose.
351.2 Scope.
351.3 Limitation of scope.

Subpart B—Federal Radiological Preparedness Coordinating Committee and Regional Assistance Committees

351.10 Establishment of committees.
351.11 Functions of committees.

Subpart C—Interagency Assignments

351.20 Federal Emergency Management Agency.
351.21 Nuclear Regulatory Commission.
351.22 Environmental Protection Agency.
351.23 Department of Health and Human Services.
351.24 Department of Energy.
351.25 Department of Transportation.
351.26 Department of Agriculture.
351.27 Department of Defense.
351.28 Department of Commerce.

Authorities: 5 U.S.C. 552; Reorganization Plan No. 3, 1978, 43 FR 41943; Executive Order 12127, March 31, 1979, 44 FR 19367; Executive Order 12148, July 20, 1979, 44 FR 43239; Executive Order 12241, September 29, 1980, 45 FR 64879; President's Directive of December 7, 1979.

Subpart A—General

§ 351.1 Purpose.

This part sets out Federal agency roles and assigns tasks regarding Federal assistance to State and local governments in their radiological emergency planning and preparedness activities. Assignments in this part are applicable to radiological accidents at fixed nuclear facilities and transportation accidents involving radioactive materials.

§ 351.2 Scope.

The emergency planning and preparedness responsibilities covered by this part relate to consequences and activities which extend beyond the boundaries of any fixed nuclear facility with a potential for serious consequences and the immediate area of a transportation accident involving radioactive materials.

§ 351.3 Limitation of scope.

(a) This part covers Federal agency assignments and responsibilities in connection with State and local emergency response plans and preparedness measures. It does not set forth criteria used in the review and approval of these plans and does not include any of the requirements associated with FEMA findings and determinations on the adequacy of State and local government radiological emergency preparedness. FEMA has published a separate proposed rule on procedures and criteria for reviewing and approving these plans and preparedness capabilities (45 FR 42341). Furthermore, this part does not set forth Federal agency responsibilities or capabilities for responding to an accident at a fixed nuclear facility or a transportation accident involving radioactive materials.

(b) Nothing in this part authorizes access to or disclosure of classified information required to be protected in accordance with Federal law or regulation in the interest of national security.

Subpart B—Federal Radiological Preparedness Coordinating Committee

§ 351.10 Establishing of committees.

(a) The Federal Radiological Preparedness Coordinating Committee (FRPCC) consists of the Federal Emergency Management Agency, which chairs the Committee, Nuclear Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Energy, Department of Transportation, Department of Defense, Department of Agriculture, Department of Commerce, and, where appropriate and on an ad hoc basis, other Federal departments and agencies. In chairing the Committee, FEMA will be responsible for assuring that all agency assignments described in this rule are coordinated through the Committee and carried out with or on behalf of State and local governments.

(b) The Regional Assistance Committees (RACs), one in each of 10 standard Federal Regions,[1] consist of a FEMA Regional Representative, who chairs the Committee, and representatives from the Nuclear Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Energy, Department of Transportation, Department of Defense, Department of Agriculture, Department of Commerce, and, where appropriate, other Federal departments and agencies. The FEMA Chairman of the RACs will provide guidance and orientation to other agency members to assist them in carrying out their functions.

§ 351.11 Functions of committees.

(a) The FRPCC shall assist FEMA in providing policy direction for the program of Federal assistance to State and local governments in their radiological emergency planning and preparedness activities. The FRPCC will establish subcommittees to aid in carrying out its functions; e.g., research, training, emergency instrumentation, public information and education. The FRPCC will assist FEMA in resolving issues relating to granting of final FEMA approval of a State plan. The FRPCC will coordinate research and study efforts of its member agencies related to State and local government radiological emergency preparedness to assure minimum duplication and maximum benefits to State and local governments. The FRPCC will also assure that the research efforts of its member agencies are coordinated with the interagency Radiation Research Committee.

(b) The RACs will assist State and local government officials in the development of their radiological emergency response plans, and will review these plans and observe exercise to evaluate adequacy of the plans. Each Federal agency member of the RACs will support the functions of these committees by becoming knowledgeable of Federal planning and guidance related to State and local radiological

[1] I (Boston); II (New York); III (Philadelphia); IV (Atlanta); V (Chicago); VI (Dallas); VII (Kansas City); VIII (Denver); IX (San Francisco); and X (Seattle).

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emergency response plans, of their counterpart State organizations and personnel, where their agency can assist in improving the preparedness, and by participating in RAC meetings.

Subpart C—Interagency Assignments

§ 351.20 The Federal Emergency Management Agency.

(a) Establish policy and provide leadership via the FRPCC in the coordination of all Federal assistance and guidance to State and local governments for developing, reviewing, assessing, and testing the State and local radiological emergency response plans.

(b) Issue guidance to other Federal agencies concerning their responsibilities for providing radiological emergency planning and preparedness assistance to State and local governments.

(c) Foster cooperation of industry, technical societies, Federal agencies and other constituencies in the radiological emergency planning and preparedness of State and local governments.

(d) Develop and promulgate preparedness criteria and guidance to State and local governments, in coordination with other Federal agencies, for the preparation, review and testing of State and local radiological emergency response plans.

(e) Provide assistance to State and local governments in the preparation, review, and testing of radiological emergency response plans.

(f) Assess, with the assistance of other Federal agencies, the adequacy of State and local government emergency response plans and the capability of the State and local government officials to implement them, (e.g., adequacy and maintenance of equipment, procedures, training, resources, and staffing levels and qualifications) and report the findings and determinations to NRC.

(g) Review and approve State radiological emergency response plans and preparedness in accordance with FEMA regulations.

(h) Develop, implement, and maintain a program of public education and information to support State and local radiological emergency response plans and preparedness.

(i) Develop and manage a radiological emergency response training program to meet State and local needs, using technical expertise and resources of other involved agencies. Develop and field test exercise materials and coordinate the Federal assistance required by States and localities in conducting exercises, including guidance for Federal observers.

(j) Develop, with NRC, scenarios for use by NRC licensed facility operators and State and local governments in testing and exercising radiological emergency plans.

(k) Issue guidance for establishment of State and local emergency instrumentation systems for radiation detection and measurement.

(l) Provide guidance and assistance, in coordination with NRC, to State and local governments concerning the storage and distribution of radioprotective substances (e.g., thyroid blocking agents) for use in radiological emergencies.

§ 351.21 The Nuclear Regulatory Commission.

(a) Assess NRC nuclear facility licensee emergency plans for adequacy to protect the health and safety of the public.

(b) Verify that nuclear facility licensee emergency plans can be adequately implemented (e.g., adequacy and maintenance of equipment, procedures, training, resources, staffing levels and qualifications).

(c) Review FEMA's findings and determinations of State and local radiological emergency response plans for areas surrounding NRC licensed nuclear facilities.

(d) Take into account the overall state of emergency preparedness in making decisions to issue operating licenses or shut down licensed operating reactors, including the integration of assessments of emergency preparedness onsite by the NRC and offsite by FEMA.

(e) Where not already established, determine, in cooperation with other Federal agencies, the appropriate planning bases for NRC licensed nuclear facilities including distances, times and radiological characteristics.

(f) Assist FEMA in developing and promulgating guidance to State and local governments for the preparation of radiological emergency response plans.

(g) Participate with FEMA in: assisting State and local governments in developing their radiological emergency response plans, evaluating exercises to test plans, and reviewing and evaluating the plans and preparedness.

(h) Provide representation to and support for the FRPCC and the RACs.

(i) Assist FEMA in the development, implementation, and maintenance of public information and education programs.

(j) Assist FEMA in developing scenarios for use by nuclear facility operators and State and local governments in testing and exercising radiological emergency response plans.

(k) Assist FEMA in the development of guidance for State and local governments on emergency instrumentation systems for radiation detection and measurement.

(l) Assist FEMA in the development and implementation of training programs for Federal, State and local radiological emergency preparedness and response personnel.

(m) Assist FEMA in providing guidance and assistance to State and local governments concerning the storage and distribution of radioprotective substances (e.g., thyroid blocking agents) for use in radiological emergencies.

§ 351.22 The Environmental Protection Agency.

(a) Establish Protective Action Guides (PAGs) for all aspects of radiological emergency response planning in coordination with appropriate Federal agencies.

(b) Prepare guidance for State and local governments on implementing PAGs, including recommendations on protective actions which can be taken to mitigate the potential radiation dose to the population. This guidance will be presented in the EPA "Manual of Protective Action Guides and Protective Actions for Nuclear Incidents." (The preparation of PAGs related to human food and animal feed will be done in coordination with HHS/Food and Drug Administration.)

(c) Assist FEMA in developing and promulgating guidance to State and local governments for the preparation of radiological emergency response plans.

(d) Assist FEMA in development of technical training for State and local officials in radiation dose assessment, protective actions, and decisionmaking.

(e) Participate with FEMA in assisting State and local governments in developing their radiological emergency response plans, evaluating exercises to test plans, and reviewing and evaluating the plans and preparedness.

(f) Assist FEMA in the development of guidance for State and local governments on emergency instrumentation systems for radiation detection and measurement.

(g) Provide representation to and support for the FRPCC and the RACs.

(h) Assist FEMA in developing scenarios for use by nuclear facility operators and State and local governments in testing and exercising radiological emergency response plans.

(i) Assist FEMA in the development, implementation, and maintenance of public information and education programs.

§ 351.23 The Department of Health and Human Services.

(a) Develop and specify protective actions and associated guidance to State and local governments for human food, animal feed, (in coordination with the Environmental Protection Agency) and related health problems, including mental health and behavioral disturbances, which may be associated with radiological emergencies.

(b) Assist FEMA in the development, implementation, and maintenance of public information and education programs to support State and local government radiological emergency response plans and preparedness.

(c) Assist FEMA in the development and implementation of a radiological emergency response training program to support State and local government personnel in accident assessment, protective actions, and decisionmaking.

(d) Develop and assist in providing the requisite training programs for State and local health, mental health, and social service agencies.

(e) Provide guidance to State and local governments on the use of radioprotective substances (e.g., thyroid blocking agents) to include dosage and projected radiation exposures at which such drugs should be used.

(f) Assist FEMA in developing and promulgating guidance to State and local governments for the preparation of radiological emergency response plans.

(g) Participate with FEMA in assisting State and local governments in developing their radiological emergency response plans, evaluating exercises to test plans, and reviewing and evaluating the plans and preparedness.

(h) Provide representation to and support for the FRPCC and the RACs.

(i) Assist FEMA in developing scenarios for use by nuclear facility operators and State and local governments in testing and exercising radiological emergency response plans.

(j) Assist FEMA in the development and guidance for State and local governments on emergency instrumentation systems for radiation detection and measurement.

(k) Assist the State and local governments in the planning for the safe production, during radiological emergencies, of human food and animal feed in the emergency planning zones around fixed nuclear facilities.

(l) Assist FEMA, through the Interagency Radiation Research Committee, chaired by the Department of Health and Human Services, in the coordination and design of research applicable to State and local plans and preparedness.

§ 351.24 The Department of Energy.

(a) Determine the appropriate planning bases for DOE-owned and contractor nuclear facilities, including distances, time and radiological characteristics.

(b) Assess DOE nuclear facility emergency plans for adequacy in contributing to the health and safety of the public.

(c) Verify that DOE nuclear facility emergency plans can be adequately implemented (e.g., adequacy and maintenance of equipment, procedures, training, resources, staffing levels and qualifications).

(d) Assist State and local governments, within the constraints of National security and in coordintion with FEMA, in the preparation of those portions of their radiological emergency response plans related to DOE-owned and contractor nuclear facilities and radioactive materials in transit.

(e) Review and assess FEMA's findings and determinations on the adequacy of and capability to implement State and local radiological emergency response plans for areas surrounding DOE nuclear facilities. Make independent assessments of the overall state of plans and preparedness.

(f) Serve as the lead agency for coordinating the development and issuance of interagency instructions and guidance to implement the Federal Radiological Monitoring and Assessment Plan (FRMAP) (formerly published as the Interagency Radiological Assistance Plan). The FRMAP provides the framework through which participating Federal agencies will coordinate their emergency radiological monitoring and assessment activities with those of State and local governments.

(g) Develop, maintain, and improve capability to detect and assess hazardous levels of radiation.

(h) Assist FEMA in developing and promulgating guidance to State and local governments for the preparation of radiological emergency response plans.

(i) Assist FEMA in the training of Federal, State, and local radiological emergency response personnel.

(j) Participate with FEMA in assisting State and local governments in developing their radiological emergency response plans, evaluating exercises to test plans, and reviewing and evaluating the plans and preparedness.

(k) Develop, with FEMA, scenarios for use by DOE facility operators and State and local governments in testing and exercising radiological emergency plans.

(l) Provide representation to and support for the FRPCC and the RACs.

(m) Assist FEMA in the development of guidance for State and local governments on emergency instrumentation systems for radiation detection and measurement.

§ 351.25 The Department of Transportation.

(a) Assist FEMA in the preparation and promulgation of guidance to State and local governments for their use in developing the transportation portions of radiological emergency response plans.

(b) Assist FEMA in its review and approval of State and local radiological emergency response plans and in the evaluation of exercises to test such plans.

(c) Provide guidance and materials for use in training emergency services and other response personnel for transportation accidents involving radioactive materials.

(d) Provide representation to and support for the FRPCC and the RACs.

§ 351.26 The Department of Agriculture.

(a) Assist FEMA in developing and promulgating guidance to State and local governments for the preparation of radiological emergency response plans.

(b) Participate with FEMA in assisting State and local governments in developing their radiological emergency response plans, evaluating exercises to test plans, and reviewing and evaluating the plans and prepardeness.

(c) Assist State and local governments in preparing to implement protective actions in food ingestion pathway emergency planning zones around fixed nuclear facilities.

(d) Develop, in coordination with FEMA and other Federal agencies, guidance for assisting State and local governments in the production, processing, and distribution of food resources under radiological emergency conditions.

(e) Assist FEMA in the training of Federal, State and local radiological emergency response personnel.

(f) Provide representation to and support for the FRPCC and the RACs.

§ 351.27 The Department of Defense.

(a) Determine appropriate planning bases for DOD-owned and contractor nuclear facilities and installations, including distances, time and radiological characteristics.

(b) Develop, with FEMA, scenarios for use by the Department of Defense nuclear facility operators and State and local governments in testing and exercising radiological emergency response plans.

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(c) Assist State and local governments, within the constraints of national security and in coordination with FEMA, in the development, review, and assessment of those portions of their radiological emergency response plans related to DOD-owned and contractor nuclear facilities and radioactive materials in transit.

§ 351.28 The Department of Commerce/NOAA.

(a) Provide an agreed upon set of needs of State and local governments for meteorological and hydrological services for responding to radiological emergencies.

(b) Assist FEMA in developing and promulgating guidance to State and local governments for the preparation of radiological emergency response plans.

(c) Participate with FEMA in assisting State and local governments in developing their radiological emergency response plans, evaluating exercises to test plans, and reviewing and evaluating the plans and preparedness.

(d) Assist FEMA in providing technical training for State and local officials in the use of meteorological information in responding to radiological emergencies.

(e) Provide representation to and support for the FRPCC and the RACs.

(f) Assist FEMA in the development of guidance for State and local governments on the exposure and location of emergency instrumentation systems for radiation detection and measurement.

(g) The Federal Coordinator for Meteorological Services and Supporting Research will, consistent with the provisions of the Office of Managment and Budget Circular A-62, serve as the coordinating agent for any multi-agency meteorological aspects of assisting State and local governments in their radiological emergency planning and preparedness.

Dated: October 15, 1980.

John W. Macy, Jr.,

Director.

[FR Doc. 80-32873 Filed 10-21-80; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Radio Broadcast Services; Clarification of FCC Rules by Broadcast Bureau on TV Transmitter Output Power Capability

AGENCY: Federal Communications Commission.

ACTION: Final rule clarification.

SUMMARY: The Broadcast Bureau has clarified the Commission's Rules regarding the output power capability of TV broadcast transmitters. The Commission's UHF Comparability Task Force found this clarification necessary during its examination of techniques broadcasters could use to transmit television signals more efficiently.

DATE: Nonapplicable.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Lex Felker, Office of Plans and Policy, (202) 653-5940.

SUPPLEMENTARY INFORMATION:

October 3, 1980.

The Broadcast Bureau has clarified the Commission's rules regarding the output power capability of TV broadcast transmitters.

The Commission's UHF Comparability Task Force found this clarification necessary during its examination of techniques broadcasters could use to transmit television signals more efficiently.

Specifically, §§ 73.663(b)(3) and 73.663(c)(3) of the rules require that the power output meters for the visual transmitter and the aural transmitter (if the "direct" method of determination is used for sound transmissions) be calibrated at 80, 100 and 110 percent of authorized power.

However if the transmitter is incapable of operating at 110 percent of authorized power, the calibration may be made at a power output between 100 and 110 percent of authorized output power. These rules do not require that the licensee demonstrate that the transmitter will operate at 110 percent of authorized power.

In adjusting TV broadcast transmitters (particularly Klystron transmitters), there is a trade-off between maximizing the operating efficiency (ratio of TV signal output power to the electric power input) and the reserve capacity to adjust the output power to values exceeding the authorized power.

Maintaining a television broadcast transmitter so that it has the capability to operate at 110 percent of authorized power results in wasted energy, particularly for UHF stations, the Broadcast Bureau said.

Although stations are required to be capable of operating at 100 percent of authorized power during all periods of regular program operation—except at times of technical emergencies beyond the licensee's control—no useful purpose is served by requiring that transmitters (particularly Klystron transmitters) be adjusted for less efficient operation solely to provide the unnecessary reserve capability of operating at 110 percent of authorized power, the Broadcast Bureau emphasized.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-32397 Filed 10-21-80; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1100

Extensions of Time To File Documents; Clarification of Procedural Rule

AGENCY: Interstate Commerce Commission.

ACTION: Clarification of procedural rule.

SUMMARY: Our procedural rules at 49 CFR 1100.19 state that parties who request postponement of a date for filing documents at the Commission must file such requests not less than 10 days before the due date. In many instances, parties in pending proceedings have filed requests for postponement much closer to the due date. This notice is to inform the public that requests for postponement of a due date in a proceeding pending before the Commission will be reviewed for timeliness and that failure to provide the 10 day lead time under 49 CFR 1100.19 may result in denial.

DATES: This notice is effective on October 22, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Erenberg, Associate Director, Office of Proceedings, (202) 275-7514.

By the Commission, Darius W. Gaskins, Jr., Chairman.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-32930 Filed 10-21-80; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 45, No. 206
Wednesday, October 22, 1980

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 239

[Release Nos. 33-6235A; IC-11327A; S7-849]

Proposed Comprehensive Revision to System for Registration of Securities Offerings; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking; correction.

SUMMARY: On September 2, 1980 the Commission proposed three new forms (Forms A, B and C) to be used to register offerings of securities under the Securities Act of 1933 (15 U.S.C. 77a et seq.). See Release No. 33-6235 (September 2, 1980) (45 FR 63693). In order to assist commentators in assessing the eligibility criteria for proposed Form A, the release had attached Appendix I which presented a statistical profile of the use of Form S-16 (17 CFR 239.27) for primary offerings from May 1978 to June 1980. Subsequent to publication of the release, the Commission discovered that certain errors had occurred in the compilation of data. The errors have been corrected and revised. Appendix I is published herewith. The Commission regrets any inconvenience this may have caused the public.

DATE: Comments on Release No. 33-6235 must be received on or before January 15, 1981.

ADDRESS: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-849. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Hugh Haworth (202) 523-5629, Directorate of Economic and Policy Analysis, Securities and Exchange Commisstion, 500 North Capitol Street, Washington, D.C. 20549.

By the Commission.

George A. Fitzsimmons,

Secretary.

October 15, 1980.

Appendix I.—*Part 1, Profile of Form S-16 Offerings and Issuers May 1978 to June 1980*

[Prepared by the Directorate of Economic and Policy Analysis]

	May 1978 to Jan. 1979		Feb. 1979 to Sept. 1979		Oct. 1979 to June 1980	
	Number of offerings	Percent of offerings	Number of offerings	Percent of offerings	Number of offerings	Percent of offerings
T.1—Type of security:						
Debt	24	40.7	57	47.5	139	55.8
Stock	33	55.9	48	40.0	98	39.4
Other	2	3.4	15	12.5	12	4.8
Totals	59	100.0	120	100.0	249	100.0
T.2—Industry of issuer:						
Extractive	2	4.2	3	3.1	6	3.4
Manufacturing	13	27.1	31	32.0	68	38.7
Transportation	5	10.3	1	1.0	1	0.6
Communication	1	2.1	4	4.1	6	3.4
Utilities	14	29.2	29	29.9	49	27.8
Finance	5	10.4	20	20.6	22	12.5
Miscellaneous	8	16.7	9	9.3	24	13.6
Total	48	100.0	97	100.0	176	100.0
T.3—Time in Registration:						
0 to 1 weeks	5	8.8	23	19.3	56	22.4
1 to 2 weeks	15	25.8	41	34.5	97	38.8
2 to 3 weeks	12	20.7	24	20.1	38	15.2
3 to 4 weeks	11	19.0	20	16.8	27	10.8
4 to 6 weeks	8	13.8	5	4.2	22	8.8
6 to 8 weeks	3	5.2	4	3.4	6	2.4
8 plus weeks	4	6.9	2	1.7	4	1.6
Total	58	100.0	119	100.0	250	100.0

T.4—*Amount of offering*

[In thousands of dollars, except for number of offerings]

	May 1978 to Jan. 1979	Feb. 1979 to Sept. 1979	Oct. 1979 to June 1980
Debt issues:			
Number of offerings	24	57	139
Median	100,000	100,000	75,000
Mean	115,493	124,255	99,802
Minimum	24,610	8,505	2,500
Maximum	500,000	498,125	600,000
Standard Deviation	92,587	97,775	81,929
Equity issues:			
Number of offerings	33	48	98
Median	22,100	25,126	35,635
Mean	31,785	42,881	49,773
Minimum	164	126	975
Maximum	135,250	326,000	334,028
Standard Deviation	33,146	58,174	55,782
Other issues:			
Number of offerings	2	15	12
Median	110,038	100,000	65,000
Mean	110,038	128,179	181,536
Minimum	21,249	35,000	4,380
Maximum	198,826	250,000	732,087
Standard Deviation	125,567	61,915	264,504

T.4—*Amount of offering—Continued*

[In thousands of dollars, except for number of offerings]

	May 1978 to Jan. 1979	Feb. 1979 to Sept. 1979	Oct. 1979 to June 1980
T.5—Annual revenues of issuers: [1]	[In millions of dollars, except for number of offerings]		
Number of issuers	48	97	175
Median	580	862	859
Mean	1,302	1,928	2,211
Minimum	27	8	5
Maximum	6,339	21,078	44,488
Standard Deviation	1,620	3,202	4,315
T.6—Annual earnings of issuers: [2]			
Number of issuers	48	97	175
Median	58	80	78
Mean	90	158	177
Minimum	0	1	(121)
Maximum	395	3,111	8,767
Standard Deviation	92	340	670
T.7—Annual trading volume of issuers' common stock:			
Number of issuers	47	92	173
Median	5,183	5,126	5,115
Mean	8,323	7,603	7,691
Minimum	31	3	3
Maximum	39,292	35,830	47,610
Standard Deviation	8,775	7,528	8,029
T.8—Shareholders of issuers' common stock: [3]			
Number of issuers	48	96	168
Median	29,801	27,209	27,004
Mean	41,709	54,021	66,613
Minimum	2,630	1,025	826
Maximum	251,518	580,572	2,939,090
Standard Deviation	50,677	84,640	230,857

[1] Most recent fiscal year prior to offering.
[2] Most recent fiscal year prior to offerings.
[3] Excludes companies not listed by Moody's Investors Services, Inc.

Note: (1) The total number of offerings varies from table to table due to the occasional incidence of missing data which caused some of the offerings to be excluded from certain tables. Offerings are grouped into time periods based upon filing date. Tabulations exclude extended offerings (i.e., employee savings and thrift plans, stock purchase plans, dividend reinvestment plans and American depository receipts), rights and warrants offerings, identified wholly owned subsidiaries, and secondary offerings. The number of offerings and the number of issuers do not coincide because issuers who made more than one offering during the period are accounted for as single issuers.

(2) In many cases, the time in registration depends upon the registrant's own time schedule.

Source: Moody's Investors Service, Inc. (various manuals) and Registered Offerings Statistical File, Directorate of Economic and Policy Analysis, Securities and Exchange Commission.

Appendix I.—*Part 2, Profile of 25 Largest and 25 Smallest Form S-16 Issuers Ranked on the Basis of Annual Revenue May 1978 to June 1980*

	May 1978 to Jan. 1979		Feb. 1979 to Sept. 1979		Oct. 1979 to June 1980	
	25 largest	25 smallest	25 largest	25 smallest	25 largest	25 smallest
T.1—Type of security:						
Debt	14	5	21	7	20	3
Stock	10	19	2	17	3	19
Other	1	1	2	1	2	3
Total	25	25	25	25	25	25
T.2—Industry of issuer:						
Extractive	0	2	0	1	0	3
Manufacturing	9	4	14	6	14	9
Transportation	2	4	0	0	0	0
Communication	1	0	1	1	2	1
Utilities	5	10	3	12	1	4
Finance	3	2	5	4	3	3
Miscellaneous	5	3	2	1	5	5
Total	25	25	25	25	25	25
T.2—Time in registration:						
0 to 1 week	3	4	8	3	11	4
1 to 2 weeks	8	4	10	4	8	5
2 to 3 weeks	5	5	4	6	3	8
3 to 4 weeks	5	2	3	9	0	4
4 to 6 weeks	3	5	0	1	1	3
6 to 8 weeks	0	4	0	2	1	1
8 plus weeks	1	1	0	0	1	0
Total	25	25	25	25	25	25

Appendix I.—*Part 2, Profile of 25 Largest and 25 Smallest Form S-16 Issuers Ranked on the Basis of Annual Revenue May 1978 to June 1980—Continued*

	May 1978 to Jan. 1979		Feb. 1979 to Sept. 1979		Oct. 1979 to June 1980	
	25 largest	25 smallest	25 largest	25 smallest	25 largest	25 smallest
T.4—Amount of offering (in thousands of dollars):						
Median	99,500	21,249	150,000	25,000	150,000	17,100
Mean	106,270	24,279	161,465	36,801	197,800	28,686
T.5—Annual revenues of issuers [1] (in millions of dollars):						
Median	1,505	246	3,526	206	6,601	107
Mean	2,274	271	5,445	205	9,140	112
T.6—Annual earnings of issuers [1] (in millions of dollars):						
Median	108	32	218	23	314	9
Mean	140	33	421	27	691	13
T.7—Annual trading volume of issuers' common stock (in thousands):						
Median	7,220	3,031	13,982	1,181	15,617	2,294
Mean	11,154	5,764	14,040	2,037	17,409	2,930
T.8—Shareholders of issuers' common stock:						
Median	32,286	19,000	62,743	17,448	72,000	3,766
Mean	56,968	26,300	167,011	22,219	208,846	5,618

[1] For the most recent fiscal year prior to offering.

Note: (1) Offerings are grouped into time periods based upon filing date. Tabulations exclude identified wholly owned subsidiaries and issuers of extended offerings (i.e., employee savings and thrift plans, stock option plans, stock purchase plans, dividend reinvestment plans and American depository receipts), rights and warrants offerings, and secondary offerings.

(2) In many cases, the time in registration depends upon the registrant's own time schedule.

Source: Moody's Investors Service, Inc. (various manuals) and, Registered Offerings Statistical File, Directorate of Economic and Policy Analysis, Securities and Exchange Commission.

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BILLING CODE 8010-01-M

17 CFR Part 240

[Release No. 34-17209; File No. S7-856]

Net Capital Requirement for Brokers and Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendments and solicitation of public comments.

SUMMARY: The Commission is proposing amendments to the uniform net capital rule which would increase the percentage deductions from the market value of certain debt securities in the proprietary or other accounts of the broker or dealer which must be made in computing net capital to reflect the recent sharp fluctuations in the market value of these securities. The Commission is also soliciting comments on whether and to what extent these deductions should be reduced by hedging positions in financial futures or securities of a different issuer.

DATE: Comments to be received by January 15, 1981.

ADDRESSES: All comments should be submitted in triplicate and addressed to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. All comments should refer to file No. S7-856 and will be available for public inspection at the Commission's Public Reference Room, 1100 L Street. N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Division of Market Regulation (202) 272-2372, 500 N. Capitol Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The uniform net capital rule not only requires a broker or dealer to maintain a minimum net capital the amount of which depends on the nature of its business but also prohibits it from incurring aggregate indebtedness in excess of 1500 percentum of its net capital, as those two terms are defined in the Rule. A broker or dealer electing the alternative method of computing net capital must maintain a minimum net capital equal to the greater of $100,000 or 4% of aggregate debit items in the formula for Determination of Reserve Requirements for Broker-Dealers.

In computing net capital, a broker or dealer is required to deduct from net worth (net worth as calculated in accordance with generally accepted accounting principles) certain percentages of the market value of all securities carried in its proprietary or other accounts. These deductions are generally referred to as "haircuts." The amount of the haircuts for debt securities (including short term notes) depends on the nature of the issuer, the time to maturity of the security and, for securities of non-governmental issuers. the ratings of nationally recognized rating services. In general, the haircuts for debt securities were designed to reflect the historical market fluctuations of each type of instrument.

Recent events in the debt market have led the Commission to question the adequacy of the haircut provisions for debt securities. Interest rates rose to unprecedented heights in the past year, causing precipitous declines in the values of already issued debt instruments. Several broker-dealer firms dealing primarily in municipal securities were forced to liquidate because of the unanticipated sharp movements in debt securities. Moreover, some major broker-dealer firms reportedly suffered large trading losses in debt securities, as did several large national banks.

Data recently provided to the Commission from industry sources tend to confirm doubts as to the adequacy of the present haircut categories. The data were compiled from records accumulated in the ordinary course of business of broker-dealer firms dealing in debt securities. In general, the data covered the period from February 1976 through February 1980, a period of 49 months. In the case of Government securities, daily values were given for three-month, six-month, nine-month and twelve-month treasury bills, and for selected two-year, five-year, ten-year, twenty-year and thirty-year coupon treasury bonds. For corporate bonds, summary price histories were given for representative long-term industrial and utility bonds. For municipals, weekly prices were provided from the BBI municipal index. The data show that the month-end to month-end price movements in most debt securities in the months of January 1977, October 1979, January 1980 and February 1980 were greater than the existing haircuts for the securities. They indicate a need for higher haircuts than the Rule presently provides. Each of the categories is more fully discussed below, as is the question of whether and to what extent the rule should be revised to incorporate various hedging positions.

I. Government Securities

A. Haircut Schedules

The Rule requires, in the case of a security issued or guaranteed as to principal or interest by the United States or any agency thereof, deductions from the market value of the net long or short position in each category described in subparagraph (A) of the haircut provisions of the Rule. There is no deduction for securities less than one year to maturity. The deduction for securities having one year but less than three years to maturity is 1%; that for securities having three years but less than five years to maturity is 2%; that for securities five years or more to maturity is 3%. The data submitted to the Commission tend to indicate that these haircuts are inadequate in measuring the risk in carrying the securities, particularly for those securities less than one year to maturity and those five years or more to maturity.

The data show that the majority of monthly changes in market value were greater than the existing haircuts, and that for four months (January 1977, October 1979, January 1980 and February 1980) the month-end to month-end price movements were considerably greater than the existing haircuts. Some examples will help to illustrate the concern. In 28 of the 49 months in the survey, treasury bills maturing in six months moved in price between one-tenth of one percent to over 1% (in February 1980). In October 1979, treasury bills maturing in nine months moved 1.50% and in February 1980, 1.90%. Finally, in 39 of 49 months, treasury bills maturing in 12 months moved between .1% and 2.51% (in February 1980). In each case, however, the net capital rule required no haircut.

The data for two-year coupons, five-year coupons, ten-year coupons, twenty-year coupons and thirty-year coupons show the same character of discrepancy as securities having one year or less to maturity. For example, in three different months within a six months period, United States Treasury securities maturing in 30 years declined substantially: 7.06% in February 1980, 8.82% in January 1980 and 9.16% in October 1979. Yet the required haircut is only 3% for these securities.

These figures demonstrate the need to reassess the present haircut category for Government securities.

Based largely on this data, the Commission proposes to alter the haircuts on Government securities in Rule 15c3–1(c)(2)(vi) as follows:

(A) * * *

(*1*) Less than three months to maturity—0% [0%];[1]

(*2*) Three months but less than six months to maturity—⅛ of 1% [0%];

(*3*) Six months but less than nine months to maturity—¼ of 1% [0%];

(*4*) Nine months but less than one year to maturity—⅜ of 1% [0%];

(*5*) One year but less than three years to maturity—1½% [1%];

(*6*) Three years but less than five years to maturity—3% [2%];

(*7*) Five years but less than ten years to maturity—4½% [3%];

(*8*) Ten years but less than 20 years to maturity—5% [3%]; and

(*9*) 20 years or more to maturity—6% [3%].

[1] The present haircut is shown in brackets.

While the proposed haircuts are not based on the largest changes in any 30-day period, the Commission believes that they nevertheless represent a more realistic appraisal of the potential movements of Government securities over a 30-day period.

B. Hedges

The present rule assesses deductions only on the net long or net short positions in the fixed categories in subparagraph (A), thereby recognizing certain hedges. In some cases, however, the Rule may not appropriately deal with hedges. For example, the Rule requires no haircut where a broker or dealer is long Government securities one month to maturity and short a Government security 11 months to maturity but requires a haircut of 1% on the short position where the broker or dealer is long a security 11 months to maturity and short a security 13 months to maturity. Furthermore, the Rule requires no haircut on the following positions: a long Government five years to maturity offset by a short Government security, 30 years to maturity. Yet, the data demonstrate that the historical market fluctuations of these two securities are not similar.

To some degree the problem will be lessened by the new haircut categories. But the provisions will still not distinguish adequately between bona fide risk limiting hedges and non-bona fide hedges. The job of precisely measuring hedges is of course a difficult one for the Commission. It is a matter about which experienced traders disagree daily. However, the data provided to the Commission suggest that netting of longs and shorts be allowed where the securities have a relationship by virtue of relatively close maturity dates rather than because fixed in the same haircut category. For short term instruments (less than one year to maturity), the Commission proposes that an appropriate period for netting purposes be no more than three months. For intermediate term instruments, that period will be no more than one year. For long term instruments (those five years or more to maturity), the period will be no more than five years. Hence, the rule, if amended as proposed, would require a haircut only on the net long or short position for short-term instruments where the long and short positions matured no longer than three months apart. For intermediate-term instruments the netting would be allowed if the instruments matured within one year or less of each other. Long term instruments could be netted if the longs and shorts matured within five years of one another. No netting would otherwise be permitted.

The Commission therefore proposes to amend Rule 15c3–1(c)(2)(vi)(A), as modified by the proposed amendments set forth above, as follows: Long or short positions may be netted as follows:

(*i*) Long or short positions with maturity dates within one year may be netted against long or short positions with maturity dates within 15 months, but only when such maturity dates are within three months of one another;

(*ii*) Long or short positions with maturity dates of between one and five years (except as in (*i*) above) may be netted against long or short positions with maturity dates of between one and six years, but only when such maturity dates are within one year of another;

(*iii*) Long or short positions with maturity dates of five years or more (except as in (*ii*) above) may be netted against long or short positions with maturity dates of five years of more, but only when such maturity dates are within five years of one another.

II. Municipal Securities

The haircut provision of the net capital rule which treats with municipal securities specifically divides municipal securities into two general categories (i) any municipal security which has a scheduled maturity at date of issue of 731 days or less and which is issued at par value and pays interest at maturity, or which is issued at a discount, and which is not traded flat or in default as to principal or interest and (ii) any other municipal security which is not traded flat or in default as to principal or interest.

The first category contains seven subcategories. The haircuts range from 0% for those securities having less than 30 days to maturity to 1% for those securities having from 456 to less than 732 days to maturity (hereinafter "short term notes"). The second category has four subcategories which require haircuts ranging from 1% for securities with less than one year to maturity, to 5% for securities with five years or more to maturity.

Although the data supplied to the Commission relating to municipal bonds are not as extensive as that available for Government securities, they show that the existing haircuts in this area are inadequate in relation to the market fluctuations in the last year. In two months, October 1979 and February 1980, municipal bonds moved in price substantially more than the maximum haircut. In October 1979, bond prices moved 6.58%; in February 1980 they moved 11.05% as a percentage of market value. Based on this data, increased haircuts are being proposed for municipal securities in category (ii) with more than 2 years to maturity.

The Commission does not now have sufficient data to propose any new haircuts for short-term notes in category (i) or for municipal securities with less than two years to maturity in category (ii). The Commission may possibly determine after further analysis that there is no need to change the haircuts at all for these remaining securities. The Commission solicits relevant data and comment as to whether the haircuts for these securities are appropriate.

The haircuts on securities with longer term maturities are proposed to be increased to reflect the recent sharp fluctuations in their market prices. The new proposed Haircut Schedule for municipal securities is as follows:

(B)(ii) In the case of any municipal security other than those specified in subdivision (B)(i), which is not traded flat or in default as to principal or interest, the applicable percentages of the market values on the greater of the long or short position in each of the categories specified below are:

(3) 2 years but less than 5 years to maturity—5 percent; and

(4) Five years or more to maturity—7 percent.

* * * * *

The Commission also solicits comments on two issues that have been the subject of controversy in the past with respect to municipal securities:

(1) Should the haircut provision for municipal securities distinguish between "rated" and "unrated" securities to differentiate between investment grade issues and more speculative issues?

(2) What criteria should be used to determine the market value of municipal securities for net capital and reporting purposes where the securities are the subject of quotations by only the computing broker or dealer?

III. Nonconvertible Debt Securities

Subsection (c)(2)(vi)(F) of the net capital rule requires a deduction in the case of non-convertible debt securities having a fixed interest rate and fixed maturity date and which are rated in one of the four highest rating categories by at least two of the nationally recognized statistical rating organizations, ranging from 1% for those securities with less than one year to maturity to 7% for securities with five years or more to maturity.

The Commission has insufficient data to make any determination as to appropriate haircuts for securities in this category where the security has less than five years to maturity. The Commission solicits comment on this matter. It appears from the available data, however, that the haircut for long-term debt securities in this category should be raised to 9% rather than the present 7%. The data show that prices of representative issues in this category moved about 30% more than the present haircut in several months of the past year. The new proposed haircut for debt securities in this category will reflect these recent sharp fluctuations in prices.

The proposed new haircut schedule is as follows:

(F) In the case of non-convertible debt securities having a fixed interest rate and fixed maturity date and which are not traded flat or in default as to principal or interest and which are rated in one of its four highest rating categories by each of at least two of the nationally recognized statistical rating organizations, the applicable percentages of the market values on the greater of the long or short position in each of the categories specified below are:

* * * * *

(6) Five years or more to maturity—9 percent.

IV

Because of the changes in the haircuts for government and municipal securities, it will be necessary to adjust the haircut provision for securities issued by investment companies whose assets are in the form of cash or securities or money market instruments which are described in subparagraph (a)–(C) or (E) of Rule 15c3–1(c)(2)(vi). Subparagraph (D) now requires a haircut of 5% of the market value of the greater of the long or short position. That haircut was based on the highest haircut for municipal securities. Compatible with that approach, the Commission proposes to raise the haircut for those securities in subparagraph (D) to 7%. For securities issued by investment companies whose portfolio consists of the instruments described above and non-convertible debt securities in category (F), the Commission proposes a haircut of 9%. The provision would also be amended to make clear that it applies only to redeemable securities issued by the investment company. The Rule would be amended as follows:

(D) In the case of redeemable securities of an investment company registered under the Investment Company Act of 1940, which assets are in the form of cash or securities or money market instruments which are described in subdivision (A)–(C) above or (E) below, the deduction shall be 7% of the market value of the greater of the long or short position. In the case of redeemable securities of an investment company registered under the Investment Company Act of 1940, which assets are in the form of cash or securities or money market instruments which are described in subdivisions (A)–(C) above or (E) or (F) before, the deduction shall be 9 percent of the

market value of the greater of the long or short position.

V. Hedging

Broker-dealers generally do not carry heavy nonhedged positions in debt securities. Often, brokers and dealers have significant positions in instruments which they believe hedge and reduce the market risk in the positions in which they are mainly interested. While not perfect hedges, they are thought to act as buffers to complete speculation. The hedged positions may consist either of positions in securities of the same issuer, positions in financial futures or positions in different issues. While the Rule, as noted above in the discussion as to Government securities, does take hedges into account to some degree, it has been criticized as being much too conservative.

Much sophisticated analysis has been made of the relationships among the prices of vartious fixed income securities and interest rate futures. Some believe, for example, that futures contracts may be used not only to hedge the underlying cash instruments but also to crosshedge corporate bonds. The net capital rule, as indicated above, does not recognize any such relationships for purposes of reducing the haircuts, although the Rule does extensively deal with techniqus of reducing risks through various hedging devices in listed options trading.

The Commission, in an effort to make its financial responsibility rules compatible to the extent feasible with economic reality, solicits comment on the degree to which the haircut rules should deal with hedges among the instruments described above. From the comments the Commission may be able to develop hedge criteria which are objective, clear and easily determinable for reducing any required haircuts.

Statutory Basis and Competitive Considerations

Pursuant to the Securities Exchange Act of 1934 and particularly Sections 15(c)(3) and 23(a) thereof, 15 U.S.C. 78*o*(c)(3) and 78w(a), the Commission proposes to amend § 240.15c3–1 in Chapter II of Title 17 of the Code of Federal Regulations in the manner set forth below. The Commission believes that any burden imposed upon competition by the proposed amendments is necessary in furtherance of the purposes of the Act, and particularly to implement the Commission's continuing mandate under Section 15(c)(3) thereof, to provide minimum safeguards with respect to the financial responsibility of brokers and dealers.

Text of Proposed Amendments

It is proposed to amend 17 CFR Part 240 as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES AND EXCHANGE ACT OF 1934

By amending paragraphs (A), (B), (D), and (F) of § 240.15c3–1(c)(2)(vi) as follows:

§ 240.15c3–1 Net capital requirements for brokers or dealers.

* * * * *

(c) * * *
(2) * * *
(vi) * * *

►(A) In the case of a security issued or guaranteed as to principal or interest by the United States or any agency thereof, the applicable percentages of the market value of the net long or short position as specified below are:

(*1*) Less than three months to maturity—0 percent;

(*2*) Three months but less than six months to maturity—⅛ of 1 percent;

(*3*) Six months but less than nine months to maturity—¼ of 1 percent;

(*4*) Nine months but less than one year to maturity—⅜ of 1 percent;

(*5*) One year but less than three years to maturity—1½ percent;

(*6*) Three years but less than five years to maturity—3 percent;

(*7*) Five years but less than ten years to maturity—4½ percent;

(*8*) Ten years but less than 20 years to maturity—5 percent;

(*9*) 20 years or more to maturity—6 percent. Long or short positions may be netted as follows:

(*i*) Long or short positions with maturity dates within one year may be netted against long or short positions with maturity dates within 15 months, but only when such maturity dates are within three months of one another;

(*ii*) Long or short positions with maturity dates of between one and five years (except as in paragraph (c)(2)(vi)(A)(*9*)(*i*) of this section) may be netted against long or short positions with maturity dates of between one and six years, but only when such maturity dates are within one year of another;

(*iii*) Long or short positions with maturity dates of five years or more (except as in paragraph (c)(2)(vi)(A)(*9*)(*ii*) of this section) may be netted against long or short positions with maturity dates of five years or more, but only when such maturity dates are within five years of one another.◄

(B)(*1*) * * *

(*2*) In the case of any municipal security other than those specified in paragraph (c)(2)(vi)(B)(*2*)(i) of this section, which is not traded flat or in default as to principal or interest, the applicable percentages of the market values on the greater of the long or short position in each of the categories specified below are:

(*i*) less than 1 year to maturity—1 percent;

(*ii*) 1 year but less than 2 years to maturity—2 percent;

►(*iii*) 2 years but less than 5 years to maturity—5 percent;

(*iv*) Five years or more to maturity—7 percent.◄

* * * * *

(*D*) In the case of redeemable securities of an investment company registered under the Investment Company Act of 1940, which assets are in the form of cash or securities or money market instruments which are described in paragraph (c)(2)(vi) (A)–(C) above or (E) of this section, the deduction shall be ►7◄ percent of the market value of the greater of the long or short position. ►In the case of redeemable securities of an investment company registered under the Investment Company Act of 1940, which assets are in the form of cash or securities or money market instruments which are described in paragraph (c)(2)(vi) (A)–(C) above or (E) of this section, the deduction shall be 9 percent of the market value of the greater of the long or short position.◄

* * * * *

(F) In the case of nonconvertible debt securities having a fixed interest rate and fixed maturity date and which are not traded flat or in default as to principal or interest and which are rated in one of the four highest rating categories by each of at least two of the nationally recognized statistical rating organizations, the applicable percentages of the market values on the greater of the long or short position in each of the categories specified below are:

(*1*) Less than one year to maturity—1 percent;

(*2*) One year but less than two years to maturity—2 percent;

(*3*) Two years but less than three years to maturity—3 percent;

(*4*) Three years but less than four years to maturity—4 percent;

(*5*) Four years but less than five years to maturity—5 percent;

►(*6*) Five years or more to maturity—9 percent.◄

* * * * *

By the Commission.
George A. Fitzsimmons,
Secretary.
October 9, 1980.
[FR Doc. 32611 Filed 10–21–80; 8:45 am]
BILLING CODE 8010–01–M

17 CFR Part 240

[Release No. 34–17208; File No. S7–855]

Net Capital Requirements for Brokers and Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules and solicitation of comments on financial responsibility rules.

SUMMARY: The Commission is proposing amendments to the net capital rule which would affect those portions of the rule applicable when brokers and dealers have elected the alternative net capital requirements. The proposed amendments would lower the ratio of required net capital to debit balances in customers' margin accounts and lower the minimum net capital requirements for those firms electing the alternative. The Commission is also proposing certain changes regarding the entries in the Reserve Formula of the customer protection rule which will also affect the computation of required net capital under the alternative. Finally, the Commission is soliciting comments on a broad range of questions regarding the financial responsibility rules for brokers and dealers in its reexamination of the scope, adequacy and necessity of those rules.

DATE: Comments to be received by January 15, 1981.

ADDRESSES: All comments should be submitted in triplicate and addressed to George A. Fitzsimmons, Secretary, Securities and Exchange Commission. 500 North Capitol Street, Washington, D.C. 20549. All comments should refer to file No. S7–855 and will be available for public inspection at the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Gregory N. Smith, Division of Market Regulation (202) 272–2368, 500 N. Capitol Street, NW., Washington, D.C. 20549. For questions relating to the analysis and interpretation of the economic data herein, please contact Rosanne F. Greene, Directorate of Economic and Policy Analysis (202 523–5495).

SUPPLEMENTARY INFORMATION: During the 1970's, the Commission substantially reformed its broker-dealer financial responsibility standards in response to the collapse of large firms and subsequent losses to customers arising from the financial and operational weaknesses of the firms in the late 1960's. In 1973, the Commission adopted Rule 15c3–3, which for the first time established procedures for the segregation of customers' fully-paid and excess margin securities held by broker-dealers and prohibited use of customer funds on deposit with broker-dealers except in certain customer related areas.[1]

The second major reform occurred with the adoption of the present uniform net capital rule (the "Rule"), 17 CFR 240.15c3–1, in 1975 after a lengthy review by the Commission of the then-existing financial responsibility rules and extensive public comment. The Rule eliminated the exemption in the Commission's prior net capital rule for all members of national securities exchanges and made virtually all registered brokers and dealers subject to the Commission's capital requirements.[2] The Rule continued the basic liquidity concept under which the securities industry had operated for many years. That concept requires a firm to have and maintain designated minimum amounts of liquid assets in relating to its aggregate indebtedness. In addition, the Commission introduced an alternative concept to measure the capital adequacy of brokers and dealers. The alternative concept linked the capital requirements of brokers and dealers to their customer related business as measured by the requirements of Rule 15c3–3. These reforms were significant steps in the Commission's continuing efforts to structure its rules to provide adequate protection for customers' assets while recognizing the need of securities firms for flexibility in efficiently using their capital resources.

When it adopted the present net capital rule, the Commission anticipated that it would revisit the financial responsibility rules at some time in the future. The Commission concludes that this review should be undertaken now because of changes in the structure of the industry and the nature and volume of the business of brokers and dealers.

Brokers and dealers and the markets in which they deal are different from those in the early 1970's. The financial data set forth in Tables 1 and 2 for New York Stock Exchange ("NYSE") member firms doing a public business [3] show that there has been a dramatic shift in the business mix of firms measured in terms of their major revenue sources and in their balance sheet structures.[4] In addition, many brokers and dealers now can clear significant portions of their business through a single clearing agency, regardless of the market where the transaction was executed. Participants in securities depositories can move securities throughout the country more efficiently and with less overall loss, to effect transfers and to make deliveries by book entry as a result of the expanded interfaces among depositories. This development has also had the effect of further immobilizing securities certificates.

These factors raise the question whether the present net capital rule properly assesses the risks involved in the business and requires appropriate reserves. The amount of liquid reserves required to prevent losses to customer assets and at the same time maximize scarce capital available to the intricate securities system is a subject which can elicit different responsible opinions. The object of this release is to explore these issues and elicit comment from the public. Accordingly, there follows a brief description of the net capital rule and certain proposed changes. The release concludes with an invitation for public comment on a broad range of questions regarding the financial responsibility rules.

The Commission intends that the proposals and issues raised in this release be considered in conjunction with the release proposing an amended schedule of haircuts on debt securities, also being issued today.[5] The haircut schedule, as proposed, may have a substantial effect on the net capital of

[1] Rule 15c3–3 was adopted pursuant to Section 15(c)(3) of the Securities Exchange Act of 1934 [the "Act"] which was amended by Section 7(d) of the Securities Investor Protection Act of 1970. The amendment required the Commission to adopt rules and regulations to provide ". . . safeguards with respect to the financial responsibility and related practices of brokers and dealers; including, but not limited to, the acceptance of custody and use of customers' securities, and the carrying and use of customer's deposits or credit balances. Such rules and regulations shall require the maintenance of reserves with respect to customers' deposits or credit balances, as determined by such rules and regulations."

[2] Section 15(c)(3) of the Act was further amended by the Securities Reform Act of 1975 to require the Commission, by September 1, 1975, to establish minimum, financial responsibility requirements for all brokers and dealers.

[3] Historical data for NYSE member firms doing a public business has been available on a consistent basis since 1972 while comparable data for other industry segments did not become available until 1976 with the adoption of the FOCUS Report (Financial and Operational Combined Uniform Single Report).

[4] For an analysis of the financial structure of the broker-dealer industry, *see* Securities and Exchange Commission, *Staff Report on the Securities Industry in 1979*, September 1980.

[5] Securities Exchange Act Release No. 17209 (October 9, 1980).

Table 1.—*Unconsolidated Annual Revenues and Expenses of MYSE Member Firms Doing a Public Business*

[In millions of dollars]

	1972	1973	1974	1975	1976	1977	1978	1979
REVENUES								
Securities commissions	$3,224	$2,660	$2,271	$2,925	$3,164	$2,809	$3,779	$4,012
Realized and unrealized gain or (loss) in trading and investments	909	415	592	914	1,400	1,296	1,543	2,671
Commodities revenue	120	181	160	174	210	243	351	436
Profit or (loss) from underwriting and selling groups	770	430	430	781	853	776	742	770
Revenue from sale of investment company securities	95	100	41	35	45	58	59	76
Margin interest	507	641	616	455	565	755	1,173	1,652
Revenue unrelated to the securities business	28	41	67	89	137	136	237	353
All other revenues	337	343	443	494	530	657	949	1,294
Gross revenues	5,990	4,811	4,620	5,867	6,902	6,730	8,832	11,264
Number of firms at year-end	490	463	420	409	384	364	361	374

Sources: NYSE Joint Regulatory Report and FOCUS Report directorate of Economic and Policy Analysis Securities and Exchange Commission.

Table 2.—*Summary Balance Sheet for NYSE Firms Doing a Public Business; 1972–79*

[In millions of dollars]

	1972	1973	1974	1975	1976	1977	1978	1979
ASSETS								
Cash	$816.6	$687.6	$581.6	$664.7	$761.0	$797.0	$984.0	$1,763.0
Receivables from other broker-dealers and clearing corporations:								
Securities failed to deliver	1,967.5	1,496.9	987.4	1,163.2	1,663.0	2,030.0	1,781.0	2,279.0
Securities borrowed	1,260.8	1,043	808.3	1,447.1	1,874.0	2,211.0	2,484.0	3,912.0
Other	297.2	272.3	848.6	621.4	418.0	741.0	844.0	632.0
Receivables from customers	12,321.1	8,122.7	6,539.8	8,265.4	11,453.0	13,537.0	15,868.0	17,981.0
Long positions in securities and commodities	8,307.2	7,063.0	8,319.2	8,860.5	15,662.0	13,799.0	15,238.0	20,199.0
Securities owned—not readily marketable	94.0	103.2	75.1	79.8	41.0	32.0	22.0	30.0
Securities borrowed under subordinated agreements and partners' individual and capital securities accounts	198.3	95.2	54.0	65.4	93.0	65.0	63.0	67.0
Securities purchased under agreement to resell [1]	NA	NA	NA	NA	4,255.0	8,187.0	14,018.0	24,244.0
Secured capital demand notes	268.7	412.3	343.3	292.7	291.0	236.0	248.0	255.0
Exchange memberships	218.5	134.1	109.6	102.2	129.0	106.0	108.0	139.0
Other assets	1,365.9	1,244.2	1,139.0	1,163.5	1,541.0	1,880.0	2,244.0	3,503.0
Total assets	27,115.8	20,674.7	19,805.9	22,725.9	38,181.0	43,621.0	53,902.0	75,004.0
LIABILITIES AND EQUITY CAPITAL								
Bank loans payable:								
Secured by customer collateral	5,720.1	2,499.2	1,522.2	2,054.1	4,725.0	5,683.0	5,123.0	4,002.0
Secured by firm collateral	5,960.4	5,146.2	6,783.6	6,803.0	5,108.0	5,612.0	4,337.0	4,557.0
LIABILITIES AND EQUITY CAPITAL								
Securities sold under repurchase agreements [1]	NA	NA	NA	NA	11,222.0	10,584.0	16,306.0	23,851.0
Payable to other broker-dealers and clearing organizations:								
Securities failed to receive	2,077.0	1,389.0	1,039.1	1,173.6	1,539.0	2,161.0	1,745.0	2,105.0
Securities loaned	1,238.3	839.7	573.6	1,033.9	1,585.0	1,828.0	2,198.0	3,715.0
Other	817.4	782.4	619.8	836.1	430.0	902.0	733.0	671.0
Payable to customers	3,998.8	3,610.3	2,934.5	3,323.4	4,786.0	5,099.0	7,202.0	10,992.0
Short positions in securities and commodities	1,285.1	1,018.9	645.2	931.0	2,129.0	3,980.0	6,610.0	13,706.0
Other liabilities	1,828.2	1785.0	2,432.2	3,103.8	2,744.0	3,836.0	5,258.0	6,406.0
Total liabilities excluding subordinated liabilities	22,925.3	17,070.7	16,550.4	19,258.9	34,268.0	39,688.0	49,512.0	70,005.0
Subordinated liabilities	1,041.2	1,077.5	909.4	777.6	766.0	759.0	963.0	1,040.0
Total liabilities	23,966.5	18,148.2	17,459.8	20,036.5	35,034.0	40,447.0	50,475.0	71,045.0
Equity capital	3,149.3	2,526.5	2,346.1	2,689.6	3,147.0	3,174.0	3,427.0	3,959.0
Total liabilities and equity capital	27,115.8	20,674.7	19,805.9	22,725.9	38,181.0	43,621.0	53,902.0	75,004.0
Number of firms at year-end	490	463	420	409	384	364	361	374

[1] Data on repurchase agreements is not available before the first quarter of 1976. Prior to 1976, securities purchased under agreement to resell were combined with long positions in securities and commodities, while securities sold under repurchase agreements were combined with money borrowed secured by firm collateral. Much of the considerable growth of assets in 1976 reflects the increased involvement of broker-dealers in U.S. Government and Agency obligations which was accompanied by a substantial growth in the use of repurchase agreements.

Sources: NYSE Joint Regulatory Report and FOCUS Report.

firms. It should also be noted that the Commission's proposed amendments to the FOCUS report would provide new detailed data relative to firms' activities.[6]

I. Present Net Capital Requirements

Historically, the principal regulatory tool relied upon to insure the financial integrity of broker-dealers was the required maintenance of a net capital base relative to a firm's aggregate indebtedness in order to ensure sufficient liquid assets to cover a firm's current indebtedness. The Commission's basic net capital rule currently requires that a broker-dealer's "aggregate indebtedness" never be more than 1500% of his "net capital," as those terms are defined in the Rule. Net capital essentially means the net worth of a broker-dealer reduced by prescribed percentages of the market value of securities owned by the broker or dealer ("haircuts") and reduced by other assets not readily convertible into cash, but including certain subordinated debt, i.e., net liquid assets. Aggregate indebtedness includes all the money liabilities of a broker or dealer, except certain specifically described items. In essence, the Rule requires a broker or dealer to cover each dollar of his liabilities with not less than one dollar and six and two-thirds cents of liquid assets.

The alternative method of calculating net capital requires a broker or dealer to maintain minimum net capital equal to the greater of $100,000 or 4% of aggregate debit items in the Formula for Determination of Reserve Requirements for Brokers and Dealers under Rule 15c3–3 ("Reserve Formula"), 17 CFR 240.15c3–3a. The debit items in the Reserve Formula represent moneys owed the broker-dealer in relation to customer transactions. The alternative approach is founded on the concept that, if the debit items in the Reserve Formula can be liquidated at or near their contract value, these assets along with any cash required to be on deposit under the Rule, will be sufficient to satisfy all liabilities to customers (which are represented as credit items in the Reserve Formula). As an additional safeguard, election of the alternative requires a firm to reduce by 3% its aggregate debit items to provide, in essence, a bad debt reserve of firm capital to assure adequate resources to pay customer claims. Election of the alternative also requires that operational charges (stock record differences and suspense account items) be reflected in the Reserve Formula after seven business days, rather than after 30 business days, as permitted for those firms which have not elected the alternative. Together, these limitations allow a firm to increase its customer commitments only as a function of its net capital.

Most broker-dealers utilize the basic method for complying with the net capital rule. Tables 3 through 6 provide a financial profile of firms electing the alternative and basic methods for computing net capital. As Tables 3 and 4 indicate, 139 of the 374 NYSE member firms conducting a public business as of December 31, 1979 were using the alternative method for the computation of net capital. These 139 firms accounted for 68% of the aggregate assets, 76% of the aggregate equity capital, and 81% of the aggregate revenues of the 374 NYSE firms conducting a public business. Of the classified NYSE member firms, all ten National Full Line firms elected the alternative capital approach, while 57 Regional firms (48% of NYSE member firms classified as Regional) utilized this method.[7]

Only 44 of the 2,066 broker-dealers that conducted a public business as of December 31, 1979 and were not members of the NYSE used the alternatives method for the computation of net capital (*see* Tables 5 and 6). These 44 firms were, on average, substantially larger than the 2,022 firms using the basic method.

[7] National Full Line firms conduct a general securities business and have a nationwide branch office network. Regional firms, on the other hand, confine their activities to a more limited geographic area. For further information on classified NYSE member firms, *see* Chapter 3, Securities and Exchange Commission, *Staff Report on the Securities Industry in 1979*, September 1980.

Table 3.—*Unconsolidated Revenues and Expenses of NYSE Firms Doing a Public Business 1979*

[Millions of dollars]

	Firms using alternate method			Firms using basic method		
	National full line	Regional firms	Other firms [1]	Regional firms	Other firms	All firms
REVENUES						
Commissions:						
Listed equities on an exchange	$1,275.2	$331.9	$976.5	$153.2	$388.2	$3,125.0
Listed option transactions	251.7	45.8	112.9	15.0	18.0	443.2
All other commissions	138.9	99.2	113.1	42.3	60.7	444.2
Total securities commissions	1,665.8	476.7	1,202.5	210.5	456.9	4,012.4
Gains or losses on trading accounts	793.0	141.6	771.9	65.5	399.3	2,171.3
Realized and unrealized gains or losses on securities investment accounts	69.8	7.7	241.6	3.5	177.0	499.6
Profits or losses from underwriting and selling groups	913.0	77.0	238.2	61.5	79.8	769.5
Margin interest	916.1	183.4	452.5	13.0	87.5	1,651.5
Sale of investment company shares	32.9	14.5	17.0	9.8	1.4	75.6
Investment advisory, account supervision	35.8	7.6	28.3	8.9	41.0	121.8
All other revenue	700.3	106.1	610.2	82.4	463.5	1,962.5
Gross revenue	4,525.7	1,014.6	3,562.2	455.1	1,706.4	11,264.0
EXPENSES						
Employee expenses other than registered representatives' compensation	880.9	175.9	677.0	88.2	270.6	2,092.6
Salaries and other employment costs for general partners and voting Stockholder officers	63.2	78.1	139.2	45.4	113.5	439.4
Commissions and clearance paid	176.3	59.5	298.7	25.5	86.3	646.3
Interest expense	931.2	142.1	988.5	40.2	573.3	2,675.3
Regulatory fees and expenses	19.4	8.3	9.9	3.9	7.9	47.4
All other expenses	2,126.0	468.5	1,068.2	203.9	396.2	4,262.8
Total expenses	4,197.0	930.4	3,181.5	407.1	1,447.8	10,163.8
Net income before taxes	328.7	84.2	380.7	48.0	258.6	1,100.2
Number of firms in group as of end-of-year 1979	10	57	72	60	175	374

[1] Includes three quarters of data for two firms that were acquired or went out of business in the forth quarter.

Source: FOCUS Report, Directorate of Economic and Policy Analysis, Securities and Exchange Commission.

[6] Securities Exchange Act Release No. 17138 (September 19, 1980).

Table 4.—*Summary Balance Sheet for NYSE Firms Doing a Public Business 1979*

[Millions of dollars]

	Firms using alternate method			Firms using basic method		
	National full line	Regional firms	Other firms[1]	Regional firms	Other firms	All firms
ASSETS						
Cash	$1,160.1	$70.3	$258.6	$34.7	$239.3	$1,763.0
Receivables from other broker-dealers:						
Securities failed to deliver	879.5	152.3	963.4	56.2	227.6	2,279.0
Securities borrowed	1,110.8	166.3	2,005.6	36.3	593.0	3,912.0
Other	272.9	38.1	127.1	20.0	173.9	632.0
Receivables from customers	9,546.8	1,724.4	3,690.2	467.0	2,552.8	17,981.0
Long positions in securities and commodities	4,755.8	541.0	6,754.1	219.8	7,928.3	20,199.0
Securities owned—not readily marketable	1.8	2.8	11.0	1.7	12.7	30.0
Securities borrowed under subordinated agreements and partners' individual and capital securities accounts	0	21.7	22.1	15.0	8.2	67.0
Securities purchased under agreement to resell	5,453.1	93.0	7,929.2	275.5	10,493.2	24,244.0
Secured capital demand notes	39.8	32.2	119.9	30.3	33.8	255.0
Exchange memberships	30.5	13.2	53.7	9.5	32.1	139.0
Other assets	1,440.9	176.4	1,056.1	70.2	759.4	3,503.0
Total assets	24,690.8	3,031.7	22,991.0	1,236.2	23,054.3	75,004.0
LIABILITIES AND EQUITY CAPITAL						
Bank loans payable:						
Secured by customer collateral	1,927.7	661.9	1,004.7	144.0	263.7	4,002.0
Secured by firm collateral	1,810.1	150.3	1,910.7	77.1	808.8	4,557.0
Securities sold under repurchase agreements	8,697.2	85.7	8,267.4	234.9	8,565.8	23,851.0
Payable to other broker-dealers:						
Securities failed to receive	871.3	172.6	757.5	63.7	239.9	2,105.0
Securities loaned	1,963.1	211.9	1,230.2	19.6	290.4	3,715.0
Other	169.1	100.9	103.2	25.6	272.2	671.0
Payable to customers	4,517.1	820.5	2,873.1	242.8	2,538.7	10,992.0
Short positions in securities and commodities	1,783.1	217.2	3,777.3	41.5	7,886.9	13,706.0
Other liabilities	3,361.0	220.2	1,431.5	159.3	1,234.0	6,406.0
Total liabilities excluding subordinated liabilities	22,899.7	2,641.2	21,355.4	1,008.3	22,100.4	70,005.0
Subordinated liabilities	378.3	70.2	349.4	43.4	198.7	1,040.0
Total liabilities	23,278.0	2,711.4	21,704.8	1,051.7	22,299.1	71,045.0
Equity capital	1,412.8	320.3	1,286.4	184.5	755.0	3,959.0
Total liabilities and equity capital	24,690.8	3,031.7	22,991.2	1,236.2	23,054.1	75,004.0
Number of firms in group as of end-of-year 1979	10	57	72	60	175	374

[1] Includes three quarters of data for two firms that were acquired or went out of business in the forth quarter.

Source: FOCUS Report, Directorate of Economic and Policy Analysis, Securities and Exchange Commission.

Table 5.—*Unconsolidated Revenues and Expenses of NASD And Regional Broker-Dealers Filing Four Quarters During 1979*

[Millions of dollars]

	Firms using alternate method	Firms using basic method	All firms
Revenues:			
Commissions:			
Listed equities on an exchange	$19.1	$187.5	$206.6
Listed option transactions	1.8	32.7	34.5
All other commissions	42.3	258.2	300.5
Total securities commissions	63.2	478.4	541.8
Gains or losses on trading accounts	66.2	342.6	428.8
Realized and unrealized gains or losses on securities investment accounts	2.2	96.7	98.9
Profits or losses from underwriting and selling groups	17.3	133.7	151.0
Margin interest	17.0	26.9	43.9
Sale of investment company shares	1.9	117.0	118.9
Investment advisory, account supervision	1.9	100.6	102.5
All other revenue	102.1	273.1	375.2
Gross revenue	291.8	1,569.0	1,860.8

Table 5.—*Unconsolidated Revenues and Expenses of NASD And Regional Broker-Dealers Filing Four Quarters During 1979* —Continued

[Millions of dollars]

	Firms using alternate method	Firms using basic method	All firms
Expenses:			
Employee expenses other than registered representatives' compensation	32.6	271.1	303.7
Salaries and other employment costs for general partners and voting Stockholder officers	15.7	147.7	163.4
Commissions and clearance paid	10.1	140.8	150.9
Interest expense	114.5	111.9	226.4
Regulatory fees and expenses	1.9	14.8	16.7
All other expenses	88.4	656.9	745.3
Total expenses	263.2	1,343.2	1,606.4
Net income before taxes	28.6	225.8	254.4
Number of firms in group as of end-of-year 1979	44	2,022	2,066

Source: FOCUS Report, Directorate of Economic and Policy Analysis, Securities and Exchange Commission.

Table 6.—*Summary Balance Sheet for NASD and Regional Broker-Dealers Filing Four Quarters During 1979*

[Millions of dollars]

	Firms using alternate method	Firms using basic method	All firms
Assets:			
Cash	$19.3	$272.2	$291.5
Receivables from other broker-dealers:			
Securities failed to deliver	111.0	763.1	874.1
Securities borrowed	45.1	285.2	330.3
Other	29.9	415.7	445.6
Receivables from customers	229.4	434.5	663.9
Long positions in securities and commodities	780.0	1,882.8	2,662.8
Securities owned—not readily marketable	7.7	29.9	37.6
Securities borrowed under subordinated agreements and partners' individual and capital securities accounts	1.6	8.4	10.0
Securities purchased under agreement to resell	1,377.0	958.6	2,335.6
Secured capital demand notes	1.3	34.6	35.9
Exchange memberships	.3	9.4	9.7
Other assets	92.8	712.8	805.6
Total assets	2,695.3	5,807.3	8,502.8
Liabilities and equity capital:			
Bank loans payable:			
Secured by customer collateral	98.1	156.0	254.1
Secured by firm collateral	126.7	541.1	667.8
Securities sold under repurchase agreements	1,596.7	1,004.7	2,601.4
Payable to other broker-dealers:			
Securities failed to receive	123.8	843.1	966.9
Securities loaned	12.4	161.9	174.3
Other	15.0	126.2	141.2
Payable to customers	148.1	280.5	428.6
Short positions in securities and commodities	303.1	602.6	905.7
Other liabilities	120.4	499.7	620.1
Total liabilities excluding subordinated liabilities	2,544.2	4,216.0	6,760.2
Subordinated liabilities	7.1	129.0	136.1
Total liabilities	2,551.3	4,345.0	6,896.3
Equity capital	144.0	1,462.3	1,606.3
Total liabilities and equity capital	2,695.3	5,807.3	8,502.6
Number of firms in group as of end-of-year 1979	44	2,022	2,066

Source: FOCUS Report, Directorate of Economic and Policy Analysis, Securities and Exchange Commission.

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II. Proposed Rule Amendments

The Commission is proposing changes to the net capital rule which will affect only the alternative method of computing net capital. Under the proposed amendments, the alternative will still require, for the protection of customers, a cushion of liquid assets beyond the "net" amount of liquid assets needed to offset a broker's or dealer's liabilities. Later in this release, the Commission discusses the possibility of reexamining the liquidity concept.

The proposed amendments will not only lower the ratio of required net capital to certain debit items and the minimum but also will affect the treatment of certain debit items in the Reserve Formula.

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The moneys owed by customers of a broker or dealer in connection with their securities transactions are included in Item 10 (a debit item) of the Reserve Formula. This item includes debit balances in customers' cash and margin accounts (other than unsecured accounts and accounts doubtful of collection). The Item 10 debits comprise approximately 85% of aggregate debit items and thus for most brokers and dealers which have elected the alternative are the major determinants of their net capital requirements. In times of heavy trading volume these customer debits will generally increase, thereby causing a broker's or dealer's capital requirement to increase by at least 4% of the increased debit balances in customers' accounts. The Commission's present review of the net capital rule focused on whether the increased requirement was commensurate with the risk connected with these debits.

Initially, it must be noted that there is not necessarily any direct correlation between the 4% figure presently in the Rule and the amount of liquid capital required to protect customers. That figure was selected based on judgments inferred from the then-existing system. The result was that the 4% requirement under the alternative was estimated by the staff to require approximately 15% to 25% less capital than if the firm were required to maintain net capital based on the aggregate indebtedness test.

Since 1975, the year of the adoption of the alternative, these Item 10 debits have increased substantially, thereby resulting in increased net capital requirements. While the level of margin debt is volatile, it has displayed a general trend of expansion since the beginning of 1975. In the first quarter of that year, customers owed NYSE member firms an average of $4.1 billion as debit balances in margin securities accounts. This increased 173% to $11.2 billion in the fourth quarter of 1979. During this same time period, the largest quarter-to-quarter increase in the level of margin debt was $1.1 billion, while the largest decrease was $740 million.[8]

In addition to the 4% capital requirement ratio, the Commission's early warning rules and comparable programs of the various self-regulatory organizations in effect require firms to maintain greater net capital than the minimum. The financial responsibility rules not only restrict withdrawal of firm capital if the ratio of net capital to aggregate debit items falls below 7%, but also require periodic reports in addition to those required generally of brokers and dealers when the ratio falls below 6%. *See* Rule 15c3–1(e) and Rule 17a-11, and discussion under "B", *infra*. The practical effect of these provisions is to cause is broker-dealers to maintain net capital substantially in excess of 7% in order to maintain a cushion of net capital at a level which will avoid an inadvertent piercing of these early warning thresholds. Moreover, the NYSE (of which all major retail firms are members) imposes by rule restrictions on those member firms whose net capital falls below 7% of aggregate debit items. *See* NYSE Rule 326.

In combination, the present capital cushion represented by Item 10 debits and the early warning provisions cited above may be excessive when viewed against the risks of the collectibility of these debit items and the relatively small losses experienced by firms in this area since 1975. Despite recent events revealing both the imprudence and operational inefficiencies of some broker-dealers, it seems appropriate to propose a reduction in the basic requirements. Experience has indicated that other provisions of the Rule (which require capital charges) provide the required discipline in sufficient time to permit the correction of unsound practices or the liquidation of potentially dangerous positions.

The Securities Industry Association Capital Committee (the "SIA") has recommended to the Commission that the minimum capital required under the alternative based on Item 10 debits should be lowered from 4% to 2%.

While that may be the proper figure to determine capital adequacy for financing these particular transactions, at this time the Commission believes that it is appropriate to propose a reduction of the 4% minimum figure to 3% and have that reduction apply only to debit balances in margin accounts rather than to those in cash accounts and other debit items in the Reserve Formula. It should be noted that the SIA did not recommend reductions in the captial requirements based on other debit items.

In sum, the Commission herein proposes to require brokers and dealers which have elected the alternative to have and maintain a net capital of 3% rather than the persent 4% of the debit balances in customers' margin accounts which are maintained in compliance with Regulation T of the Federal Reserve Board or the maintenance margin requirements of the various self-regulatory organizations. This reduction appears to be prudent because these margin accounts should be virtually

[8] *See*, Federal Reserve Bulletin, January 1975 through December 1979, Table 828.

100% collectible. It appears that any risk of loss is adequately safeguarded against by Regulation T and maintenance margin requirements as well as by the cushion provided by the 3% reduction of debit items required of firms electing the alternative.

This reduction will have no effect on most registered brokers and dealers (*see* Tables 7 and 8). As noted above, of the approximately 2,400 broker-dealers doing public business in 1979, only 185 broker-dealers elected the alternative method for computing net capital at year-end 1979, 169 of which carried or cleared customer accounts.

These 169 (128 NYSE and 41 non-NYSE) firms electing the alternative capital method in the fourth quarter of 1979 had required net capital of $1.2 billion based upon the 7% Early Warning Test. Under the SIA proposal, the required net capital of these 169 firms would have been $684 million compared to an estimated $1.02 billion under the current proposal.[9]

Table 7.—*Selected Financial Data for Broker-Dealers Doing a Public Business and Using the Alternative Capital Approach*[1] *Year-End 1979*

[Millions of Dollars]

	NYSE firms	Non-NYSE firms[2]	All firms
Customer Cash/Margin Debits	$14,199	180	$14,379
Aggregate Debits	$16,687	269	$16,956
Net Capital	$2,011	72	$2,083
Required Net Capital[3]	$1,168	19	$1,187
Excess Net Capital[3]	$843	53	$896
Impact of SIA Proposal[4]:			
a. Required Net Capital	$671	13	$684
b. Excess Net Capital	$1,340	59	$1,399
Number of Firms	128	41	169

[1] Excludes 16 firms filing Part IIA of the FOCUS Report who neither carry nor clear customer accounts.
[2] Firms submitting four quarters of FOCUS data in 1979.
[3] Based on Early Warning 7% Test.
[4] Based on 2% "Item 10 Debits" criteria and Early Warning 7% Testing.
Source: FOCUS Report, Directorate of Economic and Policy Anaysis, Securities and Exchange Commission.

Table 8.—*Selected Financial Data For Groups of NYSE Firms Doing a Public Business and Using The Alternative Capital Approach*[1] *Year-End 1979*

[Millions of Dollars]

	National full line	Regional	Other	Total
Total Assets	$24,691	$2,997	$22,511	$50,199
Total Liabilities[2]	$22,900	$2,603	$20,985	$46,489
Subordinated Debt	$378	$78	$299	$755
Equity Capital	$1,413	$316	$1,226	$2,955

[9] The precise impact of the modified proposal set forth in the proposed rule cannot be determined because debit balances in customers' margin accounts are not reported as a separate item on the FOCUS Report. Debit balances in customers' margin accounts in the aggregate represented approximately 72% of cash and margin debits in the Reserve Formula in a sample of 100 broker-dealers who elected the alternative as of year-end 1979.

Table 8.—*Selected Financial Data For Groups of NYSE Firms Doing a Public Business and Using The Alternative Capital Approach*[1] *Year-End 1979*—Continued

[Millions of Dollars]

	National full line	Regional	Other	Total
Customer Cash/Margin Debits	$8,237	$1,693	$3,269	$14,199
Aggregate Debits	$10,222	$1,993	$4,472	$16,687
Net Capital	$1,022	$227	$762	$2,011
Required Net Capital[3]	$716	$140	$313	$1,168
Excess Net Capital[3]	$307	$87	$449	$843
Impact of SIA Proposal[4]:				
a. Required Net Capital	$395	$80	$197	$671
b. Excess Net Capital	$827	$147	$565	$1,340
Number of Firms	10	57	61	128

[1] Excludes 16 firms filing Part IIA of the FOCUS Report who neither carry nor clear customer accounts.
[2] Excludes subordinated debt.
[3] Based on Early Warning 7% Test.
[4] Based on 2% "Item 10 Debits" criteria and Early Warning 7% Test.
Source: FOCUS Report, Directorate of Economic and Policy Analysis, Securities and Exchange Commission.

While the Commission is proposing some net capital reduction in certain areas, the Commission emphasizes that the primary burden is on the securities industry to substantiate, with empirical data where feasible, the basis for this or any other proposed reduction. The Commission is concerned that the consequence of this reduction may simply be a withdrawal of capital from the broker-dealer business. The Commission therefore requests response to the following question: Will the additional capital which is no longer required by the net capital rule be used in the "core" securities activities of the firm or will it tend to be diverted into non-securities activities or be removed from the firm altogether?

As noted above, under the current Rule, brokers and dealers who have elected to operate under the alternative are required to maintain net capital of not less than 4% of Reserve Formula aggregate debit items. Under this provision no broker-dealer may effect a securities transaction if his net capital is less than 4% of aggregate debit items. In addition, the Rule provides that no capital, either equity capital or subordinated debt, may be withdrawn from the firm when its net capital is less than 7% of aggregate debits, i.e., 175% of minimum required net capital. Under Rule 17a–11, a broker-dealer operating under the alternative whose net capital is less than 6% of aggregate debit items (150% of minimum required net capital) must file certain reports monthly on Form X–17A–5 in furtherance of the Commission's early-warning program for broker-dealers who may be approaching financial or operational difficulty.

Unless these thresholds are revised, no effective reduction would be made in the amount of net capital required. Accordingly, the Commission proposes to replace the 7% level under paragraph (e) of Rule 15c3–1 and 6% under Rule 17a–11 with amounts equal to 175% and 150% respectively of the amount of net capital required (i.e., 175% and 150% of the sum of 3% of margin debits as proposed in "A" *infra* and 4% of the remaining debits in the Reserve Formula).

While the Commission recognizes that the early warning levels must be adjusted in connection with implementing any change in net capital requirements, the Commission must also examine whether the existing early warning mechanisms effectively alert the Commission and self-regulatory organizations of a firm's potential financial and operational difficulties in time to take action to protect customers. For example, a firm has reason to believe that a material charge to net capital may arise in the near future. Under the present rules, even if the charge would put the firm's net capital below the minimum, no early warning notice need be given until the charge is actually required to be made. The Commission therefore solicits comment on the following questions: Is the present structure of the early warning system, which is based on a firm's net capital level as of a certain day, adequate to insure customer protection? Do the proposed early warning levels (150% and 175% of minimum required net capital) provide an adequate margin of safety or should they be increased? What changes could be made in the early warning system so that the Commission and the self-regulatory organizations would have timely notice of a firm's potential difficulties without forcing firms to maintain excessive regulatory capital?

C

In order to qualify to operate under the alternative net capital requirement, a broker or dealer must maintain net capital of at least $100,000. That minimum apparently acts as a deterrent to many firms who carry customer accounts from electing the alternative. Yet, if the benefits of the alternative are as significant as believed and if the alternative is a proper measurement of financial responsibility for broker-dealers, there may be no reason for a minimum greater than that applicable to those who comply with the aggregate indebtedness test (the basic rule). The minimum under the basic rule for those brokers or dealers which do a general

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securities business and carry customer accounts is $25,000.

Year-end 1979 FOCUS data indicate that there were approximatley 1001 firms doing a public business [10] and which have net capital of at least $100,000, (or 7% [11] of aggregate debits) but were not utilizing the alternative method. If the net capital threshold were reducted to $25,000, the FOCUS data indicate that approximately 399 additional broker-dealers would have been eligible to use the alternative computation. The number of additional broker-dealers eligible to use the alternative computation at $75,000 and $50,000 thresholds, respectively, would have been 205 and 252.

The Commission has decided that consideration should be given to lowering the minimum in stages. Initially, it proposes for comment a new minimum of $75,000 for election of the alternative.[12] That figure would represent a reduction of 25% from the present minimum and would still appear to provide adequate reserves to ensure that customer funds and securities are not at undue risk. After a monitoring period, ending no later than December 31, 1982, during which the Commission will review FOCUS data and liquidations by the Securities Investor Protection Corporation ("SIPC") and make periodic on-site examinations, the Commission will consider a further reduction.

D

A "fail to receive" arises when a broker or dealer purchasing securities has not taken delivery from the selling broker or dealer as of settlement date. A "fail to deliver" arises when a selling broker or dealer has not made delivery to the buying broker or dealer as of settlement date. When these transactions are related to customer purchases and sales, they are included in Reserve Formula Items 4 and 12, respectively. For a firm electing the alternative, the inclusion of the fails to deliver (a debit item) raises its net capital requirement and the inclusion of the fails to receive (a credit item) increases its potential cash deposit requirement.

As recognized in Securities Exchange Act Release No. 9922 (January 2, 1973), brokers or dealers doing a large volume of business normally find it impractical or unduly burdensome to determine which fail to receive contracts and fail to deliver contracts relate to proprietary accounts or customers accounts on a transaction by transaction basis. That release provided that a conservative allocation should be made to accomplish maximum protection for customers. If such an allocation is used with regard to the foregoing items, the broker or dealer should be able to demonstrate that the result so obtained regarding designations of customer and proprietary positions would be comparable to those which would be obtained if the respective positions had been developed without the use of an allocation.

When the alternative method of computing net capital was adopted, the Commission authorized conservative interpretations regarding Reserve Formula items where an allocation procedure was used. Fails to receive not allocable to the broker's or dealer's proprietary long positions and fails to deliver not allocable to the broker's or dealer's proprietary short positions were presumed to be customer-related and thus includable in the Reserve Formula. These interpretations were intended to insure that customer related fails would be provided for through a Reserve Formula deposit or increased capital requirements.

Before the Rule was amended in 1975, segments of the securities industry had argued that transactions in which corporate and municipal bond fails to deliver are paired off in the Reserve Formula with fails to receive (for instance, when a broker or dealer makes a simultaneous purchase and sale of a security, and the transaction has not yet settled) should not be included in either side of the Reserve Formula since not related to customer activity. That view was rejected in large part because of the experimental nature of the alternative concept and the Commission's desire to test its operation.

That situation may no longer be justifiable. Accordingly, the interpretation should be relaxed where a broker or dealer can demonstrate that it has full possession or control of all customer fully paid and excess margin securities as required under Rule 15c3–3. Moreover, where no customers of the calculating broker or dealer are involved in a particular offsetting fail transaction, the only risk to customers is where the broker or dealer on the other side of the fail to deliver must redeliver to its customer. This is basically a credit risk which should more properly be measured by a charge on "aged" fails to deliver.

At present, paragraph (c)(2)(ix) of the net capital rule requires a capital charge based on the haircuts applicable to the securities underlying the contract for "aged" fail to deliver contracts. A fail becomes "aged" when it has been outstanding 11 business days or longer (except in the case of municipal securities, where the fail must be outstanding 21 business days or longer).

Since elimination of these fails from the Reserve Formula would exclude from net capital consideration a firm's collection risk on fails to deliver until these items became "aged," the Commission herein proposes a new amendment. A broker or dealer may elect a procedure whereby he may exclude from the Reserve Formula both fails to deliver and fails to receive which allocate to one another, so long as the broker or dealer for purposes of paragraph (c)(2)(ix) treats the fail to deliver as "aged" three business days after settlement date of the transaction on all fails except fails related to municipal securities. On fails related to municipals, the aging period would be 11 business days under the proposed amendments. This change would not require significant regulatory capital to support normal street side clearance which settles routinely. The proposed approach would provide a reduction in required net capital. At the same time, an appropriate capital reserve would be imposed on a timely basis to insure customer protection. The broker or dealer must still, of course, be able to demonstrate full possession or control of customer fully paid and excess margin securities.

If the broker or dealer chooses, at his election, to place these "paired" fails in the Reserve Formula, the percentage of net capital required for these fail to deliver items remains the present 4%. Under this approach, the Rule would in addition still require a capital charge for fails to deliver more than 11 business days old (and in the case of municipals, more than 21 business days). A broker-dealer electing either alternative, of course, must treat all fails consistently and continuously in accordance with his election. Under either, the Rule assures protection of any customers which may be involved by providing incentives for the broker-dealer to resolve these items.[13]

E

In C.O.D. transactions with customers, money and securities change hand simultaneously at settlement. C.O.D. transactions with customers (Primarily institutions) as a practical and economic matter may be broken out into receipt vs. payment and delivery vs. payment items which are included in Reserve Formula Items 1 and 10 respectively. However, in either a sale or purchase of securities on a C.O.D. basis, the only financial exposure of a firm to its customer is the "net-equity" on one side as a result of market movement before completion of the transaction. Hence it appears that the Rule, by requiring equal to at least 4% of the amount of such transactions, may require more liquid capital than necessary to protect against the risks in C.O.D. transactions.

The Commission proposes to amend the Rule to allow the broker or dealer to make a choice similar to the alternative presented above related to fails to deliver. The broker-dealer may exclude C.O.D. transactions from the Reserve Formula, treat the security which is the subject of the C.O.D. transaction as if it were a proprietary position and take the appropriate haircut for that security (this would occur as of settlement date, however, with no period allowed for "aging"). Since many C.O.D. transactions currently appear to involve debt securities (government or municipal securities), the haircut on the underlying securities normally may be less than the 7% early warning threshold which currently would be required by including such items in the Reserve Formula. Alternatively, a broker or dealer choosing to place these items in the Reserve Formula would continue to have the 4% capital requirement on these items.

III. Solicitation of Comments on the Report of the Securities Industry Association Capital Committee

As noted earlier in the release, the Capital Committee of the SIA has made certain recommendations to the Commission which would alter both the net capital rule and Rule 15c3–3. Some of those recommendations are reflected in the amendments proposed above; others relating to stock loans and non-customer securities in firm bank loan, have been ongoing subjects of staff study and should before the end of the year result in public releases. With respect to the four remaining recommendations below, the Commission has insufficient data to make a proper evaluation. The Commission requests comment to assist it in determining their merit. They are:

(1) The value of certain illiquid assets (specifically, certain unsecured receivables and exchange memberships, as described below) now deducted from net worth in computing net capital should no longer be required to be deducted.

(2) Delivery vs. payment and receipt vs. payment accounts (C.O.D. accounts) should be excluded from the Reserve Formula, and only the customer equity in an unsettled transaction should be included as a credit (cash item) in the Reserve Formula.

(3) The Commission should reduce to 15% the haircut on preferred stocks under the alternative, or permit its inclusion in paragraph (f)(3)(ii) of the Rule if the inclusion would result in a smaller deduction from net worth than that prescribed by paragraph (c)(2)(vi)(H) of the Rule.

(4) Where a firm short position is allocated to a customer debit, both sides should be excluded from the Reserve Formula.

A

The SIA Report points out that a substantial amount of a firm's non-collateralized receivables are considered non-allowable assets for purposes of computing net capital and that certain receivables due from other brokers and dealers (floor brokerage and other commissions receivable) are allowable assets for a certain time after they arise. The SIA recommends that all receivables from brokers and dealers should be allowable assets on the theory that all brokers and dealers are subject to the Commission's financial responsibility rules and should therefore be able to pay promptly.

The SIA also recommends that receivables related to fees for investment banking and other services which are due from highly rated, financially sound corporations present no greater risk than debt instruments issued by those corporations and should be accorded similar treatment for net capital purposes. Related to these issues, the SIA proposes that receivables against which the broker or dealer has accrued taxes should be allowed to the extent of the accrued tax.

Finally, the SIA report recommends that a firm should be allowed to include the value of exchange memberships in computing net capital. It argues that the memberships are readily liquid, and an appropriate haircut could be devised to compensate for fluctuations in value.

The Commission notes that these proposals go to the very heart of the liquidity concept of the Rule, which is that a broker or dealer must always maintain sufficient liquid assets to satisfy promptly customer demands. With certain limited exceptions, unsecured receivables have not been treated as readily convertible into cash because they may not be readily collectable on the initiative of the broker or dealer. If the broker's or dealer's debtor diputes the claim, or simply does not pay, court action and its attendant delays may be the only recourse. Thus customers may be in the position of waiting for the broker or dealer to liquidate claims against others. Furthermore, it should be noted, there are no objective standards for classifying which receivables should be regarded as collectable and how they should be valued. With respect to exhange memberships, though in most cases they may be readily sold at some price, because of the priorities set forth in exchange rules,[14] it is not certain what amount of the proceeds would benefit customers.

The Commission requests comment from the public regarding these proposals. Specifically, interested persons are encouraged to address the problem of how to determine which unsecured receivables should be treated as readily convertible into cash.

B

The SIA proposes removing both sales and purchases on a C.O.D. basis from the Reserve Forumula (both are now included in Reserve Formula Items 1 and 10). The net equity, which would be determined by computing the sum which the firm would owe a customer on the date of a Reserve Formula calculation, would be entered as a credit in the Reserve Formula.

Elimination of this item from the debits distorts the initial intention of the alternative, which was to utilize the aggregate dollar amount of firm assets which have as their source transactions with customers as the standard for determining the maximum permissible level of the broker's or dealer's activity. In this regard, the impact of the proposal is difficult to measure primarily because data relative to C.O.D. transactions is not segregable on FOCUS or other reports. The Commission understands

[10] The non-NYSE firms "doing a public business" consists of firms filing four quarters of FOCUS data in 1979.

[11] See paragraph B above.

[12] Under the present alternative net capital rule, an introducing broker may still elect the alternative even though he is exempt from Rule 15c3–3 and therefore does not calculate the Reserve Formula. In lieu of the 4% of aggregate debit items calculation, he is required to maintain the $100,000.

One of the benefits of the alternative is that it enables a broker-dealer to take smaller haircuts on inventory positions, thereby allowing him greater flexibility in market making, underwriting and firm trading. Many introducing brokers engage in these activities and therefore could elect the alternative. Under the proposal, the Commission has not changed the $100,000 minimum for introducing brokers electing the alternative, in part, because there is no other capital constraint on the level of an introducing broker's business. The public is invited to respond to the problem of minimum capital requirements for introducing brokers. *See* Part IV, *infra*, question 7. Other brokers or dealers who have elected to operate pursuant to an exemption from Rule 15c3–3, as at present, will not be able to elect the alternative under the proposal.

[13] Under either alternative, the staff responses in a letter to Wien & Co., Inc., dated July 15, 1976, and in similar letters to other brokers or dealers would no longer be applicable.

[14] *See e.g.*, Article XI, Section 3 of the New York Stock Exchange Constitution.

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that many large institutions purchase securities on a C.O.D. basis, and that some broker-dealers use C.O.D. transactions almost exclusively. Excluding C.O.D. transactions from the Reserve Formula theoretically could reduce the capital requirement of a firm doing primarily this type of business to the $100,000 minimum.

Moreover, the Commission notes that, since a broker or dealer could allow under Regulation T a C.O.D. account to remain open for as long as 35 days, the broker or dealer may be taking a significant credit risk which is unmeasured by the net capital rule. Furthermore, because firms under the alternative are required to compute their Reserve Formula only once a week, there is no assurance that reserves will be set aside to cover transactions entered into between computation dates. Finally, it should be noted that a credit entry in the Reserve Formula under Rule 15c3–3 may actually impose a greater financing burden on a firm than the 4% minimum capital requirement based on the contra debit item, since any excess of credits caused by the inclusion of net equity in C.O.D. accounts over aggregate debit items (reduced by 3%) would be required to be placed in the Reserve Bank Account. The broker or dealer then may have greater financing needs and be forced to borrow to meet the deposit requirement.

The Commission requests information from the public in assisting it to determine the potential impact of this proposal and the ability of firms to isolate C.O.D. transactions from their other cash and margin transactions. Commentators are also asked to respond to the issue of evaluating capital requirements for firms executing orders on behalf of institutions dealing in large blocks of securities.

C

Under paragraph (c)(2)(vi)(H) of the Rule, the haircut on preferred stock is 20% of the market value of the greater of the long or short position. Under paragraph (f)(3)(ii) of the Rule, which applies to firms utilizing the alternative, the haircut on securities other than those specifically enumerated is reduced to 15%. Preferred stock is one of the classes of securities which is ineligible for the 15% haircut. The SIA argues that the imposition of a 20% haircut on preferred stock under the alternative does not appear to be reasonably related to the risks involved with positions in such securities and may hinder market making activities in this area.

The SIA proposal does not address the fact that the prices of preferred stocks tend to move in tandem with those of debt instruments and is thus influenced by other factors than those affecting common stocks. The present haircuts for debt securities are based on historical data of the fluctuations of these instruments over a long period of time. That same kind of record should be made for preferred stock. Moreover, like corporate debt securities, preferred stocks are rated by statistical rating services. It may be appropriate to require a greater haircut for those lower-rated prefered stocks than for higher-rated stocks. The Commission requests any information which may assist in the resolution of this issue.

When a firm sells short, as principal, to a customer, both sides of the transaction are included in the Reserve Formula, (i.e., the customer debit and the market value of the short proprietary position). However, when the firm buys as principal from a selling customer who is short and has not resold, the customer credit and related debit can be excluded from the Reserve Formula. The SIA recommends that a firm short position which allocates to a customer debit should be treated in the same manner as a firm long position which allocates to a customer credit.

This recommendation, however, appears to disregard the fact that the broker or dealer who has sold short as principal owes the customer securities and may be required to borrow in order to meet his delivery requirement under Rule 15c3–3. The public is invited to respond to the SIA's proposal and suggest any other possible solution to the difficulty pointed out by the Commission.

IV. Solicitation of Comments on Basic Concepts of Financial Responsibility Rules

The Commission adopted its uniform net capital rule over five years ago and the customer protection rule (Rule 15c3–3) nearly eight years ago. In promulgating these rules, the Commission sought to protect the investing public from the risk of dealing with thinly capitalized and operationally unsound brokers and dealers, while, at the same time, avoiding the imposition of unduly onerous capital requirements and burdensome operational restrictions. As noted above, current industry conditions and recent improvements to back office operations systems suggest it may now be appropriate to revisit the basic concepts.

The Commission therefore, welcomes the participation of the public in this important effort. This release contains questions about a number of areas of particular concern to the Commission. It is not necessary, however, that comments be limited to these questions. Commentators should feel free to provide any reasonable, constructive suggestion or comment regarding any aspect of the Commission's financial responsibility program.

Areas of Inquiry

1. In Securities Exchange Act Release No. 11497, (June 26, 1975) announcing amendments to the net capital rule, the Commission indicated that "[u]ltimately, it may be possible for Rule 15c3–3 in some form to replace the liquidity requirements of the net capital rule and become the primary source of protection of customer assets held by the broker or dealer." The Commission is considering whether this statement has continued validity in today's market environment.

(a) Do you believe that the net capital rule can be substantially revised or even eliminated so as to place greater emphasis on the other financial responsibility rules, particularly Rule 15c3–3?

(b) If so, please explain how and what the effect would be on brokers and dealers and their customers. Would it be necesary to strengthen these rules, particularly Rule 15c3–3, to ensure that customer funds are not deployed in unsafe areas of a firm's business, other than by requiring daily Reserve Formula computations under Rule 15c3–3?

(c) If not, can Rule 15c3–1 be so structured as to make the computation of net capital less complex? If so, please explain.

(d) Can the customer protection rules, other than the net capital rule, be structured to make such rules less complex? If so, how can this be accomplished?

2. As illustrated in Tables 1 and 2, the securities industry is undergoing substantial change. Broker-dealers deploy their capital in new and different areas to enhance their competitive positions and provide new services to investors and corporate issuers.

(a) In what ways, if any, have current financial responsibility requirements, including the net capital rule, altered firms' investment decisions?

(b) Are current regulatory capital standards adaptable to the changing capital needs of a firm? If not, please explain.

3. The ability of small or regional broker-dealers to raise investment capital may differ from that of larger firms or those which are national in scope.

(a) To what extent, if any, do present financial responsibility rules affect the ability of these broker-dealers to raise capital? In particular, can the rules be made less burdensome to smaller broker-dealers without substantially reducing customer protection?

(b) What additional cost burdens and/or financial risks does the quest for "regulatory capital" (capital required to satisfy regulatory requirements with arguably little or no business justification) impose on small broker-dealers?

4. A number of securities firms have formed subsidiaries or affiliates whose product lines fall outside the securities business and beyond the regulatory reach of the Commission. To what extent, if any, have financial responsibility requirements, including the net capitl rule, created incentives to diversify into activities unrelated to the securities business? Please explain.

5. The alternative represented a new concept for the determination of net capital requirements. The aggregate indebtedness standard measures a firm's capital requirements based on its liabilities. The alternative changes this concept considerably by making the capital requirement contingent upon the level of a firm's customer related assets, in the form of secured receivables. The alternative net capital approach integrates the net capital requirements with the custodial and reserve requirements of Rule 15c3–3 and places greater reliance for the protection of customer funds and securities on Rule 15c3–3. This corresponds to the policy of Rule 15c3–3 and the Securities Investor Protection Act of 1970, both of which exclude other brokers and dealers from their protective provisions.

As the Commission stated in Release 34–11497 when it adopted the alternative:

> The Comission believes the alternative approach will effectively create and maintain an environment of customer protection while enabling the securities industry to fulfill its function of capital raising and the maintenance of a liquid secondary market by:
>
> 1. Acting as an effective early warning device to provide reasonable assurance against loss of customer assets through a logical interface with other operation standards and existing surveillance, reporting and examination aspects of the securities industry regulatory framework;
>
> 2. Avoiding the inefficient and costly commitment of capital within the securities industry where such a commitment is not necessary for customer protection;
>
> 3. Eliminating, to the extent possible and consistent with the objective of customer protection, competitive restraints on the securities industry's ability to compete effectively with other diversified financial institutions;
>
> 4. Making the capital structures of brokers and dealers as well as their investment and operating policies more understandable to lending institutions and other suppliers of capital and to the public; and
>
> 5. Providing some reasonable and finite limitation on broker-dealer expansion to minimize the possibility of customer loss and the possibility that the SIPC Fund will have to be utilized to protect customers.

The Commission is largely satisfied with the operational experience of the alternative since its adoption five years ago. Consequently, the Commission would like to explore the possibility of supplanting the traditional aggregate indebtedness test with the alternative. To do so might require the elimination of the exemptive provisions to Rule 15c3–3 found in paragraph (k)(2)(i) of that rule (and perhaps all of its exemptive provisions) and other adjustments.

(a) Do you believe that Rule 15c3–1 and Rule 15c3–3 could be integrated into a single less complex financial responsibility requirement? If so, how could this best be accomplished?

(b) Do you believe that the alternative can effectively replace the traditional aggreage Indebtedness test for brokers and dealers? Please explain.

(c) Should all brokers and dealers be required to follow the alternative and, as a result, also be subject to Rule 15c3–3? Please explain.

(d) Have the objectives voiced by the Commission in the release quoted above been met? Will they continue to be met if the entire industry is subject to the alternative? Please explain.

(e) The alternative measures a broker-dealer's capital requirement in terms of its customer related business. However, a broker-dealer has many obligations running to other brokers and dealers which in turn have customers. Would requiring all firms to comply with the alternative undermine the interdependence of the broker-dealer industry by inadequately protecting broker-dealers who do a large business outside of their customer activity? Please explain.

6. The alternative net capital provisions sought to enhance the ability of brokers and dealers to engage in market making. It does this primarily by modifying the haircuts from those applicable in the basic net capital rule. It has, however, been suggested that even more flexibility might be appropriate.

(a) Does the alternative net capital provision measure market risk in any unreasonable manner and thus require more net capital of market makers with no customer exposure than necessary to ensure the liquidity of a broker or dealer?

(b) Should the haircut provisions of the alternative and basic net capital requirements be made uniform? Please explain.

(c) What standards of financial responsibility are appropriate for market makers? Please explain.

7. The liquidity concept of the net capital rule is premised on the policy that a broker or dealer must maintain a cushion of cash or assets readily convertible into cash in order to meet promptly the demands of customers. It may be unnecessary, however, to require such strict standards of liquidity with respect to firms who do not carry customer accounts and who do not handle customer funds or securities.

(a) What, if any, financial responsibility standards are appropriate for brokers or dealers who do not handle customer funds or securities? Please explain.

(b) What is the feasibility of substituting for the net capital rule at net worth test with a minimum net worth computed in accordance with generally accepted accounting principles (the Commission suggests a $25,000 figure) for brokers and dealers who do not handle customer funds and securities? Please explain.

8. In the last four years, brokers and dealers have become increasingly involved in government financial instruments, including T-bills and GNMA certificates. Not only do they act as instruments as a means to speculate on interest rates or to hedge other positions or, in the case of repurchase agreements, to borrow cash for short periods of time. The staff has issued interpretations dealing with some of these matters. It may be necessary, however, to examine brokers' and dealers' involvement in this entire area to determine if there is need for more specific requirements than those now in effect.

(a) What rules, if any, should the Commission adopt to protect the liquidity of a broker-dealer from the risks of dealing in the financial instruments market?

(b) What amendments, if any, should be made to the net capital rule to protect the liquidity of a broker-dealer from the risks of dealing in the financial instruments market?

(c) What risks, if any, does a broker-dealer experience because of customer transactions in the financial instruments futures or forward markets which are not now provided for by the net capital rule? How should the net capital rule treat those risks?

(d) What modifications, if any, should be made to Rule 15c3–3 in connection with brokers' and dealers' or customers' transactions in financial instruments?

9. The net capital rule requires that in computing net capital several deductions from net worth of certain specified percentages of the market values of marketable securities ("haircuts") be taken. Some have contended that the haircuts for certain securities are unwarranted.

(a) Do you believe that any of the percentage deductions are unwarranted? If so, which are unwarranted and what should be the appropriate deduction? Please supply any data or explanation which may support such changes.

(b) The net capital rule refers to "nationally recognized statistical rating organizations" in determining lower haircut categories for certain assets. *See* Rule 15c3–3(c)(2)(vi)(E) and (F). Are these categories appropriate? Are there other means for distinguishing between investment grade and speculative securities for purposes of reduced haircuts? Should ratings by other organizations and institutions be considered?

10. In the recent past, because of market volume and interest rates, captial requirements for firms electing the alternative have substantially increased and then suddenly declined. Some firms have met this additional capital requirements by subordinated borrowing in accordance with Appendix D of Rule 15c3–1. These loans cannot be repaid within a period of one year and therefore must be maintained even after a firm's capital requirement is reduced. Because of the one year lock-in requirement, these loans frequently prove to be an expensive solution to a perhaps short-term problem.

(a) Is it feasible to modify Appendix D (relating to Satisfactory Subordination Agreements) to allow subordinated borrowings to meet increases in capital requirements based on dramatic increases in customer business, which borrowings may be prepaid within a year if such business returns to normal levels? Please explain.

(b) What, if any, limitations should be placed on such prepayments?

11. The net capital rule requires a deduction from net worth for the inefficiencies or operational defaults of a broker or dealer. For example, a broker or dealer must deduct from net worth the market value of all short securities differences unresolved for seven business days after discovery. In requiring these deductions, the Rule assumes a 100% loss in these unresolved accounts pending their resolution.

(a) Are all of the operational charges warranted? If not, which are not and why not?

(b) Is there a solution other than treating operational inefficiencies as deductions of a broker or dealer? Please explain.

12. The Commission, in its *Study of Unsafe and Unsound Practices of Brokers and Dealers* [15] made the following observations regarding the capitalization of the securities industry at that time:

> The defects fall into several broad categories. First and foremost is the inadequacy and impermanence of capital, and, in some cases, the injudicious employment of such capital as does exist.[16]
>
> . . . It should be noted at the outset that protections provided by net capital requirements with a liquidity focus for meeting current obligations are not a substitute for the need for having sufficient long-term capital, in the absence of which the underlying structure of broaker-dealers may be unsatisfactory.[17]

The Commission at that time was concerned about the extreme difficulties experienced by the industry during the period 1968–1970. Since that time, there has been a tightening of Commission oversight and administration of the capital rules. The self-regulatory organizations have, during this same time period, also considerably tightened their surveillance of their members.

(a) Aside from statutory compulsion, is there any reason that the Commission should impose financial responsibility rules at all?

(b) If the Commission should impose financial responsibility rules, are the present rules, i.e., Rules 15c3–1 and 15c3–3, and Rules 8c–1 and 15c2–1, the appropriate rules? Should any of these rules be merged, modified or done away with completely? Are these rules realistic in terms of today's market environment?

(c) If the Commission were to substantially review its rules, or substantially reduce the scope of its rules, what safeguards would exist to insure a sound and adequately capitalized broker-dealer industry?

(d) Are there any other concepts which the Commission should consider which are appropriate in determining the financial responsibility of brokers and dealers?

Statutory Basis and Competitive Considerations

The Securities and Exchange Commission, acting purusant to the Securities Exchange Act of 1934 and particularly Sections 15(c)(3), 17(a) and 23 thereof (15 U.S.C. 78o(c)(3), 78q(a) and 78u), hereby proposes for public comment amendments to Rules 15c3–1, 15c3–3a, and 17a–11, which would affect the computation of net capital for brokers and dealers, all as set forth below.

The rules as proposed, if adopted, will probably have an impact on competition. For the most part, firms computing under the alternative net capital rule would have lower net capital requirements; furthermore, more firms would be able to avail themselves of the alternative and its simplified method of computation. These amendments may therefore give firms eligible for the alternative some competitive advantage over firms required to calculate net capital according to the traditional aggregate indebtedness rule, giving them greater leeway to expand their business in relations to their capital. Lowering the entry level for the election of the alternative to a certain extent ameliorates this situation, and the Commission intends to study the feasibility of further easing restrictions for election of the alternative.

The goals of the Commission in this respect are to provide safeguards with respect to the financial responsibility and related practices of brokers and dealers and to provide a regulatory environment that permits an efficient deployment of scarce industry capital and encouraging diversification while at the same time assuring investors that their funds and securities are protected against financial instability and operational weaknesses of brokers or dealers. The Commission, therefore, specifically solicits comment on the question of competitive impact and how the benefits and/or burdens imposed by this may be more evenly distributed.

Text of Proposed Amendments

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

Note.—The text of the following proposed amendments uses arrows ► ◄ to indicate additions.

It is proposed to amend 17 CFR 240 as follows:

§ 240.15c3–1 [Amended]

1. By amending paragraphs (a), (e), (f)(1)(i) and (ii), (f)(2) and deleting paragraph (g) of § 240.15c3–1 as follows:

§ 240.15c3–1 Net capital requirements for brokers or dealers.

(a) No broker or dealer shall permit his aggregate indebtedness to all other persons to exceed 1500 percent of his net capital, except as otherwise limited by the provisions of paragraph (a)(1), or, in the case of a broker or dealer electing to operate pursuant to paragraph (f) of this section, no broker or dealer shall permit his net capital to be less than > the sum of the percentages prescribed by that paragraph of debit items < computed in accordance with 17 CFR 240.15c3–3a or, if registered as a futures commission merchant, 4 percent of the funds required to be * * *

* * * * *

(e) *Limitation on withdrawal of equity capital.* No equity capital of the broker or dealer or a subsidiary or affiliate consolidated pursuant to Appendix C (17 CFR 250.15c3–1c) whether in the form of capital contributions by partners (excluding securities in the securities accounts of partners and balances in limited partners' capital accounts in excess of their stated capital contributions), par or stated value of capital stock, paid-in capital in excess of par, retained earnings or other capital accounts, may be withdrawn by action of a stock holder or partner, or by redemption or repurchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, nor may any unsecured advance or loan be made to a stockholder, partner, sole proprietor or employee if, after giving effect thereto and to any other such withdrawals, advances or loans and any Payments of Payment Obligations (as defined in Appendix D) (17 CFR 240.15c3–1D) under satisfactory subordination agreements which are scheduled to occur within six months following such withdrawal, advance or loan either aggregate indebtedness of any of the consolidated entities exceeds 1000 percent of its net capital or its net capital would fail to equal 120 percent of the minimum dollar amount required thereby or would be less than > 175 percent of the sum of the percentages prescribed by paragraph (f) of 17 CFR 240.15c3–1 of debit items < computed in accordance with 17 CFR 240.15c3–3a, or, if registered as a futures * * *

(f) *Alternative net capital requirement.* (1)(i) A broker or dealer is not exempt from the provisions of 17 CFR 240.15c3–3 under the Securities Exchange Act of 1934 pursuant to paragraph (k)(1) or (k)(2)(i) may elect not to be subject to the limitations of paragraph (a) of this section respecting aggregate indebtedness as defined in paragraph (c)(1) of this section and certain deductions provided for in paragraph (c)(2) of this section. *Provided,* That in order to qualify to operate under this paragraph (f), such broker or dealer shall at all times maintain net capital equal to the greater of > 3 percent of debit item 10a (relating to debit balances in margin accounts) of the Formula for Determination of Reserve Requirements for Brokers and Dealers (Exhibit A to Rule 15c3–3, 17 CFR 240.15c3–3a) plus 4 percent of the total of the remainder of the debit items of such formula or $75,000 < or, if registered as a futures commission merchant, 4 percent of the funds required to be segregated pursuant to the Commodity Exchange Act, and the regulations thereunder, if greater, and shall notify the Examining Authority for such broker or dealer and the Regional Office of the Commission in which the broker or dealer has its principal place of business, in writing, of its election to operate under this provision. Once a broker or dealer has determined to operate pursuant to this paragraph (f), he shall continue to do so unless a change is approved upon application to the Commission. > A broker or dealer who claims an exemption from Rule 15c3–3 by virtue of paragraph (k)(2)(ii) of that rule shall at all times maintain a net capital of not less than $100,000. If the electing broker or dealer chooses to exclude fails to deliver and fails to receive from the Rule 15c3–3 Reserve Formula in accordance with Note F thereto, such fails to deliver shall be considered "aged" three business days after settlement date except for fails to deliver related to municipal securities, which shall be considered "aged" after 11 business days.

The electing broker or dealer must charte its net capital with the deduction prescribed by paragraph (c)(2)(ix) for such aged fails.<

(ii) In the case of a municipal securities broker as defined in section 3(a)(31) of the Securities Exchange Act of 1934, who is not exempt from the provisions of 17 CFR 240.15c3–3 under the Securities Exchange Act of 1934 pursuant to paragraph (k)(2) or Ik)(2)(i), and who effects transactions only on a payment versus delivery basis with other brokers or dealers or municipal securities brokers or municipal securities dealers, and who does not hold funds or securities for, or owe money or securities to, customers and does not otherwise carry accounts of, or for, customers, in order to qualify to operate under this paragraph (f) such municipal securites broker shall at all times maintain net capital equal to the great of ► 3 percent of debit item 10a (relating to debit balances in customers' margin accounts) of the Formula for Determination of Reserve Requirements for Brokers and Dealers (Exhibit A to Rule 15c3–3, 17 CFR 240.15c3–3a) plus 4 percent of the total of the remainder of the debit items of such formula or $25,000.◄ *Provided,* That in order to qualify to operate under this paragraph (f), such municipal securities broker shall notify the Examining Authority for such broker or dealer and the Regional Office of the Commission in which the broker or dealer has its principal place of business, in writing, of its election to operate under this provision. Once a municipal securities broker has determined to operate pursuant to this paragraph (f), he shall continue to do so unless a change in such election is approved upon application to the Commission. ► If the electing broker or dealer chooses to exclude fails to deliver and fails to receive from the Rule 15c3–3 Reserve Formula in accordance with Note F thereto, such fails to deliver shall be considered "aged" three business days after settlement date except for fails to deliver related to municipal securities, which shall be considered "aged" after 11 business days. The electing broker or dealer must charge its net capital with the deduction prescribed by paragraph (c)(2)(ix) for such aged fails.◄

(2) In the case of a broker or dealer who has consolidated a subsidiary pursuant to Appendix C (17 CFR 240.15c3–1c) such broker's or dealer's minimum net capital requirements shall be ► the sum of the greater of 3 percent of debit item 10a (relating to debit balances in customers' margin accounts) of the Formula for Determination of Reserve Requirements for Brokers and Dealers (Exhibit A to Rule 15c3–3, 17 CFR 240.15c3–3a) plus 4 percent of the total of the remainder of the debit items of such formula or $75,000, ◄ or, if the parent is registered as a futures commission merchant, 4 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder, if greater, and the total of each consolidated broker or dealer subsidiary's minimum net capital requirements. The minimum net capital requirements of a subsidiary electing to operate pursuant to paragraph (f) of this section shall be ► the greater of 3 percent of debit item 10a (relating to debit balances in customers's margin accounts) of the Formula for Determination of Reserve Requirements for Brokers and Dealers (Exhibit A to Rule 15c3–3, 17 CFR 240.15c3–3a) plus 4 percent of the total of the remainder of the debit items of such formula or $75,000, ◄ or, registered as a futures * * *.

(g) [deleted]

[15] Study of Unsafe and Unsound Practices of Brokers and Dealers 92d Congress, 1st Sess., House Doc. No. 92–231 December, 1971).

[16] *Id.*, p. 11.

[17] *Id.*, p. 55.

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2. By amending paragraphs (b)(6)(iii), (b)(7), (b)(8)(i), (b)(10)(ii)(B), (c)(2) and (c)(5) of § 240.15c3–3–1d as follows:

§ 240.15c3–1d Satisfactory subordination agreements (Appendix D to 17 CFR 240.15c3–1).

* * * * *

(b) * * *

(6) * * *

(iii) The secured demand note agreement may also provide that, in lieu of the procedures specified in the provisions required by paragraph (b)(6)(ii) of this section, the lender with the prior written consent of the broker or dealer and the Examining Authority for the broker or dealer may reduce the unpaid principal amount of the secured demand note. *Provided,* That after giving effect to such reduction the aggregate indebtedness of the broker or dealer would not exceed 1000 percent of its net capital or, in the case of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3–1, net capital would not be less than ► 175 percent of the sum of the percentages prescribed by that paragraph ◄ of debit items computed in accordance with 17 CFR 240.15c3–3a, or, if registered as a * * *

(7) *Permissive prepayments.* A broker or dealer at its option but not at the option of the lender, may, if the subordination agreement so provides, make a Payment of all or any portion of the Payment Obligation thereunder prior to the scheduled maturity date of such Payment Obligation (hereinafter referred to as a "Prepayment"), but in no event may any Prepayment be made before the expiration of one year from the date such subordination agreement became effective; *Provided, however,* That the foregoing restriction shall not apply to temporary subordination agreements which comply with the provisions of paragraph (c)(5) of this Appendix D. No Prepayment shall be made if, after giving effect thereto (and to all Payments of Payment Obligations under any other subordinated agreements then outstanding the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such Prepayment is to occur pursuant to this provision or on or prior to the date on which the Payment Obligation in respect of such Prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the broker or dealer, either aggregate indebtedness of the broker or dealer would exceed 1000 percent of its net capital or its net capital would be less than 120 percent of the minimum dollar amount required by 17 CFR 240.15c–3–1 or, in the case of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3–1, its net capital would be less than ► 175 percent of the sum of the percentages prescribed by that paragraph of debit items ◄ computed in accordance with 17 CFR 240.15c3–3a or, if registered as a * * *

(8)(i) The Payment Obligation of the broker or dealer in respect of any subordination agreement shall be suspended and shall not mature if, after giving effect to Payment of such Payment Obligation (and to all Payments of Payment Obligations of such broker or dealer under any other subordination agreement(s) then outstanding which are scheduled to mature on or before such Payment Obligation) either (A) the aggregate indebtedness of the broker or dealer would exceed 1200 percent of its net capital or, in the case of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3–1, its net capital would be less than ► 150 percent of the sum of the percentages prescribed by that paragraph of debit items ◄ computed in accordance with 17 CFR 240.15c3–3a or, if registered * * *

* * * * *

(10) * * *

(ii) Notwithstanding the provisions of paragraph (b)(8) of this Appendix, a subordination agreement may provide that, if liquidation of the business of the broker or dealer has not already commenced, the Payment Obligation of the broker or dealer shall mature, together with accrued interest or compensation, upon the occurrence of an Event of Default (as hereinafter defined). Such agreement may also provide that, if liquidation of the business of the broker or dealer has not already commended, the rapid and orderly liquidation of the business of the broker or dealer shall then commence upon the happening of an Event of Default. Any subordination agreement which so provides for maturity of the Payment Obligation upon the occurrence of an Event of Default shall also provide that the date on which such Event of Default occurs shall, if liquidation of the broker or dealer has not already commenced, be the date on which the Payment Obligations of the broker or dealer with respect to all other subordination agreements then outstanding shall mature but the rights of the respective lenders to receive Payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of this Appendix (D). Events of Default which may be included in a subordination agreement shall be limited to:

(A) * * *

(B) The aggregate indebtedness of the broker or dealer exceeding 1500 percent of its net capital or, in the case of a broker or dealer which has elected to operate under paragraph (f) of 17 CFR 240.15c3–1, its net capital computed in accordance therewith is less than ► the sum of the percentages prescribed by that paragraph of debit items ◄ computed in accordance with 17 CFR 240.15c3–3a or, if registered * * *

* * * * *

(c) * * *

(2) *Notice of Maturity or Accelerated Maturity.* Every broker or dealer shall immediately notify the Examining Authority for such broker or dealer if, after giving effect to all Payments of Payment Obligations under subordination agreements then outstanding which are then due or mature within the following six months without reference to any projected profit or loss of the broker or dealer either the aggregate indebtedness of the broker or dealer would exceed 1200 percent of its net capital or its net capital would be less than 120 percent of the minimum dollar amount required by 17 CFR 240.15c3–1, or, in the case of a broker or dealer who is operating pursuant to paragraph (f) of 17 CFR 240.15c3–1, its net capital would be less than ► 150 percent of the sum of the percentages prescribed by that paragraph of debit items ◄ computed in accordance with 17 CFR 240.15c3–3a or, if registered * * *

* * * * *

(5) For the purpose of enabling a broker or dealer to participate as an underwriter of securities or other extraordinary activities in compliance with the net capital requirements of 17 CFR 240.15c3–1, a broker or dealer shall be permitted, on no more than three occasions in any 12 month period, to enter into a subordination agreement on a temporary basis which has a stated term of no more than 45 days from the date such subordination agreement became effective. *Provided,* That this temporary relief shall not apply to a broker or dealer if, at such time, it is subject to any of the reporting provisions of 17 CFR 240.17a–11 under the Securities Exchange Act of 1934, irrespective of its compliance with such provisions or if immediately prior to entering into such subordination agreement either (i) the aggregate indebtedness of the broker or dealer exceeds 1,000 percent of its net capital or its net capital is less than 120 percent of the minimum dollar amount required by 17 CFR 240.15c3–1, or (ii) in the case

of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3–1, its net capital is less than ►175 percent of the sum of the percentages prescribed by that paragraph of debit items◄ computed in accordance with 17 CFR 240.15c3–3a, or, if registered as * * *

* * * * *

3. By amending items 10, 12 and 13 and Notes E and F and adding Note G of § 240.15c3–3a as follows:

§ 240.15c3–3a Exhibit A—formula for determination of reserve requirement of brokers and dealers under § 240.15c3–3.

* * * * *

	Credits	Debits
►10a. Debit balances in customers' margin accounts excluding unsecured accounts and accounts doubtful of collection. (See Note E).		XXX
10b. Debit balances in customers' cash accounts excluding unsecrued accounts and accounts doubtful of collection. (See Note E)◄.		XXX
11. Securities borrowed to effectuate short sales by customers and securities borrowed to make delivery on customers' securities failed to deliver.		XXX
12. Failed to deliver of customers' securities not older than 30 calendar days. ►(See Note F)◄.		XXX
13. Margin required and on deposit with the Options Clearing Corporation for all option contracts written or purchased in customer accounts. ►(See Note G).◄.		XXX
+ Total credits	.	
Total debits		.
14. Excess of total credits (sum of items 1–9) over total debits (sum of items 10–13) required to be on deposit in the "Reserve Bank Account" (15c3–3(c)). If the computation is made monthly as permitted by this rule, the deposit shall be not less than 105 percent of the excess of total credits over total debits.		XXX

* * * * *

Note E.

* * * * *

►(4) A broker or dealer operating pursuant to paragraph (f) of Rule 15c3–1 (17 CFR 240.15c3–1(f)) may exclude C.O.D. transactions from Items 1 and 10 of the Reserve formula if the security underlying the transaction is treated as a proprietary position and given the appropriate haircut prescribed under Rule 15c3–1(c)(2)(vi) (17 CFR 240.15c3–1(c)(2)(vi)).◄

►Note F. A broker or dealer operating pursuant to paragraph (f) of Rule 15c3–1 (17 CFR 240.15c3–1(f)) which can demonstrate that its possessions and control of customers' securities requirements are met, may make the following election: Fails to deliver not allocable to the broker's or dealer's long positions and fails to receive not allocable to the broker's or dealer's short positions may be excluded from Items 4 and 12 of the Reserve Formula if those fails to deliver allocate to fails to receive.◄

►Note G.◄ Item 13 shall include the amount of margin required and on deposit with Options Clearing Corporation to the extent such margin is represented by cash, proprietary qualified securities, and letters of credit collateralized by customers' securities.

4. By amending paragraphs (b)(2) of § 240.17a–11 as follows: § 240.17a–11 Supplemental current financial and operational reports to be made by certain brokers and dealers.

* * * * *

(b) * * *

(2) If a computation made by a broker or dealer pursuant to paragraph (f) of Rule 15c3–1 (17 CFR 240.15c3–1(f)) shows, at any point during the month, that his net capital is less than ►150 percent of the sum of the percentages prescribed by that paragraph of debit items◄ computed in accordance with 17 CFR 240.15c3–3a, or that his total net capital is less than 120 percent of the minimum net capital required of him, such broker or dealer shall file a report on Part II or Part IIA of Form X–17A–5 (17 CFR 249.617) as determined in accordance with the standards set forth in 17 CFR 240.17a–5(a)(2)(ii) and (a)(2)(iii), within 15 days after the end of each month thereafter until three successive months shall have elapsed during which his net capital is not less than ►150 percent of the sum of the percentages prescribed by paragraph (f) of debit items◄ computed in accordance with 17 CFR 240.15c3–3a and his total net capital does not fall below 120 percent of the minimum net capital required of him.

* * * * *

By the Commission.

October 9, 1980.

George A. Fitzsimmons,

Secretary.

[FR Doc. 32627 Filed 10–21–80; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79–76 (Colorado–4)]

Ceiling Prices; High-Cost Gas Produced From Tight Formations

AGENCY: Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions that present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas subject to an incentive price (18 CFR 271.703). The rule establishes procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of proposed rulemaking contains the recommendations of the Colorado Oil and Gas Conservation Commission that the Fort Union, Mesaverde and the Mancos to the base of the Mancos "B" formations be designated as tight formations under § 271.703(d).

DATES: Comments on the proposed rule are due on November 10, 1980.

Public hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on October 27, 1980.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8299 or Victor Zabel, (202) 357–8559.

October 10, 1980.

I. Background

On October 3, 1980, the Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's final regulations (45 FR 56034, August 22, 1980), that the Fort Union formation, the Mesaverde formation, and the Mancos formation to the base of the Mancos "B" Zone, of the Rio Blanco and Dry Gulch Units in Rio Blanco County, Colorado, be designated in the Commission's regulations as tight formations. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Colorado's recommendation that these formations be designated tight formations should be adopted. The United States Geological Survey concurs with Colorado's recommendation. Colorado's recommendation and supporting data are on file with the Commission and are available for public inspection.

The recommended formations are located in an area approximately 40 miles southwest of Meeker, Colorado

and 30 miles northwest of Rifle, Colorado. The area is bounded on the north and south by synclinal and anticlinal trends, and on the northeast by an anticlinal closure known as Piceance Creek Dome. In addition, the area is made up of two federal units, the Dry Gulch and Rio Blanco Units.

The Fort Union formation is approximately 4000 to 5000 feet thick. The thickness of the Mesaverde ranges from approximately 4000 to 5000 feet at depth intervals of 5500 to 9000 feet. The Mancos formation (defined as being from the top of the Mancos to the base of the Mancos "B" zone) is approximately 3000 feet thick at depth intervals of 9000 to 12,000 feet.

II. Discussion of the Recommendation

Colorado claims in its submission that evidence gathered through information and testimony presented at a public hearing convened by Colorado on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed areas is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of crude oil per day.

Colorado further asserts that the typical casing design of wells drilled in the area, as required by Colorado's rules and regulations, protects any fresh water aquifers in the area.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued August 1, 1980, in Docket No. RM80–68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Colorado that the Fort Union formation, the Mesaverde formation, and the Mancos formation to the base of the Mancos "B" Zone as described and delineated in Colorado's recommendation as filed with the Commission, be designated as tight formations pursuant to § 271.703.

III. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20428, on or before November 10, 1980. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76 (Colorado—4), and should give reasons including any supporting data for any recommendations. Comments should also indicate the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be placed in the Commission's public files and will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Commission no later than October 27, 1980.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3342)

Accordingly, the Commission proposes to amend the regulations in Part 271, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Colorado's recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

1. Section 271.703 is amended by adding new paragraph (d)(1)(viii)–(x) and (2) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

(1) The following formations are designated as tight formations:

(i) through (vii) [Reserved]

(viii) *Fort Union Formation in Colorado.*

(A) *Delineation of formation.* The Fort Union formation is located in the Rio Blanco and Dry Gulch Units of Rio Blanco County, Colorado, approximately 40 miles southwest of Meeker, Colorado and 30 miles northwest of Rifle, Colorado. The area is bounded on the north and south by synclinal and anticlinal trends, and on the north-east by an anticlinal closure known as the Piceance Creek Dome.

(B) *Depth.* The average depth to the top of the Fort Union formation is approximately 4700 feet.

(ix) *Mesaverde formation in Colorado.*

(a) *Delineation of formation.* The Mesaverde formation is located in Rio Blanco and Dry Gulch Units of Rio Blanco County, Colorado, approximately 40 miles southwest of Meeker, Colorado, and 30 miles northwest of Rifle, Colorado. The area is bounded on the north and south by synclinal and anticlinal trends, and on the northeast by an anticlinal closure known as the Piceance Creek Dome.

(B) *Depth.* The average depth to the top of the Mesaverde formation is approximately 7200 feet.

(x) *Mancos formation to the base of the Mancos "B" in Colorado.*

(A) *Delineation of formation.* The Mancos formation to the base of the Mancos "B" is located in the Rio Blanco and Dry Gulch Units of Rio Blanco County, Colorado, approximately 40 miles southwest of Meeker, Colorado and 30 miles northwest of Rifle, Colorado. The area is bounded on the north and south by synclinal and anticlinal trends, and on the northeast by an anticlinal closure known as the Piceance Creek Dome.

(B) *Depth.* The average depth to the top of the Mancos formation is approximately 10,500 feet.

(2) A more detailed description of the geographical extent and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79–76, and is also located in the official files of the jurisdictional agency which submitted the recommendation.

[FR Doc. 80–33069 Filed 10–21–80; 8:45 am]

BILLING CODE 6450–01–M

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18 CFR Part 271

[Docket No. Rm 79–76 (Colorado–6)]

Ceiling Prices; High-Cost Gas Produced From Tight Formations

AGENCY: Office of Pipeline and Producer Regulations, Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions that present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas subject to an incentive price (18 CFR 271.703). The rule establishes procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of proposed rulemaking contains the recommendations of the Colorado Oil and Gas Conservation Commission that the Mancos "B" formation be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on November 14, 1980.

Public hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on October 30, 1980.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Streeet, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8299 or Victor Zabel, (202) 357–8559.

I. Background

On October 3, 1980, the State of Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission a recommendation in accordance with § 271.703 of the Commission's final regulations (45 FR 56034, August 22, 1980) that the Mancos "B" formation underlying certain lands in the North Douglas Creek area in Rio Blanco County, Colorado, be designated in the Commission's regulations as a tight formation. The United States Geological Survey concurs in Colorado's recommendation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Colorado's recommendation that the Mancos "B" formation be designated a tight formation should be adopted. Colorado's recommendation and supporting data are on file with the Commission and are available for public inspection.

The recommended formation is located in Rio Blanco County, Colorado and is appoximately 350 feet thick in the southern part, thinning to the north, and more silty to the east. The average depth to a producing interval is approximately 2500 feet.

II. Discussion of the Recommendation

Colorado claims in its submission that evidence gathered through information and testimony presented at a public hearing convened by Colorado on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed areas is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of crude oil per day.

Colorado further asserts that the typical casing design of wells drilled in the recommended formation, as required by Colorado's rules and regulations, will protect any fresh water aquifers in the area.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by the Commission in Order No. 97, issued August 1, 1980, in Docket No. RM80–68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Colorado that the Mancos "B" formation, as described and delineated in its recommendation, be designated a tight formation pursuant to § 271.703.

III. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before November 14, 1980. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76 (Colorado—6), and should give reasons including any supporting data for any recommendation. Comments should also indicate the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be placed in the Commission's public files and will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Commission no later than October 30, 1980.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3342)

Accordingly, the Commission proposes to amend the regulations in Part 271, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Colorado's recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

1. Section 271.703 is amended by adding new paragraphs (d)(1)(xi) and (2) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

(1) The following formations are designated as tight formations:

(i) through (x) [Reserved]

(xi) *Mancos "B" formation in Colorado.*

(A) *Delineation of formation.* The Mancos "B" formation is located in northwestern Colorado in the North Douglas Creek area in Rio Blanco County, about 10 miles south of the town of Rangely, Colorado, on the Douglas Creek Arch which separates the Uinta and Piceance Creek geologic basins.

(B) *Depth.* The average depth to the top of the Mancos "B" formation is approximately 2500 feet.

(2) A more detailed description of the geographical extent and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79–76, and is also located in the official files of the jurisdictional agency which submitted the recommendation.

[FR Doc. 80–33070 Filed 10–21–80; 8:45 am]

BILLING CODE 6450–85–M

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18 CFR Part 271

[Docket No. RM79–76 (New Mexico–1)]

Ceiling Prices; High-Cost Gas Produced From Tight Formation

AGENCY: Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions that present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas subject to an incentive price (18 CFR 271.703). The rule establishes procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This

notice of proposed rulemaking contains the recommendation of the New Mexico Oil Conservation Division that the Austin-Mississippian formation be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on November 17, 1980.

Public hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on October 31, 1980.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:
Leslie Lawner, (202) 357–8299 or Victor Zabel (202) 357–8559.

Issued October 16, 1980

I. Background

On October 9, 1980, the New Mexico Oil Conservation Division (New Mexico) submitted to the Commission, in accordance with § 271.703 of the Commission's Final Regulations (45 FR 56034, August 22, 1980), a recommendation that the Austin-Mississippian formation in Lea County, New Mexico, be designated in the Commission's regulations as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether New Mexico's recommendation that the Austin-Mississippian formation be designated a tight formation should be adopted. The United States Geological Survey concurs with New Mexico's recommendation. New Mexico's recommendation and supporting data are on file with the Commission and are available for public inspection.

The recommendation formation is located in six townships contained entirely in Lea County, New Mexico (Townships 13, 14, and 15 South, Ranges 35 and 36 East, NMPM). The Austin-Mississippian formation contains approximately 138,240 contiguous acres and ranges from 200 to 300 feet in thickness. The average depth to the top of the recommended formation is 13,250 feet.

II. Discussion of the Recommendation

New Mexico claims in its submission that evidence gathered through information and testimony presented at a public hearing convened by New Mexico on this matter demonstrates that:

(1) The average *in-situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stablized production rate, against atmospheric pressure, of wells completed for production from the Austin-Mississippian formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of crude oil per day.

New Mexico further asserts that the typical casing design of wells drilled in the recommended formation, as required by New Mexico's rules and regulations, will protect fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued August 1, 1980, in Docket No. RM80–68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by New Mexico that the Austin-Mississippian formation, as described and delineated in New Mexico's recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

III. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, on or before November 17, 1980. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76 (New Mexico—1), and should give reasons including any supporting data for any recommendations. Comments should also indicate the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., 20426, during business hours.

Any persons wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Commission no later than October 31, 1980.

(Natural Gas Policy Act of 1978, U.S.C. 3301–3342)

Accordingly, the Commission proposes to amend the regulations in Part 271. Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event New Mexico's recommendation is adopted.

Kenneth A. Williams,
Director, Office of Pipeline and Producer Regulation.

1. Section 271.703 is amended by adding new paragraphs (d)(1)(xii) and (2) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

(1) The following formations are designated as tight formations:

(i) through (xi) (Reserved)

(xii) *Austin-Mississippian formation in New Mexico.*

(A) *Delineation of formation.* The Austin-Mississippian formation is located entirely in Lea County, New Mexico. The area consists of 138,240 contiguous acres, located approximately 6 to 12 miles North of Lovington, New Mexico.

(B) *Depth.* The average depth to the top of the Austin-Mississippian formation is approximately 13,250 feet.

(2) A more detailed description of the geographical extent and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79–76, and is also located in the official files of the jurisdictional agency which submitted the recommendation.

[FR Doc. 80-33071 Filed 10-21-80; 8:45 am]
BILLING CODE 6450-85-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 171, 172, 173, 177, and 182

Indian Mineral Development Regulations; Extension of Comment Period

October 15, 1980.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule, extension of comment period.

SUMMARY: On August 11, 1980, in 45 FR 53164 a proposed rulemaking document was published concerning the revision of 25 CFR Parts 171, 172, 173, 177, and proposed part 182 governing Mineral Development on Indian lands. The comment period on that publication ended October 10, 1980. This document extends the comment period to sixty days from the date of its publication. The reason for extending the comment period is to give several tribal organizations and other interested persons who have a very keen interest in these regulations additional time in which to submit comments.

DATE: Comment period is hereby extended to December 22, 1980.

ADDRESSES: Send comments to Director, Office of Trust Responsibilities, Attn: Code 241, Bureau of Indian Affairs, U.S. Department of the Interior, Washington, D.C. 20245.

FOR FURTHER INFORMATION CONTACT:
Tim Vollmann, Office of the Solicitor, (202) 343–9331; or Tom Riggs, Bureau of Indian Affairs, (202) 343–3722.

Philip S. Deloria,
Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 80-32918 Filed 10-21-80; 8:45 am]
BILLING CODE 4310-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 25

[LR-1942]

Gift Taxes; Transfer of Life Income Interest; Exercise of Nongeneral Powers of Appointment

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulation relating to the transfer of a life income interest by the possessor of that interest. The proposed amendment would clarify existing law and provide guidance to the public for compliance with the law. It would affect certain persons who exercise nongeneral powers of appointment.

DATE: Written comments and requests for a public hearing must be delivered or mailed by December 22, 1980. The amendment is proposed to be effective for taxable years beginning after December 31, 1954.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:
Robert H. Waltuch of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T, 202–566–3287, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains a proposed regulation relating to the gift tax consequences of an exercise of a lifetime nongeneral power of appointment with respect to the corpus of a trust by the life income beneficiary. The inter vivos exercise of such a nongeneral power of appointment by the life income beneficiary is not taxable, but where a consequence of the exercise is the transfer of the powerholder's life income interest, a taxable transfer occurs under section 2511. This issue was recently dealt with in Rev. Rul. 79–327, 1979–2 C.B. 342. A technical amendment is being proposed to § 25.2514–3(e) Example (3) to emphasize that the transfer of the life income interest by the life income beneficiary is a taxable transfer under section 2511. The amendment is to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of this regulation is Robert H. Waltuch of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Proposed Amendment to the Regulations

The proposed amendment to 26 CFR Part 25 is as follows:

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

§ 25.2514–3 [Amended]

Section 25.2514–3 (e) Example (3) is amended by adding a new sentence immediately after the last sentence in the example to read as follows:

"Although the exercise or release of the nongeneral power is not taxable under this section, see § 25.2514–1(b)(2) for the gift tax consequences of the transfer of the life income interest."

Jerome Kurtz,
Commissioner of Internal Revenue.

[FR Doc. 80-33001 Filed 10-21-80; 8:45 am]
BILLING CODE 4830-01-M

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26 CFR Part 48

[LR-2118]

Manufacturers and Retailers Excise Taxes on Special Fuels

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments which would update and revise the regulations concerning manufacturers and retailers excise taxes on special fuels.

DATE: Written comments and requests for a public hearing must be delivered or mailed by December 22, 1980. Except as otherwise provided in this document, the amendments are proposed to be effective on the date which is 30 days after their publication as a Treasury decision. However, the fact that the regulations in this document are to be prospective would not preclude the application of prior Internal Revenue Service positions to periods prior to the effective date of the regualtions.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, 1111 Constitution Ave., N.W., Washington, DC 20224, Attention: CC:LR:T (LR–2118).

FOR FURTHER INFORMATION CONTACT:
H. B. Hartley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue, 1111 Constitution Ave., N.W., Washington, DC 20224, Attention: CC:LR:T (202–566–3287).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Manufacturers and Retailers Excise Tax Regulations (26 CFR Part 48) under section 4041 of the Internal Revenue Code of 1954. However, this document does not provide proposed regulations under the amendments to section 4041 made by the Energy Tax Act of 1978 nor under section 4041 (h) (exemption for use by aircraft museums). Regulations concerning these matters are expected to be provided by other regulation projects. These amendments are to be

issued under the authority contained in section 7805 of the Code. [68A Stat. 917, 26 U.S.C. 7805.]

Explanation of Provisions

The proposed regulations would update and revise the existing regulations regarding manufacturers and retailers excise taxes on special fuels to reflect statutory changes made to section 4041 since 1964, except as noted in the Background section above. Of particular significance in this connection are the amendments made by the Excise Tax Reduction Act of 1965 (79 Stat. 136), which repealed all retailers excise taxes on articles other than special fuels, and the Airport and Airway Revenue Act of 1970 (84 Stat. (Part 1) 237), which imposed a tax under section 4041 (c) of the Code on the use of fuels in noncommercial aviation. Certain clarifying additions would also be made to the regulations.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Fedeal Register.

Drafting Information

The prinicpal author of these proposed regulations is H. B. Hartley of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 48 are as follows:

Paragraph 1. Sections 48.4041, 48.4041–1, 48.4041–2, 48.4041–3, 48.4041–4, 48.4041–5, 48.4041–6, 48.4041–7, 48.4041–8, 48.4041–9, and 48.4041–10 of the Manufacturers and Retailers Excise Tax Regualtions are deleted, and §§ 48.4041–11, 48.4041–12, 48.4041–13 and 48.4041–14, are redesignated as §§ 48.4041–14, 48.4041–15, 48.4041–16, and 48.4041–17, respectively.

Par. 2. The following new sections are added immediately after § 48.0–5 to the Manufacturers and Retailers Excise Tax Regulations. The new sections read as follows:

Subpart F—Special Fules

§ 48.4041–1 Taxes on diesel fuel, special motor fuel, and fuel used in noncommercial aviation.

(a) *In general.* Section 4041 imposes an excise tax at the retail level on the sale of diesel fuel for use as a fuel in a diesel-powered highway vehicle, special motor fuel for use as a fuel in a motor vehicle or motorboat, and fuel for use in an aircraft in noncommercial aviation. A tax is also imposed when these liquid fuels are purchased tax-free and subsequently used for one of the above-mentioned purposes, or when these liquid fuels are purchased at one rate of tax and a higher rate of tax applies as a result of the use made of the liquid fuels.

(b) *Rates of tax.* Following are the rates of tax per gallon applicable to liquid fuels taxable under section 4041.

(1) *Diesel fuel.* Diesel fuel sold for use or used—

(i) Through September 30, 1984, as a fuel in a diesel-powered highway vehicle that at the time of the sale or use is—

(A) Registered or required to be registered for highway use—4 cents

(B) Owned by the United States and used on the highway—4 cents

(C) Not registered and not required to be registered for highway use—2 cents

(D) Owned by the United States and not used on the highway—2 cents

(E) a vehicle described in (A) or (B) in which the fuel that is used was purchased at the rate of 2 cents a gallon for use in a vehicle described in (C) or (D) of this subdivision (i)—2 cents

(ii) On and after October 1, 1984, as a fuel in a diesel-powered highway vehicle—1½ cents

(2) *Special motor fuels.* Special motor fuel sold for use or used—

(i) Through September 30, 1984, as a fuel

(A) In a motor vehicle that at the time of the sale or use is—

(*1*) Registered or required to be registered for highway use—4 cents

(*2*) Owned by the United States and used on the highway—4 cents

(*3*) Not registered and not required to be register for highway use—2 cents

(*4*) Owned by the United States and not used on the highway—2 cents

(*5*) A vehicle described in (*1*) or (*2*) in which the fuel that is used was purchased at the rate of 2 cents a gallon for use in a vehicle described in (*3*) or (*4*) of this subdivision (i) (A)—2 cents

(B) In a motorboat—2 cents

(ii) On and after October 1, 1984, as a fuel in a motor vehicle or motorboat—1½ cents

(3) *Noncommercial aviation.* Any liquid sold for use or used as a fuel in noncommercial aviation on or after July 1, 1970—

(i) Other than any product taxable under section 4081—7 cents

(ii) That is taxable under section 4081—3 cents

(iii) On and after October 1, 1980—no tax

(c) *Credit for tax paid.* For a credit or refund for tax paid on special fuel resold, or used other wise than for the purpose for which purchased, see section 6427(a).

§ 48.4041–2 Application of tax on sales of diesel fuel for use in diesel-powered highway vehicles.

(a) *In general.* The tax imposed by paragraph (1) of section 4041 (a) applies to the sale of diesel fuel by any person to an owner, lessee, or other operator of a diesel-powered highway vehicle for use as a fuel in the diesel-powered vehicle. The tax applies to diesel fuel sold for use in a diesel-powered highway vehicle, whether the vehicle actually is employed in highway or off-highway use.

(b) *Liability for tax.* The tax on the sale of diesel fuel is payable by the person who sells the diesel fuel to the owner, lessee, or other operator of a diesel-powered highway vehicle.

(c) *Rate of tax.* Tax is imposed on the sale of diesel fuel at the rate applicable on the date on which the diesel fuel is sold. See § 48.4041–1 (b)(1) for rates. The test of taxability at a rate specified in § 48.4041–1 (b) (1)(i) (A) is whether the vehicle in which the fuel is to be used is registered, or required to be registered, for highway use under the laws of any State or foreign country at the time of sale. Tax at a rate specified in that section applies to all fuel sold for use in a diesel-powered highway vehicle which is registered, or required to be registered, for highway use under the laws of any State or foreign country, even though the vehicle is seldom or never used on the highway and regardless of the proportion of the fuel used off the highway as compared to total fuel consumption.

(d) *Example.* Application of the tax to the sale of diesel fuel may be illustrated by the following example:

Example. The M Corporation is engaged in the construction of a power dam at a site removed from all public highways. Part of its construction equipment consists of diesel-powered shovels, bulldozers, and highway-type dump trucks. Some of the trucks are registered for highway use and are used both on and off the public roads. Others are not registered and under the applicable State law are nor required to be registered for highway use because they are used entirely on the construction site. Before October 1, 1984, all the diesel fuel sold for use in a registered dump truck is all subject to tax at the rate specified in § 48.4041–1 (b) (1) (i) (A), even though a portion of it is used off the public highway. Before October 1, 1984, the fuel sold for use in the nonregistered trucks, that are operated entirely off the highway, is taxable at the rate specified in § 48.401–1 (b) (i) (C). On and after October 1, 1984, fuel sold for use in both registered trucks and nonregistered trucks is taxable at the rate specified in § 48.4041 (b) (1) (ii). No tax is payable with respect to the diesel fuel sold for use in the power shovels and bulldozers, since they are not "highway vehicles" as defined in § 48.4061 (a)–1 (d).

(e) *Cross references.* (1) For the tax applicable in certain cases based on the use of diesel fuel as a fuel in a diesel-powered highway vehicle, see § 48.4041–6.

(2) For the definition of the terms "highway", "highway vehicle", "diesel fuel", and "registered", see paragraphs (a), (b), (e), and (i) of § 48.4041–8.

(3) For the exemption from tax with respect to diesel fuel sold for use on a farm for farming purposes, see § 48.4041–9.

(4) For the credit or refund of tax paid on diesel fuel resold or used for a purpose other than the purpose for which purchased, see section 6427(a).

§ 48.4041–3 Application of tax on sales of special motor fuel for use in motor vehicles and motorboats.

(a) *In general.* The tax imposed by paragraph (1) of section 4041 (b) applies to the sale of special motor fuel by any person to an owner, lessee, or other operator of a motor vehicle or motorboat, for use as a fuel in the motor vehicle or motorboat.

(b) *Liability for tax.* The tax on the sale of special motor fuel is payable by the person who sells the special motor fuel to the owner, lessee, or other operator of a motor vehicle or motorboat.

(c) *Rate of tax.* Tax is imposed on the sale of special motor fuel at the rate applicable on the date on which the special motor fuel is sold. See § 48.4041–1 (b) (2) for rates. In the case of the sale of special motor fuel for use as a fuel in a motor vehicle, the test of taxability at a fuel in a motor vehicle, the test of taxability at the rate specified in § 48.4041–1 (b) (2) (i) (A) (*1*) is whether the vehicle in which the fuel is to be used is registered, or required to be registered, for highway use under the laws of any State or foreign country at the time of sale. Tax at the rate specified in that section applies to special motor fuel sold for use in a motor vehicle which is registered, or required to be registered, for highway use under the laws of any State or foreign country, even though the vehicle is seldom or never used on the highway and regardless of the proportion of the fuel used off the highway as compared to total fuel consumption. Tax at the rate specfied in subdivision (i) (A) (*3*) or (i) (B) of § 48.4041–1 (b) (2) applies in any case of the sale of special motor fuel for use in a motorboat, or in a motor vehicle that is not registered and is not required to be registered for highway use under the laws of any State or foreign country.

(d) *Example.* Application of the tax to the sale of special motor fuels may be illustrated by the following example.

Example. The N Company is engaged in the manufacture of ceramic products. It has a vehicle which is used to haul clay from a clay pit to its factory. This vehicle has not been registered for highway use and under the applicable State law is not required to be registered for highway use since none of the hauling of clay is done on public highways. The N Company also uses a ditch digging machine in the vicinity of the clay pit for the construction of drains. A fork lift turck is used to move cartons of merchandise from place to place inside the company's warehouse and to assist in the loading of merchandise onto the company's highway trucks for delivery to purchasers. The highway trucks are registered by the State for use on highways. Special motor fuel is used for the operation of all of these items of equipment. Before October 1, 1984, the special motor fuel sold for use as a fuel in the registered highway trucks is subject to tax at the rate specified in § 48.401–1 (b) (2) (i) (A) (*1*). Before October 1, 1984, the special motor fuel sold for use as a fuel in the truck used to haul clay from the pit to the factory and in the fork lift truck is subject to tax at the rate specified in § 48.4041–1 (b) (2) (i)(A) (*3*). On and after October 1, 1984, special motor sold for use in the registered trucks, the unregistred truck, and the fork lift truck is taxable at the rate specified in § 48.4041–1 (b)(2) (ii). No tax is payable with respect to the special motor fuel sold for use as a fuel in the ditch digging machine since that machine is not a motor vehicle.

(e) *Cross reference.* (1) For the tax applicable in certain cases based on the use of special motor fuel as a fuel in a motor vehicle, see § 48.4041–6.

(2) For the definition of the terms "highway", "motor vehicle", "special motor fuel", and "registered", see paragraphs (a), (c), (f), and (i) of § 48.4041–8.

(3) For the exemption from tax with respect to special motor fuel sold for use on a farm for farming purposes or as supplies for vessels, see §§ 48.4041–9 and 48.4041–10, respectively.

§ 48.4041–4 Application of tax on sales of liquid for use as fuel in aircraft in noncommercial aviation.

(a) *In general.* The taxes imposed by subparagraphs (1) and (2) of section 4041 (c) apply to the sale of any liquid by any person to an owner, lessee, or other operator of an aircraft, for use as a fuel in the aircraft in noncommercial aviation.

(b) *Liability for tax.* The tax on the sale of any liquid used as fuel in aircraft in noncommercial aviation is payable by the person who sells the liquid to the owner, lessee, or operator of an aircraft in noncommercial aviation.

(c) *Rate of tax.* Tax is imposed on the sale of liquids used as fuel in aircraft in noncommercial aviation at the rate applicable on the date on which the liquid is sold. See § 48.4041–1 (b) (3) for rates.

(d) *Cross references.* (1) For the tax applicable on the basis of the use of fuel in an aircraft in noncommercial aviation, see § 48.4041–6.

(2) For the definition of the term "noncommercial aviation", see paragraph (j) of § 48.4041–8.

(3) For the exemption of tax with respect to liquids used as fuel in aircraft in noncommercial aviation sold for use on a farm for farming purposes or as supplies for vessels or aircraft, see §§ 48.4041–9 and 48.4041–10, respectively. For tax free sales if sellers and purchasers are registered, see § 48.4041–11.

§ 48.4041–5 Sales of diesel and special motor fuels and fuel for use in aircraft; rules of general application.

(a) *Taxability of liquid fuel delivered into purchaser's tanks*—(1) *Fuel supply tanks.* The sale of diesel fuel to an owner, lessee, or other operator of a diesel-powered highway vehicle, or of special motor fuel to an owner, lessee, or other operator of a motor vehicle or motorboat, or of fuel to an owner, lessee, or other operator of an aircraft used in noncommercial aviation is considered a taxable sale of the liquid fuel if the liquid fuel is delivered by the seller into the fuel supply tank of the vehicle, motorboat, or aircraft. For purposes of this paragraph (a), liquid fuel sold at a location unattended by the seller (such as under a meter system) is considered to be delivered by the seller. In this regard, see section 6247 (a) for credit or refund of tax if liquid fuel acquired in a transaction subject to tax is used in a nontaxable use.

(2) *Bulk tanks.* The sale of diesel fuel to an owner, lessee, or other operator of a diesel-powered highway vehicle, or of special motor fuel to an owner, lessee, or other operator of a motor vehicle or

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motorboat, or of fuel to an owner, lessee, or other operator of an aircraft is considered a taxable sale of the liquid fuel if—

(i) The liquid fuel is delivered by the seller into a bulk supply tank (or other container) that is not the fuel supply tank of a vehicle, motorboat, or aircraft, and

(ii) The purchaser furnishes a written statement to the seller before or at the time of the sale stating that the entire quantity of the liquid fuel covered by the sale is for use by it for a taxable purpose as a fuel in such a vehicle, motorboat, or aircraft.

If the purchaser fails to provide the written statement required by paragraph (a)(2)(ii) of this section, the purchaser is liable for the tax on the sale. If a purchase acquires both fuel that is to be used for taxable purposes and fuel that is to be used for nontaxable purposes, and the fuel that is to be used for taxable purposes is stored in a different storage tank (or container) from the tank used to store the fuel to be used for nontaxable purposes, the written statement described in paragraph (a)(2)(ii) of this section may relate to the fuel to be used for taxable purposes if proper records are kept that sufficiently identify the tanks (or containers) into which tax paid fuel is delivered and the quantities of fuel delivered into those tanks (or containers).

If only occasional sales for delivery into a bulk storage tank (or other container) are made to a purchaser, a separate statement must be furnished for each order. However, if sales are regularly or frequently made to a purchaser, a written statement covering all orders for a specified period not to exceed 12 calendar quarters is applicable.

(b) *Sales for resale and to consignees.* (1) A sale to a dealer for resale is not subject to tax even if it is known at the time of the sale that the liquid fuel will be resold by the dealer for use as a fuel in a diesel-powered highway vehicle, motor vehicle, motorboat, or aircraft.

(2) The tax is payable by the person who makes the taxable sale. If a taxable liquid fuel is consigned to a person for sale and the consignor retains ownership in the liquid fuel until it is disposed of by the consignee, the consignor is the person liable for the tax when a taxable sale of the liquid fuel is made by the consignee. If the consignor transfers ownership in the taxable liquid fuel to the consignee before sale of the liquid fuel by the consignee, the consignee is the person liable for the tax upon a subsequent taxable sale of the liquid. See paragraph (d) of § 48.4041–8 for definition of the term "taxable liquid fuel."

48.4041–6 Application of tax on use of taxable liquid fuel.

(a) *In general*—(1) *Diesel fuel.* If a person acquires any diesel fuel by any means other than through a transaction subject to tax under section 4041(a)(1) and uses it as a fuel in a diesel powered highway vehicle, the person is liable for a tax under section 4041(a)(2) on the quantity of diesel fuel so used at the appropriate rate set forth in § 48.4041–1(b)(1). If a person acquired any diesel fuel through a transaction which is subject to tax at the rate set forth in subdivision (i) (C) or (D) of § 48.4041–1(b)(1), and uses it for a use described in subdivision (i) (A) or (B) of § 48.4041–1(b)(1), the person is liable for an additional tax under section 4041(a)(2) on the quantity of diesel fuel so used. See § 48.4041–1(b)(1)(i)(E) for the applicable rate of tax. See section 6427(a) for credit or refund of tax where diesel fuel acquired in a transaction subject to tax at the rate set forth in subdivision (i) (A) or (B) of § 48.4041–1(b)(1) is used as described in subdivision (i) (C) or (D) of § 48.4041–1(b)(1) or in a nontaxable use.

(2) *Special motor fuel.* If a person acquired any special motor fuel by any means other than through a transaction subject to tax under section 4041(b)(1) and uses it as a fuel in a motor vehicle or motorboat, the person is liable for a tax under section 4041(b)(2) on the quantity of special motor fuel so used at the appropriate rate set forth in § 48.4041–1(b)(2). If a person acquired any special motor fuel through a transaction which is subject to a tax at the rate set forth in subdivision (i) (A) (*3*), (*4*) or (B) of § 48.4041–1(b)(2) and uses it as described in subdivision (i) (A) (*1*) or (*2*) of § 48.4041–1(b)(2), the person is liable for an additional tax under section 4041(b)(2) on the quantity of special motor fuel so used. See § 48.4041–1(b)(2)(i)(A)(*5*) for the applicable rate of tax. See section 6427 (a) for credit or refund of tax where special motor fuel acquired in a transaction subject to tax at the rate set forth in subdivision (i) (A) (*1*) or (*2*) of § 48.4041–1(b)(2) is used for a purpose described in subdivision (i) (A) (*3*), (*4*) or (B) of § 48.4041–1(b)(2) or in a nontaxable use.

(3) *Noncommercial aviation.* If a person acquires any liquid fuel by any means other than through a transaction subject to tax under section 4041(c)(1)(A) or section 4041(c)(2)(A) and uses it as fuel in an aircraft in noncommercial aviation, the person is liable for a tax under section 4041(c)(1)(B) or section 4041(c)(2)(B) on the quantity of the liquid fuel so used at the appropriate rate set forth in § 48.4041–1(b)(3).

(b) *Bulk purchases by users.* Taxpayers who purchase taxable liquid fuel in bulk delivered into storage tanks or other containers and use it for taxable or nontaxable purposes or in registered and nonregistered vehicles must maintain adequate records of all fuel used for each purpose to permit verification of the tax paid and of any credits, refunds, or exemptions claimed.

§ 48.4041–7 Dual use of taxable liquid fuel.

Tax applies to all taxable liquid fuel sold for use or used as a fuel in the motor which is used to propel a diesel-powered highway vehicle or in the motor used to propel a motor vehicle, motorboat, or aircraft, even though the motor is also used for a purpose other than the propulsion of the vehicle, motorboat, or aircraft. Thus, if the motor of a diesel-powered highway vehicle or a motorboat operates special equipment by means of a power take-off or power transfer, tax applies to all taxable liquid fuel sold for this use or so used, whether or not the special equipment is mounted on the vehicle or boat. For example, tax applies to diesel fuel sold to operate the mixing unit on a concrete mixer truck if the mixing unit is operated by means of a power take-off from the motor of the vehicle. Similarly, tax applies to all taxable liquid fuel sold for use or used in a motor propelling a fuel oil truck even though the same motor is used to operate the pump (whether or not mounted on the truck) for discharging the fuel into customers' storage tanks. However, tax does not apply to liquid fuel sold for use or used in a separate motor to operate special equipment (whether or not the equipment is mounted on the vehicle). If the taxable liquid fuel used in a separate motor is drawn from the same tank as the one which supplies fuel for the propulsion of the vehicle, a reasonable determination of the quantity of taxable liquid fuel used in such separate motor or during such period is acceptable for purposes of application of the tax. This determination must be based, however, on the operating experience of the person using the taxable liquid fuel, and the taxpayer must maintain records which support the allocation used. Devices to measure the number of miles the vehicle has traveled, such as hubometers, may be used in making a preliminary determination of the number of gallons of fuel used to propel the vehicle. In order to make a final determination of the number of gallons of fuel used to propel the vehicle, there must be added to this preliminary determination the amount of fuel consumed while idling or warming up the motor preparatory to propelling the vehicle.

§ 48.4041–8 Definitions.

For purposes of the regulations in this subpart, unless otherwise expressly indicated:

(a) *Highway.* The term "highway" includes any road (whether a Federal highway, State highway, city street, rural road, or otherwise) in the United States which is not a private roadway.

(b) *Highway vehicle*—(1) *In general.* The term "highway vehicle" has the same meaning assigned to the term under § 48.4061 (a)–1 (d).

(2) *Diesel-powered highway vehicle.* The term "diesel-powered highway vehicle" means any highway vehicle (within the meaning of § 48.4061 (a)–1 (d)) which is also a motor vehicle (as defined in paragraph (c) of this section) and which uses diesel fuel (as defined in paragraph (e) of this section) for propulsion purposes.

(c) *Motor vehicles.* The term "motor vehicle" includes all types of vehicles propelled by motor that are designed for carrying or towing loads from one place to another, regardless of the type of load or material carried or towed and whether or not the vehicle is registered or required to be registered for highway use. Included are fork lift trucks used to carry loads at railroad stations, industrial plants, warehouses, etc. The term does not include farm tractors, trench diggers, power shovels, bulldozers, road graders or rollers, and similar equipment which does not carry or tow a load; nor does it include any vehicle which moves eclusively on rails.

(d) *Taxable liquid fuel.* The term "taxable liquid fuel" (or "taxable liquid") means any liquid which is either—

(1) Diesel fuel as defined in paragraph (e) of this section;

(2) Special motor fuel as defined in paragraph (f) of this section, or

(3) Any liquid fuel used in an aircraft in "noncommercial aviation", as defined in paragraph (h) of this section.

(e) *Diesel fuel.* The term "diesel fuel" means any liquid (other than a product taxable as gasoline under the provisions of section 4081) which is sold for use or used as a fuel in a diesel-powered highway vehicle.

(f) *Special motor fuel.* (1) The term "special motor fuel" includes any of the following sold for use or used as a fuel for the propulsion of a motor vehicle or motorboat: (i) Liquefied petroleum gases (such as propane, butane, pentane, or methane, or mixtures of the same), or

(ii) Benzol, benzene, naptha, or any other liquid, whether a refined, partly refined, or unrefined product, 10 percent of which has been recovered when the thermometer reads 347° F. (175° C.) or 95 percent of which has been recovered when the thermometer reads 464° F. (240° C.) when subjected to distillation in accordance with the "Standard Method of Test for Distillation of Gasoline, Naptha, Kerosene, and Similar Petroleum Products" (A.S.T.M. designation: D86) of the American Society for Testing Materials, regardless of the trade name under which sold.

(2) The term "special motor fuel" does not include diesel fuel or any product taxable under the provisions of section 4081, nor does it include "kerosene, gas oil, or fuel oil", as defined in paragraph (g) of this section.

(g) *Kerosene, gas oil, or fuel oil.* (1) The term "kerosene, gas oil, or fuel oil" means any product (i) 10 percent of which has not been recovered when the thermometer reads 347° F. (175° C.), and (ii) 95 percent of which has not been recovered when the thermometer reads 464° F. (240° C.), when subjected to distillation in accordance with the "Standard Method of Test for Distillation of Gasoline, Naptha, Kerosene, and Similar Petroleum Products" (A.S.T.M. designation: D86) of the American Society for Testing Materials.

(2) Products designated as kerosene, gas oil, or fuel oil which do not fall within the specifications of both subdivisions (i) and (ii) of paragraph (g)(1) of this section are taxable as special motor fuel if sold or used as a fuel in a motor vehicle or motorboat.

(h) *Fuel used in the aircraft in noncommerical aviation.* The term "fuel used in an aircraft in noncommercial aviation" means any liquid (including any product taxable under section 4081) that is sold for use or used as a fuel in an aircraft in noncommercial aviation (as defined in paragraph (j) of this section).

(i) *Registered.* The term "registered", when used with reference to a highway vehicle, means—

(1) Registered for highway use under the laws of any State, District of Columbia, or foreign country, or

(2) Required to be registered for highway use under the law of the State, District of Columbia, or foreign country in which it is operated or situated. Any highway vehicle which is operated under a dealer's tag, license, or permit is considered to be registered. A highway vehicle is also considered to be "registered" if there has been issued a special permit for operation of the vehicle at particular times and under specified conditions.

(j) *Noncommercial aviation.* The term "noncommercial aviation" means any use of an aircraft, other than in a business of transporting persons or property for compensation or hire by air. The term also includes any use of an aircraft, in a business described in the preceding sentence, which is properly allocable to any transportation exempt from taxes imposed by sections 4261 (transportation of persons) and 4271 (transportation of property) by reason of section 4281 (use of small aircraft on nonestablished lines) or 4282 (transportation of members of affiliated group).

§ 48.4041–9 Exemption for farm use.

(a) *In general.* The tax imposed by section 4041 does not apply to diesel fuel or special motor fuel, or fuel used in noncommercial aviation, sold for use or used on a farm in the United States for farming purposes. The tax applies in the case of diesel fuel delivered into the fuel supply tank of a highway vehicle, or special motor fuel delivered into the fuel supply tank of a motor vehicle or motorboat, or fuel delivered into the fuel supply tank of an aircraft in noncommercial aviation, even if it is known that the liquid fuel is to be used on a farm for farming purposes. However, credit or refund of the tax paid in such case may be claimed as provided by section 6427(c) upon proof that the taxable liquid was used on a farm for farming purposes. The terms "used on a farm for farming purposes", "farm", and "farming purposes", and related terms, have the same meaning for purposes of the exemption in section 4041(f) and the regulations in this section as these terms are defined in paragraphs (1), (2), and (3) of section 6420(c) and the regulations contained in § 48.6420–4.

(b) *Application of exemption.* The exemption referred to in paragraph (a) of this section does not apply with respect to diesel fuel or special motor fuel or fuel used in noncommercial aviation sold for use or used for nonfarming purposes, or diesel fuel or special motor fuel or fuel used in noncommercial aviation sold for use or used off a farm, regardless of the nature of the use. Thus, if a vehicle, motorboat, or aircraft is used both on a farm and off the farm, or if it is used on a farm both for farming and nonfarming purposes, the exemption applies only with respect to that portion of the diesel fuel or special motor fuel or fuel used in noncommercial aviation which is sold for use or used "on a farm for farming purposes". For purposes of this

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exemption, it is immaterial whether or not a vehicle is registered for highway use. However, the actual use of the vehicle and the place where it is used are material. For example, if a truck used on a farm for farming purposes is also used on the highways (even though in connection with operating the farm), tax applies to that diesel fuel or special motor fuel which is sold for use or used in operating the truck on the highways, since the fuel was used off the farm.

§ 48.4041-10 Exemption for use as supplies for vessels or aircraft.

(a) *Application of exemption.* The tax imposed by section 4041 does not apply to any special fuels which are sold for use or used as supplies for vessels or aircraft within the meaning of section 4221(a)(3) and (d)(3), and § 48.4221-4. For credit or refund of tax paid on special fuels which have been sold or used as supplies for vessels or aircraft, see section 6416(b)(2)(B), section 6427, and paragraph (f) of this section.

(b) *Evidence required to establish exemption.* (1) In order to establish exemption from tax in the case of a sale of special fuels for use as supplies for vessels or aircraft, it is necessary that the seller obtain from the owner, charterer, or authorized agent of the vessel or aircraft and retain in its possession a properly executed exemption certificates in the form prescribed by paragraph (c) of this section. If fuel is sold tax free for use as supplies for civil aircraft employed in foreign trade or in trade between the United States and any of its possessions, the exemption certificates must show the name of the country in which the aircraft is registered.

(2) If only occasional sales of special fuels are made to a purchaser for use which is exempt from tax as provided in this section, a separate exemption certificate must be furnished for each order. However, if sales are regularly or frequently made to a purchaser for such exempt use, a certificate covering all orders for a specified period not to exceed 12 calendar quarters is acceptable. Such certificates and proper records of invoices, orders, etc., relative to tax-free sales must be kept for inspection by the district director as provided in section 6001. If a seller's records with respect to any sale claimed to be tax free do not include a proper certificate, with supporting invoices and such other evidence as may be necessary to establish the exempt character of the sale, tax is payable by the seller on the sale.

(c) *Acceptable form of exemption certificate.* The following form of exemption certificate, which must be adhered to in substance, is acceptable for the purposes of this section.

Exemption Certificate

(For use by purchasers of special fuels for use as supplies for certain vessels or aircraft (section 4041(g) of Internal Revenue Code of 1954))

(Date), 19— _____

The undersigned purchaser hereby certifies that he/she is the

_____

(owner, charterer, or authorized agent of owner or charterer)

of

_____

(Name of company and vessel)

and that the special fuel specified in the accompanying order, or as specified below or on the reverse side hereof, will be used only as fuel supplies for a vessel belonging to one of the following classes of vessels (including aircraft) to which section 4041(g) of the Internal Revenue Code applies: (Check class to which vessel belongs):

(1) Vessels (including aircraft) engaged in foreign trade.

(2) Vessels engaged in trade between the Atlantic and Pacific ports of the United States.

(3) Vessels (including aircraft) engaged in trade between the United States and any of its possessions.

(4) Vessels employed in the fisheries or whaling business.

(5) Vessels (including aircraft) of war of the United States or a foreign nation.

The undersigned understands that if the special fuels, are sold or used otherwise than as stated above and for a taxable purpose specified in section 4041 (b) or (c) of the Internal Revenue Code, the undersigned will be liable for the tax upon such sale or use. It is also understood that this certificate may not be used in purchasing special fuels, if such fuels are for use as fuel in pleasure vessels, or of any type of aircraft except (1) civil aircraft employed in foreign trade or trade between the United States and any of its possessions, and otherwise entitled to exemption, and (ii) aircraft owned by the United States or any foreign country and constituting a part of the armed forces thereof.

The undersigned understands that the fraudulent use of this certificate to secure exemption will subject the undersigned and all others making fraudulent use to a penalty equivalent to the amount of tax due on the sale of the special fuel and, upon conviction, to a fine of not more than $10,000, or to imprisonment for not more than 5 years, or both, together with the costs of prosecution. The purchaser also understands that it must be prepared to establish by satisfactory evidence the purpose for which the fuel purchased under this certificate was used.

(Signature) _____

(Address) _____

_____

Registration Number if Fuel Used in Noncommercial Aviation

(d) *Exemption certificate not obtained prior to filing of seller's excise tax return.* If the exemption certificate is not obtained prior to the time the seller files a return covering taxes due for the period during which the sale was made, the seller must include the tax on the sale in its return for that period. However, if the certificate is later obtained, a claim for refund of the tax paid on the sale may be filed on Form 843, or a credit for the tax paid may be taken upon a subsequent return as provided by section 6416(b)(2)(B) and § 48.6416(b)(2)-2(c).

(e) *Liability of purchaser.* The person who purchases special fuels, tax free as provided in this section is liable for the tax imposed by section 4041 if the person sells or uses such fuel in a sale or use that is not exempt under any provision of law applicable to the taxes imposed by section 4041.

(f) *Credit or refund*—(1) If diesel fuel or special motor fuel upon which the tax imposed by section 4041(a) or 4041(b), has been paid, is sold or used as supplies for vessels a credit or refund of the tax is available under section 6416(b)(2)(B) to the retail dealer who paid the tax. As an alternative, a payment equivalent to the amount of tax is available under section 6427 to the operator of the vessel who used the fuel. Where the retail dealer claims refund of the tax, the dealer, in accordance with section 6416(a), must reimburse the operator of the vessel for the amount of tax or obtain the written consent of the operator to the filing of such claim.

(2) If aviation fuel upon which the tax imposed by section 4041(c) has been paid is sold or used as supplies for aircraft, credit or refund of the tax is available only as a payment under section 6427 to the operator of the aircraft who uses the fuel or to the person who resells the fuel for such use.

§ 48.4041-11 Tax-free sales of fuel for use in noncommercial aviation only if sellers and certain purchasers are registered.

(a) *In general.* Any sale of liquid fuel for delivery into a fuel supply tank of an aircraft is presumed to be subject to tax under section 4041(c), unless both the seller and purchaser of the liquid fuel are registered as provided in paragraph (b) of this section or are within one of the exceptions provided in paragraph (c) of this section.

(b) *Form of registration.* Except as provided in paragraph (c) of this section (relating to exceptions for State and local governments, for fuel purchased from customs bonded warehouses or continuous customs custody, and for fuel purchased for use in certain aircraft of the United States or or any foreign nation), tax-free sales under section 4041(c) may be made only if both the seller and the purchaser have registered as required by section 4041(i) and this paragraph (b). If fuel is purchased tax paid for use in noncommercial aviation but is used for a nontaxable purpose, see section 6427(a) for provisions relating to refunds or credits of tax for tax-paid fuels not used for the purpose for which sold. Any person desiring to be registered in order to sell or purchase fuel free of the tax imposed by section 4041(c) must, before making any tax-free sale or purchase, file Form 637A, in duplicate. Form 637A must be diled with the district director of internal revenue for the district in which the principal place of business of the applicant is located (or if the applicant has no principal place of business in the United States, with the Director of International Operations, Internal Revenue Service, Washington, DC 20224). The person who receives a validated Certificate of Registry (Validated Form 637A) is considered to be registered for purposes of selling or purchasing fuel tax free as provided in this section.

(c) *Transactions excepted from registration.* (1) A State or local government purchasing fuel delivered into a fuel supply tank of an aircraft it operates for its exlusive use may, but is not required to, register as provided in this section.

(2) Any purchaser of aircraft fuel who purchases fuel from any customs bonded warehouse or from continuous customs custody elsewhere than in a bonded warehouse is not required to register to purchase aircraft fuel from these sources tax free.

(3) Any purchaser of fuel for use in an aircraft which is owned by the United States or any foreign country and constitutes a part of the armed forces thereof is not required to register to purchase aircraft fuel tax free.

(4) The exceptions from registration in pararaph (c) (1), (2), and (3) of this section do not relieve purchasers from the requirement of furnishing an exemption certificate as required by paragraph (d) of this section.

(d) *Evidence of tax-free sale.* (1) To establish the right of a purchaser to purchase fuel delivered into the fuel supply tank of an aircraft tax free, the seller must obtain from the purchaser and retain in its possession a certificate, properly executed and signed by or on behalf of the purchaser, containing the following information:

(i) Date of purchase,

(ii) The purchaser's registration number (or the exception from registration which is relied upon), and

(iii) A brief statement of the intended tax-free use of the fuel (for example, by an airline in the business of transporting persons or property for hire) or tax-free source of the fuel (the customs bonded warehouse or firm having continuous customs custody).

(2) The following form of certificate, which must be adhered to in substance, is acceptable for the purposes of this paragraph.

(Date)—————, 19 ——

The undersigned signifies that he/she, or the

_____

(Name of purchaser if other than undersigned)

of which the undersigned is

_____

(Title)

holds Certificate of Registry No. ———— or has not registered because

_____

(Brief statement of exception and the fuel from registration relied upon)

delivered into a supply tank of the subject aircraft may be purchased free of tax because the fuel will be used

_____

(Brief statement of tax-free use)

(or will be purchased from).

_____

_____

(Name of customs bonded warehouse or firm having continuous customs custody)

The undersigned understands that if the fuel is used otherwise than as stated above and for a purpose taxable under section 4041 of the Internal Revenue Code, the undersigned will be liable for the tax upon such use, and that the undersigned must be prepared to establish by satisfactory evidence the purpose for which the fuel purchased under this certificate was used.

The undersigned also understands that the fraudulent use of this certificate to secure exemption will subject the undersigned and all others making fraudulent use to a penalty equivalent to the amount of tax due on the sale of the fuel and upon conviction of a fine of not more than $10,000, or to imprisonment for not more than 5 years, or both, together with the costs of prosecution.

_____

(Signature)

_____

(Address)

(3) Except as provided in paragraph (d)(4) of this section, a separate exemption certificate must be furnished for each sale of fuel delivered into a fuel supply tank of an aircraft. If a portion of the fuel is intended to be used for a nontaxable purpose, the entire amount of the fuel may be sold tax free. Exemption certificates and proper supporting records such as invoices, orders, etc., relative to tax-free sales must be readily accessible for inspection by internal revenue officers and retained as provided in section 6001 of the Code and the regulations thereunder.

(4) If the purchaser of fuel to be used in an aircraft has reasonable grounds to believe that 90 percent or more of the total of the fuel to be purchased by it during a specified period not to exceed 12 calendar quarters will be used in other than noncommercial aviation, it may furnish each of its suppliers an exemption certificate covering all purchases for the specified period. The certificate shall be substantially in the same form as the certificate in paragraph (d)(2) of this section, except that in place of the date the purchaser shall specify the period covered by the certificate, and the purchaser shall give a brief explanation of its grounds for belief that 90 percent or more of its total fuel will be used in other than noncommercial aviation.

(5) The presumption under section 4041(i) that any liquid delivered into a fuel supply tank of an aircraft is taxable places the duty on the seller of the liquid fuel to use reasonable diligence to satisfy itself that a tax-free sale of fuel to the purchaser is allowed by law. In the absence of circumstances surrounding a sale that would raise a question as to whether a tax-free sale is allowable, the requirement of reasonable diligence is satisfied if the seller receives and retains the required certificate evidencing the right of the purchaser to buy the fuel tax free. However, if the circumstances are such as to indicate the seller has filed to use reasonable diligence, it is not relieved of liability for the tax imposed by section 4041(c). In addition, if the seller fails to obtain and retain the evidence of tax-free sales as required by this paragraph (d), it is not relieved of liability for the tax imposed by section 4041(c).

§ 48.4041-12 Sales by United States, etc.

The taxes imposed by section 4041 apply to the sale at retail of taxable liquid fuels by the United States or by any agency or instrumentality of the United States, unless by statute specifically exempted from these taxes. However, the exemptions from these taxes provided by section 4041(f), (g), and (h) and the regulations thereunder contained in this subpart F are available to the extent therein provided.

§ 48.4041-13 Other credits or refunds.

(a) *In general.* For provisions relating to credit or refund of tax paid on taxable liquid fuel resold by the purchaser, or used otherwise than as a fuel for the propulsion of a diesel-powered highway vehicle, motor vehicle, motorboat, or aircraft. See section 6416(b) and the

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regulations thereunder contained in Subpart O of this part.

(b) *Tax-paid liquid fuel used by local transit systems.* For provisions relating to credit or refund in the case of taxable liquid fuel used in vehicles while engaged in furnishing scheduled common carrier public passenger land transportation service along regular routes, see section 6416(b) and the regulations thereunder contained in Subpart O of this part.

Jerome Kurtz,

Commissioner of Internal Revenue.

[FR Doc. 80-33012 Filed 10-21-80; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Partial Approval of the Permanent Program Submission From the State of Kentucky Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule: partial approval and partial disapproval of the Kentucky permanent regulatory program.

SUMMARY: On February 29, 1980, the State of Kentucky submitted to the Department of the Interior its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The purpose of the submission is to demonstrate the State's intent and capability to administer and enforce the provisions of SMCRA and the permanent program regulations, 30 CFR Chapter VII.

After providing opportunities for public comment and a thorough review of the program submission, the Secretary of the Interior has determined that the Kentucky program partially meets the rquirements of SMCRA and the Federal permanent program regulations, as discussed below under "Supplementary Information" and "The Secretary's Findings." Accordingly, the Secretary of the Interior has approved in part and disapproved in part the Kentucky program. Kentucky will not assume primary jurisdiction for implementing SMCRA until its entire program receives approval.

DATE: Kentucky has until December 22, 1980 to submit revisions to the disapproved portions of the program.

FOR FURTHER INFORMATION CONTACT: Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining, 1951 Constitution Avenue N.W., Washington, DC 20240, Telephone: (202) 343-4225.

ADDRESSES: Copies of the Kentucky program and the administrative record on the review of the Kentucky program are available for public inspection and copying during business hours at:

Administrative Record Room, Office of Surface Mining, Region II, 530 Gay Street SW, Suite 500, Knoxville, Tennessee

Bureau of Surface Mining, Reclamation and Enforcement, Capital Plaza Tower, Sixth Floor, Frankfort, Kentucky

Bureau of Surface Mining, Reclamation and Enforcement, Old TB Facility, Laffoon Street, Madisonville, Kentucky

Bureau of Surface Mining, Reclamation and Enforcement, 1632 East Cumberland Avenue, Middlesboro, Kentucky

Bureau of Surface Mining, Reclamation and Enforcement, 213 Lovern Street, Hazard, Kentucky

Bureau of Surface Mining, Reclamation and Enforcement, 431 South Lake Drive, Prestonsburg, Kentucky

Bureau of Surface Mining, Reclamation and Enforcement, 165 South Mayo Trail, Pikeville, Kentucky

Bureau of Surface Mining, Reclamation and Enforcement, Reclamation Building, (Near Intersection of East 80, Daniel Boone Pakway and Highway 25), London, Kentucky

Bureau of Surface Mining, Reclamation and Enforcement, 620 West Main Street, Grayson, Kentucky

Bureau of Surface Mining, 1951 Constitution Avenue, NW., Room 153, Washington, DC 20240.

SUPPLEMENTARY INFORMATION:

General Background on the Permanent Program

The environmental protection provisions of SMCRA are being implemented in two phases—the initial program and the permanent program—in accordance with Sections 501–503 of SMCRA, 30 U.S.C. 1251–1253. The initial program became effective on February 3, 1978, for new coal mining operations on non-Federal and non-Indian lands which received State permits on or after that date, and effective on May 3, 1978, for all coal mines existing on that date. The initial program rules were promulgated by the Secretary of December 13, 1977, under 30 CFR Parts 710–725, 42 FR 62639 *et seq.*

The permanent program will become effective in each State upon the approval of a State program by the Secretary of the Interior or implementation of a Federal program within the State. If a State program is approved, the State, rather than the Federal government, will be the primary regulator of activities subject to SMCRA.

The Federal regulations for the permanent program, including procedures for States to follow in submitting State programs and minimum standards and procedures the State must include to be eligible for approval, are found in 30 CFR Parts 700–707 and 730–865. Part 705 was published October 20, 1977 (42 FR 56065), and Parts 795 and 865 (originally Part 830) were published December 13, 1977 (42 FR 62639). The other permanent program regulations were published March 13, 1979 (44 FR 15312–15643). Errata notices were published March 14, 1979 (44 FR 15485), August 24, 1979 (44 FR 49673–49687), September 14, 1979 (44 FR 53507–53509), November 19, 1979 (44 FR 66195), April 16, 1980 (45 FR 2600), June 5, 1980 (45 FR 37818), and July 15, 1980 (45 FR 47424).Amendments to the regulations were published October 22, 1979 (44 FR 60969), as corrected December 19, 1979 (44 FR 75143), December 19, 1979 (44 FR 75302–85303, December 31, 1979 (44 FR 77440–7747), January 11, 1980 (45 FR 2626–2629), April 16, 1980 (45 FR 25998–26001), May 20, 1980 (45 FR 33926–33927), June 10, 1980 (45 FR 39446–39447), and August 6, 1980 (45 FR 52306–52324). Portions of these regulations have been suspended, pending further rulemaking. See 44 FR 67942 (November 27, 1979), 44 FR 77447–77454 (December 31, 1979), 45 FR 6913 (January 30, 1980) and 45 FR 51547–51550 (August 4, 1980).

General Background on State Program Approval Process

Any State wishing to assume primary jurisdiction for the regulation of coal mining within its borders under SMCRA may submit a program for consideration. The Secretary of the Interior has the responsibility to approve or disapprove the submission. The Federal regulations governing State program submissions are found at 30 CFR Parts 730–732. After review of the submission by OSM and other agencies, an opportunity for the State to make additions or modifications to the program and an opportunity for public comment, the Secretary may approve the program unconditionally, approve it conditioned upon minor deficiencies being corrected in accordance with a specified timetable, or disapprove the program in whole or in part. If any part of the program is disapproved, the State may submit a revision to correct the items that need to

be changed to meet the requirements of SMCRA and the applicable Federal regulations. If the revised program is also disapproved, SMCRA requires the Secretary of the Interior to establish a Federal program in that State. The State may again request approval to assume primary jurisdiction after the Secretary implements the Federal program.

The procedures and timetable for the Secretary's review of State programs were initially published March 13, 1979 (44 FR 15326), at 30 CFR Part 732.

As a result of litigation in the U.S. District Court for the District of Columbia, the deadline for States to submit programs was extended from August 3, 1979, to March 3, 1980. On May 20, 1980, adjustments were made to the timetables for submissions, comments and hearings (45 FR 33927). As revised, 30 CFR 732.13(d) requires the Secretary to disapprove a State program if the State has not fully enacted all of its permanent program laws and regulations by the 104th day following program submission. The Kentucky program was submitted to the Office of Surface Mining (OSM) on February 29, 1980, and the last day for modifications of State laws and regulations to be submitted by Kentucky was June 12, 1980, the 104th day following program submission.

The Secretary, in reviewing State programs, is applying the criteria of Section 503 of SMCRA, 30 U.S.C. 1253, and 30 CFR 732.15. In reviewing the Kentucky program, the Secretary has followed the Federal rules as cited above under "General Background on the Permanent Program" and as affected by three recent decisions of the U.S. District Court for the District of Columbia *In Re: Permanent Surface Mining Regulation Litigation.* That litigation is a consolidation of several lawsuits challenging the Secretary's permanent regulatory program.

Because of the complex litigation, the court issued its initial decision in two "rounds." The Round I opinion, dated February 26, 1980, denied several generic attacks on the permanent program regulations, but resulted in suspension or remanding of all or part of 22 specific regulations. The Round II opinion, dated May 16, 1980, denied additional generic attacks on the regulations, but remanded some 40 additional parts, sections, or subsections of the regulations. The court also ordered the Secretary to "affirmatively disapprove, under Section 503 (of SMCRA), those segments of a state program that incorporate a suspended or remanded regulation" (Mem. Op., May 16, 1980, p. 49). However, on August 15, 1980, the court stayed this portion of its opinion. The effect of the stay is to allow the Secretary to approve State program provisions equivalent to remanded or suspended Federal provisions in the three circumstances described in paragraph 1 below. Therefore, the Secretary is applying the following standard to the review of State program submissions:

1. The Secretary need not affirmatively disapprove State provisions similar to those Federal regulations which have been suspended or remanded by the district court where the State has adopted such provisions in a rulemaking or legislative proceeding which occurred either (1) before the enactment of SMCRA of (2) after the date of the Round II district court decision, since such State regulations clearly are not based solely upon the suspended or remanded Federal regulations. (3) The Secretary need not affirmatively disapprove provisions based upon suspended or remanded Federal rules if a responsible State official has requested the Secretary to approve them.

2. The Secretary will affirmatively disapprove all provisions of a State program which incorporate suspended or remanded Federal rules and which do not fall into one of the three categories in paragraph one, above. The Secretary believes that the effect of his "affirmative disapproval" of a section in the State's regulations is that the requirements of that section are not enforcement in the permanent program at the Federal level to the extent they have been disapproved. That is, no cause of action for enforcement of the provisions, to the extent disapproved, exists in the Federal courts, and no Federal inspection will result in notices of violation or cessation orders based upon the "affirmatively disapproved" provisions. The Secretary takes no position as to whether the affirmatively disapproved provisions are enforceable under State law and in State courts. Accordingly, these provisions are not being pre-empted or superseded, although the Secretary may have the power to do so under Section 504(g) of SMCRA and 30 CFR 730.11.

3. A State program need not contain provisions to implement a suspended or remanded regulation and no State program will be disapproved for failure to contain a suspended or remanded regulation.

4. A State must have authority to implement all permanent program provisions of SMCRA, including those provisions of SMCRA upon which the suspended or remanded regulations were based.

5. A State program may not contain any provision which is inconsistent with a provision of SMCRA.

6. Programs will be evaluated only on those provisions other than the provisions that must be disapproved because of the court's order. The reminaing provisions will be approved unconditionally, approved conditionally, or disapproved, in whole or in part, in accordance with 30 CFR 732.13.

7. Upon promulgation of new regulations to replace those that have been suspended or remanded, the Secretary will afford States that have approved of conditionally approved programs a reasonable opportunity to amend their programs, as appropriate. In general, the Secretary expects that the provisions of 30 CFR 732.17 will govern this process.

A list of the regulations suspended or remanded as the result of the Round I and Round II litigation was published in the **Federal Register** (45 FR 45604–45607) on July 7, 1980.

To codify decisions on State programs, Federal programs, and other matters affecting individual States, OSM has established a new Subchapter T of 30 CFR Chapter VII. Subchapter T will consist of Parts 900 through 950. Provisions relating to Kentucky will be found in 30 CFR Part 917.

Background on the Kentucky Program Submission

On February 29, 1980, OSM received a proposed regulatory program from the State of Kentucky. The program was submitted by the Kentucky Department for Natural Resources and Environmental Protection, the agency designated as the regulatory authority under the Kentucky permanent program. Notice of receipt of the submission and initiating the program review was published in the March 12, 1980, **Federal Register** (44 FR 15948–15950) and in newspapers of general circulation in Kentucky. The announcement invited public participation in the initial phase of the review process as it related to the Regional Director's determination of whether the submission was complete.

On April 16 and 17, 1980, the Regional Director held public review meetings in Kentucky on the program submission and its completeness. The public comment period on completeness began on March 12, 1980, and closed April 17, 1980.

On April 29, 1980, the Regional Director published notice in the **Federal Register** announcing that the program submission had been determined to be complete (45 FR 28368–28369). The determination of completeness was not a determination of whether the

submitted materials complied with the substantive provisions of SMCRA and 30 CFR Chapter VII.

Amendments to the Kentucky Program

In accordance with 30 CFR 732.11(d), as amended on May 20, 1980 (45 FR 33927), the State could elect to modify any element of the complete submission or provide additional information for the administrative record. Modifications to the initial Kentucky program submission (Administrative Record No. KY-61-A) of February 29, 1980, are listed below, along with the date each modification was received.

(1) Modifications to regulations (Administrative Record No. KY-163)—June 12, 1980.

(2) Modifications to proposed systems (Administrative Record No. KY-163)—June 12, 1980.

(3) Modifications to legislation (Administrative Record No. KY-163)—May 14, 1980.

(4) A letter from the Kentucky Department of Natural Resources and Environmental Protection (DNREP) responding to OSM comments on legislation and providing a synthesis of KRS-350, as amended (Administrative Record No. KY-225)—July 18, 1980.

(5) An explanation of the changes made to State system descriptions submitted at the public hearing in Madisonville, Kentucky (Administrative Record No. KY-262)—July 22, 1980.

(6) A letter from DNREP responding to OSM comments on regulations (Administrative Record No. KY-238)—July 28, 1980.

(7) A letter from DNREP explaining how they determined their field offices would adequately serve as a public office (Administrative Record No. KY-238)—July 28, 1980.

On June 23, 1980, the Regional Director published notice in the Federal Register (45 FR 41977-41979) and in newspapers of general circulation within the State setting forth procedures for the public hearing and comment period on the substance of the Kentucky program.

Public hearings were held by the Regional Director on the program submission on July 22, 1980, in Madisonville, Kentucky, and July 23, 1980, in Hazard, Kentucky. The public comment period on the Kentucky permanent regulatory program ended on July 28, 1980.

On July 11, 1980, public comment was invited on a tentative list of provisions in the Kentucky program which appeared to be based on suspended and remanded Federal rules (45 FR 46820-46826).

On July 30, 1980, the Regional Director submitted to the Director of OSM his recommendation that the Kentucky program be disapproved, together with copies of the transcript of the public meeting and the public hearing, written presentations, exhibits, copies of all public comments received, and other documents comprising the administrative record.

On August 21, 1980, the Director asked DNREP, by telegram, whether there were any provisions of Kentucky's submission based on remanded or suspended Federal regulations, which the State would not want the Secretary to disapprove.

On August 13, 1980, the Secretary formally announced that comments had been solicited and received on the Kentucky program from the Administrator of the Environmental Protection Agency, the Secretary of Agriculture and the heads of other Federal agencies (45 FR 53839-53840).

On September 23, 1980, the Administrator of the Environmental Protection Agency concurred in the Secretary's approval of those provisions of the Kentucky program being approved which relate to air or water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1151-1175) and the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*).

On September 18, 1980, the Director of OSM reopened the record for five days to allow public comment on additional information the State submitted on its legislation and the State's response to the August 21, 1980, telegram identified above (45 FR 62157-62158).

On September 24, 1980, the Director of OSM recommended to the Secretary that he approve the Kentucky program in part and disapprove it in part.

On October 3, 1980, the Secretary approved the Kentucky program, in part, and disapproved the program, in part.

Elements Upon Which the Secretary Evaluated the Kentucky Program

In considering the matters discussed above under "General Background on State Program Approval Process," the Secretary wishes to set forth the elements of the proposed Kentucky program upon which the findings and decisions below are being made.

1. KRS 224 and KRS 350, as amended in 1980 (Administrative Record No. KY-163).

2. The Synthesis of KRS 350 and its amendments received July 18, 1980 (Administrative Record No. KY-225).

3. The Kentucky reguations enacted by the Governor on June 11, 1980, and included in the June 12, 1980, program revisions (Administrative Record No. KY-163). The Secretary recognizes that these regulations will not become effective until the Kentucky program is approved, in whole or with conditions, and, once effective, will only remain in effect for 120 days. Such regulations, although fully enacted by the 104th day after the program submission, could not be approved without the condition that they be made permanent.

4. The Kentucky program narrative received Fedruary 29, 1980, as revised June 12, 1980 (Administrative Record No. KY-163).

5. The DNREP responses to: (a) the initial tentative OSM comments on State legislation, (b) the initial tentative comments OSM made on State systems, and (c) the initial tentative comments OSM made on State regulations. (See Administrative Record Nos. KY-167, KY-169, KY-225, KY-238 and materials subject to comment during the recent 5 day public comment period including KY-277, KY-278, KY-279, KY-280, Ky-281 and KY-299. The responses offered an explanation of the differences between State and Federal language and their effect. Therefore, the Secretary considered the State response as clarifying material and reflected the need for a final policy statement or legal opinion where necessary in the findings.

Secretary's findings

Section 503(a)

In accordance with Section 503(a) of SMCRA, the Secretary finds that Kentucky has, in part, the capability to carry out the provisions of SMCRA. Findings made in accordance with Section 503(a) of SMCRA are set forth in Findings 1 through 7 below:

Finding 1

The Secretary finds that Kentucky has laws which, in part, provide for regulation of surface coal mining and reclamation operations in accordance with SMCRA. The Secretary has identified the following deficiencies:

1.1 KRS 350.090(1) suggests that only the permit applicant may request a hearing on a permit decision and may thus conflict with Section 514 of SMCRA, KRS 350.465(2)(c) and 405 KAR 7:090E. A legal opinion from the General Counsel of DNREP was submitted on August 18, 1980 (Administrative Record No. KY-278), maintaining that the broad language of KRS 350.465(2)(c) is not limited by the specific language of KRS 350.090(1) and that both statutory sections can be given full effect without inconsistency. The Secretary is persuaded by the legal opinion of the General Counsel of DNREP and thus finds KRS 350.090(1) acceptable.

1.2 The Secretary is unable to find KRS 350.250, Citizen Suit, to be consistent with the requirements of SMCRA for the following reasons:

(a) Section 520(a) of SMCRA creates a right of action in "any person having an interest which is or may be adversely affected." The Kentucky language creates a right of action in "any citizen of the Commonwealth." The Kentucky language is too restrictive in scope since it denies the right of action to entities which are not citizens, such as corporations or associations, as well as to non-citizen residents of Kentucky and citizens of other States.

The General Counsel of DNREP submitted a legal opinion maintaining that the above concern is adequately addressed by the language of KRS 350.250 together with Section 14 of the Kentucky Constitution which, in the General Counsel's view, extends standing to a far greater number of persons than Section 520(a) of SMCRA. (See Administrative Record No. KY-280.)

The General Counsel argues that the KRS language should not be taken literally. Section 14 of the Kentucky Constitution grants access to the courts to "*every person* for an injury done him in his lands, goods, person, or reputation," and KRS 446.010(26) defines "persons" to include individuals, partnerships, corporations, political bodies, societies, etc. According to the General Counsel, "under well-established Kentucky precedent there is no doubt that House Bill 566 and section 14 of the Kentucky Constitution would be construed to complement each other," citing *Sims* vs. *Board of Education* (290 S.W.2d 491 (KY. 1956)), and thus the State constitution would extend the coverage of KRS 350.250 to non-citizens; and OSM's insistence on a legislative amendment would exalt "form over substance." (See Administrative Record No. KY-280.)

The Secretary does not find the argument persuasive. KRS 350.250 provides that "Any citizen of this Common wealth having knowledge that (the law is not being enforced) may bring such failure to enforce the law to the attention of (the responsible) public officer or employee . . . .(A) 11 such demands to enforce the law must be in writing, under oath, with facts set forth specifically stating the nature of the failure to enforce the law." Section 520 of SMCRA allows "any person having an interest which is or may be adversely affected" to bring a civil action to compel compliance with the Act, etc. Written notice must be given to the Secretary or the regulatory authority.

Dickey v. Bogby, 574 S.W. 3d 922 (Ky. 1978) holds that the term "citizen" is synonymous with the term "domiciliary." Thus persons domiciled in other States are not citizens of Kentucky; and no matter how adversely their interests were being affected, they could not sue under KRS 350.250 (unless KRS 350.250 was invalidated as violative for the Fourteenth Amendment's Privileges and Immunities Clause).

Corporations are generally not regarded as "citizens" for most purposes (18 Am Jur 2d, Corporations, § 23); thus, KRS 350.250 may not even allow Kentucky corporations to sue the responsible State officials. Even if corporations were held to be "citizens" for purposes of KRS 350.250, the statute would only cover corporations incorporated in Kentucky (19 Am Jur 2d, Corporations, § 23). (For jurisdictional purposes, a corporation is regarded as a "citizen" of the State under the laws of which it is incorporated.)

Finally, aliens—whether resident in Kentucky or elsewhere—would be excluded from the protection of KRS 350.250.

The Secretary believes that although *Sims*, as cited in the General Counsel's opinion, does state that "(i)n approaching issues involving the constitutionality of legislation, Courts should resolve doubt in favor of constitutionality rather than unconstitutionality", it also states that where legislation directly conflicts with the Constitution, the legislation must be invalidated. The terms "citizen" and "person" are generally not synonymous in the law (*Cf. Dickey v. Bagby* with KRS 446.010 (26)). A court may agree that "citizen" in KRS 350.250 should be interpreted to mean "person," but it is at least as likely to hold that the General Assembly would have used the word "person" if it wanted KRS 350.250 to apply to non-citizens. The words "citizen *of this Commonwealth*" certainly appear to exclude non-citizens. A non-citizen would have to argue that KRS 350.250 is unconstitutional, citing Section 14 of the Kentucky Constitution and cases like *Forrester v. Terry* (357 S.W. 2d 308 (Ky. 1962)). A court would then have to decide whether failure on the part of DNREP to enforce the law is the kind of injury covered by the constitutional provision. A court might invoke *Sims* to preserve the constitutionality of KRS 350.250 at the expense of the rights of the non-citizen.

A major emphasis of SMCRA is citizen participation. Citizens—including those living outside the State's boundaries—should be able to know and assert their rights. KRS 350.250 says that only "citizens of this Commonwealth" can invoke the mandamus provisions and the Secretary must, therefore, assume that other persons are excluded form invoking these provisions.

In conclusion, the Secretary believes that the language "Any citizen of this Commonwealth having knowledge . . . " is broader than that required by Section 520 of SMCRA in that it does not require "an interest which is or may be adversely affected," but it is narrower in excluding citizens of other States, foreign corporations, aliens, and possible even domestic corporations. Therefore, the Secretary finds that the latter feature renders KRS 350.250 inconsistent with SMCRA.

(b) Section 520(a)(2) of SMCRA contains the language "failure . . . to perform any act or duty . . . which is not discretionary" in granting the cause of action for mandamus of nondiscretionary duties. Because KRS 350.250 does not contain this language, a legal opinion from the General Counsel of DNREP was requested to demonstrate that the Kentucky statute is broad enough to encompass mandamus for performance of nondiscretionary duties.

The General Counsel of DNREP submitted a legal opinion on August 19, 1980 (Administrative Record No. KY-279), demonstrating that, in Kentucky, a mandamus action is employed to compel the performance of duties which are not discretionary. Inasmuch as KRS 350.250 contains the word "mandamus," the Secretary is persuaded that no substantive difference exists between the provisions of Section 520(a)(2) and KRS 350.250 relative to compelling compliance with nondiscretionary duties.

(c) KRS 350.250(3) was presumably intended by its drafters to provide:

(1) an action for damages by any person injured in his or her person or property through the violation by any operator of any rule, regulation, order or permit (consistent with Section 520(f), SMCRA);

(2) a mandamus action against any agency or governmental insturmentality alleged to be in violation of the provisions of the Act, any rule, regulation, order or permit (consistent with Section 520(a)(1), SMCRA); and

(3) an injunction action against any person alleged to be in violation of any rule, regulation, order or permit (consistent with Section 520(a)(1), SMCRA).

KRS 350.250(3) provides only that "any person who is or may be adversely affected by the violation by any person

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of any rule, regulation, order or permit issued pursuant to this chapter may bring a civil action . . . ."

The Secretary believes that KRS 350.250(3) does not provide for the three causes of actions because it does not explicitly use the terms "damages" or "mandamus." It merely provides for a "civil action" without further specificity. In view of recent case law, the Secretary believes these causes of action must be particularly and explicitly provided for. ((See *Illinois v. Commonwealth Edison*, 14 ERC 1266 (1980) and *California v. Department of the Navy*, 9 ERC 2077, 431 F. Supp. 1271, 1283 (1980).)

(d) No Kentucky counterpart to Section 520(c)(2) of SMCRA exists relative to intervention by the Secretary or the DNREP as a matter of right.

(e) No Kentucky counterpart to Section 520(e) of SMCRA, the savings clause, exists. Without further information, perhaps in the form of an opinion from the chief legal officer of DNREP, the Secretary is unable to find that no other rights under any other statute or common law relative to enforcement under Kentucky's surface mining legislation are restricted.

1.3 KRS 350.032(2) is inconsistent with Section 526(c) of SMCRA because it fails to set forth the standards or criteria for the granting of temporary relief. Absent such statutory language, other general statutory authorizations for temporary relief and judge-made standards in Kentucky for granting such relief would apply. Kentucky courts have adopted the 4th Circuit Court of Appeals "balance of the hardships" test (the minority rule in the Federal court system) to determine when granting such temporary relief is proper. The specific standards set forth in Section 526(c) of SMCRA create a greater burden for the movant than does the 4th Circuit test. For example, under Section 526(c) of SMCRA, the movant would have to demonstrate a "substantial likelihood of success on the merits" whereas under the prevailing State standard the movant would only have to show a "substantial question as to the merits of the final determination."

1.4 KRS 350.062(8) classifies abandoned mine land (AML) projects as government-financed construction. All AML projects cannot be categorically exempted from the environmental performance standards since this would make the Kentucky program less stringent than the Federal rules require it to be. The Secretary requires clarification to assure that any more than "incidental" removal of coal during an AML project would be subject to all requirements of the Kentucky permanent regulatory program.

Finding 2

The Secretary finds that Kentucky has laws which, in part, provide sanctions for violations of State laws, regulations or conditions of permits which meet the minimum requirements of SMCRA. The Secretary has identified the following deficiencies:

2.1 The term "order of suspension" in KRS 350.130(1) is not defined and its use is unclear. It can be fairly intrpreted to mean either (1) the suspension of a permit, (2) an equivalent to a Federal cessation order for immediate danger (or the Kentucky "order to abate and alleviate"), or (3) an equivalent to a Federal failure to abate cessation order (or the Kentucky "subsequent order for cessation and immediate compliance"). As a result of the ambiguity, the Secretary requires further information, perhaps in the form of a legal opinion from the chief legal officer of DNREP, to demonstrate adequately that the issuance of summary cessation orders under KRS 350.130(1) or KRS 350.130(4) will not be adversely affected.

2.2 In order to determine whether KRS 350.032(2) is consistent with Section 526(b) of SMCRA relative to trial *de novo*, the Secretary requires further information, perhaps in the form of a legal opinion from the chief legal officer, of DNREP, as to whether or not KRS 350.032(2) addresses trial *de novo*. On its face the statute appears to provide only for an appeal on the record. However, further information is necessary relative to whether judicial practice in Kentucky has limited appeals under the statute strictly on the record. If KRS 350.032(2) does not provide for trial *de novo*, the Secretary must examine it to determine if adequate safeguards are contained to prevent interference with an enforcement program which might be inconsistent with SMCRA. If KRS 350.032(2) does not provide for trial *de movo*, no further review will be necessary inasmuch as in the litigation in the U.S. District Court for the District of Columbia, *In Re: Permanent Surface Mining Regulation Litigation*, the court indicated that Section 526(b) of SMCRA contemplated a review "on the record."

2.3 Sections 521(a)(2) and (3) of SMCRA require cessation orders to be "immediately" issued, with an opportunity for hearing to follow. In KRS 350.028(3) the language "or orders requiring an operator to adopt such remedial measures as are necessary to comply" could adversely affect Kentucky's authority to issue summary cessation orders under KRS 350.130(4). An opinion was requested from the General Counsel of DNREP to demonstrate no adverse effect. A legal opinion from the General Counsel of DNREP was received on August 18, 1980, (Administrative Record No. KY-278) arguing that the language of KRS 350.028(3) in no way limits the effect of the subsequently enacted sections KRS 350.130(1) and (4), which, assures the General Counsel, require the DNREP to order cessation of activities and corrective measures without a prior hearing as provided by Section 521 of SMCRA and 30 CFR Part 843. The Secretary is persuaded by the legal opinion of the General Counsel of DNREP that there will be no adverse effect upon DNREP's authority to issue summary cessation orders.

2.4 In KRS 350.028(4) use of the disjunctive "or" on line 20 makes it possible to interpret the section so that only a civil penalty would be a proper sancton for a "pattern of violations." This construction would conflict wih both Section 521(a)(4) of SMCRA and KRS 350.130(1) mandating revocation or suspension of the permit as the sanction. Alternatively, KRS 350.028(4) can be interpreted to authorize imposition of civil penalties only if (1) there is a pattern of violations *and* either (2) an unlawful failure to comply *or* (3) a willful violation. Section 518 of SMCRA does not place these conditions on civil penalties. Because of the ambiguities of KRS 350.028(4), a legislative amendment will be necessary unless an opinion by the chief legal officer of DNREP can adequately demonstrate that KRS 350.028(4) is consistent with Sections 518 and 521(a)(4) of SMCRA.

2.5 KRS 350.990(1), Penalties, fails to clearly provide a $750 per day minimum penalty for failure to comply with the requirements contained in the Kentucky equivalency of imminent danger cessation orders as required by Section 518(h) of SMCRA and 30 CFR Section 845.15(b).

The General Counsel of DNREP submitted a legal opinion on August 15, 1980, (Administrative Record No. KY-277), arguing that the problem could be easily solved by the attachment and incorporation of a notice of violation to every order to abate and alleviate (Kentucky's equivalent to an imminent danger cessation order) and thus clothe the order to abate and alleviate with the $750 per day provision.

The Secretary is not persuaded by the arguments of the General Counsel. The solution proposed by Kentucky is that a notice of non-compliance and order for remedial measures (equivalent to a SMCRA notice of violation) be first issued by the inspector in response to a situation discovered during an inspection, where there is a violation of

Kentucky's law, regulations or permit conditions and this condition also creates an imminent danger to the health or safety of the public, or can reasonably be expected to cause significant imminent environmental harm. As this notice would have an abatement period, the $750 minimum daily fine would be triggered if the abatement period was not complied with. According to the letter from the General Counsel, and according to the sample order and notice attached to that letter, the order to abate and alleviate, which would cease operations, would not be issued by the inspector upon discovery of the imminent harm situation, but would be issued at a later time, and possibly by another official.

SMCRA contemplates that, if an inspector discovers a violation creating imminent harm, the inspector shall immediately issue a cessation order. If the violation does not create imminent harm or danger, the inspector issues a notice of violation. In comparing Section 521(a)(2) and Section 521(a)(3) of SMCRA, these actions by an inspector appear mutually exclusive—that is, a condition or practice which is a violation either triggers an imminent harm cessation order or a notice of violation, not both.

It might be possible that orders to abate could be issued by the inspector simultaneously with a notice of non-compliance. The order to abate would not have its own remedial actions or abatement dates (which are not mentioned in KRS 350.130(4)) and would therefore not be strict parallel to the cessation orders for imminent harm under SMCRA. Instead, the notice would provide for these items. The order would recite the finding of imminent harm to the public or environment, and order cessation of operations until abatement. A problem with this approach is that the Kentucky civil penalty section assesses separate penalties for orders to abate issued under KRS 350.130(4) and therefore could be interpreted to have contemplated that these orders to abate be complete and separate from notices of non-compliance.

The minimum daily penalty is an important incentive for operators to complete remedial actions by the abatement date. It would substantially weaken this incentive if the alternative procedure mentioned above in the General Counsel's letter were relied on. Moreover, his suggested approach serves to undermine the required field enforcement. The failure to perform remedial actions set forth in an order to abate should directly trigger the minimum daily penalty without issuance of a notice or a determination that the notice was not abated within the time period prescribed.

2.6 KRS 350.465(3)(h) contains the language "in lieu of those civil penalties provided in KRS 350.990." Without further information, perhaps in the form of a policy statement, the Secretary is unable to find that the languate of KRS 350.465(3)(h) would not unacceptably permit the substitution of the penalties provided in KRS 350.465(3)(h) for those set forth in KRS 350.990, particularly as to the $750 per day minimum penalty on notices of violation, failure to abate cessation orders and imminent danger cessation orders. (Finding 2.5, above, addresses a separate but related concern relative to the failure of the State statute to provide a $750 per day minimum for imminent danger cessation orders.)

Finding 3

The Secretary finds that the program fails to demonstrate that the State regulatory authority will have sufficient administrative and technical personnel and sufficient funding to enable the State to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA. Sections 731.14(i), (j), (l) and (m) of the program submission do not contain sufficient data to enable conclusive findings on staffing and funding adequacy. These deficiencies are covered in detail under Finding 30, below.

Finding 4

The Secretary finds that the State has laws which, in part, provide for effective implementation, maintenance and enforcement of a permit system meeting the requirements of SMCRA. The Secretary has identified the following deficiencies:

4.1 KRS 350.113(3), which allows DNREP to release the remaining increment of a performance bond after determining safisfactory vegetative cover has been established, may (1) conflict with the five-year revegetation responsibility period because KRS 350.113(3) contains no time limit for responsibility, and (2) limit the time when inspections can be made in connection with revegetation compliance because KRS 350.113(3) provides that "(I)n no instance shall this vegetative cover check be made until just prior to or after the completion of the first growing season." These provisions appeared to conflict with the five-year responsibility period established in Section 515(b)(19) of SMCRA.

A legal opinion from the General Counsel of DNREP has addressed these concerns to the satisfaction of the Secretary in two parts. First KRS 350.113(3) directs that the remaining bond shall be released if "the department determines that a satisfactory vegetative cover has been established" without defining "satisfactory." To determine when vegetation is "satisfactory," one must refer to the more specific language of KRS 350.095 which directs the reader to the 5-year period defined in the regulations. Second, KRS 350.113(3) addresses inspections for bond release only and contains very general language. More specific language directing inspections may be found in KRS 350.093, KRS 350.095 and the DNREP regulations. (See Administrative Record No. KY-278.)

4.2 KRS 350.440(1), Excess Spoil Dispoal, is a counterpart to Section 515(b)(22) of SMCRA. Under that Federal section, except for durable rock fills, the end-dumping method of spoil disposal is prohibited as set forth in 30 CFR 816.70–816.74. The language "where advisable," in the Kentucky statute creates a possibility of interpretation that hauling or conveying excess spoil to the toe of a fill is to be the exception and not the rule. Appropriate program provisions, perhaps in the form of a policy statement from DNREP, are needed to demonstrate that, notwithstanding the language "where advisable," all excess spoil handling and placement will be performed consistent with the Federal permanent program regulations.

4.3 KRS 350.450(3)(a), variance from approximate original contour (AOC) requirements, is counterpart to Section 515(e) of SMCRA, which provides an AOC variance on steep slopes only. The cross-reference in this section to KRS 410 (a counterpart to Section 515(b)(3) of SMCRA), creates a variance from AOC on non-steep slopes. KRS 350.3(b) contains the same cross-reference. In *In re: Permanent Surface Mining Regulation Litigation*, the court upheld OSM's interpretation of SMCRA Section 515(e). However, the Secretary recognizes that there are circumstances in which a variance from AOC requirements is allowable under certain conditions, such as experimental practices, and therefore believes this section of the State law may be considered acceptable as long as the program and regulations otherwise demonstrate that the variances will only be granted in a manner consistent with the Federal requirements.

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4.4 Under KRS 350.085(5), Denial of Permits, the language "privately owned" on line 2 would be acceptable if it means all non-Federal and non-Indian lands in Kentucky. It does not appear to include, however, State or municipally-owned lands. The Secretary needs more information, perhaps an opinion from the chief legal officer for DNREP and a policy statement from DNREP, before he can find that "privately owned" lands can and will be interpreted to mean State or municipal lands. If this cannot be demonstrated in such opinions and statements, a legislative change to delete the words "privately owned" would appear to be required.

4.5 KRS 350.060(15) allows surface areas overlying underground mines to be categorically exempted from all bonding requirements. While it is true that not all areas overlying underground mining must be bonded against subsidence damage, the categorical exemption is inconsistent with Section 509 of SMCRA and 30 CFR 801.1 *et seq.*, inasmuch as protection of surface owner property rights against potential damage caused by unplanned subsidence must be provided for and prevention of damage to surface facilities through measures to control subsidence must be subject to performance bond coverage. In addition, in some instances the areas overlying an underground mine will be intentionally disturbed for purposes of placing mine-related facilities. The Secretary requires further information, perhaps in the form of an opinion from the chief legal officer of DNREP, to demonstrate adequately that KRS 350.060(15) would permit bonding of surface areas overlying underground mines for the purposes set forth in 30 CFR 801.1 *et seq.* in the rules as amended August 6, 1980, or to the extent required in the March 13, 1979, version of the Federal bonding rules. If an opinion of the chief legal officer of DNREP cannot adequately demonstrate that KRS 350.060(15) would permit bonding in such situations, statutory amendment probably will be required.

4.6 KRS 350.010 the definition of "overburden" does not contain the language "excluding topsoil." This conflicts with both 30 CFR 701.5 and Kentucky regulation 405 KAR 7:020E Section 1(68) which do contain the language. The Secretary requires further information, perhaps in the form of a policy statement from DNREP, to assure that there will be no adverse effect either upon the topsoil handling requirements of 405 KAR 16:050E and 18:050E or any other requirements.

Finding 5

The Secretary finds that the State has, in part, adequate processes for the designation of lands unsuitable for surface coal mining. Inconsistencies between the Kentucky regulations and the Federal regulations developed pursuant to Section 522 of SMCRA are discussed under Finding 21, below.

Finding 6

The Secretary finds that the State has, in part, adequate process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with any of the Federal or State permit processes applicable to the proposed operations. Inconsistencies between the Kentucky regulations and the Federal regulations on permitting are discussed under Finding 14, below.

Finding 7

The Secretary finds that State has rules and regulations consistent, in part, with 30 CFR Chapter VII. The regulations, which were enacted under emergency powers of the Governor, contain inconsistencies when compared to 30 CFR Chapter VII, as explained under Findings 12 through 30, below.

Section 503(b) of SMCRA Findings

As required by Section 503(b)(1)–(3) of SMCRA, 30 U.S.C. 1253(b)(1)(3), and 30 CFR 732.11–732.13, the Secretary has, through OSM, fulfilled the requirements set forth in Findings 8 through 10 below:

Finding 8

Solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture and the heads of other Federal agencies concerned with or having special expertise pertinent to the proposed Kentucky program.

Finding 9

Obtained written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of the Kentucky program being approved at this time which relate to air or water quality standards promulgated under the authority of the Clean Water Act, as amended (33 USC 1151–1175), and the Clean Air Act, as amended (42 USC 7401 *et seq.*).

Finding 10

Held public review meetings in Madisonville, Kentucky, on April 16, 1980, and Pikeville, Kentucky, on April 17, 1980, to discuss the completeness of the Kentucky submission and held public hearings on the substance of the submission at Madisonville, Kentucky, on July 22, 1980, and at Hazard, Kentucky, on July 23, 1980.

Finding 11

In accordance with Section 503(b)(4) of SMCRA, the Secretary finds that Kentucky has, in part, the legal authority but does not have sufficient qualified personnel necessary for the enforcement of environmental protection standards in accordance with SMCRA. See Finding 30, below.

30 CFR 732.15 Findings

In accordance with 30 CFR 732.15, the Secretary makes Findings 12 through 30 below on the basis of information in the Kentucky program submission, public comments and testimony, and written presentation at public hearings and other relevant information.

Finding 12

In accordance with 30 CFR 732.15(a) the Secretary finds that the program submission provides, in part, for the State to carry out the provisions and meet the purposes of SMCRA. However, the Secretary finds a number of deficiencies in the laws, regulations and descriptive elements of the State submission which should be remedied before the program can be approved. Problems in State legislative authority were discussed in Findings 1, 2 and 4. Problems with the State regulations and narrative descriptions are discussed in Findings 12 through 30 below.

Kentucky has not submitted any alternative approaches pursuant to the requirements of 30 CFR 731.13. Therefore, no findings are made regarding alternative provisions.

The Secretary finds that the State has not yet updated its legal opinion required by 731.14(c) with the revisions to Kentucky regulations submitted after the initial submission. Accordingly, the Secretary is unable to rely on that opinion to clarify any of the program amendments.

In addition the Secretary has identified the following deficiencies relating to areas affecting regulations in more than one of the findings discussed in Findings 13 through 30 below.

12.1 405 KAR 7:030E Section 2 is inconsistent with 30 CFR 700.11(b) and SMCRA Section 528 which defines operations not subject to the regulations. The words "disturbed by" should be replaced by "affected by" to assure that areas above underground mines are included in determining the total area of the mine for purposes of the two-acre exemption. Otherwise, a significant number of relatively large underground mines would be excluded from

regulation under the Kentucky program while the Federal law requires that they be regulated.

12.2 The following definitions in 405 KAR 7:020E Section 1 are significantly different than those in 30 CFR Chapter VII.

(a) No. 9, "approximate original contour" (AOC), omits "coal refuse piles." The State asserts that the Kentucky definition of AOC is not less stringent than the Federal definition because coal refuse piles are not explicitly mentioned, that the Act's definition of AOC does not contain a specific reference to removal of coal refuse piles, and that "OSM obviously interprets the language of the Act to require removal of coal refuse piles as necessary to achieve AOC, or otherwise the specific reference to coal refuse piles in the federal regulations would be unauthorized." The State concludes that its regulations should properly be construed as requiring removal of coal refuse piles (as opposed to properly constructed coal refuse disposal areas, which cannot be eliminated) as necessary to achieve AOC. (See Administrative Record No. KY–238). Based on Kentucky's concluding statement, the Secretary finds the Kentucky definition consistent with the Federal definition.

(b) No. 55, "head of hollow fill," omits criteria for less than 250,000 cubic yards associated with contour mining. However, the Secretary agrees with the explanation given by Kentucky that the State regulations address the criteria as a performance and design requirement in 405 KAR 16:130E Section 3(1) and 18:130E Section 3(1). The Secretary finds that the intent of the Federal definition is met by the cited State regulations.

(c) No. 56, "highwall," omits "or for entry to underground mining activities." The State asserts that Section 516(b)(2) of SMCRA "requires sealing of entryways and other openings, but does not require complete elimination of all vertical rock cuts as is required by 515(b)(3) for surface mining activities" and that the "distinct difference between surface mining activities and underground mining activities, which OSM was directed by 516(a) and 516(b)(10) to consider, is that in underground mining activities the face-up areas are long-term facilities rather than short-term as in surface mining, and that material from the face-up excavations is typically utilized for construction of working areas which become stable and vegetated and suitable for higher and better postmining land uses." Further, the State asserts that "no other material for backfill exists, and redisturbance of the stable and revegetated work areas would be required in order to return to AOC." The State also pointed out that fills which had become stabilized and revegetated need not be disturbed as a result of the remand of May 16, 1980. (See Administrative Record No. KY–238.)

The Secretary recognizes that there are distinct differences between surface mining activities and underground mining activities but believes the definition of "highwall" must include underground mine entrances for clarity in its use throughout the laws and regulations. For example, the requirement at SMCRA Section 515(d)(3) that land above a highwall not be disturbed includes underground mines. Differences in the highwall for surface mining and underground mining must be resolved in performance standards rather than eliminating underground mines from the definition of "highwall." Further, the Secretary believes that, while the district court has ordered a variance from return to AOC for long-term stabilized areas at underground mines, such a variance should not include unconditionally allowing a highwall to remain after bond release at mines opened after SMCRA was enacted. The Secretary wishes to advise the State that he is considering highwall variances in certain conditions submitted as a "State window" alternative by West Virginia. Kentucky may have similar circumstances and may wish to submit a "State window" alternative under the procedures in 30 CFR 731.13.

(d) No. 58, "historically used for cropland," omits criteria specified in 30 CFR 701.5. Specifically, the time period for measuring historic use must begin before acquisition, with acquisition being defined to include purchase, lease, or option of the land for coal mining. The Kentucky regulation allows the time period to begin only before the permit application and does not define the term "acquisition."

The State believes that its definition is "functionally the same" as the Federal requirement in that the language of paragraph (2) of the Federal definition is unnecessary since it is covered under the language of paragraph (3) which is contained in Kentucky's definition. (See Administrative Record No. KY–238.)

The Secretary does not agree. Under the Kentucky language, an operator could acquire property, cease use of the area for cropland for 5 years and then submit a permit application, which would be processed without consideration of the land's historical use before acquisition for coal mining.

(e) No. 64, "in situ processes," omits "slurry mining." Kentucky does not believe that inclusion of "slurry mining" in the definition is appropriate since the term is understood to apply to the recovery of coal from slurry ponds, which is not an in situ process. (See Administrative Record No. KY–238.)

The Secretary finds that the State has provided no other definition for slurry mining in its regulations nor has it included any special performance standards for slurry mining. Since slurry mining is included in the definition of "in situ processes" in 30 CFR 701.5, it is also covered by the performance standards for in situ mining in 30 CFR Part 828. The State must include at a minimum a definition of slurry mining and special performance standards similar to 30 CFR Part 828 for slurry mining or other regulatory provisions as stringent, if it does not include slurry mining as an in situ process.

(f) No. 89, "person," omits "any agency, unit, instrumentality of Federal, State, or local government including any publicly owned utility or publicly owned corporation of Federal, State or local government." The State indicated that its definition of "person" is not less inclusive than the statutory definition of "person" at Section 701(19) of SMCRA. (See Administrative Record No. KY–238.)

"Person" as defined in 30 CFR 700.5 and used in the Federal regulations is intended to include government entities. A change to State regulations may not be necessary if an opinion from the chief legal officer of DNREP can adequately demonstrate that the State regulation is as inclusive as the Federal regulation.

(g) No. 90, "person having an interest which may be adversely affected or person with valid legal interest," does not include actions by DNREP as potential causes of adverse impact on a person's interest. Kentucky believes this language in 30 CFR 700.5 is superfluous and maintains that any person who is injured has access to the full range of legal remedies. (See Administrative Record No. KY–238.)

Without the specific inclusion of "or any related action of DNREP" in this definition, the Secretary believes the State regulations do not give standing to the same degree afforded by Federal regulations and intended by SMCRA. The State regulations emphasize only actions by the operator and do not make it clear that a person has remedies in relation to State action.

(h) No. 92, "precipitation event," omits consideration of snowmelt. Kentucky indicated that it did not include the language from the Federal definition in 30 CFR 701.5 because of the relatively insignificant amount of snowmelt Kentucky receives in relation to the

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amount of runoff from rainfall. (See Administrative Record No. 238.)

The Secretary believes snowmelt should be included in the determination of precipitation event so that snowmelt will be considered when an operator designs a pond to meet criteria for detention that are based on the size of precipitation events (i.e., the requirement to prevent water from a 10-year 24-hour precipitation event from outflowing at the emergency spillway as required by 405 KAR 16:090E Section 5). To not consider snowmelt could result in undersized ponds and possible noncompliance with performance standards.

(i) No. 96, "probable hydrologic consequences," does not include aquatic habitat on the permit and other affected areas as a consideration in the determination of hydrologic consequences as does 30 CFR 795.5.

(j) No. 106, "recurrence interval." is not limited to precipitation event recurrence intervals as is the Federal definition of 30 CFR 701.5. However, the Secretary believes that the State definition is sufficiently broad as to include precipitation event recurrence intervals when used in context with the design and performance standards based on the recurrence interval concept. Therefore, the Secretary finds the definition consistent with the Federal regulations.

(k) No. 129, "surface coal mining operations," is adequate although it does not include the extraction of coal from coal refuse piles. This finding is based on the State's argument, which the Secretary finds persuasive, that extraction of coal from refuse piles is clearly encompassed within the phrase "extraction for the purpose of obtaining coal." The State also points out that extraction of coal from coal refuse piles has been added to the definition (No. 128) of "surface mining activities" to clarify that such extraction belongs within that category of surface coal mining operations. (See Administrative Record No. KY-238.)

Finding 13

In accordance with 30 CFR 732.15(b)(1), the Secretary finds that the Kentucky program submission demonstrates, in part, that the Kentucky DNREP can implement, administer, and enforce all applicable requirements of Subchapter K of 30 CFR Chapter VII under existing authorities in Kentucky laws, regulations and descriptive elements of the program submission. Kentucky incorporated provisions of 30 CFR Chapter VII, Subchapter K in 405 KAR Chapters 18 and 18. The description of the system to administer and enforce performance standards is found in the narrative entitled "Section Section 731.14(g)(6)" and is found acceptable. However, the Secretary finds a number of deficiencies in the laws and regulations, which should be remedied before the program can be approved. Deficiencies with the State legislative authority are discussed under Findings 1, 2 and 4 above. Significant differences between Kentucky regulations and Subchapter K of 30 CFR Chapter VII and SMCRA are as follows:

13.1 405 KAR 16:040E Section 2 is inconsistent with 30 CFR 816.14 which requires casing and sealing of drilled holes. Use of the word "than" in the first line of Section 2 appears to eliminate certain types of holes which should be included (drill, boreholes, wells and other exposed underground openings).

13.2 405 KAR 16:050E Section 1(3) is inconsistent with 30 CFR 816.21 and 816.22(e) because the State section allows the substitution of "available materials" for topsoil when suitable topsoil is unavailable without requiring that this "available material" be tested for its chemical and physical properties. Without the tests there is a potential that the available material will not be suitable for adequate plant growth.

13.3 405 KAR 16:070E Section 1(1)(b) and 16:090E Section 5(18) are inconsistent with 30 CFR 816.42(a)(2) and 816.46(u) because the State regulations fail to require that treatment facilities will remain in place until applicable State and Federal water quality requirements for the receiving stream are met. This finding is also applicable to 405 KAR 18:070E Section 1(1)(b) and 18:090E Section 5(18) for underground mining and the Federal analogs 30 CFR 817.42(a) and 817.46(u).

The State maintains that the State regulations were written to comply with the Distict Court ruling which suspended portions of 30 CFR 816.42. The State believes tying sedimentation pond removal to meeting standards for the receiving stream goes beyond the requirements of the Environmental Protection Agency under the Clean Water Act and therefore would not be in compliance with the court ruling. The State has agreed that SMCRA requires that the best available technology be used to control sediment and believes that the criteria in the State regulations will result in a significant reduction in sediment from surface runoff before the ponds are removed. (See Administrative Record No. KY-238.)

The Secretary believes the State has misinterpreted the court decision. Only those portions of the Federal regulation which apply the numerical effluent standards to revegetated areas are remanded. Protection of the receiving stream is mandated by SMCRA Section 515(b)(10)(B)(i) and 30 CFR 816.42(a)(2) and 816.46(u) which have not been remanded.

13.4 Although 30 CFR 816.42(b) has been suspended in relation to the application of effluent limitations to periods of heavy rainfall, the State regulation for this exemption, 405 KAR 16:070E Section 1(1)(h), lacks technical support. The State regulation allows the rainfall exemption to continue for five days after a precipitation event greater than the 10 year 24-hour event which appears very lenient for areas where the time of concentration may be less than one day. The Secretary requests the State to provide technical data to support a determination that a five-day exemption is appropriate for Kentucky. This finding is also applicable to 405 KAR 18:070E Section 1(1)(h) for underground mining and the Federal analog 817.42(b).

13.5 405 KAR 16:060E Section 2(2)(c) is less stringent than 30 CFR 816.45 for sediment control measures. Kentucky's rule requires retaining sediment and runoff "where practicable." The Federal rule requires that sediment be retained "in all cases." SMCRA requires the best technology currently available to control sedimentation and provides that mining may be prohibited where it is not technologically and economically feasible to comply with SMCRA. Therefore, a "where practicable" test is considered to be not in accordance with SMCRA. This finding is applicable also to 405 KAR 18:060E Section 2(2)(c) for underground mining and the Federal analog 30 CFR 817.45.

13.6 405 KAR 16:110E Section 1(2) is inconsistent with 30 CFR 816.52(a)(2) which provides protection for aquifers, since the Kentucky rule does not require measurements from mineralogical and chemical analyses of aquifers, overburden and spoil. This finding is also applicable to 405 KAR 18:110E Section 1(2) and the Federal analog 30 CFR 817.52(a)(2).

13.7 05 KAR 16:090E Section 5(16) is less stringent than 30 CFR 816.46(t) which requires examination of sediment pond dams at least four times per year for structural weakness, erosion and other hazardous conditions. The Kentucky regulations would require inspections "as required by the department." This finding is applicable also to 405 KAR 18:090E Section 5(16) for underground mining and the Federal analog 30 CFR 817.46(t).

Kentucky stated that it intends to require inspection four or more times per year. However, for some ponds, due to small size and low hazard location, four inspections per year may not be necessary. (See Administrative Record No. KY-238.)

The Secretary believes the Federal regulations clearly require four inspections per year. Should the State believe that there are certain conditions which could alter the requirements for inspections for dams meeting specific criteria in Kentucky, the State may wish to submit an alternative provision under the procedures provided in 30 CFR 731.13.

13.8 405 KAR 16:060E Section 11 is less stringent than 30 CFR 816.57(a) which prohibits mining within 100 feet of a perennial stream or a stream with a biological community as defined in 30 CFR 816.57(c). Kentucky's counterpart to 30 CFR 816.57(a)(1) allows relocation of streams other than as authorized by 405 KAR 16:080E which applies to diversions. Both 405 KAR 16:060E Section 11 and 405 KAR 16:080E lack the Federal standards for stream relocation specified in 30 CFR 816.57(a). This finding is applicable also to 405 KAR 16:060E Section 9 for underground mining and the Federal analog 30 CFR 817.57(a).

13.9 405 KAR 16:090E Section 5(4) provides an exemption from the requirement to remove sediment from sedimentation ponds that have been filled to the designed sediment storage volume. Although 30 CFR 816.46(h) which requires sediment removal when 60 percent design capacity has been reached has been suspended, the Secretary believes that the State must include a provision to assure that sediment is removed when a pond has reached its designed sediment storage volume. Otherwise, the pond may no longer serve a useful function, and the State exemption would be inconsistent with the requirement in 30 CFR 816.46(a) that sedimentation ponds be used. This finding is also applicable to 18:090E Section 5(4).

13.10 405 KAR 16:120E Section 2 is less stringent than 30 CFR 816.62(a) because the State does not require submission of the pre-blast survey to the DNREP in all cases when a pre-blast survey is conducted. The Federal provision requires *all* surveys to be promptly submitted to the regulatory authority (RA). The Secretary believes that the regulation must require prompt submission of all pre-blast surveys so that the RA can assure that the interests of the person who requested the survey are considered prior to blasting. This finding is also applicable to 405 KAR 18:120E Section 2 for underground mining and the Federal analog 30 CFR 817.62(a).

13.11 405 KAR 16:120E Section 2(3) and 18:120E Section 2(3) require the person who requested a pre-blast survey to provide written notification to the permittee and the RA if he or she disagrees with the survey and to do so within 30 days. 30 CFR 816.62(c) and 817.62(c) state that the person who requests the survey "may" make the notifications described above, but neither require that it be done nor set a time limit on when it may be done.

The State asserts that the 30 day limit will not be a burden on the public, but would serve the public interest since the citizen, by notifying the permittee and the department, would obtain a timely resolution of his or her problem. The State argues that the word "shall" relates to the requirement to make the notification within 30 days and, if the citizen does not want to resolve the disagreement, he or she need not make the notifications. (See Administrative Record No. KY-238.)

Since the opportunity for the citizen to comment is intended to be before the blasting actually occurs, the Secretary agrees with the concept of establishing a time for objecting to the report. However, the Secretary does not believe such a provision should serve to jeopardize a citizen's right to question the validity of the report based on later information or maintain that the report was incorrect in later actions. Without further clarification from the State, the Secretary is unable to find that the regulation will not affect a citizen's rights in later administrative or judicial reviews.

13.12 405 KAR 16:120E Section 3(9) is less stringent than 30 CFR 816.65(i) and (k) because it establishes the peak particle velocity for blasting at 2 inches per second whereas the Federal requirement is 1 inch per second. While the 1 inch per second standard was remanded by the court (Civil Case 78-2190, 2191, and 2192), that remand applies only to the interim regulatory program. Therefore, the Secretary cannot find the Kentucky permanent program provision acceptable. This finding applies also to 405 KAR 18:120E Section 4(1) for underground mining and the Federal analogs 30 CFR 816.17(i) and (k).

13.13 405 KAR 16:120E Section 4(6)(a) and (b) gives the DNREP the discretion to allow blasting within zones where mining is prohibited under 405 KAR 24:040E Section 2. The State section provides that blasting distances less than 300 feet from a dwelling, school, church, hospital or nursing facility may be approved on the basis of a pre-blast survey. 405 KAR 24:040E Section 2(2), the Federal analog 30 CFR 761.11 and SMCRA Section 522(e)(5) prohibit mining within 300 feet of these facilities except when there is a valid existing right or, in the case of a dwelling, where the dwelling owner signs a waiver for mining at a lesser distance. The Secretary assumes that 405 KAR 24:040E Section 2 would be the controlling test in determining whether mining would be allowed within these distances and that 405 KAR 16:120E would only be operative if a determination of valid existing rights has been made or a waiver is given by a dwelling owner.

13.14 405 KAR 16:120E Section 4(7) is less stringent than 30 CFR 816.65(g) concerning flyrock and other blasting material, because the State does not prohibit throwing blasting rock beyond the property owned or leased by the permittee.

Kentucky stated its intent to correct this omission, but believes that the prohibition may be better stated in terms of "permit area" rather than "land owned or leased." (See Administrative Record No. KY-238.)

Since the State language has not yet been changed, the Secretary cannot make a final judgment on the State's proposal to substitute "permit area" for "land owned or leased."

13.15 405 KAR 16:120E Section 4(9) is less stringent than 30 CFR 816.65(i) relating to limitations on blasting operations because the State specifies use of a "vector *sum* of velocities measured in three mutually perpendicular directions" in lieu of the largest of the three peak particle velocities as specified in the Federal regulation. The State regulation would allow averaging of the velocities and thus find the maximum allowable velocity had not been exceeded in cases where the Federal rules would find it had. This finding is also applicable to 405 KAR 18:120E Section 3(9) and the Federal analog 30 CFR 817.65(i).

13.16 405 KAR 16:120E Section 4(1) and Appendix B are less stringent than 30 CFR 816.65(k) and (l) because the denominator in the Kentucky formula in Appendix B has been decreased from 60 to 50, thus increasing the maximum weight of explosives that can be detonated in the 8 millisecond period. This finding is applicable also to 405 KAR 18:120E Section 3(11) and Appendix B for underground mining and the Federal analog 30 CFR 817.65(k) and(l)(1)(2).

13.17 405 KAR 16:130E Sections 1, 2, 405 KAR 16:140E Section 3, and 16:190E Section 4 require spoil and/or other materials to be "transported "and" placed in a controlled manner" rather than "hauled or conveyed to and

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placed" as required by 30 CFR 816.71, 816.72, 816.103 and 816.104. The Secretary assumes that the State language is equivalent to the Federal language and that end dumping of material into fills would be prohibited as was contemplated when the terms "transported" was used in SMCRA. This finding is also applicable to 405 KAR 18:130E Sections 1 and 2, 18:140E Section 1 and 18:190E Section 3 and the Federal analogs 30 CFR 817.71, 817.72, 817.81 and 817.103.

13.18 405 KAR 16:130E Section 1(6) is less stringent than 30 CFR 816.71(f) because the State allows a safety factor for spoil disposal areas as low as 1.3 whereas the minimum factor in the Federal regulation is 1.5. This finding is also applicable to 405 KAR 18:130E Section 1(6) and the Federal analog 30 CFR 817.71.

13.19 405 KAR 16:130E Section 1(11) is inconsistent with 30 CFR 816.71(k). The Federal regulation prohibits disposal of coal processing wastes in head-of-hollow or valley fills. The State regulation might be interpreted to prohibit coal processing waste disposal in such fills only, if the coal processing wastes are mixed with excess spoil or underground development waste. This should be clarified. In addition, paragraph (c) requires that the wastes must be "demonstrated to have no adverse effect on stability" whereas the Federal language is "demonstrated to be consistent with the design stability." Since either provision ultimately must be verified on the ground or proved during performance and the intent of the words "design stability" is to prevent adverse effect on stability, the Secretary finds the State language "demonstrated to have no adverse effect on stability" to be consistent with the Federal requirement. This finding is applicable also to 405 KAR 18:130E Section 1(11) for underground mining and the Federal analog 30 CFR 817.71(k)(3).

13.20 405 KAR 16:130E Section 4(6) is inconsistent with 30 CFR 816.74(e), the performance standards for durable rock fills. The Federal regulation requires drainage channels "in natural ground" at the periphery of the fill. The requirement for the drainage to be in "natural ground," even though a durable rock fill is supposedly free draining, is because there is up to 20 percent of non-durable rock allowed in this type of fill and water passing through the fill may disintegrate this material and result in a clogged fill. The "natural ground" channel will minimize the amount of water which passes through the fill and is available to erode the non-durable rock material. The State regulation does not require the drainage channels to be in natural ground and is accordingly less stringent. This finding is applicable also to 405 KAR 18:130E Section 4(6) for underground mining and the Federal analog 30 CFR 816.74(e).

13.21 405 KAR 16:130E Section 1(7) is less stringent than 30 CFR 817.71(g) because the Federal regulation requires that no depressions or impoundments be allowed on a fill while the Kentucy regulation requires that no "significant" depressions or impoundments be left. This finding is applicable also to 405 KAR 18:130E Section 1(7) for underground mining and the Federal analog 30 CFR 817.71(g). Kentucky maintaind that minute depressions formed by settling and successful revegetation should not be redisturbed. (See Administrative Record No. Ky-238.) The Secretary is unable to accept Kentucky's argument without clarification of the terms "significant" and "minute."

13.22 405 KAR 16:130E Section 2(2)(c) is less stringent than 30 CFR 816.72(b)(3) because the Kentucky regulation allows the main underdrain on a drainage system for valley fills to be smaller than the minimum size allowed by the Federal regulations. This could adversely affect stability during periods of heavy rainfall or snowmelt. This finding is also applicable to 405 KAR 18:130E Section 2(2)(c) for underground mining and the Federal analog 30 CFR 817.72(b)(3).

13.23 405 KAR 16:130E Section 2(3) is less stringent than 30 CFR 816.72(c) because paragraph 2(3)(b) provides discretion for the RA to allow lifts of excess spoil material in valley fills of greater thickness than the 4 feet allowed by the Federal regulation. The Federal regulation does not provide for discretionary judgements on the lift thickness. This finding is also applicable to 405 KAR 18:130E Section 2(3) for underground mining and the Federal analog 30 CFR 817.72(c).

13.24 405 KAR 16:130E Section 4(4)(c) is less stringent than 30 CFR 816.74(c)(3) which requires that the internal drainage system for durable rock fills shall be protected by a properly designed filter system "in all cases." The Kentucky regulation requires a filter system only "when necessary to ensure proper long-term functioning." This finding is applicable also to 405 KAR 18:130E Section 4(4)(c) for underground mining and the Federal analog 30 CFR 817.74(c)(3). Kentucky stated: "In some durable rock fills, an internal drainage system need not be separately constructed, since the materials in the fill are of such nature that the fill itself is free draining. Dumping rock from heights can result in a free-draining fill with natural filtering action due to the natural particle size segration that occurs during the placement of the fill." (See Administration Record No. KY–238.)

The Secretary agrees that some rock fills remain free draining without a designed drainage and filter system. However, the Secretary cannot find the Kentucky provision consistent with the existing Federal rule which does require an internal drainage system with a filter. The Secretary agrees that the State's argument has some merit and will reconsider this Federal rule.

13.25 405 KAR 16:140E Section 1(l) is inconsistent with 30 CFR 816.81(a). Different wordind renders the State regulation less stringent. The Kentucky regulation would permit general disposal of processing waste outside the permit area. The Federal regulation requires disposal in the permit area, except with special authorization from the regulatory authority. Kentucky has agreed to correct this error but the change was not made in the submitted document. (See Administrative Record No. KY–238.)

13.26 405 KAR 16:190E Section 2(1) is less stringent than 30 CFR 816.102(a) regarding backfilling and grading. The State section does not require that the final grade not exceed the approximate premining slope as does the Federal provision. The Federal regulation provides flexibility in determining the approximate premining slope, but it is important that the premining slope be used as a criterion in determining allowable postmining slope. Also, the State regulation is limited to elimination of only newly created highwalls and those portions of existing highwalls that are "substantially disturbed," whereas the Federal requirement is to eliminate the highwall in all cases.

Kentucky stated its intent to change "substantially disturbed" to "adversely, physically impacted" in order to use the language of the Interior Board of Appeals, IBSMA 79–5, Cedar Coal Company. (See Administrative Record No. KY–238.)

The Secretary believes the language change proposed by Kentucky would be acceptable, if promulgated. However, that change will not resolve the issue of final graded slopes exceeding approximate premining or lesser grades.

13.27 405 16:200E Section 1 includes an exemption from seeding for "other small incidental areas related to the fulfillment of the postmining land use plan subject to approval by the department." This discretion is not provided in 30 CFR 816.111(b)(1). Before the Secretary can determine if this section is consistent with Federal requirements, he needs further information, perhaps in the form of a policy statement, explaining the use and intent of the clause.

13.28 405 KAR 16:200E Section 1(2)(d) is inconsistent with 30 CFR 816.111(b)(4) concerning revegetation requirements. The State regulation allows that the establishment of crops would "automatically" satisfy all three of the revegetation requirements established in the Federal regulation. The Federal regulation, however, provides that the establishment of crops can "automatically" satisfy only the one requirement for permanent ground cover. Therefore, the State regulation does not provide acceptable provisions for the other two requirements, i.e., for a vegetative cover to protect against erosion or for vegetation of the same seasonal variety. This finding is also applicable to 405 KAR 18:200E Section 1(2) for underground mining and the Federal analog 30 CFR 817.111(b).

13.29 405 16:200E Section 2 is inconsistent with 30 CFR 816.112 which states four conditions that must be met before an introduced species may be substituted for a native species. State Section 2(3)(a) allows use of introduced species without a demonstration that the species are desirable and necessary. In addition, the State regulation provides a choice between paragraphs (3)(a) and (3)(b), thereby requiring that only three of the four conditions in 30 CFR 816.112 must be met.

This finding is applicable also to 405 KAR 18:200E Section 2 for underground mining and the Federal analog 30 CFR 817.112. In addition, the introductory sentence in 405 KAR 18:200E Section 2 is inconsistent with the Federal requirement since 30 CFR 817.112 requires the RA to approve the use of introduced species and the State regulation does not require approval by the DNREP prior to use of an introduced species.

13.30 405 KAR 16:200E Section 6(1) and (2)(a) is less stringent than 30 CFR 816.116(a) and (b)(1) because the Federal regulation allows the technical standard for comparison of ground cover to be developed only by USDA or USDI while the State counterpart allows State discretion in stating "or other procedures approved by the department." This finding is also applicable to 405 KAR 18:200E Section 6 and the Federal analog 817.116(a) and (6)(1).

Kentucky feels that it is unnecessary to restrict technical guidance materials to USDA and USDI publications since other reliable sources such as publications of the College of Agriculture of the University of Kentucky could be used. (See Administrative Record No. KY–238.)

The Secretary agrees that other publications may be as good as the USDA and USDI publications if the other materials are submitted for approval as part of the regulatory program. This is specifically provided for in 30 CFR 816.111(b)(1).

13.31 405 KAR 16:200E Section 6(2)(b) is inconsistent with 30 CFR 816.116(b)(1) in specifying when the period of extended responsibility under bonding begins. The Federal regulation requires that the period begin after the last year of augmented seeding, fertilizing, irrigation or other work. The State adds the word "substantially" before "augmented seeding, fertilization. . ." without defining the meaning of "substantially."

The State considers the word "substantially" necessary to avoid restarting the period of responsibility when, for example, reseeding a small area is necessary. (See Administrative Record No. KY–238.)

The Secretary finds that the word "substantially" does not sufficiently describe husbandry practices which may be allowed without restarting the bond period. 30 CFR 805.13 which was promulgated on August 6, 1980, specifies how to determine allowable husbandry practices.

13.32 405 KAR 16:200E Section 6(2)(c) is inconsistent with 30 CFR 816.116(b)(3). Section 6(2)(c)(1) does not require that the ground cover "shall not be less than can be supported by the best available topsoil or other suitable material in the reaffected area" as specified in 30 CFR 816.116(b)(3)(i). Further, Section 6(2)(c) states that "ground cover . . . shall not be less than the *department determines to be* necessary to control erosion." The Federal requirement does not contain the emphasized words. This discretion appears to weaken the subsection insofar as the lack of erosion control would be observed on the ground under the Federal requirement but could be subject to an incorrect prejudgment under the State regulation. This finding is applicable also to 405 KAR 18:200E Section 6(2)(c)(2) and 6(2)(a) for underground mining and the Federal analog 30 CFR 817.116(b)(3) and 817.116(a) and (b)(1).

Kentucky considers the omitted phrase too subjective to be enforceable. (See Administrative Record No. KY–238.) The Secretary does not consider the omitted language too subjective for enforcement because both ground cover and soil materials can be measured.

13.33 405 KAR 16:200E Section 6(4) is stringent than the 30 CFR 816.116(d). The Federal regulation requires that standards to measure success of revegetation be met for five full years while the State regulation requires the standards to be met only three out of five years. This finding is also applicable to 405 KAR 18:200E Section 6(4) and the Federal analog 30 CFR 817.116(d).

13.34 405 KAR 16:200E Section 7(3)(a) is less stringent than 30 CFR 816.117(c)(2) in that it allows stocking and groundcover to approximate that on the reference area, or "*as approved in the mining and reclamation plan as appropriate for the approved postmining land use.*" The emphasized phrase provides discretion that is not in the Federal rule. Paragraph (a) also does not include a provision similar to 30 CFR 816.117(c)(2) stating that local and regional recommendations regarding species composition, spacing, and planting arrangement shall be used. The Secretary may be able to find the State language acceptable if the technical standards to be used by DNREP are included in a program resubmission and found adequate. This finding is also applicable to 405 KAR 18:200E Section 7(3) and the Federal analog 30 CFR 817.117(c)(2).

13.35 405 KAR 16:210E Section 2 is less stringent than 30 CFR 816.133(b). The State section does not require that the postmining land use be compatible with surrounding areas and makes allowances for damages resulting from previous improper management that are not provided by the Federal regulation. This finding is also applicable to 405 KAR 18:220 Section 2 and Federal analog 30 CFR 817.133(b).

13.36 405 KAR 16:010E Section 7 is less stringent than 30 CFR 816.131 with regard to the conditions for the temporary cessation of operations. The State regulation does not requires that the permittee's notice of cessation of operations beyond 30 days include a statement of the exact number of acres which will have been affected in the permit area, the extent and kind of reclamation of those areas which will have been accomplished prior to cession, and identification of the backfilling, regarding, revegetation, environmental monitoring, and water treatment activities that will continue during the temporary cessation.

This finding is applicable also to 405 KAR 18:010E Section 5(2) and (3) for underground mining and the Federal analog 30 CFR 817.131(a). In addition, Section 5(2) of 405 KAR 18:010E specifies only that the permittee will not be relieved of the hydrology related

requirement while the Federal regulation specifies that temporary cessation shall not relieve the permittee of any permit provision. Section 5(2) requires only that the operator prevent "unreasonable adverse effects" and Section 5(3) requires environmental monitoring equipment to be made secure to the extent practicable. The section lacks the requirement that the permittee support and maintain all surface access openings and secure surface facilities in areas in which there are no current operations, but where operations are to be resumed under an approved permit.

Kentucky asserts that a notice does not appear to serve a useful purpose because any decision by the department to require certain actions by the permittee to ensure compliance with performance standards prior to and during the cessation will be based on an inspection by the department, not on the notice supplied by the permittee. (See Administrative Record No. KY–238.)

The Secretary does not agree since it is important that DNREP be alerted to temporary cessations as soon as possible to ensure that the appropriate control measures have been taken prior to an inspection. Further, it is important that the permittee assume responsibility for demonstrating that the requirements of the permit will be met. If responsibility were not placed on the permittee, the DNREP would have to initiate an inspection immediately upon receipt of all notices which may not always be possible.

13.37 405 KAR 16:250E Section 2(1) is less stringent than 30 CFR 816.181(a) because the Kentucky regulation omits the requirement that support facilities be located to prevent damage to public or private property.

13.38 405 KAR 16:030E Section 3(1) for underground mining is less stringent than 30 CFR 817.11(c)(1) concerning locations of mine identification signs. The State requires identification signs only at principal points of access while the Federal counterpart requires signs at all points of access.

In response, Kentucky states: "In many cases there are numerous points of access along a short distance of public road, all of which are clearly associated with the same mining operation. To require a sign at each such point serves no useful purpose since the information is readily available at a nearby 'principal' point of access." (See Administrative Record No. KY–238.)

The Secretary believes "principal points of access" would be too subjective to be enforceable and that access points which are not clearly associated with the same mining operation would go unmarked. Lack of signs may constitute a safety hazard to members of the public who may not be aware that unmarked points of access lead to a mine. Further, the signing requirement is not considered burdensome or expensive so there is no significant benefit to leaving access points unmarked.

13.39 405 KAR 18:050E Section 5, which provides an exception to the stock piling of topsoil on a long-term basis, is inconsistent with 30 CFR 817.24. The State section, which has no similar Federal counterpart, could be made acceptable if the State can clarify, in a program resubmission, how suitable topsoil will be obtained for reclaiming the disturbed area if it is not stockpiled.

13.40 405 KAR 18:070E Section 1(1)(a) and 18:090E Section 1 are less stringent than 30 CFR 817.42(a) (1) and (3) and 817.46(a) concerning water quality standards and effluent limits. The Federal regulation requires that "all" drainage from the disturbed area pass through a sediment pond. The Kentucky regulation requires *only* that discharge that does not meet effluent standards be passed through a pond. 30 CFR 817.42(a)(3) specifies the only conditions under which an exception to the requirements for sediment ponds or treatment facilities may be granted and the Kentucky regulations do not include these conditions.

Kentucky believes that "Many of the underground mines that will be subject to this regulation are existing operations where the disturbed areas are stabilized and revegetated. Water quality samples may in some cases demonstrate that runoff from these areas meet effluent limitations. In these cases there is absolutely no need to construct a sedimentation pond." (See Administrative Record No. KY 238.)

The Secretary agrees that stabilized areas do not require a sedimentation pond. However, the Secretary finds that the State regulations fail to properly state the conditions under which an area may be considered as sufficiently stable with regard to water quality.

13.41 405 KAR 18:090E Section 5(3) is less stringent than 30 CFR 817.46(g). The Federal regulation requires that there be no outflow through an emergency spillway "regardless of the volume of water and sediment present from the underground mine during the runoff." The State regulation does not contain the quoted words and could be interpreted to allow runoff from a 10 year 24 hours precipitation event to pass through an emergency spillway if the pond was full from previous storms or excessive sediment. The Kentucky regulation would result in smaller ponds than intended by the Federal regulation which could lead to unacceptable degradation of water quality.

13.42 405 KAR 18:090E Section 5(5) is unclear because a line appears to be missing. Language similar to the following emphasized words from 30 CFR 817.46(i) would complete the regulation: ". . . department plus any inflow from the *underground mine. The evaluation of the crest of the emergency* spillway shall be a minimum. . . ."

13.43 405 KAR 18:110E Section 1(2) is less stringent than 30 CFR 817.52(a)92) concerning ground water protection. The State regulation requires periodic monitoring of ground water levels only, while the Federal regulation requires monitoring of ground water levels and ground water quality.

13.44 405 KAR 18:110E Section 1(3) is less stringent than 30 CFR 817.52(a)(3) because the State regulation does not require that the results of hydrologic tests demonstrate compliance with the criteria for allowable underground mine entry and access discharges as specified in 30 CFR 817.50.

13.45 405 KAR 18:060E Section Section 7 is inconsistent with 30 CFR 817.55 since the State regulation does not include a provision similar to the following requirement of 30 CFR 817.55(d): "Continue as a controlled and identifiable flow and is ultimately treated by an existing treatment facility." This provision is one of the criteria required before the department may approve diversion and discharge of water into other underground mine workings.

13.46 405 KAR 18:200E Section 6(4) sets forth standards for measuring success of revegetation for areas less than 40 acres that are not found in 30 CFR 817.116 on underground mining. However, the State section matches the standards for areas less than 40 acres found in the corresponding requirements for surface mines, 30 CFR 816.116(d). On that basis, the Secretary finds 405 KAR 18:200E Section 6(4) acceptable.

13.47 405 KAR 18:210E Section 2 is less stringent than 30 CFR 817.122 concerning public notice to persons who may be affected by subsidence. The Kentucky regulation requires that only a 3 month notice be given to property owners when underground mining will occur beneath their residences whereas the Federal regulation requires a 6 month notice. In addition, under the Kentucky provision, this period can be shortened to as little as 30 days under certain circumstances.

13.48 405 KAR 18:220E Section 4(8) is less stringent than 30 CFR 817.133(c)(8) pertaining to approval of measures to prevent or mitigate adverse effects on fish, wildlife, and related environmental values and threatened or endangered species. The State regulation does not require the period for review by State and Federal agencies to occur prior to mining.

Kentucky believes that the Federal requirement is inappropriate and that approval of an alternative land use will occur as a permit revision nears the completion of the underground operation. (See Administrative Record No. KY–238.)

The Federal regulation for permit approval (30 CFR Part 786) does not provide for delaying approval of the postmining land use until near the end of the life of the mine. 30 CFR 786.19(m) requires that a permit not be approved until the RA has found that the applicant has demonstrated compliance with 30 CFR 817.133. To meet that requirement, it would be necessary to obtain approval of the measures to mitigate effects on fish and wildlife prior to issuing the permit. The Secretary believes it is important to obtain the approval prior to mining to assure compliance with the provisions to protect fish and wildlife and related environmental values during and after mining.

13.49 405 KAR 20:030E Section 1(1) is inconsistent with 30 CFR 819.11(a) pertaining to auger mining. The Kentucky language allows the applicant to avoid the provisions of the Federal regulations requiring undisturbed areas of coal to be left in unmined sections by designating specific areas where he plans to develop future entry ways for underground mining. This exception does not exist in the Federal regulations and the intent to the Kentucky language is unclear. The State regulation also omits the requirement that distances between undisturbed areas of coal greater than 2,500 feet must be approved by the RA.

13.50 405 KAR 20:060E does not contain provisions similar to 30 CFR 826.15(c) which limits land disturbance above the highwall and 30 CFR 826.16 which contains criteria for spoil placement on pre-existing benches for steep slope mining.

Kentucky says that it omitted this paragraph because the prohibition against disturbing land above the highwall is covered under 405 KAR 20:060E Section 2(4) which the State believes is consistent with Section 515(d)(3) of SMCRA. Kentucky asserts that 30 CFR 826.12(c) and 826.15(c) are overly restrictive by requiring that a disturbance must "facilitate compliance with" Part 828 because SMCRA states "facilitate compliance with the environmental protection standards of" Section 515, not just 515(d). The State feels that the Federal regulations are more restrictive than SMCRA, especially in making 3 CFR 826.15(c)(1), (2), and (3) the only criteria for disturbing land above the highwall, and that SMCRA contemplates a wider range of criteria. (See Administrative Record No. KY–238.)

The Secretary finds Kentucky's argument unpersuasive and believes the Federal regulation properly interprets SMCRA's intent and purpose. This is discussed in the preamble to the Federal regulations (44 FR 15291–15292).

13.51 405 KAR 20:070E Section 2 is less stringent than 30 CFR 827.12(f), concerning coal processing plants and support facilities off the mine site, because the State regulation omits protection for water rights.

Finding 14

In accordance with 30 CFR 732.15(b)(2), the Secretary finds that the Kentucky program demonstrates, in part, that the Kentucky DNREP can implement, administer, and enforce a permit system consistent with Subchapter G of 30 CFR Chapter VII. The description of the permit system is found in the narratives entitled "State Section 731.14(g)(1)(9)" and "State Section 731.14(g)(i)(10)." The permit system description is acceptable. However, the Secretary finds a number of deficiencies in the laws and regulations which should be remedied before the program can be approved. Deficiencies with State legislative authority are discussed in Finding 4 above. Kentucky incorporated provisions of 30 CFR Chapter VII, Subchapter G, in 405 KAR Chapter 8. Significant differences between the Kentucky regulations and Subchapter G of 30 CFR Chapter VII and SMCRA are as follows:

14.1 The State regulation does not make provision for requirements similar to 30 CFR 770.12(c) which requires coordination of review and issuance of permits under other applicable Federal acts. Without this provision there is no assurance that the agencies with responsibilities for those acts would have an opportunity to review and comment on permit applications.

14.2 405 KAR 8:010E Sections 5(6)(b)(1) through (4) are less stringent than 30 CFR 771.23(e)(2)(i) through (iv) which specify the information required on maps and plans. The State omits identification of portions of the operation which occurred prior to the enactment of SMCRA and between the enactment of SMCRA and the implementation of the interim program. As discussed in the preamble to 30 CFR Chapter VII (44 FR 15017), this delineation is necessary so that the public and the regulatory authority can clearly distinguish among the various phases of regulation applicable in reviewing applications.

14.3 405 KAR 8:030E Section 2 does not make provisions for 30 CFR 778.13(g) and SMCRA Section 508(a)(11) which requires a statement as to the permit applicant's interest in lands contiguous to the permit area. This finding is also applicable to 405 KAR 8:040E Section 2 for underground mining and the Federal analog 30 CFR 782.13(g).

Kentucky has stated that, "Although the requirement is statutory, the information is not pertinent to the permit review process." (See Administrative Record No. KY 238.)

As noted by the State, this is a statutory obligation set out in SMCRA Section 508(a)(11). The Secretary believes that the information is necessary to assure that proper evaluation of provisions protecting off-site resources and land owners is made during the permit review process.

14.4 405 KAR 8:030E Section 4 does not include provisions consistent with 30 CFR 778.15(b) which requires a written consent of the surface owners or other conveyance expressly granting the right to mine. This finding is also applicable to underground mining, 405 KAR 8:040E Section 4 and the Federal analog 782.15(b). Specific criteria for evidence of the right to mine where the private mineral estate has been severed from the private surface estate is specifically called for in Section 510(b)(6) of SMCRA.

14.5 405 KAR 8:030E Section 13(2) is less stringent than 30 CFR 779.14(b). The Federal regulation requires the collection and analysis of "test borings or core samples" in developing the geologic description, whereas Kentucky speaks more generally of "geologic information." This would not necessarily provide sufficient information on which to evaluate the permit application. See discussion in preamble to Federal rules (44 FR 15032). Section 507(b)(15) of SMCRA requires that a statement of the results of test borings or core samplings from the permit area be contained in the permit application.

14.6 405 KAR 8:030E Section 13(2)(c) is inconsistent with 30 CFR 779.14(b)(3). The State allows a waiver of "all or part of the geologic information" whereas the Federal regulation limits a waiver only for the "statement of the results of test borings or core samples." In addition, the State section does not limit the waiver to cases where "other equivalent information" is available in satisfactory form. The State provision would not

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provide adequate information for evaluation of the effect of the proposed operation on the hydrologic balance. This finding is applicable also to 405 KAR 8:040E Section 13(2) for underground mining and the Federal analog 30 CFR 783.14(b).

Kentucky does not believe that "other equivalent information" is appropriate language since there is no other information which could be the full equivalent of test borings and core samples. Kentucky stated its intent to require test borings and core samples when necessary, consistent with Section 507(b)(15) of SMCRA. The State believes there may be no need for test borings and core samples when information obtained from areas surrounding the permit area clearly indicate that there is little likelihood that adverse conditions, such as acid-forming spoil, could exist in the proposed permit area. (See Administrative Record No. KY–238.)

The Secretary believes that test borings and core samples from adjacent areas could in some cases serve as adequate "equivalent information" for the permit area. However, the Kentucky section is too general because it allows for a broad waiver of all geologic information without specifying that any information is actually available.

14.7 405 KAR 8:030E Section 15(2) is inconsistent with 30 CFR 779.16(b) which specifies the types and extent of surface water information to be included in an application. The State regulation requires surface water information only for the "proposed permit area." This excludes information on adjacent areas as required by the Federal regulation. This finding is applicable also to 405 KAR 8:040E Section 15(2) for underground mining and the Federal analog 30 CFR 783.16(b). Kentucky has agreed to delete the words "for the proposed permit area." (See Administrative Record No. KY–238.) The Secretary believes the correction proposed by Kentucky, if promulgated, would eliminate the issue.

14.8 405 KAR 8:030E Section 23(1)(d) is inconsistent with 30 CFR 779.24(g) which requires that a map show the locations of water supply intakes for users of surface water flowing into, out of and within the hydrologic area. The State regulation omits identification of users of surface water flowing into and out of the hydrologic area. The State regulation references *only* users of water within the hydrologic area. This finding is applicable also to 405 KAR 8:040E Section 23(1)(d) for underground mining and the Federal analog 30 CFR 783.24.

14.9 405 KAR 8:030E Section 25(2)(a) is less stringent than 30 CFR 780.12(b)(1) with regard to the compliance plan for the reconstruction of existing structures. The Federal regulation requires that both design and performance standards be met, but the State requires only that the performance standards be met. This findng is applicable also to 405 KAR 8:040E Section 25(2)(a) for underground mining and the Federal analog 30 CFR 784.12(b)(1).

Kentucky stated that "It is illogical, unnecessary, and a waste of time, money and effort to reconstruct a structure to meet design standards if the structure could have minor modifications made which would bring it into compliance with the performance standards irrespective of meeting design standards." (See Administrative Record No. KY–238.)

The Federal requirement is for reconstruction to meet design criteria only if performance standards are not being met since that is an indication of the structure's ability to hold up during the long term. However, if the structure does not meet standards as it exists, short-term modifications to bring the non-conforming structures up to performance standards would not likely maintain the necessary performance level over the long-run and would not ensure that the structure will be safe.

14.10 405 KAR 8:030E Section 25(2)(c) is less stringent than 30 CFR 780.12(b)(3). The Federal regulation requires that existing structures which must be modified be monitored during and after reconstruction in all cases while the State allows discretion in monitoring by stating "as required by the Department." This finding is applicable also to 405 KAR 8:040E Section 25(2)(c) for underground mining and the Federal analog 30 CFR 784.12(b)(3).

Kentucky indicated that in some cases additional monitoring by the permittee is simply not necessary and, where it is necessary, the monitoring will be required. (See Administrative Record No. KY–238.)

The Secretary believes that existing structures and their reconstruction are more likely to involve environmental problems than structure properly designed from the beginning. Nothing in the Kentucky submission persuades the Secretary that there are cases where monitoring is unnecessary. The State may wish to submit information for consideration by the Secretary.

14.11 405 KAR 8:030E Section 24 is inconsistent with 30 CFR 780.14(b) because the State section fails to require that the mining plan map show features adjacent to the permit area where necessary. This may limit the State's ability to analyze the impacts of the proposed operation. This finding is applicable also to 405 KAR 8:040E Section 24 for underground mining and the Federal analog, 30 CFR 784.14(b).

14.12 405 KAR 8:030E Section 37(1) is inconsistent with 30 CFR 780.23(a)(2). The State section omits the Federal provision concerning management plans when grazing is the proposed postmining land use. Although actual grazing need not be done, the plans are still needed to verify that the land is capable of grazing as a postmining use. This finding is also applicable to 405 KAR 8:040E Section 37(1) for underground mining and the Federal analog, 30 CFR 784.23(a).

Kentucky has stated that the requirement for management plans is no longer relevant since the court remanded the requirement that an operator implement postmining land uses. (See Administrative Record No. KY–238.) However, Kentucky has misinterpreted the Federal requirement in this section. Management plans are required here only as a part of the postmining land use plan to demonstrate the feasibility of the operator's proposal. Further, Section 503(a)(4) of SMCRA specifies that the description of postmining land use must be detailed and the Secretary believes the management plan is necessary to ensure the intent of SMCRA.

14.13 405 KAR 8:030E Section 34(1)(a)(3) is inconsistent with 30 CFR 780.25(a)(1)(iii) concerning plans for ponds, impoundments banks, dams, and embankments. The Federal regulation requires "preliminary" information "required to assess the hydrologic impact of the structure"; the State regulation requires "all" information "necessary to demonstrate compliance with the design and performance standards." While "all" is more stringent than "preliminary," the State provision looks only at the design and performance standards for the individual structure, while the Federal regulation looks to its overall hydrologic impact. This finding is applicable also to 405 KAR 8:040E Section 34(1)(a)(3) for underground mining and the Federal analog 30 CFR 784.16(a)(1)(iii).

14.14 405 KAR 8:030E Section 34(1)(a)(4) and Section 27(2)(c) are inconsistent with 30 CFR 780.25(a)(1)(iv) and 780.35(b)(3). The Federal regulations require a "survey" of possible effects on a structure due to subsidence from past underground mining operations; the State regulations require only an estimate. The Secretary believes that a survey would be necessary to assure that structural failure does not occur in areas where subsidence is still occurring. This finding is applicable also to 405 KAR 8:040E Section 34(1)(a)(4) for

underground mining and the Federal analog 30 CFR 784.16(a)(1)(iv).

14.15 405 KAR 8:030E Section 34(2) is inconsistent with 30 CFR 780.25(b). The Federal regulation requires all plans for sedimentation ponds to comply with specified MSHA regulations; the State regulation requires such compliance only for ponds that will remain as permanent impoundments. As a result, the ponds would not be in compliance with either the Secretary's regulations or the MSHA regulations.

14.16 405 KAR 8:040E Section 13(1)(a)(3) is less stringent than 30 CFR 783.14(a)(1)(iii), the geology description for underground mining. The State regulation does not require a description of the compaction and erodability factors in relation to the physical characteristics of overburden.

14.17 405 KAR 8:040E Section 23(2)(e) is less stringent than 30 CFR 783.25(f). The Kentucky regulation omits the requirement to portray the area and vertical extent of aquifers and seasonal differences of head in different acquifers in cross-sections and contour maps when subsurface water will be encountered.

Kentucky believes that its language is broad enough to require information for seasonal differences on a case-by-case basis and that it is unnecessary to require that information in every case. (See Administrative Record No. KY–238.)

The Secretary does not agree that Kentucky's language would ensure that sufficient information would be required. As stated in the preamble to the Federal rules (44 FR 15070), the Secretary believes that all of the information required by 30 CFR 783.25(f) is necessary to determine the surface effects of underground mining. Under Federal requirements the data are required for any case where subsurface water is encountered and this is the only "case-by-case" test which should apply.

14.18 405 KAR 8:040E Section 25 is inconsistent with 30 CFR 783.25(h) to the extent that it does not require the location and extent of existing or previously surface mined areas to be identified on cross-sections, maps and plans.

14.19 405 KAR 8:040E Section 23(2)(h) is inconsistent with 30 CFR 783.25(i) in the State section does not require dimensions and locations of existing areas of spoil, noncoal waste disposal, embankments and water treatment and air pollution control facilities. Without this information, it would not be possible to evaluate compliance with the environmental performance standards.

14.20 405 KAR 8:040E Section 34 does not include a statement consistent with 30 CFR 784.16 that design plans for ponds, impoundments, dams, and embankments not submitted with the general plan include a certification statement. Kentucky has stated that it requires that all design plans be included in the permit application and therefore there is no need for this statement in their regulations. On the basis that the State will treat all plans as part of the permit application and require the certification through the normal permit process, the Secretary finds 405 KAR 8:040E Section 34 acceptable.

14.21 405 KAR 8:040E Section 24(3)(a) does not require cross-sections to help specify the information on mining activities as does 30 CFR 784.23(a). Kentucky believes that the term "drawings" include cross-sections and other appropriate types of drawings. (See Administrative Record No. KY–238.) The Secretary finds that neither the term drawings nor cross-sections are used in the State regulations and, therefore, believes there is an inconsistency.

14.22 The State deleted language requiring the identification of areas "eligible for listing on the National Register of Historic Places" from 405 KAR 8:040E Section 23(1)(C). Although this wording has been suspended with regard to lands designate unsuitable by SMCRA (30 CFR 761.11(c) and 761.12(f)), it is relevant information to be required with the permit application so that agencies with responsibility for protecting those resources will be able to make a meaningful review of permit applications. Further, the Federal analog, 30 CFR 779.12(b), was not suspended.

14.23 405 KAR 8:040E Section 2 is less stringent than 30 CFR 785.13 concerning experimental practices. The State regulation does not refer to the Director of OSM's approval authority for experimental practices. Kentucky has agreed to correct this omission (Administrative Record No. KY–238.) The Secretary assumes that this correction will be made during the State's permanent rulemaking procedures.

14.24 405 KAR 8:060E Sections 6(1)(b)(1) and 6(2)(d)(1) are less stringent than 30 CFR 785.16(b)(1) and (c)(4)(i) concerning a variance from AOC when watershed control would be improved. The Federal regulations allow a steep slope AOC variance if watershed control will be improved compared to the premining condition; the State regulation allows variance if watershed control will be improved compared to the postmining condition it would have if it were restored to AOC. In addition, Section 6(2)(d)(1) allows the variance if there would be an increase in streamflow that would benefit users at times when streams are normally low; the Federal regulation does not include this provision in the criteria for determining watershed improvement.

Kentucky does not believe this Federal provision for comparison against premining conditions is necessary since Section 515(e) of SMCRA requires only that the watershed control of the area be improved and does not specify to what conditions the improvement should be compared. Kentucky goes on to say that "the choice is between: (1) mining and returning to AOC, and (2) mining and *not* returning to AOC. In most cases, *either* process will produce, at least temporarily, an increase in TSS and perhaps other pollutants as compared to unmined conditions. Therefore, the equitable basis for a decision on whether to approve the variance is to compare the resulting watershed conditions under the variance and under AOC. The federal regulation will render the variance essentially unobtainable, since it is unreasonable to expect that a mined area will show hydrologic improvement (at least in TSS) over the unmined condition, whether it is or is not returned to AOC."

The Secretary is not persuaded by Kentucky's argument. Proper soil replacement and compaction after mining can actually improve conditions for vegetative growth and infiltration rates in certain situations. Therefore, it is not unreasonable to expect that a mined area will show hydrologic improvement over unmined conditions.

Further, the premining condition is the only condition which can accurately be measured before mining and therefore is the only acceptable standard for comparison. At the time of a permit application, the proposed improvement is only theoretical and the premining condition is the only known factor. To eliminate the premining condition and utilize another hypothetical situation (i.e., the postmining condition if restored to AOC) would amount to comparing a hypothetical case to a hypothetical case. This would be too subjective to be enforceable.

Concerning stream flow, Kentucky believes that its regulation merely specifies the manner in which a watershed may be improved with respect to low flow conditions and thus does not conflict with the Federal requirement. (Administrative Record No. KY–238.) The Secretary, however, finds nothing in the program submission

which explains how stream flow would be increased at times of low flow without causing additional flooding and other problems at times of high flow. The State may wish to submit this provision for consideration by the Secretary as an alternative in accordance with the procedures in 30 CFR 731.13.

14.25 405 KAR 8:050E Section 3(2) omits a provision comparable to 30 CFR 785.17(b)(9) which requires prime farmland to be returned to equivalent levels of yield as non-mined prime farmland of the same soil type.

14.26 405 KAR 7:020E Section 1(144) is inconsistent with 30 CFR 786.5, the definition of "willful violation." The Federal definition specifies "willful violation of State or Federal laws or regulations," whereas the State regulation specifies only SMCRA, KRS Chapter 350, and the regulations of Title 405, Chapters 7 through 24. However, the operative State regulation (405 KAR 8:010E Section 13(1)(b)(2)(3)) specifies "any law, rule, or regulation of the United States or any state law, rule, or regulation enacted pursuant to Federal law, rule, or regulation, pertaining to air or water environmental protection," as well as SMCRA, KRS Chapter 350, and regulations promulgated pursuant thereto. This language is consistent with the operative Federal regulation (30 CFR 786.17(d)). Therefore, the Secretary finds that it is not necessary for the State definition to include the same language as the Federal definition.

14.27 405 KAR 8:010E Section 8(8) is less stringent than 30 CFR 786.11(d) concerning public notice of filing permit applications. The State regualtion does not specify when the applicant must file a copy of the application in a local public office for public inspection; the Federal regulation requires the filing by the first newspaper publication date. The newspaper publication would be meaningless if the application were not on file and available for public review at the same time.

14.28 405 KAR 8:010E Section 12(1)(a) does not specifically require that the information contained in a permit application, which should be available to the public, should include soil samples as does 30 CFR 786.15(a)(1). However, the Secretary assumes that, since there are no prohibitions against this information being available, it would be available as part of the permit on file. On this basis the Secretary considers 405 KAR 8:010E Section 12 acceptable.

14.29 405 KAR 8:010E Section 13(3)(b) is less stringent than 30 CFR 786.17(c)(2). Section 13(3) omits the requirement to terminate any mining approved pursuant to this paragraph if an administrative or judicial hearing authority denies a stay applied for in the appeal or affirms the violation. Kentucky feels that the Federal requirement "essentially constitutes a suspension of a permit because of the existence of a violation on another permit area" and that SMCRA does not require this. (See Administrative Record No. KY–238.

The State is correct that the Federal requirement is to suspend the permit. As discussed in the preamble to the Federal regulation (44 FR 15100), this requirement is deemed necessary because the pursuit of an appeal cannot be viewed as being in "good faith" once a stay is denied or the appeal is lost on its merits.

14.30 405 KAR 8:010E Section 15 is inconsistent with 30 CFR 786.21, the criteria for permit approval or denial concerning existing structures. The State regulations omits everything after the first paragraph of 30 CFR 788.21 (the specific criteria), but incorporates 7:040E Section 5 (permit requirements for existing structures) by reference. That section has the following deficiencies:

(a) 7:040E Section 5(2)(c)(1) requires compliance with performance standards only. 30 CFR 786.21(a)(2)(ii)(A) requires compliance with the *design and* performance standards.

(b) 7:040E Section 5(2)(c)(1) allows an applicant more than six months to modify the structure; 30 CFR 786.21(a)(2)(ii)(A) puts the limit at six months.

(c) 7:040E Section 5(2)(c)(3) requires only such monitoring "as required by the Department"; 30 CFR 786.21(a)(2)(ii)(C) requires monitoring in all cases when a structure must be modified.

14.31 405 KAR 8:010E Section 16(4) is less stringent than 30 CFR 786.23(e) concerning notice of a decision on a permit application. The Federal regulation requires simultaneous notice to anyone who filed an objection to the permit application, simultaneous delivery of a copy to the Regional Director of OSM, and simlutaneous publication of the decision in the newspaper. State regulation omits the simlutaneity requirement. The simultaneity requirement is necessary to assure that all parties have the full time and some period to respond.

14.32 405 KAR 8:010E Section 17(3) is inconsistent with 30 CFR 786.25 (permit terms) because Section 17(3) does not include experimental practices when specifying citations for modifying, suspending, or revoking permits. Without this language, the State would not have to require modification of a permit or suspend or revoke a permit for violation of approved experimental practices. The State could resolve this deficiency by including a reference to State regulation 7:060E Section 3, periodic review of experimental practices.

14.33 405 KAR 8:010E Section 20(2) is less stringent than 30 CFR 788.12(a) which specifies when permit revisions are required. The second part of 30 CFR 788.12(a)(1) calls for the RA to establish parameters to determine what constitutes sigificant departures from the original permit. Section 20(2) states "any application for a revision which proposes significant alterations in the operations . . . shall be deemed a major revision." Unless a definition of "significant departures" is provided, the provision does note fulfill the requirements of 30 CFR 788.12(a)(1) because operators would not have meaningful parameters by which to know when a permit revision application must be made nor would there be a meaningful definition for enforcement purposes. This may be corrected in the regulations or as a guideline submitted as part of the program.

Finding 15

In accordance with 30 CFR 732.15(b)(3), the Secretary finds that the Kentucky program demonstrates, in part, that the Kentucky DNREP can regulate coal exploration consistent with 30 CFR Parts 776 and 815 and can prohibit coal exploration that does not comply with these requirements. However, the Secretary finds deficiencies in the law, regulations and descriptive elements which should be remedied before the program can be approved.

Deficiencies in the legislative package are noted in Findings 1, 2, and 4. Kentucky has incorporated the provisions of 30 CFR Parts 776 and 815 concerning coal exploration and performance standards into portions of 405 KAR 8:020E and 20:020E. The narrative description of the State systems is found in the narratives entitled "State Section 731.14(g)(1)" and "State Section 731.14(g)(8)." Significant differences between the Kentucky regulations and 30 CFR Parts 776 and 815 and a deficiency in the system are as follows:

15.1 405 KAR 8:020E Section 2(3)(a) is inconsistent with 30 CFR 776.12(b)(1) concerning notice of application for approval to conduct exploration of more than 250 tons. The State section does not require posting of the notice of the exploration application at a public office. Posting of the notice is necessary to provide the opportunity for public comment on the application.

15.2 Information in the narrative description for 731.14(g)(1) and (g)(8) is inconsistent with the requirements of regulations. The description states that the Department will act on an exploration application in 20 days whereas 405 KAR 8:020E allows a 30 day period for the public comment and 60 days to act after the application is determined complete.

Finding 16

In accordance with 732.15(b)(4), the Secretary finds that the Kentucky program demonstrates, in part, that the Kentucky DNREP can regulate the extraction of coal incidental to government-financed construction consistent with 30 CFR Part 707. However, the Secretary finds one regulation that is significantly different from the Federal requirement.

405 KAR 7:030E Section 3 is inconsistent with 30 CFR 707.11–707.12 because it allows all reclamation work under Title IV of SMCRA (abandoned mine land (AML) reclamation fund) to be exempted from the environmental protection performance standards of KRS Chapter 350 and Title 405, Chapters 7 through 24. In some cases, recovery of coal may be more than an "incidental" portion of an AML project and the Kentucky program fails to ensure that these situations will be regulated. This is also discussed in Finding 1.4.

Finding 17

In accordance with 30 CFR 732.15(b)(5), the Secretary finds that the Kentucky program demonstrates, in part, that the Kentucky DNREP can enter inspect, and monitor all coal exploration and surface coal mining and reclamation operations consistent with Section 517 of SMCRA and Subchapter L of 30 CFR Chapter VII. However, the Secretary finds a number of deficienoies in the law and regulations which should be remedied before the program can be approved. Deficiencies with the program's legislative package are contained in Finding 2. Provisions of 30 CFR Chapter VII Subchapter L are incorporated in 405 KAR 12:010E, 12:020E, and 12:030E. The description of the State's inspection system is found in narratives entitled "State Section 731.14(g)(4)" and "State Section 731.14(g)(8)." Deficiencies in "State Section 731.14(g)(4)" are discussed in Finding 19, and deficiencies in "State Section 731.14(g)(8)" are discussed in Finding 15 and below. Significant differences between the Kentucky regulations and the Federal requirements are as follows:

17.1 405 KAR 12:010E Section 3(4)(a), (b) and (c) is inconsistent with 30 CFR 840.11(a), (b) and (c) since it omits language similar to "the inspector *shall* collect evidence of any violation of those conditions or requirements observed" and omits language requiring collection of evidence with respect to *every* violation.

Kentucky believes that OSM can assume that evidence taking shall take place under 405 KAR 12:010E Section 4(1) and the program plan document. Kentucky also presumes that evidence will be collected at all inspections, and states that evidence is now, and will be, collected on every violation under 405 KAR 12:010E, Section 4(1) (See Administrative Record No. KY–238.)

The Secretary believes that evidence collection cannot be presumed or assumed, and must be specifically directed by regulation. Otherwise, citizens will not have the ability, required under SMCRA, to file suit to require inspectors to collect evidence of all violations observed.

17.2 405 KAR 12:010E Section 3(2) is inconsistent with SMCRA Section 517(c)(2) and 30 CFR 840.11(d)(2) by not requiring inspections without prior notice. The State section indicates that DNREP is not obligated to give prior notice but it does not direct DNREP not to give prior notice. If the regulation is not revised, the Secretary will need some indication, such as a policy statement or inspector's handbook, showing that normally an inspection will be without prior notice.

17.3 The circumstances under which 405 KAR 12:010E Section 8 would be applied are unclear. This section, which provides for a permittee to request a review from a supervisor of an inspector's "discretionary authority, other than notice or orders for violations," has no Federal counterpart and may provide an exception to administrative review procedures under 405 KAR 7:090E. The Secretary is unable to analyze the effect of this regulation without clarification from the State as to the intended use of Section 8.

17.4 405 KAR 12:010E Section 4(1) is inconsistent with 30 CFR 840.14(b) in that the State section requires that copies of inspection materials be made available to the permittee, but does not mention availability to the public. Without this reference the State program fails to ensure the intent of SMCRA Section 517(f), which requires inspection material to be immediately available to the public and conveniently available to residents of the area of mining.

17.5 405 KAR 12:030E Section 1 and 731.14(g)(8) of the narrative description are inconsistent with 30 CFR 842.12(a) because the State regulation restricts requests for inspection to those persons "having an interest which is or may be adversely affected." The Federal regulation and SMCRA Section 521(a) allow "any citizen" to request an inspection.

17.6 405 KAR 12:030E Section 2 does not contain provisions similar to 30 CFR 842.14 regarding a citizen's right to request a review of alleged failure of the regulatory authority to make adequate and complete periodic inspections. Without specific regulations to this effect the State program fails to ensure that the intent of SMCRA Section 517(h)(2) is met.

Finding 18

In accordance with 30 CFR 732.15(b)(6), the Secretary finds that the Kentucky program demonstrates, in part, that DNREP can implement, administer, and enforce a system of performance bonds and liability insurance consistent in the requirements of Subchapter J of 30 CFR Chapter VII. However, the Secretary finds a number of deficiencies in the law, regulations, and descriptive elements of the State submission that should be remedied before the program can be approved. Kentucky incorporated provisions of Subchapter J in 405 KAR Chapter 10. The description of the proposed system for bonding and insurance is located in the narrative entitled "State Section 731.14(g)(3)." Deficiencies in legislative requirements are discussed in Finding 4. Significant differences between the Kentucky program and the Federal requirements are discussed below.

The State also proposed bonding methods based on proposed revisions to bonding regulations published in the **Federal Register** January 24, 1980 (45 FR 6028–6042). The Secretary considered the State's proposal against the Federal bonding regulations published in final in the **Federal Register** on August 6, 1980 (45 FR 52306–52324), as well as the regulations published in the **Federal Register** on March 13, 1979 (44 FR 15311 *et seq.*). The Secretary will approve State rules consistent with either the March 13, 1979 regulations or the August 6, 1980 regulations.

18.1 405 KAR 7:020E Section 1, (116), the definition of "self-bond" is inconsistent with 30 CFR 800.5 in that it does not require self-bonds to be secured or other substantial demonstration of financial acceptance. The definition of self-bond was not amended by the August 6, 1980 modifications to the bonding rules.

18.2 405 KAR 10:020E Section 1 is less stringent than 30 CFR 805.11(a) concerning determination of bond amount. The State section omits the

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requirement for consideration of cost changes during the previous five years. This requirement was not revised in the August 6, 1980, modifications to the bonding rules.

Kentucky believes that 405 KAR 10:020E Section 1 provides sufficient latitude to consider historical cost factors and that such a consideration is implicit in the other factors specified by the regulations. (See Administrative Record No. KY–238.)

Although the Kentucky language may be sufficiently broad to allow the consideration of historic cost changes, the Secretary finds nothing in the State program which speficially requires DNREP to consider historic cost and define the time frame which must be considered. The program resubmission should clearly show that DNREP will consider historic cost for a five-year period to ensure that bonds will be established high enough to prevent inflationary trends from making bonds inadequate to cover future reclamation costs.

18.3 405 KAR 10:010E Section 2(2) is less stringent than 30 CFR 800.11(b), concerning the requirement to file bonds, because the State section does not require bond coverage prior to the extension of underground mines. This requirement was not modified by the August 6, 1980, bonding rules.

Kentucky states that it will require that all surface disturbances to be bonded. The State feels that the Federal regulations allow alternative methods for subsidence control for undisturbed surface areas above underground workings and under the Kentucky provisions all subsidence control measures must be in place for the whole operation before tunnels or operations are extended. (See Administrative Record No. KY–238.)

The Secretary agrees that the Federal regulations allow for alternative methods of bonding for subsidence control. However, 405 KAR 10:010E Section 2(2), as written, does not require that the bond be approved by the RA prior to extension of the underground mine. This is especially important since KRS 350.060(15) allows surface areas overlying underground mines to be categorically exempted from all bonding requirements as discussed in Finding 4.5. The Secretary cannot find either the regulation or the statutory provision acceptable.

18.4 405 KAR 10:060E relating to the bonding of underground mines and long-term facilities is less stringent than 30 CFR Part 801 as published August 6, 1980, because the State regulation does not consider surface construction activities related to subsidence control or to measures for mine drainage treatment. The Federal bonding rules in existence before August 6, 1980, did not provide special criteria for bonding underground mines or long-term facilities. The State also provides that bonds "may" be forfeited rather than "shall" be forfeited and therefore has no mandatory criteria for bond forfeiture as required by 30 CFR 801.13 as published August 6, 1980, and 30 CFR 808.13 as published March 13, 1979.

18.5 405 KAR 10:020E Section 3 is less stringent than 30 CFR 805.13 concerning the revegetation period for bond release. The addition of the word "substantially" in front of "augmented seeding" changes the meaning intended by 30 CFR 805.13(b), as published March 13, 1979, and as modified on August 6, 1980. This wording is also used in 405 KAR 16:200E Section 6 and 18:200E Section 6 as discussed in Finding 13.31.

The State believes that use of the word "substantially" is consistent with the proposed OSM rules on bonding, specifically the new paragraph (c) of 30 CFR 805.13 with allows for separation of certain augmented areas in order to limit the applicability of the renewed period of liability. (See Administrative Record No. KY–238.)

The Secreary finds that the Kentucky program does not contain a definition of "substantially" that will sufficiently ensure consistency with both 30 CFR 805.13(b) and SMCRA Section 515(b)(20). 30 CFR 805.13(b) as modified August 6, 1980, sets forth methods to determine specific husbandry practices which would not be considered "augmented seeding." The State program must demonstrate consistency with these requirements.

18.6 405 KAR 10:020E Section 4 is less stringent than 30 CFR 805.14. The State section does not include changes in mining operations or standards of reclamation as reasons for adjusting the amount of the bonds. There are no provisions for a reevaluation of bonds in relation to 301 CFR 788.11 concerning review of outstanding permits. In addition, the word "substantially" in relation to cost makes the State section less stringent. These requirements were not modified by the August 6, 1980, rules. Kentucky feels that Section 4(a) provides adequate authority to adjust bond amounts. (See Administrative Record No. KY–238.)

The Secretary does not agree because the authority as stated in the Kentucky regulation does not include the same reasons for adjustment as the Federal requirement and because the Kentucky regulation does not mandate that there be a periodic reevaluation. Without the reevaluation, the authority for adjustment will not be effective.

18.7 405 KAR 10:030E Section 4 is less stringent than 30 CFR 806.11 as published March 13, 1979, and 30 CFR 806.14 as published August 6, 1980 concerning conditions for accepting a self-bond. Section 4(1) does not require the agent for service of process to be within the State, which could lead to delays in bond forfeiture because of jurisdictional problems. Section 509(c) of SMCRA requires the demonstration of a suitable agency to receive service of process. The Secretary believes that the program must specify what is a suitable agency under Kentucky law. In addition, the State regulation does not require security for self-bonds as discussed in Finding 18.1.

18.8 405 KAR 10:030E Section 2 does not contain provisions similar to 30 CFR 806.12(f)(2) and SMCRA Section 509(b) requiring collaterial to be values at its market value. This requirment was not modified by the August 6, 1980, rule changes. Kentucky believes that omission of the cited language does not lead to a substantively different result. (See Administrative Record No. KY–238.)

The Secretary believes the Kentucky regulation could allow securities to be valued at face value which, because they may be discounted or otherwise have different values not related to face value, may result in inadequate bond coverage. In addition, SMCRA Section 509(b) specifically requires market value of such securities shall be equal to or greater than the amount of the bond required for the bonded area.

18.9 405 KAR 10:030E Sections 2(5)(e)(3) and (7)(g)(3) do not require that a notice of violation be issued for the lack of bond coverage. While the requirement relates to the suspended portions of 30-CFR 806.12(e)(6)(iii) and (g)(7)(iii) as published March 13, 1980, requiring cessation of operations upon discontinuance of bond coverage, the State regulation must still provide that lack of bond coverage is a violation of the permit. This is especially important since the State has elected to allow for incremental and cumulative bonds and these types of bonding methods add timing factors which might lead to increased risk due to minimizing bond coverage. The State may wish to consider the language in the Federal regulation promulgated on August 8, 1980.

18.10 405 KAR 10:030E Section 2, Kentucky does not include provisions relating to mortgages or security under collateral bonding requirements as allowed by 30 CFR 800.5 as promulgated August 6, 1980. The Secretary assumes that the State will not allow mortgages and securities as bonds and therefore does not find the State Regulations inconsistent with the Federal requirements.

18.11 405 KAR 10:040E Section 2(2) and (3) do not include the additional criteria of 30 CFR 807.12(b) and (c) concerning the criteria and schedule for release of bonds, as promulgated on August 6, 1980. Since the State has elected to adopt bonding methods which allow bond release on portions of the permit area consistent with the OSM regulations promulgated August 6, 1980, it is important that the State include requirements to ensure that the amount remaining after a phase II bond release is sufficient to cover revegetation and reconstruction of drainage structures and to assure that no incremental area is completely released from the permit area prematurely.

18.12 405 KAR 10:040E Section 1(1) is inconsistent with 30 CFR 807.11(a) because of the omission of language equivalent to the portion of 30 CFR 807.11(a)(1) requiring identification of appropriate seasons for evaluation in the mining and relamation operations plan. Kentucky does not agree that this is inconsistent (Administrative Record No. KY–38).

The Secretary believes identification of the appropriate seasons for evaluation of the area in relation to bond release is necessary to avoid confusion regarding the timing of request for bond release. Inspections for bond release and evaluation of revegetation cannot be made equally effectively at all times of the year.

18.13 405 KAR 10:040E Section 1(3) and (4) is less stringent than 30 CFR 807.11(c) because the State section does not define "person having an interest which is or may be adversely affected" to include the heads of Federal, State or local government agencies for purposes of considering objections to bond release. This requirement was not changed by the August 6, 1980, modifications. Kentucky believes that such a definition is arrived at by reference to well settled rules of standing. (See Administrative Record No. KY–238).

The Secretary does not agree with the State's argument because KRS 350.093(6) specifically mandates that the Kentucky DNREP designate by regulation the responsible officer or head of any governmental agency which shall have the right to file written objections to proposed bond releases. In order then for the State regulation to be consistent with Section 519(f) of SMCRA and KRS 350.093(6), it must specifically designate those governmental agencies which "have jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to such operations."

18.14 405 KAR 10:040E Section 1(5) is less stringent than 30 CFR 807.11(d) concerning procedures for seeking release of performance bonds. In comparison to the Federal regulations, there is no requirement for a notice to invite owners and lessees to accompany inspectors. The August 6, 1980, modifications to the bonding rules did not change this requirement. State Section 12:030 covers only agency reaction to a complaint, not notification of the surface owner.

Kentucky does not believe that such a provision can be required because there is no statutory authority for lessee and surface owner inspections in Section 519 of SMCRA. (See Administrative Record No. KY–238.)

The Secretary believes the invitation to the surface owner to accompany the inspector is consistent with public participation and surface owner protection provisions of SMCRA.

18.15 405 KAR 10:040E Section 1 does not have a provision consistent with 30 CFR 807.11(f)(5) which specifies that the municipality or county will receive notice by certified mail of the regulatory authority's decision to release the bond 30 days before actual release. This requirement is not affected by the August 6, 1980 modifications to the bonding rules.

Kentucky feels that Sections 1(1) and 1(2) of 405 KAR 10:040E provide a provision relating to the notification of local governmental bodies. (See Administrative Record No. KY–238.)

The Secretary finds that 405 KAR 10:040E Sections 1(1) and 1(2) provide for notification to local government bodies of a request for a release only. The State regulations do not include provisions relating to notification of DNREP's decision to release a bond 30 days in advance of the actual release as required by 30 CFR 807.11(f). Without this provision, there would be no mechanism for assuring that the appropriate local government agency has been notified and been given 30 days notice or that the opportunity to request a public hearing on the decision has been provided before the release of the bond making such a hearing immaterial.

18.16 405 KAR 10:050E Section 2 is less stringent than 30 CFR 808.12 concerning procedures for forfeiture of bonds. The State omitted language similar to 30 CFR 808.12(a)(4) and (b) which is intended to prevent the regulatory authority from giving up on the pursuit of bond forfeitures under certain conditions. This requirement is not affected by the August 6, 1980, modifications to the bonding rules.

Kentucky does not believe that a regulation is necessary for the department to diligently prosecute bond forfeitures. The State indicated that once a bond forfeiture is instituted, it will be seen through to the end. (See Administrative Record No. KY–238.)

The Secretary believes the regulatory authority should be clearly mandated to consider all written determinations to forfeit as final actions and to defend appeals against those determinations. However, the Secretary believes that a policy statement from DNREP which clearly states that the agency will act in accordance with 30 CFR 808.12(a)(4) and (b) may be acceptable in lieu of a regulation.

18.17 405 KAR 10:050E Section 3 is less stringent than 30 CFR 808.13 because the State regulation substitutes the word *"may"* for *"shall"* and, therefore, has no mandatory criteria for bond forfeiture. The Secretary believes flexibility in avoiding forfeiture is provided in 30 CFR 808.11 which allows the regulatory authority to withhold forfeiture if the permittee and surety agree to a compliance schedule. Section 3 also omits wording equivalent to 30 CFR 808.13(b)(2) and (3) which allows forfeiture when the permittee cannot demonstrate ability to continue to operate in accordance with permit requirements because a creditor has attached judgment to the equipment at the permit area or to collateral pledged to the regulatory authority as bond. These requirements were not affected by the August 6, 1980, modifications to the bonding rules.

18.18 In the narrative for systems under State Program Section 731.14(g)(3), the system for bond computation is not adequately explained. The original State submission contained a formula for bond computation which allowed for a maximum per acre bond of approximately $2,500, which OSM identified to the State as possibly unrealistic in light of OSM estimates of reclamation costs between $3,500 and $8,000 for non-steep slopes (Administration Record No. KY–298). The revised program submission of June 12, 1980, did not contain sufficient information to allow a recomputation of the formula. The Secretary therefore must assume that no changes have been made and asks that the program resubmission clarify the procedures for establishing the bond amounts.

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18.19 The statement on page 7.3.6 of the system description, in the next to the last paragraph, indicates that additional bond is required only for new acreage which is in conflict with 405 KAR 10:120E Section 4 and 30 CFR 805.14 as published March 13, 1979, and as modified August 6, 1980.

18.20 There are discrepancies between the Kentucky regulations and the Kentucky system description under State Program Section 731.14(g)(3) for bond release. Although the Kentucky system description appears consistent with the Federal requirements for filing a notice for an informal conference, recording the meeting, and the deadlines for decisions, the descriptions are not supported by the Kentucky regulations. For example, page 7.3.10 of State Program Section 731.14(g)(3) maintains that the surface owner will be invited to accompany the inspector on bond release inspections, yet, as stated in Finding 18.13, the State regulations do not contain this requirement and the State has argued against it. Similarly, the program description on page 7.3.12 maintains that there will be a two-week newspaper notice prior to an informal conference. 405 KAR 7:090E Section 4 on informal conferences, however, does not provide for such a notice and the State has maintained (Administrative Record No. KY–281) that 405 KAR 7:090E Section 4 on informal conferences does not apply to bond release.

18.21 The system description contains a statement on page 7.3.15 that "the Department has experienced no problems in collecting forfeited bond amounts."

Based on experiences OSM has had in trying to complete abandoned mine land reclamation projects in Kentucky, the Secretary believes that there is a large backlog of abandoned mines for which no action to forfeit and collect or release bonds has been taken (Administrative Record Nos. KY–232 and KY–233). A backlog would have potential implications with regard to the State's ability to proceed with new bond forfeitures under primacy. Therefore, the Secretary requests that the State explain, in the resubmission, its methodology for resolving any current backlog that might delay new forfeitures.

Finding 19

In accordance with 30 CFR 732.15(b)(7), the Secretary finds that the Kentucky program demonstrates, in part, that the State has sufficient provisions for civil and criminal sanctions for violations of State law, regulations and conditions of permits, and exploration approvals consistent with Section 518 of SMCRA. However, the Secretary finds a number of deficiencies in the law, regulations, and descriptive elements of the State submission that should be remedied before the program can be approved. Kentucky incorporated regulatory provisions related to Section 518 of SMCRA in 405 KAR 7:090E. The program submission decribes the State's system for implementing these sanctions in the narratives entitled "State Section 731.14(g)(4)", "State Section 731.14(g)(5)" and "State Section 731.14(g)(7)." Deficiencies in the legislative requirements are discussed in Finding 2. Significant differences between the Kentucky program and the Federal requirements are as follows:

19.1 405 KAR 7:090E does not contain provisions to include history of previous violations as a factor in determining civil penalties as required by Section 518(a) of SMCRA.

19.2 405 KAR 7:090E fails to include procedures for assessment of civil penalties. Kentucky has indicated its belief that no point system regulations are required in light of the court remand (Administrative Record No. KY–238). Although the State is not required to have a point system, or a penalty system as stringent as 30 CFR Part 845, the State is required to establish a procedure for assessment of civil penalties to include the four factors set forth in Section 518(a) of SMCRA in determining the amount of the penalty.

19.3 405 KAR 7:090E Section 3(6) allows the posting of bond in lieu of the payment of a penalty into escrow. Although not specifically provided in the Federal regulations, the Secretary may consider bonds in lieu of escrow acceptable if the program resubmission demonstrates that such bonds are easily forfeitable so that they do not act as an impediment to the collection of civil penalties and that they are in the amount of the proposed assessment. However, the Kentucky regulation as written is inconsistent with SMCRA Section 518(c) because the bond is not required to be put up until seven days before the hearing, which could be much later than the date payment is required under Section 518(c). See Finding 19.4 for further discussion.

19.4 405 KAR 7:090E Section 3 is inconsistent with SMCRA Section 518(c) because the State section does not require the payment of proposed penalty or placement of the penalty into escrow within 30 days of the receipt of the proposed assessment. 405 KAR 7:090E Section 3(1)(e) states that the penalty does not have to be placed in escrow until seven days before the hearing. The hearing can be delayed past the 30-day limit for payment or placement into escrow established in SMCRA by a waiver of the State requirement for a hearing within 21 days as provided for in 405 KAR 7:090E Section 3(1)(a) or by a request for an informal conference under 405 KAR 7:090E Section 3(1)(b). It is not clear if a prepayment into escrow must be made before the informal conference. It is also not clear that payment becomes due within the time frame provided by SMCRA if no hearing is requested and the State proceeds under the requirements of 405 KAR 7:090E Section 3(f) which requires a final order of the DNREP to be issued if no hearing is requested but does not specify the time frames on that order.

19.5 There is an apparent conflict between Sections 10 and 11 of 405 KAR 7:090E regarding the assessment of civil penalties. Section 11 requires an assessment of not less than $100 for all violations, while Section 10 allows for discretion in assessing a "minor" violation. The Secretary requires an explanation of this seeming conflict before he can determine whether these State provisions are consistent with SMCRA and the regulations promulgated thereunder.

19.6 Under "Inspection for Noncompliance" as described in State Program Section 731.14(g)(4), it appears that a justification is required only for *lack* of good faith in considering civil penalties. Provisions for requiring an explanation when "good faith" is awarded should also be provided. The State system descriptions in 731.14(g)(5) and (g)(7) are unclear as to the personnel who will (1) be making the assessments and (2) holding the hearings and conferences.

Finding 20

In accordance with 30 CFR 732.15(b)(8), the Secretary finds that the Kentucky program demonstrates, in part, that the State can issue, modify, terminate, and enforce notices of violation, cessation orders and show cause orders in accordance with Section 521 of the Act and Subchapter L of 30 CFR Chapter VII. Provisions of 30 CFR Chapter VII Subchapter L are incorporated in 405 KAR 12:010E, 12:020E, and 12:030E. The description of the State's system for enforcing the civil and criminal sanctions of the State laws and regulations is contained in the narrative entitled "State Section 731.14(g)(5)." Deficiencies in the program's legislative package are discussed in Finding 2. Significant differences between the Kentucky program and the Federal requirements are as follows:

20.1 405 KAR 12:020E Section 7 is less stringent than 30 CFR 843.11(a) because the State regulation does not require immediate cessation of mining operations or the relevant portion of the operations by the inspector if an inspector discovers a condition or practice or violation which creates an imminent danger to the public or is causing or can be expected to cause significant imminent environmental harm. The last sentence of Section 7(1) also provides that an order to abate and alleviate will be issued only "when it appears that it will be prejudicial to the interests of the people of the state to delay action until an opportunity for a hearing can be provided."

Kentucky maintains that its language is consistent with Federal requirements and that there is no reason to delete the last sentence of Section 7(1). (See Administrative Record Number KY–238.)

The Secretary believes the Kentucky program does not sufficiently ensure cessation of operations by the inspector in the field under the time frame and criteria required by the Federal regulation. In addition, the last sentence of 405 KAR 12:020E Section 7(1) introduces a "weighing test" not found in SMCRA or the Federal regulations. SMCRA and the Federal regulations do not allow a delay in issuing a cessation order for imminent danger or harm for any reason and require they be issued by the inspector in the field. Moreover, the Kentucky provision improperly introduces a mechanism which would allow a delay in issuing a cessation order until after a hearing.

20.2 405 KAR 12:020E Section 2 is inconsistent with 30 CFR 843.12(a) because the State section does not exempt violations creating an imminent danger from a notice of violation (NOV). This omission indicates that a NOV will always be issued rather than a cessation order, even when a cessation order would be required under the Federal Act and Federal rules.

20.3 405 KAR 12:020E Section 3, affirmative obligations to comply, is inconsistent with 30 CFR 843.11(c) and (e) because the State regulations lack specificity. The State regulations do not define the "other appropriate relief" which can be granted by the DNREP on the date a notice of violation or order of cessation is issued. The State regulations also fail to specify data requirements which must be set forth in a cessation order to be consistent with 30 CFR 843.11(c). Before the Secretary can find consistency with the Federal requirements, the State program must demonstrate that the "other appropriate relief" will be consistent with Federal requirements and that cessation orders or their equivalent will contain the information specified in the Federal regulations.

20.4 In the system description under State Program Section 731.14(g)(5), there is no provision to vacate a notice of noncompliance and order for remedial measures. Kentucky has stated that if a violation is issued in error, the mistake would be remedied at the hearing. The Secretary believes that the State inspectors must be empowered to issue a violation and to modify, terminate or vacate that violation consistent with 30 CFR Part 843. For there to be no procedures, except by formal hearing, to modify, terminate or vacate a violation would be unduly cumbersome and inconsistent with 30 CFR Part 843.

Finding 21

The Secretary finds that the Kentucky program demonstrates, in part, that the State can designate areas as unsuitable for surface coal mining consistent with 30 CFR Chapter VII Subchapter F. Kentucky incorporated provisions of Subchapter F in 405 KAR Chapter 24. The State's description of the proposed system for designating lands unsuitable is located in the narrative entitled "State Program Section 731.14(g)(11)" and is acceptable. The State has sufficient legislative authority to accomplish this requirement. Significant differences between the Kentucky regulations and the Federal requirements are as follows:

21.1 405 KAR 24:040E Section 2(1) is not consistent with SMCRA Section 522(e) and 30 CFR 761.11(a) because the State regulation fails to include the "Wild and Scenic Rivers System" in the list of areas where mining is prohibited.

21.2 405 KAR 24:040E Section 2(6) is inconsistent with 30 CFR 761.12(d)(2) concerning public notice of intent to mine within 100 feet of a public road or to relocate the road. The State regulation does not require that the notice be published at least two weeks before a public hearing on the relocation.

21.3 405 KAR 7:020E Section 1(57) is inconsistent with 30 CFR 762.5 because it omits sites with pending historic designation from the definition of historic lands."

21.4 405 KAR 24:030E Section 3(5), concerning petitions for an area which was previously and unsuccessfully petitioned contains the word "substantial" in the first sentence concerning new allegations of fact which is not found in 30 CFR 764.15(a)(4).

The State maintains that the word "substantial" is appropriate because it is incumbent upon the petitioner to set forth non-frivolous new allegations to prevent DNREP from being in the position of continuously processing petitions for the same area.

Since the Federal regulations of 30 CFR 764.15(a)(3) allow the regulatory authority to dismiss frivolous petition requests and since the State has indicated that this is the intent of the word "substantial" in its regulations, the Secretary considers 24:030E Section 3(1) acceptable. The Secretary assumes the State will not reject any petitions where the new facts would tend to establish that the area is unsuitable for surface coal mining.

21.5 405 KAR 24:030E Section 4(1) is not consistent with 30 CFR 764.15(a)(6) because, under the State regulation, a person who petitions that an area be designated unsuitable would not be notified of a pending permit application until the petition has been determined to be complete. That could be 30 days after the petition is received (405 KAR Section 3(1)). It is important for the petitioner to know of permit applications submitted near the same time period as the petition so that, in the event the petition is determined incomplete, the petitioner will have time to complete the petition or otherwise file another objection under 405 KAR 10:8:010E Section 10 prior to a decision on the application, as intended by 30 CFR 764.15(a)(6).

21.6 405 KAR 24:030E Section 6 is inconsistent with 30 CFR 764.15(d) concerning public availability of a petition record. The State regulation needs a provision to provide for the complete petition record to be maintained at the regulatory authority's main office and at a central location in the county or multi-county area in which the petitioned land is located. The same office used for permits would probably be acceptable.

21.7 405 KAR 24:030E Section 8(2)(c), the criteria for designating lands unsuitable, establishes that an area may be designated unsuitable for mining if an operation affecting renewable resource lands "would" result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products. The Federal requirement at 30 CFR 762.11 applies to mining that "could" affect the protected resources. The Kentucky provision is less stringent than the Federal requirement because it would require the petitioner to make a firm proof of effect on the protected resources, thus being more burdensome to the petitioner than intended by the Federal requirement.

Finding 22

In accordance with 30 CFR 732.15(b)(10), the Secretary finds that the

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Kentucky program demonstrates, in part, that the State provides for adequate public participation in the development, revision and enforcement of State regulations and that the State program is, in part, consistent with the public participation requirements of SMCRA and 30 CFR Chapter VII. Provisions for public participation in the development and revision of the State program and regulations are discussed in the narrative entitled "State Program Section 731.14(g)(14)." Public participation in enforcement of the program is covered in various portions of the State program as discussed in Finding 22.2.

Deficiencies with the Kentucky legislation relative to public participation are discussed in Finding 1. Significant differences between the Kentucky program and the Federal requirements are as follows:

22.1 The Secretary finds that the Kentucky program provides for adequate public participation in the development and revision of the State program and regulations. DNREP held eleven public meetings during the development of the program submission, including the regulations, and utilized three public advisory groups (environmental and citizen organizations, coal production industry, and consumer and coal-related support industries). The State also distributed brochures and a newsletter to keep the public informed.

22.2 The Secretary finds that there are inconsistencies between State and Federal public participation requirements relating to enforcement during implementation of the program. The requirements for public participation are found in almost all parts of the Federal regulations and are discussed in various portions of the State program submission. Therefore, the Secretary's findings of deficiencies on public participation are discussed under Findings 1.2, 12.2(f), 12.2(g), 13.11, 13.47, 14.4, 14.27, 14.31, 15.1, 17.4, 17.5, 17.6, 18.13, 18.14, 18.19, 21.2, 21.5, 21.6, and 27 (administrative and judicial review).

Finding 23

In accordance with 30 CFR 732.15(b)(11), the Secretary finds that the Kentucky program demonstrates, in part, that the State can monitor, review, and enforce the prohibition against indirect or direct financial interests in coal mining operations by the employees of the State regulatory authority consistent with the requirements of Subchapter A of 30 CFR Chapter VII. The State description of the proposed system for monitoring, reviewing and enforcing the prohibition against indirect or direct financial interests in coal mining operations by the employees of the State regulatory authority is located in the narrative entitled "State Section 731.14(g)(12)." Kentucky has the legislative authority under KRS 350.460 to restrict financial interests but has not promulgated regulations consistent with the provisions of 30 CFR Part 705.

23.1 Kentucky has stated that 30 CFR Part 705 covers State employees and therefore no State regulations are needed. The Secretary does not agree with this assertion. Language in the Federal regulations refers to employees performing duties under SMCRA. As with other regulations developed under SMCRA, the State must now reference its own legislative authority and enact its own regulations to provide State regulations consistent with Federal requirements. The State will be enforcing its regulations, not the Secretary's, once it achieves primacy and must have a complete regulatory program of its own.

23.2 Since Kentucky has not yet provided implementing regulations, it is impossible to evaluate how the requirements of 30 CFR Part 705 will be implemented as described in the narrative description in State Section 731.14(g)(12).

Finding 24

In accordance with 30 CFR 732.15(b)(12), the Secretary finds that Kentucky has sufficient legislative authority to require the training, examination, and certification of persons engaged in or responsible for blasting. The State program need contain only sufficient legal provisions to allow promulgation of rules in accordance with Section 719 of SMCRA until such time as the Federal rules on blaster certification are promulgated.

Finding 25

In accordance with 30 CFR 732.15(b)(13), the Secretary finds that the Kentucky program demonstrates, in part, that the State can provide for a small operators assistance program (SOAP) consistent with the requirements of 30 CFR Part 795. The State has adequate legislative authority in KRS 350.465(2)(f) and 350.450(5)(6) to implement the SOAP program. The proposed system described in the narrative entitled "State Section 731.14(g)(16)" is also adequate. Regulations implementing 30 CFR Part 795 are contained in 405 KAR 7:080E. Significant differences between the Kentucky regulations and the Federal requirements are as follows:

25.1 405 KAR 7:080E Section 5 is not consistent with 30 CFR 795.13. Section 5(a) does not include all operations controlled by the applicant in considering eligibility for SOAP assistance. This would allow operators with many small operations to receive assistance on each operation, whereas the Federal rules would deem the operator not to be a "small operator."

25.2 405 KAR 7:080E Section 8 is less stringent than 30 CFR 795.16(b). The State section makes the determination of probable hydrologic consequences optional by using the word "may" instead of "shall."

25.3 The Kentucky program has no provision to correspond with 30 CFR 795.18 on the use and allocation of funds.

Finding 26

In accordance with 30 CFR 732.15(b)(14), the Secretary finds that the Kentucky program provides, through KRS 350.990 (7), for the protection of State employees of the regulatory authority in accordance with the protection afforded Federal employees under Section 704 of SMCRA.

Finding 27

In accordance with 30 CFR 732.15(b)(15), the Secretary finds that the Kentucky program demonstrates, in part, that the DNREP has an administrative and judicial review process in accordance with Sections 525 and 526 of SMCRA and Subchapter L of 30 CFR Chapter VII. Deficiencies in legislatiave provisions are discussed in Finding 1. Kentucky regulations related to administrative and judicial review are found in 405 KAR 7:090E. The State's description of the proposed system for administrative and judicial review is located in the narrative entitled "State Section 731.14(g)(15)" and deficiencies in this section relate to its provisions to implement the inconsistent regulatory provisions. Significant differences between the Kentucky program and the Federal requirements are as follows:

27.1 405 KAR 7:090E Section 5 is inconsistent with 30 CFR 787.11(a) and 788.16(d) concerning administrative review or regulatory authority decisions because Section 5 appears to limit hearings only to "permit issuance, denial or imposition of conditions" which may leave out decisions on revisions or renewals, applications for transfer, sale of assignment of right, etc. The Secretary requests that the State either modify its regulation or provide assurance that the hearing provision is not limited to only the cited decisions.

27.2 405 KAR 7:090E Section 3 is inconsistent with 30 CFR 787.11(b) concerning administrative review procedures in that the State section does not prohibit the informal conference officer from presiding at the formal hearing, does not identify conditions under which temporary relief can be granted (405 KAR 7:090E Section 3 appears to apply only to a cessation order), and does not identify the requirements of 30 CFR 787.11(b)(3), (4) and (5) relating to administering oaths, subpoenaing witnesses, taking evidence, recording each hearing, *ex parte* contacts, furnishing findings to all parties and specifying burden of proof. The powers and duties of the hearing authority must be demonstrated in the State program.

27.3 The provisions for an informal conference for bond release under 405 KAR 7:090E Section 4 are inconsistent with 30 CFR 807.11(e). There is no provision for publication of a notice two weeks prior to the conference or for an electronic or stenographic record.

27.4 405 KAR 10:040E Section and 7:090E are inconsistent with 30 CFR 807.11(h) concerning public hearings on bond release decisions by the regulatory authority because:

(a) There appear to be no State provisions to subpoena witnesses and materials. The Secretary requests that the State either modify its regulations or provide other clarification with regard to subpoena provisions.

(b) The Federal regulations require a verbatim record while 405 KAR 7:090E Section 3(5)(c) leaves such a requirement to the hearing officer's discretion. In addition, the State section leaves total discretion regarding transcription of the hearing to DNREP; the Federal regulations require transcripts at the motion of any party.

27.5 In 405 KAR 7:090E Section 3(1)(b), (c) and (f), the words "conference" and "hearing" are used interchangeably. This has the result of confusing the regulation inasmuch as each of the words has a separate and distinct meaning in the State regulation. "Hearing" denotes a formal administrative hearing provided for in 405 KAR 7:090E Section 3, while "conference" denotes the informal conference provided for in 405 KAR 7:090E Section 4. Use of the word "conference" in 405 KAR 7:090E Section 3 without a reference to 405 KAR 7:090E Section 4 blurs the intent of 405 KAR 7:090E Section 3.

27.6 405 KAR 7:090E Section 8 concerning intervention and consolidation of hearings is inconsistent with 43 CFR 4.1110 because:

(a) The fourth word in the first sentence should be *shall* rather than *may* with regard to the hearing officer's obligation to grant leave to intervene to any person who was not previously a party to the hearing.

(b) Persons interventing must have the right to be a *full* party.

(c) The State regulation fails to contain a permissive intervention section.

27.7 405 KAR 7:090E Sections 9(2) and 9(4) are unclear as to the type of hearing required and as to whether a record is required. It is not readily apparent whether a formal administrative hearing or an informal conference is contemplated for civil penalty assessment appeals. In order to be consistent with Section 518(b) of SMCRA, a formal administrative hearing must be clearly provided for in the State regulation.

27.8 405 KAR 7:090E Section 10 is inconsistent with Section 518(a) of SMCRA because the State regulation permits the consideration of "other relevant factors" in addition to the criteria set forth in SMCRA relative to the determination of the amount of the penalty. While other specific factors may not be inconsistent with SMCRA, the Secretary needs to know precisely what these factors are in order to determine consistency.

27.9 405 KAR 7:090E Section 11(2)(b) is inconsistent with Section 525(c) of SMCRA in that the State regulation allows for the use of "prehearing conferences or other informal conferences" (alternatives for temporary relief proceedings) as forums for abatement period extensions. Unless such abatement period extensions are given or denied in the context of a formal administrative temporary relief proceeding, the specific criteria for such relief as set forth in Section 525(c) of SMCRA will not be applied. Failure to apply these criteria is inconsistent with Section 525(c) of SMCRA.

27.10 405 KAR 7:090E Section 12(1)(a) is inconsistent with 30 CFR Subchapter L of Chapter VII because the State section does not provide for costs and expenses awards to include expert witness fees. The State regulation is thus inconsistent with 43 CFR Section 4.1295.

27.11 405 KAR 7:090E Section 12(4) appears to be inconsistent with 43 CFR 4.1294 because the phrase "shall consider the traditional practices" is unclear. Consideration of "traditional practices" may or may not be inconsistent with the Federal regulations depending upon what "traditional practices" are to be considered. The Secretary needs to know what "traditional practices" the State regulation contemplates in order to determine consistency with 43 CFR 4.1294 relative to the criteria for the awarding of costs and expenses in an administrative proceeding.

27.12 405 KAR 7:090E Section 12 is inconsistent with 43 CFR 4.1290 *et seq.* because:

(a) The time for a petitioner to file for an award is too short. 405 KAR 7:090E Section 12(b) provides that the petitioner file for an award within 20 Days of the entry of a final order. 43 CFR 4.1291 provides that the petitioner file for an award within 45 days of the entry of a final order.

(b) Awards to the permittee or the DNREP must include a finding of bad faith and harassment to be consistent with 43 CFR 4.1294.

(c) The State regulation lacks provisions consistent with 43 CFR 4.1295 relative to awards and 43 CFR 4.1296 relative to appeals of awards.

(d) The State regulation provides that an untimely petition shall result in a waiver of the right to an award (405 KAR 7:090E Section 12(b)) while the comparable Federal regulation (43 CFR 4.1291) provides only that an untimely petition may result in a waiver of the right to an award.

(e) The standard of "sound discretion" in 405 KAR 7:090E Section 12(b)(4) for the award of costs and expenses is inconsistent with 43 CFR 4.1294.

27.13 The term "order to abate and alleviate" found in 405 KAR 7:090E and 405 KAR 12:020E is undefined. The term may or may not be inconsistent with SMCRA and the Federal regulations depending upon how the term will be defined and utilized by DNREP. The term would likely be consistent with both SMCRA and the Federal regulations if it is an equivalent to the Federal imminent danger cessation order in Section 521(a)(2) of SMCRA. The Secretary requires additional information relative to the definition and usage of this term in order to determine consistency.

27.14 There are no procedural regulations comparable to 43 CFR 4.1109 (service), 4.1130 *et seq.* (discovery), 4.1155 (burden of proof in civil penalty proceedings), and 4.1171 (burden of proof in review of section 521 notices or orders).

27.15 405 KAR 7:090E Section 7, concerning mine site hearings, is inconsistent with 30 CFR 843. 15(c)(2) in that there appears to be no requirement for notifying a person who filed a report which led to a cessation order, of the date on which an informal hearing (minesite hearing) will be held.

Finding 28

In accordance with 30 CFR 732.15(b)(16), the Secretary finds that the Kentucky program demonstrates, in part,

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that the State can coordinate with and provide documents and other information to the Office of Surface Mining under the provisions of 30 CFR Chapter VII. There is nothing in the Kentucky legislation which would prohibit dissemination of information to the office. Further, the State regulations on permitting in 405 KAR Chapter 8 specifically provide for permit information to be provided to the Regional Director. Further, there is nothing in 405 KAR Chapter 10 on bonding or Chapter 12 on inspections which restricts coordination with OSM. However, 405 KAR 7:060E Section 2 does not refer to the Director of OSM's approval authority concerning experimental practices under 30 CFR 785.13 as discussed in Finding 14.32.

Finding 29

In accordance with 30 CFR 732.15(c), the Secretary finds that there are no other laws or regulations in addition to those discussed in the preceding findings which would preclude implementation of SMCRA and 30 CFR Chapter VII.

Finding 30

In accordance with 30 CFR 732.15(d), the Secretary finds that the Kentucky program does not contain sufficient information to conclude that DNREP and other agencies having a role in the State program have sufficient legal, technical, and administrative personnel and sufficient funding to implement, administer, and enforce the provisions of the program and other applicable State and Federal laws. These findings are based on review of State Program Sections 731.14(e), (f), (h), (i), (j), (k), (l), and (m). The Director of the Office of Surface Mining (OSM) will provide the State with a letter concerning deficiencies in the information provided on staffing and funding. In addition, recent studies on staffing conducted by OSM, Region II will be provided to the State for its consideration.

Public and Government Agency Comments

The Secretary received numerous comments from the public and government agencies on Kentucky's program. All of these comments were reviewed and considered by the Secretary in making the decision to approve the Kentucky program, in part, and disapprove it in part.

The Secretary intends to publish in the **Federal Register** within the next few days, a summary of the comments received and his disposition of each significant issue they raise.

Secretary's Decision

The Secretary finds that parts of the Kentucky program submission meet the criteria for approval in Section 503(a) and (b) of SMCRA and parts do not meet these critieria. Accordingly, the Kentucky program is approved in part and disapproved in part.

A. The following parts of the Kentucky program are approved:

1. The following provisions of KRS 224 are approved:

KRS 224.071 Order for discontinuance, abatement or alleviation or activity without hearing; subsequent hearing
KRS 224.081 Notice of complaint; answer to charges; petition by aggrieved party; hearing
KRS 224.083 Hearings; reports; rights of parties; records; hearings to be public

2. The following sections of KRS 350 are approved:

350.020 Declaration of legislative policy and finding of fact
350.029 Regulations to implement interstate mining compact—Adoption—Limitations
350.035 Bureau of surface mining reclamation and enforcement
350.050 Powers of department
350.055 Publication of notice of intention to mine
350.070 Procedure for increase or decrease of acreage affected by permit
350.080 Procedure for obtaining approval of the other mining operations—Reclamation may be deferred
350.090 Method of operations and reclamation plan—Waste on permit area only
350.093 Time limits—Drift mining—Bond release
350.095 Vegetative cover requirements
350.100 Time for commencement and completion of reclamation—Deferred planting—Authority to plant different area
350.110 Partial release of bond when planting deferred—Payment in lieu of forfeiture
350.113 Planting report, requirements, contents, inspection, approval
350.117 Trees, shrubs and plants, ownership
350.120 Report on expiration of permit, contents
350.133 Mountaintop removal
350.135 Succession of one operator by another at uncompleted operation
350.151 Surface effects of underground mining—Bond
350.170 Construction of chapter
350.200 Signs to be posted at mining site, size, contents
350.210 Monuments marking permit areas
350.220 Regulation of use of explosives
350.230 Conformance to statutes and regulations required, when
350.400 Applicability
350.405 Restoration of land
350.410 Restore the approximate original contour
350.415 Soil segregation
350.420 Minimize the disturbance to hydrologic balance
350.425 Waste used as dams
350.430 Explosives
350.435 Vegetation
350.445 Steep slopes
350.455 Water impoundment on mining site
350.460 Financial interest by state employee prohibited
350.470 Review of regulations

3. The following sections of Kentucky regulations in 405 KAR are approved subject to the condition that they remain essentially identical when permanently enacted:

Chapter 7—General Provisions for Title 405, Chapter 8 through 24, in part, as follows:

405 KAR 7:020E Definitions and abbreviations, in part, as follows:

Section 1. Definitions, in part, as follows:

(1) Acid drainage
(2) Acid forming materials
(3) Acid test ratio
(4) Adjacant area
(5) Affected area
(6) Agricultural use
(7) Applicant
(8) Application
(9) Approximate original contour
(10) Aquifer
(11) Area
(12) Asset ratio
(13) Auger mining
(14) Best technology currently available
(15) Capital assets
(16) Cash
(17) Cemetery
(18) Coal
(19) Coal exploration
(20) Coal processing waste
(22) Collateral bond
(23) Combustible material
(24) Common size comparative balance sheet
(25) Common size comparative income statement
(26) Compaction
(27) Complete application
(28) Cropland
(29) Current assets
(30) Current liabilities
(31) Current ratio
(32) Day
(33) Department
(34) Developed water resources land
(35) Disturbed area
(36) Diversion

(37) Downslope
(38) Embankment
(39) Ephemeral stream
(40) Existing structure
(41) Exerimental practice
(42) Extraction of coal as an incidental part
(43) Federal lands
(44) Federal lands progrm
(45) Fish and wildlife habitat
(46) Forest land
(47) Fragile lands
(48) Fugitive dust
(49) General area
(50) Government financed construction
(51) Government financing agency
(52) Grazing land
(53) Ground water
(54) Half-shrub
(55) Head of hollow fill
(59) Hydrologic balance
(60) Hydrologic regime
(61) Imminent danger to health and safety of the public
(62) Impoundment
(63) Industrial commercial land
(65) Intermittent stream
(66) Irreparable damage to the environment
(67) Land use
(68) Liquidity ratio
(69) Monitoring
(70) Mulch
(71) Natural hazard lands
(72) Net profit
(73) Net worth
(74) Notice of noncompliance and order for remedial measures
(75) Notice of violation
(76) Noxious plants
(77) Occupied dwelling
(78) Operations
(79) Operator
(80) Outslope
(81) Overburden
(82) Pasture land
(83) Perennial streams
(84) Performance bond
(85) Permanent diversion
(86) Permit
(87) Permit area
(88) Permittee
(91) Petitioner
(93) Prime farmland
(94) Principal shareholder
(95) Probable cumulative impacts
(97) Property to be mined
(98) Public building
(99) Public office
(100) Public park
(101) Public road
(102) Quick assets
(103) Recharge capacity
(104) Reclamation
(105) Recreation land
(106) Recurrence interval
(107) Reference area
(108) Renewable resource lands
(109) Residential land
(110) Retained earnings
(111) Return on investment
(112) Road
(113) Safety factor
(114) Secretary
(115) Sedimentation pond
(117) Significant imminent environmental harm
(118) Slope
(119) Soil horizons
(120) Soil survey
(121) Spoil
(122) Stabilize
(123) Steep slope
(124) Successor in interest
(125) Subsequent order for cessation and immediate compliance
(126) Substantially disturb
(127) Surety bond
(128) Surface mining activities
(129) Surface coal mining operations
(130) Surface mining and reclamation operations
(131) Suspended solids
(132) Temporary diversion
(133) Ton
(134) Topsoil
(135) Toxic forming materials
(136) Toxic mine drainage
(137) Transfer assignment or sale of rights
(138) Underground development waste
(139) Underground mining activities
(140) Undeveloped land or no current use or land management
(141) Unwarranted failure to comply
(142) Valley fill
(143) Water table
(144) Willful violation
(145) Working capital

Section 2. Abbreviations.

405 KAR 7:040E General obligations of operators and permittees, in part, as follows:

Section 1. General requirements for permits and exploration approvals
Section 2. When permit required
Section 3. Disposal of materials
Section 4. Unsafe practices
Section 6. Hazard classifications for impoundments
Section 7. Maps and reports
Section 8. Coal exploration
Section 9. Obligation to comply with other regulations
Section 10. Approximate original contour

405 KAR 7:060E Experimental practices mining, in part, as follows:

Section 1. General
Section 3. Periodic review

405 KAR 7:080E Small operator assistance, in part, as follows:

Section 1. Scope
Section 2. Objective
Section 3. Authority
Section 4. Program services
Section 6. Filing for assistance
Section 7. Application approval and notice
Section 9. Qualified laboratories
Section 10. Applicant liability

405 KAR 7:100E Notice of citizen suits, in its entirety

405 KAR 7:110E Petitions for rulemaking, in its entirety

Chapter 8—Permits, in part, as follows:

405 KAR 8:010E General provisions for permits, in part, as follows:

Section 1. Applicability
Section 2. General permit requirements
Section 3. Permit application filing deadlines
Section 4. Preliminary requirements
Section 6. Permit fees
Section 7. Verification of application
Section 9. Submission of comments on permit applications
Section 10. Right to file written objections
Section 11. Informal conferences
Section 12. Public availability of the information in permit applications on file with the department
Section 14. Criteria for permit approval or denial
Section 18. Conditions of permits
Section 19. Department review of outstanding permits
Section 21. Permit renewals
Section 23. Administrative and judicial review

405 KAR 8:020E Coal exploration, in part, as follows:

Section 1. Exploration of less than 250 tons
Section 3. Public availability of information
Section 4. Compliance

405 KAR 8:030E Surface coal mining permits, in part, as follows:

Section 1. General
Section 3. Compliance information
Section 5. Relationship to areas designated unsuitable for mining
Section 6. Permit term information
Section 7. Personal injury and property damage insurance information
Section 8. Identification of other licenses and permits
Section 9. Identification of location of public office for filing of application
Section 10. Newspaper advertisement and proof of publication
Section 11. Environmental resources information
Section 12. General requirements for geology and hydrology
Section 14. Ground water information
Section 16. Alternative water supply information
Section 17. Climatological information
Section 18. Soil resources information
Section 19. Vegetation information
Section 20. Fish and wildlife resources information

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Section 21. Prime farmland investigation
Section 22. Land use information
Section 26. MRP; blasting plan
Section 28. MRP; transportation facilities
Section 29. MRP; surface mining near underground mining
Section 30. MRP; protection of public parks and historic places
Section 31. MRP; protection of public roads
Section 32. MRP; protection of the hyudrologic balance
Section 33. MRP; diversions
Section 35. MRP; air pollution control
Section 38. MRP; transportation on public roads

405 KAR 8:040E Underground coal mining permits, in part, as follows:
Section 1. General
Section 3. Compliance information
Section 5. Relationship to areas designated unsuitable for mining
Section 6. Permit term information
Section 7. Personal injury and property damage
Section 8. Identification of other licenses and permits
Section 9. Identification of location of public office for filing of application
Section 10. Newspaper advertisement and proof of publication
Section 11. Evironmental resource information
Section 12. General requirements for geology and hydrology
Section 14. Ground water information
Section 16. Alternative water supply information
Section 17. Climatological information
Section 18. Soil resources information
Section 19. Vegetation information
Section 20. Fish and wildlife resources information
Section 21. Prime farmland investigation
Section 22. Land use information
Section 26. MRP; subsidence control
Section 27. MRP; return of coal processing waste to abandoned underground workings
Section 28. MRP; underground development waste
Section 29. MRP; transportation facilities
Section 30. MRP; protection of public parks and historic places
Section 31. MRP; relocation or use of public roads
Section 32. MRP; protection of hydrologic balance
Section 33. MRP; diversions
Section 35. MRP; air pollution control
Section 38. MRP; transportation on public roads

405 KAR 8:050E Permits for special categories of mining, in part, as follows:
Section 1. In site processing activities
Section 2. Augering
Section 4. Mountaintop removal mining
Section 5. Steep slope mining
Section 7. Variances for delay in contemporaneous reclamation requirement in combined surface and underground mining operations
Section 8. Coal processing plants or support facilities not located within the permit area or a specified mine

Chapter 10—Bond and Insurance Requirements, in part, as follows:

405 KAR 10:010E General requirements for performance bond and liability insurance, in part, as follows:
Section 1. Applicability
Section 3. Requirement to file a certificate of liability insurance

405 KAR 10:030E Form, terms and conditions of performance bonds and liability insurance, in part, as follows:
Section 1. Form of performance bond
Section 3. Escrow bonding
Section 5. Substitution of bonds
Section 6. Terms and conditions for liability insurance

405 KAR 10:050E Bond forfeiture, in part, as follows:
Section 1. General
Section 4. Determination of forfeiture amount

Chapter 12—Inspection and Enforcement, in part, as follows:

405 KAR 12:010E General provisions for inspection and enforcement, in part, as follows:
Section 1. Applicability
Section 2. Inspection and enforcement
Section 5. Penalties and sanctions
Section 6. Public participation
Section 7. Formal review

405 KAR 12:020E Enforcement, in part, as follows:
Section 1. General
Section 4. Service of notices and orders
Section 5. Suspension or revocation of permits and exploration approvals
Section 6. Informal public hearing at or near the minesite
Section 8. Inability to comply

405 KAR 12:030E Public participation in inspection and enforcement, in part, as follows:
Section 3. Citizen request for minesite access

Chapter 16—Performance Standards for Surface Mining Activities, in part, as follows:

405 KAR 16:010E General provisions, in part, as follows:
Section 1. Applicability
Section 2. Coal recovery
Section 3. Protection of underground mining
Section 4. Slide and erosion barriers
Section 5. Slides
Section 6. Permanent abandonment of operations

405 KAR 16:020E Contemporaneous reclamation, in its entirety

405 KAR 16:030E Signs and markers, in its entirety

405 KAR 16:040E Casing and sealing of drilled holes, in part, as follows:
Section 1. General requirements
Section 3. Permanent

405 KAR 16:050E Topsoil, in part, as follows:
Section 2. Removal
Section 3. Storage
Section 4. Redistribution
Section 5. Nutrients and soil amendments

405 KAR 16:060E General hydrologic requirements, in part, as follows:
Section 1. General requirements
Section 3. Discharge structures
Section 4. Acid-forming and toxic-forming spoil
Section 5. Ground water protection
Section 6. Protection of ground water recharge capacity
Section 7. Transfer of wells
Section 8. Water rights and replacement
Section 9. Discharge of water into an underground mine
Section 10. Postmining rehabilitation of sedimentation ponds, diversions, impoundments, and treatment facilities
Section 12. Discharges of accumulated water

405 KAR 16:080E Diversions, in its entirety

405 KAR 16:090E Sedimentation ponds, in part, as follows:
Section 1. General requirements
Section 2. Sediment storage volume
Section 3. Detention time
Section 4. Dewatering

405 KAR 16:100E Permanent and temporary impoundments, in its entirety

405 KAR 16:110E Surface and ground water monitoring
Section 2. Surface water

405 KAR 16:120E Use of explosives, in part, as follows:
Section 1. General requirements
Section 3. Public notice of blasting schedule
Section 5. Seismographic measurements
Section 6. Records of blasting operations

405 KAR 16:130E Disposal of excess spoil, in part, as follows:
Section 3. Rock core chimney drains
Section 5. Disposal on existing benches

405 KAR 16:140E Disposal of coal processing waste, in part, as follows:

Section 2. Site inspection
Section 3. Water control measures
Section 4. Construction requirements
Section 5. Burning coal waste
Section 6. Burned waste utilization
Section 7. Return to underground workings

405 KAR 16:150E Disposal of waste other than coal, soil, or rock, in its entirety

405 KAR 16:160E Coal processing waste dams and impoundments, in its entirety

405 KAR 16:180E Protection of fish and wildlife and related environmental values, in its entirety

405 KAR 16:190E Backfilling and grading, in part, as follows:
Section 1. General requirements
Section 3. Covering coal and acid- and toxic-forming materials
Section 4. Thin overburden
Section 5. Thick overburden
Section 6. Regarding or stabilizing rills and gullies

405 KAR 16:200E Revegetation, in part, as follows:
Section 3. Timing
Section 4. Mulching and other soil stabilizing practices
Section 5. Grazing
Section 8. Planting report

405 KAR 16:210E Postmining land use, in part, as follows:
Section 1. General
Section 3. Final release of bond from any affected area
Section 4. Alternate land use approval

405 KAR 16:220E Roads, in its entirety

405 KAR 16:250E Other facilities, in part, as follows:
Section 1. Other transportation facilities

Chapter 18—Performance standards for underground mining activites, in part, as follows:

405 KAR 18:010E General provisions, in part, as follows:
Section 1. Applicability
Section 2. Coal recovery
Section 3. Slides
Section 4. Permanent abandonment of operations

405 KAR 18:020E Contemporaneous reclamation, in its entirety

405 KAR 18:030E Signs and markers, in part, as follows:
Section 1. Specifications
Section 2. Duration of maintenance
Section 4. Perimeter markers
Section 5. Buffer zone markers
Section 6. Blasting signs
Section 7. Topsoil markers

405 KAR 18:040E Casing and sealing of underground openings, in its entirety

405 KAR 18:050E Topsoil, in part, as follows:
Section 1. General requirements
Section 2. Removal
Section 3. Storage
Section 4. Redistribution
Section 5. Nutrients and soil amendments

405 KAR 18:060E General hydrologic requirements, in part, as follows:
Section 1. General requirements
Section 3. Discharge structures
Section 4. Acid-forming and toxic-forming materials
Section 5. Underground mine entry and access discharges
Section 6. Transfer of wells
Section 8. Postmining rehabilitation of sedimentation ponds, diversions, impoundments and treatment facilities

405 KAR 18:080E Diversions, in its entirety

405 KAR 18:090E Sedimentation ponds, in part, as follows:
Section 2. Sediment storage volume
Section 3. Detention time
Section 4. Dewatering

405 KAR 18:100E Permanent and temporary impoundments, in its entirety

405 KAR 18:110E Surface and ground water monitoring, in part, as follows:
Section 2. Surface water

405 KAR 18:120E Use of explosives, in part, as follows:
Section 1. General requirements
Section 4. Seismographic measurements
Section 5. Records of blasting operations

405 KAR 18:130E Disposal of underground development waste and excess spoil, in part, as follows:
Section 3. Rock core chimney drains
Section 5. Disposal on existing benches

405 KAR 18:140E Disposal of coal processing waste, in its entirety

405 KAR 18:150E Disposal of waste other than coal, soil or rock, in its entirety

405 KAR 18:160E Coal processing waste dams and impoundments, in its entirety

405 KAR 18:180E Protection of fish and wildlife and related environmental values, in its entirety

405 KAR 18:190E Backfilling and grading, in its entirety

405 KAR 18:200E Revegetation, in part, as follows:
Section 3. Timing
Section 4. Mulching and other soil stabilizing practices
Section 5. Grazing
Section 8. Planting report

405 KAR 18:210E Subsidence control, in part, as follows:
Section 1. General requirements
Section 3. Surface owner protection
Section 4. Buffer zones

405 KAR 18:220E Postmining land use capability, in part, as follows:
Section 1. General
Section 3. Historic land use

405 KAR 18:230E Roads, in its entirety

405 KAR 18:260E Other facilities, in its entirety

Chapter 20—Special Performance Standards, in part, as follows:

405 KAR 20:010E Coal exploration, in its entirety

405 KAR 20:020E Concurrent surface and underground mining, in its entirety

405 KAR 20:040E Prime farmland (except to the extent crop production is required and to the extent there is no small area exemption for long-term surface facilities at underground mines). (See discussion of remanded and suspended regulations at "Background on State Program Approval Process.")

405 KAR 20:050E Mountaintop removal, in part, as follows:
Section 1. Performance standards

405 KAR 20:070E Offsite coal processing plants and support facilities, in part, as follows:
Section 1. Applicability

405 KAR 20:080E In situ processing, in its entirety

Chapter 24—Areas unsuitable for mining, in part, as follows:

405 KAR 24:020E Petition requirements, in its entirety

405 KAR 24:030E Process and criteria for designating lands unsuitable for surface mining operations, in part, as follows:
Section 1. General
Section 2. Lands exempt from designation
Section 3. Initial processing of permits
Section 5. Data base and inventory system
Section 7. Hearing requirements
Section 8. Criteria and decision
Section 9. Map

405 KAR 24:040E Permit application review, in part, as follows:
Section 1. General
Section 3. Assistance review
Section 4. Valid existing rights
Section 5. Exploration on land designated as unsuitable for surface coal mining and reclamation operations
Section 6. Lands designated unsuitable

4. The following sections of the program narrative:
731.14(b) Copies of other laws
731.14(d) Legal designation of one State agency as the regulatory authority
731.14e) Description of organizational structure of the regulatory authority

731.14(f) Supporting agreements among agencies. The Secretary notes that the Department for Natural Resources and Environmental Protection has elected to perform all duties in the program with its own staff and memoranda of agreement are not necessary
731.14(g)(2) Assessing fees for permit applications
731.14(g)(6) Administering and enforcing the permanent program performance standards
731.14(g)(9) Coordinating issuance of permits with other State, Federal and local agencies
731.14(g)(10) Consulting with State and Federal Agencies having responsibility for the protection or management of fish and wildlife and related environmental values and historic, cultural and archaeological resources
731.14(g)(11) Designating lands as unsuitable for surface coal mining operations
731.14(g)(13) Training, examining and certifying blasters to the extent that the State has authority to promulgate rules after Federal rules are promulgated
731.14(g)(16) Providing a small operator assistance program
731.14(h) Statistical information describing coal exploration and surface coal mining and reclamation operations in the State
731.14(k) An explanation of projected use of professional and technical personnel that are available to the regulatory authority from other agencies. The Secretary recognizes that all duties are to be performed with DNREP staff
731.14(o) Description of other programs administered by the regulatory authority
731.14(p) Other information required by the Director

B. The following parts of the Kentucky program are disapproved:

1. The following sections of KRS 350:
350.010 Definitions
350.028 Powers of department
350.032 Enforcement of subpoenas—judicial review of final orders
350.060 Permit—Application—Map—Transportation plan—Statement of consent—Fee—Bond—Mining two acres or less—Permit renewal
350.062 (Untitled)
350.085 Denial of permits and operations—Deletion of land areas
350.130 Notice of noncompliance, suspension or revocation of permit or operation—Hearing—Bond forfeiture—Denial of future permit or operations
350.250 Citizen's complaints of violation—Mandamus against officers
350.440 Placement of excess spoil
350.450 Prime farmland—Mountaintop removal—Variance upon written request of surface owner—Small operator exemption—Technical assistance for small operators—Release of portion of bond
350.465 Permanent regulatory program
350.990 Penalties

2. The following sections of Kentucky regulations in 405 KAR are disapproved:
Chapter 7—General Provisions for Title 405, Chapters 8 through 24, in part, as follows:
405 KAR 7:020E Definitions and abbreviations, in part, as follows:
Section 1. Definitions, in part, as follows:
(56) Highwall
(57) Historic lands
(58) Historically used for cropland
(64) In situ processes
(89) Person
(90) Person having interest which is or may be adversely affected or person with a valid legal interest
(92) Precipitation event
(96) Probable hydrologic consequences
(116) Self-bond
405 KAR 7:030E Applicability, in its entirety
405 KAR 7:040E General obligations of operators and permittees, in part, as follows:
Section 5. Existing structures on areas sought to be permitted
405 KAR 7:060E Experimental practices mining, in part, as follows:
Section 2. Approval procedures
405 KAR 7:080E Small operator assistance, in part, as follows:
Section 5. Eligibility for assistance
Section 8. Data requirements
405 KAR 7:090E Hearings, in its entirety
Chapter 8—Permits, in part, as follows:
405 KAR 8:010E General provisions for permits, in part, as follows:
Section 5. General format and content of applications
Section 8. Public notice of filing of permit applications
Section 13 Department review of permit applications
Section 15 Criteria for permit approval or denial regarding existing structures
Section 16. Permit approval or denial actions
Section 17. Term of permit
Section 20. Permit revisions
Section 22. Transfer, assignment, or sale of permit rights
405 KAR 8:020E Coal exploration, in part, as follows:
Section 2. Exploration of more than 250 tons
405 KAR 8:030E Surface coal mining permits, in part, as follows:
Section 2. Identification of interests
Section 4. Right of entry and right to surface mine
Section 13. Geology information
Section 15 Surface water information
Section 23. Maps and drawings
Section 24. Mining and reclamation plan (MRP); general requirements
Section 25. MRP; existing structures
Section 27. MRP; disposal of excess spoil
Section 34. MRP; impoundments and embankments
Section 36. MRP; fish and wildlife to the extent that a fish and wildlife plan is required. (For discussion of remanded and suspended regulations refer to "Background on State Program Approval Process.")
Section 37. MRP; postmining land use
405 KAR 8:040E Underground coal mining permits, in part, as follows:
Section 2. Identification of interests
Section 4. Right of entry and right to mine
Section 13. Geology information
Section 15. Surface water information
Section 23. Maps and drawings
Section 24. Mining and reclamation plan (MRP); general requirements
Section 25. MRP; existing structures
Section 34. MRP; impoundments and embankments
Section 36. MRP; fish and wildlife to the extent that a fish and wildlife plan is required. (For discussion of remanded and suspended regulations refer to "Background on State Program Approval Process.")
Section 37. MRP; postmining land use
405 KAR 8:050E Permits for special categories of mining, in part, as follows:
Section 3. Prime farmlands
Section 6. Variances from approximate original contour restoration requirements for steep slope mining
Chapter 10—Bond and Insurance Requirements, in part, as follows:
405 KAR 10:010E General requirements for performance bond and liability insurance, in part, as follows:
Section 2. Requirement to file bond
405 KAR 10:020E Amount and duration of performance bond, in its entirety
405 KAR 10:030E Form, terms and conditions of performance bonds and liability insurance, in part, as follows:
Section 2. Terms and conditions of performance bond
Section 4. Self bonding
405 KAR 10:040E Procedures, criteria and schedule for release of performance bond, in its entirety

405 KAR 10:050E Bond forfeiture
Section 2. Procedures
Section 3. Criteria for forfeiture
405 KAR 10:060E Bonding requirements for long term facilities and structures, in its entirety
Chapter 12—Inspection and Enforcement, in part, as follows:
405 KAR 12:010E General provisions for inspection and enforcement, in part, as follows:
Section 3. Timing and conduct of inspections
Section 4. Record of inspection
Section 8. Review of discretionary actions
405 KAR 12:020E Enforcement, in part, as follows:
Section 2. Notice of noncompliance and order for remedial measures
Section 3. Subsequent order for cessation and immediate compliance
Section 7. Orders to abate and alleviate
405 KAR 12:030E Public participation in inspection and enforcement, in part, as follows:
Section 1. Citizen requests for inspection
Section 2. Review of decision not to inspect or enforce
Chapter 16—Performance Standards for Surface Mining Activities, in part, as follows:
405 KAR 16:010E General provisions, in part, as follows:
Section 7. Temporary cessation of operations
405 KAR 16:040E Casing and sealing of drilled holes, in part, as follows:
Section 2. Temporary
405 KAR 16:050E Topsoil, in part, as follows:
Section 1. General requirements
405 KAR 16:060E General hydrologic requirements, in part, as follows:
Section 2. Sediment control measures
Section 11. Stream buffer zones
405 KAR 16:070E Water quality standards and effluent limitations, in its entirety
405 KAR 16:090E Sedimentation ponds, in part, as follows:
Section 5. Other requirements
405 KAR 16:110E Surface and groundwater monitoring, in part, as follows:
Section 1. Ground water
405 KAR 16:120E Use of explosives, in part, as follows:
Section 2. Pre-blasting survey
Section 4. Surface blasting requirements
405 KAR 16:130E Disposal of excess spoil, in part, as follows:
Section 1. General requirements
Section 2. Valley fills and head of hollow fills
Section 4. Hard rock spoil
405 KAR 16:140E Disposal of coal processing waste, in part, as follows:
Section 1. General requirements
405 KAR 16:170E Air resources protection to the extent it regulates air quality beyond that relating to erosion. (For discussion of remanded and suspended regulations refer to "Background on State Program Approval Process.")
405 KAR 16:190E Backfilling and grading, in part, as follows:
Section 2. General grading requirements
405 KAR 16:200E Revegetation, in part, as follows:
Section 1. General requirements
Section 2. Use of introduced species
Section 6. Standards for success
Section 7. Tree and shrub stocking for forest
405 KAR 16:210E Postmining land use, in part, as follows:
Section 2. Determining premining use of land
405 KAR 16:250E Other facilities, in part, as follows:
Section 2. Support facilities and utility installation
Chapter 18—Performance Standards for Underground Mining Activities, in part, as follows:
405 KAR 18:010E General provisions, in part, as follows:
Section 5. Temporary cessation of operations
405 KAR 18:030E Signs and markers, in part, as follows:
Section 3. Mine and permit identification signs.
405 KAR 18:050E Topsoil, in part, as follows:
Section 6. Extended Storage
405 KAR 18:060E General hydrologic requirements, in part, as follows:
Section 2. Sediment control measures
Section 7. Discharge of water into an underground mine
Section 9. Stream buffer zones
405 KAR 18:070E Water quality standards and effluent limitations, in its entirety
405 KAR 18:090E Sedimentation ponds, in part, as follows:
Section 1. General Requirements
Section 5. Other requirements
405 KAR 18:110E Surface and groundwater monitoring, in part, as follows:
Section 1. Ground water
405 KAR 18:120E Use of explosives, in part, as follows:
Section 2. Preblasting survey
Section 3. Surface blasting requirements
405 KAR 18:130E Disposal of underground development waste and excess spoil, in part, as follows:
Section 1. General requirements
Section 2. Valley fills and head of hollow fills
Section 4. Hard Rock spoil
405 KAR 18:170E Air resources protection to the extent that it regulates air quality beyond that relating to erosion. (For discussion of remanded and suspended regulations refer to "Background on State Program Approval Process.")
405 KAR 18:200E Revegetation, in part, as follows:
Section 1. General requirements
Section 2. Use of introduced species
Section 6. Standards for success
Section 7. Tree and shrub stocking for forest land
405 KAR 18:210E Subsidence control, in part, as follows:
Section 2. Public notice
405 KAR 18:220E Postmining land use capability
Section 2. Comparing premining and postmining land use
Section 4. Alternative postmining land use
Chapter 20—Special Performance Standards, in part, as follows:
405 KAR 20:030E Auger mining, in its entirety
405 KAR 20:040E Prime farmland to the extent crop production is required and to the extent that there is not a small area exemption for long term surface facilities at underground mines (See discussion of remanded and suspended regulations under "Background on State Program Approval Process.")
405 KAR 20:060E Steep slopes, in its entirety
405 KAR 20:070E Offsite coal processing plants and support facilities, in prat, as follows:
Section 2. Performance standards
Chapter 24—Areas Unsuitable for Mining, in part, as follows:
405 KAR 24:030E Process and criteria for designating lands unsuitable for surface mining operations, in part, as follows:
Section 4. Notification and request for information
Section 6. Public information
Section 8. Criteria and decision
405 KAR 24:040E Permit application review, in part, as follows:
Section 2. Permit application review

3. The following descriptive elements of the program submission:
731.14(c) Legal opinion from the Attorney General
731.14(g)(1) Narrative description for receiving notices of intention to

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explore and reviewing permits for surface coal mining operations
731.14(g)(3) Implementing, administering and enforcing a system of performance bonds
731.14(g)(4) Inspecting and monitoring coal exploration and surface coal mining and reclamations, including provisions for public participation in the process
731.14(g)(5) Enforcing the administrative, civil and criminal sanctions
731.14(g)(7) Assessing and collecting civil penalties
731.14(g)(8) Issuing public notices and holding public hearings
731.14(g)(12) Monitoring, reviewing and enforcing restrictions against direct and indirect financial interest
731.14(g)(14) Providing for the public participation in the development, revision and enforcement of State regulations, the State program and permits issued under the State program
731.14(g)(15) Providing administrative and judicial review
731.14(i) A summary table of the existing and proposed State program staff
731.14(j) A description of how the staffing proposed for the state program will be adequate
731.14(l) A description of the actual capital and operating budget
731.14(m) A description of the existing and proposed physical resources

In accordance with the May 16, 1980, court order, the Secretary must affirmatively disapprove State program sections equivalent to remanded or suspended Federal regulations as discussed above under "Background on State Program Approval Process". In the June 12, 1980, revised submission Kentucky deleted many of the remanded requirements. The following provisions of the State program which are based on remanded requirements are affirmatively disapproved in accordance with the May 16, 1980, court order:

1. 405 KAR 7:090E Section 4 and 405 KAR 10:040E Section 1 are disapproved insofar as they do not provide for citizen access to the minesite for performance bond release if an informal conference is held.

A letter from DNREP advised OSM that 405 KAR 7:090E Section 4 concerning informal conferences is not the optional "informal conference" established by 30 CFR 807.11(e) and should not be affirmatively disapproved. (See Administrative Record No. KY-281.)

The Secretary finds nothing in the Kentucy regulations which indicates that the informal conference described in 405 KAR 7:090E does not apply to bond releases. 405 KAR 10:040E Section 1(3) on bond releases contains a direct reference to 405 KAR 7:090E for hearing procedures. The hearing requirements appear to allow for an informal conference similar to 30 CFR 807.11(e). Further, the State narrative for bonding systems refers to an informal conference and 405 KAR 7:090E is the only regulation pertaining to informal conferences. The State program must clearly demonstrate that there is no informal conference for bond release before the Secretary could approve 405 KAR 7:090E Section 4.

2. 405 KAR 20:040E Section 5 is disapproved to the extent that it requires crop production on prime farmland.

3. 405 KAR 20:040E is disapproved to the extent that it does not provide for an exemption from prime farmland requirements for surface facilities at underground mines actively used over extended periods but which affect a minimal amount of land.

4. 405 KAR 16:070E and 18:070E to the extent that they regulate air quality beyond that relating to erosion.

5. 405 KAR 8:030E Section 36 and 8:040E Section 36 which require a fish and wildlife plan.

6. 405 KAR 16:070E and 18:070E to the extent that they require runoff from reclaimed lands to meet the same effluent limitations as those for actively mined areas.

Effect of This Action

Partical approval and partial disapproval means that Kentucky is not now eligible to assume primary jurisdiction to implement the permanent program pursuant to SMCRA. Kentucky may submit additions or revisions to its program to correct the disapproved parts within 60 days from the date of this **Federal Register** notice. (by December 22, 1980).

If the disapproved parts of the programs are not revised within 60 days, the Secretary will take the appropriate steps to promulgate and implement a Federal program for the State of Kentucky. If the disapproved parts of the program are revised and resubmitted within the 60-day limit, the Secretary will have an additional 60 days to review the revised program, solicit comments from the public, the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies and to approve, disapprove, or conditionally approve the final Kentucky program submission.

This approval in part and disapproval in part relates only to the permanent regulatory program under Title V of SMCRA. This decision does not constitute any type of action on the implementation of Title IV of SMCRA, the Abandoned Mine Lands Reclamation Program. In accordance with 30 CFR Part 884 (State Reclamation Plans), Kentucky may submit a State abandoned mine land (AML) reclamation plan at any time. Final approval of an AML plan, however, cannot be given by the Director of OSM until Kentucky has an approved permanent regulatory program.

There are no coal bearing Indian lands in Kentucky. Coal development is anticipated on Federal lands in the State, and these will be governed by 30 CFR Part 211 until such time as a State regulatory program is approved. After the implementation of a State regulatory program, the Federal lands program will be governed by 30 CFR Part 740.

The Secretary intends not to promulgate rules in 30 CFR Part 917 until the Kentucky program has been either finally approved or disapproved following opportunity for resubmission.

Additional Findings

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 USC 1292(d), no environmental impact statement will be prepared on this disapproval.

The Secretary has determined that this document is not a significant rule under E.O. 12044 or 43 CFR Part 14, and no regulatory analysis is being prepared.

Dated: October 16, 1980.

Joan M. Davenport,

Assistant Secretary of the Interior.

[FR Doc. 80-32872 Filed 10-21-80; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 938

Disapproval of the Permanent Program Submission From the Commonwealth of Pennsylvania Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior.

ACTION: Proposed rules; disapproval of Pennsylvania's permanent regulatory program.

SUMMARY: On February 29, 1980, the Commonwealth of Pennsylvania submitted to the Department of the Interior its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The purpose of the submission is to demonstrate the Commonwealth's intent and the capability to administer and enforce the provisions of SMCRA and the permanent regulatory program regulations, 30 CFR Chapter VII.

After providing opportunities for public comment and a thorough review of the program submission, the Secretary of the Interior has determined that the Pennsylvania program does not have enacted laws and regulations which meet the requirements of SMCRA and the federal permanent program regulations. Accordingly, the Secretary of the Interior has disapproved the Pennsylvania program in whole. The Commonwealth of Pennsylvania has sixty days within which to correct the deficiencies in its proposed permanent regulatory program. Until its permanent regulatory program is approved or a federal program is implemented, the interim program will remain in effect in Pennsylvania.

DATE: The Commonwealth of Pennsylvania has until December 22, 1980, to submit a revised program for the Secretary's consideration.

FOR FURTHER INFORMATION CONTACT:
Mr. Carl C. Close, Assistant Director, Division of State and Federal Programs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Avenue NW., Washington, D.C. 20240, Telephone (202) 343-4225.

ADDRESSES: Copies of the Pennsylvania program and the administrative record on the Pennsylvania program are available for public inspection and copying during regular business hours at:

Pennsylvania Department of Environmental Resources, Fulton Bank Building, Tenth Floor, Third and Locust Streets, Harrisburg, Pennsylvania 17120, Telephone: (717) 787-4686.
Office of Surface Mining, Region I, 950 Kanawha Blvd., East, Charleston, West Virginia 25301, Telephone: (304) 344-2331.
Office of Surface Mining, Room 153, Interior South Building, 1951 Constitution Avenue, Washington, D.C. 20240, Telephone: (202) 343-4728.

Copies of the full text of the proposed program with modifications are also available for inspection and copying during regular business hours at the following locations:

Office of Surface Mining, Region I Office, 950 Kanawha Blvd., East, Charleston, WV 25301, Phone: (304) 342-8125.
Office of Surface Mining, Johnstown District Office, Penn Traffic Bldg., 3rd Floor, 319 Washington Street, Johnstown, PA 15901, Phone: (814) 533-4223.
Office of Surface Mining, DuBois Field Office, 107 N. Brady Street, P.O. Box 647, DuBois, PA 15801, Phone: (814) 371-1240.
Office of Surface Mining, Somerset Field Office, 651 S. Central Avenue, Morocco Building, Somerset, PA 15501, Phone: (814) 443-4844.
Office of Surface Mining, Wilkes Barre District Office, 20 N. Pennsylvania Avenue, Room 3107, Wilkes Barre, PA 18701, Phone: (717) 823-0563.
Office of Surface Mining, Clarion Field Office, Clarion State College, Clarion, PA 16214, Phone: (814) 226-4230.
Office of Surface Mining, Indiana Field Office, North 8th & Waters Streets, P.O. Box 185, Indiana, PA 15701, Phone: (412) 463-0216.
Office of Surface Mining, Washington Field Office, 75 East Maiden Street, Washington, PA 15301, Phone: (412) 228-4710.
Office of Surface Mining, Clearfield Field Office, Multi-Service Center, 950 Leonard Street, Clearfield, PA 16830, Phone: (814) 765-1503
Department of Environmental Resources, Williamsport Regional Office, 736 West Fourth Street, Williamsport, PA 17701, Phone: (717) 326-2681
Department of Environmental Resources, Meadville Regional Office, 1012 Water Street, Meadville, PA 16335, Phone: (814) 724-8557
Department of Environmental Resources, Wernersville Regional Office, State Hospital Bldg. 10, Wernersville, PA 19565, Phone: (215) 670-0301
Department of Environmental Resources, Hawk Run Water District Office, Hawk Run Treatment Plant, Hawk Run, PA 16840, Phone: (814) 342-5399
Department of Environmental Resources, Ebensburg District Office, The Prave Building, 122 S. Center Street, Ebensburg, PA 15931, Phone: (814) 472-6344
Department of Environmental Resources, Knox District Office, White Memorial Bldg., Knox, PA 16232, Phone: (814) 797-1191
Department of Environmental Resources, 10th Floor, Fulton Bank Bldg., Third & Locust Streets, Harrisburg, PA 17120, Phone: (717) 787-4686
Department of Environmental Resources, Pittsburgh Regional Office, The Kosman Building, Pittsburgh, PA 15222, Phone: (412) 565-5023
Department of Environmental Resources, Wilkes Barre/Kingston Regional Office, 90 East Union St., 2nd Floor, Wilkes Barre, PA 18701, Phone: (717) 826-2511
Department of Environmental Resources, Harrisburg Regional Office, 407 South Cameron Street, Harrisburg, PA 17101, Phone: (717) 783-2818
Department of Environmental Resources, Norristown Regional Office, 1875 New Hope Street, Norristown, PA 19401, Phone: (215) 631-2402
Department of Environmental Resources, Pottsville District Office, Motor Contracts Building, 108 S. Claude A Lord Blvd., Pottsville, PA 17901, Phone: (717) 622-8181
Department of Environmental Resources, Greensburg District Office, Armbrust Professional Bldg., R.D. #2, Greenburg, PA 15601, Phone: (412) 925-8115

SUPPLEMENTARY INFORMATION:

Introduction

This notice is organized to assist understanding of the findings underlying the Secretary's decision. It is divided into seven major parts:

A. General Background on the Permanent Program
B. General Background on the State Program Approval Process
C. General Background on the Pennsylvania Program
D. Secretary's Findings and Explanation
E. Disposition of Public Comments
F. The Secretary's Decision
G. Additional Findings

Part A sets forth the statutory and regulatory framework of the environmenal protection regulatory scheme under Surface Mining Control and Reclamation Act of 1977 (SMCRA).

Part B sets forth the general statutory and regulatory scheme applicable to all states which wish to obtain primary jurisdiction to implement the permanent program on non-Indian and non-Federal lands within their borders.

Part C summarizes the steps undertaken by Pennsylvania and officials of the Department of the Interior, beginning with Pennsylvania's program submission and leading to the decision being announced today.

Part D contains the findings the Secretary has made and the reasons for them.

Part E summarizes the significant public comments received on the Pennsylvania progam during the public comment period and discusses the Secretary's disposition of them.

Part F identifies those parts of the Pennsylvania program which have been disapproved. Procedures Pennsylvania

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may follow to correct the dificiencies are presented and the effect of the decision is discussed.

Part G summarizes the Secretary's findings with regard to regulatory analysis and environmental impact of the decision.

A. General Background on the Permanent Program

The environmental protection provisions of SMCRA are being implemented in two phases—the initial program and the permanent program—in accordance with Sections 501–503 of SMCRA, 30 USC 1251–1253. The initial program has been in effect since December 13, 1977, when the Secretary of the Interior promulgated interim program rules, 30 CFR Parts 710–725 and 795, 42 FR 62639 *et seq.*

The permanent program will become effective in each state upon the approval of a state program by the Secretary of the Interior or implementation of a federal program within the state. If a state program is approved, the state, rather than the Federal government, will be the primary regulator of activities subject to SMCRA.

The federal regulations for the permanent program, including procedures for states to follow in submitting state programs and minimum standards and procedures the state programs must include to be eligible for approval, are found in 30 CFR Parts 700 and 730–865. Part 705 was published October 20, 1977 (42 FR 56064), Parts 795 and 865 (originally Part 860) were published December 13, 1977 (42 FR 62639). The other permanent program regulations were published at 44 FR 15312–15463 (March 13, 1979). Errata notices were published at 44 FR 15485 (March 14, 1979), 44 FR 49673–49687 (August 24, 1979), 44 FR 53507–53509 (September 14, 1979), 44 FR 66195 (November 19, 1979), 45 FR 26001 (April 16, 1980), 45 FR 37818 (June 5, 1980) and 45 FR 47424 (July 15, 1980). Amendments to the regulations have been published at 44 FR 60969 (October 22, 1979), as corrected at 44 FR 75143 (December 19, 1979), 44 FR 75302–75303 (December 19, 1979), 44 FR 77440–77447 (December 31, 1979), 45 FR 2626–2629 (January 11, 1980), 45 FR 25998–26001 (April 16, 1980), 45 FR 33926–33927 (May 20, 1980), 45 FR 39446–39447 (June 10, 1980), and 45 FR 52306–52324 (August 6, 1980). Portions of these regulations have been suspended pending further rulemaking. See 44 FR 67942 (November 27, 1979), 44 FR 77447–77455 (December 31, 1979), 45 FR 6913 (January 30, 1980), and 45 FR 51547–51550 (August 4, 1980).

B. General Background on State Program Approval Process

Any state wishing to assume primary jurisdiction for the regulation of coal mining under SMCRA may submit a program for consideration. The Secretary of the Interior has the responsibility to approve or disapprove the submission.

The federal regulations governing state program submissions are found at 30 CFR Parts 730–732. After review of the submission by OSM and other agencies, an opportunity for the state to make additions or modifications to the program, and an opportunity for public comment, the Secretary may approve the program, approve it conditioned upon minor deficiencies being corrected in accordance with a specified timetable set by the Secretary, or disapprove the program in whole or in part. If any part of the program is disapproved, the state may submit a revision of the program to correct the items which need to be changed to meet the requirements of SMCRA and the applicable federal regulations. If the revised program is also disapproved, SMCRA requires the Secretary of the Interior to establish a federal program in that state. The state may again request approval to assume primary jurisdiction after the federal program has been implemented.

Different criteria apply to various elements of a state program for the purpose of determining whether they can be approved by the Secretary. There are three categories of potential program elements, each with its own standard of review, as follows:

1. "State window" proposals—Pursuant to 30 CFR 731.13, a state proposed alternative to a provision of the Secretary's regulations must be in accordance with SMCRA and consistent with the Secretary's regulations. Under 30 CFR 730.5, "in accordance with" SMCRA means that the state alternative meets the minimum requirements, and includes all applicable provisions of SMCRA, while "consistent with" the Secretary's regulations means that the state proposal is no less stringent than, and meets the applicable provisions of 30 CFR Chapter VII.

2. Regulations for Inspection and Enforcement—As required by Section 518 of SMCRA, the civil and criminal penalty provisions of a state program must be no less stringent than the requirements of Section 518 and must be consistent with the federal regulations in 30 CFR Part 845 (see item 1 above for meaning of "consistent with"). However, a recent court decision (Civil Action No. 79–1144) has held that states cannot be required to establish a penalty point system like that in Part 845. Under Section 521 of SMCRA, the enforcement sanctions of a state program must also be no less stringent than those in Section 521 and must be consistent with 30 CFR Part 808 and Subchapter G (Permit Systems). State regulations which establish the procedural requirements related to civil and criminal penalties and enforcement sanctions must be the same as or similar to the procedures in Sections 518 and 521 of SMCRA and must be consistent with 30 CFR Parts 808, 843, 845 and Subchapter G.

3. Other State Program Elements—If a state provision is neither a state window alternative nor a procedure or sanction related to inspection and enforcement, then the standard to be applied in evaluating each element is whether the state provision is consistent with the corresponding provision of the federal regulations or in accordance with the relevant section of SMCRA, as set forth in 30 CFR 732.15(b) for each of the sixteen state program requirements.

State programs must contain provisions which regulate coal mining in accordance with the requirements of SMCRA and consistent with the Secretary's regulations. The requirements under SMCRA and 30 CFR Chapter VII for special bituminous coal mines in Wyoming are inapplicable in Pennsylvania.

The procedure and timetable for the Secretary's review of state programs were initially published March 13, 1979 (44 FR 15326), and codified at 30 CFR Part 732.

As a result of litigation in the U.S. District Court for the District of Columbia, the deadline for states to submit proposed programs was extended from August 3, 1979, to March 3, 1980. 30 CFR 732.11(d) required that if all required and fully enacted laws and regulations were not part of the program by November 15, 1979, the program would be disapproved. Because the submission deadline had been changed to March 3, 1980, 30 CFR 732.11(d) was amended to provide that program submissions that do not contain all required and fully enacted laws and regulations by the 104th day following program submission will be disapproved pursuant to the procedures for the Secretary's initial decision in § 732.13 (45 FR 33927, May 20, 1980). The Pennsylvania program was submitted to OSM on February 29, 1980, and the 104th day after submission was June 12, 1980.

The Secretary, in reviewing state programs, is applying the criteria of Section 503 of SMCRA (30 U.S.C. 1253) and 30 CFR 732.15. In reviewing the Pennsylvania program, the Secretary has followed the federal regulations as cited above under "General Background on the Permanent Program," and as affected by three recent decisions of the U.S. District Court for the District of Columbia in *In Re: Permanent Surface Mining Regulation Litigation* (Civil Action No. 79–1144).

Because of the complex litigation, the court issued its initial decision in two "rounds." The Round I opinion, dated February 28, 1980, denied several generic attacks on the permanent program regulations, but resulted in suspension or remanding of all or part of twenty-two specific regulations. The Round II opinion, dated May 16, 1980, denied additional generic attacks on the regulations, but remanded some forty additional parts, sections or subsections of the regulations. The court also ordered the Secretary to "affirmatively disapprove, under Section 503 of SMCRA, those segments of a state program that incorporate a suspended or remanded regulation" (Mem. Op., May 16, 1980, p. 49). However, on August 15, 1980, the court stayed this portion of its opinion. The effect of this stay is to allow the Secretary, when requested by a State, to approve state program provisions in the three circumstances described in paragraph one below.

Therefore, the Secretary is applying the following standards to the review of state program submissions:

1. The Secretary need not affirmatively disapprove state provisions similar to those federal regulations which have been suspended or remanded by the District Court where the State has adopted such provisions in a rulemaking or legislative proceeding which occurred either (1) before the enactment of SMCRA or (2) after the date of the Round II District Court decision, since such state regulations clearly are not based solely upon the suspended or remanded federal regulations. (3) The Secretary need not affirmatively disapprove provisions based upon suspended or remanded Federal rules if a responsible State official has requested the Secretary to approve them.

2. The Secretary will affirmatively disapprove, to the extent required by the court's decision all provisions of a state program which incorporate suspended or remanded Federal rules and which do not fall into one of the three categories in paragraph one, above. The Secretary believes that the effect of his "affirmative disapproval" of a section in the state's regulations is that the requirements of that section are not enforceable in the permanent program at the federal level to the extent they have been disapproved. That is, no cause of action for enforcement of the provisions, to the extent disapproved, exists in the federal courts, and no federal inspection will result in notices of violation or cessation orders based upon the "affirmatively disapproved" provisions. The Secretary takes no position as to whether the affirmatively disapproved provisions are enforceable under state law and in state courts. Accordingly, these provisions are not being pre-empted or suspended, although the Secretary may have the power to do so under Section 504(g) of SMCRA and 30 CFR 730.11.

3. A state program need not contain provisions to implement a suspended regulation and no state program will be disapproved for failure to contain a suspended regulation. Nonetheless, a state must have the authority to implement all permanent program provisions of SMCRA upon which the Secretary bases the remanded or suspended regulations, including any provision of which a suspended or remanded regulation was based.

4. A state program may not contain any provision that is inconsistent with a provision of SMCRA.

5. Programs will be evaluated only as to those provisions other than the provisions that must be disapproved because of the court's order. The remaining provisions will be unconditionally approved, conditionally approved or disapproved, in whole or in part in accordance with 30 CFR 732.13.

6. Upon promulgation of new regulations to replace those that have been suspended or remanded, the Secretary will afford states that have approved or conditionally approved programs a reasonable opportunity to amend their programs, as appropriate. In general, the Secretary expects that the provisions of 30 CFR 732.17 will govern this process.

The regulations suspended or remanded as the result of the Round I and Round II litigation were published in the **Federal Register** on July 7, 1980 (45 FR 45604).

To codify decisions on state programs, federal programs, and other matters affecting individual states, OSM has established Subchapter T of 30 CFR Chapter VII. Subchapter T will consist of Parts 900 through 950.

Provisions relating to Pennsylvania will be found at 30 CFR Part 938 once Pennsylvania's resubmission has been approved or finally disapproved after opportunity for resubmission, or if Pennsylvania does not resubmit its program within sixty days.

C. General Background on the Pennsylvania Program Submission

On February 29, 1980, OSM received a proposed regulatory program from the Commonwealth of Pennsylvania. The program was submitted by the Pennsylvania Department of Environmental Resources, the agency which will be the primary regulatory authority under the Pennsylvania permanent program. Notice of receipt of the submission initiating the program review was published in the March 11, 1980, **Federal Register** (45 FR 15575–15576) and in newspapers of general circulation within the State (Administrative Record No. PA 1). The announcement invited public participation in the initial phase of the review process as it related to the regional director's determination of whether the submission was complete.

On April 10, 1980, a public review meeting on the Pennsylvania program and its completeness was held by the regional director in Indiana, Pennsylvania. The public comment period on completeness, which had begun March 11, 1980, closed on April 11, 1980.

On April 28, 1980, the regional director published notice in the **Federal Register** (45 FR 28165–28167) announcing that the program had been determined to be incomplete (Administrative Record No. PA 80). The notice specified the elements of the Pennsylvania program submission which were missing.

On June 9, 1980, the Pennsylvania Department of Environmental Resources submitted an amendment to its program submission containing amended Senate Bills 989 (Coal Refuse Disposal Control Act), 990 (Surface Mining Conservation and Reclamation Act), 991 (The Bituminous Mine Subsidence and Land Conservation Act), and 992 (The Clean Stream Law). All of these amended bills consist of proposed amendments to existing statutes. None of these bills have been enacted. None of the missing elements identified in the April 28, 1980, Federal Register notice have been submitted.

On June 20, 1980, the regional director published a notice in the **Federal Register** (45 FR 41656–41659) and in newspapers of general circulation within the Commonwealth that the revised Pennsylvania permanent program submission was available for public review and comment (Administrative Record No. PA 118). The notice set forth procedures for public hearings and comment period on the adequacy of the Pennsylvania program.

On July 11, 1980, public comment was invited on a tentative list of those parts

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of the Pennsylvania program which might have to be disapproved under the district Court's May 16, 1980, order mentioned above, because they appeared based on suspended or remanded federal regulations (45 FR 46820–46826).

On July 14 and 15, 1980, the regional director held public hearings on the adequacy of the Pennsylvania submission in Indiana and Harrisburg, Pennsylvania, respectively. The public comment period on the adequacy of the Pennsylvania permanent regulatory program closed on July 21, 1980.

On August 2, 1980, the regional director submitted to the Director of OSM his recommendation that the Pennsylvania program be disapproved in whole, together with copies of the transcript of the public meeting and the pubic hearings, written presentations, exhibits, copies of all public comments received and other documents comprising the Administrative Record.

On August 11, 1980, OSM published in the **Federal Register** a notice of the availability of the comments on the Pennsylvania program submitted by the Environmental Protection Agency, the Soil Conservation Service, the U.S. Forest Service, the U.S. Fish and Wildlife Service, the Science and Education Administration, the U.S. Bureau of Mines, the Mine Safety and Health Administration, the Bureau of Land Management, the Appalachian Regional Commission, the Department of Energy, the National Park Service, the U.S. Army Corps of Engineers, and the Great Lakes Basin Commission (45 FR 53182).

On August 15, 1980, OSM held a public meeting in Harrisburg, Pennsylvania, to discuss the anthracite provisions of the Pennsylvania program. The public comment period on the anthracite provisions of the program was reopened until September 2, 1980 (45 FR 54372).

On September 4, 1980, the Director recommended to the Secretary that the Pennsylvania program be disapproved in whole.

The Secretary's decision to disapprove the Pennsylvania program in whole was conveyed in a letter to Governor Thornburgh on October 8, 1980 (Administrative Record No. PA 184), and in a letter to Secretary Clifford Jones, Department of Environmental Resources, on October 8, 1980 (Administrative Record No. PA 185).

Throughout the period beginning with the submission of the program, OSM has had frequent contacts with the staff of the Department of Environmental Resources. Discussions of the state program submission were held with various officials. Minutes or notes of the discussons were placed in the Administrative Record and made available for public review and comment. After the public comment period closed, no discussions were held at which new information was presented which might have influenced this decision.

All contacts between officials and staff of the Department of the Interior and the Commonwealth of Pennsylvania were conducted in accordance with the Departments guidelines for such contacts published September 19, 1979 (44 FR 54444–54445).

D. Secretary's Findings and Explanation

The discussion in this part is based on a review of the Pennsylvania program as submitted February 29, 1980, and amended June 9, 1980. The program submission includes enacted laws and regulations and various proposed amendments to those laws.

In the February 26, 1980, program transmittal letter (Administrative Record No. PA 1), Secretary Clifford Jones, Department of Environmental Resources, noted that,

> Since the law changes and the revised regulations will be perhaps the most significant factors in determining whether Pennsylvania qualifies for primacy, we believe that a meaningful review of the program cannot be undertaken until those elements of the program are available; the program submission, therefore, is not yet complete.

None of the amendments to the laws have been enacted. Pennsylvania still has not submitted proposed regulations for consideration. Also, several program elements are still missing from the Pennsylvania program. The elements missing are discussed under Part C, "General Background on the Pennsylvania Program."

In accordance with 30 CFR 732.11(d), the failure to have all required laws and regulations fully enacted requires the Secretary not to approve the Pennsylvania program. Proposed laws and regulations do not give a state full legal authority for enforcement of the environmental performance standards in accordance with Section 503(b)(4) of SMCRA. In addition, as Secretary Jones indicated, without fully enacted laws and regulations, meaningful comment and review of the Pennsylvania program by the public or the Secretary is impossible at this time.

Because Pennsylvania intends to make extensive modifications to its laws and regulations, the Secretary is disapproving the entire body of laws and regulations. The Secretary is unable to make any of the findings contained in Section 503(a) of SMCRA or 30 CFR 732.15, all of which must be made before a program can be approved.

In a letter dated October 1980, the Secretary notified Secretary Jones of his decision to disapprove the Pennsylvania program in whole (Administrative Record No. PA 185). In addition, a letter will be sent from the Director of OSM to Secretary Jones which will contain additional specific findings made with respect to each of the thirty criteria for evaluation of a state program found in SMCRA and the Secretary's regulations and the reasons for each finding. These specific findings will include discussion of the proposed statutes pending before the Pennsylvania General Assembly and the proposed program elements. If enacted, the bills would extensively amend Pennsylvania's existing program for the regulation of coal exploration and surface coal mining and reclamation operations. The conclusions expressed with respect to the bills and elements are not necessarily final. Copies of the letter will be available for public review at the addresses listed above.

All required laws and regulations should be made a part of Pennsylvania's resubmission within sixty days of the date of this publication if the Secretary is to be able to approve the Pennsylvania program. This resubmitted set of laws and regulations and all other resubmitted portions of the program will be reviewed in accordance with the procedures of 30 CFR 732.12.

E. Disposition of Comments

The comments received on the Pennsylvania program during the public comment period raised various issues. The Secretary considered these comments in evaluating Pennsylvania's program, as indicated below.

1. The U.S. Army Corps of Engineers noted that the Pennsylvania package is a series of amendments to the existing state mining laws and that the state is currently considering regulations to comply with SMCRA. The final state program will be reviewed by the Corps when it is submitted. The Secretary will afford the Corps, the public and other agencies an opportunity to review and comment on any resubmission.

2. The Cooperative Extension Service, Pennsylvania State University, U.S. Department of Agriculture, recommended adding language to read—"professional geologist, or 'professional soil scientists,' with assistance from experts in related * * *." However, the Secretary notes that there are no requirements in Sections 507(b), 515(b), 515(c) and 515(e) of SMCRA to require a professional soil scientist as an alternative (see

Administrative Record No. 97, pages 1 and 3).

3. The Cooperative Extension Service, Pennsylvania State University, U.S. Department of Agriculture, stated that it had no substantive changes to recommend. However, it noted that a data base and an inventory system, such as that provided by the Pennsylvania Information Center for Soils, could be incorporated as part of the process for review of petitions to designate lands as unsuitable for mining. The Secretary notes that while use of this particular system may have merit, the state will not be required under the Secretary's regulations to include a reference to a specific system.

4. The Department of Energy (DOE) noted that substantive review of the Pennsylvania program is severely hindered by the incomplete status of the submittal. The section-by-section comparison required under 30 CFR 731.14(c) was omitted pending completion of the state's revisions to its surface mining laws and regulations. DOE commented that it would review the state program once it is revised and resubmitted. DOE, other federal agencies and all interested persons will be given an opportunity to review and comment on any resubmission.

5. The Environmental Protection Agency (EPA) commented that the proposed state statutes do not include a 5-year term limit for permits or for the termination provisions as set forth in Section 506 (b), (c) of SMCRA. The Secretary agrees with this comment. However, Pennsylvania has stated that the term and termination of permits is to be set by regulation when promulgated (Administrative Record No. PA 77).

6. EPA also pointed out that proposed state statutes do not require the detailed information on owners, operators and dates of operation as set forth in Section 507(b)(1–5, 8) of SMCRA. In addition, the Secretary notes that requirements regarding previous infractions or statements of current or previous coal mining permits, etc., have not been addressed. Section 3.1(b) of the Pennsylvania Surface Mining Conservation and Reclamation Act alludes to previous infractions, but many specific requirements, such as information on permits suspended or revoked during the last five years prior to the date of submission of the application, are not included.

7. EPA noted that state statutes do not require information on waters affected by mining operations as set forth in Section 507(b)(10) of SMCRA. The Secretary agrees that information, such as the name of the watershed and location of the surface stream to receive surface and pit drainage, should be addressed in Pennsylvania's program submission.

8. EPA also stated that specific provisions for protection of impounded water as set forth in Section 515(b)(8) of SMCRA are not delineated in the proposed state statutes. The Secretary concurs that specific provisions to achieve the level of protection required are not adequately addressed in the Pennsylvania proposed statutes or elsewhere in the program.

9. EPA also noted that specific provisions required by Section 515(b)(10) of SMCRA for protection of water are not delineated in the proposed State laws. The Secretary agrees that specific performance standards regarding hydrologic balance are not set forth in accordance with Section 515(b)(10) of SMCRA. Section 315 of the proposed Clean Streams Law (Senate Bill 992) and Section 4.2 of the Surface Mining Conservation and Reclamation Act (Senate Bill 990) give DER the necessary authority to promulgate regulations consistent with the federal standards to insure the preservation of the prevailing hydrologic balance during and after mining operations. A review of the enacted statutes will be necessary to make a determination of the adequacy of the provisions.

10. EPA commented that permit requirements set forth in Section 516(b)(9) of SMCRA requiring operators to "minimize the disturbance of the prevailing hydrologic balance" are not included in the proposed statutes. However, the Secretary notes that the statutory authority for underground mining requirements with regard to preservation of the prevailing hydrologic balance is addressed under Section 315 of the proposed Clean Streams Law. Whether this authority is implemented in accordance with SMCRA and consistent with 30 CFR Chapter VII can only be determined when the complete program is submitted.

11. EPA also noted that while state statutes allow right-of-entry for inspection, there is no provision for right-of-entry for copying records as required by Section 517(b)(3)(B). The Secretary agrees that this provision should be included in the program submission.

12. EPA also contended that action to be taken following a complaint, which differs from a citizen suit, was not covered by the proposed Pennsylvania statutes. However, Section 18.3(b) of the Surface Mining Conservation and Reclamation Act (Senate Bill 990) appears to adequately set forth the action to be taken based upon a citizen complaint in accordance with the requirements of Section 521(a)(1) of SMCRA. A final decision on the adequacy of this provision can only be made by the Secretary on the basis of a fully enacted statutory provision, which Pennsylvania has not yet provided.

13. Finally, EPA commented that the state notice of violation (NOV) provisions do not provide for fixing a reasonable time, not to exceed 90 days, for abatement of a violation. The Secretary agrees that the proposed Pennsylvania statutes do not contain adequate requirements regarding abatement in accordance with Section 521(a)(3) of SMCRA.

14. The U.S. Fish and Wildlife Service (FWS) noted that the Pennsylvania statutes have not been passed and the implementing regulations are only in draft form and not available for review. Without those documents, FWS is unable to assess the state's program for compliance with Section 7 of the 1973 Endangered Species Act and will withold a biological opinion pending receipt of the required program documentation. The Secretary notes that, while the Pennsylvania program submission lists several state and federal agencies that the state plans to consult with during the processing of surface mine permit applications, it does not provide an adequate description of the level of involvement of these agencies in the process (See comment 26, below).

15. The U.S. Forest Service (FS) made recommendations regarding specific regulations including review of permits for tree species, use of funds to guarantee tree orders from state forest nurseries, conifer and hardwood recommendations, mixing grasses and plants, etc. The Secretary notes that, while these recommendations may have merit, they are beyond the scope of the requirements of SMCRA and the regulations promulgated thereunder. The Secretary cannot require that they be adopted. In addition, the FS recommended that a number of these changes would also apply to anthracite mining operations. However, in lieu of the state being required to demonstrate consistency with federal performance standards, Section 529 of SMCRA provides that those state standards in effect as of August 3, 1977, are applicable in the case of anthracite mining operations. Accordingly, the Secretary cannot require that these changes be made.

16. The U.S. Bureau of Mines (BOM) stated that the Pennsylvania submission, among other deficiencies, lacks a federal/state side-by-side comparison of the surface mining laws and regulations, and that the submission

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was in an incomprehensible format. BOM indicated it will conduct another review of the program after resubmission, if requested. The Secretary will afford BOM such an opportunity, along with all other agencies and members of the public, if a resubmission is made.

17. The National Park Service (NPS) requested that it be notified by DER before DER approves or disapproves any application for exploration or for a surface coal mining and reclamation permit that may affect an NPS unit. The Secretary notes that Pennsylvania did not indicate in its program submission that DER would consult with NPS before issuing permits. The Secretary urges Pennsylvania to notify NPS when exploration operations will be conducted near lands managed by NPS, but under 30 CFR Chapter VII, he cannot require such notification. Before the Secretary approves Pennsylvania's program, he will have to be assured that the program includes provisions for notification of interested agencies and other public notice of planned exploration, consistent with 30 CFR Part 776. *See* comment 28, below, relating to permits for mining. In addition to the analysis found there, the Secretary notes that NPS will be able to comment on any permit application, and there will be general public notice of each application filed.

18. The NPS requested the opportunity to (1) be involved in setting bond amounts for surface mining and reclamation activities that may have an impact on NPS units, (2) be allowed to participate in inspections prior to the release of these bonds, and (3) be allowed to participate in inspections conducted in response to a petition or notice of violation that may affect a NPS unit. The Secretary notes that there are no requirements in SMCRA which necessitate NPS involvement in setting bond amounts in every instance. Under the Secretary's regulations at 30 CFR Parts 805 and 806, the state regulatory authority will set the terms and amounts of the performance bond on non-federal and non-Indians lands. All interested agencies, including NPS, can comment to the regulatory authority on what constitutes an appropriate bond amount. Under the Secretary's regulations at 30 CFR Part 807 federal agencies have an opportunity to comment on proposed bond releases for areas for which they have a concern. The Secretary's regulations do not require states to allow the NPS to participate routinely in inspections and the Secretary will not require a state to do more for NPS than the regulations require for other interested agencies and members of the public. Of course, the NPS may participate in any inspection it initiates through notification to DER of a violation of the state program by an operator.

19. The NPS requested the opportunity to participate in developing criteria for designating lands unsuitable for surface coal mining near NPS units and to be allowed to participate in protecting all resources on lands under its jurisdiction from mining in adjacent areas. The Secretary agrees the Pennsylvania did not provide a description of its proposed lands unsuitable system and provisions regarding consultation with other agencies are not adequate (*See* comment 28, below). However, the Secretary has instructed NPS not to seek criteria in state programs which would establish "buffer zones" adjacent to national parks as automatically unsuitable for coal mining, unless these lands meet one or more of the other specific criteria for designation. On June 4, 1979, the Secretary made final decisions on the Federal Coal Management Program. Included in those decisions were numerous changes in the proposed unsuitably criteria for federal lands. The Secretary chose to delete the automatic "buffer zone" language for national parks and certain other federal lands from the first criterion (43 CFR 3461.1(a)). Instead, he stated lands adjacent to a national park should only be found unsuitable if they are covered by one of the other specific criteria (43 CFR 3461.1(b)–(t)). This instruction to NPS assures that the agency's approach to state unsuitability criteria will be compatible with the Secretary's policy on federal unsuitability criteria.

20. The Soil Conservation Service (SCS) noted that there is no discussion of how prime farmland will be restored and protected after backfilliing and during the revegetation process to achieve required levels of yield. However, once enacted, Senate Bill 990 would provide that * * * "In no case shall the department grant a permit to affect prime farmland unless the application meets all relevant regulations of the United States Department of the Interior," thereby providing Pennsylvania adequate statutory authority to promulgate regulations to implement the prime farmland requirements.

21. The Appalachian Regional Commission (ARC) commented that the Pennsylvania submission was generally adequate to be approved. ARC noted that the submission included provisions for upgrading reclaimed land for water impoundments, water-oriented real estate development, recreation area development, industrial site development or solid waste disposal area development, and that variances can be granted to operators if the post-mining reclamation plan includes a higher land use, provided that the proposed use does not pose an actual or potential threat of water pollution or a hazard and does not violate any federal, state or local law. However, the Secretary notes that the variances proposed by Pennsylvania would apply to all lands, rather than only to mountaintop removal and steep slope mining as set forth in Sections 515 (c) and (e) of SMRCA and, therefore, improperly broadens the scope of the federal requirements for variances to approximate original contour.

22. The Pennsylvania Fish Commission commented that the submission lacked provisions for regional planning based on a multidisciplinary approach and provisions for cooperation between the Department of Environmental Resources (DER) and the Fish Commission as necessary to comply with SMCRA and 30 CFR Chapter VII. The Secretary notes that Pennsylvania's program submission regarding consultation does not clearly outline and address points of interaction which will take place between DER and other agencies, including the Fish Commission (See comment 26, below).

23. The League of Women voters of Pennsylvania commented that it is difficult to assess the Pennsylvania program at this time because the narrative description required by Sections 731.14(g) was not submitted. The Secretary concurs that most of 30 CFR 731.14(g) was missing from the Pennsylvania submission.

24. The Toby Creek Watershed Association commented that training for inspectors is adequate in the area of erosion and sediment control and that there are not enough inspectors for the number of mines to be inspected. The Secretary notes that the submission did not discuss the necessary staffing levels and training required to assure compliance with the applicable provisions of SMCRA.

25. Trout Unlimited commented that the Pennsylvania submission did not contain an explanation of projected use of professional and technical personnel available to the regulatory authority from other agencies, nor a summary table of the existing and proposed state program staff, showing job functions, titles and required job experience and training. The Secretary notes that while Pennsylvania has included some information in its program concerning existing and proposed staffing, the discussion with respect to staffing necessary to assure compliance with the requirements of the SMCRA is inadequate. In addition, Pennsylvania included a summary table for only one agency in the program. This table should have shown the job functions, titles and job experience and training for professional and technical positions of the entire program staff.

26. The Pennsylvania Chapter of the Wildlife Society commented that the state's existing regulations included in the submission do not provide for an ecological evaluation of both the plant and animal communities prior to mining or any requirements to restore these communities after mining. Also, the regulations do not allow sufficient freedom for the mine operator to develop a reclamation plan utilizing native wildlife food and cover species and are entirely technique oriented rather than results oriented. The Secretary has determined that, at Pennsylvania's request, an in-depth review of the state's regulations will be deferred until Pennsylvania's revised regulations are promulgated and submitted to the Secretary.

27. The Pennsylvania Chapter of Wildlife Society also noted that the qualifications for a mine inspector and forester and other personnel do not provide for an adequate background in wildlife or fishery biology. The Secretary notes that the Department of Environmental Resources (DER) may not have to ensure that inspectors have this background if DER has an adequate procedure to coordinate or consult with other agencies in the permit and reclamation plan review process. These agencies should have the appropriate background in wildlife or fishery biology to make the necessary recommendations to the DER. However, Pennsylvania has not discussed the level DER consultation with other agencies to demonstrate that this can be accomplished (See comment 28, below).

28. Several commentors noted that the Pennsylvania program submission did not contain copies of supporting agreements between agencies having duties in the state permitting program or agreements for consultation between the regulatory authority and fish and wildlife management agencies. The Secretary notes that Pennsylvania has not addressed coordinating the issuance of permits in its program. If permit issuance is not a shared responsibility, Pennsylvania must show that the regulating authority will be able to implement effectively and enforce its permitting system, lands unsuitable system, etc., without sharing these responsibilities with such other state agencies. In addition, while Pennsylvania lists several state and federal agencies that are consulted with during the processing of surface mine applications the Secretary notes that this section does not clearly outline the procedures to be utilized during permitting to ensure that the extent of consultation required by SMCRA is achieved.

F. Secretary's Decision

Based on the Secretary's findings discussed above, the Secretary is disapproving the Pennsylvania program in whole. Because the program is not approved, the permanent program under SMCRA is not in effect in Pennsylvania. The interim program will continue on all lands in Pennsylvania until Pennsylvania has, within sixty days from the date of this notice, resubmitted its program and the Secretary has approved it. If the resubmitted program is approved, Pennsylvania will assume primary jurisdiction for implementing and enforcing the permanent program within its borders. If the resubmitted program is not approved, the Secretary will implement a federal program in Pennsylvania and the Department of the Interior will have responsibility under SMCRA for the regulation of coal mining in Pennsylvania.

G. Additional Findings

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this disapproval in whole.

The Secretary has determined that this document is not a significant rule under E.O. 12044 or 43 CFR Part 14, and no regulatory analysis is being prepared on this disapproval in whole.

Dated: October 3, 1980.

Joan M. Davenport,

Assistant Secretary of the Interior.

[FR Doc. 80-32999 Filed 10-21-80; 8:45 am]

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30 CFR Part 946

Partial Approval/Partial Disapproval of the Permanent Program Submission From the Commonwealth of Virginia Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: On March 3, 1980, the Commonwealth of Virginia submitted to the Department of the Interior its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The purpose of the submission is to demonstrate the state's intent and capability to administer and enforce the provisions of SMCRA and the permanent regulatory program regulations, 30 CFR Chapter VII. After providing opportunities for public comment and a thorough review of the program submission, the Secretary of the Interior has determined that the Virginia program only partially meets the requirements of SMCRA and the federal permanent program regulations. Accordingly, the Secretary of the Interior has approved in part and disapproved in part the Virginia program.

The Commonwealth of Virginia has sixty days within which to correct the deficiencies in its proposed program. Until its permanent program is implemented, the interim program will remain in effect in Virginia.

DATE: Virginia has until December 22, 1980 to submit revisions of the disapproved portions of the program for the Secretary's consideration.

ADDRESSES: Copies of the Virginia program and the administrative record on the Virginia program are available for public inspection and copying during business hours at:

Office of Surface Mining, Room 153, Interior South Building, 1951 Constitution Avenue, Washington, D.C. 20240, Telephone (202) 343–4728.

Office of Surface Mining, Charleston Regional Office, 950 Kanawha Blvd., East, Charleston, WV 25301, Telephone: (304) 342–8125.

Virginia Division of Mined Land Reclamation, Drawer U, 620 Powell Avenue, Big Stone Gap, VA 24219, Telephone: (703) 523–2925.

Copies of the full text of the proposed program are available for inspection during regular business hours at the following locations:

Office of Surface Mining, Lebanon District Office, Flannagan and Carroll Streets, Lebanon, VA 24266, Telephone: (703) 889–4032.

Dept. of Conservation and Economic Development, 1100 State Office Bldg., Richmond, VA 23219, Telephone: (804) 786–2121.

Buchanan County Public Library, Grundy, VA 24614, Telephone: (703) 546–1141.

Lee County Public Library, 406 Joslyn Avenue, Pennington Gap, VA 24277, Telephone: (703) 546–1141.

Scott County Public Library, Gate City, VA 24251, Telephone: (703) 386–3302.
Tazewell County Public Library, Main Street, Tazewell, VA 24651, Telephone: (703) 988–2541.
Office of Surface Mining, Richlands Field Office, Gateway Shopping Center, Highway 460, Richlands, VA 24641, Telephone: (703) 964–4022.
The Virginia State Library, 12th and Capital Streets, Richmond, VA 23219, Telephone: (804) 786–8929.
Dickenson County Public Library, Clintwood, VA 24228, Telephone: (703) 926–6617.
Russell County Public Library, Library Courthouse, Lebanon, VA 24266, Telephone: (703) 889–2881.
Wise County Public Library, Ridgefield Acres, Wise, VA 24293, Telephone: (703) 328–8061.

FOR FURTHER INFORMATION CONTACT:
Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior South Building, 1951 Constitution Avenue NW., Washington, D.C. 20240, Telephone: (202) 343–4225.

SUPPLEMENTARY INFORMATION:

Introduction

To assist understanding of the findings underlying the Secretary's decision, this notice is organized into nine major parts.

Parts

A. General Background on the Permanent Program
B. General Background on State Program Approval Process
C. Background on the Virginia Program Submission
D. Elements upon which the Virginia Program is being Evaluated for this Decision
E. Secretary's Findings
F. Disposition of Agency and Public Comments
G. The Secretary's Decision
H. Effect of this Action
I. Additional Findings

Part A sets forth the statutory and regulatory framework under the Surface Mining Control and Reclamation Act of 1977 (SMRCA) and the permanent program requirements of 30 CFR Chapter VII.

Part B sets forth the general statutory and regulatory requirements applicable to all states which wish to obtain primary jurisdiction to implement the permanent program on non-Indian and non-federal lands within their borders.

Part C summarizes the steps undertaken by Virginia and officials of the Department of the Interior to arrive at the decision being announced today.

Part D describes the elements upon which the Secretary's findings are based.

Part E contains the findings the Secretary has made and the reasons for each finding.

Part F summarizes the substantive public comments received during the review of the Virginia program and discusses the Secretary's disposition of them.

Part G describes the portions of the Virginia program which are being approved and the portions which are being disapproved.

Part H summarizes the effect of the Secretary's findings on the current regulatory program in Virginia.

Part I summarizes the Secretary's findings with regard to regulatory analysis and environmental impact of the decision.

A. General Background on the Permanent Program

The environmental protection provisions of SMCRA are being implemented in two phases—the initial program and the permanent program—in accordance with Sections 501–503 of SMCRA, 30 U.S.C. 1251–1253. The initial program has been in effect since December 13, 1977, when the Secretary of the Interior promulgated interim program rules, 30 CFR Parts 710–725 and 795, 42 FR 62639 *et seq.*

The permanent program will become effective in each state upon the approval of a state program by the Secretary of the Interior for implementation of a federal program within the state. If a state program is approved, the state, rather than the federal government, will be the primary regulator of activities subject to SMCRA.

The federal regulations for the permanent program, including procedures for states to follow in submitting state programs and standards and procedures which the state programs must include to be eligible for approval, are found in 30 CFR Parts 700–707 and 730–865. Part 705 was published October 20, 1977 (42 FR 56064), and parts 795 and 865 (originally Part 830) were published December 13, 1977 (42 FR 62639). The other permanent program regulations were published March 13, 1979 (44 FR 15312–15463). Errata notices were published March 14, 1979 (44 FR 15485), August 24, 1979 (44 FR 49673–49687), September 14, 1979 (44 FR 53507–53509), November 19, 1979 (44 FR 66195), April 6, 1980 (45 FR 26001), June 5, 1980 (45 FR 37618), and July 15, 1980 (45 FR 47424).

Amendments to the regulations were published October 22, 1979 (44 FR 60969), as corrected December 19, 1979 (44 FR 75143), December 19, 1979 (44 FR 75302–75303), December 31, 1979 (44 FR 77440–77447), January 11, 1980 (45 FR 2626–2629), April 16, 1980 (45 FR 25998–26001), May 20, 1980 (44 FR 33926–33927), June 10, 1980 (45 FR 39448–39447), and August 6, 1980 (45 FR 52306–52324). Portions of these regulations have been suspended, pending further rulemaking. See 44 FR 67942 (November 27, 1979), 44 FR 77447–77455 (December 31, 1979), 45 FR 6913 (January 30, 1980), and 45 FR 51547–51550 (August 4, 1980).

B. General Background on State Program Approval Process

Any state wishing to assume primary jurisdiction for the regulation of coal mining under SMCRA may submit a program for consideration. The Secretary of the Interior has the responsibility to approve or disapprove the submission.

The federal regulations governing state program submissions are found at 30 CFR Parts 730–732. After review of the submission by OSM and other agencies, an opportunity for the state to make additions or modifications to the program and an opportunity for public comment, the Secretary may approve the program, approve it conditioned upon minor deficiencies, being corrected in accordance with the specified timetable set by the Secretary, or disapprove the program in whole or in part. If any part of the program is disapproved, the state may submit a revision of the program to correct the items that need to be changed to meet the requirements of SMCRA and the applicable federal regulations. If the revised program is also disapproved, SMCRA requires the Secretary of the Interior to establish a federal program in that state.

The state may again request approval to assume primary jurisdiction after the Secretary implements the federal program.

The procedure and timetable for the Secretary's review of state programs were initially published March 13, 1979 (44 FR 15326), to be codified at 30 CFR Part 732. Section 732.11(d), as published on March 13, 1979, required that states make any modifications and additions by November 15, 1979.

As a result of litigation in the U.S. District Court for the District of Columbia, the deadline for states to submit proposed programs was extended from August 3, 1979, to March 3, 1980. 30 CFR 732.11(d) required that if all required and fully enacted laws and regulations were not part of the program by November 15, 1979, the program would be disapproved. Because the submission deadline had been changed to March 3, 1980, 30 CFR 732.11(d) was amended to provide that program submissions that do not contain all required and fully enacted laws and regulations by the 104th day following program submission will be disapproved pursuant to the procedures for the Secretary's initial decision in Section 732.13 (45 FR 33927, May 20, 1980). The Virginia program was submitted on March 3, 1980. The 104th day after March 3 was June 15, 1980. Since June 15 was not a normal business day, the deadline was extended to June 16, 1980.

The Secretary's rules for the review of state programs implement his policy that industry, the public, and other agencies of government should have a meaningful opportunity to participate in his decisions. The Secretary also has a policy that a state should be afforded the maximum opportunity possible to charge its program, when necessary, to cure any deficiencies in it.

To accomplish both of these policy objectives the Secretary determined that the laws and rules upon which the state bases its program, must be finalized at the beginning of the public comment period. By identifying the laws and rules in effect on the 104th day as the basis of his program approval decision, the Secretary assists commenters by informing them of program elements which should be reviewed. Meaningful public comment would be undermined if the program elements were constantly changing up until the day before the Secretary's decision.

The 104 day rule affords the state 3½ months following submission within which it may modify its laws and rules. In addition, after the Secretary's initial program decision, the state has additional opportunities to revise its laws and regulations.

All program elements other than laws and rules, including Attorney General's opinions, program narratives, descriptions and other information, may be revised by the state at any time prior to program approval. The Secretary will provide opportunity for public comment on those changes, as appropriate.

The Secretary, in reviewing state programs, is complying with the provisions of Section 503 of SMCRA, 30 U.S.C. 1253, and 30 CFR 732.15. In reviewing the Virginia program, the Secretary has followed the federal rules as cited above under "General Background on the Permanent Program" and as affected by decisions of the U.S. District Court for the District of Columbia in *In Re: Permanent Surface Mining Regulation Litigation* (Civil Action No. 79–1144). That litigation is a consolidation of several lawsuits challenging the Secretary's permanent regulatory program.

Because of the complex litigation, the court issued its decision in two "rounds." The Round I opinion, dated February 26, 1980, denied several generic attacks on the permanent program regulations, but resulted in suspension of remaining all or part of twenty-two specific regulations. The Round II opinion, dated May 16, 1980, denied additional generic attacks on the regulations, but remanded some forty additional parts, sections or subsections of the regulations. The court also ordered the Secretary to "affirmatively disapprove, under Section 503 of SMCRA, those segments of a state program that incorporate a suspended or remanded regulation" (Mem. Op., May 16, 1980, p. 49). However, on August 15, 1980, the court stayed this portion of its judgment. The effect of this stay is to allow the Secretary to approve state program provisions equivalent to remanded or suspended federal provisions in the three circumstances described in paragraph 1 below. Therefore, the Secretary is applying the following standards in the review of state program submissions:

1. The Secretary need not affirmatively disapprove state provisions similar to those federal regulations which have been suspended or remanded by the District Court where the state has adopted such provisions in a rulemaking or legislative proceeding which occurred either (1) before the enactment of SMCRA or (2) after the date of the Round II District Court decision, since such state regulations clearly are not based solely upon the suspended or remanded federal regulations. (3) The Secretary need not affirmatively disapprove provisions based upon suspended or remanded Federal rules if a responsible state official has requested the Secretary to approve them.

2. The Secretary will affirmatively disapprove, to the extent required by the court's decision, all provisions of a state program which incorporate suspended or remanded Federal rules and which do not fall into one of the three categories in paragraph one, above. The Secretary believes that the effect of his "affirmative disapproval" of a section in the state's regulations is that the requirements of that section are not enforceable in the permanent program at the federal level to the extent they have been disapproved. That is, no cause of action for enforcement of the provisions, to the extent disapproved, exists in the federal courts, and no federal inspection will result in notices of violation or cessation orders based upon the "affirmatively disapproved" provisions. The Secretary takes no position as to whether the affirmatively disapproved provisions are enforceable under state law and in state courts. Accordingly, these provisions are not being pre-empted or suspended, although the Secretary may have the power to do so under Section 504(g) of SMCRA and 30 CFR 730.11.

3. A state program need not contain provisions to implement a suspended regulation and no state program will be disapproved for failure to contain a suspended regulation. Nonetheless, a state must have authority to implement all permanent program provisions of SMCRA, including those provisions of SMCRA upon which the Secretary based remanded or suspended regulations.

4. A state program may not contain any provision that is inconsistent with a provision of SMCRA.

5. Programs will be evaluated only as to those provisions other than the provisions that must be disapproved because of the court's order. The remaining provisions will be approved, conditionally approved or disapproved in whole or in part in accordance with 30 CFR 732.13.

6. Upon promulgation of new regulations to replace those that have been suspended or remanded, the Secretary will afford states that have approved or conditionally approved programs a reasonable opportunity to amend their programs, as appropriate. In general, the Secretary expects that the provisions of 30 CFR 732.17 will govern this process.

A list of the regulations suspended or remanded as the result of the Round I and II litigations was published in the Federal Register on July 7, 1980 (45 FR 45604). A proposed list of Virginia provisions incorporating suspended or remanded federal regulations was available at a public hearing in Wise, Virginia, held on July 17, 1980, and is available at the OSM Region I office and at the Virginia Division of Mined Land Reclamation (See addresses above).

To codify decisions on state programs, federal programs, and other matters affecting individual states, OSM has established a new Subchapter T of 30 CFR Chapter VII. Subchapter T will consist of Parts 900 through 950. Provisions relating to Virginia will be found in 30 CFR 946.

C. Background on the Virginia Program Submission

On March 3, 1980, OSM received a proposed regulatory program from the Commonwealth of Virginia. The

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program was submitted by the Virginia Department of Conservation and Economic Development (DCED), the agency designated as the regulatory authority. Notice of receipt of the submission initiating the program review was published in the March 11, 1980, **Federal Register** (45 FR 15576–15578) and in newspapers of general circulation in Virginia. The announcement invited public participation in the initial phase of the review process as it related to the regional director's determination of whether the submission was complete.

On April 10, 1980, the regional director held a public review meeting in Big Stone Gap, Virginia, on the program submission and its completeness. The public comment period on completeness began on March 22, 1980, and closed April 11, 1980.

On April 10, 1980, the Virginia Department of Conservation and Economic Development, Division of Mined Land Reclamation, submitted to OSM revisions to the Virginia permanent program submission. (Administrative Record No. VA 44).

The modifications to the March 3, 1980, Virginia program submission are listed below:

1. House Bill 943 which was signed by the Governor on March 24, 1980, and House Bill 944 which was signed by the Governor on April 1, 1980. These amendments were included in the March 3, 1980, submittal, but had not yet received the approval of the Governor.

2. The Virginia Administrative Process Act, *Va. Ann. Code*, 9–6.14:1 *et seq.*, and regulations adopted under the Virginia Register Act *Va. Ann. Code*, 9–6.15 *et seq.*

On April 28, 1980, the regional director published notice in the **Federal Register** announcing that the program submission had been determined to be complete (45 FR 28167–28168).

On May 5, 1980, the Virginia Division of Mined Land Reclamation submitted to OSM further revisions to the Virginia permanent program submission (Administrative Record No. VA 65). A number of these were draft proposals intended to implement recent court decisions and changes in state statutes and federal regulations. Among other things, regulations for the issuance, administration, monitoring, and enforcement of National Pollutant Discharge Elimination System (NPDES) permits for surface coal mining operations were included. The modifications which provided new regulations not included in the March 3, 1980, submission are listed in part D below.

On May 23, 1980, after reviewing the Virginia submission, OSM Region I transmitted comments on the adequacy of the Virginia Permanent Regulatory Program to the Virginia Department of Conservation and Economic Development (Administrative Record No. VA 89).

On June 4 and 5, 1980, OSM and the Virginia Division of Mined Land Reclamation met in Charleston, West Virginia to discuss the issues raised during the regional director's and OSM Director's review of the Virginia permanent program. This meeting was open to the public (Administrative Record No. VA 128).

On June 13, 1980, a letter was received from the Virginia Division of Mined Land Reclamation which included a list of typographical errors that had been identified and would be corrected by Virginia. Also included was House Bill 948 which was passed by the Virginia 1980 General Assembly concerning right of entry (Administrative Record No. VA 94).

On June 16, 1980, interpreted to be the 104th day after the Virginia program submission, the Virginia Department of Conservation and Economic Development submitted to OSM additional modifications to the Virginia permanent program submission (Administrative Record No. VA 93). This submission included:

1. A legal opinion on the effect of the changes in the Virginia regulations from OSM regulations.

2. A supplement to the side-by-side comparison covering the 1980 amendments to Virginia's law.

3. A copy of the Virginia Conflict of Interest Law.

On June 23, 1980, the regional director published notice in the **Federal Register** (45 FR 41973–41976) and in newspapers of general circulation within the state that the Virginia program submission as modified was available for public review and comment. The notice also set forth procedures for the public hearing and comment period on the substance of the Virginia program.

On July 11, 1980, public comment was invited on a tentative list of Virginia provisions apparently based upon remanded and suspended federal rules (45 FR 46820–46826).

On July 15 and 16, 1980, OSM and the Virginia Division of Mined Land Reclamation met in Washington, D.C. to discuss issued raised during the regional director's and OSM Director's reviews of the Virginia permanent program submission. This meeting was open to the public (Administrative Record No. VA 171 and 173).

On July 17, 1980, the regional director held a public hearing on the adequacy of the Virginia submission in Wise, Virginia. The public comment period on the Virginia program ended on July 23, 1980.

On July 23, 1980, Virginia submitted a letter to OSM changing the permanent program staffing proposal as a result of a directive the Virginia Division of Mined Land Reclamation had received from the Virginia Secretary of Administration and Finance.

On August 4, 1980, the regional director submitted to the Director of OSM his recommendation that the Virginia program be approved in part and disapproved in part together with copies of the transcript of the public meeting and the public hearing, written presentations, exhibits, copies of all public comments received, and administrative record.

On August 11, 1980, OSM published in the **Federal Register** (45 FR 53180–53181) a notice of the availability of the views on the Virginia programs submitted by the Appalachian Regional Commission; the U.S. Department of Agriculture through the Forest Service, the Science and Education Administration, and the Soil Conservation Service; the U.S. Department of Energy; the U.S. Environmental Protection Agency; the U.S. Department of the Interior through the Bureau of Land Management, the Bureau of Mines, the Fish and Wildlife Service and the National Park Service; the U.S. Department of Labor through the Mine Safety and Health Administration; the U.S. Army Corps of Engineers and the Tennessee Valley Authority.

On August 22, 1980, the Director of OSM asked Virginia if there were any provisions in its program, based on suspended or remanded federal rules, which it did not want the Secretary to affirmatively disapprove under the district court order. Virginia has not replied.

On September 10, 1980, the Director recommended to the Secretary that the Virginia program be partially approved and partially disapproved.

On September , 1980 the Secretary approved in part and disapproved in part the Virginia program.

The Secretary's decision was conveyed to Virginia in a letter to Government John N. Dalton on October 3, 1980. A copy of the letter to Governor Dalton is available for review in the Virginia Administrative Record (Administrative Record No. VA 213).

The Virginia program consists of the formal submission of March 3, 1980 (Administrative Record No. VA 1), as amended on April 10, May 5, June 13 and June 16, 1980 (Administrative Record Nos. VA 44, 65, 93 and 94).

Throughout the period beginning with the submission of the program, OSM has had frequent contact with the staff of DCED. Discussions of the state program submission were held with various officials. Minutes or notes of the discussions were placed in the Administrative Record and made available for public review.

All contacts between officials or staffs of the Department of the Interior and the Commonwealth of Virginia were conducted in accordance with the Department's guidelines for such contacts published September 19, 1979 (44 FR 54444–54445).

D. Elements Upon Which the Virginia Program Is Being Evaluated for This Decision

In consideration of the matters discussed above under "General Background on State Program Approval Process," the Secretary hereby sets forth the elements of the proposed Virginia program upon which the findings and decisions below are being made.

Because of the 104-day promulgated May 20, 1980 (30 CFR 732.11(d), 45 FR 33927), only those statutory provisions and regulations that were fully enacted on or before June 15, 1980, are being considered as a basis for this decision.

The following proposed regulations were not fully enacted by June 15, 1980. Therefore, they are not being approved in this Secretarial decision and are not part of the partially approved program:

1. Regulations to revise applicability in Section V700.11(b).

2. Regulations to revise the definitions of public road and valid existing rights in Section V761.5.

3. Regulations to revise the provisions for waivers in Section V761.12(e).

4. Regulations to revise the definition of irreparable damage to the environment in Section V786.5.

5. Regulations to allow citizens to accompany an inspector on a mine site in Section V786.27(b).

6. Regulations to provide for prior notice of citizen suits comparable to 30 CFR 700.13.

7. Regulations to revise the provisions for performance bonding in Subchapter VL.

8. Regulations to revise provisions for treatment or covering of coal and acid toxic-forming materials in Sections V816.103(a) and V817.103(a).

9. Regulations to implement and define a citizen's right to accompany inspectors on inspections of a mine site in Section V842.12(b) and (c).

10. Regulation to revise the civil penalties systems in Section V845.

11. Regulations for the issuance, administration, monitoring, and enforcement of National Pollutant Discharge Elimination System (NPDES) permits for coal surface mining operations in Subchapter VN.

Items 1, 2, 3, 4, 7 and 8 were proposed by Virginia in response to regulations proposed by OSM. Since OSM's regulations are still only in proposed form, it is not appropriate to comment on Virginia's proposals at this time. When final rules are adopted, Virginia and all other states will have an opportunity to amend their programs accordingly under a separate schedule. Items 5, 6, 9, 10 and 11 are new Virginia proposals to implement existing OSM requirements. Even though these proposals cannot be considered for approval because they are not fully enacted, OSM has commented on their adequacy in order to provide guidance to Virginia and the public on resubmission.

When these proposed regulations are enacted, they may be resubmitted to remedy those aspects of the program disapproved by this decision or to amend previously approved sections, at which time the Secretary will reopen the public comment period in accordance with 30 CFR 732.13(f), or 732.17, as appropriate.

The balance of the laws, rules, and program narrative received on March 3, 1980, as amended through June 16, 1980, have been evaluated. These proposed amendments were announced to the public prior to the required public hearing and were open to public comment six days after the public hearing as well as at the hearing.

Many typographical and editorial errors were identified during the OSM review of the Virginia program. In a letter from the Virginia Division of Mined Land Reclamation which was received by OSM on June 13, 1980, Virginia identified those typographical errors which it intended to correct. However, there has been no modification to the Virginia program to provide those changes. In those places where these typographical and editorial errors create substantive deficiencies, comment has been provided.

E. Secretary's Findings

1. In accordance with Section 503(a) of SMCRA and 30 CFR 732.15, the Secretary finds that Virginia has, in part, the capability to carry out the provisions of SMCRA and to meet its purposes in the following ways:

(a) The Virginia Coal Surface Mining Control and Reclamation Act of 1979, House Bill 1514 (Virginia CSMCRA), and the regulations adopted thereunder provide, in part, for the regulation of surface coal mining and reclamation operations on non-Indian and non-federal lands in Virginia in accordance with SMCRA. Those parts not approved are analyzed in Findings 4a, 4b, 4c, 4d, 4j, 4k, 4l, 4m, 4q and 4s, below.

(b) The Virginia CSMCRA provides sanctions for violations of Virginia laws, regulations or conditions of permits concerning surface coal mining and reclamation operations, and these sanctions meet the requirements of SMCRA, including civil and criminal actions, forfeiture of bonds, suspensions, revocations, and withholding of permits, and the issuance of cease-and-desist orders by the Virginia Department of Conservation and Economic Development or its inspectors.

(c) The Virginia Department of Conservation and Economic Development has, in part, sufficient administrative and technical personnel and sufficient funds to enable Virginia to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA. Those parts not approved are analyzed in Finding 4t, below.

(d) Virginia CSMCRA provides, in part, for the effective implementation, maintenance, and enforcement of a permit system that meets the requirements of SMCRA for the regulation of surface coal mining and reclamation operations on non-Indian and non-federal lands within Virginia. Those parts not approved are discussed in Finding 4d, below.

(e) Virginia has established, in part, a process for the designation of areas as unsuitable for surface coal mining in accordance with Section 522 of SMCRA, 30 USC 1272. Those parts not approved are discussed in Finding 4k, below.

(f) Virginia has established, for the purpose of avoiding duplication, a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with other federal and state permit processes applicable to the proposed operations.

(g) Virginia has, in part, fully enacted regulations consistent with regulations issued pursuant to SMCRA, subject to the exceptions discussed below. Those parts not approved are discussed in Findings 4b, 4c, 4d, 4j, 4k, 4l, and 4q, below.

2. As required by Section 503(b)(1)–(3) of SMCRA, 30 USC 1253(b)(1)–(3), and 30 CFR 732.11–732.13, the Secretary has, through OSM:

(a) Solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other federal agencies concerned with

or having special expertise pertinent to the proposed Virginia program;

(b) Obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of the Virginia program being approved and which relate to air or water quality standards promulgated under the authority of the Clean Water Act, as amended, 33 USC 1151–1775, and the Clean Air Act, as amended, 42 USC 1857 *et seq.*; and

(c) Held a public review meeting in Big Stone Gap, Virginia on April 10, 1980, to discuss the completeness of the Virginia program submission, and held a public hearing in Wise, Virginia on July 17, 1980, on the adequacy of the Virginia program submission.

3. In accordance with Section 503(b)(4) of SMCRA, 30 USC 1253(b)(4), the Secretary finds that the State of Virginia has, in part, the legal authority and qualified personnel necessary for the enforcement of the environmental protection standards of SMCRA and 30 CFR Chapter VII. See Finding 4t.

4. In accordance with 30 CFR 732.15, the Secretary finds, on the basis of information in the Virginia program submission, including the section-by-section comparison of the Virginia law and the regulations with SMCRA and 30 CFR Chapter VII, public comments, testimony and written presentations at the public hearings, and other relevant information, that:

(4a) The Virginia program provides, in part, for Virginia to carry out the provisions and meet the purposes of SMCRA and 30 CFR Chapter VII. This finding is based upon all of the findings discussed below.

(4b) Virginia has prepared eight "state window" alternative approaches to the requirements of 30 CFR Chapter VII pursuant to 30 CFR 731.13. That section of the regulations requires that a state demonstrate:

(1) that the proposed alternative will be in accordance with the applicable provisions of the Act and consistent with the regulations of . . . (30 CFR Chapter VII) and

(2) that the proposed alternative is necessary because of local requirements of local environmental or agricultural conditions.

The Virginia state window proposals have been analyzed to determine if they qualify as true state window proposals based on local conditions. If a particular proposal was determined not to be a state window, it was nevertheless reviewed for consistency like all other regulations.

(i) *Existing Structures.* Virginia proposed that its criteria in Section V786.21(c) for permit approval or denial, as applied to existing structures, be considered under 30 CFR 731.13. The state proposed guidelines for permit review where the permit applicant requests an exemption from design criteria for an existing structure which would meet the appropriate performance standards. With this proposal, Virginia identified those standards which would be considered performance standards and those which would be considered design standards. Upon review of the proposal, the Secretary believes that the Virginia provision is more properly characterized as an explanation of the requirements of 30 CFR Chapter VII rather than a state window alternative based on local conditions. However, the Secretary has fully considered the alternative and finds that the proposal is not consistent with 30 CFR 786.21 and 30 CFR 701.11. An analysis of the proposal is contained in finding 4(d)(iv) below.

(ii) *Designating Areas Unsuitable for Surface Coal Mining Operations.* Virginia proposed that its procedures for petition and hearing requirements as applied to the process for designating land unsuitable be considered under 30 CFR 731.13. The state proposed alternatives to 30 CFR 764.13, .15, and .17 consist of three major parts. The first identifies additional information to be included in the petition to the extent that such information is available to the petitioner. The second part provides that the regulatory authority can intitiate a proceeding to designate or terminate a designation of areas as unsuitable for surface coal mining. The third part establishes a shorter time period within which a petition would be accepted if that petition is for an area on which a permit application has been filed. It also provides a shorter time limitation for holding a hearing on petitions to declare lands unsuitable for surface coal mining operations when the petition is filed during the public comment period on a permit application.

Upon review of the proposal, the Secretary believes the Virginia provision is better characterized as an explanation of the requirements of 30 CFR Chapter VII, rather than as a state window alternative based on local conditions. However, the Secretary has fully considered the proposal and finds that this proposal is, in part, inconsistent with Section 522 of SMCRA and 30 CFR 764.13, .15, and .17. An analysis of the proposal is contained in finding 4(k)(iii) below.

(iii) *Backfiling and Grading Previously Mined Areos.* Virginia has proposed an alternative to 30 CFR 816.101 and 817.101 for backfilling and grading of previously mined areas that have not been restored to the standards of SMCRA. These provisions require the elimination of the highwall in all cases. Under the Virginia proposal, which is included as Sections V816.107 and V817.107, on previously mined lands where sufficient spoil was not available to eliminate all highwalls it would be acceptable to eliminate highwalls only to the extent possible by grading and backfilling to stable slopes not exceeding 1v:2h or such lesser slopes as the regulatory authority may specify.

Virginia has proposed this alternative based on consideration of the steep topography and past mining history of southwestern Virginia. Most previously mined lands consist of an existing highwall, bench, and outslope. Virginia maintains that the past practice of placing spoil on the steep downslope has created a situation where operators remining previously affected areas may have an insufficient quantity of spoil material to return the area to the approximate original contour. This should not, it maintains, prevent remining of these lands.

Approximately 70,000 acres of previously mined lands exist in Virginia many of which were improperly reclaimed because of past mining practices. Changing economics in the coal market and low coal recovery during the initial mining operations make remining of these previously mined lands economically feasible. Since present operators may not have sufficient spoil available to completely eliminate the highwall, Virginia's alternative would require that the highwall be eliminated only to the extent possible.

Section 510 of SMCRA requires the regulatory authority before approving a mining application to find, in writing, "that reclamation as required by this Act and the State or Federal program can be accomplished." See 30 CFR 786.19. Section 515(b)(3) of SMCRA requires the elimination of all highwalls as part of the process of backfalling and grading. See, also, Section 515(d)(2) and 516(b)(10). The Department's regulations follow this statutory language and also require the elimination of all highwalls. 30 CFR 816.101, 816.102, 817.101, and 817.102. Read together, these two provisions appear to bar the approval of any permit application which does not require complete elimination of all highwalls. The legislative history of the SMCRA supports this interpretation and does not suggest that previously mined areas are subject to any broad exception to this rule.

In reviewing State program applications the Secretary must follow

the standards set in the SMCRA. Any action that he takes that is contrary to that Act is void. In adopting regulations to carry out the statutory requirements of SMCRA, the Secretary recognized that he needed flexibility to allow States to adopt alternative regulatory approaches to those found in his regulations. 30 CFR 731.13. These alternative approaches are allowed where local or state conditions are such that use of the Federal regulation is not feasible or would be expensive and the State alternative provides the same degree of environmental and procedural protection. This regulation does not, of course, give the Secretary the authority to ignore statutory provisions.

During the course of the State program review process several States in addition to Virginia have proposed alternatives to the requirements in 515(b)(3). New Mexico, for example proposed an alternative which was approved. In that case, New Mexico showed that in mining of areas with natural rock mesas return to approximate original contour would result in the retention of highwalls. New Mexico argued that because of this unique topography, only one or the other statutory standard could be met. New Mexico also proposed to tightly control any exceptions to either requirement. The Secretary has not formally published his decision on New Mexico, but has decided to approve this proposal with a minor adjustment.

As drafted, the Virginia proposal does not present an adequate rationale for the Secretary to approve it. Re-mining previously mined areas would appear to further the purposes of the Act in more narrowly defined circumstances.

Important considerations include whether:

1. Re-mining will maximize the use and conservation of the coal being recovered so that re-affecting the land in the future through surface mining will be minimized (515(b)(1)) at current and reasonably expected coal markets.

2. The land prior to mining is unproductive or unsafe.

3. Special analysis will be made to demonstrate that the final land form will be stable.

4. Material will not be placed in fills or otherwise disposed of off the pre-mined bench.

6. All available fill material reasonably available to the operator will be used to eliminate all highwalls.

These conditions would certainly help "promote the reclamation of mined areas left without adequate reclamation prior to the enactment of the Act." The possibility of approving a variation of Virginia's proposal is limited to those unique conditions left by Virginia's past mining practices.

It should not be construed in anyway to allow variations from 515(b)(3) for any unmined lands. The Secretary finds Virginia's proposal is not in accordance with the requirements of SMCRA as proposed. Virginia may submit a revised proposal as suggested by this notice. Public comment is specifically requested on Virginia's current proposal and the response in this notice.

(iv) *Topsoil Removal*—Virginia proposed an alternative to 30 CFR 816.22 and 817.22 to allow selected overburden materials to be substituted for or used as supplement to topsoil if the slope of the land containing the topsoil is greater than 60 percent and the sclected overburden materials satisfy certain criteria. The state was concerned that the requirements in 30 CFR 816.22 and 30 CFR 817.22 did not allow sufficient latitude for the regulatory authority to approve topsoil substitutes and supplements in an area such as southwestern Virginia, which has very steep slopes with thin, poor soils which are difficult to remove safely prior to mining.

30 CFR 816.22(e) and 30 CFR 817.22(e) provide that selected overburden materials may be substituted for, or used as a supplement to, topsoil if the regulatory authority determines that the resulting soil medium is equal to or more suitable for sustaining revegetation than the available topsoil. The substitute material must be the best available to support revegetation. This determination is to be based on the results of chemical and physical analysis of overburden and topsoil, and must include determinations of pH, net acidity or alkalinity, phosphorous, potassium, texture class, and other analyses as required by the regulatory authority.

The Virginia proposal provides that in order for selected overburden to be an acceptable substitute, it must be analyzed to determine pH, net acidity or alkalinity, phosphorous, potassium, texture class for soil material, and other tests the regulatory authority may require. In order to be suitable, the substitute material must have a pH of greater than 5.5, a net acidity of less than 5 tons per 1,000 tons of material, or a net alkalinity, and be suitable for sustaining vegetation consistent with the standards for revegetation and the approved post mining land use.

As part of this proposal, the Virginia Department of Conservation and Economic Development has included data demonstrating that the native and unconsolidated material on these steep slope areas is insufficient both in quality and quantity. The soils usually affected by coal mining in southwestern Virginia typically occur on steep hillsides and narrow ridgetops. These soils generally have thin A-horizons and the levels of available plant nutrients are typically low to moderate. The sources of the data provided by Virginia include the United States Soil Conservation Service, Virginia Polytechnic Institute, and the State Agricultural Experiment Station.

OSM has provided in interpretive regulations published in the **Federal Register**, June 10, 1980 (45 FR 39447), that if the operator demonstrates through a soil survey or other data that the topsoil and unconsolidated material are insufficient and substitute materials will be used, only the substitute materials must be analyzed in accordance with 30 CFR 816.22(e)(i) and 817.22(e)(i). Because the Virginia submission does not presently include assurances that the state window proposal will be implemented consistent with the Interpretive Rules Relating to Topsoil Substitutes and Supplements, June 10, 1980, it must be disapproved at this time. It appears that this proposal could be approved if these assurances are included on resubmission.

(v) *Sediment Ponds*—In Sections V816.46(m)–(o) and V817.46(m)–(o) of its regulations, Virginia has proposed an alternative to 30 CFR 816.46(m)–(o) and 30 CFR 817.46(m)–(o). This alternative would allow the construction of sediment ponds with the combined upstream and downstream side slopes less than 1v:5h, provided that a minimum static safety factor of 1.5 is met and neither slope is steeper than 1v:2h. This alternative would also allow the use of non-toxic and non-acid producing coal processing waste in the construction of sediment structures under certain conditions.

The first part of this alternative, allowing upstream and downstream slopes to be no steeper than 1v:2h with a static safety factor of 1.5, is proposed by Virginia because of the limited areas available for construction of sedimentation ponds due to the terrain of southwestern Virginia, the increased embankment size which would be necessary to provide the necessary storage volume according to the OSM regulations, and the reduction in the amount of surface area disturbed by embankments constructed under this proposal.

The Virginia proposal included examples of typical pond construction sites which would be found in southwestern Virginia. These examples showed embankments built according to the OSM requirements requiring a 23 to 34 percent greater volume of material than if built according to the Virginia

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proposal. The smaller size of the embankment allows the pond site to be smaller and the borrow area to be smaller, resulting in less area to be disturbed by the mining operation.

The Virginia proposal has retained the federal reguirement that neither the upstream nor the downstream slope of the embankment shall be steeper than 1v:2h. It has provided an additional requirement that the slope of the embankment must have a static safety factor of at least 1.5.

The federal regulations in 30 CFR 816.46(q) and 30 CFR 817.46(q) provide that if a sediment pond has an embankment that is more than twenty feet in height, as measures from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of twenty acre-feet or more, then additional, more stringent requirements must be met. One of these additional requirements is that the embankment shall be designed and constructed with a static safety factor of at least 1.5. Greater than twenty foot dams must also pass one hundred year storms, rather than twenty-five year storms, and comply with all safety requirements of MSHA in 30 CFR 77.216. Therefore, the Secretary finds the Virginia proposal in V816.46(m) and V817.46(m) is consistent with the federal regulations in 30 CFR 816.46(m) and (q) and 817.46(m) and (q) because this proposal requires that all structures, whether greater than or less than twenty feet in height have a static safety factor of at least 1.5.

The second part of this proposal would allow the use of non-toxic and non-acid forming coal waste in the embankment because it is often difficult to obtain suitable borrow material for embankment construction in southwestern Virginia due to the relatively thin soil cover. Obtaining sufficient borrow material for embankment construction may require large areas to be disturbed in order to obtain a sufficient volume of materials. According to the Virginia proposal, the use of coal refuse would reduce this disturbance. Water quality would be protected since only non-toxic, non-acid forming refuse would be used.

The provision to allow the use of coal waste in embankments is inconsistent with 30 CFR 816.46(o). Sections 515(b)(13) and 515(f) of SMCRA require that dams constructed of coal refuse shall comply with safety standards used by the Chief of Engineers. Regulations incorporating these requirements are contained in 30 CFR 616.91 through 816.93 and 817.91 through 817.93. Since the Virginia proposal would allow construction of dams using coal refuse without requiring compliance with these standards, the Secretary finds that the proposal is not in accordance with SMCRA. It appears that the proposal could be approved if it is modified to require compliance with 30 CFR 816.91 through 30 CFR 816.93 and 30 CFR 817.91 through 30 CFR 817.93.

(vi) *Disposal of Excess Spoil*—In Sections V816.75 and V817.75 of its regulations, Virginia provides an additional method for the disposal of excess spoil in areas other than the actual mined area. A single lift disposal area would be allowed with a "structural zone", similar to a constructed dam at the face of the fill area. This proposal is an alternative to 30 CFR 816.71 through 816.74 and 30 CFR 817.71 through 817.74.

This alternative assumes that embankment construction and disposal of spoil are different. As explained more fully below, the Virginia proposal would omit SMCRA's requirements for removal of organic matter from all areas of the site, placement of an underdrain system in all areas of the site so as to prevent infiltration of water into the spoil pile, and controlled placement of spoil and compaction. Under the alternative these basic practices would be waived for areas not considered as the structural zone of the fill. The structural zone would be designed and constructed using standard embankment and slope stability principles and the basic embankment requirements would apply only to the structural zone.

Three other specific OSM regulatory requirements are proposed to be waived by the Commonwealth of Virginia: providing a filter system for the subsurface drainage system; placement of spoil materials in horizontal lifts; and the prohibition on drainage over the outslope.

The Secretary finds the following specific alternatives that are incorporated in this method are less stringent than the requirements of the regulations and/or SMCRA insofar as they:

1. Allow drainage to be diverted over the outslope of the fill. SMCRA requirements—515(b)(22)(C); Regulation requirements 816.72(f), 817.72(f)

2. Allow spoil materials to be placed in areas where topsoil and vegetation matter have not been removed. SMCRA requirements—515(b)(22)(B); Regulation requirements 816.71(c), 817.71(c)

3. Allow unclassified spoil to be placed in other than horizontal lifts (end dumping) and without compaction. SMCRA requirements—515(b)(22)(A); Regulation requirements 816.71(f), 817.71(f)

4. Do not require an underdrain system to be constructed under the nonstructural zone to intercept springs, natural watercourses or wet weather seeps. SMCRA requirements—515(b)(22)(D); Regulation requirements 816.71(1), 817.71(1), 816.72(b)(1), 817.72(b)(1), 816.73(b)(1), 817.73(b)(1)

5. Allow unclassified spoil to be placed without any lift thickness requirements in nonstructural zone. SMCRA requirements—515(b)(22)(A); Regulation requirements 816.72(c), 817.72(c)

6. Do not specifically require a filter system to protect underdrain system. Regulation requirements 816.72(b)(2), 817.72(b)(2), 816.73(b)(2), 817.73(b)(2)

7. Do not require materials to be transported to placement areas in a controlled manner. SMCRA requirements—515(b)(22)(A); Regulation requirements 816.71(f), 817.71(f)

Withal, this proposal represents an innovative engineering approach that contains technical merit. Because, on its face, it conflicts with several requirements of SMCRA, it can only be approved if it is more stringent than SMCRA. The proposal lacks certain engineering data and justifications needed to determine its effect.

Absent additional information and justifications, the proposal violates or conflicts with regulations and SMCRA; therefore, the proposal must be denied at this time. The Secretary would suggest that the Commonwealth on resubmission apply for approval of this proposal as an experimental practice under Section 711 of SMCRA. The construction of a model, or several models, that would yield data should provide a basis for the Secretary to reconsider his decision. Virginia might also prepare plans and specifications in greater detail showing fill performance under site-specific, hypothetical situations.

This new technique could prove environmentally and economically beneficial. The Commonwealth is to be commended for advancing this innovative approach: OSM will continue working with Virginia to develop it.

(vii) *Steep Slope Mining*—In Sections V826.12(b) and (g), Virginia proposes an alternative which modifies the special performance standards required for steep slope mining in 30 CFR 826.12 and 826.15. This proposal in Section V826.12(b) would allow the regulatory authority to specify a lower or higher factor of safety than the 1.3 specified in 30 CFR 826.12(b) for all portions of the reclaimed area. The second part of this proposal in V826.12(g) would allow drainage channels or roads to be located in the uppermost portion of the backfilled area and incorporate the highwall as an integral part of the drainage channel or road.

Virginia has justified this proposal by alleging that if the highwall is completely covered and the slope returned to its original contour, there is little likelihood that the minimum factor of safety of 1.3 can be achieved for most steep slope areas. Virginia also maintains that there will be more positive control of surface runoff by constructing ditches or roadways at the top of the backfilled spoil if these structures are properly designed and if there is no structure above the spoil slope to intercept the surface water runoff, the risk of erosion and instability increases significantly. By allowing a flatter spoil slope, it would be safer and easier to operate earth-moving equipment, improve the overall compaction of the spoil and effect a vegetation program.

The 1.3 safety factor is particularly appropriate in steep slope areas where slope failures are likely. It is an accepted value in engineering design (44 FR 15229, March 13, 1979) and provides a margin of error if field conditions are not accurately defined or if design is not properly implemented. A lower safety factor would provide less assurance of stability for future land uses and reduce protection of the environment and public health and safety. Virginia's allegation that a 1.3 factor cannot be attained above a lv:2h slope is nof correct. With concurrent compaction in zoning or select materials, the required safety factor can be easily achieved. (See Lambe, T. W. and Whitman, R. V., 1969. Soil mechanics, John Wiley & Sons, Inc., New York, New York, cited at 44 FR 15215, March 13, 1979).

Retention of a portion of the highwall to facilitate roads and drainage structures is contrary to SMCRA which forbids leaving highwalls. Water in the uncompacted fill could lead to saturation and create stability problems in the backfill.

Therefore, a drainage facility or a road at the top of the backfilled highwall must be an engineered channel designed to handle anticipated flows with the small highwall segment "shaved" to blend into surrounding terrain. Under the Federal regulations terraces may also be used on the backfill to reduce runoff velocity, but in no case may highwalls be left as a part of the terrace, 30 CFR 816.102(b)(3).

In accordance with 30 CFR 731.13, the Secretary finds that this proposed alternative is not in accordance with Sections 515(d)(2) and 515(e) of SMCRA which clearly provide that the highwall must be completely covered and that backfill material must maintain stability following mining and reclamation. It also is not consistent with the 1.3 factor of safety requirement of 30 CFR 826.15.

(viii) *Haul Roads*—Virginia proposed in Sections V816.152, V816.162, V817.152, and V817.162 that if substrate materials exposed by road cuts are demonstrated to be a satisfactory topsoil substitute for establishing the vegetation, they may be used in place of topsoil or other suitable materials under Section V816.22. The state was concerned that the Federal regulations in 30 CFR 816.152 and 816.162 and 30 CFR 817.152 and 817.162 require all cut slopes of lv:5h or flatter to be covered with topsoil. Virginia provided data with the proposed topsoil alternative (Finding 4(b)(iv) above) showing that the A-horizon is not necessarily the soil stratum best suited for vegetative purposes in southwestern Virginia. The native soils on the steep slopes characteristic of southwestern Virginia are generally low to moderate in fertility and difficult to remove safely prior to surface mining activities. The native soils typically found on these steep slope areas are insufficient both in quality and quantity for restoring land capability and productivity.

OSM has provided in interpretive regulations published in the **Federal Register**, June 10, 1980 (45 FR 39446–39448) that if the operator demonstrates through analysis, soil survey or other data that the topsoil and unconsolidated material are insufficient and substitute materials will be used, only the substitute materials must be analyzed in accordance with 30 CFR 816.22(e)(1) and 30 CFR 817.22(e)(1). Although this proposal is generally acceptable and the substantive finding would be similar to that for the topsoil alternative [Finding 4(b)(iv)], the Secretary must affirmatively disapprove this proposal because of the decision of the District Court of the District of Columbia in *In Re: Permanent Surface Mining Regulation Litigation*. 30 CFR 816.150–176 and 30 CFR 817.150–176 were remanded by the district court. Accordingly, all portions of State programs relating to these regulations must be disapproved.

(c) Pursuant to the requirements of 30 CFR 732.15(b)(1), the Secretary finds that the Virginia Department of Economic Development has, in part, authority under Virginia laws and regulations to implement, administer, and enforce all applicable requirements consistent with 30 CFR Chapter VII, subchapter K, and the Virginia program includes provisions adequate, in part, to do so. Special provisions comparable to 30 CFR Parts 820, 822, and 825 for anthracite mines and operations in alluvial valley floors are not applicable to or included in the Virginia law or regulations.

Virginia incorporates provisions corresponding to Sections 515 and 516 of SMCRA in Subchapter 19, Virginia Coal Surface Mining Control and Reclamation Act of 1979 as amended, Sections 45.1–242 and 45.1–243, and in the Virginia Coal Surface Mining Regulations, Subchapter VK. Part 8.6 of the program submission contains a discussion of Virginia administrative and enforcement procedures for the performance standards. Except for the following items, the Secretary finds that the Virginia program, law, and regulations meet the requirements of 30 CFR 732.15(b)(1):

(i) The difference between 30 CFR 817.48 (Hydrologic balance: acid-forming and toxic-forming material) and the Virginia regulations contained in Section V817.48 in that Virginia has included only "acid-forming and toxic-forming spoil." 30 CFR 817.48 incudes "acid-forming and toxic-forming *underground development waste and* spoil." Virginia has omitted the four italicized words, thereby altering the Federal requirements and making the Virginia regulations less stringent.

(ii) The difference between 30 CFR 817.59 (coal recovery) and the Virginia regulations contained in Section V817.59 in that Virginia has changed the phrase "best technology currently available" of the Federal regulation to "best appropriate technology currently available" in the Virginia regulations. This alteration could limit the regulatory authority's ability to require that certain technology be utilized to ensure environmental integrity in coal recovery. The addition of "appropriate" alters the meaning of this section so that it is less stringent.

Pursuant to the requirements of 30 CFR 732.15(b)(2), the Secretary finds that the Virginia Department of Conservation and Economic Development has, in part, the authority under Virginia laws and regulations and the Virginia program includes, in part, provisions to implement, administer and enforce a permit system consistent with 30 CFR Chapter VII, Subchapter G.

Virginia incorporates provisions corresponding to Sections 506, 507, 508, 510, 511 and 513 of SMCRA and Subchapter G of 30 CFR Chapter VII in Virginia CSMCRA as amended in Section 45.1–234, 45.1–235, 45.1–236, 45.1–237, 45.1–238 and 45.1–239 and Subchapter VG of the Virginia regulations. Part 8.1 of the program submission contains discussion of the system for permitting. The Virginia

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modification which was received by OSM on May 5, 1980, included proposed regulations V786.27(b) pertaining to permit provisions for right of entry.

The Virginia statute and regulations are consistent with the federal law and regulations except for the following items:

(i) In Section V771, which corresponds to 30 CFR 771, Virginia has included an additional part, V771.23(c), which does not have a corresponding federal part. This provision would allow permit applicants to comply with the permit application requirements of Section V778 through V780 and V782 through V785, which require specific data to be submitted with the permit application, by reliance upon accurate data, as approved by the regulatory authority, already in the possession of the applicant or the regulatory authority. This information pertains to permit application requirements for (1) legal, financial, compliance and related information, (2) information on environmental resources, and (3) the reclamation and operation plan. Under the proposal such data could be incorporated by reference into a permit, provided that the incorporated information is made available to the public for inspection.

Existing data can be used to satisfy the requirements of V778 through V780 and V782 through V785 if it can be shown that they are relevant to that particular permit area. In most cases this can be done by collecting some data so that reasonable predictions or modeling can be done. Therefore, the Secretary finds that Section V771.23(c) is consistent with the federal requirement.

(ii) In Section V783.15(a)(3) of the Virginia regulations "known uses" has been used instead of "the uses" in 30 CFR 783.15(a) of the federal regulations. In order to protect uses of ground water, it is necessary that the term "known uses" be interpreted to mean all potential uses, even though the ground water may not be being used for such purpose currently. If Virginia assures that a thorough investigation of all uses of ground water and its function in the hydrologic balance will be conducted, the Secretary could accept the term "known uses".

(iii) In Section V782.13 of the Virginia regulations the words "property to be mined" have been substituted in place of the following in 30 CFR 782.13 which concerns required information for underground mining permit application:

—782.13(a)(2) "areas to be affected by surface operations and facilities and every legal or equitable owner of records of the coal to be mined."

—782.13(a)(3) "areas to be affected by surface operations or facilities and the holders of record of any lease hold interest in the coal to be mined."

—782.13(a)(4) "areas to be affected by surface operations and facilities and any purchaser of record under a real estate contract of the coal to be mined."

The Secretary finds this change inconsistent with the federal requirement. Virginia has identified this change as an editorial error which it plans to correct and make consistent with 30 CFR 782.13 (See Administrative Record No. VA 94). No correction has yet been submitted by Virginia.

(iv) Section V786.21(c) of the Virginia regulations establishes guidelines for permit review where the permit applicant requests an exemption from the design criteria for existing structures. OSM recognizes the need for coal mine operators and regulatory authorities to know which of the regulations are performance standards and which are design standards. The Virginia proposal has attempted to consolidate that information in one place in the Virginia regulations.

The Virginia proposal provides a listing of existing structures and the standard those structures must meet in order for them to comply with the performance standards of the Virginia CSMCRA and Subchapter VK of the Virginia regulations. If these standards are not met, the structure would be subject to the modification or reconstruction requirements of Section V701.11(e) which corresponds to 30 CFR 701.11.

For the purposes of this proposal and evaluating the performance standards applicable to the existing structures, the regulations of Subchapter K of the federal regulations and the provisions of Sections 515 and 516 of SMCRA were divided by Virginia into the following categories: (1) performance standards, (2) design criteria, (3) operating standards, (4) reclamation standards, and (5) general standards.

Of the twenty two performance standards contained in the Virginia proposal, fourteen meet federal requirements. These are the provisions of V786.12(c)(1), (3), (4), (6), (10), (11), (14), (15), (17), (18), (19), (20), (21) and (22). The eight others do not meet the full performance standards as required in 30 CFR Parts 816 and 817 and Sections 515 and 516 of SMCRA.

The federal regulations in 30 CFR 701.11(d) provide an exemption from reconstruction requirements if the applicant can demonstrate, and the regulatory authority finds, (1) that the existing structure complies with performance standards in the initial program, which were at least as stringent as the comparable standards for the permanent program, (2) that the existing structure complies with a more stringest permanent program performance standard, and (3) in the case of a new performance standard in the permanent program with no comparable standard in the initial program, the existing structure complies with the permanent program performance standards. In essence, if the existing structure complies with permanent program performance standards, the applicant need not reconstruct the structure in order to comply also with permanent program design requirements.

As a part of its proposal, Virginia has not clearly stated that any and all performance standards in its law and regulations must be met. Neither has Virginia clearly provided that structures which were in violation during the interim program will not be subject to grandfather provisions and allowed to remain without meeting the requirements of 30 CFR 701.11(d). The Secretary suggests that at a minimum the state regulations be amended to include:

(a) The words "performance and" before the word "design" in Section V701.11(e)(1)(iii) at line 7, and Section V701.11(c)(1)(iv) at line 5.

(b) The statement "structures that are in violation during the interim program, 30 CFR Subchapter B, will not be subject to grandfather provisions" in Section V786.21(c).

(c) The statement "all other performance standards in Virginia law and regulations must be met" in Section V786.21(c).

Because of these deficiencies in this Virginia proposal, the Secretary finds the provisions of V786.21(c) of the Virginia regulations inconsistent with the federal requirements.

(v) The Virginia regulations have omitted the requirement of 30 CFR 786.27(b) that permittees allow a citizen to accompany an inspector on a mine site when the inspection is in response to an alleged violation reported to the regulatory authority by that person. The Secretary finds the Virginia regulations deficient insofar as they do not provide for this requirement. The proposed regulation V786.27(b), submitted on May 5, 1980, appears to correct the deficiency.

(vi) Section V784.19(p) of the Virginia regulations omits the requirement of 30 CFR 784.16(e) that the plan for coal processing waste dams and embankments include a stability analysis of each structure if the structure is twenty feet or higher or

impounds more than twenty acre feet. Virginia has indicated that this omission is a typographical error which will be corrected, but these corrections have not been received (See Administrative Record No. VA 93).

4e

Pursuant to the requirements of 30 CFR 732.15(b)(3), the Secretary finds that the Virginia Department of Conservation and Economic Development has the authority to regulate or to prohibit coal exploration consistent with 30 CFR Parts 776 and 815 (coal exploration), and that the Virginia program includes provisions adequate to do so. The Virginia program incorporates provisions corresponding to Section 512 of SMCRA and 30 CFR Parts 776 and 815 in Virginia CSMCRA 45.1–233 and regulations Sections V776 and V815. Part 8.1 of the program submission includes a discussion of coal exploration notifications and approvals.

4f

Pursuant to the requirements of 30 CFR 732.15(b)(4), the Secretary finds that the Virginia Department of Conservation and Economic Development has the authority under Virginia laws and regulations to require that persons extracting coal incidental to government-financed construction maintain information on site consistent with 30 CFR Part 707.12. The Virginia program incorporates provisions corresponding to Section 528 of SMCRA and 30 CFR Part 707 in Virginia CSMCRA 45.1–253 and the Virginia surface mining regulations Part V707.

4g

Pursuant to the requirements of 30 CFR 732.15(b)(5), the Secretary finds that the Virginia Department of Conservation and Economic Development has the authority under Virginia laws and regulations to enter, inspect, and monitor all coal exploration and surface coal mining and reclamation operations on non-Indian and non-federal land within Virginia consistent with the requirements of Section 517 of SMCRA (inspections and monitoring) and 30 CFR Chapter VII, Subchapter L (inspections and enforcement). Provisions corresponding to Section 517 of SMCRA and Subchapter L of 30 CFR Chapter VII for inspection and monitoring are found in Virginia CSMCRA Section 45.1–244 and Virginia proposed surface mining regulations Subchapter VL (inspection and enforcement). Part 8.4 of the program submission contains a description of the inspection program to be carried out by the Virginia Department of Conservation and Economic Development.

4h

Pursuant to the requirements of 30 CFR 732.17(b)(6), the Secretary finds that the Virginia Department of Conservation and Economic Development has the authority under Virginia laws and regulations and the Virginia program includes provisions for implementation, administration and enforcement of a system of performance bonds and liability insurance, or other equivalent guarantees, consistent with 30 CFR Chapter VII, Subchapter J. The performance bond and liability insurance provisions of Sections 507(f), 509, 510 and 519 of SMCRA and 30 CFR Chapter, VII, Subchapter J are incorporated in Sections 45.1–235(G), 45.1–241, 45.1–238, 45.1–247 of the Virginia CSMCRA and in Subchapter VJ of the Virginia regulations.

Several regulations in 30 CFR Chapter VII, Subchapter J, were suspended or remanded as a result of the litigation over the permanent program regulations (*In Re: Permanent Surface Mining Regulation Litigation*, Civil Action No. 79–1144). However, Virginia submitted proposed regulations on bonding corresponding to those sections suspended or remanded. The proposed Virginia bonding regulations were not taken into consideration by the Secretary in making this findind as they have not yet been enacted. As a result of this litigation, those sections of the Virginia bonding regulations based on suspended or remanded federal regulations cannot be approve. New regulations were published by OSM on August 6, 1980 (45 FR 52306–52324). These new regulations will be used as the basis to determine the adequacy of the corresponding Virginia regulations. Prior to resubmission Virginia should review the final OSM regulations and consider modifying its proposed regulations in accordance with the new federal regulations.

4i

Pursuant to the requirements of 30 CFR 732.15(b)(7), the Secretary finds that the Virginia Department of Conservation and Economic Development has the authority under Section 45.1246 of the Virginia CSMCRA and provides in Part V845 of the Virginia regulations for civil and criminal sanctions for violations of Virginia law, regulations and conditions of permits and exploration approval, including civil and criminal penalties, in accordance with Section 518 of SMCRA (30 U.S.C. 1268) and consistent with 30 CFR Part 845. Part 8.5 of the program submission discusses the system for enforcing civil and criminal sanctions of State laws.

On February 26, 1980, the U.S. District Court for the District of Columbia issued its first round decision in the litigation over the permanent program regulations (*In Re: Permanent Surface Mining Regulation Litigation*, Civil Action No. 79–1144). In that decision, the court held that the Secretary could not require a point system for assessing civil penalties. On May 16, 1980, in its second round decision in this litigation, the court answered the Secretary's request for clarification regarding the round one decision remanding the penalty point system. The court stated that the Secretary may not require the states to develop a system to assess penalties at least as stringent as those imposed under the civil penalty system set forth in the federal regulations. The Secretary has interpreted the court's decision concerning penalty systems such that the states and need develop only a penalty system incorporating: (1) the four criteria in Section 518(a) of SMCRA, (2) the procedural requirements of 30 CFR 845.17 through 845.20, (3) the requirement of 30 CFR 845.12 that all cessation orders must be assessed, and (4) the requirement of 30 CFR 845.15(b) that a minimum of $750.00 per day be assessed for all cessation orders issued for failure to abate a violation.

Based on the district court's ruling, the Secretary finds that the Virginia alternative penalty point system appears acceptable. Virginia submitted proposed regulations to modify V845 to provide a means of assessing civil penalties which would not rely on a point system (See Administrative Records No. VA 65). These proposed regulations would appear to be acceptable if resubmitted as fully enacted regulations because the assessment would still be based on the consideration of the four statutory criteria; history, seriousness, negligence, and good faith in correcting the violation.

4j

Pursuant to the requirements of 30 CFR 732.15(b)(8), the Secretary finds that the Virginia Department of Conservation and Economic Development has, in part, the authority under Virginia laws and the Virginia program contains, in part, provisions to issue, modify, terminate and enforce notices of violation, cessation orders and show cause orders in accordance with Section 521 of SMCRA (30 U.S.C. 1271) and with 30 CFR Chapter VII, Subchapter L. The authority to issue, modify, terminate and enforce notices of violation, cessation orders and show

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cause orders is contained in Section 45.1–245 of the Virginia CSMCRA and in Chapter 19, Subchapter VL of the Virginia regulations. Except for the following, the Virginia program, law, and regulations meet the requirements of 30 CFR 732.15(b)(8):

(i) The Virginia program in Section 8.4 has failed to show clearly who may be an "authorized representative" of the Director of the Department of Conservation and Economic Development and, therefore, who would be authorized to issue notices of violation and cessation orders as provided in V843 of the Virginia regulations. It is necessary that the field inspector be an "authorized representative" so that violations may be cited immediately in the field as required by SMCRA. For example, this provision is necessary in the event that the inspector encounters any condition, practice, or violation which he determines to be imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources so that he may immediately order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the condition, practice, or violation. The Secretary finds Section 8.4 unacceptable insofar as it does not define who may be an "authorized representative," or provide that the field inspector will be an authorized representative of the Director.

4k

Pursuant to the requirements of 30 CFR 732.15(b)(9), the Secretary finds that the Virginia Department of Conservation and Economic Development has, in part, the authority under Virginia laws and regulations to provide for designation of areas as unsuitable for surface coal mining consistent with 30 CFR Chapter VII, Subchapter F. Section 45.1–252 of the Virginia CSMCRA and Chapter I, Subchapter VF of the Virginia regulations are consistent with 30 CFR Chapter VII, Subchapter F, except for the following:

(i) 30 CFR 764.15(b)(2) provides that the regulatory authority shall, within three weeks after the determination that a petition is complete, notify the general public of the receipt of the petition and request submissions of relevant information by a newspaper advertisement placed once a week for two consecutive weeks in the locale of the area covered by the petition in the newspaper of largest circulation in the state, and in any official state register of public notice. V764.15(b)(2) provides that the newspaper advertisement shall be placed once a week for two consecutive weeks in the locale of the area covered by the petition, in a newspaper of general circulation in the locale. Mining in Virginia is confined to the southwest portion of the state. The Secretary recognizes the problems in that the newspaper of largest circulation in Virginia may not reach the residents of the southwest and other portions of the state. Conversely, the newspaper of general circulation in the locale would not provide notification to a large portion of Virginia residents. Knowledge of a permit would be expected to be of high interest to those in the coal shipping areas of Virginia and residents of the state outside of the coal producing areas of the state. Therefore, the Secretary finds that Virginia should provide that the newspaper advertisement be placed in a newspaper of general circulation of the locale and in the newspaper of largest circulation in Virginia.

(ii) 30 CFR 764.17(a) provides that the hearing held in regard to the petition shall be legislative and fact-finding in nature without cross-examination of witnesses. Section V764.17(a) provides that the hearing officer is empowered to administer oaths and may at his discretion allow cross-examination and rebuttal of witnesses. The Secretary has noted that nothing prevents the state regulatory authorith from providing additional procedural safeguards in unusual circumstances and, therefore, providing for elements of an adjudicatory type hearings in those situations (See first round decision of February 26, 1980, *In Re: Permanent Surface Mining Regulation Litigation*, Civil Action No. 79–1144). However, under normal circumstances an adjudicatory type hearing cannot be required and the hearing must be legislative and fact-finding in nature. Therefore, Virginia should use adjudicatory type hearings only in unusual circumstances. The Secretary intends to monitor this as an element of oversight.

(iii) Virginia proposed three major changes to its regulations governing petitions to designate lands unsuitable for surface coal mining operations in Section V764.13, V764.15, and V764.17. In V764.13, the Virginia proposal directs a petitioner to supply substantially more information than required under SMCRA or 30 CFr 764.13. The additional information is proposed to assist the regulatory authority in making its findings. Section V764.13(d) allows the Virginia Division of Mined Land Reclamation to initiate a petition. In V764.15 and V764.17(a) the time limit is restricted for filing a petition in response to a permit application and the time limit for holding a hearing for a petition filed in response to a permit application is reduced.

The information that a petitioner needs to provide is specified at 30 CFR 764.13(b) for designation and 30 CFR 764.13(c) for termination. These information requirements provide a very low threshold for the petitioner's burden to present a petition. In its submission, Virginia stated that the additional information is designed to guide petitioners and will be required only to the extent it is available to the petitioner.

The ambiguous language used by Virginia in achieving this purpose in its regulation does not clearly indicate that this additional information requirement is only a guide. On its face this constitutes a requirement which, if not met, would be reason for not considering the petition.

The Secretary supports the intentions of Virginia to provide additional guidance to petitioners so that it might be better able to supply those kinds of information needed by the regulatory authority for consideration in its findings on the on the petition. The Secretary finds this part of the Virginia proposal inconsistent with SMCRA and the federal regulations only insofar as the requirement for additional information is not optional. Virginia indicated at the meeting July 15 and 16, 1980, in Washington, D.C., that clarification would be provided to show that the additional information requirement was for guidance and the failure to provide this additional information would not result in the rejection of the petition (See Administrative Record No. VA 171 and 173). This clarification has not been provided at this time.

The second part of the Virginia proposal would allow the state and its agencies, including the Division of Mined Land Reclamation, to act as petitioners. This part of the proposal is to clarify that the state is a proper petitioner.

Under 30 CFR 764.13 and "person" with an interest which is or may be adversely affected may file a petition. In 30 CFR 700.5, the word "person" is defined to include ". . . any agency, unit, or instrumentality of . . . of . . . state or local government . . ." The Secretary finds that this part of the Virginia proposal is consistent with SMCRA and the federal regulations and, therefore, acceptable.

The third part of the Virginia proposal restricts time limitations in the process for designating lands unsuitable when a permit application is involved. This proposal has two components. Section V764.15(a)(7) allows the filing of a petition to designate an area, including a permit application area, at any time up to the end of the public comment period on that permit application. The public comment period would not extend to the informal conference as is provided in 30 CFR 764.15(a)(7). Secondly, in V764.17(a) when a petition to designate lands unsuitable for surface coal mining operations is filed during the public comment period on a permit application, the hearing on the petition must be held within three months rather than 10 months as required by 30 CFR 764.17(a).

As explained by the Secretary in the **Federal Register**, March 13, 1979 (44 FR 15002), the establishment of the petition cutoff date was the result of a balancing of interests on a national level. Environmental groups wanted as much time as possible to file petitions while regulatory authorities and operators wanted an early cutoff to prevent harassment and provide easier administration. Virginia has presented no justification for its proposal that is unique to Virginia except to state that it would save money and would be easier to handle administratively. This reasoning would apply to any state government and was considered in the drafting of the federal regulations. Therefore, the Secretary finds this provision unacceptable.

Virginia could accomplish its objectives within the framework of the existing regulations. Under these regulations, an informal conference could be held as soon as the day following the comment period, provided that proper notification was given. However, when informal conferences are held, a decision on the permit application must be made within sixty days [30 CFR 786.23(b)(2)(i) and V786.23(b)(2)(i)], unless a petition to designate lands unsuitable for mining is filed.

Virginia states that the basis for its proposal to shorten the ten month time limit for holding a public hearing on a petition to three months if the petition was filed during the public comment period on a permit application is the large number of small operators who will be adversely impacted by delays in permitting. Virginia considers that the three month provision places a more stringent requirement on the Division of Mined Land Reclamation (DMLR).

While it is agreed that the time between filing of a complete petition and the public hearing should not be unduly long, reduction of this period from a maximum of ten months to a maximum of three is not a more stringent standard. It may impose more of an administrative burden on the DMLR to meet this compressed schedule, but it will also result in a shorter time for petitioners to prepare testimony. It is, therefore, a less stringent standard than the federal regulation. The intent of the ten month maximum time period is to allow all parties sufficient time to prepare for the hearing. It seems likely that the complexity of issues, volume of petitions and staff capability may require some hearing schedules to go beyond a three month limit. In addition, proposals that the time to consider petitions be reduced have been previously considered and rejected by OSM (44 FR 15003, March 13, 1979). Therefore, the Secretary finds this provision unacceptable.

It should be noted, however, that the ten month time limit is a maximum and there is nothing in the regulations to preclude the DMLR from holding the hearing on any petition at any time within the ten month period. It would be permissible for Virginia to adopt a policy to direct that the petitions be processed as rapidly as possible and that hearings on such petitions may be held within three months of receipt. This should allow regulatory authority flexibility to provide sufficient consideration of a petition regardless of the complexity.

4l

Pursuant to the requirements of 30 CFR 732.15(b)(10), the Secretary finds that the Virginia Department of Conservation and Economic Development has the authority under Virginia laws and the Virginia program contains, in part, provisions for public participation in the development, revision and enforcement of the Virginia regulations and program. The modification to the Virginia program which was received by OSM on May 5, 1980, contained proposed regulations which are not fully enacted and cannot be considered as the basis of the Secretary's findings (*See* part D., above). The Virginia CSMCRA and Chapter I, Virginia Coal Surface Mining Regulations provide the authority and the Virginia program is consistent with the public participation requirements of SMCRA and 30 CFR Chapter VII except for the following:

(i) 30 CFR 842.12(b) provides that the indentity of any person supplying information to the office relating to a possible violation or imminent danger or harm shall remain confidential, if requested by that person. Section V842.12(b) has changed the "person" to "citizen" in this section. Both the federal and the Virginia regulations define "person" to include individuals, corporations, associations, etc., but "citizen" is not defined and could exclude out-of-state persons, corporations, associations, etc. from remaining confidential. Therefore, the Secretary finds V842.12(b) is inconsistent with 30 CFR 842.12(b).

(ii) The Virginia regulations do not contain provisions to allow a citizen to accompany the inspector during an inspection which is conducted as a result of information provided to the regulatory authority by the citizen as is provided in 30 CFR 842.12. Therefore, the Secretary finds V842.12 of the Virginia regulations unacceptable. The Virginia modifications received by OSM on May 5, 1980, contained proposed regulations V842.12(b)(c) which if resubmitted as fully enacted regulations would appear to correct this deficiency.

(iii) The Virginia regulations omitted provisions requiring notice of citizen suits as is provided in 30 CFR 700.13. Therefore, the Secretary finds the Virginia regulations inconsistent with the federal regulation insofar as there is no provision for notice of citizen suits. The Virginia modification received by OSM on May 5, 1980, contained proposed regulations in Part V790 which if resubmitted as fully enacted regulations would appear to correct this deficiency.

4m

Pursuant to the requirements of 30 CFR 732.15(b)(11), the Secretary finds that the Virginia Department of Conservation and Economic Development has, in part, the authority under Virginia laws, and the Virginia program includes provisions to monitor, review and enforce the prohibition against indirect or direct financial interests in coal mining operations by employees of the Virginia Department of Conservation and Economic Development consistent with 30 CFR Part 705. The prohibitions against fiancial interests in coal mining operations are contained in Sections 45.1–231 and 45.1–232 of the Virginia CSMCRA, part V705 of the Virginia regulations, and in Section 8.12 of the Virginia program description. Except for the following, the Virginia program, law and regulations meet the requirements of 30 CFR Part 705:

(i) Section 45.1–231 of Virginia CSMCRA prohibits conflicts of interest for members of the Board of Conservation and Economic Development. However, Section 45.1–232 allows up to three members of the

Board representing the coal industry to have financial interests in coal mining. 30 CFR Part 705 exempts from its coverage members of state multi-interest boards, and thereby allows otherwise forbidden financial interests on such boards. It is not clear in Virginia's submission that any other special interests besides coal mining are required to be represented on the Board, and it is therefore impossible to determine if the Board is truly a "multi-interest" board. Absent such demonstration the Secretary finds that Section 45.1–232 of Virginia CSMCRA is inconsistent with Section 517(g) of SMCRA and 30 CFR Part 705. This issue is discussed further in response to comment 67.

4n

Pursuant to the requirements of 30 CFR 732.15(b)(12), the Secretary finds that the Virginia Department of conservation and Economic Development has the authority under Section 45.1–256 of the Virginia CSMCRA to require the training, examination, and certification of persons engaged in or responsible for blasting and the use of explosives in accordance with Section 719 of SMCRA. Under 30 CFR 732.15(b)(12) the state is not required to implement regulations governing such training, examination and certification until six months after federal regulations for these provisions have been promulgated. Federal regulations have not been promulgated at this time. However, when OSM issues final rules on this subject, Virginia will be required to have regulations consistent with them.

4o

Pursuant to the requirements of 30 CFR 732.15(b)(13), the Secretary finds that the Virginia Department of Conservation and Economic Development has the authority under Section 45.1–235 of the Virginia CSMCRA and Part V795 of the Virginia regulations to provide for a small operator assistance program consistent with Section 507(c) of SMCRA and 30 CFR Part 795. Part 8.16 of the Virginia program narrative describes the Virginia small operator assistance program.

4p

Pursuant to the requirements of 30 CFR 732.15(b)(14), the Secretary finds that the Virginia Department of Conservation and Economic Development has the authority under Section 45.1–257 of the Virginia CSMCRA to provide for protection of employees of the Virginia Department of Conservation and Economic Development in accordance with the protection afforded federal employees under Section 704 of SMCRA.

4q

Pursuant to the requirement of 30 CFR 732.15(b)(15), the Secretary finds that the Virginia Department of Conservation and Economic Development has, in part, the authority under Sections 45.1–249, 45.1–250 and 45.1–251 of the Virginia CSMCRA and the Virginia Administrative Process Act, *Va. Ann. Code* 9–6:14:12 et seq. and Subchapter VL of the Virginia regulations provide, in part, for administrative and judicial review of state program actions in accordance with Sections 525 and 526 of SMCRA and 30 CFR Chapter VII. The Virginia statutes and regulations are consistent with SMCRA and federal regulations except for the following:

(i) Section 45.1–251A of the Virginia CSMCRA provides that judicial review under this section includes the right of any party to request a jury trial *de novo*. The Secretary finds the provision for jury trial *de novo* unacceptable unless certain conditions are met. The Secretary's position that *de novo* review of administrative decisions was unacceptable was challenged in the first round of the permanent program litigation. *In Re: Permanent Surface Mining Regulation Litigation*, Civil Action No. 79–1144, in the District Court for the District of Columbia. As a result of that litigation, the Office of Surface Mining modified its position on *de novo* review and stated that such reviews would be acceptable if the *de novo* review procedures: (1) insure preservation of the administrative record, including all exhibits and transcripts of all testimony taken at the proceeding; (2) guarantee that the party to a *de novo* review proceeding has the right to use any evidence contained in the administrative record whenever such evidence cannot otherwise be practicably obtained; (3) insure that any money paid into escrow is held until there is a final, binding resolution of the controversy; (4) demonstrate that the provision for trial *de novo* will not result in undue delay so as to undermine the effectiveness of the enforcement program; (5) make trial *de novo* review available to any party to the administrative proceeding, including the regulatory authority and any intervening parties; (6) insure that review by trial *de novo* is not available to a person who has failed to appear at or waived his right to an administrative hearing, and (7) provide for representation of the regulatory authority by a licensed attorney at law at every stage of the judicial review proceeding. These conditions have not been provided in the Virginia law and regulations, therefore, the Secretary finds the Virginia provision for jury trial *de novo* unacceptable.

(ii) Section 518(b) of SMCRA provides that any hearing under this section shall be of record and shall be subject to 5 U.S.C. 554. The Virginia Administrative Process Act states that the presiding hearing officer is empowered to oversee an accurate verbatim recording of the evidence, but does not require that all hearings be of record. In addition, the Virginia program submission does not contain this requirement. The Secretary finds the Virginia Administrative Process Act is less stringent than SMCRA because it does not mandate a record of the hearing on civil penalties.

(iii) Section 45.1–249E of the Virginia CSMCRA empowers the Board to adopt regulations governing the awarding of costs, expenses, and attorney fees to any party and the assessing of these costs against any other party. Section 45.1–251C authorizes the assessing and awarding of costs, expenses, and attorney fees during judicial review of agency action. To this extent, the Secretary finds that both of these sections appear consistent with Section 525(e) of SMCRA. However, both of the above sections exempt the state from their operation, with the result that attorney fees, etc,, may not be assessed against the state. This is inconsistent with the requirements of Section 525(e), which expresses no limitation on the awarding of costs against governmental entities. In addition, 30 CFR 732.15(b)(10) and 840.15 require public participation provisions in each state program consistent with 43 CFR Part 4. The preamble to the permanent regulations is clear that the availability of costs and expenses is an integral part of public participation in administrative and judicial review, under state programs, and inclusion of such provisions is required (See 44 FR 14965; 15297 (March 13, 1977)]. The Secretary finds that the Virginia provision is unacceptable insofar as it limits the awarding of costs, expenses, and attorney fees against the state.

(iv) 30 CFR 840.15 requires public participation in enforcement of a state program consistent with 43 CFR Part 4. The Virginia Administrative Process Act governs the general conduct of administrative hearings including those authorized in Section 45.1–249 of the Virginia CSMCRA. Although the Virginia Administrative Process Act empowers the hearings officer to govern the conduct of the hearing, (*Va. Ann. Code*, 9–6.14:12), Virginia has submitted no procedural regulations which are the same or similar to the intervention and discovery rules in 43 CFR Part 4. The Secretary finds that the lack of such procedural regulations allowing public access to this phase of the enforcement process is inconsistent with 43 CFR Part 4 as it is applicable to state programs.

4r

Pursuant to the requirements of 30 CFR 732.15(b)(16), the Secretary finds that the Virginia Department of Conservation and Economic Development has the authority under Virginia laws, and the Virginia program contains provisions to cooperate and coordinate with and provide documents and other information to the Office of Surface Mining under the provisions of 30 CFR Chapter VII. This authority is provided by Virginia CSMCRA and Chapter I, Virginia Coal Surface Mining Reclamation Regulations, Parts V700 through V845.

4s

Pursuant to the requirements of 30 CFR 732.15(c), the Secretary finds that the Virginia CSMCRA and regulations adopted thereunder and other laws and regulations of Virginia do not contain provisions that would interfere with or preclude implementation of the provisions of SMCRA and 30 CFR Chapter VII, except that the Virginia legislature and several counties have passed statutes and ordinances allowing coal companies to deed their coal haulroads to counties as "public roads." OSM requested that Virginia submit copies of these laws and ordinances for review with the proposed Virginia permanent regulatory program: however, these have not been submitted. OSM has obtained copies of the law and ordinances and has determined that they would allow the haulroad requirements of SMCRA to be circumvented. Haulroads which otherwise would be required to be a part of the permitted area of the surface coal mining operation arguably elude the requirements of SMCRA and 30 CFR Chapter VII because as "county owned" roads the state might not require they be included as a part of the permitted area. The construction and upgrading of roads to haul coal or gain access to the mine site is included within the definition in Section 701(28) of SMCRA of "surface coal mining and reclamation operations." The Secretary finds that state law and policy allowing the coal haulroad requirements of SMCRA to be circumvented in Virginia's program is unacceptable.

4t

Pursuant to the requirements of 30 CFR 732.15(d), the Secretary finds that the Virginia Department of Conservation and Economic Development and other agencies having a role in the program have, in part, sufficient legal, technical, and administrative personnel and funds to implement, administer, and enforce the provisions of the program, the requirements of 30 CFR 732.15(d) and other applicable state and federal laws except for the following:

(i) Section 9.2 of the Virginia program narrative, states that since May 1979, the number of geographical inspection areas has been reduced from nine to six, "due largely to the fact that a lesser number of mines are now permitted as a result of the release of those mines less than two acres in size which were previously permitted." Based on the current average number of inspections per area (pages 9–14), this reduction in geographical areas requires fifteen fewer inspectors. This reduction in proposed staffing is attributable to mines affecting less than two acres no longer being permitted.

The Office of Surface Mining is aware of up to two hundred underground mines, allegedly affecting two acres or less, that are unpermitted. The determination of affected area for underground mining operations includes not only the land visibly disturbed on the surface but also that area disturbed beneath the surface of the land (mine workings). It has not been demonstrated in the Virginia program submittal that such affected area determinations are applied by Virginia to those mines claiming to be two acres or less. If, in fact, Virginia does not include the underground workings in determining the affected area, then the total number of inspectable units, as reported by Virginia, may be significantly deflated. This would result in an underestimation of inspection staffing needs.

Statistical information, as provided in Tables 9–1 and 9–2 of Section 9.2 of the Virginia narrative, contains insufficent information concerning inspectable units on which to base a decision for inspection staffing approval. It is not apparent in either the statistical table or the program narrative that preparation, loading, coal waste disposal, or other auxiliary facilities are considered in the total number of inspectable units. Without this specific information it is impossible to determine accurately the adequacy of Virginia's proposed staffing.

Compounding the above concern is the fact that Virginia, by administrative record correspondence of July 23, 1980, notified the OSM Region I Director of a position ceiling imposed on VDMLR by the Virginia Secretary of Administration and Finance which affects inspection staffing by necessitating a reduction in the number of inspectors from fifty to forty. Based on the above concerns, the Secretary finds that the inspection staffing plan proposed by Virginia is unacceptable.

To evaluate adequately an inspection staffing plan which is resubmitted, the Secretary believes he will need, at a minimum, the following information:

(1) A description of the methods and criteria used in determining jurisdiction of all surface coal mining operations and the methods and criteria used to determine the affected areas of all surface coal mining operations, especially underground coal mining operations. This description should enable the Secretary and the public to evaluate Virginia's basis for its proposal on the number of inspectors.

(2) An accurate count of current and projected surface underground coal mining operations which claim to be two acres or less.

(3) An accurate breakdown of surface coal mining operations which include surface mines, underground mines, preparation, coal waste disposal and loading facilities. This information must be updated to reflect the present numbers of all these inspectable units.

F. Disposition of Agency and Public Comments

1. One commenter pointed out that Virginia law Section 45.1–242E does not contain the same limitations on the granting of experimental practices as does Section 711 of SMCRA. Since Virginia CSMCRA requires the Secretary's approval of all experimental practices, the limitations of SMCRA are retained. Therefore, the Secretary will not require a change in the Virginia program.

2. One commenter noted the absence of any provision in the Virginia statute which authorizes citizens to file petitions for rulemaking as provided in Section 201(g) of SMCRA. In addition, the commenter remarked that the Virginia statute does not require a response by the state to petitions for rulemaking within ninety days. The Secretary notes, however, that Section V700.12 of the Virginia regulations provides that any person can initiate a proceeding for the issuance, amendment, or repeal of any regulation under SMCRA. This provision is consistent with 30 CFR Chapter VII. A recommendation on the petition must be made to Virginia's Board of Conservation and Economic

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Development within 90 days, and the Board must consider the petition at its next regular quarterly meeting. The Secretary has found that the time limit for response by the state is consistent with the federal requirement, since an initial complete review and tentative disposition must be made within 90 days, and since the Board will have no earlier opportunity to make the final decision that the meeting at which it must be considered under V700.12.

3. Several comments were made that the wording of CSMCRA, Section 45.1–244–A, would restrict state inspector enforcement activities by not granting expressed right of entry to any area disturbed by coal surface mining activities. This provision only allows entry to and across permitted areas and does not expressly grant entry to areas disturbed off the permit, or to coal surface mining activities not under permit. The Secretary notes that the wording of this section is consistent with Section 517 of SMCRA. In addition, Virginia has passed new legislation under CSMCRA, Section 45.1–209–1, which allows right of entry to non-permitted operations to determine whether they fall within the jurisdiction of CSMCRA.

4. A comment was received that CSMCRA, Section V45.1–245.D, does not grant the inspector the authority to issue a notice of violation (NOV) or cessation order (CO) in the field upon observation of a violation. CSMCRA, Section V45.1–245.A and .B, requires the "authorized representative of the Director" to issue an NOV or CO upon observation of violation. However, as discussed in Finding 4j(i) above, "authorized representative of the Director," is not clearly defined to include field inspectors.

5. One commenter was concerned that the substitution of the word "occurs" for the word "continues" in the CSMCRA, Section 45.1–246.N, could weaken the intent of the federal law. Clarification of this wording was provided by Virginia at a public meeting conducted on June 4, and 5, 1980, in Charleston, West Virginia and in a June 12, 1980, Attorney General's opinion (See Administrative Record Nos. VA 128 and VA 93). Virginia's interpretation is that there is no difference in the meaning of the Virginia Act and SMCRA and the Secretary agrees.

6. One commenter expressed concern that CSMCRA, Section 45.1–246.1, limits the jurisdiction for a citizen's suit against the federal government to the Virginia circuit court of the county or city in which the mining operation at issue is located. This comment appears erroneous. Section 520(a) of SMCRA clearly gives citizens a separate federal cause of action beyond any rights set forth in CSMCRA 45.1–246.1.

7. Several comments were made that Virginia's definition of public roads in V761 was too imprecise and could result in widespread abuse.

Several stated that many mining operations could use the Virginia definition to claim an exemption as a two-acre or less operation, especially with the current practice of deeding haulroads to the county in which the operation is located so as to circumvent federal and state jurisdiction. The definition of public roads in V761 applies only to Subchapter VF, and would not affect the general applicability of CSMCRA. In any event, the Secretary suspended the analogous federal definition (44 FR 67942) and no state equivalent is required for a program to be eligible for approval. Further discussion of the two-acre exemption and the practice of deeding haulroads to counties is found in Findings 4s and 4t above.

8. One commenter stated that the Virginia definition of "a person having an interest which is or may be adversely affected" in V700.5 appears more restrictive than holdings under *Sierra Club v. Morton, 405 U.S. 727 (1972) and SCRAP II* 412 U.S. 669. Virginia has added the words "in fact" to the phrase "is or may be adversely affected." The secretary believes this definition is similar to and therefore consistent with the federal definition and the decisions rendered under *Sierra Club v. Morton* and *SCRAP II* because it will not reduce the class of people entitled to participate as a result of their interests, and therefore will not require any change.

9. One commenter stated that the word "aesthetic" (sic) should be deleted from the definition of persons who may be adversely affected by surface mining in Section V700.5. Since "esthetic" is included in the definition of persons having an interest which is or may be adversely affected as found in 30 CFR 700.5, the Secretary will not require a change in the Virginia program because the Virginia definition is consistent with the federal definition.

10. The same commenter objected to the use of the word "aesthetic" in the definition of fragile lands under V762.5. This definition is identical to the definition in 30 CFR 762.5; the Virginia provision is consistent with that regulation.

11. One comment was received on V700.11(b) that the exemtion for two-acre mining sites should be more clearly defined and that the statement ". . . at or near the mine site . . .," in the definition for surface coal mining operations should be deleted and a more precise statement submitted. The Secretary finds the Virginia definitions are similar to and consistent with the definitions in 30 CFR 7000.11.

12. One commenter noted that the Virginia submission failed to explain why there was no corresponding section to 30 CFR 700.13, Notice of Citizen Suits. Virginia has submitted proposed regulations, Part 790, which pertain to notice of citizen suits. However, these regulations have not been enacted and therefore cannot be considered at this time. For further discussion on this issue, see Finding 41 above.

13. One commenter expressed an opinion that the definition of "valid existing rights" under V761 seemed to negate some of the situations covered under SMCRA. The Virginia definition is identical to the definition of valid existing rights at 30 CFR 761.5(a)(2)(i) as orginally promulgated on March 13, 1979 (44 FR 15342). However, the portion of this regulation which requires that an operator must have obtained all permits necessary for mining prior to August 3, 1977, as part of the test to establish a valid existing right, was challenged during litigation on the permanent program regulations. The court held, in the Round I opinion, that a good faith effect to obtain all permits should suffice for meeting this test, so as not to unduly burden an operator who has applied for all permits but failed to receive one through bureaucratic delay. The Virginia definition of valid existing rights is disapproved, as noted below, to the extent it requires that all permits must have been obtained prior to August 3, 1977.

14. One commenter stated that the definitions in 30 CFR 762.5 are not included in Virginia's program. This comment appears erroneous. The definitions are in V762.5 of the Virginia regulations and are consistent with 30 CFR Chapter VII.

15. A comment was submitted that in Virginia Section V741.13(b) requires only two copies of a permit application to be filed with the regulatory authority and 30 CFR Part 740 requires nine. The Secretary will not require any changes in the program because 30 CFR Part 740 deals with Surface Coal Mining Operations On Federal Lands and does not apply to any state program.

16. Another commenter noted that the Virginia regulations contained no counterparts for 30 CFR 741.18 and 741.19 pertaining to public participation in the permit review process and availability of permit information. The Secretary will not require any changes in the program because 30 CFR Part 740 deals with Surface Coal Mining Operations On Federal Lands and does not apply to any state program.

17. Several commenters expressed concern with Virginia Part V764 which regulates the designation of lands unsuitable. Specific areas of concern were:

a. *V764.13.* This section requires the petitioner to provide additional information beyond that required by 30 CFR 764.13 of the federal regulations.

b. *V764.13(d).* This section would allow the Division of Mined Land Reclamation or any other branch of state government to initiate procedures to designate lands unsuitable or to terminate an existing designation.

c. *V764.17.* Unlike 30 CFR 764.17 this section would reduce the time for holding a public hearing on a petition from ten months to three months in the case of a petition submitted during a public comment period on a permit application.

d. *V764.15(a)(7).* Unlike 30 CFR 765.14(a)(7) this section would allow the filing of a petition between the close of the public comment period on a permit application and the end of an informal conference.

e. *V764.15(b)(2).* This section omits the federal requirement of 30 CFR 764.15(b)(2) to advertise the receipt of a petition in the newspaper of largest circulation in the state.

f. *V764.17(a).* Unlike 30 CFR 764.17(a), this section would allow the administering of oaths, cross examination, and rebuttal of witnesses.

All of these comments relate to program changes required by the Secretary, with the exception of b which the Secretary finds consistent with SMCRA and 30 CFR Chapter VII. Further discussion of these issues is found in Finding 4k above.

18. One commenter stated that the procedures for petitioning lands unsuitable under V764 were incomplete because no waiver for copying fees was included for an impecunious petitioner, similar to that provided for small operations in part 8.16.1 of the Virginia program which addresses the data base and inventory system. The Secretary will not require a change in the Virginia program because pursuant to 30 CFR 764.23, states may charge a reasonable fee for copying. Any waiver for copying fees is at the discretion of the regulatory authority.

19. One commenter objected to the required under V778.14(c) that a permit applicant list all violations received on past permits when a new permit is sought. Since this requirement is consistent with 30 CFR 778.14(c), the Secretary will not require a change in the program.

20. Several commenters indicated the Virginia groundwater permit requirements in V779.15 were not appropriate. Since this section is consistent with 30 CFR 779.15, the Secretary will not require a change in the Virginia program.

21. One commenter did not agree with Virginia's inclusion of Section V779.18 which allows the regulatory authority to request climatological data. Since the Virginia section is identical to 30 CFR 779.18, the Secretary will not require a change in the Virginia program.

22. One commenter said that Virginia should promulgate regulations under V779.19 to require a map delineating existing vegetative communities. Since 30 CFR 779.19 does not make this specific requirement, the Secretary cannot require it. The federal regulation provides the regulatory authority the option to determine what materials are necessary to describe adequately the vegetation of the area to be disturbed. Virginia regulation V779.19 is consistent with 30 CFR 779.19.

23. Several commenters stated that by using the phrase "if available" in Section 779.21, Virginia does not make the soil map requirement for permits mandatory, as in 30 CFR 779.21. The District Court of the District of Columbia has remanded 30 CFR 779.21; therefore, it is not necessary for a state program to meet this requirement at this time (*In Re: Permanent Surface Mining Regulation Litigation*, Civil Action No. 79–1144). (D.D.C. 1980)

24. One commenter objected to Virginia's requirement to remove preparation plant buildings and silos after their use. Sections V780.11 and V784.11 of the Virginia regulations require a narrative explaining how the removal of coal handling, storage, cleaning, and transportation areas and structures will be a part of the reclamation and operation plan in the permit application. This is consistent with 30 CFR 780.11 and 784.11. In addition the reclamation requirements for the permanent cessation of mining in Section V816.132 and V817.132 are consistent with the requirements of 30 CFR 816.132 and 817.132. The Secretary will, therefore, not require a change in the state program.

25. One commenter stated that the effluent limitations are often incompatible with the requirement for restoring approximate original contour. He recommended either relaxing the effluent standards or requiring the watershed to be shaped and designed and revegetated or managed with ponds, terraces, etc., in a manner that will achieve the standards. All operations are required to use "best technology" preventive measures to reduce sedimentation and meet effluent limitations e.g. 30 CFR 816.45 and 817.45. Virginia regulations are consistent with 30 CFR, Chapter VII in this regard and, therefore, the Secretary will not require a change in the state program.

26. One commenter stated that the high number of maps required under V780.14 constituted a costly and time consuming requirement. The Secretary finds that V780.14 is consistent with 30 CFR 780.14.

27. Several commenters stated that professional geologists should not be authorized under Section V780.14 to certify maps, plans, and cross sections, unless they are registered or licensed. The Secretary will not require a change in the state program because the Virginia regulation is consistent with 30 CFR 780.14.

28. One commenter suggested that Virginia Section V780.15(1) should require a more critical air quality monitoring program. Since Section V780.15(1) is consistent with 30 CFR 780.15(a)(1) the Secretary will not require a change in the state program.

29. One commenter stated that considerable thought should be given to the method of calculating reclamation costs for performance bonding. The regulatory authority in Section V805.11 has the responsibility for calculating reclamation restoration and abatement costs for such bonding based on the estimated cost to the regulatory authority if it had to perform this work itself. V805.11 is consistent with 30 CFR 805.11 and the Secretary will therefore require no change in the program.

30. Virginia Polytechnic Institute and State University commented that the standards for pond construction found in V816.46 and V817.46 could represent "over-engineering" for sediment ponds which would be constructed in remote areas. The Secretary is disapproving V816.46(o) and V817.46(o) and V816.46(m) and V817.46(m) of the Virginia regulations to the extent they allow the use of waste in sediment pond dams (See Finding 4b(v)). The Secretary finds the remaining provisions of V816.46 and V817.46 consistent with the federal regulations and therefore no change is required. 30 CFR 816.46(b)(c)(d) and (h) were suspended as a result of litigation (*In Re: Permanent Surface Mining Regulation Litigation*, Civil Action No. 79–1144). Virginia suspended its corresponding regulations in V816.46(b)(c)(d) and (h) (See Administrative Record No. VA 123).

31. One commenter recommended that Virginia's term "property to be mined" in V782.13(a) be amended to conform

with 30 CFR 782.13(a). The words "property to be mined" have been inserted in place of the following corresponding federal sections:

30 CFR 783.13(a)(2) "areas to be affected by surface operations and facilities and every legal or equitable owner of record of the coal to be mined."

30 CFR 782.13(a)(3) "areas to be affected by surface operations or facilities and the holders of record of any lease hold interest in the coal to be mined."

30 CFR 782.13(a)(4) "areas to be affected by surface operations and facilities and any purchaser of record under a real estate contract of the coal to be mined."

The Secretary agrees with this comment and has disapproved this Virginia provision (See Finding 4d(iii)).

32. One commenter suggested that Virginia Section V783.14(a), which requires chemical analyses of geologic strata, should be related to cost-benefit. Virginia's wording is consistent with 30 CFR 783.14(a); therefore, the Secretary will not require a change in the state program.

33. One commenter was concerned with Virginia Section V783.14(a), which modifies the phrase in 30 CFR 783.14(a), "stratum to be affected," to "stratum within the overburden." This wording only applies to those areas in which overburden will be removed down to the level of the coal; therefore, Virginia's wording is consistent.

34. One commenter stated that the phrase "the uses of the water" which appears in 30 CFR 783.15(a)(3) has been modified in Virginia Section V783.15(a)(3) to read "known uses of the water" and this modification alters the intent of the federal regulations. The Secretary agrees with this comment and has disapproved this provision of the Virginia regulations (See Finding 4d(ii), above).

35. A commenter pointed out that Virginia regulations do not contain requirements for stability analysis for coal processing waste dams and embankments as required in 30 CFR 784.16. This omission occurred when Virginia regulations failed to include 30 CFR 784.16(e). The Secretary agrees with this comment and has disapproved this Virginia provision (See Finding 4d(vi), above).

36. One commenter stated that a subsidence control plan, required by 30 CFR 784.20 or Virginia Section V784.20, should have a waiver provision if the land over the underground workings is owned by the permittee or operator. 30 CFR 784.20 does not provide for such a waiver; therefore, to be consistent, Virginia cannot provide such a waiver. Further explanation was provided on March 13, 1979 (44 FR 15074–15076 and 15272–15276).

37. One commenter said that Virginia Section V786.19(c) fails to require DMLR to assess specifically the cumulative impacts of mining on the hydrologic balance. The requirement for cumulative assessment in V786.19(c) is consistent with 30 CFR 786, the Secretary will therefore require no change in the state program.

38. Several commenters expressed concern over the alternative for preexisting structures, and contend that the Virginia alternative is vague and creates confusion between design standards and performance standards. The Secretary agrees with this comment and has disapproved this alternative (See Finding 4d(iv), above).

39. One commenter noted that the Virginia regulations fail to establish time frames for permit processing in Section V786.23 as required by 30 CFR 786.23. The Secretary will not require a change in the Virginia program because the Virginia regulations are identical to the federal regulations concerning when an informal conference is held and otherwise require permit processing within a reasonable time, in accordance with Section 510(a) of SMCRA.

40. Several commenters noted that the Virginia Program omits reference to 30 CFR 786.27(b)(2) concerning permit terms which allow right of entry to citizens. The Secretary agrees with this comment and has disapproved this Virginia provision (See Finding 4d(v), above).

41. Several commenters stated that the Virginia regulations in Sections V788.14, V788.16, and V788.18 do not establish procedures or standards for public participation in the revision or renewals of permits in the transfer, sale, or assignment of rights as required by 30 CFR 788.14, 788.16, and 788.18. The Secretary will not require changes in the state program because the Virginia regulations provide for public notice and participation consistent with 30 CFR 788.14, 788.16, and 788.18.

42. One commenter stated that small operator assistance available under V795 should be available to contractors who have no direct connection to a large operator, other than working on his permit area. The operators referred to by this commenter are not permittees, as required in 30 CFR Part 795, but contractors. The Virginia regulations pertaining to small operator assistance are consistent with the federal regulations and the Secretary will therefore require no change in the program.

43. A commenter suggested that the five-year minimum period of liability under V805.13 should be shortened significantly. The Secretary does not agree with this comment since the five-year minimum period of liability is mandated by Sections 509(b) and 515(b)(20) of SMCRA.

44. Two commenters stated that V816.22(e)(3), as proposed by Virginia regarding topsoil removal on slopes greater than sixty percent, is not acceptable until language is added to ensure that the substitute materials used are the best available for sustaining vegetative growth. These regulations would exempt the required testing of native topsoil on areas with greater than sixty percent slope. The Secretary agrees with this comment and has disapproved this regulation (See Finding 4b(iv), above).

45. A commenter stated that Section V816.65(d) omits the word "fly" in its requirement on fly rock. Virginia has identified this omission as a typographical error which will be corrected (See Administrative Record No. VA 94). Until the appropriate revision is effected, the Secretary has disapproved this provision.

46. Several comments stated that the Virginia proposed alternative regulation for the disposal of excess spoil, V816.75, is inconsistent with SMCRA and the federal regulations in the following manner:

—Allows spoil materials to be placed in areas where topsoil and vegetative matter have not been removed.

—Does not require an underdrain system to be constructed under the nonstructural zone to intercept springs, or wet weather seeps.

—In the nonstructural zone, allows unclassified spoil to be placed without lift thickness requirements.

—Does not specifically require a filter system to protect the underdrain system.

The Secretary agrees with this comment and has disapproved this alternative (See Finding 4b(vi), above.

47. Several commenters stated that the Virginia proposed alternative regulations V816.107 and V817.107, concerning backfilling and grading on previously mined lands, are inconsistent with the SMCRA and the federal regulations since complete elimination of highwalls is not required. The Secretary agrees with this comment and has disapproved this alternative (See finding 4b(iii), above).

48. Two commenters stated that the Virginia regulations for haulroads, V816.153, V816.162, V817.152, and V817.162, are not adequately justified and that the discussion of erosion should have considered the use of mulch. The federal regulations governing haulroads, on which Virginia regulations are modeled, have been remanded by the District Court of the District of Columbia. The adequacy of haulroad regulations will, therefore, not be addressed until new federal regulations are promulgated.

49. Several commenters stated that Virginia regulation V816.46(o) is inconsistent with 30 CFR 816.46(o) because the Virginia regulation allows the use of coal processing waste in the construction of sedimentation ponds, provided such waste is both non-toxic and non-acid forming. The Secretary agrees with this comment and has disapproved this provision (See Finding 4b(v), above).

50. Several commenters stated Virginia has substituted, in V817.59, the phrase "best appropriate technology currently available" for the phrase "best technology currently available" found in 30 CFR 817.59. The Secretary agrees with this comment and has disapproved the provision (See Finding 4c(ii), above).

51. One commenter suggested that the requirement to return backfilled slopes to the approximate premining slopes should be replaced with a requirement to "step down" or terrace the backfill to enhance erosion and sediment control, allow homesites, enhance visual amenities, and promote agriculture. The Secretary is not persuaded by this comment since it is inconsistent with the basic requirements in Section 515 of SMCRA and 30 CFR 826. Limited variances from restoring premining slopes are available under 30 CFR 826.15 if demonstrated to be needed for alternate postmining land uses, watershed improvement, etc. (See Finding 4b(vii), above).

52. One commenter stated that the inspector's right of entry should be restricted and allowed only after proper presentation of credentials and during regular working hours. The Secretary agrees in part. Presentation of credentials is already required by Section V840.12(a). Restricting inspections to regular working hours is contrary to 30 CFR 840.11(d)(1) which requires inspections to be conducted on an irregular basis.

53. One commenter stated that Virginia's regulations did not provide citizen discovery rights at administrative proceedings consistent with 43 CFR 4.1130 *et seq.*, as required by 30 CFR 840.15. The Secretary agrees with this comment and will require Virginia to provide discovery rights to citizens (See Finding 4q(iv), above).

54. A commenter objected that the Virginia regulatory package does not contain provisions concerning the award of costs and expenses consistent with 43 CFR 1290 *et seq.*, as required by 30 CFR 840.15. Although the state is empowered to award costs and expenses, the provision does not apply to the state itself and the Secretary, therefore, finds it inconsistent with SMCRA Section 525(e) and 43 CFR Part 4 (See Finding 4q(iii), above).

55. Two commenters stated that Virginia does not provide provisions for the intervention of citizens in administrative proceedings consistent with 43 CFR 4.1110 as required by 30 CFR 840.15. Under Virginia Code 96.14:12(c), hearing officers are given the right to regulate the hearings, which presumably would include intervention issues. However, it is equally clear that Virginia has no regulations assuring citizen intervention pursuant to 43 CFR 4.1110. Therefore, the Secretary finds unacceptable the absence of this necessary provision (See Finding 4q(iv), above).

56. Two commenters stated that the use of the phrase "except for good cause shown" found in Section V842.11 of the Virginia regulations, would provide a discretionary excuse for the regulatory authority to not act on a citizen complaint. OSM questioned this language during its review and requested clarification from Virginia at a public meeting held on June 4 and 5, 1980, at Charleston, West Virginia. Virginia explained that this phrase was not intended to limit inspections conducted as a result of citizens' complaints, but rather to require the inspector to conduct an immediate inspection or show good cause why not. The Secretary finds this language consistent with the intent of 30 CFR 842.11.

57. Two commenters were concerned that by exchanging the word "person", as found in 30 CFR 842.12, with "citizen", in Virginia regulation Section V842.12, corporations or out-of-state residents could be excluded from requesting inspections or requesting confidentiality during a complaint. The Secretary agrees with this comment and has disapproved this provision (See Finding 4l(i), above).

58. One commenter objected to Virginia regulation V842.14 which allows the Director of DCED thirty days instead of fifteen to render a decision on a citizens' complaint of a failure to make an adequate inspection. 30 CFR 842.12 specifically addresses the time in which the Director of OSM must respond to an alleged failure to conduct a *federal* inspection. While the time period allowed by Virginia is not identical to the federal requirement, it is similar. The Secretary notes that the effect of this on overall citizen participation is nil because of the Secretary's oversight authority. Clearly, if more than 10 days passed without an inspection, the Secretary would have an obligation to act.

59. One commenter stated that Virginia's statute does not provide for the informal review of citizen's complaints. Agencies may promulgate regulations to regulate their internal procedures in accordance with their statutory purposes. Virginia has included informal review for citizens complaints under V842.15.

60. One commenter objected to Virginia regulation V843.14(b), which allows a show cause order to be served to any person who appears to be in charge of a coal exploration or surface coal mining and reclamation operation as opposed to service by certified mail or hand delivery to the operator or his designated agent. The Secretary finds that V843.14(b) is consistent with 30 CFR 843.14(b) because the two provisions are identical.

61. One commenter stated that, if the Director of DCED has the authority to review indepedently and modify a hearing officer's decision of permit revocation, then minimal Administrative Procedures Act protections must be provided. Under V843.13(e), the right to present arguments under Director Review is preserved. In addition, the requirements of Virginia's Administrative Process Act would apply to any agency action in a contested case.

62. One commenter stated that V843.16 should contain a section which allows the operator an expedited hearing on cessation orders with an immediate ruling. Expedited relief hearings are included in this section by reference to CSMCRA, Section 45.1–249.

63. One commenter objected to the omission in the Virginia regulations of injunctive relief provisions consistent with 30 CFR 843.19. Injunctive relief is granted under CSMCRA, Section 45.1–245E.

64. Two commenters stated that Virginia's point system under V845.13 for determining the assessment of civil penalties was inconsistent with 30 CFR 845.13. Pursuant to a recent court decision, states are not required to implement a point system which is identical to OSM's. States need only consider the four criteria discussed in Section 518(i) of SMCRA.

65. Two commenters stated that Virginia's program should impose criminal penalties in order to prevent direct or indirect conflicts of interest of state employees. A state does not have to provide a criminal penalty system

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against direct or indirect financial interests since 30 CFR 705.19 gives the Director of OSM the authority to impose penalties against state employees with conflicts of interest if a state has no such authority.

66. One commenter stated that Virginia's program was deficient in that it did not project coal production from surface mining activities or explain in full the anticipated decline in underground mine development and expansion between 1979 and 1984. Section 30 CFR 731.14(b)(8) requires, as part of the state program submission, "projections, if available from existing studies, of the annual coal production and geographic distribution of coal exploration and surface coal mining and reclamation operations, for the next three to five years . . ." The commenter should note the qualifying phrase "if available from existing studies . . ." The state does not have to generate new data, if it is currently unavailable.

67. One commenter raised both constitutional and statutory objections to mixed state boards where conflicts of interest could arise. The Secretary has interpreted his rules to permit members of multi-interest boards, established by a statute, to have interests in coal companies other than a company, if any, involved in the particular proceeding before the board. At this time state programs can also allow members of such boards to have these interests in coal companies. However, the Secretary has proposed to amend his rules on this subject. See 44 FR 52098–52101, September 6, 1979. The Secretary considers this to be an important issue, and intends to make a final decision on conflicts of interest of board and commission members in the near future. The Department is currently evaluating various alternatives, ranging on the one hand, from leaving the present rules and interpretations unchanged to, on the other hand, a blanket prohibition against conflict of interest by any person performing any function, even an advisory one. Between these two extremes lies the possibility of exempting only members of boards which are exclusively advisory in nature. Until the regulation is changed, it remains the standard for judging the adequacy of State program submissions. For the purposes of State program approval, the objection now raised are untimely and should have been within 60 days after the rule was adopted. Section 526 of SMCRA. If the Secretary changes the rules, or his interpretation of the present rules, states will be required to amend their programs as necessary to make them consistent with the new requirements.

68. The Fish and Wildlife Service stated that Part 8.1.1 of the Virginia Program pertaining to permitting failed to describe the requirements for permit renewal, and that permits should be re-assessed prior to renewal to determine impact on endangered and threatened species. Part V788.3 of the Virginia regulations specifically address permit renewal and procedures for permit review and modification. There is no specific requirement in 30 CFR Part 788 which requires a state to conduct an impact assessment pertaining specifically to endangered or threatened species prior to renewal. Therefore, the Secretary will not require changes in the state program.

69. One commenter stated that the Virginia program narrative at pages 84 and 8–10 do not specify which division (VDMLR) officials would be responsible for investigating the applicant's performance and compliance history. There is no requirement imposed on the states in 30 CFR 731.14 to specifically identify the officials responsible for the compliance review.

70. One commenter objected to the lack of an adequate explanation of why citizens would not be allowed to accompany inspectors during inspections conducted pursuant to a citizen's complaint as provided in 30 CFR 842.12. The absence of this provision is basis for disapproval. Virginia has proposed regulations which would remedy this (See Finding 41(ii), above).

71. One commenter stated that the Virginia submission should address the anticipated costs of reviewing the permit application as well as the level of the fees to be assessed. A detailed analysis of permitting costs is not required by 30 CFR 731.14 for program approval. Therefore, the Secretary will not require changes in the state program.

72. One commenter stated that Virginia failed to provide a copy of Virginia's conflict of interest implementing regulations. The Virginia conflict of interest law, which was submitted as part of Virginia's program, is operative without specific implementing regulations.

73. One commenter stated that Virginia's narrative is deficient because it does not provide procedures for processing administrative requests, procedures for show cause hearings, or procedures in accordance with Section 554 of the Federal Administrative Procedures Act (APA). Show cause and other administrative review proceedings are handled pursuant to the Virginia Administrative Process Act which provides procedures similar to those required under SMCRA. Compliance with Section 554 of the federal APA is not required in state programs. The processes for all required state administrative actions have been provided in the Virginia program.

74. A commenter stated that Virginia's proposed inspection staffing plan is inadequate to meet SMCRA's mandate. This is primarily due to the fact that Virginia has failed to include, in their inspectable units count, mines claiming to be less than two acres and coal preparation and loading facilities. The Secretary agrees with this comment and has disapproved the inspection staffing (See Finding 41(i), above).

75. A major landowner in southwest Virginia commented that as a landowner they should have the right to reshape the land during mining to suit a more productive use. The Secretary will not require any changes in the Virginia program because exceptions from regrading to approximate original contour are provided when certain alternate land uses are anticipated and planned after mining. In order for the Virginia program to remain consistent with SMCRA and the federal regulations, it is necessary that highwalls be eliminated and that the land be restored to the approximate original contour unless an alternative land use plan has been approved.

76. One commenter stated that Section 8.3 of the Virginia narrative regarding performance bond release procedures should include provisions for prolonged bonding or a new estimate probability of likely reclamation based on work done to date. Section 8.3 of the program narrative sufficiently references the Virginia regulations, Part V800, which governs bonding. Part V800 is consistent with 30 CFR Part 800 and specifies that bonds shall remain in effect until all requirements of SMCRA and the regulations are met *and* for a minimum period of five years.

77. One commenter stated that the bonding regulations, Part V800, are inadequate because no provision is included which requires a minimum bond per acre for the permit area. The Secretary finds that Part V800 is consistent with 30 CFR Part 800 because the requirements for the minimum amounts of the bond are identical.

78. The EPA commented that the format, conditions, and requirements of DMLR permits are not discussed in the proposed state program, including conditions and requirements of the permit process and a copy of the permit format. The Virginia program has included in Part 8.0, a narrative description, including a Flow Chart of the system for receiving applications for surface and underground mining permits. The Secretary finds that Subchapter VG of the Virginia regulations implement permitting provisions is consistent with the provisions of Subchapter G of 30 CFR Chapter VII.

79. The EPA expressed concern that DCED may at any time, without EPA concurrence, revise the following air and water quality provisions which may be enjoined, suspended, or remanded by court order or decision, including but not limited to the appeal in the case of *Virginia Surface Mining and Reclamation Association, Inc. et al. v. Andrus et al.* (Civil Action No. 78–0224–B, W.D. VA 1979)

Section 816.46(u)—Sedimentation Pond Regrading
Section 817.46(u)—Sedimentation Pond Regrading
Section 816.71—Disposal of Excess Spoil
Section 817.71—Disposal of Excess Spoil
Section 824.11(a)—Mountaintop Removal
Part 843—Federal Enforcement
Part 845—Civil Penalties

30 CFR 732.17 governs the procedures for amendments to approved state programs. Pursuant to 30 CFR 732.17(b)(3), any change in the state law and regulations from those contained in the approved state program would constitute an amendment. All amendments must be approved by the Director of OSM following the procedures required in 30 CFR 732.12, 732.13, and 732.15. 30 CFR 732.15 requires the written concurrence and views of EPA.

80. The EPA commented that in Section 8.0 of the program narrative where approval of the DMLR is required with respect to specific facets of the environmental baseline studies, the approval should be provided in writing. This approval is a part of the pre-application conference. Because approval granted at this point is subject to the formal application review procedures and all requirements for final permit approval which is in writing, the Secretary will not require a change in the Virginia program.

81. The EPA commented that it is not clear in Section 8.0 of the program narrative who requests the pre-application conference—the Division of Mined Land Reclamation or the operator. It is the operator who would request the pre-application conference because only the operator would normally know when preparation for a permit application must begin.

82. The EPA made the following comments with respect to Virginia's proposed NPDES program:

—The Virginia program does not address specifically or by reference, in the narrative Sections 8.4 or 8.5 a system for enforcing violations pertaining to NPDES conditions on water quality standards.
—Virginia has no provision in Section 8.4 of its program for describing compliance sampling and evaluation.
—Virginia's program procedures and systems pertaining to funding, manpower, and organizational structure were insufficient in detail to permit a sound determination of adequacy with regard to the administration of the NPDES Program for coal mines.
—The Virginia program does not contain adequate regulations for an NPDES Program and EPA is not in a position, at this time, to evaluate the program until the specific elements of an NPDES Program are developed. There are also relevant consolidated EPA permit regulations for which there were no comparable state regulations.
—The reference to the use of the NPDES application Short Form C. on page 8–89 of the Virginia program should be deleted since EPA has published a new consolidated permit application form.
—The relationship between the SMCRA application form and the NPDES application form is not clear from the information provided in Section 8.1 of the program narrative, and it is not clear what type of NPDES application form was to be used.

The proposed regulations submitted by Virginia (Part V900) which pertain to the NPDES Program have not been enacted and, therefore, have not been considered by the Secretary in making his findings at this time.

83. The EPA commented that a system of tracking DMLR inspection and enforcement actions should be included as a part of the Virginia program narrative. 30 CFR 731.14(g)(4) requires states to submit narrative description, e.g. flow charts, or other appropriate documents of the proposed system for inspecting and monitoring coal exploration and surface coal mining and reclamation operations. Virginia has submitted this information in Part 8.4 of its program. The regulations do not require a tracking system for inspection and enforcement actions so it need not be included. Virginia does provide sufficient narrative and regulation references to satisfy the requirements of 30 CFR 731.14(g)(4).

84. EPA recommended that Virginia expand Section 8.9 of the program narrative, which concerns coordinating the issuance of permit with federal and other agencies, to include methods for resolution of objections. Section 8.9 of the Virginia program narrative describes how the issuance of permits will be coordinated with other local, state, and federal agencies. Submission of a methodology for resolving objections arising from this coordination is not required by 30 CFR 731.14(g)(9).

85. EPA commented that Virginia should include in its program copies of forms it proposes to use in the implementation of its program, such as permit application forms, inspection report forms, and notice of violation and cessation order forms. Inclusion of forms DMLR intends to use in its program is not required by 30 CFR 731.14.

86. The Department of energy noted that Virginia has omitted a section corresponding to 30 CFR 770.12 of the federal regulations pertaining to coordination of the review and issuance of permits with the requirements under other laws. The purpose of 30 CFR 770.12 is to provide information to states on what must be included in the state program. The Virginia program adequately describes its system for coordinating permit review with other federal or state permit process applicable to a given proposed mining operation.

87. The SCS commented that in addition to their Clintwood, Virginia, office the State (Central), Lee, and Tazewell SCS offices should be included as sources for consultation in Section 8.11.1 of the Virginia program. The inclusion of the SCS office in Clintwood as a source available for consultation is sufficient and consistent with federal regulations. It is assumed that the SCS Clintwood office will serve as a focal point for coordination with other SCS offices.

88. The U.S. Forest Service commented that its involvement with respect to its responsibility for National Forest Lands should be specified in the basic state plan. Resolution of the Forest Service role in administering mining operations on federal lands will be based on the existing BLM–FS memorandum of understanding for federal coal leases, resolution of the issue regarding the leasing of federally owned land for the mining of privately owned coal, and the final rules for 30 CFR 211 covering federal coal. The precise form of the relationship between the Forest Service and the state will evolve after the state permanent regulatory program is approved, at which time a cooperative agreement can be developed between OSM and the state enabling the Virginia DMLR to

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obtain primacy for operations on federal lands.

89. The National Park Service (NPS) requested the opportunity to participate in developing criteria for designating lands unsuitable for surface coal mining near NPS units and to be allowed to participate in protecting all resources on lands under its jurisdiction from mining in adjacent areas. The regulatory authority is obligated, in V761.12 of the Virginia regulations, to request approval from any park agency which may be adversely affected by surface coal mining operations. Additionally, Virginia has listed the NPS in Part 8.11.1 of its program as a consultation source for the designation of lands unsuitable.

The Secretary has instructed NPS not to seek criteria in state programs which would establish "buffer zones" adjacent to national parks as automatically unsuitable for coal mining, unless these lands meet one or more of the other specific criteria for designation. On June 4, 1979, the Secretary made final decisions on the Federal Coal Management Program. Included in those decisions were numerous changes in the proposed unsuitability criteria for federal lands. The Secretary chose to delete the automatic "buffer zone" language for national parks and certain other federal lands from the first criterion (43 CFR 3461.1(a)). Instead, he stated lands adjacent to a national park should only be found unsuitable if they are covered by one of the other specific criteria (43 CFR 3461.1(b)–(t)). This instruction to NPS assures that that agency's approach to state unsuitability criteria will be compatible with the Secretary's policy on federal unsuitability criteria.

90. The National Park Service commented that Virginia should use OSM's definition of fragile and historic lands found in 30 CFR 762.5. The corresponding Virginia definition found in V762.5 of the Virginia regulations is consistent with the definition in 30 CFR 762.5.

91. The Fish and Wildlife Service commented that it was its biological opinion that Virginia's program is unlikely to jeopardize the continued existence of endangered or threatened species or adversely modify their critical habitats provided Virginia incorporated certain provisions in its program. Subsequently in a memorandum of September 15, 1980, the Director of the Fish and Wildlife Service notified OSM that the opinion on the Virginia program had been modified and Virginia's program is not likely to jeopardize the continued existence of listed species or critical habitat. Accordingly, no revision of the Virginia program is required based on FWS's comments.

92. The SCS commented that Section V785.17 of the Virginia regulations does not provide specific procedures for coordination between SCS and DMLR for permit reviews on areas including prime farmlands. The Secretary will not require any changes in the state program because the requirements for coordination and consultation with the Secretary of Agriculture found in V785.17 are consistent with 30 CFR 785.17 and specifically address SCS participation.

93. the Appalachian Regional Commission commented that although the implementation of the Virginia bonding and enforcement program was somewhat vague, the program was complete enough for the state to assume primacy. Furthermore, ARC was particularly interested in the Virginia provisions for higher alternate land uses. The Secretary agrees with these comments and finds the provisions of the Virginia program concerning bonding and enforcement consistent with the requirements of SMCRA and 30 CFR Chapter VII. Provisions for higher alternate land uses in the Virginia program are modeled after provisions provided in the federal regulations.

94. The Department of Energy commented that Virginia's steep slope mining performance standards found in V826.12(b) and (g) were inconsistent with the corresponding OSM requirements for adequate factors of safety. The Secretary agrees with this comment and has disapproved V826.12(b) and (g) of the Virginia regulations (See Finding 4b(vii), above).

95. The Bureau of Mines submitted a detailed review of the Virginia program which identified differences between the Virginia Act and regulations and SMCRA and regulations. The specific Virginia sections identified as different were:

Act
45.1–231
45.1–232
45.1–241
45.1–244
Regulations
V764.13(b)(1)
V764.17(a)
V816.65(d)
V816.75(d)
V817.22
V817.23(b)(2)
V817.42(b)
V817.46(o)
V817.116(a)
V817.116(b)(2)(ii)

The Bureau also commented that the narrative portion of the Virginia program is, in general, in full compliance with the requirements of 30 CFR 731.14. The differences noted by the Bureau were previously identified by OSM. Those which necessitated revision or modification were communicated to the Commonwealth of Virginia. Those which were not correct in the state's submission have been discussed in the findings above.

96. One commenter stated that attorney's fees should be allowed against citizens only when they have acted in bad faith. Virginia addresses this at V789.1.

97. One commenter noted that Virginia does not provide a regulation which allows the establishment of additional criteria determining unsuitability. Since 30 CFR 762.12 provides that the regulatory authority may establish additional criteria for unsuitability, the Secretary cannot require that Virginia have a counterpart to 30 CFR 762.12.

98. One commenter stated that Virginia does not provide a regulation equivalent to 30 CFR 786.27(b)(1) which sets forth in the permit that a permittee will allow entry for the inspection of monitoring equipment and general rights of entry. Virginia has provided for the necessary rights of entry consistent with 30 CFR 786.27(b)(1) in its statute and regulations. (See Section 45.1–244(A)(3) of CSMCRA and Section V786.27(b) of the Virginia regulations).

99. One commenter stated that Virginia had no counterpart to 30 CFR 840.13 pertaining to civil penalties. Most of the requirements of this section of the federal regulations have been enjoined by the District Court for the District of Columbia. Therefore, the Secretary cannot require compliance with the substantive requirements of 30 CFR 840.13.

G. The Secretary's Decision

The Virginia program is approved in part and disapproved in part. As indicated above under the Secretary's findings, certain program parts meet the criteria for state program approval in 30 CFR 732.15 and certain program parts do not meet the criteria. Partial approval means that Virginia may revise and resubmit the disapproved portions of the program within 60 days of the effective date of the decision. The resubmission will then be reviewed and approved or disapproved under procedures in 30 CFR Part 732. Until the entire program is approved, however, the state will not assume primary jurisdiction to implement and enforce the permanent program under SMCRA.

The following program parts are approved:

I. The Virginia Coal Surface Mining Control and Reclamation Act of 1979 (CSMCRA), as amended, with the following exceptions:

(a) Sections 45.1–231 and 232 regarding applicability of the conflict of interest provisions to the Board (See Finding 4m(i)).

(b) Section 45.1–249E and 251C pertaining to assessing of costs (See Finding 4q(iii)).

(c) Section 45.1–251A allowing jury trial *de novo* (See Finding 4q(i)).

II. Other state statutes affecting the regulation of coal exploration and surface coal mining operations with the following exceptions:

(a) The Virginia Administrative Process Act to the extent:

(1) It does not require hearings to be of record (See Finding 4q(ii)).

(2) It does not allow intervention by "any person who is or may be adversely affected" or provided that discovery rights are available to intervenors (See Finding 4q(iv)).

(b) State statutes and county ordinances which allow haulroads to be deeded to the county to the extent such haulroads are then automatically deemed not to constitute part of the permit area. (See Finding 4s).

III. Regulations pursuant to the Virginia CSMCRA with the following exceptions:

(a) V764.15(b)(2) pertaining to newspaper advertisements for petitions (See Finding 4k(i)).

(b) V764.17(a) pertaining to adjudicatory hearings (See Finding 4k(ii)).

(c) V782.13(a)(2)–(4) pertaining to the identification of interests (See Finding 4d(iii)).

(d) V783.15(a)(3) because "the uses" has been changed to "known uses" (See Finding 4d(ii)).

(e) V784.16(f) pertaining to the requirement to include stability analysis of certain structures (See Finding 4d(vi)).

(f) V817.59 because "appropriate" has been added to the phrase "best technology currently available" (See Finding 4c(ii)).

(g) V842.12(b) pertaining to confidential information (See Finding 4l(i)).

(h) Virginia state window provisions which include the following:

(1) V786.21(c) pertaining to existing structures (See Finding 4b(i)).

(2) V764.13(b) pertaining to additional information requirements for petitions (See Finding 4b(ii)).

(3) V764.15(a) pertaining to time limits for filing a patition (See Finding 4b(ii)).

(4) V764.17(a) pertaining to time limits for holding a public hearing (See Finding 4b(ii)).

(5) V816.107 and V817.107 pertaining to backfilling and grading of previously mined areas (See Finding 4b(iii)).

(6) V816.22(e) and V817.22(e) pertaining to topsoil substitutes and supplements (See Finding 4b(iv)).

(7) V816.46(m) and V817.46(m) pertaining to sediment pond construction to the extent they allow the use of waste in sediment pond dams (See Finding 4b(v)).

(8) V816.46(o) and V817.46(o) pertaining to the use of coal waste in sediment pond construction (See Finding 4b(v)).

(9) V816.75 and V817.75 pertaining to the disposal of excess spoil (See Finding 4b(vi)).

(10) V826.12(b) pertaining to the requirement of a minimum static safety factor of 1.3 for the backfilled area on steep slopes (See Finding 4b(vii)).

(11) V826.12(g) pertaining to drainage channels or roads in the uppermost portion of the backfilled area (See Finding 4b(vii)).

(12) V816.152(c) and V817.152(c) pertaining to topsoil substitutes and supplements on road cuts (See Finding 4b(viii)).

(13) V816.162(c) and V817.162(c) pertaining to topsoil substitutes and supplements on road cuts (See Finding 4b(viii)).

(i) Regulations of 30 CFR Chapter VII which have been omitted as follows:

(1) 30 CFR 700.13 pertaining to citizen suits (See Finding 41(iii)).

(2) 30 CFR 786.27(b)(2) pertaining to citizens rights to accompany inspectors as a permit condition (See Finding 4d(v)).

(3) 30 CFR 842.12(c) pertaining to citizens rights to accompany inspectors (See Finding 41(ii)).

(j) Regulations which incorporate suspended or remanded federal regulations:

(1) V701.5, V779, V780, V783, V784: The definition of "mine plan area" and the use of the term in Parts V779, V780, V783 and V784 are disapproved to the extent of the Court's order regarding requirements of information outside the permit area.

(2) V701.11(e)(1)(i)(ii): The regulations are disapproved insofar as they read to retain discretion in the regulatory authority to grant an exemption from reconstruction of existing structures after making the findings in V786.21.

(3) V761.5(a)(2)(i): The definition of "valid existing rights" is disapproved insofar as a good faith effort to obtain all permits before 8/3/77 should be sufficient to qualify for a valid prior existing right.

(4) V761.11(c), V761.12(f)(1): The words "or a statutory or regulatory responsibility for" in V761.12(f)(1) are disapproved and both of these regulations are disapproved insofar as they would apply to privately owned places listed on the National Register of Historic Places in addition to publicly owned places.

(5) V779.20, V780.16, V783.20, V784.14: These regulations are disapproved insofar as they require a permit application to contain a study of fish and wildlife and a fish and wildlife reclamation plan.

(6) V779.21, V783.21: These regulations are disapproved to the extent they require a soil survey for lands other than those which a reconnaissance inspection suggest may be prime farmland.

(7) V786.5: The words "or has not been" in the definition of *irreparable harm to the environment* are disapproved.

(8) V805.13(d): The regulations are disapproved insofar as exception is granted from requirements specified as those "of Part V816."

(9) V806.12(e)(6)(iii), V806.12(g)(7)(iii): The regulations are disapproved to the extent they require cessation of operations upon the insolvency of a surety.

(10) V807.11(e): The regulation is disapproved insofar as there is no provision for citizens' access to the mine site.

(11) V808.12(c): The regulation is disapproved insofar as it indicated bond liability in the permit area was limited to hydrologic balance.

(12) V816.103(a)(1), V817.103(a)(1): These regulations are disapproved insofar as they do not allow for treatment as an alternative to covering of acid and toxic-forming material.

(13) V816.115, V817.115, V823.11(c), V823.15(b), V823.15(c): These regulations are disapproved insofar as they exceed the statutory authority which requires only that restored lands be "capable" of supporting the designated use.

(14) V816.116(b), V817.116(b): These regulations are disapproved insofar as they improperly extend an operator's five-year period of responsibility for revegetation.

(15) V816.133(c)(4) and (9), B817.133(c)(4) and (9): These regulations are disapproved insofar as an operator is only required to demonstrate a "reasonable likelihood" of attaining a post mining use that is higher or better than the previous use.

IV. Proposed systems and processes described by the Virginia program narrative with the following exceptions:

(a) Section 8.4 of the program requiring clarification of who may be an

"authorized representative" (See Finding 4j(i)).

(b) Section 9.2 of the program pertaining to staffing (See Finding 4t(i)).

H. Effect of This Action

Virginia is not eligible to assume primary jurisdiction to implement the permanent program. Virginia may submit additions or revisions to its proposed program to correct those parts of the program being disapproved within sixty days of this decision. Virginia should submit approvable regulations and additional information as identified in the Secretary's findings.

If no revised submission is made within sixty days, the Secretary will take appropriate steps to promulgate and implement a federal program for the Commonwealth of Virginia. If the disapproved portions of the state regulatory program are revised and resubmitted within the sixty day limit, the Secretary will have an additional sixty days to review the revised program, solicit comments from the public, the Administrator of the Environmental Protection Agency, the Secretary of Agriculture and heads of other federal agencies concerned with or having special expertise pertinent to the proposed state program and to approve, disapprove, or conditionally approve the final Virginia program submission.

This approval in part and disapproval in part relates at this time only to the permanent regulatory program under Title V of SMCRA. The partial approval does not constitute approval or disapproval of any provisions related to the implementation of Title IV of SMCRA, the abandoned mined lands reclamation program. In accordance with 30 CFR Part 884 (State Reclamation Plans), Virginia may submit a state Abandoned Mine Lands (AML) reclamation plan at any time. Final approval of an AML plan, however, cannot be given by the Director of OSM until the state has an approved permanent regulatory program.

There are no coal bearing Indian lands in Virginia. In the event that surface mining and reclamation operations on federal lands are proposed, however, the initial federal lands program will be governed by regulations in 30 CFR Part 211. When a state regulatory program is approved, the federal lands program, if one is necessary, will be governed by 30 CFR Part 740.

The Secretary will not promulgate rules in 30 CFR Part 946 until the Virginia program has been either finally approved or disapproved following opportunity for resubmission.

I. Additional Findings

The Secretary has determined that pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this approval in part.

The Secretary has determined that this document is not a significant rule under E.O. 12044 or 43 CFR Part 14, and no regulatory analysis is being prepared on this approval in part.

Dated: October 15, 1980.

Joan M. Davenport,

Assistant Secretary of the Interior.

[FR Doc. 80-32793 Filed 10-21-80; 8:45 am]

BILLING CODE 4310-05-M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

36 CFR Ch. IX

Improving Government Regulations; Semiannual Agenda of Regulations

AGENCY: Pennsylvania Avenue Development Corporation.

ACTION: Semiannual agenda of significant regulations under development or review.

SUMMARY: Pursuant to Section 2 of Executive Order 12044, the Pennsylvania Avenue Development Corporation is not planning to issue or review any significant regulations prior to March 30, 1980.

FOR FURTHER INFORMATION CONTACT:

Ms. Mary M. Schneider, Attorney, Office of General Counsel, Pennsylvania Avenue Development Corporation, 425 13th Street, N.W., Suite 1148, Washington, D.C. 20004, (202) 566-1078.

Dated: October 6, 1980.

W. Anderson Barnes,

Executive Director.

[FR Doc. 80-32823 Filed 10-21-80; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL-1639-5]

Approval and Promulgation of Implementation Plans; Georgia: Alternate Compliance Schedules for Volatile Organic Compound (VOC) Sources

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA today proposed to approve the Georgia implementation plan revisions that the State submitted on April 14, 1980, relating to alternate compliance schedules for volatile organic compound (VOC) sources. The revisions that EPA is taking proposal action on today consist of alternate compliance schedules for the General Motors automotive assembly plants in Atlanta and Doraville, and the Ford Motor Company assembly plant in Hapeville. The compliance schedules for the General Motors plants and the Ford Motor Company plant are included as part of operating permits for each plant respectively.

The issuance of the permits by the State represents implementation of Georgia's VOC regulations which EPA approved on September 18, 1979 (44 FR 54047). The regulations are part of Georgia's control strategy designed to attain the ozone standard in the Metropolitan Atlantic area by December 31, 1982.

DATES: To be considered, comments must be submitted on or before November 21, 1980.

ADDRESSES: Written comments should be addressed to Melvin Russell of EPA Region IV's Air Programs Branch (see address below). Copies of the material submitted by the State may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 204060;

Library, Environmental Protection Agency, Region IV, 345 Courtland Street, NE, Atlanta, Georgia 30365;

Air Protection Branch, Environmental Protection Division, Georgia Department of Natural Resources, 270 Washington Street, SW, Atlanta, Georgia 30334.

FOR FURTHER INFORMATION CONTACT:

Mr. Melvin Russell, Air Programs Branch, EPA Region IV, 345 Courtland Street, NE, Atlanta, Georgia 30365, 404/881-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION: The Georgia Environmental Protection Division submitted to EPA State Implementation Plan (SIP) revisions consisting of operating permits for the General Motors automotive assembly plants in Atlanta and Doraville, and the Ford Motor Company assemply plant in Hapeville. The permits include alternate compliance schedules for these three VOC sources. The issuance of the permits with compliance schedules are necessary in order for the State to implement its VOC regulations and ensure reasonable further progress toward attaining the National Ambient

Air Quality Standard (NAAQS) for ozone, as stated in Georgia's 1979 nonattainment SIP submittal, and approved by EPA in 44 FR 54047, September 18, 1979.

The Ford Motor Company's Atlanta Assembly Plant, located at 340 S. Central Avenue, Hapeville, Georgia, was issued a permit to operate on April 14, 1980 (Permit No. 3711-060-7453-0). The permit requires the source to meet the conditions of the following compliance schedule:

Permit No. 3711-060-7453-0

Prime Operations

1. By October 31, 1980, the Permittee shall submit permit to construct applications for the modification of process operations of the existing electrocoating prime system necessary to comply with Rule 391-3-1-.02(2)(t)1.(i) of the Georgia Rules for Air Quality Control.

2. By January 31, 1981, the Permittee shall issue purchase orders for electrocoating materials necessary to comply with Rule 391-3-1-.02(2)(t)1.(i). Copies of such purchase orders shall be submitted to the Division by February 10, 1981.

3. By March 31, 1981, the Permittee shall begin process modifications of the electrocoating prime system. Written notification that such process modifications have commenced shall be made by April 10, 1981.

4. By December 31, 1981, the Permittee shall limit the emissions of volatile organic compounds (VOC) from the electrocoating prime system to 1.2 pounds per gallon excluding water and shall demonstrate compliance with this emission limitation by the submittal of acceptable analyses by same date.

5. By April 30, 1983, the Permittee shall submit applications for permit to construct for the installation of emission control systems and/or the modification of process equipment necessary to comply with Rule 391-3-1-.02(2)(t)1.(ii) of the Georgia Rules for Air Quality Control.

6. By December 31, 1983, the Permittee shall enter into binding contracts or purchase orders for the installation of emission control systems and/or the modification of process equipment necessary to comply with Rule 391-3-1-.02(2)(t)1.(ii). Copies of the primary contracts or purchase orders shall be submitted to the Division by January 10, 1984.

7. By January 31, 1984, the Permittee shall begin on-site construction of emission control equipment and/or the modification of process equipment necessary to comply with Rule 391-3-1-.02(2)(t)1.(ii). Written notification that such construction has commenced shall be made by February 10, 1984.

8. By December 31, 1985, the Permittee shall limit the emissions of VOC from regulated spray prime application, flashoff area, and oven operations to 2.8 pounds per gallon of coating excluding water delivered to the coating applicator. The Permittee shall demonstrate compliance with this emission limitation by same date by the submittal of acceptable analyses of the coatings and test reports, if required, indicating efficiencies of emission control systems.

Topcoat and Final Repair Operations

9. The Permittee shall submit yearly progress reports to the Division within ten (10) days after the end of calendar years 1980, 1981, 1982, and 1983, describing the progress being made by suppliers to develop topcoat and final repair paints which comply with Rules 391-3-1-.02(2)(t)1.(iii) and (iv) of the Georgia Rules for Air Quality Control.

10. By April 30, 1984, the Permittee shall submit applications for permit to construct for the installation of emission control systems and/or the modification of process equipment necessary to comply with the topcoat and final emission limitations per Rules 391-3-1-.02(2)(t)1.(iii) and (iv).

11. By December 31, 1984, the Permittee shall enter into binding contracts or purchase orders for the installation of emission control systems and/or the modification of process equipment necessary to comply with Rules 391-3-1-.02(2)(t)1.(iii) and (iv). Copies of the primary contracts or purchase orders shall be submitted to the Division by January 10, 1985.

12. By January 31, 1985, the Permittee shall begin on-site construction of emission control equipment and/or the modification of process equipment necessary to comply with Rules 391-3-1.02(2)(t)1.(iii) and (iv). Written notification that such construction has commenced shall be made by February 10, 1985.

13. By December 31, 1986, the Permittee shall limit the emissions of VOC from regulated topcoat application, flashoff area, and oven operations to 2.8 pounds per gallon of coating excluding water delivered to the coating applicator and from regulated final repair application, flashoff area, and oven operations to 4.8 pounds per gallon of coating minus water delivered to the coating applicator. The Permittee shall demonstrate full compliance with Rules 391-3-1-.02(2)(t)1.(iii) and (iv) by same date by the submittal of acceptable analyses of the coatings and test reports, if required, indicating efficiencies of emission control systems.

Testing Requirements and Equivalency

14. The Permittee will be allowed to use the arithmetic average of the VOC contents (lbs. VOC/gallon of coating excluding water) of all requlated topcoat colors in use at the plant to determine compliance with any VOC emission limitation referred to in conditions (9) thru (13) above. If a new topcoat color is introduced into the plant after compliance with an emission limitation has been demonstrated, the Permittee will be required to perform additional sampling and analyses as specified by the Division to determine if compliance is being maintained.

15. After demonstrating final compliance with the VOC emission limitation(s) under Rule 391-3-1-.02(2)(t) of the Georgia Rules for Air Quality Control, the Permittee will be required to perform additional sampling, analyses, and testing at dates specified by the Division to verify that compliance with the emission limitation(s) is being maintained.

16. Coating transfer efficiencies above the baseline (to be specified by the Division) can be used for determining compliance with a VOC emission limitation if such transfer efficiencies are approved by the Division.

17. The Permittee shall use methods and procedures approved by the Division to perform all sampling and analyses of coatings and testing of emission control systems that are required by conditions of this permit.

General Motors Corporation's Atlanta Assemly plant located at 3900 Motors Industrial Way, Doraville, Georgia was issued a permit to operate on April 14, 1980 (Permit No. 3711-044-7449-0). The permit requires the GM Doraville plant to comply with the following compliance schedule:

Permit No. 3711-044-7449-0

Prime Operations

1. By May 1, 1980, the Permittee shall submit permit to construct applications for the installation of an electrocoating (electrophoretic) prime system necessary to comply with Rule 391-3-1-.02(2)(t)1.(i) of the Georgia Rules for Air Quality Control.

2. By July 1, 1980, the Permittee shall begin on-site construction of the electrocoating prime system. Written notification that such construction has commended shall be made July 11, 1980.

3. By September 1, 1981, the Permittee shall complete construction of the electrocoating prime system. Written notification that such construction has

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been completed shall be made by September 11, 1981.

4. By December 31, 1981, the Permittee shall limit the emissions of volatile organic compounds (VOC) from the electrocoating prime system to 1.2 pounds per gallon excluding water and shall demonstrate compliance with this emission limitation by the submittal of acceptable analyses by same date.

5. By December 31, 1981, the Permittee shall limit the emissions of VOC from regulated spray prime application, flashoff area, and oven operations to 3.0 pounds per gallon of coating excluding water delivered to the coating applicator. Acceptable analyses demonstrating compliance shall be submitted to the Division by January 31, 1982.

6. By December 31, 1987, the Permittee shall limit the emissions of VOC from regulated spray prime application, flashoff area, and oven operations to 2.8 pounds per gallon of coating excluding water delivered to the coating applicator and shall demonstrate compliance with this emission limitation by the submittal of acceptable analyses by same date.

Topcoat and Final Repair Operations

7. By April 15, 1980, the Permittee shall limit the emissions of volatile organic compounds (VOC) from regulated topcoat application, flashoff area, and oven operations to 5.8 pounds per gallon of coating excluding water delivered to the coating applicator. Acceptable analyses demonstrating compliance with the emission limitation shall be submitted to the Division by same date.

8. By September 30, 1980, the Permittee shall submit a final topcoat control plan and schedule for the implementation of specified steps which will result in compliance with Rule 391-3-1-.02(2)(t)1.(iii) of the Georgia Rules for Air Quality Control.

9. By December 31, 1982, the Permittee shall limit the emissions of VOC from regulated topcoat applicaiton, flashoff area, and oven operations to 5.0 pounds per gallon of coating excluding water delivered to the coating applicator. Acceptable analyses demonstrating compliance with this emission limitation shall be submitted to the Division by January 31, 1983.

10. By March 31, 1985, the Permittee shall submit applications for permit to construct for the installation of emission control systems and/or the modification of process equipment necessary to comply with the topcoat and final repair emission limitations per Rules 391-3-1-.02(2)(t)1.(iii) and (iv) of the Georgia Rules for Air Quality Control.

11. By September 30, 1986, the Permittee shall enter into binding contracts or purchase orders for the installation of emission control systems and/or the modification of process equipment necessary to comply with Rules 391-3-1-.02(2)(t)1.(iii) and (v). Copies of the primary contracts or purchase orders shall be submitted to the Division by October 10, 1986.

12. By December 31, 1986, the Permittee shall begin on-site construction of emission control equipment and/or the modification of process equipment necessary to comply with Rules 391-3-1-.02(2)(t)1.(iii) and (iv). Written notification that such construction has started shall be made by January 10, 1987.

13. By December 31, 1987, the Permittee shall limit the emissions from VOC from regulated topcoat application, flashoffff area, and oven operations to 2.8 pounds per gallon of coating excluding water delivered to the coating applicator and from regulated final repair application, flashoff area, and oven operations to 4.8 pounds per gallon of coating minus water delivered to the coating applicator. The Permittee shall demonstrate full compliance with Rules 391-3-1-.02(2)(t)1.(iii) and (iv) by same date by the submittal of acceptable analyses of the coatings and test reports, if required, indicating efficiencies of emission control systems.

Testing Requirements and Equivalency

14. The Permittee will be allowed to use the arithmetic average of the VOC contents (lbs VOC/gallon of coating minus water) of all regulated topcoat colors in use at the plant to determine compliance with any VOC emission limitation referred to in conditions (7) thru (13) above. If a new topcoat color is introduced into the plant after compliance with an emission limitation has been demonstrated, the Permittee will be required to perform additional sampling and analyses as specified by the Division to determine if compliance is being maintained.

15. After demonstrating final compliance with the VOC emission limitation(s) under Rule 391-3-1-.02(2)(t) of the Georgia Rules for Air Quality Control, the Permittee will be required to perform additional sampling, analyses, and testing at dates specified by the Division to verify that compliance with the emission limitation(s) is being maintained.

16. Coating transfer efficiencies above the baseline (to be specified by the Division) can be used for determining compliance with a VOC emission limitation if such transfer efficiencies are approved by the Division.

17. The Permittee shall use methods and procedures approved by the Division to perform all sampling and analyses of coatings and testing of emission control systems that are required by conditions of this permit.

General Motors Corporation's Atlanta Assembly Plant located at McDonough Boulevard and Sawtell Avenue, Atlanta, Georgia was issued a permit to operate on April 14, 1980 (Permit no. 3711-060-7451-0). The permit requires the GM Lakewood Assembly Plant, McDonough Boulevard and Sawtell Avenue, Atlanta, Georgia to comply with the following compliance schedule:

Permit No. 3711-060-7451-0

Car Assembly

Prime Operations

1. By March 1, 1981, the Permittee shall submit permit to construct applications for the installation of an electrocoating (electrophoretic) prime system necessary to comply with Rule 391-3-1-.02(2)(t)1.(i) of the Georgia Rules for Air Quality Control.

2. By June 1, 1981, the Permittee shall begin on-site construction of the electrocoating prime system. Written notification that such construction has commenced shall be made by June 11, 1981.

3. By November 15, 1982, the Permittee shall complete construction of the electrocoating prime system. Written notification that such construction has been completed shall be made by November 25, 1982.

4. By December 31, 1982, the Permittee shall limit the emissions of volatile organic compounds (VOC) from the electrocoating prime system to 1.2 pounds per gallon excluding water and shall demonstrate compliance with this emission limitation by the submittal of acceptable analyses same date.

5. By December 31, 1982, the Permittee shall limit the emissions of VOC from regulated spray prime application, flashoff area, and oven operations to 3.0 pounds per gallon of coating excluding water delivered to the coating applicator. Acceptable analyses demonstrating compliance shall be submitted to the Division by January 31, 1983.

6. By December 31, 1987, the Permittee shall limit the emissions of VOC from regulated spray prime application, flashoff area, and oven operations to 2.8 pounds per gallon of coating excluding water delivered to the coating applicator and shall demonstrate compliance with this emission limitation by the submittal of acceptable analyses by same date.

Topcoat and Final Repair Operations

7. By April 15, 1980, the Permittee shall limit the emissions of VOC from regulated topcoat application, flashoff area, and oven operations to 5.8 pounds per gallon of coating excluding water delivered to the coating applicator. Acceptable analyses demonstrating compliance with this emission limitation shall be submitted to the Division by same date.

8. By September 30, 1980, the Permittee shall submit a final topcoat control plan and schedule for the implementation of specified steps which will result in compliance with Rule 391-3-1-.02(2)(t)1.(iii) of the Georgia Rules for Air Quality Control.

9. By December 31, 1981, the Permittee shall limit the emissions of VOC from regulated topcoat application, flashoff area, and oven operations to 5.0 pounds per gallon of coating excluding water delivered to the coating applicator. Acceptable analyses demonstrating compliance with this emission limitation shall be submitted to the Division by January 31, 1982.

10. By March 31, 1985, the Permittee shall submit applications for permit to construct for the installation of emission control systems and/or the modification of process equipment necessary to comply with the topcoat and final repair emission limitations per Rules 391-3-1-.02(2)(t)1.(iii) and (iv) of the Georgia Rules for Air Quality Control.

11. By September 30, 1986, the Permittee shall enter into binding contracts or purchase orders for the installation of emission control systems and/or the modification of process equipment necessary to comply with Rules 391-3-1-.02(2)(t)1.(iii) and (iv). copies of the primary contracts or purchase orders shall be submitted to the Division by October 10, 1986.

12. By December 31, 1986, the Permittee shall begin on-site construction of emission control equipment and/or modification of process equipment necessary to comply with Rules 391-3-1-.02(2)(t)1.(iii) and (iv). Written notification that such construction has commenced shall be made by January 10, 1987.

13. By December 31, 1987, the Permittee shall limit the emissions of VOC from regulated topcoat application, flashoff area, and oven operations to 2.8 pounds per gallon of coating excluding water delivered to the coating applicator and from regulated final repair application, flashoff area, and oven operations to 4.8 pounds per gallon of coating minus water delivered, to the coating applicator. The Permittee shall demonstrate compliance with Rules 391-3-1-.02(2)(t)1.(iii) and (iv) by same date by the submittal of acceptable analyses of the coatings and test reports, if required, indicating efficiencies of emission control systems.

Truck Assembly

Prime Operations

14. By March 31, 1980, the Permittee shall begin on-site construction of the electrocoating prime system and new spray prime system. Written notification that such construction has commenced shall be made by April 10, 1980.

15. By November 1, 1980, the Permittee shall complete on-site construction of the electrocoating prime system and spray prime system. Written notification that such construction has been completed shall be made by November 11, 1980.

16. By December 31, 1980, the Permittee shall limit the emissions of VOC from the electrocoating prime system to 1.2 pounds per gallon excluding water and shall demonstrate compliance with this emission limitation by the submittal of acceptable analyses by same date.

17. By December 31, 1980, the Permittee shall limit the emissions of VOC from the spray prime application, flashoff area, and oven operations to 3.4 pounds per gallon of coating excluding water delivered to the coating applicator. Acceptable analyses demonstrating compliance with this emission limitation shall be submitted by January 31, 1981.

18. By December 31, 1986, the Permittee shall limit the emissions of VOC from the spray prime application, flashoff area, and oven operations to 2.8 pounds per gallon of coating excluding water delivered to the coating applicator and shall demonstrate compliance with this emission limitation by the submittal of acceptable analyses by same date.

Topcoat and Final Repair Operations

19. By December 31, 1982, the Permittee shall limit the emissions of VOC from regulated topcoat application, flashoff area, and oven operations to 3.6 pounds per gallon of coating excluding water delivered to the coating applicator. Acceptable analyses demonstrating compliance with this emission limitation shall be submitted to the Division by January 31, 1983.

20. By September 30, 1980, the permittee shall submit a final topcoat control plan and schedule for the implementation of specified steps which will result in compliance with Rule 391-3-1-.02(2)(t)1.(iii) of the Georgia Rules for Air Quality Control.

21. By March 31, 1984, the Permittee shall submit applications for permit to construct for the installation of emission control systems and/or the modification of process equipment necessary to comply with the topcoat and final repair emission limitations in Rules 391-3-1-.02(2)(t)1.(iii) and (iv) of the Georgia Rules for Air Quality Control.

22. By December 31, 1985, the Permittee shall enter into binding contracts or purchase orders for the installation of emission control systems and/or the modification of process equipment necessary to comply with Rules 391-3-1-.02(2)(t)1.(iii) and (iv). Copies of the primary contracts or purchase orders shall be submitted to the Division by January 10, 1986.

23. By September 30, 1986, the Permittee shall complete on-site construction of emission control equipment and/or modification of process equipment necessary to comply with Rules 391-3-1-.02(2)(t)1.(iii) and (iv). Written notification that such construction has been completed shall be made by October 10, 1986.

24. By December 31, 1986, the Permittee shall limit the emissions of VOC from regulated topcoat application, flashoff area, and oven operations to 2.8 pounds per gallon of coating excluding water delivered to the coating applicator and from regulated final repair application, flashoff area, and oven operations to 4.8 pounds per gallon of coating minus water delivered to the coating applicator. The Permittee shall demonstrate compliance with Rules 391-3-1-.02(2)(t)1.(iii) and (iv) by same date by the submittal of acceptable analyses of the coatings and test reports, if required, indicating efficiencies of emission control systems.

Testing Requirements and Equivalency

25. The Permittee will be allowed to use the arithmetic average of the VOC contents (lbs VOC/gallon of coating minus water) of all regulated topcoat colors in use at the plant to determine compliance with any VOC emission limitation referred to in conditions (7) thru (13) and (19) thru (24) above. If a new topcoat color is introduced into the plant after compliance with an emission limitation has been demonstrated, the Permittee will be required to perform additional sampling and analyses as specified by the Division to determine if compliance is being maintained.

26. After demonstrating final compliance with the VOC emission limitation(s) under Rule 391-3-1-.02(2)(t) of the Georgia Rules for Air Quality Control, the Permittee will be required to perform additional sampling, analyses, and testing at dates specified by the Division to verify that compliance

with the emission limitation(s) is being maintained.

27. Coating transfer efficiencies above the baseline (to be specified by the Division) can be used for determining compliance with a VOC emission limitation if such transfer efficiencies are approved by the Division.

28. The Permittee shall use methods and procedures approved by the Division to perform all sampling and analyses of coatings and testing of emission control systems that are required by conditions of this permit.

The Georgia SIP revisions being proposed today are necessary to ensure implementation and enforcement of Georgia's VOC regulations. The VOC regulations are an integral part of Georgia's plan to attain the ozone standard in the Metropolitan Atlanta area. Approval and subsequent implementation of these SIP revisions will result in an overall improvement of air quality in the Atlanta area and will provide reasonable further progress toward attaining the ozone standard.

EPA proposes to approve the permits submitted by the State because they ensure expeditious compliance with the State's RACT regulations for VOC. The permits will also enable the State to demonstrate reasonable further progress toward attainment as required by the 1977 Clean Air Act, Section 172(b)(3). The public is invited to participate in this rulemaking by submitting written comments on the proposed revisions (see addresses above). After reviewing all relevant comments received together with all other information available to him, the Administrator will take action on the proposed revisions to the Georgia State Implementation Plan (SIP).

(Secs. 110, 172, Clean Air Act (42 U.S.C. 4710 and 7502))

Dated: August 29, 1980.

John A. Little,

Acting Regional Administrator.

[FR Doc. 80-32905 Filed 10-21-80; 8:45 am]

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40 CFR Part 52

[A-9-FRL 1639-4]

Approval and Promulgation of Implementation Plans; Maricopa County Urban Planning Area Nonattainment Area Plan and Regulations in the State of Arizona

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: On June 11, 1979, October 30, 1979, and May 28, 1980 (44 FR 33433, 62296, and 45 FR 35841) the Environmental Protection Agency (EPA) published Notices of Proposed Rulemaking for the Maricopa County Urban Planning Area Nonattainment Area Plan (NAP). Revisions which affect the NAP have been submitted to EPA by the Governor's designee, consisting of volatile organic compound and new source review rules.

As a result of these revisions, only minor deficiencies remain in the Maricopa County NAP. Therefore, EPA is proposing in this notice to conditionally approve the Maricopa County NAP with respect to Part D. Upon final rulemaking action, conditional approval would be sufficient to lift the current prohibition on construction of certain new or modified sources in the Maricopa County Urban Planning Nonattainment Area.

The EPA invites public comments on these revisions, the identified issues, the suggested corrections and associated proposed deadlines, and whether the revisions or certain portions of revisions should be approved, conditionally approved, or disapproved, especially with respect to the requirements of Part D of the Clean Air Act.

DATES: Comments must be submitted on or before November 21, 1980.

ADDRESSES: Comments may be sent to: Regional Administrator, Attn: Air and Hazardous Materials Division, Air Technical Branch, Regulatory Section (A-4), Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105.

Copies of the proposed revisions, the NAP, and EPA's associated Evaluation Reports are contained in document file NAP-AZ-01 and are available for public inspection during normal business hours at the EPA Region IX Office at the above address and at the following locations:

Maricopa Association of Governments, 1820 West Washington Street, Phoenix, AZ 85007;

Arizona Department of Health Services, 1740 West Adams Street, Phoenix, AZ 895007;

Public Information Reference Unit, Room 2404 (EPA Library), 401 "M" Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Douglas Grano, Chief, Regulatory Section, Air Technical Branch, Air and Hazardous Materials Division, Environmental Protection Agency, Region IX, (415) 556-2938.

SUPPLEMENTARY INFORMATION:

Background

New provisions of the Clean Air Act, amended in August 1977, Pub. L. No. 95-95, require states to revise their SIPs for all areas that do not attain the National Ambient Air Quality Standards (NAAQS).

On April 4, 1979 (44 FR 20372), EPA published a General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas. In addition, EPA published Supplements to the General Preamble on July 2, August 28, September 17, and November 23, 1979 (44 FR 38583, 50371, 53761, and 67182). The General Preamble supplements this notice by identifying the major considerations that will guide EPA's evaluation of the plan submittal.

The Maricopa County Urban Planning Area is currently designated as nonattainment for carbon monoxide (CO), ozone (O_3), and total suspended particulates (TSP).

On February 23, 1979, the Governor's designee submitted the NAP for Carbon Monoxide and Ozone for the Maricopa County Urban Planning Area to EPA as a revision as a revision to the State Implementation Plan (SIP). EPA evaluated the submitted plan with respect to the Clean Air Act requirements and published a notice of proposed rulemaking in the **Federal Register** on June 11, 1979 (44 FR 33433). On July 3, 1979, the Governor's designee submitted a revision to the SIP which supplemented and superseded portions of the plan submitted on February 23, 1979 concerning ozone. EPA evaluated the submitted revision with respect to the Clean Air Act requirements and published a notice of proposed rulemaking in the **Federal Register** on October 30, 1979 (44 FR 62296). On March 21, 1979, the Governor's designee submitted revisions to Arizona's Inspection Maintenance Program (I/M). EPA evaluated the I/M Program with respect to the Clean Air Act requirements and published a notice of final rulemaking in the **Federal Register** on August 11, 1980 (45 FR 53145). On November 13, 1979, the Governor's designee submitted the NAP for Total Suspended Particulates for the Maricopa County Urban Planning Area to EPA as a revision to the SIP. EPA evaluated the submitted plan and published a notice of proposed rulemaking in the **Federal Register** on May 28, 1980 (45 FR 35841). On April 1, 1980, the Governor's designee submitted amendments to Arizona's Rules and Regulations for Air Pollution Control. EPA evaluated the NAP-related New Source Review (NSR) portions of the amendments along with Pima County's NSR rules and proposed to conditionally approve the two sets of rules in the **Federal Register** on July 23, 1980 (45 FR 49112).

Those notices provide a description of each revision, summarize the applicable Clean Air Act requirements, compare each revision to those requirements, identify deficiencies, and suggest corrections. Those notices should be consulted for necessary background information concerning today's proposed rulemaking action.

Proposed Revisions

Volatile Organic Compound Rules

On June 23, 1980, the Governor's designee submitted to EPA Rule 34, *Organic Solvents*, for inclusion in the SIP. This regulation supersedes rules previously discussed in the June 11, 1979 **Federal Register** notice under Criterion 14.

Sections 172(a)(2) and (b)(3) of the Clean Air Act require that minimum levels of control technology be provided for in the NAP. Since Maricopa County's ozone NAP demonstrates attainment of the standard by December 31, 1982, the plan must, at a minimum, contain legally-adopted, enforceable regulations which reflect the application of reasonably available control technology (RACT) for those major stationary source categories for which EPA has published a Control Techniques Guideline (CTG) document by January, 1978. In addition, the plan is required to contain a commitment to adopt RACT regulations for source categories to be covered by future CTG documents.

The CTGs provide information on available air pollution control techniques and contain recommendations of what EPA calls the "presumptive norm" for RACT, based on EPA's current evaluation of the capabilities and problems general to an industry. The State may develop case-by-case RACT requirements, independent of EPA's recommendation, for any source or group of sources. Therefore, the basis for EPA's decision to approve a regulation as satisfying the Clean Air Act requirement for RACT consists of (1) the applicable CTG document, (2) any material submitted by the State justifying that the regulation satisfies the requirements of the Act for RACT (based on the economic and technical circumstances of a particular being regulated), and (3) public comment on the submitted regulation and supporting material.

On June 11, 1979, (44 FR 33433), EPA published a Notice of Proposed Rulemaking which indicated that this requirement had not met for Maricopa County, since adequate regulations had not been submitted for solvent metal cleaning, cutback asphalt, and the surface coating of cans, large appliances, and metal furniture. Each of these source categories was addressed in a CTG document published by EPA prior to January, 1978 (i.e., Category I CTGs). On June 23, 1980, the State of Arizona submitted Rule 34, which was adopted by the Maricopa County Bureau of Air Pollution Control for each of these source categories.

Rule 34 has been evaluated to determine whether it satisfies the requirements of Section 110 of the Clean Air Act, and 40 CFR Part 51, and would therefore be approvable for inclusion in the SIP. Revised Rule 34 will strengthen the SIP, and it is consistent with Section 110 of the Clean Air Act, EPA policy, and 40 CFR Part 51. Therefore, it is proposed that Rule 34 be approved for inclusion in the SIP.

It is proposed that Rule 34 is adequate to fulfill the requirements for RACT for degreasing, and the surface coating of cans, coils, large appliances, and metal furniture. Rule 34 also satisfies the requirement for RACT for cutback asphalt, except for the exemption allowing the use of cutback asphalts during December, January, and February. In response to this minor deficiency, EPA proposes to approve this portion of the NAP with the condition that the State submit the following regulations by November 1, 1980: (1) Information showing that the ambient temperatures during application are typcially below 50° F for these three months or (2) an amended regulation without the exemption.

As stated above, the NAP must contain a commitment to adopt RACT regulations for source categories to be covered by future CTG documents. In order to meet this requirement, the State must sumit the following regulations by January 1, 1981: Petroleum refinery leaks, gasoline tank trucks, perchloroethylene dry cleaning, pharmaceutical manufacture, graphic arts, pnematic rubber tire manufacture, flatwood paneling, floating-roof tands, and the surface coating of miscellaneuous metal parts and products.

New Source Review Rules

On July 17, 1980, the Governor's designee submitted revisions to Arizona's New Source Review (NSR) rules as follows: R9-3-301, *Installation Permits*, R9-3-306, *Operating Permits*, and R9-3-320, *Revised Definitions of New Major Source and Major Alteration*. These rules supplement and supersede portions of Arizona's NSR rules submitted on April 1, 1980 and previously discussed in the July 23, 1980 **Federal Register** notice (45 FR 49112) under Criterion 9. The State rules have been adopted in a legally enforceable manner as required by Section 172(b)(10) of the Act. As provided in Rule R9-3-1101, *Jurisdiction*, of the Arizona State Rules and Regulations submitted on January 4, 1979, the State has jurisdiction over permitting new major sources in Maricopa County since the County has not yet adopted new source review regulations. The rule was proposed for approval in the **Federal Register** on January 10, 1980 (45 FR 2054).

EPA's criteria for approval of a new source permitting program are contained in Section 173, which also references essential portions of Sections 171 and 172. EPA has established guidance based on Section 173 in: (1) EPA's Emission Offset Interpretative Ruling in the January 16, 1979 **Federal Register** (44 R 3274), and (2) EPA's proposed amendments to regulations for New Source Review and the Emission Offset Interpretative Ruling in the September 5, 1979 **Federal Register** (44 FR 51924).

The Arizona State NSR rules generally follow the January 16, 1979 Emission Offset Interpretative Ruling. EPA has therefore evaluated Arizona's NSR rules in comparison to the January 16, 1979 Interpretative Ruling rather than the September 5, 1979 proposal. EPA's review indicates that Arizona's NSR rules are not fully consistent with January 16, 1979 criteria. The State rules differ from EPA's in the definition of major modification and significance levels, LAER and offset application, statewide compliance, and the absence of a secondary emissions definition. These and other deficiencies are described in the Evaluation Report. EPA has determined that the deficiencies in the NSR rules are minor deficiencies with respect to Section 173.

EPA recently published two final rulemaking notices on the September 5, 1979 proposed amendments to EPA's NSR regulations and the Emission Offset Interpretative Ruling. These notices, published in the **Federal Register** on May 13, 1980 (45 FR 31307) and August 7, 1980 (45 FR 52676), amend EPA's NSR requirements. The State is required to comply with the August 7, 1980 requirements by May 7, 1981.

EPA therefore proposes to approve and incorporate into the SIP the State NSR rules with the following condition. The rules must be revised and submitted as an SIP revision by May 7, 1981. In revising its NSR rules, the State must address the deficiencies noted in EPA's Evaluation Report in addition to any new deficiencies which result from EPA's promulgation of final NSR regulations on August 7, 1980.

Proposed Actions

This notice proposes to approve the submitted volatile organic compound

(VOC) rules under Section 110 of the Clean Air Act since they provide additional control measures and therefore strengthen the SIP. In addition, specific rules have been evaluated to determine whether they require a level of control which reflects RACT. Since the rules contain only minor deficiencies with respect to Part D RACT requirements, EPA proposes to conditionally approve this portion of the NAP. This proposed action supersedes any proposed action included under Criterion 14 (VOC RACT) of the June 11, 1979 notice.

The State NSR rules provide for the issuance of permits for the construction of new or modified stationary sources in certain areas of the State, including Maricopa County. The rules contain minor deficiencies with respect to Part D requirements. Thus, this notice proposes to conditionally approve the State's NSR rules and the permit program portion of the Maricopa County NAP. This proposed action supersedes any proposed action under Criterion 9 (Permit Program) in the previous notices.

As a result of these revisions, only minor deficiencies remain in the Maricopa County NAP. Therefore, EPA is proposing in this notice to conditionally approve the Maricopa County NAP with respect to Part D. Upon final rulemaking action, conditional approval would be sufficient to lift the current prohibition on construction of certain new or modified sources in the Maricopa County Urban Planning Nonattainment Area. This prohibition is required by the Clean Air Act and is discussed in detail in the July 2, 1979 Federal Register (44 FR 38471).

Public Comments

Under Section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove revisions to the SIP submitted by the State. The Regional Administrator hereby issues this notice setting forth the SIP revisions described above, as proposed rulemaking and advises the public that interested persons may participate by submitting written comments to the Region IX Office.

The EPA Region IX Office specifically invites public comment on whether to conditionally approve the items identified in this notice as deficiencies. EPA is further interested in receiving comments on the specified deadline for the State to submit the corrections, in the event of conditional approval.

Comments received on or before November 21, 1980, will be considered. Comments received will be available for public inspection at the EPA Region IX Office and at the locations listed in the addresses section of this notice.

The Administrator's decision to approve, conditionally approve, or disapprove the proposed revisions will be based on the comments received and on a determination whether the revisions meet the requirements of Section 110(a)(2) and Part D of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

EPA believes the available period for comment is adequate because:

(1) The plan has been available for inspection and comment since May 1, 1979;

(2) The issues involved in the revisions submitted on April 1, June 23, and July 17, 1980 are limited in scope and are sufficiently clear to allow comments to be developed in the available 30-day period; and

(3) EPA has a responsibility under the Act to take final action as soon as possible after July 1, 1979 on that portion of the SIP that addresses the requirements of Part D.

EPA has determined that this action is "specialized" and therefore, not subject to the procedural requirements of Executive Order 12044.

(Secs. 110, 129, 171 to 178, 301(a) Clean Air Act as amended (42 U.S.C. 7410, 7429, 7501 to 7508, and 7601(a)))

Dated: September 18, 1980.

Sheila M. Prindivilla,

Acting Regional Administrator.

[FR Doc. 80-32906 Filed 10-21-80; 8:45 am]

BILLING CODE 6560-26-M

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40 CFR Part 81

[A-4-FRL-1640-3]

Designation of Areas for Air Quality Planning Purposes; Alabama: Proposed Redesignation for Morgan County

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On July 14, 1980, the Alabama Air Pollution Control Commission submitted to EPA eight quarters of TSP data from the Morgan County area. This data shows no violations of the primary or secondary TSP 24-hour standards. EPA is today proposing to approve the state's request for redesignation of Morgan County from secondary nonattainment for TSP to an attainment classification.

DATE: To be considered, comments must be submitted on or before November 21, 1980.

ADDRESSES: The Alabama submittal may be examined during normal business hours at the following EPA offices:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

Library, Environmental Protection Agency, Region IV, 345 Courtland Street NE, Atlanta, Georgia 30365

In addition, the Alabama revision may be examined at the offices of the Alabama Air Pollution Control Commission, Division of Air Pollution Control, 645 South McDonough Street, Montgomery, Alabama 36130. Comments should be addressed to Mr. Jerry Preston, EPA, Region IV, Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Preston, Air Programs Branch, EPA, Region IV, 345 Courtland Street NE, Atlanta, Georgia 30365, 404/881-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION: On March 3, 1978, EPA promulgated a nonattainment status designation for a portion of Morgan County, Alabama. This designation was for a secondary nonattainment area for particulates around the vicinity of Decatur, Alabama.

EPA policy for Section 107 redesignation criteria was issued on June 12, 1978, and stated that for redesignation of a nonattainment area by use of monitoring data, that data must be below the standard for the pollutant measured for a reporting period of no less than eight quarters.

The TSP data submitted by the Alabama Air Pollution Control Commission on July 14, 1980 showed no violations of the 24-hour secondary standard. The eight quarters of data submitted were from July 1, 1978 to June 30, 1980. All data has been documented, shown to be representative, and has been subjected to an accepted quality assurance program.

Action

Based on the above statements, EPA is proposing to approve the redesignation of the area in Morgan County from nonattainment to attainment for the TSP secondary standard.

(Sec. 107, Clean Air Act (42 U.S.C. 7407))

Dated: October 2, 1980.

John A. Little,

Acting Regional Administrator.

[FR Doc. 80-32902 Filed 10-21-80; 8:45 am]

BILLING CODE 6560-26-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA 5914]

National Flood Insurance Program; Proposed Corporate Limits and Zone Designation for the City of Valdosta, Ga.

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed corporate limits and zone designation described below.

The proposed corporate limits and zone designation will be the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Map and other information showing the detailed outlines of the flood-prone areas and the proposed corporate limits and zone designation are available for review at the Mayor's Office, City Hall, Valdosta, Georgia.

Send comments to: The Honorable Ernest Nijem, Mayor, City of Valdosta, P.O. Box 1125, Valdosta, Georgia 31601.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation and Engineering Office, National Flood Insurance Program, 451 Seventh Street, SW., Washington, D.C. 20410 (202) 755-6570 or toll free line (800) 424-8872 or (800) 424-8873.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed corporate limits and zone designation (100-year flood) for the City of Valdosta, Georgia, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a) (presently appearing at its former Section, 24 CFR 1917.4(a)).

The proposed corporate limits and zone designation, together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. The proposed corporate limits and zone will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed 100-year flood corporate limits and zone for selected locations are:

Source of flooding	Location	Zone
Dukes Bay Drainage Canal South.	East of Southern Railway, south of Dampier Street.	A

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended: 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: September 5, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-32536 Filed 10-21-80; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. 5911]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program (202) 426-1460 or Toll Free Line (800) 424-8872 (In Alaska and Hawaii call Toll Free Line (800) 424-9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 890, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67.4(a).

These elevations, together with the flood plain management measures required by section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or Regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Proposed Base (100-Year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
California	San Jose (City), Santa Clara County.	Alamitos Creek	100 feet west of intersection of Mt. Carmel Drive and Camden Avenue.	*251
			Intersection of Winterset Way and Mt. Carmel Drive	#1
			Approximately 500 feet northeast of intersection of Borgwood Court and Portswood Circle.	*322
		Arroyo Calero	Approximately 100 feet downstream from center of Harry Road	*319
		South Babb Creek	Approximately 250 feet north of intersection of Mt. Wilson and Mt. Stanley Drives.	#1
		Berryessa Creek	Intersection of Cropley and Morrill Avenues	#1
		Calabazas Creek	100 feet upstream from center of Rainbow Drive	*273
		Canoas Creek	Intersection of Nightingale and Hummingbird Drives	*142
		Coyote Creek	200 feet downstream from center of U.S. Highway 101	*101
			500 feet south of intersection of Ford and Silver Leaf Roads	*196
			At confluence with Fisher Creek	*248
		Fisher Creek	100 feet west of intersection of Santa Teresa Boulevard and Bailey Avenue.	*250
		Fisher Creek Overbank	100 feet upstream from center of Fisher Road	*257
		Guadalupe River	Intersection of Auzerais Street and Vine Avenue	#3
		Los Gratos Creek	300 feet southwest along West Santa Clara Street from its intersection with North River Street.	#1
		Upper Penitencia Creek	Intersection of Helmsley and Wilsham Drives	#1
			100 feet upstream from center of Noble Avenue	*244
		Ross Creek	Intersection of Cherry Avenue and Cherry Court	*1
		San Francisco Bay	Intersection of Michigan Avenue and Archer Street	*7
		Silver Creek	Intersection of McKee Road and North 33rd Street	*88
			100 feet south of intersection of Cunningham Avenue and White Road.	*131
		Thompson Creek	Intersection of Fairfax Avenue and Scottsdale Drive	#1
		Shallow Flooding	Intersection of Moorpark Avenue and Hamann Drive	#1
			300 feet southeast from intersection of Rogers Avenue and Brokaw Road.	#1
			Intersection of Zonker Road and Component Drive	*26
			Intersection of Las Plumas Avenue and Lenfest Road	*84
			100 feet north from intersection of King Road and Dobbin Drive	*88
			Intersection of Sinclair Freeway and McKee Road	*101
			Intersection of Monterey Highway and East Alma Avenue	*102
			Intersection of Bettaglia Circle and Old Ridge Place	*127
			Intersection of White Road and Tully Road	*131
	Maps available for inspection at Engineering Department, 801 N. 1st., San Jose, California.			
	Send comments to Honorable Janet Gray Hayes, 801 N. 1st., San Jose, California 95110.			
	Town of Hastings, St. Johns County.	St. Johns River	Intersection of Church Avenue (State Road 207) with western corporate limits.	*6
		Deep Creek	Intersection of Church Avenue and Orange Street	*7
	Maps available for inspection at Town Hall, 401 Main Street, Hastings, Florida 32045.			
	Send comments to Mayor L. R. French or Ms. Carolyn B. Smyly, Town Hall, P.O. Box 607, Hastings, Florida 32045.			
Illinois	(V), Banner, Fulton County	Copperas Creek	At the downstream corporate limits	*465
			Approximately 260 feet downstream of U.S. Route 24	*455
			At the upstream corporate limits	*457
	Maps available for inspection at the Banner Village Hall, RR #3, Canton, Illinois			
	Send comments to Honorable Floyd D. Miller, Village President, Village of Banner, Banner Village Hall, RR #3, Canton, Illinois 61520.			
Iowa	(C), Burlington, Des Moines County.	Flint Creek	Mouth at Mississippi River	*535
			About 1,050 feet upstream of the Chicago, Rock Island and Pacific Railroad.	*535
			About 1,500 feet upstream Tama Road Bridge	*538
		Mississippi River	Downstream corporate limits	*533
			Upstream corporate limits	*535
		Tributary A	Just upstream of Gunnison Street	*584
			About 700 feet upstream of Remick Street	*584
			Just downstream Plane Street	*601
			Just upstream Plane Street	*604
			Just downstream Division Street	*608
			Just upstream Division Street	*613
			About 520 feet upstream of Division Street	*613
			At confluence of Tributary B	*617
		Tributary B	Just downstream Division Street	*620
			Just upstream Division Street	*629
			About 420 feet upstream of Division Street	*631
			About 920 feet upstream Division Street	*638
	Maps available for inspection at the City Hall, Burlington, Iowa.			
	Send comments to Honorable R. F. Eiffelman, Mayor, City of Burlington, City Hall, Burlington, Iowa 52601.			
Iowa	(C), Durango, Dubuque County	North Fork Little Maquoketa River	At mouth	*649
			Southwest corporate limits	*649
		Sherrill Creek	About 130 feet downstream of Chicago and North Western Railroad	*647
			About 90 feet upstream Glen Dalfa Road	*649

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Little Maquoketa River	About 660 feet downstream Southeast Road	*647
			About 500 feet upstream Southeast Road	*649
	Maps available for inspection at the City Clerk's Home, Durango, Iowa.			
	Send comments to Honorable James Schemmel, Mayor, City of Durango, P.O. Box 10, Durango, Iowa 52039.			
Iowa	(C), Nevada, Story County	West Branch Indian Creek	About 2,000 feet downstream of U.S. Highway 30	*945
			Just downstream of County Road S14 bridge	*957
			Just downstream of Chicago and North Western railroad	*962
	Maps available for inspection at the City Hall, Nevada, Iowa.			
	Send comments to Honorable Roy T. Bulty, Mayor, City of Nevada, City Hall, Nevada, Iowa 50201.			
Kentucky	City of Frankfort, Franklin County	Kentucky River	Just upstream Broadway St.	*508
			At the East-West Connector (State Highway 676)	*509
		Benson Creek (Backwater from Kentucky River).	Just upstream Bald Knob Road	*508
	Maps available for inspection at Office of Planning and Zoning, City Hall, 315 W. Second Street, Frankfort, Kentucky 40601.			
	Send comments to Mayor Sower or Mr. Paul Royster, City Manager, City Hall, P.O. Box 697, Frankfort, Kentucky.			
Michigan	(C), Charlotte, Eaton County	Battle Creek River	At downstream corporate limits	*879
			Just upstream of South Cochran Street	*880
		Butternut Creek	Just upstream of Packard Street	*876
			About 650 feet upstream of Interstate 69	*878
	Maps available for inspection at the City Hall, 111 East Lawrence Street, Charlotte, Michigan.			
	Send comments to Honorable Daryl Baker, Mayor, City of Charlotte, City Hall, 111 East Lawrence Street, Charlotte, Michigan 48813.			
Michigan	(Chtr. Twp.), Delhi, Ingham County.	Grand River	Just upstream of Waverly Road	*853
			Upstream corporate limits	*857
		Sycamore Creek	Just upstream of Jolly Road	*838
			Just downstream of College Road	*846
		Mud Lake Drain	Just upstream of Aurelius Road (about 600 feet south of Jolly Road)	*839
			Just downstream of Aurelius Road (about 2,700 feet south of Jolly Road).	*843
		Gilbert Drain	Just upstream of Waverly Road	*864
			About 1,550 feet upstream of Grovenburg Road	*866
	Maps available for inspection at the Delhi Township Hall, 1974 Cedar Street, Holt, Michigan.			
	Send comments to Honorable Billy L. Dowell, Supervisor, Charter Township of Delhi, Delhi Township Hall, 1974 Cedar Street, Holt, Michigan 48842.			
Michigan	(Twp.), Oneida, Eaton County	Grand River	At county boundary	*792
			At downstream corporate limits of City of Grand Ledge	*798
			At upstream corporate limits of City of Grand Ledge	*800
			At upstream corporate limits	*803
	Maps available for inspection at the Oneida Township Hall, 11883 Oneida Road, Grand Ledge, Michigan.			
	Send comments to Honorable Paul Edwards, Supervisor, Township of Oneida, Township Hall, 11883 Oneida Road, Grand Ledge, Michigan 48837.			
Mississippi	City of Belzoni, Humphreys County.	Fisk Bayou	At Jackson Street	*115 [1]
			At Virginia Street	115 [1]
		Unnamed Tributary of Yazoo River.	Intersection of Mound Street and Washington Ave.	*115 [1]
			Intersection of First Street and Shannon Street	*115 [1]
		Yazoo River	At Humphreys County Bridge	*114
		County Ditch No. 26	At Jackson Street	*113 [1]
	Maps available for inspection at City Hall, 102 W. Jackson Street, Belzoni, Mississippi 39038.			
	Send comments to Mayor Mortimer and Mr. Roy H. Watson, City Clerk, City Hall, P.O. Box 674, Belzoni, Mississippi 34038.			
	[1] Effected by overflow from Wasp Lake.			
New Jersey	East Amwell, Township, Hunterdon County.	Neshanic River	Downstream Corporate Limits	*103
			Upstream side of Cider Mill Road	*111
			Upstream side of Manners Road	*115
			Upstream Corporate Limits	*121
		Stony Brook	Downstream Corporate Limits	*207
			Approximately 1,570' upstream of Downstream Corporate Limits	*217
			Approximately 4,820' upstream of Downstream Corporate Limits	*236
			Downstream side of Linvale Road	*282
			Approximately 60' upstream of Linvale Road	*294
		South Fork Third Neshanic River	Downstream Corporate Limits	*159
			Approximately 60'upstream of Rynearson's Road	*168
			Centerline of Creek Road at upstream Corporate Limits	*172
		Tributary A	Confluence with Neshanic River	*110
			Downstream side of Private Road approximately 2,975' upstream of Back Brook Road.	*126
			Upstream side of Private Road approximately 2,875' upstream of Back Brook Road.	*130
			Downstream side of Private Road approximately 475' downstream of Manners Road.	*154
			Downstream side of Manners Road	*158
			Upstream side of Manners Road	*159

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Back Brook	Confluence with Neshanic River	*112
			Downstream side of Van Lieu's Road	*118
			Approximately 6,475' upstream of Van Lieu's Road	*137
			Downstream side of Wertsville Road	*164
			Downstream side of Farm Lane	*175
			Approximately 500' downstream of State Route 202	*187
			Downstream side of Country Route 579	*191
			Upstream side of Old York Road	*196
	Maps available at the Township Clerk's Office, East Amwell, New Jersey.			
	Send comments to Honorable Mary Elizabeth Sheppard, Township Clerk, P.O. Box F, East Amwell, New Jersey 08551.			
New York	Town of Wheatfield, Niagara County.	Bergholtz Creek	Just upstream of Williams Road	*578
			Just upstream of Hoover Road	*595
		Brent Road Tributary	Approximately 300 feet upstream of Ward Road	*587
		Raymond Road Tributary	Just downstream of Raymond Road	*603
		Cayuga Creek	Just downstream of Lockport Road	*605
			Just upstream of Blank Road	*616
		Cayuga Creek Tributary	Confluence of Cayuga Creek and Cayuga Creek Tributary	*810
		Tonawanda Creek	Just upstream of Niagara Falls Boulevard	*573
		Sawyer Creek	Just upstream of Shawnee Road	*573
			Just upstream of Schultz Road	*575
			Just upstream of Nash Road	*577
		Bull Creek	Just downstream of Town Line Road (Downstream of Crossing)	*573
			Just downstream of Loveland Road	*578
			Just downstream of Town Line Road (Upstream of Crossing)	*580
	Maps available for inspection at Town Hall, 2800 Church Road, Wheatfield, New York 14120.			
	Send comments to Honorable Edward Greinert, Town Hall, 2800 Church Road, North Tonawanda, New York 14120.			
New York	Warsaw, Village, Wyoming County.	Oatka Creek	Corporate Limits	*980
			Downstream of West Court Street	*996
			Downstream of South Main Street	*1,009
			Downstream of Washington Street	*1,010
			Upstream of Corporate Limits	*1,033
		Crystal Brook	Confluence with Oatka Creek	*1,009
			Upstream of Oatka Street	*1,010
			Corporate Limits	*1,033
	Maps available at the Village Office, 15 South Main Street, Warsaw, New York.			
	Send comments to Honorable Edward Mink, Mayor, P.O. Box 49, Warsaw, New York, 14569.			
North Carolina	Archdale (City), Randolph County.	Muddy Creek	50 feet upstream from center of North Carolina Secondary Road 1916—Weart Road.	*722
			20 feet upstream from center of North Carolina Secondary Road 1606—School Road.	*784
		Muddy Creek—West Tributary	Intersection of Sunny Lane and Archdale Road	*792
			100 feet upstream from Center of North Carolina Highway 62—Trindale Road.	*823
		Muddy Creek—East Tributary	200 feet upstream from center of Ashbrook Street	*737
			50 feet upstream from center of North Carolina Secondary Road 1912—Aldridge Road.	*759
	Maps available for inspection at City Hall, 307 Balfour Drive, Archdale, North Carolina.			
	Send comments to Honorable Lloyd H. Taylor, 307 Balfour Drive, Archdale, North Carolina 27263.			
North Carolina	Asheboro (City), Randolph County.	Deep River	100 feet upstream from center of North Carolina Secondary Road 2261—Old Liberty Road.	*572
		Hasketts Creek	20 feet upstream from center of Bridge at Sewage Plant	*611
			100 feet upstream from center of Greenvale Road	*649
		Hasketts Creek—North Tributary	50 feet downstream from center of Northwood Drive	*670
		Penwood Branch	50 feet upstream from center of North Carolina Secondary Road 2261—Old Liberty Road.	*637
			Intersection of Windsor Drive and Camden Court	*697
		Penwood Branch—South Tributary.	Intersection of Grove Street and Glovinia Street	*764
		Vestal Creek	Intersection of creek and center of Cox Road	*669
		Vestal Creek—Tributary I	100 feet upstream from center of Newbern Avenue	*711
		Vestal Creek—Tributary II	50 feet upstream from center of Pine Grove	*710
		Vestal Creek—Tributary III	Confluence with Vestal Creek—Tributary II	*663
	Maps available for inspection at City Hall, 146 N. Church Street, Asheboro, North Carolina.			
	Send comments to Honorable Robert L. Reese, 146 N. Church Street, Asheboro, North Carolina 27203.			
North Carolina	Randolph County (Unincorporated Areas).	Richland Creek	Intersection of Creek and center of North Carolina Secondary Road 2831.	*509
		Muddy Creek	50 feet upstream from center of North Carolina Secondary Road 1917	*717
	Maps available for inspection at Mapping Department, 146 Worth Street, Asehboro, North Carolina.			
	Send comments to Honorable Richard K. Tugh, 145 Worth Street, Asheboro, North Carolina 27203.			
Oklahoma	Town of Noble, Cleveland County..	Canadian River	At south corporate limits (Cemetery Road Extended)	*1,072
		Belle Creek	Just upstream of Cemetery Road	*1,097
			Approximately 100 feet at upstream of U.S. Highway 77	*1,112

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Just upstream of Maguirer Road	*1,119
		Dripping Springs Creek	Approximately 100 feet at upstream of Cemetery Road	*1,106
			Just upstream of Maguire Road	*1,125
		N.W. Park Creek	Approximately 100 feet at downstream of Atchison Topeka & Santa Fe Railway.	*1,106
			At downstream of U.S. Highway 77	*1,116
	Maps available for inspection at City Hall, 115 North 2nd Street, Noble, Oklahoma 73068.			
	Send comments to Mayor Earl Musgrave or Ms. Margaret Leslie, City Clerk, City Hall, 115 North 2nd Street, Noble, Oklahoma 73068			
Oklahoma	City of Owasso, Tulsa and Rogers Counties.	Ranch Creek	At 76th Street	*591
			Just downstream of 116th Street North	*653
		Ranch Creek Tributary A	Approximately 90 feet at downstream of Atchison Topeka at Santa Fe Railroad.	*592
			Just upstream of North 19th Street	*652
			Approximately 80 feet upstream of North Birch Street	*660
			Just downstream of Garnett Road	*675
		Bird Creek Tributary 5A	At downstream of 76th Street N (Second Avenue)	*590
			Just downstream of U.S. Highway 169	*601
			Approximately 250 feet at upstream of 83rd Street N	*615
			Approximately 100 feet at upstream of 86th Street N	*626
		Elm Creek	Just downstream of 129th Avenue E	*590
		Bird Creek	Approximately 200 feet at downstream of Atchison Topeka and Santa Fe Railroad.	*590
	Maps available for inspection at City Hall, 207 South Cedar Street, Owasso, Oklahoma 74055.			
	Send comments to Mayor Boyd Spencer or Mr. Kenneth Thompson, City Manager, City Hall, 207 South Cedar Street, Owasso, Oklahoma 74055.			
Oklahoma	City of Purcell, McClain County	Canadian River	Just downstream of U.S. Highway 77	*1,034
			At the west corporate limits (Approximately 2,900 feet downstream of the Atcheson Topeka and Santa Fe Railway.	*1,057
		Walnut Creek	Just upstream of U.S. Highway 77	*1,036
			Just downstream of Interstate Highway 35	*1,039
		Beaver Creek	Approximatelty 100 feet upstream of Interstate Highway 35	*1,043
	Maps available at City Hall, 230 West Main Street, Purcell, Oklahoma 73080.			
	Send comments to Mayor C. B. Jermiah or Mr. Noland Combs, City Manager, City Hall, 230 West Main Street, Purcell, Oklahoma 73080.			
Pennsylvania	Roscoe, Borough, Washington County.	Monongahela River	Downstream Corporate Limits	*765
			Upstream Corporate Limits	*766
	Maps available at the residence of Ms. Ruth Chester, Borough Secretary, 503 Underwood, Roscoe, Pennsylvania.			
	Send comments to Honorable Julius Klein, Council President of Roscoe, Box 1, Roscoe, Pennsylvania 15477.			
Texas	City of Anahuac, Chamber County	Lake Anahuac	Along Shoreline	*12
		Galveston Bay	Along western corporate limits (Trinity River Channel)	*13
	Maps available for inspection at City Manager's Office, City Hall, 501 Miller Street, Anahuac, Texas 77514.			
	Send comments to Mayor Strimple or Mr. Robert Nelson, City Manager, City Hall, P.O. Box 578, Anahauc, Texas 77514.			
Wisconsin	(C), De Pere, Brown County	Ashwaubenon Creek	Just downstream of Fort Howard Avenue	*585
			About 600 feet upstream of State Highway 41 Southbound	*589
			About 500 feet upstream Ashwaubenon Street	*590
			About 1,300 feet upstream Main Avenue	*595
		Fox River	Downstream corporate limits	*585
			Just downstream De Pere Dam	*585
			Just upstream De Pere Dam	*591
			Upstream corporate limits	*594
		East River	Downstream corporate limits	*591
			Upstream corporete limits	*591
	Maps available for inspection at the Office of the Building Inspector, City Hall, 335 South Broadway Street, De Pere, Wisconsin.			
	Send comments to Honorable Richard A. Switzer, Mayor, City of De Pere, City Hall, 335 South Broadway Street, De Pere, Wisconsin 54115.			
Wisconsin	(C), New Holstein, Calumet County.	Jordan Creek	About 0.7 mile downstream of Wisconsin Avenue	*904
			Just downstream of Milwaukee Drive	*924
			Just upstream of Hickory Lane	*939
			Just upstream of Plymouth Street	*967
			Just downstream of Wisconsin Avenue	*971
	Maps available for inspection at the Office of the City Clerk, City Hall, 2100 Washington Street, P.O. Box 136, New Holstein, Wisconsin.			
	Send comments to Honorable Ralph N. Orth, Mayor, City of New Holstein, City Hall, 2100 Washington Street, P.O. Box 136, New Holstein, Wisconsin 53061.			

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: September 25, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-32954 Filed 10-21-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA 5926]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program (202) 426–1460 or Toll Free Line (800) 424–8872 (In Alaska and Hawaii call Toll Free Line (800) 424–9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67.4(a).

These elevations, together with the flood plain management measures required by section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent on their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or Regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Proposed Base (100-Year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Arkansas	Fort Smith, City, Sebastian County.	Arkansas River	Downstream Corporate Limits	*403
			3,000' upstream Free Ferry Road (Extended)	*407
			850' upstream Interstate Route 540	*409
			250' downstream St. Louis and San Francisco Railroad	*410
			North C Street (Extended)	*417
		Poteau River	South 3rd Street	*418
			Upstream Corporate Limits	*420
		Mill Creek	Upstream Schulter Road	*421
			Carthage Street (Extended)	*425
			550' downstream Route 59	*427
		Little Massard Creek	650' upstream Meandering Way	*403
			150' downstream 91st Street	*408
		Sunny Mede Creek	900' downstream 52nd Street	*410
			750' upstream 50th Street	*415
			42nd Street	*421
		May Branch	North 21st Street	*421
			Belle Avenue	*422
			May Avenue	*425
	Maps available at City Hall, 623 Garrison Avenue, Fort Smith, Arkansas.			
	Send comments to the Honorable Jack Freece, Mayor, 623 Garrison Avenue, Fort Smith, Arkansas 72902.			
Arkansas	City of Pine Bluff, Jefferson County.	Caney Bayou	At intersection of Woodlea and Woodlawn Drives	*213
		Caney Bayou Tributary A	Just upstream of Hutchinson Street	*226
			Just downstream of Mosely Street	*231
			Just downstream of Bryant Street	*238
		Outlet Canal	Just upstream of U.S. Highway 65	*203
			Just upstream of Ohio Street	*204
			Just downstream of Kentucky Street	*205
		Pitts Drain	Just downstream of Ohio Street	*208
			Just downstream of Main Street	*215
			Just upstream of Laurel Street	*221
		Outlet Canal Tributary A	Just upstream of Ohio Street	*211
			Just upstream of Kentucky Street	*213
			Just upstream of Georgia Street	*221
		Caney Bayou Tributary A1	Just downstream of Rhinehart Road	*231
			Just upstream of U.S. Highway 65 (Blake Avenue)	*231
			Just downstream of Shirley Street	*235

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Brumps Bayou	Just upstream of Pullen Street	*214
			Just downstreet of Myrtle Street	*229
			Just upstream of Peach Street	*231
		Harding Drain	Just upstream of Pine Street	*215
			Just downstream of Mulberry Street	*221
			Just downstream of Cypress Street	*224
		Eden Park Drain	Just downstream of Main Street	*206
			Just upstream of Olive Street	*211
			Just upstream of Hickory Street	*222
		Interceptor Canal	Just downstream of West 34th Street	*219
			Just downstream of Catalpa Street	*225
		Bayou Bartholomew	Just downstream of U.S. Highway 79	*219
	Maps available for inspection at City Hall, 200 East 8th Avenue, Pine Bluff, Arkansas 71601.			
	Send comments to Mayor Charles E. Moore, City Hall, 200 East 8th Avenue, Pine Bluff, Arkansas 71601			
California	Anaheim (City), Orange County	Santa Ana River	Centerline of Simmons Avenue 200 feet west of the intersection of Simmons Avenue with Nautical Street.	*133
			Imperial Highway bridge 250 feet upstream from centerline	*264
			75 feet upstream of the confluence with Walnut Canyon Channel	*292
			Centerline of levee 250 feet upstream of confluence with Esperanza Channel.	*320
			Intersection of Orangewood Avenue and State College Boulevard	#1
			Intersection of Simmons Avenue and Nautical Street northeast corner.	#3
	Maps available for inspection at City Hall, Anaheim, California.			
	Send comments to Honorable John Seymour, P.O. Box 3222, Anaheim, California 92803.			
California	Orange (City), Orange County	Santa Ana River	Intersection of Spinnaker Street and Sirius Avenue	*133
			Centerline of Rampart Street 1600 feet northeast of intersection with State College Boulevard.	#1
			Intersection of El Rancho Avenue and Lewis Street	#2
			Intersection of Manchester Avenue and Sheringham Street	#3
	Maps available for inspection at City Hall, Orange, California.			
	Send comments to Honorable James Beam, 300 East Chapman Avenue, Orange, California 92666.			
California	Orange County (Unincorporated Areas).	Santa Ana River	Centerline of Greenville Banning channel 700 feet upstream of Coast Highway centerline.	*9
			Centerline of Greenville Banning channel 800 feet upstream of Victoria Street.	*11
			Centerline of Shady Drive 70 feet north of intersection with Westminster Avenue.	*94
			Centerline of Haster Street 420 feet south of intersection with Lampson Avenue.	*122
			400 feet southeast of the intersection of Douglas Street and Katella Avenue.	#1
			Intersection of Edinger Avenue and Harbor Boulevard southeast corner.	#3
	Maps available for inspection at Environmental Management Agency, P.O. Box 4048, Santa Ana, California.			
	Send comments to Mr. H. G. Osborne, P.O. Box 4048, Santa Ana, California 92702.			
California	Santa Ana (City), Orange County	Santa Ana River	Centerline of Southern Pacific Railroad 2000 feet south of Macarther Boulevard.	*32
			Centerline of 5th Street 400 feet west of the center of 5th Street bridge over Santa Ana River.	*84
			Intersection of Cotter Street and Bern Lane	*109
			Centerline of Santa Ana freeway 900 feet northwest of center of Santa Ana freeway bridge over Santa Ana River.	*132
			Intersection of Sharon Road and Forest Avenue	#1
			Intersection of Alona Street and 21st Street	#2
			Intersection of English Street and Washington Avenue	#3
	Maps available for inspection at City Hall, 20 Civic Center Plaza, Santa Ana, California.			
	Send comments to Honorable James E Ward, 20 Civic Center Plaza, Santa Ana, California 92701.			
Colorado	Orchard City (Town), Delta County.	Cedar Run	Downstream edge of Vista Grande Drive, crossing the stream	*5297
			Downstream edge of Harts Basin Road, crossing the stream	*5,454
		Surface Creek	Downstream edge of Talbott Lane, crossing the stream	*5,442
			Downstream edge of Hamilton Lane, crossing the stream	*5,767
	Maps available for inspection at City Hall, 2102 J 50 Road, Austin, Colorado.			
	Send comments to Honorable J. Clare Davis, 2102 J 50 Road, Austin, Colorado 81410.			
Florida	City of Kissimmee Osceola County.	Shingle Creek	Just upstream of S.R. 530	*79
		Mill Slough	Just upstream of Mill Slough Road	*65
		East City Canal	Just upstream of U.S. 441	*60
			Just upstream of U.S. 17–92	*66
			Just upstream of Vine Street	*69
		West City Canal	Just upstream of U.S. 17–92	*63
			Just upstream of Patrick Street	*64
			Just downstream of Oak Street	*66
	Maps available for inspection at City Hall, 101 North Church Street, Kissimmee, Florida 32741.			
	Send comments to Mayor Smith or Mr. G.W. Mann, Jr., Director of Public Works and Engineering, City Hall, P.O. Box 1608, Kissimmee, Florida 32741.			

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Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Kansas	(C), Haysville, Sedgwick County	Wichita-Valley Center Floodway	At northeastern corporate limits	*1,267
			Just upstream from the Chicago, Rock Island and Pacific Railroad	*1,270
			At northwestern corporate limits	*1,274
	Maps available for inspection at the City Hall, Haysville, Kansas.			
	Send comments to Honorable Glenn O. Crum, Mayor, City of Haysville, City Hall, Haysville, Kansas 67060.			
Kentucky	Unincorporated areas of Bourbon County.	Stoner Creek	Just upstream of U.S. 460	*793
			Just upstream of Southern Paris City Limits	*800
		Houston Creek	Just upstream of Georgetown Road (U.S. 460)	*807
			Just upstream of Abandoned Frankfort and Cincinnati Railroad	*842
	Maps available for inspection at County Judge/Executor's Office or Office of Disaster and Emergency Service, Bourbon County Courthouse, Paris, Kentucky 40361.			
	Send comments to County Judge/Executor, Roy Baber, Bourbon County Courthouse, Main Street, Paris, Kentucky 40361.			
Missouri	(T), Canalou, New Madrid County.	Shallow Flooding (Little River and Otter Slough Overflow).	Within corporate limits	*291
	Maps available for inspection at the Town Hall, P.O. Box 221, Canalou, Missouri.			
	Send comments to Honorable Charles Joyce, Acting Mayor, Town of Canalou, Town Hall, P.O. Box 221, Canalou, Missouri 63828.			
Missouri	(C), Matthews, New Madrid County.	Shallow Flooding (Little River)	About 500 feet upstream of Main Street bridge over Little River	*293
			About 1000 feet southwest of intersection of Moore Street and Belt Avenue.	*293
		Shallow Flooding (From Rainfall)	About 1400 feet north of Main Street and about 2100 feet east of St. Louis-San Francisco Railway.	#3
			About 900 feet south of Main Street and about 1300 feet east of St. Louis-San Francisco Railway.	#3
			North of Summit Drive between Ridgeview Drive and Davis Street	#3
			North of Critchlow Street, on east side of Railroad Avenue	#3
			Just north of Main Street on Railroad Avenue	#3
			At Hall Street and Railroad Avenue	#3
			Just west of Morgan Street and Belt Avenue intersection	#3
			Just east of Morgan Street and Dean Street intersection	#3
	Maps available for inspection at the City Hall, P. O. Box 54, Matthews, Missouri.			
	Send comments to Honorable Charles Daniels, Mayor, City of Matthews, City Hall, P. O. Box 54, Matthews, Missouri 63867.			
Missouri	(C), Morehouse, New Madrid County.	Shallow Flooding-Little River Overflow.	From Wayne Street to the southern corporate limit	*295
			From Wayne Street to the northwestern corporate limit	*296
		Shallow Flooding-Otter Slough Overflow.	Carrot and Pine Streets	*299
			100 feet north of Craig Place and Front Street	*299
	Maps available for inspection at the City Hall, P. O. Box 96, Morehouse, Missouri.			
	Send comments to Honorable Pete Leija, Mayor, City of Morehouse, City Hall, P. O. Box 96, Morehouse, Missouri 63868.			
Nebraska	(C) Blair, Washington County	Missouri River	About 2.5 miles downstream U.S. Highway 30	*1,006
			About 3.2 miles upstream of U.S. Highway 30	*1,011
		Cauble Creek About 120 feet downstream of confluence of Cauble Creek East Tributary.		*1,034
			Just downstream U.S. Highway 73	*1,048
			Just upstream U.S. Highway 73	*1,055
			Just downstream of College Drive	*1,056
		Cauble Creek East Tributary	Mouth at Cauble Creek	*1,034
			Just downstream Baronage Drive	*1,057
			Just upstream Baronage Drive	*1,065
			Just downstream College View Drive	*1,066
		Cameron Ditch	Mouth at Missouri River	*1,007
			Just downstream of County Road located about 800 feet upstream of U.S. Highway 30.	*1,009
		Unnamed Creek	Just upstream Chicago and North Western railroad	*1,060
			Just downstream 13th Street	*1,073
			Just upstream 17th Street	*1,092
			Just downstream 19th Street	*1,102
	Maps available for inspection at the City Hall, 1570 Washington Street, Blair, Nebraska.			
	Send comments to Honorable M. Stanley Jensen, Mayor, City of Blair, City Hall, 1570 Washington Street, Blair, Nebraska 68008.			
Nebraska	(Uninc.) Dodge County	Platte River	At the downstream Fremont extraterritorial limits	*1,209
			At the upstream Fremont extraterritorial limits	*1,217
			Just downstream of the Chicago and North Western railroad	*1,224
			About 9000 feet upstream of the Chicago and North Western railroad	*1,232
			About 10,000 feet downstream of the City of North Bend downstream extraterritorial limits.	*1,256
			About 1100 feet upstream of the City of North Bend downstream extraterritorial limits.	*1,268
			At upstream City of North Bend extraterritorial limits	*1,279
			About 9500 feet upstream City of North Bend extraterritorial limits	*1,286
			At upstream county boundary	*1,306

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Elkhorn River	About 5.8 miles downstream of the Chicago and North Western railroad.	*1,148
			Just upstream of the Chicago and North Western railroad	*1,164
			About 4.4 miles upstream of U.S. Highway 30	*1,175
			Just downstream of State Highway 91	*1,193
	Maps available for inspection at the County Clerk's Office, Dodge County Courthouse, Fremont, Nebraska.			
	Send comments to Honorable Walter J. Mruz, Chairman, County Board of Supervisors, Dodge County, Dodge County Courthouse, Fremont, Nebraska 68025.			
New York	Seneca Falls, Town, Seneca County.	Seneca River	Confluence with Cayuga Lake	*396
			Upstream Corporate Limits of the Town of Seneca Falls	*432
		Black Brook	Downstream Corporate Limits	*466
			Downstream side of King Road	*470
			Upstream Corporate Limits of the Village of Seneca Falls	*477
			2,200' upstream of Mound Road at the downstream side of Private Road.	*481
			Upstream Corporate Limits	*487
		Sucker Brook	Confluence with Seneca River	*432
			Upstream side of Conrail	*435
			7,600' upstream of Conrail	*453
		Sucker Brook Tributary	Confluence with Sucker Brook	*436
			Upstream of California Avenue	*454
			3,000' upstream of California Avenue	*463
		Cayuga Lake	Entire Shoreline within the town	*386
	Maps available at the Town Office, 28 Cayuga Street, Seneca Falls, New York.			
	Send comments to Honorable Frank Saracino, Town Supervisor, 28 Cayuga Street, Seneca Falls, New York 13148.			
South Carolina	Unincorporated Areas of Cherokee County.	Buffalo Creek	Approximately 300 feet upstream of Magnolia Plant Road	*570
			Just upstream of State Highway No. 5	*575
			Approximately 5000 feet downstream of North Boond Bridge Interstate 85.	*676
		Cherokee Creek	Approximately 140 feet upstream of small dam above water filtration plant.	*602
			Just upstream of Interstate Highway 85	*612
			Just downstream of Lake Whelchel Dam	*633
			Just upstream of Lake Whelchel Dam	*682
			Approximately 100 feet downstream of State Highway 150	*693
			Approximately 100 feet downstream of State Road 34	*734
			Just upstream of State Road 61	*762
		Irene Creek	Just upstream of State Highway No. 105	*660
			Approximately 100 feet downstream of Rutledge Ave	*668
		Limestone Creek	Just upstream of State Road 304	*617
			Downstream corporate limits for the City of Gaffney approximately 2700 feet upstream from State Road 304.	*644
		Mills Creek	Just upstream of State Road 368	*596
			Just downstream of State Road 512	*658
		Peoples Creek	Just upstream of State Road 296	*643
			Just upstream of culvert under Railroad Spur embankment	*660
			Just downstream of Beech Street	*668
		Providence Branch	Just downstream of State Highway 18	*626
			Just upstream of Vermont Drive	*668
			Just upstream of State Highway 150	*675
	Maps available for inspection at Cherokee County Courthouse, 210 North Limestone Street, Gaffney, South Carolina 29340.			
	Send comments to Mr. Dolphus Medley, County Administrator, Cherokee County Courthouse, 210 North Limestone Street, Gaffney, South Carolina 29390			
Texas	City of Kilgore, Rusk and Gregg Counties.	Bighead Creek	Approximately 60 downstream of Missouri Pacific Railroad	*283
			At Pentecost Road	*299
			At Houston Street	*306
		Turkey Creek	Approximately 180 feet upstream of Houston Street	*307
			Approximately 100 feet downstream of FM 1249	*312
			Just upstream of Broadway Boulevard	*329
			Approximately 20 feet upstream of Martin Street	*336
		Birdsong Creek	Approximately 250 feet upsteam of Higginbotham Road	*322
			Lockhaven Drive Extended	*323
	Maps available for inspection at Building Inspector's Office, City Hall, 901 North Kilgore Street, Kilgore, Texas 75662			
	Send comments to Mayor Foster Bean or Mr. Richard Allen, Building Inspector, City Hall, 909 North Kilgore Street, Kilgore, Texas 75662.			
Texas	City of Lufkin, Angelina County	Hurricane Creek	Just downstream of State Highway Loop 287	*249
			Just downstream of Tulane Drive	*266
			Just downstream of U.S. Highway 59 (Timberland Drive)	*280
		Hurricane Creek East Tributary North.	Just downstream of Chestnut Street	*280
			Just downstream of U.S. Highway 69 (Denman Avenue)	*285
		Hurricane Creek East Tributary (E).	Just downstream of State Highway 35	*244
		Hurricane Creek East Tributary (S).	Just downstream of U.S. Highway 59	*254
		Hurricane Creek West Branch	Just upstream of Temple Drive	*266

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Cedar Creek	Just downstream of Hank Street	*240
			Just upstream of State Highway Loop 287	*255
			Just downstream of Franklin Street	*277
		Cedar Creek North Tributary	Just downstream of Texas Southern Railroad	*278
		Cedar Creek South Tributary	Just downstream of F.M. 271	*257
			Just upstream of Texas Southern Railroad	*279
		Paper Mill Creek Tributary	Just upstream of State Highway 287	*259
		Tributary to Paper Mill Creek Tributary.	Just upstream of State Highway 103 (Atkinson Drive)	*273
		Mill Creek Tributary	Just downstream of Angelina and Neches River Railroad	*274
		Tributary to Mill Creek Tributary	Just upstream of Sayers Street	*282

Maps available for inspection at City Hall, 300 East Shepard Street, Lufkin, Texas 75901.

Send comments to Mayor Garrison or Mr. Harvey Westerholm, City Manager, City Hall, 300 East Shepard, Lufkin, Texas 75901.

Texas	City of Robstown, Nueces County	Ditch A	Just downstream of Missouri-Pacific Railroad	*73
			Just upstream of FM Highway 1889	*79
		Ditch BN	Just upstream of Airport Road	*79
		Ditch C	Just downstream of Unnamed Road upstream of confluence of Ditch E.	*68
		Ditch E	Just upstream of State Highway 44	*70
			Just upstream of U.S. Highway 77	*73
Shallow Flooding Area			At intersection of Avenue C and Seventh Street	*73
			At intersection of Main Avenue and San Patricio Street	*77

Maps available for inspection at City Hall, 101 East Main Street, Robstown, Texas 78380.

Send comments to Mayor Ricaido L. Rodriquiez or Mr. Roy Gutienez, City Secretary, City Hall, P.O. Box 872, Robstown, Texas 78380.

Texas	City of Sinton, San Patricio County.	Chiltipin Creek	Intersection of Rachel Avenue and West Welder Street	*49
			Just upstream of U.S. Route 181	*50

Maps available for inspection at City Hall, 301 East Market Street, Sinton, Texas 78387.

Send comments to Mayor Sanderman, or Mr. Walter W. Hill, Jr., City Manager, City Hall, 301 East Market Street, Sinton, Texas 78387.

Texas	Unincorporated Areas of Smith County.	West Mud Creek	Just upstream of State Highway 344	*360
			Just upstream of County Road	*367
			Just downstream of State Highway 346	*385
		Shackleford Creek	Just upstream of U.S. Route 69	*392
			Just upstream of State Highway 346	*397
		Henshaw Creek	Just upstream of Cumberland Road	*452
			Just upstream of U.S. Highway 69	*391
			Just upstream of County Road 143	*402
			Just upstream of County Road 165	*469
		Saline Creek	Just downstream of State Highway 2868	*379
			Just upstream of State Highway 2813	*406
		Willow Creek	Just upstream of Confluence with Black Fork Creek	*419
			Just upstream of State Highway 110	*451
		West Mud Creek Tributary B	Just upstream of Reick Road	*467
			Just upstream of New Copeland Road	*481
			Just downstream of Paluxy Drive	*504
		Black Fork Creek	Just upstream of State Route 110	*419
			Just upstream of U.S. Highway 69	*430
			Just upstream of State Route 323	*440
			Just upstream of State Route 14	*462

Maps available for inspection at 304 Smith County Courthouse, Tyler, Texas 75702.

Send comments to Judge Bob Hayes or Mr. Allan Pollack, Government Intern, 304 Smith County Courthouse, Tyler, Texas 75702.

Texas	Town of Woodsboro, Refugio County.	Tributary A	Just upstream of Jetter Street	*34

Maps available for inspection at City Hall, Woodsboro, Texas 78393.

Send comments to Mayor Allan Carsner, City Hall, P.O. Box 632, Woodsboro, Texas 78393.

Washington	Goldendale, City, Klickitat County.	Little Klickitat River	Upstream State Highway 142	*1,600
			Upstream Mill Street	*1,608
			Upstream Columbus Avenue	*1,622
			Upstream Corporate Limits	*1,638

Maps available at the City Hall, 225 West Court, Goldendale, Washington.

Send comments to Honorable Cyrus Forry, Mayor of Goldendale, City Hall, 225 West Court, Goldendale, Washington 98620.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: October 3, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-32556 Filed 10-21-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5895]

National Flood Insurance Program; Proposed Flood Elevation Determinations; Correction

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Unincorporated Areas of Dodge Country, Wisconsin, previously published at 45 FR 60953 on September 15, 1980.

EFFECTIVE DATE: October 22, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872 (In Alaska and Hawaii call Toll Free Line (800) 424–9080) Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the correction to the Notice of Proposed Determinations of Base (100-year) flood elevations for selected locations in the Unincorporated Areas of Dodge County, Wisconsin, previously published at 45 FR 60953 on September 15, 1980, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)). Under the Source of Flooding of Rock River, the location description, "About 0.3 mile upstream of Cady Street", with corresponding elevation of 812 feet, should be added as the first entry. The listing appears correctly as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Wisconsin	(Uninc.), Dodge County	Rock River	About 0.3 mile upstream of Cady Street	*812

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: October 3, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-32555 Filed 10-21-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5927]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program (202) 426–1460 or Toll Free Line (800) 424–8872 (In Alaska and Hawaii call Toll Free Line (800) 424–9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4 (a).

These elevations, together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or Regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Proposed Base (100-Year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Arkansas	Unincorporated areas of Pulaski County.	Arkansas River	Just downstream of East Belt Freeway	*245
			Just upstream of Baring Cross (Missouri Pacific Railroad)	*256
			Just upstream of U.S. Highway I-430	*265

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Ison Creek	Just upstream of Townsend St	*325
			Just upstream of Garland Street	*346
		Fourche Creek	Just downstream of Arch Street Pike (State Highway 367)	*256
			Just upstream of New Benton Highway	*269
			Just upstream of Baseline Road	*289
			Just upstream of State Highway 5	*308
		Crooked Creek	Just downstream of Highway I-30	*309
			Just downstream of Alexander Road	*315
		Callagahan Branch	Just downstream of State Highway 5 (Old Stage/Coach Road)	*292
			Just upstream of Baseline Road	*338
		Haw Branch	Just upstream of Highway 5 (Old Stage Coach Road)	*289
		Otter Creek	Just upstream of Mabelville West Road	*297
			Just upstream of Highway I-30	*301
			Just downstream of Alexander Road	*305
		McHenry Creek	Just upstream of State Highway 5 (Old Stage Coach Road)	*280
			Just upstream of Highway I-430	*297
		Nash Creek	Just downstream of Baseline Road	*280
			Just upstream of Meadow Lane	*293
		Young Creek	Just downstream of Mablevale Pike Avenue	*266
			Just upstream of Highway I-30	*271
		Brodie Creek	Just upstream of State Highway 5 (Old Stage Coach Road)	*283
			Just upstream of Shackleford Road	*314
			Just upstream of Bowman Road	*330
		Panther Branch	Just downstream of West 36th Street	*316
			Just upstream of Bowman Road	*355
		Rock Creek	Just downstream of West Markham Parkway	*453
			Just upstream of Kanis Road	*456
		Grassy Flat Creek	Approximately 600 feet upstream of Rodney Parham Road	*367
		Coleman Creek	Just downstream of Little Rock Corporate Limits	*258
		Little Fourche Creek	Just upstream of Hilard Springs Road	*257
			Just upstream of Chicago, Rock Island, and Pacific Railroad	*273
			Just upstream of Chicot Road	*286
		Smith Creek	Just downstream of Geyers Springs Road	*265
			Just upstream of Chicot Road	*290
		Field Creek	Just downstream of Little Rock Corporate Limits	*263
		Stump Creek	Just upstream of Reck Road	*262
		Fairman Ditch	Just upstream of State Highway 161	*252
		Glenview Ditch	Just upstream of State Highway 161	*251
		Fivemile Creek	Just downstream of U.S. Highway 67-167	*256
		Fivemile Creek McCain Fork	Just downstream of Smoke Lane Road	*261
		Fivemile Creek East Tributary	Just downstream of Smokey Lane Road	*255

Maps available for inspection at City Planning Office, 3201 West Roosevelt Road, Little Rock, Arkansas 72204.

Send comments to Judge W. R. Beaumont, Pulaski County Courthouse, Markham and Springs Streets, Little Rock, Arkansas 72201.

Georgia	City of Bloomingdale, Chatham County.	Pipemakers Canal	Just downstream of Adams Road	*19
		Hardin Canal	Just downstream of Waller Road	*19

Maps available for inspection at City Hall, Highway 80 and Adams Road, Bloomingdale, Georgia 30302.

Send comments to Mayor W. E. Taylor or Ms. Edith Harry, City Clerk, City Hall, Highway 80 and Adams Road, Bloomingdale, Georgia 30302.

Georgia	City of Darien, McIntosh County	Darien River	Just upstream of U.S. Highway 17	*11
		Cathead Creek	At confluence point of Darien River and Cathead Creek	*12

Maps available for inspection at City Hall, Highway 17, Darien, Georgia 31305.

Send comments to Mayor Gene Sumner or Mr. C. A. Devillars, City Manager, City Hall, Highway 17, Darien, Georgia 31305.

Georgia	City of Riceboro, Liberty County	Riceboro Creek (Flooding controlled by Hurricane Tides from the Coast of Georgia).	Just upstream of Seaboard Coast Line Railroad	*11.0
			Just upstream New State Road 25 (New U.S. Highway 17)	*10.5

Maps available for inspection at City Hall, Riceboro, Georgia 31323.

Send comments to Mayor John D. McIver or Mayor Pro-Tem, Mr. Jack Haimth, City Hall, P.O. Box 246, Riceboro, Georgia 31323.

Kentucky	City of Middlesboro, Bell County	Stoney Fork	Just upstream of Wilson Lane	*1,175
			Just upstream of Louisville and Nashville Railroad	*1,216
		Bean's Fork	Just upstream of State Highway 441	*1,205
		Bennett's Fork	Just upstream of State Highway 441	*1,134
			Just upstream of 35th Street (State Highway 1599)	*1,159
		Yellow Creek	Just upstream of State Highway 441	*1,133
			Just downstream of 30th Street (Peters Borough Avenue)	*1,136
		Little Yellow Creek	Approximately 630 feet upstream of U.S. Highway 25E	*1,134

Maps available for inspection at City Hall, 20th and Lothbury Street, Middlesboro, Kentucky 40965.

Send comments to Mayor Chester Wolf, or Ms. Olive Crockett, City Clerk, City Hall, 20th and Lothbury, Middlesbury, Kentucky 40965.

Louisiana	Town of Henderson, St. Martin Parish.	Bayou Peyron-net	Just upstream of Louisiana Highway 352	*13
			Just upstream of Interstate Highway 10 Westbound Lanes	*15
		Bayou Portage	Just upstream of Interstate Highway 10 Westbound Lanes	*14
		True Canal	Just upstream of Patin Street	*15

Maps available for inspection at Town Hall, Amy Street, Henderson, Louisiana.

Send comments to Mayor Huvall or Ms. Donna Patin, Town Clerk, P.O. Box 595, Henderson Station, Breaux Bridge, Louisiana 70517.

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Minnesota	(Uninc.), Brown County	Minnesota River	Approximately 7250 feet upstream from Blue Earth County Boundary	*804
			Approximately 100 feet downstream from Chicago and North Western Railroad.	*806
			At County Highway 13	*811
			Approximatley 8.2 miles downstream from confluence of Spring Creek	*812
			Just upstream of State Highway 4	*816
			Just upstream of County Highway 6 (Peterson Bridge)	*821
			Approximately 600 feet downstream from Redwood County Boundary	*823
		Cottonwood River	At confluence with Minnesota River	*806
			Approximately 3000 feet downstream from the Chicago and North Western Railroad.	*806
			Approximately 150 feet upstream from the Chicago and North Western Railroad.	*807
			Approximately 200 feet upstram from Bridge Street	*810
			Approximately 200 feet downstream from State Highway 15	*811
			Just downstream from Dam	*819
			Just upstream from Dam	*831
			Just downstream from County Highway 13	*833
			Approximately 3.5 miles upstream from County Highway 13	*851
			Approximately 1.6 miles downstream from eastern corporate limits of the City of Springfield (limit of detailed study).	*1,009
			Approximately 1.3 miles downstream from eastern corporate limits of the City of Springfield.	*1,010
			Approximately 5000 feet downstream from eastern corporate limits of the City of Springfield.	*1,014
			Just downstream of eastern corporate limits of the City of Springfield	*1,017
			Just upstream of upstream corporate limits of the City of Springfield	*1,021
			Just downstream from County Highway 3	*1,023
			Approximately 3000 feet upstream from County Highway 3	*1,026

Maps available at the Brown County Courthouse, New Ulm, Minnesota.

Send comments to Mr. Virgil Wellner, Chairman, Board of Commissioners, Brown County Courthouse, New Ulm, Minnesota 56073.

Oklahoma	City of Collinsville, Tulsa and Rodgers Counties.	Caney River	Just downstream of U.S. Highway 169	*599
		Horsepen Creek	Just upstream of 129th East Avenue	*603
		Black Jack Creek	Approximately 500 feet downstream of Broadway Street, (146th Street North).	*609
			Just downstream of 126th Street North	*642
		Black Jack Creek Tributary A	Just upstream of Atchison, Topeka & Santa Fe Railroad	*625
			Just downstream of Garnett Road	*644
		East Creek	Just upstream of Broadway Street, (146th Street North)	*608
			Just downstream of 126th Street North	*664

Maps available for inspection at City Hall, 12th and Main Streets, Collinsville, Oklahoma 74021.

Send comments to Mayor John P. Philips or Ms. Wyne Eastin, City Clerk, City Hall, 12th and Main Streets, Collinsville, Oklahoma 74021.

Texas	City of El Paso, El Paso County	Arroyo 1	Just upstream of Doniphan Road	*3,756
			Just downstream of Interstate Highway 10 (Southbound Lanes)	*3,822
			Just upstream of Interstate Highway 10 (Northbound Lanes)	*3,824
		Arroyo 2	Just upstream of Doniphan Road	*3,753
			Just upstream of Service Road Interstate Highway 10 (Southbound)	*3,807
			Just upstream of Service Road Interstate Highway 10 (Northbound)	*3,814
			Just downstream of Thorn Dam	*3,848
			Just upstream of Thorn Dam	*3,891
			Just downstream of Lakehurst Road	*3,900
		Arroyo 2A	Just upstream of Lakehurst Road	*3,910
		Arroyo 3	Just downstream of Osborne Drive	*3,780
			Just upstream of Interstate Highway 10 (Northbound Lanes)	*3,804
			Just upstream of Restler Drive	*3,960
			Just downstream of West Wind Drive	*4,140
			Just upstream of West Wind Drive	*4,151
		Arroyo 3A	At West Wind Drive Extended	*4,071
		Arroyo 4	Just upstream of Doniphan Road	*3,745
			Just upstream of Interstate Highway 10 (Northbound Lanes)	*3,790
			Just downstream of Mesa Street	*3,880
			Just upstream of Mesa Street	*3,909
			Just downstream of North Wind Drive	*4,090
			Just upstream of North Wind Drive	*4,113
		Arroyo 5	Just downstream of Interstate Highway 10 (Southbound Lanes)	*3,765
			Just downstream of Mesa Street	*3,930
			Just upstream of Mesa Street	*3,971
		Arroyo 6	Just upstream of Doniphan Road	*3,745
			Just downstream of Delmar Avenue	*3,930
			Just upstream of Isabella Drive	*3,990
			Just upstream of Shadow Mountain Drive	*4,171
		Arroyo 6A	Just upstream of Thunderbird Drive	*4,382
		Arroyo 6B	Just upstream of Thunderbird Drive	*4,360
		Arroyo 7	Just downstream of Interstate Highway 10 (Southbound Lanes)	*3,789
			Just downstream of Mesa Street	*4,060
		Arroyo 8	Just upstream of Doniphan Road	*3,735
			Just downstream of Mesa Street	*4,040
			Just upstream of Mesa Street	*4,058
		Overland Flooding At Northwest of Arroyo 1—North of Mulberry Avenue.	At Atchison Topeka and Santa Fe Railway	*3,749

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Ponding area West of Arroyo 1 Through Arroyo B.	Just downstream of Frontera Road	*3,735
			Just upstream of Belva Road	*3,741
			Just downstream of Mulberry Avenue	*3,752
		Flow Path #11	Just downstream of East West Trail	*3,937
		Flow Path #13 (Drainage Channel #1).	Just upstream of U.S. Highway 54	*3,024
			Just upstream of McCombs Street	*3,957
			Just upstream of Rushing Drive	*3,990
			Just upstream of Kenworthy Drive	*4,037
		Flow Path #13A	Salinger Drive Extended	*4,003
		North East Pond	Donald Street	*3,818
		Flow Path #14 (Drainage Channel #2)	Just upstream of McCombs Street	*3,943
			Just upstream of McKinley Drive	*3,965
			Just upstream of Rushing Drive	*3,970
			Just upstream of Sunvalley Drive	*4,077
		Flow Path #15 *Shallow Flooding Sheet Flow.	Hugg Street	#2
			Just upstream of Wren Avenue	*3,888
			Just upstream of Fairbank's Drive	*3,934
		Flow Path #16	Just upstream of Hercules Avenue	*3,880
			Just upstream of Hondo Pass Drive	*3,886
		Flow Path #17 (McKelligon Canyon).	At the road to the Concrete Batch Plant	*4,262
			Just downstream of McKelligon Canyon Road (uppermost crossing before the confluence of Flow Path #17A.	4,580
		Flow Path #17A (McKelligon Canyon Tributary).	Just upstream of McKelligon Canyon Road	*4,648
		Flow Path #18	Just downstream of U.S. Highway 85 (Paisano Drive)	*3,735
			Just upstream of U.S. Highway 85 (Paisano Drive)	*3,743
		Flow Path #19	Just upstream of Atchison, Topeka, and Santa Fe Rankin Railway	*3,739
		Flow Path #20	Just upstream of Atchison, Topeka, and Santa Fe Railway	*3,732
			Just upstream of Mesa Street (U.S. Highway 80)	*4,088
		Flow Path #20A	Just downstream of Interstate Highway 10	*3,840
			Just upstream of Interstate Highway 10	*3,847
			Just upstream of Mesa Street (U.S. Highway 85, 185)	*4,131
		Flow Path #21	Just upstream Atchison Topeka and Santa Fe Railway	*3,740
			Just upstream of Southern Pacific Railroad (Eastermost Track)	*3,778
			Just downstream of Mesa Street	*3,880
			Just upstream of Mesa Street	*3,908
		Flow Path #21A	Just upstream of Southern Pacific Railroad	*3,778
			Just downstream of Interstate Highway 10	*3,800
			Just upstream of Stanton Street	*4,056
		Flow Path #22	Just upstream of Van Buren Dam (Reservoir No. 1)	*4,123
			Just downstream of Mall Dam (Approximately 1550 feet upstream of Reservoir No. 1).	*4,182
			Just upstream of Mall Dam (Approximately 1550 feet upstream of Reservoir No. 1).	*4,202
		Flow Path #23	Just downstream of Residential Street	*3,724
			Just downstream of University Avenue	*3,846
			Just upstream of University Avenue	*3,860
			Just downstream of Scenic Drive	*4,112
		Flow Path #24	Just upstream of La Luz Avenue	*3,744
			Just upstream of Bliss Avenue	*3,759
			Just upstream of Hanting Avenue	*3,780
		Flow Path #25	Just upstream of Alameda Avenue	*3,702
			Just upstream of Durazno Avenue	*3,705
		Flow Path #26 (Phelps Dodge)	At Phelps Dodge Detention Basin	*3,750
			Just upstream of Hawkings Boulevard	*3,772
		Flow Path #27 Playa Drain	Just upstream of Americas Avenue (State Highway 375)	*3,666
			Just upstream of Knights Drive	*3,671
			Just upstream of George Orr Road	*3,686
			Just downstream of Ascarate Wasteway	*3,688
			Just upstream of Ascarate Street	*3,690
		Flow Path #27A (Left Bank Lateral Street, Flow of Flow Path #27).	North of Alameda Avenue	*3,697
		Flow Path #28 (Mesa Drain and Interceptor)	Just downstream of Carl Longuemari Road	*3,662
			Just upstream of Pendale Drive	*3,673
			Just upstream of Yarbrough Drive	*3,682
			Just upstream of Butcher Road	*3,691
		Flow Path #28A (Mesa Drain Below Interceptor).	Just upstream of Americas Avenue	*3,665
			Just upstream of Ivey Road	*3,668
		Flow Path #29 *Shallow Flooding	Shallow Flooding Sheet Flow along Phoenix Drive	#21
			Just upstream of Interstate Highway 10	*3,835
			Just upstream of Jugarberry Drive	*3,860
		Flow Path #30	Just upstream of Mauer Drive	*3,693
		Flow Path #31 (Jesuit Drain)	Just upstream of Ryland Drive	*3,720
			Just upstream of Burnham Road	*3,771
		Flow Path #32	Just upstream of Geranium Drive	*3,683
			Just upstream of Northbound Frontage Road of Interstate Highway 10	*3,760
		Flow Path #32A	Confluence of Flow Path #32 and Flow Path #32A	*3,766
		Flow Path #33 (Middle Drain)	Just upstream of North Cames Road	*3,667
			Just upstream of Zaragosa Road	*3,670
		Middle Drain Below Interceptor	Just downstream of Inglewood Drive	*3,665
		Flow Path #36	Approximately 450 feet upstream of the confluence of Mesa Spur Drain and Flow Path #36.	*3,663
		Flow Path #37 (Franklin Drain)	Just upstream of Americas Avenue	*3,664
			Just upstream of Carl Longuemare Road	*3,665
		Shallow Flooding along Franklin Drain (Below Flow Path #28, Mesa Drain and Interceptor.	Just downstream Unnamed Road (At the end of Carl Longuemare Road).	*3,660

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Ponding Area P1	At the Diat Road	*3,939
		Ponding Area P2	Entire Area	*3,938
		Ponding Area P3	At Montana Street	*3,937
		Ponding Area P4	Entire Area	*3,965
		Ponding Area P5	Entire Area	*3,966
		Ponding Area P6	At Album Road	*3,945
		Ponding Area P7	At Edgemere Boulevard	*3,965
		Ponding Area P8	At Hitchlock Road	*3,969
		Ponding Area P9	At East Glen Drive	*3,964
		Ponding Area P10	At Pico Norte	*3,945
		Ponding Area P11	Entire Area	*3,965
		Ponding Area P12	Entire Area	*3,967
		Shallow Flooding Sheet Flow	East of Lee Trevino Drive and Ponding Areas P11 and P12	#2
		Ponding Area P13	Entire Area	*3,963
		Ponding Area P14	Entire Area	*3,963
		Ponding Area P15	Entire Area	*3,974
		Ponding Area P16	At Zaragosa Road	*4,003
		Lomaland Basin	Entire Area	*3,683
		*Overflow from Reservoir 1	At Mountain Avenue	#2
		Shallow Floodeast Bank of Juan De Herrera Lateral Branch "B".	Entire Area	*3,668
		Shallow Flooding, West Bank of Ysleta Lateral.	At America's Avenue	*3,665
		Shallow Flooding, West of Flow Path #27 Playa Drain.	Bernadine Avenue	*3,677
		Shallow Flooding, West of Flow Path #28 (Mesa Drain and Interceptor).	At Oro Verde	*3,664
		Playa Lateral	Approximately 300 feet Southwest of Zaragosa Road	*3,662

* Shallow Flooding Sheet Flow (Zone AO).

Maps available for inspection at City Engineer's Office, City Hall, #2 Civic Center Plaza, El Paso, Texas 79901.

Send comments to Mayor Thomas D. Westfall or Mr. Leon Metz, Executive Assistant, City Hall, #2 Civic Center Plaza, El Paso, Texas 79901.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: October 6, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-32534 Filed 10-21-80; 8:45]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA 5916]

National Flood Insurance Program; Proposed Map Combination for Georgetown County and Waccamaw Neck Flood District, S.C.

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed map combination described below.

The proposed map combination will be the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Map and other information showing the detailed outlines of the flood-prone areas and the proposed map combination are available for review at the County Council's Office, County Courthouse, Georgetown, South Carolina.

Send comments to: Mr. Alfred M. Schooler, President, County Council, County Courthouse, Georgetown County, Post Office Box 1270, Georgetown, South Carolina 29440.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation and Engineering Office, National Flood Insurance Program, 451 Seventh Street, S.W., Washington, D.C. 20410 (202) 755–6570 or toll free line (800) 424–8872 or (800) 424–8873.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed map combination of the FIRM for Waccamaw Neck Flood District and the FHBM for Georgetown County in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a) (presently appearing at its former Section, 24 CFR 1917.4(a)).

The map combination together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. The proposed map will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed map combination for selected locations is:

Source of flooding	Location	Zone
Waccamaw Neck Flood District.	Southeastern section of Georgetown County between Intercoastal Waterway and the Atlantic Ocean.	V14 A14 B C A

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: September 5, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-32538 Filed 10-21-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5913]

National Flood Insurance Program; Proposed Zone and Base Flood Elevation Determinations for the City of San Jacinto, Riverside County, Calif.

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed zones and base flood elevations as described below.

The proposed zone and base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed zones and base flood elevations are available for review at the Planning Department, City Hall, 201 East Main Street, San Jacinto, California.

Send comments to: The Honorable Bertha Hazeltine, Mayor, City of San Jacinto, 201 East Main Street, San Jacinto, California 92383.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation & Engineering Office, National Flood Insurance Program, 451 Seventh Street, S.W., Washinton, DC 20410 (202) 755–6570 or toll free line (800) 424–8872 (in Alaska and Hawaii call toll free (800) 424–9080).

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed zones and base flood elevations for the City of San Jacinto, California, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These zones and base flood elevations, together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed zones and base flood elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations in the recently annexed areas are:

Source of flooding	Location	Elevation (national geodetic vertical datum)
Bautista Wash	Just downstream of Grand Avenue.	1,523
	Upstream of State Street	1,534
	Just downstream of Hewitt Street.	1,575

An additional special flood hazard area, identified as Zone A, is proposed north of Esplanade Avenue and east of State Street.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administration)

Issued: August 28, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-32535 Filed 10-21-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5915]

National Flood Insurance Program; Proposed Zone Designations for the Village of Forest Park, Cook County, Ill.

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed zone designations described below.

The proposed zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety-days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed zone designations are available for review at 517 Des Plaines Avenue, Forest Park, Illinois.

Send comments to: The Honorable Fred E. Marunde, Village of Forest Park, 517 Des Plaines Avenue, Forest Park, Illinois 60130.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation & Engineering Office, National Flood Insurance Program, 451 Seventh Street, S.W., Washington, D.C. 20410 (202) 755–6570 or toll free line (800) 424–8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed zone designations for the Village of Forest Park, Illinois, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

Zone designations and base (100–year) flood elevations, together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed designations are:

Zone A along Des Plaines River in the area added to the map south of Roosevelt Road and west of Des Plaines Avenue.

Zone C in a portion of the area added to the map adjacent to Roosevelt Road.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: September 5, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-32537 Filed 10-21-80; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15 and 94

[Docket No. 79-337; RM-3241; RM-3678]

Facilitating Operation of Low Power, Limited Coverage Systems in the 22.0–23.6 GHz Band and Creating a New Class of Low Power Unlicensed Microwave Device in the 24 GHz Ban; Order Extending Time for Filing Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Further notice of proposed rulemaking; reply comments; extension of time.

SUMMARY: This order Extends Time for Filing Reply Comments to the Further Notice of Proposed Rule Making in Docket 79–337 which proposes the amendment of Rule Parts 94 and 15 to facilitate the operation of low power communication systems in the 22.0–23.6 GHz band and creating a new class of low power unlicensed microwave device in the 24 GHz band.

DATE: Reply comments are now due on or before October 29, 1980.

ADDRESS: Federal Communications Commission, 1919 M Street, NW Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Donald D. Campbell, Office of Science and Technology, Washington, D.C. 20554 (202) 653–8176.

In the matter of amendment of Part 94 of the Commission's rules and regulations to facilitate operation of low power, limited coverage systems in the 22.0–23.6 GHz band, Docket No. 79–337, (RM–3241), and amendment of Part 15 of the Commission's Rules to create a new class of low power unlicensed microwave device in the 24 GHz band, RM–3678.

Adopted: October 9, 1980.

Released: October 10, 1980.

1. On 3 October 1980, M/A–COM, Incorporated (M/A–COM) petitioned the Commission requesting that a two week extension of time be granted for filing Reply Comments to the Further Notice of Proposed Rule Making in the above-captioned proceeding. The Further Notice specified that Comments are due on 29 September 1980 and that Reply Comments are due on 14 October 1980. (45 FR 55775, August 21, 1980)

2. M/A–COM states that they filed Comments on 29 September 1980, and have thus far received copies of only two other Comments that were filed. M/A–COM goes on to state that since there was no formal service list established and no requirement that Comment be served upon interested parties, time was lost in trying to determine what Comments were filed. Furthermore, M/A–COM states that the Comments they have received raise complex technical issues which cannot be addressed in the brief period allotted Reply Comments.

3. The Commission agrees that prompt action is desirable in this proceeding, but feels that M/A–COM's request for an extention of time is in the public interest because it is desirable to establish a thorough and complete record in this proceeding. Furthermore, since we perceive no harm to any party nor have we received any objections in this matter, the request for an extension of time to file Reply Comments is granted.

4. Accordingly, it is ordered, pursuant to § 0.241(d) of the Commission's rules and regulation that the date for filing Reply Comments in this proceeding is extended to October 29, 1980.

Federal Communications Commission.

S. J. Lukasik,

Chief Scientist.

[FR Doc 80-32939 Filed 10-21-80; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[Gen. Docket No. 78-391; FCC 80-543]

Improvements to UHF Television Reception; Further Notice of Inquiry

AGENCY: Federal Communications Commission.

ACTION: Further notice of inquiry and notice of proposed rulemaking.

SUMMARY: Action taken herein sets dates for comments and reply comments in Docket 78–391, specifically as they relate to the Commission's UHF Comparability Task Force's Final Report. That report summarizes the findings of the two year effort and presents a plan to aid viewers in improved UHF television reception. That plan is embodied in the *Further Notice of Inquiry and Notice of Proposed Rulemaking*. We think it would be helpful if we had the benefit of public comment before proceeding further with these long range recommendations. We therefore request comments by the public and interested parties on the entire issue. Therefore the FCC is requesting comments on the Final Report and on several proposed changes in some of our technical rules.

DATE: Comments must be filed on or before January 5, 1981. Reply comments must be filed on or before February 19, 1981.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Philip Gieseler, Office of Plans and Policy (202) 653–5940.

SUPPLEMENTARY INFORMATION:

In the matter of Improvements to UHF Television Reception, General Docket No. 78–391.

Adopted: September 18, 1980.

Released: October 24, 1980.

1. The Commission has today received the *Final Report* of its UHF Comparability Task Force (*Final Report*).[1] The report covers a two-year effort to explore the UHF handicap and develop a plan to improve the comparability of UFH television with VHF television. This effort was funded by a supplemental appropriation from the 95th Congress for the Commission to conduct this study.[2]

[1] The Executive Summary of that report is Attachment I of this Notice. A complete copy of the *Staff Report on Comparability for UHF Television: Final Report* has been placed in the Docket. A limited number of copies of the Report are available from the Office of Public Affairs.

[2] Department of State, Justice and Commerce, the Judiciary, and Related Agencies Appropriation Bill, 1979. See also Senate Report 95—5th Cong., 2nd Sess. (July 28, 1978).

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2. We initially requested public participation in this effort in a *Notice of Inquiry*, 70 FCC 2d 1720 (1978) in this docket. Subsequent to that, comments have been requested on the Task Force's Preliminary Report, 44 FR 60112 (1979) and several contract reports.[3] We now request comments on the *Final Report* and on several proposal changes in some of our technical rules.

3. *Further Notice of Inquiry.* The *Final Report* is a comprehensive examination of the problems facing UHF. Included in the report are many long range actions the Commission may wish to undertake. We think it would be helpful if we had the benefit of public comment before proceed further with these long range recommendations. We, therefore, request comments by the public and interested parties on the entire report. One specific area which we hope will be addressed concerns the proposed FCC program for antenna measurements. We seek comments concerning which of the many characteristics or parameters of antennas should be measured and which of these measurements should be available to the public. Additionally, comments might address how the information should be disseminated. The extent to which the FCC, private contractors, or manufacturers participate in the measurement program may vary, and comment is specifically requested as to the form that the measurement program should take.

4. *Notice of Proposed Rulemaking.* In addition to their longer range proposals, the Task Force also recommends immediate changes of specific rules.[4] We find these proposals to have merit and request comments on whether we should our rules accordingly.

Information on Comments

5. *Who should file comments?* We urge the viewing public, television equipment manufacturers, broadcasters, and all other interested parties to participate in this inquiry. You may participate by sending information and opinions that are relevant to the questions raised in this Notice.

6. *How comments should be prepared.* Your comments must clearly show this docket number "General Docket No. 78-391," at the top of the first page. Please label your responses so that it will be clear whether you are addressing a specific proposed rule change or a more general issue. If your comments are general, and not related to a specific rule change, please state the issue being addressed.

7. *How may copies should be sent?* Sec. 1.419 of the rules requires that you file the original and five copies of your comments. If you want each Commissioner to receive a persoanl copy of your comments, you should include 8 additional copies. The FCC will fully consider all comments, even if the original is filed.

8. *Where to send comments.* Send your comments to: Secretary, Federal Communications Commission, Washington, D.C. 10554.

9. *How to see the comments of other parties.* All comments will be available for public inspection in the FCC Dockets Reference Room, Room 239, 1919 M St., N.W., Washington, D.C. The FCC is open weekdays between 8:00 am and 5:30 pm. You can reply to comments submitted by another party by following the same procedure as you do for commenting.

10. *Deadline for filing Comments.* Comments must be received by January 5, 1981. You are encouraged to submit a one-page summary of your comments at the time you file. Replies to comments are due by February 19, 1981.

11. This action is taken pursuant to the authority contained in Sections 4(i), 302, 303(f), (g), (r), and (s), 330, and 403 of the Communications Act as amended. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a written statement indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order. The contact person for further information regarding this proceeding is Philip Gieseler (202) 653-5940.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Attachment I—Executive Summary; Staff Report on Comparability for UHF Television: Final Report

In 1952, the Federal Communications Commission released its *Sixth Report and Order* on television allocations, which specified the use of both the very high frequency band (VHF—channels 2 through 13) and the ultra-high frequency band (UHF—channels 14 through 83) for broadcast television. Since that time, development of a fully effective television service has been hindered by the disparity in technical characteristics associated with these bands. This technical disadvantage and the economic difficulties stemming from it have become known as the "UHF handicap."

The Federal Communications Commission and Congress have sought to foster UHF television because the many UHF channels have the potential to make a wide diversity of television services available to the public. Several improvements in the UHF service has been made, but a significant disparity between the UHF and VHF services continues to exist.

In 1978, Congress directed the FCC to evaluate further improvements in the UHF service, and the UHF Comparability Task Force was formed. It was the Task Force's hope that the need for continued Government attention to changes and improvements in the UHF service could be laid to rest if a comprehensive investigation, weighing the costs and benefits of various improvements, was undertaken.

As a baseline for its analysis of the UHF television service, the Task Force relied on a detailed engineering project undertaken in New York City by the FCC in the early 1960's. That project attempted to determine whether UHF television could be received adequately in a dense urban area such as New York City, and in the surrounding suburbs. The result was overwhelmingly positive: UHF reception in most cases could be just as adequate as VHF reception. Despite this technical result, a UHF handicap persists. We therefore concluded that improving the UHF television service not only involved a detailed engineering analysis, but also required a careful investigation of the underlying economic and social issues.

The Survey of Television Viewers

In order to test our beliefs that the underlying causes of the UHF handicap might be economic and social as well as technical, and to provide the information needed for improvements to the UHF service, the Task Force contracted with Louis Harris and Associates to determine the attitudes and experiences of the public concerning UHF television.[1] The Harris survey confirms the existence of UHF handicaps in programming, in channel selection, and in picture quality. Furthermore, it contains a wealth of information about viewer's receiving equipment that has been invaluable in formulating effective recommendations. The results of the Harris survey are given in Chapter 2, reported in more detail in Harris (1980), and summarized below.

Programming

The programming on a channel is the main determinant of whether a viewer will watch that channel. Only 1 percent of the viewers in the survey who said that none of their favorite programs were shown on UHF had watched UHF stations the previous day, while 50 percent of those who said that all or most of their favorite programs were shown on UHF had watched UHF the previous day. The audience handicap virtually disappears when UHF network affiliates are compared to VHF network affiliates. This suggests that viewers will do what is needed to receive adequate UHF reception when they are particularly attracted to the programming.

Channel Selection

Forty-seven per cent of the viewers surveyed felt that it was easier to tune VHF channels than UHF channels, 33 per cent felt there was no difference in tuning, and 3 per cent felt that it was easier to tune UHF channels. Viewers reported UHF and VHF channel selection was more comparable with certain types of channel selectors. With some of the electronically-tuned selectors, over half the respondents indicated that there was no difference in ease of tuning between UHF and VHF channels.

Picture Quality

The most telling result of the Louis Harris survey was that the reception quality of UHF signals is vastly inferior to the quality of VHF signals. In communities that should be able to receive at least one UHF and one VHF station (based on FCC technical predictions of television coverage), 1 per cent of the households were unable to receive a VHF station, but 27 per cent could not receive a UHF station. Furthermore, 91 per cent of these households could receive at least one VHF station with good or excellent picture quality, compared to only 49 per cent who could receive a UHF station with good or excellent picture quality.

These results stand in striking contrast to previous technical estimates of the UHF handicap. In particular, the New York City research indicated that UHF suffered only a slight disadvantage with respect to VHF; it was found that UHF reception in the urban and suburban area surrounding New York City was somewhat inferior to VHF reception when indoor receiving antennas were used, but that this difference almost completely disappeared when outdoor antennas were used (Deitz, 1962). The UHF Comparability Task Force's own technical estimates, as given in our preliminary report (Gieseler *et al.*, 1979), confirmed the New York City result that most viewers should be able to receive adequate UHF reception. There is an obvious discrepancy between the UHF handicap as measured by traditional engineering methods and the handicap that the Harris survey determined was actually experienced by the public.

There is one chief reason that accounts for the survey results. This one reason must be underscored because it accounts for the vast majority of the UHF picture quality handicap: *Members of the public have not installed adequate receiving antenna systems for good UHF reception.* The previous technical estimates of UHF coverage have assumed and the New York City equipment used UHF receiving antenna systems of a quality far superior to those that are in general use. Although good quality UHF receiving equipment is available, it is not being used to the extent necessary for UHF channels to be received as well as VHF channels. In the Harris survey, 42 per cent of the sample had an outdoor or attic receiving antenna for VHF, while only 24 per cent reported an outdoor or attic antenna for UHF. Of the 48 per cent of the sample with indoor antennas only, 29 percent of this group did not report any UHF indoor antenna. Thus we find that members of the public are not even installing UHF receiving equipment.

Even for those who have installed UHF receiving equipment, there is a significant disadvantage: snow caused by weak signals appeared less frequently on VHF channels with indoor antennas than on UHF channels with outdoor UHF antennas. Thus we find that even members of the public who are installing UHF equipment are not obtaining the quality of service that the New York City project determined could be obtained from good receiving equipment.

Attention has been focused previously on improvements in televison receivers that would make them better able to display a weak UHF signal. Broadcasters have also given attention to raising their transmitted power so a stronger signal can be broadcast to the public. Both of these are worthwhile goals and will offer improvements to UHF television, but these improvements pale in comparison to the improvement that could be achieved through the installation of adequate UHF receiving antenna systems. If members of the public who are now using an indoor UHF receiving antenna would change to an outdoor receiving system, they could easily achieve an improvement more than five times as effective as the improvement obtained if the television station were to double its transmitter power.[2] No new technology is needed for this improvement, just a willingness by the public to install these systems.

Twenty-seven percent of the population predicted to receive adequate reception do not receive *any* picture from the strongest UHF station available to them. Thus, the order of magnitude of the UHF picture quality handicap is much larger than can be resolved by improvements in television receivers and increases in transmit power alone. Major improvement in UHF television reception will be achieved in only one way: Through the installation of adequate UHF receiving antenna systems by the public.

Receiving Antenna Systems

In view of the importance of the receiving antenna system to the reduction of the UHF handicap, the Task Force has given substantial attention to this area. Four separate reports (listed in Appendix A) have been written on various aspects of the receiving antenna system, and Chapter 2 contains the results of this extensive analysis.

We have found that UHF television reception can be much improved with existing and available technology. On the basis of the large volume of information compiled, we have made six distinct recommendations for achieving improved UHF reception:

1. An outdoor antenna is much more likely to provide better picture quality than an indoor antenna.

2. Separate UHF and VHF outdoor antennas can provide better performance on UHF than can a

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[1] The Harris nationwide survey was restricted to areas in or immediately surrounding the predicted coverage areas of both UHF and VHF stations. Cable television households were excluded from the survey, although 21 percent of the households in the sample area were found to subscribe to cable.

[2] Doubling a station's power can produce a 3 dB improvement to UHF signal strength. Improving the weak signal performance of television receivers will produce about this same change. The installation of an outdoor receiving antenna system can easily provide a 15 dB improvement and can provide a much larger improvement—30 dB or more. A dB (or decibel) is an engineering notation that describes relative size. An improvement of 15 dB is much better than an improvement of 3 dB. In 1950, the Television Allocations Study Organization specified various grades of television picture quality: excellent, fine, passable, marginal, inferior and unusable (TASO, 1959). A 6 dB improvement provides about one TASO grade of picture quality improvement.

[3] C. Chapin Cutler, *New Technical Opportunities for UHF Television* (February 1980), R. G. FitzGerrell, *Indoor Television Antenna Performance* (October 1979), 45 FR 14233 (1968); J. B. O'Neal, Jr., *Television Receiver Noise Figure Study* (March 1980), 45 FR 23478 (1980).

[4] These are the proposed changes to Part 15 of the FCC Rules found in Appendix C of the *Final Report* and are reproduced here as Attachment II.

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combination UHF/VHF antenna, at little or no extra cost.

3. Four-bay and eight-bay "bowtie" UHF antennas provide good performance and low cost. (The most expensive antennas are not necessarily the best.) A two-bay bowtie UHF antenna is a good choice for an indoor antenna.

4. Antennas should be installed by "probing" for the best receiving location; signal strength can vary significantly over a very short distance; thus the antenna should be installed at the location that provides the best picture quality.

5. Shielded cable (either coax or shielded twin lead) is much better than conventional "twin-lead" cable to connect an outdoor antenna to a TV set. RG–6 is a good quality cable. Coaxial cable should be used with baluns when connected to the antenna and set.

6. Preamplifiers that boost the TV signal may provide improved UHF picture quality, but a television serviceman should be consulted about their use, since in the wrong circumstances "preamps" can cause interference.

A major conclusion reached by the Task Force is that although good-quality UHF receiving equipment is not necessarily expensive, consumers are not provided with the information needed to compare adequately the quality of television receiving equipment. For instance, the major measure of antenna performance is the "gain" of the antenna, but there are many different ways to measure antenna gain figures. While several of these are perfectly valid approaches, the fact that there is no standard reference makes meaningful comparisons of antenna gains extremely difficult. Part of the solution to helping the public choose good-quality receiving systems is to develop a standard and accepted measure for antenna gain, so that claims by manufacturers can be readily compared one against the other. We recommend a government measurement program that can eventually evolve such a standard. If this program is as successful and low cost as we anticipate, the Commission can extend the program to cover other receiving components such as transmission line and preamplifiers.

Such a procedure would be similar to a previous program undertaken by the FTC for the measurement of power output of stereo amplifiers. There are many ways to measure power output, and confusion was evidently caused by advertising claims using many different and non-comparable measurements. Due to FTC involvement, manufacturers now state their power output in a standardized way that allows direct comparison among different pieces of equipment.

The Television Receiver

We have determined that further improvements in the performance of television receivers are not as critical as is the installation of an adequate receiving antenna system. The receiver is nonetheless a vital part of the full television system. We present our analysis and conclusions regarding television receivers in Chapter 3.

The FCC was given the authority to regulate the UHF performance of television receivers by the All-Channel Television Receiver Act, and this regulation comes in four forms. First, receivers must meet certain standards for their ability to receive and display a weak UHF signal; this is required by rules regulating the maximum UHF noise figure, which is a technical measure for weak signal performance. Second, TV receivers must meet certain requirements for channel selection and tuning of UHF channels. Third, television receivers must be capable of adequately receiving all channels allocated to television broadcasting. Fourth, in some cases a television receiver must offer a design feature for UHF if it is provided for VHF. The Task Force has evaluated each of these types of regulation, and has recommended changes that should cost-effectively assist UHF television.

Weak Signal Performance

In 1978, the FCC lowered the maximum UHF noise figure requirement, and this is expected to improve significantly the weak signal performance of television receivers. The Task Force evaluated whether further improvements should be sought in this aspect of receiver design. We concluded that the 12 dB maximum noise figure standard that becomes effective in 1982 will achieve comparable performance for UHF and VHF noise figures, and that further reductions in noise figure beyond the 12 dB limit need not be sought.[3]

We also confirmed that UHF noise figure is not a fully accurate indicator of weak signal performance. Two receivers with the same noise figure can have a different response to a relevision input signal. This problem is now being evaluated within the Office of Science and Technology of the FCC, and we recommend that it be given a high priority. If a valid measure for weak signal performance is obtained, we recommend that this more accurate measurement be used as the standard by which the FCC judges the weak signal performance of television receivers.

In addition to improving the reception of existing UHF signals, the FCC has been seeking means to provide many more television services to an area. Certain combinations of UHF frequencies produce interference in current television receivers. In order to decrease the likelihood of interference, the FCC allocates UHF channels so as to avoid the undesirable channel combinations in the same area. These undesirable channel combinations are known as "UHF taboos," and restrict the total number of stations that can serve the public. If the taboos can be reduced or eliminated, it will be possible to allocate more UHF channels to an area without interference being caused.

Texas Instruments has previously developed an Improved Television Receiver for the FCC that exhibited much better immunity to interference, but the UHF noise figure of that design was higher than desired (Ash and Hartmann, 1978). RF Monolithics, Inc. has been given a follow-on contract to improve on the Texas Instruments design; in particular they are seeking to maintain resistance to interference while achieving a very good UHF noise figure. The RF Monolithics design also will use electronic tuning that offers comparable channel selection for UHF and VHF signals. We are hopeful that this prototype design will eventually lead to a new generation of television receivers that have very good UHF weak signal performance, fully comparable tuning for UHF and VHF channels, and high resistance to interference that will allow many more UHF stations to operate in an area. This development work should be completed later in calendar year 1980.

Channel Selection

Although it is often presumed that the newer types of electronic tuners offer comparable selection of all television channels, the Task Force is seeking to determine definitively whether differences in channel selectors produce different levels of UHF viewing. This will be used to determine what specific rules regarding channel selectors will best aid UHF television, and what additional rules should be imposed by the Commission. A detailed research project to accomplish this will not be completed until late in 1980, so the Task Force will not make comprehensive recommendations regarding the desirability of the various electronically-tuned channel selector systems until that research is complete.

We have, however, evaluated the existing channel selector rules and the history behind them, and have suggested certain revisions and consolidation of these rules where the need for changes appears immediately desirable. We expect these proposed changes, which are detailed in Appendix C, to benefit UHF but to have a small impact on receiver manufacturers.

All-Channel Requirements

The Commission has the authority to require television receivers to be capable of receiving all channels allocated to television broadcasting. The frequencies from 806 to 890 Megahertz (MHz) once were allocated to television broadcasting as channels 70 to 83, but these frequencies have been since reallocated to the land mobile services. We believe that the Commission should make it clear that they intend the All-Channel requirements to apply only to frequencies actually allocated to television broadcasting, and that noise figure requirements, comparable tuning and any other similar requirements do not apply to what once were television broadcast channels 70 to 83.

This issue is complicated by the fact that several hundred low-power television translator stations still operate on these old frequencies, on a secondary basis to land mobile operations.[4] These stations have been gradually moving to other television channels of their own accord, however, and our suggestion, if implemented, would not impose a deadline for completing this transition. The benefit of clarifying the all-channel requirements so that they do not apply to channels 70 to 83 is that receiver manufacturers could design their UHF systems to operate over a smaller total bandwidth, which can improve performance, allow for better channel selector designs and save costs. We have concluded that these benefits are clearly worthwhile even in view of the impact of this change on translator stations operating on channels 70 to 83.

Another factor regarding the all-channel requirements is that the total number of tuning positions on some television receivers is less than the total number of stations available in many areas. Some receivers have buttons for only twelve TV channels, so that those viewers in areas receiving thirteen or more channels must eliminate one or more stations from their readily available viewing options.[5] Some TV receivers have a position for each of the twelve VHF channels and six positions for any UHF channel, so that those viewers in areas receiving seven or more UHF channels must eliminate one or more of these stations from their viewing options. We believe that the underlying goal of the All-Channel Television Receiver Act was to provide all viewers with the opportunity to watch all television stations available to them. Television receivers with a limited number of tuning positions are inconsistent with that goal.

On the other hand, these types of tuners may aid UHF stations because they generally provide electronic tuning and offer improved tuning for those UHF stations that have been pre-selected and loaded onto the system. A balancing of the advantages and disadvantages of these tuners may be required. We therefore are including this issue in the comprehensive examination of electronically-tuned channel selection systems that will be completed later this year.

Equality Regulations

Current Commission rules require that if a VHF antenna is attached by the manufacturer to a receiver, a UHF antenna must also be attached § 15.65(b) of the FCC Rules). Also, if tuning aids such as remote control are included with a set, they must operate for both VHF and UHF. These rules are "equality" regulations, in that there is no absolute requirement to include these features, but if they are included, they must apply equally for UHF and VHF. Our review indicates that this concept of equality regulation should be extended to apply to other aspects of receiver design.

In particular, we have found that manufacturers often supply a coaxial connector for attaching a VHF receiving antenna, but do not supply a like connector for UHF. Furthermore, some manufacturers use coaxial or shielded cable inside the set for the VHF frequencies but fail to use this type of cable for UHF. In view of our determination that coaxial and shielded cable provide better performance than unshielded cable, we recommend that reception aids such as these be made subject to the Commission's equality regulations. Manufacturers would not be forced to include these features, but if they included them for VHF, they would likewise need to include them for UHF.

Transmission Systems

In Chapter 5, we note that UHF broadcasters will always have higher transmission costs than VHF broadcasters. The transmitting and the electrical power costs of UHF stations can be easily ten times those of VHF stations. This is due, first, to the fact that UHF broadcasters must operate with higher transmitter power to achieve coverage close to equivalent with VHF stations, and, second, to the fact that the technology used for UHF transmission is inherently less efficient in converting electrical power to transmitted power. Improvement in transmitter efficiency is possible.

The Task Force has attempted to be a catalytic agent in increasing the broadcasters' interest in improved efficiency transmission systems. At present, many UHF stations do not find it profitable to operate at high power due to the costs involved. If technologies can be developed for improving transmitter efficiency, some broadcasters might then find it cost-effective to increase their station's power, thereby sending out a stronger signal for reception by the public. Both the station and the public might therefore benefit from an improvement in the efficiency of transmitting techniques.

The Public Broadcasting Service (PBS) has been investigating the prospects for improved transmitter efficiency, and has been working with special tuning techniques for transmitter tubes and with a device known as a modulating anode pulser. Both of these techniques have been known to improve transmitter efficiency; but PBS has conducted experiments in which the two techniques were combined, and a large efficiency increase has been obtained.

The Task Force has also evaluated several technologies that would substantially improve the efficiency of UHF transmission and thereby save power costs. One very promising technique is the multi-element depressed collector (MDC) which could offer three times the efficiency of existing transmitter tubes. it is estimated that the development of MDC would require one to two million dollars for development of a transmitter tube ready for production, but in view of the power savings involved, the MDC technology appears to be cost effective. it is expected that the contributions of the Task Force, PBS, and others will receive due consideration by the broadcast community in order to determine which

[3] Previously, the maximum UHF noise figure allowable on any channel was 18 dB, and TV receivers had an average noise figure of about 12 dB (Lines, 1972). Under the new requirement, UHF noise figures average about 9 dB, and should improve further when a stricter standard becomes effective in 1982. VHF noise figures average about 6 to 7 dB (Kalagian, 1977).

[4] A television translator is a low power TV station, generally used in rural areas, that rebroadcasts a television station's signals to areas unable to receive the TV signals directly.

[5] Each of the buttons can be reset for a different station, but with some difficulty.

are the most appealing and should be further pursued.

In the course of our work, we made several other findings, each of which individually can make small improvements in efficiency and which when combined may make a sizable difference. We found that the use of aluminum waveguide rather than conventional transmission line now generally is cost effective. We determined that, although high antenna towers can be very expensive, they may in some cases be a profitable alternative to higher power at lower antenna height.

We have also found two areas where FCC rules may be inhibiting the use of possible cost-saving techniques, and are recommending that consideration be given to modifying these rules. First, most stations maintain a margin in their transmitting operations that allow them to operate at up to 110 percent of their authorized power. Due to the nature of UHF transmitter operation, this reduces the efficiency of transmission. FCC rules, though not specifically requiring this, may be read to imply that the ability to operate at 110 percent of authorized power is preferable. We recommend that these rues be clarified to make it clear that this margin is not required.

Second, FCC rules also require that the aural power of the broadcast station be between 10 and 20 percent of the visual broadcast power. Some stations believe that they can adequately serve the public with a smaller ratio or aural-to-visual power. Since this could potentially save on power costs, it should also be considered, at least on an experimental basis.

Consumer and Broadcaster Choice

Commercial broadcasters choose their transmitter power, their antenna height, and their programing expenses at a level that they believe will achieve maximum profits. Noncommercial broadcasters do not maximize profits, but consider similar tradeoffs in benefits and costs when they make their choices. Viewers choose their receiving equipment based on the quality of service they desire and the cost of receiving that service. In Chapter 6, we have conducted an analysis of broadcasters' choices of power and antenna height and of viewers' choices of receiving antenna equipment.

Broadcaster Choice

UHF stations, unlike VHF stations, generally do not operate at their maximum allowed effective radiated power (ERP) because it is not the most profitable power level.[6] Stations select their ERP and antenna height in predicatable ways, depending on the characteristics of their market. These profit-maximizing choices would cause UHF stations to serve somewhat smaller populations than VHF stations, even if viewers used comparable receiving equipent for both UHF and VHF.

We also analyzed whether improvements in UHF transmitter efficiency might make it profitable for UHF stations to transmit at higher power. We found that stations in some markets might increase their power, although the increases can be expected to be 3 dB or less. In many cases, improved transmitter efficiency alone will not make it profitable to increase power.

The implication of this conclusion is that, even if viewers use comparable quality receiving equipment for UHF and VHF, UHF stations usually will reach smaller potential audiences than VHF stations in the same market. Consumer choices of receiving antenna equipment increase this UHF reception disadvantage.

Consumer Choice

Consumers generally have much better VHF television reception than they have UHF reception. The major reason that this is true is that virtually all households have equipment sufficient for reception of the VHF stations in their area, but many households within the reception area of UHF stations either do not have any UHF receiving equipment or have inadequate equipment. These results strongly imply that many consumers do not consider it worth the effort necessary for adequate UHF television reception. If they did, more consumers would be purchasing and installing adequate UHF receiving equipment.

Since a large cause of the UHF picture quality hadicap is a lack of any UHF receiving antenna equipment, consumers as a whole must decide that receiption of UHF stations is worth the cost of this equipment for the handicap to be substantially reduced. At present, however, consumers are not making this choice. This implies that large reductions in the UHF reception disadvantage will depend, partly, on the programing service that UHF stations offer to viewers.

Consumer Information

Although many consumers who have poor UHF reception have not attempted to get good reception, many other consumers have attempted to receive UHF channels with unsatisfactory results. On the basis of our technical and survey work, we have found that, for the same expense, these consumers could have gotten better reception if they had known the best receiving equipment to buy. There is an information gap because consumers who are interested in obtaining adequate reception are not provided the information required to make the best purchasing decisions. This appears to be a failure in the ability of the marketplace to synthesize complex technical information into a form readily understood and accepted by the public.

We have analyzed how this information flow can be improved, and our proposal for improving consumer information falls into two parts:

- A program for measuring the performance of receiving antenna equipment, and making this information available to the public.
- A program for providing additional information concerning UHF reception to the public and to those who wish to inform the public.

The first program, having to do with receiving antenna systems, has already been discussed. The second program involves a combination of information released by the government and use of this information by those in the industry who have an interest in improved UHF reception. We believe that the use of the six recommendations we have formulated for improving UHF reception, for example, can have an impact on consumers' purchase and installation of appropriate receiving equipment. This information can be reproduced and distributed by broadcasters to those in their viewing area, or can be included in booklets if further information is found to be useful.

The Commission's Field Operations Bureau (FOB) presently produces an excellent information booklet entitled "Radio-TV Interference Problems" (Federal Communications Commission, 1977). We recommend that this booklet be updated to include relevant information concerning UHF television reception.

Technical articles of interest to television servicemen can be drafted and published in various technical magazines. The Commission's Office of Public Affairs (OPA) can draft general interest articles for non-technical publications.

We advocate these programs because they appear to have very low costs relative to the possible benefits. There are economies to the central processing of information that, in this case, can be initially undertaken by the Government. There has apparently been little demand for information concerning UHF reception, so the government can serve as a central catalyst in conveying the relevant information to the public. We believe that a program for measuring television receiving antenna equipment in a standardized manner would not be coordinated by the industry on its own initially, but such a program might eventually be adopted by the industry if the program is found to be successful.

We should recognize, however, that even if consumers are provided with additional information for improving the reception of UHF television, it does not necessarily follow that they will act on this information. In fact, consumers in general say that they are satisfied with their present television service. Even in the face of much better information, adequate UHF reception equipment will not be purchased and installed unless consumers sufficiently value the product that they are purchasing—the television programs available to them on UHF.

The Improvement Available to UHF Television

At best, UHF television can cover much but not all of the population covered by VHF television. Even this point is not likely to occur unless something causes consumers to change their minds about their choices of receiving antenna equipment, or unless a much larger fraction of viewers receive UHF signals through a cable television system.[7] This perspective should be kept in mind. To seek improvements in transmitters and television receivers without recognizing the root problem to the UHF handicap—that members of the public are not installing adequate receiving antenna systems for good UHF reception—will have done little to foster the delivery to the public of the many diverse television services available from UHF.

Improvements in UHF transmitter efficiency would make it cost-effective for some broadcasters to double their power output, and the UHF television picture quality for these stations would be improved by 3 dB. When television receivers all meet the 12 dB noise figure standard, we believe that UHF television picture quality will be improved by about 4 dB. These are significant improvements, but they are not nearly sufficient. The only way to achieve major improvement in UHF television reception is through the receiving antenna system. In this area, and in this area alone, improvements of 10, 15 and even 30 dB are possible. This is the magnitude of improvement required for UHF television.

Table 1 is an example of the improvments available in UHF picture quality. For this example, we have assumed that the present UHF picture quality is "inferior" and have added the effects of improvements to receiving antenna systems, TV receivers, and UHF transmitters. Either an increase in transmitter power or an improvement in receiver noise figure would improve picture quality slightly, to "marginal;" a change of both power and receiver noise figure would improve picture quality to "passable." On the other hand, without these improvements, but with only an improvement in the receiving antenna system, the picture quality becomes "fine." Furthermore, when all three improvements—receiving antenna systems, TV receivers, and UHF transmitters—are made, the picture quality becomes "excellent." Table 1 is merely an illustrative example, but it shows that the most improvement to UHF will come from changes to the receiving antenna system, and that improvements to receiver noise figure that the Commission is requiring and increased transmitter power also will help to improve UHF reception.

Table 1.—*Example of Picture Quality Improvements to UHF Television*

[The signal-to-noise ratio required for each picture quality level is given in parentheses][1]

	No change in transmitted power or noise figure	3 dB increase in transmitted power	4 dB improvement in noise figure	Improvement in both transmitted power and noise figure
No changes in receiving antenna system.	Inferior (21 dB[2])	Marginal (24 dB)	Marginal (25 dB)	Passable (28 dB).
15 dB improvement in receiving antenna system.	Fine (36dB)	Fine (39 dB)	Fine (40 dB)	Excellent (43 dB).

[1] A report by Harry Fine (1960) indicates the signal-to-noise ratio required for various levels of picture quality:

Picture quality	Signal-to-noise-ratio
Excellent	Greater than 41 dB.
Fine	33–41 dB.
Passable	28–33 dB.
Marginal	23–28 dB.
Inferior	17–23 dB.
Unusable	Less than 17 dB.

[2] For illustrative purposes, a 21 dB signal-to-noise ratio was assumed. Picture quality will vary from one household to another, and the effects of an assumption other than 21 dB can be analyzed using the information given.

The fundamental relationship between a viewer's interest in installing an adequate UHF receiving antenna system and that viewer's interest in the programming on UHF channels cannot be ignored. The UHF Comparability Task Force has analyzed the technical possibilities for improving the UHF television service, and the economic and social prospects for these improvements. We have not thoroughly studied the relationship between television programming and television reception equipment. Some immediate observations, however, can be made.

The fact that UHF network stations suffer only a small disadvantage relative to VHF network stations indicates that programming impacts the quality of UHF receiving equipment that consumers are willing to buy and use. Future sources of high-quality programming, from lower-cost delivery systems such as communications satellites, may provide additional program sources for the UHF broadcaster. In this regard, UHF television need not necessarily attempt to duplicate the network programming usually found on VHF. In fact, our survey results show that viewers aren't particularly interested in additional network programs, but are interested in several forms of specialty programming. Net work programming in general attempts to appeal to a mass market and cannot serve the tastes of small segments of the market. Specialty sports programming, minority programming, or children's programming may provide a smaller but faithful audience base that will provide profitable operation, whether by advertiser-supported television or by subscription television.

In spite of the technical difficulties faced by UHF television, this service is becoming profitable and competitive. We have suggested several steps for improving the UHF television service further, but we question whether

[6] The FCC allows a maximum ERP of 5000 kilowatts (kW for UHF stations, 100 kW for low VHF stations (channels 2 to 6) and 316 kW for high VHF stations (channels 7–13).

[7] UHF stations carried on a cable system reach subscribing viewers as effectively as the VHF stations carried on the system.

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comparison with VHF provides an appropriate standard for judging UHF, or whether a more appropriate goal is to seek a fully viable and profitable UHF service on its own merits.

Comparisons with VHF will always be unfavorable for the UHF operator. Actual parity between these services would be extremely costly for the government to attempt to achieve, because it involves choices made by consumers and broadcasters that the government does not wish to control; decisions about programming, with its Constitutional implications; and the propagation of radio frequencies, which is dictated by the laws of physics.

We believe that a fully competitive and prosperous UHF service, regardless of how it compares with VHF, will achieve the diversity of television services long sought by the FCC and the Congress. Judging from the growth of UHF stations and their increasingly profitable operation, and the demand for UHF television stations as shown by applications to the FCC, this goal is now beginning to be achieved, and will be additionally fostered by the recommendations we have made.

Attachment II—Proposed Changes to FCC Rules

Section 15.63(c)

- Add the following to the Note in subsection (1):

If the receiver is not capable of receiving channels 70–83 then the measurements at 900 and 931 MHz may be omitted.

- In subsection (2), delete the number "10".

Section 15.65

- Change title to read: "All-channel television broadcast reception: General requirements."
- Delete the words "manufactured after April 30, 1964" from subsection (a), since this qualification is no longer necessary.
- Amend subsection (b) to read as follows:

If equipment and controls which tend to simplify, expedite or perfect the tuning and reception of television signals (such as automatic frequency control, remote control, attached or supplied receiving antennas, or coaxial antenna connections, referred to generally as tuning and reception aids) are incorporated into the VHF portion of a television broadcast receiver, tuning and reception aids of the same type and of comparable quality shall be provided for the UHF portion of that receiver.

Section 15.66 and Section 15.67

- Change references to channels 14–83 to channels 14–69.
- Delete the words "manufactured after April 30, 1964" from Section 15.67, since this qualification is no longer necessary.

Section 15.68

- Change title to read: "All-channel television broadcast reception: Channel selectors."
- Amend subsection (b) to read:

(b) On a given receiver, use of the UHF and VHF tuning systems shall provide approximately the same degree of tuning accuracy with approximately the same expenditure of time and effort: *Provided, however,* That this requirement will be considered met if the need for routine fine tuning is eliminated on UHF channels, through the use of automatic frequency control or other means.

- Reserve subsection (b)(2), since these requirements are now incorporated into § 15.65(b).
- Amend subsection (b)(3), and move to a new subsection (e), as follows:

(f) *Tuning controls and channel read-out.* UHF tuning controls and channel read-out on a given receiver shall be comparable in size, location, accessiblity and legibility to VHF tuning controls and read-out on that receiver.

(1) *Systems with separate selectors for UHF and VHF Channels.* Comparable legibility of channel read-out will alternatively be considered met if UHF channel numbers are clearly legible and UHF and VHF channel numbers are at all times visible on the face of the receiver.

(2) *Systems with channel positions selectable to UHF or VHF channels.* If discrete tuning positions are provided that are adjustable to UHF and VHF channels, and if such tuning positions are adjusted or labeled by the manufacturer for specific channels, at least half of these adjustable channels shall be set or labeled for UHF reception.

- Reserve subsection (d), which applies to 70-channel detent tuners. These types of channel selectors would meet the requirements of the other subsections of Section 15.68.

[FR Doc. 80-32910 Filed 10-21-80; 8:45 am]
BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR PART 1248

[No. 37269]

Elimination of Annual Report Form TCS for Motor Carriers of Property

AGENCY: Interstate Commerce Commission.

ACTION: Second notice of proposed rulemaking.

SUMMARY: The Commission is proposing to eliminate the requirement that all Class I Motor Carriers of Property file Form TCS, the annual report of freight commodity statistics. The intended effect of this proposal is to reduce the management hours spent to collect, compile and report information by the carriers. The Commission concluded that the use of the data contained in the report no longer justifies the reporting burden. The elimination of the reporting requirement will be effective for the reporting year beginning January 1, 1981.

DATES: Comments should be filed on or before December 8, 1980.

ADDRESSES: An original and 15 copies, if possible, of any comments should be sent to: Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Bryan Brown, Jr. (202) 275–7448.

SUPPLEMENTARY INFORMATION: On February 19, 1980, the Commission published a Notice (45 FR 13480) proposing the adoption of statistical sampling procedures to collect freight commodity statistics from Class I, II and III Motor Carriers of Property in the Freight Commodity Statistics Report (Form TCS). At the present time, Form TCS is filed by Class I Motor Carriers of Property only. The Notice proposed a reduction in the number of Class I carriers required to file Form TCS, but at the same time, it required a sample of Class II and III carriers to file.

In response to the Notice, we received 63 comments from motor carriers, motor carrier associations and other interested parties (See Appendix A). This Second Notice of Proposed Rulemaking resulted from the respondents' comments that are discussed below:

Justify Need of Report—The majority of the respondents opposed the filing of Form TCS because they contend the Commission has not shown a need for TCS data. They recommend the Commission eliminate the report completely unless a regulatory need for the information gathered can be demonstrated.

Statistical Sampling Does Not Reduce Reporting Burden—The American Trucking Associations (ATA), backed by many of the respondents, stated that adopting statistical sampling procedures to collect the data does not decrease the reporting burden for those carriers that must report. In addition, by including Class II and III carriers, the requirement creates an entirely new burden which directly contradicts the Commission's own stated policy of reducing public filing requirements.

Report is Too Burdensome—Form TCS has 447 commodity classification line items with 11 potential columns. The report itself is printed on 12 pages with one additional page of instructions. Reporting such detailed information is estimated to take an average of 470 hours of management time annually. Many of the respondents requested that we either modify or eliminate the report.

As a result of these comments, we are proposing to eliminate Form TCS. The time spent to compile the information by the carriers is not justified by the occasional use of the information by the Commission. Any need for the information can be satisfied by periodic special requests.

The proposed action does not significantly affect either the quality of the human environment or conservation of energy resources.

§ 1248.51–1248.57 (Subpart D) [Removed]

Accordingly, we propose to delete 49 CFR Part 1248 Subpart D.

This action is proposed under the authority of 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided October 8, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis and Gilliam.

Agatha L. Mergenovich,
Secretary.

Appendix A

Respondents

O.L. Doud
Standard Trucking Company
Carstensen Freight Lines, Inc.
Hall's Motor Transit Company
Tennessee Carolina Transportation, Inc.
Carolina Freight Carriers Corporation
G.C.T., Inc.
Priority Freight Systems, Inc.
Metals Transport, Inc.
IRC&D Motor Freight, Inc.
Associated Truck Lines, Inc.
Bren Transfer Co.
Reisch Trucking and Transportation Co., Inc.
Harry McKenzie Trucking Co.
Reinhart & Sons
California Trucking Association
E.L. Murphy Trucking Company
Nehalem Valley Motor Freight, Inc.
Calzona Transportation Inc.
Clairmont Transfer Co.
Holmes Transportation Inc.
The Chief Freight Lines Company Haslett Company
Graves Truck Lines
Berman's Motor Express, Inc.
Red Ball Motor Freight, Inc.
The Mason and Dixon Lines, Inc.
General Highway Express, Inc.
Murphy Motor Freight Lines, Inc.
Consolidated Freightways Corporation of Delaware
Transamerican Freight Lines Incorporated
Advisory Council on Federal Reports
Nationwide Carriers, Inc.
Doyle Trucking Corporation
Delta Lines
Clark Bros. Transfer, Inc.
Shaffer Trucking, Inc.
Yellow Freight System, Inc.
Churchill Truck Lines, Inc.
Meridian Express Company
Pilot Freight Carriers, Inc.
Transcon Lines
McLean Trucking Company
AAA Cooper Transportation
Lock Trucking Inc.
Ruan Transport Corporation
Overnite Transportation Company
Tri-State Motor Transit Co.
Smith's Transfer Corporation
Curry Motor Freight Lines, Inc.
Fleet Carrier Corporation
Convoy Company
Ellsworth Freight Lines, Inc.
Maryland Motor Truck Asso. Inc.
Campbell Sixty Six Express, Inc.
Nussbaum Trucking, Inc.
Arkansas-Best Freight System, Inc.
Michigan Transportation Company, Inc.
Harold G. Cline, Inc.
ICX
Indianhead Truckline, Inc.
Arizona Tank Lines, Inc.
American Trucking Associations, Inc.

[FR Doc. 80-32904 Filed 10-21-80; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Ch. I

Scoping Meeting To Consider the Preparation of an Environmental Assessment on the Proposal of Rules To Govern Surface Management of Hardrock and Placer Mining on Units of the National Wildlife Refuge System

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of public meeting.

SUMMARY: This Notice advises the public that the U.S. Fish and Wildlife Service will hold a scoping meeting to consider its preparation of an environmental assessment on the proposal of rules to govern surface management of mining operations authorized under the Mining Law of 1872 on units of the National Wildlife Refuge System. Virtually all of these units which are on public domain lands have been withdrawn from the operation of the mining laws, but there are relatively small numbers of existing claims on twelve refuges. Current information indicates there are approximately 500 claims on nine refuges in Alaska and several hundred claims on three refuges in the forty eight contiguous States. The Service proposes to promulgate rules which are similar to those proposed by the Bureau of Land Management in the Federal Register on March 3, 1980, as modified in its final environmental impact statement on those rules. The Service also proposes to adopt BLM's environmental impact statement on the environmental impacts of these rules, pursuant to the Council on Environmental Quality's rules at 40 CFR 1500.

DATE: The scoping meeting will be held on Wednesday, Nov. 5, 1980 at 1:00.

ADDRESS: The scoping meeting will be held at Room 3241, U.S. Department of the Interior, 18th and C St. N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: William C. Reffalt, Chief, Division of Refuge Management, U.S. Fish and Wildlife Service, (202) 343–4791.

SUPPLEMENTARY INFORMATION: The Service is seeking public input on its proposed decision to promulgate surface management rules for mining operations on refuges authorized by the Mining Law of 1872, and to adopt the environmental impact statement which was prepared for the Bureau of Land Management's (BLM's) proposed surface management rules. The Service contemplates proposing rule which are similar to BLM's, with changes where necessary to reflect the different statutes which control the administration of the National Wildlife Refuge System.

The rules proposed by BLM represent a framework for regulating hardrock mining by requiring a plan of operations for all mining operations which create more than negligible impacts on surface resources. The rules do not spell out mining methods, but are intended as a general framework to address mining management. The rules require contemporary reclamation of disturbed areas and site-specific environmental impact documents in the process of approving a plan of operations.

Because the Service contemplates proposing rules which are similar to those proposed by BLM, the Service intends to adopt all or part of the EIS prepared for BLM's rules. Adoption is a procedure authorized by the Council of

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Environmental Quality's rules in the interest of reducing unnecessary paperwork and delay. See 40 CFR 1500.4, 1500.5, 1506.3. Furthermore, refuge system lands were initially lumped with other lands in BLM's environmental impact statements. The Service also proposes to create an Environmental Assessment to address any differences in the rules and their respective impacts.

Dated: October 17, 1980.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

[FR Doc. 80-33008 Filed 10-21-80; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

Natural Oceanic and Atmospheric Administration

50 CFR Part 320

Taking of Bowhead Whales by Indians, Aleuts, or Eskimos for Subsistence Purposes

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: At its 32nd Annual Meeting held in Brighton, England, in July 1980, the International Whaling Commission (IWC) adopted an amendment to the Schedule of the International Convention for the Regulation of Whaling, 1946 (Convention), which established a three year quota for the taking of the Bering Sea stock of bowhead whales for calendar years 1981, 1982, and 1983 of 45 landed or 65 struck, whichever occurs first, with a maximum of 17 whales landed in any year. The Schedule of the Convention containing the three year quota will become effective on November 26, 1980. The Whaling Convention Act of 1949 requires Schedule Amendments to be adopted as Federal regulations. NOAA is beginning to plan for the rulemaking which will implement this quota.

DATES: Comments on how the three year quota should be implemented may be submitted on or before December 1, 1980.

ADDRESS: Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration. Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Mr. Richard B. Roe, Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, Washington, D.C. 20235, Telephone: (202) 634-7461.

SUPPLEMENTARY INFORMATION: Prior to 1977 the IWC Schedule exempted the native subsistence harvest of bowhead whales from its otherwise total prohibition of the hunting of bowheads. In 1977, the IWC removed that exemption and has established annual quotas each year from 1977 through 1980. In 1980, the quota was 18 landed or 26 struck, whichever came first.

Recent scientific analyses have indicated that the bowhead whale population may decline even in the absence of any further removal of animals from the stock. Thus, a sustained harvest of bowhead whales at current levels over an extended period of time could endanger the herd and jeopardized the Eskimos' own interests.

At the 32nd Annual Meeting of the IWC, the United States proposed a transition period to lower hunt levels during which NOAA and the Department of the Interior would cooperate with the Eskimos in developing and studying the implications of more biological evidence, exploring subsistence alternatives, and improving hunting practices and weapons to increase the efficiency of the hunt. The IWC responded by establishing a three year block quota, beginning in 1981, of 45 whales landed or 65 struck, whichever occurs first, with the maximum landed in any one year of 17.

NOAA intends to issue proposed regulations implementing the three year quota in mid-December. An environmental assessment will be available at that time.

There are a number of issues associated with the bowhead hunt on which the Agency invites comment. These include: how the quota should be allocated over a three year period; how the quota should be allocated among the villages; and how takings over or under annual allocations should affect the remaining quota.

In addition to this regulatory process, over the next several months, a number of other Federal efforts related to the bowhead will be undertaken. Scientific analysis will refine the status of the population and its ability to withstand removals. Methods to improve the efficiency of the hunt will be studied. The availability and acceptability of alternative resouces will be examined, and a program to increase their use will be developed. Issues relating to whaling effort, storage of whale meat, utilization of and sharing of whale meat will be reviewed. Comments on these matters are solicited as well.

Terry L. Leitzell,

Assistant Administrator for Fisheries.

[FR Doc. 80-32903 Filed 10-21-80; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 45, No. 206

Wednesday, October 22, 1980

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Freedom of Information Act; Confidential Business Information

AGENCY: Administrative Conference of the United States; Committee on Ratemaking and Economic Regulation.

ACTION: Request for comments.

SUMMARY: The Administrative Conference Committee on Ratemaking and Economic Regulation currently is examining the procedures used by agencies in complying with Freedom of Information Act requests that implicate exemption (b)(4) of the Act, the so-called "business records exemption". The Committee wishes to be informed about actual instances in which information to which exemption (b)(4) applies has been disclosed by the agency under a Freedom of Information Act request notwithstanding the applicability of the exemption. The Committee particularly desires to be informed of instances in which important confidential business information has been disclosed by the government to the detriment of the submitter of the information.

SEND COMMENTS TO: William C. Bush; 2120 L Street NW, Suite 500; Washington, DC 20037.

COMMENT DEADLINE: November 20, 1980.

FOR FURTHER INFORMATION CONTACT: William C. Bush, Administrative Conference of the United States, 2120 L Street NW, Suite 500, Washington, DC 20037, telephone (202) 254-7065.

SUPPLEMENTARY INFORMATION: The Administrative Conference Committee on Ratemaking and Economic Regulation is working toward developing recommendations concerning agency procedures and practices in dealing with Freedom of Information Act requests for information that would fall within exemption (b)(4) of the Act, the "business records exemption". This information would ordinarily be in the form of documents in an agency's possession that had been submitted to the agency by a private person or business firm and that deal with the business of the individual or firm, and would include documents containing "confidential" information or trade secrets.

The Committee is aware of a large volume of criticism directed at alleged problems in the administration of exemption (b)(4). In particular, there appears to be a substantial concern that valuable commercial secrets are often disclosed by agencies pursuant to Freedom of Information Act requests, thereby seriously damaging the interests of the submitters of the information, and that such disclosures are made by agencies without affording the submitters adequate opportunity to protect their interests.

Notwithstanding the quantity and intensity of such criticisms, there is in the public record very little documentation of instances in which an individual or firm has actually been damaged as a result of an agency release of confidential business information under the Freedom of Information Act. The Committee would welcome comments describing such instances, as well as comments on any related problems that may have been experienced by submitters of business records.

In addition to any comments received in response to this invitation, the Committee will also be considering a report of its consultant, Professor Russell B. Stevenson, Jr. of the National Law Center, George Washington University. The Committee has not yet received the consultant's report. The Committee will hold several meetings in the future to discuss these matters, and will again request comments at the time that any tentative recommendations are formulated. Notices of future meetings and further requests for comments will appear in the **Federal Register.**

All comments submitted to the Committee will be placed in a file available for public inspection during normal business hours (9:00 a.m. to 5:30 p.m.; Monday through Friday, excluding federal holidays) at the Office of the Chairman of the Administrative Conference, 2120 L Street NW, Suite 500, Washington, DC.

Richard K. Berg,

Executive Secretary.

October 17, 1980.

[FR Doc. 80-33000 Filed 10-21-80; 8:45 am]

BILLING CODE 6110-01-M

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting

Notice is hereby given in accordance with Section 800.6(d)(3) of the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), that the Advisory Council on Historic Preservation will meet on November 5-6, 1980, in the Cash Room, U.S. Treasury Building, 15th and Pennsylvania Avenue, NW., Washington, D.C. The meeting will begin at 9:00 a.m. on both Wednesday and Thursday. The meeting is open to the public with the exception of the portion of the Excutive Director's report concerning the Fiscal Year 1982 Council budget.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. Sec. 470) to advise the President and Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Secretries of the Interior; Housing and Urban Development; Commerce; Treasury; Agriculture; Transportation; State; Defense; Health and Human Services; and the Smithsonian Institution; the Attorney General; the General Services Administrator; the Chairman of the Council on Environmental Quality; the Chairman of the Federal Council on the Arts and Humanities; the Architect of the Capitol; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; and twelve non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Statement by the Chairman
II. Report of the Excutive Director
  A. Budget
  B. Urban Task Force

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C. International Centre Committee
III. Report of the General Counsel
A. Legislation
B. Litigation
C. Interim Procedures, Section 9(a), Mining in National Parks Act
IV. Report of the Office of Cultural Resource Preservation
A. Report of the Panel on McConnell's Mill State Park, Pennsylvania
B. Report of Archeology Task Force

Due to controlled access to the Treasury Building, those wishing to attend must have a Government Identification Card, or notify the Council prior to the meeting by calling 202–254–3967.

Additional information concerning either the meeting agenda or the submission of oral and written statements to the Council is available from the Executive Director, Advisory Council on Historic Preservation, Suite 430, 1522 K Street, NW, Washington, D.C. 20005, 202–254–3967.

Dated: October 16, 1980.

Robert R. Garvey, Jr.

Executive Director.

[FR Doc. 80-32892 Filed 10-21-80; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Forest Service

Belle Starr Cave Wilderness Study Area and Extensions; Ouachita National Forest; Scott and Sebastian Counties, Ark.; Intent To Prepare an Environmental Impact Statement

Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, will prepare an environmental impact statement for the Belle Starr Cave Wilderness Study Area and extensions. The Belle Starr Cave Area was designated a wilderness study area by Pub. L. 93–622 on January 3, 1975. The Act identified the Area as 5,700 acres; corrected acreage, according to resource data is about 6,036 acres. The Forest's Service's Roadless Area Review and Evaluation (RARE II) Process identified Belle Starr East (about 5,900 acres) and Belle Starr West (about 5,560 acres) as areas requiring "further planning". The three adjacent areas (about 17,496 acres) will be studied concurrently.

A range of alternatives for the area will be considered. One of the alternatives will be the no action (no change) alternative which will be to continue the present management of the area. Other alternatives will consider different management options for the area—ranging from recommending the total area for wilderness to recommending the area for wilderness with boundary changes.

The environmental analysis process for the Belle Starr Cave Wilderness Study Area was initiated in 1975. This process also included a survey by the U.S. Geological Survey and the Bureau of Mines to determine the mineral values of the area. Public input on the Area was received during the Forest Service's RARE II process which was conducted from 1977–1979. Other background information, such as compartment prescriptions, Ouachita National Forest Timber Management Plan and other documents have been reviwed along with the RARE II input for determining the scope of the issues to be addressed and for identifying the significant issues related to the proposal.

A public hearing on the draft environmental impact statement will be held in the Winter of 1981. Adequate notice of the hearing will be published in local newspapers prior to the hearing. At least 30 days before the date of the hearing, the Governor of Arkansas, the governing boards of Scott and Sebastian Counties, and Federal departments and agencies concerned with the areas will be invited to submit their views on the proposed action at the hearing or by no later than 30 days following the date of the hearing. The draft environmental impact statement should be available for public review by February, 1981. The final environmental impact statement is scheduled for filing by September 1981.

R. Max Peterson, Chief of the Forest Service is the responsible official for the environmental impact statement.

Comments and suggestions concerning this Notice of Intent or the proposal should be sent to John V. Orr, Forest Supervisor, by December 1, 1980. For further information about the proposal or the environmental impact statement, or other documents relevant to the proposal, contact: Earl Littlejohn, Ouachita National Forest, P.O. Box 1270, Hot Springs, Arkansas 71901 (phone 501–321–5202).

Dated: October 15, 1980.

J. Lamar Beasley,

Acting Chief.

[FR Doc. 32859 Filed 10-21-80; 8:45 am]

BILLING CODE 3410-11-M

Dry Creek Wilderness Study Area; Ouachita National Forest, Logan and Scott Counties, Ark.; Intent To Prepare an Environmental Impact Statement

Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, will prepare an environmental impact statement for the Dry Creek Wilderness Study Area. The Dry Creek Area was designated a wilderness study area by Public Law 93–622 on January 3, 1975. The Act identified the Area as 5,500 acres; corrected acreage, according to resource data is 6,667 acres.

A range of alternatives for the area will be considered. One of the alternatives will be the no action (no change) alternative which will be to continue the present management of the area. Other alternatives will consider different management options for the area—ranging from recommending the total study area for wilderness to recommending the area for wilderness with boundary changes.

The environment analysis process for the Dry Creek Wilderness Study Area was initiated in 1975. This process also included a survey by the U.S. Geological Survey and the Bureau of Mines to determine the mineral values of the area. Public input on the Area was received during the Forest Service's Roadless Area Review and Evaluation (RARE II) process which was conducted from 1977–1979. Other background information, such as compartment prescriptions, Ouachita National Forest Timber Management Plan and other documents have been reviewed along with the RARE II input for determining the scope of the issues to be addressed and for identifying the significant issues related to the proposal.

A public hearing on the draft environmental impact statement will be held in the Winter of 1981. Adequate notice of the hearing will be published in local newspapers prior to the hearing. At least 30 days before the date of the hearing, the Governor of Arkansas, the governing boards of Logan and Scott Counties, and Federal departments and agencies concerned with the areas will be invited to submit their views on the proposed action at the hearing or by no later than 30 days following the date of the hearing. The draft environmental impact statement should be available for public review by February, 1981. The final environmental impact statement is scheduled for filing by September 1981.

R. Max Peterson, Chief of the Forest Service is the responsible official for the environmental impact statement.

Comments and suggestions concerning this Notice of Intent or the proposal should be sent to John V. Orr, Forest Supervisor, by December 1, 1980.

For further information about the proposal or the environmental impact statement, or other documents relevant to the proposal, contact: Earl Littlejohn, Ouachita National Forest, P.O. Box 1270, Hot Springs, Arkansas 71901 (phone 501–321–5202).

Dated: October 15, 1980.

J. Lamar Beasley,

Acting Chief.

[FR Doc. 80-32858 Filed 10-21-80; 8:45 am]

BILLING CODE 3410-11-M

Office of the Secretary

Agricultural Technical Advisory Committee for Trade on Sweeteners and Tropical Products; Proposed Establishment

Notice if hereby given that the Secretary of Agriculture, after consultation with the United States Trade Representative, proposes to establish an Agricultural Technical Advisory Committee for Trade on Sweeteners and Tropical Products.

The purpose of this committee is to provide advice to the Secretary and the Trade Representative with respect to the trade policy of the United States pursuant to section 135(c) of the Trade Act of 1974 (Pub. L. 93–618), as amended by the Trade Agreements Act of 1979 (Pub. L. 96–39). Meetings of this committee will be open only to members of the committee in accordance with section 135(f)(2) of the Act unless otherwise determined.

The establishment of this committee is in the public interest in connection with the duties of the Department imposed by the Trade Act of 1974, as amended by the Trade Agreements Act of 1979.

Comments may be submitted to Thomas B. O'Connell, Advisory Committees Support Group Leader, FAS, U.S. Department of Agriculture, room 5528 South Building, Washington, D.C. 20250 until November 6, 1980.

October 17, 1980.

Bob Bergland,

Secretary.

[FR Doc. 80-32894 Filed 10-21-80; 8:45 am]

BILLING CODE 3410-10-M

Soil Conservation Service

Richland Creek Watershed, Miss.

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of intent to prepare an environmental impact statement.

FOR FURTHER INFORMATION CONTACT: Mr. Chester F. Bellard, State Conservationist, Soil Conservation Service, 100 West Capitol Street, Jackson, Mississippi 39201, 601–960–4335.

NOTICE: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Richland Creek Watershed, Rankin County, Mississippi.

The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Chester F. Bellard, State Conservationist, has determined that the preparation and review of an environmental impact statement are needed for this project.

The project concerns a plan for flood prevention. The planned works of improvement includes three floodwater retarding structures, 9.8 miles of channel excavation, 0.9 miles of levee, and floodproofing of one residential and four commercial buildings by dikes and one mobile home by relocation.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation of agencies and individuals with expertise or interest in the preparation of the draft environmental impact statement. The draft environmental impact statement will be developed by Mr. Chester F. Bellard, State Conservationist.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: October 7, 1980.

[FR Doc. 80-32820 Filed 10-21-80; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

[80–10–63]

Houston Service Show-Cause Proceeding

AGENCY: Civil Aeronautics Board.

ACTION: Notice of order to show cause (80–10–63).

SUMMARY: The Board is proposing to award nonstop air route authority between Houston, on the one hand, and the 77 points listed in Appendix A, on the other hand, to Continental Air Lines and any other fit, willing and able applicant whose fitness, willingness and ability can be established by officially noticeable data, under show-cause procedures.

The complete text of this order is available as noted below.

DATES: Objections: All interested persons having objections to the Board issuing an order making final the tentative findings and conclusions shall file, by November 17, 1980, a statement of objections together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections. Such filings should be served upon all parties listed below.

ADDRESSES: Objections to the issuance of a final order should be filed in Docket 38839, which we have entitled the *Houston Service Show-cause Proceeding*. They should be addressed to Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

In addition, copies of such filings should be served on Continental Air Lines; Mayor of Houston; Manager, Houston Intercontinental Airport; Texas Aeronautics Commission; the mayor and airport manager of each additional city referred to in the objection; and the state aeronautical commission of the state in which such city is situated.

FOR FURTHER INFORMATION CONTACT: Anne W. Stockvis, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673–5198.

SUPPLEMENTARY INFORMATION: The complete text of Order 80–10–63 is available from our Distribution Section, Room 516, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 80–10–63 to that address.

By the Bureau of Domestic Aviation: October 15, 1980.

Phyllis T. Kaylor,

Secretary.

Appendix A

Akron-Canton, Ohio
Albany, N.Y.
Allentown-Bethlehem-Easton, Pa.
Asheville, N.C.
Ashland, Ky.-Huntington, W. Va.
Augusta, Ga.
Bakersfield, Calif.
Bangor, Me.
Baton Rouge, La.
Beaumont-Port Arthur, Tex.
Bismark-Mandan, N.D.
Buffalo-Niagara Falls, N.Y.
Burlington, Vt.
Butte, Mont.
Cedar Rapids, Iowa
Champaign-Urbana, Ill.
Charleston, S.C.
Charleston, W. Va.

Chattanooga, Tenn.
Cheyenne, Wyo.
Columbia-Jefferson City, Mo.
Columbia, S.C.
Columbus, Ga.
Davenport, Iowa-Moline, Ill.
Duluth, Minn.-Superior, Wis.
Erie, Pa.
Eugene, Ore.
Evansville, Ind.
Fargo, N.D.
Fayetteville, N.C.
Flint, Mich.
Fort Wayne, Ind.
Gainesville, Fla.
Grand Forks, N.D.
Grand Rapids, Mich.
Green Bay-Clintonville, Wis.
Greenville-Spartanburg, S.C.
Harlingen-San Benito, Tex.
Harrisburg-York, Pa.
Hartford, Conn.-Springfield, Mass.
Helena, Mont.
Huntsville, Ala.
Jackson-Vicksburg, Miss.
Lafayette, La.
Lansing, Mich.
Lexington-Frankfort, Ky.
Lincoln, Neb.
Madison, Wis.
Medford, Ore.
Minot, N.D.
Mission-McAllen-Edinburg, Tex.
Missoula, Mont.
Monterey-Salinas, Calif.
Montgomery, Ala.
Newsport News-Hampton-Williamsburg-Yorktown, Va.
Portland, Me.
Providence, R.I.
Pueblo, Colo.
Raleigh-Durham, N.C.
Rapid City, S.D.
Rochester, Minn.
Rochester, N.Y.
Saginaw-Bay City-Midland, Mich.
St. Croix, V.I.
St. Thomas, V.I.
Santa Barbara, Calif.
Savannah, Ga.
Scranton-Wilkes-Barre, Pa.
Seridan, Wyo.
Shreveport, La.
Sioux City, Iowa
South Bend, Ind.
Springfield, Ill.
Springfield, Mo.
Syracuse, N.Y.
Waterloo, Iowa
Youngstown, Ohio

[FR Doc. 80-32929 Filed 10-21-80; 8:45 am]
BILLING CODE 6320-01-M

COMMISSION ON CIVIL RIGHTS

California Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the California Advisory Committee to the Commission will convene at 9 a.m., and will end at 4 p.m., on November 8, 1980, at the Airport Hilton Hotel, San Francisco Airport, Vintage Room #14, San Francisco, California. The purpose of the meeting is subcommittee meetings and a full committee meeting on current projects.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Mr. Herman Sillas, Jr., U.S. Courthouse Building, 650 Capitol Mall, Sacramento, California 95814, (916) 440-2331 or the Western Regional Office, 3660 Wilshire Boulevard, Suite 810, Los Angeles, California 90010, (213) 688-3437.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 15, 1980.

Thomas L. Neumann,
Advisory Committee Management Officer.

[FR Doc. 80-32919 Filed 10-21-80; 8:45 am]
BILLING CODE 6335-01-M

Delaware Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Delaware Advisory Committee to the Commission will convene at 3:30 p.m., and will end at 5:00 p.m., and will convene at 6:30 p.m., and will end at 9:00 p.m., on November 5, 1980, at the J. Caleb Boggs Federal Building, Federal Court Room, Wilmington, Delaware 19801. The purpose of the afternoon meeting is to report on the State Advisory Committee Chairpersons Conference; discuss the Regional Project on Northeast Corridor contracting and planning for FY '81. The purpose of the evening meeting is discussion of State Board of Education's proposal to redistrict the New Castle County School District into four separate school districts.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Ms. Beatrice R. Coker, 3106 North Van Buren, Wilmington, Delaware 19802, (302) 764-0137 or the Mid-Atlantic Regional Office, 2120 L Street, N.W., Washington, D.C. 20037, (202) 254-6717.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 15, 1980.

Thomas L. Neumann,
Advisory Committee Management Officer.

[FR Doc. 80-32920 Filed 10-21-80; 8:45 am]
BILLING CODE 6335-01-M

Florida Advisory Committee; Amendment

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the Florida Advisory Committee of the Commission originally scheduled for October 22-23, 1980, at the Sheraton Hotel, 224 E. Garden Street, Pensacola, Florida 32501, (FR Doc. 80-30436 on page 65002) has been changed.

The meeting now will be held at the Seville Inn, Gold Room, 223 E. Garden Street, Pensacola, Florida 32501, beginning at 7:30 p.m., and ending at 10:00 p.m., on October 22, 1980. The press conference on October 23, 1980 will convene at 10:00 a.m., and will end at 12:30 p.m.

Dated at Washington, D.C., October 16, 1980.

Thomas L. Neumann,
Advisory Committee Management Officer.

[FR Doc. 80-32921 Filed 10-21-80; 8:45 am]
BILLING CODE 6335-01-M

Indiana Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Indiana Advisory Committee to the Commission will convene at 7:00 p.m., and will end at 10:00 p.m., on November 6, 1980, at Gary City Hall, Gary Room, 2nd Floor, 401 Broadway Street, Gary, Indiana 46402. The purpose of the meeting is for the Employment sub-committee to report on their review of the data requested as a result of the employment study of city-council government in Indianapolis, Indiana and the full committee will make recommendations to staff on their concepts and observations on what should be included in the report. Also, staff will give an update on the monitoring of civil rights activities in Muncie, Indiana and the Housing sub-committee will submit their final draft on the Housing Study. New business will also be discussed.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Mrs. Harriette B. Conn, 501 State Office Building, Indianapolis, Indiana 46204, (317) 633-6723 or the Midwestern Regional Office, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604, (312) 353-7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 15, 1980.

Thomas L. Neumann,
Advisory Committee Management Officer.

[FR Doc. 80-32922 Filed 10-21-80; 8:45 am]
BILLING CODE 6335-01-M

Minnesota Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Minnesota Advisory Committee to the Commission will convene at 10 a.m., and will end at 12 p.m., on November 7, 1980, at Duluth Radisson, 505 W. Superior, Duluth, Minnesota 55802. The purpose of the meeting is to release the Duluth Desegregation Statement and discuss the Twin Cities Police Report.

Persons desiring additional information or planning a presentation to the committee, should contact the Chairperson, Ms. Lupe Lopez, 509 Sibley, St. Paul, Minnesota 55101, (612) 227-8954.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 15, 1980.

Thomas L. Neumann,
Advisory Committee Management Officer.

[FR Doc. 80-32923 Filed 10-21-80; 8:45 am]
BILLING CODE 6335-01-M

New Jersey Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Jersey Advisory Committee to the Commission will convene at 6:30 p.m., and will end at 8:30 p.m., on November 13, 1980, at the Ramada Inn, Route 18, School House Lane, New Brunswick, New Jersey 08816. The purpose of the meeting is to discuss coming year projects.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Mr. Clyde C. Allen, 62 Sheridan Avenue, Plainfield, New Jersey 07060, (212) 572-7577 or the Eastern Regional Office, 26 Federal Office Building, Room 1639, New York, New York 10007, (212) 264-0543.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 17, 1980.

Thomas L. Neumann,
Advisory Committee Management Officer.

[FR Doc. 80-32924 Filed 10-21-80; 8:45 am]
BILLING CODE 6335-01-M

Oklahoma Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Oklahoma Advisory Committee to the Commission will convene at 4:00 p.m., and will end at 7:00 p.m., on November 20, 1980, at Langston University, President's Conference Room, Langston, Oklahoma 73050. The purpose of the meeting is to discuss desegregation of higher education project.

Persons desiring additional information or planning a presentation to the Committee should contact the Chairperson, Rep. Hannah Atkins, State Capitol Building, Room 334, Oklahoma City, OK 73105, (405) 521-2711 or the Southwestern Regional Office, Heritage Plaza, 418 South Main, San Antonio, Texas 78204, (512) 229-5570.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 15, 1980.

Thomas L. Newmann,
Advisory Committee Management Officer.

[FR Doc. 80-32925 Filed 10-21-80; 8:45 am]
BILLING CODE 6335-01-M

Wyoming Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Wyoming Advisory Committee to the Commission will convene at 9:00 a.m., and will end at 12:00 p.m., on November 15, 1980, at the Federal Building, 100 East B Street, Room 3116, Casper, Wyoming 82601. The purpose of the meeting is to report on the SAC Chairs Conference in Washington and update the progress of research into working conditions for women and minorities in mineral extraction industries.

Persons desiring additional information or planning a presentation to the Committee should contact the Chairperson, Mrs. Jamie C. Ring, 520 Parkview Drive, Casper, Wyoming 82601, (307) 237-9504 or the Rocky Mountain Regional Office, 1020 Fifteenth Street, Suite 2235, Denver, Colorado 80202, (303) 837-2211.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 15, 1980.

Thomas L. Neumann,
Advisory Committee Management Officer.

[FR Doc. 80-32926 Filed 10-21-80; 8:45 am]
BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 164]

Resolution and Order Approving Application of Border Industrial Development, Inc. for a Foreign-Trade Zone in Nogales, Ariz.

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the Authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81U), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of Border Industrial Development, Inc., Nogales, Arizona, filed with the Foreign-Trade Zones Board (the Board) on February 26, 1980, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Nogales, Arizona, within the Nogales Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves an industrial park type zone that envisages the possible construction of buildings by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary

of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant To Establish, Operate, and Maintain a Foreign-Trade Zone in Nogales, Ariz., Within the Nogales Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81U) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports to entry under the jurdiction of the United States;

Whereas, Border Industrial Development, Inc., (the Grantee), a non-profit Arizona civic corporation, has made application (filed February 26, 1980) in due and proper form to the Board, requesting the establishment, operation and maintenance of a foreign-trade zone in Nogales, Arizona, within the Nogales Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's Regulations (15 CFR Part 400) are satisfied;

Now, Therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 60 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, said grant being subject to the provisions, conditions, and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 15th day of October 1980, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Luther H. Hodges, Jr.,

Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 80-32908 Filed 10-21-80; 8:45 am]

BILLING CODE 3510-25-M

COMMISSION ON EXECUTIVE, LEGISLATIVE, AND JUDICIAL SALARIES

Public Hearing

AGENCY: Commission on Executive, Legislative, and Judicial Salaries.

ACTION: Notice of Public Hearing.

SUMMARY: In accordance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the Commission on Executive, Legislative, and Judicial Salaries, open to public observation and participation. The purpose of the meeting is to solicit the views of the public concerning the appropriate pay levels and relationships between and among executive, legislative, and judicial salaries in the Federal Government.

DATE: Beginning at 1 p.m. on Thursday, November 6, and at 9:30 a.m. on Friday, November 7, 1980.

ADDRESSES: The Cash Room, (Pennsylvania Avenue Entrance), Department of the Treasury, 15th and Pennsylvania Avenue, N.W. Washington, D.C.

FOR FURTHER INFORMATION: Contact Lewis Shollenberger, Suite 440, 1815 N. Lynn Street, Arlington, Virginia 22209. Telephone (703) 235–2782.

SUPPLEMENTARY INFORMATION: Pursuant to section 225 of Public Law 90–206, the Commission is appointed every fourth fiscal year to make recommendations to the President on the appropriate level of compensation for the Vice President, and for positions in the Executive Branch from Cabinet Officers through positions at Level V, for the Members of Congress, for Supreme Court Justices and other members of the Federal Judiciary, and for certain other Federal officers. The Commission will submit its report to the President in early December 1980. As part of its review, the Commission wishes to seek out and carefully consider the views of all interested parties, including Federal government officials, organized labor, the business community, professional associations, and the general public.

The Commission requests that persons wishing to give testimony at this public hearing submit the subjects to be covered in writing and a summary statement of the views to be covered including name, organization, telephone number and address, to the individual named above, no later than Friday, October 31. The summaries should not exceed two typewritten pages, excluding any supplemental data such as charts, etc. which support the testimony. The Commission will then respond by telephone to those wishing to testify, giving the date and time of the appearance, and the amount of available time scheduled for testimony.

Persons who cannot testify at this hearing are invited to submit written views and comments to the Commission. The Commission requests that all written views and comments be submitted no later than the closing date of the public hearing on November 7, 1980.

While the Commission appreciates that the scope and complexity of these issues will make it difficult for some interested parties to respond fully in the time allowed, it must be emphasized that the Commission has its own time restraints and earnestly solicits the recommendations of all interested parties.

Alfred M. Zuck,

Executive Director.

[FR Doc. 80-33044 Filed 10-21-80; 8:45 am]

BILLING CODE 6820-AZ-M

DEPARTMENT OF DEFENSE

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I (1976)), notice is hereby given that the Naval Research Advisory Committee will meet on November 13, 1980, at the United States Naval Observatory, Washington, D.C., and on November 14, 1980, at the Pentagon, Washington, D.C. Sessions of the meeting will commence at 8:30 a.m. and terminate at 5:00 p.m. on November 13, 1980, and commence at 8:00 a.m. and terminate at 5:00 p.m. on November 14, 1980. All sessions will be closed to the public.

The entire agenda for the meeting will consist of discussions of star positions in aiding ship navigation, time service, anti-jam communications, jamming, tactical warning, nuclear effects, and other related research. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to Executive order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 522b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Captain Jesse B. Morris, U.S. Navy, Office of Naval Research (Code 700), 800 North Quincy Street, Arlington, Virginia 22217, telephone No. (202) 696–5066.

Dated: October 10, 1980.

P. B. Walker,

Captain, JAGC, U.S. Navy Alternate Federal Register Liaison Officer.

[FR Doc. 80-32897 Filed 10-21-80; 8:45 am]

BILLING CODE 3810-71-M

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, effective January 5, 1973, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, December 2, 1980; Tuesday, December 9, 1980; Tuesday, December 16, 1980, Tuesday, December 23, 1980; and Tuesday, December 30, 1980 at 10:00 a.m. in Room 3D–325, The Pentagon, Washington, D.C.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) concerning all matters involved in the development and authorization of wage schedules for Federal prevailing rate employees pursuant to Public Law 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92–463, the Federal Advisory Committee Act, meetings may be closed to the public when they are "concerned with matters listed in section 552b. of Title 5, United States Code." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the Chairman concerning matters believed to be deserving of the Committee's attention. Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D–281, The Pentagon, Washington, D.C.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

October 17, 1980.

[FR Doc. 80-32936 Filed 10-21-80; 8:45 am]

BILLING CODE 3810-70-M

Office of the Secretary

Defense Intelligence School Panel of the National Defense University and the Defense Intelligence School

Pursuant to the provisions of Subsection (d) Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a partially closed meeting of the Defense Intelligence School Panel of the Board of Visitors of the National Defense University and the Defense Intelligence School will be held on-site at the School in Washington, D.C. on 17, 18 and 19 November 1980.

Morning sessions on 17, 18 and 19 November 1980 will be devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and will therefore be closed to the public. Subject matter will be concerned with specialized instructional requirements and related curricula content.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

October 17, 1980.

[FR Doc. 80-32937 Filed 10-21-80; 8:45 am]

BILLING CODE 3810-70-M

DELAWARE RIVER BASIN COMMISSION

Comprehensive Plan; Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on November 18, 1980, beginning at 10:00 a.m. The hearing will be in the Stockholm Room of the Holiday Inn in Kulpsville, Montgomery County, Pennsylvania (Exit 31 of the northeast extension of the Pennsylvania Turnpike). The subject of the hearing is amendments of the Comprehensive Plan, and applications under Section 3.8 of the Delaware River Basin Compact, for the following interrelated projects:

1. *Neshaminy Water Resources Authority D–65–76 CP (6).* A water supply project involving an intake and pumping station on the Delaware River at Point Pleasant, Plumstead Township, Bucks County, Pennsylvania; a transmission main from Point Pleasant to the Bradshaw reservoir proposed by the Philadelphia Electric Company; a transmission main from Bradshaw reservoir to the North Branch Neshaminy Creek; a water treatment plant at the confluence of Pine Run with North Branch Neshaminy Creek in the Borough of Chalfont; and, southern and western transmission mains from the water treatment plant to serve areas in Bucks and Montgomery Counties. The applicant proposes to divert a maximum of 63 million gallons per day initially.

and to increase the diversions incrementally to a maximum of 95 million gallons per day by the year 2010.

2. *Philadelphia Electric Company D–79–52 CP.* A water supply project involving a 70 million gallon storage reservoir near Bradshaw Road in Plumstead Township, Bucks County, Pennsylvania; a proposed pumping station adjacent to the reservoir; and a seven mile transmission main from the reservoir to the East Branch Perkiomen Creek. The project will provide water supply by way of Perkiomen Creek to the Limerick nuclear generating station near Pottstown, Montgomery County, Pennsylvania, during those periods when the Schuylkill River and Perkiomen Creek flows are insufficient to maintain full plant operation. When operating, the system will withdraw from Bradshaw reservoir at a miximum rate of 46.2 million gallons per day.

Drafts of Delaware River Basin Commission dockets for each of the above project review applications are available from the Commission upon request. These documents provide a more detailed description of each project and set forth proposed terms and conditions under which the projects would be operated, if approved by the Commission.

The public hearing will run from 10 a.m. until 5 p.m. and will resume with an evening session at 7:30 p.m. Persons wishing to testify are requested to notify the Secretary to the Commission, by phone or in writing, prior to 5 p.m., Friday, November 14, 1980. Written testimony may be submitted at the hearing in lieu of oral testimony and will be made a part of the record. The record of the hearing will remain open until 5 p.m., Friday, December 5, 1980, for receipt of written testimony.

W. Brinton Whitall,

Secretary.

October 15, 1980.

[FR Doc. 80–32806 Filed 10–21–80; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF EDUCATION

Board of Advisors to the Fund for the Improvement of Postsecondary Education; Renewal

Pursuant to the Federal Advisory Committee Act, 5 USC Appendix I, notice is given of the renewal of the Board of Advisors to the Fund for the Improvement of Postsecondary Education. The Board advises the Secretary, the Assistant Secretary for Educational Research and Improvement, and the Director, Fund for the Improvement of Postsecondary Education, on projects under consideration for support by the fund, and on the operations of the Fund generally. This includes activities such as advising on planning documents and guidelines prepared by the Director of the Fund, and advising on project ideas submitted to the Fund in response to these guidelines. This Board will expire when the National Board of the Fund for the Improvement of Postsecondary Education authorized by the Education Amendments of 1980, Pub. L. 96–374, is properly chartered and established.

Further information on the Board may be obtained from Arturo Madrid, Director, Fund for the Improvement of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202, telephone: (202) 245–8091.

Dated: October 16, 1980.

John Gabusi,

Assistant Secretary for Management.

[FR Doc. 80–32931 Filed 10–21–80; 8:45 am]

BILLING CODE 4000–01–M

Fund for the Improvement of Postsecondary Education; Meeting

AGENCY: Fund for the Improvement of Postsecondary Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the Board of Advisory to the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463, Sec. 10(a)(2)).

DATE: November 7, 1980, 3:00 p.m. to 9:00 p.m.; November 8, 1980, 9:00 a.m. to 12:00 p.m.

ADDRESS: Sheraton French Lick Resort, French Lick, Indiana.

FOR FURTHER INFORMATION CONTACT: Arturo Madrid, Director, Fund for the Improvement of Postsecondary Education, 400 Maryland Avenue, SW., Washington, D.C. 20202 (202/245–8091).

SUPPLEMENTARY INFORMATION: The Board of Advisors to the Fund for the Improvement of Postsecondary Education was established under Section 404 of the General Education Provisions Act. The Board of Advisors to the Fund was established to:

Recommend to the Director of the Fund, the Assistant Secretary for Educational Research and Improvement, and the Secretary priorities for funding and the approval or disapproval of grants and contracts of a given kind or over a designated amount.

The meeting of the Board shall be open to the public.

The proposed agenda includes:

- Developing and submitting for review procedures for the five competitions the Fund will be conducting in FY81. The competitions are:

—Mina Shaughnessy Scholars Program
—Minority Institutions Science Improvement Program
—Comprehensive Programs
—ED/DOL Program
—Final Year Dissemination

Records shall be kept of all Board proceedings, and shall be available for public inspection at the Fund for the Improvement of Postsecondary Education, 400 Maryland Avenue, SW., Roomn 3123, Washington, D.C. 20202, between the hours of 8:00–4:30 weekdays, except Federal Holidays.

Signed: October 17, 1980.

F. James Rutherford,

Assistant Secretary, Education Research and Improvement.

[FR Doc. 80–32928 Filed 10–21–80; 8:45 am]

BILLING CODE 4000–01–M

National Advisory Council on Women's Educational Programs; Meeting

AGENCY: National Advisory Council on Women's Educational Programs.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Women's Educational Programs and its Executive, Federal Policies, Practices, and Programs, Civil Rights and WEEA Program Committees. This notice also describes the functions of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: November 10, 1980, 1:00 p.m. to 5:00 p.m. and 7:30 p.m. to 9:30 p.m.; November 11, 1980, 8:30 a.m. to 5:00 p.m.; and November 12, 1980, 8:30 a.m. to 5:00 p.m.

ADDRESS: 1832 M Street, N.W., Suite 821, Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Dauito, Administrative Assistant, National Advisory Council on Women's Educational Programs, 1832 M Street, N.W., Suite 821, Washington, D.C. 20036 (202) 653–5846.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Women's Educational Programs is established pursuant to Public Law 95–561. The Council is mandated to (a) advise the Secretary on matters relating to equal education opportunities for women and policy matters relating to the administration of the Women's Educational Equity Act of 1978; (b) make recommendations to the Secretary with respect to the allocation of any funds pursuant to the Act, including criteria developed to insure an appropriate geographical distribution of approved programs and projects throughout the Nation; (c) recommend criteria for the establishment of program priorities; (d) make such reports as the Council determines appropriate to the President and Congress on the activities of the Council; and (e) disseminate information concerning the activities of the Council.

The Council will hold an orientation session for its newly appointed members on November 10, 1980 from 1:00 p.m. to 5:00 p.m. The agenda will include a general overview of the past and present work and programs of the Advisory Council.

The meeting of the Executive Committee will take place on November 10, 1980 from 7:30 p.m. to 9:30 p.m. The agenda will include plans for the Council meeting as well as a discussion of current activities and future plans.

The meeting of the Federal Policies, Practices, and Programs Committee, the Civil Rights Committee, and the WEEA Program Committee will take place on November 11, 1980 from 8:30 a.m. to 3:00 p.m.

The agenda for the Federal Policies, Practices, and Programs Committee will include a discussion of the Council's Congressional testimony on sex equity provisions in the Vocational Education Act, the possibility of a second forum on vocational education, and the concerns of new members and suggestions for new directions.

The agenda for the Civil Rights Committee will include discussion of the Council's study on alternatives to Federal assistance termination as a sanction for certain types of Title IX violations, EEOC's call for information on layoffs and affirmative action, and follow-up on the sexual harassment report.

The agenda for the Program Committee will include the orientation of new members to the activities of the Committee, a general discussion of possible evaluation strategies of the FY 1980 WEEA Program, and a status report from the WEEAP Director.

The meeting of the National Advisory Council on Women's Educational Programs will take place from 3:30 p.m. to 5:00 p.m. on November 11 and from 8:30 a.m. to 5:00 p.m. on November 12, 1980. The agenda will include reports of the Executive Director and the Women's Educational Equity Act Program, action on recommendations from the Council's standing Committees, and plans for future Council meetings.

The meetings of the Council will be open to the public. Records will be kept of the proceedings and will be available for public inspection at the office of the National Advisory Council on Women's Educational Programs, 1832 M Street, NW., Suite 821, Washington, D.C.

Signed at Washington, D.C. on October 17, 1980.

Joy R. Simonson,

Executive Director.

[FR Doc. 80–32893 Filed 10–21–80; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

National Petroleum Council, Exploration Task Group of the Committee on Arctic Oil and Gas Resources; Meeting

Notice is hereby given that the Exploration Task Group of the Committee on Arctic Oil and Gas Resources will meet in December 1980. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Arctic Oil and Gas Resources will analyze the various issues bearing on expeditious resource development of this promising frontier area. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location and agenda of the Exploration Task Group meeting follows:

The second meeting of the Exploration Task Group will be held on Tuesday, December 2, 1980, starting at 9:00 a.m., in Rooms 304 and 306, Chevron U.S.A. Inc., 575 Market Street, San Francisco, California.

The tentative agenda for the meeting follows:

1. Introductory remarks from Chairman and Government Cochairman.
2. Review preliminary drafts of individual assignments.
3. Discuss any other matters pertinent to the overall assignment of the Exploration Task Group.

The meeting is open to the public. The Chairman of the Exploration Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Exploration Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform L. A. Vickers, Office of Oil and Natural Gas, Resource Applications, 202/633–8383, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on October 16, 1980.

R. D. Langenkamp,

Deputy Assistant Secretary Resource Development & Operations Resource Applications.

October 16, 1980.

[FR Doc. 80–32950 Filed 10–21–80; 8:45 am]

BILLING CODE 6450–01–M

National Petroleum Council, Land Use Task Group of the Committee on Environmental Conservation; Meeting

Notice is hereby given that the Land Use Task Group of the Committee on Environmental Conservation will meet in November 1980. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Environmental Conservation will analyze the environmental problems of the oil and gas industries and the impact of current environmental control regulations on the availability and costs of petroleum products and natural gas. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location and agenda of the Land Use Task Group meeting follows:

The Land Use Task Group will hold its first meeting on Wednesday, November 5, 1980, starting at 2:00 p.m., in the Conference Room of the National Petroleum Council, 1625 K Street, NW, Washington, D.C.

The tentative agenda for the meeting follows:

1. Review Task Group assignment from the NPC Committee on Environmental Conservation.
2. Discuss Task Group study approach and individual assignments.
3. Discuss Task Group schedule.
4. Discuss any other matters pertinent to the overall assignment of the Land Use Task Group.

The meeting is open to the public. The Chairman of the Land Use Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Land Use Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform L. A. Vickers, Office of Oil and Natural Gas, Resource Applications, 202/633-8383, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on October 16, 1980.

R. D. Langenkamp,

Deputy Assistant Secretary Resource Development & Operations Resource Applications.

October 16, 1980.

[FR Doc. 80-32949 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, Resource Assessment Task Group of the Committee on Arctic Oil and Gas Resources; Meeting

Notice is hereby given that the Resource Assessment Task Group of the Committee on Arctic Oil and Gas Resources will meet in October 1980. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Arctic Oil and Gas Resources will analyze the various issues bearing on expeditious resource development of this promising frontier area. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location and agenda of the Resource Assessment Task Group meeting follows:

The second meeting of the Resource Assessment Task Group will be held on Friday, October 31, 1980, starting at 9:00 a.m., in the Board Room of DeGoyler and MacNaughton, 400 One Energy Square, Dallas, Texas.

The tentative agenda for the meeting follows:

1. Introductory remarks from Chairman and Government Cochairman.
2. Review recommendations for the methodology of the Task Group report.
3. Review the timetable of the Task Group.
4. Discuss any other matters pertinent to the overall assignment of the Task Group.

The meeting is open to the public. The Chairman of the Resource Assessment Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Resource Assessment Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform L. A. Vickers, Office of Oil and Natural Gas, Resource Applications, 202/633-8383, prior to the meeting and resonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on October 16, 1980.

R. D. Langenkamp,

Deputy Assistant Secretary, Resource Development & Operations, Resource Applications.

October 16, 1980.

[FR Doc. 80-32951 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs

Proposed Subsequent Arrangements

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Canada Concerning Civil Uses of Atomic energy, as amended, and the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above mentioned agreements involve approval of the following sales contracts:

S-CA-300, to the Government of Canada, 1,000 milligrams of uranium, greater than 99% enriched in U-235, to be used in a research program to develop analytical procedures concerning uranium isotopes.

S-EU-665, to Belgium, 1,000 milligrams of uranium containing 99.9% U-238, 100 milligrams of uranium containing approximately 90% U-236, 10 milligrams of plutonium enriched to greater than 85% Pu-244, and 50 milligrams of plutonium, enriched to 99.9985% in Pu-239. These materials are to be used for safeguards purposes, for burn-up determinations, for fuel analysis, and for exploratory research.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of these nuclear materials will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: October 16, 1980.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 80-32811 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangements

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning the Peaceful Uses of Atomic Energy, as amended.

These subsequent arrangements to be carried out under the above mentioned Agreement involve the shipment of enriched uranium/aluminum alloy fuels from the locations below to the DOE Savannah River facility for reprocessing and storage of recovered uranium.

Reactor and location	Kilograms of contained uranium
FRG 1 and 2, Federal Republic of Germany	56
ESSOR, Italy	20

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security. These arrangements for returning U.S. origin highly enriched uranium (HEU) to the U.S. are consistent with U.S. non-proliferation policy in that they serve to reduce the amount of HEU abroad.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: October 16, 1980.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 80-32812 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Dickey-Lincoln School Lakes Transmission Project; Public Meetings

The U.S. Department of Energy (DOE) will conduct public meetings to provide information and receive comments on a draft Environmental Impact Statement (EIS) describing electrical transmission facilities between the Comerford and Moore Dams and Franklin, New Hampshire, area. These meetings are scheduled as follows: Wednesday, November 12, 7:30 p.m., Littleton Town Hall, Littleton, New Hampshire, and Thursday, November 13, 7:30 p.m., Court Room, Plymouth Town Hall, Plymouth, New Hampshire.

The supplemental draft Environmental Impact Statement was filed with EPA on October 3, 1980, and notice of its availability was published in the **Federal Register** on October 10, 1980. A 45-day period has been allotted for public comment and review of the document.

Questions regarding the EIS should be directed to Timothy J. Murray, Assistant Project Manager for Environmental Studies, Dickey-Lincoln School Lakes Transmission EIS Project, Bonneville Power Administration—ETMC, P.O. Box 3621, Portland, Oregon 97208.

Dated at Washington, D.C., this 17th day of October, 1980.

Roger E. Seifert,

Assistant Manager.

[FR Doc. 80-32952 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-01-M

UMI 0 8 2 2 C O 5 4 V

Federal Energy Regulatory Commission

[Volume 300]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

October 16, 1980.

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
LOUISIANA OFFICE OF CONSERVATION								
*EXXON CORPORATION					RECEIVED: 10/02/80 JA: LA			
8100573	80-2633	1772520204	102		S L 6706 NO A-1	MAIN PASS BLOCK 74	240.0	
*GLENDA PETROLEUM CORP					RECEIVED: 10/02/80 JA: LA			
8100561	80-3413	1711120628	108		EXXON 23-A #7 S/N 148410	MONROE	3.9	MID LOUISIANA GAS
8100566	80-3408	1711120720	108		KELTON HOWARD NO 1 S/N 150153	MONROE	11.0	MID LOUISIANA GAS CO
8100562	80-3412	1711120722	108		KELTON HOWARD NO 3 S/N 150155	MONROE	12.0	MID LOUISIANA GAS CO
8100563	80-3411	1711120723	108		KELTON HOWARD NO 4 S/N 150156	MONROE	12.0	MID LOUISIANA GAS CO
8100564	80-3410	1711120725	108		KELTON HOWARD NO 5 S/N 150173	MONROE	13.0	MID LOUISIANA GAS CO
8100565	80-3409	1711120726	108		KELTON HOWARD NO 6 S/N 150174	MONROE	13.0	MID LOUISIANA GAS CO
8100567	80-3420	1711120547	108		MAGGIE SMITH C-1 S/N 147359	MONROE	19.0	MID LOUISIANA GAS CO
8100568	80-3419	1711120567	108		MAGGIE SMITH C-3 S/N 147534	MONROE	20.0	MID LOUISIANA GAS CO
8100569	80-3418	1711120601	108		MAGGIE SMITH M-1 S/N 147905	MONROE	16.0	MID LOUISIANA GAS CO
8100571	80-3416	1711120606	108		MAGGIE SMITH M-2 S/N 147917	MONROE	17.0	MID LOUISIANA GAS CO
8100570	80-3417	1711120763	108		MAGGIE SMITH J #1 S/N 150679	MONROE	13.0	MID LOUISIANA GAS CO
8100572	80-3415	1707321116	108		PERRY HEIRS B #6 S/N 161006	MONROE	3.5	MID LOUISIANA GAS
8100560	80-3414	1707321119	108		PERRY HEIRS B #9 S/N 161110	MONROE	3.5	MID LOUISIANA GAS
*KERR-MCGEE CORPORATION					RECEIVED: 10/02/80 JA: LA			
8100574	80-2792	1710121079	102		BESSIE L CARTER #1	JEANERETTE	1460.0	TEXAS GAS TRANSMISSI
OHIO DEPARTMENT OF NATURAL RESOURCES								
*ALTHEIRS OIL INC					RECEIVED: 10/01/80 JA: OH			
8100501		3412724684	103		M SABATINO #1	PIKE TWP	4.0	
8100374		3405320539	103		MELVIN COEN #1	CHESHIRE TWP	4.0	COLUMBIA GAS TRANSMI
*APPALACHIAN PETROLEUM CORP					RECEIVED: 10/01/80 JA: OH			
8100330		3416725668	103		E HULETT #1	ADAMS	3.5	COLUMBIA GAS TRANSMI
8100502		3412122376	103		HAROLD REED #1-1	JACKSON	3.5	COLUMBIA GAS TRANSMI
8100326		3416725684	103		M FARNSWURTH #1	ADAMS	3.5	COLUMBIA GAS TRANSMI
8100329		3416725644	103		R ADDLESBURGER #4	ADAMS	3.5	COLUMBIA GAS TRANSMI
*ATLAS ENERGY GROUP INC					RECEIVED: 10/01/80 JA: OH			
8100449		3413322305	103		CARVER BASINAIS NO 1 = #0892	DEERFIELD	0.0	EAST OHIO GAS CO
*BEREA OIL AND GAS CORPORATION					RECEIVED: 10/01/80 JA: OH			
8100485		3415521391	102		HUBISH #3	BROOKFIELD	1.0	COLUMBIA GAS TRANSMI
8100486		3415521296	103		THOMAS UNIT #2	VIENNA	1.0	EAST OHIO GAS CO
*BJVC ENERGY MANAGEMENT CORP					RECEIVED: 10/01/80 JA: OH			
8100405		3410521862	103		HARLEY RIGGS #3	BEDFORD	3.0	COLUMBIA GAS TRANSMI
*BROWN PETROLEUM CORP					RECEIVED: 10/01/80 JA: OH			
8100410		3407522401	103		BRUMME #4	KILLBUCK	1.5	COLUMBIA GAS TRANSMI
8100414		3407522262	103		FLINTSTONE FARMS #2	KILLBUCK	3.0	NATIONAL GAS & OIL C
8100406		3409921228	103		PARKS #2	CANFIELD	38.0	EAST OHIO GAS CO
*BUCKEYE OIL PRODUCING CO					RECEIVED: 10/01/80 JA: OH			

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8100404		3411121881	108		BEARDMORE #1		5.0	COLUMBIA GAS TRANSMI
*CAMERON BROS					RECEIVED: 10/01/80 JA: OH			
8100440		3411925277	103		OHIO DIST COUNCIL INC #1	WASHINGTON	10.0	COLUMBIA GAS TRANSMI
*CLARENCE K TUBSEL JR					RECEIVED: 10/01/80 JA: OH			
8100386		3400721407	103		J KALLIO #1	CITY OF CONNEAUT	30.0	
*DERRICK PETROLEUM CO					RECEIVED: 10/01/80 JA: OH			
8100379		3403123748	103		DOUGLAS SWIGERT #1	JACKSON	0.0	
8100378		3403123800	103		HARRY STURMAN & H SWARTZ #1	PERRY	0.0	
8100377		3403123865	103		LYNN MIKESELL #1	PERRY	0.0	
*DUSTY DRILLING COMPANY INC					RECEIVED: 10/01/80 JA: OH			
8100445		3411521984	103		TAYLOR #1	DEERFIELD	0.1	COLUMBIA GAS TRANSMI
*ENERGY DEVELOPMENT CORP					RECEIVED: 10/01/80 JA: OH			
8100326		3416922367	103		CANANKAMP #1	PLAIN	16.0	
8100388		3400721381	103		DEAN #1	NEW LYME	20.0	EAST OHIO GAS CO
8100387		3400721386	103		FORRISTAL #1	NEW LYME	20.0	EAST OHIO GAS CO
8100389		3400721365	103		PIETRASZ #2	ORWELL	20.0	EAST OHIO GAS CO
8100385		3400721415	103		STOKES #1	NEW LYME	20.0	EAST OHIO GAS CO
*FORTUNE GAS AND OIL INC					RECEIVED: 10/01/80 JA: OH			
8100446		3411521832	103		KLIES #1	BLOOM	30.0	EAST OHIO GAS CO
*GERALD GREEN					RECEIVED: 10/01/80 JA: OH			
8100403		3411121966	103		GERALD GREEN #1	WAYNE	12.0	
*J D DRILLING CO					RECEIVED: 10/01/80 JA: OH			
8100375		3405320470	103		EARL ICARD #1	CHESHIRE	3.0	COLUMBIA GAS TRANSMI
*J P WHITE					RECEIVED: 10/01/80 JA: OH			
8100483		3415521412	103		NEWCOMB LUMBER #3	NEWTON	50.0	COLUMBIA GAS TRANSMI
*L & M PETROLEUM					RECEIVED: 10/01/80 JA: OH			
8100331		3416725582	107		CHARLES LOWE #2	FEARING	12.8	COLUMBIA GAS TRANSMI
8100337		3416725379	107		OEMMLOW/ZIMMER UNIT #1	FEARING	12.8	COLUMBIA GAS TRANSMI
8100309		3416725017	107		DOYLE DUCKWORTH UNIT #1	FEARING	12.8	COLUMBIA GAS TRANSMI
8100335		3416725472	107	D	ELMER MILLER #2	FEARING	12.8	COLUMBIA GAS TRANSMI
8100334		3416725483	107		HAROLD DAY #2	FEARING	12.8	COLUMBIA GAS TRANSMI
8100400		3416724973	107		HOWARD IDDINGS #1	MARIETTA	12.8	COLUMBIA GAS TRANSMI
8100336		3416725412	107		LYLE SCHULTHEIS 1-6	FEARING	12.8	COLUMBIA GAS TRANSMI
8100333		3416725497	107		LYLE SCHULTHEIS 2-A	FEARING	12.8	COLUMBIA GAS TRANSMI
8100332		3416725569	107		OTTMIRE DUFF #1	LAWRENCE	12.8	COLUMBIA GAS TRANSMI
8100359		3416725018	107		PAUL ZIMMER #1	FEARING	12.8	COLUMBIA GAS TRANSMI
8100338		3416724377	107		ROBERT BARTH #4	NEWPORT	12.8	COLUMBIA GAS TRANSMI
*NATIONAL PETROLEUM CORP					RECEIVED: 10/01/80 JA: OH			
8100390		3400721142	103		C REINKE #2	JEFFERSON	15.0	EAST OHIO GAS CO
8100402		3411121998	107		D CHRISTMAN #2	MALAGA	15.0	TEXAS EASTERN TRANSM
8100401		3411122071	107		R PETERS #8	MALAGA	15.0	TEXAS EASTERN TRANSM
*OHIO TITAN ENERGY CO LTD 1980-6					RECEIVED: 10/01/80 JA: OH			
8100413		3407522352	103		JOHN C BUREN #3	HARDY	1700.0	COLUMBIA GAS TRANSMI
*OHIO TITAN ENERGY CO LTD 1980-4					RECEIVED: 10/01/80 JA: OH			
8100411		3407522357	103		JOHN C BUREN #1	HARDY	1200.0	COLUMBIA GAS TRANSMI
*OHIO TITAN ENERGY CO LTD 1980-5					RECEIVED: 10/01/80 JA: OH			
8100412		3407522353	103		JOHN C BUREN #2	HARDY	1300.0	COLUMBIA GAS TRANSMI
*R M HUTCHESON					RECEIVED: 10/01/80 JA: OH			
8100496		3413320425	108		A ETAL WISE COM #1		3.5	EAST OHIO GAS CO
8100407		3409920196	108		ALLIANCE BRICK #1		9.2	EAST OHIO GAS CO
8100394		3400720244	108		BAILEY #1		1.7	EAST OHIO GAS CO
8100492		3415120234	108		BRADLEY & DUNEM #1		4.4	COLUMBIA GAS TRANSMI

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JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8100393		3400720245	108		C T KELNER #1		5,4	EAST OHIO GAS CO
8100491		3415120323	108		D G SHAFFER #1		1,9	COLUMBIA GAS TRANSMI
8100498		3413320405	108		D M HOSKINS #1		5,8	EAST OHIO GAS CO
8100408		3409920179	108		F & M E KNISLEY #1		14,1	EAST OHIO GAS CO
8100395		3400720243	108		I & A GLINIAK #1		1,6	EAST OHIO GAS CO
8100392		3400720324	108		J & M MEBUVITCH #1		5,1	EAST OHIO GAS CO
8100495		3413320431	108		J KAPUSTA #1		3,4	EAST OHIO GAS CO
8100384		3401920415	108		J P MCQUEEN #1		2,9	EAST OHIO GAS CO
8100484		3415720966	108		JOHN G SCALIA #1		1,7	EAST OHIO GAS CO
8100500		3413320132	108		JOHN QUIN #2		6,6	EAST OHIO GAS CO
8100499		3413320136	108		JOHN QUIN #3		5,4	EAST OHIO GAS CO
8100391		3400720356	108		KOWALEWSKI UNIT #1		5,8	EAST OHIO GAS CO
8100448		3413320460	108		M & G UHEN #1		1,7	EAST OHIO GAS CO
8100494		3413320455	108		M T & G MONTER #1		9,7	EAST OHIO GAS CO
8100396		3400720227	108		P & E STEIN #1		2,3	EAST OHIO GAS CO
8100497		3413320419	108		R J & D B KEMMARY #1		2,5	EAST OHIO GAS CO
8100493		3415120199	108		WATSON #1		1,4	EAST OHIO GAS CO
•RELIANCE MANAGEMENT CO					RECEIVED: 10/01/80 JA: OH			
8100376		3400520586	108		GALON MODABAUGH #1		1,0	COLUMBIA GAS TRANSMI
•ROWLEY & BROWN PETROLEUM CORP					RECEIVED: 10/01/80 JA: OH			
8100443		3411923683	103		KILPATRICK #2	LICKING	72,0	COLUMBIA GAS TRANSMI
•STOCKER&SITLER INC					RECEIVED: 10/01/80 JA: OH			
8100481		3416320442	102		LOCKARD LEASE #1	CLINTON	73,0	
8100482		3416320434	102		LOCKARD UNIT #1	CLINTON	55,0	
•STRATA EXPLORATION INC LTD 1980=6					RECEIVED: 10/01/80 JA: OH			
8100409		3407522461	105		LEON GLICK #1	HANDY	750,0	COLUMBIA GAS TRANSMI
•SUSIE JANE GAS CO					RECEIVED: 10/01/80 JA: OH			
8100397		3408720254	108		JOHN PRATT #1		11,5	COLUMBIA GAS TRANSMI
•THE OXFORD OIL CO					RECEIVED: 10/01/80 JA: OH			
8100442		3411923960	108		ALPINE FARMS #1=A		9,0	COLUMBIA GAS TRANSMI
8100441		3411924383	108		LARRY MCCUTCHEUN #1		4,0	COLUMBIA GAS TRANSMI
8100415		3407521495	108		MARY MILLER #1		15,0	COLUMBIA GAS TRANSMI
8100325		3411521324	108		MAURICE BUERGEN #1		18,0	COLUMBIA GAS TRANSMI
•THUNDERBIRD PETROLEUM DEVELOP CO					RECEIVED: 10/01/80 JA: OH			
8100503		3412122296	103		C J BAKER #1	ELK	50,0	
•TOWNER PETROLEUM CO					RECEIVED: 10/01/80 JA: OH			
8100436		3412121759	108		A CROCK #1 G=8		6,0	EAST OHIO GAS CO
8100426		3412121823	108		AKE #1 J=17		6,0	JONES & LAUGHLIN STE
8100512		3412121826	108		AKE #2 J=16		8,0	JONES & LAUGHLIN STE
8100424		3412121825	108		AKE #3 J=15		4,5	JONES & LAUGHLIN STE
8100510		3412121828	108		AKE #4 J=20		3,0	JONES & LAUGHLIN STE
8100425		3412121824	108		AKE/HUTCHINS/FINLEY J=18		7,0	JONES & LAUGHLIN STE
8100341		3405922189	108		AYRES J=67		18,0	JONES & LAUGHLIN STE
8100358		3405922021	108		BEYMER/CHAPMAN USS=24		2,0	US STEEL CORP
8100461		3405922286	108		BISHARD PPG=38		21,0	JONES & LAUGHLIN STE
8100373		3405921897	108		BRILL #1 USS=2		7,0	US STEEL CORP
8100476		3405922215	108		BROWN M=36		3,0	WIERTON STEEL COMP
8100460		3405922276	108		BROWN M=46		8,0	WIERTON STEEL CO
8100348		3405922111	108		BUGOS PPG=15		4,0	PPG INDUSTRIES INC
8100371		3405921921	108		C FITZGERALD #1 USS=3		4,0	US STEEL CORP
8100478		3405922203	108		C GRAY J=64		4,5	JONES & LAUGHLIN STE
8100477		3405922212	108		C GRAY J=65		7,0	JONES & LAUGHLIN STE

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JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8100421		3405922440	108		CARLISLE #1 J=62		9,0	JONES & LAUGHLIN STE
8100420		3405922442	108		CARLISLE #2 J=63		19,0	JONES & LAUGHLIN STE
8100369		3405921928	108		CHAPMAN #1 USS=4		2,3	US STEEL CORP
8100322		3411521738	108		CO INFIRMARY #1 M=12		10,5	EAST OHIO GAS CO
8100323		3411521737	108		CO INFIRMARY #2 M=13		6,0	EAST OHIO GAS CO
8100367		3405921955	108		CRAMBLETT PPG=39		4,0	JONES & LAUGHLIN STE
8100431		3412121789	108		CROCK #3 B=1		5,0	EAST OHIO GAS CO
8100507		3412121879	108		CROCK #5 B=3		2,0	EAST OHIO GAS CO
8100324		3411521660	108		DANIELS M=10		6,0	EAST OHIO GAS CO
8100345		3405922121	108		DUNLAP #4 J=59		8,0	JONES LAUGHLIN STEEL
8100459		3405922292	108		DUNLAP M=42		18,0	WIERTON STEEL CO
8100509		3412121830	108		E & C HUTCHINS #4 J=26		9,6	JONES & LAUGHLIN STE
8100362		3405921986	108		EVANS USS=16		6,0	US STEEL CORP
8100418		3405922446	108		FERDUN J=89		7,0	JONES & LAUGHLIN STE
8100344		3405922152	108		FOGLE M=26		5,0	WIERTON STEEL CO
8100474		3405922217	108		FORD M=33		6,0	WIERTON STEEL CORP
8100365		3405921959	108		FRESHLEY/CALAWAY USS=10		7,5	JONES & LAUGHLIN STE
8100453		3405922348	108		GEORGE=SCHULLER #1 PPG=31		20,0	JONES AND LAUGHLIN S
8100480		3405922198	108		GRAY #1 J=58		3,0	JONES & LAUGHLIN STE
8100472		3405922220	108		GRAY J=70		4,0	JONES & LAUGHLIN STE
8100355		3405922025	108		H WARNE PPG=2		9,0	JONES & LAUGHLIN STE
8100416		3405922471	108		HALE #2 M=56		9,0	WIERTON STEEL CO
8100430		3412121810	108		HARPER=JENKINS OM=5		4,0	EAST OHIO GAS CO
8100506		3412121867	108		HAYES/HUTCHINS/CLARK J=10		11,6	JONES & LAUGHLIN STE
8100456		3405922298	108		HICKMAN M=51		2,0	WIERTON STEEL CORP
8100455		3405922299	108		HICKMAN M=52		17,0	JONES & LAUGHLIN STE
8100350		3405922108	108		HITCHCOCK PPG=10		5,0	PPG INDUSTRIES INC
8100349		3405922109	108		HOSFELT/HITCHCOCK PPG=12		4,0	PPG INDUSTRIES INC
8100435		3412121766	108		HUTCHINS #1 J=11		3,7	JONES & LAUGHLIN STE
8100429		3412121816	108		HUTCHINS #2 J=13		2,0	JONES & LAUGHLIN STE
8100428		3412121817	108		J OGLE #1 OM=6		7,5	EAST OHIO GAS CO
8100364		3405921962	108		J OLIVER USS=14		6,0	US STEEL CORP
8100454		3405922300	108		JACKSON M=47		1,0	WIERTON STEEL COMP
8100462		3405922284	108		JOHNSON M=40		4,5	WIERTON STEEL CO
8100422		3405922439	108		JOHNSON/FRAME J=66		18,0	JONES & LAUGHLIN STE
8100473		3405922218	108		JOHNSTUN=WATSON M=29		5,0	WIERTON STEEL CO
8100475		3405922216	108		KLIES M=30		5,0	WIERTON STEEL CO
8100363		3405921985	108		LANDMAN USS=16		0,5	US STEEL CORP
8100361		3405921992	108		LANDMAN USS=19		7,0	US STEEL CORP
8100466		3405922273	108		LARRICK M=44		8,0	WEIRTON STEEL CO
8100360		3405921954	108		LATCHIC #1 USS=8		7,0	US STEEL CORP
8100457		3405922297	108		LATTEA J=77		2,0	JONES & LAUGHLIN STE
8100460		3405922290	108		LAUGHMAN PPG=30		14,0	JONES & LAUGHLIN STE
8100465		3405922283	108		LAUGHMAN M=48		7,0	JONES & LAUGHLIN STE
8100417		3405922463	108		LINDLEY #1 PPG=64		10,0	JONES & LAUGHLIN STE
8100351		3405922106	108		LINN PPG=7		3,5	PPG INDUSTRIES INC
8100353		3405922102	108		LINN PPG=8		8,0	PPG INDUSTRIES INC
8100471		3405922221	108		LONG J=74		5,7	JONES & LAUGHLIN STE
8100504		3412122000	108		M SAYRE B=6		3,8	EAST OHIO GAS CO
8100432		3412121788	108		M WEBER #1 OM=3		9,4	EAST OHIO GAS CO
8100343		3405922163	108		MCCONNELL USS=27		3,0	US STEEL CORP
8100370		3405921927	108		MCCORMICK USS=5		9,6	US STEEL CORP

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8100511		3412121827	108		MCKITRICK #1 J=21		7,6	JONES & LAUGHLIN STE
8100423		3405922433	108		MCQUAIN J=85		9,0	JONES & LAUGHLIN STE
8100451		3405922360	108		MOORE #1 PPG=62		18,0	JONES & LAUGHLIN STE
8100479		3405922201	108		OLIVER J=71		13,0	JONES & LAUGHLIN STE
8100339		3405922191	108		OLIVER J=72		0,0	JONES & LAUGHLIN STE
8100340		3405922190	108		OLIVER J=73		16,0	JONES & LAUGHLIN STE
8100360		3405922016	108		OLIVER US3=17		4,5	JONES & LAUGHLIN STE
8100470		3405922225	108		PETERSON J=68		9,0	JONES & LAUGHLIN STE
8100357		3405922023	106		R MOOREMEAD PPG=1		2,5	JONES & LAUGHLIN STE
8100467		3405922241	108		RAIMER W=49		5,0	JONES & LAUGHLIN STE
8100468		3405922239	108		RAIMER W=50		11,0	JONES & LAUGHLIN STE
8100346		3405922119	108		RAMELLI & CANEL 1 J=54		11,0	JONES & LAUGHLIN STE
8100347		3405922118	108		RAMELLI & CANEL 2 J=55		15,0	JONES & LAUGHLIN STE
8100438		3412121750	108		RITTERBECK G=3		6,6	COLUMBIA GAS TRANSMI
8100437		3412121754	108		ROSS #1 G=4		5,8	EAST OHIO GAS CO
8100444		3411922401	108		RUBY #1		10,0	EAST OHIO GAS CO
8100372		3405921898	108		S BRILL #1 US8=6		4,0	US STEEL CORP
8100433		3412121786	108	D	S GREATHOUSE UM=2		24,5	EAST OHIO GAS CO
8100427		3412121820	108		SANFORD #1 G=7		2,0	EAST OHIO GAS CO
8100463		3405922265	108		SCHULLER/BISHAND PPG #37		5,0	JONES & LAUGHLIN STE
8100450		3405922410	108		SHOWALTER #1 PPG=40		8,0	JONES & LAUGHLIN STE
8100352		3405922105	108		SLASOR PPG=14		4,5	PPG INDUSTRIES INC
8100342		3405922107	108		SMITH J=63		4,7	JONES & LAUGHLIN STE
8100447		3405922431	108		T DEAN J=84		0,0	JONES & LAUGHLIN STE
8100434		3412121781	108		T FINLEY #1 J=12		3,7	JONES & LAUGHLIN STE
8100356		3405922024	108		TIPTON PPG=3		2,0	JONES & LAUGHLIN STE
8100366		3405921957	108		UMBERGER #1 US8=9		9,0	US STEEL CORP
8100439		3412121835	108		W LOVE #1		2,5	EAST OHIO GAS CO
8100505		3412121996	108		W SAYRE 8=5		6,5	EAST OHIO GAS CO
8100354		3405922026	108		WADE PPG=23		4,0	PPG INDUSTRIES INC
8100419		3405922444	108		WATSON J=81		4,0	JONES & LAUGHLIN STE
8100469		3405922227	108		WEAVER W=34		8,0	WIERTON STEEL CO
8100508		3412121856	108		WEBBER/MILLER J=31		7,7	JONES & LAUGHLIN STE
8100452		3405922349	108		WHITE J=79		15,0	JONES & LAUGHLIN STE
8100458		3405922296	108		WORCHESTER J=80		5,0	JONES & LAUGHLIN STE
*WENNER PETROLEUM CORPORATION					RECEIVED: 10/01/80 JA: OK			
8100327		3416922243	103		CAROL SIX #1	PLAIN * WAYNE POOL	0,0	COLUMBIA GAS TRANSMI
*WESTERN HYDROCARBONS CORP					RECEIVED: 10/01/80 JA: OK			
8100487		3415121128	108		BIERY-GREEN #1	SW 1/4 OF #12	8,0	EAST OHIO GAS CO
8100383		3402920558	108		BUN #1		15,1	EAST OHIO GAS CO
8100380		3402920573	108		GRANGE UNIT #1		1,6	EAST OHIO GAS CO
8100382		3402920568	108		HANDSCHIN		4,5	EAST OHIO GAS CO
8100488		3415121115	108		NEY A&D		15,2	EAST OHIO GAS CO
8100489		3415121112	108		RAY M E & MINA J		5,3	EAST OHIO GAS CO
*8100381		3402920561	108		STEIGER A&P COM I		6,8	EAST OHIO GAS CO
8100490		3415121110	108		WILCOXON/MULSOPPLE		9,7	EAST OHIO GAS CO
*WILLOW WOOD GAS CO					RECEIVED: 10/01/80 JA: OK			
8100398		3408720142	108		W D MOLSCHUM NO 1		4,0	COLUMBIA GAS TRANSMI

OKLAHOMA CORPORATION COMMISSION

*A L ABERCROMBIE INC — RECEIVED: 10/02/80 JA: OK

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8100580	05389	3500700000	108		BOATES #1	FLORIS	15,0	MICHIGAN-WISCONSIN P
*AMERADA HESS CORPORATION					RECEIVED: 10/02/80 JA: OK			
8100606	05513	3501500653	108		JOSIE NOVOTNY A NO 1	WEST CEMENT	9,9	NATURAL GAS PIPELINE
8100617	04788	3504320984	103		P E MERCER NO 1	PUTNAM	750,0	MICHIGAN WISCONSIN P
*ANDOVER OIL COMPANY					RECEIVED: 10/02/80 JA: OK			
8100587	05306	3515100000	108		BEHRENS-HEATH #15=1	S E ALVA	3,6	OKLAHOMA NATURAL GAS
8100615	05493	3501721152	103		CLARA M SCHRUEDER #18=1		185,0	DELMI GAS PIPELINE C
8100608	05505	3501721344	103		GLOBE LIFE M #34=1	WILDCAT	185,0	DELMI GAS PIPELINE C
*APACHE CORPORATION					RECEIVED: 10/02/80 JA: OK			
8100609	05503	3512920392	102		BURROWS #1=29		1480,0	MICHIGAN-WISCONSIN P
8100634	05236	3512900000	103		TAYLOR #1=1		1277,5	EL PASO NATURAL GAS
*ARKLA EXPLORATION COMPANY					RECEIVED: 10/02/80 JA: OK			
8100598	05484	3503920265	103		LEONARD #3=25	WEATHERFORD	365,0	ARKANSAS LOUISIANA G
8100597	05483	3514920052	102		ROY #1	DILL CITY	85,0	OKLAHOMA NATURAL GAS
*BLAIK OIL COMPANY					RECEIVED: 10/02/80 JA: OK			
8100603	05443	3504722062	103		ISHMAEL UNIT #4	SOONER TREND	58,0	EXXON COMPANY USA
8100575	05501	3508321236	103		STROTHMAN #1	S E ELK HORN	18,0	EASON OIL CO
*CABOT CORPORATION					RECEIVED: 10/02/80 JA: OK			
8100614	05494	3513920310	108		BALZER #1=9		14,0	NATURAL GAS PIPELINE
*CAYMAN EXPLORATION CORP					RECEIVED: 10/02/80 JA: OK			
8100631	05355	3507322228	103		STURM #1		0,0	CITIES SERVICE GAS C
*COTTON PETROLEUM CORPORATION					RECEIVED: 10/02/80 JA: OK			
8100578	05442	3504920237	108		MAXWELL NO 1	SOONER TREND	10,0	UNION TEXAS PETROLEU
*CRUCUM PETROLEUM COMPANY					RECEIVED: 10/02/80 JA: OK			
8100604	05431	3505520259	108		SMITH-VANZANDT 1=21	BLOOMINGTON	5,2	WILLOW PIPELINE CO
*DAVIS OIL COMPANY					RECEIVED: 10/02/80 JA: OK			
8100592	05488	3503900000	103		LORENZ NO 1	SOUTH THOMAS	500,0	TRANSOK PIPELINE CO
*DICK BOGERT INC					RECEIVED: 10/02/80 JA: OK			
8100607	05512	3501121020	103		LAMLE 1=10	SOONER TREND	250,0	ARKANSAS LOUISIANA G
8100611	05499	3507322311	103		SCHUBER 1=21	SOONER TREND	80,0	PHILLIPS PETROLEUM C
*GETTY OIL COMPANY					RECEIVED: 10/02/80 JA: OK			
8100623	05478	3501500000	103		LENA THOMAS HEIRS NO 1	EAST BINGER	6,0	PHILLIPS PETROLEUM C
*GRACE PETROLEUM CORPORATION					RECEIVED: 10/02/80 JA: OK			
8100618	04737	3505120013	103		WHITENER 3=30	CHITWOOD	73,0	MOBIL OIL CORP
*HUNT ENERGY CORPORATION ET AL					RECEIVED: 10/02/80 JA: OK			
8100594	05486	3501520852	103		GILLINGHAM NO 1 (CULP MELTON)	UNNAMED FIELD	0,0	MICHIGAN WISCONSIN R
8100595	05485	3501520852	103		GILLINGHAM NO 1 (RED FORK)		0,0	MICHIGAN WISCONSIN P
*KAISER-FRANCIS OIL COMPANY					RECEIVED: 10/02/80 JA: OK			
8100581	04881	3505120873	103		ERWIN #1	WAYONGA CHICKASHA TREND	1095,0	ARKANSAS LOUISIANA G
8100586	04987	3505120759	102		WHITING #1	S E CHICKASHA	365,0	MISSISSIPPI RIVER TR
*L & N EXPLORATION INC					RECEIVED: 10/02/80 JA: OK			
8100624	05477	3508321262	103		GALLOWAY #1	WEST BARNS	73,0	EASON OIL CO
*L G WILLIAMS OIL COMPANY INC					RECEIVED: 10/02/80 JA: OK			
8100633	05300	3501720954	103		KUNNEMAN #30=1	NORTH CONCHO	1,8	PHILLIPS PETROLEUM C
8100630	05303	3501720984	103		NEWER #34=1	NORTH CONCHO	3,7	PHILLIPS PETROLEUM C
8100576	05467	3501721327	103		WIEMAN #29=1	NORTH CONCHO	0,0	PHILLIPS PETROLEUM C
8100632	05302	3501721004	103		ZUM MALLEN #23=1	WEST PIEDMONT	20,0	PHILLIPS PETROLEUM C
*LOBAR OIL CO INC					RECEIVED: 10/02/80 JA: OK			
8100610	05502	3508321167	103		MAGUIRE NO 1	LOVELL FIELD	150,0	EASON OIL CO
*NIXON-DAVIS ENERGY CO INC					RECEIVED: 10/02/80 JA: OK			
8100600	05452	3508321152	103		JUNE #1	WEST MULHALL	200,0	EASON OIL CO
8100599	05453	3508321074	103		KYLE #1	S LUCIEN	12,0	EASON OIL CO
8100601	05451	3508321227	103		NORTON #1	WEST MULHALL	35,0	EASON OIL CO

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JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8100602	05450	3508321205	103		SMEDLEY #1	WEST MULHALL	120,0	EASON OIL CO
*OIL INVESTMENT CO			RECEIVED: 10/02/80 JA: OK					
8100584	02930	3507321299	108		MICKEY 29 NO 1	SOONER TREND	14,0	EASON OIL CO
*OMNI OIL & GAS INC			RECEIVED: 10/02/80 JA: OK					
8100598	05458	3507322388	103		BERT 28 NO 1	SOONER TREND FIELD	182,5	PHILLIPS PETROLEUM C
*P-T III LTD			RECEIVED: 10/02/80 JA: OK					
8100615	05495	3504700000	103		SIMUNEK 20-1	SOONER TREND	109,5	WELLHEAD ENTERPRISES
8100612	05496	3504700000	103		SKAGGS 20-1	SOONER TREND	109,5	WELLHEAD ENTERPRISES
*PERRY OIL CO			RECEIVED: 10/02/80 JA: OK					
*8100579	05429	3504721850	103		PARRIOTT #1	N E ENID	168,0	PANHANDLE EASTERN PI
*PETRO-LEWIS CORPORATION			RECEIVED: 10/02/80 JA: OK					
8100583	02131	3505120686	103		FRITTS #2	MARLOW	54,0	ARKANSAS LOUISIANA G
*PETROLEUM RESOURCES CO			RECEIVED: 10/02/80 JA: OK					
8100591	05310	3500320693	103		CURTIS-METHODIST CHURCH #1	S W CHEROKEE	212,0	AMINOIL USA INC
*PHILLIPS PETROLEUM COMPANY			RECEIVED: 10/02/80 JA: OK					
8100577	05421	3504900000	108		BONNER A #1	GOLDEN TREND	0,0	WARREN PETROLEUM CO
8100605	06014	3591721354	102		MCCARTHY A #1	N CONCHO	0,0	PANHANDLE EASTERN P
*PIONEER PRODUCTION CORPORATION			RECEIVED: 10/02/80 JA: OK					
8100590	04799	3515120990	102		CLARK D SCHULTZ #1 (MISSISSIPPIAN)	WILDCAT	184,5	PANHANDLE EASTERN PI
8100589	04800	3515120990	102		CLARK D SCHULTZ #1 (OSWEGO)	WILDCAT	184,5	PANHANDLE EASTERN PI
*SABINE CORP			RECEIVED: 10/02/80 JA: OK					
8100619	04607	3515320924	103		HARPER #2-19	S E MOORELAND	255,0	WESTERN FARMERS ELEC
8100629	05373	3504320991	103		OSCAR CHAIN #2-30	E WEBB	1100,0	MICHIGAN-WISCONSIN P
*SAMEDAN OIL CORPORATION			RECEIVED: 10/02/80 JA: OK					
8100616	05491	3501721144	102		M WILDS NO 1-6		17,0	PHILLIPS PETROLEUM C
*SAMSON RESOURCES COMPANY			RECEIVED: 10/02/80 JA: OK					
8100620	02707	3502920158	102		M & R RANCH NO 1 (CROMWELL)	CENTRAHOMA	300,0	ARKANSAS LOUISIANA G
*SHAR-ALAN OIL CO			RECEIVED: 10/02/80 JA: OK					
8100585	04355	3509321667	103		CORNELSEN #4	E FAIRVIEW	34,0	PHILLIPS PETROLEUM C
*TENNECO OIL COMPANY			RECEIVED: 10/02/80 JA: OK					
8100625	05471	3509321706	103		KIRKENDALL 3-19	CHESTER WEST	85,5	PHILLIPS PETROLEUM C
*TEXAS OIL & GAS CORP			RECEIVED: 10/02/80 JA: OK					
8100621	05480	3507920355	103		REED F #1		103,0	
8100582	04750	3501120999	103		WALKER G #1		558,0	
*THE MARLOW CORP			RECEIVED: 10/02/80 JA: OK					
8100588	05096	3505500000	108		ROGERS #3	NORTH BLOOMINGTON	14,8	OKLAHOMA NATURAL GAS
*VULCAN ENERGY CORP			RECEIVED: 10/02/80 JA: OK					
8100593	05487	3507322343	103		BOECHEN #1	SOONER TREND	150,0	PHILLIPS PETROLEUM C
8100627	05375	3507322255	103		COMBS #1	E LOYAL	50,0	PHILLIPS PETROLEUM C
8100622	05479	3507322268	103		SCHOELEN #1	SOONER TREND	130,0	PHILLIPS PETROLEUM C
*WISHBONE OIL & GAS			RECEIVED: 10/02/80 JA: OK					
8100628	05374	3508320862	103		HOPPER #1	WEST MULHALL	23,8	EASON OIL & GAS
*WM J OCONNOR			RECEIVED: 10/02/80 JA: OK					
8100626	05384	3515121000	103		KRAGH #1 (FORM WHITENECK #1)	WEST ALINE	180,0	
**********								
WEST VIRGINIA DEPARTMENT OF MINES								
**********								
*BAKER DEVELOPMENT			RECEIVED: 10/02/80 JA: WV					
*8100549		4701700614	108		JAMES F ROBINSON #1		1,0	HOPE NATURAL GAS CO
*COLUMBIA GAS TRANSMISSION CORP			RECEIVED: 10/02/80 JA: WV					
8100533		4703902211	108		AULTZ NO 1 809838	ROCKY FORK	0,6	COLUMBIA GAS TRANSMI

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JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8100518		4700501078	108		BETHELEM MINES CORP 820531	WEST VIRGINIA FIELD AREA	7,2	COLUMBIA GAS TRANSMI
8100535		4703902447	108		H C PRILLERMAN 809786	ROCKY FORK	4,5	COLUMBIA GAS TRANSMI
8100526		4703902662	108		IMPERIAL COAL NO 3 820357	FIELD AREA A	4,2	COLUMBIA GAS TRANSMI
8100519		4701900219	108		KANAWHA GAULEY COAL & COKE 809796	FIELD AREA A	9,0	COLUMBIA GAS TRANSMI
8100520		4701900226	108		KANAWHA GAULEY COAL & COKE 809830	FIELD AREA A	14,0	COLUMBIA GAS TRANSMI
8100521		4701900236	108		KANAWHA GAULEY COAL & COKE 820023	FIELD AREA A	5,0	COLUMBIA GAS TRANSMI
8100522		4701900239	108		KANAWHA GAULEY COAL & COKE 820026	FIELD AREA A	8,0	COLUMBIA GAS TRANSMI
8100523		4701900240	108		KANAWHA GAULEY COAL & COKE 820027	FIELD AREA A	5,2	COLUMBIA GAS TRANSMI
8100524		4701900254	108		KANAWHA GAULEY COAL & COKE 820203	FIELD AREA A	1,8	COLUMBIA GAS TRANSMI
8100530		4701900262	108		KANAWHA GAULEY COAL & COKE 820207	FIELD AREA A	2,4	COLUMBIA GAS TRANSMI
8100534		4701900265	108		KANAWHA GAULEY COAL & COKE 820208	FIELD AREA A	3,9	COLUMBIA GAS TRANSMI
8100531		4701900263	108		KANAWHA GAULEY COAL & COKE 820209	FIELD AREA A	6,5	COLUMBIA GAS TRANSMI
8100532		4701900264	108		KANAWHA GAULEY COAL & COKE 820210	FIELD AREA A	3,6	COLUMBIA GAS TRANSMI
8100559		4701900255	108		KANAWHA GAVLEY COAL & COKE 820204	FIELD AREA A	3,2	COLUMBIA GAS TRANSMI
8100544		4701900260	108		KANAWHA GAVLEY COAL & COKE 820205	FIELD AREA A	3,5	COLUMBIA GAS TRANSMI
8100545		4701900261	108		KANAWHA GAVLEY COAL & COKE 820206	FIELD AREA A	2,0	COLUMBIA GAS TRANSMI
8100536		4703902605	108		KING LAND CO 809789	FIELD AREA A	8,0	COLUMBIA GAS TRANSMI
8100537		4703902606	108		KING LAND CO 809790	FIELD AREA A	12,5	COLUMBIA GAS TRANSMI
8100547		4703902621	108		KING LAND CO 809799	FIELD AREA A	8,8	COLUMBIA GAS TRANSMI
8100515		4703902622	108		KING LAND CO 809800	FIELD AREA A	3,7	COLUMBIA GAS TRANSMI
8100513		4703902623	108		KING LAND CO 809801	FIELD AREA A	4,5	COLUMBIA GAS TRANSMI
8100527		4703902624	108		KING LAND CO 809802	FIELD AREA A	1,0	COLUMBIA GAS TRANSMI
8100546		4703902612	108		KING LAND CO 809806	FIELD AREA A	11,5	COLUMBIA GAS TRANSMI
8100516		4703902613	108		KING LAND CO 809807	FIELD AREA A	5,0	COLUMBIA GAS TRANSMI
8100517		4703902614	108		KING LAND CO 809808	FIELD AREA A	10,0	COLUMBIA GAS TRANSMI
8100525		4703902668	108		OMLEY COAL CO NO 1 820354	FIELD AREA A	2,4	COLUMBIA GAS TRANSMI
8100514		4703902673	108		OMLEY COAL CO NO 3 820355	FIELD AREA A	2,0	COLUMBIA GAS TRANSMI
8100538		4703902671	108		PAINT CREEK COAL & LAND #3 820358	FIELD AREA A	5,3	COLUMBIA GAS TRANSMI
8100540		4703902669	108		PAINT CREEK COAL & LAND 820352	FIELD AREA A	12,2	COLUMBIA GAS TRANSMI
8100539		4703902670	108		PAINT CREEK COAL & LAND 820353	FIELD AREA A	1,0	COLUMBIA GAS TRANSMI
*FOSSIL PETROLEUM CORPORATION			RECEIVED: 10/02/80 JA: WV					
8100558		4700100795	108		ARLIN PAUGH #1 FOSSIL #9501		2,9	CONSOLIDATED GAS SUP
8100552		4703300999	108		ISAAC MAXWELL #1 FOSSIL #10001		4,7	CONSOLIDATED GAS SUP
*M & F OIL & GAS CO			RECEIVED: 10/02/80 JA: WV					
8100541		4710301191	108		E E ICE #3	GRANT	0,8	PENNZOIL CO
8100542		4710301192	108		E E ICE #4	GRANT	0,8	PENNZOIL CO
8100548		4710301193	108		E E ICE #5	GRANT	0,8	PENNZOIL CO
8100543		4710301190	108		V A ICE #3	GRANT	0,8	PENNZOIL CO
*NASHVILLE ASSOCIATES INC			RECEIVED: 10/02/80 JA: WV					
8100529		4700701060	108		COCHRAN KEN NO 1-A		3,1	CONSOLIDATED GAS SUP
8100551		4700701014	108		KNIGHT FERGUSON MALLOY #1		2,7	CONSOLIDATED GAS SUP
8100528		4700710220	108		KNIGHT MARTHA NO 1		8,9	CONSOLIDATED GAS SUP
*QUAKER STATE OIL REFINING CORP			RECEIVED: 10/02/80 JA: WV					
8100556		4709520407	108		MERRY ASH 61052-1	CENTERVILLE DISTRICT	16,8	CONSOLIDATED GAS CO
8100557		4703922140	108		RENNICK #1 62115-1	BIG SANDY DISTRICT	3,0	COLUMBIA GAS TRANSMI
8100555		4703922432	108		SHAFFER-CARTE-DUDD #1 62150-1	ELK DISTRICT	1,0	COLUMBIA GAS TRANSMI
8100553		4703922363	108		STRICKLAND #1 62200-1	ELK DISTRICT	1,8	COLUMBIA GAS TRANSMI
8100554		4703922361	108		V DOUGLAS #1	ELK DISTRICT	3,9	COLUMBIA GAS TRANSMI
*WILLIAM DYE RIDDLE			RECEIVED: 10/02/80 JA: WV					
8100550		4701302508	108		JARVIS #1 55-0550472	PINE CREEK	5,9	CONSOLIDATED GAS SUP
**********								
** U.S. GEOLOGICAL SURVEY - METAIRIE,LA								
**********								
*CNG PRODUCING COMPANY			RECEIVED: 10/01/80 JA: LA 3					

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JD NO	JA ORT	API NO	SEC D	WELL NAME	FIELD NAME	PROD	PURCHASER
*8100319	GO=1548	17712401S5	102	F=182 (ALT)	SHIP SHOAL	730.0	CONSOLIDATED GAS SUP
*8100321	GO=1590	17712402Z4	102	F=1081	SHIP SHOAL	584.0	CONSOLIDATED GAS SUP
*GULF OIL CORPORATION				RECEIVED: 10/01/80 JA: LA 3			
8100320	GO=1550	17720400T5	102	OCS G=1101 G=4D WD BLK 117	WEST DELTA	140.0	TEXAS EASTERN TRANSM

CORRECTIONS TO PREVIOUS NOTICES/REVISIONS TO PRIOR DETERMINATIONS

JD No.	JA	APPLICANT	WELL NAME	ORIG. FERC VOL. NO.	DATE PUB. IN FEDERAL REGISTER	R: Revision or redetermination by Jurisdictional Agency C: Correction to prior Fed. Reg. notice
80-58584	NM	Amerada Hess Corp	STATE WEB W3 & 4 #3	295		C: 108 Denied
80-57291	OK	Harper Oil Co	PEMBROOK #1	290	10-10-80	C: 102 103 Approved
80-57429	OK	Linn L. Shanks	CARNEY NO 3	291	10-10-80	C: 108 Denied
80-31599	TX	Gulf Oil Corp	C MARTINEZ #3 RRC #72013	204	05-23-80	C: 103 108 Approved
80-50121	TX	Marathon Oil Co	HODGES #2	266	09-17-80	C: Well Name
80-51000	TX	Meadco Properties	#1 SUGG - 13 RRC #07763	267	09-17-80	C: 102 Approved (not 103)
80-05237	USGS(LA)	C & K Petroleum Co	OCS G-1960 NO A-2	116	12-03-79	C: Well Name

BILLING CODE 6450-85-C

Other Purchasers—Volume No. 300

8100319 Columbia Gas Transmission Corp.
8100321 Columbia Gas Transmission Corp.
8100381 Quaker State Oil Refining Corp.
8100549 Consolidated Gas Co.
8100579 Union Texas Petroleum

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" after the section code. Estimated annual production (PROD) is in million cubic feet (MMcf). An (*) preceding the control number indicates that other purchasers are listed at the end of the notice.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20428.

Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before November 6, 1980.

Please reference the FERC Control Number (JD No) in all correspondence related to these determinations.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-32999 Filed 10-21-80; 8:45 am]
BILLING CODE 6450-85-M

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JD NO	JA DKT	API NO	SEC D WELL NAME	FIELD NAME	PROD	PURCHASER
MISSISSIPPI OIL & GAS BOARD						
*CARDELL-TLAPEK COMPANY			RECEIVED: 10/02/80 JA: MB			
8100638	33-80-496	2316320126 102	WILLIAMS ESTATE #1	MECHANICSBURG FIELD	730.0	SOUTHERN NATURAL GAS
*EXXON CORPORATION			RECEIVED: 10/02/80 JA: MB			
8100640	A1-80-15	2309120093 102	HUB GAS UNIT 13 NO 1	HUB	300.0	SOUTHERN NATURAL GAS
*FIRST ENERGY CORPORATION			RECEIVED: 10/02/80 JA: MB			
8100645	A5-80-420	2306520148 107	QUENTIN DYESS WELL #1	HOLIDAY CREEK FIELD	62.0	TRANSCONTINENTAL GAS
*FLORIDA GAS EXPLORATION COMPANY			RECEIVED: 10/02/80 JA: MB			
8100646	A4-80-467	2309120099 107	F B CARLISLE UNIT 4-6 NO 1	EAST MORGANTOWN FIELD	540.0	TRANSCONTINENTAL GAS
*GULF OIL CORPORATION			RECEIVED: 10/02/80 JA: MB			
8100636	A2-80-11	2307320210 103	I H BASS ET AL NO 85	BAXTERVILLE	8.0	UNITED GAS PIPE LINE
8100635	A6-80-11	2307320206 103	MRS L T SIMPSON NO 11	BAXTERVILLE	0.0	UNITED GAS PIPE LINE
*INEXCO OIL COMPANY			RECEIVED: 10/02/80 JA: MB			
8100647	A0-80-49	2315320240 107	BISHOP COOLEY ET AL NO 1 WELL	MIWANNEE	292.0	
*KILROY CO OF TEXAS			RECEIVED: 10/02/80 JA: MB			
8100644	A3-80-361	2302920026 102	INTERNATIONAL PAPER COMPANY #2	GLANCY	1022.0	MISSISSIPPI POWER &
*OGDEN OIL CO INC			RECEIVED: 10/02/80 JA: MB			
8100643	74-80-32	2306320286 102	LOGAN A NO 1 WELL	RODNEY FIELD	365.0	LOCUS RIDGE GAS CO
8100643	74-80-32	2306320286 103	LOGAN A NO 1 WELL	RODNEY FIELD	365.0	LOCUS RIDGE GAS CO
8100641	73-80-32	2306320280 102	LOGAN NO 1 WELL	RODNEY FIELD	100.0	LOCUS RIDGE GAS CO
8100641	73-80-32	2306320280 103	LOGAN NO 1 WELL	RODNEY FIELD	100.0	LOCUS RIDGE GAS CO
8100639	75-80-32	2306320287 102	PIAZZA A NO 1 WELL	RODNEY FIELD	43.0	LOCUS RIDGE GAS CO
8100639	75-80-32	2306320287 103	PIAZZA A NO 1 WELL	RODNEY FIELD	43.0	LOCUS RIDGE GAS CO
*SMITH PRODUCTION CO			RECEIVED: 10/02/80 JA: MB			
8100637	69-80-503	2306320235 102	NOBLE WELL NO 1	MELTUN FIELD	175.0	COLES CREEK GAS CO
8100637	69-80-503	2306320235 103	NOBLE WELL NO 1	MELTUN FIELD	175.0	COLES CREEK GAS CO
*UNION OIL COMPANY OF CALIF			RECEIVED: 10/02/80 JA: MB			
8100642	72-80-426	2303120059 107	L D ROSS 2-11 NO 1	MCRANEY	901.0	TRANSCONTINENTAL GAS
OHIO DEPARTMENT OF NATURAL RESOURCES						
*APPALACHIAN PETROLEUM CORP			RECEIVED: 10/03/80 JA: OH			
8100744		3412122277 103	D & D LOTHES #1	JACKSON	3.5	COLUMBIA GAS TRANSMI
8100743		3412122278 103	D & D LOTHES #2	JACKSON	3.5	COLUMBIA GAS TRANSMI
8100760		3412122285 103	D & D LOTHES #3	JACKSON	3.5	COLUMBIA GAS TRANSMI
8100752		3416425562 103	WILBUR BAKER #8-1	ADAMS	3.5	COLUMBIA GAS TRANSMI
*ARNOLD ROSEN & MILTON HANDLER			RECEIVED: 10/03/80 JA: OH			
8100753		3415920089 108	ARMIL #1		20.0	COLUMBIA GAS
*BELDEN & BLAKE & CO 74			RECEIVED: 10/03/80 JA: OH			
8100755		3415123249 103	L & G POMARESKY COMM #1-947		36.5	
*BERRESFORD ENTERPRISES INC			RECEIVED: 10/03/80 JA: OH			
8100714		3403123939 103	MARILYN BUMPUS #1	LIVERTON	0.0	COLUMBIA GAS CO

JD NO	JA DKT	API NO	SEC D WELL NAME	FIELD NAME	PROD	PURCHASER
*BROWN PETROLEUM CORP			RECEIVED: 10/03/80 JA: OH			
8100687		3407522454 103	HOGARDEE #1	KILLBUCK	1.0	COLUMBIA GAS TRANSMI
8100689		3407522340 103	DAN YODER #1	MECHANIC	69.0	COLUMBIA GAS TRANSMI
*BUCKEYE OIL PRODUCING CO			RECEIVED: 10/03/80 JA: OH			
8100722		3411122089 103	CLARENCE CHRISTMAN #1	MALAGA	14.0	COLUMBIA GAS TRANSMI
8100725		3411121960 103	CLYDE LANDEFELD #1	MALAGA	13.0	COLUMBIA GAS TRANSMI
8100724		3411122097 103	LAWRENCE RICER #1	MALAGA	13.0	COLUMBIA GAS TRANSMI
8100726		3411121959 103	OTTO BURKHART JR (82) #1	MALAGA	10.0	COLUMBIA GAS TRANSMI
8100676		3409921242 103	WILLIAM FRANCIS #1	GOSHEN	16.0	COLUMBIA GAS TRANSMI
*CLAY COUNTY PRODUCTION CO INC			RECEIVED: 10/03/80 JA: OH			
8100759		3412724253 103	LEWIS-LEACH #1	CLAYTON	8.0	FONAKER GAS CO INC
*CLINE OIL & GAS CO			RECEIVED: 10/03/80 JA: OH			
8100663	03886	3416724109 107	MUPP #2	AURELIUS	8.0	COLUMBIA GAS TRANSMI
8100664	04642	3416724108 107	MORRIS #2	SALEM	10.0	COLUMBIA GAS TRANSMI
8100665	03355	3416723965 107	GNODGRASS #2	AURELIUS	7.0	COLUMBIA GAS TRANSMI
*CLOVER OIL CO			RECEIVED: 10/03/80 JA: OH			
8100674		3410322274 103	MACE #1	WESTFIELD	30.0	
*DORAN & ASSOCIATES INC			RECEIVED: 10/03/80 JA: OH			
8100758		3412724812 103	KARL WILTSIE #1	MADISON	12.0	NATIONAL GAS & OIL C
*DORFMAN PRODUCTION CO			RECEIVED: 10/03/80 JA: OH			
8100677		3409921200 103	A LOHR NO 1	DAMASCUS	7.0	
8100682		3409921096 103	A WENDLAND NO 1	DAMASCUS	1.5	DAMASCUS GAS CO
8100680		3409921179 103	MALMSBERRY A NO 1	DAMASCUS	1.8	DAMASCUS GAS CO
8100681		3409921102 103	MYERS B NO 1	DAMASCUS	3.6	DAMASCUS GAS CO
8100678		3409921195 103	MYERS B NO 2	DAMASCUS	3.6	DAMASCUS GAS CO
8100679		3409921183 103	SIMMONS NO 1	DAMASCUS	10.0	DAMASCUS GAS CO
*EDCO DRILLING & PRODUCING INC			RECEIVED: 10/03/80 JA: OH			
8100716		3403123852 103	MOBERG 2A	LIVERTUN	18.0	
8100718		3403123764 103	SHAW 3A	BEDFURD	18.0	
*ENERGY DEVELOPMENT CORP			RECEIVED: 10/03/80 JA: OH			
8100661		3400721363 103	BEER #2	ORWELL	20.0	EAST OHIO GAS CO
8100754		3415123262 103	DEFORD UNIT #1	CANTON	16.0	THE EAST OHIO GAS CO
*FLANIGAN BROTHERS			RECEIVED: 10/03/80 JA: OH			
8100662		3400721350 103	EDWARD VANSKOIK ET AL #1	MONROE	6.0	
*G & B DRILLING CO			RECEIVED: 10/03/80 JA: OH			
8100717		3403123791 103	WARREN & DAVID LAPP #1	BETHLEHEM	8.0	
*JOHN C MASON			RECEIVED: 10/03/80 JA: OH			
8100715		3403123866 103	JOHN C MASON ETAL #1	CLARK	12.0	NATIONAL GAS & OIL C
*KING DRILLING CO			RECEIVED: 10/03/80 JA: OH			
8100675		3410321979 103	JOSEPH LLOYD #1	GUILFORD	10.0	COLUMBIA GAS TRANSMI
8100751		3416922060 103	BELINA STEINER #1	CANAAN	10.0	COLUMBIA GAS TRANSMI
*LAKE REGION OIL INC			RECEIVED: 10/03/80 JA: OH			
8100688		3407522423 103	JOHN W CUSTUS #1	MECHANIC	15.0	COLUMBIA GAS TRANSMI
*LESLIE OIL & GAS CO INC			RECEIVED: 10/03/80 JA: OH			
8100673		3410322282 103	MANGE #1	SPENCER	20.0	COLUMBIA GAS TRANSMI
*LIBERTY OIL&GAS CORP			RECEIVED: 10/03/80 JA: OH			
8100672		3410521849 103	HELEN E BARGELOH #1	OLIVE	20.0	COLUMBIA GAS TRANSMI
*MORGAN-PENNINGTON INC			RECEIVED: 10/03/80 JA: OH			
8100750		3416922315 103	PONTIUS NO 2	GREEN	20.0	COLUMBUS GAS TRANSMI
*NATIONAL PETROLEUM CORP			RECEIVED: 10/03/80 JA: OH			
8100723		3411122072 107	R PETERS #7	MALAGA	0.0	TEXAS EASTERN TRANSM
*OAK DALE DRILLING CO			RECEIVED: 10/03/80 JA: OH			

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JC NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8100691		3407322251	103		BARTHOLOMEW #1	GREEN	10.0	GREEN FALLS GAS CO
*ORION ENERGY CORP					RECEIVED: 10/03/80 JA: DM			
8100719		3411522110	103		B LEONARD #1	WINDSOR	33.0	
8100720		3411522091	103		WEINSTOCK #1	WINDSOR	23.0	
*PATRICK T MONNELLY DVA LANDPROVEST					RECEIVED: 10/03/80 JA: DM			
8100761		3412122386	103		BLACKBURN/OHIO POWER #1-80	CUMBERLAND	25.0	
8100734		3411925323	103		HALL/MCINTIRE #1-80	MEIGS TOWNSHIP	30.0	
*QUAKER STATE OIL REFINING CORP					RECEIVED: 10/03/80 JA: DM			
8100666	n1543	3407321530	108		GRACE B HULL #1 69143-01		3.4	COLUMBIA GAS TRANSMI
8100668	n1540	3407321260	108		NATCO #10 69139		0.3	GENERAL CLAY PRODUCT
8100667	n1541	3407321291	108		NATCO #12 69139		1.6	GENERAL CLAY PRODUCT
8100656	n1539	3407321273	108		NATCO #9 69139		0.1	GENERAL CLAY PRODUCT
*R GENE BRASEL DBA BRASEL & BRASEL					RECEIVED: 10/03/80 JA: DM			
8100711		3405320271	103		FLORENCE PHILLIPS #1	ADDISON	5.0	COLUMBIA GAS TRANSMI
*RAYMOND T RECK					RECEIVED: 10/03/80 JA: DM			
8100757		3413322187	103		WILLIAM YURGEN #2	RAVENNA	15.0	COLUMBIA GAS OF OH I
*RELIANCE MANAGEMENT CO					RECEIVED: 10/03/80 JA: DM			
8100684		3408322720	103		A M ELLIOTT #3	CLAY	6.0	COLUMBIA GAS TRANSMI
*STRATA EXPLORATION INC LTD 1980-8					RECEIVED: 10/03/80 JA: DM			
8100685		3407522667	103		TOM WILSON #1	RICHLAND	200.0	COLUMBIA GAS TRANSMI
*SUN OIL COMPANY (DELAWARE)					RECEIVED: 10/03/80 JA: DM			
8100713		3404320060	108		MAKEFIELD NO 1	BIRMINGHAM (NEWBURG)	17.0	EAST OHIO GAS CO
*TALBOTT OIL & GAS CO					RECEIVED: 10/03/80 JA: DM			
8100669		3410521888	103		CHARLES BARRETT #1	RUTLAND	4.0	COLUMBIA GAS TRANSMI
8100671		3410521875	103		VIRGINIA VITATOE #3	RUTLAND	5.0	COLUMBIA GAS TRANSMI
8100670		3410521887	103		WARREN MOLDEN #1	RUTLAND	4.0	COLUMBIA GAS TRANSMI
*THE OXFORD OIL CO					RECEIVED: 10/03/80 JA: DM			
8100721		3411521506	108		DOUGLAS WILLIAMS #1		16.0	NATIONAL GAS & OIL C
8100692		3407322008	108		ERNEST MYERS #1		1.5	COLUMBIA GAS TRANSMI
8100712		3404520598	108		GEORGE YEAGER #1		3.0	NATIONAL GAS & OIL C
8100736		3411923442	108		HAROLD WILSON #1		12.0	NATIONAL GAS & OIL C
8100735		3411923801	108		MARION MINN #1		4.0	NATIONAL GAS & OIL C
8100690		3407521960	108		MAUDE JACOT #1		4.0	COLUMBIA GAS TRANSMI
*TOWNER PETROLEUM CO					RECEIVED: 10/03/80 JA: DM			
8100705		3405922066	108		APPERSON G-15		4.0	COLUMBIA GAS TRANS C
8100733		3412121533	108		ARENS & CROCK CT-5 #1		2.0	JONES & LAUGHLIN STE
8100707		3405921987	108		BEYMER US8-22		1.2	US STEEL CORP
8100706		3405922020	108		BEYMER-CHAPMAN US8-25		3.5	US STEEL CORP
8100747		3412121948	108		BIG C RANCH J-37		12.5	JONES & LAUGHLIN STE
8100748		3412121928	108		BIG C RANCH J-38		10.6	JONES & LAUGHLIN STE
8100730		3412121595	108		BROWN #1		5.0	JONES & LAUGHLIN STE
8100702		3405922069	108		COMBS #1 G-16		9.0	COLUMBIA GAS TRANSMI
8100695		3405922388	108		COWDEN PPG-32		11.0	JONES & LAUGHLIN STE
8100737		3412121867	108		CROCK-BROWN & WEBBER J-29		2.8	JONES & LAUGHLIN STE
8100763		3412121862	108		CROCK/SANFURD J-27		1.2	JONES & LAUGHLIN STE
8100657		3402920732	108		E COY RE-4		1.1	COLUMBIA GAS TRANSMI
8100740		3412121790	108		E GREATHOUSE OM-1		2.8	EAST OHIO GAS CO
8100738		3412121854	108		E MILLER #4 J-35		5.4	JONES & LAUGHLIN STE
8100708		3405921966	108		E WARNE US8-13		2.6	US STEEL CORP
8100709		3405921965	108		G TOMAK US8-15		4.0	US STEEL CORP
8100710		3405921896	108		GOODWIN G-9		7.0	COLUMBIA GAS TRANS C
8100694		3405922461	108		GREEN PPG-63		11.0	JONES & LAUGHLIN STE

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JC NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8100698		3405922151	108		HATFIELD PPG-18		12.5	P P G INDUSTRIES INC
8100701		3405922075	108		MORTON G-14		16.8	COLUMBIA GAS TRANS C
8100699		3405922131	108		MORTON G-17		10.0	COLUMBIA GAS TRANS C
8100749		3412121886	108		MUTCHINS-LORI J-22		2.7	JONES & LAUGHLIN STE
8100659		3402920728	108		J COY RE-2		1.9	COLUMBIA GAS TRANSMI
8100731		3412121580	108		J MUGGRAGE #1		0.5	EAST OHIO GAS CO
8100727		3412121629	108		K CROCK #1		1.0	JONES & LAUGHLIN STE
8100742		3412121660	108		K CROCK #2 J-28		13.5	JONES & LAUGHLIN STE
8100703		3405922068	108		KEIFFER G-21		12.7	COLUMBIA GAS TRANS C
8100658		3402920729	108		L SANOR RE-3		0.8	COLUMBIA GAS TRANSMI
8100700		3405922113	108		LAUGHMAN PPG-19		5.0	P P G INDUSTRIES INC
8100729		3412121627	108		MCCAULLEY #1		6.0	EAST OHIO GAS CO
8100745		3412122100	108		MILLER #5 J-40		11.0	JONES & LAUGHLIN STE
8100739		3412121818	108		MORRIS #1 J-23		4.0	JONES & LAUGHLIN STE
8100762		3412121715	108		MUGGRAGE #2 G-1		14.0	EAST OHIO GAS CO
8100741		3412121716	108		MUGGRAGE #3 G-2		10.7	EAST OHIO GAS CO
8100696		3405922182	108		PADEN PPG-17		8.0	P P G INDUSTRIES INC
8100693		3405922462	108		PARRISH #2		9.0	JONES & LAUGHLIN STE
8100728		3412121628	108		S CROCK #4		2.0	EAST OHIO GAS CO
8100746		3412121951	108		S CROCK J-33		0.0	JONES & LAUGHLIN STE
8100697		3405922180	108		SCHANTZ PPG-21		21.0	P P G INDUSTRIES INC
8100732		3412121578	108		SMITH #2		5.5	EAST OHIO GAS CO
8100660		3402920727	108		VIRGIL SANOR RE-1		1.1	COLUMBIA GAS TRANSMI
8100704		3405922067	108		YONTZ G-19		4.0	COLUMBIA GAS TRANS C
*VIKING RESOURCES CORPORATION					RECEIVED: 10/03/80 JA: DM			
8100756		3415123216	103		STEFANICK UNIT #4	OSNABURG	30.0	
*W E SHRIDER CO					RECEIVED: 10/03/80 JA: DM			
8100683		3408923850	103		ROGER KRAMER #1	HOPEWELL	3.0	NEWZANE GAS CO
*WILLIAM F HILL					RECEIVED: 10/03/80 JA: DM			
8100686		3407522496	103		BYRON E NEISWANDER #1	KNOX	0.0	
**********								
WEST VIRGINIA DEPARTMENT OF MINES								
**********								
*CONSOLIDATED GAS SUPPLY CORPORATION					RECEIVED: 10/06/80 JA: WV			
8100782		4704700278	108		CROZER COAL LAND ASSOC 10631	PINEVILLE FLD A-59442	4.0	GENERAL SYSTEM PURCH
8100783		4704700446	108		JOHN ADDAIR 11015	PINEVILLE FLD A-59442	3.0	GENERAL SYSTEM PURCH
8100779		4704700183	108		OLGA COAL CO 10166	PINEVILLE FLD A-59442	6.0	GENERAL SYSTEM PURCH
8100780		4704700183	108		OLGA COAL CO 10220	PINEVILLE FLD A-59442	14.0	GENERAL SYSTEM PURCH
8100781		4704700190	108		OLGA COAL CO 10221	PINEVILLE FLD A-59442	7.0	GENERAL SYSTEM PURCH
8100777		4704700087	108		OLGA COAL CO 9631	PINEVILLE FLD A-59442	6.0	GENERAL SYSTEM PURCH
8100778		4704700088	108		OLGA COAL CO 9632	PINEVILLE FLD A-59442	6.0	GENERAL SYSTEM PURCH
8100776		4704500637	108		TRIAD CO 10081	PINEVILLE FLD A-59442	5.0	GENERAL SYSTEM PURCH
*FOSSIL PETROLEUM CORPORATION					RECEIVED: 10/06/80 JA: WV			
8100764		4702102640	108		VOELKER NO 1 FOSSIL NO 6401	SAND FORK	20.5	CARNEGIE NATURAL GAS
*QUAKER STATE OIL REFINING CORP					RECEIVED: 10/06/80 JA: WV			
8100770		4703922305	108		A B PRICE #2 62150-2	ELK DISTRICT	0.5	COLUMBIA GAS TRANSMI
8100768		4703922383	108		O SMITH #1 62200-1	ELK DISTRICT	5.5	COLUMBIA GAS TRANSMI
8100785		4703922317	108		OOMUFFMAN A #1	ELK DISTRICT	3.6	COLUMBIA GAS TRANSMI
8100792		4703922312	108		E SHAFFER #1 62150-1	ELK DISTRICT	1.7	COLUMBIA GAS TRANSMI
8100788		4703922136	108		EWING 62075-1	ELK DISTRICT	0.6	COLUMBIA GAS TRANSMI
8100790		4703922104	108		FACEMYER #1 62115-1	BIG SANDY DISTRICT	0.4	COLUMBIA GAS TRANSMI
8100775		4703922329	108		H THAXTON #1 62200-1	ELK DISTRICT	4.1	COLUMBIA GAS TRANSMI

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JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8100789		4703922119	108		J RAY #6 62075=6	ELK DISTRICT	0.4	COLUMBIA GAS TRANSMI
8100791		4701721058	108		JOSEPH FREEMAN #1	WEST UNION DISTRICT	0.1	PENNZOIL CO
8100772		4703922353	108		L PETERS #1 62200=1	ELK DISTRICT	3.3	COLUMBIA GAS TRANSMI
8100786		4703922139	108		LARCH 62075=1	ELK DISTRICT	1.0	COLUMBIA GAS TRANSMI
8100771		4703922350	108		MARLOWE #1 62075=1	ELK DISTRICT	2.3	COLUMBIA GAS TRANSMI
8100793		4703922404	108		HOLEB #1 62200=1	ELK DISTRICT	2.7	COLUMBIA GAS TRANSMI
8100787		4703922136	108		P HUFFMAN #1 62115=1	BIG SANDY DISTRICT	1.2	COLUMBIA GAS TRANSMI
8100769		4703922389	108		R FRENCH #1 62150=1	ELK DISTRICT	2.3	COLUMBIA GAS TRANSMI
8100773		4703922360	108		S B CARTE #1	ELK DISTRICT	4.1	COLUMBIA GAS TRANSMI
8100767		4703922382	108		BLACK #1 62075=1	ELK DISTRICT	3.4	COLUMBIA GAS TRANSMI
8100765		4703922379	108		TICKLE 62200=1	ELK DISTRICT	0.5	COLUMBIA GAS TRANSMI
8100784		4703922327	108		W C BOOKER #1	ELK DISTRICT	0.6	COLUMBIA GAS TRANSMI
8100766		4703922381	108		W H ODELL #1 62115=1	BIG SANDY DISTRICT	3.7	COLUMBIA GAS TRANSMI
8100774		4703922085	108		W L PAULEY #1 62200=1	ELK DISTRICT	1.3	COLUMBIA GAS TRANSMI
**********								
** U.S. GEOLOGICAL SURVEY - METAIRIE,LA								
**********								
=CNG PRODUCING COMPANY		1771240136	102		RECEIVED: 10/02/80	JAI LA 3	528.0	CONSOLIDATED GAS SUP
8100653	GO 1484	1771240155	102		D-781		1460.0	CONSOLIDATED GAS SUP
8100651	GO=1549				F-181			
=GULF OIL CORPORATION		1772040073	102		RECEIVED: 10/02/80	JAI LA 3	117.0	TEXAS EASTERN TRANS
8100655	GO=1556				OCS G-1101 #6-A NO BLK 117			
=KIRBY EXPLORATION CO					RECEIVED: 10/02/80	JAI LA 3		
8100649	GO=1275	1772040062	102		OCS G 1107 NO D-13		1900.0	SOUTHERN NATURAL GAS
8100648	GO=1276	1772040065	102		OCS G 1107 NO D-14		7.0	SOUTHERN NATURAL GAS
8100650	GO=1273	1772040061	102		OCS G 1107 NO D-6		1900.0	SOUTHERN NATURAL GAS
=SHELL OIL CO					RECEIVED: 10/02/80	JAI LA 3		
8100654	GO=1445	1701740065	102		OCS G-2966 NO A-1		6.0	SOUTHERN NATURAL GAS
=MOBIL OIL CORP					RECEIVED: 10/02/80	JAI TX 3		
*8100652	GO=1154	4270940182	102		C-6		183.0	NATURAL GAS PIPELINE

MISSISSIPPI CANYON 311

HIGH 18 SD ADD A-572

BILLING CODE 6450-85-C

Other Purchasers—Volume No. 301

8100652 Transcontinental Gas P L Corp.

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" after the section code. Estimated annual production (PROD) is in million cubic feet (MMcf). An (*) preceding the control number indicates that other purchasers are listed at the end of the notice.

The applications for determinations in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426.

Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before November 6, 1980.

Please reference the FERC Control Number (JD No.) in all corrrespondence related to these determinations.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32993 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

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[Volume 299]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

October 15, 1980.

JD NO	JA DKT	API NO	SEC U	WELL NAME	FIELD NAME	PROD	PURCHASER
				LOUISIANA OFFICE OF CONSERVATION			
*A & G SCRATCHERS & CENTRALIZERS				RECEIVED: 10/01/80 JA: LA			
8100154	AO-3147	1707321160	108	J A SMITH #1	MONROE	19.0	PETRO-LEWIS CORP
*ACE DRILLING SERVICES INC				RECEIVED: 10/01/80 JA: LA			
8100309	AO-3137	1711121761	108	GIBSON ESTATE #1	MONROE GAS FIELD	9.9	TEXAS GAS TRANSMISSI
8100308	AO-3138	1711121762	108	GIBSON ESTATE #2	MONROE GAS FIELD	9.9	TEXAS GAS TRANSMISSI
8100313	AO-3139	1711121763	108	GIBSON ESTATE #3	MONROE GAS FIELD	9.9	TEXAS GAS TRANSMISSI
8100314	AO-3140	1711121764	108	GIBSON ESTATE #4	MONROE GAS FIELD	9.9	TEXAS GAS TRANSMISSI
8100315	AO-3141	1711121765	108	GIBSON ESTATE #5	MONROE GAS FIELD	9.9	TEXAS GAS TRANSMISSI
8100316	AO-3142	1711121660	108	GIBSON ESTATE #6	MONROE GAS FIELD	9.9	TEXAS GAS TRANSMISSI
8100317	AO-3143	1711121767	108	GIBSON ESTATE #7	MONROE GAS FIELD	9.9	TEXAS GAS TRANSMISSI
8100162	AO-3144	1711121758	108	GIBSON ESTATE #8	MONROE GAS FIELD	9.9	TEXAS GAS TRANSMISSI
8100161	AO-3145	1711121760	108	GIBSON ESTATE #9	MONROE GAS FIELD	9.9	TEXAS GAS TRANSMISSI
8100312	AO-3134	1711121337	108	HOPKINS ESTATE #1	MONROE GAS FIELD	13.0	TEXAS GAS TRANSMISSI
8100311	AO-3135	1711121338	108	HOPKINS ESTATE #2	MONROE GAS FIELD	13.0	TEXAS GAS TRANSMISSI
8100182	AO-3331	1711122194	103	JARMON ESTATE #1	MONROE GAS FIELD	30.0	TEXAS GAS TRANSMISSI
8100289	AO-3313	1711122195	103	JARMON ESTATE #2	MONROE GAS FIELD	30.0	TEXAS GAS TRANSMISSI
8100290	AO-3314	1711122196	103	JARMON ESTATE #3	MONROE GAS FIELD	30.0	TEXAS GAS TRANSMISSI
8100183	AO-3330	1711122198	103	JARMON ESTATE #5	MONROE GAS FIELD	30.0	TEXAS GAS TRANSMISSI
8100194	AO-3329	1711122199	103	JARMON ESTATE #6	MONROE GAS FIELD	30.0	TEXAS GAS TRANSMISSI
8100195	AO-3328	1711122201	103	JARMON ESTATE #8	MONROE GAS FIELD	30.0	TEXAS GAS TRANSMISSI
8100310	AO-3136	1711121602	108	WELLS #1	MONROE GAS FIELD	17.0	TEXAS GAS TRANSMISSI
*ANDCO PRODUCTION CO				RECEIVED: 10/01/80 JA: LA			
8100023	AO-3434	1770520099	103	S/L 862 #13	VERMILION 14	1261.0	TRUNKLINE GAS CO
8100024	AO-3433	1770520099	103	S/L 862 #13D	VERMILION 14	840.0	TRUNKLINE GAS CO
8100269	AO-3347	1770520097	103	STATE LEASE 861 NO 11	VERMILION BLOCK 14 FIELD	3850.0	TRUNKLINE GAS CO
8100001	AO-2769	1702321294	102	VUA MIAMI CORP T NO 1	SOUTH PECAN LAKE	1800.0	COLUMBIA GAS TRANSMI
*ARKLA EXPLORATION COMPANY				RECEIVED: 10/01/80 JA: LA			
8100112	AO-3396	1706120202	103	MATTHEWS #3	RUSTON	220.0	MISSISSIPPI RIVER TR
*ASHLAND EXPLORATION INC				RECEIVED: 10/01/80 JA: LA			
8100287	AO-3311	1707321082	103	RAE GREEN NO 14	MONROE	24.2	SOUTHERN NATURAL GAS
8100288	AO-3312	1707321139	103	RAE GREEN NO 15	MONROE	33.0	SOUTHERN NATURAL GAS
8100176	AO-3310	1707320974	103	STOVALL DRILLING CO FEE NO 8	MONROE	27.0	SOUTHERN NATURAL GAS
*AZTEC PETROLEUM CORP				RECEIVED: 10/01/80 JA: LA			
8100077	AO-3367	1711122180	103	SCHULTZE NO 1	MONROE	18.0	WEST MONROE GAS GATH
8100078	AO-3370	1711122255	103	SCHUTZE NO 2	MONROE	10.0	WEST MONROE GAS GATH
8100076	AO-3368	1711122440	103	SCHUTZE NO 3	MONROE	9.0	WEST MONROE GAS GATH
8100075	AO-3369	1711122636	103	SCHUTZE NO 4	MONROE	7.0	WEST MONROE GAS GATH
*BARTON OIL & GAS CO INC				RECEIVED: 10/01/80 JA: LA			
8100204	AO-3393	1710922220	103	SABIN HEIRS NO 1	SOURS II FIELD	365.0	UNITED GAS PIPE LINE
*BABB ENTERPRISES PRODUCTION CO				RECEIVED: 10/01/80 JA: LA			
8100186	AO-3389	1706120219	103	CV DAVIS RA SUGO L G HANNA #1	UNIONVILLE	365.0	UNITED GAS PIPE LINE

JD NO	JA DKT	API NO	SEC U	WELL NAME	FIELD NAME	PROD	PURCHASER
*BURK ROYALTY CO				RECEIVED: 10/01/80 JA: LA			
8100073	AO-3371	1710700307	108	MASS SU 176 FISHER LBR CO #8-6	BUCKHORN	14.0	MID LOUISIANA GAS CO
*CALLON PETROLEUM COMPANY				RECEIVED: 10/01/80 JA: LA			
8100178	AO-3308	1710720345	103	SMITH NO A-1	DELTA BRIDGE	475.0	LOCUST RIDGE GAS PRO
8100177	AO-3309	1710720338	103	SMITH NO 1	DELTA BRIDGE	540.0	LOCUST RIDGE GAS PRO
*CHARLES A ONEILL JR ET AL				RECEIVED: 10/01/80 JA: LA			
8100114	AO-3397	1705721647	103	VUA GISCLAIR #1	GOLDEN MEADOW	146.0	SOUTH COAST GAS CO I
*CHEVRON U S A INC				RECEIVED: 10/01/80 JA: LA			
8100281	AO-3340	1771520151	103	S L 4238 NO 13	SOUTH TIMBALIER BLOCK 8	1095.0	TEXAS GAS TRANSMISSI
*CONOCO INC				RECEIVED: 10/01/80 JA: LA			
8100202	AO-3395	1709920776	103	CONOCO FEE A NO 26	ST MARTINVILLE	10.0	
*CRYSTAL OIL COMPANY				RECEIVED: 10/01/80 JA: LA			
8100184	AO-3391	1701320430	103	FLORRIE FELTS #1	WEST ARCADIA	234.6	TEXAS GAS TRANSMISSI
*DUNAGAN & RAYMOND				RECEIVED: 10/01/80 JA: LA			
8100163	AO-3327	1707321308	103	DUNAGAN & RAYMOND FEE #1	MONROE	6.1	UNITED GAS PIPELINE
*ELI REBICH				RECEIVED: 10/01/80 JA: LA			
8100305	AO-3148	1703100908	108	BAGLEY NO 4 (SN 111405)	CANADIAN BAYOU	18.0	TEXAS EASTERN TRANSM
*ERGON INC				RECEIVED: 10/01/80 JA: LA			
8100153	AO-3128	1711122176	103	MARY PHILLIPS NO 4	MONROE (6824)	9.3	TEXAS GAS TRANSMISSI
8100152	AO-3129	1711122457	103	M T MILLER NO 4	MONROE (6824)	9.3	TEXAS GAS TRANSMISSI
*EXCALIBUR RESOURCES INC				RECEIVED: 10/01/80 JA: LA			
8100280	AO-3341	1703121260	103	CONTINENTAL CAN #3	CHENARD LAKE	300.0	LOUISIANA INTRASTATE
*EXXON CORPORATION				RECEIVED: 10/01/80 JA: LA			
*8100256	AO-3217	1711320984	107	EXXON FEE-PECAN IS NO 84	PECAN ISLAND	1000.0	COLUMBIA GAS TRANS C
*FLYNN ENERGY CORP				RECEIVED: 10/01/80 JA: LA			
8100306	AO-3168	1705721662	103	EXXON FEE NO 1	LAKE FIELDS	529.0	
*FRANK CONCANNON				RECEIVED: 10/01/80 JA: LA			
8100045	AO-3262	1707320402	108	A G PUCKETT NO 1 (SN 142773)	MONROE	2.3	MID LOUISIANA GAS CO
8100124	AO-3228	1706720515	108	B B EUBANKS NO 1 (SN 142808)	MONROE	0.5	MID LOUISIANA GAS CO
8100247	AO-3236	1707320386	108	CASE-MEEKS NO 1 (SN 142772)	MONROE	1.4	MID LOUISIANA GAS CO
8100146	AO-3238	1707320410	108	COLE NO 1 (SN 142839)	MONROE	12.3	MID LOUISIANA GAS CO
8100206	AO-3235	1707320439	108	COLE NO 2 (SN 143304)	MONROE	3.5	MID LOUISIANA GAS CO
8100248	AO-3234	1707320434	108	COLE NO 3 (SN 143265)	MONROE	4.1	MID LOUISIANA GAS CO
8100040	AO-3245	1707320441	108	COLE NO 6 (SN 143306)	MONROE	18.9	MID LOUISIANA GAS CO
8100127	AO-3251	1707320417	108	COLEMAN NO 1 (SN 142927)	MONROE	2.5	MID LOUISIANA GAS CO
8100249	AO-3233	1706720549	108	COULTER NO 1 (SN 143249)	MONROE	1.1	MID LOUISIANA GAS CO
8100144	AO-3240	1706720550	108	COULTER NO 2 (SN 143250)	MONROE	2.0	MID LOUISIANA GAS CO
8100098	AO-3226	1706720551	108	COULTER NO 3 (SN 143251)	MONROE	1.7	MID LOUISIANA GAS CO
8100223	AO-3221	1706720439	108	E JOHNSON NO 1 (SERIAL NO 141020)	MONROE	1.0	MID LOUISIANA GAS CO
8100226	AO-3218	1706720527	108	ETHEL PICKETT NO 1 (SN 142945)	MONROE	8.6	MID LOUISIANA GAS CO
8100059	AO-3260	1707320473	108	FRED MILL NO 1-A (SN 144335)	MONROE	1.4	MID LOUISIANA GAS CO
8100058	AO-3261	1707320536	108	FRED MILL NO 2 (SN 144803)	MONROE	2.6	MID LOUISIANA GAS CO
8100251	AO-3231	1706720523	108	G EUBANKS NO 1-A (SN 142862)	MONROE	4.6	MID LOUISIANA GAS CO
8100250	AO-3232	1706720513	108	G EUBANKS NO 2 (SN 142726)	MONROE	4.6	MID LOUISIANA GAS CO
8100130	AO-3254	1706720526	108	GARNIER NO 1 (SN 142925)	MONROE	1.7	MID LOUISIANA GAS CO
8100131	AO-3253	1707320373	108	J N COUN NO 1 (SN 140994)	MONROE	0.8	MID LOUISIANA GAS CO
8100255	AO-3250	1706720505	108	JAMES P MADISON NO 3 (SN 142715)	MONROE	3.9	MID LOUISIANA GAS CO
8100298	AO-3222	1707320421	108	JOHN LANDRUM NO 1 (SN 143006)	MONROE	2.1	MID LOUISIANA GAS CO
8100043	AO-3242	1707320411	108	L RAMSEY NO 1 (SN 142849)	MONROE	4.8	MID LOUISIANA GAS CO
8100035	AO-3263	1707320491	108	LAVERNE RAMSEY #1 (SN 144462)	MONROE	0.5	MID LOUISIANA GAS CO
8100041	AO-3244	1706720553	108	LIEBER ESTATE #2 (SN 143253)	MONROE	2.1	MID LOUISIANA GAS CO

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JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8100123	A0=3229	1706720552	108		LIEBER ESTATE NO 1 (SN 143252)	MONROE	1.6	MID LOUISIANA GAS CO
8100297	A0=3223	1706720554	108		LIEBER ESTATE NO 3 (SN 143254)	MONROE	2.0	MID LOUISIANA GAS CO
8100042	A0=3243	1707320432	108		LIEBER ET AL #2 (SN 143197)	MONROE	1.6	MID LOUISIANA GAS CO
8100036	A0=3237	1707320431	108		LIEBER ET AL NO 1 (SN 143196)	MONROE	2.6	MID LOUISIANA GAS CO
8100036	A0=3249	1707320433	108		LIEBER ET AL NO 3 (NO 143198)	MONROE	1.6	MID LOUISIANA GAS CO
8100044	A0=3241	1706720445	108		MADISON NO 1 (SN 141082)	MONROE	13.2	MID LOUISIANA GAS CO
8100224	A0=3220	1706720509	108		MADISON NO 2 (SN 142697)	MONROE	8.5	MID LOUISIANA GAS CO
8100099	A0=3225	1706720529	108		MILTON PICKETT NO 1 (SN 142975)	MONROE	1.2	MID LOUISIANA GAS CO
8100033	A0=3264	1706720616	108		OLLIE WHITE #2 (NO 144253)	MONROE	2.3	MID LOUISIANA GAS CO
8100037	A0=3248	1706720611	108		OLLIE WHITE NO 1 (SN 144065)	MONROE	3.4	MID LOUISIANA GAS CO
8100252	A0=3230	1706720573	108		PHILLEY NO 1 (SN 143480)	MONROE	8.2	MID LOUISIANA GAS CO
8100185	A0=3239	1706720443	108		PICKETT NO 1 (SN 141043)	MONROE	0.7	MID LOUISIANA GAS CO
8100225	A0=3219	1706720444	108		PICKETT NO 2 (SN 141073)	MONROE	3.7	MID LOUISIANA GAS CO
8100126	A0=3252	1706720522	108		RAMSEY NO 2 (SN 142853)	MONROE	1.3	MID LOUISIANA GAS CO
8100100	A0=3224	1706720521	108		RAY YARBROUGH NO 1 (SN 142827)	MONROE	6.0	MID LOUISIANA GAS CO
8100039	A0=3246	1707320427	108		STELLA ONEAL #1 (SN 143121)	MONROE	7.1	MID LOUISIANA GAS CO
8100038	A0=3247	1707320428	108		STELLA ONEAL #2 (SN 143122)	MONROE	6.1	MID LOUISIANA GAS CO
8100095	A0=3257	1706720557	108		W B WILLIAMS NO 1 (SN 143271)	MONROE	3.9	MID LOUISIANA GAS CO
8100094	A0=3258	1706720598	108		W B WILLIAMS NO 2 (SN 143817)	MONROE	3.6	MID LOUISIANA GAS CO
8100056	A0=3259	1706720599	108		W B WILLIAMS NO 3 (SN 143818)	MONROE	4.8	MID LOUISIANA GAS CO
8100125	A0=3227	1706720510	108		Z D PICKETT NO 1, (SN 142698)	MONROE	0.6	MID LOUISIANA GAS CO
8100129	A0=3255	1706720555	108		Z D PICKETT NO 2 (SN 143255)	MONROE	0.7	MID LOUISIANA GAS CO
8100147	A0=3256	1706720556	108		Z D PICKETT NO 3 (SN 143256)	MONROE	0.9	MID LOUISIANA GAS CO
=FRANK SPOONER					RECEIVED: 10/01/80 JA: LA			
8100271	A0=3348	1702120507	103		VUA OLINKRAFT NO 16 (161460)	SWIM LAKE	100.0	LOUISIANA INTRASTATE
8100270	A0=3349	1702120579	103		VUA OLINKRAFT NO 17 (163727)	SWIM LAKE	100.0	LOUISIANA INTRASTATE
=FRANKS & PETROFUNDS INC					RECEIVED: 10/01/80 JA: LA			
8100088	A0=3266	1701320375	103		MOBB B SUL E W MERNITT A NO 1	WEST BRYCELAND	360.0	TEXAS EASTERN TNANSM
8100128	A0=3265	1701320410	103		MOBB B SUG STREETMAN NO 2	WEST BRYCELAND	292.0	UNITED GAS PIPELINE
=FRANKS-EVANS					RECEIVED: 10/01/80 JA: LA			
8100307	A0=3167	1701320374	103		MOBB B SUGG ROCHELLE NO 1	WEST BRYCELAND	117.0	LOUISIANA GAS PUNCHA
=GAS RESOURCES INC					RECEIVED: 10/01/80 JA: LA			
8100072	A0=3372	1711122393	103		EXXON #17 (8166281)	MONROE	21.0	IMC PIPELINE CO INC
=GAS TRANSPORTATION CORPORATION					RECEIVED: 10/01/80 JA: LA			
8100294	A0=3289	1711122169	108		DIGBY NO 1	MONROE	1.1	PETRO-LEWIS FUNDS IN
8100193	A0=3293	1711122155	108		GTC-L NOLAN NO 1	MONROE	3.8	PETRO-LEWIS FUNDS IN
8100268	A0=3292	1711122156	108		GTC-L NOLAN NO 2	MONROE	3.8	PETRO-LEWIS FUNDS IN
8100295	A0=3290	1711122178	108		GTC-L NOLAN NO 3	MONROE	3.8	PETRO-LEWIS FUNDS IN
8100296	A0=3291	1711122095	108		GTC-O NOLAN NO 1	MONROE	2.0	PETRO-LEWIS FUNDS IN
=GATOR HAWK GAS CO					RECEIVED: 10/01/80 JA: LA			
8100090	A0=3283	1707321420	103		BARDIN #5	MONROE GAS	25.7	UNITED GAS PIPELINE
8100091	A0=3282	1707321421	103		BARDIN #6	MONROE GAS	23.6	UNITED GAS PIPELINE
=GLENDA PETROLEUM CORP					RECEIVED: 10/01/80 JA: LA			
8100101	A0=3401	1711120613	108		EXXON ARCO 14 A #1 S/N 148295	MONROE	20.0	MID LOUISIANA GAS CO
8100102	A0=3403	1711120614	108		EXXON ARCO 14 A #2 S/N 148296	MONROE	21.0	MID LOUISIANA GAS CO
8100104	A0=3405	1711120616	108		EXXON ARCO 14 A NO 4 S/N 148298	MONROE	20.0	MID LOUISIANA GAS CO
8100106	A0=3406	1711120649	108		EXXON ARCO 14=A #5 S/N 148778	MONROE	17.0	MID LOUISIANA GAS CO
8100105	A0=3404	1711120615	108		EXXON=ARCO 14=A #3 S/N 148297	MONROE	19.0	MID LOUISIANA GAS CO
8100025	A0=3432	1711121393	108		EXXON=ARCO 35 #1 S/N 160930	MONROE	6.9	MID LOUISIANA GAS
8100103	A0=3402	1711120721	108		KELTON HOWARD NO 2 S/N 150154	MONROE	12.0	MID LOUISIANA GAS CO
8100109	A0=3423	1711120605	108		L A M SMITH NO 1 S/N 147916	MONROE	0.0	MID LOUISIANA GAS CO
8100032	A0=3429	1711120569	108		MAGGIE SMITH C=2 S/N 147525	MONROE	20.0	MID LOUISIANA GAS CO
8100111	A0=3424	1711120521	108		MAGGIE SMITH E=1 S/N 146984	MONROE	17.0	MID LOUISIANA GAS CO

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JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8100108	A0=3407	1711120522	108		MAGGIE SMITH E=2 S/N 146990	MONROE	11.0	MID LOUISIANA GAS CU
8100107	A0=3421	1711120609	108		MAGGIE SMITH H=3 S/N 148095	MONROE	20.0	MID LOUISIANA GAS CU
8100110	A0=3422	1711120764	108		MAGGIE SMITH J NO 2 S/N 150680	MONROE	13.0	MID LOUISIANA GAS CO
8100031	A0=3426	1711121790	108		WEST NO 1 S/N 162492	MONROE	1.0	MID LOUISIANA GAS CU
8100030	A0=3427	1711121791	108		WEST NO 2 S/N 162493	MONROE	6.2	MID LOUISIANA GAS CO
8100027	A0=3430	1706721279	108		WHITAKER NO 12 S/N 163897	MONROE	4.0	MID LOUISIANA GAS CO
8100028	A0=3429	1706721281	108		WHITAKER NO 14 S/N 163899	MONROE	4.0	MID LOUISIANA GAS CO
8100029	A0=3428	1706721282	108		WHITAKER NO 15 S/N 163900	MONROE	4.0	MID LOUISIANA GAS CO
8100026	A0=3431	1706721274	108		WHITAKER NO 9 S/N 161429	MONROE	4.0	MID LOUISIANA GAS CO
=GULF OIL CORPORATION					RECEIVED: 10/01/80 JA: LA			
8100205	A0=3342	1707522620	103		SL 195 OO #188	GRAND BAY	3000.0	UNITED GAS PIPELINE
=HADDOX PETROLEUM CORP					RECEIVED: 10/01/80 JA: LA			
8100269	A0=3191	1711122574	103		CARLILE SANDERS #1	MONROE	0.0	IMC PIPELINE COMPANY
8100264	A0=3192	1711122233	103		MOBIL=IP NO 2	MONROE	0.0	MID LOUISIANA GAS CO
=HERD PRODUCING COMPANY INC					RECEIVED: 10/01/80 JA: LA			
8100231	A0=3201	1702720635	103		SMK C RA SUG MORELAND A=1	EAST MAYNESVILLE	120.0	LOUISIANA GAS INTRAS
=IMC EXPLORATION COMPANY					RECEIVED: 10/01/80 JA: LA			
8100214	A0=3181	1711122078	108		GRAYLING #N=257	MONROE	15.0	IMC PIPELINE CU INC
8100217	A0=3179	1711122063	108		GRAYLING #N=259	MONROE	3.0	IMC PIPELINE CO INC
8100216	A0=3180	1711122038	108		LA GAS LANDS #22	MONROE	20.3	IMC PIPELINE CU INC
=JAMES A WHITSON JR					RECEIVED: 10/01/80 JA: LA			
8100179	A0=3307	1705721451	103		PELTO NO 2	NORTH THIBODEAUX	365.0	SUGAR BOWL GAS CORP
=JUSTISS-MEARS OIL CO INC					RECEIVED: 10/01/80 JA: LA			
8100160	A0=3146	1702120676	103		HADDEN RA SU A DUNN #1	NORTH CLARKS	0.0	LOUISIANA INTRASTATE
=KERR-MCGEE CORPORATION					RECEIVED: 10/01/80 JA: LA			
8100002	A0=2791	1710121079	102		BESSIE L CARTER NO 1	JEANERETTE	735.0	TEXAS GAS TRANSMISSI
8100113	A0=3396	1772620185	103		S L 2000 NO 52	BRETON SOUND BLOCK 20	123.0	SOUTHERN NATURAL GAS
8100115	A0=3399	1772620162	103		S L 2326 NO 38	BRETON SOUND BLOCK 20	121.0	SOUTHERN NATURAL GAS
8100118	A0=3400	1772620162	103		S L 2326 NO 38=D	BRETON SOUND BLOCK 20	131.0	SOUTHERN NATURAL GAS
=LAMOMA GAS COMPANY					RECEIVED: 10/01/80 JA: LA			
8100293	A0=3288	1707300000	108		JOHN T COLE #1	MONROE GAS ROCK FIELD	0.0	IMC EXPLORATION CO
8100235	A0=3285	1707300110	108		JOHN T COLE #13	MONROE GAS ROCK FIELD	0.0	IMC EXPLORATION CO
8100086	A0=3287	1707300105	108		JOHN T COLE #4	MONROE GAS ROCK FIELD	0.0	IMC EXPLORATION CO
8100087	A0=3286	1707300106	108		JOHN T COLE #7	MONROE GAS ROCK FIELD	0.0	IMC EXPLORATION CO
8100089	A0=3284	1707300145	108		PACE LAKE #2	MONROE GAS ROCK FIELD	0.0	IMC EXPLORATION CO
=LANKFORD & NANCE					RECEIVED: 10/01/80 JA: LA			
8100267	A0=3189	1711122280	103		BEASLEY NO 1	MONROE GAS	20.0	TEXAS GAS TRANSMISSI
8100266	A0=3190	1711122281	103		BROWN NO 1	MONROE	20.0	TEXAS GAS TRANSMISSI
8100149	A0=3132	1711122529	103		BROWN NO 2	MONROE	20.0	TEXAS GAS TRANSMISSI
8100151	A0=3130	1711122530	103		BROWN NO 3	MONROE	22.0	TEXAS GAS TRANSMISSI
8100148	A0=3133	1711122283	103		HAILE NO 2	MONROE	10.0	TEXAS GAS TRANSMISSI
8100150	A0=3131	1711122284	103		J B LANKFORD NO 1	MONROE	8.0	TEXAS GAS TRANSMISSI
=M T HERBST					RECEIVED: 10/01/80 JA: LA			
8100306	A0=3149	1707321036	106		SHO VAN #1 (SN 157165)	MONROE GAS ROCK FIELD	20.4	UNITED GAS PIPE LINE
=MALMAC ENERGY					RECEIVED: 10/01/80 JA: LA			
8100070	A0=3374	1711122228	103		EXXON 12 #1	MONROE GAS FIELD	36.0	TEXAS GAS TRANSMISSI
8100071	A0=3373	1711122229	103		EXXON 12 #2	MONROE GAS FIELD	0.0	TEXAS GAS TRANSMISSI
8100068	A0=3375	1711122366	103		EXXON 12 #5	MONROE GAS FIELD	35.0	TEXAS GAS TRANSMISSI
=MARATHON OIL COMPANY					RECEIVED: 10/01/80 JA: LA			
8100282	A0=3339	1711900701	108		CU SU HUNT MEYERS #1	COTTON VALLEY	0.0	UNITED GAS P L CO
8100185	A0=3390	1711901185	108		CYSU HUNT DAVIS ET AL #2	COTTON VALLEY	3.0	UNITED GAS PIPE LINE
=MAY PETROLEUM INC					RECEIVED: 10/01/80 JA: LA			

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JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8100174	A0-3334	1703120721	102		ROD RA SUC BROWN #1 (157113)	BETHANY-LONGSTREET	840.0	ARKANSAS LOUISIANA G
8100175	A0-3333	1703120753	102		ROD RA SUM JONES #1 (158247)	BETHANY-LONGSTREET	600.0	ARKANSAS LOUISIANA G
8100284	A0-3337	1703120677	102		ROD RA SUK GAMBLE #2 (155771)	BETHANY-LONGSTREET	540.0	ARKANSAS LOUISIANA G
8100285	A0-3336	1703120706	102		ROD RA SUL GAMBLE A #1 (156644)	BETHANY-LONGSTREET	900.0	ARKANSAS LOUISIANA G
8100286	A0-3335	1703120691	102		ROD RA SUP BURFORD #1 (156158)	BETHANY-LONGSTREET	48.0	ARKANSAS LOUISIANA G
*MID LOUISIANA GAS COMPANY		RECEIVED: 10/01/80 JA: LA						
8100219	A0-3383	1711121495	108		MLGC FEE GAS NO 691	MONROE FIELD	15.8	
8100189	A0-3384	1711121489	108		MLGC FEE GAS NO 697	MONROE FIELD	17.1	
8100188	A0-3385	1711121486	108		MLGC FEE GAS NO 700	MONROE FIELD	17.9	
8100173	A0-3317	1711121537	108		MLGC FEE GAS NO 720	MONROE FIELD	16.7	
8100172	A0-3318	1711121545	108		MLGC FEE GAS NO 728	MONROE FIELD	12.7	
8100166	A0-3324	1711121650	108		MLGC FEE GAS NO 749	MONROE FIELD	11.2	
8100201	A0-3379	1711121837	108		MLGC FEE GAS NO 775	MONROE FIELD	16.8	
8100199	A0-3380	1711121849	108		MLGC FEE GAS NO 783	MONROE FIELD	11.1	
8100200	A0-3381	1711121860	108		MLGC FEE GAS NO 794	MONROE FIELD	21.1	
8100198	A0-3382	1711121622	108		MLGC FEE GAS NO 804	MONROE FIELD	3.1	
8100171	A0-3319	1711121918	108		MLGC FEE GAS NO 806	MONROE FIELD	19.6	
8100170	A0-3320	1711121969	108		MLGC FEE GAS NO 839	MONROE FIELD	10.2	
8100169	A0-3321	1711121970	108		MLGC FEE GAS NO 840	MONROE FIELD	17.3	
8100167	A0-3323	1711121972	108		MLGC FEE GAS NO 842	MONROE FIELD	12.4	
8100168	A0-3322	1711121988	108		MLGC FEE GAS NO 849	MONROE FIELD	8.9	
8100261	A0-3195	1711122053	103		MLGC FEE GAS NO 855	MONROE FIELD	78.3	
8100260	A0-3196	1711122054	103		MLGC FEE GAS NO 856	MONROE FIELD	67.9	
8100259	A0-3197	1711122055	103		MLGC FEE GAS NO 857	MONROE FIELD	41.6	
8100164	A0-3326	1711122325	103		MLGC FEE GAS NO 869	MONROE FIELD	29.2	
8100258	A0-3198	1711122420	103		MLGC FEE GAS NO 884	MONROE FIELD	17.2	
8100257	A0-3199	1711122437	103		MLGC FEE GAS NO 888	MONROE FIELD	25.3	
*PATRICK PETROLEUM CORP (MI)		RECEIVED: 10/01/80 JA: LA						
8100053	A0-3267	1705721404	102		BOWIE LBR CO LTD #10-D (156928)	SOUTH BAYOU BOEUF FIELD	0.7	LOUISIANA RESOURCES
8100052	A0-3268	1705721472	102		BOWIE LBR CO LTD #11-D (162741)	SOUTH BAYOU BOEUF FIELD	1.0	LOUISIANA RESOURCES
8100051	A0-3269	1705721429	102		BOWIE LBR CO LTD #12-D (157119)	SOUTH BAYOU BOEUF FIELD	1.3	LOUISIANA RESOURCES
8100050	A0-3270	1705721553	102		BOWIE LBR CO LTD #14-D (162142)	SOUTH BAYOU BOEUF FIELD	1.0	LOUISIANA RESOURCES
8100049	A0-3271	1705721564	102		BOWIE LBR CO LTD #15 (162308)	SOUTH BAYOU BOEUF	1.3	LOUISIANA RESOURCES
8100048	A0-3272	1705721608	102		BOWIE LBR CO LTD #17-D (163755)	SOUTH BAYOU BOEUF FIELD	1.0	LOUISIANA RESOURCES
*PENNZOIL PRODUCING COMPANY		RECEIVED: 10/01/80 JA: LA						
8100263	A0-3193	1711121514	108		FEE 61 NO 38	MONROE	14.0	UNITED GAS PIPE LINE
8100262	A0-3194	1711121515	108		FEE 61 NO 39	MONROE	14.0	UNITED GAS PIPE LINE
*PRIMOS PRODUCTION CO		RECEIVED: 10/01/80 JA: LA						
8100229	A0-3204	1707321396	103		CULPEPPER ET AL #1	MONROE GAS	6.2	MID LOUISIANA GAS CO
8100228	A0-3205	1707321397	103		CULPEPPER ET AL #2	MONROE GAS	7.2	MID LOUISIANA GAS CO
8100227	A0-3206	1707321398	103		CULPEPPER ET AL #3	MONROE GAS	6.2	MID LOUISIANA GAS CO
8100244	A0-3304	1706721332	108		GEORGIA PACIFIC B #10	MONROE GAS FIELD	3.8	UNITED GAS PIPELINE
8100274	A0-3356	1706721327	108		GEORGIA PACIFIC B #11	MONROE GAS FIELD	3.8	UNITED GAS PIPELINE
8100181	A0-3305	1706721336	108		GEORGIA PACIFIC B #18	MONROE GAS FIELD	3.8	UNITED GAS PIPELINE
8100192	A0-3294	1706721333	108		GEORGIA PACIFIC B #19	MONROE GAS FIELD	3.8	UNITED GAS PIPELINE
8100191	A0-3295	1706721334	108		GEORGIA PACIFIC B #20	MONROE GAS FIELD	3.8	UNITED GAS PIPELINE
8100242	A0-3302	1706721331	108		GEORGIA PACIFIC B #8	MONROE GAS FIELD	3.8	UNITED GAS PIPELINE
8100243	A0-3303	1706721325	108		GEORGIA PACIFIC B #9	MONROE GAS FIELD	3.8	UNITED GAS PIPELINE
8100237	A0-3297	1706721348	108		GEORGIA PACIFIC C #10	MONROE GAS FIELD	4.2	UNITED GAS PIPELINE
8100238	A0-3298	1706721354	108		GEORGIA PACIFIC C #11	MONROE GAS FIELD	4.2	UNITED GAS PIPELINE
8100239	A0-3299	1706721358	108		GEORGIA PACIFIC C #12	MONROE GAS FIELD	4.3	UNITED GAS PIPELINE
8100240	A0-3300	1706721349	108		GEORGIA PACIFIC C #13	MONROE GAS FIELD	7.8	UNITED GAS PIPELINE

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JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8100241	A0-3301	1706721351	108		GEORGIA PACIFIC C #15	MONROE GAS FIELD	7.4	UNITED GAS PIPELINE
8100236	A0-3296	1706721357	108		GEORGIA PACIFIC C #9	MONROE GAS FIELD	7.4	UNITED GAS PIPELINE
8100190	A0-3332	1707321171	103		LIEBER NO 8	MONROE FIELD	39.1	UNITED GAS PIPELINE
8100254	A0-3207	1711122400	103		PETRO LEWIS NOLAN HEIRS #1	MONROE GAS FIELD	20.5	PETRO-LEWIS FUNDS IN
8100246	A0-3215	1711122472	103		PETRO LEWIS UNION POWER #11	MONROE GAS FIELD	18.4	PETRO LEWIS FUNDS IN
8100078	A0-3366	1711122439	103		PETRO-LEWIS E NICHOLS #2	MONROE	10.3	PETRO-LEWIS FUNDS IN
8100079	A0-3365	1711122486	103		PETRO-LEWIS J B HANDY #2	MONROE	11.3	PETRO-LEWIS FUNDS IN
8100293	A0-3208	1711122401	103		PETRO-LEWIS NOLAN HEIRS #2	MONROE GAS FIELD	17.5	PETRO-LEWIS FUNDS IN
8100212	A0-3209	1711122402	103		PETRO-LEWIS NOLAN HEIRS #3	MONROE GAS FIELD	24.7	PETRO-LEWIS FUNDS IN
8100097	A0-3362	1711122403	103		PETRO-LEWIS NOLAN HEIRS #4	MONROE	17.5	PETRO-LEWIS FUNDS IN
8100310	A0-3363	1711122404	103		PETRO-LEWIS NOLAN HEIRS #5	MONROE	16.4	PETRO-LEWIS FUNDS IN
8100211	A0-3210	1711122406	103		PETRO-LEWIS PENNZOIL FEE 119 #5	MONROE GAS FIELD	16.4	PETRO-LEWIS FUNDS IN
8100210	A0-3211	1711122407	103		PETRO-LEWIS PENNZOIL FEE 119 #6	MONROE GAS FIELD	15.6	PETRO-LEWIS FUNDS IN
8100080	A0-3364	1711122368	103		PETRO-LEWIS PENNZOIL FEE 65 #5	MONROE	12.3	PETRO-LEWIS FUNDS IN
8100276	A0-3357	1711122464	103		PETRO-LEWIS UNION POWER #1	MONROE GAS	13.3	PETRO-LEWIS FUNDS IN
8100207	A0-3214	1711122471	103		PETRO-LEWIS UNION POWER #10	MONROE GAS FIELD	20.5	PETRO-LEWIS FUNDS IN
8100275	A0-3358	1711122465	103		PETRO-LEWIS UNION POWER #2	MONROE GAS	15.4	PETRO-LEWIS FUNDS IN
8100209	A0-3212	1711122466	103		PETRO-LEWIS UNION POWER #3	MONROE GAS FIELD	8.2	PETRO-LEWIS FUNDS IN
8100208	A0-3213	1711122467	103		PETRO-LEWIS UNION POWER #4	MONROE GAS FIELD	15.4	PETRO-LEWIS FUNDS IN
8100278	A0-3359	1711122468	103		PETRO-LEWIS UNION POWER #5	MONROE GAS	13.3	PETRO-LEWIS FUNDS IN
8100277	A0-3360	1711122469	103		PETRO-LEWIS UNION POWER #6	MONROE GAS	18.5	PETRO-LEWIS FUNDS IN
8100279	A0-3361	1711122470	103		PETRO-LEWIS UNION POWER #7	MONROE GAS	18.8	PETRO-LEWIS FUNDS IN
*PRIMOS-TOMLINSON		RECEIVED: 10/01/80 JA: LA						
8100218	A0-3178	1706721555	103		HART #1	MONROE GAS	15.4	LOUISIANA GAS SERVIC
*R L ZINN		RECEIVED: 10/01/80 JA: LA						
8100245	A0-3216	1701920632	102		ZINN-VERRET #1 (SN 162761)	NORTH MAYES	45.0	CONTINENTAL OIL CO
*RANGER OIL CO		RECEIVED: 10/01/80 JA: LA						
8100180	A0-3306	1700720250	107		BROWNELL-RIDD NO 3	BAYOU GROSSEC	175.0	MONTEREY PIPELINE CO
*RELIANCE TR-JV		RECEIVED: 10/01/80 JA: LA						
8100069	A0-3376	1711122213	103		M J JOHNSON #1	MONROE GAS FIELD	30.0	TEXAS GAS TRANSMISSI
8100067	A0-3377	1711122214	103		M J JOHNSON #2	MONROE GAS FIELD	30.0	TEXAS GAS TRANSMISSI
8100234	A0-3184	1711122532	103		HOPKINS #4	MONROE GAS FIELD	30.0	TEXAS GAS TRANSMISSI
8100233	A0-3185	1711122613	103		HOPKINS ESTATE #6	MONROE GAS FIELD	0.0	TEXAS GAS TRANSMISSI
8100064	A0-3378	1711122212	103		T BAKER #2	MONROE GAS FIELD	30.0	TEXAS GAS TRANSMISSI
*RELIANCE TRUSTO		RECEIVED: 10/01/80 JA: LA						
8100213	A0-3183	1711122109	103		OLINKRAFT #36	MONROE GAS FIELD	30.0	TEXAS GAS TRANSMISSI
8100215	A0-3182	1711122531	103		T L JAMES #2	MONROE GAS FIELD	30.0	TEXAS GAS TRANSMISSI
*RESOURCES INVESTMENT CORPORATION		RECEIVED: 10/01/80 JA: LA						
8100197	A0-3342	1708920403	103		R C MILLING #1	LAKE DES ALLEMANDES	330.0	LOUISIANA INTRASTATE
*ROY M TEE		RECEIVED: 10/01/80 JA: LA						
8100046	A0-3274	1706720168	108		BENNET-MORGAN #1	MONROE GAS ROCK FIELD	0.1	GEORGIA-PACIFIC
8100097	A0-3191	1706720160	108		C J JACKSON #1	MONROE GAS ROCK FIELD	15.9	GEORGIA PACIFIC
8100085	A0-3275	1706720158	108		C J JACKSON #2	MONROE GAS ROCK FIELD	0.4	GEORGIA-PACIFIC
8100011	A0-3044	1707321281	108		COLE HEIRS #26	MONROE GAS ROCK FIELD	13.9	IMC PIPELINE CO INC
8100010	A0-3047	1707321282	108		COLE HEIRS #27	MONROE GAS ROCK FIELD	0.0	IMC PIPELINE CO INC
8100015	A0-3042	1707321283	108		COLE HEIRS #28	MONROE GAS ROCK FIELD	17.2	IMC PIPELINE CO INC
8100014	A0-3043	1707321284	108		COLE HEIRS #29	COLE HEIRS #29	13.5	IMC PIPELINE CO INC
8100082	A0-3278	1711120923	108		EXXON 29-2	MONROE GAS ROCK FIELD	12.8	LOUISIANA PUWER AND
8100081	A0-3279	1711121017	108		EXXON 31-1	MONROE GAS ROCK FIELD	11.0	LOUISIANA PUWER AND
8100047	A0-3273	1706700104	108		FREELAND-ODOM #2	MONROE GAS ROCK FIELD	0.0	GEORGIA-PACIFIC
8100084	A0-3276	1706720574	106		J C SANDIDGE ET AL #1	MONROE GAS ROCK FIELD	0.0	UNITED GAS PIPE LINE
8100083	A0-3277	1707300804	108		JOHN T COLE #6	MONROE GAS ROCK FIELD	0.0	IMC EXPLORATION CO

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JD NO	TA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8100302	AO-3153	1706721267	108		KENO #3	MONROE GAS ROCK FIELD	9.9	IMC PIPELINE CO INC
8100301	AO-3154	1706721268	108		KENO #4	MONROE GAS ROCK FIELD	21.2	IMC-PIPELINE CO INC
8100300	AO-3155	1706721269	108		KENO #5	MONROE GAS ROCK FIELD	14.2	IMC PIPELINE CO INC
8100299	AO-3156	1706721270	108		KENO #6	MONROE GAS ROCK FIELD	4.0	IMC PIPELINE CO INC
8100141	AO-3157	1706721276	103		KENO #7	MONROE GAS ROCK FIELD	20.1	IMC PIPELINE CO INC
8100013	AO-3444	1707321235	108		NACHTRIEB #10	MONROE GAS ROCK FIELD	8.8	IMC PIPELINE CO INC
8100012	AO-3445	1707321234	108		NACHTRIEB #11	MONROE GAS ROCK FIELD	8.8	IMC PIPELINE CO INC
8100096	AO-3152	1706721223	108		PATTON #3	MONROE GAS ROCK FIELD	9.1	UNITED GAS PIPE LINE
8100093	AO-3280	1707320962	108		SHO VAN #1	MONROE GAS ROCK FIELD	19.9	UNITED GAS PIPE LINE
*B TEEL					RECEIVED: 10/01/80 JA: LA			
8100303	AO-3150	1707321050	108		SHO VAN #1 (SN 157381)	MONROE GAS ROCK FIELD	14.1	UNITED GAS PIPE LINE
*BAND HILL LTD					RECEIVED: 10/01/80 JA: LA			
8100232	AO-3186	1711223190	103		RAMSEY ET AL NO 1	MONROE	19.0	PETRO-LEWIS FUNDS IN
8100165	AO-3325	1711122320	103		RAMSEY ET AL NO 2	MONROE	25.0	PETRO-LEWIS FUNDS IN
8100092	AO-3281	1711122321	103		RAMSEY ET AL NO 3	MONROE	27.0	PETRO-LEWIS FUNDS IN
*BUN OIL COMPANY (DELAWARE)					RECEIVED: 10/01/80 JA: LA			
8100221	AO-3345	1710121077	103		BI N VU A NO 6-6	BELLE ISLE	365.0	UNITED GAS PIPE LINE
8100292	AO-3316	1700120879	102		HAYES B NO 3	EGAN	0.0	TEXAS EASTERN TRANSM
8100196	AO-3343	1700120832	103		LAPLEAU NO 6	MIDLAND	730.0	TENNESSEE GAS PIPELI
8100222	AO-3344	1700120690	103		U HMBK E RC SUB FALCON HRS #1	NAYNE	1460.0	
*TEE OPERATING CO					RECEIVED: 10/01/80 JA: LA			
8100272	AO-3354	1701920861	103		PREAGER #5 (SN 164731) (MIOCENE)	GILLIS ENGLISH BAYOU	98.9	CONTINENTAL OIL CO
8100273	AO-3355	1701920861	103		PREAGER #5 (SN 164731)(5800' SAND)	GILLIS ENGLISH BAYOU	270.0	CONTINENTAL OIL CO
*TEEL 78 A					RECEIVED: 10/01/80 JA: LA			
8100132	AO-3166	1706721463	103		KENO A #12	MONROE GAS ROCK FIELD	11.0	IMC PIPELINE CO INC
8100058	AO-3466	1706721414	108		PATTON A #1	MONROE GAS ROCK	15.3	UNITED GAS PIPELINE
8100021	AO-3436	1706721415	108		PATTON A #2	MONROE GAS ROCK	20.1	UNITED GAS PIPELINE
8100020	AO-3437	1706721474	108		PATTON A #3	MONROE GAS ROCK	21.2	UNITED GAS PIPELINE
8100022	AO-3435	1706721404	108		SANDIDGE A #10	MONROE GAS ROCK FIELD	21.2	UNITED GAS PIPELINE
8100138	AO-3160	1706721397	108		SANDIDGE A #2	MONROE GAS ROCK FIELD	15.7	UNITED GAS PIPELINE
8100140	AO-3158	1706721399	108		SANDIDGE A #4	MONROE GAS ROCK FIELD	11.3	UNITED GAS PIPELINE
8100139	AO-3159	1706721400	108		SANDIDGE A #5	MONROE GAS ROCK FIELD	15.3	UNITED GAS PIPELINE
8100018	AO-3439	1706721402	108		SANDIDGE A #8	MONROE GAS ROCK	3.9	UNITED GAS PIPELINE
8100019	AO-3438	1706721403	108		SANDIDGE A #9	MONROE GAS ROCK FIELD	21.2	UNITED GAS PIPELINE
8100017	AO-3440	1706721405	108		SANDIDGE A NO 7	MONROE GAS ROCK FIELD	3.7	UNITED GAS PIPELINE
8100016	AO-3441	1706721340	108		SANDIDGE A 1	MONROE GAS ROCK FIELD	1.8	UNITED GAS PIPELINE
8100137	AO-3161	1707321153	108		SMITH A #1	MONROE GAS ROCK	6.6	UNITED GAS PIPE LINE
8100136	AO-3162	1707321157	108		SMITH A #2	MONROE GAS ROCK	7.3	UNITED GAS PIPE LINE
8100135	AO-3163	1707321173	108		SMITH A #3	MONROE GAS ROCK	5.5	UNITED GAS PIPE LINE
8100134	AO-3164	1707321174	108		SMITH A #4	MONROE GAS ROCK	6.2	UNITED GAS PIPE LINE
8100133	AO-3165	1707321175	108		SMITH A #5	MONROE GAS ROCK	4.8	UNITED GAS PIPE LINE
*TEEL 79 A					RECEIVED: 10/01/80 JA: LA			
8100007	AO-3450	1707321268	108		COLE MEIRS A #11	MONROE GAS ROCK	16.4	IMC PIPELINE CO INC
8100064	AO-3460	1707321269	108		COLE MEIRS A #12	MONROE GAS ROCK	18.3	IMC PIPELINE CO INC
8100063	AO-3461	1707321270	108		COLE MEIRS A #13	MONROE GAS ROCK	14.6	IMC PIPELINE CO INC
8100008	AO-3449	1707321271	108		COLE MEIRS A #14	MONROE GAS ROCK	11.7	IMC PIPELINE CO INC
8100009	AO-3448	1707321272	108		COLE MEIRS A #15	MONROE GAS ROCK	11.0	IMC PIPELINE CO INC
8100006	AO-3451	1707321273	108		COLE MEIRS A #16	MONROE GAS ROCK	11.0	IMC PIPELINE CO INC
8100116	AO-3456	1707321261	108		COLE MEIRS A #4	MONROE GAS ROCK	11.7	IMC PIPELINE CO INC
8100120	AO-3457	1707321262	108		COLE MEIRS A #5	MONROE GAS ROCK	11.0	IMC PIPELINE CU INC
8100119	AO-3458	1707321263	108		COLE MEIRS A #6	MONROE GAS ROCK	9.9	IMC PIPELINE CU INC
8100065	AO-3459	1707321266	108		COLE MEIRS A #9	MONROE GAS ROCK	9.9	IMC PIPELINE CU INC
8100061	AO-3463	1707321236	108		NACHTRIEB A #10	MONROE GAS ROCK FIELD	4.0	IMC PIPELINE CU INC

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JD NO	TA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8100062	AO-3462	1707321237	108		NACHTRIEB A #11	MONROE GAS ROCK FIELD	6.2	IMC PIPELINE CU INC
8100003	AO-3454	1707321238	108		NACHTRIEB A #12	MONROE GAS ROCK FIELD	11.3	IMC PIPELINE CO INC
8100004	AO-3453	1707321239	108		NACHTRIEB A #13	MONROE GAS ROCK FIELD	3.5	IMC PIPELINE CU INC
8100005	AO-3452	1707321240	108		NACHTRIEB A #14	MONROE GAS ROCK FIELD	3.7	IMC PIPELINE CU INC
8100117	AO-3455	1707321209	108		NACHTRIEB A #3	MONROE GAS ROCK FIELD	19.7	IMC PIPELINE CO INC
8100059	AO-3465	1707321233	108		NACHTRIEB A #7	MONROE GAS ROCK FIELD	13.1	IMC PIPELINE CO INC
8100060	AO-3464	1707321241	108		NACHTRIEB A #8	MONROE GAS ROCK FIELD	6.9	IMC PIPELINE CU INC
*TEXACO INC					RECEIVED: 10/01/80 JA: LA			
8100220	AO-3346	1770720091	103		S L 340 MOUND POINT NO 70	MOUND POINT	2200.0	KAISER ALUMINUM & CH
*8100158	AO-3170	1770720086	103		S/L 340 MOUND POINT NO 64	MOUND POINT	1460.0	KAISER ALUMINUM & CH
*8100157	AO-3171	1770720088	103		S/L 340 MOUND POINT NO 64-D	MOUND POINT	2477.0	KAISER ALUMINUM & CH
*8100156	AO-3172	1770720085	103		S/L 340 MOUND POINT NO 65	MOUND POINT	2920.0	KAISER ALUMINUM & CH
*8100159	AO-3169	1770720089	103		S/L 340 MOUND POINT NO 68	MOUND POINT	2190.0	KAISER ALUMINUM & CH
*8100143	AO-3174	1770720090	103		S/L 340 MOUND POINT NO 69	MOUND POINT	7300.0	KAISER ALUMINUM & CH
*8100142	AO-3175	1770720091	103		S/L 340 MOUND POINT NO 70	MOUND POINT	3650.0	KAISER ALUMINUM & CH
*8100155	AO-3173	1770720093	103		S/L 340 MOUND POINT NO 72	MOUND POINT	1900.0	KAISER ALUMINUM & CH
*THE STONE OIL CORPORATION					RECEIVED: 10/01/80 JA: LA			
8100230	AO-3203	1705320619	107		ALICE ROY PRIMEAUX #1	ANDRUS COVE	2555.0	
8100187	AO-3380	1711320983	107		EXXON FEE #11	LAC BLANC	2008.0	
*THE SUPERIOR OIL COMPANY					RECEIVED: 10/01/80 JA: LA			
8100203	AO-3394	1710922047	103		SOUTHDOWN INC BA-7	SUNRISE	1460.0	UNITED GAS PIPE LINE
*UNION OIL COMPANY OF CALIF					RECEIVED: 10/01/80 JA: LA			
8100291	AO-3315	1710922246	103		STATE LEASE 2826 NO 41	CAILLOU ISLAND	50.0	TENNESSEE GAS PIPELI
*VIKING RESOURCES CORPORATION					RECEIVED: 10/01/80 JA: LA			
8100121	AO-3168	1707321348	108		HATCHER-EVANS NO 1	MONROE	4.0	PETRO-LEWIS FUNDS IN
8100122	AO-3167	1707321350	108		HATCHER-EVANS NO 2	MONROE	4.0	PETRO-LEWIS FUNDS IN
*WHITE & ELLIS DRILLING INC					RECEIVED: 10/01/80 JA: LA			
8100283	AO-3338	1703121015	103		PSU R BURFORD #1 (163954)	BETHANY-LONGSTREET	36.0	ARKANSAS LOUISIANA G

BILLING CODE 6450-85-C

Other Purchasers—Volume No. 299

8100142 American Cyanamid Co.
8100143 American Cyanamid Co.
8100155 American Cyanamid Co.
8100156 American Cyanamid Co.
8100157 American Cyanamid Co.
8100158 American Cyanamid Co.
8100159 American Cyanamid Co.
8100256 Monterey P L Co.

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" after the section code. Estimated annual production (PROD) is in million cubic feet (MMcf). An (*) preceding the control number indicates that other purchasers are listed at the end of the notice.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426.

Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before November 6, 1980.

Please reference the FERC Control Number (JD No) in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32996 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA81-1-000]

Arizona Fuels Corp.; Filing of Petition for Review Under 42 U.S.C. 7194

October 10, 1980.

Take notice that Arizona Fuels Corporation on October 2, 1980, filed a Petition for Review under 42 U.S.C. § 7194(b) (1977 Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before October 27, 1980, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before October 27, 1980, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32842 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA80-53]

Art Frost Leasing Co. (Glendale Automotive Services); Filing of Petition for Review Under 42 U.S.C. 7194

October 10, 1980.

Take notice that Art Frost Leasing Co. on June 24, 1980, filed a Petition for Review under 42 U.S.C. § 7194(b) (1977 Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the Petition for Review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before October 27, 1980, with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before October 27, 1980, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue SW., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St. NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32843 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ES80-83]

Central Illinois Light Co.; Application

October 10, 1980.

Take notice that on September 30, 1980, Central Illinois Light Company (Applicant) filed an application seeking authority pursuant to Section 204 of the Federal Power Act to issue up to $66,000,000 prinicpal amount of short-term debt to be issued from time to time with maturities not later than December 31, 1983.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 30, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32855 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3412]

City of Oxford, Kans.; Application for Preliminary Permit

October 9, 1980.

Take notice that the City of Oxford, Kansas (Applicant) filed on August 28, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. Sections 791(a)–825(r)] for proposed Project No. 3412 to be known as the Oxford Mill Project located on the Arkansas River in the City of Oxford, Sumner County, Kansas.

Correspondence with the Applicant should be directed to: Mayor N.R. Nelson, City Hall, Oxford, Kansas 67119.

Project Description—The proposed project would consist of the existing main dam, secondary dam, canal, Mill Building and tailrace canal in Oxford. The Applicant intends to study the feasibility of restoring two existing turbine-generator units with a total rated capacity of 300 kW located within the Mill Building. The project would be capable of generating up to 2,100,000 kWh annually saving the equivalent of 3,450 barrels of oil or 1,000 tons of coal annually.

Purpose of Project—Energy generated at the project would be sold to Kansas Gas and Electric Company for distribution to its customers.

Proposed Scope and Cost of Studies under Permit—The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $8,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described applications for preliminary permits. (A copy of each application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of permits and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Completing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before November 17, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than January 16, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c), (as amended 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d), (as amended, 44 FR 61328, October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about these applications should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the Requirements of the Commission's Rules of Practice and Procedure, 18 CFR Section 1.8 or Section 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in Section 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comment, protest, or petition to intervene must be filed on or before November 17, 1980, and must specify which of the above applications is being addressed. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32844 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RP80-145]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

October 10, 1980.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf), on September 30, 1980, tendered for filing proposed changes to its FERC Gas Tariff as follows:

Original Volume No. 1

Twenty-sixth Revised Sheet No. 7

Original Volume No. 2

Seventh Revised Sheet No. 72
Seventh Revised Sheet No. 73
Fourth Revised Sheet No. 92
Fourth Revised Sheet No. 93
Fourth Revised Sheet No. 126
Fifth Revised Sheet No. 145
Fifth Revised Sheet No. 146
Fourth Revised Sheet No. 263
Third Revised Sheet No. 320
Third Revised Sheet No. 337
Third Revised Sheet No. 386
Third Revised Sheet No. 387
Second Revised Sheet No. 416
Second Revised Sheet No. 417
Third Revised Sheet No. 440
Third Revised Sheet No. 484
Third Revised Sheet No. 493
Third Revised Sheet No. 567
Third Revised Sheet No. 596
Second Revised Sheet No. 628
First Revised Sheet No. 663
First Revised Sheet No. 677
First Revised Sheet No. 702
Second Revised Sheet No. 750
Second Revised Sheet No. 820
Second Revised Sheet No. 821
Second Revised Sheet No. 848
Second Revised Sheet No. 849
First Revised Sheet No. 937
First Revised Sheet No. 1052
First Revised Sheet No. 1097

The revised tariff sheets proposed to become effective November 1, 1980, reflects an increase in Columbia Gulf's revenue of $44,066,538 based on a cost of service for the test period twelve months ended May 31, 1980, as adjusted, compared with revenue based on April 26, 1980 level cost of service under the Stipulation and Agreement at Docket No. RP78-19. Columbia Gulf further states that the increased rates are required because of increases in labor and materials expense; an increase in the company's overall rate of return; and other cost changes more fully explained in the filing.

Columbia Gulf specifically requests that the Commission shorten the period of suspension for the subject rate filing, and permit the the rates to go into effect, subject to refund, on November 1, 1980.

Copies of this filing were served by the Company upon each of its jurisdictional customers.

Any person desiring to be heard or to protests said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR, 1.8 and 1.10). All such petitions or protests should be filed on or before October 24, 1980. Protests will be considered by the Commission in

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determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party msut file a petition to intervene. Copies of Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32851 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3326]

Continental Hydro Corp.; Application for Preliminary Permit

October 10, 1980.

Take notice that the Continental Hydro Corporation (Applicant) filed on August 18, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3326 to be known as the Huntington Lake Dam Hydroelectric Project located at the U.S. Army Corps of Engineers' Huntington Dam and Lake flood control project, on the Wabash River near Huntington, Huntington County, Indiana.

Correspondence with the Applicant should be directed to: A. Gail Staker, President, 141 Milk Street, Suite 1143, Boston, Massachusetts 02109.

Project Description—The proposed project would consist of: (1) a penstock from the existing sluice gates; (2) a powerhouse to be located on the northwest bank of the river; (3) transmission lines; and (4) other appurtenances. Applicant estimates the capacity of the project to be 2.13 MW, and the annual energy output to be 8.5 GWh.

Purpose of Project—Energy developed at Project No. 3326 would be sold to the Indiana and Michigan Electric Company for distribution to its customers.

Proposed Scope and Cost of Studies under Permit—The Applicant seeks issuance of a preliminary permit for a period of 36 months. The work to be performed under the preliminary permit would consist of gathering necessary data, completing surveys and environmental studies, obtaining necessary Federal, State and local permits, and preparing necessary documentation for the Commission's licensing requirements. Applicant estimates that the cost of works to be performed under the permit would not exceed $50,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 15, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 13, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c), (as amended, 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR, 4.33(a) and (d), (as amended, 44 FR 61328, October 25, 1979.)

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 15, 1980. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32850 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3356]

Continental Hydro Corp.; Application for Preliminary Permit

October 10, 1980.

Take notice that Continental Hydro Corporation (Applicant) filed on August 25, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3356 to be known as Wister Dam Project located on the Poteau River in the Town of Wister, Le Flore County, Oklahoma.

Correspondence with the Applicant should be directed to: A. Gail Staker, President, 141 Milk Street, Suite 1143, Boston, Massachusetts 02109.

Project Description—The proposed project would utilize the existing U.S. Army Corps of Engineers' Wister Dam and would consist of: (1) a 320-foot-long penstock located along the right (south) bank; (2) a powerhouse containing a generating unit having a rated capacity of 4,700 kW; (3) a short tailrace; and (4) appurtenant facilities. Project energy would be transmitted to existing power lines serving the dam or to Oklahoma Gas and Electric's 161 kV transmission lines within several miles of the project. Applicant estimates the annual generation would average about 19,100,000 kWh.

Purpose of Project—Project energy would be sold to Oklahoma Gas and Electric.

Proposed Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for a period of three years, during which time it would prepare studies of the hydraulic construction, economic, environmental, historic, and recreational aspects of the project. Depending upon the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $65,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 15, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 13, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), (as amended, 44 F.R. 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR, 4.33 (a) and (d), (as amended, 44 FR 61328, October 25, 1979.)

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Fedral Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 15, 1980. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32847 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3366]

Continental Hydro Corp.; Application for Preliminary Permit

October 10, 1980.

Take notice that Continental Hydro Corporation (Applicant) filed on August 25, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3366 to be known as the Fishtrap Project located on the Levisa Fork, Big Sandy River in the Town of Fishtrap, Pike County, Kentucky. Correspondence with the Applicant should be directed to: Mr. A. Gail Staker, 141 Milk Street, Suite 1143, Boston, Massachusetts 02109.

Project Description—The proposed project would utilize the existing U.S. Army Corps of Engineers Fishtrap Dam and Reservoir and would consist of a powerhouse with one or more generating units having a total rated capacity of 2 MW, and a 1-mile-long transmission line. The project would be capable of generating up to 8,800,000 kWh annually saving the equivalent of 14,500 barrels of oil or 4,100 tons of coal.

Purpose of Project—Energy generated at the project would likely be sold to Kentucky Power Company for distribution to it's customers.

Proposed Scope and Cost of Studies under Permit—The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $60,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 15, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 18, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c), (as amended, 44 F.R. 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR, 4.33(a) and (d), (as amended, 44 F.R. 61328, October 25, 1979.)

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to interve in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 15, 1980. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32849 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA80-68]

Crossroads Shell; Filing of Petition for Review Under 42 U.S.C. 7194

October 10, 1980.

Take notice that Crossroads Shell on April 28, 1980, filed a Petition for Review under 42 U.S.C. § 7194(b) (1977 Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before October 27, 1980, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before October 27, 1980, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32837 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TC81-5-000]

El Paso Natural Gas Co.; Tariff Sheet Filings

October 10, 1980.

Take notice that on October 1, 1980, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. TC81-5-000 tariff sheets pursuant to Part 281 of the Commission's Regulations under the Natural Gas Policy Act of 1978 to its FERC Gas Tariff, Original Volume No. 1 to become effective November 1, 1980, reflecting a periodic update to the seasonal base volumes of El Paso's affected customers.

El Paso states that the changes to its currently effective Index of Base Volumes are contained on tendered Fifth Revised Sheet No. 100 and Second Revised Sheet Nos. 101 through 103 and 105 through 107, and the changes to El Paso's Index of Priority Limitations are contained on tendered Second Revised Sheet Nos. 131, 135, 138, 144 and 152, Third Revised Sheet Nos. 132, 146, and 151, and First Revised Sheet Nos. 157 and 158.

Further it is indicated that the changes reflected in the seasonal base volumes contained in the Index of Base Volumes and the Index of Priority Limitations, for each affected customer, encompass the accumulation of data furnished to El Paso in response to letters El Paso set to its system customers except those having only Priority 1 requirements, requesting the appropriate data from each of said customers. Such changes reflect data submitted to El Paso associated with each affected customer's current essential agricultural requirements, that is, increases or reductions in Priority 2(a), and the related reclassification to Priority 2(a), when necessary of end-users' requirements currently classified in Priority 2, 3, 4, or 5, it is asserted.

El Paso also states that as a result of an inadvertent computational error in the data submitted by Pacific Gas and Electric Company (PG&E) to El Paso in compliance with the Commission's Order No. 29, the data pertaining to PG&E contained in the Index of Priority Limitations presently on file with the Commission are in error. Accordingly, El Paso states that Third Revised Sheet No. 148 is tendered to correct the seasonal base volumes, by priority, of PG&E shown on currently effective Second Revised Sheet No. 146.

El Paso also states that due to assignment or sale of various properties the following changes in the Index of Base Volumes and the Index of Priority Limitations are necessitated:

Community Public Service Company to West Texas Gas, Inc. and
Magma Natural Gas Company to City of Mesa, Arizona, respectively.

El Paso also submitted a complete copy of the Data Verification Committee Report.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filings should on or before October 24, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32853 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-1-51 (PGA81-1)]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Under Purchased Gas Adjustment Clause Provisions

October 10, 1980.

Take notice that Great Lakes Gas Transmission Company (Great Lakes), on September 30, 1980, tendered for filing Thirty-Sixth-A Revised Sheet No. 57; to its FERC Gas Tariff, First Revised Volume No. 1, proposed to be effective November 1, 1980.

Great Lakes states that the revised purchased gas cost adjustment reflects a reduction in the cost of gas purchased from TransCanada PipeLines Limited, its sole supplier of natural gas, as a result of a reduction in the heat content of the gas.

In addition, the revised tariff sheet reflects a purchased gas cost surcharge resulting from maintaining an unrecovered purchased gas cost account for the period commencing March 1, 1980 and ending August 31, 1980 as well as an adjustment for changes in the compressor fuel cost from that reflected in the base tariff rates. The compressor fuel adjustment is required in accordance with Article III of the Stipulation and Agreement in Docket No. RP79-10 which was approved by the Commission on March 31, 1980.

Great Lakes also states that copies of this filing have been served upon its customers and the Public Service Commissions of Minnesota, Wisconsin and Michigan.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules and Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before October 24, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32836 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA80-121]

Jack Halbert; Filing of Petition for Review Under 42 U.S.C. 7194

October 10, 1980.

Take notice that Jack Halbert on September 26, 1980, filed a Petition for Review under 42 U.S.C. § 7194(b) (1977 Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before October 27, 1980, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before October 27, 1980, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W. Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32838 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-1-53 (PGA81-1)]

Kansas-Nebraska Natural Gas Co., Inc.; Proposed Changes in FERC Gas Tariff

October 10, 1980.

Take notice that Kansas-Nebraska Natural Gas Co., Inc. (Kansas-Nebraska) on September 30, 1980 tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1. The proposed changes will adjust its rates charged its jurisdictional customers pursuant to the Purchased Gas Cost Adjustment provision (Section 19) and its Incremental Pricing Surchages provision (Section 20) of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1. The proposed changes would incease the commodity rate under each of Kansas-Nebraska's jurisdictional rate schedules by $0.5538 per MCF of which $0.5276 per MCF represents the increase in the base gas cost and $0.0262 per MCF the increase in the unrecovered gas cost surcharge. This filing is proposed to become effective December 1, 1980.

Copies of the filing were served upon the company's jurisdictional customers, interested public bodies and all direct and indirect customers which will be subject to the incremental pricing provisions.

Any person desiring to be heard or make any protest with reference to this filing should, on or before October 24, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedures (18 CFR 1.8 or 1.10) under the Regulations of the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32839 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-1-48-000]

Michigan Wisconsin Pipe Line Co.; Proposed Changes in FERC Gas Tariff

October 10, 1980.

Take notice that on October 1, 1980, Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) tendered for filing Ninth Revised Sheet No. 7 to its F.E.R.C. Gas Tariff, Original Volume No. 1 and proposed an effective date of November 1, 1980.

This filing reflects a net increase in Michigan Wisconsin's one-part rates and the commodity component of the two-part rate of 16.98¢ per dekatherm (dth). This increase is the result of: (1) the effect of price increases on purchased gas in accordance with the NGPA; (2) the replacement of old low-cost sources of supply with new higher-cost sources; (3) a decrease of 8.82¢ in the surcharge adjustment; and (4) a decrease of .58¢ in the LFUT adjustment. Michigan Wisconsin also filed Third Revised Sheet No. 7a to reflect that zero MSAC's have been reported by its customers.

Michigan Wisconsin further states that it requests a waiver of the requirements of Part 154 of the Commission's Regulations under the Natural Gas Act to the extent that such waiver may be necessary to permit this filing of Ninth Revised Sheet No. 7 and Third Revised Sheet No. 7a to be made and to become effective November 1, 1980.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 24, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are

on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32840 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-1-49-000 (PGA 81-1)]

Montana-Dakota Utilities Co.; Purchased Gas Cost Adjustment Filing

October 10, 1980.

Montana-Dakota Utilities Co. ("MDU"), on October 1, 1980, submitted for filing as part of the its FERC Gas Tariff the following tariff sheets:

Originial Volume No. 4

Fifteenth Revised Sheet No. 3A

First Revised Volume No. 2

Eighth Revised Sheet No. 10

MDU states that this tariff filing is being made pursuant to its Purchased Gas Cost Adjustment Provisions. The proposed changes include a Gas Cost Adjustment of 59.325 cents per Mcf and a Surcharge Adjustment is 34.449 cents per Mcf. The proposed changes are supported by exhibits attached to the filing.

MDU states that it has reflected in the filing amounts refunded under Docket No. RP74-97 (PGA78-1) as a special twelve-month surcharge to reflect the decision of the United States Court of Appeals for the Eighth Circuit in *Montana-Dakota Utilities Co.* v. *Federal Energy Regulatory Commission*, No. 79-1915, issued August 21, 1980, which determined that conclusion of Powell II area gas costs in MDU's rates is proper. MDU states that the Gas Cost Adjustment of 59.325 cents per Mcf and the normal current surcharge of 13.224 cents per Mcf include gas costs from the Powell II unit in conformance with the decision.

MDU states that it has consulted with its jurisdictional customers and that they are agreeable to paying the special Powell II surcharge of 21.225 cents per Mcf over a twelve-month period.

The proposed effective date of MDU's PGA filing is November 1, 1980.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedures (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 24, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve the make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene. Copies of the filing are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32852 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3223]

Northern California Power Agency and the Cities of Anaheim, Azusa, Banning, Colton, and Riverside, Calif.; Application for a New Major License

October 10, 1980.

Take notice that on June 20, 1980, the Northern California Power Agency and the Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California (Applicants) filed an application with the Federal Energy Regulatory Commission under the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r), for new major license for the constructed Rock Creek-Cresta Project No. 3223 located on the North Fork Feather River in the Counties of Plumas, Butte, Yuba, and Sutter, California. The existing license for this project (Licensee: Pacific Gas and Electric Company) will expire on September 30, 1982. Correspondence with the Applicants should be directed to: Ms. Frances E. Francis, Attorney, Spiegel and McDiarmid, 2600 Virginia Avenue, NW., Suite 312, Washington, D.C. 20037. The project affects lands of the United States within the Plumas and Lassen National Forests.

The Rock Creek-Cresta Project, with a total installed capacity of 180,800 kW, consists of:

A. Rock Creek Development comprising: (1) the Rock Creek Reservior with a gross storage capacity of 4,400 acre-feet and a surface area of 118 acres at elevation 2,216.2 feet; (2) the Rock Creek Dam, a concrete gravity overflow structure, 126 feet high (from stream bed to the top of spillway gates), with a crest elevation of 2,230.2 feet and crest length of 567 feet; (3) a main spillway at elevation 2,188.2 feet containing two 124-foot wide bays, controlled by hydraulically operated drum gates; (4) a 22.5-foot wide supplementary spillway at elevation 2,210.2 feet, located to the west of the drum gates, controlled by a radial gate; (5) an intake structure within the reservior about 100 feet upstream of the dam near the western abutment; (6) a 25/19-foot diameter, 34,110-foot long tunnel; (7) a surge chamber; (8) two 12/9.75-foot diameter penstocks, 906 and 936 feet long; (9) a powerhouse containing two generating units with total installed capacity of 113,400 kW; and (10) a switchyard, adjacent to the powerhouse, containing two 13.8/230-kV transformer units.

B. Cresta Development comprising: (1) the Cresta Reservoir with a gross storage capacity of 4,140 acre:feet; and a surface area of 95 acres at elevation 1,681.2 feet; (2) the Cresta Dam, a concrete gravity overflow structure, 114 feet high (from stream bed to the top of spillway gates) with a crest elevation of 1,690.2 feet and crest length of 377.5 feet; (3) a main spillway at elevation 1,653.2 feet containing two 124-foot wide bays, controlled by hydraulically operated drum gates; (4) a 22.5-foot wide supplementary spillway at elevation 1,666.2 feet, located to the east of the drum gates, controlled by a radial gate; (5) an intake structure within the reservoir, about 100 feet upstream of the dam near the eastern abutment; (6) a 26/19-foot diameter, 21,080-foot long tunnel; (7) a surge chamber; (8) two 12-foot diameter penstocks, 800 and 775 feet long; (9) a powerhouse containing two generating units with a total installed capacity of 67,400 kW; and (10) a switchyard adjacent to the powerhouse containing two 11.5/230-kV transformer units.

C. Two 230-kV transmission lines, Rock-rio Oso Nos. 1 and 2, each about 72 miles long, extending from Rock Creek Switchyard to Rio Oso Substation, with Line No. 2 making a 1.4 mile loop into and out of Cresta Switchyard.

Existing recreational facilities within the project boundary consist of one highway rest stop. Applicant proposes to construct two fishing access areas on the shores of Rock Creek Reservoir and two traveller information sites along Highway 70. Applicant further proposes to provide additional shoreline fishing facilities at the project reservoirs, if needed, and recommended by governmental agencies.

Applicant would utilize the full output of the project to supply power to twelve consumer-owned utilities in northern and southern California for use by the Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California.

Competing Applications—This application was filed as a competing application to the Pacific Gas and Electric Company's application for license for the Rock Creek-Cresta Project No. 1962 on the North Fork Feather River in the Counties of Plumas, Butte, Yuba, and Sutter, California, under 18 CFR 4.33 (as amended, 44 FR 61328, October 25, 1979), and, therefore, no further competing applications or notices of intent to file a competing application will be accepted for filing.

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before November 24, 1980. The Commission's address is: 825 North Capitol Street, N. E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32846 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3392]

Sequoia Energy Corp.; Application for Preliminary Permit

October 9, 1980.

Take notice that Sequoia Energy Corporation (Applicant) filed on August 27, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)—825(r)] for proposed Project No. 3392 to be known as Conchas Project located on the Canadian River in the Town of Grant, San Miguel County, New Mexico. Correspondence with the Applicant should be directed to: Mr. A. Gail Staker, 141 Milk Street, Suite 1143, Boston, Massachusetts 02109.

Project Description—The proposed project would utilize the existing U.S. Army Corps of Engineers Conchas Dam and Reservoir and would consist of a powerhouse with one or more generating units having a total rated capacity of 2.5 MW, and a transmission line. The project would be capable of generating up to 10,000,000 kWh annually saving the equivalent of 16,400 barrels of oil or 4630 tons of coal.

Purpose of Project—Energy generated at the project would likely be sold to Public Service Company of New Mexico for distribution to its customers.

Proposed Scope and Cost of Studies under Permit—The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construction and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be 55,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 8, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 9, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c), as amended, 44 FR 61328, (October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d), as amended, 44 FR 61328 (October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR, § 1.8 or § 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 8, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32845 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RP80-147]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 10, 1980.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on September 29, 1980 tendered for filing as a part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following sheet:

First Revised Sheet No. 90

This tariff sheet is being filed in order to update the interest rate to be charged by Texas Eastern on overdue bills of its customers. The existing tariff interest rate of 7% has become outdated and no longer reflects present-day interest rates. The purpose of this tariff sheet is to change the interest rate to the same rate of interest prescribed for pipeline refunds according to Section 154.67(d)(2) of the FERC's Regulations.

The proposed effective date of the above tariff sheet is November 1, 1980.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with §§ 1.6 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.6 and 1.10). All such petitions or protests should be filed on or before Oct. 24, 1980. Protests will be considered by the Commission in determining the

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appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32841 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3285]

Trinity River Authority of Tex.; Application for Preliminary Permit

October 10, 1980.

Take notice that Trinity River Authority of Texas (Applicant) filed on July 31, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3285 to be known as the Livingston Project located on the Trinity River in San Jacinto, Polk, Trinity, and Walker Counties Texas. Correspondence with the Applicant should be directed to: Danny F. Vance, General Manager, Trinity River Authority of Texas, P.O. Box 60, Arlington, Texas 76010.

Project Description—The proposed project would utilize the following existing facilities owned by the Applicant: (1) a 50-foot high, 13,480-foot long earthen dam; (2) a 646-foot long spillway section containing twelve 40-foot high by 32-foot wide, Tainter Gates; (3) a reservoir (Lake Livingston) with a surface area of 82,250 acres and a storage capacity of 1,750,000 acre-feet at elevation 131 feet mean sea level; (4) an outlet works; and (5) a stilling basin. Applicant proposes to study the feasibility of the installation of a powerhouse, between the east abutment and spillway section, containing four 15 MW turbine-generator units producing up to 175 million kWh annually and saving the equivalent of 287,400 barrels of oil or 81,000 tons of coal.

Purpose of Project—Energy generated by the project would be sold to either Gulf States Utilities Company or nearby electric power cooperatives.

Proposed Scope and Cost of Studies under Permit—The work proposed under this preliminary permit would include economic analysis, preparation of preliminary engineering plans, and environmental assessment studies. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the work to be performed under this permit would cost $1,000,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 15, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 13, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c), as amended, 44 FR 61328, (October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d), as amended, 44 FR 61328 (October 25, 1979.)

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the proposed procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 15, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32848 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TA81-1-50-000]

Valley Gas Transmission, Inc.; Purchased Gas Cost Adjustment Filing

October 10, 1980.

Valley Gas Transmission, Inc. ("Valley"), on October 1, 1980 submitted for filing as part of its FERC Gas Tariff, Original Volume No. 1, its proposed "Nineteenth Revised Sheet No. 2A". The proposed effective date is November 1, 1980.

Valley states that this tariff sheet is filed pursuant to its currently effective Purchased Gas Cost Adjustment Provision. The proposed changes involve Valley's "Current Surcharge Adjustment" and "Current Gas Cost Adjustment." The adjustments are supported by computations attached to the filing.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before October 24, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of the filing are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32854 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

Advisory Committee on Revision of Rules of Practice and Procedure; Subcommittee on Review of Hearing Procedures; Meeting

October 17, 1980.

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 77), notice is hereby given that the Subcommittee on Review of Hearing Procedures of the Advisory Committee on Revision of Rules of Practice and Procedure will meet Thursday, November 6, 1980, from 9:30 a.m. until 5:00 p.m. at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 9306, Washington, D.C. If the business of the Subcommittee is not concluded on November 6, 1980, then the Subcommittee meeting will resume on Friday, November 7, 1980, at 9:30 a.m. until 5:00 p.m. at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 9306, Washington, D.C.

The purpose of the meeting is to discuss a second draft revision of the Commission's Rules of Practice and Procedure. A copy of the second draft revision is available at the FERC's Division of Public Information.

The meeting is open to the public. A transcript of the hearing will be available for public review at FERC's Division of Public Information, Room 1000, 825 North Capitol Street, NE., between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday except Federal holidays. In addition, any person may purchase a copy of the transcript from the reporter.

Kenneth F. Plumb,

Secretary

[FR Doc. 80-32826 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-13-000]

Alabama Power Co.; Filing

October 14, 1980.

The filing Company submits the following:

Take notice that Alabama Power Company, on October 7, 1980, tendered for filing an initial rate schedule constituting a Transmission Service agreement between Alabama Power Company and Tennessee Valley Authority. The service under the rate schedule to commence on September 1, 1980. The Agreement between Alabama Power Company and Tennessee Valley Authority primarily provides for Alabama Power Company to receive compensation for transmission capacity made available by it for the delivery of power to customers of Tennessee Valley Authority, this delivery of power being made pursuant to long established interconnected operations between Tennessee Valley Authority and Alabama Power Company.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 3, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32940 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-5-000]

Appalachian Power Co.; Filing

October 14, 1980.

The filing Company submits the following:

Take notice that American Electric Power Service Corporation on behalf of its affiliate, Appalachian Power Company (APCo). Tendered for filing on October 6, 1980, Modification No. 5 and Modification No. 6 to the Federal Energy Regulatory Commission's APCo Rate Schedule No. 24 which represents an Interconnection Agreement with Carolina Power & Light Company. These proposed Modifications are stated to be a filing in compliance with the Federal Energy Regulatory Commission's Order No. 84, issued May 7, 1980.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 3, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32959 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TC81-12-000]

Arkansas Louisiana Gas Co.; Tariff Filing

October 16, 1980

Take notice that on October 1, 1980, Arkansas Louisiana Gas Company (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. TC81-12-000, First Revised Sheet Nos. 3E through 3J, to its FERC Gas Tariff, First Revised Volume No. 1, to become effective November 1, 1980, pursuant to Part 281 of the Regulations under the Natural Gas Policy Act of 1978.

Section 281.204 of the Regulations requires interstate pipelines to file no later than October 1, 1980, tariff sheets containing an updated index of the high-priority and essential agricultural use entitlements of each of their customers. Arkla states that First Revised Sheet Nos. 3E through 3J contain the updated Index of Entitlements required under Section 281.204 of the Regulations.

Any person desiring to be heard or to make any protest with reference to said filing should on or before October 27, 1980, file with the Federal Energy Commission, Washington, D.C. 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32953 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3284]

Ashuelot Paper Co., Inc.; Application for Preliminary Permit

October 15, 1980.

Take notice that the Ashuelot Paper Company, Inc., (Applicant) filed on July 31, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for

proposed Project No. 3284 to be known as the Ashuelot Paper Company Dam Project located on the Ashuelot River in Cheshire County, New Hampshire. Correspondence with the Applicant should be directed to: Mr. Edward J. McCormick, Executive Vice President, Ashuelot Paper Company, Inc., Hinsdale, New Hampshire 03451.

Project Description—The proposed project would consist of: (1) an existing concrete-face rock-fill dam having a height of 10 feet and a length of 110 feet; (2) a reservoir having a surface area of three acres and negligible storage capacity; (3) a 4,000-foot long penstock; (4) a proposed powerhouse having an installed generating capacity of 3,100 kW; and (5) appurtenant works. It is estimated that the average annual energy output of the project would be 15,000,000 kWh.

Purpose of Project—Project energy would be sold to a local public utility.

Proposed Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for a period of three years, during which time Applicant would investigate the hydrologic, hydraulic, structural, and financial aspects of the project. Depending upon the outcome of the studies, the Applicant would proceed with the preparation of an application for license. Applicant estimates the cost of studies under the permit would be $39,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before January 5, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 10, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), (*as amended*, 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR, 4.33 (a) and (d), (*as amended*, 44 FR 61328, October 25, 1979.)

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR, § 1.8 or § 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before January 5, 1981. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32941 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-10-000]

Central Louisiana Electric Co., Inc.; Cancellation

October 14, 1980.

The filing company submits the following:

Take notice that on October 6, 1980, Central Louisiana Electric Company, Inc. (CLECO) tendered for filing a Notice of Cancellation of the Agreement for Electric Service between CLECO and the City of Franklin, Louisiana (City) dated July 7, 1978 (Rate Schedule FERC No. 35).

CLECO states that its proposal for the operation and possible ultimate transfer of ownership of City's electric system was approved by a majority of votes cast by the qualified electors of the City in an election held on August 23, 1980. CLECO and the City have agreed that CLECO will assume administration of the system on October 3, 1980 and the agreement covering firm power purchases by the City should be cancelled concurrently.

CLECO has requested waiver of the notice requirements of Part 35 in order to assume operation and maintenance of the system as agreed upon with the City.

Copies of the Notice of Cancellation were served upon the City and upon the Louisiana Public Service Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10). All such petitions or protests should be filed on or before November 3, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32961 Filed 10-21-80; 8:45 a.m.]

BILLING CODE 6450-85-M

[Docket No. CP80-400]

Columbia Gas Transmission Corp. Petition To Amend

October 14, 1980.

Take notice that on September 24, 1980, Columbia Gas Transmission Corporation (Petitioner), P.O. Box 1273, Charleston, West Virginia 25325, filed in Docket No. CP80-400 a petition to amend the order issued September 17, 1980, in the instant docket pursuant to section 7(c) of the natural gas Act so as to authorize the transfer of one point of delivery to Columbia Gas of Pennsylvania, Inc., all as more fully set forth in the petition to amend which is on file with the commission and open to public inspection.

Petitioner states that by order issued September 17, 1980, it was authorized to construct and operate 80 interconnecting tap facilities to provide additional points of delivery to certain of Petitioner's existing wholesale customers. One point of delivery, Petitioner states, was incorrectly requested for its customer, Columbia Gas of West Virginia, Inc.

Petitioner contends that the correct point of delivery should have been:

Request No. CPA-12-3:
Somerset County, Pa.
Paul Silbaugh
R.D. No. 1
Addison, Pa.
Residential 150

instead of:

Request No. CWV-12-14
Somerset County, W. Va.
Paul Silbaugh
3 Marilyn Road
Scott Depot, W. Va.
Residential 150

Petitioner proposes to transfer delivery from Columbia Gas of West Virginia, Inc. to Columbia Gas of Pennsylvania, Inc.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 3, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kennth F. Plumb,

Secretary.

[FR Doc. 80-32980 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER 81-8-000]

Consolidated Edison Co. of New York, Inc.; Filing

October 14, 1980.

The filing Company submits the following:

Take notice that Consolidated Edison Company of New York, Inc. (Con Edison) on October 6, 1980, tendered for filing as a rate schedule an executed agreement dated as of August 1, 1980 between Con Edison and the companies of the Northeast Utilities system (The Connecticut Light and Power Company, The Hartford Electric Light Company, and Western Massachusetts Electric Company, hereinafter collectively called NU). The proposed rate schedule provides for the sale of interruptible power and energy by Con Edison to NU.

The rate schedule provides for a capacity charge of $3.00 per megawatthour and an energy charge based upon the incremental cost of providing the energy.

Con Edison requests waiver of the notice requirements of Section 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective October 3, 1980 in accordance with the anticipated utilization by the parties.

Con Edison states that a copy of its filing was served on NU.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 3, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32991 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3371]

Continental Hydro Corp.; Application for Preliminary Permit

October 14, 1980.

Take notice that Continental Hydro Corporation (Applicant) filed on August 25, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for proposed Project No. 3371 to be known as the East Sidney Project located on the Guleout Creek in the Town of East Sidney, Delaware County, New York. Correspondence with the Applicant should be directed to: A. Gail Staker, President, 141 Milk Street, Suite 1143, Boston, Massachusetts 02109.

Project Description—The proposed project would utilize the existing U.S. Army Corps of Engineers' East Sidney Dam and would consist of: (1) a 150-foot-long penstock located along the left (south) bank; (2) a powerhouse containing a generating unit having a rated capacity of 1,110 kW; (3) a short tailrace; and (4) appurtenant facilities. Project energy would be transmitted over existing power lines serving the dam or to New York Gas and Electric Company's transmission lines within several miles of the project. Applicant estimates the annual generation would average about 4,460,000 kWh.

Purpose of Project—Project energy would be sold to New York Gas and Electric Company.

Proposed Scope and Cost of Studies Under Permit—Applicant seeks issuance of a preliminary permit for a period of three years, during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic, and recreational aspects of the project. Depending upon the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $48,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 11, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 8, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), (*as amended*, 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d), (*as amended*, 44 FR 61328, October 25, 1979.)

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to

intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 11, 1980. The Commission's address is: 825 North Capitol Street, NE, Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32966 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3372]

Continental Hydro Corp.; Application for Preliminary Permit

October 15, 1980.

Take notice that Continental Hydro Corporation (Applicant) filed on August 25, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3372 to be known as the Pine Creek Project located on the Little River in McCurtain County, Oklahoma. Correspondence with the Applicant should be directed to: A. Gail Staker, President, 141 Milk Street, Suite 1143, Boston, Massachusetts 02109.

Project Description—The proposed project would utilize the existing U.S. Army Corps of Engineers Pine Creek Dam and would consist of: (1) a 400-foot-long penstock located along the left (east) bank; (2) a powerhouse containing a generating unit having a rated capacity of 5,950-kW; (3) a short tailrace; and (4) appurtenant facilities. Project energy would be transmitted over existing power lines serving the dam or to Oklahoma Gas & Electric Company's 138-kV transmission lines within 20 miles of the project. Applicant estimates the annual generation would average about 23,800,000 kWh.

Purpose of Project—Project energy would be sold to Oklahoma Gas & Electric Company.

Proposed Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for a period of three years, during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic, and recreational aspects of the project. Depending upon the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $75,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 19, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 17, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), (as amended, 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR, 4.33 (a) and (d), (as amended, 44 FR 61328, October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR, § 1.8 or § 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 19, 1980. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32943 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3370]

Continental Hydro Corp.; Application for Preliminary Permit

October 15, 1980.

Take notice that Continental Hydro Corporation (Applicant) filed on August 25, 1980 an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)—825(r)] for proposed Project No. 3370 to be known as the Belton Project located on the Leon River in the Town of Belton, Bell County, Texas. Correspondence with the Applicant should be directed to: Mr. A. Gail Staker, 141 Milk Street, Suite 1143, Boston, Massachusetts 02109.

Project Description—The proposed project would utilize the existing U.S. Army Corps of Engineers Belton Dam and Reservoir and would consist of a powerhouse with one or more generating units having a total rated capacity of 2.5 MW, and a 1.5-mile long transmission line. The project would be capable of generating up to 11,000,000 kWh annually saving the equivalent of 18,000 barrels of oil or 5,100 tons of coal.

Purpose of Project—Energy generated at the project would likely be sold to Texas Power and Light Company for distribution to its customers.

Proposed Scope and Cost of Studies under Permit—The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project.

Applicant estimates that the cost of the work to be performed under the preliminary permit would be $52,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 19, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 17, 1981. A notice of intent must conform with the requirements of 18 CFR § 4.33 (b) and (c), as amended 44 FR 61328 (October 25, 1979). A competing application must conform with the requirements of 18 CFR § 4.33 (a) and (d), as amended, 44 FR 61328 (October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR, § 1.8 or § 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 19, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32944 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3358]

Continental Hydro Corp.; Application for Preliminary Permit

October 10, 1980.

Take notice that Continental Hydro Corporation (Applicant) filed on August 25, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3358 to be known as the Chatfield Project located on the South Platte River in Douglas County, Colorado. Correspondence with the Applicant should be directed to: Mr. A. Gail Staker, 141 Milk Street, Suite 143, Boston, Massachusetts 02109.

Project Description—The proposed project would utilize the existing U.S. Army Corps of Engineers Chatfield Dam and Reservoir and would consist of a powerhouse with one or more generating units having a total rated capacity of 3.6 MW, and a 2-mile-long transmission line. The project would be capable of generating up to 14,600,000 kWh annually saving the equivalent of 24,000 barrels of oil or 6,800 tons of coal.

Purpose of Project—Energy generated at the project would likely be sold to Public Service Company of Colorado for distribution to its customers.

Proposed Scope and Cost of Studies under Permit—The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $50,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize constuction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 15, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 13, 1981. A notice of intent must conform with the requirements of 18 C.F.R. 4.33(b) and (c), (*as amended*, 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR, 4.33(a) and (d), (*as amended*, 44 FR 61328, October 25, 1979.)

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure 18 CFR, § 1.8, or § 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 15, 1980. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the

Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 32835 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3375]

Continental Hydro Corp.; Application for Preliminary Permit

October 14, 1980.

Take notice that Continental Hydro Corp. (Applicant) filed on August 25, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)] for proposed East Fork Dam Project, FERC Project No. 3375, to be located at the U.S. Army Corps of Engineers' East Fork Dam and Reservoir, a flood control project, on the East Fork of the Little Miami River near Batavia, Clermont County, Ohio. Correspondence with the Applicant should be directed to: Mr. A. Gail Staker, President, Continental Hydro Corp., 141 Milk St., Suite 1143, Boston, Massachusetts 02109.

Project Description—The proposed project would utilize an existing U.S. Army Corps of Engineers' dam and reservoir. Project No. 3375 would consist of: (1) a proposed penstock extending from the outlet works downstream; (2) a proposed powerhouse located on the right bank of the river; (3) transmission lines; and (4) appurtenant facilities. Applicant estimates the capacity of the proposed project to be 2.72 MW, and the annual energy output to be 10.9 GWH.

Purpose of Project—Energy produced at the proposed project would be sold to Cincinnati Gas and Electric Company.

Proposed Scope and Cost of Studies under Permit—Applicant has requested a 36-month permit to prepare a definitive project report, including preliminary design and economic feasibility studies, hydrological studies, environmental and social studies, and soil and foundation data. The cost of the aforementioned activities along with obtaining agreements with other Federal, State and local agencies is estimated to be $72,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 12, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 10, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), (*as amended* 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d), (*as amended*, 44 FR 61328, October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR, 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 12, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32963 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3377]

Continental Hydro Corp.; Application for Preliminary Permit

October 14, 1980.

Take notice that Continental Hydro Corporation (Applicant) filed on August 25, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Orwell Dam project, FERC No. 3377, to be located at the U.S. Army Corps of Engineers' Orwell Dam and reservoir, a flood control project, on the Otter Tail River near Fergus Falls, in Otter Tail County, Minnesota. Correspondence with the Applicant should be directed to: Mr. A. Gail Staker, President, Continental Hydro Corporation, 141 Milk Street, Suite 1143, Boston, MA 02109.

Project Description—The proposed project would utilize the existing U.S. Army Corps of Engineers' dam and reservoir. Project No. 3377 would consist of: (1) a proposed penstock extending from the outlets works; (2) a proposed powerhouse located on the northwestern bank of the river; (3) transmission lines; and (4) appurtenant facilities. Applicant estimates the capacity of the proposed project to be 2.4 MW, and the annual energy output to be 7.4 GWh.

Purpose of Project—Energy produced at the proposed project would be sold to Otter Tail Power Company.

Proposed Scope and Cost of Studies Under Permit—Applicant has requested a 36 month permit to prepare a definitive project report, including preliminary design and economic feasibility studies, hydrological studies, environmental and social studies, and soils and foundation data. The cost of the aforementioned activities along with obtaining agreements with other Federal, State and local agencies is estimated to be $47,500.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 15, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 16, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), *as amended*, 44 FR 61328, (October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d), *as amended*, 44 FR 61328 (October 25, 1979).

Comments, Protests, or Petitions to Intervene—Any desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 15, 1980. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32965 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Projects Nos. 3391, 3393, and 3399]

Continental Hydro Corp.; Application for Preliminary Permit

October 16, 1980.

Take notice that Continental Hydro Corp. (Applicant) filed on August 27, 1980, three applications for preliminary permits [pursuant to the Federal Power Act, 16 U.S.C. Sections 791(a)–825(r)] for the projects described below. Correspondence with the Applicant on these projects should be addressed to: Mr. A Gail Staker, President, Continental Hydro Corp., 141 Milk Street Suite 1143, Boston, MA 02109.

The proposed projects are located as follows:

(i) Cecil M. Harden Dam Project No. 3391 would be located at the U.S. Army Corps of Engineers' Cecil M. Harden Dam and Lake, a flood control project, on the Raccoon Creek near Ferndale, in Parke and Putnam Counties, Indiana.

(ii) Brookville Dam Project No. 3393 would be located at the U.S. Army Corps of Engineers' Brookville Dam and Lake, a flood control project, on the East Fork of Whitewater River near Brookville, in Franklin County, Indiana.

(iii) Cagles Mill Dam Project No. 3399 would be located at the U.S. Army Corps of Engineers' Cagle Mill Dam, a flood control project, on the Mill Creek River near Cloverdale, Putman County, Indiana.

Projects Descriptions—The three proposed projects would utilize existing U.S. Army Corps of Engineers' dams and reservoirs.

Project No. 3391—would consist of: (1) a penstock extending from the outlet conduit; (2) a powerhouse located on the southwest bank of the river; (3) transmission lines; and (4) appurtenant facilities. Applicant estimates the capacity of the project to be 1.0 MW, and the annual energy output to be 4.2 GWh.

Project No. 3393—would consist of: (1) a penstock extending from the outlet conduit; (2) a powerhouse located on the east bank of the river; (3) transmission lines; and (4) appurtenant facilities. Applicant estimates the capacity of the project to be 3.1 MW, and the annual energy output to be 12.7 GWh.

Project No. 3399—would consist of: (1) a penstock extending from a 12-foot outlet conduit; (2) a powerhouse on the northern bank of the river; (3) transmission lines; and (4) appurtenant facilities. Applicant estimated the capacity of the project to be 1.2 NW and the annual energy output to be 5.3 GWh.

Purpose of Project—Energy produced at proposed Projects Nos. 3391 and 3399 would be sold to Public Service Company of Indiana, while proposed Project No. 3393 would sell energy to Indiana and Michigan Electric Company.

Proposed Scope and Cost of Studies Under Permits—The Applicant has requested a 36-month permit to prepare a definitive report for each project, including preliminary design and economic feasibility studies, hydrological studies, environmental and social studies, and soils and foundation data. The cost of the aforementioned activities along with obtaining agreements with other Federal, State and local agencies are estimated by the Applicant to be $50,000 each for Projects Nos. 3391 and 3393, while proposed Project No. 3399 is estimated to cost $48,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described applications for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 22, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 20, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), (*as amended*, 44

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FR 61328 (October 25, 1979). A competing application must confrom with the requirements of 18 CFR 4.33 (a) and (d), *as amended* 44 FR 61328 (October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about these applications should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the Requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comment, protest, or petition to intervene must be filed on or before December 22, 1980, and must specify which of the above applications is being addressed. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32968 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3394]

Continental Hydro Corp.; Application for Preliminary Permit

October 14, 1980.

Take notice that Continental Hydro Corp. (Applicant) filed on August 27, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for the proposed Harlan County Dam project, FERC No. 3394, to be located at the U.S. Army Corps of Engineers' Harlan County Dam and Reservoir, a flood control project, on the Republican River near Republican City, Harlan County, Nebraska. Correspondence with the Applicant should be directed to: Mr. A. Gail Staker, President, Continental Hydro Corp., 141 Milk Street, Suite 1143, Boston, MA 02109.

Project Discription—The proposed project would utilize an existing U.S. Army Corps of Engineers' dam and reservoir. Project No. 3394 would consist of : (1) a proposed penstock extending from the outlet works below the dam; (2) a proposed powerhouse located on the south bank of the river; (3) transmission lines; and (4) appurtenant facilities. Applicant estimates the capacity of the proposed project to be 2.3 MW, and the annual energy output to be 10.1 GWh.

Purpose of Project—Energy produced at the proposed project would be sold to Nebraska Public Power System Company.

Proposed Scope and Cost of Studies under Permit—Applicant has requested a 36-month permit to prepare a definitive project report, including preliminary design and economic feasibility studies, hydrological studies, environmental and social studies, and soil and foundation data. The cost of the aforementioned activities along with obtaining agreements with other Federal, State, and local agencies is estimated to be $55,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 12, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 11, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c), *as amended*, 44 FR 61328 (October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d), *as amended*, 44 FR 61328 (October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to interevene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 12, 1980. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32964 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3400]

Continental Hydro Corp. Application for Preliminary Permit

October 14, 1980.

Take notice that Continental Hydro Corporation (Applicant) filed on August 27, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)] for the proposed Buckhorn Dam project, FERC No. 3400 to be located at the U.S. Army Corps of Engineers' Buckhorn Dam and Reservoir, a flood control project, on the Middle Fork Kentucky River near Buckham, Perry County, Kentucky. Correspondence with the Applicant should be directed to: Mr. A. Gail Staker, President, Continental Hydro Corporation, 141 Milk Street, Suite 1143, Boston, Massachusetts 02109.

Project Description—The proposed project would utilize an existing U.S. Army Corps of Engineers' dam and reservoir. Project No. 3400 would consist of: (1) a proposed penstock extending from the outlet conduit; (2) a powerhouse located on the western bank of the river; (3) transmission lines; and (4) appurtenant facilities. Applicant estimates the capacity of the proposed project to be 2.8 MW, and the annual energy output to be 10.5 GWh.

Purpose of Project—Energy produced at the proposed project would be sold to Kentucky Power Company.

Proposed Scope and Cost of Studies under Permit—Applicant has requested a 36 month permit to prepare a definitive project report, including preliminary design and economic feasibility studies, hydrological studies, environmental and social studies, and soil and foundation data. The cost of the aforementioned estimates along with obtaining agreements with other Federal, State and local agencies is estimated to be $52,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 15, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 11, 1981. A notice of intent must conform with the requirements of 18 CFR. 4.33(b) and (c), *as amended* 44 FR 61328, (October 25, 1979). A competing application must conform with the requirements of 18 CFR. 4.33(a) and (d), *as amended*, 44 FR 61328 (October 25, 1979).

Comments, Protest, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR, 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protest. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 15, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary,

[FR Doc. 80-32974 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TC81-3-000]

East Tennessee Natural Gas Co.; Tariff Filing

October 10, 1980.

Take notice that on October 2, 1980, East Tennessee Natural Gas Company (East Tennessee), Tenneco Building, P.O. Box 2511, Houston, Texas 77001, filed in Docket No. TC81-3-000, First Revised Sheet Nos. 85 through 99, to become effective November 1, 1980, which revise its FERC Gas Tariff, Sixth Revised Volume No. 1, pursuant to Part 281 of the Regulations under the Natural Gas Policy Act of 1978.

Section 281.204 of the Regulations requires interstate pipelines to file no later than October 1, 1980, tariff sheets containing an updated index of the high-priority and essential agricultural use entitlements of each of their customers. East Tennessee states that First Revised Sheet Nos. 85 through 99 contain the updated Index of Entitlements required under Section 281.204 of the Regulations and that copies of the filing have been mailed to its customers and interested State Commissions.

East Tennessee also states that this filing includes a copy of the Final Report of its Data Verification Committee.

Any person desiring to be heard or to make any protest with reference to said filing should on or before October 24, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32828 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RP80-89]

Eastern Shore Natural Gas Co.; Settlement Conferences

October 14, 1980.

Settlement conferences will be held for the purpose of discussing all issues in the above-captioned proceeding at 10:00 a.m. on October 22, 1980, and October 29, 1980, at the Federal Energy Regulatory Commission, 625 North Capitol Street, NE, Washington, D.C. 20426. The location of the conference room will be posted on the second floor of the Commission's offices at 825 North Capitol Street, NE, on the day of the conference.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32976 filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-16-000]

El Paso Electric Co. Filing of Agreement for Sale and Interchange of Energy

October 14, 1980.

The filing company submit the following:

Take notice that on October 8, 1980, El Paso Electric Company (EPEC) submitted for filing, as an initial rate filing, an "Agreement For Sale and Interchange of Energy Between El Paso Electric Company and The Public Service Department of the City of Burbank" dated July 14, 1980 (Agreement). EPEC states that this Agreement provides a basis, and on an economy basis. EPEC has requested that this Agreement be accepted for filing and made effective on October 8, 1980, and that waiver of the notice provisions and other requirements of the Commission's Regulations be granted as appropriate.

EPEC further states that copies of this filing have been served upon the Public Utility Commission of Texas, the New

Mexico Public Service Commission, and The Public Service Department of the City of Burbank.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 3, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and area available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32985 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-15-000]

El Paso Electric Co.; Filing of Agreement for Sale and Interchange of Energy

October 14, 1980.

The filing company submits the following:

Take notice that on October 8, 1980, El Paso Electric Company (EPEC) submitted for filing, as an initial rate filing, an "Agreement For Sale and Interchange of Energy Between El Paso Electric Company and The City of Glendale" dated September 30, 1980 (Agreement). EPEC states that this Agreement provides a basis for the exchange and sale of energy between the parties on a non-firm basis as available, on a returnable basis, and on an economy basis. EPEC has requested that this Agreement be accepted for filing and made effective on October 8, 1980, and that waiver of the notice provisions and other requirements of the Commission's Regulations be granted as appropriate.

EPEC further states that copies of this filing have been served upon the Public Utility Commission of Texas, the New Mexico Public Service Commission, and The City of Glendale.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 3, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32990 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. Cp61-92]

El Paso Natural Gas Co.; Amendment To Petition To Amend

October 14, 1980.

Take notice that on September 23, 1980, El Paso Natural Gas Company (Petitioner), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP61-92 and amendment to its petition to amend the order issued in the instant docket on January 11, 1965 [1] pursuant to Section 7(c) of the Natural Gas Act so as to authorize the establishment of a new delivery point between Petitioner and Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Petitioner, in its petition to amend filed in the instant docket on July 9, 1980, requested authorization to establish the Abraham Unit No. 1 well in Roger Mills County, Oklahoma, as a new delivery point to Northern under the existing service agreement dated August 17, 1962, as amended, between Applicant and Northern, it is said.

Subsequently, Petitioner states that it has been advised by Northern that Northern has quantities of residue gas available from Amoco Production Company's Slaughter Plant, which Northern desires to make available for delivery to Petitioner as a part of the authorized exchange arrangement as set forth in a letter agreement dated July 2, 1980.

Petitioner submits that it has constructed and now operates approximately 2.80 miles of 12¾-inch O.D. pipeline with appurtenances including a 6⅝-inch O.D. standard orifice purchase meter which connect the Slaughter Plant to Petitioner's existing Dumas mainline in Hockley and Cochran Counties, Texas. Petitioner seeks to include its connection with the Slaughter Plant as a new delivery point with Northern.

Petitioner asserts that Northern may cause the delivery of up to 2,000 Mcf of natural gas per day to Petitioner from the Slaughter Plant which Petitioner would redeliver to Northern as part of the total exchange volumes now authorized. Petitioner states that it would receive from Northern 2.0 cents for each Mcf of natural gas which it transports from the Slaughter Plant for the account of Northern.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before November 3, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32982 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-14-000]

El Paso Electric Co.; Filing of Agreement for Sale and Interchange of Energy

October 14, 1980.

The filing company submits the following:

Take notice that on October 8, 1980, El Paso Electric Company (EPEC) submitted for filing, as an initial rate filing, an "Agreement For Sale and Interchange of Energy Between El Paso Electric Company and The Department of Water and Power of the City of Pasadena" dated September 29, 1980 (Agreement). EPEC states that this Agreement provides a basis for the exchange and sale of energy between the parties on a non-firm basis as available, on a returnable basis, and on an economy basis. EPEC has requested that this Agreement be accepted for filing and made effective on October 8, 1980, and that waiver of the notice provisions and other requirements of the Commission's Regulations be granted as appropriate.

EPEC further states that copies of this filing have been served upon the Public Utility Commission of Texas, the New Mexico Public Service Commission, and The Department of Water and Power of the City of Pasadena.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 3, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32972 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-17-000]

El Paso Electric Co.; Filing of Agreement for Sale and Interchange of Energy

October 14, 1980

The filing company submits the following:

Take notice that on October 8, 1980, El Paso Electric Company (EPEC) submitted for filing, as an initial rate filing, an "Agreement For Sale and Interchange of Energy Between El Paso Electric Company and The Department of Water and Power of the City of Los Angeles" dated August 21, 1980 (Agreement). EPEC states that this Agreement provides a basis for the exchange and sale of energy between the parties on a non-firm basis as available, on a returnable basis, and on an economy basis. EPEC has requested that this Agreement be accepted for filing and made effective on October 8, 1980, and that waiver of the notice provisions and other requirements of the Commission's Regulations be granted as appropriate.

EPEC further states that copies of this filing have been served upon the Public Utility Commission of Texas, the New Mexico Public Service Commission, and The Department of Water and Power of the City of Pasadena.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 3, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32988 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3457]

French Broad Electric Membership Corp.; Application for Preliminary Permit

October 16, 1980

Take notice that French Broad Electric Membership Corporation (Applicant) filed on September 11, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 3457 to be known as the Capitola Dam Project located on the French Broad River in Madison County, North Carolina. Correspondence with the Applicant should be directed to: Mr. Charles R. Tolley, General Manager, P.O. Box 9, Marshall, North Carolina 28753.

Project Description—The proposed project would consist of: (1) an existing 500-foot long and 9-foot high concrete dam; (2) an existing 25 acre reservoir with 225 acre-feet of storage capacity; (3) an existing 575-foot long intake canal; (4) a powerhouse with an installed generating capacity of 3.0 MW and (5) appurtenant facilities. The average annual energy generation is estimated to be 16,500 MWh.

Purpose of Project—The French Broad Electric Membership Corporation proposes to develop the Hydroelectric potential of the project and to utilize the power to offset the utility's power purchases.

Proposed Scope and Cost of Studies under Permit—The Applicant seeks issuance of a preliminary permit for a period of 36 months. During this time the significant legal, institutional, engineering, environmental, marketing, economic and financial aspects of the project will be defined, investigated and assessed to support an investment decision. The report of the proposed study will address whether or not a commitment to implementation is warranted, and, if the findings are positive, describe the steps required for implementation. The report will be prepard so that the information presented will be useful in preparing an application for license for the project. The Applicant's estimated total cost for performing a feasibility study is $86,070.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 22, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file a competing application no later than February 20, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c), *as amended*, 44 FR 61328 (October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d), *as amended*, 44 FR 61328 (October 25, 1979).

Comments, protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 and 1.10 (1979). Comments not in the nature of a protest

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

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may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 22, 1980. the Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32970 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. RP74-86 and RP76-97]

Gulf Energy & Development Corp.; Order Remanding Proceeding for Further Hearing

Issued: October 10, 1980.

This proceeding involves a claim by Gulf Energy & Development Corporation (Gulf Energy) for an acquisition adjustment amounting to approximately $260,000. The proposed adjustment stems from a 1963 transaction in which Gulf Resources, Inc., Gulf Energy's predecessor, acquired from Delhi-Taylor Company Delhi's 50 percent interest in Natural Gas Gathering Company (NGG). NGG and Gulf Resources were equal co-owners of a natural gas gathering pipeline known as the Zapata System. gulf Resources purchased Delhi's NGG stock for a price which was some $618,433 in excess of the net book value of NGG's share of the Zapata properties. Approxiamtely $358,000 of the purchase premium has been written off by Gulf Energy. It seeks to amortize the remaining $260,000 in its rates over a 10 year period and to include unamortized portions of the adjustment in its rate base.

Following heraings ordered by the Federal Power Commission, the presiding judge on March 4, 1977, issued his initial decision recommending that the adjustment be denied. The judge's decision was affirmed by the Commission in an order dated July 25, 1978.

The Commission's decision was appealed by Gulf Energy to the United States Court of Appeals for the D.C. Circuit. On February 14, 1980, the court reversed the Commission's decision and remanded the case for further consideration. *Gulf Energy and Development Corp.* v. *F.E.R.C.*, 616 F. 2d 1211 (D.C. Cir. 1980). The court concluded that the Commission and the presiding judge had failed to make findings necessary to support denial of the claimed acquisition adjustment. The court went on to suggest additional considerations and information which might be relevant in deciding the matter. Among other things the court suggested that an attempt be made to establish the value of Delhi's NGG stock as of the date of acquisition by Gulf Energy.

Upon review of this matter, the Commission finds that the record in this proceeding is not adequate to meet the requirements set forth by the court. The proceeding shall therefore be remanded for further hearings in light of and consistent with the court's instructions.

The Commission orders: (A) this proceeding is remanded for further hearing.

(B) A presiding administrative law judge to be designated by the Chief administrative law judge shall preside at the hearing initiated by this order, with full authority to establish and change all procedural dates and to rule on all motions as provided in the rules of practice and procedure.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-32879 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. G-4282, et al.]

Gulf Oil Corp., et al.; Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

October 14, 1980.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before October 31, 1980, file with the Federal Energy Regulatory Commission, Washington, D. C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft [2]	Pressure base
G-4282, D, Sept. 2, 1980	Gulf Oil Corporation, P.O. Box 2100, Houston, Texas.	Natural Gas Pipeline Company of America, Boonesville Field, Jack County, Texas.	The only well on the lease has ceased to produce and the lease expired 7-15-80.	
G-6378, D, Sept. 3, 1980	Kerr-McGee Corporation, P.O. Box 25861, Oklahoma City, Okla. 73125.	Colorado Interstate Gas Company, Keyes Field, Cimarron County, Oklahoma.	Lease expired due to lack of commercial production and has been released of record.	
G-14718-000, D, Oct. 1, 1980	do	Northern Natural Gas Company, Rosston Area, also called South Glenwood Field, Beaver County, Oklahoma.	Well has been plugged and lease has been released of record.	

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft [2]	Pressure base
G-17018, D, Aug. 6, 1980	Gulf Oil Corporation	El Paso Natural Gas Company, Bisti Field, San Juan County, New Mexico.	Leases have expired	
G-17309, Aug. 27, 1980 [1]	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	El Paso Natural Gas Company, Tubb and Blinebry Field, Lea County, New Mexico.	(3)	14.65
G-17571, D, July 30, 1980	do	El Paso Natural Gas Company, Mocane-Laverne Area, Beaver County, Oklahoma.	Wells have been plugged and abandoned and leases have lapsed.	
G-19062, D, Sept. 2, 1980	Gulf Oil Corporetion	Tennessee Gas Pipeline Company, a Division of Tenneco, Inc., Lake Washington Field, Plaquemines Parish, Louisiana.	Portion of lease has been surrendered to the State of Louisiana.	
CI75-538, C, Sept. 8, 1980	Mobil Oil Exploration and Producing Southeast Inc., Nine Greenway Plaza—Suite 2700, Houston, Texas 77046.	Trunkline Gas Company, Grand Isle Block 95 Field, South Addition, Federal Offshore Louisiana.	(4)	15.025
CI76-734, C, Sept. 8, 1980	do	Trunkline Gas Company, Grand Isle Block 93 Field, South Addition, Federal Offshore Louisiana.	(4)	15.025
CI76-778, C, Aug. 12, 1980	Shell Oil Company, One Shell Plaza, P.O. Box 2463, Houston, Texas 77001.	Transcontinental Gas Pipe Line Corporation, OCS-G-3119 Well No. 1 located in Vermilion Block 21, Offshore Louisiana.	(4)	15.025
CI77-18, C, Sept. 5, 1980	Transco Exploration Company, P.O. Box 1396, Houston, Texas 77001.	do	(4)	15.025
CI78-37, C, Sept. 8, 1980	The Superior Oil Company, P.O. Box 1521, Houston, Texas 77001.	Michigan Wisconsin Pipe Line Company, OCS-G-2596 Well No. A-8 located in Block 244 of the South Marsh Island Block 243 Field, Offshore Louisiana.	(4)	15.025
CI78-206, C, Aug. 29, 1980	Chevron U.S.A. Inc., P.O. Box 7643, San Francisco, Ca. 94120.	Southern Natural Gas Company, OCS-G-2603 No. 2 Well in Eugene Island, Block 65 (E ½), Offshore Louisiana.	(4)	15.025
CI78-1216, F, Sept. 9, 1980 [7]	Phillips Petroleum Company (Succ. in Interest to the Estate of Lewis T. Lohman), 5 C4 Phillips Building, Bartlesville, Okla. 74004.	Arkansas Louisiana Gas Company, SE/4 Section 21, the SW/4 Section 22, the NW/4 Section 27, and the NE/4 Section 28, all in Township 18 North Range 8 West, Webster Parish, Louisiana.	(4)	15.025
CI80-405, E, July 7, 1980	Placid Oil Company (Succ. to Bodcaw Company), 1600 First Natl. Bank Bldg., Dallas, Texas 75202.	United Gas Pipe Line Company, Caster Field, Bienville Parish, Louisiana.	(4)	15.025
CI80-407, E, July 7, 1980	do	Texas Gas Transmission Corporation, Northwest Cotton Valley Area, Webster Parish, Louisiana.	(8)	15.025
CI80-456, F, July 30, 1980 [10]	Shell Oil Company (Partial Successor in Interest to Conoco Inc.), One Shell Plaza, P.O. Box 2463, Houston, Texas 77001.	El Paso Natural Gas Company, Aneth Field, San Juan County, Utah.	(9)	16.025
CI80-491, A, Aug. 26, 1980	Mobil Oil Exploration and Producing Southeast, Inc., Nine Greenway Plaza—Suite 2700, Houston, Texas 77046.	Michigan Wisconsin Pipe Line Company, Vermilion Block 182 Field, Federal Offshore Louisiana.	(11)	14.73
CI80-492, A, Aug. 26, 1980	do	Michigan Wisconsin Pipe Line Company, Eugene Island Block 296 "10 Sand" and "X Sand", Federal Offshore Louisiana.	(12)	15.025
CI80-493, F, Aug. 27, 1980	Amoco Production Company (Succ. in Interest to Petroleum Inc.), 1754 Amoco Bldg., Denver, Colorado 80202.	Northern Natural Gas Company, Mocane-Laverne Gas Area, Beaver County, Oklahoma.	(13)	14.65
CI80-495, B, Aug. 19, 1980	W. Carlton Weaver, *et al.*, 1820 Bank & Trust Tower, Corpus Christi, Texas 78477.	Tennessee Gas Pipeline Company, Leal (Miocene 2200) and El Oro (3150) Fields, Duval County, Texas.	All production ceased on the Glasscock Ranch in July, 1979 and wells were plugged on order of Railroad Commission of Texas.	
CI80-496, F, Aug. 28, 1980	Conoco Inc., P.O. Box 2197, Houston, Texas 77001.	Natural Gas Pipeline Company of America, Dagger Draw Field Area, Eddy County, New Mexico.	(14)	14.65
CI80-497, F, Aug. 28, 1980	do	do	(14)	14.65
CI80-498, F, Aug. 28, 1980	do	do	(14)	14.65
CI80-499, A, Sept. 2, 1980	Getty Oil Company, P.O. Box 1404, Houston, Texas 77001.	El Paso Natural Gas Company, Malagorda Island Block 526, Offshore Texas.	(14)	14.65
CI80-500, A, Sept. 2, 1980	The Superior Oil Company, P.O. Box 1521, Houston, Texas 77001.	Columbia Gas Transmission Corporation, Block 36, Vermilion Block 14 Field, Vermilion Area, Offshore Louisiana.	(4)	15.025
CI80-502, (G-14351), B, Sept. 3, 1980.	Union Oil Company of California, Union Oil Center, Boc 7600, Los Angeles, Ca. 90051.	Transcontinental Gas Pipe Line Corporation, Block 66, Block 75 Field, Vermilion Area, Offshore Louisiana.	Gas reserves were depleted and the wells were plugged and abandoned. The leases were released to the Bureau of Land Management.	
CI80-503, (G-9872), B, Sept. 2, 1980.	Gulf Oil Corporation, P.O. Box 2100, Houston, Texas 77001.	Texas Gas Pipe Line Corporation, Big. Hill Field, Jefferson County, Texas.	The only lease covered by this contract expired 1-30-79 after the last well was plugged and abandoned 11-30-78.	
CI80-504, (G-14741), B Sept. 2, 1980.	do	United Gas Pipe Line Company, Maxie-Pistol Ridge Field, Forrest, Lamar and Pearl River Counties, Mississippi.	(15)	
CI80-506, A, Sept. 8, 1980	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Tennessee Gas Pipeline Company, Vermilion Area Block 119, Offshore Louisiana.	(11)	15.025
CI80-507, (CI75-505), B, Sept. 9, 1980.	Cities Service Company, P.O. Box 300, Tulsa, Oklahoma 74102.	Panhandle Eastern Pipe Line Company, Section 1-5N-9ECM, Cimmarron County, Oklahoma.	(12)	
CI80-508, A, Sept. 11, 1980	Kerr-McGee Corporation, P.O. Box 25861, Oklahoma City, Okla. 73125.	Natural Gas Pipeline Company of America, Block 143, South Marsh Island Area, Offshore Louisiana.	(12)	15.025
CI80-509 A, Sept. 11, 1980	Kerr-McGee Corporation, P.O. Box 25861, Oklahoma City, Okla. 73125.	Natural Gas Pipeline Company of America, Blocks 115 and 116, West Cameron Area, Offshore Louisiana.	(12)	15.025
CI80-510, A, Sept. 11, 1980	do	Natural Gas Pipeline Company of America, Block 265, South Marsh Island Area, Offshore Louisiana.	(12)	15.025

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft ³	Pressure base
CI80-511, (CI61-1795), B, Sept. 15, 1980.	Getty Oil Company, P.O. Box 1404, Houston, Texas 77001.	Panhandle Eastern Pipe Line Company, J. C. White Lease N/2 Section 22, S/2 Section 15-4N-10ECM, Texas County, Oklahoma.	(20)	
CI80-512, B, Sept. 2, 1980	Gulf Oil Corporation, P.O. Box 2200, Houston, Texas 77001.	J. L. Davis and Tipperary Resources Corporation, Lea "GI" Lease, Dean Permo Penn Pool, Lea County, New Mexico.	Production from last well on lease has ceased. Lease expired by its own terms when workover operations ceased.	
CI80-513, A, Sept. 16, 1980	Alminex U.S.A., Inc., P.O. Box 1521, Houston, Texas 77001.	Michigan Wisconsin Pipe Line Company, Block A-555, High Island Area, Offshore Texas.	(1)	14.65
CI80-514, A, Sept. 16, 1980	Canadian Superior Oil (U.S.) Ltd., P.O. Box 1521, Houston, Texas 77001.	Michigan Wisconsin Pipe Line Company, Block A-555, High Island Area, Offshore Texas.	(1)	14.65
CI80-515, A, Sept. 15, 1980	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Tennessee Gas Pipeline Company, Logansport Field, DeSoto Parish, Louisiana.	(22)	15.025
CI80-516, A, Sept. 18, 1980	Samedan Oil Corporation, P.O. Box 909, Ardmore, Okla. 73401.	Texas Eastern Transmission Corporation, a portion of West Cameron Block 522, Offshore Louisiana.	(24)	15.025
CI80-517, A, Sept. 18,1980	CNG Producing Company, Suite 3100, One Canal Place, New Orleans, La. 70130.	Columbia Gas Transmission Corporation, Ship Shoal Block 249, produced on "D" Platform, Ship Shoal Block 248, Offshore Louisiana.	(25)	14.73
CI80-518, A, Sept. 18,1980	do	Consolidated Gas Supply Corporation "S" Plateform, South Marsh Island Block 143, Offshore Louisiana.	(26)	15.025
CI80-519, A, Sept. 18, 1980	Amoco Production Company, P.O. Box 50879, New Orleans, La. 70150.	Southern Natural Gas Company and United Gas Pipe Line Company, Ship Shoal Block 84, Offshore Louisiana.	(28)	15.025
CI80-520, B, Sept. 19, 1980	Vessels Oil & Gas Company, Suite 1220, Cherry Creek Plaza, 600 South Cherry, Denver, Colorado 80222.	Panhandle Eastern Pipeline Company, Morris Letterly No. 1 Well SW/SW, Section 4-2S-65W, Adams County, Colorado.	Due to decrease in wellhead pressure, well cannot deliver any volume into Buyer's high-pressure system.	
CI80-521, B, Sept. 19, 1980	do	Panhandle Eastern Pipeline Company, Kreitzer No. 1 Well NE/NE Section 4-2S-65W, Adams County, Colorado.	Same as above	
CI80-523, A, Sept. 22, 1980	ARCO Oil and Gas Company, Division of Atlantic Richfield Company (Operator), P.O. Box 2819, Dallas, Texas 75221.	Transcontinental Gas Pipe Line Corporation, North Padre Island Block 967 Field (Block 956), Offshore Texas.	(27)	14.65
CI80-522, A, Sept. 22, 1980	do	Transcontinental Gas Pipe Line Corporation, North Padre Island Block 967 Field (Block 967 and 968D), Offshore Texas.	(27)	14.65
CI80-524 (CI60-414), B, Sept. 22, 1980.	Cabot Corporation, One Houston Center, Suite 1000, Houston, Texas 77002.	Panhandle Eastern Pipeline Company, Section 141, Block 45 of the H & TC Survey, NE/4 and W/2 of Section 141 Lease No's T-354 and T-567, Hansford County, Texas.	(34)	
CI80-525 (CI78-907), B, Sept. 22, 1980.	General American Oil Company of Texas, Meadows Building, Dallas, Texas 75206.	Lone Star Gas Company, Velma Field, Stephens County, Oklahoma.	All gas sold under the rate schedule has been finally determined to qualify under Section 103 of the NGPA of 1978.	
CI80-526, A, Sept. 26, 1980	The Offshore Company, P.O. Box 2765, Houston, Texas 77001.	Southern Natural Gas Company, East Cameron Block 23, Offshore Louisiana.	(1)	15.025
CI60-527, A, Sept. 26, 1980	Sonat Exploration Company, 5599 San Felipe, Houston, Texas 77056.	Southern Natural Gas Company, East Cameron Block 23, Offshore Louisiana.	(1)	15.025
CI81-1-000, A, Oct. 1, 1980	Kerr-McGee Corporation, P.O. Box 25861, Oklahoma City, Okla. 73125.	Transcontinental Gas Pipe Line Corporation, Block A-156, Galveston Area, Offshore Texas.	(29)	14.65
CI81-2-000, F, Oct. 2, 1980 [30]	Bethlehem Steel Corporation (Partial Successor in Interest to Shell Oil Company), Bethlehem, Pa. 18016.	Southern Natural Gas Company, Federal Lease Nos. OCS-G-1106 and OCS-G-1107, Blocks 133 and 134, West Delta Area, South Addition, Offshore Louisiana.	(31)	15.025
CI67-1826, D, Sept. 22, 1980	Kerr-McGee Corporation, P.O. Box 25861, Oklahoma City, Okla. 73125.	Texas Gas Transmission Corporation, Terryville Field, Lincoln Parish, Louisiana.	Depleted, wells have been plugged and Applicant's leases have been released of record.	
CI77-518-002, C, Oct. 6, 1980	Exxon Corporation, P.O. Box 2180, Houston, Texas 77001.	Northern Natural Gas Company, East Cameron Block 335 Field, Offshore Louisiana.	(1)	15.025
CI80-528, A, Sept. 30, 1980	Texaco Inc., P.O. Box 60252, New Orleans, La. 70160.	Natural Gas Pipeline Company of America, Vermilion Block 380 Field, Offshore Louisiana.	(32)	15.025
CI80-3-000, A, Oct. 2, 1980	Texoma Production Company, P.O. Box 90996, Houston, Texas 77090.	Natural Gas Pipeline Company of America, Sabine Pass Block 9, Well No. 2, Offshore Louisiana.	(33)	15.025
CI81-4-000, B, Oct. 3, 1980	Texaco Inc., P.O. Box 2420, Tulsa, Okla. 74102	Arkansas-Louisiana Gas Company, Hillsdale, N.E., Grant County, Oklahoma.	Depleted, abandonment of the well, and reversion of the lease to the landowners.	
CI81-5-000, A, Oct. 3, 1980	Cities Service Company, P.O. Box 300, Tulsa, Oklahoma 74102.	Southern Natural Gas Company, Main Pass Block 311, Offshore Louisiana.	(34)	15.025

[1] Adds additional delivery point at tailgate of Warren Petroleum Company Eunice plant.
[2] Applicant is filing under Amendatory Agreement dated 6-30-80, amending Gas Purchase Agreement dated 8-10-56.
[3] Applicant is filing under Gas Sales contract dated 2-27-76, as amended, and Amendment dated 12-3-79.
[4] Applicant is filing under Gas Sales contract dated 8-8-76, as amended, and Amendment dated 12-3-79.
[5] Applicant is willing to accept a certificate establishing the initial rate as the maximum lawful rate authorized by the NGPA of 1978.
[6] Applicant is filing under Gas Sales Contract dated 9-15-77, amended by Amendment No. 1 dated 6-30-80.
[7] Phillips acquired a partial interest in the Davis "O" Lease from the Estate of Lewis T. Lohman effective 9-1-77. Production attributable to the interest of the Estate of Lewis T. Lohman was marketed pursuant to the certificate authority received by F. Julius Fohs and Lucerne Corporation at Docket No. G-7424.
[8] Phillips proposes to continue the sale of natural gas attributable to this acerage to Arkansas Louisiana Gas Company pursuant to Gas Purchase Contract dated 3-24-50, as amended.
[9] On 10-11-79, the new Bodcaw Company sold and conveyed to Placid all the mineral properties and oil and gas production owned by Bodcaw Company. Applicant requests that the Commission issue a Certificate of Public convenience and Necessity, effective 10-11-79, authorizing Placid Oil Company to succeed to the sale formerly made by Bodcaw Company, and that the certificate of Public Convenience and Necessity issued to Bodcaw Company on 9-1-71 in docket No. CS71-304 be cancelled.
[10] By various assignments, Shell Oil company has acquired an interest in three sections in the Aneth Field, San Juan County, Utah, from Conoco Inc. (formerly Continental Oil Company). Applicant is seeking authority to continue service to El Paso Natural Gas Company as a partial successor in interest to Conoco Inc. authorized at Docket No. CI64-1301.

[11] Applicant is willing to accept an initial rate determined in accordance with the NGPA of 1978, Part 271, Subpart D, Section 102(d) for natural gas from a new OCS reservoir on an old OCS lease, and Part 271, Subpart D, Section 104 for post-1974 gas, 1973-1974 biennium gas and recompletion gas.
[12] Applicant is willing to accept the Major Producer rate for gas produced from the "X Sand", determined in accordance with the NGPA of 1978, Section 104, and 18 C. F. R. 271, Subpart D, Talbe II, for post-1974 gas. 1973-1974 biennium gas and recompletion gas. For gas produced from the "10 Sand", Applicant submits that the rate applicable is the Small Producer rate for 1973-1974 biennium gas.
[13] Applicant, by virtue of an Assignment effective 6-16-78, from Petroleum, Inc., *et al.*, been assigned certain interests in a certain oil and gas lease located in Beaver County, Oklahoma. Said lease is subject to a certain Gas Sales Contract dated 5-17-67, between Petroleum, Inc., as Seller, and Northern Natural Gas Company, as Buyer and Applicant proposes to sell natural gas to Northern Natural Gas Company under and in accordance with the terms and conditions of said Gas Sales Contract.
[14] Conoco has acquired the Roger C. Hanks interest in the Dagger Draw Field Area, Eddy County, New Mexico by letter agreement dated 12-13-79. Roger C. Hanks was issued a Small Producer Certificate in Docket No. CS72-929.
[15] Applicant is filing under Gas Purchase Contract dated 7-11-80.
[16] All of the wells covered by the 2-25-58 Agreement have ceased production and have been plugged and abandoned. The leases covering the acreage attributable to the wells have expired.
[17] Applicant is filing under Gas Purchase Contract dated 7-31-80.
[18] Production from the Whisennand "C" No. 1 Well declined until the well was no longer capable of producing gas. The well was plugged and abandoned on 3-16-78, and the acerage attributable to the unit is non-productive. by an Amendment to Gas Purchase and Sales Agreement dated 7-16-80, Panhandle and Cities have agreed to cancel the Gas Purchase and Sales Agreement subject to FERC approval.
[19] Applicant is filing under Gas Purchase Contract dated 7-7-80.
[20] Applicant is filing under Gas Purchase Contract dated 7-8-80.
[21] Applicant is filing under Gas Purchase Contract dated 7-3-80.
[22] The only producing well, the White-Rhoton No. 1 was plugged and abandoned on 8-21-78. the reserves are considered depleted and the lease has reverted to the mineral owner. The operator of the well, W. C. McBride-Silurian Oil Comapny, was granted abandonment authorization for their portion of the sale in Docket No. CI78-917.
[23] Applicant is filing under Gas Purchase Contract dated 6-13-80.
[24] Applicant is filing under Gas Purchase Contract dated 6-17-80.
[25] Applicant is willing to accept a certificate conditioned to the applicable national rate as determined by the NGPA of 1978 (assumes initial deliveries occur in fourth quarter of 1980) plus the adjustments and escalations provided for in 18 CFR 2.56a and in the NGPA of 1978.
[26] Applicant is filing under Gas Purchase Contract dated 8-20-80.
[27] Applicant is filing under Gas Purchase Contract dated 8-5-80.
[28] All gas reserves have been depleted to the extent that the continuance of gas service is unwarranted. The only remaining well on the lease was plugged and abandoned on 9-4-79.
[29] Applicant is filing under Gas Purchase Contract dated 9-29-80.
[30] By two Assignments of Operating Rights dated as of 9-24-76, and 7-6-79, Bethlehem Steel secured the interests from Shell in West Delta Blocks 133 and 134.
[31] Applicant is filing under Ratification Agreement dated as of 6-20-80.
[32] Applicant is filing under Gas Purchase Contract dated 8-20-80.
[33] Applicant is filing under Gas Sales Contract dated 5-1-80.
[34] Applicant is filing under an Agreement dated 9-5-80.

Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acerage. D—Amendment to delete acerage. E—Total Succession. F—Partial Succession.

[FR Doc. 80-32975 Filed 10-21-80; 8:45 am]
BILLING CODE 6450-85-M

[Project No. 3324]

Hartford Electric Light Co.; Application for Preliminary Permit

October 15, 1980.

Take notice that The Hartford Electric Light Company (Applicant) filed on August 15, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 3324 to be known as the Tariffville Project located on the Farmington River in Tariffville, Hartford County, Connecticut. Correspondence with the Applicant should be directed to: Mr. William G. Counsil, Vice-President, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut 06101.

Project Description—The proposed project would consist of: (1) a new 30-foot high, 250-foot long concrete dam at the site of a previously existing but currently breached dam of the same approximate size; (2) a reservoir with a surface area of 15 acres at a water surface elevation of 138 feet (m.s.l.); (3) a new powerhouse containing a single 1.5 MW turbine-generator unit; and (4) appurtenant facilities. Total estimated average annual generation would be up to 8,000,000 kWh saving the equivalent of 13,100 barrels of oil or 3,700 tons of coal.

Purpose of Project—Power generated at the project would be utilized by the Applicant for distribution to its customers.

Proposed Scope and Cost of Studies under Permit—The work proposed under the preliminary permit would include preliminary designs and economic analysis and a study of environmental impacts. No ground disturbing activities are contemplated. Applicant states that sufficient geologic information on the site already exists. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $85,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic and environmental feasibility of the proposed project, the market for the power, and all other information necesary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 19, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 17, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c), as amended 44 FR 61328, (October 25, 1979). A competing must conform with the requirements of 18 CFR 4.33(a) and (d), as amended, 44 FR 61328 (October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest

may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 19, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32946 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA81-2-000]

Hergert Oil Co.; Filing of Petition for Review Under 42 U.S.C. 7194

October 15, 1980.

Take notice that Hergert Oil Company on October 6, 1980, filed a Petition for Review under 42 U.S.C. 7194(b) (1977) Supp. from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before October 30, 1980, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before October 30, 1980, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W. Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32984 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 693]

Town of Highlands, N.C.; Application for Short-Form License (Minor)

October 15, 1980.

Take notice that the Town of Highlands (Applicant) filed on March 14, 1980, an application for license pursuant to the Federal Power Act, U.S.C. §§ 791(a)-825(r) for construction and operation of a water power project to be known as the Highlands Project No. 693. The project would be located on the Cullasaja River in Macon County, North Carolina, near the Town of Highlands. Approximately 5 acres of the project lands are located within the Nantahala National Forest. Correspondence with the Applicant should be directed to: Mr. Harry R. Wright, Mayor, Town of Highlands, Highlands, North Carolina 28741.

Project Description—The project would consist of: (1) an existing concrete arch dam, 208 feet long and 25 feet high including a 160-foot long overflow spillway section; (2) a new 30-inch diameter steel penstock, 2,400 feet long; (3) an existing powerhouse in which a new turbine-generator unit of approximately 750 kW capacity will be installed; (4) a reservoir with a surface area of 93 acres at normal pool elevation of 3,806 feet, m.s.l.; and (5) appurtenant facilities. The estimated average annual output is 4,200,000 kWh.

Purpose of Project—To provide peaking power for the Town of Highlands' system.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not file comments within the time set below, it will be presumed to have no comment.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 1, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 31, 1981. A notice of intent must conform with the requirements of 18 CFR. 4.33 (b) and (c), (as amended 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR. 4.33 (a) and (d), (as amended, 44 FR 61328 October 25, 1979).

Comments, Protest, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a portest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR, § 1.8 or § 1.10 (1979). Comments not in the nature of a portest may also be submitted by conforming to the procedures specified in Section 1.10 for protest. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervent in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 1, 1980. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32942 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-3-000]

Indiana & Michigan Electric Co.; Filing

October 14, 1980.

The filing company submits the following;

Take notice that on October 3, 1980, Indiana and Michigan Electric Company (I&M) submitted for filing certain certificates of assignment.

Pursuant to the assignments, the members of the Wabash Valley Power Association (Wabash) have assigned all of their right, title, and interest to receive service under I&M's Electric Tariff REC-1 to Wabash. The certificates executed by I&M indicate its assent to the assignments, and reserve I&M's right to collect from the Assignors any amounts which Wabash fails to pay for power and energy delivered to the delivery points of such Assignor.

The members of Wabash are Fruit Belt Electric Cooperative, Jay County Rural Electric Membership Corp., Noble County Rural Electric Membership Corp., Paulding-Putnam Electric Cooperative, United Rural Electric Membership Corp., and Whitley County Rural Electric Membership Corp.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D. C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All such petitions or protests should be filed on or before November 3, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32956 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-566]

Inland Gas Co., Inc.; Application

October 9, 1980.

Take notice that on September 18, 1980, Inland Gas Company, Inc., 340-17th Street, Ashland, Kentucky 41101, filed in Docket No. CP80-566 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities for service to Kentucky Revised Statutes (KRS) customers, all as more fully set forth in the application which is on file with Commission and open to public inspection.

Applicant proposes to construct and operate gas service taps and metering facilities for the following 98 KRS customers in Boyd, Floyd, Johnson, Knott, Lawrence and Magoffin Counties, Kentucky.

Name, Address and County

1. [1]Jennings Ritchie, RR 3, Kendallville, Indiana 46755—Knott
2. Elcy Williams, Box 41, Royalton, Kentucky 41464—Magoffin
3. Elmer Laughran, Sassafras, Kentucky 41759—Knott
4. Ballard Combs, Fisty, Kentucky 41743—Knott
5. Ronaald Smith, RR No. 2, Box No. 30, Leburn, Kentucky 41831—Knott
6. Robert Boyd, P.O. Box 203, Betsy Layne, Kentucky 41605—Floyd
7. Fred Wells, Route 4, Box 249-G, Briarwood Drive, Catlettsburg, Kentucky 41129—Boyd
8. Norma Martin, Box 67, Garrett, Kentucky 41630—Floyd
9. Robert L. Adams, Box 367, Pinetop, Kentucky 41843—Knott
10. James V. Clark, 5339 Valley View Drive, Ashland, Kentucky 41101—Boyd
11. William R. Scott, Route 7, Box 261, Ashland, Kentucky 41101—Boyd
12. Samuel G. Burke, Star Route Box 30, Hager Hill, Kentucky 41222—Johnson
13. Herman V. Hermon, Hueysville, Kentucky 41640—Floyd
14. Charles E. Hackworth, Box 176, West Prestonsburg, KY 41668—Floyd
15. Norman Fraxier, Rt. 3, Box 576, Ashland, Kentucky 41101—Boyd
16. Billy J. Elkins, Abbott Road, Rt. No. 5, Box 136, Prestonsburg, Kentucky 41653—Floyd
17. James E. Adkins, II, Rt. 3, Box 117, Catlettsburg, Kentucky 41129—Boyd
18. Philip Thornsbury, P.O. Box 155, Wayland, Kentucky 41666—Floyd
19. Mickey Lawson, St. Rt. 4, Box 7, Prestonsburg, Kentucky 41653—Floyd
20. Grahn Slone, Route 201, Sitka, Kentucky 41255—Johnson
21. Elmo Shelton, Route 2, Box 391, Ashland, Kentucky 41101—Boyd
22. Elmo Shelton, Route 2, Box 391, Ashland, Kentucky 41101—Boyd
23. Elmo Shelton, Route 2, Box 391, Ashland, Kentucky 41101—Boyd
24. Ell Arnett, Rt. 1, Box 357, Martin, Kentucky 41649—Floyd
25. Johnny Pittman, General Delivery, Sassafras, Kentucky 41759—Knott
26. Roger Bartley, Route 6, Box 90, Ashland, Kentucky 41101—Boyd
27. [2]Charles M. Brown, 1621 Walnut Street, Kenova, West Virginia 25530—Boyd
28. Ford Honeycutt, General Delivery, Pinetop, Kentucky 41843—Knott
29. Monnie McGranahan, Rt. 3, Box 148-A, Catlettsburg, Kentucky 41129—Boyd
30. Lonnie D. Robbins, Rt. 3, Box 148-B, Catlettsburg, Kentucky 41129—Boyd
31. Lloyd Shepherd, RR 855, Box 51, David, Kentucky 41616—Floyd
32. Malcom Brown, St. Rt. 5, Prestonsburg, Kentucky 41653—Floyd
33. Olga Jackson, Royalton, Kentucky 41464—Magoffin
34. Kelly Ward, Box C-31, Route 1, Prestonsburg, Kentucky 41653—Floyd
35. Kelly Ward, Box C-31, Route 1, Prestonsburg, Kentucky 41653—Floyd
36. Paul E. Risner, Royalton, Kentucky 41464—Magoffin
37. Robert Short, Pinetop, Kentucky 41843—Knott
38. Jim Lafferty, Jr., Rt. 3, Box 390, Prestonsburg, Kentucky 41653—Floyd
39. Edgal Shepherd, RR 1, Box 402, Prestonsburg, Kentucky 41653—Floyd
40. Larry A. Wireman, Royalton, Kentucky 41464—Magoffin
41. [3]James W. Wiler, Jr., 523 North 4th Street, Flatwoods, Kentucky 41139—Boyd
42. Honus White, Box 166, Hindman, Kentucky 41822—Knott
43. Sherry H. Risner, Gunlock, Kentucky 41632—Floyd
44. Belura Crider, St. Rt. 1, Box C-53, Prestonsburg, Kentucky 41653—Floyd
45. Dixie Johnson, Box 57, Hueysville, Kentucky 41640—Floyd
46. Rex Lovely, R#1, Box 152, Salyersville, Kentucky 41465—Magoffin
47. Dave Bowling, Box 24, Sassafras, Kentucky 41759—Knott
48. Leonard Stephenson, P.O. Box 45, West Prestonsburg, KY 41668—Floyd
49. Roy Ellis Conley, Box 48, Stambaugh, Kentucky 41257—Lawrence
50. Bill Whitlock, Rt. 1, Box 434A, Catlettsburg, Kentucky 41129—Boyd
51. Betty Collins, Ivel, Kentucky 41642—Floyd
52. Robert Calhoun, Box 35, Talcum, Kentucky 41765—Knott
53. Odell Adams, Box 43A, Pinetop, Kentucky 41843—Knott
54. Onas Amburgey, Box 51, Rt. 1, Mallie, Kentucky 41836—Knott
55. Bill V. Terry, Hindman, Kentucky 41822—Knott
56. Nova Leigh Hammonds, Route 3, Watergap Road, Prestonsburg, Kentucky 41653—Floyd
57. Donald Ray Hale, Box 408, Royalton, Kentucky 41464—Magoffin
58. Ransom Greer, Rt. 5, Prestonsburg, Kentucky 41653—Floyd
59. Fred Ross, Box 337-Route 201, Blaine, Kentucky 41124—Lawrence
60. Robert D. Holder, Rt. 3, Box 215D, Catlettsburg, Kentucky 41129—Boyd
61. Robert C. Wilkinson, Ponderosa Estates, Rt. 4, Box 268D, Catlettsburg, Kentucky 41129—Boyd
62. Grant Horn, Hueysville, Kentucky 41640—Floyd
63. Ballard Jones, Box 384, Prestonsburg, Kentucky 41653—Floyd
64. John Adams, Pinetop, Kentucky 41843—Knott
65. Ralph B. Wells, Box 106, Prestonsburg, Kentucky 41653—Floyd
66. Henry Miller, P.O. Box 106, Prestonsburg, Kentucky 41653—Floyd
67. Bufford Owens, Lackey, Kentucky 41643—Floyd
68. Ell Howard, Rt. 1-B, Box 17, Hueysville, Kentucky 41640—Floyd
69. Billy Ray Perry, Box C-11, Pinetop, Kentucky 41843—Knott
70. Cora Bolen, Box 7, Vest, Kentucky 41772—Knott

[1] Tap will be located in Hindman, Kentucky 41822.
[2] Tap will be located in Catlette Creek, Boyd County, Kentucky.
[3] Tap will be located in Catlettsburg, Kentucky 41129.

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71. Claude Amburgey, Emmalena, Kentucky 41740—Knott
72. Keith Slone, Rt. 2, Box 491, Catlettsburg, Kentucky 41129—Boyd
73. Fred Meade, Rt. 4, Box 249L, Catlettsburg, Kentucky 41129—Boyd
74. Donald Ray Amburgey, General Delivery, Emmalena, Kentucky 41740—Knott
75. James Prater, St. Rt. No. 5, Prestonsburg, Kentucky 41653—Floyd
76. Joe Daniel, Jr., Box 494, Lovely, Kentucky 41231—Johnson
77. Tom O'Bryan, Rt. 201, Sitka, Kentucky 41255—Johnson
78. Willie Ray Wilson, Webbville, Kentucky 41180—Lawrence
79. Ronnie Newsome, Rt. 3, Box 380, Prestonsburg, Kentucky 41653—Floyd
80. Thomas M. Devaney, Rt. No. 3, Box 289, Catlettsburg, Kentucky 41129—Boyd
81. Marvin Lewis, General Delivery, Tram, Kentucky 41663—Floyd
82. Albert Alan King, Rt. 1, Box 1195, Coldwater Branch, Harold, Kentucky 41635—Floyd
83. William N. Walters, Rt. 2, Box 78, Catlettsburg, Kentucky 41129—Boyd
84. Sondra Lee Risner, Rt. 2, Box 146, Hindman, Kentucky 41822—Knott
85. Sue A. Owens, Box 43, Hueysville, Kentucky 41640—Floyd
86. Dickie Jarvis, Star Rt. 1, Box 23-19, Prestonsburg, Kentucky 41653—Floyd
87. R. Percy Elkins, P.O. Box 98, Hazard, Kentucky 41701—Knott
88. Kindle Joseph, Box 124, Royalton, Kentucky 41464—Magoffin
89. Woodie Caudill, R. 3, Box 445, Prestonsburg, Kentucky 41653—Floyd
90. Vida Combs, Box No. 7, Sassafras, Kentucky 41759—Knott
91. J. R. Daniels, Jr., Rt. 3, Box 215-B3, Catlettsburg, Kentucky 41129—Boyd
92. Thurman Lafferty, Rt. 3, Box 380, Prestonsburg, Kentucky 41653—Floyd
93. Kenneth Ray Williams, P.O. Box 2297, Pinetop, Kentucky 41843—Knott
94. James E. Adkins, Ashland, Kentucky 41101—Boyd
95. J. R. Daniels, Ashland, Kentucky 41101—Boyd
96. Donny Williams, Royalton, Kentucky 41464—Magoffin
97. Ronnie Robinette, Rt. 3, Box 300, Catlettsburg, Kentucky 41129—Boyd
98. Mrs. Nola Stumbo, West Prestonsburg, KY 41668—Floyd

Applicant states that pursuant to a Kentucky statute, the 98 customers are entitled to gas service because they own property on or over a producing well or gas gathering pipeline. Moreover, it is stated, the statute provides that the gas service be furnished at rates and minimum monthly charges determined by the Public Service Commission of Kentucky. Applicant states that in accordance with the statute the customer would be responsible for constructing and maintaining service lines while it would provide and maintain the necessary gas meters.

It is asserted that the average cost of the taps is $225 for a total cost of $22,050 which would initially be financed from internally generated funds.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 29, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Art and Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32876 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-7-000]

Kansas City Power & Light Co.; Filing

October 14, 1980.

Take notice that on October 6, 1980, Kansas City Power & Light Company ("KCPL) tendered for filing First Amendatory Agreement dated September 11, 1980, to the Municipal Participation Agreement dated August 11, 1975, between KCPL and the City of Osawatomie, Kansas ("City"). This Agreement amends KCPL's Rate Schedule FERC No. 77.

KCPL states that the purpose of this filing is to eliminate the contractural provisions related to Transfer Service so as to conform the Municipal Participation Agreement to the terms of the Settlement Agreement achieved in FERC Docket Nos. ER76-131, ER76-552 and ER78-25. By Order dated February 21, 1980, the FERC accepted the Settlement Agreement to become effective June 1, 1979, and KCPL proposes that the First Amendatory Agreement filed herein also be made effective as of June 1, 1979.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 3, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32992 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RP80-141]

Locust Ridge Gas Co.; Order Accepting for Filing Certain Tariff Sheets and Suspending Proposed Rate Increase Subject to Refund and Summarily Disposing Limited Issue

Issued: October 9, 1980.

On September 9, 1980, Locust Ridge Gas Company (Locust Ridge) filed revised tariff sheets proposing a rate increase which would reflect an increase in the gathering component to Michigan Wisconsin Pipeline Company from 16.96 cents per MMBtu to 61.98 cents per MMBtu, a 265% increase, resulting in increased revenues of approximately $898,177. The proposed effective date is October 10, 1980. The proposed increase rates are predicated on a test period based on actual costs for the twelve month period ending May 31, 1980, as adjusted for known increases scheduled to occur within nine months of that date or February 28, 1981.

Locust Ridge claims the proposed increase is necessary to recover the increased costs of operation and to earn a reasonable return on investment.

Locust Ridge calculated return expense in this application by capitalizing prior losses and proposing to earn a 15% return on this hypothetical equity capitalization. In addition, Locust Ridge has filed as an alternative, interim Revised Tariff Sheet No. 1-A which excludes the claimed equity return and Federal Income Tax on such return. Locust Ridge has requested a one-day suspension of the interim tariff sheet.

Based upon a review of Locust Ridge's filing, the Commission finds that the proposed tariff sheets have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission shall accept Locust Ridge's filing, suspend the effective date of the proposed tariff sheets, and make them subject to refund and the conditions outlined below.

A recent decision of the Court of Appeals for the District of Columbia Circuit has led the Commission to reassess the standards that it used to fix the appropriate duration of a suspension period as we may impose with respect to rate increase filings.[1] We have done this as a predicate to our acting on this matter.

Though the regulatory schemes that the Commission administers involve a subtle and difficult balancing of producer and transporter interests with consumer and shipper interests, their primary purpose is to protect the consumer and shipper against excessive rates and charges. Hence, it is our view that the discretionary power to suspend should be exercised in a way that maximizes this protection.

The decision to suspend a proposed rate increase rests on the preliminary finding that there is good cause to believe that the increase may be unjust and unreasonable or that it may run afoul of other statutory standards. The governing statutes say that "*any* (emphasis added) rate or charge that is not just and reasonable is hereby * * * declared unlawful."[2] This declaration places on the Commission a general obligation to minimize the incidence of such illegality.

Based on the foregoing the Commission has determined that, in the exercise of its rate suspension authority, rate filings should normally be suspended and the *status quo ante* preserved for the maximum period permitted by statute in circumstances where preliminary study leads the Commission to believe that there is substantial question as to whether a filing complies with applicable standards.

Particular circumstances may warrant shorter suspensions. Situations present themselves from time to time in which rigid adherence to the general policy of preserving the *status quo ante* for the maximum statutory period makes for harsh and inequitable results. Such circumstances are presented here. A one-day suspension is appropriate for the interim sheet on the basis of Locust Ridge's claim that its existing rates are inadequate for Locust Ridge to fully cover its out-of-pocket operating and interest costs. In addition, the Commission notes the special nature of this tariff sheet—it excludes any amount for equity return and associated taxes. Accordingly, we believe we should exercise our discretion to suspend the rate permitting the rate to take effect on October 11, 1980, subject to refund.

The Commission is not persuaded that particular circumstances exist with respect to the other tariff sheet. No showing has been made here that rigid adherence to the general policy for preserving the *status quo ante* for the maximum statutory period makes for harsh and inequitable results. Accordingly, we will suspend the Fourth Revised Sheet No. 1-A for a period of five months permitting the rate to take effect, subject to refund, on March 10, 1981.

Locust Ridge proposes in its Fourth Revised Sheet No. 1-A, but not in its interim sheet, a return calculation which deviates from traditional Commission methodology in that first, it provides for a dollar return of 10.5 percent on embedded debt cost and 15 percent on common equity and second, that the equity capitalization includes prior losses which Locust Ridge claims as "start-up costs" and on which Locust Ridge proposes to earn a 15 percent return. The claimed capitalization is more than double the adjusted rate base. Moreover, Locust Ridge does not use this capital structure to determine a rate of return to be applied to the net depreciated original cost rate base. Rather, Locust Ridge computes its allowed return dollars by multiplying 10.5 percent times the amount of debt outstanding in the hypothetical capitalization and then multiplies 15 percent times the equity figure in the hypothetical capitalization composed of their actual equity plus the capitalized losses. Then a tax component is computed and added to the "equity return."

For the reasons set forth below, we shall require, pursuant to Section 4 of the Natural Gas Act, that the proposed rates be modified to reflect elimination of the equity return and taxes associated with prior period losses. In requiring this change pursuant to Section 4 of the Natural Gas Act, the Commission notes that the hearing required by that section need not encompass a formal, evidentiary hearing when the matter presents issues solely of policy, not of law. In such cases, a hearing is not required, and the matter can be decided by summary disposition. *Tennessee Gas Pipeline Company* v. *FPC*, 561 F. 2d 955, 958 (D.C. Cir. 1977).

The matter pending before the Commission in this case does not raise any factual issues. The question presented is whether, as a matter of law, is it just and reasonable to have a tariff provision allowing the pipeline purchaser to recover past losses. In *Nader* v. *F.C.C.*,[3] the court held that regulated utilities may not set rates to recoup past losses. The Commission, therefore, accepts Locust Ridge's Fourth Revised Tariff Sheet No. 1-A on the condition that Locust Ridge file within 45 days of the issuance of this order, a revised tariff sheet reflecting elimination of the equity return and taxes associated with prior period losses; *i.e.*, that portion equal to the sum of (1) 15 percent times the portion of the equity component of the hypothetical capitalization equal to the prior period losses *plus* (2) taxes associated with that figure.

The Commission Orders:

(A) Subject to the conditions set forth below, Locust Ridge's interim Fourth Revised Sheet No. 1-A is accepted for filing and its effectiveness is suspended for one day until October 11, 1980, subject to refund.

(B) Pursuant to Section 4 of the Natural Gas Act, the Commission hereby summarily disposes of the legal issue of whether it is just and reasonable for Locust Ridge to have a tariff provision which includes the equity return and taxes associated with prior losses.

(C) Locust Ridge's Fourth Revised Sheet No. 1-A is accepted for filing and suspended for 5 months on the condition that within 45 days Locust Ridge files a Revised Tariff Sheet which eliminates the equity return and taxes associated with prior period losses to become effective March 10, 1981 subject to refund.

(D) The Commission Staff shall prepare and serve top sheets on or before January 12, 1981.

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[1] *Connecticut Light ond Power Compony* v. *Federal Energy Regulatory Commission*, ——F. 2d —— (D.C. Cir. May 30, 1980).

[2] Section 205(a) of the Federal Power Act. Section 4(e) of the Natural Gas Act, and Section 15 of the Interstate Commerce Act.

[3] *Noder* v. *F.C.C.* 520 F. 2d 182 (D.C. Cir. 1975).

V 45 O C 2 2 8 0 UMI

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-32880 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RP81-2-000]

Michigan Wisconsin Pipe Line Co.; Tariff Filing

October 10, 1980.

Take notice that on October 1, 1980, Michigan Wisconsin Pipe Line Company ("Michigan Wisconsin") tendered for filing "Amendment No. 1 to Agreement of August 4, 1977 Between High Island Offshore System and Michigan Wisconsin Pipe Line Company" which amends Article IV of Michigan Wisconsin's Rate Schedule X-64 to its F.E.R.C. Gas Tariff, First Revised Volume No. 2 to be effective November 1, 1980.

Michigan Wisconsin states that this filing is made to restate the original intent of Michigan Wisconsin and the High Island Offshore System ("HIOS") that in recalculating its rate to HIOS on the annual November 1 contractual redetermination date, Michigan Wisconsin would utilize the same rate of return as Michigan Wisconsin's current systemwide rate of return reflected in filed rates being collected by Michigan Wisconsin on the November 1 redetermination date, whether or not subject to refund. Michigan Wisconsin states that such amendment is being filed because the Presiding Administrative Law Judge in *Michigan Wisconsin Pipe Line Company*, Docket No. RP80-3, concluded in an initial decision dated August 21, 1980 that Rate Schedule X-64 does not permit Michigan Wisconsin to utilize its current systemwide rate of return, whether or not subject to refund, in the racalculation of its rate to HIOS on the annual November 1 redetermnination date.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 24, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32833 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RP81-2-000]

Michigan Wisconsin Pipe Line Co.; Supplement to Tariff Filing

October 15, 1980.

Take notice that on October 8, 1980, Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) tendered for filing First Revised Sheet No. 666 and Fourth Revised Sheet No. 667 of Rate Schedule X-64 of First Revised Volume No. 2 of its F.E.R.C. Gas Tariff, to be effective November 1, 1980.

Michigan Wisconsin states that this filing is being made to supplement its filing of October 1, 1980, at Docket No. RP81-2-000. On October 1, 1980, Michigan Wisconsin tendered for filing "Amendment No. 1 to Agreement of August 4, 1977 Between High Island Offshore System and Michigan Wisconsin Pipe Line Company" which amends Article IV of Michigan Wisconsin's aforementioned Rate Schedule X-64.

The revised Sheet Nos. 666 and 667 which have been revised to reflect this "Amendment No. 1" were not included in its filing of October 1, 1980. Therefore, Michigan Wisconsin is submitting them to the Commission at this time so that they may be considered in the context of its filing of October 1, 1980, at Docket RP81-2-000.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 24, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32983 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TC81-2-000]

Midwestern Gas Transmission Co.; Tariff Sheet Filings

October 10, 1980.

Take notice that on October 1, 1980, Midwestern Gas Transmission Company (Midwestern), 1100 Milam Building, Houston, Texas 77001, filed in Docket No. TC81-2-000, tariff sheets pursuant to Part 281 of the Commission's Regulations under the Natural Gas Policy Act of 1978 to become effective November 1, 1980, consisting of Original Sheet Nos. 108A and 108B and First Revised Sheet Nos. 113, 115, 116, 117, 125, and 128, to its FERC Gas Tariff, Third Revised Volume No. 1.

Midwestern states that the purpose of this tariff filing is to update its Index of End-Use Volumes to reflect changes in its customer's essential agricultural use requirements contained in Priority 2 of Midwestern's currently effective curtailment plan.

Midwestern also states that its filing includes a copy of the final report of its Data Verification Committee which found that the Indexes of End-Use Volumes was prepared in a uniform manner consistent with Order No. 29.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filings should on or before October 24, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32831 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-4-000]

Montaup Electric Co.; Filing

October 14, 1980.

The filing Company submits the following:

Take notice that Montaup Electric Company (Montaup) on October 3, 1980, tendered for filing a transmission service agreement between Montaup and the Newport Electric Corporation (Newport) under which Montaup transmits for Newport 10,000 kW of capacity and energy from Northeast Utilities' Middletown Unit No. 4 for the period from November 1, 1980, through October 31, 1985. Exhibit A to be transmitted, and exhibit I shows that Montaup's twleve months estimated revenues from transmission of that capacity and energy will total $49,104.

Montaup requests waiver of the Commission's sixty (60) day notice requirement in order to allow an effective date of November 1, 1980.

Copies of this filing have been served on Newport and the Massachusetts Department of Public Utilities.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedures (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 31, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32960 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-160]

Mountain Fuel Supply Co.; Amendment to Application

October 9, 1980.

Take notice that on September 10, 1980, Mountain Fuel Supply Company (Applicant), 180 East First South Street, Salt Lake City, Utah 84139, filed in Docket No. CP80-160 an amendment to its application in the instant docket filed pursuant to Section 7(c) of the Natural Gas Act so as to reflect the rendering of a long term gathering and transportation service with Natural Gas Pipeline Company of America (Natural) without the potential sale of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to perform a long term natural gas gathering and transportation service for Natural with redelivery to Natural being effected through the facilities of Colorado Interstate Gas Company (CIG). Pursuant to the parties' transportation agreement, to the extent practicable, thermally equivalent volumes would be accepted by Applicant and redelivered to Natural on a daily basis. Applicant asserts that CIG has advised it that a capacity constraint on its transmission system, particularly during winter season periods of peak demand, may render CIG unable to accept on a daily basis all of the gas available to be delivered by Applicant for Natural to CIG. Therefore it is stated Applicant and Natural entered into a delayed exchange agreement providing that Applicant would retain any volumes of gas rendered during any winter month (November through March) of 1979, 1980, or 1981 in which an imbalance occurs due to CIG's inability to receive the volumes tendered by Natural to Applicant. Applicant states that any such volumes of gas which it receives and cannot deliver to CIG during any winter months would be retained and delivered to CIG on a best-efforts basis during the summer months (April through October) of 1980, 1981 or 1982.

Applicant states that it and Natural have agreed in principle to amend their delayed exchange agreement of September 28, 1979, to the extent necessary and appropriate to eliminate the potential sales feature in order for such agreement to reflect and provide for a deferred volumetric exchange.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before October 29, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32875 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TC81-11-000]

National Fuel Gas Supply Corp.; Tariff Filings

October 10, 1980.

Take notice that on October 2, 1980, National Fuel Gas Supply Corporation (National Fuel), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. TC81-11-000 revised tariff sheets pursuant to Part 281 of the Commission's Regulations under the Natural Gas Policy Act of 1978 to become effective November 1, 1980.

National Fuel has filed as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 32(B), First Revised Sheet No. 32(C) and First Revised Sheet No. 32(D) superseding Original Sheet No. 32(B), Original Sheet No. 32(C) and Original Sheet No. 32(D), respectively.

Said revised tariff sheets are filed to update National Fuel's Index of Entitlements. Also submitted is the Final Report of National Fuel's Data Verification Committee.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filing should on or before October 24, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commissions's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32830 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-86]

Natural Gas Pipeline Co. of America; Petition To Amend

October 14, 1980.

Take notice that on September 29, 1980, Natural Gas Pipeline Company of America (Petitioner), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP80-86 a petition to amend the order issued February 6, 1980, pursuant to § 7(c) of the Natural Gas Act and § 157.7(b) of the Regulations thereunder (18 CFR 157.7(b)) so as to authorize the

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construction and operation of gas purchase facilities in excess of the total cost limitation of $20,000,000, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that it was authorized by order issued February 6, 1980, to construct and operate certain natural gas facilities with a maximum total cost of $20,000,000.

It is stated that 35 projects are at various stages of completion and would closely approximate the $20,000,000 total cost limitation.

Petitioner states it has identified ten other gas purchase facility projects which it plans to construct during the remainder of 1980. Petitioner requests amendment of the order of February 6, 1980, so as to authorize the construction and operation at a cost of $11,171,000 of the 10 projects.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 3, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32981 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-542]

Northern Natural Gas Co., Division of InterNorth, Inc.; Application

October 14, 1980.

Take notice that on September 9, 1980, Northern Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP80-542 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities to accommodate the delivery of natural gas to certain of its utility customers for ultimate sale in interstate commerce, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate three new delivery points for Peoples Natural Gas Company, Division of InterNorth, Inc. (Peoples), Wisconsin Gas Company and Iowa Public Service Company and to enlarge an existing delivery point serving a present Peoples' customer. It is asserted the new delivery points are required for the respective distributor to serve a new customer.

The proposed facilities would have a total estimated daily usage of 1,392 Mcf of natural gas and an annual usage of 48,532 Mcf of natural gas, it is asserted.

Applicant states that the cost to construct the proposed facilities is estimated at $75,900 to be financed by the appropriate utility.

Additional volumes to be delivered to the utilities through the proposed facilities are within present entitlements, it is asserted.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filing should, on or before November 3, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commissions's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32979 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-546]

Northern Natural Gas Co., Division of InterNorth, Inc.; Application

October 14, 1980.

Take notice that on September 11, 1980, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP80-546 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition and operation of certain existing intrastste pipeline facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to acquire by purchase from Tejas Gas Corp. (Tejas) and operate as part of its interstate transmission system an intrastate natural gas pipeline and appurtenances known as the Irion County Transmission System located in Irion, Tom Green and Sterling Counties, Texas.

Pursuant to a purchase agreement with Tejas dated August 28, 1980, Applicant would purchase Tejas' existing 8-inch, 6-inch and 4-inch lateral pipeline and appurtenances, it is stated. Applicant further states that the 8-inch pipeline is approximately 33 miles in length commencing in Irion County, following a north, northwesterly direction through Tom Green County, and terminating in Sterling County, Texas. The 4-inch lateral pipeline, approximately .8 miles in length, and the 6-inch lateral pipeline, approximately 1.7 miles in length, connect to the 8-inch pipeline in Irion County, it is said. In addition, Applicant proposes to acquire Tejas' 1,000 horsepower Irion County Compressor Station located in Irion County.

Applicant submits that it has acquired supplies of gas located in the vicinity of the Tejas system and has concluded the agreement with Tejas in order to avoid having to construct duplicate facilities to transport its gas.

Applicant would pay a cash consideration from its general corporate funds of $1,682,835 to Tejas for the facilities to be acquired, it is said.

Applicant asserts that it would connect to the Irion County transmission system pursuant to its budget authority.

Applicant states that the Irion County transmission system at present is being utilized by Tejas to transport natural gas purchased in Irion County by Valero Transmission Company (Valero) and Texas Utilities Fuel Company (Tufco). Applicant upon approval from the Commission for the purchase proposed herein, submits that it would provide similar transportation service for Valero and Tufco pursuant to Section 311(a)(1) of the Natural Gas Policy Act of 1978 and § 284.102 of the Commission's Regulations.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 3, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. It a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32967 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-11-000]

Pacific Gas & Electric Co.; Contract Filing

October 14, 1980.

The filing company submits the following:

Take notice that on October 6, 1980, Pacific Gas and Electric Company (PG and E) tendered for filing a contract dated August 8, 1980, entitled "Agreement for Sale of Electric Capacity and Energy by Pacific Gas and Electric Company to Shasta Dam Area Public Utility District" (Agreement). The Agreement provides for supplemental power deliveries from PG and E to Shasta Dam Area Public Utility District (District) in the event that District's current supplier, United States of America, Department of Energy (Department), is unable to satisfy District's full electric power requirements.

Copies of the filing were served upon District, Department, and the California Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, D.C. 20426 in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 3, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary,

[FR Doc. 80-32989 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-9-000]

Puget Sound Power & Light Co.; Filing

October 14, 1980.

Take Notice that on October 6, 1980; Puget Sound Power & Light Company (Puget) tendered for filing as an initial rate schedule, an Exchange Agreement between Puget and Pacific Gas and Electric Company (PG and E).

The Agreement sets forth the Terms and conditions under which Puget will make available capacity and energy to PG and E during the months of July and August 1980. This capacity and energy will help PG and E meet its anticipated heavy air-conditioning loads on its system this summer. PG and E will make available this capacity and energy to Puget during the months of December 1980 and January 1981.

A copy of the filing has been sent to Pacific Gas and Electric.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedures (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 3, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wish to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32986 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. RP64-34, et al.]

South Georgia Natural Gas Co., et al.; Filing of Pipeline Refund Reports and Refund Plans

October 15, 1980.

Take notice that the pipeline listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before October 31, 1980. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

Appendix

Filing date	Company	Docket No.	Type filing
Sept. 23, 1980.	South Georgia Natural Gas Co.	RP64-34	Report.
Sept. 26, 1980.	East Tennessee Natural Gas Co.	RP75-114	Report.

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Appendix—Continued

Filing date	Company	Docket No.	Type filing
Sept. 26, 1980.	Tennessee Gas Pipeline Co.	G-9279	Report.
Oct. 3, 1980.	Consolidated Gas Supply Corp.	RP72-157-035	Report.
Oct. 6, 1980.	South Georgia Natural Gas Co.	RP77-32	Report.

[FR Doc. 80-32962 Filed 10-21-80; 8:45 am]
BILLING CODE 6450-85-M

[Docket No. RP80-102-001]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 14, 1980.

Take notice that Southern Natural Gas Company (Southern) on October 2, 1980, tendered for filing proposed changes in its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2. The revised tariff sheets would result in an increase in jurisdictional sales and service by $69,211,007 annually over currently effective rates.

Southern states that on May 1, 1980, Southern filed a general rate increase in Docket No. RP80-102 to become effective on June 1, 1980. By its order issued May 30, 1980, the Commission accepted revised tariff sheets for filing and suspended the use of certain sheets until November 1, 1980 subject to certain conditions.

Additionally, Southern has reflected the current level of purchased gas costs as represented in Southern's Purchased Gas Adjustment (PGA) filing of July 24, 1980 and further, Southern has eliminated storage costs associated with the Bear Creek Storage Service which was included in the original filing.

Southern requests that the proposed tariff sheets be allowed to be substituted for the tariff sheets previously suspended by the Commission's order of May 30, 1980. Since the proposed tariff sheets contain the same costs included in Southern's rate filing, modified in accordance with the Commission's May 30, 1980 order, Southern requests that the Commission grant any such waivers as are necessary so as to allow the proposed tariff sheets to become effective as contemplated by the Commission in Ordering Paragraph (B) of that order.

Copies of this filing have been served upon Southern's jurisdictional customers, interested state public service commissions and all parties of record.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 24, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-32957 Filed 10-21-80; 8:45 am]
BILLING CODE 6450-85-M

[Docket No. RP81-3-000]

Southwest Gas Corp.; Proposed Changes in FERC Gas Tariff

October 14, 1980.

Take notice that Southwest Gas Corporation ("Southwest") on October 6, 1980 tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1. The proposed changes would increase revenues from jurisdictional sales and service by $1,247,525 based on the twelve-month period ending July 31, 1981, as adjusted.

The reason for the proposed increase in rates is to compensate Southwest for increases in various items of cost, such as capital, labor, materials and supplies, taxes, and including a claimed rate of return of 13.35 percent.

Copies of the filing were served upon Southwest's jurisdictional customers, Sierra Pacific Power Company and CP National, including the California Public Utilities Commission and the Public Service Commission of Nevada.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 24, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-32958 Filed 10-21-80; 8:45 am]
BILLING CODE 6450-85-M

[Project No. 3472]

Southwire Co.; Application for Preliminary Permit

October 16, 1980.

Take notice that Southwire Company (Applicant) filed on September 15, 1980, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)) for proposed Project No. 3472 to be known as the Wyre Wynd Project located on the Quinebaug River in Jewett City, new London County, Connecticut. Correspondence with the Applicant should be directed to: Fred W. Stackpole, Vice President, Wyre Wynd, Inc., Jewett City, Connecticut 06351.

Project Description—The proposed project would consist of: (1) an existing 19-foot high, 455-foot long concrete dam; (2) an existing reservoir with negligible storage capacity; (3) an existing 260-foot long, 60-foot wide canal with a 160-foot long overflow spillway along the west side of the canal; (4) a new powerhouse to be located at the end of the canal containing turbine-generator units with a total rated capacity of 1.2 MW; and (5) appurtenant facilities. Total energy produced at the project would amount to 6,500,000 KWH annually saving the equivalent of 10,700 barrel of oil or 3,000 tons of coal.

Purpose of Project—Energy produced at the project would be used in the Applicant's factory or sold to the local utility company.

Proposed Scope and Cost of Studies under Permit—The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $135,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 19, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 18, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c), (as amended 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d), (as amended, 44 FR 61328, October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR, 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 19, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-32960 Filed 10-21-80; 8:45 am]
BILLING CODE 6450-85-M

[Docket No. CP75-376]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Petition To Amend Further

October 9, 1980.

Take notice that on September 22, 1980, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Petitioner), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP75-376 a petition to amend further the order issued in the instant docket on July 24, 1975,[1] as amended, so as to authorize the delivery of natural gas to Haverhill Gas Company (Haverhill) under a new gas sales contract providing for revised daily volume limits by delivery points, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that by order issued December 2, 1975, the Commission amended its order of July 24, 1975, *inter olia*, to authorize it to serve Haverhill under its Rate Schedule DC-6. Petitioner further states that pursuant to a gas sales contract dated December 2, 1975, it sells a contract demand of 14,519 Mcf of natural gas per day to Haverhill and provides delivery as follows:

[In thousand cubic feet]

Delivery points	Daily volume limits
Wenham	2,500
Essex	1,200
Haverhill	12,669

Petitioner submits that the total of the daily volume limits exceeds Haverhill's contracted demand of 14,519 Mcf per day in order to provide Haverhill with operational flexibility among delivery points but that Haverhill is not entitled to take on any day a total of more than 14,519 Mcf at all delivery points.

Petitioner states that on September 16, 1980, it entered into an amended agreement with Haverhill which provides for revised daily volume limits by delivery points as follows:

[In thousands cubic feet]

Delivery point	Daily volume limit
Wenham	3,700
Essex	2,000
Haverhill	12,669

Petitioner asserts that such revised service would not increase or decrease the annual volumetric limitation received by Haverhill. It is further asserted that there would be no impact on Petitioner's other customers as a result of the changes in service herein.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before October 29, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (19 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (19 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-32878 Filed 10-21-80; 8:45 am]
BILLING CODE 6450-85-M

[Docket No. TC81-4-000]

Tennessee Gas Pipeline Co., a Divison of Tenneco Inc.; Tariff Sheet Filings

October 14, 1980.

Take notice that on October 1, 1980, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), Tenneco Building, P.O. Box 2511, Houston, Texas 77001, filed in docket No. TC81-4-000, tariff sheets pursuant to Part 281 of the Commission's Regulations under the Natural Gas Policy Act of 1978 to become effective November 1, 1980, consisting of Original Sheet Nos. 45A and 113A, First Revised Sheet Nos. 5, 23, 25, 28, 29, 30, 42, 55, 82, 98, 99, 102, 104, 105, and 126, Second Revised Sheet Nos. 2, 4, 9, 10, 14, 16, 22, 31 through 34, 43, 57, 61, 87, 92, 93, 96, 111, 113, 118, 121 and 122, to its FERC Gas Tariff, Original Volume No. 1A.

Tennessee states that the purpose of this filing is to update its index of End-Use Volumes to reflect changes in its customers' essential agricultural use

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

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requirements. The filings indicate that the net change in its system-wide Priority 2 volumes is an increase of 3,900,000 Mcf or 8 percent. The total in Priority 2 would be 56,200,000 Mcf. A significant portion of the increase would be due to the inclusion of volumes attributable to the U.S. Department of Agriculture's new definition of process fuel. Otherwise, according to the filings, most of the increases are due to increased requirements of existing customers or the addition of new customers that qualify as essential agricultural users.

Tennessee also states that its filing includes a copy of the final report of its Data Verification Committee which found that the revision to the Index of End-use Volumes was prepared in a uniform manner consistent with Order No. 29.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filings should on or before October 24, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20462, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any peron wishing to become a party to a proceeding or to participate as a party in any hearing therin must file a petition to intervene in accordance with the Commissions' Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32955 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TC80-95]

Tennessee Natural Gas Line, Inc.; Tariff Sheet Filings

October 10, 1980.

Take notice that on October 1, 1980, Tennessee Natural Gas Lines, Inc. (TNGL), 2000 Parkway Towers, Nashville, Tennessee, 37219, filed in Docket No. TC80-95, tariff sheets pursuant to Part 281 of the Commission's Regulations under the Natural Gas Policy Act of 1978 to become effective November 1, 1980, consisting of Second Revised Sheet Nos. 32, 33, and 34 to its FERC Gas Tariff, First Revised Volume No. 1.

TNGL states that the purpose of this filing is to update its Index of End-Use Volumes to reflect changes in its customers' essential agricultural uses.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filings should on or before October 24, 1980, file with the Federal Energy Regulation Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32829 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-573]

Texas Gas Transmission Corp.; Application

October 9, 1980.

Take notice that on September 23, 1980, Texas Gas Transmission Corporation, P.O. Box 1160, Owensboro, Kentucky 42301, filed in Docket No. CP80-573 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the addition of a new delivery point and for permission and approval to abandon service to Louisiana Gas Service Company (Louisiana Gas) at a certain delivery point, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to abandon the sale of up to 1,200 Mct of natural gas per day to Louisiana Gas for resale to Pellets Inc. (Pellets) which has ceased its operations. Such gas was delivered to Louisiana Gas at Mer Rouge, Louisiana.

Applicant further proposes to use the Mer Rouge delivery point to provide an additional delivery point to Louisiana Gas under an existing service agreement between the parties dated September 1, 1970. The proposed service would enable Louisiana Gas to serve an existing essential agricultural plant and other high-priority users. Applicant asserts that construction of new facilities would not be necessary nor would there be an increase in Louisiana Gas' existing contract demand and quantity entitlement.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 29, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.70). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32877 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA80-110]

Thunderbird Chevron Service; Filing of Petition for Review Under 42 U.S.C. 7194

October 14, 1980.

Take notice that Thunderbird Chevron Service on September 11, 1980, filed a Petition for Review under 42 U.S.C. 7194(b) (1977) Supp. from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before October 28, 1980, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before October 28, 1980, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W. Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection a Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32977 filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RP72-99]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

October 10, 1980.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing Third Revised Sheet No. 229 to Second Revised Volume No. 1 of Transco's FERC Gas Tariff. This tariff sheet, which is proposed to be effective November 1, 1980, provides for increases in Annual Quantity Entitlements totalling 250,177 dekatherms (dt) for five small volume customers which requested such increases in accordance with Article VI of Transco's "Settlement Agreement as to Curtailment Rules" approved and adopted by the Commission in the above-referenced docket.

Transco states that the foregoing increases in entitlements for customers which purchase under Transco's Rate Schedule G and OG are being proposed in accordance with the provisions set forth in Section 13.2(b)(ii) of the General Terms and Conditions of Transco's FERC Gas Tariff, Second Revised Volume No. 1.

The Company states that copies of the filing have been mailed to each of its jurisdictional customers and interested State Commissions and to parties to Transco's curtailment proceeding in Docket No. RP72-99.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 24, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32834 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-562]

United Gas Pipe Line Co.; Application

October 9, 1980.

Take notice that on September 19, 1980, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP80-562 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Chevron Chemical Company (Chevron) and the construction and operation of related facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport up to 12,000 Mcf of natural gas per day for Chevron for a term of two years and to construct and operate facilities necessary therefor pursuant to a gas transportation agreement between it and Chevron dated August 19, 1980.

Applicant submits that Chevron has acquired a new supply of natural gas in St. Mary Parish, Louisiana, attributable to the interest of Trunkline Gas Company (Trunkline). In order to transport gas for Chevron, Applicant proposes to construct and operate the necessary measuring and regulating facilities on its existing 16-inch Paradis Field Main Line No. 2 and 30-inch Lirette-Mobile Line located in St. Charles Parish, Louisiana, it is said. It is asserted that construction of the proposed facilities is estimated to cost $100,000 for which costs Chevron has agreed to reimburse Applicant and that after such reimbursement of costs Chevron would own the measuring and regulating facilities proposed herein.

It is stated that Chevron would deliver or cause to be delivered the subject gas to Applicant at an existing point of interconnection between facilities of Applicant and Trunkline in St. Mary Parish, Louisiana, and/or in LaSalle Parish, Louisiana. Applicant asserts that it would then redeliver to Chevron equivalent quantities of less volumes attributable to fuel and company-used gas, at the outlet side of the regulating station proposed herein.

Applicant states that for the transportation service Chevron would pay it an amount per Mcf equal to the rate in effect from time to time in Applicant's Southern or Northern Rate Zones as applicable less 2.3 percent for fuel and company-used gas. Applicant's current Southern and Northern Zone transportation rates are 13.68 and 19.32 cents, respectively, it is said.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 29, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the

matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kennth F. Plumb,

Secretary.

[FR Doc. 80-32827 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA81-2-000]

Upper Adams School District; Filing of Petition for Review Under 42 U.S.C. 7194

October 14, 1980.

Take notice that Upper Adams School District on October 6, 1980, filed a Petition for Review under 42 U.S.C. 7194(b) (1977) Supp. from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before October 28, 1980, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before October 28, 1980, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W. Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32978 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3426]

Water Power Development Corp.; Application for Preliminary Permit

October 15, 1980.

Take notice that Water Power Development Corporation (Applicant) filed September 4, 1980, an application for preliminary permit [pursuant to the Federal Power Act 16 U.S.C. §§ 791(a)-825(r)] for proposed Project No. 3426 to be known as the Hopkinton-Everett Project located on the Piscataquog and Contoocook Rivers near the Towns of Hopkinton and Weare, Merrimack and Hillsborough Counties, New Hampshire. Correspondence with the Applicant should be directed to: Mr. Robert L. Winship, Director, Water Power Development Corporation, 141 Milk Street, Boston, Massachusetts 02109.

Project Description—The proposed project would consist of two developments described as follows:

(A) The Everett Development would utilize the existing Everett flood control dam and reservoir owned by the U.S. Army Corps of Engineers and would consist of a new powerhouse containing a single 215-KW turbine-generator and appurtenant facilities.

(B) The Hopkinton-Hoaque-Sprague Development would utilize the existing Hopkinton flood control dam and reservoir owned by the U.S. Army Corps of Engineers and the Hoaque-Sprague dam, located immediately below the Hopkinton dam, owned by the Hoaque-Sprague Company, would consist of: (1) three existing inletgates located at the Hoaque-Sprague dam; (2) an existing 400-foot long, 40-foot wide, 10 to 11 foot deep canal; (3) two existing eight-foot diameter, 200-foot long steel penstocks; (4) an existing powerhouse containing a single 400-KW turbine-generator; and (5) appurtenant facilities. Applicant would study the feasibility of the installation of additional capacity which would result in a total rated capacity of 800-KW at the development.

Purpose of Project—Energy generated at the project would be sold to the Public Service Company of New Hampshire when not used at the site.

Proposed Scope and Cost of Studies under Permit—The work proposed under this preliminary permit would include preparing engineering plans, and an environmental assessment. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the work to be performed under this preliminary permit would cost $50,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 24, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 23, 1981. A notice of intent must conform with the requirements of 18 CFR § 4.33 (b) and (c), (as amended 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR, § 4.33 (a) and (d), (as amended, 44 FR 61328, October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR, § 1.8 or § 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 24, 1980. The Commission's address is: 825 North Capitol Street NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32945 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85

[Docket No. RP81-4-000]

West Lake Arthur Corp.; FERC Gas Tariff

October 14, 1980.

Take notice that West Lake Arthur Corporation (WLAC), on October 7, 1980, tendered for filing a proposed FERC Gas Tariff, Original Volume No. 1. The proposed rates are based on the period ending June 30, 1980, as adjusted, for jurisdictional revenues of $1,773,974.

WLAC states that the proposed rates are necessary to permit it to recover its jurisdictional cost of service for the test period ended June 30, 1980, as adjusted. The cost of service reflects rates as contained on Original Sheet No. 4 of WLAC's proposed FERC Gas Tariff.

Copies of this filling have been served upon WLAC's jurisdictional customer and the Public Service Commission of the State of Louisiana.

Any person desiring to be heard or protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All petitions or protests should be filed on or before October 24, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32954 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3415]

West Virginia Renewable Resources, Inc.; Application for Preliminary Permit

October 16, 1980.

Take notice that West Virginia Renewable Resources, Inc. (Applicant) filed on September 2, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for proposed Project No. 3415 to be known as R. D. Bailey Project located on the Guyandot River in Mingo and Wyoming Counties, West Virginia. Correspondence with the Applicant should be directed to: Jeffrey M. Kossak, West Virginia Renewable Resources, Inc., Suite 1900, 14 Wall Street, New York, New York 10005.

Project Description—The proposed project would utilize the existing U.S. Army Corps of Engineers' R. D. Bailey Dam and would consist of (1) a penstock utilizing the existing outlet works tunnel near the left bank; (2) a powerhouse containing generating units having a rated capacity of 5,000 kW; (3) a tailrace; (4) a transmission line; and (5) appurtenant facilities. Applicant estimates the annual generation would average about 22,000,000 kWh.

Purpose of Project—Applicant proposes to determine a purchaser for project energy from studies to be conducted during the preliminary permit period.

Proposed Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for period of three years during which time it would prepare studies of the hydraulic, construction, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $55,500.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 19, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 17, 1980. A notice of intent must conform with the requirements of 18 CFR 1.33 (b) and (c), (as amended, 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR, 4.33 (a) and (d), (as amended, 44 FR 61328, October 25, 1979.)

Comments, Protest, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR, 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 19, 1980. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32971 Filed 10-21-80; 8:45 am]

BILLING CODE 6450-85-M

V 4 5 O C 2 2 8 0 UMI

[Docket No. TA81-1-52 (PGA81-1]

Western Gas Interstate Co.; Proposed PGA Rate Adjustment

October 10, 1980.

Take notice that on Sept. 30, 1980, Western Gas Interstate Company ("Western") filed herein Fifteenth Revised Sheet No. 3A to its FERC Gas Tariff, Original Volume No. 1. Said tariff sheet is proposed to become effective on November 1, 1980.

Western states the proposed increase in rates is being filed in accordance with its Tariff's PGA clause which permits the recovery of increases in the cost of gas and of unrecovered purchased gas cost. Western further states the proposed Purchase Gas Cost Adjustment for the Northern Division is 77.66 cents per Mcf; for the Western Division it is 24.69 cents per Mcf; and for the Southern Division it is <1.49> cents per Mcf. The proposed surcharge adjustment is 21.09 cents per Mcf for the Northern Division; 3.98 cents per Mcf for the Western Division and 7.48 cents per Mcf for the Southern Division. The surcharge adjustments will only be effective over the six-month period November 1, 1980 through April 30, 1981.

Western states that copies of this filing were served upon Western's transmission system customers and the interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 24, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-32832 Filed 10-21-80; 8:45 am]
BILLING CODE 6450-85-M

[Docket No. ER81-6-000]

Wisconsin Power & Light Co.; Filing

October 14, 1980.

The filing Company submits the following:

Take notice that on October 6, 1980, Wisconsin Power and Light Company (WPL) tendered for filing an Amendment to the Wholesale Power Contract dated September 2, 1980, between the City of Cuba City (Grant Count), Wisconsin and WPL. WPL states that this Amendment proposes to modify WPL FPC Rate Schedule #79 (as supplemented).

WPL requests a proposed effective date of September 2, 1980 and, therefore, requests waiver of the notice requirements of the Commission's regulations. WPL states that a copy of the Amendment to the Wholesale Power Contract and the filing have been provided to the City of Cuba and the Public Service Commission of Wisconsin.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 3, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kennety F. Plumb,
Secretary.

[FR Doc. 80-32987 Filed 10-21-80; 8:45 am]
BILLING CODE 6450-85-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-66075; PH-FRL 1640-2]

Certain Pesticide Products; Intent To Cancel Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice lists the name of firms who have requested voluntary cancellation of registration of their pesticide products as provided for in section 6(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended.

EFFECTIVE DATE: November 21, 1980.

ADDRESS: Written comments to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 (202-755-8050).

FOR FURTHER INFORMATION CONTACT: Lela Sykes (202-426-8540).

Supplementary information: EPA has been advised by the following firms of their intent to voluntarily cancel registration of their pesticide products.

EPA reg. No.	Product name	Registrant	Date reg.
99-97	Watkins Mothproofer Inproved with RBA	Watkins Inc., 150 Liberty St., Winona, MN 55987.	February 16, 1972.
241-64	Malathion 4 percent Dust Perthane 5 percent Dust.	American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540.	July 20, 1961.
477-279	Farmrite Perthane 4 EC	Central Chemical Corp., P.O. Box 918, Hagerstown, MD 21740.	December 23, 1969.
787-41	Pro-Tec License Liquid Mothproofing for Drycleaning.	Adco Inc., P.O. Box 999, Sedalia, MO 65301.	July 30, 1974.
4822-6	Raid Moth Proofer	S.C. Johnson & Sons, Inc., 1524 Home St., Racine, WI 53403.	November 16, 1955.
4822-146	Raid Mothproofer Pressurizer	Do	September 18, 1875.
10130-2	Rose Formula 55 M Moth Spray	Rose Exterminator Co., P.O. Box 1402, Troy, MI 48099.	June 24, 1968.
524-117	Stop Scald	Monsanto Co., 1101 17th St. NW., Washington, DC 20036.	July 8, 1960.
4185-433	Borden Nutro New Kil-All	Smith Douglas Div., Borden Chemical, Borden Inc., 5100 Virginia Beach Blvd., Norfolk, VA 23501.	June 20, 1969.
6311-5	Stock 6840-530-4762 Rodenticide Bait Anticoagulant Warfarin.	Tyler Products, 4525 5th St. NE., Puyallup, WA 98371.	December 21, 1967.
6311-6	Stock 6840-753-4973 Rodenticide Bait Anticoagulant Pivalyl.	Do	January 18, 1968.
6311-7	Stock 6840-753-4972 Rodenticide Anticoagulant Universal Concentrate.	Do	February 8, 1968.
6311-8	Stock 6840-L89-4664 Rodenticide, Diphacin, Bait Blocks Rodenticide.	Do	May 13, 1968.

The Agency has agreed that such cancellation shall be effective November 21, 1980, unless within this time the registrant, or other interested person with the concurrence of the registrant, requests that the registration be continued in effect. The registrants were notified by certified mail of this action.

The Agency has determined that the sale and distribution of these products produced on or before the effective date of cancellation, may legally continue in commerce until the supply is exhausted, or for one year after the effective date of cancellation, whichever is earlier; provided that the use of these products is consistent with the label and labeling registered with EPA. Furthermore, the sale and use of existing stocks have been determined to be consistent with the purposes of FIFRA as amended. Production of these products as pesticide formulations after the effective date of cancellation will be considered to be a violation of the Act.

Requests that the registration of these products be continued may be submitted in triplicate to the Process Coordination Branch, Registration Division (TS-767), Office of Pesticide Programs, Environmental Agency, 401 M St. SW Washington, DC 20460.

Comments may be filed regarding this notice. Written comments should bear a notation indicating the document control number "[OPP-66075]" and the specific registration number. Any comments filed regarding this notice will be available for public inspection in the Document Control Office at the above address from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

(Sec. 6(a)(1) of FIFRA as amended 86 Stat. 973 89 Stat. 751, 7 U.S.C. 136))

Dated: October 10, 1980.

James M. Conlon,
Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80-32891 Filed 10-21-80; 8:45 am]
BILLING CODE 6560-01-M

[OPP-50502; PH-FRL 1640-01]

Elanco Products, Co.; Issuance of Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA has issued an experimental use permit to the following applicant. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767), Office of Pesticide Programs, Rm. E-351, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, (202-755-1397).

1471-EUP-67. Elanco Products Co., a Division of Eli Lilly Co., P.O. Box 1750, Indianapolis, IN 46206. This experimental use permit allows the use of 704 pounds of the herbicide fluridone (1-methyl-3-phenyl-5-[3-(trifluoromethyl)phenyl]-4-(1*H*)-pyridinone) on ponds and lakes to evaluate control of various aquatic weeds. A total of 437 surface acres are involved. The program is authorized in the 48 contiguous States. The program is effective from August 20, 1980 to August 20, 1981. A temporary tolerance for residues of fluridone in fish has been established.

Persons wishing to review the experimental use permit are referred to the Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M St., SW., Washington, DC 20460. Inquiries regarding this permit should be directed to the contact person given above. It is suggested that interested persons call before visiting the EPA Headquarters office so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

(Sec. 5, 92 Stat. 819 as amended, (7 U.S.C. 136))

Dated: October 14, 1980.

Robert Brown,
Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-32890 Filed 10-21-80; 8:45 am]
BILLING CODE 6560-01-M

[OPTS-51160; TSH-FRL 1639-6]

Esterified Polyamic Acid; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the **Federal Register** certain information about each PMN within 5 working days after receipt. This Notice announces receipt of a PMN and provides a summary.

DATE: Written comments by November 28, 1980.

ADDRESS: Written comments to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW., Washington, D.C. 20460, (202-755-8050).

FOR FURTHER INFORMATION CONTACT: George Bagley, Chemical Control Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-210, SW., Washington, D.C. 20460, (202-426-3936).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the **Federal Register** of May 15, 1979 (44 FR 28558—Initial) and July 29, 1980 (45 FR 50544—Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the **Federal Register** issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the

company claims confidentiality for the specific chemical identity of use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the **Federal Register**.

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use(s), the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The Section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register**.

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, a summary of the data taken from the PMN is published herein.

Interested persons may, on or before November 28, 1980, submit to the Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–447, 401 M St., SW, Washington, DC 20460, written comments recording this notice. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS–51160]" and the PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: October 15, 1980.

Warren R. Muir,

Deputy Assistant Administrator for Toxic Substances.

PMN 80–268. The following summary is taken from data submitted by the manufacturer in the PMN.

Closed of Review Period. December 28, 1980.

Manufacturer's Identity. E.I. du Pont de Nemours & Co., Inc., 1007 Market St., Wilmington, DE 19898.

Specific Chemical Identity. Claimed confidential business information. Generic name provided. Esterified polyamic acid.

Use. Isolated intermediate.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties. Claimed confidential business information.

Toxicity Data. Primary skin irritation and sensitization tests (guinea pigs)—Non-irritant and non-sensitizer at 5% suspension. Mild to non-irritant at 50% suspension.

Occupational Exposure.

Activity	Potential route(s)	Number of potentially exposed workers	Maximum duration of exposure
Manufacture..	Dermal	2/shift	1 shift/day; 8 hours/shift; 5 days/year.
Customer.....	Dermal	2/shift	2 shifts/day; 8 hours/shift; 250 days/year.

Environmental Release/Disposal. Manfacture. E.I. du Pont states that environmental release will be minimal and incidental; solid waste from filtering operation is incinerated.

Customer's site. The manufacturer states that environmental release will be minimal; waste will be drummed by contractor for disposal.

[FR Doc. 80–32889 Filed 10–21–80; 8:45 am]

BILLING CODE 6560–01–M

[ER–FRL 1639–7]

Wastewater Treatment System in State of New York; Intent To Prepare an Environmental Impact Statement

AGENCY: U.S. Environmental Protection Agency—Region II.

ACTION: Notice of intent to prepare a draft environmental impact statement (EIS).

PURPOSE: In accordance with Section 102(2)(c) of the National Environmental Policy Act, the EPA has identified a need to prepare an EIS and therefore publishes this Notice of Intent pursuant to 40 CFR 1501.7.

FOR FUTURE INFORMATION CONTACT: Mr. Raymond Basso, Environmental Impacts Branch, USEPA—Region II, 26 Federal Plaza, Room 400, New York, New York 10278, Telephone—FTS 8–264–8675, Commercial (212) 264–8675.

SUMMARY:

1. Description of proposed action. The EPA action would be the approval of a facilities plan and award of grant monies pursuant to Section 201 of the Clean Water Act for the design and construction of a wastewater treatment system to serve the Village of Lake George, Hamlet of Bolton Landing, Hamlet of Warrensburg, and portions of the Towns of Lake George, Bolton, Warrensburg, and Queensbury in Warrent County, New York.

2. Description of alternatives. The alternatives to be evaluated in the EIS include no-action, in-basin, and regional.

Under the no-action alternative, the existing wastewater treatment systems (including septic tank system) would continue.

Under the in-basin alternative(s) facilities would be provided within the Lake George basin and in surrounding areas (notably the Town of Queensbury).

Under the regional alternative(s) all wastewater flows in the Lake George basin would be transferred out of the basin for treatment and discharge.

3. Public and private participation in the EIS process. a. Full participation by interested Federal, State and local agencies as well as other interested private organizations and parties is invited. The public will be involved to the maximum extent possible; a full-scale public participation program will be implemented, including establishment of a citizen advisory committee, three public meetings, and a public hearing.

b. Significant issues to be discussed in the EIS include: 1. the impacts of the proposed project upon population growth and distribution;

2. the water quality impacts including the non-point source pollution attributable to the projected growth.

c. Scoping: In accordance with the CEQ regulations (40 CFR Section 1501.7) and EPA procedures (40 CFR Part 6) a scoping meeting will be held on December 1, 1980, from 3:00 p.m. to 5:00 p.m. and from 7:00 p.m. to 10:00 p.m. at the Warren County Municipal Center—

Supreme Court, Lake George, New York 12345 (Telephone 518–792–9951).

d. Timing: The EPA estimates that the draft EIS will be available for public review and comment around March 1982.

e. Request for copies of draft EIS: All interested parties are encouraged to submit their names and address to the person indicated above for inclusion on the distibution list for the draft EIS and related public notices.

Dated: October 17, 1980.

William D. Dickerson,

Acting Director, Office of Environmental Review (A–104).

[FR Doc. 80–32888 Filed 10–21–80; 8:45 am]

BILLING CODE 6560–37–M

[WH–FRL 1637–7]

Request for EPA Determination That Aquifers in the Area North of the City of Broken Arrow, Okla., and Upstream on the Verdegris River Are the Sole and Principal Source of Drinking Water

A petition has been submitted requesting the Administrator to determine that the aquifers in the area north of the City of Broken Arrow, Oklahoma and upstream on the Verdegris River are the sole or principal drinking water source for that area.

Section 1424(a) of the Safe Drinking Water Act (P.L. 93–523) allows any person to petition the Administrator to have an area of a State (or States) designated as an area in which no new underground injection well may be operated during the period beginning on the date of the designation and ending on the date on which he applicable underground injection control program covering such area takes effect unless a permit for the operation of such well has been issued by the Administrator. The Administrator may so designate an area within a State if he finds that the area has the aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health.

The petition is reprinted as received.

Dated: October 15, 1980.

Alan Levin,

Director, State Programs Division, Office of Drinking Water, EPA.

Douglas M. Costle,

Administrator, United States Environmental Protection Agency, 401 "M" Street Southwest, Washington, D.C.

Amended Petition

Pursuant to Section 1424(a)(1) [42 U.S.A. 300h–3] of public law 93–523 of the 93rd Congress, S. 433 enacted December 16, 1974, and entitled the "Safe Drinking Water Act", COMES NOW the City of Broken Arrow Oklahoma, to petition that the Administrator designate the area north of the City of Broken Arrow and upstream on the Verdigris River, as an area in which no new underground injection wells for hazardous and toxic wastes may be operated.

The City of Broken Arrow is a municipal corporation organized and operated under the laws of the State of Oklahoma. The principal offices of the City of Broken Arrow are located in the City Hall in Broken Arrow, Oklahoma.

Mr. Allen West is a landowner who resides upstream from the City of Broken Arrow in the Port of Catoosa area and his address is Post Office Drawer 310, Catoosa, Oklahoma 74015.

Mr. P. R. Rhees is a landowner who resides upstream from the City of Broken Arrow in the Port of Catoosa area and his address is Post Office Drawer F, Catoosa, Oklahoma 74015.

Mr. Robert Caldwell is a landowner who resides upstream from the City of Broken Arrow in the Port of Catoosa area and his address is Post Office Box 447, Catoosa, Oklahoma 74015.

Mr. Donald Lane is a landowner in the Port of Catoosa area upstream from the City of Broken Arrow. Mr. Lane's address is Post Office Box 490, Catoosa, Oklahoma 74015.

The Catoosa Township Landowners Association is a non-profit organization organized and operated under the laws of the State of Oklahoma and its principle offices are located at 501 West First Street, Claremore, Oklahoma.

The above named landowners and the member of the Catoosa Township Landowners Association have water wells on their respective properties which are used for residential and agricultural purposes.

The sole and principle source of drinking water for the City of Broken Arrow is the Verdigris River of the Kerr-McClellan Waterway including the associated watershed area and related aquifers. The hydrological system which provides all the fresh drinking water for the City of Broken Arrow includes various underground aquifers which discharge into the City's municipal water supply. The construction and operation of new underground injection wells for hazardous and toxic waste will contaminate aquifers which presently contribute to the water supply of the City of Broken Arrow. If said aquifers become contaminated the entire water supply of the City of Broken Arrow will be destroyed.

The hydrological system which is the principle and sole source of drinking water for approximately 70,000 people to which this application applies covers an area from the City of Broken Arrow north upstream on the Verdigris River to the Oologah Dem. See the attached map for a precise definition of the area to be designated as unsafe for further waste injection wells.

The major fresh water aquifer which is in danger of being contaminated by the development of further injection wells in the area in question is the alluvial fill associated with the Verdigris River. The allivium is approximately 40–60 feet thick. It is located at the surface. It is composed of unconsolidated sands and gravel and other fill. Ground water is encountered at depth ranging from 15–60 feet.

The alluvium is subject to recharge by the Verdigris River in periods of high flow. The alluvium is also recharged by ground water percolation from the surrounding watershed. The alluvium is also in part recharged by the underlying aquifers including but not limited to the big lime and the Oswego limestone.

The alluvium is known to discharge into the Verdigris River in periods of moderate and low flow of said river. The alluvium is a part of the hydrological system involving the Verdigris River and as a source of drinking water, the alluvium and the river form an inseparable unit and constitute the same source of supply. The contamination of either the alluvium or the river will inevitably cause the contamination of both within a short period of time.

There are at least 2 dozen residential and agricultural water wells in the alluvium in the designated area which supply single family homes and farms. In the designated area, there are approximately 70,000 people which rely upon the alluvium and the associated Verdigris River as their sole and principal source of drinking water.

The geological column in the area in question includes the following aquifers:

The alluvium is an aquifer encountered at or near to the surface with a thickness between 40–60 feet. It is the source of fresh water supply and is located adjacent to the Verdigris River.

The big lime is the formation which underlies much of the area in which alluvial deposits exist. The big lime contains several porous and permeable zones which contain either salt water or fresh water depending upon location. This limestone will vary in thickness from 150 feet to zero depending upon location.

The Labette shale underlies the big lime. This is a bedded and fractured shale. This shale will range normally from 50–100 feet in thickness and it is possible that at various locations it will be absent due to erosion by the Verdigris River.

The Oswego limestone is an aquifer which can contain either salt water or fresh water depending upon location. It will vary between 25–100 feet in thickness and it underlies the Labette shale. It is probable that at various locations it directly underlies the alluvium or comes into contact with the Verdigris River channel.

Underlying the Oswego limestone is the balance of the Des Moinesian series, the Atokan series and the Morowan series, all of Pennsylvanian age. The composite of these series will be approximately 800 feet thick.

Underlying the Pennsylvanian system, the following Mississippian system can be expected: The Chesterian series, the Meramecian series, the Osagean series. The composite of the Mississippian series can be expected to be approximately 270–320 feet in thickness.

Underlying the Mississippian system, the Ordovician system will be encountered. The Burgen sand immediately underlies the Mississippian system and it is a highly porous sandstone. Underlying the Bergen sand will be the Arbuckle group which

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consist of the Cotter dolomite, the Jefferson City dolomite, the Roubidoux formation, the Gasconade dolomite, the Eminence dolomite, the Boneterre dolomite, the Reagan sandstone. The Bergen sandstone and the Arbuckle group taken together will be approximately 1,300 feet in thickness. The Ordovician system in the area is presently full of fluid which consists mainly of brines. This fluid is known to have a high artesian pressure with a minimum potentiometric surface at plus 750 MSL. The average ground level elevation in the designated area is between 550–625 feet above sea level.

The Precambrian basement underlies the Arbuckle group and can be expected at depths between 2,000–2,000 feet in the designated area depending upon location.

Aerial photographs of the area in question show numerous fractures. The fracture zones are expected to be continuous from the surface to the basement complex. The fractures are known to be open in the Arbuckle group and it is believed that the fractures are also open and will permit the transmission of fluids in the shallower formations.

The area has been shown to be subject to earthquakes. A 1956 earthquake occurred with its calculated epicenter located at Catoosa, Oklahoma.

This has been an active area for oil and gas exploration. Numerous wells have been drilled to both the Pennsylvanian and the Mississippian series. There is oil and gas production in the Pennsylvanian series in the Bartlesville and Redfork sand. The Arbuckle formation has also been the subject of oil and gas exploration. In excess of 500 wells have been drilled in the designated area. No records exist on approximately ⅓rd of these wells and it is unknown how deep they were drilled or whether they were plugged. Many of the wells for which records exist show only mud or wood plugs.

It is known that the Arbuckle group and the Mississippian series were both exposed during and after deposition to weathering. Due to this weathering, it is known that secondary porosity in the form of solution channels and vugs exist in both of these formations. It is also believed that karst topography may have developed in either or both of these formations.

It is doubtful that any aquicludes exist in the area. The Woodford shale is a shale bed immediately overlying the Bergen sandstone and the Arbuckle group. This is a relatively thin bed of shale ranging from zero to 14 feet in thickness in the designated area. It is also highly fractured at all locations where it has been observed. The balance of the Mississippian series is also expected to be fractured. Data does not exist to establish whether or not the Mississippian shales are in fact fractured. The Labette shale which lies near the surface in the designated area is also known to be bedded and fractured. Sufficient information does not exist for the balance of the Pennsylvanian series to determine whether all the shale beds are bedded and fractured.

The Arbuckle formation is an artisan aquifer with its recharge areas in northeastern Oklahoma and southwestern Missouri. It is likely that the designated area is a discharge area for the Arbuckle formation. The shallower Mississippian and Pennsylvanian formations show very similar water to the water found in the Arbuckle formation in this area. The fact that similar water exists in shallower formations supports the conclusion that there is some transmission of fluids vertically from the Arbuckle formation to the Mississippian and Pennsylvanian formations.

The Bergen sand and Arbuckle group are the target formation for hazardous waste disposal injection wells. At the present time, there exists one injection well in the designated area located in Section 9, Range 15 East, Township 29. It is not known the precise amount of fluids injected into the Arbuckle formation by this injection well. This well is an onsite disposal well for the Agrico Company. It is believed that they are injecting in excess of 10 million gallons yearly into the Arbuckle formation. Approximately 90% of these injected fluids are believed to be cooling tower water blowdown with approximately 10 parts per million chromates. The balance of the fluid being presently injected into this well is believed to be the various nitrates associated with the production of fertilizer.

There is presently planned a second industrial waste disposal well by Browning-Ferris Chemical Service, Inc. At the present time, this well has not received a permit from the State of Oklahoma, but the Browning-Ferris Chemical Services, Inc., has applied to the Industrial Waste Division of the Department of Health for a construction permit. According to the Browning-Ferris permit application, they intend to inject 100 million gallons of industrial waste per year into the Arbuckle formation. The location of the proposed injection well is Section 5, Range 15 East, Township 20 North, Rogers County, Oklahoma. This is a planned commercial waste disposal well. The anticipated waste stream includes acidic waste including hydrochloric acid, sulphuric acid, acetic acid, sorbic acid, nitric acid, chromic acid. The acids contain the following contaminants: barium, celcium, iron, magnesium, and nickel. The waste stream also includes basic waste such as caustic sulphide, caustic cyanides, caustic fluorides. Neutral waste including arsenic waste water and ammonium chloride solutions. The anticipated waste stream also includes organic waste including chlorinated hydrocarbons, hexachlorobutadiene, hexachloroethane, triclorobenzene, chlorinated benzene, and tetrachloroethylene.

From the 70,000 people relying upon the hydrological system including the alluvium and the Verdigris River, approximately 100 people are receiving their fresh water supply directly from fresh water wells in the alluvium. There is no other apparent alternate source of fresh water to these individuals. There are two rural water districts which receive their water immediately from the Verdigris River adjacent to the alluvium. These two rural water districts serve in excess of 10,000 people. There is no other apparent source of fresh water other than the Verdigris River and the alluvium source of water supply for these two water districts. The City of Broken Arrow presently supplies fresh water for in excess of 50,000 people. The only presently available alternate source of water is a tie line with the City of Tulsa which would only provide approximately ¼th to ½rd of the fresh water needs of the City.

The operation of a commercial industrial waste disposal injection well will cause barges filled with lethal chemicals to traverse the Verdigris River channel. There are no facilities such as dry docks or water locks to prevent the spillage from the unloading of these barges from entering the Verdigris River. The alluvium aquifer is subject to recharge from the Verdigris River and if the Verdigris River becomes contaminated, the alluvium will also become contaminated. Once the alluvium becomes contaminated, it in turn will recontaminate the Verdigris River over a long period of time.

The operation of a commercial industrial waste injection well will also cause trucks filled with lethal chemicals and railroad cars filled with lethal chemicals to travel to the injection well site. The area designated by this petition includes the 100 year flood plain. Due to the possibility of floods, these railcars and trucks could be subject to being carried by flood waters. If during a flood any of the lethal chemicals are released into the area, the ground water and the river would immediately become contaminated. The area to be designated can be ascertained by following the river and creek valleys shown in maps 1 through 4 in the attached comprehensive plan for the Rogers County Metropolitan Area.

Wherefore, in consideration of the contents of this Petition and pursuant to the authority of 42 U.S.A. § 300h–3(2), the undersigned petitioners hereby petition said Administrator to grant the relief requested herein and protect the safety, health, well being and drinking water of the inhabitants in the affected area.

Respectfully submitted,

Robert Caldwell,
Allen D. West,
P. R. Rhees,
Donald Lane,
C. R. Bachtell,
Leroy Bachtell,
Catoosa Township Landowners Association, an Oklahoma Nonprofit Corporation, Petitioners.
James W. Summerlin
(Of the Firm Summerlin, Williams & Zacharias, Claremore, Okla.)
The City of Broken Arrow
(A Municipal Corporation, Petitioner).
Ray H. Wilburn
(Of the Firm Ray H. Wilburn & Associates, Tulsa, Okla.).

Interested person shall submit written comments, data, views or arguments to the EPA Administrator no later than the 25th day following the date of publication in the **Federal Register.** The Administrator shall either make the designation for which the petition is submitted or deny the petition no later than November 21, 1980.

[FR Doc. 80-32527 Filed 10-21-80; 8:45 am]
BILLING CODE 6560-29-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket No. FEMA 5925]

National Flood Insurance Program; Communities With Flood-Prone Areas Subject to Section 202(A), Prohibition of Federal and Federally Related Assistance

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Notice.

SUMMARY: The purpose of this notice is to provide a list of communities that contain areas of special flood hazard potentially subject to the provisions of Section 202(A) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) on July 1, 1975, or an appropriate later date, and to provide a convenient reference for interested persons, communities, Federal agencies and instrumentalities, and others involved in assuring compliance with that section. This list supersedes and updates the list published in the **Federal Register** at 44 FR 64879 and all prior lists.

DATES: Section 202(A) applies to the community as of one year after the initial date appearing in the last column on each page of this list.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line 800–424–8872, 451 7th Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: Section 202(A) provides that effective July 1, 1975, Federal agencies are prohibited from providing financial assiatance or making loans for acquisition or construction purposes in areas which (a) have been designated by the Director of Federal Emergency Management Agency as Special Flood Hazard Areas for at least one year; and (b) are in communities which are not participating in the National Flood Insurance Program (42 USC 4001–4128). Special Flood Hazard Areas are designated on Federal Insurance Administration Flood Hazard Boundary Maps (FHBM's) or Flood Insurance Rate Maps (FIRM's) and as Zone A, AO, AH, A1–89, V, VO, V1–30, M or E.

Each of the communities listed below received notice of its designation as flood-prone prior to October 1, 1980, and legal notice was furnished of such designation by publication under Part 65 of Title 44 of the Code of Federal Regulations in the **Federal Register.** These communities have failed to provide the Federal Insurance Administrator with sufficient technical or scientific data to rebut their designation as flood prone nor have they as yet qualified for participation in the National Flood Insurance Program. Thus, the sanctions of Section 202(A) apply as of July 1, 1975, or one year after a community's identification, whichever is later, until the community participates in the program.

In order to continue Federal financial assistance or lending for acquisition of construction purposes for insurable structures in its Special Flood Hazard Area, a community must apply for and be made eligible for participation in the program in accordance with 44 CFR (Parts 59 to 75). Communities on this list may be made eligible to participate in the program after the date of publication of this list. Such eligibility will be published periodically in the **Federal Register** under 44 CFR 64.6 List of eligible communities. At that time the sanctions of Section 202(a) will no longer apply to the communities listed below.

Ident. and community name	County	Original hazard date
Alabama		
010095 Akron, town of	Hale County	750718
010229 Allgood, town of	Blount County	750124
010331 Andalusia, city of	Covington County	780602
010407 Anderson, town of	Lauderdale County	781124
010242 Babbie, town of	Covington County	750110
010352 Bear Creek, town of	Marion County	760618
010083 Belk, town of	Fayette County	740913
010257 Black, town of	Lauderdale County	750207
010230 Blount County*	Blount County	780224
010371 Blountsville, town of	Blount County	780329
010092 Boligee, city of	Greene County	741213
010296 Bon Air, town of	Talladega County	770304
010372 Branchville, town of	St. Clair County	780915
010055 Brantley, town of	Crenshaw County	740628
010342 Brilliant, town of	Marion County	770715
010347 Brundidge, city of	Pike County	761022
010017 Butler County*	Butler County	780421
010374 Camp Hill, town of	Tallapoosa County	780929
010119 Cardiff, town of	Jefferson County	740920
010240 Carolina, town of	Covington County	750110
010375 Carrville, town of	Tallapoosa County	781215
010376 Chatom, town of	Washington County	781020
010234 Cherokee County*	Cherokee County	790218
010030 Chilton County*	Chilton County	780726
010316 Clarke County*	Clarke County	780609
010377 Clayton, town of	Barbour County	780929
010228 Cleveland, town of	Blount County	780905
010239 Coffee County*	Coffee County	750117
010318 Colbert County	Colbert County	780224
010319 Conecuh County	Conecuh County	780707
010244 Covington County*	Covington County	741213
010367 Crossville, town of	Pike County	761029
010379 Cuba, town of	Sumter County	790316
010247 Cullman County*	Cullman County	780728
010380 Daviston, town of	Tallapoosa County	781006
010320 De Kalb County*	De Kalb County	780429
010350 Double Springs, town of	Winston County	770128
010056 Dozier, town of	Crenshaw County	740920
010383 Epes, town of	Sumter County	781020
010251 Escambia County*	Escambia County	781027
010077 Etowah County*	Etowah County	780217

Ident. and community name	County	Original hazard date
Alabama —Continued		
010027 Five Points, town of	Chambers County	741115
010354 Flint City, town of	Morgan County	761126
010384 Fort Deposit, town of	Lowndes County	780929
010322 Franklin County	Franklin County	780120
010038 Fulton, town of	Clarke County	750718
010295 Gainesville, town of	Sumter County	761015
010053 Gantt, town of	Covington County	740607
010258 Geneva County*	Geneva County	760220
010356 Geraldine, town of	De Kalb County	780113
010557 Glenwood, town of	Crenshaw County	740920
010387 Goodwater, town of	Coosa County	781103
010152 Gurley, town of	Madison County	760418
010388 Hammondville, town of	De Kalb County	781103
010293 Harpersville, town of	Shelby County	750411
010357 Henagar, town of	De Kalb County	760312
010390 Kansas, town of	Walker County	790318
010391 Lakeview, town of	De Kalb County	790907
010324 Lawrence County*	Lawrence County	770513
010250 Lee County*	Lee County	780331
010235 Leesburg, city of	Cherokee County	761015
010358 Lexington, town of	Lauderdale County	761015
010393 Margaret, town of	St. Clair County	781006
010275 Marshall County*	Marshall County	780120
010359 Mentone, town of	De Kalb County	760702
010207 Milry, town of	Washington County	761112
010349 Montevallo, town of	Shelby County	770128
010175 Morgan County*	Morgan County	770311
010395 New Site, town of	Tallapoosa County	781027
010232 Ohatchee, town of	Calhoun County	750131
010245 Petrey, town of	Crenshaw County	770225
010333 Phil Campbell, town of	Franklin County	761029
010397 Pine Hill, town of	Wilcox County	781117
010360 Pisgah, town of	Jackson County	760312
010075 Pollard, town of	Escambia County	750131
010159 Providence, town of	Marengo County	741101
010182 Randolph County*	Randolph County	740913
010334 Red Bay, city of	Franklin County	761210
010243 Red Level, town of	Covington County	750110
010253 Reece City, city of	Etowah County	750221
010348 Roanoke, city of	Randolph County	770610
010339 Rogersville, town of	Lauderdale County	780310

Ident. and community name	County	Original hazard date
Alabama		—Continued
010362 Section, town of	Jackson County	760625
010191 Shelby County*	Shelby County	780224
010399 Shiloh, town of	De Kalb County	790914
010227 Snead, town of	Blount County	750627
010363 Somerville, town of	Morgan County	760604
010400 Sumiton, town of	Jefferson County	790119
010326 Summerdale, town of	Baldwin County	790113
010180 Sweetwater, town of	Marengo County	750718
010364 Sylvania, town of	De Kalb County	781029
010326 Tallapoosa County	Tallapoosa County	780331
010037 Toxey, town of	Choctaw County	770218
010201 Tuscaloosa County*	Tuscaloosa County	780505
010335 Vina, town of	Franklin County	771218
010292 Vincent, town of	Shelby County	750411
010365 Vinemont, town of	Cullman County	761001
010340 Waterloo, town of	Lauderdale County	781217
010401 Wedowee, town of	Randolph County	781006
010348 Wilmer, town of	Mobile County	761008
010404 Wilsonville, town of	Shelby County	790907
010304 Winston County*	Winston County	760217
Total of 102 communities.		
Arizona		
040119 Superior, town of	Pinal County	790731
Total of 1 community.		
Arkansas		
050378 Alicia, town of	Lawrence County	750711
050380 Almyra, town of	Arkansas County	750815
050017 Alpena, town of	Boone County	740830
050381 Altus, city of	Franklin County	750725
050303 Amity, city of	Clark County	750221
050418 Arkansas County	Arkansas County	770818
050382 Ash Flat, town of	Sharp County	750627
050003 Ashley County	Ashley County	771115
050123 Aubrey, town of	Lee County	741206
050305 Barling, city of	Sebastian County	750214
050010 Baxter County	Baxter County	770517
050419 Benton County	Benton County	771018
050386 Bethel Heights, town of	Benton County	750425
050415 Biscoe, town of	Prairie County	781126
050474 Bodcaw, town of	Nevada County	781119
050392 Bonanza, town of	Sebastian County	750815
050018 Boone County	Boone County	770617
050131 Bradford, city of	White County	750221
050393 Branch, city of	Franklin County	750502
050394 Bull Shoals, city of	Marion County	750425
050567 Caraway Valley, town of	Clark County	790320
050024 Carroll County	Carroll County	770614
050397 Caulksville, town of	Logan County	750627
050313 Cave City, city of	Sharp County	750718
050398 Cave Springs, city of	Benton County	781029
050400 Chidester, city of	Ouachita County	750725
050424 Cleburne County	Cleburne County	770607
050425 Columbia County	Columbia County	770602
050426 Conway County	Conway County	770610
050568 Corinth, town of	Yell County	790424
050402 Coy, town of	Lonoke County	760625
050427 Craighead County	Craighead County	771115
050428 Crawford County*	Crawford County	770617
050429 Crittenden County	Crittenden County	771206
050061 Dallas County	Dallas County	770617
050404 Damascus, town of	Faulkner County	750418
050320 Dierks, city of	Howard County	750214
050430 Drew County	Drew County	771025
050406 Dyer, town of	Crawford County	750711
050214 Elkins, town of	Washington County	741220
050019 Everton, town of	Boone County	740830
050431 Faulkner County	Faulkner County	770607
050433 Garland County*	Garland County	770602
050224 Garner, town of	White County	770630
050434 Grant County	Grant County	770510
050435 Greene County	Greene County	771213
050248 Greers Ferry, city	Cleburne County	760423
050247 Griffithville, town of	White County	750926
050248 Guion, town of	Izard County	750411
050049 Gum Springs, town of	Clark County	750627
050251 Hartman, town of	Johnson County	761029
050435 Hempstead County	Hempstead County	770603
050225 Higginson, town of	White County	740816
050437 Hot Spring County	Hot Spring County	771101
050438 Howard County*	Howard County	770607
050120 Imboden, town of	Lawrence County	740808
050439 Izard County	Izard County	770712

Ident. and community name	County	Original hazard date
Arkansas		—Continued
050441 Johnson County	Johnson County	770802
050337 Kibler, city of	Crawford County	760825
050260 Knoxville, town of	Johnson County	750221
050569 Lafe, town of	Greene County	790710
050443 Lawrence County	Lawrence County	770603
050444 Lee County	Lee County	771101
050479 Little Flock, town of	Benton County	770621
050447 Logan County	Logan County	771018
050448 Lonoke County	Lonoke County	770616
050341 Lonoke, city of	Lonoke County	760326
050262 Louann, town of	Ouachita County	761105
050449 Madison County	Madison County	770614
050450 Marion County	Marion County	770906
050347 Marshall, city of	Searcy County	750425
050170 Marvell, city of	Phillips County	760312
050343 McNeil, city of	Columbia County	750502
050348 Melbourne, city of	Izard County	750411
050266 Menifee, town of	Conway County	750425
050451 Miller County	Miller County	780110
050069 Mitchellville, town of	Desha County	741106
050154 Monroe County	Monroe County	770621
050095 Mount Pleasant, town of	Izard County	741122
050051 Mountainburg, city of	Crawford County	740503
050354 Mulberry, city of	Crawford County	761126
050454 Nevada County	Nevada County	770809
050270 Ogden, city	Little River County	750919
050181 Ouachita County	Ouachita County	770913
050271 O'Kean, town of	Randolph County	750418
050007 Parkdale, town of	Hot Spring County	740329
050275 Perla, town of	Hot Spring County	760625
050166 Phillips County	Phillips County	770809
050363 Plainview, city of	Yell County	750418
050364 Plumerville, city of	Conway County	750627
050172 Poinsett County	Poinsett County	770507
050473 Polk County*	Polk County	771018
050458 Pope County*	Pope County	771220
050459 Prairie County*	Prairie County	770603
050279 Prattsville, town of	Grant County	750425
050280 Quitman, town of	Cleburne County	760409
050460 Randolph County*	Randolph County	770809
050281 Ravenden Spgs, town of	Randolph County	760723
050470 Ravenden, town of	Lawrence County	760402
050478 Reader, town of	Ouachita County	770603
050040 Rison, city of	Cleveland County	740308
050475 Roseton, town of	Nevada County	770218
050286 Scranton, town of	Logan County	750418
050462 Sebastian County*	Sebastian County	770531
050463 Sevier County*	Sevier County	771213
050464 Sharp County*	Sharp County	770621
050287 Shirley, town of	Van Buren County	760613
050290 Sulphur Rock, town of	Independence County	750425
050292 Thornton, city of	Calhoun County	750725
050205 Union County	Union County	771213
050021 Valley Springs, town of	Boone County	780718
050296 Viola, town of	Fulton County	760409
050212 Washington County	Washington County	770510
050374 Wheatley, city of	St. Francis County	750919
050467 White County*	White County	770607
050298 Wickes, town of	Polk County	750627
050571 Willisville, town of	Nevada County	790313
050299 Wilton, town of	Little River County	750411
050077 Winchester, town of	Drew County	740830
050469 Yell County*	Yell County	771115
Total of 120 communities.		
California		
060015 Amador County	Amador County	770607
060017 Butte County*	Butte County	740906
060633 Calaveras County*	Calaveras County	771129
060040 El Dorado County*	El Dorado County	740802
060445 Ferndale, city of	Humboldt County	741220
060092 Lassen County	Lassen County	780228
060361 Loyalton, city of	Sierra County	760604
060434 Mariposa County*	Mariposa County	771129
060451 Montague, town of	Siskiyou County	760328
060228 Orange, city of	Orange County	780328
060239 Placer County*	Placer County	770712
060455 Plymouth, city of	Amador County	761119
060267 San Benito County*	San Benito County	770802
060435 San Ciy, city of	Monterey County	781203
060056 Selma, city of	Fresno County	740524
060401 Trinity County*	Trinity County	771213
060411 Tuolumne County*	Tuolumne County	780418
Total of 17 communities.		

Ident. and community name	County	Original hazard date
Colorado		
080229 Aguilar, town of	Las Animas County	750711
080148 Boone, town of	Pueblo County	740906
080210 Coal Creek Town	Fremont County	750815
080040 Custer County	Custer County	780124
080120 Dinosaur, town of	Moffat County	740830
080056 Elizabeth, town of	Elbert County	740906
080212 Empire, town of	Clear Creek County	750502
080073 Fraser, town of	Grand County	740906
080131 Ft. Morgan, city of	Morgan County	781029
080215 Grand Valley Town	Garfield County	760813
080074 Hot Sulphur Springs, town of	Grand County	741122
080207 Iliff, town of	Logan County	741227
080057 Kiowa, town of	Elbert County	740906
080033 Kit Carson, town of	Cheyenne County	741213
080282 Lake County*	Lake County	771018
080256 New Castle Town	Garfield County	750725
080127 Nucla, town of	Montrose County	740524
080256 Orchard City, city of	Delta County	770527
080170 Ovid, town of	Sedgwick County	741115
080293 Pitkin, town of	Gunnison County	780620
080260 Redcliff Town	Eagle County	750919
080150 Rye, town of	Pueblo County	750718
080164 Sagauche, town of	Saguache County	780528
080223 Silt Town	Garfield County	750725
080200 Silver Plume, town of	Clear Creek County	741213
080106 Starkville, town of	Las Animas County	740906
Total of 26 communities.		
Connecticut		
090156 Salem, town of	New London County	750221
Total of 1 community.		
Florida		
120580 Alford, town of	Jackson County	790209
120581 Astatula, town of	Lake County	790824
120018 Brooker, town of	Suwannee County	740830
120126 Campbellton, city of	Jackson County	740906
120583 Cottondale, town of	Jackson County	781124
120319 Freeport, city of	Walton County	781029
120573 Hilliard, town of	Nassau County	771223
120586 Inglis, town of	Levy County	781229
120390 Lake Wales, city of	Polk County	751017
120570 Marineland, town of	Flagler County	770706
120591 Mascotte, city of	Lake County	790921
120575 McIntosh, town of	Marion County	770527
120344 Micanopy, town of	Alachua County	750416
120365 Monticello, city of	Jefferson County	780723
120592 Otter Creek, city of	Levy County	790817
120571 Painters Hill, town of	Flagler County	770805
120612 Palm Shores, town of	Brevard County	790831
120593 Ralford, town of	Union County	780929
120413 Weeki Wachee, town of	Hernando County	760723
Total of 19 communities.		
Georgia		
130195 Abbeville, municipality of	Wilcox County	780217
130360 Ailey, town of	Montgomery County	750404
130394 Andersonville, village of	Sumter County	770429
130001 Appling County	Appling County	780312
130390 Avalon, town of	Stephens County	760416
130270 Baker County*	Baker County	750328
130115 Bartow, city of	Jefferson County	750822
130309 Bellville, city of	Evans County	750718
130179 Blairsville, town of	Union County	760811
130362 Bostwick, town of	Morgan County	750404
130343 Braselton, city of	Jackson County	750418
130268 Brinson, town of	Colquitt County	750718
130281 Brooks County	Brooks County	780203
130364 Buckhead, town of	Morgan County	750711
130323 Buford, city of	Gwinnett County	750404
130478 Carlton, town of	Madison County	781013
130464 Carroll County*	Carroll County	780811
130257 Centralhatchee, town of	Heard County	770706
130292 Charlton County	Charlton County	760514
130036 Chattooga County	Chattooga County	760326
130416 Cleveland, city of	White County	750411
130465 Coffee County*	Coffee County	780421
130058 Colquitt County	Colquitt County	780519
130135 Colquitt, city of	Miller County	760723
130169 Coolidge, city of	Thomas County	760402
130341 Corinth, town of	Heard County	770706

Ident. and community name	County	Original hazard date
Georgia		—Continued
130479 Danielsville, city of	Madison County	780915
130304 Dawson County	Dawson County	780618
130330 Demorest, town of	Habersham County	750404
130446 Dillard, town of	Rabun County	780604
130365 Elton, town of	Murray County	771125
130359 Forsyth, city of	Monroe County	750411
130428 Fort Oglethorpe, city of	Macon County	750404
130379 Georgetown, town of	Quitman County	780210
130023 Girard, town of	Burke County	740906
130419 Glenwood, city of	Wheeler County	750404
130096 Grady County	Grady County	770617
130325 Grayson, town of	Gwinnett County	750711
130456 Guyton, town of	Effingham County	770701
130311 Hagan, city of	Evans County	750418
130466 Hall County*	Hall County	780828
130338 Harris County	Harris County	760416
130105 Heard County	Heard County	780409
130192 Helen, town of	White County	740906
130385 Hiltonia, town of	Screven County	750411
130221 Hiram, city of	Paulding County	741018
130447 Hiwassee, town of	Towns County	760611
130291 Homeland, town of	Charlton County	750411
130271 Homer, town of	Banks County	750418
130481 Ila, city of	Madison County	780815
130345 Jackson County	Jackson County	760423
130375 Jasper, city of	Pickens County	750411
130412 Jersey, town of	Walton County	760723
130434 Jones County	Jones County	770527
130277 Kingston, city of	Bartow County	750418
130462 Laurens County*	Laurens County	780217
130409 Linwood, town of	Walker County	750404
130441 Louisville, city of	Jefferson County	750815
130469 Lowndes County*	Lowndes County	780505
130354 Lumpkin County	Lumpkin County	780402
130470 Madison County*	Madison County	780317
130224 Madison, city of	Morgan County	750221
130392 Martin, town of	Stephens County	750404
130342 McDonough, city of	Henry County	750411
130357 McDuffie County*	McDuffie County	760326
130421 McIntyre, town of	Wilkinson County	750411
130473 Meriwether County*	Meriwether County	780714
130134 Miller County	Miller County	770610
130438 Mitchell County*	Mitchell County	760718
130376 Molena, city of	Pike County	750411
130136 Monroe County	Monroe County	770401
130139 Montgomery County	Montgomery County	760319
130482 Montrose, town of	Laurens County	780915
130286 Mount Zion, town of	Carroll County	770701
130315 Mountain Park, city of	Fulton County	780113
130366 Murray County	Murray County	760514
130353 Naylor, town of	Lowndes County	750425
130161 Newington, town of	Screven County	740906
130483 Nicholls, city of	Coffee County	780929
130368 North High Shoals, town of	Oconee County	770819
130299 Oak Park, town of	Emanuel County	750718
130189 Odum, city of	Wayne County	750103
130370 Oglethorpe County	Oglethorpe County	760528
130367 Oxford, town of	Newton County	750411
130457 Patterson, town of	Pierce County	770610
130149 Pickens County	Pickens County	781231
130151 Pierce County*	Pierce County	760813
130378 Pulaski County	Pulaski County	770617
130264 Pulaski, town of	Candler County	750404
130327 Rest Haven, city of	Gwinnett County	780203
130267 Riverside, town of	Colquitt County	750718
130162 Rocky Ford, town of	Screven County	740906
130274 Russell, municipality of	Barrow County	780721
130363 Rutledge, town of	Morgan County	750808
130439 Sale City, town of	Mitchell County	750404
130166 Scotland, city of	Telfair County	740830
130301 Senoia, city of	Coweta County	750404
130362 Shellman, city of	Randolph County	760611
130339 Shiloh, city of	Harris County	750404
130349 Smithville, city of	Lee County	770527
130368 Spalding County*	Spalding County	770325
130393 Steward County	Stewart County	760514
130308 Stillmore, town of	Emanuel County	750411
130260 Stone Mountain, city of	De Kalb County	740512
130486 Summer, town of	Worth County	780922
130389 Sunny Side, village of	Spalding County	750411
130150 Talking Rock, town of	Pickens County	770617
130380 Tallulah Falls, city of	Habersham County	750425
130471 Tattnall County*	Tattnall County	780818
130487 Taylorsville, city of	Bartow County	780929
130288 Temple, town of	Carroll County	750411
130400 Terrell County*	Terrell County	760718
130381 Tiger, town of	Rabun County	750711

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Ident. and community name	County	Original hazard date
Georgia		—Continued
130173 Toombs County	Toombs County	780319
130422 Toomsboro, town of	Wilkinson County	750404
130489 Tunnell Hill, city of	Whitfield County	781006
130413 Walnut Grove, town of	Walton County	760613
130190 Wheeler County	Wheeler County	760430
130191 White County	White County	760611
130297 Winterville, city of	Clarke County	750411
130196 Worth County	Worth County	780602
Total of 121 communities		
Idaho		
160042 Albion, town of	Cassia County	750110
160207 Boundary County*	Boundary County	770802
160015 Chatcolet, city of	Benewah County	740913
160005 Council, city of	Adams County	760503
160163 Craigmont, city of	Lewis County	760625
160165 Downey, city of	Bannock County	790109
160137 Franklin, city of	Franklin County	70905
160061 Fremont County	Fremont County	771206
160241 Grand View, city of	Owyhee County	790403
160141 Hauser, city of	Kootenai County	761008
160228 Jerome County*	Jerome County	771025
160224 Leadore, city of	Lemhi County	770603
160197 Malta, town of	Cassia County	741213
160179 Menan City	Jefferson County	760430
160045 Oakley, town of	Cassia County	741016
160149 Plummer City	Benewah County	761029
160186 Preston City	Franklin County	750829
160153 St. Charles, city of	Bear Lake County	760319
160230 Teton County*	Teton County	770913
160231 Twin Falls County*	Twin Falls County	780131
Total of 20 communities.		
Illinois		
170835 Adeline, village of	Ogle County	750711
170941 Altona, village of	Knox County	780929
170844 Alvin, village of	Vermilion County	750221
170489 Anchor, village of	McLean County	741206
170657 Anna, city of	Union County	740329
170942 Argenta, village of	Macon County	790112
170923 Aviston, village of	Clinton County	770520
170742 Avon, village of	Fulton County	741018
170321 Batavia, city of	Kane County	760910
170845 Belgium, village of	Vermilion County	750328
170945 Biggsville, village of	Henderson County	780929
170606 Bluffs, village of	Scott County	740607
170920 Bluford, village of	Jefferson County	770722
170848 Braidwood, city of	Will County	750411
170468 Brookport, city of	Massac County	740607
170226 Browns, village of	Edwards County	741115
170746 Bryant, village of	Fulton County	741206
170850 Bureau Junction, village of	Bureau County	750328
170471 Bushnell, city of	McDonough County	740607
170785 Camargo, village of	Douglas County	740405
170491 Carlock, village of	McLean County	761203
170250 Carrollton, city of	Greene County	740607
170642 Cedarville, village of	Stephenson County	750411
170926 Christian County*	Christian County	780407
170966 Coles County*	Coles County	790717
170939 Crawford County*	Crawford County	790105
170646 Creve Coeur, village of	Tazewell County	740301
170987 Cumberland County*	Cumberland County	790323
170751 De Soto, village of	Jackson County	740405
170647 Deer Creek, village of	Tazewell County	740628
170948 Deer Grove, village of	Whiteside County	781006
170949 Divernon, village of	Sangamon County	780908
170658 Dongola, village of	Union County	740308
170950 Earlville, city of	La Salle County	781013
170873 East Brooklyn, village of	Grundy County	750321
170985 Edgar County*	Edgar County	790302
170937 Edwards County*	Edwards County	781027
170441 Edwardsville, city of	Madison County	740405
170227 Effingham County*	Effingham County	771223
170251 Eldred, village of	Greene County	731217
170649 Elwood, village of	Will County	750221
170816 Farmer City, city of	De Witt County	750321
170952 Farmington, city of	Fulton County	781020
170232 Fayette County	Fayettee County	780106
170664 Fithian, village of	Vermilion County	750801
170991 Ford County*	Ford County	790223
170827 Forest City, village of	Mason County	750328
170899 Franklin County*	Franklin County	780113
170953 Freemanapur, village of	Franklin County	781020
170263 Galva, city of	Henry County	740614
170049 Germantown, village of	Clinton County	740329

Ident. and community name	County	Original hazard date
Illinois		—Continued
170234 Gibson City, city of	Ford County	740329
170685 Golden Gate, village of	Wayne County	750627
170954 Gorham, village of	Jackson County	790126
170561 Hamletsburg, village of	Pope County	760730
170465 Havana, city of	Mason County	740405
170366 Hawthorn Woods, vill	Lake County	760730
170570 Hennepin, village of	Putnam County	761119
170497 Heyworth, village of	McLean County	740614
170956 Hill Crest, village of	Ogle County	760915
170253 Hillview, village of	Greene County	741206
170184 Hinckley, village of	De Kalb County	740301
170957 Indianola, village of	Vermilion County	790105
170927 Jackson County*	Jackson County	780714
170990 Jasper County*	Jasper County	790727
170305 Jefferson County	Jefferson County	770304
170315 Jerseyville, city of	Jersey County	740607
170757 Joppa, village of	Massac County	731123
170828 Junction City, village of	Marion County	750321
170837 Kinderhook, village of	Pike County	750321
170780 La Prairie, town of	Adams County	750425
170457 Lacon, city of	Marshall County	731130
170373 Lake Bluff, village of	Lake County	740201
170458 Laroe, village of	Marshall County	741025
170400 La Salle County	La Salle County	780526
170409 Lawrence County*	Lawrence County	781124
170342 Libson, village of	Kendall County	741101
170929 Livingston County	Livingston County	780331
170794 Livingston, village of	Madison County	740322
170959 Mackinaw, village of	Tazewell County	781110
170930 Macoupin County*	Macoupin County	780106
170785 Maeystown, village of	Monroe County	780402
170187 Malta, village of	De Kalb County	740607
170549 Mansfield, village of	Platt County	750103
170836 Mapleton, village of	Peoria County	750328
170764 Marietta, village of	Fulton County	750131
170932 Marion County*	Marion County	780324
170650 Marquette Heights, city of	Tazewell County	740306
170994 Marshall County*	Marshall County	790302
170041 Martinsville, city of	Clark County	731123
170684 Maunie, village of	White County	740109
170930 McHenry Shores, village of	McHenry County	790427
170960 Mechanicsburg, village of	Sangamon County	790128
170961 Menomonee, village of	Jo Daviess County	790112
170685 Mill Shoals, village of	White County	740719
170611 Mowsaqua, village of	Shelby County	790817
170963 Muncie, village of	Vermilion County	790223
170787 Nauvoo, city of	Hancock County	751010
170853 New Bedford, village of	Bureau County	750627
170555 New Canton, town of	Pike County	740616
170769 Newman, city of	Douglas County	741129
170832 Oakford, village of	Menard County	750321
170831 Oakwood Hills, village of	McHenry County	750416
170352 Oneida, city of	Knox County	740607
170541 Orangeville, village of	Stephenson County	740616
170964 Palmer, village of	Christian County	781013
170538 Perry County*	Perry County	741213
170272 Pontoosuc, village of	Hancock County	740116
170975 Prairie Grove, village of	McHenry County	790907
170999 Putnam County*	Putnam County	790223
170883 Reynolds, village of	Rock Island County	750418
170995 Richland County*	Richland County	790608
170603 Riverton, village of	Sangamon County	731118
170966 Rossville, village of	Vermilion County	780908
170800 Russellville, village of	Lawrence County	781112
170986 Saline County*	Saline County	790601
170933 Shelby County*	Shelby County	780224
170969 Sherman, village of	Sangamon County	790112
170580 Steeleville, village of	Randolph County	760730
170775 St. David, village of	Fulton County	741206
170601 St. Francisville, village of	Lawrence County	740329
170976 Sunrise Ridge, village of	McHenry County	790706
170005 Tamms, village of	Alexander County	740510
170778 Thomson, village of	Carroll County	751017
170670 Tilton, village of	Vermilion County	770114
170828 Topeka, town of	Mason County	750321
170972 Troy Grove, village of	LaSalle County	790126
170973 Vergennes, village of	Jackson County	790216
170935 Vermilion County	Vermilion County	780421
170938 Wabash County*	Wabash County	781103
170455 Warnac, city of	Washington County	740626
170974 Watson, village of	Effingham County	790202
170865 Wayne, village of	Du Page County	750815
170355 Williamsfield, village of	Knox County	781203
170934 Williamson County*	Williamson County	780331
170615 Wyoming, city of	Stark County	780310
170240 Zeigler, city of	Franklin County	770225
Total of 137 communities.		

Ident. and community name	County	Original hazard date
Indiana		
180031 Alton, town of	Crawford County	740123
180303 Amboy, town of	Miami County	741129
180097 Andrews, town of	Huntington County	740607
180273 Boonville, city of	Warrick County	731228
180258 Cayuga, town of	Vermillion County	740531
180408 Clay County*	Clay County	771125
180451 Country Club Heights, town of	Madison County	790516
180433 Daviess County*	Daviess County	780505
180054 Dubois County*	Dubois County	741213
180106 Dupont, town of	Jefferson County	741129
180282 Fountain City, city of	Wayne County	740510
180366 Francisco, town of	Gibson County	750321
180434 Gibson County*	Gibson County	780428
180435 Grant County*	Grant County	780519
180436 Greene County*	Greene County	780721
180060 Hamilton County*	Hamilton County	741213
180327 Hazleton, town of	Gibson County	731123
180437 Henry County*	Henry County	780127
180225 Indian Village, town of	St. Joseph County	741018
180439 Jasper County*	Jasper County	780512
180440 Jay County*	Jay County	780106
180106 Jennings County*	Jennings County	741213
180193 Judson, town of	Parke County	731217
180090 Knightstown, town of	Henry County	731130
180172 Ladoga, town of	Montgomery County	740524
180125 Lagrange County	Lagrange County	770701
180441 Lawrence County*	Lawrence County	780829
180035 Leavenworth, town of	Crawford County	731130
180456 Linton, city of	Greene County	790525
180399 Little York, town of	Washington County	750321
180442 Madison County*	Madison County	780523
180458 Markleville, town of	Madison County	790105
180459 Mentone, town of	Kosciusko County	790717
180413 Merom, town of	Sullivan County	770610
180460 Middleburg, town of	Elkhart County	790907
180382 Milford, town of	Kosciusko County	750321
180445 Montgomery County*	Montgomery County	781013
180178 Morgan County*	Morgan County	741220
180462 Napoleon, town of	Ripley County	790321
180463 New Pekin, town of	Washington County	790309
180337 Newberry, town of	Greene County	740201
180262 Newport, town of	Vermillion County	740531
180250 Orland, town of	Steuben County	740531
180192 Parke County*	Parke County	741220
180340 Patoka, town of	Gibson County	731123
180467 Pennville, town of	Jay County	790420
180473 Pike County*	Pike County	790815
180388 Pines, town of	Porter County	750321
180213 Putnam County	Putnam County	750103
180096 Roanoka, town of	Huntington County	731228
180345 Salamonia, town of	Jay County	781022
180346 Spring Lake Park, town of	Hancock County	740201
180240 Starke County	Starke County	770902
180410 Sullivan County	Sullivan County	790323
180349 Sulphur Springs, town of	Henry County	740201
180350 Tennyson, town of	Warrick County	740201
180411 Union County	Union County	770304
180449 Vermilion County*	Vermillion County	781124
180448 Warren County*	Warren County	781110
180446 Washington County*	Washington County	780421
180175 Waynetown, town of	Montgomery County	740531
180471 Woodlawn, town of	Madison County	790126
Total of 62 communities.		
Iowa		
190386 Ackley, city of	Franklin County	760716
190525 Ainsworth, city of	Washington County	750919
190542 Albion, city of	Marshall County	760423
190138 Alden, city of	Hardin County	740621
190005 Allamakee County	Allamakee County	770603
190335 Aplington, city of	Butler County	760525
190092 Arion, city of	Crawford County	740906
190217 Ashton, city of	Osceola County	750711
190700 Bagley, city of	Guthrie County	760813
190526 Barnum, city of	Webster County	761105
190423 Battle Creek, city of	Ida County	750926
190452 Beacon, city of	Mahaska County	750919
190322 Beaver, city of	Boone County	761029
190303 Belmond, city of	Wright County	740503
190845 Benton County*	Benton County	770524
190436 Bertram, city of	Linn County	780702
190320 Blairstown, city of	Benton County	750919
190517 Blockton, city of	Taylor County	750926

Ident. and community name	County	Original hazard date
Iowa		—Continued
190846 Boone County*	Boone County	780509
190420 Bradgate, city of	Humboldt County	760625
190328 Brandon, city of	Buchanan County	781029
190478 Brunsville, city of	Plymouth County	780702
190848 Buchannan County*	Buchanan County	770607
190093 Buck Grove, city of	Crawford County	741129
190849 Buena Vista County*	Buena Vista County	771115
190850 Butler County*	Butler County	770906
190001 Carbon, city of	Adams County	760625
190482 Castana, city of	Monona County	750829
190050 Cedar County	Cedar County	770607
190433 Center Junction, city of	Jones County	760625
190853 Cerro Gordo County*	Cerro Gordo County	770607
190509 Chatsworth, city of	Sioux County	760813
190854 Cherokee County*	Cherokee County	770506
190855 Chickasaw County*	Chickasaw County	770524
190269 Chillicothe, city of	Wapello County	741106
190395 Churdan, city of	Greene County	750829
190857 Clay County*	Clay County	770607
190201 Clemons, city of	Marshall County	761105
190374 Clermont, city of	Fayette County	761105
190401 Conrad, city of	Grundy County	760416
190516 Conway, city of	Taylor County	760702
190407 Corwith, city of	Hancock County	761022
190388 Coulter, city of	Franklin County	760813
190519 Cromwell, city of	Union County	760625
190345 Cumberland, city of	Cass County	761029
190421 Dakota City, city of	Humboldt County	741106
190860 Dallas County*	Dallas County	771025
190109 Davis City, city of	Decatur County	750718
190358 Dawson, city of	Dallas County	760813
190565 Dayton, city of	Webster County	761105
190532 Decorah, city of	Winneshiek County	761210
190566 Delhi, city of	Delaware County	760319
190113 Des Moines County	Des Moines County	770517
190501 Diagonal, city of	Ringgold County	750829
190864 Dickinson County*	Dickinson County	770510
190505 Donahue, city of	Scott County	760319
190305 Dows, city of	Wright County	740621
190572 Early, city of	Sac County	761029
190574 Eldridge, city of	Scott County	760806
190440 Ely, city of	Linn County	760730
190730 Farnhamville, city of	Calhoun County	760326
190866 Fayette County*	Fayette County	770816
190437 Fenton, city of	Kossuth County	750919
190457 Ferguson, city of	Marshall County	750928
190127 Floyd County	Floyd County	770603
190382 Floyd, city of	Floyd County	760319
190483 Fonda, city of	Pocahontas County	760730
190867 Franklin County*	Franklin County	790522
190324 Fraser, city of	Goone County	760730
190027 Frederika, city of	Gremer County	741122
190306 Fredonia, city of	Louisa County	750214
190321 Garrison, city of	Benton County	750808
190924 Gillett Grove, town of	Clay County	790410
190584 Goldfield, city of	Wright County	760625
190466 Grant, city of	Montgomery County	761119
190318 Gray, city of	Audubon County	770719
190159 Green Island, city of	Jackson County	741025
190869 Greene County*	Greene County	770614
190228 Grimes, city of	Polk County	760305
190403 Grundy Center, city of	Grundy County	760702
190497 Guernsy, city of	Poweshiek County	760430
190871 Guthrie County*	Guthrie County	770823
190873 Hancock County*	Hancock County	770906
190236 Hancock, city of	Pottawattamie County	740830
190833 Hanlontown, city of	Worth County	760604
190316 Harpers Ferry, city of	Allamakee County	761029
190589 Hartford, city of	Warren County	780319
190455 Harvey, city of	Marion County	780319
190204 Hastings, city of	Mills County	750919
190484 Havelock, city of	Pocahontas County	760319
190330 Hazelton, city of	Buchanan County	760526
190364 Hopkinton, city of	Delaware County	761029
190411 Hubbard, city of	Hardin County	760702
190391 Imogene, city of	Fremont County	761029
190878 Iowa County*	Iowa County	779818
190533 Jackson Jct., city of	Winneshiek County	760625
190744 Jamaica, city of	Guthrie County	760813
190023 Janesville, city of	Black Hawk County	731228
190880 Jasper County*	Jasper County	770603
190600 Jewell, city of	Hamilton County	760613
190408 Kanawha, city of	Hancock County	761029
190748 Kelley, city of	Story County	781119
190883 Keokuk County*	Keokuk County	770823
190436 Kinross, city of	Keokuk County	760813
190884 Kossuth County*	Kossuth County	770621

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Ident. and community name	County	Original hazard date
Iowa		—Continued
190425 Ladora, city of	Iowa County	750919
190331 Lamont, city of	Buchanan County	750912
190006 Lansing, city of	Allamakee County	771122
190389 Latimer, city of	Franklin County	760326
190311 Letts, city of	Louisa County	741227
190032 Linn Grove, city of	Buena Vista County	740616
190608 Livermore, city of	Humboldt County	761029
190768 Luverne, city of	Kossuth County	750919
190886 Lyon County*	Lyon County	770531
190772 Macedonia, city of	Pottawattamie County	761210
190887 Madison County*	Madison County	760117
190888 Mahaska County*	Mahaska County	770607
190498 Malcom, city of	Poweshiek County	750919
190834 Manly, city of	Worth County	760709
190383 Marble Rock, city of	Floyd County	760730
190889 Marion County*	Marion County	771016
190348 Marne, city of	Cass County	761029
190890 Marshall County*	Marshall County	770603
190524 Martensdale, city of	Warren County	760416
190456 Marysville, city of	Marion County	760702
190365 Masonville, city of	Delaware County	760813
190349 Massena, city of	Cass County	760521
190512 Maurice, city of	Sioux County	760319
190458 McIntire, city of	Mitchell County	750926
190465 Melrose, city of	Monroe County	760702
190476 Merrill, city of	Plymouth County	760702
190779 Miles, city of	Jackson County	761119
190891 Mills County*	Mills County	771016
190781 Minden, city of	Pottawattamie County	761029
190166 Mingo, city of	Jasper County	750905
190892 Mitchell County*	Mitchell County	770607
190459 Mitchell, city of	Mitchell County	761106
190161 Monmouth, city of	Jackson County	750117
190782 Montour, city of	Tama County	750905
190784 Moorland, city of	Webster County	761029
190523 Mt. Sterling, city of	Van Buren County	760813
190493 Neola, city of	Pottawattamie County	750919
190082 North Buenavieta, city of	Clayton County	741016
190832 Norway, city of	Benton County	750926
190894 Otto, city of	Woodbury County	740913
190172 Oxford, city of	Johnson County	741050510
190479 Oyens, city of	Plymouth County	760719
190896 Palo Alto County*	Palo Alto County	770517
190506 Panorama Park, city of	Scott County	761210
190405 Panora, city of	Guthrie County	760806
190337 Parkersburg, city of	Butler County	760702
190387 Paton, city of	Greene County	750919
190326 Pilot Mound, city of	Boone County	761105
190151 Pisgah, city of	Harrison County	741206
190489 Pleasant Hill, city of	Polk County	770204
190838 Pleasantville, city of	Marion County	760326
190081 Plymouth, city of	Cerro Gordo County	741108
190486 Pocahontas, city of	Pocahontas County	760730
190341 Pomeroy, city of	Calhoun County	761217
190232 Pottawattamie County	Pottawattamie County	771206
190004 Prescott, city of	Adams County	781105
190431 Preston, city of	Jackson County	750919
190392 Randolph, city of	Fremont County	760319
190167 Reasnor, city of	Jasper County	741101
190646 Reinbech, city of	Grundy County	761210
190480 Remsen, city of	Plymouth County	760319
190418 Riceville, city of	Howard County	760319
190100 Ricketts, city of	Crawford County	741122
190342 Rinard, city of	Calhoun County	761029
190646 Riverside, city of	Washington County	760813
190393 Riverton, city of	Fremont County	760813
190351 Rock Falls, city of	Cerro Gordo County	770114
190343 Rockwell City, city of	Calhoun County	760326
190352 Rockwell, city of	Cerro Gordo County	760326
190513 Roland, city of	Story County	770325
190414 Rome, city of	Henry County	760709
190799 Royal, city of	Clay County	761029
190365 Rudd, city of	Floyd County	760423
190800 Runnells, city of	Polk County	750919
190422 Rutland, city of	Humboldt County	761105
190801 Ryan, city of	Delaware County	760326
190531 Scarville, city of	Winnebago County	760702
190652 Schaller, city of	Sac County	761105
190499 Searsboro, city of	Poweshiek County	781029
190521 Shannon City, city of	Ringgold County	760813
190132 Sheffield, city of	Franklin County	740628
190338 Shell Rick, city of	Butler County	761217
190319 Shellsburg, city of	Benton County	761029
190906 Sioux County*	Sioux County	771025
190805 Soldier, city of	Monona County	760813
190432 Solon, city of	Johnson County	760813
190344 Somers, city of	Calhoun County	761029
190285 Spillville, city of	Winneshiek County	761029
190444 Springville, city of	Linn County	770401
190461 Stacyville, city of	Mitchell County	760326
190333 Stanley, city of	Buchanan County	760625
190141 Steamboat Rock, city of	Hardin County	750103
190489 Stockton, city of	Muscatine County	761119
190810 Swisher, city of	Johnson County	760813
190666 Thompson, city of	Winnebago County	750919
190813 Thor, Town of	Humboldt County	770913
190667 Toledo, city of	Tama County	750912
190816 Treynor, city of	Pottawattamie County	760326
190671 University Park, Town of	Mahaska County	760319
190464 Ute, city of	Monona County	760319
190362 Van Meter, city of	Dallas County	750926
190574 Ventura, city of	Cerro Gordo County	761105
190468 Villisica, city of	Montgomery County	760813
190360 Wadena, city of	Fayette County	760613
190675 Walcott, city of	Muscatine County	760709
190820 Walford, city of	Benton County	760813
190445 Walker, city of	Linn County	761029
190911 Wapello County*	Wapello County	771025
190912 Warren County*	Warren County	780207
190317 Waterville, city of	Allamakee County	760416
190381 Waucoma, city of	Fayette County	760730
190276 Wellman, city of	Washington County	760430
190680 Wellsburg, city of	Grundy County	761008
190482 Westfield, city of	Plymouth County	760613
190823 Westgate, city of	Fayette County	761029
190090 Wheatland, city of	Clinton County	740628
190684 Whiting, city of	Monona County	760702
190686 Wilton, city of	Muscatine County	761022
190915 Winnebago County*	Winnebago County	770726
190350 Wiota, city of	Cass County	760625
190410 Woden, city of	Hancock County	760430
190070 Woodburn, city of	Clarke County	741220
190827 Woolstock, city of	Wright County	760625
190474 Yorktown, city of	Page County	761008
190971 Zwingle, city of	Dubuque County	761105

Total of 230 communities.

Ident. and community name	County	Original hazard date
Kansas		
200380 Alta Vista, city of	Wabaunsee County	760319
200181 Alton, city of	Osborne County	760319
200382 Altoona, city of	Wilson County	760730
200569 Anderson County*	Anderson County	771213
200384 Arcadia, city of	Crawford County	750816
200464 Arlington, city of	Reno County	750926
200009 Atchison County	Atchison County	770531
200387 Axtell, city of	Marshall County	750326
200388 Barnes, city of	Washington County	750822
200016 Barton County	Barton County	770802
200389 Beattie, city of	Marshall County	750829
200467 Bennington, city of	Ottawa County	760326
200469 Bird City, city of	Cheyenne County	760730
200391 Bison, city of	Rush County	750829
200470 Blue Rapids, city of	Marshall County	760326
200022 Bourbon County	Bourbon County	771025
200392 Brewster, city of	Thomas County	760716
200393 Bronson, city of	Bourbon County	750718
200028 Brown County	Brown County	770517
200396 Burdett, city of	Pawnee County	760326
200249 Burlingame, city of	Osage County	781224
200397 Burns, city of	Marion County	760326
200474 Caldwell, city of	Sumner County	750919
200475 Cheney, city of	Sedgwick County	760326
200044 Cherokee County	Cherokee County	770510
200479 Cherokee, city of	Crawford County	760326
200058 Cloud County	Cloud County	770823
200062 Coffey County	Coffey County	770823
200004 Colony, city of	Anderson County	741220
200486 Cottonwood Falls, city of	Chase County	760326
200399 Courtland, city of	Republic County	780521
200403 Dearing, city of	Montgomery County	750725
200405 Dorrance, city of	Russell County	760613
200490 Downs, city of	Osborne County	761126
200235 Dunlap, city of	Morris County	750103
200406 Dwight, city of	Morris County	750919
200491 Eastborough, city of	Sedgwick County	750919
200408 Elk City, city of	Montgomery County	781029
200236 Elkhart, city of	Morton County	740524
200271 Emmett, city of	Pottawatomie County	741220
200050 Englewood, city of	Clark County	760716
200409 Ensign, city of	Gray County	760326
200492 Enterprise, city of	Dickinson County	760423
200410 Esbon, city of	Jewell County	750829
200493 Eskridge, city of	Wabaunsee County	750822
200099 Finney County	Finney County	780228
200101 Ford County	Ford County	771206
200411 Ford, city of	Ford County	760326
200495 Fowler, city of	Meade County	760730
200024 Fulton, city of	Bourbon County	750110

Ident. and community name	County	Original hazard date
Kansas—Continued		
200412 Garfield, city of	Pawnee County	760604
200342 Gayford, city of	Smith County	741227
200413 Geneseo, city of	Rice County	760423
200414 Geuda Springs, city of	Cowley County	750912
200227 Glen Elder, city of	Mitchell County	741227
200206 Goessel, city of	Marion County	741122
200239 Goff, city of	Nemaha County	741108
200006 Greeley, city of	Anderson County	741122
200501 Greensburg, city of	Kiowa County	760730
200418 Grenola, city of	Elk County	750926
200064 Gridley, city of	Coffey County	741122
200355 Haddam, city of	Washington County	741227
200029 Hamlin, city of	Brown County	750919
200421 Hardtner, city of	Barber County	750815
200504 Haviland, city of	Kiowa County	750822
200061 Highland, city of	Doniphan County	760423
200508 Hoxie, city of	Sheridan County	760616
200116 Ingalls, city of	Gray County	741220
200619 Jackson County*	Jackson County	770531
200426 Jamestown, city of	Cloud County	760430
200147 Jefferson County	Jefferson County	770816
200512 Kensington, city of	Smith County	750822
200007 Kincaid, city of	Anderson County	741122
200329 Kismet, city of	Seward County	741122
200196 La Cygne, city of	Linn County	740315
200103 Lane, city of	Franklin County	741227
200065 Lebo, city of	Coffey County	760423
200247 Lenora, city of	Norton County	761119
200517 Leoti, city of	Wichita County	761105
200066 Leroy, city of	Coffey County	731228
200516 Lewis, city of	Edwards County	760326
200431 Linn, city of	Washington County	750905
200272 Louisville, city of	Pottawatomie County	741206
200519 Lucas, city of	Russell County	760702
200433 Luray, city of	Russell County	760702
200520 Maize, city of	Sedgwick County	761029
200593 Marion County*	Marion County	780822
200310 McCracken, city of	Rush County	741122
200437 Melvern, city of	Osage County	760730
200220 Miami County	Miami County	770607
200537 Miltonvale, city of	Cloud County	760507
200538 Minneapolis, city of	Ottawa County	760806
200595 Montgomery County*	Montgomery County	771016
200540 Moran, city of	Allen County	760326
200055 Morganville, city of	Clay County	741220
200118 Morland, city of	Graham County	770311
200032 Morrill, city of	Brown County	741122
200356 Morrowville, city of	Washington County	741206
200197 Mound City, city of	Linn County	740301
200440 Mullinville, city of	Kiowa County	750829
200014 Muscotah, city of	Atchison County	741122
200598 Neosho County*	Neosho County	771101
200360 Neosho Falls, city of	Woodson County	750131
200204 Neosho Rapids, city of	Lyon County	750103
200543 Oakley, city of	Logan County	760702
200444 Olpe, city of	Lyon County	750926
200544 Onaga, city of	Pottawatomie County	760813
200601 Osage County*	Osage County	770609
200545 Oswego, city of	Labette County	750919
200547 Oxford, city of	Sumner County	750808
200357 Palmer, city of	Washington County	741220
200198 Parker, city of	Linn County	750207
200446 Partridge, city of	Reno County	761217
200566 Pawnee County*	Pawnee County	771025
200447 Peru, city of	Chautauqua County	750926
200199 Pleasanton, city of	Linn County	760702
200105 Pomona, city of	Franklin County	740206
200200 Prescott, city of	Linn County	760423
200449 Preston, city of	Pratt County	761029
200106 Princeton, city of	Franklin County	760528
200550 Protection, city of	Comanche County	760702
200522 Quinter, city of	Gove County	761224
200450 Ransom, city of	Ness County	761112
200288 Republic, city of	Republic County	741206
200453 Rolla, city of	Morton County	760326
200315 Russell, city of	Russell County	740206
200455 Scammon, city of	Cherokee County	750919
200097 Schoenchen, city of	Ellis County	750117
200528 Sedan, city of	Chautauqua County	750822
200457 Severy, city of	Greenwood County	750926
200606 Seward County*	Seward County	770913
200458 Sharon, city of	Barber County	750822
200459 South Haven, city of	Sumner County	750919
200531 Spearville, city of	Ford County	750919
200524 St. Francis, city of	Cheyenne County	750919
200274 St. George, city of	Pottawatomie County	750103
200460 Summerfield, city of	Marshall County	760702
200365 Thayer, city of	Neosho County	760702
200367 Toronto, city of	Woodson County	750919
200366 Treece, city of	Cherokee County	760326
200370 Tyro, city of	Montgomery County	750725
200551 Ulysses, city of	Grant County	781105
200556 Waterville, city of	Marshall County	750829
200557 Weir, city of	Cherokee County	750919
200558 West Plains, city of	Meade County	760618
200008 Westphalia, city of	Anderson County	741220
200617 Wilson County*	Wilson County	770607
200379 Woodston, city of	Rooks County	750926

Total of 146 communities.

Ident. and community name	County	Original hazard date
Kentucky		
210353 Adairville, city of	Logan County	780908
210267 Allen County*	Allen County	770624
210268 Ballard County*	Ballard County	770408
210334 Barren County*	Barren County	770819
210008 Bath County*	Bath County	770401
210106 Berry, city of	Harrison County	740816
210167 Booneville, city of	Owsley County	740201
210021 Bracken County	Bracken County	770610
210161 Bradfordsville, city of	Marion County	740510
210025 Breckinridge County	Breckinridge County	771021
210201 Brodhead, city of	Rockcastle County	740517
210236 Brownsville, city of	Edmonson County	761008
210273 Bullitt County	Bullitt County	770520
210354 Cadiz, city of	Trigg County	780929
210313 Calloway County*	Calloway County	771202
210042 Carlisle County*	Carlisle County	741016
210045 Carroll County	Carroll County	770225
210053 Casey County*	Casey County	741213
210355 Cedarville, city of	Pike County	780929
210277 Christian County	Christian County	770624
210057 Clay County*	Clay County	741227
210327 Clinton County	Clinton County	770715
210254 Crittenden County*	Crittenden County	771223
210060 Cumberland County	Cumberland County	750103
210317 Dexter, city of	Calloway County	761001
210038 Fort Thomas, city of	Campbell County	740125
210249 Fort Wright, city of	Kenton County	750117
210272 Foster, city of	Bracken County	750801
210336 Fulton County*	Fulton County	771223
210281 Gallatin County	Gallatin County	760903
210081 Garrard County*	Garrard County	741016
210251 Gilbertsville, city of	Marshall County	750725
210078 Glencoe, city of	Gallatin County	740201
210282 Graves County	Graves County	771104
210330 Grayson County*	Grayson County	771125
210303 Hardin, city of	Marshall County	740614
210329 Harrison County*	Harrison County	770826
210257 Hart County*	Hart County	770706
210357 Hartford, city of	Ohio County	780915
210086 Henderson County	Henderson County	770624
210338 Hickman County*	Hickman County	780303
210112 Hopkins County*	Hopkins County	741016
210358 Jeffersonville, city of	Montgomery County	780908
210340 Knott County*	Knott County	771104
210134 Laurel County*	Laurel County	741227
210085 Leitchfield, town of	Grayson County	740510
210324 Leslie County*	Leslie County	770729
210289 Letcher County	Letcher County	770902
210341 Logan County*	Logan County	770909
210342 Madison County*	Madison County	770826
210160 Marion County	Marion County	770610
210252 Marshall County*	Marshall County	780317
210259 Mason County*	Mason County	761231
210343 McCreary County*	McCreary County	771125
210233 McHenry, town of	Ohio County	741025
210169 Meade County*	Meade County	770513
210326 Montgomery County*	Montgomery County	771021
210293 Muhlenberg County	Muhlenberg County	770513
210183 Ohio County*	Ohio County	771202
210186 Owen County*	Owen County	741018
210296 Owsley County	Owsley County	770617
210297 Pendleton County*	Pendleton County	760730
210197 Pulaski County*	Pulaski County	770722
210200 Robertson County*	Robertson County	770325
210245 Rockport, town of	Ohio County	740201
210205 Russell County*	Russell County	770715
210260 Sadieville, city of	Scott County	750103
210209 Shelby County*	Shelby County	741016
210294 South Carrollton, city of	Muhlenberg County	750725
210276 Southgate, city of	Campbell County	750801
210320 St. Charles, town of	Hopkins County	760813
210212 Taylor County*	Taylor County	741016
210315 Trigg County*	Trigg County	770826
210300 Trimble County	Trimble County	770114
210216 Uniontown, town of	Union County	740517
210270 Union, town of	Boone County	750801

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Ident. and community name	County	Original hazard date
Kentucky—Continued		
210231 Versailles, city of	Woodford County	770729
210096 Vine Grove, city of	Hardin County	740517
210048 Wayne County*	Wayne County	790106
210248 Wheat Croft, town of	Webster County	740215
210007 Wineton Park, town of	Kenyon County	740123
Total of 81 communities.		
Louisiana		
220114 Albany, village of	Livingston Parish	740412
220231 Angie, village of	Washington Parish	750103
220354 Athens, village of	Claiborne Parish	750221
220374 Belcher, village of	Caddo Parish	780627
220316 Bonita, village of	Morehouse Parish	750822
220318 Chatham, town of	Jackson Parish	750919
220320 Clarks, village of	Caldwell Parish	750815
220323 Dubach, town of	Lincoln Parish	770401
220324 Elizabeth Town	Allen Parish	750725
220326 Florien, village of	Sabine Parish	750725
220117 French Settlement, village of	Livingston Parish	741025
220290 Goldonna, village of	Natchitoches Parish	750919
220331 Hodge, village of	Jackson Parish	750711
220332 Hornbeck, village of	Vernon Parish	750815
220334 Jena, town of	La Salle Parish	781224
220335 Junction City, village of	Claiborne Parish	750718
220390 Lillie, village of	Union Parish	790403
220366 Lincoln Parish*	Lincoln Parish	771129
220336 Logansport, town of	De Soto Parish	750815
220339 Mooringsport, town of	Caddo Parish	760625
220367 Morehouse Parish*	Morehouse Parish	780805
220340 New Llano, village of	Vernon Parish	760409
220307 Reeves, village of	Allen Parish	750815
220368 Sabine Parish*	Sabine Parish	780124
220309 Saline, village of	Bienville Parish	760625
220258 Slaughter, town of	East Feliciana Parish	750919
220205 Sun, village of	St. Tammany Parish	740830
220069 Turkey Creek, village of	Evangeline Parish	740830
220397 Urania, town of	La Salle Parish	790403
220234 Varnado, village of	Washington Parish	741025
220228 Vernon Parish	Vernon Parish	770726
Total of 31 communities.		
Maine		
230063 Alna, town of	Lincoln County	750103
230272 Amherst, town of	Hancock County	750124
230345 Avon, town of	Franklin County	770114
230252 Belmont, town of	Waldo County	750314
230144 Berwick, town of	York County	740809
230119 Bowdoinham, town of	Sagadahoc County	761203
230913 Bowdoin, town of	Sagadahoc County	761217
230275 Brooklin, town of	Hancock County	761224
230374 Burlington, town of	Penobscot County	750207
230375 Carmel, town of	Penobscot County	750228
230376 Charleston, town of	Penobscot County	750221
230437 Charlotte, town of	Washington County	761217
230378 Clifton, town of	Penobscot County	750207
230307 Columbia, town of	Washington County	750214
230380 Corinth, town of	Penobscot County	750221
230309 Crawford, town of	Washington County	750117
230148 Dayton, town of	York County	740626
230279 Dedham, town of	Hancock County	750418
230313 East Machias, town of	Washington County	770211
230217 Edgecomb, town of	Lincoln County	750103
230237 Fayette, town of	Kennebec County	741129
230168 Gilead, town of	Oxford County	750207
230398 Greenfield, town of	Penobscot County	750221
230425 Hersey, town of	Aroostook County	741220
230315 Jonesboro, town of	Washington County	750214
230393 Lagrange, town of	Penobscot County	750228
230912 Le Vante, town of	Penobscot County	770429
230193 Lebannon, town of	York County	750207
230426 Littleton, town of	Aroostook County	750321
230395 Lowell, town of	Penobscot County	750221
230429 Ludlow, town of	Aroostook County	750221
230268 Mariaville, town of	Hancock County	750314
230261 Montville, town of	Waldo County	750221
230363 Moose River, town of	Somerset County	750117
230216 Newcastle, town of	Lincoln County	750221
230316 Northfield, town of	Washington County	750214
230180 Orrington, town of	Penobscot County	750207
230289 Otis, town of	Hancock County	750418
230412 Parkman, town of	Piscataquis County	750214
230143 Pembroke, town of	Washington County	741018
230030 Perham, town of	Aroostook County	750418
230399 Plymouth, town of	Penobscot County	770429
230264 Prospect, town of	Waldo County	750214

Ident. and community name	County	Original hazard date
Maine—Continued		
230414 Sebec, town of	Piscataquis County	761210
230415 Shirley, town of	Piscataquis County	750124
230400 Springfield, town of	Penobscot County	760124
230323 Steuben, town of	Washington County	780221
230095 Stockholm, town of	Aroostook County	780110
230914 Talmadge, Town of	Washington County	781217
230324 Topsfield, Town of	Washington County	750814
230248 Vassalborough, Town of	Kennebec County	750207
230300 Verona, Town of	Hancock County	781126
230439 Wales, Town of	Androscoggin County	750221
230082 Washington, Town of	Knox County	740906
230039 Weston, Town of	Aroostook County	750221
230222 Westport, Town of	Lincoln County	750103
230087 Whitefield, Town of	Lincoln County	740726
230329 Whitneyville, Town of	Washington County	770607
230404 Winn, Town of	Penobscot County	750124
230223 Wiscasset, Town of	Lincoln County	770524
Total of 80 communities.		
Maryland		
240102 Deer Park, Town of	Garrett County	741108
240106 Galestown, Town of	Dorchester County	750711
240124 Smithburg, Town of	Washington County	770114
240062 Willards, Town of	Wicomico County	770121
Total of 4 communities.		
Massachusetts		
250048 Acushnet, Town of	Bristol County	740906
250176 Ashby, Town of	Middlesex County	770429
250134 Blandford, Town of	Hampden County	740726
250135 Brimfield, Town of	Hampden County	740719
250136 Chester, Town of	Hampden County	740719
250069 Chilmark, Town of	Dukes County	741206
250181 Dunstable, Town of	Middlesex County	741129
250180 Easthampton, Town of	Hampshire County	740621
250023 Florida, Town of	Berkshire County	781112
250139 Granville, Town of	Hampden County	740830
250084 Hamilton, Town of	Essex County	781126
250311 Hubbardston, Town of	Worcester County	740906
250121 Leyden, Town of	Franklin County	750207
250148 Montgomery, Town of	Hampden County	741122
250032 New Ashford, Town of	Berkshire County	741122
250324 Oakham, Town of	Worcester County	740802
250326 Paxton, Town of	Worcester County	740726
250168 Pelham, Town of	Hampshire County	740628
250036 Peru, Town of	Berkshire County	741101
250169 Plainfield, Town of	Hampshire County	741101
250126 Rowe, Town of	Franklin County	760620
250101 Rowley, Town of	Essex County	740726
250126 Shutesbury, Town of	Franklin County	750221
250151 Tolland, Town of	Hampden County	750404
250043 Tyringham, Town of	Berkshire County	741129
250130 Werwick, Town of	Franklin County	750124
250044 Washington, Town of	Berkshire County	741101
250131 Wendell, Town of	Franklin County	750117
250047 Windsor, Town of	Berkshire County	741122
Total of 29 communities.		
Michigan		
260342 Autrain, Township of	Alger County	770325
260210 Bangor, Township of	Van Buren County	750110
260352 Baraga, Township of	Baraga County	760526
260551 Baraga, Village of	Baraga County	751031
260583 Barryton, Village of	Mecosta County	770520
260374 Bay Mills, Township of	Chippewa County	770617
260357 Beaver, Township of	Bay County	770805
260481 Benona, Township of	Oceana County	781015
260192 Berlin, Township of	St. Clair County	740823
260465 Big Prairie, Township of	Newaygo County	770114
260027 Blaine, Township of	Benzie County	740920
260430 Boardman, Township of	Kalaska County	770805
260371 Boyne Falls, Village of	Charlevoix County	761022
260530 Breedsville, Village of	Van Buren County	750926
260390 Brietung, Township of	Dickinson County	770311
260505 Brockway, Township of	St. Clair County	751024
260335 Brooklyn, Village of	Jackson County	761008
260375 Bruce, Township of	Chippewa County	770603
260555 Buchanan, Township of	Berrien County	761008
260601 Byron, Village of	Shiawassee County	750919
260597 Caro, Village of	Tuscola County	751024
260506 Casco, Township of	St. Clair County	770304
260677 Caseville, Village of	Huron County	770805
260659 Cedarville, Township of	Menominee County	780526

Ident. and community name	County	Original hazard date
Michigan—Continued		
260599 Chelsea, Village of	Washtenaw County	751003
260500 Chelsaning, Township of	Saginaw County	761008
260591 Chesaning, Village of	Saginaw County	770311
260482 Claybanks, Township of	Oceana County	761126
260663 Clayton, Township of	Genesee County	771111
260579 Clifford, Village of	Lapeer County	751024
260437 Clinton, Village of	Lenawee County	750416
260195 Clyde, Township of	St. Clair County	740726
260433 Columbiaville, Village of	Lapeer County	750711
260531 Columbia, Township of	Van Buren County	750905
260491 Coopersville, Village of	Ottawa County	750926
260488 Croton, Township of	Newaygo County	780310
260454 Custer, Village of	Mason County	750926
260350 Deep River, Township of	Arenac County	770624
260434 Deerfield, Township of	Lapeer County	770513
260600 Dexter, Village of	Wastienaw County	751017
260553 Elberta, Village of	Benzie County	750919
260569 Elkton, Village of	Huron County	751003
260349 Ellsworth, Village of	Antrim County	750411
260449 Ely, Township of	Marquette County	770520
260327 Evart, City of	Osceola County	750425
260518 Evergreen, Township of	Sanilac County	761022
260586 Exeter, Township of	Monroe County	751003
260405 Fife Lake, Township of	Grand Traverse City	770114
260406 Fife Lake, Village of	Grand Traverse County	750711
260062 Ford River, Township of	Delta County	761203
260373 Forest, Township of	Cheboygan County	770304
260450 Forsyth, Township of	Marquette County	770325
260657 Fraser, Township of	Bay County	780526
260576 Galesburg, City of	Kalamazoo County	751024
260360 Gilead, Township of	Branch County	761126
260525 Gilford, Township of	Tuscola County	750919
260440 Green Oak, Township of	Livingston County	770527
260570 Harbor Beach, City of	Huron County	760130
260532 Hartford, City of	Van Buren County	750711
260347 Heath, Township of	Allegan County	750822
260489 Hersey, Village of	Osceola County	750711
260485 Hesperia, Village of	Oceana County	750711
260137 Hinton, Township of	Mecosta County	740906
260462 Holland, Township of	Missaukee County	750801
260474 Holly, Township of	Oakland County	770624
260457 Holmes, Township of	Menominee County	770401
260568 Houghton, City of	Houghton County	770610
260365 Howard, Township of	Cass County	770318
260418 Hubbardston, Village of	Ionia County	750926
260493 Hudsonville, City of	Ottawa County	750905
260415 Huron, Township of	Huron County	761105
260545 Huron, Township of	Wayne County	780630
260475 Independence, Township of	Oakland County	770513
260526 Indianfields, Township of	Tuscola County	770304
260650 Ingallston, Township of	Menominee County	780217
260354 Irving, Township of	Barry County	770415
260133 Ishpeming, City of	Marquette County	761112
260408 Jonesville, Village of	Hillsdale County	750926
260463 Lakeview, Village of	Montcalm County	750711
260496 Lake, Township of	Roscommon County	761126
260435 Lapeer, Township of	Lapeer County	770415
260533 Lawton, Village of	Van Buren County	750926
260014 Lincoln, Township of	Arenac County	760514
260398 Linden, Village of	Genesee County	750926
260715 Lockport, Township of	St. Joseph County	781103
260149 London, Township of	Monroe County	760820
260353 L'Anse, Township of	Baraga County	780224
260675 Mackinaw, Village of	Cheboygan County	770812
260349 Manlius, Township of	Allegan County	761126
260609 Marathon, Township of	Lapeer County	751024
260367 Marcellus, Township of	Cass County	761126
260328 Marion, Village of	Osceola County	750425
260687 Masonville, Township of	Delta County	780120
260436 Mayfield, Township of	Lapeer County	780519
260487 McMillan, Township of	Ontonagon County	751003
260584 Mecosta, Village of	Mecosta County	751010
260513 Mendon, township of	St. Joseph County	770325
260702 Menominee, township of	Menominee County	780815
260356 Middleville, village of	Barry County	750718
260486 Mills, township of	Ogemaw County	750725
260359 Monitor, township of	Bay County	759725
260517 Moore, township of	Sanilac County	770527
260443 Moran, township of	Mackinac County	770325
260521 New Haven, township of	Shiawassee County	750725
260340 Newaygo, city of	Newaygo County	750912
260338 North Branch, village of	Lapeer County	750912
260420 North Plains, township of	Ionia County	770617
260424 Norvell, township of	Jackson County	761105
260332 Norway, city of	Dickinson County	750711
260476 Oakland, township of	Oakland County	770401
260502 Oakley, village of	Saginaw County	750926
260622 Omer, city of	Arenac County	771028
260413 Osceola, township of	Houghton County	750926
260362 Ovid, township of	Branch County	761105
260378 Pickford, township of	Chippewa County	770520

Ident. and community name	County	Original hazard date
Michigan—Continued		
260704 Pinckney, village of	Livingston County	770819
260534 Pine Grove, township of	Van Buren County	750725
260368 Pokagon, township of	Cass County	770527
260618 Port Austin, village of	Huron County	760130
260672 Port Huron, township of	St. Clair County	761029
260460 Powers, village of	Menominee County	750711
260464 Ravenna, village of	Muskegon County	750926
260410 Reading, township of	Hillsdale County	771028
260453 Republic, township of	Marquette County	780512
260402 Richfield, township of	Genesee County	750711
260422 Rolland, township of	Isabella County	770304
260497 Roscommon, township of	Roscommon County	770318
260377 Rudyard, township of	Chippewa County	761015
260537 Scio, township of	Washtenaw County	761126
260538 Sharon, township of	Washtenaw County	761015
260523 Shiawassee, township of	Shiawassee County	751010
260378 Soo, township of	Chippewa County	761126
260336 Sparta, village of	Kent County	761015
260557 Stevensville, village of	Berrien County	750926
260444 St. Ignace, township of	Mackinac County	770729
260379 Sugar Island, township of	Chippewa County	770617
260380 Superior, township of	Chippewa County	770617
260540 Superior, township of	Washtenaw County	770617
260683 Thetford, township of	Genesee County	780210
260504 Tittabawassee, township of	Saginaw County	750815
260708 Torch Lake, township of	Houghton County	770812
260351 Turner, township of	Arenac County	750718
260550 Turner, village of	Arenac County	770304
260527 Tuscola, township of	Tuscola County	770304
260334 Ubly, village of	Huron County	750411
260546 Van Buren, township of	Wayne County	770408
260524 Vernon, village of	Shiawassee County	750711
260508 Wales, township of	St. Clair County	750808
260447 Washington, township of	Macomb County	761105
260404 Watersmeet, township of	Gogebic County	770318
260049 Weesaw, township of	Berrien County	740628
260388 Wells, township of	Delta County	770610
260479 White Lake, township of	Oakland County	770527
260417 White Oak, township of	Ingham County	751010
260547 Wilber, township of	Iosco County	761126
260495 Wright, township of	Ottawa County	770527
260329 Yale, city of	St. Clair County	750411
260432 Yates, township of	Lake County	750815
260541 York, township of	Washtenaw County	750718
Total of 159 communities.		
Minnesota		
270	County	
270492 Aldrich, city of	Wadena County	750207
270691 Arco, city of	Lincoln County	770415
270345 Askov, city of	Pine County	741025
270417 Aurora, city of	St. Louis County	740405
270552 Avoca, city of	Murray County	750110
270554 Baudette, city of	Lake of the Woods County	741227
270710 Becker, city of	Sherburne County	790330
270555 Bejou, city of	Mahnomen County	750103
270711 Bemidji, city of	Beltrami County	781110
270251 Biscay, city of	McLeod County	741115
270556 Blackduck, city of	Beltrami County	750801
270293 Bolus, city of	Morrison County	741025
270057 Boy River, city of	Cass County	770610
270070 Branch, city of	Chisago County	740830
270319 Brewster, city of	Nobles County	750425
270557 Brook Park, city of	Pine County	741025
270388 Brooks, city of	Red Lake County	740809
270292 Brownton, city of	McLeod County	740503
270294 Buckman, city of	Morrison County	740809
270712 Caledonia, city of	Houston County	781013
270281 Cedar Mills, city of	Meeker County	750214
270312 Chandler, city of	Mower County	740809
270125 Chatfield, city of	Fillmore County	760813
270058 Chickamaw Bch, city of	Cass County	761015
270454 Chokio, city of	Stearns County	740503
270664 Clear Lake, city of	Sherburne County	750103
270363 Climax, city of	Polk County	740920
270458 Clontarf, city of	Swift County	740719
270561 Cobden, city of	Brown County	741101
270562 Cologne, city of	Carver County	741101
270035 Comfrey, city of	Brown County	740920
270025 Correll, city of	Big Stone County	750124
270282 Cosmos, city of	Meeker County	740517
270314 Courtland, city of	Nicollet County	740719
270313 Currie, city of	Mower County	740802
270469 Danvers, city of	Swift County	740809
270334 Deer Creek, city of	Otter Tail County	740816
270470 Degraff, city of	Swift County	740809
270563 Delhi, city of	Red Lake County	741025
270346 Denham, city of	Pine County	750124
270566 Dover, city of	Olmstead County	741101

Ident. and community name	County	Original hazard date
Minnesota —Continued		
270059 East Gull Lake, city of	Cass County	741220
270118 Easton, city of	Faribault County	760730
270283 Eden Valley, city of	Stearns County	740503
270320 Ellsworth, city of	Nobles County	740503
270295 Elmdale, city of	MorrisonCounty	740809
270336 Erhard, city of	Otter Tail County	740809
270422 Eveleth, city of	St. Louis County	740607
270329 Eyota, city of	Olmstead County	740412
270278 Fairmont, city of	Martin County	740607
270060 Federal Dam, city of	Cass County	761008
270366 Fisher, city of	Polk County	740802
270693 Forest Lake, City of	Washington County	771218
270570 Frazee, city of	Becker County	741115
270448 Freeport, city of	Stearns County	740503
270571 Funkley, city of	Beltrami County	750711
270296 Genola, city of	Morrison County	750207
270439 Gibbon, city of	Sibley County	740621
270088 Gonvick, city of	Clearwater County	740823
270142 Goodhue, city of	Goodhue County	740524
270277 Granada, city of	Martin County	740802
270447 Greenwald, city of	Stearns County	740823
270051 Hackensack, city of	Cass County	740920
270573 Hadley, city of	Murray County	750411
270574 Hanley Falls, city of	Yellow Medicine County	750711
270071 Harris, city of	Chisago County	740920
270355 Hatfield, city of	Pipestone County	750131
270398 Hector, city of	Reinville County	760827
270701 Heidelberg, city of	Le Sueur County	770722
270338 Henning, city of	Otter Tail County	750503
270002 Hill City, city of	Aitkin County	741108
270409 Hills, city of	Rock County	740412
270578 Hoffman, city of	Grant County	750131
270448 Holdingford, city of	Stearns County	740517
270356 Holland, city of	Pipestone County	740830
270471 Holloway, city of	Swift County	740906
270357 Ihlen, city of	Pipestone County	740802
270235 International Falls, city of	Koochiching County	740607
270579 Iona, city of	Murray County	741220
270580 Iron Junction, city of	St. Louis County	741025
270098 Jenkins, city of	Crow Wing County	740823
270655 Kellogg, the city of	Wabasha County	750131
270523 Kent, city of	Wilkin County	750801
270143 Kenyon, city of	Goodhue County	740524
270206 La Prairie, city of	Itasca County	740823
270692 Lake Benton, city of	LIncoln County	770401
270517 Madelia, city of	Watonwan County	740412
270585 Mantorville, city	Dodge County	770603
270567 Maple Lake, city of	Wright County	750110
270243 Marietta	Lac Qui Parle County	740906
270053 Mayer, city of	Carver County	731123
270587 Maynard, city of	Chippewa County	741115
270487 Mazeppa, city of	Wabasha County	740719
270588 McIntosh, city of	Polk County	741129
270433 Menahga, city of	Wadena County	740412
270367 Mentor, city of	Polk County	741220
270270 Middle River, city of	Marshall County	740719
270589 Milan, city of	Chippewa County	770715
270488 Millville, city of	Wabasha County	740802
270489 Minneiska, city of	Wabasha County	750711
270122 Minnesota Lake, city of	Faribault County	740517
270405 Morristown, city of	Rice County	740329
270300 Motley, city of	Cass County	740802
270424 Mountain Iron, city of	St. Louis County	740524
270151 Mew Munich, city of	Stearns County	741025
270497 New Richland city of	Wadena County	740412
270590 Nielsville, city of	Polk County	741101
270591 Nimrod, city of	Wadena County	750418
270592 Norcross, city of	Grant County	741213
270072 North Branch, city of	Chisago County	740510
270512 Oak Park Heights, city of	Washington County	740322
270594 Odin, city of	Watonwan County	741213
270595 Okabena, city of	Jackson County	741227
270648 Orr, city of	St. Louis County	741213
270004 Palisade, city of	Aitkin County	740802
270063 Pillager, city of	Cass County	740719
270704 Pine County*	Pine County	771223
270697 Pine Springs, city of	Washington County	770722
270596 Plato, city of	McLeod County	741101
270218 Quamba, city of	Kanabec County	740809
270223 Regal, city of	Kandiyohi County	750131
270065 Remer, city of	Cass County	750711
270565 Revere, city of	Red Lake County	750411
270597 Rice, city of	Benton County	750117
270453 Richmond, city of	Stearns County	740329
270341 Richville, city of	Otter Tail County	741025
270021 Ronneby city of	Benton County	750711
270455 Roscoe, city of	Stearns County	740802
270073 Rush City, City of	Chisago County	740510
270360 Ruthton, city of	Pipestone County	740809
270350 Rutledge, city of	Pine County	740809
270402 Sacred Heart, city of	Renville County	740503
270046 Scanlon, city of	Carlton County	731102
270602 Seaforth, city of	Redwood County	741213
270494 Sebeka, city of	Wadena County	740412
270662 Silver Lake, city of	McLeod County	750124
270672 Skyline, city of	Blue Earth County	750627
270208 Squaw Lake, city of	Itasca County	750801
270717 Staples, city of	Todd County	781110
270352 Sturgeon Lake, city of	Pine County	741025
270601 St. Anthony, city of	Stearns County	750711
270033 St. Clair, city of	Blue Earth County	740823
270457 St. Joseph, city of	Stearns County	760827
270458 St. Stephen, city of	Stearns County	740823
270660 S. International Falls, city of	Koochiching County	750117
270209 Taconite, city of	Itasca County	760723
270260 Taunton, city of	Lyon County	740719
270047 Thomson, city of	Carlton County	740802
270605 Tower, city of	St. Louis County	741213
270361 Trosky, city of	Pipestone County	740809
270606 Turtle River, city of	Beltrami County	750801
270308 Upsala, city of	Morrison County	741025
270607 Verndale, city of	Wadena County	741025
270608 Vernon Center, city of	Blue Earth County	750103
270609 Vesta, city of	Redwood County	750110
270718 Walnut Grove, city of	Redwood County	780929
270147 Wanamingo, city of	Goodhue County	740510
270210 Warba, city of	Itasca County	740913
270286 Watkins, city of	Meeker County	740412
270666 Waverly, city of	Wright County	750117
270279 Welcome, city of	Martin County	740510
270685 Willernie, city of	Washington County	770527
270612 Williams, city of	Lake of the Woods County	741129
270703 Willmar, city of	Kandiyohi County	770729
270719 Wilton, city of	Beltrami County	781110
270613 Winger, city of	Polk County	750131
270427 Winton, city of	St. Louis County	740802
270524 Wolverton, city of	Wilkin County	740809
270615 Wood Lake, city of	Yellow Medicine County	750117
270048 Wright, city of	Carlton County	740913
270211 Zemple, city of	Itasca County	750627

Total of 171 communities.

Ident. and community name	County	Original hazard date
Mississippi		
280309 Abbeville, town of	Lafayette County	780929
280267 Alcorn County*	Alcorn County	780407
280089 Bassfield, town of	Jefferson Davis County	760730
280287 Belmont, town of	Tishomingo County	760709
280158 Braxton, village of	Simpson County	740719
280269 Chickasaw County	Chickasaw County	770603
280017 Duncan, town of	Bolivar County	761105
280188 Eden, village of	Yazoo County	740719
280270 Franklin County	Franklin County	771104
280117 Gattman, village of	Monroe County	740719
280290 Itawamba County*	Itawamba County	780512
280092 Jasper County*	Jasper County	780224
280303 Jefferson Davis County*	Jefferson Davis County	780331
280093 Lafayette County*	Lafayette County	741227
280315 Learned, town of	Hinds County	781110
280204 Lena, town of	Neshoba County	741025
280273 Lincoln County	Lincoln County	780217
280316 Louin, town of	Jasper County	781027
280274 Marshall County	Marshall County	771028
280008 McCool, village of	Attala County	750131
280048 Mt. Olive, town of	Covington County	750801
280279 Prentiss County	Prentiss County	770916
280147 Puckett, town of	Rankin County	740823
280322 Rienzi, town of	Alcorn County	781117
280049 Seminary, village of	Covington County	750801
280324 Shuqualak, town of	Noxubee County	781208
280323 Silver City, town of	Humphreys County	790914
280226 Silver Creek, town of	Lawrence County	750711
280308 Smith County*	Smith County	780421
280325 Smithville, town of	Monroe County	790216
280326 Sumrall, town of	Lamar County	790831
280282 Tippah County	Tippah County	770826
280283 Tishomingo County	Tishomingo County	780512
280263 Toccopola, town of	Pontotoc County	741213
280237 Union County*	Union County	741213
280327 Vardaman, town of	Calhoun County	790119
280098 Walnut Grove, town of	Leake County	740628
280328 Walnut, town of	Tippah County	790112

Total of 38 communities.

Ident. and community name	County	Original hazard date
Missouri		
290761 Airport Drive, village of	Jasper County	750214
290005 Amazonia, town of	Andrew County	740818
290217 Anderson, city of	McDonald County	740517
290281 Appleton, city of	St. Clair County	750207
290461 Augusta, village of	St. Charles County	741206
290767 Bakersfield, village of	Ozark County	750425
290770 Bellflower, city of	Montgomery County	770517
290756 Bevier, city of	Macon County	750214

Ident. and community name	County	Original hazard date
Missouri —Continued		
290757 Billings, city of	Christian County	750627
290006 Bolckow, town of	Andrew County	760430
290274 Bragg City, city of	Pemiscot County	780207
290618 Brashear, city of	Adair County	750214
290759 Braymer, city of	Caldwell County	750425
290618 Bronaugh, city of	Vernon County	760625
290111 Bunceton, city of	Cooper County	750425
290850 Caledonia, village of	Washington County	761105
290624 Camden, city of	Ray County	760528
290248 Canalou, town of	New Madrid County	760611
290249 Catron, town of	New Madrid County	760528
290601 Cobalt City, village of	Madison County	760326
290196 Conway, town of	Laclede County	740510
290605 Cowgill, town of	Caldwell County	750418
290610 Cross Timbers, village of	Hickory County	750221
290345 Crystal Lake Pk, town of	St. Louis County	770513
290464 Dalton, village of	Chariton County	741213
290055 Delta, city of	Cape Girardeau County	741206
290613 Des Arc, village of	Iron County	750418
290485 Dewitt, city of	Carrol County	740906
290219 Elmer, city of	Macon County	741206
290730 Esther, city of	St. Francois County	750221
290593 Frankford, city of	Pike County	770107
290477 Fremont, village of	Carter County	750221
290431 Galena, city of	Stone County	740830
290733 Gallatin, city of	Daviess County	750214
290734 Gerald, city of	Franklin County	760604
290460 Grandin, city of	Carter County	741108
290573 Hillsboro, city of	Jefferson County	761022
290714 Holden, city of	Johnson County	760409
290576 Houston Lake, village of	Platte County	770621
290575 Houstonia, city of	Pettis County	750918
290715 Humansville, city of	Polk County	750711
290577 Hume, city of	Bates County	750221
290359 Huntleigh, town of	St. Louis County	760625
290580 Iron Gates, village of	Jasper County	750214
290446 Irondale, town of	Washington County	770513
290724 Knob Noster, city of	Johnson County	750627
290698 Lake Ozark, city of	Camden County	770726
290558 Lake Winnabago, village of	McDonald County	770225
290559 Lanagan, city of	McDonald County	760604
290705 Lawson, city of	Clay County	760604
290707 Lexington, city of	Lafayette County	750725
290053 Linn Creek, city of	Camden County	741025
290115 Lock Springs, town of	Daviess County	750711
290565 Marquend, city of	Madison County	750418
290444 Marthasville, village of	Warren County	740913
290271 Meta, town of	Osage County	740913
290568 Middletown, city of	Montgomery County	760806
290499 Mill Spring, village of	Wayne County	741213
290571 Mineral Point, village of	Washington County	750808
290690 Montrose, city of	Henry County	750418
290549 New Cambria, city of	Macon County	750725
290692 New Florence, city of	Montgomery County	761105
290550 New Hampton, city of	Harrison County	750808
290059 Norborne, city of	Carrol County	740405
290554 Oak Grove, village of	Franklin County	770603
290671 Osage Beach, city of	Miller County	760730
290672 Osceola, city of	St. Clair County	760402
290535 Pineville, city of	McDonald County	750418
290537 Pleasant Hope, village of	Polk County	761029
290243 Rhineland, town of	Montgomery County	770121
290655 Rich Hill, city of	Bates County	750214
290657 Richmond, city of	Ray County	761022
290485 Ritchey, town of	Newton County	750110
290438 Rockaway Beach, town of	Taney County	750110
290518 Rockville, city of	Bates County	750221
290008 Rosendale, city of	Andrew County	750214
290665 Shelbina, city of	Shelby County	750425
290527 South Gorin, city of	Scotland County	761105
290488 Stella, city of	Newton County	750221
290667 Stockton, city of	Cedar County	760702
290039 Sturgeon, town of	Boone County	760423
290078 Sumner, town of	Chariton County	750110
290508 Sunnyvale, city of	Newton County	781105
290509 Tarsney Lakes, village of	Jackson County	761022
290228 Tuscumbia, village of	Miller County	741025
290514 Urbana, village of	Dallas County	750627
290857 Velda Village Hills, village of	St. Louis County	760702
290645 Verona, city of	Lawrence County	761015
290648 Viburnum, city of	Iron County	750221
290648 Warrenton, city of	Warren County	750207
290483 Wantworth, town of	Newton County	750110
290635 Westboro, village of	Atchison County	750711
290396 Westwood, town of	St. Louis County	760528
290653 Willard, city of	Greene County	761105
290452 Williamsville, city of	Wayne County	741018
290639 Wood Heights, village of	Ray County	761105
290033 Zalma, village of	Bollinger County	741025

Total of 97 communities.

Ident. and community name	County	Original hazard date
Montana		
300066 Bainville, town of	Roosevelt County	750103
300090 Brockton, town of	Roosevelt County	750627
300091 Clyde Park, town of	Park County	750103
300016 Deer Lodge County*	Deer Lodge County	750607
300092 Dutton, town of	Teton County	750425
300111 Ekalaka, town of	Carter County	760716
300070 Forsyth, city of	Rosebud County	740308
300013 Fort Benton, city of	Chouteau County	740510
300150 Garfield County*	Garfield County	790320
300151 Glacier County*	Glacier County	771227
300021 Grass Range, town of	Fergus County	741227
300095 Hingham, town of	Hill County	750711
300154 Jefferson County*	Jefferson County	780124
300116 Jordan, town of	Garfield County	750627
300096 Kevin, town of	Toole County	750627
300031 Lavina, town of	Golden Valley County	750124
300159 Mineral County*	Mineral County	780214
300174 Musselshell County*	Musselshell County	790529
300119 Polson, city of	Lake County	750926
300163 Powder River County*	Powder River County	790515
300164 Prairie County*	Prairie County	790508
300122 Ronan, city of	Lake County	750425
300069 Rosebud County*	Rosebud County	740802
300072 Sanders County*	Sanders County	771227
300125 Shelby, city of	Toole County	760402
300126 Sheridan, town of	Madison County	750919
300076 Silver Bow County*	Silver Bow County	770617
300127 Sunburst, town of	Toole County	750110
300130 Thompson Falls, town of	Sanders County	750207
300047 White Sulphur Springs, city of	Meagher County	740524
300052 Winnett, town of	Petroleum County	741227

Total of 31 communities.

Ident. and community name	County	Original hazard date
Nebraska		
310411 Adams County*	Adams County	771018
310243 Alexandria, village of	Thayer County	750912
310412 Antelope County*	Antelope County	771227
310342 Arnold, village of	Custer County	750815
310006 Arthur, village of	Arthur County	750110
310246 Ashton, village of	Sherman County	750711
310343 Atkinson, city of	Holt County	761105
310249 Belgrade, village of	Nance County	750502
310026 Bellwood, village of	Butler County	741122
310250 Benedict, village of	York County	750418
310066 Big Springs, village of	Deuel County	741220
310252 Bladen, village of	Webster County	750711
310351 Bloomfield, city of	Knox County	760716
310416 Box Butte County*	Box Butte County	770823
310253 Bruning, village of	Thayer County	750131
310254 Brunswick, village of	Antelope County	750402
310419 Buffalo County*	Buffalo County	790417
310169 Burchard, village of	Pawnee County	741108
310161 Burr, village of	Otoe County	741206
310420 Burt County*	Burt County	771122
310354 Burwell, city of	Garfield County	760423
310255 Bushnell, village of	Kimball County	760326
310256 Campbell, village of	Franklin County	750822
310258 Cedar Rapids, village of	Boone County	750110
310357 Chadron, city of	Dawes County	760924
310260 Chapman, village of	Merrick County	760326
310261 Chester, village of	Thayer County	760806
310263 Cody, village of	Cherry County	760326
310360 Creighton, city of	Knox County	761112
310427 Cuming County*	Cuming County	770816
310086 Curtis, city of	Frontier County	760402
310428 Custer County*	Custer County	780314
310058 Dawson County	Dawson County	771018
310430 Deuel County*	Deuel County	771101
310269 Diller, village of	Jefferson County	750829
310270 Dix, village of	Kimball County	750926
310271 Dorchester, village of	Saline County	760326
310272 Duncan, village of	Platte County	770218
310276 Eustis, village of	Frontier County	750919
310061 Farnam, village of	Dawson County	741108
310088 Gage County	Gage County	770809
310373 Greeley, village of	Greeley County	750711
310375 Gretna, city of	Sarpy County	760806
310234 Guide Rock, village of	Webster County	760709
310283 Hardy, village of	Nuckolls County	761119
310213 Hay Springs, city of	Sheridan County	740322
310286 Hildreth, village of	Franklin County	760730
310288 Holstein, village of	Adams County	750718
310381 Humphrey, village of	Platte County	750711
310447 Jefferson County*	Jefferson County	770621
310385 Laurel, village of	Cedar County	761105
310452 Lincoln County*	Lincoln County	780411
310085 Maywood, village of	Frontier County	741220
310303 Milligan, village of	Fillmore County	760709
310063 Naponee, village of	Franklin County	760613
310159 Oak, village of	Nuckolls County	741115

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Ident. and community name	County	Original hazard date
Nebraska —Continued		
310081 Ohiowa, village of	Fillmore County	741108
310394 Orleans, city of	Harlan County	760709
310465 Phelps County*	Phelps County	770816
310175 Plainview, city of	Pierce County	760702
310467 Platte County*	Platte County	770818
310310 Polk, village of	Polk County	750627
310459 Red Willow County*	Red Willow County	771227
310064 Riverton, village of	Franklin County	781029
310214 Rushville, city of	Sheridan County	740503
310489 Santee, village of	Knox County	790814
310318 Scotia, village of	Greeley County	750502
310474 Seward County*	Seward County	770607
310475 Sheridan County*	Sheridan County	771122
310034 South Bend, village of	Cass County	790710
310171 Steinauer, village of	Pawnee County	741122
310106 Stockham, village of	Hamilton County	741206
310172 Table Rock, village of	Pawnee County	741101
310326 Thedford, village of	Thomas County	750711
310333 Western, village of	Saline County	781119
310335 Wilsonville, village of	Furnas County	761203
Total of 78 communities.		
Nevada		
320030 Churchill County*	Churchill County	771227
320029 Lyon County	Lyon County	780131
320033 Storey County*	Storey County	780110
320012 Winnemucca, city of	Humboldt County	780423
Total of 4 communities.		
New Hampshire		
330152 Acworth, town of	Sullivan County	740913
330174 Albany, town of	Carroll County	750117
330041 Alexandria, town of	Grafton County	750221
330175 Atkinson, town of	Rockingham County	750103
330180 Brookline, town of	Hillsborough County	750404
330126 Candia, town of	Rockingham County	750221
330181 Chatham, town of	Carroll County	750103
330183 Chesterfield, town of	Cheshire County	771213
330182 Chester, town of	Rockingham County	750221
330109 Chichester, town of	Merrimack County	740405
330184 Clarksville, town of	Coos County	750103
330111 Danbury, town of	Merrimack County	770614
330199 Danville, town of	Rockingham County	750117
330050 Dorchester, town of	Grafton County	750314
330201 Dummer, town of	Coos County	750117
330202 Dunbarton, town of	Merrimack County	750117
330204 Easton, town of	Carroll County	750117
330012 Effingham, town of	Carroll County	750117
330208 Errol, town of	Coos County	750117
330207 Fitzwilliam, town of	Cheshire County	761126
330019 Freedom, town of	Carroll County	740830
330131 Fremont, town of	Rockingham County	740809
330208 Gilmantown, town of	Belknap County	750117
330054 Grafton, town of	Grafton County	750117
330212 Harrisville, town of	Cheshire County	750124
330216 Kensington, town of	Rockingham County	770906
330217 Kingston, town of	Rockingham County	750117
330060 Landaff, town of	Grafton County	741206
330159 Langdon, town of	Sullivan County	750103
330160 Lempster, town of	Sullivan County	750131
330062 Lincoln, town of	Grafton County	750221
330117 Loudon, town of	Merrimack County	740802
330218 Lyndeborough, town of	Hillsborough County	750221
330219 Madbury, town of	Strafford County	750117
330220 Madison, town of	Carroll County	750117
330221 Mason, town of	Hillsborough County	750221
330222 Middleton, town of	Strafford County	750131
330035 Milan, town of	Coos County	740828
330149 Milton, town of	Strafford County	750207
330068 Monroe, town of	Grafton County	741129
330224 Mont Vernon, town of	Hillsborough County	750117
330015 Moultonborough, town of	Carroll County	770211
330229 Newington, town of	Rockingham County	750221
330069 Orange, town of	Grafton County	750110
330186 Pittsburg, town of	Coos County	750131
330187 Randolph, town of	Coos County	750103
330188 Richmond, town of	Cheshire County	750103
330172 Roxbury, town of	Cheshire County	750214
330073 Rumney, town of	Grafton County	740315
330191 Sandown, town of	Rockingham County	750103
330193 South Hampton, town of	Rockingham County	750228
330163 Springfield, town of	Sullivan County	771108
330194 Stewartstown, town of	Coos County	750110
330195 Stoddard, town of	Cheshire County	750117
330170 Surry, town of	Cheshire County	750103
330173 Troy, town of	Cheshire County	750103
330165 Unity, town of	Sullivan County	740531
330168 Warren, town of	Grafton County	740913
330166 Washington, town of	Sullivan County	741227
330235 Weare, town of	Hillsborough County	750214
330040 Whitefield, town of	Coos County	740726
330124 Wilmot, town of	Merrimack County	740816
Total of 62 communities.		
New Jersey		
340540 Mendham, borough of	Morris County	750131
340556 Mine Hill, township of	Morris County	770107
340549 Newfield, borough of	Gloucester County	770701
340421 Pittsgrove, township of	Salem County	761203
340455 Sandyston, township of	Sussex County	771021
340212 South Harrison, township of	Gloucester County	740628
340533 Tabernacle, township of	Burlington County	750207
340479 Winfield, township of	Union County	740308
Total of 8 communities.		
New Mexico		
350098 Capitan, village of	Lincoln County	760625
350110 Carrizozo, town of	Lincoln County	750822
350050 Chama, village of	Rio Arriba County	740816
350125 Chaves County*	Chaves County	780613
350127 Curry County*	Curry County	780207
350112 Dexter, town of	Chaves County	750502
350121 Grant County	Grant County	770809
350122 Lincoln County	Lincoln County	780328
350114 Loving, village of	Eddy County	750808
350076 Magdalena, village of	Socorro County	740802
350106 Maxwell, village of	Colfax County	750919
350039 McKinley County	McKinley County	780704
350116 Questa, village of	Taos County	750117
350141 Reserve, village of	Catron	790814
350108 Roy, village of	Harding County	760716
350132 San Miguel County*	San Miguel County	770816
350055 Sandoval County	Sandoval County	771129
350032 Tatum, town of	Lea County	740621
350133 Torrence County*	Torrance County	780411
Total of 19 communities.		
New York		
361361 Allen, town of	Allegany County	750131
361379 Altona, town of	Clinton County	750103
361260 Amboy, town of	Oswego County	741115
361095 Angelica, town of	Allegany County	760910
360518 Ava, town of	Oneida County	740628
381392 Bellmont, town of	Franklin County	750117
361362 Birdsall, town of	Allegany County	750103
361097 Bolivar, town of	Allegany County	761029
361415 Boylstown, town of	Oswego County	750103
360521 Bridgewater, town of	Oneida County	740908
361128 Broadalbin, town of	Fulton County	740920
361480 Brushton, village of	Franklin County	741115
361394 Burke, town of	Franklin County	780217
361098 Burns, town of	Allegany County	741108
360328 Champion, town of	Jefferson County	740531
361422 Clare, town of	St. Lawrence County	750103
360524 Clayville, village of	Oneida County	740524
361380 Clinton, town of	Clinton County	750124
360360 Constableville, village of	Lewis County	740809
360300 Danube, town of	Herkimer County	740405
360364 Diana, town of	Lewis County	740913
361122 Dickinson, town of	Franklin County	741108
361382 Ellenburg, town of	Clinton County	750314
361397 Franklin, town of	Franklin County	750718
361325 Freetown, town of	Cortland County	750117
361100 Friendship, town of	Allegany County	750103
361597 German, town of	Chenango County	770729
361455 Gilbertsville, village of	Oswego County	760716
361178 Gouverneur, town of	St. Lawrence County	750124
360651 Hannibal, town of	Oswego County	761001
361451 Harrisville, village of	Lewis County	741115
361234 Hartford, town of	Washington County	741227
361178 Hopkinton, town of	St. Lawrence County	741115
360078 Humphrey, town of	Cattaraugus County	740830
361008 Independence, town of	Allegany County	740906
361113 Indian Lake, town of	Hamilton County	761210
361196 Jefferson, town of	Schoharie County	770812
361131 Johnstown, town of	Fulton County	741025
360080 Leon, town of	Cattaraugus County	740531
360368 Lewis, town of	Lewis County	740628

Ident. and community name	County	Original hazard date
New York —Continued		
361152 Lewis, town of	Essex County	741129
360309 Litchfield, town of	Herkimer County	740315
361406 Long Lake, town of	Hamilton County	750725
360983 Lyndon, town of	Cattaraugus County	740809
361153 Minerva, town of	Essex County	741220
381125 Moira, town of	Franklin County	741115
361488 Mooers, village of	Clinton County	750103
361389 Moriah, town of	Essex County	741122
361019 Nelsonville, village of	Putnam County	771216
361400 Northampton, town of	Fulton County	750131
361408 Ohio, town of	Herkimer County	750103
361526 Oneida, village of	Oneida County	761126
361134 Oppenheim, town of	Fulton county	741108
361263 Palermo, town of	Oswego County	750207
361425 Parishville, town of	St. Lawrence County	750117
361426 Piercefield, town of	St. Lawrence County	750131
360375 Pinckney, town of	Lewis County	740906
361184 Pitcairn, town of	St. Lawrence County	780331
361190 Providence, town of	Saratoga County	741115
361368 Red House, town of	Cattaraugus County	750228
361265 Redfield, town of	Oswego County	741122
360541 Remsen, village of	Oneida County	770304
361121 Russia, town of	Herkimer County	741101
360317 Salisbury, town of	Herkimer County	740607
361505 Savannah, village of	Wayne County	760827
360100 South Valley, town of	Cattaraugus County	740906
360555 Steuben, town of	Oneida County	740628
360880 Stoney Creek, town of	Warren County	761217
361157 St. Armand, town of	Essex County	774025
360733 Victory, village of	Saratoga County	740405
360563 Waterville, village of	Oneida County	740614
361112 Wells, town of	Hamilton County	741129
361267 Williamstown, town of	Oswego County	741101
361161 Wilmington, town of	Essex County	750117
361401 Windham, town of	Greene County	771104
Total of 75 communities.		
North Carolina		
370398 Alexander County*	Alexander County	780609
370004 Alleghany County	Alexander County	770701
370407 Arlington, town of	Yadkin County	790119
370288 Bath, town of	Beaufort County	770708
370088 Bettleboro, town of	Edgecombe County	750815
370183 Bayboro, town of	Pamlico County	760730
370290 Bertie County	Bertie County	780929
370394 Bolivia, town of	Brunswick County	770610
370395 Calabash, town of	Brunswick County	770610
370408 Casar, town of	Cleveland County	781117
370300 Caswell County	Caswel County	780203
370299 Chatham County	Chatham County	780519
370302 Cleveland County	Cleveland County	780616
370321 Cramerton, town of	Gaston County	750711
370322 Dallas, town of	Gaston County	750627
370359 East Laurinburg, town of	Scotland County	750711
370352 Faith, town of	Rowan County	751017
370377 Franklin County	Caswell County	780915
370325 Granville County	Granville County	780421
370378 Greene County*	Greene County	771202
370130 Hertford County	Hertford County	780602
370405 High Shoals, City of	Gaston County	781103
370326 Hookerton, town of	Greene County	750926
370383 Jupiter, town of	Buncombe County	761029
370319 Kernersville, town of	Forsyth County	770527
370384 Laurel Park, town of	Henderson County	760611
370303 Lawndale, town of	Cleveland County	750711
370317 Leggett, town of	Edgecombe County	770701
370323 Lowell, town of	Gaston County	750815
370150 Macon County*	Macon County	780630
370418 Minnesoft Beach, town of	Pamlico County	790302
370309 Mocksville, town of	Davie County	750711
370336 Montgomery County	Davidson County	781013
370349 Orrum, town of	Robeson County	750425
370315 Perquimans County	Perquimans County	780728
370345 Person County	Person County	780210
370420 Pittsboro, town of	Chatham County	781020
370286 Polkton, town of	Anson County	780210
370324 Ranlo, town of	Gaston County	750627
370348 Richmond County	Richmond County	780728
370106 Robbinsville, town of	Grahham County	740614
370350 Rockingham County	Rockingham County	780616
370347 Roxboro, city of	Sampson County	780113
370355 Ruth, town of	Rutherford County	770401
370220 Sampson County*	Sampson County	741220
370422 Severn, town of	Northampton County	781103
370423 Sims, town of	Wilson County	790112
370406 Spencer Mountain, town of	Gaston County	780714
370371 Stantonsburg, town of	Wilson County	751003
370366 Vanc County	Vance County	780804
370360 Wagram, town of	Scotland County	750808
370254 Weyne County*	Wayne County	741227
370281 Webster, town of	Jackson County	780210
370370 Wilson County	Wilson County	780310
370345 Winfall, town of	Perquimans County	750725
370365 Wingate, town of	Union County	751003
370400 Yadkin County	Yadkin County	780505
Total of 57 communities.		
North Dakota		
380151 Abercrombie, city of	Richland County	761029
380216 Bow Bells, city of	Burke County	750207
380121 Courtenay, city of	Stutsman County	741227
380039 Dawson, city of	Kidder County	741206
380169 Flaxton, city of	Burke County	750207
380170 Fordville, city of	Walsh County	760604
380171 Fortuna, city of	Divide County	750725
380173 Gladestone, city of	Stark County	760613
380175 Golden Valley, city of	Mercer County	750627
380099 Great Bend, city of	Richland County	760730
380178 Hannaford, city of	Griggs County	750117
380179 Hoople, city of	Walsh County	760613
380237 Lidgerwood, city of	Richland County	750214
380037 Marvel, city of	Grand Forks County	750110
380006 Maxbass, city of	Bottineau County	741122
380109 McClusky, city of	Sheridan County	761105
380124 Median, city of	Stutsman County	741220
380125 Montpelier, city of	Stutsman County	741115
380242 New England, city of	Hettinger County	760716
380031 New Rockford, city of	Eddy County	731123
380192 Osnabrock, city of	Cavalier County	750221
380195 Plaza, city of	Mountrail County	760813
380199 Reynolds, city of	Grand Forks County	761029
380248 Richardton, city of	Stark County	760806
380318 Stanley, city of	Mountrail County	770719
380250 Stanton, city of	Mercer County	760402
380210 Tower City, city of	Barnes County	750110
380063 Washburn, city of	McLean County	741115
380344 Watford City, city of	McKenzie County	790605
380319 Williston, city of	Williams County	780516
Total of 30 communities.		
Ohio		
390584 Arcanum, village of	Darke County	780113
390207 Arlington Heights, village of	Hamilton County	740201
390759 Ashland County	Ashland County	780210
390760 Athens County	Athens County	771209
390761 Auglaize County	Auglaize County	780512
390159 Baltimore, village of	Fairfield County	740621
390805 Beloit, village of	Mahoning County	770826
390650 Berlin Heights, village of	Erie County	740405
390674 Bethesda, village of	Belmont County	750207
390074 Blanchester, village of	Clermont County	740405

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Ident. and community name		County	Original hazard date
	Ohio		—Continued
390543	Bolivar, village of	Tuscarawas County	781029
390728	Buchtel, village of	Athens County	750207
390816	Buckland, village of	Auglaize County	790202
390753	Burbank, village of	Wayne County	750418
390488	Burgoon, village of	Sandusky County	740802
390037	Butler County	Butler County	771223
390801	Cairo, village of	Allen County	770715
390461	Camden, village of	Preble County	740515
390763	Carroll County*	Carroll County	771104
390817	Carroll, village of	Fairfield County	780922
390685	Castine, village of	Darke County	770715
390607	Cedarville, village of	Greene County	750110
390818	Chatfield, village of	Crawford County	781027
390819	Cherry Fork, village of	Adams County	780922
390820	Clarksville, village of	Clinton County	781110
390821	Clayton, village of	Montgomery County	781110
390822	Cochrie, village of	Athens County	781103
390823	Cortland, town of	Morgan County	781006
390555	Corwin, village of	Washington County	760716
390811	Crawford County*	Crawford County	760120
390575	Creston, village of	Wayne County	740201
390187	Crown City, village of	Gallia County	750110
390824	Cumberland, village of	Guernsey County	780915
390712	Darbyville, village of	Pickaway County	750207
390262	Deshler, village of	Henry County	780723
390826	Edgerton, village of	Williams County	780929
390827	Edon, village of	Williams County	781006
390656	Elida, village of	Allen County	740329
390828	Englewood, village of	Montgomery County	781103
390314	Fairport Harbor, village of	Lake County	760723
390164	Fayette County	Fayette County	771209
390788	Fayetteville, village of	Brown County	770805
390829	Fayette, village of	Fulton County	780915
390830	Fort Laramie, village of	Shelby County	780922
390426	Frazeysburg, village of	Muskingum County	740830
390804	Freeport, village of	Harrison County	771028
390182	Fulton County	Fulton County	760120
390277	Glenmont, village of	Holmes County	761029
390254	Hamler, village of	Henry County	740412
390767	Hancock County	Hancock County	771230
390250	Hardin County	Hardin County	750103
390769	Highland County	Highland County	771216
390505	Jackson Center, village of	Shelby County	740531
390248	Jenera, village of	Hancock County	740809
390834	Junction City, village of	Perry County	790105
390306	Knox County*	Knox County	750131
390606	La Grange, town of	Lorain County	771223
390803	Lafayette, village of	Allen County	780120
390835	Laura, village of	Miami County	781006
390270	Leesburg, village of	Highland County	740405
390050	Leesville, village of	Carroll County	740920
390836	Limaville, village of	Stark County	780922
390346	Lorain County	Lorain County	770603
390561	Lucas, village of	Richland County	740405
390838	Ludlow Falls, village of	Miami County	780929
390839	Magnetic Spring, village of	Union County	781006
390756	Marseilles, village of	Wyandot County	750418
390718	McArthur, village of	Vinton County	761126
390254	McGuffey, village of	Hardin County	740510
390840	Metamora, village of	Fulton County	780929
390799	Mifflin, village of	Ashland County	770708
390689	Millersport, village of	Fairfield County	750131
390842	Mineral City, village of	Tuscarawas County	781006
390396	Montezuma, village of	Mercer County	740809
390581	Montpelier, village of	Williams County	740531
390746	Morral, village of	Marion County	750418
390888	Morrow County*	Morrow County	780804
390621	Mount Orab, village of	Brown County	750725
390844	Mount Sterling, village of	Madison County	780929
390843	Munroe Falls, village of	Summit County	781013
390722	Nevada, village of	Wyandot County	750214
390847	New Concord, village of	Muskingum County	780908
390848	New Knoxville, village of	Auglaize County	781006
390849	New Vienna, village of	Clinton County	790112
390850	Ney, village of	Defiance County	790105
390285	North Fairfield, village of	Huron County	740315
390851	Philo, village of	Muskingum County	790330
390287	Plymouth, village of	Huron County	740503
390852	Port William, village of	Clinton County	781013
390480	Preble County	Preble County	770826
390465	Putnam County	Putnam County	770812
390854	Quincy, village of	Logan County	781006
390802	Rendville, village of	Perry County	771202
390478	Richland County	Richland County	760224
390645	Rogers, village of	Columbiana County	740322
390627	Sabina, village of	Clinton County	750725
390706	Sarahsville, village of	Noble County	750328
390789	Sardinia, village of	Brown County	780113
390858	Senecaville, village of	Guernsey County	781006
390859	Sherwood, village of	Defiance County	781006
390046	Somerville, village of	Butler County	750725
390485	South Salem, village of	Ross County	740823
390860	South Zanesville, village of	Muskingum County	781020
390862	Stryker, village of	Williams County	790119
390832	Swanton, village of	Fulton County	750725
390064	Tremont City, village of	Clark County	780519
390716	Unionville Center, village of	Union County	761015
390548	Van Buren, village of	Hancock County	740322
390475	Vaughnsville, town of	Putnam County	741115
390087	Washingtonville, village of	Columbiana County	731109
390293	Wellston, city of	Jackson County	740215
390864	West Farmington, village of	Trumbull County	780929
390638	West Jefferson, village of	Madison County	750725
390865	Wharton, village of		093
	Oklahoma		
400309	Milburn, town of	Johnston County	750928
400309	Mill Creek, town of	Johnston County	760813
400406	Minco, town of	Grady County	770128
400408	Mounds, town of	Creek County	760625
400491	Muskogee County*	Muskogee County	780314
400311	Nash, town of	Grant County	760702
400312	New Prue, town of	Osage County	760521
400428	North Miami, town of	Ottawa County	760409
400313	Oakland, town of	Marshall County	781029
400314	Oaks, town of	Delaware County	750829
400315	Ochelata, town of	Washington County	760409
400427	Oilton, city of	Creek County	761112
400492	Okmulgee County*	Okmulgee County	780207
400316	Orlando, town of	Logan County	760813
400154	Ottawa County	Ottawa County	770520
400317	Paoli, town of	Garvin County	761105
400158	Peoria, town of	Ottawa County	741122
400431	Perkins, town of	Payne County	760409
400027	Piedmont, town of	Canadian County	770719
400433	Pond Creek, city of	Grant County	761112
400495	Pontotoc County*	Pontotoc County	780110
400436	Quapaw, town of	Ottawa County	760813
400320	Ravia, town of	Johnston County	760813
400322	Reydon, town of	Roger Mills County	761112
400324	Ripley, town of	Payne County	770621
400118	Salina, town of	Mayes County	760702
400442	Sentinel, city of	Washita County	761112
400231	Sharon, town of	Woodward County	760813
400034	Springer, town of	Carter County	761217
400418	Temple, town of	Cotton County	760716
400333	Tupelo, city of	Coal County	760917
400443	Tuttle, town of	Grady County	760625
400334	Union City, town of	Canadian County	770114
400447	Velma, city of	Stephens County	770211
400335	Vera, town of	Washington County	760716
400448	Vici, town of	Dewey County	761105
400105	Washington, town of	McClain County	760709
400338	Waukomis, town of	Garfield County	770204
400451	Welch, town of	Craig County	760716
400452	Wellston, town of	Lincoln County	760409
400339	West Siloam Springs, town of	Delaware County	760409
400455	Yale, city of	Payne County	750822

Total of 106 communities.

	Oregon		
410285	Adrian, city of	Malheur County	790529
410004	Halfway, town of	Baker County	750926
410284	Millersburg, city of	Linn County	780124
410037	Prescott, city of	Columbia County	750110
410273	Sherwood, town of	Washington County	760813
410188	St. Paul, city of	Marion County	741122

Total of 8 communities.

	Pacific Trust		
600001	American Samoa		771213
750001	Mariana District		780815

Total of 2 communities.

	Pennsylvania		
422508	Addison, township of	Somerset County	750103
422509	Allegheny, township of	Somerset County	750103
422529	Allegheny, township of	Venango County	750117
421562	Athens, township of	Crawford County	761105
422297	Atwood, borough of	Armstrong County	750131

Ident. and community name		County	Original hazard date
	Pennsylvania		—Continued
422435	Banks, township of	Indiana County	750117
421547	Beaver, township of	Columbia County	741101
421659	Belfast, township of	Fulton County	741220
422185	Bell, township of	Westmoreland County	740913
421749	Benton, township of	Lackawanna County	750110
421332	Bloomfield, township of	Bedford County	750131
421515	Boggs, township of	Clearfield County	741115
422511	Brothers Valley, township of	Somerset County	750110
421660	Brush Creek, township of	Fulton County	750328
421054	Burlington, township of	Bradford County	740913
422545	Cherry Grove, township of	Warren County	741227
422604	Chest, township of	Cambria County	750110
422077	Clifford, township of	Susquehanna County	741227
421838	Cogan House, township of	Lycoming County	750404
421334	Colerain, township of	Bedford County	750103
421715	Conemaugh, township of	Indiana County	741206
422406	Conewago, township of	Dauphin County	741227
422387	Conneaut, township of	Crawford County	750110
422404	Cooke, township of	Cumberland County	770128
422186	Cook, township of	Westmoreland County	740920
421176	Deerfield, township of	Tioga County	740630
422187	Donegal, township of	Westmoreland County	740621
421681	Dudley, borough of	Huntingdon County	741108
422431	Dunkard, township of	Greene County	750110
422268	East Carroll, township of	Cambria County	750214
422218	East Hopewell, township of	York County	741227
422314	Eastvale, borough of	Beaver County	750131
422189	Fairfield, township of	Westmoreland County	740906
422049	Fairhope, township of	Somerset County	741115
422288	Franklin, township of	Chester County	741129
421537	Gallagher, township of	Clinton County	750221
422437	Glen Campbell, borough of	Indiana County	750124
421717	Grant, township of	Indiana County	750131
422512	Greenville, township of	Somerset County	750404
421223	Hanover, township of	Beaver County	740906
422528	Hartleton, borough of	Union County	741227
421399	Herrick, township of	Bradford County	750404
422319	Hookstown, borough of	Beaver County	750131
421581	Hopewell, township of	Cumberland County	741227
421525	Huston, township of	Clearfield County	741220
420502	Jacksonville, borough of	Indiana County	741213
421671	Jackson, township of	Greene County	741220
422601	Jackson, township of	Lycoming County	750328
421889	Jackson, township of	Monroe County	750103
421552	Jackson, township of	Columbia County	741213
421593	Jackson, township of	Dauphin County	750131
422383	Jordon, township of	Clearfield County	750117
421342	King, township of	Bedford County	750131
421307	Kittanning, township of	Armstrong County	761217
422515	Larimer, township of	Somerset County	750110
421693	Lincoln, township of	Huntingdon County	750103
421533	Loganton, borough of	Clinton County	741108
420309	Lumber City, borough	Clearfield County	750214
421755	Madison, township of	Lackawanna County	750103
422606	Markleysburg, borough	Fayette County	761015
421935	McEwensville, borough of	Northumberland County	741227
421881	Menno, township of	Mifflin County	741122
422352	Mercer, township of	Butler County	750110
421896	Morris, township of	Huntingdon County	741122
422263	Munster, township of	Cambria County	741122
420889	New Alexandria, borough of	Westmoreland County	740628
420799	New Baltimore, borough of	Somerset County	741108
421815	Ohiopyle, borough of	Fayette County	750131
421401	Orwell, township of	Bradford County	750124
421968	Palmyra, township of	Pike County	741213
421530	Penn, township of	Clearfield County	741129
421313	Plum Creek, township of	Armstrong County	740906
421985	Portage, township of	Potter County	741213
421655	Quincy, township of	Franklin County	741227
420828	Roseville, borough of	Tioga County	741213
421585	Shippensburg, township of	Cumberland County	740906
421104	Smithfield, township of	Bradford County	761029
421350	South Woodbury, township of	Bedford County	760305
421351	Southampton, township of	Bedford County	750207
421677	Springhill, township of	Greene County	750411
421407	Stevens, township of	Bradford County	741101
421328	St. Clairsville, borough of	Bedford County	750131
422056	Summit, township of	Somerset County	750103
421469	Taylor, township of	Centre County	741220
421958	Tobyne, township of	Perry County	780630
421704	Union, township of	Huntingdon County	741206
421531	Union, township of	Clearfield County	750117
420318	Wallaceton, borough of	Clearfield County	741108
421722	Washington, township of	Indiana County	741222
421599	Wayne, township of	Dauphin County	750117
421678	Wayne, township of	Greene County	741227
422526	Wellersburg, borough of	Somerset County	750131
421542	West Keating, township of	Clinton County	741206
421723	West Mahoning, township of	Indiana County	750124
421355	Woodbury, township of	Bedford County	750131

Total of 95 communities.

	South Carolina		
450227	Abbeville County*	Abbeville County	780210
450201	Allendale County*	Allendale County	741129
450203	Bamberg County*	Bamberg County	741129
450204	Barnwell County*	Barnwell County	741220
450116	Bethune, town of	Kershaw County	750718
450148	Blenheim, town of	Marlboro County	770812
450032	Cameron, town of	Calhoun County	750103
450236	Chapin, town of	Lexington County	780922
450045	Cherokee County	Cherokee County	780609
450228	Chesterfield County*	Chesterfield County	780609
450237	Chesterfield, town of	Chesterfield County	780922
450124	Cross Hill, town of	Laurens County	740906
450060	Darlington County*	Darlington County	741227
450064	Dillon County	Dillon County	771209
450065	Dillon, town of	Dillon County	740517
450229	Edgefield County*	Edgefield County	780120
450074	Edgefield, town of	Edgefield County	740524
450022	Ehrhardt, town of	Bamberg County	740719
450010	Fairfax, town of	Allendale County	740531
450132	Gilbert, town of	Lexington County	741025
450210	Gray Court, town of	Laurens County	741213
450037	Hollywood, town of	Charleston County	740906
450104	Horry County*	Horry County	781020
450063	Lamar, town of	Darlington County	750718
450128	Lee County	Lee County	780303
450241	Lockhart, town of	Union County	780126
450242	Luray, town of	Hampton County	780915
450126	Lynchburg, town of	Lee County	750718
450141	Marion County	Marion County	780106
450146	Marlboro County	Marlboro County	780224
450225	Mayesville, town of	Sumter County	760319
450244	Ninety Six, town of	Greenwood County	780922
450080	Olanta, town of	Florence County	740524
450081	Pamplico, town of	Greenwood County	740510
450135	Pelion, town of	Lexington County	740809
450018	Pelzer, town of	Anderson County	760618
450218	Reevesville, town of	Dorchester County	741227
450165	Rowesville, town of	Orangeburg County	740920
450212	Salem, town of	Oconee County	741108
450230	Saluda County*	Saluda County	780120
450145	Sellers, town of	Marion County	740607
450155	Silverstreet, town of	Newberry County	750124
450057	Smoaks, town of	Colleton County	740906
450248	Society Hill, town of	Darlington County	781013
450072	St. George, town of	Dorchester County	760723
450011	Sycamore, town of	Allendale County	741025
450185	Union County*	Union County	780526
450248	Ware Shoals, town of	Anderson County	780901

Total of 48 communities.

	South Dakota		
460153	Alexandria, city of	Hanson County	750627
460096	Alpena, town of	Jerauld County	750926
460098	Aurora, town of	Brookings County	750627
460251	Beadle County*	Beadle County	780110
460156	Big Stone City, city of	Grant County	761112
460099	Bison, town of	Perkins County	761105
460158	Bridgewater, city of	McCook County	761119
460247	Buffalo Gap, town of	Custer County	761105
460037	Buffalo, town of	Harding County	761105
460236	Butte County	Butte County	771220
460162	Canistota, city of	McCook County	760813
460102	Canova, town of	Miner County	770520
460163	Centerville, city of	Turner County	760813
460257	Charles Mix County*	Charles Mix County	780110
460013	Clark, city of	Clark County	760312
460259	Clay County*	Clay County	771018
460168	Colton, city of	Minnehaha County	760813
460008	Columbia, city of	Brown County	741206
460107	Cresbard, town of	Faulk County	750718
460020	Davison County	Davison County	770520
460169	Dupree, city of	Ziebach County	750425
460170	Eagle Butte, town of	Dewey County	761112
460173	Eureka, city of	McPherson County	760716
460238	Fall River County	Fall River County	771101
460112	Gary, town of	Deuel County	750627
460270	Hanson County*	Hanson County	770816
460180	Hartford, city of	Minnehaha County	760716
460115	Hayti, town of	Hamlin County	750627
460230	Hermosa, town of	Custer County	770121
460181	Herreid, city of	Campbell County	750711

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Ident. and community name	County	Original hazard date
South Dakota		—Continued
460271 Hughes County*	Hughes County	780110
460119 Hurley, town of	Turner County	760718
460041 Hutchinson County	Hutchinson County	770603
460185 Kadoka, city of	Jackson County	760718
460186 Kimball, city of	Brule County	750808
460192 Lennox, city of	Lincoln County	750928
460126 Letcher, town of	Sanborn County	781112
460277 Lincoln County*	Lincoln County	771025
460197 Marion, city of	Turner County	760702
460195 Mcintosh, city of	Corson County	750919
460206 Murdo, city of	Jones County	750919
460209 Newell, city of	Butte County	750718
460245 Nisland, town of	Butte County	770204
460126 Oacoma, town of	Lyman County	770107
460211 Parker, city of	Turner County	750627
460297 Presho, city of	Lyman County	770719
460133 Pukwana, town of	Brule County	750919
460214 Selby, city of	Walworth County	750725
460140 Spencer, town of	McCook County	781112
460138 St. Francis, town of	Todd County	750919
460139 St. Lawrence, town of	Hand County	750718
460142 Tabor, town of	Bon Homme County	760625
460216 Timber Lake, city of	Dewey County	761112
460062 Turton, town of	Spink County	741220
460224 Wagner, city of	Charles Mix County	760813
460250 Wasta, town of	Pennington County	761224
460147 Wessington, town of	Beadle County	750822
460014 Willow Lake, town of	Clark County	770520
460150 Wolsey, town of	Beadle County	760813
Total of 59 communities.		
Tennessee		
470234 Adair, town of	Madison County	750207
470292 Adamsville, town of	McNairy County	760528
470159 Adams, town of	Robertson County	741115
470245 Alamo, town of	Crockett County	770319
470293 Ardmore, town of	Giles County	761217
470262 Arlington, town of	Shelby County	750725
470294 Baileytown, town of	Greene County	760903
470006 Bedford County	Bedford County	771223
470220 Bells, town of	Crockett County	750110
470218 Benton County	Benton County	750110
470128 Bethel Springs, town of	McNairy County	740828
470295 Big Sandy, town of	Benton County	760924
470219 Bledsoe County	Bledsoe County	750218
470358 Blount County*	Blount County	770826
470296 Bluff City, town of	Sullivan County	760702
470061 Bolivar, city of	Hardeman County	761112
470357 Bradley County*	Bradley County	770708
470244 Bruceton, town of	Carroll County	760702
470373 Burlison, town of	Tipton County	781013
470366 Cannon County*	Cannon County	790105
470222 Carroll County	Carroll County	771104
470296 Caryville, town of	Campbell County	760903
470374 Cantertown, town of	Warren County	780922
470120 Chapel Hill, town of	Marshall County	740614
470348 Chester County*	Chester County	781117
470362 Clay County*	Clay County	790330
470225 Coalmont, town of	Grundy County	760924
470355 Coffee County*	Coffee County	770805
470324 Collinwood, city of	Wayne County	760604
470225 Cornersville, town of	Marshall County	760917
470383 Crockett County*	Crockett County	790112
470375 Cumberland City, town of	Stewart County	781103
470037 Cumberland County	Cumberland County	770902
470326 Cumberland Gap, town of	Claiborne County	760528
470041 Decatur County	Decatur County	770805
470300 Decaturville, town of	Decatur County	760924
470369 Dekalb County*	Dekalb County	781208
470048 Dickson County*	Dickson County	741206
470335 Dickinson, city of	Dickson County	760709
470237 Dover, town of	Stewart County	771209
470240 Dresden, town of	Weakley County	761210
470378 East View, tTown of	McNairy County	781110
470064 Elkton, city of	Giles County	760604
470271 Englewood, city of	McMinn County	740517
470028 Enville, town of	Chester County	761029
470301 Ethridge, city of	Lawrence County	760702
470242 Fairview, city of	Williamson County	750411
470343 Fentress County*	Fentress County	771209
470129 Finger, town of	McNairy County	740906
470344 Franklin County*	Franklin County	780331
470302 Friendsville, city of	Blount County	760611
470221 Gadsden, town of	Crockett County	750124
470063 Giles County	Giles County	780224
470068 Grainger County	Grainger County	780106
470303 Greenback, city of	Loudon County	760924
470250 Grundy County*	Grundy County	780825
470190 Guilt Edge, city of	Tipton County	740913
470346 Hamblen County*	Hamblen County	771111
470226 Hancock County	Hancock County	770819
470360 Hardeman County*	Hardeman County	780120
470085 Hawkins County	Hawkins County	771021
470088 Henderson County*	Henderson County	741220
470259 Henning, town of	Lauderdale County	750103
470228 Henry County	Henry County	771230
470091 Hickman County	Hickman County	781222
470304 Hohenwald, city of	Lewis County	760924
470305 Hollow Rock, city of	Carroll County	760625
470288 Hornsby, town of	Hardeman County	760305
470347 Houston County*	Houston County	770819
470229 Humphreys County	Humphreys County	770826
470055 Huntland, town of	Franklin County	770128
470101 Iron City, city of	Lawrence County	740614
470370 Jackson County*	Jackson County	790323
470097 Jefferson County	Jefferson County	770902
470224 Kenton, town of	Gibson County	741227
470289 Kingston Springs, city of	Cheatham County	750718
470354 Lawrence County*	Lawrence County	771125
470103 Lewis County*	Lewis County	790209
470121 Lewisburg, city of	Marshall County	740301
470104 Lincoln, County	Lincoln County	771028
470146 Lobelville, town of	Perry County	780113
470306 Loretto, city of	Lawrence County	760702
470209 Luttrell, city of	Union County	760903
470065 Lynnville, city of	Giles County	740614
470371 Macon County*	Macon County	781027
470307 Madisonville, town of	Monroe County	761210
470119 Marshall County*	Marshall County	790202
470191 Mason, city of	Tipton County	761001
470123 Maury County	Maury County	771202
470308 McEwen, town of	Humphreys County	760702
470126 McMinn County	McMinn County	770701
470127 McNairy County	McNairy County	771021
470133 Meigs County	Meigs County	771202
470336 Michie, city of	McNairy County	761001
470130 Milledgeville, town of	McNairy County	760702
470066 Minor Hill, city of	Giles County	760702
470233 Monroe County	Monroe County	770706
470260 Moore County*	Moore County	781110
470139 Morgan County	Morgan County	750117
470310 Mosheim, town of	Greene County	780903
470385 New Market, town of	Jefferson County	780922
470312 Niota, city of	McMinn County	760528
470313 Normandy, town of	Bedford County	760611
470361 Obion County*	Obion County	780721
470314 Orme, town of	Marion County	760702
470362 Overton County*	Overton County	780113
470315 Parrottsville, town of	Cocke County	760702
470118 Parsons, town of	Decatur County	760611
470317 Paryear, town of	Henry County	760611
470291 Pegram, town of	Cheatham County	750718
470144 Perry County	Perry County	781222
470384 Pickett County*	Pickett County	781229
470261 Polk County*	Polk County	790119
470149 Putnam County*	Putnam County	740913
470131 Ramer, town of	McNairy County	741129
470151 Rhea County	Rhea County	770722
470277 Richard City, city of	Marion County	740201
470235 Rives, city of	Obion County	750103
470158 Robertson County	Robertson County	780108
470320 Rockford, town of	Blount County	760924
470061 Rutherford, tTown of	Gibson County	740607
470093 Salitillo, town of	Hardin County	740614
470379 Samburg, town of	Obion County	760915
470321 Sardis, town of	Henderson County	760924
470341 Scott County*	Scott County	771223
470171 Sequatchie County	Sequatchie County	771021
470236 Sevier County	Sevier County	771125
470239 Spencer, town of	Van Buren County	770325
470328 Stantonville, town of	McNairy County	760611
470258 Stanton, town of	Haywood County	780310
470180 Stewart County*	Stewart County	740913
470327 St. Joseph, city of	Lawrence County	760625
470280 Tellico Plains, city of	Monroe County	740308
470337 Tennessee Rige, city of	Houston County	760625
470281 Townsend, city of	Blount County	760618
470282 Tracy City, city of	Grundy County	7740510
470243 Trezevant, town of	Carroll County	770225
470329 Tusculum, city of	Greene County	760702
470194 Union County*	Union County	781124
470342 Van Buren County*	Van Buren County	781201
470363 Warren County*	Warren County	771125
470009 Wartrace, town of	Bedford County	740614
470331 Watauga, city of	Carter County	760528
470380 Watertown, city of	Wilson County	780915
470199 Wayne County*	Wayne County	790318
470364 Weakley County*	Weakley County	771218

Ident. and community name	County	Original hazard date
Tennessee		—Continued
470365 White County*	White County	771202
470118 Whitwell, city of	Marion County	740215
470381 Woodland Mills, city of	Obion County	780929
470254 Yorkville, city of	Gibson County	750627
Total of 150 communities.		
Texas		
481089 Addison, town of	Dallas County	761029
480960 Adrian, city of	Oldham County	750725
481306 Altoga, city of	Collin County	780725
480894 Amherst, city of	Lamb County	750711
480001 Anderson County	Anderson County	780124
480006 Andrews, city of	Andrews County	760827
480007 Angelina County*	Angelina County	741227
480982 Annona, town of	Red River County	760611
481088 Appleby, city of	Nacogdoches County	760806
480775 Argyle, city of	Denton County	750829
480790 Asherton, city of	Dimmit County	760702
481093 Aspermont, town of	Stonewall County	760813
480778 Aubrey, town of	Denton County	760604
480731 Avinger, town of	Cass County	760806
480065 Baileys Praire, town of	Brazoria County	741108
480808 Biley, town of	Fannin County	761105
480722 Baird, town of	Callahan County	760611
480718 Bangs, town of	Brown County	760806
481087 Bardwell, city of	Ellis County	760730
480951 Barry, town of	Nevarro County	760730
480642 Barstow, city of	Ward County	760625
481501 Bartonville, town of	Denton County	790612
480630 Bells, town of	Grayson County	761029
481095 Bellville, city of	Austin County	761119
480888 Benjamin, city of	Knox County	750627
481541 Berryville, city of	Henderson County	790626
481088 Blackwell, town of	Nolan County	750815
480732 Bloomburg, town of	Cass County	761105
480984 Bogata, town of	Red River County	760806
481194 Bowie County*	Bowie County	780815
481195 Brazos County*	Brazos County	771018
481096 Bremond, city of	Robertson County	761119
480398 Briar Oaks, city of	Johnson County	740329
480588 Briar, city of	Tarrent County	760723
480717 Brown County	Brown County	780124
481542 Browndell, town of	Jasper County	790619
480325 Brownsboro, city of	Henderson County	761210
481302 Bruceville-Eddy, city of	McLennan County	780502
480877 Bryson, city of	Jack County	750711
481138 Buffalo Gap, town of	Taylor County	761119
480904 Buffalo, city of	Leon County	760820
481169 Burleson County*	Burleson County	770617
481209 Burnet County*	Burnet County	771122
480649 Burton, city of	Washington County	741220
480490 Cactus, city of	Moore County	740614
480364 Caddo Mills, city of	Hunt County	740628
480979 Camp Wood, city of	Real County	760702
481068 Campbellton, town of	Atascosa County	760625
481504 Campbell, town of	Hunt County	790410
481505 Carmine, city of	Fayette County	790403
480730 Cass County	Cass County	770705
480737 Castro County	Castro County	770603
481282 Cedar Park, city of	Williamson County	771115
480365 Celeste, city of	Hunt County	740521
480905 Centerville, city of	Leon County	760813
480701 Charlotte, city of	Atascosa County	760806
480739 Cherokee County	Cherokee County	771227
481140 Chester, town of	Tyler County	760813
481053 Chico, city of	Wise County	760813
481202 Chillicothe, city of	Hardeman County	750718
481543 Chireno, city of	Nacogdoches County	790703
480702 Christine, city of	Atascosa County	750711
480535 Clarksville, town of	Gregg County	751107
481098 Claude, city of	Armstrong County	760813
481099 Coahoma, town of	Howard County	760804
480169 Cockrell Hill, city of	Dallas County	731207
481507 Coffee City, city of	Henderson County	790703
480130 Collin County	Collin County	771206
480408 Combine, city of	Dallas County	760702
480870 Como, town of	Hopkins County	760806
480765 Cooke County	Cooke County	771018
480911 Coolidge, town of	Limestone County	760611
481508 Copper Canyon, town of	Denton County	790605
481510 Cove, town of	Chambers County	790605
481511 Covington, city of	Hill County	790417
480409 Crandall, city of	Kaufman County	740308
480501 Crane, city of	Crane County	760718
481512 Crantills Gap, city of	Bosque County	790417
480723 Cross Plains, town of	Callahan County	760806
481513 Cross Roads, town of	Denton County	790605
480671 Cumby, city of	Hopkins County	760806
481279 Cut'n Shoot, city of	Montgomery County	770603
480985 Detroit, town of	Red River County	761224
481514 Devers, city of	Liberty County	790424
481171 Dewitt County*	Dewitt County	770818
480767 Dickens, city of	Dickens County	760806
480789 Dimmit County	Dimmit County	780124
481515 Domino, city of	Cass County	790710
481309 Dorchester, town of	Grayson County	780704
481516 Doubla Oak, town of	Denton County	790619
480733 Douglasville, town of	Cass County	760813
480068 Early, city of	Brown County	740517
480895 Earth, city of	Lamb County	750502
480876 East Tawakoni, town of	Rains County	761105
480793 Eastland County	Eastland County	771115
481145 Easton, village of	Rusk County	750718
481517 Eastvale, town of	Denton County	790619
480796 Ector County	Ector County	771129
480809 Ector, town of	Fannin County	750711
480763 Eden, village of	Concho County	750502
480635 Edgewood, city of	Van Zandt County	740614
481146 Edom, city of	Van Zandt County	760813
481000 El Dorado, town of	Schleicher County	760813
480710 Elmendorf, city of	Bexar County	760611
480977 Emory, town of	Rains County	750806
480218 Erath County	Erath County	771227
480277 Estelline, city of	Hall County	741106
480327 Eustace, city of	Henderson County	760611
480623 Fairfield, town of	Freestone County	780813
480807 Fannin County	Fannin County	771108
480544 Fate, city of	Rockwall County	761105
480815 Fayette County	Fayette County	780131
481147 Fayetteville, town of	Fayette County	760806
481102 Flatonia, town of	Fayette County	760730
480617 Floyd County	Floyd County	770517
480226 Floydada, city of	Floyd County	740531
480228 Fort Bend County*	Fort Bend County	760709
480622 Freestone County	Freestone County	780103
480523 Friona, city of	Parmer County	740412
480875 Fritch, city of	Hutchinson County	760716
481041 Fruitvale, city of	Van Zandt County	760716
480949 Garrison, town of	Nacogdoches County	760716
481148 Gary, town of	Panola County	761119
481521 Gholson, city of	McLennan County	790501
480435 Giddings, city of	Lee County	740628
480880 Godley, town of	Johnson County	750822
480828 Goliad, city of	Goliad County	760718
481310 Golinda, city of	McLennan County	780606
481070 Goodrich, town of	Polk County	761119
480963 Gordon, town of	Palo Pinto County	761022
480964 Gratord, town of	Palo Pinto County	750711
480873 Grapeland, town of	Houston County	761119
480829 Grayson County	Grayson County	771220
480261 Gregg County	Gregg County	780103
480726 Groom, town of	Carson County	761203
481032 Groveton, city of	Trinity County	761105
481104 Gruver, city of	Hansford County	761105
480328 Gun Barrel City, city of	Henderson County	741108
480832 Gunter, town of	Grayson County	750711
481223 Hale County*	Hale County	780103
481522 Hallsburg, city of	McLennan County	790515
480848 Hallsville, city of	Harrison County	760430
481011 Happy, city of	Swisher County	750214
480847 Harrison County	Harrison County	770906
480738 Hart, city of	Castro County	750627
480600 Haslet, city of	Tarrant County	741101
480321 Hays County	Hays County	780321
481495 Hebron, city of	Denton County	790703
481045 Hempstead, town of	Waller County	760730
481174 Henderson County	Henderson County	771122
481150 Hickory Creek, town of	Denton County	760730
480843 Hico, city of	Hamilton County	750622
481106 Hill Country Village, town of	Bexar County	770823
480857 Hill County	Hill County	770809
480352 Hockley County	Hockley County	771025
480699 Holliday, city of	Archer County	750418
481277 Homer, town of	Angelina County	770603
480869 Hopkins County	Hopkins County	771227
480872 Houston County*	Houston County	771101
481227 Howard County*	Howard County	771213
480833 Howe, town of	Grayson County	761029
480859 Hubbard, city of	Hill County	761029
480734 Hughes Springs, city of	Cass County	760827
480363 Hunt County	Hunt County	780822
481077 Huntington, city of	Angelina County	760730
480373 Hutchinson County*	Hutchinson County	750207

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Ident. and community name		County	Original hazard date
Texas			—Continued
481294	Impact, town of	Taylor County	770610
480973	Iraan, town of	Pecos County	760730
481072	Iredell, town of	Bosque County	741101
481080	Jasper County	Jasper County	770517
480906	Jewett, town of	Leon County	761224
480879	Johnson County	Johnson County	770517
480758	Josephine, city of	Collin County	760528
480882	Joshua, city of	Johnson County	750627
480709	Jourdanton, city of	Atascosa County	760813
480778	Justin, city of	Denton County	770603
481175	Karnes County	Karnes County	770607
481107	Keene, city of	Johnson County	760604
481230	Kenedy County*	Kenedy County	780117
481523	Kenefick, town of	Liberty County	790424
480674	Kermit, city of	Winkler County	740524
480690	Knox City, city of	Knox County	750815
481151	Kosse, town of	Limestone County	760611
480845	Kountze, city of	Hardin County	760625
481012	Kress, city of	Swisher County	750221
480475	Lacoste, city of	Medina County	740109
480605	Lake Worth, city of	Tarrant County	761119
481496	Lakeside City, city of	Archer County	790703
480278	Lakeview, town of	Hall County	741206
480891	Lamar County	Lamar County	771129
481178	Lavaca County*	Lavaca County	770823
481313	Lavon, town of	Collin County	780523
481015	Lawn, town of	Taylor County	780625
480980	Leakey, city of	Real County	770513
481142	Leary, city of	Bowie County	761126
480907	Leona, town of	Leon County	761119
480735	Linden, town of	Cass County	760730
481075	Lipan, village of	Hood County	761029
481152	Little Elm, town of	Denton County	760813
480818	Lockney, town of	Floyd County	760702
480944	Lone Star, town of	Morris County	760608
481109	Lorsine, town of	Mitchell County	750627
480808	Lott, city of	Falls County	760709
480874	Lovelady, city of	Houston County	761029
480915	Lubbock County	Lubbock County	771129
480886	Lueders, city of	Jones County	760813
481261	Magnolia, town of	Montgomery County	770517
480861	Malone, town of	Hill County	760709
480736	Marietta, town of	Cass County	760625
480946	Matador, town of	Motley County	781105
480470	Maverick County	Maverick County	771220
480208	Maypearl, city of	Ellis County	741129
480546	McLendon-Chisholm, city of	Rockwall County	750926
481020	Meadow, town of	Terry County	750622
480700	Megargel, town of	Archer County	750822
480924	Melvin, town of	McCulloch County	761029
481016	Merkel, city of	Taylor County	750502
480862	Mertens, town of	Hill County	761105
480376	Mertzon, city of	Irion County	740728
480801	Midlothian, city of	Ellis County	780709
480992	Miles, city of	Runnels County	760813
480679	Mineola, city of	Wood County	740503
480518	Mingus, city of	Palo Pinto County	750502
480644	Monahans, city of	Ward County	760811
481483	Montgomery, city of	Montgomery County	761126
480930	Moody, town of	McLennan County	760709
481123	Morgan, village of	Bosque County	751112
481525	Morgan's Point Resort, town of	Bell County	790619
480943	Morris County	Morris County	770809
480863	Mount Calm, city of	Hill County	761105
480767	Muenster, city of	Cooke County	750725
481125	Mullin, town of	Mills County	760611
480330	Murchison, city of	Henderson County	760611
480947	Nacogdoches County	Nacogdoches County	771227
480950	Navarro County	Navarro County	771227
481315	New Deal, city of	Lubbock County	780518
480920	New Home, town of	Lynn County	750905
481113	New London, city of	Rusk County	761105
481153	New Summerfield, city of	Cherokee County	761119
481043	New Waverly, town of	Walker County	760625
481058	Newcastle, city of	Young County	761217
480500	Newton, city of	Newton County	740607
481297	Nome, city of	Jefferson County	770712
481154	Nordheim, city of	Dewitt County	760604
481063	North Cleveland, city of	Liberty County	770506
480752	Novice, city of	Coleman County	760702
481533	Oak Grove, town of	Kaufman County	790717
481534	Oak Ridge, town of	Kaufman County	790626
480437	Oakwood, town of	Leon County	740524
480769	Oglesby, city of	Coryell County	761112
480696	Olton, city of	Lamb County	761001
480495	Omaha, city of	Morris County	760206
480974	Oneiseka, city of	Polk County	761126
480964	Overton, city of	Rusk County	760813
481082	Ozona, city of	Crockett County	731207
480852	O'Brien, city of	Haskell County	750725
480921	O'Donnell, city of	Lynn County	760827
480764	Paint Rock, town of	Concho County	760813
480209	Palmer, city of	Ellis County	760813
481527	Pattison, town of	Waller County	790612
480486	Patton Village, village of	Montgomery County	760813
480773	Pecan Gap, city of	Delta County	760820
480864	Penelope, town of	Hill County	760423
480745	Petrolia, town of	Clay County	761105
480996	Pineland, town of	Sabine County	761022
480116	Pittsburg, city of	Camp County	740123
481528	Pointblank, city of	San Jacinto County	790501
481158	Point, city of	Rains County	761105
480526	Polk County	Polk County	771213
481241	Potter County*	Potter County	771206
480141	Prosper, town of	Collin County	740621
480724	Putnam, town of	Callahan County	760813
480645	Pyote, city of	Ward County	740816
481117	Queen City, town of	Cass County	760423
480715	Quitaque, city of	Briscoe County	761022
480975	Rains County	Rains County	771018
480205	Ranger, city of	Eastland County	740517
480628	Rankin, city of	Upton County	740510
480969	Reno, town of	Parker County	761105
481158	Retreat, town of	Navarro County	750711
480957	Rice, city of	Navarro County	750926
480562	Richland Springs, city of	San Saba County	741106
480958	Richland, town of	Navarro County	750725
481316	Riesel, town of	McLennan County	780523
481044	Riverside, town of	Walker County	761119
480785	Roanoke, city of	Denton County	750905
480749	Robert Lee, city of	Coke County	750627
480988	Robertson County	Robertson County	770603
480225	Roby, city of	Fisher County	740517
481118	Rocksprings, town of	Edwards County	760723
480543	Rockwall County	Rockwall County	770531
480577	Roma-Los Saenz, city of	Starr County	760604
481061	Rose City, city of	Orange County	770712
481119	Rosebud, city of	Falls County	761029
481317	Ross, city of	McLennan County	780530
480616	Round Top, town of	Fayette County	761029
481120	Runge, town of	Karnes County	750425
480993	Rusk County	Rusk County	771220
481039	Sabinal, city of	Uvalde County	750926
481160	Sadler, town of	Grayson County	760702
480553	San Jacinto County	San Jacinto County	771220
481285	Sanctuary, town of	Parker County	770610
480876	Sanford, town of	Hutchinson County	760813
480811	Sansom Park Village, city of	Tarrant County	761210
480751	Santa Anna, town of	Coleman County	750627
481134	Schulenburg, city of	Fayette County	760625
481280	Scotland, city of	Archer County	770614
481161	Scottsville, town of	Harrison County	761210
480564	Scurry County	Scurry County	770510
480332	Seven points, city of	Henderson County	761105
480656	Shamrock, city of	Wheeler County	761022
481004	Shelby County	Shelby County	780801
481136	Shiner, town of	Lavaca County	760611
480957	Smyer, town of	Hockley County	760813
480090	Snook, city of	Burleson County	761105
481284	Somerset, city of	Bexar County	770809
481163	Southmayo, town of	Grayson County	750912
480488	Splendora, city of	Montgomery County	740630
480897	Springlake, town of	Lamb County	761022
480786	Spur, city of	Dickens County	761112
480965	Strawn, city of	Palo Pinto County	760716
480825	Streetman, town of	Freestone County	770506
481318	St. Paul, town of	Collin County	780606
481531	Sunrise Beach Village, city of	Llano County	790619
481010	Swisher County	Swisher County	771213
481024	Talco, city of	Titus County	761022
480753	Talpa, town of	Coleman County	760723
480995	Tatum, city of	Rusk County	750711
481008	Teneha, town of	Shelby County	760790
481018	Terry County	Terry County	770614
480934	Thorndale, town of	Milam County	760813
480846	Thornonville, city of	Ward County	760813
480914	Thornton, town of	Limestone County	761106
481023	Titus County	Titus County	770603
480866	Toler, town of	Hood County	750716
481532	Tool, city of	Henderson County	790529
481130	Trent, town of	Taylor County	760723
481018	Tye, city of	Taylor County	750711
481034	Tyler County	Tyler County	771106
481036	Upshur County	Upshur County	770881
481040	Van Zandt County	Van Zandt County	780110
480713	Walnut Springs, city of	Bosque County	761001
481248	Ward County*	Ward County	771025

Ident. and community name		County	Original hazard date
Texas			—Continued
480840	Warren City, city of	Gregg County	780813
481183	Washington County	Washington County	770524
480850	Waskom, city of	Harrison County	761029
481058	Webb County	Webb County	780509
481121	Wiemer, city of	Colorado County	770429
480865	Weinert, city of	Haskell County	761112
480741	Wells, town of	Cherokee County	750711
480938	Westbrook, city of	Mitchell County	761112
480614	Westlake, city of	Tarrant County	761210
480758	Westminster, town of	Collin County	761105
481324	Weston, town of	Collin County	790523
480852	Wharton County*	Wharton County	740802
480729	White Deer, town of	Carson County	760702
480841	White Oak, town of	Gregg County	750822
480839	Whitewright, town of	Grayson County	761105
481189	Wichita County	Wichita County	780801
480942	Willis, city of	Montgomery County	760702
480922	Wilson, town of	Lynn County	760716
481025	Winfield, town of	Titus County	761112
480675	Wink, city of	Winkler County	740828
480573	Winona, city of	Smith County	741101
481051	Wise County	Wise County	770807
481055	Wood County	Wood County	770531
480967	Woodsbor, town of	Refugio County	760702
481022	Woodson, city of	Throckmorton County	761022
480826	Wortham, town of	Freestone County	761029
481187	Yantis, town of	Wood County	760709
480434	Yoakum, city of	Lavaca County	740510
480687	Zapata County*	Zapata County	740802

Total of 372 communities.

Utah

490068	Antimony, town of	Garfield County	760402
490194	Bear River, town of	Box Elder County	750905
490002	Beaver, city of	Beaver County	740611
490196	Cleveland, town of	Emery County	770712
490015	Cornish, town of	Cache County	760402
490236	Deweyville, town of	Box Elder County	770429
490007	Elwood, town of	Box Elder County	750124
490169	Enterprise, city of	Washington County	740816
490114	Fountain Green, city of	Sanpete County	760402
490199	Francis, town of	Summit County	750725
490154	Genola, town of	Utah County	750207
490155	Goshen, town of	Utah County	750207
490171	Hildale, town of	Washington County	760604
490188	Huntsville, town of	Weber County	740621
490085	Kanab, city of	Kane County	761029
490097	Kingston, town of	Piute County	770204
490210	Lindon, city of	Utah County	770621
490195	Loa, town of	Wayne County	741220
490117	Mayfield, town of	Sanpete County	760526
490089	Meadow, town of	Millard County	760702
490021	Millville, town of	Cache County	761022
490212	Monticello, city of	San Juan County	761224
490056	Myton, town of	Duchesne County	760402
490025	Paradise, town of	Cache County	751105
490100	Randolph, town of	Rich County	740816
490215	Rush Valley, town of	Tooele County	771025
490179	Springdale, town of	Washington County	770510
490180	Toquerville, town of	Washington County	760625
490220	Tremonton, city of	Box Elder County	760423
490030	Trenton, town of	Cache County	750627
490148	Vernon, town of	Tooele County	760604
490168	Wallsburg, town of	Wasatch County	760702

Total of 32 communities.

Vermont

500279	Athens, town of	Windham County	741206
500227	Belvidere, town of	Lamoille County	741206
500236	Brookfield, town of	Orange County	741213
500245	Brownington, town of	Orleans County	741213
500107	Cabot, village of	Washington County	740906
500083	Charleston, town of	Orleans County	740809
500185	Danville, town of	Caledonia County	750117
500249	Derby Center, village of	Orleans County	750326
500229	Eden, town of	Lamoille County	741206
500316	Elmore, town of	Lamoille County	750411
500051	Enosburg, town of	Franklin County	740809
500035	Essex Junction, village of	Chittenden County	740628
500210	Ferdinand, town of	Essex County	741213
500251	Glover, town of	Orleans County	741220
500211	Granby, town of	Essex County	741213
500003	Granville, town of	Addison County	750124
500149	Hartland, town of	Windsor County	761224
500313	Hubbardton, town of	Rutland County	741213
500252	Irasburg, town of	Orleans County	741220
500253	Jay, town of	Orleans County	740913
500188	Kirby, town of	Caledonia County	741213
500048	Lunenburg, town of	Essex County	740628
500213	Maidstone, town of	Essex County	741213
500255	Morgan, town of	Orleans County	750131
500262	Mt. Tabor, town of	Rutland County	750110
500190	Newark, town of	Caledonia County	750110
500238	Newbury, village of	Orange County	761126
500284	Newfane, village of	Windham County	750103
500086	Newport, city of	Orleans County	771213
500256	Newport, town of	Orleans County	741101
500180	North Bennington, village of	Bennington County	750221
500214	Norton, town of	Essex County	750328
500181	Peru, town of	Bennington County	750110
500183	Sandgate, town of	Bennington County	750131
500286	Saxtons River, village of	Windham County	790227
500184	Searsburg, town of	Bennington County	741115
500300	Sharon, town of	Windsor County	770204
500267	Somerset, town of	Windham County	741122
500233	Stratton, town of	Windham County	750131
500269	Sudbury, town of	Rutland County	750124
500196	Sutton, town of	Caledonia County	741213
500270	Tinmouth, town of	Rutland County	741206
500242	Verahire, town of	Orange County	750117
500215	Victory, town of	Essex County	741213
500077	Washington, town of	Orange County	740628
500233	Waterville, town of	Lamoille County	741220
500272	West Haven, town of	Rutland County	750103
500257	Westfield, town of	Orleans County	740906
500203	Westford, town of	Chittenden County	750103
500140	Westminster, village of	Windham County	741220
500311	Westmore, town of	Orleans County	750103
500204	Wheelock, town of	Caledonia County	741115
500290	Windham, town of	Windham County	770906

Total of 53 communities.

Virginia

510260	Alberta, town of	Brunswick County	770225
510242	Belle Haven, town of	Accomack County	741101
510258	Bloxom, town of	Accomack County	770211
510333	Charlotte County*	Charlotte County	780707
510045	Clintwood, town of	Dickenson County	770304
510264	Crewe, town of	Nottaway County	770211
510271	Floyd, town of	Floyd County	770325
510268	Gordonville, town of	Orange County	770225
510216	Hallwood, town of	Accomack County	740609
510316	Hillsboro, town of	Loudoun County	750404
510277	Keller, town of	Accomack County	770401
510259	Lovettsville, town of	Loudoun County	770415
510258	Newsoms, town of	Southampton County	770204
510326	Nickelsville, town of	Scott County	760702
510285	Painter, town of	Accomack County	770204
510337	Pocahantas, town of	Tazewell County	781103
510332	Port Royal, town of	Caroline County	770722
510288	Washington, town of	Rappahannock County	770204
510295	Windsor, town of	Isle of Wight County	770415

Total of 19 communities.

Washington

530007	Asotin County	Asotin County	770913
530274	Bonney Lake, town of	Pierce County	761029
530108	Creston, town of	Lincoln County	741220
530283	Eatonville, town of	Pierce County	761022
530246	Elmer City, town of	Okanogan County	750822
530150	Friday Harbor, town of	San Juan County	741129
530047	Garfield County	Garfield County	771115
530049	Grant County	Grant County	771122
530110	Harrington, town of	Lincoln County	741213
530248	La Center, town of	Clark County	761112
530176	Latah, town of	Spokane County	741206
530250	Malden, town of	Whitman County	750718
530294	Milton, town of	King County	761203
530256	N. Bonneville, town of	Skamania County	761119
530257	Northport, town of	Stevens County	760709
530259	Prescott, town of	Walla Walla County	750718
530112	Reardan, town of	Lincoln County	750110
530042	Republic, town of	Ferry County	740607
530262	Roy, town of	Pierce County	750718

Ident. and community name		County		Original hazard date
Washington				—Continued
530300	Rushton, town of	Pierce County		761203
530149	San Juan County	San Juan County		770607
530264	Springdale, town of	Stevens County		750502
530031	Starbuck, city of	Columbia County		750103
530266	Vader, town of	Lewis County		750905
530308	Woodway, town of	Snohomish County		750919
530269	Yacolt, town of	Clark County		760702
530310	Yelm, town of	Thurston County		781022
Total of 27 communities.				
Wisconsin				
550068	Bell Center, village of	Crawford County		740109
550493	Big Falls, village of	Waupaca County		740830
550147	Blue River, village of	Grant County		770128
550148	Boscobel, city of	Grant County		731217
550018	Cable, village of	Bayfield County		740830
550011	Cameron, village of	Barron County		731228
550358	Cazenovia, village of	Richland County		740823
550371	Conrath, village of	Rusk County		740830
550597	Crivitz, village of	Marinette County		780317
550069	De Soto, village of	Crawford County		740109
550461	Eagle River, city of	Vilas County		731228
550417	Eland, village of	Shawano County		740823
550249	Elderon, village of	Marathon County		740719
550129	Fairchild, village of	Eau Claire County		740531
550250	Fenwood, village of	Marathon County		740802
550592	Fontana on Geneva Lake, village of	Walworth County		771223
550110	Forestville, village of	Door County		731130
550367	Fortville, village of	Rock County		740531
550238	Francis Creek, village of	Manitowoc County		740517
550372	Glen Flora, village of	Rusk County		741108
550050	Granton, village of	Clark County		740830
550202	Hustler, village of	Juneau County		740823
550100	Iron Ridge, village of	Dodge County		760723
550393	Ironton, village of	Sauk County		740816
550396	Lime Ridge, village of	Sauk County		740823
550102	Lowell, village of	Dodge County		740517
550434	Lublin, village of	Taylor County		740920
550170	Marquette, city of	Green Lake County		731218
550418	Mattoon, village of	Shawano County		740830
550288	Melvina, village of	Monroe County		740830
550152	Mount Hope, village of	Grant County		740830
550205	Necedah, village of	Juneau County		740109
550048	New Auburn, city of	Chippewa County		740719
550350	North Bay, village of	Racine County		740906
550500	Ogdensburg, village of	Waupaca County		740823
550113	Oliver, village of	Douglas County		740830
550427	Oostburg, village of	Sheboygan County		740628
550155	Potosi, village of	Grant County		731228
550401	Prairie Du Sac, village of	Sauk County		731207
550507	Wild Rose, village of	Waushara County		740531
550594	Williams Bay, village of	Walworth County		771021
Total of 56 communities.				
Wyoming				
550508	Redgranite, village of	Waushara County		740517
550587	Slinger, village of	Washington County		771021
550231	South Wayne, village of	Lafayette County		731207
550388	Stanton, town of	St. Croix County		741116
550387	Star Prairie, village of	St. Croix County		731228
550353	Sturtevant, village of	Racine County		740524
550573	Sun Prairie, city of	Dane County		771104
550599	Taylor County	Taylor County		781201
550207	Union Center, village of	Juneau County		741115
550257	Unity, city of	Marathon County		740920
550519	Vesper, village of	Wood County		740802
550540	Waushara County*	Waushara County		770617
550378	Weyerhauser, village of	Rusk County		781112
550233	White Lake, village of	Langlade County		781001
560068	Afton, town of	Lincoln County		770621
560001	Albany County	Albany County		770623
560004	Big Horn County	Big Horn County		770602
560008	Carbon County	Carbon County		780516
560041	Chugwater, town of	Platte County		741213
560082	Converse County*	Converse County		780221
560059	Cowley, town of	Big Horn County		750919
560018	Dubois, town of	Fremont County		740123
560025	East Thermopolis, town of	Hot Springs County		741108
560060	Edgerton, town of	Natrona County		761001
560062	Glendo, town of	Platte County		750615
560022	Goshen County	Goshen County		770719
560072	Guernsey, town of	Platte County		761112
560063	Hanna, town of	Carbon County		750822
560016	Hulett, town of	Crook County		761210
560064	Lingle, town of	Goshen County		750615
560066	Medicine Bow, town of	Carbon County		760625
560085	Park County*	Park County		780425
560086	Platte County*	Platte County		780328
560021	Riverton, city of	Fremont County		740329
560003	Rock River, city of	Albany County		750207
560078	Shoshoni, town of	Fremont County		750815
560046	Sublette County	Sublette County		771115
560087	Sweetwater County*	Sweetwater County		780801
560079	Uptown, town of	Weston County		760625
560089	Washakie County*	Washakie County		780829
560024	Yoder, town of	Goshen County		741206
Total of 27 communities.				
Total of 3,204 sanctioned communities.				

*Unincorporated areas only.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, (42 U.S.C. 4001–4128) Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963)

Issued: October 10, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-32860 Filed 10-21-80; 8:45 am]

BILLING CODE 6718-03-M

[FEMA-626-DR]

Wisconsin; Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This Notice amends the Notice of a major disaster for the State of Wisconsin (FEMA–626–DR), dated July 24, 1980 and related determinations.

DATED: October 11, 1980.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Response and Recovery, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 634–7848.

NOTICE: The Notice of a major disaster for the State of Wisconsin dated July 24, 1980, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 24, 1980.

The following Counties for Public Assistance: *Chippewa, Dunn, Eau Claire, Pierce.*

Consistent with the requirement that Federal assistance be supplemental, the Federal Government will provide 75 percent of all eligible Public Assistance under Pub. L. 93–288.

(Catalog of Federal Domestic Assistance No. 83.300, Disaster Assistance)

William H. Wilcox,

Associate Director, Disaster Response and Recovery, Federal Emergency Management Agency.

[FR Doc. 80-32810 Filed 10-21-80; 8:45 am]

BILLING CODE 4210-23-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Notice of Proposed de Novo Nonbank Activities

The bank holding company listed in this notice has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and section 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to this application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on the application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for the application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than November 7, 1980.

A. *Federal Reserve Bank of Chicago* (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

Wisco, Inc., West Des Moines, Iowa (insurance activities; Iowa): to act through its subsidiary, Diagonal Insurance Agency, Inc., as an agent or broker for the sale of insurance in a community that has a population not exceeding 5,000. These activities would be conducted from an office in Diagonal, Iowa, serving the community of Diagonal, Iowa.

B. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, October 14, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32866 Filed 10-21-80; 8:45 am]

BILLING CODE 6210-01-M

B.P.C. Corp.; Formation of Bank Holding Company

B.P.C. Corporation, Cookeville, Tennessee, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 87.5 per cent of the voting shares of The Bank of Putnam County, Cookeville, Tennessee. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 14, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 15, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32870 Filed 10-21-80; 8:45 am]

BILLING CODE 6210-01-M

Commercial State Bancshares, Inc.; Proposed Retention of General Insurance Agency Activities

Commercial State Bancshares, Inc., Two Harbors, Minnesota, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to retain Commercial State Bancshares, Inc., Insurance Division, Two Harbors, Minnesota.

Applicant states that its subsidiary performs the activities of general insurance agency in a town with a population not exceeding 5,000. These activities would be performed from offices of Applicant's subsidiary in Two Harbors, Minnesota, and the geographic area to be served is the Two Harbors Trade Area. Such activities have been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than November 14, 1980.

Board of Governors of the Federal Reserve System, October 14, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32867 Filed 10-21-80; 8:45 am]

BILLING CODE 6210-01-M

Derby Bancshares, Inc.; Formation of Bank Holding Company

Derby Bancshares, Inc., Derby, Kansas, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 96 percent or more of the voting shares of First National Bank of Derby, Derby, Kansas. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be

received not later than November 14, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 15, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32869 Filed 10-21-80; 8:45 am]

BILLING CODE 6210-01-M

First National Boston Corp.; Acquisition of Bank

First National Boston Corporation, Boston, Massachusetts, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(3)) to acquire 100 per cent of the voting shares of The Country Bank, National Association, Shelburne Falls, Massachusetts. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Boston. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than November 14, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 14, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32865 Filed 10-21-80; 8:45 am]

BILLING CODE 6210-01-M

Manufacturers National Corp.; Acquisition of Bank

Manufacturers National Corporation, Detroit, Michigan, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(3)) to acquire 100 per cent of the voting shares of Bank of Lansing, Lansing, Michigan. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than November 14, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 15, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32864 Filed 10-21-80; 8:45 am]

BILLING CODE 6210-01-M

Peoples Equity Shares, Inc.; Formation of Bank Holding Company

Peoples Equity Shares, Inc., Carrollton, Georgia, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 90 percent or more of the voting shares of The Peoples Bank. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

Peoples Equity Shares, Inc., Carrollton, Georgia, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Peoples Equity Leasing Company, Inc., Carrollton, Georgia.

Applicant states that the proposed subsidiary would engage in the activities of leasing cars, trucks, trailers, industrial equipment and railroad cars. These activities would be performed from offices of Applicant's subsidiary in Carrollton, Georgia, and the geographic areas to be served are western Georgia. Such activities have been specified by the Board in section 225.4(a) of Regulation Y as permissable for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than November 14, 1980.

Board of Governors of the Federal Reserve System, October 15, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32871 Filed 10-21-80; 8:45 am]

BILLING CODE 6210-01-M

Zavala Bancshares, Inc.; Formation of Bank Holding Company

Zavala Bancshares, Incorporated, Crystal City, Texas, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by aquiring 97.3 percent or more of the voting shares of Zavala County Bank, Crystal City, Texas. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 14, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would to suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 15, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-32868 Filed 10-21-80; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

United Department Stores, Inc.; Early Termination of the Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: United Department Stores, Inc. is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of all stock of two wholly-owned subsidiaries and certain assets from the Outlet Company. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by United. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: October 9, 1980.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202-523-3894).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

By direction of the Commission.

Carol M. Thomas

Secretary.

[FR Doc. 80-32900 Filed 10-21-80; 8:45 am]

BILLING CODE 6750-01-M

Wheelabrator-Frye, Inc.; Early Termination of the Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Wheelabrator-Frye, Inc. is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of all stock of Pullman, Inc. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early temination submitted by Wheelabrator-Frye. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: September 15, 1980.

FOR FURTHER INFORMATION CONTACT: Naomi Licker, Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202) 523-3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

By direction of the Commission.

Carol M. Thomas

Secretary.

[FR Doc. 80-32901 Filed 10-21-80; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Center for Disease Control; Safety and Occupational Health Study Section; Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Center for Disease Control announces the following National Institute for Occupational Safety and Health (NIOSH) committee meeting:

Name: Safety and Occupational Health Study Section.

Date: November 12-13-14, 1980.

Place: Conference Room G—November 12-13-14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Time and type of meeting: Open: 9:00 a.m.-11:30 a.m.—November 12; Closed: 1:00 p.m.-5 p.m.—November 12; Closed: 8:30 a.m.-5 p.m.—November 13-14.

Contact person: Catherine M. Woodbury, Ph.D., Acting Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 8-63, Rockville, Maryland 20857.

Telephone: 301-443-4493.

Purpose: The committee is charged with the initial review of research, training, demonstration, and fellowship grant applications for Federal assistance in program areas administered by the National Institute for Occupational Safety and Health, and with advising the Institute staff on training and research needs.

Agenda: Agenda items for the open portion of the meeting will include consideration of minutes of previous meeting; administrative reports; and progress report on the Educational Resource Center program. Beginning at 1:00 p.m., November 12, 1980, through adjournment on November 14, 1980, the Study Section will be performing the initial review of research grant and training grant applications for Federal assistance, and will not be open to the public, in accordance with the provisions set forth in Section 552b(c)(6), Title 5 U.S. Code, and the Determination of the Director, Center for Disease Control, pursuant to Public Law 92-463.

Agenda items are subject to change as priorities dictate.

The portion of the meeting so indicated is open to the public for observation and participation. A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: October 16, 1980.

William H. Foege, M.D.,

Director, Center for Disease Control.

[FR Doc. 80-32899 Filed 10-21-80; 8:45 am]

BILLING CODE 4110-87-M

Office of the Secretary

Office of Management Services; Statement of Organization, Functions, and Delegations of Authority

Part A, Chapter AMS (Office of Management Services) of the Statement of Organization, Functions, and Delegations of Authority (42 FR 3631a-11, 7/14/77) is amended to retitle the Data Management Center as the Office of Data Processing and to include three divisions, reflecting a reorganization, as part of the Office of Data Processing.

1. In Section AMS.10 line 13, replace "Data Management Center (AMS4)" with the following: Office of Data Processing (AMS4), Office of the Director, Division of Administration and Technical Planning, Division of Customer Assistance, Division of Computer Operations.

2. Delete Section AMS.20.F in its entirety and replace with the following: F. The Office of Data Processing. Serves as a computer service organization which provides computer time and related services to the Office of the Secretary and, as resources permit, to other Department of Health and Human Services organizations. Designs and

operates a Departmentwide Administrative Data Communications Utility. Responds for the Office of the Secretary to the Office of Management and Budget and General Services Administration on reporting requirements related to computers and telecommunications and office systems management. The Office of Data Processing provides advice, guidance, and management with regard to automated data processing, telecommunications, and office systems management to the Office of the Secretary components.

F.1. Office of the Director. Provides leadership, policy guidance, and supervision, as well as coordinating long and short range planning to constitutent units.

F.2. Division of Computer Operations. Operates the ADP equipment and associated hardware required to provide necessary computer and related data processing service. Develops, coordinates, and monitors actions relating to the acquisition of ADP and telecommunication hardware. Designs, implements and monitors system software such as operating system, telecommunication system, data base management system.

F.3. Division of Customer Assistance. Serves as the principal contact and liaison between the office and its customers. Designs, implements and maintains general purpose computer software and precedures necessary for the functioning of a computer service organization. This software includes generalized application tools such as project management systems, statistical packages, mathematical subroutines and information retrieval systems.

F.4. Division of Administration and Technical Planning. Provides the Director of the Office of Data Processing with technical support required for all aspects of office management, including computer capacity planning, and personnel, financial, and procurement planning. The Division is also responsible for the development of the Office of the Secretary teleprocessing plan, and for the development and coordination of ADP and office systems management reporting to OMB and GSA for the Office of the Secretary. The Division is also responsible for the Operation of DMC financial, personnel, and procurement activities.

Dated: October 14, 1980.

Patricia Robert Harris,

Secretory.

[FR Doc. 80-32938 Filed 10-21-80; 8:45 am]

BILLING CODE 4110-12-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Environmental Quality

[Docket No. NI-31]

Intended Environmental Import Statements

The Department of Housing and Urban Development gives notice that an Environmental Impact Statement (EIS) is intended to be prepared for each of the following projects under HUD programs as described in the appendices of the Notice: Oquirrh Shadows Subdivision, Salt Lake County, Utah; and Wood Ranch Land Development, Simi Valley, California. This Notice is required by the Council on Environmental Quality under its rules (40 CFR 1500).

Interested individuals, governmental agencies, and private organizations are invited to submit information and comments concerning a particular project to the specific person or address indicated in the appropriate part of the appendices.

Particularly solicited is information on reports or other environmental studies planned or completed in the project area, issues and data which the EIS should consider, recommended mitigating measures and alternatives, and major issues associated with the proposed project. Federal agencies having jurisdiction by law, special expertise or other special interests should report their interests and indicate their readiness to aid the EIS effort as a "cooperating agency."

Issued at Washington, D.C. October 15, 1980.

Francis G. Haas,

Deputy Director, Office of Environmental Quality.

Appendix—EIS on Oquirrh Shadows Subdivision, Salt Lake County, Utah

The HUD Area Office in Denver, Colorado intends to prepare an EIS on Oquirrh Shadows Subdivision, described below, and requests information and comments for consideration in the EIS.

Description. Approximately 2,782 dwelling units (single-family and multifamily) will be built in Salt Lake County, Utah, approximately ten miles southwest of downtown Salt Lake City, Utah.

Need. An EIS is required because the total number of dwelling units exceeds a HUD established threshold.

Alternatives. The alternatives are HUD participation in the development as proposed by the developer, participation in the development provided that HUD required modifications are implemented by the developer, or reject participation in the development.

Scoping. A scoping meeting will not be held. HUD will request input from the appropriate government agencies and service organizations. This Notice will also appear in a paper of local circulation in Salt Lake City, Utah.

Comments. Comments should be forwarded within 21 days following publication of this Notice in the **Federal Register** to Mr. Caroll G. Goodwin, Area Environmental Clearance Officer, U.S. Department of Housing and Urban Development, 1405 Curtis Street, Denver, Colorado 80202.

Appendix—EIS on Wood Ranch Land Development, Simi Valley, Calif.

The Los Angeles Area Office of the Department of Housing and Urban Development intends to prepare an Environmental Impact Statement on the project described below and solicits information and comments for consideration in the EIS.

Description. Wood Ranch is a proposed Title X Land Development of some 3800 acres. Over a 10-year period the land will be developed in six phases and sold so that eventually 3888 units may be built in a mixture of housing types and densities. Planned land uses include rediential, commercial, recreational, and open space.

Project location is south west of and adjacent to the City of Simi Valley, Ventura County, California, between Olsen Road to the north, the City of Thousand Oaks City limits to the south, and extending no farther west than the western most point of Bard Reservoir.

Need. An EIS is proposed because of HUD threshold requirements as to project size. In addition significant impacts may be found in areas such as: the 100-year base floodplain, land use, transportation, air quality, endangered species, community services and facilities.

Alternatives. Alternatives identified are: no project, lower density, higher density, alternative utilizaiton of open space, alternative location, and extended phasing.

Scoping. HUD will hold a pre-project "scoping" meeting in accordance with Section 1501.7 of the implementing regulations of the 1969 National Environmental Policy Act. At this meeting, which will be open to all interested persons, groups and local, state and Federal agencies, HUD wishes to identify all significant issues to be analyzed in the Environmental Impact Statement. Time and place of this scoping meeting will be announced at a later date by notice in a local newspaper of general circulation and the mailing of a letter of invitation. The HUD mailing list covers most Federal, State and local public agencies and some private local organizations and groups.

Comments. Comments regarding this proposal should be sent within 21 days of publication of this notice in the **Federal Register** to: John J. Tuite, Area Manager, attention: Peter Severynen, Environmental Protection Specialist, U.S. Department of Housing and Urban Development, 2500 Wilshire Boulevard, Los Angeles, California 90057; or call (213) 688-5899; (FTS) 798-5899.

[FR Doc. 80-32857 Filed 10-21-80; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Florida; Resource Management Planning, Pine Island Sound-Sanibel Resource Management Plan

Pursuant to the responsibilities outlined in 43 CFR 1601.3(g), the Eastern States Office (ESO) of the Bureau of Land Management, U.S. Department of the Interior, announces that a resource management plan (RMP) is now being prepared for public lands and islands under its jurisdiction in Lee, Charlotte and Collier Counties, Florida.

Geographic Area of Plan

The plan will consider the public lands and islands, as well as Federal Mineral Ownership (FMO), in Lee, Charlotte and Collier Counties, Florida as one planning unit. It encompasses approximately 900 acres of public lands, including 46 islands and 3 inland tracts, as well as FMO under Federal, State and private surface in the 3-county area.

Anticipated Issues

The RMP will address several issues on which public comment would be beneficial. One issue is whether certain lands presently under BLM jurisdiction should be transferred to other Federal, State, or local government agencies or non-profit organizations, sold to private parties, or retained under BLM jurisdiction and managed according to multiple use management principles. Several applications are pending for lands actions that could affect ownership and management responsibilities in the planning area.

Other issues that will be addressed during development of the RMP include, but are not limited to, the following: (1) The necessity to manage and protect areas of critical environmental concern; (2) the possible impact of wilderness designations (see paragraph on Wilderness Review); (3) the need for access to beach front and recreation facilities; (4) the potential for ownership conflicts and trespass; (5) the need to protect various wildlife and plant species (including endangered species); (6) the possible development of mineral deposits on inland areas; (7) the need to protect valuable cultural resources; (8) the impact of the inclusion of public domain in areas designated as aquatic preserves; (9) the potential problems of beach and soil erosion; (10) the socio-economic needs of the area; and (11) the potential problems of salt water encroachment and recharge area loss.

Interdisciplinary Team

The RMP will be developed by a Bureau of Land Management interdisciplinary team (IDT) located in Tuscaloosa, Alabama. The team includes a community planner, geologist, hydrologist, realty specialist, environmental specialist, soil scientist, natural resource specialist, archeologist, editor, and administrative personnel. Additional support will be supplied as needed by BLM's Eastern States Office, which has jurisdiction over the public lands and Federal Mineral Ownership in Florida and 30 other eastern states.

Resource Management Planning Process

The preparation or revision of an RMP and the evaluation of its impacts includes the following steps: (1) *Identification of issues,* an action that gives Federal agencies and State and local governments an opportunity at the outset of the planning process to suggest concerns, needs and resource use, development and protection opportunities for consideration in the RMP.

(2) *Development of planning criteria* to guide the development of the RMP to ensure that it is tailored to the issues previously identified and to ensure that unnecessary data collection is avoided; to guide the analysis of the management situation; to assist in the design and formulation of alternatives; and to estimate the effects of alternatives.

(3) *Inventory data and information collection* (including resource, environmental, social, economic and institutional data).

(4) *Analysis of the management situation* to determine the capability of public land resources to respond to: needs, concerns and opportunities identified through public participation and coordination with other publics; issues defined earlier in the planning process; and national and State Director guidance.

(5) *Formulation of mangement alternatives* for the resources in the planning area.

(6) *Estimation of the effects of the alternatives.*

(7) *Selection of a preferred alternative,* which is incorporated into the draft plan and draft environmental impact statement (DEIS).

(8) *Selection of RMP,* which becomes the proposed RMP and is accompanied by a final environmental impact statement (FEIS).

(9) *Monitoring and evaluation of RMP* at intervals of not more than five years.

Public Participation Plan

A comprehensive public participation plan covering the period October 1, 1980 through February, 1982 has been prepared. It outlines a strategy for five phases of public involvement coordinated with the planning steps. The plan is flexible and designed to accommodate the unique situations caused by the widely scattered nature of BLM's ownership pattern and the variety of affected publics. The plan generally follows a "grass roots" approach to public involvement, using localized, one-to-one contacts and extensive direct mailings, as well as continual coordination with local, State and other Federal agencies.

Public Workshop on Issues and Criteria

A public workshop on the RMP has been scheduled for Thursday, November 6, 1980, at the Sheraton Inn, 8900 South Tamiami Trail, Fort Myers, Florida 33907. For the convenience of the public, two sessions will be held, one from 1:00 p.m. to 4:00 p.m., the other from 6:00 p.m. to 9:00 p.m. The workship is intended to introduce interested parties to the RMP process and to involve the public in the identification of issues and the development of planning criteria.

Other Public Meetings and Federal Register Notices

Additional workshops, briefings, and group discussions will be scheduled to assure the full representation and participation of interested and affected publics in the planning area. Additional**Federal Register** notices and news releases will accompany the publication of the draft RMP and environmental statement (upon which there will be a 90-day review and comment period) in September, 1981; the publication of the final RMP and environmental statement (which will trigger a 30-day opportunity for protest) in January, 1982; and the final notice and comment (as necessary) on any changes made as a result of action on a protest, in February, 1982. This schedule is tentative, and may be changed as the planning process unfolds. Complete records of all public participation will be available for public review at all times throughout the development of the RMP.

Wilderness Review

In the course of the planning process, BLM will conduct wilderness inventories on the public islands under its jurisdiction in the 3-county planning area. The inventories will follow guidelines established in the *Wilderness Inventory Handbook,* and are required under the authority of Section 603 of the Federal Land Policy and Management Act of 1976. They mark one of the first steps in the Bureau's wilderness review program to identify all roadless islands

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for wilderness characteristics on public lands administered by the Bureau of Land Management. The notice announcing commencement of the Bureau-wide inventory was published in the Federal Register on September 27, 1978.

Compilation of initial inventory data from existing records is about to commence. Upon completion, the inventory will be prepared for full public review and comment. Public input regarding the inventory should be submitted to the Manager, Tuscaloosa Office, at the address given below.

The *Wilderness Inventory Handbook* is available from the following sources:

Director, Eastern States, Bureau of Land Management, 350 South Pickett Street, Alexander, Virginia 22304

Manager, Tuscaloosa Office, Bureau of Land Management, 1315 McFarland Boulevard, East, Tuscaloosa, Alabama 35405

Additional Information

For information about BLM resource management planning in Florida—to review planning maps and narratives, to obtain copies of the public participation plan, maps, or other information; or to offer data or assistance, contact Robert Todd, Manager, Tuscaloosa Office, Bureau of Land Management, 1315 McFarland Boulevard, East, Tuscaloosa, Alabama 35405. Telephone: (205) 759–5441 (FTS 229–2933 or 229–2966).

Roger L. Hildebeidel,
Eastern States Director.

[FR Doc. 80-32896 Filed 10-21-80; 8:45 am]
BILLING CODE 4310-84-M

INTERSTATE COMMERCE COMMISSION

Motor Carrier Temporary Authority Application

The following are notices of filing of applicaitons for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. **One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.**

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

The following applications were filed in region 1.

Send protests to: Interstate Commerce Commission, Regional Authority Center, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 3252 (Sub-1–2TA), filed October 8, 1980. Applicant: MERRILL TRANSPORT CO., 1037 Forest Avenue, Portland, Maine 04104. Representative: Francis E. Barrett, Jr., Esq., 10 Industrial Park Road, Hingham, MA 02043. *Gasoline and diesel, in bulk,* from Chelsea and Braintree, MA to points in NH and VT. Supporting shipper: Conna Córp. d.b.a. Petco Oil Co., 981 South Third, Lousville, KY 40201.

MC 141034 (Sub-1–1TA), filed October 7, 1980. Applicant: MARGIN LEASING, INC., 21 Baltic Road, Worcester, MA 01607. Representative: Ronald I. Shapss, Esq., 450 Seventh Avenue, New York, NY 10123. *Contract carrier:* irregular routes: *Scrap cans for recycling and scrap paper* between Nashua and Hopington, NH, on the one hand, and, on the other, points in CT, VT, ME, MA, RI, NH and NY, under continuing contract(s) with Container Recover Corp. Supporting shipper: Container Recovery Corp., 12 Celina Ave., P.O. Box 3406, Nashua, NHa 03061.

MC 152124 (Sub-1–1TA), filed October 8, 1980. Applicant: RAND TRANSPORTATION SERVICES, INC., 2240—74th Street, North Bergen, NJ 07047. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *(1) Glass and Glass Products; and (2) Materials, equipment, and supplies used in the manufacture and sale of commodities named in (1) above (except commodities in bulk in tank vehicles),* Between Jeanette, PA, on the one hand, and, on the other, points in the US east of and including the states of ND, SD, NE, KS, OK and TX. Supporting shipper(s): General Glass International Corp., 270 North Ave., New Rochelle, NY 10801.

MC 147074 (Sub-1–12TA), filed October 2, 1980. Applicant: E Z FREIGHT LINES, 70 Gould Street, Bayonne, NJ 07002. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Synthetic fiber* from Dillon and Spartanburg, SC to points in NC, NJ, NY, PA, RI and VA and from Greensboro, NC to NC, NY, PA, RI, SC and VA. Supporting shipper: Titan Textile Company, Inc., and Atlas Yarn Company, Inc., 53 E. 34th Street, Paterson, NJ 07514.

MC 143127 (Sub-1–24TA), filed October 8, 1980. Applicant: K. J. TRANSPORTATION, INC., 6070 Collett Road, Victor, NY 14564. Representative: Linda A. Calvo, 6070 Collett Road, Victor, NY 14564. *Children's clothing, knit piece goods, and materials, supplies, and equipment used in the manufacture and distribution of children's clothing and knit piece goods,* between points in AL, GA, ME, RI, and VA. Supporting shipper: Health-Tex, Inc., 88 Martin Street, Cumberland, RI 02864.

MC 115353 (Sub-1–6TA), filed October 6, 1980. Applicant: LOUIS J. KENNEDY TRUCKING COMPANY, 342 Schuyler Avenue, Kearny, NJ 07032. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048. *Contract carrier:* irregular routes: *Iron and steel and iron and steel articles,* from points in the Philadelphia, PA commercial zone to points in NJ and New York, NY, restricted to traffic having a prior movement by water. Supporting shipper: Mitsui & Co., (USA), Inc., 200 Park Avenue, New York, NY 10017.

MC 2860 (Sub-1–17TA), filed October 7, 1980. Applicant: NATIONAL FREIGHT, INC., 71 West Park Avenue, Vineland, NJ 08360. Representative: Gerald S. Duzinski, Vice President—Commerce, 71 West Park Avenue, Vineland, NJ 08360. *Foodstuffs and materials, equipment and supplies used in the manufacture, sale and distribution thereof,* between points in Mecklenburg County, NC, on the one hand, and, on the other, points in AL, GA, MS, TN, SC, FL, and LA. Supporting shipper: Heinz, USA, Division of H. J. Heinz, P.O. Box 57, Pittsburgh, PA 15230.

MC 1041 (Sub-1–1TA), filed October 6, 1980. Applicant: B. N. CORKUM

TRANSPORTATION COMPANY, 326 Ballardvale Street, Wilmington, MA 01887. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. *Such merchandise as is dealt in by wholesale, retail, and chain grocery and food business houses (except in bulk),* from the facilities of Saylesville Warehouse, Inc., Saylesville, RI, to points in ME, NH, VT, MA, and CT. Supporting shipper: The Dracket Company, 5020 Spring Grove Avenue, Cincinnati, OH 45232.

MC 151408 (Sub-1–10TA), filed October 6, 1980. Applicant: CARGO TRANSPORT, INC., 100 Garfield Avenue, P.O. Box 268, Somerville, MA 02143. Representative: William F. Mix, 153 Grove Street, Lexington, MA 02173. *Contract carrier:* irregular routes: *Lumber and lumber products, materials and supplies used in the manufacture, sale and distribution thereof (except in bulk and tank vehicles),* between points in the US (except AK and HI). Supporting shipper: O'Brien Lumber Co., P.O. Box 727, Ashland, NH 03217.

MC 152119 (Sub-1–1TA), filed October 7, 1980. Applicant: SCHLAGER'S AUTO BODY REPAIR, INC., 101 Willard Street, West Quincy, MA 02169. Representative: Robert G. Parks, 20 Walnut St.—Suite 101, Wellesley Hills, MA 02181. *Disabled, wrecked, repossessed and replacement motor vehicles, by use of wrecker equipment only,* between Boston, MA and points within its Commercial Zone, on the one hand, and, on the other, points in ME, NH, VT, RI, CT and NY. There are six statements in support attached to this application which may be examined at the ICC Regional Office in Boston, MA.

MC 2860 (Sub-1–18TA), filed October 7, 1980. Applicant: NATIONAL FREIGHT, INC., 71 West Park Avenue, Vineland, NJ 08360. Representative: Gerald S. Duzinski, 71 West Park Avenue, Vineland, NJ 08360. *General commodities (except Classes A & B explosives and household goods)* between all points in the US. Restricted to traffic originating at or destined to the facilities of PPG Industries. Supporting shipper: PPG Industries, Inc., One Gateway Center, Pittsburgh, PA 15222.

MC 152107 (Sub-1–1TA), filed October 7, 1980. Applicant: INTERPORT TRUCKING, INC., 860 McLester Street, Elizabeth, NJ 07021. Representative: Ronald I. Shapss, Esq., 450 Seventh Avenue, New York, NY 10123. *Contract carrier:* irregular routes: *Chemicals and chemical containers,* between Newark, NJ, Syracuse, NY, Newcastle, KY, Tampa, FL, and Dallas, TX, on the one hand, and, on the other, points in the US (excluding AK and HI). Supporting shipper: Chemical Corp., 127 W. Berry Street, Fort Wayne, IN 46802.

MC 152118 (Sub-1–1TA), filed October 8, 1980. Applicant: JOSE ROCHA, d.b.a. J. R. TRANSPORT, 11 Jefferson Street, Cambridge, MA 02141. Representative: George C. O'Brien, 12 Vernon Street, Norwood, MA 02062. *Contract carrier:* irregular routes: *Trailers and modular units,* between Randolph, MA, and points in NH, RI and CT, under a continuing contract or contracts with Design Space International of Randolph, MA. Supporting shipper: Design Space International, 6 York Ave., Randolph, MA 02368.

MC 152139 (Sub-1–1TA), filed October 9, 1980. Applicant: SERVICE PETROLEUM CARRIERS INC., 544 Pinewood Avenue, Roselle Park, NJ 07204. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Petroleum products in bulk,* between Skyline, MD; Edison, Linden, NJ; Marcus Hook, PA; Woburn, MA; Philadelphia, PA; Baltimore, MD; Norfolk, VA; and Bristol, CT. Supporting shipper(s): Cook's Industrial Lubricants, 5 N. Stiles St., Linden, NJ 07036; Burmah-Castrol Inc., 30 Executive Ave., Edison, NJ 08817.

MC 108247 (Sub-1–1TA), filed October 6, 1980. Applicant: WESTCHESTER MOTOR LINES, INC., 35 Edgemere Road, P.O. Box 892, New Haven, CT 06504. Representative: Ronald G. Esposito, 35 Edgemere Road, P.O. Box 892, New Haven, CT 06504. *Beverages and materials used in the manufacture, distribution and sale thereof,* between the States of MD, PA, NJ, NY, CT, RI, MA, VT, and ME. DE and NH to be traversed for operating convenience. Supporting shipper: Colt Corporation, 197 Chatham Street, New Haven, CT 06513.

MC 152111 (Sub-1–1TA), filed October 7, 1980. Applicant: RUBIN CUSTOMER SERVICE, INC., 84–14 Cuthbert Road, Kew Gardens, NY 11415. Representative: Piken & Piken, Esqs., 95–25 Queens Blvd., Rego Park, NY 11374. *Lamps, lighting fixtures and commodities used or useful in the manufacture and distribution of lighting fixtures,* between points in NY, NJ, PA, MA, CT, RI, DE, MD, and DC. Supporting shippers: There are 8 statements in support attached to this application which may be examined at the ICC Regional Office in Boston, MA.

MC 103490 (Sub-1–3TA), filed October 8, 1980. Applicant: PROVAN TRANSPORT CORP., 210 Mill Street, Newburgh, NY 12550. Representative: Eugene M. Malkin, Suite 1832, Two World Trade Center, New York, NY 10048. *Chemicals, in bulk,* from Bayport, TX and Memphis, TN to points in Fayette County, PA. Supporting shipper: Intercontinental Lubricants Corp., P.O. Box 208, Brookfield, CT 06804.

MC 148292 (Sub-1–5TA), filed October 8, 1980. Applicant: J. POSA INC., P.O. Box 335, Elmont, NY 11003. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168. *Malt beverages, related advertising materials, materials, supplies, and equipment used in the manufacture, sale, and distribution of malt beverages, and empty returned malt beverage containers,* between James City County, VA, on the one hand, and, on the other, points in the New York, NY Commercial Zone. Supporting shipper: Port Distributing Corp., 45–01 Vernon Blvd., Long Island City, NY 11101.

MC 16513 (Sub-1–3TA), filed October 10, 1980. Applicant: REISCH TRUCKING & TRANSPORTATION CO., INC., 1301 Union Avenue, Pennsauken, NJ 08110. Representative: Jeffrey A. Vogelman, Suite 400, Overlook Bldg., 6121 Lincolnia Road, Alexandria, VA 22312. *Foodstuffs, cleaning compounds, scouring compounds, washing compounds, maintenance supplies for institutional and industrial use, and such commodities as are dealt in or used by grocery and food buisiness houses,* (1) from the facilities of The Procter & Gamble Distributing Co. at or near Quincy, MA to points in CT, RI, Suffolk County, NY, and New York, NY and its commercial zone; and (2) from the facilities of The Procter & Gamble Distributing Co. at or near Port Ivory, NY to points in CT, MA, and RI. Supporting shipper: The Procter & Gamble Distributing, P.O. Box 599, Cincinnati, OH 45201.

The following applications were filed in Region 2. Send protests to: ICC, Federal Reserve Bank Bldg., 101 N. 7th St., Room 620, Philadelphia, PA 19106.

MC 149170 (Sub-20TA), filed: October 10, 1980. Applicant: ACTION CARRIER, INC., 1000 East 41st Street, Sioux Falls, SD 57105. Representative: Carl L. Steiner, 39 South LaSalle Street, Chicago, IL 60603. *Polyfilm, polyethylene film and bags, and plastic granules, and related items (Except Commodities in Bulk)* Between Minneapolis, MN and Denver, CO, on the one hand, and, on the other, points in the U.S. Supporting shipper: Poly-Tech Company, 1401 W. 94th Street, Minneapolis, MN 55440.

MC 142830 (Sub-4–3TA), filed: October 10, 1980. Applicant: TRANSHIELD TRUCKING, INC., 1000 North Harvester Road, West Chicago, IL 60185. Representative: E. Stephen Heisley, Suite 805, 666 Eleventh Street,

NW, Washington, DC 20001. Contract, Irregular. (1) *Steel and fiber cable, wire, rope, cordage and accessories,* and (2) *materials, equipment and supplies* used in the manufacture, sale and distribution of commodities in (1) above (except commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Bridon American Corporation of Wilkes-Barre, PA for 270 days. Supporting shipper: Bridon American Corporation, Hanover Industrial Estate, South Main Road, Wilkes-Barre, PA 18702.

MC 145792F (Sub-4–3TA), filed: October 10, 1980. Applicant: RED MOVERS & VAN LINES, INC., 7000 S. Chicago Ave., Chicago, IL 60637. Representative: Walter L. Weart, 548 Anita St., Des Plaines, IL 60016. *Furniture or fixtures or parts thereof, and material, equipment and supplies used* in the manufacture and distribution thereof between Cook County, IL and points in the U.S. (Except AK and HI). Supporting shipper: Douglas Furniture Corp., 5020 West 73rd St., Chicago, IL 60638.

MC 108382 (Sub-4–3TA), filed: October 10, 1980. Applicant: SHORT FREIGHT LINES, INC., 459 South River Road, Bay City, MI 48706. Representative: Richard L. Poirier (same address as applicant). *Automobile Parts,* between Lewiston, MI and Cook County, Il. Supporting shipper: Lewiston Lustre, Inc., 516 N. Airport Road, Lewiston, MI 49756.

MC 114632 (Sub-4–17TA), filed: October 10, 1980. Applicant: APPLE LINES, INC., P.O. Box 287, Madison, SD 57042. Representative: David E. Peterson (same address as applicant. *Paint, lacquer, enamel, epoxies, resins, pigments, adhesives, rubber cement, and thinning and removing compounds; and materials, equipment, and supplies used in the manufacture of such commodities,* between Shelby County, TN and Orange County, CA on the one hand, and, on the other, points in the United States. Supporting shipper: Pratt & Lambert Company, Inc., Box 22, Buffalo, NY 14240.

MC 128837 (Sub-4–20TA), filed: October 9, 1980. Applicant: TRUCKING SERVICE, INC., P.O. Box 229, Carlinville, IL 62626. Representative: Michael W. O'Hara, 300 Reisch Building, Springfield, IL 62701. (a) *Flex-el pads,* from Memphis, TN to the facilities of Simmons U.S.A. at Atlanta, GA, Jacksonville, FL, Elizabeth, NJ, Columbus, OH, Dallas, TX, Kansas City, KS and Janesville, WI; (b) *Syfi pads,* from Nashville, TN to the facilities of Simmons U.S.A. at Atlanta, GA, Jacksonville, FL, Elizabeth, NJ, Columbus, OH, Dallas, TX, Kansas City, KS and Janesville, WI; (c) *Duon,* from Seneca and Utica, SC to the facilities of Simmons U.S.A. at Atlanta, GA, Jacksonville, FL, Elizabeth, NJ, Columbus, OH, Dallas, TX, Kansas City, KS and Janesville, WI. Supporting shipper: Simmons U.S.A., P.O. Box 105032, Atlanta, GA 30348.

MC 311 (Sub-4–1TA), filed October 9, 1980. Applicant: BURREN TRANSFER COMPANY, Second & Berkley Streets, Elgin, IL 60120. Representative: Eugene L. Cohn, One North LaSalle St. Chicago, IL 60602. *Foodstuffs, Meats, Meat Products and Meat By-Products and articles distributed by meat packinghouses* between points in Jo Daviess, Stephenson, Winnebago, Boone, Mc Henry, Lake, Carrol, Ogle, De Kalb, Kane, Du Page, Cook, Whiteside, Lee, Kendall, Will, Rock Island, Henry, Bureau, La Salle, Grundy, Putnam, Stark, Marshall, Livingston, Kankakee, and Iroquois Counties IL; Lake and Porter Counties, IN; and Rock, Kenosha, Walworth and Racine Counties, WI. An underlying ETA seeks 120 days authority. Supporting shipper: Swift Independent Packing Company, Division of Swift & Company, 115 West Jackson Blvd., Chicago, IL 60604.

MC 142779 (Sub-4–TA), filed: October 9, 1980. Applicant: WEIER AIR FREIGHT, INC., 4928 S. Second St., Milwaukee, WI 53207. Representative: Wayne W. Wilson, 150 E. Gilman St., Madison, WI 53703. *General commodities* (except those of unusual value, household goods as defined by the Commission, classes A & B explosives, commodities in bulk, and those requiring special equipment) between points in Brown, Calumet, Dodge, Fond du Lac, Kenosha, Manitowoc, Milwaukee, Outagamie, Ozaukee, Racine, Sheboygan, Walworth, Washington, Waukesha, and Winnebago Counties, WI, on the one hand, and, on the other, Milwaukee, WI and Chicago, IL and its commercial zone. An underlying ETA seeks 120 days authority. RESTRICTION: Restricted to the transportation of traffic having a prior or subsequent movement by water. Supporting shippers: Schenkers International Forwarders, Inc., 4950 South 2nd St., Milwaukee, WI 53207; Arthur J. Fritz and Company, 2301 Mount Prospect Road, Des Plaines, IL 60018; Micro Design, Division of Bell & Howell, 857 W. State St., Hartford, WI 53027; and Mariner International Company, Divison of Brunswick, 1939 Pioneer Road, Fond du Lac, WI 54935.

MC 147488 (Sub-4–4TA), filed: October 9, 1980. Applicant: Burt Clifford Transport, Inc., Box 400, Ruthven, Ontario, Canada NOP 2G0. Representative: Miss Wilhelmina Boersma, 1600 First Federal Building, Detroit, MI 48226. *Glassware, gloss table products, molds, empty cartons* and *pollets,* between ports of entry on the U.S.-Canada International Boundary Line in MI and NY, on the one hand, and, on the other, points in PA, WV, NY, MD, NJ, MI and OH, restricted to shipments moving to or from facilities of Libbey-St. Clair, Inc. at Wallaceburg, Ont. Supporting shipper: Libbey-St. Clair, Inc., 1250 James Street, Wallaceburg, Ont., Canada N8A 4L8.

MC 76266 (Sub-4–12TA), filed: October 7, 1980. Applicant: ADMIRAL-MERCHANTS MOTOR FREIGHT, INC., 2625 Territorial Road, St. Paul, MN 55114. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *Furnaces, house heating, hot air* from the facilities of Applies Air Systems, Inc. at St. Paul, MN to all points in the U.S. An underlying ETA seeks 120 days authority. Supporting shipper: Applied Air Systems, Inc., 2475 Doswell Avenue, St. Paul, MN 55108.

MC 150786 (Sub-4–2TA), filed: October 9, 1980. Applicant: Bobby Barnes & Charles Fitzpatrick, d.b.a. B & F TRUCKING CO. (a partnership), 3240 Sangamon St., Steger, IL 60415. Representative: Philip A. Lee, 120 W. Madison St., Chicago, IL 60602. I—*Pasta products, spaghetti, noodles and macaroni,* between IL, KS, & NJ. II—*Manuafactured fertilizers,* in 50 pound packages, between CA, GA, IN, IL, LA, MI, MO, NJ, OH, TX; AR, MS, WI, & NC, Restricted to transportation under continuing contracts with D'AMICO FOODS CO. & WM. C. LYONS ASSOCIATED, LTD. Supporting shipper: D'AMICO FOODS COMPANY, 3601 Chicago Road, Steger, IL 60475. WM. C. LYONS ASSOCIATED, LTD., 21141 Governors Hwy., Matteson, IL 60443.

MC 95876 (Sub-4–5), filed: October 7, 1980. Applicant: ANDERSON TRUCKING SERVICE, 203 Cooper Avenue N, St. Cloud, MN 56301. Representative: William L. Libby (address same as applicant). (1) *Aluminum ingots and billets* from Ferndale, WA to Rockwall, TX (2) *Aluminum scrap* (a) from Alexandria, MN, Oklahoma City, OK, Bryan, TX and Sanford, FL to Rockwall, TX and Magnolia, AR, and (b) from Sanford, FL to Frederick, MD and (3) *Aluminum and aluminum products* from Rockwall, TX to Lancaster, PA. Supporting shipper: Howmet Aluminum Corp., 475 Steamboat Road, Greewich, CT 06830.

MC 115876 (Sub-4–1TA), filed: October 8, 1980. Applicant: ERWIN HURNER, 413 Valley Avenue,

Moorhead, MN 56560. Representative: Thomas J. Van Osdel, 502 First National Bank Bldg., Fargo, ND 58126. *Contract* Irregular: *Potato flakes,* from the facilities of The Pillsbury Company at or near Grand Forks, ND, to Golden Valley, MN. Restricted to traffic moving under continuing contract(s) with The Pillsbury Company. An underlying ETA seeks 120 days authority. Supporting shipper: The Pillsbury Company, Consumer Products Division, 1100 North 4th Street, LeSueur, MN 565058.

MC 152005 (Sub-4–2TA), filed: October 8, 1980. Applicant: TRANSCONTINENTAL FREIGHT SYSTEMS, INC., 2550 South Archer Avenue, Chicago, IL 60608. Representative: Edward G. Bazelon, 39 South La Salle Street, Chicago, IL 60603. *Contract* Irregular: *General commodities* (except articles of unusual value, household goods as defined by the Commission, classes A and B explosives, commodities in bulk and those requiring special equipment), between points in the United States (except AK and HI), under a continuing contract with International Nu-Way Shippers, Inc., of Chicago, IL. Supporting shipper: International Nu-Way Shippers, Inc., 3333 South Iron Street, Chicago, IL 60608.

MC 108185 (Sub-4–8TA), filed: October 9, 1980. Applicant: JACK COLE-DIXIE HIGHWAY COMPANY, 2625 Territorial Road, St. Paul, MN 55114. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *Lumber; Building materials; Posts and poles, wooden,* from the plant site of Newburg Road Lumber Co., Inc. at or near Haleyville, AL to points in IL, IN, IA, KS, KY, MI, MN, MO, NE, OH, PA, TN and WI. Supporting shipper: Newburg Road Lumber Co., Inc., P.O. Box 548, Haleyville, AL 35565.

MC 139151 (Sub-4–3TA), filed October 10, 1980. Applicant: CANUS TRUCKING, LTD., 150 Sutherland Ave., Winnipeg, Manitoba, Canada R2W 5K4. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St., N.W., Washington, D.C. 20005. *Paper* (except newsprint), from Hamilton, OH, Chillocothe, OH, Aurora, IL and Plainwell, MI to Noyes, MN on the U.S./Canada border. Supporting shipper: Inter City Papers Limited, Ville LaSalle, Quebec H8R 3W1.

MC 139482 (Sub-4–18TA), filed October 1, 1980. Applicant: NEW ULM FREIGHT LINES, INC., P.O. Box 877, New Ulm, MN 56073. Representative: Barry M. Bloedel, P.O. Box 877, New Ulm, MN 56073. *Tires, tubes, automotive accessories and related products (except commodities in bulk),* from Buffalo, NY; Camden, AR; Carlisle, PA; Cincinnati, OH; Conshohoken, PA; Des Moines, IA; Eau Claire, WI; Elk Grove Village, IL; Findlay, OH; Indiana, PA; Indianapolis, IN; Jackson, MS; Kansas City, MO; Lenexa, KS; Little Rock, AR; Morton, IL; and Natchez, MS to Minneapolis and St. Paul, MN. An underlying ETA seeks 120 days authority. Supporting shipper: Trans-Continental Tire Sales, Inc., 7968 Main St. N.E., Fridley, MN 55432.

MC 118612 (Sub-4–4TA), filed October 4, 1980. Applicant: COLUMBIA TRUCKING, INC., 700–131st Place, Hammond, IN 46320. Representative: Richard A. Kerwin, 180 North La Salle Street, Chicago, IL 60601. *Hot asphalt, in bulk, in tank vehicles.* From McCook, IL to Detroit, MI. Supporting shipper: Trumbull Asphalt Division of Owens-Corning, Fiberglas Corporation, 59 & Archer Road, Summit, IL 60501.

MC 134022 (Sub-4–1TA), filed October 8, 1980. Applicant: RICHARD A. ZIMA, d.b.a., ZIPCO, P.O. Box 715, West Bend, WI 53095. Representative: Gerald K. Gimmel, Suite 145, 4 Professional Dr., Gaithersburg, MD 20760. *Such commodities as are dealt in by retail gift and curio shops,* from the facilities of Swiss Colony, Inc. and Swiss Colony Stores, Inc., at Madison and Monroe, WI to points in the U.S. (except AK and HI). Supporting shipper: Swiss Colony Stores, Inc., Swiss Colony, Inc., 1112 7th Ave., Monroe, WI 53566

MC 152132 (Sub-4–1TA), filed October 9, 1980. Applicant: FRANK PEYERL, P.O. Box 607, Cando, ND 58324. Representative: David C. Britton, 1425 Cottonwood St., Grand Forks, ND 58201. *Foodstuffs (including in bulk), and machinery and supplies used in the manufacture thereof,* between Towner County, ND on the one hand, and, on the other, points in the U.S. Supporting shipper: Noodles by Leonardo, Cando, ND 58324

MC 151507 (Sub-4–3TA), filed October 9, 1980. Applicant: J. LAKES TRUCKING, INC., 2957 S. E. St., Indianapolis, IN 46206. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215. *(1) Paper and paper products and (2) materials, equipment and supplies used in the manufacture, sale and distribution of the commodities in (1) above (except commodities in bulk)* between pts. in Butler County, OH, on the one hand, and, on the other, pts. in the U.S. (except AK and HI). Restricted to traffic originating at or destined to the facilities of The Beckett Paper Co. Supporting shipper: The Beckett Paper Co., 4th & Buckeye Sts., Hamilton, OH 45012.

MC 146761 (Sub-4–1TA), filed October 8, 1980. Applicant P. J. TRUCKING, INC., P.O. Box 376, Summit, IL 60501. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956.

Nonexempt Food or Kindred Products

(1) Between points in CA in interstate commerce restricted to shipments in containers or trailers having a prior or subsequent movement by rail. (2) Between Chicago, IL and Points in IA, IL, IN, KY, MI, MO, OH, PA and WI restricted to shipments in containers or trailers having a prior or subsequent movement by rail. An underlying ETA seeks 120 days authority. Supporting shippers: Weibel Champagne Vineyards, 1250 Sanford Avenue, Mission, San Jose, CA 94538, Delicato Vineyards, 12001 S. Hwy 99, Manteca, CA 95336 and Gloreitta Foods, P.O. Box 5040, San Jose, CA 95150.

The following applications were filed in region 5. Send protests to: Consumer Assistance Center, Interstate Commerce Commission, Post Office Box 17150, Fort Worth, TX 76102.

MC 200 (Sub-5–57TA), filed October 8, 1980. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing Road, Kansas City, MO 64141. Representative: H. Lynn Davis (same as applicant). *General commodities (except household goods as defined by the Commission and classes A & B explosives),* between Grant County, KS, Montgomery County, TX, and Marshall County, WV, on the one hand, and, on the other, points in CA, CO, CT, DC, DE, IA, IL, IN, KS, KY, MA, MD, MI, MO, NE, NJ, NY, OH, OK, PA, RI, TX, VA, AND WV. Restricted to shipments originating at or destined to facilities used by Columbian Chemical Co., its suppliers, or vendors. Supporting shipper: Columbian Chemical Co., P.O. Box 37, Tulsa, OK 74102.

MC 200 (Sub-5–58TA), filed October 9, 1980. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W. Pershing Road, Kansas City, MO 64141. Representative: H. Lynn Davis (same as applicant). *Bracing, bulkheads, or fiberborad or paper and bracing, blocks, or panels, fiberborad, paper, or corrugated,* between the facilities of Down River Forest Products at or near Waco, TX, on the one hand, and, on the other, Lawrence, KS. Restricted to shipments originating at the named origins and destined to the named destinations. Supporting shipper: Down River Forest Products, 7201 Imperial, Waco, TX 76710.

MC 200 (Sub-5–59TA), filed October 9, 1980. Applicant: RISS INTERNATIONAL CORPORATION, P.O. Box 100, 215 W.

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Pershing Road, Kansas City, MO 64141. Representative: H. Lynn Davis (same as applicant). *General commodities (except those of unusual value, Classes A & B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* between Webster County, KY, on the one hand, and, on the other, points in CA, CO, CT, DC, DE, IA, IL, IN, KS, KY, MA, MD, MI, MO, NE, NJ, NY, OH, OK, PA, RI, TX, VA, & WV. Restricted to shipments originating at or destined to facilities used by Anaconda Aluminum Co., its affiliates, suppliers, or vendors. Supporting shipper: Anaconda Aluminum Co., 2700 First National Tower, P.O. Box 32860, Louisville, KY 40232.

MC 29910 (Sub-5–54TA), filed October 9, 1980. Applicant: ABF FREIGHT SYSTEM, INC., 301 South Eleventh Street, Fort Smith, AR 72901. Representative: Joseph K. Reber (address same as applicant). Common, Regular. *General commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment),* serving points in Sussex, Warren, Morris and Passaic Counties, NJ as intermediate and off-route points in connection with applicant's existing regular route authority between New York, NY and Raleigh, NC. Applicant intends to tack and interline. Supporting Shipper (s): 6.

MC 30844 (Sub-5–24TA), filed October 8, 1980. Applicant: KROBLIN REFRIGERATED XPRESS, INC., 4616 East 67 Street, Tulsa, OK 74121. Representative: Robert Kroblin, P.O. Box 21222, Tulsa, OK 74121. *Alcoholic beverages (except malt beverages and commodities in bulk)* between AR, CA, FL, IN, IL, KY, LA, MA, MI, MO, NJ, NY, OH, OK, TN, and TX. Restricted to transportation originating at or destined to the facilities utilized by Jarboe Sales Company. Supporting shipper: Jarboe Sales Company, 6924 East Reading Place, Tulsa, OK 74151.

MC 35320 (Sub-5–33), filed October 9, 1980. Applicant: T.I.M.E.–DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Common, regular. *General Commodities, except household goods as defined by the Commission, and Classes A and B explosives,* serving Beaumont, TX and its commercial zone as an off-route point in connection with carrier's otherwise authorized regular route operations. Supporting shippers: 6.

Note.—Applicant intends to tack to its existing authority and any authority it may obtain in the future and interline with other carriers.

MC 82841 (Sub-5–3TA), filed October 8, 1980. Applicant: HUNT TRANSPORTATION, INC., 10770 "I" Street, Omaha, NE 68127. Representative: Donald L. Stern, 7171 Mercy Road, Suite 610, Omaha, NE 68106. (1) *Metal products, fabricated steel products, and (2) materials and supplies used in the manufacture of (1) above* between Lancaster County, NE, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Brownie Manufacturing Co., Inc. and Central Nebraska Tubing, a Subsidiary of Brownie Manufacturing Co., Inc. 1777 U.S. Highway 6, Waverly, NE 68462.

MC 85718 (Sub-5–1TA), filed October 9, 1980. Applicant: SEWARD MOTOR FREIGHT, INC., P.O. Box 128, Seward, NE 68434. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501. *Automotive parts, accessories,* and *tools,* between Portland, OR on the one hand, and, on the other, points in WA and ID. Supporting shipper: Walker Manufacturing Company, 12229 N. Burgard, Portland, OR 97203.

MC 117119 (Sub-5–35TA), filed October 8, 1980. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box188, Elm Springs, AR 72728. Representative: L. M. McLean (same address as applicant). (1) *Confectionery* and (2) *materials, supplies, and equipment used in the manufacture, sale, and distribution of confectionery (except commodities in bulk)* between Selma, AL on the one hand and on the other points in the U.S. (except AK & HI). Supporting shipper(s): American Candy Manufacturing Co., P.O. Box 879, Selma, AL 36701.

MC 117373 (Sub-5–2TA), filed October 9, 1980. Applicant: NU–WAY TRUCKING INC., 101 E. Monroe, Owensville, MO 65066. Representative: Dennis D. Dunton (same address as applicant). *Contract* irregualr: *Steel pipe and tubing* between points in the State of TX, on the one hand, and, on the other, points in AR, IL, LA, MO, OK and TN, under continuing contract with Southern Metals Div. of MPL Industries. Supporting shipper: Southern Metals Div. of MPL Industries, 12900 Preston Road, Dallas, TX 75230.

MC 118341 (Sub-5–2TA), filed October 7, 1980. Applicant: VALLEY TRUCKING CO., INC., P.O. Box 2298, Brownsville, TX 78520. Representative: Billy R. Reid, 1721 Carl Street, Fort Worth, TX 76103. *(1) Electrical parts, components and articles used in the manufacture of automobile radios; and (2) circuit boards and parts for automobile radios;* (1) from Kokomo and Indianapolis, IN and Oak Creek, WI, to the ports of entry at Brownsville, TX, and (2) from the ports of entry at Brownsville, TX, to Kokomo, IN; restricted to shipments in export or import through service in carrier equipment. Supporting shipper: Delco Electronic Div. General Motors Corp., 700 E. Firmin St., Kokomo, IN 46901.

MC 119399 (Sub-5–28TA), filed October 9, 1960. Applicant: CONTRACT FREIGHTERS, INC., P.O. Box 1375, 2900 Davis Boulevard, Joplin, MO 64801. Representative: Thomas P. O'Hara (same as applicant). *Liquid resin solution, in drums and pails, (except in bulk),* from Mayes County OK to points in CO, FL, FA and IA. Supporting shipper: Interplastic Corporation, Commercial Resins Division, Bartlesville, OK.

MC 119399 (Sub-5–29TA), filed October 9, 1980. Applicant: CONTRACT FREIGHTERS, INC., P.O. Box 1375, 2900 Davis Boulevard, Joplin, MO 64801. Representative: Thomas P. O'Hara (address same as applicant). (1) *Malt Beverages:* (2) *Wines and Spirits;* (1) From Peoria, IL to Springfield, MO; (2) From points in CA to Springfield, MO. Supporting shipper: Murray Distributing Company, Springfield, MO.

MC 119493 (Sub-5–46TA), filed October 9, 1980. Applicant: MONKEM COMPANY, INC., P.O. Box 1196, Joplin, MO 64801. Representative: Thomas D. Boone, Traffic Manager, Monkem Company, Inc., P.O. Box 1196, Joplin, MO 64801. *General commodities (except classes A & B explosives).* Between the facilities owned or utilized by Velsicol Chemical and points in the U.S. Supporting shipper: Edward A. Wysocki, Traffic Manager, Velsicol Chemical Corporation, 341 E. Ohio, Chicago, IL 60611.

MC 119741 (Sub-5–19TA), filed October 9, 1980. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., 1515 Third Avenue, NW., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (address same as applicant). *General commodities (except in bulk, in tank vehicles),* from points in the U.S. to Webster County, IA. (Supporting shipper: White Transfer & Storage, Inc., P.O. Box 1355, Fort Dodge, IA 50501.)

MC 134405 (Sub-5–13TA), filed October 8, 1980. Applicant: BACON TRANSPORT COMPANY, P.O. Box 1134, Ardmore, OK 73401. Representative: Wilburn L. Williamson, Suite 615–East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. *Barite, in bulk,* from Galveston, TX to points in LA. Supporting shipper: Milchem Inc., a Division of Baker International, P.O. Box 22111, 3920 Essex Lane, Houston, TX 77027.

MC 135797 (Sub-5–73TA), filed October 8, 1980. Applicant: J. B. HUNT TRANSPORT, INC., Post Office Box 130 Lowell, AR 72745. Representative: Paul R. Bergant, Post Office Box 130, Lowell, AR 72745. *Textiles:* Between Dallas County, TX on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Southern Textiles, 11448 Reeder Road, Dallas, TX 75229.

MC 138634 (Sub-5–2TA), filed October 9, 1980. Applicant: MARSHALL MOTOR COACH, INC., 1409 East Anson, Marshalltown, IA 50158. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Common, irregular, *Meat, meat products and meat by-products,* from Marshalltown, IA, to points in the U.S. in and east of ND, SD, NE, CO and NM. Supporting shipper: Marshall Packing Company, Inc., 816 Union Street, Marshalltown, IA 50158.

MC 140033 (Sub-5–7TA), filed October 9, 1980. Applicant: COX REFRIGERATED EXPRESS, INC., 10606 Goodnight Lane, Dallas, TX 75220. Representative: Jackson Salasky, P.O. Box 45538, Dallas, TX 75245. *Floor coverings and/or materials and supplies used in the installation of floor coverings* from Los Angeles, and Orange, CA and Bartow, Floyd, Gilmer, Gordon, Murray, Walker and Whitfield Counties, GA to Bell, Bexar, Dallas, Paris, Nueces, Tarrant and Travis Counties, TX for 270 days. Supporting shipper(s): L. D. Brinkman, P.O. Box 47586, Dallas, TX 75247 and Longhorn Carpet Distributing Company, P.O. Box 17035, Austin, TX 78760.

MC 141865 (Sub-5–12TA), filed October 9, 1980. Applicant: ACTION DELIVERY SERVICE, INC., 2401 West Marshall Drive, Grand Prairie, TX 75051. Representative: A. William Brackett, 1108 Continental Life Building, Fort Worth, TX 76102. Contract; Irregular. *Such commodities as are dealt in or used by manufacturers and distributors of paint, chemicals and related articles,* between Dallas County, TX, and points in AR and LA. Supporting shipper: The Sherwin-Williams Company, 2802 W. Miller Road, Garland, TX 75040.

MC 142872 (Sub-No. 5–15TA), filed October 6, 1980. Applicant: DAVID BENEUX PRODUCE & TRUCKING, INC. Post Office Drawer F, Mulberry, AR 72947. Representative: Don Garrison, Esq., Post Office Box 1065, Fayetteville, AR 72701. *Candy and Confectionery and display and advertising materials related thereto,* between the facilities of Tootsie Roll Industries, Inc., at or near Chicago, IL, on the one hand, and, on the other, points in AR, CA, MI, MO, OH, OR and TX. Restricted to the transportation of traffic originating at or destined to the facilities of Tootsie Roll Industries, Inc. Supporting shipper: Tootsie Roll Industries, Inc., 7401 South Cicero Avenue, Chicago, IL 60629.

MC 144393 (Sub 5–2TA), filed October 8, 1980. Applicant: BORDER DISTRIBUTING COMPANY, 7800 S. Angora, P.O. Box 4423, El Paso, TX 79914. Representative: Gene Crutcher, same as applicant. *Copper Sulphate, in Packages,* from El Paso County, TX to points in CA. Supporting shipper: Phelps Dodge Corporation, New York, N.Y.

MC 145149 (Sub-5–4TA), filed October 9, 1980. Applicant: MATADOR SERVICE, INC., P.O. Box 2256, Wichita, KS 67201. Representative: Clyde N. Christey, KS Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. *COKE, in dump vehicles with prior movement via water transportation,* from Decatur, Florence, Guntersville and Sheffield, AL; and Chattanooga and Knoxville, TN to the states of AL; GA; MS & TN. Supporting shipper: Koch Carbon, Inc., 888 Worcester St., Wellesley, MA 02181.

MC 150330 (Sub-5–7TA), filed October 7, 1980. Applicant: BELCO, INC., 2101 West Main Street, Jacksonville, AR 72076. Representative: Ron Harvey, 2101 West Main Street, Jacksonville, AR 72076. (501) 982–6511. Contract irregular *paper, paper products, paper bags, plastic bags, and bags constructed of paper and plastic combined* between the facilities of Great Plains Bag Corporation at Des Moines, IA; Hodge, LA; Jacksonville, AR; and New Philadelphia, OH, and all points in the U.S. Supporting shipper: Great Plains Bag Corporation, 2201 Bell Avenue, Des Moines, IA 50321.

MC 152128 (Sub-5–1TA), filed October 8, 1980. Applicant: STATE TRANSPORT SERVICE, INC., 13029 Market Street, Houston, TX. Representative: C. W. Ferebee, 720 North Post Oak, Suite 230, Houston, TX 77024. *Iron and steel articles* between Harris County, TX, on the one hand, and, on the other, AR, CO, LA, MS, NM, and OK. Supporting shipper: Texas Steel & Wire, Inc., 2002 Brittmore, Houston, TX.

MC 152137 (Sub-5–1TA), filed October 9, 1980. Applicant: AMCO TRANSPORTATION, A. M. COX AND JAMES CONNER, c.b.a., 1305 Wildbriar Street, Lufkin, TX 75901. Representative: Billy R. Reid, 1721 Carl Street, Fort Worth, TX 76103. *(1) Household appliances, (2) television sets and recorders (tape or wire), and (3) parts and accessories for household appliances, televisions and recorders,* from the facilities of General Electric Company at Little Rock, AR to points in LA, MS, NM, OK and TX. Supporting shipper: General Electric Company, 6901 Lindsey Rd., Little Rock, AR 72206.

MC 146616 (Sub-5–7TA), filed September 12, 1980. Applicant: B&H MOTOR FREIGHT, INC., 4024 West 21st Street, Tulsa, OK 74107. Representative: Fred Rahal, Jr., Suite 305, Reunion Center, 9 East Fourth Street, Tulsa, OK 74103. Contract; Irregular. (1) *Concrete curing compounds; (2) Materials and supplies used in the production and distribution of the commodities named in (1) above,* between the facilities of C & S Manufacturing Co., at Kansas City, KS, on the one hand, and, on the other, points in CA, FL, GA, IL, LA, MO, MS, OK, OH, TX and WA. Supporting shipper: C & S Manufacturing Co., 2129 S. 74th St., Kansas City, KS 66106.

MC 151902 (Sub-5–1TA), filed September 18, 1980. Applicant: C & S CARRIER SERVICE, 311 East Buena Vista Springfield, MO 65807 Representative: Gene Christenson (same as applicant). *General Commodities, (with usual restrictions) moving on Freight Forwarders bills of lading, restricted to shippers moving on Acme ABC–TNT, Trans National transport, bills of lading,* Between points in WA, OR, CA, NV, ID, MT, WY, UT, AZ, NM, CO, ND, SD, NE, KS, OK, TX, MO, IA, MN, WI, MI, IL, IN, OH, KY, TN, PA, WV. Supporting shippers: Acme Fast Freight, Inc., ABC–TNT Trans National Transport, Inc., 2110 Alhambra Avenue, Los Angeles, CA 90031.

MC 11592 (Sub-5–5TA), filed October 10, 1980. Applicant: BEST REFRIGERATED EXPRESS, INC., P.O. Box 7365, 824 Livestock Exchange Bldg., Omaha, NE 68107. Representative: F. E. Myers, P.O. Box 7365, Omaha, NE 68107. *Meats, meat products, meat by-products and articles distributed by meat-packing houses, as defined in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except commodites and hides in bulk, in tank vehicles).* From: Sedwick County in KS to: Points in IA, NE, MN, SD, CO, IL, IN, OH, MI and WI. Supporting shipper: Dubuque Packing Company, P.O. Box 4225, Wichita, KS 67214.

MC 35320 (Sub-5–34TA), filed October 10, 1980. Applicant: T.I.M.E.–DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Common, regular. *General Commodities, except household goods as defined by the Commission, and Classes A and B explosives,* serving Reno, NV. and

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Sparks, NV. and their commercial zones as off-route points in connection with carrier's otherwise authorized regular route operations. Supporting shippers: 5

Note.—Applicant intends to tack to its existing authority and any authority it may obtain in the future and interline with other carriers.

MC 113908 (Sub-5–21TA), filed October 10, 1980. Applicant: ERICKSON TRANSPORT CORP., 2255 North Packer Road, P.O. Box 10068 G.S., Springfield, MO 65804. Representative: B. B. Whitehead (same address as applicant). *Fruit Juice and Fruit Juice Contentrates* Between (Soledad), Monterey County, CA, on the one hand, and, on the other, (Litchfield), Litchfield County, CT. Supporting shipper: Haight Vineyards, Chestnut Hill, Litchfield, CT 06759.

MC 126930 (Sub-5–4TA), filed October 10, 1980. Applicant: BRAZOS TRANSPORT CO., P.O. Box 2746 Lubbock, TX 79408. Representative: Richard Hubbert, Sims, Kidd, Hubert & Wilson, P.O. Box 10236, Lubbock, TX 79408, (806) 763–9555. *Iron and Steel Articles, and materials, equipment and supplies used in the manufacture, distribution and installation of such commodities,* between Harris County, TX, on the one hand; and on other, points in the states of OK, LA, MS, AR, MO, KS, CO, NE, SD, ND, NM, MN, WI, IA, IL, TN, AL and TX. Supporting shipper: Shinko Wire America, Inc., 11020 Tanner Road, P.O. Box 218808, Houston, TX 77218.

MC 151504 (Sub-5–2), filed October 10, 1980. Applicant: PHELCO, INC., 11842 Missouri Botton Road, St. Louis, MO 63042. Representative: B. W. LaTourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, MO 63105, (314) 737–0777. *Such commodities as are dealt in by retail chain grocery and food business houses and mcterials and supplies used in the manufacture and distribution of the above, except commodities in bulk,* between CA, CO, FL, GA, LA, MD, MI, MN, MO, NJ, NC, OH, OR, RI, and TX. Supporting shipper(s): Lever Bros. Company, 1400 N. Pennsylvania, St. Louis, MO 63133.

MC 152151 (Sub-5–1TA), filed October 10, 1980. Applicant: UNITED PETROLEUM TRANSPORTS, INC., 4312 S. Georgia Place, Okla. City, OK 73129. Representative: C. L. Phillips, Room 248—Classen Terrace Bldg., 1411 N. Classen, Oklahoma City, OK 73106. *Petroleum and Petroleum Products,* between points in OK on the one hand, and on the other, points in AR. Supporting shipper(s): Sanders Oil Company, P.O. Box 457, Grove, OK 74344.

MC 152157 (Sub-5–1TA), filed October 10, 1980. Applicant: CLARENCE R. MINKS, Route #2, Box 58D, Broseley, MO 63932. Representative: Clarence R. Minks, Route #2, Box 58D, Broseley, MO 63932. Contract: Irregular. *Ingredients of livestock feed and poultry feed which consists of alfalfa meal, soybean meal, middlings, rice by-products, cotton seed meal, and bagged agriculture lime,* from points in AR, IL, KY, TN, and MS to Sikeston, MO. Restricted to transportation performed for Cargill, Inc. Supporting shipper: Cargill, Inc., 410 West Malone, Sikeston, MO 63801.

THE FOLLOWING APPLICATIONS WERE FILED IN REGION 6. SEND PROTESTS TO: INTERSTATE COMMERCE COMMISSION, REGION 6 MOTOR CARRIER BOARD, P.O. BOX 7413, SAN FRANCISCO, CA 94120.

MC 116544 (Sub-6–19TA), filed October 8, 1980. Applicant: ALTRUK FREIGHT SYSTEMS INC., 1703 Embarcadero Rd., Palo Alto, CA 94303. Representative: Richard G. Lougee, P.O. Box 10061, Palo Alto, CA 94303. *Frozen prepared foods* between Riverside County, Orange County, CA, Bernalillo County, NM and all points in the states of AL, CO, FL, GA, IA, IN, KY, LA, MI, MO, MS, NE, NM, OH, TN, and TX for 270 days. An underlying ETA seeks 120 days authority. Restriction: Restricted to or from the facilities of Butcher Boy Foods. Supporting shipper: Butcher Boy Foods, 12155 Magnolia Avenue, Riverside, California.

MC 133276 (Sub-6–1TA), filed October 7, 1980. Applicant: BERRY TRANSPORT, INC., 5315 NW St. Helens Rd., Portland, OR 97210. Representative: Nick I. Goyak, O'Connell, Goyak & Ball, P.C., One Southwest Columbia, Suite 555, Portland, OR 97258. *General commodities* (except classes A & B explosives, household goods as defined by the Commission), in containers, *container chassis, iron* and *steel articles* and *machinery* between points in OR, WA, ID, CA, MT and UT for 270 days. Supporting shippers: Johnson Scanstar Line, General Steamship Corp., 421 SW Sixth Avenue, Portland, OR 97204; Japan Line (USA) Ltd., 421 SW Sixth Avenue, Portland, OR 97204; Del Monte Corporation, 1425 NE Irving, Portland, OR 97232.

MC 41932 (Sub-6–2TA), filed October 6, 1980. Applicant: BROWNING FREIGHT LINES, INC., 650 So. Redwood Rd., Salt Lake City, UT 84104. Representative: Ronald D. Browning, 1321 S. E. Water Ave., Portland OR 97214. *Common Carrier:* Regular Route: *General Commodities* (except household goods) between Elko, NV and Reno, NV serving all intermediate points over Interstate Hwy 80 for 270 days. Authority is requested to tack and to interline. Supporting shipper: There are 38 supporting shippers. Their statements may be examined at the Regional office listed. An underlying ETA seeks 120 days authority.

MC 152123 (Sub-6–1TA), filed October 6, 1980. Applicant: JAMES L. BUSCHBOM, P.O. Box 927, Livingston, MT 59047. Representative: Alma Lea Longmire, P.O. Box 30193, Billings MT 59107. *Contract Carrier* Irregular routes: *Lumber* from Pablo, MT to all points in the U.S.A. for the account of Plum Creek Lumber Company, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Plum Creek Lumber Company, Plant #2, Pablo, MT 59855.

MC 141431 (Sub-6–1TA), filed October 7, 1980. Applicant: CAL–VALLEY TRANSPORTATION, INC., 1315 East Holt Blvd., Ontario, CA 91761. Representative: Robert Fuller, 13215 E. Penn St., Suite 310, Whittier, CA 90602. *Contract Carrier,* Irregular routes: *Frozen fruits and vegetables* from Watsonville and Atwater, CA and Bear Lake and Decatur, MI to points in the United States (except AK and HI) under contract with J. R. Wood, Inc. for 270 days authority. Supporting shipper: J. R. Wood, Inc., 7916 West Bellevue, Atwater, CA 95301.

MC 151620 (Sub-6–1TA), filed October 8, 1980. Applicant: COBRA TRUCKING SERVICE, INC., 4012 N. 85th Ave., Phoenix, AZ 85037. Representative: Lawrernce J. Exe., 1701 W. Walnut Parkway, Comption, CA 90220. *Contract carrier,* irregular routes: *General commodities* except household goods as defined by the Commission and classes A and B explosives), between Los Angeles and its commercial zone; CA and Maricopa County and Tucson, AZ, for 270 days. An under lying ETA seeks 120 days. Supporting shipper: LAWI/CSA Consolidators, Inc., 5610 S. Soto St., Huntington Park, CA 90255.

MC 42487 (Sub-6–36TA), filed October 6, 1980. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. *Common carrier,* regular routes: *General Commodities, (except those of unusual value, Classes A and B explosives, livestock, green hides, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment).* Serving the facilities of Purolator, Inc., and Mr. Hanger Corp., Inc., at or near Ringtown, PA, Air Products & Chemicals and J. E. Morgan Kitting Mills, Inc., at or near Tamaqua, PA and Richmond Screw Anchor Co., at or near Tremont, PA, as off-route points in connection with carrier's otherwise authorized regular route operations, for 270 days. Applicant intends to tack to its existing authority and any authority it may acquire in the future. The proposed authority will be tacked or joined with authority in Docket No. MC 42487 Sub 578, as an off-route point. the Sub 578 authorities, in turn, will be tacked or joined with other present authorities of Applicant at such points as Boston, MA, Buffalo, NY, Chicago, IL, Cincinnati, OH, Detroit, MI, Indianapolis, IN, Minneapolis, MN and St. Louis, MO, to permit service to and from points throughout the United States. Applicant proposes to interline traffic with its present connecting carriers at authorized interline points throughout the United States as provided in tariffs on file with the Interstate Commerce Commission. Supporting shipper(s): Purolator, Inc., R.D. No. 1, P.P. No. 1, Ringtown, PA 17967. Mr. Hanger Corp., Inc., Main Street, Ringtown, PA 17967. Air Products & Chemicals, R.D. No. 2, P.O. Box 351, Hometown, Tamaqua, PA 18252. J. E. Morgan Knitting Mills, Inc., Rt. No. 54, Hometown, Tamaqua, PA 18252. Richmond Screw Anchor Co., 55 N. Pine Street, Tremont, PA 17981.

MC 139171, (Sub-6–10TA), filed October 7, 1980. Applicant: CONTROLLED DELIVERY SERVICE, INC., P.O. Box 1299, City of Industry, CA 91749. Representative: Robert L. Cope, Suite 501, 1730 M St., NW, Washington, DC 20036. *Contract Carrier,* Irregular routes: *General commodities* (except household goods as defined by the Commission and Classes A and B explosives), between OR, on the one hand, and, on the other, AZ, CA, CO, ID, MT, NM, NV, OK, OR, TX, UT, WA, and WY under continuing contract with Seaport Cooperative, Inc., of Portland, OR, for 270 days. Supporting shipper: Seaport Cooperative, Inc., 730 N.W. 11th Avenue, Portland, OR 97209.

MC 139171 (Sub-6–11TA), filed October 8, 1980. Applicant: CONTROLLED DELIVERY SERVICE, INC., P.O. Box 1299, 17295 E. Railroad Avenue, City of Industry, CA 91749. Representative: Robert L. Cope, 1730 M Street, NW, Suite 501, Washington, DC 20036. *Contract carrier;* Irregular routes: *General commodities (except household goods as defined by the Commission, and Classes A and B explosives),* between IL, on the one hand, and, on the other, points in the US, under continuing contract with international Nu-Way Shippers, Inc., of Chicago, IL., for 270 days. Supporting shipper: International Nu-Way Shippers, Inc., 3333 So. Iron St., Chicago, IL 60608.

MC 113678 (Sub-6–24TA), filed October 6, 1980. Applicant: CURTIS, INC., 4810 Pontiac St., Commerce City, CO 80022. Representative: Roger M. Shaner (same as above). *Blood serums* from Lincoln, NE, to points in the U.S., for 270 days. Supporting shipper: Centennial Corporation, 766 NBC Center, Lincoln, NE.

MC 115826 (Sub-6–19TA), filed October 6, 1980. Applicant: W. J. DIGBY, INC., 6015 East 58th St., Commerce City, CO 80022. Representative: Charles M. Williams, 350 Captiol Life Center, 1600 Sherman St., Denver, CO 80203. *Bottled, Sparkling Mineral Water,* from the ports of entry at Los Angeles and Oakland, CA and Houston, TX and from points in their respective commercial zones to points in AZ, CO, ID, MT, NV, NM, OR, UT, WA, and WY, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Great Waters of France, Inc., 7217 South Spruce, Englewood, CO 80112.

MC 149364 (Sub-6–6TA), filed October 7, 1980. Applicant: DOUDELL TRUCKING COMPANY, 555 E. Capitol Avenue, Milpitas, CA 95305. Representative: Ronald C. Chauvel, 100 Pine Street, Ste. 2550, San Francisco, CA 94111. *Contract carrier,* irregular routes. *Animal and poultry feed and materials and supplies required to manufacture and distribute animal and poultry feed* between Chandler, AZ and CA, NV, NM, CO, UT, and TX under continuing contracts with Doane Products Company for 270 days. Shipper: Doane Products Company, P.O. Box 879, Joplin, MO 64801.

MC 152115 (Sub-6–1TA), filed October 6, 1980. Applicant: G. K. DISTRIBUTION CO., 13101 E. Rosecrans Blvd., Sante Fe Springs, CA 90670. Representative: George Kuiphof (same address as applicant). *Furniture and furniture parts, including mattress and upholstored box springs* from Los Angeles and Orange Counties, CA to points and places in AZ and NV, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Englander Van Vorst Corp., 6000 South St. Andrews Pl., Los Angeles, CA 90047.

MC 146024 (Sub-6–1TA), filed October 7, 1980. Applicant: G & R PETROLEUM, INC., 253 S.W. 4th Avenue, Ontario, OR 97914. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. *Contract Carrier,* Irregular routes: *Petroleum and petroleum products,* from Boise, ID and points in its commercial zone and Fruitland, ID and points in its commercial zone to points in Malheur County, OR, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Farmers Supply Co-op, 514 S.W. 4th Ave., Ontario, OR 97914.

MC 133215 (Sub-6–1TA), filed October 6, 1980. Applicant: INTERIOR MOTOR FREIGHT, INC., P.O. Box 857, The Dalles, OR 97058. Representative: Jerry R. Woods, Suite 1600, One Main Place, Portland, OR 97204. *Common carrier,* regular routes, *general routes, general commodities* (except household goods as defined by the Commission and commodities in bulk): (1) Between Portland, OR and Goldendale, WA: from Portland over Interstate Hwy 84N to junction U.S. Hwy 97, then over U.S. Hwy 97 to Goldendale, and return over the same route, serving all intermediate points and all points in OR and WA within ten (10) miles of said route; (2) Between Hood River, OR and Goldendale, WA: from Hood River to WA State Hwy 14 via an undesignated bridge over the Columbia River, then over WA State Hwy 14 to Junction U.S. Hwy 97, then over U.S. Hwy 97 to Goldendale, and return over the same route, serving all intermediate points and the off route points of The Dallas and Biggs, OR, for 270 days. Supporting shippers: There are 35 shippers. Their statements may be examined at the Regional office listed. Applicant intends to tack and interline.

MC 26462 (Sub-6–1TA), filed October 3, 1980. Applicant: JACA TRUCK LINES, P.O. Box 87, McDermitt, NV 89421. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. *Equipment, materials and supplies utilized by ranch, farm or mining operations,* between points in Malheur and Harney counties, OR; Owyhee County, ID; Lander, Humboldt, Pershing, Elko, Washoe and Churchill Counties, NV, on the one hand, and on the other, points in AZ, CA, CO, ID, MT, NM, OR, UT, WA and WY, for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: There are 5 shippers. Their statements may be examined at the Regional office listed.

MC 151472 (Sub-6–5TA), filed October 3, 1980. Applicant: PBI FREIGHT SERVICE, P.O. Box 37, Orem, UT 84057. Representative: Rick J. Hall, P.O. Box 2465, Salt Lake City, UT 84110. *Contract Carrier,* Irregular routes: *General commodities* (except household goods as defined by the Commission and Class A and B explosives), between points in CA, NV, UT, CO, AZ, ID, TX, IL, IN, OH, MO and NM, for the account of Trans-West Shipper's Association, for 270 days per Ex Parte MC–67 (Sub-No. 9). Supporting shipper: Trans-West

Shipper's Association, 3029 East 3215 South, Salt Lake City, UT 84109.

MC 134201 (Sub-6–1TA), filed October 7, 1980. Applicant: JIM PALMER TRUCKING, 9730 Derby Dr., Missoula, MT 59801. Representative: John T. Wirth, 717—17th St., Suite 2600, Denver, CO 80202. *Contract Carrier,* irregular routes: *Lumber and wood products,* from Lake County, MT to points in OH, MI, IL, WI, NM, IA, NE, IN, CO, KS and MO, for the account of Plum Creek Lumber Company, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Plum Creek Lumber Company, Box 188, Pablo, MT 59855.

MC 143531 (Sub-6–1TA), filed October 3, 1980. Applicant: POWDER RIVER MOTOR TRANSPORT CORPORATION, P.O. Box 300, Provo, UT 84601. Representative: Irene Warr, 430 Judge Building, Salt Lake City, UT 84111. *Contract Carrier,* Irregular routes: *Primary and fabricated metal products,* between the facilities of Powder River Enterprises, Inc. at Provo, UT, on the one hand, and, on the other, points in the United States, under a continuing contract(s) with Powder River Enterprises, Inc., for 270 days. Supporting shipper: Powder River Enterprises, Inc., 394 East 900 South, Provo, UT 84601.

MC 56945 (Sub-6–2TA), filed October 3, 1980. Applicant: S & H TRUCK LINES, INC., 13990 Valley Blvd., Fontana, CA 92335. Representative: Milton W. Flack, 8383 Wilshire Blvd., Suite 900, Beverly Hills, CA 90211. *Conduit or pipe, cement or asbestos fiber, and accessories,* restricted to traffic having a subsequent movement by water, from the facilities of Certainteed Corporation at Crestmore, CA, to Oakland, CA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Certainteed Corporation, 2100 Avalon, Crestmore, CA.

MC 151853 (Sub-6TA), filed October 6, 1980. Applicant: DONALD L. SHIRLEY, 5242 West Via Camille, Glendale, AZ 85306. Representative: James F. Crosby & Assoc., 7363 Pacific St., No. 210B. Omaha, NE 68114. *Such commodities as are used or dealt in by retail stores,* (1) between Santa Fe Springs and San Diego, CA on the one hand, and, on the other, Phoenix and Tempe, AZ, and (2) between Sante Fe Springs and San Diego, CA; and Phoenix and Tempe, AZ, on the one hand, and, on the other, Window Rock, AZ, for 270 days. An underlying ETA seeks 120 days authority. Restriction: Restricted to shipments originating at or destined to the facilities of Fed Mart Corp. Supporting shipper: Fed Mart Corporation, 7130 Miramar Rd., San Diego, CA 92121.

MC 138875 (Sub-6–26TA), filed October 8, 1980. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Rd., Boise, ID 83709. Representative: F. L. Sigloh (same address as applicant). *Gypsum, gypsum wallboard, joint compounds and materials and supplies used in the application thereof* (except commodities in bulk), from Sevier County, UT to points in Los Angeles, Orange, Riverside and Ventura Counties, CA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Georgia-Pacific Corporation, 900 S.W. Fifth Ave., Portland, OR 97204.

MC 152099 (Sub-6–1TA), filed October 6, 1980. Applicant: SNAKE RIVER TRUCKING, INC., Rt. 2, Box 390, Rigby, ID 83442. Representative: Irene Warr, 430 Judge Bldg., Salt Lake City, UT 84111. *Contract carrier,* irregular routes: *Iron and steel articles,* from the facilities of Brown Strauss, division of Azcon Corporation, at or near Pleasant Grove, UT to ID for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Brown Strauss, division of Azcon Corporation, P.O. Box 175, Pleasant Grove, UT 84062.

MC 152130 (Sub-6–1TA), filed October 7, 1980. Applicant: TABOR TRUCK LINES, INC., P.O. Box 2728, Sacramento, CA 95812. Representative: Michael T. Applegate, P.O. Box 2728, Sacramento, CA 95812. *Contract carrier,* irregular routes: *General commodities,* with the usual exceptions, from Alameda County, CA to Washoe County, NV, for the account of Foremost-McKesson, Inc., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Foremost-McKesson, Inc., One Post St., San Francisco, CA 94104.

MC 151332 (Sub-6–1TA), filed October 6, 1980. Applicant: GARRY E. THREADGILL, d.b.a. GARRY E. THREADGILL TRUCKING CO., 16210 S. E. 135th, Renton, WA 980955. Representative: George R. LaBissoniere, 15 South Grady Way—Suite 233, Renton, WA 98055. *Contract carrier,* Irregular routes: *Steel Furniture or Fixtures,* from points in OH, IN, IL, and WI to points in ID, OR, and WA. For 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Business Furniture Distributors, 3601 Second Avenue South, Seattle, WA 98134.

MC 148791 (Sub-6–2TA), filed October 6, 1980. Applicant: TRANSPORT–WEST, INC., 2125 N. Redwood Road, Salt Lake City, UT 84116. Representative: Rick J. Hall, P.O. Box 2465, Salt Lake City, UT 84110. *Contract Carrier,* Irregular routes: *General commodities* (except household goods as defined by the Commission and Class A and B explosives), from Reno, NV and its commercial zone to points in or east of Interstate Hwy 5 and to points in the State of WA, for the account of K-Mart Corporation, for 270 days per Ex Parte MC–67 (Sub-No. 9). Supporting shipper: K-Mart Corporation, 1400 S. McCarran Blvd., Sparks, NV 89431.

MC 143812 (Sub-6–2TA), filed October 7, 1980. Applicant: VAN DIEST TRUCKING, INC., P.O. Box 418, Pomona, CA 91766. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. *Prune juice concentrate,* in bulk, from Fresno and Yuba City, CA, to Lake Wales, FL, and Sulphur Springs, TX, for 270 days. An underlying ETA seeks 120 day authority. Supporting shipper: Sun Diamond Growers of California, 1050 So. Diamond St., P.O. Box 1727, Stockton, CA 95201.

MC 114418 (Sub-6–14TA), filed October 6, 1980. Applicant: WESTERN TRANSPORT CRANE & RIGGING, 100 Western Way, Missoula, MT 59801. Representative: Theodore F. Anno, P.O. Box 3507, Missoula, MT 59806. (1) *Commodities which because of size or weight require special handling or special equipment,* and (2) *related articles and supplies when their transportation is incidental to the transportation of the commodities in (1) above,* between points in AZ, CA, CO, ID, KS, MT, ND, NE, NM, NV, OK, OR, SD, TX, UT, WA, and WY, restricted to the transportation of shipments originating at or destined to facilities used by Fuller Company for 270 days. Supporting shipper: Fuller Company, S. 10th and Mill Sts., Allentown, PA 18103.

MC 113678 (Sub-6–25TA), filed October 6, 1980. Applicant: CURTIS, INC., 4810 Pontiac St., Commerce City, CO 80022. Representative: Roger M. Shaner (same as above). *Meats and carnivorous animal foods* from Lincoln, NE, to points in the U.S., for 270 days. Supporting shipper: International Foods, 766 NBC Center, Lincoln, NE.

MC 142122 (Sub-6–1TA), filed October 6, 1980. Applicant: PASCUZZO AND HONEYMAN TRUCKING, INC., 5127 Maywood Ave., Maywood, CA 90270. Representative: Peter Sowa (same as applicant). *Contract Carrier,* Irregular routes: *Salt and Salt Products in bag and block form,* from Lake Point, UT to points in CA for the account of Utah Salt Co., Inc. for 270 days. Supporting shipper: Utah Salt Co., Inc., 1935 South Main—Suite 307, Salt Lake City, UT 84115.

MC 151956 (Sub-6–1TA), filed October 7, 1980. Applicant: CARSON L. PATTERSON, d.b.a. CANYON EXPRESS TRANSPORT SYSTEM, 2412 E. Isabella, Mesa, AZ 85204. Representative: Andrew V. Baylor, 337 E. Elm St., Phoenix, AZ 85012. *Non-exempt food or kindred products,* from Los Angeles, Orange, Riverside and San Bernardino Counties, CA to Coconino, Maricopa, Pima, Pinal and Yavapai Counties, AZ for 270 days. Supporting shippers: AME Food Service, Inc., 8705 E. McDowell, Scottsdale, AZ 85257; Food Service Marketing, Inc., 5517 N. Black Canyon Highway, Phoenix, AZ 85015; Joseph Solomon Sales, Inc., 2833 Leonis Blvd., Los Angeles, CA 90058.

MC 141804 (Sub-6–81TA), filed October 6, 1980. Applicant: WESTERN EXPRESS, Division of Interstate Rental, Inc., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same as applicant). *Commodities dealt in or ulitized by or manufactured by or distributed by manufacturers and distributors of containers,* between Wheeling, IL, Clayton, NJ, City of Commerce, CA on the one hand, and, on the other, points in the U.S. (except AK and HI). Restricted to traffic originating at or destined to the facilities of Ekco Products, its divisions and subsidiaries, for 270 days. Supporting shipper: Ekco Products, Inc., 777 Wheeling Rd., Wheeling, IL 60090.

MC 141804 (Sub-6–82TA), filed October 6, 1980. Applicant: WESTERN EXPRESS, Division of Interstate Rental, Inc., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same as applicant). *(1) Rubber and plastic articles and (2) materials, equipment and supplies used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk).* Between Irving, TX on the one hand, and, on the other, points in the U.S. (except AK and HI), for 270 days. Supporting shipper: Entek Corporation of America, 104 County Line Rd., Irving, TX 75060.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80–32683 Filed 10–21–80; 8:45 am]
BILLING CODE 7035–01–M

Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the Federal Register of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to application of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before December 8, 1980 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP2–059

Decided: September 29, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 41932 (Sub-14F), filed September 17, 1980. Applicant: BROWNING FREIGHT LINES, INC., 650 South Redwood Rd., Salt Lake City, UT 84104. Representative: Ronald D. Browning, 1321 S.E. Water Ave., Portland, OR 97214. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk in tank vehicles, and those requiring special equipment), between Elko and Reno, NV, over Interstate Hwy 80, serving all intermediate points.

MC 108393 (Sub-155F), filed September 22, 1980. Applicant: SIGNAL DELIVERY SERVICE, INC., 201 E. Ogden Ave., Hinsdale, IL 60521. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of heating and cooling systems, between points in the U.S., under continuing contract(s) with Heil-Quaker Corporation, of Lavergne, TN.

MC 115092 (Sub-112F), filed September 22, 1980. Applicant: TOMAHAWK TRUCKING, INC., P.O. Box 0, Vernal, UT 84078. Representative: Walter Kobos, 1016 Kehoe Drive, St. Charles, IL 60174. Transporting *chemicals,* between points in Brozoria and Fort Bend Counties, TX, on the one hand, and, on the other, points in Natrona County, WY, Rio Blanco County, CO, and Uintah County, UT.

MC 115093 (Sub-24F), filed September 22, 1980. Applicant: MERCURY MOTOR EXPRESS, INC., 2511 North Grady Ave. (P.O. Box 23406), Tampa, FL 33607 (33623). Representative: Joseph W. Watson (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission and Classes A and B explosives), between points in AL, CT, DE, FL, GA, MA, MD, NC, NJ, NY, PA, RI, SC, TN, VA, WV and DC restricted to traffic having a prior or subsequent movement by water.

MC 115353 (Sub-47F), filed September 22, 1980. Applicant: LOUIS J. KENNEDY TRUCKING COMPANY, a corporation, 342 Schuyler Avenue, Kearny, NJ 07032. Representative: Morton E. Kiel, Suite 1832, 2 World Trade Center, New York, NY 10048. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of cast iron products (except commodities in bulk, in tank vehicles), between points in the U.S., under a continuing contract(s) with Griffin Pipe Products Co., Oak Brook, IL.

MC 119642 (Sub-11F), filed September 22, 1980. Applicant: JANESVILLE AUTO TRANSPORT COMPANY, a Delaware corporation, 1800 South Jackson, P.O. Box 959, Janesville, WI 53545. Representative: Eugene C. Ewald, 100 West Long Lake Road, Suite 102,

V 4 5 O C 2 2 8 0 UMI

Bloomfield Hills, MI 48013. Transporting *motor vehicles*, between points in the U.S., under continuing contract(s) with General Motors Corporation, of Detroit, MI.

MC 120652 (Sub-2F), filed September 18, 1980. Applicant: GREATER SYRACUSE MOVING & STORAGE CO., INC., Box 23—6255 Taft Rd., N. Syracuse, NY 13212. Representative: Richard D. Mathias, 1100 Connecticut Ave., NW, Washington, DC 20036. Transporting *household goods* as defined by the Commission, (1) between points in NY, on the one hand, and, on the other, points in ME, NH, VT, MA, CT, RI, NJ, PA, MD, DE, VA, WV, OH, MI, IN, IL, MN, IA, MO, AR, MS, AL, GA, SC, NC, TN, KY, WI, FL, LA, TX, OK, KS, NE, SD, ND, and DC, and (2) between points in Onondago County, NY, on the one hand, and, on the other, points in NY. Condition: Applicant has requested, in writing, coincidental cancellation of its Certificate of Registration under MC–120652 Sub 1, issued April 20, 1967, upon issuance of a certificate in this proceeding.

Note.—By part (2) of this application, applicant seeks to convert its Certificate of Registration to a Certificate of Public Convenience and Necessity.

MC 123502 (Sub-56F), filed September 22, 1980. Applicant: FREE STATE TRUCK SERVICE, INC., P.O. Box 760, Glen Burnie, MD 21061. Representative: W. Wilson Corroum (same address as applicant). Transporting *waste residue of coal burning boiler systems*, between points in DE, KY, MD, PA, VA, WV, and DC.

MC 126473 (Sub-47F), filed September 18, 1980. Applicant: HAROLD DICKEY TRANSPORT, INC., Packwood, IA 52580. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501. Transporting (1) *foodstuffs*, from the facilities of Geo. A. Hormel & Co., at or near Beloit, WI, to points in TX, LA, AR, MS, TN, MD, PA, and VA; and (2)(a) *meats, meat products, and meat by-products*, (b) *foodstuffs* (except the commodities in (a) above), and (c) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (a) and (b) above, in the reverse direction.

MC 126473 (Sub-48F), filed September 18, 1980. Applicant: HAROLD DICKEY TRANSPORT, INC., Packwood, IA 52580. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501.Transporting (1) *foodstuffs*, from the facilities of Geo. A. Hormel & Co., at or near Davenport, IA, to points in AL, CO, CT, DE, FL, GA, IL, IN, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NJ, NY, NH, NC, ND, OH, PA, RI, SC, SD, TN, TX, VT, VA, WV, and DC; and (2) *materials, equipment, and supplies* used in the manufacture and distribution of gelatin products, in the reverse direction.

MC 131033, filed September 19, 1980. Applicant: MARY C. LUKE AND JAMES I. LUKE, a partnership, d.b.a. AMERICA FIRST TOURS, P.O. Box 220, Collinsville, MS 39325. Representative: James I. Luke, Route 3, Box 123, Collinsville, MS 39325. As a *broker*, at Collinsville, MS, to arrange for the transportation of *passengers and their baggage*, between points in Attala, Winston, Noxubee, Leake, Neshoba, Kemper, Scott, Newton, Lauderdale, Jasper, Clarke, Jones, and Wayne Counties, MS, on the one hand, and, on the other, points in the U.S.

MC 141532 (Sub-100F), filed September 23, 1980. Applicant: PACIFIC STATES TRANSPORT, INC., 10244 Arrow Hwy., Rancho Cucamonga, CA 91730.Representative: Michael J. Norton, 1905 South Redwood Rd., Salt Lake City, UT 84104. Transporting *building materials*, between points in Contra Costa, San Joaquin and Los Angeles Counties, CA, on the one hand, and, on the other, points in OR, WA, ID, MT and UT. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. § 11343(a) or submit an affidavit indicating why such approval is unnecessary.

MC 145072 (Sub-45F), filed September 18, 1980. Applicant: M. S. CARRIERS, INC., 1797 Florida St., Memphis, TN 38109. Representative: A. Doyle Cloud, Jr., 2008 Clark Tower, 5100 Poplar Ave., Memphis, TN 38137. Transporting *sugar* (except in bulk), from points in St. James, St. John the Baptist, St. Bernard, Assumption, Orleans, Jefferson, and Lafourche Parishes, LA, to points in AL, AR, FL, GA, IL, IN, KY, MO, MS, NC, OH, SC, TN, TX, VA, and WV.

MC 145072 (Sub-48F), filed September 18, 1980. Applicant: M. S. CARRIERS, INC., 1797 Florida St., Memphis, TN 38109. Representative: A. Doyle Cloud, Jr., 2008 Clark Tower, 5100 Poplar Ave., Memphis, TN 38137. Transporting *plastic articles and materials, equipment and supplies* used in the manufacture of plastic articles (except commodities in bulk), between Atlanta, GA and Swainsboro, GA, on the one hand, and, on the other, points in TX, LA, MS, AL, TN, AR, OK, MO, IL, IA, WI, IN, MI, OH, KY, WVA, PA, NY, DE, NJ, MA, and CT.

MC 145072 (Sub-47F), filed September 18, 1980. Applicant: M. S. CARRIERS, INC., 1797 Florida St., Memphis, TN 38109. Representative: A. Doyle Cloud, Jr., 2008 Clark Tower, 5100 Poplar Ave., Memphis, TN 38137. Transporting *pipe fittings, iron or steel articles, and materials, supplies and equipment used in the manufacture of iron or steel articles*, between Ackerman, MS, Woodstock, TN, and Cicero, IL, on the one hand, and, on the other, points in and east of TX, OK, KS, MO, IA, and MN.

MC 145362 (Sub-2F), filed September 23, 1980. Applicant: NORTHEAST PRODUCE TRANSPORT, INC., 135 Skyline Drive, Ringwood, NJ 07456. Representative: Roy A. Jacobs, 550 Mamaroneck Ave., Harrison, NY 10528. Transporting *frozen fruits and vegetables*, (1) between points in New York, NY, and (2) between points in New York, NY, on the one hand, and, on the other, points in Cumberland County, NJ, restricted to traffic having a prior or subsequent movement by water.

MC 150163 (Sub-4F), filed September 22, 1980. Applicant: HORWITH TRUCKS, INC., R.D. No. 1, Coplay, PA 18037. Representative: Francis W. Doyle, 323 Maple Ave., Southampton, PA 18966. Transporting *coal*, in bulk, between points in Carbon, Luzerne and Schuylkill Counties, PA, on the one hand, and, on the other, points in the U.S.

MC 150432 (Sub-3F), filed September 23, 1980. Applicant: H & M TRANSPORTATION, INC., U.S. Highways 42 and 70, London, OH 43140. Representative: Owen B. Katzman, 1828 L St. NW., Suite 1111, Washington, DC 20036. Transporting *grain handling equipment*, and *materials, equipment, and supplies* used in the manufacture and distribution of grain handling equipment, between points in the U.S. (except AK and HI), under continuing contract(s) with Sweet Manufacturing Company, of Springfield, OH.

MC 150782 (Sub-1F), filed September 23, 1980. Applicant: CHAIN O'LAKES EXPRESS, INC., Rte. 1, Otter Drive, Waupaca, WI 54981. Representative: James A. Spiegel, Olde Towne Office Park, 6425 Odana Rd., Madison, WI 53719. Transporting (1) *foundry castings and foundry products*, and (2) *materials, equipment, and supplies* used in the manufacture of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Waupaca Foundry, inc., of Waupaca, WI.

MC 151932F, filed September 19, 1980. Applicant: K & C TRUCKING CO., INC., P.O. Box 407, Glenwooe, IL 60425. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting (1) *primary metal products*, including galvanized (except coating or other allied processing), and (2) *waste or scrap materials*, viz scrap or waste materials not identified by industry producing, as described in Items 33 and 40, respectively, of the Standard Transportation Commodity Code Tariff, between points in the U.S., under continuing contract(s) with Dietrich Industries, Inc., of Blairsville, PA.

Volume No. OP2–071

Decided: October 10, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton, and Liberman.

MC 11722 (Sub-74F), filed October 8, 1980. Applicant: BRADER HAULING SERVICE, INC., P.O. Box 655, Zillah, WA 98953. Representative: Philip G. Skofstad, 1525 NE Weidler, Portland, OR 97232. Transporting *mattresses and box springs*, from Twin Falls, ID, to points in OR and WA.

MC 107012 (Sub-587F), filed October 3, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). Transporting *general commodities* (except those of unusual value, housegoods as defined by the Commission, Classes A and B explosives, and commodities in bulk), between points in the U.S.

MC 114312 (Sub-34F), filed October 2, 1980. Applicant: ABBOTT TRUCKING, INC., Route 3, Box 74, Delta, OH 43515. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215. Transporting *boat trailer parts and empty semi-trailers*, between Delta and Walbridge, OH, restricted to traffic having a prior or subsequent movement by rail.

MC 115093 (Sub-21F), filed September 17, 1980 (Correction), published in the **Federal Register** issue of September 29, 1980, and republished this issue. Applicant: MERCURY MOTOR EXPRESS, INC., 2511 North Grady Ave., P.O. Box 23406, Tampa, FL 33607. Representative: Francis W. McInerny, 1000 Sixteenth St. NW., Washington, D.C. 20036. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in NC, on the one hand, and, on the other, points in CT, DE, MA, MD, NC, NJ, NY, PA, RI, TN, VA, WV, and DC.

Note.—This republication is to include the State of NC in the radial territory description, omitted in the prior publication.

MC 135562 (Sub-9F), filed October 8, 1980. Applicant: O.C.C., INC., 2214 4th S., Seattle, WA 98134. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055. Transporting *such commodities* as are dealt in or used by manufacturers of automotive parts between points in the U.S., under continuing contract(s) with Kelsey-Hayes Company, of Romulus, MI.

MC 143702 (Sub-17F), filed October 6, 1980. Applicant: ALL FREIGHT SYSTEMS, INC., 1028 South 10th St., Kansas City, KS 66105. Representative: Donald J. Quinn, Suite 900, 1012 Baltimore, Kansas City, MO 64105. Transporting *foodstuffs*, from the facilities of Delicious Food Carriers, Inc., at Lincoln, NE, to points in the U.S. (except AK and HI).

MC 144203 (Sub-7F), filed October 1, 1980. Applicant: HERMAN BROS., INC., 2565 St. Marys Ave., Omaha, NE 68101. Representative: William A. Gray, 2310 Grant Bldg., Pittsburgh, PA 15219. Transporting *liquid nitrogen, liquid oxygen and liquid argon*, between points in the U.S. under continuing contract(s) with Liquid Air Corporation of San Francisco, CA. Conditions: (1) The person or persons who appear to be engaged in common control of applicant and another regulated carrier must either file an application for approval of common control under 49 U.S.C. § 11343, or submit an affidavit indicating why such approval is unnecessary. (2) Any permit to be issued in this proceeding shall be limited in point of time to a period expiring 5 years from its date of issue.

MC 146632 (Sub-3F), filed October 6, 1980. Applicant: BETS TRUCK LEASING, INC., P.O. Box 1050, Bennington, VT 05201. Representative: James M. Burns, 1383 Main St., Suite 413, Springfield, MA 01103. Transporting (1) *laminated sheet steel*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of laminated sheet steel, between points in the U.S., under continuing contract(s) with National Lamination Company, of Des Plaines, IL. Condition: Issuance of a permit is conditioned upon the prior submission by applicant of a statement stating the manner in which contractual provisions are to be fulfilled (i.e., either (1) by furnishing transportation service through the assignment of motor vehicles for a continuing period of time to the exclusive use of each person served, or (2) by furnishing transportation services designed to meet the distinct need of each individual customer, and, if the latter, describe briefly the distinct need for which transportation services have been designed.

Volume No. OP2–073

Decided: October 16, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill.

MC 29753 (Sub-6F), filed October 6, 1980. Applicant: BOB AIKINS LINES, INC., P.O. Box 264, U.S. 50 West, Lawrenceburg, IN 47025. Representative: Paul J. Snodgrass (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in IN, KY, and OH.

MC 64423 (Sub-2F), filed October 2, 1980. Applicant: FREY'S MOTOR EXPRESS, INC., Fox Farm Rd., P.O. Box 196, R.D. 3, Phillipsburg, NJ 08885. Representative: James M. Cope (same address as applicant). Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), (I) *Over Regular routes* (1) between Philadelphia, PA, and New York, NY: (a) from Philadelphia over U.S. Hwy 611 to Easton, PA, then over U.S. Hwy 22 to junction U.S. Hwy 1, then over U.S. Hwy 1 to New York, and (b) over U.S. Hwy 1, (2) between Philadelphia and Easton, PA: from Philadelphia over PA Hwy 309 to Allentown, PA, then over U.S. Hwy 22 to Easton, (3) between Philadelphia and junction U.S. Hwys 1 and 130: from Philadelphia over U.S. Hwy 30 to junction U.S. Hwy 130, then over U.S. Hwy 130 to junction U.S. Hwy 1, and (4) in connection with (1) thru (3) above, return over the same route, serving all intermediate points and points in NJ and those in Bucks, Montgomery, Lehigh, and Northampton Counties, PA, as off-route points; and (II) *Over irregular routes*, between New York, NY, points in NJ, and those points in and east of York, Dauphin, Schuylkill, Cargon, Luzerne, Wyoming, and Susquehanna Counties, PA. Condition: Issuance of a certificate here is subject to prior or coincidental cancellation at applicant's written request of Certificate MC 64423, issued May 27, 1942.

MC 112713 (Sub-313F), filed October 3, 1980. Applicant: YELLOW FREIGHT SYSTEM, INC., 10990 Roe Ave., Overland Park, KS 66207. Representative: Robert E. DeLand (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving points in DeSoto Parish, LA, as off-route points in

connection with carrier's otherwise authorized regular-route operations.

MC 123872 (Sub-122F), filed October 6, 1980. Applicant: W&L MOTOR LINES, INC., P.O. Box 3467, Hickory, NC 28601. Representative: Allen E. Bowman (same address as applicant). Transporting (1) *Carpets and rugs*, and (2) *materials, equipment, and supplies* used in the manufacture, installation, and distribution of the commodities in (1) above, (except commodities in bulk), between points in GA, on the one hand, and, on the other, points in AZ, CA, CO, ID, IL, MT, NV, NM, NC, OK, OR, TX, UT, WA, and WY.

MC 133542 (Sub-16F), filed October 2, 1980. Applicant: FLOYD WILD, INC., P.O. Box 91, Marshall, MN 56258. Representative: Samuel Rubenstein, Box 5, Minneapolis, MN 55440. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) between points in the U.S., under continuing contract(s) with Schwans Sales Enterprises, Inc., of Marshall, MN.

MC 133542 (Sub-17F), filed October 2, 1980. Applicant: FLOYD WILD, INC., P.O. Box 91, Marshall, MN 56258. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440. Transporting such *commodities* as are dealt in by farm supply stores and construction companies, (except commodities in bulk), between points in the U.S. under continuing contract(s) with Running Supply, Inc., of Marshall, MN, Lyon Farm Center, Inc., of Marshall, MN, and Dulas Construction, Inc., of Marshall, MN.

MC 133542 (Sub-18F), filed October 2, 1980. Applicant: FLOYD WILD, INC., P.O. Box 91, Marshall, MN 56258. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440. Transporting *containers*, between points in the U.S., under continuing contract(s) with Viking Coca-Cola Bottling Co., of St. Cloud, MN.

MC 135052 (Sub-32F), filed October 8, 1980. Applicant: ASHCRAFT TRUCKING, INC., 875 Webster St., Shelbyville, IN 46176. Representative: Warren C. Moberly, 777 Chamber of Commerce Bldg., 320 North Meridian St., Indianapolis, IN 46204. Transporting (1) *apparel; or other finished textile products or knit apparel*, (2) *furniture or fixtures*, (3) *chemicals and allied products*, (4) *rubber or miscellaneous plastics products*, (5) *primary metal products; including galvanized* (except coating or other allied processing), (6) *fabricated metal products*, (except ordnance), (7) *machinery*, (except electrical), (8) *transportation equipment*, (9) *instruments or photographic goods; or optical goods, watches or clocks*, and (10) *waste or scrap materials; viz scrap waste materials not identified by industry producing*, as described in Items 23, 25, 28, 30, 33, 34, 35, 37, 38, and 40, respectively, of the Standard Commodity Code Tariff, between points in Shelby and Marion Counties, IN, on the one hand, and, on the other, points in the U.S. (except AK, HI, and IN).

MC 139482 (Sub-181F), filed October 7, 1980. Applicant: NEW ULM FREIGHT LINES, INC., P.O. Box 877, New Ulm, MN 56073. Representative: Barry M. Bloedel (same address as applicant). Transporting *cellulose insulation, vermiculite, and polyethelene*, (except commodities in bulk), from Lake Mills, WI, to points in IL, IA, MI, MN, MO, NE, ND, and SD.

MC 143953 (Sub-4F), filed October 7, 1980. Applicant: ELITE TRUCKING CO., a Corporation, P.O. Box 69, Station E, St. Joseph, MO 64505. Representative: W.R. England III, P.O. Box 456 Jefferson City, MO 65102. Transporting *metal buildings, Transporting knocked down, and (2) materials, equipment, and supplies* used in the manufacture and distribution of metal buildings, (except commodities in bulk), between points in the U.S., under continuing contract(s) with Pascoe Steel Corporation, of Wathena, KS.

MC 148602 (Sub-2F), filed October 6, 1980. Applicant: ECKDAHL WAREHOUSE CO., a Corporation, 501 South Anderson St., Los Angeles, CA 90033. Representative: John Paul Fischer, 256 Montgomery St., San Francisco, CA 94104. Transporting *such commodities* as are dealt in or used by department and food stores, between points in the U.S., under continuing contract(s) with K mart Corporation, of Ontario, CA.

MC 149543 (Sub-1F), filed October 3, 1980. Applicant: CLARKSON BROS. MACHINERY HAULERS, INC., P.O. Box 788, Cowpens, SC 29330. Representative: Edward P. Bocko, 1689 Warner Ct., Mineral Ridge, OH 44440. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in the U.S., under continuing contract(s) with Clarkson Bros., Inc., of Cowpens, SC.

MC 151163 (Sub-1F), filed October 2, 1980. Applicant: DWG TRANSPORT, INC., 1600 Jamesville Ave., P.O. Box 250, Syracuse, NY 13205. Representative: Herbert S. Zischkau III, 277 Park Ave., New York, NY 10172. Transporting (1) *foodstuffs* and (2) *such commodities* as are dealt in by wholesale, retail, chain, convenience and supermarket food and business houses, and discount department stores, and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above, between points in the U.S., under continuing contract (s) with Dewitt Wholesale Grocery, Inc., of Syracuse, NY, and Olean Wholesale Grocery Coop, Inc., of Olean, NY.

MC 152042F filed September 29, 1980. Applicant: SIDNEY R. DREXLER, d.b.a. DREXLER HORSE TRANSPORTATION, Rt. 2, Box 315, Hampshire, IL 60140. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701. Transporting (1) *Livestock*, and (2) *supplies and equipment* used in the care and exhibition of livestock, between points in IL and WI, on the one hand, and on the other points in AL, AR, DE, FL, GA, IN, IA, KS, KY, LA, MD, MI, MN, MS, NB, NJ, NY, NC, OH, OK, PA, SC, TN, TX, VA, WV, and DC.

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Decided: October 8, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton, and Liberman.

MC 111594 (Sub-101F), filed September 22, 1980. Applicant: C.W. TRANSPORT, INC., 610 High St., Wisconsin Rapids, WI 54494. Representative: Leonard Kofkin, 39 S. LaSalle St., Chicago, IL 60603. Over regular routes, transporting *general commodities* except household goods as defined by the Commission and classes A and B explosives): (1) Between Portal, ND and Galveston, TX: From Portal over U.S. Hwy 52 to Jamestown, ND, then over U.S. Hwy 281 to junction Interstate Hwy 90 near Plankinton, SD, then over Interstate Hwy 90 to junction U.S. Hwy 81, then over U.S. Hwy 81 to junction Interstate Hwy 35 at or near Wichita, KS, then over Interstate Hwy 35 to Dallas, TX, and then over Interstate Hwy 45 to Galveston, and return over the same route; (2) Between Westhope, ND, and Laredo, TX, over U.S. Hwy 83; (3) Between Williston, ND, and St. Ignace, MI, over U.S. Hwy 2; (4) Between Beach, ND, and Port Huron, MI, over Interstate Hwy 94; (5) Between Marmarth, ND, and Memphis, TN: From Marmarth over U.S. Hwy 12 to St. Paul, MN, then over U.S. Hwy 61 to Memphis, and return over the same route; (6) Between Spearfish, SD, and Erie, PA: From Spearfish over Interstate Hwy 90 to junction Interstate Hwy 79, then over Interstate Hwy 79 to Erie, and return over the same route; (7) Between Harrison, NE, and Chicago, IL, over U.S. Hwy 20; (8) Between Bushnell, NE, and Philadelphia, PA: From Bushnell over Interstate Hwy 80 to junction PA Hwy 9, then over PA Hwy 9 to junction Interstate Hwy 276, then over Interstate Hwy 278 to junction U.S. Hwy 422, then over U.S. Hwy 422 to Philadelphia, and return over the same route, (9) Between Goodland, KS and Norfolk, VA: From Goodland over Interstate Hwy 70 to Wheeling, WV, then over WV Hwy 2 to Moundsville, WV, then over U.S. Hwy 250 to Charlottesville, VA, then over Interstate Hwy 64 to Norfolk, and return over the same route; (10) Between Seminole, TX, and Brunswick, GA. From Seminole over U.S. Hwy 180 to Fort Worth, then over Interstate Hwy 20 to Meridian, MS, then over U.S. Hwy 80 to Montgomery, AL, then over U.S. Hwy 82 to Waycross, GA, then over U.S. Hwy 84 to Brunswick, GA, and return over the same route; (11) Between Glenrio, TX, and New Burn, NC: From Glenrio over Interstate Hwy 40 to Raleigh, NC, then over U.S. Hwy 70 to New Burn, and return over the same route; (12) Between El Paso, TX, and Jacksonville, FL, over Interstate Hwy 10; (13) Between Crookston, MN, and Baton Rouge, LA: From Crookston over U.S. Hwy 75 to Sioux City, IA, then over Interstate Hwy 29 to Kansas City, MO, then over U.S. Hwy 71 to junction U.S. Hwy 190 near Opelousas, LA, then over U.S. Hwy 190 to Baton Rouge, and return over the same route; (14) Between Duluth, MN, and Laredo, TX, over Interstate Hwy 35; (15) Between Lake City, MN, and Baton Rouge, LA: From Lake City over U.S. Hwy 63 to Hoxie, AR, then over U.S. Hwy 67 to Little Rock, AR, then over U.S. Hwy 65 to Natchez, MS, then over U.S. Hwy 61 to Baton Rouge, and return over the same route; (16) Between Hurley, WI, and New Orleans, LA, over U.S. Hwy 51; (17) Between Chicago, IL, and Mobile, AL: From Chicago over Interstate Hwy 90 to junction Interstate Hwy 65 then over Interstate Hwy 65 to U.S. Hwy 31 to Mobile, and return over the same route; (18) Between Sault Ste, Marie, MI, and Miami, FL: From Sault Ste. Marie over Interstate Hwy 75 to Tampa, FL, then over U.S. Hwy 41 to Miami, and return over the same route; (19) Between Cleveland, OH, and Charleston, SC: From Cleveland over Interstate Hwy 77 and U.S. Hwy 21 to Columbia, SC, then over Interstate Hwy 26 to Charleston, and return over the same route; (20) Between St. Louis, MO, and Erie, PA: From St. Louis over Interstate Hwy 64 to Charleston, WV, then over Interstate Hwy 79 to Erie, and return over the same route; (21) Between Great Bend, PA, and junction Interstate Hwys 40 and 81, over Interstate Hwy 81; (22) Between Arlington, VA, and Miami, FL: From Arlington over Interstate Hwy 95 to junction FL Hwy 70, then over FL Hwy 70 to Ft. Pierce, FL. then over U.S. Hwy 1 to Miami, and return over the same route; (23) Between Nevada, MO, and Dalhart, TX, over U.S. Hwy 54; (24) Between Sandusky, OH, and Lockwood, KY: From Sandusky over OH Hwy 4 to junction U.S. Hwy 23 near Marion, OH, then over U.S. Hwy 23 to Lockwood, and return over the same route; (25) Between St. Louis, MO, and Oklahoma City, OK, over Interstate Hwy 44; (26) Between Little Rock, AR, and junction Interstate Hwys 20 and 10, near Kent, TX: From Little Rock over Interstate Hwy 30 to Fort Worth, TX, then over Interstate Hwy 20 to junction Interstate Hwy 10, and return over the same route; (27) Between Presidio and Dallas, TX, over U.S. Hwy 67; (28) Between Terre Haute, IN, and New Orleans, LA: From Terre Haute over U.S. Hwy 41 to Hopkinsville, KY, then over Alt. U.S. Hwy 41 to junction Interstate Hwy 24, then over Interstate Hwy 24 to Chattanooga, TN, then over Interstate Hwy 59 to junction Interstate Hwy 10, and then over Interstate Hwy 10 to New Orleans, and return over the same route; (29) Between Flint, MI, and Indianapolis, IN, over Interstate Hwy 69; (30) Between Birmingham, AL, and Columbia, SC, over Interstate Hwy 20; (31) Between Montgomery, AL, and Greensboro, NC, over Interstate Hwy 85; (32) Between Detroit, MI, and Mackinaw City, MI: From Detroit over Interstate Hwy 96 to Muskegon, MI, then over U.S. Hwy 31 to Mackinaw City, and return over the same route; (33) Between Chicago, IL, and Nashville, TN: From Chicago over Interstate Hwy 57 to junction Interstate Hwy 24, near Pulleys Mill, IL, then over Interstate Hwy 24 to junction Alt. U.S. Hwy 41, then over Alt. U.S. Hwy 41 to Nashville, and return over the same route; (34) Between Baton Rouge and Shreveport, LA: From Baton Rouge over Interstate Hwy 10 to Lake Charles, LA, then over U.S. Hwy 171 to Shreveport, and return over the same route; (35) Between Indianapolis, IN and Moline, IL, over Interstate Hwy 74; (36) Between Peoria, IL, and Taylor, MO, over U.S. Hwy 24; (37) Between Marion, IL, and Sikeston, MO: From Marion over Interstate Hwy 57 to Cairo, IL, then over U.S. Hwy 60 to Sikeston, and return over the same route; (38) Between Madison, WI, and Dubuque, IA, and over U.S. Hwy 151; (39) Between St. Louis, MO, and Arlington, VA, over U.S. Hwy 50; (40) Between Bradford, PA, and junction Interstate Hwy 79 and U.S. Hwy 119 near Morgantown, WV: From Bradford over U.S. Hwy 219 to Dubois, PA, then over U.S. Hwy 119 to junction Interstate Hwy 79 and U.S. Hwy 119, and return over the same route; (41) Between Cleveland, OH, and Milford, PA, over U.S. Hwy 6; (42) Between Akron, OH, and Philadelphia, PA, over Interstate Hwy 76; (43) Between Chattanooga, TN, and Miami, FL, over U.S. Hwy 27; (44) Between Petersburg, VA, and Bradenton, FL: From Petersburg over U.S. Hwy 1 to Daytona Beack, FL, then over Interstate Hwy 4 to Tampa, FL, then over Interstate Hwy 275 to junction U.S. Hwy 41, then over U.S. Hwy 41 to Bradenton, and return over the same route; (45) Between Montgomery, AL, and Savannah, GA, over U.S. Hwy 80; (46) Between San Antonio and Brownsville, TX, over U.S. Hwy 281; (47) Between Asheville, NC, and St. Petersburg, FL, over U.S. Hwy 19; (48) Between Laredo, TX, and Texarkana, AR, over U.S. Hwy 59; and (49) Between Hoxie, AR, and Birmingham, AL: From Hoxie over U.S. Hwy 63 to junction U.S. Hwy 61, then over U.S. Hwy 61 to Memphis, TN, then over U.S. Hwy 78 to Birmingham, and return over the same route; serving in connection with routes (1) to (49) about points in AL, AR, FL, GA, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, NE, NC, ND, OH, OK, PA, SC, SD, TN, TX, VA, WV, and WI, as intermediate and off-route points.

Note.—Applicant intends to tack this authority with its existing regular-route authority.

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Decided: October 15, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 34227 (Sub-22F), filed October 8, 1980. Applicant: PACIFIC INLAND TRANSPORTATION COMPANY, a corporation, 15910 East Colfax, Aurora, CO 80011. Representative: James P. Beck, 717 17th St., Suite 2600, Denver, CO 80202. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of industrial cleaners, weed killers and insecticides (except in bulk), between points in the U.S. under continuing contract(s) with Oxford Chemicals, Inc., of Atlanta, GA.

MC 41116 (Sub-88F), filed October 8, 1980. Applicant: FOGLEMAN TRUCK LINE, INC., P.O. Box 1504, Crowley, LA 70526. Representative: Austin L. Hatchell, P.O. Box 2165, Austin, TX 78768. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with (a) Congra, Inc., of Oak Brook, IL, and (b) Chase Bag Company, of Omaha, NE.

MC 59117 (Sub-76F), filed August 5, 1980, and previously noticed in the

Federal Register issue of August 26, 1980. Applicant: ELLIOTT TRUCK LINE, INC., 101 E. Excelsior, P.O. Box 1, Vinita, OK 74301. Representative: Wilbur L. Williamson, Suite 615 East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. To operate as a *common carrier*, by motor vehicle, over irregular routes, transporting *metallic ores, nonmetallic minerals* (except fuels), *chemicals or allied products, petroleum or coal products and clay, concrete or stone products*, as set forth in paragraphs (10), (14), (28), (29), and (32) of Revised STCC Major Industry Grouping, between points along the Arkansas and Verdigris Rivers in Muskogee, Tulsa and Rogers Counties in OK, on the one hand, and, on the other, points in AR, MO, KS, NM, CO, NE, TX and OK.

Note.—The purpose of this republication is to correctly reflect the territorial description.

MC 59957 (Sub-66F), filed October 3, 1980. Applicant: MOTOR FREIGHT EXPRESS, a corporation, P.O. Box 1029, York, PA 17405. Representative: James W. Patterson, 1200 Western Savings Bank Bldg., Philadelphia, PA 19107. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Portsmouth, NH and South Hill, VA, over U.S. Hwy 1, (2) between Portsmouth, NH and Emporia, VA, over Interstate Hwy 95, (3) between Boston, MA, and Madison, WI, over Interstate Hwy 90, (4) between Boston, MA, and Dubuque, IA, over U.S. Hwy 20, (5) between Providence, RI, and Davenport, IA (a) over U.S. Hwy 6 and (b) from Providence over Interstate Hwy 84 to Scranton, PA, then over Interstate Hwy 81 to Hazelton, PA, then over Interstate Hwy 80 to Davenport, and return over the same route, (6) between New York, NY, and St. Louis, MO (a) from New York over U.S. Hwy 22 to Cambridge, OH, then over U.S. Hwy 40 to St. Louis, and return over the same route, (b) from New York over Interstate Hwy 78 to Lickdale, PA, then over Interstate Hwy 81 to Carlisle, PA, then over Interstate Hwy 76 to New Stanton, PA, then over Interstate Hwy 70 to St. Louis, and return over the same route, (7) between Atlantic City, NJ and Clinton, IA, over U.S. Hwy 30, (8) between Atlantic City, NJ and Hershey, PA, over U.S. Hwy 322, (9) between Atlantic City, NJ, and Cambridge, OH, over U.S. Hwy 40, (10) between Baltimore, MD, and Breezewood, PA, over Interstate Hwy 70; (11) between Ocean City, MD, and St. Louis, MO, over U.S. Hwy 50, (12) between Washington, DC, and Frederick, MD, (a) over Interstate Hwy 270, and (b) over MD Hwy 355, (13) between Virginia Beach, VA, and Middlesboro, KY, over U.S. Hwy 58, (14) between Virginia Beach, VA, and Cairo, IL, over U.S. Hwy 60, (15) between Allen (Floyd County) and Columbus, KY, over KY Hwy 80, (16) between Bluefield, WV, and Dubuque, IA, over U.S. Hwy 52, (17) between New Castle, PA, and Huntington, IN, over U.S. Hwy 224, (18) between Uhrichsville, OH, and Hannibal, MO, over U.S. Hwy 36, (19) between Fort Wayne, In, and Taylor, MO, over U.S. Hwy 24, (20) between Monroe and Cambria Junction, MI, over MI Hwy 50, (21) between Clinton, MI, and Chicago, IL, over U.S. Hwy 12, (22) between Richmond, VA, and Benton Harbor, MI, over U.S. Hwy 33, (23) between Harrison, NJ, and Westfield, NY, from Harrison, NJ over NJ Hwy 17 to the NJ–NY State line, then over NY Hwy 17 to Westfield, NY, and return over the same route, (24) between Concord, NH, and Wilmington, DE, over U.S. Hwy 202, (25) between Concord, NH, and Lexington, MA, over U.S. Hwy 3, (26) between Boston, MA, and Troy, NY, from Boston over MA Hwy 2, to MA–NY State line, then over NY Hwy 2 to Troy, and return over the same route, (27) between Troy and Binghamton, NY, over NY Hwy 7, (28) between Williamstown, MA, and Norwalk, CT, over U.S. Hwy 7, (29) between Manchester, NH, and East Lyme, CT, from Manchester over NH Hwy 101 to Milford, NH, then over NH Hwy 13 to the MA–NH State line, then over MA Hwy 13 to Fitchburg, MA, then over MA Hwy 12 to Auburn, MA, then over MA Hwy 52 to the CT–MA State line, then over CT Hwy 52 to East Lyme, and return over the same route, (30) between Glens Falls, NY, and North Cape May, NJ, over U.S. Hwy 9, (31) between Kingston, NY, and Millersburg, PA, over U.S. Hwy 209, (32) between Albany, NY, and Fort Lee, NJ, over U.S. Hwy 9W, (33) between Sandy Creek, NY, and Bristol, VA, over U.S. Hwy 11, (34) between Painted Post, NY, and Clarksville, VA, over U.S. Hwy 15, (35) between Sayre, PA, and Ridgeway, VA, over U.S. Hwy 220, (36) between Buffalo, NY, and Rich Creek, VA, over U.S. Hwy 219, (37) between Norfolk, VA, and Frankfort, KY, over U.S. Hwy 460, (38) between Erie, PA, and Bristol, VA, over U.S. Hwy 19, (39) between St. Louis, MO, and Joliet, IL, over U.S. Hwy 66, (40) between Greenup and Morton, IL, over IL Hwy 121, (41) between Lafayette, OH, and Louisville, KY, over U.S. Hwy 42, (42) between Morganfield, KY, and East St. Louis, IL, from Morganfield over KY Hwy 56 to the IL–KY State line, then over IL Hwy 13 to East St. Louis, and return over the same route, (43) between Peru and Springfield, IL, over IL Hwy 29, (44) between Chicago, IL, and Hopkinsville, KY, over U.S. Hwy 41, (45) between South Bend, IN, and Bowling Green, KY, from South Bend over U.S. Hwy 31 to Louisville, then over U.S. 31W to Bowling Green, and return over the same route, (46) between Moline, IL, and Mount Vernon, KY, over U.S. Hwy 150, (47) between Keokuk, IA, and Indianapolis, IN, over U.S. Hwy 136, (48) between Marshall, MI, and Somerset, KY, over U.S. Hwy 27, (49) between Somerset, MI, and Russell Springs, KY, over U.S. Hwy 127, (50) between Bryan, OH, and Tell City, IN, from Bryan over OH Hwy 2 to the IN–OH State line, then over IN Hwy 37 to Tell City, and return over the same route, (51) between Harrison, OH, and Terre Haute, IN, over IN Hwy 46, (52) between St. John, IN, and Bowling Green, KY, over U.S. Hwy 231, (53) between Hawesville, KY, and Evansville, IN, from Hawesville over the Ohio River Bridge to Cannelton, IN, then over IN Hwy 66 to Evansville, and return over the same route, (54) between Celina, OH, and Vincennes, IN, from Celina over OH Hwy 29 to the IN–OH State line, then over IN Hwy 67 to Vincennes, and return over the same route, (55) between Ellis and Lawrenceburg, IN, over IN Hwy 1, (56) between Bellefontaine, OH, and Henning, IL, from Bellefontaine over OH Hwy 47 to the IN–OH State line, then over IN Hwy 28 to the IL–IN State line, then over IL Hwy 119 to Henning, and return over the same route, (57) between Silver Creek and Albany, NY, over NY Hwy 5, (58) between Rochester and Weedsport, NY, over NY Hwy 31, (59) between Weedsport and Elbridge, NY, over NY Hwy 31B, (60) between Jersey City, and Wilkes-Barre, PA, from Jersey City over U.S. Hwy 1 to Weehawken, NJ, then over NJ Hwy 3 to Clifton, NJ, then over U.S. Hwy 46 to East Stroudsburg, PA, then over PA Hwy 611 to Scranton, PA, and then over PA Hwy 315 to Wilkes-Barre, and return over the same route, (61) between Reading and Scranton, PA, from Reading over PA Hwy 61 to Molino, then over PA Hwy 895 to McKeansburg, then over PA Hwy 443 to South Tamaqua, then over PA Hwy 309 to Wilkes-Barre, then over U.S. Hwy 11 to Scranton, and return over the same route, (62) between Clarks Ferry and Halls, PA, over PA Hwy 147, (63) between Marshall, MI, and Madison, WI, over Interstate Hwy 94, (64) between Dundee, MI, and Duffield, VA, over U.S. Hwy 23, (65) between Richmond, VA, and Sandusky, OH, over U.S. Hwy 250, (66) between Findlay, OH, and Lexington, KY, over U.S. Hwy 68, (67) between Cleveland, OH, and Princeton, WV, over Interstate Hwy 77, (68) between Monroe, MI, and London, KY, over Interstate Hwy 75, (69) between Arlington, KY, and Rockford, IL, over U.S. Hwy 51, (70) between Middlesboro and London, KY, from Middlesboro over U.S. Hwy 25E to Corbin, then over U.S. Hwy 25 to London, and return over the same route, (71) between St. Louis, MO, and Dubuque, IA, over U.S. Hwy 61, (72) between Wilmington, DE, and Suffolk, VA, over U.S. Hwy 13, (73) between Chicago, IL, and Mayfield, KY, over U.S. Hwy 45, (74) between Chicago and Cairo, IL, over Interstate Hwy 57, (75) between Chicago, IL, and Burlington, IA, over U.S. Hwy 34, (76) between East St. Louis, IL, and Louisville, KY over Interstate Hwy 64, (77) between Decatur and Champaign, IL, over Interstate Hwy 72, (78) between Chicago and Norris City, IL, over IL Hwy 1, (79) between Rock Island, IL, and St. Louis, MO, over U.S. Hwy 67, and (80) between Sabula and Davenport, IA, over U.S. Hwy 67, routes (1) through (80) serving all intermediate points, and serving as off-route points, points in Dubuque and Scott Counties, IA; Barry, Berrien, Branch, Calhoun, Cass, Hillsdale, Kalamazoo, Lenawee, Monroe, St. Joseph, and Van Buren Counties, MI, Franklin, Jefferson, St. Charles and St. Louis Counties, MO, Hillsboro, Merrimack, and Rockingham Counties, NH; that part of NY, in, south and west of the counties of Fulton, Herkimer (south of the Adirondack Forest Preserve), Oneida, Oswego, Rensselaer, and Saratoga; and Dane, Dodge, Jefferson, Kenosha, Milwaukee, Ozaukee, Racine, Rock, Walworth, Washington and Waukesha Counties, WI, and points in DE, IL, IN, KY, MD, MA, OH, PA, RI, VA, NJ, and WV.

Note.—Applicant states it intends to tack this authority with its existing regular-route authority.

MC 97977 (Sub-7F), filed September 25, 1980. Applicant: CARTAGE SERVICE, INC., 2437 E. 14th St., Los Angeles, CA 90021. Representative: Robert Fuller, 13215 E. Penn St., Suite 310, Whittier, CA 90602. Transporting *general commodities* (except Classes A and B explosives and commodities in bulk), between points in California, restricted to traffic having an immediately prior or subsequent movement by rail.

MC 99067 (Sub-5F), filed October 8, 1980. Applicant: TRI-VALLEY TRANSPORTATION, INC., 524 East 4th St., Grand Island, NE 68801. Representative: Donald L. Stern, Suite 610, 7171 Mercy Rd., Omaha, NE 68106. Transporting *meats, meat products, meat byproducts, and articles* distributed by meat-packing houses, as described in Section A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, between points in Buffalo, Colfax, and Dawson Counties, NE, on the one hand, and, on the other, points in KS, CO, ND, SD, OK, WY, AZ, and CA.

MC 109397 (Sub-527F), filed October 8, 1980. Applicant: TRI-STATE MOTOR TRANSIT CO., a corporation, P.O. Box 113, Joplin, MO 64801. Representative: A. N. Jacobs (same address as applicant). Transporting (1) *primary metal products*, and (2) *fabricated metal* products, between points in Jackson County, MS, on the one hand, and, on the other, points in the U.S.

MC 121496 (Sub-46F), filed October 8, 1980. Applicant: CANGO CORPORATION, 2727 North Loop West, Houston, TX 77008. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. Transporting *petroleum and petroleum products*, in bulk, in tank vehicles, from points in Acadia Parish, LA, to points in TX.

MC 134286 (Sub-171F), filed October 9, 1980. Applicant: ILLINI EXPRESS, INC., P.O. Box 1564, Sioux City, IA 51102. Representative: Edward A. O'Donnell (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), between points in the U.S. Condition: Issuance of a certificate in this proceeding is subject to coincidental cancellation of its certificates issued under MC 134286 and subnumbers thereunder.

Note.—Applicant relies on past operations and has no shipper support.

MC 136897 (Sub-30F), filed October 8, 1980. Applicant: SWIFT TRANSPORTATION COMPANY, INC., 335 West Elwood Rd., P.O. Box 3902, Phoenix, AZ 85030. Representative: Donald E. Fernaays, 4040 East McDowell Rd., Suite 320, Phoenix, AZ 85008. Transporting *plastic containers*, from Dallas, TX to Tempe, AZ, under continuing contract(s) with Aloe Vera Products, of Tempe, AZ.

MC 138956 (Sub-17F), filed October 8, 1980. Applicant: ERGON TRUCKING, INC., 202 East Pearl St., Jackson, MS 39201. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205. Transporting *abrasives*, in bulk, between points in Jefferson and St. Tammany Parishes, LA, on the one hand, and, on the other, points in AL, FL, MS, and TX.

MC 139906 (Sub-131F), filed October 8, 1980. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, P.O. Box 30303, Salt Lake City, UT 84127. Representative: Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501. Transporting (1) *electric storage batteries*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of electric storage batteries, between points in the U.S. (except AK and HI).

MC 143386 (Sub-2F), filed October 8, 1980. Applicant: RC COLA-7UP BOTTLING CO. OF HGN, INC., 601 North 77 Sunshine Drive, Harlingen, TX 78550. Representative: Harry F. Horak, Suite 115, 5001 Brentwood Stair Rd., Fort Worth, TX 76112. Transporting *canned citrus juice*, between points in the U.S., under a continuing contract(s) with Texsun Corporation, of Weslaco, TX.

MC 146807 (Sub-18F), filed October 7, 1980. Applicant: S n W ENTERPRISES, INC., P.O. Box 1131, Wilkes-Barre, PA 18702. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517. Transporting *such commodities* as are dealt in or used by the manufacturers and distributors of confectionery, from points in IL, OK, GA, IN, TX, TN, MO, KY, MS, AL, KS, OH, NC, SC, LA, FL, MN, WI, MI, and NY, to the facilities of Topps Chewing Gum, Inc., at Duryea and Scranton, PA.

MC 146927 (Sub-17F), filed October 8, 1980. Applicant: DIXIE TRANSPORT, INC., P.O. Box 1126, Hattiesburg, MS 39401. Representative: William P. Jackson, Jr., P.O. Box 1240, Arlington, VA 22210. Transporting *such commodities* as are dealt in or used by distributors of paper and paper products, between points in Mobile County, AL, on the one hand, and, on the other, points in NC, SC, GA, FL, TN, MO, KY, AR, TX, and CA.

MC 147096 (Sub-6F), filed October 2, 1980. Applicant: MADISON BROTHERS DELIVERY SERVICE, INC., 101 Indiana Ave., Toledo, OH 43602. Representative: Brian S. Stern, 5411–D Backlick Road, Springfield, VA 22151. Transporting (1) *aluminum and aluminum products*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities described in (1), above, between the facilities of Reynolds Metals Company at or near (a) Jones Mills, Gum Springs, AR, and (b) Memphis, TN, on the one hand, and, on the other, points in the U.S.

MC 148127 (Sub-28F), filed October 8, 1980. Applicant: LINEHAUL EXPRESS CORPORATION, P.O. Box 5078,

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Manchester, NH 03108. Representative: Neal R. Michaud (same address as applicant). Transporting *frozen food products*, between points in NJ, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 151346 (Sub-2F), filed October 3, 1980. Applicant: ZEE CORPORATION, P.O. Box 396, Langhorne, PA 19047. Representative: John A. Pillar, 1500 Bank Tower, 307 Fourth Ave., Pittsburgh, PA 15222. Transporting (1) *iron and steel articles*, and (2) *materials, equipment and supplies* used in the manufacture and distribution thereof between points in the U.S., under continuing contract(s) with Raritan River Steel Co., of Perth Amboy, NJ.

Volume No. OP5–035

Decided: October 10, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 808 (Sub-67F), filed October 3, 1980. Applicant: ANCHOR MOTOR FREIGHT, INC., 29201 Telegraph Rd., Southfield, MI 48034. Representative: J. D. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114. Transporting *motor vehicles*, between points in the U.S., under continuing contract(s) with General Motors Corporation of Troy, MI.

MC 29948 (Sub-12F), filed October 2, 1980. Applicant: EMPIRE LINES, INC., West 1125 Sprague Ave., Spokane, WA 99210. Representative: Jeremy Kahn, Suite 733 Investment Bldg., 1511 K St., NW, Washington, D.C. 20005. Over regular routes, Transporting *passengers and their baggage*, and *express* and *newspapers* in the same vehicle with passengers, between the port of entry on the US–Canada boundary line at or near Porthill, ID, and the intersection of US Hwy 95 and ID Hwy 1, over ID Hwy 1, serving all intermediate points.

Note.—Applicant intends to tack this authority with existing regular route authority at the intersection of US Hwy 95 and ID Hwy 1.

MC 35628 (Sub-438F), filed October 7, 1980. Applicant: INTERSTATE MOTOR FREIGHT SYSTEM, P.O. Box 175, 110 Ionia Ave. N.W., Grand Rapids, MI 49503. Representative: Michael P. Zell (same as above). Transporting (1) *foodstuffs*, between points in Traverse County, MI on the one hand, and, on the other, points in the U.S.

MC 127848 (Sub-10F), filed October 3, 1980. Applicant: WAYNE W. SELL CORPORATION, 236 Winfield Road, Sarver, PA 16055. Representative: John A. Pillar, 1500 Bank Tower, 307 Fourth Ave., Pittsburgh, PA 15222. Transporting *coal* (in bulk, in dump vehicles), from points in Armstrong, Butler, Indiana and Mercer Counties, PA, to points in OH and NY.

MC 128798 (Sub-5F), filed October 1, 1980. Applicant: GALASSO TRUCKING, INC., 8 Kilmer Road, Larchmont, NY 10538. Representative: Larsh B. Mewhinney, 555 Madison Ave., New York, NY 10022. Transporting *canned foodstuffs, bakery goods, pickles and relishes*, between points in the U.S., under continuing contract(s) with Campbell Soup Company, of Camden, NJ.

MC 131058F, filed October 7, 1980. Applicant: IRELAND TRAVEL CLUB, INC., Rt. 1, Box 122, Union Grove, NC 28689. Representative: Elon Ireland (same as above). To engage in operations in interstate or foreign commerce, as a *broker*, at Union Grove, NC, in arranging transportation of *passengers and their baggage*, in special or charter operations, beginning and ending at points in Forsyth, Yadkin, Wilkes, Surry, Iredell, and Catawba Counties, NC, and extending to points in the U.S.

MC 131059F, filed October 6, 1980. Applicant: TOUROPA INTERNATIONAL, INC., 40 East 49th St., New York, NY 10017. Representative: Walter P. Graf, P.O. Box 5279, Clinton, NJ 08809. To engage in operations as a *broker*, at New York, NY, in arranging for the transportation of *passengers and their baggage*, between points in the U.S.

MC 136898 (Sub-10F), filed October 7, 1980. Applicant: BAKER TRANSPORT, INC., P.O. Box 668, Hartselle, AL 35650. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL. Transporting *lumber*, between points in the U.S., under continuing contract(s) with Baker Industries, Inc. of Hartselle, AL.

MC 140389 (Sub-91F), filed October 7, 1980. Applicant: OSBORN TRANSPORTATION, INC., P.O. Box 1830, Gadsden, AL 35902. Representative: Clayton R. Byrd, P.O. Box 304, Conley, GA 30027. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between the facilities of Armstrong Container, Inc., at Atlanta, GA, on the one hand, and, on the other, points in AL, DE, FL, IL, IN, KY, LA, MD, MS, NJ, NY, NC, OH, PA, SC, TN, VA, WV, and DC.

MC 141958 (Sub-20F), filed October 3, 1980. Applicant: FEDCO FREIGHTLINES, INC., P.O. Box 422, Effingham, IL 62401. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. Transporting (1) *toys* and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1), between points in the U.S., under continuing contract(s) with Strombecker Corporation, of Chicago, IL.

MC 143059 (Sub-137F), filed October 6, 1980. Applicant: MERCER TRANSPORTATION CO., P.O. Box 35610, Louisville, KY 40232. Representative: Janice K. Taylor (same address as applicant). Transporting (1) *forest products*, and (2) *lumber or wood products*, (except furniture), described in Item Nos. 08, and 24, of the Standard Transportation Commodity Code, respectively, between points in Los Angeles County, CA, on the one hand, and, on the other, points in the U.S.

MC 143328 (Sub-36F), filed October 7, 1980. Applicant: EUGENE TRIPP TRUCKING, P.O. Box 2730, Missoula, MT 59806. Representative: David A. Sutherland, 1150 Connecticut Ave., NW., Suite 400, Washington, DC 20036. Transporting *general commodities* (except household goods as defined by the Commission, classes A and B explosives and commodities in bulk), between those points in the U.S. in and west of MI, WY, CO, NM, and TX (except AK and HI), on the one hand, and, on the other, points in AZ, CA, and NV, restricted to traffic originating at or destined to the facilities used by Ralston Purina Company.

MC 143348 (Sub-2F), filed October 3, 1980. Applicant: PROFESSIONAL DELIVERY SYSTEMS, INC., 8408 Zell Lane, Richmond, VA 23229. Representative: Paul C. Anderson (same as above). Transporting *such commodities* as are dealt in or used by manufacturers of cosmetics, between points in the U.S., under continuing contract with Avon Products, Inc., of Newark, DE.

MC 144709 (Sub-9F), filed October 6, 1980. Applicant: MINERAL CARRIERS, INC., P.O. Box 110, Bound Brook, NJ 08805. Representative: Paul J. Keeler, P.O. Box 253, South Plainfield, NJ 07080. Transporting *coffee oil*, between points in the U.S., under continuing contract(s) with The Nestle Company, Inc., of White Plains, NY.

MC 147259 (Sub-6F), filed October 6, 1980. Applicant: CHURCHILL TRANSPORTATION, INC., 5000 Wyoming, Dearborn, MI 48126. Representative: Gerald E. Churchill (same address as applicant). Transporting *automotive parts*, and *materials, equipment and supplies* used in the manufacture of motor vehicles, between points in MI, on the one hand, and, on the other, points in CA.

MC 149008 (Sub-1F), filed October 6, 1980. Applicant: TRUCK LEASING, INC., P.O. Box 502, Cyril, OK 73069. Representative: Marvin Simpson, 127 McCall Rd., Manhattan, KS 66502. Transporting *building materials*, between points in CO, IA, IL, KS, MO, NE, OK, and TX.

MC 152109F, filed October 6, 1980. Applicant: KAIBAB TRANSPORTATION, INC., P.O. Box 20506, Phoenix, AZ 85306. Representative: Michael F, Marrone, 1150 17th St., Suite 1000, Washington, D.C. 20036. Transporting *asphalt roofing products*, between points in the U.S., under continuing contract(s) with Tamko Asphalt Products, Inc., of Denver, CO.

MC 152109 (Sub-1F), filed October 6, 1980. Applicant: KAIBAB TRANSPORTATION, INC., P.O. Box 20506, Phoenix, AZ 85036. Representative: Michael F, Marrone, 1150 17th St., Suite 1000, Washington, D.C. 20036. Transporting *crushed, automobile bodies*, between points in the U.S., under continuing contract(s) with Milford Pepper, d.b.a. Century Enterprises, Inc., of Denver, CO.

MC 152109 (Sub-2F), filed October 6, 1980. Applicant: KAIBAB TRANSPORTATION, INC., P.O. Box 20506, Phoenix, AZ 85306. Representative: Michael F, Marrone, 1150 17th St., Suite 1000, Washington, D.C. 20036. Transporting *gypsum wallboard, wallboard paper, starch, and potash*, between points in the U.S., under continuing contract(s) with American Gypsum Company, of Albuquerque, NM.

Volume No. OP5–036

Decided: October 10, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

MC 35628 (Sub-437F), filed October 7, 1980. Applicant: INTERSTATE MOTOR FREIGHT SYSTEM, P.O. Box 175, 110 Ionia Ave., N.W., Grand Rapids MI 49503. Representative: Michael P. Zell (same as above). Transporting *foodstuffs* and *materials, equipment and supplies* used in the production and distribution of foodstuffs, (a) between the facilities used by Ore Ida Foods, Inc. at or near Greenville, MI, Plover, WI, and Massillon, OH, and (b) between points in (a) one the one hand, and, on the other, points in the U.S.

MC 105269 (Sub-91F), filed October 6, 1980. Applicant: GRAFF TRUCKING COMPANY, INC., 2110 Lake St., Kalamazoo, MI 49005. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in IL, IN, IA, KY, MI, MN, MO, OH, PA, WV, and WI, restricted to traffic originating at or destined to the facilities of Mays Chemical Company, Inc.

MC 112298 (Sub-5F), filed October 6, 1980. Applicant: RAY'S GARAGE, INC., 14429 W. Highway 24, Hales Corners, WI 53130. Representative: James Salentine (same address as applicant). Transporting (1) *machinery, equipment and parts*, and (2) *materials, equipment and supplies* used in the manufacture of the commodities in (1), between points in the U.S. (except AK and HI.)

MC 113059 (Sub-12F), filed October 7, 1980. Applicant: KELLER TRANSPORT, INC., Route 9 Katy Lane, Billings, MT 59102. Representative: F.E. Keller (same address as applicant). Transporting *asphalt, road oil, and asphalt rejuvenators*, between points in MT, ND, SD, and WY.

MC 113908 (Sub-509F), filed September 29, 1980. Applicant: ERICKSON TRANSPORT CORP., 2255 North Packer Road, P.O. Box 10068 G. S., Springfield, MO. Representative: B. B. Whitehead (same address as applicant). Transporting *lecithin between points in the U.S.*

MC 118899 (Sub-15F), filed October 6, 1980. Applicant: BALTIMORE TANK LINES, INC., 180 Eighth Avenue, P.O. Box 1028, Glen Burnie, MD 21061. Representative: Lawrence E. Lindeman, 425 13th Street NW., Suite 1032, Washington, DC 20004. Transporting *petroleum and petroleum products*, in bulk, in tank vehicles, from points in New Castle County, DE, to points in MD.

MC 119789 (Sub-721F), filed October 6, 1980. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: James K. Newbold, Jr. (same address as applicant). Transporting *chemicals*, in containers, from Greensboro, NC to points in the U.S. (except AK and HI.)

MC 123649 (Sub-10F), filed October 3, 1980. Applicant: MAGILL TRUCK LINES, INC., 211 West 53rd North, Wichita, KS 67204. Representative: Lester C. Arvin, 814 Century Plaza Bldg., Wichita, KS 67202. Transporting *animal and poultry feed and animal and poultry feed ingredients, and sanitation and health products*, between points in AZ, AR, KS, MO, NE, NM, OK, TX and WY.

MC 126118 (Sub-259F), filed October 3, 1980. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: David R. Parker (same address as applicant). Transporting *such commodities* as are dealt in and used by manufacturers of medical, surgical and hospital supplies and materials (except in bulk), between points in the U.S. Condition: Any certificate issued in this proceeding is subject to the prior or coincidental cancellation, at applicant's written request, of MC–126118 Sub 174F, issued June 20, 1980.

MC 126588 (Sub-6F), filed September 29, 1980. Applicant: KERR MOTOR LINES, INC., 174 Jackson St., Binghamton, NY 13903. Representative: Herbert M. Canter, 305 Montgomery St., Syracuse, NY 13202. Transporting *pulp, paper or allied products and printed matter*, as described in Item 26 of the Standard Transportation Commodity Code Tariff, between points in Delaware County, NY, on the one hand, and, on the other, points in CT, DE, IL, IN, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, VT, VA, and DC.

MC 134599 (Sub-187F), filed October 3, 1980. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, P.O. Box 30303, Salt Lake City, UT 84127. Representative: Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501. Transporting *general commodities*, between points in the U.S., under continuing contract(s) with Scott Paper Company, its divisions and subsidiaries. Condition: Any certificate issued in this proceeding, to the extent it authorizes the transportation of classes A and B explosives, shall be limited to a period expiring five years from the date of issuance.

MC 138438 (Sub-92F), filed September 29, 1980. Applicant: D. M. BOWMAN, INC., Route 2, Box 43A1, Williamsport, MD 21795. Representative: Edward N. Button, 580 Northern Ave., Hagerstown, MD 21740. Transporting (1) *gypsum, gypsum products, building materials, paper products, chemicals, and plastic products*, and (2) *materials, equipment, and supplies* used in the manufacture, installation, and distribution of the commodities in (1), between points in the U.S., restricted to traffic originating at or destined to the facilities used by Georgia Pacific Corporation.

MC 140928 (Sub-3F), filed September 29, 1980. Applicant: VULCAN FREIGHT LINES, INC., P.O. Box 6223–A, Birmingham, AL 35217. Representative: John R. Frawley, Jr., 5506 Crestwood Blvd., Birmingham, AL 35212. Transporting (1) *alcoholic beverages* (except commodities in bulk). Between points in the U.S., on the one hand, and, on the other, points in Jefferson, Calhoun, Montgomery, Madison,

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Tuscaloosa and Mobile Counties, AL, and (2) *equipment, material, and supplies* used in the distribution of the commodities in (1) (except commodities in bulk) between points in AL, on the one hand, and, on the other, points in the U.S.

MC 149288 (Sub-2F), filed October 6, 1980. Applicant: TRIPPLE A DELIVERY SERVICE, INC., 244 W. Main St., Groveport, OH 43125. Representative: Boyd E. Ferris, 50 W. Broad St., Columbus, OH 43215. Transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), between points in Franklin County, OH, on the one hand, and, on the other, points in the U.S.

MC 150339 (Sub-6F), filed October 6, 1980. Applicant: PIONEER TRANSPORTATION SYSTEMS, INC., 151 Easton Blvd., Preston, MD 21655. Representative: J. Cody Quinton, Jr. (same address as applicant). Transporting *clay, concrete, glass or stone products,* between points in the U.S., under continuing contract(s) with Belair Road Supply Company, Inc., of Baltimore, MD.

MC 150339 (Sub-7F), filed October 6, 1980. Applicant: PIONEER TRANSPORTATION SYSTEMS, INC., 151 Easton Blvd., Preston, MD 21655. Representative: J. Cody Quinton, Jr. (same address as applicant). Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with The Drackett Products Company, of Cincinnati, OH.

MC 151429 (Sub-1F), filed October 6, 1980. Applicant: REMPEL-TRAIL TRANSPORTATION LTD., P.O. Box 5300, Vancouver, BC, Canada V6B 4B6. Representative: Jack R. Davis, 1100 IBM Bldg., Seattle, WA 98101. In foreign commerce only, transporting *muriatic acid,* in bulk, in tank vehicles, from ports of entry on the international boundary line between the U.S. and Canada in MT and ND to points in ND and MT.

Note.—The person or persons which appear to be in common control of applicant and another regulated carrier must either file an application for approval of common control under 49 U.S.C. 11343, or submit an affidavit indicating why such approval is unnecessary.

MC 151679 (Sub-1F), filed October 3, 1980. Applicant: L. G. KITCHENS TRANSPORTATION, INC., 31197 Clark Rd., Lucerne Valley, CA 92356. Representative: D. Gary Tyson, 1545 Wilshire Blvd., Suite 606, Los Angeles, CA 90017. Transporting *non-metallic minerals* (except fuels), between points in the U.S., under continuing contract(s) with Industrial Mineral Ventures, Inc., of Las Vegas, NV.

MC 152019 (Sub-1F), filed October 6, 1980. Applicant: C.A.T. TRUCKING, INC., State Hwy 3 & 46 West, P.O. Box 487, Greensburg, IN 47240. Representative: Robert W. Loser II, 1101 Chamber of Commerce Bldg., 320 North Meridian St., Indianapolis, IN 46204. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with Crown Zellerbach Corporation, of South Glens Falls, NY.

MC 152088F filed October 3, 1980. Applicant: RICH TRUCKING, INC., 1300 Island Ave., McKees Rocks, PA 15136. Representative: John A. Pillar, 1500 Bank Tower, 307 Fourth Ave. Pittsburgh, PA 15222. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with Rich Leasing, Inc., of Pittsburgh, PA.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-32810 Filed 10-21-80; 8:45 am]

BILLING CODE 7035-01-M

Permanent Authority Decisions, Decision-Notice

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's rules of practice (49 CFR 1100.247). These rules provide, among other things, that a petition for intervention, either in support of or in opposition to the granting of an application, must be filed with the Commission within 30 days after the date notice of the application is published in the **Federal Register.** Protests (such as were allowed to filings prior to March 1, 1979) *will be rejected.* A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(1) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, including the extent, if any, to which petitioner (a) has solicited the traffic or business of those supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. The Commission will also consider (a) the nature and extent of the property, financial, or other interest of the petitioner, (b) the effect of the decision which may be rendered upon petitioner's interest, (c) the availability of other means by which the petitioner's interest might be protected, (d) the extent to which petitioner's interest will be represented by other parties, (e) the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and (f) the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable compliance with the requirements of the rule may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission indicating the specific rule under which the petition to intervene is being filed, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Section 247(f) provides, in part, that an applicant which does not intend to timely prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If an applicant has introduced rates as an issue it is noted. Upon request, an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after October 22, 1980.*

Any authority granted may reflect administrative acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulation. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930(a) (formerly section 210 of the Interstate Commerce Act).

In the absence of legally sufficient petitions for intervention, filed on or before November 21, 1980 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the following decision-notices on or before November 21, 1980, or the application shall stand denied.

Note.—All applications are for authority to operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, except as otherwise noted.

Volume No. 351

Decided: October 2, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton, and Liberman.

MC 17605 (Sub-5F), filed July 24, 1979. Applicant: RONALD E. WATSON, Box 217, Ross, OH 45061. Representative: Paul F. Beery, 275 East State St., Columbus, OH 43215. Transporting (1) *coal,* from points in Clay, Leslie and Bell Counties, KY, to points in IN and OH; (2) *coal, sand, and gravel,* from points in Butler, Warren and Preble Counties, OH, to points in OH, KY, and IN.

MC 44735 (Sub-52F), filed February 4, 1980, previously noticed in the FR issue of April 22, 1980. Applicant: KISSICK TRUCK LINES, INC., 7101 East 12th St., Kansas City, MO 64126. Representative: William B. Barker, 641 Harrison St., Topeka, KS 66603. Transporting (1) *irrigation systems, parts and accessories for irrigation systems, pipe, light poles, mast arms, brackets, bases, transmission poles, and equipment and supplies* used in the installation of the commodities in (1) above, (except commodities in bulk), from the facilities of Valmont Industries, Inc., at or near Valley, NE, to points in AR, IL, IN, IA, KS, MN, MO, OK, TX, and WI, (2) *equipment, materials, and supplies* used in the manufacture of the commodities named in (1) above, in the reverse direction, (3) *used irrigation systems, parts and accessories,* for used irrigation systems, *and equipment materials, and supplies* used in the installation of used irrigation systems, between points in AR, IL, IN, IA, KS, MN, MO, OK, TX, and WI, and (4) (a) *solar energy heating and cooling systems, and* for the commodities in (4)(a) above woodburning heating appliances, (b) *parts* and *accessories* and (c) *materials, supplies and accessories* used in the manufacture, distribution, installation and operation of the commodities in (4)(a) above, between the facilities of Valmont Industries, Inc., at or near Valley, NE, on the one hand, and, on the other, points in AR, IL, IN, IA, KS, MN, MO, OK, TX, and WI. (Hearing site: Kansas City, MO, or Omaha, NE.)

MC 139294 (Sub-6F), filed May 27, 1980. Applicant: H.T.L. INC., P.O. Box 122, Fairfield, AL 35064. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. Transporting (1) (a) *iron and steel articles* and (b) *pipe,* and (2) *materials, supplies and equipment* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk, in tank vehicles), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities used by the Berg Steel Pipe Corp.; (3) (a) *iron and steel articles,* and (b) *pipe,* from points in Bay County, FL, to points in the U.S. (except AK and HI); (4) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (3) above (except commodities in bulk, in tank vehicles), in the reverse direction.

MC 145855 (Sub-5F), filed May 22, 1980. Applicant: JOHN RAY TRUCKING COMPANY, INC., P.O. Box 206, Eastaboga, AL 36260. Representative: John W. Cooper, 200 Woodward Bldg., 1927 First Ave., North, Birmingham, AL 35203. Transporting (1) *metal articles* (except in bulk), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), between Anniston, AL, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with Halden Machine Company and Southern Plating and Machine Company, of Anniston, AL.

Volume No. 359

Decided: October 16, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 150186 (Sub-1F), filed August 26, 1979. Applicant: BEVERAGE TRUCKING, INC., 80 Baldarelli Court, Springfield, MA 01104. Representative: Patrick A. Doyle, 60 Robbins Rd., Springfield, MA 01104. Transporting *malt beverages* from points in Oswego and Onondaga Counties, NY, to points in ME, NH, VT, MA, CT, and RI, under continuing contract(s) with Miller Brewing Co., of Milwaukee, WI.

Volume No. 360

Decided: October 10, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton, and Liberman.

MC 147102 (Sub-4F) (correction), filed May 29, 1980, published in the **Federal Register,** issue of July 10, 1980, and republished, as corrected, this issue. Applicant: E.T.I. COMPANY, a partnership, 4055 William Penn Hwy., Easton, PA 18042. Representative: Rick A. Rude, Suite 611, 1730 Rhode Island Ave., NW., Washington, DC 20036. Transporting such commodities as are dealt in or used by manufacturers or distributors of industrial *machinery* and equipment. The purpose of this republication is to include *machinery* in the commodity description.

MC 149532F, filed July 1, 1980. Applicant: LEROY K. TRUCKING CO., INC., 99 Evergreen Avenue, Newark, NJ 07114. Representative: Lawrence S. Burstein, One World Trade Center, Suite

2373, New York, NY 10048. Transporting (1) *brass, bronze, copper, and nickel products, and* (2) *materials and supplies* used in the manufacture of the commodities in (1) above, (a) from New York, NY, to Norwich, CT, and (b) between Norwich, CT, on the one hand, and, on the other, points in NJ, MA, and RI, and points in Nassau, Suffolk, Westchester, Dutchess, Ulster, Sullivan, Rockland, and Orange Counties, NY, and Philadelphia, PA, and (3) *copper scrap*, from Norwich, CT, to points in Queens County, NY, under continuing contract(s) in (1), (2), and (3) above with Phelps Dodge Corporation, of New York, NY.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-32884 Filed 10-21-80; 8:45 am]

BILLING CODE 7035-01-M

Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's rules of practice, see 49 CFR 1100.247. Special rule 247 was published in the Federal Register on July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before November 21, 1980, (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP2-072

Decided: October 16, 1980.

By the Commission, Review Board, Number 3, Members Parker, Fortier, and Hill.

MC 105733 (Sub-82F), filed October 2, 1980. Applicant: RITTER TRANSPORTATION, INC., P.O. Box 1064-A, Rahway, NJ 07065. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St., N.W., Washington, DC 20005. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 131052F, filed September 30, 1980. Applicant: J. W. BOYLES, 500 S. Western (P.O. Box 25852), Oklahoma City, OK 73125. Representative: G. Timothy Armstrong, 200 North Choctaw, P.O. Box 1124, El Reno, OK 73036. As a *broker*, to arrange for the transportation of *general commodities* (except household goods), between points in the U.S.

Volume No. OP3-049

Decided: October 14, 1980.

By the Commission, Review Board Number 2, Members Parker, Fortier and Hill. Member Hill not participating

MC 56945 (Sub-3F), filed October 2, 1980. Applicant: S & H TRUCK LINES, INC., 13990 Valley Blvd., Fontana, CA 92335. Representative: Milton W. Flack, 8383 Wilshire Blvd., Suite 900, Beverly Hills, CA 90211. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 143794 (Sub-17F), filed September 30, 1980. Applicant: EAST-WEST MOTOR FREIGHT, INC., P.O. Box 607, Highway 45 South, Selmer, TN 38375. Representative: Stephen L. Edwards, 806 Nashville, Bank & Trust Building, Nashville, TN 37201. *Broker* in arranging for the transportation of *general commodities* (except household goods), between points in the U.S.

Volume No. OP4-091

Decided: October 15, 1980.

By the Commission, Review Board Number, Members Carleton, Joyce, and Jones.

MC 40456 (Sub-16F), filed October 3, 1980. Applicant: JOHN BENKART & SONS CO., a corporation, 2500 North Charles St., Pittsburgh, PA 15214. Representative: John A. Pillar, 1500 Bank Tower, 307 Fourth Ave., Pittsburgh, PA 15222. Transporting *general commodities* (except used household goods, hazardous or secret materials and sensitive weapons and munitions) for the United States Government, between points in the U.S.

MC 108207 (Sub-559F), filed October 9, 1980. Applicant: FROZEN FOOD EXPRESS, INC., P.O. Box 225888, Dallas, TX 75265. Representative: M. W. Smith (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 109847 (Sub-33F), filed October 8, 1980. Applicant: AMERICAN TRANSPORTATION, INC., 797 Amity Rd., Bethany, CT 06460. Representative: Mel P. Booker, Jr., 110 S. Columbus St., Alexandria, VA 22314. Transporting *shipments weighing 100 pounds or less*, if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 139277 (Sub-3F), filed October 8, 1980. Applicant: AL E. HALL TRUCKING, 210 Livingston St., Gridley, IL 61744. Representative: Patrick H. Smyth, 19 So. LaSalle St., Suite 401, Chicago, IL 60603. Transporting (1) *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions) for the United States Government, and (2) *shipments weighing 100 pounds or less*, if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 148477 (Sub-2F), filed October 2, 1980. Applicant: DAILY DELIVERY SERVICE, INC., 1905 Maplewood Avenue, Hagerstown, MD 21740. Representative: Edward N. Button, 580 Northern Ave., Hagerstown, MD 21740. Transporting *shipments weighing 100 pounds or less*, if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

Volume No. OP5-034

Decided: October 16, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 97068 (Sub-23F), filed October 7, 1980. Applicant: H. S. ANDERSON TRUCKING COMPANY, a corporation, P.O. Box 3656, Port Arthur, TX 77640. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons or munitions), for the U.S. Government, between points in the U.S.

MC 127539 (Sub-85F), filed October 6, 1980. Applicant: PARKER REFRIGERATED SERVICE, INC., 1108 54th Avenue East, Tacoma WA 98424. Representative: Michael D. Duppenthaler, 211 South Washington Street, Seattle, WA 98104. Transporting general commodities (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 141548 (Sub-19F), filed October 1, 1980. Applicant: INTERIOR TRANSPORT, INC., P.O. Box 3347, Spokane, WA 99220. Representative: George H. Hart, 1100 IBM Building, Seattle, WA. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 147869 (Sub-2F), filed October 6, 1980. Applicant: PIERCE TRAFFIC CORPORATION, P.O. Box 528, Eugene, OR 97440. Representative: David C. White, 2400 S.W. Fourth Ave., Portland, OR 97201. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 149288 (Sub-3F), filed October 6, 1980. Applicant: TRIPLE A DELIVERY SERVICE, INC., 244 W. Main St., Groveport, OH 43125. Representative: Boyd B. Ferris, 50 W. Broad St., Columbus, OH 43215. Transporting *shipments* weighing 100 pounds or less, if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-32885 Filed 10-21-80; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30,000 (Sub-1—Sub-10)]

Union Pacific Corp. and Union Pacific Railroad Co. et al.; Applications Accepted for Consideration; Correction

Decision: Finance Docket No. 30,000; Union Pacific Corporation and Union Pacific Railroad Company—Control—Missouri Pacific Corporation and Missouri Pacific Railroad Company; Finance Docket No. 30,000 (Sub-No. 1); Union Pacific Corporation and Union Pacific Railroad Company—Control—The Western Pacific Railroad Company; Finance Docket No. 30,000 (Sub-No. 2); Union Pacific Corporation—Securities; Finance Docket No. 30,000 (Sub-No. 3); Missouri Pacific Corporation—Securities; Finance Docket No. 30,000 (Sub-No. 4); The Western Pacific Railroad Company—Securities; Finance Docket No. 30,000 (Sub-No. 5); Union Pacific Railroad Company—Trackage rights at Kansas City over—Missouri Pacific Railroad Company; Finance Docket No. 30,000 (Sub-No. 6); Union Pacific Railroad Company—Trackage rights at St. Joseph, MO over—Missouri Pacific Railroad Company; Finance Docket No. 30,000 (Sub-No. 7); Missouri Pacific Railroad Company—Trackage rights at Omaha-Council Bluffs, NE—IA over—Union Pacific Railroad Company; Finance Docket No. 30,000 (Sub-No. 8); Union Pacific Railroad Company and Missouri Pacific Railroad Company—Pooling between Omaha-Council Bluffs and Kansas City; Finance Docket No. 30,000 (Sub-No. 9); Union Pacific Railroad Company and Missouri Pacific Railroad Company—Pooling between Beloit and Salina, KS; Finance Docket No. 30,000 (Sub-No. 10); Union Pacific Railroad Company and Missouri Pacific Railroad Company—Pooling between Lincoln and Kansas City.

AGENCY: Interstate Commerce Commission.

ACTION: Correction to notice accepting applications for consideration.

SUMMARY: The Commission is accepting for consideration the applications for Union Pacific Corporation, Pacific Rail System, Inc., and Union Pacific Railroad Company to control (1) Missouri Pacific Corporation and Missouri Pacific Railroad Company and (2) The Western Pacific Railroad Company. The Commission is also accepting for consideration related applications by these parties to enter into trackage rights and pooling agreements, and to issue securities. The Commission is setting a schedule for the consolidated proceeding. The original notice, published at 45 FR 68484, October 15, 1980, contained an error and an omission, both of which are corrected below.

FOR FURTHER INFORMATION CONTACT: Ellen Hanson, (202) 275-7245.

SUPPLEMENTARY INFORMATION: On page 68485, column 3, delete the second item (1) and the second item (2), and the second paragraph designation (3). Run the text of the paragraph immediately preceding the second item (1) (beginning with "Because we have determined.") into the text of former paragraph (3).

At the end of former paragraph (3), at the bottom of column 3, insert the following language:

We are waiving on our motion the requirements found in our regulations that railroads filing written comments file as part of those comments copies of existing preferential solicitation agreements and a list of run-through train operations. Where such information is relevant, we believe commenting railroads will have every incentive to file such information voluntarily. Where it is not relevant, we don't want such information.

As corrected, page 68485, last paragraph following item No. 7 reads as follows:

Because we have determined that this proceeding constitutes a major transaction within the meaning of our *Railroad Consolidation Procedures*, Ex Parte 282—(Sub-No. 3), served August 25, 1980, railroads filing written comments must, in addition to the above information, submit a statement of whether the commenting railroad intends to file inconsistent applications, petitions for inclusion, trackage rights, or any other affirmative relief requiring an application to be filed with the Commission. This will be considered a prefiling notice without which the Commission will not entertain applications for this type of relief. We are waiving on our motion the requirements found in our regulations that railroads filing written comments file as part of those comments copies of existing preferential solicitation agreements and a list of run-through

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train operations. Where such information is relevant, we believe commenting railroads will have every incentive to file such information voluntarily. Where it is not relevant, we don't want such information.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-33009 Filed 10-21-80; 8:45 am]

BILLING CODE 7035-01-M

Recission of Revised Policy Concerning Applications for Operating Authority To Handle Traffic to and from Points in Canada

AGENCY: Interstate Commerce Commission.

ACTION: Notice of recission of policy statement.

SUMMARY: A decision by the United States Court of Appeals for the District of Columbia Circuit in No. 79-1214, *American Bus Association* v. *ICC* (decided June 25, 1980), found the Commission's policy statement entitled *Revised Policy Concerning Applications for Operating Authority to Handle Traffic to and from Points in Canada,* 43 FR 60706 (December 28, 1978) to have been unlawfully adopted. The Court found that the Commission improperly failed to provide notice and comment pursuant to 5 U.S.C. 553. The Court did not reach the merits of the policy statement. The purpose of this notice is (1) to advise the public that the revised policy statement has been voided, so that Canadians restrictions imposed between 1975 and 1978 can no longer be considered null and void and (2) to inform the public that the Commission is proposing procedures in Ex Parte No. MC-142 (Sub-No.1), *Removal of Restrictions from Authorities of Motor Carriers of Property,* 45 FR 61326 (September 16, 1980), which would enable motor carriers to eliminate certain foreign commerce restrictions in their outstanding certificates and permits on an expeditious basis.

EFFECTIVE DATE: October 22, 1980.

FOR FURTHER INFORMATION CONTACT: Howell I. Sporn, (202) 275-7575, or Donald J. Shaw, Jr., (202) 275-7292

SUPPLEMENTARY INFORMATION:

A decision of the Court of Appeals for the District of Columbia Circuit has vacated a Commission policy statement entitled *Revised Policy Concerning Applications for Operating Authority to Handle Traffic to and from Points in Canada,* 44 FR 60706 (December 28, 1978). In that policy statement the Commission advised the public that it was revising an earlier policy statement on the subject (published at 39 FR 42440 (December 5, 1974), and supplemented at 40 FR 53480 (November 18, 1975)) which had required carriers to specify origins and destinations to be served in Canada as well as ports of entry, and grants of authority were specifically limited accordingly. The new policy statement advised the public that the Commission would not include these restrictions in future grants of authority, and that carriers issued operating authority subsequent to March 3, 1975, (the effective date of the initial policy action) containing restrictions of this nature could consider them to be null and void. Carriers holding authorities issued before March 3, 1975, were reminded that similar restrictions contained in their authorities were still valid and enforceable.

Carriers issued authority after March 3, 1975, are notified that because of the Court's decision they can no longer consider restrictions in their authorities to be null and void. Carriers holding authority with these foreign commerce restrictions are further notified of the Commission's proposal in Ex Parte No. MC-142 (Sub-No. 1), *Removal of Restrictions from Authorities of Motor Carriers of Property,* 45 FR 61326 (September 16, 1980).

The Commission is proposing procedures which would enable any carrier issued authority related to traffic moving from or to points in Canada or Mexico, and restricted to (1) the transportation of traffic originating at or destined to specific points in the two foreign countries, or (2) specific ports of entry on the International Boundary Line between the United States and the two countries, to have the restrictions removed on an expedited basis. This relief would be available for carriers issued authority both before and after March 3, 1975.

Ex Parte No. MC-142 (Sub-No. 1) was initiated by the Commission to implement Section 6 of the Motor Carrier Act of 1980. As pertinent here, the new statute requires the Commission to implement, by regulations, procedures to process applications seeking to remove restrictions in outstanding certificates or permits within 180 days of the enactment of the new legislation. We are proposing that foreign commerce restrictions be considered proper subjects for the restrictions removal program to be adopted.

Carriers affected by the revised policy statement are invited to comment on our proposal in Ex Parte No. MC-142 (Sub-No. 1), during the comment period in that proceeding.

Decided: October 6, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis and Gilliam.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-32886 Filed 10-21-80; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-69]

Certain Airtight Cast-Iron Stoves; Rejection of Consent Order Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Rejection of consent order agreement submitted in Investigation No. 337-TA-69, Certain Airtight Cast-Iron Stoves.

SUMMARY: Notice is hereby given that Motions No. 69-23, 69-28, and 69-30 have been denied by the Commission. The Administrative Law Judge in this investigation had previously recommended that the consent order agreements be rejected (Orders No. 69-27, 69-31 and 69-32). Interested persons may obtain copies of the administrative law judge's recommendation, the Commission's order and opinion (and all other public documents) by contacting the Office of the Secretary to the Commission, 701 E St., N.W., Washington, D.C. 20436.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Neeley, Office of the General Counsel, U.S. International Trade Commission, 701 E St., N.W., Washington, D.C. 20436; telephone 202-523-0359.

By order of the Commission.

Issued: October 15, 1980.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-33003 Filed 10-21-80; 8:45 am]

BILLING COOE 7020-02-M

[Investigation No. 337-TA-89]

Certain Apparatus for the Continuous Production of Copper Rod; Denial of Three Motions, Granting of One Motion

On October 15, 1980, the Commission voted to deny (1) Krupp's Motion to Admit Additional Evidence or to Remand to the Administrative Law Judge; (2) Southwire's Motion to Strike Krupp Respondents' Prehearing Brief; and (3) Southwire's objection to the appearance of Phelps Dodge Corporation. The Commission also voted to grant Southwire's Motion to Substitute Exhibits.

Copies of the Commission's Action and Order and any other public documents in this investigation are available to the public during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436, telephone 201-523-0161.

By Order of the Commission.

Issued: October 16, 1980.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-33002 Filed 10-21-80; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-76]

Certain Food Slicers and Components Thereof; Denial of Motion To Terminate Respondent Albert E. Price, Inc., and Remand of Proposed Consent Order Agreement

AGENCY: United States International Trade Commission.

ACTION: Having determined that this matter is properly before the Commission and having reviewed the record in this investigation, including the recommendation of the presiding officer and the joint motion to terminate (motion docket No. 76-1), and papers in support thereof, the Commission has voted to deny the joint motion to terminate Albert E. Price, Inc., as respondent in Investigation No. 37-TA-76, and remanded the proposed consent order agreement to the presiding officer for revision. The Commission believes that the consent order agreement is defective in that: (1) it fails to specify that the food slicers presently under investigation are prohibited from importation and sale in the United States; and (2) it lacks a provision waiving all rights to seek judicial review or otherwise challenge or contest the validity of the consent order.

EFFECTIVE DATE: October 10, 1980.

FOR FURTHER INFORMATION CONTACT: Warren H. Maruyama, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436; telephone (202) 523-0143.

SUPPLEMENTARY INFORMATION:

Background. This investigation, under Section 337 of the Tariff Act of 1930, concerns alleged infringement of claim 7 of U.S. Letters Patent 3,766,817 by repondents E. Mishan and Sons, Albert E. Price Inc., Crest Industries Corporation, and Taiwan Timing Co. The Commission instituted Investigation No. 337-TA-78 on December 4, 1979, and published notice thereof in the **Federal Register** on December 21, 1979 (44 FR 75733).

On March 21, 1980, complainant Prodyne Enterprises, Inc., respondent Albert E. Price, Inc. and the Commission investigative attorney filed a joint motion to terminate the investiation as to Price, and submitted a proposed consent order agreement to the presiding offier. The presiding officer certified the consent order agreement to the Commission on May 7, 1980, and certified her recommendation that the proposed consent order be rejected on June 24, 1980. The Commission published notice of the motion to terminate the investigation as to respondent Price in the **Federal Register** on July 16, 1980 for public comment (45 FR 47770), in addition, requested comments from government agencies pursuant to 19 CFR 210.14(a)(2).

Pursuant to 19 CFR 210.51(a), the Commission has denied the joint motion to terminate respondent Price (Motion 76-1), and has remanded the proposed consent order agreement to the presiding officer.

Reconsideration. Any party wishing to petition for reconsideration of the Commission's action must do so within fourteen (14) days of service of the Commission order. Such petitions must be in accord with Commission Rule § 210.56 (19 CFR 210.56).

Additional Information. Copies of the Commission's Order and Opinion and any other public documents in this investigation are available to the public during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, United States Internationl Trade Commission, 701 E Street, N.W., Washington, D.C. 20436, Telephone (202) 523-0161.

By order of the Commission.

Issued: October 14, 1980.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-33004 Filed 10-21-80; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 22-42]

Peanuts, Shelled or Not Shelled Blanched, or Otherwise Prepared or Preserved (Except Peanut Butter); Investigation and Hearing

AGENCY: United States international Trade Commission.

ACTION: Institution of an investigation under section 22(d) of the Agricultural Adjustment Act (7 U.S.C. 624) to determine whether changed circumstances exist which require the modification or suspension of the section 22 quantitative import restriction on peanuts, set forth in item 951.00[1] of the Appendix to the Tariff Schedules of the United States, for the 12-month quota period beginning August 1, 1980. Specifically, the Commission instituted the investigation under section 22(d) to determine whether the annual import quota for the 12-month period beginning August 1, 1980, may be modified or suspended without rendering or tending to render ineffective, or materially interfering with, any program or operation undertaken by the Department of Agriculture with respect to peanuts, or reducing substantially the amount of any product processed in the United States from peanuts.

EFFECTIVE DATE: October 15, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen D. Burket, 202/523-0033.

SUPPLEMENTARY INFORMATION:

Background.

Since July 1, 1953, U.S. imports of peanuts have been subject to an annual quota (beginning on August 1 of each year) of 1,709,000 pounds (aggregate quantity, shelled basis). This quota was imposed, based on a U.S. Tariff Commission (now the U.S. International Trade Commission) finding, as a result of an investigation under section 22 of the Agricultural Adjustment Act of 1933. In 1955 and 1956, as a result of actions taken under section 22(d) of that act, the import quota was temporarily relaxed to allow for imports in excess of the quota in order to relieve shortages of certain types of peanuts in the United States.

The current investigation (No. 22-42) is being instituted following receipt on October 1, 1980, of a petition filed by counsel on behalf of the Peanut Butter and Nut Processors Association and the Natonal Confectioners Association requesting that the Commission make such an investigation under section 22(d), and alleging that because of severe drought conditions in producing areas in the United States and a resultant decline in U.S. production of peanuts, it is urgent that action be taken to suspend entirely the import restriction for the current quota period.

[1]Item 951.00 provides that whenever, in any 12-month period beginning August 1 in any year, an aggregate quantity of 1,709,000 pounds (shelled basis) of peanuts, shelled or not shelled, blanched, or otherwise prepared or preserved (except peanut butter) provided for in TSUS items 145.20, 145.21, and 145.48 (part 9A, schedule 1) has been entered, no such products may be entered during the remainder of such period. Peanuts in the shell are charged against the quota on the basis of 75 pounds for each 100 pounds of peanuts in the shell.

Authority. Section 22(d) of the Agricultural Adjustment Act provides that "After investigation, report, finding, and declaration in the manner provided in the case of a proclamation issued pursuant to subsection (b) of this section, any proclamation or provision of such proclamation may be suspended or terminated by the President whenever he finds and proclaims that the circumstances requiring the proclamation or provision thereof no longer exist or may be modified by the President whenever he finds and proclaims that change circumstances require such modification to carry out the purposes of this section." This investigation will be subject to the provisions of part 204 of the Commission's Rules of Practice and Procedure (19 CFR 204).

PUBLIC HEARING: The Commission will hold a public hearing in connection with this investigation beginning at 10 a.m., e.s.t., Monday, December 1, 1980, in the Hearing Room of the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m., e.s.t.), November 24, 1980. All persons desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 10 a.m., e.s.t., on November 25, 1980, in Room 117 at the U.S. International Trade Commission Building. For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rule of Practice and Procedure, Part 204 (19 CFR 204) and Part 201 (19 CFR 201).

WRITTEN SUBMISSIONS: In addition to or in lieu of an appearance at the hearing, interested persons may submit to the Commission a written statement of information pertinent to the subject matter of this investigation. Written statements should be addressed to the Secretary to the Commission, 701 E Street, NW., Washington, D.C. 20436, and must be received not later than December 10, 1980. All written submissions, except for confidential business data, will be available for public inspection.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

By order of the Commission.

Issued: October 16, 1980.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-33006 Filed 10-21-80; 8:45 am]

BILLING CODE 7020-02-M

[731-TA-35 (Preliminary)]

Portable Electric Nibblers From Switzerland; Institution of Preliminary Antidumping Investigation and Scheduling of Conference

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary antidumping investigation to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry is materially retarded, by reason of imports from Switzerland of hand-directed or -controlled nibblers with self-contained electric motors, provided for in item 683.20 of the Tariff Schedules of the United States (TSUS), sold or likely to be sold at less than fair value.

EFFECTIVE DATE: October 16, 1980.

FOR FURTHER INFORMATION CONTACT: Daniel Leahy, Senior Investigator (202-523-1369).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted following receipt of a petition on October 7, 1980, filed by the Widder Corp., Naugatuck, Conn., on behalf of the domestic industry producing portable electric nibblers. The petition alleged sales at less than fair value (LTFV) of portable electric nibblers produced in Switzerland.

Authority. Section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673(a)) requires the Commission to make a determination of whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports alleged to be, or likely to be, sold in the United States at less than fair value. Such a determination must be made within 45 days after the date on which a petition is filed under section 732(b) or on which notice is received from the Department of Commerce of an investigation commenced under 732(a). Accordingly, the Commission, on October 16, 1980, instituted preliminary antidumping investigation No. 731-TA-35. This investigation will be subject to the provisions of Part 207 of the Commission's Rules of Practice and Procedure (19 CFR Part 207, 44 FR 76457) and particularly, subpart B thereof.

Written submissions. Any person may submit to the Commission on or before November 3, 1980, a written statement of information pertinent to the subject matter of this investigation. A signed original and nineteen copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference. The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 10 a.m., e.s.t., on October 29, 1980, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. Parties wishing to participate in the conference should contact the senior investigator for the investigation, Mr. Daniel Leahy (202-523-1369). It is anticipated that parties in support of the petition for antidumping duties and parties opposed to such petition will each be collectively allocated one hour within which to make an oral presentation at the conference. Further details concerning the conduct of the conference will be provided by the senior investigator.

Inspection of petition. The petition filed in this case is available for public inspection at the Office of the Secretary, U.S. International Trade Commission.

Issued: October 17, 1980.

Issued by the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-33005 Filed 10-21-80; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Proposed Consent Decree in Action To Enjoin Discharge of Water Pollutants by Orange County, Fla.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on October 15, 1980 a proposed consent decree in *United States of America* v. *Orange County, Florida* (M.D. Fla. Civ. No. 79-169-Orl-Civ.-R), was lodged with the United States District Court for the Middle District of Florida. The proposed consent decree establishes compliance schedules by which Orange County will eliminate the discharges of pollutants from five wastewater treatment plants. In addition, the proposed decree requires the payment of stipulated civil penalties for violations of certain of its provisions and the establishment of a $200,000 environmental trust fund to be used for beneficial environmental projects.

The proposed consent decree may be examined at the office of the United States Attorney, 80 North Hughey Avenue, Orlando, Florida, and at the Pollution Control Section, Land and Natural Resources Division of the Department of Justice, Room 2644, Ninth and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed decree may be obtained in person or by mail from the Pollution Control Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of one dollar, seventy cents (ten cents per page reproduction charge) payable to the Treasurer of the United States.

The Department of justice will receive written comments relating to the proposed consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Orange County, Florida*, (M.D. Fla. Civ. No. 79-169-Orl-Civ.-R), D.J. Ref. 90-5-1-1-1144.

Angus MacBeth,

Deputy Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 80-32882 Filed 10-21-80; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Tripartite Advisory Panel on International Labor Standards; Meeting

In accordance with Section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is hereby given of a meeting of the Tripartite Advisory Panel on International Labor Standards, which is a subcommittee of the President's Committee on the International Labor Organization.

Name: Tripartite Advisory Panel on International Labor Standards.

Date: November 6, 1980.

Time: 10 a.m.

Place: Department of Labor, 3rd and Constitution Ave., N.W., Room C-5515, Washington, D.C. 20210.

This meeting will be closed to the public under authority of Section 10(d) of the Federal Advisory Committee Act, as amended. During its closed session, the Committee will discuss classified materials relating to United States participation in the International Labor Organization. Additionally, the meeting will involve discussion of information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action. It is not practicable to segregate a portion of the meeting to permit public participation.

All communications regarding this subcommittee should be addressed to Carin A. Clauss, Solicitor of Labor, U.S. Department of Labor, 3rd and Constitution Ave., N.W., Washington, D.C. 20210, telephone (202) 523-7656.

Ray Marshall,

Secretary of Labor.

[FR Doc. 80-33114 Filed 10-21-80; 8:45 am]

BILLING CODE 4510-28-M

NUCLEAR REGULATORY COMMISSION

Privacy Act of 1974; Notices of Systems of Records

Proposed Minor Amendments

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Proposed minor amendments of systems of records.

SUMMARY: The Nuclear Regulatory Commission is proposing minor amendments to the NRC Systems of Records, NRC-1, 4, 7, 8, 9, 11, 15, 16, 18, 20, 22, 27, 31, 33, 34, 36, and 38. The proposed amendments would clarify and update the information contained in the NRC Systems of records. The NRC is also proposing minor amendments to the Prefatory Statement of General Routine Uses.

COMMENT DATE: Comments are due on or before November 21, 1980.

ADDRESS: Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

FOR FURTHER INFORMATION CONTACT: Sarah N. Wigginton, FOI/PA Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Phone: (301) 492-8133.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, the Nuclear Regulatory Commission has published notices of those systems of records maintained by the NRC which contain personal information about individuals and from which such information can be retrieved by an individual identifier. The notices were published as a document subject to publication in the annual compilation of Privacy Act documents. The amendments are of a minor nature and do not include any substantive changes.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 552a of Title 5 of the United States Code, as amended, notice is hereby given that adoption of the following amendments to the NRC Systems of Records is contemplated. All interested persons who desire to submit written comments should send them to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch by November 21, 1980. Copies of comments on the proposed amendments may be examined at the Commission's Public Document Room 1717 H Street NW., Washington, D.C.

1. Paragraphs one through four of the Prefatory Statement of General Routine Uses are amended to read as follows:

Prefatory Statement of General Routine Uses

The following routine uses apply to each system of records notice set forth below which specifically references this Prefatory Statement.

* * * * *

1. In the event that a system of records maintained by the NRC to carry out its functions indicates a violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rules or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

2. A record from this system or records may be disclosed, as a routine

use, to a Federal, State, local or foreign agency if necessary to obtain information relevant to an NRC decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

3. A record from this system of records may be disclosed, as a routine use, to a Federal, State, local or foreign agency in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. A record from this system of records may be disclosed as a routine use, in the course of discovery and in presenting evidence to a court, magistrate, administrative tribunal, or grand jury, including disclosures to opposing counsel in the course of settlement negotiations.

* * * * *

2. The paragraphs of NRC–1, "Appointment and Promotion Certificate Records," entitled "Storage" and "Retention and disposal" are amended to read as follows:

NRC–1

SYSTEM NAME:

Appointment and Promotion Certificate Records—NRC.

* * * * *

STORAGE:

Paper records are maintained in file folders in the Records Retention Center, St. Louis, Missouri. Microfiche records are kept in the Division of Organization and Personnel.

* * * * *

RETENTION AND DISPOSAL:

Retained for 2 years from date of selection, then personal records are destroyed by shredding; nonpersonal records are destroyed through regular trash disposal system.

* * * * *

3. The paragraphs of NRC–4, "Conflict of Interest Files," entitled "Categories of records in the system" and "Authority for maintenance of the system" are amended to read as follows:

NRC–4

SYSTEM NAME:

Conflict of Interest Files—NRC.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

a. General biographical data (i.e., name, birthdate, home address, position title, home and business telephone, citizenship, educational history, employment history, professional society memberships, honors, fellowships received, publications, licenses, and special qualifications);

b. Financial status (i.e., nature of financial interests and in whose name held, creditors, character of indebtedness, interest in real property, monthly U.S. Civil Serivce Annuity, and status as Uniformed Services Retired Officer);

Certifications by employees that they and members of their families are in compliance with the Commission's stock ownership regulations;

d. Requests for approval of outside employment by NRC employees and NRC responses thereto;

e. Determination (i.e., no conflict or apparent conflict of interest, questions requiring resolution, steps taken toward resolution); and

f. Information pertaining to appointment (i.e., proposed period of NRC service, estimated number of days of NRC employement during period of service , proposed pay, clearance status, description of services to be performed and explanation of need for the services, justification for proposed pay, description of expenses to be reimbursed and dollar limitation, and description of government-owned property to be in possession of appointee).

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

a. 18 U.S.C. 201 (1976);
b. Executive Order 11222, May 8, 1965;
c. 10 CFR 0.735–29; 10 CFR 0.735–40.

* * * * *

4. The paragraphs of NRC–7, "Division of Document Control Workload Assignment and Production Records," entitled "System name," "System location," "Routine uses of records maintained in the system, including categories of users and the purposes of such uses," "Safeguards, " and "System manager(s) and address" are amended to read as follows:

NRC–7

SYSTEM NAME:

Division of Technical Information and Document Control Workload Assignment and Production Records-NRC

SYSTEM LOCATION:

Primary system—Division of Technical Information and Document Control, Office of Administration, NRC, 7910 Woodmont Avenue, Bethesda, Maryland.

Duplicate system—duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Part 1 (a), (b), (e), (f), and (g).

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATERGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used by the Division of Technical Information and Document Control for any of the routine uses specified in the Prefatory Statement.

* * * * *

SAFEGUARDS:

Files relating to comparative employee production and analysis thereof are maintained in locked desks. Budgetary and staffing projection data are maintained in locked and unlocked files. All files are under immediate control of the supervisory staff.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Technical Information and Document Control, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

* * * * *

5. The parapgraph of NRC–8, "Employee Appeals, Grievances and Complaints Records," entitled "System location" is amended to read as follows:

NRC–8

SYSTEM NAME:

Employee Appeals, Grievances and complaints Records—NRC.

SYSTEM LOCATION:

Primary system—Division of Organization and Personnel, Office of Administration, NRC, 7910 Woodmont Avenue, Bethesda, Maryland.

Duplicate system—duplicate systems exist, in whole or in part, at locations listed in Addendum I, Parts 1 and 2.

* * * * *

6. The paragraph of NRC–9, "Equal Employment Opportunity Records Files," entitled "Retention and disposal" is amended to read as follows:

NRC–9

SYSTEM NAME:

Equal Employment Opportunity Records Files—NRC.

* * * * *

RETENTION AND DISPOSAL:

Retained indefinitely.

* * * * *

7. The paragraphs of NRC–11, "General Personnel Records (Official Personnel Folder and Related Records)," entitled "System location," "Routine uses of records maintained in the system, including categories of users and the purposes of such uses," and "Retention and disposal" are amended to read as follows:

NRC–11

SYSTEM NAME:

General Personnel Records (Official Personnel Folder and Related Records—NRC.

SYSTEM LOCATION:

Primary system—Division of organization and Personnel, Office of Administration, NRC, 7910 Woodmont Avenue, Bethesda, Maryland.

Duplicate system—duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2; at the Department of Energy computer facility, Germantown, Maryland; and at the National Institutes of Health computer facility, Bethesda, Maryland. The duplicate systems maintained in a particular office, division or branch may contain information of specific application to employees in that organization in addition to that information contained in the primary system.

* * * * *

ROUNTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. By the Office of Personnel Management and Merit Systems Protection Board for making a decision when an NRC employee or former NRC employee questions the validity of a specific document in an individual's record;

b. To provide information to a prospective employer of a government employee. Upon transfer of the employee to another Federal agency, the information in transferred to such agency;

c. To update the Office of Personnel Management systems concerning the Central Personnel Data File (CPDF), the Executive Inventory File and security investigations index hires, and to update adverse actions and terminations records of the Merit Systems Protection Board;

d. To provide statistical reports to Congress, agencies, and the public on characteristics of the Federal work force;

e. To provide information to the Office of Personnel Management and Merit Systems Protection Board for review and audit purposes;

f. To provide members of the public with the names, position titles, grades, salaries, appointments (temporary or permanent), and duty stations of employees;

g. Medical records may be used for providing information to the Public Health Service in connection with Health Maintenance Examinations and to other Federal agencies responsible for Federal benefit programs administered by the Department of Labor (Office of Workmen's Compensation Programs) and the Office of Personnel Management; and

h. For any of the routine uses specified in the Prefatory Statement.

* * * * *

RETENTION AND DISPOSAL:

The Official Personnel Folder is sent to the National Personnel Records Center within 30 days of the date of the employees separation from the Federal service. Some records such as letters of reprimand, indebtedness and vouchers are maintained for two years or destroyed by shredding when an individual resigns, transfers or is separated from the Federal service. SF–1, "Service Record Card," is retained indefinitely after separation or transfer.

* * * * *

8. The paragraph of NRC–15, "National Standards Committee Membership Files," entitled "Categories of records in the system" is amended to read as follows:

NRC–15

SYSTEM NAME:

National Standards Committee Membership Files–NRC.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

This system is a comprehensive record of NRC personnel on the nuclear standards committees and contains members' names, the names of the committees to which they belong, and the names of the NRC offices in which the members work.

* * * * *

9. The paragraph of NRC–16, "Facility Operator Licensees Records Files," entitled "Routine uses of records maintained in the system, including categories of users and the purposes of such uses" is amended to read as follows:

NRC–16

SYSTEM NAME:

Facility Operator Licensees Records Files—NRC.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in these records may be used:

a. To determine if the individual meets the requirements of 10 CFR Part 55 to take an examination or to be issued an operator's license;

b. For any of the routine uses specified in the Prefatory Statement, except paragraph number 3;

c. To provide researchers with information for statistical evaluations related to selections, training and examination of facility operators;

d. To provide for examination and testing material and obtain results from contractors; and

e. To provide facility management with sufficient information to enroll the individuals in the licensed operator requalification program.

* * * * *

10. The paragraphs of NRC–18, "Office of Inspector and Auditor Index File and Associated Records" entitled "Authority for maintenance of the system," "Routine uses of records maintained in the system, including categories of users and the purposes of such uses," and "Safeguards" are amended to read as follows:

NRC–18

SYSTEM NAME:

Office Inspector and Auditor Index File and Associated Records—NRC.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

a. Subsections 25(c) and 161(c) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2035(c) and 2201(c) (1976);

b. Subsection 201(f), Energy Reorganization Act of 1974, 42 U.S.C. 5841(f) (1976).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. A record in the system of records may be disclosed as a routine use to a Federal, State, local, or foreign agency or to an individual or organization, if the

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disclosure is reasonably necessary to elicit information or to obtain the cooperation of a witness or an informant.

b. A record in the system of records relating to a case or matter falling within the purview of the Office of Inspector and Auditor that has been referred for audit, inspection or investigation may be disclosed as a routine use to the referring agency, group, organization or individual to notify such agency, group, organization or individual of the status of the case or matter or of any decisions or determination that has been made.

c. A record in the system of records relating to an individual held in custody pending arraignment, trial, or sentence, or after conviction, may be disclosed as a routine use to a Federal, State, local or foreign prison, probation, parole or pardon authority, or to any agency or individual concerned with the maintenance, transportation, or release of such an individual.

d. A record in the system of records relating to a case or matter may be disclosed as a routine use to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States.

e. A record in the system of records may be disclosed as a routine use to a Federal, State, local or foreign law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency.

f. A record in the system of records in the nature of an audit, inspection or investigation report relating to the integrity and efficiency of the Commission operation and management may be disseminated outside the Commission as part of the Commission's reponsibility to inform the Congress and the public about Commission operations.

g. A record in the system of records may be disclosed for any of the routine uses specified in the Prefatory Statement.

* * * * *

SAFEGUARDS:

The index is maintained in unlocked file cabinets and the associated records are located in lockable metal filing cabinets or safes. All records are under visual control during normal working hours, available only to authorized personnel whose duties require access, and stored in a room that is locked after normal working hours.

* * * * *

11. The paragraph of NRC–20, "Official Travel Records," entitled "Retrievability" is amended to read as follows:

NRC–20

SYSTEM NAME:

Official Travel Records—NRC.

* * * * *

RETRIEVABILITY:

Records are accessed by name, social security account number, authorization number, estimated travel start day, authorization process day, voucher process day, and voucher payment schedule number.

* * * * *

12. The paragrah of NRC–22, "Personnel Performance Appraisals," entitled "Retention and Disposal" is amended to read as follows:

NRC–22

SYSTEM NAME:

Personnel Performance Appraisals—NRC.

* * * * *

RETENTION AND DISPOSAL:

Retained 1 year, or until subsequent rating is prepared, whichever is later, then destroyed by shredding.

* * * * *

13. The paragraphs of NRC–27, "Radiation Exposure Information and Reports System (REIRS)," entitled "Categories of individuals covered by the system" and "Categories of records in the system" are amended to read as follows:

NRC–27

SYSTEM NAME:

Radiation Exposure Information and Reports System (REIRS)—NRC.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals monitored for radiation exposure while employed by or visiting or temporarily assigned to certain NRC licensed facilities; individuals who were exposed to radiation or radioactive materials in incidents required to be reported pursuant to 10 CFR 20.403 and 20.405 by all NRC licensees; individuals who may have been exposed to radiation or radioactive materials off-site from a facility, plant, installation, or other place of use of licensed materials, or in unrestricted areas, as a result of an incident involving byproduct, source, or special nuclear material; as the required by NAVMED P–5055, Radiation Health Protection Manual, monitored individuals terminating their service with the Navy prior to 1977; and monitored employees of all the registrants of the State of Illinois.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information relating to individual's name; sex; social security account number; date of birth; job category; period of employment; place and period date of exposure; name, address, and license number of individual's employer; licensee name and number reporting the incident; radiation doses or estimates of exposure received during this period; types of radiation; part(s) or organ(s) exposed; and nuclide(s) involved. Some reports will indicate whether the individual is a contractor or a utility employee. Between January 1972 and May 1974 the following information was also recorded for individuals over-exposed to radiation: sex, training experience, regular occupation of the exposed individuals; device or method used to determine dose(s); brief statement describing the incident and the causes; corrective actions taken; status of exposed individual (i.e., medical treatment); type, age, and manufacturer of malfunctioning equipment; and cumulative dose prior to incident.

* * * * *

14. The paragraphs of NRC–31, "Secretariat Records Facility Files," entitled "System name," "System location," "Categories of individuals covered by the system," "Categories of records in the system" "Authority for maintenance of the system," "Route uses of records maintained in the system including categories of users and the purposes of such uses," "Storage," "Retrievability," "Safeguards," "Retention and disposal," and "Systems exempted from certain provisions of the act" are amended to read as follows:

SYSTEM NAME:

Correspondence and Records Branch, Office of the Secretary, NRC.

SYSTEM LOCATION:

Office of the Secretary, Correspondence and Records Branch, NRC, 1717 H Street, N.W., Washington, DC 20555.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The majority of records in this system consist of internal NRC memoranda between NRC employees and the Chairman, a Commissioner, or the Secretary in the ordinary course of carrying out the official business of the NRC. Records also include correspondence from Members of Congress and their staffs including constituent referrals, and White House correspondence referred to the NRC for response. Correspondence may identify an individual's social security number, date of birth, address, and employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information concerning all subjects which directly or indirectly relate to the fulfillment of NRC's statutory mandate. Records include information dealing with the policy, legal, administrative, and adjudicatory functions of the NRC.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

a. Section 201, Energy Reorganization Act of 1974, 42 U.S.C. 5841 (1976);

b. 44 U.S.C. 3101 (1970).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records may be used for any of the routine uses specified in the Prefatory Statement.

* * * * *

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Most records are accessed by subject matter headings and are not individually identifiable. Access to some correspondence by individual name is available through correspondence control documents.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Classified materials are maintained in approved safes, and unclassified records are maintained in rolling file equipment. Access to floor where records are held is controlled 24 hours per day by Federal Protective Officers.

RETENTION AND DISPOSAL:

Retained indefinitely.

* * * * *

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(1), the Commission has exempted portions of the system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f). The exemption rule is contained in Section 9.95 of the NRC regulations (10 CFR 9.95).

15. The paragraphs of NRC–33, "Special Inquiry File," entitled "System location" and "Storage" are amended to read as follows:

NRC–33

SYSTEM NAME;

Special Inquiry File.

SYSTEM LOCATION:

a. Primary system: Special Inquiry Group, U.S. Nuclear Regulatory Commission, 7920 Norfolk Avenue, Bethesda, Maryland.

b. Duplicate system: a duplicate system exists, in whole or in part, at the TERA Advanced Services Corporation, 7101 Wisconsin Avenue, Suite 1400, Bethesda, Maryland.

* * * * *

STORAGE:

Maintained in microfiche, disks, tapes, and paper in file folders. Documents are maintained in secured vault facilities.

* * * * *

16. The paragraph of NRC–34, "Advisory Committee on Reactor Safeguards (ACRS) Correspondence Index and Associated Records," entitled "System manager(s) and address" is amended to read as follows:

SYSTEM NAME:

Advisory Committee on Reactor Safeguards (ACRS) Correspondence Index and Associated Records—NRC.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Technical Informaiton Branch, Advisory Committee on Reactor Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

* * * * *

17. The paragraphs in NRC–36, "Employee Locator Records Files," entitled "Storage," "Safeguards," and "System manager(s) and address" are amended to read as follows:

SYSTEM NAME:

Employee Locator Records Files—NRC.

* * * * *

STORAGE:

Maintained on index cards.

* * * * *

SAFEGUARDS:

Maintained in controlled access room under 24-hour visual control of NRC operators. Access to and use of these records are limited to those persons whose official duties require such access.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Telecommunications Branch, Division of Facilities and Operations Support, Office of Administration, U.S.

Nuclear Regulatory Commission, Washington, DC 20555.

* * * * *

18. The paragraphs of NRC–38, "Mailing Lists," entitled "System location" and "System manager(s) and address" are amended to read as follows:

NRC–38

SYSTEM NAME:

Mailing Lists—NRC.

SYSTEM LOCATION:

Primary system: Division of Technical Information and Document Control, Office of Administration, NRC, 7920 Norfolk Avenue, Bethesda, Maryland.

* * * * *

SYSTEM MANAGER(S) AND ADDRERSS:

Director, Division of Technical Information and Document Control, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Bethesda, Maryland, this 9th day of October, 1980.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 80–32716 Filed 10–21–80; 8:45 am]

BILLING CODE 7590–01–M

Utility Management and Technical Resources; Report NUREG/CR–1656

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comments.

SUMMARY: The Nuclear Regulatory Commission (NRC) is currently reassessing its requirements regarding nuclear power plant utility management and technical resources. NUREG/CR–1656 is a report prepared by Teknekron Research Inc. under contract to the NRC to analyze and evaluate utility management and technical resources for dealing with events like that at Three Mile Island Unit 2. Teknekron (1) analyzed licensee submittals in response to an NRC request to identify management and technical short-term and long-term resources for reacting to TMI–2 type accidents, (2) developed acceptance criteria that specify minimum management and technical (onsite and offsite) resources, and (3) evaluated the adequacy of licensee management and technical resources (onsite and offsite). Public comments on this report will be considered in development of new requirements or guidance.

DATE: Comment period expires December 8, 1980.

ADDRESS: Copies of the report are available for $8.00 from GPO Sales Program, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence P. Crocker (301) 492–9437.

SUPPLEMENTARY INFORMATION: Interested persons are invited to submit written comments to Mr. Harold R. Denton, Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, on or before December 8, 1980.

Dated at Bethesda, Maryland, this 9th day of October, 1980.

For the Nuclear Regulatory Commission.

Domenic B. Vassallo,

Chief, Licensee Qualifications Branch, Division of Human Factors Safety.

[FR Doc. 80–32647 Filed 10–21–80; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Section 337 Case on Certain Skateboards and Platforms Therefor: Solicitation of Public Views

Under the provisions of section 337 of the Tariff Act of 1930, the United States International Trade Commission (USITC) issued an order excluding certain imported skateboards from entry into the U.S. (see USITC Investigation No. 337–TA–37).

The Commission determined that the importation and sale in the United States of certain skateboards infringed U.S. Letters Patent No. 3,565,454 and, by stipulation of the parties, that such importation has the effect or tendency to injure substantially or to destroy a domestic industry in violation of section 337. The report of the USITC was referred, on October 9, 1980, to the USTR who receives it for the President, leads an interagency review and advises the President whether to approve the order, or whether to disapprove it for policy reasons.

The President, under section 337(g) (19 U.S.C. 1337(g)), has 60 days following receipt of the Commission's determination and order during which he may disapprove the order for policy reasons, approve the order making it final immediately or take no action allowing the order to become final following the 60 day period.

In order to prepare the recommendation to the President, the Trade Policy Staff Committee welcomes the views and comments of interested parties concerning the policy issues, economic and political, which should be considered in relation to the exclusion of this product from importation into the United States.

Written comments should be submitted in 20 copies to the Secretary, Trade Policy Staff Committee, Room 735, Office of the United States Trade Representative, 1800 G Street, N.W., Washington, D.C. 20506. Such submissions should be received by the close of business, November 14, 1980. For further information, call Alice Zalik (202) 395–3432.

Ann H. Hughes,

Chairman, Trade Policy Staff Committee.

[FR Doc. 80–32917 Filed 10–21–80; 8:45 am]

BILLING CODE 3190–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–5385]

H.B.R. Capital Corp.; Issuance of a License To Operate as a Small Business Investment Company

On April 8, 1980, a notice was published in the Federal Register (45 FR 23843) stating that H.B.R. Capital Corporation, located at 1775 Broadway, New York, New York 10019, has filed an application with the Small Business Administration pursuant to 13 CFR 107.102 (1980) for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended.

Interested parties were given until the close of business April 25, 1980, to submit their comments to SBA. No comments were received.

Notice is hereby given that having considered the application and other pertinent information, SBA has issued License No. 02/02–5385 to H.B.R. Capital Corporation on October 9, 1980.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies)

Dated: October 11, 1980.

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 80–32907 Filed 10–21–80; 8:45 am]

BILLING CODE 8025–01–M

WATER RESOURCES COUNCIL

Principles and Standards for Planning Water and Related Land Resources; Change in Discount Rate

Notice is hereby given that the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 7⅜ percent for the period October 1, 1980, through and including September 30, 1981.

The rate has been computed in accordance with Chapter IV, D., "The Discount Rate" in the "Standards for Planning Water and Related Land Resources" of the Water Resources Council, as amended (39 FR 29242), and is to be used by all Federal agencies in plan formulation and evaluation of water and related land resources projects for the purpose of discounting future benefits and computing costs, or otherwise converting benefits and costs to a common time basis.

The Department of the Treasury on October 16, 1980, informed the Water Resources Council pursuant to Chapter IV, D., (b) that the interest rate would be 10¼ percent based upon the formula set forth in Chapter IV, D., (a): "* * * the average yield during the preceding Fiscal Year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity * * *." However, Chapter IV, D., (a) further provides "* * * that in no event shall the rate be raised or lowered more than one-quarter of one percent for any year." Since the rate in Fiscal Year 1980 was 7⅛ percent (44 FR 62116), the rate for Fiscal Year 1981 is 7⅜ percent.

Dated: October 17, 1980.

Richard N. Vannoy,

Acting Director.

[FR Doc. 80–32933 Filed 10–21–80; 8:45 am]

BILLING CODE 6410–01–M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 206
Wednesday, October 22, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., Friday, October 31, 1980.

PLACE: 2033 K Street NW., Washington, D.C., eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance briefing.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

[S–1936–80 Filed 10–20–80; 3:20 pm]

BILLING CODE 6351–01–M

2

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., October 28, 1980.

PLACE: 2033 K Street NW., Washington, D.C., fifth floor hearing room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Discussion of Disclosure of Information under Section 8(o) of the Act.
Enforcement matters/request for authorization to take testimony in a private investigation; offer of settlement.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

[S–1937–80 Filed 10–20–80; 3:47 pm]

BILLING CODE 6351–01–M

3

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., October 28, 1980.

PLACE: 2033 K Street NW., Washington, D.C., fifth floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Dealer Options/ The Commission will consider recommendations to republish the proposed rules for the regulation of dealer options in the **Federal Register** for additional comment.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

[S–1938–80 Filed 10–20–80; 3:47 pm]

BILLING CODE 6351–01–M

4

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Agency meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, October 27, 1980, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors pursuant to sections 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

Application for Federal deposit insurance:

Florence Savings Bank, Northampton, Massachusetts, an operating noninsured bank, for Federal deposit insurance.

Application for consent to purchase stock in a foreign financial entity:

Colonial Bank, Waterbury, Connecticut, for consent to acquire stock of Colonial International, S.A., a corporation organized in Panama.

Application for consent to purchase assets, assume liabilities, and establish branches:

Washington Trust Bank, Spokane, Washington, an insured State nonmember bank, for consent to purchase the assets of and assume the liability to pay deposits made in Eastern Washington Bank, Moses Lake, Washington, and for consent to establish the two offices of Eastern Washington Bank as branches of Washington Trust Bank.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 44,493–L—Banco Economias, San German, Puerto Rico.
Case No. 44,528–L—Banco de Ahorro de Puerto Rico, San Juan, Puerto Rico.
Memorandum and Resolution re: First State Bank & Trust Co., Rio Grande City, Texas.
Memorandum and Resolution re: First Augusta Bank & Trust Company, Augusta, Georgia.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents, or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

Reports of committees and officers:

Report of actions taken by the Division of Liquidation under delegated authority—Expenditures.
Report of actions taken by the Division of Liquidation under delegated authority—Compromise Settlements.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: October 20, 1980.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S–1939–80 Filed 10–20–80; 3:46 pm]

BILLING CODE 6714–01–M

5

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Agency meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5. U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, October 27, 1980, to consider the following matters:

Disposition of minutes of previous meetings.

Memorandum and Resolution re: Amendments to Part 329 of the Corporation's rules and regulations redefining "Time Deposits" to reduce maturity from 30 to 14 days.

Reports of committees and officers:

Minutes of the actions approved by the Committee on Liquidations, Loans and Purchases of Assets pursuant to authority delegated by the Board of Directors.
Reports of the Director of the Division of Bank Supervision with respect to applications or requests approved by him and the various Regional Directors pursuant to authority delegated by the Board of Directors.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550, 17th Street, N.W., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: October 20, 1980.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S–1940–80 Filed 10–20–80; 3:45 pm]

BILLING CODE 6714–01–M

6

NATIONAL INSTITUTE OF EDUCATION.

NATIONAL COUNCIL ON EDUCATIONAL RESEARCH (NIE):

"FEDERAL REGISTER" CITIATION OF PREVIOUS ANNOUNCEMENT: S–1395–80 filed July 21, 1980, 9:51 a.m.

DATE AND TIME: October 31, 1980, 9 a.m.–3:30 p.m.

PLACE: Room 823, National Institute of Education, 1200 19th Street NW., Washington, D.C.

STATUS: Certification has been received from the Department of Education Office of General Counsel, that in the opinion of that office, the NCER "would be authorized to close portions of its meeting on October 31, 1980, under 5 U.S.C. 522b(c)(9)(B) and 45 CFR 1440.2(a)(9) for the purposes of reviewing and discussing with the Director of NIE, the proposed executive branch budget for fiscal year 1982, in particular, the sections dealing with the proposed budget and funding priorities of NIE." Agenda item #5 will be closed, the rest of the agenda remains open to the public.

MATTERS TO BE CONSIDERED:

1. Swearing-in Ceremony (9 a.m.–9:20 a.m.).
2. Director's Report (9:20 a.m.–10:20 a.m.).
3. NIE Legislative Situation (10:20 a.m.–10:40 a.m.).
4. Review and Reports Committee Report: NCER Annual Report.
5. Closed session: Fiscal year 1982 Budget (11 a.m.–11:30 a.m.).
6. Review Discussion: Research on Teaching (1 p.m.–3:30 p.m.).

CONTACT PERSON FOR MORE INFORMATION: Ella L. Jones, Administrative Coordinator; telephone: 202/254–7900.

Peter H. Gerber,

Chief, Policy and Administrative Coordination.

[S–1934–80 Filed 10–20–80; 11:15 am]

BILLING CODE 4000–05–M

7

NATIONAL RAILROAD PASSENGER CORPORATION.

Board of Directors Meeting.

In Accordance with Rule 4a. of Appendix A of the Bylaws of the National Railroad Passenger Corporation notice is given that the Board of Directors will meet on October 29, 1980.

A. The meeting will be held on Wednesday, October 29, 1980, in the National Guard Association Building, 3rd Floor, One Massachusetts Avenue, Northwest, Washington, D.C., beginning at 9:30 a.m.

B. The meeting will be open to the public at 10:30 a.m. beginning with agenda item No. 3, as described below.

C. The agenda items to be discussed at the meeting follow.

Agenda—National Railroad Passenger Corporation, Meeting of the Board of Directors—October 29, 1980

(9:30) Closed Session

1. Internal Personnel Matters.
2. Litigation Matters.

(10:30) Open Session

3. Approval of Minutes of Regular Meeting of September 24, 1980.
4. Resolution of Appreciation for Robert G.. Dunlop.
5. Approval of Pennsylvania Liquor License.
6. 1981 Board Meeting Dates.
7. Commitment Approval Requests:

80–183 Acquire Facility for the Amtrak Institute for Rail Services.
81–01 Lease Conversion for Control Data Peripheral Equipment.
81–03 Wilmington, Delaware—Equipment PCB Decontamination Program.
80–215 Handicapped and Elderly Accessibility Modifications—Fiscal Year 1981 Programs.
77–154–S4 Michigan Track Upgrade—Phase V.
81–05 Broadway Limited—Showcase Route Improvements.
77–2–R1 Construct Permanent Station—St. Louis, Missouri.
81–04 Station Expansion—Houston, Texas.
81–09 Amtrak Customer Information System—Demonstration Project.
80–01–R1 Revision to CAR 80–01, Conversion of Five Amdinettes to Lounge/ Dinettes.
80–181 Purchase and Rebuild Six Used Diesel Switcher Locomotives.
80–200 Acquisition of 30 HEP Diesel-Electric Locomotives.
80–210 Fiscal Year 1981 HEP Conversion Program/Supplemental Funding for Previous Programs.
79–78–S2 Continuation of Hi-Level HEP Program/Supplemental Funding for Previous Programs.

8. Board Committee Reports:

Equipment.
Finance.
Northeast Corridor Improvement Project.

9. President's Report.
10. Advertising Presentation.
11. New Business.
12. Adjournment.

D. Inquiries regarding the information required to be made available pursuant to Appendix A of the Corporation's Bylaws should be directed to the Assistant Corporate Secretary at (202) 383–3991.

October 17, 1980.

Barbara J. Willman,

Assistant Corporate Secretary.

[S–1935–80 Filed 10–20–80; 1:12 pm]

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federal register

Wednesday
October 22, 1980

Part II

Department of the Interior

Fish and Wildlife Service

Proposed Listing With Endangered Status and Critical Habitat for the Minito Gecko

V 4 5 O C 2 2 8 0 UMI

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Listing With Endangered Status and Critical habitat for the Monito Gecko

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes that the Minoto gecko, *Sphaerodactylus micropithecus*, known only from Isla Monito in the Commonwealth of Puerto Rico, be determined an Endangered Species under provisions of the Endangered Species Act of 1973, as amended. This action is being taken because of the extremely small population size coupled with suspected heavy predation by rats. In addition, the Service proposes that the entire inland of Monito be declared Critical Habitat. If this action is made final, all provisions of Section 7 and 9 of the Act would apply to this species.

DATES: Comments on the proposed rule from the public must be received by January 21, 1981. Public meetings on this proposal will be held December 2 and December 3, 1980 in Puerto Rico beginning at 10:00 a.m. each day.

ADDRESSES: Submit comments to Director (OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and materials relating to this rule are available for public inspection during normal business hours at the Service's Office of Endagered Species, 1000 North Glebe Road, Arlington, Virginia. the meetings will be held at the following places:

December 2, 1980—Amphitheater/ General Studies, University of Puerto Rico, Mayaguez, Puerto Rico; and

December 3, 1980—Conference Room, Department of Natural Resources, Puerta de Tierra (San Juan) Puerto Rico.

FOR FURTHER INFORMATION CONTACT:

Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, U.S. Department of the Interior, Washington D.C. 20240 (703/ 235–2771) or the Endangered Species Staff of the Service's Regional Office, Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, Georgia 30303 (404/221–3583).

SUPPLEMENTARY INFORMATION:

Background

The Monito gecko was discovered on Isla Monito, 5 km. northwest of Mona Island in the Mona Passage, in May of 1974. Only one adult has ever been collected in spite of intensive survey by serveral investigators (see A. Schwartz, Proc. Biol. Soc. Wash. 90(4):985–992, 1977, for a complete review of surveys of the herpetofauna of Monito). In addition, an egg was collected at the same time which later hatched in the laboratory; both specimens have been deposited at the Florida State Museum. Dr. Howard W. Campbell, who, with Dr. Fred G. Thompson, collected the gecko and egg during a two day visit, reported that "An ecological factor of considerable concern on Monito is the dense population of introduced rats. No quantitative estimate is available for their numbers, but it should be noted that, at night, one is never out of sight of at least one foraging rat and frequently several will be in sight at any givem moment. The apparent low number of *Ameiva* (a type of lizard) and *Sphaerodactylus* might be the result of rat predation. If the *Sphaerodactylus* turns out to be an endimic species or subspecies and if its numbers are as low as our data indicate, a rat removal program may be necessary for its preservation." The rat involved is *Rattus rattus*.

Previous surveys of Monito had not revealed the presence of any lizards of the genus *Sphaerodactylus*, which are normally abundant members of a herpetofauna when present (see Rolle et al., Caribbean Journal of Science, 4(1):321–322, 1964). Schwartz (op. cit.) described the gecko as a distinct species and noted that the Monito *Sphaerodactylus* was difficult to ally with any geographically proximate species, including *S. monensis* residing only 5 km. away. Monito is a very small island (only about 300 x 500 meters) with steep sides; the presence of an endemic lizard so distinct from nearby forms makes the island and its lizard unique. The apparent rarity of this species, coupled with an abundance of rats (which are known predators on lizards and their eggs), is of concern to herpetologists.

Section 4(a) of the Act (16 U.S.C. 1531 et. seq.) states:

General—(1) The Secretary shall by regulation determine whether any species is an endagered species or a threatened species because of any or the following factors:

(1) The present or threatened destruction, modification, or curtailment of its habitat or range;

(2) Overutilization for commercial, sporting, scientific, or educational purposes;

(3) Disease or predation;

(4) The inadequacy of existing regulatory machanisms; or

(5) Other natural or man-made factors affecting its continued existence.

This authority has been delegated to the Director. The Monito gecko and its relation to these factors is as follows:

Summary of Factors Affecting the Species

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.*

In the past, Monito has been considered as a target for Naval bombing practice. While there are no such plans at present, any major alteration of Monito could be detrimental to the continued survival of this species.

2. *Overutilization for commerical, sporting, scientific, or educational purposes.*

While there are no data on population size, the apparent extreme rarity of this species indicates that removal of specimens could be detrimental.

3. *Disease or predation.*

The presence of large numbers of introduced rats on Monito is thought to be the major factor in the current precarious status of this species. Rats are predacious and are known to feed on both lizards and lizard eggs.

4. *The inadequacy of existing regulatory mechanisms.*

The Monito gecko currently receives no protection.

5. *Other natural or man-made factors affecting its continued existence.*

None known.

Effects of the Proposal if Published as a Final Rule

Endangered species regulations already published in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered species. The regulations referred to above, which pertain to Endangered species, are found at Section 17.21 of Title 50, and are summarized below.

With respect to the Monito gecko, all prohibitions of Section 9(a)(1) of the Act, as implemented by 50 CFR 17.21, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commerical activity, or sell or offer for sale this species in interstate or foreign commerce. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife which was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies.

Regulations published in the Federal Register of September 26, 1975 (40 FR 44412), codified at 50 CFR 17.22 and 17.23, provided for the issuance of permits to carry out otherwise prohibited activities involving Endangered or Threatened species under certain circumstances. Such permits involving Endangered species are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not available.

Section 7(a) of the Act provides (in part):

(1) The Secretary shall review other programs administered by him and utilize such programs in furtherance of the Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of Endangered species and Threatened species listed pursuant to Section 4 of the Act.

(2) Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to an 'agency action') is not likely to jeopardize the continued existence of any Endangered species or Threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to Subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.

Provisions for Interagency Cooperation are codified at 50 CFR Part 402. If published as a final rule this proposal would require Federal agencies not only to insure that activities they authorize, fund, or carry out, do not jeopardize the continued existence of the Monito gecko but also to insure that their actions do not result in the destruction or adverse modification of this Critical Habitat which has been determined by the Secretary to be critical.

Critical Habitat

The Act defines "Critical Habitat" as (i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of Section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by the species at the time it is listed in accordance with the provisions of Section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

The Service believes that, since the Monito gecko is known to occur only on tiny Monito Island, this area should be designated Critical Habitat. If this area were to be destroyed, the gecko would become extinct. In addition, the rat problem is such that the island needs to be carefully managed to insure the continued existence of the lizard.

Section 424.12(b) of 50 CFR further states that, when considering the designation of Critical Habitat, the Director shall focus on the biological or physical constituent elements within the defined area that are essential to the conservation of the species. Known primary constituent elements shall be listed with the Critical Habitat description. The following elements are known or believed to be constituent elements of the habitat of the Monito gecko.

1. *Cover.* The habitat for the Monito gecko must provide sufficient cover to hide from predators and from unfavorable environmental conditions.

2. *Disturbance.* The habitat must be spared from extreme disturbance, such as from bombing practice as was proposed in the past but is not under present consideration.

3. *Predators. The habitat must be free from introduced predators, such as the black rat on Monito.*

Section 4(f)(4) of the Act requires, to the maximum extent practicable that any proposal to determine Critical Habitat be accompanied by a brief description and evaluation of those activities which, in the opinion of the Secretary, may adversely modify such habitat if undertaken, or may be impacted by such designation. Such activities are identified below for this species. It should be emphasized that Critical Habitat designation may not affect each of the activities listed below, as Critical Habitat designation only affects Federal agency activities, through Section 7 of the Act. At this time, no Federal activities are known which would be affected by this proposed action.

Examples of activities that could be detrimental to the environment of this species and lead to further reduction of its range include:

1. The use of Monito as a bombing range as has been considered in the past.

2. The physical alteration of the island, including the mining of guano.

Section 4(b)(4) of the Act requires the Service to consider economic and other impacts of specifying a particular area as Critical Habitat. The Service has prepared a draft impact analysis and believes at this time that economic and other impacts of this section are not significant in the foreseeable future. The Service is notifying Federal and commonwealth agencies that may have jurisdiction over the land and water under consideration in this proposed action. These Federal agencies and other interested persons or organizations are requested to submit information on economic or other impacts of this proposed action (see below).

The Service will prepare a final impact analysis prior to the time of final rules, and will use this document as the basis for its decision as to whether or not to exclude any area from Critical Habitat.

Proposed Critical Habitat

The 1979 Amendments require Federal agencies to confer with the Service on any agency action which is likely to result in the destruction or adverse modification of Critical Habitat proposed to be designated for proposed species. The purpose of this requirement is to identify and resolve all potential conflicts between a proposed action and conservation of endangered and threatened species at an early point in the decision-making process. That purpose is to be achieved with respect to proposed species through informal/ formal discussions between the Federal agency and the Service on potential impacts of a proposed Critical Habitat.

The Service believes that the goal of early resolution of potential conflicts between proposed Critical Habitat and proposed actions can best be achieved by consolidating the discussions on proposed Critical Habitats with consultations conducted for proposed species. By consolidating conferences on proposed Critical Habitat with consultations conducted on proposed species/Critical Habitat, additional procedural steps can be avoided so as to reduce the potential for delay. While not required by the statute, the Service recommends, for administrative ease and effeciency, that this procedure be followed. A biological assessment

prepared for construction projects will identify the proposed species that may be affected by the action, setting the stage for concurrent discussions on those species.

The Federal agency and the Service should attempt to consolidate discussions on listed and proposed species in non-construction cases as well. As with all discussions on endangered species problems, early initiation increases the chances of resolution of potential conflicts.

For proposed projects which impact only proposed Critical Habitats, the requirements for conferring will be met on an informal basis. The Service will be responsible for documenting the conference for administrative purposes. Although consolidation of conferences on proposed species with consultations on listed species is encouraged, the Service does not intend that the informal nature of the conference on proposed species be changed or that any of the formal requirements for consultation be imposed on Federal agencies with respect to proposed Critical Habitats.

Public Comments Solicited

The Director intends that the rules finally adopted will be as accurate and effective as possible in the conservation of this Endangered species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) The location of and the reasons why any habitat of this species should or should not be determined to be Critical Habitat as provided for by Section 7 of the Act;

(2) Current or planned activities which may adversely affect the subject areas which are being considered for Critical Habitat;

(3) The foreseeable economic and other impacts of Critical Habitat designation on Federally funded or authorized projects.

(4) Biological and other relevant data concerning any threat (or lack thereof) to this species and;

(5) Additional information concerning the range and distribution of the species in Puerto Rico.

Public Meetings

The Service hereby announces that public meetings will be held on this proposed rule. The public is invited to attend these meetings and to present opinions and information on the proposal. Specific information relating to the public meetings have been set out in the section above.

National Environmental Policy Act

A draft environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia, and may be examined by appointment during regular business hours. A determination will be made at the time of a final rule as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 and 40 CFR Parts 1500–1508.

The primary author of this rule is Dr. C. Kenneth Dodd, Jr., Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975).

Regulation Promulgation

Accordingly, it is proposed that Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations be amended as follows: 1. By adding the Monito gecko herein considered to the list, alphabetically under "Reptiles" as indicated below:

§ 17.11 Endangered and threatened wildlife.

Species		Historic range	Population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Gecko, Monito	*Sphaerodactylus micropithecus*	U.S.A. (Puerto Rico)	Entire	E		17.95(c)	NA

2. It is further proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

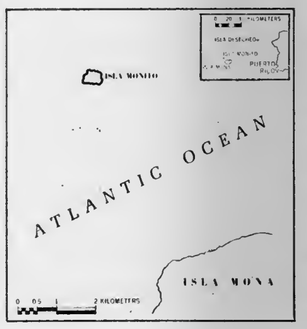
§ 17.95 [Amended]

(a) It is proposed that § 17.95(c), *Reptiles*, be amended by adding Critical Habitat of the Monito gecko before that of the giant anole as follows:

Monito Gecko

Sphaerodactylus micropithecus

Puerto Rico—Isla Monito; entire island.



The following elements are known or believed to be constituent elements of the habitat of the Monito gecko.

1. *Cover.* The habitat of the Monito gecko must provide sufficient cover to hide from predators and from unfavorable environmental conditions.

2. *Disturbance.* The habitat must be spared from extreme disturbance, such as from bombing practice as was proposed in the past but is not under present consideration.

3. *Predators.* The habitat must be free from introduced predators, such as the black rat on Monito.

Note.—The Department of the Interior has determined that this rule is not a significant rule and does not require preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Dated: September 30, 1980.

Lynn A. Greenwalt,

Director, Fish and Wildlife Service.

[FR Doc. 80-32824 Filed 10-21-80: 8:45 am]

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Wednesday
October 22, 1980

Part III

Department of the Interior

Fish and Wildlife Service

Proposed Determination of Critical Habitat for the Hawksbill Sea Turtle in Puerto Rico

V 4 5 O C 2 2 8 0 UMI

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Determination of Critical Habitat for the Hawksbill Sea Turtle in Puerto Rico

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule, Critical Habitat for the Hawksbill sea turtle.

SUMMARY: The Service proposes to designate Critical Habitat for the hawksbill sea turtle (*Eretmochelys imbricata*) in the Commonwealth of Puerto Rico. Nesting of this species occurs in scattered localites throughout the Caribbean although in no place is nesting as abundant as in the past. The proposed beaches on Mona Island represent a significant nesting area for this species in the Caribbean and were singled out as of major importance at the World Conference on Sea Turtle Conservation held in November 1979, in Washington, D.C. Areas on the islands of Culebra, Culebrita, and Cayo Norte are also regularly used by nesting hawksbills. The hawksbill sea turtle was listed as Endangered on June 2, 1970 (35 FR 8495) and is protected under the provisions of the Endangered Species Act of 1973. An earlier proposal (May 24, 1978; 43 FR 22224–22225) was withdrawn on March 6, 1979 (44 FR 12382) because of procedural and substantive changes made by the Endangered Species Act Amendments of 1978. The proposed rule would identify habitat subject to Federal agency consultation pursuant to Section 7(a) of the Act. Comments and date related to this proposal are solicited.

DATES: Comments on the proposed rule from the public must be received by January 21, 1981. Public meetings on this proposal will be held on December 2, 1980, December 3, 1980 and December 4, 1980 in Puerto Rico at 10:00 a.m.

ADDRESSES: Submit comments to Director (OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Comments and materials received will be available for public inspection by appointment during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 North Glebe Road, Arlington, Virginia. The time, place and date of the public meetings on this proposal will be:

Deccmber 2, 1980—Amphitheater/ General Studies, University of Puerto Rico, Mayaguez, Puerto Rico

December 3, 1980—Conference Room, Department of Natural Resources, Puerto de Tierra (San Juan), Puerto Rico; and

December 4, 1980—Conference Room, Department of Natural Resources Headquarters, Isle Culebra, Puerto Rico.

FOR FURTHER INFORMATION CONTACT:
Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, (703/ 235–2771).

SUPPLEMENTARY INFORMATION:

Background

The hawksbill sea turtle is a rare and critically Endangered reptile throughout the world (see Parsons, 1972, Carr and Stancyk, 1975; and Pritchard, 1979) and has been officially listed as Endangered since 1970. Much of the hope for the survival and recovery of this species depends upon the maintenance of suitable and undisturbed nesting beaches and the protection of nesting beaches is a strategy endorsed by scientists throughout the world (World Conference on Sea Turtle Conservation, 1979) for the conservation of this species. The Service recognizes that areas containing such beaches may qualify for recognition as Critical Habitat as referred to in Section 7 of the Act.

In accordance with the July 18, 1977, Memorandum of Understanding between the Fish and Wildlife Service and National Marine Fisheries Service, the Fish and Wildlife Service was given responsibility for sea turtles while on land. Such responsibility includes proposing and designation of Critical Habitat. The designation of marine Critical Habitat is the jurisdiction of the National Marine Fisheries Service; therefore, this proposal includes only land areas.

Hawksbill sea turtles are known to nest on all of Mona Island's 7.2 kilometers of beaches. The offshore areas appear to support a somewhat stable and resident population (Thurston and Wiewandt, 1975; Wiewandt, 1973; A. Carr, pers. commun)., In addition, green turtles and, rarely, leatherback turtles may also nest on Mona (T. Wiewandt, pers. commun). The designation of Mona Island as Critical Habitat for the hawksbill sea turtle was recommendation number 83 in the World Action Plan for the Conservation of Sea Turtles (World Conference on Sea Turtle Conservation, 1979). The entire island of Mona is already Critical Habitat for the listed yellow-shouldered blackbird, Mona ground iguana, and Mona boa.

Nesting of hawksbill sea turtles occurs on suitable sandy beaches on the north shore of Culebra Island, as well as the nearby islands of Cayo Norte and Isla Culebrita. Turtles are known to feed on the rich offshore reefs around these islands. In addition to hawksbills, occasional nesting has been reported for leatherback, loggerhead, and green turtles on these beaches (T. Carr, 1974). The Critical habitat for the Endangered giant anole barely overlaps the proposed Critical Habitat of the hawksbill on Playa Resaca.

The hawksbill sea turtle is a tropicopolitan species. It occurs in waters off the east coats of the continental United States (primarily Florida), the U.S. Virgin Islands, mainland Puerto Rico, the Hawaiian Islands, Pacific Trust Territory, American Samoa, Guam, and Territory of the Northern Marianas, Nesting is known to occur very rarely in Florida (Lund, 1978) and more frequently in the Virgin Islands (Island Resources Foundation, 1978) and on remote islands under U.S. jurisdictions in the Pacific Ocean (Pritchard, 1977). Dodd (1978) has provided a list of nesting areas for the hawksbill in the United States and in areas under its jurisdiction.

The main threats to the worldwide apparent decline in populations of the hawksbill sea turtle comes from three main sources: killing the animal so that the scutes covering the bony shell may be removed to fashion tortoise-shell items, or the animal may be stuffed and sold to tourists; removal of eggs for human consumption or the destruction of eggs by predators; destruction or alteration of the nesting beaches. Additional problems that this species may encounter include killing for meat (this happens occasionally but hawksbill meat is considered poisonous in many parts of the world), incidental catch in trawls (of minor problem in the Caribbean), accidental entanglement in fishing nets, pollution and destruction of resting and feeding reefs, and harassment while nesting and swimming. The problems faced by this species were treated in detail at the recent (November 26–30, 1979) World Conference on Sea Turtle Conservation held in Washington, D.C.

Critical Habitat for beaches used by nesting hawksbills in the Commonwealth of Puerto Rico was proposed on May 24, 1978 in the Federal Register (43 FR 22224–22225). Those areas were withdrawn from consideration on March 6, 1979 (44 FR 12382–12384) because of the substantive changes made to the requirements for the determination of Critical Habitat made by the Endangered Species Act Amendments of 1978. The areas in the present proposal are essentially the same as those of the original proposal. This proposal is in compliance with the requirements of the 1978 and later amendments.

Mona Island is presently owned by the Commonwealth of Puerto Rico who manages the island as a Natural Reserve. A management plan has been developed which takes the fragile nature of the island's beaches into account. The island is uninhabited except for Puerto Rico Conservation Rangers who enforce wildlife laws.

Culebra Island—The areas proposed as Critical Habitat include all the major sand beaches on the north shore if the island. These areas are presently owned by the U.S. Navy but are scheduled to be transferred to the Commonwealth of Puerto Rico sometime in 1981. The beaches are visited occasionally by fishermen but there are no permanent dwellings in the vicinity. Under draft agreements, these beaches will not be further developed and will be managed by the Commonwealth as marine turtle nesting beaches with numerous conditions on human use and activities.

Culebrita—Isla Culebrita is presently uninhabited and is part of the National Wildlife Refuge System. No development is present and there is virtually no public access. This island may be transferred to the Commonwealth of Puerto Rico in 1981, pending Congressional approval, although this has not been decided as yet. If transfer is completed as expected, the same restrictions with regard to human activities that will apply to Culebra will also apply to this island.

Cayo Norte—Cayo Norte is in private ownership in two separate parcels. No one presently lives on the island, although there are reportedly some occupied dwellings. The beach may occasionally be visited by private boats but the remoteness of the island makes such visits rare.

Critical Habitat

The Act defines "Critical Habitat" as (i) the specific areas within the georgraphical area occupied by the species, at the time it is listed in accordance with the provisions of Section 4 of this Act, on which are found those physical or biological features (i) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by the species at the time it is listed in accordance with the provisions of Section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

The Service believes that certain beaches and adjacent landward areas within the geographical area occupied by the hawksbill sea turtle in the Commonwealth of Pureto Rico should be designated as Critical Habitat. This species is highly susceptible to changes in its nesting habitat and unless these areas are managed carefully with regard to nesting and the successful incubation and hatching of eggs, the species could disappear from these beaches, which are reputed to be among the best in the world for hawksbills. The Service believes that the designation of Critical Habitat is essential to the conservation of this species and will work carefully in cooperation with the Department of Natural Resources in Puerto Rico to insure survival of the species, which requires special management considerations and protection.

Section 424.12(b) of 50 CFR further states that, when considering the designation of Critical Habitat, the Director shall focus on the biological or physical constituent elements within the defined area that are essential to the conservation of the species. Known primary constituent elements shall be listed with the Critical Habitat description. The following elements are known or believed to be constituent elements in the nesting habitat of the hawksbill sea turtle.

1. *Presence of clean sand.* The hawksbill sea turtle requires clean sand free of pollutants such as oil, to have successful incubation of its eggs.

2. *Obstructions.* Tree roots, beach debris, steep banks, and offshore obstructions such as rocks or jetties may prohibit or hinder successful nesting. Beaches should be free from or have a minimum of such obstructions.

3. *Depth of sand.* There must be sufficient depth of sand to allow successful incubation and hatching without the eggs being drowned by sea water intrusion.

4. *Lights of land.* Areas behind and on the nesting beach should be free of lights. Lights may inhibit females from nesting and disorient hatchlings (Philibosian, 1976).

5. *Beach disturbance.* Beaches should receive a minumum of disturbance, especially after dark. Loud noise and even silhoettes may inhibit females from nesting. In addition, vehicles on a beach or even careless human walking may collapse nesting cavities.

Section 4(b)(4) of the Act requires the Service to consider economic and other impacts of specifying a particular area as Critical Habitat. The Service has prepared a draft impact analysis and believes at this time that economic and other impats of this section are not significant in the foreseeable future. The Service is notifying Federal and Commonwealth agencies that may have jurisdiction over the land and water under consideration in this proposed action. These Federal agencies and other interested persons or organizations are requested to submit information on economic or other impacts of this proposed action (see below).

The Service will prepare a final impact analysis prior to the time of final rules, and will use this document as the basis for its decision as to whether or not to exclude any area from Critical Habitat for the hawksbill sea turtle.

Effect of This Proposal if Published as a Final Rule

Section 7(a) of the Act provides (in part):

(1) The Secretary shall review other programs administered by him and utilize such programs in furtherance of the Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of Endangered species and Threatened species listed pursuant to Section 4 of this Act.

(2) Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an 'agency action') is not likely to jeoparize the continued existence of any Endangered species or Threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to Subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.

Provisions for Interagency Cooperation are codified at 50 CFR Part 402. If published as a final rule this proposal would require Federal agencies not only to insure that ativities they authorize, fund, or carry out, do not jeopardize the continued existence of the hawksbill sea turtle but also to insure that their actions do not result in the destruction or adverse modification of these Critical Habitats which have

been determined by the Secretary to be critical. Section 4(f)(4) of the Act requires, to the maximum extent practicable that any proposal to determine Critical Habitat be accompanied by a brief description and evaluation of those activities which. in the opinion of the Secretary, may adversely modify such habitat if undertaken, or may be impacted by such designation. Such activities are identified below for this species. It should be emphasized that Critical Habitat designation may not affect each of the activities listed below, as Critical Habitat designation only affects Federal agency activities, through Section 7 of the Act. At this time, no Federal activities are known which would be significantly affected by this proposed action.

Examples of activities that could be detrimental to the environment of this species and lead to further reduction of its range include:

1. The destriction of reef areas needed for feeding and resting or atual physical disturbance or pollution.

2. The modification of nesting beaches through removal of sand.

3. The placement of artificial lighting too near the nesting beach which could disorient hatchlings.

4. Putting human recreational facilities too close to nesting beaches which could allow the destruction of already completed nests or the spooking of nesting females as they come onto shore to lay.

5. Pollution of the nesting beaches by oil or other fouling materials.

6. The use of off-road vehicles on nesting beaches.

7. The creation of off-shore barriers which could prevent the females from reaching the beaches.

8. General harassment by people and domestic and introduced animals.

The above eight examples are provided as illustrations of the types of activities which may be detrimental to the physical environment of hawks-bill sea turtle nesting beaches. They are not necessarily examples of what is actually happening at each of the areas proposed as Critical Habitat.

If published as a final rule this proposal would require Federal agencies not only to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the hawksbill sea turtle, but also requires them to insure their actions are not likely to result in the destruction or adverse modification of their Critical Habitat which has been determined by the Director (who is authorized to make such designations on behalf of the Secretary). Provisions for Interagency Cooperation are codified at 50 CFR Part 402.

Proposed Critical Habitat

The 1979 Amendments require Federal agencies to confer with the Service on any agency action which is likely to result in the destruction or adverse modification of Critical Habitat proposed to be designated for listed species. The purpose of this requirement is to identify and resolve all potential conflicts between a proposed action and conservation of endangered and threatened species at an early point in the decisionmaking process. That purpose is to be achieved with respect to listed species through informal/formal discussions between the Federal agency and the Service on potential impacts of a proposed Critical Habitat. Some of the proposed areas already constitute critical habitat for other species. The Service believes that the goal of early resolution of potential conflicts between proposed Critical Habitat and proposed actions can best be achieved by consolidating the discussions on proposed Critical Habitats with consultations conducted for already listed species. By consolidating conferences on proposed Critical Habitat with consultations conducted on listed species/Critical Habitat, additional procedural steps can be avoided so as to reduce the potential for delay. While not required by the statute, the Service recommends, for administrative ease and efficiency, that this procedure be followed. A biological assessment prepared for construction projects will identify the listed species that may be affected by the action, setting the stage for concurrent discussions on those species.

The Federal agency and the Service should attempt to consolidate discussions on listed and proposed species in non-construction cases as well. As with all discussions on endangered species problems, early initiation increases the chances of resolution of potential conflicts.

For proposed projects which impact only proposed Critical Habitats, the requirements for conferring will be met on an informal basis. The Service will be responsible for documenting the conference for administrative purposes. Although consolidation of conferences on proposed species with consultations on listed species is encouraged, the Service does not intend that the informal nature of the conference on proposed species be changed or that any of the formal requirements for consultation be imposed on Federal agencies with respect to proposed Critical Habitats.

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Wiewandt, T. A. 1973. Mona amphibians, reptiles, and mammals. In: Mona and Monito Islands, an assessment of their natural and historical resources. Vol. II. Environmental Quality Board of Puerto Rico, San Juan.

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Public Comments Solicited

The Director intends that the rules finally adopted will be as accurate and effective as possible in the conservation of this Endangered species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) The location of and the reasons why any habitat of this species should or should not be determined to be Critical Habitat as provided for by Section 7 of the Act;

(2) Current or planned activities which may adversely affect the subject areas which are being considered for Critical Habitat and;

(3) The foreseeable economic and other impacts of Critical Habitat designation on federally funded or authorized projects.

Public Meetings

The Service hereby announces that public meetings will be held on this proposed rule. The public is invited to attend these meetings and to present opinions and information on the proposal. Specific information relating to the public meetings have been set out in the section above.

National Environmental Policy Act

A draft environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia, and may be examined by appointment during regular business hours. A determination will be made at the time of a final rule as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 and 40 CFR Parts 1500–1508.

The primary author of this rule is Dr. C. Kenneth Dodd, Jr., Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240, (703/235–1975).

Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. It is proposed that § 17.95(c), Reptiles, be amended by adding Critical Habitat of the hawksbill sea turtle before that of the leatherback sea turtle as follows:

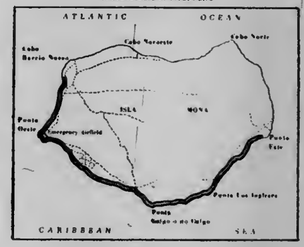
Hawksbill Sea Turtle

(Eretmochelys imbricata)

Puerto Rico—(1) Island Mona. All areas of beachfront on the west, south, and east sides of the island from mean high tide inland to a point 150 meters from shore. This includes all 7.2 kilometers of beaches on Isla Mona. (2) Culebra Island. The following areas of beachfront on the north shore of the island from mean high tide inland to a point 150 meters from shore: Playa Resaca, Playa Brava, and Playa Larga. (3) Cayo Norte. South beach, from mean high tide inland to a point 150 meters from shore. (4) Isla Culebrita. All beachfront areas on the southwest facing shore, east facing shore, and northwest facing shore of the island from mean high tide inland to a point 150 meters from shore.



HAWKSBILL SEA TURTLE



Dated: September 30, 1980.

Lynn A. Greenwalt,

Director, Fish and Wildlife Service.

[FR Doc. 80-32825 Filed 10-21-80; 8:45 am]

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Wednesday
October 22, 1980

Part IV

Department of the Interior

Bureau of Land Management

Federal Installations; Implementation of Section 3(e) of the Alaska Native Claims Settlement Act; Final Rule

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2650

[Circular No. 2478]

Federal Installations; Implementation of Section 3(e) of the Alaska Native Claims Settlement Act

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking provides the procedures to be used by the Secretary of the Interior to carry out the provisions of section 3(e) of the Alaska Native Claims Settlement Act. The procedure will be used to determine which lands held by Federal departments or agencies were in actual use during the time prescribed in the Act and which such lands were not in actual use and can be conveyed to Native Corporations under the Act.

EFFECTIVE DATE: November 21, 1980.

FOR FURTHER INFORMATION CONTACT:
Beaumont McClure, (202) 343–6511
or
Robert C. Bruce, (202) 343–8735
or
Robert Arnold, Bureau of Land Management, 701 C Street, Box 3, Anchorage, Alaska 99513, (907) 271–5760.

SUPPLEMENTARY INFORMATION: On September 18, 1979, proposed rulemaking was published in the **Federal Register** (44 FR 54254). Comments were invited for 60 days ending November 19, 1979. Written responses were received from the State of Alaska, the Department of Transportation, the Alaska Railroad, Alaska Federation of Natives, Inc., Bering Straits Native Corporation, Bristol Bay Native Corporation, Calista Corporation, Choggiung, Chugach Natives, Inc., Eklutna Inc., Galena, Gana-a' yoo, Ltd., Holy Cross, Koniag, Inc., Interior Village Association, Northway, Sealaska Corporation, Unalakleet Native Corporation and Yak-Tat Kwaan, Inc. These responses have been reviewed and analyzed.

Generally, those who commented expressed the opinion that the proposed rulemaking was necessary in order to carry out the Congressional intent of section 3(e) of the Alaska Native Claims Settlement Act. This rulemaking sets up the general guidelines under which the Department of the Interior will determine which lands held by Federal agencies are available for conveyance to Native corporations under this part. It is important to note that the status of each tract will be addressed by the Bureau of Land Management on a case-by-case basis. It is impossible in one rulemaking to take into account all of the individual issues which could affect section 3(e) determinations. For this reason, the final rulemaking does not contain specific examples.

The comments also recommended specific changes that would make the final rulemaking clearer and more understandable. The following discussion summarizes the comments and suggestions received on a section-by-section basis.

Authority

It was suggested that the word "certain" be deleted from the phrase "certain Federal installations in Alaska" as it appeared in the proposed rulemaking. As explained in the section on "lands subject to determination", the provisions of section 3(e) of the Alaska Native Claims Settlement Act and this rulemaking apply to Federal installations located within areas withdrawn by sections 11(a)(1), 16(a), or 16(d) or selected in accordance with section 14(h)(8)(B). Since the Federal lands subject to determination are specifically identified in the final rulemaking, the word "certain" has been deleted.

Definitions

This section received the largest number of comments, generally suggesting that the definitions were incomplete or unclear. After careful analysis and in response to comments, the definitions section of the final rulemaking defines three terms—"holding agency", "appropriate selection period" and "State Director". Other terms which appeared in the definitions section of the proposed rulemaking are now contained in a new section, "Criteria for determination". The term "smallest practicable tract" is contained in the Authority section, which uses that term as it is used in the Alaska Native Claims Settlement Act.

A definition of the term "holding agency" has been added. The term was added in response to a comment that the agency actually controlling the lands may not necessarily be the agency which was using the lands on December 18, 1971. The term "Federal installation" as used in the proposed regulations defined the lands subject to determination and is now addressed in the section on "Criteria for determination".

The term "appropriate selection period" was added as suggested by one comment, in order to avoid the questions raised by § 2655.1(c) (1), (2) and (3) in the proposed rulemaking, which listed specific time periods for selection. Since the Alaska Native Claims Settlement Act itself, its implementing regulations and subsequent congressional enactments, list the appropriate selection periods for Native corporations, it is unnecessary to include that information in this final rulemaking. This will avoid amending the regulations each time Congress acts on selection periods. The third definition added to the final rulemaking is "State Director" which means Director, Alaska State Office, Bureau of Land Management.

Lands Subject to Determination

This section of the proposed rulemaking drew a few comments which pointed out three omissions in the first paragraph of the section. First, there is no mention of Federal department or agency lands located within the areas withdrawn; second, the withdrawal authorities cited should include section 16(d) of the Alaska Native Claims Settlement Act; and third, there is no reference in the paragraph to selections made by the regional corporation for southeast Alaska under section 14(h)(8)(B) of the Act. These omissions have been corrected. The final rulemaking does not include a reference to section 11(a)(3) of the Act as suggested in some comments. This change is not appropriate since determinations pursuant to section 3(e) of the Act do not apply to lands withdrawn under section 11(a)(3). As explained above, several comments questioned the need for stating specific selection periods and this has been deleted.

Criteria for Determination

This section has been added to further clarify the procedures for making a determination and clarify some of the misunderstanding expressed in the comments on the definitions section. Almost all of the comments found the definitions section of the proposed rulemaking unclear. Therefore, the final rulemaking has been redrafted to reflect the three criteria which the Bureau of Land Management will use in order to make a 3(e) determination as to whether the lands are public lands and, thus, subject to conveyance to a Native corporation. These criteria, which were previously reflected but not expressly stated in the definitions section are: (1) Nature and time of use, (2) area to be retained by the Federal agency, and (3) interest to be retained by the Federal agency. Each point will be discussed individually.

(1) Nature and time of use—This criterion derives from § 2655.0–5(a)(1) in the proposed rulemaking and sets out three provisions. The first is that the use must be for a purpose "directly and necessarily connected with a Federal agency as of December 18, 1971". The comments suggested this language would more clearly reflect the intent of section 3(e) than the language in the proposed rulemaking.

The second provision is that the activity must be continuous, depending on the type of use, throughout the appropriate selection period. Two aspects of this provision need to be addressed. The final rulemaking provides that use by the agency during the entire selection period is necessary in order for the lands to be exempt from Native selection. This provision represents a compromise between those comments which favored establishing each agency's use solely on the basis of use on December 18, 1971, and those comments which expressed the view that use at any time during the appropriate selection period and, in some cases, proposed or future use, should make the lands subject to retention by the agency. The provision that use should be continuous, considering the type of use, reflects this compromise.

The third provision is that the agency claiming the land, if different from the agency using the land on December 18, 1971, must have a similar function to that of the original using agency. Again, this portion of the final rulemaking serves to assure that ongoing agency activities are not disrupted, while at the same time precluding Federal agencies performing new and different functions from asserting rights superior to the selecting Native corporations.

(2) Area to be retained by the Federal agency—This criterion derives from §§ 2655.0–5 (a) and (b) in the proposed rulemaking. The first subsection of this section of the final rulemaking states that the area which the Federal agency can retain shall be no bigger than reasonably necessary to support the agency's use. This provision responds to those comments which found inclusion of this provision in the definitions section confusing and repetitive; and further clarifies "smallest practicable tract". The next subsection requires that the tract in question be described in appropriate terms (i.e. by the U.S. survey, smallest aliquot part, metes and bounds or protraction diagram). This provision comes from § 2655.2(a)(2) of the proposed rulemaking and responds to comments which requested an explanation. The third provision lists those types of agency use which fall within the definition of section 3(e), i.e. "land actually used in connection with the administration of Federal installations." This provision is essentially a restatement of §§ 2655.0–5 (a) and (b) in the definitions section of the proposed rulemaking in response to those comments which objected to the inclusion of these items in the definitions section. Improved lands, in subparagraph (A) of § 2655.2(b)(3) are a category of lands that most comments felt qualified as actually being used. Some comments thought subparagraph (B) of that section, concerning buffer zones, should be omitted. However, the regulation reflects the comments which felt that reasonable buffer zones were legitimate actual uses of lands by Federal agencies under the section 3(e) definition. Subparagraph (C) includes unimproved lands used for storage as lands retainable by Federal agencies. It is another clarification of § 2655.0–5(a)(1) of the proposed rulemaking in response to comments.

There were many comments on subparagraph (D) of § 2655.2(b)(3) of the proposed rulemaking concerning gravel. The final rulemaking states that lands containing gravel can be retained by the agency if the use is in direct connection with the agency's purpose. In response to comments which found the proposed rulemaking's "immediate future" standard not justified by the statutory definition nor administratively practical, the Department of the Interior uses the end of the appropriate selection period. This is consistent with the section on "Nature and time of use" as applied to all other Federal lands. Again, this provision reflects a compromise between those comments which indicated the agency's use should be limited to those occurring on December 18, 1971, and those comments which suggested that some uses could extend to an indefinite time in the future.

Subparagraph (E) of § 2655.2(b)(3) is a restatement of §§ 2655.0–5 (a)(3) and (b) of the proposed rulemaking. Agencies will be able to retain lands used by a third party which are directly connected to the holding agency's purposes, but lands used primarily to derive revenue will be available for Native selection.

Although two comments objected to wording in the proposed rulemaking that excludes from lands actually used, those lands which produce revenues for the holding agency if such revenue production can be defined as falling within the mandate of their statutory authority, this language has been retained. The statutory mandates can be interpreted so broadly as to cover almost any kind of revenue production, thereby defeating the intent of the Alaska Native Claims Settlement Act.

(3) *Interest to be retained by Federal agency.* This provision deals with the issue raised in § 2655.2(c)(2) of the proposed rulemaking, namely when easements will be retained and under what authority. In most instances, the holding agency shall retain a full fee interest in the tract; however, the Department has determined that rights-of-way and electronic, light or visibility clear zones may be reserved as easements under section 17(b) of ANCSA and BLM's regulations 43 CFR 2650.4–7. This is consistent with the authority and the intent of section 16(b) of ANCSA and will fully protect the Federal interest. The consultation provisions for section 17(b) easements will govern in the cases where easements are reserved.

Determination Procedures

This section has been amended to remove ambiguities and thus make the procedure easier for the public, Federal agencies and the Bureau of Land Management to understand and follow. Paragraph (a) has been reworked as suggested by comments. It incorporates information contained in the first two sentences of § 2655.2 and paragraphs (d) and (f) of the proposed rulemaking concerning notice, submission of information and time extensions. Two changes were made. At the request of one comment, the information, including maps, should be furnished in triplicate for administrative convenience. As a result of several comments, the final rulemaking provides that the State Director shall provide copies of the information submitted by the holding agency to affected Native corporations.

Another change from the proposed rulemaking is the provision for time extensions of 60 rather than 90 days. Several comments objected to the granting of a 90-day extension saying that it would unduly delay the decision process, while others opposed any extensions. Therefore, the final rulemaking provides for a 60-day extension, which should be adequate for completion of information gathering, yet at the same time reduce the time lag on a determination.

Paragraph (b) of the section in the final rulemaking on determination procedures is essentially the same as paragraph (a) in the proposed rulemaking concerning the information to be furnished by the agency. One change suggested by a comment was that the information be submitted for each discrete tract subject to a determination. Another suggestion was

that the list of rights, interests, or permitted uses granted to others should include the dates of issuance and expiration. This information should prove helpful in making the section 3(e) determination, and consequently the suggestion was adopted.

Paragraph (c) in the final rulemaking incorporates paragraph (g) of the proposed rule pertaining to Native comments, and provides that Native corporations have the same time period for comment as agencies do to submit information. In order to allow for delays in mailing, the time period commences from the date of receipt of the information by the Native corporation.

Paragraph (d) concerning the burden of proof on the agency is a reworking of paragraph (c)(1), the second and third sentences of paragraph (d), and paragraph (e) of the proposed rulemaking. This stipulation resulted from one comment.

Paragraph (e) is a rewrite of paragraph (h) which clarifies points of confusion on the issuance of decision documents that were raised in several of the comments.

The discussion of whether land should be retained in full fee or as an easement as provided in paragraph (c)(2) of the proposed rulemaking has been dealt with in the criteria section.

Adverse Decisions

This section is almost identical to the proposed rulemaking. One addition to paragraph (a) is that the State Director, Alaska, be notified of the Secretary's decision.

Paragraph (b) of § 2655.4 was modified because the comments suggested that baseless appeals might be filed on any determination that was objectionable to a Federal agency or a Native interest. Also, the first sentence was changed to indicate that this provision applies whether the appeal is lodged by an agency or a Native corporation.

Editorial changes and corrections have been made as necessary.

The principal author of this final rulemaking is Beaumont McClure, Alaska Program Staff, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management, and Susan Shands of the Office of the Solicitor, Department of the Interior.

Note.—The Department of the Interior has determined that this document is not a significant regulatory action requiring the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Under the authority of the Alaska Native Claims Settlement Act of 1971 (43 U.S.C. 1601 et seq.), a new Subpart 2655 is added to Part 2650, Group 2600, Subchapter B, Chapter II, Title 43 of the Code of Federal Regulations as set forth below.

Guy R. Martin,

Assistant Secretary of the Interior.

October 17, 1980.

Subpart 2655—Federal Installations

Sec.

2655.0–3 Authority.
2655.0–5 Definitions.
2655.1 Lands subject to determination.
2655.2 Criteria for determinations.
2655.3 Determination procedures.
2655.4 Adverse decisions.

Authority: Alaska Claims Settlement Act of 1971 (43 U.S.C. 1601 et seq.).

Subpart 2655—Federal Installation

§ 2655.0–3 Authority.

Section 3(e)(1) of the act provides that the Secretary shall determine the smallest practicable tract enclosing land actually used in connection with the administration of Federal installations in Alaska.

§ 2655.0–5 Definitions.

As used in this subpart, the term:

(a) "Holding agency" means any Federal agency claiming use of a tract of land subject to these regulations.

(b) "Appropriate selection period" means the statutory or regulatory period within which the lands were available for Native selection under the act.

(c) "State Director" means the Director, Alaska State Office, Bureau of Land Management.

§ 2655.1 Lands subject to determination.

(a) Holding agency lands located within areas withdrawn by sections 11(a)(1), 16(a), or 16(d) of the act and subsequently selected by a village or regional corporation under sections 12 or 16, or selected by the regional corporation under sections 12 or 16, or selected by the regional corporation for southeast Alaska in accordance with section 14(h)(8)(B) are subject to a determination made under this subpart.

(b) Lands in the National Park System, lands withdrawn or reserved for national defense purposes and those former Indian reserves elected under section 19 of the act are not subject to a determination under section 3(e)(1) of the act or this subpart. Lands withdrawn under section 11(a)(3) or 14(h), except 14(h)(8)(B), of the act do not include lands withdrawn or otherwise appropriated by a Federal agency and, therefore, are not subject to a determination under section 3(e)(1) of the act of this subpart.

§ 2655.2 Criteria for determinations.

Land subject to determination under section 3(e)(1) of the act will be subject to conveyance to Native corporations if they are determined to be public lands under this subpart. If the lands are determined not to be public lands, they will be retained by the holding agency. The Bureau of Land Management shall determine:

(a) Nature and time of use.

(1) If the holding agency used the lands for a purpose directly and necessarily connected with the Federal agency as of December 18, 1971; and

(2) If use was continuous, taking into account the type of use, throughout the appropriate selection period; and

(3) If the function of the holding agency is similiar to that of the Federal agency using the lands as of December 18, 1971.

(b) Specifications for area to be retained by Federal agency.

(1) Area shall be no larger than reasonably necessary to support the agency's use.

(2) Tracts shall be described by U.S. Survey (or portion thereof), smallest aliquot part, metes and bounds or protraction diagram, as appropriate.

(3) Tracts may include:

(i) Improved lands;

(ii) Buffer zone surrounding improved lands as is reasonably necessary for purposes such as safety measures, maintenance, security, erosion control, noise protection and drainage;

(iii) Unimproved lands used for storage;

(iv) Lands containing gravel or other materials used in direct connection with the agency's purpose and not used simply as a source of revenue or services. The extent of the areas reserved as a source of materials will be the area disturbed but not depleted as of the date of the end of the appropriate selection period; and

(v) lands used by a non-governmental entity or private person for a use that has a direct, necessary and substantial connection to the purpose of the holding agency but shall not include lands from which proceeds of the lease, permit, contract, or other means are used primarily to derive revenue.

(c) Interest to be retained by Federal agency.

(1) Generally, full fee title to the tract shall be retained; however, where the tract is used primarily for access, electronic, light or visibility clear zones or right-of-way, an easement may be reserved in lieu of full fee title where the State Director determines that an easement affords sufficient protection, that an easement is customary for the particular use and that it would further the objectives of the act.

(2) Easements reserved in lieu of full fee title shall be reserved under the provisions of section 17(b) of the act and § 2650.4–7 of this title.

§ 2655.3 Determination procedures.

(a) The State Director shall make the determination pursuant to the provisions in this subpart. Where sufficient information has not already been provided, the State Director shall issue written notice to any Federal agency which the Bureau of Land Management has reason to believe might be a holding agency. The written notice shall provide that the information requested be furnished in triplicate to the State Director within 90 days from the receipt of the notice. Upon receipt of information the State Director will promptly provide affected Native corporations with copies of the documents. Upon adequate and justifiable showing as to the need for an extension by the holding agency, the State Director may grant a time extension up to 60 days to provide the information requested in this subpart.

(b) The information to be provided by the holding agency shall include the following for each tract which is subject to determination:

(1) The function and scope of the installation;

(2) A plottable legal description of the lands used;

(3) A list of structures or other alterations to the character of lands and their function, their location on the tract, and date of construction;

(4) A description of the use and function of any unaltered lands;

(5) A list of any rights, interests or permitted uses the agency has granted to others, including other Federal agencies, along with dates of issuance and expiration and copies of any relevant documents;

(6) If available, site plans, drawings and annotated aerial photographs delineating the boundaries of the installation and locations of the areas used; and

(7) A narrative explanation stating when Federal use of each area began; what use was being made of the lands as of December 18, 1971; whether any action has taken place between December 18, 1971, and the end of the appropriate selection period that would reduce the area needed, and the date this action occurred.

(c) The State Director shall request comments from the selecting Native corporation relating to the identification of lands requiring a determination. The period for comment by the Native corporation shall be as provided for the agency in § 2655.3(a) of this title, but shall commence from the date of receipt of the latest copy of the holding agency's submission.

(d) The holding agency has the burden of proof in proceedings before the State Director under this subpart. A determination of the lands to be retained by the holding agency under section 3(e) of the act and this subpart shall be made based on the information available in the case file. If the holding agency fails to present adequate information on which to base a determination, all lands selected shall be approved for conveyance to the selecting Native corporation.

(e) The results of the determination shall be incorporated into appropriate decision documents.

§ 2655.4 Adverse decisions.

(a) Any decision adverse to the holding agency or Native corporation shall become final unless appealed to the Alaska Native Claims Appeal Board in accordance with 43 CFR Part 4, Subpart J. If a decision is appealed, the Secretary may take personal jurisdiction over the matter in accordance with 43 CFR Part 4.5. In the case of appeals from affected Federal agencies, the Secretary may take jurisdiction upon written request from the appropriate cabinet level official. The requesting official, the State Director and any affected Native corporation shall be notified in writing of the Secretary's decision regarding the request for Secretarial jurisdiction and the reasons for the decision shall be communicated in writing to the requesting agency and any other parties to the appeal.

(b) When an appeal to a decision to issue a conveyance is made by a holding agency or a Native corporation on the basis that the Bureau of Land Management neglected to make a determination pursuant to section 3(e)(1) of the act, the matter shall be remanded by the Alaska Native Claims Appeals Board to the Bureau of Land Management for a determination pursuant to section 3(e)(1) of the act and these regulations: *Provided*, That the holding agency or Native corporation has reasonably satisfied the Board that its claim is not frivolous.

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator. Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

ENVIRONMENTAL PROTECTION AGENCY

62815 9–22–80 / Approval and promulgation of Implementation Plan, Ohio

62814 9–22–80 / Revision to the New Hampshire State Implementation Plan

FEDERAL MEDIATION AND CONCILIATION SERVICE

62798 9–22–80 / Mediation assistance in the Federal Service

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration—

49440 7–24–80 / Medicare and Medicaid programs; protection of patients funds

NUCLEAR REGULATORY COMMISSION

62789 9–22–80 / Primary reactor containment leakage testing for water-cooled power reactors

Deadlines for Comments On Proposed Rules for the Week of October 26 through November 1, 1980

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—

68659 10–16–80 / Raisins produced from grapes grown in Calif.; supplementary regulations and conversion factors; comments by 10–31–80

Animal and Plant Health Inspection Service—

57700 8–29–80 / Specifically approved States to receive stallions imported from CEM-affected countries; comments by 10–28–80

CIVIL AERONAUTICS BOARD

64864 9–30–80 / Filing of tariffs and payment of commissions to air freight forwarders and foreign air freight forwarders; comments by 10–30–80

COMMERCE DEPARTMENT

International Trade Administration—

57116 8–27–80 / Extension of validity period for export licenses; clarification of effect of amendment applications; comments by 10–27–80

National Oceanic and Atmospheric Administration—

68698 10–16–80 / Atlantic Surf Clam and Ocean Quahog Fisheries; closure of an area of the fishery Conservation zone (FCZ) offshore and south of Chincoteague, Va., to surf clam fishing; comments by 10–31–80

60457 9–12–80 / Atlantic Mackerel Fishery Management Plan. reserve allocation and foreign fishing; comments by 10–27–80

65642 10–3–80 / Foreign fishing; trawl and herring gillnet fisheries of the Eastern Bering Sea and Northeast Pacific Ocean; comments by 10–31–80

60957 9–15–80 / Precious corals fishery, proposed regulations; comments by 10–30–80

EDUCATION DEPARTMENT

Bilingual Education and Minority Language Affairs Office—

60382 9–11–80 / Federal financial assistance to meet special educational needs of refugee children and to enhance their transition into American society; comments by 10–27–80

ENERGY DEPARTMENT

Economic Regulatory Administration—

57138 8–27–80 / Amendments to normal business practices rule; comments by 10–27–80

58788 9–4–80 / Motor gasoline allocation; adjustments and downward certification; comments by 10–31–80

Federal Energy Regulatory Commission—

66811 10–8–80 / First sale regulation under Natural Gas Policy Act; ceiling prices; comments by 11–1–80

ENVIRONMENTAL PROTECTION AGENCY

48510 7–18–80 / Acrylamide: response to the Interagency Testing Committee; comments by 10–31–80

[Corrected at 45 FR 68411, 10–15–80]

65628 10–3–80 / Air quality implementation plan, Illinois: comment period extended to 10–31–80

[*See also* 45 FR 50625, 7–31–80]

64219 9–29–80 / Approval and promulgation of State plans for designated facilities and pollutants, New Jersey and Virgin Islands; comments by 10–29–80

48524 7–18–80 / Chloromethane and chlorinated benzenes proposed test rule; amendment to proposed health effects standards; comments by 10–31–80

[Corrected at 45 FR 68410, 10–15–80]

56845 8–26–80 / Discretionary authority and State Implementation Plan Revisions; comments by 10–27–80

48512 7–18–80 / Exemptions for test rules; proposed statement of policy and procedures; comments by 10–31–80

63886 9–26–80 / Idaho State air quality Implementation Plan, proposed revision; comments by 10–27–80

[Corrected at 45 FR 68410, 10–15–80]

63302 9–24–80 / Louisiana; submission of interim Authorization Plan, Phase I, Hazardous Waste Management Program; comments by 10–30–80

63887 9–26–80 / Ohio air quality control, attainment status designations; comments by 10–27–80

57461 8–28–80 / Pesticide chemicals in or on raw agricultural commodities; parsnips, rutabagas and upland cress; comments by 10–29–80

63888–63889 9–26–80 / Pesticide chemicals in or on raw agricultural commodities; proposed tolerances for O,O-dimethyl S-[(4-oxo-1,2,3-benzotriazin-3 (4H)-yl)]methyl phosphorodithioate and thiabendazole; comments by 10–27–80

64214 9–29–80 / Proposed revision of the Virginia State Implementation Plan; comments by 10–29–80

62170 9–16–80 / Submission for approval of Interim Authorization Plan, Phase I Hazardous Waste Management Program, Arkansas; comments by 10–27–80

59598 9–10–80 / Water quality standards; navigable waters of the Commonwealth of Kentucky; comments by 10–27–80

FEDERAL COMMUNICATIONS COMMISSION

51252 8–1–80 / Amending rules regarding the multipoint distribution service; reply comments extended to 10–27–80

55237 8–19–80 / FM broadcast station in Wray, Colo.; table of assignments; reply comments by 10–27–80

55240 8–19–80 / FM broadcast station in Smithfield, Utah; table of assignments; reply comments by 10–27–80

55238 8–19–80 / FM broadcast station in Spokane Wash.; table of assignments; reply comments by 10–27–80

55239 8–19–80 / FM broadcast station in Ladysmith, Wis.; table of assignments; reply comments by 10–27–80

55243 8–19–80 / Representation of stations by representatives owned by competing stations in the same area; reply comments by 10–31–80

FEDERAL MARITIME COMMISSION

57152 8–27–80 / Time/volume rate contracts; tariff filing regulations applicable to carriers and conferences in the foreign commerce of the United States; comments by 10–27–80

FEDERAL TRADE COMMISSION

47705 7–16–80 / Food advertising; methods useful to consumers; comments by 11–1–80

[Originally published at 45 FR 23705, 4–8–80]

59588 9–10–80 / Rules for using energy cost and consumption information used in labeling and advertising of consumer appliances under the Energy Policy and Conservation Act; comments by 10–27–80

[*See also* 45 FR 53340, 8–11–80]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration—

56823 8–26–80 / Canned peaches; standards of identity and quality; comments by 10–27–80

64601 9–30–80 / Establishment of registration and product listing for manufacturers of human blood and blood products; exemption of certain transfusion services and clinical laboratories from registration; comments by 10–30–80

63836 9–26–80 / Ice cream and frozen custard identity standards; label declaration of color additive FD&C yellow No. 5; objections by 10–27–80

57735 8–29–80 / Oligosaccharide, peptide, and certain other antibiotic drugs; comments by 10–28–80

[Corrected at 45 FR 65616, 10–3–80]

64569 9–30–80 / Penicillin antibiotic drugs; Amoxicillin Trihydrate chewable tablets; comments by 10–30–80

56832 8–26–80 / Phenothiazine products; bioequivalence requirements; comments by 10–27–80

[Corrected at 45 FR 63002, 9–23–80]

Health Care Financing Administration—

57150 8–27–80 / Medicare; ambulance service provision; comments by 10–27–80

HOUSING AND URBAN DEVELOPMENT

Community Planning and Development, Office of the Assistant Secretary—

56839 8–26–80 / Community Development Block Grants; grant administration requirements for use of eseron accounts for property rehabilitation loans and grants; comments by 10–27–80

Federal Housing Commissioner—Office of Assistant Secretary for Housing—

57444 8–28–80 / Minimum property standards; plastic drain waste and vent pipe and fittings, acrylonitrile-butadiene-styrene and poly (vinyl chloride); proposed revision of use of materials Bulletin No. 79; comments by 10–27–80

56800 8–26–80 / Mutual mortgage insurance and insured home improvement loans; condition of property—adjustment for damage or neglect; comments by 10–27–80

Office of the Secretary—

57437 8–28–80 / Mortgagee Review Board; flexibility in administrative actions; comments by 10–27–80

57440 8–28–80 / Procedures for appeals proceedings before hearing officers; comments by 10–27–80

INTERIOR DEPARTMENT

Fish and Wildlife Service—

59914 9–11–80 / Federal aid in fish and wildlife restoration; correction to proposed revisions to regulations; comments by 10–31–80

[*See also* 45 FR 57471, 8–28–80]

Indian Affairs Bureau—

64960 10–1–80 / San Carlos Indian River Project, Arizona; revision of power rates; comments by 10–31–80

National Park Service—

63884 9–26–80 / Blue Ridge Parkway, Va.–N.C.; snowmobile regulations; comments by 10–27–80

Surface Mining Reclamation and Enforcement Office—

64604 9–30–80 / Abandoned mines lands reclamation program; comments by 10–29–80

64961 10–1–80 / Procedures and criteria for approval or disapproval of State program submissions; comments by 10–31–80

INTERSTATE COMMERCE COMMISSION

61333 9–16–80 / Elimination of gateway restrictions and circuitous route limitations; comments by 10–31–80

61337 9–16–80 / Food transportation; operating authority for motor carrier owner-operators; reporting and filing requirements; comments by 10–31–80

61326 9–16–80 / Removal of restrictions from authorities of motor carriers of property; comments by 10–31–80

56849 8–26–80 / Traffic protective conditions in railroad consolidation proceedings; comments by 10–30–80

JUSTICE DEPARTMENT

Immigration and Naturalization Service—

57432 8–28–80 / Alien orphan children; filing of immigrant petitions to classify as immediate relatives; adoptive relationships requirements; comments by 10–27–80

58131 9–2–80 / Requirements for written notice of parole termination; reference to Form I–122; comments by 10–31–80

LABOR DEPARTMENT

Occupational Safety and Health Administration—

58881 9–5–80 / Access to employee exposure and medical records in agricultural employments; comments period extended to 10–31–80

[Originally published at 45 FR 35298, 5–23–80]

63476 9–24–80 / Lead exposure; reopening of rulemaking record; comments by 10–27–80

Pension and Welfare Benefit Program Office—

56843 8–26–80 / Reporting and disclosure for short plan years; comments by 10–28–80

[Corrected at 45 FR 62518, 9–19–80]

NUCLEAR REGULATORY COMMISSION

50613 7–30–80 / Nuclear facilities; correction and improvement of regulation and operation; action plan; comments by 10–28–80

POSTAL SERVICE

63885 9–26–80 / Special (nonprofit) bulk Third-Class mail rates, application procedures; comments by 10–27–80

SMALL BUSINESS ADMINISTRATION

59587 9–10–80 / Small business size standards; revision to method of establishing size standards and definitions of small business; comments by 10–27–80

[*See also* 45 FR 15442, 3–10–80]

STATE DEPARTMENT

Consular Affairs Bureau—

59175 9–8–80 / Validity, termination, and replacement of visa; comments by 10–31–80

TRANSPORTATION DEPARTMENT

Federal Aviation Administration—

57688 8–28–80 / Aircraft products and parts: Type certificates design and procedural standards; comments by 10–27–80

57684 8–28–80 / Flight crew members; elimination of duties and activities not required for safe operation of aircraft; comments by 10–27–80

57694 8–28–80 / Flight data recorder and cockpit voice recorder tapes; FAA access to; comments by 10–27–80

Federal Highway Administration—

57676 8–28–80 / Motor carriers, minimum levels of financial responsibility; comments by 10–27–80

[Corrected at 45 FR 59177, 9–8–80]

50728 7–31–80 / Wetlands, privately owned; evaluation and mitigation of environmental impacts; comments by 10–29–80

National Highway Traffic Safety Administration—

57466 8–28–80 / Motor vehicle safety standards; new pneumatic tires for passenger cars; comments by 10–27–80

Research and Special Programs Administration—

54097 8–14–80 / Hazardous materials; aluminum cylinders (DOT 3AL Seamless); specifications and usage requirements; comments by 11–1–80

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau—

57745 8–29–80 / Cases and bulk containers of distilled spirits, wine or beer; export markings; comments by 10–28–80

Internal Revenue Service—

57739 8–29–80 / Imputed interest rates; comments by 10–28–80

56840 8–26–80 / Set-asides made by private foundations; comments by 10–27–80

Deadlines for Comments On Proposed Rules for the Week of November 2 through November 8, 1980

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

68998 10–17–80 / Draft recommendations on intragovermental communications in informal rulemaking proceedings; comments by 11–5–80

68949 10–17–80 / Draft recommendation on separation of functions in agency proceedings; comments by 11–5–80

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—

68951 10–17–80 / Oranges and grapefruit grown in lower Rio Grande Valley, Tex.; import regulations and proposed grade and size requirements; comments by 11–3–80

Farmers Home Administration—

58557 9–4–80 / Implementation of Interagency Agreement regarding employment of Comprehensive Employment and Training Act (CETA) eligible persons in jobs created by certain FmHA programs; comments by 11–3–80

Food Safety and Quality Service—

53002 8–6–80 / Net weight labeling of meat and poultry products; comments by 11–6–80

44317 7–1–80 / Prohibition of PCB containing equipment or machinery and liquid polychlorinated biphenyls (PCB's) in Federally inspected meat establishments, poultry product establishments, and egg product plants; comments by 11–4–80

[*See also* 45 FR 30980–30983, 5–9–80]

CIVIL AERONAUTICS BOARD

66474 10–7–80 / Service mail rates for nonsubsidized carriers; flight equipment depreciation; statement of general policy; comments by 11–6–80

COMMERCE DEPARTMENT

International Trade Administration—

58562 9–4–80 / Effects of foreign policy export controls; comments by 11–3–80

National Oceanic and Atmospheric Administration—

65264 10–2–80 / Fishermen's Contingency Fund provisions; comments by 11–3–80

DEFENSE DEPARTMENT

Army Department—

66476 10–7–80 / Visitors rules for the Arlington National Cemetery; comments by 11–6–80

EDUCATION DEPARTMENT

61950 9–17–80 / Asbestos detection and control; Asbestos detection and State Plan: State Educational Agencies; comments by 11–3–80

ENERGY DEPARTMENT

Economic Regulatory Administration—

58871 9–5–80 / Mandatory Petroleum Price Regulations; retroactive amendments to "V" factor of refiner cost allocation formulae; comments by 11–4–80

53368 8–11–80 / Power plant and Industrial Fuel Use Act of 1978; cogeneration exemption; comments by 11–7–80

Federal Energy Regulatory Commission—

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65170 10-1-80 / Authority delegation to Director, Office of Pipeline and Producer Regulation, to grant exemptions to incremental pricing regulations; comments by 11-3-80

ENVIRONMENTAL PROTECTION AGENCY

65828 10-3-80 / Air quality implementation plan, Maryland; revision; comments by 11-3-80

65831 10-3-80 / Air quality; ozone; California and Nevada attainment status designations; comments by 11-3-80

59177 9-8-80 / Approval and promulgation of implementation plans; Nevada; comments by 11-7-80

64219 9-29-80 / Benzene emissions from maleic anhydnide plants; National emissions standards for hazardous air pollutants; comments by 11-6-80

66484 10-7-80 / Carbaryl; proposed tolerance; comments by 11-6-80

61966 9-17-80 / Friable asbestos-containing materials in schools; comments by 11-3-80

63888 9-26-80 / Hazardous waste management; North Carolina's application for Phase I interim authorization; comments by 11-4-80

62506 9-9-80 / Kentucky air quality implementation plans; federal assistance limitation; comments by 11-3-80

52628 8-7-80 / Pesticide programs; registration denial or cancellation and change of use classification; issuance and hearing procedures; comments by 11-5-80

[Corrected at 45 FR 57461, 8-28-80]

62170 9-18-80 / Policy and guidance on implementation of Clean Air Act requirement for meeting "basic transportation needs"; comments by 11-3-80

47168 7-14-80 / Proposed restrictions on use of PCB's at agricultural pesticide and fertilizer facilities; comments by 11-5-80

[*See also* 45 FR 30989, 5-9-80]

66816 10-8-80 / Standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities; comments by 11-7-80

FEDERAL COMMUNICATIONS COMMISSION

47445 7-15-80 / Cable television systems and postponement of divestiture requirement relative to prohibited cross ownership in existence on or before July 1, 1970; reply comments by 11-5-80

58629 9-4-80 / FM Broadcast Stations in Aguada, Arecibo, Cidras, Lajas, Manati, Mayaquez, Quebradillas and Utuado, P.R.; Proposed Changes in Table of Assignments; reply comments by 11-6-80

58611 9-4-80 / FM Broadcast Station in Hampton, Ark.; Proposed Changes in Table of Assignments; reply comments by 11-6-80

63302 9-24-80 / FM Broadcast Station in Hudson, Mich.; proposed changes in table of assignments; comments by 11-7-80

58621 9-4-80 / FM Broadcast Station in Irmo, S.C.; Proposed Changes in Table of Assignments; reply comments by 11-6-80

58618 9-4-80 / FM Broadcast Station in North Mankato, Minn.; Proposed Changes in Table of Assignments; reply comments by 11-6-80

58612 9-4-80 / FM Broadcast Station in Oildale, Calif.; Proposed Changes in Table of Assignments; reply comments by 11-6-80

58619 9-4-80 / FM Broadcast Station in Olivia, Minn.; Proposed Changes in Table of Assignments; reply comments by 11-6-80

62517 9-19-80 / FM Broadcast Station in Roy and Clearfield, Utah; Proposed Changes in Table of Assignments; comments by 11-7-80

58616 9-4-80 / FM Broadcast Station in Smith Center, Kans.; Proposed Changes in Table of Assignments; reply comments by 11-6-80

58613 9-4-80 / FM Broadcast Station in South Lake Tahoe, Calif.; Proposed Changes in Table of Assignments; reply comments by 11-6-80

58622 9-4-80 / FM Broadcast Station in Tremonton, Utah; Proposed Changes in Table of Assignments; reply comments by 11-6-80

58610 9-4-80 / FM Broadcast Stations in Tucson and Nogales, Arizona; Proposed Changes in Table of Assignments; reply comments by 11-6-80

58150 9-2-80 / 9 kHz channel separation for AM broadcasting; comments by 11-3-80

47444 7-15-80 / Revision of applications for renewal of license of commercial and noncommercial AM, FM and television licensees; reply comments by 11-3-80

58608 9-4-80 / TV Broadcast Station in Fort Walton Beach, Florida; Proposed Changes in Table of Assignments; reply comments by 11-6-80

55244 8-19-80 / TV Broadcast Stations in Jacksonville, Lumberton, Roanoke Rapids and Rockingham, N.C.; Farmville and Kenbridge, Va.; Table of Assignments; comments by 11-3-80

58627 9-4-80 / TV Broadcast Stations in Sanger, Clovis, Visalia, and Fresno, Calif.; Proposed Changes in Table of Assignments; reply comments by 11-6-80

55246 8-19-80 / Use of digital voice modulation in the Power Radio Service; reply comments by 11-7-80

FEDERAL DEPOSIT INSURANCE CORPORATION

58876 9-5-80 / Employee responsibilities and conduct; comments by 11-4-80

FEDERAL MARITIME COMMISSION

66485 10-7-80 / Enlargement of time for filing and commenting on certain agreements; comments by 11-3-80

[*See also* 45 FR 58923, 9-5-80]

58385 9-3-80 / Temporary tariff filing regulations applicable to carriers and conferences of such carriers in the foreign commerce of the United States; consideration of petitions by several conferences; comments by 11-3-80

FEDERAL RESERVE SYSTEM

66348 10-6-80 / Electronic fund transfers; exemptions; comments by 11-5-80

FEDERAL TRADE COMMISSION

58399 10-15-80 / Possible rescission of the Guides against deceptive advertising of guarantees; comments period extended to 11-6-80

[*See also* 45 FR 51838, 8-5-80]

66810 10-8-80 / Sale of used motor vehicles; disclosure and other regulation; comments by 11-7-80

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration—

52821 8-8-80 / Blood and blood components; error and accident reports; comments by 11-6-80

58880 9-5-80 / Exemptions from food labeling requirements for food labeling experiments; comments by 11-4-80

53023 8-8-80 / Food labeling; net weight labeling requirements; comments by 11-6-80

44325 7-1-80 / Polychlorinated biphenyls (PCB's) in sealed electrical transformers and capacitors used or stored in or around food, feed, and food- and feed-packaging materials manufacturing and storage facilities; comments by 11-4-80

[*See also* 45 FR 30984, 5-9-80]

Health Care Financing Administration—

58123 9-2-80 / Medicare; extension of time periods for end stage renal disease facilities to achieve conditional and unconditional status; comments by 11-3-80

Public Health Service—

59132 9-5-80 / Grants to health systems agencies, discretionary funding; comments by 11-4-80

Social Security Administration—

58563 9-4-80 / Supplemental security income for the aged, blind, and disabled; eligibility, amount of benefits, residence, and citizenship provision; comments by 11-3-80

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal Housing Commissioner—Office of the Assistant Secretary for Housing—

56374 9-3-80 / Polyethylene (PE), Acrylonitrile—butadiene—Styrene (ABS), Poly (Vinyl Chloride) (PVC) and Polybutylene (PB) plastic piping for cold water; comments by 11-3-80

59147 9-8-80 / Mortgage insurance and interest reduction payment for rental projects; comments by 11-7-80

59145 9-8-80 / Rent supplement payments; redefinition of "income"; comments by 11-7-80

Office of the Secretary—

59149 9-8-80 / Low-income housing; additional assistance program for projects with HUD-insured or HUD-held mortgages; comments by 11-7-80

INTERIOR DEPARTMENT

Fish and Wildlife Service—

58168 9-2-80 / *Phacelia formosulae;* proposed endangered species status; comments by 11-3-80

58166 9-2-80 / Proposed endangered status for 'Ewa Plains 'akoko (Euphorbia skottsbergii var. kalaeloana); comments by 11-3-80

Surface Mining and Reclamation Office—

65626 10-3-80 / Abandoned mine lands reclamation program; comments by 11-3-80

58377 9-3-80 / Surface coal mining and reclamation operations on Federal lands under permanent program State-Federal Cooperative Agreements; Montana; comments by 11-3-80

64971 10-1-80 / Surafce coal mining and reclamation operations on Federal lands under the Permanent Program; Wyoming cooperative agreement; comments by 11-7-80

[Originally published at 45 FR 45927, 7-8-80]

LABOR DEPARTMENT

Occupational Safety and Health Administration—

66475 10-7-80 / Proposed supplement to Conn. State Plan for public employees only; comments by 11-6-80

NUCLEAR REGULATORY COMMISSION

65466 10-2-80 / Domestic licensing of production and utilization facilities; interim requirements related to hydrogren control and certain degraded core considerations; comments by 11-3-80

SMALL BUSINESS ADMINISTRATION

66807 10-8-80 / Pollution control guarantee program; interest rate at which small concerns repay SBA; comments by 11-7-80

TRANSPORTATION DEPARTMENT

Federal Aviation Administration—

59256 9-8-80 / Non-federal navigation facilities; microwave landing system; comments by 11-7-80

Federal Highway Administration—

51720 8-4-80 / Design and construction criteria for bikeway construction; comments by 11-3-80

Office of the Secretary—

62170 9-18-80 / Policy and guidance on implementation of Clean Air Act requirement for meeting "basic transportation needs"; comments by 11-3-80

TREASURY DEPARTMENT

Internal Revenue Service—

64603 9-30-80 / Qualified disclaimers of property conferred by gift or inheritance; comments by 11-4-80

VETERANS ADMINISTRATION

66185 10-8-80 / Exclusions from countable income under Improved Pension Program; comments by 11-7-80

WAGE AND PRICE STABILITY COUNCIL

65502 10-3-80 / Anti-inflationary price standards; procedural rules and data requests; comments by 11-3-80

65995 10-6-80 / Anti-inflationary pay and price standards; questions and answers on the pay standard; comments by 11-3-80

Next Week's Meetings

AGRICULTURE DEPARTMENT

Forest Service—

58636 9-4-80 / Modoc National Forest Grazing Advisory Board, Tulelake, Calif. (open), 10-26-80

Science and Education Administration—

63023 9-23-80 / Animal Health Science Research Advisory Board, Washington, D.C. (open), 10-28 and 10-29-80

ARTS AND HUMANITIES, NATIONAL FOUNDATION

66929 10-8-80 / Design Arts Panel, New York, N.Y. (partially open), 10-27 and 10-28-80

66534 10-7-80 / Humanities Panel Advisory Committee, Washington, D.C. (closed), 10-30 and 10-31-80

[Originally published at 45 FR 63985, 9-26-80]

66929 10-8-80 / Music Panel (Professional Training), Washington, D.C. (partially open), 10-27 and 10-28-80

CIVIL RIGHTS COMMISSION

66827 10-8-80 / Arizona Advisory Committee, Phoenix, Ariz. (open), 11-1-80

65002 10-1-80 / Connecticut Advisory Committee, Cromwell, Conn. (open), 10-30-80

66827 10-8-80 / Illinois Advisory Committee, Chicago, Ill. (open), 10-27-80

65003 10-1-80 / Vermont Advisory Committee, Montpelier, Vt. (open), 10-29-80

COMMERCE DEPARTMENT

Census Bureau—

64610 9-30-80 / Asian and Pacific Americans Population for the 1980 Census Advisory Committee, Suitland, Md. (open), 10-30-80

64610 9-30-80 / Spanish Origin Population for the 1980 Census Advisory Committee, Suitland, Md. (open), 10-27-80

International Trade Administration—

67118 10-9-80 / Electronic Instrumentation Technical Advisory Committee; Arlington, Va. (partially open), 10-28-80

67116 10-9-80 / Exporters' Textile Advisory Committee, Washington, D.C. (open), 10-29-80

66702 10-16-80 / Numerically Control Machine Tool Technical Advisory Committee, Washington, D.C. (partially open), 10-30-80

67713 10-14-80 / Telecommunications Equipment Technical Advisory Committee, Washington, D.C. (partially open), 10-29-80

National Oceanic and Atmospheric Administration—

63543 9-25-80 / Commercial Ocean Thermal Energy Conversion Environmental Impact Statement, Washington, D.C. (open), 10-30-80

50848 7-31-80 / Mid-Atlantic Fishery Management Council, Surf Clam/Ocean Quahog Resources Subpanel, Dover, Del. (open), 10-31-80

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65272 10–2–80 / National Climate Program Advisory Committee, Washington, D.C. (open), 10–27 and 10–28–80

66490 10–7–80 / South Atlantic Fishery Management Council, Charleston, S.C. (open), 10–28 through 10–30–80

66490 10–7–80 / South Atlantic Fishery Management Council's Advisory Subpanel, Charleston, S.C. (open), 10–27–80

Office of the Secretary—

67406 10–10–80 / Commerce Technical Advisory Board, Melrose Park and Chicago, Ill. (open), 10–28 and 10–29–80

DEFENSE DEPARTMENT

Air Force Department—

63328 9–24–80 / Scientific Advisory Board, Los Angeles Air Force Station, Calif. (closed), 10–30 and 10–31–80

67716 10–14–80 / USAF Scientific Advisory Board, Fort Worth, Tex. (closed), 10–29–80

Army Department—

66495 10–7–80 / Army Medical Research and Development Advisory Panel Ad Hoc Study Group on Medical Entomology, Washington, D.C. (open), 10–27 and 10–28–80

Office of the Secretary—

65019 10–1–80 / Defense Intelligence Agency Advisory Committee, Rosslyn, Va. (closed), 10–27 and 10–28–80

62177 9–18–80 / DOD Advisory Group on Electron Devices, Arlington, Va. (closed), 10–28–80

64230 9–29–80 / Defense Science Board Task Force on Anti-Tactical Missiles Advisory Committee, Morrestown, N.J. (closed), 10–30 and 10–31–80

56381 8–25–80 / Wage Committee, Washington, D.C. (closed), 10–28–80

ENERGY DEPARTMENT

66190 10–6–80 / National Petroleum Council, Production Engineering Task Group of the Committee on Arctic Oil and Gas Resources, Houston, Tex. (open), 10–28–80

65392 10–2–80 / Opportunity to present oral comments on findings and conclusions of the National Energy Transportation Study, Seattle, Wash., 10–27 and 10–31–80

Economic Regulatory Administration—

59615 9–10–80 / Emergency Preparedness Committee of the National Petroleum Council, Wash., D.C. (open), 10–31–80

Energy Research Office—

67130 10–9–80 / Geothermal Panel of the Energy Research Advisory Board, Palo Alto, Calif. (open), 10–28–80

66842 10–8–80 / Solar Photovoltaic Energy Advisory Committee of the Energy Research Advisory Board, Pasedena, Calif. (open), 10–27 and 10–28–80

ENVIRONMENTAL PROTECTION AGENCY

62544 9–19–80 / Guideline on Air Quality Models, revisions, Chicago, Ill. (open), 10–30 and 10–31–81

67395 10–10–80 / Pesticides; State FIFRA Issues Research and Evaluation Group, Registration and Classification Working Committee, San Francisco, Calif. (open), 10–28 and 10–29–80

67395 10–10–80 / Pesticides; State FIFRA Issues Research and Evaluation Group, Enforcement Working Committee, San Francisco, Calif. (open), 10–30 and 10–31–80

67458 10–10–80 / Science Advisory Board, Clean Air Scientific Advisory Committee, Carbon Monoxide Subcommittee, Washington, D.C. (open), 10–27–80

67458 10–10–80 / Science Advisory Board, Executive Committee, Washington, D.C. (open), 10–29 and 10–30–80

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

63137 9–23–80 / Meeting, Washington, D.C. (open), 10–30–80

FEDERAL RESERVE SYSTEM

66206 10–6–80 / Consumer Advisory Council, Washington, D.C. (open), 10–30 and 10–31–80

FOREIGN CLAIMS SETTLEMENT COMMISSION

65765 10–3–80 / American citizens claims involving Germany, China, and Vietnam, Washington, D.C. (open), 10–29–80

GENERAL SERVICES ADMINISTRATION

Federal Register Office—

67155 10–9–80 / Southern Building Code Conference International (SBCCI) Annual Research and Education Conference, Memphis, Tenn. (open), 10–26 through 10–30–80

National Archives and Records Service—

61367 9–16–80 / Preservation Advisory Committee, Washington, D.C. (open), 10–27–80

HEALTH AND HUMAN SERVICES DEPARTMENT

Alcohol, Drug Abuse and Mental Health Administration—

62550 9–19–80 / Alcohol Abuse Prevention Review Committee, Rockville, Md., (partially open) 10–27–80, (closed) 10–28–80

62550 9–19–80 / Basic Behavioral Processes Research Review Committee, Rockville, Md., (partially open) 10–27–80, (closed) 10–28–80

62551 9–19–80 / Basic Psycho-pharmacology and Neuropsychology Research Review Committee, Silver Spring, Md., (partially open) 10–30–80, (closed) 10–31–80

62551 9–19–80 / Board of Scientific Counselors, NIMH, Bethesda, Md., (partially open) 10–30–80, (closed) 10–31 and 11–1–80

62551 9–19–80 / Mental Health Research Education Review Committee, Washington, D.C., (partially open) 10–30–80, (closed) 10–31–80

62551 9–19–80 / Minority Group Mental Health Review Committee, Chevy Chase, Md., (partially open) 10–30–80, (closed) 10–31–80

62550 9–19–80 / Psychopathology and Clinical Biology Research Review Committee, Bethesda, Md., (partially open) 10–27–80, (closed) 10–28 and 10–29–80

62551 9–19–80 / Social Work Education Review Committee, Rockville, Md. (partially open), 10–31–80

Center for Disease Control—

64709 9–30–80 / Mine Health Research Advisory Committee, Morgantown, W. Va. (partially open), 10–30 and 10–31–80

Food and Drug Administration—

62559 9–19–80 / Immunology and Miciobiology Device Section, Silver Spring, Md. (partially open), 10–27 and 10–28–80

59205 9–8–80 / Mammalian Genetics Study Section, Bethesda, Md. (partially open), 10–30 through 11–1–80

62557 9–19–80 / Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel: Ear, Nose, and Throat Device Section, Washington, D.C. (open), 10–27 and 10–28–80

Health Resources Administration—

55821 8–21–80 / National Advisory Council in Nurse Training, Hyattsville, Md. (partially open), 10–29 through 10–31–80

63552 9–25–80 / Migrant Health, National Advisory Council, Tampa, Fla. (open), 10–27 through 10–30–80

Human Development Services Office—

65046 10–1–80 / White House Conference on Aging, Technical Committee on Spiritual Well-Being, Washington, D.C. (open), 10–30–80

68760 10–16–80 / White House Conference on Aging Technical Committee, Ft. Mitchell, Ky. (open), 10–30–80

National Institutes of Health—

59205 9–8–80 / Allergy and Immunology study section, Bethesda, Md. (partially open), 10–31 through 11–1–80

58206 9–2–80 / Animal Resources Review Committee, Atlanta, Ga. (partially open), 10–27–80

59205 9–8–80 / Applied Physiology and Orthopedics Study Section, Bethesda, Md. (partially open), 10–30 through 11–1–80

59205 9–8–80 / Biochemical Endocrinology Study Section, Chevy Chase, Md. (partially open), 10–27 through 10–29–80

59205 9–8–80 / Biochemistry Study Section, Rosslyn, Va. (partially open), 10–29 through 11–1–80

59205 9–8–80 / Biophysics and Biophysical Study Section, Chemistry B, Bethesda, Md. (partially open), 10–30 and 11–1–80

59204 9–8–80 / Board of Scientific Counselors, National Institute on Aging, Baltimore, Md. (partially open), 10–30 and 10–31–80

59205 9–8–80 / Cardiovascular and Pulmonary Study Section, Washington, D.C. (partially open), 10–29 through 10–31–80

59205 9–8–80 / Cardiovascular and Renal Study Section, Bethesda, Md. (partially open), 10–29 through 10–31–80

59205 9–8–80 / Cell Biology Study Section, Bethesda, Md. (partially open), 10–29 through 10–31–80

64270 9–29–80 / Communicative Disorder Review Committee, Bethesda, Md. (partially open), 10–30 and 10–31–80

59205 9–8–80 / Communicative Sciences Study Section, Bethesda, Md. (partially open), 10–29 through 10–31–80

59205 9–8–80 / General Medicine A Study Section, Bethesda, Md. (partially open), 10–27 and 10–28–80

59205 9–8–80 / General Medicine B Study Section, Washington, D.C. (partially open), 10–29 through 11–1–80

59205 9–8–80 / Human Embryology and Development, Bethesda, Md. (partially open), 10–29 through 10–31–80

59205 9–8–80 / Medicinal Chemistry A Study Section, Washington, D.C. (partially open), 10–29 through 10–31–80

59205 9–8–80 / Neurology A Study Section, Washington, D.C. (partially open), 10–30 through 11–1–80

59205 9–8–80 / Neurology B Study Section, Washington, D.C. (partially open), 10–29 through 11–1–80

59205 9–8–80 / Nutrition Study Section, Bethesda, Md. (partially open), 10–29 through 10–31–80

59205 9–8–80 / Oral Biology and Medicine Study Section, Silver Spring, Md. (partially open), 10–28 through 10–31–80

59205 9–8–80 / Pathology Study Section, Bethesda, Md. (partially open), 10–29 through 10–31–80

59205 9–8–80 / Pharmacology Study Section, Bethesda, Md. (partially open), 10–28 through 10–30–80

65319 10–2–80 / Research Manpower Review Committee, Bethesda, Md. (partially open), 10–27 through 10–31–80

58208 9–2–80 / Transplantation Biology and Immunology Committee, Bethesda, Md. (partially open), 10–31–80

59205 9–8–80 / Visual Sciences A Study Section, Alexandria, Va. (partially open), 10–29 through 10–31–80

Public Health Service—

62548 9–19–80 / Health Care Technology Study Section, Hyattsville, Md. (partially open), 10–27–80, (closed) 10–28 and 10–29–80

INTERIOR DEPARTMENT

Heritage Conservation and Recreation Service—

66213 10–6–80 / Adequacy of Draft Environmental Impact Statement and California River Application, Sacramento, Calif., 10–27–80 and Los Angeles, Calif., 10–31–80

68468 10–15–80 / Pinelands National Reserve, Draft Environmental Impact Statement, Marlton, N.J. (open), 10–29–80

Land Management Bureau—

61032 9–15–80 / Nevada Elko District, Multiple Use Advisory Council, Elko, Nev. (open), 10–29–80

63150 9–23–80 / Redding District Multiple Use Advisory Council, Redding, Colo., (open), 10–30–80

63940 9–26–80 / Salem District Advisory Council, Salem, Oreg. (open), 10–29–80

63150 9–23–80 / Vernal District Advisory Council, Vernal, Utah (open), 10–28 and 10–29–80

National Park Service—

67780 10–14–80 / Boston National Historical Park, Boston, Mass. (open), 10–30–80

INTERNATIONAL CONVENTION ADVISORY COMMISSION

67171 10–9–80 / Domestic procedures for implementation, applications for international trade in species protected, and miscellaneous business Washington, D.C. (open), 10–29–80

LABOR DEPARTMENT

Occupational Safety and Health Administration—

67480 10–10–80 / Federal Advisory Council on Occupational Safety and Health, Washington, D.C. (open), 10–28–80

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

67803 10–14–80 / National Advisory Council, Aeronautics Advisory Committee, Cleveland, Ohio (open), 10–29 and 10–30–80

NATIONAL COMMISSION ON SOCIAL SECURITY

68486 10–15–80 / Meeting, Washington, D.C. (open), 10–31 and 11–1–80

NATIONAL SCIENCE FOUNDATION

67489 10–10–80 / Atmospheric Sciences Advisory Committee, Washington, D.C. (partially open), 10–29 through 10–31–80

64772 9–30–80 / DOE/NSF Nuclear Science Advisory Committee, Computational Capabilities for Nuclear Theory Subcommittee, Germantown, Md. (open), 11–5–80

63400 9–24–80 / Materials Research Advisory Committee, Condensed Matter Sciences Subcommittee, Washington, D.C. (partially open), 10–27 and 10–28–80

63398 9–24–80 / Materials Research Laboratories, Ad Hoc Oversight Subcommittee, Washington, D.C. (closed), 10–29 and 10–30–80

63399 9–24–80 / Materials Research Laboratories Advisory Subcommittee, Washington, D.C. (partially open), 10–30 and 10–31–80

67490 10–10–80 / Minority Programs in Science Education Advisory Committee, Washington, D.C. (open), 10–30 and 10–31–80

61052 9–15–80 / Physiology, Cellular and Molecular Biology Advisory Committee, Biological Instrumentation Subcommittee, Washington, D.C. (closed), 10–30 and 10–31–80

61052 9–15–80 / Physiology, Cellular and Molecular Biology Advisory Committee, Genetic Biology Subcommittee, Washington, D.C. (closed), 10–30 through 11–1–80

61053 9–15–80 / Physiology, Cellular and Molecular Biology Advisory Committee, Metabolic Biology Subcommittee, Washington, D.C. (closed), 10–30 and 10–31–80

63401 9–24–80 / Social and Economic Science Advisory Committee, Subcommittee on Geography and Regional Science, Wasnington, D.C. (closed), 10–27–80

63401 9–24–80 / Social and Economic Science Advisory Committee, Subcommittee on Political Science, Washington, D.C. (closed), 10–27 and 10–28–80

64771 9–30–80 / Social and Economics Science Advisory Committee, Sociology Subcommittee, Washington, D.C. (closed), 10–30 and 10–31–80

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NUCLEAR REGULATORY COMMISSION

68817 10–16–80 / Reactor Safeguards Advisory Committee, Babcock and Wilcox Water Reactors Subcommittee, Washington, D.C. (partially open), 10–31–80

PENSION POLICY PRESIDENT'S COMMISSION

61058 9–15–80 / Interim report, Washington, D.C. (open), 10–25 and 10–26–80

SMALL BUSINESS ADMINISTRATION

63202 9–23–80 / Region II Advisory Council, Newark, N.J. (open), 10–28–80

63203 9–23–80 / Region V Advisory Council, Indianapolis, Ind. (open), 10–28–80

66939 10–8–80 / Region V Advisory Council, Dearborn, Mich. (open), 10–31–80

66281 10–6–80 / Region VII Advisory Council, Kansas City, Mo. (open), 10–28–80

TRANSPORTATION DEPARTMENT

Federal Aviation Administration—

66282 10–6–80 / Radio Technical Commission for Aeronautics (RTCA), Special Committee 142—Air Traffic Control Radar Beacon System/Discrete Address Beacon System (ATCRBS/DABS) Airborne Equipment, Washington, D.C. (open), 10–29 through 10–31–80

National Highway Traffic Safety Administration—

43921 6–30–80 / Fatal Accident Reporting System [FARS], Orlando, Florida (open), 10–28 through 10–30–80

59245 9–8–80 / Fatal Accident Reporting System Annual Workshop, Orlando, Fla. (open), 10–28 through 10–30–80

43921 6–30–80 / National Highway Safety Advisory Committee, Washington, D.C. (open), 10–27 through 10–29–80

59245 9–8–80 / National Highway Safety Advisory Committee, Washington, D.C. (open), 10–27 through 10–30–80

67186 10–9–80 / National Highway Safety Advisory Committee, Washington, D.C. (open), 10–27 through 10–30–80

59245 9–8–80 / Problem-Behavior Workshop: Pedestrian, Bicyclists and Public Transportation, Washington, D.C. (open), 10–27 and 10–28–80

Office of the Secretary—

65392 10–2–80 / Opportunity to present oral comments on findings and conclusions of the National Energy Transportation Study, Seattle, Wash., 10–27 and 10–31–80

TREASURY DEPARTMENT

Office of the Secretary—

65104 10–1–80 / Debt Management Advisory Committees, Washington, D.C. (closed), 10–28 and 10–29–80

VETERANS ADMINISTRATION

66939 10–8–80 / Career Development Committee, Washington, D.C. (partially open), 10–27 and 10–28–80

56222 8–22–80 / Cooperative Studies Evaluation Committee, Washington, D.C. (partially open), 10–27 and 10–28–80

61845 9–17–80 / Medical Research Service Merit Review Board (partially open), Washington, D.C., 10–30 and 10–31–80

61846 9–17–80 / Voluntary Service National Advisory Committee, Arlington, Va., 10–27 through 10–29–80

59470 9–9–80 / Wage Committee, Washington, D.C. (closed), 10–30–80

WAGE AND PRICE STABILITY COUNCIL

66188 10–6–80 / Price Advisory Committee, Washington, D.C., 10–29–80

[*See Also* 45 FR 62520, 9–19–80]

Next Week's Public Hearings

AGRICULTURE DEPARTMENT

Forest Service—

56850 8–26–80 / Mount Henry, Taylor-Hilgard, and West Pioneer Wilderness Study Areas; Beaverhead, Gallatin, and Kootenai National Forests, Beaverhead, Gallatin, Madison, and Lincoln Counties, Mont.; Libby and Bozeman, Mont., 10–28 and 10–30–80

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration—

68698 10–16–80 / Atlantic Surf Clam and Ocean Quahog Fisheries; closure of an area of the fishery conservation zone (FCZ) offshore and south of Chincoteague, Va., to surf clam fishing; Dover, Delaware, 10–31–80

DEFENSE DEPARTMENT

60467 9–12–80 / Naval Discharge Review Board, Dallas, Tex., St. Louis, Mo., 10–27 through 11–7–80

[*See also* 45 FR 41691, 6–20–80 and 45 FR 68704, 10–16–80]

60467 9–12–80 / Naval Discharge Review Board, Dallas Tex., St. Louis, Mo., 10–27 through 11–7–80

[*See also* 45 FR 41691, 6–20–80]

68704 10–16–80 / Navy Discharge Review Board, San Diego, Calif., 10–31–80

ENERGY DEPARTMENT

Conservation and Solar Energy Office—

66960 10–8–80 / Residential Conservation Service Program, Washington, D.C., 10–30–80

Economic Regulatory Commission—

62478 9–19–80 / East Coast Residual Fuel Oil Entitlements, extension of domestic crude oil allocation program, Washington, D.C., 10–27–80

Federal Energy Regulatory Commission—

67276 10–9–80 / Consideration of agricultural uses exemption interim rule, Washington, D.C., 10–28–80

67279 10–9–80 / Incremental pricing; consideration of rulemaking, Washington, D.C., 10–28–80

Office of the Secretary—

66970 10–8–80 / Energy Auditor Training and Certification Grants, Washington, D.C., 10–30 and 10–31–80

ENVIRONMENTAL PROTECTION AGENCY

63888 9–26–80 / Hazardous Waste Management; North Carolina's application for Phase I interim authorization, Raleigh, N.C., 10–29–80

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office—

64971 10–1–80 / Wyoming Cooperative Agreement; coal mining and reclamation, Cheyenne, Wyo., 10–30–80

INTERNATIONAL TRADE COMMISSION

65088 10–1–80 / Conference on television receiving sets from Japan, Washington, D.C., 10–31–80

TREASURY DEPARTMENT

Internal Revenue Service—

63296 9–24–80 / Tax-free sales of articles to be used for, or resold for, further manufacture, Washington, D.C., 10–28–80

List of Public Laws

Last Listing October 21, 1980

This is a continuing listing of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–275–3030).

S. 2622 / Pub. L. 96–464 Coastal Zone Management Improvement Act of 1980 (Oct. 17, 1980; 94 Stat. 2060) Price $1.25.

H.R. 6790 / Pub. L. 96–465 Foreign Service Act of 1980. (Oct. 17, 1980; 94 Stat. 2071) Price $3.75.

H.R. 5288 / Pub. L. 96–466 Veterans' Rehabilitation and Education Amendments of 1980. (Oct. 17, 1980; 94 Stat. 2171) Price $:

H.R. 3122 / Pub. L. 96–467 Relating to the tariff treatment of certain articles. (Oct. 17, 1980; 94 Stat. 2220) Price $1.25.

H.R. 6593 / Pub. L. 96–468 Swine Health Protection Act. (Oct. 17, 1980; 94 Stat. 2229) Price $1.

S. 2043 / Pub. L. 96–469 Animal Cancer Research Act. (Oct. 17, 1980; 94 Stat. 2235) Price $1.

Documents Relating to Federal Grant Programs

This is a list of documents relating to Federal grant programs which were published in the Federal Register during the previous week.

RULES GOING INTO EFFECT

68890, 68899 10–16–80 / HHS/PHS—Grants for predoctoral, graduate, and faculty developmental educational programs in family medicine (2 documents); effective 10–16–80

69196 10–17–80 / USDA/FNS—New York City's Food Stamp Replacement "Authorization to Participate" Card Issuance Procedure and Rapid Access Reconciliation System; establishment of procedures; effective 10–17–80

DEADLINES FOR COMMENTS ON PROPOSED RULES

68902 10–16–80 / HHS/PHS—Grants for Establishment of Departments of Family Medicine; comments by 12–15–80

APPLICATIONS DEADLINES

68421 10–15–80 / DOE—Energy Financial Assistance Solicitations Availability; proposals by 11–14–80

67771 10–14–80 / HHS/HRA—Health Careers Opportunity Program; apply by 12–11–80

67770 10–14–80 / HHS/HRA—Public Health Special Project Grants; apply by 1–9–81

69046 10–17–80 / HUD/CPD—FY 1981 technical assistance for assessing potential district heating and cooling system projects; apply by 1–5–81

67643 10–14–80 / USDA/APHIS—Applications for special permits and schedule of fees for the third importation of cattle through the Harry S Truman Animal Import Center; apply by 1–6–81

68952 10–17–80 / USDA/FmHA—Relocation and real property acquisition; uniform policy; comments by 12–16–80

MEETINGS

68421 10–15–80 / DOE—Energy Financial Assistance Solicitations Availability, preproposal conference, Washington, D.C., 10–21–80

68464 10–15–80 / HHS/HSA—Maternal and Child Health Research Grants Review Committee, Rockville, Md. (open and closed), 11–12 through 11–14–80

68467 10–15–80 / HHS/NIH—Biomedical Review Committee and the Subcommittee for the Review of Medical Library Resource Improvement Grant Application, Bethesda, Md. (open and closed), 11–17 and 11–18–80

68464 10–15–80 / HHS/NIH—Bladder and Prostatic Cancer Review Committee, Atlanta, Ga. (open and closed), 11–6–80

68465 10–15–80 / HHS/NIH—Cancer Clinical Investigation Review Committee, Bethesda, Md. (open and closed), 11–11 and 11–12–80

68465 10–15–80 / HHS/NIH—Clinical Trials Review Committee, Bethesda, Md. (open), 11–7–80

68466 10–15–80 / HHS/NIH—General Clinical Research Centers Committee, Bethesda, Md. (open and closed), 12–1 and 12–2–80

68466 10–15–80 / HHS/NIH—General Research Support Review Committee, Bethesda, Md. (open and closed), 11–13 and 11–14–80

68468 10–15–80 / HHS/NIH—National Heart, Lung, and Blood Advisory Council, Bethesda, Md. (open and closed), 11–24 and 11–25–80

68464 10–15–80 / HHS/NIH—Scientific Counselors, NICHD, Bethesda, Md. (closed), 11–24–80

68467 10–15–80 / HHS/NIH—Vision Research Program Committee, Bethesda, Md. (open and closed), 11–13–80

68487 10–15–80 / NSF—Advisory Committee for Earth Sciences, Geology, Geophysics, Geochemistry and Petrology Subcommittee, Washington, D.C. (closed), 11–6 and 11–7–80

68487 10–15–80 / NSF—Advisory Committee for Social and Economic Science, Subcommittee for Law and Social Sciences, Washington, D.C. (closed), 11–13 and 11–14–80

68487 10–15–80 / NSF—Advisory Committee for Ocean Sciences, Subcommittee for Ocean Sciences Research, Washington, D.C. (closed), 11–10 and 11–11–80

68487 10–15–80 / NSF—Advisory Committee for Materials Research, Subcommittee on Condensed Matter Sciences, additional session added, Washington, D.C. (closed), 10–27 and 10–28–80

68486 10–15–80 / NSF—Advisory Committee for Chemistry, Washington, D.C. (open and closed), 11–6 and 11–7–80

68813 10–16–80 / NSF—Engineering and Applied Science Advisory Committee, Washington, D.C. (open), 11–3–80

68812 10–16–80 / NSF—Humanities Panel, Washington, D.C. (closed), 11–3, 11–6 and 11–7–80

OTHER ITEMS OF INTEREST

68419 10–15–80 / Commerce—Renewal of Sea Grant Review Panel

68703 10–16–80 / CSA—Funding of the Center for Rural Affairs, Walthill, Nebraska, to carry out a two-year project of information dissemination, training, and monitoring of on-farm small-scale appropriate technologies based on work of previously CSA-funded Small Farm Energy Project

68899 10–16–80 / HHS/HRA—Grants for Predoctoral, Graduate, and Faculty Development Educational Programs in family medicine; guidelines; effective 10–16–80

68465 10–15–80 / HHS/NIH—Filing of annual committee reports with Library of Congress

68392 10–15–80 / HHS/PHS—Correction to grant-in-aid regulations published at 45 FR 12240, 2–25–80

[*See also* 45 FR 20096, 3–27–80]

68973 10–17–80 / HUD/CPD—Community development block grants; clarifications and changes to urban development action grant rules; congressional waiver request

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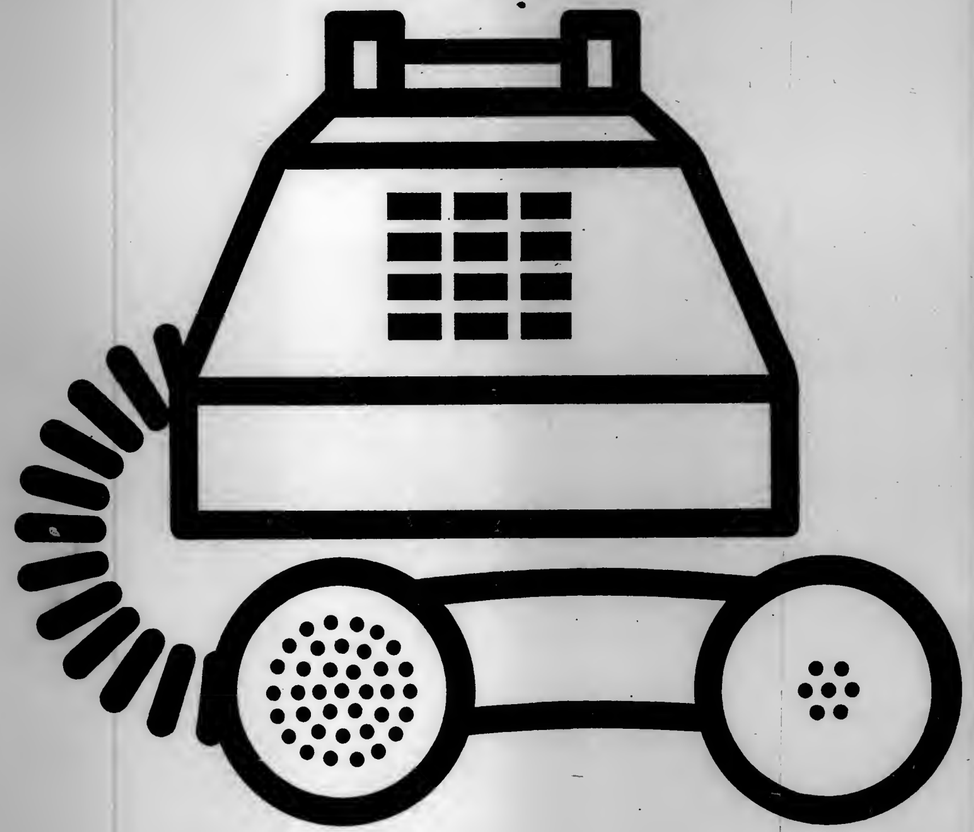
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Pages 70209-70426

federal register

Thursday
October 23, 1980

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Document Drafting Handbook
The Office of the Federal Register has issued a revised edition of the handbook. See the **Reader Aids** section of this issue for details.

70352 **Grant Programs—Social** Justice/NIC resolicits cooperative agreement grant entitled "National Institute of Corrections Training and Consulting Project"; apply by 11–21–80

70390 **Pipeline Safety** DOT/RSPA establishes new safety standards governing liquefied natural gas facilities used in transportation of gas by pipeline in or affecting interstate or foreign commerce (Part III of this issue)

70412 **Transportation** DOT/UMTA proposes regulations governing its program which provides funding for mass transportation projects that enhance urban development; comments by 12–8–80 (Part IV of this issue)

70366 **Mopeds** DOT/NHTSA advises the public of motorized bicycle safety guidelines for State programs

70313 **Grant Programs—Environmental Protection** EPA invites comments on and announces opportunity for hearing on its intent to award a grant to the State of Oregon to assist in the funding of its air pollution control program for fiscal year 1981

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

70221 **Loan Programs—Agriculture** USDA/CCC sets forth loan rates applicable to grades of 1980-crop fire cured, dark air-cured and sun-cured tobacco; effective 10–23–80

70282 **Grant Programs—Highway Safety** DOT/NHTSA proposes rules regarding award of innovative project grants to States and nonprofit organizations; comments by 12–1–80

70209 **Crop Insurance** USDA/FCIC prescribes procedures for allowing soybean crop insurance policyholders to replant acreage and to become eligible for replanting payment under certain conditions; effective 10–23–80

70217 **Loan Programs—Agriculture** USDA/CCC sets forth rules to enable eligible soybean producers to obtain loans and purchases on their 1980-crop; effective 10–22–80

70273 **Tires** DOT/NHTSA amends Uniform Tire Quality Grading Standards to provide for testing of metric tires; effective 10–23–80

70212 **Loan Programs—Agriculture** USDA/CCC sets forth rule that will enable eligible sorghum producers to obtain loans and purchases on their 1980-crop; effective 10–22–80

70249 **Transportation** DOT/UMTA provides guidance for urban transportation planning in small metropolitan areas

70237 **Airports** DOT/FAA amends regulations pertaining to charitable, religious, and political leafletting and soliciting at National and Dulles Airports; effective 10–26–80; comments by 11–24–80

70386 **Aviation Safety** DOT/FAA issues amendment to upgrade certification standards for combustion heater installations in small airplanes; effective 11–19–80 (Part II of this issue)

70294 **Wood** Commerce/ITA issues notice of allocation of fiscal year 1981 quotas for export of unprocessed western red cedar

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70372 **Sunshine Act Meetings**

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 431

[Amdt. No. 2]

Soybean Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule amends two sections of the Soybean Crop Insurance Policy to prescribe procedures for allowing soybean crop insurance policyholders to replant acreage to soybeans under certain conditions and to become eligible for a replanting payment under certain conditions. This rule is promulgated under the authority contained in the Federal Crop Insurance Act, as amended, and is intended to provide a benefit to those insured producers who are faced with replanting acreage to soybeans.

EFFECTIVE DATE: October 23, 1980.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone 202–447–3325.

The Final Impact Statement describing options considered in developing this final rule and the impact of implementing each option is available upon request from the above-named individual.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1955 (August 25, 1978), to implement Executive Order No. 12044 (March 23, 1978), and has been classified as "not significant".

The Federal Crop Insurance Corporation (FCIC) published a notice of proposed rulemaking in the **Federal Register** on Tuesday, August 12, 1980 (45 F.R. 53486–53487), proposing to amend two sections of the Soybean Crop Insurance Regulations (7 CFR 431) to provide procedures for allowing soybean growers (1) to replant acreage to soybeans under certain conditions, and (2) to become eligible for a replanting payment under certain conditions.

This amendment involves the Soybean Crop Insurance Regulations (7 CFR Part 431) as published in the **Federal Register** on Thursday, November 8, 1979 (44 FR 64786) and December 20, 1979 (44 FR 75374), effective with the 1981 crop year.

The purpose of the amendment is to allow growers of soybeans whose crops are insured by the Federal Crop Insurance Corporation to replant acreage with soybeans in the event that their original soybean crop is destroyed and be eligible for a replanting payment under certain conditions.

The replanting payment will indemnify growers who are faced with increased costs of production and possible lower yield due to the replanting.

The amendment to the Soybean Crop Insurance Policy involves subsection (7), "Notice of Damage or Loss", and subsection (8) of the 7 CFR 431(d), and the Appendix (Additional Terms and Conditions).

Under the provisions of Executive Order No. 12044 and the Administrative Procedure Act (5 U.S.C. 553(b) and (c)), the public was given an opportunity to submit written comments, data, and opinions on the proposed amendment, but none were received. Therefore, the amendment as contained in the proposed rule is hereby issued as a final rule to become effective starting with the 1981 crop year.

In compliance with the Secretary's Memorandum No. 1955 and "Improving USDA Regulations" (43 FR 50988), the review of these regulations contained in 7 CFR Part 431 for need, currency, clarity, and effectiveness must be completed prior to the sunset date of November 8, 1984.

Final rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends 7 CFR 431.7(d) of the Soybean Crop Insurance Regulations and the Appendix at the end of such regulations, as follows:

1. Sections 7 and 8 of the terms and conditions of the Soybean Crop Insurance Policy (7 CFR 431.7(d)), appearing at 44 FR 64786, are amended to read as follows:

§ 431.7 The application and policy.

* * * * *

(d) * * *

7. Notice of domage or loss. (a) Any notice of damage or loss shall be given promptly in writing by the insured to the Corporation at the office for the county.

(b) Notice shall be given promptly if (1) after June 1 the insured wants the consent of the Corporation to replant acreage damaged by an insured cause(s) in order to qualify for the replanting payment and such acreage is at least 25 acres or 10% of the insured acreage on the unit, (2) during the period before harvest, the soybeans on any unit are damaged to the extent that the insured does not expect to further care for the crop or harvest any part of it, or (3) the insured wants the consent of the Corporation to put the acreage to another use. No insured acreage shall be put to another use until the Corporation has made an appraisal of the potential production of such acreage and consents in writing to such other use. Consent to put acreage to another use (other than replanting to soybeans) shall not be given until it is too late or impractical to replant to soybeans. Notice shall also be given when such acreage has been replanted or put to another use.

(c) In addition to the notices required in subsection (b) of this section, if an indemnity is to be claimed on any unit, the insured shall give written notice thereof to the Corporation at the office for the county not later than 30 days after the earliest of (1) the date harvest is completed on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire soybean crop on the unit is destroyed, as determined by the Corporation. The Corporation reserves the right to provide additional time if it determines there are extenuating circumstances.

(d) Acreage upon which a replanting payment will be claimed shall be left intact until consent is given by the Corporation to replant.

(e) Any insured acreage which is not to be harvested and upon which an indemnity is to be claimed shall be left intact until inspected by the Corporation.

(f) The Corporation may reject any claim for indemnity if any of the requirements of this section are not met.

8. Cloim for Indemnity. (a) It shall be a condition precedent to the payment of any indemnity that the insured (1) establish the total production of soybeans on the unit and

that any loss of production was directly caused by one or more of the insured causes during the insurance period for the crop for which the indemnity is claimed and (2) furnish any other information regarding the manner and extent of loss as may be required by the Corporation.

(b) Indemnities shall be determined separately for each unit. The amount of indemnity for any unit shall be determined by (1) multiplying the insured acreage of soybeans on the unit by the applicable production guarantee per acre, which product shall be the production guarantee for the unit, (2) subtracting therefrom the total production of soybeans to be counted for the unit, (3) multiplying the remainder by the applicable price for computing indemnities, and (4) multiplying the result obtained in step (3) by the insured share: *Provided,* That if the premium computed on the insured acreage and share is more than the premium computed on the reported acreage and share, the amount of indemnity shall be computed on the insured acreage and share and then reduced proportionately.

(c) The total production to be counted for a unit shall be determined by the Corporation and shall include all harvested and appraised production.

(1) Mature production which grades No. 4 or better shall be reduced .12 percent for each .1 percentage point of moisture in excess of 14 percent; and if, due to insurable causes, any soybeans do not grade No. 4 or better in accordance with the Official U.S. Grain Standards, the production shall be adjusted by (i) dividing the value per bushel of the damaged soybeans (as determined by the Corporation) by the price per bushel of U.S. No. 2 soybeans and (ii) multiplying the result by the number of bushels of such soybeans. The applicable price for No. 2 soybeans shall be the local market price on the earlier of: The day the loss is adjusted or the day the damaged soybeans were sold.

(2) Appraised production to be counted shall include: (i) the greater of the appraised production or 50 percent of the applicable guarantee for any acreage which, with the consent of the Corporation, is planted before soybean harvest becomes general in the current crop year to any other crop insurable on such acreage (excluding any crop(s) maturing for harvest in the following calendar year), (ii) any appraisals by the Corporation for potential production on harvested acreage and for uninsured causes and poor farming practices, (iii) not less than the applicable guarantee for any acreage which is abandoned or put to another use without prior written consent of the Corporation or damaged solely by an uninsured cause, (iv) only the appraisal in excess of the lesser of 3 bushels or 20 percent of the production guarantee for all other unharvested acreage, and (v) the lesser of 3 bushels or 20% of the production guarantee for acreage on which a replanting payment has been made.

(d) The appraised potential production for acreage for which consent has been given to be put to another use shall be counted as production in determining the amount of loss under the contract.

However, If consent is given to put acreage to another use and the Corporation determines that any such acreage (1) is not put to another use before harvest of soybeans becomes general in the county, (2) is harvested, or (3) is further damaged by an insured cause before the acreage is put to another use, the indemnity for the unit shall be determined without regard to such appraisal and consent.

(e) A replanting payment shall be applicable to any insured acreage replanted after June 1 upon which the Corporation has given consent to be replanted: *Provided,* That the acreage replanted is at least 25 acres or 10 percent of the insured acreage for the unit. *Provided, however,* no payment will be made on acreage (1) initially planted prior to the date determined as reasonable by the Corporation or (2) on which a prior replanting payment has been made during the current crop year. The amount per acre of such payment will be the lesser of 3 bushels or 20 percent of the production guarantee multiplied by the applicable price for computing indemnities times the insured share: *Provided further,* That if the premium computed on the insured acreage and share is more than the premium computed on the reported acreage and share, the amount of replanting payment shall be computed on the insured acreage and share and then reduced proportionately.

(f) Any replanting payment will be considered as an indemnity with respect to all provisions of the policy and appendix except sections 7 and 8 of the policy.

2. By inserting a new subsection 1(i) in the Appendix appearing at 44 FR 64792, to read as follows:

Appendix—Additional Terms and Conditions

1. Meaning of Terms.

(a) * * *

* * * * * *

(i) "Replanting" means performing the agricultural practices necessary to replant insured acreage to the same crop.

3. By redesignating subsections (i), (j), and (k) of section 1 of the Appendix, appearing at 44 FR 64792, as follows:

1(i) is redesignated as 1(j)
1(j) is redesignated as 1(k)
1(k) is redesignated as 1(l)

(Sections 506, 516, 52 Stat. 73, as amended, 77, as amended (7 U.S.C. 1506, 1516))

Note.—The reporting requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942 and OMB Circular A–40.

This action will not have a significant impact, specifically on area and community development; therefore, review as required by OMB Circular A–95 is inapplicable.

Approved by the Board of Directors on July 14, 1980.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: October 20, 1980.

Approved by:

Everett S. Sharp,

Acting Manager.

[FR Doc. 80-33103 Filed 10-22-80; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 915

Avocados Grown in South Florida; Subpart—Container and Pack Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This amendment of the Florida avocado container regulation permits the use of containers of a more appropriate size for packing larger sizes of avocados. This action is necessary to provide for standardized packing practices and maintain orderly marketing conditions for Florida avocados in the interest of producers and consumers.

EFFECTIVE DATE: October 20, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975. The Final Impact Statement relative to this final rule is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: *Findings.* This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant." This amendment is issued under the marketing agreement, as amended, and Order No. 915, as amended (7 CFR Part 915), regulating the handling of avocados grown in south Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation submitted by the Avocado Administrative Committee, and upon other available information.

Section 915.305 (Avocado Regulation 5) under Subpart—Container and Pack Regulations requires that avocados shipped to fresh markets outside of the production area be in containers meeting certain packing and net weight requirements and size specifications. This amendment authorizes a container with inside dimensions of 13½ x 16½ x 5 inches. It requires that avocados packed in any such container be placed in one layer only and specifies a minimum net weight requirement of 12½ pounds of avocados. This amendment permits the use of containers of a more appropriate size for packing larger sizes of avocados. This action is necessary to provide for standardized packing practices and maintain orderly marketing conditions.

This action was recommended at a public meeting at which all present could state their views. There is insufficient time between the date when information became available upon which this final rule is based and when the action must be taken to warrant a 60-day comment period as recommended in E.O. 12044, and it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553). It is necessary to effectuate the declared policy of the act to make these regulatory provisions effective as specified, and these provisions relieve restrictions on the handling of avocados grown in south Florida.

Accordingly, it is found that the provisions of § 915.305 in Subpart—Container and Pack Regulations should be and are hereby amended by revising paragraph (a)(1), revising paragraph (a)(1)(x), deleting paragraph (a)(1)(ix), redesignating paragraphs (a)(1)(v), (a)(1)(vi), (a)(1)(vii), and (a)(1)(viii), as paragraphs (a)(1)(vi), (a)(1)(vii), (a)(1)(viii), and (a)(1)(ix), respectively, revising redesignated paragraph (a)(1)(ix), and adding a new paragraph (a)(1)(v) to read as follows:

§ 915.305 Avocado Container Regulation 5.

(a) *Order.* (1) On and after October 20, 1980, * * *

* * * * * *

(v) Containers with inside dimensions of 13½ x 16½ x 5 inches,

* * * * * *

(ix) With respect to the containers prescribed in paragraphs (a)(1)(ii) through (vi) of this section, all avocados packed in such containers shall be placed in one layer only and the net weight of all avocados in any such container shall be not less than 12½ pounds: *Provided,* That not to exceed five percent, by count, of such containers in any lot may fail to meet such weight requirement.

(x) With respect to the containers prescribed in paragraph (a)(1)(vii)

* * * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: October 20, 1980, to become effective October 20, 1980.

D. S. Kuryloski,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-33123 Filed 10-22-80; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 930

Cherries Grown in Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia and Maryland Revised Free and Restricted Percentages

AGENCY: Agricultural Marketing Service.

ACTION: Final rule.

SUMMARY: This regulation revises free and restricted percentages for red tart cherries effective during the period November 1–11, 1980, to permit the Cherry Administrative Board to offer about 18.9 million pounds of reserve pool cherrires for sale to handlers for use in normal commerical outlets.

EFFECTIVE DATE: November 1, 1980 to November 11, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone (202) 447–5975. The Final Impact Analysis relative to this final rule is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant". This regulation is issued under § 930.53 of marketing Order No. 930, which regulates the handling of cherries grown in eight designated states. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendation and information submitted by the Cherry Administrative Board, and other information. The Board is the agency established under the order to administer its terms and provisions.

Free and restricted percentages of 76 percent and 24 percent, respectively, for the 1980–81 fiscal period (May 1, 1980–April 30, 1981) are set forth in § 930.300 which was published in the **Federal Register** on July 9, 1980 (45 FR 46061). Such percentages were intended to provide a free tonnage of cherries of about 210 million pounds. Adverse weather during the season reduced the size of the cherry crop and, as a result, the free tonnage available to handlers was about 18.9 million pounds less than the amount intended.

Section 930.53(a) of the order requires the Board to determine the total quantity of free percentage cherries handled from the current crop as soon as practicable after completion of processing of the current crop of cherries. If the total quantity of such cherries handled is less than the quantity determined as the quantity which should be available for handling, the Board should recommend to the Secretary an appropriate revision of free and reserve percentages to become effective during a 10-day period. Such revision permits the Board to offer a quantity of reserve pool cherries for sale to handlers which would be necessary to make the total available supply for use in normal commercial outlets equal to the amount needed to meet the demand in such outlets.

This action revises the free and restricted percentages effective during the period November 1–11, 1980, to permit the Cherry Administrative Board to offer for sale to handlers approximately 18.9 million pounds of reserve pool cherries.

This action was recommended at a public meeting October 15, 1980, at which all present could state their views. There is insufficient time between the date when information became available upon which this final rule is based and when the action must be taken to warrant a 60-day comment

period as recommended in E.O. 12044. It is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553) in that (1) Handlers are aware of this action as proposed by the Cherry Administrative Board; (2) compliance with this regulation requires no preparation by handlers; and (3) this action relaxes restrictions relative to reserve pool cherries.

Therefore, § 930.300 (45 FR 46061) is revised to read as follows:

§ 930.300 Free and restricted percentages.

(a) Except as provided in paragraph (b) of this section, the free and restricted percentages applicable to all cherries acquired during the fiscal period May 1, 1980, through April 30, 1981, shall be 76 percent and 24 percent, respectively.

(b) The free and restricted percentages in paragraph (a) of this section are revised to 87 percent and 13 percent, respectively, effective during the period November 1–11, 1980, thereby permitting the Cherry Administrative Board to offer about 18.9 million pounds of reserve pool cherries (approximately 42 percent of the reserve pool) for sale to handlers in accordance with § 930.591.

(Secs. 1–19, 48 Stat. 31, as amended; (7 U.S.C. 601–674))

Dated: October 20, 1980.

D. S. Kuryloski,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-33125 Filed 10-22-80; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 984

Walnuts Grown in California; Expenses of the Walnut Marketing Board and Rate of Assessment for the 1980–81 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation authorizes expenses and a rate of assessment for the 1980–81 marketing year, to be collected from handlers to support activities of the Board which locally administers the Federal marketing order covering walnuts grown in California.

DATES: Effective August 1, 1980, through July 31, 1981.

FOR FURTHER INFORMATION CONTACT: J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, U.S. Department of Agriculture, Washington, D.C. 20250 (202) 447–5053.

SUPPLEMENTARY INFORMATION: Findings: Pursuant to Marketing Order No. 984, as amended (7 CFR Part 984), regulating the handling of walnuts grown in California, effective under the Agricultural Marketing Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Board, established under this marketing order, and upon other information, it is found that the expenses and rate of assessment, as hereinafter provided, will tend to effectuate the declared policy of the act.

It is further found that it is impractible, unnecessary, and contrary to the public interest to give preliminary notice and engage in public rulemaking, and that good cause exists for not postposing the effective time until 30 days after publication in the **Federal Register** (5 U.S.C. 553), as the order requires that the rate of assessment for a particular marketing year shall apply to all assessable walnuts from the beginning of such year which began August 1, 1980. To enable the Board to meet marketing year obligations, approval of the expenses and assessment rate is necessary without delay. Handlers and other interested persons were given an opportunity to submit information and views on the expenses and assessment rate at an open meeting of the Board. To effectuate the declared purposes of the act, it is necessary to make these provisions effective as specified.

Further, in accordance with procedures in Executive Order 12044, the emergency nature of this regulation warrants publication without opportunity for further comments. The regulation has not been classified significant under USDA criteria for implementing the Executive Order.

An Impact Analysis is available from J. S. Miller (202) 447–5053.

§ 984.332 Expenses and rate of assessment.

(a) Expenses that are reasonable and likely to be incurred by the Board during the 1980–81 marketing year, will amount to $599,300.

(b) The rate of assessment for said year payable by each handler in accordance with § 984.69 is fixed at 0.40 cent per 100 pounds kernelweight of certified merchantable walnuts.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: October 16, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 80-33124 Filed 10-22-80; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1421

[CCC Grain Price Support—1980-Crop Flaxseed Supplement]

1980-Crop Flaxseed Purchase Program; Grain and Similarly Handled Commodities

Correction

In FR Doc. 80–30053, appearing at page 64547 in the issue for Tuesday, September 30, 1980, make the following correction:

On page 64548, in the middle column, in § 1421.177, in the table, in list of counties under Minnesota, "Otter Trail" should have read "Otter Tail".

BILLING CODE 1505-01-M

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7 CFR Part 1421

[CCC Grain Price Support Regulations, 1980—Crop Sorghum Supplement]

1980—Crop Sorghum Loan and Purchase Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final Rule.

SUMMARY: The purpose of this rule is set forth the (1) final loan and purchase availability dates, (2) maturity dates, and (3) loan and purchase rates and premiums and discounts under which Commodity Credit Corporation (CCC) will extend price support on 1980-crop sorghum. This rule will enable eligible sorghum producers to obtain loans and purchases on their eligible 1980-crop sorghum.

EFFECTIVE DATE: October 22, 1980.

ADDRESS: Price Support and Loan Division, ACSC, USDA, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: W. W. Beesley, ASCS, (202) 447–7923.

With respect to the availability of an impact analysis, the increases in the basic county loan and purchase rates announced by this final rule were considered under the provisions of the "Notice of Determinations of the 1980 Crop Normal Crop Acreages (NCA), Established 'Target Prices,' Loan and Purchase Rates for Feed Grains, Soybeans, Wheat, and Rice, and Loan Rates for Upland and ELS Cotton" published in the **Federal Register** (945 FR 53501) on August 12, 1980, and specifically considered in the Final Impact Statement prepared for that action. Thus, the Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from Bruce R. Weber, Agricultural Program Specialist, Production Adjustment Division, ASCS–USDA, P.O. Box 2415, Washington, D.C. 20013, (202) 447–6688.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant." Also for, "Improving USDA Regulations" (43 FR 50988), initiation of review of the regulations contained in 7 CFR 1421.235–.239 for need, accuracy, clarity, and effectiveness will be made within the next five years. The next review will take into consideration problems, issues, etc., which are experienced in program administration during the intervening period.

A "Notice of Determinations of 1980-Crop Normal Crop Acreages (NCA) Established "Target" Prices, Loan and Purchase Rates for Feed Grains, Soybeans, Wheat, and Rice, and Loan Rates for Upland and Extra Long Staple (ELS) Cotton" was published in the **Federal Register** on August 12, 1980, (45 FR 53501), effective August 7, 1980. The notice included the Secretary's determination that the 1980 loan and purchase rate for sorghum was being increased to $3.82 per hundredweight in accordance with Section 105A of the Agricultural Act of 1949, as amended (7 U.S.C. 1444c). The announcement of this action by the Secretary had to be made immediately so that farmers could indicate their 1980 program participation. Therefore, it was and remains impractical and contrary to the public interest to comply with the public rulemaking requirements of 5 U.S.C. and Executive Order 12044. Thus, this final rule shall become effective upon filing with the Director, Office of the Federal Register.

This rule announces the individual basic county loan and purchase rates to conform with the above notice of determination which increased the national average loan and purchase rate to $3.82 per hundredweight for the 1980 crop of sorghum. Producers who wish to secure loans can do so by contacting their local county ASCS office or Agricultural Service Center.

The program title and number from the "Catalog of Federal Domestic Assistance" is Commodity Loan and Purchases, 10.051. This action will not have a significant impact specifically on area and community development. Therefore, review was established by OMB Circular A–95 was not used to assure that units of local government are informed of this action.

Final Rule

The General Regulations Governing Price Support for 1978 and Subsequent Crops and any amendments thereto, and the 1978 and Subsequent Crops Sorghum Loan and Purchase Regulations and any amendments thereto in this Part 1421 are further supplemented for the 1980 crop of sorghum. Accordingly, the regulations in 7 CFR § 1421. 235 through § 1421.239 and the title of the subpart are revised to read as provided below effective as to the 1980 crop of sorghum. The material previously appearing in these sections shall remain in full force and effect as to the crops to which it is applicable.

PART 1421—GRAINS AND OTHER SIMILARLY HANDLED COMMODITIES

Subpart—1980-Crop Sorghum Loan and Purchase Program

Sec.

1421.235 Purpose.
1421.236 Availability.
1421.237 Maturity of loans.
1421.238 Warehouse charges.
1421.239 Loan and purchase rates and premiums and discounts.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714b and c); Secs. 105A, 401, 63 Stat. 1051, as amended (7 U.S.C. 1444c, 1421).

§ 1421.111 Purpose.

This supplement contains additonal program provisions which, toegether with the provisions of the General Regulations Governing Price Support for the 1978 and Subsequent Crops, the 1978 and Subsequent Crop Sorghum Loan and Purchase Program regulations and any amendments thereto, apply to loans on and purchases of the 1980 crop of sorghum.

§ 1421.112 Availability.

(a) Loans. Producers desiring to participate in the program through loans must request a loan on their 1980 crop of eligible sorghum on or before May 31, 1981.

(b) Purchases. A producer desiring to offer eligible 1980-crop sorghum not under loan for purchase must execute and deliver to the county ASCS office on or before May 31, 1981, a Purchase Agreement (Form CCC–614) indicating the approximate quantity of 1980-crop sorghum the producer will sell to CCC.

§ 1421.113 Maturity of loans

Loans mature on demand but not later than the last day of the ninth calendar month following the month the loan is disbursed.

§ 1421.114 Warehouse charges.

If storage is not provided for through loan maturity, the county ASCS office shall deduct storage charges at the daily storage rate for the storing warehouse times the number of days from the date the commodity was received or date through which storage has been provided for to the maturity date.

§ 1421.115 Loan and purchase rates, premiums and discounts.

(a) *Basic loan and purchase rates (counties).* Basic rates per hundredweight (cwt) for loan settlement purposes for sorghum are established for sorghum grading No. 2 or better are as follows:

1980-Crop Sorghum Loan and Purchase Rates

[Basic County Loan and Purchase Rates for Sorghum No. 2 or Better]

County	Rate per Cwt
Alabama	
All Counties	$3.81
Arizona	
Apache	3.83
Cochise	4.05
Coconino	3.83
Gila	3.83
Graham	3.87
Greenlee	3.83
Maricopa	4.19
Mohave	4.31
Navajo	3.83
Pima	4.11
Pinal	4.19
Santa Cruz	4.06
Yavapai	3.83
Yuma	4.24
Wght. State Avg	4.11
Arkansas	
Arkansas	3.86
Ashley	3.82
Baxter	3.74
Benton	3.71
Boone	3.72
Bradley	3.80
Calhoun	3.79
Carroll	3.70
Chicot	3.82
Clark	3.78
Clay	3.88
Cleburne	3.81
Cleveland	3.82
Columbia	3.80
Conway	3.78
Craighead	3.89
Crawford	3.76
Crittenden	3.90
Cross	3.89
Dallas	3.80
Desha	3.84
Drew	3.82
Faulkner	3.80
Franklin	3.75
Fulton	3.79
Garland	3.76
Grant	3.77
Greene	3.88
Hampstead	3.79
Hot Spring	3.77

1980-Crop Sorghum Loan and Purchase Rates—Continued

[Basic County Loan and Purchase Rates for Sorghum No. 2 or Better]

County	Rate per Cwt
Arkansas—Continued	
Howard	3.77
Independence	3.81
Izard	3.77
Jackson	3.86
Jefferson	3.82
Johnson	3.75
Lafayette	3.81
Lawrence	3.68
Lee	3.89
Lincoln	3.83
Little River	3.79
Logan	3.75
Lonoke	3.84
Madison	3.71
Marion	3.72
Miller	3.81
Mississippi	3.90
Monroe	3.86
Montgomery	3.75
Nevada	3.78
Newton	3.73
Ouachita	3.79
Perry	3.77
Phillips	3.69
Pike	3.77
Poinsett	3.89
Polk	3.76
Pope	3.78
Prairie	3.86
Pulaski	3.82
Randolph	3.85
St. Francis	3.89
Saline	3.77
Scott	3.76
Searcy	3.74
Sebastian	3.76
Sevier	3.77
Sharp	3.81
Stone	3.77
Union	3.80
Van Buren	3.79
Washington	3.72
White	3.84
Woodruff	3.87
Yell	3.77
Wght. State Avg	3.66
California	
Alameda	4.33
Amador	4.32
Butte	4.22
Calaveras	4.32
Colusa	4.26
Contra Costa	4.33
El Dorado	4.31
Fresno	4.25
Glenn	4.23
Humboldt	3.97
Imperial	4.28
Inyo	4.04
Kern	4.29
Kings	4.24
Lake	4.18
Lassen	4.01
Los Angeles	4.33
Madera	4.26
Marin	4.29
Mariposa	4.28
Mendocino	4.06
Merced	4.29
Modoc	4.00
Monterey	4.20
Napa	4.27
Orange	4.33
Placer	4.26
Plumas	4.06
Riverside	4.28
Sacramento	4.33
San Benito	4.26
San Bernardino	4.31
San Diego	4.33
San Francisco	4.33
San Joaquin	4.33
San Louis Obispo	4.17
San Mateo	4.32
Santa Barbara	4.20
Santa Clara	4.33
Santa Cruz	4.25
Shasta	4.03
Sierra	4.10
Siskiyou	3.99
Solano	4.32
Sonoma	4.26
Stanislaus	4.33
Sutter	4.26
Tehama	4.21
Tulare	4.23
Tuolumne	4.26
Ventura	4.30
Yolo	4.26
Yuba	4.25
Wght. State Avg	4.27
Colorado	
Baca	3.77
All other counties	3.72
Wght. State Avg	3.72
Delaware	
All counties	3.86
Florida	
All counties	3.81
Georgia	
All counties	3.86
Idaho	
All counties	3.59
Illinois	
Alexander	3.85
Bond	3.77
Calhoun	3.73
Clay	3.77
Clinton	3.79
Edwards	3.79
Franklin	3.80
Gallatin	3.79
Hamilton	3.81
Hardin	3.82
Jackson	3.82
Jefferson	3.79
Jersey	3.73
Johnson	3.83
Lawrence	3.75
Madison	3.79
Marion	3.78
Massac	3.64
Monroe	3.79
Perry	3.80
Pope	3.83
Pulaski	3.85
Randolph	3.80
Richland	3.78
St. Clair	3.79
Saline	3.81
Union	3.84
Wabash	3.76
Washington	3.79
Wayne	3.79
White	3.79
Williamson	3.82
All other counties	3.67
Wght. State Avg	3.79
Indiana	
All counties	3.73
Iowa	
Adair	3.71
Adams	3.70
Appanoose	3.87
Audubon	3.89
Calhoun	3.64
Carroll	3.68
Cass	3.72
Clarke	3.86
Crawford	3.69
Decatur	3.89
Fremont	3.72
Greene	3.65
Guthrie	3.68
Harrison	3.71
Ida	3.88
Lucas	3.67
Madison	3.69
Marion	3.84
Mills	3.72
Monona	3.70
Monroe	3.65
Montgomery	3.72
Page	3.72
Pottawattamie	3.72
Ringgold	3.71
Sac	3.68
Shelby	3.70
Taylor	3.71
Union	3.69
Warren	3.67
Wayne	3.66
Woodbury	3.66
All other counties	3.60
Wght. State Avg	3.67
Kansas	
Allen	3.79
Anderson	3.80
Atchison	3.83
Barber	3.70
Barton	3.66
Bourbon	3.80
Brown	3.80
Butler	3.71
Chase	3.78
Chautauqua	3.75
Cherokee	3.78
Cheyenne	3.63
Clark	3.70
Clay	3.71
Cloud	3.70
Coffey	3.78
Comanche	3.70
Cowley	3.71
Crawford	3.78
Decatur	3.65
Dickinson	3.71
Doniphan	3.79
Douglas	3.81
Edwards	3.65
Elk	3.75
Ellis	3.68
Ellsworth	3.68
Finney	3.67
Ford	3.70
Franklin	3.82
Geary	3.75
Gove	3.66
Graham	3.65
Grant	3.67
Gray	3.69
Greeley	3.83
Greenwood	3.76
Hamilton	3.65
Harper	3.70
Harvey	3.70
Haskell	3.68
Hodgeman	3.68
Jackson	3.81
Jefferson	3.82
Jewell	3.68
Johnson	3.82
Kearny	3.65
Kingman	3.89
Kiowa	3.86
Labette	3.78
Lane	3.84
Leavenworth	3.83
Lincoln	3.69
Linn	3.82
Logan	3.64
Lyon	3.77
McPherson	3.70
Marion	3.71
Marshall	3.75
Meade	3.69
Miami	3.82
Mitchell	3.68
Montgomery	3.78
Morris	3.75
Morton	3.69
Nemaha	3.77
Neosho	3.79
Ness	3.65
Norton	3.68
Osage	3.79
Osborne	3.68
Ottawa	3.70
Pawnee	3.68
Phillips	3.66

1980-Crop Sorghum Loan and Purchase Rates—Continued

[Basic County Loan and Purchase Rates for Sorghum No. 2 or Better]

County	Rate per Cwt
Kansas—Continued	
Pottawatomie	3.77
Pratt	3.68
Rawlins	3.64
Reno	3.68
Republic	3.70
Rice	3.68
Riley	3.75
Rooks	3.68
Rush	3.66
Russell	3.68
Saline	3.70
Scott	3.64
Sedgwick	3.70
Seward	3.69
Shawnee	3.80
Sheridan	3.66
Sherman	3.63
Smith	3.67
Stafford	3.66
Stanton	3.87
Stevens	3.69
Sumner	3.70
Thomas	3.64
Trego	3.66
Wabaunsee	3.77
Wallace	3.63
Washington	3.78
Wichita	3.64
Wilson	3.78
Woodson	3.77
Wyandotte	3.83
Wght. State Avg	3.72
Kentucky	
All counties	3.81
Louisiana	
All counties	3.83
Maryland	
All counties	3.86
Michigan	
All counties	3.68
Minnesota	
All counties	3.63
Mississippi	
All counties	3.81
Missouri	
Adair	3.68
Andrew	3.79
Atchison	3.71
Audrain	3.71
Barry	3.69
Barton	3.73
Bates	3.79
Benton	3.73
Bollinger	3.82
Boone	3.70
Buchanan	3.81
Butler	3.68
Caldwell	3.81
Callaway	3.69
Camden	3.72
Cape Girardeau	3.83
Carroll	3.60
Carter	3.82
Cass	3.81
Cedar	3.72
Charlton	3.79
Christian	3.70
Clark	3.81
Clay	3.83
Clinton	3.82
Cole	3.69
Cooper	3.73
Crawford	3.72
Dade	3.69
Dallas	3.72
Daviess	3.76
De Kalb	3.76
Dent	3.75
Douglas	3.75
Dunklin	3.91
Franklin	3.76
Gasconade	3.70
Gentry	3.72
Greene	3.69
Grundy	3.75
Harrison	3.71
Henry	3.77
Hickory	3.73
Holt	3.74
Howard	3.73
Howell	3.78
Iron	3.81
Jackson	3.83
Jasper	3.72
Jefferson	3.79
Johnson	3.79
Knox	3.65
Laclede	3.72
Lafayette	3.81
Lawrence	3.69
Lewis	3.83
Lincoln	3.73
Linn	3.73
Livingston	3.79
McDonald	3.69
Macon	3.70
Madison	3.82
Maries	3.70
Marion	3.65
Mercer	3.71
Miller	3.71
Mississippi	3.84
Moniteau	3.69
Monroe	3.70
Montgomery	3.72
Morgan	3.73
New Madrid	3.87
Newton	3.69
Nodaway	3.74
Oregon	3.81
Osage	3.70
Ozark	3.76
Pemiscot	3.92
Perry	3.81
Pettis	3.73
Phelps	3.70
Pike	3.70
Platte	3.83
Polk	3.70
Pulaski	3.70
Putnam	3.69
Ralls	3.68
Randolph	3.71
Ray	3.83
Reynolds	3.77
Ripley	3.87
St. Charles	3.75
St. Clair	3.75
St. Francois	3.79
Ste. Genevieve	3.80
St. Louis	3.79
Saline	3.77
Schuyler	3.63
Scotland	3.61
Scott	3.83
Shannon	3.77
Shelby	3.67
Stoddard	3.85
Stone	3.70
Sullivan	3.69
Taney	3.72
Texas	3.72
Vernon	3.76
Warren	3.74
Washington	3.78
Wayne	3.65
Webster	3.69
Worth	3.72
Wright	3.71
Wght. State Avg	3.78
Nebraska	
Antelope	3.67
Burt	3.70
Butler	3.69
Cass	3.71
Colfax	3.69
Cuming	3.69
Dodge	3.70
Douglas	3.71
Gage	3.71
Hall	3.66
Hamilton	3.67
Jefferson	3.68
Johnson	3.71
Lancaster	3.70
Madison	3.68
Merrick	3.66
Nemaha	3.72
Otoe	3.70
Pawnee	3.72
Pierce	3.68
Platte	3.68
Polk	3.68
Richardson	3.74
Saline	3.70
Sarpy	3.71
Saunders	3.70
Seward	3.70
Stanton	3.69
Thayer	3.66
Thurston	3.69
Washington	3.71
York	3.69
All other counties	3.65
Wght. State Avg	3.68
Nevada	
All counties	3.75
New Mexico	
Chaves	3.82
Curry	3.84
De Baca	3.81
Guadalupe	3.81
Harding	3.83
Hidalgo	3.87
Lea	3.84
Luna	3.87
Quay	3.84
Roosevelt	3.84
Union	3.80
All other counties	3.79
Wght. State Avg	3.84
North Carolina	
All counties	3.86
North Dakota	
All counties	3.58
Ohio	
All counties	3.73
Oklahoma	
Adair	3.86
Alfalfa	3.84
Atoka	3.94
Beaver	3.81
Beckham	3.80
Blaine	3.91
Bryan	3.94
Caddo	3.93
Canadian	3.92
Carter	3.94
Cherokee	3.91
Choctaw	3.94
Cimarron	3.81
Cleveland	3.94
Coal	3.94
Comanche	3.93
Cotton	3.93
Craig	3.84
Creek	3.92
Custer	3.91
Delaware	3.86
Dewey	3.85
Ellis	3.85
Garfield	3.87
Garvin	3.94
Grady	3.94
Grant	3.84
Greer	3.81
Harmon	3.90
Harper	3.81
Haskell	3.92
Hughes	3.93
Jackson	3.91
Jefferson	3.94
Johnston	3.94
Kay	3.84
Kingfisher	3.90
Kiowa	3.93
Latimer	3.93
Le Flore	3.92
Lincoln	3.93

1980-Crop Sorghum Loan and Purchase Rates—Continued

[Basic County Loan and Purchase Rates for Sorghum No. 2 or Better]

County	Rate per Cwt
Oklahoma—Continued	
Logan	3.90
Love	3.94
McClain	3.94
McCurtain	3.92
McIntosh	3.92
Major	3.85
Marshall	3.95
Mayes	3.86
Murray	3.94
Muskogee	3.92
Noble	3.86
Nowata	3.84
Okfuskee	3.92
Oklahoma	3.93
Okmulgee	3.92
Osage	3.86
Ottawa	3.84
Pawnee	3.89
Payne	3.90
Pittsburg	3.93
Pontotoc	3.94
Pottawatomie	3.93
Pushmataha	3.94
Roger Mills	3.88
Rogers	3.86
Seminole	3.93
Sequoyah	3.91
Stephens	3.94
Texas	3.81
Tillman	3.91
Tulsa	3.91
Wagoner	3.90
Washington	3.83
Washita	3.91
Woods	3.84
Woodward	3.83
Wght. State Avg	3.84
Oregon	
All counties	3.74
Pennsylvania	
All counties	3.86
South Carolina	
All counties	3.86
South Dakota	
Bon Homme	3.67
Clay	3.69
Hutchinson	3.66
Lincoln	3.66
Turner	3.66
Union	3.69
Yankton	3.69
All other counties	3.65
Wght. State Avg	3.65
Tennessee	
Shelby	3.93
All other counties	3.81
Wght. State Avg	3.81
Texas	
Anderson	4.01
Andrews	3.80
Angelina	4.06
Aransas	4.14
Archer	3.90
Armstrong	3.85
Atascosa	4.06
Austin	4.11
Bailey	3.84
Bandera	4.02
Bastrop	4.01
Baylor	3.90
Bee	4.13
Bell	3.98
Bexar	4.01
Blanco	4.02
Borden	3.82
Bosque	3.94
Bowie	3.91
Brazoria	4.14
Brazos	4.05
Brewster	3.73
Briscoe	3.88
Brooks	4.12
Brown	3.92
Burleson	4.03
Burnet	4.01
Caldwell	4.02
Calhoun	4.10
Callahan	3.90
Cameron	4.18
Camp	3.92
Carson	3.85
Cass	3.91
Castro	3.84
Chambers	4.18
Cherokee	3.98
Childress	3.88
Clay	3.92
Cochran	3.94
Coke	3.88
Coleman	3.91
Collin	3.94
Collingsworth	3.87
Colorado	4.08
Comal	4.01
Comanche	3.94
Concho	3.92
Cooke	3.94
Coryell	3.95
Cottle	3.86
Crane	3.80
Crockett	3.78
Crosby	3.88
Culberson	3.73
Dallam	3.80
Dallas	3.94
Dawson	3.82
Deaf Smith	3.84
Delta	3.93
Denton	3.94
DeWitt	4.07
Dickens	3.88
Dimmit	3.95
Donley	3.85
Duval	4.09
Eastland	3.83
Ector	3.79
Edwards	3.92
Ellis	3.94
El Paso	3.73
Erath	3.94
Falls	4.00
Fannin	3.94
Fayette	4.03
Fisher	3.88
Floyd	3.86
Foard	3.86
Fort Bend	4.14
Franklin	3.92
Freestone	3.99
Frio	3.97
Gaines	3.83
Galveston	4.18
Garza	3.85
Gillespie	4.00
Glasscock	3.82
Goliad	4.13
Gonzales	4.03
Gray	3.85
Grayson	3.95
Gregg	3.91
Grimes	4.10
Guadalupe	4.01
Hale	3.84
Hall	3.86
Hamilton	3.94
Hansford	3.80
Hardeman	3.88
Hardin	4.18
Harris	4.18
Harrison	3.92
Hartley	3.80
Haskell	3.90
Hays	4.01
Hemphill	3.83
Henderson	3.97
Hidalgo	4.15
Hill	3.95
Hockley	3.84
Hood	3.94
Hopkins	3.93
Houston	4.08
Howard	3.82
Hudspeth	3.74
Hunt	3.94
Hutchinson	3.80
Irion	3.84
Jack	3.94
Jackson	4.06
Jasper	4.08
Jeff Davis	3.74
Jefferson	4.18
Jim Hogg	4.09
Jim Wells	4.15
Johnson	3.94
Jones	3.90
Karnes	4.11
Kaufman	3.94
Kendall	4.02
Kenedy	4.12
Kent	3.88
Kerr	4.01
Kimble	3.96
King	3.89
Kinney	3.94
Kleberg	4.15
Knox	3.90
Lamar	3.93
Lamb	3.84
Lampasas	3.96
La Salle	3.96
Lavaca	4.04
Lee	4.03
Leon	4.01
Liberty	4.14
Limestone	3.99
Lipscomb	3.80
Live Oak	4.11
Lleno	3.98
Loving	3.79
Lubbock	3.84
Lynn	3.84
McCulloch	3.92
McLennan	3.98
McMullen	4.02
Madison	4.05
Marion	3.92
Martin	3.82
Mason	3.96
Matagorda	4.12
Maverick	3.88
Medina	4.00
Menard	3.92
Midland	3.81
Milam	4.02
Mills	3.94
Mitchell	3.85
Montague	3.94
Montgomery	4.15
Moore	3.80
Morris	3.92
Motley	3.88
Nacogdoches	3.99
Navarro	3.98
Newton	4.08
Nolan	3.88
Nueces	4.18
Ochiltree	3.80
Oldham	3.84
Orange	4.14
Palo Pinto	3.94
Panola	3.98
Parker	3.94
Parmer	3.84
Pecos	3.78
Polk	4.11
Potter	3.84
Presidio	3.73
Reins	3.93
Randall	3.84
Reagan	3.81
Real	3.99
Red River	3.92
Reeves	3.80
Refugio	4.15
Roberts	3.81
Robertson	4.01
Rockwall	3.94
Runnels	3.89
Rusk	3.95
Sabine	4.03
San Augustine	4.03
San Jacinto	4.09
San Patricio	4.18
San Saba	3.93
Schleicher	3.85
Scurry	3.85
Shackelford	3.91
Shelby	3.99
Sherman	3.80
Smith	3.95
Somervell	3.94
Starr	4.11
Stephens	3.93
Sterling	3.84
Stonewall	3.90
Sutton	3.90
Swisher	3.84
Tarrant	3.94
Taylor	3.90
Terrell	3.79
Terry	3.84
Throckmorton	3.91
Titus	3.92
Tom Green	3.88
Travis	4.01
Trinity	4.07
Tyler	4.08
Upshur	3.92
Upton	3.79
Uvalde	3.89
Val Verde	3.88
Van Zandt	3.93
Victoria	4.10
Walker	4.10
Waller	4.12
Ward	3.80
Washington	4.11
Webb	3.96
Wharton	4.10
Wheeler	3.86
Wichita	3.89
Wilbarger	3.89
Willacy	4.17
Williamson	4.01
Wilson	4.06
Winkler	3.79
Wise	3.94
Wood	3.93
Yoakum	3.84
Young	3.93
Zapata	4.08
Zavala	3.93
Wght. State Avg	3.96
Utah	
All counties	3.72
Virginia	
All counties	3.86
Washington	
All counties	3.74
Wisconsin	
All counties	3.63
Wyoming	
All counties	3.84

(b) Schedule of Discounts for 1980-Crop Sorghum:

	Cents per hundredweight
1. Discounts apply per hundredweight—Test Weight, lbs:	
51.0 to 51.9	—1
52.0 to 52.9	—2
2. Total damaged kernels, percent:	
5.1 to 6.0	—2
6.1 to 7.0	—4
7.1 to 8.0	—6
8.1 to 9.0	—8
9.1 to 10.0	—10
10.1 to 11.0	—12
11.1 to 12.0	—14
12.1 to 13.0	—16
13.1 to 14.0	—18
14.1 to 15.0	—20
3. Heat damaged kernels, percent:	
.051 to 1.00	—2
1.01 to 2.00	—6
2.01 to 3.00	—10
4. Broken kernels, foreign material and other grains, percent:	
8.1 to 9.0	—2
9.1 to 10.0	—4
10.1 to 11.0	—6
11.1 to 12.0	—8
12.1 to 13.0	—10
13.1 to 14.0	—12
14.1 to 15.0	—14
5. Weed Control Law (where required by § 1421.24)	—15

6. *Other.* Sorghum with quality factors exceeding limits shown in foregoing schedule or sorghum that (1) contains in excess of 14.0 percent moisture, (2) is weevily, (3) is musty, or (4) is sour, shall not be eligible for loan. In the event quantities of sorghum exceeding limits shown are delivered in satisfaction of loan obligations, such quantities will be discounted on the basis of the schedule of discounts as provided by the Kansas City Commodity Office for settlement purposes. Such discounts will be established not later than the time delivery of sorghum to CCC begins and will thereafter be adjusted from time to time as CCC determines appropriate to reflect changes in market conditions. Producers may obtain schedule of such factors and discounts at county ASCS offices approximately one month prior to the loan maturity date.

Signed at Washington, D.C. on October 16, 1980.

John W. Goodwin,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 80-33081 Filed 10-22-80; 8:45 am]

BILLING CODE 3410-05-M

7 CFR Part 1421

[CCC Grain Price Support Regs., 1980—Crop Soybeans Supplement]

1980—Crop Soybeans Loan and Purchase Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to set forth the (1) final loan and purchase availability dates, (2) maturity dates, and (3) loan and purchase rates and premiums and discounts under which Commodity Credit Corporation (CCC) will extend price support on 1980-crop soybeans. This rule will enable eligible soybean producers to obtain loans and purchases on their eligible 1980-crop soybeans.

EFFECTIVE DATE: October 23, 1980.

ADDRESS: Price Support and Loan Division, ASCS, USDA, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Thomas Fink, ASCS, (202) 447-7923.

With respect to the availability of an impact analysis, the increases in the basic county loan and purchase rates announced by this final rule were considered under the provisions of the "Notice of Determinations of the 1980 Crop Normal Crop Acreages (NCA), Established 'Target Prices', Loan and Purchase Rates for Feed Grains, Soybeans, Wheat, and Rice, and Loan Rates for Upland and ELS Cotton" published in the **Federal Register** (45 FR 53501) on August 12, 1980, and specifically considered in the Final Impact Statement prepared for that action. Thus, the Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from Bruce R. Weber, Agricultural Program Specialist, Production Adjustment Division, ASCS-USDA, P.O. Box 2415, Washington, D.C., 20013, (202) 447-6688.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant." Also for "improving USDA Regulations" (43 FR 50988), initiation of review of the regulations contained in 7 CFR 1421.390-.394 for need, accuracy, clarity, and effectiveness will be made within the next five years. The next review will take into consideration problems, issues, etc., which are experienced in program administration during the intervening period.

A "Notice of Determinations of 1980-Crop Normal Crop Acreages (NCA) Established 'Target' Prices, Loan and Purchase Rates for Feed Grains, Soybeans, Wheat, and Rice, and Loan Rates for Upland and Extra Long Staple (ELS) Cotton" was published in the **Federal Register** on August 12, 1980, (45 FR 53501), effective August 7, 1980. The notice included the Secretary's determination that the 1980 loan and purchase rate for soybeans was being increased to $5.02 per bushel in accordance with Section 201 of the Agricultural Act of 1949, as amended (7 USC 1446, 1421). The announcement of this action by the Secretary had to be made immediately so that farmers could indicate their 1980 program

participation. Therefore, it was and remains impractical and contrary to the public interest to comply with the public rulemaking requirements of 5 U.S.C. 553 and Executive Order 12044. Thus, this final rule shall become effective upon filing with the Director, Office of the Federal Register.

This rule announces the individual basic county loan and purchase rates to conform with the above notice of determination which increased the national average loan and purchase rate to $5.02 per bushel for the 1980 crop of soybeans. Producers who wish to secure loans can do so by contacting their local county ASCS office or Agricultural Service Center.

The program title and number from the "Catalog of Federal Domestic Assistance" is Commodity Loan and Purchases, 10.051. This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A-95 was not used to assure that units of local government are informed of this action.

Final Rule

The General Regulations Governing Price Support for 1978 and Subsequent Crops and any amendments thereto, and the 1978 and Subsequent Crops Soybean Loan and Purchase Regulations and any amendments thereto in this Part 1421 are further supplemented for the 1980 crop of soybeans. Accordingly, the regulations in 7 CFR 1421.390 through 1421.394 and the title of the subpart are revised to read as provided below effective as to the 1980 crop of soybeans. The material previously appearing in these sections shall remain in full force and effect as to the crops to which it is applicable.

PART 1421—GRAINS AND OTHER SIMILARLY HANDLED COMMODITIES

Subpart—1980—Crop Soybeans Loan and Purchase Program

Sec.

1421.390 Purpose.
1421.391 Availability.
1421.392 Maturity of loans.
1421.393 Warehouse charges.
1421.394 Loan and purchase rates and premiums and discounts.

Authority: Secs. 4, 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); secs. 201, 401, 63 Stat. 1051, as amended (7 U.S.C. 1446, 1421).

Subpart—1980—Crop Soybeans Loan and Purchase Program

§ 1421.390 Purpose.

This supplement contains additional program provisions which, together with the provisions of the General Regulations Governing Price Support for the 1978 and Subsequent Crops, the 1978 and Subsequent Crop Soybean Loan and Purchase Program regulations and any amendments thereto, apply to loans on and purchases of the 1980 crop of soybeans.

§ 1421.391 Availability.

(a) *Loans.* Producers desiring to participate in the program through loans must request a loan on their 1980 crop of eligible soybeans on or before May 31, 1981.

(b) *Purchases.* A producer desiring to offer eligible 1980-crop soybeans not under loan for purchase must execute and deliver to the county ASCS office on or before May 31, 1981, a Purchase Agreement (Form CCC-614) indicating the approximate quantity of 1980-crop soybeans the producer will sell to CCC.

§ 1421.392 Maturity of loans.

Loans mature on demand but not later than the last day of the ninth calendar month following the month the loan is disbursed.

§ 1421.393 Warehouse charges.

If storage is not provided for through loan maturity, the county ASCS office shall deduct storage charges at the daily storage rate for the storing warehouse times the number of days from the date the commodity was received or date through which storage has been provided for to the maturity date.

§ 1421.394 Loan and purchase rates, premiums and discounts.

(a) *Basic loan and purchase rates (counties).* Basic county rates per bushel for loan and settlement purposes for soybeans of the classes Green and Yellow containing 12.8 to 13.0 percent moisture and grading not lower than No. 2 on the factors of test weight, splits, and heat damage and No. 1 on all other factors are as follows:

1980—Crop Soybeans

County	Rate per bushel
Alabama	
All counties	$5.00
Arizona	
All counties	4.86
Arkansas	
Arkansas	5.07
Ashley	5.06
Baxter	5.02
Benton	4.96
Boone	4.99
Bradley	5.06
Calhoun	5.04
Carroll	4.98
Chicot	5.06
Clark	5.02
Clay	5.06
Cleburne	5.03
Cleveland	5.06
Columbia	5.02
Conway	5.03
Craighead	5.05
Crawford	4.99
Crittenden	5.07
Cross	5.07
Dallas	5.04
Desha	5.08
Drew	5.06
Faulkner	5.04
Franklin	5.00
Fulton	5.03
Garland	5.02
Grant	5.04
Greene	5.06
Hempstead	4.99
Hot Spring	5.03
Howard	4.98
Independence	5.03
Izard	5.03
Jackson	5.05
Jefferson	5.05
Johnson	5.01
Lafayette	4.99
Lawrence	5.05
Lee	5.07
Lincoln	5.06
Little River	4.99
Logan	5.00
Lonoke	5.06
Madison	4.98
Marion	5.01
Miller	4.99
Mississippi	5.07
Monroe	5.07
Montgomery	4.99
Nevada	5.01
Newton	4.99
Ouachita	5.03
Perry	5.03
Phillips	5.07
Pike	4.99
Pomsett	5.05
Polk	4.99
Pope	5.02
Prairie	5.07
Pulaski	5.04
Randolph	5.05
St. Francis	5.07
Saline	5.03
Scott	4.99
Searcy	5.01
Sebastian	4.99
Sevier	4.98
Sharp	5.05
Stone	5.03
Union	5.04
Van Buren	5.02
Washington	4.97
White	5.04
Woodruff	5.07
Yell	5.01
Wght. State avg	5.06
California	
All counties	4.88
Colorado	
All counties	4.91
Delaware	
All counties	5.00
Florida	
All counties	5.00
Georgia	
All counties	5.00
Illinois	
Adams	5.07
Alexander	5.07
Bond	5.09
Boone	5.06
Brown	5.08
Bureau	5.06
Calhoun	5.07
Carroll	5.04
Cass	5.09
Champaign	5.10
Christian	5.10
Clark	5.09
Clay	5.08
Clinton	5.07
Coles	5.09

1980—Crop Soybeans—Continued

County	Rate per bushel
Cook	5.10
Crawford	5.08
Cumberland	5.09
De Kalb	5.08
De Witt	5.10
Douglas	5.09
Du Page	5.10
Edgar	5.09
Edwards	5.03
Effingham	5.09
Fayette	5.09
Ford	5.10
Franklin	5.03
Fulton	5.08
Gallatin	5.02
Greene	5.08
Grundy	5.10
Hamilton	5.03
Hancock	5.07
Hardin	5.02
Henderson	5.06
Henry	5.06
Iroquois	5.10
Jackson	5.07
Jasper	5.09
Jefferson	5.04
Jersey	5.07
Jo Daviess	5.04
Johnson	5.05
Kane	5.09
Kankakee	5.10
Kendall	5.09
Knox	5.08
Lake	5.09
La Salle	5.08
Lawrence	5.08
Lee	5.06
Livingston	5.10
Logan	5.10
McDonough	5.08
McHenry	5.07
McLean	5.10
Macon	5.10
Macoupin	5.09
Madison	5.06
Marion	5.06
Marshall	5.10
Mason	5.09
Massac	5.01
Menard	5.09
Mercer	5.05
Monroe	5.07
Montgomery	5.09
Morgan	5.09
Moultrie	5.09
Ogle	5.06
Peoria	5.09
Perry	5.06
Piatt	5.10
Pike	5.07
Pope	5.02
Pulaski	5.05
Putnam	5.08
Randolph	5.07
Richland	5.07
Rock Island	5.04
St. Clair	5.07
Saline	5.07
Sangamon	5.10
Schuyler	5.08
Scott	5.09
Shelby	5.09
Stark	5.09
Stephenson	5.04
Tazewell	5.10
Union	5.07
Vermilion	5.10
Wabash	5.09
Warren	5.08
Washington	5.07
Wayne	5.04
White	5.02
Whiteside	5.04
Will	5.10
Williamson	5.05
Winnebago	5.05
Woodford	5.10
Wght. State avg	5.08
Indiana	
Adams	5.05
Allen	5.05
Bartholomew	5.04
Benton	5.09
Blackford	5.04
Boone	5.05
Brown	5.04
Carroll	5.05
Cass	5.05
Clark	5.04
Clay	5.06
Clinton	5.05
Crawford	5.05
Daviess	5.04
Dearborn	5.05
Decatur	5.04
De Kalb	5.05
Delaware	5.04
Dekalb	5.04
Elkhart	5.04
Fayette	5.04
Floyd	5.04
Fountain	5.09
Franklin	5.05
Fulton	5.05
Gibson	5.04
Grant	5.04
Greene	5.05
Hamilton	5.05
Hancock	5.04
Harrison	5.05
Hendricks	5.04
Henry	5.04
Howard	5.05
Huntington	5.04
Jackson	5.04
Jasper	5.08
Jay	5.05
Jefferson	5.04
Jennings	5.04
Johnson	5.04
Knox	5.04
Kosciusko	5.04
Lagrange	5.04
Lake	5.10
La Porte	5.07
Lawrence	5.04
Madison	5.04
Marion	5.05
Marshall	5.05
Martin	5.04
Miami	5.05
Monroe	5.04
Montgomery	5.06
Morgan	5.04
Newton	5.09
Noble	5.04
Ohio	5.05
Orange	5.04
Owen	5.05
Parke	5.07
Perry	5.05
Pike	5.04
Porter	5.09
Posey	5.05
Pulaski	5.07
Putnam	5.06
Randolph	5.05
Ripley	5.04
Rush	5.04
St. Joseph	5.05
Scott	5.04
Shelby	5.04
Spencer	5.05
Starke	5.07
Steuben	5.05
Sullivan	5.06
Switzerland	5.05
Tippecanoe	5.07
Tipton	5.05
Union	5.05
Vanderburgh	5.05
Vermillion	5.09
Vigo	5.08
Wabash	5.04
Warren	5.08
Warrick	5.05
Washington	5.04
Wayne	5.05
Wells	5.04
White	5.07
Whitley	5.04
Wght. State avg	5.05
Iowa	
Adair	4.96
Adams	4.98
Allamkee	4.99
Appanoose	5.01
Audubon	4.97
Benton	5.02
Black Hawk	4.99
Boone	4.99
Bremer	4.98
Buchanan	5.00
Buena Vista	4.97
Butler	4.98
Calhoun	4.97
Carroll	4.97
Cass	4.98
Cedar	5.03
Cerro Gordo	4.98
Cherokee	4.97
Chickasaw	4.98
Clarke	5.00
Clay	4.97
Clayton	5.00
Clinton	5.04
Crawford	4.97
Dallas	4.99
Davis	5.03
Decatur	5.00
Delaware	5.00
Des Moines	5.06
Dickinson	4.97
Dubuque	5.01
Emmet	4.97
Fayette	4.99
Floyd	4.97
Franklin	4.99
Fremont	4.97
Greene	4.97
Grundy	5.00
Guthrie	4.97
Hamilton	4.99
Hancock	4.98
Hardin	5.00
Harrison	4.96
Henry	5.05
Howard	4.98
Humboldt	4.98
Ida	4.97
Iowa	5.02
Jackson	5.04
Jasper	5.01
Jefferson	5.04
Johnson	5.02
Jones	5.03
Keokuk	5.04
Kossuth	4.98
Lee	5.06
Linn	5.02
Louisa	5.05
Lucas	5.01
Lyon	4.96
Madison	4.99
Mahaska	5.03
Marion	5.01
Marshall	5.01
Mills	4.97
Mitchell	4.97
Monona	4.96
Monroe	5.01
Montgomery	4.97
Muscatine	5.04
O'Brien	4.97
Osceola	4.97
Page	4.97
Palo Alto	4.97
Plymouth	4.96
Pocahontas	4.97
Polk	5.00
Pottawattamie	4.97
Poweshiek	5.02
Ringgold	4.99
Sac	4.97
Scott	5.04
Shelby	4.97
Sioux	4.96
Story	5.00
Tama	5.02
Taylor	4.98
Union	4.99
Van Buren	5.05
Wapello	5.03

1980—Crop Soybeans—Continued

County	Rate per bushel
Iowa—Continued	
Warren	5.00
Washington	5.05
Wayne	5.01
Webster	4.99
Winnebago	4.96
Winneshiek	4.99
Woodbury	4.96
Worth	4.98
Wright	4.98
Wght. State avg	4.99
Kansas	
All counties	4.95
Kentucky	
All counties	5.04
Louisiana	
All counties	5.04
Maryland	
All counties	5.00
Michigan	
Allegan	4.96
Arenac	4.98
Barry	4.96
Bay	4.96
Berrien	5.01
Branch	5.01
Calhoun	4.98
Cass	5.01
Clinton	4.96
Eaton	4.97
Genesee	4.96
Gladwin	4.98
Gratiot	4.96
Hillsdale	5.02
Huron	4.96
Ingham	4.97
Ionia	4.96
Isabella	4.96
Jackson	4.99
Kalamazoo	4.96
Lapeer	4.96
Lenawee	5.02
Livingston	4.97
Macomb	4.97
Midland	4.96
Monroe	5.03
Montcalm	4.96
Oakland	4.97
Saginaw	4.98
St. Clair	4.96
St. Joseph	5.00
Sanilac	4.96
Shiawassee	4.96
Tuscola	4.96
Van Buren	4.98
Washtenaw	4.99
Wayne	4.99
All other counties	4.95
Wght. State avg	4.99
Minnesota	
Aitkin	4.90
Anoka	4.97
Becker	4.91
Beltrami	4.90
Benton	4.94
Big Stone	4.94
Blue Earth	4.99
Brown	4.98
Carlton	4.91
Carver	4.99
Cass	4.90
Chippewa	4.96
Chisago	4.94
Clay	4.91
Clearwater	4.90
Cottonwood	4.95
Crow Wing	4.90
Dakota	4.99
Dodge	4.97
Douglas	4.93
Faribault	4.98
Fillmore	4.97
Freeborn	4.98
Goodhue	4.97
Grant	4.93
Hennepin	4.99
Houston	4.97
Hubbard	4.91
Isanti	4.94
Itasca	4.90
Jackson	4.95
Kanabec	4.92
Kandiyohi	4.95
Kittson	4.88
Koochiching	4.90
Lac Qui Parle	4.96
Lake of the Woods	4.89
Le Sueur	4.99
Lincoln	4.93
Lyon	4.94
McLeod	4.98
Mahnomen	4.90
Marshall	4.88
Martin	4.97
Meeker	4.96
Mille Lacs	4.92
Morrison	4.92
Mower	4.97
Murray	4.94
Nicollet	4.99
Nobles	4.95
Norman	4.90
Olmsted	4.97
Otter Tail	4.91
Pennington	4.89
Pine	4.92
Pipestone	4.93
Polk	4.89
Pope	4.94
Ramsey	4.99
Red Lake	4.89
Redwood	4.95
Renville	4.96
Rice	4.98
Rock	4.94
Roseau	4.88
Scott	4.99
Sherburne	4.97
Sibley	4.99
Stearns	4.94
Steele	4.96
Stevens	4.94
Swift	4.94
Todd	4.92
Traverse	4.93
Wabasha	4.97
Wadena	4.91
Waseca	4.98
Washington	4.97
Watonwan	4.98
Wilkin	4.91
Winona	4.97
Wright	4.97
Yellow Medicine	4.97
Wght. State avg	4.96
Mississippi	
All counties	5.06
Missouri	
Adair	5.02
Andrew	4.98
Atchison	4.98
Audrain	5.04
Barry	4.98
Barton	4.97
Bates	4.97
Benton	4.98
Bollinger	5.06
Boone	5.01
Buchanan	4.98
Butler	5.05
Caldwell	4.98
Callaway	5.01
Camden	4.99
Cape Girardeau	5.06
Carroll	5.00
Carter	5.02
Cass	4.97
Cedar	4.96
Charlton	5.01
Christian	4.98
Clark	5.06
Clay	4.96
Clinton	4.98
Cole	5.00
Cooper	5.00
Crawford	5.02
Dade	4.97
Dallas	4.98
Daviess	4.98
De Kalb	4.98
Dent	5.02
Douglas	4.98
Dunklin	5.07
Franklin	5.04
Gasconade	5.02
Gentry	4.98
Greene	4.98
Grundy	5.00
Harrison	4.98
Henry	4.97
Hickory	4.98
Holt	4.98
Howard	5.00
Howell	5.01
Iron	5.04
Jackson	4.97
Jasper	4.97
Jefferson	5.06
Johnson	4.97
Knox	5.04
Laclede	4.98
Lafayette	4.97
Lawrence	4.97
Lewis	5.06
Lincoln	5.05
Linn	5.01
Livingston	5.00
McDonald	4.97
Macon	5.02
Madison	5.04
Maries	5.00
Marion	5.06
Mercer	5.00
Miller	4.98
Mississippi	5.06
Moniteau	5.00
Monroe	5.04
Montgomery	5.02
Morgan	4.99
New Madrid	5.07
Newton	4.97
Nodaway	4.96
Oregon	5.03
Osage	5.00
Ozark	5.00
Pemiscot	5.07
Perry	5.06
Pettis	4.99
Phelps	5.00
Pike	5.06
Platte	4.98
Polk	4.98
Pulaski	4.99
Putnam	5.01
Ralls	5.06
Randolph	5.02
Ray	4.98
Reynolds	5.02
Ripley	5.03
St. Charles	5.05
St. Clair	4.97
St. Francois	5.04
Ste. Genevieve	5.06
St. Louis	5.06
Saline	4.99
Schuyler	5.02
Scotland	5.04
Scott	5.06
Shannon	5.02
Shelby	5.04
Stoddard	5.06
Stone	4.98
Sullivan	5.01
Taney	4.99
Texas	5.00
Vernon	4.96
Warren	5.03
Washington	5.04
Wayne	5.04
Webster	4.98
Worth	4.98
Wright	4.98
Wght. State avg	5.02
Montana	
All counties	4.88
Nebraska	
All counties	4.93
New Jersey	
All counties	4.98
New Mexico	
All counties	4.88
New York	
All counties	4.90
North Carolina	
All counties	5.00
North Dakota	
All counties	4.88
Ohio	
Adams	5.05
Allen	5.06
Ashland	5.05
Ashtabula	5.03
Athens	5.05
Auglaize	5.06
Belmont	5.05
Brown	5.05
Butler	5.05
Carroll	5.03
Champaign	5.05
Clark	5.04
Clermont	5.05
Clinton	5.05
Columbiana	5.03
Coshocton	5.03
Crawford	5.05
Cuyahoga	5.03
Darke	5.04
Defiance	5.05
Delaware	5.04
Erie	5.05
Fairfield	5.05
Fayette	5.05
Franklin	5.04
Fulton	5.07
Gallia	5.05
Geauga	5.03
Greene	5.04
Guernsey	5.05
Hamilton	5.05
Hancock	5.06
Hardin	5.07
Harrison	5.03
Henry	5.07
Highland	5.05
Hocking	5.05
Holmes	5.03
Huron	5.05
Jackson	5.05
Jefferson	5.03
Knox	5.03
Lake	5.03
Lawrence	5.05
Licking	5.03
Logan	5.06
Lorain	5.05
Lucas	5.06
Madison	5.04
Mahoning	5.03
Marion	5.06
Medina	5.05
Meigs	5.05
Mercer	5.05
Miami	5.04
Monroe	5.05
Montgomery	5.04
Morgan	5.05
Morrow	5.05
Muskingum	5.05
Noble	5.05
Ottawa	5.06
Paulding	5.05
Perry	5.05
Pickaway	5.05
Pike	5.05
Portage	5.03
Preble	5.04
Putnam	5.06
Richland	5.05
Ross	5.05
Sandusky	5.06
Scioto	5.05
Seneca	5.06
Shelby	5.05
Stark	5.03
Summit	5.03
Trumbull	5.03
Tuscarawas	5.03
Union	5.04
Van Wert	5.05
Vinton	5.05
Warren	5.05
Washington	5.05
Wayne	5.03
Williams	5.05
Wood	5.07
Wyandot	5.06
Wght. State avg	5.05
Oklahoma	
All counties	4.91
Pennsylvania	
All counties	4.96
South Carolina	
All counties	5.00
South Dakota	
All counties	4.91
Tennessee	
All counties	5.00
Texas	
All counties	4.91
Vermont	
All counties	4.89
Virginia	
All counties	5.00
West Virginia	
All counties	4.98
Wisconsin	
All counties	4.95

(b) Premiums and discounts

Moisture (percent)	Cents per bushel
(1) Premiums:	
12.2 or less	+7.0
12.3 through 12.7	+3.5
12.8 through 13.0	0
(2) Discounts:	
(i) Class:	
Black	−25
Brown	−25
Mixed	−25
(ii) Moisture:	
13.1 through 13.5	−3.5
13.6 through 14.0	−7.0
(iii) Test weight per bushel (lbs.):	
53.9–53.0	−0.5
52.9–52.0	−1.0
51.9–51.0	−1.5
50.9–50.0	−2.0
49.9–49.0	−2.5
(iv) Splits:	
20.1–25.0	−0.25
25.1–30.0	−0.50
30.1–35.0	−0.75
35.1–40.0	−1.00
(v) Damaged kernels:	
(A) Heat damage (%):	
0.6–1.0	−1.0
1.1–1.5	−2.0
1.6–2.0	−3.0
2.1–2.5	−4.0
2.6–3.0	−5.0
(B) Total damage:	
2.1–3.0	−1.0
3.1–4.0	−2.0
4.1–5.0	−3.0
5.1–6.0	−5.0
6.1–7.0	−7.0
7.1–8.0	−9.0
(vi) Black, brown and/or bicolored soybeans in yellow or green soybeans:	
1.1–2.0	−0.5
2.1–5.0	−1.5
5.1–10.0	−3.5
(vii) Special factors:	
(A) Materially weathered	−5.0
(B) Stained	−2.0
(C) Purple mottled	−2.0
(D) Weed control laws (where required by § 1421.25)	−10

(c) Other: Soybeans exceeding limits shown in this schedule or soybeans containing in excess of 14.0 percent moisture are not eligible for loan. In the event quantities of soybeans exceeding limits shown are delivered in satisfaction of loan obligations, such quantities will be discounted on the basis of the schedule of discounts as provided by the Kansas City ASCS Commodity Office for settlement purposes. That schedule will also provide discounts for certain quality factors not specified above which affect the value of soybeans, e.g., musty, sour, heating, etc. Such discounts will be established prior to loan maturity and will thereafter be adjusted from time to time as CCC determined appropriate to reflect changes in market conditions. Producers may obtain schedule of such factors, discounts and adjustments at county ASCS offices prior to their loan maturity date or as soon thereafter as practicable.

Signed at Washington, D.C., on October 15, 1980.

John W. Goodwin,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 80-33078 Filed 10-22-80; 8:45 am]

BILLING CODE 3410-05-M

7 CFR Part 1464

Tobacco; 1980 Crop Grade Loan Rates—Fire-Cured, Dark Air-Cured and Sun-Cured Tobacco

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule sets forth the schedule of loan rates applicable to the various grades of 1980-crop Virginia Fire-Cured, Kentucky-Tennessee Fire-Cured, Dark Air-Cured and Sun-Cured Tobacco. These rates will provide the level of support required by the Agricultural Act of 1949, as amended. Eligible fire-cured, dark air-cured and sun-cured tobacco can be delivered for price support at the specified rates.

EFFECTIVE DATE: October 23, 1980.

ADDRESS: U.S. Department of Agriculture, Price Support and Loan Division, ASCS, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Betty A. Lucas, ASCS (202) 447–6733. The Final Impact Statement considered in developing this final rule is available on request from Robert L. Tarczy, Price Support and Loan Division (ASCS), Room 3754 South Building, P.O. Box 2415, Washington, D.C. 20013, (202) 447–6733.

V 4 5 O C 2 3 1980 UMI

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "not significant."

In compliance with Secretary's Memorandum No. 1955 and "Improving USDA Regulations" (45 FR 50988), initiation of review of these regulations contained in 7 CFR 1464.17, 1464.18, 1464.19, and 1464.20 for need, currency, clarity, and effectiveness is planned for the period August–October 1981.

The title and number of the Federal Assistance Program that the Final Rule applies to is: Title-Commodity Loans and Purchases; Number 10.051. This action will not have a significant impact on area and community development. Therefore, review as established by OMB Circular A–95 was not used to assure that units of local government are informed of this action.

On April 25, notice was published in the **Federal Register** (45 FR 27944) inviting written comments, not later than May 27, on the proposed national average loan level for 1980 fire-cured, dark air-cured and sun-cured tobacco.

Discussion of Comments

No comments were received.

Section 106 of the Agricultural Act of 1949, as amended, prescribes a formula for computing, in cents per pound, the level of price support for each crop of tobacco for which marketing quotas are in effect or have not been disapproved by producers. Application of this formula requires that the 1980 crop of fire-cured tobacco be supported at the level of 98.9 cents per pound, and that dark air-cured and sun-cured tobacco be supported at the level of 88.0 cents per pound.

Price support will be provided through loans to producer associations which will receive eligible tobacco from producers and make price support advances to the producers for the tobacco received. The price support advances will be based on the grade loan rates, which will average the required level of support when weighted by estimated grade percentages, in accordance with Section 403 of the Act. The price support advances for fire-cured, dark air-cured and sun-cured tobacco will be the amounts determined by multiplying the pounds of each grade received by the respective grade loan rate less 1 cent per pound which the associations are authorized to deduct and to apply against overhead costs.

Final Rule

Accordingly, 7 CFR Part 1464 is amended by revising § 1464.17, § 1464.18, § 1464.19, and § 1464.20 to read as set forth below, effective for the 1980 crop of fire-cured, dark air-cured and sun-cured tobacco. The material previously appearing under § 1464.17, § 1464.18, § 1464.19, and § 1464.20 remains applicable to the crop to which each refers.

§ 1464.17 1980 crop Virginia fire-cured tobacco, type 21 grade loan rates.[1]

Loan Rates

[Dollars per 100 lb, farm sales weigh]

Grade	Length				
	47	46	45	44	43
A1F	156	156	156	.....	.....
A2F	153	154	154	.....	.....
A1D	156	156	156	.....	.....
A2D	153	154	154	.....	.....
B1F	149	154	154	.....	.....
B2F	138	141	142	138	.....
B3F	125	129	129	129	96
B4F	107	114	118	112	86
B5F	89	91	94	91	78
B1D	148	154	154	.....	.....
B2D	138	141	141	136	.....
B3D	125	127	127	123	86
B4D	101	103	103	100	87
B5D	91	94	95	91	78
B3M	101	107	110	108	85
B4M	91	98	99	96	83
B5M	86	88	89	86	75
B3G	100	102	103	100	79
B4G	93	95	97	94	78
B5G	78	87	83	78	68
C1L	161	161	158	.....	.....
C2L	151	152	152	136	.....
C3L	130	132	132	115	.....
C4L	109	113	113	101	.....
C5L	95	96	97	88	.....
C1F	161	161	161	.....	.....
C2F	151	152	152	125	.....
C3F	130	132	132	115	.....
C4F	109	115	118	114	.....
C5F	95	96	98	92	.....
C2D	96	97	97	94	.....
C3D	90	91	91	88	.....
C4D	81	84	86	82	.....
C5D	71	72	73	72	.....
C3M	103	104	105	101	.....
C4M	95	98	101	96	.....
C5M	78	79	81	79	.....
C3G	88	89	91	85	.....
C4G	81	82	84	79	.....
C5G	73	77	78	74	.....

Grade	Loan rates
X1L	109
X2L	108
X3L	106
X4L	91
X5L	85
X1F	109
X2F	108
X3F	106
X4F	83
X5F	85
X1D	108
X2D	106
X3D	101
X4D	88
X5D	79
X3M	93
X3M 45	85
X4M	79
X4M 45	78
X5M	66
X5M 45	65
X3G	95
X3G 45	93
X4G	87
X4G 45	79
X5G	71
X5G 45	66
N1L	51
N1D	49
N1GL	20
N1DG	51
N2	2

[1] Only the original producer is eligible to receive advances. Tobacco graded "U" (unsound), "No-G" (no grade), "W" (doubtful keeping order), or scrap will not be accepted. The assocation through which advances are made is authorized to deduct $1 per hundred pounds to apply against overhead costs.

[2] N2 is not eligible for support.

§ 1464.18 1980 crop Kentucky and Tennessee fire-cured tobacco, types 22 and 23 grade loan rates.[1]

Loan Rates

Grade	Length				
	47	46	45	44	43
A1F	145	145	145	.....	.....
A2F	140	140	140	.....	.....
A3F	132	132	132	.....	.....
A1D	145	145	145	.....	.....
A2D	140	140	140	.....	.....
A3D	132	132	132	.....	.....
B1F	130	130	130	125	.....
B2F	126	126	126	122	.....
B3F	121	121	121	118	112
B4F	116	116	116	113	106
B5F	109	109	109	106	100
B1D	129	129	129	124	.....
B2D	125	125	125	121	.....
B3D	120	120	120	116	112
B4D	115	115	115	112	105
B5D	106	106	106	102	96
B3M	112	112	112	108	103
B4M	107	107	107	103	96
B5M	102	102	102	97	92
B3VF	112	112	112	108	101
B4VF	110	110	110	107	100
B5VF	104	104	104	101	94
B3G	112	112	112	108	100
B4G	107	107	107	103	95
B5G	97	97	97	92	87
C1L	132	132	132	128	.....
C2L	128	128	128	125	.....
C3L	123	123	123	119	113
C4L	118	118	118	115	109
C5L	111	111	111	109	102
C1F	132	132	132	128	.....
C2F	128	128	128	125	.....
C3F	123	123	123	120	113
C4F	118	118	118	115	108
C5F	111	111	111	107	100
C1D	131	131	131	126	.....
C2D	122	122	122	119	.....
C3D	116	116	116	113	107
C4D	109	109	109	107	101
C5D	102	102	102	100	93
C3M	111	111	111	108	102
C4M	107	107	107	106	99
C5M	100	100	100	97	88
C3VF	115	115	115	112	106
C4VF	110	110	110	108	102
C5VF	105	105	105	103	94
C3G	104	104	104	101	96
C4G	96	96	96	92	87
C5G	91	91	91	88	85

Grade	Loan rates
X1L	110
X2L	107
X3L	102
X4L	97
X5L	94
X1F	111
X2F	108
X3F	103

Loan Rates—Continued

Grade	Loan rates
X4F	99
X5F	96
X1D	107
X2D	102
X3D	97
X4D	91
X5D	86
X3M	88
X4M	82
X5M	79
X3VF	95
X4VF	91
X5VF	86
X3G	85
X4G	74
X5G	65
N1L	68
N1D	58
N1G	50
N2	28

[1] Only the original producer is eligible to receive advances. Tobacco graded "No-G" (no grade), "U" (unsound), or scrap will not be accepted. Tobacco graded "W" (Doubtful keeping order) shall have an advance rate 20 percent below the advance rate otherwise applicable. Tobacco is eligible for loan only if consigned by the original producer. The association through which advances are made is authorized to deduct $1 per hundred pounds to apply against overhead costs.

§ 1464.19 1980 crop dark air-cured tobacco, types 35 and 36 grade loan rates.[1]

Loan Rates

[Dollars per 100 lb, farm sales weight]

Grade	Length			
	47	46	45	44
A1F	.....	141	141	.....
A2F	137	137	137	.....
A3F	.....	131	131	.....
A1R	.....	141	141	.....
A2R	.....	137	137	.....
A3R	.....	131	131	.....
B1F	132	132	132	129
B2F	.....	127	127	126
B3F	122	122	122	120
B4F	112	112	112	111
B5F	104	104	104	103
B1R	.....	131	131	129
B2R	126	126	126	125
B3R	120	120	120	119
B4R	111	111	111	110
B5R	103	103	103	102
B1D	.....	130	130	128
B2D	.....	125	125	124
B3D	.....	119	119	118
B4D	.....	110	110	109
B5D	.....	102	102	101
B3M	109	109	109	108
B4M	.....	101	101	100
B5M	95	95	95	94
B3G	107	107	107	106
B4G	101	101	101	100
B5G	94	94	94	93
C1L	.....	134	.....	.....
C2L	130	130	130	129
C3L	126	126	126	125
C4L	116	116	116	115
C5L	106	106	106	104
C1F	.....	134	134	133
C2F	130	130	130	129
C3F	125	125	125	123
C4F	116	116	116	115
C5F	106	106	106	104
C1R	.....	133	133	132
C2R	129	129	129	128
C3R	124	124	124	122
C4R	113	113	113	112
C5R	104	104	104	103
C3M	109	109	109	108
C4M	102	102	102	101
C5M	95	95	95	94
C3G	111	111	111	109
C4G	101	101	101	100
C5G	91	91	91	90

Loan Rates—Continued

Grade	Loan rates
T3F	90
T4F	87
T5F	79
T3R	91
T4R	87
T5R	80
T3D	90
T4D	87
T5D	79
T3M	88
T4M	84
T5M	76
T3G	88
T4G	85
T5G	76
X1L	120
X2L	116
X3L	114
X4L	108
X5L	101
X1F	120
X2F	117
X3F	114
X4F	108
X5F	102
X1R	118
X2R	115
X3R	112
X4R	106
X5R	99
X3D	95
X4D	88
X5D	81
X3M	92
X4M	86
X5M	75
X3G	83
X4G	70
X5G	57
N1L	55
N2L	42
N1R	50
N2R	38
N1G	44
N2G	26

[1] Tobacco graded "No-G" (no grade), "U" (unsound) or scrap will not be accepted. A reduction of 20 percent in the advance (loan) rate will be made for tobacco graded "W" (doubtful keeping order), grades marked with the special factor "BH" and type 35 grades marked with the special factor "BL." The association through which advances are made is authorized to deduct $1 per hundred pounds to apply against overhead costs.

§ 1464.20 1980 crop Virginia sun-cured tobacco, type 37 grade loan rates.[1]

Loan Rates

[Dollars per 100 lb, farm sales weight]

Grade	Length		
	46	45	44
A1F	140	140	135
A2F	135	135	130
A3F	130	130	128
A1R	140	140	135
A2R	135	135	130
A3R	130	130	130
B1F	137	137	130
B2F	134	134	130
B3F	126	126	124
B4F	115	115	112
B5F	95	95	91
B1R	137	137	130
B2R	128	128	126
B3R	121	121	120
B4R	110	115	115
B5R	96	96	95
B1D	120	120	115
B2D	115	115	112
B3D	112	112	110
B4D	96	99	96
B5D	87	87	82
B3M	99	99	95
B4M	91	91	88
B5M	83	83	80
B3G	101	101	100
B4G	91	92	85
B5G	81	81	81
C1L	140	140	130
C2L	135	135	120
C3L	125	125	118
C4L	112	112	110
C5L	88	88	86
C1F	140	140	130
C2F	135	135	128
C3F	125	125	120
C4F	114	114	111
C5F	90	90	88
C1R	110	110	105
C2R	99	99	93
C3R	95	95	.....
C4R	84	84	82
C5R	75	75	74
C3M	95	95	91
C4M	85	89	86
C5M	83	83	80
C3G	84	85	82
C4G	80	81	79
C5G	74	76	74

Grade	Loan rates
T3F	79
T4F	77
T5F	71
T3R	80
T4R	77
T5R	72
T3D	77
T4D	75
T5D	69
T3M	77
T4M	74
T5M	69
T3G	79
T4G	77
T5G	71
X1L	98
X2L	95
X3L	90
X4L	84
X5L	82
X1F	98
X2F	95
X3F	92
X4F	87
X5F	84
X1R	92
X2R	90
X3R	85
X4R	80
X5R	73
X3D	77
X4D	74
X5D	66
X3M	93
X4M	82
X5M	73
X3G	82
X4G	77
X5G	70
N1L	41
N2L	19
N1R	41
N2R	19
N1G	41
N2G	19

[1] Only the original producer is eligible to receive advances. Tobacco graded "No-G" (no grade), "U" (unsound), or scrap will not be accepted. Tobacco graded "W" (doubtful keeping order) or scrap will not be accepted. The association through which advances are made is authorized to deduct $1 per hundred pounds to apply against overhead costs. Grades marked with special factor "BH" shall have an advance rate 20 percent below the advance rate otherwise applicable without such special factor. Cooperatives are authorized to deduct $1 per hundred pounds to apply against overhead costs.

V 45 O C 23 80 UMI

Signed at Washington, D.C., on October 9, 1980.

John W. Goodwin,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 80-32804 Filed 10-22-80; 8:45 am]

BILLING CODE 3410-05-M

Animal and Plant Health Inspection Service

9 CFR Part 92

Importation of Certain Animals; Harry S. Truman Animal Import Center

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This amendment provides additional standards for a foreign embarkation quarantine facility to be used in conjunction with the exportation of animals from rinderpest or foot-and-mouth disease infected countries to the United States through the Harry S Truman Animal Import Center (HSTAIC). This action is necessary to provide disease free facilities in which animals to be exported to the United States through HSTAIC can be assembled and processed prior to their embarkation. The intended effect of this amendment is to provide for the use of pesticides for the control of small flying insects as facilities in foreign countries through which animals may be exported to the United States through HSTAIC.

DATES: Effective date: October 20, 1980. Comments must be received on or before: December 19, 1980.

ADDRESS: Written comments to the Deputy Administrator, USDA, APHIS, VS, Federal Building, Room 817, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8170.

FOR FURTHER INFORMATION CONTACT: Dr. D. E. Herrick, USDA, APHIS, VS, Federal Building, Room 817, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8170.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as "not significant". The emergency nature of this action warrants publication of this final action without completion of a Final Impact Statement. A Final Impact Statement will be developed after public comments have been received. Dr. M. J. Tillery, Director, National Program Planning Staffs, has determined that an emergency situation exists which warrants publication without opportunity for a public comment period on this final action. This action is required to assist in providing disease free facilities in which animals to be exported to the United States through HSTAIC can be assembled and processed prior to their embarkation.

The second importation of animals to be imported into HSTAIC are presently scheduled to enter the foreign embarkation quarantine facility in October, 1980. Therefore, the amendment is of an emergency nature and must be placed in effect immediately in order to serve the purpose intended.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this emergency final action are impracticable and contrary to the public interest and good cause is found for making this emergency final action effective less than 30 days after publication of this document in the Federal Register. Comments have been solicited for 60 days after publication of this document, and this emergency final action will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the Federal Register as soon as possible.

On July 26, 1977 there was published in the Federal Register (42 FR 37968–37070) an amendment to 9 CFR Part 92 which provided in § 92.4 standards for a foreign embarkation quarantine facility to be used in conjunction with the exportation of animals from rinderpest or foot-and-mouth disease infected countries to the United States through the HSTAIC. Section 92.4(a)(2) provided standards for the building that is used for quarantine purposes.

Section 92.4a was redesignated § 92.42 at 44 FR 10056, February 16, 1979.

Subparagraph (iv) of § 92.42(b) provides that all openings in the building shall be double screened, with such mesh as to preclude the entrance of small flying insects such as mosquitos into the animal holding area.

The control of flying insects such as mosquitos is necessary as these insects are known vectors of communicable disease of animals. In order to guard against the importation into the HSTAIC of animals infected with or exposed to disease, it is necessary that such animals held in a foreign embarkation quarantine facility prior to shipment to HSTAIC be protected from insect vectors.

It has been the Department's experience that screening alone will not, in all cases, provide adequate security during the care, feeding, testing and handling to minimize the chance of exposure to insect borne disease. This includes situations where the animals may be removed from the buildings for processing, cleaning the facility, for blood sampling, or when insects are managing to enter the facility despite the double screening.

Therefore, the Department is amending § 92.42(b)(2)(iv) to provide that there shall be a program of insect vector control established by Veterinary Services which may include the treatment of animals, building interiors and the areas around the buildings of the embarkation quarantine facility with pesticides registered by the United States Environmental Protection Agency for such use and approved for such purpose by the national government of the country in which the facility is located. This program would be instituted in those situations where the double screening is not sufficient to prevent exposure of the animals to be imported from insect borne disease.

Accordingly, Part 92, Title 9, Code of Federal Regulations, is amended as follows:

In § 92.42(b) subparagraph (2)(iv) is amended to read:

§ 92.42 Embarkation quarantine facility; criteria and standards for approval.

* * * * *

(b) *Standards for approval of embarkation quarantine facilities.* * * *

(2) *Building* * * *

* * * * *

(iv) All openings in the building shall be double screened with such mesh as to preclude the entrance of small flying insects such as mosquitos into the animal holding area. There shall be a program of insect vector control established by Veterinary Services if the cattle are removed from the double screened building any time prior to export to the Harry S Truman Animal Import Center or in any other circumstance when it is determined by the USDA Veterinarian in Charge of the quarantine operation that insects which may transmit communicable animal diseases are entering the animal holding area. Such insect vector control program shall include the treatment of animals, building interiors and the areas around the buildings with pesticides registered by the United States Environmental Protection Agency for such use and in accordance with its labeling, and approved by the national government of the country in which the facility is located.

(Sec. 2, of the Act of February 2, 1903, as amended, 32 Stat. 792; Sec. 1 Pub. L. 91–239, 84 Stat. 202 (21 U.S.C. 111 and 135); 37 FR 28464, 28477; 38 FR 19141))

All written submission made pursuant to this notice will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 815, Hyattsville, MD, during regular hours of business (8 a.m. to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

Comments submitted should bear a reference to the date and page number of this issue in the Federal Register.

Done at Washington, D.C. this 20th day of October 1980.

Pierre A. Chaloux,

Deputy Administrator, Veterinary Services.

[FR Doc. 80-33129 Filed 10-22-80; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

Revised Costs for the Reproduction of Agency Records

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to reflect the new costs for the reproduction of records made available to the public. The revised rates reflect specific costs in a copying service contract that was awarded after competitive bidding.

EFFECTIVE DATE: October 23, 1980.

FOR FURTHER INFORMATION CONTACT: Lynn Scattolini, Chief, Public Document Room, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 202–634–3273.

SUPPLEMENTARY INFORMATION: Requests by the public for the reproduction of records at the NRC Public Document Room in Washington, DC, have traditionally been accommodated by a copying service contractor. The NRC recently solicited bids for a new contract, and a contract has been awarded to Literature Research Company. The changes in copying costs to the public which result from the letting of the new contract are reflected in the amendments below to paragraph (a) of § 9.14. In addition, paragraph (b) of § 9.14 has been revised to reduce the per page copying cost for documents made available at locations other than the Public Document Room. Further information on the services available at the Public Document Room are described in NUREG/BR–0004, Public Document Users Guide.

A single copy of this publication may be obtained after November 1, 1980, by writing to the U.S. Nuclear Regulatory Commission, Public Document Room, Washington, D.C. 20555.

Since these amendments reduce the costs for reproducing records, and because they reflect the specific costs in a copying service contract recently awarded after competitive bidding, notice of proposed rulemaking and public comment are unnecessary, and good cause exists to make the amendments effective upon publication in the Federal Register.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendments to Title 10, Chapter I, Code of Federal Regulations, Part 9 are published as a document subject to codification.

Section 9.14 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 9.14 Charges for production of records.

(a)(1) Charges for the copying of records at the NRC Public Document Room (PDR), 1717 H St. NW., Washington, D.C. by the copying service contractor are as follows:

(i) Five cents per page for paper copy to paper copy, except for engineering drawings and any other records larger than 8½ x 14 inches for which the charge varies between $1.00 to $2.00 per square foot, depending upon size.

(ii) Twenty-four cents per page for microform to paper copy, except for engineering drawings and other records larger than 8½ x 14 inches for which the charge is $3.00 per square foot or $6.00 for a reduced size print (18 x 24 inches).

(iii) Twenty-two cents per microfiche to microfiche.

(iv) Forty cents per aperture card to aperture card.

(v) Charges for records copied by the contractor at the PDR must be paid when the copies are furnished.

(2) Self service, coin operated, copying machines are available at the PDR for the use of the public. Paper to paper is $0.05 per page. Microform to paper is $0.10 per page on the reader-printers.

(3) Mail order requests for contractor copying of NRC records may be made by writing to the PDR.

(i) The charges for mail order reproduction of records are the same as those set out in paragraph (a)(1) of this section, except there is a $2.00 minimum charge for records, plus mailing or shipping charges.

(ii) Each order submitted by mail must contain a statement that the requester is willing to pay the applicable charges. The contractor will include an invoice when it sends the order to the requester. A requester may also open an account with the copying service contractor, Literature Research Company, P.O. Box 1001, Annandale, VA 22003 (703–941–8010).

(b) * * *

(1) Sizes up to 8½ x 14 inches made on office copying machines—$0.05 per page of copy.

* * * * *

(Sec. 161, Pub. L. 83–703, 68 Stat. 948 (42 U.S.C. 2201); sec. 201, as amended, Pub. L. 93–438, 88 Stat. 1242 (42 U.S.C. 5841))

Dated at Bethesda, Md., this 8th day of October 1980.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 80-32819 Filed 10-22-80; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 20851, Amdt. 39–3955]

Societe Nationale Industrielle Aerospatiale Model AS 350 Series Helicopters; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Societe Nationale Industrielle Aerospatiale Model AS 350 series helicopters by individual telegrams. The AD requires modification of the tail rotor drive shaft assembly and tail rotor transmission, inspection of the tail rotor flapping hinge bearings on unmodified helicopters, inspection of the tail rotor transmission for oil leaks and cracks, and replacement of defective components as necessary. The AD is necessary to prevent deterioration of the tail rotor flapping hinge bearings and failure of the tail rotor transmission, which could result in loss of directional control of the helicopter.

DATES: Effective October 23, 1980, as to all persons except those persons to

whom it was made immediately effective by telegraphic AD T79EU19, issued November 30, 1979, which contained this amendment.

Compliance schedule—as prescribed in the body of the AD.

ADDRESSES: The applicable service bulletin and Work Cards may be obtained from: Societe Nationale Industrielle Aerospatiale (SNIAS), 37, blvd. de Montmorency, 75781 Paris Cedex 16, France.

A copy of the service bulletin and each Work Card is contained in the Rules Docket, Room 916, 800 Independence Avenue, S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:
C. Christie, Chief, Aircraft Certification Staff, AEU–100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, Brussels, Belgium, Telephone: 513.38.30, or C. Chapman, Acting Chief, Technical Standards Branch, AWS–110, FAA, 800 Independence Avenue, SW., Washington, D.C. 20591, Telephone: 202–426–8192.

SUPPLEMENTARY INFORMATION: On November 23, 1979, telegraphic AD T79EU18 was issued and made effective immediately as to all known U.S. owners and operators of Societe Nationale Industrielle Aerospatiale Model AS 350 series helicopters. The AD required checking the clearance of the tail rotor head assembly to the tail rotor drive shaft attachment, inspection of the tail rotor transmission for oil leaks, replacement of defective components as necessary, and modification of the tail rotor drive system. AD action was necessary because of the possible failure of the tail rotor transmission and deterioration of the tail rotor flapping hinge bearing, which could result in loss of directional control of the helicopter. The AD was superseded on November 30, 1979, by telegraphic AD T79EU19, in order to revise the inspection requirements for the tail rotor flapping hinge bearings and eliminate the requirement of the inspection when helicopters were modified.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest and good cause existed for making the AD effective immediately as to all known U.S. owners and operators of Societe Nationale Industrielle Aerospatiale Model AS 350 series helicopters by telegraphic means. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of the Federal Aviation Regulations to make it effective as to all persons. Dates have been added to the manufacturer's service bulletin and Work Cards, and editorial changes have been made concerning the FAA-approved equivalent to the manufacturer's service literature.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Societe Nationale Industrielle Aerospatiale (SNIAS). Applies to Model AS 350 series helicopters, certificated in all categories.

Compliance required as indicated, unless already accomplished.

To prevent failure of the tail rotor transmission and deterioration of the tail rotor flapping hinge bearings, which could result in loss of directional control of the helicopter, accomplish the following:

(a) Within the next 100 hours time in service after the effective date of this AD—

(1) Modify the tail rotor drive shaft assembly by incorporating Aerospatiale Modification No. AMS 350A–07–6519, or an FAA-approved equivalent.

(2) Modify the tail rotor transmission, P/N 350A–33–0006–03, by incorporating Aerospatiale Modification No. AMS 07–8519, or an FAA-approved equivalent.

(3) Incorporate paragraph 2.D, "Operating Instructions," of Aerospatiale Service Bulletin 65.13, dated November 6, 1979, or an FAA-approved equivalent, and Aerospatiale Work Card 05.23.203, page 1, dated October 1979, page 2, dated November 1979, page 3, dated November 1978, and page 4, dated November 1979, or an FAA-approved equivalent, into the helicopter maintenance manual, and perform the last flight of the day checks accordingly.

(b) For helicopters not modified in accordance with Aerospatiale Modification Nos. AMS 350A–07–6519 and AMS 07–8519.

(1) Before further flight, except that the helicopter may be flown in accordance with FAR § 21.197 to a base where these inspections can be performed, and thereafter following the last flight of each day:

(i) Inspect the tail rotor flapping hinge bearings, P/N 704A.33.633.038, to determine the out of flush dimension "M" of the bearing inner to outer bushing in accordance with Work Card 65.40.605, dated October 1979, of the maintenance manual, or an FAA-approved equivalent.

(ii) Inspect the tail rotor transmission, P/N 350A–33–0006–03, for evidence of oil leaks and cracks.

(2) If as a result of the determination required in paragraph (b)(1)(i) of this AD, dimension "M" is found to be less than 0.04 inches/1 millimeter, or more than 0.08 inches/2 millimeters, before further flight, replace the laminated bearing, P/N 704A–33–633–038, with a new or serviceable bearing of the same P/N, and continue the repetitive inspections of paragraph (b)(1)(i) of this AD.

(3) If as a result of the determination required in paragraph (b)(1)(i) of this AD, dimension "M" is found to be greater than 0.04 inches/1 millimeter but less than 0.08 inches/2 millimeters, return the helicopter to service and repeat the inspections required in paragraphs (b)(1)(i) of this AD.

(4) If as a result of the determination required in paragraph (b)(1)(ii) of this AD, evidence of an oil leak, or cracking is found, replace the tail rotor transmission, P/N 350A–33–0006–03, with a serviceable tail rotor transmission which has Aerospatiale Modification AMS 07–8519 incorporated, and discontinue the repetitive inspection of paragraph (b)(1)(ii) of this AD.

(c) For all tail rotor transmissions held as spares and not already modified, install Aerospatiale Modification No. AMS 07–8519, or an FAA-approved equivalent, before installation of the tail rotor transmission on the helicopter.

(d) If an equivalent means of compliance is used in complying with paragraphs (a), (b), or (c) of this AD, that equivalent must be approved by the Chief, Aircraft Certification Staff, Europe, Africa and Middle East Office, FAA, c/o American Embassy, Brussels, Belgium.

Notes.—1. Aerospatiale AS 350 Service Bulletin No. 65–08, revision 1, dated August 13, 1979, refers to the same subject as paragraphs (a)(2) and (c) of this AD.

2. Aerospatiale AS 350 Service Bulletin No. 65–13, dated November 6, 1979, refers to the same subject as paragraphs (a)(1), and (b)(1) of this AD.

This amendment becomes effective October 23, 1980, as to all persons except those persons to whom it was made immediately effective by telegraphic AD T79EU19, issued November 30, 1979, which contained this amendment.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

Note.—The FAA has determined that this document involves a regulation which is not considered to be significant under Executive Order 12044 as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Washington, D.C., on October 15, 1980.

Jerold M. Chavkin,
Acting Director of Airworthiness.

[FR Doc. 80-32815 Filed 10-22-80; 8:45 am]
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14 CFR Part 39

[Docket No. 20850; Amdt. 39–3957]

Costruzioni Aeronautiche Giovanni Agusta Model A109A Series Helicopters; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires repetitive inspections of the aluminum engine lateral fitting foward mounting tab for cracks, and replacement as necessary, until a steel fitting is installed on certain Costruzioni Aeronautiche Giovanni Agusta Model A109A series helicopters. The AD is prompted by reports of cracking and failure of the fitting which could result in loss of engine mounting integrity and subsequent loss of engine power to the helicopter rotor drive system.

DATES: Effective November 6, 1980. Compliance schedule—as prescribed in the body of AD.

ADDRESSES: The applicable service bulletin may be obtained from: Customer Service, Costruzioni Aeronautiche Giovanni Agusta Cascina Costa (Gallarate), Italy.

A copy of the service bulletin is contained in the Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:
C. Christie, Chief, Aircraft Certification Staff, AEU–100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, Brussels, Belgium, Telephone: 513.38.30, or C. Chapman, Acting Chief, Technical Standards Branch, AWS–110, FAA, 800 Independence Avenue, SW., Washington, D.C. 20591, Telephone: 202–426–8192.

SUPPLEMENTARY INFORMATION: There have been reports of cracking and failure of the aluminum engine outer lateral fitting, P/N 109–0320–97–4, on certain Costruzioni Aeronautiche Giovanni Agusta Model A109A series helicopters which could result in loss of engine mounting integrity and subsequent loss of engine power to the helicopter rotor drive system.

Since this condition is likely to exist or develop on other helicopters of the same type design, an airworthiness directive is being issued which requires inspection of the engine lateral fitting foward mounting tab for cracks and replacement as necessary, to prevent failure of the engine mount structure. Repetitive inspections are required until the aluminum fitting is replaced with a steel fitting on certain Costruzioni Aeronautiche Giovanni Agusta Model A109A series helicopters.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

Adoption of Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Costruzioni Aeronautiche Giovanni Agusta. Applies to Model A109A series helicopters, certificated in all categories, except for the following serial numbered helicopters: 7107, 7109, 7110, 7113, 7114, 7117, 7119, 7128, 7132, 7138, 7140, 7142, 7143, 7144, 7145, 7148, 7150, 7152, 7158, 7160, 7166, and subsequent.

Compliance required as indicated, unless already accomplished.

To prevent failure of the engine mount structure, accomplish the following:

(a) Within the next 25 hours time in service after the effective date of this AD, and thereafter at intervals not to exceed 25 hours time in service since the last inspection, visually inspect the foward mounting tab of the aluminum engine outer lateral fitting, P/N 109–0320–97–4, for cracks in accordance with "ACCOMPLISHMENT INSTRUCTIONS" of Costruzioni Aeronautiche Giovanni Agusta Service Bulletin No. 109–18, dated April 27, 1979 (hereinafter referred to as the Service Bulletin), or an FAA-approved equivalent.

(b) If, as a result of the inspections required in paragraph (a) of this AD, no cracking is found, return the helicopter to service and continue to inspect in accordance with paragraph (a) or comply with paragraph (d) of this AD.

(c) If, as a result of any inspection required in paragraph (a) of this AD, cracking is found, before further flight, except as provided in paragraph (e) of this AD—

(1) Replace the cracked fitting with a serviceable fitting of the same part number and continue to inspect in accordance with paragraph (a) of this AD; or

(2) Replace the cracked fitting with a new steel fitting, P/N 109–0320–97–6, or an FAA-approved equivalent.

(d) Compliance with the repetitive inspections required by paragraphs (a), (b) and (c)(1) of this AD may be discontinued when a steel fitting, P/N 109–0320–97–6, or an FAA-approved equivalent, is installed.

(e) In accordance with FAR §§ 21.197 and 21.199, the helicopter may be flown to a base where the maintenance required by this AD may be accomplished. Ferrying of the helicopter with a failed fitting or an engine inoperative is not permitted.

(f) If an equivalent means of compliance is used in complying with paragraphs (a), (c)(2) and (d) of this AD, that equivalent means must be approved by the Chief, Aircraft Certification Staff, AEU–100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, Brussels, Belgium.

(g) Upon request of an operator, the Chief, Aircraft Certification Staff, Europe, Africa and Middle East Office, may approve an equivalent modification or replacement fitting provided the request is made through an FAA Maintenance Inspector and the request contains substantiating data to justify the request for that operator.

This amendment becomes effective November 6, 1980.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

Note.—The FAA has determined that this document involves a final regulation which is not considered to be significant under Executive Order 12044, as implemented by the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Washington, D.C., on October 10, 1980.

M. C. Beard,
Director of Airworthiness.

[FR Doc. 80-32816 Filed 10-22-80; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 20594, Amdt. 39–3956]

Mitsubishi Heavy Industries, Ltd., Model MU–2B Airplanes; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) applicable to certain Mitsubishi Heavy Industries, Ltd., Model MU–2B airplanes by adjusting the compliance time for the initial inspection of the nose landing gear strut assembly.

DATES: Effective October 23, 1980. Compliance schedule—as indicated in the body of the AD.

ADDRESSES: The applicable service bulletin may be obtained from: Mitsubishi Heavy Industries, Ltd., 10, Oye-Cho, Minato-ku, Nagoya, Japan
or,
Mitsubishi Aircraft International, Inc., P.O. Box 3848, San Angelo, Texas 76901.

A copy of the service bulletin is contained in the Rules Docket, Room 916, 800 Independence Avenue, S.W., Washington, D.C. 20591. The document may also be examined in Room 7321, Federal Aviation Administration, Pacific-Asia Region, Engineering and Manufacturing District Office, 300 Ala Moana Boulevard, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT:
Gary K. Nakagawa, Chief, Engineering and Manufacturing District Office, APC–210, Pacific-Asia Region, Federal Aviation Administration, P.O. Box 50109, Honolulu, Hawaii 96850, telephone: (808) 546–8650 or 546–8658, or C. Chapman, Acting Chief, Technical Standards Branch, AWS–110, Federal

Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone: (202) 426–8374.

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39–3892 (45 FR 54729), AD 80–18–12, which currently requires magnetic particle inspection and replacement as necessary of the critical components of the nose landing gear strut assembly on certain Mitsubishi Heavy Industries Model MU–2B airplanes. After issuing Amendment 39–3892, the FAA has determined that the initial inspection should apply only to nose landing gear strut assembly, Part Numbers 010A–39131 or 030A–39111, that have accumulated 4,000 hours time in service, and was inadvertently omitted from the text of paragraph (a). This omission made the AD effective within 200 hours for all nose landing gear strut assemblies, regardless of the time in service rather than the intended compliance as specified in Mitsubishi MU–2 Service Bulletin No. 161. Therefore, the FAA is amending Amendment 39–3892 by adjusting the compliance time in paragraph (a) and clarifying the inspection schedule for replacement parts in paragraph (b).

Since this amendment relieves a restriction and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and good cause exists for making the amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by amending Amendment 39–3892 (45 FR 54729), AD 80–18–12, as follows:

(1) By revising the lead in sentence of paragraph (a) to read:

Prior to the accumulation of 4,000 hours time in service on the nose landing gear strut assembly, P/N's 010A–39131 or 030A–39111, or within the next 200 hours time in service after the effective date of this AD, whichever occurs later, unless already accomplished within the last 100 hours time in service, and thereafter at intervals not to exceed 200 hours time in service from the last inspection, inspect the critical components of the NLG strut assembly for cracks in accordance with the instructions contained in Mitsubishi MU–2 Service Bulletin No. 181, dated July 12, 1979 (hereinafter referred to as the Service Bulletin), or an FAA-approved equivalent.

(2) By revising paragraph (b) to read:

If a crack is discovered during any inspection required by paragraph (a) of this AD, replace the defective part with a new part of the same part number in accordance with the instructions contained in the Service Bulletin or an FAA-approved equivalent, and comply with the inspection schedule set forth in paragraph (a) of this AD for the new part.

This amendment becomes effective October 23, 1980.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under the provisions of Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Washington, D.C., on October 10, 1980.

M. C. Beard,

Director of Airworthiness.

[FR Doc. 80-32817 Filed 10-22-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 80-WE-48-AD, Amdt. 39-3947]

McDonnell Douglas DC-10 Series Airplanes; Airworthiness Directives

AGENCY: Federal Avation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires deactivation of the potentiometer linkage (spoiler) in the Airborne Integated Data Systems (AIDS) on certain McDonnell Douglas DC–10 series airplanes until an approved modification is installed. The AD is needed to ensure the deployment of the spoiler/speedbrake system when selected.

DATE: Effective October 23, 1980. Compliance schedule—As prescribed in the body of the AD.

ADDRESSES: The applicable service information may be obtained from: McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attn: Director, Publication and Training C1–750–[54–60].

Also, a copy of the service information may be reviewed at, or a copy obtained from:

Rules Docket in Room 916, FAA, 800 Independence Avenue S.W., Washington, D.C. 20591, or

Rules Docket in Room 6W14, FAA Western Region, 15000 Aviation Boulevard, Hawthorne, California 90261.

FOR FURTHER INFORMATION CONTACT: Robert T. Razzeto, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536–6351.

SUPPLEMENTARY INFORMATION: There have been four reports of spoiler/speedbrake not deploying as selected because the AIDS potentiometer linkage traveled overcenter and blocked the linkage from further movement necessary to initiate deployment.

Since this condition is likely to exist or develop on other airplanes of the same type design, an airworthiness directive is being issued which requires deactivation of the potentiometer linkage (spoiler) of the AIDS system until an approved modification is installed.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by adding the following new airworthiness directive:

McDonnell Douglas: Applies to DC–10, series 10, 30, and 40 airplanes; fuselage numbers 2, and 183 through 292, certified in all categories, equipped with Airborne Integrated Data System (AIDS) spoiler handle position sensor.

Compliance is required, unless already accomplished.

To prevent blocking of initiation of spoiler/speedbrake deployment due to AIDS potentiometer linkage traveling overcenter, accomplish the following:

(a) Within 300 hours time in service from the effective date of this AD remove speedbrake potentiometer linkage P/N ABH 7486–1 Rod and ABH 7485–1 Crank in accordance with Douglas Aircraft Company Alert Service Bulletin A27–178, issued March 19, 1980 and Revision 1, dated May 2, 1980.

(b) Prior to reactivation of AIDS, modify the AIDS potentiometer linkage bracket by adding a stop consisting of a lock bolt, spacer, washer, and collar in accordance with the "Accomplishment Instuctions", Part 2 of Douglas Aircraft Company Service Bulletin A27–178, dated May 6, 1980.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of modification required by this AD.

(d) Alternative inspections, modifications or other actions which provide an equivalent level of safety may be used when approved by the Chief, Aircraft Engineering Division, FAA Western Region.

This amendment becomes effective October 23, 1980.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89)

Note.—The FAA has determined that this document involves a final regulation which is not considered to be significant under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Los Angeles, Calif., on October 6, 1980.

H. C. McClure,

Acting Director, FAA Western Region.

[FR Doc. 80-32877 Filed 10-22-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 80-WE-45-AD; Amdt. 39-3946]

McDonnell Douglas DC–8 Airplanes; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection and repair if necessary of wing skins on certain McDonnell Douglas DC–8 airplanes. The AD is needed to prevent crack growth which could result in structural failure of the wing lower skin and rear spar lower cap.

DATE: Effective October 23, 1980.

Compliance schedule—as prescribed in the body of the AD.

ADDRESSES: The applicable service information may be obtained from: McDonnell Douglas Aircraft Company, Customer Service Department, 3855 Lakewood Boulevard, Long Beach, California 90846.

Also, a copy of the service information may be reviewed at, or a copy obtained from:

Rules Docket in Room 916, FAA, 800 Independence Avenue, SW., Washington, D.C. 20591, or

Rules Docket in Room 6W14, FAA Western Region, 15000 Aviation Boulevard, Hawthorne, California 90261.

FOR FURTHER INFORMATION CONTACT: Jerry Presba, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536–6351.

SUPPLEMENTARY INFORMATION: There have been reports of cracks in lower inboard aft wing skin panels at station Xcw = 69.500 on certain McDonnell Douglas DC–8 airplanes which could, if uncorrected, result in structural failure of the wing lower skin and rear spar lower cap. Since this condition is likely to exist or develop on other airplanes of the same type design an airworthiness directive is being issued which requires inspection and repair, if necessary, of wing skins on McDonnell Douglas DC–8 airplanes.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by adding the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC–8 series airplanes with 20,000 or more hours time in service, certificated in all categories. Compliance required as indicated unless already accomplished. To prevent crack growth which could result in structural failure of the wing lower skin and rear spar lower cap, accomplish the following:

(a) Visually inspect the lower inboard aft wing skin panels and aft tang of the rear spar cap in the vicinity of the dihedral break at wing station Xcw = 69.500 per the Phase 1 accomplishment instructions (Part 2) of McDonnell Douglas Service Bulletin 57–88 dated January 23, 1980 (hereinafter referred to as SB57–88) within the times specified below:

For airplanes with total hours time in service on or after the effective date of this AD	Inspect within additional hours time in service from the effective date of this AD
20,000 to 24,999	900
25,000 to 29,999	700
30,000 to 34,999	500
35,000 and over	300

(b) Modify Clip P/N 5649893–47 (Left Side) and –48 (Right Side) per SB57–88, Part 2, Accomplishment Instructions, Paragraph G within the compliance schedule specified in Paragraph (a) of this AD.

(c) Precoin ream the six holes in lower wing skin identified in SB57–88, Part 2.H per instructions of SB57–88, Part 2.H, Condition II, Paragraph 1, within the compliance schedule specified in Paragraph (a) of this AD.

(d) Ream five attachment holes identified in SB57–88 Part 2.H per instructions of SB57–88 Part 2.H Condition II, Paragraph 2, within the compliance schedule specified in Paragraph (a) of this AD.

(e) Inspect the eleven attachment holes identified in Paragraphs (c) and (d) of this AD for cracks in wing skin and rear spar lower cap aft tang using eddy current methods per SB57–88, Part 2.H, Condition II, Paragraph 3, within the compliance schedule specified in Paragraph (a) of this AD.

(f) If cracks are found, as a result of the inspections of Paragraphs (a) or (e) of this AD, repair prior to further flight as indicated:

1. If cracks are less than 2.5 inches in length, rework in accordance with appropriate Condition of Service Sketch (SS) 3154, or Paragraph (f)(2) of this AD. Rework per SS 3154 requires repetitive inspections per Paragraphs (a) and (e) of this AD at intervals not to exceed: 1200 hours additional time in service since the last inspection for Conditions I and VI of SS 3154 or 1800 hours additional time in service for Conditions II through V of SS 3154, and repair within 3600 additional hours time in service subsequent to rework per Paragraph (f)(2) of this AD.

2. Repair cracks which are 2.5 inches in length or greater, but less than 7.0 inches in length per SB57–88, Part 2.H, Condition I, Paragraph 3.

3. Repair cracks which are 7.0 inches in length or greater after obtaining approval of the proposed repair from the Chief, Aircraft Engineering Division, FAA Western Region. Submit exact location and dimension of crack with the proposed repair.

(g) If no cracks are found as a result of inspections of Paragraphs (a) and (e) of this AD, coin six holes outboard of wing station Xcw = 69.500 per SB57–88, Part 2.H, Condition II, Paragraph 4, and revert to repetitive inspection requirements of Paragraph (i) of this AD.

(h) Return the aircraft to serviceable condition per the appropriate instructions of SB57–88 prior to flight.

(i) Conduct repetitive visual inspections per Paragraph (a) and eddy-current inspection of the 11 attachment holes per Paragraph (e) at intervals not to exceed 3,600 hours time in service since the last such inspection. (Note: Do Not re-ream the eleven attachment holes inboard of station Xcw = 69.500 after the initial inspection of Paragraph (e) of this AD).

(j) Installation of the preventive modification per S/B 57–88, Part 2.H, Condition I, Paragraph 3, eliminates the requirement for repetitive inspections required by Paragraph (i) of this AD.

(k) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections required by this AD.

(l) Alternative inspections, modifications or other actions which provide an equivalent level of safety may be used when approved by the Chief, Aircraft Engineering Division, FAA Western Region.

This amendment becomes effective October 23, 1980.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421,

1423); sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

Note.—The FAA has determined that this document involves a final regulation which is not considered to be significant under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Los Angeles, Calif., on October 6, 1980.

H. C. McClure,

Acting Director, FAA Western Region.

[FR Doc. 80-32678 Filed 10-22-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 79-NW-46-AD, Amdt. 39-3951]

Airworthiness Directives: Boeing Model 707/720/727/737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) to require the addition of leading edge device position logic that will provide aural warning when the leading edge devices are not deployed for takeoff on Boeing Model 707/720/727/737 series airplanes.

This AD is necessary because service experience indicates that during the routine use of the preflight checklist, the flight crew may overlook the unlighted leading edge position lights which indicates that the leading edge devices (slats and flaps) are not extended. A hazardous condition exists when a takeoff is attempted with the leading edge devices retracted because this configuration would greatly increase the likelihood of an airplane stall.

DATES: Effective date November 24, 1980.

Compliance times as described in the body of this AD.

FOR FURTHER INFORMATION CONTACT: Mark I. Quam, Systems and Equipment Section, ANW-213, Engineering and Manufacturing Branch, FAA, Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108, telephone (206) 767-2500.

SUPPLEMENTARY INFORMATION:

History

The status of the 707/720/727/737 leading edge devices prior to takeoff is determined by the use of a Before Takeoff checklist coupled with the observation of the leading edge position lights. Green lights indicate the leading edge devices have extended. Amber lights indicate the leading edge devices are unlocked or in transit. Absence of leading edge position lights would indicate either a system failure or that the pilot had failed to put the flap handle in or beyond the first flap detent position.

Service experience indicates that during routine use of the Before Takeoff checklist, the flight crew may overlook the "no light" leading edge position light condition. They then may attempt a takeoff with the leading edge devices retracted. The latest reported occurrence is the Indian Airlines Boeing 737 crash at Hyderabad, India on December 17, 1978. The Government of India Civil Aviation Department preliminary accident report of that incident indicates that the flight crew had failed to notice the lack of leading edge device lights during the use of the Before Flight checklist and then attempted a takeoff with the leading edge devices retracted.

Public Participation

A Notice of Proposed Rule Making (NPRM) was published in the **Federal Register** (45 FR 2657) on January 14, 1980, proposing an amendment which would require (a) a positive aural warning when the leading edge devices have not been extended prior to takeoff and (b) a visual amber caution warning when the leading edge devices have not been extended and the trailing edge flaps have been extended to the takeoff setting. Interested persons were invited to participate in the making of the amendment and due consideration has been given to all comments received.

Subsequent to publishing the NPRM the Air Transport Association of America (ATA) requested an extension to the comment period and a meeting to provide public input to the NPRM. The request for extension was granted and a public meeting was announced in the **Federal Register** (45 FR 32012) dated May 15, 1980. Comments from that meeting, which was held on June 19, 1980, have also been considered in the making of this rule. Except as changed herein, the rule as proposed is adopted.

Comments

The FAA has received numerous comments from the ATA, operators, and the airframe manufacturer. A summary of these comments and the FAA responses follows.

A. The Regulation Generally

ATA/Operator Comment

The ATA and two operators commented that the proposed AD appears to be an attempt by the FAA to retroactively adopt Amendment 25-42 which requires that the takeoff warning systems include the leading edge devices. They believe these new requirements should be proposed as retroactive rules of general applicability, if the FAA feels they are necessary, rather than propose them as discriminatory rules against the Boeing aircraft.

Response

Section 25.703 of the Federal Aviation Regulations (FAR's)—takeoff warning system—was added by Amendment 25-42 and, in part, requires an aural warning if the leading edge devices are not in the proper positions. This AD action stems from service experience which indicates that flight crews may overlook the absence of a green light which indicates the leading edge devices are not properly extended. This action as well as that following the Nairobi accident involving a B-747 (discussed later) are predicated upon a finding of an unsafe condition within the meaning of Part 39. It is not based upon Part 25. The Administrative Procedure Act (5 U.S.C. 500 *et seq.*) is satisfied because full public participation in the rule making has been afforded. Furthermore, Part 25 addresses problems prospectively, while Part 39 deals with inservice problems. Any further amendment to Part 25 is unnecessary in view of the adoption of Amendment 25-42.

B. Leading Edge Visual Warning

ATA/Operator/Manufacturer Comment

All of the comments concerning the amber caution light proposal were unfavorable. The operators have stated the light would be impractical and ambiguous when considering the existence of the leading edge indication green and amber caution lights system. One operator commented that if a rule is adopted, an aural warning system should be considered sufficient and should tie into the existing takeoff warning system.

The airframe manufacturer stated that the incorporation of an amber light on the center panel which illuminates when some degree of trailing edge flap has been selected will not add to dispatch safety and could encourage a practice of looking for "NO AMBER" rather than the checklist "GREEN LIGHT" requirement. They also stated that these lights are capable of being dimmed, and are, therefore, not readily visible during a period of increased crew workload.

Response

Upon reconsideration, the FAA has determined that the amber caution light

requirement should be deleted from the rule. The light, as proposed in the NPRM, provided the function of pointing out to the flight crew that the takeoff aural warning was activated by the leading edge device position logic, and the aural warning was not activated from the speed brake, stabilizer trim, or trailing edge flap logic. This is a feature that would have provided a convenience; however, it does not appear to be necessary in the interests of safety and it is hereby withdrawn.

C. Leading Edge Aural Warning

1. *ATA/Operator Comment:*

The Indian Government final accident report on the Indian Airlines 737 accident at Hyderabad is not available. Therefore, the airlines believe there is insufficient evidence to support the FAA's conclusion that flight crew failure to notice the "no leading edge device lights" was the primary cause. They state that the possibility of improper configuration of the aircraft for takeoff and the improper use of the checklist by the flight crew in a single incident should not be the basis for "wholesale modifications" of systems proven satisfactory by long operating experience.

Response

The FAA has not received the final accident report on the Indian Airlines accident at Hyderabad and it is not known whether an operational or mechanical failure caused the leading edge devices not to deploy. That failure may never be established. However, the preliminary report, signed on April 8, 1979, by the Indian Government authorities, has established that the leading edge devices were retracted and the trailing edge flaps were close to the number one position. The warning horn did not sound. Messages received from the Indian Airworthiness Authority in July 1980 indicated that they consider that retraction of leading edge devices on the B-737 cannot be ruled out if the flap lever is not positively housed into the detent at takeoff.

This rule making is not centered around what causes leading edge devices not to extend. As was the case in the Lufthansa 747 crash at Nairobi, the subject of AD 75-05-11, 44 FR 8542, dated February 28, 1975, the rule making is in recognition that flight crews may overlook the lack of leading edge position lights even with the use of a checklist. Therefore, the existing warning presentation coupled with the improper (or lack of) use of the checklist is considered to be unsafe, and the warning presentation can be improved by coupling the leading edge device position logic to the aural warning system.

2. *ATA/Operator Comment:*

The airlines believe the Lufthansa 747 accident should be considered in the light of the unique design characteristics of that airplane.

Primary power for the 747 trailing edge flaps is hydraulic, while the power for the leading edge devices is pneumatic. A 747 flight crew, using normal cockpit controls, could inadvertently "set up the cockpit" in a manner that would lead to takeoff with trailing edge flaps properly extended but with the leading edge devices retracted.

The commenters stated that the commonality of power source and sequential train of operation of the 707/720/727/737 airplanes combine to produce a design "extremely invulnerable" to a failure that would result in improper positioning of the leading edge devices with the trailing edge flaps in a takeoff position. With regard to exposure to an inadvertent flight crew action they state that, unlike the 747, such an inadvertency on these narrow body aircraft is extremely improbable (approximately one in 1.43×10^9).

Response

a. *Operational Reliability:*

From an operational standpoint, the 737 flap lever can be set up to extend the trailing flaps without leading edge extension and the aural warning will not sound, which may have been the case on the 737 crash at Hyderabad, India. Other operational errors can occur such as was the case when a flap handle on a 707 was inadvertently knocked out of the detent position in two instances (flap handle configuration is similar on the 720, 727 and 737). Therefore, operational type failures cannot be ruled out.

b. *Mechanical Reliability:*

The ATA has made the assessment that the probability of exposure to failure (commonality of power source and sequential train of operation) yields a probability of occurrences of approximately one in 1.43×10^8 hours for 707/720/727/737 fleets. This may be a reasonable assessment if the reliability figures could be assessed as accurate and the leading edge actuation systems were exactly the same on all three airplanes. The conceptual designs are similar but parts and linkage configuration including the valves are not the same. Therefore, the conclusion is questionable.

From a mechanical/hydraulic system standpoint, the 707/720/727/737 leading edge actuation systems have been reliable, but not without failures. The worn flap handle has caused inadvertent flap selection (five known 707 cases, and the 720/727/737 aircraft are similar in design). There has been a failure reported in the crank rivets in the extend system of the 707 leading edge devices, and there has been one reported leading edge valve failure that led to loss of leading edge device position control. There have been failures in the 737 flap worm gear that can have any number of failure effects. It was fortuitous these failures occurred with the leading edge flaps extended and at a time other than the takeoff condition.

Further, it was assumed in the certification presentation of the 707, 720, 727, and 737 leading edge actuating systems that they may fail and that the leading edge position light system would provide adequate warning information in that eventuality. Therefore, from an historical standpoint, that is from service history and from the aircraft certification proceedings, the probability of failure of the leading edge actuation systems has not been established as "extremely improbable".

3. *ATA/Operator Comment:*

ATA maintained that there would be an increased likelihood of false warnings following installation of the leading edge device warning systems; and that these false warnings were likely to occur during the takeoff roll, resulting in unnecessary rejected takeoffs. They recommend that, in the event that the AD is issued requiring installation of the leading edge device warning system, operators be permitted to install an inhibit system which would prevent the leading edge device warning from activating once the takeoff roll has begun.

Response

The service history of the existing aural takeoff warning system, with respect to false warnings, has been satisfactory. However, in coupling the existing B-707 aural warning system to the leading edge device position indicating system, Lufthansa experienced false warnings during takeoffs on rough runways. This problem was resolved by the installation of a throttle advance inhibit system. The FAA is cognizant of the hazard that results from false warnings, particularly during the high speed segment of the takeoff roll. During the design evaluation of the aural warning modification, the need for warning inhibit circuitry will be fully evaluated, and where it is found necessary it will be required as a condition for approval of the modification procedure. Further, any operator may develop and submit a

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system for FAA-approval. For the above reasons, it is considered unnecessary to include a specific inhibit circuitry requirement as part of the rule.

4. *ATA/Operator Comment:*

ATA maintained that the modifications cannot be accomplished within the proposed 2,400 flight hour period without major service disruptions. They said that in order to avoid grounding of airplanes and loss of service to the public it will be necessary for the compliance time to be adjusted to accommodate the availability of service bulletins and parts, and the scheduled aircraft major maintenance operations where the required time, facilities, manpower, and equipment will be available. They stated that compliance would require at least 18 months after delivery of service bulletins and parts if service disruptions are to be minimized.

Response

The FAA has reconsidered the proposed compliance time, in view of the comments received concerning both the time required for the manufacturer to develop and the FAA to approve the modifications, and the amount of time that the operators will require to install the modifications. Upon consideration of all of the information presently available, it has been determined that an additional period of 18 months is necessary to effect the changes required herein. It has also been determined that a reasonable addition of time will not adversely affect safety. Since the Hyderabad accident, as well as the commencement of this rule-making action, operators have been on notice of the potential hazards of flight crews overlooking unlighted leading edge position lights and have had the opportunity to stress the importance of this in training and otherwise. Further, the existing visual warning system remains in place. It will, therefore, not significantly affect the intent of the proposal to extend the proposed compliance time somewhat. The final date for compliance will, therefore, be extended until 18 months following the proposal date which was the earlier of 2,400 hours or one year, thereby adjusting the time on a calendar basis to March 31, 1983.

In addition to extending the compliance time, the proposed visual warning system change has been withdrawn. These adjustments in the proposed rule should significantly reduce the cost burden, without adversely affecting safety.

5. *ATA/Operator Comment:*

The ATA stated that in addition to publication of the subject NPRM, the FAA recently revised all transport category airplane Master Minimum Equipment Lists (MMEL's) to require that takeoff warning system be operative at all times. The ATA was advised that this action was taken as a result of the Indian Airlines Hyderabad accident. The ATA argues that the application of two simultaneous solutions to the problem; i.e., revision of MMEL's and this proposal, appears to be illogical.

Response

Prior to FAR 25.703, takeoff warning systems were not required for aircraft certification. As a result, the takeoff warning systems have been on the MMEL's to permit them to be inoperative for dispatch. Due to takeoff accidents (Chicago/DC-10 and Nairobi/747) where retractions and/or missettings of lift devices have been involved, the takeoff warning systems have been deleted from the MMEL's for the 747 and DC-10 aircraft.

In the interest of safety, and to avoid similar accidents in other aircraft, the Flight Operations Evaluation Policy Board decided to remove the takeoff warning systems from all MMEL's. This proposal, which would add a feature to the takeoff warning system, does not contradict but rather complements the earlier FAA action in making the system mandatory.

6. *ATA/Operator Comment*

ATA suggested that since Boeing 707/720 aircraft will have been "noise regulated" out of service by the end of 1984, those aircraft should be exempt from any such modifications at this late date.

Response

The final date for retirement of subsonic aircraft which do not comply with the noise standards of Part 36, does not occur until January 1, 1985, nearly two years after this rule will have mandated the leading edge warning modification. And then it is only speculative that all 707/720 aircraft will be removed from service. The Aviation Safety and Noise Abatement Act of 1979 revoked the "No-Trades" provisions of the original Sub-Part E of FAR 91. As a result, now that trades can be used, there appears to be considerably more interest in complying with the noise requirements of FAR Part 36 by use of reductions in maximum operating weights, and the use of other operating limitations with less emphasis on the application of acoustic treatment to the airplane. Therefore, it cannot be said that the 707/720 airplanes will not be operating within the U.S. beyond 1984. Moreover, the "retirement" regulations do not apply to aircraft engaged in foreign air commerce (flights between the United States and foreign locations). In addition, the 707/720 design configuration is the most easily traced for a history of problems in the leading edge actuation system. Therefore, this rule will not exempt these models.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Boeing: Applies to all Model 707, 720, 727, and 737 series airplanes. Compliance time as follows: To assure the flight crew has positive warning when the leading edge devices are not extended for takeoff, accomplish the following:

On or before March 31, 1983, unless already accomplished, install in a manner approved by the Chief, Engineering and Manufacturing Branch, FAA Northwest Region, leading edge device logic that will provide aural warning when the leading edge devices have not been extended prior to takeoff.

Note.—Boeing service bulletins that meet the requirement of this AD will so state.

This amendment becomes effective November 24, 1980.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89).

Note.—The FAA has determined that this document involves a proposed regulation which is not considered to be significant under the provisions of Executive Order 12044 and as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Seattle, Wash., on October 9, 1980.

Charles R. Foster,

Director, Northwest Region.

Note.—The incorporation by reference provisions in the document were approved by the Director of the Federal Register on June 19, 1967.

[FR Doc. 80-32679 Filed 10-22-80; 8:45 a.m.]

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14 CFR Part 39

[Docket No. 80-SO-61, Amdt. No. 39-3948]

Teledyne Continental Models TSIO-520-M, TSIO-520-P and TSIO-520-R; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which requires the installation of crankshaft front oil seal retainer plates on certain Teledyne Continental Models TSIO-520-M, TSIO-520-P and TSIO-520-R engines installed in, but not limited to certain Cessna Models T206, T207, T210M, T210N and P210N series airplanes. The AD is prompted by reports of the crankshaft front oil seal being dislodged under certain operating periods of high internal crankcase pressure. Displacement of this seal has allowed release of engine oil onto the windshield, obscuring pilot vision, and oil released into the engine compartment has caused an engine fire.

DATES: Effective October 24, 1980.

Compliance required within the next 25 hours time in service after the effective date of this AD unless already accomplished.

FOR FURTHER INFORMATION CONTACT: Gil Carter, ASO-214, Engineering and Manufacturing Branch, FAA, Southern Region, P.O. Box 20636, Atlanta, Georgia 30320, telephone (404) 763-7435.

SUPPLEMENTARY INFORMATION: There have been reports of the crankshaft front oil seal being dislodged due to high crankcase internal pressure which has allowed the release of engine oil which impinged on the pilot's windshield and resulted in a landing accident. Also, the release of oil into an engine compartment has resulted in an engine fire. Since this condition is likely to exist or develop on other engines of the same or similar type design, an Airworthiness Directive is being issued which requires the installation of oil seal retention plates on Teledyne Continental Models TSIO-520-M, TSIO-520-P and TSIO-520-R engines installed in, but not limited to, certain Cessna T206, T207, T210M, T210N and P210N airplanes.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

Teledyne Continental Motors: Applies to engine models as follows:

TSIO-520-M, serial numbers 511000 through 520187, 230126R through 230129R, 230131R through 230142R, and 230144R through 230146R, installed in, but not limited to, certain Cessna Models T206 and T207 airplanes certificated in all categories; TSIO-520-P, serial numbers 513000 through 513620, and 236401R, installed in, but not limited to, certain Cessna Model P210N airplanes certificated in all categories; TSIO-520-R, serial numbers 512000 through 517961, 230226R, 230228R, 230230R through 230233R, 230235R through 230246R, and 230248R, installed in, but not limited to, certain Cessna Models T210M and T210N airplanes certificated in all categories.

Compliance is required within the next 25 hours time in service after effective date of this AD, unless already accomplished.

To prevent the crankshaft front oil seal being dislodged from the engine crankcase, accomplish the following:

(a) Remove engine top cowl panel and left and right nose cowl sections.

(b) Inspect the crankshaft front oil seal which is located on the crankshaft where it passes through the front engine case. If the seal is displaced or there is evidence of oil leakage, replace the oil seal in accordance with the appropriate maintenance manual.

(c) Install two (2) seal half plates, TCM Part No. 641361, on the forward face of the crankshaft with four (4) TCM Part No. 628321-.38 bolts. Torque bolts to 21-25 in-lbs.

(d) Reinstall left and right nose cowl sections and engine top cowl panel, ensuring that baffle seals are fitted and turned in the correct direction.

(e) Run the engine until normal operating temperature is reached and inspect crankshaft front oil seal for leaks.

(f) Make an appropriate maintenance record entry.

Note.—Teledyne Continental Service Bulletin No. M80-20, dated September 12, 1980, pertains to this subject.

An equivalent method of compliance may be approved by the Chief, Engineering and Manufacturing Branch, Federal Aviation Administration, Southern Region.

This amendment is effective October 24, 1980.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended (49 U.S.C 1354(a), 1421, 1423); sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified above under the caption "For Further Information Contact."

Issued at East Point, Ga., on October 8, 1980.

Louis J. Cardinali,

Director, Southern Region.

[FR Doc. 80-32682 Filed 10-22-80; 8:45 am]

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14 CFR Part 39

[Docket No. 80-CE-35-AD; Amdt. 39-3949]

Cessna Models 210K, 210L, 210M, 210N, T210K, T210L, T210M, T210N and P210N Airplanes; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), AD 80-21-03, applicable to Cessna Models 210K, 210L, 210M, 210N, T210K, T210L, T210M, T210N and P210N airplanes with a King Radio Corporation Model KFC-200 autopilot on which the roll axis servo actuator is mounted in the right wing. The AD requires, prior to further flight, inspection of the aileron system to verify that the autopilot is correctly connected to the aileron system. This situation, if not corrected, could cause the loss of the primary aileron control and the autopilot roll axis control, with resultant safety hazards to the airplane's occupants.

EFFECTIVE DATE: October 23, 1980, to all persons except those to whom it has already been made effective by airmail letter from the FAA dated October 2, 1980.

Compliance: Prior to further flight.

ADDRESSES: King Radio Corporation Installation Bulletin No. 170, dated October 1, 1980, referenced in this AD, may be obtained from King Radio Corporation, 400 North Rogers Road, Olathe, Kansas 66061; Telephone (913) 782-0400. A copy of the Installation Bulletin is also contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106; and Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Ed Mosman, ACE-213, Aircraft Certification Program, FAA, Room 238, Terminal Building No. 2299, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 942-4281.

SUPPLEMENTARY INFORMATION: In 1979, King Radio Corporation (King) obtained approval of their KFC-200 Flight Control System for Cessna Model P210N airplanes under Supplemental Type Certificate (STC) SA1487CE. King subsequently amended STC SA1202CE which approved the KFC-200 Flight Control System in certain Cessna Model 210 series airplanes to use an identical wing-mounted roll axis servo actuator as that used in Cessna Model P210N airplanes. On these wing-mounted roll servo installations, the original Cessna

primary aileron cable clevis bolt was replaced with a longer bolt to provide a means to attach the roll servo bridle cable with the aileron cable to the aileron bellcrank. There were no instructions provided to reinstall the castellated nut and cotter pin when the clevis bolt was replaced.

The FAA has received a report involving a Cessna Model P210N airplane which indicated that the aileron bellcrank nut was not secured with a cotter pin and that the clevis bolt installed was not the specified type drilled for the cotter pin. The report further indicated that the clevis bolt nut loosened and allowed the bolt to release both the primary aileron cable and the autopilot roll servo bridle cable. All aileron control of the airplane roll axis was lost when the clevis bolt slipped from the bellcrank. This created an unsafe condition in which, had it occurred in flight, normal roll control or recovery from an upset with the ailerons would not have been possible.

The FAA determined that this is an unsafe condition that may exist in other airplanes of the same type design, thereby requiring the issuance of an AD. It was also determined that an emergency condition existed, that immediate corrective action was required and that notice and public procedure thereon was impractical and contrary to the public interest. Accordingly, the FAA notified all known registered owners of the airplanes affected by this AD by letter dated October 2, 1980. The AD became effective immediately as to these individuals upon receipt of that letter and is identified as AD 80-21-03.

The AD is applicable to Cessna Models 210K, 210L, 210M, 210N, T210K, T210L, T210M, T210N and Model P210N airplanes with a King Radio Corporation Model KFC-200 autopilot on which the roll axis servo actuator is mounted in the right wing. The AD requires, prior to further flight, visual inspection of the clevis bolt and nut which secures the autopilot bridle cable and the aileron cable to the aileron bellcrank to verify that there is a cotter pin installed to secure the nut. Since the unsafe condition described herein may still exist on other models of the above-mentioned Cessna airplanes, the AD is being published in the **Federal Register** as an amendment to Part 39 of the Federal Aviation Regulations (14 CFR Part 39) to make it effective to all persons who did not receive the letter notification.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

Cessna: Applies to Models 210K, 210L, 210M, 210N, T210K, T210L, T210M, T210N and Model P210N airplanes certified in all categories which have the King Radio Model KFC-200 autopilot installed in accordance with the Supplemental Type Certificates (STCs) SA1202CE or SA1487CE and have the roll axis servo actuator mounted in the right outboard wing.

Compliance: Required as indicated unless the requirements of Paragraphs (A)1, 2 and 3 have been previously accomplished.

To prevent loss of roll axis flight control:

(A) Prior to further flight:

1. Gain access to the right wing aileron bellcrank by removing the aft cover plate on the underside of the wing between wing stations 155 and 172 in accordance with the appropriate Cessna service manual.

2. Visually inspect the clevis bolt and nut which secures the autopilot bridle cable and the aileron cable to the aileron bellcrank to verify there is a cotter pin installed to secure the nut.

3. If a cotter pin is installed, reinstall the cover plate and comply with Paragraph B.

4. If no cotter pin is installed, further visually inspect the clevis bolt to determine if the bolt was cross drilled for a cotter pin.

5. If there is a cotter pin hole and the nut is still in place, install an AN380-2-2, or equivalent, cotter pin and reinstall the cover plates.

6. If there is no cotter pin hole, replace the clevis bolt with a proper AN23-15, or equivalent, bolt as defined by Advisory Circular AC43.13. Reinstall the washers between the cable end fittings and install the nut and cotter pin. After securing the nut and cotter pin, re-rig the aileron system in accordance with the appropriate Cessna service manual and adjust the bridle cable to 20±2 pounds tension.

King Radio Corporation Installation Bulletin No. 170, dated October 1, 1980, has information applicable to this AD.

(B) Make the prescribed entry in the airplane maintenance records.

(C) Within 10 days notify, in writing, the Chief, Aircraft Certification Program, Federal Aviation Administration, Room 238, Terminal Building No. 2299, Mid-Continent Airport, Wichita, Kansas 67209 of any incorrect clevis bolt or lack of cotter pin in complying with paragraphs (A)4. or (A)6. One acceptable means of making these reports is Malfunction or Defect Report (FAA Form 8010-4). (Reporting approved by the Office of Management and Budget under OMB No. 04-R0174.)

(D) Any equivalent method of compliance with this Airworthiness Directive must be approved by the Chief, Aircraft Certification Program, Federal Aviation Administration, Room 238, Terminal Building No. 2299, Mid-Continent Airport, Wichita, Kansas 67209.

This amendment becomes effective on October 23, 1980, to all persons except those to whom it has already been made effective by an airmail letter from the FAA dated October 2, 1980, and is identified as AD 80-21-03.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c) Department of Transportation Act (49 U.S.C 1655(c)); sec. 11.89, Federal Aviation Regulations (14 CFR sec. 11.89))

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A copy of the final evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to FAA, Office of the Regional Counsel, Room 1558, Central Region, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 8, 1980.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 80-32683 Filed 10-22-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-SO-67]

Alteration of Transition Area, Rocky Mount, N.C.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule alters the Rocky Mount, North Carolina, Transition Area by revoking the portion associated with the Rocky Mount Downtown Airport, which has been permanently closed.

EFFECTIVE DATE: 0901 G.m.t., December 4, 1980.

ADDRESS: Federal Aviation Administration, Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

FOR FURTHER INFORMATION CONTACT: Harlen D. Phillips, Airspace and Procedures Branch, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: 404-763-7646.

SUPPLEMENTARY INFORMATION: In the Rocky Mount, North Carolina, Transition Area, described in § 71.181 (45 FR 445), a portion was designated to provide controlled airspace for instrument operations at the Rocky Mount Downtown Airport. Since the airport is permanently closed and the associated instrument flight procedures have been canceled, it is necessary to revoke the designated airspace. Since this amendment lessons the burden on the public, notice and public procedure hereon are unnecessary.

Adoption of the Amendment

Accordingly, Subpart G, § 71.181 (45 FR 445) of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t. December 4, 1980, as follows:

Rocky Mount, N.C.

The present description is deleted and ". . . That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Rocky Mount-Wilson Airport (Lat. 35°51'17" N, Long. 77°53'34" W) * * *" is substituted therefor.

(Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in East Point, Ga., on October 10, 1980.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 80-32681 Filed 10-22-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-SO-37]

Alteration of Transition Area, Alabaster, Ala.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule alters the Alabaster, Alabama, Transition Area. A new standard instrument approach procedure has been developed for the Shelby County Airport. Additional controlled airspace is required to protect aircraft executing the approach procedure and must be designated before the procedure can become effective.

EFFECTIVE DATE: 0901 G.m.t., December 4, 1980.

ADDRESS: Federal Aviation Administration, Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

FOR FURTHER INFORMATION CONTACT: Harlen D. Phillips, Airspace and Procedures Branch, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: 404-763-7646.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking was published in the **Federal Register** on Monday, August 4, 1980 (45 FR 51590), which proposed the alteration of the Alabaster, Alabama, Transition Area. A new standard instrument approach procedure, NDB RWY 33, has been developed for the Shelby County Airport. A transition area extension south of the airport is required to protect aircraft executing the approach procedure. The establishment of a non-Federal, nondirectional radio beacon south of the airport, which will support the approach procedure, is presently being accomplished.

No objections were received from this Notice.

Adoption of the Amendment

Accordingly, Subpart G, § 71.181 (45 FR 445) of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t., December 4, 1980, as follows:

Alabaster, Ala.

The present description is deleted and "* * * that airspace extending upward from 700 feet above the surface within a 7-mile radius of Shelby County Airport (Lat. 33°10'40"N., Long. 86°47'00"W.); within 3 miles each side of the 171° bearing from the Calera RBN (Lat. 33°07'04"N., Long. 86°46'14"W.), extending from the 7-mile radius area to 8.5 miles south of the RBN; within a 6.5-mile radius of Bessemer Airport (Lat. 33°18'49"N., Long. 86°55'29"W.); within 3 miles each side of the 241° bearing from Bessemer RBN (Lat. 33°18'42"N., Long. 86°55'25"W.), extending from the 6.5-mile radius area to 8.5 miles southwest of the RBN; excluding that portion within the Birmingham Transition Area * * *" is substituted therefor.

(Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequenbt and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in East Point, Ga., on October 10, 1980.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 80-32698 Filed 10-22-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-ARM-18]

Correction to Previously Altered Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment corrects the Eagle, Colorado control zone description. This action is necessary as a result of the amendment to the Eagle, Colorado control zone (Airspace Docket No. 80-ARM-08) which had a typographical error in the description.

EFFECTIVE DATE: 0901 G.m.t. December 25, 1980.

FOR FURTHER INFORMATION CONTACT: Pruett B. Helm, Operations, Procedures and Airspace Branch, Air Traffic Division, ARM-500, Federal Aviation Administration, Rocky Mountain Region, 10455 East 25th Avenue, Aurora, Colorado 80010; telephone (303) 837-3937.

SUPPLEMENTARY INFORMATION:

History

On Monday, July 21, 1980, the FAA published for comment (45 FR 48651) a proposal to alter the Eagle, Colorado Control Zone. As a result of this circular the only comments received expressed no objections. On Thursday, September 11, 1980, the FAA published the Final Rule (45 FR 59839) which altered the Eagle, Colorado control zone. However, there was a typographical error in the description which placed the boundaries of the Control Zone 13 miles northeast of the Wolcott NDB rather than 9 miles northeast of the Wolcott NDB as described in the NPRM dated July 21, 1980.

Drafting Information

The principal authors of this document are Pruett B. Helm, Operations, Procedures and Airspace Branch, Air Traffic Division, and Daniel J. Peterson, office of Regional Counsel.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended effective 0901 G.m.t., December 25, 1980, as follows:

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By amending Subpart F, § 71.171 (45 FR 356) so as to alter the following control zone to read:

Eagle, Colo.

Within a 5-mile radius of the Eagle County Airport (latitude 39°38'42" N., longitude 106°54'43" W.); within 3 miles each side of 072° and 252° bearings from the Wolcott NDB (latitude 39°40'33" N., longitude 106°45'34" W.); extending from the 5-mile radius area to 9 miles northeast of the Wolcott NDB.

(Sec. 307(a) Federal Aviation Act of 1958 as amended (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Aurora, Colo., on October 10, 1980.

Paul K. Bohr,

Acting Director, Rocky Mountain Region.

[FR Doc. 80-32675 Filed 10-22-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71, 73

[Airspace Docket No. 80-AWA-13]

Temporary Restricted Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action designates a temporary restricted area in the vicinity of Clear Creek, Alaska, to contain a major joint military exercise entitled BRIM FROST 81. Applicable portions of the area are designated as controlled airspace within the Continental Control Area to permit joint use of the affected airspace when military activity permits. Federal Airways B-26 and V-444 are excluded within the restricted area to facilitate military aircraft performing maneuvers which are not compatible with the existence of an airway. This action prohibits unauthorized flight operations by nonparticipating aircraft within the restricted area during its designated time of use.

EFFECTIVE DATE: December 25, 1980.

FOR FURTHER INFORMATION CONTACT: George O. Hussey, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION:

History

On August 25, 1980, the FAA proposed to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to: (1) Designate a temporary restricted area identified as R-2213, Clear Creek, Alaska; (2) to designate as controlled airspace those portions of the area that penetrate the Continental Control Area; and (3) to exclude Federal Airways B-26 and V-444 within the restricted area (45 FR 56352). The area is required to contain a major joint military exercise (BRIM FROST 81) which involves air activities of such a volume and nature that a hazard exists for nonparticipating aircraft within the restricted area when the area is in use by the military. Communications equipment will be installed and maintained between the appropriate military and FAA facilities to coordinate movement of nonparticipating aircraft through the exercise area when military activity permits. Additionally, a reverse charge telephone number and VHF/UHF radio frequencies will be established and published for pilots of nonparticipating aircraft to coordinate directly with the military if desired. The temporary restricted area will be designated as joint use to permit use of the area by the controlling agency for nonparticipating VFR and IFR air traffic when the area is not in use for its designated purpose. The military will provide aerial access to private or public use lands within the temporary restricted area. These amendments are the same as those proposed in the notice. Of the comments received on the notice of proposed rulemaking, none objected to the proposal. The Department of the Air Force, Alaskan Air Command, is the lead agency for purposes of compliance with the National Environmental Policy Act (NEPA). Sections 71.109, 71.125 and 71.151 of Part 71 and § 73.22 of Part 73 were republished in the Federal Register on January 2, 1980 (45 FR 306, 342, 346 and 680).

The Rule

These amendments designate temporary joint use Restricted Area R-2213, Clear Creek, Alaska, for continuous use from 0001 January 28 until 2359 local time, February 3, 1981. Those portions of the area which penetrate the Continental Control Area are designated as controlled airspace and Federal Airways B-26 and V-444 are excluded within the temporary restricted area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.109, § 71.125, § 71.151 and § 73.22 of Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as republished (45 FR 306, 342, 346 and 680) are amended, effective 0901 G.m.t., December 25, 1980, as follows:

1. In § 71.109, under B-26, the following is added: "The airspace within Restricted Area R-2213 is excluded from 0001 January 28 until 2359 local time February 3, 1981."

2. In § 71.125, under V-444, the following is added: "The airspace within Restricted Area R-2213 is excluded from 0001 January 28 until 2359 local time February 3, 1981."

3. In § 71.151, between "R-2211 Blair Lakes, Alaska" and "R-2301 Ajo, Arizona" the following is added: "R-2213 Clear Creek, Alaska, from 0001 January 28 until 2359 local time February 3, 1981."

4. In § 73.22, After "R-2211 Blair Lakes, Alaska;" the following is added:

R-2213 Clear Creek, Alaska

Boundaries. Beginning at Lat. 64°41'00"N., Long. 147°55'00"W.; to Lat. 64°40'00"N., Long. 147°20'00"W.; to Lat. 64°20'00"N., Long. 147°00'00"W.; to Lat. 64°14'45"N., Long. 146°43'15"W.; thence along the East bank of the East Fork and Little Delta Rivers to Lat. 63°50'50"N., Long. 146°47'30"W.; to Lat. 63°58'00"N., Long. 147°02'00"W.; to Lat. 63°58'00"N., Long. 148°00'00"W.; to Lat. 64°23'00"N., Long. 148°05'00"W.; to point of beginning.

Designated altitudes. Surface to FL200.

Time of designation. Continuous, from 0001 January 28 until 2359 local time February 3, 1981.

Controlling agency. Federal Aviation Administration, Anchorage ARTCC.

Using agency. Alaskan Air Command, Elmendorf AFB, Alaska.

(Secs. 307(a), 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on October 14, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-32690 Filed 10-22-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Airspace Docket No. 80-AWA-15]

Special Use Airspace; Amendment of Restricted Area at Queets, Wash.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action amends Restricted Area R-6707, Queets, Wash., to correct a technical error in the boundary description which incorrectly extends the western boundary to the extent that the restricted area encompasses twice the intended amount of airspace. This action relieves the restriction on the use of that airspace and makes it available for public use.

DATES: Effective date—December 25, 1980. Comments on the rule must be received by November 30, 1980.

ADDRESSES: Send comments on the rule in triplicate to: Director, FAA Northwest Region, Attention: Chief, Air Traffic Division, Docket No. 80-AWA-15, Federal Aviation Administration, FAA Building, Boeing Field, Seattle, Wash. 98108.

Send comments on environmental aspects to: Commander, Medium Attack Tactical, Electronic Warfare Wing, NAS Whidbey Island, Wash. 98277.

The official docket may be examined at the following location: FAA Office of the Chief Counsel, Rules Docket (AGC-204), Room 916, 800 Independence Avenue SW., Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: George O. Hussey, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION:

Request for Comments

The purpose of this amendment is to correct the technical description of Restricted Area R-6707, Queets, Wash. Although the current description has been in effect for several years, a recomputation of the location of a line 3 miles parallel to the shoreline caused an unintended westward extension of the restricted area. The new description corrects this discrepancy and describes the western boundary on a north/south axis as originally intended, however, comments are invited on the rule. When the comment period ends, the FAA will use the comments and any other available information to review the regulation. Commander, Medium Attack Tactical Electronic Warfare Wing, NAS Whidbey Island, Wash., has certified that the requirements of the National Environmental Policy Act (NEPA) have been met.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations (14 CFR Part 73) changes the boundary description of Restricted Area R-6707, Queets, Wash., to delete reference to "3 nautical miles from and parallel to the shoreline." Section 73.67 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) was republished in the Federal Register on January 2, 1980 (45 FR 726). Since this action returns to unrestricted, public use airspace inadvertently assigned within the restricted area, I find that notice and public procedure is unnecessary.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as republished (45 FR 726) is amended, effective 0901 GMT, December 25, 1980, as follows:

§ 73.67 [Amended]

In § 73.67 Washington, under R-6707 Queets, Wash., the boundary description is deleted and the following is substituted therefor. "Boundaries. Beginning at Lat. 47°29'35" N., Long. 124°25'00" W.; clockwise along the arc of a 3 mile radius circle centered at Lat. 47°27'00" N., Long. 124°24'15" W.; to Lat. 47°24'25" N., Long. 124°24'30" W.; to point of beginning."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order No. 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on October 14, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-32721 Filed 10-22-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 159

[Docket No. 20200; Amendment 159-21]

Solicitation and Leafletting Procedures at Washington National and Dulles International Airports

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This rule amends the regulations pertaining to charitable, religious, and political leafletting and soliciting at National and Dulles Airports. These amendments are editorial in nature or remove restrictions and are intended to clarify the requirements imposed on applicants for leafletting or soliciting permits.

DATE: This Amendment becomes effective on October 26, 1980. Comments may be submitted by November 24, 1980.

ADDRESS: Comments may be submitted to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue, S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Edward Faggen, Legal Counsel, AMA-7, Metropolitan Washington Airports, Washington National Airport, Washington, D.C. 20001, telephone: (703) 557-8123.

SUPPLEMENTARY INFORMATION:

Background Information

On May 20, 1980, FAA issued a final rule amending 14 CFR Part 159 (45 FR 35306, 5/27/80), National Capital Airports, to provide for regulation of solicitation and leafletting by noncommercial organizations at National and Dulles Airports. This final rule was issued in accordance with Title V of Public Law 96-193 enacted February 18, 1980. Subsequent to publication of the final rule, the original effective date of July 28, 1980, was deferred 90 days to October 26, 1980, to permit completion of various administrative requirements associated with implementation of rule. (45 FR 49917, July 28, 1980).

Since the final rule was issued, FAA has received petitions for

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reconsideration of the rule from the following organizations:

Aviation Consumer Action Project;
Alliance for Preservation of Religious Liberty;
American Civil Liberties Union Fund of the National Capital Area.

These petitions were considered as petitions for rulemaking under Part 11 of the Federal Aviation Regulations (14 CFR Part 11). The petitions were published in full in the **Federal Register**, 45 FR 59897, September 11, 1980. Comments on them were requested by November 10.

Consideration will be given to amending the final rule based on the petitions and the comments received. In the meantime, the rule as clarified in this amendment will become effective October 26, 1980.

The amendments remove restrictions on noncommercial activity at the airports and clarify possibly ambiguous language.

The restrictions that permit the sale of written or printed matter only by persons doing so for the sole benefit of religious beliefs, §§ 159.93(a)(3) and 159.93(c)(2)(v)(A) and (B) are removed.[1]

The regulations will not distinguish between sales by religious solicitors on the one hand and sales of written or printed matter by political or tax exempt organizations on the other. This regulation will allow sale of written or printed matter for noncommercial purposes primarily because it is difficult to distinguish between the act of selling written or printed matter and the exchange of such material for a solicited contribution. The airport's interest in preventing congestion, in regulating commercial activity and protecting the public from fraud are equally affected by a sale or exchange of material.

Also, in § 159.93(c)(2) which establishes the permit application procedure, the reference to distribution of written or printed matter is modified to further clarify that the person who seeks only to distribute written or printed matter on the airport without soliciting funds or selling the printed matter is not subject to the procedure of § 159.93(c)(2). Section 159.93(c)(2) applies to those persons seeking to solicit contributions or sell written or printed matter on the airport. Those who seek only to distribute will be given a permit, if available, upon request under § 159.93(c)(1). Language is being added to that section to make clear those persons to whom it applies.

[1] Sections 159.91(a), which prohibits persons from engaging in any business or commercial activity at the airport without approval, is not affected by this amendment.

Sections 159.93 (c)(2) and (c)(2)(ii) are being modified to further clarify that each person who seeks to solicit contributions or sell printed matter may do so only as a representative of a non-commercial organization or in connection with religious expression. With the exception of those soliciting for religious purposes, solicitors must represent an organization although membership in the organization is not required.

Section 159.93(c)(2)(v)(B) was intended to allow a person to solicit funds on the airports on behalf of a political organization. The definition of a political organization was not intended to be restrictive. For this reason the requirement that the organization have as its "primary" function the influence of the nomination, election, or appointment of one or more individuals to Federal, state, or local public office; to influence legislation or to advocate issues or causes to the public is not appropriate. The word "primary" is deleted. Therefore, noncommercial organizations that engage in some political activity are not excluded by this definition from soliciting.

Finally, § 159.94 is modified to more clearly prohibit the solicitation of funds or the selling of written or printed matter without displaying a solicitation permit.

Since these amendments are clarifying and editorial in nature and implement changes required to carry out the intent of Amendment 159–18 which becomes effective on October 26, 1980, I find that notice and public procedure are impractical and that good cause exists for making them effective in less than 30 days. However, the FAA invites interested persons to submit such written data, views, or arguments as they may desire regarding these amendments. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC–24, 800 Independence Avenue, S.W., Washington, D.C. 20591. All communications received on or before Nov. 24, 1980 will be considered by the Administrator and these amendments may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Adoption of the Amendment

Accordingly, Part 159 of the Federal Aviation Regulations (14 CFR Part 159) is amended effective October 26, 1980, as follows:

1. By amending paragraphs (a)(3) and (c) of § 159.93 to read as follows:

§ 159.93 Certain noncommercial activities.

(a) * * *

(3) The sale of written or printed matter. All other sales of any material, items, or services will be treated as a "commercial activity" under this Part.

* * * * *

(c) *Procedure:* Unless by prior application all available permits have been granted, applications will be processed as follows:

(1) Each person who seeks to distribute written or printed matter without soliciting funds or selling such matter shall immediately be given a single permit for leafletting for noncommercial purposes upon his request.

(2) Each person who seeks to solicit contributions or sell written or printed matter may do so only in connection with religious expression or as a representative of a noncommercial organization. Each such person shall immediately be given a single permit upon submission of an application, signed by the applicant, containing the following:

(i) The applicant's name, address, and telephone number.

(ii) The name, address, and telephone number of the organization that the applicant purports to represent, and a letter or other documentation that the applicant has authority to represent that organization. (This submission is not required of an individual who would be soliciting in connection with religious expression and who is not representing an organization.)

(iii) The name and title of the person in the organization who will have supervision of an responsibility for the activity at the airport, if applicable.

(iv) A statement that the sale of printed matter and/or the solicitation of funds is for noncommercial purposes.

(v) One of the following:

(A) A statement signed by the applicant that the applicant represents, and will be soliciting funds or selling written or printed matter for the sole benefit of, a religion or religious group.

(B) A statement signed by the applicant that the applicant represents, and will be soliciting funds or selling written or printed matter for the sole benefit of, a political organization a function of which is to influence the nomination, election, or appointment of one or more individuals to Federal, state, or local public office; to influence Federal, state, or local legislation; or to advocate issues or causes to the public.

(C) A statement signed by the applicant that the applicant's organization has received an official Internal Revenue Service (IRS) ruling or letter of determination stating that the organization or its parent organization qualifies for tax-exempt status under 26 U.S.C. 501(c)(3), (c)(4), or (c)(5).

(D) A statement signed by the applicant that the applicant's organization has applied to the IRS for a determination of tax-exempt status under 26 U.S.C. 501(c)(3), (c)(4), or (c)(5), and that the IRS has not yet issued a final administrative ruling or determination on such status.

(E) A statement signed by the applicant that the applicant's organization has on file with the Virginia Administrator of Consumer Affairs a current registration statement in accordance with the Virginia Annotated Code, Section 57–49 (1978 Cumulative Supplement), "Registration of Charitable Organizations."

* * * * *

2. By amending paragraph (e) of § 159.94 to read as follows:

§ 159.94 Prohibited conduct relating to noncommercial activity.

* * * * *

(e) If that person is selling written or printed matter or soliciting funds, without wearing or displaying, in a conspicuous manner, a solicitation permit and the name of the organization that the person represents.

* * * * *

(Secs. 2 and 4 of the Act for the Administration of Washington National Airport, 54 Stat. 686 as amended by 61 Stat. 94; Secs. 4 and 10 of the Second Washington Airport Act, 64 Stat. 770; sec. 313 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1359); sec. 6, Department of Transportation Act (29 U.S.C. 1655); sec. 501 of Pub. L. 96–193, February 18, 1980)

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT in Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, since these amendments are editorial and clarifying in nature, or are relaxatory, and impose no additional burden on any person, the Federal Aviation Administration has determined that the anticipated impact is so minimal that an evaluation is not required.

Issued in Washington, D.C., on October 17, 1980.

Langhorne Bond,
Administrator.

[FR Doc. 80-33142 Filed 10-22-80; 8:45 am]
BILLING CODE 4910-13-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY
Agency for International Development

22 CFR Part 216

Environmental Procedures

AGENCY: Agency for International Development.

ACTION: Final amendment of regulations.

SUMMARY: These final regulations amend A.I.D.'s environmental procedures to increase their effectiveness and efficiency and to reduce unnecessary paperwork and delay.

EFFECTIVE DATE: October 23, 1980.*

FOR FURTHER INFORMATION CONTACT: Albert Printz, A.I.D. Environmental Coordinator, Agency for International Development, Department of State, Washington, D.C. 20523, 202–632–1036.

SUPPLEMENTARY INFORMATION: On October 1, 1979, the Agency for International Development (A.I.D.) published in the **Federal Register** (44 FR 56378) a notice of proposed rulemaking with proposed amendments to A.I.D.'s environmental procedures. All comments submitted with respect to the proposed amendments were given due consideration. These comments generally were favorable. There were, however, one general and several specific criticisms, each of which are discussed below. Except to the extent modified herein, the supplementary information to the proposed amendments contains a summary of the major changes to A.I.D.'s environmental procedures made by these final amendments.

A. General Comment

A.I.D.'s proposed amendments were criticized for incorporating into the environmental procedures some aspects of the Executive Order 12114, dated January 4, 1979, entitled Environmental Effects Abroad of Major Federal Actions (the Executive Order). The contention was made that reliance on the Executive Order is contrary to both A.I.D.'s obligations under the National Environmental Policy Act of 1970 (NEPA) and a Stipulation, approved by the United States District Court for the District of Columbia, (the Stipulation), in the case of *Environmental Defense Fund et al. v. the Agency for International Development, et al.* No. 75–0500 (D.D.C., December 5, 1975) (Order approving Stipulation.)[1]

A.I.D. does not agree that the amendments adapted from the Executive Order, which are applicable only to the extent an action does not significantly affect the environment of the United States, violate the Stipulation. A.I.D. recognizes its responsibilities to conduct its operations in a manner that mitigates or avoids any potential short- or long-term deleterious environmental effects of local, regional or global proportions. A.I.D. will continue to ensure that environmental consequences of proposed A.I.D. financed activities are identified and properly analyzed.

B. Specific Comments

1. *Section 216.1(a). Purpose.* One commentator suggested that the statement of purpose of the procedures should make it clear that the procedures are adopted in accordance with NEPA.

[1] Actions for which Environmental Assessments or Environmental Impact Statements have been instituted, or contracts for such studies executed, may be completed in accordance with the procedures in effect prior to these amendments or with the amended procedures at the option of the Bureau Environmental Officer.

[1] Plaintiffs in this case sought a declaratory judgment that NEPA applied to A.I.D. and to its assistance in the procurement and use of pesticides; that A.I.D. was in violation of section 102 (2)(C) of NEPA by failing to promulgate procedures ensuring that environmental values may be given appropriate consideration in decision making along with economic and technical considerations; and that A.I.D. failed to prepare, circulate for comment and consider in its decision making process a detailed environmenlel impact statement concerning A.I.D. financed assistance for the procurement and use of pesticides.

The Stipulation provided in relevant part: A.I.D. will prepare a detailed environmental impact statement in accordance with Section 102 (2) (C) of NEPA, the CEQ Guidelines and A.I.D. regulations on any aspect of A.I.D.'s activities * * * covered by NEPA *in each instance in which such a statement is required.* Where the proposed action will not require an impact statement, A.I.D. will, nevertheless, assess the potential environmental effects and results of the assessment will be an integral part of its decision making process.

The Stipulation did not conclude that NEPA is applicable to Agency actions that affect the environment of foreign countries. However, as a matter of law, A.I.D. agreed that NEPA does apply to any major A.I.D. action that has a significant effect on the environment of the United States. A.I.D. adopted regulations covering such cases and formalized procedures that institutionalize environmental review to determine when an A.I.D. action has a significant effect on the environment of the United States. These procedures, which are mandatory under NEPA, require an environmental impact statement to be prepared in accordance with CEQ guidelines for such documents whenever such action occurs.

The Stipulation did not require such "impact statements" in cases where Agency actions have significant effects limited to the environment of a foreign country or countries. However, A.I.D. agreed in the Stipulation that "where an action will not require an impact statement, A.I.D. will nevertheless assess the potential environmental effects and the results of that assessment will be an integral part of its decision making process. In 1978, after finding upon the suggestion of the parties that the requirements of the Stipulation had been satisfied, the District Court ordered that the lawsuit against A.I.D. be dismissed."

A.I.D. adopted this suggestion by indicating that § 216.7(a)(2) is intended to implement the requirements of NEPA.

2. *Section 216.1(c). Definition of "Significant Effect".* Objection was made to the proposed definition of "significant effect" as "an action that does significant harm to the environment." Although this definition is not used with respect to effects on the environment of the United States and is taken from the Executive Order, it was asserted that adoption of the definition is contrary to the requirement in the Stipulation that A.I.D. assess "every proposed new activity significantly affecting the environment."

A.I.D. disagrees. The Stipulation did not define the terms "significant effect" or "significantly affecting the environment." The original A.I.D. procedures adopted pursuant to the Stipulation did not define those terms. NEPA and the regulations implementing that Act which were adopted by the President's Council on Environmental Quality (CEQ) (43 FR 55978) are not applicable to agency actions that have effects limited to the environment of one or more foreign countries. Accordingly, A.I.D. remains free to adopt the definition of significant effect used in the Executive Order regarding environmental effects abroad. This provides consistency within the Executive Branch regarding the environment abroad. Further, it is A.I.D.'s judgment that this definition is adequate to ensure that A.I.D. financed activities are environmentally sound.

A.I.D. does not believe it is necessary to require by regulation a formal environmental assessment in order to study more beneficial alternatives. Other A.I.D. studies conducted in the process of project selection and design are intended to accomplish that purpose. The example of a reforestation project offered by the commentator illustrates this point. The commentator indicated that such a project might be viewed as wholly beneficial, but there are important matters that should be assessed such as the suitability of various tree species and tree planting arrangements. These considerations, however, would be carefully reviewed as standard A.I.D. procedure through technical analysis contained in the A.I.D. project design process. Therefore, it is unnecessary to conduct an environmental assessment for that purpose.

3. *Section 216.1(c)(4) and (5). Definitions of Environmental Assessment and Environmental Impact Statement.* One commentator pointed out that the difference in the description of an Environmental Assessment* in subsection (4) as a "concise evaluation" and an Environmental Impact Statement in subsection (5) as a "detailed study" can convey the mistaken impression that an Environmental Assessment will be less thorough than an Environmental Impact Statement.** A.I.D. notes that in either case the content and form of an Environmental Assessment is detailed in § 216.6(c), but the brief definition of an Environmental Assessment in § 216.1(c)(4) has been revised to describe it as a "detailed study."

4. *Section 216.1(c)(12). A.I.D. as a Minor Donor.* As proposed, the definition of a minor donor in a multidonor project, which is the subject of a categorical exclusion from preliminary environmental review, has been expanded to include situations in which A.I.D.'s contribution exceeds $1,000,000 but not 25 percent of total project cost and the environmental procedures of the donor in control over design of the project are followed. Commentators objected because the environmental procedures of other donors might be superficial or inadequate. As finally adopted, the definition requires a determination by the A.I.D. Environmental Coordinator that the environmental procedures of the donor in control of design are adequate. If the lead donor's environmental procedures are not adequate to identify and assess actions significantly affecting the environment, A.I.D. will cooperate with the recipient country and other donors in conducting an Environmental Assessment or conduct its own Environmental Assessment relying on studies performed by other donors when appropriate.

There are instances when planning for a multidonor project is quite advanced before A.I.D. is invited to participate in financing an activity. Frequently, such projects are organized and planned under the auspices of the World Bank or other substantial donor agencies. A.I.D.'s project review process, in these cases, often relies on the studies performed by the lead donor. To do otherwise would be time consuming, duplicative and sometimes wasteful of manpower and resources. Within the limits described in § 216.1(c)(12) A.I.D. believes it is appropriate for it to use the environmental procedures and studies relied on by the lead donor in the same manner as A.I.D. relies on the other studies, such as economic, technical and social analyses, used by the lead donor for decisionmaking.

If the A.I.D. Environmental Coordinator does not believe that the lead donor's procedures are adequate, A.I.D. is required to conduct its own assessment of the project, and A.I.D. may, of course, choose as a matter of policy to conduct an independent Environmental Assessment even when not required to do so by regulation.

5. *Section 216.2(c). Categorical Exclusions.* One commentator requested two changes in the criteria for determining classes of actions generally excluded from environmental review. First, it was suggested that criterion (i) should be changed from "the action does not have *an effect* on the natural or physical environment" to "the action has no reasonably foreseeable *significant impacts* on the environment."

A.I.D. has decided not to accept this suggestion because A.I.D. believes that the criterion as originally proposed is a more stringent test for activities included in the categorical exclusions. The A.I.D. formulated criterion does not exclude any action which has an effect on the natural or physical environment from the preliminary environmental review involved in an Initial Environmental Examination to determine whether an action is significant. For example, to the extent an action alters the physical environment, it is not excluded automatically from environmental review. An Initial Environmental Examination will be prepared regarding the alteration to support a Threshhold Determination whether its effects are significant. A.I.D. believes that a judgment regarding significance should be made after a threshhold environmental review.

The formulation proposed by the commentator, on the other hand, would exclude from environmental review all actions affecting the environment unless they are significant. A.I.D. believes that an action affecting the environment should be subject to environmental review until it can be shown in an Initial Environmental Examination that it will not have a significant effect.

Second, the commentator suggested that criterion (ii) should be revised to delete the reference to A.I.D.'s objective in furnishing the assistance requiring knowledge of or control over the details of the specific activities to be financed. The commentators suggested that the test simply should be whether A.I.D. has knowledge of or control over the activities.

A.I.D.'s proposed criterion was an effort to have an objective standard. There may be instances when A.I.D. does not have knowledge or control, but the objective A.I.D. is attempting to accomplish should impose on A.I.D. the requirement to obtain knowledge or control over the specific activities. Again, A.I.D. was attempting to develop a more stringent test than that proposed by the commentator.

The amendment adopted by A.I.D. is an effort to clarify this position by requiring environmental review whenever A.I.D. has such knowledge or A.I.D.'s objective in furnishing the assistance requires A.I.D. to have knowledge of or control over the specific activities financed. This has also been clarified in subsection (IX) regarding commodity import programs as suggested by the commentator.

The suggestion made by the commentator that knowledge of specific kinds of proposed activities in Food for Development programs and PVO institutional support grants should prompt environmental review has not been accepted. In those cases, although A.I.D. may know that a local government in a Food for Development Program will conduct a particular activity, A.I.D. will not be involved in the planning or design of the activity. A.I.D. neither approves nor controls the details of specific activities that would have environmental significance, such as the location of activities or the manner in which they are carried out. In such cases, A.I.D. does not, for example, review economic, technical or social analyses. In keeping with the principle that environmental concerns should be integrated in decision making to the same extent as technical, social and economic factors, A.I.D. does not intend to review environmental analysis of specific activities.

Another commentator was concerned about the categorical exclusions for programs involving nutrition, health care or population and family planning services (subsection (c)(2)(viii)) and for programs of maternal or child feeding (subsection (c)(2)(xi)). Acknowledging that these areas traditionally are not viewed as having environmental impacts, the commentator noted that there have been reported cases of health damage, serious injuries and deaths associated with the use of and method of using particular kinds of IUDs and baby milk formulae. Concern was expressed that categorically excluding these activities from environmental review downgrades the importance of careful analysis by A.I.D. officials of the potentially adverse implications which such activities may have for the people served.

By making such activities the subject of categorical exclusions, A.I.D. did not and does not intend to downplay the importance of careful analysis of their effect on the people served. The effects on people participating in these programs are carefully studied as a matter of agency procedure before the assistance is furnished, and it is not necessary to implement A.I.D.'s concern regarding these programs through the environmental procedures.

With respect to population programs, A.I.D. furnishes to developing countries only pharmaceutical products for which information is available to attest to the safety, efficacy and quality of the product. Generally, such products are approved by the Food and Drug Administration. In addition, clinical trials are frequently conducted, in a manner that complys with regulations of the Department of Health and Welfare for the protection of human subjects, to evaluate health impact and efficacy in selected foreign countries before a new product is included in the program.

With respect to maternal child feeding programs, A.I.D. does not distribute baby milk formula. Food distribution programs are limited to whole grains or processed foods. Before any new food product is used in either domestic or foreign donation programs, it must be approved by the Processed Foods Committee, an interagency committee established by the Department of Agriculture. This committee consists of representatives from the Agricultural Stabilization Service, Science and Education Service, Food and Nutrition Service, Foreign Agricultural Service, Office of the General Sales Manager, Food Safety and Quality Service and the Office of Food for Peace. The committee makes a thorough analysis of the product, including specifications, nutritive value, shelflife, packaging and other aspects. Foods to be included in A.I.D. programs are also evaluated from the perspective of use potential regarding both the type of product and the target group as well as taste acceptance and shipping potential.

Under the circumstances, A.I.D. believes that the categorical exclusions should be retained but careful review of these programs will continue.

6. *Section 216.2(d). Classes of Actions Normally Having a Significant Effect on the Environment.* One commentator suggested adding "deforestation" to the list of classes of actions generally determined to have a significant effect on the environment for which an Environmental Assessment or Environmental Impact Statement is required without the need for an Initial Environmental Examination. However, the classes of actions in § 216.2(d) are not a catalogue of effects that are considered significant, but a list of actions undertaken for appropriate development purposes that have significant effects warranting an Environmental Assessment. Although A.I.D. believes that any action that has the effect of deforestation warrants an Environmental Assessment, A.I.D. conducts no action where the purpose is deforestation. The suggestion, therefore, has not been accepted.

7. *Section 216.3(a)(3). Negative Declarations.* Concern was raised regarding Negative Declarations* that might be made on the basis of "the fact that a substantial number of Environmental Assessments or Environmental Impact Statements relating to similar activities have been prepared in the past." Although this basis for a Negative Declaration has been in the environmental procedures since originally issued, the commentator stated that thus far A.I.D. environmental reviews have been site specific with little relevance to similar activities in different locations. The suggestion was made that A.I.D. should first determine whether the data collected and lessons learned from the previous assessments or impact statements on similar activities are generally applicable. A.I.D. has always construed this basis for a Negative Declaration to require relevance of the previously conducted environmental review for the proposed action, but § 216.3(a)(3) has been revised to make this requirement clear.

8. *Section 216.3(a)(4). Scoping.* Two comments were offered regarding the scoping process set forth in § 216.3(a)(4).** First the process should eliminate from consideration elements of actions that are adequately covered by approved project design standards or criteria. Second, the process should consider whether the various analyses required as part of an Environmental Assessment should be done in phases.

*An Environmental Assessment is defined in § 216.1(c)(4) as a detailed study of the reasonably foreseeable significant effects, both beneficial and adverse, of a proposed action on the environment of a foreign country or countries.

**An Environmental Impact Statement is defined in Section 216.1(c)(5) as a detailed study of the reasonably foreseeable environmental impacts, both positive and negative, or a proposed A.I.D. action and its reasonable alternatives on the United States, the global environment or areas outside the jurisdiction of any nation as described in § 216.7 of these procedures.

*A Negative Declaration is a decision made by an Assistant Administrator or the Administrator that the agency will not develop an Environmental Assessment or an Environmental Impact Statement for an action normally requiring such a study. A Negative Declaration may be made on the basis set forth in section 216(a)(3) of the procedures.

**Scoping is a process, adopted from the CEQ Regulations, which attempts to focus analytical attention on the significant issues to be addressed in an Environmental Assessment or an Environmental Impact Statement thereby eliminating unnecessary detail and improving the usefulness of those documents in decision making.

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Section 216.3(a)(4) has been revised to adopt both suggestions.

This section also has been revised to state that under certain circumstances the format of the Environmental Assessment that is prescribed in § 216.6 may be modified during the scoping process. This change is more fully described below in the section regarding the content and format of Environmental Assessments.

9. *Record of Decision.* One commentator suggested the addition of a new provision requiring that a concise record of decision be maintained for all actions involving an Environmental Assessment or Environmental Impact Statement. This suggestion has not been accepted. Such a record is presently available in the Environmental Assessment or Environmental Impact Statement sections of the Project Paper treating the environmental aspects of the action, and other documents used in the process of approving an action. All of these documents are available to the public upon request, and A.I.D. believes that the benefits to be obtained by pulling this information into a single record do not warrant the increased burden to the environmental staff that would be involved.

10. *Section 216.3(a)(8). Monitoring.* The suggestion was made that the monitoring provision be expanded to ensure that the environmental alternative selected is followed and that design criteria used and mitigating measures adopted are actually implemented. A.I.D. does not believe it is necessary to make such statements in the environmental procedures. Environmental factors are one important aspect among many considered in the authorization for funding of actions, and it is necessary that all important factors in an authorization be included in the implementation of an action or the authorization must be revised. It is not necessary to single out these environmental concerns as proposed because they are accommodated in A.I.D.'s standard operating procedures.

However, § 216.3(a)(8) has been revised to indicate clearly that implementation of A.I.D. actions will be monitored for environmental impacts to the same extent as other aspects of the action are monitored, and if in the course of implementation, it appears that the action will have a significant effect on the environment that was not previously studied in an Environmental Assessment or an Environmental Impact Statement, such a study will be made.

11. *Section 216.5. Endangered Species.* This proposed section was criticized for failing to require consultation with the Fish and Wildlife Service of the Department of the Interior (FWS) when endangered or threatened species or their critical habitat are affected by a proposed action. A.I.D. acknowledges that the FWS is the agency of the United States Government having the greatest amount of expertise about the protection of wildlife. A.I.D. has in the past and intends in the future to seek the assistance of FWS in designing actions financed by A.I.D. in order to eliminate or minimize harmful effects on such species and their habitat.

Section 216.3(a)(4) requires the originator of an action to include in the scoping process persons having expertise relevant to the environmental aspects of the proposed action, and requires the Bureau Environmental Officer to circulate the scoping statement to selected federal agencies when, in the judgment of this officer, comments by such agencies will be useful in preparing an Environmental Assessment. These steps would include, of course, FWS when an action involves endangered or threatened species or their critical habitat.

Section 216.5 has been revised to indicate that A.I.D. will not be limited to information supplied by the FWS or the host country regarding the presence of such species or their critical habitat in an area affected by a proposed action. A.I.D. will consider all relevant available information.

12. *Section 216.6(b). Collaboration with Affected Nations on Preparation of Environmental Assessments.* One commentator objected to the deletion from this section of the statement that A.I.D. missions should encourage and be responsive to host country requests for training and technical assistance to build their capacity to collaborate with A.I.D. in preparing Environmental Assessments. Such training and technical assistance are useful for the developing world and are a part of A.I.D.'s development program. A.I.D. does not believe, however, that it is necessary to include a provision in its regulatory procedures that singles out this type of training and technical assistance from other types routinely offered by A.I.D.

13. *Section 216.6(c). Content and Form of Environmental Assessments.* One commentator questioned the adoption by A.I.D., for purposes of Environmental Assessments, of the content and format prescribed by CEQ for Environmental Impact Statements that are used by decisionmakers in United States Government agencies when major federal actions significantly affect the environment of the United States. The commentator suggested that such a content and format places emphasis primarily on identification of impacts and the presentation of environmental problems rather than on useful solutions to those problems. The contention was made that although an enumeration of impacts is interesting to a developing country, the real benefit to a developing country is in identifying practical low cost solutions needed to mitigate adverse environmental impacts, to maximize the effective use of environmental resources and to integrate environmental planning with development projects.

A.I.D.'s experience has been that it is sometimes difficult to integrate effectively Environmental Assessments with realistic, timely development planning. On the other hand, A.I.D. believes that the content and format developed by CEQ eliminates repetitive discussion, stresses the major conclusions including mitigating measures, highlights the areas of controversy and focuses on the issues to be resolved. The content and format prescribed in § 216.6(c) generally will be followed. However, this will not be required inflexibly in all cases at the expense of effectively integrating environmental planning in the design of A.I.D. actions. If in the process of scoping it appears that variations should be made in the content or format of the Environmental Assessment to be prepared for the action in order to improve the benefit of the assessment to the developing country or to integrate environmental planning more effectively in the design of the action, the variations may be made. They should be described in the scoping statement and are subject to the review and approval of the Bureau Environmental Officer in the same manner as the remainder of the scoping statement.

Section 216.6(c) has been revised to indicate that the format prescribed will be followed, if appropriate, and § 216.3(a)(4) has been revised to indicate that the scoping statement may describe, subject to the approval of the Bureau Environmental Officer, variations in the format when appropriate for the reasons set forth above.

14. *Section 216.6(d). Program Assessments.* One commentator suggested that programmatic evaluations regarding the establishment of new categorical exclusions or approved project design standards or criteria should be made available for public comment. In addition, the section should indicate who within A.I.D. will be responsible for approving additional categorical exclusions and design standards or criteria. Section 216.6(d) has been revised to adopt both suggestions. The Administrator of A.I.D. will approve additional categorical exclusions. Since design considerations will be approved by varying offices within A.I.D. depending on whether they involve health, engineering, agricultural and other factors, it is not possible to indicate who will be responsible for approving each set of such considerations. They will be approved in accordance with usual A.I.D. procedures.

15. *Section 216.6. Consultation and Review.* Objection was made to the deletion of former § 216.5(d) regarding consultation with and review by host governments at the outset and conclusion of Environmental Assessments. This provision was proposed for deletion because it was considered unnecessary. A.I.D. provides financing for actions that are requested by host countries which are involved in a collaborative manner with A.I.D. at each step of design and approval of an action. A.I.D. consults with the host government at the outset of an assessment and at its conclusion, as well as at other appropriate points, just as A.I.D. does with respect to other analyses that are important to A.I.D. and the host country in decision making. Moreover, A.I.D. will continue to encourage host governments to make Environmental Assessments available to the public. Although it is not necessary for A.I.D.'s environmental procedures to include these statements, they will be retained to emphasize the importance of such consultation and review. Former § 216.5(d)(5) has been reinstated as § 216.6(e).

16. *Section 216.9. Bilateral or Multilateral Studies and Concise Reviews.* Objection was made to the provision permitting the Administrator of A.I.D. to approve the use of bilateral or multilateral studies or a concise review of the environmental issues as a substitute for an Environmental Assessment. These are approved documents under the Executive Order, but the commentator contended that the use of such documents is contrary to the requirement of the Stipulation that "where the proposed action will not require an impact statement A.I.D. will nevertheless assess the potential environmental effects and results of that assessment will be an integral part of the decision making process."

Although the Stipulation indicated that A.I.D. will assess potential environmental effects, it did not prescribe the content or format of such an assessment. A.I.D. subsequently adopted its original environmental procedures which prescribed the content and form of an Environmental Assessment, but that does not mean that A.I.D. cannot satisfy its obligation under the Stipulation to "assess environmental consequences" by using some other format adequate to accomplish that purpose.

A.I.D. intends to continue to assess environmental consequences of proposed actions by means of Environmental Assessments. However, A.I.D. believes it is useful, in extraordinary circumstances, for the Administrator to have the opportunity to approve the use of other documents authorized under the Executive Order to assess the environmental consequences of A.I.D. actions. Such authority will be used sparingly and only when the Administrator concludes that it is appropriate and adequate to address environmental concerns.

17. *Section 216.10. Records and Reports.* One commentator suggested that scoping statements be made available to other federal agencies upon request and that final Initial Environmental Examinations and Scoping Statements be placed in a permanent file available to the public when requested. Section 216.10 has been revised to adopt both suggestions.

C. Finally, Substantial Editorial Changes Have Been Made in the Text of the Procedures

Accordingly 22 CFR Part 216 is amended as follows:

1. Sections 216.1, 216.2 and 216.3 (a) and (b)(1)(iii) (*g*) are revised to read as follows:

§ 216.1 Introduction.

(a) *Purpose.* In accordance with Sections 118(b) and 621 of the Foreign Assistance Act of 1961, as amended, (the FAA) the following general procedures shall be used by A.I.D. to ensure that environmental factors and values are integrated into the A.I.D. decision making process. These procedures also assign responsibility within the Agency for assessing the environmental effects of A.I.D.'s actions. These procedures are consistent with Executive Order 12114, issued January 4, 1979, entitled Environmental Effects Abroad of Major Federal Actions, and the purposes of the National Environmental Policy Act of 1970, as amended (42 U.S.C. 4371 et seq.) (NEPA). They are intended to implement the requirements of NEPA as they effect the A.I.D. program.

(b) *Environmental Policy.* In the conduct of its mandate to help upgrade the quality of life of the poor in developing countries, A.I.D. conducts a broad range of activities. These activities address such basic problems as hunger, malnutrition, overpopulation, disease, disaster, deterioration of the environment and the natural resource base, illiteracy as well as the lack of adequate housing and transportation. Pursuant to the FAA, A.I.D. provides development assistance in the form of technical advisory services, research, training, construction and commodity support. In addition, A.I.D. conducts programs under the Agricultural Trade Development and Assistance Act of 1954 (Pub. L. 480) that are designed to combat hunger, malnutrition and to facilitate economic development. Assistance programs are carried out under the foreign policy guidance of the Secretary of State and in cooperation with the governments of sovereign states. Within this framework, it is A.I.D. policy to:

(1) Ensure that the environmental consequences of A.I.D.-financed activities are identified and considered by A.I.D. and the host country prior to a final decision to proceed and that appropriate environmental safeguards are adopted;

(2) Assist developing countries to strengthen their capabilities to appreciate and effectively evaluate the potential environmental effects of proposed development strategies and projects, and to select, implement and manage effective environmental programs;

(3) Identify impacts resulting from A.I.D.'s actions upon the environment, including those aspects of the biosphere which are the common and cultural heritage of all mankind; and

(4) Define environmental limiting factors that constrain development and identify and carry out activities that assist in restoring the renewable resource base on which sustained development depends.

(c) *Definitions.*—(1) *CEQ Regulations.* Regulations promulgated by the President's Council on Environmental Quality (CEQ) (**Federal Register**, Volume 43, Number 230, November 29, 1978) under the authority of NEPA and Executive Order 11514, entitled Protection and Enhancement of Environmental Quality (March 5, 1970) as amended by Executive Order 11991 (May 24, 1977).

(2) *Initial Environmental Examination.* An Initial Environmental Examination is the first review of the reasonably foreseeable effects of a proposed action on the environment. Its function is to provide a brief statement of the factual basis for a Threshold Decision as to whether an Environmental Assessment or an

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Environmental Impact Statement will be required.

(3) *Threshold Decision.* A formal Agency decision which determines, based on an Initial Environmental Examination, whether a proposed Agency action is a major action significantly affecting the environment.

(4) *Environmental Assessment.* A detailed study of the reasonably forseeable significant effects, both beneficial and adverse, of a proposed action on the environment of a foreign country or countries.

(5) *Environmental Impact Statement.* A detailed study of the reasonably foreseeable environmental impacts, both positive and negative, of a proposed A.I.D. action and its reasonable alternatives on the United States, the global environment or areas outside the jurisdiction of any nation as described in § 216.7 of these procedures. It is a specific document having a definite format and content, as provided in NEPA and the CEQ Regulations. The required form and content of an Environmental Impact Statement is further described in § 216.7 infra.

(6) *Project Identification Document (PID).* An internal A.I.D. document which initially identifies and describes a proposed project.

(7) *Program Assistance Initial Proposal (PAIP).* An internal A.I.D. document used to initiate and identify proposed non-project assistance, including commodity import programs. It is analogous to the PID.

(8) *Project Paper (PP).* An internal A.I.D. document which provides a definitive description and appraisal of the project and particularly the plan or implementation.

(9) *Program Assistance Approval Document (PAAD).* An internal A.I.D. document approving non-project assistance. It is analogous to the PP.

(10) *Environment.* The term environment, as used in these procedures with respect to effects occurring outside the United States, means the natural and physical environment. With respect to effects occurring within the United States see § 216.7(b).

(11) *Significant Effect.* With respect to effects on the environment outside the United States, a proposed action has a significant effect on the environment if it does significant harm to the environment.

(12) *Minor Donor.* For purposes of these procedures, A.I.D. is a minor donor to a multidonor project when A.I.D. does not control the planning or design of the multidonor project and either (i) A.I.D.'s total contribution to the project is both less than $1,000,000 and less than 25 percent of the estimated project cost, or (ii) A.I.D.'s total contribution is more than $1,000,000 but less than 25 percent of the estimated project cost and the environmental procedures of the donor in control of the planning of design of the project are followed, but only if the A.I.D. Environmental Coordinator determines that such procedures are adequate.

§ 216.2 Applicability of procedures.

(a) *Scope.* Except as provided in § 216.2(b), these procedures apply to all new projects, programs or activities authorized or approved by A.I.D. and to substantive amendments or extensions of ongoing projects, programs, or activities.

(b) *Exemptions.* (1) Projects, programs or activities involving the following are exempt from these procedures:

(i) International disaster assistance;

(ii) Other emergency circumstances; and

(iii) Circumstances involving exceptional foreign policy sensitivities.

(2) A formal written determination, including a statement of the justification therefore, is required for each project, program or activity for which an exemption is made under paragraphs (b)(1) (ii) and (iii) of this section, but is not required for projects, programs or activities under paragraph (b)(1)(i) of this section. The determination shall be made either by the Assistant Administrator having responsibility for the program, project or activity, or by the Administrator, where authority to approve financing has been reserved by the Administrator. The determination shall be made after consultation with CEQ regarding the environmental consequences of the proposed program, project or activity.

(c) *Categorical Exclusions.* (1) The following criteria have been applied in determining the classes of actions including in § 216.2(c)(2) for which an Initial Environmental Examination, Environmental Assessment and Environmental Impact Statement generally are not required:

(i) The action does not have an effect on the natural or physicial environment;

(ii) A.I.D. does not have knowledge of or control over, and the objective of A.I.D. in furnishing assistance does not require, either prior to approval of financing or prior to implementation of specific activities, knowledge of or control over, the details of the specific activities that have an effect on the physicial and natural environment for which financing is provided by A.I.D.;

(iii) Research activities which may have an affect on the physicial and natural environment but will not have a significant effect as a result of limited scope, carefully controlled nature and effective monitoring.

(2) The following classes of actions are not subject to the procedures set forth in § 216.3, except to the extent provided herein;

(i) Education, technical assistance, or training programs except to the extent such programs include activities directly affecting the environment (such as construction of facilities, etc.);

(ii) Controlled experimentation exclusively for the purpose of research and field evaluation which are confined to small areas and carefully monitored;

(iii) Analyses, studies, academic or research workshops and meetings;

(iv) Projects in which A.I.D. is a minor donor to a multidonor project and there is no potential significant effects upon the environment of the United States, areas outside any nation's jurisdiction or endangered or threatened species or their critical habitat;

(v) Document and information transfers;

(vi) Contributions to international, regional or national organizations by the United States which are not for the purpose of carrying out a specifically identifiable project or projects;

(vii) Institution building grants to research and educational institutions in the United States such as those provided for under Section 122(d) and Title XII of Chapter 2 of Part I of the FAA (22 USCA §§ 2151 p. (b) 2220a. (1979));

(viii) Programs involving nutrition, health care or population and family planning services except to the extent designed to include activities directly affecting the environment (such as construction of facilities, water supply systems, waste water treatment, etc.)

(ix) Assistance provided under a Commodity Import Program when, prior to approval, A.I.D. does not have knowledge of the specific commodities to be financed and when the objective in furnishing such assistance requires neither knowledge, at the time the assistance is authorized, nor control, during implementation, of the commodities or their use in the host country.

(x) Support for intermediate credit institutions when the objective is to assist in the capitalization of the institution or part thereof and when such support does not involve reservation of the right to review and approve individual loans made by the institution;

(xi) Programs of maternal or child feeding conducted under Title II of Pub. L. 480;

(xii) Food for development programs conducted by food recipient countries under Title III of Pub. L. 480, when achieving A.I.D.'s objectives in such programs does not require knowledge of or control over the details of the specific activities conducted by the foreign country under such program;

(xiii) Matching, general support and institutional support grants provided to private voluntary organizations (PVOs) to assist in financing programs where A.I.D.'s objective in providing such financing does not require knowledge of or control over the details of the specific activities conducted by the PVO;

(xiv) Studies, projects or programs intended to develop the capability of recipient countries to engage in development planning, except to the extent designed to result in activities directly affecting the environment (such as construction of facilities, etc.); and

(xv) Activities which involve the application of design criteria or standards developed and approved by A.I.D.

(2) The originator of a project, program or activity shall determine the extent to which it is within the classes of actions described in paragraph (c)(2) of this section. This determination shall be made in writing and be submitted with the PID, PAIP or comparable document. This determination, which must include a brief statement supporting application of the exclusion shall be reviewed by the Bureau Environmental Officer in the same manner as a Threshold Decision under § 216.3(a)(2) of these procedures. Notwithstanding paragraph (c)(2) of this section, the procedures set forth in § 216.3 shall apply to any project, program or activity included in the classes of actions listed in paragraph (c)(2) of this section, or any aspect or component thereof, if at any time in the design, review or approval of the activity it is determined that the project, program or activity, or aspect or component thereof, is subject to the control of A.I.D. and may have a significant effect on the environment.

(d) *Classes of Actions Normally Having a Significant Effect on the Environment.* (1) The following classes of actions have been determined generally to have a significant effect on the environment and an Environmental Assessment or Environmental Impact Statement, as appropriate, will be required:

(i) Programs of river basin development;

(ii) Irrigation or water management projects, including dams and impoundments;

(iii) Agricultural land leveling;

(iv) Drainage projects;

(v) Large scale agricultural mechanization;

(vi) New lands development;

(vii) Resettlement projects;

(viii) Penetration road building or road improvement projects;

(ix) Powerplants;

(x) Industrial plants;

(xi) Potable water and sewerage projects other than those that are small-scale.

(2) An Initial Environmental Examination normally will not be necessary for activities within the classes described in § 216.2(d), except when the originator of the project believes that the project will not have a significant effect on the environment. In such cases, the activity may be subjected to the procedures set forth in § 216.3.

(e) *Pesticides.* The exemptions of § 216.2(b)(1) and the categorical exclusions of § 216.2(c)(2) are not applicable to assistance for the procurement or use of pesticides.

§ 216.3 Procedures.

(a) *General Procedures*—(1) *Preparation of the Initial Environmental Examination.* Except as otherwise provided, an Initial Environmental Examination is not required for activities identified in § 216.2(b)(1), (c)(2), and (d). For all other A.I.D. activities described in § 216.2(a) an Initial Environmental Examination will be prepared by the originator of an action. Except as indicated in this section, it should be prepared with the PID or PAIP. For projects including the procurement or use of pesticides, the procedures set forth in § 216.3(b) will be followed, in addition to the procedures in this paragraph. Activities which cannot be identified in sufficient detail to permit the completion of an Initial Environmental Examination with the PID or PAIP, shall be described by including with the PID or PAIP: (i) an explanation indicating why the Initial Environmental Examination cannot be completed; (ii) an estimate of the amount of time required to complete the Initial Environmental Examination; and (iii) a recommendation that a Threshold Decision be deferred until the Initial Environmental Examination is completed. The responsible Assistant Administrator will act on the request for deferral concurrently with action on the PID or PAIP and will designate a time for completion of the Initial Environmental Examination. In all instances, except as provided in § 216.3(a)(7), this completion date will be in sufficient time to allow for the completion of an Environmental Assessment or Environmental Impact Statement, if required, before a final decision is made to provide A.I.D. funding for the action.

(2) *Threshold decision.* (i) The Initial Environmental Examination will include a Threshold Decision made by the officer in the originating office who signs the PID or PAIP. If the Initial Environmental Examination is completed prior to or at the same time as the PID or PAIP, the Threshold Decision will be reviewed by the Bureau Environmental Officer concurrently with approval of the PID or PAIP. The Bureau Environmental Officer will either concur in the Threshold Decision or request reconsideration by the officer who made the Threshold Decision, stating the reasons for the request. Differences of opinion between these officers shall be submitted for resolution to the Assistant Administrator at the same time that the PID is submitted for approval.

(ii) An Initial Environmental Examination, completed subsequent to approval of the PID or PAIP, will be forwarded immediately together with the Threshold Determination to the Bureau Environmental Officer for action as described above.

(iii) A Positive Threshold Decision shall result from a finding that the proposed action will have a significant effect on the environment. An Environmental Impact Statement shall be prepared if required pursuant to § 216.7. If an impact statement is not required, an Environmental Assessment will be prepared in accordance with § 216.6. The cognizant Bureau or Office will record a Negative Determination if the proposed action will not have a significant effect on the environment.

(3) *Negative Declaration.* The Assistant Administrator, or the Administrator in actions for which the approval of the Administrator is required for the authorization of financing, may make a Negative Declaration, in writing, that the Agency will not develop an Environmental Assessment or an Environmental Impact Statement regarding an action found to have a significant effect on the environment when (i) a substantial number of Environmental Assessments or Environmental Impact Statements relating to similar activities have been prepared in the past, if relevant to the proposed action, (ii) the Agency has previously prepared a programmatic Statement or Assessment covering the activity in question which has been considered in the development of such activity, or (iii) the Agency has developed design criteria for such an action which, if applied in the design of the action, will avoid a significant effect on the environment.

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(4) *Scope of Environmental Assessment or Impact Statement*—(i) *Procedure and Content.* After a Positive Threshold Decision has been made, or a determination is made under the presticide procedures set forth in § 216.3(b) that an Environmental Assessment or Environmental Impact Statement is required, the originator of the action shall commence the process of identifying the significant issues relating to the proposed action and of determining the scope of the issues to be addressed in the Environmental Assessment or Environmental Impact Statement. The originator of an action within the classes of actions described in § 216.2(d) shall commence this scoping process as soon as practicable. Persons having expertise relevant to the environmental aspects of the proposed action shall also participate in this scoping process. (Participants may include but are not limited to representatives of host governments, public and private institutions, the A.I.D. Mission staff and contractors.) This process shall result in a written statement which shall include the following matters:

(*a*) A determination of the scope and significance of issues to be analyzed in the Environmental Assessment or Impact Statement, including direct and indirect effects of the project on the environment.

(*b*) Identification and elimination from detailed study of the issues that are not significant or have been covered by earlier environmental review, or approved design considerations, narrowing the discussion of these issues to a brief presentation of why they will not have a significant effect on the environment.

(*c*) A description of (*1*) the timing of the preparation of environmental analyses, including phasing if appropriate, (*2*) variations required in the format of the Environmental Assessment, and (*3*) the tentative planning and decision making schedule; and

(*d*) A description of how the analysis will be conducted and the disciplines that will participate in the analysis.

(ii) These written statements shall be reviewed and approved by the Bureau Environmental Officer.

(ii) *Circulation of Scoping Statement.* To assist in the preparation of an Environmental Assessment, the Bureau Environmental Office may circulate copies of the written statement, together with a request for written comments, within thirty days, to selected federal agencies if that Officer believes comments by such federal agencies will be useful in the preparation of an Environmental Assessment. Comments received from reviewing federal agencies will be considered in the preparation of the Environmental Assessment and in the formulation of the design and implementation of the project, and will, together with the scoping statement, will be included in the project file.

(iv) *Change in Threshold Decision.* If it becomes evident that the action will not have a significant effect on the environment (i.e., will not cause significant harm to the environment), the Positive Threshold Decision may be withdrawn with the concurrence of the Bureau Environmental Officer. In the case of an action included in § 216.2(d)(2), the request for withdrawal shall be made to the Bureau Environmental Officer.

(5) *Preparation of Environmental Assessments and Environmental Impact Statement.* If the PID or PAIP is approved, and the Threshold Decision is positive, or the action is included in § 216.2(d), the originator of the action will be responsible for the preparation of an Environmental Assessment or Environmental Impact Statement as required. Draft Environmental Impact Statements will be circulated for review and comment as part of the review of Project Papers and as outlined further in § 216.7 of those procedures. Except as provided in § 216.3(a)(7), final approval of the PP or PAAD and the method of implementation will include consideration of the Environmental Assessment of final Environmental Impact Statement.

(6) *Processing and Review Within A.I.D.* (i) Initial Environmental Examinations, Environmental Assessments and final Environmental Impact Statements will be processed pursuant to standard A.I.D. procedures for project approval documents. Except as provided in § 216.3(a)(7), Environmental Assessments and final Environmental Impact Statements will be reviewed as an integral part of the Project Paper or equivalent document. In addition to these procedures, Environmental Assessments will be reviewed and cleared by the Bureau Environmental Officer. They may also be reviewed by the Agency's Environmental Coordinator who will monitor the Environmental Assessment process.

(ii) When project approval authority is delegated to field posts, Environmental Assessments shall be reviewed and cleared by the Bureau Environmental Officer prior to the approval of such actions.

(iii) Draft and final Environmental Impact Statements will be reviewed and cleared by the Environmental Coordinator and the Office of the General Counsel.

(7) *Environmental Review After Authorization of Financing.* (i) Environmental review may be performed after authorization of a project, program or activity only with respect to subprojects or significant aspects of the project, program or activity that are unidentified at the time of authorization. Environmental review shall be completed prior to authorization for all subprojects and aspects of a project, program or activity that are identified.

(ii) Environmental review should occur at the earliest time in design or implementation at which a meaningful review can be undertaken, but in no event later than when previously unidentified subprojects or aspects of projects, programs or activities are identified and planned. To the extent possible, adequate information to undertake deferred environmental review should be obtained before funds are obligated for unidentified subprojects or aspects of projects, programs or activities. (Funds may be obligated for the other aspects for which environmental review has been completed.) To avoid an irreversible commitment of resources prior to the conclusion of environmental review, the obligation of funds can be made incrementally as subprojects or aspects of projects, programs or activities are identified; or if necessary while planning continues, including environmental review, the agreement or other document obligating funds may contain appropriate convenants or conditions precedent to disbursement for unidentified subprojects or aspects of projects, programs or activities.

(iii) When environmetal review must be deferred beyond the time some of the funds are to be disbursed (e.g. long lead times for the delivery of goods or services), the project agreement or other document obligating funds shall contain a covenant or covenants requiring environmental review, including an Environmental Assessment or Environmental Impact Statement, when appropriate, to be completed and taken into account prior to implementation of those subprojects or aspects of the project, program or activity for which environmental review is deferred. Such convenants shall ensure that implementation plans will be modified in accordance with environmental review if the parties decide that modifications are necessary.

(vi) When environmental review will not be completed for an entire project, program or activity prior to authorization, the Initial Environmental Examination and Threshold Decision required under § 216.3(a)(1) and (2) shall identify those aspects of the project, program or activity for which environmental review will be completed prior to the time financing is authorized. It shall also include those subprojects or aspects for which environmental review will be deferred, stating the reasons for deferral and the time when environmental review will be completed. Further, it shall state how an irreversible commitment of funds will be avoided until environmental review is completed. The A.I.D. officer responsible for making environmental decisions for such projects, programs or activities shall also be identified (the same officer who has decision making authority for the other aspects of implementation). This deferral shall be reviewed and approved by the officer making the Threshold Decision and the officer who authorizes the project, program or activity. Such approval may be made only after consultation with the Office of General Counsel for the purpose of establishing the manner in which conditions precedent to disbursement or covenants in project and other agreements will avoid an irreversible commitment of resources before environmental review is completed.

(6) *Monitoring.* To the extent feasible and relevant, projects and programs for which Environmental Impact Statements or Environmental Assessments have been prepared should be designed to include measurement of any changes in environmental quality, positive or negative, during their implementation. This will require recording of baseline data at the start. To the extent that available data permit, originating offices of A.I.D. will formulate systems in collaboration with recipient nations, to monitor such impacts during the life of A.I.D.'s involvement. Monitoring implementation of projects, programs and activities shall take into account environmental impacts to the same extent as other aspects of such projects, programs and activities. If during implementation of any project, program or activity, whether or not an Environmental Assessment or Environmental Impact Statement was originally required, it appears to the Mission Director, or officer responsible for the project, program or activity, that it is having or will have a significant effect on the environment that was not previously studied in an Environmental Assessment or Environmental Impact Statement, the procedures contained in this part shall be followed including, as appropriate, a Threshold Decision, Scoping and an Environmental Assessment or Environmental Impact Statement.

(9) *Revisions.* If, after a Threshold Decision is made resulting in a Negative Determination, a project is revised or new information becomes available which indicates that a proposed action might be "major" and its effects "significant", the Negative Determination will be reviewed and revised by the cognizant Bureau and an Environmental Assessment or Environmental Impact Statement will be prepared, if appropriate. Environmental Assessments and Environmental Impact Statements will be amended and processed appropriately if there are major changes in the project or program, or if significant new information becomes available which relates to the impact of the project, program or activity on the environment that was not considered at the time the Environmental Assessment or Environmental Impact Statement was approved. When on-going programs are revised to incorporate a change in scope or nature, a determination will be made as to whether such change may have an environmental impact not previously assessed. If so, the procedures outlined in this part will be followed.

(10) *Other Approval Documents.* These procedures refer to certain A.I.D. documents such as PIDs, PAIPs, PPs and PAADs as the A.I.D. internal instruments for approval of projects, programs or activities. From time to time, certain special procedures, such as those in § 216.4, may not require the use of the aforementioned documents. In these situations, these environmental procedures shall apply to those special approval procedures, unless otherwise exempt, at approval times and levels comparable to projects, programs and activities in which the aforementioned documents are used.

(b) * * *

(1) * * *

(iii) * * *

(*a*) Any pesticide other than one registered for the same or similar uses by USEPA without restriction or for restricted use on the basis of user hazard; or

* * * * *

2. Section 216.6 is Removed.

3. Section 216.7 is redesignated as § 216.80.

4. Sections 216.4, 216.5 and 216.6 are revised.

5. A new § 216.7 is added.

§ 216.4 Private applicants.

Programs, projects or activities for which financing from A.I.D. is sought by private applicants, such as PVOs and educational and research institutions, are subject to these procedures. Except as provided in §§ 216.2 (b), (c) or (d), preliminary proposals for financing submitted by private applicants shall be accompanied by an Initial Environmental Examination or adequate information to permit preparation of an Initial Environmental Examination. The Threshold Decision shall be made by the Mission Director for the country to which the proposal relates, if the preliminary proposal is submitted to the A.I.D. Mission, or shall be made by the officer in A.I.D. who approves the preliminary proposal. In either case, the concurrence of the Bureau Environmental Officer is required in the same manner as in § 216.3(a)(2), except for PVO projects approved in A.I.D. Missions with total life of project costs less than $500,000. Thereafter, the same procedures set forth in § 216.3 including as appropriate scoping and Environmental Assessments or Environmental Impact Statements, shall be applicable to programs, projects or activities submitted by private applicants. The final proposal submitted for financing shall be treated, for purposes of these procedures, as a Project Paper. The Bureau Environmental Officer shall advise private applicants of studies or other information foreseeably required for action by A.I.D.

§ 216.5 Endangered species.

It is A.I.D. policy to conduct its assistance programs in a manner that is sensitive to the protection of endangered or threatened species and their critical habitats. The Initial Environmental Examination for each project, program or activity having an effect on the environment shall specifically determine whether the project, program or activity will have an effect on an endangered or threatened species, or critical habitat. If the proposed project, program or activity will have the effect of jeopardizing an endangered or threatened species or of adversely modifying its critical habitat, the Threshold Decision shall be a Positive Determination and an Environmental Assessment or Environmental Impact Statement completed as appropriate, which shall discuss alternatives or modifications to avoid or mitigate such impact on the species or its habitat.

§ 216.6 Environmental assessments.

(a) *General Purpose.* The purpose of the Environmental Assessment is to provide Agency and host country decision makers with a full discussion of significant environmental effects of a

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proposed action. It includes alternatives which would avoid or minimize adverse effects or enhance the quality of the environment so that the expected benefits of development objectives can be weighed against any adverse impacts upon the human environment or any irreversible or irretrievable commitment of resources.

(b) *Collaboration with Affected Nation on Preparation.* Collaboration in obtaining data, conducting analyses and considering alternatives will help build an awareness of development associated environmental problems in less developed countries as well as assist in building an indigenous institutional capability to deal nationally with such problems. Missions, Bureaus and Offices will collaborate with affected countries to the maximum extent possible, in the development of any Environmental Assessments and consideration of environmental consequences as set forth therein.

(c) *Content and Form.* The Environmental Assessment shall be based upon the scoping statement and shall address the following elements, as appropriate:

(1) *Summary.* The summary shall stress the major conclusions, areas of controversy, if any, and the issues to be resolved.

(2) *Purpose.* The Environmental Assessment shall briefly specify the underlying purpose and need to which the Agency is responding in proposing the alternatives including the proposed action.

(3) *Alternatives Including the Proposed Action.* This section should present the environmental impacts of the proposal and its alternatives in comparative form, thereby sharpening the issues and providing a clear basis for choice among options by the decision maker. This section should explore and evaluate reasonable alternatives and briefly discuss the reasons for eliminating those alternatives which were not included in the detailed study; devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits; include the alternative of no action; identify the Agency's preferred alternative or alternatives, if one or more exists; include appropriate mitigation measures not already included in the proposed action or alternatives.

(4) *Affected Environment.* The Environmental Assessment shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in the Environmental Assessment shall be commensurate with the significance of the impact with less important material summarized, consolidated or simply referenced.

(5) *Environmental Consequences.* This section forms the analytic basis for the comparisons under paragraph (c)(3) of this section. It will include the environmental impacts of the alternatives including the proposed action; any adverse effects that cannot be avoided should the proposed action be implemented; the relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity; and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. It should not duplicate discussions in paragraph (c)(3) of this section. This section of the Environmental Assessment should include discussions of direct effects and their significance; indirect effects and their significance; possible conflicts between the proposed action and land use plans, policies and controls for the areas concerned; energy requirements and conservation potential of various alternatives and mitigation measures; natural or depletable resource requirements and conservation potential of various requirements and mitigation measures; urban quality; historic and cultural resources and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures; and means to mitigate adverse environmental impacts.

(6) *List of Preparers.* The Environmental Assessment shall list the names and qualifications (expertise, experience, professional discipline) of the persons primarily responsible for preparing the Environmental Assessment or significant background papers.

(7) *Appendix.* An Appendix may be prepared.

(d) *Program Assessment.* Program Assessments may be appropriate in order to assess the environmental effects of a number of individual actions and their cumulative environmental impact in a given country or geographic area, or the environmental impacts that are generic or common to a class of agency actions, or other activities which are not country-specific. In these cases, a single, programmatic assessment will be prepared in A.I.D./Washington and circulated to appropriate overseas Missions, host governments, and to interested parties within the United States. To the extent practicable, the form and content of the programmatic Environmental Assessment will be the same as for project Assessments. Subsequent Environmental Assessments on major individual actions will only be necessary where such follow-on or subsequent activities may have significant environmental impacts on specific countries where such impacts have not been adequately evaluated in the programmatic Environmental Assessment. Other programmatic evaluations of classes of actions may be conducted in an effort to establish additional categorical exclusions or design standards or criteria for such classes that will eliminate or minimize adverse effects of such actions, enhance the environmental effect of such action or reduce the amount of paperwork or time involved in these procedures. Programmatic evaluations conducted for the purpose of establishing additional categorical exclusions under § 216.2(c) or design considerations that will eliminate significant effects for classes of actions shall be made available for public comment before the categorical exclusions or design standards or criteria are adopted by A.I.D. Notice of the availability of such document shall be published in the **Federal Register.** Additional categorical exclusions shall be adopted by A.I.D. upon the approval of the Administrator, and design consideration in accordance with usual agency procedures.

(e) *Consultation and Review.* (1) When Environmental Assessments are prepared on activities carried out within or focused on specific developing countries, consultation will be held between A.I.D. staff and the host government both in the early stages of preparation and on the results and significance of the completed Assessment before the project is authorized.

(2) Missions will encourage the host government to make the Environmental Assessment available to the general public of the recipient country. If Environmental Assessments are prepared on activities which are not country-specific, the Assessment will be circulated by the Environmental Coordinator to A.I.D.'s Overseas Missions and interested governments for information, guidance and comment and will be made available in the U.S. to interested parties.

(f) *Effect in Other Countries.* In a situation where an analysis indicates that potential effects may extend beyond the national boundaries of a recipient country and adjacent foreign nations may be affected, A.I.D. will urge the recipient country to consult with such countries in advance of project approval and to negotiate mutually acceptable accommodations.

(g) *Classified Material.* Environmental Assessments will not normally include classified or administratively controlled material. However, there may be situations where environmental aspects cannot be adequately discussed without the inclusion of such material. The handling and disclosure of classified or administratively controlled material shall be governed by 22 CFR Part 9. Those portions of an Environmental Assessment which are not classified or administratively controlled will be made available to persons outside the Agency as provided for in 22 CFR Part 212.

§ 216.7 Environmental impact statements.

(a) *Applicability.* An Environmental Impact Statement shall be prepared when agency actions significantly affect:

(1) The global environment or areas outside the jurisdiction of any nation (e.g., the oceans);

(2) The environment of the United States; or

(3) Other aspects of the environment at the discretion of the Administrator.

(b) *Effects on the United States: Content and Form.* An Environmental Impact Statement relating to paragraph (a)(2) of this section shall comply with the CEQ Regulations. With respect to effects on the United States, the terms environment and significant effect wherever used in these procedures have the same meaning as in the CEQ Regulations rather than as defined in § 216.1(c) (12) and (13) of these procedures.

(c) *Other Effects: Content and Form.* An Environmental Impact Statement relating to paragraphs (a)(1) and (a)(3) of this section will generally follow the CEQ Regulations, but will take into account the special considerations and concerns of A.I.D. Circulation of such Environmental Impact Statements in draft form will precede approval of a Project Paper or equivalent and comments from such circulation will be considered before final project authorization as outlined in § 216.3 of these procedures. The draft Environmental Impact Statement will also be circulated by the Missions to affected foreign governments for information and comment. Draft Environmental Impact Statements generally will be made available for comment to Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved, and to public and private organizations and individuals for not less than forty-five (45) days. Notice of availability of the draft Environmental Impact Statements will be published in the **Federal Register.** Cognizant Bureaus and Offices will submit these drafts for circulation through the Environmental Coordinator who will have the responsibility for coordinating all such communications with persons outside A.I.D. Any comments received by the Environmental Coordinator will be forwarded to the originating Bureau or Office for consideration in final policy decisions and the preparation of a final Environmental Impact Statement. All such comments will be attached to the final Statement, and those relevant comments not adequately discussed in the draft Environmental Impact Statement will be appropriately dealt with in the final Environmental Impact Statement. Copies of the final Environmental Impact Statement, with comments attached, will be sent by the Environmental Coordinator to CEQ and to all other Federal, state, and local agencies and private organizations that made substantive comments on the draft, including affected foreign governments. Where emergency circumstances or considerations of foreign policy make it necessary to take an action without observing the provisions of § 1506.10 of the CEQ Regulations, or when there are overriding considerations of expense to the United States or foreign governments, the originating Office will advise the Environmental Coordinator who will consult with Department of State and CEQ concerning appropriate modification of review procedures.

§ 216.8 [Redesignated from § 216.7]

Sections 216.9 and 216.10 are added to read:

§ 216.9 Bilateral and multilateral studies and concise reviews of environmental issues.

Notwithstanding anything to the contrary in these procedures, the Administrator may approve the use of either of the following documents as a substitute for an Environmental Assessment (but not a substitute for an Environmental Impact Statement) required under these procedures:

(a) Bilateral or multilateral environmental studies, relevant or related to the proposed action, prepared by the United States and one or more foreign countries or by an international body or organization in which the United States is a member or participant; or

(b) Concise reviews of the environmental issues involved including summary environmental analyses or other appropriate documents.

§ 216.10 Records and reports.

Each Agency Bureau will maintain a current list of activities for which Environmental Assessments and Environmental Impact Statements are being prepared and for which Negative Determinations and Declarations have been made. Copies of final Initial Environmental Examinations, scoping statements, Assessments and Impact Statements will be available to interested Federal agencies upon request. The cognizant Bureau will maintain a permanent file (which may be part of its normal project files) of Environmental Impact Statements, Environmental Assessments, final Initial Environmental Examinations, scoping statements, Determinations and Declarations which will be available to the public under the Freedom of Information Act. Interested persons can obtain information or status reports regarding Environmental Assessments and Environmental Impact Statements through the A.I.D. Environmental Coordinator.

(22 U.S.C. 2381; 42 U.S.C. 4332)

Dated October 9, 1980.

Joseph C. Wheeler,
Acting Administrator.

[FR Doc. 80-33108 Filed 10-22-80; 8:45 am]
BILLING CODE 4710-02-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Urban Mass Transportation Administration

23 CFR Part 450

Urban Transportation Planning in Small Metropolitan Areas

AGENCIES: Federal Highway Administration (FHWA) and Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice of guidance.

SUMMARY: The FHWA and UMTA have developed guidance for meeting the minimum requirements of the joint transportation planning regulations (23 CFR Part 450, Subparts A and C) for urbanized areas of less than 200,000 population. The purpose of this notice is to publish this guidance for the information of the general public.

FOR FURTHER INFORMATION CONTACT:
FHWA: Sam W. P. Rea, Jr., Urban

Planning Divison (202) 426–2961, or Stanley Abramson, Office of the Chief Counsel, (202) 426–0762; or UMTA: Robert Kirkland, Office of Planning Assistance, (202) 426–4991, or Anthony Anderson, Office of the Chief Counsel, (202) 426–1906. All located at 400 Seventh Street, SW., Washington, D.C. 20590. FHWA office hours are from 7:45 a.m. to 4:15 p.m. ET., UMTA office hours are from 8:30 a.m. to 5 p.m., ET., Monday through Friday.

SUPPLEMENTARY INFORMATION: As part of a joint FHWA/UMTA effort to reduce redtape and simplify administrative and technical requirements in small metropolitan areas, guidance was issued to all FHWA and UMTA field offices on August 1, 1980, on the simplification of administrative requirements for planning in metropolitan areas of less than 200,000 population. The guidance relates to meeting the minimum requirements of the FHWA/UMTA joint planning regulations (23 CFR Part 450, Subparts A and C) for these areas.

The simplification of Federal program requirements has been given a high priority by the Administrators of FHWA and UMTA and by the Office of the Secretary of Transportation. The objective in developing this guidance for metropolitan areas of less than 200,000 population was to (1) reduce the burden of Federal planning requirements in areas with uncomplicated institutional arrangements and simple technical procedures for urban transportation planning; (2) reduce the administrative burden on FHWA and UMTA staff; and (3) aid newly designated urbanized areas in developing a planning process which is adequate to address their unique needs while avoiding excessive detail and wasteful expenditures.

The guidance provides for an appropriate level of effort for smaller urbanized areas and can be implemented without any change to existing regulations. Changes to the joint planning regulations will be proposed in a rulemaking action to be issued shortly by FHWA and UMTA. Appropriate revisions will be made to the guidance for smaller urbanized areas when the changes to the joint planning regulations are finalized.

The following guidance was issued on August 1, 1980, for prompt application to planning efforts in areas under 200,000 population. The guidance is keyed to the appropriate sections of the joint planning regulations.

Simplification of Administrative Requirements for Planning in Metropolitan Areas of Less Than 200,000 Population

Meeting Minimum Requirements of 23 CFR Part 450, Subpart A, Urbanized Transportation Planning

Organization: Sections 450.106, 450.108, 450.112, 450.122

—If State or local governments wish to redesignate Metropolitan Planning Organizations (MPO's), this should be done by agreement among the units of general purpose local government and the Governor.

Agreements: Section 450.108

—Except for the formal agreement required where the MPO and A–95 agency are different, this requirement may be satisfied through descriptions of roles and responsibilities in the Prospectus, Unified Planning Work Program (UPWP) and/or Transportation Improvement Program (TIP).

Planning Work Program: Section 450.114

—The Prospectus and the UPWP may be as brief as a few pages. Clarity and brevity should be emphasized.

—The Prospectus should briefly describe the important transportation issues facing the area and the roles and responsibilities of each of the participating agencies.

—Work descriptions in the UPWP will usually satisfy the requirements for status and anticipated accomplishments and procedures to be used in carrying out the process.

—UPWP's need only be reviewed by the Federal funding agencies. Joint review and approval procedures should be worked out by these agencies.

Transportation Plan: Section 450.116

—In accordance with section 134, Title 23, U.S.C., the transportation plan must be based on transportation needs and consider long-range land use plans, overall goals and objectives, and their impact on future development. In small urbanized areas the long-range plan may be a simple statement about land use policy and the location of major public facilities, and transportation improvements together with a Transportation Systems Management (TSM) element.

Transportation Improvement Program/ Annual Elements: Section 450.118

—The TIP/AE should be scaled to the needs of the area. If only a few projects can be funded annually, the document need only be a single page with the coming year's projects clearly identified.

Elements: Section 450.120

—The level of efforts should only be commensurate with the problems being addressed. Maximum use should be made of simplified planning techniques. These are discussed in several planning manuals specifically developed for small areas; quick response training courses; and earlier "Level of Effort" publications.

Certification: Section 450.122

—The annual review should be as simple as possible and should be based to the maximum extent on previously submitted data. The review may be informal except that every 3 years it should be formally documented.

—In new areas (those added as a result of the 1980 Census) the determination of planning adequacy should take into account the "newness" of the process, that is to recognize that extensive planning may not be ongoing in these areas. In most cases, we would expect new urbanized areas to be certified initially with appropriate conditions.

Meeting Minimum Requirements of 23 CFR Part 450, Subpart C, Transportation Improvement Program

Project Initiation: Section 450.310

—While the regulations call for specific initiation procedures, the key to local involvement is the MPO endorsement. This should be the focus of Federal review.

Annual Element Content: Section 450.312

—The only nonfederally funded TSM projects that need to be included in the TIP/AE are those which local officials determine will have a substantial impact on federally funded projects in the TIP/AE.

(Catalog of Federal Domestic Assistance Program Numbers 20.205, Highway Research, Planning and Construction; 20.500, Urban Mass Transportation Capital Grants; 20.501, Urban Mass Transportation Capital Improvement Loans; and 20.507, Urban Mass Transportation Capital and Operating Assistance Formula Grants. The provisions of OMB Circular No. A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to these programs)

Issued on: October 17, 1980.

Lillian C. Liburdi,
Deputy Administrator, Urban Mass Transportation Administration.

Alinda C. Burke,
Deputy Administrator, Federal Highway Administration.

[FR Doc. 80-32932 Filed 10-22-80; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 19

[T.D. ATF-75]

Alternate Curtailment and Extension of Bonded Premises for Use as General Premises

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Temporary rule (Treasury decision).

SUMMARY: This temporary rule relates to the Distilled Spirits Tax Revision Act of 1979, Subtitle A of Title VIII of the Trade Agreements Act of 1979 (Pub. L. 96–39). This temporary rule provides a method of alternation between general and bonded distilled spirits plant premises.

EFFECTIVE DATE: The effective date of these temporary regulations is October 23, 1980.

FOR FURTHER INFORMATION CONTACT: Edward J. Sheehan, E. J. Ference, or John V. Jarowski, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Telephone: 202–566–7626.

SUPPLEMENTARY INFORMATION: The Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing this temporary rule to revise 27 CFR 19.190 and 19.193 and add a new section, 27 CFR 19.205, to provide a method of curtailing the bonded premises of a distilled spirits plant for use as general premises. Sections 19.190 and 19.193 were published in their entirety in the **Federal Register** (44 FR 71612) as both a temporary rule, T.D. ATF–62, and a notice of proposed rulemaking for final regulations, Notice No. 329. The temporary regulations as revised and added by this document will remain in effect until superseded by final regulations. In addition, Notice No. 329, a notice of proposed rulemaking for final regulations providing for submission of written comments, applies to these revised temporary regulations.

New Provision

The purpose of these regulations is to provide proprietors with additional operational flexibility. Proprietors will be able to curtail and extend their bonded premises to permit the use of the processing premises and equipment for both bonded (bonded premises) and taxpaid (general premises) operations. These regulations provide an expeditious and practical method for accomplishing such curtailment and extension of distilled spirits plant premises.

Drafting Information

The principal authors of this document are E. J. Sheehan, E. J. Ference and J. V. Jarowski of the Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, personnel from other offices of the Treasury Department participated in developing this document, both on matters of substance and style.

Effective Date

Issuance of this Treasury decision as a temporary rule with notice and public procedure under 5 U.S.C. 553(b) and in compliance with the effective date limitation in 5 U.S.C. 553(d) is impracticable and not in the public interest. The omission from 27 CFR Part 19 of a provision for extension and curtailment of the bonded premises of a distilled spirits plant for use as general premises has created operational difficulties for proprietors desiring to store taxpaid case goods. In addition, the omission of this provision has created the potential for hardships and financial inequities for manufacturers of nonbeverage products who qualify their premises as distilled spirits plants. Those manufacturers cannot expeditiously extend their premises to permit bonded operations when needed, and then curtail the bonded premises to permit routine taxpaid manufacturing operations.

Accordingly, this Treasury decision becomes effective on October 23, 1980.

Authority and Issuance

These regulations are issued under the authority contained in 26 U.S.C. 7805 (68A Stat. 917, as amended).

Accordingly, Title 27 Code of Federal Regulations is amended as follows:

PART 19—DISTILLED SPIRITS PLANTS

Par. 1. The table of sections for Part 19 is amended to reflect the addition of § 19.205. As amended, the table of sections reads as follows:

* * * * *

Subpart G—Qualification of Distilled Spirits Plants

* * * * *

Sec.
19.205 Alternate curtailment and extension of bonded premises for use as general premises.

* * * * *

Par. 2. Section 19.190 is amended to include a reference to new § 19.205. As amended, § 19.190 reads as follows:

§ 19.190 Changes in premises.

Except as provided in §§ 19.202, 19.203, 19.204, and 19.205, where bonded premises, or any other premises included as a part of the plant are to be extended or curtailed, the proprietor shall file (a) an application for registration, Form 5110.41, to cover such extension and curtailment, and (b) amended plans. Premises and equipment to be included by extension or to be excluded by curtailment shall not, prior to approval by the regional regulatory administrator of the required documents, be used for other than previously approved purposes.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended (26 U.S.C. 5172))

§ 19.193 [Amended]

Par. 3. Section 19.193 is amended to add a reference to new § 19.205. In the first sentence of § 19.193, the words "or 19.204" are replaced with the words "19.204, or 19.205."

Par. 4. Section 19.205 is added immediately following § 19.204. As added, § 19.205 reads as follows:

§ 19.205 Alternate curtailment and extension of bonded premises for use as general premises.

(a) *General.* The premises of a distilled spirits plant may, as provided in this section, be alternately curtailed and extended to permit the bonded premises of the distilled spirits plant to be used temporarily as general premises, or to permit the general premises of a distilled spirits plant to be used temporarily as bonded premises.

(b) *Proprietor's responsibility.* When a portion of the distilled spirits plant premises is first to be curtailed or extended as provided in this section, the proprietor shall file with the regional regulatory administrator (1) an application for registration, Form 5110.41, to cover alternate extension and curtailment of the premises, (2) a special plan delineating the premises as they will exist, both during extension and curtailment, and (3) a special diagram, in duplicate, clearly depicting all buildings, rooms, areas, equipment and spirits lines (identified individually by letter or number) which are to be subject

to alternation, in their relative operating sequence. Once such qualifying documents have been approved by the regional regulatory administrator, the designated premises and equipment may be alternately curtailed or extended pursuant to notice on Form 5110.34. Portions of the premises to be excluded by curtailment or included by extension shall not be used for purposes other than as set forth in the current notice. The proprietor shall remove all spirits (including denatured spirits), articles, and wines from the premises or equipment affected by the notice prior to the effective date and hour of the notice, except that (1) bonded spirits on portions of bonded premises that are to be curtailed to general premises need not be removed if the spirits are taxpaid concurrent with the filing of Form 5110.34 to effect curtailment; and (2) taxpaid spirits on portions of general premises to be curtailed to bonded premises need not be removed if the spirits are to be immediately dumped and returned to bond under the provisions of Subpart U of this part.

(c) *Separation of premises.* The portion of the premises which is to be curtailed or extended as provided in this section shall be separated from the remaining portion of the distilled spirits plant in a manner satisfactory to the regional regulatory administrator.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1353, as amended (26 U.S.C. 5172, 5178))

Signed: August 26, 1980.

G. R. Dickerson,

Director.

Approved: October 9, 1980.

Richard J. Davis,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 80-33146 Filed 10-22-80; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD Regulation 6010.8–R]

Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)

AGENCY: Office of the Secretary of Defense.

ACTION: Statement of Policy.

SUMMARY: This statement established a policy which provides for payment of nutrient solutions for patients requiring home parenteral nutrition therapy. This action has come about as a result of a movement in recent years to discharge inpatients earlier to a program of home parenteral nutrition, prompting a re-review of the traditional policy to pay for parenteral nutrition only on an inpatient basis. This action will expand Program outpatient benefits and reduce institutional Program costs.

DATES: This statement of policy is retroactively effective for covered services and supplies provided on or after October 1, 1979.

FOR FURTHER INFORMATION CONTACT: Lorraine F. Carpenter, Special Assistant for CHAMPUS, Office of the Assistant Secretary of Defense (Health Affairs), Washington, D.C. 20301; Telephone (202) 697–5185.

SUPPLEMENTARY INFORMATION: In FR Doc 77–7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its Regulation, DoD 6010.8–R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as part 199 of this title. Section 199.10, paragraphs (a) (10) and (a) (11), authorizes the Director, OCHAMPUS (or a designee), to issue such other instructions, procedures, guidelines, standards, norms, and criteria as may be necessary to implement the intent of the Regulation.

Section 199.10, paragraph (g)(63) excludes payment for food, food substitutes, vitamins, etc. This provision was originally interpreted to include parenteral nutrition. Parenteral nutrition is covered on an inpatient basis as part of the "board" provided a patient during an otherwise covered inpatient stay; therefore, the interpretation only affected outpatient claims. In recent years, there has been a movement to discharge inpatients earlier to a program of home parenteral nutrition, prompting a re-review of this interpretation. This review has resulted in a determination that home parenteral nutrition therapy should no longer be considered a nutritional supplement or food substitute; rather, it is a therapy which furnishes the only source of nutrition for the patient unable to receive nutrients orally and is as important to survival for such a patient as digitalis is to the heart patient or insulin to the diabetic. In view of these factors, the following statement of policy is announced:

1. *Coverage.* Devices and supplies, including nutrient solutions, are covered medical supplies, when medically necessary for patients requiring home parenteral nutrition therapy. Coverage includes injectable vitamins when required in conjunction with the home parenteral nutrition program. This determination does not affect the exclusion contained in section 199.10, paragraph (g)(63), which remains in effect.

2. *Reimbursement.* Reimbursement for the nutrient solutions is limited to the reasonable charge which would be payable if the patients mixed their own solutions and administered the solutions themselves. If a statement is provided by the attending physician which documents that the patient is incapable of formulating or administering the solutions, and no household member is able to assist, then reimbursement is limited to the reasonable cost of the pre-mixed solutions.

October 20, 1980.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

[FR Doc. 80-33079 Filed 10-22-80; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-10-FRL 1640-8]

Approval and Promulgation of Implementation Plans; Revisions to the Idaho State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rulemaking addresses State Implementation Plan (SIP) revisions submitted by the State of Idaho or called for by the Enironmental Protection Agency (EPA) pursuant to the requirements of Part D and Section 110 of the Clean Air Act (hereafter referred to as the Act). Today EPA is: (1) approving the Transportation Control Plan (TCP) portion of the Boise-Ada County carbon monoxide (CO) attainment plan (under Part D), (2) approving a revision to Idaho's indirect source review program (under Section 110), (3) approving an extension of the CO attainment date for the Boise-Ada County area from December 31, 1982 to December 31, 1987, and (4) calling for a SIP revision containing a motor vehicle inspection and maintenance (I/M) program for the Boise-Ada County area. Furthermore, EPA is taking separate action at a later date on Part D new source review procedures and the other specific attainment plans which the State has submitted to EPA.

These other area-specific plans address total suspended particulate control for Silver Valley, Pocatello, and Soda Springs.

EFFECTIVE DATE: October 23, 1980.

ADDRESSES: Copies of the revision and accompanying support material are available for public inspection during normal business hours at the following locations:

The Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C. 20408

Central Docket Section, (#10A–80—2), Environmental Protection Agency, 401 M Street S.W., West Tower Lobby, Gallery I, Washington, D.C. 20460

Enviromental Protection Agency, Air Programs Branch, Region 10, 1200 Sixth Avenue, Seattle, WA 98101

Idaho Operations Office, Environmental Protection Agency, 422 W. Washington, Street, Boise, Idaho 83702

FOR FURTHER INFORMATION CONTACT: Loren C. McPhillips, Coordination & Planning Section, M/S 625, Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, WA 98101, Telephone No. (206) 442–1226, FTS: 399–1226

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I. Introduction

EPA finds that good cause exists for making the action in this notice immediately effective for the following reasons: (1) Implementation Plan revisions are already in effect under State law and EPA approval poses no additional regulatory burden, and (2) EPA has a responsibility under the Act to take final action on the portion of the SIP which addresses Part D requirements by July 1, 1979 or as soon thereafter as possible.

This notice follows the August 8, 1980 issue of the **Federal Register** (45 FR 52834), wherein EPA published a notice of proposed rulemaking which described the nature of the Part D and Section 110 SIP revisions and requested public comment. Several comments were submitted during the comment period and they are discussed elsewhere in this notice.

EPA has reviewed comments received on the proposed rulemaking and is taking the following actions:

1. *Approval.* The transportation portion of the Boise-Ada County carbon monoxide attainment plan.

2. *Approval.* A variance for the BRA project from the Idaho indirect source regulations.

3. *Approval.* An extension of the CO attainment date for the Boise-Ada County area from December 31, 1982 to December 31, 1987.

4. *Request for SIP revision.* A SIP revision containing a motor vehicle inspection and maintenance program for the Boise-Ada County area.

In this notice the portions of the SIP on which EPA is taking action are summarized. Key issues relating to approval are discussed and summaries of comments on EPA's proposed rulemaking are provided. It is important to note that actions being taken in this publication are limited to those requirements contained in Part D and Section 110 of the Act.

The information in this notice is divided into two sections entitled "Background" and "Plan Review". The first section outlines the background leading to the development of the Idaho Part D SIP revisions in relation to the Clean Air Act Amendments of 1977. The "Plan Review" portion is divided into three major sub-sections. The first sub-section, "Transportation Control Plan (TCP) portion of the Boise-Ada County CO Attainment Plan," discusses the development, pursuant to Part D requirements, and approvability of a strategy for attaining the CO ambient air quality standards for the Boise-Ada County area. The second sub-section, "Indirect Source Review Variance," describes a SIP revision, which while submitted for approval pursuant to Section 110 of the Act, is integral to the TCP portion of the Boise-Ada County CO attainment strategy. The last sub-section under "Plan Review" entitled "Inspection and Maintenance" presents EPA's basis for requiring an I/M program in the Boise-Ada County area and the schedule for developing and implementing an I/M program.

II. Background

A. *Designation Process.* Pursuant to the requirements of Section 107(d) of the Act, EPA published in the **Federal Register** on March 3, 1978 (43 FR 8962) and on September 11, 1978 (43 FR 40412) a designation of the attainment status of certain areas in the State of Idaho with respect to the National Ambient Air Quality Standards (NAAQS) for total suspended particulates, carbon monoxide, and sulfur dioxide. This designation process triggered required revisions to the SIP as discussed below.

B. *Revision Process.* The 1977 Amendments to the Act require States to make extensive revisions to their SIPs. These revisions fall into three major areas:

1. Provisions for attainment and maintenance of NAAQS in those areas where air quality standards are being violated (required in Part D of the Act).

2. Plans for Prevention of Significant Deterioration to protect those areas with clean air (required in Part C of the Act).

3. General SIP requirements which have statewide applicability (e.g., Section 128—State Boards).

This notice presents the results of EPA's review of the TCP portion of the Biose-Ada County CO attainment plan, which was developed by Ada Planning Association (APA) and Idaho Department of Health and Welfare (IDHW) pursuant to their responsibilities under Part D of the Act. The TCP portion of the Boise-Ada County area CO attainment plan was submitted to EPA along with certain other Part D plans and revisions in January 1980. An adjustment to the TCP was submitted to EPA along with indirect source review variance for the BRA project in July, 1980. EPA will be taking action on these other Part D submissions at a later date.

This notice also presents the results of EPA's review of the indirect source review variance which was submitted to EPA pursuant to Section 110 of the Act.

Finally, this notice contains EPA's call for a SIP revision which requires an I/M program to be implemented in the Boise area prior to December 31, 1982 for a decentralized approach and no later than December 31, 1983 for a centralized approach, in order to attain the eight hour CO standard prior to December 31, 1987.

C. *Review and Approval Process.* It is important to understand the overall

nature of SIPs and of EPA's review and approval role, with special focus on the Part D requirements of the Act. First, nonattainment designations are specific to pollutants and areas. Therefore, it is possible for the Part D SIP revisions to be adequate for one pollutant or geographical area but inadequate for others. It is EPA's policy to treat the separate revisions as severable to the maximum extent possible. Due to circumstances described below, this notice contains a series of actions related only to the attainment of CO standards in the Boise area.

In the case of Part D SIP revisions, EPA's review process can lead to three results:

1. Approval, outright, where the SIP or the portion under consideration meets all requirements;

2. Disapproval where deficiencies are of such magnitude as to significantly interfere with the basic objective; or

3. Approval with conditions, where deficiencies exist, but where the effect of the deficiency is not judged to be significant and where the State is taking steps to correct the deficiency.

A discussion of conditional approval and its practical effect appears in supplements to the General Preamble published in the April 4, 1974, **Federal Register** (44 FR 20372); supplemented on July 2, 1979 (44 FR 38583), and November 23, 1979 (44 FR 67182). In essence, however, conditional approval is an option where minor deficiences in a state plan can be remedied by submission of additional materials by a specified deadline. Please see the above referenced **Federal Register** notices for additional details.

D. *Review Criteria.* The revisions approved today have been reviewed in light of the Clean Air Act. EPA regulations and additional guidance. Specific criteria for an approvable Part D SIP are described in a General Preamble published in the April 4. 1979, **Federal Register** (44 FR 20372); supplemented on July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979, (44 FR 53761), and November 23, 1979 (44 FR 67182). Additional criteria were published in the "EPA/DOT Transportation Planning Guidelines" and the "Transportation SIP Checklist." (These documents are available at the address noted above). General requirements for all SIPs are contained in 40 CFR Part 51.

A summary of the criteria used to evaluate the Boise-Ada County TCP are as follows:

1. Definition of nonattainment area and geographic area covered by transportation control measures.

2. Accurate, comprehensive and current emissions inventory.

3. Estimation of emission reductions needed to demonstrate standard attainment by 1982 and 1987.

4. Designation and certification of a lead agency for nonattainment areas.

5. Identification of agency task and responsibilities.

6. Schedule for comprehensive analyses of alternatives and demonstration that analysis is underway or completed.

7. Schedule for adoption of reasonably available measures.

8. Commitment to justify decision not to adopt difficult, but reasonably available measures.

9. Process for public, interest group, and elected official consultation and involvement in: defining transportation-air quality issues, establishing the planning process, developing and analyzing alternatives.

10. Identification of estimated financial and manpower resources necessary to carry out the process.

11. Evidence that the SIP was adopted by the State after reasonable notice and public hearing.

12. Provisions for progress reporting throughout the planning and implementation period.

13. Assess the need to implement an I/M program.

14. A commitment to use available grants and funds to establish, expand or improve public transportation measures to meet basic transportation needs as expeditiously as practicable.

15. Emission reduction estimates for adopted measures and/or packages of measures. Rough estimates of annual emission reductions through 1987 for packages of measures currently being developed and analyzed.

16. Commitment to: (1) accelerate implementation of transportation improvements, and (2) incremental phase-in of additional reasonable measures.

E. *Matters Upon Which EPA is Taking Action.* 1. The first phase of a two-phase CO attainment plan was developed locally by Ada Planning Association with close EPA Region 10 coordination. It was then submitted to the IDHW, combined with other State-developed Part D SIP revisions, and forwarded to EPA under the Governor's signature on January 15, 1980. An advanced notice of proposed rulemaking announcing receipt of the SIP revisions was published in the January 31, 1980 **Federal Register** (45 FR 6959). In the August 8, 1980 **Federal Register** EPA proposed approval of the TCP portion of the Boise-Ada County CO attainment plan submitted by the State pursuant to Part D requirements. An adjustment to the TCP had been submitted to EPA along with a variance request in July, 1980. Today, EPA is approving that plan.

2. In addition, pursuant to Section 110 of the Act. EPA is approving a variance to the State indirect source review regulation which would allow construction of a large parking garage associated with a Boise downtown redevelopment project.

3. Furthermore, EPA is granting an extension of the CO attainment date for the Boise-Ada County area from December 31, 1982 to December 31, 1987.

4. Finally EPA is calling for a SIP revision which includes an I/M program in the Boise-Ada County area due to projected difficulties in meeting CO standards by the end of 1987.

F. *SIP Submittals For Which Separate Action Will Be Taken.* In addition to the TCP portion of the Boise-Ada County CO plan, the State of Idaho also submitted the following Part D SIP revisions:

1. Part D new source review procedures,

2. TSP attainment plans for the Silver Valley, Pocatello, and Soda Springs.

EPA is not taking action on the above-listed revisions at this time due to ongoing negotiations with the State. Rulemaking for these plan revisions will be treated in a separate **Federal Register** notice at a later date.

Until EPA takes final action to approve or conditionally approve the Part D CO attainment plan for the Boise-Ada County area which includes the new source review procedures submitted by the State, the ban on construction of new and modified major stationary sources required by Section 110(a)(2)(I) of the Act, will remain in effect. These restrictions apply only in the designated nonattainment areas and only to new or modified major stationary sources. The restriction does not affect existing sources (unless they are being modified) or sources which applied for permits to construct before July 1, 1979.

G. *Comments on Proposed Rulemaking.* During the comment period following EPA's August 8, 1980 proposed rulemaking on this Part D and Section 110 SIP revision (45 FR 52834) over 35 comments were received from individuals and citizen groups. The majority of the comments were supportive of the proposed action. The issues raised by EPA in the August 8, 1980 **Federal Register**, relevant comments received on these issues, and EPA's response to these comments follows.

Comments on the TCP Portion of the CO Plan

1. One commenter asked that comments EPA had received from that commenter in March and June, 1979 be incorporated as part of its comments on the TCP. In accordance with this request, EPA fully considered such comments in this rulemaking.

2. *Comment:* Two commenters expressed views that the emission inventory contained in the TCP is not accurate, comprehensive, and current. They argued that the inventory addresses only CO and not other pollutants, it utilizes data gathered in 1977 and it relies on data from a monitoring site which may not now correspond to the site with the highest incidence of CO standards violations.

Response: Section 174(b)(4) of the Clean Air Act requires that nonattainment plans include pollutant-specific emissions inventories. The Boise-Ada County area is designated nonattainment for one pollutant, CO. As today's action involves only the TCP portion of the Boise-Ada County CO plan, it is both pollutant and area specific. Emissions of other pollutants such as lead and hydrocarbons are or will be addressed in other parts of the Idaho SIP.

The TCP which EPA is approving today was submitted to EPA as part of the State's 1979 SIP revision. The original TCP was completed in March 1979 but because the emission inventory was not complete, an adjustment to the inventory was submitted to EPA in July, 1980 along with the Boise Redevelopment Agency (BRA) indirect source review variance request. Use of 1975–1977 calendar year data is expressly called for in appendices to EPA's Transportation Air Quality Planning Guidelines (June 1978) and EPA does not agree that use of such data by APA was inappropriate. EPA shares the commenters' concerns that the 1982 submission be accurate, comprehensive and current. Areas which must be addressed in the 1982 SIP submission are detailed elsewhere in this notice.

Similarly, while EPA recognized in its August 8, 1980 **Federal Register** notice that the Ninth Street monitoring site may not now correspond to the location for the highest incidence of CO standards violations in the Boise area, EPA belives the Ninth Street site provided a proper basis for establishing a 1977 baseline inventory. Data for the relevant calendar year was available from this site, and in addition, as a National Air Monitoring Station (NAMS), the Ninth Street monitor serves as a trend station, reflecting one of the many potential peak situations which may occur throughout the urban area.

3. *Comment:* One commenter argues that EPA underestimated the impact of the BRA project in evaluating the TCP, and that the TCP for Boise-Ada County does not contain the required estimate of emission reductions needed to demonstrate standard attainment by 1982 and 1987.

Response: EPA performed a technical analysis of the TCP and the data supporting the petition for a variance which was submitted to EPA as an adjustment to the TCP in July, 1980. This analysis predicted violations of the 8-hour CO standard in the Boise-Ada County area by the end of 1982. The BRA project's air quality impact was specifically factored into EPA's microscale analysis. EPA does not agree that the project's impact was underestimated. As noted in the August 8, 1980 **Federal Register** notice, EPA agrees with the prediction that there will still be violations of the 8-hour CO standard in the Boise-Ada County area by the end of 1982. EPA also agrees with the estimates that an additional 12 to 15 percent reduction in CO emissions, beyond that which would be achieved through implementation of an I/M program and other committed measures, is necessary to meet the 8-hour CO standard by the end of 1987. This prediction is based on a report prepared by GCA, Inc., "CO Emission Inventory and Analysis of Nonattainment in Ada County, Idaho" (March 1979). EPA is satisfied that this prediction meets the requirement for an *estimation* of emission reductions needed to demonstrate attainment of standards by 1982 and 1987.

4. *Comment:* The same commenter objected that the law makes no explicit provision for a two phase TCP submission, that a phased TCP is not legally enforceable, and that a TCP must demonstrate actual progress towards attainment.

Response: The process for developing a TCP for a specific nonattainment area is well documented in the "EPA/DOT Transportation-Air Quality Planning Guidelines (June 1978)." The preparation of these guidelines was required by Section 108(e) of the Act. These guidelines, which specifically call for a two-phase TCP submission, have been used extensively by other lead agencies in developing their own CO attainment plans.

EPA believes that these guidelines are consistent with the requirements of Sections 110 and 172 of the Act, and are within EPA's authority as provided by Section 301 of the Act. These guidelines specifically call for a two-phase TCP submission. Furthermore, Sections 172(a)(2) and 172(c) of the Act, require areas where it is not possible to attain the standards prior to December 31, 1982, despite the implementation of reasonable transportation control measures, such as the Boise-Ada County area, to submit an enforceable attainment plan not later than July 1, 1982. As discussed elsewhere in this notice, it will be necessary for the State of Idaho to adopt and implement all reasonably available control measures in order to attain standards no later than December 31, 1987.

In accordance with the statutory requirements of Section 172, EPA is requiring the State to demonstrate reasonable further progress and attainment of the standards by 1987 in the State's 1982 SIP submittal. To the extent that the commenter's concern coincides with the statutory requirement for reasonable further progress, EPA concurs that the State's 1982 SIP submittal must demonstrate reasonable further progress. EPA does not agree that a phased TCP is unlawful or unenforceable. A TCP which has been submitted to EPA as a SIP revision pursuant to the requirements of Sections 110 and 172 of the Act and which has been approved and promulgated by EPA is federally enforceable as set out in Section 113 of the Act.

5. *Comment:* The same commenters questioned commitments by APA to implement the CO attainment plan, and commented that such commitments are not evident in the Boise-Ada County TCP nor have they been made public.

Response: EPA has reviewed the submitted SIP revisions for the Boise-Ada County Transportation Control Plan and the Indirect Source Review Variance and is satisfied that the required commitments to develop and implement the CO nonattainment plan have been included in the SIP. The documentation relating to the TCP adjustment which was submitted along with the indirect source review regulation variance for the BRA project specifically identifies control measures which have been or must be developed and committed to. These documents were available for public inspection at the addresses mentioned in this notice prior to and throughout the comment period. In addition, Section 175 grant requirements insure that the transportation control planning process will continue, and that the identified commitment will be met. In the event that specified commitments are not met, sanctions as provided for in Section 176(a) and 316 could be imposed.

V 4 5 O C 2 3 8 0 UMI

Comments on the BRA Project Indirect Source Review Regulation

8. *Comment:* One commenter criticized the proposed approval of the variance from the indirect source regulation for the BRA project or approval of the variance as a revision to the TCP because the proposal was made without quantifying the air quality impact of the project.

Response: IDHW and EPA have both performed analyses which project the air quality impact of the BRA project on the Boise-Ada County nonattainment area. These analyses are part of the rulemaking docket. Both analyses indicate that even with an I/M program, an aggressive TCP will have to be implemented in the Boise area. EPA is requiring that emissions from the BRA project be adequately accounted for in the 1982 SIP and that the TCP portion of that SIP revision demonstrate attainment of the CO standards prior to December 31, 1987.

7. *Comment:* One commenter suggested that Idaho's variance procedure does not apply to indirect sources and that EPA cannot approve this variance as part of the Idaho SIP.

Response: The State of Idaho's indirect source review regulation was approved by EPA on January 30, 1975 as part of the federally enforceable SIP (40 CFR 52.670). Idaho's variance provision was approved by EPA in 1972 as part of the State's original SIP submittal. The legal question concerning the applicability of the variance procedures to indirect sources was raised by a commenter at the State hearing on the variance petition which was held on March 12, 1980 before the Director of IDHW. The Director rejected such an interpretation in granting the variance. The Idaho State Attorney General's Office acting as Counsel for the Idaho Department of Health and Welfare considered the question in a letter dated June 30, 1980 to counsel for the BRA. The Attorney General's office found the variance procedures to be applicable to the BRA project and advised counsel to follow the procedures as set forth in the variance provision. EPA has considered this matter to be an issue of State law and defers to the finding of the State Attorney General's office.

8. *Comment:* The same commenters felt that the BRA should be required to mitigate the CO burden added by the downtown project through traffic flow alterations and design modifications to minimize emissions.

Response: EPA shares the commenter's concern with mitigating the CO burden in the Boise-Ada County nonattainment area. EPA carefully evaluated the commitments in the Disposition and Development Agreement between the BRA and the project's developer, as well as the mitigation assurances contained in the "Adjustment to the March 1979 Ada County TCP" which was submitted to EPA along with the variance request in July 1980. These documents indicated that the developer has committed to a project which will be designed to minimize internal and external emissions, and improve traffic flow. The project design will incorporate CO monitoring and exhaust devices to control emissions. The combined total of all the newly constructed parking facilities associated with the project cannot exceed 3060 spaces (one large facility or a combination of several small facilities). Additional mitigation measures are being evaluated. BRA is closely coordinating the redevelopment project with APA. EPA accepts these commitments as providing adequate assurance that the CO burden from the project will be mitigated. The 1982 Boise-Ada County CO attainment plan must account for emissions generated by the new facility and still demonstrate reasonable further progress in attaining the CO standards prior to December 31, 1987.

9. *Comment:* While agreeing with EPA that an I/M program is necessary for the Boise area, two commenters felt that I/M was a necessary element of the 1979 SIP submittal, and that EPA had no assurance that an I/M program would be implemented pursuant to the requirements of the Act.

Response: Sections 110 and 172 of the Act require States which are not able to demonstrate attainment of the CO standards by December 31, 1982 to establish, among other things, a specific schedule for implementation of a vehicle emission control I/M program. On April 4, 1979 (44 *FR* 20372), EPA published a General Preamble which identified the major considerations that guide EPA's evaluation of SIP submittals. This guidance specifically addressed the date by which an I/M program is required for areas with attainment dates beyond 1982. For urbanized areas (areas with a population of 200,000 or more) with attainment dates beyond 1982, a SIP containing appropriate commitments and an assurance of legal authority must be submitted to EPA by June 30, 1979. For non-urbanized area, however, EPA established that it would review the need for I/M once the 1979 SIP revisions had been submitted and would consider additional requirements at that time. EPA's approval of the TCP portion of the State of Idaho CO attainment plan is consistent with the policy established in the General Preamble and with the requirements of the Act.

EPA concurs with the commenters and the IDHW and APA that implementation of an I/M program is necessary in the Boise area. Accordingly, in this notice EPA is calling for a SIP revision containing an I/M program to be submitted by July 1, 1981. The program must be implemented no later than December 31, 1982 for a decentralized approach and December 31, 1983 for a centralized approach. If an I/M program is not adopted or implemented, funding limitations contained in Sections 176(a) and 316 of the Act, will be applied to the Metropolitan Boise Intrastate Air Quality Control Region.

10. *Comment:* One commenter questioned the evaluation by EPA of benefits from I/M and criticized the benefits as over stated and optimistic.

Response: The predicted benefits of an I/M program in Boise-Ada County were based on a state-of-the-art model for calculating mobile source emissions and benefits from an I/M program. These emission factors were published in an EPA publication called, "Mobile Source Emission Factors (EPA–400/9–78–005, March 1978)" and have been used extensively in modeling mobile source emission in other nonattainment areas. No affirmative showing was made by the commentor to support the assertion that the projected credits were in error.

General Comments

11. *Comment:* One group was concerned that EPA is relying upon significant reduction in CO levels in the Boise-Ada County air shed which will result from regulation of the drive-in industry (i.e., banks and fast-food service).

Response: In order to attain the CO standard in the Boise-Ada County area prior to December 31, 1987, an aggressive TCP will have to be implemented. APA is studying several transportation control measures including vehicle idling controls. Controlling vehicle emissions from drive-up facilities is an innovative idea and certainly the effectiveness of such a measure should be examined. However, the only commitment concerning drive-up facilities in the action EPA is taking today is that APA will continue to study its effectiveness and consider its implementation as part of the 1982 SIP.

12. *Comment:* Three commenters were concerned that in order to offset the air quality impact associated with the BRA project the IDHW would impose increased controls on agricultural sources, such as open field burning and wood burning stoves.

Response: The BRA project is expected to impact CO emissions in the Boise area. Field burning and wood burning stove emissions primarily impact a different pollutant standard that is set for particulate matter. In light of the dominant motor vehicle contribution to the CO nonattainment problem with the Boise area, APA and IDHW have focused the CO control strategy on transportation measures. Accordingly, while it is the responsibility of the States to devise the control strategies necessary to attain and maintain national ambient air quality standards, EPA does not believe that the CO control strategy for the Boise area would affect agricultural sources identified by the commenters.

III. Plan Review

A. *TCP Portion of the Boise-Ada County CO Attainment Plan.* 1. *Background.* In the fall of 1977, the IDHW proposed a carbon monoxide nonattainment area for Ada County which consisted of that area generally contained within the boundaries of the Boise Metropolitan Planning Area. In early February of 1978 the nonattainment area was expanded to include most of Ada County.

Numerous violations of the 10 milligrams per cubic meter (mg/m^3) 8-hour CO standard have been recorded in the Boise-Ada County nonattainment area. CO monitoring data has been collected at the Odd Fellows Building on Ninth Street since July 1975. Data collected at this site from 1975 through 1978 indicate that CO concentrations were over 20.0 mg/m^3 for each year recorded. Based upon that data, the CO 8-hour design concentration was determined to be 21.0 mg/m^3. In addition to the Odd Fellows Building monitoring data there were other special monitoring studies conducted in the Boise area. During one such study EPA Region 10 collected monitoring data at 40 locations from the period of November 23 through December 22, 1977. The study results indicated that the CO problem is widespread and not restricted to the downtown business district. At approximately 70 percent of the monitors, CO standards were exceeded on a regular basis. The study also suggested that the Ninth Street monitor may not represent the worst site in the city.

As required by Section 174(a) of the Act, a lead planning organization consisting of local elected officials was designated by the Governor of the State of Idaho on February 6, 1978. As the designated lead planning organization, Ada Planning Association (APA) is responsible for coordination and preparation of the required CO plan. APA is developing the TCP portion of the Boise-Ada County CO attainment plan in two phases. The first phase of the plan consists of adopting measures to insure reasonable further progress, developing a schedule to study and adopt other necessary reasonably available control measures and to identify target emission reductions. This part of the plan was developed based on the criteria set forth elsewhere in this notice. It is this phase (the 1979 SIP) upon which we are taking action today. The second phase (the 1982 SIP) will consist of a plan containing necessary commitments and adoptions of measures to insure attainment of the standards prior to December 31, 1987.

2. *Emission Reduction Required.* With a combination of computer modeling and rollback modeling APA predicted that there will still be violations of the 8-hour CO standard in the Boise area by the end of 1982. It is also estimated that an additional 12 to 15 percent reduction in CO emissions, beyond that which would be achieved through implementation of an I/M program and other committed measures, is necessary to meet the 8-hour CO standard by the end of 1987.

3. *Extension Request.* Since attainment by the statutory December 31, 1982 date is not projected, a formal request for a post-1982 attainment date has been made by IDHW and APA. The Act enables the EPA Administrator to grant up to a five year extension (to December 31, 1987) for compliance with the standards as long as the state submits a demonstration that attainment by 1982 cannot be achieved in the Boise area despite implementation of all reasonably available control measures.

EPA has reviewed the State and local demonstration and has determined that an extension of the attainment date from December 31, 1982 to December 31, 1987 is warranted.

4. *Control Strategy.* The CO problem has been attributed almost entirely to emissions from mobile (transportation) sources. As demonstrated in the emission inventories contained in the Boise-Ada County CO plan, more than 90 percent of the CO problem originates from motor vehicles.

In light of the dominant motor vehicle contribution to the CO nonattainment problem, the APA control strategy focuses on transportation measures. Typical reasonably available control measures are listed in Section 108(f)(1)(A) of the Act. It should be noted that these measures are designed to reduce vehicle emissions in one of three basic ways: (a) by reducing trips and miles traveled; i.e., improved mass transit, carpooling, etc., or (b) by improving traffic speeds; i.e., improved traffic signalization, traffic flow improvements, parking restrictions, etc., or (c) by reducing the emissions from individual vehicles; i.e., an inspection and maintenance program and the Federal Motor Vehicle Emission Control Program.

Measures which already have been implemented or which have been committed to implementation prior to December 31, 1982 in the Boise-Ada county area, and in some cases scheduled for further improvements include:

a. Improved public transit including downtown free shuttle bus.
b. On-street parking controls.
c. Promotion of flexible work hours.
d. Traffic signalization improvements downtown.
e. Park and ride lots.
f. Growth management.
g. Areawide carpool programs.
h. Bicycle lanes and storage.

Measures which APA is now studying and which will be considered for future implementation are listed below:

a. Inspection and maintenance program.
b. Additional public transit improvements including establishment of a downtown bus terminal.
c. Exclusive bus and carpool lanes.
d. Additional traffic flow improvements.
e. Long-range transit improvements.
f. Pedestrian malls including the Boise redevelopment project in the central business district.
g. Additional park and ride lots.
h. Additional employer programs to encourage carpooling and vanpooling.
i. Vehicle idling controls.
j. Additional growth management.

5. *Final Action.* Based on the criteria set forth elsewhere in this notice, EPA is approving the 1979 TCP portion or the Boise-Ada County CO attainment plan as submitted without conditions. EPA is satisfied that all currently planned, reasonably available control measures are being implemented, and that in addition, a commitment to evaluate and adopt control measures, which will result in attainment no later than December 31, 1987, has been made. APA, IDHW, and EPA are working closely together to insure that items contained in the next section will be addressed in the 1982 SIP submittal.

6. *Areas to be Addressed in Future SIP Submissions.* The following items are problems that will be addressed in the 1982 SIP submission or in other sections of this notice:

V 4 5 O C 2 3 8 0 UMI

a. It is critical for future work (the 1982 SIP) that the emission inventory be detailed, comprehensive and incorporate the use of the latest mobile source emissions factors. A more complete and refined analysis of parking lot activity emissions is necessary. This would include accounting for parking lot emissions from the Boise Redevelopment Agency (BRA) project. Specific projects that are in the adopted transportation plan must also be included in the projected emission inventories.

b. An inspection and maintenance program is discussed in detail later in the notice.

c. The CO plan that is submitted in 1982 must demonstrate reasonable further progress in attaining the standards prior to December 31, 1987.

d. Population projections used in the 1982 SIP projections must be consistent with Bureau of Economic Affairs projections. The major intent of this future requirement is to insure that the population projections used in all EPA programs are consistent (CO attainment plans, water quality planning under the 208 program, and construction grants projects for wastewater treatment facilities).

e. Individual highway projects must conform with the SIP at both the system or comprehensive planning level (mesoscale) *and* the project level or EIS level (microscale). In order to construct these projects, the following criteria must be fulfilled:

(1) The project's regional impact must be accounted for in the SIP. For example, the project must be part of the Regional Transportation Plan that was analyzed in the alternative analysis (mesoscale).

(2) The project's impact must be evaluated for the microscale air quality impact. The project must not cause new or exacerbate existing violations of the standards, or delay the attainment of the standards (microscale).

In order to help facilitate project conformity with the SIP, a detailed listing and schedule for construction and opening of various major projects will be required.

B. *Indirect Source Review Variance.*

1. *Introduction.* An indirect source review program provides for the pre-construction review of facilities which are likely to induce or attract significant vehicular traffic, thereby increasing the amount of mobile source generated air pollutants.

EPA approved the State of Idaho's indirect source review regulation in the **Federal Register** on January 30, 1975 (40 FR 4420). The regulation applies to any new parking facility or other indirect source with an associated parking area which has a parking capacity of 1,000 cars or more. Sources subject to this regulation such as the BRA project would have to obtain a "Permit to Construct" or be granted a variance from the regulations prior to commencing construction. Specific procedures for applying for a permit or variance are set forth in Section 1–1004 and Section 1–1007 of the "Rules and Regulations for the Control of Air Pollution in Idaho" and will not be discussed here.

On July 1, 1980 the State of Idaho submitted to EPA as a SIP revision a variance from its indirect source review program. EPA's action on this request for a SIP revision is governed by Sections 110(a)(3)(A) and 110(a)(5)(A)(iii) of the Act and the recent decision of the Second Circuit Court of Appeals in the case of *Manchester Environmental Coalition* vs. *EPA*, —— F.2d —— (2nd Cir. 1979) (No. 79–4062). In the *Manchester* case the court held that Section 110(a)(5)(A)(iii) required EPA to insure that a State's indirect source SIP revision met both procedural and substantive requirements of Section 110. The court noted that under the Act most states were revising their SIPs to meet Part D and suggested that the appropriate procedure would be to examine a State's indirect source revision submittal along with its Part D SIP submittal, concluding that EPA approval of the State's Part D submission would be sufficient to allow the Agency to approve the State's indirect source revision as well. Therefore since the Idaho Part D SIP revision or the relevant portion thereof is approvable (or conditionally approvable) then EPA is approving the State's request for a SIP revision approving its indirect source variance.

2. *Background.* The Boise City Comprehensive General Plan in 1964 provided for a major regional shopping center in the downtown area. In pursuit of this goal, the City Council established the Boise Redevelopment Agency (BRA) in 1965 and in turn incorporated the concept of a regional shopping complex into the current Boise Metro Plan. In April 1979 the BRA and Winmar Corporation presented the current project design proposal intended to optimize the goals of various citizen committees.

An integral part of the project is a 3,060 space underground parking facility. Success of the proposed retail complex is dependent upon occupancy by major department stores which require large, adjacent parking facilities. Construction of the parking garage is subject to the State of Idaho permit procedures for Indirect Sources, Rule 1–1004, Rules and Regulations for the Control of Air Pollution. Pursuant to the Indirect Source Regulations, the BRA submitted an application for an indirect source permit in late 1977 with an addendum submitted in March 1978. On April 5, 1978, the Idaho Department of Health and Welfare issued a preliminary determination to deny the permit based upon a finding by the BRA that its proposed project would further degrade air quality in the Boise area.

In 1978, BRA unsuccessfully challenged, in state court, the IDHW's finding that the BRA project was subject to indirect source regulation permit requirements.

On December 13, 1979, pursuant to Rule 1–1007, the BRA filed a petition for a variance from the permit requirements set forth in Rule 1–1004. The petition was supplemented on January 2 and January 7, 1980. In its petition the BRA contends that application of the indirect source permit requirements to the redevelopment project would impose an arbitrary or unreasonable hardship upon the Boise community. On March 12, 1980, a public hearing was held on the variance request. Over fifty persons presented oral or written testimony.

On April 24, 1980, IDHW granted the BRA a variance from Rule 1–1004. The Director of IDHW reasoned that rejection of the variance request could result in an expensive design change or project termination without any significant air quality benefit.

The Director further stated that it would then be unreasonable to require compliance with the permit regulation when clean air standards can be met without modifying the project or imposing a severe hardship on the community. The Director noted that pursuant to the Act, the Ada Planning Association must adopt and implement whatever measures may be necessary to ensure that national CO standards are achieved by 1987. He concluded that because of the severity of Boise's air quality problem, the APA plan must be both aggressive and innovative. He also found that any additional traffic generated by the BRA project must be addressed by the control strategy developed by APA. Because APA was committed to developing such a strategy, the Director found the variance acceptable. The SIP revision containing the variance was then submitted to EPA on July 1, 1980.

3. *Description of the BRA Project.* The BRA project is a shopping center and parking garage complex currently being proposed for construction in downtown Boise. It is considered to be an urban renewal project which would help reduce urban sprawl and encourage revitalization of the downtown area.

The BRA project is scheduled for an area bounded on the east by Capitol Boulevard, on the south by Front Street, on the west by Ninth Street, and on the north by Bannock Street. The retail complex will be contained in a two-level structure, designed to provide some vertical urban relief. The retail portion will contain approximately 765,000 square feet.

Parking spaces in the redevelopment project would be limited to new construction of four parking spaces for each 1,000 square feet of gross leasable area of retail space. This would allow construction of 3,060 spaces using the assumption of 765,000 square feet of retail space.

Approximately 650 parking spaces in the project area would be removed during the first phase of construction of the project, including removal of existing parking and on-street facilities. Therefore, the actual net increase in parking in the eight-square block area will be approximately 2,410 spaces. The planned 3,060 spaces would be placed in a manner yet to be determined.

Existing streets to be vacated include Main from Capitol Boulevard to Ninth; Idaho from Capitol Boulevard to Ninth; and Eighth from Main to Bannock. A portion of Idaho from Capitol to Eighth and a portion of Eighth from Idaho to Bannock would remain open for vehicular access to project facilities. However, this access is not meant to facilitate through traffic.

4. *Rationale for Action.* EPA is approving the SIP revision containing the BRA project variance from the State of Idaho's indirect source regulation. As already discussed, EPA is today approving the TCP portion of the Boise-Ada County CO attainment plan. Action on the new source review regulations which constitute the remaining portion of the CO attainment plan will take place in a separate **Federal Register** notice at a later date. However, given that there are no present or planned stationary sources emitting CO within the area impacted by the BRA project which will be subject to these new source review regulations, and moreover, since emissions from the BRA project will be accounted for in the updated emission inventory and 1982 SIP revision, EPA is satisfied that approval of the variance from the State of Idaho's indirect source review program will not result in a SIP which is inadequate to attain and maintain NAAQS.

APA and IDHW have provided assurances that the project's impact on air quality will be accounted for in the transportation control plan currently being developed to attain the CO standards. In addition to the submittal of variance request, EPA has received adequate commitments from APA and IDHW to ensure that the plan currently being developed will demonstrate attainment of the standards prior to December 31, 1987 even with the additional growth allowance. EPA recognizes that an inspection and maintenance program will be necessary to make an attainment demonstration and is calling for submission of a SIP revision containing an I/M program elsewhere in this notice. Specific rationale for approval of the SIP revision containing the BRA variance for the action is discussed below:

a. Increased emissions generated by this facility will be adequately accounted for in the 1982 SIP revision containing the Boise-Ada County CO attainment plan. In effect, the BRA project indirect source variance is an amendment to the CO emission inventory since emissions from the parking activity associated with the project have been added to the existing emission inventory thus making it current, accurate and comprehensive.

b. The 1982 SIP revision containing the Boise CO attainment plan will only be approved if the emissions from this facility are adequately accounted for and if the plan demonstrates, to EPA's satisfaction, attainment of the standards prior to December 31, 1987.

c. The BRA project is consistent with national goals to promote urban renewal and reduce urban sprawl.

d. IDHW has determined that the project will be designed with air quality considerations as one of the prime design factors. A special parking garage design configuration maximizing internal flow and facilitating ingress and egress will be incorporated to help reduce automobile emissions. The garage will also have an elaborate exhaust fan system.

5. *Final Action.* In order to approve the BRA indirect source variance which has been submitted to EPA, EPA must determine that the variance meets the requirements of Section 110 of the Act. The State is required to demonstrate that approval of the SIP revision will result in protection of the NAAQS. Based on the State's demonstration as outlined above, EPA is satisfied that the SIP revision meets the substantive and procedural requirements of Section 110 and is therefore approving the BRA indirect source variance.

C. *Other Action (Boise-Ada County Inspection and Maintenance Program).*

1. *General Background.* "Inspection and Maintenance" (I/M) refers to a program whereby motor vehicles receive periodic inspections to assess the functioning of their exhaust emission control systems. Vehicles which have excessive emissions must then undergo mandatory maintenance. Generally, I/M programs include passenger cars, although other classes can be included as well. Operation of non-complying vehicles is prohibited. This is more effectively accomplished by requiring proof of compliance to purchase license plates or to register a vehicle. A windshield sticker system, much like that of many safety inspections programs, can be used if it can be demonstrated that equal effectiveness will be achieved.

Section 172 of the Act requires that State Implementation Plans which include nonattainment areas must meet certain criteria. For areas which demonstrate that they will not be able to attain the ambient air quality standards for ozone or carbon monoxide by the end of 1982 despite the implementation of all reasonable available control measures, an extension to 1987 is granted. The plan provisions shall "establish a specific schedule for implementation of a vehicle emission control inspection and maintenance program . . ."

EPA issued guidance on February 24, 1978, on the general criteria for SIP approval including I/M, and on July 17, 1978, regarding the specific criteria for I/M SIP approval. Both of these items are part of the SIP guidance material referred to in the General Preamble for Proposed Rulemaking (44 FR 20372, 20373, n 6). Though the July 17, 1978, guidance should be consulted for details, the key elements for I/M SIP approval are as follows:

- Legal Authority. States or local governments must have adopted the necessary statutes, regulations, ordinances, etc., to establish the I/M program. (Section 172(b)(10)).
- Commitment. The appropriate governmental unit(s) must be committed to implement and enforce the I/M program. (Section 172(b)(10)).
- Resources. The necessary finances and resources to carry out the I/M program must be identified and committed. (Section 172(b)(7)).
- Schedule. A specific schedule to establish the I/M program must be included in the State Implementation Plan (Section 172(b)(11)(B)). Interim milestones are specified in the July 17, 1978 memorandum in accordance with the general requirement of 40 CFR 51.15(c).
- Program Effectiveness. As set forth in the July 17, 1978 memo, the I/M program must achieve a 25 percent

reduction for carbon monoxide. This reduction is measured by comparing the levels of emission projected to December 31, 1987, with and without the I/M program. This is not a specific requirement of the Act but is EPA's policy based on Section 172(b)(2) which states that "the plan provisions . . . shall . . . provide for the implementation of all reasonably available control measures . . ."

2. *Rationale Calling for an Inspection and Maintenance Program in the Boise-Ada County Area.* a. *Boise-Ada County Co Problem.* (1) Boise is a rapidly growing city. The current 1980 estimated population in the Boise nonattainment area is 170,000. By the year 1985 the population is projected to exceed 200,000 and will likely increase to 300,000 by the year 2000.

(2) Over the last few years the Boise-Ada County area has experienced numerous violations of the 8-hour CO standards. A summary of the 8-hour CO violations is as follows:

Year	2d high (mg/m³)	Days of violation
1975	20.4	28
1976	21.0	95
1977	20.7	67
1978	20.2	58

Also, special monitoring studies have revealed that the CO problem is widespread and that there are several locations with violations even higher than those reported in the normal monitoring data.

(3) The meteorological conditions in the Boise-Ada County area are conducive to causing CO problems. Strong inversions are common during the winter months resulting in poor ventilation. CO emissions are then trapped in these stagnant conditions causing violations of the standards.

b. *Justification for an Inspection and Maintenance Program in Boise-Ada County.* I/M is necessary in the Boise-Ada County area to insure reasonable further progress and eventual attainment of the CO standard. The following issues demonstrate this need:

(1) Initial SIP Air Quality Projections: The initial air quality projections contained in the SIP indicate that Boise will not be able to attain the CO standard by 1987 without an I/M program. This estimate includes emission reduction credits associated with the implementation of improved transit, traffic flow improvements, carpools and idle limitations. Boise may not be able to attain the standards by the statutory date, accordingly, an aggressive CO attainment plan, including I/M, is necessary for the Boise area.

(2) Major Urban Renewal: Boise is currently planning a major urban renewal project. The project includes a shopping mall and a large parking garage for approximately 3,000 vehicles. the project would increase vehicular activitiy in the vicinity where the permanent CO monitor is already recording violations of the standard. The only feasible measure capable of mitigating the project's projected impact on air quality is an effective I/M program.

(3) Major Highway Projects: Currently there are two major projects being considered for construction in the Boise Central Business District. The State Street Connector and the Broadway-Chinden Corridor both would potentially increase vehicular activity in the Boise area. One way to mitigate these projects' air quality impacts would be to implement an I/M program.

(4) Major EPA Construction Grants: Major 201 wastewater treatment projects are underway or starting in the Boise nonattainment area. Certain of these, namely sewage treatment plant expansion and interceptor construction, have some growth-inducing features. Associated with this growth are additional air quality impacts. This is presently being studied by EPA and will be discussed in a Boise Urban Environmental Impact Statement.

In summary, the Boise-Ada County area is a rapidly growing isolated small urban area. Numerous violations of the CO standard have been recorded, and the area will not be able to attain standards by 1987 without an I/M program. Several projects are being contemplated for construction. The combined impact of these projects can only be mitigated through the implementation of an I/M program and other transportation control measures.

3. *EPA's Inspection and Maintenance Policy.* Current EPA policy as stated in a July 17, 1978 I/M policy memo from David Hawkins, Assistant Administrator for Air, Noise, and Radiation to the Regional Administrators specifies that for areas with populations less than 200,000 "EPA will not at this time automatically require I/M schedules in 1979 as a condition for SIP approval or an extension."

This policy should not be interpreted, however, to prevent the inclusion of an I/M strategy into the SIP for smaller urban areas if I/M can be shown to be reasonable and necessary to attain the standards. "Areas under 200,000 still have to attain and maintain NAAQS as expeditiously as practicable," but no later than December 31, 1987. EPA has indicated that the need for I/M in those small areas would be assessed after the submittal of the 1979 SIP revisions.

APA and IDHW have made a convincing case that Boise has a significant CO problem. Due to the projected dramatic population increase, projected difficulty in attaining the CO standards by December 31, 1987, and resulting increase in CO levels projected due to major projects, EPA agrees with the finding that an I/M program is necessary for the Boise-Ada County area.

4. *Final Action.* At this time EPA is calling a SIP revision including I/M to be submitted by July 1, 1981. The SIP revision must contain at a minimum a commitment from the appropriate jurisdiction to achieve a 25 percent reduction in CO emissions from gasoline fueled light duty vehicles by 1987 from an I/M program, and the other key elements discussed earlier in this section. Program implemention must be by December 31, 1982 for a decentralized approach and no later than December 31, 1983 for a centralized approach.

5. *Funding and Growth Limitations.* Failure to submit the needed legal authority, revised schedule as agreed to by EPA, and commitments as a SIP revision by July 1, 1981, will make the State liable to the funding and growth limitations specified in the Act. In order to avoid these statutorily-imposed limitations, the State must pass the appropriate legislation (I/M Bill) securing the needed legal authority to implement an I/M program in the Boise-Ada County area prior to March 31, 1981. Generally, the area affected will be the air quality control region (AQCR). In this specific case, the AQCR includes Ada and Canyon Counties.

If funding limitations are necessary, procedures for applying them would be consistent with those published in the Federal Register on April 10, 1980 (45 FR 24692). These procedures will not be discussed in detail here.

Section 316 of the Act also allows the Administrator of the EPA to withhold, condition or restrict grants for the construction of sewage treatment works in nonattainment areas where the State is not making reasonable further progress towards attainment of all NAAQS.

EPA finds that good cause exists for making the action in this notice immediately effective for the following reasons: (1) implementation plan revisions are already in effect under State law and EPA approval poses no additional regulatory burden, and (2) EPA has a responsibility under the Act to take final action on the portion of the SIP which addresses Part D requirements by July 1, 1979 or as soon thereafter as possible.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures; I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This notice of final rulemaking is issued under the authority of Section 110 of the Clean Air Act, as amended. [Sections 110 (a) and 172 of the Clean Air Act (42 U.S.C. 7410 (a) and 7502).]

Dated: October 17, 1980.

Douglas M. Costle,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Idaho was approved by the Director of the Federal Register on July 1, 1980.

Part 52 of Chapter I, Title 40, Code of Federal Regulations is amended as follows.

Subpart N—Idaho

1. In § 52.670, paragraphs (c)(16)–(c)(17) are added as follows:

§ 52.670 Identification of plan.

* * * * *

(c) * * *

(16) On January 15, 1980 the Governor submitted the transportation portion of the Boise-Ada County carbon monoxide plan.

(17) On July 1, 1980 the Governor submitted a SIP revision containing a variance from the indirect source regulation for an urban renewal project located in downtown Boise, as well as an adjustment to the TCP which had been submitted to EPA in January 1980.

§ 52.671 [Amended]

2. Section 52.671 is amended by changing the heading "photochemical oxidants (hydrocarbons)" to "ozone". Also, in the Table the listing for Metropolitan Boise Intrastate carbon monoxide, "III" is changed to "I".

3. In § 52.672, paragraph (d) is added as follows:

§ 52.672 Extensions.

* * * * *

(d) The Administrator hereby extends the attainment date for carbon monoxide in the Boise-Ada County nonattainment area to December 31, 1987.

§ 52.680 [Amended].

4. Section 52.680 is amended by changing the Table for Metropolitan Boise Intrastate—carbon monoxide from the letter "c" to "g". The following footnote is then added; "g. December 31, 1987." Also, the heading is changed on the Table from "Photochemical Oxidants (hydrocarbons)" to "Ozone".

5. Section 52.684 is added as follows:

§ 52.684 Control Strategy: Carbon Monoxide.

(a) The transportation control plan portion of the Boise-Ada County carbon monoxide attainment plan required under Part D of the Clean Air Act is approved.

(b) Until EPA takes final action to approve or conditionally approve the Part D carbon monoxide attainment plan for the Boise-Ada County area which includes the new source review procedures submitted by the State, the ban on construction of new and modified major stationary sources required by Section 110(a)(2)(I) of the Clean Air Act as amended, will remain in effect.

(c) The 1982 SIP submission containing a revision to the Boise-Ada County transportation control plan shall contain the following:

(1) An inspection and maintenance program.

(2) A strategy insuring that reasonable further progress will be met in attaining the standards prior to December 31, 1987.

6. Section 52.685 is added as follows:

§ 52.685 Indirect source review program.

(a) EPA approved the State of Idaho's indirect source review regulation in the Federal Register on January 30, 1975 (40 FR 4420). The regulation applies to any new parking facility or other indirect source with an associated parking area which has a parking capacity of 1,000 cars or more.

(b) EPA approves a variance from the State indirect source regulation for the Boise Redevelopment Agency's downtown urban renewal project including a 3,060 space parking facility.

7. Section 52.686 is added as follows:

§ 52.686 Inspection and maintenance program.

(a) EPA is calling for a SIP revision including I/M to be submitted by July 1, 1981. Program implementation must be by December 31, 1982 for a decentralized approach and no later than December 31, 1983 for a centralized approach.

(b) [Reserved.]

* * * * * *

[FR Doc. 80-33101 Filed 10-22-80; 8:45 am]

BILLING CODE 6560-26-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[OST Docket No. 68]

Yacht Documentation Fees

AGENCY: Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule establishes a fee schedule for the documentation of yachts used exclusively for pleasure. The Department of Transportation FY 81 Appropriation Act (Pub. L. 96-400) contains a provision prohibiting any funds provided by the Act from being used for expenses related to yacht documentation, except to the extent fees are collected from yacht owners. The Act also contains a provision authorizing the Secretary of Transportation to prescribe fees to recover the expenses of yacht documentation. Establishment of the fee schedule will enable the Coast Guard to continue yacht documentation services.

DATES: This amendment is effective on October 20, 1980. Comments may be submitted until December 29, 1980.

ADDRESSES: Comments should be mailed to Commandant (G-CMC/24), U.S. Coast Guard, Washington, D.C. 20593. Between the hours of 7 a.m. and 5 p.m., Monday through Thursday; comments may be delivered to and will be available for inspection or copying at the Marine Safety Council (G-CMC/24), Room 2418, U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: Commander Michael J. DeWitt, Office of Merchant Marine Safety (G-MP-5/12), U.S. Coast Guard Headquarters, Washington, D.C. 20593 (202) 426-9776.

SUPPLEMENTARY INFORMATION: These regulations are being issued without a prior Notice of Proposed Rulemaking and they become effective immediately. The extent of the restriction on Coast Guard expenditures could not be determined with certainty until passage

of the Appropriation Act, and the restriction became effective upon enactment. Delay in establishing a fee schedule would preclude the Coast Guard from continuing documentation of yachts, thereby eliminating the benefits associated with this service currently available to the public. Therefore, notice and public procedure hereon are impractical and contrary to the public interest and good cause exists for making this rule effective in fewer than 30 days after publication.

Drafting Information

The principal persons involved in drafting these rules are Commander M. J. DeWitt, Project Manager, Office of Merchant Marine Safety, and Mr. A. F. Bridgmen, Jr., Office of the Chief Counsel, U.S. Coast Guard.

Discussion of Regulations

The Department of Transportation's FY 81 Appropriations Act (Pub. L. 96-400) prohibits the expenditure of Government funds for the documentation of yachts except to the extent that fees are collected from yacht owners for the service. The Act also contains a provision authorizing the Secretary of Transportation to prescribe fees to recover the expenses of yacht documentation. Unless a fee schedule is established, the Coast Guard is precluded from documenting yachts.

Under 46 U.S.C. 103, yacht owners may document their vessels through the Coast Guard if the yacht is used exclusively as a pleasure vessel and would be, if it were a merchant vessel, entitled to registry.

U.S. citizen yacht owners may either obtain a certificate of number from a state boating authority or obtain documentation from the Coast Guard. Many yacht owners have selected Federal documentation. Documentation renders the vessel eligible for financing under the Ship Mortgage Act (46 U.S.C. 911 *et seq.*), which makes vessels secured under it an attractive investment for lenders. Documentation affords greater protections for the vessel in many foreign ports. The vessel's document can be maintained even if the location of principal use changes from state to state. It offers a vessel marking system preferred by yacht owners. Finally, prior to this rule, Federal documentation was provided without charge.

By requiring owners to pay a fee for documentation, Congress has addressed two perceived problems. The present documentation procedure for yachts primarily benefits yacht owners, not the Government or the public in general. Moreover, providing the service at no cost is inequitable since many pleasure boat owners must pay for state numbering because their vessels are not large enough to qualify for documentation. In shifting the burden to yacht owners, Congress has ensured that those who benefit from Federal documentation also pay the cost of that service.

The rule establishes a fee of 75 dollars for documenting a yacht, and 15 dollars for the renewal of a document or endorsing the change of a master on the document. These figures are derived from the cost of documenting yachts during 1979. Approximately 20,000 yacht documents and 50,000 renewals and change of masters were processed during 1979. The overall cost related to this service was approximately 2.5 million dollars. Given the greater amount of work involved in preparing a document, as opposed to merely renewing an existing document or changing the master on an existing document, the fees for these services have been fixed at a 5 to 1 ratio.

These fees will ensure that the actual cost of documentation is underwritten by yacht owners.

It should be noted that Federal documentation is not mandatory. Yacht owners may obtain a certificate of number for their vessels from a state. However, given the benefits associated with Federal documentation, this valuable service should be continued without interruption. Only by establishing fees for yacht documentation may the Coast Guard continue the service.

Evaluation

This rule has been evaluated in accordance with the Department of Transportation's "Regulatory Policies and Procedures," (44 FR 11034) and is considered "nonsignificant." An evaluation has been prepared and is available for inspection and copying between the hours of 7 a.m. and 5 p.m., Monday through Thursday (except holidays) at the Marine Safety Council, Room 2418, U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, D.C. 20593.

Comments

Due to the problems that abrupt suspension or termination of yacht documentation services would have caused vessel owners, yacht brokers, and banking interests, a fee schedule is being published as a final rule, effective immediately. However, comments on the appropriateness of this rulemaking and the fees established herein, as well as on alternative fee schedules, are welcomed. Comments should be submitted by December 29, 1980, to the Commandant, U.S. Coast Guard, as indicated under "Addresses." All comments received will be evaluated by the Commandant, who will submit his recommendation to the Secretary on whether or not this rule should be modified. Following the evaluation, the Department will publish a notice responding to any comments received.

In accordance with the foregoing, Part 67 of Title 46, Code of Federal Regulations is amended by adding § 67.77-5 as follows:

§ 67.77-5 Fees for the documentation of yachts.

(a) When a marine document is issued to a yacht, the owner shall pay a fee of $75 to the Officer in Charge.

(b) When a yacht's marine document is renewed, the owner shall pay a fee of $15 to the Officer in Charge.

(c) When a yacht's marine document is endorsed to reflect a change of master, the yacht owner shall pay a fee of $15 to the Officer in Charge.

(D.O.T. FY 81 Appropriations Act, Pub. L. 96-400, 94 Stat. 1681)

Issued in Washington, D.C., on October 20, 1980.

Neil Goldschmidt,

Secretary of Transportation.

[FR Doc. 80-33132 Filed 10-21-80; 9:30 am]

BILLING CODE 4910-62-M

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46 CFR Parts 150, 151, 153, 154

[CGD 75-59]

Compatibility of Bulk Liquids and Liquefied Gas on Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This new subpart consolidates requirements for compatible stowage of bulk liquid hazardous materials on tank vessels. The previous requirements were inconsistently worded and incorporated other documents by reference. This consolidation should make it easier for the person in charge of a vessel to load incompatible cargos safely.

DATE: This amendment is effective November 24, 1980.

FOR FURTHER INFORMATION CONTACT: Robert M. Query, Office of Merchant Marine Safety (G-MHM/14), Room 1405, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593. (202 426-1217).

SUPPLEMENTARY INFORMATION: In the March 27, 1980 Federal Register (45 FR 20132), the Coast Guard proposed to add a new Subpart A of 46 CFR part 150 that would consolidate various requirements designed to prevent accidents arising from mixing bulk liquid incompatible cargoes. The proposal contained a compatibility table and a requirement that vessel operators load in a configuration that the table showed to be compatible.

The Coast Guard accepted comments from interested persons until May 1, 1980 and received 3 comments.

Drafting Information

The principal persons involved in drafting this rule are: Robert M. Query, Project Manager, Office of Merchant Marine Safety and Michael N. Mervin, Project Attorney, Office of the Chief Counsel.

Discussion of Comments

The comments raised five questions:

1. One comment noted that the proposal gave the responsibility for loading cargo compatibly to the "operator of a vessel". It pointed out that responsibility for a vessel's proper loading has traditionally rested with the master of a ship or the person in charge of cargo transfer on a barge. This has worked well because these people are directly involved in supervising cargo transfer and vessel safety. The Coast Guard agrees. The term "vessel operator" is often taken to mean the company or organization having principal operating responsibility for the vessel. Referring to the vessel operator could confuse the assignment of responsibility and perhaps weaken the regulation. Therefore, section 150.115 is modified to include a definition of "person in charge", and section 150.130 is changed to assign responsibility to the person in charge of a vessel.

2. Another comment pointed out that the proposal made no mention of how one would treat tanks located diegonally across a cruciform joint when assessing whether two containment systems provide double or single barrier isolation. The Coast Guard has determined that tanks located across a cruciform joint may be considered equivalent to double barrier isolation for the purposes of compatibility. Therefore, a paragraph is added to Section 150.130 to state that a cruciform joint provides double barrier isolation for purposes of compatibility.

This determination on cruciform joints applies only to questions of compatibility. In situations where even minute leakage between compartments would endanger the crew or vessel, the Coast Guard does not consider a cruciform joint equivalent to a true double barrier. An example is the treatment of a cruciform joint that separates an accommodation space from a space that may contain cargo vapor on a gas or chemical carrier (see 46 CFR 153.233 and 154.335).

3. A third comment suggested that, though correct, footnote F to the compatibility table (Figure 1) was more stringent than absolutely necessary. The Coast Guard agrees. The footnote stated that furfuryl alcohol was incompatible with organic acids. Furfuryl alcohol is unstable with formic and oxalic acids but is stable when mixed with the other members of the organic acids group. Therefore, footnote F is rewritten to state only that furfuryl alcohohol is incompatible with formic acid. Oxalic acid is not included since it is usually handled as a solid and, to the Coast Guard's knowledge, is not moved as a bulk liquid.

4. Another comment from the same person suggested that furfural could react hazardously with the members of group 1, non-oxidizing mineral acids. Therefore, the comment recommended that furfural be included in footnote A with the other reactive aldehydes shown to be incompatible with group 1. The Coast Guard tested mixtures of furfural and hydrochloric acid on two occasions but did not find a reaction sufficiently strong to meet the criteria for incompatible pairs. Therefore, the footnote has not been changed. The Coast Guard discussed these results with the writer, who agreed that this reaction was probably borderline.

5. The last comment suggested that an "X" should be put at the intersection of group 7 (aliphatic amines) and group 36 (halogenated hydrocarbons). The writer had run tests on this combination using an accelerating calerimeter (ARC) and found an indication of some reaction hazard.

The Coast Guard has not changed the table. The Coast Guard may consider using this instrument or changing the data for groups 7 and 36 after receiving the data from the person who made the suggestion. However, in trying to specify a simple, inexpensive series of tests for determining compatibility, the Coast Guard has attempted to avoid unusual or expensive instrumentation. The ARC keeps the sample under conditions approximately adiabatic, while the Coast Guard procedure uses a Dewar flask to approximate adiabatic conditions. Since a vessel's tanks are generally far from adiabatic, it is questionable how critical adiabatic conditions are for designing a representative test. It should be noted that the ARC test is probably more conservative (errs on the safe side) than that prescribed by the Coast Guard.

The proposal has also been changed to clarify language or correct typographical errors as noted below:

The title of the part is changed to better describe its content. The new part will eventually contain requirements for liquid hazardous wastes.

The words "(as defined in 46 U.S.C. 391(a)(2)(c))—" are stricken from Section 150.110. The definition of "hazardous materials" is in Section 150.115, so that the reference in 150.110 to a second definition only confused the terminology.

The words "or its residues" are added to Section 150.130(a) to emphasize that "cargo" means cargo in any amount, including clingage that may remain in a tank after the tank is pumped out. The term "isolated" is changed to "separated" to agree with the nomenclature used in other regulations dealing with interconnections between cargo containment systems.

Several changes are made to correct obvious typographical errors of no substantive effect. Tables I and II have been edited to make them uniform, but no cargoes have been added or deleted.

This rule has been reviewed under the Department of Transportation's "Regulatory Policies and Procedures" (44 FR 11034, February 26, 1979). A final evaluation has been prepared and placed in the public docket. The Coast Guard has determined this rule to be "non-significant."

In consideration of the foregoing, the amendments proposed in the Federal Register of March 27, 1980 (45 FR 20132) are adopted with changes, as set forth below.

Dated: October 9, 1980.

J. B. Hayes,

Admiral, U.S. Coast Guard Commandant.

PART 150—COMPATIBILITY OF CARGOES AND OPERATIONAL REQUIREMENTS FOR BULK LIQUID HAZARDOUS WASTE CARGOES

Subpart A—Compatibility of Cargoes

Sec.

150.110 Applicability.
150.115 Definitions.
150.120 Definition of incompatible cargoes.
150.130 Loading a cargo on vessels carrying cargoes with which it is incompatible.
150.140 Cargoes not listed in table I.
150.150 Exceptions to the compatibility chart.
150.160 Carrying a cargo as an exception to the compatibility chart.
Figure I—Compatibility chart.
Table I—Alphabetical list of cargoes.
Table II—Groupings of cargoes.
Appendix I—Exceptions to the chart.

Appendix II—Explanation of figure I.
Appendix III—Testing procedures for determining exceptions to the chart.
Appendix IV—Data sheet.

Authority: The regulations of this subpart are issued under 46 USC 391a; 49 U.S.C. 1803; 49 CFR 1.46(n)(4) and (t).

Subpart A—Compatibility of Cargoes

§ 150.110 Applicability.

This subpart prescribes rules for identifying incompatible hazardous materials and rules for carrying these materials in bulk as cargo in permanently attached tanks or in tanks that are loaded or discharged while aboard the vessel. The rules apply to all vessels subject to 46 U.S.C. 391a.

§ 150.115 Definitions.

As used in this subpart: "Hazardous material" means—

(a) a flammable liquid as defined in § 30.10–22 or a combustible liquid as defined in § 30.10–15 of this chapter;

(b) a material listed in table 151.05, table 1 of part 153, or table 4 of part 154 of this chapter; or

(c) a liquid, liquefied gas, or compressed gas listed in 49 CFR 172.101.

"Person in charge" means the master of a self-propelled vessel, or the person in charge of a barge.

§ 150.120 Definition of incompatible cargoes.

Except as described in § 150.150, a cargo of hazardous material is incompatible with another cargo listed in table I if the chemical groups of the two cargoes have—

(a) an "X" where their columns intersect in figure I and are not shown as exceptions in Appendix I; or

(b) a letter other than "X" where their columns intersect in figure I and are specifically listed in the footnote designated by the letter. (See also § 150.140.)

§ 150.130 Loading a cargo on vessels carrying cargoes with which it is incompatible.

Except as described in § 150.160, the person in charge of a vessel shall ensure that the containment system for a cargo that is a hazardous material meets the following requirements:

(a) The containment system must separate the hazardous material or its residue from any cargo in table I with which it is incompatible by two barriers such as formed by a—

(1) cofferdam;
(2) empty tank;
(3) void space;
(4) cargo handling space;
(5) tank containing a compatible cargo; or
(6) piping tunnel.

(b) In this subpart, isolation across a cruciform joint is equivalent to isolation by two barriers.

(c) The containment system for the hazardous material must not have a piping or venting system that connects to a containment system carrying a cargo with which the hazardous material is incompatible. Any such piping or venting system must have been separated from the containment system carrying the incompatible cargo by—

(1) removing a valve or spool piece and blanking off the exposed pipe ends, or

(2) installing two spectacle flanges in series with a means of detecting leakage into the pipe between the spectacle flanges.

§ 150.140 Cargoes not listed in table I.

(a) A cargo of hazardous material not listed in table I must be handled as if incompatible with all other cargoes until the Commandant (G–MHM) (tel. no. (202) 426–6260) assigns the hazardous material to a compatibility group.

(b) A cargo of hazardous material must be handled as if incompatible with any cargo not listed in table I until the Commandant (G–MHM) (tel. no. (202) 426–6260) assigns the unlisted cargo a compatibility group.

§ 150.150 Exceptions to the compatibility chart.

The Commandant (G–MHM) authorizes on a case by case basis exceptions to the rules in this subpart if two cargoes shown to be incompatible in figure I meet the standards for a compatible pair in Appendix III.

§ 150.160 Carrying a cargo as an exception to the compatibility chart.

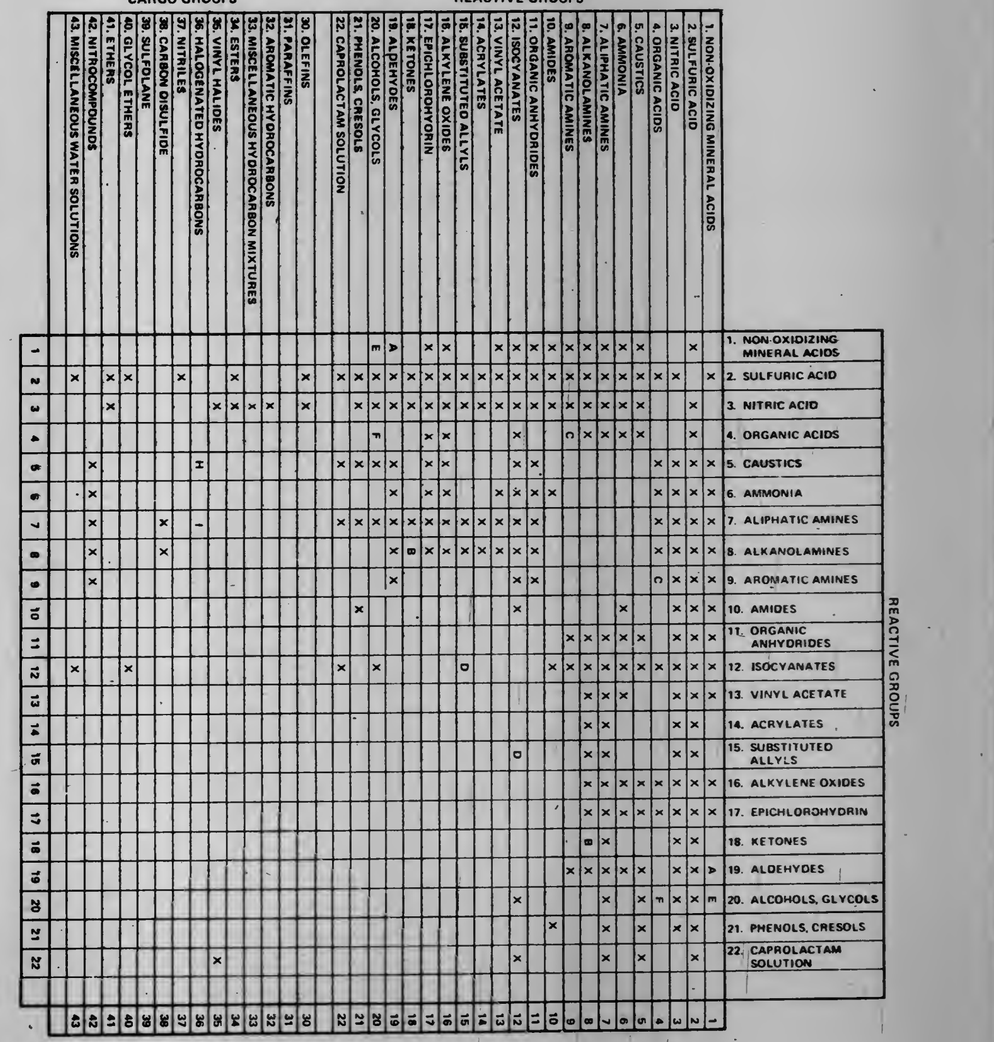
The operator of a vessel having on board a cargo carried as an exception under § 150.150 shall ensure that—

(a) the Commandant (G–MHM) has authorized by letter or message the cargo pair as an exception to the compatibility chart; and

(b) a copy of the letter or message is on the vessel.

BILLING CODE 4910–14–M

Figure I - Compatibility chart



BILLING CODE 4910–14–C

V 45 O C 23 80 0 UMI

Footnotes to Figure I

X Incompatible groups.

A Acrolein (19), Crotonaldehyde (19), and 2-Ethyl-3-propyl acrolein (19) are not compatible with Group 1, Non-Oxidizing Mineral Acids.

B Isophorone (18), and Mesityl Oxide (18) are not compatible with Group 8, Alkanolamines.

C Acrylic Acid (4) is not compatible with Group 9, Aromatic Amines.

D Allyl Alcohol (15) is not compatible with Group 12, Isocyanates.

E Furfuryl Alcohol (20) is not compatible with Group 1, Non-oxidizing Mineral Acids.

F Furfuryl Alcohol (20) is not compatible with Formic acid.

H Trichloroethylene (36) is not compatible with Group 5, Caustics.

I Ethylenediamine (7) is not compatible with Ethylene Dichloride (36).

Table I—Alphabetical list of cargoes

Name	Group No.
Acetaldehyde	19
Acetic Acid	4
Acetic Anhydride	11
Acetone	18
Acetonitrile	37
Acrolein (inhibited)	19
Acrylic Acid (inhibited)	4
Acrylonitrile (inhibited)	15
Adiponitrile	37
Allyl Alcohol	15
Allyl Chloride	15
Aminoethylethanolamine	8
Ammonia, Anhydrous	8
Ammonium Hydroxide (28% or less)	8
Ammonium Nitrate, Urea, Water Solutions (containing Ammonia)	8
Ammonium Nitrate, Urea, Water Solutions (not containing Ammonia	43
Amyl Acetate	34
Amyl Alcohol	20
Amyl Tallate	34
Aniline	9
Asphalt	33
Asphalt Blending Stocks:	
Roofers Flux	33
Straight Run Residue	33
Benzene	32
Benzene, Toluene Xylene (crude)	32
Butadiene (inhibited)	30
Butane	31
Butene	30
Butyl Acrylate (inhibited)	14
Butyl Acetate	34
Butyl Alcohol	20
Butylamine	7
Butyl Benzyl Phthalate	34
Butylene	30
1,3-Butylene Glycol	20
Butylene Oxide	16
Butyl Ether	41
Butyl Methacrylate (inhibited)	14
Butyraldehyde	19
Butyric Acid	4
Camphor Oil (light)	18
Caprolactam Solution	22
Carbolic Oil	21
Carbon Disulfide	38
Carbon Tetrachloride	36
Caustic Potash Solution	5
Caustic Soda Solution	5
Chlorine	(1)
Chlorobenzene	36
Chloroform	36
Chlorosulfonic Acid	(1)
Corn Syrup	43
Creosote, Coal Tar	21
Cresols	21
Cresylate Spent Caustic Solution	5
Crotonaldehyde	19
Cumene	32
Cycloaliphatic Resins	31
Cyclohexane	31
Cyclohexanol	20
Cyclohexanone	18
Cyclohexylamine	7
Cymene	32
Decaldehyde	19
Decane	31
Decene	30
Decyl Alcohol	20
Decyl Acrylate (inhibited)	14
Decylbenzene	32
Dextrose Solution	43
Diacetone Alcohol	20
Dibutylamine	7
Dibutyl Phthalate	34
Dichlorobenzene	36
Dichlorodifluoromethane	36
1,1-Dichloroethane	36
Dichloroethyl Ether	41
Dichloromethane	36
1,1-Dichloropropane	36
1,2-Dichloropropane	36
1,3-Dichloropropene	15
Dicyclopentadiene	30
Diethanolamine	8
Diethylamine	7
Diethylbenzene	32
Diethylene Glycol	40
Diethylene Glycol Monobutyl Ether	40
Diethylene Glycol Monobutyl Ether Acetate	34
Diethylene Glycol Monoethyl Ether	40
Diethylene Glycol Monomethyl Ether	40
Diethylenetriamine	7
Diethylethanolamine	8
Diheptyl Phthalate	34
Diisobutylene	30
Diisobutyl Carbinol	20
Diisobutyl Ketone	18
Diisodecyl Phthalate	34
Diisopropanolamine	8
Diisopropylamine	7
Dimethylamine	7
Dimethylethanolamine	8
Dimethylformamide	10
Dinonyl Phthalate	34
Dioctyl Phthalate	34
1,4-Dioxane	41
Diphenyl-Diphenyl Oxide	33
Diphenylmethane Diisocyanate	12
Di-n-propylamine	7
Dipropylene Glycol	40
Distillates:	
Straight Run	33
Flashed Feed Stocks	33
Diundecyl Phthalate	34
Dodecane	31
Dodecanol	20
Dodecene	30
Dodecylbenzene	32
Epichlorohydrin	17
Ethane	31
Ethanolamine	8
Ethoxylated Alcohols C_{11}-C_{15}	20
Ethoxy Triglycol	40
Ethyl Acetate	34
Ethyl Alcohol	20
Ethyl Acrylate (inhibited)	14
Ethylamine	7
Ethyl Benzene	32
Ethyl Butanol	20
Ethyl Chloride	36
Ethylene	30
Ethylene Chlorohydrin	20
Ethylene Cyanohydrin	20
Ethylenediamine	7
Ethylene Dibromide	36
Ethylene Dichloride	36
Ethylene Glycol	20
Ethylene Glycol Monobutyl Ether	40
Ethylene Glycol Monobutyl Ether Acetate	34
Ethylene Glycol Monoethyl Ether	40
Ethylene Glycol Monoethyl Ether Acetate	34
Ethylene Glycol Monomethyl Ether	40
Ethylene Oxide	(1)
Ethyl Ether	41
Ethylhexaldehyde	19
2-Ethyl Hexanol	20
2-Ethylhexyl Acrylate (inhibited)	14
Ethyl Hexyl Tallate	34
Ethyl Methacrylate (inhibited)	14
2-Ethyl-3-Propyl Acrolein	19
Formaldehyde Solution (37-50%)	19
Formic Acid	4
Furfural	19
Furfuryl Alcohol	20
Gas Oil:	
Cracked	33
Gasoline Blending Stocks:	
Alkylates	33
Reformates	33
Gasolines:	
Casinghead (natural)	33
Automotive (containing over 4.23 grams lead per gallon)	33
Aviation (containing not over 4.86 grams lead per gallon)	33
Polymer	33
Straight Run	33
Glutaraldehyde Solution	19
Glycerine	20
Glycol Diacetate	34
Glyoxal Solution	19
Heptane	31
Hexamethyleneimine	7
Hexane	31
Hexanol	20
Hexene	30
Hexylene Glycol	20
Hydrochloric Acid	1
Hydrofluoric Acid	1
Isophorone	18
Isoprene (inhibited)	30
Jet Fuels:	
JP-1 (Kerosene)	33
JP-3	33
JP-4	33
JP-5 (Kerosene, Heavy)	33
Kerosene	33
Latex, Liquid Synthetic	43
Mesityl Oxide	18
Methane	31
Methyl Acetate	34
Methyl Acetylene, Propadiene Mixture (Stabilized)	30
Methyl Acrylate (inhibited)	14
Methyl Alcohol	20
Methylamine	7
Methyl Amyl Acetate	34
Methyl Amyl Alcohol	20
Methyl Bromide	36
3-Methyl Butyraldehyde	19
Methyl Chloride	36
Methyl Ethyl Ketone	18
2-Methyl-5-Ethyl Pyridine	9
Methyl Formal (Dimethyl Formal)	41
Methyl Isobutyl Ketone	18
Methyl Isobutyl Carbinol	20
Methyl Methacrylate (inhibited)	14
(alpha-) Methyl Styrene (inhibited)	30
Mineral Spirits	33
Monochlorodifluoromethane	36
Morpholine	7
Motor Fuel Antiknock Compounds Containing Lead Alkyls	(1)
Naphtha:	
Coal Tar	33
Solvent	33
Stoddard Solvent	33
Varnish Makers' and Painters' (75%)	33
Naphthalene (molten)	32
Nitric Acid (70% or less)	3
Nitric Acid (95%)	(1)
Nitrobenzene	42
1- or 2-Nitropropane	42
Nitrotoluene	42
Nonane	31
Nonene	30
Nonyl Alcohol	20
Nonyl Phenol	21
Nonyl Phenol (ethyoxylated)	40
Octane	31
Octene	30
Octyl Alcohol	20
Octyl Aldehyde	19
Octyl Epoxytallate	34
Oils:	
Clarified	33
Coal Oil	33
Crude Oil	33
Diesel Oil	33
Residual	33
Road	33
Transformer	33
Fuel Oils:	
No. 1 (Kerosene)	33
No. 1-D	33
No. 2	33
No. 2-D	33
No. 4	33
No. 5	33
No. 6	33
Edible Oils, including:	
Castor	34
Coconut	34
Cotton Seed	34
Fish	34
Lard	34
Olive	34
Palm	34
Peanut	34
Safflower	34
Soya Bean	34
Soybean, Epoxidized	40
Tucum	34
Vegetable	34
Miscellaneous Oils, including:	
Absorption	33
Aromatic	33
Coal Tar	33
Heartcut Distillate	33
Linseed	33
Lubricating	33
Mineral	33
Mineral Seal	33
Motor	33
Neatsfoot	33
Penetrating	33
Range	33
Resin	33
Resinous Petroleum	33
Rosin	33
Sperm	33
Spindle	33
Spray	33
Tall	34
Tanner's	33
Turbine	33
Oleum	(1)
Pentadecanol	20
Pentane	31
Pentene	30
Pentyl Aldehyde	19
Perchloroethylene	36
Petrolatum	33
Petroleum Naphtha	33
Phenol	21
Pentachloroethane	36
Phosphoric Acid	1
Phosphorus	(1)
Phthalic Anhydride (molten)	11
Polybutene	30
Polyethylene Glycols	40
Polymethylene Polypheny isocyanate	12
Polypropylene	30
Polypropylene Glycol Methyl Ether	40
Polypropylene Glycols	40
Propane	31
Propanolamine	8
Propionaldehyde	19
Propionic Acid	4
Propionic Anhydride	11
Propyl Acetate	34
Propyl Alcohol	20
Propylamine	7
Propylene	30
Propylene Butylene Polymer	30
Propylene Glycol	20
Propylene Oxide	16
Propylene Tetramer	30
Propyl Ether	41
Pyridine	9
Sodium Hydrosulfide Solution (45% or less)	5
Sorbitol	20
Styrene (inhibited)	30
Sulfolane	39
Sulfur (molten)	(1)
Sulfuric Acid	2
Sulfuric Acid, Spent	2
Tallow	34
Tallow Fatty Alcohol	20
1,1,2,2-Tetrachloroethane	36
Tetradecanol	20
Tetradecene	30
Tetradecylbenzene	32
Tetraethylene Glycol	40
Tetraethylenepentamine	7
Tetrahydrofuran	41
Tetrahydronaphthalene	32
Tetrasodium Salt of EDTA Solution	43
Toluene	32
Toluene Diisocyanate	12
1,2,4-Trichlorobenzene	36
Trichloroethylene	36
Tridecanol	20
Tridecene	30
Tridecylbenzene	32
Triethanolamine	8
Triethylamine	7
Triethyl Benzene	32
Triethylene Glycol	40
Triethylenetetramine	7
Tripropylene Glycol	40
Turpentine	30
Undecanol	20
Undecene	30
Undecylbenzene	32
Valeraldehyde	19
Vinyl Acetate (inhibited)	13
Vinyl Chloride (inhibited)	35
Vinylidene Chloride (inhibited)	35
Vinyl Toluene (inhibited)	30
Xylene	32

Table I—Alphabetical list of cargoes—Continued

Name	Group No.
No. 6	33
Edible Oils, including:	
Castor	34
Coconut	34
Cotton Seed	34
Fish	34
Lard	34
Olive	34
Palm	34
Peanut	34
Safflower	34
Soya Bean	34
Soybean, Epoxidized	40
Tucum	34
Vegetable	34
Miscellaneous Oils, including:	
Absorption	33
Aromatic	33
Coal Tar	33
Heartcut Distillate	33
Linseed	33
Lubricating	33
Mineral	33
Mineral Seal	33
Motor	33
Neatsfoot	33
Penetrating	33
Range	33
Resin	33
Resinous Petroleum	33
Rosin	33
Sperm	33
Spindle	33
Spray	33
Tall	34
Tanner's	33
Turbine	33
Oleum	(1)
Pentadecanol	20
Pentane	31
Pentene	30
Pentyl Aldehyde	19
Perchloroethylene	36
Petrolatum	33
Petroleum Naphtha	33
Phenol	21
Pentachloroethane	36
Phosphoric Acid	1
Phosphorus	(1)
Phthalic Anhydride (molten)	11
Polybutene	30
Polyethylene Glycols	40
Polymethylene Polypheny isocyanate	12
Polypropylene	30
Polypropylene Glycol Methyl Ether	40
Polypropylene Glycols	40
Propane	31
Propanolamine	8
Propionaldehyde	19
Propionic Acid	4
Propionic Anhydride	11
Propyl Acetate	34
Propyl Alcohol	20
Propylamine	7
Propylene	30
Propylene Butylene Polymer	30
Propylene Glycol	20
Propylene Oxide	16
Propylene Tetramer	30
Propyl Ether	41
Pyridine	9
Sodium Hydrosulfide Solution (45% or less)	5
Sorbitol	20
Styrene (inhibited)	30
Sulfolane	39
Sulfur (molten)	(1)
Sulfuric Acid	2
Sulfuric Acid, Spent	2
Tallow	34
Tallow Fatty Alcohol	20
1,1,2,2-Tetrachloroethane	36
Tetradecanol	20
Tetradecene	30
Tetradecylbenzene	32
Tetraethylene Glycol	40
Tetraethylenepentamine	7
Tetrahydrofuran	41
Tetrahydronaphthalene	32
Tetrasodium Salt of EDTA Solution	43
Toluene	32
Toluene Diisocyanate	12
1,2,4-Trichlorobenzene	36
Trichloroethylene	36
Tridecanol	20
Tridecene	30
Tridecylbenzene	32
Triethanolamine	8
Triethylamine	7
Triethyl Benzene	32
Triethylene Glycol	40
Triethylenetetramine	7
Tripropylene Glycol	40
Turpentine	30
Undecanol	20
Undecene	30
Undecylbenzene	32
Valeraldehyde	19
Vinyl Acetate (inhibited)	13
Vinyl Chloride (inhibited)	35
Vinylidene Chloride (inhibited)	35
Vinyl Toluene (inhibited)	30
Xylene	32

(1) Because of very high reactivity or unusual conditions of carriage, this product is not included in the Compatibility Chart. If compatibility information is needed for a shipment, contact Commandant (G-MHM-3/TP14), U.S. Coast Guard, 2100 Second St. SW., Washington, D.C. 20593 tel no. (202) 426-6260.

Table II—Groupings of cargoes

1. *Non-Oxidizing Mineral Acids*
   - Hydrochloric Acid
   - Hydrofluoric Acid
   - Phosphoric Acid
2. *Sulfuric Acids*
   - Spent Sulfuric Acid
   - Sulfuric Acid (98% or less)
3. *Nitric Acid*
   - Nitric Acid (70% or less)
4. *Organic Acids*
   - Acetic Acid
   - Butyric Acid
   - Formic Acid
   - Propionic Acid
   - Acrylic Acid (inhibited)
5. *Caustics*
   - Caustic Potash Solution
   - Caustic Soda Solution
   - Cresylate Spent Caustic Solution
   - Sodium Hydrosulfide Solution (45% or less)
6. *Ammonia*
   - Ammonia, Anhydrous
   - Ammonium Hydroxide (28% or less)
   - Ammonium Nitrate, Urea, Water Solutions (containing Ammonia)
7. *Aliphatic Amines*
   - Butylamine
   - Cyclohexylamine
   - Dibutylamine
   - Diethylamine
   - Diethylenetriamine
   - Diisopropylamine
   - Dimethylamine
   - Di-n-propylamine
   - Ethylamine
   - Ethylenediamine
   - Hexamethyleneimine
   - Methylamine
   - Morpholine
   - Propylamine
   - Tetraethylenepentamine
   - Triethylamine
   - Triethylenetetramine
8. *Alkanolomines*
   - Aminoethylethanolamine
   - Diethanolamine
   - Diethylethanolamine
   - Diisopropanolamine
   - Dimethylethanolamine
   - Ethanolamine
   - Propanolamine
   - Triethanolamine
9. *Aromatic Amines*
   - Aniline
   - Pyridine
   - 2-Methyl-5-Ethylpyridine
10. *Amides*
    - Dimethylformamide
11. *Organic Anhydrides*
    - Acetic Anhydride
    - Phthalic Anhydride
    - Propionic Anhydride
12. *Isocyanates*
    - Diphenylmethane Diisocyanate
    - Polyphenyl Polymethyleneisocyanate
    - Toluene Diisocyanate
13. *Vinyl Acetate*
    - Vinyl Acetate (inhibited)
14. *Acrylates*
    - Butyl Acrylate (inhibited)
    - Butyl Methacrylate (inhibited)
    - Decyl Acrylate (inhibited)
    - Ethyl Acrylate (inhibited)
    - 2-Ethylexyl Acrylate (inhibited)
    - Ethyl Methacrylate (inhibited)
    - Methyl Acrylate (inhibited)
    - Methyl Methacrylate (inhibited)
15. *Substituted Allyls*
    - Acrylonitrile (inhibited)
    - Allyl Alcohol
    - Allyl Chloride
    - 1,3-Dichloropropene
16. *Alkylene Oxides*
    - Propylene Oxide
    - Butylene Oxide
17. *Epichlorohydrin*
    - Epichlorohydrin
18. *Ketones*
    - Acetone
    - Camphor Oil
    - Cyclohexanone
    - Diisobutyl Ketone
    - Isophorone
    - Mesityl Oxide
    - Methyl Ethyl Ketone
    - Methyl Isobutyl Ketone
19. *Aldehydes*
    - Acetaldehyde
    - Acrolein (inhibited)
    - Butyraldhyde
    - Crotonaldehyde
    - Decaldhyde
    - Ethylhexaldehyde
    - 2-Ethyl-3-Propyl Acrolein
    - Formaldehyde
    - Furfural
    - Glutaraldeyhyde Solution
    - Glyoxal Solution
    - Methylbutyraldehyde
    - Octyl Adlehyde
    - Pentyl Adlehyde
    - Propionaldehyde
    - Valeraldehyde
20. *Alcohols, Glycols*
    - Amyl Alcohol
    - Butyl Alcohol
    - 1,3-Butylene Glycol
    - Cyclohexanol
    - Decyl Alcohol
    - Diacetone
    - Alcohol Diisobutyl Carbinol
    - Dodecanol
    - Ethanol
    - Ethoxylated Alcohols C_{11}-C_{15}

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Ethyl Alcohol
Ethylbutanol
Ethylene Chlorohydrin
Ethylene Cyanohydrin
Ethylene Glycol
2-Ethyl Hexanol
Furfuryl Alcohol
Glycerin
Hexanol
Hexylene Glycol
Methanol
Methyl Alcohol
Methylamyl Alcohol
Methylisobutyl Carbinol
Octyl Alcohol
Nonyl Alcohol
Pentadecanol
Propyl Alcohol
Propylene Glycol
Sorbitol
Tallow Fatty Alcohol
Tetradecanol
Tridecanol
Undecanol

21. *Phenols and Cresols*
Carbolic Oil
Creosote, Coal Tar
Cresols
Nonyl Phenol
Phenol

22. *Caprolactam Solution*
Caprolactam Solution

23–29. *Unassigned*

30. *Olefins*
Butadiene (inhibited)
Butene
Butylene
Decene
Dicyclopentadiene
Diisobutylene
Dodecene
Ethylene
Hexene
Isoprene (inhibited)
Methyl Acetylene, Propadiene Mixture (stabilized)
(alpha-) Methyl Styrene (inhibited)
Nonene
Octene
Pentene
Polybutene
Polypropylene
Propylene
Propylene Butylene Polymer
Propylene Tetramer
Styrene (inhibited)
Vinyl Toluene (inhibited)
Tetradecene
Tridecene
Turpentine
Undecene

31. *Paraffins*
Butane
Cycloaliphatic Resins
Cyclohexane
Decane
Dodecane
Ethane
Heptane
Hexane
Methane
Nonane
Octane
Pentane
Propane

32. *Aromatic Hydrocarbons*
Benzene
Benzene, Toluene, Xylene (crude)
Cumene
Cymene
Decylbenzene
Diethylbenzene
Dodecylbenzene
Ethylbenzene
Naphthalene
Tetradecylbenzene
Tetrahydronaphthalene
Toluene
Tridecylbenzene
Triethylbenzene
Undecylbenzene
Xylene

33. *Misc. Hydrocarbon Mixtures*
Asphalt
Asphalt Blending Stocks
Diphenyl-Diphenyl Oxide
Distillates
Gas Oil, Cracked
Gasoline Blending Stocks
Gasolines
Jet Fuels
Kerosene
Mineral Spirits
Naphtha
Naphtha, Varnish Makers' and Painters (75%)
Oils, Clarified
Oils, Coal
Oils, Crude
Oils, Diesel
Oils, Fuel (No. 1 through No. 6)
Oils, miscellaneous
Oils, Residual
Oils, Road
Oils, Transformer
Petrolatum
Petroleum Naphtha

34. *Esters*
Amyl Acetate
Amyl Tallate
Butyl Acetate
Butyl Benzyl Phthalate
Castor Oil
Coconut Oil
Cottonseed Oil
Dibutyl Phthalate
Diethylene Glycol Monobutyl Ether Acetate
Diheptyl Phthalate
Diisodecyl Phthalate
Dinonyl Phthalate
Dioctyl Phthalate
Diundecyl Phthalate
Ethyl Acetate
Ethylene Glycol Monobutyl Ether Acetate
Ethylene Glycol Monoethyl Ether Acetate
Ethylhexyl Tallate
Fish Oil
Glycol Diacetate
Lard
Methyl Acetate
Methyl Amyl Acetate
Octyl Epoxy Tallate
Olive Oil
Palm Oil
Peanut Oil
Propyl Acetate
Safflower Oil
Soybean Oil
Tallow
Tucum Oil
Vegetable Oil

35. *Vinyl Halides*
Vinyl Chloride (inhibited)
Vinylidene Chloride (inhibited)

36. *Halogenated Hydrocarbons*
Carbon Tetrachloride
Chlorobenzene
Chlorodifluoromethane (mono-)
Chloroform
Dichlorobenzene
Dichlorodifluoromethane
1,1-Dichloroethane
Dichloromethane
1,1-Dichloropropane
1,2-Dichloropropane
Ethyl Chloride
Ethylene Dibromide
Ethylene Dichloride
Methyl Bromide
Methyl Chloride
Pentachloroethane
Perchloroethylene
1,1,2,2-Tetrachloroethane
1,2,4-Trichlorobenzene
Trichloroethylene

37. *Nitriles*
Acetonitrile
Adiponitrile

38. *Carbon Disulfide*

39. *Sulfolane*

40. *Glycol Ethers*
Diethylene Glycol
Diethylene Glycol Monobutyl Ether
Diethylene Glycol Monethyl Ether
Diethylene Glycol Monomethyl Ether
Dipropylene Glycol
Ethoxy Triglycol
Ethylene Glycol Monobutyl Ether
Ethylene Glycol Monoethyl Ether
Ethylene Glycol Monomethyl Ether
Nonylphenol, Ethoxylated
Polyethylene Glycols
Polypropylene Glycols
Polypropylene Glycol Methyl Ether
Soybean Oil, Epoxidized
Tetraethylene Glycol
Triethylene Glycol
Tripropylene Glycol

41. *Ethers*
Butyl Ether
Dichloroethylether
1,4-Dioxane
Ethyl Ether
Methyl Formal (Dimethyl Formal)
Propyl Ether
Tetrahydrofuran

42. *Nitrocompounds*
(mono-) Nitrobenzene
1- or 2-Nitropropane
Nitrotoluene

43. *Miscellaneous Water Solutions*
Ammonium Nitrate, Urea, Water Solutions (not containing Ammonia)
Corn Syrup
Dextrose Solution
Latex Solutions
Tetrasodium Salt of EDTA Solution

Appendix I—Exceptions to the Chart

The binary combinations listed below have been tested as prescribed in Appendix III and found not to be dangerously reactive. These combinations are exceptions to the Compatibility Chart (Figure 1) and may be stowed in adjacent tanks.

Member of reactive group	Compatible with—
Caustic soda, 50% or less	Butyl Alcohol. Diacetone Alcohol. Diethylene Glycol. Diethylene Glycol, Ethylene Glycol mixture. Ethylene Glycol (pure). Ethyl Alcohol. Ethyl Hexanol (Octyl Alcohol). Methyl Alcohol. Propyl Alcohol. Propyl Alcohol, Water mixture. Propylene Glycol.
Ethylene Diamine	Ethyl Hexanol. Isophorone. Propyl Alcohol. Creosote. Propylene Glycol. Methyl Ethyl Ketone.
Sulfuric Acid, 98% or less	Choice White Grease.
Acrylonitrile	Triethanolamine.
Dodecyl and Tetradecylamine mixture.	Tall Oil Fatty Acid.

Appendix II—Explanation of Figure I

Definition of a hazardous reaction—As a first approximation, a mixture of two cargoes is considered hazardous when, under specified condition, the temperature rise of the mixture exceeds 25°C or a gas is evolved. It is possible for the reaction of two cargoes to produce a product that is significantly more flammable or toxic than the original cargoes even though the reaction is non-hazardous from temperature or pressure considerations, although no examples of such a reaction are known at this time.

Chart format—There are different degrees of reactivity among the various cargoes. Many of them are relatively non-reactive: for example, aromatic hydrocarbons or paraffins. Others will form hazardous combinations with many groups: for example, the inorganic acids.

The cargo groups in the compatibility chart are separated into two categories: 1 through 22 are "Reactive Groups" and 30 through 43 are "Cargo Groups". Left unassigned and available for future expansion are groups 23 through 29 and those past 43. Reactive Groups contain products which are chemically the most reactive; dangerous combinations may result between members of different Reactive Groups and between members of Reactive Groups and Cargo Groups. Products assigned to Cargo Groups, however, are much less reactive; dangerous combinations involving these can be formed only with members of certain Reactive Groups. Cargo Groups do not react hazardously with one another.

Using the Compatibility Chart—The following procedure explains how the compatibility chart should be used to find compatibility infomation:

(1) Determine the group numbers of the two cargoes by referring to the alphabetical listing of cargoes and the corresponding groups (Table I). Many cargoes are listed under their parent names; unless otherwise indicated, isomers or mixtures of isomers of a particular cargo are assigned to the same group. For example, to find the group number for Isobutyl Alcohol, look under the parent name Butyl Alcohol. Similarly, the group number for para-Xylene is found under the entry Xylene. If a cargo cannot be found in this listing, contact the Coast Guard for a group determination (see § 150.140).

(2) If both group numbers are between 30 and 43 inclusive, the products are compatible and the chart need not be used.

(3) If both group numbers do not fall between 30 and 43 inclusive, locate one of the numbers on the left of the chart (Cargo Groups) and the other across the top (Reactive Groups). (Note that if a group number is between 30 and 43, it can only be found on the left side of the chart.) The box formed by the intersection of the column and row containing the two numbers will contain one of the following:

(a) *blank*—The two cargoes are compatible.

(b) "x"—The two cargoes are not compatible.

(c) *a letter other than "x"*—Reactivity varies among the group members. Refer to the footnotes following the chart to find whether the products in question are included in the footnotes. Unless the combination is specifically mentioned in these footnotes, it is compatible.

Examples

Combination	Groups	Compatible
Butyraldehyde/Acetic Acid	19/4	Yes.
Allyl Alcohol/Toluene Disocyanate	15/12	No.
Decene/Ethyl Benzene	30/32	Yes.
Ethanolamine/Acetone	8/18	Yes.
Ammonia/Dimethylformamide	6/10	No.

Appendix III—Testing Procedures for Determining Exceptions to the Chart

Experimental Procedure for Evaluating Binary Chemical reactivity

General Safety Precautions—Chemical reactivity tests have, by their nature, serious potential for injuring the experimenter or destroying equipment. The experimenter should 1) have knowledge of the magnitude of the reactivity to be expected, 2) use adequate facilities and protective equipment to prevent injury from splatter of materials or release of fumes, and 3) start on a small scale so that unexpected reactions can be safely contained. All tests should be performed in a well-ventilated laboratory hood provided with shields.

Testing Chemicals other than Liquids—The procedure outlined below was developed for chemicals which are liquids at ambient temperatures. If one or both chemicals are normally shipped at elevated temperatures, the same procedure may be followed except the chemicals are tested at their respective shipping temperatures and the oil bath in Step 3 is maintained at a level 25°C above the higher temperature. This information is then indicated on the data sheet. If one of the chemicals is a gas at ambient temperatures, consult the Coast Guard for additional instructions before proceeding with the compatibility test.

Step 1

Objective—To determine if the test chemicals react violently and present a safety hazard in further tests.

Procedure—Place 0.5ml of one (A) of the test chemicals in a 25×150mm test tube. Clamp the test tube to a stand behind a safety shield (in a hood). Carefully add from a dropper 0.5ml of the other substence (B). Shake to induce mixing. If no immediate reaction occurs, retain the mixture for at least 10 minutes to check for a delayed reaction.

Results—If a violent reaction occurs, such as sputtering, boiling of reactants or release of fumes, record the results on the Data Sheet (appendix IV) and do not proceed to Step 2. If no reaction or a minor reaction occurs, proceed to Step 2.

Step 2

Objective—To determine the heat of reaction of two chemicals on mixing under specified conditions.

Procedure—Three separate mixes of the proposed binary combination will be tested. These are 2ml: 18ml, 10ml: 19ml, and 10ml: 2ml, respectively, to result in a final mixture of about 20ml in each case.

A reference-junctioned thermocouple is prepared by inserting two lengths of 20 gauge or finer iron-constantan or chromelalumel duplex thermocouple wire into glass capilary sheaths. The common wire of each probe is joined, while the other wire of each is connected to a strip-chart recorder. The thermocouple probe which produces a negative pen deflection upon warming is the reference junction and is placed in a test tube of water at ambient laboratory temprature. The other probe is placed near the bottom of a Dewar flask of about 300ml capacity, such that the thermocouple will be below the surface of the test mixture. The Dewar flask is equipped with a magnetic stirrer having a stirring bar coated with an inert material such as a flourinated hydrocarbon.

Start the temperature recorder and stirrer. Deliver the test chemicals to the Dewar Flask simultaneously from separate graduated syringes. If an exothermic reaction occurs, continue the test until the maximum temperature is reached and begins to subside. If no apparent reaction occurs, continue the test for at least 30 minutes to check for a delayed reaction. Stop agitation and observe the mixture at five-minute intervals to determine if the mixture is miscible, if gases are evolved, or if other visible changes occur. In the interest of safety, a mirror can be used for these observations. Repeat the above test for the other mixture combinations.

Results—Record the results in the appropriate places on the Data Sheet. If no reaction occurs or if the temperature rise is less than 25°C, proceed to Step 3. If the observed temperature rise exceeds 25°C or gases are evolved, do not proceed to Step 3.

Step 3

Objective—To determine if exothermic reactions occur at temperatures up to 50°C.

Procedure—If a non-hazardous reaction occurred in Step 2, the ratio of chemicals which resulted in the greatest temperature rise will be tested. Fresh chemicals will be used with a total volume for this test of about 10ml (a ratio of 1ml:9ml, 5ml:5ml, or 9ml:1ml). If no reaction was observed in Step 2, use a ratio of 5ml:5ml. Using the thermocouple prepared for Step 2, insert the reference probe into a 25×150mm test tube containing 10ml of water. Place the other probe into an empty test tube. Start the temperature recorder and add the two chemicals of the

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combination, one at a time, to the empty test tube. Lower the two test tubes into an oil bath maintained at 50 ± 2°C. Hold the samples in the oil bath until the maximum temperature differential is recorded, and in all cases at least 15 minutes. Observe the test mixture to determine if gases are evolved or if other visible changes occur. Follow prescribed safety precautions.

Results—Record the maximum differential temperature measured, the time required to reach this temperature, and any other observations in the proper space on the Data Sheet.

Send a copy of the Data Sheet for each binary chemical mixture tested to: Commandant (C–MHM–3/TP14), U.S. Coast Guard, 2100 Second St., S.W., Washington, D.C. 20593.

BILLING CODE 4910–14–M

Appendix IV - Data sheet

CHEMICAL REACTIVITY TEST DATA

Chemicals: A _____ B _____

Synonyms: _____ _____

Formula: _____ _____

Description of Products:	A	B
Manufacturer		
Sample Source		
Composition (by weight %)		
Inhibitors or Stabilizers		

Deviations from Prescribed Method (including special equipment)

Step Number 1

Products miscible? _____ Gases evolved? _____

Other Observations:

Step Number 2

A/B Ratio:	2/18	10/10	18/2
Initial Temperature			
Maximum ΔT			
Time to reach Max. Temp.			
Products miscible?			
Gases evolved?			
Other Observations			

Size of Dewar Flask (inside measurements): Width _____ mm Height _____ mm

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Step Number 3

A/B Ratio	
Oil Bath Temperature	
Maximum ΔT	
Time to reach Max. Temp.	
Gases evolved?	
Other Observations	

Date of Test: _____

Submitting Organization: _____

Test Data Approved By: _____

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PART 151—UNMANNED BARGES CARRYING CERTAIN BULK DANGEROUS CARGOES

§§ 151.13–5, 151.13–10, and 151.45–4 [Amended]

2. By deleting 151.13–5(b), 151.13–10, and 151.45–4(d)(11).

PART 153—SAFETY RULES FOR SELF-PROPELLED VESSELS CARRYING HAZARDOUS LIQUIDS

§ 153.963 [Deleted]

3. By deleting § 153.963.

PART 154—SAFETY STANDARDS FOR SELF-PROPELLED VESSELS CARRYING BULK LIQUEFIED GASES

§ 154.1832 [Deleted]

4. By deleting § 154.1832.

(46 U.S.C. 391a; 49 U.S.C. 1803; 49 CFR 1.46(n)(4) and (t))

[FR Doc. 80-32720 Filed 10-22-80; 8:45 am]

BILLING CODE 4910-14-M

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. 25; Notice 41]

Consumer Information Regulations; Uniform Tire Quality Grading

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Final rule.

SUMMARY: This notice amends the Uniform Tire Quality Grading (UTQG) Standards to provide for the testing of metric tires, tires with inflation pressures measured in kilopascals. Since the original UTQG test requirements were written prior to the introduction of metric tires and specified inflation pressures measured in pounds per square inch, modification of the regulation is now necessary to identify inflation pressures applicable to metric tires. The notice also makes technical changes in the UTQG traction test procedure to facilitate efficient use of test facilities.

EFFECTIVE DATE: October 23, 1980.

FOR FURTHER INFORMATION CONTACT: Dr. F. Cecil Brenner, Office of Automotive Ratings, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, 202–426–1740.

SUPPLEMENTARY INFORMATION: The UTQG standards prescribe test procedures for evaluation of the treadwear, traction, and temperature resistance properties of passenger car tires. Grades based on these tests are used by consumers to evaluate the relative performance of competing tire lines. Test procedures for all three performance categories were established specifying inflation pressures in pounds per square inch.

Following the introduction of metric tires with inflation pressures measured in kilospascals, the National Highway Traffic Safety Administration (NHTSA) recognized the need to add metric inflation pressures to the UTQG test procedures. The agency proposed (44 FR 56389; Oct. 1, 1979; Notice 34) that for purposes of traction testing, metric tires would be inflated and tire loads determined using a prescribed inflation pressure of 180 kPa. Under the proposal, other tires would continue to be tested at an inflation pressure of 24 psi. NHTSA's notice also proposed modification of the temperature resistance test procedure to provide, in the case of metric tires, for use of inflation pressures 60 kPa less than the tires' maximum permissible inflation pressure.

In response to comments, NHTSA modified the original proposal (45 FR 35408; May 27, 1980; Notice 40) to include treadwear testing in the proposed modifications and to incorporate a table indicating treadwear, traction, and temperature resistance test inflation pressures for tires with various maximum permissible inflation pressures in kilopascals and pounds per square inch. In the proposed table, different test inflation pressures were specified for tires with differing maximum permissible inflation pressures.

The agency also proposed, in Notice 34, modification of the traction test procedure to permit the adjustment of candidate tire test results with standard tire results obtained either before or after the candidate tire test sequence, so long as all data to be compared were collected within the same two-hour period. This change was intended to promote efficient use of the traction test facilities by permitting data from more than one candidate tire test sequence to be adjusted by comparison with the same standard tire sequence.

Upon examination of additional data, NHTSA concluded that a three-hour period could be employed without affecting the accuracy of the test results. Use of a three-hour period would permit more than one candidate tire test sequence to be run both before and after the corresponding standard tire test sequence. A three-hour period for comparative testing was proposed in Notice 40. Having received no negative comments on the traction test sequence proposal as stated in that notice, NHTSA has determined that the amendment will be adopted as proposed.

On the proposed changes to provide for testing of metric tires, Goodyear Tire & Rubber Company noted that the table of test inflation pressures proposed in Notice 40 calls for variations in the prescribed test inflation pressure depending on the maximum permissible inflation pressure of the tested tire. The original traction procedure specified a single test inflation pressure for all tires. Goodyear expressed concern that such a change could affect test results and, consequently, tire grades, and require wasteful additional testing to confirm grades already assigned. Goodyear recommended that NHTSA adopt the amendment proposed in Notice 34 that all metric tires be tested using the inflation pressure 180 kPa and all other tires be tested using the original 24 psi inflation pressure.

NHTSA agrees that unnecessary costs associated with the UTQG Standard should be avoided. For this reason, the agency has determined that reference to traction testing will be deleted from the table of test inflation pressures, and the addition of the metric traction test inflation pressure of 180 kPa proposed in Notice 34 will be adopted instead. Those aspects of Notice 40 pertaining to treadwear and temperature resistance testing of metric tires will be adopted as proposed in that notice.

Pursuant to Executive Order 12044, "Improving Government Regulations," and implementing Departmental guidelines, the agency has considered the effects of these amendments. NHTSA reaffirms its earlier determination that the amendments are not significant and that the effects are so minimal as not to warrant preparation of a regulatory evaluation. NHTSA has determined these amendments will result in modest cost savings to industry and consumers, while having no appreciable effect on safety or the environment.

Because these amendments will facilitate the efficient and accurate completion of testing presently underway, the amendments are effective immediately.

In consideration of the foregoing, 49 CFR 575.104 is amended as follows:

§ 575.104 [Amended]

1. In § 575.104(e)(2)(ii) by substitution of the words "the applicable pressure specified in Table 1 of this section." in place of the words "an inflation pressure 8 pounds per square inch less than its

maximum permissible inflation pressure."

2. In § 575.104(f)(2)(i) (B) and (D) by addition of the words ", or, in the case of a tire with inflation pressure measured in kilopascals, to 180 kPa" following the words "to 24 psi".

3. In § 575.104(f)(2)(vii) by addition of the following sentence, at the end thereof: "The standard tire traction coefficient so determined may be used in the computation of adjusted traction coefficients for more than one candidate tire."

4. In § 575.104(f)(2)(viii) by addition of the words ", or, in the case of a tire with inflation pressure measured in kilopascals, the load specified at 180 kPa," following the words "at 24 psi", and by addition of the sentences, "Candidate tire measurements may be taken either before or after the standard tire measurements used to compute the standard tire traction coefficient. Take all standard tire and candidate tire measurements used in computation of a candidate tire's adjusted traction coefficient within a single three hour period." following the first sentence thereof.

5. In § 575.104(g)(1) by substitution of the words "the applicable pressure specified in Table 1 of this section." in place of the words "2 pounds per square inch less than its maximum permissible inflation pressure."

6. In § 575.104(g)(3) by substitution of the words "the applicable pressure specified in Table 1 of this section." in place of the words "2 pounds per square inch less than the maximum permissible inflation pressure."

7. In § 575.104(g)(6) by substitution of the words "applicable inflation pressure specified in Table 1 of this section." in place of the words "inflation pressure that is 8 pounds per square inch less than the tire's maximum permissible inflation pressure."

8. In § 575.104(g)(8) by substitution of the words "the applicable pressure specified in Table 1 of this section." in place of the words "2 pounds per square inch less than the tire's maximum permissible inflation pressure.

9. By addition of the following table at the conclusion of the text of that section:

Table 1.—*Test Inflation Pressures*

Maximum permissible inflation pressure	32 lb/in²	36 lb/in²	40 lb/in²	240 kPa	280 kPa	300 kPa
Pressure to be used in tests for treadwear and in determination of tire load for temperature resistance testing	24	28	32	160	220	180
Pressure to be used for all aspects of temperature resistance testing other than determination of tira load	30	34	38	220	260	220

The principal authors of this notice are Dr. F. Cecil Brenner of the Office of Automotive Ratings and Richard J. Hipolit of the Office of Chief Counsel.

(Sec. 103, 112, 119, 201, 203; Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1407, 1421, 1423); delegation of authority at 40 CFR 1.50)

Issued on October 14, 1980.

Joan Claybrook,
Administrator.

[FR Doc. 80-32808 Filed 10-22-80; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Certain Disabled Hunters May Take Migratory Game Birds from a Stationary Motor Vehicle or a Stationary Motor-Driven Land Conveyance; Deleting the Term "Wild" from the Definition of Migratory Game Bird and the Description of Migratory Waterfowl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service amends the methods of taking migratory game birds found in the basic hunting regulations, 50 CFR 20.21, to provide paraplegics and persons missing one or both legs an opportunity to take migratory game birds from a stationary motor vehicle or a stationary motor-driven land conveyance.

The Service also amends the definition of "migratory game bird" under 50 CFR 20.11 by deleting the term "wild" wherever found in that definition. Similarly, the Service amends the description of "migratory waterfowl" under 50 CFR 20.91 by deleting the term "wild."

EFFECTIVE DATE: October 23, 1980.

FOR FURTHER INFORMATION CONTACT:
John E. Cross, Special Agent in Charge, Branch of Investigations, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 28006, Washington, D.C. 20005 telephone 202–343–9242.

SUPPLEMENTARY INFORMATION:

1. Hunting of Migratory Game Birds by Certain Disabled Persons

Background

On February 15, 1979 (44 FR 9938), the Service proposed to amend 50 CFR Part 20 under authority of the Migratory Bird Treaty Act (hereinafter MBTA), 16 U.S.C. 703–712, to provide both paraplegics and persons missing one or both legs an opportunity to take migratory game birds from a stationary motor vehicle or motor-driven land conveyance. The Service was of the opinion that the amendment would not be detrimental to the resource and would provide additional recreational opportunities for certain disabled hunters.

During the Fall of 1978 the Service allowed disabled persons to hunt sika and white-tailed deer on Chincoteague National Wildlife Refuge in Virginia through a special program sponsored by the Service and the Disabled Sportsmen of America. That program served as a model for providing assistance, when possible, to handicapped hunters. Details of that hunt may be obtained by consulting the Department of the Interior News Release of November 22, 1978, entitled "Disabled Sportsmen to Get Chance to Hunt."

Summary of Comments

In the proposal (44 FR 9932), the Service requested interested parties to submit written comments, suggestions, or objections regarding the proposed amendment.

Of the six comments that were received during the comment period only one was unfavorable. The Washington Department of Game (E. Reade Brown) could not endorse the proposal because implementation in the State of Washington would require legislative action.

The remaining comments gave either qualified or unqualified support for the proposal. The California Department of Fish and Game (E. Charles Fullerton) and the Wisconsin Department of Game (Anthomy S. Earl) supported the proposal. Both the Arizona Game and Fish Department (Robert A. Jantzen) and the Nevada Department of Fish and Game (Glen K. Griffith) did not object to the proposal but noted that their respective States do not allow this practice under existing State law. The Utah Division of Wildlife Resources (Douglas F. Day) endorsed the proposal, with the reservation that the State may elect to place into effect more restrictive regulations.

Conclusions

The Service has reviewed all available data and determined that this amendment would provide certain disabled persons an opportunity to hunt migratory game birds without significantly affecting the resource.

The Service recognizes that more restrictive State laws will preclude hunters in some States from exercising the opportunity provided by this amendment. However, each State will have the option of amending its State law to conform with this amendment.

The final rule contains a minor editorial change to clarify the intent of the rule. The taking of migratory game birds is allowed only from a stationary motor vehicle, or a *stationary* motor-driven land conveyance. (Emphasis added).

2. Amended Definition of Migratory Game Bird and Amended Description of Migratory Waterfowl.

Background

On February 29, 1980 (45 FR 13642–43) the Service proposed to amend 50 CFR 20.11 by deleting the term "wild" wherever it appears in the definition of "migratory game bird." Similarly, the Service proposed to delete the term "wild" from the description of migratory waterfowl under 50 CFR 20.91.

The Service proposed these amendments, to provide uniformity with existing regulations and to remove ambiguity created by the use of the term "wild." Migratory birds, including migratory game birds, protected by the MBTA are defined in part by 50 CFR 10.12 to mean "* * * any bird, whatever its origin and whether or not raised in captivity, which belongs to a species listed in § 10.13, or which is a mutation or hybrid of any such species * * *"

Applicable regulations found in 50 CFR 21.13, 21.14, and 21.25 provide that captive-reared and properly marked migratory waterfowl may be killed by shooting only in accordance with all the applicable hunting regulations governing the taking of like species from the wild. The lone exception to these regulations is the shooting of captive-reared and properly marked mallard ducks at shooting preserve operations or bona fide dog training or field trial operations.

The Service believes that the decision in United States v. Conners, 606 F.2d 269(10th Cir. 1979) is incorrect and that the MBTA was intended to apply to all migratory birds, captive-reared as well as wild. Any other interpretation would cause serious enforcement problems and hinder the management and preservation of this valuable natural resource.

Summary of Comments

In the proposal (45 FR 13642–43), the Service requested interested parties to submit written comments, suggestions, or objections regarding the proposed amendment.

Only two comments were received during the comment period. The Wisconsin Department of Natural Resources (Anthony S. Earl) and the Central Flyway Waterfowl Council (Ted L. Clark) both supported the proposal.

Conclusions

The Service has determined that these amendments eliminate any ambiguity that may have been created by the use of the term "wild" in the definition of "migratory game bird" and the description of "migratory waterfowl," while providing uniformity with other existing regulations.

National Environmentol Policy Act

The Service has determined that these amendments are not major Federal actions significantly affecting the quality of the human environment, and therefore do not require preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969.

The primary authors of these rules are John T. Webb and David L. McMullen, Branch of Investigations, Division of Law Enforcement, (202) 343–9242.

Note.—The Department has determined that this document is not a significant rule and does not require the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Regulations Promulgation

Accordingly, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as follows:

PART 20—MIGRATORY BIRD HUNTING

§ 20.11 [Amended]

1. Amend § 20.11 by adding the following definition in alphabetical order:

* * * * *

"Paraplegic" means an individual afflicted with paralysis of the lower half of the body with involvement of both legs usually due to disease of or injury to the spinal cord.

* * * * *

2. Amend the definition of "migratory game birds" in § 20.11 by deleting the term "wild" wherever it appears in that definition.

§ 20.21 [Amended]

3. Amend § 20.21(d) to read as follows:

* * * * *

(d) From or by means, aid, or use of any motor vehicle, motor-driven land conveyance, or aircraft of any kind, except that paraplegics and persons missing one or both legs may take from any stationary motor vehicle or stationary motor-driven land conveyance;

* * * * *

§ 20.91 [Amended]

4. Amend § 20.91 by deleting the word "wild" wherever it appears.

Dated: October 16, 1980.

Lynn A. Greenwalt,
Director, Fish and Wildlife Service.

[FR Doc. 80-33038 Filed 10-22-80; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 21

Migratory Bird Permits; States Meeting Federal Falconry Standards, New Jersey Meets Federal Falconry Standards.

AGENCY: Fish and Wildlife Service. Interior.

ACTION: Final rule.

SUMMARY: The Service adds New Jersey to the list of States where falconry laws have been determined by the Director to meet or exceed the minimum Federal standards. Falconry may be practiced in the States listed in 50 CFR 21.29.

EFFECTIVE DATE: October 23, 1980.

FOR FURTHER INFORMATION CONTACT:
John E. Cross, Special Agent in Charge, Branch of Investigations, Division of Law Enforcement, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, telephone 202–343–9242.

SUPPLEMENTARY INFORMATION:

Regulations in 50 CFR Part 21 provide for the review and approval of State falconry laws by the Service. Included in that section is a list (§ 21.29(k)) of those States whose laws have been approved, and in which falconry is permitted pursuant to a system of joint Federal-State permits.

As provided by § 21.29(c), the Director has reviewed a certified copy of the

falconry regulations adopted by the State of New Jersey (Regulations NJAC 7:25–5.15 (A–K)). The regulations meet or exceed the minimum restrictions, conditions and requirements contained in 50 CFR 21.29 (d) through 50 CFR 21.29 (i) pursuant to permit requirements, classes of permits, examination procedures, facilities and equipment standards, raptor marking and raptor taking restrictions. The New Jersey regulations also meet or exceed all restrictions or conditions found in 50 CFR 21.29(j).

The Director has determined, based on the review, that the regulations of the State of New Jersey meet or exceed the Federal standards. Upon publication of this amended § 21.29(k) in the **Federal Register**, the practice of falconry in New Jersey shall be governed by 50 CFR 21.28 and 21.29.

The primary author of this document is William B. Zimmerman, Special Agent, Branch of Investigations, Division of Law Enforcement, Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

§ 21.29 [Amended]

Accordingly, § 21.29(k) of Part 21 of Chapter I, Title 50 of the Code of Federal Regulations, is amended by adding New Jersey, alphabetically and preceded by an asterisk, to the list of States.

Note.—The Department has determined that this document is not a significant rule and does not require preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Dated: October 9, 1980.

Lynn A. Greenwalt,

Director, Fish and Wildlife Service.

[FR Doc. 80-33039 Filed 10-22-80; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 32

Opening of Valentine National Wildlife Refuge, Nebr., to Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulations.

SUMMARY: The Director has determined that the opening to hunting of Valentine National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: Archery—09/20/80—11/07/80, 11/17/80—12/31/80, firearms—11/08/80—11/16/80.

FOR FURTHER INFORMATION CONTACT:

Robert M. Ellis, Fort Niobrara National Wildlife Refuge, Hidden Timber Route, Valentine, Nebraska 69201 Telephone: 402/376–3789.

SUPPLEMENTARY INFORMATION:

Section 32.32 is added to read as follows:

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

Public hunting of deer on Valentine National Wildlife Refuge, Nebraska, is permitted during the regular State seasons except on areas designated by signs as closed. This open area is shown on the maps available at refuge headquarters and from the Regional Director, U.S. Fish and Wildlife Service, 10597 West Sixth Avenue, Lakewood, Colorado 80225. Hunting shall be in accordance with all State regulations covering the hunting of deer.

* * * * *

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50 Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent for which the area was established. In addition, the Refuge Recreation Act requires (1) that any recreational use permitted will not interfere with the primary purpose for which the area was established; and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

The recreational use authorized by these regulations will not interfere with the primary purposes for which the Valentine National Wildlife Refuge was established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Note.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A–107.

August 12, 1980.

Robert M. Ellis,

Refuge Manager.

[FR Doc. 80-33109 Filed 10-22-80; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 32

Opening of Valentine National Wildlife Refuge, Nebr., to Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special Regulations.

SUMMARY: The Director has determined that the opening to hunting of Valentine National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: Prairie grouse—09/20/80—11/11/80; pheasant—11/01/80—01/15/81.

FOR FURTHER INFORMATION CONTACT:

Robert M. Ellis, Fort Niobrara National Wildlife Refuge, Hidden Timber Route, Valentine, Nebraska 69201 Telephone: 402/376–3789.

SUPPLEMENTARY INFORMATION: Section 32.22 is added to read as follows:

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

Public hunting of pheasant and grouse on Valentine National Wildlife Refuge, Nebraska, is permitted during the regular State seasons except on areas designated by signs as closed. This open area is shown on maps available at refuge headquaters and from the Regional Director, U.S. Fish and Wildlife Service, 10597 West Sixth Avenue, Lakewood, CO 80225. Hunting shall be in accordance with all State regulations covering the hunting of pheasant and grouse.

* * * * *

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50 Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent for which the area was established. In addition, the Refuge Recreation Act requires (1) that any recreational use permitted will not interfere with the primary purpose for which the area was established; and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

The recreational use authorized by these regulations will not interfere with the primary purposes for which the Valentine National Wildlife Refuge was established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Note.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A–107.

August 12, 1980.

Robert M. Ellis,

Refuge Manager.

[FR Doc. 80-33110 Filed 10-22-80; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 32

Hunting; Opening of Valentine National Wildlife Refuge, Nebr. to Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulations.

SUMMARY: The Director has determined that the opening to hunting of Valentine National Wildlife Refuge is compatible with objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: October 11 and 12, 1980; October 18, 1980 through January 6, 1981.

FOR FURTHER INFORMATION CONTACT:

Robert M. Ellis, Fort Niobrara National Wildlife Refuge, Hidden Timber Route, Valentine, Nebraska 69201. Telephone: 402/376–3789.

§ 32.12 Special Regulations; migratory game birds; for individual wildlife refuge areas.

Public hunting of ducks on Valentine National Wildlife Refuge, Nebraska, is permitted during the regular State seasons except on areas designated by signs as closed. This open area is shown on maps available at refuge headquarters and from the Regional Director, U.S. Fish and Wildlife Service, 10597 West Sixth Avenue, Lakewood, Colorado 80225. Hunting shall be in accordance with all State regulations covering the hunting of ducks.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50 Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent for which the area was established. In addition, the Refuge Recreation Act requires (1) that any recreational use permitted will not interfere with the primary purpose for which the area was established; and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

The recreational use authorized by these regulations will not interfere with the primary purposes for which the Valentine National Wildlife Refuge was established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

Note.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A–107.

Robert M. Ellis,

Refuge Manager.

August 12, 1980.

[FR Doc. 80-33146 Filed 10-22-80; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 655

Squid Fishery of the Northwest Atlantic Allocation of Atlantic Squid From Reserve; Correction

AGENCY: National Oceanic and Atmospheric Administration (NOAA)/ Commerce.

ACTION: Notice of correction of the allocation of short-finned squid.

SUMMARY: In 45 FR 63862 (September 26, 1980), the Northeast Regional Director, National Marine Fisheries Service, allocated the entire reserve of 13,000 metric tons (mt) of short-finned squid (*Illex Illecebrosus*) to the total allowable level of foreign fishing (TALFF). Appendix 1 of 50 CFR 611.20 was changed with the revised TALFF for short-finned squid shown as 31,000 mt. That amount of TALFF is in error and should have read 25,000 mt.

FOR FURTHER INFORMATION CONTACT:

Denton Moore, 634–7432.

Signed at Washington, D.C., this 16th day of October 1980.

William H. Stevenson,

Deputy Assistant Administrator, National Marine Fisheries Service.

(16 U.S.C. 1801 *et seq.*)

50 CFR 611.20 Appendix 1 is corrected to read as follows:

PART 611—FOREIGN FISHING

§ 611.20 (Appendix) [Revised]

	Species	Species code	Area	OY	DAH	JVP	Reserve	TALFF
1. Northwest Atlantic Ocean fisheries:								
D. Squid fishery	Squid, long-finned	502		44,000	7,000		0	37,000
	Squid, short-finned	504		30,000	5,000		0	25,000

[FR Doc. 80-33010 Filed 10-22-80; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 45, No. 207
Thursday, October 23, 1980

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 911 and 915

Limes Grown in Florida, and Avocados Grown in South Florida; Subpart—Pack Regulation, and Subpart—Container and Pack Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rules.

SUMMARY: This notice invites written comment on a proposal that would require containers of limes and avocados to bear a Federal or Federal-State Inspection Service lot stamp number showing that the fruit has been inspected and found to meet applicable regulation requirements issued under these marketing orders. The proposed action is designed to verify inspection and compliance with these requirements, in the interest of producers and consumers.

DATES: Comments must be received on or before November 7, 1980..

ADDRESSES: Send two copies of comments to the Hearing Clerk, United States Department of Agriculture, Room 1077 South Building, Washington, D.C. 20250, where they will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975. The Draft Impact Analysis relative to this proposed action is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and is classified "not significant." The proposal is being published with less than a 60-day comment period because there is insufficient time between the date when the information upon which it is based became available and the effective date necessary to effectuate the declared policy of the act.

The Department is considering issuing the proposed amendment of § 911.311 Lime Regulation 9, and § 915.306 Avocado Regulation 6, under the marketing agreements, as amended, and Marketing Orders 911 and 915, each as amended (7 CFR Parts 911 and 915). These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). These proposed amendments are based upon recommendations and information submitted by the committees established under these marketing orders, and other available information. In addition, these proposed amendments would revise references in these regulations to the U.S. grade standards for Florida limes and avocados to reflect recent changes in such standards.

The first proposal is that § 911.311 of Subpart—Pack Regulation be amended by revising paragraph (a)(1), amending paragraph (a)(2), revising and redesignating paragraph (a)(3) as paragraph (a)(4), adding a new paragraph (a)(3), and revising paragraph (b) to read as follows:

§ 911.311 Lime Pack Regulation 9.

(a) *Order.* (1) The grades set forth in the U.S. Standards for Grades of Persian (Tahiti) Limes (7 CFR 2851.1000–2851.1016) are hereby established as pack specifications for the grading and packing of limes.

(2) On and after November 17, 1980, * * *

* * * * *

(3) On and after November 17, 1980, no handler shall handle any container of limes, grown in the production area, unless such container is marked with a Federal or Federal-State Inspection Service lot stamp number showing that the limes have been inspected in accordance with regulations issued under § 911.48 of this marketing order.

(4) The provisions of paragraphs (a)(2) and (a)(3) of this section shall not apply to individual packages of limes not exceeding 4 pounds, net weight, that are within master containers except that if such packages are individual bags either such bags or the master containers thereof shall be marked or labeled in accordance with the requirements of paragraph (a)(2) of this section and master containers shall be marked or labeled in accordance with the requirements of paragraph (a)(3) of this section.

(b) Terms used in this section shall mean the same as in the marketing order, and terms relating to grade and standard pack shall mean the same as in the U.S. Standards for Grades of Persian (Tahiti) Limes (7 CFR 2851.1000–2851.1016).

The second proposal is that § 915.306 of Subpart—Container and Pack Regulations be amended by revising paragraph (a)(1), amending paragraph (a)(2), revising and redesignating paragraph (a)(3) as paragraph (a)(4), adding a new paragraph (a)(3), and revising paragraph (b) to read as follows:

§ 915.306 Avocado Pack Regulation 6.

(a) *Order.* (1) The grades set forth in the U.S. Standards for Grades of Florida Avocados (7 CFR 2651.3050–2851.3069) are hereby established as pack specifications for the grading and packing of avocados.

(2) On and after November 17, 1980, * * *

* * * * *

(3) On and after November 17, 1980, no handler shall handle any container of avocados, grown in the production area unless such container is marked with a Federal or Federal-State Inspection Service lot stamp number showing that the avodados have been inspected in accordance with regulations issued under § 915.51 of this marketing order.

(4) The provisions of paragraphs (a)(2) and (a)(3) of this section shall not apply to individual packages of avocados not exceeding 4 pounds, net weight, that are within master containers.

(b) Terms used in this section shall mean the same as in the marketing order, and terms relating to grade and standard pack shall mean the same as in the U.S. Standards for Grades of Florida Avocados (7 CFR 2851.3050–2851.3069).

Dated: October 20, 1980.

D. S. Kuryloski,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-33126 Filed 10-22-80; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 80-AAL-17]

Alteration of Control Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter Control 1234, located in the Aleutian Islands, Alaska, area, by extending a portion northward in the Saint Paul Island, Alaska, area. This alteration would allow reduced Air Traffic Control (ATC) separation standards and lower the area floor to 2,000 feet.

DATE: Comments must be received on or before November 24, 1980.

ADDRESS: Send comments on the proposal in triplicate to: Director, FAA Alaskan Region, Attention: Chief, Air Traffic Division, Docket No. 80-AAL-17, Federal Aviation Adminstration, P.O. Box 14, 701 C Street, Anchorage, Alaska 99513. The official docket may be examined at the following location: FAA Office of the Chief Counsel, Rules Docket (AGC-204), Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591. An informal docket may be examined at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Alaskan Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, P.O. Box 14, 701 C Street, Anchorage, Alaska 99513. All communications received on or before November 24, 1980, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to Subpart E of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that would alter Control 1234 in the vicinity of Aleutian Islands, Alaska. This proposal would extend a portion of Control 1234 northward toward Saint Paul Island, Alaska, and the Bering Sea. The recent commissioning of a Remote Communications Air Ground Facility and a Distance Measuring Equipment (DME) navigational aid at Saint Paul Island would permit the application of standard ATC separation criteria. Currently, oceanic separation criteria is utilized in this area. In addition, this alteration would lower the current control area floor of 5,500 feet to domestic controlled airspace with a floor of 2,000 feet. This action would improve traffic flow, reduce controller workload and aid flight planning. Subpart E of Part 71 was republished in the **Federal Register** on January 2, 1980, (45 FR 349).

ICAO Considerations

As part of this proposal relates to the navigable airspace outside the United States, this notice is submitted in consonance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices to civil aircraft in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.163 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 349) as follows:

Under § 71.163

Control 1234

"to latitude 53°36'00"N., longitude 176°47'00"N.; to latitude 54°33'00"N., longitude 169°58'00"W., to latitude 56°39'00"N., longitude 164°25'00"W.; to latitude 57°46'00"N., longitude 161°46'00"W.; thence to point of beginning." is deleted and "to Lat. 53°36'00"N., Long. 176°47'00"W.; to Lat. 54°02'00"N., Long. 174°00'00"W.; to Lat. 60°00'00"N., Long. 174°00'00"W.; to Lat. 60°00'00"N., Long. 168°00'00"W.; to Lat. 57°46'00"N., Long. 161°46'00"W.; thence to point of beginning." is substituted therefor.

(Secs. 307(a), 313(a), 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), 1510); Executive Order 10854 (24 FR 9565); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65)

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established

body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Washington, D.C., on October 14, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.80-32673 Filed 10-22-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-ASW-45]

Proposed Alteration of Control Zone and Transition Area: Greenville, Tex.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The nature of the action being taken is to propose alternation of the control zone and transition area at Greenville, Tex. The intended effect of the proposed action is to provide additional controlled airspace for aircraft executing instrument approach procedures to Majors Field, Greenville, Tex. The circumstance which created a need for the action is that three new instrument approach procedures to the airport have been developed for use by the military. There will be TACAN approaches to Runways 17 and 35 and an ILS approach to Runway 17. In addition, higher performance aircraft are utilizing the airport, which requires additional controlled airspace.

DATES: Comments must be received on or before November 24, 1980.

ADDRESSES: Send comments on the proposal to: Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. The official docket may be examined at the following location: Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas. An informal docket may be examined at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101; telephone: (817) 624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

Subpart F§ 71.171 (45 FR 356) and Subpart G§ 71.181 (45 FR 445) of FAR Part 71 contains the description of control zones and transition areas designated to provide controlled airspace for the benefit of aircraft conducting Instrument Flight Rules (IFR) activity. Alteration of the control zone and transition area at Greenville, Tex., will necessitate an amendment to these subparts.

Comments Invited

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. All communications received on or before November 24, 1980, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, airspace and Procedures Branch. Any data, views, or arguments presented during such conferences must also be submitted in writting in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rule making (NPRM) by submitting a request to the Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, or by calling (817) 624-4911, extension 302. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the office listed above.

The Proposal

The FAA is considering an amendment to Subparts F and G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the control zone and transition area at Greenville, Tex. The FAA believes this action will enhance IFR operations at Majors Field, Greenville, Tex., by providing controlled airspace for aircraft executing proposed instrument approach procedures to the airport. Subparts F and G of Part 71 were republished in the **Federal Register** on January 2, 1980 (45 FR 356) and (45 FR 445).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 356) and (45 FR 445) by altering the Greenville, Tex., control zone and transition area.

In subpart F, § 71.171 (45 FR 356), the Greenville, Tex., control zone is proposed to be amended by deleting the present description and substituting the following:

Greenville, Tex.

Within a 5-mile radius of the Majors Field Airport (latitude 33°04'07"N., longitude 96°03'47"W.); and within 3 miles each side of the 352° bearing of the airport extending from the 5-mile radius area to 7 miles north of the airport; and within 3 miles each side of the 191° bearing of the airport extending from the 5-mile radius area to 6 miles south of the airport.

In Subpart G, § 71.181 (45 FR 445), the Greenville, Tex., transition area is proposed to be amended by deleting the present description and substituting the following:

Greenville, Tex.

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Majors Field Airport (latitude 33°04'07"N., longitude 96°03'47"W.).

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation, and a comment period of less than 45 days is appropriate.

Issued in Fort Worth, Texas on October 9, 1980.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 80-32689 Filed 10-22-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-CE-10]

Transition Area—Harper, Kans.; Proposed Designation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to designate a 700-foot transition area at Harper, Kansas, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Harper, Kansas Municipal Airport, utilizing the Anthony, Kansas OMNI directional range as a navigational aid.

DATE: Comments must be received on or before November 23, 1980.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Chief, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-530, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408. The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City Missouri. An informal docket may be examined at the Office of the Chief, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Charles A. Sears, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-538, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before November 23, 1980, will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedures and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 374-3408. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) by designating a 700-foot transition area at Harper, Kansas. To enhance airport usage, a new instrument approach procedure is being established for the Harper, Kansas Municipal Airport, utilizing the Anthony, Kansas OMNI Directional Range as a navigational aid. The establishment of a new instrument approach procedure based on this navigational aid entails designation of a transition area at Harper, Kansas, at and above 700 feet above ground level (AGL) within which aircraft are provided air traffic control service. the intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Accordingly, Federal Aviation Administration proposes to amend Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1980, (45 FR 445) by adding the following new transition area:

Harper, Kans.

That airspace extending upwards from 700 feet above the surface within a 5 mile radius of the Harper, Kansas Municipal Airport (Latitude 37°16'45"N, Longitude 98°02'37"W) and within 2 miles each side of the Anthony, Kansas VORTAC (Latitude 37°09'32"N, Longitude 98°10'13"W) 040° radial extending from the 5 miles radius area to 11 miles southwest of the airport.

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); sec. 11.65 of the Federal Aviation Regulations (14 CFR 11.65)

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Kansas City, Missouri, on October 7, 1980.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 80-32676 Filed 10-22-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 80-ARM-12]

Extension of Jet Route No. 136

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to extend Jet Route No. 136 from its present terminal at Billings, Mont., to Medicine Bow, Wyo. The proposal would designate an established route to handle the increased traffic flow in this area. This would not only reduce controller workload and freqency congestion, but also provide more efficient air traffic service by reducing the need for radar vectoring.

DATES: Comments must be received on or before November 24, 1980.

ADDRESS: Send comments on the proposal in triplicate to: Director, FAA Rocky Mountain Region, Attention: Chief, Air Traffic Division, Docket No. 80-ARM-12, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colo. 80010. The official docket may be examined at the following location: FAA Office of the Chief Counsel, Rules Docket (AGC-204), Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591. An informal docket may be examined at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: L. Jack Overman, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Rocky Mountain Region, Attention: Chief, Air Traffic Division,

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Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colo. 80010. All communications received on or before November 24, 1980, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) that would extend J–136 from Billings, Mont., VORTAC direct to Medicine Bow, Wyo., VORTAC. Designation of this extended route would provide charted course radials and minimum altitudes where they may be required. Flight planning and communication time would be reduced by the use of a numbered jet route rather than radar vectoring that is presently required. Section 75.100 of Part 75 was republished in the **Federal Register** on January 2, 1980 (45 FR 732).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as republished (45 FR 732) by amending Jet Route No. 136 as follows:

Delete the words "to Billings." and substitute for them the words "Billings, Mont.; to Medicine Bow, Wyo."

(Secs. 307(a), 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.65.)

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Washington, D.C., on October 14, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-32674 Filed 10-22-80; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF STATE

22 CFR Part 51

[Docket No. SD–156]

Denial of Passport Facilities in Cases Involving a Criminal Court Order

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State proposes to amend the current regulation that governs the denial of passports in cases in which the applicant is subject to a court order, condition of probation, or condition of parole which forbids the applicant's departure from the United States and the violation of which could subject the applicant to a provision of the Federal Fugitive Felon Act. By the terms of the regulation, it is applicable only to court orders issued in state criminal cases, not in federal cases. This limitation was made in error. The proposed amendment will correct this inadvertent omission by extending the applicability of the regulation to the appropriate federal criminal cases.

DATES: Comments must be received on or before December 22, 1980.

ADDRESS: Send comments to the Director, Office of Citizenship Appeals and Legal Assistance, Bureau of Consular Affairs, Department of State, Room 5813, Washington, D.C. 20520.

FOR FURTHER INFORMATION CONTACT: Karen R. Spinner (202) 632–7940.

SUPPLEMENTARY INFORMATION: The proposed revisions of the passport denial regulation will correct an omission in the current regulation, which was published on July 18, 1979 (44 FR 41777). In publishing the current regulation, the Department had intended to clarify the language in the predecessor regulation by making it applicable only to cases involving state or federal criminal court orders, conditions of parole, or conditions of probation the violation of which could cause the issuance of a federal warrant of arrest.

However, as promulgated the language in the current regulation, which provides that the violation of the court order, or conditions of parole or of probation bring the applicant within the provisions of the Federal Fugitive Felon Act (18 U.S.C. 1073), did not accomplish this. As the Federal Fugitive Felon Act is applicable only to state criminal cases, the regulation is limited to denying passports to individuals who are subject to state court orders, conditions of parole, and conditions of probation. The proposed amendment will correct this error by extending the regulation to federal criminal cases in which the applicant's departure from the United States in violation of a court order or conditions of parole or probation could result in the issuance of a federal warrant of arrest.

Accordingly, it is proposed to amend Title 22, Code of Federal Regulations, Part 51, by revising § 51.70(a)(2) to read as follows:

§ 51.70 Denial of passports.

(a) A passport, except for direct return to the United States, shall not be issued in any case in which:

* * * * *

(2) The applicant is subject to a criminal court order, condition of probation, or condition of parole, any of which forbids departure from the United States and the violation of which could result in the issuance of a Federal warrant of arrest, including a warrant issued under the Federal Fugitive Felon Act; or

* * * * *

(Sec. 1, 44 Stat. 887, sec. 4, 63 Stat. 111, as amended (22 U.S.C. 211a, 2658); E.O. 11295, 36 FR 10603; 3 CFR 1966–70 Comp., p. 507).

Dated: October 15, 1980.

For the Secretary of State.

Diego C. Asencio,

Assistant Secretary for Consular Affairs.

[FR Doc. 80-32918 Filed 10-22-80; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1217

[Docket No. 79–11; Notice 2]

Highway Safety Innovative Project Grants Program

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed rule would carry out a new section in the Highway Safety Act by establishing criteria and administrative procedures for application, selection, and award of innovative project grants to States and their political subdivisions, and to nonprofit organizations, in order to explore new approaches to highway safety. This program is listed in the Catalogue of Federal Domestic Assistance (CFDA) as the State and Community Highway Safety Program, CFDA No. 20.600. Part III of OMB Circular No. A–95 (revised) applies.

DATE: Comments must be received on or before December 1, 1980.

ADDRESS: Submit written comments to Docket Section, Room 5108 Docket No. 79–11, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street, S.W., Washington, D.C. 20590. The Docket Room is open from 8 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. John Tartaglino, Office of Traffic Safety Programs, 400 Seventh Street, S.W., Washington, D.C. 20590 (202) 426–0837.

SUPPLEMENTARY INFORMATION: The innovative grants program is a product of the Highway Safety Act of 1978 (Pub. L. 95–599). Proposals for the program originated in response to the widespread opinion among the States that earlier incentive award programs were ineffective in improving highway safety because of their retrospective character. Congress authorized the innovative grant program in the belief that making innovation the principle basis for the prospective award would offer the best incentive.

Section 208 of the Act established a new section 407 in Title 23, United States Code, to authorize the Secretary to make grants to States, their political subdivisions, and nonprofit organizations which develop innovative approaches to highway safety. The Secretary is instructed by section 208(b) to develop a selection process after consultation with the States, their political subdivisions, appropriate Federal departments and agencies, and other public and nonprofit organizations. Grant applications are to be in the form and contain the information prescribed by regulations issued by the Secretary.

An Advanced Notice of Proposed Rulemaking was published on July 19, 1979, to seek comments on all aspects of innovation in highway safety that might be served by the innovative grant process (44 FR 42233). The notice requested comments on the following subjects: (1) Project eligibility, (2) the selection criteria to be used, (3) the importance of evaluation as compared to operational innovation, (4) the value of projects requiring enabling legislation or governmental reorganization, (5) means of assuring equal opportunity to compete for funds, (6) means of monitoring and evaluating projects, (7) the procedure for soliciting proposals, and (8) the use of a panel of experts to rank proposals.

Nineteen responses were received, many of which addressed the specific subjects listed in the notice. Most comments favored eligibility for a wide variety of projects. As to the criteria to be used for selection, the responses varied, but included comments that proposed to give weight to projects with short lead time, high impact on accident reduction, and low cost, and to projects that are long-term and comprehensive in nature. Most comments recognized the importance of individual project evaluation (the amount to vary with the project), but stressed that operational innovation should not be sacrificed to evaluation. Most opposed projects requiring enabling legislation or governmental reorganization.

As to ensuring equal opportunity to compete for funds, comments varied, but included recommendations that the following entities be used to communicate the potential applicants:

(i) DOT's existing system with an expanded mailing list,

(ii) Local traffic safety boards,

(iii) DOT regional offices, and

(iv) Governor's Highway Safety Representatives. Responses regarding proposal solicitation included suggestions that the soliciting agent be the States, DOT regional offices, the Governors' Highway Safety Representatives, and NHTSA. Most comments supported the use of an outside panel to screen and rank the proposals.

In addition to the comments responding to the subjects listed in the notice, several comments addressed two additional areas. First, some comments suggested funding limitations ranging from $25,000 to $250,000; other favored percentage set-asides for particular classes of applicants (e.g., counties). Second, the Governors' Highway Safety Representatives asked to be involved in all aspects of project administration. Several comments also favored involvement by the NHTSA Regional Offices.

The comments received were taken into consideration in formulating the proposed rules. For instance, the preference for a wide range of project eligibility has been incorporated into the rules, as has the preference for operational innovation over evaluation innovation. Likewise, the proposal reflects the opposition to projects requiring enabling legislation and the support for using a panel of experts to rank proposals.

In consideration of the foregoing, a new Part 1217 is proposed in Title 23, Code of Federal Regulations to read as set forth below.

PART 1217 INNOVATIVE PROJECT GRANTS

1217.1 Scope.
1217.2 Purpose.
1217.3 Solicitation of proposals.
1217.4 Preparation procedure.
1217.5 Project application and classification.
1217.6 Project review procedure.
1217.7 Limitation on project funding.
1217.8 Length of projects.
1217.9 Project reporting.

Authority: Surface Transportation Act of 1978, Pub. L. 95–599, 92 Stat. 2689.

§ 1217.1 Scope.

This part establishes criteria and administrative procedures for awards of innovative project grants to States and their political subdivisions, and to nonprofit organizations including volunteer groups.

1217.2 Purpose.

The purpose of this part is to encourage innovation in solving highway safety problems by funding highway safety projects that apply original or creative methods, use existing methods in original or creative ways, or use new techniques to evaluate existing methods.

§ 1217.3 Solicitation of proposals.

The agency shall publish a call for project preapplication submissions in the **Federal Register**, the Commerce Business Daily, and newsletters of the National League of Cities, National Association of Counties, and National Association of Mayors. It shall forward solicitation announcements concurrently to all Governor's Highway Safety Representatives and to the regional offices of the National Highway Traffic Safety Administration and Federal Highway Administration.

§ 1217.4 Preparation procedure.

(a) To be considered for an innovative project grant, an agency or organization shall submit a preapplication complying with this section.

(b) The preapplication shall contain (1) the name and address of the applicant; (2) a descriptive project title; (3) the project location; (4) a brief statement of the problem and its effect

on the proposed jurisdiction; (5) an outline of the proposed approach to the problem, its innovative aspects, and its anticipated results; (6) the period of performance; (7) the estimated costs by fiscal year; and (8) a brief plan for evaluation of the project.

(c) A nonprofit orgainzation whose project does not involve activities within a State or political subdivision shall submit its preapplication directly to the NHTSA Associate Administrator for Traffic Safety Program. Each other applicant shall submit its preapplication to the State Highway Safety Agency for the State of which it is a constituent part or in which it is located.

(d) The State Highway Safety Agency shall promptly forward such preapplication, together with any comments it may have, to the NHTSA and FHWA Regional Offices. The Regional Offices shall comment on the project, then promptly submit the preapplication to the NHTSA Associate Administrator for Traffic Safety Programs.

§ 1217.5 Project application and classification.

(a) Based on the preapplications, the agency shall determine which proposals warrant further development. The agency shall request detailed proposals to clarify and amplify the preapplications.

(b) To facilitate the selection of eligible projects, the agency will classify projects according to the following categories:

(1) Accident reduction areas, such as speed limit violations; alcohol and drug abuse, restraint systems, motorcycle operation, pedestrian behavior, and roadside and roadway hazards.

(2) System support areas, such as coordinated jurisdictional highway safety planning and implementation, traffic records, emergency response systems, manpower training and development, and driver licensing and improvement programs.

(3) System development and improvement, such as problem analysis techniques, cost effectiveness measures, countermeasure selection and evaluation criteria, program management techniques, and citizen participation.

§ 1217.6 Project review procedure.

(a) The detailed proposals shall be forwarded to a panel of traffic safety experts whose members shall be selected based on their experience in relevant fields of endeavor. The panel shall review the technical merits of each proposal and rank the proposals within established categories in accordance with the criteria of subsection (b) of this section.

(b) In reviewing any project within each category the panel shall consider the following criteria:

(1) The significance of the project's impact on highway safety,

(2) Its ability to unify existing highway safety programs,

(3) Its relationship to the 18 Highway Safety Program Standards,

(4) Its consistency with policies of curbing inflation and saving energy,

(5) Its freedom from the need for enabling legislation or governmental reorganization,

(6) Its feasibility,

(7) Its public acceptance and suitability for public participation,

(8) Its low cost or cost-effectiveness,

(9) Its adaptability to other jurisdictions, and

(10) Its suitability for evaluation.

(c) Based on the panel's review and ranking, the agency shall determine the projects to be funded and shall publish the list of awards in the **Federal Register.**

§ 1217.7 Limitation on project funding.

(a) A project funded under 23 U.S.C. 402 shall not be eligible for funding under the innovative grant program.

(b) The funds for any individual project in any fiscal years shall not exceed 10 percent of the funds appropriated for 23 U.S.C. 407 for the fiscal year in which the grant is awarded.

§ 1217.8 Length of projects.

Project operational periods exclusive of the preplanning and followup evaluation shall be limited to three years. The agency may extend an approved project for a period of time not to exceed two years, based on the progress toward project objectives, justification for continued support, and the reasonableness of the budget for project continuation.

§ 1217.9 Project reporting.

Grant recipients shall report semiannually to the agency and shall prepare an evaluation report at the end of each fiscal year.

Interested persons are invited to submit comments on this proposal. It is requested but not required that 10 copies be submitted.

Comments may not exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new naterial.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Note.—The National Highway Traffic Safety Administration and the Federal Highway Administration have determined that this document is a nonsignificant regulation under the regulatory policies and procedures established by the Department of Transportation (44 FR 11034). The anticipated impact of this regulation is so minimal that a full regulatory evaluation is not required.

Issued on October 16, 1980.

Charles F. Livingston,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 80-32935 Filed 10-17-80; 4:21 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 120

Land Records and Title Documents

October 10, 1980.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises and replaces the regulations relating to land records and title documents affecting Indian lands. The proposed regulation defines the role of the Land Titles and Records Offices (formerly called title plants) in the Bureau of Indian Affairs as the offices of record for all title documents to Indian lands. It explains procedures to owners and administrators of Indian lands, employees of the Bureau of Indian Affairs, and other persons authorized by law or regulation to have access to information about the current status and ownership of Indian lands.

DATE: Comments must be received on or before November 24, 1980.

ADDRESSES: Submit written comments to Elva DeCelles, Land Records Officer, Bureau of Indian Affairs, 500 Gold Avenue, P.O. Box 888, Albuquerque, NM 87103.

FOR FURTHER INFORMATION CONTACT: Elva DeCelles, Land Records Officer, Bureau of Indian Affairs, 500 Gold Avenue, P.O. Box 888, Albuquerque, NM 87103. (503-766-2800) (FTS 8-474-2800).

SUPPLEMENTARY INFORMATION: The Bureau of Indian Affairs has a trust responsibility for approximately 10 million acres of individually-owned Indian land and 40 million acres of tribally-owned Indian land. The Land Titles and Records Offices are the recording offices for all Indian land records and title documents. These offices perform functions comparable to the county recording offices charged with the duty of keeping the public records of deeds, mortgages, etc., within most states. Other functions include preparation of abstracts of title and maintenance of probate records.

This proposed rule completely revises 25 CFR, Part 120, which was originally written in 1965 when the Bureau "title plants" were being created. It supersedes all regulations previously published under that Part.

The primary author of this proposed rule is: Elva DeCelles, Land Records Officer, Bureau of Indian Affairs. (503-766-2800) (FTS 8-474-2800). This proposed rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Note.—The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

The regulations on land records and title documents affecting Indian lands, 25 CFR Part 120, are revised to read as follows:

PART 120—LAND RECORDS AND TITLE DOCUMENTS

Sec.

120.1 Purpose and scope.
120.2 Definitions.
120.3 Maintenance of land records and title documents.
120.4 Location and service areas for Land Titles and Records Offices.
120.5 Other Bureau Offices with title service responsibility.
120.6 Recordation of title documents.
120.7 Curative action to correct title defects.
120.8 Title status reports.
120.9 Land status maps.
120.10 Certification of title documents.
120.11 Disclosure of land records, title documents, and title reports.

Authority: Act of June 30, 1834 (4 Stat. 738; 25 U.S.C. 9). Act of July 26, 1892 (27 Stat. 273; 25 U.S.C. 5). Reorganization Plan No. 3 of 1950 approved June 20, 1949 (64 Stat. 1262). (Act of April 26, 1906 (34 Stat. 137); Act of May 27, 1908 (35 Stat. 312); Act of August 1, 1914 (38 Stat. 582, 598) deal specifically with land records of Five Civilized Tribes.)

Cross-References: For further regulations pertaining to proceedings in Indian probate, see 43 CFR Part 1, Subpart D.

§ 120.1 Purpose and scope.

These regulations set forth authorities, policy and procedures governing the recording, custody, maintenance, use and certification of title documents and the issuance of title status reports for Indian land.

§ 120.2 Definitions.

As used in this part.

(a) "Secretary" is the Secretary of the Interior or his authorized representative.

(b) "Commissioner" is the Commissioner of Indian Affairs or his authorized representative.

(c) "Agency" is an Indian Agency or other field unit of the Bureau of Indian Affairs having trust or restricted Indian land under its immediate jurisdiction.

(d) "Superintendent" is the designated officer in charge of an Agency.

(e) "Tribe" is a tribe, band, nation, community, rancheria, colony, pueblo, or other Federally-acknowledged group of Indians.

(f) "Bureau" is the Bureau of Indian Affairs.

(g) "Land" is real property, including any interests, benefits, and rights inherent in the ownership of the real property.

(h) "Indian land" is an inclusive term describing all lands held in trust by the United States for individual Indians or tribes, or all lands, titles to which are held by individual Indians or tribes, subject to Federal restrictions against alienation or encumbrance. For purposes of this Part, the term Indian land also includes land for which the title is held in fee status by Indian tribes, and U.S. Government-owned land under Bureau jurisdiction.

(i) "Administrative Law Judge" is an employee of the Office of Hearing and Appeals, Department of the Interior, upon whom authority has been conferred by the Secretary to probate the trust or restricted estates of deceased Indians in accordance with 43 CFR Part 4, Subpart D.

(j) "Land Titles and Records Offices" are those offices within the Bureau of Indian Affairs charged with the Federal responsibility to record, provide custody, and maintain records that affect titles to Indian lands, to examine titles, and to provide title status reports for such land.

(k) "Manager" is the designated officer in charge of a Land Titles and Records Office.

(l) "Title Document" is any document that affects the title to or encumbers Indian land and is required to be recorded by regulation or Bureau policy.

(m) "Recordation" or "Recording" is the acceptance of a title document by the appropriate Land Titles and Records Office. The purpose of recording is to provide evidence of a transaction, event, or happening that affects land titles; to preserve a record of the title document; and to give notice of the change of ownership or the existence of encumbrances to the land.

(n) "Title examination" means an examination and evaluation by a qualified title examiner of the completeness and accuracy of title documents affecting a particular tract of Indian land with certification of the findings by the Manager of the Land Titles and Records Office.

(o) "Title status report" means a report issued after a title examination which shows the proper legal description of a tract of Indian land; current ownership, including any applicable conditions, exceptions, restrictions, or encumbrances on record; and whether the land is unrestricted, restricted, trust, or other status as indicated by the records in a Land Titles and Records Office.

§ 120.3 Maintenance of land records and title documents.

The Land Titles and Records Offices within the Bureau are hereby designated as the offices of record for land records and title documents and are hereby charged with the Federal responsibility to record, provide custody, and maintain records that affect titles to Indian land, to examine titles, and to provide title status reports.

§ 120.4 Locations and service areas for land titles and records offices.

Shown below are present Land Titles and Records Offices and the jurisdictional area served by each office.

(a) Aberdeen, S. Dakota Office provides title service for Indian land located under the jurisdiction of the Aberdeen and Minneapolis Area Offices, except for Indian land on the White Earth, Isabella, and Oneida Indian Reservations.

(b) Albuquerque, New Mexico Office provides title services for Indian land located under the jurisdiction of the

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Albuquerque, Navajo, and Phoenix Area Offices.

(c) Anadarko, Oklahoma Office provides title services for Indian land located under the jurisdiction of the Anadarko Area Office and under the Miami Agency of the Muskogee Area Office.

(d) Billings, Montana Office provides title services for Indian land located under the jurisdiction of the Billings Area Office.

(e) Portland, Oregon Office provides title services for Indian land located under the jurisdiction of the Portland and Sacramento Area Offices.

§ 120.5 Other bureau offices with title service responsibility.

(a) Muskogee Area Office is the office of record and performs limited title functions for all Indian land of the Five Civilized Tribes. The regulations in this part apply to the Muskogee Area Office to the extent that they relate to the title services performed by that office.

(b) The Bureau Central Office, Washington, D.C. provides title services to all other Indian land not shown above in § 120.4 or in this paragraph, including the land of the Absentee Wyandottes. The regulations in this part apply to the Central Office.

§ 120.6 Recordation of title documents.

All title documents shall be submitted to the appropriate Land Titles and Records Office for recording immediately after final approval, issuance, or acceptance. Bureau officials delegated by the Secretary to approve title documents or accept title are responsible for prompt compliance with the recording requirement. Documents submitted for recording shall be completed in accordance with prescribed Bureau regulations or instructions.

(a) *Title documents other probate records.* The original, a signed duplicate, or a certified copy of such documents shall be submitted for recording. Following the recording process, the Land Titles and Records Office will return those title documents that are required to be returned to the original office with appropriate recording information.

(b) *Probate records.* In accordance with 43 CFR, Part 4, Subpart D, Administrative Law Judges shall forward the original record of Indian probate decisions and copies of petitions for rehearing, reopening, and other appeals to the Land Titles and Records Office which provides service to the originating agency. If trust land or Indian heirs involved in the probate are located within the jurisdictional area of another Land Titles and Records Office, the Administrative Law Judge shall also send a duplicate copy to that office. Probate records submitted by an Administrative Law Judge for recording will be retained by the Land Titles and Records Office.

§ 120.7 Curative action to correct title defects.

Land Titles and Records Office shall initiate such action as described below to cure defects in the record discovered during the recording of title documents or examination of titles.

(a) If an error is traced to a defective title document other than probate records, the Land Titles and Records Office shall recommend to the originating office that a correction document be prepared and submitted for recording.

(b) If errors are discovered in probate records, the Land Titles and Records Office may initiate corrective action as follows:

(1) An administrative modification shall be issued to modify probate records to include any Indian land omitted from the inventory if such property is located in the same state and takes the same line of descent as that shown in the original probate decision. Authority is delegated to the Commissioner by 43 CFR 4.272 to make such modifications except on those Indian reservations covered by special Inheritance Acts (43 CFR 4.300). Copies of administrative modifications shall be distributed to the appropriate Administrative Law Judge, Agencies with jurisdiction over the Indian land, and to all persons who share in the estate.

(2) Land Titles and Records Offices shall notify the Superintendent when modifications are required by Administrative Law Judges for other types of probate errors. Corrective action is then initiated in accordance with 43 CFR Part 4, Subpart D.

(3) Land Titles and Records Offices shall issue administrative corrections to correct probate errors which are clerical in nature and which do not affect vested property rights or involve questions of due process. Copies of administrative corrections are distributed to the appropriate Administrative Law Judge and Agency.

§ 120.8 Title status reports.

Land Titles and Records Offices may conduct a title examinaton of a tract of Indian land and provide a title status report upon request to those persons authorized by law to receive such information. Requests for title status reports shall be submitted by or through the Bureau office that has administrative jurisdiction over the Indian land and must be made on the prescribed form. All requests must clearly identify the tract of Indian land by legal description.

§ 120.9 Land status maps.

The Land Titles and Records Office shall prepare and maintain maps of all reservations and similar entities within their jurisdictions to assist Bureau personnel in the execution of their title service responsibilities. Base maps shall be prepared from plats of official survey made by the General Land Office and the Bureau of Land Management. These base maps, showing prominent physical features and section, township and range lines, shall be used to prepare land status maps. The land status maps shall reflect the individual tracts, tract numbers, and current status of the tract. Other special maps, such as plats and townsite maps, may be also prepared and maintained to meet the needs of individual Land Titles and Records Offices, Agencies, and Indian tribes.

§ 120.10 Certification of land records and title documents.

Under the provisions of the Act of July 26, 1892 (27 Stat. 273; 25 U.S.C. 6), an official seal was created for the use of the Commissioner of Indian Affairs in authenticating and certifying copies of Bureau records. Managers of Land Titles and Records Offices are designated as Certifying Officers for this purpose. When a copy or reproduction of a title document is authenticated by the official seal and certified by a Manager, Land Titles and Records Office, the copy or reproduction shall be admitted into evidence equally with the original from which it was made. The fees for furnishing such certified copies are established by a uniform fee schedule applicable to all constituent units of the Department of the Interior and published in 43 CFR Part 2, Appendix A.

§ 120.11 Disclosure of land records, title documents, and title reports.

(a) The usefulness of a Land Titles and Records Office depends in large measure on the ability of the public to consult the records contained therein. It is therefore the policy of the Bureau of Indian Affairs to allow access to land records and title documents unless such access would violate the Privacy Act, 5 U.S.C. 552a or other law restricting access to such records, or there are strong policy grounds for denying access where such access is not required by the Freedom of Information Act, 5 U.S.C. 552.

(b) Before disclosing information concerning any living individual, the Manager, Land Titles and Records Office, shall consult 5 U.S.C. 552a(b) and the notice of routine users then in effect to determine whether the information may be released without the written consent of the person to whom it pertains.

Philip S. Deloria,

Deputy Assistant Secretary, Indian Affairs.

[FR Doc. 80-33040 Filed 10-22-80; 8:45 am]

BILLING CODE 4310-02-M

National Park Service

36 CFR Part 7

Grand Teton National Park; Proposed Rulemaking and Publication of Noise Abatement Plan for Jackson Hole Airport

Correction

In FR Doc. 80-32382 appearing at page 68687 in the issue of Thursday, October 16, 1980, on page 68690, third column, under Paragraph *"9. Effective Date"*, the first sentence should read as follows: "This plan will be effective November 17, 1980".

BILLING CODE 1505-01-M

POSTAL SERVICE

39 CFR Part 111

Locks on Rural Mailboxes

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: Existing postal regulations permit, but do not require, customers receiving rural delivery service to put locks on their mailboxes. Customers who lock their boxes must provide a key to the postmaster who will assign it to the appropriate rural carrier. In the interest of more expeditious mail service, the Postal Service proposes to require that any box equipped with a lock must have a slot large enough to accommodate the customer's normal daily mail volume. There would then be no need for the rural carrier to unlock boxes, and no keys to locks would thereafter be accepted by the Postal Service. Keys presently held by the Service would be returned.

DATE: Comments must be received on or before November 24, 1980.

ADDRESS: Written comments should be addressed to the General Manager, Rural Delivery Division, Delivery Services Department, U.S. Postal Service, Washington, D.C. 20260. Copies of written comments received will be available for public inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 7128, 475 L'Enfant Plaza, SW, Washington, D.C. 20260.

FOR FURTHER INFORMATION CONTACT:

Carl Johnson, (202) 245-5619.

SUPPLEMENTARY INFORMATION: If the proposed rule change described in the Summary is adopted, customers who lock their boxes and provide a slot therein for delivery of mail will be notified whenever a piece of mail, such as a parcel, is too large to fit through the slot. Customers may call for such mail at the local post office or notify the post office when they will meet the carrier at the box to receive the mail. This is in accord with existing procedure in 156.33 of the Domestic Mail Manual. As to the purchase of stamps, postal cards, or stamped envelopes, customers with locked boxes would have to purchase these items at the post office, unless they met the carrier at the box.

To carry out the above proposed rule change, the Postal Service proposes to revise 156.57 of the Domestic Mail Manual to read in the form reproduced below.

Although exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553(b)(c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comment on the following proposed revision of the Domestic Manual, which is incorporated by reference in the **Federal Register**. See 39 CFR 111.1.

Part 156—Rural Service

In 156.5 of the Domestic Mail Manual, revise .57 to read as follows:

156.5 Rural Boxes

* * * * *

.57 The use of locks on boxes is not required. If however, a box is equipped with a lock the box must have a slot large enough to accommodate the customer's normal daily mail volume. The Postal Service will not open boxes which are locked and will not accept keys for this purpose. Keys which are now held by the Postal Service will be returned.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

(39 U.S.C. 401(2), 403(b)(1), 404(a)(1))

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 80-33060 Filed 10-22-80; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

[SW-FRL 1640-5]

Oklahoma: Submission for Approval of Interim Authorization Plan, Phase I, Hazardous Waste Management Plan

AGENCY: Environmental Protection Agency.

ACTION: Notice of public comment period.

SUMMARY: In the May 19, 1980 **Federal Register** (45 FR 33063), the Environmental Protection Agency promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976 (as amended), to protect human health and the environment from the improper management of hazardous waste. Included in these regulations, which become effective 6 months from the date of promulgation, were provisions for a transitional stage in which states would be granted interim program authorization. The interim authorization program will be implemented in two phases corresponding to the two stages in which an underlying Federal program will take effect.

As noted in the May 19, 1980 **Federal Register**, copies of state submittals for Phase I Interim Authorization are to be available for public inspection and comment. The purpose of this notice is to announce the availability of the Oklahoma submittal for Phase I Interim Authorization for public review, to invite public comment, and give notice of a public hearing to be held on Oklahoma's application. A listing and a description of requirements for interim authorization are stated in 40 CFR Section 123, Subpart F.

DATE: Comments on the Oklahoma Interim Authorization application must be received by December 2, 1980.

Public hearing: EPA will hold a public hearing on Oklahoma's application for Interim Authorization on Tuesday, November 25, 1980, at 7:00 p.m.

ADDRESSES: Copies of the Phase I Interim Authorization plan are available during normal business hours at the following addresses for inspection and copying:

Environmental Protection Agency, Region VI, Library, 26th floor, 1201 Elm Street, Dallas, Texas 75270, (214) 767-7341.

Oklahoma State Department of Health, Industrial and Solid Waste Division, 1000 N.E. 10th Street, Room 803, Oklahoma City, Oklahoma 73105.

U.S. Environmental Protection Agency, Library, Room 2404, 401 M Street, SW., Washington, D.C. 20460.

Written comments should be sent to: Environmental Protection Agency, Region VI, Air and Hazardous Materials Division, Attention: Don Walker, Solid Waste Branch, 1201 Elm Street, Dallas, Texas 75270, (214) 767-2645.

The Public hearing will be held at the Sequoyah Underground Auditorium, 2401 Lincoln Blvd., Oklahoma City, Oklahoma.

FOR FURTHER INFORMATION CONTACT: Don Walker, Solid Waste Branch, U.S. EPA, Region VI, Dallas, Texas 75270, (214) 767-2645.

Dated: October 17, 1980.

Adlene Harrison,

Regional Administrator.

[FR Doc 80-33072 Filed 10-22-80; 8:45 am]

BILLING CODE 6560-30-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 396

[Docket No. MC-48-1; Notice No. 80-11]

Inspection, Repair, and Maintenance—Inspection Requirements for Leased Vehicles

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Public comments are sought on a proposal to amend the Inspection, Repair, and Maintenance requirements of the Federal Motor Carrier Safety Regulations (FMCSR). This action is being taken as the result of a petition filed to exempt commonly controlled motor vehicles from the inspection procedure for vehicles leased less than 30 days. The purpose of the proposal is to give motor carriers more flexibility in fleet utilization requirements.

DATES: Comments must be received on or before January 21, 1981.

ADDRESS: All comments should refer to the docket number that appears at the top of this document and must be submitted preferably in triplicate to Room 3402, Bureau of Motor Carrier Safety (BMCS), 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald J. Davis, Bureau of Motor Carrier Safety, (202) 426-9767; or Mrs. Kathleen S. Markman, Office of the Chief Counsel, (202) 426-0346, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The FHWA has determined that this document does not contain a significant proposal according to the criteria established by the Department of Transportation pursuant to Executive Order 12044. An evaluation of the regulation is contained in BMCS Docket No. MC-48-1; a copy of the regulatory evaluation may be obtained from Mr. Gerald J. Davis at the address given above. Those desiring to comment on this rulemaking action are asked to submit their views, data, and arguments to the docket at the address provided above. All comments submitted will be available, both before and after the closing date, for examination by interested persons in the docket room of the BMCS, room 3402, 400 Seventh Street, SW., Washington, D.C. 20590.

The FMCSR provides that before a motor carrier can take possession of a leased vehicle for its use for less than 30 days, the vehicle must be inspected in order to ensure that all of the vehicles' parts and accessories necessary for safe operation are in good operating condition. Additionally, the person conducting the inspection must certify the results of the inspection. The BMCS received a petition on behalf of Crete Carrier Corporation, Shaffer Trucking, Inc., and Sunflower Carriers, Inc., requesting that § 396.3(c) of 49 CFR be amended. Section 396.3(c) regulates the records of inspection for vehicles leased less than 30 days. The petitioners requested that the inspection exemption be provided to coincide with a previous Interstate Commerce Commission regulation (49 CFR 1057.4(c)). The former regulation exempted vehicles from an inspection at the point they are leased if the carriers leasing the equipment were commonly controlled (the day to day operations of two or more companies under the same management) motor carriers which jointly maintained and administered a uniform safety program. In addition, both carriers would be required to remain under common control, to have their equipment inspected within the 24-hour period immediately preceding the time of augmentation. The equipment would have to meet FMCSR requirements.

The proposed amendment would restore similar language as contained in the former regulation, for vehicles used by a motor carrier for less than 30 days. The proposed amendment would thus exempt vehicles controlled by a motor carrier for less than 30 days from the required vehicle inspection, provided that (1) the carriers are commonly controlled and jointly maintain and administer a uniform safety program; and (2) both carriers remain under common control and the vehicle is inspected within the 24-hour period immediately preceding augmentation and found to meet the requirements of the FMCSR.

One of the purposes of the present rule requiring inspection, which went into effect April 1, 1980, is to ensure that systematic inspections are performed and that reported vehicle defects are repaired before a short-term leased vehicle is placed into service.

Motor carriers have always been required, through maaintenance and inspection programs, to have their vehicles meet the provisions of Part 393 of the FMCSR. Bureau of Motor Carrier Safety data [1] does indicate that many carriers do not always comply with the prescribed inspection process.

The FMCSR are designed to reduce the risk of involvement of heavy trucks and buses in highway accidents and reduce the risk of personal injuries, death, or substantial property damage that occurs as a result of these accidents.

The petitioners feel that the present rule impedes maximum fleet utilization and creates a new onerous and stringent rule not previously in existence. According to the petitioners, they jointly maintain and administer a uniform safety program which they feel ensures that their equipment meets all applicable standards. They claim that "nothing is gained by requiring additional paperwork at the time the petitioner trip leases its equipment to another petitioner to augment a fleet whereas on the other hand the public interest is adversely affected by creating a situation wherein augmentations between commonly controlled fleets which will result in substantial fuel savings are not encouraged and needless duplicative time and record keeping requirements are levied upon the parties and such additional business expenses and delays cannot help but be borne by the consuming public."

The petitioners feel that to achieve maximum utilization of equipment, to minimize deadhead mileage, and to preserve vital national fuel resources, it is imperative that they be able to augment their respective fleets in a flexible manner. The petitioners indicate that, in normal operations, the motor vehicle equipment is inspected every 24 hours by personnel supervised and trained under a uniform safety program.

[1] Available at the Bureau of Motor Carrier Safety, 400 Seventh Street, SW., Washington, D.C. 20590, for inspection.

The petitioners also claim that the present rule requires yet another inspection which is often within minutes or a few hours of the initial daily inspection.

The Director of the BMCS believes that the petitioners' argument may have merit.

In consideration of the foregoing, it is proposed to amend 49 CFR 396.3(c) to read as follows:

§ 396.3 Inspection, repair, and maintenance.

* * * * *

(c) *Records for vehicles leased less than 30 days*—For vehicles controlled by a motor carrier for less than 30 days, the motor carrier shall, before taking possession of the vehicle, inspect the vehicle in order to ensure that the vehicle complies with Part 393 and all parts and accessories necessary for safe operations are in good operating condition. The person making the inspection shall certify the results of the inspection. *Exemption:* Where carriers leasing equipment are commonly controlled and jointly maintain and administer a uniform safety program, no such inspection is required at the time and place the lease is affected: *Provided,* That both carriers remain under common control and the equipment be inspected within the 24-hour period immediately preceding the time of augmentation and found to meet all applicable requirements of this subchapter.

* * * * *

(49 U.S.C. 304, 49 U.S.C. 1655; 49 CFR 1.48(h), and 301.60) (Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: October 15, 1980.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety.

[FR Doc. 80-33041 Filed 10-22-80; 8:45 am]

BILLING CODE 4910-22-M

V 45 OCT 23 80 UMI

Notices

Federal Register
Vol. 45, No. 207
Thursday, October 23, 1980

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Federal Crop Insurance Act of 1980

AGENCY: Federal Crop Insurance Corporation.

ACTION: Notice: Mandatory notification to producers.

SUMMARY: The Federal Crop Insurance Act of 1980, which amends the Federal Crop Insurance Act of 1938 (7 U.S.C. 1501 *et seq.*), extends, for the 1981 crop year, the disaster provisions of the wheat, feed grains, upland cotton, and rice programs administered by the Agricultural Stabilization and Conservation Service (ASCS), and replaces them effective with the 1982 crop year with a comprehensive all-risk crop insurance program administered by the Federal Crop Insurance Corporation (FCIC). Under certain conditions, Producers of wheat, feed grains, upland cotton, and rice may, for the 1981 crop year only, participate in either, or both, the FCIC crop insurance programs or the ASCS disaster payment programs. Section 202 of the Federal Crop Insurance Act of 1980 provides that the Secretary of Agriculture shall, within 30 days following enactment notify all producers of wheat, feed grains, upland cotton, and rice, of their options for participation in either, or both, FCIC crop insurance or ASCS disaster payment programs for the 1981 crop year. This notice is intended to implement those provisions.

EFFECTIVE DATE: This notice shall be effective October 23, 1980.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone 202–447–3325.

SUPPLEMENTARY INFORMATION: The Federal Crop Insurance Act of 1980 replaces the wheat, feed grains, upland cotton, and rice disaster payment programs administered by ASCS effective with the 1981 crop year. The Act extends such disaster payment programs through the 1981 crop year, at the same time authorizing FCIC to subsidize 30 percent of the premium charged for crop insurance on such crops; however, the Act also provides that producers of these crops who wish to take advantage of the subsidized crop insurance programs on such crops for the 1981 crop year will not be eligible for disaster payments under the ASCS programs.

Section 202 of the Federal Crop Insurance Act of 1980 provides in part that the Secretary of Agriculture shall, within 30 days after the enactment of the Federal Crop Insurance Act of 1980, notify producers of wheat, feed grains, upland cotton, and rice of their right to elect, with respect to the 1981 crop year, between (1) declaring the producer's share of the particular crop on the farm eligible for disaster payments under the Agricultural Act of 1949 or (2) covering such producer's share with crop insurance, part of the premium for which is paid by FCIC.

The notification to producers referred to above is reproduced herein in its entirety to implement the provisions of Section 202 of the Federal Crop Insurance Act of 1980, as follows:

Department of Agriculture

Office of the Secretary, Washington, D.C.

Dear Producer: The Congress has passed and President Carter has signed into law the Federal Crop Insurance Act of 1980. The basic provisions of the new law will apply to 1981 crops and you should review your options at an early date.

The new law amends the present program administered by the Federal Crop Insurance Corporation (FCIC). The changes establish a more comprehensive all-risk crop insurance program and provide for the Federal Government to share with farmers the cost of insurance premiums.

For the 1981 crop year, you will have the opportunity to elect one of the following options if you currently have, or later purchase, an FCIC policy for 1981 wheat, barley, corn, upland cotton, grain sorghum, or rice. A separate election may be made for each crop.

OPTION 1: You may elect to pay the full cost of your 1981 Federal Crop Insurance premium for one or more of these crops and retain full eligibility under the ASCS disaster provisions for that crop provided you meet all ASCS program requirements.

OPTION 2: You may elect to decline eligibility for ASCS disaster payments on one or more of these croips and have the cost of your Federal Crop Insurance premium for such crop(s) reduced by 30 percent for coverage up to 65 percent of yield.

If you are insured with FCIC on one or more of these crops, you will be asked to decide which option best fits your needs on a form to be sent to you by FCIC. Participation in the crop insurance program will not affect your eligibility for loans and purchases or possible deficiency payments under ASCS programs.

For further information on how these options will affect your farming operation, I urge you to contact your local ASCS or FCIC office prior to selecting the option you prefer.

Sincerely,

Bob Bergland,
Secretary.

Issued in Washington, D.C., on October 20, 1980.

Peter F. Cole, Secretary,
Federal Crop Insurance Corporation.

Approved by:

Everett S. Sharp,
Acting Manager.

October 20, 1980.

[FR Doc. 80-33111 Filed 10-22-80; 8:45 am]

BILLING CODE 3410-08-M

Forest Service

Modoc National Forest Grazing Advisory Board; Meeting

The Modoc National Forest Grazing Advisory Board will meet at 10:00 a.m., November 13, 1980, in the Conference Room of the Supervisor's Office at 441 North Main Street, Alturas, California.

The purpose of this meeting is to discuss the expenditure of range betterment funds. We also plan to review several allotment management plans.

The meeting will be open to the public. Persons who wish to attend or who would like further information should notify William E. Britton, Modoc Supervisor's Office, telephone 916–233–3521. Written statements may be filed with the board before or after the meeting.

Dated: October 14, 1980.

G. Lynn Sprague,
Forest Supervisor.

[FR Doc. 80-33033 Filed 10-22-80; 8:45 am]

BILLING CODE 3410-11-M

Gypsy Moth Suppression and Regulatory Activities; Intent To Prepare a Programmatic Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service and the Animal and Plant Health Inspection Service of the Department of Agriculture in Washington, D.C., in cooperation with the Bureau of Forestry of the Department of Conservation in the State of Maine; the Bureau of Forestry of the Department of Environmental Resources in the State of Pennsylvania; the Division of Parks and Forestry of the Department of Environmental Protection and the Division of Plant Industry of the Department of Agriculture in the State of New Jersey; the Division of Lands and Foresta of the Department of Environmental Conservation in the State of New York; and the Division of Agriculture of the Department of Environmental Management in the State of Rhode Island, will prepare a Programmatic Environmental Impact Statement for the Gypsy Moth Supression and Regulatory Activities.

The statement will be based on information and data provided by cooperating state agencies and on comments and issues presented by other agencies, private organizations and the general public as expressed at local township, county, or municipal meetings held during the fall and winter of 1980–81. In addition, scoping meetings were held to further address the issues, alternatives, and impacts of the proposed action. The meetings were held by the Forest Service and the Animal and Plant Health Inspection Service, in cooperation with state agencies as follows:

Albany, New York; 1980 September 23
Trenton, New Jersey; September 25
Middletown, Pennsylvania; September 30
Providence, Rhode Island; October 7
Augusta, Maine; October 15

Insecticides under consideration for treatment of gypsy moth populations are the chemicals carbaryl, trichlorfon, diflubenzuron, acephate, disparlure and the biologicals, *Bacillus thuringiensis* and the nucleopolyhedrosis virus. These pesticides are registered with the U.S. Environmental Protection Agency for use against gypsy moth. Unregistered insecticides used as part of an integrated pest management system will be applied under experimental use permits or exemptions issued by the U.S. Environmental Protection Agency.

By December 31, 1980, the Draft Programmatic Environmental Impact Statement is expected to be filed with the Environmental Protection Agency, and released to the public for a 60-day review period. The Final Statement is expected to be filed and released by March 31, 1981.

The responsible officials are R. Max Peterson, Chief, Forest Service, and Harry C. Mussman, Administrator, Animal and Plant Health Inspection Service.

Questions concerning the Programmatic Environmental Impact Statement relative to Forest Service/State Cooperative Suppression Programs should be directed to R. Max Peterson, Chief, USDA Forest Service, P.O. Box 2417, Washington, D.C. 20013.

Questions concerning Gypsy Moth Regulatory Activities should be sent to Harry C. Mussman, Administrator, USDA Animal and Plant Health Inspection Service, 12th & Independence Avenue, SW., Room 312–E, Administration Building, Washington, D.C. 20250.

Written comments should be sent to R. Max Peterson, Chief, USDA Forest Service.

Dated: October 15, 1980.

J. Lamar Beasley,
Acting Chief, Forest Service.

Dated: October 17, 1980.

Harry C. Mussman,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 80-33050 Filed 10-22-80; 8:45 am]

BILLING CODE 3410-11-M

1984–89 Period Operating Plan, Louisiana-Pacific Ketchikan 50-Year Timber Sale, Tongass National Forest, Ketchikan, Alaska; Intent To Prepare an Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement for the 5-year operating period 1984–89 of the Lousiana-Pacific Ketchikan (LPK) Division 50-Year Timber Sale and for advance roading associated with other operating periods.

The proposed activity is to harvest 960 million board feet of timber and construct roads, log transfer facilities, and logging camps. These actions are authorized under the existing 50-year timber sale agreement between the United States and LPK Division and are in accord with the Tongass NF Land Management Plan.

As a first step in the environmental analysis, Federal, State, and local agencies, organizations, and individuals who may be interested in or affected by the decision will be invited to participate in the scoping process which includes: (a) Identification of those issues to be addressed; (b) identification of issues to be analyzed in depth; (c) elimination of insignificant issues or those which have been covered by previous environmental reviews; and (d) determination of potential cooperating agencies and assignment of responsibilities. Notice of scoping sessions will be sent to news media and interested groups and individuals.

The Forest Service will develop a range of alternatives that will address the various issues established in the scoping process. Significant current issues identified include the location of new logging camps, the protection of other resource values during timber harvest, the varying desires of affected communities, and the extension and linkup of road systems.

It is anticipated that the Draft Environmental Impact Statement will be issued in November 1981 and the Final Impact Statement in March 1982. Implementation of portions of the selected alternative could begin during the summer of 1982; however, the majority of harvest activities would not occur until after March 1984.

The responsible official is R. Max Peterson, Chief of the Forest Service. Comments on the Notice of Intent or on the proposed activity should be sent to James S. Watson, Forest Supervisor, Ketchikan Area, Tongass National Forest, Federal Building, Ketchikan, Alaska 99901, telephone 907–225–3101.

Dated: October 16, 1980.

J. Lamar Beasley,
Acting Chief.

[FR Doc. 80-33049 Filed 10-22-80; 8:45 am]

BILLING CODE 3410-11-M

CIVIL AERONAUTICS BOARD

[Docket No. 34141]

Applications of Trans-Panama, S. A.; Amended Notice of Hearing

Notice is hereby given that the hearing in the above-entitled proceeding previously scheduled to be held on October 14, 1980, (45 F.R. 61652, September 17, 1980) and postponed by the Order of Administrative Law Judge of October 10, 1980, is hereby rescheduled to be held on December 9, 1980, at 9:30 A.M. (local time) in Room 1003, Hearing Room "B", Universal Building North, 1875 Connecticut Avenue, N.W., Washington, D.C.

Dated at Washington, D.C., October 17, 1980.

Elias C. Rodriguez,

Administrative Law Judge.

[FR Doc. 80-33100 Filed 10-22-80; 8:45 am]

BILLING CODE 6320-01-M

[Docket 36595; 36595-092]

Competitive Marketing of Air Transportation; Notice of Postponement of Rescheduled Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that the hearing now scheduled to be held on November 4, 1980 (45 FR 66824, October 8, 1980), is postponed until January 13, 1981, in Room 1003, Hearing Room A, Universal North Building, 1875 Connecticut Avenue, N.W., Washington, D.C.

Dated at Washington, D.C., October 17, 1980.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 80-33095 Filed 10-22-80; 8:45 am]

BILLING CODE 6320-01-M

[Docket 38185]

Lone Star Airways, Inc, Fitness Investigation; Notice of Postponement of Hearing

Notice is hereby given that, pursuant to the request of the applicant, the hearing in the above-titled proceeding now assigned to be held on November 5, 1980 (45 FR 63895, September 26, 1980) is postponed until November 13, 1980, at 10 a.m. (local time) in Room 1003, Hearing Room B, Universal North Building, 1875 Connecticut Avenue NW., Washington, D.C.

Dated at Washington, D.C., October 17, 1980.

William A. Kane, Jr.,

Administrative Law Judge.

[FR Doc. 80-33096 Filed 10-22-80; 8:45 am]

BILLING CODE 6320-01-M

[Docket 38743; Order 80-10-84]

Ozark Air Lines, Inc.; Application; Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 17th day of October, 1980.

Application of Ozark Air Lines, Inc., for compensation for losses at Clarksville, Tennessee—Ft. Campbell-Hopkinsville, Kentucky.

On April 10, 1979, Ozark Air Lines, Inc. filed a 90-day notice announcing its intent to suspend air service at Clarksville-Ft. Campbell-Hopkinsville effective July 9, 1979. By Order 79-5-138 and subsequent orders the Board prohibited Ozark's suspension.

By Order 80-5-203 we approved an arrangement which permits Ozark to fulfill its primary service obligations at Clarksville-Ft. Campbell-Hopkinsville through the services of Air Kentucky. The arrangement provides that Ozark will compensate Air Kentucky on the basis of specified expense and profit elements. While not disapproving that provision, we stated that we would compensate Ozark only for documented losses actually incurred by Air Kentucky.

On September 24, 1980, Ozark filed an application for interim compensation for losses at Clarksville-Ft. Campbell-Hopkinsville seeking compensation of $11,237 for the month of June 1980, and for each month thereafter, until a replacement carrier is found and Ozark is allowed to terminate service. The application is based on Air Kentucky's experienced operating losses plus interest expense for June 1980, and contains a detailed explanation of how costs were assigned or allocated to services in this particular market.

We have reviewed Ozark's application and find that it reasonably supports the requested compensation on an interim basis. Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, and particularly sections 102, 204, 419, and 1002(b) thereof, and the regulations promulgated in 14 CFR 302 and 324:

1. We set the interim rate of compensation for losses sustained by Ozark Air Lines, Inc. by virtue of its provision through Air Kentucky of essential air service at Clarksville, Tennessee-Ft. Campbell-Hopkinsville, Kentucky at $104.00 for each scheduled flight completed beginning June 1, 1980, subject to a maximum compensation of $11,237 per calendar month;

2. This proceeding shall remain open pending entry of an order fixing the final rate of compensation, and the amount of such rate of compensation may be the same as, lower than, or higher than the interim rate of compensation set here; and

3. We shall serve this order on all parties to this proceeding.

We shall publish this order in the Federal Register.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-33097 Filed 10-22-80; 8:45 am]

BILLING CODE 6320-01-M

[Docket 31838; Order 80-10-91]

Professional Air Charter, Inc.; Proceeding To Revoke All-Cargo Certificate of Professional Air Charter

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 80-10-91; Order to Show Cause, Docket 31838.

SUMMARY: The Board is proposing to revoke the All-Cargo Air Service Certificate of Professional Air Charter, Inc. of Mountain View, California. This action is being proposed because the carrier apparently no longer exists.

DATES: Objections: All interested persons having objections to the Board issuing an order revoking the All-Cargo Air Service Certificate of Professional Air Charter, Inc. shall file no later than November 21, 1980, a statement of objection, together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections.

ADDRESSES: Objections should be filed in Docket 31838, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: John McCamant, Bureau of Domestic Aviation, Civil Aeronautics Board, Washington, D.C. 20428, (202) 673-5082.

The complete text of Order 80-10-91 is available from the Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 80-10-91 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautical Board: October 17, 1980.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-33098 Filed 10-22-80; 8:45 am]

BILLING CODE 6320-01-M

[Summary Order 80-10-95; Amdt. 3 to Order 79-10-51]

Order Establishing the Subsidy Rate for Five Local Service Carriers for the Period January 1, 1980, Through June 30, 1980

AGENCY: Civil Aeronautics Board.

ACTION: Summary of Order 80-10-95; Amendment Three to Order 79-10-51.

SUMMARY: The Board has adopted the maximum subsidy rates due and payable to the five local service carriers for the period January 1, 1980, through June 30, 1980. Under the provisions of Class Rate IX, semi-annual reviews are conducted to determine adjustments to the base period subsidy rates as set in Order 79-10-51. The adjustments in this order are based on operating results for the year ended September 30, 1979. The annual subsidy level effective January 1, 1980, for the entire class is $72.6 million. This includes an upward median percentage change of 13.84 percent applied to the base period net formula provisions and service incentive payments of eligible carriers, and a reduction of the industry's Federal tax allowance by $2.7 million. Due to service suspensions during the rate period, the maximum annual subsidy rate declined to $67.0 million by June 30, 1980.

DATES: Parties must file exceptions and supporting rationale within 7 days of the date of service.

FOR FURTHER INFORMATION CONTACT: John R. Hokanson, or James Craun, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5368.

The complete text of Order 80-10-95 is available from our Distribution Section. Persons outside the metropolitan area may send a postcard request for the order to the Distribution Section, B-22b, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: October 17, 1980.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-33094 Filed 10-22-80; 8:45 am]

BILLING CODE 6320-01-M

[Docket 38792; Order 80-10-61]

Scandinavian Airlines System; U.S.-Scandinavia Fare Increases; Order of Suspension and Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 3rd day of October, 1980.

By tariff revisions filed for effectiveness October 15, 1980, Scandinavian Airlines System (SAS) proposes a general increase in fares between the United States, on the one hand, and Denmark, Norway and Sweden, on the other. The proposal includes an 8 percent increase in the carrier's "unbundled" special economy fares.

We have decided to suspend SAS's proposed special economy fare increases.

When we increased the upward fare flexibility allowance for U.S.-Europe markets from 5 to 15 percent above the Standard Foreign Fare Level (SFFL) ceiling, we stated that our action did not liberalizations fell outside the terms of the agreement.

In view of the Scandinavian authorities' insistence on strict observerance of the agreement, and their consequent denial of promotional fare liberalizations which were designed to increase the accessibility of those fares to the traveling public, we are unable to allow SAS to implement increases beyond those stipulated in the agreement. We are, however, prepared to consider reciprocal relinquishment of the terms and conditions of the agreement, or any other arrangements of possible mutual interest and potential benefit, with the Scandinavian authorities.

Accordingly, pursuant to sections 102, 204(a), 403, 801 and 1002(j) of the Federal Aviation Act of 1958, as amended: 1. We shall institute an investigation to determine whether the fares and provisions set forth in the Appendix hereof, and rules and regulations or practices affecting such fares and provisions, are or will be unjust or unreasonable, unjustly discriminatory, unduly preferential, induly prejudicial or otherwise unlawful; and if we find them to be unlawful, to act appropriately to prevent the use of such fares, provisions or rules, regulations or practices;

2. Pending hearing and decision by the Board, we suspend and defer the use of the fares named in the Appendix from October 15, 1980, to and including October 14, 1981, unless otherwise ordered by the Board, and shall permit no changes to be made therein during the period of suspension except by order or special permission of the Board;

3. We shall submit this order to the President [5] and unless disapproved by the President it shall become effective on October 15, 1980; and

4. We shall file copies of this order in the aforesaid tariff and serve them on Scandinavian Airlines System and the Ambassadors of Denmark, Norway and Sweden in Washington, D.C.

We shall publish this order in the Federal Register.

By the Civil Aeronautics Board. All Members concurred.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-33099 Filed 10-22-80; 8:45 am]

BILLING CODE 6320-01-M

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[1] See Order 80-5-139, May 20, 1980, p. 3, n. 5.

[2] While the International Air Transportation Competition Act, P.L. 96-192, mandates a 5 percent upward flexibility zone, the Board retains the discretion to expand or not expand such zone. In view of our agreement with the Scandinavian authorities, we saw no compelling reason to expand the zone insofar as it applied to the markets concerned.

[3] Order 80-8-178, August 29, 1980.

[4] For example, the basic-season New York-Copenhagen special economy fare (which includes the 5 percent allowance) is currently $432 one way, and the four-month SFFL adjustment of 2.82 percent produces a new level of $444. SAS, however, propses an 8.1 percent increase to $467, which is 5.2 percent above the permissible level.

[5] We submitted this order to the President on October 3, 1980.

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee on Housing for the 1980 Census; Notice of Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the Census Advisory Committee on Housing for the 1980 Census will convene on November 20, 1980, at 9:30 a.m. The Committee will meet in Room 2424, Federal Building 3 at the Bureau of the Census in Suitland, Maryland.

The Census Advisory Committee on Housing for the 1980 Census was established in March 1976 to provide technical advice and guidance in planning the forthcoming decennial census on housing to ensure that the major statistical requirements of decision makers are provided by the 1980 Census of Housing program.

The Committee is composed of 18 members, including a representative from each of nine organizations, and nine members appointed by the Secretary of Commerce.

The agenda for the meeting, which is scheduled to adjourn at 4:30 p.m., is: 1) Opening remarks by the Director, Bureau of the Census; 2) issue of census undercount adjustment; 3) status of the 1980 census; 4) technical housing enumeration problems; 5) status of the Components of Inventory Change (CINCH) and Residential Finance (RF) Programs; 6) updating of 1980 census data, including a) mid-decade census, and b) current surveys based on Current Population Survey redesign; 7) housing quality indexes; and 8) election of chairperson-elect, Committee recommendations, and plans for the next meeting.

The meeting will be open to the public and a brief period will be set aside for public comment and questions. Extensive questions or statements must be submitted in writing to the Committee Control Officer at least 3 days prior to the meeting.

Persons planning to attend and wishing additional information concerning this meeting or who wish to submit written statements may contact Mr. Arthur F. Young, Chief, Housing Division, Bureau of the Census, Room 1731, Federal Building 3, Suitland, Maryland. (Mail address: Washington, D.C. 20233). Telephone (301) 763–2863.

Dated: October 20, 1980.

Vincent P. Barabba,

Director, Bureau of the Census.

[FR Doc. 80-33106 Filed 10-22-80; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

Notice of Allocation of Fiscal Year 1981 Quotas for Export of Unprocessed Western Red Cedar

AGENCY: Office of Export Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of export quota allocations.

SUMMARY: The Department of Commerce (Department) has issued final allocations of the fiscal year 1981 quota, established by section 7(i) of the Export Administration Act, for the export of unprocessed western red cedar harvested from state or federal lands. This notice describes in detail the method used in making these allocations.

FOR FURTHER INFORMATION CONTACT: Mr. Converse Hettinger, Director, Short Supply Division, Office of Export Administration, (202) 377–3984.

SUPPLEMENTARY INFORMATION: Section 7(i) of the Export Administration Act of 1979 (Pub. L. 96–72 to be codified at 50 U.S.C. App. 2401 et seq.) requires validated licensing of exports of unprocessed western red cedar harvested from state or federal lands and establishes a quota of 15 MMBF (million board feet) scribner of such cedar which may be exported during the period October 1, 1980–September 30, 1981. By regulation published in the **Federal Register** on April 2, 1980, and revised in the **Federal Register** edition of September 9, 1980 (45 FR 59302), the Department established a validated licensing system for western red cedar, including a procedure for applying to participate in the allocation of the statutory quota for fiscal year 1981.

The Department has now completed its review of the applications for a share of the fiscal year 1981 quota and has issued to qualifying applicants quota allocations against which licenses will be issued this fiscal year. The method used by the Department in making these allocations is described below.

Method of Allocating Fiscal Year 1981 Western Red Cedar Export Quota

In the revised regulations published in the **Federal Register** on September 9, 1980 (45 FR 59302), the method to be used in allocating the statutory quota is described in § 377.7(f) (1) and (3) as follows:

* * * * *

(f) * * *

(1) The Office of Export Administration will review the applications submitted under (e) above for a share of the export quota and, based on that review, will determine what proportion of the fiscal year's quota specified in subsection (c) to allot to each of the four categories set forth under subsection (e).

After determining the quantity to be allocated to each of the four categories discussed in subsection (e), quota shares will be allocated to successful applicants within each of the first three categories on a proportionate basis and, after making any adjustments required by (3) below, written notification thereof will be mailed as soon as possible to each person receiving a quota share. Quota shares under the hardship and exceptions category will be allocated after a case-by-case review of each presentation and in accordance with the merits of each case. Persons applying under the hardship and exceptions category will also be notified in writing as to whether their applications have been successful.

* * * * *

(3) Each person who exported a quantity of western red cedar subject to quota restriction during the period October 1, 1979–April 16, 1980, which was in excess of his quota allocation for the period October 1, 1979–September 30, 1980, will have such excess exports deducted from his quota allocation in FY 1981 and in subsequent fiscal years until such excess exports have been totally absorbed. The quantities so deducted from exporters' allocation will then be re-allocated among other persons receiving quota shares so as to permit the issuance of licenses in each fiscal year for up to the total statutory quota.

The specific steps taken by the Department in making the FY 1981 allocations were as follows:

Step (1) Allotment to Hardship Category of a Share of the Quota Available for Allocation

After reviewing the individual hardship applications, the Department determined that the meritorious applications could be accommodated by reserving a total of 2% of the quota available for allocation. Accordingly, 2% of the quota available for allocation, or 300 MBF (300,000 board feet) was reserved for this category. This left 98% available for allotment to the other three categories of claimants.

Step (2) Determination of Adjusted Statutory Quota

The 2 percent hardship allotment was then deducted from the top of the statutory quota to arrive at an "adjusted statutory quota" of 14,700 MBF. (15,000 − 300 = 14,700).

Step (3) Allotment of Shares of the Adjusted Statutory Quota to the Other Three Categories of Applicants

The Department then allotted proportionate shares of the adjusted statutory quota to each of the other three categories of applicants as described below.

(A) Historical Exporters. Historical exporters claimed exports of 144,080.576 MBF [1] of western red cedar logs over the *eighteen month* base period of April 1, 1978–September 30, 1979. (This was well within the Bureau of the Census figures for the same period which show exports of 155,483 MBF.) The total claimed by the exporters was then reduced by one-third to reflect an *annual* level of 96,053.717 MBF (144,080.576 × 1⅔). This figure was then multiplied by the proportion of state or federal content, as determined on the basis of information submitted pursuant to applications for FY 1980 quota shares (see 45 FR 50617, July 30, 1980; step (1)(A)), to arrive at the aggregate annual base period exports of state or federal origin cedar (96,053.717 × .313 = 30,064.813 MBF). These aggregate annual base period exports equal 200.432% of the statutory quota (30,064.813 divided by 15,000).

(B) Inventory Owners. Owners of inventories claimed and documented 102.410 MBF of state or federal origin cedar logs in inventories destined for export on October 1, 1979 to which the inventory owner still had title and which remained unexported on October 1, 1980, and which were not claimed for a share of the FY 1980 statutory quota. No lumber inventories were claimed. Aggregate inventories thus equal 0.682% of the statutory quota (102.410 divided by 15,000).

(C) Contract Harvesters. Holders of contractual obligations to harvest from state or federal lands claimed and documented 30,288.374 MBF of Washington State and U.S. Forest Service western red cedar timber intended to be harvested and exported during FY 1981 (no other state and no other federal agency-owned timber was claimed). This figure represents 201.909% of the statutory export quota for this fiscal year (30,286.374 divided by 15,000).

(D) Allotment by Category of Proportionate Shares. Total claims on the statutory quota under (A), (B), and (C) above were as follows:

Historical Exporters: 200.432 percent of the statutory quota
Inventory Owners: 0.682 percent of the statutory quota
Contract Harvesters: 201.909 percent of the statutory quota
Total Claims: 403.023 percent of the statutory quota

Each of these three categories was then allotted a proportionate share of the adjusted statutory quota based on the percentage of the statutory quota it claimed as a proportion of the total claims made:

$$\text{Historical Exporters: } \frac{200.432}{403.023} \text{ or } 49.73\% \times 14{,}700^{**} = 7{,}310.310 \text{ MBF}$$

$$\text{Inventory Owners: } \frac{0.682}{403.023} \text{ or } 0.17\% \times 14{,}700^{**} = 24.990 \text{ MBF}$$

$$\text{Contract Harvesters: } \frac{201.909}{403.023} \text{ or } 50.10\% \times 14{,}700^{**} = 7{,}364.700 \text{ MBF}$$

Step (4) Preliminary Allocations to Individual Applicants

Applicants in each category except hardship were then allocated their proportionate shares of the total adjusted statutory quota allotted to that category based on the proportion which their individual claims bore to aggregate claims under that category.

Step (5) Final Allocations

Where an applicant received a preliminary allocation in more than one category his allocations were combined. When applicable, each applicant's preliminary allocation or combined preliminary allocation was then adjusted by subtracting the quantity of cedar subject to quota which the applicant had exported in excess of his fiscal year 1980 allocation. The amounts so deducted were then reallocated among those recipients of fiscal year 1981 net quota allocations, whose fiscal year 1980 exports did not exceed their fiscal year 1980 quota allocations, in the proportion which their net quota allocations bore to the adjusted statutory quota. This method assured that the final allocations made to applicants in categories other than hardship aggregated 98 percent of the total quota available for allocation.

Hardship applicants whose applications had been found to be meritorious by the Department after a case-by-case review were then allocated the remaining 2 percent of the quota available for allocation which had been reserved for them under Step (1) above according to the Department's assessment of the relative degree of hardship experienced by each applicant.

(Sections 3, 4, 7, 12, and 21, Pub. L. 96–72, to be codified at 50 U.S.C. App. 2401 *et seq.*; Executive Order 12214 (45 FR 29783, May 6, 1980); Departmental Organization Order 10–3, (45 FR 6141, January 25, 1980); International Trade Administration Organization and Function Orders 41–1 (45 FR 11862, February 22, 1980) and 41–4 (effective August 28, 1980))

Dated: October 20, 1980.

Eric L. Hirschhorn,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 80-33042 Filed 10-20-80; 11:20 am]

BILLING CODE 3510-25-M

[1] Applications from firms or individuals that did not participate in last year's allocation account for the increase over last year's claims in this category.

** This figure represents the "adjusted statutory quota". (See Step (2) above.)

V 45 OCT 23 1980 UMI

National Oceanic and Atmospheric Administration

Notice of Changes in Tidal Datums Established Through the National Tidal Datum Convention of 1980

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice to promulgate the provisions of The National Tidal Convention of 1980.

SUMMARY: In this document, the National Ocean Survey, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, promulgates the National Tidal Datum Convention of 1980.

Notification has been given to all Governors and U.S. Senators of coastal States, and to all U.S. Representatives of Gulf Coast States with a coastal constituency. Extensive briefings have been provided to Gulf Coast State agencies, appropriate Federal agencies, and to professional organizations with surveying, engineering, and marine interests.

Specifically the Convention:

(1) Provides a uniform, continuous tidal datum system that is independent of computations based on the type of tide for all tidal waters of the United States, U.S. possessions and territories, and U.N. trust territories under U.S. jurisdiction;

(2) Introduces the tidal datum of Mean Higher High-Water in areas of predominantly diurnal tides;

(3) Lowers chart datum from Mean Low Water to Mean Lower Low Water along the Atlantic coast of the United States;

(4) Changes the name "Gulf Coast Low Water Datum" to "Mean Lower Low Water";

(5) Updates the National Tidal Datum Epoch from 1941 through 1959, to 1960 through 1978.

DATES: These provisions are effective November 28, 1980.

FOR FURTHER INFORMATION, CONTACT: Steacy D. Hicks, Physical Oceanographer, National Ocean Survey, National Oceanic and Atmospheric Administration, 6001 Executive Boulevard, Rockville, MD 20852, Telephone 301–443–8474.

SUPPLEMENTARY INFORMATION: (1) CONVENTION: Pursuant to the authority contained in section 883(a) of Title 33 of the United States Code, the National Ocean Survey, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, designates the following as official policy of the United States Government.

(a) *Revised Definitions:*

(i) Mean High Water (MHW)—A tidal datum. The average of all the high water heights observed over the National Tidal Datum Epoch. (See High Water.) For stations with shorter series, simultaneous observational comparisons are made with a control tide station in order to derive the equivalent of a 19-year datum.

(ii) Mean Higher High Water (MHHW)—A tidal datum. The average of the highest high water height of each tidal day observed over the National Tidal Datum Epoch. For stations with shorter series, simultaneous observational comparisons are made with a control tide station in order to derive the equivalent of a 19-year datum.

(iii) Mean Low Water (MLW)—A tidal datum. The average of all the low water heights observed over the National Tidal Datum Epoch. (See Low Water.) For stations with shorter series, simultaneous observational comparisons are made with a control tide station in order to derive the equivalent of a 19-year datum.

(iv) Mean Lower Low Water (MLLW)—A tidal datum. The average of the lowest low water height of each tidal day observed over the National Tidal Datum Epoch. For stations with shorter series, simultaneous observational comparisons are made with a control tide station in order to derive the equivalent of a 19-year datum.

(b) *Retained Definitions:*

For clarification, the following operational definitions will be retained:

(i) High Water (HW)—The maximum height reached by a rising tide. The height may be due solely to the periodic tidal forces or it may have superimposed upon it the effects of prevailing meteorological conditions.

(ii) Low Water (LW)—The minimum height reached by a falling tide. The height may be due solely to the periodic tidal forces or it may have superimposed upon it the effects of prevailing meteorological conditions.

(c) *Reassignment:*

Mean Lower Low Water is assigned as chart datum for the Atlantic coast of the United States, replacing Mean Low Water.

(d) *Name Change:* The name "Gulf Coast Low Water Datum" is replaced by the name "Mean Lower Low Water."

(e) *Epoch Revision:* The National Tidal Datum Epoch is updated to the 1960 through 1978 19-year series, replacing the 1941 through 1959 19-year series.

(2) Effects of Convention: (a) The revised definitions will provide a uniform, continuous tidal datum elevation system for the entire United States, U.S. possessions and territories, and U.N. trust territories under U.S. jurisdiction. Concomitantly, all coastal and marine boundaries and boundary baselines (which are derived from these tidal datums) will become uniform and continuous throughout the entire United States, U.S. possessions and territories, and U.N. trust territories under U.S. jurisdiction.

(b) The revised definitions will cause no significant changes in tidal datum elevations or horizontal displacements of tidal datum lines along the Altantic or Pacific coasts of the United States (including Alaska and Hawaii). However, the revised definition for the tidal datum of Mean High Water will lower the datum and move the Mean High Water Line slightly seaward in areas of diurnal tides. This will provide a uniform and continuous Mean High Water Line without the present vertical jumps or horizontal discontinuities along the Gulf of Mexico Coast of the United States and along the coasts of Puerto Rico and the U.S. Virgin Islands. The continuity of the Mean High Water Line is made possible by the independence of the revised definition from computations based on type of tide. Thus, a uniform and continuous Mean High Water Line is achieved regardless of frequent changes from mixed to diurnal (and vice versa) types of tide, both with time and distance.

(c) The revised definitions will create a tidal datum of Mean Higher High Water and a Mean Higher High Water Line in areas of diurnal tides. This datum and line will coincide with the former Mean High Water and Mean High Water Line of the diurnal tide. Thus, similarly, a uniform and continuous Mean Higher High Water Line is achieved regardless of frequent changes from mixed to diurnal (and vice versa) types of tide, both with time and distance, along the Gulf of Mexico Coast of the United States and along the coasts of Puerto Rico and the U.S. Virgin Islands.

(d) The lowering of chart datum from Mean Low Water to Mean Lower Low Water along the Atlantic coast, coupled with the change in name from "Gulf Coast Low Water Datum" to "Mean Lower Low Water" along the Gulf of Mexico, will provide a uniform and continuous chart datum at Mean Lower Low Water throughout the entire United States, U.S. possessions and territories, and U.N. trust territories under U.S. jurisdiction.

(e) Updating the National Tidal Datum Epoch (the period of time used in averaging for tidal datums) from 1941 through 1959, to 1960 through 1978, will provide current, realistic datum elevations in view of the continuing rise in secular, eustatic sea level (1.5 mm/yr average from 1855 to the present).

(3) Impacts: (a) Only datum statements will be changed on nautical charts, bathymetric maps, tide tables, or other nautical products of the National Ocean Survey. Shoreline, depth sounding values, isobaths, etc., will not be modified as a result of this name change. This is because of:

(i) the small changes in comparison to the overall accuracy of the hydrographic-cartographic process (including determination of tidal datums);

(ii) the small changes in comparison to the line thickness on the largest scale nautical charts;

(iii) the mitigating effect of lowering the elevation of Mean High Water in areas of diurnal tides and the rise in datum elevation due to Epoch revision; and

(iv) the mitigating effect of lowering chart datum along the Atlantic coast and the relatively large rise (along the Atlantic coast) in datum elevation due to Epoch revision.

(b) Datum statements (legends, labels, etc.) will be changed on all affected products of the National Ocean Survey with their next regularly scheduled editions of these products.

(c) Although depictions of the changes will not be evident on even the largest scale National Ocean Survey nautical charts, they can be measured "on the ground" using accepted surveying techniques, tidal bench marks, and the numerical relationships provided by the National Ocean Survey.

Inquiries: Inquiries and comments are welcomed and should be sent to Physical Oceanographer Steacy D. Hicks at the address set out above.

Dated: October 17, 1980.

Francis J. Balint,

Acting Director, Office of Management and Computer Systems.

[FR Doc. 80-33015 Filed 10-22-80; 8:45 am]

BILLING CODE 3510-12-M

Issuance of Permit

On July 8, 1980, Notice was published in the Federal Register (45 FR 45937) that an application had been filed with the National Marine Fisheries Service, by Ms. Barbara A. Kuljis, c/o National Marine Fisheries Service, P.O. Box 3830, Honolulu, Hawaii 96812, and Mr. C. Scott Baker, University of Hawaii, Honolulu, Hawaii 96822, for a scientific research permit to take two (2) bottlenose dolphins for experimental studies of food aversion behavior.

Notice is hereby given that on October 15, 1980, the National Marine Fisheries Service issued a scientific research Permit, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) to Barbara A. Kuljis, and C. Scott Baker subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: October 15, 1980.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 80-33011 Filed 10-22-80; 8:45 am]

BILLING CODE 3510-22-M

National Marine Fisheries Service and Fish and Wildlife Service; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The National Marine Fisheries Service and the U.S. Fish and Wildlife Service will hold a joint meeting to discuss implementation of the Emergency Striped Bass Study as authorized by the amended Anadromous Fish Conservation Act, (Pub. L. 96–118).

DATE: The meeting will convene on Friday, November 21, 1980 at 10:00 a.m. and will adjourn at approximately 5:00 p.m. The meeting is open to the public, however space is limited.

ADDRESS: National Marine Fisheries Service, Room 401, Page Building No. 2, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Richard H. Schaefer, State/Federal Division, Office of Resource Conservation and Management, National Marine Fisheries Service, Washington, D.C. 20235. Telephone: (202) 634–7454.

Dated: October 20, 1980.

Robert K. Crowell,

Deputy Executive Director.

[FR Doc. 80-33025 Filed 10-22-80; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

October 15, 1980.

The USAF Scientific Advisory Board Armament Division Advisory Group will hold a meeting on November 12 and 13, 1980 from 8:30 am to 4:30 pm at the Armament Division, Eglin Air Force Base, Florida, in Building 1, Room 204.

The group will receive classified briefings and participate in classified discussions relating to Air Force Armament Programs for Air-to-Air and Air-to-Ground Munitions.

The meetings concern matters listed in Section 552b(c), of Title 5, United States Code, specifically subparagraph (1), thereof, and accordingly the meetings are closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Carol M. Rose,

Air Force Federal Register Liaison Officer.

[FR Doc. 80-33030 Filed 10-22-80; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

October 15, 1980.

The USAF Scientific Advisory Board Foreign Technology Division Advisory Group, Air Force Systems Command, will hold meetings on November 20, 1980 from 8 a.m. to 5 p.m. and November 21, 1980 from 8 a.m. to 1 p.m. at Wright-Patterson Air Force Base, Ohio. Room E202, Building 856.

The Division Advisory Group will receive classified briefings and participate in discussions related to assessments of system design techniques and materials used by foreign military aircraft designers.

The meetings concern matters listed in Section 552b(c), of Title 5, United States Code, specifically subparagraph (1), thereof, and accordingly the meetings are closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Carol M. Rose,

Air Force Federal Register Liaison Officer.

[FR Doc. 80-33031 Filed 10-22-80; 8:45 am]

BILLING CODE 3910-01-M

V 4 5 O C 2 3 8 0 UMI

Determinations of Active Military Service and Discharge; Civilian or Contractual Personnel

In accordance with Pub. L. 95–202, Section 401 (The G.I. Bill Improvement Act of 1977) and under the provisions of DODD 1000.20, Determinations of Active Military Service and Discharge: Civilian or Contractual Personnel, the Secretary of the Air Force, acting in accordance with authority delegated to him by the Secretary of Defense, determined on October 2, 1980, that the service of the members of the groups known as Crewmen, US Army Vessels, WWII; Office of Field Service, Office of Scientific Research and Development Technical Observers; Army Exchange Service Auditors; CAA War Training Service Trainees; and Civilian Technician Employees of the CAA, not be considered active military service in the Armed Forces of the United States.

For further information contact: Staff Sergeant Stephen J. Koegle, USAF, telephone: 694–5380, Office of the Secretary of the Air Force Personnel Council (SAF/MIPC), The Pentagon, Washington, D.C. 20330.

Carol M. Rosé,

Air Force Federal Register Liaison Officer.

[FR Doc. 80–33084 Filed 10–22–80; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Privacy Act of 1974; Amendments to Systems of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice of amendments to systems of records.

SUMMARY: The Army proposes to amend 2 systems of records subject to the Privacy Act of 1974. Specific changes to the systems being amended are set forth below, followed by the systems, as amended, printed in their entirety.

DATE: The systems shall be amended as proposed without further notice on November 24, 1980, unless comments are received on or before November 24, 1980 which would result in a contrary determination and require republication for further comments.

ADDRESS: Comments, including written data, views or arguments concerning the proposed action should be addressed to The Adjutant General, Headquarters, Department of the Army, ATTN: DAAG–AMR–R, Washington, DC 20314.

FOR FURTHER INFORMATION CONTACT: Mr. Richard S. Christian, The Adjutant General's Office (DAAG–AMR–R), 1000 Independence Avenue, SW, Washington, DC 20314; telephone 202/693–0973.

SUPPLEMENTARY INFORMATION: Department of the Army systems of records have been published in the following editions of the **Federal Register:**

FR Doc. 79–37052 (44 FR 73729) December 17, 1979.
FR Doc. 80–594 (45 FR 1658) January 8, 1980.
FR Doc. 80–3891 (45 FR 8399) February 7, 1980.
FR Doc. 80–7515 (45 FR 15736) March 11, 1980.
FR Doc. 80–9633 (45 FR 20992) March 31, 1980.
FR Doc. 80–10014 (45 FR 21673) April 2, 1980.
FR Doc. 80–150501–M (45 FR 26117) April 17, 1980.
FR Doc. 80–13706 (45 FR 29390) May 2, 1980.
FR Doc. 80–18501 (45 FR 41478) June 19, 1980.
FR Doc. 80–20779 (45 FR 46842) July 11, 1980.
FR Doc. 80–21847 (45 FR 48936) July 22, 1980.
FR Doc. 80–29170 (45 FR 62875) September 22, 1980.

Proposed amendments are not within the purview of the provisions of 5 USC 552a(o) which require submission of a new or altered report.

Dated: October 20, 1980.

M.S. Healy,

OSD Federal Register Liaison Officer Washington Headquarters Services Department of Defense.

A0201.08bDAAG

System name:

201.08 Privacy Act Request File (44 FR 73773), 17 December 1979.

Changes:

System ID:

Delete "A0201.08bDAAG" and add: "AO240.01DAAG".

System name:

Substitute "Case" for "Request".

System location:

Delete entry and substitute the following therefor: "These records exist at Headquarters, Department of the Army, staff and field operating agencies, major commands, installations and activities receiving Privacy Act requests. They also exist in offices of Access and Amendment Refusal Authorities (enumerated in Army Regulation 340–21) when an individual's request to access and/or amend his/her record is denied; upon appeal of that denial, record is maintained by the DA Privacy Review Board. Official mailing addresses are in the DOD Directory following the Annual Compilation of system notices appearing at 44 FR 74011 on December 17, 1979."

Categories of records in the system:

Delete entry and substitute the following: "Documents which notify requestors of the existence of records on them, providing or refusing access to or amendment of records, acting on appeals or refusals to provide access to or amend records, and providing or developing information for use in litigation. Included are requests; approval and refusal actions; appeals and actions on appeals, including DA Privacy Review Board minutes and actions; coordination actions; copies of the requested and amended/unamended records; statements of disagreement; and related documents."

Authority for maintenance of the system:

Add: "; Title 5 U.S.C. section 552a".

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Safeguards:

Delete entry and substitute therefor: "Records are accessed by custodian of the record system and by persons responsible for servicing the record system in performance of their official duties who are properly screened and cleared. Records are stored in locked cabinets or rooms."

Retention and disposal:

Delete entry and substitute therefor: "Office of appelate authorities: Appeals adjudicated fully in favor of requestor: destroyed after 4 years. Appeals refused in full or in part: destroyed after 10 years provided legal proceedings are completed.

"Offices of Access and Amendment Refusal Authorities: Approved requests, unappealed refusals, and refusals fully overruled by appellate authorities: destroyed after 4 years." Refusals upheld in whole or in part by appellate authorities: destroyed after 10 years, provided legal proceedings are completed "Other offices: destroyed after 4 years."

Contesting record procedures:

Delete entry and substitute therefor: "The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505)."

Systems exempted from certain provisions of the act: Delete entry and substitute therefor: "The majority of records in this system are not exempt. Copies of documents residing in the office of an Access and Amendment Refusal Authority having a law enforcement mission which fall within (j)(2) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g). Copies of documents maintained by the DA Privacy Review Board and by those Access and Amendment Refusal Authorities not having a law enforcement mission which fall within 5 U.S.C. section 552a (k)(1) through (k)(7) are exempt from the following provisions of Title 5 U.S.C. section 552a: (C)(3), (D), (e)(1), (e)(4)(G), (e)(4)(H), and (f)."

A0202.08DAAG

System name:

202.08 Request for Information Files (44 FR 73773), December 17, 1979.

Changes:

System ID:

Delete "AO202.08DAAG" and substitute therefor: "AO239.01DAAG".

System location:

Delete entry and substitute the following: "These records exist at Headquarters, Department of the Army, staff and field operating agencies, major commands, installations and activities receiving requests to access records pursuant to the Freedom of Information Act or to declassify documents pursuant to Executive Order 12065. They also exist in offices of Initial Denial Authorities (enumerated in Army Regulation 340–17) when an individual's request is denied; upon appeal of that denial, record is maintained in the Secretary of the Army's Office of General Counsel. Official mailing addresses are in the DOD Directory following the Annual Compilation of system notices appearing at 44 FR 74011 on December 17, 1979."

Routine uses of records maintoined in the system, including categories of users and the purposes of such uses:

Delete entry and substitute the following: "To control administrative processing of requests for information pursuant either to the Freedom of Information Act or to Executive Order 12065, including appeals from denials."

Retention and disposal:

Delete entry and substitute the following: "Records reflecting granted requests are destroyed after 2 years."

When requests have been denied, records are retained for 5 years except that, if appeals result, records are retained until 4 years after final denial by the Army or 3 years after final adjudication by the courts, whichever is later."

Record access procedures:

Delete entry and substitute the following: "Written requests should be addressed to the office that processed the initial inquiry or access request. Individual may obtain assistance from the System Manager.

"Personal visits may be made to the office maintaining the records upon presentation of acceptable identification such as driver's license, and furnishing verbal information that can be verified."

Contesting record procedures:

Delete entry and substitute the following: "The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505)."

Systems exempted from certain provisions of the act:

Change entry to read: "The majority of records in this system are not exempt. Copies of documents residing in the office of an Initial Denial Authority having a law enforcement mission which fall within (j)(2) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g). Copies of documents maintained by those Initial Denial Authorities not having a law enforcement mission which fall within 5 U.S.C. section 552a (k)(1) through (k)(7) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f)."

AO239.01DAAG

SYSTEM NAME:

239.01 Request for Information Files

SYSTEM LOCATION:

These records exist at Headquarters, Department of the Army, staff and field operating agencies, major commands, installations and activities receiving requests to access records pursuant to the Freedom of Information Act or to declassify documents pursuant to Executive Order 12065. They also exist in offices of Initial Denial Authorities (enumerated in Army Regulation 340–17) when an individual's request is denied; upon appeal of that denial, record is maintained in the Secretary of the Army's Office of General Counsel. Official mailing addresses are in the DOD Directory following the Annual Compilation of system notices appearing at 44 FR 74011 on December 17, 1979.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who requests an Army record under the Freedom of Information Act or requests mandatory review of a classified document pursuant to Executive Order 12065.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains individual's request; related processing papers; correspondence between the office of receipt, records custodians, Army staff offices and other government agencies; retained copies of classified or other exempt material; and other selective documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5 U.S.C. section 552: The Freedom of Information Act, as amended by Pub. L. 93–502; Executive Order 12065.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To control administrative processing of requests for information either pursuant to the Freedom of Information Act or to Executive Order 12065, including appeals from denials.

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Alphabetically by requestor's surname.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly trained.

RETENTION AND DISPOSAL:

Records reflecting granted requests are destroyed after 2 years. When requests have been denied, records are retained for 5 years except that if appeals result, records are retained until 4 years after final denial by the Army or 3 years after final adjudication by the courts, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

The Adjutant General, Headquarters, Department of the Army, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Requests should be addressed to the custodian of the record sought; if unknown, write to: HQDA (DAAG–AMR–S), Room GA–082, Forrestal Building, Washington, DC 20310, telephone: 202/693–1847.

RECORD ACCESS PROCEDURES:

Written requests should be addressed to the office that processed the initial inquiry or access request. Individual may obtain assistance from the System Manager.

V 4 5 C 2 3 8 0 UMI

Personal visits may be made to the office maintaining the records upon presentation of acceptable identification such as driver's license, and furnishing verbal information that can be verified.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual requestor, Department of Army organizations, other Department of Defense components, and other Federal, state, and local government agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The majority of records in this system are not exempt. Copies of documents residing in the office of an Initial Denial Authority having a law enforcement mission which fall within (j)(2) are exempt from the following provisions of Title 5 U.S.C., section 552a: (c)(3), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g). Copies of documents maintained by other Initial Denial Authorities not having a law enforcement mission which fall within 5 U.S.C., section 552a (k)(1) through (k)(7) are exempt from the following provisions of Title 5 U.S.C., section 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

AO240.01DAAG

SYSTEM NAME:

240.01 Privacy Act Case Files.

SYSTEM LOCATION:

These records exist at Headquarters, Department of the Army, staff and field operating agencies, major commands, installations and activities receiving Privacy Act requests. They also exist in offices of Access and Amendment Refusal Authorities (enumerated in Army Regulation 340–21) when an individual's request to access and/or amend his/her record is denied; upon appeal of that denial, record is maintained by the DA Privacy Review Board. Official mailing addresses are in the DOD Directory following the Annual Compilation of system notices appearing at 44 FR 74011 on December 17, 1979.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who request information concerning themselves which is in the custody of the Department of the Army, including requests to amend such records pursuant to Title 5, U.S.C. section 552a(d) (Privacy Act of 1974).

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents which notify requestors of the existence of records on them, providing or refusing access to or amendment of records, acting on appeals or refusals to provide access to or amend records, and providing or developing information for use in litigation. Included are requests; approval and refusal actions; appeals and actions on appeals, including DA Privacy Review Board minutes and actions; coordination actions; copies of the requested and amended/unamended records; statements of disagreement; and related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10 U.S.C., section 3012; Title 5 U.S.C., section 552a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To process and coordinate individual requests for access to or amendment of personal records; to process and record appeals on denials of requests for access or amendment to personal records by the individual against agency rulings; and to ensure timely response to requestors.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By name of requestor on whom the records pertain.

SAFEGUARDS:

Records are accessed by custodian of the record system and by persons responsible for servicing the record system in performance of their official duties who are properly screened and cleared. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Office of appellate authorities: Appeals adjudicated fully in favor of requestor: destroyed after 4 years. Appeals refused in full or in part: destroyed after 10 years provided legal proceedings are completed.

Offices of Access and Amendment Refusal Authorities:

Approved requests, unappealed refusals, and refusals fully overruled by appellate authorities: destroyed after 4 years. Refusals upheld in whole or in part by appellate authorities: destroyed after 10 years, provided legal proceedings are completed.

Other offices:

Destroyed after 4 years.

SYSTEM MANAGER(S) AND ADDRESS:

The Adjutant General, Headquarters, Department of the Army, ATTN: DAAG–AMR–R, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Requests should be addressed to the custodian of the record sought; if unknown, write to: HQDA (DAAG–AMR–R), 1000 Independence Avenue, SW, Washington, DC 20314, telephone: 202/693–0973.

RECORD ACCESS PROCEDURES:

Written requests should be addressed to the office that processed the initial inquiry, access request, or amendment request. Individual may obtain assistance from the System Manager.

Personal visits may be made to the office maintaining the records upon presentation of acceptable identification such as driver's license, employee identification card, and furnishing verbal information that can be verified from individual's case file.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual requestor, Department of Army organizations, other Department of Defense components, and other Federal, state, and local government agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The majority of records in this system are not exempt. Copies of documents residing in the office of an Access and Amendment Refusal Authority having a law enforcement mission which fall within (j)(2) are exempt from the following provisions of Title 5 U.S.C., section 552a: (c)(3), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g). Copies of documents maintained by the DA Privacy Review Board and by those Access and Amendment Refusal Authorities not having a law enforcement mission which fall within 5 U.S.C., section 552a (k)(1) through (k)(7) are exempt from the following provisions of Title 5 U.S.C., section 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

[FR Doc. 80-33133 Filed 10-22-80; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Notice of Intent To Prepare a Draft Environmental Impact Statement for a Proposed Project on the Little Arkansas Watershed, Kansas

AGENCY: U.S. Army Corps of Engineers, DOD, Tulsa District.

ACTION: Notice of Intent to Prepare a Draft Envirionmental Impact Statement (DEIS).

SUMMARY: 1. The purpose of the project is to provide flood protection, water supply, and recreation for the Upper Little Arkansas River Watershed and address other national and local needs such as erosion control and fish and wildlife.

2. Reasonable Alternatives: Evaluation included various combinations of flood plain acquisition, floodproofing, flood plain management, channel improvement, levees, small dams, large lakes, water rationing, water reuse, interbasin transfers, wildlife management, fisheries management, game refuges, and no action.

3. Scoping Process: a. Public Involvement: A comprehensive public involvement program was developed as a means of disseminating information and soliciting public views. A variety of techniques including formal public meetings, public workshops, and the local news media were employed to involve Federal, State, and local agencies, citizen committees, organizations, and the interested public in the planning studies.

b. Significant Issues Requiring In-Depth Analysis: None.

c. Assignment: U.S. Fish and Wildlife Service is preparing a Fish and Wildlife Coordination Act Report.

d. Environmental Review and Consultation Requirements: The draft environmental impact statement will be circulated for review and all comments will be incorporated into the final environmental impact statement.

4. Scoping meeting will not be held.

5. Estimated date when the DEIS will be available: March 1981.

ADDRESS: Mr. Buell O. Atkins, Chief, Environmental Resources Branch, U.S. Army Corps of Engineers, Tulsa District, P.O. Box 61, Tulsa, OK 74121, (918) 581–7857; FTS 736–7857.

Dated: October 14, 1980.

James J. Harmon,

Colonel, CE District Engineer.

[FR Doc. 80-33066 Filed 10-22-80; 8:45 am]

BILLING CODE 3710-39-M

Department of the Navy

Amendment to System of Records

AGENCY: Department of the Navy (DON).

ACTION: Notice of amendment to system of records.

SUMMARY: The Department of the Navy proposes to amend one system of records subject to the Privacy Act of 1974. The specific change to the system being amended is set forth below followed by the system published in its entirety, as amended.

DATES: The system shall be amended as proposed without further notice on November 24, 1980, unless comments are received on or before November 24, 1980, which would result in a contrary determination.

ADDRESS: Send comments to the system manager identified in the record system notice.

FOR FURTHER INFORMATION CONTACT:

Mrs. Gwendolyn R. Rhoads, Privacy Act Coordinator, Office of the Chief of Naval Operations (OP–09B1P), Department of the Navy, The Pentagon, Washington, D.C. 20350, telephone: 202–694–2004.

SUPPLEMENTARY INFORMATION: The Navy systems of records notices as prescribed by the Privacy Act of 1974, Title 5, U.S.C., Section 552a (Pub. L. 93–579) have been published in the Federal Register as follows:

FR Doc. 79–26400 (44 FR 67703) November 27, 1979.
FR Doc. 79–36789 (44 FR 68947) November 30, 1979.
FR Doc. 79–37052 (44 FR 74553) December 17, 1979.
FR Doc. 80–6599 (45 FR 13794) March 3, 1980.
FR Doc. 80–14965 (45 FR 32037) May 15, 1980.
FR Doc. 80–15427 (45 FR 33679) May 20, 1980.
FR Doc. 80–17286 (45 FR 38099] June 6, 1980.
FR Doc. 80–19603 (45 FR 43841] June 30, 1980.
FR Doc. 80–20317 (45 FR 43936) July 8, 1980.
FR Doc. 80–23111 (45 FR 50851) July 31, 1980.
FR Doc. 80–24237 (45 FR 53508) August 12, 1980.
FR Doc. 80–26396 (45 FR 57514) August 28, 1980.
FR Doc. 80–26960 (45 FR 58851) September 4, 1980.
FR Doc. 80–27976 (45 FR 59938) September 11, 1980.
FR Doc. 80–29172 (45 FR 62876] September 22, 1980.
FR Doc. 80–29774 (45 FR 63898] September 26, 1980.

The proposed corrections are not within the purview of the provisions of 5 U.S.C 552a(O) of the Act which requires the submission of a new or altered system report.

Dated: October 20, 1980.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

N96021–431

System name: Employee Relations Including Discipline, Employee Grievances, Complaints, etc. (45 FR 58651) 4 Sep 80

Changes:

Categories of records in the system: Delete the last phrase in the entry: ". . . including formal and informal supervisor's notes."

N96021–431

SYSTEM NAME:

Employee Relations Including Discipline, Employee Grievances, Complaints, etc.

SYSTEM LOCATION:

Chief of Naval Operations (OP–14), Naval Civilian Personnel Command (NCPC), NCPC Field Divisions, Navy and Navy Staff Headquarters and Field Activities employing civilians. Mailing addresses are provided in the Department of the Navy Directory published in the Federal Register.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy civilian emloyees, paid from appropriated funds serving under career, career-conditional, temporary and excepted service appointments on whom discipline, grievances, and complaints records exist. Discrimination complaints of Navy civilian employees, paid from appropriated and non-appropriated funds, applicants for employment and former employees in appropriated and non-appropriated positions. Appeals of Navy civilian employees paid from appropriated funds. Filipino employee appeal case files ("Filipinos who are lawfully admitted residents.") Cases reviewed by CINCPAC under Filipino Employment Policy Instructions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Manual files, maintained in paper folders, contain copies of documents and information pertaining to discipline, grievances, complaints, and appeals. Management Operations Record System consisting of manual file maintained by immediate supervisors and high level managers concerning employee performance, capability, informal discipline, attendance, leave and tardiness, work assignments, and similar work related to employee records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 9830, Amending the Civil Service Rules and Providing for Federal Personnel Administration, Amended by Executive Order 10577 and Executive Order 12106; Executive Order 12107; 5 U.S.C. §§ 1205, 1206, 1207, 1302, 3301, 3302, 7105, 7512, relevant portions of the Civil Service Reform Act, Pub. L. 95–454; 42 U.S.C. Section 2000e–16 et seq.; Equal Employment Opportunity Act of 1972, Pub. L. 93–259, amendment to the Fair Labor Standards Act, 29 U.S.C. Section 201, et seq.; Age Discrimination and Employment Act, 29 U.S.C. Section 633a; the Rehabilitation Act of 1978 as amended, 29 U.S.C. § 791, 794a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Officials of the Department of the Navy in the performance of their official duties related to the management of civilian employees in the processing, administration and adjudication of discipline, grievances, appeals, litigation and program evaluation.

Representatives of the United States Office of Personnel Management on matters relating to the inspection, survey, audit or evaluation of a Navy civilian personnel management program or personnel action, or other such matters under the jurisdiction of the Office of Personnel Management.

Appeals officers and complaints examiners of the Merit Systems Protection Board and Equal Employment Opportunity Commission for the purpose of conducting hearings in connection with employees appeals from adverse actions and formal discrimination complaints.

The Comptroller General or any of his authorized representatives, in the course of the performance of duties of the General Accounting Office relating to the Navy's civilian, manpower management programs.

The Attorney General of the United States or his authorized representatives in connection with litigation law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies.

The Senate or the House of Representatives of the United States or any member, committee or subcommittee of joint committees on matters within their jurisdiction relating to the programs. The records may also be used to disclose information to any source from which additional information is requested in the course of processing a grievance or appeal to the extent necessary to identify the individual, inform the source of the purpose(s) of the request and identify the type of information requested.

The records may also be used to disclose information to a Federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary.

The records may be used by the National Archives and Records Service (General Services Administration) in records management inspection conducted under authority of 5 U.S.C. 2904 and 2906.

The records may be used to disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in the pending judicial or administrative proceeding.

The records may also be used to provide information to officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices and matters affecting working conditions."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual records are stored in paper folders.

RETRIEVABILITY:

Manual records are filed by last name.

SAFEGUARDS:

All records are stored under strict control, and are available only to authorized personnel having a need to know.

RETENTION AND DISPOSAL:

Manual records are destroyed upon separation of the employee from the activity, or in accordance with appropriate record disposal schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Operations (OP–14), Department of the Navy, Washington, D.C. 20350.

NOTIFICATION PROCEDURE:

Requests by correspondence should be addressed to the Chief of Naval Operations (OP–14), Department of the Navy, Washington, D.C. 20350, Commanding Officers or Heads of Navy Staff Headquarters and Field Activities. The letter should contain the full name, social security number, and signature of the requester. The individual may visit the Chief of Naval Operations (OP–14). Department of the Navy, Arlington Annex, Washington, D.C. or the Navy Activity at which he or she is employed. The addresses of these activities are provided in the Department of the Navy Directory, published in the Federal Register.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Supervisors or other appointed officials designated for this purpose.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 80–33134 Filed 10–22–80; 8:45 am]

BILLING CODE 3810–71–M

Office of the Secretary

Defense Advisory Committee on Women in the Services (DACOWITS); Meeting

Pursuant to Pub. L. 92–463 notice is hereby given that a meeting of the Defense Advisory Committee on Women in the Services (DACOWITS) will be held 16–19 November 1980 at the Safari Resort Hotel, Scottsdale, Arizona.

The purpose of the DACOWITS Committee is to assist and advise the Secretary of Defense on matters relating to women in the Services. The Committee meets semiannually.

Sessions will be conducted daily as indicated and will be open to the public. The agenda will include the following meetings and discussions:

Sunday, November 16, 1980—Safari Resort Hotel

12:00 noon–9:00 p.m.—Registration.
3:00 p.m.—Executive Committee Meeting.
5:30 p.m.–7:00 p.m.—Orientation Briefing for New Members.
7:00 p.m.–8:30 p.m.—"No Host" Cocktail Buffet

Monday, November 17, 1980—Safari Resort Hotel.

8:00 a.m.–12:00 noon—Registration.
9:00 a.m.–9:45 a.m.—Official Opening.

10:00 a.m.–12:00 noon—OSD/Service Briefings.
12:00 noon–1:30 p.m.—Luncheon (By invitation only).
1:30 p.m.–3:00 p.m.—OSD/Service Briefings.
3:15 p.m.–5:30 p.m.—Subcommittee Meetings.
7:00 p.m.–10:30 p.m.—Official Department of Defense, Reception and Dinner (By invitation only).

Tuesday, November 18, 1980—Williams Air Force Base, Ariz.

8:30 a.m.–5:00 p.m.—Field Trip to Integrated Undergraduate Pilot Training Facilities at Williams Air Force Base

Wednesday, November 19, 1980—Safari Resort Hotel.

8:30 a.m.–10:15 a.m.—Subcommittee Meetings.
10:15 a.m.–11:45 a.m.—Subcommittee Meetings.
11:45 a.m.–1:30 p.m.—"No Host" Luncheon.
1:30 p.m.–4:00 p.m.—Subcommittee Meetings.
6:00 p.m.–7:00 p.m.—Executive Committee and Military Representatives to DACOWITS Meeting.
7:00 p.m.—Business Session. Adjourn.

Members of the public will not be permitted to go on the field trip or attend the social functions.

The following rules and regulations will govern the participation by members of the public at the meeting:

(1) All business sessions, to include Executive Committee sessions, will be open to the public.

(2) Interested persons may submit a written statement and/or make an oral presentation for consideration by the Committee during the meeting.

(3) Persons desiring to make an oral presentation or submit a written statement to the committee must notify Captain Mary J. Mayer, USAF, DACOWITS, Executive Secretary, OASD (Manpower, Reserve Affairs and Logistics), Room 3D322, the Pentagon, Washington, D.C. 20301, (202) 697–5655/5656 by 10 November 1980.

(4) Length and number or oral presentations to be made will depend on the number of requests received from the members of the public.

(5) Oral presentations by members of the public will be permitted only from 7:00 p.m. to 7:30 p.m. on Wednesday, 19 November 1980 before the full Committee.

(6) Each person desiring to make an oral presentation or submit a written statement must provide the DACOWITS Secretariat with 40 copies of the presentation/statement by 10 November 1980.

(7) Persons submitting a written statement only for inclusion in the minutes of the meeting must submit one (1) copy either before or during the meeting or within five (5) days after the close of the meeting.

(8) Members of the public will not be permitted to enter into the oral discussion conducted by the Committee members at any of the sessions; however, they will be permitted to reply to questions directed to them by the members of the Committee.

(9) Members of the public will be permitted to orally question the scheduled speakers if time allows after the official participants have asked questions and/or made comments.

(10) Questions from the public will not be accepted during the subcommittee sessions, the Executive Committee sessions, or the Business Session on Wednesday, 19 November 1980.

Additional information regarding the committee and/or this meeting may be obtained by contacting the DACOWITS Executive Secretary, OASD (MRA&L), The Pentagon, Washington, D.C. 20301.

M. S. Healy,

OSD Federal Register Liaison Office, Washington Headquarters Service, Department of Defense.

October 20, 1980.

[FR Doc. 80–33119 Filed 10–22–80; 8:45 am]

BILLING CODE 3810–70–M

DoD Advisory Group on Electron Devices; Advisory Committee Meeting

Working Group D (Mainly Laser Devices) of the DoD Advisory Group on Electronic Devices (AGED) will meet in closed session 1 December 1980 at the Hughes Aircraft Company, Culver City, California and 2 and 3 December 1980 at JPL/NASA, California Institute of Technology, 4800 Oak Grove Drive, Pasadena, California.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering; the Director, Defense Advanced Research Projects Agency, and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group D meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The laser area includes programs on developments and research related to low energy lasers for such application as battlefield surveillance, target designation, ranging, communications, weapon guidance and data transmission. The review will include classified program details throughout.

In accordance with 5 U.S.C. App 1, 10(d)(1976), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

Dated: October 17, 1980.

M.S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

[FR Doc. 80–33068 Filed 10–22–80; 8:45 am]

BILLING CODE 3810–70–M

DEPARTMENT OF EDUCATION

Asbestos Hazards School Safety Task Force; Meeting

AGENCY: The Asbestos Hazards School Safety Task Force.

ACTION: Notice of Meeting.

SUMMARY: The Acting Deputy Assistant Secretary, Office of Educational Support announces a meeting and proposed agenda of the Asbestos Hazards School Safety Task Force. Notice of this meeting is required by the Federal Advisory Committee Act. This notice also describes the functions of the task force.

DATE: The meeting will be held on November 12, 1980, 10:00 a.m.–5:00 p.m.

ADDRESS: Federal Office Building #6, 400 Maryland Avenue, S.W., Room 2189, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. Herman R. Goldberg, Acting Deputy Assistant Secretary, Office of Educational Support, Room 2079, FOB–6, 400 Maryland Avenue, S.W., Washington, D.C. 20202. (202) 245–8094.

SUPPLEMENTARY INFORMATION: The Asbestos Hazards School Safety Task Force was established under Section 3 of the Asbestos School Hazard Detection and Control Act of 1980, Pub. L. 96–270, (20 U.S.C. 3604, 3605). The task force was established to compile medical, scientific, and technical information on health and safety hazards associated with friable materials emitting asbestos fibers; to compile information on the means of identifying, sampling and testing materials suspected of emitting asbestos fibers; to distribute compiled information to State and local education agencies; to review applications for grants and loans to assit in identifying and eliminating imminent hazards associated with friable asbestos

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building materials in school buildings and to make recommendations to the Secretary on these applications; and to review guidelines established by the Environmental Protection Agency and the Department of Education to implement this Act.

The meeting of the task force is open to the public. The meeting will be held from 10:00 a.m. to 5:00 p.m. on Wednesday, November 12, 1980. The proposed agenda includes:

1. A review of the proposed application packet.
2. A discussion on comments received in response to the notice of proposed rulemaking.
3. An assessment of the progress of the task force.
4. Reports of task force subcommittees.
5. Other items of importance.

Records will be kept of all task force proceedings, and will be available for public inspection in the Office of Educational Support, Room 2079, 400 Maryland Avenue, S.W., Washington, D.C., 20202 between the hours of 8:00 a.m. and 4:30 p.m. week days except Federal holidays.

Dated: October 10, 1980.

Herman R. Goldberg,

Acting Deputy Assistant Secretary.

[FR Doc. 80-33092 Filed 10-22-80; 8:45 am]

BILLING CODE 4000-01-M

Intent To Waive Certain Title IV (Educational Improvement, Resources, and Support) and Title V (State Leadership) of the Elementary and Secondary Education Act Statutory Requirements for the Trust Territory of the Pacific Islands for the Period From July 1, 1980 Through June 30, 1981

AGENCY: Department of Education.

ACTION: Notice of intent.

SUMMARY: Notice is given that, under Section 1003(a) of the Elementary and Secondary Education Act of 1965 (ESEA), the Secretary intends to waive the applicability of certain Title IV and Title V, ESEA, requirements pertaining to the Trust Territory of the Pacific Islands.

ADDRESS: Submit written comments to Dr. Alpheus White, Division of State Educational Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 3010, ROB-3), Washington, D.C. 20202.

EFFECTIVE DATE: The proposed waiver will not be granted until at least 30 days after publication of this notice. All comments must be received on or before November 24, 1980.

FOR FURTHER INFORMATION CONTACT:
Dr. Alpheus White, Telephone: (202) 245-2592.

SUPPLEMENTARY INFORMATION:

A. Authority for Granting a Waiver

The Elementary and Secondary Education Act of 1965 (ESEA) was amended by the Education Amendments of 1978 (Pub. L. 95-561), to authorize the Secretary to waive ESEA requirements for the Trust Territory of the Pacific Islands. In particular, Section 1003(a)(1) of the Act states "(i)f the (Secretary) determines that compliances with any of the requirements of this Act by * * * the Trust Territory of the Pacific Islands is impractical or inappropriate because of conditions or circumstances particular to the Trust Territory, (she) may waive any of those requirements upon the request of (its) State educational agency * * *"

B. Waiver Request

On January 31, 1980, the Trust Territory Bureau of Education requested the Secretary to waive the applicability of certain Titles IV and Title V, ESEA, requirements. This waiver request identifies the requirements contained in sections 404(a)(12) and 522(2), 20 U.S.C. 3084(a)(12) and 3162(2).

These sections require that each jurisdiction participating in Title IV and V, ESEA, describe as one part of its State Plan * * * "a comprehensive plan for the coordination of Federal and State funds for training activities for educational personnel in the State including preservice and inservice training, which plan shall be developed with the involvement of teachers, professional associations, institutions of higher education, and other interested individuals."

The January 31, 1980 waiver request describes why the Title IV and Title V, ESEA, requirements that the State plan include the coordination of training activities are impractical or inappropriate in light of conditions in the Trust Territory. In general, the request is based upon the imminent dissolution of the Trust Territory, scheduled for 1981.

The Commonwealth of the Northern Mariana Islands has been operating as a separate entity, apart from the Trust Territory, since January, 1978. The remainder of the Trust Territory, namely the Marshall and Caroline Islands, has been divided into three political entities: the Government of the Marshall Islands, the Federated State of Micronesia, and the District of Palau. These three entities are presently under the jurisdiction of the High Commissioner of the Trust Territory. Responsibilities for governance, including responsibility for educational programs, are presently being determined by the High Commissioner and representatives of the three entities.

These three entities will have difficulty in identifying individuals to represent the required resources to develop a comprehensive plan. Their geographical location places a financial burden on them if they are required to coordinate training activities as a part of the development of the State plan. In any event, with the impending dissolution of the Trust Territory, it would be extremely difficult for the coordination of training activities to be carried out.

In light of these facts, the requirements imposed by sections 404(a)(12) of Title IV and 522(2) of Title V of ESEA are inappropriate and impractical for the Trust Territory Bureau of Education, serving as a State educational agency, to implement.

C. Notice of the Secretary's Intent To Grant a Waiver

Section 1003(a)(1) of the Elementary and Secondary Education Act of 1965 requires that at least 30 days prior to approving any such request for waiver, the (Secretary) shall "publish in the Federal Register a notice of his intent to grant such a waiver and the terms and conditions upon which such a waiver will be granted."

In accordance with this requirement, notice is hereby given that the Secretary intends to waive the requirements contained in sections 404(a)(12) of Title IV and 522(2) of Title V, ESEA. If granted, this waiver would be effective through the period covered by the approved Title IV and Title V, ESEA State Plans—July 1, 1980 through June 30, 1981. Because of the very limited nature of the proposed waiver, the unique circumstances which justify the waiver and the June 30, 1981 expiration date, the Secretary does not believe that it is appropriate or necessary to attach any additional terms or conditions to the waiver.

D. Opportunity for Public Comment

Public comment is invited on this notice of intent. Interested persons may send written comments to Dr. Alpheus L. White, at the address at the beginning of this notice. All comments must be received on or before November 24, 1980. All comments will be considered before a final determination is made regarding this waiver request.

Dated: October 17, 1980.

(Catalog of Federal Domestic Assistance No. 13.570 Libraries and Learning Resources, 13.571 Improvement in Local Educational Practices, 13.577 Guidance, Counseling, and Testing, and 13.486 Strengthening State Educational Agency Management)

Steven A. Minter,

Under Secretary of Education.

[FR Doc. 80-33104 Filed 10-22-80; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Council for Career Education; Meeting

AGENCY: Department of Education, National Advisory Council for Career Education.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming meeting of the National Advisory Council for Career Education. It also describes the functions of the Council. Notice of the meetings is required pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463). This document is intended to notify the general public of their opportunity to attend.

DATE: November 6-7, 1980.

ADDRESS: Department of Transportation Building, 400 7th Street, S.W., Room 8334, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT:
Nancy N. Swanby, Department of Education, Office of Education, 7th and D Streets, S.W., ROB 3, Room 3108A, Washington, D.C. 20202, (202) 245-2331.

The National Advisory Council for Career Education is established under Section 406 of the Education Amendments of 1974, P.L. 93-380 (88 Stat. 552, 553). The Council is directed to:

Advise the Secretary of Education and the Assistant Secretary for Elementary and Secondary Education on the implementation of Section 406 of the Education Amendments of 1974, Sections 331-336 of the Education Amendments of 1976, and the Career Education Incentive Act and carry out such advisory functions as it deems appropriate, including reviewing the operation of these sections and all other programs of the Department of Education pertaining to the development and implementation of career education, evaluating their effectiveness in meeting the needs of career education throughout the United States, and in determining the need for further legislative remedy in order that all citizens may benefit from the purposes of career education as described in Section 406 and in the Career Education Incentive Act.

The Secretary, to the extent practicable, seeks the advice and assistance of the Council concerning the lifelong learning activities authorized by Sec. 133 of Part B of Title I of the Higher Education Act of 1965, as amended.

The meeting of the Council shall be open to the public. The meeting will be held on Thursday, November 6 and Friday, November 7, 1980 and will begin at 9:00 A.M. and end at 4:30 P.M. The meeting will be held at the Department of Transportation Building, 400 7th Street, S.W., Washington, D.C.

The proposed agenda includes:

Issues in K-12 and Postsecondary Education.

Council Discussion—Old and New Business.

Records shall be kept of all Council proceedings and shall be available 14 days after the meeting for public inspection between the hours of 8:00 A.M. to 4:30 P.M., Monday through Friday at the Office of Career Education located at 7th and D Streets, S.W., Room 3100, Washington, D.C. 20202.

Signed at Washington, D.C. on September 30, 1980.

John Lindia,

Delegate, National Advisory Council for Career Education.

[FR Doc. 80-33326 Filed 10-22-80; 11:25 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA DOCKET NO. 80-CERT-031]

Federal Paper Board Co., Inc.; Recertification of Eligible Use of Natural Gas to Displace Fuel Oil

On September 18, 1980, Federal Paper Board Company, Inc. (Federal Paper), 75 Chestnut Ridge Road, Montvale, New Jersey 07645, filed an application pursuant to 10 CFR Part 595 for recertification of an eligible use of up to 18,000 Mcf of natural gas per day to displace approximately 2,850 barrels of No. 6 fuel oil (2.1 percent maximum sulfur) per year at its Riegelwood Mill located in Riegelwood, North Carolina, with the Administrator of the Economic Regulatory Administration (ERA). The certified daily volumes are only expected to be available on an intermittent basis. The eligible sellers of the natural gas are the East Tennessee Natural Gas Company and the U.G.C. Energy Company. The gas will be transported by the Tennessee Gas Pipe Line Company, the North Carolina Gas Company, and the Transcontinental Gas Pipe Line Corporation. Notice of that application was published in the Federal Register (45 FR 65652, October 3, 1980) and an opportunity for public comment was provided for a period of ten (10) calendar days from the date of publication. No comments were received.

On October 3, 1979, Federal Paper received the original certification (ERA Docket No. 79-CERT-086) of an eligible use of natural gas at the Riegelwood Mill facility for a period of one year, which expired October 2, 1980. Although this recertification is being issued after the expiration date of the original certification, Federal Paper had informed ERA that it did not expect to use this gas during the interim period. Thus, the lack of continuity with the original certificate will not result in any reduction in the amount of fuel oil displaced.

The ERA has carefully reviewed Federal Paper's application for recertification in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that Federal Paper's application satisfies the criteria enumerated in 10 CFR Part 595, and, therefore, has granted the recertification and transmitted that recertification to the Federal Energy Regulatory Commission. More detailed information including a copy of the application, transmittal letter, and the actual recertification are available for public inspection at the Division of Natural Gas Docket Room, Room 7108, RG-55, 2000 M Street, N.W., Washington, D.C. 20461, from 8:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., October 16, 1980.

F. Scott Bush,

Assistant Administrator, Office of Regulatory Policy, Economic Regulatory Administration.

[FR Doc. 80-33120 Filed 10-22-80; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-80-003; (OFC Case No. 55381-2900-01-12)]

Republic Steel Corp.; Seeking Permanent Fuels Mixture Exemption

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order granting an exemption from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: On January 16, 1980, Republic Steel Corporation (Republic) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) seeking a permanent fuels mixture exemption for a new major

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fuel burning installation (MFBI) from certain provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*). The Act prohibits the use of petroleum or natural gas as a primary energy source in certain new MFBIs. ERA accepted Republic's petition on February 15, 1980. Applicable criteria for petitioning for exemption from the prohibitions of FUA are published at 10 CFR Part 500, *et seq.* (Interim Rules). ERA published Final Rules relating to New Facilities on June 6, 1980 (45 FR 38278) which became effective August 5, 1980.

Republic requested a permanent fuels mixture exemption under 10 CFR 505.28 of the interim rules (44 FR 28530 and FR 28950) for a field-erected boiler to be constructed at its Warren Works Steel Plant, Warren, Ohio, in order to burn a mixture of blast furnace gas or coke oven gas (alternate fuels) and natural gas or No. 6 fuel oil. Republic stated that the amount of natural gas or oil it proposed to use would not exceed 25 percent of the total annual Btu heat input of the primary energy sources used in that unit.

The MFBI (designated as No. 3 high pressure (HP) boiler by Republic), will have a design heat input rate capability of 487 million Btu's per hour and a steam generating capacity of 300,000 pounds per hour.

Pursuant to Section 212(d) of the Act, and subject to specified terms and conditions stated herein, this order grants a permanent fuels mixture exemption to Republic to permit the use of natural gas and/or No. 6 fuel oil in a mixture with blast furnace gas and/or coke oven gas in the No. 3 HP boiler. However, the total amount of natural gas and/or No. 6 fuel oil used in the unit shall not exceed 25 percent of the total annual Btu heat input of the primary energy sources used in that unit.

In accordance with Section 702(a) of the Act, this order shall not take effect earlier than December 22, 1980.

FOR FURTHER INFORMATION CONTACT:

Constance L. Buckley, Chief, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street NW., Room 3128, Washington, D.C. 20461; Phone (202) 653–4228.

William H. Freeman, Case Manager, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street NW., Room 3128–F, Washington, D.C. 20461; Phone (202) 653–4235.

Edward Jiran, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6G–087, 1000 Independence Avenue SW., Washington, D.C. 20585; Phone (202) 252–2967.

The public file containing a copy of all documents and supporting materials on this proceeding is available for inspection upon request at: ERA, Room B–110, 2000 M Street NW., Washington, D.C., Monday through Friday, 8:00 a.m.–4:30 p.m.

SUPPLEMENTARY INFORMATION: Republic petitioned ERA, on January 18, 1980, for a permanent exemption from the prohibitions of Title II of FUA for a field-erected boiler located at its Warren Works Steel Plant, Warren, Ohio. The petition requested a permanent fuels mixture exemption for the boiler, identified by Republic as No. 3 HP boiler, to burn a mixture of blast furnace gas and/or coke oven gas (alternate fuels) and natural gas or No. 6 fuel oil under the provisions of § 505.28 of ERA's interim rule. In its petition Republic demonstrated to the satisfaction of ERA that:

(1) It proposes to use a mixture of natural gas and/or petroleum and an alternate fuel (blast furnace gas and/or coke oven gas) as a primary energy source; and

(2) the amount of natural gas and/or No. 6 fuel oil proposed for use in the mixture will not exceed the minimum percentage of the total annual Btu heat input of the primary energy sources needed to maintain operational reliability of the installation consistent with maintaining a reasonable level of fuel efficiency.

If a fuels mixture exemption is granted to an MFBI, ERA may not require that the percentage of natural gas (or petroleum) used in the mixture be less than 25% of the total annual Btu heat input of the primary energy sources of the installation.

Republic stated that the amount of natural gas to be used in the proposed fuel mixture would not exceed 25% of the total annual Btu heat input of the primary energy sources of the MFBI. Republic submitted a duly authorized certification to that effect for the unit.

Preceding this determination and the issuance of this order, and in accordance with the procedural requirements of FUA and ERA's implementing interim rules, ERA accepted Republic's petition for a permanent fuels mixture exemption on February 15, 1980. Notice of that acceptance and a statement of the reasons contained in the petition were published in the **Federal Register** on February 26, 1980 (45 FR 12478) commencing a 45-day public comment period pursuant to Section 701 of FUA. As required by Sections 701(f) and (g) of the Act, ERA provided a copy of Republic's petition to the Environmental Protection Agency and the Federal Trade Commission for their comment. During this period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed on April 11, 1980. No comments were received and a public hearing was not requested.

On August 11, 1980, ERA published in the **Federal Register** a Notice of Availability of a Tentative Staff Determination recommending that Republic's petition be granted and providing a 14 day period for interested persons to submit written comments or to request a public hearing (45 FR 53201). That period ended August 25, 1980. Comments were filed only by Republic. No public hearing was requested.

In its comments to ERA, Republic contended that ERA does not have the authority to restrict fuel uses excluded from the definition of primary energy source.

ERA believes that the statement in the Tentative Staff Determination concerning the amounts of fuel to be allowed under Section 103(a)(15)(A) of the Act as an exclusion from the definition of primary energy source, where a fuels mixture exemption has been granted, is consistent with the purposes of the Act and within the authority of ERA. Section 103(a)(15) provides that the minimum amounts which are excluded are subject to rules prescribed by the Secretary. In the final rule implementing FUA, in connection with the definition of "Primary energy source" (10 CFR 500.2), ERA has set the excluded amount at zero where a fuels mixture exemption has been granted. The footnote to the definition provides: "For purposes of subparagraph (1), no fuel will be excluded from the definition of primary energy source where a mixtures exemption has been granted under Parts 503 or 504 of these regulations. The minimum amount of natural gas or petroleum provided by a mixtures exemption to maintain reliability of operation, consistent with maintaining a reasonable level of fuel efficiency is in lieu of the minimum amount required for unit ignition, start-up, testing, flame stabilization, and control uses." It should be noted that the rule does not include, as part of the exempt fuel covered by a mixtures exemption, any amount of fuel which could otherwise be excluded from the definition of primary energy source. Whenever, with respect to exemptions other than a fuels mixture, a given amount of excluded fuel is authorized (for example the 15% presumptive exclusion provided for in the final rule) it is in addition to the fuel that is exempt as a primary energy source. ERA has determined that this regulatory treatment (i.e., to set the amount of fuel which could be excluded under Section 103(a)(15) at zero) where a mixtures exemption is granted, best accommodates the purposes of the Act in minimizing the amounts of petroleum and natural gas to be used for congruent purposes.

Republic requested that paragraph 5 of the recommended terms and conditions found in the Tentative Staff Determination be deleted and ERA has not included that provision in the order.

Subsequent to the issuance of the Notice of Availability of the Tentative Staff Determination on Republic's petition, ERA published a final rule pertaining to new facilities (45 FR 38276 and 38302, June 6, 1980) which became effective on August 5, 1980. Accordingly, this order is issued under the provisions of the final rule.

The implementing provisions for the fuels mixture exemption authorized by Section 212(d) of the Act are found at 10 CFR 503.38 of the final rule. ERA has determined that the conclusions reached in the Tentative Staff Determination, prepared under the provisions of the interim rules, are consistent with the provisions of the final rule. Therefore the terms and conditions of this order incorporate the specific terms and conditions required by 10 CFR 503.38(e) of the final rule.

ERA has determined that Republic has met all requirements for a permanent fuels mixture exemption from the prohibitions of Title II of FUA to enable it to burn a mixture of blast furnace gas and/or coke oven gas (alternate fuels) and natural gas or No. 6 fuel oil in No. 3 HP boiler. ERA has also determined that by its certification, Republic has demonstrated that the total amount of natural gas and/or No. 6 fuel oil to be used in the fuels mixture with alternate fuels will not exceed 25% of the total annual Btu heat input of the primary energy sources of the boiler. Republic, therefore, has satisfied the evidentiary requirement of Section 212(d) (1)(B) of the Act.

Pursuant to Section 212(d) of the Act, and subject to the terms and conditions stated below, ERA hereby grants Republic a permanent fuels mixture exemption to permit the use of natural gas and/or No. 6 fuel oil in a mixture with blast furnance gas and coke oven gas in No. 3 HP boiler. As specified in the terms and conditions of this order, the total amount of natural gas and/or No. 6 fuel oil used in the boiler shall not exceed 25% of the total annual Btu input of the primary energy sources of that boiler.

This order takes into account the purposes for which the minimum percentage of natural gas provided by a fuels mixture exemption is to be used, i.e., to maintain reliability of operation consistent with maintaining a reasonable level of fuel efficiency. Therefore, ERA will not exclude from the definition of primary energy source any fuel used in the boiler for the purposes of unit ignition, startup, testing, flame stabilization and control.

Terms and Conditions: Section 214(a) of the Act gives ERA the authority to attach terms and conditions to any order granting an exemption. Based upon analysis of the information contained in the record of this proceeding, this order is granted subject to the following terms and conditions:

1. The total combined use of petroleum and/or natural gas may not exceed 25 percent of the total annual Btu heat input of the primary energy source for No. 3 HP Boiler.

2. All steam pipes must be insulated and all steam traps properly maintained; and

3. The quality of any petroleum to be burned in the unit will be the lowest grade available, which is technically feasible, and capable of being burned consistent with applicable environmental requirements.

4. In accordance with the reporting requirement in Section 505.38(d), Republic shall submit an annual report to the Economic Regulatory Administration (ERA), OFC Case Control Unit, Box 4629, Room 3214, 2000 M Street, NW., Washington, D.C. 20461, each year within 30 days after the anniversary of the date No. 3 HP Boiler is placed in service containing a certified statment identifying the actual quantities of blast furnace gas, coke oven gas, natural gas (in MCF), and petroleum (in barrels) used in the unit during the year, as well as the heating value (in Btu's) of each of those fuels. The following format for quantities shall be used:

Fuel type	Amount of fuel used (Mcf or bbls)	Btu equivalent	Percent of total Btu's heat input

(Cite OFC Case Number 55381–2900–01–12 on all reports.)

The certification of fuel use must be executed by a duly authorized representative of Republic.

The exemption granted by this order shall not become effective earlier than December 22, 1980.

Pursuant to Section 702(c) of the Act, any person aggrieved by this order may at any time before December 22, 1980 petition for judicial review in accordance with the procedures outlined in 10 CFR 501.69.

Based upon information provided by Republic, ERA has conducted an analysis which has been reviewed by DOE's Office of Environment, with consultation from the Office of the General Counsel, and DOE has concluded that the granting of these exemptions will not be a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA). Accordingly, neither an environmental impact statement nor an environmental assessment is required.

Issued in Washington, D.C., on October 16, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-33121 Filed 10-22-80; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Volume 302]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: October 17, 1980.

BILLING CODE 6450-85-M

JD NO	JA DKT	API NO	SEC D WELL NAME	FIELD NAME	PROD	PURCHASER
OHIO DEPARTMENT OF NATURAL RESOURCES						
*WILLIAM F HILL			RECEIVED: 10/07/80 JA: OH			
8100857	05105	3407520989	108 D WARREN MASSIE #1		0.0	COLUMBIA GAS TRANSMI
8100858	05106	3407521577	108 D WARREN MASSIE #2		0.0	COLUMBIA GAS TRANSMI
OKLAHOMA CORPORATION COMMISSION						
*AMERICAN QUASAR PETROLEUM CO			RECEIVED: 10/06/80 JA: OK			
8100808	05552	3509520179	107 BEARD #1	SEC 3 T8S R4E	1825.0	NATURAL GAS PIPE LIN
*AMOCO PRODUCTION CO			RECEIVED: 10/07/80 JA: OK			
8100869	05282	3500721729	103 ANGLETON GAS UNIT B #2	MOCANE LAVERNE	255.0	PANHANDLE EASTERN PI
*ANDOVER OIL COMPANY			RECEIVED: 10/06/80 JA: OK			
8100814	05525	3501720819	103 E M LEICHENBERGER #35-1	SE RICHLAND	100.0	PHILLIPS PETROLEUM C
8100833	05604	3501720904	103 KEMP #7-1	RICHLAND	100.0	PHILLIPS PETROLEUM C
*ANDOVER OIL COMPANY			RECEIVED: 10/07/80 JA: OK			
8100870	05550	3508321056	103 KRATKY #34-1	WILDCAT	55.0	CHAMPLIN PETROLEUM C
*BLAIK OIL COMPANY			RECEIVED: 10/07/80 JA: OK			
*8100883	05476	3504722102	103 THOMAS UNIT #3	SOUNER TREND	61.0	EXXON CO USA
*CITIES SERVICE COMPANY			RECEIVED: 10/06/80 JA: OK			
8100840	05548	350072176?	102 HAMM A #1	EAST LORENA	512.0	NORTHERN NATURAL GAS
8100826	05498	3506120320	102 TREASURE COVE A #2 (CRUMMELL)	NORTH RUSSELLVILLE	88.3	ARKANSAS LOUISIANA G
8100839	05549	3513921224	103 WEAR A #1	PANOMA	136.0	PANHANDLE EASTERN PI
8100841	05547	3500721736	102 WINDSOR A #1	LORENA	202.0	NORTHERN NATURAL GAS
*CLARK RESOURCES INC			RECEIVED: 10/06/80 JA: OK			
8100806	05555	3504721876	103 KREJCI #8-1	SOUNER TREND	89.0	PANHANDLE EASTERN PI
8100807	05553	350472220?	103 MALY #21-1	SOUNER TREND	182.5	PANHANDLE EASTERN PI
8100805	05556	3504722044	103 SIMUNEK #18-1	SOUNER TREND	115.5	PANHANDLE EASTERN PI
8100804	05557	3507322245	103 STURGEON #2-1	SOUNER TREND	53.9	CITIES SERVICE GAS C
*CLARK RESOURCES INC			RECEIVED: 10/07/80 JA: OK			
8100871	05554	3507322321	103 STAMBAUGH #5-1	SOUNER TREND	275.6	CITIES SERVICE GAS C
*CONOCO INC			RECEIVED: 10/06/80 JA: OK			
8100820	05507	3503920280	102 SNIDER NO 1-A	S ARAPAHO	1.9	MICHIGAN WISCONSIN P
*COTTON PETROLEUM CORPORATION			RECEIVED: 10/06/80 JA: OK			
8100799	05572	3501721283	103 MEINES NO 1	PIEDMONT NORTH	5.0	PHILLIPS PETROLEUM C
*COTTON PETROLEUM CORPORATION			RECEIVED: 10/07/80 JA: OK			
8100866	05573	3515321012	103 PIERSON B NO 1	SE FARGO	360.0	NORTHERN NATURAL GAS
*F M BUXTON			RECEIVED: 10/06/80 JA: OK			
8100813	05529	3508300000	103 STATE 16 NO 1	SOUNER TREND	110.0	CONOCO INC
*FERGUSON OIL & GAS COMPANY INC			RECEIVED: 10/07/80 JA: OK			
8100881	05346	3507920316	103 CLUCK NO 1	KINTA	219.0	ARKANSAS LOUISIANA G
*GETTY OIL COMPANY			RECEIVED: 10/06/80 JA: OK			

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JD NO	JA DKT	API NO	SEC D WELL NAME	FIELD NAME	PROD	PURCHASER
8100812	05534	3501700000	103 M L HARRINGTON #2	WATONGA TREND	0.0	OKLAHOMA GAS & ELECT
*GULF OIL CORPORATION			RECEIVED: 10/07/80 JA: OK			
8100874	05585	3501721212	103 COMPTON DRIS #2-26	NORTH FORK	243.0	PHILLIPS PETROLEUM C
*HAMM PRODUCTION CO			RECEIVED: 10/07/80 JA: OK			
8100873	05583	3509321741	103 WIGGINS-ROYSEN #1	RINGWOOD	237.3	UNION TEXAS PETROLEU
*HARPER OIL COMPANY			RECEIVED: 10/06/80 JA: OK			
*8100797	05577	3510900000	108 ALDEN #1	N EDMOND	12.0	CITIES SERVICE GAS C
8100795	05579	3504700000	108 CHESTNUT #5	N DRUMMOND	7.0	UNION TEXAS PETROLEU
*8100825	05522	3503920264	102 GEORGE #1	W ARAPAHO	565.0	NATURAL GAS PIPELINE
*8100796	05578	3510900000	108 J GRIFFIN #1	N EDMOND	17.0	CITIES SERVICE GAS C
8100815	05521	3508321268	103 LILA #1	S ELK HORN	75.0	EASON OIL CO
*8100832	05581	3507321093	108 MCKEEVER #1 28-18-7	SOONER TREND	7.0	PHILLIPS PETROLEUM C
8100794	05580	3507320520	108 MOERY #1	SOONER TREND	13.0	PHILLIPS PETROLEUM C
8100798	05576	3500300000	108 WHITE 13-1	E ALINE	9.6	AMINOIL USA INC
*HARPER OIL COMPANY			RECEIVED: 10/07/80 JA: OK			
8100865	05584	3501120726	108 KENT #1	N W GEARY	9.0	OKLAHOMA NATURAL GAS
*HESTON OIL CO			RECEIVED: 10/06/80 JA: OK			
8100809	05539	3509321765	103 BERTHA #8-1	NE FAIRVIEW	36.5	OKLAHOMA NATURAL GAS
*JAMES D HARMAN			RECEIVED: 10/07/80 JA: OK			
8100868	03149	3513700000	108 DUMA SPEARS	SHO-VEL-TUM	6.3	GETTY OIL CO
*KRUMME OIL CO			RECEIVED: 10/06/80 JA: OK			
8100816	05518	3511120487	108 MCNUTT #1	BEGGS	2.6	PHILLIPS PETROLEUM C
8100817	05519	3511120843	108 MCNUTT #2	BEGGS	2.6	PHILLIPS PETROLEUM C
*MUSTANG PRODUCTION CO.			RECEIVED: 10/07/80 JA: OK			
8100872	05560	3501121006	103 ALLREAD #1-33	GREENFIELD	280.0	MICHIGAN WISCONSIN P
*NATIONAL COOP REFINERY ASSOC			RECEIVED: 10/06/80 JA: OK			
8100823	05603	3505920810	102 CAL-RAY #1	NORTHWEST LOVEDALE	64.0	NATURAL GAS PIPE LIN
*QUINTIN LITTLE CO			RECEIVED: 10/06/80 JA: OK			
8100819	05517	3509500000	103 CARRIE LNU LITTLE #1-19	CUMBERLAND	700.0	LONE STAR GAS CO
*RICKS EXPLORATION CO			RECEIVED: 10/06/80 JA: OK			
8100824	05530	3500721712	103 WOLF 17A	MOCANE-LAVERNE	150.0	MICHIGAN-WISCONSIN P
*RICKS EXPLORATION CO			RECEIVED: 10/07/80 JA: OK			
8100860	05599	3515320980	103 BENNETT 29B	S W WOODWARD	20.0	PHILLIPS PETROLEUM C
8100863	05596	3515320966	103 BONNIE 29A	SHARON WEST	220.0	PHILLIPS PETROLEUM C
8100875	05587	3515321042	103 FENSMAN 33A	WEST SHARON	20.0	PHILLIPS PETROLEUM C
8100864	05593	3507322362	103 GLAZIER 19A	S LOYAL	100.0	CITIES SERVICE GAS C
8100859	05600	3515320911	103 LYLE 28A	SHARON WEST	2.0	PHILLIPS PETROLEUM C
8100862	05597	3507322086	103 MURPHY 2A	ALTONA SE	300.0	PHILLIPS PETROLEUM C
8100861	05598	3515320946	103 PHILLIPS 26A	WAYNOKA NE	180.0	PANHANDLE EASTERN PI
8100884	05602	3515321062	103 TOMMY 31 B	S W SHARON	28.0	PHILLIPS PETROLEUM C
*ROBERT E FAERLY SR			RECEIVED: 10/06/80 JA: OK			
8100827	05433	3505100000	103 EBERLY & MEADE SMDEMAKE #1-29	S TABLER	73.0	MOBIL OIL CORP
*SAMEDAN OIL CORPORATION			RECEIVED: 10/06/80 JA: OK			
8100847	05540	3501721216	102 BONEBRAKE #1		225.0	PHILLIPS PETROLEUM C
*SAMEDAN OIL CORPORATION			RECEIVED: 10/07/80 JA: OK			
8100877	05609	3501721310	103 DYLER #2	RICHLAND	100.0	PHILLIPS PETROLEUM C
*SEARCH DRILLING CO			RECEIVED: 10/06/80 JA: OK			
8100828	05430	3500721770	103 LEONARD #1-33	FORGAN	445.0	
*SERVICE DRILLING CO			RECEIVED: 10/06/80 JA: OK			
8100816	05520	3513121082	103 FRASIER #4	WEST TALALA	36.0	DIAMOND S GAS SYSTEM
*SHELL OIL CO			RECEIVED: 10/07/80 JA: OK			
8100879	05611	3505120843	102 CUMMINGS 1-25	WEST CHICKASHA	350.0	ARKANSAS LOUISIANA G

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JD NO	JA DKT	API NO	SEC D	WELL NAME	FIELD NAME	PROD	PURCHASER
8100878	n5610	3505920794	103	MOORE 2=10	MOCANE LAVERNE	450.0	MICHIGAN WISCONSIN P
=TENNECO OIL COMPANY				RECEIVED: 10/06/80 JA: OK			
8100834	n5608	3512920377	102	SMITH 1=19	BERLIN	252.0	EL PASO NATURAL GAS
=TEXAS OIL & GAS CORP				RECEIVED: 10/06/80 JA: OK			
8100803	n5562	3509321711	103	CONDREAY #1	N E BEILING	155.0	DELHI GAS PIPELINE C
8100801	n5567	3507302232	103	HUMPHREY A #1	ALTONA	238.0	DELHI GAS PIPELINE C
8100835	n5569	3504321009	103	JEFFREY #1	VICI	90.0	
8100837	n5564	3500721728	103	SAM #1	PLAINVIEW	250.0	
8100802	n5566	3501721407	103	SCHWARZ A #1	RICHLAND	95.0	DELHI GAS PIPELINE C
8100838	n5563	3507321917	103	STROUD #1	ALTONA	128.0	DELHI GAS PIPELINE C
8100836	n5568	3512120645	103	WEAVER D #1	KIOWA	0.0	
8100800	n5570	3501720701	103	ZUM MALLEN #1	RICHLAND	526.0	DELHI GAS PIPELINE C
=TEXAS OIL & GAS CORP				RECEIVED: 10/07/80 JA: OK			
8100867	n5565	3504722057	103	THEILEN #1	BOONER TREND	99.0	
=TOWER OIL AND GAS COMPANY INC				RECEIVED: 10/06/80 JA: OK			
8100821	n5607	3507322336	103	DROKE #1	BOONER TREND	547.5	ARKANSAS LOUISIANA G
=TOWNSEND OPERATING CO INC				RECEIVED: 10/06/80 JA: OK			
8100831	n8195	3513321261	102	CHRISTIAN NO 7	ADA	150.0	ARKANSAS LOUISIANA G
=UNION OIL COMPANY OF CALIF				RECEIVED: 10/06/80 JA: OK			
8100822	n5606	3507920360	103	GOLDSBOROUGH #2=29	RED OAK NORRIS	910.0	ARKANSAS LOUISIANA G
=UNIVERSAL RESOURCES CORPORATION				RECEIVED: 10/06/80 JA: OK			
8100846	n5541	3501721168	103	BOYD 1=12	YUKON NW	150.0	DELHI GAS PIPELINE C
8100843	n5545	3501720860	103	CANNON 1=33	RICHLAND S	90.0	PHILLIPS PETROLEUM C
8100844	n5543	3501721416	103	FREDRICK 1=17	RICHLAND N	175.0	OKLAHOMA GAS & ELECT
8100845	n5542	3501721167	103	MORRIS 1=11	YUKON NW	340.0	DELHI GAS PIPELINE C
8100842	n5546	3509321726	103	WOODS 2=28	CEDAR SPRINGS S	80.0	DELHI GAS PIPELINE C
=WILLIAM M FULLER				RECEIVED: 10/06/80 JA: OK			
8100829	n4561	3504721879	102	LOUIS KREJCI NO 2	EAST WAUKOMIS	350.0	PANHANDLE EASTERN PI
=WALKER & WITMROW INC				RECEIVED: 10/07/80 JA: OK			
8100876	n5605	3501721385	103	DELANA 8=1	NORTH YUKON	125.0	DELHI GAS PIPELINE C
=WALTER A KELLY JR				RECEIVED: 10/07/80 JA: OK			
8100882	n5473	3511921061	103	EBERHART #1	NO MARCH SEC 29=19N=5E	5.0	COLORADO GAS COMPRES
=WARREN DRILLING CO INC				RECEIVED: 10/06/80 JA: OK			
8100810	n5536	3509321698	103	DRECHSLER #1	RINGWOOD	91.0	UNION TEXAS PETROLEU
8100848	n5538	3500320697	103	MILO CRAIG #2	RINGWOOD	100.0	UNION TEXAS PETROLEU
8100811	n5535	3509300000	103	PERCY #1	RINGWOOD	150.0	PIONEER GAS PRODUCTS
=WARREN DRILLING COMPANY INC				RECEIVED: 10/06/80 JA: OK			
8100830	n3482	3509300000	103	CUNNINGHAM #1	OKEENE NORTHWEST	100.0	PHILLIPS PETROLEUM C
=WM J OCONNOR				RECEIVED: 10/07/80 JA: OK			
8100880	n5615	3500320711	103	DEVEREAUX #1	OAKDALE	180.0	

UTAH DIVISION OF OIL,GAS, & MINING

=BELCO PETROLEUM CORPORATION				RECEIVED: 10/06/80 JA: UT			
8100851	K=111=13	4304730611	103	STAGECOACH 18=17 30614	STAGECOACH WASATCH	0.0	MOUNTAIN FUEL SUPPLY
=PETRODYNE PRODUCTION CO				RECEIVED: 10/06/80 JA: UT			
8100850	K=127=1	4304730695	102	JENSEN #3		139.0	

VIRGINIA DEPARTMENT OF LABOR & INDUSTRY

=CLINCHFIELD COAL CO				RECEIVED: 10/06/80 JA: VA			
8100853		4505119828	108	AYERS & ASHTON 157	NORA	6.0	KENTUCKY=WEST VIRGIN
8100855		4505119864	108	J W WRIGHT 212	NORA	7.3	KENTUCKY=WEST VIRGIN

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JD NO	JA DKT	API NO	SEC D	WELL NAME	FIELD NAME	PROD	PURCHASER
8100854		4505119856	108	LOVELL STANLEY 202	NORA	6.0	KENTUCKY=WEST VIRGIN
8100856		4505119849	108	W J RING 190	NORA	7.2	KENTUCKY=WEST VIRGIN

** U.S. GEOLOGICAL SURVEY = CASPER,WY

=NORTHWEST EXPLORATION COMPANY				RECEIVED: 10/06/80 JA: CO 5			
8100849	CC 1150=9	0510308057	103	PHILADELPHIA CREEK #5	CATHEDRAL	37.0	NORTHWEST PIPELINE C

** BUREAU OF INDIAN AFFAIRS, OSAGE AGENCY, PAWHUSKA,OK

=V N OIL CO				RECEIVED: 10/06/80 JA: OK 8			
8100852		3511300000	103	STUART 1=2	QUAPAW	75.0	CITIES SERVICE GAS C

BILLING CODE 6450-85-C

Other Purchasers—Volume No. 302

8100796 Champlin Petroleum Co
8100797 Champlin Petroleum Co
8100825 Ong Western Inc
8100832 Petro Lewis Corp
8100883 Panhandle Eastern Pipeline Co

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" after the section code. Estimated annual production (PROD) is in million cubic feet (MMcf). An (*) preceeding the control number indicates that other purchasers are listed at the end of the notice.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before November 7, 1980.

Please reference the FERC Control Number (JD No.) in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-32684 Filed 10-22-80; 8:45 am]

BILLING CODE 6450-85-M

ENVIRONMENTAL PROTECTION AGENCY

[A5-FRL 1628-6]

Region V: Granite City Steel

In the matter of the applicability of Title I, Part C of the Clean Air Act (the Act), as amended, 42 U.S.C. 7401 *et seq.*, and the Federal regulations promulgated thereunder at 40 CFR 52.21 (43 FR 26388, June 19, 1978) for the Prevention of Significant Deterioration of Air Quality (PSD), to Granite City Steel, Granite City, Illinois.

On May 5, 1979, Granite City Steel submitted a request to the U.S. Environmental Protection Agency (U.S. EPA), Region V office, for a determination of applicability of the regulations for PSD.

On August 29, 1980, Granite City Steel was notified that it is not subject to a PSD review.

This determination does not relieve Granite City Steel of the responsibility to comply with the control strategy and all local, State and Federal regulations which are part of the applicable State Implementation Plan, as well as all other applicable Federal, State and local requirements.

This determination may now be considered final agency action which is locally applicable under section 307(b)(1) of the Act and therefore a petition for review may be filed in the U.S. Court of Appeals for the Seventh Circuit by any appropriate party. In accordance with section 307(b)(1), petitions for review must be filed sixty days from the date of this notice (December 22, 1980).

For further information contact Kathy Kline, Acting Chief, Compliance Section, Region V, U.S. EPA, 230 South Dearborn Street, Chicago, Illinois 60604. (312) 353-2090.

John McGuire,

Regional Administrator, Region V.

Dr. John G. Manda,

Vice President, Environmental Control Granite City Steel, 20th and Madison, Granite City, Illinois

Dear Dr. Manda: This is in reference to your application for a permit to reconstruct coke oven battery "B" under the regulations for the Prevention of Significant Deterioration of Air Quality (PSD) at 45 FR 52735, August 7, 1980 (40 CFR 52.21).

As a result of the *Alabama Power Co.* vs. *Douglas M. Costle* (73-1006 and consolidated cases) ruling on December 14, 1979, and the PSD regulations promulgated on August 7, 1980, at 45 FR 52736, the reconstruction of the "B" battery is not subject to the PSD regulations.

The U.S. Environmental Protection Agency has determined that the reconstruction of "B" battery by Granite City Steel is not a major modification to the iron and steel mill as there will be no net increase in emission, therefore, no PSD permit is required [45 FR 52736(b)(3)(VI), August 7, 1980].

This exemption from PSD review does not relieve Granite City Steel of the responsibility to comply with the control strategy and all local, State and Federal regulations which are part of the applicable State Implementation Plan, as well as all other applicable Federal, State and local requirements.

If you have further questions, contact Kay Kamalick at (312) 353-2090.

Very truly yours,

Sandra S. Gardebring,

Director, Enforcement Division.

cc:

Daniel Goodwin,

Manager, Division of Air Pollution Control, Illinois Environmental Protection Agency.

Edward E. Reich,

Director, Division of Stationary Source Enforcement (EN-341).

bcc:

Steve Rothblatt, Palsie/Thayll.

August 29, 1980.

[FR Doc. 80-31320 Filed 10-22-80; 8:45 am]

BILLING CODE 6560-26-M

[PH-FRL 1640-4; PF-205]

Dow Chemical Co.; Filing of Pesticide and Food Additive Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that Dow Chemical Co., P.O. Box 1706, Midland, MI 48640, has submitted notices for filing for a pesticide and food additive petition, for the combined residues of the insecticide chloropyrifos [methyl[*O,O*-dimethyl*O*-(3,5,6-trichloro-2-pyridyl)]phosphorothioate] and its metabolite 3,5,6-trichloro-2-pyridinol in or on the certain raw agricultural commodities and on food items.

ADDRESS: Written comments to: Jay S. Ellenberger, Product Manager (PM) 12, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-303, 401 M St., SW., Washington, D.C. 20460.

Written comments may be submitted while a petition is pending before the agency. The comments are to be identified by document control number "[PF-205]" and the specific petition number. All written comments filed pursuant to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Jay S. Ellenberger (202-426-2635).

SUPPLEMENTARY INFORMATION: EPA gives notice that the following pesticide petitions have been submitted to the Agency to establish a tolerance and a food additive regulation for combined residues of chloropyrifos in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each specific petition.

PP OF2423. Proposes amending 40 CFR 180.342 by establishing tolerances for the combined residues of the insecticide chloropyrifos-methyl[*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl)] phosphorothioate and its metabolite 3,5,6-trichloro-2-pyridinol in or on the following raw agricultural commodities:

Commodities	Parts per million
Barley, corn, oats, rice, sorghum, and wheat grain	6.0
Eggs	0.05
Milk, fat	0.1
Milk, whole	0.02
Meat of cattle, goats, hogs, horses, and sheep	0.1
Fat of cattle, goats, and sheep	0.2
Fat of hogs and horses	0.3
Meat byproducts of cattle, goats, and sheep	1.0
Meat byproducts of hogs and horses	0.5
Meat, fat, and meat byproducts of poultry	0.05

The proposed analytical method for determining residues is by liquid chromatography.

FAP 0H5277. Proposes amending 21 CFR 193.85 by establishing a regulation for the combined residues of chloropyrifos-methyl and its metabolite 3,5,6-trichloro-2-pyridinol in the commodities:

Commodities	Parts per million
Corn oil	160
Milling fractions (except flour) of barley, corn, oats, sorghum, wheat	20
Milling fractions of rice	30

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 135); 409(b)(5), 72 Stat. 1786, (21 U.S.C. 348))

Dated: October 17, 1980.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-33073 Filed 10-22-80; 8:45 am]

BILLING CODE 6560-32-M

[A-10-FRL 1640-7]

Intent to Award Clean Air Act Program Grant to State of Oregon; Comments Solicited—Opportunity for Hearing

AGENCY: Evironmental Protection Agency (EPA).

ACTION: Notice for hearing opportunity.

SUMMARY: The U.S. Environmental Protection Agency, Region X (EPA) invites comments on and announces an opportunity for public hearing on EPA's intent to award a grant to the State of Oregon to assist the Oregon Department of Environmental Quality in the funding of its air pollution control program for federal fiscal year 1981.

DATE: Public Hearing: November 24, 1980, 7:30 p.m.

ADDRESS: Yeon Bldg., 14th Floor, 522 S.W. Fifth Avenue, Portland, Oregon 97204.

FOR FURTHER INFORMATION CONTACT: John Vlastelicia, Director, U.S. Environmental Protection Agency, Oregon Operations Office, 522 S.W. Fifth Avenue, Yeon Building, 2nd Floor, Portland, OR 97204; Telephone: (503) 221-3250, FTS: 423-3250.

SUPPLEMENTAL INFORMATION:

Background Information

For several years, EPA has provided financial assistance to the State of Oregon to aid the DEQ in administration of its air pollution control program. This assistance has been provided through a grant under Section 105 of the Clean Air Act (42 U.S.C. 7405(b)).

The Clean Air Act prevents award of such grants where the recipient agency's—

Expenditures of non-Federal funds for other than nonrecurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year, unless the Administrator, after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a nonselective reduction in expenditures in the programs of all executive branch agencies of the applicable unit of Government * * *

(42 U.S.C. 7405(b))

The State of Oregon Department of Environmental Quality (DEQ) has budgeted 24 percent (24%) fewer dollars in the general fund for the air program in 1981. DEQ has provided EPA with information indicating that (1) the programs of all agencies of the executive branch of State government have also been scheduled for a reduction in expenditures (although the percentage reductions vary somewhat from agency to agency); and (2) that the air pollution control program and DEQ have not been selectively targeted by the State for a disproportionate reduction in funding.

Intended Action

Based on the information received from the State, EPA is prepared to determine that the reduction in funding is nonselective and, if all other conditions for grant award are met, intends to award a grant to DEQ under Section 105 of the Clean Air Act for the continued support of the State's air pollution control program. The information upon which this intent has been formed is available to the public by writing or phoning to the office listed above.

Invitation of Comments—Opportunity for Hearing

Any person who desires to comment on this intended action may do so by writing to the above listed contact person. Comments must be received on or before November 24, 1980.

If No Timely Request for a Hearing is Received, No Hearing Will Be Held

A public hearing will be held *if* (and only if) a request for a public hearing is received at the office listed above in the thirty (30) days following publication of this notice. The purpose of such a hearing would be to take testimony regarding whether the reduction of expenditures for the DEQ air pollution control program is or is not attributable to a nonselective reduction in expenditures in the programs of all State executive branch agencies. If it is held, the hearing will be conducted at the time and place listed above.

If a request is not received, no public hearing will be held. It is suggested that any one who anticipates attending this public hearing call the above listed office to verify if a hearing is to be held.

A shorter notice period is being employed for this action (the usual period is 45 days) because the State's current Section 105 grant expired at the end of the previous fiscal year, September 30, 1980. EPA cannot obligate funds beyond that date without first concluding that the requirements of Section 105 have been met.

Dated: October 17, 1980.

Donald P. Dubois,

Regional Administrator.

[FR Doc. 80-33086 Filed 10-22-80; 8:45 am]

BILLING CODE 6560-26-M

FEDERAL COMMUNICATIONS COMMISSION

[BC Docket Nos. 80-620, 80-621; File Nos. BPH-790713AD, BPH-790801AF]

Hensley Broadcasting, Inc, and Town and Country Broadcasting Corp.; Hearing Designation Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: September 30, 1980.

Released: October 16, 1980.

In re applications of Hensley Broadcasting, Inc., Burlington, Iowa, Req: 93.5 MHz, Channel 228, 3.0 kW (H&V), 276 feet, BC Docket No. 80-620, File No. BPH-790713AD; Town & Country Broadcasting Corporation, Burlington, Iowa, Req: 93.5 MHz, Channel 228, 3 kW (H&V), 300 feet, BC Docket No. 80-621, File No. BPH-

790801AF; for construction permit for a new FM station.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications filed by Hensley Broadcasting, Inc, and Town & Country Broadcasting Corporation.

2. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, for the purpose of comparison, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

3. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

4. Accordingly, it is ordered, that, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

5. It is further ordered, that in the event the application of Town & Country Broadcasting Corporation is granted, it is subject to the condition that if the Commission ultimately adopts a rule prohibiting commonly owned AM and FM stations in the same market, Town & Country will divest itself of either its AM station or FM station in accordance with the requirements established in such rulemaking proceeding.

6. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

7. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594(g) of the Commission's rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Jerold L. Jacobs,

Chief, Broadcast Facilities Division, Broadcast Bureau.

[FR Doc. 80-33047 Filed 10-22-80; 8:45 am]

BILLING CODE 6712-01-M

Radio Technical Commission for Marine Services; Meetings

In accordance with Pub. L. 92-463, "Federal Advisory Committee Act," the schedule of future Radio Technical Commission for Marine Services (RTCM) meetings is as follows:

Special Committee No. 71

"VHF Automated Radiotelephone Systems"
Notice of 21st Meeting: Wednesday, November 5, 1980—10:00 a.m. (full day meeting)
Conference Room A-106, F.C.C. Annex, 1229—20th Street, NW, Washington, DC

Agenda

1. Call to Order; Chairman's Report.
2. Administrative Matters.
3. Discussion concerning additions and changes to draft final report.
4. Approval/disposition of final report.
5. Discussion of future work.

John J. Renner, Chairman, Advanced Technology Systems, Inc., 3428 N. Washington Blvd., Arlington, VA 22201. Phone: (703) 525-2664

Special Committee No. 75

"MPS—Automatic Coordinate Conversion Systems"
Notice of 6th Meeting: Wednesday, November 12, 1980—9:00 a.m.
Maritime Institute of Technology and Graduate Studies, 5700 Hammonds Ferry Road, Linthicum Heights, MD 21090

Agenda

1. Call to Order; Chairman's Report.
2. Administrative Matters.
3. Discussion of draft of Minimum Performance Specifications.

Mortimer Rogoff, Chairman, SC-75, 4201 Cathedral Avenue, NW, Apartment 91W, Washington, DC 20016. Phone: (202) 362-5462

Special Committee No. 76

"Maritime Advisory Committee In preparation for the 1982 Mobile Services World Administrative Radio Conference (1982 Mobile Services WARC)"
Notice of 5th Meeting: Wednesday, November 12, 1980—9:30 a.m. to 4:30 p.m.
1st Floor Auditorium, Comsat Building, 950 L'Enfant Plaza, SW, Washington, DC

Agenda

1. Call to Order; Chairman's Report.
2. Administrative Matters.
3. Discussion of Proposals and Review of work Program.
4. Establishment of future meeting schedule.

Charles Dorian, Chairman, SC-76, Comsat Corporation, Washington, DC. Phone: (202) 554-6756

Executive Committee Meeting

Notice of November Meeting: Thursday, November 20, 1980—9:30 a.m.
Conference Rooms 9230/9232, Nassif (DOT) Building, 400 Seventh Street, SW at D Street, Washington, DC

Agenda

1. Administrative matters and committee reports.
2. Discussion concerning terms of reference for: A. Special Committee No. 71 (VHF Automated Radiotelephone Systems)
B. New special committee to study Federal Radionavigation Plan

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. All RTCM meetings are open to the public. Written statements are preferred, but by previous arrangement, oral presentations will be permitted within time and space limitations.

Those desiring additional information concerning the above meeting(s) may contact either the designated chairman or the RTCM Secretariat (phone: (202) 632-6490).

Federal Communications Commission.

William J. Tricarico,

Secretory.

[FR Doc. 80-33046 Filed 10-22-80; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket Nos. 80-644—80-654; File Nos. 2316-C1-R-71, etc.]

Service Electric Co. et al.; Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Service Electric Company, for renewal of licenses for point-to-point microwave radio stations: KGH98, Pimple Hill, Pennsylvania, CC Docket No. 80-644, File Nos. 2316-C1-R-71, 621-C1-ML-75, 7737-CF-R-76, 2079-CF-ML-79; KGH99, Bears Head Mountain, Pennsylvania, CC Docket No. 80-645, File Nos. 95-C1-R-71, 4840-C1-ML-74, 396-C1-ML-75, 4941-C1-ML-76, 7738-CF-R-76, 78-CF-ML-79; KHI61, Pimple Hill, Pennsylvania, CC Docket

No. 80-646, File Nos. 1856-C1-R-71, 3330-C1-ML-75, 3891-CF-ML-76, 7736-CF-R-78; KGI66, Nescopeck Mountain, Pennsylvania, CC Docket No. 80-647, File Nos. 96-C1-R-71; KGJ20, Montour Ridge, Pennsylvania, CC Docket No. 80-648, File Nos. 97-C1-R-71, 5436-1-ML-73, 7739-CF-R-76, 2073-CF-R-79, 2078-CF-ML-79, 3481-C1-AL-(5)-74; Penn Service Microwave Company, Inc., for renewal of and licenses for point-to-point microwave radio stations: KGO 20, Bears Head Mountain, Pennsylvania, CC Docket No. 80-649, File Nos. 3629-C1-R-71, 401-CF-ML-75, 4477-CF-ML-76, 2289-CF-ML-76, 7741-CF-R-76, 8217-CF-ML-76, 250-CF-ML-76, 487-CF-ML-77, 2081-CF-ML-77, 3859-CF-ML-80; WAY80, Bald Eagle Mountain, Pennsylvania, CC Docket No. 80-650, File Nos. 2087-C1-L-71, 7741-CF-R-76, 1202-CF-ML-77, 1975-CF-ML-77, 2533-CF-ML-77, 139-CF-ML-78, 3858-CF-ML-80; WBB218, Mill Hall, Pennsylvania, CC Docket No. 80-651, File No. 1974-CF-L-77; WCF956, Ralston, Pennsylvania, CC Docket No. 80-652, File No. 140-CF-L-78; WCU533, Canton, Pennsylvania, CC Docket No. 80-653, File No. 2055-CF-L-79; WQQ37, Wyoming Mountain, Pennsylvania, CC Docket No. 80-654, File Nos. 13858-CF-L-75, 1690-CF-ML-77, 1691-CF-ML-77, 1455-CF-ML-78, 2351-CF-ML-78, 536-CF-ML-80, 3857-CF-ML-80.

Adopted: October 14, 1980.

Released: October 15, 1980.

By the Commission: Commissioner Jones absent.

Introduction and Summary

1. The Commission has before it the above-captioned renewal and license applications of Service Electric Co. (hereinafter referred to as Service Electric) and Penn Service Microwave Co. (hereafter Penn Service).[1]

A Joint Petition to Deny the 1971 renewal applications was filed by Taft Television Corp.,[2] Scranton Broadcasters, Inc., and WBRE-TV, Inc.

2. John Walson is the sole proprietor of Service Electric. He owns 50% of the stock of Penn Service jointly with his wife, with the remaining 50% held in equal amounts by his two sisters. Additionally, he is the president of Penn Service. Mr. Walson also owns Service Electric Cable TV, Inc., (hereinafter Service Electric Cable) which operates systems in a number of communities served by the microwave carriers. In this order we evaluate arguments made by Mr. Walson that despite his failure to comply with a cease and desist order issued by the Commission, his microwave licenses nevertheless should be renewed. We conclude that in light of the arguments submitted, the renewal and license applications of Service Electric and Penn Service should be designated for hearing pursuant to Section 309(e) of the Act.

Background

3. The background of this proceeding is detailed in our Memorandum Opinion and Order, 77 F.C.C. 2d 986 (hereafter *Microwave Order*), and will be only briefly summarized here.

4. In November of 1974 the Commission initiated a proceeding pursuant to Section 403 of the Communications Act, 47 U.S.C. § 403, to examine allegations by the stations that John Walson operated his cable systems and microwave facilities in disregard of the Commission's rules. The designation order noted that findings made in the hearing would be used to evaluate the pending microwave applications.[3] The hearing had all of the requisites of administrative due process; parties were represented by counsel, had the right to call and cross-examine witnesses, to introduce exhibits, and to file proposed findings of fact and conclusions of law. In his Recommended Decision,[4] the Administrative Law Judge stated that Service Electric Cable operated its systems in a haphazard manner with a lack of concern for Commission procedures. He found a number of specific violations, including Service Electric Cable's carriage of specific signals on the Hazleton system long after those signals had been ordered to be deleted by the Commission, in unjustified defiance of a Commission cease and desist order.

5. The Commission subsequently affirmed the judge's findings with regard to a number of violations, including those on the Hazleton system.[5] The Commission found illegal signal carriage on the Hazleton system "was in continuous and willful derogation of an outstanding Commission cease and desist order and a judicial affirmance thereof."[6] The Commission expressly found the conduct was not inadvertent.

6. In the companion *Microwave Order*, the Commission stated it was obliged to evaluate the microwave renewal and license applications in light of the findings of the *Report and Order*. It stated that an evidentiary hearing had been conducted and that further hearings were unnecessary. The carriage of signals at Hazleton in violation of the cease and desist order was found to be the most serious of the several violations established. The Commission noted that it has a legitimate interest in the character qualifications of common carriers to the extent that it must have a basis for expecting its licensees to follow the Commission's rules and orders. These rules and orders are designed to ensure that authorized facilities are operated in a manner consistent with the public interest. It found that based on the record, it could not determine that Walson is qualified to perform his common carrier duties in a responsible manner. However, it offered Penn Service and Service Electric an opportunity to file "a particularized proffer of specific evidence"[7] to mitigate the findings made or to show why the findings should not be considered to reflect on the qualifications of the licenses.

7. On May 7, 1980, Penn Service and Service Electric took advantage of the opportunity the Commission allowed them and filed a brief in support of their renewal and license applications. The carriers claim that they have operated the microwave stations in a superior manner in that charges under their tariffs have been reasonable. They claim that denial of their applications would effectively deny some service to cable television systems presently using the carriers because the cable systems would be unable to obtain alternative service at the same reasonable rates.[8] Service Electric also asserts that the violations of the cable rules were in no way connected to operation of the microwave stations since the signals were received directly off-the-air at the system's headend. Service Electric further submits that Section 309(e) of the Communications Act (47 U.S.C. 309(e))[9]

[1] Service Electric and Penn Service are both licensees of common carrier microwave stations relaying television broadcast signals to cable television systems in Pennsylvania.

[2] NEP Communications, Inc., is the current licensee of WNEP-TV; Taft's sale of the station to NEP was approved by the Commission on October 30, 1973. NEP subsequently withdrew from these proceedings and was not a party to the Section 403 hearing.

[3] 49 F.C.C. 2d 707, 713 (1974).

[4] FCC 77D-23 (1977).

[5] Service Electric Cable TV, Inc., (Docket 20218) 77 F.C.C. 2d 994 (1980), hereafter referred to as *Report and Order*.

[6] Id. at 1002. The cease and desist order is at 23 F.C.C. 2d 468 (1970); the judicial affirmance 463 F. 2d 872 (3rd Cir. 1972).

[7] 77 F.C.C. 2d at 992, 993.

[8] Service Electric and Penn Service have submitted letters and affidavits from several of their cable television customers to this effect.

[9] Section 309(e) provides in pertinent part: If * * * a substantial and material question of fact is presented or the Commission for any reason is unable to make the finding [that the public interest,

Footnotes continued on next page

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requires that the Commission designate the renewal applications for a hearing if the applications cannot be granted based on the record before it. Service Electric argues that the evidence adduced at the Section 403 proceeding cannot be utilized to deny renewal of common carrier licenses without a further adjudicatory hearing to evaluate the grieviousness of the offenses. Service Electric contends that because the character qualifications of Mr. Walson were not considered during the 403 proceedings, the Commission cannot now deny the license and renewal applications and still satisfy the requirement of Section 309(e).

8. Service Electric argues that prior statements by the Commission in this matter acknowledge that the section 403 proceeding does not satisfy the requirements of section 309. For example, it points to the order in *Service Electric Cable TV, Inc. tr/as Mountain City TV Co.*, which acted on Scranton's petition for reconsideration of the 403 hearing designation order.[10] In denying this request on procedural grounds, the Commission noted:

> We have indicated that the findings in the instant hearing would be of help in evaluating the microwave renewal applications, and we therefore declined to set the latter for hearing immediately. For this reason we shall again deny Scranton's request that we designate the microwave renewal applications for hearing now. Service Electric Cable TV, Inc., (51 F.C.C. 2d 763, 764 (1975).

Service Electric further states that the Review Board, in denying Scranton's Motion to Enlarge Issues, clearly recognized that the addition of a character issue would turn the 403 inquiry into a 309(e) hearing and thus transform the nature of the proceedings.[11] It also argues that in June, 1977 Service Electric Cable TV filed a Motion for a Declaratory Order in which it sought clarification of the jurisdiction of the Chief, Cable Television Bureau and the Chief, Office of Opinions and Review in the further consideration of the proceeding. It notes the Commission stated:

> * * * the purpose of this proceeding is not to make a 'final disposition' or adjudicate the rights of any party but to ascertain the facts. It may be that an adjudicatory proceeding will be initiated after the facts are ascertained but we have not yet decided that point. The evidentiary hearings held herein were conducted pursuant to Section 403 of the Communications Act and Section 403 proceedings are investigatory not adjudicatory. *Service Electric Cable TV, Inc.*, 67 F.C.C. 2d 1563, 1565 (1978).

9. Service Electric states that it is also significant to note that the carriers and the cable companies are represented by separate counsel. It submits that, assuming Mr. Walson was placed on notice that the outcome of the 403 proceeding could ultimately effect the status of the microwave renewal applications, the carriers, and particularly Penn Service, were entitled to be represented by their own counsel at the 403 investigation, if the evidence adduced in that proceeding could be used as a vehicle for refusing to grant the renewals without a further hearing.[12]

10. In response to Service Electric's brief, WBRE–TV, Inc., and Scranton Broadcasters, Inc., (collectively referred to hereafter as "Broadcasters") filed a joint statement opposing the suggestion that further hearings are required. Broadcasters argue that the microwave companies have been on notice for almost six years that the results of the 403 investigation would be used to evaluate their renewal applications. Broadcasters contend that Section 309(e) requires a hearing only if there are substantial and material questions of fact relating to the license applications or if, on the basis of the established factual record, the Commission is uncertain whether the public interest, convenience and necessity would be served by grant of the license renewals. If neither of these alternative situations exists, Broadcasters maintain that the Commission many deny a renewal application without a hearing.[13]

11. As to Service Electric's statement of mitigation, Broadcasters argue that the carriers' record of performance is legally insufficient to mitigate the pattern of abuse found by the Commission in the 403 proceeding. Broadcasters assert that existing precedent in the non-broadcast area requires a stronger showing in mitigation than Service Electric has made.[14]

Discussion

12. It is undisputed that the judicially affirmed Commission Cease and Desist Order directed at Service Electric Cable TV was violated on more than one occasion over a period of years. The violation reflects adversely on the qualifications of Service Electric Cable TV's owner, John Walson, to remain a licensee of the Commission. Indeed, the impact on Mr. Walson's qualifications is such that, absent mitigation of the violation, denial of the microwave renewals and license applications of Service Electric and Penn Service might be warranted.

13. Mr. Walson has submitted what he considered to be mitigating factors concerning the willfulness of the violation. Without ruling on the merits of the respective arguments made in mitigation, we agree that the contradictory characterizations of the Section 403 hearing, by the Commission, the Review Board, and the Administrative Law Judge assigned to the case, may have led Mr. Walson to assume that the proceeding was investigatory not adjudicatory in nature and thus, that Service Electric and Penn Service's qualifications to remain Commission licensees were not then in issue. Because these pronouncements may have misled Mr. Walson in the presentation of his case during the Section 403 proceeding, we deem it appropriate that the above-captioned renewal and license applications presently be designated for hearing.[15]

14. Accordingly, it is ordered, that, pursuant to Section 309(e) of the Communications Act of 1934, the above-captioned applications of Service Electric Company and Penn Service Microwave Company ARE DESIGNATED FOR HEARING, at a time and place to be specified in a subsequent Order, upon the following issues: (a) To determine the facts and circumstances surrounding the violation by Service Electric Cable TV, Inc., of the Commission's Cease and Desist Order,

Footnotes continued from last page
convenience, and necessity will be served by granting the application] it shall formally designate the application for hearing * * *.

[10] 51 F.C.C. 2d 763 (1975). Scranton had requested that the designation order be revised to eliminate inquiry into the alleged violations of the cable systems, and that an order to show cause be issued. It also asked that the designation order be redrafted to include inquiry into the renewal of Service Electric's microwave applications, claiming that this is required pursuant Section 309(e) of the Communications Act.

[11] *Service Electric Cable TV, Inc., tr/as Mountain City TV Co.*, 51 F.C.C. 2d 1167 (Rev. Bd. 1975).

[12] Penn Service and Service Electric also refer to a pleading filed by Service Electric Cable TV, Inc., captioned "Statement of Service Electric Cable TV, Inc. and Request for Revision of the Report and Order." In il petitioner argues that the manager of the Hazelton system believed the signals were authorized, that the local press did not publicize the fact the signals in question had been ordered deleted, and that a change in counsel all led to a failure to remind Walson the signals had to be deleted. The pleading also attempts to assert that the broadcasters' failure to remind Walson to delete the signals constituted entrapment.

[13] However, in a brief filed on August 25, 1980, in *Scranton Broadcasters v. FCC*, (Civil No. 80–1631) Scranton argues that "[t]he Commission's responsibility to designate a Section 309(e) hearing in these circumstances is not discretionary." *Brief* at p. 27. Scranton had previously called for immediate designation of a 309(e) hearing on the microwave applications at page 44 of its exceptions to the Recommended Decision.

[14] In support of this position, the Broadcasters cite *TelePrompter Cable Systems, Inc.*, 40 F.C.C. 2d 1027 (1973).

[15] We previously stated our intent to order a hearing if we felt the carriers' statement in mitigation and the responses warranted such a proceeding. *Microwave Order* at 992, fn. 11.

23 F.C.C. 2d 468 (1970) *aff'd.* 463 F.2d 672 (3rd Cir. 1972); and

(b) To determine, in light of the evidence adduced under issue (a), whether the licensees possess the requisite character qualifications to be or remain licensees of the Commission, and whether a grant of the captioned applications would serve the public interest, convenience and necessity.

15. It is further ordered, that, in accordance with Section 309(e) of the Communications Act of 1934, the burden of proceeding with the introduction of evidence and the burden of proof with respect to all issues SHALL BE upon Service Electric Company and Penn Service Microwave Company.

16. It is also ordered, that, to avail themselves of the opportunity to be heard, Service Electric Company and Penn Service Microwave Company, pursuant to § 1.221(e) of the Commission's Rules, in person or by attorney, SHALL within TWENTY (20) days of the mailing of this Order, FILE with the Commission in triplicate, a written appearance stating an intent to appear on the date fixed for hearing and present evidence on the issues specified in this Order.

17. It is also ordered, that the Chief, Common Carrier Bureau, WBRE–TV, Inc. and Scranton Broadcasters ARE MADE parties to this proceeding.

18. It is further ordered, that the Secretary of the Commission send copies of this Order by Certified Mail—Return Receipt Requested to Service Electric Company and Penn Service Microwave Company.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80–33048 Filed 10–22–80; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 80–73]

Kelco, Division of Merck & Co. v. Johnson Scanstar; Filing of Complaint and Assignment

Notice is given that a complaint filed by Kelco, Division of Merck & Company against Johnson Scanstar was served October 15, 1980. Complainant alleges that respondent has subjected it to payment of rates for ocean transportation in violation of section 18(b)(3) of the Shipping Act, 1916.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,

Secretary.

[FR Doc. 80–33035 Filed 10–22–80; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 80–74; Agreement No. 5850 DR (W&S)]

North Atlantic Westbound Freight Association Wines and Spirits Dual Rate Contract; Order To Show Cause

The North Atlantic Westbound Freight Association (NAWFA) is a conference of ocean carriers serving the trade from ports and points in Great Britain, Northern Ireland and Ireland to Atlantic Coast ports of the United States. Pursuant to permission originally granted by the Commission in 1964, NAWFA offers a dual rate contract arrangement for the carriage of wines and spirits.

Any wines or spirits importer may become a party to this contract. However, the contract provides for rate consultation between NAWFA members and the National Association of Alcoholic Beverage Importers, Inc. (NAABI).

At the time the Commission originally granted NAWFA permission to offer this particular dual rate contract arrangement, the Commission believed that NAABI members imported the large majority of wines and spirits moving in the NAWFA trade. The Commission no longer believes this to be the case. Many wines and spirits importers are not members of NAABI, but are members of the Wines and Spirits Shippers Association (WSSA). The use of NAWFA's wines and spirits dual rate contract, which specifically requires consultations between NAWFA members and NABBI, may be unjustly discriminatory or unfair as between shippers, exporters or importers, and may be contrary to the public interest because it specifically provides for consultations with only one segment of the wines and spirits imports industry.

Not only does the NAWFA contract specifically mention rate consultations with only one segment of the industry, but since at least 1978, NAWFA has been unwilling to consult with NAABI pursuant to the terms of its contract. Assuming, *aguendo*, that the contract otherwise meets the requirements of section 14(b) of the Shipping Act, 1916 (46 U.S.C. 813(a)) the Commission is of the opinion that it is not in the public interest to permit the existence of a dual rate contract arrangement when the carrier parties thereto are not abiding by its terms.

Section 14(b) states that:

> The Commission shall withdraw permission which it has granted under the authority contained in this section for the use of any contract if it finds, after notice and hearing, that the use of such contract is detrimental to the commerce of the United States or contrary to the public interest, or is unjustly discriminatory or unfair as between shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors.

Based on its view that NAWFA's wines and spirits dual rate contract arrangement should not provide for rate consultations with only one segment of the wines and spirits industry and that the existing consultation provisions are not being followed, the Commission will order NAWFA and its member lines to show cause why the Commission should not either withdraw permission for the use of such contract or require it to be modified to comport with the requirements of section 14(b) in order to permit consultations with all segments of the wines and spirits imports industry.

Now therefore, it is ordered, that pursuant to sections 14(b) and 22 of the Shipping Act, 1916, the North Atlantic Westbound Freight Association and its member lines, as listed in Appendix A hereto, are named Respondents in this proceeding and that such Respondents are ordered to show cause why the Commission should not find the NAWFA dual rate contract arrangement for the carriage of wines and spirits to be contrary to the standards of section 14(b) of the Shipping Act, 1916, and either withdraw permission for its use or require it to be modified to conform to the requirements of section 14(b).

It is further ordered, that this proceeding be limited to the submission of affidavits of fact and memoranda of law. Should any party feel that an evidentiary hearing is required, that party must accompany any request for such hearing with a statement setting forth in detail the facts to be proven, their relevance to the issues in this proceeding, a description of the evidence which would be adduced to prove those facts, and why such proof cannot be submitted through affidavit. Requests for hearing shall be filed no later than February 2, 1981;

It is further ordered, that notice of this Show Cause Order be published in the Federal Register and that a copy thereof be served upon each of the Respondents;

It is further ordered, that Respondents shall file affidavits of fact and memoranda of law no later than December 5, 1980, with the Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, in an original and 15 copies;

It is further ordered, that the Commission's Bureau of Hearing Counsel be made a party to this proceeding. Reply affidavits and memorandum of law shall be filed by Hearing Counsel no later than January 5, 1981, with the Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, in an original and 15 copies;

It is further ordered, that rebuttal memoranda and affidavits responding to the memorandum and affidavits filed by Hearing Counsel shall be filed by Respondents no later than January 26, 1981, with the Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, in an original and 15 copies;

It is further ordered, that any persons having an interest and desiring to participate in this proceeding may file a petition for leave to intervene in accordance with § 502.72 of the Commission's rules (46 CFR 502.72), and

It is further ordered, that all documents submitted by any party of record in this proceeding shall be filed in accordance with § 502.118 of the Commission's rules of practice and procedure (46 CFR 502.118) as well as being mailed directly to all parties of record.

By the Commission.

Francis C. Hurney,

Secretary.

Appendix

North Atlantic Westbound Freight Association, D. G. Jeffries, Chairman, 74 St. James' Street, London SW1A 1PS, England
Atlantic Cargo Service AB, Post Office Box 2188, S–403 13, Gothenburg 2, Sweden
Atlantic Container Line (G.I.E.), Overline House, Central Station, Southampton, England
Dart Containerline Company Limited, Meir 1, Antwerp, Belgium
Farrell Lines, Inc., 1 Whitehall Street, New York, New York 10004
Gulf Europe Express—A Joint Service of—
Intercontinental Transport (ICT) B.V., Wilhelminakade 39, 3000 Rotterdam, Holland
Campagnie General Maritime, Tour Winterthur, 102 Quartie, Boieldieu a La Defense, Cedex, F–92085, Paris—La Defense, France
Hapag-Lloyd AG, Ballindamm 25, Hamburg 1, Germany
Sea-Land Service, Inc., 75, Route 27, Iselin, New Jersey 08830
Seatrain International S.A., Port Seatrain, Weehawken, New Jersey 17087
United States Lines, Inc., 1 Broadway, New York, New York 10004

[FR Doc. 80-33076 Filed 10-22-80; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Arcadia Agency Co., et al.; Acquisition of Bank

Arcadia Agency Company, Arcadia, Nebraska, Tekamah Agency Company, Tekamah, Nebraska, and Decatur Agency Company, Decatur, Nebraska, have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)), each to acquire 24.9 per cent of the voting shares of Emerson First National Company, Emerson, Nebraska, which proposes to acquire 95 per cent of the voting shares of the First National Bank, Emerson, Nebraska. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than November 17, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 16, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33028 Filed 10-22-80; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and, except as noted, received by the appropriate Federal Reserve Bank not later than November 17, 1980.

Federal Reserve Bank of Kansas City (Thomas M. Hoening, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

This notice corrects a previous Federal Register document published at page 48252 of the issue for Friday, July 18, 1980.

1. Union Bancorporation, Inc., Oklahoma City, Oklahoma (finance and lending activities; Oklahoma): to engage, through a subsidiary, Union Loan & Thrift Company, in the sale at retail of money orders having a face value of not more than $1,000, and the sale of travelers checks. These activities would be conducted from an office of applicant's subsidiary in Oklahoma City, Oklahoma, serving Oklahoma County, Oklahoma. Comments on this application must be received by November 14, 1980.

2. Farmers Enterprises, Inc., Albert, Kansas (leasing activities; Kansas): to engage in commercial equipment leasing that is the functional equivalent to extending credit. This activity would be conducted from an office in Albert, Kansas, serving Barton, Ellsworth, Lane, Pawnee, Rice, Rush, Russell, Scott, and Stafford Counties, Kansas.

B. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, October 16, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33029 Filed 10-22-80; 8:45 am]

BILLING CODE 6210-01-M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposals

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on October 16, 1980 (NRC), and October 17, 1980 (FCC). See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the Federal Register is to inform the public of such receipts.

The notice includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed FCC and NRC requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before November 10, 1980, and should be addressed to Mr. John M. Lovelady, Senior Group Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202–275–3532.

Federal Communications Commission

The FCC requests an extension-without-change clearance of Section 1.311, National Environmental Policy Act Reporting Requirement of the FCC Rules. The information required by Section 1.311 of the FCC Rules must be filed as a supplement by applicants for authority to construct major communications facilities in order for the Federal Communications Commission to meet the requirement of the National Environmental Policy Act (NEPA). The information collected helps FCC to determine whether the facilities will have a significant effect on the environment. Section 102(2)(c) of the NEPA requires all Federal agencies to prepare an environmental impact statement before taking any major action significantly affecting the quality of human environment. The FCC estimates that approximately 513 statements are filed annually and that each statement requires an average of ten hours to prepare.

The FCC requests an extension-without-change clearance of Form 324, Annual Financial Report of Networks and Licensees of Broadcast Stations. Section 1.611 of the FCC's Rules and Regulations requires that each licensee or permittee of a commercially operated standard, FM, television, or international broadcast station file FCC Form 324 with the FCC on or before April 1 of each year. The data collected by Form 324 are compiled into a complete financial and accounting history of the broadcast industry. These data are then used by the FCC in reporting annually to Congress, trade groups, and public groups. The financial information is used by FCC to develop an overview of the broadcast industry and to supply information pertaining to its economic health and performance; to determine the impact of FCC operational decisions on individual broadcast stations and licensees; and to provide input to policy issues and rule-making procedures regarding the economic impact of proposed actions. Form 324 is filed for the calendar year by April 1 of the following year. The FCC estimates that 8,000 respondents complete Form 324 annually and that each response requires four hours to prepare.

Nuclear Regulatory Commission

The NRC requests an extension-without-change clearance of the recordkeeping and reporting requirements contained in 10 CFR Part 31, General Licenses for Byproduct Material; specifically sections 31.5(c) (4), (5), (8) and (9). The NRC estimates respondents to Part 31 to number approximately 10,000 and that recordkeeping requirements for section 31.5(c)(4) will average 2 minutes per test performed; reporting for section 31.5(c)(5) will average one hour per report; reporting for section 31.5(c)(8) will average 10 minutes per report; and reporting for section 31.5(c)(9) will average 10 minutes per report.

Norman F. Heyl,

Regulatory Reports Review Officer.

[FR Doc. 80-33074 Filed 10-22-80; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Alcohol Abuse Prevention Review Committee; Meeting Change

In FR Doc. 80–28951, appearing on page 62550, in the issue of Friday, September 19, the meeting agenda is changed as follows: From 9:00 a.m. to 5:00 p.m., October 27, the committee will be performing initial review of grant applications for Federal assistance and will not be open in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of Section 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I). On October 28, the meeting will be open for discussion of administrative announcements, and a report from the Prevention Division of the National Institute on Alcohol Abuse and Alcoholism. There will also be a policy discussion on the assessment of past alcohol abuse prevention programming and on future program direction. Other arrangements for the meeting remain the same.

Dated: October 17, 1980.

Elizabeth A. Connolly,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 80-33143 Filed 10-22-80; 8:45 am]

BILLING CODE 4110-88-M

National Institutes of Health

Women: A Developmental Perspective; Meeting

Notice is hereby given that a research conference, Women: A Developmental Perspective, will be held November 20–21, 1980 in the Masur Auditorium, Clinical Center, National Institutes of Health, Bethesda, Maryland. The conference is sponsored by the National Institute of Child Health and Human Development in cooperation with the National Institute of Mental Health and the National Institute on Aging.

The conference will convene at 8:30 a.m. each day and will be open to the public. Attendance will be limited to space available.

Women: A Developmental Perspective will address a broad range of research issues concerning the physical and psychological development of women. The agenda includes presentations on: women's health concerns, infancy to womanhood, women and work.

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reproduction and giving birth, women and the family, sexuality, and implications for the middle and later years.

There will be opportunity for audience participation following each panel. Groups or individuals are encouraged to present their views during open discussion.

Inquiries about the conference and requests for programs should be addressed to Pamela Driscoll or Joan Muller, Office of Research Reporting, NICHD, Building 31, Room 2A–32, Bethesda, Maryland 20205, or telephone (301) 496–5133.

Dated: October 14, 1980.

Suzanne L. Fremeau,

Committee Management Officer, National Institutes of Health.

[FR Doc. 80-33144 Filed 10-22-80; 8:45 am]

BILLING CODE 4110-08-M

Public Health Service
Health Services Administration

Geographic Composition of the Contract Health Service Delivery Areas (CHSDA's) Established by Regulations of the Indian Health Service

The purpose of this notice is to list the geographic composition of the CHSDA's established by 42 CFR 36.22(a). Final regulations for Indian Health Service (IHS) Contract Health Services were published in the **Federal Register** on August 4, 1978 (43 FR 34650).

The regulation at 42 CFR 36.22(a)(6) provides that:

> With respect to all other reservations [i.e., other than those not specifically listed in the regulation] within the funded scope of the Indian health program, the contract health service delivery area shall consist of a county which includes all or part of a reservation, and any county or counties which have a common boundary with the reservation.

This is the geographic area within which contract health services may be made available by the IHS to eligible individuals who reside within the area, subject to the provisions of the regulation.

This list presents reservations within the funded scope of the IHS program, and includes exceptions to the rule specifically provided for by the regulation at 42 CFR 36.22(a) and several exceptions covering areas which have been traditionally served by IHS and are within the funded scope. Listed for each reservation are the counties comprising the CHSDA.

It should be clearly understood that residence within a CHSDA by a person who is within the scope of the Indian health program, as set forth in 42 CFR 36.12, creates no legal entitlement to contract health services but only potential eligibility for services. Services needed but not available at an IHS facility are provided under the Contract Health Services program dependent upon the availability of funds, the person's relative medical priority, and the actual availability and accessibility of alternate resources in accordance with the regulations.

The list was compiled utilizing various maps, but primarily the latest Bureau of Indian Affairs (BIA) Federal Aid Indian Road System Atlas, the 1978 BIA Annual Report of Indian Lands, and the 1974 U.S. Department of Commerce publication, *Federal and State Reservations and Indian Trust Areas.* Counties included or excluded from the following list of CHSDA's were determined by applying the regulation quoted above (42 CFR 36.22(a)(6)) except where otherwise provided for by regulations, public laws or congressional action in the appropriations process. Any mistakes in the list of CHSDA's should be brought to the attention of: Mr. Richard J. McCloskey, Director, Office of Legislation and Regulations Services/Indian Health Service, Rm 6A–20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Corrections of mistaken inclusions or exclusions of a county or counties in a CHSDA may be made administratively and included in a later **Federal Register** notice. However, redesignations of areas included or excluded from a CHSDA for reasons other than a mistake in applying the regulation is governed by the procedures in 42 CFR 36.22(b) and may only be made by the Secretary. The regulations at 42 CFR 36.22(b) provide that redesignation of an area or community as appropriate for inclusion or exclusion in a CHSDA may be made by the Secretary of Health and Human Services, but only after consultation with the tribal governing body or bodies of those reservations included within the CHSDA. The regulations also stipulate certain criteria which must be considered before any redesignation will be made. This criteria is as follows:

1. The number of Indians residing in the area proposed to be so included or excluded;
2. Whether the tribal governing body has determined that Indians residing in the area near the reservations are socially and economically affiliated with the tribe;
3. The geographic proximity to the reservation of the area whose inclusion or exclusion is being considered; and
4. The level of funding which would be available for the provision of contract health services.

Additionally, 42 CFR 36.22(c) stipulates that any redesignation of a CHSDA must conform with the procedures of the Administrative Procedure Act (5 U.S.C. 553). Anyone wishing to change the boundaries of a CHSDA should seek advice from or submit a written request to the IHS Area or Program Office which is responsible for the reservation which determines the current CHSDA.

The CHSDA's for all reservations within the funded scope of the IHS program are as follows:

Contract Health Service Delivery Areas

Reservation and CHSDA (County/State)

Acoma Pueblo—Valencia, NM
Agua Caliente Indian Reservation—Riverside, CA
Ak Chin—Pinal, AZ
Alaskaw [1]
Alturas Indian Rancheria—Modoc, CA
Augustine Reservation—Riverside, CA
Bad River—Ashland, WI, Iron, WI
Barona Reservation—San Diego, CA
Bay Mills—Chippewa, MI
Benton Paiute Reservation—Mono, CA
Berry Creek Rancheria—Butte, CA
Big Bend Rancheria—Shasta, CA
Big Lagoon Rancheria—Humboldt, CA
Big Pine Reservation—Inyo, CA
Bishop Colony—Inyo, CA
Blackfeet—Glacier, MT, Pondera, MT
Bridgeport Indian Colony—Mono, CA
Burns Paiute—Harney, OR
Cabazon Reservation—Riverside, CA
Cahuilla Reservation—Riverside, CA
Campe Verde—Yavapai, AZ
Campo Indian Reservation—San Diego, CA
Capitan Grande Reservation—San Diego, CA
Cedarville Rancheria—Modoc, CA
Chehalis—Grays Harbor, WA, Thurston, WA
Chemehuevi Reservation—San Bernardino, CA, Mohave, AZ
Cheyenne River—Corson, SD, Dewey, SD, Haakon, SD, Meade, SD, Perkins, SD, Potter, SD, Stanley, SD, Sully, SD, Walworth, SD, Ziebach, SD
Chitimacha—St. Mary Parish, LA
Choctaw—Jasper, MS, [2] Kemper, MS, Leake, MS, Neshoba, MS, Newton, MS, Noxubee, MS [2]
Cochiti Pueblo—Sandoval, NM
Cocopah—Yuma, AZ
Coeur d'Alene—Benewah, ID, Kootenai, ID, Latah, ID, Spokane, WA, Whiteman, WA
Cold Springs Rancheria—Fresno, CA
Coleville—Douglas, WA, Ferry, WA, Grant, WA, Lincoln, WA, Okanogan, WA, Stevens, WA
Colorado River—Yuma, AZ, Riverside, CA, San Bernardino, CA
Colusa Rancheria—Colusa, CA
Cortina Indian Rancheria—Colusa, CA
Coushatta—Allen Parish, LA
Coyote Valley Rancheria—Mendocino, CA
Crow—Big Horn, MT, Carbon, MT, Yellowstone, MT, Big Horn, WY, Sheridan, WY

[1] Alaska Native Regions are reservations (42 CFR 36.21(i)) and the entire State of Alaska is included as a CHSDA by regulation (42 CFR 36.22(a)(1)).

[2] Choctaw Indians residing in Jasper and Noxubee Counties, MS, will continue to be eligible for contract health services pending correction of the inadvertent omission of these two counties from § 36.22 of the regulations.

Crow Creek—Brule, SD, Buffalo, SD, Hand, SD, Hughes, SD, Hyde, SD, Lyman, SD, Stanley, SD
Cuyaplape Reservation—San Diego, CA
Dry Creek Rancheria—Sonoma, CA
Duck Valley—Elko, NV, Owyhee, ID
Eastern Band of Cherokees—Cherokee, NC, Graham, NC, Haywood, NC, Jackson, NC, Swain, NC
Enterprise Rancheria—Butte, CA
Flandreau—Moody, SD
Flathead—Flathead, MT, Lake, MT, Missoula, MT, Sanders, MT
Fond Du Lac—Carlton, MN, St. Louis, MN
Fort Apache—Apache, AZ, Coconino, AZ, Gila, AZ, Graham, AZ, Greenlee, AZ, Navajo, AZ
Fort Belknap—Blaine, MT, Phillips, MT
Fort Berthold—Dunn, ND, Mercer, ND, McKenzie, ND, McLean, ND, Mountrail, ND, Ward, ND
Fort Bidwell Reservation—Modoc, CA
Fort Hall—Bannock, ID, Bingham, ID, Caribou, ID, Power, ID
Fort Independence Reservation—Inyo, CA
Fort McDermitt—Humboldt, NV, Malheur, OR
Fort McDowell—Maricopa, AZ
Fort Peck—Daniels, MT, McCone, MT, Richland, MT, Roosevelt, MT, Sheridan, MT, Valley, MT
Fort Totten (Devil's Lake Sioux Reservation)—Benson, ND, Eddy, ND, Nelson, ND, Ramsey, ND
Fort Yuma (Quechan)—Imperial, CA, Yuma, AZ
Gila River—Maricopa, AZ, Pinal, AZ
Goshute—Juab, UT, Tooele, UT, White Pine, NV
Grand Portage—Cook, MN
Grindstone Indian Rancheria—Glenn, CA
Hannahville—Delta, MI, Menominee, MI
Havasupai—Coconino, AZ
Hoh—Jefferson, WA
Hoopa Valley Reservation—Humboldt, CA
Hopi—Apache, AZ, Coconino, AZ, Navajo, AZ
Hopland Rancheria—Mendocino, CA
Hualapai—Coconino, AZ, Mohave, AZ, Yavapai, AZ
Inaja and Cosmit Reservation—San Diego, CA
Iowa—Brown, KS, Doniphan, KS, Richardson, NE
Isabella—Clare, MI, Isabella, MI, Midland, MI
Isleta Pueblo—Bernalillo, NM, Torrance, NM, Valencia, NM
Jackson Rancheria—Amador, CA
Jemez Pueblo—Sandoval, NM
Jicarilla Apache—Archuleta, CO, Rio Arriba, NM, Sandoval, NM
Kaibab—Coconino, AZ, Mohave, AZ, Kane, UT
Kalispel—Pend Oreilla, WA
Karok Tribe of California—Humboldt, CA
Katakitegoning (Watersmeet) or Lac Vieux Desert Band—Gogebic, MI
Keweenaw Bay—Baraga, MI, Houghton, MI, Ontonagon, MI
Kickapoo—Brown, KS, Jackson, KS
Kootenai—Boundary, ID
Lac Courte Oreilles—Sawyer, WI
Lac de Flambeau—Iron, WI, Oneida, WI
La Jolla Reservation—San Diego, CA
Laguna Pueblo—Bernalillo, NM, Sandoval, NM, Velancia, NM
La Posta Indian Reservation—San Diego, CA
Laytonville Rancheria—Mendocino, CA
Leech Lake—Beltrami, MN, Cass, MN, Hubbard, MN, Itasca, MN
Lone Pine Reservation—Inyo, CA
Lookout Rancheria—Modoc, CA
Los Coyotes Reservation—San Diego, CA
Lower Brule—Brule, SD, Buffalo, SD, Hughes, SD, Lyman, SD, Stanley, SD
Lower Elwha—Clallam, WA
Lower Sioux—Redwood, MN, Renville, MN
Lummi—Whatcom, WA
Makah—Clallam, WA
Manchester—Pt. Arena Rancheria—Mendocino, CA
Manzanita Reservation—San Diego, CA
Menominee—Langlade, WI, Menominee, WI, Shawano, WI
Mesa Grande Reservation—San Diego, CA
Mescalero—Chaves, NM, Lincoln, NM, Otero, NM
Middletown Rancheria—Lake, CA
Mille Lacs—Aitkin, MN, Kanebec, MN, Mille Lacs, MN
Mole Lake—Forest, WI
Montgomery Creek Rancheria—Shasta, CA
Morongo Reservation—Riverside, CA
Mucklesoot—King, WA, Pierce, WA
Nambe Pueblo—Santa Fe, NM
Navajo (including Alamo Navajo, Cononcito Navajo, and Ramah Navajo)—Apache, AZ, Bernalillo, NM, Coconino, AZ, McKinley, NM, Montezuma, CO, Navajo, AZ, Sandoval, NM, San Juan, NM, San Juan, UT, Socorro, NM, Valencia, NM
Nett Lake—Itasca, MN, Koochiching, MN, St. Louis, MN
Nevada [3]
Nez Perce—Clearwater, ID, Idaho, ID, Latah, ID, Lewis, ID, Nez Perce, ID
Nisqually—Pierce, WA, Thurston, WA
Nooksah—Whatcom, WA
Northern Cheyenne—Big Horn, MT, Rosebud, MT
Oklahoma [4]
Omaha—Burt, NE, Cuming, NE, Monona, IA, Thurston, NE, Wayne, NE
Oneida—Brown, WI, Outagamie, WI
Pala Reservation—San Diego, CA
Papago—Maricopa, AZ, Pima, AZ, Pinal, AZ
Pasqua-Yaqui—Pima, AZ [5]
Passamaquoddy, Penobscot, ME—Aroostook, ME [6]
Pauma and Yuima Reservation—San Diego, CA
Payson Community (Tonto Apache)—Gila, AZ
Pechanga Reservation—Riverside, CA, San Diego, CA
Penobscot—Aroostook, ME, [6] Penobscot, ME
Picuris Pueblo—Taos, NM
Pine Ridge—Bennett, SD, Cherry, NE, Custer, SD, Dawes, NE, Fall River, SD, Jackson, SD, Mellette, SD, Pennington, SD, Shannon, SD, Sheridan, NE, Todd, SD, Washabaugh, SD
Pit River Indian Tribe of the X-L Ranch Reservation—Modoc, CA
Pojoaque Pueblo—Rio Arriba, NM, Santa Fe, NM
Port Gamble—Kitsap, WA
Port Madison—Kitsap, WA
Potowatomi—Forest, WI, Marinette, WI, Oconto, WI
Potawatomi—Jackson, KS
Prairie Island—Goodhue, MN
Prior Lake—Scott, MN
Puyallup—King, WA, Pierce, WA
Quileute—Clallam, WA, Jefferson, WA
Quinault—Grays Harbor, WA, Jefferson, WA
Ramona Reservation—Riverside, CA
Red Cliff—Bayfield, WI
Red Lake—Beltrami, MN, Clearwater, MN, Koochiching, MN, Lake of the Woods, MN, Marshall, MN, Pennington, MN, Polk, MN, Roseau, MN
Resighini Rancheria—Del Norte, CA
Rincon Reservation—San Diego, CA
Roaring Creek Rancheria—Shasta, CA
Robinson Rancheria—Lake, CA
Rocky Boy's—Chouteau, MT, Hill, MT
Rosebud—Bennett, SD, Cherry, NE, Mellette, SD, Todd, SD, Tripp, SD
Round Valley Reservation—Mendocino, CA
Rumsey Indian Rancheria—Yolo, CA
Sac and Fox (Iowa)—Tama, IA
Sac and Fox (Kansas)—Brown, KS, Richardson, NE
Salt River—Maricopa, AZ
Sandia Pueblo—Bernalillo, NM, Sandoval, NM
San Carlos—Apache, AZ, Cochise, AZ, Gila, AZ, Graham, AZ, Greenlee, AZ, Pinal, AZ
San Felipe Pueblo—Sandoval, NM
San Ildefonso—Los Alamos, NM, Rio Arriba, NM, Sandoval, NM, Santa Fe, NM
San Juan Pueblo—Rio Arriba, NM
San Manual Reservation—San Bernardino, CA
San Pasqual Reservation—San Diego, CA
Santa Ana Pueblo—Sandoval, NM
Santa Clara Pueblo—Los Alamos, NM, Rio Arriba, NM, Sandoval, NM, Santa Fe, NM
Santa Domingo Pueblo—Sandoval, NM, Santa Fe, NM
Santa Rosa Rancheria—Kings, CA
Santa Rosa Reservation—Riverside, CA
Santa Ynez Reservation—Santa Barbara, CA
Santa Ysabel Reservation—San Diego, CA
Santee—Bon Homme, SD, Knox, NE
Sauke-Suiattle—Snohomish, WA
Sault Ste. Marie Tribe of Chippewa [7]—Alger, MI, Chippewa, MI, Delta, MI, Luce, MI, Mackinac, MI, Marquette, MI, Schoolcraft, MI
Seneca—Allegany, NY, Cattaraugus, NY, Chautauqua, NY, Erie, NY, Warren, PA
Sheep Ranch Rancheria—Calaveras, CA
Sherwood Valley Rancheria—Mendocino, CA
Shingle Springs Rancheria (Veronica Tract)—El Dorado, CA
Shoalwater—Pacific, WA

[3] The entire State of Nevada is designated a CHSDA by regulation (42 CFR 36.22[a][2]).

[4] Former reservations in the State of Oklahoma are reservations by regulation (42 CFR 36.21(1)). The entire State of Oklahoma is a CHSDA by regulation (42 CFR 36.22(a)(3)).

[5] Legislative History (H.R. Report No. 95–1021) to Pub. L. 95–375, Extension of Federal Benefits to Pascua Yaqui Indians, Arizona, expresses congressional intent that lands conveyed to the tribes pursuant to Act of October 8, 1964, (Pub. L. 88–350) shall be deemed a Fedeal Indian Reservation.

[6] Included to carry out the intention of Congress to fund and provide contract health services to Penobscot and Passamaquoddy Indians in Aroostook County. A notice of proposed rulemaking is under development to reflect this congressional intent.

[7] The counties included in this CHSDA were designated by regulation (42 CFR 36.22(a)(4)).

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Siletz [1]—Benton, OR, Lane, OR, Lincoln, OR, Linn, OR, Marion, OR, Polk, OR, Tillamook, OR, Yam Hill, OR
Sisseton—Codington, SD, Day, SD, Grant, SD, Marshall, SD, Richland, SD, Roberts, SD, Sargent, SD, Traverse, MN
Skokomish—Mason, WA
Skull Valley—Tooele, UT
Soboba Reservation—Riverside, CA
South Florida (including Brighton, Florida State, Hollywood, and Miccosukee)—Broward, FL, Collier, FL, Dade, FL, Glades, FL, Hendry, FL
Southern Ute—Archuleta, CO, La Plata, CO, Montezuma, CO, Rio Arriba, NM, San Juan, NM
Spokane—Lincoln, WA, Ferry, WA, Stevens, WA
Squaxin Island—Mason, WA
St. Croix—Barron, WI, Burnett, WI, Pine, MN, Polk, WI, Washburn, WI
St. Regis Mohawk—Franklin, NY, St. Lawrence, NY
Standing Rock—Adams, ND, Campbell, SD, Corson, SD, Dewey, SD, Emmons, ND, Grant, ND, Morton, ND, Perkins, SD, Sioux, ND, Walworth, SD, Zieback, SD
Stewarts Point Rancheria—Sonoma, CA
Stockbridge-Munsee—Menominee, WI, Shawano, WI
Sulfer Bank Rancheria—Lake, CA
Suzanville Indian Rancheria—Lassen, CA
Swinomish—Skagit, WA
Sycuan Reservation—San Diego, CA
Table Bluff Rancheria—Humboldt, CA
Table Mountain Rancheria—Fresno, CA
Taos Pueblo—Colfax, NM, Taos, NM
Tesque Pueblo—Santa Fe, NM
Torres-Martinez Reservation—Riverside, CA, Imperial, CA
Trinidad Rancheria—Humboldt, CA
Tulalip—Snohomish, WA
Tule River Indian Reservation—Tulare, CA
Tuolumne Rancheria—Tuolumne, CA
Turtle Mountain—Rolette, ND
Twenty-Nine Palms Reservation—San Bernardino, CA
Uintah and Ouray—Carbon, UT, Duchesne, UT, Emery, UT, Grand, UT, Rio Blanco, CO, Uintah, UT, Wasatch, UT
Umatilla—Umatilla, OR, Union, OR
Upper Lake Rancheria—Lake, CA
Upper Sioux—Chippewa, MN, Yellow Medicine, MN
Ute Mountain Ute—La Plata, CO, Montezuma, CO
Viejas Reservation–San Diego, CA
Warm Springs—Clackamas, OR, Jefferson, OR, Linn, OR, Marion, OR, Wasco, OR
Washoe River (Dresslerville Colony)—Alpine, CA, Douglas, NV
White Earth—Becker, MN, Clearwater, MN, Mahnomen, MN, Norman, MN, Polk, MN
Winnebago (Nebraska)—Burt, NE, Dakota, NE, Dixon, NE, Monona, IA, Thurston, NE, Wayne, NE, Woodbury, IA
Winnebago (Wisconsin) [1]—Adams, WI, Clark, WI, Columbia, WI, Crawford, WI, Eau Claire, WI, Houston, MN, Jackson, WI, Juneau, WI, La Crosse, WI, Marathon, WI, Monroe, WI, Sauk, WI, Shawano, WI, Vernon, WI, Wood, WI
Yakima—Klickitat, WA, Lewis, WA, Yakima, WA
Yankton—Bon Homme, SD, Boyd, NE, Charles Mix, SD, Douglas, SD, Gregory, SD, Hutchison, SD, Knox, NE
Yavapai-Prescott—Yavapai, AZ
Zia Pueblo—Sandoval, NM
Zuni Pueblo—Apache, AZ, McKinley, NM, Valencia, NM.

Dated: October 14, 1980.

George I. Lythcott,

Assistant Surgeon General, Administrator.

[FR Doc. 80-33016 Filed 10-22-80; 8:45 am]

BILLING CODE 4110-84-M

[1] Under the Siletz Restoration Act, Pub. L. 95-195, a reservation is being established. Pending establishment of a reservation, in order to carry out the congressional intent as expressed in H.R. Report No. 95-623, at page 4, Siletz tribal members residing in these counties are eligible for contract health services.

[1] The counties included in this CHSDA were designated by regulation (42 CFR 36.22(a)(5)).

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Baker District Office, Oregon; Oregon Designation of Public Lands for Off-Road Vehicle Use

Notice is hereby given that the public lands administered by the Bureau of Land Management within Baker County, Oregon have been designated for use by off-road vehicles. The designations (open, limited, closed) are consistent with and in furtherance of Executive Order 11644 (37 FR 2877, February 9, 1972), regulations in 43 CFR Part 8340 and the Federal Land Policy and Management Act of 1976. These designations are the result of decisions made in the Baker Management Framework Plan and received full public participation. These designations apply to all motorized vehicular use except (1) fire, emergency, law enforcement, military, and Federal or other governmental vehicles while use for official or emergency purposes, and (2) any vehicle whose use is expressly authorized by permit, lease, license, agreement or contract issued by the authorized officer.

The area affected by these designations encompasses approximately 380,000 acres of public land and is located within Baker County, Oregon. The rationales for the designation of these lands are:

A. Reduce impacts upon soil and vegetation caused by vehicular use.

B. Minimize harrassment of big game species (deer and elk) while they are on their winter ranges.

C. Minimize harrassment of raptors and other species of non-game birds within major concentration areas. These areas support Bald Eagles, Golden Eagles, Red-Tailed hawks, Rough-legged hawks and many other species; they are crucial for mating, nesting and rearing.

D. Protect important historical, archeological, paleontological and other cultural resources.

E. Provide an area for foot or horseback-oriented traveling and/or hunting experiences.

F. Provide for a quality experience for generalized ORV recreational use (hunting, sightseeing, exploring).

G. Provide for a quality experience for intensive commercial/competitive ORV events.

H. Provide big game additional hiding, escape, and rest cover thereby reducing stress on the animal during the hunting seasons.

I. Interim management of area included in BLM Wilderness Inventory process limits use to existing open roads and trails. This will help prevent degradation of wilderness values while allowing historic uses to occur.

Following the description and designation of specific areas, the rationale is listed.

The designations are:

A. *Open:* 260,440 acres. 1. All public lands not indicated as closed or limited. Rationales F & G.

B. *Limited:* 119,560 acres. 1. *West Fork Burnt River:* 560 acres. Limited to existing open roads and trails from the opening of Blue grouse season to the close of rifle elk season. Rationale H.

2. *Denny Flat:* 1,260 acres. Limited to existing open roads and trails year around. Current ORV use many continue as long as the use area is not increased and the activities are confined to existing roads and trails. Rationales A, D & F.

3. *Burnt River Canyon:* 44,340 acres. Limited to existing open roads and trails from the opening of Blue grouse season to Janurary 15. Rationales A, B, D, E & H.

4. *Lookout Mountoin/Soda Lake:* 34,850 acres. Limited to existing open roads and trails from July 1 to January 15. Rationales A, E & H.

5. *Virtue Flat:* 3,560 acres. Area designated for intensive 4x4 and motorcycle free play, commerical and/or competitive events. No commercial/competitive or other permitted uses allowed from April 15 to June 7. Rationales C & G.

6. *South Virtue Flat (south of Ruckles Creek):* 700 acres. Limited year around: no recreational use. Mining, mineral exploration, land management, and other non-recreational uses are allowed. Rationales A & C.

7. *Powder River Canyon:* 6,230 acres. Limited to existing open roads and trails

year around. In addition the area is closed to recreational traffic from December 1 to the opening of trout season. Rationales A, B, C & D.

8. *McGraw Creek/Homestead/Sheep Mountain:* 24,600 acres. Limited to existing open roads and trails year around. Rationales A, E, H & I.

9. *Deer Creek (Halfway):* 3,460 acres. Limited to existing open roads and trails from January 1 to May 31. Rationale A.

C. *Closed:* 0 acres.

Specific locations of these areas are noted on maps and overlays located at the district office in Room 215 in the Federal Building, Baker, Oregon.

For further information contact: District Manager, Bureau of Land Management, P.O. Box 987, Baker, Oregon 97814, 503-523-6391, Ext. 281.

These designations are effective immediately.

Dated: October 14, 1980.

Gordon R. Staker,

District Manager.

[FR Doc. 80-33014 Filed 10-22-80; 8:45 am]

BILLING CODE 4310-84-M

Canon City District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Canon city district advisory council meeting.

SUMMARY: Notice is hereby given, in accordance with Pub. L. 94-579, that a meeting of the Canon City District Advisory Council will be held on Friday, November 21, 1980.

The meeting will begin at 1:00 p.m. in the meeting room of the Chaffee County Bank, 146 G Street, Salida, Colorado.

The topic of discussion will be BLM's management of public lands along the Arkansas River.

The meeting will be open to the public. Interested persons may make oral statements to the council during allotted time period beginning at 2:30 p.m. and lasting at least one-half hour. The District Manager may establish a time limit for oral statements depending on the number of people wishing to speak.

EFFECTIVE DATE: October 22, 1980.

ADDRESS: Anyone wishing to address the council must notify the District Manager, Bureau of Land Management, 3080 East Main, (P.O. Box 311), Canon City, Colorado 81212 by November 14, 1980.

FOR FURTHER INFORMATION CONTACT: Mel Clausen, District Manager, Canon City District, Canon City, Colorado 81212.

SUPPLEMENTAL INFORMATION: Summary minutes of the council meeting will be maintained in the Canon City BLM District Office and will be available for public inspections and reproduction (during regular business hours).

Mel Clausen,

District Manager.

[FR Doc. 80-33013 Filed 10-22-80; 8:45 am]

BILLING CODE 4310-84-M

Butte District, Mont.; Multiple Use Advisory Council Meeting

Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR Part 1780 that a meeting of the Butte District Advisory Council will be held on Wednesday and Thursday, November 12 and 13, 1980.

The meeting will begin at 1:00 p.m. on November 12 in the conference room of the Butte District Office at 106 North Parkmont (Industrial Park), Butte, Montana. The agenda will include:

1. Reading of the Advisory Council minutes from the meeting held 19 and 20 August.

2. A review of the status of the planning update in the Headwaters Resource Area.

3. A review of the scoping process now underway for the planning update in the Garnet Resources Area.

4. A report on implementation measures planned and in progress in the Dillon Resource Area which are the result of the recent planning update and Range Environmental Impact Statement in that area.

5. Review of oil and gas leasing on the Rocky Mountain Front.

6. Council topics.

The meeting is open to the public. Interested persons may make oral statements to the Council between 10:30—11:30 a.m., November 13, or file written statements for th Council's consideration. Anyone wishing to make an oral statement should notify the District Manager, Bureau of Land Management, 106 North Parkmont, P.O. Box 3388, Butte, Montana 59701 by November 10. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District manager.

Summary minutes of the meeting will be maintained in the District Office and be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Dated: October 10, 1980.

Dave Pickett,

Acting District Manager.

[FR Doc. 80-33067 Filed 10-22-80; 8:45 am]

BILLING CODE 4310-84-M

[AA-9205-C]

Alaska Native Claims Selection

Correction

In FR Doc. 80-28982, appearing on page 62564, in the issue of Friday, September 19, 1980, make the following correction.

On page 62565, first column, under **"Copper River Meridian, Alaska (Unsurveyed)"** in the sixteenth line a comma was omitted. The line should have read as follows:

"Sec. 10 (fractional), S½NW¼, SW¼."

BILLING CODE 1505-01-M

[F-14875-A]

Alaska Native Claims Selection; Kugkaktlik Ltd.

Correction

In FR Doc. 80-30446, appearing on page 64744, in the issue of Tuesday, September 30, 1980, make the following correction:

On page 64745, first column, beneath **"Seward Meridian, Alaska (Unsurveyed)**, add

"T .2 S. R. 84 W."

BILLING CODE 1505-05-M

Off-Road Vehicle Use Designations, Parker Mountain Planning Unit, Utah

October 10, 1980.

AGENCY: Bureau of Land Management, Department of the Interior, Richfield District.

ACTION: Utah; Off-Road Vehicle Use Designations, Parker Mountain Planning Unit.

In accordance with Executive Order 1164 (37 FR 2877, as amended, February 9, 1972), under the authority of 43 CFR, Part 8340, the following vehicle use zones are established on Bureau of Land Management administered lands in Wayne County, Utah:

1. *Closed to Vehicles.* Big Hollow Canyon—Below the Awapa Plateau and extending from the Fremont River west to Hunt's Reservoir in Section 33, T. 29 S., R. 1 E., Salt Lake Meridian, with the exception of the Loa-Escalante road crossing.

Fish Creek Cove—That portion of Section 31, T. 29 S., R. 5 E., Salt Lake Meridian, which is situated southwest of

Cock's Comb; Lots 4 & 5, Section 6, T. 30 S., R. 5 E., Salt Lake Meridian.

Fremont Gorge—That portion of the Fremont River Gorge extending from the Torrey-Grover road and the Fish Creek confluence east to the Capitol Reef National Park boundary.

2. *Open to Vehicles.* All other public lands within the Parker Mountain Planning Unit; subject to the regulations found in 43 CFR, Part 8340—Off-Road Vehicles, Use of Public Lands, published in the Federal Register June 15, 1979.

The Use Zones shown above are as specified by the Parker Mountain Management Framework Plan, dated April, 1979 which was subject to public input and comment.

The purpose of the closed zones is to protect natural and cultural resource values and prevent conflicts between vehicular and non-vehicular recreation uses.

The closure of Big Hollow Canyon is further intended to provide protection from vehicular use while studies of the area's raptor population are conducted. When the studies are completed the appropriateness of the closed designation will be reviewed.

Vehicle use will be prohibited in the closed zones except for required administrative use, emergency use and other essential access as authorized by the Richfield District Office. Permits will be granted for reasonable management and use purposes as authorized under 43 CFR, Part 8340.

These designations will be effective, October 23, 1980 and remain in effect until further notice. A map showing the use zones is available from the following offices:

Richfield District Office, 150 East 900 North, Richfield, Utah 84701
Henry Mountain Resource Area Office, P.O. Box 99, Hanksville, Utah 84734

Leroy C. Montoya,
Assistant District Manager.

[FR Doc. 80-33083 Filed 10-22-80; 8:45 am]
BILLING CODE 4310-84-M

[W-72517]

Wyoming; Notice of Application

October 15, 1980.

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Company of Colorado Springs, Colorado filed an application for a right-of-way to construct a 6 ⅝ inch and two 4½ inch O.D. pipelines and related facilities for the purpose of transporting natural gas across the following described public lands:

Sixth Principal Meridian, Wyoming

T. 13 N., R. 94 W.,
Secs. 14, 18, 19, 20, 21, 22 and 23.
T. 13 N., R. 95 W.,
Secs. 3, 4, 10, 11, 13, 14, 23, 24 and 26.

The proposed pipelines will transport natural gas from the McPherson Springs 14–2, McPherson 23–2 and Polaris Unit #1 Wells to a point of connection with a proposed pipeline in section 4, T. 13 N., R. 95 W., Sweetwater County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

Harold G. Stinchcomb,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 80-33082 Filed 10-22-80; 8:45 am]
BILLING CODE 4310-84-M

Fish and Wildlife Service

Endangered Species Permit; Receipt of Application

Applicant: Patuxent Wildlife Research Center, U.S. Fish and Wildlife Service, Laurel, MD 20811.

The applicant requests a permit to import parts or products (e.g. blood, feces, feathers, tissue samples, etc.) of Andean condors (Vultur gryphus) collected in Peru for scientific research.

Documents and other information submitted with this application are available to the public during normal business hours in Room 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), P.O. Box 3654, Arlington, VA 22203.

This application has been assigned file number PRT 2–7149. Interested persons may comment on this application on or before November 24, 1980 by submitting written data, views, or arguments to the Director at the above address. Please refer to the file number when submitting comments.

Dated: October 16, 1980.

Larry LaRochelle,
Acting Chief, Permit Branch, Federal Wildlife Permit Office, Fish and Wildlife Service.

[FR Doc. 80-33112 Filed 10-22-80; 8:45 am]
BILLING CODE 4310-55-M

Endangered Species Permit; Receipt of Applications

The applicants listed below wish to be authorized to conduct the specified activity with the indicated Endangered Species:

Applicant: R. E. Lee Andrew, Easton, MD 21601; PRT 2–7135.

The applicant requests a permit to purchase in interstate commerce captive-bred Nene geese (*Branta sandivicensis*) from U.S. sources for enhancement of propagation and survival.

Applicant: R. H. Crompton, Harvard University, Cambridge, MA; PRT 2–7174.

The applicant requests a permit to export preserved specimens of cotton-top marmosets (*Saquinus oedipus*) and mouse lemurs (*Microcebus murinus*) to Hong Kong for scientific research at the Chinese University.

Applicant: David Lee Moore, Byhalia, MS 38611; PRT 2–7169.

The applicant requests a permit to purchase in interstate commerce captive-bred Nene geese (*Branta sandivicensis*) and Hawaiian ducks (*Anas wyvilliana*) from U.S. sources for enhancement of propagation and survival.

Applicant: San Antonio Zoo, San Antonio, TX 78212; PRT 2–7176.

The applicant requests a permit to import in foreign commerce two captive bred Cuban crocodiles (*Crocodylus rhombifer*) from the Aquarium de Montreal, Quebec, Canada for enhancement of propagation and survival.

Applicant: Joseph C. Allen, Prescott, AZ 86301; PRT 2–7125.

The applicant requests a permit to take (salvage) dead or injured endangered and threatened bird species in Arizona for scientific research and/or rehabilitation purposes.

Humane care and treatment during transport, if applicable, has been indicated by the applicant.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service, WPO, P.O. Box 3654, Arlington, VA 22203.

Interested persons may comment on these applications within 30 days of the date of this publication by submitting written data, views, or arguments to the Director at the above address.

Dated: October 17, 1980.

Fred L. Bolwahnn,
Acting Chief, Permit Branch, Federal Wildlife Permit Office, Fish and Wildlife Service.

[FR Doc. 80-33113 Filed 10-22-80; 8:45 am]
BILLING CODE 4310-55-M

Heritage Conservation and Recreation Service

Proposed Designation of Five California Rivers in the National Wild and Scenic Rivers System; Intent To Extend EIS Review Period

October 20, 1980.

AGENCY: Heritage Conservation and Recreation Service, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Heritage Conservation and Recreation Service has extended the review period for DES 80–59, *Proposed Designation of Five California Rivers in the National Wild and Scenic Rivers System* through November 20, 1980. The previous deadline for comments was November 5, 1980.

FOR FURTHER INFORMATION CONTACT: John Haubert, Outdoor Recreation Planner, Heritage Conservation and Recreation Service, U.S.D.I., Washington, D.C. 20243, (202/343–4793). The primary author for this Notice is John Haubert.

Dated: October 20, 1980.

Robert A. Ritsch,
Acting Director for Natural Resources.

[FR Doc. 80-33077 Filed 10-22-80; 8:45 am]
BILLING CODE 4310-03-M

INTERSTATE COMMERCE COMMISSION

[Notice No. 200]

Assignment of Hearings

October 15, 1980.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 94201 (Sub-179F), Bowman Transportation, Inc., now assigned for Prehearing Conference on October 15, 1980 at Washington, D.C., is postponed to October 27, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 28088 (Sub-46F), North & South Lines, Inc.; now assigned for hearing on September 30, 1980 at Washington, D.C., is cancelled and application dismissed.

MC 34631 (Sub-6F), A. Arnold & Sons Transfer & Storage Co., Inc., now being assigned for hearing on December 10, 1980 (1 day) at Columbus, OH location of hearing room will be designated later.

MC 135524 (Sub-48F), G. R. Trucking Co. now being assigned for hearing on December 11, 1980 (2 days) at Columbus, OH location of hearing room will be designated later.

MC–F–14171, Columbus Retail Merchants Delivery, Inc., Purchase Reed Lines, Inc. and MC 14251, (Sub-7F), Columbus Retail Merchants Delivery, Inc., now being assigned for hearing on December 15, 1980 (5 days) at Columbus, OH location of hearing room will be designated later.

MC 107012 (Sub-499F), North American Van Lines, Inc., now assigned for Prehearing Conference on November 21, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 134922 (Sub-318F), B. J. McAdams, Inc., now assigned for Prehearing Conference on November 21, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 114552 (Sub-249F), Senn Trucking Company, now assigned for Prehearing Conference on November 24, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 113974 (Sub-69F), Pittsburgh & New England Trucking Co., now assigned for Prehearing Conference on November 24, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 148629F, Parkhill Pipe Services Company, now assigned for Prehearing Conference on November 24, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 31389 (Sub-287F), McLean Trucking Company, now assigned for Prehearing Conference on November 24, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 141443 (Sub-25F), John Long Trucking, Inc., now assigned for Prehearing on October 2, 1980 at Los Angeles, CA is transferred to Modified Procedure.

MC 108119 (Sub-151F), E. L. Murphy Trucking Company, now assigned for hearing on December 8, 1980 (1 day) at Birmingham, AL in a hearing room to be later designated.

MC144011 (Sub-1F), Hall System, Inc., now assigned for hearing on December 9, 1980 (9 days) at Birmingham, AL in a hearing room to be later designated.

MC 147848 (Sub-3F), A–1 Express Chartered Bus Service, Inc., now assigned for hearing on December 10, 1980 (3 days) at Indianapolis, IN in a hearing room to be later designated.

MC 101474 (Sub-26F), Red Top Trucking Company, Inc., now assigned for hearing on December 15, 1980 (5 days) at Indianapolis, IN in a hearing room to be later designated.

MC 124078 (Sub-975F), Schwerman Trucking Co., application dismissed.

MC 22301 (Sub-29F), Sioux Transportation Co., Inc., now assigned for hearing on December 9, 1980 (9 days) at Chicago, IL in a hearing room to be later designated.

MC 107912 (Sub-29F), Rebel Motor Freight, Inc., now assigned for hearing on January 6, 1981 (9 days) at Memphis, TN in a hearing room to be later designated.

MC 11838 (Sub-58F), Cabor Trucking, Inc., now assigned for hearing on October 29, 1980 at Seattle WA in Room No. 2866, Federal Building, 915 2nd Avenue.

AB 10 (Sub-21F), Wabash Railroad Company and Norfolk and Western Railway Company—Abandonment—In Elkhart, LaGrange, Noble and Steuben Counties, IN, and Williams County, OH, now assigned for hearing on October 28, 1980 at LaGrange, IN, in the Conference Room, Farmer's State Bank, 220 South Detroit Street.

MC 110563 (Sub-307F), Coldway Food Express, Inc., now assigned for Prehearing Conference on November 13, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 56679 (Sub-167F), Brown Transport Corp., now assigned for Prehearing Conference on December 1, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 145152 (Sub-90F), Big Three Transportation, Inc., now assigned for hearing on December 2, 1980 (1 day) at Kansas City, MO in a hearing room to be later designated.

MC 134755 (Sub-208F), Charter Express, Inc., now assigned for hearing on December 3, 1980 (1 day) at Kansas City, MO in a hearing room to be later designated.

MC 141092 (Sub-2F), E. R. Hopkins Truck Line, Inc., now assigned for hearing on December 4, 1980 at Kansas City, MO in a hearing room to be later designated.

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MC 113908 (Sub-495F), Erickson Transport Corp., now assigned for hearing on December 8, 1980 (1 week) at Kansas City, MO in a hearing room to be later designated.

MC 58902 (Sub-19F), Manley Transfer Company, Inc., now assigned for hearing on October 27, 1980 (2 weeks) at Kansas City, MO will be held in hearing rooms as follows, October 27, 1980 (3 days) at the Federal Building, room 280, 601 East 12th Street, continued on October 30, 1980 (2 days) at the HEW, Room No. 276, 601 East 12th Street and November 3, 1980 (5 days) at the Department of Labor, Room Nos. 2506 and 2507—25th Floor, 911 Walnut Street, Old Federal Building.

MC 61825 (Sub-130F), Roy Stone Transfer Corporation, now assigned for Prehearing Conference on December 1, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 114211 (Sub-456F), Warren Transport Inc., now assigned for Prehearing Conference on December 2, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 138878 (Sub-8F), John S. Watson DBA John S. Watson Trucking Co., now assigned for hearing October 7, 1980 at Charleston, WV is transferred to Modified Procedure.

MC 105269 (Sub-77F), Graff Trucking Company, Inc., is transferred to Modified Procedure.

MC 110525 (Sub-1307F), Chemical Leaman Tank Lines, Inc., now assigned for hearing November 6, 1980 at Chicago, IL is transferred to Modified Procedure.

MC 140024 (Sub-166F), J. B. Montgomery, Inc., now assigned for hearing on October 28, 1980 at Pittsburgh, PA is transferred to Modified Procedure.

MC 124151 (Sub-13F), Vanguard Transportation, Inc., is transferred to Modified Procedure.

MC 147895 (Sub-1F), Express Transport Corp., now assigned for Prehearing Conference on October 7, 1980 at Washington, D.C., is postponed to November 6, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 124174 (Sub-151F), Momsen Trucking Co., now assigned for hearing on October 27, 1980 at Laredo, TX at the La Posada Motor Hotel, 1000 Zaragoza.

MC 135732 (Sub-38F), Aubrey Freight Lines, Inc., now assigned for hearing on October 9, 1980 at New York, NY is transferred to Modified Procedure.

MC 146946 (Sub-1F), Linten Heavy Haulers, now assigned for hearing on December 9, 1980 (9 days) at Los Angeles, CA in a hearing room to be later designated.

MC 23818 (Sub-62F), McAlister Trucking Company D/B/A Matco, now assigned for Prehearing Conference on November 25, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 23618 (Sub-63F), McAlister Trucking Company D/B/A Matco, now assigned for Prehearing Conference on November 28, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 125433 (Sub-428F), F–B Truck Line Company, now assigned for Prehearing Conference on November 21, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 107478 (Sub-66F), Old Dominion Freight Line, Inc., now assigned for Prehearing Conference on November 21, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 150777 (Sub-1F), American Contract Carrier, Inc., now assigned for Prehearing Conference on December 1, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 128272 (Sub-392F), Midwestern Distribution, Inc., now assigned for Prehearing Conference on December 15, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 115703 (Sub-13F), Kreitz Motor Express, Inc., now assigned for hearing on October 8, 1980 at Washington, D.C., is canceled and application is dismissed.

MC 58923 (Sub-54F), Georgia Highway Express, Inc., now assigned for October 14, 1980 is canceled and reassigned to October 15, 1980 at Jackson, MS, Suite 707, Federal Building, 100 West Capitol Street, continued hearing assigned for November 17, 1980 is canceled.

MC 147408 (Sub-2F), Isadore Hall DBA I. Hall Charter Service, now assigned for hearing on October 27, 1980 at Baltimore, MD in the Conference Room—First Floor, Garmatz Federal Bldg., & Courthouse, 101 W. Lombard Street.

MC 66746 (Sub-23F), Shippers Express, Inc., now assigned for continued hearing on November 6, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 148379 (Sub-4F), Auto Express, Inc., now assigned for Prehearing Conference on December 2, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 147281 (Sub-2F), Robert G. Willment and Edward J. Blyzwick Jr. D/B/A Keystone Air Freight Expediting, now assigned for hearing on November 3, 1980 (1 week) at Pittsburgh, PA on November 3, 4, & 7, 1980 in Room 2218, Federal Building, 1000 Liberty Avenue, on November 5 & 6, 1980 in Room 2501, Federal Building, 1000 Liberty Avenue.

MC 141804 (Sub-307F), Western Express, Division of Interstate Rental, Inc., now assigned for hearing on November 13, 1980 at Los Angeles, CA in Los Angeles County Courthouse, 111 North Hill Street.

MC 147521 (Sub-4F), J.S.I., now assigned for hearing on November 17, 1980 at Los Angeles, CA in Los Angeles County Courthouse, 111 North Hill Street.

MC 143775 (Sub-123F), Paul Yates, Inc., now assigned for hearing on October 28, 1980 (2 days) at San Francisco, CA in Room 510, 5th Floor, 211 Main Street.

MC 5623 (Sub-51F), Arrow Trucking Co., now assigned for hearing on November 3, 1980 at San Francisco, CA in room 510, 5th Floor, 211 Main Street.

MC 106674 (Sub-402F), Schilli Motor Lines, Inc., now assigned for October 28, 1980 (1 day) at Chicago, IL in Room 3883, Kluczynski Bldg., 230 S. Dearborn Street.

MC 110420 (Sub-811F), Quality Carriers, Inc., now assigned for hearing on October 29, 1980 (3 days) at Chicago, IL in Room 3883, Kluczynski Bldg., 230 South Dearborn Street.

MC 113855 (Sub-490F), International Transport, Inc., now assigned for hearing on November 3, 1980 (1 day) at Chicago, IL in Room 3619, Kluczynski Building, 230 South Dearborn Street.

MC 61592 (Sub-475F), Jenkins Truck Line, Inc., now assigned for hearing on November 4, 1980 (2 days) at Chicago, IL.

MC 35628 (Sub-418F), Interstate Motor Freight System, now assigned for hearing on November 17, 1980 at Buffalo, NY is transferred to Modified Prodecure.

MC 115841 (Sub-752F), Colonial Refrigerated Transportation, Inc., now assigned for hearing on October 29, 1980 at San Antonio, TX will be held in Room No. 371, Old U.S. Courthouse & Post Office, 615 East Houston Street.

MC 113300 (Sub-12F), William T. Herron Trucking, Inc., now assigned for hearing on November 13, 1980 at Columbus, OH will be held in Conference Room No. 426, Federal Building, 85 Marconi Blvd.

MC 31389 (Sub-284F), Mclean Trucking Company, now assigned for hearing on November 3, 1980 at Fort Worth, TX will be held in ICC Hearing Room—4th Floor, 411 West 7th Street, Neil P. Anderson Building.

MC 123048 (Sub-472F), Diamond Transportation System, Inc., now assigned for hearing on November 14, 1980 at Columbus, OH will be held in Conference Rom No. 426, Federal Building, 85 Marconi Blvd.

MC 14552 (Sub-69F), Mcnicholas Transportation Co., now assigned for hearing on November 17, 1980 at Columbus, OH will be held in Conference Room No. 426, Federal Building, 85 Marconi Blvd.

MC 102616 (Sub-1011F), Coastal Tank Lines, Inc., now being assigned for hearing on January 6, 1981 (4 days) at Ft. Worth, TX, location of hearing room will be designated later.

MC 148438 (Sub-1F), Marchand Construction, Inc., now being assigned for hearing on January 12, 1981 (2 days) at Ft. Worth, TX location of hearing room will be designated later.

MC 133095 (Sub-248F), Texas-Continental Express, Inc., now being assigned for hearing on January 14, 1981 (3 days) at Ft. Worth, TX location of hearing room will be designated later.

MC 115841 (Sub-768F), Colonial Refrigerated Transportation, Inc., now being assigned for prehearing conference on November 7, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 147323 (Sub-16F), Haddad Transportation, Inc., now being assigned for prehearing on December 1, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 115311 (Sub-397F), J & M Transportation Co., Inc., now being assigned for prehearing conference on December 2, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 125433 (Sub-424F), F-B Truck Line Company, now being assigned for prehearing conference on November 21, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 108937 (Sub-65F), Murphy Motor Freight Lines, Inc., now assigned for prehearing conference on December 3, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

No. 37466, The Aluminum Association, Inc., Et Al v. The Akron, Canton & Youngstown Railroad Co., et al., now being assigned for prehearing conference at the Offices of the Interstate Commerce Commission, at Washington, D.C.

AB 43 (Sub-38F), Illinois Central Gulf Railroad Company Abandonment near Rosedale and Greenville, in Washington and Bolivar Counties, Mississippi now assigned for hearing on November 3, 1980 (9 days) at Rosedale, MS is postponed to December 2, 1980 (9 days) at Rosedale, MS., location of hearing room will be designated later.

MC 119789 (Sub-639F), Caravan Refrigerated Cargo, Inc., now being assigned for hearing on December 5, 1980 (1 day) at Chicago, IL location of hearing room will be designated later.

No. 37499 The Murray Ohio Manufacturing Co. v. The Louisville & Nashville Railroad Co., now being assigned for prehearing conference on November 7, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 125985 (Sub-29F), Auto Driveaway Company, is transferred to Modified Procedure.

MC 136343 (Sub-182F), Milton Transportation, Inc., is transferred to Modified Procedure.

MC 145481 (Sub-12F), Coyote Truck Line, Inc., is transferred to Modified Procedure.

MC 105566 (Sub-201F), Sam Tanksley Trucking, Inc., is transferred to Modified Procedure.

MC 29079 (Sub-168F), Brada Miller Freight Systems, Inc., now being assigned for hearing on December 2, 1980 (1 week) at Birmingham, AL location of hearing room will be designated later.

MC 111302 (Sub-169F), Highway Transport, Inc., now being assigned for hearing on December 8, 1980 at Atlanta, GA location of hearing room will be designated later.

MC 143594 (Sub-10F), National Bulk Transport, Inc., is transferred to Modified Procedure.

No. 37450, Central Illinois Light Company v. the Atchison Topeka and Santa Fe Railway Company, et al, now being assigned for hearing on December 15, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 144678 (Sub-9F), American Freight System, Inc., now being assigned for hearing on December 15, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 147568F, Sam Broussard Trucking Co., Inc., now being assigned for hearings on December 1, 1980 (3 days) at New Orleans, LA location of hearing room will be designated later.

MC 148265F, L & F Leasing, Inc., is transferred to Modified Procedure.

MC 139482 (Sub-128F), New Ulm Freight Lines, Inc., is transferred to Modified Procedure.

MC 107605 (Sub-23F), Advance-UNITED Expressways, Inc., now being assigned for hearing on December 12, 1980 (9 days) at St. Paul, MN location of hearing room will be designated later.

MC 119639 (Sub-20F), Inco Express, Inc., now being assigned for hearing on November 19, 1980 (3 days) at Portland, OR in room No. 103, Pioneer Courthouse, 555 S.W. Yamhill Street.

MC 56679 (Sub-152F), Brown Transport Corp., now being assigned for hearing on December 2, 1980 (9 days) at Atlanta, GA location of hearing room will be designated later.

MC 105120 (Sub-20F), Freightways Express, Inc., now being assigned for hearing on December 9, 1980 (2 week) at Memphis, TN location of hearing room will be designated later.

MC 110817 (Sub-29F) E. L. Farmer & Company, now being assigned for hearing on December 2, 1980 (2 week) at Houston, TX location of hearing room will be designated later.

MC 146863 (Sub-2F), Webb's Hot Service, Inc., MC 147391 (Sub-2F), Loyd Rudy d.b.a. Loyd's Hot Shot Service, MC 147351 (Sub-2F), Yor Enterprises, Inc., d.b.a. Diamond Y Hot Shot, MC 147398 (Sub-2F), A. t. Tucker d.b.a. Hotshot & MC 105006 (Sub-11F), L. L. Smith Trucking., now being assigned for hearing on December 9, 1980 (2 weeks) at Casper, WY location of hearing room will be designated later.

MC 14702 (Sub-85F), Ohio Fast Freight, Inc., is transferred to Modified Procedure.

MC 135524 (Sub-44F), G. F. Trucking Company, now being assigned for hearing on December 9, 1980 at Chicago, IL location of hearing room will be designated later.

MC 142268 (Sub-39F), Gorski Bulk Transport, Inc., now being assigned for hearing on December 11, 1980 at Chicago, IL location of hearing room will be designated later.

MC 109533 (Sub-119F), Overnite Transportation Company, now being assigned for hearing on December 15, 1980 at Indianapolis, IN location of hearing room will be designated later.

MC 135518 (Sub-20F), Western Carriers, Inc., is transferred to Modified Procedure.

MC 144969 (Sub-12F), Wheaton Cartage, Co., now being assigned for hearing on December 4, 1980 at Chicago, IL, (1 day) at Chicago, IL location of hearing room will be designated later.

MC 143594 (Sub-10F), National Bulk Transport, Inc., now being assigned for hearing on December 5, 1980 (1 day) at Chicago, IL location of hearing room will be designated later.

MC 147522 (Sub-1F), George Joseph Brzezinski, d.b.a. Shur-Way Moving & Cartage Company, now being assigned for hearing on December 8, 1980 (1 day) at Chicago, IL location of hearing room will be designated later.

MC 128273 (Sub-378F), Midwestern Distribution, Inc., now being assigned for prehearing conference on November 13, 1980 at the Offices of the Interstate

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MC 26396 (Sub-368F), The Waggoners Trucking, now being assigned for prehearing conference on November 14, 1980 at the Offices of the International Commerce Commission, at Washington, D.C.

MC 49387 (Sub-56F), Orscheln Bros. Truck Lines, Inc., now being assigned for prehearing conference on November 14, 1980 at the Offices of the Interstate Commerce Commission at Washington, D.C.

MC 124141 (Sub-30F), Julian Martin, Inc., now being assigned for prehearing conference on November 17, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 146281 (Sub-4F), Silver Fleet Express, Inc., now being assigned for prehearing conference on November 17, 1980 at the Offices of the Interstate Commerce Commission Washington, D.C.

MC 136343 (Sub-182F), Milton Transportation, Inc., now being assigned for hearing on October 29, 1980, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 114569 (Sub-305F), Shaffer Trucking, Inc., now being assigned for hearing on November 13, 1980 at the Offices of the Interstate Commerce Commission at Washington, D.C.

MC 119991 (Sub-26F), Young Transport, Inc., now being assigned for hearing on November 18, 1980 at the Offices of the Interstate Commerce Commission at Washington, D.C.

No. 37487, Volkswagen of America, Inc. v. The Baltimore and Ohio Railroad Company, Inc., et al, now being assigned for prehearing conference at the offices of the Interstate Commerce Commission, at Washington, D.C.

AB 43 (Sub-62F), Illinois Central Gulf Railroad Company—Abandonment—between Bemis, TN and Coffeeville, MS is being assigned for continued hearing on November 12, 1980 (1 week) at Bolivar, TN and November 17, 1980 (1 week) at Oxford, MS location of hearing room will be designated later.

MC 146378 (Sub-5F), Paul Harpole Truck Service, Inc., now being assigned for hearing on December 3, 1980 at Chicago, IL (1 day) at Chicago, IL location of hearing room will be designated later.

MC 115826 (Sub-479F), W. J. Digby, Inc., now being assigned for hearing on December 4, 1980 (1 day) at Denver, CO location of hearing room will be designated later.

MC 115828 (Sub-511F), W. J. Digby, Inc., now being assigned for hearing on December 5, 1980 (1 day) at Denver, CO location of hearing room will be designated later.

MC 106194 (Sub-39F), Horn Transportation, Inc., now being assigned for hearing on December 8, 1980 (1 week) at Denver, CO location of hearing room will be designated later.

MC 125299 (Sub-7F), Witt Brothers Exchange, Incorp., now being assigned for hearing on December 4, 1980 (2 days) at St. Louis, MO location of hearing room will be designated later.

MC 128299 (Sub-35F), Rediehs Interstate, Inc., now being assigned for hearing on December 8, 1980 (1 day) at St. Louis, MO location of hearing room will be designated later.

MC 119656 (Sub-62F), North Express, Inc., now being assigned for hearing on December 9, 1980 (2 days) at St. Louis, MO location of hearing room will be designated later.

MC 112304 (Sub-222F), Ace Doran Hauling & Rigging Co., now being assigned for hearing on December 11, 1980 (2 days) at St. Louis, MO, location of hearing room will be designated later.

MC 109708 (Sub-101F), Indian Ribert Transport Co., now being assigned for hearing on December 1, 1980 (1 week) at Indianapolis, IN location of hearing room will be designated later.

MC 145516 (Sub-7F), T. G. Stegall Trucking Company, Inc., now being assigned for prehearing conference on November 20, 1980 at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 73165 (Sub-497F), Eage Motor Lines, Inc., now being assigned for prehearing conference on November 20, 1980 at the Offices of the Interstate Commerce Commission at Washington, D.C.

MC 115841 (Sub-709F), Colonial Refrigerated Transportation, now being assigned for hearing on December 9, 1980 (2 days) at Seattle, WA location of hearing room will be designated later.

MC 11722 (Sub-72F), Brader Hauling Service, Inc., now being assigned for hearing on December 11, 1980 (2 days) at Seattle, WA location of hearing room will be designated later.

MC 144315 (Sub-5F), Port City Leasing, Inc., now being assigned for hearing on December 15, 1980 at Seattle, WA location of hearing room will be designated later.

MC 140665 (Sub-59F), Prime, Inc., now being assigned for hearing on December 17, 1980 (3 days) at Seattle, WA, location of hearing room will be designated later.

MC 730 (Sub-440F), Pacific Intermountain Express Co., now being assigned for hearing on December 2, 1980 at St. Louis, MO location of hearing room will be designated later.

MC 115331 (Sub-507F), Truck Transport Incorporated, now being assigned for hearing on December 3, 1980 at St. Louis, MO location of hearing room will be designated later.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-33061 Filed 10-22-80; 8:45 am]

BILLING CODE 7035-01-M

Decision-Notice

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). These rules provide, among other things, that opposition to the granting of an application must be filed with the Commission within 30 days after the date of notice of filing of the application is published in the **Federal Register.** Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. Opposition under these rules should comply with Rule 240(c) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, and specify with particularity the facts, matters and things relied upon, but shall not include issues or allegations phrased generally. Opposition not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of any protest shall be filed with the Commission, and a copy shall also be served upon applicant's representative or applicant if no representative is named. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 240(c)(4) of the special rules and shall include the certification required.

Section 240(e) further provides, in part, that an applicant who does not intend timely to prosecute its application shall promptly request its dismissal.

Further processing steps will be by Commission notice or order which will be served on each party of record. *Broodening amendments will not be accepted after the date of this publicotion except for good cause shown.*

Any authority granted may reflect administratively acceptable restrictive

amendments to the transaction proposed. Some of the applications may have been modified to conform with Commission policy.

We find with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a protestant, that the proposed dual operations are consistent with the public interest and the national transportation policy subject to the right of the Commission, which is expressly reserved, to impose such conditions as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930.

In the absence of legally sufficient protests as to the finance application *or* any application directly related thereto filed within 30 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Decided: October 10, 1980.

By the Commission, Review Board Number 5, members Krock, Taylor and Williams. (member William not participating)

MC-F-14334F, filed March 5, 1980. P. L. LAWTON, INC. (Lawton) (P.O. Box 325, Berwick, PA 18603) PURCHASE—DAILEY TRUCKING, INC. (Dailey) (2935 Moreland Avenue, Conley, GA 30027). Representative: J. Bruce Walter, P.O. Box 1146, 410 N. Third Street, Harrisburg, PA 17108. Lawton seeks authority to purchase the interstate operating rights of Dailey. Lawton Enterprises, Inc., a non-carrier and sole stockholder of Lawton, and in turn, LaBar Enterprises, Inc., a non-carrier and sole stockholder of Lawton Enterprises, Inc., and in turn, James C. LaBar, the sole stockholder of LaBar Enterprises, Inc., seek authority to acquire control of said rights through the transaction. Lawton is purchasing the interstate operating rights of Dailey which are contained in MC 144731 (Sub-1F), and authorize the transportation, as a motor contract carrier, over irregular routes, of *floor covering installation materials* (except commodities in bulk), from Conyers, GA, to points in the United States (except AK, HI, AZ, CA, CO, ID, MT, NV, NM, ND, OR, SD, UT, WA, and WY), under continuing contract(s) with Taylor Industries, of Conyers, GA. P. L. Lawton is a motor contract carrier pursuant to authority issued in MC 128782 and sub-numbers thereunder. Condition: So far as can be ascertained from the evidence of record in this proceeding, Lawton's parent, LaBar's Enterprises, Inc., is a non-carrier with its investments and functions primarily related to transportation. Accordingly, concurrently with consummation of the transaction authorized in this proceeding, LaBar's Enterprises, Inc., will be considered a motor carrier within the meaning of 49 U.S.C. 11348. It will, therefore, be subject to the applicable provisions of 49 U.S.C. Subtitle IV, subchapter III of chapter 111 relating to reporting and accounting, and of 49 U.S.C. 11302 relating to the issuance of securities.

Note.—Application for temporary authority has been filed.

MC-F-14441F, filed June 28, 1980. BEST-WAY TRANSPORTATION (Best-Way) (5150 N. 16th Street, Ste. 232, Phoenix, AZ 85016) —PURCHASE (PORTION)— SYSTEM 99 and NEVADA FREIGHT LINES, INC. (Nevada) (both of 8201 Edgewater Drive, Oakland, CA 94621). Representative: Lewis P. Ames, 111 W. Monroe, 10th Floor, Phoenix, AZ 85003. Best-Way seeks authority to purchase a portion of the interstate operating rights of System 99 and Nevada. Arrow Delivery Company which controls 100% of the stock of Best-Way seeks authority to acquire control of said rights through the transaction. Best-Way is purchasing a portion of the interstate operating rights contained in System 99 certificate MC 98327 (Subs.-26, 27 and 34), which authorized the transportation of general commodities [except those of unusual value, Classes A and B explosives, household goods, as defined by the Commission, commodities in bulk, and those requiring special equipment], over regular routes, as summarized: [1] Between San Bernardino, California and junction unnumbered highway and Interstate Highway 15, near Nipton, California, serving all intermediate points. From San Bernardino over Interstate Highway 15 to junction U.S. Highway 66, then over U.S. Highway 66 to Essex, CA, then over unnumbered highways via Goffs, Ivanpah, and Nipton, CA, to junction Interstate Highway 15, and return over the same route. Serving as off-route points those in that part of CA and NV within 50 miles of Nipton, CA, including Nipton, CA. [2] Between the junction of U.S. Highway 93 and U.S. Highway 95 [near Alunite, NV] and the junction of Interstate Highway 40 [U.S. Highway 66] and the AZ State Highway 95, east of Topock, AZ, serving all intermediate points; From the junction of U.S. Highway 93 and U.S. Highway 95 [near Alunite, NV] over U.S. Highway 95 to its junction with Interstate Highway 40 west of Needles, CA, thence over Interstate Highway 40 to its junction with AZ State Highway 95, east of Topock, AZ, and return over the same route. Between Essex, CA, and the junction of Interstate Highway 40 [U.S. Highway 66] and U.S. Highway 95 west of Needles, CA, serving all intermediate points; From Essex, CA, over Interstate Highway 40 to its junction with U.S. Highway 95, west of Needles, CA, and return over the same route. [3] Between junction Interstate Highway 10 and U.S. Highway 60, and Phoenix, AZ, serving all intermediate points; From junction Interstate Highway 10 and U.S. Highway 60 over U.S. Highway 60 via Hope, Aguila and Wickenburg, AZ, to Phoenix and return over the same route. Between Kingman, AZ and Hope, AZ, serving all intermediate points; From Kingman, AZ, to junction AZ Highway 95, thence over AZ Highway 95 via Lake Havasu City and Parker, AZ, to junction AZ Highway 72, and thence over AZ Highway 72 to Hope, and return over the same route. Best-Way is purchasing a portion of the interstate operating rights contained in Nevada's certificate in MC 97526 (Sub.-3), which authorizes transportation of *general commodities* [except those of unusual value, Classes A and B explosives, household goods, as defined by the Commission, commodities in bulk and those requiring special equipment], [1] Between Reno, NV and junction U.S.

Hwy. Alternate 95 and U.S. Hwy. 95 near Schurz, NEV. serving all intermediate points: From Reno over Interstate Hwy. 80 to junction U.S. Highway Alternate 95, then over U.S. Hwy. Alternate 95, through Silver Springs, NV, to junction U.S. Hwy. 95 near Schurz, and return over the same route. [2] Between Fernley, NV, and Schurz, NV, serving all intermediate points: From Fernley over U.S. Hwy. Alternate 95, through Hazen, NV, to junction U.S. Hwy. 95, then over U.S. Hwy. 95 to Schurz, and return over the same route. [3] Between Schurz, NV and Las Vegas, NV, serving all intermediate points: From Schurz over U.S. Hwy. 95 to Las Vegas, and return over the same route. Best-Way is authorized to operate as a common carrier pursuant to certificates issued in MC–112123. [Hearing site: Los Angeles or Phoenix.] Impediment: An impediment exists to a summary grant of this application in that (1) the rights to be sold by Nevada in MC 97526 (Sub-3) duplicate the rights to be retained by Nevada, to serve Reno and Las Vegas, NV; and (2) the rights to be sold by System 99 in MC 98327 (Sub-27) duplicate the rights to be retained by System 99 to serve intermediate points on Interstate Hwy 15 between San Bernardino, CA, and the junction of U.S. Hwy. 66 and Interstate Hwy 15.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-33060 Filed 10-22-80; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 29242]

Hillsdale County Railway Co., Inc.—Common Control of Designated Operators and Motor Common Carrier Operating Rights, Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Hillsdale County Railway Company, Inc. and its controlling officers need not obtain further approval from the Interstate Commerce Commission in order for Hillsdale to operate certain motor common carrier authority ancillary to its rail operations. The Commission is exempting the resuting common control of rail authority and motor common carrier authority in this instance from the need for prior Commission approval.

DATE: Effective on October 23, 1980.

FOR FURTHER INFORMATION CONTACT: Ellen Hanson (202) 275–7245.

SUPPLEMENTARY INFORMATION:

Procedural Background

Hillsdale County Railway Company, Inc. (Hillsdale) filed an application on March 30, 1978, seeking motor common carrier operating rights ancillary to its presently held rail designated operator authority. The lines of the designated operator extend approximately 60 miles in Branch County, MI and Steuben County, IN. The motor common carrier authority was sought to complement the rail authority and is inextricably tied to that service.

The motor common carrier authority would allow Hillsdale to operate by transporting general commodities, when moving in trailer-on-flat car service, between points in Indiana and Michigan on the one hand, and, on the other, Toledo, OH and Detroit, MI. The authority is restricted to service which is auxiliary to, or supplemental of, Hillsdale's rail service. Therefore, it is not an independent operation.

The three controlling officers of Hillsdale also control the Lenawee County Railroad Company, Inc. (Lenawee) and the Tuscola and Saginaw Bay Railway Company (T&SB). Lenawee operates 31 miles of railroad in Michigan between Morenci and Grosvenor, Bimo and Leaf, and Adrian and Lenawee Jct. T&SB operates 44 miles of railroad between Millington and Colling, MI. Since the motor carrier authority granted is restricted to service at stations on the rail lines of the Hillsdale County Railway Company, Inc., it cannot be used in conjunction with Lenawee's or T&SB's operations.

The application for motor common carrier authority was approved, but the grant of authority was conditioned upon Hillsdale either receiving approval of the resulting common control of motor and rail operating authority under 49 U.S.C. § 11343 or demonstrating why such approval was unnecessary.

By our authority under 49 U.S.C. 10505 we began this proceeding to consider exempting Hillsdale and its controlling officers from the requirement of obtaining prior Commission approval under 49 U.S.C. 11343–11347 for the proposed transaction.[1] We published a notice in the **Federal Register** on May 23, 1980, 45 FR 35025 (1980), requesting comments on the proposed exemption. There were no comments in opposition to the proposed exemption. Hillsdale filed a comment in support.

Hillsdale notes that in accordance with *Exemption of Certain Designated Operators from 49 U.S.C. 11343*, 361 I.C.C. 379 (1979) (*DOP Case*), common control of designated operators is an exempt transaction. However, in order to take advantage of this exemption the operations conducted must be exclusively rail service under designated operator certificates. Here the proposed motor carrier service will either originate at, or be destined to, a station on Hillsdale's line. All traffic must have either a prior or subsequent movement by rail, and will be traffic that is directly related to Hillsdale's own service. Since the proposed motor common carrier service is not independent of the operations of the designated operator, Hillsdale argues that an exemption should be granted.

Rail Exemption Authority

The common control of designated operator rights along with motor common carrier rights will be exempted in this instance from the provisions of 49 U.S.C. 11343–11347 under 49 U.S.C. 10505. This section provides that we can exempt the transaction if it is limited in scope, not necessary to carry out the national transportation policy, would be an unreasonable burden, and would serve little or no useful purpose.

Limited Scope

Geographically the transaction will be of minor significance. As mentioned above, the designated operator's line totals approximately 60 miles in two States. It has a single connection, with ConRail at Quincy, MI. Therefore, the motor common carrier authority will operator within this region.

The transaction will have a limited effect on Hillsdale's employees. The rail services of Hillsdale are to continue as before. The new proposed motor common carrier rights can only affect those employees in a positive manner. Hillsdale's operation of the motor common carrier authority may cause it to employ additional people to operate these rights.

The transaction will not affect competitors of Hillsdale. The purpose of the transactionis to gain common control of designated operator and motor common carrier operating rights which can be used in the common and interelated plan to provide better service to the shipping public. This will allow for more efficient and expeditious handling of traffic. The motor common carrier rights will have no independent existence from the rail operating

[1] The proceeding initiated upon our own motion was docketed as Finance Docket No. 29242. While this matter was being considered Hillsdale filed a petition for exemption under 49 U.S.C. 10505 which was designated as Finance Docket No. 29259. That petition was effectively mooted by the prior proceeding begun on our own motion. Therefore, information contained in the petition was used to supplement our decision in Finance Docket No. 29242. We will dismiss as moot the petition filed by Hillsdale in Finance Docket No. 29259.

authority of Hillsdale as far as competition for freight traffic is concerned, and no change in rail competition will result from the transaction.

We conclude that the exemption is of limited scope, since the transaction is restricted to: (1) A small group of commonly controlled designated operators; (2) a limited geographic area; (3) a minor impact on employees; and (4) no affect on competition for freight traffic.

Since the proposed transaction is of limited scope, we may now proceed to consider the other criteria.

Necessity To Carry Out the Notional Transportation Policy

The transportation policy stated at 49 U.S.C. 10101 requires us to regulate impartially the modes of transportation subject to 49 U.S.C. Subtitle IV.[2]

Regulation of the Hillsdale transaction under which common control is sought is not necessary to carry out the goals of the National Transportation Policy. It is a transaction involving the common control of motor carrier operating rights with related designated operator rights.

Unreasonable Burden on a Person

The ICC *Railroad Acquisition, Control, Merger, Consolidation, Coordination Project, Trackage Rights and Lease Procedures*, 49 CFR Part 1111 (1979) (Consolidation Procedures) as amended, require a complete application to be filed in order for a decision to be reached within the time constraints of 49 U.S.C. 11345. The submission of the material necessary to comply with the *Consolidation Procedures* will be a time consuming task requiring the dedication of financial resources. This will place an unreasonable burden upon Hillsdale because of the lack of useful purpose of our reviewing a transaction of such limited scope and minimal impact on the national transportation policy.

Little or No Useful Public Purpose

In determining whether or not to approve a transaction, the Commission decides if it is in the public interest. In reaching this determination we rely upon the applications submitted pursuant to the *Consolidation Procedures* and any comments by the parties.

Here we have received no comments from competitors, shippers or anyone else who may object to the proposed common control of rail and motor common carrier operating rights. Because the operating rights already granted will be related to the existing rail authority we see no public purpose to conduct a further proceeding on this matter.

Our permission to exempt such a service is very similar to the existing exemption granted to designated operators in the *DOP Case*. It would be a wasteful allocation of resources to require the filing of an application under the *Consolidation Procedures*.

Because this is a request to continue common control of designated operators along with motor common carrier operating rights which will be directly related to rights of one of the designated operators, our review of the transaction would serve no useful purpose.

Conclusion

We conclude that exemption of the common control of rail designated operator authority and motor common carrier operating rights under 49 U.S.C. 11343–11347 meets the statutory requirements of 49 U.S.C. 10505 in this case. The power to exempt from regulation enables the Commission and carriers to commit their limited resources in areas where they are most needed by enabling the Commission effectively to deregulate those areas which have no significant bearing on the overall regulatory scheme. In enacting 49 U.S.C. 10505, Congress clearly intended us to exempt certain limited transactions from our regulatory power. This is one such transaction.

We find:

(1) The application of the requirements of 49 U.S.C. 11343–11347 for the common control of rail designated operator authority and motor common carrier operating rights by Hillsdale County Railway Company, Inc. and its controlling officers is of a limited scope and (a) is not necessary to carry out the transportation policy of section 10101, (b) would be an unreasonable burden on Hillsdale, and (c) would serve little or no useful purpose.

(2) This action will not significantly affect either the conservation of energy or the quality of the human environment.

It is ordered:

(1) The petition filed in Finance Docket No. 29259 is dismissed.

(2) Hillsdale County Railway Company, Inc. and its controlling officers are exempted under 49 U.S.C. 10505 from the requirements of 49 U.S.C. 11343–11347 of obtaining prior Commission approval for the limited purpose of commonly controlling rail designated operator authority and motor common carrier operating rights.

(3) Hillsdale shall within 60 days of consummating the transaction submit 3 copies of a sworn statement showing all journal entries required to record the transaction.

(4) Public notice of our action shall be given to the general public by delivery of a copy of this decision to the Director, **Federal Register**, for publication therein.

(5) This exemption shall continue in effect for 90 days from the effective date of this decision. Hillsdale must consummate the transaction during that time in order to take advantage of the exemption which we have granted.

(6) This decision shall be effective on October 23, 1980.

Dated: October 14, 1980.

By the Commission, Chairman Gaskins, Vice-Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-33057 Filed 10-22-80; 8:45 am]
BILLING CODE 7035-01-M

[2] Impartial regulation is achieved through: (1) recognizing and preserving the inherent advantage of each mode: (2) promoting safe, adequate, economical, and efficient transportation: (3) encouraging sound economic conditions in transportation, including sound economic conditions among carriers; (4) encouraging the establishment and maintenance of reasonable rates for transportation without unreasonable discrimination or unfair or destructive competition: (5) cooperating with each State on transportation matters: and (6) encouraging fair wages and working conditions in the transportation industry.

[Directed Service Order No. 1398]

Kansas City Terminal Railway Co.—Directed To Operate Over—Chicago, Rock Island & Pacific Railroad Co., Debtor (William M. Gibbons, Trustee); Final Authorization for Unrepaired Track Damage From Derailments During Directed Service

AGENCY: Interstate Commerce Commission.

ACTION: Authorization.

SUMMARY: This order authorizes the Kansas City Terminal Railway Company (KCT) to reimburse the Missouri-Kansas Texas Railroad Company (MKT) for derailment-caused track repairs which occurred during directed service and which were not repaired during that period. KCT ceased operations March 31, 1980, and the MKT is now authorized to operate all portions of the lines involved.

DATES: This order shall be effective on October 20, 1980.

FOR FURTHER INFORMATION CONTACT: Joel E. Burns, (202) 275–7849.

Decision of the Commission

On September 26, 1979, the Commission directed Kansas City Terminal Railway Company (KCT) to provide service as directed rail carrier

(DRC) under 49 U.S.C. § 11125 over lines of the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) (RI). See Directed Service Order No. 1398, *Kansas City Term., Ry. Co.—Operate—Chicago, R.I.&P.*, 360 I.C.C. 289, (1979), 44 FR 56343 (October 1, 1979). Directed service operations by KCT over the RI system ended on March 23, 1980, with total operations ending on March 31, 1980.

During the course of the KCT's directed service operation, derailments occurred which were not repaired. In all, seven derailments occurred totalling an estimated $375,521 in damage, four of which happened in the last fifteen days of directed service and totalled $342,725. The following is a summary of the derailments and estimated damage.

Summary A.—*Kansas City Terminal Directed Service Estimated Main Line Derailment Damage*

Location	Date	Material	Labor	Total
1. Sunray, OK; MP 480.8	Mar. 25, 1980	$30,391	$15,300	$45,691
2. Duncan, OK, MP 468.6 to MP 471.4	Mar. 23, 1980	167,543	59,136	226,679
3. Boyd, TX; Trinity River, MP 586.8	Mar. 22, 1980	31,727	20,060	51,787
4. Peck, KS; MP 258	Mar. 10, 1980	12,688	5,900	18,588
5. Riverdale, KS; North Switch	Jan. 30, 1980	8,000	400	8,400
6. Bridgeport, TX; MP 569	Jan. 30, 1980	10,652	4,650	15,302
7. MP 288 pole 21	Jan. 16, 1980	7,654	3,440	11,094
Total		266,635	108,886	375,521

The DRC (KCT) seeks Commission authorization to reimburse the MKT, as interim operator of the line between Herrington, Kansas, and Dallas, Texas, under Service Order No. 1473, for the cost of necessary repairs which were not accomplished prior to cessation of service. The MKT spent a total of $21,689 to date for temporary repairs at derailment sites 1 and 3 (Sunray, OK and Boyd, TX), for which it seeks reimbursement and which is included in the $375,521 total.

Summary of MKT expenses:

Summary B.—*Expenses Incurred Through July 31 for Repairs to Track and Bridges Account Derailments During Kansas City Terminal Directed Operation of Rock Island*

MP 586.6–MP 587.2 (Trinity River)

Labor:	
June:	
48 hr at $9.24	$443.52
40 hr at $8.70	348.00
136 hr at $8.60	1,169.60
(OT) 2 hr at $12.90	25.80
Subtotal	1,986.92
July:	
136 hr at $9.95	1,353.20
136 hr at $9.39	1,277.04
408 hr at $9.29	3,790.32
Subtotal	6,420.56
Total	8,407.48
Material:	
June: 39 SH 8"x10"x10' bridge ties	1,550.00
July:	
25 new 8"x10"x12' bridge ties	1,990.00
20 SH 8"x12"x10' bridge ties	990.00
39 SH 8"x10"x10' bridge ties	1,550.00
133 new ¾"x10" drive screws	100.00
69 new ¾"x14" bolts	90.00
138 new ¾" OG washers	70.00
69 new ¾" nuts	45.00
9 SH 4"x8"x14' guard rails	185.00
2 new 4"x8"x14' guard rails	70.00
14 SH 8"x10"x14' bridge ties	1,300.00
5 new 4"x8"x18' guard rails	215.00
1 SH 4"x8"x12' guard rails	15.00
Subtotal	6,520.00
Total	8,170.00
Total through July 31, 1980 Trinity River	16,577.48

MP 480.8 (Sunray)

Labor:	
June:	
40 hr at $8.84	353.60
88 hr at $7.72	879.38
(OT) 52½ hr at $13.26	696.15
(OT) 120 hr at $11.58	1,389.60
Subtotal	3,118.71
Material:	
June:	
52 new 5" track bolts	66.58
700 new 6" spikes	203.00
1 car slag ballast	450.00
2 SH 90-lb angle bars	17.00
157 SR crossties at $8	1,256.00
Subtotal	1,992.56
Total through July 31, 1980 Sunray	5,111.27

We find:

This action will not significantly affect the quality of the human environment or the conservation of energy resources. See 49 CFR Parts 1106 and 1108 (1978).

It is ordered:

(1) The DRC is authorized to reimburse the MKT for repairs to derailment damaged track as listed in Summary A, Items 1–4, at a cost not to exceed estimated repair value. Authorization for Items 5–7 of Summary A is denied.

(2) The DRC (KCT) or MKT will not be authorized any contingency cost, nor will KCT be authorized any profit for this disbursement.

(3) The authorized reimbursement should be made a part of the final accounting report to be filed by October 20, 1980.

(4) MKT shall complete all authorized repairs by November 30, 1980.

(5) This decision shall be effective on its service date.

By the Commission. Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam. Commissioner Trantum dissenting with a separate expression. Commissioner Alexis not participating.

Agatha L. Mergenovich,

Secretary.

Commissioner Trantum; Dissenting:

The January derailment damages should not be reimbursed. As to the March derailments, I am not yet prepared to authorize reimbursement to restore the line even to FRA's minimum Class I standard. While I appreciate the distinction between rehabilitation needs caused by years of neglect and repairs that are needed after a derailment, there is more involved. The KCT and MKT should be required to demonstrate that the trustee's prior failure to maintain the property contributed to neither the causation of the four March derailments nor the extent of the resulting damage (particularly in item 2, which appears to extend nearly three miles).

[FR Doc. 80-33055 Filed 10-22-80; 8:45 am]

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[Directed Service Order No. 1398]

Kansas City Terminal Railway, Compensation Agreement With Rock Island and Pacific Railroad Trustee; Petition for Clarification or Reconsideration

Decided: October 6, 1980.

AGENCY: Interstate Commerce Commission.

ACTION: Modification of compensation agreement.

SUMMARY: By decision served March 19, 1980, (45 FR 19663, March 26, 1980), we approved and settled the terms of an agreement between the Kansas City Terminal Railway Company (KCT) and Trustee of the Chicago, Rock Island & Pacific Railroad Company (RI) regarding compensation to be paid with respect to directed service operations over the RI system. KCT seeks clarification and modification of several of the terms of the agreement. We grant the request in part.

DATES: The decision shall be effective on October 20, 1980.

FOR FURTHER INFORMATION CONTACT: Richard J. Schiefelbein (202) 275–0828.

SUPPLEMENTAL INFORMATION:

Decision of the Commission

We have considered: (1) The petition of Kansas City Terminal Railway Company (KCT) seeking clarification or reconsideration of our decisions entered March 17, 1980, in this proceeding, and (2) the reply of Chicago, Rock Island & Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) (Rock Island or RI).

On September 26, 1979, we directed KCT to provide service over the Rock Island system. *Kansas City Term. Ry. Co.—Operate—Chicago, R.I. & P.*, 360 I.C.C. 289 (1979), 49 FR 56343 (October 1, 1979). That decision also required KCT (the directed rail carrier, or DRC) and RI to negotiate regarding compensation in several areas related to directed service. We reserved the right to approve all compensation agreements and to establish just and reasonable terms in the event the parties failed to agree.

The parties reached agreement on many compensation issues. KCT submitted a draft agreement for our approval and RI submitted proposed alternate or additional provisions covering matters not agreed upon. In our prior decision, we settled the areas of dispute and approved the compensation agreement.

KCT seeks clarification or reconsideration of our prior decision, in order, it alleges, (1) to make the compensation agreement more consistent with previous orders in this proceeding, (2) to recognize that the RI Trustee will no longer operate any portion of the RI system, (3) to correct minor inaccuracies, and (4) to clarify certain provisions. RI does not oppose KCT's suggested correction of a typographical error in the compensation agreement. RI concurs in KCT's recommendation that numbered paragraph 13 of the Compensation Agreement be clarified to specify that both opening and closing inventories be valued at the price levels established for the October 5, 1979 inventory. RI opposes all other revisions proposed by KCT.

Because KCT's petition was not filed within 20 days of the service date of our prior decision, we will consider the petition under rule 98(h) of the Rules of Practice (49 CFR 1100.98(h)). Under rule 98(h) a petition to reopen an administratively final action of the Commission must demonstrate material error, new evidence, or substantially changed circumstances.

1. *Incentive Per Diem:* The agreement approved on March 17 provides for KCT to compensate the Trustee for use of the Trustee's owned equipment by paying an amount equal to the daily standard per diem rates including incentive per diem (IPD). KCT requests that IPD be excluded since the Trustee, not being a railroad, cannot invest IPD funds into new equipment and, thus, the IPD funds would be an unintended windfall to the Trustee. The Trustee responds that per diem, including IPD, represents what the Trustee was earning on those cars immediately prior to directed service and that the proper handling of the Trustee's IPD funds will be considered in a different proceeding, presumably the reorganization proceeding.

The Trustee has a strong argument that he could have received IPD payments on these cars if the KCT had not taken them from his control. KCT has not shown material error, new evidence, or substantially changed circumstances. Therefore, the existing (March 17) wording giving the Trustee IPD payments will not be changed. It is our intent in retaining the original wording in this provision that KCT pay IPD to the Trustee only for the time that the Trustee's owned IPD cars were off-line and for which IPD has been collected. The off-line time for these cars is the only time the Trustee could have earned IPD payments.

2. *Typographical errors:* KCT notes one typographical error in our prior decision. In numbered paragraph 4 (beginning on page 4), page 5, line 6, of the Compensation Agreement, as set forth in the Appendix to the March 17 decision, "ICC Account No. 31" should be changed to "ICC Account No. 37," (45 FR 19666, column 1, paragraph 2, line 12). The Trustee agrees that the reference to Account No. 31 is in error and that the suggested correction should be made. Our prior decision, therefore, will be corrected accordingly.

We note another typographical error in our prior decision. In numbered paragraph 3, page 4, lines 6 and 10, the references to "Docket 33–144" should be changed to "Table C of the Appendix in Docket 33145, served February 16, 1978 and amended in Ex Parte 334, served August 22, 1979," (45 FR 19666, column 1, paragraph 1, line 2). Our prior decision will be corrected accordingly.

3. *Equipment Lease Payments:* KCT proposes revising numbered paragraph 5 of the Compensation Agreement to recognize that KCT used RI equipment during the wind-down period from March 24 to March 31, 1980, by adding references to wind-down operations in the first two sentences of the paragraph. The RI Trustee responds that the KCT is proposing new offsets.

The problem here results from a typographical error in the March 17 order. In paragraph 5 (page 6 of the appendix to March 17 order), line 16, the order reads ". . . and the amounts due from the DRC to Trustee under this agreement." The drafts submitted by the KCT and the Trustee, which both agreed, recognized the applicability of offsets in this case, differing only on which payments could be offset against, (45 FR 19666, column 2, paragraph 1, line 18). The KCT language, which was adopted in the March 17 decision, read: "* * * and the amounts thereof shall be offset against any other amounts due from DRC to Trustee under this Agreement."

Thus, KCT's proposed revision, which incorporates this language, does not establish a new offset, as alleged by the Trustee.

We adopt the change proposed by the KCT petition, and our prior decision will be modified accordingly.

4. *Personnel, and Computer and Office Equipment:* KCT recommends revisions to the Compensation Agreement provisions relating to personnel (numbered paragraph 9) and computer and office equipment (numbered paragraph 11). When the draft agreements were originally prepared for submission to the Commission (January 22), Judge McGarr's liquidation order had not been issued (January 25). The drafts were negotiated with the anticipation that the Trustee would operate a portion of the RI system after the directed service period. In this light, the draft agreement (KCT and Trustee had no disagreement on these points) attempted to simplify the problem of apportioning expenses for employees working for both the Trustee and KCT and for the expenses associated with shared use of the computer and other equipment and facilities.

The March 17 agreement established that KCT would pay for everything during directed service and the Trustee could utilize the staff and facilities as necessary. After the directed service period, the Trustee would pay for everything and the KCT could utilize the staff and facilities as necessary.

The Trustee, however, is not an operating railroad now and has not placed any union employees back on this payroll. KCT is thus still paying the wages for the accountants (clerks) and some of the non-union employees. The Trustee and KCT are keeping time records of each's use of the other's

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employees. Such records have been maintained since the beginning of directed service. Similar records are maintained for the computers and other facilities.

KCT's proposed changes reflect this situation and call for a monthly payment between the KCT and Trustee to cover the wages paid for the previous month.

The Trustee objects to the monthly payments to cover wages on the basis that, as of July 18, there had been no accounting settlement or payment on railroad operating accounts. This argument is not persuasive. The original provisions are not workable because the Trustee has not settled the clerk's strike and will not pay any clerks directly. Thus, something other than the original plan must be (and has been) worked out. The fact that revenue accounting and interline settlements are performed several months after the fact, however, is not adequate justification to refuse to reimburse KCT for direct wages or expenses incurred for the sole benefit of the Trustee.

We adopt KCT's proposed paragraphs 9 and 11 covering these issues. Our March 17 decision shall be revised by deleting numbered paragraph 9 (page 19666) and 11 (page 19667) and substituting the following:

9. *Personnel.* During the period of directed service, DRC will employ all RI personnel except those listed in DRC's letter delivered to Trustee on October 5, 1979, and in DRC's letter to Trustee dated October 23, 1979, subject to the right to DRC to lay off or furlough Employees, and to blank jobs pursuant to collective bargaining agreements, and to discharge nonagreement Employees. It is recognized that certain Employees and State Attorneys who are compensated by DRC will, during the period of directed service, perform services for both DRC and Trustee. Trustee shall compensate DRC for the salary, payroll and compensation costs incurred by DRC attributable to the performance of any such services for Trustee, and DRC's expenses incurred in the performance of such services shall be offset against other amounts which may be owed by DRC to Trustee in accordance with paragraph 20 hereof. From and after the period of directed service, DRC shall retain in its employment such RI clerical Employees covered by collective bargaining agreements, for such period as DRC shall determine to be necessary in order to conclude DRC's final accounting and wind-down operations, and Trustee shall employ such nonagreement RI personnel as Trustee shall determine to be necessary to provide services to Trustees. It is recognized that certain of the personnel so employeed, as well as State Attorneys, will be required to perform services to each party hereto after the period of directed service. Trustee shall compensate DRC for the salary, payroll and compensation costs incurred by DRC in performing services for the Trustee after the period of directed service, and DRC shall compensate Trustee for the salary, payroll and compensation costs incurred by Trustee in performing services for DRC. At the end of each calendar month after the end of the period of directed service during which personnel employed by Trustee shall perform services for DRC, or during which personnel compensated by DRC shall perform services for Trustee, an accounting will be made of all amounts owed by each party to the other for services rendered during the preceding month, and the party owing the larger amount will pay to the other party the amount of such difference, subject to the setoff provisions of paragraph 20 hereof. Each party shall pay its or his own costs for services of State Attorneys after the end of the period of directed service. Contributions to RI pension and other employee benefit plans for nonagreement Employees during the period of directed service shall be made by DRC to Trustee, in escrow as suggested by ICC on page 21 of the Order. DRC will give Trustee at least five days' notice before dispensing with the sevices of a nonagreement Employee in order to give Trustee an opportunity to hire the Employee.

* * * * *

11. *Computer ond Office Equipment.* DRC shall be responsible for all rentals and obligations under agreements covering RI computers, other office equipment and communication services used by DRC which become due during the period of directed service, subject to adjustment as provided in Supplemental Order No. 2. It is recognized that some items of such equipment will be used by both Trustee and DRC, and Trustee shall compensate DRC, on a pro rata basis, for any such use by Trustee.

From and after the end of the period of directed service, DRC shall continue to pay rentals on RI computers and other leased office and communications equipment, and the expense of telephone service, the use of which is required by DRC for concluding its wind-down and final accounting operations, for such period as DRC deems necessary. From and after the end of the period of directed service operations, Trustee shall pay all rentals due on RI Chicago headquarters offices. DRC shall have the right to use such portions of that office space as it shall reasonably require in conducting its final accounting and wind-down operations, and shall compensate Trustee on a pro rata basis, for all such use by DRC. It is recognized that Trustee will also use the RI computers, other leased office and communications equipment, and telephone service, rentals on and expense of which are to be paid by DRC after the period of directed service, and Trustee shall compensate DRC, on a pro rata basis, for any such use by Trustee. At the end of such calendar month after the end of the period of directed service, an accounting will be made of all amounts owed by each party to the other under this paragraph 11 for such equipment, service and office use during the preceding month and the party owing the larger amount will pay to the other party the amount of such difference, subject to the setoff provisions of paragraph 20 hereof.

5. *Vacation Pay:* KCT requests that the Compensation Agreement be modified to provide that all vacation payments made by KCT be considered a "Cost of Administration" claim in the Rock Island's reorganization proceeding. In the alternative, KCT requests that these vacation payments be offset against other amounts payable to the Trustee. The Trustee objects to any offsets.

The March 17 agreement assigned responsibility for vacations earned prior to directed service to the Trustee, but provided for KCT to pay for these during the period of directed service without any right of offset, referring to the process for assignment of claims contained in Supplemental Order No. 8. Although it did not specifically so state, this provision refers to 1980 vacations which were earned in the first 5 months of 1979 as well as 1979 vacations, the rights to which accrued during the first 5 months of 1978. The March 17 decision also addressed 1981 vacations earned in 1980 under directed service. While refusing to advance any payments to the Trustee for a potential 1981 vacation liability, the decision states that KCT will be authorized to reimburse the Trustee if the reorganization process assigns a 1981 vacation liability on the Trustee.

KCT's request that these claims be accorded a cost of administration priority is denied as unnecessary. As an assignment of unpaid wages, the priority of such claims is established by law.

KCT's alternative request, however, has merit. To facilitate a final accounting between the KCT and the Trustee under the terms of our March 17 Order, as amended herein, and subject to our approval upon its submission, we will authorize KCT to offset the amounts paid to employees for vacations taken during the period of directed service. To the extent these claims are offset, the existing claim against the estate shall be released.

In addition, the language from the March 17 decision dealing with 1981 vacations (which was not incorporated in the March 17 agreement) should be added to the end of numbered paragraph 10 (page 19667) of the agreement, as follows:

If, as a result of the settlement of labor claims against Trustee in the reorganization process or by legislation, direct liability is imposed upon Trustee for payment of 1981 vacations as a result of directed service operations conducted by DRC during 1980, DRC will reimburse the Trustee with respect to any such liability.

6. *Fuel, Materials, and Supplies.* The agreement approved by the Commission on March 17 envisioned that KCT would pay the Trustee for inventory items as they were used. At the end of directed service, the Trustee would pay KCT for any inventory items which KCT had purchased during the directed service operation, unless the trustee did not need the purchased items for his continued operations. Because railroad inventories are not maintained in warehouses, but are often scattered along the right-of-way, the concept of paying for an item as it is used is not workable.

The method actually employed by the RI Trusteee and KCT was to perform two physical inventory counts, one as of October 5, 1979 and the other as of the end of directed service, with the difference representing the materials used by the KCT.

KCT's first request is that the opening and closing inventories both be valued at the October 5, 1979 market values. This is supported by the Trustee in his response.

The Trustee objects, however, to being required to pay for items which KCT purchased and which remain in the inventory as of the end of directed service. The Trustee is concerned that he has no use for these materials because he is no longer operating a railroad and he would not have purchased these materials and supplies if the choice had been left up to him. KCT's position is that the only feasible way to make a final determination of responsibility for inventory items is by comparison of the values of the total invotories as of the beginning and end of directed service.

The Trustee has a valid argument that, in light of the abandonment decision, he should not be required to accept additional inventory items which he would not have purchased. The language in the agreement approved on March 17 can adequately address his concerns:

* * * if Trustee does not require any such items [materials and supplies purchased by DRC] for use in continued RI rail operations, Trustee will, at DRC's option, either pay to DRC the net liquidating value received by Trustee for the sale of such items, or return such items to DRC for removal and sale by DRC.

We will modify this provision to state clearly that the Trustee can reject inventory items only to the extent that the closing inventory of a particular class of inventory items is greater than the October 5, 1979 inventory for that class of items. For example, during directed service, the DRC used ties and other materials from inventory and also purchased the same materials to replenish the inventory.

To assign responsibility to the DRC for all items purchased during directed service would, in effect, be assigning to the government the expense of disposing of a substantial portion of the inventory the Trustee had on hand when he was no longer able to operate a railroad. Thus, KCT's responsibility for inventory should be: (1) the fuel, materials, and supplies used by the KCT, as reflected in the difference between the opening and closing inventories values at October 5, 1979 market prices, and (2) those items purchased by KCT during directed service which are in greater quantity in the closing inventory than in the opening inventory, with KCT having the option or removing and selling these items or of allowing the Trustee to sell the items and pay to KCT the amount received for the sale of the items less the direct costs of making the sale.

We further modify the March 17 agreement by including the offset provision in all of the payment provisions to avoid the problem of being unable to settle any of the accounts because the Trustee is unlikely to make any cash payments until the consummation date of the RI reorganization. Accordingly, numbered paragraph 13 (page 19667) of the Compensation Agreement is revised as follows:

13. *Fuel, Materials ond Supplies.* DRC shall be responsible for all fuel, materials, and supplies used by it during directed service operations, whether on hand and in the Trustee's inventory accounts on October 5, 1979, or thereafter purchased by DRC. In order to adjust inventory accounts between DRC and Trustee, DRC will be charged with the full amount of all RI inventories on hand as of October 5, 1979, and Trustee will be charged with the full amount of such inventories on hand as of March 31, 1980 except as described below in this paragraph. Both the opening and closing inventories will be valued at the price levels established for the October 5, 1979 inventory. The amount of any difference between the opening inventory and the closing inventory will be paid by DRC to Trustee, or by Trustee to DRC, as the case may be, subject to the offset provisions of paragraph 20 hereof. To the extent that the DRC purchased fuel, materials and supplies during the period of directed service, and the inventory of a class of items on hand as of March 31, 1980 exceeds the inventory of these classes of items on hand as of October 5, 1979, and the Trustee does not require these additional items for use in continued RI rail operations, the Trustee will, at DRC's option, either pay to DRC the net liquidating value received by Trustee for sale of such items, or return such items to DRC for removal and sale by DRC.

8. *Clarifications:* In adition to the various requested modifications to the Compensation Agreement discussed above, KCT seeks clarification of the agreement on several points.

(a) Shipper Programs. In Supplemental Order No. 2, we authorized KCT to make repayments of shipper and State car and track rehabilitation loans whether those loans were repayable on a usage basis or on a straight monthly installment basis. We permitted offsets of these amounts, but restricted which payments the offsets could be applied against. The March 17 decision states, "* * * any payments relating to track and car rehabilitation made by KCT to shippers or States shall be credited against rental payments owed by KCT to RI covering the same equipment."

KCT argues that, since these payments are repayments of shippers' loans to the Trustee, they should be credited against any amounts owed by KCT-DRC to the Trustee, whether for equipment rental or otherwise. The Trustee objects to any additional offsets.

The theory behind our earlier decision was that repayment offsets could be applied to the rental for the equipment involved. Since we are not compensating the Trustee for the use of his trackage under directed service, there is no rental directly related to the trackage involved in the shipper repayment program for track projects. To reflect that intent more accurately, our March 17 decision is amended to eliminate "track" from the payments to shippers or States KCT is authorized to offset against rental payments owed by KCT to RI for equipment.

KCT's proposed clarification will not be adopted. If, however, the ultimate Court resolution of the track rental issue requires that directed service compensate the Trustee for use of his trackage, then any track, rehabilitation payments should be offset against that rental, and we may reconsider our decision on this issue.

(b) Locomotives. KCT requests that the section of the March 17 decision entitled *Owned and Leased Equipment* be revised to reflect that compensation for owned locomotives should be based on an agreed schedule of rental rates (Exhibit A to the draft compensation agreement) rather than on per diem rates. The Trustee's response requests that compensation for locomotives be at "the Standard industry rates," which presumably would be the Genral Managers Association (GMA) rates for short-term rental of locomotives between railroads. The March 17 decision calls for "per diem" rates on locomotives, but the approved agreement appended to the decision referred to a table of rates reflecting lease rates for long-term leases. Thus, the March 17 agreement reflected the lease prices from a firm which leases locomotives on a longer-term basis to railroads.

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The GMA rates require the locomotive owner to perform the maintenance on the equipment while the longer-term leases require the lessee to perform the maintenance. The latter is more respresentative of the KCT situation. Therefore, we will not adopt any change in the original version of the locomotive lease provisions of numbered paragraph 4.

(c) Maintenance of Equipment. KCT requests that numbered paragraph 7 of the March 17 agreement be changed to limit KCT's liability for repairs which the Trustee must make to equipment left in bad order at the end of directed service. KCT proposes limits of $1,200 per unit for car repairs and $3,000 per unit for locomotive repairs, citing the comparability of these limits to the limits established by the directed service order for repairs performed during the directed service period.

The Trustee argues that we lack authority to provide for offsets to amounts that are due to the Trustee.

The issue is not one of offsets, but a question of the extent to which the directed service operator should be liable for repairs to equipment after directed service ended. This provision would be triggered only if KCT left more cars in a bad order status at the end of directed service than were in bad order status at the beginning of directed service.

We will adopt KCT's proposed language because it comports with our earlier decisions (as expressed in the authorization orders for equipment repairs) and because repairs to equipment result from extended usage. A 6-month directed service operation should not be charged with the full amount of repairs necessitated by several years of operation.

KCT's proposed language will be added to the end of numbered paragraph 7 of the agreement, rather than as a substitute for any of the existing language.

KCT also requests clarification of the March 17 language regarding the repair of equipment which was in a bad order condition at the beginning of directed service. KCT requests that any repair costs in excess of the $1,200 and $3,000 limits be treated as an offset. The Trustee opposes any additional offset.

Since repairs in excess of the authorized limits required prior Commission approval, all equipment for which repairs exceeded the limits should have been covered in authorization orders. Our earlier decisions will stand and KCT's proposal on this issue will not be adopted.

Numbered paragraph 7 (page 19666) of the Compensation Agreement is modified by the addition of the following sentence:

"Any amount owed by DRC to the Trustee under this paragraph, however, shall be limited to an average repair cost per locomotive of $3,000, and an average repair cost per car or other equipment unit of $1,200."

The petition of KCT will be granted to the extent specified above, and will be in all other respects denied.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The compensation agreement between KCT and RI, attached as an appendix to our decision of March 17, 1980, in this proceeding, is modified as set forth in this decision.

2. The petition is in all other respects denied.

3. This decision will be effective on October 20, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-33054 Filed 10-22-80; 8:45 am]

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Motor Carriers Finance Applications; Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). An interim proposed final Rule 240 reflecting changes to comport with the Motor Carrier Act of 1980 was published in the July 3, 1980, **Federal Register** at 45 FR 45529 under Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349.* These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register.** Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 240(C) of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.240(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.240(A)(h).

Amendments to the request for authority will not be accepted after October 23, 1980. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: October 14, 1980.

By the Commission, Review Board Number 5, Members Krock, Taylor and Williams. (Member Taylor not participating).

MC-F-14477F, filed October 1, 1980. COLES EXPRESS (COLES) (444 Perry Road, Bangor, ME 04401)—Purchase (portion)—Law Trucking Company (Law) (Crow Point Road, Lincoln, RI 02865). Representative: John F. O'Donnell, 60 Adams Street, P.O. Box 238, Milton, MA 02187. Coles seeks authority to purchase a portion of the interstate operating rights of Law. Cole Enterprises, a non-carrier and sole stockholder of Coles, and in turn, Galen Cole, the majority stockholder of Cole Enterprises, seek authority to acquire control of said rights through the transaction. Coles is purchasing the authority contained in Law's Certificate MC 99764 (Sub-2), which authorizes the transportation, as a motor common carrier, over irregular routes, of *general commodities* (except commodities which, because of size or weight require the use of special equipment, articles of unusual value, Classes A and B explosives, livestock, carnival equipment, household goods as defined by the Commission, commodities in bulk, and commodities requiring refrigerator equipment), between points within 5 miles of Boston, MA, including Boston, on the one hand, and, on the other, points in CT. Coles is authorized to operate as a common carrier in the States of MA, NH, ME, and RI, pursuant to authority issued in MC 93682 and sub-numbers thereunder. Condition: Cole Enterprises shall continue to be deemed a carrier within the meaning of 49 U.S.C. 11348, as previously subjected by decision in MC-F-14323F.

Notes.—(1) Application for temporary authority has been filed. (2) A directly related gateway elimination application has been filed in MC 93682 (Sub-21F), and published in this same **Federal Register** issue.

Decision-Notice

The following operating rights applications, filed on or after July 3, 1980, are filed in connection with pending finance applications under 49 U.S.C. 10926, 11343 or 11344. The applications are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). Special Rule 247 was published in the **Federal Register** of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Persons submitting protests to applications filed in connection with pending finance applications are requested to indicate across the front page of all documents and letters submitted that the involved proceeding is directly related to a finance application and the finance docket number should be provided. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. However, the Commission may have modified the application to conform to the Commission's policy of simplifying grants of operating authority.

Findings: With the exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements as to the finance application *or* to the following operating rights applications directly related thereto filed on or before December 8, 1980 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except where the application involves duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the nottice by effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Dated: October 14, 1980.

By the Commission, Review Board Number 5, Members Krock, Taylor, and Williams. (Member Taylor not participating).

MC 93682 (Sub-21F), filed October 1, 1980. Applicant: COLES EXPRESS—Gateway elimination, 444 Perry Road, Bangor, ME 04401. Representative: John F. O'Donnell, 60 Adams St., P.O. Box 238, Milton, MA 02187. To operate as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting, *general commodities* (except commodities which because of size or weight require the use of special equipment, articles of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in ME and MA and those in Rockingham and Hillsborough Counties, NH, on the one hand, and, on the other, points in CT.

Notes.—(1) This proceeding is a matter directly related to a proceeding pursuant to 49 U.S.C. 11343 in MC-F-14477F, published in this same **Federal Register** issue.

(2) The purpose of this application is to eliminate a gateway at Boston, MA, and an internal gateway at Portland, ME, to provide a through service between points in MA, ME, and Rockingham and Hillsborough Counties, NH, on the one hand, and, on the other, points in CT.

(3) Coles also requested authority to eliminate the gateways at MA points in order to provide through service between points in RI within 10 miles of Providence, including Providence, on the one hand, and, on the other, points in CT. Coles seeks to tack the authority being purchased with a piece of authority which has not yet been certificated to provide this through service. We cannot approve the joinder since a certificate has not been issued.

(4) Coles also seeks to remove the restriction against transporting commodities requiring refrigerator equipment in the certificate it seeks to purchase in MC-F-14477F. The certificate being purchased by Coles in MC-F-14477F will not be broadened to include commodities requiring refrigerator equipment. However, the gateway elimination application in MC 93682 (Sub-No. 21F) has sufficient shipper support to warrant the slight broadening of the scope of authority to include commodities requiring refrigerator equipment.

MC 87951 (Sub-5F), filed October 10, 1980. Applicant: THORNE TRUCK LINES, INC., Highway 45, South, P.O. Box 439, Milan, TN 38358. Representative: Warren A. Goff, 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. To operate as a *common carrier,* in interstate or foreign commerce, over irregular routes, transporting, *General commodities* (1) between Memphis, TN and Savannah, TN over Tennessee Hwy. 15, with closed doors between Memphis and Selmer and intermediate points, (except for newspapers), and serving Ramer, TN, as an off-route point; and (2) between Selmer, TN and Bethel Springs, TN over U.S. Hwy. 45, serving no intermediate points.

Notes.—(1) This application is directly related to a finance matter docketed MC-F-

14211F, Lexington-Paris Motor Freight Lines, Inc.—Control—Thorne Truck Lines, Inc., published in the March 28, 1980, issue of the **Federal Register.**

(2) The purpose of this application is to convert a Certificate of Registration to a Certificate of Public Convenience and Necessity.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-33058 Filed 10-22-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers Finance Applications; Decision-Notice

The following applications filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). An interim proposed final Rule 240 reflecting changes to comport with the Motor Carrier Act of 1980 was published in the July 3, 1980, **Federal Register** at 45 FR 45529 under Ex Parte 55 (Sub-44), *Rules Governing Applications Filed By motor Carriers Under 49 U.S.C. 11344 and 11349.* These rules provides among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register.** Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 240(c) of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.240(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.240(A)(h).

Amendments to the request for authority will not be accepted after the date of this application. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application or to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: October 10, 1980.

By the Commission, Review Board Number 5, Members Krock, Taylor and Williams. Board member Taylor not participating)

MC-F-14400F, filed May 27, 1980. (supplemental) (previously published in the **Federal Register** on August 25, 1980, at page 56466). JIM EDDLEMAN, an individual, d.b.a. J & J CATTLE CO. (J & J) (3395 Wright Street, Wheat Ridge, CO 80003)—Purchase (portion)—Tomahawk Trucking, Inc. (Tomahawk) (Box O, Vernal, UT 84078).

Note.—The purpose of this republication is to correctly identify the application's docket number and applicants' addresses. Also, J & J seeks authority to purchase Tomahawk's pending authority in MC 115092 (Sub-104F). Although Tomahawk's application in that proceding has been approved, a certificate has not been issued. Authority that has not been certificated is not subject to transfer. Therefore, J & J should file a petition for substitution into that proceeding.

MC-F-14481F, filed September 25, 1980. VALLEY TRANSPORTATION SERVICE, INC. (Valley) (P.O. Box 1527, Mission, TX 78572)—Purchase (portion)—Highway Pipeline Trucking Co. (Highway) (P.O. Box 1517, Edinburg, TX 78539). Representative: Kenneth R. Hoffman, P.O. Box 2165, Austin, TX 78768. Valley seeks authority to purchase a portion of the interstate operating rights and property of Highway. L. W. Waller, who controls Valley through stock ownership, seeks authority to acquire control of said rights and property through the transaction. Valley is purchasing that portion of Highway's authority which authorizes the transportation, as a common carrier, over irregular routes, as follows:

MC 96992 (Sub-4): (1) *frozen vegetables, frozen fruits, frozen berries, frozen juices and citrus concentrate,* (except in bulk), and (2) *commodities* which are otherwise exempt from regulation under 49 U.S.C. 10526(a)(6) when moving in the same vehicle at the same time with the commodities in (1) above, from points in Cameron, Hidalgo, Webb, and El Paso Counties, TX, to points in AL, AR, CT, DE, FL, GA, IL, IN, KY, LA, MD, MA, MI, MN, MS, NC, NJ, NY, OH, PA, RI, NH, SC, TN, VA, WV, WI, and DC, restricted in (1) and (2) above to the use of vehicles equipped with mechanical refrigeration.

MC 96992 (Sub-7F): *agricultural pesticides* (except in bulk), from the facilities of Shell Chemical Company, a division of Shell Oil Company, at or near El Paso, IL, to points in the United States (except AK and HI). MC 96992 (Sub-8F): *petroleum, petroleum products, vehicle body sealer and sound deadener compounds* (except in bulk), from Congo (hancock County) and St. Mary's (Pleasants County), WV, to points in AL, AR, GA, KY, LA, MS, TN, and TX, restricted to the transportation of traffic originating at the named origins.

MC 96992 (Sub-10F): *foodstuffs* (except frozen foods and commodities in bulk), from the facilities of Vlasic Foods, Inc., at Greenville, MS, to points in AL (except Birmingham and points in its commercial zone), AR, GA (except Atlanta and points in its commercial zone), IL, IN, KS, KY, LA, MO, OK, TN, and TX, restricted to the transportation of traffic originating at the facilities of Vlasic Foods, Inc., at Greenville, MS.

MC 96992 (Sub-12F): *foodstuffs* (except in bulk), (1) from the facilities used by Texsun Corporation at or near Weslaco and Harlingen TX, to points in the United States in and west of MI, OH, KY, TN, AL, and FL, and (2) from the facilities used by Texsun Corporation at or near Plymouth, IN, to points in MN, IA, MO, WI, IL, MI, IN, KY, OH, PA, and WV, restricted in (1) and (2) above to the transportation of traffic originating at the named origins and destined to the indicated destinations.

MC 96992 (Sub-15F): *such merchandise as is dealt in by chain grocery and food business houses* (except commodities in bulk, in tank vehicles), in vehicles equipped with mechanical refrigeration, between points in AL, AR, GA, IA, IL, IN, KY, KS, MA, MI, MN, MO, MS, NC, NE, NY, OH, PA, TN, TX, VA, and WI, restricted to the transportation of traffic originating at or destined to the facilities of Kraft, Inc.

MC 96992 (Sub-19F) (portion): *petroleum and petroleum products, vehicle sealer and/or sound deadener compounds* (except in bulk, in tank vehicles), *and filters,* from points in Warren County, MS, to points in AL, AR, FL, GA, LA, and TX, restricted to the transportation of traffic originating at the facilities of Quaker State Oil Refining Corporation, located in Warren County, MS.

Valley presently holds no operating authority from the Commission. However, Valley is presently operating under temporary authority under MC-F-14415F, redocketed FC-78778. Valley is also affiliated with L.C.W. Trucking, Inc., a motor common carrier pursuant to MC 138686 and sub-numbers thereunder, and a motor contract carrier pursuant to MC 138578 and sub-numbers thereunder. Impediment: L.C.W. Trucking, Inc., has an application pending, seeking authority to transport, as a motor common carrier, over irregular routes, frozen fruits, frozen vegetables, frozen berries and frozen citrus concentrate, from points in Webb, Hidalgo, and Cameron Counties, TX, to points in AL, GA, LA, MS, TN, and TX. Since this pending application partially duplicates the authority sought to be purchased by Valley in this proceeding, authorization and approval of this transaction is conditioned upon the elimination of said duplications.

Notes.—(1) Application for temporary has been filed. (2) Applicants are also seeking authority for the purchase by Valley of certain of Highway's authority which is still pending before the Commission. Certificates have not yet been issued. Such unissued authority is not subject to transfer. Therefore, Valley must request substitution into those proceedings in lieu of Highway.

MC F-14485F, filed October 1, 1980. J. R. BUTLER, INC. (Butler) (5950 Fisher Road, East Syracuse, NY 13057)—Purchase—Container Transfer Corporation (Container) (26 East Oneida Street, Oswego, NY 13218). Representation: Martin Werner, 888 Seventh Avenue, New York, NY 10106. Butler seeks authority to purchase the interstate operating rights and property of Container. Transportation Consultants, Inc., a holding and management company who controls Butler through stock, and in turn Frederic J. Durkin and John C. Durkin, Jr. who control Transportation Consultants, Inc. through equal stock ownership, seek authority to acquire control of said rights through the transaction. Butler is purchasing the operating authority contained in Container's certificate in MC 127057 which authorizes the transportation of *general commodities* (except those requiring special equipment, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Buffalo, Rochester, Syracuse, Utica, Elmira and Binghamton, NY, on the one hand, and, on the other, points in NY (except New York and those in Nassau, Suffolk, Rockland, Westchester, Orange, Putnam, Sullivan, Ulster, Dutchess, St. Lawrence, Franklin, Clinton and Essex Counties, NY), restricted to the transportation of shipments having an immediately prior or immediately subsequent movement by rail. Butler is a motor contract carrier pursuant to authority issued in MC 145298 and sub-numbers thereunder. Transportation Consultants, Inc. controls several regulated motor contract carriers: (1) Food Haul, Inc., (MC 124939) and its wholly-owned subsidiary, J.C.D. Transportation Corp. (MC 129026), (2) Fleetwood Transportation Corp. (MC 135284), (3) Fairfield Transportation Corp. (MC 141487), (4) Barr Transportation Corp. (MC 141335), (5) Cumberland Transportation Corp. (MC 144029) and (6) De Witt Transportation Corp. (MC 145029), and a common carrier Scotholm Transportation Corp. (MC 145298).

Note.—An application for temporary authority has been filed. (Hearing site: Syracuse, NY.)

MC-F-14487F, filed October 1, 1980. SCARI'S DELIVERY SERVICE, INC. (Scari) (Arnold Avenue and Skeet Road, New Castle, DE 19720)—Merger—Metro Express, Inc. (Metro) (901 Arnold Avenue, New Castle, DE 19720) Representative: Albert F. Beitel, 1625 Eye Street, NW, Washington, DC 20006. Scari seeks authority for the merger of the interstate operating rights and property of Metro into Scari for ownership, management, and operation. Harry J. Scari, who controls Scari through 75% stock ownership. Metro holds motor common carrier authority pursuant to certificates issued in MC-138476 and sub-numbers thereunder, which authorize the transportation, over irregular routes, of (1) *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between New York, NY, and points in Essex, Union, Hudson, Bergen, Passiac, Morris, and Middlesex Counties, NJ, on the one hand, and, on the other, Wilmington, DE, (2) *olcoholic beverages* (except in bulk, in tank vehicles), (a) from points in NJ, NY, PA, and MD, to Wilmington, DE, and (b) between New York, NY, on the one hand, and, on the other, Baltimore, MD, and DC, and (c) between Wilmington, DE, and Hartford, CT, (3) *malt beverages* (except in bulk, in tank vehicles), (a) from New York, NY, Baltimore, MD, Philadelphia, PA, Newark, NJ, and Reading, PA, to Milford, DE, and (b) from Winston-Salem, NC, to Wilmington and Milford, DE, and (4) *rotex dust,* from Dover, DE, to Camden, NJ. Scari is authorized to operate as a common carrier in the States of DE, PA, NJ, DC, VA, and NY, pursuant to authority issued in MC-115955 and sub-numbers thereunder. Impediment: Authorization and approval of this transaction is conditioned upon the prior receipt by the Commission of an affidavit signed by Harry J. Scari, stating that he is in control of Scari through 75% stock ownership, and that as person in control of Transferee through stock, he joins in the application. (Hearing site: Washington, DC.)

Note.—Application for temporary authority has been filed.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-33059 Filed 10-22-80; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 28098 (Sub-No. 1), Finance Docket Nos. 29421, 29422]

New York, Susquehanna & Western Railroad Co., Debtor (Walter G. Scott, Trustee)—Plan of Liquidation and New York, Susquehanna & Western Railway Corp.—Purchase—New York, Susquehanna & Western Railroad Co., Debtor (Walter G. Scott, Trustee); Securities Issuance

AGENCY: Interstate Commerce Commission.

ACTION: Notice of plan of liquidation.

SUMMARY: The Trustee of The New York, Susquehanna and Western Railroad Company, Debtor (Walter G. Scott, Trustee) (NYSW) has filed its First Amended and Second Amended Plan of Liquidation with the Commission pursuant to an order of the United

States District Court for the District of New Jersey. In connection with these plans, The New York, Susquehanna and Western Railway Corporation filed an application pursuant to 49 U.S.C. 10901 for a certificate of public convenience and necessity authorizing the acquisition and operation of the NYSW, and an application pursuant to 49 U.S.C. 11301 for authority to issue securities. Comments on these proposals are sought.

DATES: (1) Verified statements supporting or opposing the liquidation plans, the acquisition proposal, and the securities issuance are due on or before November 12, 1980. (2) Verified reply statements in support or opposition are due 10 days thereafter.

ADDRESSES: The original and 5 copies of all statements should be sent to: Section of Finance, Room 5414, Interstate Commerce Commission, Washington, D.C. 20423, attention: NYSW Liquidation Plan. Persons submitting statements to the Commission shall, at the same time, serve copies of such statements upon applicant; the Clerk, United States District Court for New Jersey; and all persons indicated on the attached service list. Filings with the Commission shall include a certificate of service on all designated persons, and all statements shall be sworn and otherwise in conformity with the General Rules of Practice, 49 CFR Part 1100.

FOR FURTHER INFORMATION CONTACT: Ellen Hanson (202) 275–7245.

SUPPLEMENTARY INFORMATION: The United States District Court for the District of New Jersey, by Order No. 101, dated June 10, 1980,[1] directed that the Trustee of the New York, Susquehanna and Western Railroad Company, Debtor (Walter G. Scott, Trustee) (NYSW) submit its Amended Plan of Liquidation to this Commission, pursuant to Section 77(d) of the Bankruptcy Act, 11 U.S.C. 205(d). In compliance with the Court's order, the Trustee ifled, on September 8, 1980, the First Amended Plan of Liquidation and the Second Amended Plan of Liquidation (called the First Plan and the Second Plan, respectively). The Court's order directs us to submit comments on the Trustee's proposal within 60 days after all interested parties are served with the plans. Both plans are available for public inspection at our offices during normal business hours.

The First Plan supersedes the preliminary Plan of Liquidation previously filed by the Trustee with the Bankruptcy Court (but not with us). It envisions the cessation of operations by the NYSW and liquidation of the debtor railroad, but a continuance of service by a successor carrier unrelated to the debtor. The Second Plan incorporates all the terms and provisions of the First Plan, but amends Article VI of the First Plan to show that the Trustee has entered into an agreement with the Delaware Otsego Corporation and its wholly-owned subsidiary, the New York, Susquehanna and Western Railway Corporation (Susquehanna) whereby the latter will acquire the physical assets of NYSW and will operate rail freight service over the NYSW's line subject to regulatory approval.

In Finance Docket No. 29421,[2] Susquehanna filed an application on July 14, 1980, pursuant to 49 U.S.C. 10901 seeking a certificate of public convenience and necessity authorizing the acquisition and operation of the rail lines of the NYSW. The line extends from Croxton Yard to Sparta, NJ, a distance of 59.9 miles in Hudson, Bergen, Passaic, Morris, and Sussex Counties, NJ. Applicant also proposes to acquire the line of railroad now operated by NYSW's subsidiary, the Susquehanna Connecting Railway Company as its Suscon Branch, extending from Suscon to Hillside Junction, Luzerne and Lackawanna Counties, PA. The Suscon Branch is presently operated by Consolidated Rail Corporation.

In Finance Docket No. 29422, an application was filed by Susquehanna on July 14, 1980, pursuant to 49 U.S.C. 11301, seeking authority to issue 500 shares of common stock at a value of $2000 per share for a total of $1,000,000.

All common stock will be sold to the Delaware Otsego Corporation for $2,000 per share. The security for the stock will be a First Mortgage Bond, in the amount of $4,500,000, to be issued to the New Jersey Economic Development Authority or sold to a bank with a guarantee by the Federal Economic Development Agency. Susquehanna also seeks authority to issue this First Mortgage Bond without competitive bidding.

Because of the interrelationship of NYSW's liquidation plan and Susquehanna's acquisition and operation proposal, we have consolidated the proceedings for hearings on a written record.

As noted before, the Court's order of June 10, 1980, directs us to forward comments on the Trustee's Plans within 60 days of service on interested parties. Section 77(d) of the Bankruptcy Act, 11 U.S.C. 205(d) provides that, after a plan of reorganization has been filed, we shall give notice to stockholders and creditors, hold public hearings, and render a report and order approving a plan which will, in our opinion, meet the requirements of Section 77(b) and (e) and be compatible with the public interest, or disapproving all plans.

Although we desire to cooperate fully with the Court's efforts to conclude the NYSW's reorganization, we cannot afford the required notice and hearings, complete our consideration of these matters, and render a report and order within the 60-day time frame set forth in the Court's order. The hearing schedule established in this decision and notice shall permit us to render our report and order fairly but expeditiously.

This proceeding will not significantly affect either the quality of the human environment or conservation or energy resources.

Dated: October 14, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam. Commissioners Trantum and Alexis absent and not participating.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-33056 Filed 10-22-80; 8:45 am]

BILLING CODE 7035-01-M

[1] Docket No. B-76-182. *In the Matter of New York, Susquehanna and Western Railroad Company, Debtor.*

[2] Published in 45 FR 48952, July 22, 1980.

Permanent Authority Decisions

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a petition for intervention, either in support of or in opposition to the granting of an application, must be filed with the Commission within 30 days after the date notice of the application is published in the **Federal Register**. Protests (such as were allowed to filings prior to March 1, 1979) *will be rejected.* A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, including the extent, if any, to which petitioner (a) has solicited the traffic or business of those supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. The Commission will also consider (a) the nature and extent of the property, financial, or other interest of the petitioner, (b) the effect of the decision which may be rendered upon petitioner's interest, (c) the availability of other means by which the petitioner's interest might be protected, (d) the extent to which petitioner's interest will be represented by other parties, (e) the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and (f) the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable compliance with the requirements of the rule may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission indicating the specific rule under which the petition to intervene is being filed, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Section 247(f) provides, in part, that an applicant which does not intend to timely prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If an applicant has introduced rates as an issue it is noted. Upon request, an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administrative acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulation. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930(a) [formerly section 210 of the Interstate Commerce Act.]

In the absence of legally sufficient petitions for intervention, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the following decision-notices within 30 days after publication, or the application shall stand denied.

NOTE.—All applications are for authority to operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, except as otherwise noted.

Volume No. 357

Decided: October 16, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton and Liberman.

MC 142364 (Sub-32F), filed May 6, 1980, previously published in the **Federal Register** issue of July 31, 1980. Applicant: KENNETH SAGELY, d.b.a. SAGELY PRODUCE, P.O. Box 368, Van Buren, AR 72956. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72701. Transporting *ground clay cat box filler*, from the facilities of Absorbent Clay Products,, Inc., at or near Mounds, IL, to points in the U.S. (except AK, AZ, CA, CO, HI, ID, MT, ND, NV, NM, OR, SD, UT, WA, and WY).

Note.—This republication indicates the correct origin.

Volume No. 358

Decided: October 16, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 139805 (Sub–5F), filed April 28, 1980, previously published in the **Federal Register** issue of July 10, 1980. Applicant: B MOTOR FREIGHT INC., 451 Old Airport Rd., New Castle, DE 19720. Representative: Dennis N. Barnes, 1800 M St., NW, Washington, DC 20036. *Contract carrier*, transporting *general commodities* (except bulk commodities and household goods) and hazardous materials (except classes A and B explosives), between points in the U.S., under continuing contract(s) with E. I. du Pont de Nemours & Co., Inc., of Newark, DE. To the extent the certificate granted in this proceeding authorizes the transportation of classes A and B explosives it will expire 5 years from the date of issuance.

Note.— This republication indicates the correct territorial description.

MC 141255 (Sub-17F), filed June 2, 1979. Applicant: TANDY TRANSPORTATION, INC., 2560 East Long Ave., P.O. Box 7135, Fort Worth, TX 76111. Representative: Ralph W. Pulley, Jr., 4555 First National Bank Bldg., Dallas, TX 75202. *Contract carrier*, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the U.S., under continuing contracts(s) with Tandy Corporation, Stafford-Lowdon, Inc., Trinity Forms, Tandy Crafts, Inc., Color Tile, Inc., Tandy Brands, Inc., Hickok Manufacturing Co.,

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Inc., and Ryons Saddle & Ranch Supplies, Inc., and their divisions.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-33062 Filed 10-22-80; 8:45 am]

BILLING CODE 7035-01-M

Permanent Authority Decisions

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the Federal Register on July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed within 45 days of publication of this decision-notice (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP3-047

Decided: October 15, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill.

MC 72465 (Sub-10F), filed October 2, 1980. Applicant: DANIELS TRANSPORTATION CO., INC., 91 Mechanic St., Lebanon, NH 03766. Representative: Frederick T. O'Sullivan, P.O. Box 2184, Peabody, MA 01960. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 131054F, filed October 2, 1980. Applicant: ROCHESTER DISTRIBUTION UNLIMITED, INC., 1000 Jefferson Rd., Rochester, NY 14618. Representative: Robert L. Boxer, 900 Midtown Tower, Rochester, NY 14604. As a broker, to arrange for the transportation of *general commodities* (except household goods), between points in the U.S.

MC 134484 (Sub-31F), filed October 7, 1980. Applicant: EDWARDS BROS., INC., P.O. Box 1684, Idaho Falls, ID 83401. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions) for the United States Government, between points in the U.S.

Volume No. OP4-093

Decided: October 15, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

MC 5227 (Sub-74F), filed October 10, 1980. Applicant: ECKLEY TRUCKING, INC., P.O. Box 201, Mead, NE 68041. Representative: A. J. Swanson, 226 N. Phillips Ave., P.O. Box 1103, Sioux Falls, SD 57101. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 152146F, filed October 8, 1980. Applicant: FAR WEST TRANSPORTERS, INC., 14901 Chandler Rd., Omaha, NE 68138. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Rd., Omaha, NE 68106. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-33063 Filed 10-22-80; 8:45 am]

BILLING CODE 7035-01-M

Permanent Authority Decisions

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the Federal Register of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed within 45 days of publication of this decision-notice (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP3-046

Decided: October 15, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 2934 (Sub-79F), filed October 3, 1980. Applicant: AERO MAYFLOWER TRANSIT CO., INC., 9998 North Michigan Road, Carmel, IN 46032. Representative: W. G. LOWRY (same address as applicant). Transporting *carpet padding and expanded cellular plastic*, from Moonachie and Edison, NJ, to points in AL, AR, FL, GA, IL, IN, IA, KS, KY, LA, MI, MO, NC, OH, OK, PA, SC, TN, TX, VA, WV, and WI.

MC 2934 (Sub-80F), filed October 3, 1980. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Road, Carmel, IN 46032. Representative: W. G. Lowry (same address as applicant). Transporting *new furniture*, from Michigan City, IN to points in AL, AR, CT, DE, FL, GA, IL, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA, WV, WI, and DC.

MC 52704 (Sub-287F), filed October 3, 1980. Applicant: GLENN McCLENDON TRUCKING COMPANY, INC., P.O. Drawer "H", LaFayette, AL 36862. Representative: Archie B. Culbreth, 202, 2200 Century Parkway, Atlanta, GA 30345. Transporting *malt beverages*, and *materials, equipment, and supplies* used in the manufacture and distribution of malt beverages, between points in Tarrant County, TX, on the one hand, and on the other points in AR, LA, MS, and OK.

MC 59265 (Sub-73F), filed September 26, 1980.Applicant: SMITH & SOLOMON TRUCKING COMPANY, a corporation, P.O. Box 2015, New Brunswick, NJ 08903. Representative: Lawrence S. Burstein, Suite 2373, One World Trade Center, New York, NY 10048. Transporting *general commodities* (except those of unusual value, household goods as defined by the Commission, commodities in bulk, and commodities requiring speicial equipment), between points in Atlantic, Cape May, Cumberland, Gloucester, Hunterdon, Ocean, Salem, Sussex and Warren Counties, NJ, Dutchess, Orange, Putnam, Suffolk, Sullivan, Ulster Counties, NY, Fairfield, New Haven, Litchfield Counties, CT, Adams, Berks, Carbon, Chester, Columbia, Cumberland, Dauphin, Franklin, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Monroe, Montgomery, Northampton, Perry, Pike, Schuykill, Susquehanna, Wayne, Wyoming, and York Counties, PA, and Arundel, Baltimore, Calvert, Caroline, Carroll, Cecil, Charles, Dorchester, Frederick, Harford, Howard, Kent, Montgomery, Prince George, Queen Anne, St. Marys, Somerset, Talbot, Washington, Wicomico, and Worcester Counties, MD, and points in VA.

Note.—Issuance of a certificate is subject to prior or coincidental cancellation of applicant's existing Certificates No. MC 59265 and subs thereunder, at applicant's written request.

MC 69834 (Sub-22F), filed October 6, 1980. Applicant: PRICE TRUCK LINE, INC., 2945 North Market Street, Wichita, KS 67219. Representative: Paul V. Dugan, 2707 West Douglas, Wichita, KS 67213. Transporting *alcoholic beverages* (except in bulk), from points in CA to points in KS.

MC 105045 (Sub-155F), filed October 3, 1980. Applicant: R. L. JEFFRIES TRUCKING CO., INC., 1020 Pennsylvania Street, Evansville, IN 47701. Representative: Paul F. Sullivan, 711 Washington Building, Washington, DC 20005. Transporting (1) *commodities* the transportation of which, because of size or weight, require the use of special equipment or special handling, (2) *machinery and parts* for machinery, and (3) *iron and steel articles*, between points in the U.S., restricted to traffic originating at or destined to the facilities of, or used by, The Babcock & Wilcox Company.

MC 111504 (Sub-10F), filed October 3, 1980. Applicant: STARR TRANSIT CO., INC., 2531 E. State St., Trenton, NJ 08619. Representative: Alan R. Squires, 818 Widener Bldg., 1339 Chestnut St., Philadelphia, PA 19107. Transporting *passengers and their baggage*, in the same vehicle with passengers, in charter operations, beginning and ending at Philadelphia, PA, and points in Bucks, Montgomery, Chester, and Delaware Counties, PA, Mercer, Middlesex, Hunterdon, Burlington, Camden, Monmouth, Ocean, Gloucester, and Salem Counties, NJ, and New Castle County, DE, and extending to points in the U.S. (including AK but excluding HI).

MC 114045 (Sub-571F), filed October 3, 1980. Applicant: TRANS-COLD EXPRESS, INC., P.O. Box 61228, D/FW Airport, TX 75261. Representative: Arnold L. Burke, 180 North LaSalle St., Chicago, IL 60601. Transporting *general commodities* (except household goods as defined by the Commission, classes A and B explosives, commodities in bulk, and those requiring special equipment), between the points in the U.S., restricted to traffic originating at or destined to the facilities of International Paper Company.

MC 114045 (Sub-572F), filed October 3, 1980. Applicant: TRANS-COLD EXPRESS, INC., P.O. Box 61228, D/FW Airport, TX 75261. Representative: Arnold L. Burke, 180 North LaSalle Street, Chicago, IL 60601. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), from points in Litchfield County, CT, to points in the U.S. (except AK, FL, GA, HI, NC, and SC).

MC 114045 (Sub-573F), filed October 3, 1980. Applicant: TRANS-COLD EXPRESS, INC., P.O. Box 61228, D/FW Airport, TX 75261. Representative: Arnold L. Burke, 180 North LaSalle Street, Chicago, IL 60601. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), which are at the time moving on bills of lading of freight forwarders, (1) between points in MA, RI, CT, NY, NJ, DE, MD, PA, OH, MI, IN, WI, IL, MN, ND, IA, MO, and Wyandotte County, KS, and (2) from the points listed in (1) to points in WY, LA, TN, KY, ND, SD, NE, CO, KS, OK, AR, and TX.

MC 114334 (Sub-89F), filed October 6, 1980. Applicant: BUILDERS TRANSPORTATION COMPANY, 3710 Tulane Rd., Memphis, TN 38116. Representative: Dale Woodall, 900 Memphis Bank Bldg., Memphis, TN 38103. Transporting *precast and pre-stressed concrete articles*, between points in TN, west of the Tennessee River, and Memphis, TN, on the one hand, and, on the other, points in TX, OK, and KY.

MC 114725 (Sub-115F), filed October 6, 1980. Applicant: WYNNE TRANSPORT SERVICE, INC., 2222 N. 11th St., Omaha, NE 68110. Representative: Donald L. Stern, 7171 Mercy Rd., Suite 610, Omaha, NE 68106. Transporting *fertilizer, and fertilizer and feed ingredients*, in bulk,

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between points in the U.S. (except AK and HI), under continuing contract(s) with the Agricultural Division of Allied Chemical Corporation.

MC 116004 (Sub-62F), filed October 3, 1980. Applicant: TEXAS OKLAHOMA EXPRESS, INC., P.O. Box 47112, Dallas, TX 75247. Representative: Doris Hughes (same address as applicant). Transporting *general commodities*, (except household goods as defined by the Commission and classes A and B explosives), (1) between Oklahoma City, OK and Memphis, TN: from Oklahoma City, OK over Interstate Hwy. 40 to Memphis, TN and return over the same route, (2) between Kansas City, KS/MO and Texarkana, AR/TX: from Kansas City, KS/MO over U.S. Hwy. 71 to Texarkana, AR/TX and return over the same route, (3) between Houston, TX and Texarkana, AR/TX: from Houston, TX over U.S. Hwy. 59 to Texarkana, AR/TX and return over the same route, (4) between Ft. Worth, TX and Little Rock, AR: from Ft. Worth, TX over Interstate Hwy. 30 to Little Rock, AR and return over the same route, (5) between Little Rock, AR and St. Louis, MO: from Little Rock, AR over U.S. Hwy. 67 to St. Louis, MO and return over the same route, (6) between Memphis, TN and Chicago, IL: from Memphis, TN over Interstate Hwy. 55 to Chicago, IL and return over the same route, (7) between junction Interstate Hwys. 55/57 and Chicago, IL: from junction Interstate Hwys. 55/57 over Hwy. 57 to Chicago, IL and return over the same route, (8) between junction U.S. Hwy. 71/Interstate Hwy. 70, on the one hand, and, junction Interstate Hwys. 57/70, on the other: from junction U.S. Hwy. 71/Interstate Hwy. 70 over Interstate Hwy. 70 to junction Interstate Hwys. 57/70 and return over the same route, (9) between junction Interstate Hwys. 55/57, on the one hand, and, junction U.S. Hwys. 60/66 on the other: from junction Interstate Hwys. 55/57 over U.S. Hwy. 60 to junction U.S. Hwys. 60/66 and return over the same route, (10) between junction U.S. Hwys. 81/54, on the one hand, and, junction U.S. Hwy. 54/MO Hwy. 13, on the other: from junction U.S. Hwys. 81/54 over U.S. Hwy. 54 to junction U.S. Hwy. 54/MO Hwy. 13 and return over the same route, (11) between junction U.S. Hwys. 55/72, on the one hand, and, junction Interstate Hwys. 57/72, on the other: from junction Interstate Hwys. 55/72 over Interstate Hwy. 72 to junction 57/72 and return over the same route, (12) between junction U.S. Hwy. 71/MO Hwy. 7, on the one hand, and, junction U.S. Hwy. 66/MO Hwy. 13, on the other: from junction U.S. Hwy. 71/MO Hwy. 7 over MO Hwy. 7 to junction MO Hwys. 7/13, then over MO Hwy. 13 to junction U.S. Hwy. 66/MO Hwy..13 and return over the same route, (13) between junction U.S. Hwys. 60/63 and Memphis, TN: from junction U.S. Hwys. 60/63 over U.S. Hwy. 63 to Memphis, TN and return over the same route, (14) between Muskogee, OK and Interstate Hwy. 40 over the Muskogee Turnpike and return over the same route, as an alternate route for operating convenience only.

Note.—Applicant proposes to serve all intermediate points in routes (1) through (13) and points in Macon, McLean, Peoria, Vermilion, Champaign, Pulaski, Jefferson, Sangamon and Kankakee Counties, IL; Quachita, Yell, Craighead, Union and Jefferson Counties, AR; Butler, Cole, Stoddard, Pettis, Randolph and Audrain Counties, MO; Okmulgee, Muskogee and Seminole Counties, OK; and Orange County, TX, as off-route points. (2) Applicant intends to tack this authority with its existing authority.

MC 116254 (Sub-317F), filed October 2, 1980. Applicant: CHEM-HAULERS, INC., 118 East Mobile Plaza, P.O. Box 339, Florence, AL 35631. Representative: Hampton M. Mills (same address as applicant). Transporting (1) *metallic ores*, (2) *non-metallic minerals* (except fuels), (3) *stone, clay, glass and concrete products*, (4) *metal products* (except ordnance), (5) *machinery and transportation equipment*, and (6) *waste and scrap materials*, between points in the U.S. in and east of MN, IA, MO, AR, and LA.

MC 125254 (Sub-76F), filed October 2, 1980. Applicant: MORGAN TRUCKING CO., a Corporation, P.O. Box 714, Muscatine, IA 52761. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. Transporting *such commodities* as are dealt in by food business houses (except commodities in bulk), from the facilities of International Multifoods Corporation, at North Kansas City, MO, to points in NE and MN.

MC 125285 (Sub-11F), filed October 6, 1980. Applicant: SKYLINE EXPRESS INC., 1703 Highway Two, Duluth, MN 55810. Representative: E. L. Newville (same address as applicant). Transporting *minerals, coal*, and *petroleum coke*, between points in St. Louis and Dakota Counties, MN, on the one hand, and, on the other, points in MI MN, and WI.

MC 133614 (Sub-10F), filed October 6, 1980. Applicant: PAPPAS TRUCKING, INC., P.O. Box 8, Gering, NE 69341. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Transporting *such commodities* as are dealt in or used by distributors of lumber, lumber products and building materials, between points in the U.S., under continuing contract(s) with Shepard & Morse Lumber Company, of Weston, MA.

MC 135895 (Sub-113F), filed October 6, 1980. Applicant: B & R BRAYAGE, INC., P.O. Box 8534, Battlefield Station, Jackson, MS 39204. Representative: Harold H. Mitchell, Jr., P.O. Box 1295, Greenville, MS 38701. Transporting (1) *paper and paper products*, and *woodpulp*, and (2) *materials, equipment*, and *supplies* used in the manufacture and distribution of the commodities in (1) (except commodities in bulk and those requiring special equipment), between points in Lowndes County, MS, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 136635 (Sub-40F), filed October 6, 1980. Applicant: UNIVERSAL CARTAGE, INC., 640 W. Ireland Rd., South Bend, IN 46680. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting *petroleum products*, between points in Marion County, IN, on the one hand, and, on the other, points in IL, OH, KY, MI, MO, PA, NY, MS, CT, WV, TN, AL, and WI.

MC 138395 (Sub-15F), filed October 2, 1980. Applicant: DOUGLAS H. WEST, P.O. Box 1274, Salisbury, MD 21801. Representative: Dixie C. Newhouse, P.O. Box 1417, Hagerstown, MD 21740. Transporting (1) *printed matter*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of printed matter, between points in Wicomico County, MD, on the one hand, and, on the other, points in the U.S. in and east of WI, IL, KY, TN, and MS.

MC 141914 (Sub-91F), filed October 2, 1980. Applicant: FRANK AND SON, INC., Route 1, Box 108A, Big Cabin, OK 74332. Representative: Kathrena J. Franks, Route 1, Box 108A, Big Cabin, OK 74332. Transporting *general commodities*, between points in the U.S. restricted to traffic originating at or destined to the facilities used by Shaklee Corporation.

Note.—To the extent the certificate granted in this proceeding authorizes the transportation of liquefied petroleum gas it will expire 5 years from the date of issuance.

MC 143385 (Sub-2F), filed October 6, 1980. Applicant: TRANSPORT ROBERT (1973) LTEE, a Corporation, 130 First Ave.—C.P. 39, Rougemont, P. Quebec, Canada JOL 1MO. Representative: Robert D. Schuler, 100 W. Long Lake Rd., Suite 102, Bloomfield Hills, MI 48013. Transporting *general commodities*, between points in the U.S. (except HI), under continuing contract(s) with Ivaco Quebec Division of Ivaco Ltee and Infasco Division of Ivaco Ltee, of Quebec, Canada.

MC 144345 (Sub-19F), filed October 6, 1980. Applicant: DON'S FROZEN EXPRESS, INC., 3820 Airport Ave., Caldwell, ID 83605. Representative: David E. Wishney, P.O. Box 837, Boise, ID 83701. Transporting *frozen fruit juices* from the facilities of Ventura Coastal Corporation, at or near Ventura, CA, to points in ID, OR, UT, and WA.

MC 145904 (Sub-33F), filed October 3, 1980. Applicant: SOUTH WEST LEASING, INC., P.O. Box 152, Waterloo, IA 50704. Representative: Stanley C. Olsen, Jr., 7400 Metro Blvd., Suite 411, Edina, MN 55435. Transporting *such commodities*, as are dealt in or used by retial and grocery stores and food business houses, between points in IL, IA, KS, MN, MO, NE, and WI.

MC 145914 (Sub-12F), filed October 3, 1980. Applicant: COASTAL TRUCK LINE, INC., How Lane, P.O. Box 600, New Brunswick, NJ 08903. Representative: Herbert Burstein, Suite 2373, One World Trade Center, New York, NY 10048. Transporting *such commodities* as are dealt in by chain grocery and food business houses (except commodities in bulk), between points in the U.S., under continuing contract(s) with Wakefern Food Corporation, of Elizabeth, NJ.

MC 151395 (Sub-3F), filed October 6, 1980. Applicant: SNEAKER FREIGHT LINE, INC., 4215 Thurman Rd., P.O. Box 768, Conley, GA 30027. Representative: Archie B. Culbreth, 2200 Century Parkway, Suite 202, Atlanta, GA 30345. Transporting (1) *containers and container components*, from points in DeKalb County, GA, and Will County, IL, to points in the U.S., and (2) *materials, equipment, and supplies* used in the manufacture and distribution of commodities in (1), in the reverse direction.

Volume No. OP3–048

Decided: October 10, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill. Member Hill not participating.

MC 56945 (Sub-4F), filed October 2, 1980. Applicant: S & H TRUCKLINES, INC., 13990 Valley Blvd., Fontana, CA 92335. Representative: Milton W. Flack, 8383 Wilshire Blvd., Suite 900 Beverly Hills, CA 90211. Transporting *general commodities*, (except those of unusual value, household goods as defined by the Commission, and classes A and B explosives), between points in Los Angeles, Orange, Riverside and San Bernardino Counties, CA. Condition: Issuance of a certificate is subject to prior or coincidental cancellation of certificate of Registration in MC 56945 Sub 1 at applicant's request.

Note.—Applicant states the purpose of this application is to convert applicant's existing certificate of registration in MC 56945 (Sub-1) to a certificate of public convenience and necessity.

MC 114045 (Sub-574F), filed October 3, 1980. Applicant: TRANS-COLD EXPRESS, INC., P.O. Box 61228, D/FW Airport, TX 75261. Representative: Arnold L. Burke, 180 North LaSalle Street, Chicago, IL 60601. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), from points in NJ to points in IL.

MC 116254 (Sub-316F), filed October 2, 1980. Applicant: CHEM-HAULERS, INC., 118 East Mobile Plaza, P.O. Box 339, Florence, AL 35631. Representative: Hampton M. Mills (same address as applicant). Transporting (A) *chemicals or allied products*, in bulk, and (B) *petroleum and coal products*, in bulk, between points in AL, AR, FL, GA, LA, MS, TN, and TX, and (2) between points in AL, AR, FL, GA, LA, MS, TN, and TX, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, NE, KS, OK, and TX.

MC 116544 (Sub-224F), filed October 2, 1980. Applicant: ALTRUK FREIGHT SYSTEMS INC., 1703 Embarcadero Rd., Palo Alto, CA 94303. Representative: Richard G. Lougee, P.O. Box 10061, Palo Alto, CA 94303. Transporting *such commodities as are used in the manufacture, processing, and distribution of pet foods*, between points in Potter County, TX, on the one hand, and, on the other, points in AR, CA, CO, IL, IN, KS, KY, LA, MI, MN, MO, NE, ND, OH, OK, SD, TN, and WI.

MC 117344 (Sub-284F), filed October 2, 1980. Applicant: THE MAXWELL CO., A Corporation, 10300 Evendale Dr., Cincinnati, OH 45241. Representative: James R. Stiverson, 1396 W. 5th Ave., Columbus, OH 43212. Transporting *chemicals*, in bulk, between points in Scioto County, OH, on the one hand, and, on the other, points in the U.S.

MC 117765 (Sub-299F), filed September 30, 1980. Applicant: HAHN TRUCK LINE, INC., 1100 S. MacArthur, P.O. Box 75218, Oklahoma City, OK 73147. Representative: R. E. Hagan (same address as applicant). Transporting *malt beverages*, in containers, from Omaha, NE to points in AR and OK.

MC 119315 (Sub-32F), filed October 3, 1980. Applicant: FREIGHTWAY CORPORATION, 131 Matzinger Road, Toledo, OH 43612. Representative: Andrew Jay Burkholder, 275 East State Street, Columbus, OH 43215. Transporting *Textile mill products*, between points in Essex County, MA, on the one hand, and, on the other, points in Lucas County, OH.

MC 119654 (Sub-92F), filed October 3, 1980. Applicant: HI-WAY DISPATCH, INC., P.O. Box 509, Marion, IN 46952. Representative: Norman R. Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. Transporting *such commodities* as are dealt in or used by chain drug and food business houses, (except commodities in bulk), between the facilities of Colgate-Palmolive Company, at Jeffersonville, IN, on the one hand, and, on the other, points in IL, KY, MI, MO, OH, PA, and WI.

MC 121664 (Sub-134F), filed October 1, 1980. Applicant: HORNADY TRUCK LINE, INC., P.O. Box 846, Monroeville, AL 36460. Representative: William E. Grant, 1702 1st Ave., South, Birmingham, AL 35233. Transporting (1) *clay products, plastic couplings, firebrick and fireplace covers*, and (2) *materials, equipment and supplies* used in the manufacture, distribution, and installation of commodities in (1) above, between points in Bexar, Wilson and Bowie Counties, TX, Crawford County, KS, Webster County, IA, Lauderdale County, MS, Jefferson County, AL and Manatee County, FL, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, CO, and NM.

MC 133735 (Sub-14F), filed October 3, 1980. Applicant: AUDUBON-BROOKHISER TRANSPORT, INC., P.O. Box 166, Wever, IA 52658. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. Transporting *corn products*, in bulk, from the facilities of the Hubinger Company, at or near Keokuk, IA, to points in AR, KY, MI, OK, TN, and TX.

MC 135524 (Sub-157F), filed October 2, 1980. Applicant: G. F. TRUCKING COMPANY, a Corporation, P.O. Box 229, 1028 West Rayen Ave., Youngstown, OH 44501. Representative: George Fedorisin, 914 Salt Springs Rd., Youngstown, OH 44509. Transporting (1) *aluminum articles*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in Berkeley County, SC, on the one hand, and, on the other, points in the U.S.

MC 140025 (Sub-4F) filed, September 30, 1980. Applicant: L & T, INC., 2650 West Beaver Street, Jacksonville, FL 32205. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. Transporting (1) *bakery goods*, from Jacksonville, FL, to points in MD,

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NJ, NY and PA, and (2) *general commodities* (except household goods as defined by the Commission, commodities in bulk, and classes A and B explosives), between Jacksonville, FL, on the one hand, and, on the other, points in AL, DE, FL, GA, MD, MS, NJ, NC, SC, TN, and VA.

MC 143234 (Sub-2F) filed, September 30, 1980. Applicant: PHILLIPS BROS. WAREHOUSING & DISTRIBUTING CORP., 25 Thomas Avenue, Baltimore, MD 21225. Representative: Robert L. Cope, Suite 501, 1730 M Street, NW, Washington, DC 20036. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with Stereo Equipment Sales, Inc., of Baltimore, MD.

MC 145855 (Sub-6F) filed, September 29, 1980. Applicant: JOHN RAY TRUCKING, INC., P.O. Box 206, Eastaboga, AL 35260. Representative: John W. Cooper, 634 Woodward Building, 1927 First Avenue North, Birmingham, AL 35203. Transporting (1) *pipe and pipe fittings, water work supplies, and sewage treatment equipment,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1), (except commodities in bulk), between points in the U.S., under continuing contract(s) with Davis Water & Waste Industries, Inc., of Thomasville, GA.

MC 146485 (Sub-2F) filed, October 1, 1980. Applicant: MARBURGER REFRIGERATED EXPRESS, INC., P.O. Box 387, Peru, IN 46970. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting *ceramic insulation material,* between points in Fulton County, IN, and Kankakee County, IL, on the one hand, and, on the other, points in Salt Lake County, UT.

MC 148025 (Sub-2F) filed, September 30, 1980. Applicant: TRENOAK TRUCKING COMPANY, INC., 735 Commercial Avenue, Carlstadt, NJ 07072. Representative: Michael Kanas, 2633 Trenton Avenue, Philadelphia, PA 19125. Transporting *alcoholic and non-alcoholic beverages,* in containers, between points in the U.S., under continuing contract(s) with Jacquin-New York, Inc., of Mt. Vernon, NY.

MC 146485 (Sub-3F), filed October 1, 1980. Applicant: MARBURGER REFRIGERATED EXPRESS, INC., P.O. Box 387, Peru, IN 46970. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting *concrete forms, sealants, and curing compounds,* between points in Cook County, IL, on the one hand, and, on the other, Salt Lake City, UT and Boise, ID.

MC 149374 (Sub-1F), filed September 24, 1980. Applicant: JUNIOR LEE MULLENS, d.b.a. J. L. MULLENS TRUCKING, Commercial Ave., Richwood, WV 26261. Representative: (same as applicant). Transporting *coal,* between points in the U.S., under continuing contract(s) with Sewell Coal Company, of Nettie, WV.

MC 152045 (Sub-1F), filed September 29, 1980. Applicant: CASON COMPANIES, INC. d.b.a. CASON BUILDERS SUPPLY, 1880 Spartanburg Highway, Hendersonville, NC 28739. Representative: Charles Ephraim, 406 World Center Building, 918 16th Street, NW, Washington, DC 20006. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in Henderson, Rutherford, Transylvania and Buncombe Counties, NC, on the one hand, and, on the other, points in AL, GA, SC, TN, and VA.

MC 150684 (Sub-1F), filed September 22, 1980. Applicant: P & E ASSOCIATES, INC., 2820 LaSalle St., St. Louis, MO 63104. Representative: Edward M. Edleson, 3920 Manorwood, St. Louis, MO 63125. Transporting *general commodities,* between St. Louis, MO, on the one hand, and, on the other, points in IL, IN, KY, IA, and MO.

Note.—To the extent that this certificate authorizes the transportation of classes A and B explosives, it shall be limited in point of time to a period expiring 5 years from its date of issuance.

Volume No. OP3–050

Decided: October 16, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill. Member Hill not participating.

MC 2934 (Sub-81F), filed October 6, 1980. Applicant: AERO MAYFLOWER TRANSIT CO., INC., 9998 N. Michigan Rd., Carmel, IN 46032. Representative: W. G. Lowry (same address as applicant). Transporting *new hospital and laboratory equipment,* from Two Rivers, WI, to points in AL, AR, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA, WV, and DC.

MC 43685 (Sub-26F), filed October 6, 1980. Applicant: MERCER TRUCKING COMPANY, INC., P.O. Box 11585, Spokane, WA 99211. Representative: Marshall Hanning (same address as applicant). Transporting lumber, veneer, *forest products,* and *building materials,* between points in Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima Counties, WA, and Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties, ID, on the one hand, and, on the other, points in California, and in Clark and Washoe Counties, NV.

MC 67234 (Sub-32F), filed October 6, 1980. Applicant: UNITED VAN LINES, INC., One United Drive, Fenton, MO 63026. Representative: B. W. LaTourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, MO 63105. Transporting *furniture,* between Seattle, WA, on the one hand, and, on the other, points in AL, CA, CT, DE, FL, LA, MD, MA, MS, NJ, NY, NC, PA, RI, SC, and VA.

MC 69224 (Sub-52F), filed October 8, 1980. Applicant: H & W MOTOR EXPRESS COMPANY, a corporation, 3000 Elm St., Dubuque, IA 52001. Representative: Carl L. Steiner, 39 South LaSalle St., Chicago, IL 60603. Over regular routes, transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between Des Moines, IA, and Omaha, NE, over Interstate Hwy 80, serving all intermediate points.

MC 107295 (Sub-996F), filed October 6, 1980. Applicant: PRE-FAB TRANSIT CO., a Corporation, P.O. Box 146, Farmer City, IL 61842. Representative: Duane Zehr (same address as applicant). Transporting *insulation materials* (except commodities in bulk), from points in Harris County, TX, to points in the U.S. (except AK and HI).

MC 116544 (Sub-225F), filed October 6, 1980. Applicant: ALTRUK FREIGHT SYSTEMS, INC., 1703 Embarcadero Rd., Palo Alto, CA 94303. Representative: Richard G. Lougee, P.O. Box 10061, Palo Alto, CA 94303. Transporting *foodstuffs* (except in bulk), between points in Shelby County, TN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 117574 (Sub-354F), filed October 6, 1980. Applicant: DAILY EXPRESS, INC., P.O. Box 39, 1076 Harrisburg Pike, Carlisle, PA 17013. Representative: James W. Hagar, P.O. Box 1166, 100 Pine St., Harrisburg, PA 17108. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between the facilities of E. I. DuPont de Nemours & Co., Inc., at or near Towanda, PA, and Horseheads, NY.

MC 124964 (Sub-66F), filed October 8, 1980. Applicant: J. M. BOOTH TRUCKING, INC., P.O. Box 265, Tavares, FL 32778. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street, NW, Washington, DC 20001. Transporting (1) *cleaning and scouring compounds* and (2) *materials, equipment, and supplies* used in the manufacture, sale and distribution of the commodities in (1), (except commodities in bulk), between points in the U.S., under continuing contract(s) with Texize, Division of Morton Norwich, of Greenville, SC.

MC 135944 (Sub-6F), filed October 6, 1980. Applicant: RODGERS EXPRESS, INC., 1310 S. West St., Indianapolis, IN 46225. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between Hayes, KS, and Columbus, OH, over Interstate Hwy 70, serving all intermediate points, and serving Dayton and Marysville, OH, as off-route points.

Note.—Applicant intends to tack this authority with its existing regular-route authority.

MC 140265 (Sub-15F), filed October 6, 1980. Applicant: LARRY E. HICKOX, d.b.a. LARRY E. HICKOX TRUCKING, Box 95, Casey, IL 62420. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701. Transporting *plastic fence posts,* between points in the U.S., under continuing contract(s) with Sunbelt Manufacturers, Inc., of Grand Prairie, TX.

MC 145054 (Sub-1F), filed October 7, 1980. Applicant: COORS TRANSPORTATION COMPANY, a corporation, 5101 York Street, Denver, CO 80216. Representative: Leslie R. Kehl, 1600 Lincoln Center, 1660 Lincoln Street, Denver, CO 80264. Transporting (1) *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in CO, on the one hand, and, on the other, points in KS, MN, and MO.

MC 145914 (Sub-11F), filed October 6, 1980. Applicant: COASTAL TRUCK LINE, INC., How Lane, P.O. Box 600, New Brunswick, NJ 08903. Representative: Herbert Burstein, One World Trade Center, Suite 2373, New York, NY 10048. Transporting *bakery goods,* not frozen, between points in the U.S., under continuing contract(s) with Sunshine Biscuits, Inc., of New York, NY.

MC 145955 (Sub-18F), filed October 8, 1980. Applicant: CENTRAL TRUCK SERVICE, INC., 4440 Buckingham Avenue, Omaha, NE 68107. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Road, Omaha, NE 68106. Transporting *such commodities* as are dealt in or used by producers and distributors of paper and plastic products, between Chicago, IL, on the one hand, and, on the other, points in IA, KS, MO, and NE.

MC 149284 (Sub-2F), filed October 8, 1980. Applicant: MARION D. DAY, d.b.a., DAY'S EXPRESS, 1942–7th Street, Columbus, IN 47201. Representative: Stephen M. Gentry, 1502 Main Street, Speedway, IN 46224. Transporting *fabricated metal products,* between points in Lawrence County, IN, on the one hand, and, on the other, points in CA.

MC 149284 (Sub-3F), filed October 8, 1980. Applicant: MARION D. DAY, d.b.a., DAY'S EXPRESS, 1942–7th Street, Columbus, IN 47201. Representative: Stephen M. Gentry, 1502 Main Street, Speedway, IN 46224. Transporting *automobile parts and supplies,* between points in Marion County, IN, on the one hand, and, on the other, points in CA, MA, NJ, and TX.

MC 150445, filed October 6, 1980. Applicant: ALFONSO V. MANGIONE, 510 S. Main St., Pittston, PA 18640. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517. Transporting *coal,* from points in Luzerne and Schuylkill Counties, PA, to points in NH, VT, NE, DE, and OH.

MC 151395 (Sub-4F), filed October 7, 1980. Applicant: SNEAKER FREIGHT LINE, INC., 4215 Thurman Rd., P.O. Box 768, Conley, GA 30027. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. Transporting (1) *polyethylene film and bags,* from points in Clayton County, GA, to points in AL, FL, KY, MD, MS, NC, SC, TN, and VA, and (2) *materials, equipment, and supplies* used in the manufacture and distriution of the commodities in (1) above, in the reverse direction.

MC 151685F, filed October 6, 1980. Applicant: W D P TRANSPORTATION, INC., 453 Versailles Road, Frankfort, KY 40601. Representative: George M. Catlett, Suite 708, McClure Building, Frankfort, KY 40601. Transporting *general commodities* (except commodities in bulk, classes A and B explosives, household goods as defined by the Commission, commodities of unusual value, and those requiring special equipment), between points in the U.S., under continuing contract(s) with Roper Corporation, of Kankakee, IL.

Volume No. OP4–094

Decided: October 16, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton and Liberman. Member Chandler not participating.

MC 11207 (Sub-571F), filed October 9, 1980. Applicant: DEATON, INC., 317 Avenue W, P.O. Box 938, Birmingham, AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Ave., Washington, D.C. 20014. Transporting *lumber and wood products,* between points in MS and points in Choctaw County, AL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 11207 (Sub-572F), filed October 10, 1980. Applicant: DEATON, INC., 317 Avenue W, P.O. Box 938, Birmingham, AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Ave., Washington, D.C. 20014. Transporting *iron and steel articles,* between Dallas, TX, on the one hand, and, on the other, points in MI, and those points in the U.S. in and west of TX, AR, MO, IL, and WI.

MC 27817 (Sub-171F), filed October 10, 1980. Applicant: H. C. GABLER, INC., R.D. No. 3, P.O. Box 220, Chambersburg, PA 17201. Representative: Christian V. Graf, 407 N. Front St., Harrisburg, PA 17101. Transporting (1) *such commodities* as are dealt in, or used by, chain grocery and food business houses (except commodities in bulk), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), between points in CT, DE, IL, IN, KY, ME, MD, MA, MI, NJ, NH, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, and DC.

MC 105566 (Sub-233F), filed October 10, 1980. Applicant: SAM TANKSLEY TRUCKING, INC., P.O. Box 1120, Cape Girardeau, MO 63701. Representative: William F. King, Suite 400, Overlook Bldg., 6121 Lincolnia RD., Alexandria, VA 22312. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities used by Corning Glass Works and its subsidiaries.

MC 108207 (Sub-560F), filed October 10, 1980. Applicant: FROZEN FOOD EXPRESS, INC., P.O. Box 225888, Dallas TX, 75265. Representative: M. W. Smith (same address as applicant). Transporting *food or Kindred products,* as defined in Item 20 of the Standard Transportation Commodity Code, between points in TX, on the one hand, and, on the other, points in UT.

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MC 119366 (Sub-4F), filed October 10, 1980. Applicant: MOTOR CITY CARTAGE COMPANY, a corporation, 175—12th St., Detroit, MI 48216. Representative: Wilhelmina Boersma, 1600 First Federal Bldg., Detroit, MI 48226. Transporting *meats, meat products, meat byproducts, dairy products, and articles distributed by meat-packing houses,* as described in Sections A, B and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), between Detroit, MI, on the one hand, and, on the other, points in MI.

MC 144606 (Sub-16F), filed October 14, 1980. Applicant: DUNCAN & SON LINES, INC., 714 East Baseline Rd., Buckeye, AZ 85326. Representative: Donald W. Powell, 4150 No. 12th St., Phoenix, AZ 85014. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in AZ, CA, CO, and NM, restricted to traffic originating at or destined to the facilities used by Ralston Purina Company. Condition: Person or persons who appears to be engaged in common control of applicant and another regulated carrier must either file an application under 49 U.S.C. 11343(A), or submit an affidavit indicating why such approval is unnecessary.

MC 151746 (Sub-1F), filed October 10, 1980. Applicant: ORANGE DISTRIBUTION SERVICES, INC., P.O. Box 2277, Short Beach, CT 06405. Representative: Gerald A. Joseloff, P.O. Box 3258, Hartford, CT 06103. Transporting (1) *cement, tile adhesives, and building supplies,* and (2) *materials and equipment* used in the manufacture and distribution of the commodities in (1) above, between points in New Haven County, CT, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 151746 (Sub-2F), filed October 10, 1980. Applicant: ORANGE DISTRIBUTION SERVICES, INC., P.O. Box 2277, Short Beach, CT 06405. Representative: Gerald A. Joseloff, P.O. Box 3258, Hartford, CT 06103. Transporting (1) *polyethylene bags, plastic film, and plastic materials,* and (2) *equipment and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in Middlesex County, CT and Wilson County, TN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-33064 Filed 10-22-80; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

[Delegation of Authority No. 137 (Revised)]

Assistant Administrator for Program and Management Services and Director, Office of Personnel Management; Delegation of Authority

By virtue of the authority delegated to me by the Trade and Development Program Delegation of Authority No. 1, entitled "Contracting and Personnel Management Functions for the Trade and Development Program," effective July 1, 1980, it is hereby directed as follows:

Section 1. There is hereby delegated to the Assistant Administrator for Program and Management Services the authority to sign or approve, on behalf of the Trade and Development Program, the following:

A. U.S. Government contracts, grants and cooperative agreements financed under authority vested in the Trade and Development Program by Section 1–203 of the International Development Cooperation Agency ("IDCA") Delegation of Authority No. 4. This includes authority to perform or issue the following: (1) Negotiation, conclusion and termination of agreements;

(2) Amendments, modifications, ratifications or other extraordinary contractual actions pursuant to Sections 3 or 4 of Executive Order 11223: *Provided,* That redelegation of such authority shall not extend to actions which (i) increase the amount payable to the contractor by more than $250,000 or (ii) relieve the contractor of the liability to make refund or restitution of more than $250,000;

(3) Determinations pursuant to Section 604(a) of the Foreign Assistance Act of 1961, as amended, in regard to programs authorized under Sections 607(a) and 661 of the Act;

(4) Determinations and Findings with respect to advance payments, including those financed by Federal Reserved Letters of Credit, and to approve contract, grant, and cooperative agreement provisions relating to such advance payments. This authority may not be redelegated for contracts, grants, or cooperative agreements with profit making organizations; it may be redelegated for contracts, grants, or cooperative agreements with other than profit making organizations;

(5) Project implementation orders-technical services (PIO/T) for activities for which said Assistant Administrator has program responsibility.

B. Reviews, evaluations, recommendations and other documents pertaining and preliminary to non-U.S. Government contracts, the final approval of which is exercised by the Trade and Development Program. This includes authority to provide all services necessary for the formulation and review of non-U.S. Government contracts for which the Trade and Development Program has responsibility but does not include authority to approve such agreements.

Section 2. There is hereby delegated to the Director, Office of Personnel Management, the authority necessary to implement sections 1–203 and 1–401 of IDCA Delegation of Authority No. 4 insofar as they relate to personnel of the Trade and Development Program. This includes the authority of the Foreign Service Act of 1946, as amended, to employ and designate personnel, which the Director is authorized to exercise pursuant to Section 625(d) of the Act and the provisions of the Foreign Service Act which apply to personnel so appointed or assigned, and shall consist of: (a) the authority available to the Secretary of State under the Foreign Service Act of 1946 (including Section 571 of that Act), relating to Foreign Service Reserve Officers, Foreign Service Staff officers and employees, and alien clerks and employees;

(b) the authority available to the Secretary of State under Sections 1021 through 1071 of the Foreign Service Act of 1946;

(c) the authority available to the Board of Foreign Service and under the Foreign Service Act of 1946;

(d) the authority to prescribe or issue in pursuance of the Foreign Service Act of 1946 and the Act such regulations, orders and instructions as may be incidental to, or necessary for, or desirable in connection with, the carrying out of the provisions of Section 625(d)(2) of the Act or the provisions of this Delegation of Authority; and

(e) the prohibitions contained in Sections 1001 through 1005 of the Foreign Service Act of 1946.

Section 3. The authority delegated herein may be redelegated successively and may be exercised by persons who are performing the functions of the designated officers on an acting basis.

Section 4. This delegation of authority shall be deemed effective immediately and actions within the scope of this delegation and any redelegation hereunder undertaken prior hereto which are consistent with the terms and scope of this delegation are hereby ratified and confirmed.

Dated: October 9, 1980.

Joseph C. Wheeler,

Acting Administrator.

[FR Doc. 80-33036 Filed 10-22-80; 8:45 am]

BILLING CODE 4710-02-M

[Redelegation of Authority No. 137.1]

Director, Office of Contract Management; Delegation of Authority

Pursuant to the authority delegated to me by Delegation of Authority No. 137 from the Administrator of the Agency for International Development, effective July 1, 1980, I hereby redelegate to the Director, Office of Contract Management the following authority, with power to redelegate to such officers and employees as he may designate:

Section 1. To sign or approve, on behalf of the Trade and Development Program, the following: A. U.S. Government contracts, grants and cooperative agreements financed under authority vested in the Trade and Development Program by Section 1–203 of the International Development Cooperation Agency ("IDCA") Delegation of Authority No. 4. This includes authority to perform or issue the following: (1) Negotiation, conclusion and termination of agreements;

(2) Amendments, modifications, ratification of other extraordinary contractual actions pursuant to Sections 3 or 4 of Executive Order 11223: *Provided,* that such authority shall not extend to actions which (i) increase the amount payable to the contractor by more than $50,000 or (ii) relieve the contractor of the liability to make refund or restitution of more than $50,000.

(3) Determinations pursuant to Section 605(a) of the Foreign Assistance Act of 1961, as amended, in regard to programs authorized under Sections 607(a) and 661 of the Act;

(4) Determinations and Findings with respect to advance payments, including those financed by Federal Reserve Letters of Credit, and to approve contract, grant, and cooperative agreement provisions relating to such advance payments. This authority may be exercised for contracts, grants, or cooperative agreements with other than profit making organizations only;

(5) Project implementation orders-technical services (PIO/T) for activities for which said Assistant Administrator has program responsibility.

B. Reviews, evaluations, recommendations and other documents pertaining and preliminary to non-U.S. Government contracts, the final approval of which is exercised by the Trade and Development Program. This includes authority to provide all services necessary for the formulation and review of non-U.S. Government contracts for which the Trade and Development Program has responsibility but does not include authority to approve such agreements.

Section 2. The authority delegated herein may be redelegated and may be exercised by persons who are performing the functions of the designated officers on an acting basis.

Section 3. This redelegation of authority shall be deemed effective immediately, and actions within the scope of this redelegation heretofore taken by the officials designated herein are hereby ratified and confirmed.

Dated: October 10, 1980.

D. G. MacDonald,

Bureau for Program and Management Services.

[FR Doc. 80-33037 Filed 10-22-80; 8:45 am]

BILLING CODE 4710-02-M

DEPARTMENT OF JUSTICE

Proposed Consent Decree in Action To Enjoin Discharge of Air Pollutants

In accordance with Department Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed consent decree in *United States* v. *Transit Oil Company,* Civil Action No. 79–110–C, has been lodged with the United States District Court for the Southern District of Indiana. The proposed consent decree requires Transit to reduce its gasoline loading activities at its New Albany, Indiana facility, to levels below 40,000 gallons per day throughput, to bring this facility into compliance with the Clean Air Act, 42 U.S.C. 7401 *et seq.,* and provides for payment of a civil penalty.

The Department of Justice will receive until November 24, 1980, written comments relating to the proposed consent decree. Comments should be addressed to the Deputy Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530 and refer to *United States* v. *Transit Oil Company,* D.J. Reference No. 90–5–2–3–1183.

The proposed consent decree may be examined at the office of the United States Attorney, Room 274, Federal Building and Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204; at the Region V office of the United States Environmental Protection Agency, Enforcement Division, 230 South Dearborn Street, Chicago, Illinois 60604; and at the Pollution Control Section, Land and Natural Resources Division, Department of Justice, Room 2644, Ninth and Pennsylvania Ave., NW., Washington, D.C. 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Pollution Control Section, Land and Natural Resources Division, Department of Justice.

Angus MacBeth,

Deputy Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 80-33017 Filed 10-22-80; 8:45 am]

BILLING CODE 4410-01-M

Proposed Consent Decree in Action Involving Emission of Air Pollutants by Northern States Power Co.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed consent decree in *United States of America* v. *Northern States Power Company,* Civil Action No. 3–80–539, has been lodged with the United States District Court for the District of Minnesota. The proposed consent decree requires Northern States Power Company to adopt measures to bring its steam-generating facility into compliance with Minnesota Air Pollution Regulations on particulate matter by February, 1982.

The proposed consent decree may be examined at the office of the United States Attorney, District of Minnesota, 234 United States Courthouse, 110 South 4th Street, Minneapolis, Minnesota 55401; at the Region V office of the Environmental Protection Agency, Enforcement Division, 230 South Dearborn Street, Chicago, Illinois, 60604; and at the Pollution Control Section, Land and Natural Resources Division of the Department of Justice, Room 2644 Ninth and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed decree may be obtained in person or by mail from the Pollution Control Section, Land and Natural Resources Division of the Department of Justice.

The Department of Justice will receive written comments relating to the proposed consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to Deputy Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States of America* v. *Northern States Power Company,* Civil Action No. 3–80–539, D.J. Reference No. 90–5–2–1–335.

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In requesting a copy of the proposed consent decree, please enclose a check in the amount of $1.10 (ten cents per page for reproduction charge) payable to the Treasurer of the United States.

Angus Macbeth,

Deputy Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 80-33018 Filed 10-22-80; 8:45 am]

BILLING CODE 4410-01-M

Criminal Division Order; Advisory Opinion Service

Effective immediately there is established within the Criminal Division an advisory opinion service for the purpose of providing a public forum for resolving ambiguities concerning this Division's interpretation and enforcement policy with respect to Federal criminal laws dealing with political activities within the Federal civil service, patronage and politicalization of Federal programs. The purpose of this new service is to foster compliance with what are essentially non-feasant criminal laws, and thereby to achieve the essentially regulatory purposes the Congress sought to protect in enacting them.

1. This advisory opinion service shall apply only to the following provisions contained in Chapter 29 of Title 18, United States Code: 18 U.S.C. 592, 593, 595, 596, 598, 599, 600, 601, 602, 603, 604, 605, 606 and 607.

2. Requests for interpretative opinions shall be in writing, and they should in each instance reflect the principal on whose behalf they are submitted. Replies will similarly be in writing, and all replies will be made available for public inspection by the Criminal Division through an appropriate medium. Under extentuating circumstances, requests for the deletion of personal identifying data from materials made available to the public will be entertained.

3. All requests should be addressed to the Director, Election Crimes Branch, Public Integrity Section, P.O. Box 50168, Washington, D.C. 20004.

4. Replies will be signed by the Deputy Assistant Attorney General, and will reflect the views of the Criminal Division.

5. The Division reserves the right not to respond to request for advisory opinions when a substantive response under the circumstances would not be consistent with the criminal law enforcement responsibilities of the Department of Justice.

6. Any advisory opinion rendered by the Criminal Division pursuant to this procedure may be relied upon by the person or entity that requested it. Any other person who is engaged in a specific activity which is *indistinguishable* in all material aspects from the activity with respect to which an advisory opinion is rendered may similarly rely on its substance. With respect to any person who is engaged in an activity that is *distinguishable* from the activity with respect to which an advisory opinion is rendered, the Criminal Division shall take into consideration a claim that such person acted in good faith reliance on the substance of an advisory opinion as a mitigating factor in the exercise of prosecutive discretion.

Philip B. Heymann,

Assistont Attorney General Criminal Division.

[FR Doc. 80-33019 Filed 10-22-80; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 80-3]

Gilbert Miller, M.D.; Denial of Registration

On January 18, 1980, the Administrator of the Drug Enforcement Administration (DEA) directed to Gilbert Miller, M.D. (Respondent) an Order to Show Cause as to why the Drug Enforcement Administration should not deny his application for a DEA Certificate of Registration executed on January 22, 1979, for reason that on May 3, 1978, Respondent was convicted in the United States District Court for the Southern District of New York of one (1) count of unlawfully, intentionally and knowingly and causing to be distributed to another, Schedule II controlled substances, in violation of 21 U.S.C. 841(a)(1). This is a controlled substance-related felony. After preliminary procedures, during which Respondent initially requested a hearing *pro se* but then obtained counsel, and including a Prehearing Conference in which the Administrative Law Judge and Counsel for the Government and Respondent participated, the Honorable Francis L. Young, Administrative Law Judge, conducted a hearing in Washington, D.C. on June 3, 1980.

On September 24, 1980, Judge Young certified to the Administrator, pursuant to 21 CFR 1316.65, the record of the proceedings in this matter, together with his recommended findings of fact, conclusions of law, and a recommended decision. Pursuant to 21 CFR 1316.67, the Administrator hereby publishes his Final Order in this proceedings, based upon the findings of fact and conclusions of law set forth below.

The Administrative Law Judge found that respondent pled guilty to one (1) count of unlawfully distributing 540 tablets of Schedule II controlled substances to another individual. This is the second count of a three (3) count indictment; the remaining counts were dismissed on motion of respondent's counsel with the Government's consent. Respondent's sentence was suspended, and he was placed on three (3) years probation and fined $5,000.

A DEA special agent testified for the Government. He testified that on January 25, 1977, he served an arrest warrant on an individual from whom his partner was making street buys of Quaalude. In this individual's apartment the agents saw medicine bottles with Respondent's name on them. The individual indicated that Respondent was his source of supply, and that he would cooperate with the Government. The arrest took place in the Upper East Side of Manhattan, a higher income area.

Judge Young found that this cooperating individual went to Dr. Miller's office on March 17, 1977, wearing a concealed tape recorder. He entered Respondent's office and purchased four prescriptions in four fictitious names from Respondent. Three of the prescriptions were for thirty (30) methaqualone each, and one was for sixty (60) Tuinal. Judge Young found that Respondent knew these names to be fictitious and he believed the individual intended to use the prescriptions to obtain drugs for illegal sale to others.

Judge Young found that the individual purchased five (5) prescriptions in a similar manner on April 12, 1977. Three (3) of the prescriptions were for thirty (30) methaqualone and two (2) were for sixty (60) biphetamine. Again, Judge Young found that respondent knew these names to be fictitious and he believed the individual intended to use the prescription to obtain drugs for illegal sale to others.

Judge Young further found that the individual repeated this method of obtaining prescriptions on May 17, 1977, when he obtained two (2) prescriptions for sixty (60) biphetamine and two (2) for thirty (30) methaqualone. The Administrative Law Judge made the same finding concerning this purchase.

The Administrative Law Judge found that the DEA agent visited Respondent's Manhattan office on April 14, 1977. The agent met Dr. Miller in his office, and the agent told Respondent he wanted some Quaaludes. The agent filled out a patient's card. Respondent performed a perfunctory physical examination on the agent, listening briefly to his chest and back with a stethoscope, and taking his blood pressure. The whole procedure took less than five minutes. At no time did the agent complain of medical symptoms requiring methaqualone. The agent paid $20.00, obtained the prescription, and left.

Judge Young found further that the agent purchased a prescription for 30 tablets of methaqualone on April 26, 1977. On this latter occasion he obtained a prescription for 50 biphetamine for his non-existent girlfriend. Respondent counselled against filling the prescriptions at the same pharmacy, so as not to get Respondent in trouble.

Respondent's case in mitigation consisted of submitting letters from his probation officers that he is abiding by the terms of his probation; an affidavit submitted at the hearing and another submitted during the exception period that he would find it useful to prescribe certain Schedule IV and V controlled substances; and the testimony of a DEA Compliance Investigator that he has not recently heard of any complaints concerning Respondent's prescribing habits. The Administrative Law Judge found that Respondent is employed by a large corporation in New York as a clinic staff physician, and has a private practice in Roslyn, Long Island, New York. Respondent was not present at the hearing.

Judge Young concluded that there is a lawful basis for denial of Respondent's application for DEA registration, and that the preponderance of the evidence indicates that Respondent's application for DEA registration should be denied. The Administrator hereby adopts the findings, conclusion and recommended decision of the Administrative Law Judge, as set forth above.

Counsel for Respondent filed exceptions under 21 CFR 1316.66 to the Administrative Law Judge's opinion and recommended ruling, findings of fact, conclusions of law and decision. The Administrator has considered the exceptions. Nothing in them would change the Administrative Law Judge's findings, conclusion and recommended decision, or alter the fact that there is a lawful basis for the denial of Respondent's application.

Having reviewed the record of this proceeding in its entirety, including exceptions filed on behalf of Respondent, and having concluded that Respondent's application should be denied for reason that Respondent Gilbert Miller has been convicted of a felony relating to controlled substances, it is the decision of the Administrator that said application be denied. Accordingly, pursuant to the authority vested in the Attorney General by Section 824 of Title 21, United States Code, and redelegated to the Administrator of the Drug Enforcement Administration, the Administrator hereby orders that the application for registration, executed by Gilbert Miller, M.D., on January 22, 1979, be, and is, hereby, denied, effective November 24, 1980.

Peter B. Bensinger,

Administrator.

October 20, 1980.

[FR Doc. 80-33116 Filed 10-22-80; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 80-9]

Harry Werbin, D.O.; Orders To Show Cause

On February 7, 1980, the Administrator of the Drug Enforcement Administration (DEA) issued to Harry Werbin, D.O., two Orders to Show Cause, the first of which concerned why an application which he submitted to DEA for registration of his medical office in Missouri, dated June 17, 1977, should not be denied, and the second order concerned why two applications which he submitted to DEA for registration of his two California medical offices, dated February 3, 1977 and July 6, 1978, should not be denied, and why one of his California medical office DEA registrations should not be revoked.

The reasons which the Government cited in the Order to Show Cause concerning Dr. Werbin's application for registration in Missouri were that he pled guilty to drug-related felonies (five counts), that Missouri revoked his medical license, and the Missouri Board of Narcotics and Dangerous Drugs denied his Missouri Controlled Substance Registration application and removed his Missouri registration from their files.

The Government's reasons for issuing the Order to Show Cause to deny the registrations for Dr. Werbin's California medical office locations were, again, his guilty pleas to the aforementioned drug-related felonies.

In response to the February 7, 1980 Order to Show Cause concerning his Missouri medical office registration application, Dr. Werbin filed on March 11, 1980 an affidavit and a request for a stay of the DEA proceedings. His reasons for the stay request were that he had appealed his drug-related felony convictions, contesting the validity of his plea of guilty thereto, that the matter of his appeal was *pendente lite* in the Missouri Court of Appeals, and the DEA proceedings should be stayed pending the outcome of that appeal.

The Government objected to Dr. Werbin's request for a stay, citing authority for its position that conviction of a Respondent for a drug-related felony is, and can continue to serve as, the basis for an administrative proceeding based thereon, notwithstanding that the conviction is *pendente lite* on appeal.

Following this, the Government filed on May 5, 1980 a Motion in the Nature of Summary Judgement or to Terminate Proceedings, asserting that the Respondent was clearly not a "practitioner" under Missouri law, was without authority to dispense or administer controlled substances in Missouri having had his license to conduct such activities in that State revoked by the Missouri Court which convicted him, and thus Respondent could not, under the Controlled Substances Act, obtain a DEA registration as a practitioner. Therefore, the Motion concluded, the final question of whether Respondent's pending application for registration at his Missouri location should be denied is answered as a matter of law.

The Administrative Law Judge considered the aforementioned stay request by Respondent, and the Motion submitted in response thereto by the Government, and issued on May 7, 1980, a Memorandum and Order which invited Respondent to respond in opposition to the Government's Motion.

Despite the Administrative Law Judge having presented him with the opportunity to do so, the Respondent, Dr. Harry Werbin, has neglected as of this date to submit to the Administrative Law Judge any statement or proof refuting the Government's Motion, nor has he advised the Administrative Law Judge of any matter or issue concerning this proceeding since he filed his March 11, 1980 request for a stay.

On June 4, 1980, the Administrative Law Judge presiding issued an Order terminating the proceeding pending in the instant matter, and recommended that the Administrator issue his final order without a hearing as to the matters regarding and raised by the February 7, 1980 Order to Show Cause concerning Dr. Werbin's Missouri registration application.

As to the February 7, 1980 Order to Show Cause regarding Dr. Werbin's two remaining DEA applications for registration of his two California medical office locations, and regarding revoking his ongoing DEA registration for one of those California office locations, Dr. Werbin filed no response.

Therefore, upon review and consideration of the Memorandum and Order issued May 7, 1980, by the

Administrative Law Judge presiding, and of the record in this case, and recognizing: 1. that in the instant administrative proceeding, the Government has served on the Respondent a copy of its Motion in the Nature of Summary Judgement or to Terminate Proceedings, based on the Missouri Court revoking Respondent's license to practice medicine and consequent authorization to dispense controlled substances; 2. that the Respondent has been given ample opportunity to oppose or make other response to the Government's motion, but that the Respondent has failed to do so; 3. that the record in this matter indicates that there is no genuine issue as to any material fact with respect to Respondent's entitlement to a DEA registration as a practitioner pursuant to 21 U.S.C. 823(f), because the record reveals that he is not authorized to dispense controlled substances under the laws of the State of Missouri, in which, heretofore, he practiced medicine; 4. that there is a lawful basis for denying Respondent's pending DEA application regarding Missouri; and 5. that since the Respondent is no longer licensed to practice medicine in Missouri, his pending DEA application regarding Missouri must be denied.

For the reason that the Respondent is no longer licensed to practice medicine, nor is he authorized to dispense controlled substances, in the State of Missouri in which he heretofore practiced and was registered with the Drug Enforcement Administration, it is the decision of the Administrator that the Respondent's pending application for registration of his Missouri location be denied.

Further, for the reason that Respondent has never responded to the Order to Show Cause (1) to deny his two applications for registration at his two medical office locations in California; and (2) to revoke the ongoing DEA registration at one such location in California, it is the decision of the Administrator that Respondent's DEA registration and applications for his California locations be revoked, and denied, respectively.

Therefore, pursuant to the authority vested in the Attorney General by sections 823 and 824 of Title 21, U.S.C., and redelegated to the Administrator of the Drug Enforcement Administration, the Administrator orders that all pending applications for registration of Harry Werbin, D.O. which are the subject of this order be, and they are hereby, denied, and that his DEA registration AW7368031 for his medical office location in California be, and it hereby is, revoked, all of which is effective immediately.

Dated: October 20, 1980.

Peter B. Bensinger,

Administrator.

[FR Doc. 80-33117 Filed 10-22-80; 8:45 am]

BILLING CODE 4410-09-M

National Institute of Corrections

Resolicitation—Grant Notification: Training and Consulting Project

October 20, 1980.

This is a resolicitation of the notice published in the **Federal Register** Vol. 45, No. 141/Monday, July 21, 1980 (45 FR 48751).

Pursuant to Federal Procurement Regulations published in the Code of Federal Regulations Subpart 1–2.4, Section 1–2.404–1(b)(1), this notification is republished for resolicitation. This reference section permits the agency to cancel invitations for bid after opening but prior to award where such cancellations is in the best interest of the Government. This resolicitation clarifies inadequate and otherwise deficient specifications.

Attached is a grant notification entitled, "National Institute of Corrections Training and Consulting Project," at least in the amount of $698,000.00 plus any additional supplemental awards which may be added on to the original grant award during the original award period.

If you are interested in submitting an application, please read the notification carefully and have your formal submittal into the National Institute of Corrections by close of business on November 21, 1980.

In the event there are any questions, please contact Charles E. Wolfe of the National Institute of Corrections (NIC), Financial Management Division at 202–724–3110.

Applications and instructions to aid you in preparing your response to this notification may be obtained from NIC. The Institute plans to make the grant award no later than December 1, 1980.

Frank A Maes,

Chief, Financial Management, Department of Justice, National Institute of Corrections, 320 First Street, N.W. Washington, D.C. 20534.

National Institute of Corrections Grant Notification

Introduction/General Statement

The National Institute of Corrections (NIC) will be sponsoring a cooperative agreement grant entitled, "NIC Training and Consulting Project," of which the main purpose would be to have the grantee review, audit, and make payments to NIC identified consultants and trainees. This notification outlines the purpose, background and requirements for submitting a proposal (in the form of a grant application—Standard Form 424) to the Institute for consideration. Pertaining to Fiscal Year 1981, NIC has set aside initially $698,000.00 for disbursement purposes only to NIC identified grantees and consultants plus anticipated additions to the grant during the fiscal year. These amounts do not include the cost of managing the cooperative agreement award. A one-year cooperative agreement award will be given to the group or agency being awarded the grant.

Purpose

The purpose of this grant notification/solicitation is:

1. To locate an organization with a primary background in management and or accounting to make payments to NIC identified consultants and trainees
2. To make timely accurate financial reports to NIC indicating the financial status of the grant award by NIC program activity
3. To providing listings to NIC indicating the payees, amounts paid, and date paid by NIC program activity
4. At the end of each calendar year in which the grant is in effect, prepare IRS 1099 for those consultants which were paid a professional fee during the year.

Background

Congress, in passing the National Institute of Correction's (NIC) legislation in 1974 (Pub. L. 93–415), recognized a continuing need to coordinate Federal efforts to assist corrections at the state and local levels. In its report supporting this legislation, the Senate Judiciary Committee noted that through the Institute there would be:

> * * * a center in the nation to which the multitude of correctional agencies and programs of the states and localities can look for the many different kinds of assistance that they require. The Institute would serve as a center for correctional knowledge * * * (and) develop national policies for the guidance and coordination of correctional agencies.

The Institute was created to strengthen and improve local correctional agencies and programs. Designed to develop a more effective, humane, and just correctional service locally, NIC has become an advocate for safe, positive and effective correctional programming. Specific as to mission and small in size, the Institute has directed its energies and resources to improving correctional components of the larger criminal justice system. This has

permitted a precise and immediate response to local problems with little of the dissipation of resources often found in larger, more remote, and formally structured organizations. Assistance is generally through direct services by Institute Staff, technical assistance provided by part consultants and training programs covering all areas of corrections.

Requirements

Using the objectives identified in this notification and the appended report, interested parties may submit a proposal to the National Institute of Corrections, U.S. Department of Justice, 320 First Street, N.W., Washington, D.C. 20534, in the form of a *grant applications—Standard Form 424.* All applications must be submitted in three copies November 21, 1980. All applications must be submitted in compliance with instructions as outlined in the NIC *Grant Guidelines Manual.* The format outlined in the application and in the guideline manual must be followed.

In completing the application, the following (requirements/guidelines) must be adhered to:

A. The grantee cooperative agreement recipient shall furnish all personnel, materials, incidental services, reports, and travel necessary to perform the project described in the grant award, at such locations and for such individuals as designated by the National Institute of Corrections.

1. This Project is designed to provide management accounting and recordkeeping functions for NIC Training and Consulting Projects. The grant encompasses the four branches of NIC: Jail Center, Director's Office, Staff Development and Correctional Programs.

B. *Accounting system standards and components.*—1. The financial responsibility of the recipient must be parallel to that of NIC. The recipient must govern its affairs so that it may properly discharge the public trust which accompanies the authority to expend public funds. The recipient must establish and maintain fiscal control and accounting procedures which assure that NIC funds available for the conduct of the grant programs and projects are properly disbursed. In accordance with the NIC Guideline Manual, Financial Management Guidelines for Grantees, the basic accounting system should meet the following criteria;

(a) Accounting records should provide information needed to adequately identify the receipt of funds under each grant award (plus supplementals) and the expenditure of funds by each award.

(b) Entries in accounting records should refer to subsidiary records and/or documentation which support the entry and which can be readily identified.

(c) The accounting system should provide accurate and current financial reporting information.

(d) The accounting system should be integrated with an adequate system of internal controls to properly safeguard the funds and assets covered, check the accuracy and reliability of accounting data, promote operational efficiency, and encourage adherence to prescribed management practices.

2. The accounting system components would consist of a minimum of a cash receipts journal, cash disbursements journal, and a component capable of recording obligations upon receipt of an obligation authorization by individual NIC Program section.

(a) The recipient must prepare and maintain a cash receipts journal and substantiating documentation to support requests by the recipient to NIC for funds necessary to cover outstanding obligations as required to meet the grant's goals on a timely basis.

(b) The recipient will be responsible for the preparation and maintenance of a cash disbursements journal which will properly reflect payments to NIC funds to duly authorized consultants and trainees in compliance with the objectives of the Training and Consulting Project. It will be the responsibility of NIC to specifically identify each consultant and trainee to be paid and it will be the responsibility of the recipient to ensure that only properly authorized documented requests for payments are in fact processed for payment. The following are the minimum performance elements.

(1) The initial review, verification, and audit of documentation submitted for payment including matching each expense voucher with appropriate obligation report. Submitted documentation will include a detailed billing by the consultant for the type of work performed, total number of days involved (including preparation and report writing time), plus a detailed travel voucher and applicable receipts. Consultant fee payments will be made in compliance with applicable NIC Standard Operating Procedures. Travel vouchers will be processed in agreement with applicable Federal Government Travel Regulations.

(2) Issuance of a check to the consultant and trainee identifying payment type and details of the calculation. All payments must be processed within five days of payment request receipt.

(3) Distribution of expenditures into specific NIC Program budget categories as required by the terms of the grant. Timely reports will be submitted to NIC indicating the status of each program budget category.

(4) Reduce obligated funds by the expenditure amount in order to maintain a constant record of unobligated, obligated, and expended funds for the project by budget category and in total by each separate grant supplemental.

(5) Accumulate fees paid to consultants and associates for professional services for purposes of monthly and annual reports. The recipient will also be responsible for the issuance of individual IRS Form 1099 at the end of each calendar year in which the grant is operational.

(6) The recipient must be able to maintain a system element capable of recording obligations upon receipt of an obligation authorization form by consultant/trainee and budget category and detailing balances unobligated, obligated, and expended by specific NIC Program budget. The recipient is responsible for all cost overruns to the extent of keeping NIC formally informed whenever obligations exceed the amount of the grant award(s) in total or by individual subdivided budget category.

(7) The recipient must properly maintain a general ledger which contains a sufficiently detailed chart of accounts to reflect all costs by individual grant budget categories. Posting from the journals of original entry may be in total by month providing sufficient detail to each transaction is reported to NIC. Accounting for NIC funds must be in compliance with generally accepted accounting principles and applicable U.S. Government guidelines.

3. The recipient will be required to submit to NIC the following reports:

(a) Standard Form 270 "Request for Advance or Reimbursement" on a monthly basis.

(b) Form H–1 "Financial Status Report" which reflects obligations and expenditures by individual grant award. This report is due on a quarterly basis after the grant start-up date.

(c) A monthly bank reconciliation of all grant funds.

(d) A monthly listing of all individual consultants/trainees paid during the period by total amount paid, type and purpose of expenditure, and the specific NIC Program budget being expended against.

(e) A monthly obligation report detailing the funds by individual Program budget indicating the budgeted,

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obligated, expended, unexpended, and unobligated balance.

C. *Prior experience.*—Offerors should have been engaged as an established business providing accounting and management assistance services to the general public on a regular basis for a period of at least two years prior to the date of issuance of this proposal. No joint ventures will be allowed under this solicitation.

The offeror awarded the grant cooperative agreement under this solicitation shall perform with the existing organization the total amount of work to be performed under the award.

D. *Cost and pricing elements.*—The total amount which is to be disbursed to NIC identified trainees and consultants will be $698,000.00 plus supplementals and will be included in the following elements on Page 9, Part III Budget Information of the Standard Form 424 Federal Assistance Grant Application:

1. Personnel: The offeror will include all in-house personnel cost including secretary, supervisory, and other staff costs dealing with operating the grant award. By NIC legislation, the maximum per day per full-time employee service payment is $190 excluding the cost of fringe benefits.

2. Fringe Benefits: All fringe benefits applicable to personnel costs.

3. Travel: All related travel cost in connection with managing the grant would be included under this item.

4. Equipment: Any office equipment directly related to the grant's operations would be included under this item.

5. Supplies: Any office supplies directly related to the grant's operations would be included under this item.

6. Contractual: The $698,000.00 would be included under this item for the purposes of paying consulting costs of NIC identified consultants and trainees.

7. Construction: Not applicable.

8. Other: Other costs which would not be considered under one of the other object class categories. Profit fees or any other type of profit costs are not allowable under a grant award.

9. Indirect Cost: Refer to NIC Guideline Manual: *Financial Management Guidelines for Grantees* page 29, paragraph 46 under Indirect Costs for further guidance.

A separate budget narrative must also be submitted to justify all costs claimed under Section B—Budget Categories.

E. *Evaluation criteria for review of application.*—1. Accounting system description, standards and components, report preparation and accounting system safeguards, 20 points.

2. Previous experience of the organization in performing similar type services. Offeror should narrate business history, with emphasis on dealing with similar grants or contracts. Quality, experience and capability of staff offeror intends to assign to this project. The personnel will present in some detail the staffing available to the project. This will include biographical data on all professional staff, 30 points.

3. Total costs for management services (excludes travel, per diem, and consultant fees which is represented by $698,000.00 to be disbursed to NIC selected consultants and trainees). An indication of approximately the cost per individual voucher/payment document processed is required. Estimated vouchers annually is 1,500. Supplemental awards will consider the cost per voucher as the basis for additional management services, 50 points.

Total 100 Points.

[FR Doc. 80-33045 Filed 10-22-80; 8:45 am]

BILLING CODE 4410-36-M

NATIONAL SCIENCE FOUNDATION

Executive Committee of the Advisory Committee for Ocean Sciences; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Executive Committee of the Advisory Committee for Ocean Sciences.

Date and time: November 13 and 14, 1980—0900 to 1700 each day.

Type of meeting: Open.

Contact person: Dr. M. Grant Gross, Director, Division of Ocean Sciences, Room 609, National Science Foundation, Washington, D.C. 20550, Telephone (202) 357-9639.

Summary minutes: May be obtained from the Contact Person, Dr. Grant Gross at the above address.

Purpose of committee: To provide advice and recommendations concerning oceanographic research and its support by the NSF's Division of Ocean Sciences.

Agenda

November 13, 0900

(1) Status report, Directorate for Atmospheric, Astronomical, Earth and Ocean Sciences, Dr. Johnson.

(2) Status report, Division of Ocean Sciences, Dr. Gross; new personnel, new organizational structure, budget projections, revised schedule for scientific reviews.

(3) Report on oversight study of Office for Oceanographic Facilities & Support, Dr. Heath.

(4) Discussion on "Evaluation Study of NSF's Oceanography Program", prepared by the Office of Audit and Oversight, Dr. Fregeau.

(5) Report on a meeting with Acting Director Langenberg to discuss long-range planning, NSF reorganization, and other matters, Dr. Gagosian.

November 13, 1300

(6) Long-term implications for ocean research of the U.N. Conference on Law of the Sea, Mr. Brown.

(7) Update on OSB Facilities study, Dr. Gross.

(8) Ship maintenance and upgrading—new approaches, Ms. Johrde.

November 14, 0900

(9) OCE Long-range planning . . . making a required exercise more meaningful and productive, Dr. Gross: identification of key issues, greater Exec. Comm. input, the Astronomy Division plan as a model.

(10) Future role(s) of the Exec. Committee, Dr. Gross.

M. Rebecca Winkler,

Committee Management Coordinator.

October 20, 1980.

[FR Doc. 80-33052 Filed 10-22-80; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

[N-AR 80-43]

Reports, Recommendations and Responses; Availability

Highway Accident Report

Multiple Vehicle Collision and Fire, U.S. Route 101, Los Angeles, California, March 3, 1980 (NTS B-HAR-80-5).—As indicated in the formal investigation report, made public by the National Transportation Safety Board on October 14, a sedan entered the Ventura Freeway (U.S. Route 101) westbound from the Laurel Canyon on ramp. The sedan was traveling in the far right lane of the four-lane roadway, changed lanes to the left, and hit the right front of a gasoline cargo tank truck pulling a gasoline cargo tank trailer westbound in the No. 3 traffic lane. Both vehicles moved left and the tank truck sideswiped a westbound pickup truck in the No. 2 lane. The tank truck forced the pickup left into the median barrier. The tank trailer rolled over the median barrier, was ruptured, and its contents spilled and ignited. The accident occured at 9:05 p.m., Pacific standard time. The pickup truck and the tank truck, with tank trailer, were destroyed in the fire. Of the seven occupants in the pickup, five died of thermal injuries and the other two were burned severly. The drivers of the sedan and tank truck received minor injuries.

The Safety Board determined that the probable cause of this accident was the improper lane change by the driver of the sedan which hit the tank truck and caused it to move to the left and strike the pickup truck forcing it into the median barrier. The fatalities and injuries were caused by the fire which ensued immediately when gasoline was released from the ruptured tank trailer.

In analyzing this accident, the Safety Board expressed concern that there was no reliable procedure, or system, to link the emergency response units arriving on the scene first with those that came later. Without such a procedure, the Board noted, the fire and police units are not able to pass and coordinate information so that each can effectively assess the situation and minimize exposure to unnecessary danger. The Safety Board in its report on the subject accident refers to a special investigation of the emergency response following a March 31, 1977, railroad accident near Rockingham, N.C. There, the Safety Board concluded that "the implementation of an effective hazardous materials emergency response network in combination with adequate on scene communications should provide emergency response personnel with the information needed to adequately assess the dangers involved." As a followup of that special investigation, the Safety Board on September 13, 1979, recommended that the Department of Transportation:

> • • • develop and disseminate guidelines for planning emergency responses to transportation accidents involving hazardous materials. These guidelines should clearly delineate the on scene command structure, establishment of a command post and communications, and structure of the coordination of efforts, and require control of access to the accident site. Furthermore, the relationships and responsibilities of the responding Federal, State, local and private agencies should be clearly identified. (I-79-5)

This recommendation, designated "Class II, Priority Action," was endorsed by the Department of Transportation, but the Board notes that the recommendation has not been implemented. The Safety Board therefore reiterates recommendation I-79-5 and urges prompt DOT implementation.

Pipeline Accident Report and Safety Recommendation Letters

Municipal Gas Department of Cordele, Georgia, Explosion and Fire, Cordele, Georgia, February 21, 1980 (NTSB-PAR-80-5).—The Safety Board's formal report, released October 16, indicates that the explosion and fire destroyed four stores in a shopping complex, severly damaged an adjoining restaurant, and damaged eight cars. The Board found that gas leaking from a 1-inch service line at 22 psig pressure migrated under a concrete block wall, into a service line trench, under a concrete slab floor, and into a jewelry store where it was ignited by an unknown source. Of the eight persons who were injured in the 11 a.m. accident, three died later as a result of injuries received. Buildings and nearby automobiles were damaged extensively; no estimate of the dollar loss was made.

The Safety Board determined that the probable cause of the accident was the snagging, 3 days before, of a 1-inch steel, gas service line by a backhoe which broke the service line in a threaded connection and also pulled it out of an underground compression coupling 14 feet away. Contributing to the accident were: (1) The failure of the Cordele municipal gas department personnel to check for additional damage to the service line or to conduct a gas leak survey after snagging the line, and (2) the failure of the gas department to inject adequate amounts of gas odorant daily in the gas distribution system to facilitate detection of escaping gas.

Investigation showed that 3 days before the accident, the Cordele gas department crew, working behind the stores with a backhoe, snagged a one-inch steel gas service line while attempting to disconnect gas service to a service station which was being torn down. The backhoe broke the line at a threaded coupling and pulled it 12 inches out of line. The crew plugged the line and back-filled it without checking it for further damage or surveying the area for gas leakage. Unknown to the crew, the line also had been pulled almost a foot out of a nearby underground compression coupling, and natural gas escaped into the ground under 22 pounds-per-square-inch pressure for 3 days. Yet there were no reports of gas odor during that time, and the Cordele gas operations superintendent detected none when he arrived at the accident scene.

Further, the Board's investigation showed that the gas crew had no map showing the location and depth of the service line. A metal detector located it for them, but they did not know how deep they had to dig to expose it. A map of the distribution system in the area also would have shown them the nearby compression coupling, the Board noted.

Incomplete gas department records prevented the Board from determining the exact amount of odorant which had been injected into the Cordele system. But the Board believes either the amount was inadequate, or it was injected inconsistently. The volume of gas which escaped before the explosion should have been detected if it had been properly odorized.

During the accident investigation, the Safety Board on June 4 issued four safety recommendations, Nos. P-80-39 through 42, to the city of Cordele, Georgia; three recommendations to the American Gas Association and the American Public Gas Association, jointly, Nos. P-80-43 through 45; and two recommendations, Nos. P-80-46 and -47, to the Research and Special Programs Administration of the U.S. Department of Transportation. (See 45 FR 41553, June 10, 1980, for the complete text of these recommendations.) As of the time the Safety Board's report was adopted, September 9, 1980, no responses to these recommendations had been received.

As a further result of its investigation of this accident, the Safety Board on October 2 issued letters making the following recommendations:

P-80-71 and -72 to the Research and Special Programs Administration:

Emphasize to its regional field office personnel the importance of requiring all municipal gas operators within their region to comply with 49 CFR 192.615(d). (Class II, Priority Action) (P-80-71)

Survey a representative sample of similar small-sized, municipally owned, gas distribution systems serving less than 100,000 customers, which are not required to submit written reports of pipeline accidents, to determine their compliance with pipeline safety regulations and safe operating practices. (Class II, Priority Action) (P-80-72)

P-80-73 to the city of Cordele Gas Department:

Immediately initiate a program, as required by 49 CFR 192.615(d), to enable its customers and the general public to recognize the odor of natural gas and to know the proper action to take when it is detected. (Class I, Urgent Action) (P-80-73)

Aviation Safety Recommendation Letter

A-80-108 and 109 to the Federal Aviation Administration, October 9, 1980.—Last January 10 a Piper Arrow, N3839M, crashed into a mountain after departing the Kalispell City Airport, Kalispell, Montana. All three persons aboard were killed.

Board investigation disclosed that the pilot, who was employed at the Kalispell City Airport as an instrument flight instructor, had been issued, before takeoff, an IFR clearance to the Calgary Airport via direct to the Kalispell VOR, direct to the Calgary VOR. The clearance, issued by the Salt Lake City Air Route Traffic Control Center, included a climb to 14,000 feet and a transponder code. After acknowledging the clearance, the pilot asked, "Are we going to get vectors northbound?" The controller replied, "I could vector you to the Canadian border; after that I'm not

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sure if Canada can." The pilot answered, "We'll be receiving Lethbridge by that point."

As the aircraft reached the Kalispell VOR, the controller said "radar contact" and requested the aircraft's altitude. After the pilot reported leaving "five point five," the controller made the following transmission: "Three niner mike roger Lethbridge (unintelligible) bearing (unintelligible) five report reaching one four thousand." About 1 minute later, the pilot asked the center "* * * to let us know coming up on some high terrain if you would." The controller replied, "* * * are you in the clouds now?" The pilot said that they were. There were no more transmissions from N3839M.

The Safety Board notes that the Kalispell Airport has no published instrument approach procedures and, thus, no published IFR departure procedures. An approach by visual reference to the terrain is the only means of access to this airport. However, there are no procedures which prohibit a pilot from filing an IFR flight plan and receiving an IFR clearance for departure from this airport or other airports not having published instrument departure procedures. Normally, a pilot files a route that may include a published Minimum En Route Altitude (MEA), a Standard Instrument Departure (SID), a Standard Arrival Route (STAR), a published IFR Departure Procedure for small airports, or a published Instrument Approach Procedure, all of which provide sufficient altitude obstruction clearance. However, a departure clearance from an airport, such as the Kalispell Municipal, does not provide obstruction clearance. In fact, the Board notes, paragraph (5)(c), Instrument Departures, Obstruction Clearance During Departure, of the Airman's Information Manual, states, "* * * At airports where instrument approach procedures have not been published, hence no published departure procedure, determine what action will be necessary and take such action that will assure a safe departure."

Thus, the Board states, in IFR conditions, such departures involve a hazard because the pilot does not have available any published procedures for instrument flight. Furthermore, he cannot get radar vectors until the aircraft climbs to the minimum vectoring altitude (MVA). The ATC issuance of an IFR clearance for the portion of a flight before it reaches "protected airspace," or airspace that insures terrain avoidance, gives the pilot implied permission to fly under actual IFR conditions via the IFR flight plan in an area where the flight can only be accomplished safely under VFR. The Safety Board believes that in order to assure terrain clearance, a departure of this nature must be conducted visually and that the controller-issued IFR clearance should begin only at a point that provides separation from the terrain.

During its investigation of this accident, the Safety Board interviewed pilots who said that they expect the controller to be able to issue radar vectors after saying "radar contact." The ATC handbook prohibits vectoring aircraft below the MVA. Pilots have no access to MVA information because it is contained in documents in individual ATC facilities. These are not given general distribution. During the investigation, the controller stated that the MVA for the flight was 12,500 feet, that radar contact was established as the aircraft left 5,500 feet, that the target was non-mode C, and that the bearing to Lethbridge was an "information only" item.

The Safety Board believes that in this accident, based on the controller's transmission, the pilot expected radar vectors and was not aware that the controller had no terrain information and therefore was unable to issue vectors until the aircraft was above the MVA. Because this misconception apparently is shared by many pilots, the Board believes that a change in procedure is warranted. Accordingly, the Board recommends that FAA:

Amend Air Traffic Control Handbook 7110.65B so that the term "radar contact," *when used in communications with pilots,* means that the target is identified and that the controller is able to vector the aircraft, and to require that, if there is an operational advantage to either the controller or pilot for the controller to state "radar contact" when vectors cannot be provided, the pilot should be expressly informed that vectors cannot be provided. (A-80-108)

Amend Air Traffic Control Handbook 7110.65B, paragraph 350, to require that when a pilot requests an IFR clearance from an airport with no published instrument procedures, the controller-issued IFR clearance shall originate only from some point in space that insure terrain separation and that the pilot shall be instructed to remain VFR until reaching that point. (A-80-109)

Both of the above aviation safety recommendations are designated "Class II Priority Action."

Responses to Safety Recommendations

Aviation

A-77-46 and -47, from the Federal Aviation Administration, October 2, 1980.—Letter is in response to the Safety Board's request of July 28 for updated status information regarding recommendations issued as a result of a Piper PA-28 accident which occurred 33 miles northeast of Farmington, N. Mex., on November 26, 1976. The crashed aircraft was located after 6 days. The recommendations pertained to search and rescue missions.

FAA's October 2 response encloses a copy of FAA Order 7840.1 which was initiated in June 1978 to supplement the Air Traffic Controller's Handbook, Chapter 8. The Order establishes the procedures for FAA's Computer Display Channel equipped Air Route Traffic Control Centers (ARTCC's) utilizing computer generated data to aid search and rescue authorities in locating missing or suspected downed aircraft. FAA notes that the National Rescue Coordination Center participated in the review of the Order and established their internal procedures for coordination with the ARTCC's and field units. This coordination includes passing updated information on the last known position of missing aircraft received from the ARTCC's computer generated data to the field units. Currently, 15 ARTCC's have the proper equipment for extracting the computer generated data. A task is underway to develop a new computer technique to allow all 20 centers to have the capability of using computer generated data to aid search and rescue authorities. This task is estimated to be completed within 18 months.

The Safety Board's July 28 letter informed FAA that, predicated on FAA's response of September 9, 1977 (42 FR 51680, September 29, 1977), recommendation A-77-45 had been evaluated and its status classified as "Closed—Acceptable Action."

A-79-75, from the Federal Aviation Administration, October 2, 1980.—Letter is in response to the Safety Board's inquiry of last December 17 which commented on FAA's initial response of December 6 (44 FR 75539, December 20, 1979). Recommendation A-79-75, calling on FAA to disseminate information regarding hazards associated with flight in white-out conditions and to undertake an educational program to correct apparent misconceptions regarding VFR operations in such conditions, issued as a result of a Cessna 207 accident in Chevak, Alaska, on December 21, 1978.

FAA's October 2 letter reports that FAA's educational and informational efforts with respect to the white-out hazard to flight operations have been analyzed. Also, in addition to the slide presentation and the "Cold Weather Safety" publication issued by FAA's Alaskan Region, referred to in FAA's December 6 letter, FAA has instructionally addressed this hazard in Advisory Circular (AC) 60-4, Pilot's Spatial Disorientation, and in AC 91-13C, Cold Weather Operations of Aircraft. FAA has also periodically published articles in its General Aviation News dealing extensively with this subject. Copies of these publications were provided.

Marine

M-76-9, M-77-6, and M-78-8, from the U.S. Coast Guard, September 4, 1980.—Letter is in response to the Safety Board's comments of May 1 addressing Coast Guard's response of January 11 (45 FR 10097, February 14, 1980) and providing a review of the Board's concern for a coordinated response to marine disasters. The Board first moved on this issue as a result of its 1972 special study, "Analysis of the Safety of Transportation of Hazardous Materials on the Navigable Waters of the United States." Two recommendations were issued, Nos. M-72-14 and M-72-15. Coast Guard responded favorably on November 7, 1972, and the Board was informed that U.S. Coast Guard Captains of the Port had participated in the development of emergency contingency plans in ports such as Boston, New York, and Los Angeles. Based on these statements from Coast Guard, the Board on October 15, 1975, classified recommendations M-72-14 and -15 as "Closed—Acceptable Action."

The Board's May 1 letter further notes that on March 2, 1976, as a result of investigation and analysis of the collision of the SS C.V. SEA WITCH and tankship SS ESSO BRUSSELS in New York harbor on June 2, 1973, the Board issued recommendation M-76-9, related to port contingency plans for major marine fires. In response, Coast Guard published Commandant Instruction 11320.7, "Firefighting Assistance Policy." This policy contains the action description:

Contingency Planning. Annex F to the Coast Guard Natural Disaster Preparedness Plan, CG-360-2, points out the need for coordinated plans of action prior to actual emergencies. Annex F also places several requirements on District Commands and COTP's relative to firefighting, support response agreements and hazard assessments in and along the navigable waters of the United States. District Commanders, COTO's and other units as directed by the District Commanders, are required to assure that ports within their jurisdiction have current and effective contingency plans, supported by the port community, to provide adequate response of the available federal, state, municipal and commercial resources to fire and other accident.

The above requirement was placed in Coast Guard's Marine Safety Manual, CG-495; section 86-6-5, page 86-6:2, using the exact same wording.

The three recommendations discussed were concerned only with the issue of Coast Guard involvement in developing contingency plans for fighting marine fires in U.S. ports. There was no discussion by the Safety Board of the role to be filled by Coast Guard in actual firefighting operations.

On June 15, 1977, the Board issued recommendation M-77-6, calling on Coast Guard to study the adequacy of its capability to fight major marine fires on remote waterways where the local firefighting capability is inadequate and to establish an adequate firefighting capability for such areas. This recommendation addressed the same issue as the recommendations noted above—the fighting of marine fires—but extended to the problems encountered outside of ports on remote waterways. Coast Guard's initial response to M-77-66, dated October 11, 1977, was: "Marine firefighting is a local responsibility. The Coast Guard has neither the assets nor the mandate to assume a major role in this regard." The Safety Board requested a reconsideration of that position, based on the total lack of firefighting capability on remote waterways and the absence of any incentive for local governments to develop such a capability because they are not extensively involved in marine commerce.

The Board's May 1 letter further notes with reference to recommendation M-77-6 that on August 15, 1978, Coast Guard restated its position in these words: "Whether or not the alleged gap in firefighting capability should be filled by the federal government is a question for the Congress, not the Coast Guard." The Board then, with a growing concern for the need to provide for response to and control of major marine disasters, suggested that the remote waterway problem be considerd along with the port contingency plan development; and that the Coast Guard lead in initiating a Federal/State/local coordinated effort in marine disaster mitigation. In making this suggestion, the Board did not define any role to be filled by the Coast Guard in the actual firefighting activities; this was to be worked out by the contingency planning group.

Coast Guard responded to this suggestion on May 30, 1979, by stating that it had assisted in response to marine fires upon request and "* * * will continue to respond within the constraints of limited resources. However, primary responsibility for maintaining adequate fire response capability resides with local port operators, municipalities, and public agencies * * *." On July 23, 1979, the Safety Board replied by stating its belief that Coast Guard does have a leadership responsibility in developing multijurisdictional fire contingency plans for remote waterways.

While this discussion was being pursued, the Safety Board issued on March 4, 1978, marine safety recommendation M-78-8, calling on Coast Guard to initiate contingency plans for responding to major marine casualties in the Greenville, Miss., area, such plans to require that emergency communications are established, that appropriate training be provided, and that firefighting resources be coordinated. Coast Guard responded on August 11, 1978, stating that COTP's in a number of localities have developed contingency plans but noted that it does not have the statutory authority to impose any requirments for communications, training, or firefighting resources on local governments. The Board replied on October 4, 1978, that statutory authority does not preclude a cooperative effort.

The Safety Board's May 1 letter notes that Coast Guard's letter of last January 11 addresses primarily the issue of port firefighting (M-76-9 and M-78-8) but contains the arguments put forth in rejecting M-77-6, firefighting on remote waterways. The previous Coast Guard position—i.e., Coast Guard does not have the resources and is not mandated to provide primary firefighting on remote waterways—is restated and the responsibility for these operations is placed on the local authorities.

The Board sees the problem being solved by the creation of well planned, local disaster mitigation programs, be they for ports or remote waterways, with a definition of the relative involvement of local-State-Federal resources in the actual operations to be thrashed out during the planning stages. Coast Guard has repeatedly argued the issue of its lack of authority and resources to accept a primary firefighting role. In order to bring the two issues together, the Board accepts and understands Coast Guard's position with respect to actual involvement in firefighting operations because of its limited resources. However, the Board reiterates its position that Coast Guard does have the authority and responsibility under the Ports and Waterways Safety Act to require local officials to develop contingency plans,

and that it should use its expertise to aid in and coordinate such plan development.

The Board's May 1 letter informed Coast Guard that recommendations M–76–9, M–77–6, and M–78–8 would remain in open status. The Board urged Coast Guard to vigorously pursue the development of contingency plans and asked for a report on the status of port contingency plans currently under development or in operation, as well as a report on the level of compliance by Coast Guard district commanders and COTP's with Marine Safety Manual (CG–495), Section 86–6–5, "Contingency Planning."

In its September 4 response, Coast Guard states that its role in contingency planning as described in the Board's May 1 letter seems consistent with Coast Guard's directions to each COPT which are contained in Section 86–6–5, Coast Guard Marine Safety Manual (CG–495). Coast Guard reports that its district commanders and COTP's have developed a variety of internal response plans addressing actions to be taken by Coast Guard forces in the event of major waterway disasters. Expansion of these local operational plans into comprehensive multijurisdictional port and waterway contingency plans, however, will be a major undertaking. Coast Guard said it concurs in principle with the stated need for increased coordination between Federal, State, and local interests, but stated, ". . . the coordination process will demand very precious man-hours of effort on the part of each COTP." Coast Guard supports this effort to the extent that this coordination does not interfere with higher priority missions. A research and development project which Coast Guard began several years ago on selected port firefighting capabilities should be completed by February 1981. As an adjunct to this study, Coast Guard hopes to develop a standard format for a comprehensive contingency plan. Coast Guard will keep the Safety Board informed of the status of this program as it relates to safety recommendations M–76–9, M–77–6, and M–78–8.

M–79–103 through –106; M–74–15 and M–77–33, from the U.S. Coast Guard, September 4, 1980.—Response is addressed first to recommendations issued October 29, 1979, following investigation into the ramming of two moored vessels by the M/T RIBAFORADA (Spain) on December 4, 1977. (See 45 FR 64931, November 8, 1979.)

Recommendation M–80–103 asked Coast Guard to expedite the installation of vessel surveillance systems and institute mandatory participation in the Vessel Traffic Service for the Mississippi River near Algiers Point. Recommendation M–79–104 sought to have Coast Guard operate the Algiers Point traffic lights continuously as an interim measure pending installation of vessel surveillance systems for the Vessel Traffic Service. Coast Guard states in response that these two recommendations will be examined during the "Lower Mississippi River Safety Study" mandated by Congress and funded by the Coast Guard through the National Oceanographic and Atmospheric Administration. Louisiana State University, through the Sea Grant Program, will conduct the study. The study, scheduled to be completed by March 1981, will develop recommendations concerning the manner in which communications, electronics surveillance, aids to navigation and traffic management, can best enhance marine transportation safety, protection of the environment, and effectiveness of the New Orleans Vessel Traffic Service.

In response to recommendation M–79–105, which asked Coast Guard to include in its foreign vessel boarding program checklist a requirement to determine that maneuvering information is displayed as required by 33 CFR 164.35(g), Coast Guard reports that it is now updating the vessel boarding checklist, which will include the maneuvering information required by 33 CFR 164.35(g). The new form is anticipated to be in field use by July 1, 1981. A checkoff item for maneuvering information is already included in the "Tankship Hull Inspection Book," Part II (U.S. and Foreign Vessel Section), CG 840S, page 40, item 9. This checklist is a part of each foreign tank vessel boarding conducted by the Coast Guard.

Recommendation M–79–106 asked Coast Guard to establish, with the assistance of the Federal Communications Commission, a monitoring and enforcement program and a public information program to reduce improper use of the bridge-to-bridge radiotelephone channels on the lower Mississippi River. Coast Guard, partially concurring with this recommendation, reports that VTS New Orleans has established a monitoring and public education program to reduce improper use of the bridge-to-bridge radiotelephone channel on the lower Mississippi River. This monitoring and public education program will be continued by Commander, Eighth Coast Guard District. Enforcement actions are taken as required. Coast Guard conducts the program without the participation of the FCC.

Also addressed by Coast Guard in its September 4 response letter are recommendations M–74–15, resulting from investigation of the collision of the SS AFRICAN NEPTUNE with the Sidney Lanier Bridge, Brunswick, Ga., November 7, 1972, and M–77–33, which resulted from investigation of the SS EDGAR M QUEENY—S/T CORINTHOS collision at Marcus Hook, Pa., January 31, 1975.

Recommendation M–77–15 asked Coast Guard to require that every master of an oceangoing vessel inform himself of the pilot's plan to maneuver his ship in or out of a harbor and that the master determine, with the pilot's assistance, the critical aspects of the maneuver, including the pilot's plan for emergencies. The master should then be required to instruct his crew to insure that high-risk tasks receive priority. In its September 4 response, Coast Guard considers its response to M–77–33 to apply to M–74–15.

With respect to M–77–33, which recommended amending 33 CFR 164.11(k) to require that masters and pilots discuss beforehand and agree to the essential features and relevant checkpoints of maneuvers expected to be undertaken, Coast Guard refers to its previous response, dated April 13, 1978, which stated that requirements for a master/pilot conference were being drafted for publication as a notice of proposed rulemaking. As a preliminary step in this project, similar casualties were reviewed to determine the need for the regulation. As a result of the review, and in keeping with the Administration's goal of reducing Federal regulations, Coast Guard says it finds that it cannot justify, at present, further regulation of the master/pilot working relationship.

Coast Guard notes that the ship's master is currently required to inform the pilot of various characteristics of the vessel. A pilot will ordinarily report to the master anything pertinent that is not obvious from charts and publications. However, Coast Guard states, the pilot cannot be expected to establish a "game plan" with the master when so many aspects of a passage cannot be predetermined. Coast Guard believes there are sufficient Federal regulations and customary practices which apply in master/pilot relationships. "Furthermore, a lack of a conference has not been proven to be a contributory factor in this casualty," Coast Guard stated.

Pipeline

P–80–10 and –11 and P–80–56 through –58, from Columbia Gas of Virginia, Inc., September 9, 1980.—Response is to

recommendations developed in connection with the investigation of the natural gas explosion and fire at Stanardsville, Va., October 24, 1979. (See 45 FR 18210, March 20, 1980; and 45 FR 48001, July 17, 1980.)

In addressing, first, recommendation P–80–56 which called for updating Columbia's card records and maps for the gas distribution system in the Stanardsville, Va., area to coincide with the actual locations of the area's gas facilities, Columbia emphasizes that the difference in records was not a factor in the accident. Columbia states it will not, however, be satisfied with incorrect records. In 1976 Columbia began a program of remapping the entire distribution system onto a Universal Transverse Mericater (UTM) map grid system. Remapping of the community of Stanardsville recently has been completed. The related card records are being reviewed and updated as appropriate. Columbia's current procedures require that maps and related card records be updated to reflect any change in the physical plant.

With respect to recommendation P–80–57, which asked Columbia to review its card records and maps to determine whether the inaccuracies found in its Stanardsville, Va., records exist in other areas, and if appropriate, expedite action to update the records, Columbia in response states that the mapping and card updating discussed with regard to recommendation P–80–56 covers the entire Columbia System and should be completed in 1981. The procedure to update maps and cards to reflect any changes in the physical plant applies to the entire system.

In response to recommendation P–80–56, which asked Columbia to require in its emergency procedures the training and equipping of local emergency response agencies for the control of gas distribution pipeline failures in areas where qualified gas company employees cannot respond rapidly, Columbia states that it has continuous programs to train local emergency response agencies to handle gas emergencies. These programs are under constant evaluation and refinement to meet changing conditions. At the current time, Columbia, through its general office staff working with another State's gas association, has developed a comprehensive slide/cassette presentation which will be utilized in this education program. This presentation will be utilized in Virginia as well as the other six States in which the Columbia Gas Distribution Companies operate.

Recommendations P–80–56 through –58 were issued by the Safety Board last June 23, at the time of adoption of the investigation report. Recommendations P–80–10 and –11 were issued on March 10, 1980, during the investigation. Columbia responded initially to the earlier recommendations of April 8 (45 FR 30576, May 8, 1980) and refers to that correspondence in its September 9 letter.

With respect to recommendation P–80–10 which asked Columbia to change its operating maintenance plan to include specific procedures to cover the part of the service lines identified under company policy as "customer's service lines" in the same manner as company-owned service lines, Columbia notes that historically it has been Columbia practice to only install gas facilities up to the property line and the customer/owner is responsible for installing gas facilities beyond that point. This practice is not only followed by Columbia but also by other gas companies throughout the United States. However, Columbia states that even though it does not own this line between the property line and meter, Columbia does assume the responsibility for seeing that the design, construction, testing, operating, and maintenance of that line meets all the requirements of 49 CFR Part 192. Columbia reports that its personnel provided copies of its operating procedures regarding customer service lines at a meeting with Safety Board investigators in Columbia's Staupton, Va., office subsequent to its April 8 response letter.

Recommendation P–80–11 called on Columbia, in conjunction with other operators of underground facilities in its service area, to extend the established "one-call" notification system to Greene County and other areas of Central Virginia not now covered in the system. In further response, Columbia notes that as indicated in its letter of April 8, the Columbia Gas Distribution Companies have been very active in promoting "one-call" notification systems. Columbia's progress in expanding its participation in a one-call system in Virginia has been described in a letter to a Mr. Garcia dated May 14, 1980.

Correction

In FR Doc. 80–31510, published Thursday, October 9, 1980, page 67173, 3rd column, first complete paragraph, ninth line, "inoperative" should read "operative."

Note.—Single copies of Safety Board reports are available without charge, as long as limited supplies last. Copies of Board recommendation letters, responses and related correspondence are also provided free of charge. All requests for copies must be in writing, identified by recommendation or report number. Address requests to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

Multiple copies of Safety Board reports may be purchased from the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22161.

(49 U.S.C. 1903(a)(2), 1906)

Margaret L. Fisher,

Federal Register Liaison Officer.

October 20, 1980.

[FR Doc. 80–33105 Filed 10–22–80; 8:45 am]

BILLING CODE 4910–58–M

OFFICE OF MANAGEMENT AND BUDGET

Agency Forms Under Review

October 20, 1980.

Background

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Federal Reports Act (44 USC, Chapter 35). Departments and agencies use a number of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibility under the Act also considers comments on the forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

Every Monday and Thursday OMB publishes a list of the agency forms received for review since the last list was published. The list has all the entries for one agency together and grouped into new forms, revisions, extensions, or reinstatements. Some forms listed as revisions may only have a change in the number of respondents or a reestimate of the time needed to fill them out rather than any change to the content of the form. The agency clearance officer can tell you the nature of any particular revision you are interested in. Each entry contains the following information:

The name and telephone number of the agency clearance officer (from whom a copy of the form and supporting documents is available);

The office of the agency issuing this form;

The title of the form;

The agency form number, if applicable;

How often the form must be filled out;

Who will be required or asked to report;

V 45 OC 23 80 UMI

An estimate of the number of forms that will be filled out;

An estimate of the total number of hours needed to fill out the form; and

The name and telephone number of the person or office responsible for OMB review.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. Our usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the **Federal Register** but occasionally the public interest requires more rapid action.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review. If you experience difficulty in obtaining the information you need in reasonable time, please advise the OMB reviewer to whom the report is assigned. Comments and questions about the items on this list should be directed to the OMB reviewer or office listed at the end of each entry.

If you anticipate commenting on a from but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer of your intent as early as possible.

The timing and format of this notice have been changed to make the publication of the notice predictable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Jim J. Tozzi, Assistant Director for Regulatory and Information Policy, Office of Management and Budget, 726 Jackson Place, Northwest, Washington, D.C. 20503.

DEPARTMENT OF COMMERCE

Agency Clearance Officer—Edward Michals–377–3627

Revisions

- Maritime Administration

Supplementary training course application
MA–823
On occasion
Marine Operating Personnel 7,000 responses, 550 hours
William T. Adams 395–4814

Reinstatements

- National Bureau of Standards

Industry Assessment of NBS Productivity Impacts Survey
NBS–1161
Single time
Electronics Industry 400 responses, 400 hours
William T. Adams 395–4814

DEPARTMENT OF ENERGY

Agency Clearance Office—Dr. Irene Montie–633–9464

Revisions

- Annual Report of Forecasted Loads and Projected Changes In Generating Capacity and Transmission—Monthly

Report of Electric Energy, Capability and Peak Load
ERA–119A and ERA–119M
Annually
Sample of Electric Utilities with Generating Capacity 3,575 responses, 9,378 hours
Jefferson B. Hill 395–7340

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Clearance Officer—Joseph J. Strnad–245–7488

New Forms

- Center for Disease Control

Study of Perceived and Real Barriers to Sex Education—Adult Telephone Survey
Single time
Representative Sample of U.S. Adults over age 18 1,000 responses, 330 hours
Eisinger, Richard 395–6880

- Center for Disease Control

Study of Perceived and Real Barriers to Sex Education—Survey of Professionals
Single time
Professional Sex Educators 150 responses, 75 hours
Eisinger, Richard 395–6880

- National Institutes of Health

Case-Control Study of Cutaneous T-Cell Lymphoma
Single time
Controls for cancer patients, 610 responses, 305 hours
Eisinger, Richard, 395–6880

- National Institutes of Health

Intervention Program at Naval Shipyard, Charleston
Single time
Patients in shipyard clinics, 874 responses, 288 hours
Eisinger, Richard, 395–6880

Revisions.

- Alcohol, Drug Abuse and Mental Health Administrtion

Epidemiologic Catchment Area Program Community Interview
ADM–T–45–3
Single time
Households, 16,080 responses, 13,178 hours
Office of Federal Statistical Policy and Standard 673–7974

- Center for Disease Control

National Surveillance of Dialysis-Associated Hepatitis
CDC 4.534
Annually
Directors of Dialysis Units, 1,000 responses, 417 hours
Eisinger, Richard, 395–6880

DEPARTMENT OF JUSTICE

Agency Clearance Officer—Donald E. Larue—633–3526.

New Forms

- Offices, Boards, Division

Aggregate Conditional Release Data Form
BJS (Series 6200) UPR 1
Annually
State Paroling Authority or State Department of Correction, 58 responses, 87 hours
Office of Federal Statistical Policy and Standard, 673–7974

- Offices, Boards, Division

Uniform Parole Reports Entry Form and Follow Up Form
BJS (Series 6200): UPR2(E) and UPR 2(FU)
Annually
State Parole Authority or State Departments of Correction, 145,750 responses, 2,025 hours
Office of Federal Statistical Policy and Standard, 673–7974

DEPARTMENT OF LABOR

Agency Clearance Officer—Paul E. Larson—523–6341

New Forms

- Bureau of Labor Statistics

Survey of Job Tenure and Occupational Mobility [1]
CPS–1
Single time
Interviewed households in January 1981 CPS, 68,000 responses, 6,230 hours
Office of Federal Statistical Policy and Standard, 673–7974

[1] This activity has been conducted in 1966, 1968, 1973 and 1978. The data are needed to answer policy questions about occupational mobility and job tenure. The data collection will be conducted as part of the January 1981 Current Population Survey conducted by the Bureau of the Census for the Bureau of Labor Statistics. OMB has cleared this data collection activity in advance of the normal ten day period for comments because of the inflexibility of the Current Population Survey collection schedule.

DEPARTMENT OF TRANSPORTATION

Agency Clearance Officer—John Winsor, Acting—426–1887

New Forms

- National Highway Traffic Safety Administration

On-The-Road Fuel Economy Survey
HS–435
Annually
Owners of 1977, 1978, 1979, passenger cars; 1978, 1979 light trucks, 46,000 responses, 2,300 hours.
Hayward, Corinne D., 395–7340

COUNCIL ON WAGE AND PRICE STABILITY

Agency Clearance Officer—Jane Campana—456–6210

Reinstatements

- Report on Company Organization—(Pay) CO–1 (Pay)

Single time
Large companies private sector, 1,100 responses, 550 hours
Warren Topelius, 395–7340

- Report on Company Organization—(Price)

CO–1 (Price)
Single time
Large companies—private sector, 3,000 responses, 6,000 hours
Warren Topelius, 395–7340

OFFICE OF PERSONNEL MANAGEMENT

Agency Clearance Officer—John P. Weld–632–7737

Revisions

- Inquiry for United States Government Use Only (Employment Data for NACI),

OF–49
On occasion
Former employers/supervisors, 1,050,000 responses, 175,035 hours
Veeder, Robert N., 395–4814

Extensions

- Inquiry for United States Government Use Only (Law Enforcement Data for NACI)

OF–51
On occasion
Law enforcement agencies, 432,000 responses, 43,200 hours
Veeder, Robert N., 395–4814

C. Louis Kincannon,

Acting Deputy Assistant Director for Reports Management.

[FR Doc. 80–33122 Filed 10–22–80; 8:45 am]

BILLING CODE 3110–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Presidential Import Relief Determination on Section 201 Case on Mushrooms

The following memorandum is the President's determination under Section 202(b)(1) of the Trade Act of 1974 to provide three years of import relief for the domestic mushroom industry in the form of increased duties. The determination is in response to the affirmative finding of the U.S. International Trade Commission on Investigation No. 201–TA–43.

For further information contact: Mr. Tim Regan at 202–395–6127.

C. Michael Hathaway,

Senior Assistant General Counsel.

THE WHITE HOUSE

Washington, D.C., October 17, 1980.

Memorandum for the U.S. Trade Representative

Pursuant to Section 202(b)(1) of the Trade Act of 1974 (19 U.S.C. 2252), I have determined to provide import relief for the domestic mushroom industry in the form of increased duties. This action is in response to the affirmative finding of the U.S. International Trade Commission (USITC) on Investigation Number 201–TA–43. The investigation was initiated as a result of a petition by the American Mushroom Institute. The USITC's report was received on August 18, 1980. The USITC found that increased imports had been a substantial cause of serious injury, or threat thereof, to the domestic industry. It recommended the imposition of import quotas over the next three years as an appropriate remedy.

After considering all relevant aspects of the case, including those considerations set forth in section 202(c) of the Trade Act, I have determined to provide three years of import relief for the domestic industry in the form of increased duties. I will issue a Presidential Proclamation, to be effective within fifteen days, increasing the current duty of 3.2 cents per pound plus 10 percent *ad valorem* on imported mushrooms, otherwise prepared or preserved, provided for in item number 144.20 of the Tariff Schedules of the United States, to:

3.2 cents per pound plus 30 percent *ad valorem* for the first year of relief;
3.2 cents per pound plus 25 percent *ad valorem* for the second year of relief; and
3.2 cents per pound plus 20 percent *ad valorem* for the third year of relief.

In addition to this import relief, I am creating a White House Task Force under the direction of Stuart Eizenstat, Assistant to the President for Domestic Affairs and Policy, that will coordinate the Administration's efforts to assist the mushroom industry in adjusting to import competition.

This Task Force will include representatives from the Office of the United States Trade Representative, the Council of Economic Advisers, the Small Business Administration, the Economic Development Administration, the Farm Home Administration, and the Agricultural Marketing Service. The Task Force will provide appropriate technical and financial assistance to facilitate the industry's adjustment to increased imports.

I am taking these actions to mitigate the human and social problems associated with economic adjustment. Since these actions are temporary, it is vitally important that firms within the industry take the necessary management decisions within the relief period to become more competitive or to diversify. To monitor the industry's progress, I am directing you as the United States Trade Representative to request under Section 203(i)(1) of the Trade Act of 1974 that the USITC report, within eighteen months of this decision, on the industry's efforts to adjust.

I have chosen to provide tariff relief rather than the quota relief recommended by the USITC because I believe it is the most appropriate form of relief in this case. Increased tariffs will enable the canning industry to become more profitable. This improvement in their financial position, which is not expected to have a significant inflationary impact, will enable the industry to implement adjustment programs which they have pledged to undertake. Tariffs are also preferable in this case because, unlike quotas, they allow the natural market forces to continue to work, thus providing relatively more incentive to the industry to adjust to foreign competition. Finally, tariffs are preferred because of the difficulty of equitably allocating quotas among countries when there are highly competitive new suppliers entering a market dominated by traditional suppliers.

[FR Doc. 80–33087 Filed 10–22–80 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 11401; (811–1410)]

The Decade Fund—1965, Inc.; Proposal To Terminate Registration Pursuant to Section 8(f) of the Act

October 16, 1980.

Notice is hereby given that the Commission proposes, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare, by order on its own motion, that The Decade Fund—1965, Inc. ("Fund"), c/o Walter S. Weiss, Esq., Greenberg & Glusker, Suite 200, 1900 Avenue of the Stars, Los Angeles, California 90067, registered under the Act as an open-end, diversified, management investment company, has ceased to be an investment company as defined by the Act.

The Fund registered under the Act on July 21, 1966. Information contained in the files in the Commission indicates that the Fund's registration statement

under the Securities Act of 1933 (File No. 2-25334) did not become effective, and was ordered abandoned by the Commission on August 9, 1973. Thus, the Fund has never engaged in a public distribution of its securities. In addition, the Fund has not filed the annual and periodic reports required by Section 30 of the Act since its fiscal year ending December 31, 1967. Moreover, efforts by the staff of the Division to contact the Fund have been unsuccessful. Thus, it appears that the Fund is not currently engaged in the business of an investment company.

Notice is further given that any interested person may, not later than November 10, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Fund at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-33088 Filed 10-22-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11402; (811-1445)]

The Decade Fund—1967, Inc.; Filing of Application Pursuant to Section 8(f) of the Act for an Order Declaring That Applicant Has Ceased To Be an Investment Company

October 16, 1980.

Notice is hereby given that The Decade Fund—1967, Inc. ("Applicant"), c/o John Michael McCormick, Receiver, 707 Wilshire Boulevard, 39th Floor, Los Angeles, California 90017, a Delaware corporation which registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on September 29, 1980, for an order of the Commission, pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company as defined by the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

A qualified receiver was duly appointed for the Applicant by an order of the United States District Court for the Central District of California dated April 25, 1972. The application states that, pursuant to an order of the court filed on June 29, 1979, the receiver distributed to the holders of Plan/Certificate Shares of Applicant the approximate sum of $102,556.92 representing the first and final liquidating dividend of the receivership estate. The application further states that as of the date of the application, the receiver holds worthless, unsaleable securities and the sum of approximately seven thousand dollars (subject to expenses in the amount of $5,000) representing the only asset of value of the receivership estate. According to the application, the receiver anticipates that this cash on hand will not exceed that required to administer the closing phases of the liquidation of the receivership estate. Finally, it is represented that the Applicant does not intend to engage in any further business activities other than those necessary to wind up its affairs.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and that, upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than November 10, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-33089 Filed 10-22-80; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-6697]

Golden Nugget, Inc., Common Stock, $0.833 Par Value; Application To Withdraw From Listing and Registration

October 17, 1980.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 (the "Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

1. The common stock of Golden Nugget, Inc. (the "Company") is listed and registered on the Amex. Pursuant to a Registration Statement on Form 8-A which became effective on August 28, 1980, the Company is also listed and registered on the New York Stock Exchange ("NYSE"). The Company has determined that the direct and indirect costs and expenses do not justify maintaining the dual listing of the common stock on the Amex and the NYSE, and believes that dual listing would fragment the market for its common stock.

2. This application relates solely to withdrawal of the common stock from listing and registration on the Amex and shall have no effect upon the continued listing of such stock on the NYSE. The Amex has posed no objection to this matter.

Any interested person may, on or before November 7, 1980, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-33090 Filed 10-22-80; 8:45 am]

BILLING CODE 8010-01-M

Midwest Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

October 17, 1980.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Basic Resources Corporation, Common Stock, $.05 Par Value (File No. 7-5762)
John H. Harland Company, Common Stock, $1 Par Value (File No. 7-5763)
Thermo Electron Corporation, Common Stock, $1 Par Value (File No. 7-5764)

These securities are listed and registered on one or more other national securities exchanges and are reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 7, 1980 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-33091 Filed 10-22-80; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 11398; (812-4748)]

Monte J. Wallace, Neil W. Wallace; Filing of Application Pursuant to Section 9(c) of the Investment Company Act of 1940 and Order of Temporary Exemption Pending Determination of the Application

October 16, 1980.

Notice is hereby given that Monte J. Wallace and Neil W. Wallace (the "Wallaces") have filed an application pursuant to Section 9(c) of the Investment Company Act of 1940, 15 U.S.C. 80a-1, *et seq.* as amended (the "Act"), for an order granting them a partial exemption from the provisions of Section 9(a) of the Act, and a temporary, partial exemption from Section 9(a) pending the Commission's determination of the application for a permanent exemption.

All interested persons are referred to the application on file with the Commission for a statement of the representations therein, pertinent parts of which are summarized below.

In January of 1978, the Wallaces and Continental Advisers ("CA") were named, with others, as defendants in Civil Action No. 78-0066, brought by the Commission in the United States District Court for the District of Columbia (the "action"). The Commission's Complaint alleged, *inter alia*, that between 1972 and 1975 the Wallaces, in the course of their association with Continental Mortgage Investors ("CMI"), a publicly held real estate investment trust, and CA, a partnership that served as CMI's investment adviser prior to October 29, 1975, violated Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), as amended, and Rule 10b-5, 17 CFR 240.10b-5, thereunder, and other provisions of the securities laws.

On October 16, 1980, without admitting or denying the allegations of the Complaint, CA and the Wallaces consented to the entry of an order enjoining them from engaging in acts and practices that constitute violations of Section 10(b) of the Securities Exchange Act of 1934, as amended and Rule 10b-5 thereunder. The Wallaces further agreed to contribute part of a $2 million escrow fund that may be used to satisfy claims by certain present and past owners of CMI securities and the Trustee in Bankruptcy of CMI. Finally, the Wallaces undertook to support the establishment of an independent Audit Committee of the Board of any publicly held company of which they may become officers, directors, or substantial shareholders within five years from the Court's entry of the order. The agreed-upon order provides that the action shall be terminated against the Wallaces with prejudice and without costs.

Section 9(a) of the Act, insofar as is pertinent here, disqualifies any person, or any company with which such person is affiliated, from acting in the capacity of employee, officer, director, member of any advisory board, investment adviser, or depositor for any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face-amount certificate company, if such person is by reason of any misconduct enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase of sale of any security.

Section 9(c) of the Act provides that upon application the Commission shall grant an exemption from the provisions of Section 9(a), either unconditionally or on an appropriate temporary or other conditional basis, if it is established that the prohibitions of Section 9(a), as applied to the applicant, are unduly or disproportionately severe or that the conduct of such person has been such as not to make it against the public interest or protection of investors to grant the application.

The Wallaces have submitted an application pursuant to Section 9(c) stating, *inter alia*, that:

(1) Prior to March of 1976, Monte J. Wallace was the Chairman of the Board of Trustees, and Neil W. Wallace the Vice-President of the Board of Trustees, of CMI, and the Wallaces were the beneficial owners of a substantial interest in CA. The Wallaces also founded and served as directors of Continental Investment Corporation ("CIC"), which is publicly held.

(2) Unqualified application of Section 9(a) of the Act would work an undue hardship upon the Wallaces. The Wallaces, various members of their families, and family trusts collectively own approximately 65.7% of the outstanding shares of CIC, which is currently in reorganization under Chapter X of the Bankruptcy Act. The Wallaces and their families have and may continue to have a significant stock interest in CIC, and therefore wish to be able to serve on its Board of Directors. Because one of CIC's subsidiaries, Waddell & Reed, advises registered investment companies—specifically United Funds, Inc. (United

Income Fund, United Accumulative Fund, United Bond Fund, United Science & Energy Fund), United Continental Fund, Inc., United Continental Income Fund, Inc., United Vanguard Fund, Inc., United Fiduciary Shares, Inc., United Municipal Bond Fund, Inc., United High Income Fund, Inc., United Cash Management, Inc., United Cach Management II, Inc.—the Wallaces may be precluded from serving as directors of CIC if they are not granted partial relief from the disqualifications mandated by Section 9(a) of the Act.

(3) Unqualified application of Section 9(a) of the Act would work an undue hardship upon the investing public. CIC may be deemed to be an affiliated of the Wallaces and/or CA. Its successful reorganization and ultimate financial health depend in part upon income generated by Waddell & Reed. If the Wallaces and CA are not granted partial relief from Section 9(a) of the Act, Waddell & Reed may become ineligible to advise investment companies. The investment companies advised by Waddell & Reed and their shareholders have, throughout the companies' existence, relied upon Waddell & Reed for both investment advice and distribution. The prohibitions of Section 9(a) could thus operate severely to the detriment of the financial interests of CIC and its stockholders, and of the investment companies advised by Waddell & Reed and their stockholders, who were not involved in the events and transactions that gave rise to the action.

(4) The Wallaces have never before applied for an exemption from the provisions of Section 9(a) of the Act.

(5) The Wallaces have relied upon the Commission Staff's agreement to recommend a conditional exemption from the prohibitions of Section 9(a) in entering into settlement of the action.

(6) The Wallaces are applying for a limited exemption from the prohibitions of Section 9(a) pursuant to which they would be entitled to serve on the Board of Directors of CIC but, (a) not to serve on the Board of Directors of Waddell & Reed or any of its affiliated investment companies, (b) not to participate, directly or indirectly in the management of Waddell & Reed or any of its affiliated investment companies, and (c) during the three-year period commencing with the entry of the injunction in the action, not to participate in any CIC Board decisions affecting membership on, or the composition of, the Board of Directors of Waddell & Reed or any of its affiliated investment companies.

The Commission has considered the matter and finds that:

(1) The absolute and complete prohibitions of Section 9(a), to the extent they may be applicable, may be unduly or disproportionately severe as applied to the Wallaces and companies with which the Wallaces may be affiliated; and

(2) In order to maintain the uninterrupted services provided by CIC and its affiliates to regulated investment companies and others, it is necessary and appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, that a temporary order be issued forthwith.

Accordingly, it is ordered that, pursuant to Section 9(c) of the Act, Monte J. and Neil W. Wallace CA, CIC and CIC's subsidiaries as of the date of this Order, be and hereby are granted a temporary, limited exemption from the prohibitions of Section 9(a) of the Act, pending final determination by the Commission of the Wallaces' application for an order granting them a partial exemption from such prohibitions, to allow Waddell & Reed to serve as investment adviser to the funds described on p. 2, *supra*, and to enable the Wallaces to serve on the Board of Directors of CIC so long as the Wallaces (a) do not serve on the Board of Directors of Waddell & Reed or any of its affiliated investment companies, (b) do not participate, directly or indirectly, in the management of Waddell & Reed or any of its affiliated investment companies, and (c) during a three-year period commencing with the entry of the injunction in this action, do not participate in any CIC Board decisions affecting membership on, or composition of, the Board of Directors of Waddell & Reed or any of its affiliated investment companies; provided, however, that the Wallaces shall not be precluded from exercising their full rights as members of CIC's Board of Directors, or otherwise, with respect to the non-investment company activities, subsidiaries or affiliates of Waddell & Reed.

Notice is further given that any interested party may, not later than November 14, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon Arthur F. Mathews, Wilmer & Pickering, 1666 K Street NW., Washington, D.C. 20006. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided in Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80–33092 Filed 10–22–80; 8:45 am]

BILLING CODE 8010–01–M

Philadelphia Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

October 17, 1980.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

General American Oil Co. of Texas
Common Stock, $1 Par Value (File No. 7–5765)

Knogo Corporation
Common Stock, $.01 Par Value (File No. 7–5766)

Helmerich & Payne, Inc.
Common Stock, $.10 Par Value (File No. 7–5767)

These securities are listed and registered on one or more other national securities exchanges and are reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 7, 1980 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80–33093 Filed 10–22–80; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 06106–5140]

Southern Orient Capital Corp.; Application for a License as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration pursuant to § 107.102 of the SBA Regulations (13 CFR 107.102 (1980)), by Southern Orient Capital Corporation, 1103 Chartres, Houston, Texas 77003, for a license to operate as a small business investment company (SBIC) under the provisions of Section 301(d) of the Small Busienss Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*).

The proposed officers, directors and stockholders are:

Name and address	Title and relationship	Percent of ownership
Dr. Cheng M. Lee, 47 Fortuna East, Irvine, CA 92714.	Chairman of the Board and Director.	18.2
Min Hsiung Liang, 8507 Ferres Drive, Houston, TX 77096.	President and Director	9.1
Johnny Liang, 12322 Braewick, Houston, TX 77035.	Secretary	
David R. C. Chang, 21 Roberts Road, Warren, NJ 07060.	Director	18.2
George C. Ko, 1439 Wembly Road, San Marine, CA 91108.	Director	9.1
Eric T. S. Lin, 1456 Tarrytown Street, San Mateo, CA 94402.	Director	9.1
Chi Chang Chen, 10–3, 315 Lane, Shih Pai Road, Sec. 2, Pei Tow, Teipei, Tarwan R.O.C..	Shareholder	9.1
Betty Mei-Chih Lee, 47 Fortuna East, Irvine, CA 94402.	Shareholder	9.1
Chen-Yi Cagge Lee, 233 Treherne Road, Timonium, MD 21093.	Shareholder	9.1
Chin-Yaw Yang, 214–10 46th Road, Beyside, Queen, NY 11361.	Shareholder	9.1

The Applicant proposes to begin operations with a capitalization of $500,000 and will be a source of equity capital and long-term loan funds for qualified small business concerns. The Applicant intends to render management consulting services to small business concerns.

As a Section 301(d) Licensee, the investment policy of the Applicant will be limited to making investments solely in small concerns which will contribute to a well balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of shareholders and management, and the probability of successful operation of the new company in accordance with the Act and Regulations.

Notice is further given that any person may, on or before November 7, 1980, submit written comments on the proposed licensing of this company. Any such communications should be addressed to: Acting Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published by the Applicant in a newspaper of general circulation in Houston, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Dated: October 20, 1980.

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 80–33115 Filed: 10–22–80; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

High Altitude Pollution Program Scientific Advisory Committee; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. I), notice is hereby given of a meeting of the Federal Aviation Administration High Altitude Pollution Program Scientific Advisory Committee to be held December 3–5, 1980, in Conference Rooms 8A, 8B, and 8C at the Federal Aviation Administration building located at 800 Independence Avenue, SW., Washington, D.C. 20591, at the following times: December 3, 1980—9 a.m. to 5 p.m., December 4, 1980—9 a.m. to 5 p.m., December 5, 1980—9 a.m. to 12 noon.

The objective of the meeting will be to address selected technical issues in atmospheric chemistry which have potential impact on Federal policy options with regard to high altitude aircraft emissions. The agenda will include technical progress reports from some contractors followed by a discussion of the overall status of the chemical data base used for atmospheric modeling.

Attendance is open to the interested public but limited to the space available. Any member of the public wishing to attend, make a presentation, or obtain additional information should contact Dr. Narasimhan Sundararaman, AEE–300, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, 202–755–8933 or 202–755–1851 by close of business November 26, 1980.

Any member of the public may present a written statement for the consideration of the committee at any time.

Issued in Washington, D.C., on October 17, 1980.

N. Sundararaman,

Manager, High Altitude Pollution Program.

[FR Doc. 80–33026 Filed 10–22–80; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Ware County, Ga.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Ware County, Georgia.

FOR FURTHER INFORMATION CONTACT: David H. Densmore, Development Engineer, Federal Highway Administration, Suite 700, 1422 West Peachtree Street, N.E., Atlanta, Georgia 30309, telephone (404) 881–4758, or Peter Malphurs, State Environmental Analysis Engineer, Georgia Department of Transportation, Office of Environmental Analysis, 65 Aviation Circle, Atlanta, Georgia 30336, telephone (404) 696–4634.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Georgia Department of Transportation (Georgia DOT) will prepare an environmental impact statement (EIS) on a proposal to relocate S.R. 50 through certain existing streets and on new location in Waycross.

The proposed project, the relocation and widening of S.R. 50 through Waycross and Ware County will begin on the south side of existing S.R. 50/U.S. 82 in west Waycross approximately 500 feet west of County Road 145 and extend south and east 8.11 miles to the intersection of City Boulevard and existing S.R. 50/U.S. 84 in east Waycross.

V 45 OCT 23 1980 UMI

The proposed project will be on new location for 3.5 miles from the western terminus (near County Road 145) to the intersection of Augusta Avenue and Francis Street. The typical design cross section will consist of four twelve-foot travel lanes with a 40-foot grassed median. There will be partially controlled access on this section.

At the intersection of Augusta Avenue and Francis Street the typical design cross section becomes two lanes in each direction separated by a 14-foot paved median. Existing Francis, Jane and Reynolds Streets will be widened and connected. A railroad underpass on Jane Street will be widened to accommodate the widening.

Portions of the project described above are being constructed as State-Aid projects and are described in this report for sake of project continuity and to avoid piecemealing. Those sections are three of the five lanes on the Francis Street-Jane Street Connector and the railroad overpass and approaches from Nicholls Street to Lee Street.

Alternatives under consideration include: (1) taking no action; and (2) the build alternative as described previously.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. Formal scoping meetings will not be held. Two public meetings were held in Waycross on April 2 and April 30, 1980. In addition, a public hearing will be held. Public notice will be given of the time and place of the hearing.

To ensure that the full range of issues related to this proposed project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action on the EIS should be directed to the FHWA at the address provided above.

The Catalog of Federal Domestic Assistance Program Number is 20.205, *Highway Research, Planning and Construction.* The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and Federally assisted programs and projects apply to this program.

Issued on: October 15, 1980.

David H. Densmore,

Development Engineer, Atlanta, Ga.

[FR Doc. 80-33085 Filed 10-22-80; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

[FRA General Docket No. H-80-7]

Locomotive Test Program; Public Conference

The Federal Railroad Administration (FRA) is considering a proposal to grant a temporary limited waiver of compliance with certain provisions of the Locomotive Safety Standards (49 CFR Part 229). The temporary waiver would be used to conduct a study and evaluation of the safe service life and reliability of specific components of locomotive power brake euipment.

The FRA has recently revised the Locomotive Safety Standards. In the final rule, which was published on March 31, 1980, in the Federal Register (45 FR 21092), FRA noted that it was not altering the proposed time interval provisions of either § 229.27 or § 229.29. The FRA indicated that the decision to retain the same basic time interval used in the prior regulation stemmed from the absence of an adequate data base to justify either extending or shortening this interval. The FRA stated that a service test would be needed to more precisely define the inspection interval required for safety.

Several railroads individually and the Association of American Railroads (AAR) have contacted FRA about the initiation of such a service test. Three railroads, Atchison, Topeka and Santa Fe, Norfolk and Western and Union Pacific, have specifically indicated their willingness to allow their locomotives to be utilized in an appropriate test program.

The Railroad Safety Board (Board) of the FRA has been delegated the responsibility for determining whether to grant the appropriate waivers of compliance in order to permit the initiation of such a test effort. Pursuant to its delegated authority, the Board has reviewed the limited available information to determine the appropriate course of action be taken in this proceeding.

The Board desires to obtain the comments and views of all interested parties on this contemplated test program. In an effort to obtain these comments and views the Board will hold a public conference. Accordingly, a public conference has been set for 10 a.m. on December 3, 1980, in Room 8334, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The public conference will be an informal one conducted by a representative designated by the Board. The Board's representative will make an opening statement outlining the scope of the conference and any necessary procedures for the conduct of the conference.

This notice is issued under the authority of section 202 of the Federal Railroad Safety Act of 1970, 84 Stat. 971, 45 U.S.C. 431; and § 1.49(n) of the regulations of the Office of the Secretary of Transprtation 49 CFR 1.49(n).

Issued in Washington, DC on October 8, 1980.

J. W. Walsh,

Chairman, Railroad Safety Board.

[FR Doc. 80-33034 Filed 10-22-80; 8:45 am]

BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

[Docket No. 75-29; Notice 5]

Safety Aspects of Motorized Bicycles

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Issuance of Agency Recommendations.

SUMMARY: This notice advises the public of motorized bicycle safety guidelines for comprehensive state programs.

FOR FURTHER INFORMATION CONTACT: Mr. Lewis Buchanan, Driver and Pedestrian Safety Division, Traffic Safety Programs, National Highway Traffic Safety Administration, Washington, D.C. 20590, (202) 426-2180.

SUPPLEMENTARY INFORMATION: Gasoline shortages and price increases have created a great deal of interest in mopeds as an economical means of transportation. In 1974, there were fewer than 25,000 mopeds in use in the United States. There are now one million mopeds in use, and the number is expected to grow to 2½ million by 1984.

While mopeds offer an attractive and economical means of transportation, they provide their riders with little protection from serious injury in accidents. By 1984, an estimated 1,200 fatalities annually could result from moped accidents.

The key to preventing moped accidents and the resulting deaths and injuries is for the States to develop comprehensive moped safety programs which effectively regulate the use of these vehicles.

On October 12, 1978, the National Highway Traffic Safety Administration issued for public comment a series of proposed recommendations relating to the safety of motorized bicycles (43 FR 47040). These recommendations resulted from an analyses of the comments previously received by the agency in response to an earlier request for

comments (40 FR 55375), as well as research that the agency had carried out.

Over the past two years, the agency has carefully reviewed the comments received, accident data relating to motorized bicycles, and research sponsored by the agency and others in this rapidly changing area to ensure that the recommendations reflect the highest state-of-the-art. Further, to allow for a more comprehensive analysis of the recommendations and the rationale for their implementations, each recommendation is followed by a discussion of that particular recommendation. In addition, the series of recommendations is followed by listing of selected references which will be of use to States implementing the recommendations.

A number of recommendations are essentially unchanged from the 1978 proposal, although the language has been clarified. These recommendations are in the areas of vehicle registration, financial responsibility, passengers, traffic law enforcement, rider education, moped operator handbook, conspicuity, and use of on-road bicycle facilities.

Several other recommendations have been revised to refer to Uniform Vehicle Code recommendations. In terms of vehicle equipment, Chapter 12 of the Uniform Vehicle Code, equipment of vehicles has been substituted for the reference to the Vehicle Equipment Safety Commission standard. Further, the reference to the Federal Motor Vehicle Safety Standards has been omitted, as this is a manufacturer responsibility and it is presumed all vehicles will comply prior to their first sale. The accident records recommendation has also been amended to include a reference to the Uniform Vehicle Code.

Some recommendations have been comprehensively revised. The recommended definition of "moped" has been revised to require that the vehicle have pedals which permit propulsion by human power. The current recommended definition also provides that if an internal combustion engine is used, the displacement shall not exceed 50 cc and the moped shall have a power drive system that functions directly or automatically without clutching or shifting by the operator after the drive system is engaged.

The recommendations concerning operator's licensing, minimum age, and test requirements have been revised to indicate a preference for separate moped testings, although a modified motorcycle test is also cited as a less-preferred alternative. The agency believes that considering the speed and other differences between mopeds and motorcylcles, the skills which should be demonstrated are likewise different.

The recommendation concerning safety helmets has been broadened to require only protective head gear rather than bicycle or motorcycle headgear. A new section has been added, however, recommending that moped operators utilize an eye protective device.

The recommendation relating to moped use on high speed roads has also been somewhat modified. As before, the agency is not recommending that mopeds be allowed to operate on roadways where the speed limit exceeds 35 miles per hour. However, where lower speed routes are not available, the agency recommendation calls for an engineering analysis of the higher speed roadway to determine how the moped can be separated from the high-speed traffic flow.

Further, the agency is no longer recommending the designation of moped/bicycle lanes. In this regard, the provision relating to the use of on-road bicycle facilities has been revised somewhat to recommend joint use of on-street bicycle lanes as long as they are appropriately engineered.

In conformance with Uniform Vehicle Code § 11-1103, the agency is now recommending that mopeds not be allowed on bicycle paths or sidewalks. Previously, the agency had suggested that such mixed usage might be appropriate under certain circumstances.

Several new recommendations have also been added. The first recommends that States prohibit modifications which increase the speed capability of mopeds. The second recommends that mopeds be included in State vehicle inspection programs. The third recommends that moped operation should be in conformance with the Uniform Vehicle Code Rules of the Road.

The principal author of this notice is Frederic W. Schwartz, Jr. of the Office of Chief Counsel.

(Pub. L. 89-564, 80 Stat. 731; 23 U.S.C. 401 et seq.; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued: October 20, 1980.

Frank Berndt,

Acting Administrator.

Moped Safety—Guidelines for Comprehensive State Programs

Moped Definition.—A moped is a motor-driven cycle both with pedals to permit propulsion by human power and with a motor which produces not to exceed two brake horsepower and which is not capable of propelling the vehicle at a speed in excess of 30 mph (48.28 km/h) on level ground. If an internal combustion engine is used, the displacement shall not exceed 50 cc and the moped shall have a power drive system that functions directly or automatically without clutching or shifting by the operator after the drive system is engaged.

Discussion.—A variety of terms are used to define lightweight, two-wheeled motor vehicles. These include motor-driven cycle, motor bike, minibike, minicycle, and motor assisted cycle. Some are "mopeds" and some are not. The recommended moped definition adopted here was written by the National Committee on Uniform Traffic Laws and Ordinances after careful consideration of the moped definitions used here and abroad. It provides an adequate means of describing the physical characteristics of those vehicles which should be classified as mopeds.

Vehicle Requirements

Vehicle Equipment

Recommendation.—Moped equipment requirements by the separate States should be in reasonable conformity with Uniform Vehicle Code (UVC), Chapter 12, *Equipment of Vehicles*

Discussion.—Chapter 12 of the Univorm Vehicle Code (UVC) describes the minimum safety equipment which mopeds must have in order to be operated safely on public roads.

Altering Mopeds

Recommendation.—States should prohibit modifications which would give mopeds the capability of exceeding 30 mph (48.28 km/h). *See Inspection.*

Discussion.—The braking, lighting and suspension systems on mopeds are designed for maximum effectiveness at speeds of 30 mph or below. Speeds greater than 30 mph could create situations in which the safety performance of these systems would be exceeded. Therefore, it is important to prohibit engine modifications which would increase the top speed of mopeds. For persons who wish to use a faster form of two-wheeled transportation, there are a variety of light weight and larger motorcycles. Use of these vehicles entails a greater risk of accident and injury. Consequently, the safety requirements for motorcycles and their operation are more stringent.

Inspection

Recommendation.—If the State has a vehicle inspection program, mopeds should be inspected as part of that program. The inspection should include

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a verification that the moped has not been modified.

Discussion.—While vehicle or equipment failure does not play a large role in moped accident causation the consequences of defective equipment can be severe in terms of accidents, injuries and deaths. An inspection program will help insure that mopeds are maintained in safe mechanical condition.

Administration and Enforcement

Vehicle Registration

Recommendation.—Mopeds should be registered as motor vehicles in a special class or as a specific subset of the motorcycle class.

Discussion.—Registration of mopeds is needed in order to reinforce the identity of mopeds as motor vehicles, to improve the accident reporting system for mopeds by listing it as a discrete class of vehicle, and to identify mopeds as vehicles for which an operator's license should be required.

Accident Records

Recommendation.—States should conform with the appropriate American National Standards Institute (ANSI) and/or UVC standard so that data can be compiled in such a way that moped accident data can be clearly and easily identified as a category separate from bicycle and motorcycle accident data.

Discussion.—Unless mopeds are registered and moped accidents are compiled as a separate category it will be impossible to accurately determine the size and nature of the moped accident problem or to measure the effectiveness of safety programs designed to prevent moped accidents. It is therefore extremely important for each State to require registration of mopeds and to identify and compile moped accident data in a discrete category.

Operator's Licensing, Minimum Age, and Test Requirements

Recommendation.—A moped or motorcycle operator's license or moped endorsement to an existing valid license should be required. The minimum age for licensing a moped operator should be the same as that for automobile licensing. Separate moped testing is preferred. However, an adaquate motorcycle test which includes specific questions on moped characteristics and safe operations would be acceptable.

Discussion.—A moped is a motor vehicle and is operated in traffic where very real risks of serious injury or death exist. This recommendation is designed to insure that moped operators have demonstrated that they possess the necessary maturity, knowledge and skill to operate safely in traffic.

Financial Responsibility

Recommendation.—States should apply financial responsibility requirements to moped owners and operators.

Discussion.—It is clear that a moped is a motor vehicle capable of achieving speeds which could endanger pedestrians and other vehicle operators. It is important that these parties be provided financial compensation for any damage or injury caused by a moped operator. Therefore, the States should apply financial responsibility requirements to moped owners and operators.

Passengers

Recommendation.—Passengers should be prohibited from riding on mopeds unless the vehicles are specifically designed to carry passengers. Where the vehicles are so designed, other recommendations such as protective headgear and eye protection would also apply to the passengers.

Discussion.—Because of the low power and light weight of mopeds, the weight of a passenger can seriously impair the safe handling characteristics of the vehicle. This is especially true if the vehicle is not equipped with an adequate seat and footrests for a passenger. Therefore, passengers should be prohibited unless the moped is designed to carry a passenger.

Traffic Law Enforcement

Recommendation.—Moped operators should be required to obey all applicable traffic laws and regulations. Police agencies should establish policies which will ensure that enforcement personnel are well informed about moped regulations, and the traffic laws pertaining to moped are equitably enforced.

Discussion.—Accident data indicate that moped operators are most often at fault when a collision with another vehicle occurs. Very often the accidents happen because the moped operator violated a safe driving practice or law. Mopeds are motor vehicles and their operators must obey all applicable laws. Therefore, special attention to traffic law enforcement is an important aspect of a State's moped program.

Rider and Public Education.

Rider Education

Recommendation.—Moped operators should receive specific moped safety educaton either as a separate curriculum or as a portion of an approved motorcycle safety education course.

Discussion.—Moped operators have little protection from injury and possible death when an accident occurs. Also, the performance characteristics of mopeds differ substantially from those of automobiles and motorcycles. Therefore, it is extremely important that moped operators have the knowledge and skill necessary to anticipate and avoid potential accident situations.

Moped Operotor Handook

Recommendation.—States should prepare a moped operator handbook. This publication should contain information on all legal requirements for moped operaton in the State as well as information on recommended safe driving practices.

Discussion.—The knowledge and skills needed by moped operators are significantly different from those required for automobile operators. Certain legal requirements apply to mopeds which do not apply to other classes of vehicles. It is therefore important that moped operators and potential operators be provided with the information on skills, knowledge and laws which they need to drive safely.

NHTSA has completed a moped driving task analysis and will be developing moped education materials for use by the States.

Public Information and Educqtion

Recommendation.—Public information programs should be pursued in the context of each State's laws and safety programs. Moped public information activities should be included in existing highway safety programs, public information programs, and in-school safety and driver education programs.

Discussion.—Public information programs should provide moped riders and potential riders with information about safe moped riding practices as well as legal requirements. The programs should also be aimed at creating an awareness by other motorists that they must look for and be prepared to handle traffic situations involving mopeds. It should also inform each group about sources for additional moped safety information. NHTSA will be developing model moped education and public information materials for use by the States.

Rider Protection

Safety Helmets

Recommendation.—Moped operators should wear protective headgear.

Discussion.—Head injury is the leading cause of death in moped and motorcycle accidents. Unhelmeted riders are two times more likely to receive a head injury of any type and from three to nine times more likely to receive a fatal head injury than are helmeted riders.

Because of the potential collisions with automobiles and other large vehicles, moped operators need the maximum level of head protection available. Therefore, use of motorcycle safety helmets is recommended. Other types of helmets are available for various recreational and industrial purposes. While these helmets will provide levels of head protection substantially lower than provided by motorcycle helmets, they are better than no helmet at all. Helmet use by moped operators should be promoted.

Eye Protection

Recommendation.—Moped operators should wear some form of eye protection device (similar to those used by motorcycle operators) unless the moped is equipped with a windscreen.

Discussion.—Flying dust and debris from the roadway as well as the wind blast created by speeds of 30 mph seriously impair a rider's ability to see and avoid potential accident situations. It is therefore important that moped operators use adequate eye protection devices.

Conspicuity

Recommendation.—Moped operators should, through all means possible, be encouraged to make themselves as conspicuous as possible to other drivers.

Discussion.—Because moped use is relatively new, many motorists are not conditioned to look for mopeds in traffic. The small size of a moped also contributes to its lack of noticeability. Therefore, moped operators should be encouraged to make themselves as visible as possible to other motorists. This can be accomplished by the use of brightly colored clothing and helmets, the use of the moped's headlight during the day, the use of a bicycle flag, and at night, by the use of retro-reflective materials on the vehicle, flag, clothing and helmet.

Limitation on Moped Use

Use on High Speed Roads

Recommendation.—Mopeds should not be allowed to operate on roadways where the speed limit is in excess of 35 mph. Therefore, priority should be given to finding and designating low-speed routes for moped use. Where low-speed alternative routes are not available, engineering analyses of higher speed roadways should be conducted to determine whether mopeds can be safely operated on such roads. The governing criterion in such route selection should be the physical separation by markings or barriers of the moped from higher speed vehicles. The basic approach to integrating the moped into the transportation system is one of achieving maximum mobility while retaining adequate safety.

Discussion.—Differences in speed of more than 5 mph between vehicles substantially increase the risks of an accident. Mopeds have a top speed capability of 30 mph. On a high speed roadway (55 mph) the difference in speed between mopeds and other vehicles would be 25 mph or more, greatly increasing the potential for an accident. Therefore, mopeds should be limited to roads with speed limits of 35 mph or lower and an effort should be made to identify and designate low speed routes as alternatives to high speed roads.

Use of On-Rood Bicycle Facilities

Recommendation.—Where joint use appears compatible, appropriately engineered on-street bicycle lanes should be designated for both moped and bicycle use.

Discussion.—On heavily congested roads it may be desirable to separate mopeds from other motor vehicle traffic. The use of on-road bicycle lanes by mopeds offers a practical means of achieving the needed separation. All on-road bicycle lanes should be examined to determine those on which moped use could be permitted with little increase in risk to other bicycle lane users.

Those facilities where joint use appears compatible should then be designated for use by mopeds as well as bicycles.

Operating on Roadways Laned for Traffic, Position on Roadway

Recommendation.—Moped operation should conform with Rules of the Road, Chapter 11, Section 11–1205 and Section 11–1303; UVC 1968, and Supplement 1979. (Section 11–1205 includes mopeds and 11–1303 (a) and (b) do not apply to mopeds.)

Discussion.—UVC Section 11–1205 requires that bicycles be ridden as near to the right side of the roadway as practicable, that bicycles not be ridden more than two abreast on bike paths or lanes and a bike lane or path be used if it is provided adjacent to the roadway.

UVC Section 11–1303 provides that mopeds should not operate between lanes of trafic or between adjacent lines or rows of vehicles, and that mopeds not be operated more than two abreast in a single traffic lane.

Use of Mopeds on Sidewalks and Bicycle Paths

Recommendation.—States should support the UVC 11–1103 which prohibits operating motor vehicles on sidewalks. Similarly, mopeds should be prohibited from operating on bicycle paths.

Discussion.—The use of mopeds on sidewalks creates unnecessary hazards for pedestrians. Therefore, mopeds should be prohibited from operating on sidewalks. Since most bicycle paths are not designed for speeds of which mopeds are capable, and because bicycle paths are also frequently used by pedestrians and young cyclists, mopeds should be prohibited from bicycle paths.

References

1. Denis, A. and Kearney, E.F. *State Laws on Mopeds and Motorized Bicycles.* Traffic Laws Commentary, National Committee on Uniform Traffic Laws and Ordinances, 1978.
2. Hodge, B.C. and McIntosh, L.J. *Moped Accidents in Selected California Communities.* Paper presented at the 22nd Conference of the American Association for Automotive Medicine, Ann Arbor, Michigan, July 1978.
3. Hunter, W.H., Stewart, J.R. and Stutts, J.C. *An Analysis of Mopeds as a Potential Safety Problem in the United States:* Highway Safety Research Center, University of North Carolina, May 1979. Volume I: Review of Literature and Data Search—DOT–HS–805–035. Volume II: Data Analysis and Usage and Accident Projections—DOT–HS–805–036.
4. Langweider, K. *Collision Characteristics and Injuries to Motorcyclists and Moped Drivers.* In Proceedings of the 21st Stapp Car Crash Conference, New Orleans, October 1978, pp. 259–301.
5. Licht, K.F. *The Moped in the Traffic Mix.* Traffic Safety, July 1978, pp. 8–9, 28–29.
6. Quane, R.P. *Moped Accident Data Collection: A Technique.* Paper Presented at the First National Moped Conference, Anaheim, California, May 1978.
7. Scott, B.Y. *Moped legislotion: The New York Approach.* Traffic Safety, March 1978, pp. 8–9, 28.
8. McKnight, A.J., et al. *Moped Task Analysis: Final Report.* National Public Services Research Institute, NHTSA Contract Number DOT–HS–8–02033, March 1980.

[FR Doc. 80-33139 Filed 10-22-80; 8:45 am]

BILLING CODE 4910-59-M

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Office of the Secretary

[Notice 80-8a]

Senior Executive Service Performance Review Boards; Addition of Members

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Addition of members to performance review boards (PRB).

SUMMARY: DOT adds names to the list of persons selected to serve on Senior Executive Service PRB's.

FOR FURTHER INFORMATION CONTACT: Robert S. Smith, Director, Office of Personnel and Training, and Executive Secretary, DOT Executive Resources Board, 202-426-4088.

SUPPLEMENTARY INFORMATION: The following persons are added to the PRB's for their respective organizations:

Federal Aviation Administration

Clarence R. Melugin, Director, Southwest Region
James Bispo, Associate Administrator for Air Traffic and Airway Facilities.

Urban Mass Transportation Administration

Thomas Hunt, Associate Administrator for Administration
Thomas Downs, Executive Director.

Research and Special Programs Administration

James Costantino, Director, Transportation Systems Center.

Issued in Washington, D.C. on October 16, 1980.

Robert L. Fairman,
Acting Assistont Secretary for Administration.

[FR Doc. 80-32927 Filed 10-22-80; 8:45 am]
BILLING CODE 4910-62-M

Urban Mass Transportation Administration

Proposed Washington Heights Redevelopment Project in Miami, Fla.; Intent To Prepare an Environmental Impact Statement

Pursuant to the National Environmental Policy Act (42 U.S.C. 4321) and the Council on Environmental Quality's implementing regulations (40 CFR Part 1500), the Urban Mass Transportation Administration (UMTA) gives notice that an environmental impact statement (EIS) is being prepared for the proposed Washington Heights Redevelopment Project in Miami, Florida.

Metropolitan Dade County proposes to undertake, with Federal capital grant assistance from UMTA and other Federal agencies, a joint urban development project in conjunction with the Miami Overtown Redevelopment Plan. The purpose is to revitalize, through public acquisition and preparation of the site and private redevelopment, a 12-acre area of downtown Miami adjacent to the Overtown Rapid Transit Station. The project area is bounded by NW 6th Street, NW 8th Street, NW 1st Court, and NW 3rd Avenue. Existing land use in the project area consists of substandard low-income housing, scattered small retail establishments, and vacant land. The private sector redevelopment is proposed to include 670 new housing units, 200,000 square feet of office space, 60,000 square feet of retail space, and a 150-room hotel. After public acquisition and clearance of this four-block area, the land would be resold to a private developer with the proceeds to fund a pedestrian plaza and street and open space/recreation improvements.

The alternatives proposed for consideration and analysis in the EIS include: the no-action alternative resulting in the continuing decline of this neighborhood; a redevelopment project funded solely through private sector investment which may result in a less comprehensive redevelopment effort; and the proposed action which combines both public and private sector funds to implement a major element of the city's Overtown Redevelopment Plan.

A scoping meeting will be held in Miami on November 6, 1980, for the purpose of identifying the significant impacts and alternatives to be addressed in the EIS. The meeting will be held in two sessions. A morning session for interested public agencies and organizations will be held from 10 a.m. to 12 noon at the Downtown Development Authority, One Biscayne Tower, Suite 2099, Miami, Florida. An evening session for the general public will be held from 6:30 to 8:30 p.m. at the City of Miami Administration Building, 275 NW 2nd Street, Miami, Florida. The Urban Mass Transportation Administration invites agencies, organizations, and individuals with an interest in the proposed project to comment on the scope of this environmental impact statement.

Comments and questions regarding this environmental impact statement should be referred to: Mr. Abbe Marner, Environmental Protection Specialist, Office of Transit Assistance, Urban Mass Transportation Administration, Washington, D.C. 20590, telephone: (202/472-7100). In Miami, comments and questions may be referred to: Ms. Robin Sobrino, Metropolitan Dade County Office of Transportation Administration, 44 West Flagler Street, 10th floor, Miami, Florida 33130, telephone: (305/579-5323).

Dated: October 20, 1980.

Peter Benjamin,
Acting Associate Administrator for Transit Assistance.

[FR Doc. 80-33102 Filed 10-22-80; 8:45 am]
BILLING CODE 4910-57-M

DEPARTMENT OF TRANSPORTATION
Office of the Secretary

[OST File No. 61; Notice No. 80-10a]

DEPARTMENT OF ENERGY

Office of the Secretary

National Energy Transportation Study; Announcement of Change in Date of Public Hearing

AGENCIES: Department of Transportation (DOT) and Department of Energy (DOE).

ACTION: Announcement of change in date of public hearing.

SUMMARY: Notice is hereby given that the date of the Seattle public hearing for the National Energy Transportation Study has been changed. The hearing will now be held on November 14, 1980. The location and time are unchanged.

FOR FURTHER INFORMATION CONTACT:
Nancy K. MacRae, Office of Industry Policy, Department of Transportation, (202) 426-4203;
or
Thomas E. Marchessault, Office of Economics and Public Investment, Department of Transportation, (202) 426-4168.

Issued in Washington, D.C. on October 17, 1980.

Charles Swinburn,
Deputy Assistant Secretary for Policy and Internationol Affairs, Department of Transportation.

[FR Doc. 80-32947 Filed 10-22-80; 8:45 am]
BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY
Fiscal Service

[Dept. Circ. 570, 1980 Rev., Supp. No. 10]

Surety Companies Acceptable on Federal Bonds

WARNING—COUNTERFEIT SURETY BONDS

Federal agencies engaged in surety bonding operations and federal bond-approving officers are advised that counterfeit surety bonds may have been accepted by Government agencies. Therefore, the Treasury requests that federal agencies take positive steps to disseminate this notice to all agency bond-approving officers.

Individuals posing as employees or representatives of General Insurance Company of America, Seattle, Washington, are offering bogus bonds and commitments in Eastern Pennsylvania, New Jersey and New York. The U.S. Attorney's office in Philadelphia thinks the scheme could be nationwide.

The counterfeit bonds discovered so far were written using the General Insurance Company of America name with the initials N.A. or S.N. following and showing a business address of 1211 Chestnut Street, Philadelphia, Pennsylvania. However, this is not to say that other variations may not exist.

Neither "General Insurance Company of America, N.A." nor "General Insurance Company of America, S.N." nor their employees or agents, have any connection with nor any authority to issue bonds or make any commitment on behalf of the Seattle-based General Insurance Company of America.

General Insurance Company of America, organized in Washington State in 1923, is a member of the SAFECO group of companies. It is licensed to issue surety bonds in all states and holds a Treasury department certificate of authority as an acceptable surety on federal bonds. The company was last listed at FR 45 No. 128, page 44505 July 1, 1980 (Treasury Circular 570, 1980 Revision). This company is and has been in good standing with the Treasury Department and bona fide bonds issued by it should be accepted.

Federal bond-approving officers are advised to search their files from May 1, 1980 and to look closely at the name of the surety appearing on the bonds. Anyone finding a bond listing the General Insurance Company of America name with the initials N.A. or S.N. following, should refer the matter to Charles MCMannus of the U.S. Postal Inspector's Office , P.O. Box 7500, Philadelphia, Pennsylvania 19100, or phone Mr. McMannus on (215) 596-5208 or FTS 596-5208. Bond-approving officers should also closely examine the corporate seal impressed on the bond and the related power-of-attorney.

In order to verify the authenticity of a doubtful bond, bond-approving officers may call the General Insurance Company of America (or SAFECO Insurance Company) as listed in a local telephone directory or Ronald Goetsch, Manager of their eastern surety office in New Jersey, at (201) 967-5350, or Donald Spickard, Vice-President of the SAFECO Insurance Companies, at (206) 545-5627. (Caution-do not check authenticity by calling a phone number inserted or labeled on a bond or power-of-attorney.) In addition, anyone wishing a current listing of General Insurance Company of America's licensed independent agents may contact Mr. Goetsch.

If a bond-approving officer finds that he or she has accepted a counterfeit bond, strong steps should be taken to protect the interests of the Government and any laborers, materialmen or suppliers involved. At the discretion of the agency, such steps may include halting progress payments until the principal has furnished a satisfactory bond, defaulting a principal, requiring a principal to make positive arrangements to pay his suppliers, etc.

Questions concerning this notice should be directed to the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226 by phoning (202) 634-5010 or FTS 634-5010.

Dated: October 17, 1980.

W.E. Douglas,
Commissioner, Bureau of Government Financial Operations.

[FR Doc. 80-33065 Filed 10-22-80; 8:45 am]
BILLING CODE 4810-35-M

Office of the Secretary

Announcement of Public Meeting To Discuss U.S.-Tunisia Tax Treaty

The Treasury Department announces that it will hold a public meeting on November 19, 1980, to solicit the views of interested persons on issues being considered in the negotiation of an income tax treaty between the United States and Tunisia.

The public meeting will be held at the Treasury Department at 2:00 p.m., in Room 4125. Persons interested in attending are requested to give notice in writing by November 14, 1980, of their intention to attend. Notices should be addressed to H. David Rosenbloom, International Tax Counsel, Room 3064, Department of the Treasury, Washington, D.C. 20220.

There is no income tax treaty now in effect between the United States and Tunisia. Today's announcement of the public meeting follows a series of negotiations between representatives of the two countries based on the U.S. and OECD model income tax treaties.

The Treasury seeks the views of interested persons on any of the items covered in those models and on any aspect of Tunisian income tax relevant to such a treaty, including the taxation of dividends, interest, royalties, film rentals, insurance, and independent personal services.

Dated: October 17, 1980.

Donald C. Lubick,
Assistant Secretary (Tax Policy).

[FR Doc. 80-33053 Filed 10-22-80; 8:45 am]
BILLING CODE 4810-25-M

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Sunshine Act Meetings

Federal Register
Vol. 45, No. 207
Thursday, October 23, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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[M-297; Oct. 21, 1980]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 9:30 a.m., October 21, 1980.

PLACE: Room 1012, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: Recommended Position for United States-Brazil consultations, Scheduled to Begin on October 27, 1980 in Rio de Janeiro, Brazil.

STATUS: Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-1948-80 Filed 10-21-80; 3:45 pm]
BILLING CODE 6320-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of changes in subject matter of agency meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, October 20, 1980, the Corporation's Board of Directors determined, on motion of Chairman Irvine H. Sprague, seconded by Director William M. Isaac (Appointive), concurred in by Director John G. Heimann (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:
Case No. 44,519-NR (amended)—United States National Bank, San Diego, California.
Case No. 44,535-NR—United States National Bank, San Diego, California.
Case No. 44,536-L—The Mission State Bank & Trust Company, Mission, Kansas.
Memorandum and Resolution re: Tri-City Bank, Warren, Michigan.

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(9)(B) and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(9)(B) and (c)(10)).

Dated: October 20, 1980.
Federal Deposit Insurance Corporation.
Alan J. Kaplan,
Assistant Executive Secretary.

[S-1944-80 Filed 10-21-80; 2:54 pm]
BILLING CODE 6714-01-M

3

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Tuesday, October 28, 1980 at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Personnel. Litigation. Audits. Expedited Compliance.

* * * * * *

DATE AND TIME: Wednesday, October 29, 1980 at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Any matters not concluded on October 28, 1980.

* * * * * *

DATE AND TIME: Wednesday, October 29, 1980 at 2 p.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Expedited compliance.

* * * * * *

DATE AND TIME: Thursday, October 30, 1980 at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C. (fifth floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates for future meetings.
Correction and approval of minutes.
Advisory Opinions:
AO 1980-113: H. Oliver Welch, Treasurer, Zell Miller for U.S. Senate.
1980 Election and related matters.
Appropriations and budget.
Pending legislation.
Classification actions.
Routine administrative matters.

* * * * * *

DATE AND TIME: Thursday, October 30, 1980 (following the regular open meeting).

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Expedited compliance.

* * * * * *

DATE AND TIME: Friday, October 31, 1980 at 2 p.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Expedited compliance.

* * * * * *

DATE AND TIME: Monday, November 3, 1980 at 2 p.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Expedited compliance.

* * * * * *

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Public Information Officer; telephone: 202-523-4065.

Marjorie W. Emmons,
Secretary to the Commission.

[S-1945-80 Filed 10-21-80; 3:37 pm]
BILLING CODE 6715-01-M

4

INTERSTATE COMMERCE COMMISSION.

TIME AND DATE: 9:30 a.m., Tuesday, October 28, 1980.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue NW., Washington, D.C. 20423.

STATUS: Open special conference.

MATTER TO BE DISCUSSED: Standards for Temporary Authority and Emergency Temporary Authority.

CONTACT PERSON FOR MORE INFORMATION: Douglas Baldwin, Director, Office of Communications; telephone: (202) 275-7252.

[S-1941-80 Filed 10-21-80; 8:45 am]
BILLING CODE 7035-01-M

5

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Week of October 20, 1980.

PLACE: Commissioners conference room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED: Thursday, October 23:

10 a.m.

Discussion of Management-Organization and Internal Personnel Matters (approximately 1½ Hours, closed—Exemption 2 and 6) (tentative).

2 p.m.

Affirmation Session (Approximately 10 minutes, public meeting):
a. SECY-80-364A—Fees for Withdrawn Applications.
b. SECY-80-375—10 CFR 50 Revision on Fracture Toughness.
c. Order on Instructions to Board on Indian Point Proceeding.
d. SECY-80-223A—Amendments to Parts 2.786(a) and 2.206(c) (tentative).

(Items b. and c. are postponed from October 16).

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634-1410.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634-1498.

Those planning to attend a meeting should reverify the status on the day of the meeting.

October 16, 1980.
Walter Magee,
Office of the Secretary.

[S-1943-80 Filed 10-21-80; 2:29 pm]
BILLING CODE 7590-01-M

6

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (To be published.)

STATUS: Open meeting/closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Thursday, October 16, 1980.

CHANGES IN THE MEETING: Additional items. The following additional item will be considered at an open meeting scheduled for Wednesday, October 22, 1980, at 10 a.m.:

Consideration of what response to make to the Freedom of Information Act ("FOIA") appeal of Lee T. Gesmer. The FOIA Officer denied Mr. Gesmer's request for access to certain documents in the Commission's investigative file relating to J. Ray McDermott & Co. For further information, please contact Robert Mills at (202) 272-3088.

The following additional item will be considered at a closed meeting scheduled for Wednesday, October 22, 1980, following the 10 a.m. open meeting:

Institution of injunctive action.

Chairman Williams and Commissioners Loomis, Evans, and Friedman determined that Commission business required the above changes and that no earlier notice thereof was possible.

At time changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Marcia MacHarg at (202) 272-2468.

October 20, 1980.

[S-1942-80 Filed 10-21-80; 12:10 pm]
BILLING CODE 8010-01-M

7

U.S. SYNTHETIC FUELS CORPORATION.

Meeting of the Board of Directors.

ENTITY: United States Synthetic Fuels Corporation.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Board of Directors of the United States Synthetic Fuels Corporation to be held at the time, date and place specified below. The Chairman of the Board may entertain a motion during the meeting to close a portion thereof insofar as it relates to matters specified in Section 116(f)(1)(A through C) of the United States Synthetic Fuels Corporation Act of 1980, Pub. L. 96-294.

TIME AND DATE: 10:00 a.m. on October 27, 1980.

PLACE: Arlington Room, Madison Hotel, 15th and "M" Streets NW., Washington, D.C.

PERSON TO CONTACT FOR MORE INFORMATION: Carl Gustin, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-4292.

United States Synthetic Fuels Corporation.
John Sawhill,
Chairman of the Board.

October 21, 1980.

[S-1950-80 Filed 10-22-80; 10:50 am]
BILLING CODE 6450-01-M

V 45 OC 23 80 UMI

federal register

Thursday
October 23, 1980

Part II

Department of Transportation

Federal Aviation Administration

Combustion Heater Fire Protection in Small Airplanes: Final Type Certification Standards

V 45 OCT 23 80 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 20052; Amdt. No. 23-27]

Combustion Heater Fire Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to upgrade the type certification standards for combustion heater installations in small airplanes. The amendment, incorporating recommendations of the National Transportation Safety Board, improves safety standards applicable to combustion heaters used in the operating environment by newer high-performance small airplanes. This amendment adopts a rule substantially the same as currently applicable to transport category airplanes.

EFFECTIVE DATE: November 19, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Eli S. Newberger, Regulatory Projects Branch, AVS-24, Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; Telephone (202) 755-8716.

SUPPLEMENTARY INFORMATION:

Background

Airplane combustion heaters require four elements for operation: Fuel, ignition, combustion air, and ventilating air. Combustion air provides the oxygen required to support the flame in the heater burner and ventilating air is used to convey the heat to airplane areas where needed. Fuel, exhaust air, combustion air, and ventilating air present special design problems in connection with hazardous conditions resulting from leaks, breakage, and fire in supply ducts and lines in the vicinity of the heater.

As a result of the favorable strength-weight properties of plastic materials, many normal category airplanes are equipped with various combustion heater components made of plastic, such as inlet hoses, inlet plenums, and foam insulation material. However, the National Transportation Safety Board (NTSB) has determined that certain of these plastic components may emit poisonous or noxious fumes when heated which could enter the cabin through the heating and ventilating system and have adverse safety effects on the airplane occupants. As a result, the NTSB recommends that the type certification standards applicable to Part 23 airplanes be amended by adding a requirement that the ventilating airstream be protected from backfiring and reverse burning and that combustion and ventilating air ducts in close proximity to a combustion heater be constructed of fireproof materials. The NTSB has not recommended that any of the new requirements be made retroactive to currently operating small airplanes.

The FAA agrees with the analysis provided by the NTSB and the corresponding recommendations. The FAA's further review indicates that the entire Part 23 combustion heater fire protection requirement should be upgraded.

Combustion heaters are not required items of airplane equipment. However, when installed, such heaters must meet specified fire protection requirements. Section 23.859 is essentially a recodification of Civil Air Regulation § 3.388(b). The standard, which has been in effect for many years, was developed at a time when combustion heaters were not extensively used in normal category airplanes and the airplanes themselves, generally single-engine, were limited as to the kinds of weather and altitudes at which they could be operated. As Part 23 airplanes become more sophisticated with two engines and capability for operations into virtually all kinds of weather and at high altitudes, the use of combustion heaters becomes more prevalent. In this connection, it is to be noted that combustion heaters are not normally installed in single-engine airplanes which use manifold heaters or in turbine-powered airplanes where high temperature bleed air is available.

The design complexity and operational altitude and weather capability of current Part 23 piston-powered airplanes may necessitate installation of combustion heaters for occupant survival and airplane heating to counteract windshield icing conditions. Part 25 presently contains updated type certification requirements for combustion heater fire protection that are applicable regardless of the size of airplane in which the heater is installed. Among these requirements are those for fireproof air ducts and protection of the ventilating airstream from backfire and reverse burning, as recommended by the NTSB for inclusion in Part 23. In addition, Part 25 designates fire zones, requires fire detection means, contains heater control requirements, sets forth air intake location standards, gives heater exhaust requirements, and provides for fuel system protection and drainage. These requirements constitute the necessary minimum safety standards for combustion heater fire protection for any high-performance airplane.

Because of the increasing sophistication of normal category small airplanes and the expanded operating environment for which they are designed and used, the FAA has determined that more stringent type certification fire protection and detection standards are needed for combustion heaters when such heaters are installed in these airplanes. In view of the technical similarities between these airplanes and airplanes designed to Part 25 standards, the Part 25 standards for combustion heater fire protection are substantially adopted as type certification requirements for Part 23.

With the issuance of this amendment, the FAA has responded affirmatively to all the NTSB recommendations concerning combustion heater fire protection for Part 23 airplanes. One of those recommendations was that the FAA issue a maintenance bulletin emphasizing the importance of inspections of the heater combustion air inlet hose and plastic ventilating air inlet plenum. A bulletin with this information appears in the General Aviation Inspection Aids Summary, AC No. 20-7P, issue dated August 1977.

In addition to the recommendations of the NTSB, the FAA considered the service experience of operators in determining applicability of this amendment. Records of this experience, available to the FAA through its Service Difficulty Reporting Program, show that only four instances of combustion heater malfunction causing smoke or fumes in small airplane cabins were reported by operators in the period June 1, 1974, to January 10, 1980. In these cases, none of which involved accidents, the problems were attributed to material defects or lack of maintenance and not to combustion or overheating of plastic components.

Based on the foregoing considerations, this amendment applies only to future Part 23 airplanes produced under new type certificates that will incorporate the rule as part of the individual type certification bases. In the current picture, in view of the inspection guidance that has been issued and the reported service experience, safety considerations do not indicate a need to apply the new standard to airplanes in production under existing type certificates or retroactively to operating airplanes. It is to be noted, however, that manufacturers may elect to incorporate the new standard into

current production airplanes by obtaining approval of changes to existing type certificates under the procedures set forth in Part 21, Subparts D and E, of the Federal Aviation Regulations.

This amendment is part of the FAA's ongoing regulatory program to upgrade type certification standards as necessary in the interest of safety to make them consistent with the state-of-the-art of aircraft design. The rule is fully compliant with the President's directive (Executive Order 12044) that existing regulations be evaluated after their issuance under criteria that consider the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

This amendment is based on Notice of Proposed Rule Making No. 80-3 as published in the Federal Register (45 FR 13106) on February 28, 1980. Interested persons have been afforded an opportunity to participate in the making of this amendment and due consideration has been given to all matter presented. Except for the changes discussed below, this amendment and the reasons for its adoption are the same as those contained in Notice No. 80-3. Non-substantive editorial and clarifying changes have been made based upon relevant comments received and upon further review by FAA.

Discussion of Comments

Five individual sets of public comments were submitted in response to Notice of Proposed Rule Making No. 80-3. Two commenters are in substantial agreement with the proposed rule change while two others question any need for a change. The fifth commenter merely suggests that the rule be made retroactive, without giving any justification.

The NTSB supports the proposed rule change and recommends that Part 25 standards be substantially adopted for Part 23 airplanes. The FAA agrees.

Another commenter that is in substantial agreement with the proposal points out that the current requirements in § 25.859 were developed in response to early service experience with combustion heating equipment and have been found to be necessary and adequate. They are validated by numerous successful applications and represent today's state-of-the-art for combustion heater safety. The FAA agrees that the evaluation of § 25.859 (and the earlier similar CAR 4b.388 from which § 25.859 was recodified) was based on service experience over the years and, as pointed out in Notice 80-3, similar requirements are needed for Part 23 airplanes. This commenter points out, however, that the second sentence of proposed § 23.859(a)(3) is redundant because fire extinguishment is not required in Part 23 airplanes. The FAA agrees and that sentence is deleted.

The arguments raised by the two remaining commenters are essentially the same although phrased differently. They do not address the substance of the proposed amendment but rather contend that industry has coped successfully with the existing rule by complementing the existing rule with interpretive material (CAM 3.388-1 through -4) and reasonable administration. They state that such an approach is sound regulation and should continue to be used. The FAA disagrees for the reason that interpretive material and sound administration are not mandatory and, while one manufacturer may faithfully use this material in its certification process, it is not enforceable and cannot be imposed on a manufacturer without special conditions or its cooperation. The commenters' acknowledgment that the current rule does not stand by itself is recognition that the amendment is necessary. The commenters also point out that there is a fundamental difference in the objectives contemplated by Part 25 combustion heater standards and the present use of Part 23 combustion heaters. They imply that when a heater is used for comfort only, as opposed to continued airworthiness (that is, anti-icing), the proposed standards are not needed. The FAA disagrees since the objective of the rule is to provide for an improved installation with regard to fire protection irrespective of the heater's operational use or reliability.

Economic Considerations

Both of the commenters having dissenting views question the FAA cost estimate of $1,500 to upgrade a combustion heater installed in a production airplane in compliance with current § 23.859 as opposed to one installed in accordance with the proposed rule. One commenter suggests that the FAA further study the cost impact. The commenter suggests that the cost to the purchasing operator is in the range of $5,500 to $6,000.

The FAA conducted a thorough cost impact analysis that is reported in the Cost Impact Statement included in the regulatory docket for this action. That analysis shows that one combustion heater manufacturer, who produces approximately 60 percent of heaters used in commercial aviation, determined that its heaters already meet Part 25 rules and, therefore, no additional cost would be incurred. Another heater manufacturer, who produces the remaining units, estimates an increase of $135.00 per unit to upgrade its equipment. The costs to airplane manufacturers to comply with the rule range from $350 to $1,550, including heater system, ducts, miscellaneous components, and fireproof lines and fittings. The average cost for upgrading, therefore, is $950.00 per airplane. In this connection, the dollar values cited by the commenter are not inaccurate since they specifically refer to the cost to the purchaser. The FAA study reveals that the $6,000 would be the result of a high markup to the customer. Conversely a low markup for a similar installation would cost the customer $1,000. Comparative data—cost to the manufacturer versus cost to the customer—show that a low markup would be a 5 percent markup while the high markup cited by the commenter represents a 530 percent increase. The FAA estimate of $1,500 as the cost to comply with the amended rules is based on an average increase in the cost to the manufacturer to produce the airplane without considering profit margins various manufacturers might impose on their customers.

The Amendment

In consideration of the foregoing, Part 23 of the Federal Aviation Regulations (14 CFR Part 23) is amended effective November 19, 1980, by revising § 23.859 to read as follows:

§ 23.859 Combustion heater fire protection.

(a) *Combustion heater fire regions.* The following combustion heater fire regions must be protected from fire in accordance with the applicable provisions of §§23.1182 through 23.1191 and 23.1203:

(1) The region surrounding the heater, if this region contains any flammable fluid system components (excluding the heater fuel system) that could—

(i) Be damaged by heater malfunctioning; or

(ii) Allow flammable fluids or vapors to reach the heater in case of leakage.

(2) The region surrounding the heater, if the heater fuel system has fittings that, if they leaked, would allow fuel vapor to enter this region.

(3) The part of the ventilating air passage that surrounds the combustion chamber.

(b) *Ventiloting air ducts.* Each ventilating air duct passing through any fire region must be fireproof. In addition—

(1) Unless isolation is provided by fireproof valves or by equally effective means, the ventilating air duct

downstream of each heater must be fireproof for a distance great enough to ensure that any fire originating in the heater can be contained in the duct; and

(2) Each part of any ventilating duct passing through any region having a flammable fluid system must be constructed or isolated from that system so that the malfunctioning of any component of that system cannot introduce flammable fluids or vapors into the ventilating airstream.

(c) *Combustion air ducts.* Each combustion air duct must be fireproof for distance great enough to prevent damage from backfiring or reverse flame propagation. In addition—

(1) No combustion air duct may have a common opening with the ventilating airstream unless flames from backfires or reverse burning cannot enter the ventilating airstream under any operating condition, including reverse flow or malfunctioning of the heater or its associated components; and

(2) No combustion air duct may restrict the prompt relief of any backfire that, if so restricted, could cause heater failure.

(d) *Heater controls: general.* Provision must be made to prevent the hazardous accumulation of water or ice on or in any heater control component, control system tubing, or safety control.

(e) *Heater safety controls.* (1) Each combustion heater must have the following safety controls:

(i) Means independent of the components for the normal continuous control of air temperature, airflow, and fuel flow must be provided to automatically shut off the ignition and fuel supply to that heater at a point remote from that heater when any of the following occurs:

(A) The heater exchanger temperature exceeds safe limits.

(B) The ventilating air temperature exceeds safe limits.

(C) The combustion airflow becomes inadequate for safe operation.

(D) The ventilating airflow becomes inadequate for safe operation.

(ii) Means to warn the crew when any heater whose heat output is essential for safe operation has been shut off by the automatic means prescribed in paragraph (e)(1)(i) of this section.

(2) The means for complying with subparagraph (1)(i) of this paragraph for any individual heater must—

(i) Be independent of components serving any other heater whose heat output is essential for safe operations; and

(ii) Keep the heater off until restarted by the crew.

(f) *Air intakes.* Each combustion and ventilating air intake must be located so that no flammable fluids or vapors can enter the heater system under any operating condition—

(1) During normal operation; or

(2) As a result of the malfunctioning of any other component.

(g) *Heater exhaust.* Heater exhaust systems must meet the provisions of §§ 23.1121 and 23.1123. In addition, there must be provisions in the design of the heater exhaust system to safely expel the products of combustion to prevent the occurrence of—

(1) Fuel leakage from the exhaust to surrounding compartments;

(2) Exhaust gas impingement on surrounding equipment or structure;

(3) Ignition of flammable fluids by the exhaust, if the exhaust is in a compartment containing flammable fluid lines; and

(4) Restrictions in the exhaust system to relieve backfires that, if so restricted, could cause heater failure.

(h) *Heater fuel systems.* Each heater fuel system must meet each powerplant fuel system requirement affecting safe heater operation. Each heater fuel system component within the ventilating airstream must be protected by shrouds so that no leakage from those components can enter the ventilating airstream.

(i) *Drains.* There must be means to safely drain fuel that might accumulate within the combustion chamber or the heater exchanger. In addition—

(1) Each part of any drain that operates at high temperatures must be protected in the same manner as heater exhausts; and

(2) Each drain must be protected from hazardous ice accumulation under any operating condition.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423), sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—The FAA has determined that this document involves a regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the person identified earlier in this document as contact for further information.

Issued in Washington, D.C., on October 10, 1980.

Langhorne Bond,

Administrator.

[FR Doc. 80-32680 Filed 10-22-80; 8:45 am]

BILLING CODE 4910-13-M

V 4 5 O C 2 3 8 0 UMI

federal register

Thursday
October 23, 1980

Part III

Department of Transportation

Research and Special Programs Administration

Liquefied Natural Gas Facilities; Federal Safety Standards

V 45 OCT 23 1980 UMI

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 193

[Amdts. 192-36 and 193-2; Docket OPSO-46]

Liquefied Natural Gas Facilities; Federal Safety Standards

AGENCY: Materials Transportation Bureau (MTB), DOT.

ACTION: Final rule.

SUMMARY: This final rule establishes new safety standards governing the operations, maintenance (including corrosion control), fire protection, personnel qualifications and training, and security of liquefied natural gas (LNG) facilities used in the transportation of gas by pipeline in or affecting interstate or foreign commerce. Present regulations are considered inadequate because they do not provide an acceptable level of safety.

EFFECTIVE DATES: In Part 192 the provisions of § 192.12 applicable to design, installation, construction, initial inspection, and initial testing are revoked effective March 15, 1980, and the remaining provisions are revoked effective when corresponding provisions take effect under Part 193 as set forth below. In Part 193, the amendments to §§ 193.2005 and 193.2007 and the addition of §§ 193.2304 and 193.2431(c) become effective November 24, 1980. To allow an appropriate time to conduct required studies and analyses, prepare plans and procedures, and train and test personnel, the new rules for operations, maintenance, personnel qualifications and training, fire protection, and security (including § 193.2017) become effective July 23, 1980, except that the following sections, which may require a longer period for the purchase and installation of new equipment or material do not become effective until January 1, 1982: §§ 193.2511, 193.2519, 193.2817, 193.2819, 193.2821, 193.2905, 193.2907, 193.2909, 193.2911 and 193.2915.

FOR FURTHER INFORMATION CONTACT: Walt Dennis, (202) 426-2392.

SUPPLEMENTARY INFORMATION:

Background

On January 30, 1980, MTB issued a notice of proposed rulemaking (Notice 5; Docket OPSO-46) (NPRM) for the addition of new Federal safety standards to 49 CFR Part 193 governing the operation, maintenance, fire protection and security of LNG facilities (45 FR 9220, February 11, 1980). The NPRM was preceded by an advance notice of proposed rulemaking (42 FR 20776, April 21, 1977), and based, in part, on the 1975 edition of the National Fire Protection Association standards, NFPA 59A "Storage and Handling Liquefied Natural Gas". The NPRM was issued under authority of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671 et seq.), as amended by the Pipeline Safety Act of 1979 (Pub. L. 96-129, November 30, 1979) (hereafter, "the Act") which specifically requires that new standards be established.

Interested persons were given until May 9, 1980, to comment on the proposed rules; and 69 different persons submitted comments, primarily LNG facility operators and their trade associations but also State and Federal agencies, non-industry and industry related organizations, and individuals.

In accordance with section 4 of the Act, the Technical Pipeline Safety Standards Committee (TPSSC) met in Washington, D.C., on June 17-20, 1980, to review the technical feasibility, reasonableness, and practicability of the regulations proposed in the NPRM. The Committee's report is available in the docket and may be obtained by writing to the Docket Branch, Materials Transportation Bureau, 400 Seventh Street, S.W., Washington, D.C. 20590. Where MTB has not adopted the views of the TPSSC, an explanation is provided below regarding the section concerned.

Since the NPRM was issued, both the National Transportation Safety Board (NTSB) and the House Subcommittee on Energy and Power have made recommendations as a result of their investigations of the explosion and fire, killing one person and injuring another with an estimated $3 million cost, at the Cove Point, Maryland LNG receiving terminal. MTB considered the NTSB report, dated April 16, 1980 (NTSB Par-80-2) and the House Subcommittee Report, dated May, 1980 (Committee Print 96-IFC 46) as relevant information in the development of the final rules.

Waterfront Facilities

Concurrent with this proceeding the United States Coast Guard (USCG) is developing regulations for the storage and handling of hazardous materials, including LNG, at waterfront facilities. In conjunction with this effort, MTB has coordinated these final rules with the USCG to avoid any problems of possible inconsistent regulatory approach.

This coordination was carried out under the Memorandum of Understanding (MOU) between MTB and the USCG on the regulation of waterfront LNG facilities (see Notice 4; 44 FR 8146). Under this MOU and these final rules, fire protection and security at waterfront LNG facilities are subject to USCG rather than MTB jurisdiction. This policy is reflected in the sections setting forth the scopes of Subparts I and J.

The comments to Notice 5 generally did not disagree with the wording of the proposed definition of "waterfront LNG facility" (45 FR 9222). It, therefore, is adopted as final in § 193.2007, but changed to use the term "LNG plant".

Definition of "Component"

A number of commenters argued that the term "component" is not defined clearly enough under § 193.2007 to convey the intended meaning of the term, and misunderstandings or economic impracticabilities could result in applying the new standards. These commenters argued that as currently defined "component" could include virtually every piece of equipment at an LNG plant, regardless of signficance, and even parts of that equipment, such as a seal.

Under § 193.2007, the definition of "LNG facility" matches the definition of this term in the Pipeline Safety Act of 1979, and speaks of "pipeline facilities" that are used for LNG purposes. In a similar fashion, the definition of "component" is intended to carve out from the full range of facilities called "LNG facilities" those facilities that provide safety. Thus, where the term is used in a substantive requirement of Part 193, that requirement applies only to facilities of an LNG plant that are safety-related, or whose failure to function as designed could result in a danger to the public or plant personnel. In light of the comments, that this intended meaning be expressed more clearly, the term "component" is redefined to mean "any part, or system of parts functioning as a unit, including, but not limited to, piping, processing equipment, containers, control devices, inpounding systems, lighting, security devices, fire control equipment, and communication equipment, whose integrity of reliability is necessary to maintain safety in controlling, processing, or containing a hazardous fluid."

Under this new definition, an individual part, such as a gasket, of a piece of equipment would not be a component, because the equipment is considered as a whole. A lamp post would not be a component, but an entire lighting unit would be if its integrity or reliability is necessary for safety in providing for control, processing, or containment of a hazardous fluid. A protective enclosure erected under Subpart J for security purposes would be a component, since its integrity is essential to plant safety. A fire hydrant would be a component, since it used to provide for safe handling of flammable fluids.

As a result of this change, it is unnecesary to qualify the term "component," where it is used in the new standards, by such phrases as "whole malfunction would cause a hazardous condition". Qualifying phrases like this one were recommended by many commenters and TPSSC where they considered it appropriate to limit the scope of a proposed standard related to components.

Size of Facilities

The NPRM asked that interested persons tell MTB where different standards might be appropriate because of LNG facility size or extent of operation and its associated risk (45 FR 9222). In consideration of the arguments received on this topic, a few of the final rules (e.g., § 193.2817(b)(2)) do not apply to plants below certain amounts of storage capacity.

Standards Affecting Design

At least two industry commenters asserted that retroactive application to an existing LNG facility of standards affecting design or construction is restricted by section 6(c) of the Act, and that many of the proposed standards contravene that mandate.

MTB concedes that both proposed and final standards, primarily in the areas of fire protection and security, could, depending on the condition of an existing plant, require design modifications or new construction for compliance. We do not agree, however, that application of these standards to existing plants is forbidden by the Act as asserted by the commenters. While section 6 of the Act restricts the application of design and construction standards to new facilities or certain replacements at existing facilities, this restriction applies to new standards for the design or construction of facilities like containers, piping, and control systems that are used directly in the processing and handling of LNG. The restriction does not apply to facilities that are needed to assure adequate fire protection capabilities, security, or safe operations at an existing plant. This distinction is made evident by section 6(d)(3) of the Act. which specifically requires that the Secretary, in prescribing general safety standards for the operation and maintenance of "any LNG facility" (which includes existing facilities), consider the condition and type of equipment used, fire prevention and containment equipment, security measures to prevent sabotage, and other factors relating to safe handling of LNG. Since new or modified equipment may be needed to carry out the full intent of this section of the Act that safe operation and adequate fire protection and security be assured at existing plants, section 6(c) cannot be broadly construed, as the commenters have, so as to limit the authority granted over these matters by section 6(b) and section 6(d) of the Act.

Notwithstanding the issue of whether certain operation and maintenance standards that affect design and construction are legally authorized, MTB has recognized the need in many instances for an appropriate lead time for compliance with these standards. In this regard, the effective dates are extended until January 1, 1982, as provided above under the Effective Dates heading.

Safety Analysis

In its comment to the NPRM, NTSB argues that the final rules should contain "an explicit requirement for the use of safety analysis techniques * * * to reduce to a minimum the risk of remaining system hazards". NTSB also made similar recommendations in its report on the Cove Point, Maryland incident.

NTSB concedes in its comment that many of the proposed standards would, in effect, require the use of safety analysis techniques in order to meet the objectives of the standards. For example, in developing operating and emergency procedures. An operator must foresee potential hazards and be able to eliminate or control them. Likewise, under Subpart I, an operator must predict the types and sizes of fires and the places they may occur and plan steps to avoid or control fires. Nevertheless, NTSB states these requirements may not be effective unless operators are also required to use "applicable safety analysis techniques." the results of which would be available to MTB in assessing the acceptability of procedures and plans that are formulated. NTSB seems to say, therefore, that some additional benefits could be obtained if the final rules were to identify the required efforts as "safety analyses" and if the level of sophistication of the analysis were spelled out.

MTB presented this issue before the TPSSC at its meeting in June. While no formal recommendations were made, the discussion brought out the points that safety analyses are advantageous and done as a normal part of design as well as planning for emergency preparedness. It could also be concluded from the discussion that regardless of the type of analysis performed, anything less sophisticated than that done for airplane or space vehicle design probably would not identify all potential safety problems at a plant.

In view of this discussion, the safety history of LNG facilities, and the lack of consensus and opportunity for public participation on the methods that should be used in an analysis. MTB has decided not to specify in the final rules the types or levels of analyses that must be performed by operators in preparing the required plans and procedures. This does not mean the issue is closed, however. As MTB gains more information about the reliability of analysis techniques used to comply with Part 193 through its field review of studies, plans, and procedures that operators are required to prepare, it will be better able to judge the merits of different approaches, with a view toward standardization if warranted.

49 CFR 192.12

Before new standards for the siting, design, and construction of LNG facilities were published in Part 193 last February 11, the only MTB standards for LNG facilities were prescribed by 49 CFR 192.12. Section 192.12 references NFPA 59A (1972 edition) and other requirements of Part 192 for the siting, design, construction, operation and maintenance of LNG facilities. The newly issued standards in Part 193 superseded the related standards of section 192.12 for the siting, design, and construction of LNG facilities that were not under construction before February 11, 1980, except facilities for which an application was filed before March 1, 1978, as described in section 193.2005(a)(2). The excepted facilities are defined by the Act as "existing LNG facilities". In accordance with the Act, siting, design and construction standards issued after March 1, 1978, may not be applied to existing LNG facilities (subject to the exceptions provided by section 193.2005(b)). Therefore, the siting, design, and construction of existing LNG facilities not under construction before February 11, 1980. Are governed by the applicable standards of section 192.12 not including applicable standards issued in Part 192 after March 1, 1978.

The application of Part 192 standards to existing LNG facilities is now provided in Part 193 by section 193.2005(c). This provision is modified by this document to conform with statutory intent and to permit the alternative of compliance with Part 193.

Without this alternative, facilities not under construction before February 11, 1980, might be forced in some instances to comply with outmoded 1972 NFPA 59A standards. Existing LNG facilities that are subject to the 1972 edition of NFPA 59 referenced in section 192.12 are those that were not under construction before July 1, 1976, the date the 1972 edition became effective under Part 192.

When standards for the operation and maintenance of LNG facilities take effect under Part 193 as provided above in this final rulemaking document, they will supersede standards for those subjects under 49 CFR 192.12. As a result, section 192.12 will thereafter be beneficial only as an historical reference to applicable standards and as current standards for siting, design, and construction of certain existing LNG facilities as discussed above. Since the application of Part 192 standards to existing LNG facilities is provided by section 193.2005(c) and since standards without current effect are normally not codified for historical purposes, 49 CFR 192.12 is revoked by this document, effective coincidentally with the effective dates of the final rules.

The following table shows the relation between section numbers in the January 30, 1980, NPRM and the section numbers in this final rule. Some of the section titles have been changed.

Final rule	*NPRM*
193.2017	.....
193.2304	193.1405
193.2431(c)	193.1310(g)
193.2501	193.1101
193.2503	193.1105
193.2505	193.1106
193.2507	193.1107
193.2509	193.1109
193.2511	193.1111
193.2513	193.1117
193.2515	193.1121
193.2517	193.1139
193.2519	193.1140
193.2521	193.1141
193.2601	193.1201
193.2603	193.1203
193.2605	193.1205
193.2607	193.1206
193.2609	193.1206a
193.2611	193.1207
193.2613	193.1208
193.2615	193.1209
193.2617	193.1211
193.2619	193.1215
193.2621	193.1217
193.2623	193.1219
193.2625	193.1402
193.2627	193.1407
193.2629	193.1409
193.2631	193.1411
193.2633	193.1415
193.2635	193.1419
193.2637	193.1421
193.2639	193.1423. 193.1221
193.2707	193.1103. 193.1403
193.2709	193.1124a
193.2711	193.1113
193.2713	193.1115
193.2715	193.1124
193.2717	193.1311
193.2719	193.1313
193.2801	193.1301
193.2803	193.1303
193.2805	193.1305
193.2807	193.1306
193.2809	193.1306a
193.2811	193.1306b
193.2813	193.1306c
193.2815	193.1306d
193.2817	193.1308
193.2819	193.1310
193.2821	193.1310a
193.2901	.....
193.2903	193.1123
193.2905	193.1125
193.2907	193.1127
193.2909	193.1130
193.2911	193.1131
193.2913	193.1133
193.2915	193.1134
193.2917	193.1135

Sectional Analysis

The following portion of this preamble discusses the significant comments to the NPRM and their disposition in development of the final rules.

Plans and Procedures—Amendment of Subpart A (§ 193.2017)

In various sections of the NPRM, MTB proposed that procedures and revisions thereof be filed with the Director or the State Agency having jurisdiction. Under the NPRM, the Director or State Agency would also have been permitted to amend procedures that did not assure safety. As these proposed requirements were repetitive in many sections, MTB feels it is better to have one section covering this matter in Subpart A of Part 193, applicable as appropriate throughout the entire Part. Thus, a new § 193.2017 is added for that purpose. Filing is not required by the final rule for consistency with section 105 of the Act. Also, to provide for procedural safeguards, the Director or State agency must give notice and provide an opportunity for hearing before requiring any changes to plans or procedures.

Subpart F—Operations

Operating Procedures

Many commenters objected to the term "manual" in § 193.2503 and whereever a manual of written procedures was proposed in the NPRM. The commenters assumed that one bound volume would be required, and that a "cook-book" approach would have to be used, whereby personnel would have to have a manual with them open to the correct page to carry out their operational activities. This was not MTB's intent. However, to dispel the one-volume concept, in § 193.2503 and elsewhere MTB has modified the wording to read "one or more manuals". MTB would accept any number of pertinent documents such as pamphlets, instruction books, files of relevant materials and any other materials relating to operating procedures which individually or collectively are arranged in manual form. Personnel, in their training, would become familiar with and follow the precepts of those items in any manual of procedures related to their assigned functions, but they would not have to carry such material with them.

As proposed under § 193.2503, operators were to follow a manual of written procedures to "assure safety * * *." MTB accepts the suggestion that "provide" is a more appropriate word than "assure," for the latter implies a guarantee which the operator could not be expected to meet. A similar change has been made elsewhere in Part 193 where the intent is the same.

In response to additional comments to § 193.2503:

- § 193.2503(c) now requires procedures for recognition of abnormal operating conditions in general, rather than the specific ones listed in the NPRM.
- § 193.2503(e) has been rewritten to better express the intent, which is to control factors involved so that the resultant gas is within limits established for the vaporizer and the downstream piping.
- NPRM § 193.1105 (b), and (c) and have been deleted as they now appear in § 193.2017 in revised form.

Cooldown

Section 193.2505 has been revised to reflect MTB's agreement that cooldown is normally achieved in systems of components, rather than in individual components. MTB also agrees that the proposed requirement to inspect flange gaskets and seals after cooldown is physically impossible. Therefore, § 193.2505(b) now requires operators to check for leakage in the areas of flanges and seals, as well as valves.

Monitoring Operations

Comments on § 193.2507 pointed out that certain sensing, warning, and control devices are used only periodically for certain functions, and that continuous monitoring of such devices should not be required. MTB agrees, and has deleted the term "continuously" in § 193.2507. In accordance with § 193.2503(a), the details of monitoring would have to be included in the operating procedures.

Comments to § 193.2507 also questioned the intent of requiring components to be monitored from a control center. It was felt that the term "control center" implied the necessity to monitor all individual components equipped with sensing, warning, and control devices from a central location, even when such devices for a component are located at the component site. This was not exactly MTB's intent, which was to provide for monitoring from an attended location. However, the term "control center" is being retained in the final rule, with the understanding that control stations at component sites are to be considered "control centers" for the purpose of complying with the § 193.2507 monitoring requirement.

It was proposed that components and buildings not monitored from a control center be monitored by a daily inspection or test. Commenters reasoned that daily testing or inspection would be onerous and may be "overkill" or "underkill," depending on the characteristics of an individual component or building. MTB agrees, and has modified § 193.2507 to permit operators to establish the testing or inspection intervals, which must be specified in the operating procedures. The proposal for direct observation of startups, shutdowns, and transfer operations has been deleted in recognition that many components operate automatically to maintain preset conditions and the safety of startups, shutdowns and transfers as provided for by procedures under Subpart F.

Emergency Procedures

Several comments to § 193.2509 objected to including structural collapse and personnel error as factors in determining the types and places of emergencies that may reasonably be expected to occur at an LNG facility. These terms are retained in paragraph (a) of the final rule because the standard of "may reasonably be expected to occur" qualifies the paragraph adequately so as not to create any hardship to the operator. Also, in paragraph (a) as well as elsewhere in this Part, the term LNG plant replaces the term LNG facility, where the broader context is intended.

In response to the majority of the comments on § 193.2509(b)(2), MTB has deleted the reference to "early notification of local law enforcement officials" and inserted in its place "prompt notification of appropriate local officials." This change is warranted given the involvement of more than just law enforcement personnel in responding to emergencies at an LNG plant. The word "prompt" replaces "early" to convey better the intent that notice be given quickly after an emergency becomes uncontrollable.

As proposed, § 193.2509(b)(3) would have required operators to prepare an emergency evacuation plan, setting forth the steps required to protect the public in the event of a catastrophic failure of an LNG tank. Commenters expressed concern over the operator's ability to prepare such a plan without having the authority to unilaterally mandate that evacuation measures be taken. The final rule responds to that concern by requiring preparation of the plan in coordination with appropriate local authorities. Such coordination will assure that planned evacuation measures will be called for and taken.

NPRM §§ 193.1109 (c), (d) and (e) have been deleted from § 193.2509, as they now appear in § 193.2017 in revised form.

Personnel Safety

As suggested by TPSSC and other commenters, in § 193.2511 paragraph (a) is revised to require that the operator only provide any "special" clothing and equipment needed for emergency response, as the NPRM could have been interpreted to cover clothing and equipment needed to prevent injury during normal duties, a result MTB did not intend. Also, MTB agrees that the proposed term "shelter" used in § 193.1111(b) of the NPRM with respect to providing thermal radiation protection was too restrictive. It has been replaced in § 193.2511 by "means of protection" or "a means of escape," which would permit other options.

This is the first of nine O & M sections identified by the Draft Evaluation on the NPRM as having a high cost impact. Minimum and maximum estimated incremental costs for the NPRM, when compared to NFPA 59A (1975 edition), the former baseline, were respectively $3.417 and $4.081 million. These costs were due primarily to separate shelters required for the protection of plant personnel from potential thermal radiation.

The final rule permits water screens and other alternatives to brick or block structures contemplated in the NPRM. This flexibility is estimated to reduce corresponding estimated costs under the final rule to $1.24 and $1.50 million.

The new baseline, NFPA 59A (1979 edition), is modified, providing greater specificity in certain areas, but shelters or alternative measures are not required. Estimated costs are therefore unaffected. Accordingly, the preceding costs also apply to the final rule when compared to the new baseline.

NPRM § 193.1113, Personnel Performance, and § 193.1115, Personnel Training, now appear in Subpart H as §§ 193.2711 and 193.2713, respectively.

Transfer Procedures

Section 193.2513(b)(2) requires each operator to verify that a tank vehicle does not contain any substance that would be incompatible with the incoming fluid. Commenters questioned how verification could be accomplished regarding fluid compatibility in a vehicle not owned by the operator. In response, MTB expects that operators would check with the tank vehicle driver, examine the bill of lading or vehicle log, or ask the vehicle owner to tell what commodity had been previously carried. For clarification of the meaning of "stratification" in the NPRM, (b)(4) has been modified to state "to prevent rollover due to stratification."

There were some objections to the proposed § 193.1117(c)(2) which would have required positioning of a tank truck so that it need not exit the transfer area by backing after transfer has been completed. The objections focused on the need to rebuild facilities not designed for use without backing out. This proposal was based on a similar requirement that appears in paragraph 8–7.2.5 in NFPA 59A–1979; however, the change to § 193.2513(c)(2) discussed below should alleviate any safety problems posed by backing, and § 193.1117(c)(2) has thus been deleted.

Section 193.2513(c)(2) (§ 193.1117(c)(3) in the NPRM) has been revised to permit backing in the transfer area, provided a person is positioned at the rear of the truck giving instructions to the driver. Comments on this section convinced MTB that this arrangement provides for safe truck backing.

NPRM §§ 193.1117 (a), (e), and (f) have been deleted, as they now appear in § 193.2017 in revised form.

Accident Investigation

MTB agrees with commenters and TPSSC that "investigate" is more fitting than "determine" in § 193.2515(a), for in many cases, the cause of an accident may not be determinable. In paragraph (a), MTB has also adopted the commenter's and TPSSC's suggestion that the scope of accidents to be investigated be limited to ones involving explosion, fire or LNG spill or leak. The wide range of accidents proposed to be investigated, when combined with the threshold $10,000 value, would have resulted in many investigations outside the realm of those necessary to provide for safe operations.

Section 193.2515(b) has been revised to delete the proposed reporting requirement. MTB intends such reporting to be the subject of future rulemaking. Instead, a record of the investigation must be kept under § 193.2521.

Section 193.2515(c) now recognizes there may be occasions where a component involved in an incident may have to be moved when necessary to

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restore service or for safety purposes before approval from the Director or State Agency may be obtained. However, the component may not be removed from the plant site until the investigation is complete or the investigating agency otherwise provides.

This is the second of nine O & M sections estimated by the Draft Evaluation to have a high cost impact. Minimum and maximum estimated incremental costs for the NPRM, when compared to NFPA 59A (1975 edition), the former baseline, which has no comparable requirement, were respectively $4.495 and $5.384 million. These costs were due primarily to retainer fees and service charges for engineering consultants to make the required investigation, and for personnel time dedicated to reporting.

Under the final rule, substantive changes reducing the extent of investigations and eliminating most reporting requirements, reduce corresponding estimated costs to $1.25 and $1.52 million. These costs also apply to a comparison with the new baseline, NFPA 59A (1979 edition), which like the former baseline, has no comparable requirement.

Purging

MTB recognizes that purging may not always be necessary when components are taken out of service or before being returned to service as originally proposed. Thus under § 193.2517, purging is required only "when necessary for safety." MTB expects that the operating procedures developed under § 193.2503(d) will give guidance as to when purging is necessary. Likewise, as elsewhere in this Part, purging must be in accordance with a procedure which meets the provisions of AGA "Purging Principles and Practice," and the procedure must be specifically developed to fit the system being purged. Commenters pointed out that the AGA document does not by itself contain the steps necessary for purging.

Communication

Section 193.2519(b) has been revised to require emergency communication systems for LNG plants having in excess of 70,000 gallons storage capacity. Verbal communications would be adequate to deal with emergencies in smaller plants.

Many commenters objected to the requirement proposed in § 193.1140(c) for an auxiliary source of power for each communication system, specifically with regard to sound powered or battery powered equipment. MTB has exempted sound powered equipment, but feels a plant should have spare (new or recharged) batteries on hand as replacements, and this would be considered as meeting the requirements of this paragraph.

Operating Records

Section 193.2521 now only requires a record of the results of each inspection, test, and investigation required by the subpart. The proposal to keep a record of each abnormal operation was deleted as overly broad, and MTB intends to cover the subject of collecting information on abnormal operations in future rulemaking.

Notice of Intent To Operate

NPRM § 193.1143 has been deleted from the final rule. MTB agrees with commenters and TPSSC that adequate notice of intent to operate a new LNG facility is available when an operator files applications to construct or operate with appropriate Federal and State agencies. Also, the proposal would have been too burdensome with regard to components replaced due to normal wear and tear. As stated earlier, MTB will consider in future rulemaking the need to gather information about components replaced because of malfunctions or failure.

Subpart G—Maintenance

Subpart G of the final rules covers general requirements for maintaining components at LNG plants (appearing in the NPRM as Subpart M) and requirements for corrosion control, which were proposed as Subpart O of the NPRM. This combination is a result of the coordination between MTB and USCG in developing a common numbering system.

General

In § 193.2603, paragraph (c) has been revised to require that when a component is taken out of service, it must be identified in the maintenance records kept under § 193.2639. The final rule refers to records rather than a "log book" as proposed, because as further discussed under § 193.2639, MTB recognizes that records may be kept in other ways than a log book. There were comments that only major maintenance should be recorded, because, otherwise, the requirement would hinder routine maintenance. Such comments show a misunderstanding of the intent of § 193.2603(c). This requirement serves to notify that a component is not "in service," or ready for use. It is not intended to provide a record of maintenance work performed on a component, which must be provided under § 193.2639. Thus, the word "maintenance" is not used in the final rule. With the information provided by recording components taken out of service, it should be clear which ones are in service, and thus subject to the maintenance standards of Subpart G.

Section 193.2603(e) now only requires tagging if operation of a component taken out of service could cause a hazardous condition rather than tagging if such a component could be "inadvertently operated." This change was made to avoid having to tag components whose inadvertent operation would not cause a hazard.

Maintenance Procedures

In § 193.2605, paragraph (b) is changed to incorporate corrosion control procedures, proposed in § 193.1403(a), as further discussed hereafter. Paragraphs (c), (d), and (e) in the NPRM have been included in § 193.2017.

Foreign Material

Section 193.2607(a) has been modified so that the presence of foreign material, contaminants, or ice need only be controlled to maintain the operational safety of each component. MTB agrees with TPSSC and other comments that the presence of foreign materials may be an inherent problem in the operation of some components, but that operational safety can be provided by monitoring and removal of such materials. Under § 193.2605(b), the maintenance procedures would have to describe steps needed to provide operational safety.

Section *193.2607(b)* has been reworded in terms of LNG plant rather than LNG facility to better express the intent.

Fire Protection

The general and referenced maintenance standards proposed under § 193.1207 (a) and (b) of the NPRM are deleted in the final rule and replaced by references in Subpart I to the maintenance requirements of NFPA 59A. The 59A document provides a comprehensive set of requirements for the various types of equipment and detection systems in use for fire protection. MTB agrees with the industry comments presented at the TPSSC meeting that "all" fire control equipment has to be taken out of service for maintenance periodically. In this regard, § 193.2611(a) does not prohibit such action, but would prevent an operator from taking a large amount of fire control equipment out of service at one time and from leaving equipment out of service for an inordinate period.

Section *193.2611(b)* is changed to require that routes "within the LNG plant" for use by fire control vehicles or portable equipment must be maintained

to "reasonably" provide for use in all weather conditions. Under a strict interpretation of the proposal, operators would have been required absolutely to maintain access over all routes, including public roads, under even the most extreme conditions. The final rule is consistent with § 193.2063(c) in regard to access in flood conditions.

Auxiliary Power Sources

TPSSC and many commenters objected to the proposed monthly tests for capacity under § 193.1208, because shutdown of facilities may be necessary to carry out the test. The purpose of the proposed test is to assure adequate capacity if any additional load from new equipment is added. Because adequacy of capacity would normally be considered in design and tests as frequently as proposed could present operating difficulties, the final § 193.2613 only requires capacity tests annually.

Some commenters argued that requiring the test under § 193.2613 to account for power needed to "start up and simultaneously operate equipment" could cause a tremendous starting load, beyond the capacity of the auxiliary power source. These comments indicate some confusion, as it was not MTB's intent to require a test based on simultaneous starting. Under the final rule, start up could be properly sequenced, but once equipment to be served by an auxiliary power source in an emergency is on line, it must be simultaneously operated during the test.

Purging

The TPSSC and commenters pointed out that certain maintenance activities could be carried out safely on isolated components without purging. MTB agrees that an absolute requirement to purge would not be appropriate for all cases, and § 193.2615 has been revised to not require purging when the operator's maintenance procedures provide that it is not necessary for safety. The term "or double block and bleed valving" has been added as an example of a protective measure that must be taken if an ignition source is present.

Repairs

The typographical error in § 193.2617, was corrected by changing "Subpart K" to "Subpart D" in paragraph (a)(1).

Control Systems

In § 193.2619, paragraph (a) has been reworded to clarify that a control system need only be able to operate "within design limits" instead of "as designed," which was the proposed standard. Commenters argued that the proposed wording was too rigid to serve as a minimum standard of acceptable maintenance.

Despite TPSSC objections that § 193.2619(b) is superfluous, it is retained in the final rule because of the need to assure operational capability of controls that may have been adversely affected during a service outage.

Some commenters objected to the proposed requirement under § 193.1215(e) that the reseating pressure of relief valves be tested, arguing that such a test is impractical and not useful. MTB agrees that an exact reseating pressure is not as important a safety concern as knowing that the valve will reseat and will not leak in the closed position. Thus, in view of the difficulties, the test to determine reseating pressure is deleted in the final rule under paragraph (e).

This is the third of nine sections estimated by the Draft Evaluation to have a high cost impact. Minimum and maximum estimated incremental costs for the NPRM, when compared to NFPA 59A (1975 edition), the former baseline, which has no comparable requirement, were respectively $3.360 and $4.370 million.

In the final rule, modifications clarifying that a control must be tested only for its design application range rather than its maximum design capability will not alter these costs, since this intent was recognized in preparing the Draft Evaluation.

The new baseline, NFPA 59A (1979 edition), also lacks a counterpart to this requirement. Accordingly, the given estimated incremental costs for the final rule are unchanged from $3.63 and $4.37 million respectively for the minimum and maximum number of facilities.

Inspecting Storage Tanks

Section 193.2623 has been revised extensively in response to comments that many of the proposed requirements, such as means of conducting inspections, were too specific and in some cases would only be applicable to certain designs of LNG storage tanks. The section is now more performance oriented, and together with § 193.2605, makes the operator responsible for conducting appropriate inspections or tests to assure the listed conditions do not impair the structural integrity of the tank. The proposed inspection to check the condition of stratification has been deleted, for the problem is covered better by proper operation than by inspection (e.g., § 193.2513(b)(4)). The condition identified in the NPRM as "cold spots" has been changed to "inner tank leakage," for although internal leakage would be indicated on the outer shell of most above ground metal tanks, this would not necessarily be so for all types of tanks and impoundment designs.

This is the fourth of nine sections estimated by the Draft Evaluation to have a high cost impact. Minimum and maximum estimated incremental costs for the NPRM, when compared to NFPA 59A (1975 edition), the former baseline, which has no comparable requirement, were respectively $7.260 and $8.739 million. The new baseline NFPA 59A (1979 edition) also lacks a counterpart of this requirement.

Under the final rule, inspection requirements for stratification, the most costly single inspection function, has been eliminated. Also, specific intervals for the inspections are no longer prescribed and the rule is set forth in performance language. These changes are estimated to reduce the incremental costs to $1.91 and $2.29 million respectively for the minimum and maximum number of facilities.

Corrosion (Subpart O in the NPRM)

The NPRM sections covering corrosion have been rearranged in the final rules to provide a better sequence. The proposed § 193.1403(b) is moved to Subpart H (§ 193.2707(c)), for it relates to qualifications of corrosion control personnel. The proposed § 193.1405, Corrosion control overview, has been relocated in Subpart D, since it deals more with construction than maintenance. Although there were several suggested changes to § 193.1405, in regard to the types of metallic components that need corrosion control, MTB believes the revised definition of "component" takes care of the problems raised. The proposed § 193.1403(a). Procedures, is deleted in the final rules, because procedures for corrosion control would now have to be followed under the requirements of § 193.2605, Maintenance procedures.

Corrosion Protection, (Previously "General")

Section 193.2625 has been revised in response to comments and TPSSC views that a method for corrosion control be permitted as an alternative to the protective methods proposed in the NPRM. Commenters argued that the use of corrosion control systems as proposed would be impractical or prohibitively expensive for many existing plants. MTB agrees that an alternative of regularly scheduled inspection and replacement under established procedures would provide an acceptable corrosion control alternative. This alternative is set forth in § 193.2625(b)(2).

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External Corrosion Control

Commenters suggested that § 193.2629(a)(2)(ii) permit up to three years for an operator to cathodically protect existing components. They argued a similar time period was allowed under Part 192 for operators to bring their pipeline systems into compliance with the cathodic protection requirements. MTB believes 1 year is adequate to prepare for compliance in view of the number and location of components requiring cathodic protection in an LNG plant, as compared with entire transmission or distribution piping systems subject to Part 192.

Monitoring Corrosion Control

The ad hoc industry group participating at the TPSSC meeting recommended that § 193.2635(e) not require monitoring for internal corrosion inside components that are protected from internal corrosion by a material that is proven to be corrosion resistant over the component's life (as permitted under § 193.2631(a)). The group argued that periodic monitoring would require undesirable opening of systems, exposing them to the atmosphere or contaminants; and there would be substantial construction costs for existing plants to provide access points for installation and periodic removal of monitoring devices. After considering this argument, MTB believes that it would be redundant and counterproductive to monitor the performance of corrosion resistant materials that have historically or otherwise been proven to handle corrosive fluids without adverse consequences due to corrosion. Therefore, § 193.2635(e) is changed in the final rule by excepting proven corrosion resistant materials from the requirement to monitor the performance of internal corrosion control techniques. For the exception to apply, an operator need only be able to demonstrate that the material will control corrosion by the fluid involved to the extent that the component's integrity or reliability will not be adversely affected over its service life.

There was considerable discussion at the TPSSC meeting over the need to monitor internal corrosion control inside a component operating at cryogenic temperatures. MTB agrees with the TPSSC view that corrosion does not occur at cryogenic temperatures or where the metal is continually in contact with liquid LNG or LNG vapors. At extremely low temperatures, the chemical reaction necessary to cause corrosion does not occur. In view of this fact, the monitoring requirements of § 193.2635(e) do not apply to components operating at cryogenic temperatures, because corrosion control would not be required by § 193.2625; and therefore, the proposed frequency for monitoring cryogenic systems is deleted in the final rule. Parts of such a component that are not continually at cryogenic temperatures may, however, have to be protected against corrosion and thus monitored under § 193.2635, depending on the findings made under § 193.2625 regarding the effects to corrosion on those parts and the overall effect on the component.

MTB recognizes that cryogenic components in service but infrequently operated at cryogenic temperatures or out of service for lengthy periods may be subject to corrosion. Such components would have to be protected only if the findings under § 193.2625 indicate that adverse consequences from corrosion may occur.

This is the fifth of nine sections estimated by the Draft Evaluation to have a high cost impact. Minimum and maximum estimated incremental costs for the NPRM, when compared to Section 68 in NFPA 59A (1975 edition) the related baseline standard, were respectively $19.208 and $20.924 million, the most costly of the nine sections. The new baseline Section 6–9 in NFPA 59A (1979 edition) has the same basic requirements as its predecessor.

These costs largely derive from installation and monitoring of test coupons and probes in LNG storage tanks and other cryogenic equipment, erroneously interpreted by the Draft Evaluation to be required by the NPRM. Clarifications in the final rule eliminate the potential for misinterpretation in this respect, and thereby the corresponding excessive cost for monitoring of most common LNG tanks and certain other cryogenic equipment. Accordingly, the estimated incremental costs are reduced to $1.30 and $1.42 million respectively.

Maintenance Records

In § 193.2639, the word "records" is used instead of "log," for MTB recognizes that there are several other techniques that can be used rather than keeping a log. Such records could be kept at a central maintenance office, covering a number of facilities in the LNG plant. This section now includes the corrosion recordkeeping proposed under § 193.1423.

As elsewhere in this part, the proposed reporting requirements of § 193.1423(a) have been deleted in the final rules. As previously indicated, future rulemaking will consider the need for such reports.

This is the sixth of nine sections estimated by the Draft Evaluation to have a high cost impact. Minimum and maximum estimated intcremental costs for the NPRM, when compared to Section 68 in NFPA 59A (1975 edition) the related baseline standard, were respectively $3.216 and $3.839 million. The new baseline, Section 6–9 in NFPA 59A has the same basic requirements as its predecessor.

Requirements under the NACE standard referenced in the NFPA 59A baseline, which sets forth record keeping provisions that are more extensive than those provided in either the NPRM or the final rules, were not considered in developing costs for the Draft Evaluation. Recognizing that detailed corrosion records are required in the baseline (both editions) and that reporting required under the NPRM has been deleted, there are no incremental costs attributable to the final rule.

Subpart H—Personnel Qualifications and Training

As fully explained in the preamble of the NPRM, Subpart H is a result of the coordination between MTB and USCG in developing a common numbering system for the two agencies' regulations which would make both sets of regulations easier for the public to understand.

Three sections are already included in this subpart under the existing Part 193 rules. The following sections, which appeared in Subparts L–O of the NPRM, have been incorporated in this subpart as they deal with personnel qualifications or training.

Qualifications for Operation and Maintenance Personnel

Section 193.2707 was criticized by TPSSC and others because it appeared in the operations subpart of the NPRM but also applied to maintenance personnel. It was suggested a similar section be included in the maintenance subpart covering qualifications. This objection may have been valid under the original format, but MTB feels that with the rearrangement and with the qualification standards for operating and maintenance personnel being identical in most respects, the section as it now stands should not be a problem.

Many persons commented that the compatibility to an LNG facility of a facility where experience is gained is not always relevant to an individual's performance capability. MTB agrees that facility compatibility is not an important criterion, and § 193.2707(a)(2) now only requires work-related experience; references to "compatible" facilities, or examples of such facilities

are deleted. MTB will recognize on the job experience obtained under § 193.2707(b) as satisfying this requirement.

The proposed qualification test is referred to as a "proficiency test" under § 193.2707(a)(3). Many commenters stated the word "proficiency" would be more indicative of the abilities being tested. Some commenters felt performance on a test should serve as an alternative to experience, and not an additional criterion for judging an individual's capability. MTB did not adopt this view because of the importance of verifying that personnel know and understand their duties. Both the NTSB and the House Subcommittee on Energy Power recommended written testing in their reports on the LNG accident at Cove Point, Maryland.

As recommended by TPSSC and many commenters, § 193.2707(b) has been revised to permit a person who is not yet qualified under the requirements of paragraph (a) to operate or maintain a component when accompanied and directed by an "individual" who is qualified. The term "individual" replaces "supervisor" used in the NPRM, because individuals other than a supervisor may qualify to perform the duties required by § 193.2707(b).

Security Qualifications

Section 193.2709 (formerly § 193.1124a) has been modified to clarify that an operator may use personnel other than special security forces for security functions. The final rule also responds to commenters and the TPSSC by deleting the proposed requirement that each operator "ensure" that personnel are qualified. MTB agrees that operators should not be required to "ensure," or "guarantee," that personnel are actually qualified, in the sense of providing indemnity for loss. However, an operator is nonetheless liable to penalty under the Act if security functions are assigned to personnel who are unqualified.

MTB has not adopted any of the various proposals to use general language for security qualifications, to be accompanied by deletion of paragraph (a) in the NPRM. The TPSSC and others contended that paragraph (a) is redundant, in that the same requirement appears in § 193.2715(a) and (b) (formerly § 193.1124) concerning security training. MTB disagrees, since the referenced section requires only that personnel be trained, not that the training be successfully completed.

Many more commenters objected to paragraph (b) in the NPRM. Arguments by the TPSSC and others were essentially based on difficulties that would be encountered in determining whether a person is "physically and mentally capable" of performing security duties. Since aspects of this proposal are met by successful completion of training and by compliance with § 193.2711, discussed below, paragraph (b) is deleted in the final rule.

Personnel Health

Many of the commenters to § 193.2711 apparently assumed that compliance with the proposed training requirements would also meet the requirements of § 193.2711. In proposing that a written program be conducted to ensure that personnel are mentally and physically capable while performing their duties, MTB did not intend to duplicate the training requirements proposed elsewhere. The personnel performance program proposed under § 193.1113 of the NPRM was directed to the potential problem of personnel, although properly trained, reporting for work in a condition (e.g., drunk, injured, or with a debilitating mental or physical ailment) that would impair their proper performance of duties, especially emergency response. This section has thus been rewritten and retitled to better reflect this intent.

While most commenters did not contest the need for such a program, objections were raised that it need not be written, since a written program does not relate well either to examining physical problems or to other valid ways of evaluating personnel (e.g., use of a simulator). Most commenters also argued that in the absence of any mental criteria under § 193.2711 (such as for psychological screening), the test of an individual's mental capability to work is covered by the training and qualification standards.

In response to these comments, the revised rule requires a written plan rather than a program. The plan may refer to use of any techniques or equipment an operator deems necessary to properly evaluate an individual's physical condition in relation to the demands of the job. The final rule does not refer to "mental capabilities," to avoid any implication that intelligence testing is required (since this is a factor in meeting the qualification and training requirements), and because criteria for measuring the suitability of an employee's mental condition would be extremely difficult for an operator to develop and apply. Also, MTB feels that any mental disorders that could impair an employee's performance would be physically manifested. In assessing physical capabilities, periodic physical examinations will be needed to assure compliance with the new standard as well as day-to-day observations. Physical examinations were recommended by the House Subcommittee on Energy and Power in its report on the Cove Point incident.

Training for Operation and Maintenance

Commenters pointed out that a training program for operation and maintenance personnel under § 193.2713 could be carried out by means that are not "written," such as lectures, audio-visual, simulator, hands-on, or combinations of these means. Although MTB agrees, it is important that an overall description of the program be available. Use of the term "documented," recommended by some commenters, would not necessarily yield this result. The final rule requires the operator to provide and implement a "written plan" of initial and continuing training. The plan may refer to the use of any program training techniques an operator chooses. The term "plan" is also consistent with § 193.2017.

Section 193.2713(a)(3) now applies to "appropriate" supervisory personnel to avoid the implication that all supervisors must be trained, not just those engaged in operations. Paragraph (a)(4) in the NPRM has been deleted as redundant.

Security Training

MTB agrees with comments to § 193.2715 that a person specifically responsible for security functions need not be familiar with all plant operations and all emergency procedures. Paragraph (a)(3) has, therefore, been clarified by describing operations and emergency procedures as those "necessary to effectively perform their assigned duties."

Fire Protection Training

There were ten comments received on § 193.2717. All the commenters stated that paragraph (a) should be reworded to define which supervisory personnel must be trained. Their reason was that only maintenance and operations supervisory personnel need to be trained, since they would be the only supervisors involved in handling a fire emergency. MTB agrees with the commenters and has reworded § 193.2717 to clearly define which supervisors must be trained.

MTB has also made it clear under paragraphs (a) and (b) that plant fire drills must be a part of any fire training program. MTB believes the proposed training program could not be satisfactorily accomplished without fire drills, but to be certain, this point is in

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the final rule. The House Subcommittee on Energy and Power recommended "full-fledged drills" in its report on the Cove Point incident.

Training Records

There were four comments received on § 193.2719. All four commenters stated that the fire protection training records should not have to be maintained after the employee has been discharged. MTB disagrees. MTB believes that it is necessary to have records available for one year after personnel are no longer employed, because to fully evaluate a training program, it is necessary to have past records of employees, their duties, and training furnished. For this reason, the commenters' recommendation was not included in the final rule. As finally adopted, § 193.2719 applies to all training required by Subpart H.

Subpart I—Fire Protection

General

In § 193.2803 one commenter stated that the phrase "minimize the occurrence and consequences of fires" should be changed by using the word "limit" instead of "minimize." The rationale was that the word "minimize" implies that zero is possible. MTB does not agree. In its ordinary dictionary sense, "minimize" means to reduce to the smallest possible amount. On the other hand, "limit" implies a boundary, and would require a further definition of the bounds to be set. The final rule retains "minimize" in the general standard.

Fire Prevention Plan

There were twenty-two comments received on § 193.2805, which requires that a fire prevention plan be established for each LNG plant, and procedures followed to carry it out. All commenters to this section were concerned with the proposed requirement that operators determine potential sources of ignition "outside" the LNG plant. Some suggested deletion of the requirement, given the gas dispersion requirements of § 193.2059 that a flammable vapor concentration not go beyond the dispersion zone of the plant. Others, including the TPSSC, suggested that the term "outside" be qualified to limit the amount of study necessary and the potential controversy as to the meaning of "outside." While the siting requirements of § 193.2059 are intended to preclude a flammable vapor concentration from dispersion beyond the dispersion zone, those requirements do not apply to existing facilities, and in any event, will not preclude ignition sources located beyond the property line of a plant from causing fires on plant property. Rather than delete reference to areas outside the plant, MTB has adopted the TPSSC recommendation to change the word "outside" to "adjacent to" in the final rule. MTB believes that this term sufficiently limits, and is more descriptive of, the area to be investigated for potential sources of ignition.

Several commenters to § 193.2805 suggested that it is not necessary to "determine" ignition sources and places of flammable fluids, as proposed, since these can be discovered by conducting an examination without the "scientific method" required to comply with the definition of "determine" in § 193.2007. These commenters suggested that a requirement for the operator to "identify" sources of ignition and areas at an LNG plant where flammable fluids may be present would be more appropriate. MTB does not agree with this view, because the application of fire protection engineering principles required by § 193.2803 should readily identify sources of ignition, and the reference to NFPA 70 provides adequate guidance for identifying flammable fluid areas. Application of these principles and NFPA 70 should satisfy the requirement to conduct an investigation based on scientific method under the definition of "determine." The use of "identify" would also result in a weak standard, since unlike "determine," the word "identify" is not required to have a demonstrable basis. Therefore, "determine" rather than "identify" is used in the final rule.

Ten commenters stated that the reference to "§ 500–4 of NFPA–70" in § 193.2805 should be changed to "§ 7–6 NFPA 59A," since the 59A reference would give a better guide to places of flammable fluids. MTB disagrees with the commenters' reason. Section 7–6 of NFPA 59A states the type of electrical equipment which may be used, and it references NFPA 70 as a whole, not the particular section 500–4. It is only § 500–4 of NFPA–70 that describes areas that could be hazardous. For this reason, the commenters' recommendation was not adopted in the final rule.

Several commenters stated that § 193.1305(b) in the NPRM, which proposed a manual of procedures to minimize leakage and ignition, should be deleted in its entirety. Their reasons were that it is redundant with other requirements for operations (§ 193.2503) and emergency (§ 193.2509) procedures. MTB does not believe that adopting § 193.1305(b) as proposed would result in a redundancy because the proposed requirements for operating and emergency procedures were not aimed at preventing fires by reducing leakage and controlling the opportunity for ignition. MTB concedes, however, that these objectives can best be attained through proper plant operations and maintenance. Therefore, the final rule is revised to require that the proposed fire prevention procedures be included in the plant operating and maintenance procedures, as appropriate.

Smoking

Comments to § 193.2807 stated that the installation of "smoking permitted" signs would be an overkill; that "no smoking" signs should be sufficient, since "no smoking" signs are the normal and traditional signs used.

MTB believes that if smoking is prohibited in certain areas of an LNG plant and those areas are marked with signs, then it is also appropriate to mark those areas of an LNG plant where smoking is permitted. The marking of both areas will reduce confusion by positively identifying each area. For this reason, the comment was not adopted in the final rule.

Open Fires

There were 22 comments received concerning the requirements of § 193.2809, governing open fires. Twenty of the commenters stated that open fires should be permitted in designated areas. Their reasons were: that the proposed rule would effectively prohibit venting gas through flare stacks and training fire fighting personnel on the plant site, and that open fires necessary for maintenance work, such as water heaters, would be prohibited. Two commenters stated that § 193.2809 should be deleted, because § 193.2811, Hotwork, contains provisions which are adequate to cover all open fires.

MTB disagrees with commenters that § 193.2809 should be deleted, and that the provisions of § 193.2811 are adequate for all open fires that may occur on an LNG plant. The requirements of § 193.2811 are intended to cover those situations where such maintenance and operating activities as welding, cutting, and grinding are being performed. This is clearly indicated by the reference to NFPA 51–B, Cutting and Welding Processes. Other types of open fires that can be present on an LNG plant are covered by § 193.2809. Therefore, the comment was not adopted in the final rule. MTB does not intend that the open fire restrictions be applied to flare stacks. This point is clarified in the final rule.

MTB does agree with the other twenty commenters to the extent that an absolute prohibition against open fires is too restrictive. The final rule permits open fires on an LNG plant at places and times designated by the operator, provided that whenever an open fire is permitted, there must be trained fire fighting personnel with adequate equipment at the site, and the fire fighting personnel and the equipment must remain at the site until there is no possibility of danger from the fire.

Hotwork

There were no adverse comments received on § 193.2811. MTB has adopted it as proposed for the final rule.

Storage of Flammable Fluids

There were seventeen comments received on § 193.2813. All opposed the proposed prohibition against storage of flammable fluids in areas with ignition sources, because of the need to store small quantities of flammable fluids, like lubricating oils or cleaning fluids, for maintenance work in areas where ignition sources are present. Several commenters recommended that storage of flammable fluids be permitted if stored according to the requirements of § 3–3 of NFPA 59A. This comment was not adopted, however, because § 3–3 references industry standards, such as NFPA 30, Flammable and Combustible Liquids Code, that are broader in scope than the mere fire prevention purpose intended by the NPRM.

MTB agrees with the comments that an allowance should be made for storage of fluid needed for maintenance purposes. With the intent of the comments in mind, MTB believes that Chapter 4 of NFPA 30 would be an appropriate safety standard for such storage. The final rule permits the storage of flammable fulids where ignition sources are present, if they are stored in accordance with the requirements of Chapter 4 of NFPA 30.

Motorized Equipment

Of the five comments received regarding § 193.2815, two agreed with the proposal as written, two stated that supervisors at the scene should be permitted to make minute-to-minute decisions for the use of motorized equipment, and one commenter stated that motorized equipment should be permitted near tanks and equipment only when constantly attended and when specifically designed to be without open ignition sources.

MTB believes that the proposal as written does not prohibit an operator's supervisors from making the necessary decisions for use of motorized equipment, as long as the times for use are designated in writing as safe. Also, the proposed rule provides for the safe use of motorized equipment which is a potential ignition source by requiring constant attendance and prior consideration of the time of use. To permit only the use of ignition proof vehicles would be more stringent than reasonably necessary for safety. For the above reasons, the commenters' recommendations were not adopted, and the final rule is issued as proposed.

Fire Control Equipment

There were fourteen comments received on § 193.2817. Comments to paragraph (a) stated with regard to the proposal to determine the types and sizes of fires inside and outside an LNG plant, that the word "determine" should be changed to "identify," and that the word "outside" should be deleted. Their reasons were the same as those given for their objection to the use of those words in § 193.2805. Likewise, MTB's reasons for not changing the word "determine" to "identify" and for changing the word "outside" to "adjacent to" in the final rule are the same as in the discussion of § 193.2805. It was also suggested for paragraph (a) that the words "potential fires" should be deleted and the term "reasonably be expected to occur" be used. The commenters reasoned that "potential" is too broad for a reasonable requirement of this type. MTB agrees, and the comment is adopted in the final rule. This change makes § 193.2817(a) consistent with the wording of § 193.2509(a), concerning emergencies other than fires.

TPSSC recommended that § 193.2817(b)(1) be reworded to delete the term "portable fire extinguisher" and use instead the words "fire control equipment" to eliminate the implication that portable extinguishers are the only type of equipment necessary to comply with paragraph (b). MTB does not agree with the TPSSC's recommendation. The intent of paragraph (b) is to ensure that each operator has sufficient fire control equipment on hand to protect components against the damaging effects of exposure to fires determined under paragraph (a). MTB believes that, at a minimum, the equipment should include portable extinguishers and, in some cases, water delivery systems, as provided respectively by subparagraphs (b)(1) and (b)(2). Additional equipment, such as foam systems, would be required only if necessary to provide the requisite protection.

Also, in paragraph (b)(1), the proposed reference to NFPA 10 as standards for protable fire extinguishers is deleted in the final rule. Instead, a general reference to NFPA 59A is included. Chapter 9 of 59A provides a more comprehensive set of standards for fire protection equipment that might be used, covering such units as foam systems as well as portable extinguishers and water delivery systems. A similar reference has also been included in §§ 193.2819 and 193.2821 for the provision and maintenance of gas and fire detectors.

This is the seventh of nine sections that the Draft Evaluation estimates to have a high cost impact. Minimum and maximum estimated incremental costs for the NPRM, when compared to § 92 in NFPA 59A 1975 edition), the related baseline, were respectively $6.835 and $7.976 million. Since the final rule and NPRM are essentially the same, these costs would be unchanged.

However, because of substantive changes with detailed requirements in the new baseline, § 9–1 in NFPA 59A (1979 edition), that, compared to the final rule, provide equal or greater stringency there are no incremental costs associated with the final rule.

Gas Detection

Nine commenters stated that § 193.2819(a), as proposed, was not reasonable because it would require continuous monitoring for gas in areas where escaping gas would not be a hazard, such as areas within 5 feet of vents or relief valves. Consequently, they said, an unreasonable number of monitoring devices would be required.

MTB agrees with the commenters that it may not be necessary to monitor all areas determined under § 193.2805(a) that have a potential for the presence of gas. For example, properly designed vents and open air storage areas safely separated from ignition soures would not normally become hazardous with the escape of gas. Therefore, MTB has, for the final rule, reworded § 193.2819(a) to require operators to monitor only those areas in which a hazard could exist.

The bulk of the comments received on § 193.2819(b), concerning alarms, stated the audible alarms should not be required in the area of gas detection, except building, because personnel in the area could be notified verbally from the control station by use of the emergency communication system and because audible alarms could cause confusion, panic, and false alarm. Several commenters stated that audible alarms for areas other than buildings could be located anywhere as long as they are clearly audible in the area of gas detection.

Because of the built-in delay and possibility of confusion in transmitting verbal instructions in an emergency and

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the need for immediate action of personnel in an area where there may be a hazardous gas leak, MTB does not agree with the commenters that verbal notice through the emergency communication system is sufficient warning to personnel. MTB believes that well trained personnel will not panic or be confused because of an audible alarm. If, indeed, false alarms were occurring at a high rate, it could be an indication of other problems which the operator should determine and correct. MTB believes that the alarms should be located to pinpoint the area of a gas leak as close as possible. If an alarm located outside the area of detection were used to alert personnel, it could lead to delay and confusion and inhibit the taking of prompt action, because the area of leak would not be indicated by the alarm. For these reasons, the commenters' recommendations were not included in the final rule.

Three commenters stated that the flammable gas detectors required by paragraph (e) should be capable of reading the lower flammable limit, and not "percent by volume." MTB agrees that the lower flammable limit is the critical reading the detectors must show, and paragraph (e) is changed accordingly.

Seventeen commenters objected to the requirement of § 193.2819(f) that all enclosed buildings located on an LNG plant be continuously monitored for flammable gas by fixed gas detectors. They argued that placing gas detectors in every building would be an unreasonable burden because such buildings as warehouses, portable toilets, and administration buildings do not process gas and would not be likely to have gas inside.

MTB does not agree with the commenters. MTB believes that any enclosed building on an LNG plant has, in the event of a gas or LNG leak, a potential for the collection and containment of a flammable gas to the extent that the cost of gas detection is warranted. Therefore, the MTB did not adopt the changes as proposed by the commenters for the final rule.

The TPSSC recommended that MTB establish criteria based upon distance from areas known to have flammable gases and liquids and upon the methods of gas entry into buildings to determine which enclosed buildings should be required to have fixed gas detectors. Because of the many variables involved in determining the flow of gas/vapor, such as temperature, wind, and terrain, and the almost impossible task of determining all methods by which gas may enter a building, it is not practicable to establish meaningful criteria as recommended. Thus, TPSSC's recommendation was not adopted for the final rule.

All comments received on § 193.1310(g) of the NPRM stated that the proposed requirement to heat vented gas to 100° F was not necessary for safety. Their reasons were that: natural gas achieves positive buoyancy at −160° F and to require that the temperature be raised to 100° F would be excessive and not reduce any hazard presented by the vented gas. The intent of paragraph (g) was to require the gas to be of such positive buoyancy that is will rise in the vent stack, thereby venting in a safe manner. MTB agrees with the commenters that it is not necessary to prescribed a specific temperature for the gas. Therefore, MTB has reworded the proposed paragraph (g) in the final to require that the gas be heated to a temperature that will provide positive buoyancy and save venting. Because the proposed § 193.1310(g) relates more to the design of venting systems than to maintenance, operation, or fire protection, it is relocated in the final rule in § 193.2431(c).

Commenters to § 193.1310(h) of the NPRM opposed the proposal that emergency venting be observed be a person with portable gas detector. They argued that in most cases emergency venting would occur without prior notice and would be over before the monitoring could be done. MTB agrees and has deleted paragraph (h) in the final rule.

Fire Detection

Many commenters to § 193.2821(a) stated that the operator should be required to detect fires only within the plant in areas determined under § 193.2817, not § 193.2805(a)(2) as proposed. The rationale given was that § 193.2817 relates more to where fire may be expected to occur. MTB finds this point confusing, however, since § 193.2817 does not require operators to determine areas where fires may occur, while under § 193.2805(a)(2), fires may be expected in areas inside a plant where their is a potential for flammable gas or vapor. Thus, the required placement of fire detectors is adopted as proposed, except that for consistency with § 193.2819(a) detectors need only be placed where a hazard to persons or property could exist. Commentors also urged that the words "substantial quantities" should be included in paragraph (a) to modify the amount of material stored. If not, storage areas of small quantities of materials such as pencils, office supplies, and cleaning fluid would be included, with an unwarranted expense for monitoring. The TPSSC also made a similar recommendation. MTB is not in agreement with these views that only storage areas of large quantities of flammable fluids and combustible material should be monitored. Since the requirements of § 193.2821 permit the use of wide range of equipment, an operator could use less extensive devices in areas where small quantities are stored. Also, the purpose of fire protection is to detect a fire as soon as possible so quick action can be taken to prevent its spreading. Large fires may result from small sources of ignition.

Many commenters to paragraph (b) objected to the placement of alarms in outdoors areas (outside buildings), because detectors might be set off by reflected sunlight, welder's arcs, and lighting strikes, leading to confusion and causing workers to ignore the alarms. Others argued that local alarms are unnecessary and should not be required.

MTB does not agree with the commenters that fire alarms should not be required outside of buildings. The operator should be able to shield the detectors so as to prevent the great majority of false alarms, and the few false alarms that might occur should not be confusing to well-trained workers nor cause them to ignore the alarms. MTB discussed the use of audible alarms and the use of the emergency communications system in the discussion of comments on § 193.2819. MTB believes the reasons discussed there are also valid for § 193.2821, and, therefore, paragraph (b) is adopted as proposed.

Subpart J—Security

Sections on security, located under Subpart L in the NPRM, are set forth under a new Subpart J, to more appropriately delineate security functions in accordance with the MOU between the MTB and U.S. Coast Guard and to give greater recognition of their importance.

Throughout this subpart, terms such as "facility," "component," or "item" have been changed to "plant," "facility," or "component," as appropriate, in accordance with earlier discussions in this preamble and with definitions in § 193.2007.

Security Procedures

Section 193.2903 prescribes the basic features of security procedures that must be prepared and followed. Overall, public comment on this section was greater than for other sections on security.

Use of the term "manual" to describe required written procedures met with objections from several commenters who otherwise generally acknowledged the need for written procedures. In response, MTB has adopted the wording "one or more manuals" for the reasons discussed in regard to § 193.2503 above.

There were several proposals that security procedures be kept confidential to minimize the possibility of compromising security. Similarly, there were proposals to exempt the procedures from public disclosure or to limit access to specific agencies. These comments have not been adopted, since the idea of subjecting operators to penalty for compromising disclosures was not proposed in the NPRM. Of course, operators may voluntarily limit disclosure to parties having authority under existing law.

Section 193.2903(a). A proposal to delete the storage capacity limitation set forth in the referenced section (§ 193.2913) has not been adopted. Although MTB agrees with the commenter that small plants may cover large areas, monitoring only the protective enclosure at these plants is considered appropriate in view of the limited hazard resulting from the combination of a small plant with a large area open for detection of unauthorized personnel.

Section 193.2903(b). MTB has amended this paragraph to permit operators to list security personnel responsibilities as an alternative to personnel positions. This clarifies MTB's original intent, and is in accordance with proposals from the TPSSC and 15 other commenters.

Section 193.2903(c). This and other relevant paragraphs have been similarly modified for clarification, consistent with the change in paragraph (b) of this section and views expressed by the TPSSC and ten other commenters. MTB agrees with the commenters that alternate assignment of operating personnel to security duties should be permitted, particularly at smaller plants. Such an arrangement is desirable since knowledge of operations could benefit certain security functions.

Section 193.2903(d). A change from the term "facility personnel" to "designated facility personnel" was suggested by the TPSSC and two other commenters. Another two commenters proposed the term "key personnel." The suggested modifications were intended to clarify that specific personnel be designated, and to limit notification of security breaches to persons with authority to direct and take action. MTB agrees that only specific personnel should be notified. However, notification should not be strictly limited to persons in authority. In the event of a nearby riot or other insurgency, staff reinforcement might be necessary. The instructions should prescribe notification in accordance with the nature of the event. Therefore, MTB has used the term "appropriate plant personnel" in the final rule. At the same time, the word "appropriate" used in the NPRM to modify "law enforcement officials" has been deleted, since officials engaged in law enforcement are the appropriate officials.

Also, in accordance with views expressed by the TPSSC and six other commenters, the word "emergency" has been deleted from paragraph (d) in the final rule, since security is the subject of Subpart J and notification of emergencies is covered under Subpart F (§ 193.2509). However, MTB disagrees with the TPSSC and ten other commenters that notification should be required only if an actual breach of security occurs, since, while a "potential" breach may be undetectable, evidence of an "attempted" breach should be reported as a preventive action, even if plant safety was not endangered, in view of possible future attempts. Suggestions by several other commenters that notification should be required only for events requiring assistance is unacceptable for the same reason. Therefore, MTB has modified paragraph (d) in the final rule to require notification if there is any indication of an actual or attempted security breach.

Section 193.2903(f). Many commenters and the TPSSC objected to providing security badges for plant personnel. The TPSSC felt the proposed regulation implied that picture badges are the best method of identification. Performance language, permitting operator judgment, was advocated by the TPSSC and nine other commenters. Other commenters contended that other means are as effective, or that more sophisticated techniques should not be discouraged. Three argued that picture badges are unnecessary at small plants.

MTB agrees that for small plants, if a person is well known to security personnel, identification by direct recognition is sufficient and probably would, in any event, be the real method of identification. However, when a new employee is hired, an effective means of identification is necessary pending sufficient familiarization with the employee for identification by recognition. Notwithstanding the General Accounting Office report (EMD–78–28) which recommended picture badges, MTB believes that code identification, electronic identifiers, and other improved techniques could assure more positive identification than badges, which lose their effectiveness with age. Of greater importance to plant security, alternate means of positive identification than picture badges would be necessary for positive identification of single or infrequent entries by persons such as equipment technicians or drivers of cargo or material delivery trucks. Therefore, using performance language, the final rule cites picture badges as a minimum criterion to measure the effectiveness of identification methods, but does not mandate their use. Also, by deleting the term "facility personnel," as suggested by commenters, the requirement for identification applies more broadly to include one-time or occasional entries, who, compared to entry by facility personnel, have greater security implications.

Section 193.2903(g). MTB has made an editorial correction, changing "continual liaison" to "liaison," in accordance with a proposal by the TPSSC and a number of commenters. The commenters felt that uninterrupted contact was implied, but periodic contact is adequate, or that liaison should focus on mutual assistance. The word "continual" has been deleted, since "liaison" by itself denotes a close connection that would have to be carried out at a frequency sufficient to meet the objectives of § 193.2903.

This is the eighth of nine sections that is estimated to have a high cost impact by the Draft Evaluation. Minimum and maximum estimated incremental costs for the NPRM, when compared to the former baseline NFPA 59A (1975 edition) which has no counterpart, were respectively, $3.216 and $3.839 million.

Reduction in costs under the final rule, due to lowering restrictions on personnel maintaining security, permitting alternate identification techniques, and eliminating some procedural requirements for notification and liaision, result in reduced estimated incremental cost, compared to the former baseline, of $1.49 and $1.80 million respectively for the minimum and maximum number of facilities. Changes in the new baseline, § 9.8–1 in NFPA 59A (1979 edition) which now includes specific security provisions, would further reduce comparative estimated incremental costs for the final rule to $102 and $124 thousand.

Protective Enclosures

The kinds of LNG facilities that require protective enclosures are designated in § 193.2905. Conditions for access, location and surrounding topographical features are also prescribed.

The principal concern of the TPSSC and many other commenters was the proposal that each of the facilities listed

in paragraph (a) be surrounded by an enclosure. Most felt that "each" implied that a separate enclosure was required for each facility. Since this was not intended, the word "each" is deleted, and new language to show that one or more facilities may use the same enclosure is adopted in the final rule to clarify the issue. All facilities need not be within the same enclosure, because control rooms, vaporizers, or other equipment may be better located at some remote distance from other facilities.

All but one commenter indicated agreement with the designated facilities requiring enclosure under paragraph (a). This commenter stated that a protective enclosure should not be required for fire control equipment (para (a)(8)) and alternative power source (para (a)(10)). The commenter argued that location of fire control equipment outside the enclosure should be permitted to serve for vapor dispersion protection and for protection of equipment from thermal radiation. Also, protection of electric service lines was claimed to range between the impractical and the impossible.

Fire control equipment is necessary for plant safety, and could have major importance if the security of other facilities is breached. Separate enclosures may be used if the equipment is outside a security enclosure for the major part of the plant. Each alternative power source required by § 193.2915 must be designed so that failure of the primary source does not affect the capability of the alternative. In most cases, this will require an operator to have full control over the alternative, and where electrical power lines cannot be fenced, wiring may be underground. For these reasons, MTB has not incorporated the suggested modifications in the final rule.

MTB also rejects the proposal by the TPSSC and a few commenters in regard to paragraph (b) that grading to assure enclosure integrity should not be required because grading is not always necessary. Under the standard, where existing grade satisfies the requirement, the area is properly graded, and the standard does not imply a need for further grading.

Four commenters objected to paragraph (c) on the basis that unalterable obstructions and conditions at existing facilities would make it nearly impossible for an enclosure to be located so as to avoid outside features that could be used to breach the enclosure. They suggested the proposed rule be modified to allow equivalent alternate security measures to a protective enclosure in these cases. This comment was not adopted, because MTB believes the proposal provides for such conditions as it is written. Where equivalent alternative measures are provided, there would not be a feature "which could be used to breach the enclosure." However, to clarify this intent, the word "enclosure" is changed in the final rule to "security."

Many commenters and the TPSSC proposed to change the proposed requirement under paragraph (e) regarding an unlocked gate to permit "monitoring" as an alternative to "guarding" of the gate. Most commenters essentially felt that monitoring by closed circuit television, intrusion alarms, or other means is equivalent or superior to guarding, which they properly interpreted as implying a manned procedure. In more extensive argument, the TPSSC and others claimed that employee safety could be jeopardized by locked gates or that the operator may consider unlocked accesses to be desirable. A number said monitoring would provide better reaction time for either a casual or less than casual entry attempt.

The recommendation to change "guarded" to "monitored" in paragraph (e) is not adopted, because MTB does not consider monitoring to be equivalent to guarding, which provides both assured monitoring and direct control. An individual's attention could be easily diverted from a closed circuit television or other monitoring system. Without a guard at unlocked accesses, entry and damaging activity could be quickly accomplished. The action might be unobserved, or response might be delayed to the point where damage or escape could not be deterred. Neither a fence, locked gate, or guard can prevent determined unlawful entry. However, these features are necessary for deterrence, and may prevent whimsical vandalism which could result in a serious hazard. Clearly, where accesses are neither locked nor guarded, there is no immediate deterrent to entry. Also, under § 193.2903(f) where positive identification of persons entering a plant through an unlocked access relies on visual recognition or picture badges, an attentive guard is necessary. Concern about employee safety is specious, since the rule requires provisions in this respect, and a variety of measures are available for emergency egress.

With regard to § 193.2907(a), the TPSSC and some commenters recommended that the proposed requirement that protective enclosures have "sufficient strength and configuration" to obstruct access be changed to a less definitive expression such as "designed and constructed," arguing that the change would be more appropriate performance language. MTB does not agree, since the existing wording is in performance terms and "strength" together with "configuration" are the principal features necessary to make an enclosure protective.

With regard to § 193.2907(b), while some commenters expressed agreement, most proposed deletion of some or all of this paragraph. The majority, including the TPSSC, proposed to delete subparagraphs (b)(1)–(3), while others recommended deletion of the entire paragraph, claiming that the performance language of paragraph (a) was a sufficient design standard. Some said the proposed specifications in paragraph (b) were too rigid. (Others, who proposed deletion or modifications of paragraph (a) argued that the specification of paragraph (b) made (a) unnecessary). Still others asserted the operator should have latitude in enclosure design. MTB believes a prescriptive type of standard is necessary for protective enclosures. Otherwise, the characteristics of enclosure would be left to subjective judgment, making conformance unlikely and enforcement impossible. The USCG uses a similar standard, and concurs with MTB's position.

Many other commenters took exception only with paragraphs (b)(1) or (b)(3). TPSSC had concern specifically for existing facilities, and commenters argued that fences should not have to be replaced or relocated, if: under (b)(1), an existing fence has lighter gauge wire than No. 11; under (b)(3), barbed wire is angled inward so that it does not encroach on the property of others; under (b)(3), razor ribbon is used in lieu of barbed wire; and under (b)(3), the overall height is seven rather than eight feet. MTB agrees that where existing fencing meets certain alternative standards and has effectively provided security, it is acceptable. Accordingly, a new paragraph (c) provides for this circumstance.

Commenters and the TPSSC, who proposed deletion of paragraph (b)(1) thru (b)(3) in favor of performance language under (a), proposed specific changes to paragraph (b)(4), using performance terms. MTB believes the prescriptive language of (b)(4) is necessary for the reasons discussed with respect to its position on subparagraphs (b)(1) thru (b)(3).

Security Communication

In accordance with the original intent of § 193.2909 and views generally expressed by some commenters, MTB has modified this section to require that communication with law enforcement officials need only be available to personnel having supervisory security duties. The designation of personnel makes clear that the link is in the hands of persons directly in charge of security, since delay caused by indirect contact thru a plant manager, or potential chaos from a link between every person engaged in security and law officials, could denigrate the effectiveness of security. Also, only "prompt" rather than "direct" means of communication is now required so as to permit telephonic communication without the connotation of a "hot line." However, between on duty plant security personnel and specified facilities, "direct" communication is considered necessary and is clearly convenient by intercom or radio.

Security Lighting

The TPSSC and six commenters pointed out the transposition in the proposed value of lighting intensity under the NPRM version of § 193.2911. MTB has corrected the value to read 2.2 lux (0.2 ftc) in the final rule. This level of illumination is adopted since NRC standard 10 CFR 70.50(b)(5) and other standards uniformly prescribe the value for security lighting.

A number of commenters proposed the use of performance language instead of specified minimum lighting intensity, arguing that a prescribed minimum might conflict with local ordinances or otherwise be objectionable. This rationale was also given for suggesting that the protective enclosure not be lighted at all.

Considering the very low minimum level of lighting generally recognized as necessary for security reasons, MTB doubts serious objections would arise over the lighting level. MTB does not agree with suggestions that performance language is more appropriate since a minimum intensity is needed regardless of the means of providing light. The notion of not lighting the protective enclosure because of potential community objections was not taken seriously, because lighting is only required if a security warning system is not provided, and this alternative is always available if lighting is a problem. More lighting than the minimum level required by § 193.2911 may be needed to comply with the monitoring requirements of § 193.2913, depending on the effect of local conditions around the facility being monitored.

This is the last of nine sections that is shown to have a high estimated cost impact in the Draft Evaluation. Minimum and maximum estimated incremental costs for the NPRM when compared to the former baseline, NFPA 59A (1975 edition), which has no counterpart, were $8.343 and $10.084 million, respectively.

Changes in the final rule, requiring lighting that would exceed the minimum specified 2.2 lux intensity under certain conditions, is estimated to increase these costs to $8.68 and $10.49 million. However, when compared to the new baseline, § 9–8.4 in NFPA 59A (1979 edition) which except for specifying a minimum intensity has requirements equivalent to those in the final, the estimated incremental costs of the final rule is reduced to $22 and $27 thousand for the minimum and maximum number of facilities, respectively.

Security Monitoring § 193.2913

Despite recommendations by five commenters, the word "each," used in describing the enclosure and the facility to be monitored, has been retained in § 193.2913 because its use is appropriate to assure that every protective enclosure and specified facility, whether one or many, will be properly monitored. However, the word "direct," describing "visual observation," has been deleted in accordance with comments by the TPSSC and several commenters in order to clarify MTB's intent that television is an acceptable means of monitoring. Although the term "schedule," referenced with respect to "security procedures under § 193.2903," has not been deleted, the word "schedule" is not intended to forbid a random inspection interval. It is expected that the procedures under § 193.2903 would spell out a formulation for random inspection tours appropriate for optimum security of the plant.

Alternative Power Sources

In § 193.2915, an error in numbering the referenced section, noted by the TPSSC and five commenters, has been corrected from § 193.927 to § 193.2445. Recommendations by several of these commenters to change the word "and" to "or," appearing between "security lighting" and "security warning systems," is inappropriate since this would denote that alternative power for only one of the two systems would satisfy the requirement, when, at a given plant, security might be reliant on both.

Security Warning Signs

While only a few commenters objected to § 193.2917, they did not support their objections with significant rationale. The vast majority of commenters and the TPSSC signified acceptance of the NPRM wording, which remains unchanged in the final rule.

In consideration of the foregoing, Parts 192 and 193 of Title 49 of the Code of Federal Regulations are amended as follows:

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

§ 192.12 [Revoked]

1. Section 192.12 is revoked in the text of the rules and the table of sections.

2. The table of sections of Part 193 is amended by adding a new § 193.2017 under Subpart A; a new § 193.2304 under Subpart D; new §§ 193.2707–193.2719 under Subpart H; and new Subparts F, G, I, and J as follows:

PART 193—LIQUEFIED NATURAL GAS FACILITIES: FEDERAL SAFETY STANDARDS

Subpart A—General

Sec.

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193.2017 Plans and procedures.

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Subpart D—Construction

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193.2304 Corrosion control overview.

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Subpart F—Operations

193.2501 Scope.
193.2503 Operating procedures.
193.2505 Cooldown.
193.2507 Monitoring operations.
193.2509 Emergency procedures.
193.2511 Personnel safety.
193.2513 Transfer procedures.
193.2515 Investigations of failures.
193.2517 Purging.
193.2519 Communication systems.
193.2521 Operating records.

Subpart G—Maintenance

193.2601 Scope.
193.2603 General.
193.2605 Maintenance procedures.
193.2607 Foreign material.
193.2609 Support systems.
193.2611 Fire protection.
193.2613 Auxiliary power sources.
193.2615 Isolating and purging.
193.2617 Repairs.
193.2619 Control systems.
193.2621 Testing transfer hoses.
193.2623 Inspecting LNG storage tanks.
193.2625 Corrosion protection.
193.2627 Atmospheric corrosion control.
193.2629 External corrosion control; buried or submerged components.
193.2631 Internal corrosion control.
193.2633 Interference currents.
193.2635 Monitoring corrosion control.
193.2637 Remedial measures.
193.2639 Maintenance records.

Subpart H—Personnel Qualifications and Training

* * * * *

Sec.
193.2707 Operations and maintenance.
193.2709 Security.
193.2711 Personnel health.
193.2713 Training: operations and maintenance.
193.2715 Training: security.
193.2717 Training: fire protection.
193.2719 Training: records.

Subpart I—Fire Protection

193.2801 Scope.
193.2803 General.
193.2805 Fire prevention plan.
193.2807 Smoking.
193.2809 Open fires.
193.2811 Hotwork.
193.2813 Storage of flammable fluids.
193.2815 Motorized equipment.
193.2817 Fire control equipment.
193.2819 Gas detection.
193.2821 Fire detection.

Subpart J—Security

193.2901 Scope.
193.2903 Security procedures.
193.2905 Protective enclosures.
193.2907 Protective enclosure construction.
193.2909 Security communications.
193.2911 Security lighting.
193.2913 Security monitoring.
193.2915 Alternative power sources.
193.2917 Warning signs.

3. In § 193.2005, paragraph (c) is amended to read as follows:

§ 193.2005 Applicability.

* * * * *

(c) The siting, design, installation, and construction of an LNG facility under construction before February 11, 1980, or that is listed in paragraph (a)(2) of this section (except a facility under construction before July 1, 1976) must meet the applicable requirements of NFPA 59A (1972 edition) and Part 192 of this chapter or the applicable requirements of this part, except that no Part 192 standard issued after March 1, 1978, applies to an LNG facility listed in paragraph (a)(2) of this section.

§ 193.2007 [Amended]

4. In § 193.2007, the definition of the term "component" is revised and a definition of "Waterfront LNG plant" is added, both to read as follows:

* * * * *

"Component" means any part, or system of parts functioning as a unit, including, but not limited to, piping, processing equipment, containers, control devices, impounding systems, lighting, security devices, fire control equipment, and communication equipment, whose integrity or reliability is necessary to maintain safety in controlling, processing, or containing a hazardous fluid.

* * * * *

"Waterfront LNG plant" means an LNG plant with docks, wharves, piers, or other structures in, on, or immediately adjacent to the navigable waters of the United States or Puerto Rico and any shore area immediately adjacent to those waters to which vessels may be secured and at which LNG cargo operations may be conducted.

* * * * *

5. Section 193.2017 is added to read as follows:

§ 193.2017 Plans and procedures.

(a) Each operator shall maintain at each LNG plant the plans and procedures required for that plant by this part. The plans and procedures must be available upon request for review and inspection by the Director or any State Agency that has submitted a current certification or agreement with respect to the plant under section 5 of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1674). In addition, each change to the plans or procedures must be available at the LNG plant for review and inspection within 20 days after the change is made.

(b) The Director or the State Agency, after notice and opportunity for hearing, may require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

6. Section 193.2304 is added to read as follows:

§ 193.2304 Corrosion control overview.

(a) Subject to paragraph (b) of this section, components may not be constructed, repaired, replaced, or significantly altered until a person qualified under § 193.2707(c) reviews the applicable design drawings and materials specifications from a corrosion control viewpoint and determines that the materials involved will not impair the safety or reliability of the component or any associated components.

(b) The repair, replacement, or significant alteration of components must be reviewed only if the action to be taken—

(1) Involves a change in the original materials specified;

(2) Is due to a failure caused by corrosion; or

(3) Is occasioned by inspection revealing a significant deterioration of the component due to corrosion.

7. Section 193.2431(c) is added to read as follows:

§ 193.2431 Vents.

* * * * *

(c) Venting of natural gas/vapor under operational control which could produce a hazardous gas atmosphere must be directed to a flare stack or heat exchanger in order to raise its temperature to achieve positive buoyancy and safe venting.

8. Subpart H is amended by adding the following new §§ 193.2707–193.2719:

§ 193.2707 Operations and maintenance.

(a) Each operator shall utilize for operation or maintenance of components only those personnel who have demonstrated their capability to perform their assigned functions by—

(1) Successful completion of the training required by §§ 193.2713 and 193.2717; and

(2) Experience related to the assigned operation or maintenance function; and

(3) Acceptable performance on a proficiency test relevant to the assigned function.

(b) A person who does not meet the requirements of paragraph (a) of this section may operate or maintain a component when accompanied and directed by an individual who meets the requirements.

(c) Corrosion control procedures under § 193.2605(b), including those for the design, installation, operation, and maintenance of cathodic protection systems, must be carried out by, or under the direction of, a person qualified by experience and training in corrosion control technology.

§ 193.2709 Security.

Personnel having security duties must be qualified to perform their assigned duties by successful completion of the training required under § 193.2715.

§ 193.2711 Personnel health.

Each operator shall follow a written plan to verify that personnel assigned operating, maintenance, security, or fire protection duties at the LNG plant do not have any physical condition that would impair performance of their assigned duties. The plan must be designed to detect both readily observable disorders, such as physical handicaps or injury, and conditions requiring professional examination for discovery.

§ 193.2713 Training; operations and maintenance.

(a) Each operator shall provide and implement a written plan of initial training to instruct—

(1) All permanent maintenance, operating, and supervisory personnel—

(i) About the characteristics and hazards of LNG and other flammable fluids used or handled at the facility, including, with regard to LNG, low temperatures, flammability of mixtures with air, odorless vapor, boiloff characteristics, and reaction to water and water spray;

(ii) About the potential hazards involvd in operating and maintenance activities; and

(iii) To carry out aspects of the operating and maintenance procedures under §§ 193.2503 and 193.2605 that relate to their assigned functions; and

(2) All personnel—

(i) To carry out the emergency procedures under § 193.2509 that relate to their assigned functions; and

(ii) To give first-aid; and

(3) All operating and appropriate supervisory personnel—

(i) To understand detailed instructions on the facility operations, including controls, functions, and operating procedures; and

(ii) To understand the LNG transfer procedures provided under § 193.2513.

(b) A written plan of continuing instruction must be conducted at intervals of not more than two years to keep all personnel current on the knowledge and skills they gained in the program of initial instruction.

§ 193.2715 Training; security.

(a) Personnel responsible for security at an LNG plant must be trained in accordance with a written plan of initial instruction to:

(1) Recognize breaches of security;

(2) Carry out the security procedures under § 193.2903 that relate to their assigned duties;

(3) Be familiar with basic plant operations and emergency procedures, as necessary to effectively perform their assigned duties; and

(4) Recognize conditions where security assistance is needed.

(b) A written plan of continuing instruction must be conducted at intervals of not more than two years to keep all personnel having security duties current on the knowledge and skills they gained in the program of initial instruction.

§ 193.2717 Training; fire protection.

(a) All personnel involved in maintenance and operations of an LNG plant, including their immediate supervisors, must be trained in accordance with a written plan of initial instruction, including plant fire drills, to:

(1) Know and follow the fire prevention procedures under § 193.2805(b);

(2) Know the potential causes and areas of fire determined under § 193.2805(a);

(3) Know the types, sizes, and predictable consequences of fire determined under § 193.2817(a); and

(4) Know and be able to perform their assigned fire control duties according to the procedures established under § 193.2509 and by proper use of equipment provided under § 193.2817.

(b) A written plan of continuing instruction, including plant fire drills, must be conducted at intervals of not more than two years to keep personnel current on the knowledge and skills they gained in the instruction under paragraph (a) of the section.

§ 193.2719 Training; records.

(a) Each operator shall maintain a system of records which—

(1) Provide evidence that the training programs required by this subpart have been implemented; and

(2) Provide evidence that personnel have undergone and satisfactorily completed the required training programs.

(b) Records must be maintained for one year after personnel are no longer assigned duties at the LNG plant.

9. In Part 193, Subparts F, G, I, and J are added as set forth below.

Subpart F—Operations

§ 193.2501 Scope.

This subpart prescribes requirements for the operation of LNG facilities.

§ 193.2503 Operating procedures.

Each operator shall follow one or more manuals of written procedures to provide safety in normal operation and in responding to an abnormal operation that would affect safety. The procedures must include provisions for—

(a) Monitoring components or buildings according to the requirements of § 193.2507.

(b) Startup and shutdown, including for initial startup, performance testing to demonstrate that components will operate satisfactory in service.

(c) Recognizing abnormal operating conditions.

(d) Purging and inerting components according to the requirements of § 193.2517.

(e) In the case of vaporization, maintaining the vaporization rate, temperature and pressure so that the resultant gas is within limits established for the vaporizer and the downstream piping;

(f) In the case of liquefaction, maintaining temperatures, pressures, pressured differentials and flow rates, as applicable, within their design limits for:

(1) Boilers;

(2) Turbines and other prime movers;

(3) Pumps, compressors, and expanders;

(4) Purification and regeneration equipment; and

(5) Equipment within cold boxes.

(g) Cooldown of components according to the requirements of § 193.2505; and

(h) Compliance with § 193.2805(b).

§ 193.2505 Cooldown.

(a) The cooldown of each system of components that is subjected to cryogenic temperatures must be limited to a rate and distribution pattern that keeps thermal stresses within design limits during the cooldown period, paying particular attention to the performance of expansion and contraction devices.

(b) After cooldown stabilization is reached, cryogenic piping systems must be checked for leaks in areas of flanges, valves, and seals.

§ 193.2507 Monitoring operations.

Each component in operation or building determined under § 193.2805(a)(2) in which a hazard to persons or property could exist must be monitored to detect fire or any malfunction or flammable fluid which could cause a hazardous condition. Monitoring must be accomplished by watching or listening from an attended control center for warning alarms, such as gas, temperature, pressure, vacuum, and flow alarms, or by conducting an inspection or test at intervals specified in the operating procedures.

§ 193.2509 Emergency procedures.

(a) Each operator shall determine the types and places of emergencies other than fires that may reasonably be expected to occur at an LNG plant due to operating malfunctions, structural collapse, personnel error, forces of nature, and activities adjacent to the plant.

(b) To adequately handle each type of emergency identified under paragraph (a) of this section and each fire emergency identified under § 193.2817(a), each operator shall follow one or more manuals of written procedures. The procedures must provide for the following:

(1) Responding to controllable emergencies, including notifying personnel and using equipment appropriate for handling the emergency.

(2) Recognizing an uncontrollable emergency and taking action to minimize harm to the public and personnel, including prompt notification of appropriate local officials of the emergency and possible need for evacuation of the public in the vicinity of the LNG plant.

(3) Coordinating with appropriate local officials in preparation of an emergency evacuation plan, which sets forth the steps required to protect the

public in the event of an emergency, including catastrophic failure of an LNG storage tank.

(4) Cooperating with appropriate local officials in evacuations and emergencies requiring mutual assistance and keeping these officials advised of—

(i) The LNG plant fire control equipment, its location, and quantity of units located throughout the plant;

(ii) Potential hazards at the plant, including fires;

(iii) Communication and emergency control capabilities at the LNG plant; and

(iv) The status of each emergency.

§ 193.2511 Personnel safety.

(a) Each operator shall provide any special protective clothing and equipment necessary for the safety of personnel while they are performing emergency response duties.

(b) All personnel who are normally on duty at a fixed location, such as a building or yard, where they could be harmed by thermal radiation from a burning pool of impounded liquid, must be provided a means of protection at that location from the harmful effects of thermal radiation or a means of escape.

(c) Each LNG plant must be equipped with suitable first-aid material, the location of which is clearly marked and readily available to personnel.

§ 193.2513 Transfer procedures.

(a) Each transfer of LNG or other hazardous fluid must be conducted in accordance with one or more manuals of written procedures to provide for safe transfers.

(b) The transfer procedures must include provisions for personnel to:

(1) Before transfer, verify that the transfer system is ready for use, with connections and controls in proper positions, including if the system could contain a combustible mixture, verifying that it has been adequately purged in accordance with a procedure which meets the requirements of AGA "Purging Principles and Practice."

(2) Before transfer, verify that each receiving container or tank vehicle does not contain any substance that would be incompatible with the incoming fluid and that there is sufficient capacity available to receive the amount of fluid to be transferred;

(3) Before transfer, verify the maximum filling volume of each receiving container or tank vehicle to ensure that expansion of the incoming fluid due to warming will not result in overfilling or overpressure;

(4) When making bulk transfer of LNG into a partially filled (excluding cooldown heel) container, determine any differences in temperature or specific gravity between the LNG being transferred and the LNG already in the container and, if necessary, provide a means to prevent rollover due to stratification.

(5) Verify that the transfer operations are proceeding within design conditions and that overpressure or overfilling does not occur by monitoring applicable flow rates, liquid levels, and vapor returns.

(6) Manually terminate the flow before overfilling or overpressure occurs; and

(7) Deactivate cargo transfer systems in a safe manner by depressurizing, venting, and disconnecting lines and conducting any other appropriate operations.

(c) In addition to the requirements of paragraph (b) of this section, the procedures for cargo transfer must be located at the transfer area and include provisions for personnel to:

(1) Be in constant attendance during all cargo transfer operations;

(2) Prohibit the backing of tank trucks in the transfer area, except when a person is positioned at the rear of the truck giving instructions to the driver;

(3) Before transfer, verify that—

(i) Each tank car or tank truck complies with applicable regulations governing its use;

(ii) All transfer hoses have been visually inspected for damage and defects;

(iii) Each tank truck is properly immobilized with chock wheels, and electrically grounded; and

(iv) Each tank truck engine is shut off unless it is required for transfer operations;

(4) Prevent a tank truck engine that is off during transfer operations from being restarted until the transfer lines have been disconnected and any released vapors have dissipated;

(5) Prevent loading LNG into a tank car or tank truck that is not in exclusive LNG service or that does not contain a positive pressure if it is in exclusive LNG service, until after the oxygen content in the tank is tested and if it exceeds 2 percent by volume, purged in accordance with a procedure that meets the requirements of AGA "Purging Principles and Practice;"

(6) Verify that all transfer lines have been disconnected and equipment cleared before the tank car or tank truck is moved from the transfer position; and

(7) Verify that transfers into a pipeline system will not exceed the pressure or temperature limits of the system.

§ 193.2515 Investigations of failures.

(a) Each operator shall investigate the cause of each explosion, fire, or LNG spill or leak which results in—

(1) Death or injury requiring hospitalization; or

(2) Property damage exceeding $10,000.

(b) As a result of the investigation, appropriate action must be taken to minimize recurrence of the incident.

(c) If the Director or relevant state agency under section 5 of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1674) investigates an incident, the operator involved shall make available all relevant information and provide reasonable assistance in conducting the investigation. Unless necessary to restore or maintain service, or for safety, no component involved in the incident may be moved from its location or otherwise altered until the investigation is complete or the investigating agency otherwise provides. Where components must be moved for operational or safety reasons, they must not be removed from the plant site and must be maintained intact to the extent practicable until the investigation is complete or the investigating agency otherwise provides.

§ 193.2517 Purging.

When necessary for safety, components that could accumulate significant amounts of combustible mixtures must be purged in accordance with a procedure which meets the provisions of the AGA "Purging Principles and Practice" after being taken out of service and before being returned to service.

§ 193.2519 Communication systems.

(a) Each LNG plant must have a primary communication system that provides for verbal communications between all operating personnel at their work stations in the LNG plant.

(b) Each LNG plant in excess of 70,000 gallons storage capacity must have an emergency communication system that provides for verbal communications between all persons and locations necessary for the orderly shutdown of operating equipment and the operation of safety equipment in time of emergency. The emergency communication system must be independent of and physically separated from the primary communication system and the security communication system under § 193.2909.

(c) Each communication system required by this part must have an auxiliary source of power, except sound-powered equipment.

§ 193.2521 Operating records.

Each operator shall maintain a record of the results of each inspection, test, and investigation required by this subpart. Such records must be kept for a period of not less than 5 years.

Subpart G—Maintenance

§ 193.2601 Scope.

This subpart prescribes requirements for maintaining components at LNG plants.

§ 193.2603 General.

(a) Each component in service, including its support system, must be maintained in a condition that is compatible with its operational or safety purpose by repair, replacement, or other means.

(b) An operator may not place, return, or continue in service any component which is not maintained in accordance with this subpart.

(c) Each component taken out of service must be identified in the records kept under § 193.2639.

(d) If a safety device is taken out of service for maintenance, the component being served by the device must be taken out of service unless the same safety function is provided by an alternate means.

(e) If the inadvertent operation of a component taken out of service could cause a hazardous condition, that component must have a tag attached to the controls bearing the words "do not operate" or words of comparable meaning.

§ 193.2605 Maintenance procedures.

(a) Each operator shall determine and perform, consistent with generally accepted engineering practice, the periodic inspections or tests needed to meet the applicable requirements of this subpart and to verify that components meet the maintenance standards prescribed by this subpart.

(b) Each operator shall follow one or more manuals of written procedures for the maintenance of each component, including any required corrosion control. The procedures must include—

(1) The details of the inspections or tests determined under paragraph (a) of this section and their frequency of performance; and

(2) A description of other actions necessary to maintain the LNG plant in accordance with the requirements of this subpart and § 193.2805.

§ 193.2607 Foreign material.

(a) The presence of foreign material, contaminants, or ice shall be avoided or controlled to maintain the operational safety of each component.

(b) LNG plant grounds must be free from rubbish, debris, and other material which present a fire hazard. Grass areas on the LNG plant grounds must be maintained in a manner that does not present a fire hazard.

§ 193.2609 Support systems.

Each support system or foundation of each component must be inspected for any detrimental change that could impair support.

§ 193.2611 Fire protection.

(a) Maintenance activities on fire control equipment must be scheduled so that a minimum of equipment is taken out of service at any one time and is returned to service in a reasonable period of time.

(b) Access routes for movement of fire control equipment within each LNG plant must be maintained to reasonably provide for use in all weather conditions.

§ 193.2613 Auxiliary power sources.

Each auxiliary power source must be tested monthly to check its operational capability and tested annually for capacity. The capacity test must take into account the power needed to start up and simultaneously operate equipment that would have to be served by that power source in an emergency.

§ 193.2615 Isolating and purging.

(a) Before personnel begin maintenance activities on components handling flammable fluids which are isolated for maintenance, the component must be purged in accordance with a procedure which meets the requirements of AGA "Purging Principles and Practices," unless the maintenance procedures under § 193.2605 provide that the activity can be safely performed without purging.

(b) if the component or maintenance activity provides an ignition source, a technique in addition to isolation valves (such as removing spool pieces or valves and blank flanging the piping, or double block and bleed valving) must be used to ensure that the work area is free of flammable fluids.

§ 193.2617 Repairs.

(a) Repair work on components must be performed and tested in a manner which—

(1) As far as practicable, complies with the applicable requirements of Subpart D of this part; and

(2) Assures the integrity and operational safety of the component being repaired.

(b) For repairs made while a component is operating, each operator shall include in the maintenance procedures under § 193.2605 appropriate precautions to maintain the safety of personnel and property during repair activities.

§ 193.2619 Control systems.

(a) Each control system must be properly adjusted to operate within design limits.

(b) If a control system is out of service for 30 days or more, it must be inspected and tested for operational capability before returning it to service.

(c) Control systems in service, but not normally in operation (such as relief valves and automatic shutdown devices), must be inspected and tested once each calendar year, but with intervals not exceeding 15 months, with the following exceptions:

(1) Control systems used seasonally, such as for liquefaction or vaporization, must be inspected and tested before use each season.

(2) Control systems that are intended for fire protection must be inspected and tested at regular intervals not to exceed 6 months.

(d) Control systems that are normally in operation, such as required by a base load system, must be inspected and tested once each calendar year but with intervals not exceeding 15 months.

(e) Relief valves must be inspected and tested for verification of the valve seat lifting pressure and reseating.

§ 193.2621 Testing transfer hoses.

Hoses used in LNG or flammable refrigerant transfer systems must be—

(a) Tested once each calendar year, but with intervals not exceeding 15 months, to the maximum pump pressure or relief valve setting; and

(b) Visually inspected for damage or defects before each use.

§ 193.2623 Inspecting LNG storage tanks.

Each LNG storage tank must be inspected or tested to verify that each of the following conditions does not impair the structural integrity or safety of the tank:

(a) Foundation and tank movement during normal operation and after a major meteorological or geophysical disturbance.

(b) Inner tank leakage.

(c) Effectiveness of insulation.

(d) Frost heave.

§ 193.2625 Corrosion protection.

(a) Each operator shall determine which metallic components could, unless corrosion is controlled, have their integrity or reliability adversely affected by external, internal, or atmospheric corrosion during their intended service life.

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(b) Components whose integrity or reliability could be adversely affected by corrosion must be either—

(1) Protected from corrosion in accordance with §§ 193.2627 thru 193.2635, as applicable; or

(2) Inspected and replaced under a program of scheduled maintenance in accordance with procedures established under § 193.2605.

§ 193.2627 Atmospheric corrosion control.

Each exposed component that is subject to atmospheric corrosive attack must be protected from atmospheric corrosion by—

(a) Material that has been designed and selected to resist the corrosive atmosphere involved; or

(b) Suitable coating or jacketing.

§ 193.2629 External corrosion control; buried or submerged components.

(a) Each buried or submerged component that is subject to external corrosive attack must be protected from external corrosion by—

(1) Material that has been designed and selected to resist the corrosive environment involved; or

(2) The following means:

(i) An external protective coating designed and installed to prevent corrosion attack and to meet the requirements of § 192.461 of this chapter; and

(ii) A cathodic protection system designed to protect components in their entirety in accordance with the requirements of § 192.463 of this chapter and placed in operation before October 23, 1981, or within 1 year after the component is constructed or installed, whichever is earlier.

(b) Where cathodic protection is applied, components that are electrically interconnected must be protected as a unit.

§ 193.2631 Internal corrosion control.

Each component that is subject to internal corrosive attack must be protected from internal corrosion by—

(a) Material that has been designed and selected to resist the corrosive fluid involved; or

(b) Suitable coating, inhibitor, or other means.

§ 193.2633 Interference currents.

(a) Each component that is subject to electrical current interference must be protected by a continuing program to minimize the detrimental effects of currents.

(b) Each cathodic protection system must be designed and installed so as to minimize any adverse effects it might cause to adjacent metal components.

(c) Each impressed current power source must be installed and maintained to prevent adverse interference with communications and control systems.

§ 193.2635 Monitoring corrosion control.

Corrosion protection provided as required by this subpart must be periodically monitored to give early recognition of ineffective corrosion protection, including the following, as applicable:

(a) Each buried or submerged component under cathodic protection must be tested at least once each calendar year, but with intervals not exceeding 15 months, to determine whether the cathodic protection meets the requirements of § 192.463 of this Chapter.

(b) Each cathodic protection rectifier or other impressed current power source must be inspected at least 6 times each calendar year, but with intervals not exceeding 2½ months, to ensure that it is operating properly.

(c) Each reverse current switch, each diode, and each interference bond whose failure would jeopardize component protection must be electrically checked for proper performance at least 6 times each calendar year, but with intervals not exceeding 2½ months. Each other interference bond must be checked at least once each calendar year, but with intervals not exceeding 15 months.

(d) Each component that is protected from atmospheric corrosion must be inspected at intervals not exceeding 3 years.

(e) If a component is protected from internal corrosion, monitoring devices designed to detect internal corrosion, such as coupons or probes, must be located where corrosion is most likely to occur. However, monitoring is not required for corrosion resistant materials if the operator can demonstrate that the component will not be adversely affected by internal corrosion during its service life. Internal corrosion control monitoring devices must be checked at least two times each calendar year, but with intervals not exceeding 7½ months.

§ 193.2637 Remedial measures.

Prompt corrective or remedial action must be taken whenever an operator learns by inspection or otherwise that atmospheric, external, or internal corrosion is not controlled as required by this subpart.

§ 193.2639 Maintenance records.

(a) Each operator shall keep a record at each LNG plant of the date and type of each maintenance activity performed on each component to meet the requirements of this subpart, including periodic tests and inspections, for a period of not less than five years.

(b) Each operator shall maintain records or maps to show the location of cathodically protected components, neighboring structures bonded to the cathodic protection system, and corrosion protection equipment.

(c) Each of the following records must be retained for as long as the LNG facility remains in service:

(1) Each record or map required by paragraph (b) of this section.

(2) Records of each test, survey, or inspection required by this subpart in sufficient detail to demonstrate the adequacy of corrosion control measures.

Subpart I—Fire Protection

§ 193.2801 Scope.

This subpart prescribes requirements for fire prevention and fire control at LNG plants other than waterfront LNG plants.

§ 193.2803 General.

Each operator shall use sound fire protection engineering principles to minimize the occurrence and consequences of fire.

§ 193.2805 Fire prevention plan.

(a) Each operator shall determine—

(1) Those potential sources of ignition located inside and adjacent to the LNG plant which could cause fires that affect the safety of the plant; and

(2) Those areas, as described in Section 500–4 of MFPA–70, where the potential exists for the presence of flammable fluids in an LNG plant. Determinations made under this paragraph must be kept current.

(b) With respect to areas determined under paragraph (a)(2) of this section, each operator shall include in the operating and maintenance procedures under § 193.2503 and § 193.2605, as appropriate, steps necessary to minimize—

(1) The leakage or release of flammable fluids; and

(2) The possibility of flammable fluids being ignited by sources identified under paragraph (a)(1) of this section.

§ 193.2807 Smoking.

(a)(1) Smoking is prohibited at an LNG plant in areas identified under § 193.2805(a)(2).

(2) Smoking is permitted only in such locations that the operator designates as a smoking area.

(b) Signs marked with the words "smoking permitted" must be dispayed in prominent places in each smoking

area designated under paragraph (a) of this section.

(c) Signs marked with the words "NO SMOKING" must be displayed in prominent places in areas where smoking is prohibited.

§ 193.2809 Open fires.

(a) No open fires are permitted at an LNG plant, except at flare stacks and at times and places designated by the operator.

(b) Whenever an open fire is designated, there must be at the site of the fire—

(1) Trained fire fighting personnel; and

(2) Fire control equipment which has the capability of extinguishing the fire.

(c) The fire fighting personnel and equipment must remain at the fire site until the fire is extinguishd and there is no possibility of reignition.

§ 193.2811 Hotwork.

Welding, flame cutting, and similar operations are prohibited, except at times and places that the operator designates in writing as safe and when constantly supervised in accordance with NFPA-51B.

§ 193.2813 Storage of flammable fluids.

Flammable fluids may not be stored in areas where ignition sources are present, unless stored in accordance with the requirements of Chapter 4 of NFPA 30.

§ 193.2815 Motorized equipment.

Use of motor vehicles and other motorized equipment which constitute potential ignition sources is prohibited in an impounding space, in areas within 15 m (49.2 ft) of a storage tank, and in areas within 15 m (49.2 ft) of processing equipment containing a flammable fluid except—

(a) At times the operator designates in writing as safe; and

(b) When the motorized equipment is constantly attended.

§ 193.2817 Fire equipment.

(a) Each operator shall determine: (1) the types and sizes of fires that may reasonably be expected to occur within and adjacent to each LNG plant that could affect the safety of components; and (2) The foreseeable consequences of these fires, including the failure of components or buildings due to heat exposure.

(b) Each operator shall provide and maintain fire control equipment and supplies in accordance with the applicable requirements of NFPA 59A to protect or cool components that could fail due to heat exposure from fires determined under paragraph (a) of this section and either worsen an emergency or endanger persons or property located outside the plant. Protection or cooling must be provided for as long as the heat exposure exists. The fire control equipment and supplies must include the following:

(1) Portable fire extinguishers suitable for types of fires identified under paragraph (a) of this section; and

(2) If the total inventory of LNG is 265 m^3 (70,000 gal.) or more, a water supply and associated delivery system.

(c) Each operator shall determine the type, size, quantity and location of the fire control equipment and supplies required under paragraph (b) of this section.

(d) Each operator shall provide each facility person who may be endangered by exposure to fire or the products of combustion in performing fire control duties protective clothing and equipment, including, if necessary, a self-contained breathing apparatus.

(e) Portable fire control equipment, protective clothing and equipment for personnel use, controls for fixed fire control equipment, and fire control supplies must be conspicuously located, marked for easy recognition, and readily available for use.

(f) Fire control equipment must have operating instructions. Instructions must be attached to portable equipment and placed at the location of controls for fixed equipment.

§ 193.2819 Gas detection.

(a) All areas determined under § 193.2805(a)(2) in which a hazard to persons or property could exist must be continuously monitored for the presence of flammable gases and vapors with fixed flammable gas detection systems provided and maintained according to the applicable requirements of NFPA 59A.

(b) Each fixed flammable gas detection system must be provided with audible and visible alarms located at an attended control room or control station, and an audible alarm in the area of gas detection.

(c) Flammable gas detection alarms must be set to activate at not more than 25 percent of the lower flammable limit of the gas or vapor being monitored.

(d) Gas detection systems must be installed so that they can be readily tested as required by NFPA 59A.

(e) A minimum of two portable flammable gas detectors capable of measuring the lower flammable limit must be available at the LNG plant for use at all times.

(f) All enclosed buildings located on an LNG plant must be continuously monitored for the presence of flammable gases and vapors with a fixed flammable gas detection system that provides a visible or audible alarm outside the enclosed building. The systems must be provided and maintained according to the applicable requirements of NFPA 59A.

§ 193.2821 Fire detection.

(a) Fire detectors that continuously monitor for the presence of either flame, heat, or products of combustion must be provided in all areas determined under § 193.2805(a)(2) in which a hazard to persons or property could exist and in all other areas that are used for the storage of flammable or combustible material.

(b) Each fire detection system must be provided with audible and visible alarms located at an attended control room or control station, and an audible alarm in the area of fire detection. The systems must be provided and maintained according to the applicable requirements of NFPA 59A.

Subpart J—Security

§ 193.2901 Scope.

This subpart prescribes requirements for security at LNG plants other than waterfront LNG plants.

§ 193.2903 Security procedures.

Each operator shall prepare and follow one or more manuals of written procedures to provide security for each LNG plant. The procedures must be available at the plant in accordance with § 193.2017 and include at least:

(a) A description and schedule of security inspections and patrols performed in accordance with § 193.2913;

(b) A list of security personnel positions or responsibilities utilized at the LNG plant;

(c) A brief description of the duties associated with each security personnel position or responsibility;

(d) Instructions for actions to be taken, including notification of other appropriate plant personnel and law enforcement officials, when there is any indication of an actual or attempted breach of security;

(e) Methods for determining which persons are allowed access to the LNG plant;

(f) Positive identification of all persons entering the plant and on the plant, including methods at least as effective as picture badges; and

(g) Liaison with local law enforcement officials to keep them informed about current security procedures under this section.

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§ 193.2905 Protective enclosures.

(a) The following facilities must be surrounded by a protective enclosure:

(1) Storage tanks;
(2) Impounding systems;
(3) Vapor barriers;
(4) Cargo transfer systems;
(5) Process, liquefaction, and vaporization equipment;
(6) Control rooms and stations;
(7) Control systems;
(8) Fire control equipment;
(9) Security communications systems; and
(10) Alternative power sources.

The protective enclosure may be one or more separate enclosures surrounding a single facility or multiple facilities.

(b) Ground elevations outside a protective enclosure must be graded in a manner that does not impair the effectiveness of the enclosure.

(c) Protective enclosures may not be located near features outside of the facility, such as trees, poles, or buildings, which could be used to breach the security.

(d) At least two accesses must be provided in each protective enclosure and be located to minimize the escape distance in the event of emergency.

(e) Each access must be locked unless it is continuously guarded. During normal operations, an access may be unlocked only by persons designated in writing by the operator. During an emergency, a means must be readily available to all facility personnel within the protective enclosure to open each access.

§ 193.2907 Protective enclosure construction.

(a) Each protective enclosure must have sufficient strength and configuration to obstruct unauthorized access to the facilities enclosed.

(b) Protective enclosures must be fences or walls constructed as follows:

(1) Fences must be chainlink security fences constructed of No. 11 American wire gauge or heavier metal wire.

(2) Walls must be vertical and constructed of stone, brick, cinder block, concrete, steel or comparable materials.

(3) Protective enclosures must be topped by three or more strands of barbed wire or similar materials on brackets angled outward between 30° and 45° from the vertical, with a height of at least 2.4m (8 ft.) including approximately one foot of barbed topping.

(4) Openings in or under protective enclosures must be secured by grates, doors or covers of construction and fastening of sufficient strength such that the integrity of the protective enclosure is not reduced by any opening.

(c) Paragraphs (b)(1) thru (b)(3) of the section do not apply to protective enclosures constructed before October 23, 1980.

(1) Are made of noncombustible materials;

(2) Are at least 2.1m (7 ft.) in height including approximately one foot of barbed or similar topping; and

(3) Have served to protect the LNG plant without having been breached during their history of service.

§ 193.2909 Security communications.

A means must be provided for:

(a) Prompt communications between personnel having supervisory security duties and law enforcement officials; and

(b) Direct communications between all on-duty personnel having security duties and all control rooms and control stations.

§ 193.2911 Security lighting.

Where security warning systems are not provided for security monitoring under § 193.2913, the area around the facilities listed under § 193.2905(a) and each protective enclosure must be illuminated with a minimum in service lighting intensity of not less than 2.2 lux (0.2 ft^c) between sunset and sunrise.

§ 193.2913 Security monitoring.

Each protective enclosure and the area around each facility listed in § 193.2905(a) must be monitored for the presence of unauthorized persons. Monitoring must be by visual observation in accordance with the schedule in the security procedures under § 193.2903(a) or by security warning systems that continuously transmit data to an attended location. At an LNG plant with less than 40,000 m^3 (250,000 bbl) of storage capacity, only the protective enclosure must be monitored.

§ 193.2915 Alternative power sources.

An alternative source of power that meets the requirements of § 193.2445 must be provided for security lighting and security monitoring and warning systems required under §§ 193.2911 and 193.2913.

§ 193.2917 Warning signs.

(a) Warning signs must be conspicuously placed along each protective enclosure at intervals so that at least one sign is recognizable at night from a distance of 39m (100 ft.) from any way that could reasonably be used to approach the enclosure.

(b) Signs must be marked with at least the following on a background of sharply contrasting color:

The words "NO TRESPASSING," or words of comparable meaning.

10. Appendix A to Part 193 is amended by adding new material incorporated by reference as set forth below.

Appendix A to Part 193—Incorporation by Reference

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II. *Documents Incorporated by Reference.*

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B. American Gas Association (AGA)

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2. Purging Principles and Practice (1975 edition).

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G. National Fire Protection Association (NFPA)

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2. NFPA No. 59A, Storage and Handling of LNG (1972 edition for § 193.2005(c), otherwise 1979 edition).

* * * * *

4. NFPA No. 30, Flammable Liquids (1977 edition).

5. NFPA No. 51 B, Cutting and Welding Processes (1977 edition).

11. Section § 193.2013(c) is revised to read as follows:

§ 193.2013 Incorporation by reference.

* * * * *

(c) Incorporated by reference provisions approved by the Director of the Federal Register.

(49 U.S.C. 1674 (a); 49 CFR 1.53 and Appendix A to Part 1)

Issued in Washington, D.C., on October 17, 1980.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 80-33115 Filed 10-22-80; 8:45 am]

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Thursday
October 23, 1980

Part IV

Department of Transportation

Urban Mass Transportation Administration

Urban Initiatives Program; Proposed Requirements and Guidelines

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DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 654

[Docket No. 80-W]

Urban Initiatives Program

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Urban Mass Transportation Administration (UMTA) is proposing regulations governing its Urban Initiatives Program. The Urban Initiatives Program provides funding for mass transportation projects that enhance urban development. The regulations would codify and clarify existing requirements and guidelines concerning the program.

DATE: Comments must be received by: December 8, 1980.

ADDRESS: Comments must be submitted to UMTA Docket No. 80-W, 400 7th Street, S.W., Washington, D.C. 20590. All comments and suggestions received will be available for examination in Room 9320 at the above address between 8:30 a.m. and 5:00 p.m., Monday through Friday. Receipt of comments will be acknowledged by UMTA if a self-addressed stamped postcard is included with each comment.

FOR FURTHER INFORMATION CONTACT: Casimir Bonkowski, Office of Grants Assistance (202) 472-7037.

SUPPLEMENTARY INFORMATION: All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. Comments received after the expiration of the comment period will be considered to the extent feasible. The Administrator has determined that this regulation is not a significant regulation under the criteria in the DOT Order for Improving Government Regulations (44 FR 11042, February 26, 1979).

Under the DOT Order, a full evaluation is not warranted because the expected economic impact of the regulation is minimal. The proposed regulation is a codification and clarification of existing requirements.

The provisions of OMB Circular A-95 apply to this Final Rule. It covers the following program as listed in the Catalog of Federal Domestic Assistance (CFDA):

20:500 Urban Mass Transportation Capital Grants

The guidelines and requirements for the Urban Initiatives Program were published in the Notice section of the **Federal Register** on April 10, 1979 (44 FR 21580) and interested parties were invited to submit comments. Comments on the Urban Initiatives Guidelines were generally favorable, or requested clarification as to specific interpretations of the elements of the selection criteria. All comments have been considered. The proposal would codify the requirements for clarity and for easier use by affected parties. Most comments related to elements which are already eligible for funding under existing UMTA programs. As these elements are already eligible for UMTA funding they are not specifically enumerated in the regulations. These included requests for specific references to funding environmental analysis, elevated pedestrian connections, bicycle facilities, and the cost of historic preservation through rehabilitation and renovation of facilities. During the comment period, UMTA will consider applications for Urban Initiatives grants on a case-by-case basis utilizing the proposed regulations as guidance.

Background

On March 27, 1978, the President announced his Urban Policy which consists of a comprehensive set of policy statements to guide Federal actions for urban America. On February 15, 1979, the Secretary of Transportation announced that UMTA would administer an Urban Initiatives Program which follows the guidelines established by the President's Policy.

The Urban Mass Transportation Administration will carry out the mass transit component of the Urban Policy through an Urban Initiatives Program, authority for which is provided in Section 3(a)(1)(D) of the Urban Mass Transportation Act of 1964, as amended (the Act) (This section was amended by Section 302(a) of the Surface Transportation Assistance Act of 1978). This section authorizes the financing of "transportation projects which enhance the effectiveness of any mass transportation project and are physically or functionally related to such mass transportation project or which create new or enhanced coordination between public transportation and other forms of transportation, either of which enhance urban economic development or incorporate private investment including commercial and residential development."

The Act further identifies activities eligible for funding by specifying that "the term 'eligible costs' includes property acquisition, demolition of existing structures, site preparation utilities, building foundations, walkways, open space, and the acquisition, construction, and improvement of facilities and equipment for intermodal transfer facilities and transit malls, but does not include the construction of commercial revenue producing facilities, whether publicly or privately owned, or those portions of public facilities not related to mass transportation."

UMTA (through a delegation from the Secretary) is authorized to establish terms, conditions and requirements for assistance, "including requirements for the disposition of net increases in value of real property resulting from the project * * *"

The funding authorization for the Urban Initiatives Program is found in Section 4(c)(1)(B) of the Act, and the Act provides that not more than $200 million is available in each fiscal year for the Program.

Projects which do not contain a significant transit element are not eligible for funding. Projects that provide significant transportation benefits to a community, but cannot qualify under the Urban Initiatives Program, may be eligible for funding through UMTA's basic capital grant programs.

The categories of eligible Urban Initiatives projects, set out in Subpart B, emphasize those aspects which will clearly establish compliance with the President's Urban Policy Program Objectives (set out in Appendix A).

In regard to funding phased projects, one portion of which UMTA has already approved, new unfunded elements of these projects which distinctly contribute to the objectives of the President's Urban Policy are eligible for consideration.

Joint development projects are considered transportation projects. District transit elements which are eligible for traditional UMTA capital funding should be funded through normal transit assistance programs. The Urban Initiatives Program will strive to concentrate its funds on those items covered by Section 3(a)(1)(D) of the Urban Mass Transportation Act which are not eligible under other UMTA funding sources.

Changes to Existing Guidelines

The following changes have been made as result of comments and experience with implementation of the program:

1. Employment opportunities for the structurally unemployed are stressed, and employment plans are now required for projects which create permanent new jobs.

2. Increased coordination is required between public and private carriers in developing intermodal terminals.

3. Increased emphasis is placed in the transit component of malls. General access by private automobiles other than emergency vehicles must be restricted, or strictly limited to vehicles engaged in public transportation. The type of public transportation vehicles to be allowed to utilize the transit mall is a local decision determined by local priorities and the vehicular capacity of the mall. Public transportation vehicles may include shared ride taxis, paratransit vehicles or other high occupancy vehicles whose use provides increased mass transit service.

4. UMTA participation in projects containing a parking element will be considered on a case-by-case basis. Applicants are expected to have established that other funding sources are not available to fund parking elements before applying to UMTA. Preference will be given to proposals which do not contain a substantial parking element.

5. Increased emphasis is placed on the use of Federal Aid Urban Systems funds to finance elements of projects.

6. Increased emphasis is placed on local transit directly benefitting from the disposition of proceeds realized from the sale or lease of property or other items acquired or improved by the UMTA investment.

7. Special consideration will be given to projects which include significant participation by State governments and their agencies.

8. Letters of No Prejudice will not be issued during the preapplication phase of the project selection process.

9. Emphasis is placed on funding smaller projects of less than $5 million, and on ensuring a representative geographic balance in selecting projects.

10. Greater emphasis is placed on generating economic development and/or private sector investment participation in the project.

Discussion of Specific Requirements

Section 654.15(b) requires operators to notify private carriers concerning intermodal transfer facilities. The intent of this notification is to determine the private carriers' interest in physically collocating services or facilities.

In regard to using the proceeds of the investment for operating expenses, (§ 654.31) the regulations authorize only funds which exceed the amount of the UMTA share to be used for capital as well as operating expenses. If the sale or lease proceeds are less than the project cost, their use is restricted to funding capital expenses. Technically, these funds constitute revenue financing and therefore are restricted to a capital use. In addition, it is the intent of the Urban Initiatives Program to enhance the economic viability of transit by improving its capital plant, or by generating additional revenue producing economic development. This can best be accomplished by directing proceeds to finance capital projects.

In order to achieve the objectives of the Urban Initiatives Program three sets of criteria have been established. First, the projects will be evaluated to determine the extent to which they meet the objectives of the President's Urban Policy. Second, in assessing the project's eligibility, special preference will be given to those projects which meet certain special criteria (set out in Subpart D). Third, each project must satisfy standard UMTA Section 3 grant requirements.

UMTA and the Employment and Training Administration (ETA) of the Department of Labor (DOL) entered into an agreement on November 20, 1979, (See Appendix B) to maximize the degree to which a project will directly provide new permanent jobs for the long-term unemployed. UMTA has established an employment goal for the Urban Initiatives Program that must be adhered to by all affected applicants. For those projects that create new permanent jobs, the goal is the reservation of 10-15 percent of those jobs for long term unemployed persons eligible to obtain assistance under the Comprehensive Employment and Training Act (CETA).

UMTA has not identified a strict ratio of private to public investment to be used as a minimum threshold or for comparative purposes. The prevailing urban, economic, and development climate require case-by-case evaluation. It is expected, however, that Joint Development projects will directly incorporate higher proportions of private investments than other types of Urban Initiatives projects. Ideally, UMTA will be looking for projects which generate substantially more private commitment than the total Federal money requested.

Consideration will be given to the existing physical environment, financial climate, and the relationship to local development activities in evaluating the amount of private investment being leveraged. Applicants are encouraged to secure the highest/optimum ratio for the project.

The discussion of application procedures has been expanded and clarified to solicit specific and general information as part of the preapplication phase in order to ensure sufficient documentation to evaluate the project adequately. A schedule has been developed for submitting preapplication materials and for UMTA issuing notices of eligibility, fund reservation and grant award. UMTA activities relative to project review, selection and grant award are set out in Appendix D.

In consideration of the foregoing, it is proposed that a new Part 654 be added to Title 49 of the Code of Federal Regulations to read as follows:

PART 654—URBAN INITIATIVES PROGRAM

Subpart A—General

Sec.
654.1 Eligible recipients.
654.3 Funding.
654.5 Project scope and feasibility.

Subpart B—Eligible Project Categories

654.11 General requirements.

Intermodal Transfer Facilities

654.13 Types of facilities.
654.15 Requirements: Intermodal transfer facilities.
654.17 Eligible projects costs: Intermodal transfer facilities.

Transit Malls

Sec.
654.19 Types of malls.
654.21 Requirements: Transit malls.
654.23 Eligible projects costs: Transit malls.

Joint Development Projects

654.25 Types of projects.
654.27 Requirements: Joint development projects.
654.29 Eligible project costs: Joint development project.
654.31 Participation in proceeds derived from UMTA investment.

Subpart C—Criteria for Meeting Policy Objectives

654.41 General.
654.43 Transit.
654.45 Socio-economic: Employment.
654.47 Socio-economic: Involvement of neighborhood organizations and voluntary associations.
654.49 Development: Urban economic development/private sector investment.
654.51 Development: Business opportunities for small and minority businesses.
654.53 Development: Enhancement of the immediate physical environment around the project.
654.55 Development: Coordination.

Subpart D—Special Considerations

654.61 Establishing priorities.

Subpart E—Application Procedures

654.71 Preapplication procedures.
654.73 Application procedures.
654.75 Post grant activities.
Appendix A—Policy Objectives
Appendix B— Interagency Agreement Between the Urban Mass Transportation Administration of the Department of Transportation and the Employment and Training Administration of the Department of Labor

Appendix C—Timing and Degree of Public and Private Commitments for Joint Development Projects
Appendix D—Project Application Review and Selection Process.

Authority: 49 U.S.C. 1602(a)(1)(D) and 1603(c)(1)(B); 49 CFR 1.51.

Subpart A—General

§ 654.1 Eligible recipients.

(a) A public agency which is eligible for UMTA capital assistance is eligible for Urban Initiatives grants. These public agencies include transit authorities, local governments, States, agencies of States, and quasi-public development corporations.

(b) Eligible public bodies may pass through funds to a quasi-public development corporations to manage projects.

(c) Applicants other than transit authorities or State and local governments must provide evidence of their financial and managerial ability to ensure continued operation of the transportation components of an Urban Initiatives project over the life of the project in order to be an eligible recipient.

§ 654.3 Funding.

(a) In reviewing funding sources for potential Urban Initiatives projects, every effort should be made to match each available funding source with the most appropriate project elements, based on various eligible cost requirements and restrictions.

(b) Project components such as traffic diverters and barriers, pedestrian malls, sidewalks and walkways, bicycle paths, and street landscaping and furniture independent of a transit mall or terminal, should be funded from DOT's Federal Highway Administration Federal Aid Urban Systems funds to the maximum extent feasible rather than as Urban Initiatives projects.

(c) Parking components of a project will be considered for funding by UMTA on a case-by-case basis, and only after the applicant has established that there is no local, state or other Federal funding source available.

(d) The applicant shall develop a project implementation schedule for financial participation.

§ 654.5 Project scope and feasibility.

(a) Each applicant shall perform sufficient feasibility analysis in the planning phase of Urban Initiatives project development to provide a minimum level of technical data with which UMTA may evaluate the project. Funds for technical assistance are available from the UMTA Section 8 Technical Studies Program through local Metropolitan Planning Organizations.

(b) In developing projects, applicants are encouraged to undertake sufficient environmental analysis and engineering to enable UMTA to establish the project scope.

Subpart B—Eligible Project Categories

§ 654.11 General requirements.

(a) To qualify for consideration under the funding authorization of the Urban Initiatives Program, a project must extend beyond the scope of traditional transit improvements to clearly demonstrate a significant degree of impact on the urban physical and economic environment, including increased private investment, enhanced interagency coordination and the support of social goals including increased employment opportunities and accessibility for disadvantaged groups.

(b) Projects which do not contain a significant transit element are not eligible for funding under the Urban Initiatives Program.

(c) The acquisition of vehicles is not an eligible Urban Initiatives activity.

(d) There are three categories of eligible projects: Intermodal terminals, transit malls and joint development.

Intermodal Transfer Facilities

§ 654.13 Types of facilities.

Intermodal transfer facilities that are eligible for funding under the Urban Initiatives Program include the construction and improvement of facilities which provide for the integration of urban public transportation systems with other forms of public and private transportation services such as intercity bus and rail systems, and taxis, which enhance the effectiveness of mass transit and facilitate coordination among modes.

§ 654.15 Requirements: Intermodal transfer facilities.

(a) UMTA will not participate in the construction of an intermodal terminal unless the space and service needs of the local mass transportation constitute a reasonable component of the project.

(b) Project sponsors must notify private carriers operating within the area of the project of their intent to apply for Urban Initiatives funds for construction or reconstruction of an intermodal facility.

(c) If an intermodal terminal is to provide space for private carriers, the preapplication data must contain letters of interest committing the carriers to use of the facility providing that acceptable accommodations and rents are negotiated.

(d) Prior to award of construction funds, the applicant must secure a lease agreement from private carriers committing them to long term use of the facility.

(e) The intermodal facility must be the property of a public body.

(f) The net proceeds from rental payments or other reimbursements in excess of operating and maintenance expenses must be used to offset eligible local mass transit capital expenses.

(g) Proceeds realized from lease or sale payments may not be used to reduce local debt service payments, or otherwise reduce local share requirements without a commensurate reduction in the Federal share.

§ 654.17 Eligible projects costs: Intermodal transfer facilities.

(a) Eligible project costs for intermodal transfer facilities include, but are not limited to, the following:

(1) Design and engineering tasks.

(2) Acquisition of real property, facilities, and equipment.

(3) Roadbeds, tracks, and bus ramps.

(4) Pedestrian concourses, and related equipment and facilities.

(5) Loading shelters.

(6) Improvements of existing bus or rail transit terminals, stations, major transfer points, and shelters as well as other facilities directly related to the linking of public transportation facilities with other modes of transportation.

(7) Incidental parking. A small number of spaces may be provided. The number is limited to the amount required to reasonably accommodate the needs of intermodal facility patrons and employees who are not within the transit service area of any public transportation provider including shared-ride taxis. It must be demonstrated that parking cannot be financed from other sources.

(b) Urban Initiatives funds my only be used to finance the engineering and construction of non-revenue producing elements. Funds may not be used for restaurants, major concessions, package storage and delivery facilities, and other revenue producing facilities not directly required for the transport of passengers.

Transit Malls

§ 654.19 Types of malls.

Transit malls eligible for funding under the Urban Initiatives Programs are those on streets which—

(a) Have been improved for pedestrian use; and

(b) Retain a roadway reserved for public transportation vehicles integrated with the city-wide, or regional transportation system.

§ 654.21 Requirements: Transit malls.

(a) The type of public transportation vehicles to be allowed to utilize the transit mall is a local decision determined by local priorities and the vehicular capacity of the mall. Public transportation vehicles may include, but are not restricted to, shared ride taxis, paratransit vehicles, or other high occupancy vehicles whose use provides increased mass transit service. General access by private vehicles, other than public transportation and emergency vehicles, must be restricted to those periods where they do not adversely affect peak period transit travel time.

(b) Preferential signalization to facilitate bus movements must be incorporated within the mall design whenever appropriate.

(c) Parking is not an eligible item in a transit mall project.

§ 654.23 Eligible project costs: Transit malls.

Eligible project costs for transit malls include, but are not limited to the following:

(a) Design and engineering.

(b) Mall construction activities such as surveying, utility relocation (to the extent that the utility is not responsible for such costs), materials testing, and construction management.

(c) Street, sidewalk and utility construction.

(d) Traffic control devices.

(e) Street furniture and structures.

(f) Landscaping.

(g) Pedestrian concourses and walkways and other passenger and pedestrian amenities.

Joint Development Projects

§ 654.25 Types of projects.

Joint development projects that are eligible for funding under the Urban Initiatives Program are commercial, residential, industrial, or mixed use developments that are induced by or enhance the effectiveness of mass transportation projects, including private development activities associated with new rail rapid transit systems, automated systems, improvement and extension of existing rail systems, intermodal transfer facilities, transit malls, and Federal, State or local investments in existing facilities.

§ 654.27 Requirements: Joint development projects.

(a) Each joint development project must—

(1) Include a transit element;

(2) Enhance the effectiveness of a significant mass transportation project;

(3) Be physically or functionally related to the mass transportation project;

(4) Create new or enhanced coordination between public transportation, and other forms of transportation; and

(5) Enhance urban economic development through the incorporation of private investment including office, commercial, or residential development.

(b) A project is physically related to a mass transportation project if it provides a direct physical connection with mass transportation services or facilities, including projects involving air rights over stations or adjacent property.

(c) A project is functionally related to a mass transportation project if it is related by activity and use and is functionally linked (with or without direct physical connection) to mass transportation services or facilities. Functional relationships must not extend beyond the distance most people will reasonably walk to use a transit service. The eligible project area for a functionally related project will be defined on a case-by-case basis.

§ 654.29 Eligible project costs: Joint development project.

(a) Eligible project costs for joint development projects include, but are not limited to, the following:

(1) Site design, engineering, and environmental analysis as appropriate.

(2) Real estate packaging for a specific UMTA capital project including assessment of market potential, preliminary design and engineering, estimates of operating income and expenses, capital costs, and negotiations to secure financing, developers and prime tenants.

(3) Land acquisition, relocation, and demolition.

(4) Foundations and substructure improvements for buildings over transit facilities.

(5) Pedestrian connections and access links between mass transportation services and related development.

(6) Open space, site amenities and related street-scape improvements such as street furniture, lighting and landscaping.

(7) Other facilities and infrastructure investments needed to induce significant private investment and to improve access between new or existing development and mass transportation facilities.

(b) The eligibility of the costs of utility work associated with private investment will be considered on a case-by-case basis. UMTA will not pay for the costs of utility work that are attributable to non-UMTA project purposes unless—

(1) The utility serves a joint private and transit use; or

(2) The utility lines will be located under a collocated street or sidewalk or within other common elements so that it would benefit the project to provide adequate capacity at the outset of the project.

(c) Front end and permanent financing costs related to the design and construction of retail, commercial, housing or other public and private revenue producing facilities are not eligible joint development costs.

(d) UMTA participation in joint development projects containing a parking element will be considered on a case-by-case basis.

(e) In developing proposals which contain a parking element, the applicant must demonstrate that—

(1) The provision of parking is strictly required for the success of the project;

(2) The proposal will increase public transportation patronage;

(3) Trips to the project site cannot be adequately accommodated by use of existing or reasonably upgraded transit service;

(4) The amount of parking in the proposal conforms to an approved local parking plan;

(5) The local political jurisdiction has undertaken steps to upgrade area transit service, operator efficiency, visibility or accessibility, which when completed, will serve to reduce the public's dependency on private automobiles; and

(6) Parking areas will be monitored to ensure that spaces are used by employees or patrons of the project rather than to supplement municipal parking.

(7) All other possible sources of financing have been exhausted, including other federal agencies, revenue bonds, and state and local agencies. UMTA is the source of funding for parking only as a matter of last resort.

(8) In cases where UMTA finances land acquisition or infra structive improvements in support of a private or otherwise non UMTA funded parking facility, local transit must participate in any disposition of proceeds arrangements (see § 654.31).

(9) In cases where UMTA finances the construction of a parking facility, the project sponsor can ensure that

(i) A fair and competitive parking fee is charged,

(ii) The net revenues realized from the accrual of parking receipts are to be used to offset transit system operating expenses (consistent with UMTA Circular 9050.1, Application Instructions

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for Section 5 Operating Assistance Projects), and

(iii) The proportion of the structure and number of spaces financed are necessary to the proper functioning of the mass transportation facility.

(iv) The applicant must provide all necessary documentation regarding the provision and justification for UMTA participation in projects with parking elements.

§ 654.31 Participation in proceeds derived from UMTA investment.

(a) Each grantee must negotiate a fair and equitable return of the benefits to be generated as a result of the UMTA investment.

(b) Local mass transit must benefit from revenues accruing as a result of UMTA financial participation in a project.

(c) Project sponsors must retain for transit related use proceeds and profits realized in connection with UMTA participation in joint development projects.

(d) Proceeds and profits may include returns generated from, but not limited to, sale or lease of property, mortgage proceeds, or returns stemming from local agency participation in the distribution of project revenues.

(e) Local mass transit's participation in proceeds will reflect the percentage of the UMTA investment in relation to that of other participating public agencies.

(f) If property is sold, the entire proceeds of the sale up to the amount of the combined UMTA and local investment must be applied to finance other existing or proposed capital project elements that would be eligible fo assistance under Section 3 of the UMT Act, or the proceeds may be returned to UMTA to reduce the amount of the Urban Initiatives grant. These project elements include traditional transit projects, existing Urban Initiatives projects, or new Urban Initiatives projects. Funds from these proceeds may not be used for local share of such federally assisted projects. Should profits result from such a sale, (that is, any amount above the combined UMTA and local share) those profits must be used for the above purposes and may also be used as the local share for other capital or operating projects. The grantee must obtain UMTA concurrence in the disposition of proceeds.

(g) If property is leased, or if any payments are made to the grantee or the public agency in consideration for the use of the property, the entire proceeds of the lease, as well as the proceeds from local agency participation in the distribution of project revenues, up to the amount of the appraised value of the leased property must be applied to capital project elements eligible for assistance under Section 3 of the UMT Act or the proceeds may be returned to UMTA to reduce the amount of the Urban Initiatives grant. These projects elements include traditional transit projects, existing Urban Initiatives projects or new Urban Initiatives projects. UMTA will approve the appraised value in accordance with the procedures set forth in UMTA Circular 4530.1 "Land Acquisition and Relocation Assistance Manual". Any additional proceeds from the lease beyond the approved appraised value must be used for the above purposes or as the local share for other capital or operating projects. The grantee must obtain UMTA concurrence in the disposition of lease proceeds.

(h) Agreements which transfer title or control of land or facilities acquired as part of the UMTA project must contain provisions which—

(1) Extend the requirements of the UMTA grant contract;

(2) Ensure that the grantee retains continuing control of the mass transportation project; and

(3) Assures that transit participates in the disposition of proceeds in the manner established in the grant contract.

Subpart C—Criteria for Meeting Policy Objectives

§ 654.41 General.

(a) Applicants for grants to assist in funding projects under the Urban Initiatives Program must demonstrate how the proposed project will meet the objectives of the President's Urban Policy Statement (the President's Policy Objectives are set out in Appendix A).

(b) The criteria that an applicant must follow in meeting the Objectives are set out in this Subpart.

§ 654.43 Transit.

(a) Projects must demonstrate a positive impact on transit patronage and quality of service. A project demonstrates a positive transit impact if it—

(1) Improves accessibility and equity of service for elderly, handicapped and minority communities;

(2) Increases system security and attractiveness;

(3) Makes improvements allowing for more efficient use and operation of service and facilities; or

(4) Increases public transportation access to employment, social, educational, health, recreational, and residential areas.

(b) The applicant must provide both general and specific information as appropriate on the project's transit impact including such factors as transit patronage, operational efficiency, increased service, projected changes in revenues/deficit, accessibility and security.

(c) Each proposal must include a description of any related changes in transit operations which, though not part of a specific project, will increase public access and facilitate circulation (i.e., headways, increased service, and special demonstrations).

(d) The project sponsor, if other than the local transit provider, must provide documentation that the transit provider participated in the development of the proposal, and identify the proposal's relative priority within the transit provider's Transportation Improvement Program.

§ 654.45 Socio-economic: Employment.

(a) For projects that create new permanent jobs, each applicant shall set a goal of reserving 10–15 percent of the jobs for long term unemployed persons eligible to obtain assistance under the Comprehensive Employment and Training Act (CETA) (29 U.S.C. 801 et. sq.).

(b) Each applicant for a project that creates new permanent jobs shall certify the established goal as a part of project development.

(c) Each applicant for a project that creates new permanent jobs shall develop an employment plan that documents how employment opportunities will be made available.

(d) The employment plan must be submitted prior to grant award or before receipt of construction funds.

(e) The employment plan must include the following elements:

(1) The total number, title, and description of jobs to be created.

(2) The goals for the total number, titles and timing of jobs to be made available to the long term unemployed.

(3) The skill requirements for the jobs that are being made available to the long term unemployed.

(4) A description of the activities which are to be undertaken in order to link new employment opportunities, training programs and assistance for CETA eligible individuals (The Linkage Program). This description must include.

(i) The name of the CETA prime sponsor, or other employment and training provider, who is assisting the applicant in developing and implementing the employment plan, including the name of a responsible person, with an address and telephone number.

(ii) An identification of the employment and training programs to be applied in preparing or referring qualified persons to available jobs with an indication of how they will be used and any special conditions required by the employer (i.e., number of referrals per vacancy to be filled, timing of referrals).

(iii) An identification of the roles and responsibilities of the participants in the employment plan (i.e., UMTA applicant, UMTA beneficiary, if different from applicant; employment and training provider; and local agency, if not the applicant).

(iv) The steps to be taken and the schedule for implementing the plan.

(v) The signatures of persons or agencies party to the employment plan, (i.e. UMTA beneficiary, if different from the applicant; employment and training provider; and the economic development agency).

(f) After UMTA approval of the employment plan, each applicant shall provide UMTA with comprehensive quarterly status reports on the plan's implementation.

§ 654.47 Socio-economic: Involvement of neighborhood organizations and voluntary associations.

(a) Each project sponsor shall document the degree to which the project considers established priority needs of the local community, and contributes to local plans.

(b) Each project should have active citizen participation at the planning and development stages. This participation can be satisfied by involvement of neighborhood organizations and voluntary associations.

§ 654.49 Development: Urban economic development/private sector investment.

(a) Each project must enhance urban economic development and/or incorporate or leverage private sector investment.

(b) Each applicant shall provide documentation concerning how public/private financial participation and investment ratios are determined.

§ 654.51 Development: Business opportunities for small and minority businesses.

Each applicant shall indicate the extent to which the project will provide business opportunities for female owned, small, and minority businesses during the construction phase, or the extent to which the project generates opportunities for female, small or minority businesses to participate in spin-off development and business formation generated by the Federal investment.

§ 654.53 Development: Enhancement of the immediate physical environment around the project.

(a) Each project must enhance the immediate physical environment around the project.

(b) Each applicant shall document the extent to which the project is part of larger development plans or projects.

(c) Each applicant shall identify—

(1) Potential secondary development including private as well as public investment;

(2) A timetable for development;

(3) Any interface between the project and future development; and

(4) Changes in the nature of transportation services, accessibility and detailed impacts of broader development plans, parking regulations, auto restrictions, and impacts on air and noise pollution.

(d) Each applicant shall provide specific information as to how and to what degree private investors will financially participate in the project directly, or in related redevelopment in the project area.

(e) Each applicant shall provide information concerning the status of securing a developer's commitment.

(f) Each applicant shall submit pro formas and projected cash flow statements identical to those submitted to financial institutions to secure financing in those cases in which financing has been secured. If financing has not been secured, the applicant shall submit a preliminary pro forma and cash flow statement.

§ 654.55 Development: Coordination.

Each applicant shall submit—

(a) A discussion of the effect of investment on the economic viability of the central city.

(b) A discussion of the consistency of the project with local and State (if appropriate) plans including land use, economic development, employment, and housing;

(c) A discussion of the impacts of the project on central city revenues, accounting for anticipated changes in property, sales and income taxes; and

(d) A discussion of additional public expenditures (if any) which the central city will have to bear as a result of the proposed project and its corresponding development shifts.

Subpart D—Special Consideration

§ 654.61 Establishing priorities.

The extent to which projects meet the criteria set out in Subpart C determines their priority within the Urban Initiatives Program. However, in establishing priorities, special considerations will be given to the following.

(a) Projects with smaller dollar value which provide strong potential for achieving the program's objectives and those which can be fully funded within the budgetary constraints of the program.

(b) Projects which are located in those cities or sections of cities which have been determined to be distressed by the Department of Housing and Urban Development (HUD). Urban Development Action Grant Program (UDAG). Rules and regulations governing the basis for determining a city's economic status are in Subpart G of Part 570 of Title 24 of the Code of Federal Regulations. Cities which are not on the HUD list may still qualify for special consideration if applicants can provide documentation that another Federal agency, i.e., Economic Development Agency (EDA), or Department of Interior, identifies the city or the portion of it which includes the project, as distressed. Applicants shall state if the project is in a distressed city; identify the distress index utilized; and provide the city's (area's) rank standing.

(c) Projects which target UMTA funds cooperatively with HUD, EDA, and other Federal agency resources to maximize the economic development potential of Federal investments. Where appropriate, Urban Initiatives projects should be developed in maximum cooperation with projects planned or committed to by other Federal agencies. The application must include a discussion of the status and anticipated timing of any commitments by other Federal agencies.

(d) Projects which do not contain a substantial parking element, regardless of whether UNTA is requested to participate in such costs.

(e) Projects which contain evidence of significant state financial participation. This includes, but is not limited to, long term lease arrangements for use of facilities; independent financing of integral components of the project, or separate but supporting components; engineering, design and construction of public works improvements in support of the project; commitment of other Federal funds within the control of the State, i.e. interstate substitution, or Federal Aid Urban System funds, to the project; contributed services; and participation in assisting the applicant to meet local share requirements.

(f) Projects which represent a special or unique opportunity to meet local priority needs and which are consistent with the overall objectives of the President's Urban Policy. Applicants

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should provide information about features of their proposal, program, neighborhood or community which are considered sufficiently special or unique to justify special consideration.

(g) Projects that meet UMTA's Employment Initiatives goal. In this regard, it is recognized by UMTA that not all projects will result in new permanent job opportunities.

Subpart E—Application Procedures

§ 654.71 Preapplication procedures.

(a) In order to limit the requirements all applicants must address during the initial review process, each applicant shall submit a preapplication in lieu of a full Section 3 discretionary capital grant application package. The preapplication must include the following information:

(1) Standard Form 424.

(2) A brief description of the total project, including a discussion of prospective funding sources.

(3) A separate discussion and budget for the elements to be funded by UMTA stressing the proposal's physical and functional relationship to the project.

(4) Documentation required to support eligibility (as discussed in Subpart B).

(5) Data demonstrating the degree to which the project meets the selection criteria (as discussed in Subpart C).

(6) Employment Initiatives requirements (as discussed in § 654.45).

(7) Data demonstrating how the project addresses the Special Consideration Criteria (as discussed in Subpart D).

(8) Discussion of the project applicant's compliance with regulations dealing with Historic Preservation/ Environmental Protection (UMTA Circular 5620.1).

(9) Status of attempts to utilize FHWA Federal Aid Urban Systems (FAUS) funds as well as resources available from HUD, EDA and other Federal agencies to finance components of the project.

(10) Financial pro formas establishing the value of the private investment, and the need for Federal participation are to be submitted for new private sector development proposed as part of the project.

(b) In order to be eligible for consideration during the two selection periods, preapplication data must be submitted to the UMTA Regional Office, prior to September 15 for the December 31 announcement and prior to February 15 for the May 31 announcement.

§ 654.73 Application procedures.

(a) Each applicant shall meet all standard Section 3 discretionary capital grant requirements before a grant can be awarded.

(b) Each applicant shall—

(1) Comply with the following regarding Civil Rights:

(i) UMTA Circular 1160.1 "Guidelines for Title VI Information Specific to UMTA Program", dated December 30, 1977.

(ii) UMTA Circular 1155.1 "UMTA Equal Employment Opportunity Policy and Requirements for Grant Recipients", dated December 30, 1977.

(iii) 49 CFR Part 23, "Participation by Minority Business Enterprise in Department of Transportation Programs".

(iv) 49 CFR Part 27, "Nondiscrimination on the basis of handicap in Federally—Assisted Programs and Activities Receiving or Benefitting from Federal Financial Assistance".

(2) Comply with the provisions of 23 CFR Part 450, Subpart C requiring that proposed projects be incorporated into the Annual Element of the local Transportation Improvement Program (TIP) in order to be considered eligible for funding;

(3) Possess adequate local public and private funds to assure implementation. Anticipated local public and private commitment must be identified in the application;

(4) Develop an Employment Plan;

(5) Sign a labor protection agreement meeting the provision of Section 13(c) of the Urban Mass Transportation Act;

(6) Secure OMB Circular A–95 clearance; and

(7) Provide sufficient data to satisfy UMTA environmental impact and historic perservation requirements.

(c) The Section 3 application with supporting requirements must be completed within 90 days after fund reservation. If it is determined that an applicant cannot meet program requirements by the end of the fiscal year for which the funds are reserved, the reservation will be withdrawn, and funds programmed for another project.

§ 654.75 Post grant activities.

Subsequent to grant award, grantees shall submit quarterly progress reports as to the status of project implementation, and the steps being taken to ensure that the project, when completed, achieves the objectives of the President's Urban Policy.

Appendix A—Policy Objectives

The objectives of the President's Urban Policy Statement are as follows:

1. Encourage and support efforts to improve local planning and management capacity, and the effectiveness of existing Federal programs by coordinating these programs, simplifying planning requirements, reorienting resources, and reducing paperwork.

2. Encourage States to become partners in assisting urban areas.

3. Stimulate greater involvement by neighborhood organizations and voluntary associations.

4. Provide fiscal relief to the most financially hardpressed communities.

5. Provide strong incentives to attract increased private investment in distressed communities.

6. Provide increased employment opportunities, primarily in the private sector, for the long term unemployed and disadvantaged in urban areas.

7. Increase access to opportunities for those disadvantaged by a history of discrimination.

8. Expand and improve social and health services to disadvantaged people in cities, counties, and other communities.

9. Improve the urban physical environment and the cultural and aesthetic aspects of urban life.

Appendix B—Interagency Agreement Between the Urban Mass Transportation Administration of the Department of Transportation and the Employment and Training Administration of the Department of Labor

I. Purpose

In an effort to effectively implement the Interagency Coordinating Council's Employment Initiatives, this agreement specifies the process by which the Employment and Training Administration (ETA) of the Department of Labor (DOL) and the Urban Mass Transportation Administration (UMTA) of the Department of Transportation (DOT) will coordinate their activities to ensure that the maximum feasible number of jobs created by UMTA's Urban Initiatives Program go to the long term unemployed. For purposes of this agreement, "long term unemployed" is defined as persons who are eligible to obtain assistance under the Comprehensive Employment and Training Act (CETA).

II. Scope

In order to accomplish the purpose of this agreement, the provisions set forth herein relate to: (1) Specific employment goals to be established by UMTA with respect to the long term unemployed; (2) operational procedures to be used by UMTA and ETA in achieving these employment goals; (3) reporting and monitoring; and (4) provision for technical assistance and training to facilitate placing long term unemployed in permanent jobs created by federally assisted mass tranportation projects.

III. Employment and Goals

Consistent with the President's national urban policy to stimulate private investments as well as increase employment opportunities in urban areas, the Urban Mass Transportation Administration, in consultation with the Employment and Training Administration, agrees to the following provisions:

(1) As a fiscal 1980 goal, 10–15% of the permanent jobs created by its Urban Initiatives Program will be filled by the long term unemployed.

(2) By no later than September 1 of each year, in conjunction with the Employment and Training Administration, UMTA will review the current annual employment goal and experience, and establish its goal for the next fiscal year no later than September 20.

IV. Operational Procedures

A. UMTA

To achieve the employment goal that has been established for FY 1980 as well as those of succeeding years, UMTA will institute the following operational procedures relative to the Urban Initiatives Program:

1. *Provide ETA with List of Employment Initiatives Coordinators*—UMTA will provide each ETA Regional administrator with the names, addresses and telephone numbers of the UMTA Employment Initiatives Coordinators in the respective region.

2. *Certification of Intent to Establish Project Employment Goals*—Applicants seeking assistance under UMTA's Urban Initiatives Program will, as a criterion of participation, be expected to make a certification at the preapplication stage (project data sheet submission) that if new, permanent jobs result from such support, 10–15% will be earmarked for CETA eligible persons.

UMTA will review the preapplication data to determine if new permanent jobs will be created as a result of the project. UMTA's Regional Employment Initiatives Coordinator will also notify the relevant ETA Regional Employment Initiatives Coordinator of the project and its estimated employment impacts. The ETA representative will be invited to provide comments as to the viability of projects' employment generating possibilities and their potential impact on local unemployment. ETA comments, when provided, will be incorporated into the preapplication data to be considered during project review and evaluation. UMTA will review the applicant's certification in addition to other project support data in making its determination as to which projects to advance to the final application stage.

3. *Initiate Consultation*—Upon notifying an applicant to prepare a final application, the applicant working in conjunction with the UMTA Employment Initiative Coordinator, will develop an employment plan and initiate formal consultation with a CETA prime sponsor or other employment/training provider. UMTA will advise its applicant to consult first with the CETA prime sponsor. This consultation is expected to continue as required, throughout the application, project funding, and implementation stages.

4. *Employment Plan*—Applicants from whom UMTA elects to solicit final applications for Urban Initiatives assistance will be required to prepare an employment plan when new permanent jobs will be created. If an employment plan is not appropriate, an explanation of why it is not must be submitted with the application. The employment plan shall include the following elements:

a. The total number and titles (and/or description) of jobs to be created by the project.

b. The goals for the total number, specific titles, and timing of jobs to be made available to CETA eligible persons.

c. The skill requirements for the jobs that are being made available to CETA eligible persons.

d. The linkage process:

i. Name of the CETA prime sponsor or other employment/training provider who is assisting the applicant in developing and implementing this employment plan. (Including name of responsible person, address, and telephone number.)

ii. Identification of any employment and training programs to be applied to preparing and/or referring qualified persons to available jobs. Indication of how they will be used and any special conditions required by the employer (e.g., number of referrals per vacancy to be filled, timing of referrals).

iii. Identification of the roles and responsibilities of the participants in the employment plan (i.e., UMTA applicant; UMTA beneficiary, if different from applicant; CETA prime sponsor or other employment and training provider; and local transit agency, if not the applicant).

iv. Indication of the procedure and schedule for implementing the employment plan.

v. Providing the signatures of persons or agency representatives party to the employment plan (i.e., UMTA beneficiary, if different from applicant; CETA prime sponsor or other employment and training provider; and local transit agency, if not the applicant).

5. *Contingent Project Approvals*—If the applicant certifies that the project will conform to program employment goals, but is unable to complete an employment plan by the time of scheduled grant award, UMTA may elect to approve the project contingent upon subsequent receipt of a satisfactory plan. Contract language will be included however, which would withhold construction funds until an employment plan acceptable to UMTA is provided.

UMTA may elect to award architectural and engineering funds in order to assess feasibility of a project prior to concurring in an employment plan, provided that project sponsor certifies that new permanent jobs resulting from subsequent Urban Inititatives construction funding will be consistent with the program employment goals.

6. *Notification*—Upon approval of a project which includes or will include an employment plan, UMTA in conjunction with its grantee, will notify the CETA prime sponsor or other employment/training provider signatory to the employment plan, as well as the ETA Employment Initiatives Coordinator.

7. *Certification of Eligibility*—UMTA and its grantee will provide the information necessary to assist the CETA prime sponsors and the ETA delivery system in certifying the eligibility of persons who may be eligible for CETA assistance but are not CETA participants when such persons are to fill new and permanent jobs resulting from UMTA's Urban Initiatives projects.

8. *Identifying Alternate Employment/ Training Provider*—When the local prime sponsor is unable to assist UMTA's staff and applicant in developing and implementing an employment plan, the UMTA staff may call upon the ETA Employment Initiatives Coordinator to discuss an alternate employment/training provider who might provide the necessary services.

B. ETA

The Employment and Training Administration recognizes that linking its employment and training programs with UMTA's Urban Initiatives Program can result in increased permanent employment opportunities for CETA eligible persons and agrees to facilitate this linkage by taking the lead in coordination of several activities.

1. *Provide UMTA with List of Prime Sponsors*—The Employment and Training Administration will provide each UMTA Regional Administrator with an updated list of CETA prime sponsor directors and regional ETA Employment Initiatives Coordinators along with their telephone numbers and addresses.

2. *Staff*—ETA will require each Regional Administrator and prime sponsor to identify an Employment Initiatives Coordinator to assume responsibility for coordinating activities related to the Employment Initiatives. To the extent possible, personnel assigned these functions at the Federal and local levels should be the same staff that has been assigned to the Private Sector Initiatives Program.

3. *Responsibilities of Employment Initiatives Coordinators*—The designated Employment Initiatives Coordinators (EIC) assigned to coordinate activities related to the Employment Initiatives in each of the regions by ETA and at the local level by prime sponsors will assist UMTA's staff and applicants in developing and implementing the employment plan delineated above. The Employment Initiatives Coordinators will also be responsible, at their respective levels, for consulting with the UMTA Employment Initiatives Coordinators to determine the status of a project so that they can initiate required CETA activities (e.g. employment, training, recruiting, screening, referral and counseling services) in a timely fashion, to place CETA eligible persons in permanent jobs created by UMTA's Urban Initiatives Program.

4. *Identifying Alternate Employment/ Training Provider*—When the local prime sponsor is unable to assist UMTA's staff and applicants in developing and implementing an employment plan, ETA's Employment Initiatives Coordinator will assist in identifying an alternate employment/provider who might provide the necessary services.

5. *Assist UMTA in Ddescribing CETA Programs and Participants*—Consistent with available funds, ETA will assist UMTA in involving its applicants in employment/ training programs by jointly developing and publishing information packets geared to the private sector, focusing on the availability and benefits of employment/training resources, including various tax credits.

6. *Certification of Eligibility*—Prime sponsors and the ETA delivery system, working with UMTA and its funds recipients, will certify the eligibility of persons who fill new and permanent jobs resulting from UMTA's Urban Initiatives projects.

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V. Reporting/Monitoring

In order to keep the Interagency Coordinating Council (IACC), the Office of Management and Budget (OMB), and each of the participating agencies informed of the progress in achieving the goals of this agreement, UMTA and ETA agree to the following reporting/monitoring provisions:

A. Effective April 1, 1980, and on a semi-annual basis thereafter (October 1 and April 1), UMTA will submit reports to OMB. These reports shall include the total number of projects funded for the six-month and annual periods, the federal dollars committed, the number permanent jobs anticipated, the total number of actual jobs created, and the number/percentage of jobs to be filled by CETA eligible persons.

B. Effective April 1, 1980, and on a semi-annual basis thereafter (October 1 and April 1), ETA will submit reports to OMB. These reports shall include the total number of employment plans that prime sponsors and the ETA delivery system have entered into with UMTA and its grantees, the total number of jobs projected for the long term unemployed, and the total number of persons actually placed in jobs created by UMTA's Urban Initiatives Program.

VI. Technical Assistance

To facilitate and promote the placement of CETA eligible persons in permanent jobs resulting from UMTA assistance, both ETA and UMTA agree to provide the following technical assistance:

A. Whenever necessary, the agencies will brief each other's staff on programmatic and/or procedural changes affecting the implementation of the Employment Initiatives.

B. Jointly develop and publish promotional information on the placement of CETA eligible persons in permanent jobs created by UMTA investments.

C. As necessary, jointly conduct interagency workshops/seminars related to the Employment Initiatives, assessing experiences and focusing on techniques and strategies to be used to more effectively implement the Employment Initiatives.

VII. Duration

This agreement shall remain in effect through November 1, 1982. ETA and UMTA will, however, jointly review the provisions herein on an annual basis (prior to September 30) in order to make any necessary modifications. The operational procedures that are being utilized by UMTA and ETA to achieve UMTA's employment goal will be given particular attention during the annual review.

Appendix C—Timing and Degree of Public and Private Commitments for Joint Development Projects

Joint development project negotiations typically progress through the following stages:

Stage 1. Executing letters of intent between local public agencies, developers, and financial institutions.

Stage 2. Executing development contracts, financing agreements and securing building permits.

Stage 3. Executing construction contracts.

UMTA's commitment to fund the project will depend on the stage of local negotiations. If the applicant has not progressed to Stage 2, UMTA would be reluctant to make a commitment to participate in the project. This will not preclude UMTA from making grants for preliminary engineering, design, appraisals and other analyses, which will allow costs to be more accurately defined. At Stage 1, UMTA may aware a grant, or set aside funds for the project pending completion of final negotiations and grant approval requirements. At Stage 2 and/or 3, the local commitment would be sufficiently secure to allow UMTA to award a grant. However, the timing and degree of mutual commitments will be adjusted to reflect the needs of particular situations.

Appendix D—Project Application Review and Selection Process

A. The Urban Mass Transportation Administration will announce grant fund reservations for Urban Initiatives projects bi-annually based on preapplications received and evaluated. The first announcement will be made no later than December 31, and the second announcement no later than May 31. Additional announcements may be made if selected projects prove unable to meet Section 3 program requirements or additional program funds become available. Fund reservations will be made based upon a preapplication submission.

B. *Preapplication Review*—1. The project sponsor will be sent a letter from the UMTA Regional Office within the first 15 days of the review period acknowledging receipt of the proposal for processing.

2. All preapplications will be screened for completeness by the Regional Office before being officially accepted for review.

a. If the preapplication is incomplete, the UMTA Regional Office will notify the project sponsor of the items needed to complete the preapplication. Consideration of the proposal will, however, be deferred until the next review period.

b. Complete preapplications will be assessed to establish the proposals' eligibility for funding under the Urban Initiatives Program. The Regional Office will notify applicants if the project is eligible for further consideration within 30 days of the beginning of the review period.

3. All eligible projects will be included in the Urban Initiatives national competition.

C. *Selection Process/Fund Reservation*—UMTA will make announcement of approvals or reservations no later than December 31 and May 31 respectively.

UMTA will determine which proposals best meet the objectives of the Urban Initiatives Program. Because funds are limited not all eligible projects will be funded.

Applicants will be notified of their proposal's status with the announcements of reservations and approvals:

1. If a proposal is rejected, the preapplication will be returned with the deficiencies noted.

2. If a proposal is deferred for lack of sufficient supporting data, the applicant will be advised to work with the Regional Office to provide the necessary data. These proposals will be reconsidered in the following review period if the applicant satisfies all deficiencies noted.

3. Should lack of sufficient Urban Initiatives funds be cited as the reason for deferral, the proposal will automatically be reconsidered in one additional round of review.

4. If a proposal is accepted, and a fund reservation made, the applicant will be notified to work with the Regional Office to develop a final application.

UMTA will announce a reservation of funds for those proposals which have been selected as part of the Urban Initiatives Program national competition. The action will set aside a specified sum of Urban Initiatives funds to be made available to the project sponsor upon satisfactorily fulfilling the requirements for a Section 3 discretionary capital grant.

If a project application cannot satisfactorily meet Section 3 program requirements by September 30 of the fiscal year in which the reservation is made, funds will be withdrawn. Projects for which funds have been withdrawn are automatically reconsidered as part of the national competition in the next two review periods. If it is determined that significant program requirements are not or cannot be met within this time, the application will be withdrawn and returned to the project sponsor.

D. *Grant Award*—UMTA will make grants no later than the last day of the fiscal year. The applicant will be notified in writing of grant award and will receive appropriate contract documents from the UMTA Regional Office.

E. *UMTA Regional Offices:*

Region I—Peter N. Stowell, Regional Administrator, Transportation Systems Center, Kendall Square, 55 Broadway, Cambridge, MA 02142, Tel: (617) 494–2055

Region II—Hiram Walker, Regional Administrator, Suite 14–130, 26 Federal Plaza, New York, NY 10007, Tel: (212) 264–8162

Region—III Franz H. Gimmler, Regional Administrator, Suite 1010, 434 Walnut Street, Philadelphia, PA 19106, Tel: (215) 597–8098

Region IV—Carl Richardson, Acting Regional Administrator, Suite 400, 1720 Peachtree Road, N.W., Atlanta, GA 30309, Tel: (404) 881–3948

Region V—Theodore Weigle, Regional Administrator, Suite 1740, 300 South Wacker Drive, Chicago, IL 60606, Tel: (312) 353–2789

Region VI—Glen Ford, Regional Administrator, Suite 9A32, 819 Taylor Street, Fort Worth, TX 76102, Tel: (817) 334–3787

Region VII—Lee Waddleton, Regional Administrator, Suite 303, 6301 Rock Hill Road, Kansas City, MO 64131, Tel: (816) 926–5053

Region VIII—Lou Mraz, Regional Administrator, Suite 1822, Prudential Plaza, 1050 17th Street, Denver, CO 80265, Tel: (303) 837–3242

Region IX—Dee Jacobs, Regional Administrator, Suite 620, Two Embarcadero Center, San Francisco, CA 94111, Tel: (415) 556–2884

Region X—Terry Ebersole, Acting Regional Administrator, Suite 3142, Federal Building, 915 Second Avenue, Seattle, WA 98174, Tel: (206) 442–4210

(49 U.S.C. 1602(a)(1)(D) and 1603(c)(1)(B); 49 CFR 1.51)

Dated: October 20, 1980.

Theodore C. Lutz,

Administrator.

[FR Doc. 80-33107 Filed 10-22-80; 8:45 am]

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Thursday
October 23, 1980

Part V

Department of Agriculture

Federal Grain Inspection Service

Elimination of Mandatory Requirements for Inbound Weighing of Grain at Export Elevators

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DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

Elimination of Mandatory Requirements for Inbound Weighing of Grain at Export Elevators

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice to implement the provisions of Pub. L. 96–437.

SUMMARY: The Federal Grain Inspection Service (FGIS or Service) is issuing this notice to implement the provisions of Pub. L. 96–437, which amends the U.S. Grain Standards Act to eliminate most of the mandatory requirements for inbound weighing of grain at export elevators at export port locations.

EFFECTIVE DATE: October 23, 1980.

COMMENTS: Comments must be submitted in writing, in duplicate, to the Issuance and Coordination Staff, FGIS, USDA, Room 1127 Auditors Building, 1400 Independence Avenue, SW., Washington, D.C. 20250, by December 8, 1980.

FOR FURTHER INFORMATION CONTACT: G. T. Lipscomb, Director, Weighing Division, FGIS, USDA, Room 3117 Auditors Building, 1400 Independence Avenue, SW., Washington, D.C. 20250; (202) 447–4851.

SUPPLEMENTARY INFORMATION: Leland E. Bartelt, Administrator, FGIS, has determined that an emergency situation exists which warrants publication without comment on this final action because of the enactment by Congress of Pub. L. 96–437. However, comments have been solicited for 45 days after publication of this document, and this final action will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the **Federal Register** as soon as possible. The emergency nature of this action warrants publication of this final action without completion of a Final Impact Statement.

On October 13, 1980, President Carter signed Pub. L. 96–437. This public law amends the U.S. Grain Standards Act (7 U.S.C. 71 *et seq.*) to exempt from official weighing, transfers of grain into or out of export elevators at export port locations for the following type shipments:

(1) Intracompany shipments of grain into an export elevator by any mode of transportation;

(2) Intercompany shipments of grain transferred into an export elevator by transportation modes other than barge; and

(3) Grain transferred out of an export elevator by any mode of transportation to destinations within the United States.

However, if the shipper or receiver requests that grain shipped in the above circumstances be officially weighed, the request shall be honored.

In order to provide for an orderly implementation of the provisions of this law, the Service is initiating the following action.

Until November 24, 1980, the Service will continue to operate under the requirements set forth in Section 5 of the U.S. Grain Standards Act, as amended in 1976 and 1977; i.e., all grain shipped into and out of export elevators at export port locations will be officially weighed. However, any elevator owner or operator may request that this service be discontinued prior to this date. Requests for discontinuation of service should be submitted in writing to the Administrator, FGIS, USDA, Room 1628 South Building, 1400 Independence Avenue, SW., Washington, D.C. 20250, (202) 447–9170.

After November 24, 1980, the industry may choose from among the following options for weighting exempted grain:

(1) Official weighing (Class X)—the determination and certification by official personnel of the quantity of a lot of grain based on actual performance of, or the physical supervision of, the weighing;

(2) Supervision of weighing (Class Y)—supervision by official personnel of the grain weighing process to the extent that the integrity of the weighing and certification is reasonably assured; or

(3) No weighing services.

For the period October 15, 1980, to November 24, 1980, the service will provide only official (Class X) weighing. After November 24, 1980, the Service will provide Class X and/or Class Y weighing if requested in writing by the grain firms. Requests for weighing service shall be submitted to FGIS local field offices, delegated State agencies, or to the Administrator. The weighing service requested will be provided contingent upon the availability of personnel, and at the published fees.

(Sec. 7A, Pub. L. 96–437, 94 Stat. 1870)

Done in Washington, D.C. on October 20, 1980.

L. E. Bartelt,

Administrator.

[FR Doc. 80-33284 Filed 10-22-80; 8:45 am]

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

ENVIRONMENTAL PROTECTION AGENCY

63734 9–25–80 / Control of Air Pollution from new motor vehicles and motor vehicle engines; gaseous emission regulations for 1984 and later model year light/duty trucks

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal Housing Commissioner—Office of Assistant Secretary for Housing—

58337 9–3–80 / Fair market rents for new construction and substantial rehabilitation, Philadelphia, Pa.

INTERSTATE COMMERCE COMMISSION

62991 9–23–80 / Railroad consolidation procedures

PERSONNNEL MANAGEMENT OFFICE

62971 9–23–80 / Reduction in force
[Corrected at 45 FR 66445, 10–7–80]

List of Public Laws

Last Listing October 22, 1980

This is a continuing listing of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–275–3030).

H.R. 6686 / Pub. L. 96–470 Congressional Reports Elimination Act of 1980. (Oct. 19, 1980; 94 Stat. 2237) Price $1.25.

H.R. 6683 / Pub. L. 96–471 Installment Sales Revision Act of 1980. (Oct. 19, 1980; 94 Stat. 2247) Price $1.25.

H.R. 6886 / Pub. L. 96–470 Congressional Reports Elimination Act of 1980. (Oct. 19, 1980; 94 Stat. 2237) Price $1.25.

S. 1393 / Pub. L. 96–472 To amend the Earthquake Hazards Reduction Act of 1977 and the Federal Fire Prevention and Control Act of 1974 to authorize the appropriation of funds to the Director of the Federal Emergency Agency to carry out the earthquake hazards reduction program and the fire prevention and control program, and for other purposes. (Oct. 19, 1980; 94 Stat. 2257) Price $1.

H.R. 5295 / Pub. L. 96–473 To amend the Social Security Act with respect to the retirement test, to reduce spending under title II of the Social Security Act, and for other purposes. (Oct. 19, 1980; 94 Stat. 2263) Price $1.

H.R. 5326 / Pub. L. 96–474 To authorize the Secretary of Agriculture to convey certain Government-owned property in the Kisatchie National Forest to the State of Louisiana in exchange for certain property at old Camp Livingston, Louisiana. (Oct. 19, 1980; 94 Stat. 2267) Price $1.

H.R. 6816 / Pub. L. 96–475 To provide for the exchange of certain Federal coal leases in State of New Mexico for other Federal coal leases. (Oct. 19, 1980; 94 Stat. 2269) Price $1.

S. 3072 / Pub. L. 96–476 Rattlesnake National Recreation Area and Wilderness Act of 1980. (Oct. 19, 1980; 94 Stat. 2271) Price $1.

H.R. 7554 / Pub. L. 96–477 Small Business Investment Incentive Act of 1980. (Oct. 21, 1980; 94 Stat. 2275) Price $1.50.

H.R. 6665 / Pub. L. 96–478 Act to Prevent Pollution from Ships. (Oct. 21, 1980; 94 Stat. 2297) Price $1.

H.R. 2743 / Pub. L. 96–479 National Materials and Minerals Policy, Research and Development Act of 1980. (Oct. 21, 1980; 94 Stat. 2305) Price $1.00.

S. 1250 / Pub. L. 96–480 Stevenson-Wydler Technology Innovation Act of 1980. (Oct. 21, 1980; 94 Stat. 2311) Price $1.25

H.R. 5612 / Pub. L. 96–481 To amend the Small Business Act, to provide for the payment of the United States of certain fees and costs incurred by prevailing parties in Federal agency adjudications and in civil actions in courts of the United States, and for other purposes. (Oct. 21, 1980; 94 Stat. 2321) Price $1.25

DOCUMENT DRAFTING HANDBOOK

The Office of the Federal Register has issued a revised edition of its handbook on preparation of documents for publication in the **Federal Register.**

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federal register

Friday
October 24, 1980

Highlights

Seminar on Principles of Regulations Writing—For details on seminar in **Washington, D.C.**, see announcement in the **Reader Aids** section at the end of this issue.

70473 **School Nutrition Programs** USDA/FNS requires State agencies to inform the Food and Nutrition Service Regional Office when they become aware of suspected fraud or other criminal acts; comments by 12–23–80

70522 **Public Assistance Programs** HHS/SSA proposes to amend rules for quality control review of sample cases under the aid to families with dependent children and adult assistance programs; comments by 12–23–80

70527 **Food Relief Programs** USDA/FNS announces plans to distribute fiscal year 1981 program (food) monies to State agencies participating in Special Supplemental Food Programs for Women, Infants and Children; effective 10–1–80; comments by 12–23–80

70516 **Medicaid** HHS/HCFA amends Medicaid Quality Control regulations by revising time frames for States to complete reviews and submit certain reports; comments by 12–23–80

70666 **Minimum Wages** Labor/ESA releases minimum wages for Federal and federally assisted construction workers (Part II of this issue)

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Highlights

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

70429 **Energy** DOE formulates general policy establishing prices or charges for materials and services sold by DOE; effective 11–24–80

70621 **Immigration** State publishes guidelines for notification to the United States Department of State of request for asylum

70431 **Air Rates and Fares** CAB publishes regulation regarding domestic passenger fare flexibility; adopted 10–21–80

70478 **Income Tax** Treasury/IRS proposes reporting requirements for certain grantor trusts; comments by 12–23–80

70475 **Energy Conversion** Commerce/NOAA is preparing licensing and other regulations for ocean thermal energy conversion facilities and plantships; applications for financial compensation 11–24–80

70712 **Rulemaking Calendar** DOE/FERC publishes calendar of pending informal rulemaking of general applicability for 10–1 to 12–31–80 (Part IV of this issue)

70444 **Food Additives** HHS/FDA adds 2-(2'-hydroxy-5'-methylphenyl) benzotriazole as antioxidant and/or stabilizer in polycarbonate resins intended for food-contact use; effective 10–24–80, objections by 11–24–80

70728 **Hazardous Materials** EPA requires submission of notice of manufacture or importation of polybrominated biphenyls and tris; effective 11–24–80 (Part V of this issue)

70469 **Fishing Vessels** Commerce/NOAA publishes regulations regarding Fishermen's Protective Act procedures provision for fees; effective 9–30–80

70574 **Prescription Drugs** HHS/HCFA publishes Pharmaceutical Reimbursement Board final maximum allowable cost determinations

70530–70535 **Data Processing** Commerce/NBS is authorized to establish uniform Federal automatic data processing standards; provisions of standard effective 4–24–81

Privacy Act Documents

700702 FERC

70623 **Sunshine Act Documents**

Separate Parts of This Issue

70666 **Part II, Labor/ESA**
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Rules and Regulations

Federal Register
Vol. 45, No. 208
Friday, October 24, 1980

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 276; Lemon Reg. 275, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period October 26–November 1, 1980, and increases the quantity of such lemons that may be so shipped during the period October 19–25. Such action is needed to provide for orderly marketing of fresh lemons for the period specified due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective October 26, 1980, and the amendment is effective for the period October 19–25, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation and amendment are issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1980–81 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on July 8, 1980. A final impact analysis on the marketing policy is available from Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again publicly on October 21, 1980, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons has improved.

It is further found that there is insufficient time between the date when information became available upon which this regulation and amendment are based and when the actions must be taken to warrant a 60-day comment period as recommended in E.O. 12044, and that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective times.

1. Section 910.576 is added as follows:

§ 910.576 Lemon Regulation 276.

(a) The quantity of lemons grown in California and Arizona which may be handled during the period October 26, 1980, through November 1, 1980, is established at 200,000 cartons.

(b) As used in this section, "handled" and "cartons" mean the same as defiend in the marketing order.

2. Paragraph (a) of § 910.575 Lemon Regulation 275 (45 FR 68912) is amended to read as follows:

§ 910.575 Lemon Regulation 275.

(a) The quantity of lemons grown in California and Arizona which may be handled during the period October 19, 1980, through October 25, 1980, is established at 210,000 cartons.

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: October 22, 1980.

D. S. Kuryloski,
Deputy Director, Fruit and Vegetable Division Agricultural Marketing Service

[FR Doc. 80-33466 Filed 10-23-80; 11:55 am]
BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 100

Statement of Organization-Field Service: Redesignation of Ajo, Ariz., and Naco, Ariz. Sub-Stations as Border Patrol Stations

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final Rule.

SUMMARY: This rule redesignates the Ajo, and Naco, Ariz. border patrol substations as border patrol stations.

EFFECTIVE DATE: November 24, 1980.

FOR FURTHER INFORMATION CONTACT: Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 I Street NW., Washington, D.C. 20536, Telephone: (202) 633–3048.

SUPPLEMENTARY INFORMATION: 8 CFR 100.2 sets forth the delegation of authority from the Attorney General to the Commissioner of the Immigration and Naturalization Service relating to the administration of the Service, including the designation of Border Patrol sector headquarters, stations, and sub-stations necessary to enforce the Immigration and Nationality Act and all other laws relating to immigration and naturalization. Consistent with such authority, the former Border Patrol substations at Ajo and Naco, Arizona are re-designated as Border Patrol stations within the Tucson, Arizona Border Patrol Sector Number 14. This rule is published to notify the public of this change in the Service's organizational structure. Compliance with the provisions of 5 U.S.C. 553 as to notice of proposed rulemaking is not required because the amendment merely up-dates the Service's organization table.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 100—STATEMENT OF ORGANIZATION

§ 100.4 [Amended]

In 100.4 (d), "Sector No. 14—Tucson, Arizona" is reviewed to read as follows:

Sector No. 14—Tucson, Ariz.

Ajo, Ariz.
Casa Grande, Ariz.
Douglas, Ariz.
Gila Bend, Ariz.
Naco, Ariz.
Nogales, Ariz.
Phoenix, Ariz.
Tucson, Ariz.
Willcox, Ariz.

* * * * *

(Sec. 103, 8 U.S.C. 1103)

Dated: October 20, 1980.

David Crosland,

Acting Commissioner of Immigration and Naturalization.

[FR Doc. 80-33274 Filed 10-23-80; 8:45 am]

BILLING CODE 4410-10-M

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8 CFR Part 235

Inspection of Persons Applying for Admission; Canadian Residents Entering the United States by Small Craft

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule liberalizes the inspection procedure for Canadian residents who enter the United States by small craft at Puget Sound during the navigation season. It also extends visit privileges in the United States from 24 hours to 72 hours and enlarges the areas for such visits.

EFFECTIVE DATE: November 24, 1980.

FOR FURTHER INFORMATION CONTACT:
For general information: Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 I Street N.W., Washington, D.C. 20536, Telephone: (202) 633-3048.

For specific information: Alvin Braunstein, Immigration Inspector, Immigration and Naturalization Service, 425 I Street NW., Washington, D.C. 20536, Telephone: (202) 633-2725.

SUPPLEMENTARY INFORMATION: 8 CFR 235.1(e) is revised to include Puget Sound, an inlet of the Pacific Ocean in northwestern Washington, under the Form I-68, Canadian border boat landing procedure. Under this procedure, U.S. citizens, lawful permanent residents of the United States, Canadian nationals and other residents of Canada who enter the United States by small craft may be issued a Form I-68, Canadian Border Boat Landing Card, without application or fee after an initial inspection, and may thereafter enter the United States along the immediate shore area from time to time for the duration of the navigation season without additional inspections. The revision also extends a nonresident alien's authorized visit in the United States from the former 24 hours to 72 hours and also extends the area of such visit from the immediate shore area to nearby shopping areas, nearby residential neighborhoods, and other contiguous areas.

The provision of the Administrative Procedure Act (5 U.S.C. 553) relative to notice of proposed rulemaking is unnecessary because the liberalized rule relieves the former restrictive practices and geographic limitations.

Accordingly, Part 235 of Chapter 1 of Title 8 is amended by revising § 235.1(e) as follows:

PART 235—INSPECTIONS OF PERSONS APPLYING FOR ADMISSION

§ 235.1 [Amended]

* * * * *

(e) *U.S. Citizens, lawful permanent residents of the United States, Canadian nationals, and other residents of Canada having a common nationality with Canadians, entering the United States by Small craft.* Upon being inspected by an immigration officer and found eligible for admission as a citizen of the United States, or found eligible for admission as a lawful permanent resident of the United States, or in the case of a Canadian national or other resident of Canada having a common nationality with Canadians being found eligible for admission as a temporary visitor for pleasure, a person who desires to enter the United States from Canada in a small pleasure craft of less than 5 net tons without merchandise may be issued, without application or fee, Form I-68, Canadian Border Boat Landing Card, and may thereafter enter the United States along with the immediate shore area of the United States on the body of water designated on the Form I-68 from time to time for the duration of that navigation season without further inspection. In the case of a Canadian national or other resident of Canada having a common nationality with Canadians, the Form I-68 shall be valid only for the purpose of visits not to exceed 72 hours and only if the alien will remain in nearby shopping areas, nearby residential neighborhoods, or other similar areas adjacent to the immediate shore area of the United States. If the bearer of Form I-68 seeks to enter the United States by means other than small craft of less than 5 net tons without merchandise, or if he or she seeks to enter the United States for other purposes, or if he or she is an alien, other than a lawful permanent resident alien of the United States, and intends to proceed beyond an area adjacent to the immediate shore area of the United States, or remains in the United States longer than 72 hours, he or she must apply for admission at a United States port of entry.

* * * * *

(Sec. 103 and 235, 8 U.S.C. 1103 and 1225)

Dated: October 20, 1980.

David Crosland,

Acting Commissioner of Immigration and Naturalization Service.

[FR Doc. 80-33275 Filed 10-23-80; 8:45 am]

BILLING CODE 4410-10-M

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8 CFR Part 238

Contracts With Transportation Lines; Air Florida

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This amendment to the regulation of the Immigration and Naturalization Service adds a carrier to the list of transportation lines which have entered into agreement with the Commissioner of Immigration and Naturalization to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries. This amendment is necessary because transportation lines which signed such agreements are published in the Service's regulations.

EFFECTIVE DATE: October 8, 1980.

FOR FURTHER INFORMATION CONTACT:
Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C., 20536—Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: This amendment to 8 CFR 238.3 is published pursuant to section 552 of Title 5 of the United States Code [80 Stat. 383], as amended by Pub. L. 93-502 [88 Stat. 1561], and the authority contained in section 103 of the Immigration and Nationality Act (8 U.S.C. 1103), 28 CFR 0.105(b), and 8 CFR 2.1. Compliance with the provisions of section 553 of Title 5 of the United States Code as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment contained in this order adds a transportation line to the listing and is editorial in nature.

The Commissioner of Immigration and Naturalization Service entered into agreement with the following named carrier on the date indicated to guarantee the passage through the United States of aliens in immediate and continuous transit destined to foreign countries under section 238(d) of the Immigration and Nationality Act and 8 CFR: Air Florida.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

§ 238.3 [Amended]

In § 238.3 *Aliens in immediate and continuous transit,* the listing of transportation lines in paragraph (b) *Signatory lines* is amended by adding in alphabetical sequence, "Air Florida"

* * * * *

(Secs. 103 and 238(d), 8 U.S.C. 1103 and 1228(d))

Dated: October 20, 1980.

David Crosland,

Acting Commissioner of Immigration and Naturalization.

[FR Doc. 80-33276 Filed 10-23-80; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 82

Exotic Newcastle Disease; and Psittacosis or Ornithosis in Poultry; Areas Quarantined

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of these amendments is to quarantine a portion of Marion County and a portion of Volusia County in Florida, and a portion of Harris County in Texas, because of the existence of exotic Newcastle disease. Exotic Newcastle disease was confirmed in such portion of Marion County, Florida, on October 13, 1980, in Volusia County, Florida, on October 7, 1980, and in Harris County, Texas, on October 3, 1980. Therefore, in order to prevent the dissemination of exotic Newcastle disease it is necessary to quarantine the affected areas.

EFFECTIVE DATE: October 20, 1980.

FOR FURTHER INFORMATION CONTACT:
C. G. Mason, Chief, National Emergency Field Operations, Emergency Programs, Veterinary Services, USDA, 6505 Belcrest Road, Federal Building, Room 751, Hyattsville, MD 20782, 301-436-8073.

SUPPLEMENTARY INFORMATION: These amendments quarantine a portion of Marion County and a portion of Volusia County in Florida, and a portion of Harris County in Texas, because of the existence of exotic Newcastle disease. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement and their carcasses, and parts thereof, and certain other articles, from quarantined areas, as contained in 9 CFR Part 82, as amended, will apply to the quarantined areas.

Accordingly, Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respects:

1. In § 82.3 (a)(1)(i), (a)(1)(iii), and (a)(3)(i) are added to read:

§ 82.3 Areas quarantined.

(a) * * *

(1) *Florida.* (i) The premises of Ocala Pet Center (Gary Fielder), 161 Northwest 59th Court, Ocala, Marion County.

* * * * *

(iii) The premises of Reef Imports (Garald Smith), Tomoka Farms, Halifax Drive, Volusia County.

* * * * *

(3) *Texas.* (i) The premises of Sam T. Wisialowski, 10206 Golden Sunshine Street, Houston, Harris County.

* * * * *

(Secs. 4-7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; secs. 1-4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132 (21 U.S.C. 111-113, 115, 117, 120, 123-126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141)

These amendments impose certain restrictions necessary to prevent the interstate spread of exotic Newcastle disease, a communicable disease of poultry, and must be made effective immediately to accomplish their purpose in the public interest. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register.**

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by J. C. Jefferies, Acting Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without opportunity for prior public comment or preparation of an impact analysis statement at this time.

This final rule implements the regulations in Part 82. It will be scheduled for review in conjunction with the periodic review of the regulations in that Part required under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 20th day of October, 1980.

Pierre A. Chaloux,

Deputy Administrator Veterinary Service.

[FR Doc. 80-33170 Filed 10-23-80; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF ENERGY

Office of the Controller

10 CFR Part 1009

Pricing Policy: General Policy for Pricing and Charging for Materials and Services Sold by the Department of Energy

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: This regulation formulated a general policy for establishing prices or charges for materials and services sold by the Department of Energy (DOE). This regulation is intended to apply to materials and services for which prices and charges are not otherwise provided for by statute, Executive order, or regulation. This regulation is published under the authority of Section 644 of the Department of Energy Organization Act (Pub. L. 95-91, 91 Stat. (42 U.S.C. 7254 et seq.))

EFFECTIVE DATE: November 24, 1980.

FOR FURTHER INFORMATION CONTACT:
Mr. Kenneth E. Cohen, Office of General Counsel, Room 6A-171, Mail Station 6A-152, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 252-8618.

Mr. Lawrence M. Pope, Chief, Product Accounting and Pricing Branch, Office of Finance and Accounting, Room GB-215, Mail Station 4A-139, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 252-4862.

Mr. Joseph P. Muskey, Product Accounting and Pricing Branch, Office

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of Finance and Accounting, Room GB–215, Mail Station, 4A–139, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–4862).

SUPPLEMENTARY INFORMATION: On July 29, 1980 DOE issued a proposed rule, 45 FR 50355, formulating a general policy for establishing prices or charges for materials and services sold by DOE. Having received no comments, DOE has determined to adopt the rule as proposed.

The general pricing policy of the Department is to establish prices or charges which recover the full cost to the Federal Government for materials and services sold.

The intent of this regulation is to provide uniform criteria for pricing materials and services covered by this regulation. The implementation of the criteria will be reflected in price and charge lists that can be obtained from the DOE office providing the material or service, or from the responsible program office.

This regulation applies to materials and services for which prices and charges are not otherwise provided for by statute, Executive Order, or regulation. The regulation does not apply to DOE's prices and charges for materials and services related to DOE's principal sources of revenue, such as from sales of uranium enrichment services, sales by power marketing activities, or sales from the Naval Petroleum and Oil Shale Reserves. Instead, this regulation pertains to the sale of materials and services generating a lesser volume of revenue, such as sales of reactor materials, and sales of stable isotopes and radioisotopes. Most of these materials and services are sold under the authority of the Atomic Energy Act of 1954, as amended. (42 U.S.C. 2011 et seq.).

In consideration of the foregoing, Title 10 of the Code of Federal Regulations is amended by establishing Part 1009 as set forth below.

Issued in Washington, D.C. October 16, 1980.

P. Marshall Ryan,

Controller.

10 CFR Chapter X is amended by adding a new Part 1009, reading as follows:

PART 1009—GENERAL POLICY FOR PRICING AND CHARGING FOR MATERIALS AND SERVICES SOLD BY DOE

Sec.

1009.1 Purpose and scope.
1009.2 Definitions.
1009.3 Policy.
1009.4 Exclusions.
1009.5 Supersessions.
1009.6 Dissemination of prices and charges.

Authority: Sec. 644 of the Department of Energy Organization Act (Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. 7254)). Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.) "User Fee Statue", 31 U.S.C. 483a. 42 U.S.C. 2111, 2112 and 2201.

§ 1009.1 Purpose and scope.

(a) This part establishes Department of Energy policy for establishing prices and charges for Department materials and services sold to organizations and persons outside the Federal Government.

(b) This part applies to all elements of the Department except the Federal Energy Regulatory Commission.

§ 1009.2 Definitions.

For the purposes of this regulation:

(a) "Allocable Cost" means a cost allocable to a particular cost objective (i.e., a specific function, project, process, or organization) if the costs incurred are chargeable or assignable to such cost objectives in accordance with the relative benefits received or other equitable relationships. Subject to the foregoing, a cost is allocable if: (1) it is incurred solely for materials or services sold; (2) it benefits both the customer and the Department in proportions that can be approximated through use of reasonable methods, or (3) it is necessary to the overall operation of the Department and is deemed to be assignable in part to materials or services sold.

(b) "Byproduct Material" means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(c) "Charges" means an accumulation of job related costs for materials and services sold by the Department.

(d) "Commerical price" means the price that a willing buyer is currently paying or would pay a willing seller for materials and services in the market.

(e) "Direct cost" is any cost which can be identified specifically with a particular final cost objective.

(f) "Full cost" includes all direct costs and all allocable costs of producing the material or providing the service consistent with generally accepted accounting principles. Direct costs and allocable costs may include, but are not limited to, the following cost elements:

(1) Direct labor.
(2) Personnel fringe benefits.
(3) Direct materials.
(4) Other direct costs.
(5) Processing materials and chemicals.
(6) Power and other utilities.
(7) Maintenance.
(8) Indirect cost, i.e., common costs which cannot be directly assigned to specific cost objectives and are therefore allocated to cost objectives in a systematic cost allocation process.
(9) Depreciation which includes depreciation costs that are directly associated with facilities and equipment utilized, and allocated depreciation costs for support and general facilities and equipment.
(10) Added factor includes general and administrative costs and other support costs that are incurred for the benefit of the Department, an organizational unit or a material or service as a whole.

(g) "Prices" means the monetary amounts generally established and published for recurring sales of the same materials and services.

(h) "Source Material" means uranium or thorium.

(i) "Special Nuclear Material" means plutonium, uranium enriched in the isotope 233 or in the isotope 235, or any materials artificially enriched by any of the foregoing. Special Nuclear Material does not include source material.

§ 1009.3 Policy.

(a) The Department's price or charge for materials and services sold to persons and organizations outside the Federal Government shall be the Government's full cost for those materials and services, unless otherwise provided in this part.

(b) Exceptions from the Department pricing and charging policy may be authorized in accordance with the following provisions:

(1) Prices and charges for byproduct material sold pursuant to 42 U.S.C. 2111 and 42 U.S.C. 2112 et seq. shall be either the full cost recovery price or the commercial price, whichever is higher, except that lower prices and charges may be established by the Department if it is determined that such lower prices and charges (i) will provide reasonable compensation to the Government for such material, (ii) will not discourage the use of or the development of sources of supply independent of the DOE of such material, and (iii) will encourage research and development. In individual cases, if (ii) and (iii) cannot be equally accommodated, greater weight will be given to encouragement of research and development.

(2) Prices and charges for materials and services sold pursuant to 42 U.S.C. 2201 shall be either the full cost recovery price or the commercial price, whichever is higher, except that lower prices and charges may be established by the Department if it is determined that such lower prices and charges will provide reasonable compensation to the Government and will not discourage the development of sources of supply independent of the DOE of such material.

§ 1009.4 Exclusions.

This part shall not apply when the amount to be priced or charged is otherwise provided for by statute, Executive Order, or regulations. This part does not apply to:

(a) Fees, penalties and fines established by the Economic Regulatory Administration of DOE.

(b) Power marketing and related activities of the Alaska Power Administration, the Bonneville Power Administration, the Southeastern Power Administration, the Southwestern Power Administration, and the Western Power Administration.

(c) Crude oil, natural gas and other petroleum products and services by or from the Naval Petroleum and Oil Shale Reserves.

(d) Uranium enriching services, source material, and special nuclear material.

(e) Requests for information under the Freedom of Information Act and the Privacy Act.

(f) Energy data and information provided by the Energy Information Administration.

(g) Crude oil and related materials and services from the Strategic Petroleum Reserve.

(h) The disposal of excess and surplus property.

(i) Access permits for uranium enrichment technology issued in accordance with 10 CFR 725.

(j) Materials and services provided pursuant to a cooperative agreement, research assistance contract or grant, or made available to a DOE contractor in connection with a contract, the primary purpose of which is to procure materials or services for DOE.

§ 1009.5 Supersessions.

Prices which appear in Federal Register Notices previously published by the Department, or its predecessor agencies, for materials and services covered by this rule are hereby superseded.

§ 1009.6 Dissemination of prices and charges.

Current prices and charges for specific materials and services are available from the DOE laboratory or office providing the material or service, or from the responsible program office. If this office cannot be determined, inquiries regarding the appropriate contact office should be addressed to the Office, of Finance and Accounting, Product Accounting and Pricing Branch, Mail Station 4A–139, 1000 Independence Avenue, SW., Washington, D.C. 20585.

[FR Doc. 80–33307 Filed 10–23–80; 8:45 am]
BILLING CODE 6450–01–M

CIVIL AERONAUTICS BOARD

14 CFR Part 399

[PS–98; Amdt. No. 75; Docket 37982]

Statements of General Policy: Domestic Passenger Fare Flexibility

AGENCY: Civil Aeronautics Board.

ACTION: Interim policy statement.

SUMMARY: The CAB amends its upward flexibility zones within which airlines may set domestic passenger fares between markets in the 48 contiguous States and the District of Columbia with limited risk of suspension by the agency. The revised policy establishes the ceiling of the regulatory no-suspend zone in all markets at the current Standard Industry Fare Level (SIFL) plus $15, plus an additional upward flexibility of 30 percent. This policy responds to criticisms that the current mileage-based fare flexibility is discriminatory either in appearance or fact. It is designed to counteract a bias against short-haul markets that is built into the previous zone of fare flexibility and to ease the transition to the full pricing deregulation that is mandated by the Airline Deregulation Act.

DATES: Adopted: October 21, 1980. Effective: The policy was put into effect September 24, 1980. The amendment of 14 CFR Part 399 is effective October 21, 1980.

FOR FURTHER INFORMATION CONTACT: Julien R. Schrenk, Chief, Domestic Fares and Rates Division, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202–673–5298.

SUPPLEMENTARY INFORMATION:

Introduction and Background

On April 3, 1980, we issued a notice of rulemaking inviting comments on six options to make domestic passenger fare policies more flexible (PSDR–66; 45 FR 24178; April 9, 1980).

After considering the comments at our May 13, 1980 Sunshine Meeting, we adopted, effective May 14, 1980, the following combination of the proposed options as an interim policy: full downward flexibility in all markets; full upward flexibility for flights up to 200 miles; 50 percent upward flexibility for flights between 201 and 400 miles; 30 percent upward flexibility for flights above 400 miles. The percentages were applied to the Standard Industry Fare Level (SIFL) as defined by section 1002(d) of the Federal Aviation Act. This new flexibility was originally limited to flights within the 48 contiguous States and the District of Columbia (PS–94, 45 FR 40969; June 17, 1980). This policy was later made applicable with minor change to service between the mainland and Puerto Rico/Virgin Islands, Hawaii or Alaska (PS–96, 45 FR 48600; July 21, 1980). Since these markets are all above 400 miles, upward flexibility is 30 percent.

On May 23, 1980, 11 United States Senators filed a Motion for Reconsideration. By PSDR–66A, 45 FR 40994, June 17, 1980, we granted the motion and asked for public comments on our interim fares policy adopted in PS–94, *supra*. Initial comments were due on July 17, 1980, with reply comments due August 1, 1980. On July 21, 1980, the Indianapolis Airport Authority asked for a 30-day extension of the reply comments. By PSDR–66C, 45 FR 50614, July 30, 1980, we granted an extension for reply comments until August 7, 1980. The docket is now properly before us again for consideration.

The Comments

Seventy-four comments were filed in response to the supplemental notice of proposed rulemaking, by members of the U.S. Congress, air carriers, representatives of small communities, airport operators, and others. A list of the commenters with a summary of their arguments is attached. (Attachment A.)

The majority of commenters to the interim policy either opposed any increased upward price flexibility, particularly in short-haul markets, or argued that any upward flexibility granted should be equal in percentage terms across all distances. Unequal percentage flexibility across mileage blocks, it was argued, would lead to discriminatory pricing: short-haul passengers, where flexibility was unlimited or very substantial, would be exposed to exorbitant prices while long-haul passengers remained protected by more stringent regulation. There were more specific proposals. For example, Piedmont Airlines recommended an alternative fare flexibility policy based on the SIFL fare formula plus $20, plus an additional 20 percent upward fare flexibility in all markets. The Indianapolis Airport Authority urged that any upward fare flexibility above 10 percent be offset by a corresponding reduction in off-peak coach fares. Bell Helicopter-Textron recommended an

alternative in markets of over 200 miles based on 10 percent above SIFL, increased by increments of 5 percent each quarter until January 1, 1983. The New York DOT supported the interim policy.

Discussion

The comments in this docket have, together with over four months' experience, substantially aided us in assessing the merits of current fare flexibility policy. In general, the worst fears of those concerned about potentially disproportionate fare increases with respect to short-haul and small community services have not been realized. For the most part, carriers have exercised their upward flexibility in an across-the-board fashion. (See Table II.) As we expected and hoped, there have been many exceptions to this, but we have not observed market-by-market pricing being directed disproportionately at small communities or short haul markets. As shown in Table I, average coach fares in the 0–200 and 201–400 mileage blocks, even with very high ceilings under current policy, were increased about the same as longer haul fares. Page 1 of the table reflects, for all certificated carriers, an increase of 4.6 percentage points in the average percentage that coach fares exceeded the *DPFI* formula fare in long haul markets since upward flexibility was expanded in May; the comparable figures in the shorter mileage blocks are, 0–200, 5.9%, and 201–400, 4.7%.[1] These variations are not significant. In non-stop markets where carriers actually compete head-to-head, the results are dramatic: while the average excess over the *DPFI* formula has increased 10.3 percentage points since May in the long haul markets, the increase in the 0–200 block is 7.2% and in the 201–400 mileage block 8.0%. In "competitive" markets, thus, there is an inverse relationship between the flexibility provided and carrier pricing actions. Even in non-stop monopoly markets, depicted in p. 3 of Table 1, the increases were roughly similar: 5.7% in long hauls, 5.8% in the 201–400 block, and 6.6% in the 0–200 block. Indeed, short-haul traffic continues to grow while overall domestic travel declines. We understand, however, that many segments of the public view the present mileage-based fare policy as unfair. The Board is concerned that its policies not only be fair, but also appear fair. For this reason, we have decided to modify our policy in a manner which will fully serve our regulatory purposes while reducing public concern about its basic equity.

The comments have not persuaded us to ignore the short-haul/long-haul bias implicit in the SIFL fare formula, as described fully in PSDR–66. Our goal, accordingly, has been to develop a means of converting the historical understatement of short-haul costs with a non-mileage-based fare policy, if practicable. Nor have the parties favoring a general pullback of upward fare flexibility persuaded us. The pertinent considerations in that respect have not changed since we first increased fare flexibility: entry remains substantially deregulated; carriers' profitability levels remain depressed, suggesting an absence of monopoly profits; our reluctance to accept the *Domestic Passenger Fare Investigation* fare curve as a definitive statement of competitive pricing remains unchanged. The problems brought on by soaring fuel costs and adverse traffic forecasts can best be dealt with if competing carriers have ample scope to test the market and experiment with new and innovative pricing policies. This is not to say that we necessarily approve the pricing strategy of every carrier, or accept the inevitability of the substantial industry-wide price increases which followed our actions in relaxing fare regulation. Rather, it means that competition is sufficiently healthy in this industry that consumers are reasonably protected. The marketplace must now play a greater role in setting prices, and carriers should neither be forced nor permitted to rely on outmoded Board imposed fare formulae.

We considered many options in establishing our flexibility zone. For example, we analyzed across-the-board flexibility of 130%, 140% and 150%. (See Tables III and IX.) The first two were lacking because of insufficient flexibility in short haul markets. For substantial bands of mileage, they produce fare ceilings which are below the DPFI cost curve as adjusted to current cost. (See Table III.) Even in mileage blocks where this was not the case, little flexibility would remain to cover variations in carrier costs, differing market characteristics, and our concern that the *DPFI* average cost fare curve may not permit normal coach fares to be sufficiently high to allow the wide array of fares sometimes necessary for maximum exploitation of economies of scale. On the other hand, 150% upward fare flexibility is greater than a majority of the Board feels is consistent at this time with a smooth transition to deregulation in medium and long haul markets. We have, instead, decided to correct for the short-haul-long-haul bias directly, by adjusting for the understatement of the price curve vis-a-vis the cost curve which was initially built into the Phase 9 DPFI fare formula.[2] We have made several calculations to determine the approximate difference, at current cost levels, of the appropriate adjustment to the present terminal charge to establish a proper zone of flexibility.

One approach was to update the DPFI cost formula by applying the cost increase from the initial Phase 9 DPFI fare formula to the cost level as of July 1, 1980—an increase of 2.099. (See Table V). This computation produces a terminal cost estimate of $40.41. A second approach was to compute the cost level at zero miles for the composite of the domestic industry, based on Version Six costing.[3] This was done using calendar year 1977 cost and traffic data, adjusted for cost increases to July 1, 1980 and further adjusted for normal fare traffic. (See Table VI.) This analysis produces a terminal cost estimate of $43.47. A third evaluation was made, utilizing 1979 cost data by equipment type for selected aircraft types (the latest cost data for the type of evaluation using Version Six costing), at an assumed 55 percent load factor. Data were adjusted to costs as at July 1, 1980 and for normal fare traffic. (See Table VII.) This analysis produces a terminal cost estimate of $47.21.

In summary, our evaluation indicates the following:

Basis	Computed terminal cost	Terminal cost July 1, 1980 formula	Adjustment to terminal costs
DPFI cost curve adjusted to 7/1/80	$40.41	$25.92	$14.49
1977 Computed composite carrier adjusted to 7/1/80	43.47	25.92	17.55

[1] It should be noted that page one of Table I includes *all* markets for which local tariffs are published, regardless of the type of service provided (*i.e.*, nonstop, multi-stop or connecting); whereas pages two and three are limited to nonstop markets. Page one is, therefore, not an average of pages two and three. Variations between page one and pages two and three are attributable primarily to the circuitous routings present in page one data which are not reflected in pages two and three.

[2] The cost of coach service per passenger was found to be $19.25 plus 4.95¢ per mile in Phase 9 of the DPFI, while the DPFI fare formula was set with a terminal charge of $12.00—a difference of $7.25 at 1972 cost levels.

[3] Version Six is a multi-element costing methodology developed and used by the Board in developing the initial DPFI Phase 7 fare level costs and the Phase 9 fare structure curve, based on cost inputs by carrier and equipment type. The 1977 cost level was developed on the basis of updated Version Six inputs for composite passenger cost data and was based on actual rather than regulatory load factor and on a flight rather than trip basis.

Basis	Computed terminal cost	Terminal cost July 1, 1980 formula	Adjustment to terminal costs
Selected aircraft 1979 costs adjusted to 7/1/80	47.21	25.92	21.29

Thus, as based on our computations, the appropriate correction is within the range of $14.48 or $21.29. As we are in a period of transition to a free market pricing system, we have conservatively chosen the lower end of the range—$15—as the measure of the bias.

We have decided to premise a revised upward fare flexibility policy on this lump sum. Above it, we will allow 30% upward zone to give the carriers the pricing flexibility that we believe to be compatible with the overall level of industry competition. This new policy will be applicable to all markets within the contiguous States and the District of Columbia, for all mileages, and will be applied uniformly.[4]

We view the new policy as having significant advantages over the previous mileage based system. By maintaining fare regulation in all markets, and providing a uniform standard, it should help provide the appearance of fairness which this cost based policy deserves. Second, it smooths out discontinuities in the old system; no longer will ceilings for 399 mile markets substantially exceed those for 401 miles. Third, the new policy will provide some modest increased flexibility in long-haul markets where, as we have noted, some carriers are pricing at or near ceilings.[5] In PSDR–66, we explained why it is undesirable for the ceiling of a zone of reasonableness to be the focus of carrier pricing. It is by no means clear to us that the marketplace will permit the recent upward march of coach fares to continue, and there is no good reason to permit present levels to be maintained by allowing the SIFL-based ceiling to be used once again as a price leader.

Table III summarizes current policy and those options to which we gave the most serious consideration.

If the new policy were not effective immediately it could be frustrated by carriers filing excessive increases in the interim, which could not be rolled back without a lengthy procedure. The new policy was therefore made effective immediately upon its announcement at the Board's public meeting on September 24, 1980, and we find good cause to make this corresponding amendment of Part 399 effective immediately upon its issuance.

Cohen, Chairman, and Members Bailey, Schaffer, Dalley and Smith concurred. Member Schaffer filed the following statement:

Schaffer, Member, Concurring:

Last May, in my dissent to the Board's interim policy statement on fare flexibility (PS–94, May 14, 1980), I opposed the method chosen by my colleagues to increase the zone of upward fare flexibility—a system that differentiated among markets on the basis of distance. At that time I indicated that I favored an approach that would apply any increase on an across-the-board basis. I was impressed by the fact that numerous commentors, including eleven United States Senators, agreed with me. My view on the issue has not changed.

However, the revised policy responds to many of my criticisms. It places an absolute limit on the upward zone of flexibility available in short-haul markets and it smooths out the very uneven variation inherent in the three-step approach adopted last May. While the actual percentage variation still is greater in short-haul markets, the majority seems to have come a long way in meeting many of my objections.

Under this circumstances, I find that I am able to concur in implementing the approach adopted here which establishes the ceiling at the current SIFL plus $15, plus additional upward flexibility of 30 percent.

Gloria Schaffer.

Accordingly, the Civil Aeronautics Board amends Subpart C of 14 CFR Part 399, *Statements of General Policy*, as follows:

In § 399.32, paragraph (d) is amended to read:

[4] We remind carriers that the zones of fare flexibility are based on the standard industry fare level or "SIFL," as defined in the Federal Aviation Act, and not on the fare formula published periodically in the Board's SIFL update orders. "Standard industry fare level" is defined in section 1002(d)(6) of the Act essentially as the fare in effect in each domestic market on July 1, 1977, adjusted by the Board for cost increases. In markets where more than one fare was available for coach service on that date, we have interpreted the SIFL as being the predominant one, adjusted for cost increases. The fare formula published in the SIFL update orders, which is sometimes referred to as the "SIFL fare formula," is merely the DPFI formula, adjusted for cost increases in accordance with the Act. In most markets, the predominant fare in effect on July 1, 1977, was exactly the amount yielded by applying the DPFI formula to the shortest authorized mileage. In those cases, the statutory SIFL and the current formula are the same, as long as the shortest authorized mileage has not decreased as a result of restriction removal or new route authority. In some markets, however, the predominant fare in effect on July 1, 1977, was either higher or lower than the DPFI formula fare, and the statutory SIFL today differs correspondingly from the current formula fare. The $15 and 30 percent upward flexibility policy for the 48 continguous States and the District of Columbia is calculated from the statutory amount. In future update orders, the percentage increase over July 1, 1977 fares will be stated explicitly. The current factor, effective through December 31, 1980, is 1.6040.

[5] See Table III and Charts I and II.

§ 399.32 Zone of limited suspension for domestic passenger fares.

* * * * *

(d) *Upward Flexibility.* Each carrier may set fares above the SIFL as follows, and where they are so set, the Board will not suspend them on the grounds that their level is unreasonable except upon a clear showing of abuse of market power that the Board does not expect to be corrected through marketplace forces:

(1) For service on the Mainland: Up to 30 percent above the sum of the SIFL plus $15. Each time after September 25, 1980, that the Board adjusts the SIFL for cost increases in accordance with § 399.31(c), it will adjust the $15 figure by the same percentage rounded to the nearest whole dollar. The Board order announcing the adjustment will be published in the **Federal Register** and served on all certificated carriers, and copies will be available through the Domestic Fares and Rates Division, Bureau of Domestic Aviation, Civil Aeronautics Board, Washington, D.C. 20428.

(2) For service between the Mainland and Puerto Rico, the Virgin Islands, Hawaii, or Alaska: Up to 30 percent above the SIFL.

* * * * *

(Secs. 204, 403, 404, and 1002 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 758, 760, and 788, as amended, 49 U.S.C. 1324, 1373, 1374, and 1482)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretory.

Attachment A

[PSDR–66–A and PSDR–66–C]

Comments on Fare Flexibility

A. Members of Congress.
B. Carriers.
C. Airport Authorities.
D. Chambers of Commerce.
E. Other Parties.
F. Associations.
G. Individual Comments.

A. Members of Congress

1. *Nine U.S. Senators:* Recommend equal upward fare flexibility in all markets.

2. *Senator Byrd:* Concurs with Nine U.S. Senators' position.

B. Carriers

1. *American;* and,

2. *Republic;* and,

3. *US Air:* Support Board's interim fare policies. However, should the Board amend its fare policies they recommend upward fare flexibility of 50% in all markets.

4. *Piedmont:* Same comments as AA, Republic and USAir, and an additional alternative based on $20 plus 20% upward fare flexibility in all markets.

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C. Airport Authorities

1. *Indianapolis Airport Authority:* Opposes broad zones of flexibility. Also states that apparently Board did not fully consider its previously filed comments objecting to upward flexibility in short-haul markets. Recommends that any upward flexibility in excess of 10% above SIFL be offset by a corresponding reduction in off-peak coach fares.
2. *Durango-La Plata County Airport;* and,
3. *Watertown (S.D.) Municipal Airport;* and,
4. *Mason City, Iowa Airport Commission:* Oppose upward fare flexibility in short-haul markets.
5. *Huntsville-Madison County Airport (Alabama);* and,
6. *Norfolk Port & Industrial Authority—Norfolk International Airport;* and,
7. *Lincoln Municipal Airport (Lincoln, Nebraska);* and,
8. *Metropolitan Knoxville Airport Authority:* Oppose tiered method of upward fare flexibility for markets of 400 miles and less. Recommend 30% upward fare flexibility in all markets.
9. *Lafayette Regional Airport;* and,
10. *Benedum Airport Authority, Bridgeport, W. Virginia;* and,
11. *Mt. Vernon Airport Authority, Mt. Vernon, Illinois;* and,
12. *Kern County Department of Airports (California);* and,
13. *Aspen-Pitkin County Airport, Aspen, Colorado;* and,
14. *Michiana Regional Airport-St. Joseph County Airport Authority:* Oppose unlimited upward fare flexibility.
15. *Waterloo Municipal Airport, Waterloo, LA.:* Opposes unlimited upward fare flexibility; Opposes 50% upward fare flexibility where there is no competition.
16. *Rhinelander-Oneida County Airport Commission:* Opposes interim upward fare flexibility policy. Urges reconsideration.
17. *Albany-Dougherty County Airport, Albany, Ga.:* Urges Reconsideration.

D. Chambers of Commerce

1. *Fresno County and City:* Requests public hearings be held. Recommends all carriers be given 30% upward fare flexibility in all markets, same as that now applicable to local service carriers. Further, requests that we not make our interim policy permanent at this time.
2. *Albany, GA.:* Opposes unlimited upward fare flexibility.
3. *Grand Island, Nebraska:* Supports Board's interim fare flexibility policy.

E. Other Parties

1. *Las Vegas parties;* and,
2. *City of Dayton, Ohio;* and,
3. *Tiffin Automobile Club:* Recommend 30% upward fare flexibility in all markets.
4. *Ralph Nader, ACAP:* Urges repeal of all regulatory upward fare flexibility.
5. *New York State DOT:* Agrees with the interim policy.
6. *Durango County Commissioners;* and,
7. *Mayor of Durango:* Concur with Durango Airport's Comments.
8. *City of Carmel-by-the-Sea:* Opposes upward fare flexibility in markets 400 miles and less. Recommends more study prior to continuation.
9. *City of Sioux Falls:* Opposes unlimited upward fare flexibility.
10. *Cuesta College-San Luis Obispo County Community College District (13 signatories):* Opposes unlimited upward fare flexibility.
11. *Governor of West Virginia:* Opposes upward fare flexibility in short-haul markets. Recommends equal upward fare flexibility in all markets.
12. *Bell Helicopter Textron:* Favors full or substantial flexibility in short-haul markets. In markets over 200 miles, recommends 10% flexibility above SIFL, increased by increments of 5% each quarter until January 1, 1983.
13. *Commonwealth of Pennsylvania DOT:* Favors 30% upward flexibility in all markets.

F. Associations

1. *Airport Operators Council International:* Opposes upward fare flexibility for markets of 400 miles or less. Recommends 30% upward fare flexibility in all markets.
2. *American Association of Airport Executives:* Opposes upward fare flexibility in short-haul markets.

G. Individual Comments

33 individual comments were received. 20 of those comments oppose unlimited upward fare flexibility. One comment recommends 30% upward fare flexibility in all markets. 3 comments oppose all upward fare flexibility, and the rest are opposed to upward fare flexibility in markets of 400 miles or less.

Table I.—*Average Percent That Tariff Normal Fares Exceeded DPFI Formula Fares, All Markets, by Mileage Block* [1]

Carrier group	Mileage 0–200	201–400	400+
All carriers			
May	19.5	22.2	12.5
June	25.9	26.5	19.3
July	24.8	25.2	16.3
Sept.[2]	24.4	26.3	17.0
Certificated carriers			
May	22.4	23.7	12.6
June	29.5	30.4	19.4
July	27.9	26.9	16.5
Sept.[2]	28.3	28.4	17.2
Trunk carriers			
May	19.1	18.0	10.2
June	30.0	28.2	19.3
July	26.2	23.6	15.7
Sept.[2]	34.1	32.3	22.8
Local carriers			
May	25.9	29.6	16.2
June	32.2	35.2	20.2
July	32.0	31.8	18.0
Sept.[2]	37.0	37.5	21.7
Commuter carriers			
May	5.4	2.2	3.4
June	10.5	7.8	0.5
July	10.8	6.6	0.8
Sept.[2]	7.4	8.8	2.2

[1] Covers local tariffs for all markets.
[2] As of September 12.

Average Percent That Tariff Normal Fares Exceeded DPFI Formula Fares, Competitive Markets, by Mileage Block [1]

Carrier group	Mileage 0–200	201–400	401+
All carriers			
May	9.1	2.8	6.3
June	14.9	11.3	13.8
July	12.9	7.3	10.4
Sept.[2]	19.0	14.6	16.3
Certificated carriers			
May	10.0	2.2	6.2
June	17.7	11.9	13.9
July	15.2	7.9	10.5
Sept.[2]	17.2	10.2	16.5
Trunk carriers			
May	8.9	6.0	8.4
June	17.7	16.3	16.4
July	14.8	11.9	13.0
Sept.[2]	18.3	17.3	14.6
Local carriers			
May	15.1	1.2	2.7
June	22.1	10.0	10.1
July	20.2	8.7	6.2
Sept.[2]	26.9	12.8	10.7
Commuter carriers			
May	5.4	9.4	0.03
June	4.2	3.3	5.7
July	4.2	1.5	3.1
Sept.[2]	7.1	5.6	2.8

[1] Covers local tariffs for nonstop competitive markets.
[2] As of September 12.

Average Percent That Tariff Normal Fares Exceeded DPFI Formula Fares, Monopoly Markets, by Mileage Block [1]

Carrier group	Mileage 0–200	201–400	401+
All carriers			
May	13.7	19.1	8.2
June	20.7	22.8	15.9
July	19.2	19.3	12.6
Sept.[2]	24.0	24.3	18.8
Certificated carriers			
May	17.2	15.3	8.2
June	24.6	24.3	16.1
July	22.9	20.7	12.7
Sept.[2]	23.8	21.1	13.9
Trunk carriers			
May	16.4	14.5	10.1
June	30.4	25.7	18.6
July	27.2	21.5	14.9
Sept.[2]	31.4	23.9	18.9
Local carriers			
May	19.1	20.3	4.5
June	25.1	27.8	12.0
July	24.6	24.3	8.7
Sept.[2]	30.7	27.4	13.2
Commuter carriers			
May	1.3	3.9	−2.0
June	5.9	8.2	7.5
July	5.3	6.6	2.9
Sept.[2]	7.0	9.8	3.0

[1] Covers local tariffs for nonstop monopoly markets.
[2] As of September 12.

Table II.—*Distribution of Normal Coach Fares in Relation to SIFL; Domestic Trunk Carriers*

[Based on Normal Coach Fares Effective on Sept. 20, 1980]

Number of city-pair markets; ratemaking miles	Percent of SIFL [1] 0 to 200	201 to 400	Over 400	Total
0.1 to 80.0	1.9	1.2	.4	.5
80.1 to 85.0	.5	.9	.1	.2
85.1 to 90.0	.4	.8	.1	.1
90.1 to 95.0	.6	2.1	.5	.7
95.1 to 100.0	1.8	2.0	1.6	1.6
100.1 to 105.0	2.6	4.2	2.3	2.6
105.1 to 110.0	2.3	3.3	3.3	3.2
110.1 to 115.0	8.0	8.1	9.6	9.4
115.1 to 120.0	17.3	31.5	34.5	33.1
120.1 to 125.0	19.7	12.2	12.8	13.2
125.1 to 130.0	10.8	9.2	12.6	12.2
130.1 to 135.0	10.8	12.5	19.9	18.7
Subtotal	80.7	87.9	97.5	95.5
135.1 to 140.0	3.9	3.5	1.2	1.6
140.1 to 145.0	2.3	2.1	.4	.7
145.1 to 150.0	2.8	1.5	.3	.5
Over 150.0	10.2	5.0	.6	1.7
Subtotal	19.3	12.1	2.5	4.5
Total	100.0	100.0	100.0	100.0

Distribution of Normal Coach Fares in Relation to SIFL; Local Service Carriers

[Based on Normal Coach Fares Effective on Sept. 20, 1980]

Number of city-pair markets; ratemaking miles	Percent of SIFL 0 to 200	201 to 400	Over 400	Total
0.1 to 80.0	106	40	12	158
80.1 to 85.0	41	30	7	78
85.1 to 90.0	27	37	32	96
90.1 to 95.0	32	51	40	123
95.1 to 100.0	66	52	96	214
100.1 to 105.0	108	95	569	772
105.1 to 110.0	200	205	369	774
110.1 to 115.0	266	443	771	1,480
115.1 to 120.0	475	991	811	2,277
120.1 to 125.0	93	483	349	925
125.1 to 130.0	255	127	149	531
130.1 to 135.0	252	92	116	460
Subtotal	1,921	2,646	3,321	7,888
135.1 to 140.0	34	39	11	84
140.1 to 145.0	24	16	6	46
145.1 to 150.0	10	15	11	36
Over 150.0	35	21	9	65
Subtotal	63	91	37	231
Total (all city pairs)	2,024	2,737	3,358	8,119

Table II.—*Distribution of Normal Coach Fares in Relation to SIFL; Domestic Trunk Carriers*—Continued

[Based on Normal Coach Fares Effective on Sept. 20, 1980]

Number of city-pair markets; ratemaking miles	Percent of SIFL [1] 0 to 200	201 to 400	Over 400	Total
120.1 to 125.0	146	124	1,169	1,439
125.1 to 130.0	80	93	1,154	1,327
130.1 to 135.0	95	127	1,812	2,034
Subtotal	599	891	8,903	10,393
135.1 to 140.0	29	36	105	170
140.1 to 145.0	17	21	35	73
145.1 to 150.0	21	15	24	60
Over 150.0	76	51	60	187
Subtotal	143	123	224	490
Total (all city pairs)	742	1,014	9,127	10,883
Percentage Distribution of City Pair Markets				
0.1 to 80.0	1.9	1.2	.4	.5
80.1 to 85.0	.5	.9	.1	.2
85.1 to 90.0	.4	.8	.1	.1
90.1 to 95.0	.6	2.1	.5	.7
95.1 to 100.0	1.8	2.0	1.6	1.6
100.1 to 105.0	2.6	4.2	2.3	2.6
105.1 to 110.0	2.3	3.3	3.3	3.2
110.1 to 115.0	8.0	8.1	9.6	9.4
115.1 to 120.0	17.3	31.5	34.5	33.1
120.1 to 125.0	19.7	12.2	12.8	13.2
125.1 to 130.0	10.8	9.2	12.6	12.2
130.1 to 135.0	10.8	12.5	19.9	18.7
Subtotal	80.7	87.9	97.5	95.5
135.1 to 140.0	3.9	3.5	1.2	1.6
140.1 to 145.0	2.3	2.1	.4	.7
145.1 to 150.0	2.8	1.5	.3	.5
Over 150.0	10.2	5.0	.6	1.7
Subtotal	19.3	12.1	2.5	4.5
Total	100.0	100.0	100.0	100.0

Distribution of Normal Coach Fares in Relation to SIFL; Local Service Carriers—Continued

[Based on Normal Coach Fares Effective on Sept. 20, 1980]

Number of city-pair markets; ratemaking miles	Percent of SIFL 0 to 200	201 to 400	Over 400	Total
Percentage Distribution of City Pair Markets				
0.1 to 80.0	5.2	1.5	.4	2.0
80.1 to 85.0	2.0	1.1	.2	1.0
85.1 to 90.0	1.3	1.3	1.0	1.2
90.1 to 95.0	1.8	1.9	1.2	1.5
95.1 to 100.0	3.3	1.9	2.8	2.6
100.1 to 105.0	5.3	3.5	16.9	9.5
105.1 to 110.0	9.9	7.5	11.0	9.5
110.1 to 115.0	13.1	16.2	23.0	18.2
115.1 to 120.0	23.5	36.2	24.1	28.0
120.1 to 125.0	4.8	17.6	10.4	11.4
125.1 to 130.0	12.6	4.8	4.4	6.6
130.1 to 135.0	12.5	3.4	3.4	5.7
Subtotal	94.9	96.7	96.9	97.2
135.1 to 140.0	1.7	1.4	.3	1.0
140.1 to 145.0	1.2	.6	.2	.8
145.1 to 150.0	.5	.5	.3	.4
Over 150.0	1.7	.8	.3	.8
Subtotal	5.1	3.3	1.1	2.8
Total	100.0	100.0	100.0	100.0

Source: ATP Fare Tape, September 20, 1980.

Distribution of Normal Coach Fares in Relation to DPFI; Domestic Trunk Carriers

[Based on Normal Coach Fares Effective on Sept. 20, 1980]

Number of city-pair markets; miles	Percentage of DPFI [1] 0 to 200	201 to 400	Over 400	Total
0.1 to 80.0	12	12	87	121
80.1 to 85.0	2	6	125	133
85.1 to 90.0	6	11	31	48
90.1 to 95.0	7	6	84	97
95.1 to 100.0	23	26	119	168
100.1 to 105.0	44	48	215	307
105.1 to 110.0	26	25	297	348
110.1 to 115.0	80	94	950	1,124
115.1 to 120.0	188	350	3,141	3,679
120.1 to 125.0	103	111	1,140	1,354
125.1 to 130.0	84	116	1,979	2,179
130.1 to 135.0	81	105	770	956
Subtotal	656	910	8,948	10,514
135.1 to 140.0	24	32	59	115
140.1 to 145.0	8	16	25	49
145.1 to 150.0	22	16	32	70
Over 150.0	32	40	63	135
Subtotal	86	104	179	369
Total (all city pairs)	742	1,014	9,127	10,883
Total (percent)	6.9	9.2	83.9	100.0
Percentage Distribution of City Pair Markets				
0.1 to 80.0	1.6	1.2	1.1	1.1
80.1 to 85.0	.3	.6	1.4	1.2
85.1 to 90.0	.8	1.1	.3	.5
90.1 to 95.0	.9	.6	.9	.9
95.1 to 100.0	3.1	2.5	1.3	1.6
100.1 to 105.0	5.9	4.7	2.4	2.8
105.1 to 110.0	3.6	2.5	3.3	3.2
110.1 to 115.0	10.8	9.3	10.4	10.3
115.1 to 120.0	25.3	34.5	34.3	33.8

Distribution of Normal Coach Fares in Relation to DPFI; Local Service Carriers

[Based on Normal Coach Fares Effective on Sept. 20, 1980]

Number of city-pair markets; ratemaking miles	Percent of DPFI 0 to 200	201 to 400	Over 400	Total
0.1 to 80.0	32	8	3	43
80.1 to 85.0	12	6	3	21
85.1 to 90.0	10	1	2	13
90.1 to 95.0	8	2	1	11
95.1 to 100.0	46	32	10	88
100.1 to 105.0	35	15	21	71
105.1 to 110.0	55	31	65	151
110.1 to 115.0	65	74	214	353
115.1 to 120.0	104	174	541	819
120.1 to 125.0	83	155	526	764
125.1 to 130.0	110	188	1,233	1,531
130.1 to 135.0	106	320	590	1,016
Subtotal	666	1,006	3,209	4,881
135.1 to 140.0	167	488	40	695
140.1 to 145.0	302	523	33	858
145.1 to 150.0	342	468	27	837
Over 150.0	547	252	49	848
Subtotal	1,358	1,731	149	3,238
Total (all city pairs)	2,024	2,737	3,358	8,119
Total (percent)	24.9	33.7	41.4	100.0
Percentage Distribution of City Pair Markets				
0.1 to 80.0	1.6	.2	.1	.5
80.1 to 85.0	.6	.2	.1	.3
85.1 to 90.0	.5	—	.1	.3
90.1 to 95.0	.4	.1	—	.1
95.1 to 100.0	2.3	1.2	.3	1.1
100.1 to 105.0	1.7	.5	.6	.9
105.1 to 110.0	2.7	1.1	1.9	1.9
110.1 to 115.0	3.2	2.7	6.3	4.3
115.1 to 120.0	5.1	6.4	16.1	10.1
120.1 to 125.0	4.1	5.7	15.7	9.4
125.1 to 130.0	5.5	6.9	36.7	18.8
130.1 to 135.0	5.2	11.7	17.6	12.5
Subtotal	32.9	36.8	95.5	60.1
135.1 to 140.0	8.3	17.8	1.2	8.6
140.1 to 145.0	14.9	19.1	1.0	10.6
145.1 to 150.0	16.9	17.1	.8	10.3
Over 150.0	27.0	9.2	1.5	10.4
Subtotal	67.1	63.2	4.5	39.9
Total	100.0	100.0	100.0	100.0

Source: ATP Fare Tape—September 20, 1980.

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Table III.—*Fare Flexibility Options Tax Rounded*

	DPFI cost curve adjusted [1]	Standard industry fare level based on DPFI fare formula and with selected options as adjusted for costs						
		DPFI at 100 pct [2]	DPFI at 130 pct [2]	DPFI at 140 pct [2]	DPFI at 150 pct [2]	Adjusted DPFI at 130 pct [3]	Adjusted version 6 costs at 130 pct [4]	DPFI+ $15 at 130 pct [5]
Ratemaking mileage:								
50	$59.29	$33.33	$43.52	$48.30	$50.00	$62.04	$63.89	$62.04
100	66.04	39.81	51.85	55.56	59.26	71.30	71.30	71.30
200	79.55	54.63	71.30	76.85	82.41	89.81	86.11	89.81
300	93.05	68.52	88.89	96.30	102.78	107.41	100.00	108.33
400	106.56	82.41	107.41	115.74	124.07	125.93	114.81	126.85
500	120.07	97.22	125.93	136.11	145.37	144.44	129.63	145.37
600	133.58	107.41	139.81	150.00	161.11	158.33	144.44	159.26
700	147.08	118.52	153.70	165.74	177.78	173.15	158.33	173.15
800	160.59	129.63	168.52	181.48	194.44	187.04	173.15	187.96
900	174.10	139.81	181.48	195.37	209.26	200.93	187.96	201.85
1,000	187.60	150.93	196.30	211.11	226.85	214.81	201.85	215.74
1,100	201.11	162.04	211.11	226.85	243.52	229.70	216.67	229.63
1,200	214.62	172.22	224.07	240.74	258.33	243.52	231.48	243.52
1,300	228.12	183.33	237.96	256.48	275.00	257.41	246.30	257.41
1,400	241.63	194.44	252.78	272.22	291.67	271.30	260.19	272.22
1,500	255.14	204.63	265.74	286.11	307.41	285.19	275.00	286.11
1,600	268.65	215.74	280.56	301.85	323.15	299.07	289.81	299.07
1,700	282.15	225.93	293.52	316.67	338.89	312.04	304.63	312.96
1,800	295.66	236.11	306.48	330.56	353.70	325.93	318.52	326.85
1,900	309.17	246.30	320.37	344.44	369.44	338.89	333.33	339.81
2,000	322.67	258.46	333.33	359.26	384.26	352.78	348.15	353.70
2,100	336.18	267.59	348.15	375.00	400.93	366.67	362.04	366.67
2,200	349.69	277.78	361.11	388.89	416.67	379.63	376.85	380.56
2,300	363.19	287.96	374.07	402.78	431.48	393.52	391.67	393.52
2,400	376.70	298.15	387.96	417.59	447.22	406.48	406.48	407.41
2,500	390.21	309.26	401.85	433.33	463.89	420.37	420.37	421.30
2,600	403.72	319.44	414.81	442.22	478.70	434.26	435.19	434.26
2,700	417.22	329.63	428.70	461.11	494.44	447.22	450.00	448.15
2,800	430.73	339.81	441.67	475.93	509.26	460.19	463.89	461.11

[1] Table V.
[2] DPFI Fare Formula as of July 1, 1980, computed at indicated percentages.
[3] Table VIII.
[4] Table VI.
[5] Table IV.

Table IV.—*Standard Industry Fare Level With Modified Terminal Charge Tax Rounded as of July 1, 1980*

Miles	DPFI fare formula plus $15 [1]	
	At 100 pct	At 13 pct
50	$48.15	$62.41
100	55.56	71.63
200	69.44	90.06
300	83.33	108.50
400	97.22	126.70
500	112.04	145.37
600	122.22	159.42
700	133.33	173.47
800	144.44	187.53
900	154.63	201.56
1,000	165.74	215.56
1,100	176.85	229.68
1,200	187.04	243.74
1,300	198.15	257.79
1,400	209.26	271.84
1,500	220.37	285.90
1,600	230.56	299.40
1,700	240.74	312.91
1,800	250.93	326.43
1,900	261.11	339.92
2,000	272.22	353.43
2,100	282.41	366.94
2,200	292.59	380.45
2,300	302.78	393.95
2,400	313.89	407.46
2,500	324.07	420.97
2,600	334.26	434.47
2,700	344.44	447.98
2,800	354.63	461.49

[1] Terminal charge—$25.92; 0–500 miles—.1418; 501–1,500—.1081; Over 1,500 miles—.1039, (DPFI fare formula as at July 1, 1980 plus added terminal charge factor).

Table V.—*DPFI Cost Curve (Base Year and as Adjusted to July 1, 1980)*

Miles	Base year [1]	As at July 1, 1980	
		At 100 pct.[2]	At 130 pct.[3]
50	$21.72	$45.59	$59.29
100	24.20	50.80	66.04
200	29.15	61.19	79.55
300	34.10	71.58	93.05
400	39.05	81.97	106.56
500	44.00	92.36	120.07
600	48.95	102.75	133.58
700	53.90	113.14	147.08
800	58.85	123.53	160.59
900	63.80	133.92	174.10
1,000	68.75	144.31	187.60
1,100	73.70	154.70	201.11
1,200	78.65	165.09	214.62
1,300	83.60	175.48	228.12
1,400	88.55	185.87	241.63
1,500	93.50	196.26	255.14
1,600	98.45	206.65	268.65
1,700	103.40	217.04	282.15
1,800	108.35	227.43	295.66
1,900	113.30	237.82	309.17
2,000	118.25	248.21	322.67
2,100	123.20	258.60	336.18
2,200	128.15	268.99	349.69
2,300	133.10	279.38	363.19
2,400	138.05	289.77	376.70
2,500	143.00	300.16	390.21
2,600	147.95	310.55	403.72
2,700	152.90	320.94	417.22
2,800	157.85	331.33	430.73

[1] Costs derived from Domestic Passenger Fare Investigation, Docket 21866-9, Exhibit BC-4926: $19.25 + $.0495 per mile.
[2] Computed at $40.41 + $.1039 per mile. Cumulative SIFL adjustment factor from April 29, 1975. (see Orders 74-12-109, 77-7-26 and 79-6-96) to July 1, 1980 at 2.099.
[3] Computed at $52.533 + $.13507.

Table VI.—*Computed Standard Industry Fare Level Based on Version Six Economic Cost for Coach Service Before Tax Rounding*

Distance [1]	Calendar year 1977 trunk coach passenger cost [2]	Cost as of July 1, 1980 [3]	Dilution factor [4]	Adjusted cost as of July 1, 1980	Computed July 1, 1980, cost per passenger [5]	Computed July 1, 1980, cost plus 30 pct
0	$27.10	$43.47			$43.56	$56.65
50					49.18	63.93
100	33.89	54.36	0.7704	$70.56	54.78	71.21
200	34.98	56.11	.9146	61.35	65.98	85.77
300	39.54	63.42	.8690	72.98	77.18	100.33
400	43.37	69.57	.8205	84.79	88.38	114.89
500	50.91	81.66	.8594	95.02	99.58	129.45
700	60.92	97.72	.8376	116.68	121.98	158.57
1,000	77.84	124.86	.7767	160.75	155.58	202.25
1,300	94.48	151.55	.8266	183.34	189.18	245.93
1,600	107.65	172.67	.8041	214.74	222.78	289.91
1,900	125.74	201.89	.7754	260.11	256.38	333.29
2,200	149.56	239.89	.7651	313.55	289.98	376.97
2,500	138.75	222.56	.7200	309.11	323.58	420.65
2,800	160.16	256.90	.7276	353.07	357.18	464.33

[1] Nonstop flight basis.
[2] Domestic trunkline composite passenger cost data (flight basis), version six economic cost per passenger. Least squares regression equation (excluding over 2,800 mile observation): $27.10 per passenger plus 4.94¢ per mile.
[3] Calendar year 1977 times cumulative cost adjustment factor of 1.604.
[4] Based on O. & D. passenger data by price for third quarter, 1979, compared with DPFI fare formula.
[5] Based on least squares regression: $43.576 per passenger plus 11.20¢ per mile.

Table VII.—*Economy Cost Per Coach Passenger at Standard 55 pct Load Factor Byproduct Costing for Selected Aircraft Types*

[Calendar year 1979 cost base]

Mileage	Domestic trunk carriers				Local service	Weighted average
	DC-9-30	727-200	DC-10-10	B-747	DC-9-30	
0	$26.61	$29.84	$39.33	$39.33	$25.14	
50	29.90	32.76	41.76	41.53	28.29	
100	33.19	35.69	44.20	43.73	31.44	
200	39.78	41.53	49.07	48.13	37.73	
300	46.36	47.38	53.94	52.52	44.03	
400	52.95	53.23	58.81	56.92	50.32	
500	59.53	59.07	63.67	61.32	56.61	
600	66.12	64.92	68.54	65.72	62.90	
700	72.70	70.77	73.41	70.11	69.20	
800	79.29	76.61	78.28	74.51	75.50	
900	85.87	82.46	83.15	78.91	81.79	
1,000	92.45	88.31	88.02	83.31	88.08	
Number of departures	301,292	1,303,821	88,860	31,974	450,411	2,176,358
Terminal cost	$8,017,380	$38,906,019	$3,494,864	$1,257,537	$11,323,333	$62,999,133
Average terminal cost, calendar year 1979	26.61	29.84	39.33	39.33	25.14	28.94
Average terminal cost as of July 1, 1980[1]						37.77
Adjusted cost as of July 1, 1980[2]						47.21
Line haul cost (cents)	6.5844	5.8467	4.8689	4.3978	6.2936	

[1] Adjusted by SIFL cost adjustment factor July 1, 1979, to July 1, 1980, of 1.3051.
[2] Adjusted for fare dilution at 0.80 to determine normal fare passenger terminal cost.
Source: Version Six costing methodology, based on 55 pct load factor by equipment type.

Table VIII.—*Standard Industry Fare Level With Cost Adjusted Terminal Charge Tax Rounded as of July 1, 1980*

Miles	DPFI fare with adjusted terminal charge [1]	
	Fare at 100 pct of adjusted DPFI [2]	Fare at 130 pct of adjusted DPFI
50	$47.22	$62.04
100	54.63	71.30
200	68.52	89.81
300	83.33	107.41
400	97.22	125.93
500	111.11	144.44
600	122.22	158.33
700	133.33	173.15
800	143.52	187.04
900	154.63	200.93
1,000	165.74	214.81
1,100	175.93	228.70
1,200	187.04	243.52
1,300	196.15	257.41
1,400	208.33	271.30
1,500	219.44	285.19
1,600	229.63	299.07
1,700	239.81	312.04
1,800	250.92	325.93
1,900	261.11	338.89
2,000	271.30	352.78
2,100	281.48	366.67
2,200	292.59	379.63
2,300	302.78	393.52
2,400	312.96	406.48
2,500	323.15	420.37
2,600	333.33	434.26
2,700	344.44	447.22
2,800	354.63	460.19

[1] DPFI Cost Formula terminal charge of $19.25 (from Exhibit BC-4926, Docket 21866-9) adjusted for cost increase to 7/1/80 of 2.099 (SIFL cost adjustment from 4/29/75 to 7/1/80.
[2] DPFI fare formula as of July 1, 1980 with cost adjusted terminal charge: terminal charge—$40.41; 0–500 miles—.1418; 501–1,500 miles—.1081; Over 1,500 miles—.1039.

Table IX.—*Number of Markets Where Current Coach Fares Exceed DPFI/SIFL With Flexibility of $15/$20 Multiplied by 30 Pct.*

Number of markets	Mileage			
	0 to 200	201 to 400	Over 400	Total
DPFI + $15 × 1.3	74	74	156	304
DPFI + $20 × 1.3	26	45	113	184
SIFL + $15 × 1.3	30	41	127	198
SIFL + $20 × 1.3	12	27	86	125
Percent of Total Markets				
DPFI + $15 × 1.3	2.8	2.0	1.3	1.6
DPFI + $20 × 1.3	.9	1.2	.9	1.0
SIFL + $15 × 1.3	1.1	1.1	1.0	1.0
SIFL + $20 × 1.3	.4	.7	.7	.7
Total number of markets	2,770	3,728	12,414	18,912

Source: ATP Fare Tape as of Sept. 20, 1980.

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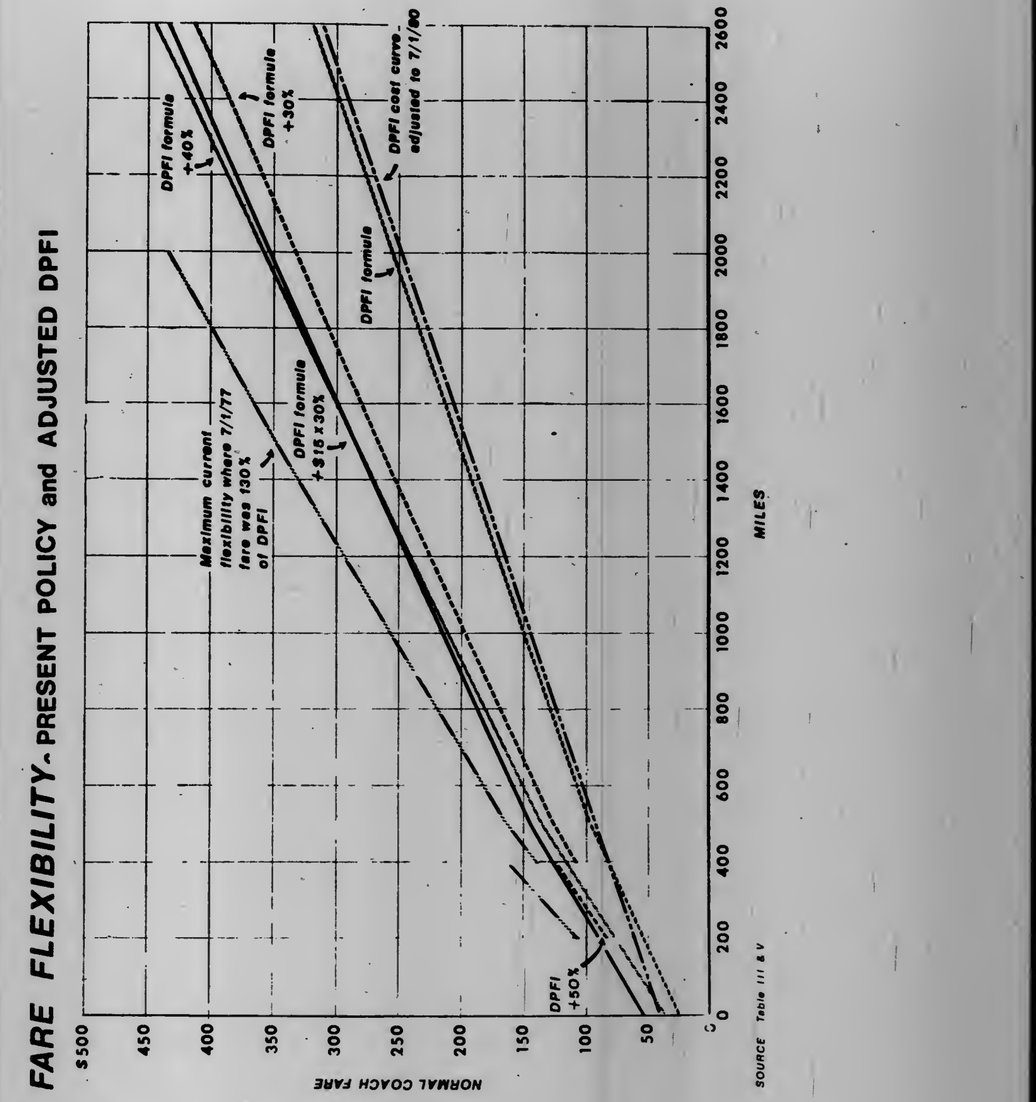
Table X.—*Distribution of Normal Coach Fares in Relation to DPFI and SIFL for Single-Plane Service Markets Under 200 Miles With 50,000 Plus Passengers Per Year (Certificated)*

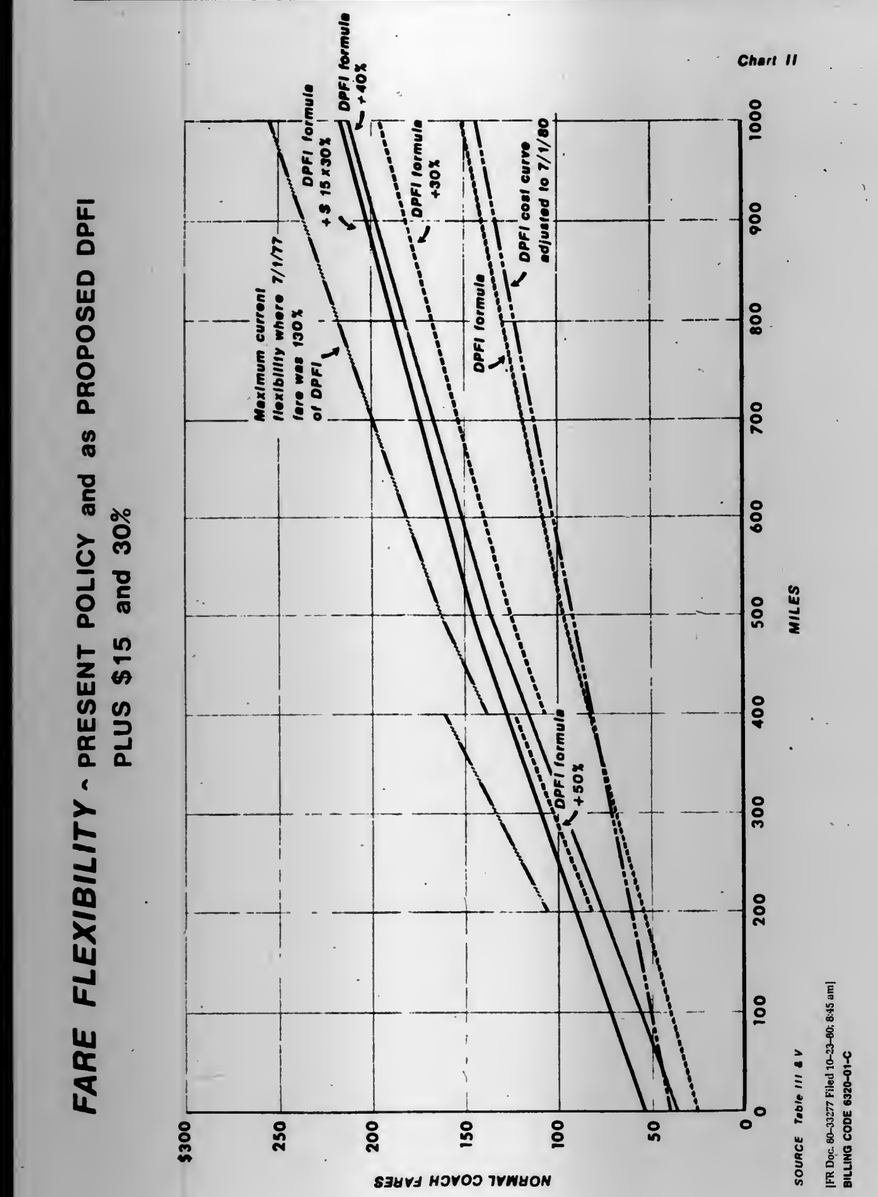
	DPFI	SIFL
0.1 to 80.0	3	1
80.1 to 85.0	2	2
85.1 to 90.0	2	.....
90.1 to 95.0	.....	2
95.1 to 100.0	10	2
100.1 to 105.0	7	9
105.1 to 110.0	6	10
110.1 to 115.0	32	37
115.1 to 120.0	62	68
120.1 to 125.0	34	41
125.1 to 130.0	30	24
130.1 to 135.0	8	23
Subtotal	196	219
135.1 to 140.0	15	7
140.1 to 145.0	9	3
145.1 to 150.0	13	4
Over 150.0	14	14
Subtotal	51	28
Total all city pair markets	247	247
Percentage Distribution of City Pair Markets		
0.1 to 80.0	1.2	.4
80.1 to 85.0	.8	.8
85.1 to 90.0	.8	.....
90.1 to 95.0	.....	.8
95.1 to 100.0	4.1	.8
100.1 to 105.0	2.8	3.7
105.1 to 110.0	2.4	4.1
110.1 to 115.0	13.0	15.0
115.1 to 120.0	25.1	27.5
120.1 to 125.0	13.8	16.6
125.1 to 130.0	12.1	9.7
130.1 to 135.0	3.2	9.3
Subtotal	79.3	88.7
135.1 to 140.0	6.1	2.8
140.1 to 145.0	3.6	1.2
145.1 to 150.0	5.3	1.6
Over 150.0	5.7	5.7
Subtotal	20.7	11.3
Total	100.0	100.0

Source: Origin-Destination Survey of Airline Passenger Traffic, CY 1979, Teble 10 and ATP Fare Type, September 12, 1980.

BILLING CODE 6320-01-M

Chart I





COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 140

Organization, Functions, and Procedures of the Commission; Amendment to Financial Reporting Provision of the Conduct Regulation (Subpart C)

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commission is amending the financial reporting provision of its Conduct Regulation for Commission members and employees and former members and employees—the Code of Conduct ("Code"). These amendments to the reporting provision effectuate recommendations made by the General Accounting Office in its 1978 report to the Congress on the Commission by expanding the reporting requirement applicable to the Commission's professional employees and establishing a certification system for other Commission employees. In addition, the Commission is updating the provision which concerns separate filing of financial disclosure reports by high-level Commission officials.

EFFECTIVE DATE: November 24, 1980.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Special Counsel, Office of the General Counsel Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, telephone (202) 254-5529.

SUPPLEMENTARY INFORMATION: Section 7 of the Commission's Code of Conduct, 17 CFR § 140.735-7, sets forth a reporting requirement as to outside employment and financial interests which is applicable to certain of the Commission's employees. As presently written, that section requires that annual financial statements be filed by Commission employees in grades GS-13 and above as well as by all Commission attorneys, auditors and investigators in GS-11 and 12 grades. In a 1978 report to Congress entitled "Regulation of the Commodity Futures Markets—What Needs to be Done." the Comptroller General of the United States recommended that the reporting provision of the Commission's Code be amended in two respects. First, it was recommended that the Commission expand the scope of its reporting requirement to include certain lower-level professional employees. In its report, the General Accounting Office ("GAO") determined that these employees should be required to file the annual disclosure statements with the Commission's Director of Personnel due to the nature of their decision-making responsibilities and sensitive duties at the Commission. Secondly, the GAO report recommended that a system of certification of compliance with the Code be instituted as to all remaining Commission employees, who in the course of their responsibilities and duties also have access to sensitive nonpublic official information. After conducting a review of the GAO recommendations, the Commission determined in accordance with applicable civil service standards that the expanded reporting and certification proposals would be appropriate in the public interest.[1] Therefore, the Commission decided to adopt those proposals in the form explained below and sought and obtained Office of Government Ethics, Office of Personnel Management, approval therefore in accordance with 5 CFR 735.104(a) and (e).

The Commission is amending Section 7(c)(3) of its Code of Conduct to require that Commission employees occupying positions as attorneys, auditors, economists, futures trading specialists [2] or investigators file annual statements of employment and financial interests regardless of their GS grade. This expanded reporting requirement will become effective as to current employees not later than 90 days after the effective date of this amendment and, as to employees subsequently promoted or otherwise appointed to such positions after the effective date of this amendment, the statement will be required to be submitted prior to entrance on duty with the Commission. The Commission notes that each such employee has the right to ask for a review through the Commission's grievance procedure of a compliant that his or her position has been improperly included in the reporting requirement.

In addition, the Commission is enacting a new Section 7(k) of its Code of Conduct, which establishes a certification of compliance system for all Commission employees not required to file financial disclosure statements. Each such employee shall certify annually that, to the best of his or her knowledge, information and belief, he or she does not nor does his or her spouse, his or her minor children or his or her other relatives who are residents of his or her immediate household, if any, have any financial interests or any outside employment which violates the Code of Conduct. The certification, along with a Privacy Act Notice, is Appendix A hereto. With respect to this new procedure, employees of the Commission as of the effective date of the amendment will be required to submit the certification not later than 90 days after the effective date. Those subsequently promoted or otherwise appointed to such positions after the effective date of the amendment must submit the certification prior to entrance on duty with the Commission. Each affected Commission employee has the right to ask for a review through the Commission's grievance procedure of a complaint that his or her position has been improperly included under the certification system.

The Commission notes that notwithstanding the annual filing of a financial statement or a certification, each employee should at all times avoid acquiring a financial interest or taking any other action that would result in a violation of the conflict-of-interest provisions of 18 U.S.C. 208, relating to the matters in which the employee or certain related persons have a financial interest, or the Code of Conduct.

Finally, the Commission is amending Section 7(j) of its Code of Conduct to reflect the change in separate reporting required of Commission members and certain high-level Commission employees in the Ethics in Government Act of 1978. As amended, Section 7(j) will generally list the Commission officials who are required to file the annual financial disclosure reports under that Act.

The Commission has determined that these amendments to Section 7 of its Code of Conduct relate solely to agency organization, procedure and practice. Therefore, the procedures of the Administrative Procedure Act, as codified, 5 U.S.C. § 553, generally requiring notice of proposed rulemaking and other opportunity for public participation are not applicable. The amendments will become effective on November 24, 1980.

Accordingly, the Commission, pursuant to the authority contained in Sections 2(a)(11) and 8a(5) of the Commodity Exchange Act, 7 U.S.C. § 4a(j) and 12a(5), Executive Order 11222, 3 CFR, 1964–1965 Comp., as amended, and 5 CFR 735.104, hereby amends Section 7 of its Code of Conduct, Subpart C of Part 140 of

[1] In accordance with 5 CFR 735.403(d), the Commission deems these amendments to be essential to protect government integrity and to avoid Commission employee involvement in possible conflicts of interest.

[2] After conducting its review of professional employee positions, the Commission determined that all of its futures trading specialists, though not specifically included in the GAO recommendation, should also be required to file annual reports in light of their sensitive responsibilities and duties.

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Chapter I of Title 17 of the Code of Federal Regulations as follows:

17 CFR 140.735–7 is amended by revising paragraph (c)(3) and (j) and adding a new paragraph (k) to read as follows:

§ 140.735–7 Statement of employment and financial interests.

* * * * *

(c) *Employees who are required to submit statements.* Statements of employment and financial interests are required of the following:

* * * * * *

(3) Employees occupying positions as attorneys, auditors, economists, futures trading specialists or investigators in any classified positions under section 5332 of title 5, United States Code; and

* * * * *

(j) *Commission members and high-level employees.* Members of the Commission and Commission employees who occupy Senior Executive Service positions, positions compensated at the basic rate of pay of GS–16 or above, administrative law judge positions or Schedule C positions which entail advising as to or making policy determinations with respect to Commission programs or policies are subject to separate financial disclosure reporting requirements under the Ethics in Government Act.

(k) *Certification of Compliance.* (1) *Manner of submission; content of certification.* Each employee occupying a position designated in subparagraph (3) of this paragraph and therefore required to file a certification of compliance shall submit to the Director of Personnel annually a certification on CFTC Form 185. Each such employee shall certify that, to the best of his or her knowledge, information and belief, he or she does not, nor does his or her spouse, his or her minor children or his or her other relatives who are residents of his or her immediate household, if any, have any financial interests or any outside employment which violates the Conduct Regulation set forth in this subpart.

(2) *Time of submission.* Each employee occupying a position designated in subparagraph (3) of this paragraph shall: (i) If such employee is an employee as of the effective date of this section, submit the certification not later than 90 days after the effective date of this paragraph; or (ii) if promoted or otherwise appointed to such a position after the effective date of this paragraph, submit the certification prior to entrance on duty with the Commission in such position. Each such employee shall file a certification as of June 30 each year thereafter. Notwithstanding the filing of the annual certification required by this paragraph, each such employee shall at all times avoid acquiring a financial interest or taking any other action that would result in a violation of the conflict-of-interest provisions of 18 U.S.C. 208[13a] or this Conduct Regulation.

(3) *Employees who are required to submit certifications.* A certification of compliance is required of each Commission employee occupying a position not designated in paragraph (c) or (j) of this section. An employee has the right to ask for a review through the Commission's grievance procedure of a complaint that his or her position has been improperly included under the provisions of this paragraph as one requiring the submission of a certification of compliance.

Issued by the Commission in Washington, D.C. on October 17, 1980.

Jane K. Stuckey,

Secretary of the Commission.

Note.—The following Appendix will not appear in the Code of Federal Regulations.

Appendix A—Commodity Futures Trading Commission, Certification of Compliance With the Commission's Conduct Regulation

I certify that, to the best of my knowledge, information and belief, I do not, nor does my spouse, my minor children or my other relatives who are residents of my immediate household, if any, have any financial interests or any outside employment which violates the Commission's Conduct Regulation set forth in Title 17 of the Code of Federal Regulations, Part 140, Subpart C, 17 CFR 140.735–1 through 140.735–16 (the "Code of Conduct").

Date: _____

Signature of employee _____

CFTC Form 185
10/80

Privacy Act Notice

(To accompany Certification of Compliance)

This information is being provided pursuant to Pub. L. 93–579 (the Privacy Act of 1974, 5 U.S.C. 552a), for Commodity Futures Trading Commission employees required to file certifications of compliance with the Commission's Code of Conduct.

Sections 2(a)(11) and 8a(5) of the Commodity Exchange Act, 7 U.S.C. 4a(j) and 12a(5), and Section 7 of the Commission's Code of Conduct, 17 CFR 140.735–7, constitute the authority for collecting the certification of compliance. This certification must be furnished; failure to do so could be cause for appropriate disciplinary action.

The certification will be used to determine whether there are any real or apparent conflicts of interest in violation of the conflict-of-interest laws, 18 U.S.C. 201 *et seq.*; Executive Order 11222; Sections 2(a)(7)(A), 9(d) and 9(e) of the Commodity Exchange Act, 7 U.S.C. 4a(f)(A), 13(d) and 13(e); and the Commission's Code of Conduct, 17 CFR 140.735–1–16. Any evidence of violation of the federal conflict-of-interest laws or other laws which is discovered may be referred to the Department of Justice, a United States Attorney or other law enforcement authorities.

[13a] *See n. 13, supra.*

[FR Doc. 80–33200 Filed 10–23–80; 8:45 am]
BILLING CODE 6351–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 355

Countervailing Duties; Float Glass From Italy Amendment to Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Amendment to countervailing duty order.

SUMMARY: This notice is to advise the public that, pursuant to an order of the Customs Court, the Department of Commerce is amending the countervailing duty order applicable to imports of float glass from Italy, T.D. 76–9, to include float glass manufactured or produced by Societa Italiana Vetro, S.p.A. The table in section 355, Annex III of the Commerce Regulations is amended to reflect this change.

EFFECTIVE DATE: October 24, 1980.

FOR FURTHER INFORMATION CONTACT: Susan Silver, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Room 1126, Washington, D.C. 20230 (202–377–4036).

SUPPLEMENTARY INFORMATION:

Background

On January 7, 1976, the Treasury Department published a countervailing duty order, T.D. 76–9, with respect to float glass from Italy (41 FR 1274). The Treasury Department modified the original order on March 8, 1977 (T.D. 77–77, 42 FR 13016) to exclude Societa Italiana Vetro (SIV), determining that "no bounty or grant is being or has been paid or bestowed, directly or indirectly, upon the manufacture, production, or exportation of float glass from Italy produced by [SIV]."

The petitioner challenged that determination and, on March 29, 1979, the U.S. Customs Court held, in *ASG Industries Inc.* v. *United States*, 467 F. Supp. 1200 (Cust. Ct. 1979), that imports of float glass from Italy manufactured or produced by SIV did in fact benefit from the payment of bounties or grants. Liquidation was suspended following the court's decision. The United States appealed the Customs Court decision to the U.S. Court of Customs and Patent Appeals (CCPA). On June 18, 1980, the CCPA granted the motion of the United States to dismiss its appeal. The original judgment of the Customs Court became effective on that date. That judgment remanded this case to the Department of the Treasury to:

(1) Ascertain and determine or estimate the net amount of the bounties or grants paid or bestowed upon the manufacture or production of float glass in Italy by SIV; and

(2) Direct the appropriate customs officers throughout the United States to assess countervailing duties, in said net amount equal to the said bounties or grants, entered or withdrawn from warehouse for consumption on or after the day following the date of entry of this order. [467 F. Supp. at 1245]

The Department of Commerce (the Department) is complying with this order because Reorganization Plan No. 3 of 1979, effective January 2, 1980, transferred authority for administering the countervailing duty law from the Department of the Treasury to the Department of Commerce.

Action

The Department determines that bounties or grants (subsidies) are being or have been paid or bestowed, directly or indirectly, upon the manufacture, production, or exportation of float glass from Italy manufactured or produced by SIV, within the meaning of section 303 of the Tariff Act of 1930 (the Act), as in effect prior to the amendments made by the Trade Agreements Act of 1979 (the TAA). The Department estimates that these subsidies equal 2.46 percent of the f.o.b. value of the exported merchandise. This estimate is based upon information previously supplied by the Government of Italy. The Department intends to revise this estimate upon completion of its administrative review of the amended order pursuant to section 751 of the Act and section 104(c)(2) of the TAA. The Department will report the results of this review to the International Trade Commission in the event that a request for an injury determination concerning this merchandise is made under section 104(b) of the TAA (19 U.S.C. 1671, note).

The Department amends T.D. 76–9, as modified by T.D. 77–77, to include imports of Italian float glass from SIV, according to the following requirements. A cash deposit of estimated duties will be required in the amount of 2.46 percent of the f.o.b. value of shipments of float glass from SIV entered, or withdrawn from warehouse, for consumption on or after (the date of publication of this notice in the Federal Register). For Italian float glass manufactured by Fabbrica Pisana, S.p.A., already covered by the order, a cash deposit of estimated duties in the amount of 10 percent of the f.o.b. value of the merchandise, as specified in T.D. 76–9, will continue to be required. Customs officers shall continue the suspension of liquidation of entries of Italian float glass manufactured or produced by SIV and Fabbrica Pisana, S.p.A.

The float glass covered by this amendment is flat glass manufactured by SIV by the float process. The glass may be either tinted or clear and is produced in a wide variety of sizes ranging from ⅛" to 1" in thickness. The glass is classifiable under item numbers 543.21 through 543.69 of the Tariff Schedules of the United States (TSUS). Entries of float glass which have been substantially further manufactured (e.g., into tempered glass or laminated glass) are not subject to this amendment to the countervailing duty order on float glass from Italy.

The table in section 355, Annex III of the Commerce Regulations is amended by deleting the last three lines for Italy and replacing them with the following:

Float glass manufactured by Societa Italiana Vetro, S.p.A. and Fabbrica Pisana, S.p.A.	76–9	Bounty declared-rate.
	77–77	Modified to exclude float glass manufactured by Societa Italiana Vetro, S.p.A.
	(FR citation of this notice).	Modified to include float glass manufactured by Societa Italiana Vetro, S.p.A.
Cap screws, ¼" in diameter and over, of iron or steel.	76–225	Bounty declared-rate.
Iron or steel chains and parts.	77–249	Bounty declared-rate

This amendment and publication of this notice are in accordance with section 303 of the Act (19 U.S.C. 1303), as in effect prior to the amendments made by the TAA, and section 104(c) of the TAA (19 U.S.C. 1671, note).

John D. Greenwald,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 80–33201 Filed 10–23–80; 8:45 am]
BILLING CODE 3510–25–M

19 CFR Part 355

Countervailing Duties; Tomato Products From the European Community; Revocation of Countervailing Duty Order

AGENCY: International Trade Administration Commerce.

ACTION: Revocation of countervailing duty order.

SUMMARY: This notice is to advise the public that, as a result of a negative injury determination by the International Trade Commission, the Department of Commerce is revoking the countervailing duty order on tomato products from the European Community. The table in Part 355, Annex III of the Commerce Regulations is amended to reflect this revocation.

EFFECTIVE DATE: January 1, 1980.

FOR FURTHER INFORMATION CONTACT: Joseph A. Black, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Room 1126, Washington, D.C. 20230 (202–377–4347).

SUPPLEMENTARY INFORMATION: A notice of "Final Countervailing Duty Determination," Treasury Decision 79–233, was published in the Federal Register of August 22, 1979 (44 FR 49248). The notice stated that the Treasury Department had determined that exports of tomato products from the European Community were provided bounties or grants, within the meaning of section 303 of the Tariff Act of 1930 (19 U.S.C. 1303). Accordingly, imports into the United States of this merchandise were subject to countervailing duties.

On January 1, 1980, Title I of the Trade Agreements Act of 1979 (93 Stat. 150) (the TAA) went into effect. On January 2, 1980, the authority for administering the countervailing duty law was transferred from the Treasury Department to the Department of Commerce (the Department). Since the member states of the European Community were "countries under the Agreement" as of January 1, 1980, the Department referred this case to the International Trade Commission (ITC) for a material injury determination in accordance with section 104(a)(1)(B) of the TAA. Effective January 1, liquidation was suspended and estimated countervailing duties were collected (see 45 FR 12860, February 27, 1980). The ITC published a negative material injury decision in the Federal Register of June 25, 1980 (45 FR 42899).

As a result, the Department hereby revokes T.D. 79–233 with respect to all merchandise entered, or withdrawn from warehouse, for consumption on or after January 1, 1980. The Department will instruct Customs officers to proceed with liquidation of all such entries of the subject merchandise without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to such entries. Entries, or withdrawals from warehouse

for consumption made from August 22 through December 31, 1979, are subject to countervailing duties as set forth in T.D. 79–233.

PART 355—COUNTERVAILING DUTIES; TOMATO PRODUCTS FROM THE EUROPEAN COMMUNITY

Annex III [Amended]

The table in Part 355, Annex III, Commerce Regulations (19 CFR 355, Annex III, 45 FR 4949) is amended under the country heading "European Communities" by deleting from the column headed "Commodity," the words "Tomato products"; from the column headed "Treasury Decision," the numbers "79–233"; and from the column headed "Action," the words "Bounty declared—rate."

This revocation and notice publication are in accordance with section 104(a)(3)(B) of the TAA (93 Stat. 191, 19 U.S.C. 1671 note).

John D. Greenwald,

Deputy Assistant Secretary for Import Administration.

October 20, 1980.

[FR Doc. 80–33202 Filed 10–23–80; 8:45 am]

BILLING CODE 3510–25–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 79F–0411]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; Antioxidants and/or Stabilizers for Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration is amending the food additive regulations to include the additional safe use of 2-(2'-hydroxy-5'-methylphenyl)benzotriazole as an antioxidant and/or stabilizer in polycarbonate resins intended for food-contact use. This action responds to a petition filed by Ciba-Geigy Corp.

DATES: Effective October 24, 1980, objections by November 24, 1980.

ADDRESS: Written objections to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: A notice published in the Federal Register of December 7, 1979 (44 FR 70568) announced that a petition (FAP 7B3323) had been filed by Ciba-Geigy Corp., Ardsley, NY 10502, proposing to amend § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of 2-(2'hydroxy-5'-methylphenyl)benzotriazole as an ultraviolet light absorber in polycarbonate resins.

Having evaluated data in the petition and other relevant materials, FDA concludes that the food additive regulations should be amended to include the petitioned additive as set forth below.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788, as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 178 is amended in § 178.2010(b) by revising the name of the item "2-(2'-hydroxy-5'-methylphenyl)benzotriazole" and by adding a new limitation to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) List of substances:

Substances	Limitations
* * *	* * *
2-(2'-Hydroxy-5'-methylphenyl)benzotriazole meeting the following specification: Melting Point 126°–132° C.	For use only:
	* * *
	5. At levels not to exceed 0.5 percent by weight of polycarbonate resins complying with § 177.1580 of this chapter. *Provided,* That the finished polycarbonate resins contact food only of types I, II, III, IV, V, VI–A, VI–B, VII, VIII and IX identified in table 1 of § 178.170(c) of this chapter and under conditions of use E, F, and G described in table 2 of § 176.170(c) of this chapter.
* * *	* * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before November 24, 1980, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Four copies of all documents shall be submitted and shall be indentified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective dote. This regulation shall become effective October 24, 1980.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: October 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–33023 Filed 10–23–80; 8:45 am]

BILLING CODE 4110–03–M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Labor-Management Relations

29 CFR Part 401

Meaning of Terms Used in This Subchapter; "Person" Redefined

AGENCY: Office of the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor.

ACTION: Final rule.

SUMMARY: A change in the language of 29 CFR 401.4 is necessary to reflect an amendment to the definition of "person" in the Labor-Management Reporting and Disclosure Act of 1959, as Amended, which was made by the Bankruptcy Reform Act of 1978.

EFFECTIVE DATE: This change is effective on October 24, 1980.

FOR FURTHER INFORMATION CONTACT: Herbert Raskin (202) 523–7373.

SUPPLEMENTARY INFORMATION: Section 320 of Title III of the Bankruptcy Reform Act of 1978, Public Law 95–598, amended the definition of "person" in Section 3(d) of the Labor-Management Reporting and Disclosure Act of 1959, as Amended (LMRDA), 29 U.S.C. 402(d). Section 3(d) was amended by striking out "bankruptcy" and inserting "cases under title 11 of the United States Code" in lieu thereof. The regulations implementing the LMRDA are amended accordingly.

Since this change is necessary in order that 29 CFR 401.4 reflect the amendment to Section 3(d) made by the Bankruptcy Reform Act, I find that it is unnecessary to issue a proposal and that there is good cause to make the amendment final and effective immediately.

Accordingly, § 401.4 of title 29 of the Code of Federal Regulations is hereby amended to read as follows:

§ 401.4 Person.

"Person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11 of the United States Code, or receivers.

(Secs. 3, 208, 301, 401, 402; 73 Stat. 520, 529, 530, 532, 534; 29 U.S.C. 402, 438, 461, 481, 482; Secretary's Order No. 9–77)

Signed in Washington, D.C. this 14th day of October 1980.

William P. Hobgood,

Assistant Secretary of Labor for Labor-Management Relations.

[FR Doc. 80–33283 Filed 10–23–80; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

Approval of the Abandoned Mine Reclamation Plan From the State of Montana Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM).

ACTION: Final rule: Approval of the Montana Abandoned Mine Plan.

SUMMARY: On June 16, 1980, the State of Montana submitted to OSM its proposed abandoned mine land reclamation plan under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The purpose of this submission is to demonstrate the State's intent and capability to assume responsibility for administering and conducting the Abandoned Mine Reclamation Program established by Title IV of SMCRA and regulations adopted by OSM (30 CFR Chapter VII, Subchapter R, 43 FR 49932–49952, October 25, 1978). After opportunity for public comment and review of the plan submission, the Director of the Office of Surface Mining has determined that the Montana Abandoned Mine Reclamation Plan meets the requirements of SMCRA and the Abandoned Mine Land Reclamation Program. Accordingly, the Director of the Office of Surface Mining has approved the Montana Plan.

EFFECTIVE DATE: This approval is effective November 24, 1980.

ADDRESSES: Copies of the full text of the Montana plan are available for review during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Region V, Brooks Towers, 1020–15th Street, Denver, Colorado 80202.

The Department of State Lands, Reclamation Division, 1625 Eleventh Avenue, Helena, Montana 59601.

The Office of Surface Mining Reclamation and Enforcement, Room 153, 1951 Constitution Avenue NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Charles A Beasley, Assistant Director, Abandoned Mine Lands, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Interior Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, Telephone (202) 343–4012.

SUPPLEMENTARY INFORMATION:

General Background of Abandoned Mine Lands Program

Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, establishes an abandoned mine land reclamation program for the purpose of reclaiming and restoring land and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation under the program are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or Federal law.

Each State having within its borders coal mined lands eligible for reclamation under Title IV of SMCRA, may submit to the Secretary a State Reclamation Plan, demonstrating its capability for administering an abandoned mine reclamation program. Title IV provides that the Secretary may approve the plan once the State has an approved regulatory program under Title V of SMCRA. If the Secretary determines that a State has developed and submitted a program for reclamation and has the necessary State legislation to implement the provisions of Title IV, the Secretary shall grant the State exclusive responsibility and authority to implement the provisions of the approved plan. Section 405 of SMCRA (30 U.S.C. 1235) contains the requirements for State reclamation plans.

The Secretary has adopted regulations that specify the content requirements of a State reclamation plan and the criteria for plan approval (30 CFR Part 884, 43 FR 49932, 49947, October 25, 1978). Under those regulations, the Director is required to review the plan, solicit and consider comments of other Federal agencies and the public, and either approve or disapprove the plan. If the Director disapproves the State plan, the State may resubmit a revised reclamation plan at any time.

Upon approval of the State reclamation plan by the Director, the State may submit to the Director on an annual basis, an application for funds to be expended in such State on specific reclamation projects which are necessary to implement the State reclamation plan as approved. Such annual requests shall be made by the State and reviewed and approved by OSM in compliance with the requirements of 30 CFR Part 886.

To codify information applicable to individual States under SMCRA, including decisions on State reclamation plans, OSM has established a new Subchapter T of 30 CFR Chapter VII. Subchapter T consists of parts 900 through 950. Provisions relating to Montana are found in 30 CFR Part 926.

Background on the Montana Abandoned Mine Plan Submission

On July 9, 1979, a cooperative agreement between the Montana Department of State Lands and the Office of Surface Mining was approved. The purpose of this agreement was to assure that information required for the preparation of the Montana Abandoned Mine Reclamation Plan would be assembled.

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On February 13, 14, 19, 20 and 21, 1980, the Department of State Lands held public meetings in Great Falls, Billings, Helena, Plentywood and Miles City, Montana for comments on Montana's proposed Plan.

On June 16, 1980, the State of Montana submitted its proposed Abandoned Mine Reclamation Plan to OSM.

On June 26, 1980, and July 22, 1980, representatives of the Montana Department of State Lands and OSM met to discuss amendments and modificatons to the original plan.

On July 28, 1980, the State of Montana requested a 30-day extension of the 60-day review period to consider comments received on the proposed reclamation plan.

On July 28, 1980, the Montana Department of State Lands submitted revised pages to the Montana Reclamation Plan.

The revised pages contain several amendments and modifications to the original plan, as a result of public comments and the discussions between representatives of the Montana Department of State Lands and OSM. These amendments and modifications are specifically identified in the transmittal letter of Richard L. Juntunen to Stan Ausmus dated July 28, 1980. The necessary changes have been incorporated in the revised pages received on July 28, 1980, and therefore comply with the requirement that the policies and procedures to be followed by the agency be incorporated into the State Reclamation Plan.

Several of the amendments and modifications identified in the July 28, 1980 transmittal letter will be incorporated in the Department of State Lands Regulations by November 1, 1980. The specific amendments and modifications to be incorporated in the Department of State Lands Regulations are identified in the transmittal letter of John F. North to Art Abbs dated August 5, 1980.

The Director determined that these additions and revisions identified in the July 28, 1980 and August 5, 1980 transmittal letters were insignificant.

All of the documents mentioned above are available for public inspection at the offices of OSM listed above under "Addresses" and at the Office of the Department of State Lands listed above under "Addresses."

Notice of receipt of the submission initiating the Plan review was published June 20, 1980 (45 FR 49958–49959). The announcement requested public comments and scheduled a public hearing for July 21, 1980. On July 14, 1980, the public hearing was cancelled (45 FR 47166) as the State of Montana had provided adequate notice and opportunity for public participation in development of the reclamation plan and no unresolved controversies existed and there was insufficient interest as evidenced by no requests to hold the scheduled hearing. On August 12, 1980, (FR 53489–53490) a 30-day extension of the review period was announced to enable OSM and Montana officials to consider comments received on the proposed Reclamation Plan.

On October 9, 1980, the Regional Director and the Assistant Director for Abandoned Mine Lands Reclamation recommended to the Director that the Montana Reclamation Plan be approved.

The administrative record on the Montana Plan is available for review during regular business hours at the Office of Surface Mining Reclamation and Enforcement, Region V, Brooks Towers, 1020–15th Street, Denver, Colorado 80202.

Director's Findings

1. In accordance with Section 405 of SMCRA the Director finds that Montana has submitted a plan for reclamation of abandoned mines and has the ability and necessary State legislation to implement the provisions of Title IV of SMCRA.

2. The Director has determined, pursuant to 30 CFR 884.14, that:

(a) The Department of State Lands has the legal authority, policies and administrative structure necessary to carry out the proposed plan;

(b) the proposed plan meets all the requirements of 30 CFR Chapter VII Subchapter R;

(c) the State has an approved regulatory program; and

(d) the proposed plan is in compliance with all applicable State and Federal laws and regulations.

It should be noted that the Director disagrees with the position taken by Montana, on page 22 of their Reclamation Plan, regarding the State's intent not to place liens, where appropriate, on open cut or hard rock mined reclaimed lands (i.e., noncoal lands). In a letter dated July 28, 1980, from the Chief Legal Counsel, Montana Department of State Lands, the State maintained that both Section 408 of SMCRA and 30 CFR Part 882 of the Secretary's regulations do not authorize or require liens to be placed on noncoal mined lands.

This position is contrary to the intent of Congress and the specific language in the Act and the Secretary's regulations. Title IV of SMCRA establishes an abandoned mine land reclamation fund to finance the restoration of lands adversely affected by past mining operations and provides certain mechanisms which guard against the unnecessary depletion of the reclamation fund. To ensure that the Reclamation Fund would not be utilized in a manner which would quicken its depletion and to facilitate reclamation of abandoned lands, Congress empowered the Secretary or the State to take corrective actions in certain situations. Under section 407(a), 30 U.S.C. 1237(a), the Secretary or the State may enter and restore, without the owners consent, lands which have been adversely affected by past coal mining practices when such an entry and reclamation is in the public interest. Similarly, when it is necessary to acquire land so that successful coal reclamation activities may proceed, Section 407(c), 30 U.S.C. 1237(c), further vests in the Secretary or the State the authority to acquire land by condemnation. Lastly, Section 408, 30 U.S.C. 1238, directs the Secretary or the State to file a lien against reclaimed abandoned coal mined lands equal to the amount such property's market value was increased as a result of the coal reclamation activities.

In contrast, Section 409, U.S.C. 1239, the only provision within Title IV specifically authorizing the reclamation of noncoal mined lands, is less specific in nature. While it lacks specific protective and administrative provisions of its own, it does contain language in subsection (c) which incorporates the provisions applicable to abandoned coal mines, except those in Section 404, for all noncoal reclamation activities. OSM's research of the legislative history confirms that Congress' intent was not to set up different standards for reclaiming coal and noncoal lands but rather to utilize one system, first for coal, then for noncoal. Accordingly, through Section 409, the administrative and protective provisions related to coal activities are made applicable to noncoal.

It must be understood that the coal and noncoal provisions cannot be examined in a vacuum but rather must be interpreted and understood as elements of a total abandoned mine lands reclamation scheme created by Congress.

In regard to the purposes underlying Congress' direction that a lien be placed on reclaimed lands, the legislative history makes it clear that liens were to prevent windfall profits from accruing to private landowners and simultaneously protect the public interest by preventing depletion of the Reclamation Fund. *See* H.R. Rep. No. 218, 95th Cong., 1st Sess. 86 (1977); H.R. Rep. No. 896, 95th Cong., 2nd Sess. 88 (1976). There exists no

qualification of the phrase "reclaimed lands" and no dispositive reasons to assume Congress was speaking only to coal mined lands when it was well aware that the reclamation of noncoal mined lands would be paid for out of the same coffer. *See*, H.R. Rep. No. 218, 95th Cong., 1st Sess. 139 (1977); Conf. Rep. No. 493, 95th Cong., 1st Sess. 100 (1977). Moreover, when Representative Udall presented the Conference Report on Title IV of H.R. 2, he noted that both coal mined and noncoal mined lands were eligible for reclamation and later stated:

> Both private and public lands can be reclaimed; however expenditures on private lands under the Interior and State programs will result in a lien on the property for the increased value due to reclamation expenditures. Liens are to be payable to the federal reclamation fund. 123 Cong. Rec. H7585 (1977).

Thus, the overriding concern of Congress as regards liens was that a lien be placed against certain classes of reclaimed land to prevent the landowner from reaping a windfall profit, on both coal and noncoal mined lands.

This purpose would be contravened if States were to selectively enforce the lien provisions of Title IV against coal mined lands and prohibit or fail to place a lien against noncoal mined reclaimed land. Therefore, OSM believes that Congress intended that a lien attach under conditions delineated in Section 408 when reclamation activities increased a property's market value whether such activities took place on abandoned coal lands, under Section 403, 30 USC § 1233, or on other abandoned mine lands under Section 409 of SMCRA.

The Director finds that the Montana Reclamation Plan lacks the requisite legal authority to carry out certain noncoal related reclamation activities consistent with Section 409 of SMCRA and 30 CFR 882.13(a) because it lacks lien authority on noncoal projects. Accordingly, until the necessary authority is obtained, the Regional Director will not approve grants for noncoal reclamation activities where liens would be placed. Further the Director finds that all coal and noncoal reclamation projects must be achieved prior to approval of grants for the construction of public facilities in communities impacted by coal development. The lack of rights of entry and police power authority will not be considered as adequate justification to waive achievement of all remaining coal and noncoal projects prior to providing coal impact assistance.

It should also be noted that notwithstanding the limiting language on page 18 of the State Reclamation Plan, OSM is not limited to carrying out Federal reclamation projects on Federal lands through cooperative agreements with the State. AML reclamation projects on Federal lands may be carried out by the appropriate Federal land management agency or by interagency agreement with another Federal agency. All such projects, however, will be coordinated with OSM and the State of Montana.

3. The Director has solicited and considered the views of other Federal agencies having an interest in the plan, as required by 30 CFR 884.14(a)(2).

These agencies include the U.S. Geological Survey (USGS), the U.S. Army Corps of Engineers (COE), the Bureau of Land Management (BLM), the Bureau of Indian Affiars (BIA), the National Park Service (NPS), the U.S. Forest Service (USFS), and the U.S. Fish & Wildlife Service (FWS).

Disposition of Comments

The comments received on the Montana Abandoned Mine Plan during the public comment period raised the issues listed below, which were considered in the Director's evaluation of the Montana plan as indicated.

1. Several Federal Agencies commented that the Plan did not address coordination with Federal Agencies or the Federal Surface Management Agency.

The State of Montana has amended the plan to provide that all reclamation activities will be coordinated with appropriate Federal Agencies.

2. The USGS stated that the average stream flow data presented in the Montana Reclamation Plan was incorrect. Montana has amended its plan to show the correct stream flow data.

3. The USGS stated that stream sampling locations were inaccurate. Montana has amended its plan to show the correct stream sampling locations.

4. The BLM commented that in Section 884.13(c)(4) Policies and Procedures for Land Acquisition Management and Disposal—Coal—the words "necessary for reclamation activities" should be inserted after the "land or interest in land."

The State of Montana has amended the plan by inserting the words "for reclamation activities" after "when necessary" in paragraph three.

5. The BLM commented that the plan should state that acquired lands will be open to the public for hunting and fishing and general recreation without charge.

30 CFR 879.14 provides that "any user of land acquired under this part shall be charged a use fee." The Regional Director or State may waive the fee if found in writing that such a waiver is in the public interest.

6. The BLM commented that a request for public hearing pursuant to a Notice of Disposition of Reclaimed Lands under 30 CFR 879.15(a) should be accompanied by a justification statement.

Under 30 CFR 879.15(a) (1) & (2) a justification statement is not required. A public hearing will be held if requested.

7. The BLM commented that the plan should state that "agriculture and grazing lands can be sold."

Under 30 CFR 879.15(g) agriculture and grazing are not among the suitable uses listed for approval of disposal by public sale, but will be considered as included in the "commercial" land use category.

8. The NPS commented that the weighting factors and rationale for their derivation are not provided in the reclamation plan.

Under 30 CFR 884.13(c)(2) the State is required to provide "Reclamation project ranking and selection procedures." OSM has determined that the ranking and selection procedure in the Montana Reclamation Plan are adequate.

9. The USFS commented that a differentiation should be made between "mine dumps" and "spoil areas" in the discussion of general reclamation techniques on page 128. (Section 884.13(c)(1)).

Although these two terms are not synonomous the general reclamation techniques suggested by the State of Montana for these two problems are the same and adequately address the reclamation alternatives available for both problems.

10. The USFS commented that "sealing" is of questionable application as a technique for spoil pile and mine dump reclamation.

OSM finds "sealing" to be appropriate in certain site specific applications although not universally applicable. As such, it is properly listed as one of several general techniques to be considered.

11. The USFS recommended the addition of "Drainage to prevent spoil saturation" to the list of general reclamation techniques to be considered in problems of erosion and sedimentation.

The State of Montana has added "Surface Water Management" to the list for erosion and sedimentation control techniques. OSM considers this as inclusive of "drainage, diversion, settling ponds, etc."

12. The FWS commented that the plan is deficient in specifying how

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coordination will be implemented to assure compliance with the Endangered Species Act as well as other Acts under the FWS.

The State of Montana has amended the plan by providing that the Montana Department of Fish, Wildlife and Parks will review each project. The U.S. Fish and Wildlife Service will be contacted regarding any chance of encounter with Rare and Endangered Species in the Project Ranking Matrix.

The OSM and the FWS have signed an MOU (6/10/80) that provides for formal consultation on those projects which may affect threatened or endangered species.

OSM is satisfied that provisions for addressing endangered species in the Montana plan are adequate.

13. The FWS commented that the plan does not show how the National Environmental Policy Act will be implemented or the concerns identified during the NEPA process resolved.

Compliance with NEPA is an OSM responsibility. It should be noted that an environmental analysis or an EIS will be prepared for the approval of grants for the abandoned mine lands reclamation projects under 30 CFR 886.

The State of Montana will provide input to the NEPA process through the information developed under the Montana Environmental Act.

14. The FWS commented that the plan should contain guidelines on how fish and wildlife values and goals for AML sites will be determined and maintained at selected sites.

Prior to a site actually being selected as a reclamation project, Montana will have to comply with Rules 26.4.1234, 26.4.124 and 26.4.224, "Reclamation Objectives and Priorities", Section 884.13(c)(2) and all other rules regarding project selection. OSM is satisfied that FWS's concerns will be addressed in the project selection process under the plan.

Additional Findings

The Director has determined that approval of the Montana Abandoned Mine Plan will be effective November 24, 1980 pursuant to the rulemaking requirements in 43 CFR Section 14.5(b)(5).

The Director has determined that the Montana Abandoned Mine Plan will not have a significant effect on the quality of the human environment because the decision relates to policies, procedures and organization of the State's Abandoned Mine Plan. Therefore, under the Department of Interior Manual 516.2.3(A)(1), the Director's decision on the Montana Plan is categorically excluded from the National Environmental Policy Act process. As a result, no Environmental Assessment or Environmental Impact Statement has been prepared on this action. It should be noted that a programmatic EIS was prepared by OSM in conjuction with the implementation of Title IV. Also an environmental analysis or an EIS will be prepared for the approval of grants for the abandoned mine lands reclamation projects under 30 CFR Part 886.

The Director has determined that this document is not a significant rule under E.O. 12044 or 43 CFR Part 14 and, therefore, no regulatory analysis has been prepared on this action.

Dated: October 15, 1980.

Walter N. Heine,

Director, Office of Surface Mining.

Part 926 is amended by adding § 926.20 to read as follows:

PART 926—MONTANA

§ 926.20 Approval of the Montana Abandoned Mine Reclamation Plan.

The Montana Abandoned Mine Reclamation Plan as submitted on June 16, 1980, and amended on July 28, 1980, is approved, effective November 24, 1980. Copies of the approved program are available at the following locations:

Office of Surface Mining Reclamation and Enforcement, Region V, Brooks Towers, 1020 15th Street, Denver, Colorado 80202

The Department of State Lands, Reclamation Division, 1625 Eleventh Avenue, Helena, Montana 59601

Office of Surface Mining Reclamation and Enforcement, Room 153, 1951 Constitution Avenue NW., Washington, D.C. 20240.

[FR Doc. 80-33153 Filed 10-23-80; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9 FRL-1639-2]

Rule Revisions for Five Air Pollution Control Districts in the State of California

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove revisions to rules of the Fresno County, Kern County, Lake County, Monterey Bay Unified and Siskiyou County Air Pollution Control Districts (APCDs) submitted by the Governor's designee for incorporation into the California State Implementation Plan (SIP). The intended effect of this action is to update rules and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: November 24, 1980.

ADDRESS: A copy of the revisions is located at: The Office of the Federal Register, 1100 "L" Street NW., Room 8401, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Louise P. Giersch, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105. Attn.: Douglas Crano, (415) 556-2938.

SUPPLEMENTARY INFORMATION: On January 2, 1979 the California Air Resources Board (ARB) submitted to EPA revisions to the rules of five APCDs for inclusion in the California SIP. Revised rules which are being acted upon by this notice include the following subjects: Equipment Breakdown, Agricultural Burning, Emergency Variances, and Open Fires.

A list of the rules being considered by this action can be found in the Notice of Proposed Rulemaking published on May 23, 1980 (45 FR 34920). As described in the Notice of Proposed Rulemaking, the rules were evaluated and found consistent with 40 CFR Part 51 requirements with certain exceptions. A 60 day public comment period was provided. As discussed below, comments were received from the Siskiyou County APCD, the Lake County APCD, and the ARB concerning rules DPA proposed to disapprove in the May 23 notice.

Comment: The Siskiyou County APCD noted that the District was in the process of revising its agricultural burning regulations and that the amended regulations would be submitted to the ARB and to EPA as an SIP revision.

Response: As proposed, EPA is taking final action to disapprove Rule 4.3, *Open Fires,* of the Siskiyou County APCD since it is inconsistent with 40 CFR Part 51 requirements. However, upon receipt of the amended agricultural burning rules, EPA will review and incorporate into the SIP any approvable rules.

Comment: The Lake County APCD questioned the need for a control strategy evaluation of Section 435, *Exceptions* (open agricultural burning) since the District is an attainment area for particulates. Further, the District stated that a control strategy should not be required since only a small amount of material is consumed under this rule compared to other permitted burning activities within the District.

In addition, regarding EPA's proposed disapproval of Table V, *Concentrations and Methods,* the APCD argued that the table should be approved since it provides that the equivalent measurement technique must be approved by ARB "which must also obtain EPA approval".

Response: Although the District is an attainment area for particulates, a control strategy analysis is required in order to assure that the potential emissions increase due to open burning will not interfere with maintenance of the National Ambient Air Quality Standards (NAAQS). EPA is therefore taking final action to disapprove Section 435.

Exceptions. EPA agrees that Table V would be approvable if it stated that any equivalent measurement technique must be approved by ARB "which must also obtain EPA approval." However, the rule does *not* require EPA approval. Thus, EPA is taking final action to disapprove Table V, *Concentrations and Methods.*

Comment: The ARB states that attainment and maintenance of the NAAQS are not compromised by the Fresno County and Kern County APCDs' emergency variance rules. Requesting approval of the rule, the ARB points out that before a control officer is able to schedule an emergency variance hearing he or she has already determined that the NAAQS have not been endangered pursuant to the equipment breakdown rules.

Response: In order for a malfunctioning source to continue operation for 24 hours while exceeding an emission limit, the equipment breakdown rules require the APCD to determine that the NAAQS will not be endangered. However, the determination that a source is not violating the NAAQS during the first 24 hours of malfunction does not provide sufficient assurance that the NAAQS will not be violated during a subsequent emergency variance period of up to 15 days. Due to the lack of sufficient NAAQS assurance in the emergency variance rule, EPA is taking final action to disapprove Rule 110(B), *Equipment Breakdown,* and Rule 519, *Emergency Variance,* of the Fresno County APCD, and Rule 111(b), *Equipment Breakdown,* and Rule 519, *Emergency Variance,* of the Kern County APCD.

It is the purpose of this notice to approve the rule revisions listed in the January 2, 1979 submittal, except for the rules discussed above, which are disapproved.

The Environmental Protection Agency has determined that this document is not a "significant" regulation and does not require preparation or a regulatory analysis under Executive Order 12044.

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Secs. 110, 301(a), Clean Air Act as amended (42 U.S.C. 7410 and 7601(a))

Dated: October 20, 1980.

Douglas M. Costle,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Office of Federal Register on July 1, 1980.

Subpart F of Part 52 of Chapter I, Title 40, of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220, paragraphs (c)(47)(ii)-(vi), are added as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(47) * * *

(ii) Fresno County APCD.

(A) New or amended Rules 110, 416.1, and 519.

(iii) Kern County APCD.

(A) New or amended Rules 111, 301, and 519.

(iv) Lake County APCD.

(A) New or amended Rules 435, and 436, and Tables V and VI.

(v) Monterey Bay Unified APCD.

(A) Amended Rule 301.

(vi) Siskiyou County APCD.

(A) Amended Rule 4.3.

* * * * *

2. Section 52.236, paragraph (d) is revised to read as follows:

§ 52.236 Rules and regulations.

* * * * *

(d) The following rules or portions of rules are disapproved since they contain provisions which are inconsistent with 40 CFR Part 58, Ambient Air Quality Surveillance.

(1) Lake County APCD.

(i) Section 224, *Equivalent Method,* and Table V, *Table of Standards, Applicable Statewide,* submitted on February 10, 1977.

(ii) Table V, *Concentrations and Methods,* submitted on January 2, 1979, and Table V, submitted on February 10, 1976 and previously approved at 42 FR 42224.

* * * * *

3. Section 52.271, paragraph (b) is added as follows:

§ 52.271 Malfunction regulations.

* * * * *

(b) The following regulations are disapproved since they lack explicit provisions to assure that that NAAQS will not be exceeded while equipment breakdown periods are in effect.

(1) Fresno County APCD.

(i) Rules 110(B), *Variance Required,* and 519, *Emergency Variance,* submitted on January 2, 1979.

(2) Kern County APCD.

(i) Rules 111 (b), *(Equipment Breakdown),* and 519, *Emergency Variance,* submitted on January 2, 1979.

* * * * *

4. Section 52.273, paragraph (b)(3)(v)(B) is added and paragraph (b)(9) is revised as follows:

§ 52.273 Open burning.

* * * * *

(b) * * *

(3) * * *

(v) * * *

(B) Rule 435, (*Exception),* submitted on January 2, 1979.

* * * * *

(9) Northeast Plateau Intrastate AQCR.

(i) Shasta County APCD.

(A) Rule 2.8, *Exceptions to Open Burning,* is disapproved and the previously approved Rule 2.8 submitted on July 19, 1974, and July 22, 1975, remains in effect.

(ii) Siskiyou County APCD.

(A) Section 2 of Rule 4.3, *Open Fires,* submitted on January 2, 1979.

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[FR Doc. 80-33287 Filed 10-23-80; 8:45 am]

BILLING CODE 6560-26-M

40 CFR Part 52

[A-5-FRL 1641-7]

Approval of Illinois Sulfur Dioxide State Implementation Plan for Commonwealth Edison Kincaid Station

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On December 26, 1979 (44 FR 76311), USEPA proposed approval of an emission limitation of 105,162 lbs of sulfur dioxide (SO_2) per hour for Commonwealth Edison's Kincaid generating station in Christian County, Illinois. Interested persons were given until January 25, 1980, to comment. One comment was received. The purpose of this notice is to discuss the comment received and to announce USEPA's final rulemaking action approving this revision to the Illinois State Implementation Plan (SIP).

EFFECTIVE DATE: This final rulemaking becomes effective on November 24, 1980.

ADDRESSES: Copies of the SIP revision, public comment on the Notice of Proposed Rulemaking (44 FR 76311), and USEPA's evaluation and response to comments are available for inspection during normal business hours at the following addresses:

United States Environmental Protection Agency, Air Programs Branch Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

United States Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, D.C. 20460.

The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Judy Kertcher, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6038.

SUPPLEMENTARY INFORMATION: On December 14, 1979, the Illinois Pollution Control Board (IPCB) adopted changes to Illinois' sulfur dioxide Rule 204 which revises emission limitations for fuel combustion emission sources located outside of the Chicago, Peoria, and St. Louis major metropolitan areas (MMA's). Included in the revision were proposed rules 204(c)(1)(C), which eliminates the federally approved 6.0 pounds (lbs) SO_2 per million BTU (MMBTU) maximum sulfur dioxide emission limitation for large fuel combustion emission sources outside the MMA's; and rule 204(e)(1), which establishes a maximum hourly emission limitation for fuel combustion emission sources outside the MMA's. The State of Illinois did not conduct or submit air quality impact studies in support of the proposed revision to Rule 204, and thus, the submittal did not adequately demonstrate protection of the National Ambient Air Quality Standard (NAAQS). Therefore, on December 26, 1979 (44 FR 76308), USEPA proposed approval of the revisions for only those specific sources for which the rules do *not* represent a relaxation of the federally enforceable SIP; and disapproval of the rules for all other sources until such time as the State submits an air quality study which demonstrates that for the source(s) in question, the SIP revision will not cause or contribute to a violation of the NAAQS. USEPA's rulemaking action on Rule 204 was final on September 22, 1980 (45 FR 62804).

On September 19, 1979, the State of Illinois submitted an air quality study to USEPA on behalf of the Commonwealth Edison Company for the Kincaid generating station. The study demonstrated that emissions allowed under Illinois Rule 204(e)(1) would not cause or contribute to violation of the NAAQS. USEPA reviewed the air quality impact study and determined that the study was adequate to support a SIP revision. Therefore, on December 26, 1979 (44 FR 76311), USEPA proposed approval of the SO_2 emission limitation of 105,162 lbs SO_2/hour for the Commonwealth Edison Company's Kincaid generating station.

The Kincaid generating station is located in a rural area of Christian County, Illinois. The area is classified as attainment for SO_2. The station has two coal-fired units with a combined operating capacity of 1319 megawatts. The combined emissions are discharged through a single 187.44 m stack which replaced two 152.40 m stacks on July 1, 1979. The GEP stack height is 189.35 m based on the GEP stack height formula.

On June 24, 1980, (45 FR 42279), USEPA announced a revision to its stack height policy in the Federal Register on the Cleveland Electric Illuminating Company. The revised policy requires those sources seeking credit for raising existing stacks to provide a fluid modeling or field study demonstration that the increase in stack height is necessary to avoid excessive ground level concentrations due to downwash, wakes and eddies. USEPA performed an air quality modeling analysis using the 152.40 m stack height of the old stack and the stack design parameters associated with the new stack (187.44 m). The modeling analysis demonstrated that no stack height credit was necessary to demonstrate attainment of the NAAQS with the revised emission limitation. Therefore, fluid modeling is not required to support the increase in stack height credit.

In the notice of proposed rulemaking (44 FR 76311), USEPA solicited public comment on the proposed SIP revision and on USEPA's proposed rulemaking action. One comment was received from a public interest group. The group proposed that Kincaid meet a 7.0 lbs SO_2/MMBTU emission limitation based on the 24-hour average sulfur content sample.

USEPA Response and Final Determination: The USEPA proposed to approve an emission limitation of 105,162 lbs SO_2/hr (8.61 lbs SO_2/MMBTU) for the Kincaid Station, based on a modeling analysis performed using a USEPA reference model. The analysis demonstrates that the proposed emission limitation is sufficient to attain the NAAQS. Further, USEPA has determined that fluid modeling is not required to support the increase in stack height credit.

Therefore, USEPA approves the site-specific emission limitation of 105,162 lbs SO_2/hr (8.61 lbs SO_2/MMBTU) for the Kincaid generating station based on revised Rule 204(e)(1).

Under Section 307(b)(1) of the Clean Air Act, judicial review of this final action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of October 24, 1980. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under Executive Order 12044 (43 FR 12661), USEPA is required to judge whether a regulation is "significant" and, therefore, subject to certain procedural requirements of the Order or whether it may follow other specialized development procedures. USEPA labels these other regulations "specialized." I have reviewed this proposed regulation pursuant to the guidance in USEPA's response to Executive Order 12044, "Improving Environmental Regulations," signed March 1979 by the Administrator and I have determined that it is a specialized regulation not subject to the procedure requirements of Executive Order 12044.

This Notice of final rulemaking is issued under the authority of Section 110 of the Clean Air Act, as amended.

Dated: October 8, 1980.

Douglas Costle,
Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Illinois was approved by the Director of the Federal Register on July 1, 1980.

Title 40 of the Code of Federal Regulations, Chapter 1, Part 52 is amended as follows:

1. Section 52.720 is revised by adding paragraph (c)(24) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(24) On September 19, 1979, the State of Illinois submitted a revision to Rule 204(e)(1) for the Commonwealth Edison Company. The revision approves an emission limitation of 105,162 lbs SO_2/hour for the Kincaid Generating Station in Christian County, Illinois.

[FR Doc. 80-33286 Filed 10-23-80; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 5929]

Suspension of Community Eligibility Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities where the sale of flood insurance, as authorized under the National Flood Insurance Program (NFIP), will be suspended because of noncompliance with the flood plain management requirements of the program.

EFFECTIVE DATES: The third date ("Susp.") listed in the fifth column.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program, (202) 755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date subsidized flood insurance is no longer available in the community.

In addition, the Federal Insurance Administrator has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended, provides that no direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP, with respect to which a year has elasped since identification of the community as having flood prone areas, as shown on the Office of Federal Insurance and Hazard Mitigation's initial flood insurance map of the community. This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance." This program is subject to procedures set out in OMB Circular A–95.

In each entry, a complete chronology of effective dates appears for each listed community.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of suspended communities.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
Florida	Polk	Fort Meade, city of	120264A	June 13, 1975, emergency, Nov. 5, 1980, regular, Nov. 5, 1980, suspended.	Jan. 16, 1974 Jan. 30, 1976	Nov. 5, 1980.
Illinois	Cook	Flossmoor, village of	170091C	Dec. 15, 1972, emergency, Nov. 5, 1980, regular, Nov. 5, 1980, suspended.	Apr. 6, 1973 Apr. 26, 1978	Do.
Do	Lake	Highland Park, city of	170367A	Apr. 5, 1973, emergency, Nov. 5, 1980, regular, Nov. 5, 1980, suspended.	Oct. 26, 1973 Jan. 16, 1976	Do.
Kentucky	Campbell	Newport, city of	210039A	Mar. 26, 1975, emergency, Nov. 5, 1980, regular, Nov. 5, 1980, suspended.	Feb. 1, 1974	Do.
Louisiana	Lafayett	Carencro, town of	220103	May 10, 1977, emergency, Nov. 5, 1980, regular, Nov. 5, 1980, suspended.	Mar. 26, 1976	Do.
Massachusetts	Middlesex	Billerica, town of	250183A	Aug. 19, 1972, emergency, Nov. 5, 1980, regular, Nov. 5, 1980, suspended.	Sept. 20, 1974 Dec. 24, 1976	Do.
Missouri	Cape Girardeau	Cape Girardeau, city of	290458A	May 14, 1974, emergency, Nov. 5, 1980, regular, Nov. 5, 1980, suspended.	May 3, 1974 Oct. 17, 1975	Do
New York	Monroe	Henrietta, town of	360419B	Mar. 23, 1973, emergency, Nov. 5, 1980, regular, Nov. 5, 1980, suspended.	Jan. 16, 1974 June 3, 1977 Apr. 23, 1976	Do.
Do	St. Lawrence	Ogdensburg, city of	360707A	June 11, 1975, emergency, Nov. 5, 1980, regular, Nov. 5, 1980, suspended.	July 26, 1974 April 16, 1976	Do.
North Carolina	Alamance	Haw River, town of	370003	Aug. 25, 1975, emergency, Nov. 5, 1980, regular, Nov. 5, 1980, suspended.	July 18, 1975	Do.
Do	do	Mebane, town of	370390	Sept. 26, 1975, emergency, Nov. 5, 1980, regular, Nov. 5, 1980, suspended.		Do.
Ohio	Warren	Franklin, city of	390556A	Sept. 7, 1973, emergency, Nov. 5, 1980, regular, Nov. 5, 1980, suspended.	Nov. 16, 1973 Aug. 6, 1975	Do.
Do	Washington	Lower Salem, village of	390570A	Feb. 24, 1975, emergency, Nov. 5, 1980, regular, Nov. 5, 1980, suspended.	Aug. 30, 1974	Do.
Pennsylvania	Berks	Maxatawny, township of	421981	Dec. 3, 1975, emergency, Nov. 5, 1980, regular, Nov. 5, 1980, suspended.	Nov. 22, 1974	Do.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
Do	Chester	Schuylkill, township of	421489A	Jan. 30, 1975, emergency, Nov. 5, 1980, regular, Nov. 5, 1980, suspended.	Oct. 25, 1974 Oct. 3, 1975	Do.
Rhode Island	Washington	Richmond, town of	440031A	July 7, 1975, emergency, Nov. 5, 1980, regular, Nov. 5, 1980, suspended.	May 31, 1974 Dec. 10, 1976	Do.
South Carolina	Richland	Forest Acres, city of	450174A	July 19, 1974, emergency, Nov. 5, 1980, regular, Nov. 5, 1980, suspended.	June 7, 1974 Sept. 26, 1975	Do.
Tennessee	Smith	South Carthage, town of	470183B	Aug. 11, emergency, Nov. 5, 1980, regular, Nov. 5, 1980, suspended.	Aug. 23, 1974 Aug. 18, 1978	Do.
Texas	Travis	Lakeway, village of	481303	June 27, 1977, emergency, Nov. 5, 1980, regular, Nov. 5, 1980, suspended.		Do.
Virginia	Henry	Unincorporated areas	510078	Oct. 18, 1973, emergency, Nov. 5, 1980, regular, Nov. 5, 1980, suspended.	Nov. 22, 1974	Do.
Washington	Callalam	Unincorporated areas	530021	Nov. 27, 1973, emergency, Nov. 5, 1980, regular, Nov. 5, 1980, suspended.	Jan. 24, 1975 Apr. 4, 1978	Do.

[1] Date certain Federal assistance no longer available in special flood hazard area.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: October 10, 1980.

Gloria M. Jimenez,
Federal Insurance Administrator.

[FR Doc. 80-32862 Filed 10-23-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the nation.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required either to adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872, (In Alaska and Hawaii call Toll Free Line (800) 424–9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the final determination of flood elevation for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1988 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the administrator has resolved the appeals presented by the community.

The Administrator has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

The final base (100-year) flood elevations for selected locations are:

Final Base (100-Year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD).
Alabama	City of Birmingham, Jefferson County (FEMA–5835).	Village Creek	Just upstream of Avenue "W"	*523
			Just upstream of 16th Street	*551
			Just upstream of Vanderbuilt Rd.	*578
			Just downstream of 85th Street	*651
		Fivemile Creek (Fivemile Ck. Basin).	Confluence of Tarrant Springs Branch	*591
			Just downstream of Point Road	*706
		Tarrant Springs Branch	Just downstream of Rillough Road	*638
			Just downstream of Carson Road	*712
		Dry Creek (Fivemile Ck. Basin)	Just downstream of Old Springville Road	*748
		Unnamed Creek 23	Just downstream of Lawson Road	*817
		Camp Branch	Just downstream of Birmingham Road	*509
		Black Creek (Village Ck. Basin)	Just upstream of Old Pratt Highway	*521
			Just upstream of U.S. 78	*538
			Just downstream of Cherry Avenue	*544
		Unnamed Creek 31	Just upstream of Louisville and Nashville, Railway	*581
			Just upstream of Airport Highway	*599
		Unnamed Creek 32	Just upstream of 51st Street	*606
			Just downstream of 3rd Avenue	*629
			Just downstream of Brussels Avenue (68th Street)	*653

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD).
		Unnamed Creek 34	Just upstream of the lower road entering Bays Industrial School	*678
		Valley Creek	Just downstream of Seaboard Coastline Railroad	*511
			Just downstream of 18th Street southwest	*541
		Unnamed Creek 48	Just upstream of Cotton Avenue	*562
			Just upstream of Southern Railway	*573
			Just downstream of 6th Avenue S.W.	*576
		Unnamed Creek 49	Just downstream of 3rd St. South	*575
			Just downstream of 8th Avenue South	*588
		Nabors Branch	Just downstream of 24th Street	*530
			Just upstream of Mims Street	*550
			Just upstream of 16th Way	*562
Maps available for inspection at City Hall, 710 North 20th Street, Birmingham, Alabama 35203.				
Alabama	City of Carbon Hill, Walker County (FEMA–5835).	Lost Creek	Just downstream of U.S. Highway 78	*403
			Just upstream of County Road 63 (Pine Street)	*414
Maps available at City Hall, Maple Street and Second Avenue, Carbon Hill, Alabama 35549.				
Alabama	City of Cordova, Walker County (FEMA–5835).	Cane Creek (Backwater from Mulberry Fork).	Just upstream of County Road 22	*280
			Just upstream of County Road 61	*280
		Mulberry Fork	Just downstream of County Road 30	*280
			Just upstream of St. Louis San Francisco Railroad Crossing	*280
Maps available for inspection at City Hall, 115 Jasper Street, Cordova, Alabama 35550.				
Alabama	City of Montevallo, Shelby County (FEMA–5835).	Shoal Creek	Just upstream of Main Street	*387
			Just upstream of Overland Road	*411
		King Creek	Approximately 160 feet downstream of County Highway 204	*387
		Spring Creek	Confluence of Spring Creek and Dry Creek	*415
		Dry Creek	Approximately 100 feet downstream of County Highway 12	*428
Maps available for inspection at City Hall, 53 South Main Street, Montevallo, Alabama 35115.				
Alabama	Town of Walnut Grove, Etowah County (FEMA–5835).	Locust Fort of Black Warrior River.	Just upstream of U.S. Highway 278	*827
		Payne Branch	Just upstream of U.S. Highway 278	*827
			Just upstream of Old Asheville Rd	*841
Maps available for inspection at City Hall, Blountsville-Gadsden Road, Walnut Grove, Alabama 35900.				
California	Lafayette (City), Contra Costa County (FEMA–5841).	Los Trampas Creek	Confluence of Reliez Creek with channel	*204
			Upstream side of the intersection of Moraga Boulevard and the channel near Carol Lane.	*233
			Upstream side of the intersection of Moraga Boulevard and the channel near Third Street.	*268
			Intersection of Private Bridge at Santa Maria Way and the channel	*309
			Upstream side of the intersection of Glenside Drive and the channel	*376
			Approximately 80 feet downstream of the intersection of St. Marys Road and channel.	*425
			Intersection of the channel and the southern corporate limits	*491
		Grizzly Creek	Intersection of Silverado Drive and channel	*418
			Downstream side of Rohrer Drive over channel	*460
			Upstream side of the intersection of Bradbury Drive and channel	*507
		Reliez Creek	Intersection of the channel and the eastern corporate limits	*577
			Confluence with Las Trampas Creek	*204
			Upstream side of the intersection of Condit Road and channel	*225
			Intersection of Stanley Boulevard and channel	*317
			Intersection of Quandt Road and channel	*355
			Upstream side of the intersection of Hawk Road and channel	*421
			Intersection of northern corporate limits and channel	*552
		Lafayette Creek	Center of Second Street crossing the channel	*274
			Intersection of Chestnut Street and Dewing Avenue	*1
			Intersection of Hough Avenue and Lafayette Circle	*1
			Approximately 100 feet south along Dewing Avenue from its intersection of Walnut Street.	*2
			Upstream side of the intersection of Mountain View Drive and channel	*318
			Intersection of Mt. Diablo Boulevard and channel	*359
		Hidden Valley Creek	Confluence of Laffayette Creek and channel	*2
			Northwest end of Paulson Court	*438
			Intersection of Acalanes Road and channel	*1
			Intersection of Hidden Valley Road and channel	*480
		Happy Valley Creek	Confluence of Laffayette Creek and channel	*284
			Upstream side of Mt. Diablo Boulevard	*2
			Upstream side of the intersection of Deer Hill Road and channel	*342
			Upstream side of the intersection of Happy Valley Road and channel	*421
			Intersection of Valley View Road and channel	*518
			Upstream side of the intersection of Cricket Hill Road and channel	*621
		Jonas Hill Creek	Intersection of First Street and School Street	*288
			Intersection of St. Marys Road and channel	*302
			Intersection of Powell Drive and channel	*377
Maps available for inspection at 251 Lafayette Circle, Lafayette, California.				

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Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD).
California	Los Angeles (City), Los Angeles County (FEMA-5835).	Weldon Canyon	110 feet upstream from center of Golden State Freeway Bridge	*1,345
		Kagel Canyon	100 feet upstream from center of Osborne Street	*1,130
			Intersection of Kagel Canyon and city corporate limits	*1,154
		Rustic Canyon	400 feet east from the intersection of Sunset Boulevard and Will Rogers State Park Road.	*201
			30 feet upstream from center of Sunset Boulevard	*235
		Shallow Flooding (Sheet Flow)	At intersection of Third Street and Fairfax Avenue	#1
			At intersection of Exposition Boulevard and LaBrea Avenue	#1
			At intersection of Third Street and LaCienega Boulevard	#2
			At intersection of Lemarah Street and Canoga Boulevard	#2
			At intersection of Prosser Avenue and Tennessee Avenue	#3
			At intersection of Foothill Boulevard and Tujunga Valley Street	#3
		Shallow Flooding (ponding)	At the intersection of Denker Avenue and 205th Street	*43
			At intersection of Topham Street and Oxnard Avenue	*756
		Shallow Flooding (Deep Ponding).	50 feet from the intersection of Santa Susanna Place and Canyon Place.	*909
			100 feet east from the intersection of Rexbon Road and Mayerling Street.	*1,275
Maps available at City Engineer's Office, 200 North Street, Los Angeles, California.				
California	Los Angeles County (Unincorporated Areas) (FEMA-5841).	Amargosa Creek	30 feet upstream from the intersection of Amargosa Creek and center of 90th Street West.	*3,122
		Liberty Canyon	Outlet of concrete channel at upstream end of Liberty Canyon	*730
		Triunfo Canyon	390 feet upstream from center of Sherwood Drive	*832
			180 feet upstream from center of Lindero Canyon Road	*849
		Zuma Canyon	120 feet upstream from center of Pacific Coast Highway	*21
			40 feet upstream from center of upstream Bensall Road crossing	*114
		Medea Creek	Intersection of Medea Creek and center of Mulholland Highway	*734
			Intersection of Medea Creek and center of Carwood Street	*852
		Ramirez Canyon	300 feet upstream from center of Pacific Coast Highway	*61
		Lindero Canyon	130 feet downstream from center of Agoura Road	*838
			30 feet upstream from center of Reyes Adobe Road	*1,014
		Dry Canyon	Intersection of Dry Canyon and center of Cold Canyon Road	*1,089
		Escondido Canyon	130 feet upstream from center of Pacific Coast Highway	*14
			50 feet downstream from center of upstream Escondido Drive crossing.	*901
		Garapito Creek	At confluence with Santa Maria Creek	*974
			100 feet downstream from center of Paradise Lane	*1,040
		Old Topanga Canyon	355 feet upstream from center of downstream Bonnell Drive crossing	*962
			35 feet upstream from center of Old Topanga Canyon Road	*998
		Malibu Creek	1,600 feet upstream from center of Pacific Coast Highway	*15
			Intersection of Malibu Creek and center of Mariposa De Oro	*28
		Topanga Canyon	Intersection of Topanga Canyon and center of Pacific Coast Highway	*17
			40 feet upstream from center of Summit Road	*869
		Kagel Canyon Channel	50 feet downstream from Center of East Trail	*1,183
			25 feet upstream from center of Blue Sage Drive	*1,412
		Las Flores Canyon	200 feet upstream from center of Pacific Coast Highway	*20
			Intersection of Las Flores Canyon and center of Las Flores Canyon Road.	*132
		Cold Creek	Intersection of Cold Creek and center of Piuma Road	*467
			Intersection of Cold Creek and center of Camino Colibri	*557
		Dark Canyon Creek	490 feet downstream from center of Cold Canyon Road	*558
			Intersection of Dark Canyon Creek and center of Wild Rose Drive	*651
		Trancas Canyon Creek	40 feet upstream from center Pacific Coast Highway	*14
		Stokes Canyon Creek	Intersection of Stokes Canyon Creek and center of Mulholland Highway.	*623
		Lobo Canyon Creek	35 feet upstream from center of the downstream Lobo Canyon Road crossing.	*807
			40 feet downstream from center of the upstream Lobo Canyon Road crossing.	*860
		Las Virgines Creek	120 feet downstream from center of Rondell Street	*747
			Intersection of Las Virgines Creek and center of Parkmor Road	*792
		Cheseboro Canyon Creek	170 feet upstream from center of Driver Avenue	*908
		Palo Camado Creek	35 feet upstream from center of Backins Avenue	*963
			Intersection of Palo Camado Creek and Fairview Drive	*992
		Hacienda Creek	60 feet downstream from center of Tetley Street	*431
		Unnamed Creek	Serra Retreat Area—Intersection of Unnamed Creek and center of Cross Creek Road.	*45
		Santa Maria Creek	Intersection of Santa Maria Creek and center of Topanga Canyon Boulevard.	*919
		Lopez Canyon	1,400 feet north of intersection of Lopez Canyon Road and Glad Street.	*1,230
			120 feet west of intersection of Bailey Road and Lopez Canyon Road.	*1,300
		Mill Creek	170 feet upstream from center of Angeles Forest Highway	*3,055
		Shallow Flooding (Sheet Flow)	Intersection of Melrose Avenue and Huntley Drive	#1
			Intersection of 10th Street West and Avenue L	#1
			100 feet southwest from the intersection of Avenue M and 50th Street West.	#2
			Intersection of Dry Canyon and center of San Francisquito Road	#2
			Intersection of Haskell Canyon and center of upstream Highline Road crossing.	#3

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD).
		Shallow Flooding (Ponding)	Acton Canyon—Intersection of Crown Valley Road and Acton Avenue	#3
			Intersection of Riviera Road and Vicki Drive	*146
			Intersection of Cornell Road and Malibu Lake	*734
			On the east side of Antelope Valley Freeway between Avenue G Avenue H.	*2,312
		Shallow Flooding (Deep Ponding).	Vicinity of Santa Susanna Pass Road and Santa Susanna Avenue—2,300 feet west of the intersection of Santa Susanna Avenue and Southern Pacific Railroad.	*1,031
Maps available at 500 West Temple, Los Angeles, California.				
Connecticut	Woodbridge, Town, New Haven County (Docket No. FEMA-5778).	Bladens River	Downstream Corporate Limits	*232
			300' downstream of Acorn Hill Road	*238
			Upstream of Acorn Hill Road	*241
			Upstream of Acorn Hill Road	*246
			2,000' upstream of Acorn Hill Road	*250
			Downstream of Bethmour Road (Dam)	*260
			Upstream of Bethmour Road (Dam)	*266
			Private Drive	*268
			100' upstream of Private Drive	*273
			Downstream of Dam	*278
			Upstream of Dam	*281
			530' upstream of Dam	*290
			1,030' upstream of Dam	*300
			1,530' upstream of Dam	*310
			755' downstream of Sanford Road	*320
			420' downstream of Sanford Road	*330
			75' downstream of Sanford Road	*340
			Sanford Road	*341
			60' upstream of Sanford Road	*349
			Route 67 (Seymour Road)	*351
		Wepawaug River	Downstream Corporate Limits	*195
			2,500' downstream of Ansonia Road	*198
			Downstream of Ansonia Road	*207
			Upstream of Ansonia Road	*210
			Racebrook Road	*211
			2,150' upstream of Racebrook Road	*215
			Private Road (Downstream)	*219
			Private Road (Upstream)	*220
			350' upstream of Private Road	*224
			1,150' downstream of State Route 313	*225
			State Route 313 (Downstream)	*232
			State Route 313 (Upstream)	*238
			750' upstream of State Route 313	*245
			425' downstream of State Route 114	*253
			State Route 114	*255
		Race Brook	Downstream Corporate Limits	*172
			1,320' downstream of State Route 15	*180
			State Route 15 (Downstream side)	*191
			385' upstream of State Route 15	*194
			775' upstream of State Route 15	*202
			Golf Course Road (Downstream)	*208
			300' upstream of Golf Course Road	*212
			800' upstream of Golf Course Road	*214
			Dam (Downstream)	*227
			Dam (Upstream)	*232
			1,850' downstream of Ansonia Road	*242
			Ansonia Road (Downstream side)	*255
			Manville Road (Downstream)	*257
			Manville Road (Upstream)	*260
			State Route 313	*271
Maps available at the Office of the Town Clerk, Woodbridge, Connecticut.				
Delaware	Wyoming, Town, Kent County (Docket No. FEMA-5843).	Isaac Branch	Downstream Corporate Limits	*21
			Downstream of Layton Avenue	*25
			Downstream of Conrail	*26
			Downstream of West Railroad Avenue	*27
		Wyoming Lake	Shoreline within community	*30
Maps available at the Town Hall, Main Street, Wyoming, Delaware.				
Illinois	(V), Algonquin, McHenry, and Kane Counties (Docket No. FEMA-5843).	Fox River	At downstream corporate limits	*733
			Just downstream of Chicago and North Western Railroad	*733
			Approximately 200 feet downstream of Algonquin Dam	*734
			At upstream corporate limits	*735
Maps available for inspection at Village President's Office, Village Hall, 2 South Main Street, Algonquin, Illinois 60102.				
Illinois	(V), Bartonville, Peoria County (Docket No. FEMA-5841).	Illinois River	At the southern corporate limits	*459
			At the northern corporate limits	*459
		Unnamed Tributery of Kickapoo Creek.	Mouth at Kickapoo Creek	*450
			Just upstream of Treasure Street	*456
			Just downstream of Roosevelt Street	*465

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Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD).
			About 370 feet upstream of Roosevelt Street	*474
			At the corporate limits, about 300 feet downstream of the Lauderback Park Access Road.	*501
			At the upstream corporate limits	*521
Maps available for inspection at the Village Hall, 5912 South Adams Street, Bartonville, Illinois 61607.				
Illinois	Caseyville (Village), St. Clair County (FEMA-5843).	Canteen Creek	Approximately 825 feet north along County Road from its intersection with the northernmost Conrail railroad tracks.	*430
			Upstream side of Conrail over the channel	*441
			At the northeasternmost corporate limits	*450
		Little Canteen Creek	Approximately 180 feet upstream of the northernmost end of Harding Ditch.	*427
			Northern corner of intersection of Long Street and Reynolds Street	*440
			Intersection of O'Fallon Street and Cove Street	*446
			Intersection of O'Fallon Street and Center Drive	*454
			Approximately 1,250 feet southeast along O'Fallon Street from its intersection with the Chessie System.	*466
			Approximately 320 feet east along O'Fallon Street from its intersection with Circle Drive.	*472
		Shallow Flooding	Approximately 850 feet southeast along Forest Boulevard from its intersection with Black Lane and Caseyville Road.	*419
			Intersection of Country Side Drive with 7th Street	*419
			Intersection of Botanical Avenue with Glenwood Avenue	*419
			Approximately 1,000 feet north of Harding Ditch along northwesternmost corporate limits.	*415
			200 feet north of Garden Drive approximately 1,000 feet west of its intersection with Bluff Road.	*423
Maps available for inspection at 10 West Morris Street, Caseyville, Illinois.				
Illinois	(V), Cherry Valley, Winnebago County (Docket No. FEMA-5843).	Kishawaukee River	At southwestern corporate limits	*724
			About 100 feet downstream from the upstream corporate limit	*727
		Madigan Creek	At downstream corporate limits	*754
			At upstream corporate limits	*767
Maps available for inspection at the Village President's Office, Village Hall, 101 East State Street, Cherry Valley, Illinois 61016.				
Illinois	(V), East Dundee, Kane Conty (Docket No. FEMA-5843).	Fox River	Downstream corporate limit	*717
			Upstream corporate limit	*720
Maps available for inspection at the Village President's Office, 120 Barrington Avenue, East Dundee, Illinois 60118.				
Illinois	(V), North Aurora, Kane County (Docket No. FEMA-5841).	Fox River	About 3,500 feet downstream of East-West Tollway	*640
			Just downstream of State Street	*645
			Just upstream of North Aurora Dam	*651
			At upstream corporate limit	*651
Maps available for inspection at the Village Clerk's Office, 25 East State Street, North Aurora, Illinois 60542.				
Indiana	(Uninc.), Delaware County, (Docket No. FEMA-5849).	Mississinewa River	Approximately 1.2 miles downstream of Center Road North	*872
			Just upstream of State Route 3	*873
			Just upstream of the upstream Eaton corporate limits	*891
			Just downstream of 850 North Road	*903
			Approximately 2.2 miles downstream from Dowden Avenue	*927
			Approximately 100 feet upstream of Dowden Avenue	*931
			At the east county boundary	*936
		Swearengen Ditch	At Eaton corporate limits	*892
			Approximately 250 feet upstream 175 East Road	*892
			Just downstream 900 North Road	*901
		Holdren Ditch	Just downstream Eaton Wheeling Road	*884
			Approximately 600 feet upstream Eaton Wheeling Road	*887
			Approximately 2,000 feet upstream Eaton Wheeling Road	*888
			Just downstream 1,100 North Road	*898
			Just upstream 1,100 North Road	*903
			Approximately 4,350 feet upstream 1,100 North Road	*908
		Halfway Creek	At Albany upstream corporate limits	*934
			Just downstream State Route 167	*935
			Just upstream State Route 167	*937
			At east county boundary	*939
		Rees Ditch	Mouth at Mississinewa River	*894
			Just upstream 350 East Road	*894
		Campbell Creek	Mouth at Mississinewa River	*916
			Just upstream 514 North Road	*920
			Just upstream 525 East Road	*926
			Just upstream 425 North Road	*933
			Just downstream Norfolk and Western Railway	*943
			Just upstream Norfolk and Western Railway	*949
		Muncie Creek	Just upstream of Muncie corporate limits	*944
			Approximately 1,150 feet upstream Indiana Avenue	*945
			About 2,400 feet upstream U.S. Route 35	*953
		York Prairie Creek	Mouth at White River	*882
			Just downstream 100 South Road	*893

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD).
			Just downstream 50 South Road	*896
			Just downstream Division Road	*898
			Just upstream Division Road	*900
			Just upstream 600 West Road	*903
			Just downstream 500 West Road	*905
			Just upstream 500 West Road	*908
			Just upstream 400 West Road	*913
		Killbuck Creek	Just upstream of 1,000 West Road	*872
			Approximately 1,100 feet downstream Norfolk and Western Railway	*876
			Just upstream Interstate 69	*879
			Just downstream 600 West Road	*889
			Just downstream Chessie System	*893
			Just downstream Wheeling Avenue (downstream of Conrail)	*899
			Just upstream Wheeling Avenue (upstream of Conrail)	*909
			About 0.5 mile downstream 100 West Road	*911
			Just upstream 100 West Road	*916
			Just downstream 500 North Road	*930
		Jakes Creek	Approximately 500 feet downstream 750 West Road	*883
			Approximately 1,200 feet upstream 700 West Road	*889
			Just upstream 600 West Road	*898
			Approximately 600 feet downstream 400 West Road	*908
			Just upstream 400 West Road	*910
			Just upstream 300 West Road	*918
			Muncie corporate limits	*928
		Bell Creek	Mouth at Buck Creek	*924
			Approximately 2,400 feet upstream mouth	*924
			Just downstream of confluence of No Name Creek	*928
		No Name Creek	Just downstream 325 West Road	*928
			Approximately 300 feet upstream 325 West Road	*931
			Approximately 2,000 feet upstream 325 West Road	*940
			Just upstream private road	*944
			Just downstream State Route 67	*949
			Approximately 1,000 feet upstream State Route 67	*953
			Just upstream 400 South Road	*960
		Buck Creek	Yorktown corporate limits	*907
			Just upstream 428 West Road	*921
			Just downstream 325 West Road	*927
			About 600 feet upstream 200 South Road	*934
			At downstream Muncie corporate limit	*938
			About 1,750 feet downstream Norfolk and Western Railway (Muncie corporate limits).	*952
			Just upstream Norfolk and Western Railway	*954
			About 2000 feet upstream State Route 67 Bypass	*960
			Just upstream 400 South Road	*962
			Just upstream 700 South Road	*972
			At southern county boundary	*979
		White River	Downstream county boundary	*871
			Approximately 1,200 feet upstream 300 South Road	*881
			At Yorktown corporate limit	*899
			Just upstream of Muncie corporate limit	*954
			Approximately 1,800 feet upstream U.S. Route 35	*958
			Approximately 1,900 feet downstream 170 South Road	*973
			Just upstream 170 South Road	*977
			Approximately 2,400 feet upstream 700 East Road	*984
			At eastern county boundary	*993
Maps available for inspection at Delaware County Courthouse, 100 West Main Street, Muncie, Indiana 47305.				
Indiana	(C), Gary, Lake County (Docket No. FEMA-5843).	Grand Calumet River	About 70 feet downstream of Cline Avenue (New)	*586
			Just downstream of Norfolk and Western Railroad	*589
			About 5,597 feet upstream of Tennessee Street	*591
		Little Calumet River	About 2,600 feet downstream of I80 and 94	*594
			About 50 feet downstream of Georgia Street	*596
			About 106 feet upstream of Norfolk and Western Railroad	*597
			At upstream corporate limit	*598
		Upstream Lakes on Grand Calumet River.	Shoreline	*590
		Lake Michigan	Shoreline	*584
		Burns Ditch	Upstream corporate limit	*597
			Downstream corporate limit	*597
Maps available for inspection at the Planning Department, City Hall, 401 Broadway, Gary, Indiana 46402.				
Indiana	(C), Hammond, Lake County (Docket No. FEMA-5843).	Grand Calumet River	Downstream corporate limits	*582
			Just downstream Sohl Avenue	*584
			Approximately 3,170 feet upstream Columbia Avenue	*585
			Just upstream Kennedy Avenue	*585
			Approximately 2,920 feet downstream Cline Avenue	*586
		Little Calumet River (West)	Western corporate limits	*598
			Approximately 1,050 feet west of Northcote Avenue	*599
		Little Calumet River (East)	Approximately 200 feet west of Kennedy Avenue	*598
			Just east of Chessie System Bridge	*589
		Lake Michigan	Eastern corporate limits	*584
			Western corporate limits	*584
Maps available for inspection at the Planning Department, City Hall, 5925 Calumet Avenue, Hammond, Indiana 64320.				

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Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD).
Indiana	(Uninc.), Hendricks County (Docket No. FEMA-5845).	Abner Creek	Just downstream of County Road 525 East	*752
			About 350 feet upstream of County Road 525 East	*754
			About 150 feet downstream of Conrail	*800
			Just upstream of County Road 100 North	*832
			About 250 feet upstream of County Road 150 North	*848
			About 3,400 feet upstream of County Road 150 North	*864
		Clarks Creek	At Old State Road 267	*691
			Just downstream of Interstate 70 eastbound	*702
			Just upstream of Interstate 70 westbound	*704
			Just upstream of County Road 600 South	*713
			About 200 feet upstream of County Road 550 South	*721
			At downstream corporate limit of Plainfield	*724
			Upstream corporate limit of Plainfield	*773
			Confluence with Army Branch	*779
			At County Road 100 South	*821
		Clerks Creek Tributary	Just upstream of Conrail	*774
			Just downstream of first crossing of County Road 800 East	*775
			Just upstream of second crossing of County Road 800 East	*780
			Just downstream of third crossing of County Road 800 East	*788
			Just upstream of third crossing of County Road 800 East	*792
			Just downstream of intersection of County Road 150 South and County Road 800 East.	*809
			At County Road 100 South	*820
		Cosner Branch	At mouth at West Fork White Lick Creek	*749
			At Martin Road	*752
			Just upstream of County Road 350 South	*763
			About 5200 feet upstream of County Road 350 South	*783
		East Fork, White Lick Creek	About 1.25 miles downstream of County Road 800 South	*679
			Just upstream of County Road 800 South	*690
			Just upstream of County Road 700 South	*700
			Just downstream of Interstate 70 eastbound	*711
			Just upstream of Interstate 70 westbound	*717
			Just upstream of County Road 450 South	*723
			Downstream crossing of eastern county boundary	*736
			Upstream crossing of eastern county boundary	*803
			Just downstream of County Road 200 North	*814
			Just upstream of County Road 200 North	*817
			Just downstream of Lantern Drive	*831
			Just upstream of Chessie System Railroad	*836
			Just downstream of County Road 300 North	*842
			Just upstream of County Road 300 North	*845
			Just downstream of County Road 975 East	*859
			Just upstream of County Road 975 East	*861
			Just upstream of County Road 900 East	*874
			About 1.25 miles upstream of County Road 900 East	*879
		Hughes Branch	Mouth at Little West Fork White Lick Creek	*866
			About 200 feet downstream of first crossing of County Road 550 North.	*891
			Just upstream of first crossing of County Road 550 North	*895
			Just downstream of third crossing of County Road 550 North	*921
		Keeny Ditch	Mouth at Little West Fork White Lick Creek	*928
			About 100 feet upstream of County Road 401 East	*930
			At County Road 275 East	*938
		Little West Fork, White Lick Creek.	Mouth at White Lick Creek	*850
			About 200 feet upstream of County Road 550 East	*863
			Just downstream Old U.S. Highway 136	*876
			Just downstream of Conrail	*879
			Just upstream of Conrail	*885
			About 4650 feet upstream of County Road 550 East	*895
			Just upstream of County Road 500 East	*909
			Just downstream of first crossing of County Road 750 North	*915
			Just upstream of second crossing of County Road 750 North	*920
			Just upstream of Interstate 74 westbound	*928
			At County Road 500 East	*939
		Thompson Creek	Mouth at West Fork White Lick Creek	*862
			About 6700 feet above confluence with West Fork White Lick Creek	*884
			At County Road 300 North	*911
		West Fork, White Lick Creek	Mouth at White Lick Creek	*681
			Just downstream of Interstate 70 eastbound	*694
			Just upstream of Interstate 70 westbound	*702
			About 1.50 miles upstream of County Road 600 East	*712
			Just upstream of Old U.S. Highway 40	*738
			About 1000 feet upstream of Conrail	*749
			Just upstream of County Road 200 East	*769
			About 1.1 mile downstream Cartersburg Road	*786
			Just upstream of County Road 200 South	*809
			Just downstream of Conrail near Danville	*831
			Just upstream of East Columbia Street	*849
			Just upstream of County Road Zero	*868
			Just upstream of County Road 200 North	*893
			Just upstream of first crossing of U.S. Highway 39	*897
			About 1 mile upstream of first crossing of U.S. Highway 39	*908

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD).
			Just downstream of second crossing of U.S. Highway 39	*922
			Just upstream of second crossing of U.S. Highway 39	*927
			Just downstream of County Road 25 West	*932
		West Fork, White Lick Creek Tributary 1.	Confluence with West Fork White Lick Creek	*706
		School Branch	At County Road 600 South	*731
			Just upstream of County Line Road	*809
			About 2400 feet upstream of County Line Road	*817
			About 6800 feet upstream of County Line Road	*846
			Just downstream of County Road 600 North	*862
			Just upstream of County Road 600 North	*866
			Just upstream of County Road 1000 East	*870
			Just upstream of second crossing of County Road 1000 East	*880
			Just upstream of County Road 750 North	*895
			Just upstream of Meloney Road	*903
			Just upstream of County Road 950 North	*912
		White Lick Creek	Just upstream of County Line Road	*681
			Just downstream of Interstate 70 eastbound	*692
			Just upstream of Interstate 70 westbound	*696
			Just downstream of County Road 600 South	*703
			Just upstream of County Road 600 South	*706
			Just downstream of Conrail in Plainfield	*728
			Just upstream of Conrail near Plainfield	*731
			Confluence of Abner Creek	*751
			Just upstream of Conrail	*775
			At County Road 100 North	*766
			Just upstream of County Road 200 North	*810
			Just downstream of County Road 350 North	*826
			Just upstream of County Road 350 North	*830
			Just upstream of Chessie System	*833
			Just upstream of County Road 500 North	*851
			Just upstream of Conrail at west edge of Brownsburg	*862
			Just upstream of Interstate 74 westbound	*874
			Just upstream of State Highway 267	*894
			About 1.30 miles upstream of County Road 1000 North	*914
		White Lick Creek Tributary 3	At mouth at White Lick Creek	*776
			Just downstream of U.S. Highway 36	*778
			Just downstream of outlet from Lake View	*787
			Just upstream of Inlet to Lake View	*800
			Just upstream of State Highway 267	*811
			Just upstream of County Road 100 North	*830
			Just downstream of County Road 100 North	*833
			At County Road 200 North	*857
		White Lick Creek Tributary 4	Mouth at White Lick Creek	*784
			Just upstream of County Road 100 North	*791
			About 200 feet upstream of English Avenuue	*836
			Just downstream of County Road 200 North	*845
			Just upstream of County Road 200 North	*849
			At County Road 300 North	*867

Maps available for inspection at the Planning Department, Hendricks County Courthouse, Danville, Indiana 46122.

Indiana	(Uninc.), Tippecanoe County (Docket No. FEMA-5828)..	Wabash River	Just downstream of confluence of Jordan Creek	*526
			Just downstream County Road 775 East	*538
		Wildcat Creek	About 1,000 feet downstream State Highway 25	*536
			Just upstream Peters Mill Road	*551
			Confluence of South Fork Wildcat Creek	*559
			Just upstream County Road 725 East	*582
			Just downstream Wolf Road	*596
		Burnett Creek	About 750 feet downstream Burnett Road	*535
			Just downstream Prophets Rock Road	*562
			About 1,000 feet upstream State Highway 225 (about 0.6 mile upstream of upstream Battle Ground corporate limits).	*587
			Approximately 1,000 feet upstream State Highway 43	*606
		South Fork Wildcat Creek	At mounth at Wildcat Creek	*559
			Just downstream State Route 26	*583
			Just upstream County Road 200 South	*611
			Just downstream State Highway 38	*624
		Middle Fork Wildcat Creek	About 750 feet downstream State Highway 26	*583
			Just downstream County Road 900 East	*619
		Wea Creek	Just downstream Lilly Road	*531
			About 200 feet downstream Norfolk and Western Railway	*541
			Just downstream State Highway 25	*548
			Just upstream State Highway 25	*550
			Just downstream U.S. Route 231 and State Highway 43	*588
			Just downstream County Road 100 East	*618
			About 200 feet downstream County Road 150 East	*624
		Elliott Ditch	About 1,100 feet downstream Romney Road	*573
			Just upstream County Road 50 East	*613
			Just downstream County Road 150 East	*637
			Just downstream County Road 250 East	*642
		Little Wea Creek	About 400 feet upstream mouth	*557
			Just downstream Louisville and Nashville Railroad	*599
			Just downstream of County Road 175 West	*610

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Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD).
			Just upstream County Road 500 South	*623
			Just upstream County Road 625 South	*645
			Just downstream Louisville and Nashville Railroad	*674
	Maps available for inspection at Tippecanoe County Area Plan Commission Office, Tippecanoe County Courthouse, 20 North 3rd Street, Lafayette, Indiana 47901.			
Indiana	(T), Westfield, Hamilton County (Docket No. FEMA-5841).	Cool Creek	Just upstream East 146th Street	*817
			Just upsteam Oak Road	*826
			Just upstream Union Street (downstream crossing)	*838
			Just upstream East 181st Street	*844
			Just upstream Oak Road (upstream crossing)	*855
			Just downstream Conrail	*858
			Just upstream Conrail	*863
			Just downstream East 186th Street	*870
		Evan Kindall Drain	At mouth	*863
			Just upstream Cherry Street	*874
			Just downstream Conrail	*878
			Just upstream Conrail	*884
			Just downstream U.S. Route 31	*886
			Just upstream U.S. Route 31	*894
	Maps available for inspection at the Westfield Planning Department, Town Hall, 130 Penn Street, Westfield, Indiana 46074.			
Indiana	(T), Yorktown, Delaware County (Docket No. FEMA-5843).	White River	Western corporate limit	*896
			About 5,000 feet upstream of Yorktown-Gaston Pike	*907
			Eastern corporate limit	*916
		Buck Creek	At confluence with White River	*896
			About 150 feet upstream State Road 32	*900
			Just upstream Conrail Bridge	*903
			Southern corporate limit	*907
	Maps available for inspection at the Town Manager's Office, Town Hall, Yorktown, Indiana 47396.			
Kansas	(C), Winfield, Cowley County (Docket No. FEMA-5843).	Walnut River	About 0.75 mile downstream of Main Street	*1,121
			Just upstream of Ninth Avenue	*1,130
			About 1.1 miles upstream of confluence of Timber Creek	*1,132
		Timber Creek	Mouth at Walnut River	*1,132
			Upstream corporate limits (near Union Cemetery)	*1,132
		Black Crook Creek	About 1,950 feet downstream of Twelfth Avenue	*1,132
			At confluence of Black Crook Creek, Middle and West Branches	*1,135
			Just downstream of Simpson Avenue	*1,153
			About 1,250 feet upstream of Simpson Avenue	*1,159
		Middle Branch Black Crook Creek	Just upstream of dam	*1,140
			Just downstream of Ninth Avenue	*1,158
			Just upstream of Simpson Avenue	*1,164
			Just downstream of T.P. Hales Road	*1,193
		West Branch Black Crook Creek	Just upstream of Harris Road	*1,141
			Just upstream of Central Avenue	*1,151
			Just upstream Wheat of Road	*1,164
			Just upstream of Simpson Avenue	*1,175
	Maps available for inspection at City Hall, Planning Department, P.O. Box 646, Winfield, Kansas 67156.			
Kentucky	City of Mayfield, Graves County (FEMA-5835).	Kess Creek	Just upstream of 10 Street (Central Avenue)	*472
			Just upstream of Belmeade Drive	*477
	Maps available for inspection at City Hall, 211 East Broadway, Mayfield, Kentucky 42066.			
Maine	Pittston, Town, Kennebec County (Docket No. FI-5665).	Kennebec River	Downstream Corporate Limits	*25
			Confluence of Morton Brook	*26
			Upstream Corporate Limits	*28
		Togus Stream	Confluence with Kennebec River	*28
			State Route 27 Bridge	*28
			Confluence of Tony Meadow Brook	*68
			Pinkham Road Bridge (Upstream)	*74
			Upstream Corporate Limits	*81
	Maps available at the Fire Station and the Regional Planning Ofice, 125 State Street, Augusta, Maine.			
Michigan	(Twp), Commerce, Oakland County (Docket No. FEMA-5843).	Huron River	Just downstream of Creedmore Drive	*910
			About 100 feet upstream of Sleeth Road	*914
			Just downstream of Farr Street	*929
			Just upstream of Fox Lake Outlet Dam	*931
		Huron River West Branch	Mouth at Commerce Lake	*910
			Divergence from Huron River	*910
		Carus Lake and Pleasant Lake Channel.	About 3,000 feet downstream of Haggerty Highway	*931
			Just downstream of Haggerty Highway	*934
		Long Lake	Shoreline	*936
		Union Lake	Shoreline	*928
		Middle Straits Lake	Shoreline	*933
		Lake Sherwood	Shoreline	*931
		Bass Lake	Shoreline	*919
		North Commerce Lake	Shoreline	*910
		South Commerce Lake	Shoreline	*910
		Lower Straits Lake	Shoreline	*932

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD).
		Carroll Lake	Shoreline	*925
		Twin Suns Lake	Shoreline	*919
		Mud Lake	Shoreline	*914
		Reed Lake	Shoreline	*917
		Fox Lake	Shoreline	*931
	Maps available for inspection at Township Hall, 2840 Fisher Road, Commerce, Michigan 48088.			
Michigan	(Twp), Redford, Wayne County (Docket No. FEMA-5843).	Upper River Rouge	Downstream corporate limits	*617
			Upstream corporate limits	*629
		Bell Branch	Mouth at Upper River Rouge	*618
			Upstream corporate limits	*621
		Ashcroft-Sherwood Drain	Downstream corporate limits	*607
			Just downstream Telegraph Road	*617
		Shallow Flooding (overflow from Ashcroft-Sherwood Drain).	At eastward bend of Appleton Street	2
	Maps available for inspection at Township Hall, 15145 Beech Daly Road, Redford, Michigan 48239.			
Minnesota	(Twp), Hassan, Hennepin County (Docket No. FEMA-5843).	Crow River	At northeastern corporate limits	*862
			Just upstream of Interstate 94	*873
			About 2.03 miles upstream of Berning Mill Dam	*880
			At southern corporate limits	*891
	Maps available for inspection at the Office of the Township Clerk, 11995 Kelley Lane, Rogers, Minnesota 55374.			
Minnesota	(C), Hawley, Clay County (Docket No. FEMA-5835).	Buffalo River	At downstream corporate limit	*1,131
			Just downstream of U.S. Highway 10	*1,139
			At upstream corporate limit	*1,144
	Maps available for inspection at City Hall, Hawley, Minnesota 56549.			
Mississippi	City of Corinth, Alcorn County (FEMA-5818).	Phillips Creek	Just upstream of Shiloh Road	*449
		Bridge Creek	Just upstream of Kendrick Road	*447
		Elam Creek	Just upstream of Mitchell Street	*431
		Turner Creek	Just upstream of HWY 45	*434
	Maps available for inspection at Municipal Building, City Clerk's Office, 300 Childs Streets, Corinth, Mississippi 77507.			
Missouri	(C), O'Fallon, St. Charles County (Docket No. FEMA-5841).	Belleau Creek	About 0.29 mile downstream of Norfolk and Western Railway	*461
			About 200 feet upstream of Norfolk and Western Railway	*463
			About 0.05 mile downstream of North Outer Road	*468
			Just upstream of Old Highway 40	*472
			About 0.40 mile upstream of Belleau Creek Road	*477
			About 0.85 mile upstream of Belleau Creek Road	*484
			About 200 feet upstream of County Highway K	*508
			About 0.70 mile upstream of County Highway K	*523
	Maps available for inspection at City Hall, 138 South Main Street, O'Fallon, Missouri 63366.			
Nebraska	(C), Norfolk, Madison County (Docket No. FEMA-5841.	Elkhorn River	Eastern extraterritorial limit	*1,501
			Just downstream of 1st Street	*1,513
			About 450 feet upstream of U.S. Route 81	*1,520
			About 800 feet upstream of Union Pacific Railroad	*1,526
			At western extraterritorial limit	*1,534
		Elkhorn River Sandpits Bypass	At confluence with Elkhorn River	*1,521
			Just downstream Union Pacific Railroad	*1,523
			At divergence with Elkhorn River	*1,529
	Maps available for inspection at the City Engineer's Office, 111 South First Street, Norfolk, Nebraska 68701.			
Nebraska	(C), Sidney, Cheyenne County (Docket No. FEMA-5843).	Lodgepole Creek	At downstream extraterritorial limits	*4,036
			Approximately 6,300 feet downstream of U.S. Highway 385	*4,047
			Approximately 600 feet downstream of U.S. Highway 385	*4,059
			Approximately 150 feet upstream of U.S. Highway 385	*4,061
			Just upstream of County Road	*4,065
			Just upstream of State Highway 19	*4,078
			Just upstream of Osage Road	*4,086
			Just upstream of 11th Avenue	*4,090
			Just upstream of 13th Avenue	*4,096
			Just upstream of Pine Street	*4,099
			At the confluence of Deadwood Draw	*4,103
			Just upstream of County Road, located approximately 5,000 feet upstream of Deadwood Draw.	*4,114
			At the upstream extraterritorial limits	*4,129
		Sidney Draw	Mouth at Lodgepole Creek	*4,120
			Just downstream of County Road, located about 3,500 feet upstream or its mouth.	*4,126
			Just upstream of County Road, located about 3,500 feet upstream of its mouth.	*4,132
			Just upstream of County Road, located 700 feet downstream of the extraterritorial limits.	*4,134
			At the upstream extraterritorial limits	4,135

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD).
		Shallow Flooding (overflow from Deadwood Draw).	Just east of the intersection of 14th Avenue and Grant Street	*4,092
			Approximately 400 feet west of the intersection of 23rd Avenue and Newton Street.	*4,100
			Approximately 400 feet upstream of the Union Pacific Railroad	*4,120
			Approximately 5,000 feet upstream of the Union Pacific Railroad	*4,160
Maps available for inspection at the City Inspector's Office, 1115 13th Avenue, Sidney, Nebraska 69162.				
New Jersey	Englishtown, Borough, Monmouth County (Docket No. FEMA-5843).	McGellairds Brook	Downstream Corporate Limits	*61
			North Main Street Upstream side	*64
			Upstream Corporate Limits	*65
		Weamaconk Creek	Downstream Corporate Limits	*61
			Mill Pond Dam—Downstream side	*67
			1,440' upstream of South Main Street	*73
		Tributary to Weamaconk Creek	Confluence with Weamaconk Creek	*66
			Downstream of Conrail	*70
			Upstream Corporate Limits	*81
Maps available at the Borough Clerk's Office, Municipal Building, 13 Main Street, Englishtown, New Jersey.				
New Jersey	Frenchtown, Borough, Hunterdon County (Docket No. FEMA-5841).	Delaware River	Downstream Corporate Limits	*125
			Approximately 1,100 feet upstream of downstream Corporate Limits	*128
			Confluence of Nishisakawick Creek	*127
			Upstream side of Bridge Street	*128
			Upstream Corporate Limits	*129
		Nishisakawick Creek	Confluence with Delaware River	*127
			Approximately 630 feet upstream of Kingswood Avenue	*128
			Confluence of Unnamed Tributary	*142
			Upstream Corporate Limits	*160
		Little Nishisakawick Creek	Confluence with Delaware River	*127
			Approximately 2,090 feet upstream of confluence with Delaware River	*131
			Approximately 3,600 feet upstream of confluence with Delaware River	*153
			Upstream Corporate Limits	*173
Maps available at the Borough Clerk's Office, Borough Hall, Frenchtown, New Jersey.				
New Jersey	Haledon (Borough), Passaic County (FEMA-5843).	Molly Ann Brook	Intersection of Molly Ann Brook and center of West Broadway	*136
			40 feet upstream from center of Church Street (High Mountain Road)	*177
Maps available for inspection at Tax Office, 407 Belmont Avenue, Haledon, New Jersey.				
New Jersey	Holland, Township, Hunterdon County (Docket No. FEMA-5841).	Delaware River	Downstream Corporate Limits	*141
			Confluence with Tributary No. 1	*149
			Approximately 4,000' upstream of confluence with Tributary No. 1	*153
			3,650' downstream of upstream Corporate Limits	*157
			Upstream Corporate Limits	*159
		Milford Creek	Downstream Corporate Limits	*160
			Approximately 800' upstream of downstream Corporate Limits	*186
			County Route 519 bridge	*201
			Approximately 300' downstream of Private Drive bridge	*209
			Downstream side of Private Drive bridge	*212
			Upstream side of Private Drive bridge	*213
			Approximately 700 feet upstream of Private Drive bridge	*220
			Approximately 1,350' upstream of Private Drive bridge	*229
			Approximately 900' downstream of County Route 519 bridge	*240
			Approximately 100' downstream of County Route 519 bridge	*247
			Upstream side of County Route 519 bridge	*250
			Approximately 1,000' upstream of County Route 519 bridge	*260
			Approximately 400' downstream of Spring Garden Road bridge	*270
			Spring Garden Road bridge	*281
		Tributary No. 1 to Milford Creek	Confluence with Milford Creek	*252
			Approximately 1,000' upstream of confluence with Milford Creek	*264
			Approximately 340' downstream of Spring Garden Road bridge	*273
			Spring Garden Road bridge	*279
		Tributary No. 1 to Delaware River	Confluence with Delaware River	*149
			Approximately 900' upstream of Conrail bridge	*149
			Downstream side of Riegelsville-Milford Road bridge	*163
			Upstream side of Riegelsville-Milford Road bridge	*165
			Approximately 890' upstream of Riegelsville-Milford Road bridge	*173
			Downstream crossing of Phillips Road	*188
			Approximately 880' upstream of Philips Road	*199
			Approximately 670' downstream of the upstream crossing of Phillips Road.	*225
			Upstream crossing of Phillips Road	*243
		Musconetcong River	Confluence with Delaware River	*159
			Downstream side of Mount Joy Road bridge	*161
			Upstream side of Mount Joy Road bridge	*165
			Approximately 2,850' upstream of Mount Joy Road bridge	*167
			Approximately 1,825' downstream of Willow Lane bridge	*173
			Approximately 725' downstream of Willow Lane bridge	*174
			Upstream side of Willow Lane bridge	*178
			Approximately 200' downstream of dam	*192
			Upstream side of dam	*202
			Milford-Warren Glen Road bridge	*204

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD).
			Upstream side of Private Road bridge	*210
			Downstream side of Reigle Paper Company Dam	*231
			Upstream side of Reigle Paper Company Dam	*255
			Upstream Corporate Limits	*257
Maps available at the City Clerk's Office, Holland New Jersey.				
New Jersey	Sayreville, Borough, Middlesex County (Docket No. FEMA-6725).	South River	Entire length within corporate limits	*12
		Tennetts Brook	Entire length within corporate limits	*12
		Crossway Creek	From confluence with Cheesequake Creek to Ernston Road	*12
			Ernston Road upstream	*14
			Garden State Parkway downstream	*17
			Garden State Parkway upstream	*31
			Frank Avenue downstream	*45
			Frank Avenue upstream	*55
			Approximately 750' upstream of Frank Avenue	*59
		Raritan Bay	Entire length of coast within corporate limits	*12
			Backwater on Cheesequake Creek and Mellins Creek from confluence with Raritan Bay to upstream corporate limits.	*12
		Raritan River	Entire length within corporate limits	*12
Maps available at the Borough Clerk's Office, Borough Municipal Building, 167 Main Street, Sayreville, New Jersey.				
New York	Erwin, Town, Steuben County (Docket No. FI-5316).	Chemung River	Downstream Corporate Limits	*934
		Tioga River	Confluence with Cohocton River	*935
			Conrail Bridge Upstream	*941
			Mulholland Road (Upstream)	*950
			Confluence with the Canisteo River	*953
			Upstream Corporate Limits	*958
		Canisteo River	Confluence with Tioga River	*953
			Old U.S. Route 15 Upstream	*958
			U.S. Route 15 Upstream	*963
			Upstream Corporate Limits	*977
		Cohocton River	Downstream Corporate Limits	*937
			Upstream U.S. Route 15	*938
			Confluence with Meads Creek	*953
			Upstream Corporate Limits	*974
		Meads Creek	Confluence with Cohocton River	*953
			New York Route 415	*956
			Access Road Ford	*965
			Upstream Corporate Limits	*970
Maps available at the Town Hall, Erwin, New York.				
New York	Henderson, Town, Jefferson County (Docket No. FEMA-5843).	Stony Creek	40' upstream from Clarks Point Road	*252
			Whitney Road (extended)	*256
			160' downstream from Game Club Road	*279
			Game Club Road (upstream side)	*289
			80' upstream from State Route 3	*292
			500' downstream from Salisbury Mills Park Dam	*295
			Salisbury Mills Park Dam (upstream side)	*317
			100' upstream from State Route 178	*320
			At Henderson Pond	*323
		Lake Ontario	Shoreline within community	*249
		Crystal Lake	Entire shoreline within community	*427
Maps available at the Town Hall, Route 178, Henderson, New York.				
North Carolina	Orange County (unincorporated areas) FEMA-5841.	New Hope Creek	50 feet upstream from center of North Carolina Secondaryd Road 1737.	*270
			25 feet upstream from center of North Carolina Secondary Road 1718	*423
		Piney Mountain Creek	25 feet downstream from center of Mineral Springs Road (North Carolina Secondary Road 1718).	*301
		Old Field Creek	75 feet upstream from center of State Highway 86	*442
		Booker Creek	25 feet upstream from center of State Highway 86	*476
		Bolin Creek	50 feet upstream from center of North Carolina Secondary Road 1777	*446
		Jones Creek	Confluence of creek and Bolin Creek	*467
		Morgan Creek	25 feet upstream from center of North Carolina Secondary Road 1104	*474
		Phils Creek	50 feet downstream from center of North Carolina Secondary Road 1005.	*398
		Neville Creek	25 feet downstream from center of North Carolina Secondary Road 1945.	*436
		West Price Creek	Confluence of creek and East Price Creek	*360
		East Price Creek	25 feet downstream from center of Yorktown Drive	*395
		Eno River	50 feet upstream from center of Lawrence Road (North Carolina Secondary Road 1561).	*486
			50 feet downstream from center of U.S. Highway 70	*534
		Rhodes Creek	Intersection of creek and center of North Carolina Secondary Road 1710.	*441
		Stony Creek	50 feet upstream from center of North Carolina Secondary Road 1710	*471
		Stony Creek Tributary	100 feet upstream from center of North Carolina Secondary Road 1712.	*446
		Buckwater Creek	25 feet downstream from center of Farm Road	*495

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Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD).
		Buckwater Creek Tributary Number One.	25 feet downstream from center of Farm Road	*467
		Buckwater Creek Tributary Number Two.	25 feet downstream from center of St. Marys Road (North Carolina Secondary Road 1002).	*493
		Spring Valley Creek	25 feet upstream from center of Palmers Grove Church Road (North Carolina Secondary Road 1565).	*568
		Little Creek	50 feet upstream from center of St. Marys Road (North Carolina Secondary Road 1002).	*497
		Strouds Creek	25 feet upstream from center of St. Marys Road (North Carolina Secondary Road 1002).	*494
		Strouds Creek Tributary Number One.	75 feet upstream from center of Burke Road (North Carolina Secondary Road 1556).	*536
		Sevenmile Creek	100 feet downstream from center of Interstate Highway	*530
		Rocky Run	100 feet downstream from center of North Carolina Secondary Road 1135.	*559
		McGowan Creek	50 feet downstream from center of North Carolina Secondary Road 1324.	*589
		East Fork Eno River	50 feet downstream from center of North Carolina Secondary Road 1332.	*585
			25 feet downstream from center of North Carolina Secondary Road 1352.	*627
		West Fork Eno River	25 feet downstream from center of Cedar Grove Road (North Carolina Secondary Road 1004).	*592
		South Fork Little River	25 feet upstream from center of North Carolina Secondary Road 1538	*496
		Forrest Creek	25 feet downstream from center of North Carolina Secondary Road 1548.	*539
		North Fork Little River	25 feet downstream from center of North Carolina Secondary Road 1538.	*521
		Cates Creek	25 feet upstream from center of North Carolina Secondary Road 1009	*596
Maps available for inspection at Planning Department, Mr. Jim Polotay, 106 East Margaret Lane, Hillsboro, North Carolina.				
Ohio	(V), Silver Lake, Summit County (Docket No. FEMA-5841).	Cuyahoga River	Southwestern corporate limits	*998
			Eastern corporate limits	*999
		Tributary 1	Near mouth at Cuyahoga River	*999
			At eastern corporate limits	*1,002
Maps available for inspection at Silver Lake Village Hall, 2961 Kent Road, Silver Lake Village, Cuyahoga Falls, Ohio 44224.				
Pennsylvania	East Cocalico, Township, Lancaster County (Docket No. FEMA-5824).	Cocalico Creek	Upstream side of Wabash Road	*364
			Upstream side of Cocalico Road	*370
			Upstream side of Stevens Road	*374
			Upstream Corporate Limits	*383
		Stony Run	Downstream side of Cocalico Road	*369
			Downstream side of East Church Street	*382
			Downstream side of Bunker Road	*393
			Upstream side of Kurtz Road	*404
			Upstream side of Denver Road	*410
			Downstream side of Pennsylvania Turnpike	*426
Maps available at the East Cocalico Township Building.				
Pennsylvania	East Pikeland, Township, Chester County (Docket No. FEMA-5828).	Schuylkill River	Downstream Corporate Limits	*110
			Upstream Corporate Limits	*113
		French Creek	State Routes 23 and 724	*117
			Upstream side of Rapps Dam	*127
			Seven Stars Road (Upstream side)	*148
			Upstream Corporate Limits	*149
		Pickering Creek	Downstream Corporate Limits	*204
			250' upstream of Merlin Road	*213
			Upstream side of Pickering Road	*228
			Upstream Corporate Limits	*232
Maps available at the East Pikeland Township Building, Rapps Dam Road and at the Office of the City Engineer, 222 North Walnut Street, West Chester, Pennsylvania.				
Pennsylvania	Easttown, Township, Chester County (Docket No. FEMA-5843).	East Tributary to Darby Creek	Approximately 250' from confluence with Darby Creek	*346
			Approximately 650' downstream of Footbridge	*355
			Upstream of Sugartown Road	*367
			Confluence with Tributary A	*374
			Heatherwood Road (Extended)	*385
			Upstream side of Daventry Road	*400
			Approximately 400' upstream of Daventry Road	*405
			Approximately 200' downstream of Woodside Avenue	*421
			Downstream side of Woodside Avenue	*427
		Tributary A	Confluence with East Tributary to Darby Creek	*374
			Approximately 960' upstream of confluence	*384
			Downstream side of Arlington Road	*390
Map available at the Easttown Township Building.				
Pennsylvania	Elizabeth, Township, Lancaster County (Docket No. FEMA-5815).	Middle Creek	Downstream Corporate Limits	*355
			U.S. Route 322 (Downstream)	*356
			Confluence of Furnace Run	*360

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD).
		Furnace Run	Confluence with Middle Creek	*360
			Yummerdale Road (Upstream)	*363
Maps available at the Elizabeth Township Building, 217 East 28th Division Highway, Lititz, Pennsylvania.				
Pennsylvania	Limerick, Township, Montgomery County, (Docket No. FEMA-5828).	Schuylkill River	Downstream Corporate Limits	*118
			Upstream Vincent Dam	*124
			Upstream Conrail	*128
			Upstream Corporate Limits	*129
		Mingo Creek	Corporate Limits	*150
			Upstream Royersford Road	*163
			Confluence of Tributary No. 1 to Mingo Creek	*164
			3,000' upstream Reifsnyder Road	*180
			Upstream Linfield Road	*198
			1,000' upstream Linfield Road	*200
		Tributary No. 1 to Mingo Creek	Confluence with Mingo Creek	*164
			Upstream Dam	*171
			Downstream Country Club Road	*189
			100' upstream Country Club Road	*194
		Lodal Creek	Corporate Limits	*204
			Upstream Graterford Road	*216
			750' upstream Graterford Road	*220
Maps available at the Limerick Township Building.				
Pennsylvania	Maidencreek, Township, Berks County (Docket No. FEMA-5824).	Willow Creek	Downstream Corporate Limits	*295
			U.S. Route 222	*299
			State Route 73 (downstream)	*312
			Private Lane 2,600 feet upstream of State Route 73 (upstream)	*325
			3,500 feet upstream of State Route 73 (Limit of Detailed Study)	*326
Maps available at the Maidencreek Township Building.				
Pennsylvania	New Columbus, Borough, Luzerne County (Docket No. FEMA-5828).	Pine Creek	Downstream Corporate Limits	*717
			Legislative Route 40077 Upstream	*719
			Hollow Road Upstream	*726
			Private Lane (Extended)	*731
			Legislative Route 40078/Academy Street	*755
			Upstream Corporate Limits	*757
Maps available at Jack Frantz Barbershop, New Columbus Corners.				
Pennsylvania	Perry, Township, Berks County (Docket No. FEMA-5824).	Tributary No. 2	Downstream Corporate Limits	*331
			Private Lane 1,700 feet upstream from Corporate Limits (Upstream)	*350
			Main Street (Upstream)	*356
			Culvert at Legislative Route 160 (Downstream)	*368
			Culvert of Township Route 733 (Upstream)	*374
			Upstream Corporate Limits	*386
Maps available at the Perry Township Building.				
Pennsylvania	Porter, Township, Huntingdon County (Docket No. FEMA-5724).	Juniata River	3.20 miles downstream of the confluence of Little Juniata River and Frankstown Branch Juniata River.	*671
			1.35 miles downstream of the confluence of Little Juniata River and Frankstown Branch Juniata River.	*675
			Confluence of Little Juniata River and Frankstown Branch Juniata River.	*679
		Little Juniata River	Confluence with Frankstown Branch Juniata River	*679
			Upstream side of State Route 305	*687
			Upstream side of Conrail (1.2 miles upstream of State Route 305)	*700
			Upstream side of Legislative Route 31051	*719
			Upstream side of Conrail (1.2 miles upstream of Legislative Route 31051.	*738
		Frankstown Branch Juniata River	Confluence with Little Juniata River	*679
			Upstream side of Legislative Route 31098	*680
			Upstream side of Legislative Route 655	*694
			Upstream side of State Route 305	*705
			Upstream side of U.S. Route 22	*720
		Robinson Run	U.S. Route 22	*695
			Upstream side of Legislative Route 31075	*696
			.284 mile upstream of Legislative Route 31075	*704
		Emma Creek	Confluence with Robinson Run	*698
			Upstream side of Township Route 477	*700
			Private Drive (.015 mile upstream of Route 477)	*727
			Private Drive (0.5 mile upstream Private Drive)	*747
			Upstream side of Legislative Route 31046	*786
			.1 mile upstream of Legislative Route 31046	*783
Maps available at the Township Building, Alexandria, Pennsylvania.				
Pennsylvania	Slatington, Borough, Lehigh County (Docket No. FEMA-5824).	Lehigh River	Downstream Corporate Limits	*358
			Upstream side of Main Street Bridge	*363
			4,000' upstream of Main Street Bridge	*368
			Upstream Corporate Limits	*372

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Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD).
		Trout Creek	Confluence with Lehigh River	*362
			400' upstream of the South Walnut Street Bridge	*367
			800' upstream of the South Walnut Street Bridge	*372
			450' upstream of the Main Street Bridge	*378
Maps available at the Borough Building, 125 South Walnut Street, Slatington, Pennsylvania.				
Pennsylvania	Spring City, Borough, Chester County (Docket No. FEMA-5841).	Schuylkill River	Downstream Corporate Limits	*112
			Upstream Walnut Street Extended	*113
			Downstream side Main Street	*114
			Upstream Corporate Limits	*117
Maps available at the Borough Hall, Spring City, Pennsylvania.				
Pennsylvania	Towanda, Borough, Bradford County (Docket No. FEMA-5841).	Susquehanna River	Downstream Corporate Limits	*720
			Confluence of Tributary A	*722
			Conrail Bridge	*722
			Upstream Corporate Limits	*723
		Tributary A	Upstream of Conrail Bridge	*727
			U.S. Route 6 crossing	*742
			Approximately 400 feet upstream of U.S. Route 6 crossing	*749
			Culvert headwall near 3rd Street crossing	*765
			4th Street crossing	*792
			Headwall located approximately 420 feet upstream of 4th Street crossing.	*813
			Manhole located approximately 1,100 feet upstream of 4th Street crossing.	*836
			Entrance to culvert approximately 1,475 feet upstream of 4th Street crossing.	*850
			Upstream Corporate Limits	*871
Maps available at the Municipal Building, 724 South Main Street, Towanda, Pennsylvania.				
Pennsylvania	Worcester, Township, Montgomery County (Docket No. FEMA-5778).	Zacharias Creek	Downstream Corporate Limits	*166
			Downstream Dam—3,350 feet upstream of Corporate Limits	*179
			Green Hill Road (Upstream)	*184
			Frog Hollow Road (Downstream)	*184
			Downstream Shutt Mill Road (Extended)	*193
			State Route 363 (Downstream)	*208
			State Route 363 (Upstream)	*215
			State Route 73 (Downstream)	*224
			State Route 73 (Upstream)	*247
			Farm Road (Downstream)	*251
			Farm Road (Upstream)	*259
			Confluence of North Branch Zacharias Creek	*269
			Weber Road (Downstream)	*271
			Weber Road (Upstream)	*280
			Private Road off Weber Road (Extended)	*288
			Pennsylvania Turnpike (Upstream)	*296
			Berks Road (Upstream)	*306
			Morris Road (Downstream)	*259
		North Branch Zacharias Creek	Confluence of Zacharias Creek	*264
			Curtis Lane (Extended)	*278
			700 feet downstream of Weber Road	*290
			Weber Road (Upstream)	*295
			Pennsylvania Turnpike (Upstream)	*310
			190 feet downstream of Morris Road	*316
			Morris Road (Downstream)	
Maps available at the Office of the Worcester Township Secretary, 3063 Germantown Pike.				
Rhode Island	Hopkinton, Town, Washington County (Docket No. FEMA-5841).	Wood River	Upstream of Woodville Road	*55
			Upstream of dam upstream of Woodville Road	*60
			Upstream of Hope Valley Road	*68
			Upstream of Interstate Route 95	*69
			Upstream of Maple Avenue	*72
			Upstream of dam upstream of Maple Avenue	*80
			Upstream of State Route 3	*83
			Upstream of downstream crossing of Arcadia Road	*88
			Upstream of dam upstream of downstream crossing of Arcadia Road	*100
			Upstream of Skunk Hill Road	*101
			Upstream of upstream crossing of Arcadia Road	*110
			500' upstream of dam upstream of upstream crossing of Arcadia Road.	*115
		Pawcatuck River	Downstream Corporate Limits	*27
			Upstream of dam downstream of Potter Hill Road	*32
			Upstream of State Route 3	*34
		Ashaway River	Confluence with Pawcatuck River	*27
			Upstream of dam downstream of Laurel Street	*33
			Downstream of State Route 216	*35
			Upstream of State Route 216	*41
		Mile Brook	Upstream of Laurel Street	*28
			Upstream of State Route 3	*33
			1,700' upstream of State Route 3	*39

Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD).
		Tomaquag Brook	Confluence with Pawcatuck River	*34
			Upstream of Ashaway Bradford Road	*39
			Upstream of Burdickville Road	*43
		Canonchet Brook	Confluence with Wood River	*60
			4,000' upstream of confluence with Wood River	*65
			Upstream of Alton Road	*71
			Upstream of Palmer Circle	*76
			Upstream of Interstate Route 95	*80
			Upstream of State Route 3	*80
		Canonchet Brook Tributary	Confluence with Canonchet Brook	*80
			Upstream of downstream crossing of Canonchet Road	*84
			Upstream of first downstream dam	*95
			Upstream of second downstream dam	*108
			Upstream of upstream crossing of Canonchet Road	*111
			850' upstream of upstream crossing of Canonchet Road	*116
Maps available at the Office of the Town Clerk, Hopkinton, Rhode Island.				
South Carolina	Town of McClellanville, Charleston County (FEMA-5828).	Atlantic Ocean (Backwater Flooding along Jeremy Creek and Intracoastal Waterway).	Entire community	*12
Maps available for inspection at Town Office, Pinkney Street, McClellanville, South Carolina 29458.				
Tennessee	Unincorporated Areas of Lake County (FEMA-5835).	Reelfoot Lake	Entire Shoreline	
			Mississippi River	
			Illinois Central Gulf Railroad cross over Old Tramway Ditch	*267
				*294
Maps available for inspection at Lake County Courthouse, Agricultural, Department, Church Street, Tiptonville, Tennessee 38079.				
Tennessee	City of Millington, Shelby County (FEMA-5835).	Big Creek Drainage Canal	Just upstream of U.S. Highway 51	*259
			Just upstream of Raleigh-Millington Road	*262
		Royster Creek	Approximately 500 feet upstream of Shelby Road	*258
		North Fork Creek	Approximately 500 feet upstream of Navy Road	*262
			Just upstream of Cuba-Millington Road	*270
			Approximately 1200 feet upstream of Cuba-Millington Road	*274
		North Fork Creek Laterial A	At northernmost corporate limits (extended)	*281
Maps available for inspection at City Hall, 7930 Nelson Street, Millington, Tennessee 38053				
Tennessee	Town of Obion, Obion County (FEMA-5835).	Johnson-Hurt Avenue Tributary	Just upstream of Hurt Avenue	*285
			Just upstream of U.S. Highway 51	*289
		Fifteenth St. Tributary	Just upstream of Palestine Street	*287
Maps available for inspection at Town Hall, Seventh Street, Obion, Tennessee 38240.				
Tennessee	City of Tiptonville, Lake County (FEMA-5835).	Mississippi River	Intersection of Tipton Street and McBride St	*294
		Reelfoot Lake	Northeast of the intersection of Sunkist Road and State Highways 21 and 22.	*287
Maps available for inspection at City Hall, 130 South Court, Tiptonville, Tennessee 38079.				
Texas	Unincorporated Areas of Collin County (FEMA-5828).	Cottonwood Ck. East Fork	Just upstream of U.S. Fale County Road	*504
		Rush Creek	Just upstream of County Road	*454
			Just upstream of Old State Highway 78	*498
		Franklin Br.	Just downstream of U.S. Highway 380	*590
		Unnamed Trib. to Wilson Creek	Just downstream of State Highway 3038 (Old Rock Hill Road)	*601
		Rutherford Branch	Just upstream of FM 2478	*643
		Wilson Creek (Main Stream)	Just upstream of U.S. Highway 380	*601
			Just upstream of FM 2478	*637
		Stream 5B13	Just downstream of City of Plano corporate limits (Approximately 400 feet downstream of Atchison Topeka & Santa Fe Railway).	*685
		Tributary to Rowlett Ck.	Just downstream of City of Frisco corporate limits	*684
		White Rock Creek East	Just upstream of FM 3286	*491
			Just upstream of Winningkoff Road	*524
		Reid Branch	Approximately 120 feet downstream of westernmost corporate limits of the Town of Lucas (approximately 2,300 feet upstream of the County Road within the Town of Lucas).	*553
		Muddy Creek downstream	Just upstream of St. Louis and Southwestern Railway	*499
		Muddy Creek upstream	Approximately 200 feet upstream of County Road (Highway 2514 extended) within the Town of Lucas.	*548
		Muddy Creek Tributary 1	Approximately 150 feet upstream of FM 544	*510
		Muddy Creek Tributary 2	Just upstream of Asphalt Road	*571
		Stream 5B14	Just downstream of the City of Plano corporate limits	*678
		Rowlett Creek	Just upstream of State Highway 121	*640
		Tributary to Rowlett Ck.	Just upstream of State Highway 720	*668
		Cottonwood Creek	Just upstream of State Highway 121	*676
		White Rock Creek-West	Approximately 200 feet downstream of Atchison Topeka and Santa Fe Railway.	*609
		Rush Creek Tributary	Just upstream of Old State Highway 78 Westbound	*509
		Camp Creek	Just upstream of State Highway 205	*445
Maps available for inspection Collin County Courthouse, 2nd Floor, 200 McDonald Street, McKinney, Texas 75069.				

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Final Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD).
Vermont	Village of Alburg, Grand Isle County (Docket No. FEMA-5723).	Lake Champlain	Coastline	*102
	Maps available at the Alburg Town Office.			
Vermont	Town of Alburg, Grand Isle County (Docket No. FEMA-5723).	Lake Champlain	Coastline	*102
			Mud Creek	*102
	Maps available at the Alburg Town Office.			
Vermont	South Burlington, City, Chittenden County (Docket No. FEMA-5825).	Winooski River	Downstream Corporate Limits	*167
			Upstream of Dam	*204
			Upstream of Airport Parkway	*217
			Upstream Corporate Limits	*220
		Lake Champlain	Entire shoreline within community	*102
	Maps available at the City Manager's Office, City Hall, South Burlington, Vermont.			
Wisconsin	(C), Chilton, Calumet County (Docket No. FEMA-5841).	South Branch Manitowoc River	About 1,580 feet downstream of East Main Street	*842
			About 80 feet downstream of East Main Street	*849
			Just downstream of Chicago, Milwaukee, St. Paul and Pacific Railroad	*851
			Just upstream of Grand Street	*858
			About 160 feet upstream of Commerce Street	*868
			Just upstream Madison Street	*880
			About 265 feet upstream of Madison Street	*881
			Just upstream of State Street	*888
			At upstream corporate limit	*890
	Maps available for inspection at the Office of the City Clerk, City Hall, 42 School Street, Chilton, Wisconsin 53014.			
Wisconsin	(C), Fox Lake, Dodge County (Docket No. FEMA-5843).	Old Mill Creek	Downstream corporate limit	*881
			About 300 feet downstream of Trenton Street	*882
			Just downstream River Street dam	*886
			Just upstream of River Street dam	*892
			Upstream corporate limits	*892
		Fox Lake	Shoreline	*892
	Maps available for inspection at Office of the City Clerk, City Hall, Fox Lake, Wisconsin 53933.			
Wisconsin	(C), Galesville, Trempealeau County (Docket No. FEMA-5841).	Lake Marinuka	Shoreline	*702
		Beaver Creek	At downstream corporate limit	*685
			Just upstream Second Street	*690
			Just upstream Main Street	*692
			Just downstream of Dam	*693
			Just upstream of Dam	*702
	Maps available for inspection at the Office of the Village Clerk, Village Hall, Galesville, Wisconsin 54630.			
Wisconsin	(V), Melrose, Jackson County (Docket No. FEMA-5841).	Douglas Creek	About 0.74 mile downstream of M Street	*724
			Just downstream of M Street	*731
			Just upstream of M Street	*762
			About 0.62 mile upstream of M Street	*763
	Maps available for inspection at the Office of the Village Clerk, Village Hall, Melrose, Wisconsin 54642.			

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: October 3, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-32879 Filed 10-23-80; 8:45 am]

BILLING CODE 8718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 21

[FCC 80-516]

Domestic Public Radio Services (Other Than Maritime Mobile) and Public Mobile Radio Services; Ownership Amendments

Correction

In FR Doc. 80-30829, appearing at page 65597 in the issue for Friday, October 3, 1980, on page 65600, in the third column, under "**§ 21.31 [Amended]**", the amendatory language referring to "47 CFR 21.31(c)(3)" should have read "47 CFR 21.31(e)(3)".

BILLING CODE 1505-01-M

47 CFR Part 76

[Docket 20553; FCC 80-572]

Cable Television Systems, Termination Proceeding Involving Carriage of Specialty Stations

AGENCY: Federal Communications Commission.

ACTION: Order terminating proceeding in Docket 20553.

SUMMARY: Commission terminates proceeding involving the carriage of specialty stations by cable television systems because the Commission's more general decision deleting the distant signal carriage limits renders this proceeding moot.

FOR FURTHER INFORMATION CONTACT:

William H. Johnson, Cable Television Bureau (202) 632-6468.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of Part 76, Subparts A and D of the Commission's Rules and Regulations relative to adding a new definition for "specialty stations" and "specialty format programming" and amending the appropriate signal carriage rules; *Order.*

Adopted: October 3, 1980.

Released: October 15, 1980.

By the Commission:

1. In our *First Report and Order in Docket 20553,* 58 FCC 2d 442, 41 FR 10895 (1976) we exempted "specialty stations" as defined in § 76.5(ii) from the cable television distant signal carriage limitations of our rules. Neither subscription television stations nor stations broadcasting English language ethnic programming were included in the specialty station definition but the Commission did leave the docket open "for potential future determination concerning ethnic and subscription television programming." (para. 43)

2. As a consequence of our *Report and Order in Dockets 20988 and 21284,* FCC 80-443, 45 FR 60186 (1980) more generally eliminating the cable television distant signal carriage limits, the proceeding in Docket 20553 is now moot.

Accordingly, it is ordered, That the proceedings in Docket 20553 are terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-33238 Filed 10-23-80; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 258

Inclusion in the Definition of "Commercial Fishing Vessel" Those Fishing Vessels, Registered Under United States Law, Which Are Entitled To Be Licensed or Enrolled and Licensed for the Fisheries of the United States

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Final regulation.

SUMMARY: The Fishermen's Protective Act reimburses commercial fishermen for losses and costs incurred as a result of the seizures of U.S. commercial fishing vessels by a foreign country on the basis of rights or claims in territorial waters or on the high seas which are not recognized by the United States. This amendment to program regulations expands the definition of "commercial fishing vessel" to include those vessels that are registered under United States law and entitled to be licensed or enrolled and licensed for the fisheries.

EFFECTIVE DATE: October 24, 1980.

FOR FURTHER INFORMATION CONTACT:

Mr. Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C. 20235, Telephone No. (202) 634-7496.

SUPPLEMENTAL INFORMATION: Current Fishermen's Protective Act regulations restrict benefits to those vessels that are either licensed or enrolled and licensed as fishing vessels of the United States. Although they are eligible for such documentation, many vessels in the United States distant water fleet are neither licensed nor enrolled and licensed, but instead are registered for the foreign trade.

These vessels make a significant contribution to the United States fishing industry and deserve the same benefits other U.S. flag fishing vessels receive.

Accordingly, 50 CFR 258.1(e) is amended as follows:

Delete the definition of "commercial fishing vessel" and insert in lieu thereof the following:

§ 258.1 Definition of terms.

* * * * *

(e) *Commercial fishing vessel.* A vessel licensed or enrolled and licensed as a fishing vessel of the United States (or registered under United States law, and entitled to be licensed or enrolled and licensed for the fisheries of the United States) and catching, transporting, or processing, fish and/or shellfish.

* * * * *

Signed this 20th day of October, 1980, in Washington, D.C.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80-33270 Filed 10-23-80; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 258

Fishermen's Protective Act Procedures; Provision for Fees

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final regulations.

SUMMARY: Section 7 of the Fishermen's Protective Act (22 U.S.C. 1971–1980) authorizes the fees paid by vessel owners entering into agreement under Section 7. These fees are used to carry out a vessel seizure indemnification program under Section 7. This amendment extends the latest date for paying fees for the 1981 agreement year.

EFFECTIVE DATE: September 30, 1980.

FOR FURTHER INFORMATION CONTACT:

Mr. Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, Washington, D.C. 20235, Telephone Number: (202) 634-4688.

SUPPLEMENTARY INFORMATION: Fees for the agreement year of October 1, 1980, through September 30, 1981, had previously been payable no later than September 30, 1980. This amendment extends that fee payment deadline to December 1, 1980.

All holders of agreements for the present agreement year who wish them extended through September 30, 1981, by Amendment (rather than entering into an entirely new agreement) must consequently, pay their required fees no later than December 1, 1980. Failure to do so will result in agreements for the 1980 agreement year not being extended for the 1981 agreement year.

This amendment is exempt from the rulemaking requirements of the Administrative Procedures Act (5 U.S.C. 553) and makes no substantive change in the program's conduct.

Regulatory Analysis:

The Assistant Administrator for Fisheries initially determined that this amendment is neither significant under Executive Order 12044 nor requires an environmental impact statement under the National Environmental Policy Act.

Dated: October 20, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

Section 258.5 of the Fishermen's Protective Act Procedures (50 CFR Part 258) is amended by amending subsection (b) to read as follows:

§ 258.5 Fees.

* * * * *

(b) Fees paid by an applicant for Guarantee Agreements for the agreement year October 1, 1980, through September 30, 1981, shall be $4.00 per gross ton as listed on the vessel's document. Fractions of a ton shall not be included. Although fees are due on October 1, 1980, all parties holding Guarantee Agreements (by Amendments or otherwise) for the period terminating September 30, 1980, shall have until December 1, 1980 (midnight local time), to pay the fees established herein. Failure to do so by December 1, 1980, will result in non-extension of the previous year's Guarantee Agreement

* * * * *

[FR Doc. 80-33281 Filed 10-23-80; 8:45 am]
BILLING CODE 3510-22-M

V 45 OC 24 80 UMI

Proposed Rules

Federal Register
Vol. 45, No. 208
Friday, October 24, 1980

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 8

4-H Club Name and Emblem, Proposed Changes

AGENCY: Department of Agriculture.

ACTION: Proposed rule.

SUMMARY: The Department of Agriculture proposes to revise the regulations on authorization for the use of the 4-H Club Name and Emblem as they appear in 7 CFR Part 8. The existing regulations were originally promulgated in 1955. Since that time, there have been a number of changes in the 4-H program, including organizational changes and titles. The purpose of this proposed regulation is to clarify sections of the existing regulations, provide general policies for use of the 4-H name and emblem in local fund raising programs, eliminate sections of the existing regulations which are no longer appropriate, and update regulations throughout in terms of organizational names and titles.

DATES: Written comments must be submitted on or before December 23, 1980.

ADDRESS: Send comments to: Dr. Eugene Williams, Deputy Administrator, 4-H—Youth Programs, Science and Education Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene Williams, Telephone: 202/447-5853.

SUPPLEMENTARY INFORMATION: A summary of the proposed changes in the regulations is as follows:

(1) "Administrator, Federal Extension Service" is changed to "Administrator for Extension, Science and Education Administration" wherever the title appears.

(2) A new paragraph (d) is added to § 8.4 to specify that the 4-H Club name and emblem shall not be used to imply endorsement of commercial firms, products and/or services.

(3) Section 8.7 is rewritten for clarity. The basic import is not changed.

(4) Section 8.9 "Use on Calendars" is deleted. Section 8.7 (b) (2) in the proposed regulations establishes overall authority relating to 4-H calendars.

(5) A new § 8.9 "Use in 4-H Fund Raising" is added to provide general policies and requirements in this area.

(6) Section 8.10 is deleted, since this section does not relate directly to use of the 4-H Club name and emblem. General policies on distribution of mailing lists by Cooperative Extension Service employees are included in an Administrative Handbook and/or covered by respective State regulations.

In consideration of the above, it is proposed to revise 7 CFR Part 8 to read as follows:

PART 8—4-H CLUB NAME AND EMBLEM

Sec.
8.1 Policy.
8.2 Delegation of authority.
8.3 Definitions.
8.4 Basic premises.
8.5 Revocation of present authorizations.
8.6 Authorization for use.
8.7 Continued use.
8.8 Use by public informational services.
8.9 Use in 4-H fund raising.

Authority: 5 U.S.C. 301; 18 U.S.C. 707.

§ 8.1 Policy.

The Cooperative Extension Service, of which the 4-H Club program is a part, invites and appreciates the cooperation of all organizations, agencies, and individuals whose interest, products, or services will contribute to the educational effort of the Cooperative Extension Service as conducted through the 4-H Club program.

§ 8.2 Delegation of authority.

The Secretary of Agriculture has delegated to the Director of Science and Education, United States Department of Agriculture, responsibility to authorize use of the 4-H Club Name and Emblem in accordance with these regulations. In keeping with that delegation, the Administrator for Extension, Science and Education Administration, who has been designated responsibility by the Director of Science and Education to conduct the Extension program in the Science and Education Administration has concurrent responsibility to authorize the use of the 4-H Club Name and Emblem in accordance with these regulations.

§ 8.3 Definitions.

The term "4-H Club Name and Emblem" as used in this part means the emblem consisting of green four-leaf clover with stem and the letter "H" in white or gold on each leaflet, or any insignia in colorable imitation thereof, or the words, "4-H Club," "4-H Clubs" or any combination of these or other words or characters in colorable imitation thereof.

§ 8.4 Basic premises.

(a) The 4-H Club Name and Emblem are held in trust by the Secretary of Agriculture of the United States Department of Agriculture for the educational and character-building purposes of the 4-H program and can be use only as authorized by the statute and according to the authorization of the Secretary or designated representative.

(b) The 4-H Club Name and Emblem may be used by authorized representatives of the United States Department of Agriculture, the Cooperative Extension Services of the land-grant institutions, and National 4-H Council according to these regulations, for serving the educational needs and interests of 4-H youth.

(c) Any use of the 4-H Club Name and Emblem is forbidden if it exploits the 4-H programs, its volunteer leaders or 4-H youth participants or the United States Department of Agriculture, Cooperative Extension Services of the land-grant institutions, or their employees.

(d) The 4-H Club Name and Emblem shall not be used to imply endorsement of commercial firms, products, or services.

§ 8.5 Revocation of present authorizations.

Effective January 1, 1981, all authorization permits, except as provided in section 8.6, for the use of the 4-H Club Name and Emblem presently in effect will be revoked. However, such authorizations may be renewed upon written request.

§ 8.6 Authorization for use.

(a) The Director of Science and Education, or his designee may grant authorization for use of the 4-H Club Name and Emblem:

(1) For educational or informational uses which the Cooperative Extension Service deems to be in the best interests of the 4-H program and which can be

properly controlled by the Cooperative Extension Service.

(2) For services to youth which the Cooperative Extension Service determines it is not in a position itself to perform.

(b) Authorizations, when issued, will be valid for specified purposes and periods of time only. Application forms for requesting authorization to use the 4–H Club Name and Emblem may be obtained from the Director of Science and Education, or the Administrator for Extension, Science and Education Administration, United States Department of Agriculture, Washington, D.C. 20250.

(c) Granting an authorization to an individual, organization, or institution for a specific use does not preclude granting a similar authorization to another individual, organization, or institution for the same or a similar purpose.

(d) All uses of the 4–H Club Name or Emblem shall be consistent with the educational purposes, character-building objectives, and dignity of the 4–H program and the 4–H Club Name or Emblem shall be given a position of prominence. It is not permissible to superimpose any letter, design, or object on the 4–H Club Emblem, or to materially alter its intended shape.

(e) Specific authorization is not required to use the 4–H Club Name or Emblem in media such as newspapers, periodicals, and radio and television programs when such use is primarily for educational or informational purposes. Likewise, specific authorization is not required to use the 4–H Club Name or Emblem in those exhibits, displays, etc., which are designed primarily to pay tribute to or salute the 4–H program and are in keeping with the policies enunciated here.

(f) Authorization must be obtained for use of the 4–H Club Name or Emblem by other than representatives of the Cooperative Extension Service and the National 4–H Council in connection with contests and awards; books, booklets, charts, posters, and similar printed materials; all calendars regardless of origin or use; theatrical and nontheatrical motion pictures; slides, slide films, and other visual and audio-visual materials; supplies (whether to be sold or provided without charge); and titles of persons.

(g) Any authorization or permission for use of the 4–H Club Name and Emblem may be revoked at any time after written notice.

§ 8.7 Continued use.

(a) The Cooperative Extension Service, local 4–H Clubs and groups, and other officially affiliated 4–H organizations recognized by the Secretary of Agriculture and the Cooperative Extension Service, except as provided in paragraph (b) of this section, are authorized to use the 4–H Club Name or Emblem:

(1) For their own educational or informational purposes according to these regulations;

(2) On materials which are originated, requested, purchased, distributed, or sold by them for use in their respective geographical areas of responsibilities;

(3) Except as specifically authorized by the above-named organizations for use within the respective geographic boundaries specified (club or group, county, area, State) and as provided for in paragraph (4) of this section, manufacturers, wholesalers, jobbers, retailers, purchasers or others cannot manufacture, sell, or distribute materials bearing the 4–H Club Name or Emblem.

(4) Any proposal for distribution on an interstate, regional, or nationwide basis of materials, supplies, and similar items bearing the 4–H Club Name or Emblem which originates with an organization or individual not affiliated with the Cooperative Extension Service shall be brought to the attention of the Director of Science and Education or the Administrator for Extension, Science and Education Administration, United States Department of Agriculture, for approval.

(b) The National 4–H Council is granted authority to use the 4–H Club Name or Emblem according to these regulations:

(1) The National 4–H Council shall be the official primary source of supplies, paraphernalia, and similar items bearing the name and emblem of 4–H.

(2) The National 4–H Council is delegated the responsibility for arranging and servicing the 4–H Calendar Program. Guidelines and procedures for authorizing the use of the 4–H Club Name and Emblem on any calendar proposed for sale or that involves commercial advertising shall be established and maintained jointly by the National 4–H Council and the Science and Education Administration—Extension, United States Department of Agriculture. All other calendars shall be authorized according to paragraph (a) of this section.

§ 8.8 Use by public informational services.

(a) In any advertisement, display, exhibit, visual and audio-visual material, news release, publication, radio and television program devoted in whole or in part to 4–H, the 4–H message or salute must be distinctly set apart from any commercial product message or reference.

(b) Advertisements, news releases, publications, visuals and audio-visuals, or displays in any form must not include actual or implied testimonials or endorsements of business firms, commercial products or services, either by 4–H Clubs, other 4–H organizations and affiliated groups, 4–H youth participants, volunteer 4–H leaders, the Cooperative Extension Service, USDA, or by any employees associated with any of the foregoing. Statements that a product is used or preferred to the exclusion of similar products are not permitted.

(c) The granting of an authorization to a non-Extension affiliated agency, organization or individual, for production of films, visual and audio-visual materials, books, publications, etc., is contingent upon approval of the initial proposal and subject to review of the script of the visual or audio-visual or draft of the publication when the draft is in the final working form.

§ 8.9 Use in 4–H fund raising.

(a) Fund-raising programs using the 4–H Club Name or Emblem or involving 4–H participants and leaders, may be carried out for specific educational purposes. Such fund-raising programs must have the approval of the appropriate Cooperative Extension office, as follows:

(1) Approval of the County Extension Office if the fund-raising program is confined to a county.

(2) Approval of the State Extension Office if the fund-raising program is multi-county or Statewide.

(3) Approval of the Director of Science and Education or his designee if the fund-raising program is multi-State or Nationawide.

(b) 4–H fund-raising programs may be carried out so long as the products and services sold do not bear the 4–H Club Name or Emblem and are not themselves labeled as 4–H products or 4–H services.

This proposal has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations." A determination has been made that this action should not be classified as significant under those criteria. A Draft Impact Analysis has been prepared and is available from Dr. Eugene Williams, Deputy Administrator, 4–H—Youth Programs, Science and Education Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

Done at Washington, D.C., this 20th day of October 1980.

Bob Bergland,

Secretary of Agriculture.

[FR Doc. 80-33186 Filed 10-23-80; 8:45 am]

BILLING CODE 3410-01-M

Food and Nutrition Service

7 CFR Parts 210, 215, 220, 230

Suspected Fraud and Criminal Acts in School Nutrition Programs

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends School Nutrition program regulations to require State agencies to inform the Food and Nutrition Service Regional Office (FNSRO) when they become aware of suspected fraud or other criminal acts in the School Nutrition Programs which would result in the misuse or loss of $1000 or more of Federal funds. FNSRO will refer the information to the USDA Office of the Inspector General (OIG) for possible further review.

DATES: Comments must be postmarked on or before December 23, 1980.

ADDRESSES: Comments may be mailed to Stanley C. Garnett, Branch Chief, Room 4122 Auditors Building, Policy and Program Development Branch, School Programs Division, USDA–FNS, Washington, D.C. 20250. Comments may be inspected at Room 4300–B Auditors Building, Policy and Program Development Branch, School Programs Division, 201 14th Street SW., USDA–FNS, Washington, D.C. 20250 during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Stanley C. Garnett, School Programs Division, Food and Nutrition Service, USDA, Washington, D.C. 20250, (202) 447–8130. The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above named individual.

SUPPLEMENTARY INFORMATION:

Administrative Procedure

This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant."

Background

Pub. L. 95–627, enacted November 10, 1978, amended Section 12 of the National School Lunch Act to provide criminal penalties for fraud, theft and other acts in the Child Nutrition Programs. This regulation will add the requirement that State agencies report suspected fraud and other criminal acts to the Food and Nutrition Service Regional Office. Specifically, these regulations will require State agencies to inform a Food and Nutrition Service Regional Office of all suspected fraud or other criminal acts which would result in the misuse or loss of $1000 or more of Federal funds.

The Department feels that this proposed rule will: (1) Improve monitoring of States' anti-fraud efforts; (2) ensure that cases of potential importance and likely to lead to criminal prosecution are referred to OIG; (3) aid in the prevention and detection of individual fraud and other criminal acts; and (4) ensure that all cases are handled in a reasonable and timely manner.

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

Accordingly, Part 210 is proposed to be amended as follows:

Section 210.14(h) is amended by adding the following:

§ 210.14 Investigations.

* * * * *

(h) * * * Each State agency shall inform the appropriate Food and Nutrition Service Regional Office (FNSRO) of any suspected fraud or other criminal acts in the School Lunch Programs which would result in the loss or misuse of $1000 or more of Federal funds for referral to OIG for possible further review.

* * * * *

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

Accordingly, Part 215 is proposed to be amended as follows:

Section 215.11(e) is amended by adding the following:

§ 215.11 Investigations.

* * * * *

(e) * * * Each State agency shall inform the appropriate Food and Nutrition Service Regional Office (FNSRO) of any suspected fraud or other criminal act in the Special Milk Programs which would result in the loss or misuse of $1000 or more of Federal funds for referral to OIG for possible further review.

* * * * *

PART 220—SCHOOL BREAKFAST PROGRAM

Accordingly, Part 220 is proposed to be amended as follows:

Section 220.13(c) is amended by adding the following:

§ 220.13 Investigations.

* * * * *

(c) * * * Each State agency shall inform the appropriate Food and Nutrition Service Regional Office (FNSRO) of any suspected fraud or criminal acts in the School Breakfast Program which would result in the loss or misuse of $1000 or more of Federal funds for referral to OIG for possible further review.

* * * * *

PART 230—FOOD SERVICE EQUIPMENT ASSISTANCE PROGRAM

Accordingly, Part 230 is proposed to be amended as follows:

Section 230.12(c) is amended by adding the following:

§ 230.12 Investigations.

* * * * *

(c) * * * Each State agency shall inform the appropriate Food and Nutrition Service Regional Office (FNSRO) of any suspected fraud or criminal acts in the Food Service Equipment Assistance Program which would result in the loss or misuse of $1000 or more of Federal funds for referral to OIG for possible further review.

* * * * *

(Catalog of Federal Domestic Assistance No. 10.555)

Authority: Section 10(a) Pub. L. 95–627, 92 Stat. 3603, (42 U.S.C. 1771)

Dated: October 17, 1980.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 80-33299 Filed 10-23-80; 8:45 am]

BILLING CODE 3410-30-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Domestic Licensing of Production and Utilization Facilities; Interim Requirements Related to Hydrogen Control and Certain Degraded Core Considerations

Correction

In FR Doc. 80–30595, appearing at page 65466 in the issue for Thursday, October 2, 1980, make the following changes:

1. On page 65467:

a. The eighth line in column one should read, "The 1.0 percent specified in the ECCs".

b. The fifth line of the first complete paragraph in column one should read, "Control of Combustible Gas".

c. The third line of the first complete paragraph in column two should read, "that: (1) all operating Mark I BWRs be".

d. The first line in column three should read, "accident scenarios. It neglects the".

e. The fourteenth line in column three should read, "such as from the stainless steel steam".

2. On page 65468:

a. The sixth line of the last (incomplete) paragraph in column one should read, "hookup at TMI–2 used the 36-inch".

b. The boldface heading in column two should read, "Hydrogen Recombiner Capability".

3. On page 65469:

a. The sixth line of the second complete paragraph in column two should read, "high levels of radioactivity and to"

b. The seventh line of the third complete paragraph in column two should read, "in order to evaluate the potential dose to".

c. The seventh line of the last (incomplete) paragraph in column two should read, "noble gases to diffuse to the atmosphere".

d. The fifth line of the last complete paragraph in column three should read, "conditions and can influence their".

4. On page 65471, the sixth line in column one should read, "greater than 10⁶R/hr and consist of at".

5. On page 65472, in column three, the eighth line of § 50.44(c)(3)(iv) should read, "control requirements of § 50.44. The".

6. On page 65473, footnote two should read, "[2] or 30 days after the effective date of the rule, whichever is later."

7. On page 65474, the seventeenth line of the first complete paragraph should read, "prevent hydrogen burning—where such".

BILLING CODE 1505-01-M

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10 CFR Part 50

Domestic Licensing of Production and Utilization Facilities; Consideration of Degraded or Melted Cores in Safety Regulation

Correction

In FR Doc. 80–30596, appearing at page 65474 in the issue for Thursday, October 2, 1980, make the following changes:

1. On page 65475, the last sentence of the second complete paragraph in the second column should read, "Instead, these items simply receive what attention may be dictated by routine industrial codes and by desires to enhance plant availability.".

2. On page 65476, the introductory text and numbered paragraphs 1. through 6. under the heading "Specific Considerations" should read:

"Advice and recommendations on a proposed rule reflecting the foregoing feature and on any other points considered pertinent are invited from all interested persons. Comment is also invited on the extent to which any additional measures should be backfitted. Comments and supporting reasons are particularly requested on the following questions:

"1. If loss of core cooling and resultant core damage occur in a nuclear power plant, there are certain predictable consequences. Can these consequences be mitigated substantially, and the risk of severe public health danger thereby reduced substantially, by practical design improvements? If not, why not, or, if so, what design improvements can be made and at what estimated cost? How would your recommendations affect other safety considerations?

"2. The Three Mile Island accident was terminated after the core was damaged severely but before substantial melting occurred, a condition beyond the current design-basis-accident events considered in the safety analysis. Should the NRC require that events of this type be considered in future safety analyses? If not, why not, or, if so, what criteria would you impose to judge design acceptability?

"3. Although the consequences of core-melt accidents have been considered to some extent in assessing nuclear power plant safety, such as in requirements for siting, emergency response plans, and certain engineered safety features, explicit consideration of the capability of current designs and casualty procedures to cope with core-melt accidents has not been a part of safety analysis scrutiny by the NRC. Should core-melt accidents be specifically evaluated in safety analysis reviews, and, if so, to what extent, or, if not, why not?

"4. Recognizing that there can never be complete assurance that only analyzed events as delineated in a Safety Analysis Report will occur, what additional analyses, procedures, or design features would you propose to mitigate fuel damage accidents in the range from extensive clad perforation without oxidation, through a few percent clad oxidation, through extensive oxidation to full core meltdown? Would you recommend different and perhaps overlapping design features depending on the severity of core damage to be coped with?

"5. To what extent should reactor design and reactor safety analysis account for engineered safety features not working at all, not working well, or being defeated by the operator, resulting in severe core damage? What limits should be placed on multiple failure and operator error assumptions made in safety analyses and how should probabilistic risk assessment be used to determine these limits?

"6. Should the NRC require construction, at each nuclear reactor plant site, of a new structure for controlled filtered venting of the reactor containment structure? Would you limit the function of such a new structure to filtering particulates, elemental iodine, and inorganic iodine or would you include adsorption bed systems using charcoal or other processes so that organic iodine and noble gases could also be trapped? What quantities and release rates of gases and particulates would you design such a structure to handle and at what removal efficiency and cost? Do the potential reductions in risk expected from such a structure offset potential increases in risk that may materialize from incidents such as inadvertent operation or the concentration of hydrogen in the filtering apparatus?"

BILLING CODE 1505-01-M

FEDERAL ELECTION COMMISSION

11 CFR Part 112

[Notice 1980–30]

Advisory Opinion Requests, Barring of Withdrawals

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission seeks comments on two alternatives of a proposed regulation to bar the withdrawal of advisory opinion requests by their requestors since the present regulations are silent with respect to any procedure for withdrawal of a request after it is received. Alternative 1 would bar a withdrawal after the date the request has been "sunshined" for the Commission's consideration of an opinion response to the request. Alternative 2 would bar such withdrawals after expiration of 20 days from the date the request was made public at the Commission.

DATES: Comments must be received on or before November 24, 1980.

ADDRESSES: Address comments to Office of General Counsel, Federal Election Commission, 1325 K Street, NW, Washington, D.C. 20463.

FOR FURTHER INFORMATION CONTACT: N. Bradley Litchfield, Assistant General Counsel, 1325 K Street, NW, Washington, D.C. 20463, (202) 523–4039.

SUPPLEMENTARY INFORMATION: The current regulations at 11 CFR 112.1 concern the procedure for properly requesting advisory opinions but are silent with respect to any procedure for withdrawal of a request after it is received. Alternative 1 of the proposed regulation would permit written withdrawal of an advisory opinion request (by the person who made the request) up until the time it is scheduled, by notice delivered to the **Federal Register**, for discussion by the Commission during a public meeting. Any attempted withdrawal after that time would be nugatory and would not foreclose Commission consideration and issuance of an advisory opinion. However, the Commission could by a 4 vote majority allow withdrawal of the AOR.

Alternative 2 would permit withdrawal through the 20th calendar day after a request was made public at the Commission. Under alternative 2, as in alternative 1, an attempted withdrawal after the stated time period would be ineffective. However, the Commission could by a 4 vote majority allow withdrawal of an AOR at any time. The Commission is considering this proposed regulation to obviate the possible abuse of the advisory opinion process by obtaining the views of the Office of General Counsel on a particular legal issue, which are presented in memoranda circulated in advance of the Commission deliberation, and then withdrawing the advisory opinion request before the Commission's scheduled meeting date for consideration of the OGC proposal. The Congressional view of the advisory opinion process is that it "is central to the Commission's responsibility to clarify the Act." H.R. Report No. 96–422, 96th Cong., 1st Sess, page 20. In addition, the fact that persons other than the requestor of an advisory opinion may rely on an opinion if their specific transactions or activities are "indistinguishable in all. . . material aspects," 2 U.S.C. 437f(c), from those presented in an issued advisory opinion, means that a clear public interest arises when an advisory opinion request is submitted. That interest may be thwarted when guidance anticipated to be contained in the opinion is not given because the advisory opinion request is withdrawn after staff work is nearly concluded and the Commission is scheduled to deliberate the issuance of an opinion. The Commission wishes to assure that the advisory opinion process will serve the prescribed statutory function and accordingly invites comments on the alternative proposals to limit withdrawals of advisory opinion requests.

§ 112.1 [Amended]

11 CFR 112.1 is amended by adding subsection (g) as follows:

* * * * *

Alternative 1

(g) An advisory opinion request may be withdrawn in writing by the requesting person at any time before notice is received by the **Federal Register** pursuant to the Government in the Sunshine Act, 5 U.S.C. 552b(g) and 11 CFR 3.5, that the Commission intends to consider a response to the request on a specified meeting date. Advisory opinion requests may not be withdrawn after the described notice is received by the **Federal Register** unless the Commission, by the affirmative vote of four members, agrees to such withdrawal.

Alternative 2

(g) An advisory opinion request may be withdrawn in writing by the requesting person at any time within 20 calender days after the request was made public at the Commission except that when the 20th calendar day falls on a Saturday, Sunday, or Federal holiday the period is extended to the close of the next business day. Advisory opinion requests may not be withdrawn after expiration of the described 20 day period unless the Commission, by the affirmative vote of four members, agrees to such withdrawal.

Dated: October 20, 1980.

Max L. Friedersdorf,

Chairman, Federal Election Commission.

[FR Doc. 80–33233 Filed 10–23–80; 8:45 am]

BILLING CODE 6715–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 1001

Ocean Thermal Energy Conversion Regulations

AGENCY: Office of Ocean Minerals and Energy, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of availability of funds for public participation in rulemaking.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is preparing licensing and other regulations for ocean thermal energy conversion (OTEC) facilities and plantships, under the authority of the Ocean Thermal Energy Conversion Act of 1980 (Pub. L. 96–320, 42 U.S.C. 9101 *et seq.*; "the Act"). These proposed regulations will appear at a future date. In order to promote a full and fair determination of the issues involved in this rulemaking, NOAA plans to make available $5,000 to compensate participants in the rulemaking who meet the eligibility criteria of NOAA's regulations for financial compensation of participants in administrative proceedings (see 15 CFR Part 904).

DATES: 1. Applications for financial compensation for participation in NOAA's rulemaking to implement the Act must be received by NOAA on or before November 24, 1980.

2. A scoping meeting concerning the environmental impact statement (EIS) being prepared on the rulemaking will be held Thursday, October 30, 1980, from 9 a.m. to 12 noon, in Room 4830 of the Department of Commerce Building, located on 14th Street between E Streets and Constitution Avenue, N.W., Washington, D.C. (For further details concerning the scoping meeting and the EIS, see 45 FR 63543, September 25, 1980.)

ADDRESS: Applications for financial compensation must be sent to: Office of General Counsel, NOAA, Department of Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Brooks J. Bowen, Office of General Counsel, NOAA, Page Building 1, Room 270, 2001 Wisconsin Avenue NW., Washington, D.C. 20235, Telephone: (202) 254–7512.

SUPPLEMENTARY INFORMATION:

A. Issues Involved in the Rulemaking

NOAA's rulemaking to implement the Act will address the construction, location, ownership, and operation of:

(1) OTEC facilities connected to the U.S. by pipeline or cable;

(2) OTEC facilities located in the territorial sea of the U.S.;

(3) OTEC plantships documented under the laws of the U.S.; and

(4) OTEC plantships which are constructed, owned or operated by citizens of the U.S.

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In developing these regulations, NOAA will address a wide variety of issues, including:

(1) the content of license applications;

(2) procedures and criteria for licensing OTEC facilities and plantships;

(3) appropriate conditions to be imposed on the license, including but not limited to environmental safeguards;

(4) prevention of interference with other legitimate users of the ocean;

(5) procedures and criteria for the transfer, renewal, suspension, revocation, and termination of licenses; and

(6) enforcement of the Act.

B. Available Fund

A total fund of $5,000 is available to compensate eligible applicants. This fund may be distributed among one or more applicants, or, at the discretion of the Administrator, not distributed at all.

C. Eligible Persons

In accordance with the criteria of 15 CFR 904.3, persons who represent an interest the presentation of which can reasonably be expected to contribute substantially to a fair determination of the issues described above may be eligible for compensation from these funds. In determining eligibility and the amount of compensation, the Administrator will take into account:

(1) Whether the interest will be adequately represented otherwise,

(2) The need to encourage participation by segments of the public who may have little economic incentive to participate;

(3) The importance of the representation to a fair balance of interests;

(4) The number and complexity of the issues presented;

(5) The importance of public participation; and

(6) The applicant's resources available for participation.

D. Eligible Costs

The Administrator may compensate eligible persons for some or all of the reasonable costs incurred in participating, including:

(1) Salaries for participants or employees of participants;

(2) Fees for consultants, experts, contractual services, and attorneys;

(3) Travel and travel related costs such as lodging, meals, tipping, telephone calls, etc.;

(4) Document reproduction, postage, etc.

E. Procedures for Applying

Applications must be filed with the NOAA Office of General Counsel (see "ADDRESS" section of this Notice), no later than November 24, 1980, and must contain the information required by, and be filed in accordance with, NOAA's financial participation regulations, 15 CFR Part 904 (43 FR 17806; April 26, 1978).

Dated: October 20, 1980.

M. P. Snidero,

Deputy Assistant Administrator for Monagement and Budget.

[FR Doc. 80-33154 Filed 10-23-80; 8:45 am]

BILLING CODE 3510-12-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Ch. 1

[Docket No. RM80-66]

Affirmative Action in Accordance With Section 604 of the Outer Continental Shelf Lands Act Amendment of 1978; Notice of Inquiry; Extension of Time for Comments

October 21, 1980

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Extension of Time for Comments.

SUMMARY: On July 11, 1980, the Federal Energy Regulatory Commission issued a Notice of Inquiry involving Affirmative Action in Accordance with Section 604 of the Outer Continental Shelf Lands Act of 1978 (45 FR 49102, July 23, 1980). The Commission's notice prescribed a comment period ending August 18, 1980.

DATE: This comment period is hereby extended to November 15, 1980.

FOR FURTHER INFORMATION CONTACT:

Kenneth F. Plumb, Secretary, Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357-8400.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33290 Filed 10-23-80; 8:45 am]

BILLING CODE 6450-85-M

18 CFR Part 141

[Docket No. RM80-55]

Revision to Annual Report for Electric Utilities, Licensees and Others (Class A and Class B); Form No. 1, Extension of Comment Period

Issued: October 17, 1980.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Extension of Comment Period.

SUMMARY: This Notice further extends the written comment period until November 20, 1980 for the Notice of Proposed Rulemaking (issued July 10, 1980) to revise Form No. 1, Annual Report for Electric Utilities, Licensees and Others (published July 16, 1980; 45 FR 47705).

ADDRESS: Comments may be sent to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Cathy Ciaglo, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Room 3329, Washington, D.C. 20426, (202) 357-8318.

Joseph Neubeiser, Office of the Executive Director, Federal Energy Regulatory Commssion, 825 North Capitol Street, N.E., Room 3311, Washington, D.C. 20426, (202) 357-8210.

On July 10, 1980, the Federal Energy Regulatory Commission issued a Notice of Proposed Rulemaking in this docket. The comment period closed September 8, 1980, but in response to numerous requests, it was extended to October 20, 1980.

In the extension notice the Commission invited interested parties to arrange informal meetings with Commission staff to discuss the subject rulemaking. During those meetings, the Commission requested additional written comments with reference to specific issues addressed in the rulemaking. Certain persons have requested another extension to make their submissions.

The Commission hereby extends the comment period until 5:00 p.m., E.S.T., Thursday, November 20, 1980. Comments should be sent to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20246.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33289 Filed 10-23-80; 8:45 am]

BILLING CODE 6450-85-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 148

Personal Declarations and Exemptions

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs regulations to provide that a crewmember shall not be considered a returning resident qualifying for the personal exemptions from the payment of duties and taxes allowed under the Tariff Schedules of the United States, unless the crewmember permanently leaves the vessel, vehicle, or aircraft in which he arrived from a foreign port, without the intention of resuming employment on the same or any other carrier engaged in international traffic. The change is proposed to ensure uniform treatment of crewmembers nationwide and to conform the regulations with a headnote of the Tariff Schedules of the United States.

DATE: Comments must be received on or before November 23, 1980.

ADDRESS: Comments may be addressed to the Commissioner of Customs, Attention: Regulations and Research Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

James F. Bartley, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

SUPPLEMENTARY INFORMATION:

Background

The personal exemptions from the payment of duty and taxes imposed on imported merchandise to which residents and nonresidents of the United States are entitled are set forth in Schedule 8, Part 2A, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202). Headnote 3 of Schedule 8, Part 2A, TSUS, provides that a person arriving on duty as an employee of a vessel, vehicle, or aircraft engaged in international traffic, or arriving from a trip during which he was so employed, shall not be entitled to any of the personal exemptions other than those in item 814.00, TSUS, relating to articles for bona fide personal use which will be taken out of the United States, unless he is permanently leaving such employment without the intention of resuming it on the same or another carrier.

Under § 148.65(a), Customs Regulations (19 CFR 148.65(a)), a crewmember may qualify as a returning resident and be entitled to the exemptions allowed under Schedule 8, Part 2A, TSUS, in two situations. Section 148.65(a)(1) reflects the provisions of headnote 3, Schedule 8, Part 2A, TSUS, and provides that a crewmember may qualify as a returning resident if he permanently leaves the carrier without the intention of resuming his employment on the same or another carrier engaged in international traffic. Under § 148.65(a)(2), a crewmember may also qualify as a returning resident if he remains on or transfers to a vessel which is to proceed to another port of the United States in a movement in which entry of the vessel will not be required.

Section 148.65(a)(2) apparently conflicts with the criteria set forth in headnote 3, of Schedule 8, Part 2A, TSUS, and Customs believes that the headnote must take precedence over the Customs Regulations. To resolve this discrepancy and to ensure uniform treatment of crewmembers, it is proposed to amend § 148.65(a) by including subparagraph (1) in the text of paragraph (a) and deleting subparagraph (2). As a conforming change, the reference to paragraphs (1) and (2) of § 148.65(a) would be deleted from § 148.65(b).

Proposed Amendment

It is proposed to amend § 148.65, Customs Regulations (19 CFR 148.65), to read as follows:

§ 148.65 Exemption for resident crewmembers.

(a) *Status as returning resident.* A crewmember arriving in a vessel, vehicle, or aircraft from a foreign port who is a resident of the United States shall be considered a returning resident qualifying for the exemptions allowed under Schedule 8, Part 2A, Tariff Schedules of the United States (19 U.S.C. 1202), and Subpart D of this part if he permanently leaves the carrier without the intention of resuming his employment on the same or any other carrier that is engaged in international traffic.

(b) *Statement of declaration.* A resident crewmember who claims that articles declared by him are entitled to be passed free of duty and tax under the returning resident's exemption, shall include a legible statement on the declaration, Customs Form 5129, of the basis for his claim for entitlement to the resident's exemption.

Authority

These amendments are proposed under the authority of R.S. 251, as amended, sections 498, 624, 46 Stat. 728, as amended, 759, 5 U.S.C. 301 (19 U.S.C. 66, 1202, General Headnote 11, Tariff Schedules of the United States, 1498, 1624).

Comments

Before adopting this proposal, consideration will be given to any written comments, preferably in triplicate, submitted timely to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.8(b), Customs Regulations (19 CFR 103.8(b)), during regular business hours at the Regulations and Research Division, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

Inapplicability of Executive Order 12044

This document is not subject to the Departmental directive implementing Executive Order 12044, "Improving Government Regulations," because the regulation was in process before May 22, 1978, the effective date of the directive.

Drafting Information

The principal author of this document was Laurie Strassberg Amster, Regulations and Research Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Approved: September 19, 1980.

William T. Archey,

For Commissioner of Customs.

Richard J. Davis,

Assistant Secretary of the Treasury.

[FR Doc. 80-33213 Filed 10-23-80; 8:45 am]

BILLING CODE 4810-22-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 80F-0248]

Use of Salts of Various Fatty Acids as Stabilizers in Polymers; Withdrawal of Proposal and Termination of Rulemaking Proceeding

AGENCY: Food and Drug Administration.

ACTION: Withdrawal of proposal.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing a 1973 proposal to amend the food additive regulations to provide for the safe use of a group of salts of fatty acids as components of articles intended for use in contact with food, and to prescribe specifications for all fatty acids and salts of fatty acids permitted in food-contact use. The issue addressed by the proposal is now seen as only one part of the larger issue of dioxin in food, which FDA is continuing to investigate.

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FOR FURTHER INFORMATION CONTACT:
Richard C. Kraska, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: The agency is withdrawing a proposal published in the **Federal Register** of May 4, 1973 (38 FR 11096), to amend the food additives regulations as follows:

1. In § 121.2566 (Recodified § 178.2010), *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010), by adding to the list of substances in paragraph (b) a group of salts of fatty acids.

2. In § 121.2566 (Recodified § 178.2010), by deleting from paragraph (b) these salts of fatty acids already listed which would be incorporated into the group listing.

3. By adding a new section to prescribe purity specifications for all fatty acids and salts of fatty acids permitted for use in the manufacture of articles that contact food.

The proposal was issued in response to a food additive petition (FAP OB2549) submitted by Monsanto Co., 1101 17th St. N.W., Washington, DC 20036, proposing the addition of various salts of fatty acids to § 121.2566 (Recodified § 178.2010). Notice of filing of the petition was published in the **Federal Register** of June 18, 1970 (35 FR 10050). Monsanto has since requested that their petition be withdrawn. Notice of the withdrawal is published elsewhere in this issue of the **Federal Register**.

The 1973 proposal also reflected FDA's concern about the possible occurrence of impurities in fatty acids and salts of fatty acids authorized for use in articles that contact food. It was proposed that the purity of fatty acids and salts of fatty acids used in such articles be further defined in a new section of the food additive regulations.

FDA's principal concern in proposing these purity specifications was the possibility that fatty acids might contain chick edema factor. Chick edema factor has been chemically identified as consisting of several dioxins, which are extremely toxic chlorinated organic compounds.

Although FDA is today quite concerned about the possibility of dioxin contamination of food, possible chick edema factor in fatty acid-based compounds used in manufacturing food-contact polymers is a relatively small, indistinct element of that concern. Recent studies suggest that dioxins may be ubiquitous environmental contaminants from a wide variety of sources. The agency is actively engaged in several research programs involving dioxins, and hopes soon to be able to better ascertain whether dioxin contamination of food poses any human health hazard. At present, however, little data exist about the prevalence of dioxins in food.

The existence of a potential public health hazard from the uses of the substances covered by the 1973 proposal has not been shown. Regulation of dioxins in those uses is thus not warranted at this time.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 409, 701(a), 52 Stat. 1055, 72 Stat. 1785–1788 as amended (21 U.S.C. 348, 371(a))) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), the proposal published in the **Federal Register** of May 4, 1973 (38 FR 11096) to amend the food additive regulations with respect to the food additive use of fatty acids and salts of fatty acids in articles to contact food is withdrawn, and the rulemaking proceeding begun by that proposal is terminated.

Dated: October 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–33024 Filed 10–23–80; 8:45 am]

BILLING CODE 4110–03–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

Reporting Requirements for Certain Grantor Trusts

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document provides proposed regulations modifying the current information and reporting requirements for certain grantor trusts. The grantor-trustee of trusts covered by these regulations will no longer be required to file Form 1041.

DATE: Written comments and requests for a public hearing must be delivered or mailed by December 23, 1980. These regulations are proposed to be effective for any Form 1040 or Form 1041 required to be filed for any taxable year beginning after [The date of publication of this document as a Treasury decision].

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T, [LR–55–79] Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:
Stephen J. Small of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC 20224, Attention: CC:LR:T, 202–566–3287, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the existing regulations under sections 1.671–4 and 1.6012–3 of the Income Tax Regulations and section 301.6109–1 of the Regulations on Procedure and Administration. These amendments are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (Code) (68A Stat. 917; 26 U.S.C. 7805).

Additional Information

Under section 1.671–4 of the Income Tax Regulations, the Internal Revenue Service requires that the trustee of certain grantor trusts file Form 1041 primarily as an information return and attach a statement showing items of income, deduction, and credit that are treated as owned by the grantor. The trusts are required to furnish their employer identification numbers to payers of income and the payers, in turn, report the trusts as recipients of income on information returns.

The Treasury Department has concluded, however, that in the case of a revocable trust where an individual is both grantor and trustee and where all items of income, deduction, and credit are treated as owned by the grantor under subchapter J of the Code, it should not be necessary for the individual to file a Form 1041 for the sole purpose of attaching thereto a statement showing income which should be reported on his or her individual return. This information can be more easily obtained by requiring the individual to report such items on his or her individual return setting forth the nature and source of the income. New section 1.671–4(b) incorporates this rule.

This change is accompanied by conforming amendments to section 1.6012–3 of the Income Tax Regulations, relating to the filing requirements for fiduciaries, and section 301.6109 of the Regulations on Procedure and Administration, relating to identifying numbers. These amendments eliminate the requirement that a grantor trust referred to in new section 1.671–4(b) obtain an employer identification number. The amendments instead require the owner of such a trust to furnish his or her social security number, or, where applicable, his or her employer identification number, to payers of income. Similarly, payers are required to report income as if paid to the grantor, not the trust. These changes should eliminate the filing of returns in certain instances in which the trust income is entirely taxed to the grantor.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (perfersably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of this regulation is Stephen J. Small of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of amendments to the regulations:

Acordingly, 26 CFR Parts 1 and 301 are amended as follows:

Paragraph 1. Section 1.671–4 is amended as follows:

a. Section 1.671–4 is redesignated § 1.671–4 paragraph (a).

b. Section 1.671–4(a), as redesignated by this document, is revised to read as set forth below.

c. A new paragraph (b) is inserted to read as set forth below.

d. A new paragraph (c) is inserted to read as set forth below.

§ 1.671–4. Method of reporting.

(a) *Portion of trust income taxed to grantor.* Except as provided in paragraph (b) of this section, items of income, deduction, and credit attributable to any portion of a trust which, under the provisions of subpart E (section 671 and following), part I, subchapter J, chapter 1 of the Code, are treated as owned by the grantor or another person should not be reported by the trust on Form 1041, but should be shown on a separate statement to be attached to that form.

(b) *Trust income entirely taxed to grantor.* In the case of a trust where the same individual (other than an estate or trust) is both grantor and trustee and where that individual is treated as owner of all of the assets held by the trust by reason of a power of revocation under section 676, a Form 1041 should not be filed. Instead, all items of income, deduction, and credit from the trust should be reported on the individual's Form 1040 in accordance with its accompanying instructions. This paragraph (b) shall not apply to a trust if the situs of the trust or any of the assets of the trust are not in the United States. For provisions dealing with taxpayer identifying numbers, see § 301.6109–1 (Regulations on Procedure and Administration).

(c) Effective date. Paragraph (b) of this section is effective for any Form 1040 or Form 1041 required to be filed for any taxable year beginning after [the date of publication of this Treasury decision].

Par. 2. Section 1.6012–3 is amended by inserting a new paragraph (a)(9) as set forth below.

§ 1.6012–3 Returns by fiduciaries.

(a) *For estates and trusts* * * *

(9) *Certain grantor trusts.* A grantor who is trustee of a grantor trust to which § 1.671–4(b) applies should not file a Form 1041 for the trust. Instead, all items of income, deduction, and credit from the trust should be reported on the grantor's Form 1040 in accordance with its accompanying instructions. For provisions dealing with taxpayers identifying numbers see § 301.6109–1 (Regulations on Procedure and Administration).

* * * * *

Par. 3. Section 301.6109–1 is amended as follows:

a. Paragraph 301.6109–1(a) is redesignated § 301.6109–1(a)(1).

b. Section 301.6109–1(a)(1) as redesignated by this document is amended by inserting the paragraph heading "(1) *Social security numbers and employer identification numbers.*" immediately before the first sentence.

c. A new paragraph (a)(2) is inserted to read as set forth below.

§ 301.6109–1 Identifying numbers.

(a) *In general*—(1) *Social security numbers and employer identification numbers.* There are two types of taxpayer identifying numbers: social security numbers and employer identification numbers. Social security numbers take the form 000–00–0000, while employer identification numbers take the form 00–0000000. Social security numbers identify individual persons and estates of decedents, while employer identification numbers identify corporations, partnerships, nonprofit associations, trusts, and similar nonindividual persons. Both types of taxpayer identifying numbers are used by individuals who are employers or who are engaged in trade or business as sole proprietors, as required by returns, statements or other documents and their related instructions. Such documents often require an individual's own social security number in connection with his individual taxes, and his employer identification number in connection with his business taxes.

(2) *Certain grantor trusts.* A grantor trust described in § 1.671–4(b) shall not obtain an employer identification number until such time as the trust is no longer described in § 1.671–4(b). Instead, the grantor of such a trust must furnish his or her social security number (or, where applicable, his or her employer identification number) to payers of income, and payees must report income as if paid to the grantor, not the trust.

Jerome Kurtz,

Commissioner of Internol Revenue.

[FR Doc. 80–33273 Filed 10–2–80; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Wage and Hour Division, Employment Standards Administration

29 CFR Part 4

Service Contract Act; Labor Standards for Federal Service Contracts; Further Extension of Comment Period

AGENCY: Wage and Hour Division, Labor.

ACTION: Proposed rule; further extension of comment period.

SUMMARY: This document further extends the period for filing comments regarding a proposed rule intended to revise Part 4 of Title 29 of the Code of Federal Regulations (29 CFR Part 4) which concerns Labor Standards for Federal Service Contracts. This action is taken to permit additional comment from interested persons.

DATE: Comments must be received on or before November 24, 1980.

ADDRESS: Comments should be sent to Mrs. Dorothy P. Come, Assistant Administrator, Wage and Hour Division, Employment Standards Administration, Frances Perkins Department of Labor Building, Room S–3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT:
Dorothy P. Come, Assistant Administrator, Wage and Hour Division, Employment Standards Administration, Frances Perkins Department of Labor Building, Room S–3502, 200 Constitution

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Avenue, N.W., Washington, D.C. 20210, Telephone: 202–523–8333.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 28, 1979 (44 FR 77036) the Department of Labor published a proposed rule intended to revise 29 CFR Part 4 which concerns Labor Standards for Federal Service Contracts. Interested persons were requested to submit comments on or before February 26, 1980. Extensions of the period for comment, until October 24, 1980, have previously been granted.

Because of the continuing interest in this proposal, the agency believes that it is desirable to grant a further extension of the comment period for all interested persons. Therefore, the comment period for the proposed rule, revising 29 CFR Part 4 (Labor Standards for Federal Service Contracts), is extended to November 24, 1980.

Signed at Washington, D.C., this 22d day of October 1980.

Ray Marshall,

Secretary of Labor.

[FR Doc. 80-33444 Filed 10-23-80; 9:46 am]

BILLING CODE 4510-27-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 886

Abandoned Mine Lands Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Cancellation of scheduled public hearing on proposed rules.

SUMMARY: Notice of proposed rules for filing of financial and performance reports pursuant to State reclamation grants was published September 23, 1980 (45 FR 63002–63004). The notice scheduled a public hearing on the proposed rules for November 12, 1980, to be held at the Department of the Interior Auditorium at 9:00 a.m. The notice also included provisions for cancelling the hearing unless a significant number of requests were received by October 13, 1980.

No comments were received by the Office of Surface Mining by October 13, 1980, and therefore the public hearing scheduled for November 12, 1980, beginning at 9:00 a.m. at the Department of Interior Auditorium, 18th and C Streets, NW, Washington, D.C. 20240, is cancelled.

DATE: Written comments on the proposed amendments must be received by November 24, 1980, by no later than 5:00 p.m.

ADDRESSES: Written comments may be mailed to: Office of Surface Mining, U.S. Department of the Interior, P.O. Box 7267, Benjamin Franklin Station, Washington, D.C. 20004, Attention: James Fulton.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Office of Surface Mining, Abandoned Mine Lands, State and Indian Reclamation Programs, U.S. Department of the Interior, Washington, D.C. 20245 (202) 343–4511.

Dated: October 17, 1980.

Walter N. Heine,

Director.

[FR Doc. 80-33188 Filed 10-23-80; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 913

Abandoned Mine Lands Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of reopening of public comment period on the Illinois abandoned mine lands reclamation program submission.

SUMMARY: The Director of OSM is reopening the period for review and comment on the proposed Abandoned Mine Land Reclamation Plan for the State of Illinois. Illinois submitted a proposed permanent regulatory program on March 3, 1980, which at this time has not been approved. In compliance with 30 CFR 884.14, OSM will continue the period of review of the proposed Illinois abandoned mine lands reclamation program at least until a final decision is made by the Secretary on the Illinois permanent regulatory program. In order to allow full and effective public participation during this period, OSM is reopening the public comment period on the proposed Illinois abandoned mine land reclamation program until further notice.

DATE: The period for public comment is extended until further notice.

ADDRESS: Written comments should be delivered to Richard D. McNabb, Assistant Regional Director, AML, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204.

FOR FURTHER INFORMATION CONTACT: Richard D. McNabb, Assistant Regional Director, AML, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204. Telephone: 317/269–2846.

SUPPLEMENTARY INFORMATION: Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, establishes an Abandoned Mine Land Reclamation Program for the purposes of reclaiming and restoring land and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation under the program are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or Federal law.

Each State having within its borders coal mined lands eligible for reclamation under Title IV of SMCRA, may submit to the Secretary a State Reclamation Plan, demonstrating its capability for administering an abandoned mine reclamation program. If the Secretary determines that a State has developed and submitted a program for reclamation and has the necessary State legislation to implement the provisions of Title IV, the Secretary shall grant the State exclusive responsibility and authority to implement the provisions of the approved plan. Section 405 of SMCRA (30 U.S.C. 1235) contains the requirements for State reclamation plans.

On July 22, 1980, the State of Illinois submitted to OSM its proposed Abandoned Mine Lands Reclamation Plan under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Notice of Receipt of the Illinois Reclamation Plan and establishment of a period for public comment until August 27, 1980, were published in the Federal Register on July 28, 1980, (45 FR 49958–49959). To insure prompt and expeditious review, OSM regulations require the Director to approve, disapprove or otherwise act upon a State reclamation plan within 60 days after it is submitted or after a State regulatory program is approved, whichever is later. Illinois submitted a proposed permanent regulatory program on March 3, 1980, which at this time has not been approved. In compliance with 30 CFR 884.14, OSM will continue the period of review of the proposed Illinois abandoned mine lands reclamation program at least until a final decision is made by the Secretary on the Illinois permanent regulatory program. In order to allow full and effective public participation during this period, OSM is reopening the public comment period on the proposed Illinois abandoned mine land reclamation program until further notice. In addition, OSM has accepted those comments received after the close of the original public comment period. Copies of all comments received are available for review along with proposed Illinois abandoned mine land reclamation program at the address listed above.

Note.—The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14, 43 FR 58292, *et seq.*, (December 13, 1978).

The Department has determined that this action will not have a significant effect on the human environment and an environmental impact statement will therefore not be prepared.

Dated: October 14, 1980.

Paul L. Reeves,

Acting Director.

[FR Doc. 80-33188 Filed 10-23-80; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 944

Partial Approval/Partial Disapproval of the Permanent Program Submission From the State of Utah Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule: Approval in part/disapproval in part of the Utah permanent regulatory program.

SUMMARY: On March 3, 1980, the State of Utah submitted to the Department of the Interior its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The purpose of the submission is to demonstrate the State's intent and capability to administer and enforce the provisions of SMCRA and the permanent regulatory program regulations, 30 CFR Chapter VII.

After providing opportunities for public comment and a thorough review of the program submission, the Secretary of the Interior has determined that the Utah program partially meets the minimum requirements of SMCRA and the federal permanent program regulations. Accordingly, the Secretary of the Interior is approving in part and disapproving in part the Utah program. Utah will not assume primary jurisdiction for implementing SMCRA until its entire program receives approval.

DATE: Utah has until December 23, 1980 to resubmit revisions of its program for the Secretary's consideration.

FOR FURTHER INFORMATION CONTACT: Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240, Telephone: (202) 343–4225.

ADDRESSES: Copies of the Utah program and the administrative record on the Utah program are available for public inspection and copying during business hours at:

Division of Oil, Gas & Mining, 1588 West North Temple, Salt Lake City, Utah 84116, Telephone: (801) 533–5771.

Office of Surface Mining, Brooks Towers, Room 2115, 1020 15th Street, Denver, Colorado 80202, Telephone: (303) 837–5421.

Office of Surface Mining, Room 153, Interior South Building, 1951 Constitution Ave., NW., Washington, D.C. 20240, Telephone: (202) 343–4728.

SUPPLEMENTARY INFORMATION:

Introduction

This notice is organized to assist understanding of the findings underlying the Secretary's decision. It is divided into six major parts.

A. General Background on the Permanent Program

B. General Background on the State Program Approval Process

C. Background on the Utah Program Submission

D. Secretary's Findings

E. Disposition of Comments

F. Secretary's Decision

Part A sets forth the statutory and regulatory framework of the environmental protection regulatory scheme under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

Part B sets forth the general statutory and regulatory scheme applicable to all states which wish to obtain primary jurisdiction to implement the permanent program within their borders.

Part C summarizes the steps undertaken by Utah and officials of the Department of the Interior, beginning with Utah's initial program submission and its subsequent amendments and additional materials, and leading to the decision being announced today.

Part D contains the findings the Secretary has made with respect to each of the criteria for evaluation of a state program found in SMCRA and the Secretary's regulations.

Part E contains detailed analysis of relevant public comments with respect to the Utah program.

Part F identifies and explains the Secretary's decisions.

A. General Background on the Permanent Program

The environmental protection provisions of SMCRA are being implemented in two phases—the initial program and the permanent program—in accordance with Sections 501–503 of SMCRA, 30 U.S.C. 1251–1253. The initial program became effective on February 3, 1978, for new coal mining operations on non-Federal and non-Indian lands which received State permits on or after that date, and was effectuated on May 3, 1978, for all coal mines existing on that date. The initial program rules were promulgated by the Secretary on December 13, 1977, under 30 CFR Parts 710–725, 42 FR 62639 *et seq.*

The permanent program will become effective in each state upon the approval of a state program by the Secretary of the Interior or implementation of a federal program within the state. If a state program is approved, the state, rather then the federal government, will be the primary regulator of activities subject to SMCRA.

The federal rules for the permanent program, including procedures for states to follow in submitting state programs and minimum standards and procedures the state program must include to be eligible for approval, are found in 30 CFR Parts 700–707 and 730–865. Part 705 was published October 20, 1977 (42 FR 56064) and Parts 795 and 865 (originally Part 830) were published December 13, 1977 (42 FR 62639). The other permanent program regulations were published at 44 FR 15312–15463 (March 13, 1979). Errata notices were published at 44 FR 15485 (March 14, 1979), 44 FR 49673–49687 (August 24, 1979), 44 FR 53507–53509 (September 14, 1979), 44 FR 66195 (November 19, 1979), 45 FR 26001 (April 16, 1980), 45 FR 37818 (June 5, 1980), and 45 FR 47424 (July 15, 1980).

Amendments to the regulations have been published at 44 FR 60969 (October 22, 1979), as corrected at 44 FR 75143 (December 19, 1979), 44 FR 75302–75303 (December 19, 1979), 44 FR 77440–77447 (December 31, 1979), 45 FR 2626–2629 (January 11, 1980), 45 FR 25998–26001 (April 16, 1980), 45 FR 33926–33927 (May 20, 1980), 45 FR 37818 (June 5, 1980), 45 FR 39446–39447 (June 10, 1980), and 45 FR 52306–52324 (August 6, 1980).

Portions of these rules have been suspended, pending further rulemaking. See 44 FR 67942 (November 27, 1979), 44

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FR 77447–77454 (December 31, 1979), 45 FR 6913 (January 30, 1980), and 45 FR 51547–51550 (August 4, 1980).

B. General Background on State Program Approval Process

Any state wishing to assume primary jurisdiction for the regulation of coal mining under SMCRA may submit a program for consideration. The Secretary of the Interior has the responsibility to approve or disapprove the submission.

The federal regulations governing state program submissions are found at 30 CFR Parts 730–732. After review of the submission by OSM and other agencies, as well as an opportunity for the state to make additions or modifications to the program, and an opportunity for public comment, the Secretary may approve the program unconditionally, approve it conditioned upon minor deficiencies being corrected in accordance with a specified timetable, or disapprove the program in whole or in part. If any part of the program is disapproved, the state may submit revisions to correct the items that need to be changed to meet the requirements of SMCRA and the applicable federal regulations. If the revised program is also disapproved, SMCRA requires the Secretary of the Interior to establish a federal program in that state. The state may again request approval to assume primary jurisdiction after the Secretary implements the federal program.

The procedure and timetable for the Secretary's review of state programs was initially published March 13, 1979 (44 FR 15326), to be codified at 30 CFR Part 732.

As a result of litigation in the U.S. District Court for the District of Columbia, the deadline for states to submit proposed programs was extended from August 3, 1979, to March 3, 1980. Section 30 CFR 732.11(d) initially provided that if all required and fully enacted laws and regulations were not part of the program by November 15, 1979, the program must be disapproved. Because the submission deadline had been changed to March 3, 1980, 30 CFR 732.11(d) was amended to provide that program submissions that do not contain all required and fully enacted laws and regulations by the 104th day following program submission will be disapproved pursuant to the procedures for the Secretary's initial decision in 30 CFR 732.13 (45 FR 33927, May 20, 1980).

The Utah program was submitted to OSM on March 3, 1980. The 104th day after March 3 was June 16, 1980.

The Secretary's rules for the review of State programs implement his policy that industry, the public, and other agencies of government should have a meaningful opportunity to participate in his decisions. The Secretary also has a policy that a State should be afforded the maximum opportunity possible to change its program, when necessary, to cure any deficiencies in it.

To accomplish both of these policy objectives the Secretary determined that the laws and rules upon which the State bases its program must be finalized at the beginning of the public comment period. By identifying the laws and rules in effect on the 104th day as the basis of his program approval decision, the Secretary assists commenters by informing them of program elements which should be reviewed. Meaningful public comment would be undermined if the program elements were constantly changing up until the day before the Secretary's decision.

The 104 day rule affords the State 3½ months following submission within which it may modify its laws and rules. In addition, after the Secretary's initial program decision, the States have additional opportunities to revise their laws and regulations.

All program elements other than laws and rules, including Attorney General's opinions, program narratives, descriptions and other information, may be revised by the State at any time prior to program approval. The Secretary will provide an opportunity for public comment on those changes, as appropriate.

The Secretary, in reviewing State programs, is complying with the provisions of Section 503 of SMCRA (30 U.S.C. 1253) and 30 CFR 732.15. In reviewing the Utah program, the Secretary has used the criteria of the Federal rules as corrected, amended, and suspended in the **Federal Register** notices cited above under "General Background on the Permanent Program" and as affected by decisions of the U.S. District Court for the District of Columbia in *In re: Permanent Surface Mining Regulation Litigation* (Civil Action No. 79–1144, February 26, May 16 and August 15, 1980). That litigation is a consolidation of several lawsuits challenging the Secretary's permanent regulatory program.

There have been three recent decisions from the District Court that affect the decision-making process. Because of the complex litigation, the court has issued its decision in two "rounds." The Round I opinion, dated February 26, 1980, rejected several generic attacks on the permanent program regulations, but resulted in suspension or remand of all or part of 22 specific regulations. The Round II opinion, dated May 16, 1980, rejected additional generic attacks on the regulations, but remanded some 40 additional parts, sections, or subsections of the regulations.

The court also ordered the Secretary to "affirmatively disapprove, under Section 503 of SMRCA, those segments of a State program that incorporate a suspended or remanded regulation" (Mem. Op., May 16, 1980, p. 49). However, on August 15, 1980, the court stayed this portion of its opinion. The effect of this stay is to allow the Secretary to approve program provisions equivalent to remanded or suspended Federal provisions in the three circumstances described in paragraph 1 below.

Therefore, the Secretary is applying the following standards to the review of State program submissions:

1. The Secretary need not affirmatively disapprove State provisions similar to those Federal regulations which have been suspended or remanded by the District Court where the State has adopted such provisions in a rulemaking or legislative proceeding which occurred either (1) before the enactment of SMCRA or (2) after the date of the Round II District Court decision, since such State regulations clearly are not based solely upon the suspended or remanded Federal regulations. (3) The Secretary need not affirmatively disapprove provisions based upon suspended or remanded Federal rules if a responsible State official has requested the Secretary to approve them.

2. The Secretary will affirmatively disapprove all provisions of a State program which incorporate suspended or remanded Federal rules and which do not fall into one of the three categories in paragraph one, above. The Secretary believes that the effect of his "affirmative disapproval" of a section in the State's regulations is that the requirements of that section are not enforceable in the permanent program at the Federal level to the extent they have been disapproved. That is, no cause of action for enforcement of the provisions, to the extent disapproved, exists in the Federal courts, and no Federal inspection will result in notices of violation or cessation orders based upon the "affirmatively disapproved" provisions. The Secretary takes no position as to whether the affirmatively disapproved provisions are enforceable under State law and in State courts. Accordingly, these provisions are not being pre-empted or superseded, although the Secretary may have the power to do so under Section 505(b) of SMCRA and 30 CFR 730.11.

3. A state program need not contain provisions to implement a suspended regulation and no state program will be disapproved for failure to contain a suspended regulation. Nonetheless, a state must have authority to implement all permanent program provisions of SMCRA, including those provisions of SMCRA upon which the Secretary based remanded or suspended regulations.

4. A state program may not contain any provision which is inconsistent with a provision of SMCRA.

5. Programs will be evaluated only on those provisions other than the provisions that must be disapproved because of the court's order. The remaining provisions will be approved unconditionally, approved conditionally or disapproved in whole or in part in accordance with 30 CFR 732.13.

6. Upon promulgation of new regulations to replace those that have been suspended or remanded, the Secretary will afford states that have approved or conditionally approved programs a reasonable opportunity to amend their programs, as appropriate. In general, the Secretary expects that the provisions of 30 CFR 732.17 will govern this process.

A list of the regulations suspended or remanded as a result of the Round I and Round II litigation was published in the **Federal Register** on July 7, 1980 (45 FR 45604). A notice of the availability of a proposed list of Utah provisions incorporating the suspended or remanded federal regulations was published at 45 FR 46820–46826 (July 11, 1980).

To codify decisions on state programs, federal programs, and other matters affecting individual states, OSM has established a new Subchapter T of 30 CFR Chapter VII. Subchapter T will consist of Parts 900 through 950. Provisions relating to Utah will be found in 30 CFR Part 944.

C. Background on the Utah Program Submission

On March 3, 1980, OSM received a proposed regulatory program from the State of Utah. The program was submitted by the Division of Oil, Gas and Mining, the state agency which will be the regulatory authority under the Utah permanent program. Notice of receipt of the submission initiating the program review was published in the March 11, 1980 **Federal Register** (45 FR 15584–15586) and in newspapers of general circulation within the state. The announcement noted information for public participation in the initial phase of the review process relating to the Regional Director's determination of whether the submission was complete.

Utah submitted a "corrected set" of its section-by-section comparison of the state and the federal regulations on March 12, 1980. The "corrected set" included provisions of the state's promulgated regulations that had been erroneously omitted from the March 3 proposed program submission package. The missing provisions included UMC/SMC Part 795, UMC/SMC Part 900, UMC/SMC 843.13 (c) and (19)(g) and UMC/SMC 845.19(a–c).

On April 11, 1980, the Regional Director held a public review meeting on the program and its completeness in Salt Lake City, Utah. The public comment period on completeness began on March 11, 1980 and closed on April 21, 1980.

On April 29, 1980, the Regional Director published notice in the **Federal Register** announcing that he had determined the program to be complete (45 FR 28367–28368). The notice specified that the submission included all elements required by 30 CFR 731.14(g).

On June 23, 1980, the Regional Director published notice in the **Federal Register** (45 FR 41972–41973) and in the newspapers of general circulation within the state that the revisions to the Utah permanent program submission were available for public review and comment. The notice set forth procedures for the public hearing and comment period on the substance of the Utah program.

On July 11, 1980 the Director published a notice in the **Federal Register** (45 FR 46820–46826) to afford interested persons an opportunity to review and comment on a proposed list of Utah provisions which incorporate suspended or remanded rules in accordance with the district court opinion discussed above under "General Background on the State Program Approval Process."

On July 21, 1980, the Regional Director held a public hearing on the Utah submission in Salt Lake City, Utah. The public comment period on the Utah permanent regulatory program ended on July 24, 1980.

On June 16 and July 24, 1980, the Division of Oil, Gas and Mining submitted the following additional comments. The proposed amendments to the Utah rules submitted on these dates could not be considered by the Secretary in reaching his decision because they were not fully enacted by the 104th day after initial program submission:

1. Utah state program amended text and clarifications for parts E–O (narrative) of the March 3, 1980, program submission.

2. Proposed amendments to the Utah rules and regulations—July 22, 1980 and June 16, 1980.

3. The Utah "state window" submission for steep slope, underground coal mining, grading and backfilling.

4. Legal opinion of State Attorney General satisfying requirement of Part C (narrative) of the March 3, 1980 program submission.

5. Utah State Program Guidelines for Vegetation Information requirements of the state program.

On August 20, 1980, the Secretary published a notice of the availability of the views on the Utah program submission submited by the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and other Federal agencies (45 FR 55477).

On August 25, 1980, after a review of the revised Utah program, the Regional Director submitted to the Director of OSM, his recommendation that the Utah program be approved in part and disapproved in part, along with the copies of the transcript of the public meeting and the public hearing, written presentations, exhibits, copies of all public comments received and other documents comprising the administrative record. This modified an August 6, 1980 recommendation that the Utah program be conditionally approved.

On September 30, 1980, the Director recommanded to the Secretary that the Utah program be approved in part and disapproved in part.

On Setember 23, 1980, the Administrator of the Environmental Protection Agency concurred in the Secretary's approval of those provisions of the Utah program relating to the air and water quality standards being approved today. The Administrator stated that his concurrence does not extend to those regulations that were still in proposed form on the 104th day from the date of the initial submission. He further reserved the right under Section 503(b) of SMCRA to review such regulations for concurrence or nonconcurrence when they are resubmitted in enacted form.

Elements Upon Which the Secretary Evaluates the Utah Program for This Decision

In consideration of the matters discussed above under "General Background on State Program Approval Process," the Secretary sets forth the elements of the proposed Utah program upon which the findings end decisions below are being made.

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(a) Because of the 104 day rule, promulgated May 20, 1980 (30 CFR 732.11(d), 45 FR 33927), only those statutory provisions and regulations that were fully enacted on or before June 16, 1980, are being considered as a basis for this decision. The purpose of the 104 day rule is to allow an opportunity for comment on the proposed state statute and regulations. Because the proposed Utah regulations were not fully enacted and because there has been little opportunity for public comment, the Secretary cannot consider the proposed Utah regulation changes of June 16 and July 24, 1980 in reaching his decision at this time.

(b) The program narrative received March 3, 1980, as amended July 24, 1980, has been reviewed and will be considered as a basis for this decision.

(c) The statutes and regulations that the Secretary is reviewing under (a) and (b) above include provisions that must be disapproved in accordance with the district court's order. However, the Secretary's decision is being made without regard to the effect of the disapproval of those regulations on the other parts of the program.

D. Secretary's Findings

1. In accordance with Section 503(a) of SMCRA, the Secretary finds that Utah partially has the capability to carry out the provisions of SMCRA and to meet its purposes.

(a) The Utah Coal Mining and Reclamation Act (Utah CMRA) and the Utah Coal Mining and Reclamation Regulations adopted thereunder partially provide for the regulation of surface coal mining and reclamation operations on non-Indian and non-federal lands in Utah. Deficiencies in the Utah CMRA and the regulations promulgated thereunder are discussed below and in Findings 4(a)–4(t).

(i) Section 507(c) of SMCRA concerning criteria for the establishment of a Small Operator Assistance Program requires that under certain circumstances the regulatory authority pay for the required determination of probable hydrologic consequences and the statement of results of test borings and core samplings. The Utah CMRA limits this requirement by adding the phrase in Section 40–10–10(c) "contingent upon receipt of funding from the Office of Surface Mining." This limitation lessens the requirement that all small operators be provided this service and is therefore inconsistent with and less stringent than the federal requirement.

(ii) Section 510(b)(5)(B) of SMCRA requires that a permit application or permit revision not be approved by the regulatory authority unless the application or revision affirmatively demonstrates and the regulatory authority finds, based upon information in the application, that the proposed surface coal mining operation would not materially damage the quantity or quality of water in surface and underground water systems that supply alluvial valley floors. The above section grants an exemption to those operations which in the year preceding the effective date of SMCRA (August 3, 1977) produced coal in commercial quantities or had obtained specific permit approval by the regulatory authority to conduct operations within the alluvial valley floors. Utah, in Section 40–10–11(2)(e)(ii) UCA, allows an additional nineteen months for this "grandfathering" of alluvial valley floors by referencing the effective date of its act, March 30, 1979, rather than the effective date of SMCRA, August 3, 1977. This additional time is inconsistent with and less stringent than the environmental protection standards of SMCRA and is therefore unacceptable.

(iii) Section 510(d) of SMCRA requires that if the area proposed to be mined contains prime farmland, the regulatory authority may grant a permit to mine on the prime farmland only after making the determination that the operator can restore the mined area to meet prescribed productivity and soil reconstruction standards. This requirement applies only to permits issued after the enactment of SMCRA, August 3, 1977. Any permit issued prior to August 3, 1977, any revision or renewal of the permit, and any existing surface mining operation for which a permit was issued prior to August 3, 1977 are exempt from the prime farmland requirement of Section 510(d)(2) of SMCRA. Utah, in Section 40–10–11(4) UMC, requires that the prime farmlands permit requirements apply only to permits issued after February 3, 1978. Utah further provides an exemption for permits issued prior to March 20, 1979 or existing surface mining operations for which a permit was issued prior to March 20, 1979. This additional time allowed by the state is inconsistent with and less stringent than the environmental protection standards of SMCRA and is therefore unacceptable.

(iv) The state statute contains several errors. The statute's reference in 40–10–17(2)(j)(ii)(B) UCA to "(2)(h)(ii)" should be to "(2)(j)(ii)". In 40–10–16(4) UCA, the word "approves" should be "disapproves," as set forth in Section 519(d) for SMCRA. That section of SMCRA prescribes that if the regulatory authority disapproves the application for bond release, the regulatory authority must notify the permittee of the reasons for disapproval and recommend corrective action.

(v) UCA 40–10–21 allows a suit against the United States in state court. The Secretary does not agree to submit to the jurisdiction of the Utah courts in all circumstances involving lawsuits under SMCRA or the Utah program. Accordingly Section UCA 40–10–21 of the UCA is disapproved, since it purports to grant the Utah courts jurisdiction over the Secretary in these areas.

(vi) Subsection 516(b)(1) of SMCRA requires operators to take steps consistent with known technology to prevent and mitigate damage from subsidence to the extent technologically and economically feasible, except where the mining method used involves planned subsidence and with the proviso that "nothing in this subsection shall be construed to prohibit the standard method of room and pillar mining * * *". Section 40–10–18 UCA has the same provisions, except that the proviso declares that "nothing in this subsection shall be construed to prohibit the standard methods of mining." Because it is unclear whether this is intended to apply to methods other than planned subsidence and room and pillar, which are the only methods specifically preserved under the Federal statute, the Secretary disapproves UCA 40–10–18. This problem could be solved by a statutory change or by evidence in the record demonstrating that Utah interprets its provision to apply only to the two methods of mining given special status under SMCRA.

(b) The Secretary finds that the Utah program partially provides sanctions for violations of Utah laws, regulations or conditions of permits concerning surface coal mining and reclamation operations, and these sanctions partially meet the requirements of SMCRA, including civil and criminal actions, forfeiture of bonds, suspensions, revocations, and withholding of permits, and the issuance of cease-and-desist orders by the Utah Division of Oil, Gas and Mining or its inspectors. Deficiences in this area are noted in Finding 4(d).

(c) The Utah Division of Oil, Gas and Mining has sufficient administrative and technical personnel and sufficient funds except as noted in Finding 4(t) to enable Utah to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA;

(d) Utah law partially provides for the effective implementation, maintenance, and enforcement of a permit system that meets the requirements of SMCRA for

the regulation of surface coal mining and reclamation operations on non-Indian and non-federal lands within Utah. Deficiencies in this area are discussed in Finding 4(d).

(e) Utah has partially established a process for the designation of areas as unsuitable for surface coal mining in accordance with Section 522 of SMCRA. Deficiencies in this area are discussed in Finding 4(k).

(f) Utah has established, for the purpose of avoiding duplication, a process for coordinating the review and issurance of permits for surface coal mining and reclamation operations with other federal and state permit processes applicable to the proposed operations.

(g) Utah has fully enacted regulations which are partially consistent with regulations issued pursuant to SMCRA. A more detailed discussion of this area can be found in Finding (4) below;

2. As required by Section 503(b)(1)–(3) of SMCRA, 30 USC 1235(b)(1)–(3), and 30 CFR 732.11–732.13, the Secretary has, through OSM:

(a) Solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other federal agencies concerned with or having special expertise pertinent to the proposed Utah program.

(b) Requested the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of the Utah program which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1151–1175) and the Clean Air Act (42 U.S.C. 7401 *et seq.*). These concurrences are outstanding pending Utah's correction of deficiencies identified in the findings in (4) below.

(c) Held a public review meeting in Salt Lake City, Utah, on April 11, 1980, to discuss the Utah program submission and its completeness and held a public hearing in Salt Lake City, Utah, on July 21, 1980, to receive comments on the substance of the Utah program submission.

3. In accordance with Section 503(b)(4) of SMCRA, the Secretary finds that the State of Utah does not fully have the legal authority and qualified personnel necessary for the enforcement of the environmental protection standards of SMCRA and 30 CFR Chapter VII, because all necessary regulations have not been enacted and the proposed staffing levels are not sufficient to adequately administer the permanent program. (See Finding 4(t) below).

4. In accordance with 30 CFR 732.15, the Secretary finds, on the basis of information in the Utah program submission, including the section-by-section comparison of the Utah law and regulations promulgated by June 16, 1980 with SMCRA and 30 CFR Chapter VII, public comments, testimony and written presentations at the public hearings, and other relevant information, subject to the exceptions discussed in this Finding, that:

(a) The Utah program partially provides for the state to carry out the provisions and meet the purpose of SMCRA and 30 CFR Chapter VII. Utah has promulgated two sets of regulations for the regulation of surface coal mining operations. There are Utah regulations for surface coal mining activities (SMC) and separate Utah regulations for the surface effects of underground coal mining activities (UMC).

(b) Utah has proposed the following alternate approach to the requirements of 30 CFR Chapter VII pursuant to 30 CFR 731.13:

(i) Performance Standards for Steep Sloop Grading and Backfilling—Section 515(b)(3) of SMCRA requires operators to backfill and grade in order to restore the approximate original contour (AOC) of the land with all highwalls * * * eliminated * * *" 30 CFR 817.101 and .102 implement this statutory requirement. The basic purpose of backfilling and grading is to reshape the disturbed area to AOC to minimize erosion and water pollution and prevent slides. 44 FR 15271 (March 13, 1979). Utah proposed (July 24, 1980 submission) to allow the reduction rather than the elimination of the highwall in those cases where, as determined by the Division, the reduced highwall would meet requirements associated with approximate original contour, mass stability and hydrologic balance.

Utah states that its unique topography and geology require consideration of alternative regulatory provisions which reflect the environmental conditions of the state. Ninety-six percent of Utah's 1977 nine million ton coal production was mined from the Wasatch Plateau Field and the Book Cliffs Field. In these areas, the bench and steep topography resembles what could be called a "natural highwall." The elimination of highwalls in all cases will not achieve Section 515(b)(3)'s objective of "restoring the approximate original contour of the land." Utah believes that not eliminating the highwall in all cases will also minimize disturbances to the area. Further, Utah underlines the fact that it is not proposing that highwalls never be eliminated, but rather that the decision not to eliminate highwalls must be approved by the Division and that the resulting terrain must be compatible with the natural surroundings.

In reviewing Utah's proposed alternative the Secretary considered the circumstances unique to Utah. All statistics used in the Secretary's consideration of this alternative are taken from the Utah proposal, which cites technical publications as its authority.

Utah is divided into four major physiographic provinces: Basin and Range (northwest part of the state), Basin and Range-Colorado Plateau Transition (southwest part of the state), Middle Rocky Mountains (northeast part of the state) and the Colorado Plateau (the eastern side of the state).

All of Utah's major coal fields lie either in the Basin and Range-Colorado Plateau Transition or the Colorado Plateau Province. In these two areas, the Wasatch Plateau Field and the Book Cliff field produced approximately 90% of Utah's twelve million tons of coal in 1979. Approximately 44% of the known coal reserves in Utah are contained in these two coal fields, whose mean percent slopes are 56% and 61%. With the addition of the Kaiparowits Fields, with an average percent slope of approximately 45%, which is in the Colorado Plateau in the lower southeastern part of the state, approximately 85% of the known coal reserves in the state are in steep slope areas.

The coal deposits in the major coal fields, Wasatch Plateau, Book Cliffs and Kaiparowits, lie in Cretaceaous rocks. As a result of regional uplift and local uplift by faulting with post uplift erosion, the formations with Cretaceous rock are characterized by a natural bench and steep topography. The coal lies in outcrops in the non-marine and marine rocks which are resistent to erosion and which lie above the less erosion resistent mudstone or shale. Hence, the coal is exposed in deep, narrow canyons on the faces of what Utah characterizes as naturally occurring highwalls, formed over centuries.

The climate of the area is arid to semi-arid. The area's precipitation comes in two forms: Winter snow storms and summer thunderstorms. The thunderstorms occur with great intensity but are of short duration. The average annual precipitation for the major coal fields ranges from 8 to 16 inches. The temperatures in the summer are in the 80°–90°F range and are below freezing for several weeks at a time in the winter. As a result of these two factors, the vegetation in the area is sparse.

The lack of vegetation, high soil erosion characteristics and type of

precipitation events have contributed to the formation of deep, narrow canyons with precipitous barren cliffs which contain the natural coal outcropping. Due to the rapidly increasing overburden thickness in the areas with these outcroppings, most of the portal areas lie along the steep outcrop of the coal, with very limited development of shaft portals into the coal seam.

The result of this method of extracting the coal is the development of benches, roads, and other surface operation facilities in the steep, narrow canyons. Specifically, portal entries and road surfaces are constructed from the spoil removed from the face-up areas. The use of the spoil in constructing the stable fills for these surface operations reduces the volume of material removed from the face. Hence, there is less of a disturbance to the affected surface area. These facilities are generally designed to last 30 to 40 years.

Utah argues that reclamation of these areas through the elimination of the face-cut or highwall in all cases could be environmentally unsound and counterproductive to reclamation requirements. Utah states that complete elimination of a highwall in a narrow canyon with average slopes of 30° by backfilling to the angle of repose could create several problems. Due to the climate, scarcity of vegetation, type and nature of precipitation, the slope could be subject to excessive erosion. Further, a static safety factor of 1.3 would be difficult to achieve. On the other hand, backfilling to a lesser angle, such as 2h:1v or 3h:1v, would be impracticable because there would not be enough material from the original cut to achieve the desired slope. An attempt to reduce the face cut by blasting material from above the cut would probably cause slumping of material from the entire height of the canyon. Hauling the needed backfill material in from other sites would only create more suface disturbance.

The Secretary finds that the mandate of Section 515(b)(3) of SMCRA to restore the land to AOC with all highwalls eliminated contains an inherent internal contradiction when it is applied to the specific areas of Utah described above, with their natural bench and steep topography. In such terrain, elimination of the highwall would not restore the land to AOC, since its original contour was a natural cliff which was similar in its contour to a highwall.

Faced with this contradiction within SMCRA, the Secretary must harmonize the statute in a reasonable manner under his general authority contained in Section 201(c)(2). There is ample precedent for such an action. In *Citizens to Save Spencer Cty.* v. *Environmental Protection Agency,* 600 F.2d 844 (D.C. Cir. 1979), the court upheld EPA regulations which designed to strike a reasonable balance between conflicting provisions of the Clean Air Act. These regulations were based on the agency's general rulemaking authority. The court held that where inconsistent provisions point generally in a common direction, the implementing agency is to "look for guidance to the statute as a whole and to consider the underlying goals and purposes of the legislature in enacting the statute * * *" 600 F.2d at 871. The key to such a reasonable harmonization is to heed Congressional objectives. 600 F.2d at 869; *Clark* v. *Uebersee Finanz-Korp,* 332 U.S. 480, 489 (1947).

Here, the Congressional objectives of protecting the environment, as expressed in Section 102 of SMCRA, guide the Secretary in harmonizing the AOC and highwall elimination requirements. As discussed above, it is more environmentally desirable to allow a limited exception to the highwall elimination requirement in the particular environment involved.

Furthermore, the phrasing of these two requirements also suggests that the requirement to return the area to its natural AOC should prevail. Section 515(b)(3) requires backfilling and grading to restore AOC "with all highwalls, spoil piles, and depressions eliminated," thus suggesting that highwall elimination, like elimination of spoil piles and depressions, is part of the definition of AOC, rather than being a completely separate, independent requirement. The definitions section, 701(2), bears this out. The "with all highwalls eliminated" language appears as part of the definition of AOC.

For these reasons, the Secretary agrees with the concept that a carefully limited exception to highwall elimination would be consistent with SMCRA. However, the provision contained in UMC 817.101(b)(1), which would implement the proposed alternative, is deficient in that it does not specifically state that the alternative applies only to underground coal mining activities in terrain with steep slopes composed of rough steep escarpments. The provision is also deficient because it allows the Division, as it determines to be "practical and appropriate," to apply the alternative of not eliminating highwalls to all cases. The lack of defined criteria for the Division's determination to apply this alternative makes this provision deficient in that it could allow the retention of highwalls in situations where the unique topographical justification was lacking. Further, the state section is inconsistent with 30 CFR 817.101(b)(1) because it allows the reduction rather than elimination of depressions and spoil piles. Utah must correct these deficiencies before the proposed alternative approach can be considered for approval by the Secretary.

(c) The Secretary finds that the Utah law and regulations concerning performance standards are partially consistent with SMCRA and Subchapter K of 30 CFR Chapter VII.

(i) As a result of having one set of regulations for underground mining and one set for surface coal mining, Utah developed definitions not contained in the federal regulations to describe actions associated with underground mining. Utah defines "underground coal mining activities", "surface effects of underground activities," "surface operations," and "underground operations" in UMC 700.5 to address the points covered in the definitions in 30 CFR 701.5 of "surface coal mining and reclamation operations" (as it applies to surface activities associated with underground mining) and "underground mining activities". Utah does not specifically define or use the term "underground coal mining and reclamation activities". However, Utah does not include in its definition of "underground operations" the reclamation of shafts, audits, underground support facilities, in situ processing, underground mining, hauling, storage and blasting. Further, the reclamation of roads is not included in the State's definition of "surface operations". These omissions result in state provisions that are inconsistent with and less stringent than the federal provisions in 30 CFR 701.5.

(ii) The definition of "coal exploration" in 30 CFR 701.5 includes (a) the field gathering of surface and subsurface data and (b) the gathering of environmental data. The definition of "coal exploration" in UMC/SMC 700.5 is deficient because the state fails to address the gathering of environmental data. The deletion of this provision makes the state definition less stringent than and inconsistent with the federal definition. The regulatory authority would not have authority over these activities and therefore could not guarantee the environmental protection standards of Sections 512 and 515 of SMCRA.

(iii) Utah, in UMC/SMC Section 700.5, adds the phrase "and other materials as determined in accordance with UMC 817.22(e)/SMC 816.22(c)" to the definition of "topsoil" in 30 CFR 701.5. The state uses the term "topsoil," in UMC 817/SMC 816.21–.25 in the same manner as in 30 CFR 817/816.21–.25. This construction makes the Utah regulations internally inconsistent, as the provisions allowing the use of substitute materials in UMC 817/SMC 816.22(e) (30 CFR 817/816.22(e)) would then envision a substitute for a substitute and not for the baseline topsoil material. Utah should amend its definition of topsoil to make that term consistent with the use of that term in its regulations.

(iv) Utah, in UMC/SMC Section 700.5, deletes ASTM Standard D388.77 from the definition of "coal" in 30 CFR 701.5. This ASTM Standard establishes standards for tests for determining if a material is coal. This omission has the effect of making the state definition less comprehensive than the federal definition by not setting forth standards for determination of whether a material is coal and is therefore unacceptable.

(v) 30 CFR 701.5 defines "head-of-hollow fill" and "valley fill" as fill structures "consisting of any material, other than coal processing waste and organic material. . . ." The state's definitions of "head-of-hollow fill" and "valley fill" in UMC/SMC 700.5 include the use of "nonacid and nontoxic forming coal processing waste and coal waste" as acceptable fill material. To the extent that the State definitions allow the use of these prohibited materials in the fill, they are inconsistent with the federal requirement and are therefore unacceptable.

(vi) The definition of "applicant" in UMC 701.5 refers to a person seeking a permit to conduct "surface coal mining and reclamation activities" rather than "underground coal mining and reclamation activities" and is therefore inconsistent with the federal requirement, 30 CFR 701.5, which covers underground as well as surface activities.

(vii) 30 CFR 816.23 (b)(1)(ii) and 817.23(b)(1)(ii) require that stockpiled materials be placed in a stable area, not disturbed, and protected from wind and water erosion, unnecessary compaction and contaminants that would reduce the capability of the material to support vegetation when redistributed. The corresponding regulations, SMC 816.23(b)(1)(ii) and UMC 817.23(b)(1)(ii), add a provision that allows the Division to approve alternative storage methods in operations such as pads, parking lots and road embankments when it has been demonstrated and approved by the Division as providing protection equal to that prescribed in the above State sections. These storage methods will tend to make the stored materials difficult to use in reclamation because of excess compaction and possible contamination, and the federal requirement does not contain any such exception. The Utah regulations are less stringent than the federal requirement.

(viii) 30 CFR 817.42(a)(3)(ii)(A) requires that "For drainage from areas affected by surface operations and facilities, an exemption [to the sedimentation pond requirements] may be authorized only if the disturbed surface area within the disturbed area is small and there is no mixture of surface drainage with a discharge from underground mine workings." The state, in UMC 817.42(a)(3)(ii)(A), deletes this limiting requirement and therefore would allow exemptions to be granted which are prohibited by the federal rules. This is less stringent than the federal requirement.

(ix) 30 CFR 816.43(b) and 817.43(b) require that permanent diversions be constructed with "gently sloping" banks that are stabilized by revegetation. The state in its corresponding sections, SMC 816.43(b) and UMC 816.43(b), deletes the term "gently." This deletion reduces the state's ability to impose requirements on the operator; under the federal rule, the regulatory authority would be able to decide what slope it considers to be "gentle" and require the operator to construct its permanent diversion channel accordingly.

(x) The definition of "intermittent stream" in SMC/UMC 700.5 does not include drainages with areas greater than one square mile, as does 30 CFR 701.5. Further, Utah adds a requirement that the stream must flow for thirty consecutive days per year. Thus, many drainages covered by 30 CFR 816.44(a) and 817.44(a) are not covered in Utah's regulations, making the state definition inconsistent with and less stringent than the federal requirements.

(xi) 30 CFR 816.45(a) and 817.45(a) require that "appropriate sediment control measures shall be designed, constructed and maintained using the best technology currently available to prevent to the extent possible additional contributions of suspended solids to stream flow or runoff outside the permit area and to achieve and maintain applicable effluent limitations." The Utah regulations, SMC 816.45(a) and UMC 817.45(a), provide that sediment control measures must be "maintained fully considering the environmental impact of the control measure and using the best technology currently available that is best suited to the site." SMC 816.46(a) and UMC 817.46(a) provide that sedimentation ponds be used "when it is determined that sedimentation ponds are necessary to meet the requirements of this part," rather than the mandatory "shall be used" prescribed in 30 CFR 816.46(a) and 817.46(a). These provisions could allow broad exemptions, not allowed by the federal regulations, to the requirements that sediment ponds shall be used, and that the "best technology currently available" be used in sediment control. These exemptions render Utah's provisions less stringent than the federal standards and are therefore unacceptable.

(xii) 30 CFR 816.46(o) and 817.46(o) specify that in no case may coal processing waste be used as fill material in sedimentation ponds. In SMC 816.46(o) and UMC 817.46(o), Utah allows the use of coal processing waste as a fill material in sedimentation ponds if it is non-acid and non-toxic forming and of a quality suitable as a construction material for its intended use as demonstrated by standard engineering and chemical testing. The Utah regulation provides a standard expressly prohibited by the federal rules and is therefore unacceptable.

(xiii) SMC 816.49 and 817.49 omit the requirement found in 30 CFR 816.49 and 817.49 that excavations that will impound water during or after mining not be steeper than 2v:1h. This deletion could allow variances not allowed by the federal regulations. Further, in the same sections, the state deletes the requirement of (f) that all dams and embankments be inspected by a qualified, registered professional engineer or by someone under the supervision of a qualified professional engineer. The Utah provision requires that the inspection be performed by a person qualified under the requirements of the Mine Safety and Health Administration (MSHA) found at 30 CFR 77.216–3 rather than the above standard. This substitution lessens the federal standard because MSHA at 30 CFR 77.216–3 does not require that such inspection be performed by a registered professional engineer and is therefore not acceptable.

(xiv) 30 CFR 816/817.52 prescribes requirements for conducting surface and groundwater monitoring. Utah's regulations SMC 816.52(a)(1) and UMC 817.52(a)(1) add a provision to the paragraph which allows the Division to minimize monitoring where no aquifer exists, thus creating the potential that no monitoring will be required. Utah's provisions are less stringent than the federal regulations.

(xv) SMC 816.53 and UMC 817.53 contain no equivalent to paragraph (c) of 30 CFR 816.53 and 817.53. That provision sets forth that upon an approved transfer of a well, the transferor shall be secondarily liable for the transferee's

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obligations until release of the bond for the area in which the well is located. This omission makes the state provision less stringent than the federal provision, and thus cannot be accepted.

(xvi) In SMC 816.57(a) and UMC 817.57(a), the state adds the phrase "important to a downstream fishery" to its provision for the establishment of buffer zones for perennial and intermittent streams. This phrase limits the protection offered by 30 CFR 816.57(a) and 817.57(a) and is thereby inconsistent with the federal rule.

Further, in SMC 816.57(c) and UMC 817.57(c), the state restricts the determination of a biological community to an "intermittent stream," while 30 CFR 816.57(c) and 817.57(c) refer to any stream. By limiting biological community to only intermittent streams, the state has provided a standard less stringent than and inconsistent with the federal requirements.

(xvii) Sections UMC 817.65 and SMC 816.65, prescribing surface blasting requirements contain several typographical errors. Furthermore, UMC 817.65 is missing paragraphs (i) concerning maximum peak particle velocity, (j) concerning variance to maximum peak particle velocity, and (l) concerning the maximum weight of explosives to be detonated, as in 30 CFR 817.65. These omissions result in state requirements less stringent than the corresponding federal requirements.

(xviii) 30 CFR 816.68(s)(2) requires that seismographic records contain the name of the person taking the seismograph reading. The state omits this requirement from SCM 816.68, and therefore the provision is less stringent than and inconsistent with the federal provision.

(xix) 30 CFR 816.93(a) and 817.93(a) set forth design and construction criteria for dams and embankments constructed of coal processing waste or intended to impound such waste. Utah omits "or intended to impound such waste" from SMC 816.93(a) and UMC 817.93(a). This omission would allow for standards which are less stringent than and inconsistent with the federal requirements.

(xx) 30 CFR 816.71–74 and 817.71–74 prescribe procedures for the disposal of excess spoil. The Utah regulations contained several variations from these sections. Principally, the Utah regulations (1) allow the Division to determine the static safety factor on a site-by-site basis (SMC 816.71(f)/30 CFR 816.71(f); SMC 816/UMC 817.71(j)/30 CFR 816/817.71(k); SMC 816.74(b)(2)/30CFR 816.74(b)(2); UMC 817.74(b)(2)/30 CFR 817.74(b)(2)), or not to specifically require a long term static safety factor of 1.5 (SMC 816/UMC 817.72(a)(2)/30 CFR 816/817.72(a)(2)); allow the use of non-acid and non-toxic coal processing waste with excess spoil in head-of-hollow, valley and excess spoil fills (SMC 816/UMC 817.71(a)/30 CFR 816/817.72(a); SMC 816/UMC 817.72(c)/30 CFR 816/817.72(c); and SMC 816/UMC 817.73/30 CFR 816/817.73); (3) delete the requirement that no depressions or impoundments be allowed on the compacted fill (SMC 816/UMC 817.71(g)/30 CFR 816/817.71(g)); (4) require a filter system only "where necessary" and delete the specifications for constructing underdrains for valley fills (SMC 816/UMC 817.72(b)(2), (3), (4)/30 CFR 816.817.72(b)(2), (3), (4)); and (5) allow the Division to authorize lifts greater than 4 feet for valley fills and head-of-hollow fills (SMC 816/UMC 817.72(c)/30 CFR 816/817.72(c)). In addition, there were typographical errors in SMC 816/UMC 817.72(b)(1)–(3)/30 CFR 816/817.72(b)(1)–(3)). The differences make the Utah regulations inconsistent with the federal regulations because they require less environmental protection in fill construction.

(xxi) SMC 816.72 and UMC 817.72 allow "nonacid and nontoxic coal processing waste" to be used in valley fills. The definition of valley fill in 30 CFR 701.5 specifically prohibits the usage of coal processing waste from valley fills because of problems these materials cause with regard to stability. The preamble to the federal regulations, 44 FR 15204 (March 13, 1979), explains that coal processing waste cannot be used in this type fill because "* * * valley fills and head-of-hollow fills are in steeper areas where side slopes in excess of 20 degrees and average profiles in excess of 10 degrees are encountered. Fills in such steeper areas are more prone to failure, and the effects of failure more damaging." Therefore, the Utah provision is less stringent than and inconsistent with the federal requirements.

(xxii) 30 CFR 816.97(d)(10) and 816.97(d)(10) require that "where cropland is to be the alternative postmining land use on lands diverted from a fish and wildlife premining land use, and where appropriate for wildlife and crop management practices * * *" certain criteria must be met. Utah, in SMC 816.97(d)(10) and UMC 817.97(d)(10), includes provisions parallel to the corresponding federal provisions.

(xxiii) The state's regulation SMC 816.102(a)(2) allows the elimination or reduction of highwalls as determined by the Division. 30 CFR 816.102(a)(2) stipulates that in all cases highwalls must be eliminated by backfilling and grading. As noted in Finding 4(b)(i) on the "state window" proposal, this discretion in the state provision as it is presently formulated allows possible variances not allowed by the federal rules and is therefore inconsistent with the federal requirements.

(xxiv) Sections 30 CFR 816.103(a)(1) and 817.103(a)(1) require that all exposed coal seams remaining after mining and all acid-forming materials, toxic-forming materials, combustible materials or any other materials identified by the regulatory authority as exposed, used or produced during mining be covered with a minimum of 4 feet of the best available non-toxic and non-combustible material. The court remanded this provision to also allow the treatment of such materials in *In re: Permanent Surface Mining Regulation Litigation* Civil Action No. 79–1144 (D.D.C., February 26, 1980, p. 17). Utah's regulations SMC 816.103(a)(1) and UMC 817.103(a)(1) allow the treatment or burial and compaction or other disposal designed to prevent contamination of ground or surface waters. However, Utah does not specify a minimum burial depth if not treated, and as such is less stringent than the federal provision.

(xxv) In SMC 816.104(b)(1) the state adds the alternative "or reduce as required by the Division" to the requirement of 30 CFR 816.104(b)(1), to "cover all acid-forming and toxic-forming materials". The addition of this alternative makes the Utah provision less stringent than and inconsistent with the federal requirement.

(xxvi) In SMC 816.105(b)(5), Utah has provided an alternative to the federal requirement in 30 CFR 816.105(b)(5) to "eliminate all highwalls and depressions by backfilling with spoil and suitable waste materials" by adding the words "or reduce" after the word "eliminate." As discussed earlier in Finding 4(b)(i), this alternative as implemented in the Utah regulations makes the Utah provision less stringent than and inconsistent with the 30 CFR 816.105 requirement.

(xxvii) 30 CFR 816.111(b)(1) requires achievement of a permanent vegetative cover of the same seasonal variety native to the area of disturbed land. Utah, in SMC 816.111(b)(1) conditions this requirement with the insertion of the phrase "as that which is" after "variety". Utah's provision could be interpreted to allow the use of introduced species outside the conditions established by 30 CFR 816/817.112. This would be inconsistent with the language of Section 515(b)(19) of SMCRA and Section 40–10–17(2)(s) UCA of the Utah CMRA, which require the use of a permanent vegetative cover of the same seasonal variety native to the area except as the use of introduced species is allowed by 30 CFR 816/817.112 and Section 515(b)(19) of SMCRA.

(xxviii) 30 CFR 816.116 and 817.116 prescribe standards for revegetation success. Paragraph (b)(1) provides that ground cover and productivity of living plants on the vegetated area within the permit area shall be equal to the ground cover and productivity of living plants on the approved reference area or to standards in other technical guides approved by the Director of OSM for use in the regulatory program. The state omitted from SMC 816.116(b)(1) and UMC 817.116(b)(1) the reguirement that other technical guides for determining revegetation success be approved by the Director of OSM. The state regulation is therefore inconsistent with the comparable federal provision.

(xxix) UMC 817.124(b) does not satisfy the requirements of 30 CFR 817.124(b) for the protection of surface lands from the effects of subsidence in that the state's language allows the operator "at his option" to comply with the requirements of the section and exempts operator-owned structures from the requirement of either the restoration or purchase of damaged structures. Further, UMC 817.124(b)(3) does not require the purchase of a noncancellable premium prepaid insurance policy, as prescribed by 30 CFR 817.124, but allows a renewable policy. The state provisions are less stringent than the corresponding federal provisions because they do not afford the surface owner protection equal to that guaranteed by the federal regulations.

(xxx) UMC 817.126, concerning buffer zones, is inconsistent with 30 CFR 817.126 because in paragraphs (a) and (c) the state limits the prohibition against conducting underground operations in certain areas to those operations "which will cause subsidence." Language similar to Utah's was specifically rejected in promulgating the federal rule, 44 FR 15278 (March 13, 1979).

(xxxi) Utah, in its underground regulations, has no equivalent to 30 CFR Part 826, which establishes special permanent performance standards for operations on steep slopes. Utah stated in its July 24, 1980 program submission that this omission is part of its proposed state window for underground coal mining on steep slopes. However, the Secretary has disapproved this proposed state window in its present form (See Finding 4(b)). Accordingly, the state program is inconsistent with the federal requirements in failing to prevent the placement of spoil, waste materials, debris and abandoned equipment on the downslope on steep slopes as required by 30 CFR 126.12(a). Utah must either promulgate regulations equivalent to 30 CFR Part 826 or resubmit an acceptable state window.

(xxxii) 30 CFR 828.11(b)(3) prescribes that in situ processing activities must be planned and conducted to minimize disturbance to the prevailing hydrologic balance by avoiding annular injections between the wall of the drill hole and the casings. Utah omitted this provision from UMC/SMC 828.11(b), making its provision less stringent than the federal provision.

The Secretary has determined that while the following Utah sections are different from provisions of 30 CFR Chapter VII, they are consistent with and as stringent as those requirements.

(xxxiii) The definition in 30 CFR 701.5 of "rangeland" focuses on the nature of the natural potential plant cover. It states that except for brush control, management is primarily achieved by regulating the intensity of grazing and season of use. Rangeland is one of several terms for describing the premining land use (30 CFR 779.22 and 783.22) and post mining land use (30 CFR 780.23 and 784.15), which must be approved as part of the permit application in meeting the requirement to return the land after mining to an equal or better land use. The Utah definition in UMC/SMC 700.5 differs from the focus on plant type in that it sets forth physical limitations such as low and erratic precipitation, rough topography, poor drainage or extreme temperatures that would make the land "generally unsuited for cultivation."

In the May 21, 1980 Region V Director's letter to the state, it was requested that the use of the phrase "generally unsuited for cultivation" be clarified. As explained by Utah in clarifying information submitted to OSM on July 24, 1980, historically, certain areas of Utah were settled under the direction of the Mormon Church leaders. In all areas that were settled, they directed that the settlements be self-sufficient. This involved the development of cultivated lands in areas generally unsuited for agriculture. With the passage of time some of these cultivated lands were abandoned and returned to their natural conditions. In most cases the natural use for this land was range.

OSM's concern was that lands with a pre-mining land use such as agriculture might be designated as rangeland after mining given the term "generally unsuited for cultivation". It is the Secretary's understanding that the state is attempting to clarify that at some time, due to unique social and environmental conditions, an area might have been cultivated but that the area will be classified as rangeland on the basis of the traditional and highest and best use of the land. Based on Utah's presentation, the state definition of rangeland is determined to be consistent with that of 30 CFR 701.5.

(xxxiv) 30 CFR 817.111 sets forth the requirements for revegetating surface areas disturbed by underground mining operations. This section requires that revegetation must achieve "a permanent vegetative cover of the same seasonal variety native to the area of disturbed land." 30 CFR 817.111 implements the requirement of Section 516(b)(6) of SMCRA that a "diverse and permanent vegetative cover capable of self-regeneration and plant succession and at least equal in extent of cover to the natural vegetation of the area" be established on all lands affected by underground mining. This provision differs from the requirements of Section 515(b)(19), which requires the use of native vegetation of the same seasonal variety when revegetating areas affected by surface operations. The federal preamble, 44 FR 15271–2 (March 13, 1979), indicates that the appropriate changes were made to § 817.111 to reflect the fact that Section 515(b)(19) differs from 516(b)(6) in not requiring native vegetation of the same seasonal variety. Apparently that correction was inadvertently not made to the permanent federal program regulations, as the requirement of § 816.111(b)(1) is identical to § 816.111(b)(1) in requiring native vegetation of the same seasonal variety native to the area. Utah regulations reflect the intent of the federal preamble. Thus, SMC 816.111(b)(1) is identical to § 816.111(b)(1) while UMC 817.111(b)(1) correctly differs from § 817.111(b)(1) by reflecting the language of Section 516(b)(6) of SMCRA.

(xxxv) 30 CFR 816.97(d)(2) requires operators to fence roadways where specified by the regulatory authority to guide locally important wildlife to roadway underpasses. The state provisions SMC 816.97(d)(2) and UMC 817.97(d)(2) were consistent with this provision. This federal section was amended on June 5, 1980 (45 FR 37818) to include overpasses. Utah will be given an opportunity to revise its regulation to make it consistent with the June 5, 1980 revision of the federal regulations.

(xxxvi) "Aquifer" as defined in 30 CFR 701.5, means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities

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for a specific use. Utah's use of the term "quantity and quality" under UMC/SMC 700.5 results in a more restrictive definition of aquifer than the federal term "quantities," since under the Federal definition, a subterranean body of water would be deemed an aquifer if the water could be treated to be of sufficient quality for a "specific use" while the Utah definition would only consider it an aquifer if the water was naturally of the appropriate quality. The Secretary believes that the Utah definition would not provide protection of water resources in coal mining areas consistent with that provided by the federal rules, since permit information would not have to be submitted nor operating measures taken, such as monitoring, to protect all aquifers to the extent required under 30 CFR 779.15(a) and 816.52(a). The state regulation is therefore inconsistent with the federal rule.

(d) The Secretary finds that the Division of Oil, Gas and Mining partially has the authority under Utah laws and regulations and the Utah program partially includes provisions to implement, administer and enforce a permit system. Deficiencies in the state program submission are discussed in the following findings.

(i) SMC 779.19(a) omits the requirement of 30 CFR 779.19(a) that the permit application vegetation map include plant communities within any proposed reference area. This omission allows for variances in the permit application not allowed by the federal rule and is thus less stringent than and inconsistent with the federal requirement.

(ii) 30 CFR 784.20(b) requires a detailed description of the measures to be taken to prevent subsidence from causing material damage or lessening the value or reasonable foreseeable use of the surface. Paragraph (b)(3)(v) identifies monitoring as one of the measures that may be used. The preamble to the federal rule, 44 FR 15076 (March 3, 1979) reveals that this provision is intended to "allow for the adaptation of monitoring requirements to each individual mining situation * * *." Thus, states must retain discretion to impose monitoring on a site-by-site basis, although they need not impose it as a requirement on every operation. UMC/SMC 784.20(b)(3)(v) limit such monitoring to "only * * * those areas that may be affected by subsidence if it occurred." The state's added condition is inconsistent with the federal provision because if monitoring is conducted only in areas that may be affected, there would be no baseline for comparison to establish if subsidence was occurring and the extent of its effect.

(iii) 30 CFR 785.19(c)(1) requires that the applicant either affirmatively demonstrate, based on available data, the presence of an alluvial valley floor or submit to the regulatory authority results of a field investigation of the proposed mine plan area and adjacent area. The state, in UMC/SMC 786.19(c)(1), requires that the application establish the "lack" of presence of an alluvial valley floor based on available data. The state provision is inconsistent with the federal requirement because under the federal rule where there is inadequate data to show the presence of an alluvial valley floor, the operator must seek further data.

(iv) 30 CFR 785.19(c) sets forth procedures for the determination of whether an alluvial valley floor exists in the proposed mine area or adjacent area. 30 CFR 785.19(d) and the State's analogue, UMC/SMC 785.19(d), set forth the application content requirements for operations affecting designated alluvial valley floors. 30 CFR 785.19(e) and the State's analogue, UMC/SMC 785.19(e), prescribe conditions that must be deomonstrated by the applicant prior to conducing operations on lands west of the one hundredth median.

Utah has added a provision, UMC/SMC 785.19(c)(3), to the requirements of 30 CFR 785.19(c). In its added provision the State waives the provisions of UMC/SMC 785.19 (d) and (e) where the Division determines that the proposed surface operation will not adversely affect the alluvial valley floor. Sections UMC/SMC 785.19(c)(3) are inconsistent with 30 CFR 785.19(c), which provides no such waiver, because the protection of alluvial valley floors is less than that provided by the federal regulation.

(v) 30 CFR 786.19(h) requires proof that, in addition to applicable state permit fees, all reclamation fees required by subchapter R of 30 CFR Chapter VII (Abandoned Mine Lands) have been paid before a permit can be issued. Utah omits this requirement in Section UMC/SMC 786.19(h), thereby potentially allowing a permit to be issued before all requirements are met. This omission makes the state regulation inconsistent with and less stringent than the federal requirement.

(vi) 30 CFR 788.12(a)(1) specifies that each regulatory authority shall provide parameters in the regulatory program to determine what changes shall constitute significant departures from the method of mining and reclamation operations approved under the original permit. Those actions defined as significant departures will require permit revisions. Utah specifies in UMC/SMC 788.12(a)(1) three specific parameters and a general provision (iv) which would allow the Division to decide, on a site-by-site basis, what would be reasonable. The state should indicate if the increase in the size of the area disturbed referenced in (a)(1)(i) includes surface and subsurface disturbances for underground mining. Further, the state needs to define what actions would be considered "reasonable" and the criteria that would be used in making that decision in order to insure consistency with the federal rules.

(vii) Sections UMC/SMC 788.18(b)(2) are inconsistent with the federal regulations in that they do not prescribe, as required by 30 CFR 788.12(b)(2), the time in which written comments may be submitted on requests for a permit transfer, assignment or sale of permit right.

30 CFR 780.31 and 784.17 require that for any historic place that may be adversely affected by the proposed mining operation, each reclamation plan must describe measures to be used to minimize or prevent impacts to these areas and to obtain the necessary approval as required by 30 CFR 761.12(f). Only places listed on the National Register of Historic Places are protected under 30 CFR 761.12(f). In SMC 780.31 and UMC 784.17, Utah protects historic places designated as historic under federal, state or local law, thus protecting state or locally listed sites which would not be protected under the federal provisions. Utah's provisions are more stringent than and thus consistent with the federal provisions.

(viii) Section UMC 785.18 of the Utah underground regulations does not contain the provisions of 30 CFR 785.18, "Variances for delay in contemporaneous reclamation requirements in combined surface and underground mining operations." In the Regional Director's letter to the state, May 21, 1980, Utah was asked to clarify this omission. Utah explained in its June 16, 1980 program resubmission that it has a regulation for surface coal mining and a separate regulation for underground coal mining. The surface regulations contain a section, (SMC 785.18) which is identical to federal regulation 30 CFR 785.18. Since a combined surface and underground mining operation must comply with Chapter I (Underground) and Chapter II (Surface) of Utah's regulations, the requirements of 30 CFR 785.18 were only incorporated in the surface regulation. Based on this explanation, the Secretary finds that the Utah regulations satisfy the requirements of the federal program.

(ix) Section 510(b)(6) of SMCRA and 30 CFR 788.15(b) provide that where the private mineral estate has been severed from the private surface estate, the permit applicant must submit either the written consent of the surface owner or a conveyance expressly granting or reserving the right to use such methods; or where the conveyance does not have express language, the relative legal rights of the parties must be determined in accordance with state law. UCA 40-10-11(f) differs from the federal provisions in that these requirements are triggered only when the *state* mineral estate has been severed from the private surface estate.

On July 24, 1980, Utah submitted an Attorney General's opinion dated July 23, 1980 which explains on pages 1 and 2 that Utah rejected Section 510(b)(6) of SMCRA because of the "traditional dominance of the mineral estate over the surface estate with respect to private property" and the state's reluctance to interfere with this relationship, which is traditionally handled by private agreement.

The Attorney General argues that there is well established law on construing documents splitting up the surface and mineral estates to determine whether the mineral owner has the right to use surface mining methods. She also points out that UCA 40-10-29 protects water rights of surface owners and argues that this statutory protection, along with the common law of private property relations, suffices to protect surface owners as much as they would be protected under SMCRA.

The Secretary does not believe that section 510(b)(6) of SMCRA is intended to alter property rights. It is a procedural requirement designed to ensure that a permit applicant demonstrates to the regulatory authority that he or she will be mining in accordance with those property rights as they have been settled between the parties or under state law. Utah's provision is inconsistent with the federal provision because it fails to require such a demonstration.

(e) The Utah statute under Sections 40-10-8 UCA and 40-10-17 UCA and Utah regulations under UMC/SMC 776 and UMC/SMC 815 provide the Utah Division of Oil, Gas and Mining with the authority to regulate coal exploration consistent with Sections 512 and 515 of SMCRA and 30 CFR 776 and 815 and to prohibit coal exploration that does not comply with 30 CFR 776 and 815.

(f) The Utah CMRA, Section 40-10-5 UCA, and the Utah regulations, UMC/SMC Part 707, provide for an exemption for coal extraction incidental to government financed construction consistent with Section 528 of SMCRA and 30 CFR Part 707.

(g) The Division of Oil, Gas and Mining partially has the authority under the Utah CMRA 40-10-19 UCA and UMC/SMC 840 of the Utah regulations to enter, inspect, and monitor all coal exploration and surface coal mining and reclamation operations on non-Indian and non-Federal lands within Utah consistent with Section 517 of SMCRA and 30 CFR 840.

(i) In UMC 842.12(c), Utah provides citizen right of entry to surface operations of underground coal mining activities. 30 CFR 842.12(c) grants the right following a citizen's complaint to enter to, upon and through the coal exploration or surface coal mining and reclamation operation upon which the complaint was made. 30 CFR 700.5 defines "surface coal mining operations" to mean the activities conducted on the surface of lands in conjunction with a surface coal mine or the surface operations and surface impacts incident to an underground mine. Therefore, the Secretary finds Utah's use of the term "surface operations of an underground coal mining activity" in its underground mining regulation, UMC 842.12(c), to be consistent with the right of entry granted by 30 CFR 842.12(c). 30 CFR 842.12(c) does not grant a right to go underground.

(ii) Section 40-10-22(e) UCA requires that each notice of violation and cessation order "shall be signed by the Director," a requirement which could be read to impede or preclude the field issuance of such notices and orders. The regulations implementing § 40-10-22 UCA, however, require that each notice of violation be signed by "the Director, Division, or their authorized representative" (UMC 843.12(b)), and each cessation order by "the Director, or the authorized representative who issues it" (UMC 843.11(c)).

The immediate field issuance of notices of violation and cessation orders is an indispensable element in any State's program (44 FR 15295, March 13, 1979), and, as a consequence, the Secretary would be unable to approve a program that did not include this critical provision. The apparent difference between Section 40-10-22(e) UCA and the corresponding regulations makes it unclear whether the Utah program does or does not provide for mandatory field enforcement.

However, the Secretary finds that the July 23, 1980, legal opinion of the Utah Attorney General clarifies this issue. The legal opinion states:

> Pursuant to § 40-10-22, UCA, and implementing regulations at UMC and SMC Parts 840, 842, and 843, the Division has the authority to issue *immediate* cessation orders and notices of violation *on-site*, during the process of an inspection. (Page 4) (Emphasis added)

The Secretary understands this to mean that the Utah program provides for mandatory field enforcement, and that Utah inspectors have and use at all times the authority to issue notices of violation and cessation orders on-site during the course of, or as a result of, an inspection. The Secretary further understands this opinion to mean that no signature other than that of an authorized representative of the Division is or will be required to validate any notice of violation or cessation order issued in the field. The Secretary emphasizes that his approval of this portion of the Utah program is based on these understandings.

(h) The Secretary finds that the Utah Division of Oil, Gas and Mining partially has the authority under Utah laws and the Utah program includes provisions to implement, administer, and enforce a system of performance bonds and liability insurance, or other equivalent guarantees, consistent with Subchapter J of 30 CFR Chapter VII. The performance bond and liability insurance provisions of Sections 507(f), 509, 510, and 519 of SMCRA and 30 CFR Chapter VII, Subchapter J are incorporated in Sections 40-10-10-(6), 40-10-15, 40-10-16 of the Utah CMRA and in Parts 800-808 of the Utah regulations. Deficiencies pertinent to this finding are discussed below.

(i) The Utah regulations, UMC/SMC 800.5, have omitted the definition of "current assets" contained in 30 CFR 800.5.

(ii) 30 CFR 805.13(b) requires that "the period of [bonding] liability shall begin again whenever augmented seeding, fertilizing, irrigation, or other work is required or conducted on the site prior to bond release." The state in UMC/SMC 805.13(b) provides that when seeding, fertilizing, or irrigation work is conducted for the purpose of "general enhancement" on a revegetation plot, such work will not cause the liability period to begin anew. The state provision creates a lesser standard than that prescribed by the federal rule and is therefore unacceptable.

(iii) Portions of the following federal bonding regulations were proposed for amendment on January 24, 1980 (45 FR 6028-6042): 30 CFR 800.5, 800.11(b)(1), 800.13, Part 801, 805.13, 805.14, 806.11, 806.12, 806.13, 806.14, 806.17, 807.12, 808.11, 808.12, and 808.13(a). Final federal regulations on these bonding sections were published on August 6, 1980 (45 FR 62306-52324). Because of the

public comment received by the Secretary during the promulgation process, many changes were made to the proposed rules. Utah will have an opportunity pursuant to 30 CFR 732.17 to amend its rules to meet the requirements of the new federal rules.

The Secretary is taking the position that the Utah program's bonding provisions may be approved if they are consistent with the federal rules as they existed when the Utah program was submitted on March 3, 1980, or with the rules as amended August 6, 1980. The Secretary's finding is provided concerning Utah's provision that appears to be based on the January 24, 1980 proposed regulations.

Utah's accumulating fund bond as defined in UMC/SMC 800.5 and referenced in UMC/SMC 806.11 is deficient because it does not include the provisions 30 CFR 806.13 and .17 as amended in 45 FR 52321 (August 6, 1980), that ensure that sufficient funds are available at any point in time to complete reclamation if the operator defaults.

If Utah resubmits its program with bonding provisions which are inconsistent with the federal rules as promulgated on March 13, 1979, but which are consistent with the August 6, 1980 amendments, its rules can still be approved. At the time of the final Secretarial decision on the Utah program, the state will be advised of any further changes that may be required and will be allowed sufficient time to accomplish the changes.

(iv) 30 CFR 806.12(e) (2), (5) and (6) require the establishment of a maximum single obligation for a company beyond which a surety is restrained from bonding. A state is given the option by the federal regulations of using the criteria set forth in 30 CFR Part 806 or those established by state law.

30 CFR 806.12(a) requires that in the indemnity agreement, the amount of the surety bond shall be confessed to judgment upon forfeiture if this procedure is authorized by state law. Utah refers, in UMC/SMC 806.12(g) to the state law, but apparently none exists. The state should incorporate the requirement of the analogous federal provisions for these sections in order for the state's regulations to be consistent with the federal regulations.

(v) The Utah regulations in UMC/SMC 807.11(h) are inconsistent with the federal statute and regulations because they do not provide that an objector has the right to request the bond release hearing to be held in the town or city nearest the permit area or the state capital, at his or her option. Such a right is provided by Section 519(f) of SMCRA and 30 CFR 807.11(h). The Utah statute, Section 40–10–16(6)(b) UCA, is silent on where the bond release hearing may be held.

(i) The Division of Oil, Gas and Mining partially has the authority under Sections 40–10–20 and 40–10–21 of the Utah CMRA and the Utah program includes provisions for civil and criminal sanctions for violations of Utah law, regulations, conditions of permits and exploration approvals, including civil and criminal penalties in accordance with Section 518 of SMCRA. Specific issues in this area are discussed below.

(i) Utah, in UMC/SMC 845.20, requires that an interest rate of 6% be incurred on the funds held in escrow pending judicial review of an assessed penalty. The federal provisions, Section 518(c) and 30 CFR 845.20(c), prescribe an interest rate of 6% on the prevailing Department of Treasury rate, whichever is greater. The Secretary finds that it is highly unlikely that the Department of Treasury rate will be less than 6% in the near future. Thus, Utah's provision is consistent with the federal provision under the "same or similar" standard.

(ii) Utah regulations UMC/SMC 85.19 do not include a process for requesting that the Board review the proposed penalty in a formal hearing, as required by 30 CFR 845.19. This omission lessens the requirements for review and is therefore inconsistent with the federal requirements.

(iii) There is no constraint on the length of time that will be taken in the process of administrative adjudication of proposed civil penalties under 40–10–20 of UCA and regulation Part 845. Although an operator seeking a hearing must make his request within 30 days of receiving the proposed amendment, there is no limit on the time by which the Board must decide and issue the assessment, and the item in which a hearing must be held. It is important to both operators and the public that the adjudication process not be unreasonably delayed. Under the OSM assessment conference procedure (30 CFR 845.18) no more than 150 days will normally elapse between the initial proposal of a penalty and the conclusion of this first level of administrative review. At that time an operator wishing further review must request a formal adjudicatory hearing and place the full amount of the proposed penalty in escrow. The escrow provision is required by Section 518(c) of SMCRA.

Utah has chosen to omit an assessment conference procedure in favor of a formal administrative hearing as its first step in review of a proposed assessment. Because this hearing is sequentially similar to the OSM assessment conference, the Secretary agrees that the escrow requirement can be deferred to the second level of review as it is under OSM procedure. In Utah the second level of review is judicial review. The problem is that under its present program provisions the second level of review may be unreasonably delayed.

Accordingly, Utah's program is disapproved to the extent that it fails to require a reasonable limit on the amount of time by which the Board must decide and issue the assessment, and the time in which a hearing must be held.

(j) The Utah Division of Oil, Gas and Mining has the authority under Utah laws and the Utah program contains provisions to issue, modify, terminate and enforce notices of violation, cessation orders and show-cause orders in accordance with Section 521 of SMCRA, 30 USC 1271, and with 30 CFR Chapter VII, Subchapter L, including the same or similar procedural requirements, as described in the following findings. The enforcement authorities in Section 521 of SMCRA and the applicable provisions of 30 CFR Chapter VII, Subchapter L are contained in 40–10–22 UCA of the Utah CMRA and in Sections UMC/SMC 840, 843 and 845 of the Utah regulations.

Section 516(c) of SMCRA requires that underground coal mining under urbanized areas, cities, towns and communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams be suspended if it is found that there is imminent danger to inhabitants of the urbanized areas, cities, towns and communities. Utah requires, in U.C.A. § 40–10–18(3), that only if "after proper notice and hearing" there is a finding of imminent danger will the Board suspend such mining.

In the Regional Director's letter to the State, May 21, 1980, Utah was asked to clarify this provision. The Utah Attorney General explained in a July 24, 1980 opinion that under Utah's law the Division has the authority to order immediate suspension of mining. The Board, however, may only suspend such mining after notice and hearing. The Division of Oil, Gas & Mining has the authority under Section 40–10–22–(1)(b) of the Utah CMRA to issue a cessation order when it determines that any condition, practice or violation of the permit exists that creates an imminent danger to the health or safety of the public. That order remains in effect until the Division determines that the condition, practice or violation has been abated, or until modified, vacated or terminated by the Division in accordance with 40–10–22–(1)(e) of the Utah CMRA. That section also requires that a conference be held before the Division within 30 days of the order. Section 40–10–20 UCA of the Utah CMRA set forth the procedures to be followed for such a conference. These provisions require at least a five day notice of the hearing. After the hearing, the Board would make a determination as to whether the mining operation should be indefinitely suspended (i.e., permanently enjoined). The Board's permanent suspension (i.e., permanent injunction) constitutes a more stringent enforcement than the issuance of a cessation order by the Division which constitutes a temporary restraining order. The Secretary finds that Utah's provision for suspending underground mining is at least as stringent as the federal provision. Such procedures are consistent with SMCRA.

(k) the Utah Division of Oil, Gas and Mining partially has the authority under Sections 760, 761, 762 and 764 of the Utah regulations and the Utah program contains provisions to designate areas as unsuitable for surface coal mining consistent with CFR Chapter VII, Chapter F. Deficiencies in this area are discussed in the following findings.

(i) 30 CFR 761.11(c) prohibits or limits surface coal mining operations on any lands where such mining will "adversely affect" any publicly owned park or any places included on the National Register of Historic Places. The Utah regulations, UMC 761.11(a)(3) and SMC 761.11(c), restrict that provision to lands "contained in" the noted parks and places. The state's promulgated regulations are not consistent with the protection of public parks and places provided in 30 CFR 761.11(c) because mining outside the boundaries of these places could affect them but would not be covered by the state's rules.

(ii) 30 CFR 761.11(e) requires, subject to certain exceptions and waivers, that no "surface coal mining operations" may be conducted within 300 feet measured horizonally from any occupied dwelling. "Surface coal mining operations" includes surface mining and the surface effects of underground mining. 30 CFR 700.5 implements the mandate of Section 522(e)(5) of SMCRA. The Utah statute, Section 40–10–24(4)(d) UCA, mirrors the mandate of SMCRA. However, Utah's underground regulation, UMC 761.11(b)(1), applies the restriction only to "surface operations" closer than 300 feet. Utah does not include underground mining activities in its definition in UMC/SMC 700.5 of "surface operations." The Utah regulation, UMC 761.11(b), is inconsistent with the federal requirements because it does not apply the restriction to the surface effects of underground coal mining activities.

(iii) Utah has added a definition for the term "area" in UMC/SMC 762.5. This term is not defined in the Federal regulations. Utah defines "areas" as "a geographic unit defined by a legal subdivision in which the criteria alleged in the petition pursuant to SMC 762.11, 762.12, 764.13 (b) and (c) and 764.19 occur throughout and form a significant or substantial feature." As used in the 30 CFR Part 762, "area" refers to any parcel of land which the petitioners request be designated as unsuitable. The Utah definition places a limitation on the usage of the term not intended by the federal regulations. Further, the state's definition would impose a burden on the petitioner to supply a legal description of the area and would inhibit the petition process by requiring that such a strictly defined area contain the features of the restriction throughout. As such, the use of this definition by Utah is inconsistent with the federal requirements by creating more stringent criteria for designation of unsuitability than those in the federal regulations.

The Secretary notes that in UMC 762.5 Utah has omitted the term "form" from the definition of "area".

(iv) In UMC/SMC 764.13, Utah requires that a petition to designate lands unsuitable contain the following items, which are not required under 30 CFR 764.13:

(1) UMC/SMC 764.13(b)(2), UMC/SMC 764.13(c)(2)—a legal description of the area.

(2) UMC/SMC 764.13(b)(4), UMC/SMC 764.13(c)(4)—a U.S. Geological Survey 7½ or 15 minute topographic map.

(3) UMC/SMC 764.13(b)(5), UMC/SMC 764.13(c)(5)—information regarding legal owners of record of the property (surface and mineral) concerned; holders of record of any leasedhold interest in the property and purchasers or record of the property under a real estate contract.

(4) UMC/SMC 764.13(b)(6)-information that would tend to establish that an area is unsuitable for all or certain types of coal mining operations which address the points that must be considered under § 762.11 "criteria for designating lands as unsuitable."

(5) UMC/SMC 764.13(b)-information which would address the information needed for the detailed statement that must be prepared by the Division in accordance with § 764.17(e).

Utah places a burden on the petitioner which is not permitted by 30 CFR 764.13(b) and (c). These federal regulations state that the information required under the federal rules is the only information petitioners can be required to submit.

(v) Sections UMC/SMC 764.13(b) do not contain the provision in 30 CFR 764.13(b)(3) that requires, in the designation petition, a description of how mining of the area has affected or may adversely affect people, land, air, water, or other resources. Because this decreases the burden on petitioners, it is more conducive to public participation and thus consistent with the federal regulation.

(vi) 30 CFR 764.15(b)(2) requires that notice that a petition is complete be published in a State register when one exists. SMC/UMC 764.15(b)(2) contains the requirement that this information be published in the State Register, when in fact, no such document exists. This reference should be deleted from the regulation.

(vii) The state regulations, UMC/SMC 764.17(a), do not provide for the petition hearing to be in the locality of the petition area or that the hearing be legislative in nature, without the cross examination of witnesses as prescribed in 30 CFR 764.17(a). Rather, Utah requires that the hearing be in Salt Lake City and that it be adjudicatory in nature and allows the cross examination of witnesses. This provision is inconsistent with the federal rules.

(viii) Section 522(d) of SMCRA, 30 CFR 764.17(e) and 30 CFR 764.19(a)(3) require that before the regulatory authority designates an area unsuitable for mining, it must prepare and consider a detailed statement on the coal resources of the area, the demand, for coal, and the impact of designation on the environment, the economy and the supply of coal. Utah has an equivalent provision, § 40–10–24(3) UCA. The Utah CMRA, § 40–10–24(1)(c) UCA, also requires that the criteria for discresionary designations listed in § 40–10–24(1)(c)(i–iv) (SMCRA 522(a)(3)(A–D)) be balance against the economic impact of the designation in a cost-benefit analysis.

As explained in the Attorney General's opinion of July 23, 1980, submitted July 24, 1980, pp. 3–4, this provisions is intended to be consistent with the requirement in SMCRA and in 40–10–24(c) UCA for a statement on the economic impact of the designation. The cost-benefit analysis is to be part of the required statement. The Secretary agrees that the federal provisions require consideration of economic as well as the environmental factors. In light of the Attorney General's opinion as well as the Secretary's reading of the Utah statute, the Secretary does not

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believe that Utah's cost-benefit provision is intended to change the criteria the regulatory authority must consider or to limit its discretion in any way not envisioned by the federal rules and thus approves Utah's provision on this basis.

(ix) Section 522(e) of SMCRA and 30 CFR 761.11 and 761.5 prohibits mining in certain areas, with an exception for those surface coal mining operations which existed on the date of enactment, and 30 CFR 761.11 prohibit mining in certain areas with an exception for those operations which existed on August 3, 1977. Federal regulation 30 CFR 761.5 defines "surface coal mining operations which exist on the date of enactment" as all such operations which were being conducted on August 3, 1977. Utah statute Section 40–10–24(4) UCA and regulation UMC/SMC 761.11 have similar provisions, except that the statutory date on which such operations must have existed is the date of enactment of the Utah law, March 20, 1979. The Utah regulations, UMC/SMC 761.5, refer to August 3, 1977.

Surface coal mining operations could lawfully exist on March 20, 1979 in the designated areas only if they had also existed prior to August 3, 1977; otherwise, the federal law under Section 522(e) would have forbidden them. Since the federal law has prohibited mining in the specified areas since August 3, 1977, Utah would have been unable to issue a permit or to allow mining to be conducted, because to do so would have been inconsistent with federal law. Thus, any mine which would qualify for Utah's exception would also qualify for the federal exception.

The Secretary has determined that it is not necessary that the August 3, 1977 date be reflected in the Utah statute. The state program provisions are consistent with the federal provisions for defining surface coal mining operations which exist on the date of enactment of SMCRA.

(x) Section 522(e) of SMCRA prohibits, subject to valid existing rights, mining in certain areas. Federal regulations 20 CFR 761.5 defines valid existing rights. One of the requirements is that the operator had all necessary permits by August 3, 1977. Utah statute Section 40–10–24(d) USC and regulation UMC/SMC 761.5 have similar provisions, except that the statutory date for establishment of rights is March 20, 1979, the date of enactment of the Utah law.

In *In re: Permanent Surface Mining Regulation Litigation,* Civil Action No. 79–1144 (D.D.C. Feb. 26, 1980, p. 20), the court held that a good faith effort to obtain all permits meets the "all permits" requirement. Because of this, some people who may have in good faith applied for but not received permits in the period between August 3, 1977 and March 20, 1079 might qulify for valid existing rights under the state provision would not qualify under the federal provision. For this reason, Utah's valid existing rights provisions is less stringent than the federal provisions unless Utah demonstrates that there are in fact no operations in Utah which qualify under the state provision and would not qualify under the federal provisions.

(xi) Section 522(a)(6) of SMCRA states that the requirements of that section for determining the unsuitability of lands for surface coal mining will not apply to lands on which the operations were conducted on August 3, 1977, or under a permit issued pursuant to SMCRA or where substantial legal and financial commitments in the operations were in existence prior to January 4, 1977.

Utah has similar statutory provisions except that Section 40–10–24(1)(e) UCAS refers to operations conducted on March 20, 1979 and to commitments made prior to March 15, 1978. These dates render Utah's provisions less stringent than the federal provisions. Under the federal provision, all lands on which mining is taking place on March 3, 1977 are exempt from designation. For operations which had substantial legal and financial commitments before January 4, 1977, under Section 510(b)(4) processing of a permit application cannot be halted by a petition to designated the area involved. The state provisions do not provide equivalent protection.

Utah regulations UMC/SMC 7615. and 762.5 are identical to the federal provisions. However, in vies of the fact that these regulations appear to directly contradict Utah's statute, they are not sufficient to render Utah's program consistent with the federal program.

Surface coal mining operations could exist on March 20, 1979 in such areas only if they had also existed prior to August 3, 1977; otherwise, the Section 522(a)(6) of SMCRA would have forbidden them, Since the federal law has prohibited mining in specified areas since August 3, 1977, Utah would have been unable to issue a permit or allow mining to be conducted because to do so would have been inconsistent with SMCRA. Thus, any mine which would qualify for Utah's exception would also qualify for the federal exemption.

Further, 30 CFR 761.5 defines "surface coal mining operations which exist on the enactment" as all operations which existed on August 3, 1977. 30 CFR 762.5 defines "substantial legal and financial commitments in a surface coal mining operation" as significant investments that have been made on capital intensive activities.

(1) The Utah Division of Oil, Gas and Mining partially has the authority under the Utah Rules of Practice and Procedure, Utah laws and regulations and the Utah program partially contains provisions for public participation in the development and revision of Utah regulations. Utah also partially has the authority to provide for public participation in the permitting process and in the enforcement of its laws and regulations.

(i) 30 CFR 771.21(b)(1) requires that the regulatory authority establish a time frame for submission of a complete permit application that allows sufficient time for the Division and the public to review the application. By establishing a lead time, the regulatory authority allows the permittee and the public to be aware of the time that might elapse between submission of a complete application and its approval. Utah does not set forth this time frame in SMC/UMC 771.21(b)(1) and is therefore inconsistent with the federal requirements.

(ii) 30 CFR 786.14 prescribes procedures for requesting and conducting informal conferences on proposed permit applications. Subsection (b)(4) specifically provides that the conference is not to be formal. UMC/SMC 786.14 omit the word "informal" in the majority of their references to such conferences. These omissions make the Utah provisions inconsistent with the federal requirements in Section 513(b) of SMCRA, which explicitly requires the conference to be informal.

(iii) 30 CFR 700.14(b) prescribes that records or documents in the possession of OSM may be requested under 43 CFR Part 2, which implements the Freedom of Information Act and the Privacy Act. Utah refers to these federal statutes in its regulations. As these provisions are not a part of the Utah program submission, the Secretary assumes that Utah intended to refer to its own statutory requirements on program policies. However, the state may elect to follow federal requirements for disclosure of documents, if it so desires.

(iv) With respect to public participation during the course of the development of the Utah program, representatives of the industry, public interest groups, and the general public had a number of opportunities to become involved. The Division of Oil, Gas and Mining prepared, printed and distributed proposed coal mining regulations for the state's permanent program and Notice of the Board's hearings on the proposed regulations was published in all available newspapers in the state. Hearings were held on these proposed regulations on June 26–27, 1979, July 26 and 27, 1979, and August 23, 1979. Subsequent to these hearings, the Division redrafted the proposed regulations such that one set of regulations were developed for underground coal mining and one set of regulations were developed for surface coal mining. Hearings on these regulations were conducted on January 9–10, 1980, January 24, 1980, and February 14, 1980. The regulations were subsequently adopted by the Board on February 14, 1980.

(v) Section UMC/SMC 700.12, Utah's analogues to 30 CFR 700.12, allow an "interested" person the right to petition for rulemaking pursuant to Section 63–46–8 UCA. The federal regulation permits petitioning by "any person." The Utah provision appears to set a more restrictive standard for petitioning for a rule change. The Secretary is unable to determine if the Utah provision is consistent with the federal provision on the basis of the information in the administrative record and therefore must disapprove UMC/SMC 700.12. The state may either present information which demonstrates that standing under the state provisions is as broad as under the federal provision or make an appropriate rule change.

(m) The Division of Oil, Gas and Mining partially has the authority under Utah laws and the Utah program partially includes provisions to monitor, review, and enforce the prohibition against indirect or direct financial interests in coal mining operations by employees of the Utah Division of Oil, Gas and Mining consistent with 30 CFR Part 705.

(i) 30 CFR 705.6(b) provides that any employee who fails to file a financial interest statement is in violation of Section 517(g) of SMCRA and is subject to removal. Utah's provision UMC/SMC 705.6(b), refers to 30 CFR 705 rather than the applicable state statutory provision.

(ii) Sections UMC/SMC 705.21 are inconsistent with 30 CFR 705.21 because they omit the provisions of 30 CFR 705.21(a) and (b), which prescribe procedures for employees and the Division Director's appeals during the review of conflict of interest charges.

(ii) Sections UMC/SMC 705.21 are inconsistent with 30 CFR 705.21 because they omit the provisions of 30 CFR 705.21(a) and (b), which prescribe procedures for employees and the Division Director's appeals during the review of conflict of interest charges.

(n) The Division of Oil, Gas and Mining has the authority under Utah regulations to require the training, examination, and certification of persons engaged in or responsible for blasting and the use of explosives in accordance with Section 719 of SMCRA. 30 CFR 732.15 (b)(12) does not require a state to implement regulations governing certification and training of persons engaged in blasting until six months after federal regulations for these provisions have been promulgated. The federal regulations have not been promulgated at this time.

(o) The Utah Division of Oil, Gas and Mining partially has the authority under Utah Laws and the Utah program contains provisions in Section UMC/SMC 795 of the Utah regulations to provide small operator assistance. Discussions of specific findings are listed below.

(i) The Utah statute Section 40–10–10(3) UCA and regulations UMC/SMC 795.3 contain a provision that limits the Small Operators Assistance program only to the amount federally funded. Such a limitation is inconsistent with Section 705(c) of SMCRA and 30 CFR 795.3.

(ii) 30 CFR 795.5 defines "probable hydrologic consequences" as the projected result of proposed surface coal mining and reclamation operations. SMC/UMC 795.5 deletes "reclamation" from the definition and further limits the effects from mining to only "surface effects of underground mining activities." These omissions allow State standards less stringent than the Federal requirements and are therefore unacceptable.

(iii) In UMC/SMC 795.14(f)(2), the Utah regulations do not provide for OSM right of entry to inspect lands to be mined or adjacent lands which may be affected to collect environmental data or to install necessary monitoring instruments on such lands. This is a requirement of 30 CFR 795.14(f)(2), and therefore this omission makes the Utah regulations inconsistent with the Federal requirements.

(p) The Utah Division of Oil, Gas and Mining does not have the authority to provide protection of its employees in accordance with the protection afforded Federal employees under Section 704 of SMCRA. The Utah CMRA and the Utah regulations do not contain provisions for such protection.

(q) Utah partially has the authority under its law, Section 40–10–22 UCA, regulations, UMC/SMC 840, 842, 843, and 845, the Utah program and the Oil, Gas and Mining Board's Rules of Procedure, for administrative and judicial review of State program actions in accordance with Section 525 of SMCRA and 30 CFR Chapter VII, Subchapter L except as noted below:

(i) Utah does not have rules for discovery, intervention and the award of attorney fees that are consistent with the requirements of 43 CFR Part 4, which is incorporated as a State program requirement by 30 CFR 840.15.

(ii) Utah has no equivalent to the provision of 30 CFR 845.20(a), which prescribes that if the person issued the proposed penalty fails to request a hearing, the proposed penalty is due and payable, thereby making the Utah provision inconsistent with and less stringent than the Federal requirement.

(iii) 30 CFR 843.13(a)(1) requires that upon a determination by the Director that a pattern of violations exists, he will issue a show cause order. Section 40–10–22(1)(d) UCA prescribes that upon a determination by the Division that a pattern of violations exists, the Division will request the Board to issue a show cause order. The Utah regulations UMC/SMC 843.13(a)(1) prescribe that upon the Division's recommendation, the Board shall issue a show cause order. The State's provisions are consistent with the Federal requirements because they assure that an order is issued when a determination has been made that a pattern of violations exists or has existed.

(iv) The Federal regulations at 30 CFR 700.13(b) require that notice of intent to sue be sent to the Secretary, Director and State regulatory authority prior to the time the suit is commenced. UMC 700.13(b) is inconsistent with the Federal regulation because it limits complaints on "surface coal mining operations" to complaints on the "surface effects of underground coal mining." The State provision must encompass complaints on "underground coal mining and reclamation activities."

(v) 30 CFR 840.15 requires each State program to provide for public participation in enforcement of the State program consistent with 30 CFR Parts 842, 843, and 845 and 43 CFR Part 4. UMC/SMC 840.15 is inconsistent with the Federal requirements in that it references the Federal provision rather than the applicable State provisions. This must be corrected for the State rule to be valid and workable.

(iv) Sections UMC/SMC 843.13 are inconsistent with 30 CFR 843.13 (c) and (d) because the State does not prescribe procedures for notice of the Board's order to show cause that are consistent with the procedures of 30 CFR 843.12. The omitted Federal provisions require that the Board's show cause notice, including a brief statement of the procedure for intervention in the proceeding, if practicable, be published

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in a newspaper of general circulation in the area of the mining and reclamation site and that the notice be posted in the regulatory authority's offices, that the permittee request the hearing and that 30 days notice of the hearing be provided.

(vii) UMC/SMC 843.12(e) is inconsistent with 30 CFR 843.13(e) because the State does not require that the permittee immediately cease mining and fulfill certain other obligations after the Board determines that a pattern of violations exists.

(viii) Sections UMC/SMC 843.14 are inconsistent with 30 CFR 843.14 because the State's provisions do not prescribe procedures for the service of notices of violation and cessation orders that are consistent with those of 30 CFR 843.14.

(ix) Section 525(b) of SMCRA requires that a decision be made by the regulatory authority within 30 days of the receipt of a petition for the review of a cessation order. Neither the Utah regulations nor the Utah CMRA prescribe any time period for such a decision. The omission of this requirement in the Utah program makes the procedure for the review of cessation orders inconsistent with and less stringent than the Federal requirement.

(x) The definition in UMC/SMC 700.5 of "person having an interest which is or may be adversely affected or person with a valid legal interest" is inconsistent with the definition in 30 CFR 700.5, which provides that the state regulatory authority is covered by this phrase. The state has not included, in its analogue to "the state regulatory authority," the "Board" as well as the "Division," thus denying the Board standing it would have under the federal definition.

(r) The Division of Oil, Gas and Mining has the authority under Utah law and the Utah program contains provisions to cooperate and coordinate with and provide documents and other information to the Office of Surface Mining under the provisions of 30 CFR Chapter VII. The provisions for cooperation, coordination, and provision of documents are contained in Section 40–8–22 UCA of the Utah Mined Land Reclamation Act adopted by Section 40–10–4 UCA of the Utah CMRA.

(s) The following laws and regulations of Utah affecting its regulatory program, with the exception discussed below, do not contain provisions which would interfere with or preclude implementation of the provisions of SMCRA and 30 CFR Chapter VII.

Utah Noxious Weed Act (4–17–1 to 12 U.C.A. 1953);

Historic District Act (11–18–1 to 6 U.C.A. 1953);

Air Pollution Control Act (26–24–1 to 26 U.C.A. 1953);

Air Pollution Control Act (26–24–4 to 15 U.C.A. 1953, as amended);

Solid Waste Management Act (26–35–1 to 5 U.C.A. 1953, as amended);

Open and Public Meetings Act (52–4–1 to 9 U.C.A. 1953);

Division of State History Act (63–18–1 to 38 U.C.A. 1953, as amended);

Administrative Rule-making Act (63–46–1 to 13 U.C.A. 1953);

Enabling Act-State Engineer (73–5–5 to 12 U.C.A. 1953);

Pollution of Waters Act (73–14–1 to 13 U.C.A. 1953);

Pollution of Waters Act (73–14–1 to 11 U.C.A. 1953, as amended);

a. H.B. 180, Creation of Historic Districts, 1967;

b. Division of State History—Executive Order, 1969;

c. H.B. 34 Utah State Antiquities Act, 1973;

d. Executive Order 1976;

e. H.B. 366, State Antiquities Act, 1977;

Oil Refinement Act (40–9–1 to 6 U.C.A. 1953, as amended, and General Rules and Regulations);

Utah Rules of Civil Procedure: Rule 4—Process, Rule 24—Intervention;

Wildlife Resources Code of Utah (23–14–3 to 23–22–3 U.C.A. 1953, as amended) and Other Laws Pertinent to Wildlife Resources;

Utah Safe Drinking Water Act (26–36–1 to 26–36–13 U.C.A. 1953);

Hazardous Waste Management Act (26–37–1 to 26–37–14 U.C.A. 1953).

(t) The Division of Oil, Gas and Mining and other agencies having a role in the program do have, except as discussed below, sufficient legal, technical, and administrative personnel and sufficient funds to implement administer and enforce the provisions of the program, the requirements of 30 CFR 732.15(b), and other applicable state and federal laws on non-Indian and non-federal lands.

OSM has undertaken an analysis of the proposed Utah staffing plan to assess Utah's ability to properly carry out inspection and enforcement activities and permitting functions as required by the Act. Based on this analysis, the Secretary finds that Utah needs to increase its proposed staffing level from 2.0 to 3.0 Full Time Equivalents (FTE) for inspection and enforcement and from 9.0 to 12.0 FTE for permit review and administration.

Disposition of Comments

The comments received on the Utah program during the public comment period further described under "Background on the Utah Program Submission" raised several issues. The Secretary considered these comments in evaluating Utah's program, as indicated below.

1. The Heritage Conservation and Recreation Service (HCRS) expresses concern that the Memorandum of Agreement between the Utah Division of Oil, Gas and Mining and the Utah Division of State History does not specify how the Division of Oil, Gas & Mining will respond to recommendations of the Division of State History regarding the historic, archeological, and other cultural resource reviews the Division of State History agrees to perform. HCRS is concerned that there is no mention in the Memorandum of possible permit stipulations for mine plan approval or denial of a permit under the "Designation of Lands Unsuitable" procedure.

SMC/UMC 761.12(f)(2) of the state regulations require joint approval by all affected agencies of a mine plan or permit for an operation that may adversely affect any park or historic place listed in the National Register of Historic Places.

Utah's language closely tracks the federal provision, 30 CFR 761.12(f)(2), which also forbids issuance of a permit without joint approval of all the affected agencies. The Secretary finds that this insures adequate and sufficient involvement of all agencies in the unsuitability designation processes.

2. The National Park Service (NPS) contends that it should be given an opportunity to directly participate in developing criteria for designating lands as unsuitable for surface coal mining near NPS units. These criteria, according to NPS, should be related to all resources of the NPS units, and to the indirect effects which may occur on fragile lands. NPS contends that the establishment of buffer zones around NPS lands must not be left solely to other agencies with interests potentially at variance with NPS policy, especially when the scenic and environmental integrity of the park lands may be involved.

Further, NPS requests that the State of Utah notify the NPS Regional Director, Southwest Region, before any decision is made to approve or deny exploration or mining and reclamation permits in areas where mining may have the potential to affect the resources of park units in Utah. In addition, NPS requests that it have the opportunity to be involved in setting bond amounts in such mining areas and it be allowed to participate in inspections in cases where

NPS units may be affected, especially when these cases where NPS units may be affected, especially when these inspections are in response to a petition, a citizen's inspection request, or for release of performance bond.

The state has provisions equivalent to the federal regulatory provisions that require the circulation of copies of a complete petition and the requesting of relevant information from interested agencies (UMC/SMC 761.15(b)(1)/30 CFR 761.15(b)(1)). In addition, the requirement that the mine plan or permit for an operation will not be issued unless jointly approved by all affected agencies (UMC/SMC 761.12(f)(2)/30 CFR 761.12(f)(2)) is contained in the Utah regulations. The Utah regulations (SMC 786.11, SMC 806.11, and SMC 843.15 and 16) further reflect the federal requirements for providing for notice and soliciting comments (UMC/SMC 786.11/30 CFR 786.11) on proposed bonding amounts, decisions on bond release (UMC/SMC 806.11/30 CFR 806.11) and notices of violations (UMC/SMC 843.15/30 and .16/30 CFR 843.15 and 16).

There is no provision in the Utah program nor in the federal regulations for federal agencies to participate in inspections other than through the citizen compliant provision in UMC/SMC 842.12. The Secretary finds that the state provisions for involvement of NPS in the program are consistent with the federal requirements.

Utah is committed to consultation with concerned agencies as demonstrated in its submission under 30 CFR 731.14(g) and (10) and in the cooperative agreement between the Governor of Utah and the Regional Forester, Intermountain Region, United States Forest Service, which is in Utah's program submission. The Secretary finds that Utah has satisfied the interagency coordination and review requirements of the Federal program. The NPS comments have been forwarded to Utah for consideration.

The Secretary has instructed the Park Service not to seek criteria in state programs which would establish "buffer zones" adjacent to National Parks as automatically unsuitable for coal mining, unless these lands meet one or more of the other specific criteria for designation. On June 4, 1979, the Secretary made final decisions on the Federal Coal Management Program. Included in those decisions were numerous changes in the proposed unsuitability criteria for Federal lands. The Secretary chose to delete the automatic "buffer zone" language for national parks and certain other federal lands from the first criterion (43 CFR 3461.1(a)). Instead, he stated lands adjacent to a national park should only be found unsuitable if they are covered by one of the other specific criteria (43 CFR 3461.1(b)–(t)). This instruction to the Park Service assures that that agency's approach to state unsuitability criteria will be compatible with the Secretary's policy on federal unsuitability criteria.

3. The U.S. Fish and Wildlife Service (FWS) suggests that procedural guidelines should be developed that would provide a single FWS input to the mine plan review process. Such input would address the Fish and Wildlife Coordination Act, the Endangered Species Act, the Corps of Engineers permit reviews under Section 404 of the Federal Water Pollution Control Act, NPDES, Section 10 permit reviews and any actions involving the Migratory Bird Treaty Act. FWS's comments have been forwarded to the state for consideration.

4. The Forest Service comments that the coordination required for development and approval of mine plans or for specific features of plans such as sediment ponds, roads and monitoring plans is unclear. The Forest Service suggests that prior to approval of any plan, the surface management agency must concur.

The Utah regulations follow the federal regulatory program requirements for coordination (30 CFR 761.12/UMC/SMC 761.12), notice (30 CFR 786.11(b) and (c)/UMC/SMC 786.11(b) and (c)), consultation (30 CFR 786.17/UMC/SMC 786.17) and the applicable approval (30 CFR 786.12(f)(2)/SMC/UMC 761.12(f)(2)) of other agencies in the review and approval of mine plans and permit applications. The Secretary finds that Utah's program satisfies the requirements of the federal program.

5. The National Park Service (NPS) contends that the Utah program does not provide for coordination with the Advisory Council on Historic Preservation as is allegedly required by Section 106 of the National Historic Preservation Act.

However, the Utah program fulfills the requirements of SMCRA and its implementing regulations for solicitation of comments from other state and federal agencies and review and coordination with these agencies. Furthermore, Section 106 of the National Historic Preservation Act addresses federal agencies, not state agencies. As is noted in the preamble to 30 CFR 731.14(g)(10), 44 FR 14956 (March 13, 1977), the Secretary believes that the requirement that a state identify a process for consulting such agencies is sufficient to assure compliance with other statutes.

6. In order to avoid confusing the general public and the states regarding the relation of the Secretary's program under the Mineral Leasing Act to the program under SMCRA, the Geological Survey recommends that Utah be informed of the respective responsibilites of the Interior agencies for coal management in the Bureau of Land Management (BLM)/Geological Survey (GS)/Office of Surface Mining (OSM) Memorandum of Understanding.

The Geological Survey also expresses concern that the Utah program makes no reference to procedures for processing exploration applications which include federal lands, and recommends that the state add language indicating that exploration applications for federal lands are submitted and approved pursuant to procedures identified in the BLM/GS/OSM Memorandum of Understanding.

The state is seeking approval of a state program for non-federal and non-Indian lands. As such, it is appropriate both of these concerns on the management of federal lands under an approved state program be developed as part of the cooperative agreement with Utah, in accordance with 30 CFR Part 745.

7. The Heritage Conservation and Recreation Service (HCRS) comments that numerous currently unidentified historic, archeological, and other cultural resources that may be eligible for the National Register could be destroyed on lost unless steps are taken in the permitting process to adequately insure the identification of such resources.

The Secretary finds that the Programmatic Memorandum of Agreement between OSM and the Advisory Council on Historic Preservation (See 45 FR 41988, June 23, 1980), when implemented will allow the State Historic Presevation Officer (SHPO) to have an integral part in insuring identification of historic lands for each permit application. However, 30 CFR 761.11(c) and 761.12(f)(1) have been suspended to the extent that surface coal mining operations are prohibited on lands that would affect places "eligible for listing on" the National Register of Historic Places and to the extent that the prohibitions apply to privately owned places listed on the National Register. Therefore, the Secretary must disapprove any portion of Utah's proposed program containing such language.

8. The Department of Energy (DOE) contends that Utah's narrative on assessing fees for permit applications set forth in its response to 30 CFR 731.14(g)(2) which requires a narrative

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description of the proposed system for assessing fees in a state program submission, should be expanded to include the process the state will use in assessing the fees, as well as an explantation of how the estimated cost of reviewing applications has been determined.

Utah requires a five dollar permit application fee (UMC/SMC 771.25). This fee amount is consistent with the mandate of Section 40–10–10(2) UCA, Section 507(a) of SMCRA and 30 CFR 771.25. These require that each permit application be accompanied by a fee, to be determined by the regulatory authority, that may be less than but will not exceed the administrative cost of the permit. The Secretary finds that given the standard fee of five dollars, the Utah program and narrative comply with the requirements of SMCRA and 30 CFR 731.14(g)(2).

9. The U.S. Fish and Wildlife Service (FWS) suggest that OSM recommend to the state and baseline data guideline requirements be generated for all biological elements of a mine permit. Also, it would be desirable, according to FWS, to establish a written procedural guideline addressing the relationship between the state regulatory authority and the FWS.

The state program (UMC 783.20/SMC 779.20) contains those elements required by the federal program (30 CFR 779.20/783.20) for baseline data collection. The Secretary is not empowered to impose additional requirements on the state. FWS's comments have been forwarded to the state.

10. The Advisory Council on Historic Preservation (ACHP) objects that Utah's statue includes no requirements for data on historic properties to be submitted to the state regulatory authority. The commenter also expresses dissatisfaction with the information requirements of UMC 783.12, and the alleged absence of guidelines within Utah's program for the indentification and treatment of historic and cultural properties. In the absence of any affirmative effort by the applicant to identify and protect historic properties, the commenter maintains, the only protective mechanism is the petition process, which could result in last-minute conflicts. ACHP expresses the belief that Utah's Division of State History UCA 63–18–1 *et seq.* would provide reasonable protection if state approval of mine plans is construed to be the project of a state agency for the purpose of the Act, and if procedures were developed for identification of historic properties.

The Utah regulations follow the federal regulatory program requirements for coordination (SMC/UMC 761.12), notice (SMC/UMC 786.11 (b) and (c)/30 CFR 786.11 (b) and (c)), consultation (SMC/UMC 786.17/30 CFR 786.17) and the applicable approval (SMC/UMC 761.12(f)(2)/30 CFR 761.12(f)(2)) of other agencies in the review and approval of mine plans and permit applications. The Secretary finds that Utah's program satisfies the requirements of the federal program.

11. ACHP contends that the Memorandum of Understanding with the State Historic Presevation Officer (SHPO) which is contained in Utah's program (Volume I, page 204), is helpful in that it indicates a commitment on the part of the state to consult with the SHPO but it fails to indicate what the state will do with the information and recommendations provided. Furthermore, ACHP maintains that the Memorandum stipulates that the SHPO will proceed in accordance with 36 CFR Part 800, which is applicable only to federal undertakings. Thus ACHP concludes that the SHPO is committed to proceeding in accordance with an inapplicable authority.

The Secretary finds that the state's memorandum and regulations fulfill the requirements of the federal program under 30 CFR 786.11(c) and 30 CFR 786.17 for the coordination, solicitation and review of other state and federal agencies' comments on permit applications.

12. It is noted by the Department of Energy (DOE) that Utah's definition of "intermittent stream" in UMC/SMC 700.5 incorporates the condition that such streams must flow for 30 consecutive days in any year, while the federal definition in 30 CFR 701.5 stipulates that such streams drain at least one square mile. DOE asks that the state explain how its definition will better protect the environment than the federal definition.

The Secretary agrees that Utah should delete the provision in its definition of "intermittent stream" that requires that streams flow for 30 consecutive days. Utah's definition does not cover ephemeral streams which drain areas greater than a square mile, as do the federal regulations. In order to be consistent with the requirements of 30 CFR 816/817.44, the state should incorporate protection for such streams in UMC 817.44(a) and SMC 816.44(a). Those sections set forth requirements for stream channel diversions within the permit area. (See Finding 4(c)(x)).

13. The Bureau of Mines indicates that it believes that the Utah regulation for removal of topsoil is inconsistent with the federal provision. The state has added to its analogue to 30 CFR 816.22 (SMC 816.22(g)), a paragraph which sets forth requirements for the removal of topsoil and subsoil under adverse conditions. The state allows an exception to the requirements of 30 CFR 816.22 to remove topsoil or subsoils in a separate layer from an area to be disturbed by surface operations when the operator demonstrates to the satisfaction of the Division that (1) such actions are unsafe or impractical because of the local environmental conditions and that (2) the operator will fulfull the requiremenst of § 816.22(e) in the use of substitute materials. These provisions are consistent with the federal program.

14. The Forest Service contends that the Utah program should define subsoil, and that it should be made clear that overburden is that which is below the typical A, B and C horizons. The Forest Service disputes the accuracy of Utah's definition in UMC/SMC 700.5 of topsoil as being the A horizon, contending that in certain situations topsoils should be considered part of the B horizon.

The Secretary identified the Utah definition of topsoil as a deficiency in the Utah program (See Finding 4(c)(iii)).

15. The Bureau of Mines points out that Utah UMC 817.23(b)(1)(i)/SMC 816.23(b)(1)(i) exceeds 30 CFR 817/816.23(b)(1)(i) by allowing the use of soils and soil substitutes in operations such as pads, parking lots and road embankments. The Secretary agrees with the Bureau of Mines and has identified this provision as an inconsistency in the Utah program (See Finding 4(c)(vii)).

16. The Forest Service suggests that the definition of "arid and semiarid" SMC/UMC 700.5 could be improved with the addition of information on seasonal moisture availability rather than a simple comparison of water use by plants to total precipitation.

The Utah definition in UMC/SMC 700.5 reflects the language of the federal definition (30 CFR 701.5). The Secretary lacks the power to impose further requirements on the state.

17. DOE, the Environmental Protection Agency (EPA) and the Bureau of Mines express concern with Utah's definitions in UMC/SMC 700.5 of "head-of-hollow fill" and "valley fill", in that the definitions appears to allow coal processing waste to be used in such fills.

The Secretary agrees with the commenters that Utah must correct its definitions of "head-of-hollow" and "valley fills" in such a way that Utah regulations are consistent with 30 CFR 701.5 (See Findings 4(c)(v)).

16. EPA notes that 30 CFR 817.42(a)(3)(ii)(B) allows an exemption from the requirement to use

sedimentation ponds for drainage from underground mine workings "only if there is no mixture of that drainage with drainage from surface areas," but that Utah is less stringent by allowing the exemption when "there is no mixture of surface drainage from the underground mine working." The Secretary agrees that the omission of the requirements of 30 CFR 817.42(a)(3)(ii) (A) and (B) in the Utah regulations is a deficiency in the Utah program (See Finding 4(c)(viii)).

19. The Mine Safety and Health Administration (MSHA) notes that UMC 817/SMC 816.44(b)(2) require that diversions be designed to divert drainage from an upstream area and to be able to carry the peak runoff from a 100 year 24 hour precipitation event. MSHA states that its guidelines call for a 100 year, six hour precipitation event, which is more stringent.

Utah's regulations, UMC 817/SMC 816.44(b)(2), are identical to the requirements of 30 CFR 816/817.44(b)(2). The Secretary is satisfied that Utah has fulfilled the federal program requirements.

20. The Bureau of Mines points out what it believes to be a number of deficiencies in the area of fill design and construction. Specifically, in MSC 816.43(b), Utah requires that permanent diversions be constructed with "sloping banks" rather than with "gently sloping banks" as required in 30 CFR 816.43. In addition, SMC 816.72(b)(3) does not specify the minimum size and composition of under-drains for valley fills, as is required by 30 CFR 816.72(b)(3).

The Secretary agrees that these omissions are deficiencies in the Utah program (See Findings 4(c) (ix) and (xxi)).

21. The Bureau of Mines notes that SMC 816.46(o) of the Utah regulations allows the use of coal processing waste as construction material in sedimentation pond embankments providing it has been demonstrated through engineering and chemical testing to be suitable. The Bureau contends that this is less stringent than 30 CFR 816.46(o), which does not allow the use of coal processing waste.

The Secretary agrees with the commenter and has identified this as a deficiency in the Utah program (See Findings 4(c)(xxi)).

22. The EPA, Bureau of Mines, DOE and U.S. Army Corps of Engineers point out that Sections SMC 816.71–74 and UMC 817.71–74 of the Utah regulations are not consistent with 30 CFR 816/817.71–74. Specifically, the state allows the use of non-acid and non-toxic forming coal processing waste in excess spoil, head-of-hollow and valley fills, and the federal provisions do not.

By definition (30 CFR 701.5) head-of-hollow and valley fills are fill structures consisting of any material other than coal processing waste. However, coal processing waste can be used in structures located in a valley or head-of-hollow. When coal processing waste is used, the structure is simply not a "head-of-hollow fill" or "valley fill". While the Utah regulations recognize this distinction, they are deficient in that they do not impose the requirements of SMC 816/UMC 817.93 when the material is placed in a steep slope area and has the potential to impound water. (See Finding 4(c)(xxi)).

23. The EPA, Bureau of Mines and U.S. Army Crops of Engineers also notes that UMC 817/SMC 816.71 allow the Division to approve a static safety factor less than 1.5 and that 30 CFR 817/816.71 does not. The Secretary agrees that this is a deficiency in the Utah regulations that must be corrected (See Finding 4(c)(xx)).

24. The Bureau of Mines notes that Section UMC 817.71(g) differs from the 30 CFR 817.71(g) in that the State allows depressions and impoundments on completed fills and the federal provision does not.

The Secretary agrees with the commenter that this is a deficiency in the Utah regulation that must be corrected (See Finding 4(c)(xx)).

25. The Bureau of Mines expresses concern regarding SMC 816.46(b)(1), in which the state introduces flexibility into 30 CFR 816.46(b)(1), which requires that sediment ponds provide a sediment volume equal to the accumulated sediment volume from the drainage area to a pond for a minimum of three years. Utah allows smaller sediment ponds.

The Secretary has voluntarily suspended several permanent program regulations as a result of arguments presented in *In re: Permanent Surface Mining Regulation Litigation*, Civil Action No. 79–1144 (See 44 FR 77453 (December 31, 1979)). Sediment storage design capacity, in addition to sedimentation pond size as prescribed in 30 CFR 816.46(b) and 817.46(b) were suspended by the Secretary. Thus, the Secretary is affirmatively disapproving UMC 817/SMC 816.46(b).

26. MSHA notes that Utah's analogue, SMC 816.49(i), to 30 CFR 816.49(i), requires that plans for any enlargement, reduction, reconstruction, or other modification of dams or impoundments shall be submitted to the Division of Oil, Gas and Mining for approval. MSHA maintains that they must also approve of any such change to the original approved design plan. The state regulation is identical to 30 CFR 816.49 in its provision for the review, approval and inspection of permanent and temporary impoundments, and the Secretary is not empowered to impose requirements on the state which are not contained in the federal rules. Neither the state or federal program supersedes MSHA responsibilities.

27. In its comments, EPA asserts that Utah's analogues, UMC 817/SMC 816.45, to 30 CFR 816.45 and 817.45 regarding sediment control measures should be modified to specify that the best technology currently available must be used to control sediment. Utah has omitted this requirement. The Secretary agrees with EPA and has noted this to the state as a deficiency that must be corrected (See Finding 4(c)(xi)).

28. EPA asserts that Utah's analogues, SMC 816/UMC 817.46(a), to 30 CFR 816.46(a) and 817.46(a), which concern sedimentation ponds, should be modified to specify that sedimentation ponds represent the best technology currently available and must be used. EPA also remarks that Utah should explain the meaning of "a determination of practicality" as used as a criterion for construction of smaller than standard sedimentation ponds in SMC 816/817.46(b)(1). The Secretary agrees with EPA's comment on SMC 816/817.46(a) and has identified this as a deficiency that must be corrected in the state program. (See Finding 4(xi)). With regard to EPA's second comment on sedimentation pond storage volume criteria, the Secretary suspended 30 CFR 816/817.46(b) in 44 FR 77453 (December 31, 1979). The Secretary was ordered by the court affirmatively to disapprove provisions in state programs that incorporate regulations suspended by the Secretary or remanded by the court in the case. The Secretary's action complying with this order is contained in the section "Secretary's Decision—Approval in Part/Disapproval in Part."

29. 30 CFR 816.52(a)(1) requires that groundwater levels, infiltration rates, subsurface flow, and storage characteristics of the land to be mined be monitored to determine the effects of surface mining activities. The Bureau of Mines and EPA contend that because Utah permits (in UMC 817/SMC 816.52(a)(1)) monitoring to be minimized in situations where no aquifer exists, the state's program may be less stringent. The Secretary agrees that this is a deficiency of the Utah program that must be corrected (See Finding 4(c)(xiv)).

30. The Mine Safety and Health Administration (MSHA) expresses concern about the Utah analogues to 30 CFR 816/817.82(a), SMC 816/UMC

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817.82(a), which allow inspection of coal processing waste banks by any person approved by the Division. MSHA requires that such inspections be conducted only by "qualified persons."

The state regulations are identical to the federal regulations in providing for the site inspection of coal processing waste banks. Neither the state nor the federal program supersedes MSHA's regulations. The Secretary is not empowered to impose upon states requirements beyond those contained in the permanent program regulations.

31. EPA objects to the addition of language in the state's analogues, SMC 816/UMC 817.57(a), to 30 CFR 816.57(a) and 817.57(a). The state's language would appear to specify that a land area would not be considered a "stream buffer zone" if it was not "important to downstream fishery," whereas the federal language refers to biological communities within 100 feet of a stream. The Secretary agrees with EPA that the noted provision in UMC/817/SMC 816.56(a) is a deficiency that must be corrected by the state (See Finding (4)(c)(xvi)).

32. EPA asks for an explanation of the state's analogues, SMC 816/UMC 817.89(b), to 30 CFR 816.89(b) and 817.89(b). The state requires that final disposal of noncoal wastes shall be in a designated disposal site in the permit area, "except where such wastes are disposed of in an approved sanitary landfill." EPA is concerned that this exception, which does not appear in 30 CFR 816/817.89(b), may allow operators to avoid designating disposal sites within the permit area.

The Secretary finds that Utah's provision for the disposal of non-coal waste at approved sanitary landfills is more stringent than the provisions of 30 CFR 816/817.89(b).

33. EPA questions Utah's intent in omitting the requirement of 30 CFR 816.103(a)(1) that coal and acid and toxic forming materials be covered with a minimum of 4 feet of the best available non-toxic and non-combustible material. SMC 816.103(a)(1) requires no minimum cover and only requires that all debris, acid-forming materials, and toxic material constituting a fire hazard be treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of ground or surface water.

30 CFR 816.103(a)(1) and 817.103(a)(1) were suspended by the Secretary in response to litigation. (See discussion under "General Background" and pages 10–11 of *In re: Permanent Surface Mining Regulation Litigation*, Civil Action No. 79–1144). The Secretary was ordered affirmatively to disapprove provisions in state programs that incorporate regulations suspended by the Secretary or remanded by the court in the case. The Secretary's action complying with this order is contained in the section entitled "Secretary's Decision-Approval in Part/Disapproval in Part."

34. EPA notes that Utah omitted from its analogue (UMC/SMC 828.11(b)(3)) to 30 CFR 828.11(b)(3) the language of the federal regulation which calls for avoiding annular injections between the wall of the drill hole and the casing in in situ processing activities. The Secretary agrees with EPA and has identified this as a deficiency in the Utah regulations (See Finding 4(c)(xxxii)).

35. EPA expresses concern as to whether the staffing of Utah's regulatory authority will be adequate to carry out the program requirements. Specifically, EPA asserts that the workload estimate contained in Utah's narrative under 30 CFR 731.14(j) does not seem to include site visits to coal exploration areas and projects fewer inspections than would seem necessary. EPA questions whether the Utah staff will be adequate to handle its duties under SMCRA and the Underground Injection Control program as mandated by EPA, as well as the other activities of the Division. The Secretary agrees with commenter that additional staff is necessary to administer and implement the Utah program (See Finding 4(t)).

36. EPA points out that as described in Utah's narrative to 30 CFR 731.14(k), there are two Memoranda of Understanding between the Division of Oil, Gas and Mining and the Division of Water Rights, one of which is unsigned. The two MOUs are essentially identical, except that the signed one is between the Division of Oil, Gas and Mining (DOGM) and the Utah Division of Water Rights, Dam Safety Section. EPA questions if the draft MOU is a proposed change.

The MOU between DOGM and the Utah Division of Water Rights, which was submitted as a draft, was never entered into by the two Divisions, as the Utah statute Section 40–10–29 UCA prescribes that nothing in the Act will be construed as affecting in any way the right of any person to enforce or protect, under applicable law, his interest in water resources affected by a surface coal mining operation. This section of the Utah statute is identical to the provisions of Section 717 of SMCRA. As described by its title, the Division of Water Rights administers the waters of the state, including appropriation and distribution thereof.

37. The Forest Service points out that Utah's analogue, UMC 817.97(d)(2), to 30 CFR 817.97(d)(2) should be modified to include the requirement that roadways be fenced to guide wildlife to roadway overpasses.

The Secretary agrees with the Forest Service that this is a deficiency of the Utah program that must be corrected (See Finding 4(c)(xxxv)).

38. EPA expresses concern that the job description for the geohydrologist given in Utah's narrative under 30 CFR 731.14(i) is not adequate. EPA believes that the job description should put more emphasis on dealing with ground and surface water contamination, ground water problems related to subsidence, and the need for expertise during the operation of a mining plan.

In the "Summary of Duties" for Utah's Mine Reclamation Hydrologist, which is contained in the state's March 3, 1980 program submission (page 352), general responsibilites are defined that address the EPA areas of concern. The Secretary finds that these duties are adequate.

39. The Department of Energy suggests that Utah's narratives in its March 3, 1980 program submission on performance bonds and liability insurance, inspection and monitoring, permit performance standards, employee conflict of interest and statistical information should be in greater detail and in non-regulatory language so that they would be of greater usefulness to the coal mine operator. The Secretary finds that Utah's narrative meets the requirements of 30 CFR 731.14 for content, consistency and level of detail.

40. EPA expresses concern that Utah's program does not require that notices of violation (NOV) be served in as expeditious manner as is required by 30 CFR 843.14. According to EPA, the state's procedures are vague as they are presented in both the state's narrative contained in its March 3, 1980 program submission (page 241), and in UMC/SMC 843.14.

The Secretary agrees with EPA that the Utah regulations are deficient in that they do not prescribe measures consistent with 30 CFR 843.14 for service of orders and notices. This deficiency has been identified and must be corrected (See Finding 4(q)(viii)).

41. EPA indicates that Utah's definition in UMC 700.5 of "underground operations" does not include "in situ processing", "reclamation of shafts and audits", or "undeground support facilities" as does the definition of "underground mining activities" in 30 CFR 701.5.

The Secretary agrees with EPA's comment and has identified this as a deficiency that must be corrected by the state (See Finding 4(c)(i)).

42. The Environmental Policy Institute (EPI) and the Public Lands Institute (PLI) contend that Utah's definition, in UMC 700.5 of a "person having an interest which is or may be adversely affected or person with a valid legal interest" should be modified to include the Division and "Board" as the regulatory authority, as they would be under 30 CFR 700.5.

The Secretary agrees that this modification is necessary to insure that the Board's actions are deemed to afford persons standing where such persons interests are adversely affected by the Board's actions. This has been identified to the state as a deficiency that should be corrected (See Finding 4(g)(x)).

43. Once commenter argued that "aquifer" is defined by Utah at UMC 700.5 in a more restrictive manner than in the Federal regulations because the state adds water "quality" as a criterion for determining whether a stratum capable of carrying water is an aquifer. The Secretary agrees with the commenter and has identified this as a deficiency that must be corrected by the state (See Finding 4(c)(xxxvi)).

44. EPI and PLI contend that Utah's definition of "existing structures" in UMC 700.5 must be revised to include facilities connected with surface as well as underground mines. The definition in 30 CFR 701.5 includes facilities connected with "surface coal mining operations."

Since Utah's underground mining regulations (UMC) and surface mining regulations (SMC) are mutually exclusive, the definitions in each regulation have been modified by the state to be consistent with the type of mining being addressed. Thus, the definition in SMC 700.5 refers to facilities used in conjunction with surface coal mining activities and the UMC 700.5 definition refers to underground coal mining activities.

45. One commenter argues that in Utah's analogue, Section 40–10–19 UCA, to Section 517 of SMCRA, right of entry is available only for "surface mining operations" and not for underground coal mining operations. The commenter deduces this from the fact that the exact phrase "surface coal mining operation," which Utah defines to include underground operations was not used.

Sections 40–10–19(2)(a) and (b) UCA contain the same right of entry provisions as Section 517(b)(3) of SMCRA, with the exception that Utah further requires in (b) that the right of entry shall be a condition of obtaining an approved state permit to conduct surface mining operations.

This additional requirement does not contradict any of the provisions of SMCRA. Further, the condition is also contained in 30 CFR 786.27 and in UMC/SMC 786.27. The Secretary finds Utah's provisions consistent with those of SMCRA for right of entry authority.

46. EPI and PLI express concern that UMC 700.14(b) refers to 43 CFR Part 2 regarding availability of records. The commenters request clarification as to whether Utah is in effect adopting, by regulation, the federal Freedom of Information Act and privacy acts provisions as implemented in 43 CFR Part 2.

Utah was requested in the May 21, 1980 Regional Director's letter to the state to clarify UMC/SMC 700.14(b). Utah stated, in its June 18, 1980 program submission, that there is no state statutory equivalent of the Freedom of Information Act or Privacy Act under state law. The Secretary alerted the state to this deficiency (See Finding 4(1)(iii)).

47. PLI and EPI note that Utah has included in UMC/SMC 761.4(a) the responsibilities in 30 CFR 761.4(a) of the Secretary of Interior related to determining whether an operation can be allowed on federal lands under Section 522(e) of SMCRA, which designates certain areas unsuitable for mining. The commenter maintained that this authority should be documented and found proper by the Secretary, or this section should be deleted. UMC/SMC 761.4(a) are identical to 30 CFR 761.4(a), and as such are consistent with the federal program.

48. PLI and EPI question whether Utah's use of the word "activities" in UMC 761.5(a)(1), has a meaning different from the word "operation" which appears in 30 CFR 761.5(a)(1). The state consistently refers to "suface coal mining activities" in the surface regulations and "underground coal mining activities" in the underground regulations where the term "surface coal mining operations" is used in the federal regulations. The state's terms, with the correction of the deficiency noted in Finding 4(c)(i), will be consistent with the use of the term "surface coal mining operations" in the federal regulations.

49. PLI and EPI point out that Utah omits from its definition of "valid existing rights" in SMC 761.5 three essential parts of that definition as it appears in 30 CFR 761.5(a), (b), and (c), and that Utah has no equivalent to the federal definition in UMC 761.5.

The March 3, 1980 Utah program submission contained several "paste-up" errors in the section-by-section comparison of the state and federal regulations. These errors were identified and a "corrected set" of comparisons submitted by Utah on March 11, 1980. This information was put in the administrative record and noted as being material to be used in reviewing the program. The Utah regulations for surface coal mining contain provisions in SMC 761.5(a), (b) and (c) that are identical to those of 30 CFR 761.5, and UMC 761.5 also contains a definition of "valid existing rights" that is consistent with the definition in 30 CFR 761.5.

50. EPI and the Southern Utah Residents Concerned About the Environment (SOURCE) note that Utah's regulation UMC 764.13, regarding the petition for the designation of lands as unsuitable for surface coal mining, appears to require more information from a petitioner than does 30 CFR 654.13. UMC 674.13 requires information on the ownership and the "legal description" of the area. SOURCE contends that this discourages public participation. SOURCE also states that further information requirements such as "legal description," "ownership," and "identification of petitioner's interest" must be eliminated, and that a statement must be made that the petitioner has a right to be given full consideration regardless of the inclusion of information. The Secretary has identified these deficiencies to the state for correction (See Findings 4(k)(iv)).

51. SOURCE and PLI object to Utah's statute, Section 40–10–24(1)(c) UCA, which provides that the criteria for the designation of lands unsuitable for coal mining must "be balanced against the economic impact of the designation in a cost-benefit analysis." Section 522 of SMCRA does not provide that the criteria are to be "balanced" against the economics of the designation.

SOURCE also notes that Section 40–10–24(1)(e) UCA of the Utah CMRA excludes commitments prior to March 15, 1978 from the designation process, while Section 522(a)(6) of SMCRA uses the date of January 4, 1977. SOURCE contends that the state must use the date from SMCRA. The Secretary disagrees with the commenters. (See Finding 4(k)(ix), (x), and (xi)).

52. PLI and EPI state that Utah's analogue (UMC/SMC 764.21) to 30 CFR 764.21, concerning the data base and inventory system requirements of the designation process, should give a date by which the system will be started. The commenters contend that without a date, the mandate to start a data base is meaningless.

Utah has initiated the development and use of a data base and inventory system. The Division's materials are filed in the Lands Unsuitable Library contained in the Division's office at 1588 West North Temple, Salt Lake City, Utah.

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53. SOURCE indicates that Utah's analogue, Section 40–10–10(3) UCA, to Section 507(e) of SMCRA should be amended to show that the implementation of the Small Operator's Assistance Program will not be contingent upon receipt of funding from the Office of Surface Mining.

The Secretary agrees with this concern and has disapproved this aspect of the Utah program (See Finding 4 (o)(i)).

54. EPI and PLI assert that Utah's provision in UMC/SMC 806.11(a) to accept accumulated funds bonds as performance bonds is unacceptable without further explanation and specific approval of this alternative system by the Secretary, pursuant to SMCRA 509(c). According to the comments, it appears that the accumulating fund bond essentially allows the bond amount set by the Department to be paid in installments by the permittee, which would be unacceptable because there would be no assurance, in the event of bond forfeiture, that the Division would have sufficient funds to complete the necessary reclamation work.

The Secretary agrees with the commenters that an accumulating fund bond does not insure that sufficient monies are available to ensure completion of the reclamation plan should the operator default at any time. The Secretary has identified this as a discrepancy in the state's regulations (See Finding 4(h)(iii)).

55. PLI and EPI argue that to be consistent with Judge Flannery's first-round decision, SMC/UMC 807.11(e) should be amended to provide for access to the mine site during an informal conference on bond release.

The affirmative disapproval of UMC/SMC 807.11(e), insofar as it does not provide for access to the mine site during an informal conference on a bond release, is part of the Secretary's partial approval/partial disapproval of the Utah program. The Secretary's actions pursuant to the court decision in *In re: Surface Coal Mining Regulation Litigation*, Civil Action No. 79–1144, (February 26, 1980, pp. 41–42) are described in the General Background on State Program Approval Process Section contained in this notice.

56. EPI and PLI note that contrary to Section 519(f) of SMCRA, Section 40–10–16(6)(a) UCA has no provision for holding a formal bond release hearing in the state capital or in the locality of the mine, at the option of objector. They also note that SMC/UMC 807.11(h) specifies Salt Lake City as the site for all bond release hearings.

The Secretary agrees with the commenters that Section 519(f) specifically requires that the objector have the right to request that the location of a bond release hearing be in the city or town nearest the mine site or in Salt Lake City, at his or her option. This discrepancy has been identified to the state (See Finding 4(h)(v)).

57. One commenter points out that Section 40–10–11(e)(ii) UCA provides an exception from the alluvial valley floor permit requirements for mines operated or permitted after the enactment of SMCRA, but prior to the effective date of the Utah statute. The commenter claims that this is inconsistent with and less stringent than Section 510(b)(5) of SMCRA, which exempts only operations which were permitted or in operation in the year preceeding August 3, 1977. This cannot be considered a "minor deficiency," the commenter asserted, unless Utah can demonstrate that no mine falls into this category.

The Secretary agrees with the commenter that the difference in the Utah statute must be revised to reflect the dates of SMCRA. This deficiency has been identified for correction by the state (See Finding 1(a)(ii)).

58. One commenter points out that in Section 40–10–17(2)(j)(ii)(B) UCA, the reference to "(2)(h)(ii)" should be "(2)(j)(ii)." The error is identified in Finding 1(a)(iv).

59. One commenter states that Section 40–10–19 UCA fails to implement SMCRA 517(b)(1), which empowers the regulatory authority to impose monitoring requirements on a case-by-case basis. The state's provision in Section 40–10–19 UCA authorizes the Division to impose monitoring requirements only pursuant to rules and regulations. According to the commenter, Utah has no authority to require an underground mine operator to monitor for subsidence, since the division may only impose monitoring requirements by rule and the state has no rule authorizing the imposition of subsidence monitoring.

The same commenter notes that Utah's counterpart (Section 40–10–19 UCA) to SMCRA 517(b)(2) does not impose a mandatory duty to conduct specified monitoring to measure water quality and quantity at described locations whenever an operation will remove or disturb strata that serve as aquifers, as is required by SMCRA.

Section 40–10–19(1) UCA of the Utah CMRA directs "any permittee to provide information relative to surface coal mining and reclamation operations as the Division deems reasonable and necessary in the Division's implementing rules and regulations."

The state has carried out this provision in its regulations for subsidence monitoring (UMC 784.20 30 CFR 784.20), surface and ground water monitoring (UMC 784.14(h)/30 CFR 784.14(h)), (SMC 780.21(b)/30 CFR 780.21(b)), (UMC 817/SMC 816.52/30 CFR 817.52). The state's provisions are consistent, except as noted in these findings with the comparable federal provisions.

The Secretary finds that Utah has the necessary authority, as set forth in its statute and regulations to require monitoring on a site by site basis and as such is consistent with and as stringent as the federal program.

60. One commenter notes that Utah has identified as items for consideration under the "state window" provision, 30 CFR 731.13(c): (1) A variance to the requirements of 30 CFR 816.71(k) and 817.71(k) which would allow the disposal of acid-forming and toxic-forming wastes in valley or head-of-hollow fills; (2) a variance in 816.45(a) and UMC 817.45(a) that would allow an exemption to the use of sediment ponds; and (3) a modification in SMC 816.102(a)(2) and UMC 817.101(b)(1), that would allow the retention of exposed highwalls in certain circumstances. The commenter asserts that these state provisions provide open-ended exceptions from the federal requirements and are not backed up with supporting data or material as is required by 30 CFR 731.13(c).

Utah proposed only one state window for approval by the Secretary. That state window proposed an alternative for steep slope underground coal mining (UMC 817.101(b)(1)). Utah submitted on July 24, 1980 supporting documentation for consideration by the Secretary in his review of the state's proposed alternative as required by Section 731.13(c) (See Finding 4(b)(i)). The state's changes in UMC 817/SMC 816.71(k) and UMC 817/SMC 816.45(a) identified by the commenter have been identified by the Secretary as deficiencies that the state should correct (See Findings 4(c)(xx) and 4(c)(xi)).

61. EPI and PLI express the belief that Utah regulation UMC 840.11, regarding state inspections, appears to limit the inspection requirement to underground mines. If this is the case, the comment concludes, the provision must be changed to include surface and related facilities consistent with 30 CFR 840.11.

As discussed in Finding 4(a)(i), underground mining is regulated by the provisions of the "UMC" regulations and surface mining by the "SMC" regulations. Section SMC 840.11 sets forth procedures for state inspections of surface coal mining and related facilities.

62. SOURCE asserts that Utah's counterpart (Section 40–10–18(3) UCA) to SMCRA 516(c) should be changed so that underground mining in urbanized or commercial areas or adjacent to permanent streams can be suspended in imminently dangerous situations by the regulatory authority without the imposition of the notice or hearing requirements required by the state.

In the May 21, 1980 Regional Director's letter, the State of Utah was requested to provide an opinion from Utah's Attorney General clarifying the state's interpretation of the state's analogue, Section 40–10–18(3) UCA, to Section 516(c) of SMCRA. Utah submitted on July 24, 1980, an Attorney General opinion that stated that under the state's analogue, Section 40–10–22(b) UCA, to Section 521(a)(2) of SMCRA, the Division will issue an immediate cessation order where imminent danger exists to public health and safety. Such an order, under Section 40–10–22(1)(e), UCA will terminate within 30 days of its issuance unless a hearing is held. Under Section 40–10–18(3) UCA, that hearing must be before the Board. At that hearing, the Board will make a determination as to whether the operation will be indefinitely suspended (i.e., permanently enjoined). The hearing, which SOURCE is concerned about, will occur after the mining is stopped. The Secretary has determined that Utah's statute will immediately stop mining where there is imminent danger to the public health and safety and that a statutory change is unnecessary. (See Finding 4(j)(i)).

63. SOURCE and PLI state that Utah's statute should include the requirement of Section 517(f) of SMCRA, which states that the regulatory authority will provide information on surface mining and reclamation operations in central and sufficient locations in the county, multicounty and state area of mining so that the information will be conveniently available to residents in the areas of mining.

As noted by PLI and SOURCE, the state statute does not include specific language similar to that in Section 517(f) of SMCRA. However, in Section 40–10–19(6) UCA, the state statute does require copies of any records, reports, inspection materials or information obtained under the chapter by the Division to be made immediately available to the public. The state's implementing regulations, UMC/SMC 840.14(b) and those in 30 CFR 840.14(b), require such information to be made available to the public in the area of mining so that it is conveniently available to the residents of the area. The Secretary finds that these provisions satisfy the requirements of the federal program.

64. EPI and PLI contend that Utah has merely repeated in UMC/SMC 840.15 the language of 30 CFR 840.15 regarding public participation in enforcement of the state program. The commenters allege that Utah does not have attorney's fee regulations similar to those at 43 CFR 4.1290–96, nor has it provided for discovery or intervention procedures for administrative hearings consistent with 43 CFR Part 4.

The Board of Rules of Practice and Procedure, Rule B–14, contained in the March 3, 1980 program submission, provide that the pleading and evidence provisions of the Utah Rules of Civil Procedures shall be applicable to the state program.

The Utah Rules of Civil Procedure are equivalent to the federal Rules of Civil Procedure. Thus, the Secretary finds that Utah's procedures for pleading and evidence are consistent with those of 43 CFR Part 4, since it is derived from the Federal Rules of Civil Procedure.

The Secretary has pointed out to Utah the need to adopt procedures for the award of attorneys fees, intervention and discovery that are consistent with 43 CFR Part 4 and to amend UMC/SMC 840.15 to reflect applicable state rules and regulations. (See Findings 4(q) (i) and (v)).

65. PLI notes that UMC/SMC 842.12(b) provide for confidentiality of identities of persons supplying information concerning inspection and enforcement violations, they also allow the identities of such persons to be disclosed if required by state or federal law. 30 CFR 842.12(b) does not provide such an exception for state laws. The federal rule provides that the person alleged to be in violation shall receive a copy of the written results if a review of a decision not to inspect or enforce, except that the name of the complaining citizen shall not be disclosed unless federal law requires it. The commenter states that the ability to disclose the identity of citizens supplying information may deter citizen participation if Utah has or develops lenient disclosure laws. Furthermore, the commenter asserts Utah's disclosure laws are not found in the submission. The commenter notes that the same problem exists in the State's analogue, UMC/SMC 842.15(b) to 30 CFR 842.15(b).

30 CFR Section 842.12(b) and 842.15(b) require that confidentiality be maintained unless disclosure is required under the Freedom of Information Act or other federal law. The Secretary agrees with the commenter that Utah's reference to state *or* federal law in UMC/SMC 842.12(b) and .15(b) is inconsistent with the federal provision in that it allows disclosure or the identity of persons supplying information on inspections and enforcement if such disclosure is required by state law even if such disclosure would not be allowed under federal law. Utah must delete the reference to state law. (See Finding 4(1)(iii)).

66. EPI and PLI express concern that the Utah statute does not provide for informal review of a failure to enforce, as required by SMCRA 517(h).

While the Utah CMRA does not contain a direct analogue to Section 517(h) of SMCRA, Section 40–10–6(1)(g) authorizes to the Board and Division to make and promulgate rules and regulations necessary for the regulation of coal mining and reclamation. UMC/SMC 842.15 provides for the review of a decision not to inspect or enforce. These provisions are consistent with those of 30 CFR 842.15, which implements Section 517(h) of SMCRA.

67. SOURCE notes that Utah's provisions UMC/SMC 843.12(a)(2), which are comparable to 30 CFR 843.12(a)(2), allow issuance of a notice of violation, but do not provide for additional notices and orders when violations persist, as does the federal regulation. The commenter asks that a statement be included to require follow-up.

30 CFR 843.12(a)(2) applies to the federal inspector when he or she has reported a violation to the state for action and has given a written report of such action to the person responsible for the violation and no action has been taken by the state. As such, the provision is not applicable to the state.

68. EPI and PLI note that UCA Section 40–8–4 authorizes the state's Board to issue "emergency orders" with or without a hearing. This, according to the commenter, could cause conflict, confusion and litigation over the interaction between this emergency order and the requirement to issue a cessation order in the event of imminent danger as prescribed by UCA Section 40–10–22(1)(b) the state's analogue to Section 521(a)(2) of SMCRA. The commenters argue that Utah must clearly indicate that the emergency order in no way affects the mandatory field issuance of imminent danger orders.

Sections UMC/SMC 900 of the Utah regulations identify the provisions of the Utah Mined Land Reclamation Act of 1975, Chapter 8 of Title 40 and its implementing rules that are considered consistent with Chapter 10 of title 40, UCA. These sections also specifically

identify those provisions of Section 40–8 UCA that are superseded by or adopted under Chapter 10 of Title 40. The definition of "emergency order" in Section 40–8–4(15) UCA and the power of the Board to issue emergency orders, as prescribed by Section 40–8–4 UCA and Section 40–10–22 UCA does not exist.

The commenters also contend that the state's statute, Section 40–10–22 UCA, should be amended to ensure that an imminent danger order may be carried out upon field inspection without permission of the Board, and to ensure that field inspection can be carried out by inspectors or any other qualified person, as set out in SMCRA 521(a) (2) and (3). In addition, they argue that Section 40–10–22(1)(d) UCA, should be amended to provide for mandatory issuance of a show cause order, rather than discretionary issuance by the Board, which is in direct conflict with SMCRA 521(a)(4).

Sections 40–10–19 and 22 UCA do not require the Board's permission prior to an inspection. Further, these sections of the Utah CMRA and the state's implementing regulations, UMC/SMC 843, prescribe that inspections will be conducted and enforcement actions taken by "the Division, the Director, or authorized representative." The Secretary finds these provisions to be consistent with those of SMCRA and 30 CFR Chapter VII (See Finding 4(g)(ii)).

Section 40–10–22(d) UCA prescribes that upon a determination by the Division that a pattern of violations exists, the Divison will request the Board to issue a show cause order. The state has been alerted to the need to provide in the regulations that a show cause order will be issued by the Board when a determination is made (See Finding 4(q)(iii)).

69. PLI comments that Utah's counterpart (UMC/SMC 843.13(d)) to 30 CFR 843.13(d), concerning hearings on suspensions or revocations of permits, cites the Board's Rules of Practice and procedure, Part 900(b)(ix), as the state's procedures governing hearings, but that this document is not included in the state's submission. According to PLI, Utah should either adopt the federal rules found in 43 CFR Part 4, or resubmit and supply copies of the rule in question.

Utah's submission of the Board's Rules of Practice and Procedure is contained in Volume 1 of the state program submission of March 3, 1980. The Secretary has identified as a deficiency in the Utah program the omission, in UMC/SMC 843.13, of notice procedures consistent with those of 30 CFR 843.13(c) and (d) and 43 CFR Part 4 (See Findings 4(q)(i) and (vi)).

70. EPI, PLI and SOURCE express concern that Utah's analogues (40–10–22(1)(b) and (c) UCA and UMC/SMC 843.11 and .12) to SMCRA 521(a)(2) and (3) and 30 CFR 843.11 and .12 fail to insure mandatory field enforcement and create the possibility that the field inspector will report to the Division and that the Division will decide whether to enforce. This approach, according to the commenters, creates the possibility that field inspectors will not be vested with full cessation order (CO) and notice of violation (NOV) authority as required by the federal provisions.

Section 40–10–22(b) UCA authorizes the Division of Oil, Gas and Mining to immediately issue a cessation order when it is determined that a condition, practice or violation exists that creates an imminent danger to the health and safety of the public or is causing or can reasonably be expected to cause significant imminent environmental harm to land, air or water resources. Section 40–10–22(1)(c) UCA further authorizes the Division to issue NOVs. As further discussed in Finding 4(g)(ii), the Secretary has determined that state inspectors have and will use the necessary authority to inspect and enforce, and that the Utah program provides for mandatory field enforcement.

71. PLI recommends that Utah's counterparts (UMC/SMC 845.17(c)) to 30 CFR 845.17(c) be amended to contain language similar to the language in the federal provision that provides that penalties shall be reviewed and reassessed unless a conference has been requested.

The Secretary has noted this discrepancy to the state for correction (See Finding 4(i)(ii)).

72. In its comments, PLI asserts that Utah must include in its regulations the provisions of 30 CFR 845.18 which provide a procedural mechanism for reviewing civil penalty assessments when requested by the person to whom the notice or order was issued.

Utah, as discussed in Finding 4(i)(iii), does not provide for an informal conference on a NOV or CO prior to a public hearing on a proposed penalty. In that Finding, the Secretary determines that SMC/UMC 845, Utah's procedures for the hearing prior to payment of the penalty, are consistent with those of the 30 CFR 845. In his review of the UMC/SMC 845, however, the Secretary determines that these regulations do not include a process for requesting the Board's review of the proposed penalty in a formal hearing as prescribed by 30 CFR 845.18. The state needs to incorporate provisions consistent with 30 CFR 845.18(a) for this process.

73. In its comments, PLI remarks that Utah must include in its regulations a provision equivalent to 30 CFR 845.19(a), which provides that a permittee may petition in order to contest a proposed penalty. UMC/SMC 845.17 and .19 leave the permittee with only a judicial remedy, which the commenter asserts is more restrictive on the permittee than the federal rules.

Utah does not have informal conferences prior to adjudicatory hearing. As discussed in Finding 4(i)(iii), the Secretary considers the Utah provisions to be consistent with the federal requirements.

74. PLI stresses that Utah, in UMC/SMC 845.20(c) is only required to pay permittees an interested rate of 6% whereas the analogous federal regulation, 30 CFR 845.20(c) specifies 6% or the prevailing Department of Treasury rate on the penalty in escrow, whichever is greater, in the event the permittee has been overcharged. The Secretary finds that Utah's provision is acceptable (See Finding 4(i)(i)).

75. EPI and PLI remark that Utah should change "approves" to "disapproves" in the first sentence of Section 40–10–16(4) UCA, which is the state's counterpart to SMCRA 519. This error has been pointed out to the state (See Finding 1(a)(iv)).

76. PLI expresses concern regarding the statement in Part G–4 page 240 of the March 3, 1980, Utah submission that violations observed during a state inspection will be brought to the attention of the appropriate company representative, and that a formal notice will be issued later by registered mail. The commenter points out that minesite issuance of notices of violation and cessation orders will apparently not be the practice, as is required by Section 521 of SMCRA and 30 CFR 843. The commenter expresses the belief that this is a major deficiency in the Utah program which must be corrected with an affirmative statement of minesite authority.

Based on Utah's July 24, 1980 program submission, the Secretary has determined that Utah has the authority to issue COs and NOVs on site (See Finding 4(g)(ii)).

77. EPI, PLI, and the Southern Utah Residents Concerned About the Environment (SOURCE) contend that Utah's policy, rule and decision making Board should be subject to the conflict of interest provision of Section 517 of SMCRA and Section 40–10–19 UCA. Instead, claims SOURCE, board members are specifically excluded from the prohibitions found in UMC/SMC 705, which forbid Division employees from having financial interests in mining operations. PLI and EPI contend that the current board is tied too closely to the mining industry, thus jeopardizing citizens' rights to a fair and impartial hearing guaranteed them by the Administrative Procedures Act and the Constitution.

The Secretary has interpreted his rules to permit members of multi-interest boards, established by a statute, to have interests in coal companies other than a company, if any, involved in the particular proceeding before the board. At this time state programs can also allow members of such boards to have these interests in coal companies. However, the Secretary has proposed to amend his rules on this subject. See 44 FR 52098–52101, September 6, 1979. The Secretary considers this to be an important issue, and intends to make a final decision on conflicts of interest of board and commission members in the near future. The Department is currently evaluating various alternatives, ranging on the one hand, from leaving the present rules and interpretations unchanged to, on the other hand, a blanket prohibition against conflict of interest by any person performing any function, even an advisory one. Between these two extremes lies the possibility of exempting only members of boards which are exclusively advisory in nature. Until the regulation is changed, it remains the standard for judging the adequacy of State program submissions. For the purposes of State program approval, the objections now raised are untimely and should have been within 60 days after the rule was adopted. Section 526 of SMCRA. If the Secretary changes the rules, or his interpretation of the present rules, states will be required to amend their programs as necessary to make them consistent with the new requirements.

78. EPI and PLI maintain that Utah's program does not appear to have adequate inspection resources to meet the minimum number of inspections required by Section 517 of SMCRA.

The Scretary agrees with this assessment and has pointed out to Utah the need to employ additional staff for the administration, inspection and enforcement of the Utah program. (See Finding 4(t)).

79. PLI alleges that Utah has failed to enforce the requirements of SMCRA, the Cooperative Agreement and the state statute insofar as it has provisions similar to SMCRA. PLI also contends that it would be unwise for the Secretary to approve a state program if that state has failed to carry out applicable requirements in the past.

30 CFR 732.15 states that the Secretary shall not approve a state program unless, on the basis of information contained in the program submission, comments, testimony and written presentations at the public hearings, and other relevant information, the Secretary finds that the state program satisfies the requirements of (a) through (d) of that section. All of these criteria address the capability of the state to carry out the proposed state program. As explained in the federal preamble, 44 FR 14961 (March 13, 1979) no provision in SMCRA states or suggests that state permanent programs can be disapproved on an evaluation by the Secretary of the state's good or bad faith concerning its interim program performance. Rather, the Secretary is to evaluate the state's activities in his oversight role under Section 504(a)(3) of SMCRA and 30 CFR Part 733.

80. PLI and EPI urge that OSM not permit Utah to cure deficiencies in its program by the improper use of Attorney General opinions, regulation changes and letters from state officials to OSM employees. Such cures, they argue, create new problems, such as regulations which invite lawsuits because of the lack of supporting sections in the state law, and a confusing, contradictory, and piecemeal state program. The program should be comprehensible so that citizens can protect their interests.

The Secretary regards the Attorney General as an expert on state law in Utah. Attorney General opinions are used to resolve ambiguities, not to cure deficiencies.

Regulation changes are appropriate where they are supported by the state law and have not been relied upon where such support is lacking. Under 30 CFR 732.15, the Secretary is to consider "information contained in the program submission" as part of the basis for his decision on state programs; there is no requirement that all aspects of the federal statute must be covered by direct state *statutory* authority, as long as they are adequately covered in the program. Specific comments criticizing the use of regulations in particular instances have been considered in the specific situation involved.

Policy statements are also part of the state program and are binding promises as to how the program will be administered. The Secretary's approval of this program is based upon the state's policies as expressed in these statements, and any failure by the state to abide by these promises would be a violation of its program, just as a violation of its statute or regulations would be.

The Secretary does not agree that this state program is piecemeal. This document reflects the Attorney General opinions and policy statements relied upon in approving Utah's program, and the public can refer to it as a unified source of information.

81. One commenter expresses the belief that Part F of Utah's program contains supporting agreements with other state agencies which fail to conform to the federal criteria for approval or disapproval of state programs found under Section 503(a)(2) and (3) of SMCRA and 30 CFR 732.15. In order for the Division of Oil, Gas, and Mining to have all the authority required for a state program approval, it is argued, the state must show that it has the legal power to deny a mining permit in any case where the deficiencies in the permit application relate to areas where other agencies have jurisdiction and to take enforcement action for requirements that are established by other agencies in permits that address some of the requirements applicable to mining permits, and that the other agencies which retain enforcement authority will take enforcement actions consistent with SMCRA.

The Utah regulations contain provisions consistent with those of 30 CFR Chapter VII for (1) coordination and issuance of permits for surface and underground coal mining activities with any other state or federal permit process applicable to the mining activities, the requirements of any water quality management plans and the applicable requirements of the Endangered Species Act, Fish and Wildlife Coordination Act, and the National Historic Preservation Act (UMC/SMC 770.12/30 CFR 770.12). (2) permit application compliance information (SMC 778.14/UMC 782.14/30 CFR 778.14/30 CFR 782.14). (3) measures to be taken during reclamation to comply with the requirements of the Clean Air Act, the Clean Water Act and other applicable air and water quality laws and regulations and health and safety standards (SMC 780.18(b)(9)/30 CFR 780.18(b)(9)/UMC 784.13(b)(9)/30 CFR 784.13(b)(9)); (4) solicitation of comments on the proposed permit from Federal, State and local government agencies (UMC/SMC 786.11(c)/30 CFR 786.11(c)); and (5) review of permit applications (UMC/SMC 786.17/30 CFR 786.17)). The state has submitted cooperative agreements which the Secretary finds satisfy the requirements for coordination, review and implementation required by the federal program. The Secretary has determined that the Utah program fulfills the requirements of the federal program for

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the coordination and implementation of the program with other agencies.

82. PLI and EPI are concerned that Utah has not demonstrated, either through past performance or through flow charts or other appropriate documents included in the state's submission, that it is capable of carrying out the inspection and enforcement provisions of SMCRA. The commenters also request that a report on a study being conducted on Utah's recent inspection performance be entered into the public record at such time as the study is completed, and if this request cannot be granted, that all OSM records concerning Utah inspections be so entered. The Secretary agrees with the commenters that additional staff is necessary for the Division of Oil, Gas and Mining to administer and implement the program (See Finding 4(t)). The materials submitted by PLI and EPI on the noted report on July 24, 1980, are contained in the Utah Administrative Record.

83. EPI and PLI contend that Section 40–8–9 UCA, Utah's judicial review provision, creates the possibility for overlap with the state's citizens' suit provisions in Section 40–10–21 UCA, and that the state should be requried to make it clear when each of there provisions apply, in order to avoid needless litigation. The commenters also state that Utah should be required to indicate that attorney fees are available in actions against the Board.

The citizen suit provision of Utah's statute, 40–10–21 UCA, is identical to that of the Section 520 of SMCRA, with the exception of one phrase addressed in Finding 4(q)(xi). Utah's provisions for citizens' suits may possibly overlap with its provisions for judicial review, UCA 40–8–9 UCA. However, these is no more overlap with those provisions than there is in the various federal provisions such as Section 526 of SMCRA, and the judicial review provisions of the Administrative Procedure Act, 5 U.S.C. 701 *et seq.* (1976). The Secretary has determined that Utah's provisions are fully consistent with those of SMCRA.

Attorneys' fees against the Board are specifically provided for in UCA Section 40–10–21(4) which is consistent with the Section 520(d) of SMCRA.

84. EPI and PLI contend that Utah's program appears to restrict intervention in administrative proceedings before the Board. In Rule B–11 of the Board's Rules of Practice and Procedures, (Volume II Submission) the state limits presentation of evidence to "interested parties" who are "affected by the application," which is in direct conflict with 43 CFR 4.1110. UMC/SMC 900(h)(ix) replaced the term "interested parties" with "interested persons."

Utah's definition of "interested person" in UMC/SMC 700.5, which is identical to the definition of 30 CFR 700.5, makes it clear that almost anyone, environmental organizations and individuals in particular, may appear before the Board in any proceeding.

85. EPI and PLI comment that the waiver provision of Section 63–46–5(3) UCA could enable the state to waive any rulemaking procedure if it finds the procedure "impracticable, unnecessary, or contrary to public interest." Under this provision an agency could waive notice and comment proceedings as "unnecessary" or "impracticable," the comment concludes, and could undercut the rights a citizen possesses under 30 CFR 700.12 to petition to initiate rulemaking.

The Utah provision regarding waiver of strict procedures of the rulemaking process is borrowed directly from Section 4 of the Federal Administrative Procedure Act, *as amended*, 5 USC Section 553 (1976). The Utah provisions are, therefore, consistent with federal law.

86. Regarding citizens' suits, EPI and PLI assert that Utah should delete the provisions in the state statute (See UCA 40–10–21) which allows a suit against the United States in state court, arguing that a suit against the federal government is appropriately brought only in federal court. Second, the comment contends that Utah should be required to show that its statutory law provides as much access to the state courts as *SCRAP* II, 412 U.S. 669 and *Sierra Club v. Morton* 405 U.S. 727 (1972) allow to the federal courts. They also comment that Utah should be required to guarantee in its program submission that attorney fees can be awarded against citizens only if they act in bad faith.

First, the Secretary agrees that Utah cannot allow suits against federal agencies or the United States in a State court. The state's language cannot confer such jurisdiction. (See Finding 1(a)(v).)

Second, the language in Section 40–10–21 UCA on citizen suits which refers to "any person having an interest which is or may be adversely affected," is identical to that of Section 520 of SMCRA.

The Secretary has identified the need to the state to adopt language regarding attorneys' fees that is consistent with 43 CFR 4.1290–1296 (See Finding 4(q)(i)).

87. SOURCE, EPI and PLI object to UMC/SMC 700.12, Utah's analogues to 30 CFR 700.12. The Utah regulations restrict the right to petition for rulemaking to an "interested" person pursuant to Section 63–46–8 UCA, while the federal regulation permits petitioning by "any person." The Secretary has disapproved UMC/SMC 700.12 pending classification from the state or submission of an appropriate rule change. (See Finding 4(1)(v).

88. EPI and PLI assert that Utah should be required to show that the discovery procedures in the Utah Rules of Civil Procedure are as broad as those contained in 43 CFR 4.1130–41.

The discovery rules in 43 CFR 4.1130–41 are based directly on the Federal Rules of Civil Procedure Rules 26–37. As Utah's Rules of Civil Procedure follow the Federal Rules, they are acceptable.

89. One commenter states that "arid and semi-arid area" is defined in UMC/SMC 700.5 in a manner which allows debate over whether any particular mine-site is in such an area. The commenter argues that the definition in 30 CFR 701.5 contains a conclusive finding that all coal fields in Utah are in an arid or semi-arid area.

On July 24, 1980, Utah submitted data as part of its "state window" discussion that documents that Utah's climate is semi-arid to arid. Further, the Utah definition is consistent with the federal definition in how an area is determined to be "arid or semi-arid". Based on these provisions, the Secretary has determined Utah's definition to be consistent with that of 30 CFR 701.5.

90. EPI and PLI contend that Utah's analogues (UMC/SMC 845.17 and .19) to 30 CFR 845.18(b)(2) do not clearly authorize a citizen to attend and participate in informal civil penalty conferences.

As mentioned in Finding 4(i)(iii), Utah does not have an informal civil penalty conference. Utah provides an opportunity for a hearing before the Board and then judicial review as requested. Under Utah's Open and Public Meetings Act, 52–4–1 UCA, all meetings of the Board are open to the public. The Secretary finds that Utah provides citizen access consistent with that prescribed in 30 CFR 845.18(b)(2).

91. Utah International, Inc. (UI) expresses support for language in SMC 816.46(a) of the Utah regulations which allows the state discretion in the imposition of sedimentation pond requirements. It is not uncommon for streams in the state to carry high sediment loads at various times of the year, the commenter notes, and to mandate that sediment ponds be required to meet prescribed effluent limits would restrict the Division's ability to cost-effectively manage water quality in various regions of the state.

The Secretary has identified to the state the need to delete the phrase "when it is determined that sedimentation ponds are necessary" to be consistent with 30 CFR 816.46(a). (See Finding 4(c)(xi)).

92. UI expresses the belief that sediment control performance standards in 30 CFR 816/817.4 should be revised. Specifically the commenter states that the concept of sediment as a pollutant should be revised, that performance standards for sediment control should be quantified on a "volume" basis rather than a "concentration" basis, and that the 10-year, 24-hour storm criterion should be deleted and a more practical criterion developed.

The Secretary voluntarily suspended 30 CFR 817/816.42(a)(1)(7), 817/816.42(b), 817/816.46(b), (c) and (d) in 44 FR 77452–77453 (December 31, 1979) as a result of arguments presented in *In re: Permanent Surface Mining Regulation Litigation* (Civil Action No. 79–1144). The Secretary's action on UMC 817/SMC 816.42(a)(1)(7); 42(b); and 46(b), (c) and (d) is presented under "General Background on the Permanent Program."

93. UI contends that UMC/SMC 785.19 do not address the economic importance to agriculture of affected alluvial valley floors, as intended by Congress.

The commenter notes that Section 510(b)(5)(a) of SMCRA provides that in order for an area to be protected as an alluvial valley floor, the area must satisfy certain geomorphic, environmental, and economic conditions.

The court has remanded to the Secretary for revision 30 CFR 785.19(e)(1)(ii) and (2) in order to exclude from hydrology requirements those areas of negligible prime farmland interruption and undeveloped range lands and to allow a small acreage exemption. See *In re: Permanent Surface Mining Regulation Litigation*, Civil Action No. 79–1144, (February 26, 1980, pp. 51–53). The Secretary published on July 11, 1980, in 45 FR 46820–46826, notice of the provisions in the Utah program proposed for disapproval. UMC/SMC 785.19(e)(1)(ii) and (2) were contained in that list. The Secretary's action on those items as part of his partial approval/partial disapproval of the Utah program appears in the section of this document entitled "General Background on the Permanent Program."

94. UI comments that except for the approximate original contour provisions, the same general performance standards in UMC 817 and SMC 816 that are applicable in flat or gently rolling terrain, including watershed control, revegetation practices, and a suitable post-mining land use, should apply to steep slope mining. The commenter questions the assumption that a change in topography necessarily results in an alternative post-mining land use.

Utah has proposed a "state window" for underground mining in steep slope terrain. The Secretary has identified inconsistencies with 30 CFR Chapter VII in the state's implementing regulatory provision, UMC 817.101(b)(1), that need to be addressed before the Secretary may approve the proposed state window. (Finding 4(b)(i)).

95. One commenter asserts that since Utah's submission does not contain all required and fully enacted laws and regulations, the Secretary is required by 30 CFR 732.11(d) to disapprove the state program, that any supplement to Utah's program submitted after the 104th day must be treated as a resubmission under 30 CFR 732.13(f), and therefore be subject to the minimum 15 day comment period and public hearing.

The Secretary agrees with the commenter, as reflected in his partial approval/partial disapproval of the Utah program.

96. One commenter requests that comments made at the July 21, 1980 public hearing in Salt Lake City should be included in the public record and made available for public review prior to the close of the rule-making record.

The administrative record is available for inspection at the locations identified in the "Addresses" section of this document. The Secretary does not agree that the comment period should be kept open as long as commenters wish to review and respond to the record. To do so would effectively preclude closing the comment period as long as parties chose to debate issues on the record.

97. One commenter expresses the opinion that the Secretary is required by the Administrative Procedure Act to publish notice of his intended action on Utah's proposed program prior to taking final action in areas where SMCRA allows discretion.

The process for approving or disapproving state programs fully complies with the requirements for proper notice of the proposed decision pursuant to Section 4 of the Administrative Procedure Act, [APA] *as amended*, 5 U.S.C. 553 (1976). Upon receipt of a state's program submission, the Secretary publishes in the register a notice, informing the public that the process for consideration of the program has begun. After publishing a second notice announcing his determination of the program's completeness, the Secretary publishes a third notice commencing public comment on the substantive adequacy of the program. These notices, together with other Federal Register notices they cite clearly explain to the public that the Secretary is proposing to take one of three actions: unconditionally approve the program, in whole, to approve the program conditioned upon minor deficiencies being corrected or to disapprove part or all of the program submission. This satisfies the requirement that the public be informed of the proposed action, before a final decision is made.

98. One commenter contends that Utah's analogue (Section 40–10–18(2)(a) UCA) to Section 516(b)(1), of SMCRA is not as stringent as the federal statute. These provisions require operators to adopt measures to prevent subsidence. The state statute closes with the proviso that "nothing in this subsection shall be construed to prohibit the standard methods of mining", while SMCRA provides that nothing in the subsection "shall be construed to prohibit the standard method of room and pillar mining." The commenter asserts that one principle sustained throughout the Act, without exception or limitation, is that the value and foreseeable uses of surface lands are to be maintained. The state's language, which would allow all standard methods, could result in serious subsidence. The Secretary agrees with the commenter and has disapproved this portion of the Utah program. (See Finding 1(a)(vi).)

99. The Environmental Policy Institute and the Public Lands Institute state that Utah has no time limit on rulemaking procedures as required by 30 CFR 700.12. The commenters are incorrect. Section 63–46–8 UCA requires a response to a petition for rulemaking within 30 days of the request. 30 CFR 700.12 only requires a response within 90 days of the receipt of the rulemaking petition.

F. Secretary's Decision

The Secretary finds that parts of the Utah program submission meet the criteria for approval in Section 503(a) and (b) of SMCRA and parts do not meet these criteria. Accordingly, the Utah program is approved in part and disapproved in part.

Approval in Part

The following program parts are approved:

(a) The Utah Coal Mining and Reclamation Act (Utah CMRA) Chapter 10 of Title 40, with the exceptions in Finding 1(a) and listed under "Disapproval in Part."

(b) The Utah regulations submitted March 3, 1980, except those sections disapproved under Findings 4(b)-(t), and listed under "Disapproval in Part", and those regulations disapproved in

accordance with the district court's Order.

(c) The Utah program provisions for administrative, legal and technical personnel and funding for the regulation of surface coal mining and reclamation operations and enforcement of the environmental standards with the exception in Finding 4(t) and noted under "Disapproval in Part."

(d) The program provisions to:

(1) Coordinate the review and issuance of permits for surface coal mining and reclamation operations with any other federal or state permit process applicable to the proposed operations.

(2) Require that persons extracting coal incidental to government-financed construction maintain information on site.

(3) Regulate coal exploration and prohibit coal exploration that does not comply with the performance standards required by SMCRA.

(4) Provide for administrative review of state program actions.

(5) Cooperate and coordinate with and provide documents and other information to the Office.

(6) Require the training, examination and certification of persons engaged in or responsible for blasting and the use of explosives.

Disapproved in Part

1. The following statutory provisions of the Utah program are disapproved:

40–10–10(3) UCA—Small Operator Assistance Program Funding
40–10–11(2)(e)(ii) UCA—Permit requirements with regard to the protection of alluvial valley floors
40–10–11(4) UCA—Permit requirements with regard to the protection of prime farmlands
40–10–17–(2)(j)(ii)(B) UCA—Reference to "2(b)(ii)" should be to "2(j)(ii)".
40–10–16(4) UCA—The word "approves" should be "disapproves."
40–10–21 UCA—Suits against the United States in state courts.
40–10–18(2) UCA—Subsidence provisions.

2. The following regulatory provisions of the Utah program are disapproved:

Definitions—
UMC/SMC 700.5, "underground operations"
UMC/SMC 700.5, "surface operations"
UMC/SMC 700.5, "coal exploration"
UMC/SMC 700.5, "topsoil"
UMC/SMC 700.5, "coal"
UMC/SMC 700.5, "head-of-hollow fill"
UMC/SMC 700.5, "valley fill"
UMC/SMC 700.5, "applicant"
UMC/SMC 700.5, "intermittent stream"
UMC/SMC 700.5, "aquifer"
Performance Standards—
UMC 817.23 (b)(1)(ii), SMC 816.23 (b)(1)(ii)—Topsoil storage
UMC 817.42 (a)(3)(ii)(A)—Sedimentation pond exemption criteria
UMC 817.43 (b), SMC 816.43 (b)—Permanent diversion construction requirement
UMC 817.44 (a), SMC 816.44 (a)—Intermitent stream channel diversion requirements
UMC 817.45 (a), SMC 816.45 (a)—Sediment control requirements
UMC 817.46 (a), SMC 816.46 (a)—Sedimentation pond requirements
UMC 817.46 (o), SMC 816.46 (o)—Sedimentation pond construction requirements
UMC 817.49, SMC 816.49—Permanent and temporary impoundment construction requirements
UMC 817.52 (a)(1), SMC 816.52 (a)(1)—Surface and ground water monitoring
UMC 817.53 (c), SMC 816.53 (c)—Liability for approved transfer of a well
UMC 817.57 (a), SMC 816.57 (a)—Buffer zone criteria for perennial and intermittent stream
UMC 817.65, SMC 816.65—Use of explosives: surface blasting requirements
UMC 816.68 (s)(2)—Seismographic record requirements
SMC 816.71 (a), (f), (g), (j), UMC 817.71(a), (f), (g), (j)—Disposal of excess spoil requirements
SMC 816.72(a), (a)(2); (b)(1–4); (c), UMC 817.72(a); (a)(2); (b)(1–4); (c)—Disposal of excess spoil: valley fills
SMC 816.73, UMC 817.73—Disposal of excess spoil: head-of-hollow fills
SMC 816.74(b)(2); UMC 817.74(b)(2)—Disposal of excess spoil: Durable rockfills
SMC 816.93(a), UMC 817.93(a)—Coal processing waste: Dams and embankments: Design and construction
SMC 816.102(a)(2)—Backfillings and grading: General grading requirements
SMC 816.103(a)(1); UMC 817.103(a)(1)—Backfilling and grading: coverings coal and acid—and toxic-forming materials
SMC 816.104(b)(1)—Backfilling and grading: Thin overburden
SMC 816.105(b)(5)—Backfilling and grading: Thick overburden
UMC 817.101(b)(1)—Underground mining—Backfilling and grading: General requirements
SMC 816.111(b)(1)—Revegetation: General requirements
SMC 816.116(b)(1), UMC 817.116(b)(1)—Revegetation: Standards for success
UMC 817.124(b)—Subsidence control: Surface owner protection
UMC 817.126(a) and (c)—Subsidence Control: Buffer zones
UMC 826.12(a)—Steep slope—Performance standards
UMC/SMC 828.11(b)—In situ processing: Performance standards
UMC 817.97(d)(2), SMC 816.97(d)(2)—Protection of Wildlife
Permit Requirements—
SMC 779.19(a)—Vegetation Information
UMC 784.20(b)(3)(v)—Subsidence control plan
UMC/SMC 785.19 (c)(1) and (3)—Surface coal mining and reclamation operations on areas or adjacent to areas including alluvial valley floors in the arid or semi-arid areas of the 100th meridian.
UMC/SMC 786.19(h)—Criteria for permit approval or denial
UMC/SMC 788.12(a)(1)—Permit Revisions
UMC/SMC 788.16(b)(2)—Transfer, assignment or sale of permit rights: General requirements
Performance Bonds—
UMC/SMC 800.5—"current assets"
UMC/SMC 800.5—Definition of "accumulating final bond"
UMC/SMC 805.13(b)—Period of liability
UMC/SMC 806.11—Accumulating fund bond
UMC/SMC 806.12(e)(2), (5) and (6); (g)—Terms and conditions of the bond
UMC/SMC 807.11(h)—Procedures for seeking release of performance bond—Public hearing
Civil and Criminal Sanctions—
UMC/SMC 845.20(c)—Final assessment and payment of penalty
UMC/SMC 845.19—Request for hearing
Designate areas unsuitable for surface coal mining—
UMC 761.11(a)(3), UMC 761.11(c), UMC 761.11(b)(1)—Areas where mining is prohibited or limited
UMC/SMC 762.5—Definition of "area"
UMC/SMC 764.13(b), (b)(2), (b)(4), (b)(5) and (b)(6)—Procedures: Petitions—Designation information requirements
UMC/SMC 764.13(c)(2), (c)(4), (c)(5)—Procedures: Petitions—Termination information requirements
UMC/SMC 764.15(b)(2)—Procedures: Initial processing, record keeping, and notification requirements
UMC/SMC 764.17(a)—Procedures: Hearing requirements
Public Participation—
UMC/SMC 771.21(b)(1)—Permit application filing deadlines
UMC/SMC 786.14—Informal conferences
UMC/SMC 700.14(b)—Availability of records
UMC/SMC 700.12—Petitions for rulemaking
Indirect and Direct Financial Interest—
UMC/SMC 705.6—Penalties
UMC/SMC 705.21—Appeals procedures
Small Operator Assistance—
UMC/SMC 795.3—Authority
UMC/SMC 795.5—Definition of "probable hydrologic consequences"
UMC/SMC 795.14(f)(2)—Filing for assistance
Employee Protection—Utah has omitted the provisions of 30 CFR 865 for employee protection.
Administrative and Judicial Review—
UMC/SMC 840.15—Public participation
UMC/SMC 845.20(a)—Final assessment and payment of penalty
UMC/SMC 700.13(b)—Notice of citizen suits
UMC/SMC 843.12(e)—Notice of violation
UMC/SMC 843.14—Service of notices of violation and cessation orders
UMC/SMC 843.16—Formal review of citations
UMC/SMC 700.5—Definition of "person having an interest which is or may be adversely affected or person with a valid legal interest"

3. *The Utah staffing proposal is disapproved.* In accordance with the May 16, 1980, court order, the Secretary must affirmatively disapprove State program sections equivalent to remanded or suspended Federal regulations as discussed above under "Background on State Program Approval Process". The following provisions of the State program which are based on remanded requirements will be affirmatively disapproved in accordance with the May 16, 1980, court order unless the State of Utah demonstrates that it adopted such provisions in a rulemaking or legislative proceeding which occurred either (1) before the enactment of SMCRA or (2) after the date of the Round II District Court decision, or (3) if a responsible state official has requested the Secretary to approve them:

UMC/SMC 700.5, the definition of "mine plan area," and the use of the term in Parts SMC 779, SMC 780, UMC 783 and UMC 784 to the extent that they require information outside the permit area that is not specifically articulated in Sections 507 and 508 and the corresponding Utah statutory provisions of 40–10–10 UCA.

UMC/SMC 701.11(d)(1) (i) and (ii), relating to exemptions for existing structures, to the extent that the exemptions are not mandatory after the appropriate findings are made.

In SMC/UMC 761.5(a)(2)(i), the definitions of "valid existing rights," to the extent they do not allow recognition of such rights an operator may claim by having made a good faith effort to obtain all permits before 8/3/77 as stipulated by the court's decision.

SMC 761.11(c), 761.12(f)(1) and UMC 761.11(a)(3) and .12(b) to the extent that they prohibit or restrict mining near places eligible for listing on the National Register of Historic Places, and the words "or a statutory or regulatory responsibility for" in UMC/SMC 761.12(f)(1). Further, both provisions disapproved to the extent that they apply to privately owned places listed on the National Register of Historic Places in addition to publicly owned places.

IMC/SMC 776.11(b)(3), concerning the requirements for maps of the proposed exploration area.

UMC/SMC 761.11(b)(5), concerning the requirement that operators explain their basis for the exploration area when the surface is owned by a person other than the operator.

SMC 779.20, SMC 780.16, UMC 783.20, and UMC 784.21 requiring a permit application to contain a study of fish and wildlife and to include a fish and wildlife reclamation plan.

SMC 779.21 and UMC 783.21 to the extent they require a soil survey for lands other than those which a reconnaissance inspection suggests may be prime farmland.

SMC/UMC 785.17(b)(3) and SMC/UMC 823.14(c), concerning excessive soil compaction, pending OSM's promulgation of a standard for soil compaction.

SMC/UMC 785.17(b)(6), to the extent that they require prime farmland reclamation target yields to be based on estimated yields under a high level of management rather than a level of management equivalent to that used on prime farmlands in the surrounding area.

UMC/SMC 785.19(d)(2)(iii) and (iv) to the extent that the regulations do not allow on analysis from data collected over a period of less than one year or extrapolated from existing data if such shorter period or extrapolation process is sufficient to enable the regulatory authority to make a determination of the impact of the proposed operation on the hydrologic balance of the area.

UMC/SMC 785.19(3)(1)(ii) insofar as the regulations do not allow negligible farmland interruption and undeveloped range lands as exclusions to the hydrologic requirements of Section 40–10–11(2)(e) UCA of the Utah statute.

UMC/SMC 785.19(e)(2) insofar as they prohibit mining when the mining would create a negligible impact on the farm's productive capacity.

SMC/UMC 805.13(d) to the extent that the exception the regulatory authority may grant might be from all of Section 816.

UMC/SMC 806.12(e)(6)(iii), (g)(7)(iii) to the extent they require cessation of operations upon the insolvency of a surety.

UMC/SMC 807.11(e) to the extent they fail to provide for citizen's access to the mine site for performance bond release.

UMC/SMC 808.12(c) to the extent that they limit bond liability to protection of the hydrologic balance.

UMC/SMC 808.14(b) to the extent they allow the regulatory authority to forfeit and keep the entire amount of a bond where the entire amount is not needed to complete a reclamation plan.

SMC 816.42 (a)(1) and (a)(7) to the extent they apply effluent limitation standards to the reclamation phase of a surface coal mining operation.

SMC 816.42(b) and UMC 817.42(b), relating to effluent standard exemptions during major storm periods, pending OSM's promulgation of new sediment removal regulations.

SMC 816.46(b) and UMC 817.46(b), concerning sediment storage volume in sediment ponds, pending OSM's promulgation of new requirements.

SMC 816.46(c) and UMC 817.16.46(c), concerning detention time for water in sediment ponds, pending OSM's promulgation of new requirements.

SMC 816.46(d) and UMC 817.46(d) to the extent they require dewatering devices to have a discharge rate to achieve and maintain the theoretical detention time for sediment ponds.

SMC 816.46(h) and 817.46(h), concerning sediment removal from sediment ponds, pending OSM's repromulgation of rules.

SMC 816.65(f), requiring special approval prior to blasting within 1,000 feet of certain buildings and 500 feet of other facilities and which restricts blasting at distances greater than 300 feet.

SMC 817.95 and SMC 816.95, concerning air resources protection, to the extent the control measures enumerated for control of fugitive dust are not directly related to control of soil erosion.

SMC 816.115 and UMC 817.115 to the extent they require an operator who proposes range or pasture as the post-mining land use to actually use the land for grazing for the last two years of bond liability.

UMC 817.116(b) and SMC 816.116(b) to the extent that they state that an operator's responsibility for successful revegetation does not begin until the vegetation reaches 90 percent of the natural cover in the area.

SMC 816.133(b)(1) and UMC 817.133(b)(1) to the extent they do not allow restoration of lands to the conditions they were capable of supporting prior to any mining.

SMC 816.133(c) and UMC 817.133(c) to the extent they require an operator to provide "letters of commitment" for proposed land use changes or for proposed cropland use.

UMC/SMC 823.11(c), 823.15(b), and 823.15(c) to the extent they require an operator on prime farmland to actually return the land to crop production. The land needs only to be "capable" of supporting the designated use.

UMC/SMC 845.13 and 845.14 to the extent they impose a civil penalty point system.

Sections UMC 783.25 (c), (h), and (i) to the extent that they require cross sections, maps and plans as part of the information requisite of an underground permit application.

Section UMC 817.54 to the extent that it requires an underground operator to replace the water supply of landowners if the operation contaminates, diminishes or interrupts the supply.

Sections UMC/SMC 823 to the extent that they do not allow an exemption to the performance standards for operations on prime farmlands for surface facilities used over extended periods of time but which effect a minimal amount of land.

In its May 16, 1980, opinion, the court invalidated OSM's road classification system set forth in 30 CFR 701.5 and 30 CFR 816.150–176 on procedural grounds. The Utah road classification system, the Utah regulations SMC 816.150–176 and UMC 817.150–181 and the definition of "road" in UMC/SMC 700.5 are similar to OSM's, but were promulgated without procedural defects. Nevertheless, Utah's road classification system would be disapproved to comply with the court's order.

The court suspended the requirements of 30 CFR 816.83(a) and 30 CFR 817.83(a) to the extent that they would preclude an exemption from the underdrain requirements for coal processing waste banks where an operator could demonstrate that an alternative to the required subdrainage system would ensure structural integrity of the waste bank and protection of ground or surface water quality. The Utah regulations SMC 816.83(a)(1) and (2) and UMC 817.83(a)(1) and (2) provide for the exemption, as specified by the Court. Nevertheless, Utah's provisions for water control measures for coal processing waste banks would be disapproved to comply with the court's order.

The court suspended 30 CFR 816.103(a)(1) insofar as it does not allow for treatment as an alternative to covering certain types of materials. SMC 816.103(a)(1) of the Utah regulations does allow treatment in lieu of the cover requirement. Nevertheless, Utah's provision would be disapproved to comply with the court's order.

The court suspended 30 CFR 783.14(a)(1) insofar as it requires a geologic description of the strata down to and immediately below any coal seam for areas to be affected only by "surface operations and facilities" where no removal of overburden down to the level of coal seam will occur. Utah's regulatory provisions, UMC 783.14(a)(1) only requires a geologic description of the strata to be disturbed or otherwise affected for areas by surface operations. Nevertheless, Utah's provision would be disapproved to comply with the court's order.

UMC 817.101(b)(1) and 817.102 insofar as these sections do not provide some flexibility for settled fills that have become stabilized and revegetated.

Effect of This Action

Partial approval and partial disapproval means that Utah is not now eligible to assume primary jurisdiction to implement the permanent program pursuant to SMCRA. Utah may submit additions or revisions to its program to correct the disapproved parts on or before December 23, 1980.

If the disapproved parts of the program are not revised within 60 days, the Secretary will take the appropriate steps to promulgate and implement a Federal program for the State of Utah. If the disapproved parts of the program are revised and resubmitted within the 60 day limit, the Secretary will have an additional 60 days to review the revised program, solicit comments from the public, the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies and to approve, disapprove, or conditionally approve the final Utah program submission.

This approval in part and disapproval in part relates only to the permanent regulatory program under Title V of SMCRA. This decision does not constitute any type of action on the implementation of Title IV of SMCRA, the Abandoned Mine Lands Reclamation Program. In accordance with 30 CFR Part 884 (State Reclamation Plans), Utah may submit a state abandoned mine land (AML) reclamation plan at any time. Final approval of an AML plan, however, cannot be given by the Director of OSM until Utah has an approved permanent regulatory program.

Coal development is anticipated on federal lands in the state, and these will be governed by 30 CFR Part 211 until such time as a state regulatory is approved. After the implementation of a state regulatory program, the federal lands program will be governed by 30 CFR Part 740.

The Secretary intends not to promulgate rules in 30 CFR Part 944 until the Utah program has been either finally approved or disapproved following opportunity for resubmission.

Additional Findings

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 USC 1292(d), no environmental impact statement will be prepared on this disapproval.

Note.—The Secretary has determined that this document is not a significant rule under E.O. 12044 or 43 CFR Part 14, and no regulatory analysis is being prepared.

Dated: October 16, 1980.

Joan M. Davenport,

Acting Secretary of the Interior.

[FR Doc. 80-32883 Filed 10-23-80; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Parts 884 and 946

Abandoned Mine Lands Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Cancellation of scheduled public hearing on the Commonwealth of Virginia abandoned mine lands reclamation plan.

SUMMARY: On September 22, 1980, the Commonwealth of Virginia submitted to OSM its proposed Abandoned Mine Lands Reclamation Plan under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). On September 30, 1980, Notice of Receipt of the Plan and Notice of a Public Hearing was published in the **Federal Register** (45 FR 64604). Review of the Plan has established that the Commonwealth of Virginia provided adequate notice and opportunity for public participation in the development of the Virginia Abandoned Mine Lands Reclamation Plan and that no unresolved controversies exist, and that there is insufficient interest as evidenced by no requests to hold the scheduled hearing.

Therefore the Public Hearing scheduled for October 29, 1980, beginning at 10:00 a.m. in the Conference Room, Department of Conservation and Economic Development, at Powell and River Streets, Big Stone Gap, Virginia, is cancelled.

FOR FURTHER INFORMATION CONTACT:

Earl R. Cunningham, Assistant Regional Director, AML, Office of Surface Mining, 1st Floor, Thomas Hill Building, 950 Kanawha Boulevard, East, Charleston, West Virginia 25301, Telephone: 304/342-8125.

Dated: October 17, 1980.

Walter N. Heine,

Director.

[FR Doc. 80-33187 Filed 10-23-80; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

33 CFR Part 207

Navigation Regulations; Operation of Navigation Locks in Florida

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Proposed rule.

SUMMARY: The Corps of Engineers proposes to amend the regulations with respect to the operating schedule of the Okeechobee Waterway locks, Canaveral lock, Cross Florida Barge Canal locks, locks around the perimeter of Lake Okeechobee and several non-Federal locks in Florida which have changed hours of operations. This change reflects the present operating hours of the locks.

DATE: Comments must be received by November 30, 1980.

ADDRESS: HQDA, DAEN-CWO-N, Washington, D.C. 20314.

FOR FURTHER INFORMATION CONTACT:

Mr. Ralph T. Eppard, (202) 272-0200

SUPPLEMENTARY INFORMATION: On March 4, 1977, the Corps published a proposed regulation in the **Federal Register** (42 FR 12443), soliciting public comment on the schedule of operating hours for the Port Mayaca Lock, Florida. Subsequently, it was found that the operating hours of other locks in Florida had not been published in the **Federal Register**. To be consistent and to avoid piecemeal actions on the publication of operating schedules for all locks in Florida, the Corps is publishing all lock operating schedules in a single proposal.

The only changes to the operating schedules occur at the Eugene J. Burrell lock, Opopka-Beauclair Lock, Kissimmee River lock, Taylor Creek and Carlson's Landing Dam navigation lock. The remaining schedules are presently in effect at the locks and remain unchanged.

PART 207—NAVIGATION REGULATIONS

Accordingly, the Corps of Engineers proposes to amend 33 CFR Part 207 as set forth below:

1. The following regulations to establish schedules of operating hours at locks in Florida are proposed to be added.

Sec.

207.170e Okeechobee Waterway, navigation lock on Caloosahatchee River at Olga, Florida; use, administration and navigation.
207.170f Okeechobee Waterway, navigation lock on Caloosahatchee River at Ortona, Florida; use, administration and navigation.
207.170g Okeechobee Waterway, navigation lock on Caloosahatchee River at Moore Haven, Florida; use, administration and navigation.
207.170h Okeechobee Waterway, navigation lock (S-308B) on east side of Lake Okeechobee at Port Mayaca, Florida; use, administration and navigation.
207.170i Okeechobee Waterway, navigation lock on St. Lucie Canal at Penny Farms, Florida; use, administration and navigation.
207.170j Lake Okeechobee, navigation lock (S-131) on Fisheating Creek at Lakeport, Florida; use, administration and navigation.
207.170k Lake Okeechobee, navigation lock (S-127) on canal at Buckhead Ridge, Florida; use, administration and navigation.
207.170l Lake Okeechobee, navigation lock (G-36) on Hendry Creek, Florida; use, administration and navigation.
207.170m Lake Okeechobee, navigation lock (S-135) on northeast shore of lake at J & S Park, Florida; use, administration and navigation.
207.170n Lake Okeechobee, navigation lock (S-310) on Industrial Canal at Clewiston, Florida; use, administration and navigation.
207.171c Canaveral lock located on Canaveral Barge Canal near Port Canaveral, Florida; use, administration and navigation.
207.174 Inglis Lock located on the Cross Florida Barge Canal at Inglis, Florida; use, administration and navigation.
207.174a Henry Holland Buckman Lock located on the cross Florida Barge Canal near Palatka, Florida; use, administration and navigation.

§ 207.170e Okeechobee Waterway, navigation lock on Caloosahatchee River at Olga, Florida; use, administration and navigation.

(a) The lock shall be operated from 6:00 a.m. to 10:00 p.m. daily. During these hours the lock shall be opened upon demand for the passage of vessels.

(b) The District Engineer, U.S. Engineer District, Jacksonville, Florida, shall place signs at each side of the lock indicating the nature of the regulations of this section.

§ 207.170f Okeechobee Waterway, navigation lock on Caloosahatchee River at Ortona, Florida; use, administration and navigation.

(a) The lock shall be operated from 6:00 a.m. to 10:00 p.m. daily. During these hours the lock shall be opened upon demand for the passage of vessels.

(b) The District Engineer, US Army Engineer District, Jacksonville, Florida, shall place signs at each side of the lock indicating the nature of the regulations of this section.

§ 207.170g Okeechobee Waterway, navigation lock on Caloosahatchee River at Moore Haven, Florida; use, administration and navigation.

(a) The lock shall be operated from 6:00 a.m. to 10:00 p.m. daily. During these hours the lock shall be opened upon demand for the passage of vessels.

(b) The District Engineer, US Army Engineer District, Jacksonville, Florida, shall place signs at each side of the lock indicating the nature of the regulations of this section.

§ 207.170h Okeechobee Waterway, navigation lock (S-308B) on east side of Lake Okeechobee at Port Mayaca, Florida; use, administration and navigation.

(a) The lock shall be operated from 6:00 a.m. to 10:00 p.m. daily. During these hours the lock shall be opened upon demand for the passage of vessels.

(b) The District Engineer, US Army Engineer District, Jacksonville, Florida, shall place signs at each side of the lock indicating the nature of the regulations of this section.

§ 207.170i Okeechobee Waterway, navigation lock on Lucie Canal at Penny Farms, Florida; use, administration and navigation.

(a) The lock shall be operated from 6:00 a.m. to 10:00 p.m. daily. During these hours the lock shall be opened upon demand for the passage of vessels.

(b) The District Engineer, US Army Engineer District, Jacksonville, Florida, shall place signs at each side of the lock indicating the nature of the regulations of this section.

§ 207.170j Lake Okeechobee, navigation lock (S-131) on Fisheating Creek at Lakeport, Florida; use, administration and navigation.

(a) The owner or agency controlling the lock shall be required to open the lock for passage of vessels during the following hours and periods:

October 1 through April 30—5:30 a.m. to 8:00 p.m.
May 1 through September 30—5:30 a.m. to 9:00 p.m.

(b) The owner of the lock shall place signs, of such size and description as

may be designated by the District Engineer, US Army Engineer District, Jacksonville, Florida, at each side of this lock indicating the nature of the regulations of this section. The hours of operation are based on local time.

§ 207.170k Lake Okeechobee, navigation lock (S-127) on canal at Buckhead Ridge, Florida; use, administration and navigation.

(a) The owner or agency controlling the lock shall be required to open the lock for passage of vessels during the following hours and periods:

October 1 through April 30—5:30 a.m. to 8:00 p.m.
May 1 through September 30—5:30 a.m. to 9:00 p.m.

(b) The owner of the lock shall place signs, of such size and description as may be designated by the District Engineer, US Army Engineer District, Jacksonville, Florida, at each side of this lock indicating the nature of the regulations of this section. The hours of operation are based on local time.

§ 207.170l Lake Okeechobee, navigation lock (G-36) on Hendry Creek, Florida; use, administration and navigation.

(a) The owner or agency controlling the lock shall be required to open the lock for passage of vessels during the following hours and periods:

October 1 through April 30—5:30 a.m. to 8:00 p.m.
May 1 through September 30—5:30 a.m. to 9:00 p.m.

(b) The owner of the lock shall place signs, of such size and description as may be designated by the District Engineer, US Army Engineer District, Jacksonville, Florida, at each side of this lock indicating the nature of the regulations of this section. The hours of operation are based on local time.

§ 207.170m Lake Okeechobee, navigation lock (S-135) on northeast shore of lake at J & S Park, Florida; use, administration and navigation.

(a) The owner or agency controlling the lock shall be required to open the lock for passage of vessels during the following hours and periods:

October 1 through April 30—5:30 a.m. to 8:00 p.m.
May 1 through September 30—5:30 a.m. to 9:00 p.m.

(b) The owner of the lock shall place signs, of such size and description as may be designated by the District Engineer, US Army Engineer District, Jacksonville, Florida, at each side of this lock indicating the nature of the regulations of this section. The hours of operation are based on local time.

§ 207.170n Lake Okeechobee, navigation lock (S-310) on Industrial Canal at Clewiston, Florida; use, administration and navigation.

(a) The owner or agency controlling the lock shall be required to open the lock for passage of vessels during the following hours and periods:

October 1 through April 30—5:30 a.m. to 8:00 p.m.
May 1 through September 30—5:30 a.m. to 9:00 p.m.

(b) The owner of the lock shall place signs, of such size and description as may be designated by the District Engineer, US Army Engineer District, Jacksonville, Florida, at each side of this lock indicating the nature of the regulations of this section. The hours of operation are based on local time.

§ 207.171c Canaveral Lock located on Canaveral Barge Canal near Port Canaveral, Florida; use, administration and navigation.

(a) The lock shall be operated from 6:00 a.m. to 10:00 p.m. daily. During these hours the lock shall be opened upon demand for the passage of vessels.

(b) The District Engineer, US Army Engineer District, Jacksonville, Florida, shall place signs at each side of the lock indicating the nature of the regulations of this section.

§ 207.174 Inglis Lock located on the Cross Florida Barge Canal at Inglis, Florida; use, administration and navigation.

(a) The lock shall be operated from 8:00 a.m. to 5:00 p.m. on Saturday and Sunday only. During these hours the lock shall be opened upon demand for the passage of vessels.

(b) The District Engineer, US Army Engineer District, Jacksonville, Florida, shall place signs at each side of the lock indicating the nature of ther regulations of this section.

§ 207.174a Henry Holland Buckman Lock located on the Cross Florida Barge Canal near Palatka, Florida; use, administration and navigation.

(a) The lock shall be operated from 8:00 a.m. to 5:00 p.m. daily. During these hours the lock shall be opened upon demand for the passage of vessels.

(b) The District Engineer, US. Army Engineer District, Jacksonville, Florida, shall place signs at each side of the lock indicating the nature of the regulations of this section.

2. In addition, the following amendments to existing regulations are proposed.

a. Section 207.170a is amended by revising paragraph (a) as follows:

§ 207.170a Eugene J. Burrell Navigation Lock in Haines Creek near Lisbon, Florida; use, administration and navigation.

(a) The owner of or agency controlling the lock shall not be required to operate the navigation lock except from 7 a.m. to 12 noon and from 1 p.m. to 7 p.m., during the period of February 15 through October 15 each year; and from 7 a.m. to 12 noon and from 1 p.m. to 8 p.m. during the remaining months of the year. During the above hours and periods the lock shall be opened upon demand for the passage of vessels. The hours of operation are based on local time.

* * * * *

b. Section 207.170b is amended by revising paragraph (a) as follows:

§ 207.170b Apopka-Beauclair Navigation Lock in Apopka-Beauclair Canal in Lake County, Florida; use, administration and navigation.

(a) The owner of or agency controlling the lock shall not be requred to operate the navigation lock except from 7:00 a.m. to 12:00 noon, and from 1:00 p.m. to 7:00 p.m. during the period of February 15 through October 15 each year; and from 8:00 a.m. to 12:00 noon, and from 1:00 p.m. to 6:00 p.m., during the remaining months of each year. During the above hours and periods the lock shall be opened upon demand for the passage of vessels. The hours of operation are based on local time.

* * * * *

c. Section 207.170c is amended by revising paragraph (a) as follows:

§ 207.170c Kissimmee River, navigation locks between Lake Tohopekaliga and Lake Okeechobee, Florida; use, administration and navigation.

(a) The owner of or agency controlling the locks shall be required to open the navigation locks upon demand for passage of vessels during the following hours and periods:

Locks S-61, S-65 and S-65E		
Monday through Friday.	All year	7:00 a.m. to 6:00 p.m.
Saturday and Sunday...	March 1 through October 31	5:30 a.m. to 7:30 p.m.
Locks S-65B, S-65C, and S-65D		
Monday through Friday.	All year	7:00 a.m. to 5:00 p.m.
Saturday and Sunday...	November 1 through February 28.	5:30 a.m. to 6:30 p.m.
Locks S-65A, S65B, S-65C, and S-65D		
Monday through Friday.	All year	8:00 a.m. to 5:00 p.m.
Saturday and Sunday...	March 1 through October 31.	5:30 a.m. to 7:30 p.m.
Do	November 1 through February 28.	5:30 a.m. to 6:30 p.m.

* * * * *

d. Section 207.170d is amended by revising paragraph (a) as follows:

§ 207.170d Taylor Creek, navigation lock (S-193) across the entrance to Taylor Creek at Lake Okeechobee, Okeechobee, Florida; use, administration and navigation.

(a) The owner or agency controlling the lock shall be required to open the lock upon demand of passage of vessels during the following hours and periods:

October 1 through April 30—5:30 a.m. to 8:00 p.m.
May 1 through September 30—5:30 a.m. to 9:00 p.m.

* * * * *

e. Section 207.175a is amended by revising paragraph (e) as follows:

§ 207.175a Wysong Lock and Dam on the Withlacoochee River, south of Rutland, Florida; use, administration and navigation.

(a) The owner or agency controlling the lock shall not be required to operate the navigation lock except from 7:00 a.m. to 7:00 p.m. during the period of February 15 through October 14 each year; and from 8:00 a.m. to 6:00 p.m. during the remaining months of each year. During the above hours and periods the lock shall be opened upon demand for the passage of vessels. Navigators are advised this is an inflatable dam, and the river is open to vessels 24 hours per day when the dam is deflated.

* * * * *

(40 Stat. 266; 33 U.S.C. 1)

Note.—The Chief of Engineers has determined that this document does not contain a major proposal requiring the preparation of a regulatory analysis under EO12044, Improving Government Regulations.

Dated: October 21, 1980.

Forrest T. Gay, III,

Colonel, Corps of Engineers, Executive Director, Engineer Stoff.

[FR Doc. 80-33282 Filed 10-23-80; 8:45 am]

BILLING CODE 3710-92-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL 1642-1]

Proposed Rulemaking: Revision to the Rhode Island State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA received a request from the state of Rhode Island on August 28, 1980, to approve a revision to its State Implementation Plan (SIP). This revision, which EPA is proposing to approve, constitutes a variance from Regulation 8, "Sulfur Content of Fuels," of the Rhode Island Department of Environmental Management (DEM) Rules and Regulations for Prevention, Control and Abatement, and Limitation of Air Pollution. If approved by EPA, this revision would allow an alternative emission reduction option for control of sulfur dioxide in accordance with EPA's controlled trading policy (**Federal Register** Vol. 44, No. 239, Tuesday, December 11, 1979), commonly referred to as the "Bubble Policy." This revision would allow the Narragansett Electric Company to burn 2.2 percent sulfur fuel oil at its electric power generating station on South Street in Providence during such times that it ceases operation or is burning natural gas at its electric power generating station on Manchester Street in Providence. Presently, both stations are burning 1 percent sulfur fuel oil.

DATE: Comments must be received on or before November 24, 1980.

ADDRESSES: Copies of the Rhode Island submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, Room 1903, J.F.K. Federal Building, Boston, Massachusetts 02203; the Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Department of Environmental Management, 75 Davis Street, Room 204, Cannon Building, Providence, Rhode Island 02908.

Comments should be addressed to Harley F. Laing, Chief, Air Branch, Region I, Environmental Protection Agency, Room 2203, JFK Federal Building, Boston, Massachusetts 02203.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink, Air Branch, EPA Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203. (617)223-4448.

SUPPLEMENTARY INFORMATION: On August 28, 1980 the Director of the Rhode Island Department of Environmental Management (DEM) submitted a request to the EPA to approve a revision to the Rhode Island State Implementation Plan (SIP) which would vary the provisions of Regulation 8, "Sulfur Content of Fuels," of the DEM Rules and Regulations for the Prevention, Control and Abatement, and Limitation of Air Pollution. This revision, which EPA is proposing to approve, would allow the Narragansett Electric Company (NEC) to burn fuel oil having a sulfur content not in excess of 1.21 pounds per million Btu heat release potential (approximately 2.2 percent by weight) at its electric power generating station on South Street (the South Street Station) in Providence during such times that it ceases to operate or is burning natural gas at its electric power generating station on Manchester Street (the Manchester Street Station) in Providence. The two stations are located 0.37 kilometers apart from each other. This revision proposes an alternative emission reduction option with the Rhode Island SIP in accordance with the EPA controlled trading policy commonly referred to as "The Bubble Policy" (**Federal Register** Vol. 44, No. 239, Tuesday, December 11, 1979). Both generating stations are located in Air Quality Control Region (AQCR) 120. Providence, Rhode Island is designated as an attainment area for the National Ambient Air Quality Standards (NAAQS) for SO_2.

Under Regulation 8, "Sulfur Content of Fuels," oil burning sources must use a fossil fuel containing 0.55 pounds or less of sulfur per million Btu heat release potential (approximately equivalent to 1 percent sulfur by weight). The requested variance would allow NEC's South Street Station to burn 2.2 percent sulfur fuel oil under certain conditions for one year with the provision that the variance may be continued from year to year under the approving authority of the Rhode Island DEM. Under the Rhode Island Clean Air Act, Title 23, Chapter 23, the director of the DEM has the power to grant a variance to any Air Pollution Control Regulation. Variances may be granted when a source demonstrates that "* * * the enforcement of a Regulation would constitute undue hardship without a corresponding benefit or advantage obtained thereby, provided that such a variance is consistent with the provisions and procedures of the Federal Clean Air Act, 42 U.S.C. 4701 et seq, as amended, and the rules and regulations adopted from time to time pursuant thereto." (Rhode Island Clean Air Act, 23-23-15). Federal approval of such variances requires review by the state and EPA in accordance with procedures for amending the SIP. In this case, the DEM's decision to propose granting a variance to NEC was based upon that company's controlled trading approach for SO_2 emission control demonstrated in accordance with EPA's "Bubble Policy" (**Federal Register** Vol. 44, No. 239, Tuesday, December 11, 1979). At such times when 2.2 percent sulfur fuel is burned at the South Street Station, NEC would burn natural gas or cease operation at the Manchester Street Station. The requested variance would apply only to the South Street

Station during such times that the Manchester Street Station burns natural gas or is not in operation, and at no time may the Manchester Street Station burn any fossil fuel in excess of 1 percent sulfur by weight. The requested variance also includes the following provisions: that NEC will notify the DEM whenever it commences burning 2.2 percent sulfur fuel at South Street Station in conjunction with burning natural gas at Manchester Street Station; that NEC will maintain a minimum 10-day supply of 1 percent (maximum) sulfur fuel oil on hand to be utilized in the event of an air quality alert or due to the unavailability of natural gas; that NEC will, within thirty minutes of notification by DEM, switch to low sulfur fuel oil at the South Street Station should an air quality alert occur; that NEC will immediately cease operation at the South Street Station upon detection and/or notification by DEM that a malfunction resulting in emissions in excess of those allowed by any Air Pollution Control Regulation has occurred, and such problem is to be corrected prior to resuming operation; that NEC shall maintain records of consumption of high sulfur fuel oil (2.2 percent by weight) including times, dates, and durations of burns, number of gallons consumed, purchase date, supplier and total gallons purchased; that NEC or an independent supplier shall obtain permission from the DEM for sale or storage of high sulfur fuel oil for the purpose of this variance before NEC utilizes such fuel oil; and that NEC shall locate and maintain an air quality monitoring station at a site approved by DEM and EPA.

This "multi-plant bubble" approach for sulfur dioxide control at these two facilities results in a net reduction of emissions of 317 pounds per hour (1388.5 tons per year). The NEC expects direct fuel cost savings of 2.7–4 million dollars annually. Further, the expected reduction in foreign imported fuel oil purchased is 50,000 barrels per month (600,000 barrels per year).

Technical support for the proposed revision includes an evaluation of compliance with the NAAQS using EPA approved mathematical modeling. NAAQS are maximum ambient pollutant concentrations which are set to protect public health and welfare. The NAAQS for SO_2 is 80 $\mu g/m^3$ (annual average), 365 $\mu g/m^3$ (24-hour average), and 1300 $\mu g/m^3$ (3-hour average). No analysis to determine Prevention of Significant Deterioration (PSD) increment consumption was necessary because the applicable baseline date has not been triggered in the state of Rhode Island (40 CFR 52.21(b)(14), Federal Register, Vol. 45, No. 154, August 7, 1980). The entire state is designated attainment for SO_2 in accordance with Section 107 of the Clean Air Act.

Mathematical modeling is used to simulate the dispersion of pollutants emitted by sources into the atmosphere. These models can predict ambient pollutant concentrations at pre-selected ground-level locations called receptors. The model used was the CRSTER model developed by EPA. It utilizes source parameters and sequential meteorological data (hour by hour for a year) to determine the annual average, the highest and second highest 24-hour average concentration for the year, and the highest and second highest 3-hour concentration for the year at ground level receptors. The modeling was repeated for five years of meteorological data in accordance with EPA guidelines. A conservative NAAQS analysis involves adding the maximum predicted source impacts to the highest measured ambient background levels in the area, irrespective of the relative location of the maximum source impact and the location of the background monitor, and without consideration of possible source contributions to such background data. In other words, source impacts may be double counted. However, if when using this conservative technique; the NAAQS are shown to be maintained when both sources are operating under the variance, there is no need to perform a more realistic analysis.

For this case, the background ambient concentration values were taken from monitoring data on record at DEM and EPA (collected 1977–1979). The background concentrations for SO_2 considered were 227 $\mu g/m^3$ (second highest 24-hour average), 445 $\mu g/m^3$ (second highest 3-hour average), and 59 $\mu g/m^3$ (highest annual average). The meteorological data used for the modeling analysis were for the years 1970–1974, and were collected at Green Airport, Warwick, Rhode Island. The sums of the predicted maximum source impacts and maximum background concentration for the 3-hour, 24-hour, and annual averaging times are 625 $\mu g/m^3$, 274 $\mu g/mG23$, and 62 $\mu g/m^3$, respectively. Thus the NAAQS have been shown to be protected when the generating stations are operating under the variance.

An analysis was performed in accordance with EPA procedures to determine Good Engineering Practice (GEP) stack height levels for the stacks at the South Street Station and the Manchester Street Station. The South Street Station has two boilers with a combined rated capacity of 1127 million Btu/hour, and the Manchester Street Station has three boilers with a combined rated capacity of 1612 million Btu/hour. The two boilers at the South Street Station exhaust to a single stack. Two boilers at the Manchester Street Station exhaust to a stack at the west end of the station, and the other boiler exhausts to a stack at the east end of the station. The stack at the South Street Station is 325.5 feet high. This exceeds the calculated GEP stack height of 281 feet by 44.5 feet. However, this stack was built in 1955, and under Section 123 of the Clean Air Act, the heights of all stacks, or portions thereof, built prior to December 31, 1970 may exceed GEP and be input into dispersion models. The stacks at the Manchester Street Station are 200 and 201 feet high. These stack heights are 114 and 113 feet below the calculated GEP height of 314 feet. Thus a potential for downwash does exist at the Manchester Street Station. However, this does not affect granting the DEM's request; because under the variance, the Manchester Street Station would burn natural gas and would emit no SO_2.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

The Administrator's decision to approve or disapprove the plan revision will be based on whether it meets the requirements of Sections 110(a)(2)(A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51. This revision is being proposed pursuant to Sections 110(a) and 301 of the Clean Air Act, as amended (42 U.S.C. 7401 and 7601).

Dated: October 10, 1980.

Robert C. Thompson,

Acting Regional Administrator, Region 1.

[FR Doc. 80-33182 Filed 10-23-80; 8:45 am]

BILLING CODE 6560-26-M

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40 CFR Part 81

[A-2-FRL 1642-3]

Designation of Areas for Air Quality Planning Purposes; Section 107 Attainment Status Designations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: The purpose of this notice is to propose Environmental Protection Agency approval of a change to the designation of the attainment status of the Borough of Staten Island in New York City with regard to the secondary national ambient air quality standard for particulate matter. Such designations are required by Section 107(d) of the Clean Air Act and may be revised from time to time at the request of the State. Such a request was received from New York State to redesignate a portion of Staten Island, currently designated non-attainment, to attainment for the secondary standard for particulate matter. The Environmental Protection Agency believes that the existing evidence is insufficient to warrant a designation of attainment and is instead recommending a designation of "cannot be classified."

DATES: Comments must be received by December 23, 1980.

ADDRESSES: All comments should be addressed to: Charles S. Warren, Regional Administrator, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the proposal are available for public inspection during normal business hours at:

U.S. Environmental Protection Agency, Air Programs Branch, Room 1105, Region II Office, 26 Federal Plaza, New York, New York 10278

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, D.C. 20460

New York State Department of Environmental Conservation, Division of Air, 50 Wolf Road, Albany, New York 12233

New York State Department of Environmental Conservation, Region 2, 2 World Trade Center, 61st Floor, New York, New York 10047

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278 (212) 264–2517.

SUPPLEMENTARY INFORMATION: Section 107(d) of the Clean Air Act, as amended in August 1977, directed each State to submit to the Administrator of the Environmental Protection Agency (EPA) a list of national ambient air quality standard attainment status designations for all areas within the State. EPA received such designations and promulgated them on March 3, 1978 (43 FR 8962). Subsequently, on January 25, 1979 (44 FR 5119), revisions to the designations for the States administered by the Region II Office of EPA (New York, New Jersey, the Commonwealth of Puerto Rico and the U.S. Virgin Islands) were promulgated.

On September 12, 1980 New York State requested that the west-central portion of the Borough of Staten Island be redesignated with respect to the national ambient air quality standard for particulate matter. In the New Jersey-New York-Connecticut Interstate Air Quality Control Region, the Borough of Staten Island, south of I–278, west of Richmond Avenue and north of Arthur Kill Road as far west as Rossville Avenue, is currently designated non-attainment with respect to the particulate matter secondary standard. This area is proposed by the State to be redesignated as "better than national standards."

The following criteria are used by EPA in determining whether or not to approve a proposed redesignation:

1. No contraventions of any air quality standards are observed during the last consecutive eight calendar quarters, or

2. No contraventions of any air quality standards are observed during the last consecutive four quarters provided there has been a steady and substantial decrease in ambient air quality levels over the last consecutive eight quarters which can be attributed to a significant and quantifiable reduction in emissions.

3. Contraventions of particulate matter are shown to be due to fugitive dust emissions if the monitor is located in a non-industrial rural area.

4. Contravention of particulate matter standards are shown to be due to temporary activity in the vicinity of the monitor.

5. Although monitoring data are preferred, determination of non-attainment boundaries may also be based on air quality modeling.

In the area under consideration the total suspended particulate matter air quality monitor on which the original non-attainment designation was based was situated near the Freshkills landfill. Monitoring was discontinued at this site in January 1978 because it was determined that the data were not representative of the area. EPA believes that contraventions of the standard at this location could be attributed to temporary and ongoing landfill activities, hence exclusion criteria 3 or 4 discussed earlier would apply. In addition, the monitoring site was not a site of population exposure and was not a site to which the public had access. In recognition of these siting problems, the New York City Department of Air Resources (NYCDAR) initiated a monitoring program for particulate matter from mid-1977 to mid-1979 at another site, the PS–26 school, located just outside the landfill site and in the populated area of Travis, Staten Island.

In calendar year 1978, NYCDAR recorded two excursions above the 150 $\mu g/m^3$ secondary standards. One of these (a marginal excursion of 153 $\mu g/m^3$), upon microscopic filter examination, was shown to contain 23 percent, by weight, pollen and decayed vegetable matter; only 7.3 percent of the sample was due to products of combustion.

During its period of operation, the NYCDAR sampling at the PS–26 site showed no continuous history of violations. However, there is no recent air quality data base on which to make a conclusive determination of the attainment status of the area in accordance with criteria 1 or 2 discussed earlier. Reasonable doubt is further introduced since this portion of Staten Island is situated adjacent to the non-attainment areas of northeast New Jersey.

For these reasons, EPA cannot approve New York State's request for redesignation to attainment. Instead, EPA is proposing to redesignate the west-central portion of Staten Island as "cannot be classified." As such, this area will be subject to further study by New York State and EPA to determine its actual attainment status.

Interested persons are invited to comment on any element of the subject proposal and on whether it meets Clean Air Act requirements. Comments received by December 23, 1980 will be considered in EPA's final decision. All comments received will be available for inspection at the Region II Office of EPA at 26 Federal Plaza, Room 1005, New York, New York 10278.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. I have reviewed this package and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Dated: October 20, 1980.

(Sec. 107, Clean Air Act, as amended)

Charles S. Warren,

Regional Administrator, Environmental Protection Agency.

[FR Doc. 80-33181 Filed 10-23-80; 8:45 am]

BILLING CODE 6560-26-M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 431

Medicaid Quality Control; Time Requirements for Reviews; Technical Amendments

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposal would amend the current Medicaid Quality Control (MQC) regulations by revising time frames for States to complete reviews and to submit certain reports. The amendments also include technical changes and clarification of certain ambiguities. The purpose of this proposal is to improve Federal and State program management by ensuring timely completion of reviews and reports and to make the regulation more readable.

DATE: Closing date for receipt of comments: December 23, 1980.

ADDRESSES: Address comments in writing to: Administrator, Health Care Financing Administration, Department of Health and Human Services, P.O. Box 17076, Baltimore, Maryland 21235.

If you prefer, you may deliver your comments to Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C. 20201 or to Room 789, East High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21208.

Please refer to File Code BQC–1–P.

Agencies and organizations are requested to submit comments in duplicate. Comments will be available for public inspection approximately two weeks after publication in Room 309–G of the Department's office at 200 Independence Avenue SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (202–245–7890).

FOR FURTHER INFORMATION CONTACT: Carlton Stockton, 301–597–1350.

SUPPLEMENTARY INFORMATION:

Background

The Medicaid Quality Control (MQC) program is an important management tool to help State Medicaid agencies monitor and improve the administration of their Medicaid Programs.

The MQC program consists of the following basic elements: verification of the correctness of eligibility determinations, examination to determine whether the State has taken action to recover funds for which third parties are liable, review of the accuracy of State payment of Medicaid claims for active cases, and review of the accuracy of denials and terminations of eligibility.

The MQC program was created because management controls did not keep pace with the growth of the Medicaid program. As a result, large sums of Medicaid funds were lost through payments for medical services to ineligible recipients. To meet the need for better control, the first MQC program required States to review their eligibility determinations to determine the types of errors being made, in order to plan corrective action that would prevent repetition of these errors, and thus reduce the amount of erroneous payments.

In addition to funds being misspent for payments for services to ineligible persons, funds were also being lost due to unrecovered third party liability and claims payment errors. Consequently, the system was expanded in 1978 to require the identification of errors in Third Party Liability (TPL) and Claims Processing (CP) operations. The regulations also revised the procedures for conducting eligibility reviews.

In our experience under the expanded system, we have become aware that certain revisions are needed in the regulations. 42 CFR 431.800 does not contain any specific time requirements for the completion of reviews; by implication, it requires the completion of eligibility and payment reviews by the date a 6-month summary report is due, May 31 and November 30 of each year. The MQC manual, however, contains time requirements for the completion of certain types of reviews.

The proposed regulations would revise the time requirements for the completion of eligibility reviews and mandate time frames for the completion of negative case action and payment reviews.

In addition, the proposed regulations would revise the time requirements in the existing regulations and manual for the submittal of some reports, would modify the content and timing of another report, and would incorporate additional reporting requirements from the MQC manual and an Action Transmittal.

We are proposing these time requirements in order to provide a better flow of information, and are proposing to incorporate these requirements in the regulations in order to emphasize their importance. Some States tend to delay reviews until the end of the reporting period, which results in uneven workloads and leads to ineffective management.

The Aid to Families with Dependent Children (AFDC) program also has a quality control system basically similar to Medicaid's. Because of the close ties between the programs, a companion proposed AFDC regulation is being published today which, if adopted, would also impose review completion requirements in that program. Their review requirements for certain categories of cases do not coincide with ours because of differing program and management needs.

We are also proposing to make technical changes to reorganize the regulations, expand the authority provision, updatae cross-reference citations, incorporate some provisions from the MQC manual, and make certain technical wording changes. These technical changes are intended to clarify the requirements of the MQC program, and not to revise any substantive requirements.

Regulation Provisions

Review Completion Requirements

1. *Eligibility reviews.*—This proposal would modify the time requirements for eligibility reviews that are presently contained in the MQC manual. The manual, at section 3131, presently requires States to complete Medicaid reviews of AFDC cases within 4 months after the end of the review month, reviews of those Supplementary Security Income (SSI) cases where the State agency uses SSI-Quality Assurance (SSI-QA) data within 6 months after the end of the review month, and medical assistance only case reviews and SSI case reviews where the State does not use SSI-QA data within 3 months after the end of the review month. The review month means the month for which the case is selected and reviewed.

We are proposing that States complete eligibility quality control reviews on a regular and consistent basis in order to provide a constant flow of data to the State agency and HCFA. Since MQC eligibility reviews of certain categories of cases depend upon data from the AFDC and SSI programs, the Medicaid time requirements for completion of these cases should be based on the date the Medicaid agency receives the data from these programs rather than on the review month. Therefore, as explained below, we are proposing that agencies complete the reviews for AFDC and SSI cases within a specified period after the receipt of the data from those programs. We also propose a shortened completion period for most other cases in the active sample. However, the proposal would provide States with an additional period to complete a small percentage of reviews to compensate for exceedingly difficult cases in either category.

In order to provide a constant flow of data to the State agency and HCFA, we also propose to add to the existing program a time requirement for the completion of negative case action reviews. There are no time requirements for the completion of these reviews in the present regulations or MQC manual.

Specifically, if the proposed regulations are adopted, Medicaid agencies will be required to complete eligibility reviews for cases in the active case sample according to the following schedule (§ 431.800(e)(1)):

a. For cases for which eligibility information is supplied by the AFDC and SSI Quality Control programs, the agency will have to complete the review for 98 percent of these cases within 30 days of receipt of that information, and the remaining 2 percent within the following 30 days.

b. The agency will have to complete the review for 98 percent of all other cases in the sample within 75 days after the end of the review month, and the remaining 2 percent within the following 30 days.

2. *Negative case action reviews.*—If the proposed regulations are adopted, Medicaid agencies will be required to complete the review for 98 percent of the cases in the negative case action sample within 75 days, and the remaining 2 percent within the following 30 days (§ 431.800(e)(2)). Negative case actions are actions to deny an application for assistance or to otherwise dispose of that application without a determination of eligibility (for instance, because the application was withdrawn or abandoned), or to terminate assistance.

The initial 98 percent completion rate is also in the companion proposed AFDC regulation, and was developed jointly with the AFDC staff. We are not proposing that States complete 100 percent of their reviews within the initial time frame because the information needed to complete a case may not be available for a few complicated cases within the 30-day or 75-day period. We do not want the States to feel they must speed up decisions on cases without complete information. We also do not want them automatically placed in a position of noncompliance.

We discussed using a 95 percent completion rate, but believe that if most States start processing their cases at the beginning of the month following the review month, or, for cases where the AFDC and SSI Quality Control programs supply information, as soon as those programs provide that information, they should have sufficient time to complete 98 percent of these cases. For this reason, we think the 98 percent figure is a reasonable goal the States can achieve. We also think that States should be able to complete the remaining 2 percent of the cases within the following 30 days, without undue difficulty.

3. *Alternate plans for completing reviews.*—We recognize that circumstances might arise that would justify a State's failure to complete reviews in the time frames we are proposing. The proposed regulations would, therefore, allow for these circumstances by permitting States to submit, in writing, alternate plans for the completion of eligibility reviews and negative case action reviews to the Regional Administrator under two types of circumstances. These circumstances are referred to as "anticipated events" and "unanticipated events" for purposes of these regulations.

Under the proposed regulations, the Regional Administrator would have discretionary approval of the alternate plan, subject to review by the Administrator. The Regional Administrator would also be required to approve the alternate plan before States would be permitted to operate under the revised time frames. The reasons for these two requirements are to indicate the importance we place upon the timely completion of reviews and the flow of information on a regular and consistent basis, and to emphasize our belief that only truly compelling circumstances would justify a State's failure to complete the reviews in the proposed time frames.

(a) *Alternate plan for completing reviews that is submitted because of anticipated events.*—States would be allowed to submit an alternate plan for completing reviews because of "anticipated" events that adversely affect their ability to complete reviews in the time frames we are proposing.

The term "anticipated" events, for purposes of the proposed regulations, refers only to the following two conditions:

(1) The State's quality control sample population is dispersed over such great distances that it would be cost-prohibitive to conduct field interviews of the sample cases in the time frames we are proposing; and

(2) The State's usual weather and geographic conditions make significant numbers of the State's sample population inaccessible to field contact during certain times of the year.

We believe that these are the only two circumstances that a State could anticipate in advance that would justify inability to complete the reviews in the proposed time frames; but we welcome comments from States or individuals who can demonstrate a need for a more or less inclusive category.

Some types of alternate plans the Regional Administrator might approve because of "anticipated events" are those that allow the State to complete a lower percentage of eligibility reviews and negative case action reviews during the first 30 or 75 days following the end of the review month, and those that extend the time period required for a State to complete all of its cases following the end of the review month. For example, the State could request a lower completion rate of its cases during the first 30 or 75 days following the end of the review month than the 90 percent figure specified in the proposed regulations. Also, depending upon the particular circumstances, the State could request revised time frames for completing reviews for only a few months during the review month, or for the entire review period. However, because of the need to complete reviews on a regular and consistent basis, the proposed regulations would require that alternate plans provide for the least deviation from the proposed time frames that the State considers feasible.

In addition, under the proposed regulations, if an alternate plan is approved because of "anticipated events", the State would still be required to meet the time requirements for completing the 6-month summary report. We believe that the due date for this report should not be deferred for several reasons. First, the State, because of the permanent and recurring nature of these anticipated events, can plan for them. Second, and most important, the 6-month summary report provides the data needed for the program to take corrective action to reduce error rates.

States would not be required to submit a new alternate completion plan for these types of events each reporting period. Since the events that constitute "anticipated events" are either permanent or recurring in nature, these plans would not be time-limited; that is, they would remain in effect until the Regional Administrator notifies the State to the contrary. States, however, could submit a new alternate completion plan if they believed a new one is warranted by the particular circumstances in that individual situation.

To further emphasize the importance we place upon the completion of reviews on a regular and consistent basis, the proposed regulations place the burden upon the States to demonstrate

that "anticipated events" prevent them from completing reviews on time. States would, therefore, have to submit the following documentation to the Regional Administrator with their request for an alternate plan: (1) a description of each event or events; (2) reasons the event or events prevent the agency from completing reviews on time; and (3) a discussion of other alternate completion plans considered, and reasons for their rejection as unfeasible. The Regional Administrator would be allowed to require any additional documentation that he or she thought was necessary to evaluate the State's request.

b. *Alternate plans for completing reviews that are submitted because of unanticipoted events.*—We also recognize that, in addition to the circumstances decribed above, "unanticipated events" might arise that would justify, on a temporary basis, a State's inability to complete reviews in the time frames we are proposing.

The term "unanticipated events" for purposes of the proposed regulations, refers to events that are not easily predictable. Some examples of these types of events could include natural disasters such as floods, earthquakes, tornadoes, hurricanes, as well as conditions such as fires, employee strikes, and computer malfunctions. This list is not all-inclusive because, unlike "anticipated events" which are permanent or recurring in nature, we do not believe it is possible to describe all types of unanticipated events that would justify a State's deviation from the proposed time frames.

An alternate completion plan for these types of events would allow States to revise the review completion schedule in the same manner as with anticipated events. This plan, however, would differ in two respects. First, since States, by definition, are unable to plan for these events, we recognize that, in some instances, these events could provide justification for States to delay the submission of their 6-month summary report for a short time past the due date specified in the reporting sections of the proposed regulations. However, the Regional Administrator would approve only those alternate plans that provide the minimum deviation from the regular time frames that is necessary, and we would expect that States would request a delay of the due date for the 6-month summary report only in the most compelling circumstances.

Second, since the event that necessitates the State's submitting an alternate plan under this section is not one that is permanent or occurs on a regular basis, the plan would be time-limited. The proposed regulation would require only that States submit a written request describing the occurrence, the period the new plan will be in effect, the revised completion schedule for reviews and, if absolutely necessary, the 6-month summary report. This is the only documentation that would be required because the State might need an immediate decision on the new plan in order to reallocate its resources due to the unplanned event.

However, the Regional Administrator could request additional documentation that he or she feels necessary to evaluate the State's report.

4. *Payment reviews.*—The proposed regulations would also require States to complete payment reviews no later than the end of the seventh month after the end of each review month (§ 431.800(h)). The purpose of these reviews is to identify TPL errors, CP errors, and the dollar amount of erroneous payments resulting from eligibility, TPL, and CP errors. The time requirement for completing payment reviews is presently implied in the MQC manual at Chapter 3100, Exhibit 3100–2. This proposed change would clearly mandate it.

We are not proposing the same time frame requirements for payment reviews that are being proposed for the other reviews. Payment reviews are processed in large measure in the State agency or payment center, and require little documentation.

For those few cases where documentation is needed, the information needed to complete the reviews is located within that facility, and thus is readily available. This is especially true of payment centers that are computerized.

The time frames for these reviews also could not be the same as for other reviews because the due dates for the reviews would not coincide with the due dates for reports.

We do not think these time frames for reviews will create a burden on the States; we are however, inviting comments on the requirements. The comments should contain specific figures on any increased burden that the States believe may result from the proposal.

Reporting Requirements

The proposed regulations would require the State to forward to the Regional Administrator on a weekly basis individual case review findings (disposition list on all cases or completion of the required review schedule) for all eligibility reviews, payment reviews, and negative case action reviews that were completed or dropped the previous week (§ 432.800(i)(3)). This requirement would replace a reporting requirement in the present regulations and MQC manual that requires States to identify on a weekly basis those cases for which the State has completed reviews (§ 431.800(e)(1)).

The purpose of this requirement is to enable the Department to monitor the progress of State reviews and State findings throughout the six-month review period. In addition, this requirement would enable Federal reviewers to perform re-reviews in a more timely manner. It is our belief that these reporting requirements would thereby result in more efficient management of the program.

The proposed regulations would also incorporate two provisions that are included in the MQC manual but not in current regulations. These are: (1) negative case action error summaries are to be submitted within 4 months after the review month (by January 31, for the preceding April–September sampling period and by July 31, for the preceding October–March sampling period) (§ 431.800(i)(5)); and (2) an option which allows States to submit their 6-month summary for active cases in the form of edited raw date instead of completing the full report (§ 431.800(i)(4)). Those States choosing to submit edited raw data would be required to supply them in accordance with the requirements and instructions issued by HCFA in Section 4000 and Appendices A and B of the MQC manual, and the following Action Transmittals:

HCFA–AT–79–103, November 21, 1978;
HCFA–AT–79–25, March 13, 1979;
HCFA–AT–79–44, May 18, 1979.

The requirement that the States submit negative case action error summaries is incorporated from the MQC manual, Quality Control of Negative Case Actions in AFDC, Adult and Medicaid programs, at pages 5 and 6, with the time frame changes noted above.

In addition, we are incorporating from the MQC manual at 2400, the requirement that States submit descriptions of their sampling plans for active cases and negative case actions no later than 60 days prior to the start of each six-month sampling period.

Finally, we are incorporating from HCFA–AT–79–16, dated February 15, 1979, the requirement that States submit monthly written lists of active cases and negative case actions selected for review (§ 431.800(i)(2)).

These provisions would supply data that we believe will be useful in monitoring State operation of the Medicaid program.

We wish to note that the reports specified in the regulations would not represent an all-inclusive list, but rather those major ongoing reports that are currently required. As in the current regulations, the proposed regulations also would provide for submittal of other data and reports at the Administrator's request (§ 431.800(i)(6)). HEW presently requires States to submit two additional reports. These reports are a telephone report of progress in completing reviews (section 3133 of the MQC manual), and a State affirmation letter (Action Transmittal HCFA–AT–79–27, March 14, 1979).

Technical Amendments

As noted above, the proposed regulations would reorganize the existing regulations and would make a number of editorial changes. It would also expand the statutory authority cited in § 431.800(a), to include sec. 1902(a)(6) of the Social Security Act (reporting requirement) as well as sec. 1902(a)(4) (proper and efficient administration).

The proposed regulations would also: (1) revise the definitions for claims processing error, negative case action, and third party liability (§ 431.800(b)); (2) reorganize and expand the basic program elements section (§ 431.800(d), (e), (f), (g), and (h)); and (3) clarify the requirement that States identify negative case actions and conduct reviews (§ 431.800(e)(2)). These proposed changes would make the regulations easier to read and are not intended to have any substantive effect. We invite comments particularly on the changes in definitions.

The current regulations specify that States must meet requirements specified in the MQC manuals "issued by HCFA". The proposed regulations would delete the quoted words in order to clarify that the Medicaid Quality Control manuals include the Quality Control of Negative Case Actions in AFDC, Adult and Medicaid Programs Manual (§ 431.800(d)(1)).

In addition, the regulations would incorporate from the MQC manual a requirement that the State agency identify the dollar amount of under- and overstated liability as as part of the eligibility review (431.800(e)(1) and MQC manual paragraph 3340).

The proposed regulations would also remove § 431.800(h), protection of recipient rights, from the MQC regulations, because it repeats a requirement that is already in regulations (42 CFR 435.902). We wish to emphasize, however, that removal of this provision from the regulations does not affect the requirement and that it would still apply to MQC reviews.

We believe these regulations, if adopted, will assist in our efforts to control program misuse and management inefficiency because they will provide for more rapid and routine completion of MQC reviews, and for more timely availability of review data at the Federal and State levels. Thus, they will assist in the proper and efficient administration of the overall Medicaid program.

42 CFR 431.800 is revised to read as follows:

Subpart P—Quality Control

§ 431.800 Medicaid quality control (MQC) system.

(a) *Basis and purpose.* (1) This section establishes State plan requirements for a Medicaid quality control system designed to reduce erroneous expenditures by monitoring eligibility determinations, third-party liability activities, and claims processing.

(2) This section is authorized by sec. 1902(a)(4) of the Act, which provides for State plan requirements necessary for the proper and efficient administration of the Medicaid program, and sec. 1902(a)(6), which requires States to make reports that the Secretary mandates.

(b) *Definitions.* For purposes of this section—

"Active case" means an individual or family determined to be currently eligible for Medicaid.

"Claims processing error" means that the State has claimed FFP for a payment—

(1) For a service not authorized under the State plan;

(2) To a provider not certified for participation in the Medicaid program;

(3) For a service already paid for by Medicaid; or

(4) In an amount above the allowable reimbursement level for that service.

"Eligibility error" means that Medicaid coverage has been certified or payment has been made for a recipient under review who—

(1) Was ineligible when certified or when he received services under the State's plan; or

(2) Had not met recipient liability requirements when certified eligible for Medicaid, that is, he had not incurred medical expenses equal to the amount of his excess income over the State's financial eligibility level.

"Negative case action" means an action to deny an application for assistance or to otherwise dispose of that application without a determination of eligibility (for instance, because the application was withdrawn or abandoned), or to terminate assistance.

"State agency" or "agency" means either the State Medicaid agency, or a State agency that is responsible for determining eligibility for Medicaid.

"Third-party liability error" means that the State has claimed FFP for a payment for a medical service even though—

(1) All or part of the medical services should have been paid for by a third party; and

(2) The State failed to meet the requirements of § 433.135 of Part 433, Subpart D of this subchapter for considering third party liability.

(c) *State plan requirements.* A State plan must provide for operating a Medicaid Quality Control (MQC) system that meets the requirements of paragraphs (d) through (i) of this section.

(d) *Basic elements of MQC system.* The agency must—

(1) Operate the MQC system in accordance with the policies, sampling methodology, review procedures, and reporting forms and requirements specified in Medicaid quality control manuals;

(2) For each month, select a sample of active cases and a sample of negative case actions;

(3) Perform eligibility, negative case action and payment reviews as specified in paragraphs (e) and (f) of this section; and

(4) Use 6-month sampling periods, from April through September and from October through March.

(e) *Eligibility review and review of negative case actions.* Except as provided in paragraphs (f) and (g) of this section—

(1) The agency must review each case selected in the active case sample to identify eligibility errors and the dollar amount of under- and overstated liability, and must complete the review within the following time periods:

(i) For cases for which eligibility information is supplied by the AFDC and SSI Quality Control programs, the agency must complete the review for 98 percent of these cases within 30 days of receipt of that information, and for the remaining 2 percent within the following 30 days.

(ii) The agency must complete the review for 98 percent of all other cases in the sample within 75 days after the end of the review month, and for the remaining 2 percent within the following 30 days.

(2) The agency must review each case selected in the negative case action sample to determine whether the reason given for the action was correct, and must complete the review for 98 percent

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of those cases within 75 days after the end of the review month, and the remaining 2 percent within the following 30 days.

(3) In order to verify eligibility information for active cases and negative case actions, the agency must conduct field investigations, including—

(i) Personal interviews for each case in the active case sample; and

(ii) Personal interviews for cases in the negative case action sample, to the extent necessary to verify whether the reason given for the action is correct.

(f) *Alternate completion plans for anticipated events.*

(1) A State agency unable to meet the requirements specified in § 431.800(e) (1) and (2) because of anticipated events may submit an alternate plan for completing the reviews to the HCFA Regional Administrator, who has discretionary approval of the plan.

(2) The agency must comply with the time requirements specified in § 431.800(e) (1) and (2) of this section until the Regional Administrator approves the alternate plan for completing reviews.

(3) Even if an alternate plan is approved, the agency must submit the 6-month summary report by the dates specified in paragraphs (i) (4) and (5) of this section, and must complete the review of all of its cases in sufficient time to submit the 6-month summary report.

(4) Anticipated events, for purposes of this section, refer only to the following two conditions:

(i) The State's quality control sample population is dispersed over such great distances that it would be cost-prohibitive to conduct field interviews of the sample cases in the specified time frames; and

(ii) The State's usual weather and geographic conditions make significant numbers of the State's sample population inaccessible to field contact during certain times of the year.

(5) The agency must submit requests for approval of alternate plans for completing reviews in writing to the Regional Administrator. These requests must include—

(i) A description of any anticipated event (or events) that the agency believes would justify a revised schedule for completing reviews;

(ii) The reasons the event (or events) prevents the agency from completing the reviews on time;

(iii) A discussion of other alternate completion plans considered, and reasons why the agency does not consider these other alternate plans acceptable; and

(iv) The agency's proposed revised schedule for completing reviews.

(6) The agency must also submit any additional documentation that the Regional Administrator may request.

(7) If the Regional Administrator approves the agency's plan for completing reviews, the plan remains in effect until the Regional Administrator notifies the agency to the contrary.

(g) *Alternate completion plan for unanticipated events.*

(1) An agency unable to meet the requirements specified in § 431.800(e) (1) and (2) of this section because of unanticipated events may submit an alternate plan for completing the reviews to the HCFA Regional Administrator, who has discretionary approval of the plan.

(2) The agency must comply with the time requirements specified in § 431.800(e) (1) and (2) of this section until the Regional Administrator approves the alternate plan for completing reviews.

(3) An approved alternate plan may provide for the agency to submit the 6-month summary report at a later date than the one specified in paragraphs (i) (4) and (5).

(4) Examples of unanticipated events, for purposes of this section are:

(i) Natural disasters such as floods, tornadoes, hurricanes, snowstorms, earthquakes;

(ii) Other conditions such as fires and labor disputes, and computer malfunctions.

(5) The agency must submit requests for approval of alternate plans for completing reviews in writing to the Regional Administrator. These requests must include—

(i) A description of the unanticipated event (or events) that the agency believes would justify a revised schedule for completing reviews;

(ii) The time period the new plan will be in effect; and

(iii) The agency's proposed revised schedule for completing reviews and, if necessary, for completing the 6-month summary report.

(6) The agency must also submit any additional documentation that the Regional Administrator may request.

(7) If the Regional Administrator approves the alternate plan for completing reviews, the plan remains in effect until the Regional Administrator notifies the agency to the contrary.

(h) *Payment review.*

(1) No earlier than the beginning of the sixth month after the end of the review month, the agency must begin to review all claims paid on behalf of active cases for services received during the review month and paid in that month or in the succeeding 4 months. This review must—

(i) Identify third party liability errors and claims processing errors; and

(ii) Identify the dollar amount of erroneous payments resulting from eligibility, third-party liability and claims processing errors.

(2) The agency must complete payment reviews by the end of the seventh month after the end of the review month.

(i) The agency must submit the following reports and materials to the Regional Administrator, in the form specified by HCFA, and within the following time periods:

(1) A description of the State's sampling plan for active cases and negative case actions, to be submitted no later than 60 days before the start of each 6-month sampling period.

(2) Monthly written lists that identify active cases and negative case actions selected for that month, to be submitted immediately after the sample selection.

(3) Weekly reports that supply the individual case review findings for all eligibility reviews, payment reviews and negative case action reviews that were completed or dropped the previous week.

(4) Unless the Regional Administrator approves an alternate plan that provides for a later due date under paragraph (g)(3) of this section, summary reports, or edited raw data needed to complete the reports, on eligibility and payment error findings for all active cases in the 6-month sample—

(i) By May 31 of each year for the preceding April-September sampling period;

(ii) By November 30 of each year for the preceding October-March sampling period.

(5) Unless the Regional Administrator approves an alternate plan that provides for a later due date under paragraph (g)(3) of this section, summary reports on negative case action errors for all cases in the 6-month sample—

(i) By January 31 for the preceding April-September sampling period; and

(ii) By July 31 for the preceding October-March sampling period; and

(6) Other data and reports that the Administrator requests.

(j) *Access to records.* The agency, upon request, must provide HHS staff with access to all records pertaining to its MQC reviews to which the State has access.

(k) *Corrective action.* The agency must—

(1) Take action to correct any eligibility, third-party liability, claims processing or negative case action errors found in the sample cases;

(2) Take administrative action to prevent or reduce the incidence of those errors; and

(3) By July 31 each year, submit to the Administrator a report on its error analysis and a corrective action plan.

(Sec. 1102 of the Social Security Act (42 U.S.C. 1302)).

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: October 10, 1980.

Howard Newman,

Administrator, Health Care Financing Administration.

Approved: October 14, 1980.

Patricia Roberts Harris,

Secretary.

[FR Doc. 80-33130 Filed 10-23-80; 8:45 am]

BILLING CODE 4110-35-M

Social Security Administration

45 CFR Part 205

Public Assistance Programs; Quality Control System Review Completion Requirements

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: This proposal amends the rules for the quality control (QC) review of sample cases under the Aid to Families with Dependent Children (AFDC) and adult assistance programs. These proposed rules revise the time frames for the States to complete their quality control reviews and to submit their findings and reports to the Social Security Administration (SSA). The purpose of this proposal is to improve Federal and State program management by providing for the timely completion of reviews and reports.

We have prepared these regulations in coordination with the Health Care Financing Administration (HCFA). They are generally consistent with the Medicaid-QC review and reporting requirements that are contained in HCFA's companion proposed rule that is also being published today. However, there are some differences, as explained below, which are due to differences in program needs and requirements.

DATE: Comments must be received on or before December 23, 1980.

ADDRESS: Written comments may be submitted to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203.

Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Governmental Affairs, Social Security Administration, Department of Health and Human Services, North Building, Room 1169, 330 Independence Avenue, S.W., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Sean Hurley, Division of AFDC Quality Control, 330 C Street, S.W., Washington, D.C. 20201, (202) 245-8999.

SUPPLEMENTARY INFORMATION:

Background

These regulations make changes in the quality control (QC) system for the State administered, Federally aided financial assistance programs that are authorized by titles I, IV-A, X, XIV, and XVI (AABD) of the Social Security Act. The quality control system is a management tool for monitoring the spending of public assistance funds under these titles. This monitoring is accomplished by a continuous review of a statistically valid and reliable sample of cases to:

(1) Determine the extent to which those persons receiving assistance are eligible, and if eligible, are receiving the right amount of assistance,

(2) Determine the correctness of actions to terminate or deny assistance,

(3) Reduce or eliminate the incidence of eligibility or payment errors and incorrect denials or terminations.

The States conduct QC reviews of AFDC and adult assistance sample cases for a 6-month sample period. The States select the cases for QC review although SSA specifies how many cases each State must review and report on for each 6-month sample period. States select their review cases for each month of the 6-month sample period with an equal number of cases being selected for each month.

The current regulations only require States to complete their individual case reviews for each month by no later than 60 days after the 6-month sample period ends. The States have the latitude of completing their individual review findings for a month at any time within the 6-month sample period and the succeeding 60 days. The current regulations also require the States to forward their 6-month summary data report to SSA by no later than 60 days after the 6-month sample period ends.

Our experience in administering the QC system demonstrates the necessity for requiring States to complete their individual reviews on a consistent basis. Absent any regulatory requirement to establish a regular flow of review data to SSA, States have not completed their individual reviews for a sample month according to a consistent schedule. Furthermore, some States delay completing and reporting their reviews for all months of the sample period until the end of the reporting period. This inconsistent flow of review data from the States to SSA causes uneven workloads for SSA. This hinders SSA's efforts to identify and correct the problems that arise, to determine if funds are being lost, and to determine the error rates.

We propose to modify the regulations by specifying new time limits and completion rate requirements for States and by requiring the weekly submission of review data to SSA. We believe that amending the regulations is required because all administrative measures to ensure the timely reporting of review data have been unsuccessful.

These added requirements should not increase the States' responsibilities. The States' total workload of QC reviews is not increased since the regulatory change only spaces the completing and the reporting of reviews more evenly throughout the review period. We believe that these new requirements will ensure that reviews are not delayed unnecessarily and will permit better management of the quality control system at both the Federal and State levels.

The Medicaid program has a similar quality control system. Because of the close ties between the two programs, the companion HCFA proposed rule, which imposes new review and reporting requirements for Medicaid-QC reviews, is being simultaneously published with the SSA proposed rule. The HFCA and SSA regulations have many identical provisions but also have many significant differences. We will identify throughout the preamble any major provisions in the parallel HFCA regulations that may differ from the SSA regulations.

Sample Completion Requirements

The proposed rules will ensure that the States will complete their individual reviews on a timely basis by—

1. Assigning specific dates for States to complete their individual sample reviews for a month, and

2. Specifying the percentage of individual case reviews that States must complete by such specified dates.

The dates on which States will complete and report their individual reviews will vary depending on the sample month. For each of the first five sample months of the 6-month sample period, States will be required to complete reviews on at least 98 percent of the cases required to be sampled in that month, within 75 days after the end

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of the month. The States will complete reviews for the remaining 2 percent of the month's sample cases within 105 days after the end of the month. For the 6th month of the 6-month sample period, States will be required to complete reviews on 100 percent of the sample cases within 75 days after the end of the month. Also, States will be required to submit their 6-month summary data report within 75 days after the end of the 6-month sample period. For both the 6th sample month and the 6-month summary data report, this represents a 15-day extension over the reporting date in the current regulations.

The companion HCFA regulation also specifies a 98 percent completion rate for Medicaid-QC reviews (this figure was jointly agreed to by SSA and HCFA), SSA and HCFA jointly decided against requiring, as a completion rate, a 100 percent completion rate for reviews within the 75 day period since States may find it impossible to complete reivews for some of their complicated cases within that period of time. We wanted to avoid placing States in the position of either making a decision in a case within 75 days without sufficient supporting evidence or not making a decision in a case within 75 days and thus being in noncompliance with the regulations. SSA and HCFA also considered and rejected the idea of a 95 percent completion rate for the sample reviews. We rejected this option because we felt there should be sufficient time for States to meet the 98 percent completion goal if States start promptly processing their individual reviews. We believe that the projected completion schedule of 98 percent of reviews within 75 days and the remaining 2 percent within 105 days can be complied with by most States without undue problems.

However, the proposed SSA and proposed HCFA regulations do differ in a number of respects. The SSA regulations provides for a 100 percent case completion within 75 days for reviews of sample cases selected in the 6th month of a 6-month sample period. The HCFA regulations do not differentiate between the first 5 months and the 6th month. The reason for this difference is that AFDC quality control has an earlier due date for its reports on the sample period findings. In addition, the HCFA regulations provide different completion requirements for their payment and eligibility reviews. The SSA regulations do not because payment and eligibility reviews are the same under AFDC. Medicaid also sets different time limits for certain categories of their eligibility reviews while AFDC does not. Because the two QC system's have different requirements for the types of reviews to be conducted and different due dates for preparing reports, the sample review completion requirements under the 2 programs cannot completely correspond.

Weekly Reporting of Reviews by States

The proposed SSA regulation also provides for the weekly submission of completed reviews to SSA. States will be required to complete reviews within the 75-day and 105-day time frames (or other time frames if required) but will submit the case data to SSA in the week the case is completed. This provision allows SSA to monitor the States' progress with their monthly sample reviews and keep abreast with the ongoing review findings. Also, this provision allows SSA to conduct more timely Federal re-reviews.

Alternative Proposal for Completing Monthly Reviews

a. *Ongoing Alternate Completion Schedule—Anticipated Events.* If permanent or recurring circumstances within a State as described below make it difficult for that State to meet the completion rate requirements, it may request that the Commissioner approve an alternate completion schedule. Under such an alternate completion schedule, the completion rate percentage and completion date requirements that apply to reviews for the first 5 months of the 6-month sample period may be changed. If an alternate completion schedule is approved, a State must meet the completion percentages and time frames specified in its alternate schedule instead of those specified in the proposed regulations. However, the requirement that a State complete and submit the findings for 100 percent of its sample cases and its summary report by 75 days after the 6th month of the 6-month sampling period may not be changed.

The Commissioner may approve an ongoing alternate completion schedule under the following conditions:

1. The State's QC sample population is dispersed over such great distances that conducting field interviews for the required number of sample cases within the 75-day time period is cost prohibitive; or

2. The State's usual weather conditions or geographic conditions make significant numbers of the State's sample population inaccessible to field contact during certain times of the year.

The State requesting an alternate schedule must offer convincing evidence and supporting data as to why it should be approved. Any alternate schedule submitted must describe the reason why the State is prevented from complying with the completion rate percentages. Justification would also include the alternative plans that were considered and why they were not feasible.

b. *Temporary Alternate Completion Schedule—Unanticipated Events.* We recognize that unanticipated events beyond the State's control may occur during a review period and may temporarily affect the State's ability to meet the sample completion requirements. These unanticipated events can include, but are not limited to, natural disasters such as floods, earthquakes, snowstorms, as well as other conditions such as labor disputes, etc. Thus, we are permitting a State to request an alternate schedule for all 6 months of the sample period as the result of the occurrence of an unanticipated event during the sample period. The State must submit its request in writing explaining the nature of the event, and the reasons why it is unable to meet the requirements and for how long the temporary alternate completion schedule is to remain in effect. Under these circumstances the Commissioner may approve a change in the date by which all findings and the summary report must be submitted as well as in the completion rate percentages and completion date requirements.

c. *Implementation of an Alternative Schedule.* A State which has submitted an alternate schedule may not implement the schedule until it is approved by the Commissioner. Until approved by the Commissioner, the State must adhere to the completion rates specified in these regulations.

Form Reference

The current regulations specify by number the forms that are required to be completed and submitted. The proposed regulations delete the references to the form numbers to eliminate the need to change the regulations when we change the form.

Review Findings

These regulations define the term "review findings". This is being done to identify the information to be reported to SSA.

Anticipated Results

These regulations, by providing for more rapid availability of quality control data, will improve our efforts to control program misuse and management inefficiency. Timely data on payment errors will help State and Federal administrators in determining where funds are being lost and in taking action to correct problems identified in the review process. Imposing a specific time period for completing reviews will also facilitate analysis of error rate trends before final sample period error rates are available.

The proposed regulations are to be issued under authority of section 1102 of the Social Security Act, as amended; 49 Stat. 647 as amended, 42 U.S.C. 1302.

(Catalog of Federal Domestic Assistance Programs No. 13808 Public Assistance Maintenance Assistance (State Aid))

Dated: April 11, 1980.

William J. Driver,

Commissioner of Social Security.

Approved: October 14, 1980.

Patricia Roberts Harris,

Secretary of Health and Human Services.

Chapter II, Title 45 of the Code of Federal Regulations, is amended as set forth below:

Section 205.40 is amended by adding new paragraphs (a)(10) and (b)(3) and by revising paragraphs (B)(2)(ii), (b)(2)(iii), and (b)(2)(vi) to read as follows:

§ 205.40 Quality control system.

(a) * * *

(10) *"Review findings"* means a determination as to the payment and eligibility status of active cases and the correctness of negative case actions. Review findings include: the determination that a payment or action is correct, a payment or action is incorrect, no determination can be made or the case is not an appropriate sample case; sample case characteristics; the nature of the errors; the responsibility for the errors; and at what point in the eligibility determination process the error occurred. For active cases the review findings also include the amount of the assistance payment and, where a payment error exists, whether the error was an overpayment, underpayment, or payment to ineligible persons.

* * * * *

(b) * * *

(2) * * *

(ii) On a weekly basis, review findings from sample cases completed in that week. Each reviewed case's findings shall be submitted to the Department on the prescribed form. The State agency shall complete, within 75 days after the end of each of the first five sample months of the 6-month sample period, the reviews of at least 98 percent of the active and negative cases required to be sampled in that month. The remaining 2 percent of the required sample shall be completed within the following 30 days. Additionally, the State agency shall complete, within 75 days after the end of the 6th sample month of the 6-month sample period, the reviews of 100 percent of the active and negative cases required to be sampled in that month. (See paragraph (b)(3) of this section for alternative sample completion plan.).

(iii) Within 75 days after the end of the 6-month sample period, the 6-month statistical summary data reports used to compute State error rates.

* * * * *

(vi) Summary data on sample case characteristics, the nature of the errors, the responsibility for the errors, and at what point in the eligibility determination process the error occurred, at the same time the corrective action plan is submitted.

(3) The State agency may submit an alternate completion schedule for the Commissioner's approval if the State is unable to meet the requirements of paragraph (b)(2)(ii) of this section either as a result of circumstances of a permanent or recurring nature or as the result of the occurrence of an unforseen event during the sample period. Until the Commissioner approves an alternate completion plan, the State must continue to comply with the requirements of paragraph (b)(2)(ii) of this section.

(i) *Ongoing alternate completion schedule—anticipated events.* The Commissioner may approve an alternate completion schedule for the first five months of the 6-month sample period where: The State's sample population is dispersed over such great distances that conducting the required number of field interviews needed to meet the requirements of paragraph (b)(2)(ii) of this section is cost prohibitive; or the State's usual weather conditions or geographic conditions make significant numbers of the sample population inaccessible or difficult to contact during certain times of the year making it a hardship for the State to comply with the requirements of paragraph (b)(2)(ii) of this section. A State requesting an alternate sample completion schedule must justify its need for the schedule and must submit supporting evidence and data including: a description of the population dispersal or population inaccessability problem within the State, the reason(s) why the State cannot comply with the requirements of paragraph (b)(2)(ii) of this section, the other alternative plans that were under consideration, and why these other alternative plans were not feasible.

(ii) *Temporary alternate completion plan—unanticipated events.* The Commissioner may approve an alternate completion schedule covering all 6 months and the time frames for a particular 6-month period where unforseen events beyond the State's control occur during that review period. Unforseen events can include, but are not limited to floods, earthquakes, and snowstorms as well as other conditions such as labor disputes. A State may request a temporary alternate completion by submitting a written request briefly describing the event, the period the revised schedule will stay in effect and the revised completion dates and completion percentages.

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[FR Doc. 80-33131 Filed 10-23-80; 8:45 am]

BILLING CODE 4110-07-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

Bering Sea and Aleutian Islands Groundfish Fishery; Approval of Amendments to Preliminary Fishery Management Plan; Proposed Regulations

AGENCY: National Oceanic and Atmospheric Administration (NOAA/Commerce.

ACTION: Approval of amendment of preliminary fishery management plan (PMP) and notice of proposed implementing regulations.

SUMMARY: This action modifies certain numerical parameters in the PMP upon which the management of Pacific cod (*Gadus macrocephalus*) is based, as follows: (a) decrease maximum sustainable yield (MSY) from 58,700 metric tons (mt) to 55,000 mt; (b) increase the equilibrium yield (EY) from 58,700 metric tons (mt) to 148,000 mt; and (c) increase optimum yield (OY), which equals total allowable catch (TAC), from 58,700 mt to 700,700 mt. This action also allows the Regional Director to apportion any amount of the Reserve to the total allowable level of foreign fishing (TALFF) and/or domestic annual harvest (DAH) as soon as practicable at times other than the four scheduled dates already in the PMP. Implementing regulations are proposed.

DATE: Comments on the amendment and proposed implementing regulations will be received until November 21, 1980.

ADDRESS: Comments should be addressed to: Denton R. Moore, Chief, Permits and Regulations Division, F/CM7, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C. 20235, Telephone (202) 634-7432.

FOR FURTHER INFORMATION CONTACT: Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802, Telephone: (907) 586–7221.

SUPPLEMENTARY INFORMATION: The fisheries for Pacific cod in the fishery conservation zone off Alaska are managed under the authority of the Preliminary Management Plan (PMP) for the Trawl and Herring Gillnet Fishery of the Bering Sea and Northeast Pacific. The PMP was published in the **Federal Register** (42 FR 9298) on February 15, 1977, and implemented March 1, 1977, under provisions of the Fishery Conservation and Management Act of 1976, as amended (FCMA). It was extended through 1978, through 1979, and with amendments through 1980 (45 FR 1028).

The Secretary of Commerce has approved modifications to the PMP, based on accumulating evidence that the abundance of Pacific cod is increasing and that a 12,000 mt increase in the total allowable catch (TAC) is justified.

Recent surveys by the National Marine Fisheries Service (NMFS) of U.S. fishing and processing capacity and intent to fish and process fish indicate that the amount of Pacific cod (24,265 mt domestic annual harvest (DAH) plus 2,935 mt in Reserve) originally specified in the PMP for 1980 is more than sufficient to provide for industry needs for the remainder of the year. Hence, the 12,000 mt increase in TAC is surplus to DAH and should be apportioned to TALFF. Additional justification for these modifications appears in the PMP amendments which are set forth below. The proposed regulations relfect the August 1980 apportionment of reserves.

The PMP also is being amended to provide that the reserve amount specified for each groundfish species group may be apportioned to DAH or TALFF at times other than the four scheduled dates that are currently provided. This requires additional public comment procedures.

When the Regional Director determines that apportionment is required on dates other than those scheduled, he shall prepare a **Federal Register** notice on the proposed apportionment. That notice will advise interested persons how to submit comments on the proposed apportionment. These unscheduled apportionments are expected to be undertaken only when immediate action to increase a TALFF or DAH figure is necessary. Thus there may be grounds for a finding of good cause for omitting prior public notice and comment and the normal 30-day delayed effect pursuant to 5 U.S.C. subsections 553 (b)(B) and (d)(3).

The assistant Administrator for Fisheries, NOAA, has determined that this amendment to the PMP is necessary and appropriate to the conservation and management of Bering Sea groundfish resources, and that it is consistent with the National Standards of the FCMA, other provisions of the FCMA, and other applicable law. He has therefore approved the amendment and the proposed regulations set forth below. The Assistant Administrator has determined that promulgation of the amendment and the proposed implementing regulations does not constitute a major Federal action requiring the preparation of an environmental impact statement under the National Environmental Policy Act, and that it does not constitute a significant regulation requiring the preparation of a regulatory analysis under Executive Order 12044.

Signed in Washington, D.C. this 21 day of October, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

(16 U.S.C. 1801 *et seq.*)

A. Amendments to the Preliminary Fishery Management Plan.

The following changes are made in 42 FR 9298–9331 (February 15, 1977), as amended at 45 FR 1028.

(1) Page 9325, Section 4.0, Table 18. Make the following changes for cod as appropriate: MSY—to 55,000 mt from 58,700 mt; EY—to 148,000 mt from 58,700 mt; 1980 OY—to 70,700 mt from 58,700 mt; TALFF—to 43,500 mt from 31,500 mt; DAH—no change; JVP—no change;

(2) Page 9322, Section 3.0, (6) Pacific cod.

(a) Distribution and abundance of stocks.

Delete second paragraph and add: "The annual catch of Pacific cod by all foreign nations in the eastern Bering Sea and Aleutians increased from 13,600 mt in 1964 to about 70,400 mt in 1970. Since then, catches have varied between 36,600 mt and 63,800 mt. Japan has accounted for 66–69 percent of the catch since 1971."

(b) Maximum sustainable yield.

Delete all and add: "The incidental catch of cod in foreign trawl catches makes questionable the use of CPUE trends from the commercial fishery. Moreover, the semi-demersal distribution of cod makes them difficult to assess with research vessel trawls. MSY for this species has, therefore, been estimated on the basis of commercial catch data. Because catches increased rapidly in the mid-1960's and then stabilized, the average catch during this period of stability (1968–76) was assumed to reflect at least a minimal estimate of MSY. The original estimate was 58,700 mt, but this figure includes catches from west of 180° which lie outside the U.S. FCZ. A more appropriate estimate, including only those catches within the FCZ from the eastern Bering Sea (east of 180°) and Aleutians Islands area, is 55,000 mt."

(c) Equilibrium yield.

Delete all and add: "Analyses of data since 1978 indicate a substantial increase in the abundance of cod. The relative abundance of cod more than doubled between 1976 and 1978 based on NMFS research survey data, and in 1978 there appeared to be an unusually high abundance of age 1 cod (1977 year-class) in the research vessel catches (Bakkala et al, 1979). This same year-class was again abundant in research vessel catches during the large scale survey of the eastern Bering Sea in 1979 (unpublished data). Comparable data from the NMFS 1975 (pereyra, et al, 1976) and 1976 surveys show a seven-old increase in CPUE from 2.7 kg/km to 19.8 kg/km.

Age data from the commercial fishery indicate that the abundance of a cod cohort peaks in the fishery at age 3, contributes substantially to catches at age 4, but declines sharply at ages 5 and 6. The 1977 year-class will, therefore, make their greatest contribution to the fishery in 1980 and 1981.

The estimated biomass of cod from the 1979 survey was 792,300 mt with a 95 percent confidence interval of 603,200—981,400 mt. About 81 percent of the total biomass was made up of age groups 1 and 2 which are only partially recruited to the fishery.

Using population estimates by age from the 1979 NMFS survey, historical growth rates, a range in instantaneous natural mortality rates of 0.5–0.7, and various possible fishing mortalities by age, the projected biomass of cod in 1980 has been calculated. This projection indicates that the exploitable biomass (age group 2–5) in 1980 falls within the range of 740,000–910,000 mt.

Using the conservative lower end of the projected range in biomass and an exploitation rate of 20 percent, the EY is estimated to be 148,000 mt."

(3) Page 9325 Section 4.0B. Total Allowable Catch. (6) Cod.

Delete all and add: "The large number of 3 year-old cod (1977 year-class) justifies an increase in TAC in 1980. Since natural mortality will rapidly reduce the abundance of this year-class during 1980 and 1981, it is beneficial to increase its harvest during the short period it remains in the fishery. Due to possible inaccuracies in the 1979 biomass estimate and in the projection of this estimate into 1980, TAC is set at 70,700 mt rather than a higher level closer to the EY.

Since the present cod DAH is sufficient, a higher TAC would likely result in a higher TALFF that would cause an increase of supplies on the international market. A TAC of 70,700 mt, however, should have negligible influence on supply/demand conditions that might affect the U.S. fishing industry at a time when it is increasing expenditures and effort in the cod fishery. Also, this small increase in TAC will maintain the density of cod at a higher level, which will provide for larger catches per unit of effort for U.S. fishermen. Hence, their costs per unit of catch should be reduced."

Page 9329 Section 7.0 References. Add the following section on cod immediately after the section on sablefish as follows:

Pacific Cod

Bakkala, R.G., L.L. Low, and V. Wespestad. 1979. Condition of Groundfish Resources in the Bering Sea and Aleutian Area. U.S. Department of Commerce, NOAA, NMFS, NWAFC, Seattle, WA. (Document submitted to INPFC, 106 pp.).

Pereyra, W.T., J.E. Reeves, and and R.G. Bakkala. 1979. Demersal Fish and Shellfish Resources of the Eastern Bering Sea in the Baseline Year 1976. U.S. Department of Commerce, NOAA, NMFS, NWAFC, Seattle WA. (processed report)."

(4) Page 9331 Section 9.0 Appendix B.8.0 Reserves. Delete first paragraph and add the following: "(a) As soon as practicable after each of the following dates, and on such other dates as he determines necessary, the Regional Director shall apportion to TALFF and/or DAH any portion of the reserve amount set forth in Table 18 that he determines to be appropriate: February 2, April 2, June 2, and August 2."

B. Proposed Rulemaking to Implement the PMP Amendments

(1) It is proposed to amend 50 CFR 611.93(b)(3)(i) to read:

§ 611.93 Bering Sea and Aleutian Islands Groundfish Fishery.

* * * * *

(b) * * *

(i) *Apportionment of Reserves.* As soon as practicable after each of the following dates, and on such other dates as he determines necessary, the Regional Director shall apportion to TALFF and/or DAH any portion of the Reserve set forth in Part 4A of Appendix I to § 611.20 that he determines to be appropriate, in accordance with paragraph (b)(3)(iii) of this section: February 2, April 2, June 2, and August 2.

(2) It is proposed to amend 50 CFR 611.93(b)(3)(iii)(D)(*1*) by adding the following after the last period following the phrase "(. . . and July 28)."

* * * When the Regional Director determines that apportionment ia required on dates other than those specified in paragraph (b)(3)(i) of this section, he shall issue a **Federal Register** notice on the proposed apportionment which shall state the terms upon which interested persons will be authorized to submit comments on the apportionment to the NMFS Alaska Regional Director.

* * * * * * *

(3) It is proposed to amend Part 4A of Appendix I to 50 CFR 611.20, by revising the figures for Pacific cod to read:

Optimum yield (OY) mt., 70,700
Domestic harvest (DAH) mt., 22,265
Joint venture (JVP) mt., 15,065
Reserve, 0
TALFF, 48,435

[FR Doc. 80-33285 Filed 10-23-80; 8:45 am]
BILLING CODE 3510-22-M

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50 CFR Parts 656 and 657

Mid-Atlantic Fishery Management Council; Public Hearings

AGENCY: National Oceanic and Atmospheric Administration/ Commerce.

ACTION: Notice of Public Hearings.

SUMMARY: The Mid-Atlantic Fishery Management Council will hold public hearings for the purpose of public input on Amendment #2 to the Fishery Management Plans for Atlantic Mackerel and Butterfish (FMPs).

DATES: Written comments on the amendments to the plans for Atlantic Mackerel and Butterfish from members of the public may be submitted no later than November 10, 1980.

Individuals or organizations wishing to comment on any of the above fishery management plans may do so at public hearings to be held at the locations listed below:

November 10, 1980—Salisbury, Maryland
November 10, 1980—Toms River, New Jersey
November 11, 1980—Narragansett, (Galilee) Rhode Island
November 13, 1980—Montauk, Long Island, New York

ADDRESS: Send comments to: Chairman, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, North and New Streets, Dover, Delaware 19901.

Public hearing locations:

November 10, 1980—Sheraton Inn, 300 S. Salisbury Boulevard, Route 13 South, Salisbury, Maryland 21801
November 10, 1980—Holiday Inn, 290 Highway 37 East, Toms River, New Jersey 08753
November 11, 1980—Dutch Inn, Great Island Road, Narragansett (Galilee), Rhode Island 02882
November 13, 1980—Gurney's Inn, Old Montauk Highway, Montauk, Long Island, New York 11954

All of the public hearings mentioned above will convene promptly at 7:00 P.M. Hearings will be tape recorded and the tapes filed as an official formal transcript of proceedings. Summary minutes will be prepared on each hearing.

FOR FURTHER INFORMATION CONTACT: Mr. John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, North and New Streets, Dover, Delaware 19901, Telephone: 302–674–2331.

SUMMARY: The fishery management plan (FMP) for Atlantic mackerel was approved by the Assistant Administrator for Fisheries, NOAA, on July 3, 1979 for fishing year 1979–1980 (April 1, 1979–March 31, 1980). Amendment #1, extending the FMP through fishing year 1980–1981, was approved by the Assistant Administrator on March 17, 1980. The purpose of Amendment #2 is to extend the FMP beyond the end of fishing year 1980–1981. The management unit for this FMP is all Atlantic mackerel under U.S. jurisdiction.

The butterfish FMP was approved by the Assistant Administrator on November 9, 1979, for fishing year 1979–1980 (April 1, 1979–March 31, 1980). Amendment #1, extending the FMP through fishing year 1980–1981, was approved by the Assistant Administrator on March 17, 1980. The purpose of Amendment #2 is to extend the FMP for up to one year beyond the end of fishing year 1980–1981.

Dated: October 21, 1980.

Robert K. Crowell,

Deputy Executive Director.

[FR Doc. 80-33271 Filed 10-23-80; 8:45 am]
BILLING CODE 3510-22-M

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50 CFR Part 674

North Pacific Fishery Management Council, High Seas Salmon Fishery Management Plan; Public Hearings

AGENCY: National Oceanic and Atmospheric Administration/ Commerce.

ACTION: Notice of Public Hearings on proposed amendments to the Fishery

Management Plan for High Seas Salmon Off the Coast of Alaska East of 175° East Longitude and draft proposed regulations for the 1981 troll salmon season.

SUMMARY: The North Pacific Fishery Management Council established by Section 302 of the Fishery Conservation and Management Act of 1976 (Public Law 94–265), will hold public hearings for the purpose of public input on its proposed amendments to the High Seas Salmon Fishery Management Plan (FMP) and regulations for the 1981 season.

DATES: Written comments may be submitted on or before December 15, 1980. Individuals or organizations wishing to comment on the named fishery management plan may do so at public hearings to be held at the times and locations listed below:

November 13, 1980—Juneau, Alaska
November 13, 1980—Sitka, Alaska
November 14, 1980—Ketchikan, Alaska
November 6, 1980—Renton, Washington
November 9, 1980—Anchorage, Alaska

ADDRESSES: Send comments to: Chairman, North Pacific Fishery Management Council, P.O. Box 3136DT, Anchorage, Alaska 99510.

Public hearings locations:

November 13, 1980—Gasineau Room, Baranof Hotel, Juneau, Alaska, 10:00 a.m. to 5:00 p.m.
November 13, 1980—Centennial Building, Sitka, Alaska, 9:00 a.m. to 5:00 p.m.
November 14, 1980—Gold Room, Marine View Hotel, Ketchikan Alaska, 9:30 a.m. to 5:00 p.m.
December 6, 1980—Sheraton-Renton Inn, 800 Ranier Avenue, South, Renton, Washington, 9:30 a.m.
December 9, 1980—Anchorage Westward, Hilton, Anchorage, Alaska, 9:00 a.m.

Winter travel in Alaska is sometimes difficult and makes it necessary to consider alternative meeting places and times. We have therefore planned to visit the city where a hearing was cancelled as soon as weather permits. Cancellations and new locations, if necessary, will be announced locally by telephone and radio, and when possible, by newspaper and television.

Copies of the draft fishery management plans are available at the following locations:

Anchorage

Alaska Department of Fish and Game, 333 Raspberry Road, Anchorage, AK 99502
National Marine fisheries Service, Federal Building, and U.S. Court House, 701 C Street, Anchorage, Alaska AK 99513
Z. J. Loussac Public Library, 427 F Street, Anchorage, Alaska 99510.
North Pacific Fishery Management Council, Suite 32, 333 West 4th Avenue, Post Office Mall Building, Anchorage, AK

Bethel

Alaska Department of Fish and Game, P.O. Box 96, Bethel, AK 99559.
Bethel Public Library, Bethel, AK 99559.

Cordova

Alaska Department of Fish and Game, P.O. Box 669, Cordova, AK 99574.
Cordova Public Library, Cordova, AK 99574.

Dillingham

Alaska Department of Fish and Game, P.O. Box 199, Dillingham, AK 99576.
Dillingham Public Library, Dillingham, AK 99576.

Fairbanks

Alaska Department of Fish and Game, 1300 College Road, Fairbanks, AK 99701.
Fairbanks North Star Borough Public Library, 901 1st Avenue, Fairbanks AK 99701.

Homer

Alaska Department of Fish and Game, Homer, AK 99603.
Homer Public Library, Homer, AK 99603.

Juneau

Alaska Department of Fish and Game, S.E. Regional Office, 210 Ferry Way, Juneau, Alaska 99801.
Alaska Department of Fish and Game, Commissioner, Subport Building, Juneau, AK 99801
National Marine Fisheries Service, Room 453, Federal Building, Juneau, AK 99802.
Juneau Memorial Library, 114 West 4th Street, Juneau, AK 99802.

Ketchikan

Alaska Department of Fish and Game, 208 State Court and Office Building, 415 Main Street, Suite 208, Ketchikan AK 99901.
Ketchikan Public Library, 629 Dock Street, Ketchikan, AK 99901.

Kodiak

Alaska Department of Fish and Game, Kodiak, AK 99615.
A. Holmes Johnson Memorial Library, Kodiak, AK 99615.
National Marine Fisheries Service, Gibson, Cove, Kodiak, AK 99615.

Kotzebue

Kotzebue Public Library, Kotzebue, AK 99752.

Petersburg

Alaska Department of Fish and Game, Swanson Building, Petersburg, AK 99833.
Petersburg Public Library, Petersburg AK 99833

Sand Point

Alaska Department of Fish and Game, Sand Point, AK 99661.
Sand Point Community/School Library, Sand Point, AK 99661.

Seward

Alaska Department of Fish and Game, Seward Court Building, Seward AK 99664.

Sitka

Alaska Department of Fish and Game, State Office Building, Sitka, AK 99835.
Kedelson Memorial Library, Sitka, AK 99835.

Unalaska

Alaska Department of Fish and Game, c/o Standard Oil Dock, Dutch Harbor, AK 99685.
Unalaska/School/Community Library, Unalaska, AK 99685.

Valdez

Alaska Department of Fish and Game, Valdez, AK 99686.

Wrangell

Alaska Department of Fish and Game, P.O. Box 200, Wrangell, AK 99929.
Wrangell Public Library, Wrangell, AK 99929.

Yakutat

Alaska Department of Fish and Game, P.O. Box 68, Yakutat, AK 99689.

Limited number of the proposed amendment package will be available from the Executive Director, North Pacific Fishery Management Council, Suite 32, 333 West Fourth Avenue, Anchorage, AK 99501 (P. O. Box 3136DT, Anchorage, AK 99510) and the National Marine Fisheries Service, Box 1668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 3136DT, Anchorage, Alaska 99510, Telephone (907) 274–4563.

Dated: October 21, 1980.

Robert K. Crowell,

Deputy Executive Director.

[FR Doc. 80-33272 Filed 10-23-80; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 45, No. 208
Friday, October 24, 1980

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Feed Grain Donations for the Fort Belknap Assiniboine and Gros Ventre Tribes in Montana

Pursuant to the authority set forth in Section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Fort Belknap Assiniboine and Gros Ventre Indian Tribes in Montana has been materially increased and become acute because of severe and prolonged drought substantially reducing range forage and hay production, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of Assiniboine and Gros Ventre Indian Tribes for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation for livestock feed for such needy members of these tribes will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of these tribes to be acute distress areas and authorize the donation of feed grain owned by the Commodity Credit Corporation to livestock owners who are determined by the Bureau of indian Affairs, Department of the Interior, to be needy members of the tribes utilizing such lands. These donations by the Commodity Credit Corporation may commence upon signature of this notice and shall be made available through May 1, 1981, or to such other time as may be stated in a notice issued by the Department of Agriculture.

Signed at Washington, D.C. on October 16, 1980.

John W. Goodwin

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 80-33051 Filed 10-22-80; 8:45 am]

BILLING CODE 3410-05-M

Food and Nutrition Service

Advisory Council on Maternal, Infant and Fetal Nutrition; Meeting

Pursuant to the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Council meeting:

Name: National Advisory Council on Maternal, Infant and Fetal Nutrition.
Date and time: 9:00 a.m., November 17–19, 1980.
Place: El Tropicano Hotel, 110 Lexington Avenue, San Antonio, Texas 78205.
Purpose of meeting: The Council will continue its study of the Special Supplemental Food Program for Women, Infants and Children (WIC) and the Commodity Supplemental Food Program (CSFP), and will discuss a wide range of matters concerning the operations of these two programs.
Proposed agenda: The agenda will include discussion time for the following issues: Demonstration projects and program evaluations; food delivery and the WIC Program 10 State audit; funding and legislation; WIC Program performance standards; the WIC and CSFP food packages; and general program operations.

This meeting will be open to the public. As time permits, members of the public may participate in the meeting.

Persons wishing additional information about this meeting should contact Rita Myers, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250. telephone (202) 447–8421.

Carol Tucker Foreman,

Assistant Secretary, for Food and Consumer Services.

October 17, 1980.

[FR Doc. 80-33043 Filed 10-23-80; 8:45 am]

BILLING CODE 3410-30-M

Special Supplemental Food Program for Women, Infants and Children, (WIC) Program, Funding Formula

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice; Food Funding Formula for the WIC Program.

SUMMARY: The Department is publishing a notice announcing its plans to distribute FY 1981 program (food) monies to State agencies participating in the Special Supplemental Food Program for Women, Infants and Children (WIC). The action described in this notice must be taken because the FY 1981 WIC appropriation provided in the resolution making continuing appropriations for fiscal year 1981 is not sufficient to permit the Department to use the existing program funding formula in its entirety to allocate FY 1981 program grants.

DATES: Effective October 1, 1980. Comments are due on or before December 23, 1980.

ADDRESS: Send comments to Darrel E. Gray, Acting Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, Washington, D.C. 20250.

Comments will be available for public inspection during normal business hours at: 201 14th Street, Room 4405, Supplemental Food Programs Division, Food and Nutrition Service, USDA, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Deborah A. McIntosh, Chief, Program Analysis and Monitoring Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, Washington, D.C. 20250. (202)447–4888.

SUPPLEMENTARY INFORMATION: This action has been reviewed under procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified as "not significant". The emergency nature of this action warrants publication of this document without completion of a Final Impact Statement. A Final Impact Statement will be developed after public comments have been received.

Bob Greenstein, Administrator, FNS, has determined that an emergency situation exists which warrants making this formula effective without opportunity for a public comment period on this action because fiscal year 1981 began on October 1, 1980, and funds must be allocated to participating State agencies in order for them to operate the WIC program. Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect to this emergency action are impractical and contrary to the

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public interest, and good cause is found for making this emergency action effective less than 30 days after publication of this document in the **Federal Register**. Comments will be solicited until December 23, 1980, and this action will be scheduled for review so that a final document discussing comments received and any modifications required can be published in the **Federal Register** as soon as possible.

The Department published a proposed rule on June 19, 1979, at 44 FR 35231 and a final rule on October 16, 1979, at 44 FR 59489 setting forth the WIC program food funding formula for FY 1980 and subsequent years. The formula selected was similar to the one used to distribute funds FY 1979 with the exception of some modifications to the data base elements and special provisions. The FY 1980 formula was subsequently used to distribute WIC program food funds to participating WIC State agencies, beginning October 1, 1979.

Presently, the FY 1981 WIC appropriation has not been enacted. However, the resolution making continuing appropriations for fiscal year 1981 provides $900 million as the fiscal year 1981 funding level. At this level, the Department will be unable to guarantee all State agencies their FY 1980 fourth quarter food funding level.

Application of the Fiscal Year 1980 Funding Formula in Fiscal Year 1981

As the Department would like to assure that participants receiving WIC benefits in the fourth quarter of fiscal year 1980 continue to receive benefits in fiscal year 1981, a means of allocating fiscal year 1981 program grants to participating WIC State agencies has been formulated using the existing program funding formula structure with some modifications. This notice explains the method the Department will use to award fiscal year 1981 program grants to State agencies, assuming a WIC appropriation of $900 million. This method will, in any case, be used to make initial fiscal year 1981 allocations under the continuing resolution. Assuming such an appropriation, fiscal year 1981 WIC program food funds will be allocated to State agencies as follows:

1. The fiscal year 1980 program funding formula will be run to determine each State agency's maximum grant because the Department wants to ensure that no State agency receives more than its maximum grant. If it is determined that a State agency is receiving more funds than it needs to serve all of its potentially eligible participants in one quarter, the State agency will be held to its maximum grant funding level.

Every State agency will be guaranteed either its current fourth quarter base funding level or its maximum grant funding level. The base funding level will be equal to its fiscal year 1980 fourth quarter funding level, which includes those program funds which a State agency received through the July 1980 negotiated reallocation, plus ⅓ of its computed October 1979 through June 1980 migrant food expenditures, or ¼ of its total fiscal year 1980 migrant food grant, whichever is lower. Additionally, any fourth quarter front recoveries made during the July 1980 reallocation process will be restored to the State agency's original fiscal year 1980 fourth quarter funding level, except in those instances where projected September 1980 participation does not justify restoring the full original fourth quarter funding level.

2. The Department will then contact particular State agencies to determine whether a lower fiscal year 1981 funding level can be negotiated. This is in accordance with the fiscal year 1980 program funding formula provision allowing the Department to negotiate the level of funds a State agency will receive if it is mutually agreed that the allocation provided under the formula appears to be too great to expend. Funds recovered through the negotiations will, in essence, be redistributed to the remaining State agencies to enable the Department to fund these State agencies at their fourth quarter level. The Department will make every effort to allocate sufficient funds to State agencies to permit the continuation of current participation levels and asks the cooperation and assistance of all State agencies in achieving this objective.

Signed in Washington, D.C., on October 14, 1980.

Bob Greenstein,

Administrator, Food and Nutrition Service.

[FR Doc. 80-33137 Filed 10-23-80; 8:45 am]

BILLING CODE 3410-30-M

Office of the Secretary

National Advisory Council on Child Nutrition; Meeting

Pursuant to Public Law 92-463 notice is hereby given that the National Advisory Council on Child Nutrition, established by Section 15 of the National School Lunch Act to make a continuing study of the child nutrition programs of the U.S. Department of Agriculture, has scheduled a meeting for November 6, 7 and 8, 1980. The meeting will be from 8:30 a.m. to 5:00 p.m., daily at the Palmer House Hotel, 17 East Monroe Street, Chicago, Illinois 60611. The meeting will be open to the general public and participants will be allowed to participate in discussions as time permits.

The agenda for the meeting will include a substantial amount of time for the preparation of the 1980 annual report to the President and Congress. It will be available 15 days prior to the meeting from Mrs. Margaret O'K. Glavin, Executive Secretary, National Advisory Council on Child Nutrition, United States Department of Agriculture, Food and Nutrition Service, 500 12th Street, SW, Washington, D.C. 30350: (202) 447-5548.

Dated: October 17, 1980.

Carol Tucker Foreman,

Assistant Secretary and Chairperson, National Advisory Council on Child Nutrition.

[FR Doc. 80-32895 Filed 10-23-80; 8:45 am]

BILLING CODE 3410-30-M

CIVIL AERONAUTICS BOARD

[Dockets 38559; 38622; 38635]

Hughes Air Corp.; Order Granting Exemption

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 17th day of October, 1980.

Applications of Hughes Air Corp. d.b.a. Hughes Airwest, Aloha Airlines, Inc. and Hawaiian Airlines, Inc. for an exemption pursuant to Section 416(b) of the Federal Aviation Act of 1958, as amended.

By applications filed August 5, 21, and 25, 1980, respectively, Hughes Air Corp., d.b.a. Hughes Airwest,[1] Aloha Airlines, Inc., and Hawaiian Airlines, Inc. request exemptions from section 403 of the Federal Aviation Act and Parts 221 and 223 of the Board's Economic Regulations to permit them to provide free or reduced-rate transportation in lieu of cash payments for charitable contributions.

In support of their applications, the petitioners state that when recently amending the regulations governing free and reduced-rate transportation to permit expanded barter and promotional transportation, the Board noted Southwest Airlines' request that carriers be allowed to provide air transportation as contributions to charities, and in response stated that the practice is already permitted by Orders 78-12-49 and 80-2-155.[2] However, further reference to these orders, and in particular Order 80-2-155, reveals that the Board has only granted Southwest a one-year exemption to provide such transportation. The petitioners believe, therefore, that it appears, notwithstanding the language of ER-1181, that they and other carriers are not authorized to use free or reduced-rate travel in response to solicitations by charitable organizations, and they request that this point be clarified. No complaints have been filed against the applications.

We find the exemption to be in the public interest. In order to clarify our original intentions, we will grant the exemption and expand it to include all U.S. and foreign air carriers to the extent necessary to enable them to provide free and reduced-rate transportation in lieu of cash for charitable contributions.

Accordingly,

1. We exempt all U.S. and foreign air carriers from the provisions of section 403 of the Federal Aviation Act and Parts 221 and 223 of the Board's Economic Regulations to enable them to provide air transportation in lieu of cash for contributions to charitable organizations.

2. We will serve a copy of this order on all U.S. and foreign air carriers.

This order shall be published in the **Federal Register**.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-33219 Filed 10-23-80; 8:45 am]

BILLING CODE 6320-01-M

[1] Order 80-9-65 approved the acquisition of Hughes Airwest by Republic and the change of the carrier's name to Republic West, Inc. d.b.a Republic or Republic Airlines.

[2] ER-1181, Docket 35392, July 2, 1980 at page 10.

DEPARPTMENT OF COMMERCE

Office of the Associate Deputy Secretary

Environmental Assessment/ Environmental Impact Statement, New Orleans, La.

AGENCY: Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce is issuing this notice to advise the public that an environmental assessment will be prepared for a proposed World Exposition to be held in New Orleans, Louisiana during 1984. This will be the basis for the development of an Environmental Impact Statement.

DATE: The meeting will be held at 10:00 a.m., to 12:00 noon Monday November 24, 1980.

ADDRESS: The Chamber of Commerce of New Orleans and The River Region, Ground Floor Auditorium, 301 Camp Street, New Orleans, Louisiana 70130.

FOR FURTHER INFORMATION CONTACT: Henry Riegner, Office of the Associate Deputy Secretary, Department of Commerce, Washington, D.C. 20230, (202) 377-4987.

SUPPLEMENTARY INFORMATION: The Department of Commerce will prepare an environmental assesment (EA) on a proposal to conduct a World Exposition in New Orleans, Louisiana for a five to six month period during 1984. The proposed World Exposition would involve approximately 85 acreas of developed and undeveloped land bounded generally by Canal Street, Erato Street, South Front Boulevard and the Mississippi River which would constitute the primary site based on the proposed multiple site concept. The Louisiana Superdome and the Louis Armstrong Park would be used as secondary sites at which related events would be held. Also included in this proposal are numerous residual improvements to access.

Alternatives under consideration include taking no action, various combinations of adapted use of available structure, construction of new structures and acquisition of various undeveloped parcels of land to provide the required amount of exhibition space.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies and to private organizations and citizens who have previously expressed interest in this proposal. A series of public meetings and a public hearing will also be held. Public Notice will be given of the time and place for public and agency review and comment.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EA should be directed to Henry Riegner, at the address given above.

Issued on: October 21, 1980.

J. Wade,

Acting Associate Deputy Secretary.

[FR Doc. 80-33146 Filed 10-23-80; 8:45 am]

BILLING CODE 3510-19-M

International Trade Administration

Articles of Quota Cheeses; Quarterly Determination and Listing of Foreign Government Subsidies

AGENCY: U.S. Department of Commerce, International Trade Administration.

ACTION: Publication of List of Foreign Government Subsidies on Articles of Quota Cheese.

SUMMARY: Section 702(a) of the Trade Agreements Act of 1979 (19 U.S.C. 1202 note) ("the TAA") requires the Department of Commerce to determine, in consultation with the Department of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly update of the type and amount of each such subsidy determined to exist. The current list is published below.

EFFECTIVE DATE: October 1, 1980.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-3173).

SUPPLEMENTARY INFORMATION: The Department of Commerce ("the Department") has developed, in consultation with the Department of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese. The Appendix to this notice lists the country, the subsidy program, and the gross and net amount of each subsidy on which information is currently available. The Department will incorporate any additional programs which are found to constitute subsidies and additional information on the subsidy programs listed as the information is developed.

The Department encourages any person having information on subsidy programs administered by foreign governments which benefit articles of quota cheese to submit such information in writing to the Deputy Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

This determination and notice publication are in accordance with

section 702(a) of the TAA (19 U.S.C. 1202 note).

John D. Greenwald,

Deputy Assistant Secretary for Import Administration.

Appendix—Quota Cheese Subsidy Programs

Country	Program	Gross [1] subsidy (cents per lb)	Net [2] subsidy (cents per lb)
Belgium	European Community (EC) Restitution Payments.	55.2	55.2
Canada	Export Assistance on Certain Types of Cheeses.	16.7	16.7
Denmark	EC Restitution Payments.	28.2	28.2
Finland	Export Subsidy	62.6	62.2
	Indirect Subsidy	21.7	21.7
		84.3	84.3
France	EC Restitution Payments.	29.0	29.0
Ireland	EC Restitution Payments.	37.7	37.7
Italy	EC Restitution Payments.	72.6	72.6
Luxembourg	EC Restitution Payments.	55.2	55.2
Netherlands	EC Restitution Payments.	33.0	33.0
Norway	Indirect (Milk) Subsidy.	24.1	24.1
Portugal	Indirect (Milk) Subsidy.	38.5	38.5
Switzerland	Deficiency Payments.	58.0	58.0
United Kingdom	EC Restitution Payments.	25.3	25.3
West Germany	EC Restitution Payments.	31.9	31.9

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 80-33148 Filed 10-23-80; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards

Approval of Federal Information Processing Standard; FORTRAN

Under the provisions of Pub. L. 89-306 (79 Stat. 1127; 40 U.S.C. 759(f)) and Executive Order 11717 (38 FR 12315, dated May 11, 1973), the Secretary of Commerce is authorized to establish uniform Federal automatic data processing standards. On July 20, 1979, notice was published in the **Federal Register** (44 FR 42750) that a standard for FORTRAN was being proposed for Federal use. Interested parties were invited to submit written comments concerning this proposed standard to the National Bureau of Standards (NBS).

The written comments submitted by interested parties and other material available to the Department relevant to this standard were reviewed by NBS. On the basis of this review, NBS recommended to the Secretary his approval of the standard as a Federal Information Processing Standard (FIPS), and prepared a detailed justification document for the Secretary's review in support of that recommendation. The purpose of this notice is to announce that the Secretary has approved the standard as a FIPS, and that the standard shall be published as FIPS Publication 69. The provisions of the standard were effective on the date of approval by the Secretary, September 4, 1980.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 5317, Main Commerce Building, 14th Street between Constitution Avenue and E Street, NW., Washington, D.C. 20230.

The objective of this standard is to promote higher programmer productivity, ease conversion to other computer systems, encourage transportability of both programs and programming skills, support program modifications with less effort, and enhance documentation and program testing.

This standard defines the programming language FORTRAN. It is to be used by implementors as the reference authority for the development of FORTRAN compilers, interpreters, or other language processors, and by other computer professionals whose work demands a detailed knowledge of the syntactic and semantic rules adopted as American National Standard X3.9-1978, FORTRAN.

The approved FIPS contains two portions: (1) An announcement portion which provides information concerning the applicability, implementation, and maintenance of the standard, and (2) a specifications portion which deals with the technical requirements of the standard. Only the announcement portion of the standard is provided in this notice. Apart from the provision requiring the explicit identification of syntactically non-conforming statements (paragraph 11.2 of the announcement portion), this FIPS represents the adoption of American National Standard X3.9-1978, FORTRAN.

By arrangement with the American National Standards Institute, interested parties may purchase copies of this standard, including the specifications portion, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies section of the announcement portion of the standard.

Persons desiring further information about this standard may contact Mrs. Frances E. Holberton, Programming Science Division, Center for Programming Science and Technology, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, (301) 921-3485.

Dated: October 20, 1980.

Ernest Ambler,

Director.

Federal Information Processing Standards Publication 69 Announcing the Standard for FORTRAN

September 4, 1980.

Federal Information Processing Standards Publications (FIPS PUBs) are issued by the National Bureau of Standards pursuant to the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89-306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations (CFR).

1. *Name of Standard.* FORTRAN (FIPS PUB 69).

2. *Category of Standard.* Software Standard, Programming Language.

3. *Explanation.* This publication announces the adoption of American National Standard FORTRAN, X3.9-1978, as a Federal Standard. The American National Standard FORTRAN, X3.9-1978, specifies the form and establishes the interpretation of programs expressed in the FORTRAN Programming Language. The standard consists of a full language, FORTRAN, and a subset language, Subset FORTRAN. The purpose of the standard is to promote portability of FORTRAN programs for use on a variety of data processing systems. The standard is used by implementors as the reference authority in developing compilers, interpreters, or other forms of high level language processors, and by other computer professionals who need to know the precise syntactic and semantic rules adopted by the American National Standards Institute (ANSI). It is not the primary purpose of this standard to explain the language to the beginning or casual user. This Federal Standard specifies the set of features that must be supported by a language processor designated as FORTRAN.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* U.S. Department of Commerce, National Bureau of Standards, (Institute for Computer Sciences and Technology).

6. *Cross Index.* American National Standard X3.9-1978, FORTRAN.

7. *Related Document.* Federal Property Management Regulation 101-36.1305, Implementation of Federal Information Processing and Federal Telecommunications Standards into Solicitation Documents, Software Standards.

8. *Objectives.* The basic objectives in applying Federal Standard programming languages are: (1) To achieve the advantages that are inherent in the use of higher level languages, e.g., the simplification of program development and the production of more easily maintainable source programs; and (2) to minimize data processing costs by making it easier and less expensive to transfer programs among different computer systems, including replacement systems.

Government-wide attainment of the above objectives depends upon the widespread availability and use of high level programming languages to the exclusion of other programming languages such as assembly languages. Further, the availability of standard languages provides substantially better economy and efficiency in computer utilization. Federal Standard FORTRAN is for use by all Federal agencies for programming applications, particularly scientific or numeric computations, and for use by those who develop or acquire FORTRAN programs for government use.

9. *Applicability.* a. Federal standards for high level prgramming languages shall be used for computer applications and programs that are developed or acquired for government use. To facilitate this requirement, a family of Federal high level programming language standards is provided. The use of specific programming languages is limited to the approved Federal Information Processing Standards languages. Federal Standard FORTRAN is hereby designated as one of the high level programming languages standardized and approved for Government-wide use.

b. Every Federal department and agency that establishes a requirement for FORTRAN must use Federal Standard FORTRAN as the basis for specification.

c. Every Federal department and agency shall establish the necessary guidelines for the implementation and use of this standard.

d. Every Federal department and agency should recognize that Federal Standard FORTRAN is a general-purpose computer programming language that is suited for:

Solving numeric, scientific, or engineering problems;

Efficient computation on a wide range of computing equipment of varying power and structure;

Programs that are to be interchanged among processors.

e. Exceptions to the applicability of approved standards for high level programming languages may be obtained through the waiver process, as described in paragraph 12.

10. *Specifications.* Federal Standard FORTRAN specifications are the language specifications contained in American National Standard FORTRAN, X3.9-1978. The FORTRAN standard describes two levels of the FORTRAN language. FORTRAN refers to the full language and Subset FORTRAN refers to the subset of the full language.

The ANS FORTRAN document specifies the form of a program written in the FORTRAN language, semantic rules for program and data interpretation, and formats of data for input and output.

The ANS FORTRAN document does not specify limits on the size or complexity of programs, the range or precision of numeric quantities or the method of rounding of numeric results, the results when the rules of the standard fail to establish an interpretation, the minimum automatic data processing requirements, the means of supervisory control of programs, or the means of transforming programs internally for processing.

11. *Implementation.* The implementation of Federal Standard FORTRAN involves four areas of consideration: Acquisition of FORTRAN processors, conformance to this standard, interpretation of FORTRAN, and use of FORTRAN.

11.1 *Acquisition of FORTRAN Processors.* The provisions of this publication are effective on Septemoer 4, 1980. All FORTRAN processors specified for Federal use after this date must implement Federal Standard FORTRAN. The requirements set forth in this paragraph are applicable to FORTRAN processors developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, or used under an ADP leasing arrangement.

A transition period will provide time for industry to produce FORTRAN processors conforming to the standard. The transition period will begin on the effective date and will continue for eighteen (18) months thereafter. The policies for the acquisition of FORTRAN processors during the transition period are:

a. The provisions of this FIPS PUB will not apply to FORTRAN language processors or computing services ordered before the effective date.

b. The provisions of this FIPS PUB will apply to orders placed on or after the effective date; however, a FORTRAN language processor not conforming to this FIP PUB may be acquired for interim use during the transition period. A standard-conforming processor must be delivered by the end of the transition period (eighteen (18) months from the effective date of this document).

11.2 *Conformance to Federal Standard FORTRAN.* A processor that conforms to Federal Standard FORTRAN must satisfy at least the following requirements: (1) The processor must include all of the language elements of one of the two levels of American National Standard FORTRAN, X3.9-1978; (2) The processor must satisfy all of the requirements defined in American National Standard FORTRAN, X3.9-1978, section 1.4 or section 1.4.1, as relevant; and (3) The processor must provide a facility that allows a FORTRAN source program to be analyzed with respect to Federal Standard FORTRAN. Any statement appearing in the source program that does not conform syntactically to the specifications of Federal Standard FORTRAN shall be explicitly identified.

The General Services Administration (GSA) has established the Federal Compiler Testing Center (FCTC) located at 5203 Leesburg Pike, Suite 1100, Falls Church, Virginia 22041 (703-756-6153) for the purpose of validating language processor conformance to this standard for Federal procurement, by means of a series of test programs. This service is offered on a reimbursable basis. The validation system reports the nature of any deviations that are detected.

Periodic changes will be required to the validation system in order to correct existing errors in the system, enhance test cases, and reflect official interpretations which affect this standard (see paragraph 11.3). In order to provide both currency and stability, new versions of the validation system will be introduced no more frequently than once per year. When a new validation system is introduced or changes are made to the existing validation system, the FCTC will make an announcement in the **Federal Register**, approximately six months prior to use of the system for official validation. The Federal Register notice will specify a comment period of at least 90 days. All comments and responses to the comments will be made available to the public prior to use of the new or modified system for official validations.

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Copies of the new or modified system will be available through the National Technical Information Service (see paragraph 13).

11.3 *Interpretation of Federal Standard FORTRAN.* NBS will provide for the resolution of questions regarding Federal Standard FORTRAN specifications and requirements, and will issue official interpretations using the procedures of FIPS PUB 29, as appropriate. All questions about the interpretation of Federal Standard FORTRAN should be addressed to: Standards Administration Office, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234.

11.4 *Use of FORTRAN.* Federal Standard FORTRAN should be used as determined according to paragraph 9, Applicability. FORTRAN source programs, whether developed internally or on contract (including purchased or leased) should be limited to the elements of Federal Standard FORTRAN. Nonstandard language features should be used only when the needed operation or function cannot reasonably be implemented with the standard features alone. It should be recognized that the use of nonstandard language elements make the interchange of programs and future conversion to a replacement system or processor more difficult and costly. It is not intended that existing programs be rewritten solely for the purpose of conforming to the standard.

12. Waiver Process. Heads of agencies may request that the requirements of this standard for the acquisition of FORTRAN processors or for the applicability of standardized and approved high level programming languages be waived in instances where it can be clearly demonstrated that there are appreciable performance or cost advantages to be gained and that the overall interests of the Federal Government are best served by granting the requested waiver. Such waiver requests will be reviewed by and are subject to the approval of the Secretary of Commerce. The waiver request must address the criteria stated above as the justification for the waiver.

Forty-five days should be allowed for review and response by the Secretary of Commerce. Waiver requests shall be submitted to the Secretary of Commerce, Washington, D.C. 20230, and labeled as a Request for a Waiver to a Federal Information Processing Standard. No agency shall take any action to deviate from the standard prior to the receipt of a waiver approval from the Secretary of Commerce. No agency shall begin any process of implementation or acquisition of a nonconforming FORTRAN processor nor shall it make use of any nonstandard language unless it has already obtained such approval.

13. Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 69 (FIPS–PUB–69), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 80-33135 Filed 10-23-80; 8:45 am]
BILLING CODE 3510-13-M

Approval of Federal Information Processing Standard; Minimal BASIC

Under the provisions of Pub. L. 89–306 (79 Stat. 1127; 40 U.S.C. 759(f)) and Executive Order 11717 (38 FR 12315, dated May 11, 1973), the Secretary of Commerce is authorized to establish uniform Federal automatic data processing standards. On July 20, 1979, notice was published in the **Federal Register** (44 FR 42752) that a standard for Minimal BASIC was being proposed for Federal use. Interested parties were invited to submit written comments concerning this proposed standard to the National Bureau of Standards (NBS).

The written comments submitted by interested parties and other material available to the Department relevant to this standard were reviewed by NBS. On the basis of this review, NBS recommended to the Secretary his approval of the standard as a Federal Information Processing Standard (FIPS), and prepared a detailed justification document for the Secretary's review in support of that recommendation. The purpose of this notice is to announce that the Secretary has approved the standard as a FIPS, and that the standard shall be published as FIPS Publication 68. The provisions of the standard were effective on the date of approval by the Secretary, September 4, 1980.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 5317, Main Commerce Building, 14th Street between Constitution Avenue and E Street, N.W., Washington, D.C. 20230.

The Federal standardization of BASIC should contribute to economy and efficiency in computer utilization in two ways. First, it will improve the programming productivity of BASIC users. Second, it will reduce software costs by making it easier to transfer programs written in BASIC among different computer systems. This standard defines the syntax of the Minimal BASIC programming language and the semantics for its interpretation. It is to be used by implementors as the reference authority in developing compilers, interpreters, or other forms of high-level language processors and by other computer professionals whose work depends on the precise syntactic and semantic rules adopted by the American National Standards Institute for the BASIC language. It is not the primary purpose of the standard to explain the language to the beginning or casual user. Minimal BASIC is intended to serve both as a core language which could be included in any BASIC implementation, and as a foundation for a fuller language to be specified by subsequent standards.

The approved FIPS contains two portions: (1) An announcement portion which provides information concerning the applicability, implementation, and maintenance of the standard, and (2) a specifications portion which deals with the technical requirements of the standard. Only the announcement portion of the standard is provided in this notice. This FIPS represents the adoption of American National Standard X3.60–1978, Minimal BASIC.

By arrangement with the American National Standards Institute, interested parties may purchase copies of this standard, including the specifications portion, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies section of the announcement portion of the standard.

Persons desiring further information about this standard may contact Mr. John V. Cugini, Programming Science Division, Center for Programming Science and Technology, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, (301) 921–3485.

Dated: October 20, 1980.

Ernest Ambler,
Director.

Federal Information Processing Standards Publication Announcing the Standard for Minimal Basic

September 4, 1980.

Federal Information Processing Standards Publication (FIPS PUBs) are issued by the National Bureau of Standards pursuant to the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations (CFR).

1. *Name of Standard.* Minimal BASIC (FIPS PUB 68).

2. *Category of Standard.* Softwear Standard, Programming Language.

3. *Explanation.* This publication announces the adoption of American National Standard for Minimal BASIC, X3.60–1978, as a Federal Standard. The American National Standard defines the syntax of the Minimal BASIC Programming Language and the semantics for its interpretation. The standard is used by implementors as the reference authority in developing compilers, interpreters, or other forms of high level language processors and by other computer professionals who need to know the precise syntactic and semantic rules adopted by the American National Standards Institute (ANSI). It is not the primary purpose of the standard to explain the language to the beginning or casual user. This Federal Standard specifies the set of features that must be supported by a language processor designated as BASIC.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* U. S. Department of Commerce, National Bureau of Standards, (Institute for Computer Sciences and Technlogy).

6. *Cross Index.* American National Standard X3.60–1978, Minimal BASIC.

7. *Related Document.* Federal Property Management Regulation 101–36.1305, Implementation of Federal Information Processing and Federal Telecommunications Standards into Solicitation Documents, Software Standards.

8. *Objectives.* The Federal standardization of BASIC has two objectives: (1) To improve the programming productivity of BASIC users by making it sufficient to learn only one set of rules in order to program successfully on different computer systems; and (2) to reduce software costs by making it easier to transfer programs written in BASIC among different computer systems, including replacement systems. The first objective is especially important in view of BASIC's traditional role as a language whose use should incur only a small investment of learning time.

Government-wide attainment of the above objectives depends upon the widespread availability and use of high level programming languages to the exclusion of other programming languages such as assembly languages. Further, the availability of standard languages provides substantially better economy and efficiency in computer utilization. Federal Standard Minimal BASIC is for use by all Federal agencies for programming applications, particularly those where quick results are desired, and for use by those who develop or acquire BASIC programs for government use.

9. *Applicability.* a. Federal standards for high level programming languages shall be used for computer applications and programs that are developed or acquired for government use. To facilitate this requirement, a family of Federal high level programming language standards is provided. The use of specific programming languages is limited to the approved Federal Information Processing Standards languages. Federal Standard Minimal BASIC is hereby designated as one of the high level programming languages standardized and approved for government-wide use.

b. Every Federal department and agency that establishes a requirement for BASIC must use Federal Standard Minimal BASIC as the basis for specification.

c. Every Federal department and agency shall establish the necessary guidelines for the implementation and use of this standard.

d. Every Federal department and agency should recognize that Federal Standard Minimal BASIC is a general-purpose computer programming language that is suited for:

Fast creation of computer programs to solve small nonrecurring problems, particularly on computers providing time-shared or interactive service;

Use when ease of learning and casual use are most important.

e. Exceptions to the applicability of approved standards for high level programming languages may be obtained through the waiver process, as described in paragraph 12.

10. *Specifications.* Federal Standard Minimal BASIC specifications are the language specifications contained in American National Standard for Minimal BASIC, X3.60–1978.

The Minimal BASIC ANS document specifies program syntax, formats of data for input and output, minimal precision and range of numeric representations for input and output, semantic rules for program interpretation, and errors and exceptional circumstances that must be detected by a standard-conforming BASIC language processor.

The Minimal BASIC document does not specify limits on the size of programs, minimum automatic data processing requirements, means of supervisory control of programs, or the means of transforming programs internally for processing. Although Minimal BASIC is primarily an interactive language, this standard does not restrict implementations to the interactive mode.

11. *Implementation.* The implementation of Federal Standard Minimal BASIC involves four areas of consideration: acquisition of Minimal BASIC processors; conformance to this standard; interpretation of Minimal BASIC; and use of Minimal BASIC.

11.1 *Acquisition of Minimal BASIC Processors.* The provisions of this publication are effective on September 4, 1980. All BASIC processors specified for Federal use after this date must implement Federal Standard Minimal BASIC. The requirements set forth in this paragraph are applicable to BASIC processors developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, or used under an ADP leasing arrangement.

A transition period will provide time for industry to produce BASIC processors conforming to the standard. The transition period will begin on the effective date and will continue for eighteen (18) months thereafter. The policies for the acquisition of BASIC processors during the transition period are:

a. The provisions of this FIPS PUB will not apply to BASIC language processors or computing services ordered before the effective date.

b. The provisions of this FIPS PUB will apply to orders placed on or after the effective date; however, a BASIC language processor not conforming to this FIPS PUB may be acquired for interim use during the transition period. The standand-conforming processor must be delivered by the end of the transition period (eighteen (18) months from the effective date of this document).

11.2 *Conformance to Federal Standard Minimal BASIC.* A BASIC processor that conforms to Federal Standard Minimal BASIC must satisfy

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all of the requirements defined in American National Standard for Minimal BASIC, X3.60–1978. Special notice should be taken of section 1.4 of that document, which deals with conformance rules for processors.

The General Services Administration (GSA) has established the Federal Compiler Testing Center (FCTC) located at 5203 Leesburg Pike, Suite 1100, Falls Church, Virginia 22041 (703–756–6153) for the purpose of validating language processor conformance to this standard for Federal procurement, by means of a series of test programs. This service is offered on a reimbursable basis. The validation system reports the nature of any deviations that are detected.

Periodic changes will be required to the validation system in order to correct existing errors in the system, enhance test cases, and reflect official interpretations which affect this standard (see paragraph 11.3). In order to provide both currency and stability, new versions of the validation system will be introduced no more frequently than once per year. When a new validation system is introduced or changes are made to the existing validation system, the FCTC will make an announcement in the **Federal Register**, approximately six months prior to use of the system for official validation. The Federal Register notice will specify a comment period of at least 90 days. All comments and responses to the comments will be made available to the public prior to use of the new or modified system for official validations. Copies of the new or modified system will be available through the National Technical Information Service (see paragraph 13).

11.3 *Interpretation of Federal Standard Minimal BASIC.* NBS will provide for the resolution of questions regarding Federal Standard Minimal BASIC specifications and requirements and will issue official interpretations using the procedures of FIPS PUB 29, as appropriate. All questions about the interpretation of Federal Standard Minimal BASIC should be addressed to: Standards Administration Office, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234.

11.4 *Use of Minimal BASIC.* Federal Standard Minimal BASIC should be used as determined according to paragraph 9, Applicability. BASIC source programs, whether developed internally or on contract (including purchased or leased), should be limited to the elements of Federal Standard Minimal BASIC. Nonstandard language features should be used only when the needed operation or function cannot reasonably be implemented with the standard features alone. It should be recognized that the use of nonstandard language elements may make interchange of programs and future conversion to a replacement system or processor more difficult and costly. It is not intended that existing programs be rewritten solely for the purpose of conforming to the standard.

12. *Waiver Process.* Heads of agencies may request that the requirements of this standard for the acquisition of BASIC processors or for the applicability of standardized and approved high level programming languages be waived in instances where it can be clearly demonstrated that there are appreciable performance or cost advantages to be gained and that the overall interests of the Federal Government are best served by granting the requested waiver. Such waiver requests will be reviewed by and are subject to the approval of the Secretary of Commerce. The waiver request must address the criteria stated above as the justification for the waiver.

Forty-five days should be allowed for review and response by the Secretary of Commerce. Waiver requests shall be submitted to the Secretary of Commerce, Washington, D.C. 20230, and labeled as a Request for a Waiver to a Federal Information Processing Standard. No agency shall take any action to deviate from the standard prior to the receipt of a waiver approval from the Secretary of Commerce. No agency shall begin any process of implementation or acquisition of a nonconforming BASIC processor nor shall it make use of any nonstandard language unless it has already obtained such approval.

13. *Where to Obtain Copies.* Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 68 (FIPS–PUB–68), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 80-33136 Filed 10-23-80; 8:45 am]

BILLING CODE 3510-13-M

Approval of Federal Information Processing Standard; Representation of Geographic Point Locations for Information Interchange

Under the provisions of Pub. L. 89–306 (79 Stat. 1127; 40 U.S.C. 759(f)) and Executive Order 11717 (38 FR 12315, dated May 11, 1973), the Secretary of Commerce is authorized to establish uniform Federal automatic data processing standards. In a letter dated January 11, 1979, Federal agencies and official State government points of contact were notified that a standard for representation of geographic point locations for information interchange was being proposed for Federal use. Interested parties were invited to submit written comments concerning this proposed standard to the National Bureau of Standards (NBS).

The written comments submitted by interested parties and other material available to the Department relevant to this standard were reviewed by NBS. On the basis of this review, certain appropriate changes in the draft standard were made. Subsequently NBS recommended to the Secretary his approval of the standard as a Federal Information Processing Standard (FIPS), and prepared a detailed justification document for the Secretary's review in support of that recommendation. The purpose of this notice is to announce that the Secretary has approved the standard as a FIPS, and that the standard shall be published as FIPS Publication 70. The provisions of the standard are effective April 24, 1981.

The detailed justification document presented to the Secretary, which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 5317, Main Commerce Building, 14th Street between Constitution Avenue and E Street, N.W., Washington, D.C. 20230.

The Federal standard should contribute to economy and efficiency of the Government by improving the ability of its automated systems to interchange data involving geographic point locations. The standard is based on American National Standard X3.61–1978, a voluntary industry standard of the same name that has been developed by the American National Standards Institute.

The approved FIPS contains two portions: (1) An announcement portion which provides information concerning the applicability, implementation, and maintenance of the standard, and (2) a specifications portion which deals with the technical requirements of the standard. Only the announcement portion of the standard is provided in this notice.

Interested parties may purchase copies of this standard, including the specifications portion, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies paragraph of the announcement portion of the standard.

Persons desiring further information about this standard may contact Mr. Roy G. Saltman, Application Systems Division, Center for Programming Science and Technology, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, (301) 921–3491.

Dated: October 21, 1980.

Ernest Ambler,

Director.

Federal Information Processing Standards Publication 70

(Date)

Announcing the Standard for Representation of Geographic Point Locations for Information Interchange

Federal Information Processing Standards Publications are issued by the National Bureau of Standards pursuant to the Federal property and Administrative Services Act of 1949, as amended, Pub. L. 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973) and Part 6 of title 15 Code of Federal Regulations (CFR).

1. Name of Standard. Representation of Geographic Point Locations for Information Interchange.

2. Category of Standard. Federal General Data Standard, Representations and Codes.

3. Explanation. This standard establishes uniform formats for geographic point location data. Geographic point location refers to the use of a coordinate system to define the position of a point that may be on, above, or below the earth's surface. It provides a means for representing these data in digital form for the purpose of interchanging information among data systems and improving clarity and accuracy of inter-personal communications.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

6. Cross Index. American National Standard X3.61–1978, Representation of Geographic Point Locations for Information Interchange.

7. Applicability. This standard is required for use by Federal agencies in representing geographic point locations in the interchange of information among more than one executive department or agency or with the private sector including industry, state, local or other Governments or with the public at large. Use of such standard representations contributes to operational benefits, efficiency and economy.

This standard does not apply to applications covered by non-conforming international agreements established under the aegis of the World Meteorological Organization or the North Atlantic Treaty Organization.

This standard does not address many other geographic coordinate systems and vertical control datums utilized by the Department of Defense in military applications. Such applications are excluded from the provisions of the standard. Also, it is important to note that the standard applies only to uniquely identified locations. It does not necessarily apply to a series of coordinates developed at uniform intervals over a geographic area.

8. Specifications. The specifications are affixed. Except as noted here, this standard is materially identical with American National Standard Representation of Geographic Point Locations for Information Interchange, ANSI X3.61–1978, copyright 1978 by the American National Standards Institute, 1430 Broadway, New York, NY 10018, reprinted with permission. Differences with ANSI X3.61–1978 are in the addition of Paragraph 2.1.7.1; in the addition of new information in Tables 1, 2, and 3 and in corresponding references in the text; and in several textual modifications made for the purpose of clarity.

9. Implementation Schedule. This standard becomes effective April 24, 1981. Federal agencies, based upon their operational requirements, will develop procedures for implementing this standard by their operating units and personnel.

10. Waiver Procedure. Heads of agencies may request that provisions of this standard be waived in instances where its use would seriously affect the capability of the agency to perform its operational mission. Such waiver requests will be reviewed for approval by the Secretary of Commerce. Correspondence setting forth the reasons and justification for the waiver should be included in the waiver request.

Forty-five days should be allowed for review and response by the Secretary of Commerce. Waiver requests shall be submitted to the Secretary of Commerce, Washington, D.C. 20230, and labeled as a Request for Waiver to a Federal Information Processing Standard. No action will be taken by the agency to deviate from the standard prior to the receipt of a waiver approval response from the Secretary of Commerce.

11. Where to Obtain Copies and Information. Copies of this publication are available for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161. Microfiche copies of this publication are also available from the National Technical Information Service. When ordering, refer to Federal Information Processing Standards Publication (NBS–FIPS–PUB–70), and title. Payment may be made by check, money order, or deposit account.

A list of all published Federal Information Processing Standards and current prices may be obtained from the Office of Standards Administration, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234. Telephone: (301) 921–3157.

Inquiries concerning the Data Elements and Representation Standards Program may be directed to the Center for Programming Science and Technology, Institute for Computer Sciences and Technology, NBS. Telephone: (301) 921–3491.

[FR Doc. 80-33183 Filed 10-23-80; 8:45 am]

BILLING CODE 3510-13-M

Federal Standard COBOL (FIPS PUB 21–1); Proposed Interpretation

Under the provisions of Public Law 89–306 and Executive Order 11717, the Secretary of Commerce is authorized to establish uniform Federal automatic data processing standards. Interpretation number 6 to Federal Standard COBOL (FIPS PUB 21–1) is being recommended for Federal use. It pertains to the SORT statement.

This proposed interpretation is in accordance with the Interpretation Procedures for Federal Standard COBOL as contained in Federal Information Processing Standards Publication 29, dated June 30, 1974. The proposed interpretation, if adopted, will serve as an additional specification to Federal Standard COBOL, which is an adoption of the voluntary industry standard that has been developed by the American National Standards Institute.

The proposed interpretation contains a definition of the problem, identification of the issues, recommended interpretation, supporting of the issues, recommended interpretation, supporting justification for the proposed interpretation, necessary clarifications to Federal Standard COBOL to effect the resolution, and the effective date of the interpretation.

Prior to approval of the proposed interpretation by the National Bureau of

Standards, it is essential to assure that proper consideration is given to the needs and views of manufacturers, the public and State and local governments. The purpose of this notice is to solicit such views.

Interested parties may submit comments to the Standards Administration Office, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, not later than January 22, 1980.

Dated: October 21, 1980.

Ernest Ambler,

Director.

Federal Standard COBOL, Interpretation No. 6—The SORT Statement

Definition of the Problem

Can the input and output procedures associated with a SORT statement contain OPEN statements specifying associated GIVING and USING file-names, respectively? Further, can USING and GIVING file-names be specified in a SAME clause with a file-name that is specified in an OPEN statement contained in sort output and input procedures, respectively?

Issues

Given the following excerpt from a COBOL program:

```
I-O-CONTROL.
  SAME SORTIN-2E, SORTOUT-2E.
  •
  •
  •
PROCEDURE DIVISION.
  SORT SORTFILE-2E ON
    ASCENDING SORTFILE-KEY
    USING SORTIN-2E OUTPUT
    PROCEDURE OUT-PROCEDURE.
  •
  •
  •
  SORT SORTFILE-2E ON
    ASCENDING SORTFILE-KEY
    USING SORTIN-2E OUTPUT
    PROCEDURE OUTPROC.
OUTPROC SECTION.
OS-1. OPEN OUTPUT SORTOUT-2E.
OUT-PROCEDURE SECTION.
OPS-1. OPEN OUTPUT SORTIN-2E.
  •
  •
  •
```

A SORT USING file must not be open at the time of execution of the SORT statement. In the above program excerpt, is it permissible for the OPEN statement to specify file SORTIN-2E? What is the duration of the "execution of the SORT statement"? Does the duration include the execution of the output procedures or is the execution of the output procedure considered to be separate from the execution of the SORT statement?

Two or more files that are not sort or merge files can be specified in a SAME clause. However, because these files share the same storage areas, no more than one of these files may be open at one time. In the above program excerpt, are the files SORTOUT-2E and the USING file, SORTIN-2E, considered to be implicitly open at the same time?

Interpretation

This interpretation applies to American National Standard COBOL, X3.23-1974, as it has been adopted as Federal Standard COBOL, FIPS PUB 21-1. The interpretation is that it is not permissible in a given SORT statement:

(a) To specify in input and output procedures associated with that SORT statement an OPEN statement for the associated GIVING and USING files, respectively.

(b) To specify in output and input procedures associated with that SORT statement an OPEN statement specifying a file-name that is specified in a SAME clause in which associated USING and GIVING file-names, respectively, are also specified.

Supporting Justification

References: The following references are to American National Standard COBOL, X3.23-1974:

(a) Page I-92, Paragraph 5.3.4.3, first subparagraph numbered (1), states: "If a paragraph is being executed under control of another COBOL statement (for example . . . SORT . . .) and the paragraph is the last paragraph in the range of the controlling statement, then an implied transfer of control occurs from the last statement in the paragraph to the control mechanism of the last executed controlling statement . . ."

(b) Page IV-8, Paragraph 2.1.3.4, General Rule 3, states: "The SAME AREA clause specifies that two or more files that do not represent sort or merge files are to use the same memory area during processing . . . therefore, it is not valid to have more than one of the files open at one time . . ."

(c) Page VII-14, Paragraph 4.4.1, states: "The SORT statement creates a sort file by executing input procedures or by transferring records from another file, sorts the records in the sort file . . . makes available each record from the sort file . . . to some output procedure or to an output file."

(d) Page VII-17, Paragraph 4.4.4, General Rule 8, states: "If an output procedure is specified, . . . The compiler inserts a return mechanism at the end of the last section in the output procedure and when control passes the last statement in the output procedure, the return mechanism provides for termination of the sort and then passes control to the next executable statement after the SORT statement . . ."

(e) Page VII-17, Paragraph 4.4.4, General Rule 10, states: "If the USING phrase is specified. . . . At the time of execution of the SORT statement, file-name-2 and file-name-3 must not be open. The SORT statement automatically initiates the processing of, makes available the logical records for, and terminates the processing of file-name-2 and file-name-3. . . . The terminating function for all files is performed as if a CLOSE statement . . . had been executed for each file . . ."

Discussion: The SORT statement according to reference (c) includes the creation of the sort file by transferring records from another file (USING file-name), sorting the sort file, and making the sorted records available to some output procedure. The input and output procedures according to reference (a) are considered in the range of the controlling (SORT) statement. The sort operation according to reference (d) is terminated by the return mechanism that is inserted by the compiler at the end of the last section in the output procedure when control passes the last statement in the output procedure. The "execution of the SORT statement" (reference (e)) is that interval that begins the moment control is transferred to the SORT statement and ends when control is transferred to the next executable statement following the SORT statement in the source program. This duration of execution of the SORT statement includes the execution of any associated input or output procedures. Accordingly, based on reference (e), the USING files must not be opened in the output procedure.

The SORT statement according to reference (e) implicitly initiates the processing of the USING file. Since this file processing is terminated as if a CLOSE statement had been executed for the file, it is logical that the implicit initiation of the processing of the USING file is performed as if an OPEN statement had been executed for the file. Therefore, according to reference (b) any files specified in the SAME clause as a USING file must not be opened in the output procedure associated with the same sort statement as that USING file, otherwise, more than one of the files would be open at the same time.

Clarification of Federal Standard COBOL

None.

Effective Date of Interpretation

The effective date of this interpretation shall be 30 days after the date the approved interpretation is published in the **Federal Register**.

[FR Doc. 80-33184 Filed 10-23-80; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Marine Mammal Permit Application; Baltimore Aquarium, Inc.

Notice is hereby given that an Applicant has applied in due form for a permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: a. Name: Baltimore Aquarium, Inc. (P261).

b. Address: 10 South Street, Baltimore, Maryland 21202.

2. Type of Permit: Public Display.

3. Name and Number of Animals: Atlantic bottlenose dolphins *(Tursiops truncotus)*, 4.

4. Type of Take: Capture for permanent maintenance at the National Aquarium in Baltimore.

5. Location of Activity: Copano Bay, Texas.

6. Period of Activity: 2 years.

Concurrent with the publication of this notice in the **Federal Register** the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, on or before November 24, 1980. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.;

Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Regional Director, National Marine Fisheries Service, Northeast Region, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: October 17, 1980.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 80-33140 Filed 10-23-80; 8:45 am]

BILLING CODE 3510-22-M

Issuance of Permit

On August 27, 1980, Notice was published in the **Federal Register** (45 FR 57162), that a revised application had been filed with the National Marine Fisheries Service by Mystic Marinelife Aquarium, Mystic, Connecticut 06355, to take six harbor porpoises for public display.

Notice is hereby given that on October 20, 1980, the National Marine Fisheries Service issued a Public Display Permit, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) to Mystic Marinelife Aquarium subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Northeast Region, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: October 20, 1980.

William H. Stevenson,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 80-33221 Filed 10-23-80; 8:45 am]

BILLING CODE 3510-22-M

Patent and Trademark Office

Performance Review Board

The Patent and Trademark Office announces the addition of a new member to its Performance Review Board. The original membership was announced in the **Federal Register** of February 6, 1980 (45 FR 8083) and a change in the membership was announced in the **Federal Register** of August 5, 1980 (45 FR 51867). The new member is: S. William Yost, Assistant Commissioner for Finance and Planning, U.S. Patent and Trademark Office, Washington, D.C. 20231.

Mr. Yost is appointed as a permanent member of the Board.

Dated: October 20, 1980.

Lutrelle F. Parker,

Acting Commissioner of Patents and Trademarks.

[FR Doc. 80-33214 Filed 10-23-80; 8:45 am]

BILLING CODE 3510-16-M

Office of the Secretary

Coastal Zone Management Advisory Committee; Renewal

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), and Office of Management Budget Circular A-63 of March 1974, the Secretary of Commerce has determined that the renewal of the Coastal Zone Management Advisory Committee is in the public interest in connection with the performance of duties imposed on the Department by law.

The Committee was first established in August 1973, was rechartered on August 15, 1975, on August 15, 1977, and on September 25, 1978. Its original purpose was to advise, consult with, and make recommendations to the Secretary on matters of policy concerning the coastal zone, as provided in the Coastal Zone Management Act of 1972.

The Committee's advice has been useful to the Office of Coastal Zone Management in formulating policy, deciding program goals, and as a sounding board for new initiatives. A number of recommendations made in the form of resolutions to the Secretary of Commerce have been applied by the Office of Coastal Zone Management to its program formulation.

The Committee will continue with a balanced representation of 11 members. The Chairperson shall be elected from the membership. The Committee will operate in compliance with the provisions of the Federal Advisory Committee Act.

Copies of the Committee's revised Charter will be filed with the appropriate committees of the Congress, and with the Library of Congress.

Inquiries or comments may be addressed to Steven R. Purcell, Committee Control Officer, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 3300 Whitehaven Street, N.W., Washington, D.C. 20235, telephone: (202) 634-4245, or the Department's Committee Management Analyst, Mrs. Yvonne Barnes, U.S.

Department of Commerce, Washington, D.C. 20230, telephone: (202) 377–4217.

Dated: October 17, 1980.

Elsa A. Porter,

Assistant Secretary for Administration.

[FR Doc. 80–33220 Filed 10–23–80; 8:45 am]

BILLING CODE 3510–17–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1980; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1980 commodities to be produced by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: October 28, 1980.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher (703) 557–1145.

SUPPLEMENTARY INFORMATION: On August 15, 1980 and August 1, 1980, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (45 FR 54393, 45 FR 51260) of proposed additions to Procurement List 1980, November 27, 1979 (44 FR 67925).

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77.

Accordingly, the following commodities are hereby added to Procurement List 1980:

Class 2090

Weight, Canvas Bag
2090–00–845–9150

Class 5140

Bag, Tool
5140–00–473–6256

C. W. Fletcher,

Executive Director.

[FR Doc. 80–33171 Filed 10–23–80; 8:45 am]

BILLING CODE 6820–33–M

COUNCIL ON WAGE AND PRICE STABILITY

Price Advisory Committee; Change of Meeting Date

Authority of Committee: The Price Advisory Committee was established by the Council on Wage and Price Stability pursuant to Executive Order 12161 (44 FR 56663).

Time and Place of Meeting: On October 15, 1980, the Council announced in Vol. 45 of the **Federal Register**, at pages 68419–20 (FR Doc. 80–32103), that the next meeting of its Price Advisory Committee would be October 29, 1980, in Room 2010 of the New Executive Office Building. Because of the proximity in time between this proposed meeting and the next regularly scheduled meeting (November 12, 1980), the October 29 meeting is being cancelled. The next meeting of the Price Advisory Committee will be Wednesday, November 12, 1980, at 10:00 a.m. in Room 2010 of the New Executive Office Building, 726 Jackson Place, NW, Washington, D.C. 20503.

Purpose of the Meeting: The purpose of the meeting is to report on changes, if any, to the interim final price standards, to discuss the future course of the program, and to take up any other matters that come to the Committee's attention.

Public Participation: The meeting of the Price Advisory Committee will be open to the public. Public attendance will, however, be limited by available space; persons will be seated on a first-come, first-served basis. Persons attending the meeting will not be permitted to speak or participate in the Committee's deliberations. Interested persons will be permitted to file written statements with the Committee by mail or personal delivery to the Office of General Counsel, Council on Wage and Price Stability, 600 17th Street, NW, Washington, D.C. 20506.

Additional Information: For additional information, please telephone the Office of Public Affairs at (202) 456–6756.

Dated: October 22, 1980.

Sally Katzen,

Advisory Committee Monogement Officer.

[FR Doc. 80–33370 Filed 10–23–80; 8:45 am]

BILLING CODE 3175–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Medical Research and Development Advisory Panel Ad Hoc Study Group on Laser Bioeffects; Notice of Partially Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

Name of Committee: United States Army Medical Research and Development Advisory Panel Ad Hoc Study Group on Laser Bioeffects.

Date of Meeting: 18 November 1980.

Time and Place: 0900 hrs, Conference Room AS3102, Letterman Army Institute of Research, Presidio of San Francisco, CA.

Proposed Agenda: This meeting will be open to the public on 18 November 1980 from 0900–0930 hrs to discuss the scientific research program on Laser Bioeffects at Letterman Army Institute of Research. Attendance by the public at open session will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S. Code and Section 10(d) of P.L. 92–463, the meeting will be closed to the public from 0930–1715 for the review, discussion and evaluation of individual programs and projects conducted by the U.S. Army Medical Research and Development Command, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

J. Ryan Neville, Ph.D., Assistant Director, Research Contract Management, Leterman Army Institute of Research, Presidio of San Francisco, CA 94129, (415) 561–4367, will furnish summary minutes, roster of Committee members and substantive progam information.

For the Commander,

Harry G. Dangerfield, M.D.,

Colonel, MC, Deputy Commander.

[FR Doc. 80–33218 Filed 10–23–80; 8:45 am]

BILLING CODE 3710–08–M

Coastal Engineering Research Board; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act

(Pub. L. 92–463), notice is hereby given of a meeting of the Coastal Engineering Research Board on November 12–14, 1980.

The meeting will be held in the Conference Room of the Holiday Inn-Inner Harbor, 301 W. Lombard Street, Baltimore, Maryland from 8:30 to 12:00 a.m. on 12 November and from 8:30 to 12:00 a.m. on 14 November.

The morning session on 12 November will be devoted to Action Items from the last meeting; a presentation on the Dolos Strength Tests performed by the Buffalo District; a briefing on Effects of Ice on Structures, and the Coastal Engineering Research Program. The afternoon will be spent on a field trip by bus to inspect the Chesapeake Bay Model.

The entire day of 13 November will be an aerial inspection of coastal projects in Ocean City, Maryland.

The morning session of 14 November will be devoted to discussion of the field inspection; the North Atlantic Division's Research Needs; and the Coastal Engineering Research Board's recommendations.

Participation by the public is scheduled for 10:00 a.m. on 14 November.

The meeting is open to the public subject to the following:

1. Since seating capacity of the meeting room at the Holiday Inn is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

2. Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or up to 30 days after the meeting.

Inquiries and notice of intent to attend the meeting may be addressed to Colonel Ted E. Bishop, Executive Secretary, Coastal Engineering Research Board, Kingman Building, Fort Belvoir, Virginia 22060.

Dated: October 17, 1980.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 80–33217 Filed 10–23–80; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

National Waterways Study; Announcement of Open Meetings

Three meetings will be held to discuss the development and evaluation of strategies to improve the effectiveness of the nation's waterborne transportation system over the next twenty-five year period.

The meetings will be held:

(1) 13 November 1980—7:45 a.m.–4:00 p.m., Rosslyn West Park Hotel, 1900 No. Fort Myer Drive, Arlington, Virginia.

(2) 18 November 1980—7:45 a.m.–4:00 p.m., Rodeway Inn Downtown, 2600 Market Street, St. Louis, Missouri.

(3) 19 November 1980—8:45 a.m.–5:00 p.m., Bonneville Power Administration Auditorium, 1002 NE Holladay Street, Portland, Oregon.

The meetings will address two topics: first, the assessment of the projections of waterborne traffic relative to current and foreseeable capability, and, second, the consideration of conceptual strategies to improve the system's effectiveness. Presentations of the study's direction and progress will be followed by an opportuniy for public discussion.

Persons who wish to attend the meetings are requested to preregister in order to obtain additional information. Copies of the workshop material are available upon request to interested persons who do not attend the meeting.

Registrations and requests for additional information should be sent to Mr. Thomas M. Ballentine, U.S. Army Corps of Engineers, Institute for Water Resources, National Waterways Study, Kingman Building, Fort Belvoir, Virginia 22060, or telephone (202) 325–7141.

Dated October 20, 1980.

Maximilian Imhoff,

Calonel, Corps of Engineers, Commander/ Director.

[FR Doc. 80–33216 Filed 10–23–80; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Academic Advisory Board to the Superintendent, U.S. Naval Academy, a Subcommittee of the Secretary of the Navy's Advisory Board on Education and Training; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C., App. I), notice is hereby given that the Academic Advisory Board to the Superintendent, United States Naval Academy, will meet on 21 November 1980, in Rickover Hall, Room 301, United States Naval Academy, Annapolis, Maryland. The meeting will commence at 9:00 a.m. and terminate at 3:00 p.m.

The purpose of the meeting is to advise and assist the Superintendent of the Naval Academy concerning the education of midshipmen. To accomplish this objective, the Board will review academic policies and practices of the Naval Academy and will submit their proposals to the Superintendent to aid him in improving educational standards and in solving Academy problems.

For further information concerning this meeting contact: LCDR Jon L. Barto, USN, Military Secretary to the Academic Advisory Board, Weapons and Systems Engineering Department, United States Naval Academy, Annapolis, Maryland 21402, Telephone No. 301–267–3455.

Dated: October 20, 1980.

P. B. Walker,

Captain, JAGC, U.S. Navy, Alternate Federal Register Liaisan Officer.

[FR Doc. 80–33194 Filed 10–23–80; 8:45 am]

BILLING CODE 3810–71–M

DEPARTMENT OF ENERGY

[DOE/EIS–0026]

Waste Isolation Pilot Plant Final Environmental Impact Statement

AGENCY: U.S. Department of Energy.

ACTION: Notice of availability of final environmental impact statement (FEIS), notice of availability of a summary of the FEIS in English and Spanish, notice of intent to enter into a cooperative agreement with the Bureau of Land Management and opportunity for written comment on the FEIS and the content and scope of the proposed cooperative agreement prior to issuance of the record of decision.

SUMMARY: The Department of Energy (DOE) announces the availability of a final environmental impact statement, DOE/EIS–0026, Waste Isolation Pilot Plant (October 1980), on the pending proposal to design, construct, and operate a waste isolation pilot plant (WIPP) to demonstrate the safe disposal of radioactive wastes resulting from the defense activities and programs of the United States. A summary in English and Spanish is also available.

DATES: Written comments received prior to December 8, 1980, will be considered in preparation of the record of decision.

ADDRESS: Send written comments to: U.S. Department of Energy, WIPP Project Office, Mail Stop B–107, Washington, DC 20545, 301–353–3253.

FOR FURTHER INFORMATION CONTACT:

1. WIPP Project Staff, Department of Energy, MS B–107, Washington, DC 20545, 301/353–3253.
2. Dr. Robert J. Stern, Acting Director, NEPA Affairs Division, Office of Environmental Compliance, and Overview, EV–12, Forrestal Building, Room 4G–064, Department of Energy, Washington, DC 20585, 202/252–4600.

3. Mr. Stephen H. Greenleigh, Assistant General Counsel for Environment, Forrestal Building, MS 6A–152, Department of Energy, Washington, DC 20585, 202/252–6947.
4. Mr. Ben E. McCarty, Public Information Officer, Forrestal Building, MS 1E–218, Department of Energy, Washington, DC 20585, 202/252–5810.
5. Mr. Joseph M. McGough, Acting Project Manager, WIPP Project Office, Department of Energy, Albuquerque, New Mexico 87115, 505/766–3884.

SUPPLEMENTARY INFORMATION:

I. Previous Notices

The Department of Energy published a notice of intent (43 FR 30331) on July 14, 1978, regarding the preparation of a DEIS on a proposed waste isolation pilot plant and soliciting comments as to the scope and content of that document. The notice of intent indicated that the proposed facility was being considered for siting in Eddy County, New Mexico. The Department of Energy published a notice of availability of the DEIS (44 FR 23117) on April 18, 1979. The notice of availability provided general information on the public hearings. The Department of Energy published a notice of public hearings (44 FR 32020) on June 4, 1979. The Department of Energy published a supplemental notice of a public comment period extension to September 6, 1979 (44 FR 38620) on July 2, 1979. The Department of Energy published a supplemental notice of additional public hearings (44 FR 51848) on September 5, 1980.

II. Background for the Authorized Project

This FEIS for the WIPP project is a revision of the draft EIS published in April 1979. It includes responses to comments received from the public and from government agencies, in writing and in a series of public hearings and has been modified to reflect changes in policy and existing legislative requirements.

Current legislation (Pub. L. 96–164) authorizes the construction of the WIPP as a defense activity of the U.S. Department of Energy. The WIPP mission, as defined in this legislation, is to provide a research and development facility to demonstrate the safe disposal of radioactive wastes resulting from the defense activities and programs of the United States.

The alternatives considered in the FEIS are:

(1) Continue storing transuranic (TRU) waste at the Idaho National Engineering Laboratory as it is now, or with improved confinement.

(2) Proceed with WIPP at the Los Medanos site, as currently authorized.

(3) Dispose of TRU waste in the first available repository for high level waste. The Los Medanos site would be investigated for its potential suitability as a candidate site. This is Administration policy, and is the alternative preferred by DOE.

(4) Delay WIPP to allow other candidate sites to be evaluated for TRU waste disposal.

On February 12, 1980, President Carter sent a special message to Congress establishing the Nation's first comprehensive program for the management of radioactive waste. This message generally endorsed the broad consensus that evolved from the efforts of the Interagency Review Group on Nuclear Waste Management. The President decided that all repositories for the permanent disposal of highly radioactive waste should be licensed. He directed the Department of Energy to expand and diversify its program of geologic investigations before selecting a specific site for repository development. He decided the WIPP project should be cancelled and that defense and commercial waste should both be placed in the same repositories. The preferred alternative identified in this FEIS, disposal of TRU waste in the first available high-level waste repository, is consistent with the President's proposed program.

In accordance with the Impoundment Control Act of 1974, on March 4, 1980, President Carter sent to Congress a proposal to rescind funds appropriated for the WIPP. The proposal was not acted on by Congress; consequently the Department of Energy is required to continue project activities.

The FEIS examines the impacts of the preferred alternative, as well as the authorized WIPP project and other alternative plans, and compares the impacts of the alternatives.

Two principal differences between the FEIS and the DEIS arise from the deletion of an intermediate-scale facility and licensing from the WIPP project, as directed by the Department of Energy's authorizing legislation for fiscal year 1980. Another difference is that the WIPP project, the preferred alternative in the DEIS, is now termed the authorized alternative. The preferred alternative is to continue storing TRU waste at the Idaho National Engineering Laboratory (INEL) until an HLW repository is available to receive it, now expected to be between 1997 and 2006.

The development of WIPP (the authorized alternative) would occur in two distinct phases: (1) site and preliminary-design validation (SPDV), in which two deep shafts and in underground experimental area would be constructed; and (2) full construction in which the required surface and underground facilities and the remaining shafts would be built. The SPDV program has been planned to confirm the geologic adequacy of the site and to verify the engineering properties of the salt at the depth of the WIPP repository. After completion of these detailed in-situ site verification activities, the environmental impact statement would be supplemented, prior to a decision on construction of the WIPP facility, if significant new information related to environmental concerns and bearing on the proposed action or its impacts was developed during the SPDV program. Although designed to meet WIPP requirements, the SPDV program would be compatible with the characterization activities that would be needed to qualify the Los Medanos site for a high-level waste repository, if exploration at repository depth should be required.

In view of these principal differences mentioned above between the DEIS and the FEIS, the Department of Energy will consider written comments on the FEIS, received on or before December 8, 1980, in preparation of the record of decision.

III. Purpose of the EIS

The Department of Energy intends to use the WIPP EIS as the environmental input into future decisions concerning the authorized WIPP project. These include, but are not limited to, proceeding with detailed design, proceeding with the SPDV program, entering into a cooperative agreement with the Bureau of Land Management for the SPDV program, withdrawal of Federal and State land at the Eddy County site, long lead-time equipment procurement, and construction and operation of the facility.

IV. Cooperative Agreement

The Department of Energy and the Bureau of Land Management are currently engaged in negotiations to enter into a joint cooperative agreement which will allow access to sufficient public land to allow proceeding with the SPDV program. The cooperative agreement will set forth the terms and conditions under which the SPDV program may proceed. Written public comment with regard to the content and scope of the proposed cooperative agreement will be considered if received before December 8, 1980.

V. Summary of EIS

A summary of the FEIS has been prepared in English and in Spanish. The summary is approximately 90 pages in length.

VI. Comment Procedures

A. Availability of final EIS

Copies of the FEIS have been distributed to Federal, and State agencies, organizations, and individuals which commented on the DEIS in writing or in public hearings and others known to be interested in the project. Additional copies of the FEIS and/or the summary in English or Spanish may be obtained from the following locations.

WIPP Project Office, Department of Energy, MS B–107, Washington, DC 20545, 301/353–3253.
WIPP Project Office, Department of Energy, Albuquerque, New Mexico 87115, 505/766–3884.
U.S. Department of Energy, 2628 West Mockingbird Lane, Dallas, Texas 75235, 214/767–7736.

Copies of the FEIS and summary in English and Spanish are also available for public inspection at:

Public Reading Room, FOI, Room 5B–180, Forrestal Building, 1000 Independence Ave., SW., Washington, DC.
Albuquerque Operations Office, National Atomic Museum, Kirtland Air Force Base East, Albuquerque, New Mexico.
Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois.
Chicago Operations Office, 175 West Jackson Boulevard, Chicago, Illinois.
Idaho Operations Office, 550 Second Street, Idaho Falls, Idaho.
Nevada Operations Office, 2753 South Highland Drive, Las Vegas, Nevada.
Oak Ridge Operations Office, Federal Building, Oak Ridge, Tennessee.
Richland Operations Office, Federal Building, Richland, Washington.
Energy Resources Center, 333 Market Street—7th Floor, San Francisco, California.
Savannah River Operations Office, Savannah River Plant, Aiken, South Carolina.
Regional Energy/Environment Information Center, Denver Public Library, 1357 Broadway, Denver, Colorado.
Carlsbad Public Library, Public Document Room, 101 South Halagueno Street, Carlsbad, New Mexico.

B. Written Comments

Interested parties are invited to submit written comments with respect to the FEIS and the scope and content of the proposed cooperative agreement to the WIPP Project Office at the Washington, DC address listed above. Comments should be identified on the outside of the envelope and on the documents submitted to DOE with the designation "Final EIS on WIPP." All comments and related information should be received by the Department by December 8, 1980, in order to insure consideration in preparation of the record of decision.

Any information or data furnished by persons considered to be confidential must be so identified and submitted in writing. Any material not accompanied by a statement of confidentiality will be considered to be nonconfidential. The Department of Energy reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

Dated at Washington, DC this 22nd day of Oct. 1980.

For the United States Department of Energy.

Ruth Clusen,

Assistant Secretary for Environment.

[FR Doc. 80–33432 Filed 10–24–80; 8:45 am]

BILLING CODE 6450–85–M

Office of Assistant Secretary for International Affairs

Proposed Subsquent Arrangements Between United States and the European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended, the Agreement for Cooperation Between the Government of the United States of America and the International Atomic Energy Agency (IAEA) Concerning Peaceful Application of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Finland Concerning Civil Uses of Atomic Energy.

The subsequent arrangements to be carried out under the above mentioned agreements involve approval of contractual arrangements for the supply of the following materials.

Contract Number WC–JA–24, to Japan, 5.2 grams of plutonium as plutonium oxide, and 1.3 grams of plutonium and 4.5 grams of normal uranium in the form of plutionium-uranium oxide.
Contract Number WC–IA–114, to the IAEA Laboratory, Seibersdorf, Austria, 5.2 grams of plutonium as plutonium oxide, and 1.3 grams of plutonium and 4.5 grams of normal uranium in the form of plutonium-uranium oxide.
Contract Number WC–FI–5, to Finland, 1.3 grams of plutonium and 4.5 grams of normal uranium in the form of plutonium-uranium oxide.
Contract Number WC–EU–170, to the Institut fur Radiochemie, Federal Republic of Germany, 1.3 grams of plutonium and 4.5 grams of normal uranium in the form of plutonium-uranium oxide.
Contract Number WC–EU–169, to the Energie Centrum Nederland, the Netherlands, 5.2 grams of plutonium as plutonium oxide, and 1.3 grams of plutonium and 4.5 grams of normal uranium in the form of plutonium-uranium oxide.
Contract Number WC–EU–168, to France, 5.2 grams of plutonium as plutonium oxide, and 1.3 grams of plutonium and 4.5 grams of normal uranium in the form of plutonium-uranium oxide.
Contract Number WC–EU–167, to Alpha-Chemie und Metallurgie GmbH, Federal Republic of Germany, 5.2 grams of plutonium as plutonium oxide.
Contract Number WC–EU–166, to Belgonucleaire, Belgium, 5.2 grams of plutonium as plutonium oxide, and 1.3 grams of plutonium and 4.5 grams of normal uranium in the form of plutonium-uranium oxide.

The above materials are to be utilized in the Safeguards Analytical Laboratory Evaluation (SALE I) Program. This program is designed to evaluate the capability of participating laboratories to analyze materials to be safeguarded in the nuclear fuel cycle, and to provide means by which measurement capability may be improved through the interchange of measurement technology.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of these nuclear materials will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: October 20, 1980.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technicol Programs.

[FR Doc. 80–33293 Filed 10–23–80; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

Intent To Revise Wholesale Power Rates Which Will Become Effective July 1, 1981; Extension of Public Comment Period

AGENCY: Department of Energy, Bonneville Power Administration.

ACTION: Extension of comment period on notice of intent to revise wholesale power rates.

SUMMARY: By **Federal Register** Notice of June 12, 1980, (45 FR 39885) Bonneville

Power Administration (Bonneville) announced its intent to revise its wholesale power rate schedules effective July 1, 1981, to achieve a revenue increase of approximately 50 percent. This notice extends the period that Bonneville will accept public comments regarding its Notice of Intent from October 31, 1980, to December 1, 1980.

DATES: Effective date: October 24, 1980. Suggestions and recommendations concerning the development of Bonneville's initial proposed wholesale power rates will be accepted through December 1, 1980.

FOR FURTHER INFORMATION CONTACT:

Ms. Donna Lou Geiger, Public Involvement Coordinator, P.O. Box 12999, Portland, Oregon 97212, 503–234–3361, extension 4261. Toll-free numbers for Oregon callers 800–452–8429; for callers from Washington, Idaho, Montana, Utah, Nevada, Wyoming, and California 800–547–6048.

Mr. John H. Jones, Jr., Area Manager, Room 288, Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97208, 503–234–3361, Ext. 4551.

Mr. Ladd Sutton, District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–345–0311.

Mr. Ronald H. Wilkerson, Area manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. Gordon H. Brandenburger, District Manager, P.O. Box 758, Kalispell, Montana 59901, 406–755–6202.

Mr. Ronald K. Rodewald, District Manager, Room 314, 301 Yakima Street, Wenatchee, Washington 98801, 509–662–4379.

Mr. Randall W. Hardy, Area Manager, Room 250, 415 First Avenue North, Seattle, Washington 98109, 206–442–4130.

Mr. Roy Nishi, Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–525–5500, Ext. 701.

Mr. Robert N. Laffel, District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

SUPPLEMENTARY INFORMATION:

Bonneville has announced its intent to revise its wholesale power rates effective July 1, 1981, (45 FR 39885). It is presently anticipated that an approximate 50 percent increase in power revenues will be necessary to meet statutory obligations. In its notice, Bonneville invited interested persons to submit suggestions, advice, and recommendations on the rate increase through October 31, 1980. This notice extends the period for submitting suggestions, advice and recommendations through December 1, 1980. As Bonneville develops the initial rate proposal, it will, upon request, meet with interested persons who wish to review the studies and make suggestions.

When the initial proposal is published, Bonneville will announce opportunities for the public to participate in the development of Bonneville's rates.

Dated: October 17, 1980.

Ray Foleen,

Acting Administrator.

[FR Doc. 80-33296 Filed 10-23-80; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 80-CERT-034]

Air Products and Chemicals, Inc.; Application for Recertification of the Use of Natural Gas To Displace Fuel Oil

On November 6, 1979, Air Products and Chemicals, Inc., (Air Products), P.O. Box 538, Allentown, Pennsylvania 18105, was granted a certificate of eligible use of natural gas to displace fuel oil by the Administrator of the Economic Regulatory Administration (ERA) (Docket No. 79–CERT–093). The certification involved the purchase of natural gas from Tenneco Oil Company for use by Air Products at its complex of chemical plants in New Orleans, Louisiana. The ERA certificate expires on November 5, 1980.

On October 8, 1980, Air Products filed an application for recertification of an eligible use of natural gas to displace fuel oil at its Orleans complex pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). More detailed information is contained in the application on file with the ERA and available for public inspection at the Division of Natural Gas Docket Room, Room 7108, 2000 M Street, NW., Washington, D.C. 20461, from 8:30 a.m. to 4:30 p.m. Monday through Friday, except Federal holidays.

In its application, Air Products states that the volume of natural gas for which it requests recertification is up to 7,500 Mcf per day. It is estimated that approximately 66,400 gallons (1,581 barrels) of No. 2 fuel oil (0.3 percent maximum sulfur) will be displaced per day at the New Orleans complex.

The eligible seller of the natural gas is Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001. The gas will be transported by Tennessee Gas Pipeline Company, Trancontinental Gas Pipe Line Corporation, and Columbia Gas Transmission Corporation.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Room 7108, RG–55, 2000 M Street, NW., Washington, D.C. 20461, Attention: Albert F. Bass, within ten (10) calendar days of the date of publication of this notice in the **Federal Register** (November 3, 1980).

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest, and if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines that an oral presentation is necessary, further notice will be given to Air Products and any persons filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., on October 20, 1980.

F. Scott Bush,

Assistant Administrator, Office of Regulatory Policy, Economic Regulatory Administration.

[FR Doc. 80-33295 Filed 10-23-80; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 80-CERT-035]

Phelps Dodge Corp.; Application for Recertification of the Use of Natural Gas To Displace Fuel Oil

On November 6, 1979, Phelps Dodge Corporation (Phelps Dodge), 32 North Stone, Suite 607, Tucson, Arizona 85701, was granted a certificate of eligible use of natural gas to displace fuel oil by the Administrator of the Economic Regulatory Administration (ERA) (Docket No. 79–CERT–095). The certification involved the purchase of natural gas from Lovelady, Inc., for use by Phelps Dodge at its Tyrone Branch, Tyrone, New Mexico; New Cornelia Branch, Ajo, Arizona; Copper Queen Branch, Bisbee, Arizona; Morenci Branch, Morenci, Arizona; and Douglas Reduction Works, Douglas, Arizona. The ERA certificate expires on November 5, 1980.

On October 14, 1980, Phelps Dodge filed an application for recertification of an eligible use of natural gas to displace fuel oil at these same facilities pursuant to 10 CFR 595 (44 FR 47920, August 16, 1979). More detailed information is contained in the application on file with the ERA and available for public inspection at the ERA, Division of Natural Gas Docket Room, Room 7108, 2000 M Street, NW., Washington, D.C. 20461, from 8:30 a.m. to 4:30 p.m. Monday through Friday, except Federal holidays.

In its application, Phelps Dodge states that the volume of natural gas for which it requests recertification is an estimated 3.107 billion cubic feet per year. The use of this gas is estimated to displace the use of 322,941 barrels of No. 2 fuel oil (0.36% sulfur) per year at the Tyrone Branch, 121,533 barrels of No. 2 fuel oil (0.40% sulfur) per year at the new Cornelia Branch, 27,531 barrels of No. 2 fuel oil (0.20% sulfur) per year at the Copper Queen Branch, 33,133 barrels of No. 6 fuel oil (1.5% sulfur) per year at the Morenci Branch, and 51,560 barrels of No. 6 fuel oil (1.2% sulfur) per year at the Douglas Reduction Works.

The eligible seller of the natural gas is Lovelady, Inc., P.O. Drawer 2666, Midland, Texas 79702. The gas will be transported by El Paso Natural Gas Company (interstate pipeline), P.O. Box 1492, El Paso, Texas 79978, and Seagull Pipeline Corporation (intrastate pipeline), 1800 Capitol National Bank Building, 1300 Main Street, Houston, Texas 77002. In addition, El Paso has executed a gas transportation agreement with Valero Transmission Company (Valero), P.O. Box 500, San Antonio, Texas 78292, an intrastate pipeline company, whereby Valero transports volumes of natural gas on behalf of El Paso for ultimate delivery to Phelps Dodge.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Room 7108, RG–55, 2000 M Street, NW., Washington, D.C. 20461, Attention: Albert F. Bass, within ten (10) calendar days of the date of publication of this notice in the **Federal Register** (November 3, 1980).

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest, and if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and statement as to why an oral presentation is necessary. If ERA determines that an oral presentation is necessary, further notice will be given Phelps Dodge and any persons filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., on October 20, 1980.

F. Scott Bush,

Assistant Administrator, Office of Regulatory Policy, Economic Regulatory Administration.

[FR Doc. 80-33294 Filed 10-23-80; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER81-18-000]

Cleveland Electric Illuminating Co.; Filing

October 17, 1980.

The filing company submits the following:

Take notice that on October 9, 1980, The Cleveland Electric Illuminating Company (CEI) tendered for filing an executed Service Agreement and Exhibits A and B thereto, providing for transmission by CEI of approximately 20 MW of power from the 345 kv interconnection point on CEI's Juniper-Canton Line with the Ohio Power Company to the City of Cleveland, Ohio (City) in accordance with the terms and conditions of CEI's FERC Transmission Service Tariff.

CEI has requested waiver of the FERC's 60-day notice requirement in order to permit commencement of transmission service on October 1, 1980.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 7, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33244 Filed 10-23-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-30-000]

Commonwealth Edison Co.; Proposed Tariff Change

October 17, 1980

The filing Company submits the following:

Take notice that Commonwealth Edison Company on *October 14, 1980,* tendered for filing proposed changes in its FERC Electric Service Tariff No. 9, an Interconnection Agreement, dated June 21, 1967, between Commonwealth Edison Company and Iowa-Illinois Gas and Electric Company.

The parties have agreed to modify the compensation provisions, in part, in Service Schedule C—Short Term Power.

Copies of the proposed rate schedule changes were served upon the Illinois Commerce Commission, Springfield, Illinois, the Iowa State Commerce Commission, Des Moines, Iowa and Iowa-Illinois Gas and Electric Company, Davenport, Iowa.

Any person desiring to be heard or to protest said Application should file a Petition to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practive and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 10, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Petition to Intervene. Copies of this Application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33245 Filed 10-23-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-21-000]

Consumers Power Co.; Contract Filing

September 17, 1980.

The filing company submits the following:

Take notice that Consumers Power Company on October 9, 1980 tendered for filing a Back-up Requirements Agreement between Consumers Power Company and Michigan Public Power Agency (MPPA). Consumers Power Company states that MPPA is a public body politic and corporate organized as a joint agency by its member municipalities under the laws of the State of Michigan for the purposes of

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planning, financing, developing, owning, and operating facilities to supply electric energy for the present and future needs of its members. Consumers Power states that the Back-up Requirements Agreement is dated October 1, 1979 and became effective on September 1, 1980, being the first day of the month in which the Campbell Unit No. 3 generating unit went into commercial operation.

Consumers Power states that under a separate agreement (the Campbell Unit No. 3 Ownership and Operating Agreement), MPPA has agreed to acquire an undivided ownership interest in the Campbell Unit No. 3 generating unit. Consumers Power states that the purpose of the Back-up Requirements Agreement is to establish the terms and conditions under which Consumers Power will supply to MPPA certain back-up capacity and energy during periods when the Campbell Unit No. 3 generating unit is partially or totally out of service.

Consumers Power states that copies of the filing were served on MPPA and the Michigan Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 7, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33246 Filed 10-23-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3397]

Continental Hydro Corp.; Application for Preliminary Permit

October 17, 1980.

Take notice that Continental Hydro Corp. (Applicant) filed on August 27, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a) 825(r)] for the proposed Kanopolis Dam Project, FERC No. 3397, to be located at the U.S. Army Corps of Engineers' Kanopolis dam and reservoir, a flood control project, on the Smoky Hill River near Ellsworth, Ellsworth County, Kansas. Correspondence with the Applicant should be directed to: Mr. A. Gail Staker, President, Continental Hydro Corp., 141 Milk St., Suite 1143, Boston, Massachusetts 02109.

Project Description—The proposed project would utilize an existing U.S. Army Corps of Engineers' Kanopolis dam and reservoir. Project No. 3397 would consist of: (1) a proposed penstock extending from the 14 foot outlet tunnel; (2) a powerhouse located on the southeast bank of the river; (3) transmission lines; and (4) appurtenant facilities. Applicant estimates the capacity of the proposed project to be 1.3 MW and the annual energy output to be 5.4 GWH.

Purpose of Project—Energy produced at the proposed project would be sold to Central Telephone and Utilities Company.

Proposed Scope and Cost of Studies Under Permit—Applicant has requested a 36-month permit to prepare a definitive project report, including preliminary design and economic feasibility studies, hydrological studies, environmental and social studies, and soil and foundation data. The cost of the aforementioned activities along with obtaining agreements with other Federal, State and local agencies is estimated to be $45,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 22, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 20, 1981. A notice of intent must conform with the requirements of 18 CFR § 4.33 (b) and (c) (as amended 44 FR 61238, October 25, 1979). A competing application must conform with the requirements of 18 CFR § 4.33 (a) and (d) (as amended, 44 FR 61328, October 25, 1979).

Comments, Protests, or Petitions To Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 22, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33247 Filed 10-23-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP74-122 et al.]

Energy Terminal Services Corp., et al.; Technical Conference

October 17, 1980.

Take notice that at 10:15 a.m. Thursday, October 30, 1980, the staff will hold a technical conference with representatives of Energy Terminal Services Corporation, *et al.* to discuss the cryogenic design and safety aspects of the LNG peak-shaving plant proposed in the cases cited above. There will be no discussions on the merits of any environmental, engineering, or other issues during the conference.

The conference will be held at the Federal Building, 26 Federal Plaza, Room F-2220, New York, New York, and all interested parties may attend. It should be noted, however, that space in the room is limited to approximately 40 people. A site visit to the Rossville, Staten Island, New York, LNG plant may follow the conference, and any party interested in participating is invited to do so. Mere attendance will not serve to make any person formally a party to this proceeding.

Further information on the project, conference, or field tour is available from Mr. Robert Arvedlund, Environmental Evaluation Branch, Office of Pipeline and Producer Regulation, telephone (202) 357-9043.

Kenneth F. Plumb,

Secretary.

[FR Doc. 33248 Filed 10-23-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3321]

Joseph M. Keating; Application for Preliminary Permit

October 17, 1980

Take notice that Joseph M. Keating (Applicant) filed on August 6, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)] for proposed Project No. 3321 to be known as Small-E Project located on the Merced River in Mariposa County, California. The proposed project would affect U.S. lands within Sierra National Forest. Correspondence with the Applicant should be directed to: Mr. Joseph M. Keating, 847 Pacific Street, Placerville, California 95667.

Project Description—The proposed project would consist of: (1) a 10-foot high concrete gravity diversion dam impounding 6-acre feet; (2) an intake structure; (3) a 5,100-foot long tunnel; (4) a steel penstock; (5) a powerhouse containing one generating unit rated at 4,500 kW; and (6) a 400-foot long transmission line. The proposed project would be operated on a run-of-the-river basis.

The average annual energy generation is estimated to be 15,000 MWh.

Purposes of Project—The power output of the project would be sold to the Pacific Gas & Electric Company.

Proposed Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for a period of 15 months, during which time it would conduct engineering studies, review permit and construction requirements, conduct environmental studies, negotiate leases, do preliminary designs, make a feasibility analysis, make a historical review, and prepare an FERC license application. No new roads or other land disturbing activities would be required to conduct the studies. Applicant has filed a work plan for the studies for the new dam construction. The field studies to be conducted are line surveys, cross sections, profiles, and visual surveys.

The estimated cost of the work to be performed under the preliminary permit is $70,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before *December 22, 1980,* either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than *February 20, 1980.* A notice of intent must conform with the requirements of 18 C.F.R. § 4.33 (b) and (c), *as amended,* 44 *Fed. Reg.* 61328 (October 25, 1979). A competing application must conform with the requirements of 18 C.F.R. § 4.33 (a) and (d), *as amended,* 44 *Fed. Reg.* 61328 (October 25, 1979).

Comments, Protests, or Petitions To Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 1.8 or § 1.10 (1079). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before *December 22, 1980.* The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33249 Filed 10-23-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-29-000]

Kentucky Utilities Co.; Filing

October 17, 1980.

The filing Company submits the following:

Take notice that on October 14, 1980 Kentucky Utilities Company (KU) tendered for filing Supplement A to KU Rate Schedule FERC No. 93, which supplements the Agreement between KU and Tennessee Valley Authority. KU states that the filed supplement provides for compliance with Section 35.23 of the Commission's Regulations, as promulgated by Order No. 84, issued May 7, 1980.

KU states that a copy of the filing has been sent to the other party to the Agreement and the Energy Regulatory Commission of Kentucky.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections (1.8 and CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 10, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33250 Filed 10-23-80; 8:45 am]

BILLING CODE 6450-85-M

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[Docket No. ER81-25-000]

Kentucky Utilities Co.; Filing

October 17, 1980.

The filing Company submits the following:

Take notice that on October 14, 1980 Kentucky Utilities Company (KU) tendered for filing Supplement A to KU Rate Schedule FERC No. 89, which supplements the Agreement between KU and The Kentucky-Indiana Pool. KU states that the filed supplement provides for compliance with Section 35.23 of the Commission's Regulations, as promulgated by Order No. 84, issued May 7, 1980.

KU states that a copy of the filing has been sent to the other parties to the Agreement and to the Energy Regulatory Commission of Kentucky.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections (1.8 and CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 10, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33252 Filed 10-23-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-28-000]

Kentucky Utilities Co.; Filing

October 17, 1980.

The filing Company submits the following:

Take notice that on October 14, 1980 Kentucky Utilities Company (KU) tendered for filing Supplement A to KU Rate Schedule FERC No. 74, which supplements the Agreement between KU and Owensboro Municipal Utilities. KU states that the filed supplement provides for compliance with Section 35.23 of the Commission's Regulations, as promulgated by Order No. 84, issued May 7, 1980.

KU states that a copy of the filing has been sent to the other party to the Agreement and to the Energy Regulatory Commission of Kentucky.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections (1.8 and CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 10, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33251 Filed 10-23-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-26-000]

Kentucky Utilities Co.; Filing

October 17, 1980.

The filing Company submits the following:

Take notice that on October 14, 1980 Kentucky Utilities Company (KU) tendered for filing Supplement A to KU Rate Schedule FERC No. 20, which supplements the Agreement between KU and Ohio Power Company. KU states that the filed supplement provides for compliance with Section 35.23 of the Commission's Regulations, as promulgated by Order No. 84, issued May 7, 1980.

KU states that a copy of the filing has been sent to the other party to the Agreement and to the Energy Regulatory Commission of Kentucky.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections (1.8 and CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 10, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33253 Filed 10-23-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-20-000]

Kentucky Utilities Co.; Filing

October 17, 1980.

The filing company submits the following:

Take notice that on October 10, 1980, Kentucky Utilities Company (KU) tendered for filing three letters of agreement between KU and Tennessee Valley Authority (TVA) each of which provides for additional delivery points. The filing of these three letters of agreement would modify the Interchange Agreement dated March 22, 1951 between KU and TVA, such modifications being provided for in the Interchange Agreement. Request was made for waiver of time in the filing. The filing proposed would supplement KU Rate Schedule (FPC) FERC No. 93.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and CFR 1.8, 1.10. All such petitions or protests should be filed on or before November 7, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33254 Filed 10-23-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-27-000]

Kentucky Utilities Co.; Filing

October 17, 1980.

The filing Company submits the following:

Take notice that on October 14, 1980 Kentucky Utilities Company (KU) tendered for filing Supplement A to KU Rate Schedule FERC No. 13, which supplements the Agreement between KU and Ohio Valley Electric Corporation. KU states that the filed supplement provides for compliance with Section 35.23 of the Commission's Regulations, as promulgated by Order No. 84, issued May 7, 1980.

KU states that a copy of the filing has been sent to the other party to the Agreement and to the Energy Regulatory Commission of Kentucky.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal

Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections (1.8 and CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 10, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33255 Filed 10-23-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER78-425]

Minnesota Power & Light Co.; Filing

October 17, 1980.

The filing company submits the following:

Take notice that on August 30, 1979, Minnesota Power and Light Company filed a refund report pursuant to the Commission's letter order, issued July 26, 1979, in the above referenced proceeding.

A copy of this filing has been sent to all affected parties.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such protests should be filed on or before November 4, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33256 Filed 10-23-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-23-000]

New York State Electric & Gas Corp.; Proposed Cancellation of Electric Rate Schedule

October 17, 1980.

The filing Company submits the following:

Take notice that on October 14, 1980, New York State Electric & Gas Corporation (New York) tendered for filing a notice of cancellation of FPC Rate Schedule No. 26. The proposed effective date of the cancellation is October 31, 1980.

The subject rate schedule is an agreement dated January 27, 1957 providing for power sales to Peach Lake Utilities, Inc.; the effective commencement date being August 16, 1964. New York states that the rate schedule expires due to acquisition of the Peach Lake System by New York.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 10, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a part must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33257 Filed 10-23-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER-81-12-000]

Pacific Gas & Electric Co.; Contract Filing

October 17, 1980

Take notice that on October 6, 1980, Pacific Gas and Electric Company (PG & E) tendered for filing a contract dated August 19, 1980, entitled "Agreement for Sale of Electric Capacity and Energy by Pacific Gas and Electric Company to City of Gridley" (Agreement). The Agreement provides for supplemental power deliveries from PG & E to City of Gridley (Gridley) in the event that Gridley's current supplier, United States of America, Department of Energy (Department), is unable to satisfy Gridley's full electric power requirements.

Copies of the filing were served upon Gridley department, and the California Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedcure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 7, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33258 Filed 10-23-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-22-000]

Southern California Edison Co.; Filing

October 17, 1980

The filing Company submits the following:

Take notice that on October 14, 1980, Southern California Edison Company ("Edison") tendered for filing, as an initial rate schedule, an agreement dated October 10, 1980, with Western Area Power Administration ("Western"). The Agreement is entitled "Edison-Western Interruptible Transmission Service Agreement."

The Agreement, sets forth the terms and conditions, and rates and charges under which Edison will provide interruptible transmission service for Western from Mead Substation in southern Nevada to Midway Substation in central California.

Edison has requested that the prior notice requirement be waived and that the Agreement be made effective as an initial rate schedule as of October 10, 1980.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Western Area Power Administration.

Any person desiring to be heard or to protest this application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with § 1.8 and § 1.10 of the Commission's rules of practice and procedure (18 CFR §§ 1.8, 1.10). All such petitions or protests should be filed on or before November 10, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the

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Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-33259 Filed 10-23-80; 8:45 am]
BILLING CODE 6450-85-M

[Docket No. ER-81-24-000]

Southern California Edison Co.; Filing

October 17, 1980

The filing Company submits the following:

Take notice that on *October 14, 1980* Southern California Edison Company ("Edison") tendered for filing, as an initial rate schedule, an agreement, dated July 21, 1980, with State of California Department of Water Resources ("CDWR"). The Agreement is entitled "Agreement for Emergency Services Between Southern California Edison Company and State of California Department of Water Resources".

The Agreement provides for reciprocal Emergency Services between Edison and CDWR under the terms and conditions and at the rates and charges as set forth therein.

Edison requests that the Agreement be made effective 60 days after the date of filing with the Commission. Upon acceptance for filing by the Commission, the Agreement will remain in effect through December 31, 2004.

Copies of this filing were served upon the Public Utilities Commission of the State of California and the State of California Department of Water Resources.

Any person desiring to be heard or to protest this application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 1.8 and § 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before *November 10, 1980.* Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-33260 Filed 10-23-80; 8:45 am]
BILLING CODE 6450-85-M

[Docket No. RA80-125]

Super America of Flathead County; Filing of Petition for Review

October 17, 1980.

Take notice that Super America of Flathead County on September 29, 1980, filed a Petition for Review under 42 U.S.C. § 7194(b) (1977 Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before November 3, 1980, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before November 3, 1980, in accordance with the Commission's Rules of Practice and Procedure (18 CFR §§ 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W. Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-33261 Filed 10-23-80; 8:45 am]
BILLING CODE 6450-85-M

[Docket No. RP77-138]

United Gas Pipe Line Co.; Petition for Approval for Accounting and Rate Treatment of Second and Third Year Research Development and Demonstration Expenditures and Advance Approval for Accounting and Rate Treatment of Fourth and Fifth Year Expenditures

October 17, 1980.

Take notice that on October 14, 1980, pursuant to Section 154.38(d)(5)(i) of the Regulations of the Federal Energy Regulatory Commission (Commission) United Gas Pipe Line Company (United) filed a petition in Docket No. RP77-138 for approval for accounting and rate treatment of research, development and demonstration (RD&D) expenditures incurred during the second through fifth years of United's RD&D project known as Project SNG-Biomass. Actual expenditures amounted to $201,000 for the second year of the project and $190,000 for the third year. Estimated fourth-year project costs are $59,000 and fifth-year costs $9,000.

Project SNG-Biomass involves the conversion of an untested combination of selected renewable carbonaceous materials into synthetic natural gas of pipeline quality by a unique integrated process combining the anaerobic digestion of biomass and waste feedstocks with the production of terrestrial and aquatic biomass feedstocks. United's petition describes the research tasks undertaken, the estimated or actual costs (as available) associated with such tasks and the integration of United's Project SNG-Biomass into a biomass research program being conducted by the Gas Research Institute.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.9, 1.10), and the Regulations under the Natural Gas Act (18 CFR 157.10). All such petitions or protests should be filed on or before November 7, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-33262 Filed 10-23-80; 8:45 am]
BILLING CODE 6450-85-M

[Project No. 3439]

Western States Energy & Resources, inc.; Application for Preliminary Permit

October 17, 1980.

Take notice that Western States Energy & Resources, Inc. (Applicant) filed on September 5, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a) - 825(r)] for proposed Project No. 3439 to be known as the Abiquiu Project located on the Rio Chama in Rio Arriba County, New Mexico. Correspondence with the Applicant should be directed to: Jeffrey M. Kossak, Esq., Suite 1900, 14 Wall Street, New York, New York 10005.

Project Description—The proposed project would utilize the existing U.S. Water and Power Resources Service's Abiquiu Dam and would consist of: (1) a penstock; (2) a powerhouse containing a generating unit having a rated capacity of 8,000-kW; (3) a transmission line with voltage compatible with the closest existing substation; and (4) appurtenant facilities. Applicant estimates the annual generation would average about 32,000,000 kWh.

Purpose of Project—Applicant would conduct studies to identify a purchaser of the project energy.

Proposed Scope and Cost of Studies Under Permit—Applicant seeks issuance of a preliminary permit for a period of 3 years, during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic, and recreational aspects of the project. Depending upon the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $57,500.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before *December 22, 1980,* either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than *February 20, 1981.* A notice of intent must conform with the requirements of 18 C.F.R. § 4.33(b) and (c), *as amended,* 44 FR 61328 (October 25, 1979). A competing application must conform with the requirements of 18 C.F.R. § 4.33(a) and (d), *as amended,* 44 FR 61328 (October 25, 1979).

Comments, Protests, or Petitions To Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 1.8 or § 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before *December 22, 1980.* The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-33264 Filed 10-23-80; 8:45 am]
BILLING CODE 6450-85-M

[Docket No. RA80-112]

Zanni's Chevron Service; Filing of Petition for Review

October 17, 1980.

Take notice that Zanni's Chevron Service on August 28, 1980, filed a Petition for Review under 42 U.S.C. § 7194(b) (1977) Supp. from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before November 3, 1980, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before November 3, 1980, in accordance with the Commission's Rules of Practice and Procedure (18 CFR §§ 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W. Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-33265 Filed 10-23-80; 8:45 am]
BILLING CODE 6450-85-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of September 8 Through September 12, 1980

During the week of September 8 through September 12, 1980, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy.

The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

R. J. Batla, Jr., Washington, D.C., BFA–0442, freedom of information

R. J. Batla, Jr. filed an Appeal from a partial denial by the Assistant Administrator for Regulations and Emergency Planning of the Economic Regulatory Administration of a request for information that Mr. Batla had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that one document and parts of another document were properly withholdable pursuant to Exemption 5. In addition, the DOE determined that additional documents in the custody of ERA's Petroleum Price Regulations Division are responsive to Mr. Batla's request. The DOE therefore directed the Assistant Administrator to identify all responsive documents in the Petroleum Price Regulations Division and either release those documents to Mr. Batla or issue a determination explaining why they are not releasable.

Dobrovir, Oakes & Gebhardt, Washington, D.C., BFA–0445, freedom of informotion

Dobrovir, Oakes & Gebhardt filed and Appeal from a partial denial by the Acting Assistant General Counsel for Legal Counsel of a request for information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that many of the documents which were initially withheld under Exemptions 4, 5, and 6 should be released to the public. The DOE held in the Decision and Order that disclosure of certain reports prepared by the Office of the Inspector General of the DOE would not be contrary to the public interest.

Energy Action Educational Foundation, Washington, D.C., BFA–0447, freedom of information

The Energy Action Educational Foundation appealed from a denial by the Deputy Assistant Secretary for Oil and Gas, Policy and Evaluation of its Freedom of Information Act request. In considering the Appeal, the DOE found that the report which the foundation sought contained segregable factual material and directed the Deputy Assistant Secretary to release those portions of the report to the Foundation. The DOE remanded the matter to the Deputy Assistant Secretary with instructions to release the remainder of the report or set forth with specificity the reasons why the report is exempt from disclosure and why its release would be contrary to the public interest.

Fund for Constitutional Government, Washington, D.C., BFA–0441, freedom of information

The Fund for Constitutional Government filed an Appeal from a partial denial by the Disclosure Officer, Office of Special Counsel for Compliance and a denial by the Office of the Executive Secretary of a request for information which the organization had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that portions of the request did not seek reasonably described records. However, a document responsive to the remainder of the request was found to exist, and an additional search for other documents responsive to this portion of the request was ordered.

A. Kranish, Washington, D.C., BFA–0448, freedon of informotion

Mr. A. Kranish filed an Appeal from a denial by the Director of the Program Support Office of the Office of International Affairs (PSO Director) of a request for information which Mr. Kranish had submitted under the Freedom of Information Act. The denial was based on a finding that no responsive documents could be found. In considering the appeal, the DOE found that the request was ambiguous, and that it was therefore improper for the PSO Director to arbitrarily adopt his own construction of the request without consulting Mr. Kranish as required by 10 CFR 1004.4(c)(2). The DOE therefore directed the PSO Director to consult with Mr. Kranish regarding the scope of his request.

Morlex Oil & Refining, Inc., Long Beach California, BEA–0290, crude oil

Marlex Oil & Refining, Inc. filed an Appeal of a February 13, 1980 Decision and Order issued to the firm by the Office of Petroleum Operations of the Economic Regulatory Administration in response to an application for an emergency allocation of crude oil filed under the provisions of 10 CFR 211.65(c)(2), the Crude Oil Buy/Sell Program. In the February 13 Order, the ERA granted Marlex an emergency allocation of 5265 barrels of crude oil per day for the months of February, March, and April 1980. In its Appeal, Marlex contends that the ERA erred in selecting an adjusted base period level of crude oil runs to stills for the purposes of evaluating the firm's Buy/Sell application and that the ERA's calculation of an appropriate emergency allocation was therefore incorrect. In considering the Marlex Appeal, the DOE determined that the ERA acted properly and appropriately within the framework of the applicable regulations and was neither arbitrary nor capricious in its selection of a revised base period level. The DOE therefore denied the Marlex Appeal.

Publicker Industries, Inc., Washington, D.C., BEA–0435, residual fuel

Publicker Industries, Inc. filed an Appeal from the February 1979 Entitlements Notice which required the firm to purchase 19,065 entitlements in order to rectify the erroneous issuance of 17,634 entitlements to the firm in the January 1979 Notice. In considering the submission, the DOE determined that the firm had failed to establish that the February 1979 Entitlements Notice was erroneous in fact and law. The Appeal was therefore denied.

Requests for Exception

Cermak & Harlem Shell, Berwyn, Illinois, BEO–0725, motor gosoline

Cermak & Harlem Shell filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increased base period allocation of motor gasoline. In considering the request, the DOE found that exception relief was necessary to enable the firm to meet increased rent payments and realize a reasonable profit from its operation of a retail sales outlet. Accordingly, exception relief was granted.

Chevron U.S.A., Inc., San Francisco, California, BXE–1250, crude oil

Chevron U.S.A., Inc. filed an Application for Exception from the provisions of 10 CFR Part 212, Subpart D. Exception relief was granted to permit Chevron to sell at market prices 100 percent of the crude oil produced from the State Lease PRC 1824 main zone.

Draper Fuel Co., Inc., Wilton, New Hompshire, DEE–3919, motor gasoline

Draper Fuel Co., Inc. filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period use of motor gasoline. The firm claimed that exception relief was appropriate to restore deductions made pursuant to 10 CFR 211.105(f) of volumes it obtained through the New Hampshire state set-aside system during the motor gasoline allocation base period and to provide additional gasoline to communiies in the firm's market area. In considering the request, the DOE found that the firm had not submitted any material indicating that it or its customers experienced a serious financial hardship or a gross inequity as a result of the adjustment of Draper's allocation of motor gasoline pursuant to § 211.105(f). The DOE also found that Draper had not demonstrated that communities in its market area were experiencing an unfair distribution of regulatory burdens under the DOE motor gasoline allocation program. Accordingly, exception relief was denied.

Edgington Oil Company, Inc., Long Beach, California, DXE–3442, crude oil

Edgington Oil Company, Inc. filed an Application for Exception from the provisions of 10 CFR 211.67 in which the firm sought an extension of the exception relief which was previously granted for the period December 1, 1978 through May 31, 1979. In considering the request, the DOE found that exception relief was still necessary in order to allow the firm to attain either its historical profit margin or historical return on invested capital. Accordingly, an extension of exception relief was granted.

Ferel Little Oil Co., San Augustine, Texas, DEE–1258, motor gasoline

Ferel Little Oil Company filed an Application for Exception from the provisions of 10 CFR 212.93 in which the firm sought to defer its election of one of two price rules provided for resellers of motor gasoline from June 30, 1980 to September 1, 1980. In considering the request, the DOE found that the firm had failed to establish that the election requirement had adversely affected the firm's operations. Accordingly, exception relief was denied.

Fireline Petroleum, Inc., Washington, D.C., BEE–0650, motor gosoline

Fireline Petroleum, Inc. filed an Application for Exception from the provisions of 10 CFR 211.9 in which the firm requested that it be assigned a new, lower-priced supplier of motor gasoline. In considering the request, the DOE found that the firm failed to establish that the price which it is required to pay its base period supplier is significantly higher than the prevailing market prices paid by its competitors. Accordingly exception relief was denied.

Go-Clean, Milwaukee, Wisconsin, BEO–1067, motor gasoline

Go-Clean filed an application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increased base period allocation of motor gasoline. In considering the request, the DOE found that the firm had failed to demonstrate that it was suffering a competitive disadvantage or a serious financial hardship as a result of the DOE regulatory program. Accordingly, exception relief was denied.

Howell Insulation Co., Inc., Birmingham, Alabama, BEE–1265, Motor Gasoline

Howell Insulation Co., Inc. filed an Application for Exception from the provisions of 10 CFR 211.12(f) in which the firm, an end-user of motor gasoline, requested that it be assigned a base period volume and supplier of motor gasoline. In considering the request, the DOE found that Howell had not demonstrated that its demand for motor gasoline could not be met by local suppliers and service stations in its area. The DOE also determined that the fact that the activities of the firm might be accomplished more easily if it were granted an allocation did not constitute a proper basis for the approval of exception relief. The DOE further determined that Howell would suffer neither a gross inequity nor a serious financial hardship in the absence of exception relief. Accordingly, exception relief was denied.

Indiana Farm Bureau Cooperative Association, Inc., Indianapolis, Indiona, BEE–0239, Propane; Motor Gasoline

Indiana Farm Bureau Cooperative Association, Inc. filed an Application for Exception from the provisions of 10 CFR 210.62(a). If the firm's request were granted, it would be permitted to alter the credit terms of discounts the firm offered its customers on May 15, 1973. In considering the firm's request, the DOE found that the percentage discounts which IFB currently offers to certain of its customers is unusually large in comparison to the discounts generally offered by other refiners. In addition, the DOE noted that the value of the discount was likely to rise to unreasonably high levels as the wholesale price of IBF's products rises. Therefore, the DOE permitted IBF to substitute a fixed 2-cent discount for the percentage discounts offered to its member-customers on May 15, 1973. However, the DOE found that this rationale did not provide a justification for granting the firm's exception request with respect to the discount policy it maintains for its non-member customers. Accordingly, exception relief was granted only with respect to IBF's member-customers.

Olson's Exxon, Service Stotion, Hot Springs, Arkonsas, DEO–0376, Gasoline

On May 18, 1979, Olson's Exxon Service Station filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increased base-period allocation of motor gasoline. In considering the request, the DOE found that the firm's present allocation of gasoline reflects any benefits attributable to the investments and operating changes made by the station's new owner. Accordingly, exception relief was denied.

Randolph Oil Compony, Moberly, Missouri, BEE–0654, Motor Gasoline

Randolph Oil Company (Randolph) filed an Application for Exception from the provisions of 10 CFR Part 211. In its Application the firm requests increased allocations of regular and unleaded gasoline for the express purpose of blending and marketing alcohol-extended motor fuels. In considering the firm's request, the DOE found that Randolph had satisfied the criteria established in past gasohol-related exceptions proceedings for the approval of exception relief. The DOE therefore increased the firm's allocation of motor gasoline.

Raymer Oil Company, Statesville, North Carolina, BEE–0404, Gasohol

Raymer Oil Company filed an Application for Exception in which it sought an increase in its base period allocation of motor gasoline for the purpose of blending and marketing gasohol. In considering the firm's request, the DOE rejected arguments made by eleven major refiners that the Office of Hearings and Appeals does not have legal authority to grant exception relief to gasohol marketers and that it should not do so. In addition, the DOE found that Raymer had satisfied the criteria stated in previous cases for the approval of exception relief. Accordingly, Raymer was granted exception relief which increased the amount of unleaded motor gasoline which it is entitled to purchase from its base period supplier, Phillips Petroleum Company, by 124,998 gallons per month.

Red Bluff Mobil Service Center, Posadena, Texas, BXE–0283, Motor Gasoline

Red Bluff Mobil Service Center filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE determined that the firm was not experiencing a serious financial hardship. Accordingly, exception relief was denied.

Stockman Oil Two, Inc., Greenwood, South Carolina, DEE–6101, DEE–7909, Motor Gasoline, Gasohol

Stockman Oil Two, Inc. filed two Applications for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increased allocations of motor gasoline. In considering the requests, the DOE found that the firm had not shown that it was entitled to exception relief based on growth in its market area but that exception relief was necessary to enable the firm to produce and market gasohol. Accordingly, the DOE denied one of the firm's applications and granted the other.

Thornton Oil Corporation, Louisville, Kentucky, DEE–2140, Motor Gosoline

Thornton Oil Corporation filed an Application for Exception from the provisions of 10 CFR Part 211.9 in which the firm sought the assignment of a new, lower-priced supplier which would be directed to furnish the firm with the base period use of motor gasoline which it is now entitled to receive from the Petroleum Marketing Corporation. In considering the request, the DOE found that Thornton had not demonstrated that its purchases from PMC were of sufficient magnitude to add significantly to Thornton's overall weighted cost of motor gasoline, or that its relationship with PMC imposed a financial hardship on the firm. Accordingly, exception relief was denied.

Vicksburg Refining, Inc., Vicksburg, Mississippi, BEE–0116, Crude Oil

Vicksburg Refining, Inc. filed an Application for Exception from the provisions of 10 CFR Part 211.65 in which the firm sought permission to participate in the DOE Crude Oil Buy/Sell Program as a refiner-buyer. In considering the request, the DOE found that Vicksburg had failed to show that it qualified for participation in the Buy/Sell Program or that it was suffering a gross inequity, serious hardship, or unfair distribution of burdens as a result of the DOE regulations. Accordingly, exception relief was denied.

Wolly's Texoco Service, Dayton, Woshington, BEO–1269, Motor Gasoline

Wally's Texaco Service filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE determined that the residents were not experiencing a gross inequity or an unfair distribution of burdens. Accordingly, exception relief was denied.

Warrior Asphalt Company of Alabama, Inc., Washington, D.C., DXE–3715, crude oil

Warrior Asphalt Company of Alabama, Inc. filed an Application for Exception from the provisions of 10 CFR 211.67 (the Entitlements Program) in which the firm sought an extension of the exception relief previously granted for the period December 1, 1978 through May 31, 1979. In considering the request, the DOE found that exception relief was still appropriate under the *Delta* standards. Accordingly, exception relief was granted in the amount of $146,798 per month for the period June 1, 1979 through November 30, 1979.

Young Refining Corporation, Washington, D.C., DXE–3445, DED–3445, crude oil

Young Refining Corporation filed an Application for Exception from the provisions of 10 CFR 211.67 in which the firm sought relief from its obligation to purchase entitlements during the period April through September 1979. In considering Young's request, the DOE found that the entitlements purchase obligation would prevent the firm from attaining either its historical profit margin or its historical return on invested capital. The DOE therefore granted Young exception relief amounting to $266,754 per month for a six-month period.

Requests for Temporary Exception

Golden Valley Electric Association, Inc., Fairbanks, Alosko, BEL–1328, crude oil

Golden Valley Electric Association, Inc. filed an Application for Temporary Exception from the provisions of 10 CFR 211.67 in which the firm sought a reduction in the

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Entitlements purchase obligation of North Pole Refining. GVEA's sole source of Hago turbine fuel used in power generation. GVEA further requested that the North Pole be directed to pass through to GVEA all benefits arising from this reduction in North Pole's entitlements purchase obligation. In considering the request, the DOE found that the firm had failed to meet the criteria for temporary exception relief set forth in 10 CFR 205.125(b). Specifically, the DOE found that GVEA had failed to establish that in the absence of temporary exception relief the firm would experience an irreparable injury. In addition, the DOE found that GVEA had failed to make a *prima facie* showing that it would succeed on the merits of its underlying exception request. Accordingly, temporary exception relief was denied.

Winston Refining Company, Fort Worth, Texas, BEL–1284, crude oil

The Winston Refining Company filed an Application for Temporary Exception from the provisions of the Entitlements Program (10 CFR 211.67). Specifically, Winston requests that the Office of Hearings and Appeals order an immediate increase in the number of entitlements issued to the firm to bring Winston's averge crude oil acquisition costs into substantial parity with those of other crude oil refiners. In considering the Application, the DOE determined that Winston had failed to show that it would suffer an irreparable injury in the absence of temporary exception relief or that there is a strong likelihood of success on the merits of its exception request. Winston's temporary exception request was therefore denied.

Motion for Evidentiary Hearing

Leo's-Winstead's, Inc., Raytown, Missouri, DRH–0232, motor gasoline, No. 1 fuel, No. 2 fuel oil

Leo's-Winstead's, Inc. filed a Motion for Evidentiary Hearing in connection with its Statement of Objections to a Proposed Remedial Order issued to the firm on May 23, 1979, by the Central District of the Economic Regulatory Administration's Office of Enforcement. In considering the firm's request, the DOE determined that Leo's had not established that disputed issues of fact exist which can best be resolved at an evidentiary hearing. Accordingly, the firm's Motion for Evidentiary Hearing was denied.

Protective Orders

The following firms filed Applications for Protective Orders. The applications, if granted, would result in the issuance by the DOE of the proposed Protective Order submitted by the firm. The DOE granted the following applications and issued the requested Protective Order as an Order of the Department of Energy:

Name, Case No., and Location

Missouri Terminal Oil Onyx Corporation, BEJ–0131, St. Louis, MO
Thriftway Co./Cities Service Co., BEJ–0127, Wash., D.C.
White Pet. Inc., Cities Service Co., BEJ–0128, Wash., D.C.

Petitions Involving the Motor Gasoline Allocation Regulations

The following firms filed Applications for Exception, Temporary Exception, Stay, and/or Temporary Stay from the provisions of the Motor Gasoline Allocation Regulations. The requests, if granted, would result in an increase in the firm's base period allocation of motor gasoline. The DOE issued Decisions and Orders which determined that the requests be granted.

Company Name, Case No., and Location

Billykay Service Station, Inc., DEO–0401, Brooklyn, NY
South Ridgewood Amoco, BEO–0242, S. Daytona, FL

Petitions Involving the Motor Gasoline Allocation Regulations

The following firms filed Applications for Exception, Temporary Exception, Stay, and/or Temporary Stay from the provisions of the Motor Gasoline Allocation Regulations. The requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued Decisions and Orders which determined that the requests be denied.

Company Name, Case No., and Location

Gas 'n Groceries, DEE–7523 thru DEE–7526, Waynesville, NC
Hoover Amoco, BEO–0375, Birmingham, AL
J & M Shell Service, BEO–0759, San Mateo, CA
J.S.L., Inc., DEE–4063, Wash., DC
McLaughlin's Exxon Servicenter, BEO–1026, Rocky Mount, VA
Phillip M. Croft, BEO–1118, Charleston, SC
Reed, Martin, Frandsen & Associates, DEE–6691, Reno, NV
Ron Cromwell Chevron; Self-Serv Chevron, BEO–0418, BEO–0419, San Fran., CA
Vilish Mini-Market, BEO–0152, Pittsburgh, PA

Dismissals

The following submissions were dismissed without prejudice to refiling at a later date:

Name and Case No.

Bob Parker's Mobil, DEO–0189
Bray Oil Co., DRO–0147
Calcasieu Ref. Co., BEA–0392
Caldo Oil Co., Inc., DEE–5758
Carl King, Inc., DEO–0178
Commonwealth Oil Ref. Co., Inc., BEE–1302; BMR–0045
Commonwealth Oil, BEL–1306
Cool Fuel, Inc., DEE–5322
Crown Central Pet. Corporation, BES–0087; BST–0087
Demenno/Kerdoon, BEL–0091; BES–0091
Drug Transport, Inc., BEO–0125
Farmers Union Central Exchange, Inc., BEE–1373
Gladieux Refinery, Inc., BEA–0443
Gladieux Ref., Inc., BEE–1133; BEL–1133
Golden Eagle Ref. Co., BEE–1383
H. L. Mills Pet. Products, DES–2997
Hi-Plains Alcohol Fuels, Inc., BEE–0965
Kenneth H. White Co., BEE–1184
Marcum Oil Co., BEE–0483
Meharry Medical College, BFA–0444
Powell Oil Co., Inc., DEE–3120
Rookwood Oil Terminals, Inc., BEE–0102
School Bd. of Sara-Sota Cty., FL, BEE–1114
Speed & Briscoe, Auto/Truckstop, Inc., BEE–1293
Truckstops Corp. of America, DST–6966
Union Oil of Cal., DEA–0582
Wagner & Brown, DEE–3576
Washington Street Exxon, BRO–1170
Wayne G. Aarestad, Ltd., BEE–0723
Western Ref. Co., BEL–0063

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B–120, 2000 M Street NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,
Acting Director, Office of Hearings and Appeals.
October 20, 1980.
[FR Doc. 80-33291 Filed 10-23-80; 8:45 am]
BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of September 1 Through September 5, 1980

During the week of September 1 through September 5, 1980, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Bracewell & Patterson, Washington, D.C., BFA–0433, freedom of information

Bracewell & Patterson filed an Appeal from a determination issued on remand by the Office of Regulations and Emergency Planning of the Economic Regulatory Administration. The determination concerned a request for information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE rejected the firm's contention that the withheld material should be released without review *de novo*. The DOE determined that portions of one document initially withheld under Exemption 5 should be released since the portions consisted of nonexempt factual material. The DOE also ordered an immediate further search for certain withheld material that had been misplaced since the issuance of the determination on remand.

Gulf Oil Corporation, Philadelphia, Pennsylvania, DEA–0578, motor gasoline

Gulf Oil Corporation filed an Appeal of an assignment order issued on August 10, 1979 by the ERA Region I office. The order assigned Gulf as the base period supplier for Rymes Heating Oils, Inc. In considering the Appeal, the DOE found that Gulf's allegation that the assignment order erroneously found that a supplier-purchaser relationship existed between Gulf and Rymes was factually incorrect. The DOE also found that ERA's failure to consider a submission made by Gulf prior to the issuance of the assignment order was a harmless error. The Appeal was therefore denied.

William J. Mutryn, Washington, D.C., BFA–0439, freedom of information

William J. Mutryn filed an Appeal from a partial denial by the Acting Administrator for Enforcement of the ERA of a request for information submitted under the Freedom of Information Act. The DOE determined that the Acting Administrator had properly withheld each of 14 documents except for one sentence which had been reviewed and released in a prior OHA decision. Accordingly, Mr. Mutryn's appeal was denied except for the previously released sentence which was ordered to be supplied.

Sunland Refining Company, Bakersfield, California, BEA–0280, refined products

The Sunland Refining Company filed an Appeal from an Assignment Order which the Economic Regulatory Administration issued to it. In considering the Appeal, the DOE concluded that the ERA order should be remanded to that body in order to clarify ambiguities in the order. Accordingly, Sunland's Appeal was granted.

Remedial Orders

Cities Service Company, Tulsa, Oklahoma BRO–0094, BRD–0094, BRH–0094, motor gasoline

Cities Service Company objected to a Proposed Remedial Order which the Southwest Refiner District, Office of Special Counsel, issued to the firm on August 21, 1979. In the Proposed Remedial Order, the OSC determined that Cities had violated the provisions of 10 CFR § 211.05(d) by refusing to assume all of the base period obligations to supply the E. L. Morgan Company, Inc. with motor gasoline. In considering Cities' Statement of Objections, the DOE concluded that § 211.105(d) did not permit Morgan to designate a sole base period supplier, since Morgan's branded supplier on February 28, 1979 was the same as its branded supplier during the base period. The DOE therefore concluded that the Proposed Remedial Order should be rescinded. Cities' Motion for Discovery and Motion for Evidentiary Hearing were dismissed as moot.

Gulf Oil Corporation, Houston, Texas, BRO–0116, crude oil

Gulf Oil Corporation objected to a Proposed Remedial Order (PRO) which the Northeast District Office of Special Counsel of the Department of Energy issued to the firm on July 25, 1979. Subsequent to the firm's filing of its Statement of Objections, the DOE Office of Special Counsel requested that the PRO be dismissed without prejudice so that matters covered in the PRO could be combined with other matters still under investigation. After reviewing the entire record in the proceeding, the DOE concluded that Gulf would not be subjected to undue prejudice if the PRO was dismissed without prejudice. Accordingly, the PRO was dismissed without prejudice.

Whittier Fuel and Marine Corporation, Whittier, Alaska, DRO–0110, heating oil

Whittier Fuel and Marine Corporation (Whittier) objected to a Proposed Remedial Order which DOE Region X issued to the firm on August 22, 1978. In the Proposed Remedial Order, Region X found that the firm had overcharged three purchasers of heating oil by a total of $32,281, exclusive of interest. In its Statement of Objections, Whittier claimed that Alaska Transportation Commission tariffs required the firm to charge a price in excess of its maximum lawful price and, second, that the firm should not be required to refund overcharges to one customer who had an outstanding debt to Whittier, reduced to judgment, for heating oil delivered but never paid for. The DOE determined that Whittier's first claim was without merit, but that the firm's second claim required a modification of the Proposed Remedial Order. In this regard, the DOE ordered that the Proposed Remedial Order should be issued as a final Remedial Order after modification assuring that Whittier would not be required to refund overcharges for heating oil delivered but never paid for.

Requests for Exception

Alger Oil Company, Rising Sun, Maryland, BEE–0920, gasohol

Alger Oil Company filed a request for Exception from the Motor Gasoline Allocation Regulations. The exception request was finalized on September 3, 1980. The decision granted relief on the basis that the Allocation Regulations impede Alger's gasohol blending and marketing operations and thereby cause the applicant to experience a gross inequity.

American Motohol Supply Corporation, Washington, D.C., DEE–7203, motor gasoline

American Motohol Supply Corporation (Motohol) filed for an exception from the provisions of 10 CFR Part 211. In this filing the firm requests an allocation and supplier of unleaded motor gasoline for use in the production and marketing of gasohol. In considering the request, the DOE found that the firm had failed to make the required showing that no unleaded gasoline obtained as a result of exception relief would be blended with alcohol of foreign origin. Accordingly, the firm's request was denied.

Bay Village Marathon, Bay Village, Ohio, BEO–0545, motor gasoline

Bay Village Marathon filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm was not experiencing a serious hardship, gross inequity or unfair distribution of burdens as a result of the DOE allocation regulations. Accordingly, exception relief was denied.

Consumer Service Stations, Tulsa, Oklahoma, BEE–0259, motor gasoline

On October 30, 1979 Consumer Service Stations (Consumer) filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought a separate allocation of motor gasoline for the purpose of blending regohol and gasohol. In considering the request, the DOE found that exception relief was necessary to prevent a gross inequity under application DOE allocation regulations. Accordingly, Sun Oil Company of Pennsylvania and Getty Refining and Marketing Company, the base period suppliers of Consumer, were each selected to furnish Conumer with additional volumes of motor gasoline for the purpose of blending gasohol and regohol for the twelve month period beginning the effective date of the Decision.

Drake Shell Service, St. Petersburg, Florida, DEE–6689, motor gasoline

Drake Shell Service filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm was not experiencing a serious hardship, gross inequity or unfair distribution of burdens as a result of the DOE allocation regulations. Accordingly, exception relief was denied.

George Noblett Oil Company, Kilmarnock, Virginia, BEO–0459, motor gasoline

The George Noblett Oil Company filed an Application for Exception in which it requested an increase in the base period allocation of gasoline of a retail sales outlet which it operates in White Stone, Virginia. The firm based its request upon the fact that it had contracted to renovate the White Stone location in October 1978 and that the present gasoline allocation was insufficient to meet the expenses of the renovated outlet. After reviewing the financial information which the firm submitted, the DOE found that operations at the location would generate a substantial monthly net profit. Under these circumstances, the DOE concluded that exception relief was not warranted.

T. G. Heinen, Tulsa, Oklahoma, DEO–0409, motor gasoline

T. G. Heinen filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increased base period allocation of motor gasoline. In considering the request, the DOE found that the firm had failed to demonstrate that it was suffering a serious hardship or gross inequity as a result of DOE regulations. Accordingly, exception relief was denied.

J&L Towing, Inc., Englewood, N.J., BEO–1036, motor gasoline

J&L Towing, Inc. filed an Application for Exception from the provisions of 10 CFR 211.102 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that exception relief was necessary for J&L to realize the economic benefits of its capital investments in its station. Accordingly, exception relief was granted. The important issues discussed in the Decision and Order are similar to those in *Leo Anger, Inc.*, 4 DOE ¶ 81,037 (1979).

North American Supply, Inc. T/A Biviano's Arco, Latrobe, Pa., DEE–7178, motor gasoline

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North American Supply, Inc. T/A Biviano's Arco (Biviano) filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period use of motor gasoline. In considering the request, the DOE issued a consolidated Proposed Decision and Order which tentatively concluded that the firm's application should be denied on the basis of the precedent established in *Union Petrochem*, 5 DOE ¶ 81,255 (1980). The firm filed a Statement of Objections in which it contended that as a result of the provisions of a new lease with Arco, Biviano was experiencing a serious financial hardship. The DOE determined that the further transaction described by Biviano also did not form a basis upon which exception relief could be granted under the *Union Petrochem* precedent. The DOE also rejected Biviano's claim that its community was experiencing a gross inequity as a result of the DOE motor gasoline allocation program. Accordingly, exception relief was denied.

O'Meara Brothers, New Orleans, La., BXE–1081, crude oil

O'Meara Brothers (O'Meara) filed an Application for Exception from the provisions of 10 CFR Part 212, Subpart D. Exception relief was granted to permit O'Mears to sell at market prices 76.71 percent of the crude oil produced from the Louisiana State Lease 2192.

Pennzoil Producing Co., Houston, Tex., BXE–1179, crude oil

Pennzoil Producing Company (Pennzoil) filed an Application for Exception from the provisions of 10 CFR Part 212, Subpart D. Exception relief was granted to permit Pennzoil to sell at market prices 100 percent of the crude oil produced from the Woodruff Sand Waterflood Unit.

Sheehon Oil Co., Norman, Oklo., DEE–5561, motor gasoline

The Sheehan Oil Company filed an Application for Exception from the provisions of 10 CFR 211.102 in which the firm sought an increased allocation of motor gasoline. In considering the request, the DOE found that the firm had failed to demonstrate that its current motor gasoline allocation is unrepresentative of its normal operating posture. Accordingly, exception relief was denied.

Shop-a-Snak Food Mart, Childersburg, Alabama, BEO–0815, motor gasoline

Shop-a-Snak Food Mart filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm was not experiencing a serious hardship, gross inequity or unfair distribution of burdens as a result of the DOE allocation regulations. Accordingly, exception relief was denied.

Tags Service, Soldotna, Alaska, BEO–0590, motor gasoline

Tags Service filed an Application for Exception from the provisions of 10 CFR 211.102 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that Tags had failed to show that either the firm or the community in which it was located was experiencing a serious hardship or a gross inequity as a result of the DOE's Allocation Regulations. Accordingly, exception relief was denied.

Steve's Car Wash, Topeka, Kansas, BEO–0645, motor gasoline

Steve's Car Wash filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increased base period allocation of motor gasoline. In considering the request, the DOE found that the firm had failed to demonstrate that it was suffering a gross inequity as a result of DOE regulations. Accordingly, exception relief was denied.

Terry's Texaco, San Mateo, Californio, BEO–0506, motor gasoline

Terry's Texaco filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increased base period allocation of motor gasoline. In considering the request, the DOE found that any operating difficulties the firm might be experiencing were attributable to its own discretionary business decisions. Accordingly, exception relief was denied.

Petition for Special Redress

Northern Natural Gas, Inc., UPG, Inc., Omaha, Nebrasko, BSG–0004, BSG–0005, natúral gas, liquids

On November 14, 1979 and November 19, 1979, Northern Natural Gas, Inc. and its wholly-owned subsidiary, UPG, Inc. filed Petitions for Special Redress in which the firms requested that Notices of Probable Violation that had been issued to them to rescinded on the basis of factual and legal errors. In considering the requests, the DOE found that the firms should pursue normal administrative procedures to contest the DOE's enforcement actions. Accordingly, the Petitions for Special Redress were denied.

Supplemental Orders

Arizona Fuels Corporation, Washington, D.C., DEX–0056, crude oil

The DOE reviewed the entitlement exception relief granted to Arizona Fuels Corporation during its 1976 and 1977 fiscal years. On the basis of a review of the actual operating results that the firm achieved, the DOE found that Arizona Fuels received $429,935 in excess exception relief for its 1976 fiscal year and that the firm received $181,287 in excess exception relief for its 1977 fiscal year. Accordingly, the DOE directed that Arizona Fuels purchase $50,935 of entitlements during each of the twelve months following the date of issuance of this Decision and Order, for a total repayment of $611,222.

Motion for Discovery

Batson Petroleum Corporation, d.b.a. Tiny Town Truckstops, Guthrie, Kentucky. DRD–0136, motion for discovery

Batson Petroleum Corp. d.b.a. Tiny Town Truckstops (Batson) filed a Motion for Discovery in conjunction with an enforcement proceeding pending against the firm involving alleged overcharges on the retail sale of No. 2 diesel fuel. In its Motion, Batson sought discovery of information relating to the preparation of the Proposed Remedial Order issued to it, including information on the Office of Enforcement's "netting" policy, its policy on assessing interest, and any audit workpapers not previously released to the firm. In considering the Motion, the DOE determined that one of Batson's requests with respect to "netting" policy and its claim with respect to audit workpapers should be granted and it was so ordered. The DOE, however, denied the Motion in all other respects.

Office of Enforcement, Washington, D.C., DRX–0144, motor gasoline

The Office of Enforcement (Enforcement) filed an Application for Modification or Rescission of a Decision and Order which was issued to Glenn Martin Heller regarding an Application for Stay that Mr. Heller had filed. *See Glenn Martin Heller*, 3 DOE ¶ 82,010 (1979). In the *Heller* stay decision, the DOE stayed an Interim Remedial Order for Immediate Compliance that Enforcement had issued to Mr. Heller. In considering the Application for Modification, the DOE determined that the controversy between Mr. Heller and Enforcement was now moot since Enforcement objected only to the language contained in the *Heller* stay decision and not to the result in that case. The DOE therefore dismissed Enforcement's modification request.

Interim Orders

The following firms were granted Interim Exception relief which implements the relief which the DOE proposed to grant in an order issued on the same date as the Interim Order:

Company Name, Case No., and Location

American Agri-Fuels, BEN–1255, Kansas City, MO
Dollar Rent-a-Car, BEN–0051, Frisco, CO
Scott Boulevard Chevron, BEN–0453, Decatur, GA

Protective Orders

The following firms filed Applications for Protective Orders. The applications, if granted, would result in the issuance by the DOE of the proposed Protective Order submitted by the firm. The DOE granted the following applications and issued the requested Protective Order as an Order of the Department of Energy:

Company Name, Case No., and Location

Cities Service Co./Sage Creek Refining Co., BEJ–0125, Tulsa, OK

Petitions Involving the Motor Gasoline Allocation Regulations

The following firms filed Applications for Exception, Temporary Exception, Stay, and/or Temporary Stay from the provisions of the Motor Gasoline Allocation Regulations. The requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued Decisions and Orders which determined that the requests be denied.

Company Name, Case No. and Location

Kenwood Texaco, DEO–0278, Duluth, MN
Rancho Super Car Wash, Inc., BEO–0271, San Francisco, CA
Reynolds Superette, BEO–0262, Timmonsville, SC
Victor A. Saphiloff, BEO–0540, Orange, CA

Dismissals

The following submissions were dismissed without projudice to refiling at a later date:

Company Nome and Case No.

Appalachian Regional Hospitals, BEE–1264
Brian McMahon, DEE–5816
C.M. Dining, Inc., DRO–0053; DRD–0053
Chevron USA, Inc., BED–0129; BEJ–0129
Guan Oil and Refining Company, Inc., BEL–1247
Jako Distributors, BEE–1004
Pecora Oil Company, BEE–1207
Sherer Oil Company, Inc., BEE–1084
Ted's Arco (Lavassani), BRO–1186
Town of Georgetown, DEE–6152
Valley Petroleum Distributors, Inc., BEE–1205
Vic & Lou's Union, BRT–0090

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B–120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., e.d.t., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,
Acting Director, Office of Hearings and Appeals.
October 20, 1980.

[FR Doc. 80-33297 Filed 10-23-80; 8:45 am]
BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders; Week of September 15 through September 19, 1980

During the week of September 15 through September 19, 1980, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B–120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,
Acting Director, Office of Hearings and Appeals.
October 20, 1980.

A. Smith Bowman, Distillery, Sunset Hills, Virginio, BEE–1096, Gasohol

A. Smith Bowman Distillery (Bowman) filed an Application for Exception from the provisions of 10 CFR Part 211. The exception request, if granted, would permit Bowman to receive an allocation of unleaded gasoline for use in the production of anhydrous alcohol which will be blended with additional unleaded gasoline to produce gasohol. On September 18, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

Ayers Oil Company, Canton, Missouri, BEE–0402, Gasohol

Ayers Oil Company filed an Application for Exception from the provisions of 10 CFR Part 211. The exception request, if granted, would permit Ayers to receive an increase in its base period allocation of motor gasoline for the purpose of producing gasohol. The Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

Belco Petroleum Corporation, Houston, Texas, BXE–1143, crude oil

Belco Petroleum Corporation filed an Application for Exception from the provisions of 10 CFR Part 212, Subpart D. The exception request, if granted, would result in an extension of exception relief previously granted and would permit the firm to sell a certain portion of the crude oil which it produces from the White River Unit Lease, for the benefit of the working interest owners, at market price levels. On September 16, 1980, the DOE issued a Proposed Decision and Order and tentatively determined that an extension of exception relief should be granted with respect to the applicant's White River Unit Lease.

Brock Exploration Corp., Washington, D.C., BEL–1351, BEE–1351, Crude oil

Brock Exploration Corporation filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, with the Office of Hearings and Appeals of the Department of Energy. The exception request, if granted, would permit the firm to classify the crude oil that it produces from one of its crude oil properties as "imputed newly discovered crude oil." On September 16, 1980, the DOE issued a Proposed Decision and Order in which it tentatively determined that exception relief should be approved.

Cornell Oil Company, Washington, D.C., BEE–1151, Crude oil

Cornell Oil Company filed an Application for Exception from the provisions of 10 CFR 212.78 with the Office of Hearings and Appeals of the Department of Energy. The exception request, if granted, would permit Cornell to continue to utilize the provisions of 10 CFR 212.76 for one of its unitized properties. On September 15, 1980, the DOE issued a Proposed Decision and Order in which it tentatively determined that the exception application should be dismissed.

Fannon Petroleum Services, Inc., Alexandria, Virginia, BXE–1318, Gasohol

Fannon Petroleum Services, Inc., filed an Application for Exception from the provisions of 10 CFR Part 211. The exception request, if granted, would permit Fannon to receive an increased allocation of unleaded motor gasoline to produce and market gasohol. On September 16, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

Gasol, Incorporated, Hillsboro, Oregon. BEE–0961, Gasohol

Gasol, Inc., filed an Application for Exception from the provisions of 10 CFR Part 211. The exception request, if granted, would permit Gasol to receive an increased allocation of unleaded gasoline for gasohol production. On September 19, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

Glen Ellyn Standard, Glen Ellyn, Illinois. BEE–0607, Gasohol

Glen Ellyn Standard filed an Application for Exception from the provisions of 10 CFR Part 211. The exception request, if granted, would permit Glen Ellyn to receive an increased allocation of unleaded gasoline for gasohol production. On September 19, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

Glenn Martin Heller, Boston, Mass., DEE–2142, motor gasoline

Glenn Martin Heller filed filed an Application for Exception in which he requested that he be permitted to charge prices for motor gasoline at his retail outlet which exceed the levels permitted by § 212.93 of the Mandatory Petroleum Price Regulations. On September 15, 1980, the DOE issued a Proposed Decision and Order which tentatively denied the Heller exception request.

Gulf Oil Corp., Houston, Tex., BXE–1204, crude oil

Gulf Oil Corporation filed an Application for Exception from the provisions of 10 CFR

Part 212, Subpart D. The exception request, if granted, would result in an extension of exception relief previously granted and would permit the firm to sell a certain portion of the crude oil which it produces from the Kirby Lumber Company "C" Lease for the benefit of the working interest owners at upper tier ceiling prices. On September 19, 1980, the DOE issued a Proposed Decision and Order and tentatively determined that an extension of exception relief should be granted with respect to the applicant's Kirby Lumber Company "C" Lease.

Hoffmon Corner Oil Co., White Bear Lake, Minn., BEE–0610, gosohol

Hoffman Corner Oil Co. filed an Application for Exception from the provisions of 10 CFR Part 211. The exception request, if granted, would permit Hoffman to receive an increased allocation of unleaded gasoline for gasohol production. On September 19, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

Laketon Asphalt Refining, Inc., Evansville, Ind., BXE–1260, crude oil

Laketon Asphalt Refining, Inc., filed an Appliction for Exception from the provisions of 10 CFR 211.67 (the Entitlements Program). The exception request, if granted, would relieve Laketon of a portion of its entitlement pruchase obligations during the period September 1980 through February 1981 for crude oil receipts and runs to stills during the period July 1980 through December 1980. On September 16, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

Murray Oil Co., Ash Grove, Mo., BEE–0507, gosohol

Murray Oil Company filed an Application for Exception from the provisions of 10 CFR Part 211. The exception request, if granted, would permit Murray to receive an increased allocation of unleaded gasoline for the purpose of marketing gasohol. On September 16, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

Petroleum, Inc., Wichita, Kon., BXE–0992 Crude oil

Petroleum, Inc., filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would result in an extension of exception relief previously granted and would permit the firm to sell a certain portion of the crude oil which it produces from the Crowder Lease for the benefit of the working interest owners at market price levels. On September 16, 1980, the DOE issued a Proposed Decision and Order and tentatively determined that an extension of exception relief should be granted with respect to the applicant's Crowder Lease.

Pro Tec, Inc., Austin, Tex., DSG–0026, propane

Pro Tec, Inc., filed an Application for Exception from the provisions of 10 CFR, Parts 211 and 212. The exception request, if granted, would permit Pro Tec to charge a higher price for propane than would otherwise be permitted by DOE regulations. The firm also requested several other forms of relief in connection with its proposed establishment of Propane Extraction Units. On September 15, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted in part.

Southwestern Refining Co., Inc., Washington, D.C., BLE–1268, crude oil

Southwestern Refining Company, Inc., filed an Application for Exception from the provisions of 10 CFR 211.67 (the Entitlements Program). The exception request, if granted, would relieve Southwestern of a portion of its entitlement purchase obligations during the period September 1980 through 1981 for crude oil receipts and runs to stills during the period July 1980 through December 1980. On September 16, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

Standard Oil Co. of Ohio, Cleveland, Ohio, BEE–1123; carbon dioxide

Standard Oil Company of Ohio (Sohio) filed an Application for Exception from the provisions of 10 CFR 212.83(c)(2). The exception request, if granted, would permit Sohio to exclude the carbon dioxide which it produces and sells at its Toledo, Ohio refinery from its calculations in computing its maximum lawful prices for price controlled refined products. On September 17, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

State of New Mexico, Santa Fe, N. Mex., BEE–0944, crude oil

The State of New Mexico filed an Application for Exception from the provisions of 10 CFR 211.63. The exception request, if granted, would permit New Mexico to sell its royalty interest crude oil to purchasers of its own choosing. On September 15, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

Petitions Involving the Motor Gasoline Allocation Regulations

The following firms filed Applications for Exception from the provisions of the Motor Gasoline Allocation Regulations. The exception requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued Proposed Decisions and Orders which determined that the exception requests be denied.

Company Name, Case No., Location

Bill's Amoco, BEX–0088, Lima, PA
Colonial Shell Service, BXE–0603, Wallingford, CT
Davison Dawn Donuts, DEE–7758, Washington, DC
First Texarkana Co., DEE–4763, Texarkana, TX
Mousa's Gulf, S.C., DEE–7304, Danbury, CT

[FR Doc. 80–33296 Filed 10–23–80; 8:45 am]
BILLING CODE 6450–01–M

Objections to Proposed Remedial Orders Filed Week of September 15 through September 19, 1980

During the week of September 15 through September 19, 1980, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 on or before November 13, 1980. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

October 20, 1980.

George B. Breznay,

Acting Director, Office of Hearings and Appeals.

Notices of Objection

Sharon Heights Shell, Menlo Park, Calif., BRO–1311, motor gasoline

On September 15, 1980, Sharon Heights Shell, 125 Sharon Park Drive, Menlo Park, California 94025 filed a Notice of Objection to a Proposed Remedial Order which the DOE Western District Office of Enforcement issued to the firm on August 14, 1980. In the PRO the Western District found that during August 1, 1979 to November 8, 1979, the firm committed pricing violations of $11,116.00 in connection with the sale of motor gasoline in the State of California.

Tom's Coffee Tree, Vacaville, Calif., BRO–1310, gasoline

On September 15, 1980, Tom's Coffee Tree Chevron, 300 Orange Drive, Vacaville, California 95688 filed a Notice of Objection to a Proposed Remedial Order which the DOE Western District Office of Enforcement issued to the firm on August 14, 1980. In the PRO the Western District found that during August 1, 1979 to November 20, 1979, the firm committed pricing violations of $2,878.84 in connection with the sale of motor gasoline in the State of California.

[FR Doc. 80–33292 Filed 10–23–80; 8:45 am]
BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[TSH–FRL 1642–2; OPTS–51111A]

Alkanedioic Acids Mixed Alkanolamines Salt; Premanufacture Notice; Extension of Review Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is extending the review period for a premanufacture notice (PMN) for which the review period commenced on July 24, 1980, under section 5(c) of the Toxic Substances Control Act (TSCA). The generic identity of the substance covered by PMN P80–182 is alkanedioic acids mixed alkanolamines salt.

The review period for this substance is now scheduled to end on January 19, 1981. The PMN described a chemical substance that would be manufactured for a use claimed confidential. The submitter of the PMN also claimed his identity to be confidential along with environmental release, impurities, processing, byproducts, disposal, and production volume information.

FOR FURTHER INFORMATION CONTACT: George Bagley, Chemical Control Division (TS–794), Environmental Protection Agency, Room 210 East Tower, 401 M St. SW., Washington, D.C. 20460 (202–426–3936).

SUPPLEMENTARY INFORMATION:

Background

Under section 5 of TSCA any person who intends to manufacture in, or import into, the United States a new chemical substance for commercial purposes must submit a premanufacture notice (PMN) to EPA prior to commencement of manufacture or import. In general, section 5 provides that EPA must complete its review of a PMN within 90 days of its receipt by the Agency. However, under section 5(c) EPA may extend the notice period for good cause for additional periods, not to exceed an aggregate of 180 days from the date of receipt.

EPA issued proposed rules to implement the premanufacture notification program published in the **Federal Register** of January 10, 1979 (44 FR 2263). Section 720.35 of the proposed regulation addressed the section 5(c) extension authority and provided examples of situations in which the Agency believed there would be good cause to extend the notice period. Although EPA has not yet promulgated these rules, the example in the proposal that would apply in this case is that:

EPA has reviewed the notice and has determined that there is a significant possibility that the chemical will be regulated under section 5(e) or section 5(f) of the Act, but the Agency is unable to initiate regulatory action within the initial 90-day period (44 FR 2273).

Review to Date

EPA's initial evaluation of the subject PMN substance entailed review of information that the manufacturer supplied in the PMN and in subsequent submissions to EPA. EPA also conducted literature searches on the PMN substance and on structurally similar substances, i.e., structural analogues.

Using the information, EPA assessed seven major areas of potential concern: process chemistry, uses, worker and consumer exposures, environmental releases, health effects, environmental fate, and ecological effects. The Agency also considered other factors, such as economics and impact on technological innovation, that are not directly associated with the assessment of the risks that the PMN substance may present to human health and the environment. When EPA completed this initial screening of the substance, the Agency concluded that it needed to conduct a more thorough review of certain aspects to focus on specific areas of concern.

The initial results of these assessments are summarized below:

1. EPA is concerned about potential hazards that the substance may pose to human health. The substance can be expected to generate a chemcial known to be a carcinogen. The information provided by the manufacturer in the PMN and in subsequent communications has not been sufficient to assess the impact of this substance on human health.

2. EPA can reasonably assume that a significant number of workers, particularly in processing and use operations, will be exposed to the toxic substances that are likely to be generated. Such contact will involve both dermal and inhalation exposure routes.

3. The absence of adequate information on the reasonable assumption that the mechanism for formation of the toxic substances is enhanced under use conditions, the high toxicity of the substances, and the potential for significant human exposure give rise to the increased possibility that the PMN chemical will be regulated under section 5 of the Act.

Extension of the Review Period

Therefore, EPA has entered the PMN into another series of analyses, the Detailed Review Process. During the Detailed Review, Agency staff will conduct further evaluations and assessments of the following: (1) The mechanism for formation of the highly toxic chemicals associated with processing, use, and disposal of the PMN substance and (2) the nature and extent of risks to human health posed by the formation of these toxic chemicals, and (3) the exposure associated with the toxic chemicals during processing, use, and disposal.

On the basis of the cited concerns raised during EPA's evaluation of the PMN substance, the significant possibility of further regulation under section 5, and because of the limited time before the end of the review period for the substance (which closes on October 21, 1980), EPA has determined that good cause exists to extend the notice period for an additional 90 days, until January 19, 1981.

EPA needs additional time to assess this chemical substance to determine if regulatory controls are appropriate. During the additional time period EPA will: (1) evaluate the need for additional data on the substance, (2) determine the need for regulatory control in light of EPA's concerns about the substance, and (3) examine possible control options. Extension of the notice period preserves EPA's authority to initiate a regulatory action under section 5 of TSCA if the Agency concludes that such an action is appropriate.

The PMN, summaries of communications between the submitter and EPA, and other written material, are available for public inspection in Room 447, East Tower, at the EPA Headquarters address given above. The public record is available from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. All information that the manufacturer has claimed to be confidential has been deleted from the documents in the public record.

Dated: October 20, 1980.

Steven D. Jellinek,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 80–33179 Filed 10–23–80; 8:45 am]
BILLING CODE 6560–31–M

[A–1–FRL–1641–6]

Conditional Extension of Prevention of Significant Deterioration Permit

AGENCY: Environmental Protection Agency.

ACTION: Notice of conditional extension of permit.

SUMMARY: EPA hereby gives notice that it conditionally extends until April 15, 1981, the Prevention of Significant Deterioration permit issued to the Pittston Company on August 18, 1978.

DATES: This conditional extension takes effect on the date of signature.

FOR FURTHER INFORMATION CONTACT: Robert C. Thompson, Office of Regional Counsel, U.S. EPA, 2203 JFK Federal Building, Boston, MA 02203, (617) 223–5246.

SUPPLEMENTARY INFORMATION:

Background.

On August 18, 1978, EPA granted a Prevention of Significant Deterioration of Air Quality (PSD) permit to the Pittston Company (the Company) upon an application pending since April 1977. 43 FR 40056 (September 8, 1978). Under that permit, the Company had until February 18, 1980 to commence construction of its proposed project, else the permit would expire under 40 CFR 52.21(r)(2) [40 CFR 52.21(s)(2) (1978), 40 CFR 52.21(e)(3) (1977)].

Pittston requested an extension of its permit on December 21, 1979, arguing that the permit should not be allowed to lapse when delays in construction were beyond the Company's control. In support, the Company cited that it had stipulated not to commence construction until the First Circuit Court of Appeals completes reviewing the cases before it which challenge the validity of the permit (*Carr v. EPA*, Nos. 78–1443, 78–1484, 78–1486, and 78–1487), and that an administrative appeal from denial of the Company's NPDES permit was still pending. EPA agreed with the Company, and on February 15, 1980, exercised its authority under 40 CFR 52.21(r)(2) to extend Pittston's PSD permit for six months, until August 18, 1980. The extension, however, was conditioned on EPA amending the applicable grandfather provision, 40 CFR 52.21(i)(4), so as to extend beyond August 18, 1980 the deadline contained in that provision for Pittston to commence construction. The grandfathering amendment was proposed by EPA on July 20, 1979, 44 FR 42727, but final rulemaking action had not been taken at the time of Pittston's request.

On August 5, 1980, EPA received a request from the Company for a second extension of its permit, which was due to expire on August 18, 1980. The company requested that the extension run for eighteen months from a final, non-reviewable order in the cases pending before the First Circuit mentioned above. EPA decided that potential public interest in the request warranted a public comment period until September 18, 1980, with response due from EPA by October 18, 1980. The Agency granted an interim extension of the permit until October 18, 1980 to preserve the status quo during the comment period.

Response and Decision

Commenters submitted arguments on both sides of this issue. EPA's decision, after reviewing the comments, is to grant a conditional extension of the Pittston Company's PSD permit until April 18, 1981.

EPA is persuaded by the continued force of the argument that it has been effectively impossible for the Company to commence construction since it obtained its permit in August 1978, due to restrictions and delays for which it is not responsible. The Company is still bound by its stipulation not to commence construction during the pendency of the cases before the First Circuit, Pittston's NPDES appeal has still not been decided, and the grandfathering issue has still not been resolved. Thus, none of the bases for Pittston's first extension in February 1980 has changed. Regulation 52.21(r)(2) allows EPA to extend a permit for good cause. It is the Agency's view that impossibility of commencing construction such as exists here constitutes good cause, and EPA therefore exercises its authority under § 52.21(r)(2) to extend Pittston's permit.

The Roosevelt Campobello International Park Commission (the Commission) suggests that granting Pittston's request to extend the permit until eighteen months after the termination of litigation would in effect decide the issue of whether, in this case, to adopt the proposed grandfather rule amendment. However, EPA is extending the permit for only six months and on the condition that the grandfathering amendment is adopted. EPA simply seeks to preserve the status quo until the grandfathering issue can be properly decided. EPA rejects the Company's request for an extension until eighteen months after a final, non-reviewable order in the cases pending before the First Circuit, because allowing that request could extend the life of the permit for as much as five years, and during such a lengthy period of time circumstances affecting the interests of all parties might substantially change, making such an extension inequitable.

Two commenters argue that extending Pittston's permit violates Congress' intent to have the 1977 Amendments to the Clear Air Act in effect and applicable to sources which have not commenced construction at the latest by the date that the state's PSD SIP revision is approved. This argument reflects a misunderstanding of the effect of a permit extension. The extension issue is completely separate from the question whether or not the requirements of the 1977 Amendments apply to Pittston's refinery. Exemption from those requirements will occur only if EPA amends the applicable grandfathering provision to encompass Pittston's project, regardless of the continued validity of Pittston's original permit granted under the pre-1977 regulations. Therefore, the argument really runs only to the grandfathering decision and has no bearing on the question being considered here.

The Natural Resources Council of Maine (NRCM) also charges that the only real reason for granting the extension is to allow the Company to escape the requirements of the 1977 Amendments to the Clean Air Act. However, as explained above, the issues of exemption and extension are completely separate, and granting an extension of its PSD permit will not decide whether the Company must meet the requirements of the 1977 Amendments in constructing its project. The exemption decision will be made only upon resolution of the grandfathering issue.

The NRCM also argues that Pittston's request should be denied since lengthy extensions would undercut the policy behind requiring construction to commence within a reasonable time after receiving a permit. See 45 F.R. 52679 (August 7, 1980). According to NRCM, this requirement reflects a concern that a permit holder might harm the beneficial development of an area by indefinitely delaying construction of its project, while simultaneously holding a monopoly over the right to an approved increment of air pollution, thereby precluding other competing uses for that increment which might bring more immediate economic return. NRCM argues that the extension requested by Pittston would have this detrimental effect on Eastport's economic growth. EPA, however, disagrees that it would. Any potential harm to Eastport's economic development due to this extension will be minimal since the extension is for only six months. In addition, even if EPA were to agree that it should take competing uses into account, it would be unable to do so on the record before it now, as the NRCM has failed to show any concrete evidence of the existence of one.

The Commission also submits that the Company's resources would be better spent obtaining a new permit under the Maine State Implementation plan (SIP) rather than proceeding with the expensive and time-consuming process of defending the original permit. This argument is irrelevant to the issue being considered here. The extension request presents merely the narrow question of whether or not good cause for an extension exists. EPA has found good cause on equitable grounds and therefore grants a short-term conditional extension.

Several commenters suggest that the extension request should be denied because in their opinion the original permit was based on insufficient onsite data and improper computer modeling techniques. EPA submits, however, that the proper procedure for challenging the validity of the original permit is not to seek denial of an extension, but to seek direct judicial review of the permit itself, as has been done in the cases cited above which are pending before the First Circuit.

In recognition of the various competing views and interests involved in this issue EPA hereby extends the Company's PSD permit until April 18, 1981 on the condition that EPA adopts the proposed amendment to the applicable grandfather provision.

This conditional extension is a "locally or regionally applicable" "final action" within the meaning of Section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607(b)(1). As a result, it is reviewable only in the U.S. Court of Appeals for the First Circuit. Any petition for review must be filed on or before December 23, 1980.

Dated: October 15, 1980.

William R. Adams, Jr.,

Regional Administrator, U.S. Environmental Protection Agency Region I.

[FR Doc. 80-33177 Filed 10-23-80; 8:45 am]

BILLING CODE 6560-26-M

[PH-FRL 1641-1; OPP-180506]

Idaho and Washington State Departments of Agriculture; Issuance of Specific Exemptions for Dinoseb on Lentils

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions to the Idaho and Washington State Departments of Agriculture (hereafter referred to as "Idaho," "Washington," or the "Applicants") to use dinoseb as a desiccant on 30,000 acres of lentils in the northern counties of Idaho and 80,000 acres of lentils in Spokane and Whitman Counties, Washington. The specific exemptions are issued under the Federal Insecticide, Fungicide, and Rodenticide Act.

DATE: The specific exemptions expire on September 30, 1980.

FOR FURTHER INFORMATION CONTACT: Donald R. Stubbs, Registration Division (TS–767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E–124, 401 M St., SW., Washington, D.C. 20460 (202–426–0223).

SUPPLEMENTARY INFORMATION:

According to the Applicants, much of the lentil-growing region of northern Idaho and eastern Washington has been covered with up to two inches of ash fallout from the volcanic eruption of Mt. St. Helens in May. This condition, combined with extremely cool, wet spring weather, has resulted in excessive lentil vine growth and late season weed infestations. The excessive vine growth and ash fallout have resulted in a serious harvesting problem, the Applicants report. Lentils are usually swathed prior to harvesting in order to avoid shattering of the lentil, allow for uniform harvesting of the crop, and to dry up the weeds. The Applicants state that the presence of one-half to two inches of ash in lentil fields is of serious concern due to the health hazard of the ash to operators of swathing machines, damage to harvesting equipment, and dust on the edible crop.

Currently there are no herbicides registered for pre-harvest desiccation of lentils. The Applicants state that research data indicate that dinoseb is an effective pre-harvest desiccant. Idaho claims that crop losses due to the effect of volcanic ash on the quality of lentils harvested for market could reach $10 million if normal harvesting procedures are used. Washington estimates that losses could reach $38 million in that State.

EPA has determined that residues of dinoseb from the proposed use should not exceed 0.1 part per million (ppm) in or on lentils. This level has been judged to be adequate to protect the public health. EPA anticipates no unreasonable hazard to man or the environment from the proposed use.

After reviewing the applications and other available information, EPA has determined that the criteria for exemptions have been met. Accordingly, the Applicants have been granted specific exemptions to use the pesticide noted above until September 30, 1980, to the extent and in the manner set forth in the applications. The specific exemptions are also subject to the following conditions:

1. The product Red-Top Contact Weed Killer [dinoseb (2-sec-butyl-4, 6-dinitrophenol) as the phenol formulation], EPA Reg. No. 2935–355, may be applied at a rate of two quarts per acre;

2. Applications will be made by State-licensed commercial applicators or qualified growers. In Idaho, University of Idaho Extension Service personnel, and in Washington, Washington State University Extension Service personnel, will provide directions and pertinent information to applicators and growers;

3. Applications will be made with 1–2 quarts of Red-Top Mor-Act Adjuvant in 30–50 gallons of water by ground equipment and 7–10 gallons of water by air;

4. A single application may be made and a 10-day pre-harvest interval is imposed;

5. A maximum of 30,000 acres of lentils in the northern counties of Idaho and 80,000 acres in the Washington counties named above may be treated;

6. A total of 15,000 gallons of product may be applied in Idaho. In Washington, a total of 40,000 gallons of product may be applied;

7. Treated lentil fields may not be grazed and crop forage may be not be used for feed purposes;

8. All applicable directions, precautions, and restrictions on the EPA-registered label must be followed;

9. Residues of dinoseb from the above use are not expected to exceed 0.1 ppm in or on lentils. Lentils with residues not in excess of this level may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health and Human Services, has been advised of these actions;

10. The EPA shall be informed immediately of any adverse effects resulting from the use of dinoseb in connection with these exemptions; and

11. Idaho and Washington shall each be responsible for ensuring that all of the provisions of its specific exemption are met and each must submit a report summarizing the results by December 31, 1980.

(Sec. 18 as amended 92 Stat. 819; (7 U.S.C. 136))

Dated: October 16, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80-33172 Filed 10-23-80; 8:45 am]

BILLING CODE 6560-32-M

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[PH-FRL 1641-3; OPP-180509]

Kentucky; Crisis Exemption for Ridomil on Tobacco

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA gives notice that the Kentucky Department of Agriculture (hereafter referred to as "Kentucky") availed itself of a crisis exemption for the use of Ridomil 2E on tobacco in the northeastern counties of Kentucky for the control of blue mold.

DATE: Kentucky initiated the crisis exemption on August 7, 1980.

FOR FURTHER INFORMATION CONTACT: Libby Welch, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-124, 401 M St., SW., Washington, D.C. 20460 (202-426-0223).

SUPPLEMENTARY INFORMATION: On August 7, 1980, Kentucky informed EPA that it had initiated a crisis exemption for the use of Ridomil 2E, a systemic fungicide which contains the active ingredient methyl ester of N-(2,6-dimethylphenyl)-N-(methoxyacetyl)alanine, on tobacco to control blue mold. Kentucky reported that it declared the crisis as soon as it discovered that the blue mold infestation was reaching epidemic proportions in the northeastern counties of the State and the infestations were moving westward. According to Kentucky, dry weather and sunlight had slowed the disease down in most of the State, but that the State was anticipating several days of heavy rainfall as a result of Hurricane Allen. According to Kentucky, no registered pesticide had the efficacy or mode of action as a foliar spray to protect the tobacco in case of extended rainy periods as well as provide protection from the existing outbreak.

Ridomil was used at a rate of 1 pint of product in 40-50 gallons of water per acre as a foliar spray. Application was made on a 7-day spray schedule until lesions stopped sporulating, with a maximum of 4 applications. Farmers were encouraged to cut, wilt, and house tobacco if infection was in the crop and the crop was within 14 days of harvest. A 14-day pre-harvest interval was imposed. Kentucky indicated that the duration of the crisis was solely dependent upon weather conditions.

(Sec. 18 as amended 92 Stat. 819 (7 U.S.C. 136))

Dated: October 16, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80-33174 Filed 10-23-80; 8:45 am]

BILLING CODE 6560-32-M

[PH-FRL 1641-2; OPP-180507]

Maine; Crisis Exemption for Ridomil on Potatoes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA gives notice that the Maine Department of Agriculture (hereafter referred to as "Maine") has availed itself of a crisis exemption for the use of Ridomil to control late blight on a maximum of 10,000 acres of potatoes. Because the program was expected to last for more than 15 days, Maine submitted a request for a specific exemption for a continuation of this use.

DATE: Maine anticipates that the need for the program will extend until September 30, 1980.

FOR FURTHER INFORMATION CONTACT: Jack E. Housenger, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-107, 401 M St., SW., Washington, D.C. 20460 (202-426-0223).

SUPPLEMENTARY INFORMATION: Maine reports that it was in the process of requesting a specific exemption for the use of Ridomil, which contains the active ingredient methyl ester of N-(2, 6-dimethylphenyl)-N-(methoxyactetyl) alanine, for use on potatoes to control late blight, when it became apparent that there was insufficient time for a specific exemption and so immediately initiated a crisis exemption on August 19, 1980. According to Maine, moisture and temperature conditions during this growing season have resulted in a severe infection of late blight fungus on approximately 10,000 acres of potatoes. Maine reports that there are seven potato late blight fungicides currently available in that State. However, they must all be present in sufficient concentration on all parts of the plant prior to the arrival of spores of the late blight fungus to be effective and all have a residual effective life of seven days, or less, during periods of heavy rain. This means the pesticides would have to be reapplied whenever weather conditions favored late blight infection. Maine states that Ridomil, a systemic fungicide, provides eradication properties as opposed to the preventive characteristics of the currently registered products. According to Maine, normal loss from late blight with preventive fungicides would be about 5 percent or less. With severe conditions prevailing this year and with use of preventive materials, Maine anticipates losses of 50 percent. With use of Ridomil, Maine estimates that losses could be held to less than 10 percent.

Maine is using Ridomil 2EC at a rate of ½ pint of the ingredient per acre at 7-day intervals for two eradicative treatments and then 2 or 3 protective applications at a somewhat higher rate at 14- to 17-day intervals. Application is being made by ground or air equipment. State-certified applicators, or persons under their direct supervision, are making the applications after personnel from the University of Maine Cooperative Extension Service have determined that conditions warrant treatment. Maine is requiring that the pesticide be kept out of lakes, streams, or ponds; that it may not be applied when conditions favor drift; and that care be taken to prevent contamination of water by the cleaning of equipment or disposal of wastes. A pre-harvest interval of 7 days has been imposed. Maine has specified that treated fields may be replanted to potatoes immediately, but that other crops may not be planted in treated fields for 18 months. Maine has requested a specific exemption to continue the treatment.

(Sec. 18 as amended 92 Stat. 819 (7 U.S.C. 136))

Dated: October 16, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80-33173 Filed 10-23-80; 8:45 am]

BILLING CODE 6560-32-M

[PH-FRL 1641-5; OPP-180501]

Maryland Department of Agriculture; Issuance of Specific Exemption for Azinphos-Methyl on Carrots

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted the Maryland Department of Agriculture (hereafter referred to as the "Applicant") a specific exemption to use azinphos-methyl on 700 acres of carrots for processing in Maryland to control the carrot weevil. The specific exemption is issued under the Federal Insecticide, Fungicide, and Rodenticide Act.

DATE: The Specific exemption expires on September 30, 1980.

FOR FURTHER INFORMATION CONTACT: Patricia Critchlow, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-107, 401 M St., SW., Washington, D.C. 20460, (202-426-0223.)

SUPPLEMENTARY INFORMATION: In the larval stage, the carrot weevil is a fat, white, legless grub causing irregular zigzag grooves over the surface or burrows through the roots of carrots. According to the Applicant, the carrot weevil injures seedling carrots and renders mature carrots unacceptable for marketing. When carrots are placed in cold storage, additional damage to the carrots may be caused by fungal organisms that enter through weevil feeding injuries.

There are no registered pesticides or nonchemical methods for control of the carrot weevil. Without an effective means of control, the Applicant estimates an economic loss of $360,000 on carrots.

The Applicant proposed to use Guthion 2S or Guthion 50 WP at a rate of one-half pound of the active ingredient (a.i.) azinphos-methyl per acre on processing carrots. Data are available to indicate that azinphos-methyl is efficacious in controlling the carrot weevil at this rate.

EPA has determined that residues of azinphos-methyl are not expected to exceed 0.5 part per million (ppm) on processing carrots. This level has been judged adequate to protect the public health. No unreasonable adverse effect to the environment is anticipated from this program.

After reviewing the application and other available information, EPA has determined that the criteria for an exemption have been met. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until September 30, 1980, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following restrictions:

1. The products Guthion 2S, EPA Reg. No. 3125-123, or Guthion 50 WP, EPA Reg. No. 3125-193, are authorized for use on processing carrots. If an unregistered label is used, it must bear the identical precautions and restrictions which appear on the registered product label;

2. Application may be made by ground equipment at a rate of one-half pound a.i. in a minimum of 30 gallons of water per acre or, if aerial application is used, in a minimum of 2 gallons of water per acre at no less than 10-day intervals;

3. A maximum of six applications may be made;

4. A maximum of 700 acres of processing carrots may be treated;

5. A maximum of 2,100 pounds of azinphos-methyl may be applied;

6. A 35-day pre-harvest interval shall be observed;

7. Applications may be made by qualified private and commercial applicators;

8. Processing carrots with residues of azinphos-methyl not exceeding 0.5 ppm in or on them may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health and Human Services, has been advised of this action;

9. The use of treated carrot tops for food or feed is prohibited;

10. All precautions, directions, and restrictions addressed on the label must be adhered to;

11. The EPA shall be immediately informed of any adverse effects resulting from this specific exemption;

12. The Applicant is responsible for ensuring that all provisions of this specific exemption are followed; and

13. A final report summarizing the results of this program must be submitted to EPA by December 31, 1980.

(Sec. 18, as amended, 92 Stat. 819 (7 U.S.C. 136))

Dated: October 10, 1980.

James M. Conlon,

Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80-33176 Filed 10-23-80; 8:45 am]

BILLING CODE 6560-32-M

[PH-FRL 1641-4; OPP-180508]

Oklahoma; Crisis Exemption for Botran on Peanuts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA gives notice that on July 22, 1980, Oklahoma initiated a crisis exemption for the use of Botran 75W on a maximum of 15,000 acres of peanuts in ten counties in Oklahoma to control Sclerotinia blight. Oklahoma had previously requested a specific exemption for this use.

DATE: Oklahoma anticipates that the program will need to continue through September.

FOR FURTHER INFORMATION CONTACT: Libby Welch, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-124, 401 M St. SW., Washington, D.C. 20460 (202-426-0223).

SUPPLEMENTARY INFORMATION: Oklahoma initiated a crisis exemption for the use of Botran 75W, which contains the active ingredient 2,6-dichloro-4-nitroaniline, on peanuts in the counties of Bryan, Caddo, Carter, Grady, Hughes, Johnson, Lincoln, Love, Marshall, and Stephens, to control Sclerotinia blight. Oklahoma had requested a specific exemption for this use but had not yet received a response, and so initiated the crisis exemption.

Oklahoma reports that there are no currently registered pesticides for control of Sclerotinia blight on peanuts. According to Oklahoma, Botran is effective for this purpose and should present no adverse effects to the environment. According to Oklahoma, Sclerotinia blight caused an estimated reduction in yield of 3,599,460 pounds of peanuts, valued at $755,887 in 1979.

Oklahoma is using Botran as a preventive program, either applied once at the rate of 4 to 5 pounds of formulated product in 30 to 50 gallons of water per acre with a ground rig, or applied twice (split application) at the rate of 2 to 2½ pounds of formulated product in 30 to 50 gallons of water per acre applied at 14-day intervals. As a curative program Botran is being applied once after the disease appears at the rate of 4 pounds of formulated product in the first 30 minutes of the overhead irrigation set. Oklahoma has imposed a 30-day pre-harvest interval and is holding growers responsible for control of tail water or runoff water when it is a problem. Oklahoma has requested a specific exemption for the continuation of this program.

(Sec. 18 as amened 92 Stat. 819 (7 U.S.C. 136)

Dated: October 10, 1980.

James M. Conlon,

Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80-33175 Filed 10-23-80; 8:45 am]

BILLING CODE 6560-32-M

[OPP-40008; PH-FRL 1641-8]

Recertification of Private Applicators Certified Under a Federal Certification Program; Statement of Policy on Recertification Criteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice explains EPA's policy for approving or disapproving training courses designed for recertifying private applicators who are certified under a Federal pesticide applicator certification program.

EFFECTIVE DATE: This notice becomes effective October 24, 1980.

FOR FURTHER INFORMATION CONTACT:

1. John MacDonald, Senior Regional Coordinator (TS-770-M), Office of Pesticide Programs, Environmental

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Protection Agency, 401 M St., SW., Washington, D.C. 20460, (202–472–9407).
2. Leo Alderman, Acting Chief, Toxics and Pesticides Branch, Region VII, Environmental Protection Agency, 324 East 11th St., Rm. 1500, Kansas City, Missouri 64106, (816–374–3036).
3. Lou Johnson, Chief, Toxic Substances Branch, Region VIII, Environmental Protection Agency, 1860 Lincoln St., Suite 103, Denver, Colorado 80295, (303–837–3926).

SUPPLEMENTARY INFORMATION: The following is EPA's policy on approving or disapproving training courses for the recertification of private pesticide applicators. This policy is only applicable in Nebraska and Colorado or on Indian reservations in Nebraska and Colorado where EPA is conducting a Federal pesticide applicator certification program. This does not preclude individual States from adapting these criteria or variations of these criteria, if they so desire.

The Administrative Procedures Act (5 U.S.C. 553(b)) provides that the solicitation of comments is not required of Federal agencies for "interpretative rules, general statements of policy, or rules of agency organization, procedure or practice." EPA has determined that this notice falls within this exemption.

Nevertheless, interested parties in States in which EPA is conducting a Federal pesticide applicator certification program were given informal opportunity to comment on the criteria. Both EPA Regions VII and VIII sent draft copies of the criteria to the cooperating universities, the Nebraska and Colorado Departments of Agriculture and many agricultural associations. Copies were also available at the two Regional Offices and at the Lincoln, Nebraska, field office.

Four comments were received, consisting of minor suggestions for clarification of the policy and for changes in the criteria for approval, and in the procedures for withdrawing approval, of recertification training courses. EPA has determined that the major points raised are appropriate and this final policy has been revised accordingly. Copies of these comments are available for public inspection during normal business hours at the previously listed locations.

Introduction

In October 1972, Congress amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). One of the major provisions of the amended FIFRA concerns certification of applicators of restricted use pesticides. The certification program is intended to ensure that applicators have sufficient knowledge to prevent adverse human health and environmental effects in or near areas they treat with such pesticides.

EPA issued, published in the Federal Register of October 9, 1974, "Standards for Certification of Pesticide Applicators," 40 CFR 171.1–6. The minimum standards an applicator must meet in order to be certified as a private applicator are listed in 40 CFR 171.5 "Standards for Certification of Private Applicators." Additional standards for private applicators who have a supervisory role are listed in 40 CFR 171.6.

During the fall of 1977, the EPA began implementing Federal pesticide applicator certification programs in Nebraska and Colorado and on Indian Reservations in those States since no approved certification plans were in effect there. EPA issued, published in the Federal Register of June 8, 1978, final regulations, 40 CFR 171.11, governing Federal applicator certification programs. Under these regulations applicators who use or supervise the use of restricted use pesticides in such States or on Indian reservations are required to be certified.

In order to become certified as a private applicator under these rules, the applicator has the option to:

(1) Complete an Administrator-approved training course;

(2) Pass a written examination; or

(3) Complete an Administrator-approved self-study plan. A private applicator certification is valid for three years from the date of issuance and only in the State in which it is issued.

Recertification

Under 40 CFR 171.11(d)(3) a certified private applicator may qualify for recertification by completing any approved certification option during the 12-month period preceding the expiration of his certification. To insure that all training is current, it will be reviewed and EPA-approved on an annual basis.

Recertification serves two purposes: (1) it helps ensure that private applicators continue to meet the needs of changing technology; and (2) it helps ensure that applicators maintain a continuing ability to use pesticides safely and properly. Prior to recertification in those States where the Agency is administering certification programs, EPA is reponsible for ensuring that private applicators either successfully complete an approved training course, pass the required examinations, or sucessfully complete an approved self-study program.

EPA will provide certified private applicators opportunities to take the required written examinations or complete an approved self-study program for recertification. However, EPA is not able at this time to provide training for recertification. The availability of the training option will be dependent upon the willingness and capability of public or private organizations to develop programs which can be approved by EPA recertification.

Following is a description of the minimum criteria for training courses to recertify private applicators and the procedures for obtaining EPA approval of such a training course.

Standards for an Acceptable Training Course

Topics To Be Addressed

1. *Applicable State and Federal pesticide laws and regulations.* This presentation should include a general review of the FIFRA requirements and its regulations and any applicable State laws which apply to pesticide application, storage, transportation, and disposal. Special attention must be given to changes and additions (including amendments to FIFRA, new or revised regulations, and Agency policy statements) that have taken place during the three-year period preceding the training course.

2. *Environmental precautions.* One of EPA's major responsibilities, in addition to individual applicator safety, is protection of the environment from pollutants, including pesticides. A review of precautions applicators should take to prevent contamination of the environment should be included in the presentation. This review should be directly related to the major restricted use pesticides expected to be used by the applicator group.

3. *Calibration.* One of the major problems associated with pesticide use is maintaining proper calibration of pesticide application equipment and related records. Each training course should include a presentation on pesticide application equipment calibration, including sample problems. Course sponsors are also encouraged to provide information on preparation of field records and of their value to the applicator.

4. *Label review.* Experience has shown problems in label interpretation and understanding. A review of some of these problems should be included. Problem areas will be identified jointly by the trainer and EPA.

5. *Pest identification.* Before choosing and applying a specific pesticide, the applicator must first identify the target pest(s) to be treated and any non-target species (insects, plants, etc.) that may be present. Each presentation should include a section on the recognition of major pest(s) and beneficial organisms (i.e., insects, plants, etc.) and the damage caused by the pest(s). Applicators should be provided with information on sources of identifying problem pests. Each presentation does not have to include identification of all pests. For example, the course may provide training on identification of new or prevalent pests (insects, weeds, plant disease, etc.) for a particular crop or commodity.

6. *Restricted use pesticides.* One of the main provisions of the amended FIFRA is that applicators of pesticides classified for restricted use be competent with respect to the use and handling of these more hazardous pesticides. A part of being competent is awareness of characteristics, hazards, and safety factors of the restricted use pesticides most commonly used by the applicator. This discussion should include:

a. The relative hazards, including special environmental precautions as related to the specific pesticide category.

b. Persistence, volatility, potential phytotoxicity, drift potential, human hazards, special formulation hazards and precautions.

c. Information on special calibration and application techniques (for example, Ultra Low Volume (ULV) application, or use of adjuvants).

d. Safety factors and proper remedial procedures which are necessary for prevention and treatment of pesticide poisoning.

e. Information that misuse of any restricted use pesticide could result in civil or criminal penalties, and could also contribute to the loss of that product through cancellation.

7. *Integrated Pest Management (IPM).* EPA's responsibilities include not only regulating the use of pesticides, but also encouraging the most efficient use of available pesticides and only using them when needed. Integrated Pest Management (IPM) directly relates to this responsibility.

Although EPA cannot require IPM training, individual organizations are encouraged to provide applicators with information on the concepts of IPM, and must inform the trainee of the availability of IPM instructional materials.

Applicator Participation in Training

When developing applicator training courses, a major consideration must be the amount of knowledge retained by the applicator. Trainees learn best when they are actively involved in the training course. One method of increasing the information retention of the individual is to incorporate procedures which require applicators to actually participate in the training course.

Each training course to be approved by EPA for recertification must include a procedure requiring each individual to participate in a learning exercise. The Sample Applicator Participation Options given below outlines some examples of individual applicator participation procedures which EPA will accept. Training methods not included in the Sample Applicator Participation Options or variations of these methods may be submitted to EPA for consideration. Each method submitted to EPA will be considered on its own merit as it relates to its ability to increase an applicator's information retention.

Organizations should consider audience size when selecting a training method. Group size can have a significant effect upon trainee participation.

Mere passive attendance at a training course will not be considered as successful completion. Attendees should be made aware that failure to participate in the training course and to complete all course requirements will result in denial of recertification.

Active participation may be indicated by the trainee submitting either an approved demonstration article(s) (see Sample Applicator Participation Options below) or an attestation statement (see Sample Attestation Form below). The document which is used must be submitted with EPA's Pesticide Applicator Certification Form, to the Agency. The Agency will review and maintain the submitted documents. In most cases, submission would be expected within 10 days after completion of the training program.

The trainer is responsible for assuring that each applicator participates in and completes the approved training course. The trainer indicates that course requirements have been satisfied by signing the demonstration article or an attestation statement unless there is an EPA/Trainer agreement stating that the trainer's signature on the Pesticide Applicator Certification Form verifies applicator's attendance and participation. In that instance, the trainer is only required to sign the Certification Form. In all cases the Certification Form must be signed by both parties.

EPA Approval of Training Courses

Each training course to recertify private applicators under a Federal certification program will be approved in advance by the appropriate EPA regional office. Only under special conditions will a course be given approval after it is held. The proposal of a course for repetitive presentation will only require one submission for approval.

Each training course must meet the criteria listed above. The training course must be presented at the 12th grade level of comprehension, with provision for differing cultural and educational conditions if necessary. EPA will determine if extenuating conditions for exception to the 12th grade rule exist after consultation with respective State education authorities.

Proposed training courses will be submitted to the appropriate Regional Office for its review far enough in advance of the proposed course to allow the Agency 20 working days to review for approval. When submitting proposals, the sponsoring organization(s) should also consider the time needed to modify the proposed course if modifications are requested by the Agency.

This submission should include, but is not limited to, the proposed curriculum, estimated time allotted per seqment, training aids, instructional methodology, and applicator participation method to be used. The Regional Office may at its discretion request that other information concerning the course be submitted.

EPA does not intend to monitor all private applicator training courses; however, the Agency will monitor courses selected at random. The trainers or training agency must notify the Agency of all scheduled courses at least one week in advance to allow sufficient time for planning monitoring activities. This notification will include the time, date, and location of the training site(s).

EPA retains the authority to withdraw approval of a training course not conducted in accordance with the Agency's approval conditions. In the event a training course did not appear to satisfy the approved conditions, individual course sponsors will be given an opportunity to confer with the Pesticide Program Branch Chief prior to any action to withdraw course Approval.

If after the opportunity for such conference, the Branch Chief decides to sustain the recommended disapproval, he will so notify the training sponsor and state the reasons and conditions for such action. The course sponsor then has 10 days to submit a written appeal

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to the Pesticide Program Division Director. The Division Director will issue a final decision on the appeal in writing within 10 days of his receipt.

If the Regional Pesticide Program Branch Chief receives evidence that an applicator has not completed a recertification program, he may deny renewal of the applicator's certification after having provided the applicator an opportunity for informal consultation. If the Branch Chief decides not to renew the applicator's certification, he will notify the applicator in writing giving the reason(s) for the denial. The affected applicator has 10 working days to submit a written appeal of that decison to the Pesticide Program Division Director. The Division Director will issue a final decision on the appeal in writing within 10 days of his receipt.

Sample Applicator Participation Options

I. *Incomplete outline.* The instructors or sponsors of the training session develops an outline for each section of the course. Only the main headings and subheadings would be on the sheet distributed to the participants. It would be the responsibility of each individual participant to complete the remaining portions of the outline. The presentation should contain more in the outline and should also be designed to require the individual applicator to use experience and logic before completing the outline.

The following is an example of an acceptable incomplete outline.

I. Applicable State and Federal Pesticide Laws and Regulations.
A. State Laws.
1. Types of State Laws.
a.
b.
2. Types of Registration.
a.
b.
3. Prohibited Acts.
a.
b.
B. Federal Laws.
1. Types or Names and Administering Agency(les).
a.
b.
2. FIFRA Major Provisions.
a.
b.
c.
d.
3. Prohibited Acts (FIFRA).
a.
b.
c.
C. Recent Amendments and Regulations.
1. 1978 Amendments to FIFRA (major ones).
a.
b.
i.
ii.
c.
2. New Regulations and Policies.
a.
b.

II. *Worksheets.* Worksheets are prepared for each area of discussion. Attempts should be made to provide problems and questions suitable to the majority of the applicators' farming practices. For labeling, labels should be present so each attendee can analyze and answer questions relating to the label. Problems dealing with calibration should be developed so the answer can be worked out by the individual applicant. Worksheets should be completed on an individual basis in order to require the individual applicator to think for himself and to supply the correct answers, thereby reinforcing the learning process. After each applicator has completed this worksheet, there must be an instructor-led group discussion of each problem and question including the reasons why an answer is right, why it is wrong. This method is readily adaptable to large audiences.

III. *Group problem-solving.* Depending on the number of attendees, the main conference can be divided into smaller discussion groups after formal training is completed. Each discussion group is given a pesticide application problem, including all of the particulars relating to this problem. (For example, if discussing a weed problem: the weed(s) of concern, weather conditions, soil conditions, human and environmental factors, land area of concern, choice of pesticide(s), use of integrated pest management methods, potential legal problems, equipment available, and miscellaneous factors.) Members of the small groups would then discuss the problem among themselves and come up with a solution. Each group's solution to the problem would then be discussed and reviewed before the entire conference. This method of applicator participation provides some assurance that each applicator will participate in the smaller groups. It also allows for the applicator's individual experience and gives him the opportunity to learn from his peers.

It would be the responsibility of the trainer or an EPA official to ensure that each individual applicator fully participated in the course and completed all course requirements. If the trainer makes the determination, he must maintain a record of the program and a summary of points reviewed in the discussion.

The following is a sample of an attestation statement that meets the Agency's requirements.

Sample Attestation Statement

Name: _____
Address: _____
City/Town: _____
County: _____
State: _____

"I hearby swear (or affirm) that I have completed an approved pesticide applicator training program: that I understand and can apply the information presented therein: that I understand the significance of labeling, including the label: and that I understand my legal responsibilities for the use of pesticides in accordance with label instructions and warnings."

Signature of Applicant _____
Certification Number _____
Date _____

EFFECTIVE DATE: Since initial certification of many private applicators in Nebraska and Colorado is scheduled to expire in the near future, it is necessary for this policy on recertification to be implemented as soon as possible. Accordingly, this policy will become effective on October 24, 1980.

Dated: October 14, 1980.

Gene A. Lucero,
Acting Regional Administrator, Region VIII.

Dated: October 8, 1980.

Kathleen Q. Canin,
Regional Administrator, Region VII.

[FR Doc. 80-33178 Filed 10-23-80; 8:45 am]
BILLING CODE 6560-32-M

[FRL 1643-5]

Jurisdiction of Dredged and Fill Program: Consolidated List of Special Cases

AGENCY: Environmental Protection Agency.

ACTION: Notice of consolidated list of special cases.

SUMMARY: This notice lists special cases which have been developed pursuant to a March 23, 1980, Memorandum of Understanding (MOU) between the Chief, U.S. Army Corps of Engineers (COE) and the Administrator of the Environmental Protection Agency (EPA). This MOU establishes policies and procedures that the COE and EPA will follow in resolving geographical jurisdictional problems arising in connection with the Section 404 program regulating the discharge of dredged or fill materials into the waters of the United States. Special cases are those situations where significant issues or technical difficulties exist concerning the jurisdictional scope of Section 404 waters, the environmental consequences of jurisdiction are significant, and EPA has declared a special interest. The COE will refer jurisdictional questions involving these special cases to EPA for determination of extent of jurisdiction.

EFFECTIVE DATE: This list of special cases is effective October 24, 1980.

FOR FURTHER INFORMATION CONTACT: Joseph A. Krivak, Director, Criteria and Standards Division (WH-585) Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 (202/755-0100).

SUPPLEMENTARY INFORMATION: On September 5, 1979, Attorney General Civiletti issued an opinion that the Administrator of EPA has the ultimate administrative authority to determine the jurisdictional scope of waters of the United States for purposes of Section 404 of the Clean Water Act. In order to administer the Section 404 program efficiently and effectively under this opinion, EPA and the COE entered into an MOU on March 23, 1980, which establishes specific procedures to ensure that the public will receive prompt, definitive answers to inquiries about jurisdiction. The MOU was published in the **Federal Register** on July 2, 1980 (45 FR 45018).

The Corps of Engineers has significantly greater resources at the field level than EPA's 404 Program, and in most cases, the methods and standards for making jurisdictional determinations are well-established. Thus, the MOU provides that the District Engineer will continue to make the great majority of jurisdictional decisions. However, the MOU recognizes that certain cases may present scientific, technical or policy complexities. Accordingly, the MOU allows EPA, after consultation with the COE, to delineate such categories or types of cases (i.e., special cases) which will be referred to EPA for a decision. EPA is today publishing the initial list of special cases with descriptions, as required by the MOU.

When a pre-permit inquiry or permit application is presented to the District Engineer, he will first determine if a special case is involved. If he decides that the inquiry does not involve a special case, he will make the jurisdictional determination; if it does involve a special case, he will refer the matter to EPA. If the District Engineer doubts the status of a case, he shall treat it as a special case or consult with EPA as to its status. He may, if he wishes, consult with EPA even when no special case is involved. Of course all determinations, whether made by the COE or EPA, will be based on the applicable law and regulations defining waters of the United States.

We anticipate that the precedents established under the special case procedure, together with joint scientific research and consultation, will eventually reduce the number of special cases. Both agencies pledge to administer their joint Section 404 responsibilities fairly, fully, efficiently, and expeditiously.

The list of special cases was developed in consultation with the COE to make certain that the cases were clearly enough defined to ensure proper referral. We have also attempted to describe them in an understandable way for the public. For example, we describe the bottomland hardwoods covered by the first special case by the use of Society of American Forester's forest cover types because such types are familiar to foresters and lumber companies having an interest in bottomland hardwood areas. However, we stress that inclusion of a category on this list does not mean that every area falling within the category is a water of the United States under the Clean Water Act; it merely means that EPA has the opportunity to make jurisdictional determinations on a case-by-case basis, by applying published regulations to the facts of the case.

The second special case involves a specific California site commonly known as the Bolsa Chica Gap. The COE South Pacific Divison and EPA Region IX have agreed to list this area as a special case because of technical difficulties relating to past activities by man.

Dated: October 17, 1980.

Eckardt C. Beck,
Assistant Administrator for Water and Waste Management.

Consolidated List of Special Cases

1. Bottomland and hardwood areas regardless of size, containing one or more of the following Society of American Foresters' forest cover types (*Forest Cover Types of North America.* 1979.) (Those types indicated with an asterik (*) frequently occur within the floodplain as "hummocks" or "patches" or "islands" where minute changes in factors such as water, elevation and soils determine their presence. However, their ability to adapt to hydrological changes and prolonged flooding qualify them as potential Section 404 wetlands.)

River Birch—Sycamore, Type 61
Silver Maple—American Elm, Type 62
Cottonwood, Type 63
Pin Oak—Sweetgum, Type 65
Laurel Oak—Willow Oak, Type 88
Sweetgum—Nuttall Oak—Willow Oak, Type 92
Sugarberry—American Elm—Green Ash, Type 93
Sycamore—Pecan—American Elm, Type 94
*Beech—Magnolia, Type 90
*Loblolly Pine—Hardwood, Type 82
*Slash Pine—Hardwood, Type 85
*Swamp Chestnut Oak—Cherrybark Oak, Type 91

A. The Lower Mississippi Valley Division will refer to EPA Regions IV and/or VI for Section 404 jurisdictional determinations those bottomland hardwood areas containing one or more of the above forest cover types in the following counties and parishes. (A plus (+) indicates that only part of the county occurs within the Division.)

Arkansas

+ Arkansas
Ashley
Bradley
Calhoun
Chicot
+ Clay
Craighead
Crittenden
Cross
Desha
+ Drew
Greene
+ Independence
+ Jackson
+ Jefferson
+ Lawrence
+ Lee
Lincoln
+ Lonoke
Mississippi
Monroe
Phillips
Poinsett
+ Prairie
+ Pulaski
+ Randolph
Sevier
St. Francis
Union
+ White
+ Woodruff

Kentucky

+ Ballard
+ Calloway
Carlisle
Fulton
+ Graves
Hickman
+ McCracken

Louisiana (parishes)

Ascension
Assumption
Avoyelles
Caldwell
Catahuula
Concordia
East Carroll
Evangeline
Franklin
Grant
Iberia
Iberville
Jefferson
Lafayette
Lafourche
La Salle
Madison
Morehouse
Orleans
Ouachita
Plaquemines
Point Coupee
Rapides
Richland
St. Charles
St. James
St. John the Baptist
St. Landry
St. Martin
St. Mary
Tensas
Terrebonne
Union
West Baton Rouge
West Carroll
West Feliciana

Mississippi

Adams
+ Alcorn
+ Amite
Attala
Benton
Bolivar
Calhoun
Carroll
Chicasaw
Choctaw
Claiborne
Coahoma
Copiah
DeSoto
Franklin
Grenada
Hinds
Holmes
Humphries
Issaquena
Jefferson
Lafayette

+ Leake	Tallahatchie
+ Lincoln	Tate
Lauderdale	Tippah
Madison	Tunica
Marshall	Union
Montgomery	Warren
+ Oktibbeha	Washington
Panola	Webster
+ Prentiss	Wilkinson
Quitman	Yalabusha
Sharkey	Yazoo
Sunflower	

Tennessee

+ Carroll	+ Henry
+ Chester	Lake
Crockett	Lauderdale
Dyer	Madison
Fayettee	+ McNairy
Gibson	Obion
Hardeman	Shelby
Haywood	Tipton
+ Henderson	Weakly

B. The COE Southwestern Division will refer to EPA Region VI for Section 404 jurisdictional determinations those bottomland hardwoods areas containing one or more of the forest cover types indicated above with an asterisk in the following counties and parishes. (A plus (+) indicates that only part of the county or parish occurs in the Division.)

Arkansas

+ Arkansas	+ Lonoke
+ Clay	+ Pulaski
+ Drew	+ Randolph
+ Independence	Sevier
+ Jackson	+ White
+ Jefferson	+ Woodruff
+ Lawrence	
+ Lincoln	

Louisiana (parishes)

+ Beauregard	+ Sabine
+ Calcasieu	+ Vernon
+ Carmeron	
+ DeSoto	

Texas

Anderson	Morris
Angelina	Nacogdoches
Bowie	Newton
Camp	Orange
Cass	Panola
Cherokee	Polk
Delta	Rains
Fannin	Red River
Franklin	Rusk
Gregg	Sabine
Hardin	San Augustine
Harrison	San Jacinto
Henderson	Shelby
Hopkins	Smith
Houston	Titus
Hunt	Trinity
Jasper	Tyler
Jefferson	Upshur
Lamar	Van Zandt
Liberty	Wood
Marion	

2. The wetlands/lowlands portion of Bolsa Chica near the City of Huntington Beach in Orange County, California, generally bordered by Edwards Street, Talbert Avenue and Huntington Beach City limits to the east, the Pacific Ocean to the west, Warner Avenue to the north, and Huntington Beach Mesa to the south. This area, which is in EPA Region IX, consists of approximately 1,200 acres.

[FR Doc. 80-33403 Filed 10-23-80; 8:45 am]

BILLING CODE 6560-29-M

[ER-FRL-1624-7]

Availability of Environmental Impact Statements

AGENCY: Office of Environmental Review (A-104) U.S. Environmental Protection Agency.

PURPOSE: This notice lists the environmental impact statements (EISS) which have been officially filed with the EPA and distributed to Federal agencies and interested groups, organizations and individuals for review pursuant to the Council on Environmental Quality's regulations (40 CFR Part 1506.9).

PERIOD COVERED: This notice includes EIS's filed during the week of October 14, 1980 to October 17, 1980.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this notice is calculated from October 24, 1980 and will end on December 8, 1980. The 30-day review period for final EIS's as calculated from October 24, 1980 will end on November 24, 1980.

EIS AVAILABILITY: To obtain a copy of an EIS listed in this notice you should contact the Federal agency which prepared the EIS. This notice will give a contact person for each Federal agency which has filed an EIS during the period covered by the notice. If a Federal agency does not have the EIS available upon request you may contact the Office of Environmental Review, EPA, for further information.

BACK COPIES OF EIS'S: Copies of EIS's previously filed with EPA or CEQ which are no longer available from the originating agency are available with charge from the following source: Information Resources Press, 1700 North Moore Street, Arlington, Virginia 22209 (703) 558-8270. (For hard copy reproduction or microfiche.)

SUMMARY OF NOTICE: This notice sets forth a list of EIS's filed with EPA during the week of October 14, 1980 to October 17, 1980. The Federal agency filing the EIS, the name, address, and telephone number of the Federal agency contact for copies of the EIS, the filing status of the EIS, the actual date the EIS was filed with EPA, the title of the EIS, the State(s) and county(ies) of the proposed action and a brief summary of the proposed Federal action and the Federal agency EIS number, if available, is listed in this notice. Commenting entities on draft EIS's are listed for final EIS's. All additional information relating to EIS's such as time extentions or reductions of prescribed review periods, withdrawals, retractions, corrections or supplemental reports is also noticed under the appropriate agency.

FOR FURTHER INFORMATION CONTACT: Kathi L. Wilson, Office of Environmental Review, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (202) 245-3006.

Dated: October 21, 1980.

William N. Hedeman, Jr.,

Director, Office of Environmental Review (A-104).

U.S ARMY CORPS OF ENGINEERS

Contact: Mr. Richard Makinen, Office of the Chief of Engineers, ATTN: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, Washington, D.C. 20314 (202) 272-0121.

Report

Fairfield harbor maintenance (report), Lake County, Ohio, October 16: This supplemental information report concerns a final EIS, #751368, filed 9-10-75, which addressed the maintenance of Fairfield Harbor, Lake County, Ohio. This report updates points of concern relating to dredging and disposal operations, (Buffalo District) (EIS Order #800792).

DEPARTMENT OF ENERGY

Contact: Dr. Robert Stern, Acting Director, NEPA Affairs Division, Department of Energy, Mail Station 4G-064, Forrestal Bldg., Washington, DC 20585, (202) 252-4600.

Final

Waste Isolation Pilot Plant, Construction, Eddy County, New Mexico, October 17: Proposed is the construction and opertion of a waste isolation pilot plant for the defense transuranic nuclear wastes (TRU), experimental research and development with high level waste forms and for the potential disposal of up to a thousand spent fuel assemblies in an intermediate scale facility. The site under consideration is located in Eddy County, New Mexico. Seven alternatives are considered which include: no action, alternatives to TRU-waste disposal, alternatives for the intermediate-scale facility, alternative time schedules and potential alternative locations (DOE/EIS-0026). Comments made by: HEW, DOI, EPA, NRC, and State and local agencies. (EIS Order No. 800794.)

Extension: The review period for the above EIS has been extended until December 8, 1980 (No. 800794).

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Room 7274, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, DC 20410, (202) 755-6300.

Droft

Barrington Place Subdivision Mortgage Insurance, Fort Bend County, Tex., October 15: Proposed is the issuance of HUD home mortgage insurance for the Barrington Place Subdivision in Fort Bend County, Texas. The development would encompass 400 acres and contain 1,625 single family dwelling units. In addition the development will include school sites, commercial reserves, and high density reserves (HUD-RO6-EIS-80-5D). (EIS Order No. 800791.)

Final

Southwyck Subdivision, Mortage Insurance, Brazoria County, Tex., October 14: Proposed is the issuance of HUD home mortgage insurance for the Southwyck Subdivision in Brazoria County, Texas. The development would encompass 1863 acres and would include construction of primarily single-family dwellings. Also included would be commercial reserves, apartments, school sites, and amenity areas with greenbelts and open spaces (HUD-RO6-EIS-80-9F). Comments made by: FEMA, EPA, USDA, DOT, COE, HEW, AHP, DOI, and State and local agencies. (EIS Order No. 800789.)

The following is a community development block grant statement prepared and circulated directly by applicants pursuant to section 104(H) of the 1974 Housing and Community Development Act. Copies may be obtained from the Office of the Appropriate Local Executive. Copies are not available from HUD.

Draft

Detroit/Hamtramck Central Industrial Park, UDAG, Wayne County, Mich., October 17: Proposed is the awarding of a UDAG to the Cities of Detroit and Hamtramck, Wayne County, Michigan, for the construction of a central industrial park. The project would initially consist of acquisition, relocation, demolition and site preparation of 465 acres. The industrial park would include water, sewer service, drainage, transportation power, communication and other facilities. The alternatives considered include: (1) no action, (2) residential use of the site, (3) a smaller site, and (4) other sites. (EIS Order No. 800795.)

DEPARTMENT OF THE INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256, Interior Bldg., Department of the Interior, Washington, DC 20240, (202) 343-3891.

Fish and Wildlife Service

Extension: Charles M. Russell National Wildlife Refuge, MT, published FR September 19, 1980, No. 800679—review period extended until December 12, 1980.

INTERSTATE COMMERCE COMMISSION

Contact: Mr. Carl Bausch, Chief, Section of Energy and Environment, Interstate Commerce Commission, Room 3371, 12th and Constitution Ave., N.W., Washington, DC 20423, (202) 275-7658.

Report

Golden Triangle RR, C/O (Report), Lowndes County, Miss., October 15: This supplemental information report concerns a final EIS, No. 800422, filed 6-6-80, which addressed the construction and operation of a shortline, common carrier railroad in Lowndes County, Mississippi. The report addresses a slight alignment modification. (Finance Dockets 29170F and 29220.) (EIS Order No. 800790.)

NUCLEAR REGULATORY COMMISSION

Contact: Mr. Voss A. Moore, Assistant Director for Environmental Projects, Nuclear Regulatory Commission, P-518, Washington, DC 20555, (301) 492-8446.

Final

Dresden Nuclear Power Station, Unit 1, Morris, Grundy County, Ill., October 17: Proposed is primary cooling system chemical decontamination at Dresden Nuclear Power Station, Unit 1, located near Morris, Grundy County, Illinois. The decontamination will involve the circulation of a decontamination solution through the system to dissolve a thin layer of radioactive corrosion products which have accumulated during the 20-year operation of Dresden 1. The alternatives considered: (1) mechanical cleaning, (2) water flushing, (3) operational techniques, and (4) chemical cleaning (NUREG-0686). Comments made by: COE, USDA, FERC, HUD, HEW, EPA, State and local agencies, groups, individuals and businesses. (EIS Order No. 800796.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environment and Safety, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590, (202) 426-4357

Federal Highway Administration

Final

US 2, Churches Ferry to Devils Lake, Benson and Ramsey Counties, N. Dak., October 15: Proposed is construction of US 2 a two-lane roadway parallel to the existing roadway from the junction of US 281 and US 2 (just west of Churchs Ferry) to the existing four lane road way (just west of Devils Lake). The project will provide a four lane divided highway approximately 18 miles long. The project will require additional right-of-way. The alternatives consider no action and several alignments. The project is located in Benson and Ramsey Counties, North Dakota. The cooperating agency is the State of North Dakota. (FHWA-ND-EIS-79-01F). Comments made by: DOI, HUD, EPA, COE, State and local agencies businesses. (EIS Order No. 800793.)

Final

Correction: The following EIS should have appeared with the Notice of Availability published in the October 20, 1980 Federal Register The review period began on October 17, 1980 and will terminate on November 17, 1980.

I-440, From I-440 to I-24, Nashville, Davidson County, Tenn., October 7: Proposed is the improvement of crosstown transportation in Nashville, Davidson County, Tennessee. The project, to be known as I-440, has been planned to provide the principal high capacity facility for the circumferential travel demand. Five alternatives are presently under study which include: 1) present design, a six-lane limited-access highway, 2) reduced facility, four lane limited-access, 3) signalized intersections and additional turn lanes where needed, and 4) no-build. The build alternatives include a two and one-half mile long bikeway. (FHWA-TN-EIS-78-06F). Comments made by: USDA, DOI, AHP, COE, HEW, DOT, DOE, EPA, State and local agencies groups. (EIS Order No. 800753.).

Correction: A report was published in the Federal Register notice on October 20, 1980, entitled, I-40, Extension, I-40/I-95 the Wilmington, NC. The accession number was incorrect and should have been 800781.

[FR Doc. 80-33304 Filed 10-23-80; 8:45 am]

BILLING CODE 6560-31-M

[OPP-50494; FRL 1566-7]

Issuance of Experimental Use Permits

Correction

In FR Doc. 80-24207, appearing on page 53567, in the issue for Tuesday, August 12, 1980, in the first column, in the second paragraph, in the fourth line, "(+)" should have read "(±)".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket Nos. 80.610; 80-611; File Nos. 2539-CM-P-79, 4032-CM-P-79]

RJN Broadcasting, Inc., and Microband Corp. of America; Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: October 6, 1980.

Released: October 14, 1980.

In re application of RJN Broadcasting, Inc., for a construction permit in the Multipoint Distribution Service for a New Station at West Lafayette, Indiana, CC Docket No. 80-610, File No. 2539-CM-P-79; and Microband Corporation of America, for a construction permit in the Multipoint Distribution Service for a New Station at Rossville, Indiana, CC Docket No. 80-611, File No. 4032-CM-P-79.

1. The Commission has before it the above-referenced application of RJN Broadcasting, Inc., filed on April 2, 1979 (accepted on Public Notice May 21, 1979) and the application of Microband Corporation of America filed on July 20, 1979 (accepted on Public Notice August 13, 1979). Both applications are for a construction permit in the Multipoint Distribution Service and both propose to operate on Channel 1 in the Lafayette, Indiana area. The applications are therefore mutually exclusive and require comparative consideration. Both applications have been amended as a result of informal requests by the Commission staff for additional

information, and no petitions to deny or other objections to either of the applications have been filed.

2. Upon review of the captioned applications, we find that both applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, that pursuant to 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:[1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, that RJN Broadcasting, Inc., Microband Corporation of America and the Chief, Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's rules.

Thomas J. Casey,

Deputy Chief, Operations Common Carrier Bureau.

[FR Doc. 80-33152 Filed 10-23-80; 8:45 am]

BILLING CODE 6712-01-M

[1] Consideration of these factors shall be made in light of the Commission's discussion in *Applications of Frank K. Spain*, 77 FCC 2d 20 (1980).

Senior Executive Committee; Appointment of Members

As required by the Civil Service Reform Act of 1978 (Pub. L. 95-454), Chairman Charles D. Ferris has appointed, effective October 6, 1980, Commissioners Tyrone Brown and Robert E. Lee to the Senior Executive Committee, Federal Communications Commission, which functions as the Performance Review Board for SES members reporting directly to the Chairman. The Commission had previously approved Chairman Ferris to serve as permanent Chairman of the Committee.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-33151 Filed 10-23-80; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL ELECTION COMMISSION

Negative Campaigns: Denial of Rulemaking Petition

AGENCY: Federal Election Commission.

ACTION: Notice of denial of rulemaking petition.

SUMMARY: The Commission announces denial of a Petition for Rulemaking filed on April 3, 1980, by the Democratic National Committee and the Democratic Senatorial Campaign Committee (45 FR 26819, April 21, 1980) regarding a proposed notice to be required on solicitations by committees conducting "negative campaigns" (i.e., in opposition to a candidate).

DATE: September 25, 1980.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Propper, Office of General Counsel, 1325 K Street NW., Washington, D.C. 20463, (202) 523-4175.

SUPPLEMENTARY INFORMATION:

Negative Campaigns: Denial of Rulemaking Petition

On April 3, 1980, the Democratic National Committee and the Democratic Senatorial Campaign Committee filed a Petition for Rulemaking with the Federal Election Commission (45 FR 26819, April 21, 1980). The Petition sought promulgation of a regulation requiring committees conducting "negative campaigns" (i.e., in opposition to a candidate) to carry a notice on solicitations informing contributors that, under a February 12, 1980, letter ruling by the Internal Revenue Service, contributions to such committees would not qualify for the standard tax credit under 26 U.S.C. 41.

The Commission invited public comment on the Petition and received comments from 12 persons and a floor statement by a U.S. Senator. All of these comments were in opposition to the Petition. The Commission also sought the comments of the Internal Revenue Service pursuant to 2 U.S.C. 438(f). The IRS took no position on the Petition but reiterated the letter ruling's interpretation that 26 U.S.C. 41 does not encompass contributions to committees conducting "negative campaigns".

At its Open Meeting on September 25, 1980, the Commission voted unanimously to deny the Petition. Copies of the General Counsel's recommendation on which the Commission's decision was based and a concurring statement by Commissioner Reiche are available for public inspection and copying in the Commission's Public Records Office, 1325 K Street NW., Washington, D.C. 20463, Telephone: (202) 523-4181, (toll-free) (800) 424-9530.

Dated: October 20, 1980.

Max L. Friedersdorf,

Chairman, Federal Election Commission.

[FR Doc. 80-33147 Filed 10-23-80; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

Open Committee Meetings

Pursuant to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, November 6, 1980
Thursday, November 13, 1980
Thursday, November 20, 1980.

The meetings will convene at 10 a.m., and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, D.C.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives of five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives of five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the prevailing rate system and other matters pertinent to the establishment of prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management thereon.

These scheduled meetings will convene in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would impair to an unacceptable degree the ability of the Committee to reach a consensus on the matters being considered and disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public on the basis of a determination made by the Director of the Office of Personnel Management under the provisions of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C., section 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations thereon, and related activities. These reports are also available to the public, upon written request to the Committee Secretary.

Members of the public are invited to submit material in writing to the Chairman concerning Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information concerning thee meetings may be obtained by contacting the Committee Secretary, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street NW., Washington, D.C. 20415 (202-632-9710).

Jerome H. Ross,

Chairman, Federal Prevailing Rate Advisory Committee.

October 16, 1980.

[FR Doc. 80-33267 Filed 10-23-80; 8:45 am]

BILLING CODE 6325-01-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Proposed de Novo Nonbank Activities; Correction

The bank holding company listed in this notice has applied, and received approval pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to the application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on the application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for the application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than November 4, 1980.

A. *Federal Reserve Bank of Kansas City* (Thomas M. Hoening Assistant, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

This notice is a republication of a previous **Federal Register** document (FR Doc. 80-21015) published at page 47467 of the issue for Tuesday, July 15, 1980. The geographic scope specified in that notice was incorrect.

First Midwest Bancorp, Inc., St. Joseph, Missouri (agricultural financing): to engage in agricultural lending activities through a wholly owned subsidiary First AgCorp, Inc., St. Joseph, Missouri. The geographic area to be served is as follows: the states of Missouri, Kansas, Nebraska, and Iowa, parts of Colorado and Illinois, and Deaf Smith County, Texas.

B. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, October 17, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33222 Filed 10-23-80; 8:45 am]

BILLING CODE 6210-01-M

CAARGO Financial Corp.; Formation of Bank Holding Company

CAARGO Financial Corporation, Bentonville, Indiana, has applied for the Board's approval under Section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1) to become a bank holding company by acquiring 51.63 per cent of the voting shares of Bentonville State Bank, Bentonville, Indiana. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

CAARGO Financial Corporation, Bentonville, Indiana, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Olin W. Davis Insurance Agency, Inc., Bentonville, Indiana.

Applicant states that the proposed subsidiary would engage in the activities of general insurance in a community that has a population not exceeding 5,000. These activities would be performed from offices of Applicant's subsidiary in Bentonville and Connersville, Indiana, and the geographic areas to be served are Bentonville, and Connersville Indiana. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago.

Any views or requests for hearing should be submitted in writting and received by the Reserve Bank, not later than November 17, 1980.

Board of Governors of the Federal Reserve System, October 17, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33223 Filed 10-23-80; 8:45 am]

BILLING CODE 6210-01-M

V 45 O C 24 80 0 UMI

DeSoto Banking Corp.; Formation of Bank Holding Company

DeSoto Banking Corporation, Arcadia, Florida, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent (less directors' qualifying shares) of the voting shares of The First State Bank of Arcadia, Arcadia, Florida. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 14, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 16, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33224 Filed 10-23-80; 8:45 am]

BILLING CODE 6210-01-M

East Texas Bancorporation, Inc.; Formation of Bank Holding Company

East Texas Bancorporation, Inc., Palestine, Texas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of The East Texas National Bank of Palestine, Palestine, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 14, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 16, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33225 Filed 10-23-80; 8:45 am]

BILLING CODE 6210-01-M

First Oklahoma National Corp.; Formation of Bank Holding Company

First Oklahoma National Corporation, Stigler, Oklahoma, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of The First National Bank, Stigler, Oklahoma. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 20, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 20, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33226 Filed 10-23-80; 8:45 am]

BILLING CODE 6210-01-M

Guaranty Securities Corp.

Guaranty Securities Corporation, Minneapolis, Minnesota, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to continue to engage in the activities of selling, as agent, credit life, health and accident insurance directly related to extensions of credit by its subsidiary, Guaranty State Bank of Robbinsdale, Robbinsdale, Minnesota. These activities would be performed from Applicant's offices in Minneapolis, Minnesota, and the geographic areas to be served as parts of Hennepin County, Minnesota, including the city of Robbinsdale, and portions of the neighboring suburbs of Golden Valley, Crystal, New Hope, Brooklyn Center and northwestern Minneapolis, Minnesota. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than November 17, 1980.

Board of Governors of the Federal Reserve System, October 17, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33232 Filed 10-23-80; 8:45 am]

BILLING CODE 6210-01-M

Harris County Bankshares, Inc.; Formation of Bank Holding Company

Harris County Bankshares, Inc., Houston, Texas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares (less directors' qualifying shares) of Bank of Harris County, N.A., Houston, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 17, 1980. Any comment on an application

that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 17, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33227 Filed 10-23-80; 8:45 am]

BILLING CODE 6210-01-M

Mahaska Investment Co.; Formation of Bank Holding Company

Mahaska Investment Company, Oskaloosa, Iowa, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of The First National Bank of Summer, Summer, Iowa. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Mahaska Investment Company, Oskaloosa, Iowa, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to retain all the voting shares of MIC Leasing Co., Oskaloosa, Iowa.

Applicant states that the proposed subsidiary would continue to engage in the activities of leasing personal and real property. These activities would be performed from offices of Applicant's subsidiary in Oskaloosa, Iowa, and the geographic area to be served is Oskaloosa, Iowa. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than November 19, 1980.

Board of Governors of the Federal Reserve System, October 20, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33228 Filed 10-23-80; 8:45 am]

BILLING CODE 6210-01-M

Twin Cedars Bancorp; Formation of Bank Holding Company

Twin Cedars Bancorp, Bussey, Iowa, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of State Bank of Bussey, Bussey, Iowa. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 20, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 20, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33229 Filed 10-23-80; 8:45 am]

BILLING CODE 6210-01-M

Western Bancorp, Inc.; Formation of Bank Holding Company

Western Bancorp, Inc., Garden City, Kansas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of The Western State Bank, Garden City, Kansas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 17, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 16, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33230 Filed 10-23-80; 8:45 am]

BILLING CODE 6210-01-M

Wood & Huston Bancorporation, Inc.; Acquisition of Bank

Wood & Huston Bancorporation, Inc., Marshall, Missouri, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of South East Missouri Bank, Cape Girardeau, Missouri. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 17, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 17, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33231 Filed 10-23-80; 8:45 am]

BILLING CODE 6210-01-M

V 45 O C 24 80 UMI

FEDERAL TRADE COMMISSION

Cigarette Testing Results; Tar and Nicotine Content; Correction

ACTION: Correction.

SUMMARY: This document corrects the notice published in the Federal Register for September 23, 1980 correcting the rounded "tar" figures for Newport Lights cigarettes.

DATE: Effective immediately.

FOR FURTHER INFORMATION CONTACT: Harold Pillsbury, PAL–H–750, Federal Trade Commission, Washington, D.C. 20580. (202) 523–3559.

SUPPLEMENTARY INFORMATION: In FR Doc. 80–29311 appearing at page 63142 in the issue of Tuesday, September 23, 1980, on pages 63142 and 63143, the following correction should be made.

The word "Lights" should appear after the word "Newport" in the sentence which now reads: The rounded "tar" figures for Newport, filter soft pack, menthol cigarettes should be 9 mg. and not 10 mg.

The corrected version will therefore read: The rounded "tar" figures for Newport Lights, filter soft pack, menthol cigarettes should be 9 mg. and not 10 mg.

Carol M. Thomas,
Secretory.

[FR Doc. 80–33150 Filed 10–23–80; 8:45 am]
BILLING CODE 6350–01–M

GENERAL SERVICES ADMINISTRATION

[Intervention Notice 128; Application No. 59902]

The Pacific Gas & Electric Co., The California Public Utilities Commission; Proposed Intervention in Electric and Gas Rate Increase Proceeding

The General Services Administration seeks to intervene in a proceeding before the California Public Utilities Commission concerning the application of the Pacific Gas and Electric Company for an increase in its electric and gas rates. GSA represents the interest of the executive agencies of the U.S. Government as users of utility services.

Persons desiring to make inquiries to GSA concerning this case should submit them in writing to Leonard A. Salters, Acting Assistant General Counsel, Regulatory Law Division, General Services Administration, 18th and F Streets, NW, Washington, DC (mailing address: General Services Administration (LT), Washington, DC 20405), on or before November 24, 1980, and refer to this notice number.

Persons making inquiries are put on notice that the making of an inquiry shall not serve to make any persons parties of record in the proceeding.

(Section 201(a)(4), Federal Property and Administrative Services Act, 40 U.S.C. 481(a)(4))

Dated: October 8, 1980.

Ray Kline,
Acting Administrator of General Services.

[FR Doc. 80–33136 Filed 10–23–80; 8:45 am]
BILLING CODE 6820–AM–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meetings are announced.

Obstetrics-Gynecology Device Section of the Obstetrics-Gynecology and Radiologic Devices Panel

Date, time, and place. November 10, 9 a.m., Rm. 6821, 200 C St. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 4 p.m.; Lillian Yin, Bureau of Medical Devices (HFK–470), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7555.

General function of the Committee. The Committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes appropriate recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. Those desiring to make formal presentations should notify the contact person by November 7, 1980, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The Section will discuss the association between long-term use of intrauterine contraceptive devices (IUD's) and pelvic actinomycosis.

Applications for reimbursement. Must be received by November 3, 1980.

Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel

Date, time, and place. November 24 and 25, 9 a.m., Auditorium, 200 Independence Ave., SW., Washington, DC.

Type of meeting and contact person. Open public hearing, November 24, 9 a.m. to 10 a.m.; open committee discussion, November 24, 10 a.m. to 5 p.m.; open public hearing, November 25, 9 a.m. to 10 a.m.; open committee discussion, November 25, 10 a.m. to 5 p.m.; Max W. Talbott, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7538.

General function of the Committee. The Committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes appropriate recommendations for their regulation.

Agenda—Open public hearing. Interested persons are encouraged to present information pertinent to intraocular lenses and the intraocular lens clinical investigation (November 24) and contact lenses and contact lens products (November 25). Submission of data relative to tentative classification is also invited. Those desiring to make formal presentations should notify the contact person listed above by November 14, 1980, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their comments.

Open committee discussion. The Section will conduct reviews of premarket approval applications of intraocular lenses and will discuss other statistical/epidemiological questions pertaining to intraocular lenses (November 24); and will conduct reviews of premarket approval applications for contact lens products, prototype package inserts, and patient information booklets. Fitting guides for contact lens solutions will also be presented.

Applications for reimbursement. Must be received by November 12, 1980.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

Applications for reimbursement for participation in the meeting(s) listed above should be sent to the Office of Consumer Affairs (HFE–90), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, rather than to the Dockets Management Branch (formerly the Hearing Clerk's office) as prescribed in § 10.210 of the regulations (21 CFR 10.210). If you wish to submit an application or wish more information regarding the reimbursement program, please call 301–443–5006.

FDA has established expedited procedures for review of any application for reimbursement for participation in the meeting(s) announced in this notice. The Office of Consumer Affairs, FDA, will file any application for reimbursement for participation in the meeting(s) announced in this notice in the docket for this notice.

Dated: October 22, 1980.

Joseph P. Hile,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–33334 Filed 10–23–80; 8:45 am]
BILLING CODE 4110–03–M

[Docket No. 80F–0404]

Calgon Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Calgon Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of poly[acrylamide-[2-acrylamide-2-methylpropylsulfonate]-dimethyldially] ammonium chloride) as a component of adhesives in articles for food-contact use.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended, (21 U.S.C. 321(s), 348)) notice is given that a petition (FAP 9B3474) has been filed by Calgon Corp., Calgon Center, P.O. Box 1346, Pittsburgh, PA 15230, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of poly[acrylamide-[2-acrylamide-2-methylpropylsulfonate]-dimethyldiallyl ammonium chloride) as a component of adhesives used in articles in contact with food.

FDA has determined that the proposed action falls under § 25.1(f)(1)(v) (21 CFR 25.1(f)(1)(v)) and is exempt from the need of an environmental impact analysis report, and that no environmental impact statement is necessary. A copy of all relevant environmental impact materials may be seen in the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 15, 1980.

Sanford A. Miller,
Director, Bureau of Foods.

[FR Doc. 80–33030 Filed 10–23–80; 8:45 am]
BILLING CODE 4110–03–M

[Docket No. 80F–0398]

The Dow Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Dow Chemical Co. has filed a petition proposing that the food additive regulations be amended by revising the limitation currently set for 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride as a component of paper and paperboard in contact with aqueous and fatty foods.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B3440) has been filed by the Dow Chemical Co., Midland, MI 48640, proposing that § 176.170(b)(2) (21 CFR 176.170(b)(2)) be amended by revising the limitation currently set for 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride to provide for its use as a preservative for latex and pigment slurries as components of coatings for paper and paperboard when used in contact with food.

The agency has carefully considered the potential environmental effects of this proposed action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that document may be seen in the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 15, 1980.

Sanford A. Miller,
Director, Bureau of Foods.

[FR Doc. 80–33021 Filed 10–23–80; 8:45 am]
BILLING CODE 4110–03–M

V 45 OC 24 80 UMI

[Docket No. 80F-0248]

Monsanto Co.; Withdrawal of Petition for Food Additives

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces the withdrawal without prejudice of the petition (FAP 0B2549) proposing the safe use of the aluminum, calcium, magnesium, potassium, and sodium salts of capric, caprylic, lauric, myristic, oleic, palmitic, and stearic acids; and the zinc salts of myristic, oleic, palmitic, and stearic acids; as stabilizers in polymers used in the manufacture of food-contact articles.

FOR FURTHER INFORMATION CONTACT: Richard C. Kraska, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b), 72 Stat. 1786 (21 U.S.C. 384(b))), the following notice is issued:

In accordance with § 171.7 *Withdrawal of petition without prejudice* of the procedural food additive regulations (21 CFR 171.7), Monsanto Co., 1101 17th St. NW., Washington, DC 20036, has withdrawn its petition (FAP 0B2549). The notice was published in the **Federal Register** of June 18, 1970 (35 FR 10050), proposing (as supplemented after publication of the notice) that § 121.2566 (recodified § 178.2010) *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of the alumium, calcium, magnesium, potassium, sodium salts of capric, caprylic, lauric, myristic, oleic, palmitic, and stearic acids; and zinc salts of myristic, oleic, palmitic, and stearic acids as stabilizers in polymers used in the manufacture of food-contact articles.

Published elsewhere in this issue of the **Federal Register** is a Notice of Withdrawal of Proposal (38 FR 11096), which resulted as a consequence of this petition.

Dated: July 17, 1980.

Sanford A. Miller,

Director, Bureau of Foods.

[FR Doc. 80-33022 Filed 10-23-80; 8:45 am]

BILLING CODE 4110-03-M

Health Care Financing Administration

Pharmaceutical Reimbursement Board Final Maximum Allowable Cost Determinations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final maximum allowable cost determinations.

SUMMARY: In accordance with 45 CFR 19.5, the pharmaceutical Reimbursement Board (PRB) announces the following Final Maximum Allowable Cost (MAC) determinations: [1]

Drug	MAC limit
Potassium chloride, oral liquid, 10%	[1]$0.0030
Fluocinolone acetonide, topical solution, .01%	[1]$.1143
Fluocinolone acetonide, topical cream, .01%	[2]$.0833
Fluocinolone acetonide, topical cream, .025%	[2]$.2266
Griseofulvin, microcrystalline, oral tablet, 500 mg	[3]$.2815
Methenamine hippurate, oral tablet, 1 Gm	[3]$.1596
Dicloxacillin Sodium, oral capsules, 250 mg	[4]$.2890
Quinidine sulfate, oral tablet, 200mg	[3]$.0686
Hydrochlorothiazide, oral tablet, 25 mg	[3]$.0152
Hydrochlorothiazide, oral tablet, 50 mg	[3]$.0194

[1]Ml. [2]Gm. [3]Tablet. [4]Capsule.

DATES: The effective date of these MAC limits is December 8, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Spalding, Acting Executive Secretary, Pharmaceutical Reimbursement Board, 1-D-5 East Low Rise, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-5403.

BACKGROUND: The Pharmaceutical Reimbursement Board has been established within the Health Care Financing Administration (HCFA) to set limits on payment or reimbursement for drug products under HCFA and other HHS programs. On January 21, 1980, the Board proposed MAC limits on 12 drug products. (See 45 FR 3972.) The Board has received written comments and held a public hearing concerning MAC limits on these drugs. The Board now announces final MAC determinations for the products listed above. A summary of the written comments, the presentations at the hearings, other material on which the Board relied in determining each MAC limit and the Board's reasons for its determinations, follows.

The Board originally identified these multiple source drugs as drugs for which significant amounts of Federal funds are expended and for which there are significantly different prices. The Food and Drug Administration (FDA) has advised the Board that there is no regulatory action, either pending or under consideration, that would be a reason for delaying or withholding the establishment of MACs on the drugs.

The originally proposed MAC limits on these drugs are as follows:

[1]These MAC limits do not apply to unit dose packaging for institutional use.

Drugs and Originally Proposed MAC Limits

Potassium chloride, oral liquid, 10%—$0.0030 per ml

Fluocinolone acetonide, topical solution, .01%—$0.1043 per ml

Fluocinolone acetonide, topical cream, .01%—$0.0712 per Gm

Fluocinolone acetonide, topical cream, .025%—$0.2087 per Gm

Griseofulvin, microcrystalline, oral tablet, 500 mg—$0.2818 per tab

Methenamine hippurate, oral tablet, 1 Gm—$0.1453 per tab

Dicloxacillin sodium, oral capsule, 250 mg—$0.2215 per cap

Dicloxacillin sodium, oral liquid, 62.5 mg/5ml—$0.0236 per ml

Quinidine sulfate, oral tablet, 200 mg—$0.0645 per tab

Hydrochlorothiazide, oral tablet, 25 mg—$0.0152 per tab

Hydrochlorothiazide, oral tablet, 50 mg—$0.0194 per tab

In making the initial determination of the lowest unit price at which each of the drugs is widely and consistently available from any formulator or labeler, the Board relied on two sources: *Drug Topics Red Book* and the HCFA survey. *Drug Topics Red Book*, published annually and updated monthly, is a widely used listing of advertised prices. The HCFA survey is a summary, updated monthly, of actual pharmacy invoice prices obtained by HCFA under contract with IMS America. The HCFA survey price is based on the 70th percentile of invoice prices from a panel of 1,000 pharmacies nationwide.

General comments

Several written comments were received containing statements that addressed issues of a general nature, but were directed to a specific drug product within the group propsed for MAC limits. Where appropriate, the Board has addressed these issues in this section of the Notice rather than as part of the discussion of the specific drug product. Each comment addressing a specific product's availability or information relating only to that product is contained in the discussion of that individual product. A wholesaler in Florida, Lawrence pharmaceuticals, provided a report on the availability of the drug products at the proposed MAC limits. The report gathered information from six wholesalers and 217 "retailers" in Florida. The findings of this report are included in the comments on specific drugs in this notice.

1. A manufacturer commented that some of the proposed MAC limits were a departure from the previous practice of the Board, in that they were based on direct purchase prices and the advertised prices as opposed to wholesale prices.

This comment is an imcomplete assessment of the Board's decision making. We note that, by regulation, the Board is to determine the lowest unit price at which a particular multiple source drug is widely and consisitently available. The regulation does not expressly specify the exact method of making these determinations. The Board has rlied and continues to rely on the HCFA survey which shows invoice prices of actual pharmacy transactions. We also believe that advertised prices are an important tool in determining the price levels at which drugs are available in the marketplace. These advertised prices represent the best estimate of maximum price levels, and actual delivered prices are often discounted from the advertised level.

However, the Board has never relied solely on advertised prices. Even where advertised prices are the only figures available when a MAC is proposed, the Board has not established any MAC limits on such a drug in the absence of supporting information from the HCFA survey or information received during the comment period indicating the drug's availability. With regard to direct purchase prices, the Board will set a MAC limit at a direct purchase price only if it is clear that a product is widely and consistently available at that price. The Board does not simply choose the lowest price found.

2. A manufacturer, in oral and written comments, and a wholesaler wrote that the time limit and deadline for responses to the proposed limits created by the Board do not allow sufficient time to develop a proper comment.

The Board notes that the normal time period from the Notice of Intent until the end of the comment period on the proposed MAC limits is typically four to six months. The Board believes this should be more than sufficient time to prepare complete comments. Further, the Board notes that in this particular instance, the Notice of Intent to set MAC limits was published in the **Federal Register** on February 6, 1979 (See 44 FR 7233). Due to the delay caused by the necessity of changing the regulations, the comment period for the proposed MAC limits did not close until February 25, 1980 (See 45 FR 3972).

3. A manufacturer commented that data sources used by the Board provide no reliable information as to the wide and consistent availability of advertised products, and some direct purchase suppliers may be unable to supply the market demand.

With regard to those comments that have criticized the data sources relied upon by the Board, the Board believes that the combination of data sources and the opportunities for public participation clearly assures the reasonableness of its final determinations. Sources of advertised prices such as *Drug Topics Red Book* are widely used and useful tools to gauge the levels of offered prices. Generally speaking they represent the upper levels paid for products. The nationwide HCFA survey of invoice level prices includes all sizes of pharmacies and provides information on the actual prices paid by pharmacies (as opposed to the often discounted advertised prices). To date no evidence whatsoever has been submitted to show that prices in the *Red Book* are understated or that the HCFA survey is inaccurate. While the Board believes these sources to be fully adequate, the value of public participation in the MAC process is that it provides the public an opportunity to make certain that the record upon which the Board relies will be as timely, complete and accurate as possible. To the extent that commenters offer market data not available at the time of the proposed MAC, the Board relies upon these submissions and modifies its proposals whenever it will achieve a more accurate and equitable result. In the past, the Board has on several occasions adjusted its MAC proposals even to the extent of deciding not to set a MAC in response to public comments that drugs were not widely and consistently available at the proposed MAC price, or that the proposed MAC was predicated on outdated promotional prices.

4. Several comments suggested that the proposed MAC limits should not apply to drugs purchased in unit dose packages intended for institutional use since the product costs for these products often exceed the MAC limits and are often available from only one source in this form.

The Board acknowledges that MAC limits can be inappropriate for drugs purchased in unit dose packaging and has determined that these MAC limits will not apply to unit dose packaging used in an institutional setting.

5. A comment from a college of pharmacy expressed concern that in light of recent court decisions, the relationship of the MAC program to the FDA's authority in the marketplace as a whole was in question.

The Board referred this comment to the FDA and asked that agency to respond. On March 12, 1980 the FDA responded in a letter to the Board:

It is appropriate that the Board consider from time to time the impact on the MAC process of recent court decisions regarding FDA's authority to require Abbreviated New Drug Applications for generic copies of drugs which have been approved for safety and effectiveness. (See *United States* v. *Articles of Drugs . . . The Lannett Company, Inc.*, 585 F.2d 575 (3d Cir. 1978), and *Premo Pharmaceutical, Inc.* v. *United States*, 78 Civ. 5435 (MP) (S.D.N.Y., July 1979)). The situation with respect to FDA's authority and the marketplace as a whole has not substantially changed since I last briefed the Board. It is still FDA's position that the vast majority of the marketplace is in conformity with the new drug provisions of the Food, Drug and Cosmetic Act insofar as compliance programs have been accomplished. FDA is still confident that it has both the ability and the authority to properly police the marketplace. Those very few firms which apparently are in violation of the law, marketing new drugs without approval, are the subject of vigorous enforcement action, and we believe that progress has been made in bringing the situation to a legal resolution.

FDA continues to assert its authority in all jurisdicitons in the United States to require approval of new drugs before they are marketed. FDA has relied on other cases and its statute and regulations for the authority to proceed. (See *Pharmadyne Laboratories, Inc.* v. *Kennedy*, 466 F. Supp. 100(d. N.J. 1979), as modified in 596 F.2d 568 (3d Cir. 1979)). In a recent court decision handed down in the U.S. District Court, Southern District on Indiana, February 25, 1980, in the case of *Eli Lilly and Company* v. *Joseph A. Califano, Jr.*, Judge Steckler was not persuaded by Lilly's argument that the existing MAC limits on propoxyphene should be removed because, in part, the FDA no longer had the ability to deal with unapproved generics on the market. In finding for the government, the court said, "Those decisions (*Lannett* and *Premo*) do not undercut or vitiate the Board's conclusion that the safety and reliability of the drugs in question could be maintained and monitored." The court relied on *Pharmodyne* and on FDA's commitment to pursue regulatory actions. The court also relied on FDA's other surveillance and monitoring capabilities and on the MAC procedures which provide for periodic review of MAC determinations whenever substantial grounds are present.

Thus, the courts and the Secretary are comfortable with a reliance on FDA's ability to regulate the drug marketplace and to inform the Board should the situation dictate that a suspension of any or all MAC limits be advisable.

The Board is confident that FDA is capable of exercising its regulatory authority and supplying the required support for the MAC program.

6. A wholesaler commented that it has experienced quality problems with one line of generic products that would have met MAC limits. The comment stated that the product line was discontinued.

The wholesaler's reluctance to carry a poor quality product is commendable and it is the Board's hope that the

problems cited in the comment were brought to the attention of the responsible company and the FDA in a Product Defect Report. In establishing MAC limits the Board accepts and confidently relies on FDA's assurance of drug quality with the marketed drug products. As part of its clearance procedures for each MAC product, the FDA reviews the Product Defect Report files and has determined that there are no problems of sufficient magnitude to warrant a recommendation against the setting of any MAC for this group of drugs.

7. A pharmacist expressed concern about the effect of MAC requirements in a jurisdiction where brand substitution is prohibited by law and he is presented a prescription written for a brand name product. Specifically, the pharmacist stated his understanding that "generics of this drug (Synalar) are not legal." The comment further stated that generic products cannot be substituted under his State's laws.

The Board cannot address the issue of the legality of marketing a particular drug product in a particular State or States. The Board continues to rely upon the assurances provided by the FDA. The alternative product considered by the Board (Fluonid) is approved by the FDA. The Board is unaware of State statutes which would permit the marketing of one approved product but restrict an approved competitor. The MAC regulations neither supersede nor contravene State anti-substitution laws, nor do they authorize or require pharmacists to dispense drugs in violation of State law. Further, the regulations do not limit reimbursement for the cost of the drug to the MAC limit when the physician certifies in his or her own handwriting, the medical necessity of the brand for the treatment of a patient in accordance with 45 CFR 19.3(a). Prior to dispensing a brand name prescription, a pharmacist may contact the prescribing physician for either authorization to substitute or to certify the brand's medical necessity to assure that reimbursement will not be limited to the MAC.

8. The Board received written comments questioning the establishment of a MAC limit on a particular package size or prepackaged products available in multiple sizes. One comment from a State Pharmaceutical Association requested the Board to give consideration to an *"existing standard dispensing size."* A hospital commented that it purchases topical agents in the smallest sizes available because of the short length of stay for most patients and to discourage waste. A wholesaler asked why the usual size of purchase of a product is not taken into consideration when proposing MAC limits.

The MAC regulations require that "the Board shall make an initial determination of the lowest unit price at which the drug is widely and consistently available for any formulator or labeler. This determination will be based *on the package size of drug most frequently purchased by providers.* If it appears to the Board that a drug is or will be unavailable to providers in one or more localities at the same lowest unit price at which it is available elsewhere, the Board shall make a separate determination for each such locality." (See 45 CFR 19.5(c).) In making the initial determination of the lowest unit price at which drug products under MAC consideration are widely and consistently available, the Board makes use of the HCFA survey and other data sources available from IMS America. These information sources are used by the Board to establish the package size most frequently purchased by providers. The Board acknowledges that local purchasing variations may occur but it must consider overall purchases relating to package size.

9. A pharmacist commented that some of the proposed MAC limits were below his cost, especially when the State is paying low dispensing fees.

The Board notes that it is the responsibility of the individual States, rather than the Federal Government, to set dispensing fees for prescriptions given to Medicaid patients (See 42 CFR 447.333). In establishing these dispensing fees, States are to take into account the costs of handling all the different types of prescriptions dispensed in pharmacies including both those which require much time, skill and handling and those for which dispensing is more easily handled. The dispensing fee, which is finally established by the State, may well be in excess of cost for some prescriptions, below cost for those at the other end of the scale, but on balance, should cover the costs the pharmacist incurs in dispensing the total of his prescriptions. Since the MAC program limits the acquisition cost of a drug rather than the dispensing fee, and since it is the responsibility of the State agencies to establish adequate dispensing fees, the Board does not believe the dispensing fee issue should prevent the establishment of appropriate MAC limits.

10. A pharmacist, as executive secretary of a State pharmaceutical association commented that a product that is cross-licensed by one company for another company to distribute, should be subject to a MAC limit. The pharmacist stated the only reason not to establish a MAC limit on a cross-licensed product would be if therapeutic inequivalence existed and this issue can be addressed by the FDA. The pharmacist asked that in setting a MAC limit, the Board consider the price at which the product is available through ". . . prudent purchasing to all pharmacies."

The Board concurs with this comment and notes that MAC limits have been set on licensed products previously. This comment was addressed to methenamine hippurate but the Board notes that the fluocinoline acetonide and dicloxicillin sodium are also cross-licensed products.

11. A pharmacist asked how frequently the MAC limits are updated to reflect market conditions and changes. Further, the pharmacist wanted to know how rapidly such updates could be made.

To this point, the Board has already lowered four existing MAC limits based on changes in the marketplace, and suspended four other announced limits when it became clear that our information was in error. The Board will continue to review the market data monthly on all existing MACs and those under development, and will adjust the limits as appropriate. Should a condition develop or exist regarding a MAC limit that would cause undue hardship on those handling MAC products, the Board is open to receive comments addressing such conditions. The Board will examine such comments and seek to determine how such conditions affect the MAC program and all of its participants. If an acute situation develops which may cause immediate harm the Board may suspend MAC limits. The Board does not believe such an acute situation is likely to develop for products subject to MAC limits. While the Board cannot specify precise time frames within which MAC updates could be effected, certainly the Board is prepared to act as expeditiously as circumstances permit.

12. Several comments were blanket statements that the drug products for which reimbursement limits have been proposed are not widely and consistently available at the proposed MAC limit.

This type of comment is unspecific and undocumented. All specific comments of this nature are answered as part of the discussion of specific drugs.

Some of the general comments were concerned with the various pricing structures and practices employed by distributors, manufacturers, wholesalers and pharmacists in the drug product distribution process. The comments expressed views on the overall MAC process and other areas relating to the distribution and availability of drug products proposed for MAC limits.

13. A manufacturer commented that, ". . . if a product on which a MAC is based is not available through wholesalers at the MAC price, the MAC does not adequately meet the program's definition of wide and consistent availability."

In determining the availability of a product at the MAC level, the Board's procedures, which include a significant element of public participation, provide assurance that products given MAC limits will have wide and consistent availability.

The Board is not required to assure that all sales of a drug product are within MAC limits or that a drug priced at or below the MAC limit is immediately available on pharmacy and warehouse shelves, but rather that there will be sufficient availability of the drug, on a nationwise basis, at MAC levels and that it will be readily obtainable at that level when the MAC level is implemented.

The court in *Hoffmann-LaRoche, Inc. v. Califano,* 453 F. Supp. 900 (D.D.C. 1978), adopted this position finding an ample legal basis in the MAC regulations. The court said (at p. 904):

> The agency has interpreted "widely and consistently available" as meaning not that the drug is already available on pharmacy and warehouse shelves in sufficient quantity at the MAC price to satisfy all of the Medicare and Medicaid demand but rather that should a MAC be established the drug would be within reach promptly and without difficulty on a nationwide basis at the MAC price.
>
> This construction is reflected in the interpretative regulation 45 CFR 19.5(c)(1976), which requires the Board to determine, "the lowest price at which the drug is widely and consistently available *from any formulotor or labeler,"* as well as in the preamble to that regulation, 40 FR 32297–98 (1975). The agency's interpretation is entitled to substantial, and in this case, conclusive weight (emphasis added).

The MAC process allows 45 days following publication date before the MAC limits are effective and preliminary notice via proposed limits is available three to five months before the effective date.

14. A manufacturer commented that MACs set below wholesaler levels would be unfairly discriminatory to manufacturers and pharmacists that utilize wholesaler distribution, and may effectively remove the wholesaler as a source of the MACed product.

The Board has no evidence that MAC prices that are below advertised wholesale prices are discriminatory or unfair to any group or organization, nor does it have evidence that the MAC process has removed or will remove any element from the existing drug distribution system that is operating efficiently. The Board notes that where: (a) FDA has provided the required assurance that the generic products are the equivalent of the trade name, (b) the Board has adequate assurance that capacity is more than sufficient and, (c) economic information indicates that the equivalent generic product is available in the marketplace, the Board believes that it must take advantage of the competitive market forces that exist and use these forces as would any other prudent purchaser of drug products. Further, as a purchaser of drug products for various agency programs, the Board believes it should have the same latitude as other major purchasers of multi-source products and not be limited to obtaining drug products only through wholesale outlets at a price that is generally higher than that available from other sources in the marketplace; such a practice would be unfair and discriminatory toward federally funded programs subject to the Board's decisions, and would not provide cost effective health care since a higher price would be paid for a therapeutically equivalent product.

Further, while the Board believes that it has accurately gauged market conditions before proposing MAC limits, the MAC regulations are designed to encourage the maximum possible public participation so that the board will have as much pertinent data as possible at its disposal before making a final determination. The Board believes that this deliberative process reasonably assures that the price limits that are set will pose no difficulties for the acquisition of the product within the reimbursement limits. The Board also believes that the 45 day lead time before the MAC limit becomes effective allows whatever immediate problems might exist regarding the product availability, at the MAC level, to be easily overcome.

15. A manufacturer and a wholesaler commented that pharmacists, in purchasing directly from various sources, rather than from a wholesaler, are required to depart from their normal practices and to do so incur additional and unreimbursed costs.

While some commenters expressed concern that the Board is forcing them to depart for their normal purchasing patterns by shifting from wholesaler to direct purchases, these comments misread the Board's intent. When the Board determines the lowest unit price at which a drug is widely and consistently available, it does so without granting preference to a particular source of supply. Rather, the Board determines the best price already existing in the market at which the availability of the drug can be assured. It is irrelevant to the Board whether this price will confer benefits on one source of supply over another. It is the Board's obligation to act as a prudent consumer and to avoid the government purchasing drug products at unnecessarily high prices when the market already offers quality products at lower prices.

The Board notes that for each of the MAC limits proposed in this Notice, there is evidence that some wholesalers are currently supplying products at or below these limits. Therefore it has not been shown that wholesalers are incapable of meeting these price levels or that pharmacies must purchase directly from manufacturers.

16. Two manufacturers' comments stated that purchasing from other than a wholesaler necessitates pharmacists meeting minimum order requirements of the direct seller, supporting an additional inventory investment and encountering added costs for separate ordering and payment expense.

As noted in the preceding comment there is evidence that the products for which MACs are proposed can be made available through wholesalers, thus the comment is likewise predicated on a hypothetical rather than documented basis. Further, the comment offered no specific evaluation of the additional costs versus the savings involved in direct purchasing.

1. Potassium Chloride, Orol Liquid, 10%

The Board originally proposed a MAC limit of $0.0030 per ml based on a selling price of $1.45 per 480 ml package size.

The *Red Book* lists 18 suppliers who advertise this product at $1.45 or less per 480 ml package size. In addition, according to the HCFA survey, 50 percent of the invoices and 70 percent of the units of the "all other brands" are sold at or below the $0.0030 per ml level. For this drug, "all other brands" represents 14 percent of the invoice orders in the survey and 32 percent of the units. Small and medium size independents purchased the "all other brands" at or below the $0.0030 per ml level.

On August 3, 1979, in response to the Board's request, the FDA notified the Board that potassium chloride in an oral solution form has been marketed since before 1938 and therefore, the FDA does not require an approved New Drug Application as a condition of marketing. There is a monograph for the product in

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the *United States Pharmacopeia* which provides a public standard for its quality. The FDA is not aware of any bioequivalence issues associated with the different brands of this drug product, no bioequivalence problems have been reported in the literature, and no bioequivalence requirement regulation is anticipated. Further, the FDA stated that it knew of no pending regulatory or quality problems which would prevent or delay the establishment of a MAC limit for this product.

The Board received several written comments relating to potassium chloride oral liquid, 10% and one manufacturer of a tradename product submitted written comments and appeared at the public hearing on March 12, 1980.

In a response to an inquiry from the Board dated March 8, 1980 concerning marketing information or availability information for potassium chloride oral liquid, and in accordance with the **Federal Register** notice of February 6, 1979, Whiteworth Laboratories of Gardena, California stated it had the capacity to produce two million bottles of potassium chloride per year. The response stated that the company currently produces approximately 500,000 pints of 10% and 20% potassium chloride per year. According to the compnay, its most popular form of the product is the 10% sixteen ounce package size.

Twenty-three comments were received stating that the product could not be obtained at the proposed MAC limit. Eleven comments were received indicating that the product was available at or below the proposed MAC limit.

The results of a survey of Florida wholesalers and retailers were mixed and somewhat unclear as to current product inventrory. According to the survey, four wholesalers indicated that the product was available at or below the proposed MAC while all surveyed retailers indicated it was not.

On March 12, 1980 a public hearing was held regarding the proposed MAC limits. Dorsey Pharmaceuticals of Lincoln, Nebraska was afforded the opportunity to present reasons why the establishment of a MAC on potassium chloride, oral liquid, 10% was inappropriate. These reasons were:

A. That potassium chloride, oral liquid, 10% is not widely and consistently available at the proposed MAC limit of $0.0030 per ml ($1.45/pint).

B. That the proposed MAC would create problems of compliance by some patients for whom potassium chloride is prescribed.

Dorsey's written comment and oral presentation provided results of a telephone survey of drug wholesalers "in our region" who supply pharmacies in Nebraska. The survey was of six wholesalers: two in Nebraska, two in Missouri, and one each in Colorado and South Dakota. According to the survey two of the wholesalers do not stock a product at the proposed MAC limit; two of the surveyed wholesalers do stock a product at or below the proposed MAC limit; one wholesaler indicated that it could supply the product on a "cost plus basis" at $1.45 per pint and one wholesaler indicated the product was available at $1.43 per pint with a $100 order.

Dorsey's comment provided information from another telephone survey, performed by the company, of 2 major wholesaler headquarters. The survey indicated that each wholesaler stocked two different flavors from Whiteworth Laboratories below the proposed MAC limit. (The Board notes that in a separate comment, from one of the same wholesalers involved in the Dorsey telephone survey, it was indicated that the wholesaler did not have a product available at the proposed MAC limit.)

The Dorsey comment cited data developed by the PRB staff and stated that the information indicated that the product was not widely and consistently available at the proposed MAC. The Dorsey comment requested clarification on data developed by the PRB staff, but the company did not specify the type of clarification desired other than asking if the data reflected prices based upon the pint package size. The data presented in the PRB staff information cited by Dorsey does represent the appropriate pint package size for the MAC process.

The Board does not agree with the Dorsey position that potassium chloride 10%, oral liquid is not widely and consistently available at the proposed MAC limit. The Board believes that the information from the HCFA survey, the advertised offers to sell in the *Red Book*, the information from Whiteworth Laboratories and information supplied in Dorsey's telephone survey of major wholesale headquarters indicates that the product is widely and consistently available at the originally proposed MAC limit of $0.0030 per ml.

The second consideration of Dorsey Laboratories was that the establishment of a MAC limit on potassium chloride would create problems of compliance in some patients for whom potassium chloride oral liquid is prescribed.

Dorsey's position is that prescribers and dispensers of potassium chloride oral liquid need sufficient latitude in selecting available products, regardless of price, for their patients to avoid potential compliance problems and resulting consequences. One of the consequences of patient non-compliance with potassium chloride presented by Dorsey was that of patient hospitalization. Dorsey stated that should a patient be hospitalized as a result of non-compliance with potassium chloride oral liquid, perhaps because of product "taste fatigue", only a few such episodes could effectively wipe out any savings produced by the establishment of a MAC limit for the product.

As part of its presentation, Dorsey employed comments from a practicing physician. The physician stated that many patients receiving potassium chloride require close monitoring relating to conditions surrounding their medical conditions. The physician also stated that patients taking potassium chloride often require laboratory procedures to test for adequate amounts of potassium in the body. Such procedures are expensive and their utilization could increase as a result of poor patient compliance with an oral liquid potassium chloride product of less than optimal palatability. This potential resultant laboratory expense could rapidly offset any savings resulting from the establishment of a MAC on the product. A consultant to the Board noted, at the March 12, 1980 hearing, that necessary lab tests should be performed regardless of the product used. The Dorsey representatives acknowledged this fact.

According to Dorsey's presentation, patient non-compliance with potassium chloride oral liquids is a universal problem no matter what product is used. Having several products available to select from increases the possibilities that a physician or a pharmacist could find a product that is palatable enough to a given patient that the patient will take the product. Dorsey argues that the proposed MAC limit, if established, would limit the number of products available for selection by the prescribers and by the pharmacists and would probably reduce the possibilities that the patient would find one that would be palatable.

The Board shares Dorsey's concern over the issue of patient compliance. The Board acknowledges that the imposition of a MAC limit, by definition, places some products above the reimbursement limits and, accordingly, influences prescribers to restrict their choices to products at or below the MAC. The Board notes that there are nineteen suppliers listed in the 1979 *Drug Topics Red Book* at or below the proposed MAC limit and that the same flavor products are available at or

below the MAC limits as are available in the more expensive products.

Thus, by establishing a MAC limit for potassium chloride oral liquid, the Board does not believe it is reducing the recipient's taste selection of the products. Further, the Board notes that should an individual patient be unable to use one or more of the potassium chloride oral liquid products priced at or below the MAC limits, then the physicians may exercise the MAC override by certifying the medical necessity of the patient receiving one of the more costly brands of the product. The Board believes that the MAC regulations, particularly the medical necessity exception offer a balance between accommodating a full range of product choice while encouraging economy. The Board must consider its responsibility in carrying out its duties regarding program payment for various multiple source drugs in light of Congressional pressures to reduce or restrain costs associated with various federally funded programs. This is not to say that the Board is putting the cost element ahead of quality care for program recipients. Rather, the Board believes by its decisions to establish the proposed MAC, it is using existing dollars more effectively.

Dorsey also states, "The annual average number of Medicaid potassium chloride, 10% liquid product prescriptions filled by each Nebraska pharmacy provider amount to 2.35 prescriptions. A Medicaid provider buying direct at a $25 minimum order (some minimum order requirements will be above that) must buy 17 pints of the product priced at $1.45/pint. This amounts to seven year supply at the above Medicaid prescription volume rate. Shelf-life considerations must now come into play."

The Board does not agree or disagree with Dorsey's statement that each Nebraska pharmacy provider dispenses 2.35 prescriptions of potassium chloride, 10% liquids per year, since Dorsey did not supply any supporting documentation. It does question why Dorsey assumes that pharmacists will choose to use more economically priced potassium chloride liquid for only Medicaid recipients and not for other patients. Since FDA has provided the Board with the necessary assurances regarding the equivalent quality of potassium chloride products, the Board fails to understand the Dorsey argument that more economically priced yet equivalent potassium chloride liquid must be limited to Medicaid recipients and perhaps create an inventory problem and resultant "shelf-life considerations * * *." The Board believes that considering FDA's authority, position and assurances of product equivalence, the products subject to MAC limits are acceptable for use by all patients, not just Medicaid recipients. The Board also believes that the use of more economically priced equivalent products would save non-Medicaid patients considerable amounts and lessen the potential problem of dispensing one product for Medicaid patients and another product for other patients. With regard to "shelf-life considerations," the Board notes that with such uniform dispensing any shelf-life problems would be minimized.

The Board does not agree with Dorsey that its argument to prevent the establishment of a MAC limit for potassium chloride 10% oral liquid is persuasive in light of other evidence available on the product.

These comments and other information supplied to the Board indicated that potassium chloride, 10% oral liquid is widely and consistently available at the originally proposed MAC limit of $0.0030 per ml.

On March 19, 1980, after reviewing the record, the Board voted to establish the proposed final MAC limit on potassium chloride, 10% oral liquid at $0.0030 per ml. The Board believes this price level assures wide and consistent availability of the product.

The Administrator of HCFA concurred on October 10, 1980.

2. Fluocinolone Acetonide, 0.01% Topical Solution, 0.01% and 0.025% Topical Cream

On August 3, 1979, in response to the Board's request, the FDA notified the Board that fluocinolone acetonide is a new drug for which an approved New Drug Application is required for marketing. The FDA does *not* require bioequivalence data for topically applied preparations and is not aware of any problems associated with these products. There are public standards for fluocinolone acetonide topical products in the *United States Pharmacopeia*. The FDA knows of no pending regulatory or quality problem which should prevent or delay the establishment of a MAC limit for fluocinolone acetonide, 0.01% topical solution and 0.01% and 0.025% topical cream.

Several written comments were received regarding the proposed MAC limits for the three forms of fluocinolone acetonide.

The Board is and has been aware that some of the fluocinolone acetonide products proposed for MAC limits are controlled and distributed by Herbert Laboratories of Irvine, California which is a subsidiary of Allergan Pharmaceuticals. According to information provided the Board by Herbert Laboratories, the transfer of Marion Laboratories' fluocinolone acetonide products to Herbert took place in 1978. The Board notes that some literature sources continue to list Marion Labs as a supplier of the tradename product Fluonid. In response to an inquiry from the Board, Herbert Laboratories stated that its fluocinolone acetonide topical creams and solution had undergone a price increase in December 1979. For fluocinolone acetonide topical solution 0.01%, the current price is $0.1133 per ml based on the 60 ml package size. For fluocinolone acetonide topical cream, 0.01%, the current price is $0.0833 per gram based on the 60 gram package size. For fluocinolone acetonide topical cream, 0.025%, the current price is $0.2266 per gram based on the 15 gram package size. Also, in response to an inquiry from the Board, Herbert Laboratories provided the Board with assurance that its "sales and distribution system is fully able to ensure widespread and consistent availability of our product Fluonid." The response stated that its facilities are regularly inspected by the FDA and is in compliance with Good Manufacturing Practices and that Fluonid is the subject of approved New Drug Application.

A major wholesaler, servicing pharmacies in the Middle and North Atlantic States, regarding fluocinolone products proposed for MACing, stated that they stocked no product other than the innovator's (Syntex) tradename product. The Board notes that the wholesaler did not state that they were unable to secure the Herbert Laboratories product.

Syntex Laboratories of Palo Alto, California submitted written comments on the proposed MAC limits for fluocinolone acetonide topical cream, 0.01% and 0.025% and topical solution 0.01%. Syntex Laboratories was responsible for the original development of theses products and is the primary supplier thereof. Syntex commented that based upon the current market situation with respect to these products, the proposed reimbursement limits are inappropriate, are not authorized by HCFA regulations, and should not be adopted.

The Syntex comment was that the Board could not assure the wide and consistent availability of the fluocinolone acetonide products at the proposed MAC price to the extent that the Board was relying on past marketing practices of Marion Laboratories for these products. Specifically, Syntex

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believes Marion's production capacity to be inadequate to assure widespread availability of the products and that physicians will be forced to prescribe substitute (and costlier) products. According to the Syntex comment, it would be impossible to assume that Marion would be willing or able to supply sufficient quantities of these products without receiving a significantly higher price than the price it has charged in the past.

Syntex is incorrect in assuming that the Board is relying solely on past marketing practices in its determinations. In addition to the HCFA survey which shows nationwide distribution and purchases by all sizes of stores of Herbert's products, the Board has received from Herbert Lab's written assurances of their ability to meet increased demand.

In light of Herbert Lab's written assurances, and Allergan Lab's (Herbert Lab's parent company) established position as a national distributor of pharmaceuticals, the Board is not willing to accept Syntex's position that it alone is able to supply this market.

Syntex also argues that the proposed products have been least available from Herbert (earlier from Marion) in areas where fluocinolone acetonide is most widely prescribed and this raises further questions about the desirability of establishng a MAC price for these products. To lessen this potential problem Syntex believes that serious consideration should be given to exempting the Pacific and Mid-Atlantic regions from the proposed MAC limits and the company notes that the MAC regulations empower the Board to make such distinctions between regions of the country (45 CFR 19.5(c)). Syntex cites the Pacific and Mid-Atlantic regions as being areas where adequate supplies are most likely to be unavailable and it would be appropriate for the Board to not apply the proposed MAC limits in those areas.

The Board notes that according to the information in the Syntex written presentation, the innovator company is arguing for an exemption from the MAC limit in the Pacific region where it has 95.7 percent of the fluocinolone acetonide market and in the Mid-Atlantic region where it controls 95.1 percent of the product market.

Syntex has argued that a monopoly position in a market implies lack of availability of competing products. The Board, however, does not accept this analysis even though Syntex currently enjoys near monopoly status in various markets. This does not mean that competing products will not be available if they are, in fact, requested by wholesalers and retailers.

In light of other information available in the record, the Board does not believe the Syntex arguments to be persuasive.

A pharmacist expressed concern over the inclusion of fluocinolone acetonide cream in the list of proposed MAC limits. According to the comment, "this concern stems from industry rumors as to possible stability problems which have occurred on this product."

The Board acknowledges the commenter's concern but notes that it must rely upon the authority and assurances of the FDA when considering products for MAC limits rather than rumors from assorted sources. Further, Herbert Laboratories provided the board with a letter stating that their fluocinolone acetonide product is the subject of an approved New Drug Application.

2.a. Fluocinolone Acetonide, Topical Solution, .01%

The Board originally proposed a MAC level of $0.1043 per ml based on a selling price of $6.26 per 60 ml package size. This was the wholesale price of Herbert Laboratories at the time the MAC limit was originally proposed.

Thirty-five comments were received that indicated that this form of fluocinolone acetonide was not available within the proposed MAC limit while five comments indicated the product could be provided within the limit.

A survey of Florida wholesalers and retailers indicated that four wholesalers reported that the product was not available within the proposed MAC limit while one reported it was available within the MAC limit. Further, the survey indicated that five wholesalers carried the Herbert Laboratories product. One hundred-eighty-nine retailers indicated they stock the Herbert Laboratories product in the 60 ml package size but there was no report on price level.

On March 19, 1980 after reviewing the record, the Board voted to increase the final MAC limit on fluocinolone acetonide, 0.01% topical solution to $0.1133 per ml to reflect price increases announced by Herbert after the MAC was first proposed. The Board believes this price level assures wide and consistent availability of the product.

The Administrator of HCFA concurred on October 10, 1980.

2.b. Fluocinolone Acetonide, Topical Cream, .01%

The Board originally proposed a MAC level of $0.0712 per Gm based on a selling price of $4.27 per 60 Gm package size. This was the wholesale price of Herbert Laboratories, the only alternative source of supply.

Thirty-six written comments indicated that this product was not available within the proposed MAC limit. Three written comments stated that the product was available within the proposed MAC limit.

A survey of Florida wholesalers and retailers indicated that six wholesalers stated that the product was not available within the proposed MAC. No wholesaler reported that the product was available within the proposed MAC limit. Four wholesalers indicated they stock the Herbert Laboratories product in the 60 Gm package size. The survey made no mention of retailer availability.

These comments and other information supplied to the Board indicated that fluocinolone acetonide, 0.01% topical cream was not widely and consistently available at the original proposed MAC limit of $0.0712 per Gm.

On March 19, 1980 after reviewing the record, the Board voted to increase the proposed final MAC limit on fluocinolone acetonide, 0.01% topical cream to $0.0833 per Gm to reflect price increases announced by Herbert after the MAC was first proposed. The Board believes this price level assures wide and consistent availability of the product.

The Administrator of HCFA concurred on October 10, 1980.

2.c. Fluocinolone Acetonide, Topical Cream, .025%

The Board originally proposed a MAC level of $0.2087 per Gm based on a selling price of $3.13 per 15 Gm package size. This was the wholesale price of Herbert Laboratories, the only alternative source of supply.

Thirty-six written comments were received indicating that this product was not available within the proposed MAC limit. Three written comments stated that the product was available within the proposed MAC limit.

A survey of Florida wholesalers and retailers indicated six wholesalers reported that the product was not available at the proposed MAC limit. No wholesaler reported that the product was available within the proposed MAC limit. The survey indicated that eightythree retailers stock the Herbert Laboratories product in the 15 Gm package size but made no mention of price level.

These comments and other information supplied to the Board indicated that fluocinolone acetonide, 0.025% topical cream was not widely and consistently available at the original proposed MAC limit of $0.2087 per Gm.

On March 19, 1980 after reviewing the record, the Board voted to increase the proposed final MAC limit on fluocinolone acetonide, 0.025% topical cream to $0.2266 per Gm to reflect price increases for the product announced by Herbert after the MAC was first proposed. The Board believes this price level assures wide and consistent availability of the product.

The Administrator of HCFA concurred on October 10, 1980.

3. Griseofulvin, Microcrystalline, Oral Table, 500 mg

The Board originally proposed a MAC level of $0.2818 per tablet based on a selling price of $16.91 per 60 tablet package size. This is the wholesale price for Ayerst (subsidiary of the 2nd largest ethical drug firm, American Home Products). Ayerst currently supplies 18 percent of this market, by dollar volume, and its product is purchased by both small and medium size independent pharmacies at or below the $0.2818 level.

On August 3, 1979 in response to the Board's request, the FDA notified the Board that griseofulvin is a certifiable antibiotic for which batch certification and an approved Form 5 or 6 is required for marketing. The three firms which hold approved Forms 6 for microcrytalline griseofulvin have performed satisfactory bioavailability studies. A University of Tennessee study also showed the three commercially marketed products to be bioequivalent. There are public standards for all griseofulvin products published in the *Code of Federal Regulations* (21 CFR 449.120) and the *United States Pharmacopeia*. The FDA knows of no pending regulatory or quality problem which would prevent or delay the establishment of a MAC limit for griseofulvin microcrystalline, 500 mg tablets. The FDA does not consider microcrystalline griseofulvin products equivalent to the ultra-microcrystalline products, and therefore the FDA recommended that the proposed MAC limit should be confined to the microcrystalline products.

Several written comments were received relating to the proposed MAC limit for microcrystalline griseofulvin, 500 mg oral tablets and one manufacturer submitted written comments and appeared at the public hearing on March 12, 1980.

Sixteen written comments were received stating that the product was not available at the proposed MAC limit. Twelve written comments were received indicating that the product was available within the proposed MAC limit.

The results of a survey of Florida wholesalers and retailers were mixed as to current product inventory. The survey indicated that five wholesalers reported that the product was available within the proposed MAC limit while one wholesaler indicated that the product was not available within the MAC limit. The survey reported that 215 retailers stock the product of Schering, McNeil and Ayerst but gave no mention of price levels.

On March 12, 1980 a public hearing was held regarding the proposed MAC limits. Schering-Plough Corporation of Kenilworth, New Jersey was afforded an opportunity for oral presentation at the hearing. Schering-Plough stated its position "that if a MAC is to be set for this group of drugs, it should be based on Schering's 500 mg tablet, Fulvincin U/F." Schering stated, "We believe that the recent University of Tennessee study comparing Fulvincin 500 mg's with other 500 mg griseofulvin tablets clearly establishes Schering's product as one of the best, most available—bioavailable profile of all. We believe we have a superior product. In selecting a drug on the basis of which to establish a MAC the Board should follow the advice of the Tennessee investigators and choose Schering's Fulvincin U/F, 500 mg's as the standard."

At the hearing, the FDA restated its original position that all of the products being considered are therapeutically equivalent and hence suitable for a MAC limit. Addressing Schering's point that its product should be used as a MAC standard, the FDA stated that the selection of the standard for bioequivalent studies is an issue that rests more properly before the FDA. It is not an issue that should be addressed to the Pharmaceutical Reimbursement Board. In considering the oral presentation of Schering-Plough at the public hearing, the Board is in agreement with FDA that the issue of a reference standard for bioequivalence studies was continually confused with the MAC process. Further, the Board appropriately relies upon the FDA and independent consultants for assurance and technical expertise regarding drug product equivalence. Neither of the Board's consultants nor the FDA felt that there was any bioequivalence or health problem that should delay or prevent the determination of a MAC limit on this drug.

Written comments and other information supplied to the Board indicated that griseofulvin microcrystalline, 500 mg oral tablets were widely and consistently available at the originally proposed MAC limit of $0.2818 per tablet.

On March 19, 1980 after reviewing the record, the Board voted to establish the proposed final MAC limit on griseofulvin microcrystalline, 500 mg oral tablets at $0.2818 per tablet. The Board believes this price level assures wide and consistent availability of the product.

The Administrator of HCFA concurred on October 10, 1980.

4. Methenamine Hippurate, Oral Tablet, 1 Gm

The Board originally proposed a MAC level of $0.1453 per tablet based on a selling price of $14.53 per 100 tablet package size. This is the price at the 70th percentile as reflected in the HCFA survey of the only alternative supplier, Riker Laboratories (the 33rd largest ethical drug firm). Riker currently supplies 28 percent of this market, by dollar volume, and its product is purchased by both small and medium size independent pharmacies at or below the $0.1453 level.

On August 3, 1979, in response to the Board's request, the FDA notified the Board (July 27, 1978 memorandum) that methenamine hippurate was included in its review of MAC Group 5. At that time the FDA stated that there were two manufacturers of this drug, both holding approved New Drug Applications. FDA also stated that they were not aware of any bioequivalence or quality problems which should prevent or delay the establishment of a MAC limit for methenamine hippurate, 1 Gm tablets. There had been no change in either the bioequivalence or marketing situation of the drug since that time, and FDA had no reason to change its recommendation.

The Board received several written comments relating to methenamine hippurate 1 Gm oral tablets and the proposed MAC limit for this product. Thirty-eight written comments were received stating that the product was not available within the proposed MAC limit. Two written comments were received indicating that the product was available within the MAC limit.

A survey of Florida wholesalers and retailers stated that six wholesalers reported that the product was not available within the proposed MAC limit of $0.1453 per tablet. The survey, however, reported that 216 retailers stock the product by Riker and 217 stock the product by Merrell-National but made no mention of price levels.

Written comments received and staff information developed during the comment period indicated that recent price increases had occurred for

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methenamine hippurate 1 Gm tablets. The price of the Merrell-National product has increased to $0.1860 per tablet and the price of the Riker product has increased to $0.1596 per tablet. The Board has taken these price changes into account in its final determinations.

Written comments and other information supplied to the Board indicated that methenamine hippurate, 1 Gm oral tablets were not widely and consistently available at the originally proposed MAC limit of $0.1452 per tablet.

On March 19, 1980 after reviewing the record, the Board voted to increase the proposed final MAC limit on methenamine hippurate, 1 Gm tablet to $0.1596 per tablet to reflect price increase announced by Riker after the MAC was first proposed. The Board believes this price level assures wide and consistent availability of the product.

The Administrator of HCFA concurred on October 10, 1980.

5. Dicloxacillin Sodium, 250 mg Capsules and 62.5 mg/5 cc Oral Solution

On August 3, 1979, in response to the Board's request, the FDA notified the Board that dicloxacillin sodium is a certifiable antibiotic for which batch certification and an approved Form 5 or 6 is required for marketing. The three firms which hold approved Forms 5 or 6 for dicloxacillin sodium capsules and the two firms which hold approved Forms 5 or 6 for dicloxacillin sodium oral solution (labeling for the product declares it to be an oral suspension) have completed acceptable bioavailability studies. The FDA knows of no pending regulatory or quality problems which should prevent or delay the establishment of MAC limits for dicloxacillin sodium preparations.

5.a. Dicloxacillin Sodium, Oral Capsule, 250 mg

The Board originally proposed a MAC level of $0.2215 per capsule based on a selling price of $22.15 per 100 capsule package size. This was the wholesale price of Beecham Laboratories (a subsidiary of the 29th largest ethical drug firm, Beecham-Massengill). Beecham supplies approximately 5 percent of this market, by dollar volume, and their product is purchased by both small and medium independent pharmacies at or below the proposed MAC level.

The Board received several written comments for dicloxacillin sodium, oral capsules, 250 mg. Forty written comments indicated that the product was not available within the MAC limit. One written comment indicated that the product was available within the proposed MAC limit. Beecham Laboratories provided the Board with information stating that the proposed MAC limit does not reflect the current market situation with regard to this product and that Beecham's retail list price for dicloxacillin sodium oral capsules 250 mg was $0.2867 per capsule.

A survey of Florida wholesalers and retailers indicated that six wholesalers reported that the product was not available within the proposed MAC limit. The survey also indicated that none of the wholesalers stock the Beecham product and that two retailers stock the Beecham product but provided no report of price levels.

A State Pharmaceutical Association commented that the Beecham product was often back ordered and shipments made at a later date. The Association stated that as a result of FDA procedures, batch approval is somewhat slower with dicloxacillin than with most antibiotics. The comment requested that the Board inquire into the situation. In response to the Board's inquiry, the FDA stated that any delay related to batch approval of dicloxacillin was only a transient event and it did not foresee a continuing problem. Further, the FDA stated that any Beecham delay may have been related to the certification by FDA of Beecham's new antibiotic facility. The Board is satisfied with the FDA's asurance that there is no delay in its certification process for dicloxacillin sodium.

The Board considered the apparent price changes that the drug had undergone since the originally proposed MAC limit was developed. The originally proposed MAC price was $.2215 per capsule based upon the availability of the product at or below the HCFA survey price of Beecham. The current Average Wholesale Price price of Beecham is $.2887. Ayerst (subsidiary of American Home Products, the second largest ethical drug firm) has a wholesale price of $.2690 and currently supplies 11 percent of the market, by dollar volume.

Written comments and other information supplied to the Board indicated that dicloxacillin sodium, 250 mg oral capsules were not widely and consistently available at the originally proposed MAC limit of $0.2215 per capsule. On March 19, 1980 after reviewing the record, the Board voted to increase the proposed final MAC limit on dicloxacillin sodium, 250 mg oral capsules to $0.2690 per capsule. The Board believes this price level assures wide and consistent availability of the product.

The Administrator of HCFA concurred on October 10, 1980.

5.b. Dicloxacillin Sodium, Oral Suspension, 62.5 mg/5 ml

The Board orginally proposed a MAC level of $0.0236 per ml based on a selling price of $1.89 per 80 ml package size. This was the wholesale price of Wyeth Laboratories (subsidiary of the 2nd largest ethical drug firm). Wyeth currently supplies 9 percent of this market, by dollar volume, and its product is purchased by medium size independent pharmacies at the $0.0236 level.

The Board received several written comments regarding dicloxacillin sodium oral suspension, 62.5 mg/5 ml. Thirty-four written comments indicated that the product was not available within the proposed MAC limit. One comment indicated that the product was available within the proposed MAC limit.

A survey of Florida wholesalers and retailers indicated that six wholesalers reported that the product was not available within the proposed MAC limit. Only four wholesalers stock the Wyeth product, eighty-four retailers stock the Wyeth product but provided no report of price levels.

A comment stated that the 80 ml package size was available only from Wyeth Laboratories and other package sizes, available from other manufacturers, are now frequently being prescribed.

The Board reviewed the record on dicloxicillin sodium, oral liquid 62.5 mg/5ml. The Board determined that the package size used to establish the MAC limit was 80 ml..Prescriptions of 100 ml and 200 ml are common, but there is no source for these package sizes at or below the MAC limit. Thus, if an 80 ml package had to be used to fill a 100 ml or 200 ml prescription, there would be considerable waste, which is not covered by the MAC. For example, a prescription for 100 ml would use one 80 ml package and 20 ml of a second package, leaving 60 ml of waste from the second package. There would be no way that full reimbursement could be made since reimbursement would apply only to the quantity prescribed.

These comments and other information supplied to the Board indicated that dicloxacillin sodium 62.5 mg/5ml oral liquid was not a suitable candidate for a MAC limit. Therefore, on March 19, 1980 after reviewing the record, the Board voted not to establish a MAC limit on dicloxacillin sodium 62.5 mg/5ml.

6. Quinidine Sulfate, Oral Tablet, 200 mg

The Board originally proposed a MAC level of $0.0645 per tablet based on a selling price of $6.45 per 100 tablet package size. This is the price, reflected in the HCFA survey of the largest supplier of this product, Parke Davis (a subsidiary of the 7th largest ethical drug firm, Warner Lambert). Parke Davis currently supplies 59 percent of this market, by dollar volume, and its product is purchased by small and medium size pharmacies at the $0.0645 level according to the HCFA survey.

On August 3, 1979, in response to the Board's request, the FDA notified the Board that quinidine sulfate is a new drug for which an approved New Drug Application is required for marketing. It is a drug which poses a potential bioequivalence problem, but all firms having approved products have demonstrated the bioavailability and bioequivalence of their products. In addition, the firms who hold approved applications have been required to pass the *United States Pharmacopeia* dissolution test which has been correlated with good product performance. A bioequivalence requirement regulation for quinidine sulfate tablets is pending, but the FDA did not expect this requirement to differ significantly from the conditions met by previously approved products. There are public standards for the quality of quinidine sulfate tablets in the *United States Pharmacopeia*. The FDA did not know of any pending regulatory or quality problem which should prevent or delay the establishment of a MAC limit for quinidine sulfate tablets.

A number of written comments were received regarding quinidine sulfate, 200 mg tablets and the proposed MAC limit. Twenty-seven comments indicated that the product was not available within the proposed MAC limit. Four comments indicated that the drug was available within the proposed MAC limit.

A survey of Florida wholesalers and retailers indicated that six wholesalers reported that the product was available within the proposed MAC limit. The survey indicated that two wholesalers stock the Parke Davis product in the 100 tablet package size; 74 retailers stock the Parke Davis product; 34 retailers stock the Lederle product and 109 retailers stock a generic product other than that cited in the survey. The survey made no mention of retailer price levels.

A State pharmaceutical association commented that in addition to not being available at the proposed MAC prices, the limited availability of this product from foreign sources make it susceptible to frequent price increases, which make it a very poor MAC candidate. The Board notes that it has no control over any product source or price fluctuations in the marketplace. However, should a major supply problem develop with quinidine sulfate, there are procedures whereby the Board can either increase or suspend a MAC limit.

Originally, the Board had proposed a MAC limit of $.0645 per tablet based upon the HCFA survey price. It was subsequently learned that this price was reflective of a few very large purchaes in only two regions of the country. Written comments and other information supplied to the Board indicated that quinidine sulfate, 200mg oral tablets were not widely and consistently available at the originally proposed MAC limit of $0.0645 per tablet. After review of the recent price levels, the Board voted to establish a proposed final MAC determination of $.0688 per tablet. This determination was based upon the availability of the product in that the drug can be obtained at or below the $.0688 per tablet price level from Purepac Pharmaceuticals and other suppliers.

On March 19, 1980 after reviewing the record, the Board voted to increase the propose final MAC limit on quinidine sulfate, 200 mg oral tablets to $0.0688 per tablet. The Board believes this price level assures wide and consistent availability of the product.

The Administrator of HCFA concurred on October 10, 1980.

7. Hydrochlorothiazide, Oral Tablets 25 and 50 mg

Final MAC limits on hydrochlorothiazide 25 and 50 mg tablets were effective on June 28, 1979 (See 44 FR 28104). Since that time a number of lower prices have appeared in the marketplace, and in response, the Board has decided to consider new lower MAC limits on hydrochlorothiazide 25 and 50 mg tablets.

7.a. Hydrochlorothiazide, Oral Tablet, 25 mg

The Board originally proposed a MAC level of $0.0152 per tablet based on a selling price of $1.52 per 100 tablet package size. This was the wholesale price of Smithkline (the 5th largest ethical drug firm). The *Red Book* lists an additional 23 suppliers below the $1.52 per 100 price. Smaller independent pharmacies have purchased this product at or below the $0.0152 level.

The Board received several comments regarding hydrochlorothiazide, oral tablets, 25 mg. Two written comments were received indicating the product was not available within the proposed MAC limit. Eighteen written comments were received indicating that the product was available within the proposed MAC limit. The Board has been assured by Smithkline that it will be able to adequately supply those who wish to purchase this product from them.

A survey of Florida wholesalers and retailers indicated that six wholesalers reported the product was available within the proposed MAC limit. No wholesaler reported that the product was unavailable within the proposed MAC limit.

Written comments and other information supplied to the Board indicated that hydrochlorothiazide, 25 mg oral tablets were widely and consistently available at the originally proposed MAC limit of $0.0152 per tablet.

On March 19, 1980 after reviewing the record, the Board voted to establish the proposed final MAC limit on hydrochlorothiazide, 25 mg oral tablets at $0.0152 per tablet. The Board believes this price level assures wide and consistent availability of the product.

The Administrator of HCFA concurred on October 10, 1980.

7.b. Hydrochlorothiazide, Oral Tablets, 50 mg

The Board originally proposed a MAC level of $0.0194 per tablet based on a selling price of $1.94 per 100 tablet package size. This is the wholesale price of Smithkline. The *Red Book* lists 29 additional suppliers below the $1.94 per 100 price. Medium independent pharmacies have purchased this product at or below the proposed level.

The Board received written comments for hydrochlorothiazide oral tablets, 50 mg. Two comments indicated that the product was not available within the proposed MAC limit. Eighteen comments indicated that the product was available within the proposed MAC limit. The Board has been assured by Smithkline that it will be able to adequately supply those who wish to purchase this product.

A survey of Florida wholesalers and retailers indicated that six wholesalers reported the product was available within the proposed MAC limit. No wholesaler reported that the product was unavailable within the proposed MAC limit.

Written comments and other information supplied to the Board indicated that hydrochlorothiazide, 50 mg oral tablets were widely and consistently available at the original proposed MAC limit of $0.0194 per tablet.

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On March 19, 1980 after reviewing the record, the Board voted to establish the proposed final MAC limit on hydrochlorothiazide, 50 mg oral tablets at $0.0194 per tablet. The Board believes this price level assures wide and consistent availability of the product.

The Administrator of HCFA concurred on October 10, 1980.

Dated: October 10, 1980.

Charles S. Spalding,

Acting Executive Secretary, Pharmaceutical Reimbursement Board.

Date: October 10, 1980.

Howard Newman,

Administrator, Health Care Financing Administration.

[FR Doc. 80-33128 Filed 10-23-80; 8:45 am]

BILLING CODE 4110-35-M

Health Resources Administration

National Advisory Council on Health Professions Education; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of November 1980:

Name: National Advisory Council on Health Professions Education.

Date and time: November 17-18, 1980, 8:30 a.m.

Place: Conference Room 425A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C. 20201.

Open November 17, 8:30 a.m.-3:00 p.m.

Closed remainder of day.

Open November 18 all day.

Purpose: The Council advises the Secretary with respect to the administration of programs of financial assistance for the health professions and makes recommendations based on its review of applications requesting such assistance. This also involves advice in the preparation of regulations with respect to policy matters.

Agenda: the meeting will be closed to the public on November 17, from 3:00 p.m. to 5:00 p.m. for the review of applications for grants for Financial Distress. The closing is in accordance with the provision set forth in section 552b(c)(6), Title 5 U.S. Code, and the Determination by the Administrator, Health Resources Administration, pursuant to Public Law 92-463. The agenda for the open portion of the meeting will include; report of the Administrator; welcome and opening remarks; budget update; health promotion and disease prevention; discussion of GMENAC Report; review of council operating procedures; future agenda items; consideration of minutes of previous meeting; and discussion of future meeting dates.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write to or contact Mr. Robert L. Belsley, Bureau of Health Professions, Health Resources Administration, Room 4-27, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, Telephone (301) 436-6564.

Agenda items are subject to change as priorities dictate.

Date: October 21, 1980.

Irene D. Skinner,

Advisory Committee Management Officer, HRA.

[FR Doc. 80-33191 Filed 10-23-80; 8:45 am]

BILLING CODE 4110-83-M

Office of the Secretary

Social Security Administration; Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Sections SR.00, SR.10 and SR.20 of the SSA statement, as published in the **Federal Register** on August 7, 1979 (44 FR 46347-50) describe the mission, organization and functions of SSA's Office of Policy (OP). Sections SL.00, SL.10 and SL.20 of the SSA statement, also published in the **Federal Register** on August 7, 1979 (44 FR 46324-28), describe the mission, organization and functions of SSA's Office of Assessment.

Notice is given that section SR.20 is revised to reflect the reporting relationship of OP's Office of the Actuary (OACT) (pp. 46347-48) to the Commissioner of Social Security. Notice is also given that sections SL.10 and SL.20 are revised to retitle OA's Program Integrity Staff (pp. 46324 and 46327-28) as the Field Integrity Staff.

The revised OP and OA material reads as follows:

Sec. SR.20 *The Office of Policy*—(Functions) (p. 46347)

D. *The Office of the Actuary* (SRG) (pp. 46347-48)

Add as the last sentences:

"Although organizationally located in the Office of Policy for administrative support purposes, the Office of the Actuary reports directly to the Commissioner on trust fund fiduciary matters."

Sec. SL.10 *The Office of Assessment*—(Organization) (p. 46324)

G. *The Field Assessment Offices* (SLF1-SLFX)

4. Retitle "The Program Integrity Staff (SLF14-SLFX4)" as "The Field Integrity Staff (SLF14-SLFX4)."

Sec. SL.20 *The Office of Assessment*—(Functions) (p. 46324)

G. *The Field Assessment Offices* (pp. 46327-28) (SLF1-SLFX)

4. Retitle *"The Program Integrity Staff* (SLF14-SLFX4)" as *"The Field Integrity Staff* (SLF14-SLFX4)."

Dated: October 10, 1980.

Patricia Roberts Harris,

Secretary.

[FR Doc. 80-33215 Filed 10-23-80; 8:45 am]

BILLING CODE 4110-12-M

DEPARTMENT OF THE INTERIOR

Water and Power Resources Service

Contract Negotiations With Buffalo Rapids Irrigation Project, District No. 2, Buffalo Rapids Project, Montana; Repayment of Small Reclamation Projects Act Loan

In accordance with procedures established by the Department of the Interior concerning public participation in water service and repayment negotiations, the Water and Power Resources Service intends to begin negotiating a contract with the Buffalo Rapids Irrigation Project, District No. 2, Montana, for repayment of a loan, pursuant to the Small Reclamation Projects Act of 1956 (70 Stat. 1044), as amended.

The Buffalo Rapids Project, which is located along the Yellowstone River from 25 miles northeast of Miles City to Glendive and includes parts of Custer, Prairie, and Dawson counties, Montana, was organized in 1937. The Buffalo Rapids Project consists of two districts, No. 1 and No. 2. District No. 2 is composed of three units, Shirley, Terry, and Fallon, totaling 9,465 irrigable acres. District No. 2 presently operates four pumping plants which are operated in summer months by temporary personnel. The stations are manually operated and are generally lacking protective or safety devices such as bearing temperature sensors, phase sensors, and water level sensors.

District No. 2 has made application to Water and Power Resources Service for loan funds to rehabilitate the project under provisions of the 1956 Act. The loan funds would be used to replace pumps and motors at three of the four pumping plants, automate and centralize control of the pumping plants through a telemetry control system, and rehabilitate several areas of the distribution system to ensure continued reliable delivery of irrigation water. The total project cost has been estimated to be $1,485,000, of which $76,000 will be contributed by the district and $1,409,000 will be the loan amount.

The terms and conditions of the proposed contract are ultimately dependent upon the Secretary of the Interior's approval of the district's application for the loan and his approval of the form of the proposed contract. In addition, the approved loan application must be submitted to the Congress for its review at least 60 days prior to the appropriation of funds by the Congress for the project.

All meetings scheduled by the Water and Power Resources Service with District No. 2 for the purpose of discussing terms and conditions of the proposed repayment contract will be open to the general public for observation. Advance notice of meetings will be furnished to those parties having submitted a written request for a meeting schedule at least 1 week prior to any meeting. Requests should be addressed to Acting Regional Director, Water and Power Resources Service, Attention Code UM-440, P.O. Box 2553, Billings, Montana 59103. All written correspondence concerning the proposed contract will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

A proposed draft contract will be made available for public review following completion of contract negotiations. Thereafter, a public hearing may be held, if necessary, and a 30-day period will be allowed for receipt of written comments from the public.

For further information on scheduled contract negotiating sessions and copies of the proposed contract form, please contact Mr. William E. Crosby, Chief, Economics and Repayment Branch, Division of Water and Land, at the address stated above or by telephone (406) 657-6413.

Dated: October 20, 1980.

Aldon D. Nielsen,

Acting Assistant Commissioner of Water and Power Resources.

[FR Doc. 80-33160 Filed 10-23-80; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage In Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. § 10524(b)(1) that the named corporations intend to provide or to use compensated intercorporate hauling operations as authorized in 49 U.S.C. § 10524(b).

1. Parent corporation and address of principal office: Bristol-Myers Company, 345 Park Avenue, New York, New York 10154.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Clairol Incorporated, 345 Park Avenue, New York, New York 10154.

(b) Mead Johnson & Company, 2404 Pennsylvania Street, Evansville, Indiana 47721.

(c) Westwood Pharmaceuticals Inc., 468 Dewitt Street, Buffalo, New York 14213.

(d) The Pelton & Crane Company, P.O. Box 3664, Charlotte, North Carolina 28203.

(e) Zimmer USA, Inc., 727 North Detroit Street, Warsaw, Indiana 46580.

(f) Unitek Corporation, 2724 South Peck Road, Monrovia, California 91016.

(g) The Drackett Products Company, 5020 Spring Grove Avenue, Cincinnati, Ohio 45232.

(h) Drackett, Inc., 5020 Spring Grove Avenue, Cincinnati, Ohio 45232.

(i) The Lenk Company, Claire Street, Franklin, Kentucky 42134.

(j) The Drackett Company, 5020 Spring Grove Avenue, Cincinnati, Ohio 45232.

(k) Lenk Manufacturing Co., Inc., Claire Street, Franklin, Kentucky 42134.

1. Parent corporation and address of principal office: C-I-L Inc., 630 Dorchester Blvd. West, Montreal, P.Q., Canada H3B 1S6.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) C-I-L Chemicals, Inc., 800 Marion (P.O. Box 128), River Rouge, Michigan 48218, U.S.A.

(b) Chipman Inc., 400 Jones Road (P.O. Box 9100), Stoney Creek, Ontario, Canada L8G 3Z1.

(c) C-I-L Paints Inc., Vaughan Centre, 8200 Keele Street, Concord, Toronto, Canada L4K 1B6.

1. Parent corporation and address of principal office: Carroll Building Material Co., Inc., 1717 2nd St. NW., Albuquerque, NM 87125.

2. Wholly-owned subsidiary which will participate in the operations, and address of its respective principal office: Wholesale Roofing of New Mexico, P.O. Box 25785, Albuquerque, NM 87125.

1. Parent corporation: Colgate-Palmolive Company, 300 Park Avenue, New York, N.Y. 10022.

2. Wholly-owned subsidiaries:

Canaan Products Inc., 300 Park Avenue, New York, N.Y. 10022

Colgate-Palmolive Company, Distr., San Juan, Puerto Rico 00905

Colgate-Palmolive Export Company, 300 Park Avenue, New York, N.Y. 10022

Colgate-Palmolive General Corp., 300 Park Avenue, New York, N.Y. 10022

Colgate-Palmolive International Incorporated, 300 Park Avenue, New York, N.Y. 10022

Colgate-Palmolive (Western Hemisphere) Inc., 300 Park Avenue, New York, N.Y. 10022

Charles A. Eaton Company, 147 Centre St., Brockton, Mass. 02403

Eaton International Sales, Inc., 147 Centre St., Brockton, Mass. 02403

S. M. Edison Chemical Company, Inc., 300 Park Avenue, New York, N.Y. 10022

NDM Corp., 3040 East River Road, Dayton, Ohio 45439

MedaSonics, Inc., 340 Pioneer Way, Mountainview, Calif. 94042

RG Assets Corp., 300 Park Avenue, New York, N.Y. 10022

Galree Products Co., Inc., 300 Park Avenue, New York, N.Y. 10022

Lournay Ltd., 300 Park Avenue, New York, N.Y. 10022

Mission Hills Property Corporation, P.O. Box 1743, Palm Springs, Calif. 92262

Tentcorp, Inc., P.O. Box 1743, Palm Springs, Calif. 92262

Norwood International Incorporated, 300 Park Avenue, New York, N.Y. 10022

Olive Music Publishing Corporation, 300 Park Avenue, New York, N.Y. 10022

Purity Music Publishing Corporation, 300 Park Avenue, New York, N.Y. 10022

Paramount Research, Inc., 300 Park Avenue, New York, N.Y. 10022

AJD Cap Corp., 3301 Castlewood Road, Richmond, Va. 23234

Princess House, Inc., 620 Spring St., No. Dighton, Mass. 02764

Louie Glass Company, Inc., East Third St., Weston, W. Va. 26452

Hampshire House Enterprises, Inc., Warwick, R.I. 02888

Hampshire Lead Crystal, Inc., 455 Somerset Ave., No. Dighton, Mass. 02764

Sunset Yatch Charters, Inc., 455 Somerset Ave., No. Dighton, Mass. 02764

Sterno Corporation, 300 Park Avenue, New York, N.Y. 10022

Colgate-Palmolive (Research & Development) Inc., Brussels, Belgium

Marisa Christina, Incorporated, 1410 Broadway, New York, N.Y. 10018

Marisa Christina for Men, Inc., 1410 Broadway, New York, N.Y. 10018

Marisa Christina for Children, Inc., 1410 Broadway, New York, N.Y. 10018

Respiratory Care, Inc., 900 W. University Drive, Arlington Heights, Ill. 60004

Steripak Laboratories, Inc., 900 W. University Drive, Arlington Heights, Ill. 60004

Evacupak, Inc., 8521 Zionsville Rd., Indianapolis, Ind. 46268

Colgate-Palmolive (Caribbean) Inc., 300 Park Avenue, New York, N.Y. 10022

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Colgate-Palmolive Cia., Cali, Colombia
Colgate-Palmolive, Ltd., 300 Park Avenue, New York, N.Y. 10022 (Inactive)
Colgate-Palmolive (Dominican Republic) Inc., Santo Domingo, Dominican Republic
Colgate-Palmolive (Central America) Inc., 300 Park Avenue, New York, N.Y. 10022
Colgate-Palmolive (Taiwan) Ltd., Taipai, Taiwan (Inactive Corporation)
The Kendall Company, 1 Federal St., Boston, Mass. 02110
Southern Athletic, Inc., Knoxville, Tenn. 37901
Riverside Athletic Goods, Inc., Cherryville, N.C. 28021
Kendall International Trading Co., 1 Federal St., Boston, Mass. 02110
Consignment Sales Co., 1 Federal St., Boston, Mass. 02110
Plastronics, Inc., 407 E. Michigan Ave., Milwaukee, Wis. 53202
Helena Rubinstein, Inc., 300 Park Avenue, New York, N.Y. 10022
Helena Rubinstein, P.R., Inc., San Juan, Puerto Rico 00924
Fashion and Beauty Industries, Inc., 300 Park Avenue, New York, N.Y. 10022
Riviana Foods Inc., P.O. Box 2636, Houston, Tex. 77019
Pangburn Company, Inc., 1900 St. Loop, Ft. Worth, Tex. 76119
Thurman's, Inc., 3916 Crooked Run Rd., No. Versailles, Pa. 15137
River Brand Rice Mills, Inc., P.O. Box 2636, Houston, Tex. 77019
Romanoff Caviar Company, 100 Galway Place, Teaneck, N.J. 07666
Westfield-Sommers Foods, Inc., 312 Merchant St., Tremont, Mich. 49412
Hills Packing Co., Inc., 401 Harrison, Topeka, Kans. 66603
Pet Chemicals Inc., 7761 N.W. 73rd St., Medley, Fla. 33166
Artex Hobby Products, Inc., 711 West Vine St., Lima, Ohio 45801
Homelum Corporation, P.O. Box 2636, Houston, Tex. 77019
Ranch House West, Inc., P.O. Box 2636, Houston, Tex. 77019
Riviana International, Inc., P.O. Box 2636, Houston, Tex. 77019
Food Engineering International, Inc., P.O. Box 2636, Houston, Tex. 77019
Koko Moko Corporation, P.O. Box 2636, Houston, Tex. 77019
Thurman Phillips Investment Corp., 3916 Crooked Run Road, No. Versailles, Pa. 15137
Thurman Chocolate Company, 3916 Crooked Run Road, No. Versailles, Pa. 15137
Southern Rice Sales Co., Inc., P.O. Box 2636, Houston, Tex. 77019
Texiana Restaurants Inc., P.O. Box 2636, Houston, Tex. 77019
Caviar Packing Co., Inc., 100 Galway Place, Teaneck, N.J. 07666
Russian Caviar Co., Inc., 100 Galway Place, Teaneck, N.J. 07666
Trini's Restaurants, Inc., P.O. Box 2636, Houston, Tex. 77019
Restaurant Industries Corp., P.O. Box 2636, Houston, Tex. 77019
California Convenience Foods, Inc., P.O. Box 2636, Houston, Tex. 77019
Colormaid Manufacturing Co., 711 W. Vine St., Lima, Ohio 45801
7 West Foods, Inc., P.O. Box 2636, Houston, Tex. 77019
Riviana Restaurant Corp., P.O. Box 2636, Houston, Tex. 77019
Ranch House of America, Inc., P.O. Box 2636, Houston, Tex. 77019
Clark, Best and Associates, 7760 N.E. 4th Court, Miami, Fla. 33138
Ranch House Franchise Management, Inc., P.O. Box 2636, Houston, Tex. 77019
R. H. of Duval, P.O. Box 2636, Houston, Tex. 77019
Skin Care Products, Inc., P.O. Box 2636, Houston, Tex. 77019
Brandt-Soreson-Salt, Inc., P.O. Box 2636, Houston, Tex. 77019
Riviana International Sales Corp., P.O. Box 2636, Houston, Tex. 77019
Mark Morris Associates, Inc., P.O. Box 2636, Houston, Tex. 77019
I.S.E., Inc., P.O. Box 2636, Houston, Tex. 77019
NDM Corporation of Puerto Rico, Inc., 3040 East River Road, Dayton, Ohio 45439
Mission Hills Construction Co., P.O. Box 1743, Palm Springs, Calif. 92262
Colgate-Palmolive, Inc., 300 Park Avenue, New York, N.Y. 10022
The Kendall Company, 1 Federal St., Boston, Mass. 02110
Helena Rubinstein of Brazil, Inc., 300 Park Avenue, New York, N.Y. 10022
R.G. Assets Corp., 300 Park Avenue, New York, N.Y. 10022
79th & 29th Corp., P.O. Box 2636, Houston, Tex. 77019

1. Parent corporation: Compo Industries, Inc., 125 Roberts Rd., Waltham, MA 02154.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(1) Pandel/Bradford Corp., 200 Market St., Lowell, MA.
(2) Styletek Division, 1857 Middlesex St., Lowell, MA.
(3) Compo Shoe Machinery of Canada, 8645 Boul.Langelier, St. Leonard, Montreal, Quebec, Canada.
(4) Compo Chemical Corp., Branch St., Mansfield, MA.
(5) Compo Industries, Inc. of N.J., 170 W. Commercial Ave., Moonachie, N.J.
(6) Pandel Chemical, 21 River Rd., Cartersville, GA.
(7) Compo Industries, Inc., 3631 Forest Park Blvd., St. Louis, MO.

1. Parent corporation and address of principal office: Crown Zellerbach Corporation, One Bush Street, P.O. Box 3475, San Francisco, CA 94119.

2. Wholly-owned subsidiaries which will participate in the operations, and addresses of their respective principal offices:

Crown Zellerbach Corporation, One Bush Street, P.O. Box 3475, San Francisco, CA 94119
Pump Recycling Northeast Corporation, West River Road and Route 197, South Glens Falls, N.Y.
St. Francisville Paper Company, One Bush Street, San Francisco, CA 94119

1. The parent corporation and address of principal office is: The Firestone Tire & Rubber Company, 1200 Firestone Parkway, Akron, OH 44317.

2. Wholly-owned subsidiaries and divisions which will participate in the operations and addresses of their respective principal offices are:

(a) Firestone Foam Products Company, 623 Waterman Ave., Box 4159, East Providence, RI 02914.
(b) Firestone Plastics Company, Firestone Blvd., Box 699, Pottstown, PA 19464.
(c) Firestone Synthetic Fibers Company, Box 450, Hopewell, VA 23860.
(d) Firestone Synthetic Rubber & Latex Company, 381 West Wilbeth Rd., Akron, OH 44301.
(e) Firestone Natural Rubber & Latex Company, 1200 Firestone Parkway, Akron, OH 44317.
(f) Firestone Textiles Company, 1101 W. Second Ave., Box 1278, Gastonia, NC 28052.
(g) Firestone Wire and Cable Company, Box 906, Danville, KY 40422.
(h) Electric Wheel Company, 1120 North 28th St., Quincy, IL 62301.
(i) Hamill Manufacturing Company, 61166 Van Dyke Rd., Washington, MI 48094.
(j) Decor Metal Products, division of Firestone Canada, Inc., 140 Bay St., Midland, Ontario, Canada L4R 4L5.
(k) Firestone Industrial Products Company, 1700 Firestone Blvd., Noblesville, IN 46060.
(l) Firestone Coated Fabrics Company, Firestone Drive, Box 887, Magnolia, AR 71753.
(m) Firestone Steel Products Company, 1600 Firestone Parkway, Akron, OH 44301.
(n) Firestone Steel Products, a division of Firestone Canada, Inc., 31 Firestone Blvd., P.O. Box 2843, London, Ontario, Canada N6A 4H7.
(o) Firestone Canada, Inc., 1579 Burlington St., East, Box 400, Hamilton, Ontario, Canada L8N 3Ji.

(p) Firestone Textiles Company, a division of Firestone Canada, Inc., Woodstock, Ontario, Canada.
(q) Ravenna Arsennal, Inc., Ravenna, OH 44266.
(r) Firestone International Sales Corporation, 1200 Firestone Parkway, Akron, OH 44317.
(s) Firestone Interamerica Company, 1200 Firestone Parkway, Akron, OH 44317.
(t) The Dayton Tire & Rubber Company, P.O. Box 24011, Oklahoma City, OK 73124.
(u) The Fidesta Company, 500 North Hamilton Rd., Columbus, OH 43219.

1. Parent corporation and address of principal office: Ingersoll-Rand Company, P.O. Box 636, Woodcliff Lake, NJ 07675.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) California Pellet Mill Company, 1800 Folsom Street, San Francisco, CA 94103.
(b) California Pellet Mill International, Inc., 1800 Folsom Street, San Francisco, CA 94130.
(c) Frank M. Hill Machine Company, 50 School Street, Walpole, MA 02061.
(d) General Lock Company, 2401 Bayshore Blvd., San Francisco, CA 94119.
(e) Ingersoll-Rand Canada, Inc., 630 Dorchester Blvd. W., Montreal, Quebec H3B156.
(f) Ingersoll-Rand Equipment Corporation, 3 Century Drive, Parsippany, NJ 07054.
(g) Ingersoll-Rand Export Corporation, P.O. Box 636, Woodcliff Lake, NJ 07675.
(h) Ingersoll-Rand Financial Corporation, West 80 Century Road, Paramus, NJ 07652.
(i) Ingersoll-Rand Financial Services Corporation, West 80 Century Road, Paramus, NJ 07652.
(j) Ingersoll-Rand International, Inc., P.O. Box 636, Woodcliff lake, NJ 07675.
(k) Ingersoll-Rand Machinery & Equipment Corporation, P.O. Box 636, Woodcliff Lake, NJ 07676.
(l) Ingersoll-Rand Oilfield Producs Corporation, P.O. Box 1101, Pampa, Texas.
(m) Ingersoll-Rand Engineered Equipment Services, Eleven Greenway Plaza, Suite 1816, Houston, TX 77046.
(n) Ingersoll-Rand Research, Inc., P.O. Box 301, Princeton, NJ 08540.
(o) Ingersoll-Rand Services Company, P.O. Box 636, Woodcliff Lake, NJ 07675.
(p) Ingersoll-Rand Worldwide, Inc., P.O. Box 636, Woodcliff Lake, NJ 07675.
(q) Jenmar Estates, Inc., P.O. Box 636, Woodcliff Lake, NJ 07675.
(r) Kilian Manufacturing Company, 1728 Burnet Avenue, Syracuse, NY 13201.
(s) Knight Industries, Inc., P.O. Box 348, Broken Arrow, OK 74012.
(t) Lee Norse Company, P.O. Box 2863, Pittsburgh, PA 15230.
(u) McCartney Manufacturing Company, 635 West 12th Street, Baxter Springs, KS 66713.
(v) Northern Research Engineering Corporation, 39 Olympia Avenue, Woburn, MA 01801.
(w) S&S Corporation, Rt 3, Box 70, Cedar Bluff, VA 24609.
(x) Schlage Electronics Company, 3899 Hancock Expressway, Security, CO.
(y) Schlage Lock Company, 2401 Bayshore Blvd., San Francisco, CA 94119.
(z) Sier-Bath Gear Company, Inc., 9252 Kennedy Blvd., North Bergen, NJ 07047.
(aa) Terry Corporation, Lamberton Road, Windsor, CT 06095.
(bb) Terry Southwest, 5911 Schumacher Street, Houston, TX 77027.
(cc) Torrington Company, 59 Field Street, Torrington, CT 06790.
(dd) Von Duprin, Inc., 400 West Maryland, Indianapolis, IN 46225.
(ee) Western Land Roller Company, Hastings, NB 68901.

1. Parent Corporation and address of principal office: International Paper Company, 77 West 45th Street, New York, N.Y. 10036.

2. Wholly-owned subsidiaries and address of their respective operations:

(a) Mid-Continent Carton Corporation, 3025 W. Madison Street, Louisville, KY 40211.
(b) Bodcaw Company, Pineville Kraft Division, P.O. Box 670, Pineville, LA 71360.
(c) Bay Harbor Warehouse Corp., P.O. Box 528, Georgetown, S.C.
(d) Canadian International Paper Co., Sun Life Building, Montreal, Canada.
(e) PaPco, Inc., P.O. Box 160707, Mobile, Ala.
(f) Richmond Gravure, Inc., 34 Deepwater Terminal Road, Richmond, Va.
(g) Slaughter Industries, Inc., 10851 Miller Road, Dallas, Texas.

(1) The parent corporation: Kaibab Industries, Inc., at P.O. Box 20506, Phoenix, Arizona 85036.

(2) The wholly-owned subsidiary which will participate in the operations and address of its respective principal office is: Kaibab Transportation, Inc., P.O. Box 20506, Phoenix, Arizona 85036.

1. Parent Corporation and address of principal office: Kellogg Company, 235 Porter Street, Battle Creek, Michigan 49016.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective offices:

(a) Fearn International Inc., 9353 Belmont Avenue, Franklin Park, Illinois 60131;
(b) Kellogg Sales Company, 235 Porter Street, Battle Creek, Michigan 49016;
(c) Mrs. Smith's Frozen Foods Co., South and Charlotte Streets, Pottstown, Pennsylvania 19464;
(d) Salada Foods Inc., 235 Porter Street, Battle Creek, Michigan 49016.

1. Parent corporation: Kimball International, Inc., 1549 Royal Street P.O. Box 460, Jasper, Indiana 47546.

2. Wholly-owned subsidiaries:

Indiana Hardwoods, P.O. Box 309, Chandler, Indiana 47610
Lafayette Mfg. Co., P.O. Box 166, Lafayette, Tenn. 37083
Greensburg Mfg. Co., P.O. Drawer "J", Greensburg, KY 42743
Dale-Wood Mfg., P.O. Box 317, Dale, Indiana 47523
West Jefferson Wood Products, Inc., P.O. Box 389, West Jefferson, North Carolina 28694
Evansville Veneer & Lumber Company, 100 South Kentucky Avenue, Evansville, IN 47714
Chandler Veneers, 740 West Washington St., Chandler, IN 47610
Jasper Laminates, 1650 Cherry Street P.O. Box 629, Jasper, Indiana 47546
Jasper-American Mfg. Co., P.O. Box 378, Henderson, KY 42420
Batesville American Mfg. Co., Box 828 198 Hwy 51 South, Batesville, Mississippi 38606
McAllen-American Corporation, 6401 33rd Street, McAllen, Texas 78501
Kimball Piano & Organ Co., Piano Division, French Lick, Indiana 47432
Kimball Piano & Organ Co., Spinet Division, R. R. 2 Hwy 145, French Lick, Indiana 47432
Kimball Piano & Organ Co., Electronic Division, 1038 East 15th Street, Jasper, Indiana 47546
Conn Keyboards, Inc., 400 S. Buncombe Road, Greer, S.C. 29651
Krakauer Piano Company, P.O. Box 301, Berlin, Ohio 44610
Kimball Office Furniture Co., Hwy. 60 Box C, Borden, Indiana 47106
National Office Furniture Co., P.O. Box 155 Hwy. 69, Fordsville, KY 42343
Group Artec, 340 E. 11th Avenue, Jasper, Indiana 47546
Kimball Upholstered Products, 340 E. 11th Avenue, Jasper, Indiana 47546
Kimball Furniture Reproductions, Inc., 1919 Bell Street P.O. Box 4248, Montgomery, Alabama 36104
The Jasper Corporation, 2704 Newton Street P.O. Box 360, Jasper, Indiana 47546

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The Jasper Corporation, Cabinet Division, 1180 E. 16th Street P.O. Box 360, Jasper, Indiana 47546
Jasper Stylemasters, 1037 E. 15th Street P.O. Box 520, Jasper, Indiana 47546
Jasper Stylemasters, Speaker Cabinet Division (Vinyl), 955 S. Habig Street, Jasper, Indiana 47546
Jasper Stylemasters, Plastic Division, 1620 Cherry Street, Jasper, Indiana 47546
Jasper Stylemasters, ToolPro, 1620 Cherry Street, Jasper, Indiana 47546
Kimball International, Inc., Machine & Equipment Division, Old Boonville Hwy. 62 R.R. 2 Box 610, Chandler, Indiana 47610.

Foreign Divisions

Kimco, S.A., Carretera Matamoros km 9 P.O. Box 386, Reynosa, Tamaulipas, Mexico
Kimball Keyboards de Mexico, Carretera Matamoros km 9 P.O. Box 386, Reynosa, Tamaulipas, Mexico
L. Bosendorfer Klavierfabrik A.G., Musikveriensqebaude Canovagasse 4, 1010 Vienna, Austria
L. Bosendorfer G.m.b.H., Gymelsdorfergasse 42, 2700 Wiener Neustadt, Austria
Herrburger Brooks, Ltd., Meadow Lane, Long Eaton, Nottingham, NG10 2FG England

1. Parent corporation and address of principal office: The Kroger Co., 1014 Vine Street, Cincinnati, Ohio 45201.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Bell Pharmacal Corporation, Frontage Road, Greensville, SC 29602.

(b) Egg City of Arkansas, Inc., Rocky Mound Road, Hope, AR 71801.

(c) Egg City of Illinois, Inc., State Route 37, Farina, IL 62838.

(d) Farmers Market Warehouse Store, Inc., 8th and Jefferson Street, Nashville, TN 37208.

(e) Julius Goldman's Egg City, 8643 Shekell Road, Moorpark, CA 93021.

(f) Pace Dairy Foods Company, 2700 Valley High Drive, N.W., Rochester, MN 55901.

(g) Peyles of Tennessee, Inc., 1500 Sanita Avenue, Louisville, KY 40213.

(h) Peyton's Inc., 1500 Sanita Avenue, Louisville, KY 40213.

(i) Peyton's Southeastern, Inc., Refreshment Lane, Appalachian Industrial Park, Cleveland, TN 37311.

(j) SupeRx, Inc., 175 Tri County Parkway, Cincinnati, OH 45246.

(k) Vandervoort Dairy Foods Company, 900 South Main Street, Ft. Worth, TX 76104.

1. Parent corporation: L & W Farm Equipment, Route 4, Box 404A, Tallassee, Alabama 36078.

2. Wholly-owned subsidiary: Courtesy International, Route 2, Box 293B, Tuskegee, Alabama 36083.

1. Parent Corporation: Land O'Lakes, Inc., 614 McKinley Place, Minneapolis, MN 55413.

2. Wholly owned subsidiaries which will participate in the operation:

a. Research Seeds, Inc., 310 South Third Street, St. Joseph, MO 64501.

b. Northwest Dairy Products Company, 614 McKinley Place, Minneapolis, MN 55413.

c. Land O'Lakes Dairy Company, 614 McKinley Place, Minneapolis, MN 55413.

d. Spencer Foods, P.O. Box 1228, Spencer, IA 51301.

e. Scott Farm Seed Co., Mechanicsburg, OH 43044.

1. Parent corporation and address of principal office: Louisville Cement Company, 501 South Second Street, Louisville, KY 40202.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) C. T. Hertzsch, Inc., 501 South Second Street, Louisville, KY 40202.

(b) Speed Industries, Inc., 501 South Second Street, Louisville, KY 40202.

(c) Bessemer Cement Company, 3736 Boardman—Canfield Road, Canfield, OH 44406.

1. Parent corporation and address of principal office: Owens-Illinois, Inc., P.O. Box 1035, Toledo, Ohio 43666.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) L. E. Smith Glass Co., P.O. Box 149, Mt. Pleasant, Pennsylvania 15666.

(b) Owens-Illinois Development Corporation, P.O. Box 1035, Toledo, Ohio 43666.

(c) Forest Products Corporation, Post Office Box 10, Newberry, South Carolina 29108.

1. Parent corporation and address of principal office: Pay'n Save Corporation, 1511 Sixth Avenue, Seattle, Washington 98101.

2. Wholly-owned subsidiaries which will participate in the operation, and address of their respective principal office:

(a) Lamonts Apparel Inc., 1511 6th Avenue, Seattle, Washington 98101.

(b) Bi-Mart Company, 145 North Cleveland St. Eugene, Oregon 97402.

3. Trade names that are operated as a part of the Pay'n Save Corporation:

(a) Pay'n Save, Seattle/Alaska Division, 1511 6th Avenue, Seattle, Washington 98101.

(b) Pay'n Save, Northwest Division, 1511 6th Avenue, Seattle, Washington 98101.

(c) Pay'n Save, California/Hawaii Division, 7700 Edgewater Dr, Suite 665, Oakland, California 94621.

(d) Von Tobel's, 2655 S. Maryland Parkway, Las Vegas, Nevada 89109.

(e) Ernst Home Center Division, 1511 6th Avenue, Seattle, Washington 98101. District Office: 1198 Brickyard Road, Salt Lake City, Utah 84106.

(f) Sportswest Division, 1511 6th Avenue, Seattle, Washington 98101.

(g) Yard Bird Division, 2100 N. National Avenue Chehalis, Washington 98532.

1. Parent corporation and address of principal office: PepsiCo, Inc., Purchase, NY 10577.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(1) Beverages, Foods & Service Industries, Inc., c/o PepsiCo, Purchase, NY 10577.

(2) Conroe Packaging, Inc., 222 Loop 336 East, P.O. Box Y, Conroe, TX 77301.

(3) Frito-Lay, Inc., P.O. Box 35034, Dallas, TX 75235.

(4) National Beverages, Inc., 1700 Directors Row, Orlando, FL 32809.

(5) PBG Beverage Distributors, Inc., c/o PepsiCo, Purchase, NY 10577.

(6) Pepsi-Cola Bottling Co. of Los Angeles, Inc., P.O. Box 3338, Torrance, CA 90510.

(7) Pepsi-Cola Bottling Company of Puerto Rico, Inc., P.O. Box 1709, Hato Rey, Puerto Rico 00919.

(8) Pepsi-Cola Interamericana, S.A., c/o PepsiCo, Purchase, NY 10577.

(9) Pepsi-Cola Metropolitan Bottling Company, Inc., c/o PepsiCo, Purchase, NY 10577.

(10) Pepsi-Cola Panamericana, S.A., c/o PepsiCo, Purchase, NY 10577.

(11) PepsiCo World Trading Company, Inc., c/o PepsiCo, Purchase, NY 10577.

(12) Advance Moving & Storage, Inc., 650 North Second Ave., Phoenix, AZ 85003.

(13) Agency Media Services, Inc., c/o NAVL, P.O. Box 988, Fort Wayne, IN 46801.

(14) Fleet Insurance Management, Inc., c/o NAVL, P.O. Box 988, Fort Wayne, IN 46801.

(15) Great Falls North American, Inc., P.O. Box 1414, Great Falls, MT 59401.

(16) Lee Way Motor Freight, Inc., P.O. Box 12750, Oklahoma City, OK 73157.

(17) Marlew of El Paso, Inc., 8201 Lockheed Drive, El Paso, TX 79225.

(18) Moving Credit, Inc., c/o NAVL, P.O. Box 988, Fort Wayne, IN 46801.

(19) NACAL, Inc., 12842 Valley View, Garden Grove, CA 92645.

(20) North American Distribution Systems, Inc., P.O. Box 411, New Haven, IN 46774.

(21) North American Forwarding, Inc., c/o NAVL, P.O. Box 988, Fort Wayne, IN 46801.

(22) North American Moving & Storage, Inc., 2122 Bremer Road, Fort Wayne, IN 46803.

(23) North American Properties, Inc., c/o NAVL, P.O. Box 988, Fort Wayne, IN 46801.

(24) North American Van Lines, Inc., P.O. Box 988, Fort Wayne, IN 46801.

(25) North American Van Lines of Texas, Inc., 811 Central Expressway, Richardson, TX 75080.

(26) Tractor Power, Inc., d.b.a., Fleet Service, c/o NAVL, P.O. Box 988, Fort Wayne, IN 46801.

(27) Transportation Collections, Inc., c/o NAVL, P.O. Box 988, Fort Wayne, IN 46801.

(28) Triangle Fleet Service, Inc., 801 W. California Road, Fort Wayne, IN 46808.

(29) PepsiCo Building Systems, Inc., 3031 LaJolla St., Anaheim, CA 92806.

(30) Pizza Hut, Inc., P.O. Box 428, Wichita, KS 67201.

(31) Aurora Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(32) Bender Pizza, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(33) Buckeye PH, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(34) Blues Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(35) Chesapeake Bay Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(36) Denver Pizza, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(37) East Moline Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(38) Fiesta Cantina of Ohio, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(39) Franchise Services, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(40) Franchise Services of Kansas, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(41) Indianapolis Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(42) J & G Products, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(43) Lake Michigan Management Co., Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(44) Long's Appleton, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(45) Long's Green Bay #2, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(46) Long's Marshfield, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(47) Long's Neenah, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(48) Long's Wausau #2, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(49) Mountaineer Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(50) Oriole Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(51) Pizza Hut, Inc. of LaCrosse, c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(52) Pizza Hut of America, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(53) Pizza Hut of Boston, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(54) Pizza Hut of Columbia, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(55) Pizza Hut of Gainesville, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(56) Pizza Hut of Georgia, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(57) Pizza Hut of Jeffersonville, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(58) Pizza Hut of Kalamazoo, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(59) Pizza Hut of Knoxville Corporation, c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(60) Pizza Huts of Las Vegas, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(61) Pizza Hut of Louisiana, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(62) Pizza Hut of Louisville, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(63) Pizza Hut of Massachusetts, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(64) Pizza Huts of North Carolina, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(65) Pizza Hut of North Haven, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(66) Pizza Hut of Oklahoma, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(67) Pizza Hut of Oregon, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(68) Pizza Hut of Racine, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(69) Pizza Hut of Rochester, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(70) Pizza Hut of San Diego, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(71) Pizza Hut of Santa Fe, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(72) Pizza Hut of Spokane, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(73) Pizza Hut of Utah, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(74) Pizza Hut of Virginia, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(75) Pizza Hut of West Allis, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(76) Pizza Hut of Wichita, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(77) Pizza Hut of Wisconsin, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(78) Pizza Hut of Zion, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(79) Ross Pizza, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(80) Second Concept, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(81) Sioux Falls Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(82) Sun Devil Pizza Hut, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(83) Taco Kod of Wichita #2, Inc., c/o Pizza Hut, P.O. Box 428, Wichita, KS 67201.

(84) Taco Bell, 17381 Red Hill Ave., Irvine, CA 92714.

(85) Bell Food Services, Inc., c/o Taco Bell, 17381 Red Hill Ave., Irvine, CA 92714.

(86) Taco Bell of Ohio, Inc., c/o Taco Bell, 17381 Red Hill Ave., Irvine, CA 92714.

(87) Grandma's Foods, Inc., 6620 S.W. 112th Ave., Beaverton, OR 95007.

(88) Southwest Snack Equipment, Inc., 900 North Loop 12, Irving, TX 75061.

1. Parent corporation and address of principal office: Percy Kent Bag Co., Inc., 5910 Winner Road, Kansas City, MO 64125.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices: (a) Support Systems, Inc., 5910 Winner Road, Kansas City, MO 64125.

1. Parent corporation: Rich Terminal Company, 620 South Front Street, Ironton, Ohio 45638.

2. Wholly-owned subsidiaries:

Rich of Ohio, Inc., 620 South Front Street, Ironton, Ohio 45638.

Tanner Oil Co., 620 South Front Street, Ironton, Ohio 45638.

Tanco, Inc., 620 South Front Street, Ironton, Ohio 45638.

Rich Oil Corporation, 620 South Front Street, Ironton, Ohio 45638.

Rich of West Virginia, Inc., 620 South Front Street, Ironton, Ohio 45638.

1. Parent corporation and address of principal office: The Richardson Company, 2400 East Devon Avenue, Des Plaines, Illinois 60018.

2. Wholly-owned subsidiaries which will participate in the operations, and the address of their respective principal offices:

(a) Richardson Chemical Company, 2400 East Devon Avenue, Des Plaines, Illinois 60018;

(b) Chemprene, Inc., 570 Fishkill Avenue, Beacon, New York 12508;

(c) Richardson Graphics Company, 9797 West 151st Street, Orland Park, Illinois 60462;

(d) Concal Company, 2400 East Devon Avenue, Des Plaines, Illinois 60018;

(e) Richardson Export Company, 2400 East Devon Avenue, Des Plaines, Illinois 60018;

(f) The Richardson Company (Ohio), 2400 East Devon Avenue, Des Plaines, Illinois 60018;

(g) The Richardson International Sales Corporation, 2400 East Devon Avenue, Des Plaines, Illinois 60018; and

(h) Richardson Graphics Canada Limited, 88 Doncaster Avenue, Thornhill, Ontario, Canada L3T IL3.

1. Parent company: A. O. Smith Corporation, 3533 North 27th Street, P.O. Box 584, Milwaukee, Wisconsin 53201, Corporate Office.

2. Wholly-owned subsidiaries which will participate in the operations: A. O. Smith Harvestore Products, Inc., 550 W. Algonquin Rd., P.O. Box 395, Arlington Heights, Illinois 60005.

1. Parent corporation and address of principal office: Standard Brands Incorporated, 625 Madison Avenue, New York, N.Y. 10022.

2. Wholly-owned subsidiaries which will participate in the operations and address of their respective principal offices:

(a) Julius Wile Sone & Co., Inc., 1 Hollow Lane, New Hyde Park, N.Y. 11042.

(b) All Brand Importers, Inc., 1 Hollow Lane, New Hyde Park, N.,Y. 11042.

(c) National Peanut Corporation, 625 Madison Avenue, New York, N.Y. 10022.

(d) De Leon Peanut Company, P.O. Box 747, Durant, OK. 74701.

1. Parent corporation and address of principal office: West Point—Pepperell, Inc., 400 West Tenth Street, West Point, Georgia 31833.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices: (a) Virginia Crafts, Inc., Keysville, Virginia 23947.

1. Parent corporation: Witco Chemical Corporations, 277 Park Avenue, New York N.Y. 10017.

2. Wholly-owned subsidiaries which will participate in the operations:

Pearsall Chemical Corporation, 2519 Fairway Park Drive, Houston, TX 77001.

Southwest Petro-Chem, Inc., 1400 S Harrison, Olathe, KS 66061.

Argus Chemical Corporation, 633 Court Street, Brooklyn, N.Y. 11231.

1. Parent corporation and address of principal office: F. W. Woolworth Co., 233 Broadway, New York, New York 10279.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Kinney Shoe Corporation, 233 Broadway, New York, New York 10279.

(b) The Richman Brothers Company, 1600 E. 55th Street, Cleveland, Ohio 44103.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-33157 Filed 10-23-80; 8:45 am]

BILLING CODE 7035-01-M

[Directed Service Order No. 1398]

Kansas City Terminal Railway Co.—Directed To Operate Over—Chicago, Rock Island & Pacific Railroad Co., Debtor (William M. Gibbons, Trustee); Accounting Report Filing Date-Further Extension

AGENCY: Interstate Commerce Commission.

ACTION: Extension of Time.

SUMMARY: Time for filing accounting report on directed service operations by Kansas City Terminal Railway Company extended until November 20, 1980.

FOR FURTHER INFORMATION CONTACT: Richard J. Schiefelbein, (202) 275-0826.

SUPPLEMENTARY INFORMATION:

Decision of the Commission

On September 26, 1979, we directed Kansas City Terminal Railway Company (KCT) to provide service over the system of the Chicago, Rock Island & Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) (Rock Island or RI). *Kansas City Term. Ry. Co.—Operate—Chicago, R.I.&P.*, 360 I.C.C. 289 (1979), 49 FR 56343 (October 1, 1979). Directed service operations by KCT over the RI system ended on March 23, 1980. Under 49 CFR 1126.3(d)(1)), KCT must file a final accounting report with the Commission within 180 days after completion of directed service. Originally, the KCT report on RI operations would have been due on September 19, 1980. By order served September 16, 1980, the Commission extended the filing date to October 20, 1980 (45 FR 62,513, Sept. 19, 1980). Because of the complexities involved in establishing a cut-off date for filing claims against KCT by other railroads and because issues regarding the settlement of claims between KCT and the RI Trustee have not yet been resolved, we are further extending the time for filing the KCT accounting report until November 20, 1980.

Two continuing matters make impractical the filing of an accounting report and the completion of accounting and other necessary wind-down functions by October 20. We have continued to work to establish reasonable cut-off dates for accounting settlements of claims other railroads may have against KCT as directed operator of RI. In reviewing railroad accounting rules and practices, we have not yet been able to establish a cut-off date that would be fair to all involved railroads.

KCT also has filed a petition seeking clarification of reconsideration of our decision served March 19, 1980, regarding the compensation agreement between KCT and the Rock Island Trustee relating to directed service operations. We have not yet issued a decision disposing of that petition. KCT will need time to review and implement our decision on the petition, when issued, in order to make accounting allocations between directed service and the Rock Island Trustee.

We believe that this additional 30-day extension of the wind-down period and the time for filing the directed service accounting report will be adequate to resolve these issues. Therefore, we will extend the wind-down period and filing date until November 20, 1980.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered

1. The requirement of 49 CFR 1126.3(d)(1) that a final accounting report on directed service operations be filed with the Commission within 180 days after consummation of the directed service is waived with respect to KCT's operations of Rock Island lines pursuant to Directed Service Order No. 1398 and supplemental orders thereto.

2. KCT shall file the accounting report required by 49 CFR 1126.3(d)(1) on or before November 20, 1980.

3. This decision will be effective on Oct. 20, 1980.

This action is taken under the authority of 49 U.S.C. § 10321 and 11125.

Decided: October 17, 1980.

By the Commission. Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam. Commissioner Gilliam absent and not participating.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-33159 Filed 10-23-80; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-2 (Sub-No. 25)]

Louisville and Nashville Railroad Co. et al.; Notice of Findings

In the matter of Docket No. AB-2 (Sub-No. 25), Louisville and Nashville Railroad Company—Abandonment—Between Medaryville and Michigan City, In Pulaski, Starke, and LaPorte Counties, IN; and Finance Docket No. 28905 (Sub-No. 8) Chicago South Shore and South Bend Railroad—Acquisition and Operation Louisville and Nashville Railroad Company Line, Michigan City Branch, in LaPort County, IN; and Docket No. AB-19 (Sub-No. 41), Baltimore and Ohio Railroad Company— Abandonment—from at or near North Vernon, IN, to at or near Nabb, IN, in Jennings, Jefferson, and Scott Counties, IN; and Finance Docket No. 28905 (Sub-No. 11), Louisville and Nashville Railroad Company trackage rights over Baltimore and Ohio Railroad Company in Cincinnati, OH; Baltimore and Ohio Railroad Company joint use properties of the Covington and Cincinnati Elevated Railroad and Transfer and Bridge Company and the Cincinnati Inter-Terminal Railroad Company; Baltimore and Ohio Railroad Company trackage rights over Louisville and Nashville Railroad Company between KC juntion at Covington, KY, and Louisville, KY; Baltimore and Ohio Railroad Company and Louisville and Nashville Railroad Company coordination of operations between Cincinnati, OH, and Louisville, KY; and Docket No. AB-18 (Sub-No. 27), Chesapeake and Ohio Railway Company—abandonment—(A) carfloat operations between Newport News, VA, and the Naval Operating Base in Norfolk, VA, (B) connection with the Norfolk and Portsmouth Belt Line Railroad Company at Sewells Point in Norfolk, VA; and Finance Docket No. 28905 (Sub-No. 12), Cheaspeake and Ohio Railway Company trackage rights over Seaboard Coast Line Railroad Company between Richmond, VA, and Portsmouth, VA; Chesapeake and Ohio Railway Company and Seaboard Coast Line Railroad Company coordination of operations between Richmond, VA, and Portsmouth, VA; and Docket No. AB-18 (Sub-No. 28), Chesapeake and Ohio Railway Company—Abandonment—from at or near Winchester, KY, to at or near Chilesburg, KY, in Clark and Fayette Counties, KY; and Finance Docket No. 28905 (Sub-No. 13) Chesapeake and Ohio Railway Company trackage rights over Louisville and Nashville Railroad Company between Winchester and North Lexington, KY; and Docket No. AB-18 (Sub. No. 29), Chesapeake and Ohio Railway Company—Abandonment—line known as Louisville Viaduct and operations at Preston Street Yard, all in Louisville, Jeffersons County, KY; and Finance Docket No. 28905 (Sub-No. 14), Chesapeake and Ohio Railway Company Trackage rights over Louisville and Nashville Railroad Company between MN junction at or near East Louisville, KY, and points in Louisville; Chesapeake and Ohio Railway Company coordination of operations between Lexington, KY, and Lousiville, KY, notice of findings.

Notice is hereby given pursuant to 49 U.S.C. 10903 that by decision decided September 23, 1980, a finding which is administratively final was made by the entire Commission, stating that the public convenience and necessity permit the abandonments by (1) Louisville and Nashville Railroad Company in docket No. AB-2 (Sub-No. 25) of its line of railroad between milepost QB 15.16 near Medaryville, IN, and milepost QB 60.03 near Michigan City, IN, in Pulaski, Starke, and LaPorte Counties, IN, a distance of 44.87 miles, which application is related to Finance Docket No. 28905 (Sub-No. 8), *Chicago South Shore and South Bend Railroad Acquisition and Operation Louisville and Nashville Railroad Company line, Michigan City Branch, in LaPorte County, IN;* (2) Baltimore and Ohio Railroad Company in Docket No. AB-19 (Sub-No. 41) of its line of railroad between milepost 0.35 near North Vernon, IN, and milepost 28.52 near Nabb, IN, in Jennings, Jefferson, and Scott Counties, IN, a distance of 28.17 miles, which application is related to Finance Docket No. 28905 (Sub-No. 11), *Louisville and Nashville Railroad Company Trackage Rights over Baltimore and Ohio Railroad Company in Cincinnati, OH: Baltimore and Ohio Railroad Company Joint Use Properties of the Covington and Cincinnati Elevated Railroad and Transfer and Bridge Company and the Cincinnati Inter-Terminal Railroad Company; Baltimore and Ohio Railroad Company Trackage Rights Over Louisville and Nashville Railroad Company Between KC Junction at Covington, KY, and Louisville, KY: Baltimore and Ohio Railroad Company and Louisville and Nashville Railroad Company Coordination of Operations Between Cincinnati, OH, and Louisville, KY;* and (3) Chesapeake and Ohio Railway Company in (a) docket AB-18 (Sub-No. 27) of its carfloat operations (i) between Newport News, VA, and the U.S. Naval Operating Base at Norfolk, VA, a distance of approximately 6 miles, and (ii) between Newport News, VA, and Sewells Point in Norfolk, VA, a distance of approximately 7 miles, which application is related to Finance Docket No. 28905 (Sub-No. 12), *Chesapeake and Ohio Railway Company Trackage Rights over Seaboard Coast Line Railroad Company Between Richmond, VA, and Portsmouth, Va; Chesapeake and Ohio Railway Company and Seaboard Coast Line Railroad Company Coordination of Operations Between Richmond, VA, and Portsmouth, VA;* (b) docket No. AB-18 (Sub-No. 28) of its line of railroad between milepost 625.38 near Winchester, KY, and milepost 634.49 near Chilesburg, KY, in Clark and Fayette Counties, KY, a distance of 9.11 miles, which application is related to Finance Docket No. 28905 (Sub-No. 13), *Chesapeake and Ohio Railway Company Trackage Rights over Louisville and Nashville Railroad Company Between Winchester and North Lexington, KY; and (c) docket No. AB-18 (Sub-No. 29) of its line of railroad between valuation station 4+20 to valuation stotion 32+22.2 in Louisville, Jefferson County, KY, a distance of 0.53 miles, which application is relatd to Finance Docket No. 28905 (Sub-No. 14), Chesapeake and Ohio Railway Company Trackage Rights over Louisville Viaduct and Operations at Preston Street Yard, all in Louisville, Jefferson County, KY,* subject to the conditions for the protection of emplyees discussed in *Oregon Short Line R. Co.—Abandonment Goshen,* 360 I.C.C. 91 (1979), *provided further,* that in docket Nos. AB-2 (Sub-No. 25) and AB-19 (Sub-No. 41), the applicants shall not sell, lease, exchange or otherwise dispose of the right-of-way underlying the track, all bridges, and all culverts on the lines involved for a period of 120 days from October 25, 1980, unless these properties have first been offered, upon reasonable terms, to public authorities or other responsible persons interested in acquiring the property for public use. In addition, upon approval of the abandonment in No. AB-2 (Sub-No. 25) and institution of salvage operations

along the involved line, L&N will be required to (1) cut bridge structures off at stream bed level to prevent disruption of bottom sediments and aquatic life; (2) remove abutments only if excessive stream siltation can be prevented; and (3) remove bridges during the low-flow period of the year.

All of the above applications are directly related to the application in Finance Docket No. 28905 (Sub-No. 1), *CSX Corporation Control Chessie System, Inc., and Seaboard Coast Line Industries, Inc.*

Certificates of abandonment will be issued to the Louisville and Nashville Railroad Company, the Baltimore and Ohio Railroad Company, and the Chesapeake and Ohio Railway Company based on the above-described findings 30 days after publication of this Notice, unless within 15 days from the date of publication the Commission further finds that:

(1) a financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued. The offer must be filed with Commission and served concurrently on the applicants, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice; and

(2) it is likely that such proffered assistance would:

(a) cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed. An offer may request the Commission to set conditions and amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of an offer, and no request is made on the Commission to set conditions or amount of compensation, a certificate of abandonment will be issued no later than 50 days after this notice is published. Upon notification to the Commission of the execution of an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the finacial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the **Federal Register** on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-33158 Filed 10-23-80; 8:45 am]

BILLING CODE 7035-01-M

Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special Rule 247 was published in the **Federal Register** on July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an applicator must follow the rules under 49 CFR 1100.247(B). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed within 45 days of publication of this decision-notice (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP2-075

Decided: Oct. 21, 1980.

By the Commission, Review Board Number 3 Members Parker, Fortier and Hill. Member Hill not participating.

MC 71452 (Sub-21F), filed October 8, 1980. Applicant: INDIANA TRANSIT SERVICE, INC., 4300 West Morris St., Indianapolis, IN 46241. Representative: Warren A. Goff, 2008 Clark Tower, 5100 Poplar Ave., Memphis, TN 38137. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 71902 (Sub-99F), filed October 9, 1980. Applicant: UNITED TRANSPORTS, INC., 4900 North Santa Fe Ave., Oklahoma City, OK 73154. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th St., NW., Washington, DC 20004. Transporting *general commodities* (except household goods as defined by the Commission, hazardous or secret materials, and senitive weapons and munitions), for the United States Government, between points in the U.S.

MC 112063 (Sub-24F), filed October 7, 1980. Applicant: P.I. & I. MOTOR EXPRESS, INC., c/o P.O. Box 685, Sharon, PA 16146. Representative: Milan Tatalovich, 11 West Liberty St., Girard, OH 44420. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 123993 (Sub-83F), filed October 10, 1980. Applicant: FOGLEMAN TRUCK LINE, INC., P.O. Box 1504, Crowley, LA 70526. Representative: Austin L. Hatchell, P.O. Box 2165, Austin, TX 78768. Transporting *general commodities* between Santa Rosa, Tucumcari, Logan, Maravisa, and Endee, NM; Stratford, Glenrio, Adrian, Vega, Wildorado, Amarillo, Alanreed, McLean, Shamrock, St. Francis, Fritch, Sunray, Etter, Brum, Wilco, Stinnett, Pringle, Morse, Gruver, Dalhart, Irving, Dallas, Waxahachie, Corsicana, Teague, Newby, Normangee, Tomball, Houston, Texas City, Galveston, Fort Worth, Graham, Jacksboro, Bowie, Ringgold, and Mexia, TX; Texalo, Sayre, Elk City, Clinton, Weatherford, Bridgeport, Texhoma, Hitchland, Hardesty, Guymon, Mangum, Grantie, Hobart, Carnegie, Anadarko, Apache, Chickasha, Marlow, Duncan, Comanche, Homestead, Alva, Ingersoll, Enid, Billings, Ponca City, Augusta, Kingfisher, El Reno, Oklahoma City, Shawnee, Seminole, Wewoka, Holdenville, McAlester, Haileyville, Hartshorne, Wilburton, Wisten, Howe, Medford, Warren, Geary, Okeene, Fort Bill, Verden, Lawton, Walter, Temple, Waurika, and Terral, OK; Eunice, Lecompte, Alexandria, Winnfield, Jonesboro, Hodge, Ruston, Dubach, Bernice and Junction City, LA; Eldorado, Camden, Crossett, Hermitage, Mace, Banks, Kingman, Fordyce, Carthage, Sparkman, Malvern, Hot Springs, Haskell, Benton, Little Rock, Bauxite, North Little Rock, Carlisle, Hazen, Des Arc, Mesa, DeValls Bluff, Brinkley, Wheatley, Forest City, West Memphis, Edmondson, Stuttgart, Roland, Bigelow, Perry, Cla, Booneville, Mansfield, and Hartford, AR; Kansas City, Southlea, Pleasant Hill, Windsor, Hay, Versaille, Eldon, Meta, Gasconde, Belle, Owensville, Union, Labadie, St. Louis, Liberty, Excelsior Springs, Polo, St. Joseph, Clardsdale, Maysville, Wetherby, Altamont, Coburn, Trenton, and Princeton, MO; Caldwell, Wellington, Wichita, Peabody, Marion, Harrington, Liberal, Plains, Meade, Fowler, Mineola, Bucklin, Dodge City, Greensburg, Pratt, Hutchinson, Medora, McPherson, Salina, White City, Alta Vista, Goodland, Colby, Norton, Phillipsburg, Smith Center, Mankato, Belleville, Cuba, Clyde, Clifton, Clay Center, Riley, Manhattan, McFarland, Topeka, Holton, Horton, Troy, Atchison and Kansas City, KS; Burlington, Stratton, Flaglea, Arriba, Limon, Simla, Roman, Calhan, Colorado Springs and Denver, CO; Thompson, Ruskin, Deshler, Hebron, Fairbury, Jansen, Witt, Lincoln, South Bend, Omaha, and Beatrice, NE; Council Bluffs, Shelby, Oakland, Avoca, Audubon, Walnut, Menlo, Stuart, Winterset, Indianola, Chariton, Corydon, Allerton, Seymore, Centerville, Eldon, Ottumwa, Evans, Pella, Monroe, Des Moines, Colfax, Newton, Grimmell, Brooklyn, Marengo, Iowa City, West Liberty, Stockton, Davenport, Clinton, Fairfield, Keosauqua, South Burlington, Buffalo Center, Burlington, Mount Zion, Keokuk, Washington, Ainsworth, Columbus Jct., Nichols, Muscatine, Wilton, Elmira, Cedar Rapids, West Union, Oelwein, Vinton, Waterloo, Cedar Falls, Nevada, McCallsburg, Renwick, Iowa Falls, Hampton, Mason City, Maysfield, Manly, Dows, Belmond, Titonka, Armstrong, Northwood, Emmetsburg, Estherville, Spirit Lake, Lake Partk, Gowrie, Hanson, Pocohontas, Hartley, and Sibley, IA; Elsworth, Worthington, Lismore, Albert Lea, Hollandale, Clarks Grove, Owatona, Faribault, Northfield, Farmington, West St. Paul, and St. Paul, MN; Rock Island, Milan, Moline, East Moline, Silvis, Colona, Geneseo, Sheffield, Bureau, Tonlon, Henry, Chillicothe, Peoria, Pekin, Lasalle, Ottawa, Joliet, Elwood, and Chicago, IL; and Memphis, TN; on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

MC 135953 (Sub-18F), filed October 3, 1980. Applicant: CHEROKEE LINES, INC., P.O. Box 152, Cushing, OK 74023. Representative: Marshall D. Becker, Suite 610, 7171 Merce Rd., Omaha, NE 68106. Transporting *general commodities* (except used household goods, hazardous or secret materials and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 151453 (Sub-1F), filed October 3, 1980. Applicant: HERMAN O. ALBRITTON TRUCKING, Rt. 2, Box 219, Butler, GA 31006. Representative: Herman O. Albritton (same address as applicant). Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package (exceeds 100 pounds, between points in the U.S.

MC 152152F, filed October 8, 1980. Applicant: THOMAS J. WEBER, 12122 W. St., Omaha, NE 68137. Representative: Edward A. O'Donnell, 1004 29th St., Sioux City, IA 51104. Transporting *food and other edible products* (including edible by-products but excluding alcoholic beverages and drugs) *intended for human consumption, agricultural limestone and other soil conditioners and agricultural fertilizers*, if such transportation is provided with the owner of the motor vehicle in such vehicle, except in emergency situations, between points in the U.S.

Volume No. OP3-053

Decided: Oct. 20, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones. Member Joyce not participating.

MC 53965 (Sub-180F), filed October 6, 1980. Applicant: GRAVES TRUCK LINE, INC., 2130 South Ohio, Salina, KS 67401. Representative: John E. Jandera, P.O. Box 1979, Topeka, KS 66601. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Ford, Levant, Brewster, Edson, Caruso, Ruleton and Kanorado, KS, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

MC 95084 (Sub-167F), filed October 6, 1980. Applicant: HOVE TRUCK LINE, a Corporation, Stanhope, IA 50246. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in U.S.

MC 152114F, filed October 6, 1980. Applicant: WILLIAM E. PACE & MAX PACE, 4816 Wedgview, Hurst, TX 76053. Representative: William E. Pace & Max Pace (same address as applicant). Transporting *food and other edible products (including edible by-products but excluding alcoholic beverages and drugs), intended for human consumption, agricultural limestone and other soil conditioners, and agricultural fertilizers*, if such transportation is provided with the owner of the motor vehicle in such vehicle, except in emergency situations, between points in the U.S. (except AK, HI, and DC).

Volume No. OP4-096

Decided: Oct. 17, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton and Liberman. Member Chandler not participating.

MC 125037 (Sub-17F), filed October 14, 1980. Applicant: DIXIE MIDWEST EXPRESS, INC., P.O. Box 372, Greensboro, AL 36744. Representative: John R. Frawley, Jr., 5506 Crestwood Blvd., Birmingham, AL 35212. Transporting *general commodities* (except used household goods,

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hazardous or secret materials, and sensitive weapons and munitions) for the United States Government, between points in the U.S.

MC 152186F, filed October 10, 1980. Applicant: RICHARD GALUSHA, RFD, South Johnsburg Rd., Johnsburg, NY 12843. Representative: W. Norman Charles, P.O. Box 724, Glen Falls, NY 12801. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions) for the United States Government, between points in the U.S.

MC 152187F, filed October 10, 1980. Applicant: GORDON TRUCKING, INC., 2205 Pacific Hwy East, Tacoma, WA 98422. Representative: Michael D. Duppenthaler, 211 South Washington St., Seattle, WA 98104. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions) for the United States Government, between points in the U.S.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-33156 Filed 10-23-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a petition for intervention, either in support of or in opposition to the granting of an application, must be filed with the Commission by November 24, 1980. Protests (such as were allowed to filings prior to March 1, 1979) *will be rejected.* A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(1) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, including the extent, if any, to which petitioner (a) has solicited the traffic or business of those supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. The Commission will also consider (a) the nature and extent of the property, financial, or other interest of the petitioner; (b) the effect of the decision which may be rendered upon petitioner's interest, (c) the availability of other means by which the petitioner's interest might be protected, (d) the extent to which petitioner's interest will be represented by other parties, (e) the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and (f) the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable compliance with the requirements of the rule may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission indicating the specific rule under which the petition to intervene is being filed, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Section 247(f) provides, in part, that an applicant which does not intend to timely prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If an applicant has introduced rates as an issue it is noted. Upon request, an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administrative acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. § 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulation. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. § 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. § 10930(a) [formerly section 210 of the Interstate Commerce Act.]

In the absence of legally sufficient petitions for intervention, filed within 30 days of publication of this decision-notice (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the following decision-notices within 30 days after publication, or the application shall stand denied.

Note.—All applications are for authority to cooperate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, except as otherwise noted.

Volume No. 361

Decided: October 17, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 31389 (Sub-302F), filed June 2, 1980. Applicant: MCLEAN TRUCKING COMPANY, 1920 West First Street, Winston-Salem, NC 27104. Representative: David F. Eshelman, P.O. Box 213, Winston-Salem, NC 27102. Transporting *general commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Little Rock, AR and Springfield, MO, over U.S. Hwy 65 intermediate points between Little Rock and Conway, AR, serving Bear Creek Springs, AR for purposes of joinder only; and serving Springfield, MO as an intermediate point in conjunction with existing regular route operations: (2) between Springfield, MO and Gateway, AR: from Springfield over U.S. Hwy 60 to Monett, MO, then over MO Hwy 37 to the MO/AR state line, then over AR Hwy 37 to Gateway, and return over the same route, serving no intermediate points, (3) between Bear Creek Springs, AR and Tulsa, OK, from Bear Creek Springs over U.S. Hwy 62 to junction Muskogee Tpk., then over the Muskogee Tpk. to Tulsa, and return over the same route, serving all intermediate points between Rogers and Fayetteville, AR inclusive, the off-route point of Bentonville, AR, and the intermediate point Muskogee, OK: (4) between Muskogee, OK and Little Rock, AR, from Muskogg over U.S. Hwy 64 (also from Muskogee over the Muskogee Tpk. to the junction of U.S. Hwy 64) to Little Rock, and return over the same route, serving all intermediate points between Ft. Smith, and Little Rock, AR inclusive: (5) between Fayetteville, AR and Texarkana, TX, over U.S. Hwy 71 serving Ft. Smith, AR as an intermediate point, and the junction of U.S. Hwys 71 and 270 and U.S. Hwys 59 and 71 for purposes of joinder only: (6) between Wynne, AR and Forest City, AR, over AR Hwy 1 serving Colt, AR, and intermediate points: (7) between Memphis, TN and Little Rock, AR, from Memphis over U.S. Hwy 64 to junction U.S. Hwy 67, then over U.S. Hwy 67 to Little Rock, and return over the same route, serving Wynne, Augusta and Searcy, AR as intermediate and off-route points: and (8) between Blytheville, AR and junction Interstate Hwys 55 and 57 near Sikeston, MO, from Blytheville over U.S. Hwy 61 to junction Interstate Hwy 55, then over Interstate Hwy 55 to junction Interstate Hwy 57, and return over the same route, serving Caruthersville, Kennett and Hayti, MO as intermediate and off-route points.

MC 106398 (Sub-1079F), filed June 13, 1980, previously noticed in **Federal Register** issue of July 31, 1980. Applicant: NATIONAL TRAILER CONVOY, INC., 705 South Elgin, Tulsa, OK 74120. Representative: Gayle Gibson (same address as applicant). Transporting *pipe, conduit, and accessories* from Louisiana, MO, to points in the U.S. (except AK and HI).

Note.—This republication changes the origin.

MC 111309 (Sub-16F), filed May 19, 1980, previously noticed in **Federal Register** issue of July 29, 1980. Applicant: NEWPORT TRUCKING CORP., 4600 Fifth St., Long Island City, NY 11101. Representative: Michael R. Werner, 167 Fairfield Road, P.O. Box 1409, Fairfield, NJ 07006. *Contract carrier*, transporting (1) *flavoring compounds, extracts and beverage preparations*, from the facilities of Pepsi-Cola Company at Valhalla, NY to points in CT, DE, MA, MD, ME, NH, NJ, NY, PA, RI, SC, VA, VT, NC, MI, OH, and WV, and (2) *empty containers packaging materials, and materials, supplies and equipment* used in the manufacture of flavoring syrup, flavoring compounds, extracts and beverage preparations, from points in CT, DE, MA, MD, ME, NH, NC, NJ, NY, PA, RI, SC, VA, CT, MI, OH, and WV to the facilities of Pepsi-Cola Company at Valhalla, NY, under continuing contract(s) with Pepsi-Cola Company of Purchase, NY.

Note.—This republication add MI and OH to the territory description in (1) and (2).

MC 150358F, filed March 12, 1980. Applicant: RICHARD R. KROHN d.b.a. NORTHWEST DELIVERY SERVICE, 7600 49th Ave. N., New Hope, MN 55428. Representative: David F. Jendrzejek, 2022 IDS Center, Minneapolis, MN 55402. Transporting *such commodities* as are distributed by manufacturers of containers, between Minneapolis, MN, on the one hand, and, on the other, points in WI, MI, and IA.

Volume No. 362

Decided: Oct. 17, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton, and Liberman.

MC 106398 (Sub-970F), filed October 1, 1979, previously noticed in **Federal Register** of March 6, 1980. Applicant: NATIONAL TRAILER CONVOY, INC., 705 South Elgin, Tulsa, OK 74120. Representative: Fred Rahal (same address as applicant). Transporting, (1) *buildings and insulating materials, pipe, and pipe fittings*, and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), between points in the United States (except AK and HI), restricted to shipments originating at or destined to the facilities of CertainTeed Corporation.

Note.—This republication changes the territory description.

MC 119399 (Sub-132F), filed June 2, 1980, previously noticed in **Federal Register** issue of July 29, 1980. Applicant: CONTRACT FREIGHTERS, INC., P.O. Box 1375, 2900 Davis Boulevard, Joplin, MO 64801. Representative: Thomas P. O'Hara (same address as applicant). Transporting (1) *containers and bags*, and (2) *agricultural pesticides and ingredients* of agricultural pesticides, from Crossett, AR, and Atlas Point, DE, Indianapolis, IN, and Paoli, PA, to the facilities of Farmland Industries, Inc., at St. Joseph, MO.

Note.—This republication adds Crossett, AR to the Territory Description.

MC 146448 (Sub-17F), filed April 10, 1980, initially published in the **Federal Register** on July 29, 1980. Applicant: C & L TRUCKING, INC., P.O. Box 409, Judsonia, AR 72081. Representative: Timothy C. Miller, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101. Transporting *tile*, and *materials, equipment and supplies* used in the installation, manufacture, and sale of tile (except commodities in bulk), between the facilities of American Olean Tile Co., at (a) Roseville, CA, (b) Cloverport and Lewisburg, KY, (c) Olean, NY, (d) Lansdale and Quakertown, PA, and (e) Jackson, TN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Note.—This application is republished to show the origin point of Lewisburg, KY, in lieu of Leesburg.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-33161 Filed 10-23-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the **Federal Register** of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the

Commission's policy of simplifying grants of operating authority. Findings:

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed by December 8, 1980 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP3–052

Decided: Oct. 20, 1980.

By the Commission, Review Board Number 1; members Carleton, Joyce, and Jones. Member Joyce not participating.

MC 2934 (Sub-82F), filed October 8, 1980. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Road, Carmel, IN 46032. Representative: W. G. Lowry (same address as applicant). Transporting *electric appliances,* from Allentown, PA, and Brockport, NY, to points in AL, AR, CA, FL, GA, IL, IA, IN, KS, KY, LA, MD, MI, MN, MO, MS, NC, OH, OK, SC, TN, TX, VA, WI, and WV.

MC 104654 (Sub-165F), filed October 8, 1980. Applicant: COMMERCIAL TRANSPORT, INC., P.O. Box 469, Belleville, IL 62222. Representative: Edward G. Villalon, 1032 Pennsylvania Bldg., Pennsylvania Ave & 13th St., NW, Washington, DC 20004. Transporting (1) *petroleum products,* from St. Louis, MO, to points in IL; and (2) *lubricating oil,* from St. Louis, MO, to Atlanta, GA, Indianapolis, IN, Riverdale, IA, Jackson, KY, Memphis, and Alcoa, TN, Aberdeen, MS, Milwauke, WI, Kansas City, KS, Omaha, NE, Little Rock, AR, and Baton Rouge, LA.

MC 107295 (Sub-997F), filed October 8, 1980. Applicant: PRE-FAB TRANSIT CO., a Corporation, P.O. Box 146, Farmer City, IL 61842. Representative: Duance Zehr (same address as applicant). Transporting (1) *composition board* and *water repelling material* (except commodities in bulk), and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S., restricted to traffic originating at or destined to the facilities used by Shepherd Products Co.

MC 124905 (Sub-6F), filed October 8, 1980. Applicant: GARY W. GRAY, P.O. Box 48, Delaware, NJ 07823. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517. Transporting *scrap metal,* between points in CT, NY, NJ, PA, DE, and MD.

MC 129525 (Sub-3F), filed October 8, 1980. Applicant: STARR TRANSIT CO., INC., 2531 E. State St., Trenton, NJ 08619. Representative: Alan R. Squires, 818 Widener Bldg., 1339 Chestnut St., Philadelphia, PA 19107. Over regular routes, transporting *passengers and their baggage,* in the same vehicle with passengers, (1) between Levittown, PA and Atlantic City, NJ: From Levittown over Oxford Valley Road to junction U.S. Hwy 1, then over U.S. Hwy 1 to junction Interstate Hwy 95, then over Interstate Hwy 95 to junction PA Hwy 132, then over PA Hwy 132 to Bensalem, PA, then over PA Hwy 132 to junction Interstate Hwy 95, then over Interstate Hwy 95 to the Walt Whitman Bridge, then over said bridge to the Atlantic City Expressway, then over Atlantic City Expressway to Atlantic City, and return over the same route, and (2) between Richboro, PA and Bensalem, PA: From Richboro over PA Hwy 232 to junction PA Hwy 132, then over PA Hwy 132 to Bensalem, and return over the same route, in (1) and (2) above serving all intermediate points.

MC 133805 (Sub-60F), filed October 8, 1980. Applicant: LONE STAR CARRIERS, INC., Rt. 1, Box 48, Tolar, TX 76476. Representative: Harry F. Horak, 5001 Brentwood Stair Rd., Suite 115, Fort Worth, TX 76112. Transporting (1) *toilet preparations,* and (2) *materials and supplies* used in the manufacture and distribution of toilet preparations, in vehicles equipped with refrigeration (except commodities in bulk, in tank vehicles), between the facilities of Roux Laboratories, Inc., in Duvall County, FL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 136364 (Sub-2F), filed October 6, 1980. Applicant: J & P PROPERTIES, INC., P.O. Box 1146, Apopka, FL 32703. Representative: James E. Wharton, Suite 811, Metcalf Bldg., 100 South Orange Ave., Orlando, FL 32801. Transporting *general commodities* (except classes A and B explosives, and household goods as defined by the Commission), between points in the U.S., under a continuing contract(s) with F. W. Woolworth Co., of New York, NY.

MC 14565 (Sub-8F), filed October 6, 1980. Applicant: GURN ENTERPRISES, INC., Route 6, Box 8, Allegan, MI 49010. Representative: Charles E. Creager, P.O. Box 1417, Hagerstown, MD 21740. Transporting (1) *universal joints,* and (2) *materials and supplies* used in the manufacture and distribution of universal joints (except commodities in bulk), between points in the U.S., under continuing contracts(s) with Rockwell International Corporation, of Troy, MI.

MC 145955 (Sub-19F), filed October 8, 1980. Applicant: CENTRAL TRUCK SERVICE, INC., 4440 Buckingham Ave., Omaha, NE 68107. Representative: Arlyn L. Westergren, 7101 Mercy Rd., Suite 106, Omaha, NE 68106. Transporting *such commodities* as are dealt in or used by manufacturers of cosmetics, toilet preparations, and jewelry (except commodities in bulk, in tank vehicles), between Chicago, IL, and Kansas City, MO.

MC 147404 (Sub-3F), filed October 8, 1980. Applicant: DONALD J. GETTELFINGER d.b.a. GETTELFINGER FARMS, R.R. 2, Box 241, Palmyra, IN 47164. Representative: Robert W. Loser II, 1101 Chamber of Commerce Bldg., 320 North Meridian Street, Indianapolis, IN 46204. Transporting *bananas,* between points in Jefferson County, KY, on the one hand, and, on the other, Mobile, AL, Tampa, FL, New Orleans, LA, and Gulfport, MS.

MC 147645 (Sub-3F), filed October 8, 1980. Applicant: DOTY TRUCKING, INC., R.R. #2, Box 310, Columbus, IN 47201. Representative: Warren C. Moberly, 777 Chamber of Commerce Bldg., 320 N. Meridian St., Indianapolis, IN 46204.Transporting (1) *petroleum or coal products* as described in Item 29 of the Standard Transportation Commodity Code (STCC), (2) *rubber or miscellaneous plastics products* as described in Item 30 of STCC, (3) *primary metal products* including

galvanized, except coating or other allied processing, as described in Item 33 of STCC, (4) *fabricated metal products* except ordinance, as described in Item 34 of STCC, and (5) *machinery and supplies* as described in Item 35 of STCC, and (6) *transportation equipment* as described in Item 37 of STCC, between points in the U.S., under continuing contract(s) with Eagle International, Inc., of Brownsville, TX.

MC 147825 (Sub-4F), filed October 8, 1980. Applicant: VERNE'S AUTO SALES, INC., 2804 Neva Rd., Antigo, WI 54409. Representative: Michael J. Wyngaard, 150 E. Gilman St., Madison, WI 53703. Transporting *pallets, pallet parts, lumber, lumber products, skids, ties, timbers, and posts,* between points in WI and the Upper Peninsula of MI, on the one hand, and, on the other, points in AR, CO, IA, IL, IN, KS, KY, MI, MN, MO, NC, NM, OH, OK, SC, TN, TX, and WI.

MC 148654 (Sub-1F), filed October 8, 1980. Applicant: CLOVERLEAF TRANSPORTATION, INC., 14 Kerri Lane, Spring Valley, NY 10977. Representative: Ronald I. Shapss, 450 Seventh Ave., New York, NY 10123. Transporting (1) *malt beverages,* and (2) *material and supplies* used in the manufacture and distribution of malt beverages, between points in NY, NJ, PA, CT, RI, MA, NH, VT, ME, DE, MD, VA, WV, NC, SC, GA, FL, AL, MS, LA, AR, MO, IA, MN, WI, IL, KY, TN, OH, ID, MI, and TX.

MC 149575F, filed October 6, 1980. Applicant: ADAMS CARTAGE COMPANY, INC., P.O. Box 3043, Macon, GA 31205. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. Transporting *ground limestone* and *ground barytes,* in bags, (1) between points in Bartow County, GA, on the one hand, and, on the other, points in AL, FL, NC, and SC, and (2) between points in Talladega County, AL, on the one hand, and, on the other, points in GA, FL, NC, and SC.

MC 152175F, filed October 7, 1980. Applicant: GRIFFIN CORPORATION OF VALDOSTA, GEORGIA, Rockyford Rd., P.O. Box 1847, Valdosta, GA 31601. Representative: Kenneth D. Combs (same address as applicant). Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between the facilities of Griffin Corporation of Valdosta, Georgia, at or near (a) Valdosta and Bainbridge, GA, and (b) Mexico, MO, on the one hand, and, on the other, points in the U.S.

Volume No. OP4–092

Decided: Oct. 15, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 4426 (Sub-3F), filed October 9, 1980. Applicant: M & T TRANSPORT, INC., 7397 Richmond Rd., P.O. Box 292, East Syracuse, NY 13057. Representative: Herbert M. Canter, 305 Montgomery St., Syracuse, NY 13202. Transporting *lumber or wood products,* except furniture as described in Item 24 of the Standard Transportation Commodity Code (STCC) Tariff, between points in AL, DE, FL, MD, NC, SC and VA, on the one hand, and, on the other, points in CT, ME, MA, NH, NJ, NY, PA, RI and VT.

MC 63417 (Sub-295F), filed October 9, 1980. Applicant: BLUE RIDGE TRANSFER CO., INC., P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same address as applicant). Transporting (1) *new furniture and furniture parts,* from points in NC, SC, and VA, to points in the U.S. (except AK, HI, NC, SC, and VA), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, in the reverse direction. Condition: Issuance of a certificate in this proceeding is subject to the coincidental cancellation, at applicant's written request, of authority held in MC 63417 and Subs thereunder which duplicate, in full or in part, the authority herein.

MC 114416 (Sub-14F), filed October 8, 1980. Applicant: WESTERN TRANSPORT CRANE & RIGGING, a corporation, 100 Western Way, P.O. Box 3507, Missoula, MT 59801. Representative: Henry C. Winters, 525 Evergreen Bldg., 15 So. Grady Way, Renton, WA 98055. Transporting (1) *commodities* which because of size or weight require special handling or special equipment, (2) *related articles* and supplies when their transportation is incidental to the transportation of the commodities in (1) above, (3) *self-propelled articles* each weighing 15,000 pounds or more, and (4) *parts* of the commodities described in (1), (2), and (3) above, between points in the U.S. (including AK but excluding HI).

MC 123936 (Sub-6F), filed October 9, 1980. Applicant: RETAIL STORES DELIVERY OF RHODE ISLAND, INC., 215 Douglas Rd., Warwick, RI 02886. Representative: Michael R. Werner, 167 Fairfield Road, P.O. Box 1409, Fairfield, NJ 07006. Transporting *such commodities as are used in or dealt by retail department stores,* between points in CT, MA, ME, NH, NJ, NY, RI and VT.

MC 128837 (Sub-23F), filed October 10, 1980. Applicant: TRUCKING SERVICE INC., P.O. Box 229, Carlinville, IL 62626. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701. Transporting *fresh meat,* between points in Cook and Macoupin Counties, IL, DeKalb, Fulton, Houston And Bibb Counties, Ga, Davidson and Bedford Counties, TN, Grayson and Dallas Counties, TX, on the one hand, and, on the other, points in the U.S. (except WA, OR, ID, NV, AZ, NM, CO, UT, WY, and MT).

MC 138157 (Sub-255F), filed October 8, 1980. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 So. Market St., Chattanooga, TN 37410. Representative: Patrick E. Quinn, P.O. Box 9596, Chattanooga, TN 37412. Transporting (1) *metal articles,* (2) *chimneys,* and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) and (2) above, between points in San Mateo County, CA and Warren County, MS, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 142106 (Sub-3F), filed October 10, 1980. Applicant: VIP COMMUTER CORPORATION: 14810 Danville Rd., Dale City, VA 22193. Representative: Sylvanus G. Bent (same address as applicant) Transporting *passengers and their baggage,* in the same vehicle with passengers (1) in round-trip charter and special operations, beginning and ending at points in Prince William, Arlington, and Fairfax Counties, VA, and Washington, DC, and extending to points in the U.S. (including AK, but excluding HI), and (2) in special operations, between points in Prince William and Fairfax Counites, VA, and Washington, DC.

MC 147676 (Sub-4F), filed October 7, 1980. Applicant: KEATON TRUCK LINES, INC., 1000 So. Lelia St., P.O. Box 1187, Texarkana, TX 75504. Representative: Patsy R. Washington (same address as applicant). Transporting *general commodities* (except those of unusual value and classes A and B explosives), between points in the U.S., under continuing contract(s) with Velsicol Chemical Corp., of Chicago, IL.

MC 150567 (Sub-4F), filed October 10, 1980. Applicant: TRAVIS TRANSPORTATION, INC., 123 Coulter Ave., Ardmore, PA 19003. Representative: William E. Collier, 8918 Tesoro Dr., Suite 515, San Antonio, TX 78217. Transporting *foodstuffs, and materials, equipment and supplies* used in the manufacture and distribution of

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foodstuffs, between points in the U.S., under continuing contract(s) with Stokely-Van Camp, Inc., of Indianapolis, IN.

MC 151027 (Sub-2F), filed October 7, 1980. Applicant: GRADY J. MITCHELL d.b.a. MITCHELL TRUCKING COMPANY, Box 616, Dobson, NC 27017. Representative: Eric Meirhoefer, Suite 423, 1511 K St., N.W., Washington, D.C. 20005. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in NJ, DE, NY and PA, on the one hand, and, on the other, points in CA, TX and NV, restricted to traffic originating at or destined to the facilities of West Coast Shippers Association, Inc. and its members.

MC 152146 (Sub-1F), filed October 8, 1980. Applicant: FAR WEST TRANSPORTERS, INC., 14901 Chandler Rd., Omaha, NE 68138. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Rd., Omaha, NE 68106. Transporting *electric cable and cable reels*, between Omaha, NE, on the one hand, and, on the other, points in AR, CA, ID, LA, MN, MT, OK, OR, TX, and WA.

MC 152147 F, filed October 2, 1980. Applicant: B. J. McADAMS, INC., Route 6, Box 15, North Little Rock, AR 72118. Representative: Diane Price (same address as applicant). Transporting (1) (a) *meats, meat products, meat by-products,* and *articles distributed by meat-packing houses,* and (b) foodstuffs (except those embraced in (a), and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Swift Independent Packing Company, A Division of Swift & Company, of Chicago, IL.

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Decided, October 17, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton, and Liberman. Member Chandler not participating.

MC 21866 (Sub-180F), filed October 14, 1980. Applicant: WEST MOTOR FREIGHT, INC., 740 S. Reading Ave., Boyertown, PA 19512. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. Transporting (1) *paints, thinners, and commodities* used in the preparation and finishing of wood and metal (except commodities in bulk), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), between Delaware, OH, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX (except OH).

MC 21866 (Sub-181F), filed October 14, 1980. Applicant: WEST MOTOR FREIGHT, INC., 740 S. Reading Ave., Boyertown, PA 19512. Representative: Edward J. Kiley, 1730 M St., N.W., Washington, DC 20036. Transporting (1) *printed matter,* and (2) *materials and supplies* used in the manufacture and distribution of printed matter (except commodities in bulk), between the facilities of R. R. Donnelley & Sons Co., at points in the U.S., on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, CO, and NM.

MC 51146 (Sub-880F), filed October 14, 1980. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: Matthew J. Reid (same address as applicant). Transporting *petroleum products,* in containers, between the facilities of Pennzoil Products Company, at or near Reno and Rouseville, PA, on the one hand, and, on the other, points in IL, IN, KY, MI, MN, MO, and WI.

MC 59247 (Sub-13F), filed October 14, 1980. Applicant: LINDEN MOTOR FREIGHT COMPANY, INC., 1300 Lower Rd., Linden, NJ 07036. Representative: William Biederman, 371 Seventh Ave., New York, NY 10001. Transporting (1) *containers, container ends, and container closures,* and (2) *materials, equipment, and supplies* (except commodities in bulk) used in the manufacture and distribution of the commodities in (1) above, between those points in the U.S. in and east of MT, WY, CO, and NM, restricted to traffic originating at or destined to the facilities of Reynolds Metals Company.

MC 95876 (Sub-368F), filed October 14, 1980. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Ave. No., St. Cloud, MN 56301. Representative: William L. Libby (same address as applicant). Transporting *such commodities* as are dealt in or used by manufacturers and distributors of stone and stone products, between points in the U.S.

MC 107107 (Sub-488F), filed October 15, 1980. Applicant: ALTERMAN TRANSPORT LINES, INC., 12805 N.W. 42nd Ave., Opa Locka, FL 33054. Representative: Sidney Alterman (same address as applicant). Transporting (1) *furniture* and *fixtures,* (2) *materials, equipment, and suplies* used in the manufacture and distribution of the commodities in (1) above, and (3) *brass and brass fittings,* between points in NC, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 126286 (Sub-18F), filed October 14, 1980. Applicant: NIX TRANSPORTATION, INC., P.O. Box 721 Albany, OR 97321. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, OR 97210. Transporting (1) *lumber and wood products* (except furniture), and (2) *building materials,* between points in OR, WA, CA, ID, MT, UT, CO, NV, and AZ.

MC 136407 (Sub-33F), filed October 14, 1980. Applicant: COORS TRANSPORTATION COMPANY, a corporation, 5101 York St., Denver, CO 80216. Representative: Leslie R. Kehl, 1600 Lincoln Center, 1660 Lincoln St., Denver, CO 80264. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with Samsonite Corporation and Associated Grocers of Colorado, Inc., both of Denver, CO, Warner-Lambert Company, of Morris Plains, NJ, Storage Technology Corporation, of Broomfield, CO., and Hunt-Wesson Foods, Inc., of Fullerton, CA.

MC 149567 (Sub-1F), filed October 8, 1980. Applicant: KARAS & SONS, INC., 707 South 6th St., Princeton, MN 55371. Representative: Robert S. Lee, 1000 1st National Bank Bldg., Minneapolis, MN 55402. Transporting (1) *tonics and cosmetics,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Sasco, of Dallas, TX.

MC 152177F, filed October 8, 1980. Applicant: KNUTSON CARPET HUT, INC., 1900 Virginia Ave., North Bend, OR 97459. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, OR 97210. Transporting *textile mill products,* between Los Angeles, CA, Chattanooga, TN, and points in GA, on the one hand, and, on the other, points in OR and WA.

MC 152097 (Sub-1F), filed October 8, 1980. Applicant: UNITED CONTRACT CARRIER, INC., P.O. Box 355, Rear, 400 Brook St., Rocky Hill, CT 06067. Representative: Hugh M. Joseloff, P.O. Box 3258, Hartford, CT 06103. Tranporting *such commodities* as are dealt in or used by department stores, between points in the U.S., under continuing contract(s) with Ames Department Stores, Inc., of Rocky Hills, CT.

MC 152176F, filed October 7, 1980. Applicant: SAIN & HEAVNER TRUCKING, a corporation, Route 1, Box 318, Vale, NC 28168. Representative: Frank A. Graham, Jr., P.O. Box 11864, Columbia, SC 29211. Transporting

foodstuffs, in containers, from points in Greenville County, SC, to points in FL.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-33162 Filed 10-23-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Correction

In FR Doc. 80-26231, appearing at page 57577 in the issue of Thursday, August 28, 1980, the sixth line of the third complete paragraph (beginning, "MC 148517 (Sub-2F)") on page 57584 should read, "Rapids, MI 49503. Transporting (1)".

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Correction

In FR Doc. 80-30341, appearing at page 65072 in the issue of Wednesday, October 1, 1980, the first line of the last complete paragraph in column two on page 65074 should read, "MC 151403 (Sub-1F), filed June 16, 1980."

BILLING CODE 1505-01-M

INTERNATIONAL JOINT COMMISSION—UNITED STATES AND CANADA

Invitation for Statements In Response To the Request of the Province of British Columbia Concerning the Raising of the Level of the Skagit River at the International Boundary

The International Joint Commission has received a request from the Province of British Columbia to annul or amend the Commission's 1942 Order of Approval which authorized the raising of the natural level of the Skagit River at the International Boundary to elevation 1725 feet above mean sea level or to declare invalid a 1967 Agreement between the City of Seattle and the Province regarding compensation for damages in Canada. First notice of receipt of the above "request" was announced through a press statement dated September 16, 1980.

In accordance with its Rules of Procedure, the Commission requests Statements in Response from interested persons setting forth facts and arguments bearing on the subject matter and tending to oppose or support the Request in whole or in part. Closing date for receipt of such statements is December 17, 1980.

The Statements in Response will be sent to the Province of British Columbia which may submit a Statement in Reply within thirty (30) days. The Commission will then consider what further action it should take to dispose of this matter.

Statements should be forwarded to:

David G. Chance, International Joint Commission, Canadian Section, Berger Building, 100 Metcalf Street, 18th Floor, Ottawa, Ontario K1P 5M1.

David A. LaRoche, International Joint Commission, United States Section, 1717 H Street, NW., Suite 203, Washington, D.C. 20440.

David A. LaRoche,

Secretary, U.S. Section, Internotional Joint Commission.

October 17, 1980.

[FR Doc. 80-33185 Filed 10-23-80; 8:45 am]

BILLING CODE 4710-14-M

DEPARTMENT OF JUSTICE

Bureau of Prisons

Advisory Corrections Council; Meeting

Notice is hereby given that the Advisory Corrections Council in accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770) will meet on November 19–20 in Oakland, California.

This meeting is being held in conjuction with the Seventh and Ninth Circuit Sentencing Institute. The purpose of the meeting is to discuss five agenda items related to the role of the Federal Government in Corrections.

Signed at Washington, D.C., this 21st day of October, 1980.

Norman A. Carlson,

Director, Bureau of Prisons.

[FR Doc. 80-33192 Filed 10-23-80 8:45 am]

BILLING CODE 4410-05-M

DEPARTMENT OF LABOR

Tripartite Advisory Panel on International Labor Standards; Meeting

Note.—This document originally appeared in the **Federal Register** for Wednesday, October 22, 1980. It is reprinted in this issue to meet requirements for publication on the Tuesday/Friday schedule assigned to the Labor Department.

In accordance with Section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is hereby given of a meeting of the Tripartite Advisory Panel on International Labor Standards, which is a subcommittee of the President's Committee on the International Labor Organization.

Name: Tripartite Advisory Panel on International Labor Standard.
Date: November 6, 1980.
Time: 10:00 a.m.
Place: Department of Labor, 3rd and Constitution Ave. NW., Room C-5515, Washington, D.C. 20210.

This meeting will be closed to the public under authority of Section 10(d) of the Federal Advisory Committee Act, as amended. During its closed session, the Committee will discuss classified materials relating to United States participation in the International Labor Organization. Additionally, the meeting will involve discussion of information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action. It is not practicable to segregate a portion of the meeting to permit public participation.

All communications regarding this subcommittee should be addressed to Carin A. Clauss, Solicitor of Labor, U.S. Department of Labor, 3rd and Constitution Ave. NW., Washington, D.C. 20210, telephone (202) 523-7675.

Ray Marshall,

Secretary of Labor.

[FR Doc. 80-33114 Filed 10-21-80; 8:45 am]

BILLING CODE 4510-28-M

Employment and Training Administration

Employment Transfer and Business Competition Determinations Under the Rural Development Act; Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed for the purposes given in the attached list. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1924(b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one

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area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.

2. Employment trends in the same industry in the local area.

3. The potential effect of the new facility upon the local labor market, with particular emphasis upon its potential impact upon competitive enterprises in the same area.

4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).

5. In the case of applications involving the establishment of branch plants or facilities, the potential effect of such new facilities on other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within two weeks of publication of this notice. Comments received after the two-week period may not be considered. Send comments to: Administrator, Employment and Training Administration, 601 D Street, NW, Washington, D.C. 20013.

Signed at Washington, D.C. this 21st day of October 1980.

Glenn M. Zech,

Acting Director, Office of Program Service.

Applications Received During the Week Ending Oct. 25, 1980

Name of applicant and location of enterprise	Principal product or activity
Farm and Poultry Products, Inc., Lumberton, North Carolina.	Processing and shipping of eggs.
Seaboard Coast Line Railroad Company, Winston, Florida.	A modern freight car running repair and diesel locomotive servicing facility at Winston Yard.
Sea Krisp, Inc., Apalachicola, Florida.	Shrimp processing and ship construction repair.
Green Acre Farms, Inc., Sebastopol, Mississippi.	Intergration broiler chickens operations.

[FR Doc. 80-33306 Filed 10-23-80; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-80-125-C]

Last Try Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Last Try Coal Company, P.O. Box 324, Minersville, Pennsylvania 17954 has filed a petition to modify the application of 30 CFR 75.301 to its Last Try Slope located in Northumberland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. Air sample analysis history reveals that harmful quantities of methane are non-existent in the mine.

2. Ignition, explosion and mine fire history are non-existent for the mine.

3. There is no history of harmful quantities of carbon dioxide and other noxious or poisonous gases.

4. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

5. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners.

6. High velocities and large air quantities cause extremely uncomfortable damp and cold conditions in the already uncomfortable, wet mines.

7. As an alternative method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

9. Petitioner states that the alternative method proposed will at all times provide the same measure of protection for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before November 24, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: October 14, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-33235 Filed 10-24-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. N-80-131-C]

R & R Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

R & R Coal Company, P.O. Box 182, Stevenson, Alabama 37772, has filed a petition to modify the application of 30 CFR 75.1719 (illumination) to its Mine No. 2 located in Jackson County, Alabama. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The coal seam ranges in height from 36 to 45 inches with poor top and wet bottom conditions.

2. Petitioner states that installation of lighting fixtures onto the mine's self-propelled electric face equipment would result in a diminution of safety to the miners affected because:

a. System failure will result in an instantaneous change in light intensity. Therefore, the equipment operator and those miners present in the general area will be temporarily blinded;

b. the performance of the foreman's duties will be impaired due to this person traveling from light to dark areas;

c. extreme mining conditions (34,000 psi cutting and drilling) introduce machine vibrations that cause lighting failure on a frequent basis; and

d. the location and placement of the lights on the equipment causes extreme glare conditions.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before November 24, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: October 14, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-33236 Filed 10-23-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-123-C]

Regina Fuel Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Regina Fuel Coal Company, Route 1, Box 224A, Elkhorn City, Kentucky 41522 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 6 Mine located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The coal seam ranges in height from 40 to 46 inches.

2. Petitioner states that installation of cabs or canopies on the mine's equipment would result in a diminution of safety to the miners affected because the canopies would damage the mine's permanent roof support.

3. In addition, the installation of canopies would cause the equipment operator to hang out from the equipment for visibility purposes, exposing the operator to even greater hazards.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before November 24, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: October 14, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-33237 Filed 10-23-80; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; NACOSH Appointments

Notice is hereby given that appointments have been made to fill six (6) vacancies on the National Advisory Committee on Occupational Safety and Health. The vacancies were created by the expiration of the terms of six members on June 30, 1980. Four of the vacancies will be filled by members who have been asked to serve another term, they are:

Dr. Nicholas A. Ashford, Public representative
Dr. Richard E. Ginnold, Public representative
Mr. John J. Sheehan, Labor representative
Dr. Peter J. Nord, Management representative

The other two vacancies will be filled by persons who have not previously served on NACOSH, they are:

Ms. Carol Oppenheimer, Public representative
Dr. Thomas Rockwell, Safety representative

Each of these members has been appointed for a term which will end on June 30, 1982.

The National Advisory Committee was established under section 7(a) of the Occupational Safety and Health Act of 1970 (Pub. L. 91-596) to advise the Secretary of Labor and the Secretary of Health, Education, and Welfare on matters relating to the administration of the Act.

For additional information contact: Clarence Page, Division of Consumer Affairs, Occupational Safety and Health Administration, Room N-3635, 3rd Street and Constitution Avenue, N.W., Washington, D.C. 20210. Telephone: (202) 523-8024.

Signed at Washington, D.C. this 16th day of October 1980.

Ray Marshall,

Secretary of Labor.

[FR Doc. 80-33243 Filed 10-23-80; 8:45 am]

BILLING CODE 4510-26-M

Office of the Secretary

[TA-W-7374]

Firestone Tire & Rubber Co. Pottstown, Pa.; Negative Determination on Reconsideration

On June 19, 1980, the Department made an Affirmative Determination Regarding Application for Reconsideration for workers and former workers producing passenger car tires at Firestone's Pottstown, Pennsylvania plant. This determination was published in the **Federal Register** on June 27, 1980, (45 FR 43493).

The Congressman claimed in his application for reconsideration that the Department conducted its investigation of the Pottstown Pennsylvania plant in a different way than the investigations concerning the Firestone plants in Salinas, California, TA-W-6551, and Los Angeles, California (South Gate), TA-W-5923, whose workers were certified for trade adjustment assistance. The application further claimed that a significant proportion of the tires produced by the Pottstown plant were private brands and at least one of these private brands has been identified by the Department as having an import penetration "significantly higher" than the national average. Lastly, the application claimed that the Department's investigation was not timely, thorough or deliberate.

The Department's review showed that workers at Firestone's Pottstown, Pennsylvania plant did not meet the "contributed importantly" test of the Trade Act of 1974. The Department's survey of major customers and a random sample of smaller customers of Firestone who purchased passenger car and truck tires showed that the respondents' reliance on imports of passenger car tires was substantially below the industry wide levels of imports in 1978 and 1979. With respect to truck tires, a minor part of the production at Pottstown, most customers indicated that they either did not import or had decreased their imports of truck tires in 1979 compared to 1978. Truck tire customers who decreased purchases from Firestone and increased imports represented an insignificant proportion of truck tire sales for Firestone. The Department notes further that Firestone workers at Pottstown were denied eligibility for trade adjustment assistance in an earlier case on May 10, 1979, TA-W-4830.

The Pottstown plant was primarily a bias tire plant for passenger car tires.

Company officials at the corporate level indicated that Firestone has excess capacity for passenger car bias tires, the future for bias tires is bleak and Firestone will not supply any bias tires for the 1981 passenger car models. The Department finds that the demand for bias tires in the replacement market is down because of less miles driven, due to rising gasoline costs, and prolonged tire life, due to the lowered speed limit and the better quality of bias tires. On top of these developments has been the recent severe slump in the auto industry, aggravated by import competition. However, increased auto imports cannot be used as a basis for certifying employees of independent tire producers. The Department had previously determined that component parts are not like or directly competitive with the finished articles. This position has been supported by the courts.

The Department sees little validity in the claim that its investigation of the Pottstown plant was conducted differently than for the Firestone plants in Salinas and South Gate in California. The Salinas and South Gate certifications were based on data available at the time of the investigation. The petition dates for the Salinas and South Gate worker groups are November 16, 1979 and August 21, 1979, respectively while the petition date for the Pottstown worker group is February 13, 1980. In the Salinas and South Gate cases, company import data for passenger car tires ran to November, 1979 and July, 1979, respectively; the downward trend in company imports which began in the third quarter of 1979 was not yet obvious at the time of these investigations. In the Pottstown case, however, the Department had company import data through March, 1980 which showed clearly a significant decrease in company import activity. Company imports of passenger car tires showed dramatic declines in each of three successive quarters beginning with the third quarter of 1979.

The Department, in the Salinas investigation, conducted a two-part survey on Firestone's customers: one national accounts and the other local, including local Western accounts. The reason for the interest in local Western accounts reflected the Department's understanding that half of Salinas's output was sold in Western markets. The result of the Western local account survey showed a 40 percent increase in the extent of import penetration over the survey period. A similar situation prevailed with respect to the marketing of South Gate's tires. In the Pottstown case, the Department did not conduct a regional customer survey because it was the Department's understanding that Pottstown's output was marketed nationally.

Further, at the time of the Salinas and South Gate investigations, the Department had U.S. aggregate import data through September and June 1979, respectively which showed U.S. imports of passenger car tires increasing both absolutely and relative to domestic production in the first six months and the first nine months of 1979 compared to their respective periods in 1978. However, at the time of the Pottstown investigation, U.S. aggregate imports of passenger car tires were declining both absolutely and relative to domestic production in the first three months of 1980 compared to the same period in 1979. Updated U.S. import data for passenger car tires show that these imports fell sharply in the first six months of 1980 compared to the same period in 1979. The Department found that the downward trend in company imports of passenger car tires beginning in the second half of 1979 runs in tandem with the decline in U.S. aggregate imports of passenger car tires for that period and the first six months of 1980.

In its reconsideration, the Department updated its earlier Firestone surveys and conducted another large random survey of Firestone's customers including over half of their private brand customers. These surveys included customers which accounted for a substantial share of Firestone's total sales decline in 1980. The Department's updated survey showed that the import reliance in passenger car tires in the first six months of 1980 was not significant. The random survey showed that import reliance in the first six months of 1980 was below that for the same period in 1979. The few responding customers with declining purchases from Firestone and increasing imports were not significant as they represented less than one-half of one percent of Firestone's total sales decline in 1979 and 1980.

The Department found that although the Pottstown plant produced a substantial amount of private brand passenger car tires, only a negligible amount of Pottstown production consisted of Seiberling or Zenith tires—the primary house brands at the Barberton, Ohio facility of a Firestone subsidiary (Seiberling Tire and Rubber Company). The Department found that of the 38 private brands listed in the application, seven haven't been produced in over 3 years, another three were not familiar to company officials at the corporate level who indicated they either were discontinued long ago or are different lines within a private brand and 18 were included in the Department's survey among which were several of Firetone's largest private label customers.

The Department's certifications of Salinas and South Gate were based on three elements: the trend in company imports, the trend in aggregate imports; and the results of the survey of the plants' customers. On all three points the data indicate contrary results in the Pottstown case.

Conclusion

After reconsideration, I reaffirm the originial denial of eligibility to apply for adjustment assistance to workers and former workers of the Pottstown, Pennsylvania plant of the Firestone Tire and Rubber Company.

Signed at Washington, D.C., this 10th day of October 1980.

Harry J. Gilman,

Supervisory Internotional Economist, Office of Foreign Economic Research.

[FR Doc. 80-33241 Filed 10-23-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-9673]

Michigan Plating & Stamping Co., Grand Rapids, Mich.; Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance; Correction

In Federal Register Doc. 80-24272 appearing on page 53615 in the Federal Register of August 12, 1980 the location in the Appendix under petitioner Michigan Plating & Stamping Company, TA-W-9673 should be corrected to read Grand Rapids, Michigan.

Signed at Washington, D.C. this 17th day of October 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-33240 Filed 10-23-80; 8:45 am]

BILLING CODE 4510-28-M

Rexnord, Inc., et al.; Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for worker adjustment assistance issued during the period

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated.

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases it has been concluded that at least one of the above criteria has not been met.

TA-W-9106; Rexnord, Inc., Milwaukee, Wis.

Investigation revealed that criterion (2) has not been met.

TA-W-9527; Dun Rite Roofing Co., Inc., Farmington Hills, Mich.

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-8804; Garay Co., New York, N.Y.

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-8030; Davison Manufacturing Co. and Bennett Equipment Corp., Detroit, Mich.

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-9430; Joseph Petrilli, Inc., Egg Harbor, N.J.

Investigation revealed that criterion (3) has not been met. Separations from the subject firm were seasonal in nature.

TA-W-9029; Molded Materials Co., Ridgway, Pa.

Investigation revealed that criterion (3) has not been met. U.S. imports of friction brake blocks are negligible.

TA-W-8852 and 8853; Frank D. Saylor & Son, Inc., Birmingham, Mich. and Clarkston, Mich.

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of conduit for wire harnesses are negligible.

TA-W-8429; White Cloud Products, Inc., White Cloud, Mich.

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-10,288; Leonard Automatics, Inc., Denver, N.C.

Investigation revealed that criterion (3) has not been met. The workers' firm does not produce an article as required for certification under Section 223 of the Trade Act of 1974.

TA-W-10,434; Sterling Steel Treating, Inc., Detroit, Mich.

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-10,389; Commonwealth Industries, Inc., Detroit, Mich.

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-10,369; Diamond Heat Treating, Inc., Detroit, Mich.

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-9734; Chase Metals Service, Inc., Madison Heights, Mich.

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-9617; Fullerton Metals Co., Indianapolis, Ind.

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-10,539; Canteen Service Co. of Indianapolis, Anderson, Ind.

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-7328; Hardware Spring Corp., Detroit, Mich.

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-7668; Henzler Manufacturing Corp., Toledo, Ohio.

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-8969; Cad Cartage Co., Inc., Dearborn, Mich.

Investigation revealed that criterion (3) has not been met. The workers' firm does not produce an article as required for certification under Section 223 of the Trade Act of 1974.

TA-W-10,020; Tel-x Corp., Farmington, Mich.

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-9005 and 9011; Consolidation Coal Co.; Harmar Coal Co., Harmar Mine, Harmarville

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-7823; Bostick Foundry Co., Lapeer, Mich.

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-8775; Leroy Machine Co., Inc., Leroy, N.Y.

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-9140; York Merit Products, Inc., Ellicottville, N.Y.

Investigation revealed that criterion (3) has not been met.

TA-W-9299; A. C. Dellovade, Inc., Lackawanna, N.Y.

Investigation revealed that criterion (3) has not been met. Workers of the subject firm perform sheet metal work

related to the construction of steel plants and power houses. Such activities are not like or directly competitive with imports of steel as required for certification under Section 223 of the Act.

TA-W-7925; A. E. Nettleton Shoe Co., Syracuse, N.Y.

Investigation revealed that criterion (3) has not been met. Sales, production and employment at the firm did not decline as required for certification. Company imports declined beginning in the second half of 1979 through the first half of 1980.

TA-W-8773; Jax Mold & Machine, Inc., Decatur, Ala.

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-10,505; Barberton Recon-Center Co., Barberton, Ohio

Investigation revealed that criterion (3) has not been met. The workers' firm does not produce an article as required for certification under Section 223 of the Act.

TA-W-10,253; Reilly Plating Co., Melvindole, Mich.

Investigation revealed that criterion (3) has not been met. The workers' firm does not produce an article as required for certification under Section 223 of the Act.

TA-W-7618; Goodyear Tire & Rubber Co., Bakersfield, Calif.

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-7830; Bradford Production, Inc., Southfield, Mich.

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-8026; Acco Industries, Inc., Blytheville, Ariz.

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-9086; Alcox Corp., Niagara Falls, N.Y.

Investigation revealed that criterion (3) has not been met. U.S. imports of corrosion inhibitors and oil additives are negligible.

TA-W-7945; E. F. Houghton Co., Detroit, Mich.

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-8153; Harmon Colors Corp., Haledon, N.J.

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-8099; Getty Fashions, Inc., Yonkers, N.Y.

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-9662; Acco Industries, Inc., Adrian, Mich.

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-10,699; First Ford, Des Plaines, Ill.

Investigation revealed that criterion (3) has not been met. The workers' firm does not produce an article as required for certification under Section 223 of the Trade Act of 1974.

TA-W-8103 & 8104; G. B. Dupont Co., Inc.; Troy, Mich.; Lapeer, Mich.

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-7705; R. J. Tower Corp., Greenville, Mich.

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-9632; Tonawanda Coke Corp., Tonawanda, N.Y.

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of coal and coke did not increase as required for certification.

TA-W-8570; U.S. Steel Corp., Fairfield, Ala.

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the firm.

TA-W-8274; Neapco, Inc., Pottstown, Pa.

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-10,671, 10,672, and 10,673; Haweley Coal Mining Corp.; Bradshaw, W. Va.; Empire Division Tripple, Landgraff, W. Va.

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of coal and coke did not increase as required for certification.

TA-W-10,258; Consolidation Coal Co., Central City, Pa.

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of coal and coke did not increase as required for certification.

TA-W-7550; American Nu-Color, Inc., Manville, N.J.

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-8324; Spencer Hill Suit Co., Inc., Brooklyn, N.Y.

Investigation revealed that manufacturers for which the subject firm produced under contrct increased their contracts with other domestic firms.

TA-W-7667; Yale Rubber Manufacturing Co., Inc., Sandusky, Mich.

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-9185; Gary Bergman Carpentry; Orchard Lake, Mich.

Investigation revealed that criterion (3) has not been met. Imports of automobiles may not be considered like or directly competitive with activities such as those performed by workers of the subject firm, which are related to the construction of new homes. There are no imports of new homes.

TA-W-10,270; C & A Coal Co., Inc.; C & A Coal Mine; Blackwolf, McDowell County, W. Va.

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of coal and coke did not increase as required for certification.

TA-W-8007; Metal Forge Co., Columbus, Ohio.

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-8684; Berg-Torseth, Inc., St. Paul, Minn.

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the firm.

TA-W-8424; Machining Enterprises, Inc., Mt. Clemens, Mich.

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-9645; Florsheim Shoe Co., Anna, Ind.

Investigation revealed that criterion (3) has not been met. The earliest possible impact date in this case is April 13, 1980. Significant separations from the subject plant have not occurred since that time.

Affirmative Determinations

TA-W-8016 and 8016A; Summit Warehouses, Inc.; Mogadore, Ohio and Akron, Ohio

A certification was issued covering all workers of the firm separated on or after July 30, 1979.

TA-W-9176; Oak Industries, Inc., Oak Materials Group, Inc., Oak Laminates Division, Hayward, Calif.

With respect to workers engaged in employment related to the production of rigid epoxy glass laminates, a certification was issued applicable to all such workers separated on or after June 1, 1980.

With respect to workers producing thin epoxy glass laminates the investigation revealed that criterion (3) has not been met. Imports of thin epoxy glass laminates are negligible.

TA-W-8266 and 8266A; Modern Manufacturing Co.; Columbiaville, Mich.; Madison Heights, Mich.

A certification was issued applicable to all workers at the subject firm separated on or after May 8, 1979.

TA-W-7914; Dana Corp., Hagerstown Controls Plant, Hagerstown, Ind.

A certification was issued applicable to all workers at the subject firm separated on or after April 23, 1979 and before October 1, 1979.

TA-W-9078; Lanson Industries, Oceanside, N.Y.

A certification was issued applicable to all workers at the subject firm separated on or after March 2, 1980.

TA-W-10, 700; Ford Motor Co., Atlanta Marketing Institute, Hapeville, Ga.

A certification was issued covering all workers of the firm separated on or after September 1, 1980 and before November 1, 1980.

TA-W-8027 and 8028; Brand X Fashions, Inc.; P. H. Leather & Suede, Inc. New York, N.Y.

A certification was issued applicable to all workers at the subject firm separated on or after April 27, 1979.

TA-W-7817 and 7817A; Vanette Originals, Inc.; Fran Carol Originals, Inc., Brooklyn, N.Y.

A certification was issued applicable to all workers at the subject firm separated on or after April 18, 1979.

TA-W-7784; Conklin Forging Co., Inc., Detroit, Mich.

A certification was issued applicable to all workers at the subject firm separated on or after April 11, 1979.

I hereby certify that the aforementioned determinations were issued during the period October 14–17, 1980. Copies of these determinations are available for inspection in Room S–5314, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210 during normal working hours or will be mailed to persons who write to the above address.

Dated: October 20, 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-33239 Filed 10-23-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-6815, 7104, 7105]

Wagner Electric Corp.; Negative Determination on Reconsideration

On April 28, 1980, the Department made an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the Wagner Electric Corporation's Plymouth Avenue plant, Berkeley plant and the Lackland Road plant, all located in St. Louis, Missouri.

The union claimed that the Department did not consider that the increasing displacement of U.S. automobile production in the domestic market by foreign manufacturers had a proportionate adverse effect on domestic manufacturers of replacement parts as such replacement parts become needed. This follows, a priori, from the observation that foreign manufactured automobiles require, in large part, foreign manufactured replacement parts. The union further submits that Wagner Electric has invested substantially in supplying its service branches with company imports of replacement parts to fit imported automobiles.

The union's first argument, that the workers of Wagner Electric should be certified eligible to apply for adjustment assistance on the basis of increases in imports of brakes and brake components as replacement parts for imported automobiles, presupposes that brakes and brake components manufactured to fit imported automobiles are like or directly competitive with brake and brake components manufactured to fit domestically produced automobiles. However, the Department does not consider these brakes and brake components to be like or directly competitive with one another since they are neither substantially identical nor substantially equivalent for commercial purposes. Although Wagner Electric markets brakes and brake components to fit imported automobiles, Wagner does not produce brakes or brake components for imported automobiles. Wagner imports all brakes and brake components for use in imported automobiles.

With regard to the union's claim that Wagner Electric has invested substantially in supplying its service branches with imported brakes and brake components to fit imported

automobiles, it should be noted that Wagner's imports of brakes and brake components were insignificant in relation to total firms sales of brakes and brake components in 1978 and 1979. Moreover, as stated above, Wagner does not produce brakes and brake components which are like or directly competitive with the brakes and brake components it imports.

The Department is unable to conclude that increased competitive imports of brakes and brake components have contributed importantly to the separation of workers and to the decrease of production or sales at Wagner Electric's Plymouth Avenue plant, Berkeley plant and Lackland Road plant, all located in St. Louis, Missouri.

While it is possible that some of the brakes or brake components imported by Wagner's customers were designed for use in domestically produced automobiles and, thus, could be considered like or directly competitive with the brakes and brake components produced by Wagner, a survey of Wagner's customers indicated that such imports were negligible.

Conclusion

After reconsideration, I reaffirm the original denial of eligibility to apply for adjustment assistance to workers and former workers of Wagner Electric Corporation's Plymouth Avenue plant, Berkeley plant and Lackland Road plant in St. Louis, Missouri.

Signed at Washington, D.C., this 15th day of October 1980.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 80-33242 Filed 10-23-80; 8:45 am]

BILLING CODE 4510-28-M

MINIMUM WAGE STUDY COMMISSION

Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following meeting:

NAME: Minimum Wage Study Commission.

DATE: Thursday, November 13, 1980.

TIME: 10:30 a.m.

PLACE: The Hay-Adams Hotel, 800 Sixteenth St. NW. At Lafayette Square, Washington, DC 20006.

Original notification of this meeting date appeared in the **Federal Register** on September 24, 1980.

Proposed Agenda:

1. Conglomerate Report by Arthur Young & Company and discussants

2. Literature Review on sheltered workshops

3. Recommendations on transportation exemptions

All communications regarding this Commission should be addressed to: Mr. Louis E. McConnell, 1430 K St. NW, Suite 500, Washington, DC 20005; telephone (202) 376-2450.

Next meeting of the Commission will be Monday, December 15, 1980.

Louis E. McConnell,

Executive Director.

[FR Doc. 80-33234 Filed 10-23-80; 8:45 am]

BILLING CODE 4510-23-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed meetings of the ACRS Subcommittees and Working Groups, and of the full Committee, the following preliminary schedule reflects the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published Sep. 18, 1980 (45 FR 62236). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. Those Subcommittee and Working Group meetings for which it is anticipated that there will be a portion or all of the meeting open to the public are indicated by an asterisk (*). It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 a.m. and Subcommittee and Working Group meetings usually begin at 8:30 a.m. The exact time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee and Working Group meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the October 1980 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone 202/634-3267. ATTN: Mary E. Vanderholt) between 8:15 a.m. and 5:00 p.m., Eastern Time.

ACRS Subcommittee Meetings

**Transportation of Radioactive Materials*, October 29, 1980, Washington, DC. The Subcommittee will consider the scope of its review of the transportation certification process for package design of the NRC Transportation Certification Branch. Notice of this meeting was published Oct. 16.

**Babcock and Wilcox Water Reactors*, October 30, 1980 (rescheduled from Oct. 31), Washington, DC. The Subcommittee will review the Feb. 26, 1980 event at the Crystal River Nuclear Power Plant, Unit No. 3, to determine if there are any significant features or causes that are generic to Babcock and Wilcox reactors. Notice of this meeting was published Oct. 16.

**Three Mile Island Nuclear Power Plant, Unit No. 1*, October 30-31, 1980—RESCHEDULED TO NOVEMBER 28-29, 1980, Washington, DC. Notice of this meeting was published Sep. 18.

**General Electric Test Reactor (GETR)*, November 4, 1980 (rescheduled from Nov. 5), Washington, DC. The Subcommittee will continue its review of GETR structural integrity when subjected to design basis loads. In addition, the Subcommittee will discuss other topics such as landslide hazards. Notice of this meeting was published Oct. 20.

**Regulatory Activities*, November 5, 1980, Washington, DC. The Subcommittee will review Proposed Regulatory Guides 1.12, Revision 2, "Instrumentation for Earthquakes" and 1.97, Revision 2, "Instrumentation for Light-Water-Cooled Nuclear Power Plants and Assess Plant and Environs Conditions During and Following an Accident." Also, the Subcommittee will review Proposed Amendment to 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities" on Interim Requirements Related to Hydrogen Control and Certain Degraded Core Conditions. Notice of this meeting was published Oct. 21.

**Procedures and Administration*, November 5, 1980, (afternoon) Washington, DC. The Subcommittee will review items proposed as methods to strengthen the role of the ACRS in the regulatory process. Notice of this meeting was published Oct. 21.

**Fluid Dynamics*, November 13, 1980, San Francisco, CA. The Subcommittee will review Nucle Dyne's Passive Containment System and the status of NRC Programs on Mark II Containments and Asymetric Loads. Notice of this meeting was published Sep. 18.

**Waste Management*, November 13-14, 1980, Washington, DC. The Subcommittee will continue to obtain information to aid the full Committee in preparing a response to the NRC Commissioners' request for comments on proposed rulemaking on the storage and disposal of nuclear waste and the adequacy of the record. (Waste Confidence Rulemaking PR-50, 51).

**Combination of Dynamic Loads*, November 18-19, 1980, Jupiter, FL. POSTPONED TO EARLY DECEMBER, WASHINGTON, DC. Exact date will be announced later. Notice of this meeting was published Sep. 18.

**Evaluation of Licensee Event Reports*, November 20, 1980, Washington, DC. The Subcommittee will discuss with representatives of the NRC Staff possible modifications to the NRC collection and storage of operational data from nuclear power plants. Notice of this meeting was published Sep. 18.

**Consideration of Class-9 Accidents*, November 21, 1980, Washington, DC. The Subcommittee will review the NRC Safety Research Budget for FY-82 Decision Unit on Severe Accident Phenomena and Mitigation Research. Also, it will discuss the Advance Notice of Rulemaking on Degraded Core Accidents, and will continue its review of hydrogen control methods during accidents in nuclear power plants.

**Three Mile Island Nuclear Power Plant, Unit No. 1*, November 28-29, 1980 (rescheduled from October 30-31, 1980), Washington, DC. The Subcommittee will review the modification made to TMI-1 in preparation for a restart following the TMI-2 accident.

**Advanced Reactors*, December 2, 1980, Washington, DC. The Subcommittee will review the current proposal for FY-82 budget in preparation for the annual report to Congress.

**Reactor Operations*, December 2, 1980, Washington, DC. The Subcommittee will discuss NRC guidelines for utility management structure and technical resources.

**Regulatory Activities*, December 2, 1980 (rescheduled from December 3), Washington, DC. The Subcommittee will review regulatory guides and revisions to existing regulatory guides; also, it may discuss pertinent activities which affect the current licensing process and/or reactor operation. Notice of this meeting was published Oct. 21.

**Reliability and Probabilistic Assessment*, December 3 (morning), 1980, Washington, DC. The Subcommittee will review the NRC Safety Research Program Budget for FY-82 Decision Unit on Systems and Reliability Analysis (SARA).

**Reactor Safety Program*, December 3, 1980, Washington, DC. The Subcommittee will discuss new developments in NRC Safety Research Programs since the issuance of the ACRS Report to NRC (NUREG-0699); preliminary draft chapters or sections of the ACRS Report to Congress; and the Department of Energy's Light-Water-Reactor Safety Technology Program.

**Emergency Core Cooling Systems*, December 10-11, 1980, San Jose, CA. The Subcommittee will review NRC research programs related to transients, LOCA, and ECCS, and the work being done at the Lawrence Livermore Laboratory on Hydrogen Control.

**Reactor Radiological Effects and Site Evaluation*, December 11, 1980, Washington, DC. The Subcommittee will discuss preparation of appropriate chapters of the ACRS annual Reactor Safety Research Report to Congress.

**Reactor Radiological Effects*, December 12, 1980, Washington, DC. The Subcommittee will discuss the state-of-the-art in the area of radiation standards and dose limits to radiation workers. Notice of this meeting was published Sep. 18.

**Site Evaluation*, December 13, 1980, Washington, DC. The Subcommittee will discuss the Generic Environmental Impact Statement on Class-9 Accidents at nuclear power plants.

**Metal Components*, January 7, 1981, Washington, DC. The Subcommittee will discuss inservice inspection techniques as applied to the reactor coolant pressure boundary.

ACRS Full Committee Meetings

November 6-8, 1980

A. **North Anna Nuclear Power Plant, Unit No. 2:* Discussion of items related to plant staffing, results of the augmented low-power test program, reliability and risk assessment, steam generator tube integrity, and decay heat removal capability.

B. **General Electric Test Reactor:* Seismic upgrading/proposed operation of the GETR.

C. **BWR Hydraulic Scram Systems:* Performance of BWR hydraulic scram systems.

D. **Methods to Strengthen the ACRS Role in the Regulatory Process:* Discussion with Chairman, Nuclear Safety Oversight Committee.

E. **Meeting with NRC Chairman and Commissioners:* Discussion of procedural and safety related aspects of the nuclear regulatory process.

F. **Regulatory Activities:* Discussion of proposed changes in NRC Regulatory Guides and Rules including RG 1.97, Revision 2, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident," and Proposed Interim Requirements Related to Hydrogen Control and Certain Degraded Core Considerations (10 CFR 50).

G. **Unresolved Generic Items Applicable to Light-Water Reactors:* Review of the status of generic items identified in ACRS Report No. 7, dated March 21, 1979.

H. **Diablo Canyon Nuclear Power Plant:* Discussion of seismic interaction study and related plant modifications.

I. **Safety Related Reports:* Reports by NRC Staff and designated ACRS Subcommittee Chairmen regarding various safety related matters including the status of recovery operations at TMI-2, the implications of operating experience at the Crystal River Nuclear Power Plant, including the incident of Feb. 26, 1980, proposed changes in NRC Regulatory Guides, status of the program for design/development of a system for control of combustible gasses in nuclear power plants making use of ice-condenser containment such as the Sequoyah Nuclear Power Plant.

December 4-6, 1980: Agenda to be announced.

January 8-10, 1981: Agenda to be announced.

Dated: October 21, 1980.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 80-33204 Filed 10-23-80; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Babcock and Wilcox Water Reactors; Date Change

The meeting date for the ACRS Subcommittee on Babcock and Wilcox Water Reactors has been changed to *October 30, 1980* (instead of October 31 as previously announced).

All other items regarding this meeting remain the same as stated in the **Federal Register** notice published October 16, 1980 (45 FR 68817).

Dated: October 20, 1980.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 80-33203 Filed 10-23-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-368]

Arkansas Power & Light Co., (Arkansas Nuclear One, Unit 2); Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has

issued Amendment No. 16 to Facility Operating License No. NPF-6 issued to Arkansas Power and Light Company for Operation of Arkansas Nuclear One, Unit 2 (the facility) located at the licensee's site in Pope County, Arkansas. The amendment was effective as of September 19, 1980.

The amendment revised the Appendix A Technical Specifications by specifying that the two independent containment cooling groups shall be operable with at least one operational cooling unit per group. The Appendix A Technical Specifications had previously required that the two independent containment cooling groups shall be operable with two operational cooling units in one group and at least one operational cooling unit in the second group. The revision also increased the frequency of verifying the service water flow rate of the containment cooling groups from once every 31 days to once every 14 days with chlorination of the service water whenever the water temperature is between 60 and 80 degrees Fahrenheit.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR Section 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated September 16, 1980, (2) the Commission's letter to the licensee dated September 19, 1980 (3) Amendment No. 16 to Facility Operating License No. NPF-6, and (4) the Commission's related Safety Evaluation. These items are available for public inspection at the Commission's Public Document Room at 1717 H Street, N. W., Washington, D.C. 20555 and the Arkansas Polytechnic College, Russellville, Arkansas 72801. A copy of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 9th day of October 1980.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 80-33208 Filed 10-23-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-289 (Restart)]

Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1); Memorandum and Order Scheduling Emergency Planning Session

October 17, 1980.

Take notice that a hearing session to take up prehearing matters relating to emergency planning, including new contentions which have been proposed, will be held at the TMI-1 Hearing Room, 25 Court Street, Harrisburg, Pennsylvania, on October 30, 1980, at 9:00 a.m. All parties interested in the issue of emergency planning are directed to attend.

The parties are cautioned that such courtesy written notification, which confirms an action of the board taken on the record of the evidentiary hearing, will not normally be undertaken. Parties who choose not to attend sessions of the hearing are not excused from the responsibility of being aware of actions taken at the hearing. This responsibility can be fulfilled by various means, including monitoring the transcript and staying in contact with parties present at the hearing.

The Atomic Safety and Licensing Board.

Harrisburg, Pennsylvania, October 17, 1980.

Ivan W. Smith,

Chairman.

[FR Doc. 80-33210 Filed 10-23-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-336]

Northeast Nuclear Energy Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 61 to Facility Operating License No. DPR-65, issued to Northeast Nuclear Energy Company, the Connecticut Light and Power Company, the Hartford Electric Light Company, and the Western Massachusetts Electric Company (the licensee), which revised Technical Specifications for operation of the Millstone Nuclear Power Station, Unit No. 2, (the facility) located in the Town of Waterford, Connecticut. The amendment is effective as of its date of issuance.

The amendment revises the Technical Specifications to authorize Cycle 4 operation at 2700 MWt with a mixed core with one-third Westinghouse fuel and two-thirds Combustion Engineering fuel and modified guide tubes for the control element assemblies. The amendment also incorporates changes resulting from the analysis of the Cycle 4 reload with Westinghouse fuel, adds surveillance requirements for engineered safety features components leakage outside containment, allows continuation of low temperature operation for special tests, corrects the shutdown margin for Mode 5, and prevents containment purging in Modes 1, 2, 3 and 4.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the applications for amendment dated August 10, 1979, May 9, August 29 and September 30, 1980, (2) Amendment No. 61 to License No. DPR-65, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Waterford Public Library, Rope Ferry Road, Waterford, Connecticut. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 6th day of October, 1980.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 80-33209 Filed 10-23-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-344]

Portland General Electric Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 50 to Facility Operating License No. NPF-1, issued to Portland General Electric Company, the City of Eugene, Oregon, and Pacific Power and Light Company (the licensees), which revised Technical Specifications for operation of Trojan Nuclear Plant (the facility) located in Columbia County, Oregon. The amendment is effective as of the date of issuance.

The amendment revised the Technical Specifications related to fire protection by the addition of operability and surveillance requirements for new equipment added pursuant to the Trojan fire protection review published with Amendment No. 22 dated March 9, 1978. The amendment also contains miscellaneous changes pertaining to fire protection. The issuance of this amendment and related supplement to the Fire Protection Safety Evaluation Report completes the NRC's fire protection review for the Trojan facility. The amendment also corrects a drafting error on Figure 3.1-1 of the Technical Specifications.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the applications for amendment dated June 19, 1980, (2) Amendment No. 50 to License No. NPF-1, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Columbia County Courthouse, Law Library, Circuit Court Room, St. Helens, Oregon 97051. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 6th day of October 1980.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 80-33205 Filed 10-23-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-344]

Portland General Electric Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 49 to Facility Operating License No. NPF-1, issued to Portland General Electric Company, the City of Eugene, Oregon, and Pacific Power and Light Company, (the licensee), which revised the license for operation of the Trojan Nuclear Plant (the facility), located in Columbia County, Oregon. The amendment is effective as of the date of issuance and is to be fully implemented within 30 days of Commission approval in accordance with the provisions of 10 CFR 73.40(b).

The amendment revises license condition 2.D. to include the Commission-approved Safeguards Contingency Plan as a part of the Physical Security Plan.

The licensee's filing complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

The licensee's filing dated May 7, 1980 is being withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR 9.12.

For further details with respect to this action, see (1) Amendment No. to License No. NPF-1 and (2) the Commission's related letter to the licensee dated October 6, 1980. These items are available for public inspection at the Commission's Public Document Room. 1717 H Street, N. W., Washington, D.C. 20555 and at the Columbia County Courthouse, Law Library, Circuit Court Room, St. Helens, Oregon 97051. A copy of items (1) and (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 6th day of October, 1980.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 80-33206 Filed 10-23-80; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guide; Issuance and Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 10.8, Revision 1, "Guide for the Preparation of Applications for Medical Programs," describes the type and extent of information needed by the NRC staff to evaluate an application for a specific license for the possession of byproduct material (reactor-produced radionuclides) and its use in or on human beings. This guide was revised as a result of recent licensing experience, public comments, and additional staff review.

Comments and suggestions in connection with (1) items for inclusion

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in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Copies of active guides may be purchased at the current Government Printing Office price. A subscription service for future guides in specific divisions is available through the Government Printing Office. Information on the subscription service and current prices may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Publication Sales Manager.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 14th day of October 1980.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Standards Development.

[FR Doc. 80-33209 Filed 10-23-80; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Establishment of Prescribed Minimum Educational Requirements; Industrial Hygiene Series, GS-690

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management has revised the prescribed minimum educational requirement for industrial hygienists employed within the Federal service. The previous requirement of 15 semester hours in chemistry has been changed to 30 semester hours in the physical or natural sciences or engineering, 12 hours of which must have been in chemistry. This change, while continuing to recognize the fundamental chemistry knowledge, also recognizes the breadth of scientific disciplines used in the performance of work in this profession. The prescribed requirement will assure fair and equitable recruitment and placement actions with respect to the duties of individual positions.

EFFECTIVE DATE: October 24, 1980.

FOR FURTHER INFORMATION CONTACT: Lynn C. Hashian, Personnel Management Specialist, Standards Development Center, U.S. Office of Personnel Management, 1900 E Street NW., Washington, D.C. 20415, 202-254-8527.

SUPPLEMENTARY INFORMATION: In accordance with Section 3308 of title 5, United States Code, the Office of Personnel Management has revised the prescribed minimum educational requirement for industrial hygienists employed within the Federal service. The requirement, the duties of the positions, and the reasons for the Office of Personnel Management's decision that the requirement is necessary are set forth below:

Industrial Hygiene Series, GS-690, GS-5 through GS-15

Minimum Educational Requirement

Candidates for positions as industrial hygienists must have completed successfully a 4-year course of study in an accredited college or university, or the equivalent, creditable toward a bachelor's or higher degree in industrial hygiene, or in a branch of engineering, physical science or life science. This study must have included or been supplemented by 12 semester hours in chemistry which included organic chemistry, as well as 18 additional semester hours of courses in any combination of the following fields: chemistry, physics, engineering, health physics, environmental health, biostatistics, biology, physiology, toxicology, epidemiology, or industrial hygiene.

Duties

Industrial hygienists are concerned with the prevention of disease through proper control of the work environment. This involves the recognition of health problems created within the occupational environment, the evaluation of the occupational environment in terms of the long range as well as the short range effects on health, and the development of corrective measures in order to eliminate existing problems. Some of the more frequently encountered causes of these health problems are chemical agents, physical energy, biological agents, and ergonomic factors. These stresses must all be evaluated in terms of their danger to life and health, as well as their influence on the natural bodily functions. Industrial hygienists conduct surveys of worksites to identify and evaluate conditions which may be unhealthful to the worker, using a variety of equipment to take samples from the environment and to collect personal data from workers. Other functions performed by industrial hygienists include developing standards, calibrating and operating highly technical instrumentation, preparing methods and techniques for use by other occupational health and safety personnel, conducting epidemiologic studies to uncover the presence of occupation-related illness, developing and presenting education and training programs for employees and supervisors, reviewing design plans for facilities or for modifications to existing facilities, investigating new processes and materials for adequacy of health hazard controls, and managing occupational health programs. Industrial hygienists evaluate data collected from the environment, using laboratory analysis and extensive literature searches, and recommend or prescribe measures to control any unhealthful conditions identified.

Reason for Establishing Requirement

Because potential health hazards in the work environment may result from chemical, physical, or biological agents, or from a combination of these, industrial hygienists must have a broad basic background in the physical or natural sciences, or engineering. This background can only be acquired through the successful completion of a course of study in an accredited college or university which has thoroughly trained instructors who provide the technical and scientific course work, laboratory and library research, and the evaluation of progress necessary to the acquisition of professional competence.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 80-33286 Filed 10-23-80; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-17226; File No. SR-NASD-79-12]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975) notice is hereby given that on October 8, 1980, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of Terms of Substance of the Proposed Rule Change

Text of Proposed Rule Change

The following is the full text of the proposed revision of Schedule G under Article XVIII of the By-Laws of the National Association of Securities Dealers, Inc. (the "NASD" or the "Association").

Note.—*Italics* indicate new material; brackets indicate deletions.

Schedule G

This Schedule has been adopted pursuant to Article XVIII of the Corporation's By-Laws and shall apply to all over-the-counter transactions in listed securities that are required to be reported to the Consolidated Tape ("eligible securities"), as provided in the Plan filed by the Association pursuant to Rule 11Aa3-1 under the Securities Exchange Act of 1934 ("Plan").

Section 1—Definitions

(a) Terms used in this Schedule shall have the meaning as defined in the By-Laws and Rules of Fair Practice, Rule 11Aa3-1 and the Plan, unless otherwise defined in this Schedule.

(b) "Consolidated Tape" means the consolidated transaction reporting system for the dissemination of last sale reports in eligible securities required to be reported pursuant to the Plan.

(c) "Designated Reporting Member" means a member of the Association which executes over-the-counter transactions in eligible securities, maintains transaction reporting capability through the NASDAQ System, and has requested to be a Designated Reporting Member. The Association may also designate any member that effects a substantial number of over-the-counter transactions in eligible securities. A list of Designated Reporting Members is attached to this Schedule.

(d) "Eligible securities" means all common stocks, preferred stocks, long-term warrants, and rights entitling the holder to acquire an eligible security, listed or admitted to unlisted trading privileges on the American Stock Exchange or the New York Stock Exchange, and securities listed on regional stock exchanges, which substantially meet the original listing requirements of the New York Stock Exchange or the American Stock Exchange. A list of eligible securities listed on regional stock exchanges is attached to this Schedule.

(e) "Non-Designated Reporting Member" means all members of the Association which are not Designated Reporting Members.

Section 2—Transaction Reporting

(1) Designated Reporting Members shall transmit through the NASDAQ Transaction Reporting System, within 90 seconds after execution, last sale reports of transactions in eligible securities executed during the trading hours of the Consolidated Tape. Transactions not reported within 90 seconds after execution shall be designated as late.

(2) Non-Designated Reporting Members shall transmit through the NASDAQ Transactions Reporting System, or if such System is unavailable, via Telex, TWX or telephone to the NASDAQ Department in New York City, within 90 seconds after execution, last sale reports of transactions in eligible securities executed during the trading hours of the Consolidated Tape unless all of the following criteria are met:

(A) The aggregate number of shares of eligible securities which the member executed and is required to report does not exceed 1,000 shares in any one trading day; and

(B) The total dollar amount of shares of eligible securities which the member executed and is required to report does not exceed $25,000 in any one trading day; and

(C) The member's transactions in eligible securities have not exceeded the limits of (A) or (B) above on five or more of the previous ten trading days.

Transactions not reported within 90 seconds after execution shall be designated as late. If the member has reason to believe its transactions in a given day will exceed the above limits, it shall report all transactions in eligible securities within 90 seconds after execution; in addition, if the member exceeds the above limits at any time during the trading day, it shall immediately report and designate as late any unreported transactions in eligible securities executed earlier that day.

(3) Non-Designated Reporting Members shall report weekly to the NASDAQ Department in New York City, on Form T, last sale reports of transactions in eligible securities which are not required by paragraph (2) to be reported within 90 seconds after execution.

(4) All Members shall report weekly to the NASDAQ Department in New York City, on Form T, last sale reports of transactions in eligible securities executed outside the trading hours of the Consolidated Tape.

(5) All trade tickets for transactions in eligible securities shall be time-stamped at the time of execution.

(b) Which Party Reports Transaction

(1) Transactions executed on an exchange are reported by the exchange and shall not be reported by members.

(2) In transactions between two Designated Reported Members, only the member representing the sell side shall report.

(3) In transactions between a Designated Reporting Member and a Non-Designated Reporting Member, only the Designated Reporting Member shall report.

(4) In transactions between two Non-Designated Reporting Members, only the member representing the sell side shall report.

(c) Information To Be Reported

Each last sale report shall contain the following information:

(1) Stock symbol of the eligible security;

(2) Number of shares (odd lots shall not be reported);

(3) Price of the transaction as required by paragraph (d) below.

(d) Procedures for Reporting Price and Volume

Members which are required to report pursuant to paragraph (b) above shall transmit last sale reports for all purchases and sales in eligible securities in the following manner:

(1) For agency transactions, report the number of shares and the price excluding the commission charged.

Example: SELL as agent 100 shares at 40 plus a commission of $12.50; REPORT 100 shares at 40.

(2) For dual agency transactions, report the number of shares only once, and report the price excluding the commission charged.

Example: SELL as agent 100 shares at 40 plus a commission of $12.50; BUY as agent 100 shares at 40 less a commission of $12.50; REPORT 100 shares at 40.

(3) For principal transactions, except as provided below, report each purchase and sale transaction separately and report the number of shares and the price. For principal transactions which are executed at a price which includes a mark-up, mark-down or service charge, the price reported shall exclude the mark-up, mark-down or service charge. Such reported price shall be reasonably related to the prevailing market, taking into consideration all relevant circumstances including, but not limited to, market conditions with respect to the security, the number of shares involved in the transaction, the published bids and offers with size at the time of the execution (including the reporting firm's own quotation), accessibility to market centers publishing bids and offers with size, the cost of execution and the

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expenses involved in clearing the transaction.

Example: BUY as principal 100 shares from another member at 40 (no mark-down included). REPORT 100 shares at 40.

Example: BUY as principal 100 shares from a customer at 39¾, which includes a ⅛ mark-down from prevailing market of 39⅞; REPORT 100 shares at 39⅞.

Example: SELL as principal 100 shares to a customer at 40⅛, which includes a ⅛ mark-up from the prevailing market of 40; REPORT 100 shares at 40.

Exception:

A "riskless" principal transaction in which a member that is not a market maker in the security, after having received from a customer an order to buy, purchases the security as principal from another member of customer to satisfy the order to buy or, after having received from a customer an order to sell, sells the security as principal to another member of customer to satisfy the order to sell, shall be reported as one transaction in the same manner as an agency transaction, excluding the mark-up or mark-down. A riskless principal transaction in which a member purchases or sells the security on an exchange to satisfy a customer's order will be reported by the exchange and the member shall not report.

Example: BUY as principal 100 shares from another member at 40 to fill an existing order; SELL as principal 100 shares to a customer at 40 plus mark-up of $12.50; REPORT 100 shares at 40.

Example: BUY as principal 100 shares on an exchange at 40 to fill an existing order; SELL as principal 100 shares to a customer at 40 plus a mark-up of $12.50. DO NOT REPORT (will be reported by exchange)

(e) Transactions Not Required To Be Reported

The following types of transactions shall not be reported for inclusion on the Consolidated Tape:

(1) transactions executed on an exchange;

(2) odd-lot transactions;

(3) transactions which are part of a primary distribution by an issuer or of a registered secondary distribution (other than "shelf distributions") or of an unregistered secondary distribution effected off the floor of an exchange;

(4) transactions made in reliance on Section 4(2) of the Securities Act of 1933;

(5) transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security, e.g., to enable the seller to make a gift;

(6) the acquisition of securities by a member as principal in anticipation of making an immediate exchange distribution or exchange offering on an exchange;

(7) purchases of securities off the floor of an exchange pursuant to a tender offer; and

(8) purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a preestablished consideration unrelated to the current market.

(Existing Sections 2, 3 and 4 of Schedule G are to be renumbered as Sections 3, 4, and 5 respectively.)

Procedures of Self-Regulatory Organization

The present revision of Schedule G was developed by the Association's National Market System Trading Committee and approved by the Association's Board of Governors on July 11, 1980, pursuant to Article XVIII of the By-Laws.

Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change is as follows:

Purpose of Proposed Rule Change

References in the introductory paragraph to SEC Rule 17a–15 have been changed to reflect that the rule was amended and redesignated as Rule 11Aa3–1 in Release No. 34–16589 (Feb. 19, 1980).

Paragraphs (c) and (d) of Section 1 of Schedule G have been amended to incorporate the revisions to existing Schedule G approved by the Commission in File No. SR–NASD–80–3 on July 7, 1980. Paragraph (c)(3) refers members to paragraph (d) for the definition of "price," and paragraph (d)(3) provides that, for principal transactions, the price reported shall exclude any mark-up, mark-down, or service charge. Examples have been added to this paragraph to illustrate the new provision. In addition, former exception (i) to this paragraph has been deleted as unnecessary in light of the present amendments.

Former exception (ii) to paragraph (d)(3) has been amended to clarify that when one side of a riskless principal transaction is executed on an exchange, the non-exchange firm does not report at all. This change was adopted following discussions of the matter with the Commission's staff. Finally, in response to comments by the staff and others, the Association has decided to delete former exception (iii) dealing with block transactions.

Basis Under the Act for Proposed Rule Change

No change.

Comments Received From Members, Participants, or Others on Proposed Rule Change

No change.

Burden on Competition

The Association believes the proposed rule change does not impose a burden on competition.

The requirement that "riskless" transactions be reported as one transaction, exclusive of any mark-up or mark-down, imposes no burden on members which are already required by SEC Rule 10b–10 to disclose such charges on their customer confirmations.

Finally, the expanded exception to the real-time reporting requirements will be a benefit, not a burden, to members which effect only occasional transactions in eligible securities.

For these reasons, the Association has determined that the proposed rule change does not impose a burden on competition.

Within 35 days of the date of publication of this notice in the **Federal Register**, (November 28, 1980) or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six (6) copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, NW, Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before November 14, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

October 17, 1980.

[FR Doc. 80–33167 Filed 10–23–80; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–17230; File No. SR–NYSE–80–39]

Self-Regulatory Organization; Proposed Rule Change by New York Stock Exchange, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94–29, 16 (June 4, 1975), notice is hereby given that on October 6, 1980, the above mentioned self-regulatory organization filed with the Securities and Exchange Commission proposed rule changes as follows:

Exchange's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would increase from $35,000 to $50,000 annually, the dues payable to the exchange by members who are entitled to enter physically upon the trading floor of the exchange and to have facilities thereon for the execution of orders, pursuant to the provisions of Article IX, Section 1(b) of the exchange's constitution ("physical access members") and increase from $13,500 to $18,500 annually, the dues payable to the exchange by members who are entitled to maintain electronic or telephonic access pursuant to the provisions of Article IX, Section 1(c) of the constitution ("electronic access members").

Exchange's Statement of Purpose of Proposed Rule Change

The purpose of the proposed rule change is to increase the yearly dues of NYSE physical access and electronic access annual members. The increased dues would apply to annual members who apply who become such after the effectiveness of this rule change (October 6, 1980); but would not apply to existing annual members except upon renewal of their memberships.

The methodology used to arrive at the proposed annual dues of $50,000 for physical access members is the same as that which was used in 1977 to arrive at the original amount of $25,000 and in October 1979 when annual dues were increased to the present level of $35,000. Dues are computed by applying member firms' median pre-tax rate of return on equity capital for the last five years (28.9%) to the current $168,900 NYSE replacement value per membership, and adding the current $1,500 membership dues and the $1,800 fee assessed to each member entering on the trading floor.[1] The NYSE determined to round the total of $52,100 to an even $50,000.

The methodology used to arrive at the proposed annual dues of $18,500 for electronic access members is the same as that which was used in 1977 to arrive at the original amount of $13,500.[2] The amount was—and the proposed new amount is—based upon the regulatory costs to the exchange per electronic or telephonic access member added to the current yearly dues of $1,500.

Exchange's Statement of Basis Under the Act for Proposed Rule Change

The proposed rule change relates to Section 6(b)(4) of the Act which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members using its facilities.[3]

Comments Received From Members, Participants, or Others on Proposed Rule Change

The Exchange has received one written comment from a physical access member who opposes the proposed rule change on the following grounds. First, adjusting dues annually is too frequent; second, the magnitude of the increases is too large (i.e., 40% in 1979, 43% in 1980); and finanlly, it is not equitable to tie annual membership dues to seat prices and lease rates in light of certain differences between physical access membership and leasing a seat.

Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submission should refer to the file number referenced in the caption above and should be submitted on or before November 14, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80–33168 Filed 10–23–80; 8:45 am]

BILLING CODE 8010–01–M

[1] The Commission notes that to the extent that the current increase in physical access membership dues is the result of increased member firms' profits (measured by return on capital) and equity membership replacement value, it anticipates that any future similar decreases would result in a lowering of physical access dues.

[2] This is the first time the exchange has proposed to change the amount of electronic access dues.

[3] The Commission stated in the original order approving NYSE annual membership (Securities Exchange Act Release No. 14535, March 7, 1978), that ". . . the dues to be assessed upon annual members appear, on their face, to be reasonable and equitably allocated in accordance with Section 6(b)(4) of the Act. The Commission believes that the ultimate test of 'reasonableness', however, will be provided by response of the market. Because alternative means of membership in, and access to, the NYSE exist . . . the Commission does not believe it necessary to subject these annual membership dues to a more rigorous *a priori* determination of reasonableness as might otherwise be called for."

[Release No. 17227; SR–Phlx–80–18]

Philadelphia Stock Exchange; Order Approving Proposed Rule Change

October 17, 1980.

On August 8, 1980, the Philadelphia Stock Exchange, Inc. ("Phlx") 17th Street and Stock Exchange Place, Philadelphia, PA 19103, filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) ("Act") and Rule 19b–4 thereunder, copies of a proposed rule change to amend Articles IV, V, VIII, X, XI and XVIII of the Phlx By-laws. The amendments, among other things, vest the authority for disciplinary actions, including enforcement, prosecution and the imposition of sanctions, in the Business Conduct Committee and a newly created Hearing Committee. The amendments also would abolish the Member Firms Committee, establish a Marketing Committee as a standing committee, and change the size and composition of standing committees.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 17090, August 25, 1980) and by publication in the **Federal Register** (45 FR 57804, August 29, 1980). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges. In particular, the proposed amendments would enhance the exchange's ability to comply with its statutory obligations to enforce compliance with the Act, the rules and regulations thereunder and its own rules; to discipline its members and their associated persons for rule violations in an appropriate manner with fitting sanctions; and to provide fair procedures for discipline in accordance with Section 6(b) (1), (6) and (7), respectively.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-33169 Filed 10-23-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11404; 812-4730]

The Cash Management Trust of America; Application Under the Investment Company Act of 1940

October 17, 1980.

Notice of filing of application for an order pursuant to section 6(c) of the Investment Company Act of 1940 granting exemptions from the provisions of section 2(a)(41) of the act and rules 2a-4 and 22c-1 thereunder.

Notice is hereby given that The Cash Management Trust of America, 333 South Hope Street, Los Angeles, California 90071, ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on September 5, 1980, and amendments thereto on September 19, 1980, and September 22, 1980, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit Applicant to compute its net asset value per share according to the amortized cost method of valuing portfolio securities. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant is a business trust organized and existing under the laws of the State of Massachussetts. Applicant has registered under the Act (File No. 811-2380) and its securities are registered under the Securities Act of 1933 (File No. 2-47940).

Applicant states that it intends to operate as a "money market" fund. Applicant's investment objective is to provide current income to its investors while preserving capital and maintaining liquidity. To realize this objective Applicant invests in certain high quality money market instruments consisting of (i) securities of the United States government, its agencies and instrumentalities; (ii) obligations of commercial banks having total assets in excess of $1 billion based on latest published reports; (iii) obligations of savings associations having assets in excess of $1 billion and which are members of the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation; (iv) corporate notes with maturities up to nine months at the time of issuance which at the time of purchase are either rated in one of the two highest categories by Standard & Poor's Corporation or Moody's Investors Service, Inc. or, with respect to not more than 15% of the trust's total assets after such purchase, other commercial paper deemed by the trustees on the basis of the issuer's credit worthiness to be of comparable quality; (v) other investment grade corporate obligations that mature, or that may be redeemed by the trust, in one year or less and (vi) repurchase agreements with selected banks and securities dealers, provided that the trust does not enter any repurchase agreement if, as a result, more than 10% of the trust's total assets would be subject to repurchase agreements maturing in more than seven days.

According to the application, Capital Research & Management Company, an investment adviser to fifteen mutual funds and registered under the Investment Advisers Act of 1940, will act as Applicant's investment adviser. Applicant further states that the minimum initial investment in its shares is $5,000. Applicant states that from the inception of the public offering of its shares in November, 1976, it has maintained the public offering price of its shares at $1.00 per share.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by the board of directors. Rule 22c-1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem, or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution, repurchase and redemption shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company. Prior to the filing of the application, the Commission expressed its view that, among other things: (1) Rule 2a-4 under the Act requires that portfolio instuments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Section 6(c) of the Act provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or of the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant requests an exemption from Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to permit it to use the amortized cost method of valuing portfolio securities. In support of the relief requested Applicant represents that use of the amortized cost method of valuing portfolio securities would provide the necessary flexibility in managing Applicant's securities portfolio to deal with fluctuating interest rate levels, while at the same time maintaining the offering price of Applicant's shares at $1.00 per share. Applicant also states that such valuation would enable it to attract as investors corporate investors and bank trust departments which require stability of principal and a steady flow of investment income. Finally, Applicant states that unless it is allowed to use the amortized cost method of valuation it would be at a competitive disadvantage as compared with other money market funds. Therefore, Applicant submits that granting of the requested exemptions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant has further agreed that the following conditions may be imposed in any order of the Commission granting the exemptive relief requested:

1. In overseeing Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, the board of trustees of Applicant undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the board of trustees of each applicant shall be the following:

(a) Review by the board of trustees, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from the $1.00 amortized cost price per share, and the maintenance of records of such review.

(b) In the event such deviation from Applicant's $1.00 amortized cost price per share exceeds ½ of 1 percent, a requirement that the board of trustees will promptly consider what action, if any, should be initiated by it.

(c) Where the board of trustees believes the extent of any deviation from the $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which action may include: redeeming shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the average maturity of Applicant; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will (a) refrain from purchasing any instrument with a remaining maturity of greater than one year, and (b) maintain a dollar-weighted average portfolio maturity which does not exceed 120 days.

4. Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of its board of trustees' considerations and actions taken in connection with the discharge of their responsibilities, as set forth above, to be included in the minutes of the board of trustees' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which its board of trustees determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by its board of trustees.

6. Applicant will include in each quarterly report, as an attachment to Form N-1Q, a statement as to whether any action pursuant to paragraph 2(c) above was taken during the preceding fiscal quarter and, if any such action was taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than November 10, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule O-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-33163 Filed 10-23-80; 8:45 a.m.]

BILLING CODE 8010-01-M

[Release No. 21748; 70-5513]

The Columbia Gas System, Inc., and Columbia Alaskan Gas Transmission Corp.; Application Under the Public Utility Holding Company Act of 1935

October 20, 1980

Notice of proposal of subsidiary to enter into partnership agreement relating to construction and ownership of natural gas pipeline and to issue and sell common stock and notes to parent in connection therewith.

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Notice is hereby given that Columbia Gas System, Inc. ("Columbia"), a registered holding company, and Columbia Alaskan Gas Transmission Corporation ("Columbia Alaskan"), 20 Montchanin Road Wilmington, Delaware 19807, a non-utility gas transportation subsidiary of Columbia, have filed post-effective amendments to a previously amended application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6, 7, 9, 10 and 12 of the Act and Rules 43, 45 and 51 promulgated thereunder as applicable to the following proposed transactions. All interested persons are referred to the application-declaration, as amended by said post-effective amendments, which is summarized below, for a complete statement of the proposed transactions.

Columbian Alaskan is seeking authorization to become a partner under the Alaskan Northwest Agreement, as amended, ("Northwest Agreement"), which is summarized below, and to issue common stock and notes to finance its participation in the Northwest Agreement.

By order in this proceeding dated August 16, 1974 (HCAR No. 18534), Columbia was authorized, among other things, to participate in the Northern Border Project, a project which was one step in a larger overall project ("Arctic Gas Project") designed to deliver gas from Prudhoe Bay, Alaska to the lower 48 states. The Northern Border Project was organized to constitute and operate a natural gas pipeline which would represent the second leg of the Arctic Gas Project, would commence at Monchy, Saskatchawan and would extend through the United States to a terminal near Delmont, Pennsylvania. The August 16, 1974 order authorized the acquisition by Columbia of up to 40,000 shares of the common stock, $25 par value per share, of Columbia Alaskan Gas Transmission Corporation ("Columbia Alaskan"). A total of 8,000 shares were issued and purchased as authorized for the purpose of financing Columbia Alaskan's proportionate share of the fees paid by the Northern Border Project in connection with the Federal Energy Regulatory Commission ("FERC") filing. Subsequently, Columbia Gas Transmission Corporation advanced to Columbia Alaskan, in support of this long-term gas supply project, funds equal to these expenses. Columbia Alaskan was then a newly organized corporation with no other issued securities or outstanding capital. Columbia's interest in the Northern Border Partnership would be represented by the participation of its subsidiary, Columbia Alaskan, in the Northern Border Project pursuant to the terms of the Northern Border Pipeline Company General Partnership Agreement dated as of April 15, 1974 ("Northern Border Partnership Agreement"). By further order dated November 22, 1978 (HCAR No. 20789), Columbia Alaskan was permitted to participate in a Successor Partnership Agreement, effective as of March 9, 1978, which replaced the Northern Border Partnership Agreement previously authorized in HCAR No. 18534. The Successor Partnership Agreement dealt with Columbia Alaskan's decision not to participate in the "perbuild" of the Northern Border Project but to retain its option to join the project if and when pipeline facilities were built to transport gas from Alaska to Canada.

The Arctic Gas Project would also have involved the representation of Columbia's interest by the participation of its subsidiary, Columbia Alaskan, in the Alaskan Arctic Gas Pipeline Company General Partnership Agreement ("Alaskan Agreement") under which gas would be transported over the first leg of the Arctic Gas Project extending from The North Slope of Alaska to the Alaskan-Canadian border.

Columbia Alaskan's participation in the Alaskan Agreement was authorized by order in this proceeding dated June 22, 1977 (HCAR No. 20086). Columbia Alaskan's contributions to the partnership pursuant to the Alaskan Agreement would be made from the proceeds from the sale of common stock to Columbia authorized in the order of August 16, 1974 (HCAR No. 18534).

The Arctic Gas Project had filed in 1974 for the necessary regulatory approvals in the United States and Canada and had been supported by Columbia. A competing application was filed by El Paso Alaska Company with the then Federal Power Commission ("FPC"). That project provided for the delivery of Prudhoe Bay gas to the lower 48 states via pipeline and LNG tankers. In 1976, Alcan Pipeline Company and Northwest Pipeline Company filed a third competing application with the FPC for a certificate to transport Alaskan Gas ("Alcan project"). The Alcan Project, subsequently modified, provided for a pipeline following existing utility corridors from Prudoe Bay to Canada and through to the United States markets.

On October 22, 1976, Congress passed the Alaska Natural Gas Transportation Act of 1976 ("ANGTA"), 15 U.S.C. 719, *et seq.*, which provided that the President of the United States and the Congress would make the final decision on the selection of a route to transport Alaskan gas. Canada's National Energy Board on July 4, 1977, made its decision supporting the Alcan proposal. The Alcan Project was selected over the Arctic Gas Project through the procedures set forth in ANGTA.

On January 31, 1978, the Alcan sponsors formed the Alaskan Northwest Natural Gas Transportation Company, a general partnership ("Northwest Partnership"), for the purpose of constructing and operating the Alaskan segment of the pipelne. At that time there were six partners: Northwest Alaskan Pipeline Company, Northern Arctic Gas Company, Pan Alaskan Gas Company, Natural Gas Corporation of California, Pacific Interstate Transmission Company and United Alaska Fuels Corporation, all of which entered into an Alaskan Northwest Agreement ("Northwest Agreement") which governs the Partnership. On August 1, 1980, FERC, the FPC's successor, noticed the filing of an amendment to the Northwest Agreement which admitted American Natural Alaskan Company ("American") to the Northwest Partnership. The notice of amendment stated that the Northwest Partnership was willing to provide other interested persons with the opportunity to join the Northwest Partnership on the same terms as those accepted by American and that the offer would remain open for a period of thirty days from the date of the FERC notice. During the thirty day period, the Northwest Partnership would waive the requirement of a provision of the Northwest Agreement which requires an unequal allocation of all net profits and net losses and credits to the Northwest Partnership for persons who join the Northwest Partnership after certain dates set forth therein.

In view of the substantial regulatory progress towards commencement of construction of the project, Columbia Alaskan's continued need for the attachment of Alaskan reserves to its system and the intent of the Northwest Partnership to permit persons to join the Northwest Partnership on more favorable terms and conditions during the thirty day period following August 1, 1980, Columbia Alaskan has decided that it would be appropriate to request to become a partner in the Northwest Partnership created under the Northwest Agreement. At a meeting held on August 22, 1980, Columbia Alaskan's request to join the Northwest Partnership was accepted. The Northwest Partnership would be entered into in lieu of the Alaskan Partnership previously authorized (HCAR No. 20086) by this Commission and the Alaskan Agreement would be dissolved. Pursuant to the Northwest Agreement, Columbia Alaskan will be obligated to contribute its pro rata share of the cash contributions already made by the original partners. It will be allowed to do so gradually by contributing twice as much as the first six partners contribute with each future cash call until its contributions equal those of the first six partners. At the present time, each of the original six partners have made capital contributions of $16 million for planning and design of the project. It is estimated that Columbia Alaskan will have equalized its partnership contribution by December 1981.

In the application filed with FERC for the final certificate for the Alaskan segment, it was estimated that the Alaskan segment would cost $7.9 billion. It is planned that the partners will contribute equity equal to 25% of the project's financing. The balance of the necessary funding will be acquired through the issuance of debt by the Northwest Partnership. At present, the number of partners and companies which have indicated an intent to become partners totals eleven. Therefore, Columbia Alaskan's contribution to the Northwest Partnership required to finance construction is currently estimated to be approximately $180 million ($7.9 billion X 25% X 1/11). The amount of Columbia Alaskan's required contribution may be decreased if additional partners join in the Northwest Partnership or if Northwest Alaskan Pipeline Company or its affiliate elects to hold a greater share in the Northwest Partnership, or it may be increased if the cost of the project escalates.

To finance its participation in the Northeast Partnership, authorization is hereby sought for Columbia Alaskan to issue and Columbia to purchase common stock, $25 per value and Installment Promissory Notes ("Installment Notes") or Floating Rate Term Notes in an unlimited amount. As stated above, while the total amount of the contribution required of Columbia Alaskan is currently estimated at $180 million, the ultimate amount of the contribution is subject to a number of variables and cannot be definitively determined at this time. No amount is designated in the Northwest Agreement as a limit for any partner's contribution. The ratio of stock and debt to total capitalization will be determined based upon the ability of Columbia Alaskan to service debt. Only equity may be issued

initially or debt may be issued prior to the commencement of operations of the pipeline deferred until after operations have commenced. Ultimately, it is anticipated that a 50%–50% debt equity ratio will result.

The Installment Notes will be unsecured, unregistered and dated the date of their issue. The principal amounts will be due in twenty equal annual installments on September 30 of each year from 1987 to 2006, inclusive. Interest will accrue from the date of issuance and will be paid semiannually on September 30 and March 31 on the unpaid principal thereof. The interest rate will be the actual cost of money to Columbia with respect to its last sale of debentures prior to the issuance of said Installment Notes, decreased by an amount necessary in order that the interest rate be a multiple of 1/10th of 1%. Columbia sold $100,000,000 principal amount of debentures on August 13, 1980 (HCAR No. 21631), at an effective cost of money of 12.9%. Subject to market conditions, Columbia anticipates selling additional long term securities after 1980. Installment Notes to be issued subsequent to Columbia's future financings would carry an interest rate related to the last such sale of securities prior to the issuance of said Installment Notes.

Installment Notes will be issued unless Columbia has issued notes under the Revolving Credit and Term Loan Agreement dated as of April 1, 1980 ("Revolving Credit Agreement") since the last issuance of debentures. If Columbia has issued said notes, Columbia Alaskan will issue Floating Rate Term Notes, due March 31, 1987. This procedure has been authorized in connection with Columbia's general financing program (HCAR No. 21593). Such Floating Rate Term Notes will be issued by Columbia Alaskan in lieu of Installment Notes, will be dated the date of their issuance and will bear interest at a rate equal to the effective cost of money under the Revolving Credit Agreement. Any such Floating Rate Term Notes will be refinanced upon maturity.

As a result of its participation in the Northwest Partnership, Columbia Alaskan will earn or have allocated to it investment tax credits allowable under Section 38 of the Internal Revenue Code of 1954 as amended with respect to the investment in the Alaskan segment of the pipeline. In addition, Columbia Alaskan may sustain taxable losses during the construction period and early operation of such segment of the pipeline. Because Columbia Alaskan will be a member of the affiliated group of corporations ("System Affiliated Group") for which Columbia files consolidated federal income tax returns, it is requested that this Commission authorize the following partial exemption from Section 12(b) of the Act and Rule 45(b)(6) promulgated thereunder, as modified by orders HCAR No. 15021 dated February 27, 1964 and HCAR No. 18000 dated June 12, 1973: For purposes of determining the liability to be allocated to each member of the System Affiliated Group, the total amount of liability to be so allocated shall be computed without regard to (i) any portion of the consolidated investment tax credit earned by Columbia Alaskan or allocable to it as a result of its participation in the Northwest Partnership and (ii) any reduction in consolidated taxable income attributable to a separate taxable loss of Columbia Alaskan including any such loss resulting from its participation in the Northwest Partnership. The total amount of liability as computed above shall be allocated to the members of the System Affiliated Group. Any excess of the total amount of liability so allocated over the actual consolidated tax liability shall be remitted in cash by Columbia to Columbia Alaskan in order that such excess may be utilized by Columbia Alaskan in financing its share of the project. It is stated that in no event shall any member's allocated portion of the total amount of liability as computed above exceed the amount of tax of such member based upon a separate return computed as if such member had always filed a separate return.

Consistent with the separate return limitations of Rule 45(b)(6) for future years when Columbia Alaskan will have separate taxable income, Columbia Alaskan shall not be entitled to any reduction in its allocated portion of actual consolidated tax liability for any such future year to the extent that such reduction is attributable to an investment tax credit or net operating loss carryovers and carrybacks and represents amounts previously paid to it by Columbia as provided hereinabove.

The fees and expenses to be incurred in connection with the proposed transactions will not exceed $6,000. No state commission, and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than November 17, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration as amended by said post-effective amendments, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended by said post-effective amendments or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-33164 Filed 10-23-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11407; 811-2572]

Wednesday Alpha Corp.; Application Under the Investment Company Act of 1940

October 17, 1980.

Notice of filing of application pursuant to section 8(f) of the act for an order declaring that applicant has ceased to be an investment company.

Notice is hereby given that Wednesday Alpha Corporation ("Applicant"), 203 Park Building, Cleveland, Ohio 44113, registered under the Investment Company Act of 1940 ("Act") as a closed-end, diversified, management investment company, filed an application on August 15, 1980, and an amendment thereto on September 30, 1980, for an order of the Commission, pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant, a corporation organized under the laws of the State of Ohio, registered under the Act on May 19, 1975, and filed a registration statement on Form S–4 under the Securities Act of 1933 for the public offer and sale of shares of its common stock on May 28, 1975. Applicant states that this registration statement was declared effective on June 3, 1977, and that an initial public offering was commenced as of that date.

Applicant further states that on February 20, 1980, a special meeting of shareholders of the Applicant was held at which a plan of liquidation and dissolution of the Applicant was adopted. Applicant states that on March 24, 1980, the Board of Directors of the Applicant authorized payment to shareholders of a liquidating distribution in an amount equal to the net asset value per share of the Applicant. Applicant states that the plan of liquidation was implemented on April 30, 1980. Applicant further states that it has not within the last eighteen months transferred any of its assets to a separate trust the beneficiaries of which were or are shareholders of Applicant. Applicant represents that as of August 1, 1980, all the shareholders of the Applicant had surrendered their shares for redemption at net asset value, and had received a liquidating distribution of $4.23 per share.

Applicant states that it currently has assets in the amount of $26,764.79, which has been retained by Applicant from amounts otherwise payable as a liquidating distribution to its investment adviser, The Wednesday Corporation ("Adviser") for shares of Applicant held by the Adviser. Applicant further states that this amount of cash has been retained pursuant to an agreement between the Adviser and the Applicant which provides that the Adviser will pay certain expenses of the Applicant including, without limitation, professional fees, filing fees and other expenses not including, however, interest, taxes and extraordinary expenses beyond the control of the Adviser. Applicant states that it has incurred expenses estimated not to exceed $10,000 and will be liable for certain other expenses as yet unascertainable in connection with its liquidation, all of such expenses being subject to reimbursement by the Adviser under the above agreement. In addition, should the liquidating distribution payable to the Adviser be insufficient to pay the Applicant's expenses, the

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Adviser will be liable for any remaining expenses.

Applicant represents that it is a party plaintiff in *The Wednesday Alpha Corporation, et al.* v. *Forrester & Kovando, et al.*, a law suit filed against the Applicant's former attorney and his law firm and Applicant's accountants. Applicant further represents that it is being represented in this lawsuit on a contingent fee basis and that it will not be responsible for any costs of such lawsuit unless there is a judgment in favor of Applicant. Applicant also represents that if there is a net recovery in this lawsuit, the shareholders of record of Applicant as of the date of liquidation will receive their pro-rata share directly from Applicant's counsel, after deducting Applicant's pro-rata share of the costs of the lawsuit. Applicant further represents that it has ceased all business activities and does not propose to engage in any business activities other than those activities necessary for the final winding up of its affairs. Finally, Applicant states that it has applied for certificates necessary for filing a Certificate of Dissolution with the Ohio Secretary of State prior to December 31, 1980.

Notice is further given that any interested person may, not later than November 12, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing, upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80–33165 Filed 10–23–80; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 11405; 811–2845]

Tax Deferred Fund, Inc.; Application Under the Investment Company Act of 1940

October 17, 1980

Notice of filing of application pursuant to section 8(f) of the investment company act of 1940 for an order of the commission declaring that applicant has ceased to be an investment company.

Notice is hereby given that Tax Deferred Fund, Inc. ("Applicant"), 660 Madison Avenue, New York, New York 10021, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on June 25, 1979, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company as that term is defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that Applicant, a Maryland corporation, registered under the Act on June 14, 1978. Applicant has not filed a registration statement under the Securities Act of 1933, and thus has never made a public offering of its securities. The application further states that Applicant does not propose to make a public offering of securities or engage in any business activities other than those necessary for the winding-up of its affairs. Applicant currently has no security-holders, no assets, no debts, and is not a party to any litigation or administrative proceedings. In addition, Applicant within the last eighteen months has not for any reason transferred any of its assets to a separate trust, the beneficiaries of which were or are security-holders of Applicant. Finally, Applicant states that its legal existence under Maryland law is expected to terminate in the future because of non-payment of state taxes.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the effectiveness of such order the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than November 11, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing, upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80–33166 Filed 10–23–80; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 728]

Requests for Asylum

The following guidelines are intended to supplement and modify Public Notice 351 (37 FR 3447, February 16, 1972), with respect to notification to the Department of State of actual or imminent requests for asylum. Whereas Public Notice 351 required immediate notification of all such requests, the following guidelines establish criteria for distinguishing requests which call for immediate notification and those requests which need only be brought to the attention of the Immigration and Naturalization Service.

Guidelines for Notification to the U.S. Department of State of Requests for Asylum

The Department of State wishes to be notified immediately of any request (or imminent request) for asylum which is politically sensitive or involves the possibility of forcible repatriation. In particular, the Department of State should be informed immediately of a request for asylum from:

(1) Any national of the Soviet Union;

(2) Any national of East Germany, Romania, Poland, Hungary, Czechoslovakia, Bulgaria, Mongolia, Cuba, Albania, the People's Republic of China, North Korea, Vietnam, Laos, or Kampuchea, who is present in the United States as part of an official visit, formal cultural or athletic exchange, exchange student program or state-owned business or enterprise activity, or who is in transit through the United States in such capacity;

(3) Any foreign diplomat, foreign consular officer, or foreign official, regardless of the country;

(4) Any other alien who asserts there is a serious threat of forcible repatriation to himself or to his family.

In addition, the Department of State should be informed immediately of any request for asylum which for other reasons presents special problems calling for the Department's prompt attention. Other requests, not calling for such attention by the Department of State, should be brought to the attention of the local district director of the Immigration and Naturalization Service.

United States agencies or other authorities receiving a request for asylum meriting the Department of State's prompt attention (or knowing that such a request is immnent) should immediately notify the Department of State's Operations Officer at the Department of State's Operations Center in Washington, D.C. (Telephone: 202–632–1512.)

Dated: October 1, 1980.

For the Secretary of State.

Ben H. Read,

Under Secretary for Management.

[FR Doc. 80–33193 Filed 10–23–80; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF THE TREASURY

U.S. Customs Service

[T.D. 80-253]

Country of Origin Marking for Merchandise Imported From the People's Republic of China and Taiwan

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Customs Service decision.

SUMMARY: A recent Customs Service decision has distinguished between country of origin marking for merchandise imported from (1) the People's Republic of China and (2) Taiwan. In the decision, the Customs Service held that merchandise from the People's Republic of China may be marked to show the country of origin by use of the words "China" or "The People's Republic of China" or "People's Republic of China." However, articles manufactured or produced in Taiwan must bear the official country of origin markings "Taiwan" or "Made in Taiwan.".

With respect to articles from Taiwan, the words "Republic of China" or the initials "ROC" do not denominate a government or state recognized by the United States. However, if these designations on articles from Taiwan are preceded by the official country of origin markings "Taiwan" or "Made in Taiwan," such articles will not be denied admission into the United States.

DATE: The Customs Service decision is dated July 25, 1980.

FOR FURTHER INFORMATION CONTACT: Darrell D. Kast, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C., 20229 (202-566-5765).

Dated: October 16, 1980.

Salvatore E. Caramagno,

Acting Director, Office of Regulations and Rulings

[FR Doc. 80-33199 Filed 10-23-80; 8:45 a.m.]

BILLING CODE 4810-22-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 208
Friday, October 24, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m. (eastern time), Tuesday, October 28, 1980.

PLACE: Commission Conference Room, No. 5240, fifth floor, Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED: Open to the public:

1. Freedom of Information Act Appeal No. 80-7-FOIA-397, concerning a request for documents regarding criteria used in deciding whether to institute a Commissioner's charge.
2. Freedom of Information Act Appeal No. 80-8-FOIA-441, concerning a request by a charging party for access to case files and a work-sharing agreement.
3. Freedom of Information Act Appeal No. 80-9-FOIA-2-NO, concerning a request for certain documents contained in two charge files.
4. Final Regulations Amending Section 1601.21 (b), (d) and 1601.28 of the Commission Procedural Regulations 29 CFR Part 1601.
5. Technical Amendments to Final Guidelines on Discrimination Because of Religion.
6. Report on Commission Operation by the Executive Director.

Closed to the public:

Litigation Authorization; General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION: Treva I. McCall, Acting Executive Officer, Executive Secretariat, at (202) 634-6748.

This Notice Issued October 21, 1980.

[S-1955-80 Filed 10-22-80; 1:03 pm]

BILLING CODE 6570-06-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of agency meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:30 p.m. on Tuesday, October 21, 1980, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider a recommendation regarding the liquidation of an asset acquired by the Corporation from United States National Bank, San Diego, California (Case No. 44,535-NR).

In calling the meeting, the Board of Directors determined, on motion of Chairman Irvine H. Sprague, seconded by Director William M. Isaac (Appointive), concurred in by Mr. H. Joe Selby, acting in the place and stead of Director John G. Heimann (Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsection (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(9)(B)).

Dated: October 21, 1980.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Assistant Executive Secretary.

[S-1953-80 Filed 10-22-80; 11:17 am]

BILLING CODE 6714-01-M

3

FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. No. 45, issue No. 204, page No. 69340, published: Monday, October 20, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m., Thursday, October 23, 1980.

PLACE: 1700 G Street NW., sixth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202-377-6677).

CHANGES IN THE MEETING: The following items have been added to the agenda for the open meeting:

Branch Office Application—First Federal Savings & Loan Association of Lake Worth, Lake Worth, Florida.
Application for Bank Membership and Insurance of Accounts—Superior Savings & Loan Association, Los Angeles, California.
Treatment of Goodwill Acquired in Mergers.
Alternative Mortgage Instrument Amendments.
Technical Amendment Regarding NOW Accounts.
Amendments Regarding Interest on NOW Accounts, Giveaways, Return on Savings Accounts and Finders Fees.

No. 410, October 22, 1980.

[S-1981-80 Filed 10-22-80; 11:25 am]

BILLING CODE 6720-01-M

4

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 9:30 a.m., October 30, 1980.

PLACE: 1700 G Street NW., sixth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202-377-6677).

MATTERS TO BE CONSIDERED:

Branch office application—Fidelity Federal Savings & Loan Association, Glendale, California.
Amendment of charter, name change application—First Federal Savings & Loan Association of Phoenix, Phoenix, Arizona.
Increase in accounts of an insurable type (mergers); cancellation of membership and insurance and transfer of stock—Van Buren Savings & Loan Association, South Haven, Michigan *and* Lowell Savings & Loan Association, Lowell, Michigan *into* First Savings & Loan Association of Saginaw, Saginaw, Michigan.
Application for bank membership—Southold Savings Bank, Southold, New York.
Merger application—Franklin Federal Savings & Loan Association, Columbus, Ohio *into* Ohio Federal Savings & Loan Association of Columbus, Columbus, Ohio.
Preliminary application for conversion into a Federal Mutual Association—Oneonta Savings & Loan Association, Oneonta, New York.

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Holding company acquisition and merger; increase of accounts of an insurable type—Financial Corporation of Santa Barbara, Santa Barbara, California *to acquire* First Western Savings & Loan Association, Danville, California *and merge said association with* Santa Barbara Savings & Loan Association, Santa Barbara, California.
Debt application—Citizens Savings Financial Corporation, Miami, Florida.

No. 409, October 22, 1980.

[S-1952-80 Filed 10-22-80; 11:16 am]
BILLING CODE 6720-01-M

5

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 9 a.m., October 29, 1980.

PLACE: Hearing Room One, 1100 L Street N.W., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

1. Report on Notation Items disposed of during August 1980.
2. Report of the Secretary on times shortened for submitting comments on section 15 agreements pursuant to delegated authority during August 1980.
3. Report of the Secretary on Applications for Admission to Practice approved during August 1980 pursuant to delegated authority.
4. Assignment of Informal Dockets by the Secretary during August 1980.
5. Docket No. 80-19: Requirements for Filing Currency Adjustment Factors Reflecting Changes in the Exchange Rate of Tariff Currencies—Review of comments submitted in response to notice of proposed rulemaking.
6. Informal Docket No. 720(I): 3M v. Hapag Lloyd—Review of Settlement Officer's Decision.
7. Special Docket No. 701: Application of Trans Freight Lines, Inc. for the Benefit of Southern Pacific Marine Transport—Review of Initial Decision.

Portion closed to the public:

1. Docket Nos. 78-15, et al.: United States Lines, Inc. et al. v. Mayland Port Administration—Consideration of request for oral argument and possible consideration of the record.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523-5725.

[S-1949-80 Filed 10-22-80; 10:37 am]
BILLING CODE 6730-01-M

6

FEDERAL RESERVE SYSTEM. (Board of Governors)

TIME AND DATE: 10 a.m., Wednesday, October 29, 1980.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed adjustments to benefits for Federal Reserve Bank officers.
2. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board. (202) 452-3204.

Dated: October 21, 1980.

Griffith L. Garwood,
Deputy Secretary of the Board.

[S-1947-80 Filed 10-21-80; 4:29 pm]
BILLING CODE 6210-01-M

7

FEDERAL RESERVE SYSTEM.

Board of Governors

TIME AND DATE: 9 a.m., Wednesday, October 22, 1980.

The business of the Board requires that this meeting be held with less than one week's advance notice to the public and no earlier announcement of the meeting was practicable.

PLACE: Board Building, C Street entrance between 20th and 21st Streets NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED: 1. Further deferral of reserve and reporting requirements for small depository institutions and easing the reporting burden for small institutions.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: October 21, 1980.

Griffith L. Garwood,
Deputy Secretary of the Board.

[S-1948-80 Filed 10-21-80; 4:34 pm]
BILLING CODE 6210-01-M

8

FEDERAL RESERVE SYSTEM.
(Board of Governors)

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 69086, October 17, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Thursday, October 23, 1980.

CHANGES IN THE MEETING: Addition of the following open item(s) to the meeting: 1. Request to permit nonmember institutions to have clearing accounts before pricing for Federal Reserve Bank services is implemented.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board: (202) 452-3204.

Dated: October 21, 1980.

Griffith L. Garwood,
Deputy Secretary of the Board.

[S-1954-80 Filed 10-22-80; 12:14 pm]
BILLING CODE 6210-01-M

9

[USITC SE-80-50]

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 2 p.m., Thursday, November 6, 1980.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:
1. Complaint on paint sprayers (Docket No. 683).

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-1956-80 Filed 10-22-80; 2:01 pm]
BILLING CODE 7020-02-M

10

NATIONAL COUNCIL ON THE HANDICAPPED.

TIME AND DATE: 9 a.m.-5 p.m., Thursday, November 13, 1980 and 9 a.m.-4 p.m., Friday, November 14, 1980.

PLACE: Disabled American Veterans Building, 807 Maine Avenue SW., Washington, D.C. 20024.

STATUS: Open meeting.

MATTERS TO BE CONSIDERED:

1. Swearing in of Members of the National Council on the Handicapped.
2. Discussion of Council mandate with respect to the National Institute of Handicapped Research (NIHR), the Rehabilitation Services Administration (RSA), and all policies, programs, and activities concerning handicapped individuals conducted or assisted by Federal departments and agencies.
3. Orientation to NIHR and RSA.
4. Plan operating procedures and agenda for future meetings and activities of the National Council.

CONTACT PERSON FOR MORE INFORMATION: Carol Berman, National Council on the Handicapped, 202-245-3498.

Carol Berman,
Executive Secretary.

[S-1998-80 Filed 10-22-80; 2:11 pm]
BILLING CODE 4000-01-M

11

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of October 27, 1980, in Room 825, 500 North Capitol Street, Washington, D.C.

Closed meetings will be held on Tuesday, October 28, 1980, at 10:00 a.m. and on Wednesday, October 29, 1980, following the 10:00 a.m. open meeting.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 522b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402(a)(4)(8)(9)(i) and (10).

Chairman Williams and Commissioners Loomis, Evans, and Friedman determined to hold the aforesaid meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, October 28, 1980, at 10:00 a.m., will be:

Formal orders of investigation.
Access to investigative files by Federal, State, or Self-Regulatory authorities.
Regulatory matter regarding financial institution.
Chapter X proceeding.
Freedom of Information Act appeals.
Litigation matters.

The subject matter of the closed meeting scheduled for Wednesday, October 29, 1980, following the 10:00 a.m. open meeting, will be:

Consideration of *amicus* participation.

The subject matter of the open meeting scheduled for Wednesday, October 29, 1980, at 10:00 a.m., will be:

1. Consideration of a request by Mr. Carl Olson that the Commission review the Division of Corporation Finance's determination concerning a certain proposal he submitted to Litton Industries. For further information, please contact William E. Morley or Michael R. Kargula at (202) 272-2573.
2. Consideration of whether to adopt Rule 16 under the Public Utility Holding Company Act of 1935 (the "Act"), that would exempt non-utility joint ventures engaged in the production, manufacture, transmission or storage of gas from the duties, obligations, and liabilities imposed under the Act on "subsidiary companies" of registered holding companies, if no more than 50% of the voting interests in such companies are owned by registered holding companies. For further information, please contact Grant G. Guthrie at (202) 523-5156.
3. Consideration of an application by The Southern Company, a holding company registered under the Public Utility Holding Company Act of 1935, to issue and sell at competitive bidding up to 17 million shares of common stock aggregating approximately $200 million. A request for hearing on the proposal has been filed by three shareholders of The Southern Company. For further information, please contact William C. Weeden at (202) 523-5688 or Mary Ann Oliver at (202) 523-5685.
4. Consideration of whether to issue the proposed Memorandum Findings and Opinion and a related Order approving a plan filed by American Electric Power Company, Inc., a registered holding company, and its electric utility subsidiary, Columbus and Southern Ohio Electric Company ("CSOE"), for the elimination of the minority interest in CSOE's common stock. For further information, please contact Grant G. Guthrie at (202) 523-5156.
5. Consideration of whether to amend Rule 45 promulgated under the Public Utility Holding Company Act of 1935. The proposed amendment would delete the present Rule 45(b)(6) and add a new Rule 45(c). It is designed to eliminate the need for a holding company system to seek a Commission order concerning the allocation of losses of a subsidiary in the system's consolidated tax returns. For further information, please contact Grant G. Guthrie at (202) 523-5156.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Paul Lowenstein at (202) 272-2092.

October 22, 1980.

[S-1957-80 Filed 10-22-80; 2:43 pm]
BILLING CODE 8010-01-M

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federal register

Friday
October 24, 1980

Part II

Department of Labor

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

New General Wage Determination Decisions

Puerto Rico: PR80–3069, PR80–3070
Tennessee: TN80–1114

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Florida:	
FL77–1170	May 20, 1977.
FL79–1111	July 20, 1979.
Georgia: GA79–1149	Nov. 23, 1979.
Louisiana: LA80–4026	June 13, 1980.
New York:	
NY80–3020	Apr. 4, 1980.
NY80–3057	Sept. 19, 1980.
Ohio:	
OH80–2028	Aug. 1, 1980.
OH80–2044	July 7, 1980.
OH80–2052	July 7, 1980.
Oklahoma:	
OK80–4061	July 18, 1980.
OK80–4060	July 18, 1980.
Pennsylvania: PA80–3043	July 7, 1980.
Texas:	
TX80–4016	Mar. 14, 1980.
TX80–4031	June 6, 1980.
TX80–4032	June 6, 1980.
TX80–4033	May 16, 1980.
TX80–4034	June 6, 1980.
TX80–4038	June 20, 1980.
Virginia: VA78–3073	Oct. 13, 1978.
West Virginia: WV80–3018	July 18, 1980.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Colorado:	
CO79–5117(CO80–5137)	June 15, 1979.
CO79–5116(CO80–5138)	June 15, 1979.
CO79–5119(CO80–5139)	June 15, 1979.
CO79–5120(CO80–5140)	June 15, 1979.
Maryland: MD79–3031 (MD80–3061)	Nov. 30, 1979.
Pennsylvania: PA78–3078 (PA80–3071)	Oct. 20, 1978.

Cancellation of General Wage Determination Decisions

This is to advise all interested parties that the Department of Labor intends to withdraw 14 days from the date of this notice the following general wage determination applicable to residential construction consisting of single family homes and apartments up to and including four (4) stories: AL79–1120 dated March 23, 1979, for Bibb, Choctaw, Fayette, Greene, Hale, Lamar, Marengo, Perry, Pickens, Sumter and Tuscaloosa Counties, Alabama.

Change: The number of the Minnesota decision cancelled by **Federal Register** dated October 3, 1980 (45 FR 65833) should be changed from "MN77–2065" to "MN77–2064".

Signed at Washington, D.C., this 17th day of October 1980.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

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NEW DECISION

STATE: PUERTO RICO COUNTY: ISLAND WIDE
DECISION NO.: PR80-3069 DATE: DATE OF PUBLICATION
DESCRIPTION OF WORK: Residential Construction Projects consisting of single family homes and apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters	3.68				
Carpenter's Helpers	3.25				
Cement Masons	3.58				
Electricians	4.12				
Electrician's Helpers	3.34				
Ironworkers, Reinforcing	3.10				
Laborers:					
Unskilled	3.10				
Mason Tenders	3.25				
Painters, Brush	3.25				
Plasterers	3.75				
Plumbers & Pipefitters	3.79				
Plumber's Helpers	3.40				
Tile Setters	3.38				
Truck Drivers	3.47				
Power Equipment Operators:					
Tractors	4.17				
Rollers	4.00				
Diggers	4.09				
Backhoes	4.50				
Bulldozers	4.68				
Cranes	4.88				
Graders	4.50				
Loaders	4.60				
Welders-receive rate prescribed for craft performing operation to which welding is incidental					
Unlisted classifications needed for work not included within the acope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).					

NEW DECISION

STATE: PUERTO RICO COUNTY: ISLAND WIDE
DECISION NO.: PR80-3070 DATE: DATE OF PUBLICATION
DESCRIPTION OF WORK: Heavy and Highway Construction Projects.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters	3.72				
Carpenter's Helpers	3.10				
Cement Masons	3.60				
Electricians	3.95				
Electrician's Helpers	3.30				
Ironworkers, Reinforcing	3.46				
Laborers					
Unskilled	3.10				
Mason Tenders	3.20				
Pipelayers	3.60				
Blasters	3.75				
Painters, Brush	3.20				
Piledrivermen	3.35				
Plumbers & Pipefitters	4.15				
Plumber's Helpers	3.28				
Truck Drivers	3.56				
Power Equipment Operators					
Riggers	3.68				
Oilers	3.65				
Tractors	4.36				
Pavers	4.01				
Rollers	3.61				
Diggers	4.00				
Backhoes	4.69				
Bulldozers	4.32				
Drillers	3.50				
Cranes	4.64				
Scrapers	4.25				
Graders	4.28				
Loaders	4.60				
Welders-receive rate prescribed for craft performing operation to which welding is incidental					
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).					

NEW DECISION

STATE: TENNESSEE COUNTIES: CARTER, GREENE, HAWKINS, JOHNSON, SULLIVAN, UNICOI, & WASHINGTON
DECISION NUMBER: TN80-1114 DATE: DATE OF PUBLICATION
DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION PROJECTS (includes family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS/BLOCK MASONS	$9.35				
CARPENTERS/DRYWALL HANGERS	5.86				
ELECTRICIANS	5.00				
LABORERS	3.73				
PAINTERS/DRYWALL FINISHERS	4.95				
PLUMBERS	5.00				
ROOFERS	5.00				
SOFT FLOOR LAYERS	5.07				
TRUCK DRIVERS	4.50				
WELDERS-Rate for Craft.					
POWER EQUIPMENT OPERATORS:					
Backhoe	5.00				
Bulldozer	6.00				
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).					

MODIFICATION PAGE 1

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. FL77-1160 - MOD. NO. 3 (42 FR 26093 - May 20,1977) Polk County, Florida					
Change:					
Electricians Industrial Manufacturing production facilities (excl. retail food establishments); Hospitals (over 50 beds) excluding nursing homes and clinics shopping malls with over 10 businesses; and any business complex with elevator or escalator system:					
Wiremen	11.75	5.5%	6%	4%	.10
Cable Splicer	12.25	5.5%	6%	4%	.10
Truck Drivers	3.10				
DECISION NO. FL79-1111 - MOD. NO. 3 (44 FR 42858 - July 20, 1979) Bay County, Florida					
Change:					
Electricians	12.90	.55	3%		5%
Sprinkler Fitters	12.40	.85	1.20		.10

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MODIFICATION PAGE 2

DECISION #GA79-1149 - Mod. #6 (44 FR 67307 - November 23, 1979) Richmond County, Georgia CHANGE:	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters	$10.65				.02
Millwrights	11.65				.02
Piledrivermen	11.05				.02
DECISION NO. LA80-4026 - MOD. #5 (45 FR 40438 - June 13, 1980) Statewide Louisiana CHANGE: Laborers:					
Zone 4 - Group 1	$ 7.95	.30	.27		.05
Group 2	8.05	.30	.27		.05
Group 3	8.10	.30	.27		.05
Zone 5 - Group 1	7.55	.30	.27		.05
Group 2	7.65	.30	.27		.05
Group 3	7.70	.30	.27		.05
Change Line construction modified in Mod. #4 dated October 10, 1980 on page 67507 to read for Zone 4					

MODIFICATION PAGE 3

DECISION NO. NY80-3020 - Mod #1
(45 FR 23262 - April 4, 1980)
Bronx, Kings, Queens, New York, & Richmond Counties, New York

Change:	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos Workers	14.70	1.21	2.31		
Boilermakers	16.34	5%	5%		
Bricklayers	12.00	1.48	3.98		
Carpenters, & Soft Floor Layers	13.04	1.85	1.78	.95	.05
Millwrights	13.04	1.85	1.78	1.11	.04
Dockbuilders & Piledrivermen	12.94	1.85	1.78	1.01	.05
Cement Masons	12.10	2.04	1.67		.09
Electricians	14.65	1½%+r	7½%+s	8½%+t	1%
Glaziers	13.75	.66	1.91	.67	.01
Ironworkers					
Structural	12.70	1.86	4.15	1.75+t	.11
Ornamental Finisher	11.90	1.51	3.30	1.00	.14
Stone Derrickmen & Riggers	14.62	2.23	1.51	1.50	.01
Laborers					
Asphalt Laborers	11.45	1.30	1.55	m	
Asphalt Rakers	11.71	1.30	1.55	m	
Asphalt Tampers	11.47	1.30	1.55	m	
Cement Concrete & Excavation	10.65	1.80	1.85	q	
Mason Tenders	11.10	.887	1.595		
Marble Setters					
Cutters & Setters	11.90	1.21	1.71	f	
Carvers	12.05	1.21	1.71	f	
Polishers	11.58	1.21	1.71	f	
Painters					
Brush & Roller	12.00	1.14	1.20+h	3%	
Spray & Scaffold	14.57	1.14	1.20+h	3%	
Plasterers					
Kings	12.10	1.45		1.45	
Plumbers					
Kings, Queens	12.75	2.10	2.14	1.19	.22
Richmond	12.79	1.30+p	2.01	1.05	.30
Roofers					
Composition, Damp Waterproofers	11.05	3.14	2.85		.15
Sheet Metal Workers	14.365	1.925	1.665		.16
Sprinkler Fitters & Steamfitters	13.88	2.75	1.12	1.00	.07
Stonemasons	14.00	.75	1.00		
Tile Setters	11.725	1.15	1.10		
Tile Setters Helpers	10.21	1.055	.77		

FOOTNOTES:
r. Employer contributes $7.00 per day.

s. Employer contributes $4.00 per day.

t. Paid Holidays A through F, Washington's Birthday, Columbus Day, and Election Day.

MODIFICATION PAGE 4

DECISION NO. NY80-3020 - Mod #1 Cont'd

BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
Double Drum Hoist	13.82	1.05	3.25	.75+a	.10
Stone Derrick, Cranes, Cherry Pickers	13.56	1.05	3.25	.75+a	.10
Hoists, Fork Lifts, House Cars, Plasterer (platform machine), Plasterer Bucket, Plasterer Pump, Compressors-Welding Machines (cutting concrete-tank work), Paint Spraying, Sandblasting, and All Equipment Used For Hoisting Material	13.06	1.05	3.25	.75+a	.10
Cranes: All types-crawler or truck					
100' to 149' Boom	14.03	1.05	3.25	.75+a	.10
150' to 249' Boom	14.28	1.05	3.25	.75+a	.10
250' to 349' Boom	14.53	1.05	3.25	.75+a	.10
350' to 450' Boom	15.03	1.05	3.25	.75+a	.10
Steel Erection:					
Three Drum Derricks	14.76	1.05	3.25	.75+a	.10
Cranes, 2 Drum Derricks, Cherry Pickers	14.12	1.05	3.25	.75+a	.10
Compressors, Welding Machines	12.57	1.05	3.25	.75+a	.10
Tower Cranes	13.53	1.05	3.25	.75+a	.10

FOOTNOTE:

a. Paid Holidays: New Year's Day, Lincoln's Birthday, Washington's Birthday, Good Friday (Iron League Only), Decoration Day, Independence Day, Labor Day, Columbus Day, Election Day, Armistice Day, Thanksgiving Day and Christmas Day providing the employee is employed during the payroll week in which the holiday occurs.

MODIFICATION PAGE 5

DECISION NO. NY80-3057 - MOD. #1 (45 FR 62672 - September 19, 1980) Bronx, Kings, Queens, New York & Richmond Counties, New York Change:	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$14.70	1.21	2.31		
IRONWORKERS					
Structural	12.70	1.86	4.15	1.75+g	.11
LABORERS					
Mason Tenders	11.10	.887	1.595		
PAINTERS					
Brush & Roller	12.00	1.14	1.20+n	3%	
Spray & Scaffold	14.57	1.14	1.20+n	3%	
Fire Escape	13.71	1.14	1.20+n	3%	

FOOTNOTE:
n. Employer contributes $5.00 per day to an Annuity Fund.

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MODIFICATION PAGE 6

DECISION NO. OH80-2028 - Mod. #3
(45 FR 51416 - August 1, 1980)
Ashtabula, Cuyahoga, Lake, Lorain, Portage, Stark, & Summit Counties, Ohio

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Painters:					
Portage & Summit Cos. (Up to & inclu. Ohio Turnpike):					
Brush; Roller; & Paperhanger	$12.80	1.07	.60		
Structural Steel; Drywall Finishers & Tapers	13.30	1.07	.60		
Spray	13.40	1.07	.60		

DECISION NO. OH80-2044 - Mod. #3
(45 FR 45806 - July 7, 1980)
Adams, Allen, Ashland, Auglaize, Brown, Butler, Carroll, Champaign, Clark, Clermont, Clinton, Columbiana, Coshocton, Crawford, Darke, Defiance, Delaware, Erie, Fairfield, Fayette, Franklin, Fulton, Gallia, Geauga, Greene, Hamilton, Hancock, Hardin, Henry, Highland, Holmes, Huron, Knox, Lawrence, Licking, Logan, Madison, Marion, Medina, Meigs, Mercer, Miami, Montgomery, Morrow, Muskingum, Ottawa, Paulding, Perry, Pickaway, Pike, Preble, Putnam, Richland, Ross, Sandusky, Scioto, Seneca, Shelby, Tuscarawas, Union, Van Wert, Warren, Wayne, Williams, Wood, & Wyandot Counties, Ohio

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Painters:					
Medina Co.:					
Brush; Paperhangers; & Roller	12.80	1.07	.60		
Structural Steel; Drywall Finisher & Taper	13.30	1.07	.60		
Spray	13.40	1.07	.60		

MODIFICATION PAGE 7

DECISION NO. OH80-2052 - Mod. #3
(45 FR 45834 - July 7, 1980)
Statewide, Ohio

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Painters:					
Medina, Portage (Up to & incl The Ohio Turnpike), & Summit (Up to & incl. The Ohio Turnpike) Cos.:					
Brush; Paperhanger; & Roller	$12.80	1.07	.60		
Structural Steel	13.30	1.07	.60		
Spray	13.40	1.07	.60		

DECISION #OK80-4061-Mod. #1
45 FR 48449-July 18, 1980
Muskogee, Adair, Cherokee & Okmulgee Counties, Oklahoma

CHANGE:

Asbestos workers	$13.95	.55	.90		.03
CARPENTERS (Area II)	9.80	.55	.85		.05
MILLWRIGHTS-PILEDRIVERMEN:					
Area II	11.15	.55	.85		.05
ELECTRICIANS:					
ZONE III					
Electricians	13.25	.63	3%+.61		.10
Cable splicers	13.50	.63	3%+.61		.10
Marble, Tile & Terrazzo & Workers	12.74	.70	.60		
Painters (Adair, Muskogee & Cherokee Counties):					
Brush painting & roller	10.55		.40	.20	.10
Highwork & Stage	11.15		.40	.20	.10
Sandblasting & Spray	11.40		.40	.20	.10
Hot or Bituminous	12.05		.40	.20	.10
POWER EQUIPMENT OPERATORS:					
GROUP I	13.20	.70	.75		.12
GROUP II	12.70	.70	.75		.12
GROUP III	12.20	.70	.75		.12
GROUP IV	11.95	.70	.75		.12
GROUP V	11.70	.70	.75		.12
GROUP VI	11.45	.70	.75		.12
GROUP VII	11.20	.70	.75		.12
GROUP VIII	10.20	.70	.75		.12
Plasterers	10.15				.01

MODIFICATION PAGE 8

DECISION #OK80-4060-Mod. #2
45 FR 48439-July 18, 1980
Pittsburg County, Oklahoma

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
ASBESTOS WORKERS	$13.95	.55	.90		.03
ELECTRICIANS:					
Electricians	13.25	.63	3%+.61		.10
Cable splicers	13.50	.63	3%+.61		.10

DECISION NO. PA80-3043
MOD. NO. 4
(45 FR 45849 - July 7, 1980)
Cumberland, Dauphin, Perry, Juniata, New Cumberland Depot in York County, Pennsylvania

CHANGE:					
LINE CONSTRUCTION:					
Linemen	$12.52	.60	3%		3/8 of 1%
Groundman	7.45	.60	3%		3/8 of 1%
Cable Splicers	12.52	.60	3%		3/8 of 1%
Winch truck op.	8.73	.60	3%		3/8 of 1%
POWER EQUIPMENT OPERATORS:					
Group 1	13.40	7.9%	10.3%	a	1.8%
Group 2	13.11	7.9%	10.3%	a	1.8%
Group 3	12.24	7.9%	10.3%	a	1.8%
Group 4	11.47	7.9%	10.3%	a	1.8%
Group 5	11.00	7.9%	10.3%	a	1.8%
Group 6	10.09	7.9%	10.3%	a	1.8%
Group 7	13.65	7.9%	10.3%	a	1.8%
Group 7-A	13.90	7.9%	10.3%	a	1.8%
Group 7-B	14.14	7.9%	10.3%	a	1.8%

MODIFICATION PAGE 9

DECISION NO. TX80-4018 - MOD. #3
(45 FR 16828 - March 14, 1980)
Cameron, Hidalgo, Starr & Willacy Cos., Texas

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Boilermakers	$12.70	1.275	1.00		.03

DECISION NO. TX80-4031 - MOD. #6
(45 FR 38250 - June 6,1980)
Bell, Bosque, Coryell, Falls, Hill & McLennan Cos., Texas

CHANGE:					
Building Construction:					
Carpenters:					
Zone 2 - Carpenters	10.91	.42			
Millwrights	12.18	.42			
Ironworkers	11.65	.55	1.45		.12

DECISION NO. TX80-4032 - MOD. #6
(45 FR 38254 - June 6,1980)
Bexar County, Texas

CHANGE:					
Bricklayers & stonemasons	12.08	.57	.30	.25	.05
Laborers - Group 1	7.12	.57	.50		.05
Group 2	7.37	.57	.50		.05
Group 3	7.62	.57	.50		.05

DECISION NO. TX80-4033 - MOD. #5
(45 FR 32544 - May 16,1980)
Bowie County, Texas

CHANGE:					
Boilermakers	12.70	1.275	1.00		.03

MODIFICATION PAGE 10

DECISION NO. TX80-4034 - MOD. #4 (45 FR 38255 - June 6,1980) Brazos County, Texas	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Boilermakers	$12.70	1.275	1.00		.03
Bricklayers & stonemasons	13.60	.89	.90		.06
Cement masons	12.90	.68	.97		.08
Ironworkers	13.26	.55	1.70		.10
Marble masons	12.42	.89	.30		.06
Painters - Group 1	12.955	.715	.55	.40	.04
Group 2	13.33	.715	.55	.40	.04
Group 3	13.08	.715	.55	.40	.04
Group 4	13.58	.715	.55	.40	.04
Soft floor layers	12.42	.60	.55		.14
Terrazzo workers	12.42	.89	.30		.06
Tile setters	12.42	.89	.30		.06
Power equipment operators:					
Group 1	13.34	.75	1.25		.07
Group 2	11.48	.75	1.25		.07
Group 3	10.85	.75	1.25		.07
Group 4	10.64	.75	1.25		.07
DECISION NO. TX80-4036 - MOD. #4 (45 FR 41836 - June 20,1980) Ector & Midland Cos., Texas					
CHANGE:					
Boilermakers	12.70	1.275	1.00		.03
Decision No. VA78-3073-Mod. #7 (43 FR 47445-October 13, 1978) Radford Army Ammunition Plant, Virginia					
CHANGE:					
PLUMBERS AND PIPEFITTERS	$11.75	.50	.65	.35	.05

MODIFICATION PAGE 11

DECISION NO. WV80-3018 - MOD. #2 (45 FR 48457 - July 18, 1980) State of West Virginia excluding the counties of Berkeley, Jefferson and Morgan	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
ASBESTOS WORKERS:					
Area 1	12.99	.80	1.49		.03
BOILERMAKERS:					
Area 1	14.50	1.275	1.20		.04
BRICKLAYER, STONE MASONS, MARBLE MASONS, TERRAZZO WORKERS AND TILE LAYERS:					
Area 1	11.79	.80	1.00		
Area 3	11.70				
Area 7					
Bricklayers & Stone Masons	13.09	.80	6%		.02
Tile Layers	12.94	.80	6%		.02
CARPENTERS:					
Area 2					
Carpenters	11.68	.80	1.00		.03
Piledrivermen	12.02	.80	1.00		.03
Area 3					
Carpenters	12.73	1.04	1.25		.03
Area 4					
Carpenters	13.14	.85	1.00		.02
Piledrivermen	13.43	.85	1.00		.02
Area 5					
Carpenters	12.71	.85	1.00		.02
Piledrivermen	12.96	.85	1.00		.02
Area 6					
Carpenters	13.42	.75	1.25		.05
Piledrivermen	13.74	.75	1.25		.05
CEMENT MASONS & PLASTERERS:					
Area 1	13.26	.75			
Area 7					
Plasterers	11.75				.01
Area 9	14.16	.80			

MODIFICATION 12

DECISION NO. WV80-3018 - CONT'D	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS:					
Jackson, Pleasants, Ritchie, Tyler, Wirt and Wood Cos.					
Wiremen	12.75	.50	3%+1.50	1.75	.04
Cable Splicers	13.00	.50	3%+1.50	1.75	.04
Brooke (Buffalo twsp. only), Marshall, Ohio and Wetzel Cos.					
Wiremen	13.20	.50	3%+1.00	1.25	.04
Cable Splicers	13.45	.50	3%+1.00	1.25	.04
Hampshire & Mineral Cos.					
Wiremen	12.40	.80	3%+.70		3/4%
Marion, Monogalia, Taylor Preston, Tucker Cos.					
Contracts under $12,000					
Wiremen	7.40	.50	3%+1.25	1.75	.04
Contracts over $12,000					
Wiremen	12.35	.50	3%+1.25	1.75	.04
Cable Splicers	12.50	.50	3%+1.25	1.75	.04
Hancock Co. (Grant twsp. only):					
Wiremen	13.30	2.00	3%+.53		.09
Cable Splicer	13.70	2.00	3%+.53		.09
Summers & Wyoming Cos.					
Contracts $15,000 or less					
Wiremen	11.17	.50	3%+.67	.77	.06
Cable Splicers	11.47	.50	3%+.67	.77	.06
Contracts over $15,000					
Wiremen	14.07	.50	3%+.67	.77	.06
Cable Splicers	14.37	.50	3%+.67	.77	.06
Fayette Co. (except Falls & Kanawha Twsp.)					
Contracts $15,000 or less					
Wiremen	10.97	.50	3%+.67	.77	.06
Cable Splicers	11.27	.50	3%+.67	.77	.06
Contracts over $15,000					
Wiremen	13.87	.50	3%+.67	.77	.06
Cable Splicers	14.17	.50	3%+.67	.77	.06

MODIFICATION PAGE 13

DECISION NO. WV80-3018 - CONT'D	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS: CONT'D					
Raleigh Co. (except Clearfork & Marsh Twsp.)					
Contracts $15,000 or less					
Wiremen	10.67	.50	3%+.67	.77	.06
Cable Splicer	10.97	.50	3%+.67	.77	.06
Contracts over $15,000					
Wiremen	13.57	.50	3%+.67	.77	.06
Cable Splicer	13.87	.50	3%+.67	.77	.06
Boone, Braxton, Calhoun, Clay, Fayette (Falls & Kanawha Twsps), Gilmer, Kenawha, Nicholas, Putnam, Raleigh (Clear Fork & Marsh Fork twsp.)					
Roane & Webster Cos.					
Wiremen	15.00	.50	3%+.75		.04
Cable Splicer	16.50	.50	3%+.75		.04
ELEVATOR CONSTRUCTORS:					
Brooke, Hancock, Marshall Ohio Cos.					
Mechanics	12.80	1.195	.95	b+c	.035
Helper	8.96	1.195	.95	b+c	.035
Probationary Helper	6.40	1.195	.95	b+c	.035
GLAZIERS:					
Area 1	12.63		.15		
IRONWORKERS:					
Area 4	12.75	.75	1.40		
Area 5	12.05	.80	.85		.03
LABORERS:					
Area 7					
Group 1	10.57	.70	.70		.05
Group 2	10.87	.70	.70		.05
Group 3	11.22	.70	.70		.05
Group 4	11.17	.70	.70		.05

MODIFICATION PAGE 14

DECISION NO. WV80-3018 - CONT'D	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION:					
Hampshire & Mineral Cos.					
Linemen	12.40	.80	3%+.70		
Equipment Operators	11.78	.80	3%+.70		
Truck drivers & groundmen	8.06	.80	3%+.70		
Hancock Co. (Grant twsp.)					
Linemen & equipment operators	13.30	15%	7%		½%
Truck driver & groundmen	11.90	15%	7%		½%
Cable Splicer	13.70	15%	7%		½%
Raleigh (except Clear Fork & Marsh Fork twsp.)					
Linemen & equipmcnt operators	13.47	.70	3%+.67	.77	
Cable splicers	13.77	.70	3%+.67	.77	
Groundmen & truck drivers	10.78	.70	3%+.67	.77	
Summers & Wyoming Cos.					
Linemen & equipment operators	13.97	.70	3%+.67	.77	
Cable splicers	14.27	.70	3%+.67	.77	
Groundmen & truck drivers	11.18	.70	3%+.67	.77	
Fayette Co. (except Falls & Kanawha twsps.)					
Linemen & equipment operators	13.77	.70	3%+.67	.77	
Cable splicers	14.07	.70	3%+.67	.77	
Groundmen & truck drivers	11.02	.70	3%+.67	.77	
Marion, Monogalia, Taylor Tucker Cos.					
Linemen & equipment operators	12.35	.50	3%+1.25	1.75	
Cable splicers	13.59	.50	3%+1.25	1.75	
Groundmen & truck drivers	9.88	.50	3%+1.25	1.75	

MODIFICATION PAGE 15

DECISION NO. WV80-3018 - CONT'D	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION: CONT'D					
Jackson, Pleasants, Ritchie, Tyler, Wirt, Wood Cos.					
Linemen & equipment operators	12.55	.70	3%+1.50	1.75	½%
Cable splicers	13.81	.70	3%+1.50	1.75	½%
Groundmen	10.04	.70	3%+1.50	1.75	½%
Brooke (Buffalo Twps.) Marshall, Ohio & Wetzel Cos.					
Linemen & equipment operators	13.20	.50	3%+1.00	1.25	
Cable splicers	13.45	.50	3%+1.00	1.25	
Groundmen	10.56	.50	3%+1.00	1.25	
MILLWRIGHTS:					
Area 3	13.24	.80	.56		.06
PAINTERS:					
Area 3					
Brush, roller, paper, vinyl hangers and seamless floors	10.87	.80	.60		.02
Glove	11.12	.80	.60		.02
Spray, sandblast, seamless floor (epoxy), steam cleaning, metalizing	11.87	.80	.60		.02
PLUMBERS & PIPEFITTERS:					
Area 6	13.95	1.10	1.89	1.10	.12
SHEET METAL WORKERS:					
Area 3	11.57	.81	1.10		.07

SUPERSEDEAS DECISION

STATE: Colorado

COUNTIES: Adams, Arapahoe, Boulder, Clear Creek, Denver, Douglas, Eagle, Elbert, Gilpin, Grand, Jefferson, Lake, Larimer, Morgan, Park, Summit, and Weld

DECISION NUMBER: CO80-5137

DATE: Date of Publication

Supersedes Decision No. CO79-5117 dated June 15, 1979, in 44 FR 24719

DESCRIPTION OF WORK: Building Projects (does not include single family homes and apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$13.49	.75	$1.52		
BOILERMAKERS	13.87	1.375	1.10		.05
BRICKLAYERS; Stonemasons:					
Eagle County	12.29	.85	1.10		.06
Boulder and Grand Counties	11.95	.85	1.10		.05
Elbert, Lake and Park Counties	12.25	.85	.95		.05
Larimer County	12.29	.85	1.10		.05
Remaining Counties	12.29	.85	1.10		.06
CARPENTERS:*					
Area 1:					
Zone 1	11.065	1.00	1.00	.95	.09
Zone 2	12.45	1.00	1.00	.95	.09
Zone 3	13.63	1.00	1.00	.95	.09
Area 2:					
Zone 1	11.065	1.00	1.00	.95	.09
Zone 2	12.45	1.00	1.00	.95	.09
Zone 3	13.83	1.00	1.00	.95	.09
Area 3	11.065	1.00	1.00	.95	.09
Area 4:					
Zone 1	10.37	1.00	1.00	.95	.09
Zone 2	10.87	1.00	1.00	.95	.09
Zone 3	11.12	1.00	1.00	.95	.09
CEMENT MASONS:					
Cement Masons	12.04	.59	1.15		.13
Working with composition materials and color	12.54	.59	1.15		.13
Working on scaffold, swing stage, or temporary platform over 25'	12.29	.59	1.15		.13
DRYWALL INSTALLERS	11.72	1.00	.85	1.00	.07
ELECTRICIANS:					
Elbert and Park Counties: Electricians	12.75	.72	3%+.65		.015
Larimer, Morgan and Weld Counties: Electricians	13.00	.70	3%+1.25		3/10%
Remaining Counties: Electricians	14.25	.70	3%+1.25		3/10%
Cable Splicers	14.50	.70	3%+1.25		3/10%

*See AREA and ZONE Descriptions Page 4

DECISION NO. CO80-5137 Page 2

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELEVATOR CONSTRUCTORS	$13.26	$1.195	.82	a	.035
ELEVATOR CONSTRUCTORS' HELPERS	9.23	1.195	.82	a	.035
GLAZIERS	12.95				
IRONWORKERS:					
Structural, Ornamental, and Reinforcing	12.35	1.04	1.25		.12
LATHERS	12.94				.01
MARBLE SETTERS:					
Elbert, Lake, and Park Counties	11.79	.85	.70		
Remaining Counties	12.40	1.10	1.15		.04
MILLWRIGHTS	12.41	1.00	.85		.135
PAINTERS:					
*Park County (southern half)					
Brush, Roller, Taper, hand texture	10.79	.95	.70		.04
Steel and Paperhanger	11.29	.95	.70		.04
Spray	12.04	.95	.70		.04
Remaining Counties including northern half of Park County:*					
Brush and Roller; Hardwood Finisher	13.31	.95	1.15		.08
Drywall Finisher (hand)	13.56	.95	1.15		.08
Drywall Finisher (tool); Spray; Swing Stage and Chair; Sandblast (exterior); Paperhanger	13.91	.95	1.15		.08
Sandblast (interior); Steeplejack	15.23	.95	1.15		.08
PLASTERERS	12.94				.01
PLUMBERS; Steamfitters:					
Southern portions of Douglas, Elbert, and Park Counties*	11.75	.85	1.15	1.60	.10
Boulder County	13.25	.90	1.25	.95	.15
Remaining Counties (including northern portions of Douglas, Elbert, and Park Counties)	13.17	.90	1.25	.90	.08

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS:					
Eagle County and southern portions of Lake, Jefferson, Park, Douglas, and Elbert Counties**	$11.41	.59	.40		
Remaining Counties including northern portions of Lake, Park, Jefferson, Douglas, and Elbert Counties	13.17	.90	1.25	.90	.08
SHEET METAL WORKERS	13.20	3%+.73	1.51		.10
SOFT FLOOR LAYERS	11.18	.65	.75	.50	.10
SPRINKLER FITTERS	14.30	.85	1.20		.08
TERRAZZO WORKERS:					
Elbert, Lake, and Park Counties	11.79	.85	.70		
Remaining Counties	12.40	1.10	1.15		.04
TILE LAYERS:					
Elbert, Lake, and Park Counties	11.79	.85	.70		
Remaining Counties	12.40	1.10	1.15		.04
TILE, MARBLE and TERRAZZO FINISHERS:					
Finishers	8.95	1.10	1.15	.50	
Floor Grinders	9.10	1.10	1.15	.50	
Base Grinders	9.65	1.10	1.15	.50	

*Park County dividing Line: Line from the S.W. corner of Jefferson County to the S.E. corner of Lake County

** Area south of Lake County to a point 2 miles north of the City of Leadville to a point 1/2 mile north of the City of Limon at the west border of Lincoln County

FOOTNOTE:
a. Employer contributes 8% basic hourly rate for over 5 years service and 6% basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit. Six Paid Holidays: A through F.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

AREA and ZONE DESCRIPITONS

CARPENTERS:
Area 1: Adams, Arapahoe, Boulder, Clear Creek, Denver, Douglas, Elbert, Grand, Gilpin, and Jefferson Counties; Park County (northern area):
(a) Denver Metropolitan Area including Louisville, Golden, Boulder, and Longmont basing points:
Zone 1: 0 to 20 miles
Zone 2: 20 to 50 miles
Zone 3: 50 miles and over

Area 2: Morgan and Weld Counties:
(b) Denver Northeastern Area of Colorado including Greeley, Loveland, and Fort Morgan basing points:
Zone 1: 0 to 20 miles
Zone 2: 20 to 50 miles
Zone 3: 50 miles and over

Area 3: Larimer County (S.E. portion within Loveland basing point, Zone 1)

Area 4: Larimer (Remainder of County); Eagle, Lake, and Park Counties (south 40 miles); Summit County:
Zone 1: 0 to 30 miles from Post Office in Leadville or Fort Collins
Zone 2: 30 to 60 miles from Post Office in Leadville or Fort Collins
Zone 3: All work outside of the 60 mile radius from Post Office in Leadville or Fort Collins

	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
				H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS	ZONE 1	ZONE 2	ZONE 3				
Group 1	$ 5.50	$5.95	$6.40	.59	.70		.05
Group 2	8.65	9.10	9.55	.59	.70		.05
Group 3	8.93	9.38	9.83	.59	.70		.05
Group 4	9.15	9.60	10.05	.59	.70		.05
Group 5	9.20	9.65	10.10	.59	.70		.05
Group 6	9.45	9.90	10.35	.59	.70		.05

See ZONE DESCRIPTIONS - following TRUCK DRIVERS' Classifications

Group 1: Watchmen tending Heaters and Pumps

Group 2: Building Construction Laborer

Group 3: Laborers - Underpinning and Shoring eight (8) feet or more below working surface.
Power Tool Operators of all mechanical, air, gas and electrical tools, including Self-propelled Buggies and Cement Finishers Tenders. Laborers preparing and placing of stone or any other aggregate in sand bed to be used as exposed face of Tilt-up Panels.
Burners on Demolition and Welders, Gunnite Nozzleman and Sandblasters.

Group 4: Pipelayers on Building Construction

Group 5: Jackhammer Operator for Underpinning and Shoring over twelve (12) feet below working surface, Bellers and Stemmers on Caisson Work.

Group 6: Tender, Mason and Plaster

	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS: (Other than for work in Tunnels, Shafts, and Raises)	ZONE 1	ZONE 2				
Group 1	$ 9.75	$10.50	.93	$1.10	.55	.12
Group 2	10.10	10.85	.93	1.10	.55	.12
Group 3	10.45	11.20	.93	1.10	.55	.12
Group 4	10.60	11.35	.93	1.10	.55	.12
Group 5	10.75	11.50	.93	1.10	.55	.12
Group 6	10.90	11.65	.93	1.10	.55	.12
(For work in Tunnels, Shafts, and Raises)						
Group 1	9.90	10.65	.93	1.10	.55	.12
Group 2	10.25	11.00	.93	1.10	.55	.12
Group 3	10.35	11.10	.93	1.10	.55	.12
Group 4	10.60	11.35	.93	1.10	.55	.12
Group 5	10.75	11.50	.93	1.10	.55	.12
Group 6	11.15	11.90	.93	1.10	.55	.12

See ZONE DESCRIPTIONS - following TRUCK DRIVERS' Classifications

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POWER EQUIPMENT OPERATORS
(Other than for work in Tunnels, Shafts and Raises)

Group 1: Air Compressor; Asphalt Screed; Oiler; Brakeman; Drill Operator - smaller than Williams MF and similar; Tender to Heavy Duty Mechanic and/or Welder; Operators of 5 or more light plants, Welding Machines, Generators, single unit conveyor; Pumps; Vacuum Well Point System; Tractor, under 70 HP with or without attachments; Rodman; Chainman; Grade Checker

Group 2: Conveyor, handling building materials; Ditch Witch and similar Trenching Machine; Fireman or Tank Heater, road; Forklift; Haulage Motor Man; Pugmill; Portable Screening Plant with or without a spray bar; Screening Plants, with classifier; Self-propelled Roller, rubber-tired under 5 tons

Group 3: Asphalt Plant; Backfiller, Bituminous Spreader or Laydown Machine; Cableway Signalman; Caisson Drill; Williams MF, similar and larger; C.M.I. and similar; Concrete Batching Plants; Concrete Finish Machine; Concrete Gang Saws on concrete paving; Concrete Mixer, less than 1 yd.; Concrete Placement Pumps, under 8 inches; Distributors, Bituminous Surfaces; Drill, Diamond or Core; Drill Rigs, Rotery, Churn, or Cable Tool; Elevating Graders, Equipment Lubricating and service Engineer; Engineer Fireman; Grout Machine; Gunnite Machine; Hoist, 1 drum; Hydraulic Backhoes, wheel mounted under 3/4 yd.; Loader, Barber Green, etc.; Loader up to and including 6 cu. yds.; Machine Doctor; Mechanic; Motor Grader/Blade, rough; Road Stabilization Machine; Rollers, self-propelled, all types over 5 tons; Sandblasting Machine; single unit portable crusher, with or without washer; Tie Tamper, wheel mounted; Tractor, 70 HP and over with or without attachments; Trenching Machine Operator; Welder; Winch on truck; Instrument Man

Group 4: Cable operated Crane, track mounted; Cable operated power Shovels, Draglines, Clamshells, and Backhoes, 5 cu. yds. and under; Concrete Mixer over 1 cu. yd.; Concrete Paver 34E or similar; Concrete Placement Pumps, 8 inches and over; Crane, 50 tons and under; Hoist, 2 drums; Hydraulic Backhoe, 3/4 yd. and over; Loader, over 6 cu. yds.; Mechanic-welder, heavy duty; Mixer mobile; Motor Grader/blade, finish; Multiple unit portable Crusher, with or without washer; Pile-driver; Scrapers, single bowl under 40 cu. yds.; Self-propelled Hydraulic Crane; Tractor with sideboom; Truck mounted Hydraulic Crane

POWER EQUIPMENT OPERATORS (Cont'd)
(Other than for work in Tunnels, Shafts and Raises)

Group 5: Cable operated power Shovels, Draglines, Clamshells and Backhoes over 5 cu. yds.; Crane, over 50 tons carrier mounted; Derrick; Electric rail type Tower Crane; Hoist, 3 drum or more; Quad Nine and similar push unit; Scrapers single bowl including pups 40 cu. yds. and tandem bowls and over

Group 6: Cableway; Climbing Tower Crane; Crawler or truck mounted Tower Crane; Wheel Excavator, Tower Crane, truck type

(For work in Tunnels, Shafts and Raises)

Group 1: Brakeman

Group 2: Motorman

Group 3: Compressor (900 CFM and over) serving Tunnels, Shafts and Raises

Group 4: Air Tractors; Grout Machine; Gunnite Machine; Jumbo Form; Mechanic; Welder

Group 5: Concrete Placement Pumps, 8" and over discharge; Mechanic-Welder, heavy duty; Mucking Machines and Front End Loaders, underground; Slusher; Mine Hoist Operator

Group 6: Mole

TRUCK DRIVERS	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1	ZONE 2				
Group 1	$ 9.36	$9.86	.94	.70	.40	
Group 2	9.46	9.96	.94	.70	.40	
Group 3	9.56	10.06	.94	.70	.40	
Group 4	9.61	10.11	.94	.70	.40	
Group 5	9.66	10.16	.94	.70	.40	
Group 6	9.71	10.21	.94	.70	.40	
Group 7	9.76	10.26	.94	.70	.40	
Group 8	9.81	10.31	.94	.70	.40	
Group 9	9.91	10.41	.94	.70	.40	
Group 10	9.96	10.46	.94	.70	.40	
Group 11	10.06	10.56	.94	.70	.40	
Group 12	10.21	10.71	.94	.70	.40	
Group 13	10.26	10.76	.94	.70	.40	
Group 14	10.36	10.86	.94	.70	.40	
Group 15	10.46	10.96	.94	.70	.40	
Group 16	10.56	11.06	.94	.70	.40	
Group 17	10.66	11.16	.94	.70	.40	
Group 18	10.86	11.36	.94	.70	.40	

See ZONE DESCRIPTIONS - following TRUCK DRIVERS Classifications

TRUCK DRIVERS

Group 1: Pickups; Tenders; Scalemen; Checkers; Spotters; Dumpmen

Group 2: Dump Trucks, to and including 6 cu. yds.; Sweepers; Flat Rack, single axle; Liquid and Bulk Tankers, single axle; Warehouse Men; Washers; Greasemen; Servicemen; Ambulance Drivers

Group 3: Dump Trucks, over 6 cu. yds. to and including 14 cu. yds.; Flat Rack, tandem axle; Battery Men; Mechanics' Tenders; Material Checkers; Cardex Men; Expeditors; Man Haul Shuttle Truck or Bus

Group 4: Straddle Truck; Lumber Carrier; Liquid and Bulk Tankers, tandem axle

Group 5: Fork Lift Driver; Fuel Truck; Grease Truck; Combination Fuel and Grease

Group 6: Distributor Truck Driver; Cement Mixer, Agitator Truck to and including 10 cu. yds.; Liquid and Bulk Tankers, semi or combination

Group 7: Multi-purpose Truck; Specialty and Hoisting

Group 8: Dump Trucks, over 14 cu. yds. to and including 29 cu. yds.; High Boy, Low Boy, Floats, semi; Cab operated Distributor Truck Driver, semi; Liquid and Bulk Tankers, Euclid, Electric or similar; Truck Drivers, Dumptor type Youngbuggy, Jumbo and similar type equipment

Group 9: Truck Driver, Snow Plow

Group 10: Cement Mixer, Agitator Truck, over 10 cu. yds., to and including 15 cu. yds.

Group 11: Dump Trucks, over 29 cu. yds. to and including 39 cu. yds.

Group 12: Cement Mixer, Agitator Truck, over 15 cu. yds.

Group 13: Dump Trucks, over 39 cu. yds. to and including 54 cu. yds.; Tireman

Group 14: Mechanic

Group 15: Dump Trucks, over 54 cu. yds. to and including 79 cu. yds.

Group 16: Heavy Duty Diesel, Mechanic, Body Men, Welders or Combination Men

Group 17: Dump Trucks, over 79 cu. yds. to and including 104 cu. yds.

Group 18: Dump Trucks, over 104 cu. yds.

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DECISION NO. CO80-5137 Page 11

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

ZONE DESCRIPTIONS

LABORERS

CITIES within ZONES 1, 2, and 3:

Boulder	Denver	Dillion
Eagle	Golden	Fort Collins
Fort Morgan	Leadville	Granby
Greeley	Littleton	Vail

ZONE 1 - That area encompassed by 0 to 30 driving miles from the Main Post Office
ZONE 2 - That area encompassed by 30 to 70 driving miles from the Main Post Office
ZONE 3 - That area encompassed by 70 driving miles and over from the Main Post Office

POWER EQUIPMENT OPERATORS and TRUCK DRIVERS

A. Counties entirely within Zone 1:

Boulder	Denver	Douglas
Clear Creek	Gilpin	Jefferson
Larimer	Morgan	Weld

B. Counties entirely within Zone 2:
Grand Lake Park Summit

C. Legal description of the portions of Adams, Arapahoe, Eagle and Elbert Counties which are included within Zone 1, as follows:
All of Adams, Arapahoe, Wlbert Counties lying west of the Township line between R59W and R60W of the 8th Guide Meridian West; and all of Eagle County lying West of the Township line between R80W and R81W of the 10th Guide Meridian West

D. Legal description of the portions of Adams, Arapahoe, Eagle and Elbert Counties which are included within Zone 2, as follows:
All of Adams, Arapahoe, Elbert Counties lying East of the Township line between R59 and R60W of the 8th Guide Meridian West, and all of Eagle County lying East of the Township line between R80W and R81W of the 9th Guide Meridian West

SUPERSEDEAS DECISION

STATE: Colorado COUNTY: El Paso
DECISION NUMBER: CO80-5138 DATE: Date of Publication
Supersedes Decision No. CO79-5118 dated June 15, 1979, in 44 FR 34724
DESCRIPTION OF WORK: Building Projects (does not include family homes and apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$13.64	.75	$1.37		
BOILERMAKERS	13.87	1.375	1.10		.05
BRICKLAYERS; Stonemasons	12.25	.85	.95	.95	.04
CARPENTERS:					
Zone 1: 0-40 miles from Post Office in Colorado Springs	10.37	1.00	1.00	.95	.07
Zone 2: 40-75 miles from Post Office in Colorado Springs	10.87	1.00	1.00	.95	.07
Zone 3: 75 miles and over	11.12	1.00	1.00	.95	.07
CEMENT MASONS:					
Cement Masons	12.14	.59	1.15		.13
Working with composition materials and color	12.64	.59	1.15		.13
Working on temporary platform over 25'	12.39	.59	1.15		.13
DRYWALL INSTALLERS	11.72	1.00	.85	1.00	.07
ELECTRICIANS	12.75	.72	3%+.65		.015
ELEVATOR CONSTRUCTORS	13.26	1.195	.82	a	.035
ELEVATOR CONSTRUCTORS' HELPERS	9.28	1.195	.82	a	.035
GLAZIERS	12.95				
IRONWORKERS:					
Structural, Ornamental, and Reinforcing	12.35	1.04	1.25		.12
LATHERS	11.94				.01
MARBLE SETTERS	11.79	.85	.70		
MILLWRIGHTS	12.41	1.00	.85		.19
PAINTERS:					
Brush and Roller; Tapers, hand texture	10.79	.95	.70		.04
Paperhangers; Steel Brush	11.29	.95	.70		.04
Spray painters	11.54	.95	.70		.04
Steel, Spray	12.04	.95	.70		.04
PLASTERERS	12.94				.01
PLUMBERS; Pipefitters	11.75	.85	1.15	1.60	.10
ROOFERS	11.41	.59	.40		

DECISION NO. CO80-5138 Page 2

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SHEET METAL WORKERS	$13.20	3%+.73	$1.51		.10
SOFT FLOOR LAYERS	11.18	.65	.75	.50	.10
SPRINKLER FITTERS	14.30	.85	1.20		.08
TERRAZZO WORKERS	12.40	1.10	1.15		.04
TILE SETTERS	11.79	.85	.70		
TILE, MARBLE and TERRAZZO FINISHERS:					
Finishers	9.55	1.10	1.15	.50	
Floor Grinders	9.70	1.10	1.15	.50	
Base Grinders	10.25	1.10	1.15	.50	

FOOTNOTE:
a. Employer contributes 8% of basic hourly rate for over 5 years' service; 6% basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit. Six Paid Holidays: A through F.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

DECISION NO. CO80-5138 Page 3

LABORERS	Basic Hourly Rates ZONE 1	Basic Hourly Rates ZONE 2	Basic Hourly Rates ZONE 3	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$ 5.50	$5.95	$6.40	.59	.70		.05
Group 2	8.65	9.10	9.55	.59	.70		.05
Group 3	8.93	9.38	9.83	.59	.70		.05
Group 4	9.15	9.60	10.05	.59	.70		.05
Group 5	9.20	9.65	10.10	.59	.70		.05
Group 6	9.45	9.90	10.35	.59	.70		.05

Group 1: Watchmen tending Heaters and Pumps

Group 2: Building Construction Laborer

Group 3: Laborers - Underpinning and Shoring eight (8) feet or more below working surface.
Power Tool Operators of all mechanical, air, gas and electrical tools, including Self-propelled Buggies and Cement Finishers Tenders. Laborers preparing and placing of stone or any other aggregate in sand bed to be used as exposed face of Tilt-up Panels.
Burners on Demolition and Welders, Gunnite Nozzleman and Sandblasters.

Group 4: Pipelayers on Building Construction

Group 5: Jackhammer Operator for Underpinning and Shoring over twelve (12) feet below working surface, Bellers and Stemmers on Caisson Work.

Group 6: Tender, Mason and Plaster

ZONE DESCRIPTIONS

ZONE 1: That area encompassed by 0 to 30 driving miles from the Main Post Office in Colorado Springs
ZONE 2: That area encompassed by 30 to 70 driving miles from the Main Post Office in Colorado Springs
ZONE 3: That area encompassed by 70 driving miles and over from the Main Post Office in Colorado Springs

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POWER EQUIPMENT OPERATORS (Other than for work in Tunnels, Shafts, and Raises)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$9.75	.93	$1.10	.55	.12
Group 2	10.10	.93	1.10	.55	.12
Group 3	10.45	.93	1.10	.55	.12
Group 4	10.60	.93	1.10	.55	.12
Group 5	10.75	.93	1.10	.55	.12
Group 6	10.90	.93	1.10	.55	.12
(For work in Tunnels, Shafts, and Raises)					
Group 1	9.90	.93	1.10	.55	.12
Group 2	10.25	.93	1.10	.55	.12
Group 3	10.35	.93	1.10	.55	.12
Group 4	10.60	.93	1.10	.55	.12
Group 5	10.75	.93	1.10	.55	.12
Group 6	11.15	.93	1.10	.55	.12

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POWER EQUIPMENT OPERATORS
(Other than for work in Tunnels, Shafts, and Raises)

Group 1: Air Compressor; Asphalt Screed; Oiler; Brakeman; Drill Operator - smaller than Williams MF and similar; Tender to Heavy Duty Mechanic and/or Welder; Operators of 5 or more light plants, Welding Machines, Generators, single unit conveyor; Pumps; Vacuum Well Point System; Tractor, under 70 HP with or without attachments Rodman, Chainman, Grade Checker

Group 2: Conveyor, handling building materials; Ditch Witch and similar Trenching Machine; Fireman or Tank Heater, road; Forklift; Haulage Motor Man; Pugmill; Portable Screening Plant with or without a spray bar; Screening Plants, with classifier; Self-propelled Roller, rubber-tired under 5 tons

Group 3: Asphalt Plant; Backfiller, Bituminous Spreader or Laydown Machine; Cableway Signalman; Caisson Drill; Williams MF, similar and larger; C.M.I. and similar; Concrete Batching Plants; Concrete Finish Machine; Concrete Gang Saws on concrete paving; Concrete Mixer, less than 1 yd.; Concrete Placement Pumps, under 8 inches; Distributors, Bituminous Surfaces; Drill, Diamond or Core; Drill Rigs, Rotary, Churn, or Cable Tool; Elevating Graders, Equipment Lubricating and service Engineer; Engineer Fireman; Crout Machine; Gunnite Machine; Hoist, 1 drum; Hydraulic Backhoes, wheel mounted under 3/4 yd.; Loader, Barber Green, etc.; Loader up to and including 6 cu. yds.; Machine Doctor; Mechanic; Motor Grader/Blade, rough; Road Stabilization Machine; Rollers, self-propelled, all types over 5 tons; Sandblasting Machine; single unit portable crusher, with or without washer; Tie Tamper, wheel mounted; Tractor, 70 HP and over with or without attachments; Trenching Machine Operator; Welder; Winch on truck; Instrument Man

Group 4: Cable operated Crane, track mounted; Cable operated power Shovels, Draglines, Clamshells, and Backhoes, 5 cu. yds. and under; Concrete Mixer over 1 cu. yd.; Concrete Paver 34E or similar; Concrete Placement Pumps, 8 inches and over; Crane, 50 tons and under; Hoist, 2 drums; Hydraulic Backhoe, 3/4 yd. and over; Loader, over 6 cu. yds.; Mechanic-welder, heavy duty; Mixer mobile; Motor Grader/blade, finish; Multiple unit portable Crusher, with or without washer; Pile-driver; Scrapers, single bowl under 40 cu. yds.; Self-propelled Hydraulic Crane; Tractor with sideboom; Truck Mounted Hydraulic Crane

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POWER EQUIPMENT OPERATORS (Cont'd)
(Other than for work in Tunnels, Shafts and Raises)

Group 5: Cable operated power Shovels, Draglines, Clamshells and Backhoes over 5 cu. yds.; Crane, over 50 tons carrier mounted; Derrick; Electric rail type Tower Crane; Hoist, 3 drum or more; Quad Nine and similar push unit; Scrapers single bowl including pups 40 cu. yds. and tandem bowls and over

Group 6: Cableway; Climbing Tower Crane; Crawler or truck mounted Tower Crane; Wheel Excavator, Tower Crane, truck type

(For work in Tunnels, Shafts and Raises)

Group 1: Brakeman

Group 2: Motorman

Group 3: Compressor (900 CFM and over) serving Tunnels, Shafts and Raises

Group 4: Air Tractors; Grout Machine; Gunnite Machine; Jumbo Form; Mechanic; Welder

Group 5: Concrete Placement Pumps, 8" and over discharge; Mechanic-Welder, heavy duty; Mucking Machines and Front End Loaders, underground; Slusher; Mine Hoist Operator

Group 6: Hole

DECISION NO. CO80-5138 Page 7

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$9.36	.94	.70	.40	
Group 2	9.46	.94	.70	.40	
Group 3	9.56	.94	.70	.40	
Group 4	9.61	.94	.70	.40	
Group 5	9.66	.94	.70	.40	
Group 6	9.71	.94	.70	.40	
Group 7	9.76	.94	.70	.40	
Group 8	9.81	.94	.70	.40	
Group 9	9.91	.94	.70	.40	
Group 10	9.96	.94	.70	.40	
Group 11	10.06	.94	.70	.40	
Group 12	10.21	.94	.70	.40	
Group 13	10.26	.94	.70	.40	
Group 14	10.36	.94	.70	.40	
Group 15	10.46	.94	.70	.40	
Group 16	10.56	.94	.70	.40	
Group 17	10.66	.94	.70	.40	
Group 18	10.86	.94	.70	.40	

Group 1: Pickups; Tenders; Scalemen; Checkers; Spotters; Dumpmen

Group 2: Dump Trucks, to and including 6 cu. yds.; Sweepers; Flat Rack, single axle; Liquid and Bulk Tankers, single axle; Warehouse Men; Washers; Greasemen; Servicemen; Ambulance Drivers

Group 3: Dump Trucks, over 6 cu. yds. to and including 14 cu. yds.; Flat Rack, tandem axle; Battery Men; Mechanics' Tenders; material Checkers; Cardex Men; Expeditors; Man Haul Shuttle Truck or Bus

TRUCK DRIVERS (Cont'd)

Group 4: Straddle Truck; Lumber Carrier; Liquid and Bulk Tankers, tandem axle

Group 5: Fork Lift Driver; Fuel Truck; Grease Truck; Combination Fuel and Grease

Group 6: Distributor Truck Driver; Cement Mixer, Agitator Truck to and including 10 cu. yds.; Liquid and Bulk Tankers, semi or combination

Group 7: Multi-purpose Truck; Specialty and Hoisting

Group 8: Dump Trucks, over 14 cu. yds. to and including 29 cu. yds.; High Boy, Low Boy, Floats, semi; Cab operated Distributor Truck Driver, semi; Liquid and Bulk Tankers, Euclid, Electric or similar; Truck Drivers, Dumptor type Youngbuggy, Jumbo and similar type equipment

Group 9: Truck Driver, Snow Plow

Group 10: Cement Mixer, Agitator Truck, over 10 cu. yds., to and including 15 cu. yds.

Group 11: Dump Trucks, over 29 cu. yds. to and including 39 cu. yds.

Group 12: Cement Mixer, Agitator Truck, over 15 cu. yds.

Group 13: Dump Trucks, over 39 cu. yds. to and including 54 cu. yds.; Tireman

Group 14: Mechanic

Group 15: Dump Trucks, over 54 cu. yds. to and including 79 cu. yds.

Group 16: Heavy Duty Diesel, Mechanic, Body Men, Welders or Combination Men

Group 17: Dump Trucks, over 79 cu. yds. to and including 104 cu. yds.

Group 18: Dump Trucks, over 104 cu. yds.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Colorado

COUNTIES: Delta, Garfield, Gunnison, Mesa, Montrose, and Pitkin

DECISION NUMBER: CO80-5139 DATE: Date of Publication

Supersedes Decision No. CO79-5119 dated June 15, 1979, in 44 FR 34728

DESCRIPTION OF WORK: Building Projects (does not include single family homes and apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$13.49	.75	$1.52		
BOILERMAKERS	13.87	1.375	1.10		.05
BRICKLAYERS; Stonemasons:					
Pitkin County	12.29	.85	1.10		.06
Remaining Counties	11.25	.85	1.10		.05
CARPENTERS:					
Post Office basing points in the Cities of Leadville, Fort Collins, Glenwood Springs, Grand Junction, Gunnison and Montrose:					
Zone 1: 0-30 miles from nearest basing point	10.37	1.00	1.00	.95	.07
Zone 2: 30-60 miles from nearest basing point	10.87	1.00	1.00	.95	.07
Zone 3: 60 miles and over from nearest basing point	11.12	1.00	1.00	.95	.07
CEMENT MASONS:					
Cement Masons	12.14	.59	1.15		.13
Working with composition materials and color	12.64	.59	1.15		.13
Working on scaffold, swing stage or temporary platform over 25'	12.39	.59	1.15		.13
DRYWALL INSTALLERS	11.72	1.00	.85	1.00	.07
ELECTRICIANS:					
Electricians	14.10	.75	3%+.50		1⅓%
Cable Splicers	14.35	.75	3%+.50		1⅓%
ELEVATOR CONSTRUCTORS	13.26	1.195	.82	a	.035
ELEVATOR CONSTRUCTORS' HELPERS	9.28	1.195	.82	a	.035
GLAZIERS	12.95				
IRONWORKERS:					
Structural, Ornamental and Reinforcing	12.35	1.04	1.25		.12

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS:					
Delta, Gunnison, and Montrose Counties	$11.94				.01
Garfield, Mesa, and Pitkin Counties	12.94				.01
MARBLE and TILE SETTERS; TERRAZZO WORKERS	11.79	1.10	1.15		.04
MILLWRIGHTS	12.41	1.00	.85		.19
PAINTERS:					
Brush, Roller and Drywall Finishers	13.31	.95	1.15		.08
Paperhangers, Spray, Swing Stage	13.91	.95	1.15		.08
PLASTERERS	12.94				.01
PLUMBERS	12.85	.85	1.15		.10
ROOFERS	11.41	.59	.40		
SHEET METAL WORKERS	13.20	3%+.73	1.51		
SOFT FLOOR LAYERS	11.18	.65	.75	.50	.10
SPRINKLER FITTERS	14.30	.85	1.20		.08
TILE, MARBLE and TERRAZZO FINISHERS:					
Finishers	8.95	1.10	1.15	.50	
Floor Grinders	9.10	1.10	1.15	.50	
Base Grinders	9.65	1.10	1.15	.50	

FOOTNOTE:
a. Employer contributes 8% of basic hourly rate for over 5 years' service and 6% basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit. 6 Paid Holidays: A through F.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

LABORERS	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
				H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1	ZONE 2	ZONE 3				
Group 1	$ 5.50	$5.95	$6.40	.59	.70		.05
Group 2	8.65	9.10	9.55	.59	.70		.05
Group 3	8.93	9.38	9.83	.59	.70		.05
Group 4	9.15	9.60	10.05	.59	.70		.05
Group 5	9.20	9.65	10.10	.59	.70		.05
Group 6	9.45	9.45	10.35	.59	.70		.05

See ZONE DESCRIPTIONS - following TRUCK DRIVERS' Classifications

Group 1: Watchmen tending Heaters and Pumps

Group 2: Building Construction Laborer

Group 3: Laborers - Underpinning and Shoring eight (8) feet or more below working surface.
Power Tool Operators of all mechanical, air, gas and electrical tools, including Self-propelled Buggies and Cement Finishers Tenders. Laborers preparing and placing of stone or any other aggregate in sand bed to be used as exposed face of Tilt-up Panels.
Burners on Demolition and Welders, Gunnite Nozzleman and Sandblasters.

Group 4: Pipelayers on Building Construction

Group 5: Jackhammer Operator for Underpinning and Shoring over twelve (12) feet below working surface, Bellers and Stemmers on Caisson Work.

Group 6: Tender, Mason and Plaster

	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS: (Other than for work in Tunnels, Shafts, and Raises)	ZONE 1	ZONE 2				
Group 1	$ 9.75	$10.50	.93	$1.10	.55	.12
Group 2	10.10	10.85	.93	1.10	.55	.12
Group 3	10.45	11.20	.93	1.10	.55	.12
Group 4	10.60	11.35	.93	1.10	.55	.12
Group 5	10.75	11.50	.93	1.10	.55	.12
Group 6	10.90	11.65	.93	1.10	.55	.12
(For work in Tunnels, Shafts, and Raises)						
Group 1	9.90	10.65	.93	1.10	.55	.12
Group 2	10.25	11.00	.93	1.10	.55	.12
Group 3	10.35	11.10	.93	1.10	.55	.12
Group 4	10.60	11.35	.93	1.10	.55	.12
Group 5	10.75	11.50	.93	1.10	.55	.12
Group 6	11.15	11.90	.93	1.10	.55	.12

See ZONE DESCRIPTIONS - following TRUCK DRIVERS' Classifications

POWER EQUIPMENT OPERATORS
(Other than for work in Tunnels, Shafts and Raises)

Group 1: Air Compressor; Asphalt Screed; Oiler; Brakeman; Drill Operator - smaller than Williams MF and similar; Tender to Heavy Duty Mechanic and/or Welder; Operators of 5 or more light plants, Welding Machines, Generators, single unit conveyor; Pumps; Vacuum Well Point System; Tractor, under 70 HP with or without attachments Rodman, Chainman, Grade Checker

Group 2: Conveyor, handling building materials; Ditch Witch and similar Trenching Machine; Fireman or Tank Heater, road; Forklift; Haulage Motor Man; Pugmill; Portable Screening Plant with or without a spray bar; Screening Plants, with classifier; Self-propelled Roller, rubber-tired under 5 tons

Group 3: Asphalt Plant; Backfiller, Bituminous Spreader or Laydown Machine; Cableway Signalman; Caisson Drill; Williams MF, similar and larger; C.M.I. and similar; Concrete Batching Plants; Concrete Finish Machine; Concrete Gang Saws on concrete paving; Concrete Mixer, less than 1 yd.; Concrete Placement Pumps, under 8 inches; Distributors, Bituminous Surfaces; Drill, Diamond or Core; Drill Rigs, Rotary, Churn, or Cable Tool; Elevating Graders, Equipment Lubricating and service Engineer; Engineer Fireman; Grout Machine; Gunnite Machine; Hoist, 1 drum; Hydraulic Backhoes, wheel mounted under 3/4 yd.; Loader, Barber Green, etc.; Loader up to and including 6 cu. yds.; Machine Doctor; Mechanic; Motor Grader/Blade, rough; Road Stabilization Machine; Rollers, self-propelled, all types over 5 tons; Sandblasting Machine; single unit portable crusher, with or without washer; Tie Tamper, wheel mounted; Tractor, 70 HP and over with or without attachments; Trenching Machine Operator; Welder; Winch on truck; Instrument Man

Group 4: Cable operated Crane, track mounted; Cable operated power Shovels, Draglines, Clamshells, and Backhoes, 5 cu. yds. and under; Concrete Mixer over 1 cu. yd.; Concrete Paver 34E or similar; Concrete Placement Pumps, 8 inches and over; Crane, 50 tons and under; Hoist, 2 drums; Hydraulic Backhoe, 3/4 yd. and over; Loader, over 6 cu. yds.; Mechanic-welder, heavy duty; Mixer mobile; Motor Grader/blade, finish; Multiple unit portable Crusher, with or without washer; Pile-driver; Scrapers, single bowl under 40 cu. yds.; Self-propelled Hydraulic Crane; Tractor with sideboom; Truck mounted Hydraulic Crane

POWER EQUIPMENT OPERATORS (Cont'd)
(Other than for work in Tunnels, Shafts, and Raises)

Group 5: Cable operated power Shovels, Draglines, Clamshells and Backhoes over 5 cu. yds.; Crane, over 50 tons carrier mounted; Derrick; Electric rail type Tower Crane; Hoist, 3 drum or more; Quad Nine and similar push unit; Scrapers single bowl including pups 40 cu. yds. and tandem bowls and over

Group 6: Cableway; Climbing Tower Crane; Crawler or truck mounted Tower Crane; Wheel Excavator, Tower Crane, truck type

(For work in Tunnels, Shafts and Raises)

Group 1: Brakeman

Group 2: Motorman

Group 3: Compressor (900 CFM and over) serving Tunnels, Shafts and Raises

Group 4: Air Tractors; Grout Machine; Gunnite Machine; Jumbo Form; Mechanic; Welder

Group 5: Concrete Placement Pumps, 8" and over discharge; Mechanic-Welder, heavy duty; Mucking Machines and Front End Loaders, underground; Slusher; Mine Hoist Operator

Group 6: Mole

	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS	ZONE 1	ZONE 2				
Group 1	$ 9.36	$9.86	.94	.70	.40	
Group 2	9.46	9.96	.94	.70	.40	
Group 3	9.56	10.06	.94	.70	.40	
Group 4	9.61	10.11	.94	.70	.40	
Group 5	9.66	10.16	.94	.70	.40	
Group 6	9.71	10.21	.94	.70	.40	
Group 7	9.76	10.26	.94	.70	.40	
Group 8	9.81	10.31	.94	.70	.40	
Group 9	9.91	10.41	.94	.70	.40	
Group 10	9.96	10.46	.94	.70	.40	
Group 11	10.06	10.56	.94	.70	.40	
Group 12	10.21	10.71	.94	.70	.40	
Group 13	10.26	10.76	.94	.70	.40	
Group 14	10.36	10.86	.94	.70	.40	
Group 15	10.46	10.96	.94	.70	.40	
Group 16	10.56	11.06	.94	.70	.40	
Group 17	10.66	11.16	.94	.70	.40	
Group 18	10.86	11.36	.94	.70	.40	

See ZONE DESCRIPTIONS - following TRUCK DRIVERS Classifications

Group 1: Pickups; Tenders; Scalemen; Checkers; Spotters; Dumpmen

Group 2: Dump Trucks, to and including 6 cu. yds.; Sweepers; Flat Rack, single axle; Liquid and Bulk Tankers, single axle; Warehouse Men; Washers; Greasemen; Servicemen; Ambulance Drivers

Group 3: Dump Trucks, over 6 cu. yds. to and including 14 cu. yds.; Flat Rack, tandem axle; Battery Men; Mechanics' Tenders; Material Checkers; Cardex Men; Expeditors; Man Haul Shuttle Truck or Bus

TRUCK DRIVERS (Cont'd)

Group 4: Straddle Truck; Lumber Carrier; Liquid and Bulk Tankers, tandem axle

Group 5: Fork Lift Driver; Fuel Truck; Grease Truck; Combination Fuel and Grease

Group 6: Distributor Truck Driver; Cement Mixer, Agitator Truck to and including 10 cu. yds.; Liquid and Bulk Tankers, semi or combination

Group 7: Multi-purpose Truck; Specialty and Hoisting

Group 8: Dump Trucks, over 14 cu. yds. to and including 29 cu. yds.; High Boy, Low Boy, Floats, semi; Cab operated Distributor Truck Driver, semi; Liquid and Bulk Tankers, Euclid, Electric or similar; Truck Drivers, Dumptor type Youngbuggy, Jumbo and similar type equipment

Group 9: Truck Driver, Snow Plow

Group 10: Cement Mixer, Agitator Truck, over 10 cu. yds., to and including 15 cu. yds.

Group 11: Dump Trucks, over 29 cu. yds. to and including 39 cu. yds.

Group 12: Cement Mixer, Agitator Truck, over 15 cu. yds.

Group 13: Dump Trucks, over 39 cu. yds. to and including 54 cu. yds.; Tireman

Group 14: Mechanic

Group 15: Dump Trucks, over 54 cu. yds. to and including 79 cu. yds.

Group 16: Heavy Duty Diesel, Mechanic, Body Men, Welders or Combination Men

Group 17: Dump Trucks, over 79 cu. yds. to and including 104 cu. yds.

Group 18: Dump Trucks, over 104 cu. yds.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

ZONE DESCRIPTIONS

LABORERS

ZONE 1: That area encompassed by 0 to 30 driving miles from the Main Post Office in each of the following Cities:

Aspen, Gunnison, Glenwood Springs, Montrose, Rifle, Grand Junction, Naturita

ZONE 2: That area encompassed by 30 to 70 driving miles from the Main Post Office of the Cities listed in Zone 1

ZONE 3: That area encompassed by 70 driving miles and over from the Main Post Office of the Cities listed in Zone 1

POWER EQUIPMENT OPERATORS and TRUCK DRIVERS

A. Counties entirely within Zone 1:
Delta Garfield Mesa

B. Counties entirely within Zone 2:
Gunnison Pitkin

C. Legal description of the portion of Montrose County which is included within Zone 1, as follows:
All of Montrose County lying north of the North Line of Ouray County and said North Line extended West to the Township Line between R11W and R12W, said part lying East of said Township Line of the New Mexico Principal Meridian

D. Legal description of the portion of Montrose County which is included within Zone 2, as follows:
All of Montrose County except that part lying north of the North Line of Ouray County and said North Line extended West of said Township Line between R11W and R12W, said point being East of said Township Line of the New Mexico Principal Meridian

SUPERSEDEAS DECISION

STATE: Colorado COUNTIES: Las Animas, Otero and Pueblo
DECISION NUMBER: CO80-5140 DATE: Date of Publication
Supersedes Decision No. CO79-5120 dated June 15, 1979, in 44 FR 34733
DESCRIPTION OF WORK: Building Projects (does not include single family homes and apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$13.49	.75	$1.52		
BOILERMAKERS	13.87	1.375	1.10		.05
BRICKLAYERS	12.17	.85	1.10		.12
CARPENTERS	10.37	1.00	1.00	.95	.07
CEMENT MASONS:					
Cement Masons	12.14	.59	1.15		.13
Working with composition material and color	12.64	.59	1.15		.13
Working on scaffold, swing stage or temporary platform over 25'	12.39	.59	1.15		.13
DRYWALL INSTALLERS	11.72	1.00	.85	1.00	.07
ELECTRICIANS:					
Zone 1: 0-12 miles from Post Office:					
Electricians	13.64	.72	3%+1.00		1%%
Cable Splicers	15.00	.72	3%+1.00		1%%
Zone 2: 12-20 miles from Post Office:					
Electricians	14.47	.72	3%+1.00		1%%
Cable Splicers	15.83	.72	3%+1.00		1%%
Zone 3: 20-32 miles from Post Office					
Electricians	15.02	.72	3%+1.00		1%%
Cable Splicers	16.38	.72	3%+1.00		1%%
Zone 4: 32-50 miles from Post Office:					
Electricians	15.71	.72	3%+1.00		1%%
Cable Splicers	17.07	.72	3%+1.00		1%%
Zone 5: Over 50 miles from Post Office:					
Electricians	16.39	.72	3%+1.00		1%%
Cable Splicers	17.75	.72	3%+1.00		1%%
Electrical contracts under $20,000 in Zones 4 and 5	11.00	.72	3%+1.00		1%%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELEVATOR CONSTRUCTORS	$13.26	$1.195	.82	a	.035
ELEVATOR CONSTRUCTORRS' HELPERS	9.28	1.195	.82	a	.035
GLAZIERS	12.95				
IRONWORKERS:					
Structural; Ornamental and Reinforcing	12.35	1.04	1.25		.12
LATHERS	10.80				.01
MARBLE and TILE SETTERS, TERRAZZO WORKERS	12.40	1.10	1.15		.04
MILLWRIGHTS	12.41	1.00	.85		.19
PAINTERS:					
Brush and Roller Painters; Tapers and Hand Texture Men:					
Zone 1: 0-20 miles	10.79	.95	.70		.04
Zone 2: 20-35 miles	11.79	.95	.70		.04
Zone 3: 35 miles and over	12.57	.95	.70		.04
Tapers using Automatic tools, Spray Painters, and Sandblasters:					
Zone 1: 0-20 miles	11.54	.95	.70		.04
Zone 2: 20-35 miles	12.54	.95	.70		.04
Zone 3: 35 miles and over	13.32	.95	.70		.04
Paper and Vinyl Hangers; Steel Brush Painters:					
Zone 1: 0-20 miles	11.29	.95	.70		.04
Zone 2: 20-35 miles	12.29	.95	.70		.04
Zone 3: 35 miles and over	13.07	.95	.70		.04
Steel Spray Painters and Sandblasters:					
Zone 1: 0-20 miles	12.54	.95	.70		.04
Zone 2: 20-35 miles	12.54	.95	.70		.04
Zone 3: 35 miles and over	13.82	.95	.70		.04
PLASTERERS	12.94				.01

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLUMBERS:					
Zone 1: 0-15 miles from Post Office	$13.32	.85	$1.15		.08
Zone 2: 15-20 miles from Post Office	14.89	.85	1.15		.08
Zone 3: 20-40 miles from Post Office	14.32	.85	1.15		.08
Zone 4: Over 40 miles from Post Office	15.345	.85	1.15		.08
ROOFERS	11.41	.59	.40		
SHEET METAL WORKERS	13.20	3%+.73	1.51		.10
SOFT FLOOR LAYERS:					
Las Animas and Otero Counties	11.18	.65	.75	.50	.10
Pueblo County	9.00	.40	.75	.30	.05
SPRINKLER FITTERS	14.30	.85	1.20		.08
TILE, MARBLE and TERRAZZO FINISHERS:					
Finishers	9.55	1.10	1.15	.50	
Floor Grinders	9.70	1.10	1.15	.50	
Grinders	10.25	1.10	1.15	.50	

FOOTNOTE:
a. Employer contributes 8% of basic hourly rate for 5 years' service and 6% of basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit. 6 Paid Holidays: A through F.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

DECISION NO. CO80-5140 Page 4

LABORERS	Basic Hourly Rates ZONE 1	Basic Hourly Rates ZONE 2	Basic Hourly Rates ZONE 3	Fringe Benefits Payments H & W	Pensions	Vacation	Education and or Appr. Tr.
Group 1	$ 5.50	$5.95	$6.40	.59	.70		.05
Group 2	8.65	9.10	9.10	.59	.70		.05
Group 3	8.93	9.38	9.38	.59	.70		.05
Group 4	9.15	9.60	9.60	.59	.70		.05
Group 5	9.20	9.65	9.65	.59	.70		.05
Group 6	9.45	9.90	9.90	.59	.70		.05

See ZONE DESCRIPTIONS - following TRUCK DRIVERS' Classifications

Group 1: Watchmen tending Heaters and Pumps

Group 2: Building Construction Laborer

Group 3: Laborers - Underpinning and Shoring eight (8) feet or more below working surface.
Power Tool Operators of all mechanical, air, gas and electrical tools, including Self-propelled Buggies and Cement Finishers Tenders. Laborers preparing and placing of stone or any other aggregate in sand bed to be used as exposed face of Tilt-up Panels.
Burners on Demolition and Welders, Gunnite Nozzleman and Sandblasters.

Group 4: Pipelayers on Building Construction

Group 5: Jackhammer Operator for Underpinning and Shoring over twelve (12) feet below working surface, Bellers and Stemmers on Caisson Work.

Group 6: Tender, Mason and Plaster

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POWER EQUIPMENT OPERATORS: (Other than for work in Tunnels, Shafts, and Raises)	Basic Hourly Rates ZONE 1	Basic Hourly Rates ZONE 2	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$ 9.75	$10.50	.93	$1.10	.55	.12
Group 2	10.10	10.85	.93	1.10	.55	.12
Group 3	10.45	11.20	.93	1.10	.55	.12
Group 4	10.60	11.35	.93	1.10	.55	.12
Group 5	10.75	11.50	.93	1.10	.55	.12
Group 6	10.90	11.65	.93	1.10	.55	.12
(For work in Tunnels, Shafts, and Raises)						
Group 1	9.90	10.65	.93	1.10	.55	.12
Group 2	10.25	11.00	.93	1.10	.55	.12
Group 3	10.35	11.10	.93	1.10	.55	.12
Group 4	10.60	11.35	.93	1.10	.55	.12
Group 5	10.75	11.50	.93	1.10	.55	.12
Group 6	11.15	11.90	.93	1.10	.55	.12

See ZONE DESCRIPTIONS - following TRUCK DRIVERS' Classifications

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POWER EQUIPMENT OPERATORS
(Other than for work in Tunnels, Shafts and Raises)

Group 1: Air Compressor; Asphalt Screed; Oiler; Brakeman; Drill Operator - smaller than Williams MF and similar; Tender to Heavy Duty Mechanic and/or Welder; Operators of 5 or more light plants, Welding Machines, Generators, single unit conveyor; Pumps; Vacuum Well Point System; Tractor, under 70 HP with or without attachments; Rodman; Chainman; Grade Checker

Group 2: Conveyor, Handling building materials; Ditch Witch and similar Trenching Machine; Fireman or Tank Heater, road; Forklift; Haulage Motor Man; Pugmill; Portable Screening Plant with or without a spray bar; Screening Plants, with classifier; Self-propelled Roller, rubber-tired under 5 tons

Group 3: Asphalt Plant; Backfiller, Bituminous Spreader or Laydown Machine; Cableway Signalman; Caisson Drill; Williams MF, similar and larger; C.M.I. and similar; Concrete Batching Plants; Concrete Finish Machine; Concrete Gang Saws on concrete paving; Concrete Mixer, less than 1 yd.; Concrete Placement Pumps, under 8 inches; Distributors, Bituminous Surfaces; Drill, Diamond or Core; Drill Rigs, Rotary, Churn, or Cable Tool; Elevating Graders, Equipment Lubricating and service Engineer; Engineer Fireman; Grout Machine; Gunnite Machine; Hoist, 1 drum; Hydraulic Backhoes, wheel mounted under 3/4 yd.; Loader, Barber Green, etc.; Loader up to and including 6 cu. yds.; Machine Doctor; Mechanic; Motor Grader/Blade, rough; Road Stabilization Machine; Rollers, self-propelled, all types over 5 tons; Sandblasting Machine; single unit portable crusher, with or without washer; Tie Tamper, wheel mounted; Tractor, 70 HP and over with or without attachments; Trenching Machine Operator; Welder; Winch on truck; Instrument Man

Group 4: Cable operated Crane, track mounted; Cable operated power Shovels, Draglines, Clamshells, and Backhoes, 5 cu. yds. and under; Concrete Mixer over 1 cu. yd.; Concrete Paver 34E or similar; Concrete Placement Pumps, 8 inches and over; Crane, 50 tons and under; Hoist, 2 drums; Hydraulic Backhoe, 3/4 yd. and over; Loader, over 6 cu. yds.; Mechanic-welder, heavy duty; Mixer Mobile; Motor Grader/blade, finish; Multiple unit portable Crusher, with or without washer; Pile-driver; Scrapers, single bowl under 40 cu. yds.; Self-propelled Hydraulic Crane; Tractor with sideboom; Truck mounted Hydraulic Crane

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POWER EQUIPMENT OPERATORS (Cont'd)
(Other than for work in Tunnels, Shafts, and Raises)

Group 5: Cable operated power Shovels, Draglines, Clamshells and Backhoes over 5 cu. yds.; Crane, over 50 tons carrier mounted; Derrick; Electric rail type Tower Crane; Hoist, 3 drum or more; Quad Nine and similar push unit; Scrapers single bowl including pups 40 cu. yds. and tandem bowls and over

Group 6: Cableway; Climbing Tower Crane; Crawler or truck mounted Tower Crane; Wheel Excavator, Tower Crane, truck type

(For work in Tunnels, Shafts and Raises)

Group 1: Brakeman

Group 2: Motorman

Group 3: Compressor (900 CFM and over) serving Tunnels, Shafts and Raises

Group 4: Air Tractors; Grout Machine; Gunnite Machine; Jumbo Form; Mechanic; Welder

Group 5: Concrete Placement Pumps, 8" and over discharge; Mechanic-Welder, heavy duty; Mucking Machines and Front End Loaders, underground; Slusher; Mine Hoist Operator

Group 6: Mole

TRUCK DRIVERS	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1	ZONE 2				
Group 1	$ 9.36	$9.86	.94	.70	.40	
Group 2	9.46	9.96	.94	.70	.40	
Group 3	9.56	10.06	.94	.70	.40	
Group 4	9.61	10.11	.94	.70	.40	
Group 5	9.66	10.16	.94	.70	.40	
Group 6	9.71	10.21	.94	.70	.40	
Group 7	9.76	10.26	.94	.70	.40	
Group 8	9.81	10.31	.94	.70	.40	
Group 9	9.91	10.41	.94	.70	.40	
Group 10	9.96	10.46	.94	.70	.40	
Group 11	10.06	10.56	.94	.70	.40	
Group 12	10.21	10.71	.94	.70	.40	
Group 13	10.26	10.76	.94	.70	.40	
Group 14	10.36	10.86	.94	.70	.40	
Group 15	10.46	10.96	.94	.70	.40	
Group 16	10.56	11.06	.94	.70	.40	
Group 17	10.66	11.16	.94	.70	.40	
Group 18	10.96	11.36	.94	.70	.40	

See ZONE DESCRIPTIONS - following TRUCK DRIVERS Classifications

Group 1: Pickups; Tenders; Scalemen; Checkers; Spotters; Dumpmen

Group 2: Dump Trucks, to and including 6 cu. yds.; Sweepers; Flat Rack, single axle; Liquid and Bulk Tankers, single axle; Warehouse Men; Washers; Greasemen; Servicemen; Ambulance Drivers

Group 3: Dump Trucks, over 6 cu. yds. to and including 14 cu. yds.; Flat Rack, tandem axle; Battery Men; Mechanics' Tenders; Material Checkers; Cardex Men; Expeditors; Man Haul Shuttle Truck or Bus

TRUCK DRIVERS (Cont'd)

Group 4: Straddle Truck; Lumber Carrier; Liquid and Bulk Tankers, tandem axle

Group 5: Fork Lift Driver; Fuel Truck; Grease Truck; Combination Fuel and Grease

Group 6: Distributor Truck Driver; Cement Mixer, Agitator Truck to and including 10 cu. yds.; Liquid and Bulk Tankers, semi or combination

Group 7: Multi-purpose Truck; Specialty and Hoisting

Group 8: Dump Trucks, over 14 cu. yds. to and including 29 cu. yds.; High Boy, Low Boy, Floats, semi; Cab operated Distributor Truck Driver, semi; Liquid and Bulk Tankers, Euclid, Electric or similar; Truck Drivers, Dumptor type Youngbuggy, Jumbo and similar type equipment

Group 9: Truck Driver, Snow Plow

Group 10: Cement Mixer, Agitator Truck, over 10 cu. yds., to and including 15 cu. yds.

Group 11: Dump Trucks, over 29 cu. yds. to and including 39 cu. yds.

Group 12: Cement Mixer, Agitator Truck, over 15 cu. yds.

Group 13: Dump Trucks, over 39 cu. yds. to and including 54 cu. yds.; Tireman

Group 14: Mechanic

Group 15: Dump Trucks, over 54 cu. yds. to and including 79 cu. yds.

Group 16: Heavy Duty Diesel, Mechanic, Body Men, Welders or Combination Men

Group 17: Dump Trucks, over 79 cu. yds. to and including 104 cu. yds.

Group 18: Dump Trucks, over 104 cu. yds.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

ZONE DESCRIPTIONS

LABORERS

ZONE 1: that area encompassed by 0 to 30 driving miles from the Main Post Office in each of the following Cities:

Pueblo La Junta Trinidad

ZONE 2: that area encompassed by 30 to 70 driving miles from the Main Post Office in the Cities listed in Zone 1

ZONE 3: that area encompassed by 70 driving miles and over from the Main Post Office in the Cities listed in Zone 1

POWER EQUIPMENT OPERATORS and TRUCK DRIVERS

A. Counties entirely within Zone 1:
Otero Pueblo

B. Portions of Las Animas County which are included within Zone 1, as follows:
All of Las Animas County lying west of the Township Line between R59W and R60W of the 7th Guide Meridian West

C. Portions of Las Animas County which are included within Zone 2, as follows:
All of Las Animas County lying East of the Township Line between R59W and R60W of the 7th Guide Meridian West

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SUPERSEDEAS DECISION

STATE: MARYLAND

COUNTIES: ANNE ARUNDEL (EXCLUDING THE D.C. TRAINING SCHOOL), BALTIMORE AND BALTIMORE CITY, MARYLAND, AND FOR HEAVY CONSTRUCTION PROJECTS IN HARFORD & HOWARD COUNTIES, MARYLAND

DECISION NO.: MD80-3061 DATE: DATE OF PUBLICATION

Supersedes Decision No. MD79-3031 dated November 30, 1979 in 44 FR 69110

DESCRIPTION OF WORK: Building Construction (does not include single family houses and apartments up to and including 4-stories) and Heavy Construction Projects (does not include sewer and water lines)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	11.95	.85	.95		.02
BOILERMAKERS	13.475	1.275	1.00		.04
BRICKLAYERS	12.58	.90	.75		.07
CARPENTERS, SOFT FLOOR LAYERS, MILLWRIGHTS & PILEDRIVERS:					
Zone 1 - Anne Arundel County (the City of Annapolis and that portion of the county south and east of the following line: beginning at Rte. 3 and the Patuxent River, north of Rte. 3 to the junction of Benfield Rd., then right on Benfield Rd. to the junction of Jumpers Hole Rd. left on Jumpers Hole Rd. to the junction of Ritchie Hwy., left on Ritchie Hwy. to the junction of Rte. 100, right on Rte. 100 to Rte. 177 and continuing in an easterly direction on Rte. 177 to Gibson Island):					
Carpenters & soft floor layers	12.06	.80	.70		.05
Millwrights	12.63	.80	.70		.05
Piledriver	12.33	.80	.70		.05

DECISION NO. MD80-3061

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS, SOFT FLOOR LAYERS, MILLWRIGHTS & PILEDRIVERS: CONT'D					
Zone 2 - Anne Arundel (remainder of county), Baltimore, Baltimore City, Harford and Howard Counties:					
Carpenters, soft floor layers, resilient floor layers and pile drivers	11.70	.75	.69		.07
Millwrights	12.20	.75	.69		.07
CEMENT MASONS	10.00	.60	.55		.04
DIVERS AND TENDERS:					
Zone 1 - Anne Arundel County (the city of Annapolis and that portion of the county south and east of the following line beginning at Rte. 3 and the Patuxent River, north of Rte. 3 to the junction of Benfield Rd., then right on Benfield Rd. to the junction of Jumpers Hole Rd. left on Jumpers Hole Rd. to the junction of Ritchie Hwy., left on Ritchie Hwy. to the junction of Rte. 100, right on Rte. 100 to Rte. 177 and continuing in an easterly direction on Rte. 177 to Gibson Island):					
Divers	20.365	.80	.60		
(Depth rate: From 60' to 100' the diver shall receive an extra 50¢ per foot per day)					
Diver tenders	11.803	.80	.60		

DECISION NO. MD80-3061

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS:					
Zone 1 - From Baltimore City Hall to 25 miles Zone 2 - Over 25 miles to 45 miles from Baltimore City Hall	12.70	.90	3%+1.30		.5%
Zone 3 - Over 45 miles from Baltimore City Hall	12.95	.90	3%+1.30		.5%
ELEVATOR CONSTRUCTORS	13.20	.90	3%+1.30		.5%
Mechanics	12.24	1.195	.82	a+b	.035
Helpers	8.57	1.195	.82	a+b	.035
Helpers (Probationary)	6.12				
GLAZIERS	9.97	.80	1.53		.06
IRONWORKERS:					
Ironworkers, finishers, rodmen; pre-cast & pre-stress erectors	12.21	.90	1.95		.06
Fence Erectors	11.86	.90	1.95		.06
Skeeters	12.46	.90	1.95		.06
LABORERS, BUILDING:					
Common Laborers	8.45	.35	.60		.075
Power Tool Operators	8.55	.35	.60		.075
Pipelayers (concrete & clay)	8.65	.35	.60		.075
Wagon Drill Operator, Jackhammer Oper. (80 and over) Barco Tampers	8.70	.35	.60		.075
Plasterers Laborers	8.60	.35	.60		.075
Hod Carriers, Gunnite Nozzle and Gun Operator	8.85	.35	.60		.075
Burners (demolition)	8.95	.35	.60		.075
LABORERS, HEAVY:					
Laborers	7.40	.35	.60		.075
Power tool operators	7.50	.35	.60		.075
Pipelayers, Wagon drill operators, air track driller, burners (demolition)	7.90	.35	.60		.075
Jackhammer Operator - 80 lbs and over	7.65	.35	.60		.075

DECISION NO. MD80-3061

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS	11.34		.35	e	.01
LEAD BURNERS	12.60	.65			.01
LINE CONSTRUCTION:					
Zone 1 - From Baltimore City Hall to 25 miles:					
Linemen, cable splicers, digging & equipment operator	14.20	.70	3%		
Winch trucks & trucks with pole or steel handling	9.51	.70	3%		
Trucks without winch	8.88	.70	3%		
Groundmen	8.95	.70	3%		
Zone 2 - From 25 miles to 45 miles from Baltimore City Hall:					
Linemen, cable splicers, digging and equipment operator	14.45	.70	3%		
Winch trucks & trucks with pole or steel handling	9.76	.70	3%		
Truck without winch	9.13	.70	3%		
Groundmen	9.20	.70	3%		
Zone 3 - Over 45 miles from Baltimore City Hall:					
Linemen, cable splicers, digging and equipment operator	14.70	.70	3%		
Winch trucks & truck with pole or steel handling	10.01	.70	3%		
Truck without winch	9.38	.70	3%		
Groundmen	9.45	.70	3%		
MARBLE SETTERS	12.58	.90	.75		.07
MASON TENDERS:					
Mason tenders	9.10	.30	.50		.075
Scaffold builders	9.35	.30	.50		.075

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DECISION NO. MD80-3061

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
Brush and Roller	9.90	1.10	.65		.09
Spackling, taping & wall covering	10.05	1.10	.65		.09
Spraying painting (except steel)	10.15	1.10	.65		.09
PLASTERERS	11.60	.60	.50		
PLUMBERS	12.12	.87	.99		.16
ROOFERS:					
Roofers, damp & waterproof workers	9.00	.60	.45		
Slate, tile, asbestos & asphalt shingle	9.45	.60	.45		
Precast slab & wood block layer	10.00	.60	.45		
SPRINKLER FITTERS:					
Baltimore City including a 10 mile radius beyond the city limits	13.40	.85	1.20		.05
Harford & Howard Counties and the remainder of Anne Arundel and Baltimore Counties	13.90	.85	1.20		.08
STEAMFITTERS	13.12	.87	1.04		.16
TILE & TERRAZZO WORKERS	10.16	.90	.50		.04
TILE, MARBLE & TERRAZZO FINISHERS	8.05	.50	.25		
TRUCK DRIVERS:					
Goose-necks, drop frame trailers	9.40	1.05	.75	c+d	
All "A" Frames, winch trucks, fork lifts & trailers	9.20	1.05	.75	c+d	
Flat beds & pick ups	8.20	1.05	.75	c+d	
Euclid wagons & dumpsters	8.25	1.05	.75	c+d	
Dump trucks	7.94	1.05	.75	c+d	
TRUCK DRIVERS: EXCAVATION:					
Dump truck	8.64	1.05	.75	c+d	
Euclid wagons & dumpsters	8.95	1.05	.75	c+d	
Drop Frame, gooseneck & trailers	8.84	1.05	.75	c+d	
Pick-ups	8.43	1.05	.75	c+d	

DECISION NO. MD80-3061

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
Group I	12.33	1.00	1.05	f	.15
Group II	11.53	1.00	1.05	f	.15
Group III	10.94	1.00	1.05	f	.15
Group IV	10.37	1.00	1.05	f	.15
Group V	9.24	1.00	1.05	f	.15

POWER EQUIPMENT OPERATOR CLASSIFICATIONS

Group I - Operators handling or setting steel, stone prestressed concrete or machinery. Tower cranes.

Group II - Backfiller, backhoe, batching plants, boat captain, cableway, case type hoe (with a front end bucket over 1-1/4 yds.), concrete mixing plants, concrete paver, crane, derrick boat, double concrete pump, dragline, Eimco type overhead loader, elevating grader, excavating scoop (25 yds. and over), front end loader (1-3/4 yds. and over), gradall, grader, hoist (2 active drums or more), multiple conveyor, pile driving machine, power shovel, repair mechanic, shield, standard gauge locomotive, trenching machine, tunnel mucking machine, twin engine scraper, welder, whitley rig and bulldozers (D-9 or equivalent and above)

Group III - Asphalt spreader, bull float, Case type backhoe (with a front end bucket 1-1/4 yds. and under), concrete mixer (with skip), concrete pump, concrete spreader, excavating scoop (under 25 yds.), finishing machine, front end tractor loader (under 1-3/4 yds.), hi-lift fork lift, longitudinal float, narrow gauge locomotive, one drum hoist, power roller on hot mix asphalt, screeding machine, stone crusher, stone spreader, sub-grader, tractor with attachments (2 or more provided both attachments are being used) and all bulldozers except D-9 or equivalent and above.

Group IV - Caterpillar type tractor, compressors, elevator operator, firemen, fuel truck, grease truck, grout pump, light plant, mighty midget with compressor, single conveyor, space heaters, welding machines, well-drill, wellpoint system, and all power rollers except on hot mix asphalt.

Group V - Deck hands, oilers (all types)

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Welders - receive rate prescribed for craft performing operation to which welding is incidental.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:
a. Holidays: A through F.
b. Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% of the basic hourly rate for 6 months to 5 years of service as vacation pay credit.
c. Employee with 1 year of service - 1 week's paid vacation; 2 years of service - 2 weeks paid vacation; 10 years of service - 3 weeks paid vacation, provided the employee has worked 125 days in the previous contract year.
d. Holidays: A through F plus the employee's birthday; the day after Thanksgiving Day and Christmas Eve (provided the employee has worked one day and has been available for work during holiday week).
e. Employee working Christmas Eve shall work 4 hours and receive 8 hours pay.
f. Holidays: A through F.

Unlisted classifications needed for work not included within the scope of the classificaions listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

[FR Doc. 80-32998 Filed 10-23-80; 8:45 am]
BILLING CODE 4510-27-C

SUPERSEDEAS DECISION

STATE: Pennsylvania COUNTY: Allegheny
DECISION NO.: PA80-3071 DATE: Date of Publication
Supersedes Decision No. PA78-3078, dated October 20, 1978, in 43 FR 49205.
DESCRIPTION OF WORK: Residential construction consisting of single family homes and apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	$13.85	.90	2.00		
Carpenters:					
(3 story walk-up with no elevator)	9.25	7%	5%	5%	1/2%
Residential 4 story walk-up or with elevator	12.80	6%	8%	10%	
Cement masons	11.32	.68	1.81		
Drywall Taper/Finishers	7.40				
Electricians (single or two family houses walk-up garden type apartments up to and including 4 stories)	9.15	.55	3%	.40	
Residential 4 story walk-up or with elevator	13.35	.55	3%+.50	.60	.10
Laborers	5.61				
Painters	6.05				
Plasterers	6.42				
Plumbers	13.98	1.00	1.60		.07
Roofers	7.21				
Sheet metal workers	9.32	.65	.85		.02
Soft floor layers	7.87				
Tile Setters	11.50	.60	1.40		
Truck Drivers	4.92				
Power Equipment Operators:					
Backhoe	11.975	.95	1.00		.09
Hi-Lift	11.975	.95	1.00		.09
Welder - Rate of Craft					

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (ii))."

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federal register

Friday
October 24, 1980

Part III

Department of Energy

Federal Energy Regulatory Commission

Privacy Act of 1974; Annual Publication of Systems of Records

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Privacy Act of 1974; Notice of Existence and Character of Systems of Records

AGENCY: Federal Energy Regulatory Commission.

ACTION: Publication of existence and type of systems of records.

SUMMARY: The Federal Energy Regulatory Commission, under the requirements of the Privacy Act of 1974, publishes a listing of and description of the systems of records currently maintained by it.

FOR FURTHER INFORMATION CONTACT: Daria M. Stec, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 3305, Washington, D.C. 20426, (202) 357–8093.

SUPPLEMENTARY INFORMATION:

A. *Background:* The Privacy Act of 1974, Pub. L. No. 93–579, 5 U.S.C. § 552a, requires that each agency publish at least annually a notice of the existence and character of each "system of records," as defined in 5 U.S.C. 552a(a)(5), which the agency maintains. Such notice is to contain for each system of records a description of the name; location; categories of individuals on whom the records are maintained; the categories of records; each routine use of the records, as defined in 5 U.S.C. § 552a(a)(7); the policies and practices governing storage, retrievability, access controls, retention, and disposal of the records; the title and business address of the agency official responsible for the system of records; agency procedures for notification, access, and content of the records in each system; and the categories of the sources of the records in each system. 5 U.S.C. § 552a(e)(4). Pursuant to this requirement, the Federal Energy Regulatory Commission (Commission) publishes this listing of systems of records.

The Commission was created under the Department of Energy Organization Act of 1977, Pub. L. No. 95–91, 42 U.S.C. § 7101 et seq. Effective October 1, 1977, the Commission assumed most responsibilities within the jurisdiction of the Federal Power Commission, and acquired jurisdiction over some matters from the Interstate Commerce Commission.

Notice is hereby given that the Federal Energy Regulatory Commission adopts the notice of its systems of records as set forth below. This notice incorporates, with appropriate changes, those systems of records which were maintained by the Federal Power Commission and continue to exist within the Federal Energy Regulatory Commission. Not included in this notice are those systems of the Federal Power Commission which are no longer maintained, and those systems relating to personnel matters which were transferred to the Department of Energy. In addition, records which the Commission maintains which are considered by the Commission to fall outside of the requirements of the Privacy Act are not included in this notice.

The Commission's authority for this notice and the systems of records maintained by it is found in section 552a(e)(4) of the Privacy Act of 1974; section 309 of the Federal Power Act, as amended (49 Stat. 858–859), 16 U.S.C. § 825h; section 16 of the Natural Gas Act, as amended (52 Stat. 830), 15 U.S.C. § 717o; and the Department of Energy Organization Act, 42 U.S.C. § 7172(a)(2).

Kenneth F. Plumb,
Secretary.

B. *Systems of Records:* The Commission maintains, as of September 15, 1980, 12 systems of records under the Privacy Act of 1974. These systems, and their corresponding designator, are set forth in the following table.

Title	Designation
Regulatory Evaluation and Docketed Information System (READI).	FERC–1
Appeals, Grievances, and Complaints Records.	FERC–2
Applications for Interlocking Directorates Under the Federal Power Act, Public Files.	FERC–3
Applications For Interlocking Directorates Under the Federal Power Act, Security Files.	FERC–4
Biographical Material on Chairmen, Vice Chairmen and Commissioners of the Federal Energy Regulatory Commission.	FERC–5
Biographical Material on Commissioners and Key Staff Members of the Federal Energy Regulatory Commission.	FERC–6
Congressional Correspondence File, Office of Electric Power Regulation.	FERC–7
Congressional Correspondence File, Office of the Executive Director.	FERC–8
Correspondence File, Office of Pipeline and Producer Regulation.	FERC–9
Employee Conduct Records	FERC–10
Mailing List for Information Concerning Applications for Interlocking Directorates.	FERC–11
Mailing List for Official Publications	FERC–12

C. *Listing of Current Systems:* The following is a description of the name, system location and categories of records maintained for the 12 systems listed above. In addition to these particulars, there is given relevant information as to the categories of individuals covered in the system, authority to maintain the system, policies respecting the storage, retrieval, access retention and disposition of records in the system, system managers, relevant procedures for use of the system, and the sources of information stored in the systems.

Where the term "Commission" is used, it refers to the Federal Energy Regulatory Commission unless the term references records which date prior to October 1, 1977, in which case it refers to the Federal Power Commission.

FERC–1

SYSTEM NAME:

Regulatory Evaluation And Docketed Information System (READI).

SYSTEM LOCATION:

The system is located at the Department of Energy's computer facilities, Washington, D.C. and Germantown and Rockville, Maryland, and as leased from Boeing Computer Services, McLean, Virginia.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Energy contact persons; Commissioners; Administrative Law Judges; attorneys; project managers; technical, environmental and other Commission staff personnel associated with cases before the Commission; parties of record; and parties to be advised of proceedings. With respect to information concerning these individuals, only their names, titles, business addresses, business telephone numbers, relationship to a particular proceeding, and time expended by FERC personnel on that proceeding are entered.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information regarding the stages a docketed proceeding passes through as it is reviewed by Commission personnel. The information in the system of records includes the names of the individuals indicated above, including the names of Commission personnel responsible for various processing stages of a proceeding. The system indicates which processing stage a proceeding has reached and which Commission personnel are presently assigned to a proceeding. A case-weighing function is used to facilitate allocation of manpower and assignments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. section 717o; 16 U.S.C. section 825h; 42 U.S.C. section 7172(a)(2); 44 U.S.C. section 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records and information in the records may be used by authorized

Commission personnel to identify all docketed proceedings pending before the Commission; to indicate the current processing stage of a proceeding; to enable management to inventory proceedings by stage of processing; to identify staff personnel responsible for particular proceedings or parts of proceedings; to monitor and analyze the productivity of the Commission staff; to allocate manpower and make assignments; to identify the organizational unit responsible for a given proceeding; to identify general classes of proceedings in order to expedite their processing; and to produce management reports for agency-wide distribution, including responses to general requests for statistical information (without personal identifiers of individuals) under the Freedom of Information Act and responses to inquiries from members of Congress, other federal agencies, the press and the public. In addition, the system is used as a data source for management information, for production of summary statistics and analytical studies in support of the function for which these records are collected and maintained, or for related personnel management functions or manpower studies compiled by the staff or a contractor of the Commission; or by members of advisory committees created by the Commission or the Congress to render advice and recommendations to the Commission or the Congress. These uses are solely in connection with official designated.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

The records of FERC–1 are maintained on magnetic tape, computer disk files and punch cards.

RETRIEVABILITY:

Records are retrieved by identifying elements (e.g., docket number, docket name, type of filing), by Commission staff members (e.g., Commissioner, Administrative Law Judge, attorney, etc.), applicant name, or applicant contact.

SAFEGUARDS:

The records of FERC–1 are stored in a secured computer facility and access is limited to select authorized users.

RETENTION AND DISPOSAL:

The records are maintained for each proceeding in an "active file" until the proceeding has been terminated. The records are then transferred to a history file for permanent retention.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, Federal Energy Regulatory Commission, Room 9106, 825 North Capitol Street, N.E., Washington, D.C. 20426.

NOTIFICATION PROCEDURE:

All requests to determine whether this system contains a record pertaining to a requesting individual should be made in accordance with the Commission's Rules of Practice and Procedure, 18 CFR section 3b.220(a). Individuals should provide the appropriate identifying information as required by 18 CFR section 3b.220(b).

RECORD ACCESS PROCEDURES:

Requests for access to records in this system should be made in accordance with 18 CFR section 3b.221. Individuals should provide the appropriate identifying information as specified in 18 CFR section 3b.222.

CONTESTING RECORD PROCEDURES:

Requests to amend records should be made in accordance with 18 CFR section 3b.224.

RECORD SOURCE CATEGORIES:

Records of FERC–1 are obtained through public filings with the Commission, individuals and persons covered by the records, and the Commission itself.

FERC–2

SYSTEM NAME:

Appeals, Grievances and Complaints Records—FERC.

SYSTEM LOCATION:

Office of the Executive Director, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Office of the Assistant Director, Office of Electric Power Regulation, 400 First Street, N.W., Washington, D.C. 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for FERC employment, current and former FERC employees, and annuitants who appeal from a determination made by an official of the FERC or the Office of Personnel Management to the Office of Personnel Management, a board to adjudicate appeals, or to the FERC.

CATEGORIES OF RECORDS IN THE SYSTEM:

As such, the system contains information and files on grievances under negotiated grievance systems and documents relating to a decision or determination made by the Commission or the Office of Personnel Management which affects an individual employee, or prospective employee because of an adverse action or other appeal under applicable Office of Personnel Management regulations, classification appeals, performance rating appeals, Fair Labor Standards Act complaints, grievances and complaints brought under the Equal Employment Opportunity Act. This system of records includes counseling records, case disposition reports of the Office of Personnel Management, intraoffice and interoffice communications, schedules, tabulations, lists, organizational charts which contain personal information, and records of relevant Federal court cases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. section 717o; 16 U.S.C. section 825h; 42 U.S.C. section 7172(a)(2); and the applicable sections of Title 5 of the United States Code and the Office of Personnel Management regulations promulgated thereunder.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to adjudicate the appeal, complaint, or grievance; to respond to a request from a Member of Congress regarding the status of an appeal, complaint, or grievance; to provide information to the public on the decision of an appeal, complaint, or grievance as required by the Freedom of Information Act; to disclose to a Federal, State or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information if necessary in order to obtain information relevant to an FERC decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant, or other benefit; to disclose relevant information to a Federal agency in response to requests involving the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or issuance of a license, grant or other benefit by the requesting agency; to serve as a data source for disciplining the individual or other FERC employee in the event that this record system indicates a violation of law, executive order or regulation; as a data source for management information for production of summary descriptive statistics and analytical studies in

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support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies compiled by the staff or contractor of the Commission. The system is also used by the Office of Personnel Management or the General Accounting Office as a data source during the course of onsite inspections or audits of Commission operations. The disclosure (of information) may be made to a member of Congress from the record of an individual in response to a written request from the Member which is made at the request of the individual who is the subject of the record. In the event that a system of records maintained by the FERC to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system or records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, binders, and index cards.

RETRIEVABILITY:

These records are indexed by the name of individuals.

SAFEGUARDS:

The records are maintained in metal file cabinets with manipulation-proof combination locks. Access to these files and combinations is limited to those whose official duties require access. Personnel screening is employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

After a final decision on a particular case is reached by the Commission or other decisional authority, all records pertaining to that case are maintained in the Office of Executive Director as a closed file. If a Commission decision is not appealed to the Office of Personnel Management or other appropriate appeal board, the records are maintained for no more than two years and are transferred to the National Personnel Records Center, St. Louis, Missouri, where they are retained for at least seven years. Commission Equal Employment Opportunity Counselors maintain for one year case records which have not been a basis of an EEO complaint. The disposition of these records is handled pursuant to applicable GSA regulations and applicable internal administrative directives.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Executive Director, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

NOTIFICATION PROCEDURE:

All requests to determine whether this system contains a record pertaining to a requesting individual should be made in accordance with the Commission's Rules of Practice and Procedure, 18 CFR section 3b.220(a). Individuals should provide the appropriate identifying information as required by 18 CFR section 3b.220(b).

RECORD ACCESS PROCEDURES:

Requests for access to records in this system should be made in accordance with 18 CFR section 3b.221. Individuals should provide the appropriate identifying information as specified in 18 CFR section 3b.222.

CONTESTING RECORD PROCEDURES:

Requests to amend records should be made in accordane with 18 CFR section 3b.224.

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains; Federal Energy Regulatory Commission and Office of Personnel Management officials; affidavits or statements from individual; testimony of witnesses; official documents relating to the appeal, grievance, or complaint; correspondence from special organizations or persons.

FERC-3

SYSTEM NAME:

Applications for Interlocking Directorates, Public Files.

SYSTEM LCOATION:

Office of Management Services, Office of the Executive Director, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Lansburgh's Warehouse, Office of Management Services, Office of the Executive Director, Federal Energy Regulatory Commission, 410 8th Street, N.E., Washington, D.C. 20426.

Division of Rates and Corporate Regulation, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 400 First Street, N.W., Washington, D.C. 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers and directors of related public utilities who, in accordance with Section 305(b) of the Federal Power Act, 16 U.S.C. section 825d(b), file for permission to hold the position of officer or director of more than one public utility, of a public utility and certain financial institutions authorized to market public utility securities, and a company supplying each utility with electrical equipment.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records includes the following information for each individual: the name of the applicant; the docket number of the application; the position applied for; the date of the application and a copy of the application; the date of the public notice of the application and a copy of that notice; the date and copy of the order granting or deny the application; the date of any relevant hearing; and a copy of any petitions to intervene.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

16 U.S.C. section 825d(b); 16 U.S.C. section 825h; 42 U.S.C. section 7172(a)(2); 44 U.S.C. section 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The system is used as a file by staff of the Commission whose official duties involve the decision of whether to grant the application. The file is also used as a record of such proceedings. The records are available to the general public pursuant to the Freedom of Information Act, 5 U.S.C. section 552, as amended.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders on shelves.

RETRIEVABILITY:

These records are filed by docket number and are cross-referenced by the name of the individual whose application is involved.

SAFEGUARDS:

No measures are taken to prevent disclosure. The system contains only information available to the public.

RETENTION AND DISPOSAL:

These records are maintained for one year after the applicant dies or ten years after notice of termination of his authorization. The disposition of these records is handled pursuant to applicable GSA regulations and/or applicable internal administrative directives.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Management Services, Office of the Executive Director, 825 North Capitol Street, N.E., Washington, D.C. 20426.

NOTIFICATION PROCEDURE:

All inquiries and requests relating to this system of records should be addressed to the system manager of the system.

RECORD ACCESS PROCEDURES:

All inquiries and requests relating to this system of records should be addressed to the system manager of the system.

CONTESTING RECORD PROCEDURES:

All inquiries and requests relating to this sytem of records should be addressed to the system manager of the system.

RECORD SOURCE CATEGORIES:

Individuals on whom the records are maintained and the staff of the Commission.

FERC-4

SYSTEM NAME:

Applications for Interlocking Directorates, Security Files-FERC.

SYSTEM LOCATION:

Office of Management Services, Office of the Executive Director, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Division of Rates and Corporate Regulation, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 400 First Street, N.W., Washington, D.C. 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers and directors of regulated public utilities who, in accordance with Section 305(b) of the Federal Power Act, 16 U.S.C. § 825d(b), file for permission to hold the position of officer or director of more than one public utility, of a public utility and certain financial institutions authorized to market public utility securities, or of a public utility and a company supplying such utility with electrical equipment.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records includes the following information for each individual: a copy of the application for an interlocking directorate, a copy of any Commission order granting or denying the application, a copy of the FERC staff recommendation, and other supplementary information prepared by Commission staff, if applicable.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

16 U.S.C. section 825d(b); 16 U.S.C. section 825h; 42 U.S.C. section 7172(a)(2); 44 U.S.C. section 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The system is used as a working file by the staff of the Commission whose official duties require access in assisting the Commission in determining whether to grant the application. It is used as a record of such proceedings. In the event that a system of records maintained by the Commission to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders in metal file cabinets in a secured room.

RETRIEVABILITY:

These records are indexed by the names of individuals on whom they are maintained.

SAFEGUARD:

Access to, and use of, these records is limited to those persons whose official duties require such access. Personnel screening of these individuals is employed to minimize unauthorized disclosure and an accounting is made of removal of the records from the storage area.

RETENTION AND DISPOSAL:

These records are maintained for one year after the applicant dies or ten year after notice of termination of his or her authorization. The disposition is handled pursuant to applicable GSA regulations and/or applicable internal administrative directives.

SYSTEM MANAGER(S) AND ADDRESS:

Division of Rates and Corporate Regulation, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 400 First Street, N.W., Washington, D.C. 20426.

NOTIFICATION PROCEDURE:

All requests to determine whether this system contains a record pertaining to a requesting individual should be made in accordance with the Commission's Rules of Practice and Procedure, 18 CFR section 3b.220(a). Individuals should provide the appropriate identifying information as required by 18 CFR section 3b.220(b).

RECORD ACCESS PROCEDURE:

Requests for access to records in this system should be made in accordance with 18 CFR section 3b.221. Individuals should provide the appropriate identifying information as specified in 18 CFR section 3b.222.

CONTESTING RECORD PROCEDURES:

Requests to amend records should be made in accordance with 18 CFR section 3b.224.

RECORD SOURCE CATEGORIES:

Individuals to whom the records pertain and staff of the Commission.

FERC-5

SYSTEM NAME:

Biographical Material on Chairmen, Vice Chairmen and Commissioners—FERC.

SYSTEM LOCATION:

Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All past and present Commissioners and Chairman of the Federal Energy Regulatory Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains, where applicable, the following information on each individual: name, date nominated, date confirmed, date of designation, date of oath of office, term of office, home state, political affiliation, date first in attendance at a Commission meeting, date of expiration of term, date of resignation, and date deceased.

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. section 717o; 16 U.S.C. section 825h; 42 U.S.C. section 7172(a)(2); 44 U.S.C. section 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are used by the staff of the Commission whose official duties require access to such information and the records are available to the general public pursuant to the Freedom of Information Act, 5 U.S.C. section 552.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in file folders and in 3-ring binders in a metal file cabinet.

RETRIEVABILITY:

These records are indexed by the names of the individuals on whom they are maintained.

SAFEGUARDS:

No means are taken to prevent disclosure. The system contains only information available to the public.

RETENTION AND DISPOSAL:

These records are retained indefinitely and are updated periodically.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

NOTIFICATION PROCEDURES:

All inquiries and requests relating to this system of records should be addressed to the system manager of the system.

RECORD ACCESS PROCEDURES:

All inquiries and requests relating to this system of records should be addressed to the system manager of the system.

CONTESTING RECORD PROCEDURES:

All inquiries and requests relating to this system of records should be addressed to the system manager of the system.

RECORD SOURCE CATEGORIES:

Official White House releases; newspapers; minutes of Commission meetings; and the personnel on whom the records are maintained.

FERC-6

SYSTEM NAME:

Biographical Material on Commissioners and Key Staff Members-FERC.

SYSTEM LOCATION:

Division of Public Information, Office of Congressional and Public Affairs, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Commissioners and key staff members currently or formerly employed by the Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains biographical material on Commissioners and key staff members of the Commission including: date and place of birth, marital status, number of children, educational background, past work experience, honors or awards, published materials, and military experience and honors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. section 717o; 16 U.S.C. section 825h; 42 U.S.C. section 7172(a)(2); 44 U.S.C. section 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are used by authorized Commission personnel whose official duties require access in preparation of news releases to announce appointments of Commissioners and key staff members or promotions of key staff members, and are available to the general public pursuant to the Freedom of Information Act, 5 U.S.C. 552.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in folders in file cabinets.

RETRIEVABILITY:

These records are indexed by the names of the individuals on whom they are maintained.

SAFEGUARDS:

No measures are taken to prevent disclosure. The system contains only information available to the public.

RETENTION AND DISPOSAL:

These records are maintained indefinitely and updated periodically. Their disposition is handled pursuant to applicable GSA regulations and/or applicable internal administrative directives.

SYSTEM MANAGER(S) AND ADDRESSES:

Division of Public Information, Office of Congressional and Public Affairs, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

NOTIFICATION PROCEDURE:

All inquiries and requests relating to this system of records should be addressed to the system manager of the system.

RECORD ACCESS PROCEDURES:

All inquiries and requests relating to this system of records should be addressed to the system manager of the system.

CONTESTING RECORD PROCEDURES:

All inquiries and requests relating to this sytem of records should be addressed to the system manager of the system.

RECORD SOURCE CATEGORIES:

Individuals on whom the records are maintained.

FERC-7

SYSTEM NAME:

Congressional Correspondence Files-FERC.

SYSTEM LOCATION:

Office of Electric Power Regulation, Federal Energy Regulatory Commission, 400 First Street, N.W., Washington, D.C. 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those members of the United States Congress who have corresponded with the Commission and who solicit data from the Office of Electric Power Regulation.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains incoming correspondence from United States Congressmen referred to the Office of Electric Power Regulation with the Commission's replies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

16 U.S.C. section 825h; 15 U.S.C. section 717o; 42 U.S.C. section 7172(a)(2); 44 U.S.C. section 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are maintained for use by the staff of the Commission whose official duties require record access.

They are used to assure a complete record of correspondence by the Commission with Congress relating to Office of Electric Power Regulation matters.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in folders in file cabinets.

RETRIEVABILITY:

These records are indexed by the names of corresponding Congressmen.

SAFEGUARDS:

Access to the files is limited as required by the Privacy Act to the Commission staff who maintain these files.

RETENTION AND DISPOSAL:

These records are maintained indefinitely until the system manager determines that their usefulness to the Commission has ceased. Their disposition is handled pursuant to applicable GSA regulations and applicable internal Administrative directives.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Director, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 400 Forst Street, N.W., Washington, D.C. 20426.

NOTIFICATION PROCEDURE:

All inquiries and requests relating to this system of records should be addressed to the system manager of the system.

RECORD ACCESS PROCEDURES:

All inquiries and requests relating to this system of records should be addressed to the system manager of the system.

CONTESTING RECORD PROCEDURES:

All inquiries and requests relating to this system of records should be addressed to the system manager of the system.

RECORD SOURCE CATEGORIES:

Corresponding Congressmen and Commission Staff who draft replies.

FERC-8

SYSTEM NAME:

Congressional Correspondence Files, Office of the Executive Director-FERC.

SYSTEM LOCATION:

Office of Management Services, Office of the Executive Director, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those current members of the United States Congress who have corresponded with the Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains the incoming correspondence from United States Congressmen with Commission replies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. section 717o; 16 U.S.C. section 825h; 42 U.S.C. section 7172(a)(2); 44 U.S.C. section 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are maintained for use by the staff of the Commission whose official duties require access to them.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders in metal file cabinets.

RETRIEVABILITY:

These records are indexed by the names of the corresponding Congressmen.

SAFEGUARDS:

Access to the files is limited as required by the Privacy Act to the Commission staff who maintain these files.

RETENTION AND DISPOSAL:

These records are maintained for the length of time the corresponding Congressmen remain in office. The disposition of these records is handled pursuant to applicable GSA regulations and any applicable internal administraive directives.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Management Services, Office of the Executive Director, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

NOTIFICATION PROCEDURE:

All inquiries and requests relating to this system of records should be addressed to the system manager of the system.

RECORD ACCESS PROCEDURES:

All inquiries and requests relating to this system of records should be addressed to the system manager of the system.

CONTESTING RECORD PROCEDURES:

All inquiries and requests relating to this system of records should be addressed to the system manager of the system.

RECORD SOURCE CATEGORIES:

Corresponding Congressmen and Commission staff who draft replies.

FERC-9

SYSTEM NAME:

Correspondence File—Office of Pipeline and Producer Regulation—FERC.

SYSTEM LOCATION:

Office of the Chief, Program Planning and Administrative Staff, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of Congress and other individuals who have received correspondence drafted by the staff of the Commission's Communications and Administrative Branch, Program Planning and Administrative Staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

This file contains copies of incoming inquiries and outgoing replies drafted by the staff of the Commission's Communications and Administrative Branch.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. section 717o; 42 U.S.C. section 7172(a)(2); 44 U.S.C. section 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are maintained for use by the staff of the Commission whose official duties require access to the records. They are used to assure a complete record of correspondence by the Commission relating to Office of Pipeline and Producer Regulation matters.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in notebook binders in shelving units.

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RETRIEVABILITY:

These records are indexed by the names of the individuals who have received responses from the Commission.

SAFEGUARDS:

Access to the files is limited as required by the Privacy Act to the Commission staff who maintain these files.

RETENTION AND DISPOSAL:

These records are maintained for two years and their disposition is handled pursuant to applicable GSA regulations and applicable internal administrative directives.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Communications and Administrative Branch, Office of Pipeline Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

NOTIFICATION PROCEDURE:

All inquiries and requests relating to this system of records should be addressed to the system manager of the system.

RECORD ACCESS PROCEDURES:

All inquiries and requests relating to this system of records should be addressed to the system manager of the system.

CONTESTING RECORD PROCEDURES:

All inquiries and requests relating to this system of records should be addressed to the system manager of the system.

RECORD SOURCE CATEGORIES:

Staff of the Commission and correspondents.

FERC-10

SYSTEM NAME:

Employee Conduct Records—FERC.

SYSTEM LOCATION:

Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former members of the Commission, applicants for Commission employment, current and former employees of the Commission, current and former special employees of the Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records of the system contain a variety of information required by the reporting and enforcement provisions of the Commission's Standards of Conduct. The records may include: debt complaints; reports of misconduct; interpretation and advisory services; determinations of prohibited employment, financial interests, or activities and orders relating to the individual; limitations on work assignments due to requirements of the Standards of Conduct; other corrective or disciplinary actions based on violations of the Standards of Conduct; data documenting the reasons for actions or decisions affecting the individual; and other related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. Section 717o; 16 U.S.C. section 825h; 42 U.S.C. section 7172 (a)(2); 44 U.S.C. section 3101; E.O. 11222.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The contents of these records and files may be used as follows: by the Commission and/or Office of Personnel Management in connection with counseling the individual, evaluating the individual's employment, financial interests, and other activities, and taking appropriate action to ensure compliance with the Commission's Standards of Conduct; by the Office of Personnel Management or the General Accounting Office as a data source during the course of on-site inspections or audits of Commission operations; to disclose to a Federal, state, or local agency maintaining civil, criminal, or othe relevant enforcement information or other pertinent information if necessary in order to obtain information relevant to an FERC decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit; to disclose to a Federal, state, or local agency in response to requests involving the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter; to serve as a data source for disciplining the individual or other FERC employee in the event that this record system indicates a violation or potential violation of law, executive order, or regulation; by authorized Commission officials and contractors, as a data source for management information, for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies; in response to inquiries of Congress made at the request of the individual who is the subject of the record; and in the event that a system of records maintained by the Commission to carry out its functions indicators a violation or potential violation of law, whether civial, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in folders, index cards, and in metal file cabinets with manipulation-proof combination locks.

RETRIEVABILITY:

Records are indexed by the names of the individuals on whom they are maintained.

SAFEGUARDS:

Access to, and use of, these records is limited to persons who official duties require such access. Personnel screening is employed to minimize unauthorized disclosure.

RETENTION AND DISPOSAL:

Within 15 days after an individual leaves the major organizational unit to which he or she is assigned, the records pertaining to that individual which have been maintained are transferred to the Office of Personnel Programs for review and consolidation with official records. Official records are disposed of two years after separation of the employee or five years upon approval of the Office of Personnel Management pursuant to applicable GSA regulations and applicable internal administrative directives.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the General Counsel, 825 North Capitol Street, N.E., Washington, D.C. 20426.

NOTIFICATION PROCEDURE:

All requests to determine whether this system contains a record pertaining to a requesting individual should be made in accordance with the Commission's Rules of Practice and Procedure, 18 CFR Section 3b.220(a). Individuals should provide the appropriate identifying information as required by 18 CFR Section 3b.220(b).

RECORD ACCESS PROCEDURE:

Requests for access to records in this system should be made in accordance with 18 CFR Section 3b.221. Individuals should provide the appropriate identifying information as specified in 18 CFR Section 3b.222.

CONTESTING RECORD PROCEDURES:

Requests to amend records should be made in accordance with 18 CFR Section 3b.224.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from the individual on whom the record is maintained or derived from information which he or she supplied; and from Commission officials.

FERC-11

SYSTEM NAME:

Mailing List for Information Concerning Applications for Interlocking Directorates—FERC.

SYSTEM LOCATION:

Registry and Service Branch, Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Parties interested in applications for interlocking directorates under the Federal Power Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records includes the name and address of each individual who receives information concerning interlocking directorate applications to the Commission.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

16 U.S.C. Section 825h; 42 U.S.C. Section 7172(a)(2); 44 U.S.C. Section 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are used by the staff of the Commission whose official duties require access to them.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on index cards in a metal index card cabinet.

RETRIEVABILITY:

These records are filed by docket number and are cross-referenced by the name of the individual on whom they are maintained.

SAFEGUARDS:

Access to the files is limited as required by the Privacy Act to the Commission staff who maintain these files.

RETENTION AND DISPOSAL:

These records are maintained indefinitely and are periodically updated.

SYSTEM MANAGER(S):

Registry and Service Branch, Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

NOTIFICATION PROCEDURE:

All inquiries and requests relating to this system of records should be addressed to the system manager of the system.

RECORD ACCESS PROCEDURES:

All inquiries and requests relating to this system of records should be addressed to the system manager of the system.

CONTESTING RECORD PROCEDURES:

All inquiries and requests relating to this system of records should be addressed to the system manager of the system.

RECORD SOURCE CATEGORIES:

Individuals on whom the records are maintained.

FERC-12

SYSTEM NAME:

Mailing List for Official Publications—FERC.

SYSTEM LOCATION:

Registry and Service Branch, Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officials of privately and publicly owned utilities, independent producers, cooperatives, and licenses and others who, upon request, receive official documents of the Commission, including rulemakings, notices, orders, opinions, etc.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains the name and address of each individual who receives official Commission publications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. section 717o; 16 U.S.C. section 825h; 42 U.S.C. section 7172(a)(2); 44 U.S.C. section 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are used by the staff of the Commission whose official duties require access in order to mail documents.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on Cheshire Cards (IBM-type cards), processed from Cheshire addressograph equipment, and are stored in metal file cabinets.

RETRIEVABILITY:

These records are indexed by the names of the individuals on whom they are maintained.

SAFEGUARDS:

Access to the files is limited as required by the Privacy Act to the Commission staff who maintain these files.

RETENTION AND DISPOSAL:

The records are maintained indefinitely and are periodically updated.

SYSTEM MANAGER(S) AND ADDRESS:

Registry and Service Branch, Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

NOTIFICATION PROCEDURE:

All inquiries and requests relating to this system of records should be addressed to the system manager of the system.

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RECORD ACCESS PROCEDURES:

All inquiries and requests relating to this system of records should be addressed to the system manager of the system.

CONTESTING RECORD PROCEDURES:

All inquiries and requests relating to this system of records should be addressed to the system manager of the system.

RECORD SOURCE CATEGORIES:

Individuals on whom the records are maintained.

[FR Doc. 80-33127 Filed 10-23-80; 8:45 am]
BILLING CODE 6450-85-M

V 45 O C 24 80 UMI

federal register

Friday
October 24, 1980

Part IV

Department of Energy

Federal Energy Regulatory Commission

Rulemaking Calendar for Period of October 1 Through December 31, 1980

V 45 OC 24 80 UMI

FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Ch. I

Rulemaking Calendar

AGENCY: Federal Energy Regulatory Commission.

ACTION: Publication of Calendar of pending informal rulemakings of general applicability, for the October 1, 1980–December 31, 1980 period.

SUMMARY: The Federal Energy Regulatory Commission hereby publishes its Rulemaking Calendar for the Fourth quarter of 1980. The Calendar provides a brief description of the Commission, its statutory obligations and jurisdiction, and a summary of the informal rulemaking proceedings of general applicability now pending before the Commission. Each summary includes the title of the rulemaking proposal; its docket number; a description of its goals and purposes; its legal basis; the dates for the completion or expected completion of each stage in the rulemaking process; the **Federal Register** citations for completed stages of each proceeding, to refer the reader to the text of each notice of inquiry, notice of proposed rulemaking, interim rule, or final rule which has been published in the **Federal Register**; the agency official in charge of each proposal; and that official's title, phone number, and address. Additional data, relating to the type of Commission records available to the public and other matters of public interest, are also set forth.

COMMENT DATE: As stated on the notices of proposed rulemakings.

FOR FURTHER INFORMATION CONTACT: Kenneth Levine, Director, Office of Congressional, Consumer and Public Affairs, Federal Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357–8373, or Laurent Low, Office of Congressional, Consumer and Public Affairs, Federal Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357–8370.

Kenneth F. Plumb,

Secretary.

Federal Energy Regulatory Commission, Washington, D.C.

The Rulemaking Calendar is designed to provide the public with an overview of the FERC's rulemaking efforts. It is another aspect of the Commission's continuing program to support the President's fundamental goal of making government regulatory programs more effective and responsible. This publication is entirely separate and is more detailed than the government-wide Regulatory Calendar published periodically by the U.S. Regulatory Council.

In an attempt to assist participation in the decision-making process of the Commission, we have made a sincere attempt to project, as realistically as possible, approximately when each rulemaking will be acted upon. The reader should be cautioned that the proposed dates for action are just that—*proposed*. They are subject to change, but we are attempting to give you our best current assessment of when various steps in the rulemaking process are likely to occur. We have also listed the name, address, and phone number of the attorney responsible for each rulemaking so that individual can be contacted should additional information be desired concerning the present status of a particular matter.

There are some rulemakings in various stages of completion that are not listed in the Rulemaking Calendar. We have attempted to identify in this summary only those considered to be of major or general interest.

I hope that you will find this publication to be of real value and that it will help you to more fully understand the activities of the Commission.

Charles B. Curtis,

Chairman.

RULEMAKING CALENDAR

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Abbreviations

The following abbreviations appear in the FERC Rulemaking Calendar:

APA—Administrative Procedure Act of 1946
ALJ—Administrative Law Judge
C—Completion date
C.F.R.—Code of Federal Regulations
DOE—Department of Energy
DOE Act—Department of Energy Organization Act of 1977
Fed. Reg.—Federal Register
FERC—Federal Energy Regulatory Commission
FOIA—Freedom of Information Act of 1966
FPA—Federal Power Act of 1935
FPC—Federal Power Commission
ICA—Interstate Commerce Act
ICC—Interstate Commerce Commission
NEA—National Energy Act of 1978
NEPA—National Environmental Policy Act of 1969
NGA—Natural Gas Act of 1938
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NOPR—Notice of Proposed Rulemaking
NOI—Notice of Inquiry
OCSLA—Outer Continental Shelf Lands Act
PIFUA—Powerplant and Industrial Fuel Use Act of 1978
PURPA—Public Utility Regulatory Policies Act of 1978
T—Target date
TBD—To be determined
U.S.C.—United States Code

Introduction

The Federal Energy Regulatory Commission (FERC) is an independent federal agency authorized to regulate the wholesale or national aspects of some of our most important energy industries. The FERC sets rates and charges for interstate transportation and sale of natural gas, transmission and sale of wholesale electric power, and interstate transportation of oil by pipeline; the FERC also licenses most private, State and local hydroelectric projects and all interstate natural gas pipeline facilities. In addition, the FERC reviews certain actions taken by the Department of Energy.

The FERC was created by the Department of Energy Organization Act in 1977. The purpose of the Act was to bring all the energy-related federal agencies together into a new, cabinet-level department. That law abolished the Federal Power Commission (FPC) and established a new independent regulatory agency within DOE, the FERC, with slightly different and expanded functions.

In 1920, Congress created the FPC, the forerunner of the FERC, to oversee the development of the Nation's waterways and to license private, State and local hydroelectric projects. Until that time, the Congress had itself acted on each application to build a dam and hydroelectric generating station.

The FPC's responsibilities under the Federal Power Act were expanded in 1930 to cover interstate transmission and sale of wholesale electric power. In 1938, enactment of the Natural Gas Act added regulation of the rates and services of interstate natural gas pipelines to the FPC's jurisdiction.

Regulation of the rates and services of interstate oil pipelines under the Interstate Commerce Act which had been the responsibility of the Interstate Commerce was added to the FERC's jurisdiction when it was created in 1977. The Natural Gas Policy Act and the Public Utility Regulatory Policies Act, both parts of the National Energy Act of 1978, significantly expanded the FERC's responsibilities in the areas of natural gas and electric utility regulation.

The FERC issues and enforces general regulations putting into effect the laws passed by Congress which govern the industries under the Commission's jurisdiction. The Commission also acts on specific cases when companies regulated by the FERC seek to adjust their rates and services or to obtain permission for construction of new facilities.

The Commission is made up of five members appointed by the President with the advice and consent of the Senate. One member is chosen by the President to serve as Chairman and is the chief administrative officer. Commissioners serve four-year terms. Because the FERC is an independent regulatory agency, the Commissioners, under ordinary circumstances, cannot be removed from office, and the FERC's actions are not subject to review by the Secretary of Energy or the President. Most Commission decisions, however, may be reviewed in the Federal Courts.

When Congress passes legislation to be carried out by federal agencies, it is the responsibility of the agencies to design regulations for compliance with the new law. This is because of the agencies' knowledge of the industries they regulate and of the needs of public they represent, knowledge that is necessary to design effective rules to resolve the legal and factual disputes that arise in regulation of complex industries.

Federal agencies develop regulations through a process known as rulemaking. General requirements for the rule making process are set out in the Administrative Procedure Act of 1946 (APA), which grew out of the need for uniform, government-wide rules to ensure due process and fair procedures to all parties in the rulemaking process.

At the FERC, the general procedures for informal rulemakings established by the APA are followed. This means that, unlike in formal rulemakings, the agency is not required to keep a verbatim record of the proceedings or to follow strict trial procedures.

The informal rulemaking process begins with either a Notice of Inquiry (NOI)—also known as an Advance Notice of Proposed Rulemaking—or a Notice of Proposed Rulemaking (NOPR). When there is some indication that new or changed regulations are needed, but the Commission is not entirely convinced, a NOI is issued soliciting public comment on whether regulations should be developed. When the Commission has already determined—often after a lengthy internal staff study and review process—that there is a need for new regulations or a change in existing regulations, proposed regulations are developed and issued as a NOPR. All Notices are published in the **Federal Register**, and the public is invited to comment.

The Commission often holds public hearings to provide an opportunity for dialogue between Commissioners and Commission staff and representatives of regulated companies and the general public. When the Commission initiates a major rulemaking having a broad impact, public hearings are, insofar as possible, held around the country or in regions particularly affected so that the widest range of comments can be obtained.

Once the comments have been analyzed and evaluated by FERC staff, the Commission will issue interim regulations if further comment and evaluation is necessary, or final regulations if the Commission is satisfied that the regulations carry out the law in the best possible manner. Interim and final regulations are also published in the **Federal Register** at least 30 days before the effective date. Parties to a particular proceeding may

file for rehearing on all or part of a Commission decision within 30 days from the date the decision is issued.

Final regulations are amended from time to time as the need arises. To amend regulations, the Commission follows the rulemaking process.

Introduction to Regulations Under the Rules of Practice and Procedure

It has always been the practice of federal agencies to set down in writing the manner in which their business is conducted. This is to ensure due process to all parties in agency proceedings and so that those without prior experience in agency business will not be unduly handicapped.

The Rules of Practice and Procedure set out step-by-step instructions for all agency procedures from applications to enforcement actions. They include, for example, time limits on various stages of longer proceedings, formats for official submissions, and rules to ensure that an opportunity is provided for representation of all interested parties in agency proceedings.

The FERC has undertaken a complete revision of its Rules of Practice and Procedure as part of a comprehensive effort to simplify and streamline regulatory processes. The FERC is now operating under rules of practice and procedure inherited from its predecessor-agencies, the Federal Power Commission and the Interstate Commerce Commission. Many of these rules were written in the 1950's and 60's or even earlier. The FERC intends to update, consolidate, and reorganize these rules, simplify them where possible, and state requirements more clearly where the rules are not specific enough to adequately inform those affected of what is required.

1. Title: Rules Relating to Investigations

Docket Number RM78–15

Description: Soon after the FERC was created, the Commission set up an Office of Enforcement to investigate alleged violations of the statutes administrated by the Commission and to seek penalties when a violation can be proven.

Interim rules setting out the practices and procedures to be followed by the Office of Enforcement in conducting investigations were issued in June of 1979.

The new proposed rules will set out procedures for both formal and preliminary investigations. Matters such as issuing and serving subpoenas, taking testimony, rights of witnesses, restrictions on disclosure of information gained in investigations, and authority of investigating officers will be covered. The rulemaking will also articulate the FERC's policy on consent agreements.

Legal basis: FPA, NGA, ICC, OCSLA, Mineral Leasing Act, DOE Act, NGPA, PURPA, PIFUA, APA.

Major stages of completion	Date	FR citation	Calendar quarter
NOPR issued	3/20/79 C	44 FR 21588 4/10/78.	'79:1st.
Interim regulations issued.	6/14/78 C	44 FR 27174 6/23/78.	'78:2d.
Order issued	TBD		
Rehearing decision issued.	TBD		

Agency official: John Conway, Attorney-Advisor (202)357–8150, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

2. Title: Revisions of FERC Rules of Practice (Pt. 4), Freedom of Information Act

Docket Number RM78–22

Description: The FOIA was enacted in 1966 to provide for disclosure of information used in decisionmaking by government bodies in order to make it easier for citizens and citizen groups to participate in the process of government, and to make government more accountable.

Much of the information used by the Commission in reaching decisions is readily available to the general public through the Division of Public Information of the Office of Congressional, Consumer & Public Affairs. A detailed list of the kinds of FERC records now available to the public is included in FERC regulations in § 1.36 of Title 18 of the Code of Federal Regulations and is reproduced in the appendix to this publication.

When a document contains proprietary or sensitive information or certain data relating to rulemakings or cases in progress, it must be screened by Commission legal staff to determine which information can be released and which must be withheld. This procedure can be costly and time-consuming, but upon receipt of a legitimate request for such documents, Commission staff will screen and approve for release all information that may properly be released. Any decision by FERC staff to withhold information may be appealed to the Chairman of the Commission and, in turn, to the Federal Courts.

This rulemaking sets up procedures for reviewing FOIA requests and defines specifically which information is exempt from disclosure requirements.

Legal basis: FOIA.

Major stages of completion	Date	FR citation	Calendar quarter
NOPR issued	12/31/80 T		'80:4th.
Interim regulations issued.	N/A		
Order issued	3/31/81 T		'81:1st.
Rehearing decision issued.	TBD		

Agency official: MaryJane Reynolds, Legal Counsel (202)357–8455, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

3. Title: Revision of FERC Rules of Practice (Pt. 6) Conflict of Interest

Docket Number RM78–22

Description: These rules define the kinds of relationships between FERC staff and parties to FERC proceedings that are proper and permissible and what prior interests or commitments on the part of FERC employees constitute grounds for disqualification from participation in a particular proceeding.

"Conflicts of interest" can create serious ethical and legal problems and these rules are necessary to ensure that Commission employees will not be influenced by interests which do not coincide with their professional responsibilities such as the possibility of outside remuneration or possible future employment.

Legal basis: DOE Act and APA.

Major stages of completion	Date	FR citation	Calendar quarter
NOPR issued	12/31/80 T		'80:4th.
Interim regulations issued.	N/A		
Order issued	3/31/81 T		'81:1st.
Rehearing decision issued.	TBD		

Agency official: MaryJane Reynolds, Legal Counsel (202) 357–8455, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

4. Title: Revisions of FERC Rules of Practice (Pt. 7) Procedures to Expedite Trial-Type Hearings

Docket Number RM78–22

Description: When important matters of fact and law are at issue, as in many contested rate, license or certificate cases before the Commission, the Commission may set the matter for hearing before an administrative law judge. The judge conducts an adjudicatory or trial-type hearing on these disputed issues in which all parties have an opportunity to present evidence and to cross-examine witnesses for other parties. A verbatim record of the entire hearing is kept. The judge, after reviewing all testimony and evidence in the record, makes an initial decision on how the case should be disposed. This decision, supported by extensive citations to the record, is transmitted to the Commission for consideration and final decision.

These hearings are costly and time-consuming, drawing heavily on Commission resources while the Commission must deal with an increasing workload. Any delay also contributes to uncertainty on the part of regulated companies and their customers while they wait for final rates or decisions on the construction of facilities.

These regulations are part of a comprehensive effort to streamline the Commission's trial process and make it more efficient. This rulemaking will consolidate and update the Rules of Practice and Procedure inherited from the ICC governing trial-type hearings in oil pipeline cases and FPC rules covering hearings in natural gas and electric cases

Legal basis: DOE Act, FPA, NGA, NGPA, ICA, PURPA, APA.

Major stages of completion	Date	FR citation	Calendar quarter
NOPR issued	11/5/80 T		'80:4th.
Interim regulations issued.	N/A		
Order issued	9/31/81 T		'81:1st.
Rehearing decision issued.	TBD		

Agency official: MaryJane Reynolds, Legal Counsel (202) 357–8455, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

5. Title: Revision to FERC Rules of Practice (Pt. 9) Determine DOE's Termination of Funding

Docket Number RM78–22

Description: Under the terms of the DOE Act, federal funding of State energy-related programs must be terminated if the State is found to discriminate against persons or groups in its administration of the program. If, after a preliminary investigation, a finding of discrimination is made, the matter is set for a trial-type hearing before an FERC administrative law judge. The FERC Office of Administrative Law Judges conducts all trial-type, on-the-record proceedings on behalf of the Department of Energy when such proceedings are required in DOE regulatory processes. This rulemaking sets up procedures for trial-type hearings to determine whether funding should be terminated when it is alleged that a State is discriminating in its administration of federally-funded energy programs.

Legal basis: DOE Act and APA.

Major stages of completion	Date	FR citation	Calendar quarter
NOPR issued	12/31/80 T		'80:4th.
Interim regulations issued.	N/A		
Order issued	3/31/81 T		'81:1st.
Rehearing decision issued.	TBD		

Agency official: MaryJane Reynolds, Legal Counsel (202) 357–8455, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

6. Title: Revision to FERC Rules of Practice (Pt. 10) Declaratory Orders Under the NGPA

Docket Number RM79–65

Description: A declaratory order provides an interpretation of the provisions of a law and generally clarifies questions of agency jurisdiction or the scope of statutory requirements or exemptions. Declaratory orders are usually issued in response to a petition filed by an affected person, governmental unit, interest group or business concern because of uncertainty about whether certain activities are covered by the law or about the nature of response required.

The NGPA requires that procedures be set up to be followed by parties seeking interpretations of the provisions of that law. This rulemaking adds these procedures to the Rules of Practice and Procedure.

Legal basis: FERC Rules of Practice.

Major stages of completion	Date	FR citation	Calendar quarter
NOPR issued	N/A		
Interim regulations issued.	8/11/79 C		'79:3rd.
Order issued	TBD		
Rehearing decision issued.	TBD		

Agency official: MaryJane Reynolds, Legal Counsel (202) 357–8455, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

7. Title: Revision of FERC Rules of Practice (Pt. 1) Separation of Functions and Ex Parte in Rules for Trial-type Proceedings

Docket Number RM80–60

Description: FERC staff represent the public in trial-type hearings held in contested FERC rate and licensing cases. They must thoroughly research issues, study testimony and develop a defensible position to advance the public interest. However, because a strong advocacy position must often be taken, the same staff member cannot be expected to "step back" and objectively advise the Commission regarding the administrative law judge's initial decision in a case in which that staff member participated.

For this reason, the FERC and other governmental agencies develop rules requiring separation of the litigating and decisionmaking agency functions. In effect, this means that staff members participating in trial-type hearings cannot advise the Commission when it subsequently reviews the ALJ's ruling on that case, and cannot even communicate with "decisional employees"—other staff members engaged in advising the Commission on that case—about the merits or issues in the case.

So that all parties to a proceeding have equal opportunity to present their point of view, private communications between any staff member working on a trial-type case and a representative of any of the parties are forbidden. These rules are known as "*ex parte*" rules and generally bar all informal, off-the-record communications on the case between FERC staff handling the case and any interested person outside the agency.

This rulemaking will consolidate the rules on separation of functions and *ex parte* communications in the Rules of Practice and Procedure inherited from the FPC and ICC which govern trial-type proceedings.

Legal basis: APA section 554 and 557.

Stages of completion	Date	FR citation	Calendar quarter
NOPR issued	5/23/80 T		'80:2nd.
Interim regulations issued.	N/A		
Order issued	10/1/80 T		'80:4th.
Rehearing decision issued.	TBD		

Agency official: MaryJane Reynolds, Legal Counsel (202) 357–8455, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Introduction to Electric and Hydroelectric Regulations

Many local electric utilities do not own facilities to generate power and confine their operations to the distribution of electric power bought at wholesale from large investor-owned utilities or federal power marketing agencies. Other utilities that do own generating facilities must sometimes buy supplemental wholesale power on a regular basis or at times of greatest demand.

Under the Federal Power Act of 1935 (FPA), the FERC must set "just and reasonable" rates and service standards for these wholesale power transactions. The FERC regulates rates charged by 215 electric utilities for wholesale sales of electricity—about 13 percent of total annual sales of electricity in the U.S. Rates for retail sales to consumers are generally set by state regulatory agencies.

Electric rates are calculated to cover utilities' operating expenses, including expenses for fuel, the cost of building power plants and transmission systems, and a reasonable profit on stockholders' investment.

The Federal Power Commission, forerunner of the FERC, was originally created to oversee development of the Nation's hydroelectric power generation potential and to license non-federal hydroelectric powerplants on navigable waters. The Commission sets conditions in licenses to ensure protection of the environment, to maximize public access and usefulness to all interests, and to ensure public safety.

In 1978, Congress passed the Public Utility Regulatory Policies Act (PURPA), one of the five parts of the National Energy Act. The broad purposes of the law are to encourage energy conservation and efficient use of resources by public utilities; to encourage cogeneration and production of electric power by small producers using renewable resources; and to encourage rate reform at the retail level so that charges for electricity more

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accurately reflect the actual cost of generating the electricity.

In PURPA, the Commission was directed to take a number of actions toward meeting these goals. The Commission is to conduct studies of the use of automatic adjustment clauses in electric ratemaking and their effect on utilities' use of resources and of the potential for conservation of energy yet to be realized by interconnecting electric utility systems. The Commission has already issued regulations to encourage cogeneration and small power production. Regulations have been issued requiring utilities to submit information on the cost of providing service and the first report is due in November of this year. In addition, a report on delays in processing wholesale electric rates increases at the FERC has been submitted to Congress by Chairman Charles B. Curtis.

6. Title: Safety of Water Power Projects and Project Works, Review of Part 12 of the Regulations

Docket Number RM80–31

Description: In April, 1977, the President directed the Federal agencies to review and strengthen Federal dam safety requirements and inspection programs. The revised requirements were to impose more stringent tests on structural integrity, improve procedures for dam inspection, protect those who work or spend leisure time in the vicinity of licensed projects, and to provide that emergency procedures to protect life and property in case of dam failure be filed with Federal agencies.

The FERC issues preliminary permits and licenses for private, state and local hydroelectric projects and conducts on-site inspections of all licensed projects every five years. Approximately 1000 dams are now under the Commission's jurisdiction. The Commission seeks to ensure dam safety and the preparation of adequate emergency procedures without imposing unnecessary regulatory burdens where no actual danger exists—i.e., at small projects where little water is impounded.

This rulemaking revises the Commission's existing regulations on dam safety, inspection procedures, and early warning and emergency procedures. The proposed regulations provide for inspection by independent consultants to supplement Commission inspections and, finally, provide for certain managerial improvements.

Legal basis: FPA section 10(c).

Major stages of completion	Date	FR citation	Calendar Quarter
NOPR issued	6/16/80 C	45 FR 41608 6/19/80.	'80:2nd.
Interim regulations issued.	NA		'80:4th.
Order issued	10/8/80 T		
Rehearing decision issued.	TBD		

Agency official: Glenn Berger, Staff Attorney (202) 357–8364, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

9. Title: Regulations Governing Major Unconstructed Projects, Phase 3

Docket Number RM80–39

Description: This rulemaking is the third phase of a comprehensive program to simplify and clarify the Commission's licensing procedures for hydroelectric power projects and proposes licensing reforms dealing with all "major" projects.

A major project is defined as having a generating capacity of more than 1.5 megawatts or 2,000 horsepower and (1) for which a dam must be constructed, or (2) which would require additions to an existing dam resulting in a significant increase in the water level of the reservoir, or (3) which would for other reasons have a significant impact on the environment.

The current regulations will be revised to explain more clearly what information must be submitted, to require only information that is necessary to make a decision on the application, to consolidate and simplify the format for submitting information, and to require a more detailed Environmental Report. The Commission is also revising its regulations under the National Environmental Policy Act to provide for a more detailed Environmental Report for major projects.

These regulations should encourage development of clean, safe and renewable hydropower resources by simplifying and expediting the licensing process.

Legal basis: FPA and PURPA section 405.

Major stages of completion	Date	FR citation	Calendar Quarter
NOPR issued	10/1/80 T		'80:4th.
Interim regulations issued.	NA		
Order issued	12/31/80 T		'80:4th.
Rehearing decision issued.	TBD		

Agency official: Jim Hoecker, Staff Attorney (202) 357–9342, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

10. Title: Exemption for Small Hydroelectric Power Plants of 5 Mw or Less

Docket Number RM80–65

Description: This rulemaking—authorized by the recently-enacted Energy Security Act of 1980—will establish procedures for exempting certain non-controversial small hydroelectric power projects with 5 megawatts or less installed electric generating capacity from the FERC's licensing requirements and fees under the Federal Power Act. Exempting these facilities should encourage rapid development of the Nation's small hydro resources and will help the Commission better handle the numerous applications it has received for projects of this size. The rising cost of fossil fuels has made hydro power increasingly economical and has created a renewed interest in hydroelectric development.

Under the proposed procedures, owners of hydro projects at an existing dam or natural reservoir with a capacity of 5 megawatts or less can apply to the Commission for a licensing exemption. The FERC would be required to act within 120 days, or four months, or the exemption will be automatically granted. It currently takes about nine months to process even an uncontested small hydro license application.

Approximately two-thirds of the preliminary permit applications now on file are for projects of five megawatts or less and these applicants could apply for this exemption. A preliminary permit is granted so that the applicant can conduct the studies necessary to decide if a project is feasible and whether to submit a full license application. The permit also assures the holder of priority in applying for a license.

Legal basis: Energy Security Act of 1980 section 408.

Major stages of completion	Date	FR citation	Calendar Quarter
NOPR issued	8/27/80 C	45 FR 53868 9/3/80.	'80:3rd.
Interim regulations issued.	N/A		
Order issued	12/31/80 T		'80:4th.
Rehearing decision issued.	TBD		

Agency official: Jim Hoecker, Staff Attorney (202) 357–9342, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

11. Title: Amendments to Pt. 32 of the Regulations Under FPA; Interim Regulations Governing Interchange Energy Transmission Rates for Section 202(c) Emergencies

Docket Number RM79–28

Description: Under the FPA and the DOE Act, the Economic Regulatory Administration of the Department of Energy can order electric utilities to transmit power across their power line network during emergencies so that electricity can be interchanged by utilities with excess generating capacity and other utilities suffering shortages and unable to supply customers. In some cases, the supplying utility is at a great distance from the buying utility and the power must be transmited across a number of utility systems, creating multiple interchange transactions.

This rulemaking establishes principles for setting rates for these transactions and provides that the FERC can, as authorized in the statute, impose a rate if the parties fail to agree on a rate for a particular interchange transaction. The regulations set a model rate which is based on the incremental transmission costs—extra costs associated with the particular interchange of electricity—plus a percentage of those costs which is added to provide a margin of profit.

Legal basis: FPA section 202(c), DOE Act.

Major stages of completion	Date	FR citation	Calendar quarter
NOPR issued	4/3/79 C	44 FR 21666 4/11/79.	'79:2nd.
Interim regulations issued.	N/A		
Order issued	TBD		
Rehearing decision issued.	TBD		

Agency official: Jim Hoecker, Staff Attorney (202) 357–9342, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

12. Title: Calculation of Cash Working Capital Allowance for Electric Utilities

Docket Number RM79–49

Description: Electric utilities, like other businesses, must keep a certain amount of cash on hand to meet expenses that come due before the revenues to cover those expenses come in.

This working cash is considered for ratemaking purposes as part of the rate base, or the value of facilities and other assets on which the Commission sets a percentage return for stockholders. In the past, the Commission has calculated the amount of working cash utilities should be allowed to include in the rate base by multiplying average daily operating expenses by 45 and substracting expenses for power purchased from other utilities. This method of calculating the allowance was based on the assumption that the average lag between expenses and receipt of revenues is 45 days.

The Commission has developed a formula to calculate the working cash allowance which yields a more precise approximation of the amount of cash actually needed. In this proposed rulemaking, the Commission is considering establishing this formula as the method for calculating cash working capital allowances for electric utilities. This approach may help avoid relitigation of this issue in every case.

Legal basis: FPA section 205.

Major stages of completion	Date	FR citation	Calendar quarter
NOPR issued	6/7/79 C		'79:2nd.
Interim regulations issued.	N/A		
Order issued	12/31/80 T		'80:4th.
Rehearing decision issued.	TBD		

Agency official: Bonnie Cord, Staff Attorney (202) 357–8152, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

13. Title: Continuance of Service

Docket Number RM79–52

Description: Section 206 of PURPA is intended to ensure that electric utilities are prepared to deal with emergencies and can provide continuous service to their customers. Toward this end, the Act requires that electric utilities report to the FERC any anticipated shortage of electricity which would affect wholesale customers. Such a shortage might be anticipated if, for example, there was a delay in bringing a new plant on line or if extreme weather conditions were forecast.

Utilities must also submit a contingency plan detailing actions to be taken in the event of a shortage to avoid disruptions in service. Contingency plans must seek to accommodate shortages with fair treatment of all customers whether served on a wholesale or a direct retail basis. This rulemaking sets out the reporting requirements for anticipated shortages and contingency plans.

Legal basis: FPA section 202, as amended by PURPA Section 206.

Major stages of completion	Date	FR citation	Calendar quarter
NOPR issued	12/31/80 T		'80:4th.
Interim regulations issued.	3/26/80 C	45 FR 23684 4/18/80.	'80:1st.
Order issued	3/31/81 T		'81:1st.
Rehearing decision issued.	TBD		

Agency official: Christine Benagh, Staff Attorney (202) 357–8446, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

14. Title: Rates of Return—Electric

Docket Number RM80–36

Description: Electric utilities finance construction in the same manner as other businesses, that is, with a mixture of borrowed and investor funds. In general, the ratepayers do not finance construction or system upgrading. For this reason, the utilities must be allowed a sufficient rate of return on investment so that investors can be attracted and capital for construction raised.

Many rate increases filed by electric utilities selling wholesale power are contested by customer utilities buying the power for resale to retail users. In order to determine an appropriate rate of return when the rate increase is contested, extensive evidence must be taken in a trial-type hearing before an administrative law judge. The rate of return issue, perhaps the most time consuming element of a rate case, must essentially be considered anew in each contested rate case.

Although the capital structure, business organization and financial condition of electric utilities vary widely, there are enough similarities to suggest that a more general approach to rate of return questions might be possible.

This rulemaking undertakes to evaluate the various alternatives available to the Commission to expedite consideration of rate of return issues in electric rate cases. The regulations produced in this proceeding could substantially reduce the time necessary to resolve rate cases, cutting the length of time that electric utilities can collect rates that may be excessive pending resolution of rate cases. The regulations could also reduce "pancaking" or the build-up of successive unresolved rate cases and save administrative expenses on the part of the Commission and regulated companies, benefits which will ultimately be passed through to consumers.

Legal basis: FPA sections 201, 205, and 206, DOE Act.

Major stages of completion	Date	FR citation	Calendar quarter
NOPR issued	12/31/80 T		'80:4th.
Interim regulations issued.	NA		
Order issued	3/31/81 T		'81:1st.
Rehearing decision issued.	TBD		

Agency official: John Conway, Staff Attorney (202) 357–8150, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

15. Title: Revisions to form FPC–1, Annual Report for Electric Utilities, Licensees, and Others (Class A & B)

Docket Number RM80–55

Description: This rulemaking is the result of a continuing Commission effort to reduce unnecessary reporting requirements and paperwork burdens imposed on regulated companies. This proposal would eliminate information requested in Form No. 1 which is no longer necessary or duplicates information submitted to meet other requirements. The Commission seeks to require only information which is actually used in Commission decision-making processes.

Form 1 must be filed yearly by privately-owned electric utilities with annual operating revenues of $1 million or more which are subject to the FERC's jurisdiction. It requires the utilities to submit general corporate information, and financial, operating and other statistical data. The proposed rule should delete about 28 percent of the information currently required, or 167,000 hours of work on the part of regulated utilities.

Legal basis: FPA sections 304 and 309.

Major stages of completion	Date	FR citation	Calendar quarter
NOPR issued	7/8/80 C	45 FR 47705 7/16/80.	'80:3rd.
Interim regulations issued.	NA		
Order issued	10/22/80 T		'80:4th.
Rehearing decision issued.	TBD		

Agency official: Cathy Ciaglo, Staff Attorney (202) 357–8316, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

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16. Title: Federal Rates and Power Marketing

Docket Number RM80-40

Description: The authority to prescribe and approve rates for electric power generated by federal hydroelectric projects is divided between the Administrators of the federal power marketing agencies who prescribe proposed rates and the FERC which reviews and approves those proposed rates. This policy was evolved when the market for electric power was still relatively undeveloped, because it was thought that the Administrators would have the necessary knowledge of markets in their regions to set appropriate rates to encourage sales of electricity, and that the Commission could ensure that the rates conform to national policy.

The FERC approves the rates charged by the five Federal power marketing agencies for the sale of wholesale hydroelectric power produced at Federally-owned dams throughout the country. These agencies—the Alaska Power Administration, the Bonneville Power Administration, the Southeastern Power Administration, the Southwestern Power Administration, and the Western Area Power Administration—market nearly half of the hydro power generated in the U.S.

This proposed rulemaking will for the first time establish standard procedures and filing requirements for power marketing agency rate changes and should result in more expeditious review of these rates.

Legal basis: DOE Act section 402; Delegation Order No. 0204-33, 44 Federal Register 56735 (10/2/79)

Major stages of completion	Date	FR citation	Calendar quarter
NOPR issued	TBD		
Interim regulations issued.	NA		
Order issued	3/31/81 T		'81:1st.
Rehearing decision issued.	TBD		

Agency official: Michael Kessler, Staff Attorney (202) 357-5227, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

17-18. Title: Price Squeeze

Docket Numbers RM79-79, RM79-80

Description: Public utilities are regarded as "natural monopolies", that is, they provide services and facilities that can be most efficiently provided by a single firm. The belief that such a firm's rates and practices should be controlled by government regulation—because competitive market forces are not operative, and the monopolist will accordingly overcharge its customers—has for decades been widely accepted, though in varying degrees, by a public eager to gain the economic efficiencies of natural monopolies, but unwilling to pay monopoly overcharges for them. Because of this economic monopoly, public utilities' rates to retail customers are regulated at the state level by regulatory commissions and utilities' wholesale rates are regulated by FERC.

When a utility sells electricity to retail customers and also sells to wholesale customers for resale to their own retail customers, a price squeeze can occur. If a utility, selling at retail and at wholesale, charges a wholesale price that is out of proportion to wholesale costs, given the relationship of retail prices to retail costs, then the utility may be pricing discriminatorily. For instance, if the costs of providing generation and transmission to the retail customers are the same as the costs of providing these services to wholesale customers, but the wholesale price is higher than the retail price, then the selling utility is engaging in price discrimination against the wholesale customer. Since there is split regulatory jurisdiction between state public utility commissions and FERC, retail-to-wholesale price discrimination is not uncommon when FERC and the state commissions come to different conclusions about the costs to provide service and the appropriate rates of the respective services.

If the utility selling wholesale power and a wholesale customer buying its power from that utility are both competing for the same retail customers, the utility's wholesale price discrimination can squeeze the wholesale customer out of competition in the retail market. If the wholesale customer has alternative electric suppliers available to it, then it may be able to escape the squeeze by switching suppliers and thus continue to compete effectively with the utility in the retail market. Lacking this opportunity, the combination of wholesale price discrimination and the resulting anticompetitive effect of the discrimination causes a price squeeze for the wholesale customer that may be found unduly discriminatory and unlawful under the Federal Power Act.

The FERC is in the process of evolving general rules to handle price squeeze allegations. These rules will carry out the Supreme Court ruling in *Conway Corporation* v. *FPC* that required the Commission to consider claims of price squeeze in its wholesale electric rate cases.

RM79-79 sets out procedures for handling a rate case in which price squeeze is alleged. This rulemaking provides that the rate case may be phased: in the first phase the Commission will determine just and reasonable rates without considering price squeeze. In most cases, the Commission's determination on the appropriate wholesale costs that may be recovered in the wholesale rate will lower the wholesale rate from that proposed by the utility to such a level that any alleged price discrimination will be eliminated and thus would moot the claim of price squeeze. If a claim of price squeeze is still applicable, the Commission will consider it in a second phase of the proceedings.

RM79-80 establishes the requirements to prove or disprove a claim of price squeeze. Particular attention is given to what constitutes a first showing in the case, or what conditions, when met, will cause the Commission to investigate the claim further.

Legal basis: FPA, DOE Act, *Conway Corporation* v. *FPC* (426 U.S. 271 (1976)].

Major stages of completion	Date	FR citation	Calendar quarter
NOPR issued	11/1/79 C	44 FR 67154 11/23/79.	'79:4th.
Interim regulations issued.	N/A		
Order issued	TBD		
Rehearing decision issued.	TBD		

Agency official: Bonnie Cord, Staff Attorney (202) 357-8152, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Introduction to Regulations Under the Natural Gas Policy Act

The Natural Gas Policy Act of 1978 (NGPA), one of the five parts of the National Energy Act, grew out of the need to reform federal regulation of the natural gas industry. Just before the passage of the Act, the Nation had suffered through two seasons of severe natural gas shortages due to a dual interstate-intrastate market system. Prices in the largely unregulated intrastate markets were significantly higher and natural gas supplies were building up in the producing states while interstate pipelines, constrained by federally-set prices based on production costs, were unable to secure adequate supplies for delivery to consuming states.

The NGPA eliminated the dual market system by placing all wellhead sales of natural gas under federal jurisdiction and set a series of gradually escalating incentive prices for recently discovered or "new" natural gas which more closely approximated the higher costs of alternate fuels at the time the Act was passed. These prices were intended to stimulate production and to smooth the transition to deregulation of most new which was set by the NGPA for January 1, 1985.

In the past, the FERC had set prices for natural gas based on area and then nationwide average costs of production. Under the NGPA, the Commission's responsibility is to verify that natural gas wells qualify for the various prices set by Congress depending on when the well was drilled, where the gas is produced and whether it was priced under the earlier practices of the Commission.

The NGPA also required the FERC to institute a program known as "incremental pricing" to charge large industrial users of natural gas a larger proportion of the higher prices for new gas set in the NGPA. The purpose of incremental pricing was, first, to provide a measure of protection to high priority users of natural gas (such as residential and small commercial users) from the full immediate impact of higher gas prices. Second, the program was intended to prevent large jumps in the price of natural gas and the economic disruption which might follow deregulation by putting interstate pipelines in a position where they might lose industrial customers if their bids to buy deregulated gas from producers were too high and their prices exceeded prices for alternative fuels. (Pipeline companies buy most of the gas that is produced in this country for resale to distribution companies and large industrial users.)

Other provisions of the NGPA are intended to balance supplies of natural gas and ensure continuity of supply; to provide emergency authority in the event of serious shortages; to establish curtailment priorities to govern allocation of natural gas during shortages; and to clarify the relationship of the Commission's authorities under the NGA and the NGPA.

19. Title: Alternative Fuel Cost Ceilings for Incremental Pricing, Order 81

Docket Number RM79-21

Description: Under incremental pricing, industrial boiler fuel users must pay prices for natural gas up to the price of alternative fuels. The actual price paid depends on the amount of new gas in their pipeline's system supply and the number of users subject to incremental pricing served by the pipeline. In almost all cases, industrial users are paying a price for natural gas equal to the regional price of No. 6 high-sulfur fuel oil, the alternative fuel designated until November 1, 1981, by the Commission.

The regional price of No. 6 high-sulphur fuel oil is calculated monthly by the Energy Information Administration (EIA) of the Department of Energy. This calculation is based on data collected on the actual prices paid for the fuel in the immediately preceding months. This data is averaged and adjusted for various statistical factors.

It is important that these calculations be precise because industrial boiler fuel users may switch to fuel oil if it is cheaper than incrementally priced natural gas.

The Commission is currently considering new methods to be used by EIA to calculate alternative fuel price ceilings.

Legal Bosis: NGPA sections 203 and 204.

Major stages of completion	Date	FR citation	Calendar quarter
NOPR issued	TBD		
Interim regulations issued.	NA		
Order issued	TBD		
Rehearing decision issued.	TBD		

Agency official: Colette Bohatch, Staff Attorney (202) 357-8140, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

20. Title: Procedures for NGPA Adjustments of Rates and Orders Issued by FERC (Pt. 2)

Docket Number RM79-32

Description: Federal statutes set general guidelines and requirements and cannot take into consideration all circumstances. For this reason, many statutes include provisions for "adjustments"—exceptions, exemptions, modifications, or recissions—in special cases where it can be demonstrated that an individual or group or business concern cannot meet a particular statutory requirement or would be seriously harmed or handicapped by meeting the requirement.

One important purpose of the NGPA is to set general rules applicable to the entire sectors of the natural gas industry and replace provisions in the NGA which required case-by-case determination. Section 502(c) of the NGPA provides for adjustments to these general rules. This rulemaking sets up the procedures—form and content of applications, deadlines for Commission action, and appeals—to be followed to obtain an adjustment.

Legals basis: NGPA section 502(c).

Major stages of completion	Date	FR citation	Calendar quarter
NOPR issued	NA		
Interim regulations issued.	3/24/80 C	44 FR 18961 3/30/79.	'80:1st.
Order issued	12/31/80 T		'80:4th.
Rehearing decision issued.	TBD		

Agency official: MaryJane Reynolds, Legal Counsel (202) 357-8455, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

21. Title: State-wide Exemption from Incremental Pricing

Docket Number RM79-47

Description: This rulemaking addresses the relationship between the federal incremental pricing program and actions taken by state regulatory bodies to accomplish the purposes of incremental pricing.

The first type of program considered in the regulations is implementation of a program similar to the federal program which sets the rates to the same users subject to the federal incremental pricing program at or above the alternative fuel price ceiling established by the Commission.

The second type of program addressed in this rulemaking is an innovative rate plan designed to accomplish the purposes of incremental pricing but in a substantially different manner.

The Commission is considering allowing states implementing either of these types of programs to keep the revenues generated by their incremental pricing program for distribution to their residential users.

Legal basis: NGPA section 206(d).

Major stages of completion	Date	FR citation	Calendar quarter
NOPR issued	12/27/79 C	45 FR 1081 1/4/80.	'79:4th.
Interim regulations issued.	NA		
Order issued	TBD		
Rehearing decision issued.	TBD		

Agency official: Thomas Hirsch, Staff Attorney (202) 357-8335, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

22. Title: Procedures Governing Applications for Special Relief under Sections 104, 106 and 109 of NGPA

Docket Number RM79-67

Description: The various prices set by Congress for natural gas should, under ordinary circumstances, provide producers with an adequate return on their investment to make production of most domestic reserves economically feasible. In some cases, however, the maximum lawful price does not permit a producer to earn a fair profit, or in extreme cases, even to recover the costs of production.

In these cases and without the possibility of a higher price, the producer has two alternatives: continue production at an economic loss or abandon the well. Neither of these alternatives are in the public interest since the first affects the producer and would likely discourage further business ventures and the second affects the consumer because less gas is available.

Consequently, the Congress authorized the FERC to provide "special relief" for three of the ten categories of natural gas set out in the NGPA. This covers gas under sections 104 (sales of gas dedicated to interstate commerce), 106 (sales of gas subject to rollover contracts) and 109 (sales of gas in other categories).

These regulations describe the circumstances under which a producer-seller of natural gas may seek a special relief rate, the manner in which the application should be made, the process by which the Commission will consider an application, and the cost standards that the Commission will use to determine a special relief rate.

Legal basis: NGPA sections 104(b)(2), 106(c), 109(b)(2).

Major stages of completion	Date	FR Citation	Calendar quarter
NOPR issued	5/9/80 C	45 FR 31744 5/14/80.	'80:2nd.
Interim regulations issued.	NA		
Order issued	10/22/80 T		'80:4th.
Rehearing decision issued.	TBD		

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Agency official: Susan Tomasky, Staff Attorney (202) 357–8461, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

23. Title: High Cost Natural Gas Produced from Tight Formations, Order 99

Docket Number RM79–76

Description: The Congress anticipated that, following enactment of the NGPA, it would become apparent that production of natural gas under circumstances not covered in the NGPA should be encouraged. Section 107(c)(5) of the NGPA authorizes the Commission to identify gas which is extremely expensive or risky to produce and to set an incentive price adequate to stimulate production of the gas.

The Commission has identified natural gas produced from tight formations or "tight sands" as high-cost gas and has established an incentive price equal to 200 percent of the price for gas from new, conventional onshore wells.

Tight formations are sedimentary layers composed of very fine and irregularly shaped grains of sand cemented together in such a way as to greatly hinder the flow of gas through the rock. As a result, expensive production enhancement techniques must almost always be applied so that gas will flow in volumes worth producing. The most common of these techniques involves massive hydraulic fracturing of the rock to create a system of cracks permitting trapped gas to flow into the wellbore more easily.

It is estimated that 200 trillion cubic feet of natural gas is trapped in tight formations within the United States. This compares with the 200 trillion cubic feet of proven conventional domestic gas reserves.

Legal basis: NGPA section 107(c)(5).

Major stages of completion	Date	FR Citation	Calendar quarter
NOPR issued	8/29/79 C	44 FR 52253 9/17/79.	'79:3rd.
Interim regulations issued.	2/6/80 C	45 FR 13414 2/28/80.	'80:1st.
Order issued	8/15/80 C	45 FR 56034 8/22/80.	'80:3rd.
Rehearing decision issued.	10/15/80 T		'80:4th.

Agency official: June Perin, Staff Attorney (202) 357–8473, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

24. Title: Pricing of Pipeline and Affiliate Production under the Natural Gas Act, Order 98

Docket Number RM80–6

Description: In the 1970's, the FPC sought to encourage development of supplies that would be "dedicated to interstate commerce." As part of this effort, the Commission decided to allow interstate pipelines and affiliated companies to value gas that they produced at prevailing area or nationwide rates. Until that time, gas produced by interstate pipelines or affiliated companies had been valued on the basis of the cost of production.

When the NGPA was enacted, Commission-determined area and nationwide rates were replaced with Congressionally-set prices for gas. However, Congress did not intend to disrupt Commission regulation of the interstate pipeline network and left the valuation of pipeline production sold in mixed volume sales (volumes that contain both pipeline and affiliate production and gas purchased from independent producers) to the Commission to determine under the NGA.

RM80–6 treats gas produced by pipelines and affiliates which is commingled with gas produced by independent producers and therefore subject to the Commission's pricing authority under the NGA. The Commission has determined that it is in the public interest to allow this gas to qualify for the applicable ceiling price set in the NGPA, except when a pipeline or affiliate had applied for and received a higher "special circumstances" cost-of-production rate. In these cases, the pipeline or affiliate has been guaranteed recovery of costs incurred in drilling the well plus a margin of profit and should continue to produce the gas at that price.

This rulemaking will allow pipelines to value their production subject to the NGA at current NGPA prices and should encourage pipelines to continue to develop new gas supplies.

Legal basis: NGPA section 2(21)(b),15 U.S.C. 2201, *et seq.*; NGA sections 4, 5, 6, as amended, 15 U.S.C. 717 *et seq.*

Major stages of completion	Date	FR Citation	Calendar quarter
NOPR	11/14/79 C	44 FR 66613 11/20/79.	'79:4th
Interim regulations issued.	NA		
Order issued	8/4/80 C	45 FR 53091 8/11/80.	'80:3rd.
Rehearing decision issued.	9/24/80 T		'80:3rd.

Agency official: Susan Tomasky, Staff Attorney (202) 357–8461, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

25. Title: Final Rule Governing Maximum Lawful Prices for Pipeline Distribution or Affiliate Production, Order 58

Docket Number RM80–7

Description: This rulemaking defines the term "first sale" with regard to sales of gas by pipelines, distribution companies or their affiliates that they have produced (as opposed to gas bought from independent producers). The circumstances under which sales of this gas will be considered first sales and therefore eligible for NGPA prices will be set out. "First sales" is a term which means that the sale is subject to the terms of the NGPA and is therefore eligible for NGPA prices. The term does not refer to the first time gas sold—hence, there may be a chain of first sales.

Ordinarily pipelines and distributors that produce gas do not sell it directly to a purchaser; they commingle it with gas purchased from other producers and sell the mixed volumes to the purchaser. A mixed volume sale is not a first sale because, in selling mixed volumes, the pipeline is acting in its capacity as transportation agent rather than as a producer.

Legal basis: NGPA sections 2(21)(A)(v) and 2(21)(B).

Major stages of completion	Date	FR citation	Calendar quarter
NOPR issued	N/A		
Interim regulations issued.	12/1/78 C		'78:4th.
Order issued	11/14/79 C	44 FR 66577 11/29/79.	'79:4th.
Rehearing decision issued.	9/24/80 T		'80:3rd.

Agency official: Susan Tomasky, Staff Attorney (202)357–8461, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

26. Title: Permanent Rule Defining Agricultural uses Exempt from Incremental Pricing under NGPA, Order 83

Docket Number RM80–28

Description: The NGPA provides that agricultural users of natural gas should be exempt from incremental pricing surcharges, provided the Commission determines that an alternative fuel is not econmically practicable or reasonably available. In making this determination, the Commission must consider what constitutes capability to burn an alternative fuel and what thresholds should be set in designating economically practicable and reasonably available fuels.

At present, agricultural uses of natural gas have been exempted on an interim basis until an "alternative fuel test" can be developed.

Legal basis: NGPA section 206(b).

Major stages of completion	Date	FR citation	Calendar quarter
NOPR issued	12/31/80 T		'80:4th.
Interim regulations issued.	N/A		
Order issued	3/31/81 T		'81:1st.
Rehearing decision issued.	TBD		

Agency official: Colette Bohatch, Staff Attorney (202)357–8140, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

27. Title: High Cost Gas: Deep Water

Docket Number RM80–38

Description: The Commission has proposed to officially designate gas produced from wells drilled in deep water as another type of "unconventional" or "high-cost" gas. This rulemaking is an outgrowth of the comments received in a Notice of Inquiry requesting that the public suggest categories of gas which might qualify as high-cost gas.

The production of gas from submerged acreage becomes more costly as offshore production moves deeper. Costs and risks escalate rapidly because specially designed exploratory vessels, drilling and production platforms, and other equipment are required.

The purpose of this rulemaking is to determine whether or not an incentive price should be established to encourage the development and production of gas from wells drilled in deep water.

Legal basis: NGPA section 107(C)(5).

Major stages of completion	Date	FR citation	Calendar quarter
NOPR issued	7/11/80 C	45 FR 47863 7/17/80.	'80:3rd.
Interim regulations issued.	N/A		
Order issued	12/31/80 T		'80:4th.
Rehearing decision issued.	TBD		

Agency official: Colette Bohatch, Staff Attorney (202)357–8140, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426.

28. Title: Definition of Agricultural Uses in Section 282.202(A) of the Commission's Regulation on Incremental Pricing

Docket Number RM80–48

Description: Congress provided that agricultural uses of natural gas should be exempt from incremental pricing surcharges because of concern about price increases for necessary items such as food and fiber products. Although the Congress provided general guidelines for exempting agricultural uses, the Commission was given discretion to set specific limitations on eligibility.

The Commission's definition of agricultural uses is based on the Standard Industrial Classification (SIC) codes, a series of standardized classifications of manufacturing, industrial and market activities in the U.S. In this rulemaking, the Commission is proposing to expand its original list of the SIC codes which will be considered agricultural uses of natural gas and will therefore be exempt from incremental pricing.

Legal basis: NGPA section 206(B).

Major stages of completion	Date	FR citation	Calendar quarter
NOPR issued	4/10/80 C	45 FR 25835, 4/16/80.	'80:2nd.
Interim regulations issued.	NA		
Order issued	10/1/80 T		'80:4th.
Rehearing decision issued.	TBD		

Agency official: Barbara Christin, Staff Attorney (202)357–8446, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

29. Title: High-Cost Natural Gas—Production Enhancement Procedures

Docket Number RM80–50

Description: This rule will encourage production of reserves of natural gas which are recoverable only by application of enhanced production techniques. These techniques are often too costly to apply at the prices available under the existing "intrastate" contracts governing natural gas covered by section 104 of the NGPA to which this rule would apply.

Supply enhancement procedures often become necessary in order to maintain or to increase production from a depleting well or a well in which production has become marginal. Supply enhancement procedures eligible under the proposed rule include: (1) re-entry into a well which has been plugged and abandoned: (2) re-entry into a well in order to drill deeper or start a side shaft; (3) re-perforation of the well casing or perforation into a separate gas producing zone; (4) repair or replacement of a faulty or damaged casing or related equipment in the well bore; (5) acidizing, fracturing or installation of compression equipment. Current regulations applicable to this gas do not allow sufficient flexibility to contracting parties to amend, to modify or renegotiate contracts in order to provide for production enhancement work.

The purpose of this rule is to set a ceiling price which is high enough to encourage production of reserves of natural gas recoverable only through production enhancement procedures. The Commission has proposed that gas produced with supply enhancement procedures applied after May 29, 1980 be eligible for an incentive price as high as the price for gas under section 109 of the NGPA. (In August 1980, the price for section 109 gas was $1.72 per million Btu's.)

Legal basis: NGPA sections 107 and 501.

Major stages of completion	Date	FR citation	Calendar quarter
NOPR issued	7/25/80 C	45 FR 51219, 8/1/80.	'80:3rd.
Interim regulations issued.	NA		
Order issued	10/1/80 T		'80:4th.
Rehearing decision issued.	TBD		

Agency official: Jeffrey Fink, Staff Attorney (202) 357–8460, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Introduction to Regulations Under NGPA Section 110

The six rulemakings which follow concern state severance taxes on resource extraction and production-related costs which, in some cases, may legitimately be collected over and above the maximum lawful price set for the gas in the NGPA. The purpose of section 110 of the NGPA and the Commission's regulations implementing this section is to ensure that producers can promptly collect for these taxes and certain, specific production-related costs which the Commission determines are legitimate.

The Commission, in providing for collection of state severance taxes and production-related costs, is seeking to establish a workable set of rules for natural gas pricing and to increase deliveries of properly compressed, treated and processed gas for shipment to ultimate consumers. At the same time, the Commission seeks to do so without shifting unwarranted costs to consumers.

30. Title: NGPA Section 110, State Severance Taxes

Docket Number RM80–21

Description: This rulemaking sets out the conditions under which state severance taxes on resource extraction may be added to the maximum lawful prices for gas covered under sections 105 and 106(b) of the NGPA. Sections 105 and 106(b) generally apply to gas which was sold in intrastate commerce at the time the NGPA was enacted. The Commission is considering this gas separately because the contracts under which it is sold often provide for recovery of state severance taxes in the contract price.

Legal basis: NGPA section 110.

Major stages of completion	Date	FR citation	Calendar quarter
NOPR issued	1/16/80 C	45 FR 5747 1/24/80.	'80:1st.
Interim regulations issued.	N/A		
Order issued	TBD		
Rehearing decision issued.	TBD		

Agency official: Teresa Ponder, Staff Attorney (202) 357–8151, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

31. Title: Interim Regulations Implementing NGPA Section 110 (Subpart K, Pt. 271) "Production-Related Costs," Order 94

Docket Number RM80–47

Description: These regulations will have a major impact on who pays for certain services necessary for natural gas production and transportation to consumers and how much will be paid for those services. These services are considered to be production-related costs (rather than costs of production which should be covered by the maximum lawful price).

The interim regulations covering collection of production-related costs defined who could apply for these costs, what costs could be applied for and how an application should be made. The regulations were based on an

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expensive and time-consuming process of case-by-case ruling on applications.

In July 1980, the FERC amended the interim regulations to provide that certain, minimal types of production-related costs could be automatically added to a sales price without further administrative action or delay. The amendments also isolated the two most important types of production-related costs—costs for gathering or collecting gas from individual wells and channeling it into the main pipeline and for compression or pressurizing the gas so that it will flow through the pipeline. Appropriate costs for gathering and compression will be determined in separate rulemakings so that these costs may also be automatically added to the sales price. The results of these separate rulemakings will eventually be integrated into this rule.

In some cases, production-related costs are paid for by the pipeline purchasing the gas instead of the producer. A policy describing the types of production-related costs that the Commission will consider for inclusion in the pipeline's rates was contained in the July amendments, further simplifying administrative proceedings.

To finalize this rulemaking, the Commission must conclude its inquiry into appropriate sales price add-ons for gathering and compression and review the policies contained in the July amendments.

Legal basis: NGPA section 110, NGA sections 4, 5 and 7.

Major stages of completion	Date	FR citation	Calendar quarter
NOPR issued	N/A		
Interim regulations issued.	7/25/80 C	45 FR 52866 8/6/80.	'80:3rd.
Order issued	12/17/80 T		'80:4th.
Rehearing decisions issued.	TBD		

Agency official: John Conway, Attorney-Advisor (202) 357–8150, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

32. Title: NGPA Section 110, Production Cost Rule

Docket Number RM80–72

Description: This rulemaking complements other proceedings under section 110 of the NGPA. These regulations will specify which costs must be considered as production costs and therefore covered by the maximum lawful price. These costs may *not* be claimed as production-related costs and may *not* be added over and above the maximum lawful prices set in the NGPA.

Legal basis: NGPA section 110.

Major stages of completion	Date	FR citation	Calendar quarter
NOPR issued	9/10/80 C	45 FR 61643 9/17/80.	'80:3rd.
Interim regulations issued.	N/A		
Order issued	12/31/80 T		'80:4th.
Rehearing decision issued.	TBD		

Agency official: John Conway, Attorney-Advisor (202) 357–8150, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

33. Title: NGPA Section 110, Gathering Allowance

Docket Number RM80–73

Description: This proceeding was initiated to inquire into the cost of gathering facilities to bring natural gas from the wellhead to the main pipeline. The Commission must set a maximum charge that can be added on to the maximum lawful price set in the NGPA as a production-related cost. Once completed, the results of this rulemaking will be incorporated into the regulations on production-related costs.

Legal basis: NGPA section 110.

Major stages of completion	Date	FR citation	Calendar quarter
NOPR issued	10/22/80 T		'80:4th.
Interim regulations issued.	N/A		
Order issued	12/31/80 T		'80:4th.
Rehearing decision issued.	TBD		

Agency official: John Conway, Attorney-Advisor (202) 357–8150, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

34. Title: NGPA Section 110, Compression Allowance

Docket Number RM80–74

Description: This rulemaking was initiated to inquire into the cost of compressing natural gas so that it will flow through the gathering system to the main pipeline. The Commission must set a maximum charge that can be added, as a production-related cost, on to the maximum lawful price set in the NGPA. The results of this rulemaking will be incorporated into the regulations on production-related costs.

Legal basis: NGPA section 110.

Major stages of completion	Date	FR citation	Calendar quarter
NOPR issued	10/22/80 T		'80:4th.
Interim regulations issued.	N/A		
Order issued	TBD		
Rehearing decision issued.	TBD		

Agency official: John Conway, Attorney-Advisor (202) 357–8150, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

35. NGPA Section 110—New Filing Requirements

Docket Number RM80–76

Description: The Commission instituted this rulemaking to inquire into which costs incurred by natural gas pipelines after purchasing gas at the maximum lawful price can legitimately be charged to consumers as a necessary expense to deliver the gas. These charges could include gathering, compression, expenses for processing the gas and other expenses when not incurred by the producer prior to selling the gas.

Legal basis: NGPA section 110.

Major stages of completion	Date	FR citation	Calendar quarter
NOPR issued	9/10/80 C	45 FR 61641, 9/17/80.	'80:3rd.
Interim regulations issued.	N/A		
Order issued	12/31/80 T		'80:4th.
Rehearing decision issued.	TBD		

Agency official: John Conway, Attorney-Advisor (202) 357–8150, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

36. Title: Rule Required Under Section 202 of NGPA—Phase 2 Incremental Pricing Program, Order 80

Docket Number RM80–10

Description: The NGPA required that the Commission develop regulations extending the incremental pricing program to industrial users of natural gas other than boiler fuel users. These Phase II regulations were to be reviewed by Congress before an extension of the program could be made effective.

The Congress vetoed the Phase II incremental pricing regulations, but the Commission is still considering the Phase II rule.

Legal basis: NGPA section 202(A)(1).

Major stages of completion	Date	FR citation	Calendar quarter
NOPR issued	11/15/79 C	44 FR 67170 11/23/79.	
Interim regulations issued.	NA		
Order issued	5/6/80 C	45 FR 31622 5/13/80.	
Rehearing decision issued.	7/30/80 C	45 FR 54741 8/18/80.	

Agency official: Barbara Christin, Staff Attorney (202)357–8446, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Introduction to Regulations Under the Natural Gas Act

The Natural Gas Act was enacted in 1938 to establish federal regulation of the interstate natural gas pipeline system. The Act authorized the Federal Power Commission to set rates and charges for interstate transportation and sale of natural gas (under usual circumstances, the pipelines buy gas from producers, transport it and resell it to wholesale customers), to approve and certificate new pipeline facilities or abandonment of existing pipeline facilities, and to approve initiation or abandonment of service.

Interstate natural gas pipelines are regulated as public utilities. They are granted a monopoly in serving certain regions of the country. Because competition has been excluded, their rates and services are federally-controlled.

Under the original interpretation of the Act, the prices at which natural gas was sold at the wellhead were not federally regulated. However, in 1954, the Supreme Court ruled that the NGA required federal regulation of the price of gas at the wellhead, if the gas was to be sold in "interstate commerce." The Court accepted the argument that because pipelines are allowed to "Pass through" to customers the cost of purchasing gas, customers should be protected from "excessive" prices at the wellhead.

So the FPC undertook to set prices based on the costs of production of each well selling gas to interstate pipelines. At that time, there were over 20,000 producing wells, and the Commission eventually developed more general pricing policies which were initially based on average production costs in specific geographic areas and later on nationwide average costs. This scheme of "wellhead pricing" has now been largely superseded by the NGPA.

37. Title: Compensation Provisions on Curtailment Plans

Docket Number RM76–4

Description: In order to be prepared for natural gas shortages, interstate pipelines must develop curtailment plans, that is, priorities for the allocation of natural gas among customers when supply is inadequate to meet total demand. Customers who cannot use alternate fuels or who, if curtailed, might not be able to meet their obligations to human health and welfare—residential users, schools and hospitals—are given highest priority. Industrial users burning gas under boilers for industrial processes or to generate electricity can generally substitute fuel oil for natural gas and are usually given lowest priority.

Some industrial users were heavily curtailed during the natural gas shortages of 1967–1977. Those users were forced to switch to fuel oil which was considerably more expensive than gas at that time. They contend that all the customers on a pipeline system—both low priority and high priority—should share the economic impact of curtailment, and that they should therefore be compensated by customers who were not curtailed for their expenditures for higher priced fuels.

The FERC initiated this rulemaking to determine whether industrial users curtailed during the shortage of 1976–1977 should be entitled to compensation and whether compensation provisions should be included in curtailment plans in the future; while the FERC recently decided to terminate this rulemaking, the Commission will continue to address these issues on a case-by-case basis.

Legal basis: NGA, FPA.

Major stages of completion	Date	FR citation	Calendar quarter
NOPR issued	11/30/77 C	42 FR 62518 12/16/77.	'77:4th.
Interim regulations issued.	NA		
Order issued	8/4/80 C	45 FR 5354 8/15/80.	'80:3rd.
Rehearing decision issued.	10/1/80 T		'80:4th.

Agency official: John Conway, Attorney-Advisor (202)357–8150, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

38. Title: Transportation Certificates for Natural Gas Displacements of Fuel Oil, Order 30

Docket Number RM79–34

Description: Some of the electricity produced in this country is generated by burning gas or oil to heat water which in turn produces steam to power generating turbines. Most utilities that burn gas or oil can burn either fuel and it is in the national interest in the short run to replace as much foreign oil as possible with domestic natural gas—as long as a surplus exists over and above supplies necessary to ensure that the needs of high priority customers dependent on natural gas are met.

This program allows electric utilities and certain other large oil-burning facilities who buy gas directly from producers, distributors, or pipelines to obtain transportation from the well to power plant sites through interstate pipeline systems. In some circumstances, transportation arrangements under the program are self-executing and do not require advance FERC approval, but only an after-the-fact report to FERC.

The program is short term, since it is based on the existence of surplus natural gas supplies, a situation which may only continue for a limited period of time. The original program was initiated in May of 1979 to run for a one-year period (FERC Order No. 30). It was extended for three months in May of 1980 while the Commission surveyed the natural gas supply situation. After finding that surplus gas was still available and was likely to be available for the immediate future, the Commission extended the program until May 31, 1981.

If the current surplus persists beyond the expiration of Order No. 30, the Commission anticipates replacing this and other direct sales programs with a more effective mechanism to disburse excess gas supplies.

Legal basis: NGA section 7[c], NGPA section 311.

Major stages of completion	Date	FR citation	Calendar quarter
NOPR issued	N/A		
Interim regulations issued.	5/15/80 C	45 FR 34264 5/22/80.	'80:2nd
Order issued	8/13/80 C	45 FR 56046 8/22/80.	'80:3rd
Rehearing decision issued.	10/1/80 T		'80:4th

Agency official: Robert Platt, Staff Attorney (202) 357–8457, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

39. Title: Fees Applicable to Natural Gas Pipeline Construction

Docket Number RM79–63

Description: The NGA requires that interstate natural gas pipeline companies obtain a certificate of public convenience and necessity before building new pipeline facilities. It is the Commission's task before issuing a certificate to ascertain that the new pipeline facilities are necessary; that there are adequate supplies of natural gas available to the pipeline to support the cost of construction; that the pipeline company's construction plans can be completed at a reasonable cost.

Consumers ultimately pay for the cost of building the facilities that bring them natural gas. Charges to cover those costs are added to each unit of natural gas that flows through the pipeline, and therefore it is essential that there are adequate supplies of gas and that pipeline construction costs are reasonable so that the cost of each unit of gas is reasonable.

The purpose of this rulemaking is to review the Commission's present fee structure and to consider alternative fee structures.

Legal basis: NGA, DOE Act.

Major stages of completion	Date	FR citation	Calendar quarter
NOPR issued	TBD		
Interim regulations issued.	N/A		
Order issued	TBD		
Rehearing decision issued.	TBD		

Agency official: Sheldon Toibb, Staff Attorney (202) 357–5225, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

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40. Title: Revisions to Form FPC–2, Annual Report for Natural Gas Companies (Class A and B)

Docket Number RM80–56

Description: Revisions in this form—a major source of information on gas pipelines regulated by the FERC—are part of the Commission's effort to reduce paperwork and reporting requirements where possible. The proposal would eliminate information which is no longer necessary or duplicates information submitted to meet other requirements. The Commission is applying a strict test based on a clear need for data and will seek to require only information actually used in FERC decisionmaking processes.

Form 2 must be filed yearly by natural gas pipeline companies with annual operating revenues of $1 million or more. Form 2 requires the pipeline to submit general corporate information and financial, operating and other statistical information. The proposed rules would delete about 19 percent of the required information, or 36,700 hours of work on the part of regulated industries.

Legal basis: NGA sections 10(a) and 16.

Major stages of completion	Date	FR citation	Calendar quarter
NOPR issued	7/1/80 C	45 FR 46075 7/9/80.	'80:3rd
Interim regulations issued.	NA		
Order issued	10/22/80 T		'80:4th
Rehearing decision issued.	TBD		

Agency official: Cathy Ciaglo, Staff Attorney (202) 357–8318, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Introduction to Miscellaneous Regulations

Rulemakings in this section apply to more than one of the major sectors regulated by the Commission, or originate in a statute which applies to all federal agencies, rather than giving specific responsibilities to the Commission.

41. Title: Tax Normalization

Docket Number RM80–42

Description: Tax normalization matches the tax deductions associated with expenses to the "recognition" of the expenses by a regulatory body that decides when that expense can be recovered from consumers in rates. Because regulatory agencies seek to ensure that only consumers who benefit from an expense are required to reimburse a regulated company for that expense, the expense is not always included in rates in the same year as the expense was made.

For example, utilities may not include construction expenses in their rates until the plant is operational and consumers are actually receiving power. However, the IRS gives tax deductions resulting from interest on construction loans in the year that the interest is paid, i.e., before the plant becomes operational.

If a utility normalizes tax deduction and expenses, this means that the expense will be treated as a tax deduction for purposes of calculating the taxes covered from consumers in the same year that a regulatory agency has authorized the utility to collect the expense from consumers.

A staff study conducted for this rulemaking concludes that, over time, there is no significant difference in ratea to consumers if tax normalization or if the alternative method of "flow through" (passing tax deduction through to consumers when received, regardless of when the expense will be recognized by the regulatory agency) is used. As a result and because it is more equitable to allocate the tax benefit associated with a particular expense to the same customers who pay the expense, these regulations will allow regulated companies to use tax normalization in computing their rates.

Legal basis: FPA sections 205 and 206, DOE Act section 402.

Major stages of completion	Date	FR citation	Calendar quarter
NOPR issued	3/31/80	45 FR 20531 4/3/80.	'80:1st.
Interim regulations issued.	NA		
Order issued	11/5/80 T		'80:4th.
Rehearing decision issued.	TBD		

Agency official: John Conway, Attorney-Advisor (202) 357–8150, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

42. Title: National Environmental Policy Act

Docket Number RM79–69

Description: The enactment of the National Environmental Policy Act of 1969 (NEPA) signaled a new era of governmental concern for the environment. The purpose of the Act is to require consideration of the consequences of the actions of federal agencies on the environment. The Act added a new stage in the planning and preparation of every major action in which federal government is involved—the environmental impact statement (EIS). NEPA also created the Council on Environmental Quality (CEQ) to review and report on the environmental impacts created by programs and activities of all levels of government and private enterprise.

While the FERC is bound by NEPA requirements, it is exempt from CEQ review because it is an independent regulatory agency. However, certain of the Commission's actions—primarily issuance of hydroelectric project licenses and natural gas pipeline certificates—are likely to have a significant impact on the environment and in these and other instances, the Commission must ensure that the intent of NEPA is carried out.

Therefore, the Commission, in this rulemaking, is voluntarily revising its procedures under NEPA to conform, as much as possible, to the new standards recently issued by CEQ. The major goal of this proposed rule is to specify the kinds of environmental data that must be submitted by applicants for the range of permits and certificates issued by the FERC.

Legal basis: NEPA.

Major stages of completion	Date	FR citation	Calendar quarter
NOPR issued	8/20/79 C	44 FR 50052 8/27/79.	'79:3rd.
Interim regulations issued.	NA		
Order issued	TBD		
Rehearing decision issued.	TBD		

Agency official: James Hoecker, Staff Attorney (202) 357–9342, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Appendix A

Information Available at the FERC, Division of Public Information (Reprinted from Title 18, Code of Federal Regulations, § 1.36)

(c) *Public records.* The public records of the Commission, available for inspection and copying upon a request reasonably describing the document, during business hours in the public reference room maintained by the Office of Public Information, include: (1) All submittals and filings as follows: (i) Applications, declarations, complaints (both formal and informal), petitions and other papers seeking Commission action;

(ii) Financial and statistical and other reports to the Commission, power system statements, statements of claimed cost of licensed projects, original cost and reclassification studies, proposed accounting entries, certificates of notification (under section 204(e) of the Federal Power Act), rates or rate schedules and related data and concurrences, and other filings and submittals to the Commission in compliance with the requirement of any statute, executive order, or Commission rule, regulation, order, license, or permit;

(iii) All answers, replies, responses, objections, protests, motions, stipulations, exceptions, other pleadings, notices, depositions, certificates, proofs of service, transcripts or oral arguments, and briefs in any matter or proceeding;

(iv) All exhibits, attachments and appendices to, amendments and corrections of, supplements to, or transmittals or withdrawals of, any of the foregoing;

(v) Any Commission correspondence relating to any of the foregoing;

(2) All other parts of the formal record in any matter or proceeding set for formal or statutory hearing and any Commission correspondence related thereto. "Matter or proceeding" means the Commission's elucidation of the relevant facts and applicable law, consideration thereof, and action thereupon with respect to a particular subject within the Commission's jurisdiction, initiated by a filing or submittal or a Commission notice or order. "Formal record" includes in addition to all the filings and submittals in a matter or proceeding, any notice or Commission order initiating the matter or proceeding, and, if a hearing is held, the following: The designation of the presiding officer, transcript of hearing, all exhibits received in evidence, all exhibits offered but not received in evidence, offers of proof, motions, stipulation, subpeonas, proofs of service, reference to the Commission, and determinations made by the Commission thereon, certifications to the Commission, and anything else upon which action of the presiding officer or the Commission may be based; it does not include any unaccepted offer of settlement made by a party in the course of a proceeding and not formally submitted to the Commission.

(3) Any proposed testimony or exhibit filed with the Commission but not yet offered or received in evidence.

(4) All presiding officer actions and all presiding officer correspondence and memoranda to or from others with the exception of internal communications within the Office of Administrative Law Judges.

(5) All Commission orders, notices, findings, opinions, determinations, and other actions in any matter or proceeding and all Commission minutes which have been approved.

(6) All Commission correspondence relating to any furnishing of data or information, except to or by another branch, department, or agency of the Government.

(7) Commission correspondence with respect to the furnishing of data, information, comments, or recommendations to or by another branch, department, or agency of the Government where furnished to satisfy a specific requirement of a statute or where made public by that branch, department or agency.

(8) Commission correspondence and reports on legislative matters under consideration by the Bureau of the Budget or Congress but only if and after made public or released for publication by that Bureau or the Committee or Member of Congress involved.

(9) Staff reports on statements of claimed cost by licensees where such reports have been served on the licensee.

(10) Commission correspondence on interpretation of the Uniform System of Accounts and letters on such interpretation signed by the Chief Accountant and sent to other than the Commission, a Commissioner, or any of the staff.

(11) Copies of all filings, certifications, pleadings, records, briefs, orders, judgments, decrees, and mandates in court proceedings to which the Commission is a party and all correspondence with the courts or clerks of court.

(12) The Commission's Administrative and Operating Manuals.

(13) Transcripts, electronic recordings, or minutes of Commission meetings closed to public observation containing material nonexempt pursuant to § 1.3a of this Part.

(14) All other records of the Commission except for those that are: (i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order;

(ii) Related solely to the internal personnel rules and practices of an agency;

(iii) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(iv) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(v) Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(vi) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy

(vii) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would interfere with enforcement proceedings, deprive a person of a right to a fair trial or an impartial adjudication, constitute an unwarranted invasion of personal privacy, disclose the identity or a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, disclose investigative techniques and procedures, or endanger the life or physical safety of law enforcement personnel; or

(viii) Geological and geophysical information and data, including maps, concerning wells.

(15) Any reasonably segregable portion of a record after deletion of the portions which are exempt under this section.

(16) The following are examples or information which is not part of the public records of the Commission: (i) Files and records containing facts or information not permitted to be divulged by section 301 of the Federal Power Act or section 8 of the Natural Gas Act because knowledge thereof was gained during the course of examination of books, records, data, or accounts pursuant to those sections and divulgence thereof has not been ordered by the Commission;

(ii) Files and records classified under Executive Order No. 10501, 3 CFR, 1949–53 Comp., p. 979, for national security purposes;

(iii) Written communications between or among the Commission, members of the Commission, the Secretary, and expressly designated members of the staff while particularly assigned, in accordance with all applicable legal requirements, to aid the Commission in the drafting of any order and findings, with or without opinion in any matter or proceeding;

(iv) Unaccepted offers of settlement in any matter or proceeding unless or until made public by act of the offeror.

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Part V

Environmental Protection Agency

Submission of Notice of Manufacture or Importation of Polybrominated Biphenyls (PBBs) and Tris; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 713

[OPTS-081005a; TSA FRL 1594-2]

Submission of Notice of Manufacture or Importation of PBBs and Tris

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This rule requires that the Environmental Protection Agency be notified of any manufacture or importation of polybrominated biphenyls (PBBs) and tris (2,3-dibromopropyl) phosphate (Tris). The purpose of the notice requirement is to confirm that there are no significant sources of these substances and to ensure that EPA has the opportunity to investigate the circumstances of any resumption of production. This notice promulgates the regulations proposed on October 12, 1979, in the Federal Register (44 FR 59106).

EFFECTIVE DATE: November 24, 1980.

FOR FURTHER INFORMATION CONTACT: John Ritch, Director, Industry Assistance Office, Office of Pesticides and Toxic Substances (TS-799), Environmental Protection Agency, Washington, DC 20460, 800-424-9065; in Washington call (202) 554-1404.

SUPPLEMENTARY INFORMATION:

Background

There is significant evidence that PBBs and Tris may present risks to health and the environment. They have apparently gone out of production. One company does import PBB impregnated plastic granules that are used in the manufacture of electrical equipment housings, but it is expected that no exposure to PBBs results from this use. The purpose of this notice requirement is to confirm that the substances are no longer being manufactured or imported *per se*, and to ensure that EPA has the opportunity to investigate the circumstances of any resumption of production.

On October 13, 1977, EPA announced in the Federal Register (42 FR 55134) its intent to investigate the need to control PBBs under the Toxic Substances Control Act (TSCA). EPA prepared a hazard assessment document evaluating the known health and environmental effects of PBBs. The assessment indicated that PBBs are embryotoxic, mutagenic, teratogenic, and potentially carcinogenic. Also, they are persistent in the environment and bioaccumulate.

On April 8, 1977, the Consumer Product Safety Commission acted to ban the use of Tris in children's wearing apparel after Tris was found to be an animal carcinogen (see 42 FR 18850-18851). All production of Tris in the United States apparently stopped by the end of 1977.

Since these chemical substances are apparently not in production *per se*, the Agency has decided that control action is not warranted at this time. Therefore, the Agency has determined that a reporting rule promulgated under section 8(a) of TSCA (15 U.S.C. 2607(a)) is the appropriate course of action. For a more in-depth discussion of the background of these substances and EPA's rationale for subjecting them to a reporting requirement under section 8(a), see the October 12, 1979 proposed rule, 44 FR 59106-59107.

This section 8(a) rule requires notification to EPA of the manufacture or import of PBBs or Tris, or the proposal to manufacture or import PBBs or Tris. After receipt of a notice, EPA will determine, through follow-up investigation, whether the activity may present an unreasonable risk to health or the environment. If EPA finds that an unreasonable risk may result, EPA will consider additional regulatory action to control the proposed PBB or Tris activity, including a ban under section 6 of TSCA (15 U.S.C. 2605).

Definitions

For the purposes of this rule, the term "PBBs" (polybrominated biphenyls) means chemical substances the compositions of which, without regard to impurities, consist of brominated biphenyl molecules having the molecular formula $C_{12}H_xBr_y$, where $x+y=10$ and y ranges from 1 to 10. "PBBs" refers to discrete chemical substances (e.g., monobromobiphenyl, heptabromobiphenyl, octabromobiphenyl, etc.) as well as combinations of PBBs that occur in whole or part as a result of a chemical reaction. See TSCA, section 3(2). However, the reporting requirements of this rule are limited to those PBBs which have been reported for the Inventory and revised Inventory—4,4'-dibromobiphenyl, hexabromobiphenyl, octabromobiphenyl, nonabromobiphenyl, and decabromobiphenyl. Manufacture or import of other PBBs will, of course, require a premanufacture notice.

The term "Tris" refers to tris(2,3-dibromopropyl) phosphate.

"Propose to manufacture or import PBBs or Tris" for purposes of this rule means that a person has made a firm management decision to commit financial resources for the manufacture or import of PBBs or Tris. EPA is not exercising the full extent of its authority to obtain information from persons who "propose" to manufacture or import chemicals because the Agency has decided that this rule will serve its purpose if the Agency is informed of a company's intentions at the time the company has committed financial resources to produce the affected chemicals.

EPA recognizes that the point at which a company "proposes to manufacture or import" a chemical substance under this rule may vary considerably from company to company.

"Small manufacturer or importer" means a manufacturer or importer with total annual sales of less than $500,000. However, no person is a small manufacturer or importer with respect to PBBs or Tris manufactured or imported in quantities greater than 10,000 pounds. Thus, a notice would have to be submitted by a manufacturer or importer if PBBs or Tris were manufactured or imported in quantities greater than 10,000 pounds.

Requirements

TSCA section 8(a) authorizes the Administrator to promulgate rules under which each person (other than a small manufacturer or processor), who manufacturers or processes or who proposes to manufacture or process a chemical substance or mixture, shall submit such reports as the Administrator may reasonably require. The principal purpose of the rule is to alert EPA to the manufacture of PBBs or Tris. Under this rule, the reporting requirement consists of a notice to EPA stating that a person is manufacturing, importing or proposing to manufacture or import PBBs or Tris as a chemical substance in bulk or as part of a mixture. This rule does not apply to processors.

Since under TSCA to "manufacture" includes to import, introduction of PBBs or Tris into the United States in bulk or as part of a mixture is also subject to reporting. Requiring reporting by importers of PBBs and Tris as part of a mixture is necessary for the effectiveness of the rule, to enable the Agency to investigate the introduction of either chemical into the U.S.

The notice will include company name and address; principal technical contact; a description of the use or intended use for PBBs or Tris; estimated exposure during manufacture or importation, disposal, processing, distribution, and use; estimated production volume; and, as appropriate,

the proposed date for the resumption of manufacture or import of PBBs or Tris.

EPA considers most of the above information, such as estimated exposure during manufacture, estimated production volume, proposed date for the resumption of manufacture, and other information about the manufacturer's own activities to be information that would be known to the manufacturer. Other information, as it may pertain to customer activities—such as a description of use or intended use or estimated exposure during disposal, processing, distribution, or use—would be considered reasonably ascertainable if the manufacturer could obtain the required information from persons with whom he is dealing.

Persons not subject to the rule include (a) small manufacturers or importers as defined in § 713.11(1); (b) persons who manufacture or import or who propose to manufacture or import PBBs or Tris solely for research and development or as a byproduct or impurity; and (c) persons who import or propose to import PBBs or Tris as part of an article.

The decision to exempt importers of articles from the requirements of this rule is consistent with previous Agency reporting provisions for the Inventory (42 FR 64572 *et seq.*) and the proposed premanufacture notification regulations (44 FR 2242 *et seq.*). These importers would be exempt from this rule because EPA believes that articles containing PBBs do not pose a significant risk to health and the environment, and that, in many instances, importers of articles containing plastic components would not be aware that they contained PBBs. Importers of Tris-treated or Tris-containing articles would also likely not know that they were importing Tris. Moreover, CPSC's rules preclude use of Tris in children's wearing apparel and hence, import of Tris as part of children's wearing apparel is prohibited. This has been the use of greatest concern.

Confidentiality

Any person submitting a notice may claim any part or all of the notice as confidential. Information which is claimed confidential will be disclosed by EPA only to the extent permitted and by means of the procedures set forth in the Agency's business confidentiality rules, 40 CFR Part 2.

Public Comments

During the 60-day comment period following the October 12, 1979 proposal, only seven persons submitted comments. For the most part, the comments were directed at the proposed small business definition and general section 8 authority. The Chemical Manufacturers Association (CMA) submitted numerous comments about section 8 authority in general. CMA in particular notes that the focus of this rule is highly specific and that the proposal represents a useful model for future reporting requirements. CMA urges the Agency to adhere to this model as it develops additional proposals under section 8(a). EPA notes, however, that the highly specialized nature of this rule may not be appropriate when the Agency needs more comprehensive data. In such cases EPA must exercise the broader authority available under section 8(a). EPA does agree with CMA that the Agency must exercise such broader authority in a reasonable and prudent manner and welcomes recommendations from the Association to assist the Agency in effectively using its information gathering authority.

Comment 1: CMA notes that section 8(a)(2) contains a list of subjects about which the Administrator may require records to be kept and reports to be made. This list, consisting of seven categories, includes various information relating to exposure, use, disposal, production volumes, and byproducts. CMA states that the list is all inclusive and represents the only information that EPA may use its reporting authority to obtain.

Response: Since, as CMA admits, this rule does not require reporting of information not on the enumerated list, CMA's comment is not relevant to this rule.

EPA notes, however, that it disagrees with CMA's interpretation. Section 8 is meant to provide information relevant to whether chemicals present unreasonable risks.

EPA interprets the information listed in section 8(a)(2) to illustrate kinds of general information that Congress foresaw as being relevant to determine whether unreasonable risks exist. Nothing in the language of the Act or the legislative history indicates that other information relevant to this determination is excluded from section 8(a). The Legislative History of TSCA very plainly supports EPA's interpretation. (H.R. Rep. No. 94-1679, 94th Cong., 2d. Sess. 80 (1976)).

Comment 2: CMA notes that under section 8(a)(1)(B) of TSCA, reporting requirements which apply to manufacturers (or importers) of mixtures must be "necessary for effective enforcement of this Act." CMA interprets this "necessary for effective enforcement" standard to mean that EPA must need the information to assure that the reporting persons are in compliance with the Act's substantive requirements. The rule proposal indicates that EPA was considering requiring reporting from (1) persons who manufacture mixtures of PBBs and other chemicals, (2) persons who import articles containing PBBs,[1] and (3) persons who import mixtures containing PBBs. CMA argues that the "necessary for effective enforcement" determinations must be made for each of these categories of persons.

Response: The final rule does not require reporting from the first two categories of persons described above. For persons in the United States only the manufacturers of the chemicals themselves must report.[2] Mixture manufacturers are not subject to this rule. Importers of articles are specifically exempt from this rule.

The rule does require reporting by persons who import mixtures containing PBBs or Tris. EPA considers these persons importers of the chemical substances contained in the mixtures. They would be, under TSCA, manufacturers of the chemical substances. For purposes of this rule, therefore, the "necessary for effective enforcement" standard does not apply to these importers.

Nevertheless, EPA disagrees with CMA's interpretation of the "necessary for effective enforcement" standard. EPA believes the phrase should be broadly interpreted in order to enable the Agency to obtain adequate data to protect against unreasonable risks. The "necessary or effective enforcement" standard applies to administrative functions rather than only compliance functions and is designed to prevent EPA from requiring reporting from persons who deal only with mixtures if the Agency could obtain the needed information from manufacturers and processors of substances. This interpretation is supported in the legislative history of the Act.

[1] In responding to EPA's statement that the Agency is considering extending the rule to persons who import articles containing PBBs or Tris (44 F.R. 59108), CMA first argues that EPA does not have statutory authority to require reporting by manufacturers or importers of articles, but then notes for the sake of argument that if EPA considers articles a subcategory of mixtures EPA must make the determination that requiring reports on article importing is "necessary for effective enforcement." EPA has decided not to require reporting from importers of articles containing PBBs or Tris. However, the Agency may exercise authority over importers of articles in other section 8 rules.

[2] Note that under the definition of PBBs, a person who reacts biphenyl and bromine and gets a reaction product composed of hexabromobiphnyl and octabromobiphenyl must report as a manufacturer of two chemical substances—hexa- and octa-bromobiphenyl.

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The Committee has specified a different standard for requiring reporting for manufacturers or processors of mixtures and research substances because the Committee anticipates that in implementing its regulatory functions the need for information from such manufacturers or processors will not be as great as it will be with respect to other manufactuers or processors. (H.R. Rep. No. 1341, 94th Cong. 2d. Sess., 41 (1976)).

In those cases where there is no other practical way to obtain necessary information on a chemical substance except from persons who manufacture or process mixtures containing that substance, EPA may require those persons to report. If importers of mixtures of PBBs or Tris were considered importers of mixtures for purposes of this rule, EPA could still require reporting from them under the "necessary for effective enforcement" standard. Otherwise, significant amounts of the chemicals could enter the country without EPA's knowledge.

EPA's interpretation is further reinforced by a further statement from Senator Magnuson in the floor debates on the TSCA Conference Report. He emphasized that

"The phrase 'effective enforcement of this Act', should be used broadly. It is not meant to imply that such records and reports may only be required in order to effectively bring an enforcement action under section 16. Rather it should be interpreted to mean requiring records and gathering reports so that authorities of this Act may be invoked if necessary." 122 Cong. Rec. 516, 804 (daily ed. Sept. 28, 1976).

Comment 3: With respect to the proposed small business exclusion, CMA points out that small business standards under section 8 require consultation with the Small Business Administration. CMA argues, further, that section 8(a) provides for one exemption for small manufacturers that applies to all section 8 rules, not the *ad hoc* approach currently taken by EPA.

Response: The Small Business Administration has been consulted about the present rule. As to the single small business exclusion, EPA believes that standards of general section 8 applicability are desirable. We are presently conducting an economic analysis to support generic standards, and plan to propose such standards as soon as practical. The rule-by-rule approach will continue until the generic standards are adopted.

EPA notes that section 8 requires the Agency to develop *standards* for determining the Small Business Exemption. These standards could apply differently depending on the needs and requirements of the applicable rule.

Comment 4: Section 713.11 of the proposed rule defines "propose to manufacture" as a "management decision to commit financial resources toward the manufacture * * *." CMA has suggested a revision of the definition to say, "a *firm* management decision to commit financial resources *for* the manufacture * * *" This revision, it is suggested, will avoid requiring reports from companies that have merely decided to spend a small amount of money on tentative explorations of market possibilities and may or may not actually decide to manufacture the chemical.

Response: For purposes of this rule *only*, we have decided to adopt the suggested revision. The definition of "propose to manufacture PBBs or Tris" has been changed accordingly (see § 713.11(k)). EPA, however, disagrees with CMA's interpretation that *under the statute* the definition of "propose to manufacture" turns on whether or not a company has made a firm management decision.

Comment 5: CMA states that EPA must redefine the term "manufacture for commercial purposes" to exclude byproducts and impurities. CMA asserts that the Agency lacks the statutory authority to require recordkeeping and reporting under section 8 as to these chemicals that have no commercial potential of their own and are produced only as an inadvertent result of manufacturing or processing some other chemical.

Response: We disagree with this comment. EPA interprets the term "manufacture for commercial purposes" to refer to such activities conducted, in whole or in part, for the purpose of obtaining a commercial advantage for the manufacturer.

Chemicals that occur as byproducts or the impurities from the manufacturing of other chemicals are considered to be manufactured "for commercial purposes" even though they may have no commercial purpose separate from the substance, mixture or article to which they are incidental. See Inventory Reporting Regulations 40 CFR Part 710, 4(d); 42 FR 64577 (1977).

Since EPA considers impurities and byproducts to be manufactured "for commercial purposes", the Agency asserts that it has the statutory authority to require recordkeeping and reporting under section 8.

Comment 6: The definition of PBBs includes both monobromobiphenyls and compounds with two or more bromine substitutions per biphenyl molecule. CMA recommends that for precision and clarity, EPA should modify this definition so there is no confusion whether monobromobiphenyls are in fact covered by the reporting requirement.

Response: EPA believes that there is no ambiguity in the definition of PBBs—monobromobiphenyls are included in the definition of PBBs, not the reporting requirements.

Comment 7: A Congressman and a private individual objected to the level set for the poundage component of the small business definition as being too high. But, the Synthetic Organic Chemical Manufacturers Association (SOCMA) agreed with the poundage level for this rule, provided that the reporting requirements of the rule are minimal, but thought the dollar amount was set too low.

Response: We disagree with both objections. EPA based the small business definition on the health effects and production history of PBBs and Tris. EPA is employing a sales cutoff of $500,000, which is based, in part, on the production history of these substances (see Analysis of the Small Business Definition for the PBB and Tris Notice Rule). EPA has detemined that the minimal burden of reporting, compared to the importance of the information the Agency will receive, justifies the low dollar amount.

Even though a very low annual sales figure was used ($500,000), still about half (52%) of the chemical manufacturers (chemicals and allied products, SIC (Standard Industrial Classification) 28 and 10% of SIC 2911) would be exempt from the reporting requirements of this rule. EPA believes that these small firms would not have the financial wherewithal to produce these substances in quantities large enough to penetrate the flame retardant market. However, to guard against the possibility of unreported production of PBBs or Tris in substantial quantities, the poundage requirement above which a manufacturer with sales of $500,000 or less would have to report was set at 10,000 pounds per year. This number is based on consideration of past production figures, which indicates that production below 10,000 pounds would not represent "commercial" quantities of these chemicals.

Comment 8: SOCMA contends that EPA should define the term "small manufacturer" without respect to whether a manufacturer is owned or controlled by another company. A manufacturer who meets the basic criterion should be considered a "small manufacturer" even if the manufacturer's company is owned or controlled by another company.

Response: The legislative history of TSCA makes it clear that in considering which manufacturers and processors qualify as "small manufacturers and processors", EPA must consider whether the company is owned or controlled by another company and apply the factors for detemining "small manufacturers or processors" to both companies (H.R. Rep. No. 1341, 94th Cong., 2nd Sess., 43 (1976)).

Comment 9: CMA recommends that the definition of "person" should not include "any individual," because it creates the possibility that employees of businesses covered by the rule would have an independent duty to submit reports to EPA. CMA argues this is an impermissible extension of the section 8 reporting requirements, because under TSCA the term "person" denotes only business entities.

Response: EPA disagrees with CMA's interpretation of the term "person." TSCA does not explicitly define "person," but as used in the Act the term clearly includes individuals. For example, section 19, 20, 21, and 23 of TSCA use the term "person" in contexts that do not apply only to business entities. In the enforcement of this rule EPA will take into account the considerable body of law that has developed with respect to the liability of individual employees of business entities. This body of law applies to TSCA.

Comment 10: Section 8(a) authorizes EPA to obtain information that is known to, or "reasonably ascertainable" by, manufacturers and processors. CMA argues that these terms only authorize EPA to require information which already exists and either is or normally would be known to them. CMA asserts that the "reasonably ascertainable" standard applies only to information which a normal business in the submitter's position would usually possess already and that there is no basis under TSCA for requiring reporting companies either to develop new information, or to procure information which they would not normally obtain, simply to comply with section 8. CMA notes that the proposed rule would require reporting of all information called for by EPA and that the final rule must be revised to state that the information need be reported only if it is known to the submitter or "reasonably ascertainable," according to CMA interpretation of the term.

Response: Only information that is "known to or reasonably ascertainable" is to be reported for this rule. Section 713.16(b) now states this explicitly. The notice required by the rule (§ 713.16) would include company name and address; principal technical contact; a description of the use or intended use for PBBs or Tris; estimated exposure during manufacture or importation, disposal, processing, distribution, and use; estimated production volume; and, as appropriate, the proposed date for the resumption of manufacture or import of PBBs or Tris.

We believe that most of the above information is "known to" companies. A company knows the estimated exposure during manufacture, estimated production, proposed date for the resumption of manufacture, and other information about its own activities. Other information as it pertains to the activities of others, such as a description of use or intended use, estimated exposure during disposal, processing, distribution, or use, would be considered reasonably ascertainable if the manufacturer could obtain the required information from persons with whom he is dealing.

We disagree that manufacturers can only be required to report information which already exists and either is, or normally would be, already known to them.

In this rule, information reasonably ascertainable pertains to the activities of others—a description of use or intended use, and estimated exposure during disposal, processing, distribution or use. EPA considers this information reasonably ascertainable because the manufacturer, if he does not already know, could obtain the required information from persons with which he is dealing without incurring an unreasonable burden. The legislative history of TSCA supports this interpretation. H.R. Rep. No. 94–1341, 94th Cong., 2d Sess., 42 (1976).

Comment 11: The proposed rule requires persons who propose to manufacture or import PBBs or Tris to submit reports "as soon as they propose to manufacture or import the substance." CMA contends that this approach would require immediate submission of reports whenever a company makes the decision to manufacture or import a compound covered by the reporting rule. If a company waits even a brief period (*e.g.*, 7 to 10 days) before reporting, it would technically be a violation of the reporting rule—and thus subject to civil or criminal sanctions—for failing to report "as soon as (it) propose(d) to manufacture or import the substance." To eliminate this problem, the rule should provide that reports may be submitted no later than 30 days after a company makes the decision to manufacture or import the chemicals for which reporting is required.

Response: The reporting schedule in § 713.16(a) was changed to partially accommodate this concern. Reporting is required 15 days after a person proposes to manufacture or import PBBs or Tris, which is a reasonable amount of time in which to submit the information required.

Comment 12: Industry contends that the 15 days provided by EPA to supply the required second copy when confidential data are submitted without a second copy from which all information claimed as confidential has been deleted, does not allow the respondent sufficient time to respond. Moreover, under section 14(c) (2) of TSCA, EPA can only disclose information designated confidential if 30 days have passed after the information submitter has been notified of such proposed release.

Response: The rule has been changed to provide 15 days from the date of receipt of notification, not the date of the notification letter, to submit the required second copy, see § 713.17(c)(4). EPA believes that 15 days is an adequate period of time to make a copy of a document previously submitted to EPA.

CMA is correct in interpreting section 14(c)(2) as providing a 30 day notice period before releasing confidential data when those data are submitted in accordance with the provisions of a regulation. However, in this instance, the 15 day notice period is provided to correct deficiencies in the submitted confidential data (absence of the second copy), not to notify a person of the anticipated release of properly submitted confidential data.

Note.—Changes have been made in the rule as indicated in the above responses and for minor clarification purposes.

Public Record

In accordance with the requirements of section 19(a)(3) of TSCA, EPA has established a public record for this rulemaking (docket number OPTS–081—005a). This record is available for inspection in the OPTS Reading Room, 447 East Tower, from 8:00 a.m. to 4:00 p.m. on working days (401 M Street, SW, Washington, DC 20460). This record includes basic information considered by the Agency in developing this rule. Following is a list of the documents which constitutes the record for this rulemaking. Public comments on the proposed rule are not individually listed, but will be available upon request in the OPTS Reading Room.

1. The proposed rule published on October 12, 1979 (44 FR 59106).

2. All comments received on the proposed rule.

3. Documents supporting potential PBB section 6 action.

V 45 OC 24 80 UMI

4. Analysis of the Small Business Definition for the PBB and Tris Notice Rule.

5. "A Survey of Polybrominated Biphenyls (PBBs) Near Sites of Manufacture and Use in Northwestern New Jersey," EPA Report Number—560/13–79–002.

6. Blum, A. and Ames, B. (1977), "Flame-Retardant Additives as Possible Cancer Hazards", Science, *195*: 17–21

7. Blum, A., Gold, M.D., Ames, B. N., Kenyon, C., Jones, F. R., Hett, E. A., Dougherty, R. C., Horning, E. C., Dzidic, I., Carroll, D. I., Stillwell, R. N., and Thenot, J. P. (1978), "Children Absorb Tris-BP Flame Retardant from Sleepwear: Urine Contains the Mutagenic Metabolite, 2,3-Dibromopropanol", Science *201*:1020–1023.

8. CPSC (1977), "An Environmental Assessment of the Effects of CPSC's Action to Ban Children's Garments Containing TBPP," Consumer Product Safety Commission, Bureau of Economic Analysis.

9. CPSC (1977), "Final Report—Subchronic and Radioactive 14.C Tracer Studies of Tris(2,3-Dibromopropyl) Phosphate in Laboratory Rodents," Bureau of Biomedical Science/CPSC.

10. CPSC (1977), Bureau of Biomedical Science, as reported in the Federal Register, Vol. 42, No. 68, April 8, 1977.

11. Levin, A.A. (1978), Director of Government Compliance, Velsicol Chemical Corporation, Personal Communication, March 7, 1978.

12. NCI (1978), "Bioassay of Tris(2,3-Dibromopropyl) Phosphate for Possible Carcinogenicity," DHEW Publication No. (NIH) 78–1326.

13. Prival, M., McCoy, E. C., Gutter, B., and Rosenkranz, H.S. (1977), "Tris(2,3-Dibromopropyl) Phosphate: Mutagenicity of a Widely Used Flame Retardant," Science, *195*: 76–78.

14. St. John, L. E., Eldefrawi, M. E., and Lisk, D. J. (1976), "Studies of Possible Absorption of a Flame Retardant from Treated Fabrics Worn by Rats and Humans," Bull. Env. Contam. Toxicol., *15*(2): 192–197.

Note.—EPA has determined that this document does not contain a major proposal requiring preparation of a Regulatory Analysis under Executive Order 12044.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order, or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Dated: October 16, 1980.

Douglas M. Costle,

Administrator.

40 CFR Part 713 is added as follows:

PART 713—REPORTING AND RECORDKEEPING REQUIREMENTS

Submission of Notice of Manufacture or Import of PBBs and Tris

Sec.

713.11 Definitions.
713.12 Scope.
713.13 Compliance.
713.14 Persons who must report.
713.15 Persons not subject to this rule.
713.16 Reporting requirements.
713.17 Confidentiality claims.
713.18 Sunset provision.

Authority: Sec. 8(a), Pub. L. 94–469, 90 Stat. 2027 (15 U.S.C. 2607(a)).

Submission of Notice of Manufacture or Import of PBBs and Tris

§ 713.11 Definitions.

All definitions as set forth in the Toxic Substances Control Act (TSCA) section 3 apply for this rule. In addition, the following definitions are provided for the purposes of this rule.

(a) "Article" means a manufactured item (1) which is formed to a specific shape or design during manufacture, (2) which has end use function(s) dependent in whole or in part upon its shape or design during end use, and (3) which has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the article, and that result from a chemical reaction that occurs upon end use of other chemical substances, mixtures, or articles; except that fluids and particles are not considered articles regardless of shape or design.

(b) "Byproduct" means a chemical substance produced without a separate commercial intent during the manufacture, processing, use, or disposal of another chemical substance(s) or mixture(s).

(c) "EPA" means the United States Environmental Protection Agency.

(d)(1) "Importer" means any person who imports any chemical substance or any chemical substance as part of a mixture or article into the customs territory of the United States, and includes: (i) The person primarily liable for the payment of any duties on the merchandise, or (ii) an authorized agent acting on his behalf (as defined in 19 CFR 1.11). (2) Importer also includes, as appropriate:

(i) The consignee.

(ii) The importer of record.

(iii) The actual owner if an actual owner's declaration and superseding bond has been filed in accordance with 19 CFR 141.20.

(iv) The transferee, if the right to draw merchandise in a bonded warehouse has been transferred in accordance with Subpart C of 19 CFR Part 144.

For the purpose of this definition, the customs territory of the United States consists of the 50 states, Puerto Rico, and the District of Columbia.

(e) "Import in bulk form" means to import a chemical substance (other than as part of a mixture or article) in any quantity, in cans, bottles, drums, barrels, packages, tanks, bags, or other containers, if the chemical substance is intended to be removed from the container and the substance has an end use or commercial purpose separate from the container.

(f) "Impurity" means a chemical substance which is unintentionally present with another chemical substance.

(g) "Manufacture" means to manufacture for commercial purposes.

(h)(1) "Manufacture for commercial purposes" means to import, produce, or manufacture with the purpose of obtaining an immediate or eventual commercial advantage for the manufacturer, and includes, among other things, such "manufacture" of any amount of a chemical substance or mixture,

(i) For commercial distribution, including for test marketing, and

(ii) For use by the manufacturer, including use for product research and development, or as an intermediate.

(2) Manufacture for commercial purposes also applies to substances that are produced coincidentally during the manufacture, processing, use, or disposal of another substance or mixture, including both byproducts that are separated from that other substance or mixture. Such byproducts and impurities may, or may not, in themselves have commercial value. They are nonetheless produced for the purpose of obtaining a commercial advantage since they are part of the manufacture of a chemical product for a commercial purpose.

(i) "Person" includes any individual, firm, company, corporation, joint-venture, partnership, sole proprietorship, association, or any other business entity; any State or political subdivision thereof; any municipality; any interstate body; and any department, agency, or instrumentality of the Federal Government.

(j) "PBBs" (polybrominated biphenyls) means chemical substances the compositions of which, without regard to impurities, consist of brominated biphenyl molecules having the molecular formula $C_{12}H_xBr_y$, where $x+y=10$ and y ranges from 1 to 10.

(k) "Propose to manufacture or import PBBs or Tris" means that a person has made a firm management decision to commit financial resources for the manufacture or import of PBBs or Tris.

(l) "Small manufacturer or importer" means a manufacturer or importer whose total annual sales are less than $500,000, based upon the manufacturer's or importer's latest complete fiscal year, except that no manufacturer or importer is a small manufacturer or importer with respect to PBBs or Tris which such person manufactured at one site or imported in quantities greater than 10,000 pounds during the latest calendar year. In the case of a company which is owned or controlled by another company, total annual sales shall be based on the total annual sales of the owned or controlled company, the parent company, and all companies owned or controlled by the parent company taken together.

(m) "Tris" means tris(2,3-dibromopropyl) phosphate (also commonly named DBPP, TBPP, and Tris-BP).

(n) "TSCA" means the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*

§ 713.12 Scope.

This rule establishes procedures governing reporting by persons who manufacture or import or who propose to manufacture or import Tris, or PBBs which have been reported for the TSCA Chemical Substances Inventory (40 CFR Part 710).

§ 713.13 Compliance.

Violation of the requirements of this rule may result in civil penalty or criminal prosecution, as provided in sections 15 and 16 of TSCA. In addition, under section 17, the Government may seek judicial relief to compel submission of required information.

§ 713.14 Persons who must report.

Except as provided in § 713.15, the following persons are subject to this rule:

(a) Persons who manufacture or propose to manufacture Tris, or PBBs which have been reported for the Inventory.

(b) Persons who import (importers) or propose to import Tris, or PBBs which have been reported for the Inventory, as a chemical substance in bulk or as part of a mixture.

§ 713.15 Persons not subject to this rule.

The following persons are not subject to this rule:

(a) Persons who are small manufacturers or importers, as defined in § 713.11(l).

(b) Persons who manufacture or import and persons who propose to manufacture or import PBBs or Tris solely for research and development.

(c) Persons who manufacture or import and persons who propose to manufacture or import PBBs or Tris as a byproduct or impurity.

(d) Persons who import or propose to import PBBs or Tris as part of an article.

§ 713.16 Reporting requirements.

(a) Persons subject to this rule as described in § 713.14 must notify EPA of current or proposed manufacture or import of PBBs or Tris. Persons who are manufacturing or importing PBBs or Tris on the effective date of the rule must notify EPA within 30 days of the effective date of the rule. Persons who propose to manufacture or import PBBS or Tris must notify EPA within 15 days when they propose to manufacture or import the substance.

(b) The notice must include, to the extent that it is known to or reasonably ascertainable, the following information:

(1) Company name and address.

(2) Principal technical contact.

(3) A description of the use or intended use for the PBBs or Tris.

(4) Estimated number of persons exposed to the PBBs or Tris during manufacture or importation, processing, distribution, use, and disposal.

(5) Quantity (by weight) manufactured or imported within twelve months prior to the effective date of the rule and/or estimated quantity (by weight) to be manufactured or imported in the foreseeable future.

(6) The proposed date for the initiation of manufacturing or importation of PBBs or Tris, if appropriate.

(c) Notices shall be submitted by certified mail to the Document Control Officer, for TSCA, Environmental Protection Agency, Office of Pesticides and Toxic Substances (TS–793), Washington, DC 20460. ATTN: PBB notification or Tris notification.

§ 713.17 Confidentiality claims.

(a) Any person submitting a notice under this rule may assert a business confidentiality claim covering all or any part of the notice. Any information covered by a claim will be disclosed by EPA only to the extent and by means of the procedures set forth in Part 2 of this title.

(b) If no claim accompanies the notice at the time it is submitted to EPA, the notice will be placed in an open file available to the public without further notice to the respondent.

(c) To assert a claim of confidentiality for data contained in a notice, the respondent must submit two copies of the notice.

(1) One copy of the notice must be complete. In that copy the respondent must indicate what data, if any, are claimed as confidential by marking the specific information on each page with a label such as "confidential", "proprietary", or "trade secret".

(2) If some data in the notice are claimed as confidential, the respondent must submit a second copy. The second copy must be complete except that all information claimed as confidential in the first copy must be deleted.

(3) The first copy of the notice will be for internal use by EPA. The second copy will be placed in an open file to be available to the public.

(4) Failure to furnish a second copy of the notice when information is claimed as confidential in the first copy will be considered a presumptive waiver of the claim of confidentiality. EPA will notify the respondent by certified mail that a finding of a presumptive waiver of the claim of confidentiality has been made. The respondent has 15 days from the date of receipt of notification to submit the required second copy. Failure to submit the second copy will cause EPA to place the first copy in the public file.

(d) In submitting a claim of confidentiality, a person attests to the truth of the following four statements concerning all information which is claimed confidential:

(1) My company has taken measures to protect the confidentiality of the information, and it intends to continue to take such measures.

(2) The information is not, and has not been, reasonably obtainable without our consent by other persons (other than government bodies) by use of legitimate means (other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding).

(3) The information is not publicly available elsewhere.

(4) Disclosure of the information would cause substantial harm to our competitive position.

§ 713.18 Sunset provision.

The reporting requirements of § 713.16 will terminate on May 1, 1985.

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator. Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

GENERAL SERVICES ADMINISTRATION

66009 10–6–80 / Automatic data processing contracting

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms—

63242 9–23–80 / Unlawful trade practices under the Federal Alcohol Administration Act
[Corrected at 45 FR 66007, 10–6–80]

List of Public Laws

Last Listing October 23, 1980

This is a continuing listing of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–275–3030).

S. 1156 / Pub. L. 96–482 Solid Waste Disposal Act Amendments of 1980 (Oct. 21, 1980; 94 Stat. 2334) Price $1.75.

S. 2725 / Pub. L. 96–483 To extend certain authorizations in the Clean Water Act, and for other purposes (Oct. 21, 1980; 94 Stat. 2360) Price $1.

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federal register

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Highlights

Seminar on Principles of Regulations Writing—For details on seminar in **Washington, D.C.**, see announcement in the **Reader Aids** section at the end of this issue.

70736 **Housing** USDA/FmHA releases a rule on the management and supervision of multiple family housing borrowers and grant recipients; effective 10–27–80

70841 **Housing** USDA/FmHA amends regulations regarding tenant grievances and appeals in FmHA projects; effective 10–27–80

70775 **Housing** USDA/FmHA finalizes rule concerning rural rental housing loans; effective 10–27–80

70858 **Social Security** HHS/SSA explains whom it refers to other agencies for vocational rehabilitation services, treatment for alcohol or drug abuse and the consequences for refusal of services or treatment; effective 10–27–80

70860 **Excise Tax** Treasury/IRS publishes regulations relating to the excise tax on the use of fuel in commercial waterway transportation; effective 9–30–80

70909 **Taxes** Treasury/IRS proposes regulations relating to the classification, for Federal tax purposes of limited partnerships; comments by 12–26–80

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Highlights

70968 **Gasoline** DOE/ERA reports designing methods for distributing petroleum during a shortage and selecting standby distribution mechanisms

70967 **Gasoline** DOE gives notice of availability of first edition of 1981 Gas Mileage Guide

71023 **Nuclear Safety** NRC plans to develop safety goals; comments by 11–19–80

71251 **Airports** DOT/FAA announces delay of implementation regulations to guide future operation and development of Washington National Airport and Dulles International Airport; effective 10–27–80; implementation guidance regulations effective date changed from 1–5–81 to 4–26–81 (Part VIII of this issue)

71236 **Air Traffic Control** DOT/Sec'y proposes procedures for allocating the hourly number of instrument flight operations (takeoffs and landings) that may be reserved at Washington National Airport (DCA) in accordance with FAA's High Density Rule; comments by 12–26–80 (Part VII of this issue)

70890 **Securities** SEC proposes to regulate purchases of certain classes of common stock and preferred stock by or for the issuer; comments by 1–15–81

70916 **Postal Service** PS relaxes eligibility requirements for supplements in second-class publications; comments by 11–10–80

71088 **Improving Government Regulations** Commerce publishes review of significant and nonsignificant regulations (Part II of this issue)

Privacy Act Documents

70983 HUD

71036 **Sunshine Act Meetings**

Separate Parts of This Issue

71088 **Part II, Commerce**
71140 **Part III, Interior/BLM**
71156 **Part IV, DOT/FAA**
71195 **Part V, DOT/FAA**
71198 **Part VI, USDA/AMS**
71236 **Part VII, DOT/Sec'y**
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Rules and Regulations

Federal Register
Vol. 45, No. 209
Monday, October 27, 1980

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

Overtime Services Relating to Imports and Exports, Overtime Work at Border Ports, Seaports, and Airports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulation which establishes charges for overtime work at border ports, seaports, and airports. Agricultural quarantine inspectors of the U.S. Department of Agriculture are charged with performing inspection duties relating to imports and exports at border ports, seaports, and airports. Such services may be performed outside the regular tour of duty of the inspector when requested by a person, firm, or corporation and the charge for such overtime is recoverable from those requesting the services. The following document amends the regulation entitled, "Overtime Work at Border Ports, Seaports, and Airports," by increasing the hourly rates for such services performed on a Sunday or holiday, or at any other time outside the regular tour of duty. These increases are commensurate with salary increases provided Federal employees in accordance with the Federal Pay Comparability Act of 1970 (Pub. L. 91–656), and Executive Order 12248 dated October 16, 1980.

EFFECTIVE DATE: October 24, 1980.

FOR FURTHER INFORMATION CONTACT: H. V. Autry, (301–436–8247).

Pursuant to the authority conferred by the Act of August 28, 1950, (64 Stat. 561; 7 U.S.C. 2260) and the Airport and Airways Development Act Amendments of July 12, 1976 (90 Stat. 882; 49 U.S.C. 1741), § 354.1 of Part 354 Title 7, Code of Federal Regulations, is amended as set forth below:

§ 354.1 Overtime work at border ports, seaports, and airports.

(a) Any person, firm, or corporation having ownership, custody, or control of plants, plant products, animals, animal products, or other commodities or articles subject to inspection, laboratory testing, certification, or quarantine under this chapter and Subchapter D of Chapter I, Title 9 CFR, who requires the services of an employee of Plant Protection and Quarantine on a Sunday or holiday, or at any other time outside the regular tour of duty of such employee, shall sufficiently in advance of the period of Sunday or holiday or overtime service request the Plant Protection and Quarantine inspector in charge to furnish inspection, laboratory testing, certification, or quarantine service during such overtime, or Sunday or holiday period, and shall pay the Government therefor at the rate of $25.04 per man-hour per employee on a Sunday and at the rate of $18.08 per man-hour per employee for holiday or any other period; except that for any services performed on a Sunday or holiday, or at any time after 5 p.m. or before 8 a.m. or a weekday, in connection with the arrival in or departure from the United States of a private aircraft or vessel, the total amount payable shall not exceed $25 for all inspectional services performed by the Customs Service, Immigration and Naturalization Service, Public Health Service, and the Department of Agriculture; and except that owners and operators of aircraft will be provided service without reimbursement during regularly established hours of service on a Sunday or holiday; and except that the overtime rate to be charged owners and operators of aircraft at airports of entry or other places of inspection as a consequence of the operation of aircraft. for work performed outside of the regularly established hours of service on a Sunday will be $21.72 and for work performed outside of the regularly established hours of service for holiday or any other period will be $14.72 per hour, which charges exclude administrative overhead costs.

A minimum charge of 2 hours shall be made for any Sunday or holiday or unscheduled overtime duty performed by an employee on a day when no work was scheduled for him or which is performed by an employee on his regular workday beginning either at least 1 hour before his scheduled tour of duty or which is not in direct continuation of the employee's regular tour of duty. In addition, each such period of Sunday or holiday or unscheduled overtime work to which the 2-hour minimum charge provision applies which requires the employee involved to perform additional travel may include a commuted traveltime period the amount of which shall be prescribed in administrative instructions to be issued by the Deputy Administrator, Plant Protection and Quarantine, for the areas in which the Sunday or holiday or overtime work is performed and such period shall be established as nearly as may be practicable to cover the time necessarily spent in reporting to and returning from the place at which the employee performs such Sunday or holiday or overtime duty if such travel is performed solely on account of such Sunday or holiday or overtime service. With respect to places of duty within the metropolitan area of the employee's headquarters, such commuted travel period shall not exceed 3 hours. When inspection, laboratory testing, certification, or quarantine services are performed at locations outside the metropolitan area in which the employee's headquarters is located, one-half of the commuted travel period applicable to the point at which the services are performed shall be charged when duties involve overtime that begins less than 1 hour before the beginning of the regular tour and/or is the continuation of the regular tour of duty. It will be administratively determined from time to time which days constitute holidays.

(b) The Plant Protection and Quarantine inspector in charge in honoring a request to furnish inspection. laboratory testing, quarantine, or certification service, shall assign employees to such Sunday or holiday or overtime duty with due regard to the work program and availability of employees for duty.

(c) As used in this section—

(1) The term "private aircraft" means any civilian aircraft not being used to transport persons or property for compensation or hire, and

(2) The term "private vessel" means any civilian vessel not being used (i) to transport persons or property for compensation or hire, or (ii) in fishing operations or in processing of fish or fish products.

(64 Stat. 561 (7 U.S.C. 2260); (Sec. 15 of Pub. L. 94-353, 90 Stat. 882) (49 U.S.C. 1741))

Determination of the hourly rate for overtime services and of the commuted traveltime allowances depends entirely upon facts within the knowledge of the Department of Agriculture. The Agency has no alternative to raising the overtime rate. By law, importers and exporters are required to reimburse the Agency for its costs associated with the services rendered. Unless the rate is raised, it will not cover the pay raise which commenced October 5, 1980. Accordingly, pursuant to the administrative provisions of 5 U.S.C. 553, it is found upon good cause that notice and public procedure on this amendment are impracticable, unnecessary, and contrary to the public interest and good cause is found for making this amendment effective less than 30 days after publication in the **Federal Register.**

Note.—This final rule has been reviewed under the provisions of Executive Order 12044, "Improving Government Regulations." A determination has been made that this action is a matter related to Agency management and is, therefore, exempt from the provisions of the Order (E.O. 12044, Section 6(b)(3)).

Done at Washington, D.C. this 22nd day of October 1980.

Murray T. Pender,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 80-33325 Filed 10-24-80; 8:45 am]

BILLING CODE 3410-34-M

Farmers Home Administration

7 CFR Parts 1802, 1930, and 1944

Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) redesignates and revises its regulations pertaining to the management and supervision of the recipients of FmHA Rural Rental Housing loans, Labor Housing loans and grants, and Rural Housing Site loans. The action is taken in response to numerous requests from the public and FmHA personnel for more guidance and clarification on FmHA Multiple Family Housing project management and supervision. The intended effect of the action is to provide guidance to both FmHA personnel and the public which will result in uniform management and supervision of the effected programs; and to make appropriate changes to comply with the reorganization being implemented in the Agency.

EFFECTIVE DATE: October 27, 1980.

FOR FURTHER INFORMATION CONTACT: Paul Conn, Division Director, Multiple Family Management and Support Division, USDA, FmHA. Telephone 202-447-7207.

The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from the Office of the Chief, Directives Management Branch, Farmers Home Administration, Room 6346, South Agriculture Building, 14th and Independence SW., Washington, DC 20250, Telephone (202) 447-4057.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedure established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "significant." This Instruction does not directly affect any FmHA programs or projects which are subject to A-95 Clearinghouse review.

FmHA revises and redesignates its regulations concerning the management and supervision of Multiple Family Housing borrowers and grant recipients from Part 1802, Subpart G, to a new Subpart C of Part 1930, Chapter XVIII, Title 7, Code of Federal Regulations. The Title of Part 1930 is changed from "Borrower Property Security Servicing (Individual)" to "General." Subpart G of Part 1802 is hereby deleted and reserved. FmHA regulations presently provide only limited guidance to the public and FmHA personnel concerning supervision of Multiple Housing loan and grant recipients and no guidance concerning the operation and maintenance of these housing projects to assure that the projects are operated for the benefit of those they are intended to serve. Consequently, numerous requests have been received from loan and grant recipients, intended program beneficiaries, and FmHA personnel for the establishment of FmHA policies on project management and supervision and reporting requirements of Multiple Family Housing loan and grant recipients themselves. The purpose of this regulation is to provide the requested policy, and to establish uniform management and supervision in the affected programs. An integral part of the regulation is a Handbook prescribing FmHA policies and procedures for management of Multiple Housing projects.

The new regulation also makes appropriate changes to comply with the reoganization in the Agency. The reorganization that has been implemented requires that loans will be supervised to the maximum extent possible by the FmHA District Office staff. The State Office staff will monitor Multiple Family Housing program loan making and servicing, and will provide assistance to District Office personnel to the extent necessary to ensure that the activities are being accomplished in an orderly manner consistent with FmHA regulations.

A proposed rule was published in the **Federal Register** (44 FR 69937) on December 5, 1979, requesting comments on this regulation. Also, the proposed rule concerning approval of rental rate increases, which was published for comment as Exhibit F of Subpart G of Part 1802 in the **Federal Register** on September 20, 1979, (44 FR 54517) is now Exhibit C, "Rent Increases," of this Subpart. Comments received on these proposed rules have been considered in the revision of these regulations.

Major concerns reflected in the comments were as follows:

(1) Exhibit B should not be referred to as a "guide" but should be incorporated into the regulations.

The title of Exhibit B has been changed from "Multiple Housing Management Guide" to "Multiple Housing Management Handbook," and language has been added on page 1 of Exhibit B to clarify that the Handbook prescribes FmHA policies and procedures for management of Rural Rental Housing (RRH) and Labor Housing (LH) projects.

(2) Rent—up fees should be permitted.

Paragraph IV d has been amended to clarify that rent-up fees on a per unit basis will not be permitted where there is an identity of interest between the management agent and the borrower or where the borrower manages the project. However, the borrower or management agent may be reimbursed from the 2 percent initial operation and maintenance investment for *actual expenses* paid out in connection with initial rent-up.

(3) Nonpayment of rent should not be considered a minor violation but should be grounds for eviction. Paragraph XVII A 2 has been revised to clarify that *repeated* nonpayment of rent or any other financial obligation due under the lease (including any portion thereof)

beyond any grace period constitutes a *substantial* violation.

(4) The Debt Service Account and Operation and Maintenance Account should not be required.

Paragraph XI A of Exhibit B and paragraph numbered 16 of Exhibit B-3 have been revised to require the establishment of four accounts:

(1) General Operating Account, which will function as an all-purpose account for receiving and disbursing all project funds assuming the combined functions of the previously required General Fund Account and Operation and Maintenance Account; (2) Reserve Account, which will serve the same purpose as the previously required reserve account, (3) Tax and Insurance Escrow Account, which is a new account required to enable a borrower to escrow taxes and insurance payments one year in advance, and (4) Security Deposit Account, which is required where a borrower collects security deposits.

(5) An audit report should not be required for borrowers with 21 or more units in one or more projects in order to preclude the necessity of an audit report being provided for small projects. Paragraph 1930.124(c) and paragraph X B 2 c of Exhibit B have been revised to require annual audit report for *projects* with *25 or more units.*

(6) Tenants who reside in LH projects which are occupied on a seasonal basis should be given an opportunity to comment on a proposed rent increase.

Paragraph II of Exhibit C has been revised to state that LH borrowers and/or grant recipients whose projects are occupied on a seasonal basis should not request rent increases when the project is less than 40 percent occupied in order that a greater number of tenants will have an opportunity to make comments. The paragraph also clarifies that requests for rent increses by LH borrowers normally should be made at least 60 days prior to the start of the season.

(7) Profit-motivated borrowers should not be encouraged to convert to limited profit in order for FmHA to approve a rent increase that is profit-margin motivated, unless the project being operated on all profit basis has historically been occupied by tenants eligible for rental assistance.

The purpose of the Multiple Housing program is to provide housing for low- and moderate-income persons. The agency cannot administer the Rental Assistance program based on what occupancy has been historically but is responsible for making the program available to existing and prospective tenants who may be in need of the benefits of the program. Therefore, paragraph IV B 1 c has not been amended.

(8) The rent increase requirements of the procedure should not have to be met in the case of Department of Housing and Urban Development (HUD) automatic rent increase.

FmHA has found that in some cases, all or part of a HUD automatic rent increase is not justified in a project budget and must require that excess funds be deposited in the Reserve Account. Therefore, the regulation has not been amended to exempt HUD automatic rent increases from the requirements of Exhibit C.

(9) Borrowers who did not sign a Loan Agreement should be required to comply with the regulation.

In the case of an RRH loan made to an individual prior to (date regulations are issued) in an amount not to exceed $150.000, a Loan Agreement was not mandatory under regulations then extant, unless required by the State Director. Also, in the case of LH loans to individual farmowners where units are part of the farm operations, the borrower is not required to sign a Loan Agreement.

Since the State Director may require compliance with any sections of the regulation to assure that the objectives of the loan are carried out, the regulation has not been amended to require compliance by those individuals who were not required to sign a loan agreement. However, all RRH and LH borrowers, except those LH borrowers who are individual farmowners where units are part of farm operations, are required to comply with Exhibit C pertaining to rent increase requests.

(10) The requirement that *20 percent* of the low-income tenants be in need of rental assistance before a borrower who is eligible for rental assistance is *required* to participate in the Rental Assistance program as a condition for approval of a rent increase should be eliminated.

Paragraphs II, III A 1, and IV B 1 d have been amended to delete the 20 percent requirement and to clarify that a borrower who is eligible for Rental Assistance will be required to participate in the Rental Assistance program as a condition for approval of a rent increase if *only one* tenant will be required to pay in excess of 25 percent of adjusted income for rent and utilities.

Other changes that have been made in the regulations are as follows:

(1) Rural Cooperative Housing has been deleted from the regulation.

(2) Paragraph 1930.105 has been amended to state the primary objective of a Multiple Housing loan and/or grant; i.e., to provide decent, safe, and sanitary housing for low- and moderate-income persons.

(3) Paragraph 1930.110(b) has been amended to provide that FmHA may require that a borrower contract with an acceptable management firm.

(4) Paragraph 1930.124(c)(3) has been amended to authorize the FmHA State Director or District Director to require that the accounts of Rural Housing Site Loan (RHS) borrowers be audited if their loan exceeds the 2-year repayment term.

(5) Paragraph 1930.124(f) has been amended to discontinue the requirement for submission of copies of annual reports to the National Office during the first two years of a borrower's operations.

(6) Section 1930.142, "Complaints regarding discrimination in use and occupancy of RRH housing," has been added.

(7) Exhibit B, paragraph II N 2 e has been added to exempt the income of "chore service" workers residing with a tenant when such person's occupancy is essential to the well-being of the tenant and when such services are compensated by a Federal, State, or local assistance program designed to enable such person to achieve and maintain independent living and/or avoid inappropriate institutionalization.

(8) Exhibit B, paragraph N 3 d has been added to permit a deduction for full-time nursing home or institutional type care for purposes of determining interest credit or rental assistance subsidy.

(9) Exhibit B, paragraph IV D, has been amended to deny rent-up fees on a per unit basis where there is an identity of interest between the management agent and the borrower or where the borrower manages the project. However, there is provision for the borrower or management agent to be reimbursed from the 2 percent initial operation and maintenance investment for *actual expenses* paid out in connection with initial rent-up. The paragraph has also been amended to exclude from the management agent's compensation the cost of services for the management agent's resident manager.

(10) Exhibit B, paragraph IV E, has been amended to add a requirement for a written agreement with the resident manager.

(11) Exhibit B, paragraph IV F, has been added to provide for a contact person for a project without a resident manager or caretaker.

(12) Exhibit C, paragraph V B, has been amended to specifically describe eligible tenants, and to prescribe policies regarding Surviving Members of

an Eligible Tenant Household and Formerly Eligible Tenants and to state those situations where the State Director has the authority to permit a borrower to rent to ineligible tenants and the conditions for doing so.

(13) Exhibit B, paragraph V C 1, has been amended to provide for a cut-off point for receiving and processing applications where it would be awhile before additional appliciants could be reached on a waiting list.

(14) Exhibit B, paragraph V C 3 e has been added to provide that in the case of LH projects, no organization borrower other than an association of farmers or family farm corporation or partnership will be permitted to require that an occupant work on any particular farm or for any particular owner or interest as a condition of occupancy.

(15) Exhibit B, paragraph VI B has been amended to provide for an affidavit from a tenant where no other source is available for verification of income. It also provides that in the case of domestic farm laborers, including migrants, the borrower may project monthly income for determining eligibility for occupancy and subsidized assistance.

(16) Exhibit B, paragraph VI D has been amended to require that a verification statement be inserted on the botton of HUD Form 52659, "Application for Tenant Eligibility and Recertification."

(17) Exhibit B, paragraph VII B 1 has been added to provide a lease clause to ensure that a tenant understands that he/she will no longer be eligible for occupancy if his/her income exceeds the maximum allowable income limit.

(18) Exhibit B, paragraph VIII C has been added to provide for the Recapture of Improperly Advanced Rental Assistance.

(19) Exhibit B, paragraph XIV A has been amended to address Fidelity Bond requirements for Land Trusts and 2-party General Partnerships.

(20) Exhibit B–2 has been amended to add a paragraph to require a project owner to refer cases to the FmHA for review where there is evidence of a management agent's transactions with identity of interest claims or central service units so that FmHA can determine the reasonableness of charges to the project based on competitive costs.

(21) Exhibits B–10, B–10 A thru B–10 C have been added to provide Objective Guides to assist management in determining the ability of tenants in congregate housing to sustain relative independence.

(22) Exhibit C, paragraph II has been amended and paragraph III A 8 has been added to provide for a copy of an Energy Audit where an initial rent increase is requested or where an Energy Audit has not yet been provided. This assists in implementing Executive Order 12185, "Conservation of Petroleum and Natural Gas".

(23) Exhibit C, paragraph IV B 2 has been added to require that where rental assistance units are not available, the State Director must approve the rent increase subject to the borrower's acceptance of the units when they become available.

(24) Exhibit C, paragraph IV B 3 has been amended to provide that if there is a buildup of excess funds in the Reserve Account as a result of HUD automatic rent increases, Interest Reduction on Section 8/515 projects should be further reduced or canceled.

(25) Exhibit C, paragraph IV B 4 has been amended to provide that a return to owner that is not earned in a given accounting period may be recouped in future years, provided this does not result in a rent increase.

The reporting and/or recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

Accordingly, various sections of Part 1944, Subpart D are amended and Subpart C of Part 1930 is added as follows:

PART 1944—HOUSING

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

§ 1944.181 [Amended]

1. In § 1944.181, change references of "Subpart G of Part 1802" to "Subpart C of Part 1930"; "(FmHA Instruction 430.2)" to "(FmHA Instruction 1930–C)", and "Exhibit F" to "Exhibit C."

Exhibit B [Amended]

2. In Exhibit B, item 10, change references of "Subpart G of Part 1802" to "Subpart C of Part 1930"; and "FmHA Instruction 430.2" to "FmHA Instruction 1930–C."

3. In Exhibit B item 13, change references of "Subpart G of Part 1802" to "Subpart C of Part 1930"; "FmHA Instruction 430.2" to "FmHA Instruction 1930–C"; and "Exhibit F" to "Exhibit C".

PART 1802—SUPERVISION OF BORROWERS

Subpart G—[Reserved]

4. Part 1802, Subpart G (§§ 1802.71–1802.81) is deleted and reserved.

SUBCHAPTER H—PROGRAM REGULATIONS

5. A new Part 1930 and Subpart C is hereby added to read as follows:

PART 1930—GENERAL

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

Sec.

1930.101 General.
1930.102 Definitions.
1930.103–104 [Reserved]
1930.105 Objective of management and supervision.
1930.106–107 [Reserved]
1930.108 Extent of management.
1930.109 Extent of supervision.
1930.110 Methods of supervision.
1930.111–112 [Reserved]
1930.113 Borrower responsibilities.
1930.114–116 [Reserved]
1930.117 Effective supervision.
1930.118 [Reserved]
1930.119 Supervisory visits.
1930.120–121 [Reserved]
1930.122 Accounts and records.
1930.123 [Reserved]
1930.124 Borrower reports, audits, and analysis.
1930.125–127 [Reserved]
1930.128 Labor housing grants.
1930.129 Rural housing site loans.
1930.130–133 [Reserved]
1930.134 State Office records.
1930.135–136 [Reserved]
1930.137 State supplements, guides, forms and other issuances.
1930.138–140 [Reserved]
1930.141 Materials to be provided borrower/applicant.
1930.142 Complaints regarding discrimination in use and occupancy of RRH housing.
1930.143 Exception authority.
1930.144–1930.150 [Reserved]

Exhibits

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Questionnaire for Management Agent of FmHA Multiple Family Housing Projects.	B–4
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Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

§ 1930.101 General.

This Subpart prescribes the policies, authorizations, and procedures for management and supervision of the following Farmers Home Administration (FmHA) loan and grant recipients (existing and future).

(a) Farm Labor Housing (LH).

(b) Rural Rental Housing (RRH) including congregate housing.

(c) Rural Housing Site Loans (RHS).

(d) This Subpart, with the exception of Exhibit C "Rent Increases," does not apply to individual type borrowers who did not sign a loan agreement. However, in the case of individual type borrowers who are delinquent on their loan payments or are not otherwise carrying out the objectives of their loans, the State Director may require compliance with any Sections of this Subpart to assure that the objectives of the loan are carried out. For RHS borrowers, the following Sections of this Subpart do not apply: §§1930.108, 1930.124, 1930.128, and 1930.141.

§ 1930.102 Definitions.

(a) *FmHA:* "FmHA" means the United States of America acting through the Farmers Home Administration; it includes FmHA's predecessor agencies.

(b) (*OGC*). "OGC" means the Regional Attorney or the Attorney in Charge in the field office of the Office of the General Counsel of the United States Department of Agriculture.

(c) *Supervision.* "Supervision" includes the broad scope of guidance available through the FmHA to assist borrowers in carrying out the objectives of the loan and in complying with FmHA regulations.

(d) *Monagement.* "Management" is the overall direction given by the owner or the owner's agent in meeting the needs of the tenants, maintaining the project, and providing sound and economical operation of the project.

(e) *Borrowers.* "Borrowers" means all individuals, partnerships, cooperatives, trusts, public agencies, private or public corporations and other organizations which have received a loan or grant from FmHA for LH, RRH, or RHS purposes.

(f) *Governing Body.* "Governing Body" means those elected or appointed officials of an organization or public agency type borrower responsible for the operations of the project.

(g) *District Director.* For the purpose of this Subpart, the term also includes the Assistant District Director, and other qualified District Staff who may be delegated responsibilities under this Instruction in accordance with the provisions of Subpart F of Part 2006.

§§ 1930.103–1930.104 [Reserved]

§ 1930.105 Objective of management and supervision.

(a) Each loan or grant made by FmHA is designed to attain the primary objective of providing decent, safe and sanitary housing for low- and moderate-income persons. Therefore, each borrower and grant recipient will be provided supervision to help in accomplishing the objectives of the loan grant.

(b) To accomplish this objective primary emphasis will be given to the following:

(1) Proper and efficient management policies as prescribed in Exhibit B of this Subpart.

(2) Complying with agreements.

(3) Repaying loans on schedule.

(4) Maintaining security property.

(5) Protecting the interests of FmHA.

(6) Operating facilities in accordance with State and local laws and regulations.

(7) Maintaining accounts and records.

(8) Submitting reports and audits.

(9) Processing rent increases in accordance with Exhibit C of this Subpart.

§§ 1930.106–1930.107 [Reserved]

§ 1930.108 Extent of management.

In accordance with Exhibit B of this Subpart, the borrower or the borrower's agent will develop a management plan for each project. It may be necessary to obtain management from other than the owner. If so, a management agreement is to be used to define the responsibilities of the management agent. This agreement must be accepted by the FmHA loan approval official. A suggested management agreement is provided in Exhibit B–3 of this Subpart.

§ 1930.109 Extent of supervision.

All borrowers will be given guidance and advice to help assure successful completion and operation of facilities, compliance with their agreements and obligations, and protection of the FmHA's financial interest. Supervision does not relieve borrowers of their own responsibilities and obligations. Supervision starts with the first contact with the applicant and continues through the life of the loan or, through any restrictive time period where prepayment is authorized. In the case of a grant, supervision continues until the requirements of the grant agreement have been fulfilled. Supervision of Multiple Family Housing borrowers is a primary responsibility of the District Director; however, additional supervision and guidance will be given by the Multiple Family Housing Coordinator, and/or other members of the State Office staff, as appropriate.

§ 1930.110 Methods of supervision.

Supervisory methods used by FmHA employees include organizational and development planning; management planning; affirmative marketing; construction conferences; long-term, annual, and other periodic planning; accounts and records inspections and guidance; project inspections; attendance at membership and governing body meetings; analysis of accounting and audit reports; guidance by memorandums; and similar activities.

(a) *Applicants.* Prior to loan or grant closing, supervision will largely be conducted during conferences and meetings with prospective borrowers, members, organizing committees; governing bodies, officers, applicant's attorney, architects, project manager, bookkeeper, other authorized representatives of the applicant, and involved government agencies. Examples are:

(1) Organizational meetings to discuss needs, services available, owner obligations, and to establish steering or organizational committees.

(2) Preapplication and application conferences.

(3) Preconstruction conferences to reach an understanding regarding responsibilities and the manner in which development will be performed. The applicant at this point should be made fully aware of the responsibilities entailed in assuring Fair Housing and/or Equal Opportunity requirements provided by title VI and title VIII of the Civil Rights Acts of 1964 and 1968.

(4) Preloan and/or grant closing conferences to review requirements of the loan resolution or agreement, closing requirements, and management plan to establish responsibilities for the operation of the project. The applicant at this point should be made fully aware of the responsibilities entailed in assuring Fair Housing and/or Equal Opportunity requirements provided by title VI and title VIII of the Civil Rights Acts of 1964 and 1968.

(b) *Borrowers who have yet to demonstrate their ability and borrowers with problems.* When the borrower is establishing its operations, or for borrowers that are delinquent, or have other difficulties, supervisory guidance will include:

(1) Implementation and/or review for compliance with the management plan.

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(2) Establishment and maintenance of a recordkeeping and reporting system.
(3) Compliance with the requirements of the loan agreement or loan resolution.
(4) Review of annual audit and budget requirements.
(5) Any other supervision as may be necessary to assure effective and successful operation of the project.
(6) A requirement that the borrower contract with an acceptable management firm.

(c) *Borrowers who have demonstrated ability.* When the borrower has successfully completed its first full fiscal year of operation, is current with its payments, is in compliance with other loan or grant requirements, is maintaining the security in a satisfactory manner, and otherwise is progressing statisfactorily, supervision will consist of at least an annual review of budgets and reports in accordance with § 1930.124, and at least a biennial security inspection. HUD Form 92470, "Physical Inspection Report," may be used for the inspection.

Steps for conducting a review are outlined in Exhibit A of this Subpart. Supervision of grant-only recipients will consist of at least the reviews and inspections outlined in § 1930.119 of this Subpart.

§§ 1930.111–1930.112 [Reserved]

§ 1930.113 Borrower responsibilities.

Borrowers should understand the difference between FmHA supervised credit and credit from other Federal, State, and conventional sources. Borrowers are expected to have the ability to analyze and plan their activities, initiate and carry out adjustments and improvements, maintain suitable records, meet their obligations, make required reports, and maintain and properly account for project income and security property. Borrower members should understand their organization and the responsibilities of its governing body. That understanding includes the prohibitions against discrimination because of race, color, religion, sex, national origin, marital status, age, physical or mental handicap (applicant must have capacity to execute a legal contract) which accompany all such assistance from FmHA and the need to maintain adequate records by which the borrowers, compliance can be measured.

(a) *Borrowers with governing bodies.* Those elected or appointed officials comprising the governing body are responsible for:
(1) Knowing their responsibilities and obligations and conducting the affairs of the borrower so that the terms of its agreement(s) with FmHA will be fulfilled.
(2) Maintaining records of all current members and maintaining membership at the required level.
(3) Establishing and maintaining rules, regulations, rent schedules, fees, and other policies necessary for orderly operation of the project, payment of debts, and maintenance of required reserves.
(4) Preparing reports, audits, and other material required by FmHA for sound financial practices.
(5) Holding meetings as required by the organizational documents, and as otherwise necessary, to provide proper control and management of its operations, and to keep the membership informed.

(b) *Membership.* Members are responsible for full support of the project and operation by:
(1) Paying any dues, fees, and other required charges promptly.
(2) Electing responsible officials.
(3) Complying with organization rules and regulations.
(4) Attending annual and special meetings.

§§ 1930.114–1930.116 [Reserved]

§ 1930.117 Effective supervision.

For effective supervision, FmHA employees who are responsible for making and servicing Multiple Family Housing loans must be familiar with the complexities of the various types of borrowers; communicate effectively with the borrowers, and, if applicable, borrower's management agent; and provide guidance in the operation and management of projects.

(a) *District Director.* District Directors supervise a wide range of borrowers, from the individual to public agencies. To provide successful supervision, District Directors will use supervisory methods which will be the most effective. This includes but is not limited to the following:
(1) Organize their work and the work of their staffs in order that time is used effectively in providing supervision.
(2) Emphasize to the borrower and/or the borrower's management agent that they, not FmHA, are responsible for managing the project, collecting rents, repayment of the loan on schedule, and for compliance with any loan or grant agreement or resolution, State laws and other FmHA requirements.
(3) Monitor the borrowers' compliance with real property tax, insurance, bonding, security, and reporting requirements of FmHA regulations.
(4) See that each borrower designates a representative to serve as its contact source.
(5) Become familiar with the borrower's bylaws or other rules and regulations when necessary to assure compliance with FmHA requirements.
(6) Provide governing bodies with suggestions for disseminating information that may be helpful in keeping the membership in touch with activities of the governing body to increase and maintain membership interest.
(7) Provide adequate advice and guidance to governing bodies as needed.
(8) Avoid doing any of the following:
(i) Try to run the borrower's business.
(ii) Take charge of the borrower's meetings.
(iii) Attempt to supervise the borrower through its attorney or architect.
(iv) Assume that in the absence of adverse complaints, the borrower is proceeding successfully.

(b) *State Director.* State Directors will:
(1) Coordinate and direct supervisory activities related to borrowers and perform other functions as prescribed by this Subpart.
(2) Provide guidance and leadership to assure that the State staff and District Directors thoroughly understand and carry out their responsibilities.
(3) Develop training programs necessary to assure that FmHA personnel are kept up-to-date regarding the most effective supervisory methods, that the proper time is allotted to supervision, and that borrowers receive supervision to the extent necessary.
(4) Maintain necessary liaison with the OGC.
(5) Maintain necessary liaison with State and local authorities and agencies. For examples, in the case of projects benefiting the elderly, it is essential that liaison be maintained with State and Area Agencies on Aging.
(6) See that State Office records are maintained to assure effective supervision.

(c) *State staff.* State staff members including Rural Housing loan officers, management specialists, architects, and others responsible for supervision of borrowers covered by this Subpart will:
(1) Continuously monitor supervisory activities to assure that each borrower is receiving timely and effective supervision.
(2) Keep currently informed of the supervision being given and frequently check the status of borrowers.
(3) Train District Directors and other District staff to effectively perform the required supervisory activities, and to provide guidance in sound operation and management policies. The

assistance of State Agencies on Aging should be sought in connection with training which pertains to the management of services to their elderly.
(4) Post review closing of loans and grants to determine that they have been properly closed.
(5) Visit a sufficient number of projects to assure that proper supervision is being provided.

§ 1930.118 [Reserved]

§ 1930.119 Supervisory visits.

(a) *Purpose.* District Directors and other FmHA officials will visit the project site, including the management office, as necessary to enhance accomplishment of the objectives of the loan or grant. Following are the major purposes for which visits may be made:
(1) To assist with satisfactory development of the project..
(2) To evaluate the management program of the project pursuant to Exhibit B of this Subpart, such as:
(i) Adherence to the management plan.
(ii) Compliance with the management agreement when applicable.
(iii) Compliance with the Affirmative Fair Housing Marketing Plan.
(3) To review borrower records and verify information, such as:
(i) Tenant eligibility.
(ii) Tenant income.
(iii) Tenant selection criteria.
(iv) Waiting lists.
(v) Rental rates.
(vi) Other items as necessary.
(4) To inspect and ascertain proper maintenance and assure protection of the security for the FmHA loan.

(b) *Frequency.* Visits will be made when necessary to assure compliance with FmHA policies and objectives. The District Director after the first year of operation will make one visit at least every two years to each project. Planned visits will be included in the monthly work calendar. The visit shall be conducted with the borrower or its official representative.

(c) *Preparation.* The District Director will review the most recent monthly or annual reports, the running records, correspondence and other District Office records to determine payment dates of taxes, insurance, and bond premiums. The loan payment status will also be noted.

(d) *Recording and reporting.* The results of each visit will be recorded in the running record or, when appropriate, a letter summarizing the visit and outlining followup action may be directed to the borrower. Any major problems with the project will be reported in writing to the State Director with recommendations for corrective action. Exhibit A to Subpart A of Part 1955 or Form FmHA 465–7 "Report on Real Estate Problem Case" may be used.

(e) *Biennial inspections.* The District Director will conduct at least a biennial inspection of each project with the borrower, manager or designated representative present. This inspection may be made simultaneously with a visit scheduled in accordance with this section. The results of the inspection will be documented in the running record and formally recorded on Form FmHA 1930–8, "Year End Report and Analysis."

§§ 1930.120–1930.121 [Reserved]

§ 1930.122 Accounts and records.

Borrowers and grant recipients are required to maintain accounts and records as necessary to conduct their operation successfully, to meet the requirements of Federal, State and local laws and regulations, and to meet the terms of their agreements with FmHA, including such records on occupancy by race and/or ethnic origin that FmHA will need to be able to measure the Fair Housing compliance posture of the borrower during the conduct of compliance reviews. Borrowers and grant recipients will be required to implement accounting and recordkeeping systems as may be prescribed by FmHA.

(a) *Types of records and accounts.* The borrower must keep records and accounts sufficient to provide accurate, permanent, and current information. In order to meet this requirement, the type and form of records and accounts must be determined prior to loan or grant approval. The person responsible for maintaining such records and accounts (and if audits will be required, the Auditor) should be selected prior to loan or grant closing. Borrowers who are required to provide audits should have their auditors develop a recordkeeping system or at least review their systems and agree that it is acceptable for auditing purposes before loan closing. The recordkeeping system must conform to FmHA requirements.

(b) *Recordkeeping guides.* The following items will be considered in establishing a recordkeeping system:
(1) Prepare accounting records required by this Subpart on a cash or accrual basis.
(2) The requirements of Federal, State or local laws.
(3) If outside bookkeeping services are available, they may be used if the cost is reasonable. Management agents may also provide this service. The cost of contracting with an outside service must be shown separately and not included in the management fee.

§ 1930.123 [Reserved]

§ 1930.124 Borrower reports, audits, and analysis.

In order that borrowers establish and maintain adequate business management practices, it is essential that a system of reports, and analysis of such reports, be established at the onset. Timely reports will furnish necessary information on which to make sound management decisions essential to efficient operations and provide FmHA with periodic reports that will indicate trends and reflect the type and extent of management assistance needed. Timely analysis of such reports will reveal potential problems and provide an opportunity for corrective action before such problems develop to the extent that they have an adverse effect on fiscal or operational conditions. All reports will pertain only to the FmHA financed project. Forms and Forms Manual Inserts (FMI) necessary in making the required reports may be requested from FmHA. The following reports will be required, and borrowers and grant recipients will be required to implement a uniform reporting system that may be prescribed by FmHA.

(a) *Monthly report.* (1) Each borrower will complete Form FmHA 1930–6, "Monthly Report," the first month after: (i) completion of a project or occupancy of any units when FmHA provides the construction financing, (ii) FmHA loan closing or occupancy of any of the units where interim financing is used, (iii) reamortization, (iv) transfer, (v) failure to make scheduled payment, or (vi) failure to make or maintain required transfers to reserve. Complete reports in accordance with the FMI. The District Director will review the report, take appropriate action and forward one copy of the report to the State Director with comments within 15 days after the end of each month. The State Director will review and when necessary, make any appropriate comments to the District Director.

(2) Monthly reports are required through the borrower's first full fiscal year of operation and each month thereafter until discontinuance is authorized in writing by the District Director. At the end of such fiscal year, the District Director may inspect the project and review the operation including the annual analysis and audit. Monthly reports may be discontinued after the first full fiscal year of operation when the District Director determines that: (i) the project is being operated and maintained in a satisfactory manner; (ii)

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an adequate accounting system is being maintained; (iii) payments to FmHA are on schedule; and (iv) the reserve account is on schedule except for authorized expenditures. Authorization to discontinue the monthly reports will be made by the District Director in writing to the borrower with a copy to the State Director.

(b) *Annual reports.* Each borrower will submit, within 45 days following the close of its fiscal year, a report consisting of:

(1) An audit report or verification of accounts as required by paragraph (c) of this Section.

(2) Form FmHA 1930–7, "Statement of Budget, Income and Expense," for the year being planned and the actual income and expenses for the previous year. The form will be completed in accordance with the FMI.

(3) Exhibit A–5, "Housing Allowances for Utilities and Other Public Services," of Subpart E to Part 1944 when required for the project.

(4) Form FmHA 1930–8, "Year-End Report and Analysis," completed in accordance with the FMI.

(5) Copies of the minutes of the annual meeting or other related material that the District Director may request.

(c) *Audit reports.* Annual audit reports substantially complying with FmHA's "Instructions to Independent Certified Public Accountants and Licensed Public Accountants Performing Audits of Farmers Home Administration Borrowers and Grantees," which will be provided by FmHA, are required. Audit Reports from public bodies must comply with OMB Circular A–102. Audit Reports will be provided for each project as follows:

(1) For all projects with 25 or more units, an audit report will be prepared by a (i) Certified Public Accountant (CPA) or (ii) Licensed Public Accountant (LPA) licensed on or before December 31, 1970, except as outlined in Paragraph (c)(5) of this Section. The CPA or LPA may not be an individual or organization that is closely associated with the borrower in any manner that creates a possible conflict of interest. For example, the CPA or LPA cannot be an employee of the borrower or a member, stockholder, partner, principal, or have any interest in the borrower organization.

(2) For all borrowers with 24 or less units, an audit will not be required except as outlined in paragraph (c)(3) of this Section. The borrower will, however, provide for each project a verification of accounts on Form FmHA 1930–8 by a competent individual qualified by education and/or experience who is independent of the borrower or in the case of a nonprofit organization, by a committee of the membership not including any officer, director, or employee of the borrower.

(3) The State Director or District Director may, for good cause, require that the accounts for any project be audited by a CPA or LPA, such as when records are incomplete or inaccurate or it appears that the borrower has not adequately accounted for project income. The State Director or District Director may require that the accounts of RHS borrowers be audited if the loan exceeds the 2-year repayment term.

(4) The State Director or District Director may authorize the initial audit to cover a period up to 18 months for new projects whose first operating year was for a period of 6 months or less.

(5) The State Director may also make an exception to the CPA or LPA audit requirement for not more than one successive year in a specific case providing: (i) the borrower submits a written request and (ii) the FmHA approved budget for the project includes a typical and reasonable fee for the audit but the negotiated cost of the audit will increase the monthly per unit rental rate by more than $2.00; and (iii) the required reports, including a CPA or LPA audit, were properly submitted for the prior year's operations; and (iv) the borrower provides a verification by a competent individual who is independent of the borrower.

(d) *Annual analysis.* The business of each borrower will be scheduled for analysis each year not later than 60 days following the end of the borrower's fiscal year and will be completed except for extenuating circumstances such as the borrower's failure to provide the required information on time.

(1) *Preparation for the analysis.* No later than 30 days before the end of the borrower's fiscal year, the District Director will:

(i) Notify the borrower of the required reports, the due dates, and provide the borrower with necessary guides and forms for use in preparing reports.

(ii) When applicable, such as a loan to a new nonprofit organization, see that the borrower properly plans for its annual meeting, see that it will be held on the correct date and plan to attend the annual meeting of nonprofit organizations, unless the borrower has progressed as described in § 1930.110(c) of this Subpart.

(iii) Arrange to conduct an inspection of the project with the borrower or the borrower's representative so as to comply with the frequency of visits contained in 1930.119(b) of this Subpart.

(2) *Conducting the analysis.* The analysis will be conducted by the District Director as soon as possible after the required reports are submitted by the borrower. It is not necessary that the borrower be present during the actual analysis provided the information required by Part IV of Form FmHA 1930–8 can be completed from the District Director's knowledge of the operation. The District Director should review each step listed in Exhibit A of this Subpart when conducting the annual analysis and carefully document the results in a memorandum or in the borrower's case file. Exhibit A–1 should be reviewed when analyzing the results of the required audit reports to determine that the reports are in compliance with Agency regulations. Comments and recommendations should also be recorded in the appropriate section of the analysis report.

(e) *Distribution of reports and annual analysis information.* The information required by this Subpart will be distributed according to Exhibits B–6 and B–7 of this Subpart.

(f) *State Director's review of annual analysis.* Upon receipt of the items listed in paragraph (b) of this Section the State Director will:

(1) Review the information submitted, obtain any required modifications, approve Form FmHA 1930–7 and provide comments and recommendations by memorandum to the District Director. The State Director may delegate the authority to approve budgets to State Office staff members and to District Directors. If the authority to approve budgets is delegated to District Directors, a copy should be sent to the State Office for review.

(2) Be prepared for a review of reports by the National Office upon request.

§§ 1930.125–1930.127 [Reserved]

§ 1930.128 Labor housing grants.

In addition to the supervision provided in connection with LH loans, recipients of LH grants will receive supervision to assure that the terms of the grant agreement and other objectives of the LH grant are carried out. This supervision will be continued for a period of 50 years from the date of the grant agreement unless supervision is terminated by FmHA regulations at an earlier date. Comments on these points will be included in appropriate reports, including assurance that:

(a) The rents are reasonable.

(b) The project is operated as a community service for the benefit of the tenants.

(c) Domestic farm laborers are given absolute priority in occupancy. (This requirement also applies to borrowers who have LH loans only.)

(d) No organization borrower, other than an association of farmers or family farm corporation or partnership, may require that an occupant work for a particular farm or for a particular owner or interest as a condition of occupancy of the housing.

§ 1930.129 Rural housing site loans.

For RHS loan borrowers the following additional supervisory action will apply to assure that the terms of the loan resolution and loan objectives are carried out:

(a) Review of the site development account records for compliance with authorized loan expenditures.

(b) Work with the borrower on the adjustment of sales price of the developed lots as they are being sold to assure adequate income to repay the loan, pay taxes, accrued interest and any other authorized debt or expenditures.

(c) Determine that lots are sold only to eligible buyers.

(d) Work closely with the borrower to enhance the sale of all lots prior to the due date of the note.

(e) Should the borrower fail to repay the loan as agreed, the District Director should submit a report to the State Director within 30 days containing the following information:

(1) The status of the account, number of lots unsold, and reasons for the problem.

(2) Prospects of selling lots to eligible buyers and a target date as to when this can be accomplished, if feasible.

(3) General comments and recommendations for future servicing of this account. Where necessary, liquidation may be recommended.

(f) State Directors will take the following actions in connection with problem RHS accounts:

(1) Provide additional guidance and assistance as necessary. If the proposal for selling the remaining lots is feasible, is within FmHA authorities, and the account will likely be paid in full within one year, the State Director may continue with the loan until the lots are sold.

(2) Where no satisfactory proposal for selling the remaining lots can be developed, the account will be handled in accordance with Part 1955, Subpart A of this Chapter for liquidation.

§§ 1930.130–1930.133 [Reserved]

§ 1930.134 State office records.

State Directors will maintain records as necessary to assure that the requirements of this Subpart are met. Form FmHA 1930–9, "Multiple Family Housing Activity Card," will be maintained for each loan and/or grant recipient.

§§ 1930.135–1930.136 [Reserved]

§ 1930.137 State supplements, guides, forms, and other issuances.

The State Director may issue State supplements to this Subpart as necessary to assure the successful operation of the program. The State Director, with the assistance of the OGC, may supplement procedures or exhibits as set out in this Subpart to the extent necessary to enable borrowers to comply with the applicable provisions of State laws. State supplements to this Subpart require prior National Office approval. Under no circumstances will State forms be developed as replacements for the forms referred to in this Subpart.

§§ 1930.138–1930.140 [Reserved]

§ 1930.141 Materials to be provided borrower/applicant.

In order to enable borrowers and applicants to meet the intent of this Subpart, they will be supplied the following FmHA exhibits and materials:

(a) Exhibit B and Exhibits B–1 through B–9 and Exhibits B–10 through B–10C, of this Subpart if applicable.

(b) Exhibits C and C–1 of this Subpart.

(c) Exhibits B and B–1 of Supart E of Part 1944 of this Chapter.

(d) Exhibit C of Subpart E of Part 1944, of this Chapter.

(e) Booklet entitled "Instructions to Independent Certified Public Accountants and Licensed Public Accountants Performing Audits of Farmers Home Administration Borrowers and Grantees.

(f) The following forms and FMI's:

(1) Form FmHA 1930–7 and attached Exhibit A–5 of Subpart E of Part 1944, if applicable.

(2) Form FmHA 1930–6.

(3) Form FmHA 1930–8.

(4) Form FmHA 444–7, "Interest Credit and Rental Assistance Agreement."

(5) Form FmHA 444–29, "Project Worksheet for Interest Credit and Rental Assistance."

(6) Form FmHA 444–8, "Tenant Certification."

§ 1930.142 Complaints regarding discrimination in use and occupancy of RRH housing.

Any occupant or applicant for occupancy or use of RRH or LH housing or related facilities who believes he or she has been discriminated against because of race, color, religion, sex, national origin, age, marital status, physical or mental handicap (must possess capacity to enter into legal contract) should file a complaint with the Secretary of Agriculture (or with the Office of Equal Opportunity), U.S. Department of Agriculture, Washington, DC 20250. If a complaint is made to an FmHA County, District, or State Office, the complaint should be directed to the Office of Equal Opportunity (USDA–OEO) by the Supervisor of that office. If the complaint is forwarded to USDA–OEO by a County or District Office, the State Director will be made aware of the complaint.

(a) It is preferred that the complaint be in writing and signed by the complainant. The complaint may, however, be telephoned to the FmHA District Office. The complainant should provide the following information:

(1) The name, address, and telephone number of the complainant.

(2) The name and address of the person committing the alleged discrimination.

(3) Date and place of the alleged discrimination.

(4) Any other pertinent information that will assist in the investigation and resolution of the complaint.

(b) If a complaint is received by an FmHA office, the County Supervisor, District Director, or State Director will acknowledge receipt of the complaint and promptly forward it to the USDA Office of Equal Opportunity, Washington, DC 20250.

(c) Accompanying the complaint should be a statement from the District Director or State Director as to whether the security instrument or other document executed by the borrower contains a nondiscrimination agreement. The statement also should include any other information which the State Director or District Director has pertaining to the complaint. The District Director or State Director should delay a comprehensive investigation of any complaint until requested to do so by the National Office.

(d) The USDA Office of Equal Opportunity will determine whether discrimination did in fact occur. Appropriate steps will be taken to ascertain the essential facts. The USDA Office of Equal Opportunity will handle complaints in accordance with Department regulations, (which are found at 7 CFR § 15.6).

(e) If it is found that the complaint is without substance, the parties concerned will be so notified.

(f) If it is found that the borrower's discrimination agreement in the security instrument or elsewhere was violated, FmHA will inform the parties of such finding and advise the violator to take the action necessary to correct the

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violation and to give appropriate assurance of future compliance.

(g) If the borrower should fail to take such action and assure future compliance, the Administrator may take further appropriate action.

§ 1930.143 Exception authority.

The Administrator of the Farmers Home Administration may, in individual cases, make an exception to any requirements of this Subpart not required by the authorizing statute if the Administrator finds that application of such requirement would adversely affect the interest of the Government, the immediate health or safety of the tenants or the community. The Administrator will exercise the authority only at the request of the State Director. The State Director will submit the request supported by data: demonstrating the adverse impact; identifying the particular requirement involved; showing proper alternative courses of action; and, identifying how the adverse impact will be eliminated.

§§ 1930.144–1930.150 [Reserved]

Exhibit A—Steps for FmHA Personnel in Conducting Annual Analysis of Rental Operations

I *Examine the condition of the records to determine that:*

A. Required records are being properly maintained in accordance with loan resolution or agreement.

B. Decisions of officials are being entered in the minutes book, if applicable.

C. Financial transactions are recorded as they occur in a complete and orderly manner in appropriate books.

D. Any membership or stock transfers have been approved by FmHA as required and are recorded.

E. The records of accounts are maintained by qualified persons.

F. The records are reviewed by an auditing committee or qualified accountant as required.

II *Study the financial progress:* Compare current financial condition and net worth with previous years to discover any trends, for example:

A. Has cash carryover increased or decreased?

B. Are the debts greater or less?

C. Is the net worth greater or less?

D. Are accounts receivable greater or less?

E. Are collection provisions being enforced?

F. Are reserve and other required funds or accounts properly maintained?

III *Study the statement of income and expenditures for the past year:* Compare it with the budget for the past year and the same statement for previous years.

A. Were rents collected sufficient to produce the required revenues for planned expenditures?

B. Were actual expenditures significantly different from those budgeted?

C. Were the expenditures sufficient to adequately maintain the project?

D. Were expenditures reasonable and typical for similar projects?

E. Were any essential items of maintenance deferred during the past year?

F. Were payments made on debts in the proper amounts and on the dates agreed to?

G. If the borrower is operating on a limited profit basis, did net cash return exceed the amount permitted in the loan agreement or loan resolution?

IV Study the budget for the next year: Compare it with the statement of income and expenditures for the past year, taking into consideration any known increase or decrease in operating expenses for the planned year.

A. Are proposed expenditures adequate for normal maintenance and operation of the project?

B. Are proposed fees to be paid to firms closely associated with the borrower and their management agents typical, reasonable, and earned for the services to be provided?

C. Does the budget make provision for financing maintenance deferred from the previous year?

D. Does it provide for the required financial reserves?

E. Is planned revenue adequate to cover planned expenditures?

F. Will the budget and planned operating practices correct any deficiencies in the past year's operations?

V *Study the adult report:* Compare it with the audit from the previous year, noting any significant changes affecting the borrower's operations. Exhibit A–1 may be used as a guide.

VI *Determine whether or not the borrower has:*

A. Followed the management plan, including occupancy requirements, leasing requirements, Affirmative Fair Housing Marketing Plan, and Tenant Grievance and Appeals Procedure.

B. Renewed fidelity bonds and insurance policies.

C. For borrowers with governing bodies.

1. Held regular board and membership meetings.

2. Conducted the affairs along sound business lines.

D. Made a change in any organizational documents without FmHA consent.

E. Made a change in the plans for management and operation of the project without FmHA consent.

F. Made a change in the membership or interest in ownership without FmHA consent.

VII *Summary:* Summarize major observations and decisions reached as the result of the review and record on Form FmHA 1930–8, "Year End Report and Analysis."

Exhibit A–1—Review of Audit Reports

I. *Purpose.* To present a general guide for use of FmHA staffs in the review of independent accountants' audit reports in order to obtain maximum benefit from these audits. The procedures are designed to provide uniformity in the audit review, improve loan program servicing and help to promote better independent audits.

II. *General.* FmHA guidelines for independent audits are detailed in the booklet, "Instructions to Independent Certified Public Accountants and Licensed Public Accountants Performing Audits of Farmers Home Administration Borrowers and Grantees," (hereinafter called Audit Guide and available from FmHA). This Audit Guide, along with other instructions, is designed to protect the security of Government loans. The review of the financial and financially related information in the audits must be performed from a technical standpoint in a prompt manner so that the facts and conclusions are readily available for analysis; only then can results be used effectively for management purposes and help to insure improved audit practices.

III. *Scope.* The review should include:

A. A determination of the adequacy of the audit in relation to FmHA regulations and Audit Guide.

B. Interpretation of Information included in the audit.

C. Preparing a letter to the borrower on any missing or adverse audit data.

D. Informing appropriate FmHA offices of review results and recommendations.

IV. *Review procedures to be followed.*

A. *General.* The individual professional judgment of the reviewer should be used at all times. Considerations and decisions requiring the exercise of judgment should be used in the following:

1. Circumstances peculiar to the borrower.

2. Degree of importance attached to each item questioned.

3. Number of exceptions.

4. Whether the exceptions relate to the auditors work or the borrower's records and operations.

5. If specific action is to be requested of the borrower.

6. Whether or not the report as a whole is acceptable.

B. *Review and Procedure.*

1. *Specific.*

a. Determine if the audit was performed by a Certified Public Accountant or Licensed Public Accountant licensed on or before December 31, 1970.

b. Does the audit cover the most recent 12 months since the previous audit?

c. Was the audit received within 45 days of the borrower's year end?

2. *Evaluation checklist for audit reports.* The "Evaluation checklist for Audit Reports" which is part of this Exhibit is designed to systematically record and reveal the audit findings. Information tallied on this form is a good indication of whether or not additional contact needs to be made with the borrower.

3. *Previous audits and correspondence.* Reference to the prior audit and any correspondence concerning it can be most helpful in the current review. Determine whether corrections requested in the previous year, if any, have been made, and whether the auditor has complied with previous suggestions for improvement in the audit report, if any.

C. *Preparing the audit review letter.*

General. After completion of the "Evaluation Checklist for Audit Reports" which follows and applying personal judgment, a decision must be made on whether or not to prepare an audit review letter similar to that shown as part of this exhibit.

a. If the audit fully complies with the Audit Guide and instructions, a letter is not necessary.

b. If the audit substantially meets the requirements and is lacking in only a few points, ask the borrower to have the auditor furnish this additional information.

c. Audits which are unacceptable should be returned to the borrower for full compliance, indicating the reasons.

Exhibit A–1—Evaluation Checklist for Audit Reports

State _____
Name of Borrower _____
County _____
Address _____
Case No. _____
Name of Auditor _____
Project No. _____
Date of Audit Report _____
Period Covered _____

1. *Auditor's Opinion* (Section III*—Check one)
——(a) Unqualified
——(b) Qualified
——(c) No opinion

2. *Financial Statements* (Section II C*)
——(a) Balance Sheet
——(b) Income and Expense
——(c) Changes in Financial Position
——(d) Net Worth Reconciliation
——(e) Comparative Statements

3. *Required Supplemental Letter* (Section II D*) *or comments on the following:*
——(1) A statement that generally accepted auditing procedures were used but if not, which were omitted.
——(2) Evaluation of system of internal control.
——(3) Adequacy of accounting records and outline any recommendations for improvement.
——(4) Adequacy of physical control over assets.
——(5) Financial compliance with loan agreement including maintenance of cash reserves.
——(6) Financial reports in audit are in agreement with accounting records of organization. Indicate any material or unusual adjustments.
——(7) State whether deposit funds are in institutions insured by the Federal Government.
——(8) List kinds and amounts of insurance coverage.
——(9) Indicate if borrower is exempt from Federal income tax.
——(10) For unsatisfactory conditions disclosed by audit, state their nature and, if possible, recommend corrective action.
——(11) List names of members, users or renters delinquent over 60 days and the amount of each delinquency.
——(12) Indicate any other information that the auditor believes necessary for full disclosure.

Note.—If information is provided by the auditor which answers these items, although not in supplemental letter, it is acceptable.

4. Comments by auditor on previously recommended items which have or have not been implemented by borrower (Section IV*).

5. Was report received within 45 days of the end of the borrower's operating year?

6. Was audit performed by a CPA or LPA? If by an LPA verify that the LPA was licensed on or before December 31, 1970.

Exhibit A–1—Example Audit Review Letter

Dear _____:

We have reviewed your audit report for the period _____ to _____, prepared by _____. This review was made in accordance with current FmHA regulations and the Audit Guide entitled "Instructions to Independent Certified Public Accountants and Licensed Public Accountants Performing Audits of Farmers Home Administration Borrowers and Grantees." Based on this review, your audit:

1. [ ] Is acceptable. However, the auditor's recommendations concerning _____ should be implemented prior to next year's audit.

2. [ ] Is acceptable but did not include comparative-type financial statements as indicated in Section II C of the Audit Guide. Please inform the auditor to prepare such statements next year.

3. [ ] Is acceptable but was not submitted within 45 days after the end of the year. Please insure that next year's audit is forwarded before _____.

Exhibit A–1

4. [ ] Substantially meets all the requirements. However, the following items were omitted as detailed in the Audit Guide, Section II D, "Required Supplemental Letter." Please have your auditor comment on the number(s) circled and forward a copy to us. These numbers correspond to the 12 items listed in Section II D of the Audit Guide.

1 2 3 4 5 6 7 8 9 10 11 12

5. [ ] Is returned as unacceptable for the following reason(s). Please have the auditor prepare your audit in accordance with the Audit Guide.

a. [ ] It was prepared without audit.
b. [ ] The following financial statements were omitted: (Audit Guide, Section II C)
[ ] Balance Sheet
[ ] Statement of Income and Expense
[ ] Statement of Changes in Financial Position
[ ] Reconciliation of Net Worth
c. [ ] The auditor's opinion. (Audit Guide, Section III)
d. [ ] Other
6. [ ] Other.

District Director:

This letter will be prepared in the District Office. A copy of the audit and the approval memorandum will be sent to the State Office.

Exhibit B—Multiple Housing Management Handbook

Table of Contents

I. Purpose

*References to "Sections" indicate the appropriate section in the FmHA Audit Guide booklet entitled "Instructions to Independent Certified Public Accountants and Licensed Public Accountants Performing Audits of Farmers Home Admininstration Borrowers and Grantees."

V 45 C 27 80 UMI

II. Definitions
III. Rent Subsidy Opportunities
IV. Management Plan
V. Renting Procedure
VI. Verification and Certification of Tenant Income
VII. Leases
VIII. Rent Collection
IX. Rent Increases
X. Maintenance
XI. Accounting and Reporting Requirements and Financial Management Analysis.
XII. Management-Tenant Relations.
XIII. Termination of Tenancy and Eviction.
XIV. Security Servicing.

Title	Exhibit
Management Plan Requirements for FmHA Multiple Family Housing Projects	B-1
Requirements for Management Agreements	B-2
Suggested Housing Management Agreement for FmHA Multiple Family Housing Projects	B-3
Questionnaire for Management Agent of FmHA Multiple Family Projects	B-4
Questionnaire for Owners of FmHA Multiple Family Housing Projects	B-5
Monthly Reports (Chart)	B-6
Annual Reports (Chart)	B-7
Miscellaneous Reports of Submittals (Chart)	B-8
Employment Inquiry	B-9
Objective Guides To Assist Management in Determining the Ability of Tenants to Sustain Relative Independence	B-10
Physical Self-Maintenance Scale (PSMS)	B-10A
Instrumental Activities of Daily Living Scale (IADL)	B-10B
Index of Independence in Activities of Daily Living Scale (ADL)	B-10C

Multiple Housing Management Handbook

I. *Purpose:* This management handbook prescribing Farmers Home Administration regulations, policies and procedures for management of RRH and LH projects will be used by multiple housing borrowers and applicants and their management agents and resident managers. The subject matter is in chronological stages of management considerations. Several exhibits are also included to provide further clarification and guidance. These regulations are intended to assist in the successful operation of FmHA-financed rental projects.

II. *Definitions:*

A. *Forms Manual Insert (FMI).* A type of directive which includes a sample of the form and complete instructions for its preparation, use and distribution.

B. *Management Plan.* The applicant's written proposal for the overall operation and management of the rental project.

C. *Management Agent.* The firm of individual engaged by the borrower to manage the project in a accordance with a written agreement.

D. *Management Agreement.* The written agreement between the borrower and management agent setting forth the management agent's responsibilities and fees for services.

E. *Management Fee.* The total cost of the management service paid by the borrower directly or indirectly and includes all items in the management agreement.

F. *Project Manager.* The individual(s) and/or firm(s) responsible for management of the project; could be the owner and/or management agent and/or resident manager.

G. *Resident Assistant.* A person(s) residing in the living unit who is essential to the well-being and care of the senior citizen or handicapped person(s) and who is not related by blood, marriage or operation of the law to the senior citizen or handicapped person(s) residing in the unit and receiving supportive services.

H. *Residing Manager.* The individual employed by the borrower or the management agent who lives on the site and is responsible for the day-to-day operations of the project.

I. *Rental Agent.* The individual responsible for the leasing of the units. This individual may be hired by the owner or management agent.

J. *Caretaker.* The individual(s) employed by the borrower or management agent to handle normal maintenance and upkeep for the project.

K. *Senior Citizen.* A person 62 years of age or over; and may be either the tenant or co-tenant. (Also see Subpart E of Part 1944 of this chapter.

L. *Handicapped Person.* A person, or in the case of a household, either the tenant or co-tenant, who does not need constant supervision or constant medical or nursing care, but meets the qualifications of either of the following paragraphs:

1. A person who has an impairment which (a) is expected to be of long-continued and indefinite duration, (b) substantially impedes his or her ability to live independently, and (c) is of such a nature that such ability could be improved by more suitable housing conditions.

2. A person who is developmentally disabled. A developmentally disabled person is handicapped with a severe, chronic disability which: (a) is attributable to a mental or physical impairment or combination of mental and physical impairments; (b) is manifested before the person attains age 22; (c) is likely to continue indefinitely; (d) results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic sufficiency; and (e) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

M. *Household.* One or more persons who maintain or will maintain residency in one rental unit.

N. *Annual Income.* Planned income of the tenant, co-tenant, and spouse of either, and all other adults who live, or propose to live, in the rental unit within the next 12 months.

1. *Income Included.* All net business income and gross income from wages, salaries, commissions, pensions, social security, welfare, GI Bill, fellowships, scholarships, assistantships, unemployment compensation, alimony, and all other sources, except as indicated in paragraph N 2 below, must be counted. This includes:

a. Welfare, Social Security, child support payments, and other payments made on behalf of minors.

b. All expected overtime and bonus income which can reasonably be considered dependable.

c. Proceeds from the sale of equipment, mineral rights or real estate sold under a long-term contract (usually more than 3 years).

d. Projected business losses will be considered as "0" in determining annual income.

2. *Exempted Income.* The following income is not counted.

a. Earnings from employment or income from GI Bill, fellowships, scholarships, or assistantships for schooling received by a *full-time student* who is not the tenant, co-tenant, or spouse of either.

b. Proceeds from the sale of equipment, mineral rights, or real estate sold under a short-term contract (usually 3 years or less).

c. Cash value of food stamps, real estate tax exemptions, or similar types of assistance.

d. Payments received for the care of foster children or services rendered as a volunteer on a project sponsored by any of the following:

(1) Retired Senior Volunteer Program.

(2) Foster Grandparent and Older American Community Service Programs (as either a foster grandparent, senior health aid, or senior companion).

(3) National Volunteer Programs to Assist Small Business and Promote Volunteer Service by Persons with Business Experience.

(4) Peace Corps, Vista, or any other volunteer program sponsored by ACTION.

e. Income received for services rendered by chore service workers residing with a tenant when such person's occupancy is essential to the well-being of the tenant when such services are compensated by a Federal, State, or local assistance program designed to enable such person to achieve or maintain independent living and/or to avoid inappropriate institutionalization.

f. Allowances paid by the Department of Labor to CETA participants. Wages paid by the employers of CETA workers will be included.

g. The income of a tenant, co-tenant, or spouse of either not living in the rental unit for reasons of broken marriage or separation, and not because of work assignment or military order when:

(1) Legal papers have been filed with the appropriate court to commence divorce or legal separation proceedings provided the tenant or co-tenant agrees that should the spouse begin to live in the rental unit, that spouse's income will then be counted toward annual income and the tenant or co-tenant may be required to vacate the unit if no longer eligible from an income standpoint.

(2) Papers have not been filed to commence divorce or legal separation proceedings provided the spouse has been living apart from the tenant or co-tenant for at least six months, and the tenant or co-tenant is informed and agrees that should the spouse begin to live in the rental unit, that the spouse's income will then be counted toward annual income and the tenant or co-tenant may be required to vacate the unit if no longer eligible from an income standpoint.

3. *Deductions From Income.* In determining the tenant's annual income, the following deductions may be made:

a. A deduction may be made in the same manner as outlined in Internal Revenue Service (IRS) regulations for the exhaustion wear and tear, and obsolescence of depreciable property used in the trade or business of the tenant, co-tenant, or spouse of either. An itemized schedule must be provided showing the depreciation claimed. The schedule should be consistent with the amount of depreciation actually claimed for these items for Federal income tax purposes.

b. A deduction may be made in the same manner as outlined in IRS regulations for necessary work-related expenses actually paid by the employee in excess of the amount reimbursed by the employer. The deduction must be reasonable and, in the judgment of the approving officials, should be deducted from an employee's income to reflect annual income on an equal basis with other employed persons. Deductions, however, are not permitted for the following:

(1) Transportation to and from work.

(2) Cost of meals incurred on one-day business trips.

(3) Educational expenses except those incurred to meet the minimum requirements for the employee's present position.

(4) Fines and penalties for violation of laws.

c. A maximum aggregate deduction of $400 per month may be made for child care, disabled dependent care, or care of an incapacitated spouse of a tenant or co-tenant. The deduction will be limited to expenditures *actually paid* to enable the tenant or co-tenant to be gainfully employed. The reason for any deduction must be recorded in detail and attached to Form FmHA 444–8, "Tenant Certification." Payments for these services may not be made to persons whom the tenant is entitled to claim as personal deductions for income tax purposes.

d. For purposes of determining interest credit or rental assistance subsidy a deduction may be made for full-time nursing home or institutional type care which cannot be provided in the home for member of the household who is a senior citizen or handicapped person. Such care must be expected to be required for six months or more. The deduction will be limited to expenditures actually paid for such services. For determining eligibility the maximum deduction may not exceed $400 per month.

O. *Adjusted Annual Income.* This is the current annual income of the household as defined in paragraph II of this Exhibit, less 5 percent and less an additional $300 for each minor person, (excluding the tenant, co-tenant and foster children), who is a member of the household and lives in the rental unit.

P. *Adjusted Monthly Income.* This is the amount obtained by dividing the adjusted annual income by 12.

Q. *Low-Income Household.* A household having an adjusted annual income within the maximum limit stated in Exhibit C of Subpart A of Part 1822 (FmHA Instruction 444.1).

R. *Moderate-Income Household.* A household having an adjusted annual income within the maximum limit stated in Exhibit D of Subpart A of Part 1822 (FmHA Instruction 444.1).

S. *Domestic farm laborers.* Persons who receive a substantial portion of their income as laborers on farms in the United States, Puerto Rico, or the Virgin Islands and either (1) are citizens of the United States, or (2) reside in the United States, Puerto Rico, or the Virgin Islands after being legally admitted for permanent residence, and may include the immediate families of such persons, and as further defined in FmHA Instruction 1944–D, paragraph 1944.153(d).

T. *Migrant.* A domestic farmworker who works in any given local area on a seasonal basis and relocates his or her place of residence as farm work is obtained during the year.

U. *RRH* means Rural Rental Housing loans.

V. *LH* means Labor Housing loans and/or grants.

W. *RHS* means Rural Housing Site Loans.

X. *Congregate housing.* Housing that affords an assisted independent living environment that offers the senior citizen or handicapped person who may be functionally impaired or socially deprived, but in good health (not acutely physically ill), the residential accommodations, central dining facilities, related facilities, and supporting service(s) required to achieve, maintain or return to a semi-independent life style and prevent premature or unnecessary institutionalization as they grow older. Congregate housing is also:

1. Housing which has complete kitchen facilities in each unit. However, some or all of the units may have limited kitchen facilities such as a cooktop with a small oven and a refrigerator. In the case of group living arrangements each single family dwelling is considered a unit.

2. *Housing involving a group living arrangement* where one or more senior citizens or handicapped persons may share *living space within a rental unit* in which a resident assistant is normally required. Each housing may be one or more single family dwellings or a multi-unit structure.

III. *Rent Subsidy Opportunities:* Because of high housing costs, it is often extremely difficult to house persons with low and moderate incomes without some type of rental subsidy. The subsidy programs available should be considered at the time of developing a project proposal and, in some cases, used in an existing FmHA financed project where persons are required to pay more than 25 percent of their adjusted income for the cost of rent and utilities. These subsidy programs are as follows:

A. *FmHA Interest Credit—Section 515 Loans.* Regulations are contained in Exhibit B to Subpart E or Part 1944.

V 45 OC 27 80 UMI

1. Plan I—Available only to broadly-based nonprofit corporations and consumer cooperatives.

a. Occupancy is limited to low-income nonsenior citizens, low- and moderate-income senior citizens, and low- and moderate-income handicapped persons.

b. Budgets and rental rates are based on a 3 percent loan. The difference between the note rate of interest and the 3 percent interest is made up in the form of an interest credit to the borrower's account.

c. Normally this plan would only be considered during the development of a new project proposal when greater benefits cannot be achieved for the prospective tenants under interest credit Plan II.

2. Plan II—Available to broadly based nonprofit corporations, consumers cooperatives, State or local public agencies, or to profit organizations and individuals operating on a limited profit basis.

a. Occupancy is limited to low- and moderate-income persons, except those senior citizens and handicapped persons not meeting the definition of a low- or moderate-income person may continue occupancy if they were tenants prior to the issuance of this regulation on *10–27–80.*

b. Budgets for the housing are prepared for two rental rates—basic and market. Minimum (basic) rental rate is based on a 1 percent loan. The maximum (market) rental rate is based on the interest rate shown in the promissory note.

c. Tenants pay 25 percent of their adjusted income, less a utility allowance if applicable, or the basic rental rate, whichever is the greater. In no case will the tenant pay more than the market rental rate.

d. Existing rural rental housing borrowers whose loans were approved subsequent to August 1, 1968, may convert from Plan I to Plan II, or if presently profit motivated, convert to Plan II by executing a new or amended loan resolution or loan agreement and an interest credit and rental assistance agreement in accordance with Exhibit B of Subpart E of Part 1944 of this Chapter.

B. *Rental Assistance Program—FmHA.* This is a subsidy program available to RRH, and LH borrowers to assist low-income tenants in paying their rent. Rental assistance is not authorized for tenants whose income is above the low-income rate. LH borrowers who are individual farmowners or association of farmers cannot obtain rental assistance. RRH borrowers with loans approved after August 1, 1968, must be, or change to, operating under Interest Credit Plan II.

1. Occupancy requirements are the same as for Plan II borrowers.

2. Tenants occupying a unit and eligible to receive rental assistance pay 25 percent of their adjusted income less an approved utility allowance when applicable. The difference between the amount of rent paid by the tenant and the basic rent (for labor housing the established FmHA approved rental rate) is paid to the borrower as a rental assistance payment.

3. Existing multiple housing borrowers including eligible labor housing borrowers may request to participate in the program by contacting the appropriate FmHA District Office. Multiple housing loan applicants wanting to participate should make the request a part of their loan application.

4. Regulations for this program are contained in Exhibit C to Subpart E of Part 1944 of this Chapter.

C. *Department of Housing and Urban Development (HUD)—Section 8 Housing Assistance Payments Program.* This program is similar to the FmHA subsidy rental assistance program but is administered by HUD. There are two programs, one for new construction and rehabilitation and another for existing housing. The FmHA and HUD have entered into a Memorandum of Understanding (See Exhibit H to Subpart E of Part 1944 of this Chapter.) Wherein HUD sets aside units for use by FmHA for new construction financed with rural rental housing loans. Additional information on the HUD Section 8 program is contained in Exhibits G and H to Subpart E of Part 1944 (FmHA Instruction 1944–E).

IV. *Management Plan:*

A. *General.* A comprehensive management program is essential to the successful operation of a project. A written plan is the primary ingredient which should describe the detailed policies and procedures in managing the project. *A management plan is required for all FmHA multiple housing projects.* The detailed plan must be submitted to FmHA with the loan application, (Form AD 625, "Application for Federal Assistance"). Exhibit B–1 of this Subpart outlines the requirements of the plan. The following items should be addressed in the plan, some of which are discussed later in more detail:

1. *The relationship between owner and management agent (if applicable).*
2. *Personnel policy and staffing arrangements.*
3. *Publicizing and achieving early occupancy and affirmative marketing.*
4. *Tenant certification and verification of income.*
5. *Tenant admissians policies and leasing policies.*
6. *Rent callection.*
7. *Rent increases.*
8. *Maintenance.*
9. *Record maintenance and reports.*
10. *Energy conservation measures.*
11. *Management-tenant relatians*
12. *Termination of leases and evictions.*
13. *Management of Services to the Elderly (if congregrate housing project).*
14. *Management agreement (if applicable).*

B. *Management Agreement.* The management agreement is a primary management ingredient and bears a close relationship to the management plan. Requirements of a management agreement are listed in Exhibit B–2 of this Subpart. A management agreement is required except in cases where the borrower (owner) fills the role of manager. The management agreement is the primary document by which the management agent is guided and evaluated. Exhibit B–3 of this Subpart is a suggested management agreement. There are two types of agreements acceptable to FmHA, described as follows:

1. The owner hires a professional management agent to operate the project. The management agent may provide a resident manager for onsite management and/or caretaker when justified by the size of the project. A qualifications statement by the management agent is required in accordance with Exhibit B–4 of this Subpart.

2. The owner maintains all or a part of the management role. A qualifications statement by the owner in accordance with Exhibit B–5 of this Subpart is also required. The owner may use the services of a resident manager in providing onsite management and/or services of a caretaker when justified by the size of the project.

C. *Responsibility.* Regardless of the management system used, the management plan and management agreement or contract must be based on applicable provisions of local, State, and Federal statutes and the regulatory requirements of the loan used to finance the project. Regardless of the authority delegated by the owner to the management agent, the owner remains totally responsible to FmHA for the project.

D. *Compensatian.*

1. *Projects with management agent.* The amount of compensation is to be negotiated between the owner and the management agent. The amount of compensation should be based on a percentage of gross rents collected for each occupied unit. This should include any rental assistance and/or interest credit paid by the Government. The percentage may vary from project to project depending upon size, complexity, services to be provided, type of project, and other pertinent factors, such as comparable fees for the area in which the project is located. An initial rent-up fee payable on a per unit basis will not be permitted when the borrower or any member of the borrower organization owns an interest in the management firm or where the borrower manages the project. The borrower or management agent may be reimbursed from the 2 percent initial operation and maintenance investment paid out in connection with initial rent-up. The management agreement must be specific as to services to be provided that are not borne by the management agent, such as:

a. Cost of services of management agent's resident manager.
b. Legal fees.
c. Auditing fees.
d. Repair and maintenance costs.
e. Fidelity bond premiums.

2. *Owner managed projects.* Only when FmHA determines that the owner (either as an individual or as a part of an organization) has the necessary management capabilities, will the owner be authorized to manage the project. A typical management fee may be charged as an expense to the project. The compensation must be reasonable, earned, and not exceed the normal cost of similar management services for the project, had such services been provided by an independent management agent. This compensation will never include costs normally included in the project budget for other allowable operation and maintenance expenses such as: caretaker, resident manager, recordkeeping, etc.

E. *Resident Manager and/or Caretaker Services.* Whether a project is managed by a management agent or by the owner, the onsite services of a resident manager and/or caretaker may be used when justified by the size of the project. In such cases, there should be a written agreement with the resident manager to define the role and duties of the resident manager as distinct from the owner and which can be used as a basis for evaluating the resident manager. A project must generally have 12 or more rental units in order to justify the services of a resident manager. For larger projects, FmHA may require an onsite resident manager and/or caretaker. It is desirable but not mandatory that the resident manager and/or caretaker meet the tenant eligibility requirements for occupancy in the project. If a full-time resident manager and/or caretaker is not needed, these functions should, if at all possible, be performed by an eligible tenant.

1. *Calculation of rental rate.* For the purposes of calculating an appropriate rental rate for a resident manager and/or caretaker and for determining the borrower's appropriate payment on Form FmHA 444–29, "Project Worksheet for Interest Credit and Rental Assistance," the following policies will apply:

a. Compensation paid to the resident manager and/or caretaker for services rendered should be reflected in the operation and maintenance expenses of the project and be included in the annual income of the resident manager and/or caretaker. This will include the value of any in-kind compensation received. When a living unit is provided at no cost or at a reduced cost to the resident manager and/or caretaker, the rental value of that rental unit for all projects except those operating under interest credit Plan I will be calculated at the FmHA approved market rental rate for the size of unit occupied. For interest credit Plan I projects, the value of the rental unit will be calculated at the FmHA approved market rental rate for the size of unit occupied, plus 25 percent.

b. For resident manager and/or caretaker not provided a living unit at no cost, the rental rate will be calculated as follows:

(1) If the resident manager and/or caretaker meets the tenant eligibility requirements for the type of project being occupied, appropriate rental rate will be the rate established for an eligible tenant in accordance with paragraph V B of this Exhibit.

(2) If the resident manager and/or caretaker does not meet the tenant eligibility requirements for the type of project being occupied because the resident manager's and/or caretaker's adjusted annual income exceeds the maximum income limits, the resident manager's and/or caretaker's appropriate rental rate for all projects except those operating under interest credit Plan I will be the FmHA approved market rental rate for the size of unit occupied. For interest credit Plan I projects, the appropriate rental rate will be the FmHA approved market rental rate for the size of unit occupied, plus 25 percent.

2. *Owner Occupancy.* Since homeownership is not an objective of the FmHA Multiple Housing loan programs, owners will not be permitted occupancy in a project unless the owner will manage the project (rather than hiring a management agent), the size of the project (usually 12 units or more) justifies the services of a resident manager and/or caretaker, and the owner is determined capable and will perform these services.

F. *Projects Without a Resident Manager and/or Caretaker.* Projects without a resident manager and/or caretaker must have, at a minimum, a tenant who is agreeable to serve as a contact person or a person who is easily accessible to the project who is able to speak on behalf of project management or owner.

V. *Renting Procedure:* Planning for initial rent-up, occupancy and maintenance should begin months ahead of the projected completion of the project. Decisions must be made concerning advertisement of the availability of units, how affirmative marketing practices will be used, tenant eligibility, and tenant selection criteria.

A. *Affirmative Fair Housing Marketing Plan:* All borrowers with *five* or more rental units must meet the requirements of section 1901.203(c) of Subpart E of Part 1901 of this Chapter by preparing and submitting an Affirmative Fair Housing Marketing Plan on HUD Form 935.2, or providing evidence of being a signatory to a voluntary affirmative marketing agreement approved by HUD. Records must be maintained by the borrower reflecting efforts to fulfill the plan and will be subject to review by FmHA. *The approved plan will be made available by the borrower for public inspection at the borrower's place of business or rental office which must be in the same local area as the housing.* In developing the plan, the following items should be considered.

1. Direction of Marketing Activity: The plan should be designed to attract applications for occupancy from all potentially eligible groups of people in the housing marketing area regardless of race, color, religion, sex, age, marital status, or national origin, or physical or mental handicap (must possess capacity to enter into legal contract). The plan must show efforts will be made to reach those low-income and minority persons who traditionally would not be expected to apply for such housing without special outreach efforts.

2. Marketing Program. The applicant or borrower should determine which methods of marketing such as radio, newspaper, TV, signs, etc. are best suited to reach those low-income and minority persons who otherwise might not apply for occupancy in the project. The Agency on Aging serving the particular community should be contacted to assist in reaching senior citizens.

a. Signs, Brochures, Etc. Any signs, pamphlets, or brochures used must

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contain appropriate equal opportunity statements. A copy of this proposed material should be submitted along with the HUD Form 935.2 for approval. The nondiscrimination poster entitled, "And Justice For All" and/or the "Fair Housing" poster must be displayed in the rental office.

b. Community Contact. In small communities where there may not be formal communication media aimed at minorities, contacts with special interest groups such as places of worship and social organizations should be made in affirmative marketing. Community contacts may also be used in reaching specific elements of the community such as the elderly or particular ethnic groups.

c. Rental Staff. All persons responsible for rental of the units will be instructed in the procedures and requirements of the Affirmative Fair Housing Marketing Plan and in those actions necessary to carry out the plan in promoting equal housing opportunity.

3. The borrower will be required to provide data in accordance with Subpart E of Part 1901 of this Chapter, pertaining to compliance reviews to indicate to what extent minority groups are being benefited.

B. *Tenant Eligibility:* It is important that the rental agent of the project be knowledgeable about the FmHA eligibility requirements as they relate to a particular project. FmHA loans are made on housing projects contingent upon the units being occupied by eligible tenants.

1. *Eligible Tenonts.* Eligible tenants in a project may be either senior citizens, handicapped, or low- and moderate-income persons or any combination thereof in a Rural Rental Housing project or domestic farm laborers in a Labor Housing project as planned for the project and shown on the borrower's loan resolution or loan agreement and who comply with the following number of authorized occupants in the units:

Number bedrooms	Occupants	
	Min	Max
0	1	2
1	1	2
2	2	4
3	4	8
4	6	8
5	8	10

The above occupancy requirements for eligibility of migrants may not be applicable. Density levels will be determined in those cases based on project design.

In other cases, when a unit cannot be rented because a family of the size needed to rent the unit is not available, the State Director may authorize an exception to this requirement in accordance with paragraph V B 5 of this Exhibit. Also in case of unusual household situations such as a single parent with older children of opposite gender the State Director may make an exception to the above requirements on a case by case basis and determine the household eligible.

a. Tenants must generally be capable of caring for themselves. However, in the case of congregate housing with supportive services, eligible tenants may include elderly or handicapped persons who require some supervision and central services, but are otherwise able to care for themselves. In congregate housing projects, the tenant or co-tenant's level of function and degree of competence in performing daily living activities must be assessed by the borrower and the tenants may be permitted occupancy if found to possess the ability to sustain relative independence, given the supportive services in the project. See Exhibit B–10, "Objective Guides to Assist Management in Determining the Ability of Tenants to Sustain Relative Independence." All tenants must meet the following criteria:

(1) Not be totally dependent on others to be able to vacate the unit for their own safety in emergency situations.

(2) Be able to provide for their own sustenance in projects that provide less than full food service.

(3) Possess the legal capacity to enter into a lease agreement, except in the case of tenants with legal guardians residing in a congregate housing project.

(4) Be of legal age.

b. For projects under Plan I:

(1) Be a low- or moderate-income senior citizen or low- or moderate-income handicapped person.

(2) Be a low-income non-senior citizen or low-income, non-handicapped person.

c. For other RRH loans including those developed under Plan II: Any low- or moderate-income persons, except those senior citizens and handicapped persons who do not meet the definition of a low- or moderate-income person may continue occupancy if they were tenants prior to the issuance of this regulation on October 27, 1980.

d. For LH projects and for those RRH projects designed and designated to provide housing specifically for senior citizens and/or handicapped persons as defined in paragraph II of this exhibit, occupancy is limited solely to those meeting the eligibility requirements for the persons for whom the housing is designed and designated (i.e., domestic farm laborers, senior citizens, and/or handicapped persons), except that occupancy may be permitted by a person or person considered a member of the household of the domestic farm laborer, senior citizen, or handicapped person. However, the total income of all adult members in the household and the number of persons to occupy the unit cannot exceed eligibility requirements.

e. In a congregate housing project, a Resident Assistant may occupy living space in a congregate housing group living arrangement without regard to income.

f. Although the purpose of the program is to provide adequate housing for the eligible permanent residents of the community, a student or other seemingly temporary resident of the community who is otherwise eligible and seeks occupancy in a project, other than farm workers in the case of Labor Housing projects, may be considered an eligible tenant if all of the following conditions are met:

(1) Is either of legal age in accordance with applicable State law or is otherwise legally able to enter into a binding contract under State law.

(2) The person seeking occupancy has established a household separate and distinct from the person's parents or legal guardians.

(3) The person seeking occupancy is no longer claimed as a dependent by the person's parents or legal guardians pursuant to Internal Revenue Service regulations, and evidence is provided to this effect.

(4) the person seeking occupancy signs a written statement indicating whether or not the persons's parents, legal guardians, or others provide any financial assistance and such financial assistance is considered as part of current annual income and is verified in writing by the borrower.

g. A former domestic farm laborer may continue occupancy of a LH project after retirement or after becoming disabled if they were an eligible tenant living in the project prior to the event.

h. A tenant who was determined eligible prior to October 27, 1980 (issuance date of these regulations) but does not meet eligibility requirements regarding income and number of occupants in the size unit as prescribed in these regulations may be permitted continued occupancy based on regulations then extant).

2. Other Items the Rental Agent Should Consider in Determining Eligibility of Applicants for Admission to the Project:

a. Credit reports to determine the applicant's past record of meeting obligations.

b. Prior landlord references to determine if the tenant was responsive in meeting rent payment obligations, care, and maintenance of the unit.

c. Income must be verified according to paragraph VI of this Exhibit.

d. The applicant's financial capability to meet other basic living expenses and the rental charge, taking into consideration any subsidy assistance that could be made available to the tenant. Where rental is not available, any low-income household that would be required but unable to pay more than 25 percent of adjusted income for rent including utilities may be eligible for Section 8 subsidy if it is being administered in the area.

e. Priority to displaced tenants in accordance with § 1944.250 of Subpart E of Part 1944.

3. Surviving Members of Eligible Tenant Household.

a. Surviving members of a senior citizen and/or handicapped tenant's household may continue occupancy of the project even though they may not meet the definition of a senior citizen or handicapped person stated in paragraph II of this Exhibit, provided:

(1) they are eligible occupants in all other respects,

(2) they occupied the unit at the time of the event that the original tenant ceased to occupy the unit, and

(3) the State Director determines on a yearly review basis that their continued occupancy will not be detrimental to preserving the integrity of the project.

b. Surviving members of a domestic farm laborer household must meet the definition of a domestic farm laborer as defined in paragraph II of this Exhibit or vacate the unit within 90 days or at the end of the lease term, whichever is longer unless the State Director provides an extension of time because of an extreme hardship placed on the household.

4. Formerly Eligible Tenants.

a. Formerly eligible tenants who no longer meet eligibility requirements regarding income or in the case of an LH project, occupation, except as authorized in Paragraph V B 1 h, may not be permitted continued occupancy of the project as an eligible tenant and must vacate the unit within 90 days or the end of the term of the lease whichever is longer if an eligible tenant is available for occupancy. The District Director must monitor the borrower's efforts to locate eligible tenants.

b. Formerly eligible tenants who no longer meet tenant eligibility requirements regarding number of occupants in the size unit, except as outlined in paragraph V B 1 h, must move to a unit of appropriate size when it becomes available. The District Director must monitor the borrower's efforts to find a unit of appropriate size for the household.

5. State Director Authority To Permit Borrower To Rent To Ineligible Tenants:

a. If it becomes necessary in the servicing of a loan made to finance an RRH project, the State Director may authorize the borrower in writing, upon receiving the borrower's written request with the necessary documentation, to rent units to ineligible persons for temporary periods in order to protect the financial interests of the Government. The following determinations must be made:

(1) There are no eligible persons on a waiting list.

(2) The borrower provides evidence that he/she has made a diligent but unsuccessful effort to rent the unit to an eigible tenant household. Such evidence must consist of advertisements in appropriate publications, posting notices in several public places, holding open houses, if appropriate contacts with public housing agencies and authorities (where they exist), State and local agencies and organizations, Chamber of Commerce, real estate agencies, and other places, persons seeking rental housing would likely contact.

(3) The borrower will continue with aggressive efforts to locate eligible tenants and submit to the District Office, along with Form FmHA 444–29, a report of efforts made. The required followup should be posted in the District Office on Form FmHA 1905–6, "Management System Card—Multifamily Housing."

(4) The units will be rented on a monthly basis and only until they can be rented to eligible tenants. The monthly lease must require that the unit be vacated when an eligible tenant becomes available. The ineligible tenant should be given sufficient time to locate other housing not to exceed 90 days. In those cases where the tenant household does not consist of the appropriate number of occupants for the size unit, the tenant will be required to vacate when a unit of appropriate size becomes available.

(5) Tenants who are ineligible, because their household income exceeds the maximum for the project, will be charged the FmHA approved market rental rate for the size of unit occupied. In projects operated under Interest Credit Plan I, however, ineligible tenants will also be charged an additional rental surcharge of 25 percent of the approved market rental rate.

b. Examples of situations where the State Director may consider authorizing a borrower to rent units to ineligible persons are:

(1) A project designed for, designated as, and limited to occupancy by eligible senior citizens and/or handicapped persons.

(2) A household that does not consist of the appropriate number of occupants for the size unit.

(3) A household that does not meet eligibility requirements regarding income, i.e., an above moderate-income household.

C. Notification of Eligibility or Rejection.

1. *Application Status for Determining Eligibility.* All persons desiring to apply for units will be provided a written listing of all documentation required. Applications are considered received when the tenant has submitted all forms and information to the borrower. If additional information is required, the borrower must notify the applicant, in writing, within 10 days of receipt of the initial application of specific additional information needed in order to complete a review of eligibility. In the case of an existing project with little or no vacancies, when there are applications on hand from households determined eligible for 25 percent of the number of units in a project, and it will be awhile before additional applicants could be reached on the waiting list, the borrower may postpone a verification of eligibility. In such cases, the borrower may place the inquirer's name on the waiting list and keep a record of the address and telephone numbers where the person can be reached at such time as it appears an application could be processed.

2. *Notificatian to Applicant.* When a decision regarding an application has been made, the borrower will notify the applicant in writing that he or she has been selected, rejected, or placed on a waiting list.

3. *Applicants Determined Ineligible.* If the applicant is determined ineligible, the reason for rejection must be provided in writing in sufficient detail so that the applicant will have the opportunity to effectively evaluate the reason.

a. The letter of rejection must also outline the applicant's rights under the FmHA Tenant Grievance and Appeals Procedures in Part 1944, Subpart L of this Chapter.

b. If the rejection is because of information from a Credit Bureau, the source of the report must be revealed to the applicant in accordance with the Fair Credit Reporting Act.

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c. Applicants may be rejected because of:

(1) A history of unjustified and chronic nonpayment of rent.

(2) A history of violence and harassment of neighbors and management.

(3) A history of disturbing the quiet enjoyment of neighbors.

d. Rejection of applicants on the basis of arbitrary classifications is prohibited. Examples of such classifications are:

(1) Race, color, religion, sex, age, marital status, national origin, physical or mental handicap (except in those facilities designated for senior citizens and/or handicapped, where occupancy by non-senior citizens or non-handicapped can be prohibited).

(2) Receiving income from welfare.

(3) Families with children of undetermined parentage.

(4) Participation in tenant organizations.

e. In the case of Labor Housing projects, no organization borrower other than an association of farmers or family farm corporation or partnership will be permitted to require that an occupant work on any particular farm or for any particular owner or interest as a condition of occupany of the housing.

f. Rejected applications must be kept on file until such time as a compliance review has been conducted in accordance with Subpart E of Part 1901 of this Chapter.

D. Maintenance of Waiting List.

1. If an eligible applicant is not assigned a unit initially, the applicant will be placed on a waiting list in the chronological order in which the applications were received.

2. A different waiting list or a master waiting list with different categories or priorities indicated on it may be maintained as long as each list is in chronological order. If there are separate lists, they must be cross-referenced for applicants who fit more than one category or priority. Separate lists may be maintained for:

a. Various size units;

b. Units for senior citizens and handicapped;

c. Displaces, such as victims of natural disasters and eminent domain, to whom priority consideration may be given. Each list by category will be available for inspection by applicants on the waiting list. When the application is first submitted, the applicant will be notified of the category(s) assigned to that application. No application may be removed from a waiting list after any period of time without prior notification to the applicant or at least a reasonable attempt to locate the applicant.

E. Tenant record file: A separate file must be maintained for each tenant. This file will include items such as application, income verification, credit report, tenant certification forms, recertification and verification forms, lease, inspection reports for moving in and moving out, correspondence and notices to the tenant, and any other information as may be necessary. The information as to income verification, tenant eligibility certification and recertification must be retained for at least 2 years after the tenant has moved out.

VI. *Verification and certification of tenant income:* The incomes reported by the tenants selected for occupancy must be verified by the borrower.

A. *Verification of Income from Employment.* Verification of income from employment must be from the employer in writing and filed in the "Tenant Record File." A suggested Employment Inquiry form which is used by HUD is attached as Exhibit B–9.

B. *Verification of Income from Other Sources.* If income is from other than employment (e.g., social security, Veterans Administration, welfare), it must be verified in writing by the income source. If it is not immediately possible to obtain the written verification from the income source, the income may be verified in the interim by actually examining the income checks, check stubs, or other reliable data the tenant possesses which indicates the tenant's gross income. Verification may also be obtained through contacts with individuals who may be knowledgeable of the tenant's income. If no other verifiable source is available, a notarized affidavit from the tenant attesting to his/her gross annual income may be accepted. Verification of income must be documented and filed in the "Tenant Record File." In the case of domestic farm laborers, including migrants, who do not have easily verifiable income, the borrower may project monthy income expected to be received by the tenant during occupancy for determining eligibility and subsidy assistance.

C. *Random Sample of Tenant Income Verifications.* District Directors are required to make a random sample of tenant income verifications. The random sample can be devised from information on the tenant certification forms that will be submitted to the District Office in accordance with paragraph VI E of this Exhibit. The random sample should be representative of both low- and moderate-income persons in the project, including those receiving subsidy assistance, those paying in excess of 25 percent of their income for the costs of rent and utilities, and those paying the market rent. District Directors will conduct the random sample in the borrower's office during their supervisory visits and at any time he/she may be knowledgeable of discrepancies in income verifications. If the random sample discloses discrepancies, the District Directors will be required to investigate further or report to the State Director to obtain the assistance of the Office of Audit or the Office of Investigations.

D. *Use of HUD Certification Form for Section 8 Recipients.* For projects where the tenants are receiving Section 8 assistance, HUD Form 52859, Application for Tenant Eligibility and Certification or other appropriate HUD approved form may be used in lieu of Form FmHA 444–8 for the tenants receiving Section 8 assistance. The following verification statement by the project manager must be inserted on the bottom of the form: "The tenant's income and/or handicapped condition (if applicable) has been verified and found to be accurate."

E. *Certification of Tenant Income.* The borrower must initially submit to the District Office Form FmHA 444–8 or the acceptable HUD Form for each tenant. The initial signed tenant certification will be submitted to the FmHA District Office with the next monthly payment following the date that the tenant occupies the unit. Borrowers who are required to submit monthly payments will be required to submit these certifications to the District Office within 60 days. Subsequently signed tenant certifications must be obtained by all borrowers no later than the twelfth month after the previous certification and submitted to the FmHA District Office, except that subsequent certifications for senior citizens projects receiving 100 percent Section 8 Assistance will be obtained biennially. Furthermore, it will be necessary for the borrower to obtain the required verification of income on all tenants. The borrower or management agent will establish an adequate recordkeeping system of tenant certifications to assure this responsibility is carried out.

VII. *Leases:* A Lease is a written contract between the tenant and the landlord assuring the tenant quiet, peaceful enjoyment and exclusive possession of a specific dwelling unit in return for payment of rent and reasonable protection of the property.

A. *Form of Lease.*

1. All leases will be in writing and must cover a period of at least 30 days but not more than 1 year. In areas where there is a concentration of non-English speaking individuals, leases and the established rules and regulations for the project written in both plain English and the non-English concentration language must be available to the tenants. The tenant should have the opportunity to execute either lease form.

2. Annual leases may contain an appropriate escalation clause permitting rental increases prior to the expiration of the lease. Such increases would normally be necessary due to higher utility and other operating costs. Such increases must be approved by FmHA in accordance with Exhibit C of this Subpart.

3. The form of lease to be used, and any modifications thereof, must be approved by the FmHA District Director. When submitting a lease form for FmHA approval, it must be accompanied by a letter from the borrower's attorney regarding its legal sufficiency and compliance with Federal and State Law and FmHA regulations.

4. A copy of completed Exhibit A–5, "Housing Allowances for Utilities and Other Public Services," of Subpart E of Part 1944 and a copy of the established rules and regulations for the project will be provided to the tenant as attachments to the lease.

B. *Required Lease Clauses.* The following clauses will be required in leases used in connection with FmHA financed housing projects.

1. For all leases used in connection with FmHA financed RRH projects, the following clause will be included except in the cases of those senior citizens and handicapped persons who did not meet the definition of a low- or moderate-income person prior to the issuance of this regulation: "I understand that I will no longer be eligible for occupancy in this project if my income exceeds the maximum allowable adjusted income as defined by the Government for the State/Territory."

2. For leases in connection with borrowers participating in the FmHA rental assistance program Exhibit C of Subpart E of Part 1944 of this Chapter, the following clause will be used:

"I understand and agree that as long as I receive rental assistance, my total monthly payment for rent and utilities will be $————, (25 percent of my adjusted monthly income). If I pay any or all utilities directly (not including telephone or cable T.V.), a utility allowance of $——— will be deducted from my monthly payment for rental and utilities. If the utility allowance is in excess of 25 percent of my adjusted monthly income, the lessor will pay me this excess.

"I further agree to notify the lessor of any permanent increase in adjusted monthly income or change in the number of family members living in the household. I understand that should I receive rental assistance benefits to which I am not entitled, I may be required to make restitution and I agree to pay any amount of benefits received to which I was not entitled.

"I also understand and agree that monthly payment for rent under this lease may be raised or lowered, based on changes in household income and changes in the number and age of members living in my household and based on the escalation clause in the lease. Should I no longer receive rental assistance as a result of these changes, I understand and agree that my monthly payment for rent may be adjusted to no less than $———— (basic rental) nor more than $———— (market rental) during the remaining term of this lease."

Eligible borrowers with LH loans and grants, direct RRH loans, or insured RRH loans approved before August 1, 1968, may omit the words "no less than $———— (basic rental) nor more than" from the last sentence of the above statement.

3. For leases with borrowers operating under Plan II Interest Credit only:

"I understand and agree that the monthly rental payment under this lease will be $————. I also understand and agree that my monthly rental payment under this lease may be raised or lowered based on changes in my income and changes in the number and age of family members living in my household and based on the escalation clause in the lease. The rental payment will not, however, be less than $———— (basic rental) nor more than $———— (market rental) during the term of this lease. I agree to promptly provide any certifications and income verifications required by the owner to permit eligibility determination and, if applicable, rental rate to be charged."

4. For all cases involving farm labor housing loans and/or grants, the following additional clauses:

a. "I understand that the project is operated and maintained for the purpose of providing housing for domestic farm laborers and their families. I do hereby certify that a substantial portion of my family income is and will be derived from farm labor. I further understand that domestic farm labor means persons who receive a substantial portion of their income as laborers on farms in the United States and either (1) are citizens of the United States, or (2) reside in the United States, Puerto Rico, or the Virgin Islands, after being legally admitted for permanent residence therein, and may include the immediate families of such persons. Laborers on farms may include laborers engaged in handling agricultural commodities while in the unprocessed stage, provided the place of employment, such as a packing shed, is on or near the farm where the commodity is produced. It also includes labor for the production of aquatic organisms umder a controlled or selected environment."

b. "I agree that if my household income ceases to be substantially from farm labor for reasons other than disablement or retirement, I will promptly vacate my dwelling after proper notification by the owner."

5. The lease agreement in congregate housing cases must include in the major provisions the following statement: "I understand that my ability to live independently in the project with the support services available will be evaluated on a continuous basis. I may be requested to vacate if a determination is made that I am no longer able to live in the project without additional assistance." This would involve cases where the tenant has progressed or regressed to a state of health that requires, in the opinion of the management, a level of care not available in the congregate housing facility.

C. *Other Required Lease Provisions.* All leases must contain provisions covering:

1. Names of the parties to the lease and all individuals to reside in the unit and the identification of the premises leased.

2. The amount and due date of rental payments.

3. Any penalty for late payment of rent in accordance with Section VIII B of this Exhibit.

4. The utilities and quantities thereof and the services and equipment to be furnished to the tenant by management.

5. The process by which rents and eligibility for occupancy shall be determined and redetermined including:

a. The frequency of such rental and eligibility determinations.

b. The information which the tenant shall supply to permit such determinations.

c. The standards by which rents, eligibility, and appropriate dwelling unit size shall be judged.

d. The circumstances under which a tenant may request a redetermination of rent.

e. The effect of misrepresentation by tenant of the facts upon which rent or eligibility determinations are based.

f. The time at which rent changes or notice of ineligibility shall become effective.

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6. The limitation upon the tenant of the right to the use and occupancy of the dwellings.

7. The responsibilities of the tenant in the maintenance of the dwelling and the obligation for intentional or negligent failure to do so.

8. The use of separate legal process to collect monetary claims for damages.

9. The responsibility of management to maintain the buildings and any unassigned community areas in a decent, safe, and sanitary condition in accordance with local housing codes and FmHA regulations, and its liabilities for failure to do so.

10. The responsibility of management to provide the tenant with a written statement of the condition of the dwelling unit (when the tenant initially enters into occupancy and when vacating the dwelling unit), and the conditions under which the tenant may participate in the inspection of the premises which is the basis for such statement.

11. The circumstances under which management may enter the premises during the tenant's possession thereof, including a periodic inspection of the dwelling unit as a part of a preventive maintenance program.

12. The formalities that shall be observed by management and tenant in giving notice one to the other as may be called for under the terms of the lease.

13. The circumstances under which management may terminate the lease, all limited to good cause, and the length of notice required for the tenant to exercise the right to terminate.

14. The agreement that any tenant grievance or appeal from management's decision shall be resolved in accordance with procedures consistent with FmHA regulations covering such procedures, which are posted in the rental office.

15. The usual signature clause attesting that the lease has been executed by the parties.

D. *Prohibited Lease Clauses.* Lease clauses in the classifications listed below shall not be included in any lease.

1. Confession of judgment. Prior consent by tenant to any lawsuit the landlord may bring against the tenant in connection with the lease and to a judgment in favor of the landlord.

2. Distraint for rental or other charges. Authorization to the landlord to take property of the tenant and hold it as a pledge until the tenant performs any obligation which the landlord has determined the tenant has failed to perform.

3. Exculpatory clause. Agreement by tenant not to hold the landlord or landlord's agents liable for any acts or omissions whether intentional or negligent on the part of the landlord or the landlord's authorized representative or agents.

4. Waiver of legal notice by tenant prior to actions for eviction or money judgments. Agreement by tenant that the landlord may institute suit without any notice to the tenant that the suit has been filed.

5. Waiver of legal proceedings. Authorization to the landlord to evict the tenant or hold or sell the tenant's possessions whenever the landlord determines that a breach or default has occurred.

6. Waiver of jury trial. Authorization to the landlord's lawyer to appear in court for the tenant and to waive the tenant's right to a trial by jury.

7. Waiver of right to appeal judicial error in legal proceedings. Authorization to the landlord's lawyer to waive the tenant's right to appeal on the ground of judicial error in any suit or the tenant's right to file a suit in equity to prevent the execution of a judgment.

8. Tenant chargeable with costs or legal actions regardless of outcome. Agreement by the tenant to pay attorney's fees or other legal costs whenever the landlord decides to take action against the tenant even though the court finds in favor of the tenant. (Omission of such clause does not mean that the tenant, as a party to a lawsuit, may not be obligated to pay attorney's fees or other costs if the tenant loses the suit.)

E. *Modification of Lease—Notification to Tenants.* The landlord may modify the terms and conditions of the lease, effective at the end of the initial term or a successive term, by serving an appropriate notice on the tenant, together with the tender of a revised lease or an addendum revising the existing lease. This notice and tender shall be sent to the tenant by first-class mail, properly stamped and addressed or delivered to the premises.

The date on which the notice shall be deemed to be received by the tenant shall be the date on which the first-class letter is mailed or the date on which the copy of the notice is delivered to the premises. The notice must be received within 30 days prior to the last date on which the tenant has the right to terminate the tenancy without executing the revised lease. The notice must advise the tenants that they may appeal modifications to the lease in accordance with Subpart L of Part 1944 of this Chapter if said modification will result in a denial, substantial reduction, or termination of benefits being received.

The same notification will be applicable to any changes in the rules and regulations for the project.

F. *Rules for Occupancy.*

1. All rules for occupancy, including rent structures will be in writing, posted conspicuously in the borrower's and/or manager's offices, and made available to each tenant with the lease agreement.

2. Proposed changes of any rules for occupancy must be made available to each tenant at least 30 days in advance of implementation, and tenants must be advised that they may appeal changes in accordance with Subpart L, Part 1944, of this Chapter.

3. No rule may infringe on the rights of the tenants to organize an association of tenants. Such associations may be organized to bargain with management, as well as to act socially and/or provide for the welfare of its members.

4. Rules may be promulgated that prohibit activities which are detrimental to management and tenants, such as activities which are a threat to the health or safety of other tenants or the employees of the borrower, interfere with the quiet enjoyment of the premises by other tenants, or are damaging to the physical structure of the project.

5. Initial rules will be attached to the lease agreement and be approved by FmHA. Approval of FmHA for changes and additions may be requested annually with submission of annual reports or more frequently only in the case of an emergency situation.

G. *Security Deposits.*

1. Security deposits are not mandatory but may be permitted if reasonable and customary for the area. If used they will not be in an amount in excess of the tenant's one month's rent or the basic rent for the project, whichever is greater. The amount of security deposits should be reflected in the borrower's management plan and not be changed without the written consent of the FmHA District Director. Security deposits for persons eligible for Rental Assistance or Section 8 assistance shall be adminstered so as not to create a hardship on the household and should ordinarily:

a. For RRH projects, not exceed a down payment of 25 percent of adjusted monthly income plus $5 per month until the basic rent amount is reached.

b. For low-income farmworkers in a LH project not exceed a $25 down payment and $5 per month until an equivalent of one month's rent is reached. In the case of migrants who will occupy the units for a short period of time, the State Director may make an exception to this policy upon written request from the borrower when it is shown that such deposit needs to be raised to protect the security interest of the government and will not create a hardship on the tenants.

2. Security deposits shall be handled in accordance with any State or local laws governing tenant security deposits. Tenant security deposits shall be deposited in a separate account at a Federally insured institution, and shall be handled in accordance with any State or local laws governing tenant security deposits. Funds in the Security Deposit Account shall only be used for authorized purposes as intended and represented by the project management, and until so used, shall be held by the borrower in trust for the respective tenants.

3. Borrowers may assess fair and reasonable charges to the security deposit for damage and losses caused or allowed by the tenant. An itemized accounting for such charges must be presented to the tenant in such cases, after the move-out inspection provided for in Paragraph XE2, unless the tenant has abandoned the property and his/her whereabouts are unknown and cannot be ascertained after reasonable inquiry.

VIII *Rent collection:* A pre-established day of the month should be designated rental collection day. The time and place of onsite collection and the correct address for payment by mail should be well publicized and consideration should be given to any need for an after-hours' depository.

A. *Rental Receipts.* A form of serially-numbered rental receipts should be selected for use and the collection agent held accountable for every receipt. If optional collection services are available, they may be considered.

B. *Delinquent Rents.* A system to identify and detect unpaid rents should be instituted within the project. A penalty for late payment of rent beyond a 10-day grace period not to exceed $10.00 may be permitted. The borrower should consider the circumstances causing the late payment before assessing any penalty. True hardship cases should not be assessed penalties; however, a firm and fair policy on payment of rent will help collections.

C. *Recapture of Improperly Advanced Rental Assistance.* In cases where a tenant has received rental assistance benefits to which he/she may not be entitled, the borrower-landlord must provide the tenant with a notice of intent to recoup improperly advanced rental assistance benefits. Such a notice must inform the tenant of the amount improperly advanced and the monthly amount that will be added to the tenant's rent to recoup the improper rental assistance. If it appears that the tenant has willingly and knowingly misrepresented his/her income, the case will be reported to FmHA District Director.

IX *Rent increases:* It may be necessary as operating costs increase or revenue decreases to consider a rental increase to keep the project viable. If this occasion should arise, *prior consent* of FmHA *is required.* The procedure to initiate a rent increase is specifically covered in Exhibit C of this Subpart. The borrower must meet these requirements.

X *Maintenance:* Maintenance is the process by which a project is kept up in all respects and includes land, buildings, and equipment. Maintenance responsibilities will be included in the management plan. Proper maintenance will help to keep a good image for the project and help to minimize vacancies. Plans and policies for inspections, effective maintenance and repair are to be established at the outset. The following types of maintenance items will be necessary:

A. *Routine Maintenance.* Routine or short-term type maintenance and repairs will be those cost items and services allowed for in the annual budgets to be paid for out of the operations and maintenance expense account. These are tasks concerning the maintenance of the project that can be prescheduled or planned for, based on equipment need and property characteristics. Also included are janitorial tasks performed on a regular basis in order to maintain the appearance of the project and to prevent an accumulation of dirt and subsequent deterioration.

B. *Responsive Maintenance.* This is all tasks of maintenance performed in response to either requests for service from tenants or to unplanned breakdowns. An essential part of any maintenance system is to plan for requests coming from the dwelling units and for emergencies occurring in the systems serving the apartments. The project manager should develop a plan to focus on: who receives the requests, how they are handled, how specific employees are assigned in the tasks and what kind of records are kept. The capacity of the project manager to respond to requests and emergencies is one of the true tests of a successful maintenance program.

C. *Preventive Maintenance.* This is similar to inspection type maintenance in that regular checking and servicing of equipment and systems are done as required by service information. Preventive maintenance of mechanical systems, building exteriors, elevators, and heating systems in rental projects require specially trained personnel. The project manager should establish biweekly or monthly schedules in which the routine oiling, replacing of filters, and the like is done based on manufacturer's manuals and specifications.

D. *Long-term Maintenonce.* These are major expense items which normally do not occur on an annual basis. When such expenses occur, the borrower may request permission to use reserve funds to pay for these expenses. However, use of funds out of the reserve account must be preapproved by FmHA.

E. *Inspection Maintenonce.* These are maintenance inspections performed periodically to discover problems before crisis situations develop. The following inspections should be made at various times of each tenant's apartment:

1. Move-in inspection. When an applicant is accepted for occupancy of a unit, the management and the applicant together should inspect the unit to be occupied and agree upon any repairs needed. A written inspection report shall be prepared and a copy retained in the tenant's file. Any of these deficiencies not corrected prior to occupancy should be noted on the lease.

2. Move-out inspection. When the management becomes aware that the tenant is moving out or has vacated the unit, an inspection should be scheduled with the tenant. Any repairs or costs to be charged to the tenant will be in accordance with the terms of the lease and regulations governing security deposits in paragraph VIIG.

3. Periodic inspection. The borrower should make allowances in the lease for periodic inspection of the units as a part of preventive maintenance. An inspection of this type should be made at least annually.

XI Accounting and reporting requirements and financial management analysis:

A. *Accounting System.* The type and form of accounting to be used will have been determined prior to the loan closing. The underlying purpose of an accounting system is to provide the financial information needed by the project manager to help plan and control the activities of the project. It is also needed by the owner, FmHA, investors, and the public who have an interest that will be served by information about its financial position and operating results. Therefore the borrower must develop a systematic method to record the business transactions of the project. Borrower and grant recipients may be required to implement a bookkeeping and accounting system that may be prescribed by FmHA. The following accounts, as a *minimum*, will be established for all projects and shall be maintained for so long as the loan obligations remain unsatisfied or through any restrictive time period in the case of prepayment.

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1. *General Operating Account.* This will be a checking account and must be maintained in a bank or banks insured by the Federal Deposit Insurance Corporation (FDIC). The borrower will have deposited the required initial operating capital into this account by the time of loan closing or when interim funds were obtained in order to preclude the necessity for multiple advances of FmHA loan funds, whichever occurs first.

a. *Deposits.* All income and revenue from the housing project shall, upon receipt, immediately be deposited in the General Operating Account. This will include rent receipts, housing subsidy payments, laundry revenue, or any other project income. The borrower may also at its discretion at any time deposit therein other funds which are also to be used for purposes authorized by this section. Funds in the General Operating Account will be used only as authorized in this section and until so used, will be held by the borrower in trust for the Government as security for the loan obligations. All Housing Assistance Payments received from the Department of Housing and Urban Development (HUD) on the basis of eligible occupants in the project shall be deemed to be revenue derived from the operation of the project and shall be held by the borrower or grant recipient in trust for the Government as security for the loan obligations.

b. *Disbursements.* Not later than the 15th of each month, out of the General Operating Account the borrower or grant recipient shall pay the actual, reasonable and necessary monthly expenses, for the current and the ensuing month, of operating and maintaining the project. Current expenses may include the initial purchase and installation of furnishings and equipment with any funds deposited in the General Operating Account which are not proceeds of the loan or income or revenue from the project. Other authorized disbursements are as provided in Sections 2 and 3 below. Each month after the transfer of funds from the General Operating Account to the Tax and Insurance Escrow Account as provided in Section 2 below, any balance remaining in the General Operating Account, or so much thereof as may be necessary, shall be applied to the next installment due on the loan.

2. *Tax and Insurance Escrow Account.* This account shall be established as an interest bearing account at a Federally insured institution. This account will enable borrowers and grant recipients to escrow their tax and insurance payments one year in advance. Each month after the payment of actual, reasonable, and necessary current operating and maintenance expenses there shall be transferred from the Generl Operating Account to the Tax and Insurance Escrow Account an amount equal to one-twelfth of the total anticipated tax and insurance payments for the year. All interest earned shall be prorated based on the amount in each escrow at the time the interest is earned. Funds in the Tax and Insurance Escrow Account shall be used only as authorized by this section and until so used, shall be held by the borrower or grant recipient in trust for the Government as security for the loan obligations.

3. *Reserve Account.* This should be an interest bearing account or accounts at a Federally insured institution. Immediately, after each installment to the orderly retirement of the loan as provided in the borrower's promissory note, any balance in the General Operating Account shall be transferred to the Reserve Account at the monthly rate stipulated by the borrower's Loan Agreement or Resolution until the account reaches the aggregate amount specified in the Loan Agreement or Resolution, and shall be resumed at any time when necessary, because of disbursement from the Reserve Account to restore it to said sum. Funds in the Reserve Account shall be used only for authorized purposes as described below and, until so used, shall be held by the borrower or grant recipient in trust as security for the loan obligations. Reserve Account funds which will not be immediately needed for authorized purposes may be invested in saving certificates insured by a Federal institution or invested in readily marketable obligations of the United States Treasury Department the earnings on which shall accrue to the reserve account. Any amount in the reserve account which exceeds the aggregate sum specified in the Loan Agreement or Resolution and is not agreed between the borrower or grant recipient and the Government to be used for authorized purposes as described below shall be transferred to the General Operating Account unless the Government directs said sum to be retained in the Reserve Account. With prior consent of the Government, funds in the Reserve Account may be used by the borrower for the following purposes:

a. To meet payments due on the loan obligations in the event the amount for debt service is not sufficient for the purpose.

b. To pay costs of repairs or replacements to the housing, furnishings or equipment caused by catastrophe or long-range depreciation which are not current expenses.

c. To make improvements for extensions to the housing.

d. For other purposes desired by the borrower which in the judgment of the Government likely will promote the loan purposes without jeopardizing collectibility of the loan or impairing the adequacy of the security, or will strengthen the security, or will facilitate, improve, or maintain the orderly collectibility of the loan.

e. To pay a return on investment, provided that after such disbursements (a) the amount in the Reserve Account will not be less than that required by the Loan Agreement or Resolution to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

1. In the case of borrowers operating on a limited profit basis, to pay a return of up to 8 percent per annum of the borrower's initial investment as identified in the Loan Agreement or Resolution.

2. In the case of borrowers operating on a full profit basis, to pay a return on the borrower's initial investment as identified in the Loan Agreement or Resolution.

4. *Security Deposit Account.* (If applicable) Immediately upon receipt, all tenant security deposits collected shall be deposited into a separate account at a Federally insured institution, and shall be handled in compliance with any State or local laws governing tenant security deposits. Funds in the Security Deposit Account shall only be used for authorized purposes as intended and represented by the project management and, until so used, shall be held by the borrower in trust for the respective tenants. Any balance in the tenant Security Deposit Account which is retained by the borrower as a result of lease violations and any interest that may be transferred to the General Operating Account and treated as income of the housing.

B. *Borrower Reporting Requirements.* Certain reports will be necessary in order to meet the FmHA requirements and aid the borrower in carrying out the objectives of the loan. Some must be submitted with the FmHA payments and others submitted to FmHA either monthly or annually. The following reports will be prepared and submitted by the borrower. Exhibits B–6, B–7, and B–8, which are available in the FmHA District Office, are to be used as a guide for determining when reports are due and the number of copies.

1. MONTHLY REPORTS:

a. Submit Form FmHA 1930–6, "Monthly Report," by the tenth of each month to the District Office. Monthly reports may be completed on a cash basis if the borrower elected to use modified accrual accounting.

b. Submit Form FmHA 444–29, "Project Worksheet for Interest Credit and Rental Assistance," with the payment to the District Office.

2. ANNUAL REPORTS: Within 45 days following the close of the borrower's fiscal year, the borrower will submit the following reports to the FmHA District Office. Annual reports will be completed on an accrual basis.

a. Form FmHA 1930–7, "Statement of Budget, Income and Expense," showing planned income and expenses for the next year as well as actual income and expenses for the past year.

b. Form FmHA 1930–8, "Year End Report and Analysis."

c. Audit report to be completed in accordance with the booklet, "Instructions to Independent Certified Public Accountants and Licensed Public Accountants Performing Audits for FmHA Borrowers and Grantees." For projects with 25 or more units, the audit will be prepared by (1) a CPA or (2) LPA licensed on or before *December 31, 1970.* Borrowers with 24 units or less will need to provide a verification by an individual who is qualified by education and/or experience and who is independent of the borrower or by a committee of the membership not including any officer, director, or employee of the borrower; however, the State Director may also require audits by a CPA or LPA for any project.

d. Copy of the minutes of the annual meeting, if applicable.

e. Any other related material that may be requested by the District Director.

C. *Financial and Management Analysis.* Financial and management analysis provides information on how the project is progressing. Regular analysis of the project's operations can help identify problems and deficiencies early so that appropriate corrections can be initiated. Some methods of analysis are:

1. Budget Analysis: This is one of the simplest tools to use in financial analysis. Utilizing the monthly and annual reports, the project manager records actual income and expenses and compares them with the budgeted amounts. Any differences between the budget and actual figures indicate where the manager may need to focus added attention or take corrective action.

2. Ratio Analysis: This is another technique used in financial analysis. It prescribes various measures of actual operating performance in terms of ratios. Some useful ratios are:

a $$\text{Vacancy Rate} = \frac{\text{Total vacancy days for the month}}{\text{Total unit days for the month}}$$

b $$\text{Resident Turnover Ratio} = \frac{\text{Total units becoming vacant during the period}}{\text{Average units occupied for the period}}$$

c $$\text{Expense Ratio} = \frac{\text{Total Expense}}{\text{Total Income}}$$

d $$\text{Cost Per Unit} = \frac{\text{Total Expense (By category)}}{\text{Total No. of Units}}$$

e $$\text{Working Capital Ratio} = \frac{\text{Current Assets}}{\text{Current Liabilities}}$$

f $$\text{Collection Ratio} = \frac{\text{Total Collections}}{\text{Total Rent Roll}}$$

g $$\text{Percent of Revenue from Government Sources} = \frac{\text{FmHA Rent Assistance}}{\text{Total Market Rent}} \text{ or } \frac{\text{HUD Section 8 Payments}}{\text{Total Market Rent}}$$

XII. *Management-Tenant Relations:* This portion of the management plan should be complete since it establishes the basic relationships that could be the difference between success and failure in the project. A well-planned orientation for tenants or prospective tenants is advisable. Rules and regulations must be provided and adequately explained so the tenant will understand the goals and objectives of the project. The management should be available and willing to work with a tenant organization. Listed below are a number of areas that should be addressed in written materials developed by management and provided to all tenants prior to move-in:

A. *Explanation of rights and responsibilities under the lease.* Where a non-English language is common to an area, a lease written in that language should also be provided.

B. *Rent payment policies and procedures should be fully explained.*

C. *Policy on periodic inspection of units.*

D. *Responding to tenant complaints.*

E. *Maintenance request procedure.*

F. *Services provided by management.*

G. *Office hours, emergency telephone numbers.*

H. *Map showing location of community facilities including schools, hospitals, libraries, parks, etc.*

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I. *Restrictions on storage and prohibition against abandoning vehicles in the project area.*

J. *A project newsletter;* if desired.

XIII. *Termination of Tenancy and Eviction:* Borrowers should actively work to avoid forced terminations of leases and evictions. The rules governing termination of leases and evictions for cause are outlined in this section.

A. *Entitlement of Tenants to Continued Occupancy.*

1. *General.* The borrower may not terminate or refuse to renew any tenancy except upon material noncompliance with the lease or for other good cause. Any termination or refusal to renew tenancy must be grounded upon material noncompliance with the lease, non-eligibility for tenancy, or action or conduct of the tenant which disrupts the liveability of the project, adversely affects the health or safety of any person, or the right of any tenant to the quiet enjoyment of the leased premises and related project, or has an adverse financial effect on the project.

2. *Material Noncompliance.* Material noncompliance with the lease includes (a) one or more substantial violations of the lease or (b) repeated minor violations of the lease which disrupt the liveability of the project, adversely affect the health or safety of any person, or the right of any tenant to the quiet enjoyment of the leased premises and related project or have an adverse financial effect on the project. Repeated nonpayment of rent or any other financial obligation due under the lease (including any portion thereof) beyond any grace period constitutes substantial violation.

3. *Notice of Other Good Cause.* Conduct cannot be considered other good cause unless the borrower has given the tenant prior notice that the conduct will constitute a basis for termination of tenancy.

4. *Rent Overburden.* Any tenant household paying more than 25 percent of their adjusted income toward rent, including utilities, is experiencing rent overburden. No evictions will be permitted for non-payment of rent when a tenant experiences rent overburden and the tenant may be eligible for rental assistance or Section 8 assistance and resides in an eligible project where such assistance is available to him/her upon application by the borrower. A borrower is encouraged to use forebearance in eviction for nonpayment of rent where he/she has applied for rental assistance and rental assistance is not immediately available. For example, when a tenant who is in need of subsidy assistance cannot meet full rent payments on a timely basis, the borrower should collect the amount of rent that is within the tenant's ability to pay and collect the excess due on an installment basis when rental assistance is made available.

B. *Notice of Termination.*

1. The borrower's notice of intent to terminate the tenancy will be handled in accordance with section 1944.555(b) of Subpart L, of Part 1944 of this Chapter and must:

a. Refer to relevent provisions in the lease.

b. State the reasons for the termination with enough specificity to enable the tenant to prepare a response. In those cases where the proposed termination of the tenancy is due to the tenant's failure to pay rent, a notice stating the dollar amount of the balance due on the rent account and the date of such computation shall satisfy the requirement of specificity.

c. State the tenant's right under the Tenants Grievance and Appeals Procedures as outlined in Subpart L or Part 1944 of this Chapter.

2. If the tenant's continued occupancy constitutes a threat to the health and safety of other tenants or management (generally, by a violent action such as the use of firearms, arson, etc.), or the tenant waives his/her rights under the Tenant Grievance and Appeals procedures, eviction should be accomplished in accordance with State Law.

XIV. *Security Servicing:* Security servicing, as contained in this Exhibit, concerns the borrower's responsibilities in relation to the loan agreement or resolution, mortgage, and other loan closing papers. It does not deal with security items between the borrower and the tenants. FmHA will look to the borrower to fulfill its obligation in accordance with the requirements of the loan agreement or resolution, note, mortgage, and other legal or closing documents. Some items of special emphasis are:

A. *Fidelity Bond.* All borrowers will be required to provide Fidelity Bond coverage for the officials, employees, and management agents entrusted with the receipt, custody, and disbursement of its funds or any other negotiable or readily saleable personal property except in those cases where a loan has been made to an individual (natural person) and that individual will be responsible for such activities. In the case of a Land Trust where the beneficiary is responsible for management, the beneficiary will be treated as an individual. Also, a 2-party General partnership where there is no power of attorney or designated partner, will be treated as an individual. The amount of the bond will at least equal the potential gross project income for two months rental collection or the maximum amount of money the project will have on hand at any one time, including cash on hand, money in reserve and other special accounts, etc., whichever is greater. The United States will be named as co-obligee in the bond if not prohibited by State Law. Form FmHA 440–24, "Position Fidelity Schedule Bond," will be used if not prohibited by State Law. A blanket policy may be accepted in the case of borrowers with more than one project if blanket coverage is more advantageous cost-wise and the amount of coverage for each project is identified.

B. *Insurance.* The minimum amounts and types of insurance required of the borrower will be determined by FmHA:

1. Adequate fire and extended coverage and earthquake as needed will be required on all buildings included as security for the loan. The amount of coverage will be not less than the amount specified on Form FmHA 421–1, "Valuation of Buildings."

2. Suitable Workmen's Compensation Insurance will be carried by the borrower for all its employees.

3. The borrower will also carry adequate liability insurance.

4. If the project is located in a designated flood hazard area, flood insurance will be required.

Exhibit B–1—Management Plan Requirements for FmHA Multiple Family Housing Projects

A detailed Management Plan is required for all FmHA Multiple Housing projects. Also, a Management Agreement must be provided where a management agent is to be used. The Management Plan will be used by FmHA in evaluating the feasibility of the project from a management standpoint. A Management Plan will be considered sufficiently detailed if it is at least responsive in depth to each of the following areas.

1. *The role and responsibility of the owner and the relationship and delegations of authority to the management agent.* If there is no Management Agent, supply the equivalent information concerning the management staff assigned to day-to-day operation of the project.

a. If the management agent is closely associated with the owner in such a manner that creates a possible conflict of interest, is such relationship fully explained and justified?

b. What are the supervisory relationships, and to whom are the persons responsible for the day-to-day operation of the project accountable?

c. Under what conditions must the management agent consult the owner before taking action?

d. What are the areas in which the management agent may make decisions without consulting the owner?

e. Who, in the owner's organization, is the key contact person for the management agent? What decision making powers does this contact person have?

f. Are the respective responsibilities of the owner and the managing agent listed? Are these responsibilities clearly defined so as not to overlap? Are they clearly assigned? Are all basic responsibilities covered.

2. *Personnel policy and staffing arrangements.*

a. Is all hiring in conformance with equal employment opportunity requirements?

b. What are the projected staffing needs for the project?

c. What are the lines of authority, responsibility, and accountability within the management entity?

d. What are the positions to be filled, the duties of each position, and the compensation?

3. *Plans and procedures for marketing units and achieving and maintaining full occupancy, and affirmative marketing.*

a. How and when will the units be advertised as available?

b. How will affirmative marketing practices be used? What outreach and marketing efforts will be made to reach those low-income and minority persons who traditionally would not be expected to apply for such housing without special outreach efforts?

c. What plans are being made to achieve and maintain the highest level of occupancy reasonably obtainable.

d. What are the procedures to allow for eligible applicants to inspect the units prior to their being made available for occupancy?

e. What orientation services are to be provided tenants to acquaint them with the project and care of the units?

f. Who is responsible for selecting the tenants? Is this selection subject to review? If so, under what conditions and by whom?

4. *Procedures for determining tenant eligibility and for certifying and recertifying incomes.*

a. How are applications and other records pertinent to this function kept?

b. Who will be responsible for carrying out this function?

c. Is the responsible person knowledgeable regarding certification and recertification requirements? If not, what provisions are being made to provide this person with the necessary training?

d. Is the responsible person aware of FmHA requirements covering family size and needs as they relate to unit size?

e. Is the responsible person aware of FmHA requirements regarding tenant eligibility, rejection, or placement on a waiting list?

5. *Tenant Admissions Policies and Leasing Policies.*

a. What procedures will be used in maintaining a waiting list?

b. What are leasing policies and procedures?

c. Is the person who is responsible, knowledgeable of FmHA required lease clauses? FmHA prohibited lease clause?

d. What are the Rules for Occupancy?

e. If a substantial number of tenants do not speak or read the English language, are leases and the established rules and regulations for the project written in both English and the non-English concentration language available?

6. *Rent Collection Policies and Procedures.*

a. What are the rent collection policies and procedures?

b. Where are rents to be paid and who is responsible for collection?

c. Is there a provision for on-site collections? After hours depositing?

d. Are rent payments adequately recorded and kept in a separate account?

e. What is the amount of any required security deposits? What is the program for maintaining adequate accounting records of security deposits?

7. *Procedures for requesting and implementing a rent increase.*

a. What procedures will be followed in requesting FmHA approval of a rent increase? (Refer to Exhibit C of this Subpart.)

b. At what time of year will such a request normally be made and what information will be presented to FmHA as justification?

c. How will the tenants be notified of a proposed increase, and if approved, who will you inform the tenants?

8. *Plans for carrying out an effective maintenance and repair program.*

a. What procedures have been developed to service appliances and the mechanical equipment? To check out all such equipment to be sure that it is properly installed and operating prior to releasing units for occupancy.

b. What are the procedures for inspecting and carrying out maintenance activities in units prior to a moveout? Prior to rerenting the unit?

c. What is the schedule for interior and exterior painting and redecorating?

d. How will garbage and trash removal be handled?

e. How will major repairs be handled?

f. How will grounds upkeep and maintenance be carried out?

g. What is the schedule for cleaning entryways, halls, and other common areas?

h. How will tenants be instructed to report major and/or minor maintenance repair needs?

i. What security provision will be made for the protection of project residents such as fire extinguishers, outside lighting, etc.?

9. *Plans for Record Maintenance and Reports.*

a. Who will be responsible for the preparation and submission of the monthly and annual reports required by FmHA?

b. What type of project records will be used and how will they be maintained?

c. Discussed the proposed tenant record and maintenance system including retention of records.

d. Where will records subject to FmHA review be kept?

10. *Energy Conservation Measures.*

a. What utilities will the tenants have direct control of where energy conservation can be practiced.

b. What utilities will the management have direct control of where energy conservation can be practiced?

c. Explain the proposed energy conservation practices in connection with utilities paid by the management.

d. Describe proposed actions to stimulate energy conservation by the tenants.

e. How will tenants be oriented to energy conservation measures?

11. *Plans for tenant-management relations.*

a. How will tenants be oriented to the project?

b. Is the person who is responsible, knowledgeable of FmHA Tenant Grievances and Appeals procedures?

12. *Termination of Leases and Evictions.*

a. Is the person responsible, knowledgeable of FmHA's requirements regarding termination of leases and evictions?

b. Is the person responsible, knowledgeable of FmHA's requirements regarding notification that must be given to a tenant when termination of the lease or eviction is proposed?

13. *Security Servicing.*

a. Is the person responsible, knowledgeable of FmHA requirements for Fidelity Bond coverage?

b. Is the person responsible, knowledgeable of FmHA's insurance requirements?

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14. *Management Agreement (Contract).*

a. Attach a copy of the proposed form of Management Agreement (Contract) that will be used if the project will not be owner-managed. (See Exhibit B–2 for requirements for management agreements.)

Exhibit B–2—Requirements for Management Agreements

A completed and executed management agreement must be submitted to Farmers Home Administration (FmHA) whenever a management agent is to be used.

1. A written management agreement shall be requird for any project when the owner retains a management agent. Although a written management plan is required for all projects, a management agreement is not required if the project is managed by the owner.

2. The management agreement shall conform to FmHA requirements. The owner may delegate to the agent any management duties which are not required to be performed by the owner. Nevertheless, whatever the scope of the agent's authority, the owner remains totally responsible to FmHA for all aspects of management, including duties delegated to the agent.

3. The management agreement shall be consistent with the management plan for the project. The management plan is the primary management charter, constituting a comprehensive description of the detailed policies and procedures to be followed in managing the project. The function of the management agreement in incident to implementation of the management plan. The agreement must define in previse language the terms of the agreement, and accordingly, the agreement need not repeat all of the detailed procedures contained in the management plan.

4. In all cases where the owner retains a management agent, the Management Agreement document shall contain the management agent's organized and staffing structure, management controls, and outside ownership interests. When evidence of transaction with identity of interest firm, or central service unit exists, the owner shall refer this case to the FmHA for review and approval of such procurement arrangements and the reasonableness of charges to the project. List of competitive costs shall be provided.

5. The management agreement may conform to the suggested housing management agreement as reflected in Exhibit B–3 of this Subpart. Each management agreement shall be realistically tailored to the specific conditions of the particular project. The site, design, and size of the project fiscal constraints; market conditions; social factors; local law and business practices are among the elements which may require variations in the management agreement. Consideration should also be given to the capabilities and legitimate desires of the owner and agent.

Exhibit B–3—Suggested Housing Management Agreement for FmHA Multiple Family Housing Projects

This Agreement is made this ——— day of ———, 19——, between ——— (the "Owner") and ——— (the "Agent").

1. *Appointment and Acceptance.* The Owner appoints the Agent as exclusive agent for the management of the property described in Section 2 of this Agreement, and the Agent accepts the appointment, subject to the terms and conditions set forth in this Agreement.

2. *Description of Project.* The property to be managed by the Agent under this Agreement (the "Project") is a housing development consisting of the land, buildings, and other improvements which make up Project No. ———. The Project is further described as follows:

Name: ———
Location:
City: ———
County: ———
State: ———
No. of dwelling units ———

3. *Definitions.* As used in this Agreement:

a. "FmHA" means the Farmers Home Administration, including any successor agencies.

b. "Principal Parties" means the Owner and the Agent.

4. *FmHA Requirements.* In performing its duties under this Management Agreement, the Agent will comply with all pertinent requirements of FmHA.

5. *Management Input During FmHA Processing.* The agent will advise and assist the owner with respect to management input during the remaining stages of FmHA loan processing. The Agent's specific tasks will be as follows:

a. Preparation and submisssion to the Owner of a recommended operating budget for the initial operating year of the Project.

b. Participation in any conference with FmHA officials involving project management.

c. Preparation and submission to the Owner (for the Owner's signature and submission to FmHA) of Form FmHA 1930–6, "Monthly Report" throughout the period from initial occupancy after FmHA loan closing until such time as no longer required by FmHA. If the management is authorized to sign the reports in the owner's absence, a copy of the signed report as submitted to FmHA will be provided.

d. Participation in the on-site final inspection of the Project, required by FmHA prior to initial occupancy.

e. Continuing review of the Management Plan, for the purpose of keeping the Owner advised of necessary or desirable changes.

6. *Management Plan.* Attached hereto, and hereby incorporated herein, is a copy of the Management Plan for the Project, which provides a comprehensive and detailed description of the policies and procedures to be followed in the management of the Project. In many of its provisions, this Agreement briefly defines the nature of the Agent's obligations, with the intention that reference be made to the Management Plan for more detailed policies and procedures. Accordingly, the Owner and the agent will comply with all applicable provisions of the Management Plan, regardless of whether specific reference is made thereto in any particular provision of this Agreement. A copy of the Loan Resolution or Agreement with FmHA is also attached.

7. *Basic Information.* As soon as possible, the Owner will furnish the Agent with a complete set of "as built" plans and specifications and copies of all guarantees and warranties pertinent to construction, fixtures, and equipment. With the aid of this information and inspection by competent personnel, the Agent will become thoroughly familiar with the character, location, construction, layout, plan and operation of the Project, and especially of the electrical, heating, plumbing air-conditioning and ventilating systems, the elevators, and all other mechanical equipment.

8. *Liaison with Architect and General Contractor.* At the direction of the owner during the planning and construction phases, the Agent will maintain direct liaison with the architect and general contractor, in order to coordinate management concerns with the design and construction of the Project, and to facilitate completion of any corrective work and the Agent's responsibilities for arranging utilities and services pursuant to Section 14 of this Agreement. The Agent will keep the Owner advised of all significant matters in this connection.

9. *Marketing.* The Agent will carry out the marketing activities prescribed in the Management Plan, observing all requirements of the Affirmative Fair Housing Marketing Plan.

10. *Rentals.* The Agent will offer for rent and will rent the dwelling units in the Project. The following provisions will apply:

a. The Agent will make preparations for initial rent-up, as described in the Management Plan.

b. The Agent will follow the tenant selection policy described in the Management Plan.

c. The Agent will show the premises to prospective tenants.

d. The Agent will take and process applications for rentals. If an application is rejected, the agent will inform the applicant in writing of the reason for rejection, and the rejected application, with reason for rejection noted thereon, will be kept on file until a compliance review has been conducted. If the rejection is because of information obtained from a Credit Bureau, the source of the report must be revealed to the applicant in accordance with the Fair Credit Reporting Act. A current list of prospective tenants will be maintained.

e. The Agent will prepare all dwelling leases, parking permits, and will execute the same in its name, identified thereon as agent for the Owner. The terms of all leases will comply with the pertinent provisions of FmHA regulations. Dwelling leases will be in a form approved by the Owner and FmHA.

f. The Owner will furnish the Agent with rent and income report forms required by FmHA, showing rents as appropriate for dwelling units, and other charges for facilities and services, and income data pertinent to determinations of tenant eligibility and tenant rents. In no event will such rents and other charges be exceeded.

g. The Agent will counsel all prospective tenants regarding eligibility and will prepare and verify eligibility certifications and recertifications in accordance with FmHA requirements.

h. The Agent will collect, deposit, and disburse security deposits, if required, in compliance with any State or local laws governing tenant security deposits. Security deposits will be deposited by the Agent in a separate account, at a Federally insured institution. This account will be carried in the Agent's name and designated of record as "(Name of Project) Security Deposit Account."

11. *Collection of Rents and Other Receipts.* The Agent will collect when due all rents, charges, and other amounts receivable on the Owner's account in connection with the management and operation of the Project. Such receipts will be deposited immediately in the General Operating Account with a bank whose deposits are insured by the Federal Deposit Insurance Corporation.

12. *Enforcement of Leases.* The Agent will ensure full compliance by each tenant with the terms of the lease. Voluntary compliance will be emphasized. The Agent, using the services of local social service agencies when available, will counsel tenants and make referrals to community agencies in cases of financial hardship or under other circumstances deemed appropriate by the Agent. Involuntary termination of tenancies should be avoided to the maximum extent consistent with sound management of the Project. Nevertheless, and subject to the pertinent procedures prescribed in the Management Plan, the Agent may initiate action to terminate any tenancy when, in the Agent's judgment, there is material noncompliance with the lease or other good cause, as prescribed by FmHA regulations for such termination. The tenant must be given notification in accordance with FmHA regulations and must be notified of his/her right to appeal the proposed action. Subject to the Owner's approval, attorney's fees and other necessary costs incurred in connection with such actions will be paid out of the General Operating Account as Project expenses.

13. *Maintenance and Repair.* The Agent will cause the Project to be maintained and repaired in accordance with the Management Plan and local codes, and in a condition at all times acceptable to the Owner and FmHA. This will include but is not limited to cleaning, painting, decorating, plumbing, carpentry, grounds care, and such other maintenance and repair work as may be necessary, subject to any limitations imposed by the Owner in addition to those contained herein.

Incident thereto, the following provisions will apply:

a. Special attention will be given to preventive maintenance, and to the greatest extent feasible, the service of regular maintenance employees will be used.

b. Subject to the Owner's prior approval, the Agent will contract with qualified independent contractors for the maintenance and repair of air-conditioning systems and elevators, and for extraordinary repairs beyond the capability of regular maintenance employees.

c. The Agent will systematically and promptly receive and investigate all service requests from tenants, take such action thereon as may be justified, and will keep records of the same. Emergency requests will be received and serviced on a twenty-four (24) hour basis. Serious complaints will be reported to the Owner after investigation.

d. The Agent is authorized to purchase all materials, equipment, tools appliances, supplies and services necessary for proper maintenance and repair with prior approval of the owner.

e. Notwithstanding any of the foregoing provisions, the prior approval of the Owner will be required for any expenditure which exceeds ——— dollars ($———) in any one instance for labor, materials, or otherwise in connection with the maintenance and repair of the project. This limitation is not applicable for recurring expenses within the limits of the operating budget or emergency repairs involving manifest danger to persons or property, or required to avoid suspension of any necessary service to the Project. In the latter event, the Agent will inform the Owner of the facts as promptly as possible.

14. *Utilities and Services.* In accordance with the Management Plan, the Agent will make arrangements for water, electricity, gas, fuel oil, sewage and trash disposal, vermin extermination, decorating, laundry facilities, and telephone service. Subject to the Owner's prior approval, the Agent will make such contracts as may be necessary to secure such utilities and services acting as agent for the owner.

15. *Employees.* The Management Plan prescribes the number, qualifications, and duties of the personnel to be regulatory employed in the management of the Project, including a Resident Manager, maintenance, bookkeeping, clerical and other managerial employees. All such personnel will be employees of the Agent and not the Owner, and will be hired, paid, supervised, and discharged by the Agent.

16. *Records and Reports.* In addition to any other requirements specified in the Management Plan or other provisions of this Agreement, the Agent will have the following responsibilities with respect to accounts and reports:

a. *Accounting System.* The Agent must develop a systematic method to record the business transactions of the project. The Agent may be required to implement a bookkeeping and accounting system that may be prescribed by FmHA. The following accounts, as a minimum, will be established for all project and shall be maintained for so long as the loan obligations remain unsatisfied or through any restrictive time period in the case of repayment.

(1) *General Operating Account.* This will be a checking account and must be maintained in a bank or banks insured by the Federal Deposit Insurance Corporation (FDIC). The Agent will have

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deposited the required initial operating capital into this account by the time of loan closing or when interim funds were obtained in order to preclude the necessity for multiple advances of FmHA loan funds, whichever occurs first.

(a) *Deposits.* All income and revenue from the housing project shall, upon receipt, immediately be deposited in the General Operating Account. This will include rent receipts, housing subsidy payments, laundry revenue, or any other project income. The owner and Agent may also at their discretion at any time deposit therein other funds which are also to be used for purposes authorized by this section. Funds in the General Operating Account will be used only as authorized in this section and until so used, will be held by the Agent in trust for the Government as security for the loan obligations. All Housing Assistance Payments received from the Department of Housing and Urban Development (HUD) on the basis of eligible occupants in the project shall be deemed to be revenue derived from the operation of the project and shall be held by the Agent in trust for the Government as security for the loan obligations.

(b) *Disbursements.* Not later than the 15th of each month, out of the General Operating Account the Agent shall pay the actual, reasonable and necessary monthly expenses, for the current and the ensuing month, of operating and maintaining the project. Current expenses may include the initial purchase and installation of furnishings and equipment with any funds deposited in the General Operating Account which are not proceeds of the loan or income or revenue from the project. Other authorized disbursements are as provided in Sections 2 and 3 below. Each month after the transfer of funds from the General Operating Account to the Tax and Insurance Escrow Account as provided in Section 2 below, any balance remaining in the General Operating Account, or so much thereof as may be necessary, shall be applied to the next installment due on the loan.

(2) *Tax and Insurance Escrow Account.* This account shall be established as an interest bearing account at a Federally insured institution. Each month after the payment of actual, reasonable, and necessary current operating and maintenance expenses there shall be transferred from the General Operating Account to the Tax and Insurance Escrow Account an amount equal to one-twelfth of the total anticipated tax and insurance payments for the year. All interest earned shall be prorated based on the amount in each escrow at the time the interest is earned. Funds in the Tax and Insurance Escrow Account shall be used only as authorized by this section and until so used, shall be held by the Agent in trust for the Government as security for the loan obligations.

(3) *Reserve Account.* This should be an interest bearing account or accounts at a Federally insured institution. Immediately, after each installment to the orderly retirement of the loan as provided in the borrower's promissory note, any balance in the General Operating Account shall be transferred to the Reserve Account at the monthly rate stipulated by the borrower's Loan Agreement or Resolution until the account reaches the aggregate amount specified in the Loan Agreement or Resolution, and shall be resumed at any time when necessary, because of disbursement from the Reserve Account to restore it to said sum. Funds in the Reserve Account shall be used only for authorized purposes as described below and, until so used, shall be held by the Agent in trust as security for the loan obligations. Reserve Account funds which will not be immediately needed for authorized purposes may be invested in saving certificates insured by a Federal institution or invested in readily marketable obligations of the United States Treasury Department the earnings on which shall accrue to the reserve account. Any amount in the reserve account which exceeds the aggregate sum specified in the Loan Agreement or Resolution and is not agreed between the Owner and Agent and the Government to be used for authorized purposes as described below shall be transferred to the General Operating Account unless the Government directs said sum to be retained in the Reserve Account. With prior consent of the Government, funds in the Reserve Account may be used by the Owner and Agent for the following purposes:

(a) To meet payments due on the loan obligations in the event the amount for debt service is not sufficient for the purpose.

(b) To pay costs of repairs or replacements to the housing, furnishings or equipment caused by catastrophe or long-range depreciation which are not current expenses.

(c) To make improvements for extensions to the housing.

(d) For other purposes desired by the Owner which in the judgment of the Government likely will promote the loan purposes without jeopardizing collectibility of the loan or impairing the adequacy of the security, or will strengthen the security, or will facilitate, improve, or maintain the orderly collectibility of the loan.

(e) To pay a return on investment provided that after such disbursement (a) the amount in the Reserve Account will be not less than that required by the Loan Agreement or Resolution to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period:

(i) In the case of borrowers operating on a limited profit basis, to pay a return of up to 8 percent per annum on the borrower's initial investment as identified in the Loan Agreement or Resolution.

(ii) In the case of borrowers operating on a full profit basis, to pay a return on the borrower's initial investment as identified in the Loan Agreement or Resolution.

(4) *Security Deposit Account.* (If applicable) Immediately upon receipt, all tenant security deposits collected shall be deposited into a separate account at a federally insured institution, and shall be handled in compliance with any State or local laws governing tenant security deposits. Funds in the Security Deposit Account shall only be used for authorized purposes as intended and represented by the project management and, until so used, shall be held by the Agent in trust for the respective tenants. Any balance in the Security Deposit Account which is retained by the Agent as a result of lease violations and any interest that may be earned which is not payable to the respective tenants shall be transferred to the General Operating Account and treated as income of the housing.

(b) *Reports.*

(1) The Agent will furnish information (including occupancy reports) as may be requested by the Owner or the FmHA from time to time with respect to the financial, physical, or operational condition of the Project.

(2) The Agent will prepare and submit:

Form FmHA 444–8—"Tenant Certification"
Form FmHA 444–29—"Project Worksheet for Interest Credit and Rental Assistance"
Form FmHA 1930–6—"Monthly Report"
Form FmHA 1930–7—"Statement of Budget, Income and Expense"
Form FmHA 1930–8—"Year End Report and Analysis"

(3) The Agent will assist the owner in completing all additional forms and data prescribed by FmHA affecting the operation and maintenance of the project.

17. *Fidelity Bond.* The Agent will furnish, at its own expense, a fidelity bond in the principal sum of———— Dollars ($————), which is at least equal to the potential gross project income for two months and cash on hand and is conditioned to protect the Owner and FmHA against misapplication of project funds by the agent and its employees. The United States will be named as co-obligee in the bond at the time of FmHA loan closing if not prohibited by the State law. The other terms and conditions of the bond, and the surety thereon, will be subject to the approval of the Owner.

18. *Bids, Discounts, Rebates, etc.* With prior approval of the owner, the Agent will obtain contracts, materials, supplies, utilities, and services on the most advantageous terms to the Project, and is authorized to solicit bids, either formal or informal, for those items which can be obtained from more than one source. The Agent will secure and credit to the Owner all discounts, rebates, or commissions obtainable with respect to purchases, service contracts, and all other transactions on the Owner's behalf.

19. *Insurance.* The Owner will inform the Agent of insurance to be carried with respect to the Project and its operations, and the Agent will cause such insurance to be placed and kept in effect at all times. The Agent will pay premiums out the General Operating Account, and premiums will be treated as operating expenses. All insurance will be placed with such companies, on such conditions, in such amounts, and with such beneficial interests appearing thereon as shall be acceptable to the Owner and the FmHA provided that the same will include public liability coverage, with the Agent designated as one of the insured, in amounts acceptable to the Agent as well as the Owner and FmHA. The Agent will investigate and furnish the Owner with full reports as to all accidents, claims, and potential claims for damage relating to the Project, and will cooperate with the Owner's insurers in connection therewith.

20. *Compliance with Governmental Orders.* The Agent will take such action as may be necessary to comply promptly with any and all governmental orders or other requirements affecting the Project, whether imposed by federal, state, county or municipal authority, subject, however, to the limitation stated in Subsection 13e of this Exhibit with respect to repairs. Nevertheless, the Agent shall take no such action so long as the Owner is contesting, or has affirmed its intention to contest, any such order or requirement. The Agent will notify the Owner in writing of all notices of such orders or other requirements, within seventy-two (72) hours from the time of their receipt.

21. *Nondiscrimination.* In the performance of its obligations under this Agreement, the Agent will comply with the provisions of any Federal, State or local law prohibiting discrimination in housing on the grounds of race, color, creed, sex, age, marital status, national origin, or physical or mental handicap (applicant must have capacity to execute a legal contract) including Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352, 78 Stat. 241), Title VIII of the Civil Rights Act of 1968, Executive Order 11246, and the Equal Credit Opportunity Act of 1974, as they relate to the Farmers Home Administration (FmHA).

22. *Agent's Compensation.* The Agent will be compensated for its services under this Agreement by monthly fees, to be paid from the Operating and Maintenance Account and treated as project expenses. Such fees will be payable on the ——— day of each month for the preceding month. Each such monthly fee will be in an amount computed as follows: ———% of the actual gross rents collected for the preceding month.

23. *Term of Agreement.* This Agreement shall be in effect for a period of ——— year(s), beginning on the ——— day of ———, 19——, subject, however, to the following conditions:

a. This Agreement will not be binding upon the Principal Parties until approved by FmHA.

b. This Agreement may be terminated by the mutual consent of the Principal Parties as of the end of any calendar month, provided that at least thirty (30) days advance written notice thereof is given to FmHA.

c. In the event that a petition in bankruptcy is filed by or against either of the Principal Parties, or in the event that either makes an assignment for the benefit of creditors or takes advantage of any insolvency act, the other party may terminate this Agreement without notice to the other, provided that prompt written notice of such termination is given to FmHA.

d. Upon termination, the Agent will submit to the Owner all project books and records and any financial statements required by the FmHA, and after the Principal Parties have accounted to each other with respect to all matters outstanding as of the date of termination, the Owner will furnish the Agent security, in form and principal amount satisfactory to the Agent, against any obligations or liabilities which the Agent may properly have incurred on behalf of the Owner hereunder.

24. *Interpretative Provisions.*

a. This Agreement constitutes the entire agreement between the Owner and the Agent with respect to the management and operation of the Project, and no change will be valid, unless made by supplemental written agreement, approved by FmHA.

b. This agreement has been executed in several counterparts, each of which shall constitute a complete original Agreement, which may be introduced in evidence or used for any other purpose without production of any of the other counterparts.

In witness whereof, the Principal Parties [by their duly authorized officers] have executed this Agreement on the date first above written.

Owner: ————————————
By: ————————————
Title: ————————————
Witness: ————————————
Agent: ————————————
By: ————————————
Title: ————————————
Witness: ————————————

Approved as lender or insurer of funds to defray certain costs of the project and without liability for any payments hereunder, the Farmers Home Administration hereby approves this Agreement.

By: ————————————
Title: ————————————
Date: ————————————

Attachments: Management Plan; Loan Resolution or Agreement.

Exhibit B–4—Questionnaire for Management Agent of FmHA Multiple Family Housing Projects

Please provide a written signed statement for FmHA giving your answers in the same order, to the information requested. Please be brief and concise in your answers and indicate if a certain question is not applicable in your particular case. Your statement will be used by FmHA to evaluate your capacity to successfully manage the project.

1. Provide your name, address, name of project, location of project, and the name of the owner.

2. Provide information as to projects previously or presently managed by the management entity and its employees, including information relative to default history, mortgage relief history, and foreclosure history along with an explanation of the circumstances that led to such actions.

3. Describe your firms including number of staff employed in the following capacities: supervisory, clerical, maintenance, and social services.

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4. Give the distance in miles from your home office or branch office to the project.

5. Describe the accounting system, rent-up procedure, rent-collection policy, and preventive maintenance program you intend to use in the proposed project.

6. Describe your relationship with the owner and your knowledge of the intended degree of owner involvement in operating the project.

7. Describe the frequency and type of direct supervision to be given the resident manager.

8. Give a description of your financial stability and financial resources.

9. Describe applicable FmHA accounting requirements for your particular type of project. If you have managed this type of project before, cite those projects as a showing of your knowledge of such requirements. If you have not managed such projects, indicate your understanding of what needs to be done to fulfill such requirements.

10. Please also describe:

a. Your plans for handling tenant grievances and appeals, providing tenant counseling, and using outside social service agencies.

b. The extent of your knowledge of FmHA requirements for tenant eligibility, tenant certifications and recertifications.

c. Your plans, if any, to train your personnel in the management of FmHA multifamily housing.

11. Provide evidence of fidelity bonding capacity.

12. Include the following statement: "I hereby certify that there is no close association between the management Agent and the Owner of the above described project in such manner that creates a possible conflict of interest." If such an association exists (e.g. the management agent is a member, stockholder, partner, principal, etc., of the borrower organization) explain in detail.

Exhibit B-5—Questionnaire For Owners of FmHA Multiple Family Housing Projects

Please provide a written signed statement for FmHA responding in the same order to the items that follow. Please be brief and concise in your answers and indicate if a certain item is not applicable in your case. Your statement will be used by FmHA to evaluate your capacity to operate successfully the project. For projects owned by a partnership, the following information should be provided for the partnership entity as well as each general partner.

1. Provide name of Owner, address, and the name and location of project. State the number of units in the proposal.

2. Provide information on your previous projects, regardless of the source of financing, including mortgage relief and foreclosure history along with an explanation of the circumstances that led to such actions.

3. List names and addresses of management agents who manage your previously or presently owned projects.

4. Describe your understanding of the responsiblities connected with owning and managing a multifamily project under FmHA.

5. Outline your experience and capabilites in providing housing for low- and moderate-income tenants.

6. Describe your intended tenure of ownership and the extent of personal involvement in operating and managing this project.

7. Describe your intentions and capacity to meet negative cash flow situations.

8. Describe your plans for the management of the proposed project. If you intend to manage the project, describe your management capacity by answering the "Questionnaire for Management Agent of FmHA Multiple Family Housing Projects," Exhibit B-4 of this Subpart.

BILLING CODE 3410-07-M

MONTHLY REPORTS

REPORT OR ITEM REQUIRED	DUE DATE	PREPARED BY	REPORT OR ITEM APPLICABLE TO	DISTRIBUTION	REFERENCES AND NOTES
PROJECT WORK-SHEET FOR INTEREST CREDIT AND RENTAL ASSIS-TANCE (Form FmHA 444-29)	By the 10th of each month	Borrower	All Borrowers-Individuals and Organiza-tions.	copy kept by borrower, original to the FmHA district office	Instructions for preparation continued in the FMI for Form FmHA 444-29
MONTHLY REPORT (Form FmHA 1930-6)	Submit to FmHA District Director by the 10th of each month; due in State Office before 15th	Borrower	All Borrowers	Copy kept by borrower. Original & copy to FmHA District Office; District Director to forward a copy to State Office	Reports will continue until notice for discon-tinuance is received from FmHA District Director. Instruc-tions for preparation are in the FMI for Form FmHA 1930-6

ANNUAL REPORTS

REPORT OR ITEM REQUIRED	DUE DATE	PREPARED BY	REPORT OR ITEM APPLICABLE TO	DISTRIBUTION	REFERENCES AND NOTES
VERIFICATION OF ACCOUNT (in lieu of Audit Report) according to this Subpart	Within 45 days following close of borrower's fiscal year	Competent individual, independent of the borrower, or by a commit-tee of the membership not including any officer, director or employee of borrower	Borrowers with 24 or less units	Original and two copies to FmHA District Office; two copies to State Office. State Office to send one copy to National Office. Copy kept by borrower.	
STATEMENT OF BUDGET, INCOME & EXPENSE (Form FmHA 1930-7)	Within 45 days following close of borrower's fiscal year	Borrower	All Borrowers-	Original and two copies to FmHA District Office, two copies to State Office. State Office sends one copy to National Office. Copy kept by borrower	Instructions for preparation are in the FMI for Form FmHA 1930-7
HOUSING ALLOW-ANCE FOR UTILI-TIES & OTHER PUBLIC SERVICES Exhibit A-5 to FmHA Instruction 1944-E	Submitted with Form FmHA 1930-7 "Statement of Budget, Income & Expense	Borrower	Plan II and Rental Assistance Borrowers where tenant pays any utilities	Original and two copies to FmHA District Office with backup data; District Office returns origi-nal to Borrower after State Office approval.	Instruction for preparation in FmHA Instruction 1944-E

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ANNUAL REPORTS

REPORT OR ITEM REQUIRED	DUE DATE	PREPARED BY	REPORT OR ITEM APPLICABLE TO	DISTRIBUTION	REFERENCES AND NOTES
YEAR END REPORT AND ANALYSIS (Form FmHA 1930-8)	Within 45 days following close of borrower's fiscal year	Borrower	All Borrowers-Individuals & Organizations	Copy kept by borrower. Original and two copies to FmHA District Office. District Office to send original and two copies to State Office. State Office to send National Office one copy and return original to District Office.	Instructions for preparation in the FMI for Form FmHA 1930-8
MINUTES OF ANNUAL MEETING	Within 45 days following close of borrower's fiscal year	Borrower	All Organizational Borrowers with governing bodies, and all corporations	Two copies to FmHA District Office; one to be sent by District Office to State Office.	
AUDIT REPORT	Within 45 days following close of borrower's fiscal year	Borrower's CPA or LPA in accordance with booklet "Instructions to Independent Certified Public Accountants & Licensed Public Accountants Performing Audits of FmHA Borrowers & Grantees"	Borrowers with 25 or more units in one or more projects, or as required by State Director of FmHA	Original and two copies to FmHA District Office; two copies to State Office. State Office to send National Office a copy. Copy kept by Borrower.	

MISCELLANEOUS REPORTS OR SUBMITTALS

REPORT OR ITEM REQUIRED	DUE DATE	PREPARED BY	REPORT OR ITEM APPLICABLE TO	DISTRIBUTION	EXAMPLES AND NOTES
REQUEST FOR RENTAL ASSISTANCE (Form FmHA 444-25)	When rental assistance is requested	Borrower	Multiple Family Housing Borrowers and Applicants with tenants paying rent in excess of 25% of their adjusted income	Original and copy to District Office; submit to State Office for approval after District Office review	Refer to Exhibit C to Subpart E, Part 1944 for material to be included with request
COMPLIANCE REVIEWS Review conducted ducted within the 1st reporting year after the loan is closed or after Form FmHA 400-4, "Assurance Agreement," is signed	November 1st to October 31st of each year	FmHA District Director	All Multiple Family Housing Borrowers	Original to State Office; copy retained in District Office	
a) Initial reviews Form FmHA 400-8, "Compliance Review."	To be completed only after all units are occupied				
b) Subsequent Reviews Form FmHA 400-8	Minimum of every 3 years				

BILLING CODE 3410-07-C

Exhibit B-9—Project Name, Project Address

Employment Inquiring

Date ————————
Employee ————————
Address ————————
(incl. zip code) ————————

Gentlemen: The person named above is a tenant/applicant for a dwelling unit and subsidy assistance in this housing project. One of the requirements of the Federal law that provides the assistance is that family incomes must be within the limits set by the Government agency. The information requested below is for the purpose of determining eligibility and will be kept in *STRICT CONFIDENCE*. Thank you for your cooperation and return of the form in the enclosed self-addressed envelope.

Please complete that portion below which is applicable.

Very truly yours,

————————
Project Manager

Presently Employed:

1. Date employment began ————.
2. Occupation ————.
3. Present rate of pay $———— per (Check one: hour-day-week).
4. If present rate of pay has been in effect less than 12 months, give previous rate of pay $————.
5. Average regular (a) hrs. worked per day ——, (b) days worked per wk. ——.
6. Average overtime (a) hrs. worked per day ——, (b) rate per overtime hr. ——.
7. Other estimated income (tips-meals), if any $——— per (day-week).

Previously Employed:

1. (Period) From ———— To ————.
2. Rate of pay at termination $——— per ———.

Remarks:

————————

————————

Date: ————————
Signature: ————————
Telephone No.: ————————
Title: ————————

(To Be Reproduced Locally)

Exhibit B-10—Objective Guides To Assist Management in Determining the Ability of Tenants To Sustain Relative Independence

In providing housing for senior citizens and handicapped persons, especially when that housing is provided in the form of congregate housing or housing involving group living arrangements, there is a critical dimension of occupancy that must be considered by the project management when selecting, placing, certifying and recertifying tenants. This dimension concerns the ability of tenants with functional impairments to sustain relative independence given the supportive services provided in the project.

No matter how well meaning management might be in trying to provide housing or those tenants that have become ill or acutely impaired, rural rental housing apartment projects are designed for occupancy by tenants who are capable of caring for themselves. In a similar sense, congregate housing is designed for occupancy by those who are fully capable of living totally independent lives as well as those who are able to sustain relative independence given the non-shelter supportive services provided in the project. When management provides additional types of non-shelter support services to counteract the progressive functional impairments that prohibit tenants from being able to function on a semi-independent basis, it only makes those tenants more *dependent* on project management. Over time, this increased dependency has the effect of creating an "institution," and it runs contrary to the congregate housing objective of enabling tenants that are functionally impaired (but not ill) to sustain relatively independent lives.

Physicians, or state or local agencies responsible for providing non-shelter supportive services to the tenants, can assist project managers by providing certificates or statements concerning the degree of a tenant's functional impairment. This information can be used by project management to assess the tenant's ability to remain independent with an assist from the services provided in the project.

In addition, there are several other more technical and scientifically developed scales of competence that can be used by *the project management* to assess a tenant's capacity for personal care, capacity for continued living in the housing project, or competence in the activities of daily living. The Physical Self Maintenance Scale (Exhibit B-10A) may be used by project management to measure a person's capacity for personal care. The Instrumental Activities of Daily Living Scale (Exhibit B-10B) may be used by project management to measure a person's capacity for continual living in the "community" of the housing project and the Index of Independence in Activities of Daily Living Scale (Exhibit B-10C) may be used by project management to measure the relationship of functional capacity to the accomplishment of daily activities. These scales should be used by project management only when absolutely necessary.

It is extremely important that project management understand that these scales are tools available for *use by the management* and *not for the use of or completion by tenants or prospective tenants*. Project managers may gather the information necessary to complete any one of these scales of competence through a variety of methods, including tactful interviews or conversations with the tenants, friends or relatives, or by any other appropriate means. Under no circumstances, however, is it appropriate to give the scale to a tenant or prospective tenant to complete, or to read it to a tenant or prospective tenant as a questionnaire would be. Assessments must be made by project managers in such a way that tenants and prospective tenants are not made to feel humiliated, degraded or embarrassed in the process.

Exhibit B-10A—Physical Self-Maintenance Scale (PSMS)

Name ————————
Rated by ————————
Date ————————

A. *Toilet*

1. Cares for self at toilet completely, no incontinence.
2. Needs to be reminded or needs help in cleaning self, or has rare (weekly at most) accidents.
3. Soiling or wetting while asleep more than once a week.
4. Soiling or wetting while awake more than once a week.
5. No control of bowels or bladder.

B. *Feeding*

1. Eats without assistance.
2. Eats with minor assistance at meal times and/or with special preparation of food, or help in cleaning up after meals.
3. Feeds self with moderate assistance and is untidy.
4. Requires extensive assistance for all meals.
5. Does not feed self at all and resists efforts of others to feed.

C. *Dressing*

1. Dresses, undresses and selects clothes from own wardrobe.
2. Dresses and undresses self, with minor assistance.
3. Needs moderate assistance in dressing or selection of clothes.
4. Needs major assistance in dressing, but cooperates with efforts of others to help.

5. Completely unable to dress self and resists efforts of others to help.

D. *Grooming* (neatness, hair, nails, hands, face, clothing)

1. Always neatly dressed, well-groomed, without assistance.
2. Grooms self adequately with occasional minor assistance, e.g. shaving.
3. Needs moderate and regular assistance or supervision in grooming.
4. Needs total grooming care, but can remain well-groomed after help from others.
5. Actively negates all efforts of others to maintain grooming.

E. *Physical Ambulation*

1. Goes about grounds or city.
2. Ambulates within residence or about one block distant.
3. Ambulates with assistance of (check one)
   a. Another person ———
   b. Railing ———
   c. Cane ———
   d. Walker ———
   e. Wheelchair ———
1. ——— gets in and out without help.
2. ——— needs help in getting in and out.
4. Sits unsupported in chair or wheelchair, but cannot propel self without help.
5. Bedridden more than half the time.

F. *Bathing*

1. Bathes self (tub, shower, sponge bath) without help.
2. Bathes self with help in getting in and out of tub.
3. Washes face and hands only, but cannot bathe rest of body.
4. Does not wash self but is cooperative with those who bathe.
5. Does not try to wash self, and resists efforts to keep clean.

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Exhibit B–10B—Instrumental Activities of Daily Living Scale (IADL)

Name ———
Rated by ———
Date ———

A. *Ability to Use Telephone*

1. Operates telephone on own initiative—looks up and dials numbers, etc.
2. Dials a few well-known numbers.
3. Answers telephone but does not dial.
4. Does not use telephone at all.

B. *Shopping*

1. Takes care of all shopping needs independently.
2. Shops independently for small purchases.
3. Needs to be accompanied on any shopping trip.
4. Completely unable to shop.

C. *Food Preparation*

1. Plans, prepares and serves adequate meals independently.
2. Prepares adequate meals if supplied with ingredients.
3. Heats and serves prepared meals, or prepares meals but does not maintain adequate diet.
4. Needs to have meals prepared and served.

D. *Housekeeing*

1. Maintains house alone or with occassional assistance (e.g. "heavy work-domestic help").
2. Performs light daily tasks such as dish-washing, bed-making.
3. Performs light daily tasks but cannot maintain acceptable level of cleanliness.
4. Needs help with all home maintenance tasks.
5. Does not participate in any housekeeping tasks.

E. *Laundry*

1. Does personal laundry completely.
2. Launders small items—rinses socks, stockings, etc.
3. All laundry must be done by others.

F. *Mode of Transportation*

1. Travels independently on public transportation or drives own car.
2. Arranges own travel via taxi, but does not otherwise use public transportation.
3. Travels on public transportation when assisted or accompanied by another.
4. Travel limited to taxi or automobile with assistance of another.
5. Does not travel at all.

G. *Responsibility for Own Medication*

1. Is responsible for taking medication in correct dosages at correct time.
2. Takes responsibility if medication is prepared in advance in separate dosages.
3. Is not capable of dispensing own medication.

H. *Ability to Handle Finances*

1. Manages financial matters independently (budgets, writes checks, pays rent and bills, goes to the bank), collect and keep track of income.
2. Manages day-to-day purchases, but needs help with banking, major purchases, etc.
3. Incapable of handling money.

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Exhibit B-10C
Page 1

INDEX OF INDEPENDENCE IN ACTIVITIES OF DAILY LIVING SCALE (ADL)

Table 1. Evaluation Form

Name _____ Day of evaluation _____

For each area of functioning listed below, check description that applies. (The word "assistance" means supervision, direction, or personal assistance).

BATHING-either sponge bath, tub bath, or shower

☐	☐	☐
Receives no assistance (gets in and out of tub by self if tub is usual means of bathing)	Receives assistance in bathing only one part of the body (such as back or a leg)	Receives assistance in bathing more than one part of the body or not bathed

DRESSING-gets clothes from closets and drawers--including underclothes, outer garments and using fasteners (including braces if worn)

☐	☐	☐
Gets clothes and gets completly dressed without assistance	Gets clothes and gets dressed without assistance except for assistance in tying shoes	Receives assistance in getting clothes or in getting dressed or stays partly or completely undressed

TOILETING- going to the "toilet room" for bowel and urine elimination; cleaning after elimination and arranging clothes

☐	☐	☐
Goes to "toilet room," cleans self and arranges clothes without assistance (may use object for support such as cane, walker, or wheelchair and may manage night bedpan or commode emptying same in morning)	Receives assistance in going to "toilet room" or in cleaning self or in arranging clothes after elimination or in use of night bedban or commode	Doesn't go to room termed "toilet" for the elimination process

Exhibit B-10C
Page 2

TRANSFER-

☐	☐	☐
Moves in and out of bed as well as in and out of chair without assistance (may be using object for support such as cane or walker)	Moves in and out of bed or chair with assistance	Doesn't get out of bed

CONTINENCE-

☐	☐	☐
Controls urination and bowel movement completely by self	Has occasional "accidents"	Supervision helps keep urine or bowel control: catheter is used, or is incontinent

FEEDING-

☐	☐	☐
Feeds self without assistance	Feeds self except for getting assistance in cutting or buttering bread	Receives assistance in feeding or is fed partly or completely by using tubes or intravenous fluids

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Table 2. Index of Independence in Activities of Daily Living

The Index of Independence in Activities of Daily Living is based on an evaluation of the functional independence or dependence of persons in bathing, dressing, going to toilet, transferring, continence, and feeding. Specific definitions of functional independence and dependence appear below the index.

A—Independent in feeding, continence, transferring, going to toilet, dressing and bathing.
B—Independent in all but one of these functions.
C—Independent in all but bathing and one additional function.
D—Independent in all but bathing, dressing, and one additional function.
E—Independent in all but bathing, dressing, going to toilet, and one additional function.
F—Independent in all but bathing, dressing, going to toilet, transferring and one additional function.
G—Dependent in all six functions.
Other—Dependent in at least two functions, but not classified as C, D, E or F.

Independence means without supervision, direction, or active personal assistance, except as specifically noted below. This is based on actual status and not on ability. A person who refuses to perform a function is considered as not performing the function, even though the person is deemed able.

Bathing (Sponge, Shower or Tub)

Independent: assistance only in bathing a single part (as back or disabled extremity) or bathes self completely

Dependent: assistance in bathing more than one part of body; assistance in getting in or out of tub or does not bathe self

Transfer

Independent: moves in and out of bed independently and moves in and out of chair independently (may or may not be using mechanical supports)

Dependent: assistance in moving in or out of bed and/or chair; does not perform one or more transfers

Dressing

Independent: gets clothes from closets and drawers; puts on clothes, outer garments, braces; manages fasteners; act of tying shoes is excluded

Dependent: does not dress self or remains partly undressed

Going to Toilet

Independent: gets to toilet; gets on and off toilet; arranges clothes; cleans organs of excretion; (may manage own bedpan used at night only and may or may not be using mechanical supports)

Dependent: uses bedpan or commode or receives assistance in getting to and using toilet

Continence

Independent: urination and defecation entirely self controlled

Dependent: partial or total incontinence in urination or defecation; partial or total control by enemas, catheters, or regulated use of urinals and/or bedpans

Feeding

Independent: gets food from plate or its equivalent into mouth; (precutting of meat and preparation of food, such as buttering bread, are excluded from evaluation)

Dependent: assistance in act of feeding (see above); does not eat at all or parenteral feeding

The Index of ADL

The Index of ADL summarizes overall performance in six functions namely, bathing, dressing, going to toilet, transferring, continence and feeding. According to the Index, performance is summarized as grades A, B, C, D, E, F, or G, where A is the most independent grade relative to the scale and G the most dependent grade.

By means of a series of questions and observations, the observer forms a mental picture of the person's ADL status as it existed during a 2-week period preceding the evaluation. The observer determines whether another person assisted the person evaluated or whether the person being evaluated functioned alone, defining assistance and active personal assistance, directive assistance, or supervision. The actual existence of such assistance is considered in the evaluation, not the potential or ability of the person being evaluated. Thus, for example, overprotective assistance is defined as assistance although the observer considers the person as more able; and refusal to perform a function is considered nonfunctioning although the person is deemed able. The observer uses the following definitions in completing the form reproduced in Table 1 and records, for each function, the most dependent degree of performance during the 2-week period.

Bathing is the overall complex behavior of getting water and cleansing the whole body. A person receives "no assistance" (first of the three classes of bathing in Table 1) if no other person is involved in any part of the process of taking a sponge, shower, or tub bath to wash the whole body. Such a person goes to the sink unaided if the person sponge-bathes at the sink, gets in and out of a tub unaided if the person tub-bathes, and is not supervised in the shower if showering is the means of bathing. A person receives "assistance in bathing only one part of the body" if the person functions as defined above, except that the person is assisted in washing only one part of the body, such as the back alone or one leg alone. The class "assistance in bathing more than one part of the body" includes the individual who is assisted in washing more than one part of the body or who does not bathe. This last, most dependent category, includes also the following: the person to whom water is brought even though the person may wash independently; the person who is helped in or out of a tub as regularly as once a week; the person who is regularly supervised for reasons of safety although the person may wash independently: and the person who cannot reach the feet to wash them.

Dressing is the overall complex behavior of getting clothes from closets and drawers and then getting dressed. A person gets "completely dressed without assistance" (first of the three classes of dressing in Table 1) if no other person is involved in getting clothes from closets and drawers or in putting on the clothes, including brace, if worn, and including outer garments and footwear. Fasteners must also be managed without assistance. Footwear includes such items as socks and slippers or shoes. The intermediate category of dressing includes those who get their own clothes and dress independently as defined above "except for assistance in tying shoes." A person is placed in the third and most dependent category if the person receives "assistance in getting clothes or in getting dressed" or remains "partly or completely undressed."

Going to toilet is the act of going to the room termed the "toilet room" for bowel and bladder function, transferring on and off the toilet, cleaning after elimination, and arranging clothes. The person who functions wholly unaided, including getting to the room, is classed as functioning "without assistance" (first of the three classes in Table 1). It should be noted that an individual in this class may or may not be using an object for support such as a cane, walker, or wheelchair; and may be using a bedpan or commode at night, in which case the individual must empty it in order to be considered in the "without assistance" category. If another person assists in any part of the function, the toileting status is recorded as "receives assistance" (intermediate toileting category in Table 1). Toileting status is also recorded as "receives assistance" for an individual who uses the toilet room at certain times and at other times

uses a daytime bedpan or commode. If a person is occasionally incontinent, but manages completely independently insofar as toileting is concerned, toileting function is recorded as "without assistance."

Transfer is the process of moving in and out of bed and in and out of a chair. If no other person is involved in the transfer, the person being evaluated is considered to function "without assistance" (first of three classes of transfer in Table 1). Such a person may be using an object for support, e.g., cane, walker, or bedpost. The intermediate category, namely, "with assistance," applies if another person is involved in the process. For persons in the third category and bedridden who do not leave the bed at all, when evaluating transfer status, the observer may be told that the person is not allowed to transfer unless supervised for reasons of safety. The observer then determines whether such supervision is a reality. The observer may occasionally find, for example, that a daughter claims she supervises her mother whenever the mother moves from one place to another, when observation reveals that the mother moves about entirely on her own and the daughter means that she is always within hearing distance.

Continence refers to the physiological process of elimination from bladder and bowel where incontinence is the involuntary loss of urine and/or feces. The function is thought of as the primitive function of control and does not include any consideration of hygiene, toileting, or constipation. The person is classed as "controls urination and bowel movement completely by self" (first of three continence categories in Table 1) if no other person assists. Such a person can exert some degree of control on the process independently by medication or by self-administered enema (or, in the case of a person with a colostomy, may manage this independently). The case in which a slight amount of wetness or slight soiling of underclothes is occasionally noted by others and not perceived as incontinence by the person is recorded as "controls urination and bowel movement." The person who does not get to the bathroom or commode on time or who is incontinent at least once during the 2-week period of the evaluation is considered as "has occasional accidents," the intermediate category. Persons in the third category are incontinent or controlled by the supervision, direction or intervention of another person. Presence of a catheter or planned, supervised scheduling for bowel control are included in the incontinent category.

Feeding concerns the process of getting food from a plate or its equivalent into the mouth. It is considered in a primitive sense and without concern for social niceties. A person feeds independently "without assistance" (first of three classes of feeding in Table 1) when this primitive process of ingestion is accomplished without the aid of another person. The intermediate category applies to the individual who feeds independently but receives assistance in cutting meat or buttering bread. The third category, "receives assistance," applies to the individual who is assisted in this feeding process or who is fed partly or completely parenterally.

The form in Table 1 includes all the terms needed in the evaluation. Extensive guides are not needed, although the definitions presented above may be required initially to instruct the observer or in unusual individual patient circumstances. In the interest of maximum accuracy and reliability, the observer may create test situations. The observer may, for example, ask the person to show the bathroom and medications in another room (or a meaningful substitute object). This serves as an opportunity for direct observation of transfer and locomotion and checks on the reliability of information given about bathing, dressing, going to the toilet, and transferring.

Data recorded on the form are converted into an Index ADL grade with the aid of the definitions presented in Table 2. Note from Table 2 that two descriptions would permit one to distinguish between "Independent" and "Dependent" levels for grading purposes; yet three descriptions are presented for the observer to consider on the recording form. Introduction of an intermediate description increases observer awareness of subtle distinctions and, thereby, increases reliability. The intermediate description is classified as dependent for certain functions and independent for others. For grading purposes, the intermediate description of bathing and dressing for example, is classed as dependent. The occasional individual classified as Other (usually less than 5% of the persons) according to the Index, does not have to be eliminated from all studies. By definitions, a person so classed is more dependent than one classed as A or B, and more independent than one classed as G. Individuals classed as Other can, therefore, always be compared relative to those classed as A, B or G.

Experience has also shown that the unique profile of a person classed as Other tends to persist and thus permits a precise determination of improvement or deterioration when changes occur. For example, a person who is classified as Other because he is incontinent and dependent in dressing clearly deteriorates when the person develops bathing dependence in addition to incontinence and dressing dependence (grade of D).

Environmental artifacts that tend to influence ADL levels are occasionally encountered. For safety reasons, some hospitals require nurses to supervise patients who shower or get into tubs. During the first few days in the hospital, patients are sometimes kept in bed until the staff can assess their behavior and the degree of dependence permissible. In some nursing homes, patients are kept in bed and not permitted to dress. For safety and convenience, water for bathing and clothes for dressing are sometimes brought to patients. All these special conditions can result in ADL ratings that are lower than they might be in the absence of such restrictions. A test of actual functional level is possible and is indicated for certain studies.

Exhibit C—Rent Increases

I. *Objectives:* The basic objective of this Exhibit is to provide a method of processing requests for increases in the monthly rental rates for tenants in Farmers Home Administration (FmHA) Rural Rental Housing (RRH) and Labor Housing (LH) projects. This Exhibit covers all RRH and LH loans including those approved before the date of this Subpart.

II. *Initial understanding with borrower:* All RRH and LH applicants will be informed at the time of application that rental rates in projects financed in whole or in part by an RRH or LH loan cannot be raised without FmHA consent in accordance with requirements in loan agreements, loan resolutions, and other instruments executed in connection with RRH and LH loans. LH borrowers and/or grant recipients whose projects are occupied on a seasonal basis should not request rent increases when the project is less than 40 percent occupied in order that a greater number of tenants will have an opportunity to make comments. Borrowers should be encouraged to have the effective date of needed rent increases coincide with the start of their fiscal year or with the start of the season in the case of LH projects occupied on a seasonal basis. Rental increase requests, therefore, normally should be made at least 60 days prior to the end of the season in the case of LH projects occupied on a seasonal basis. It is anticipated that rent increases would not be necessary more than once a year. All borrowers should be encouraged to participate in the Rental Assistance Program. However, borrowers with the projects meeting the eligibility requirements of paragraph II D of Exhibit C Part 1944 Subpart E will be *required* to participate in the Rental Assistance program if it appears that a rent increase will cause any low-income tenant to pay in excess of 25 percent of adjusted monthly income for costs of rent and utilities. All borrowers will be advised that all proposed rent increases are subject to compliance with this Exhibit. This Exhibit will also apply to rent increase resulting from HUD's Automatic Adjustment Factors for units receiving Section 8 assistance. An Energy Audit will be required before an initial rent increase can be approved and where an energy audit has not yet been provided.

III. *Borrower's responsibility in processing requests:*

A. When an RRH or LH borrower determines that a rental increase is needed, the borrower should provide FmHA with the followng information:

1. An application for Rental Assistance of Form FmHA 444–25, "Request For Rental Assistance," if the borrower's project is an eligible project and the proposed rent increase will cause any low-income tenant to pay in excess of 25 percent of adjusted monthly income for the costs of rent and utilities.

2. Facts demonstrating the need and justification for a rent increase.

3. Current year's operating budget showing actual income and expenses for the project to date and estimating the income and expenses for the remainder of the year or to the end of the season in the case in LH projects occupied on a seasonal basis.

4. A new operating budget based on the old rates covering the period to the effective date of the proposed rent increase and then using the new rates to the end of the operating year selected by the borrower, if applicable.

5. A budget for the next full year of operation using the proposed rents for each size unit.

6. Current tenant Certifications of Form FmHA 444–8 or other form approved by FmHA.

7. A dated copy of the Notice requied by paragraph II B of this Exhibit.

8. An energy audit for the project conducted in accordance with the procedures established by the Department of Energy (DOE) Resource Conservation Service (RCS) or other energy audit which meets the requirements of 10 CFR 456 is acceptable. This audit will determine what improvements could be made to conserve energy in the project, how much energy would be saved and what the estimated costs of the improvements would be.

9. Any other information the borrower believes necessary to justify the proposed rent increase.

B. The borrower will notify tenants of any proposed rent increase unless an exception is permitted in accordance with paragraph III C of this Exhibit. Tenants must be notified by the following methods on the same date the application for the proposed rent increase is submitted to FmHA:

1. Post prominently in common areas around the project (laundry rooms, parking areas, recreation rooms, etc.) a Notice to Tenants of Proposed Rent Increase (hereinafter referred to as Notice) in the format of Exhibit C—1. In addition to plain English, all notifications will be published in the other primary languages of the tenants, and will:

(a) Advise the tenants that during a 30-day waiting period in which the Notice will be posted, they have an opportunity to inspect, copy, and make written comments or objections to all materials justifying the proposed rental increase which will be made available to them.

(b) Advise the tenants that all written comments or objections should be submitted directly to the FmHA District Director by the end of the 30 day waiting period.

2. Give or mail copies of the Notice to all tenants.

3. After the 30 day waiting period has ended, submit any other information to be considered to the District Director.

C. Notification to the tenant of proposed rent increase will not be required in the following instances:

1. When the borrower is receiving either FmHA rental assistance or HUD Section 8 on all units, and all tenants are eligible tenants participating in the rent subsidy program.

2. When an increase in the utility allowance only is proposed on Exhibit A–5 and the utilities are paid directly by the tenants.

3. This does not preculde posting of the FmHA Letter of Approval as provided for in paragraph IV B 2 of this Exhibit.

IV *Determininotion by FmHA:*

A. *Actions by District Director.* When the application and all attachments for the proposed rent increase have been submitted (including the tenant comments when notification is required), the District Director will:

1. Review the application, past year's budgets, planned budgets, schedule for proposed rents, and other information submitted.

2. Write a short narrative describing the general tone of the tenant comments and complaints.

3. Provide copy of the borrower's latest Form FmHA 444–29, "Project Worksheet for Interest Credit and Rental Assistance."

4. Determine whether the borrower's project is eligible to receive Rental Assistance on behalf of the low-income tenants of the project and whether or not rental assistance is available for the borrower's project.

5. The District Director shall consider the amount of proposed rent increase attributable to increased energy costs and compare that to the amount of monthly payment necessary to amortize a subsequent loan for energy improvements which yield utility cost savings equivalent to the proposed rent increase attributable to utility costs. Where the amortized loan payment is equal to or less than the cost of energy which would be saved the District Director shall recommend that the rent increase be approved only if the cost effective energy conservation measures are taken.

6. Recommend whether the proposed increase should be approved, and if the borrower's project is eligible for Rental Assistance, whether the borrower should be required to participate in the Rental Assistance program.

7. Submit all the material, including tenant comments or objections to the State Director within 10 days after receipt from the borrower.

B. *Actions by the Stote Director.* When the application and attachments with comments have been submitted, the State Director will review the material to make a determination on the rent increase.

1. *Disapproval Actions.* When the State Director determines an application for a proposed rent increase is not justified on the basis of the information submitted, the State Director will directly, or through the District Director, notify the borrower in writing stating the reason(s) why the rent increase is not authorized. Rent increases may not be authorized if any of the following circumstances exist:

(a) The borrower is able but unwilling to comply with applicable tenant eligibility requirements, the audit and reporting requirements of this Subpart or the conditions set forth in the borrower's loan agreement or resolution, interest credit and/or rental assistance agreement, form of note, or mortgage.

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(b) The budget for the project reflects sufficient income at the present rent structure to meet operation and maintenance expenses which are appropriate and reasonable in amount, meet the FmHA debt service requirements, meet the required reserve account deposit, and provide a return to the borrower, if appropriate.

(c) The borrower's project is operated on a profit basis as defined in § 1944.205(s) of Subpart E to Part 1944 and the proposed rent increase is for purposes other than meeting operation and maintenance expenses and debt service; i.e., the purpose is profit margin motivated, and the proposed rent increase will result in rental rates in excess of what eligible tenants can afford. FmHA may approve the rent increase and enable the borrower to make a profit if the borrower is willing to operate on a limited profit basis as defined in § 1944.205 (r) of Subpart E to Part 1944. By operating on a limited profit basis, the borrower will be able to participate in the rental assistance program. All borrowers operating on a profit basis should be encouraged to convert to a limit profit basis.

d. The borrower's project is operated on either a nonprofit basis or limited profit basis as defined in § 1944.205 (r) of Subpart E to Part 1944, the borrower is not willing to participate in the rental assistance program, one or more low-income tenants of the project are eligible to receive rental assistance, and the State Director is able to provide the rental assistance units to the project.

2. *Approval Actions.* When a rent increase is approved, the State Director will notify the borrower by a Letter of Approval of the amount of rent increase approved. The letter must:

(a) Show the current rate(s), the rate(s) requested, and the rate(s) approved.

(b) Contain concise statements of FmHA's reasons for approval of the rent increase.

(c) Indicate that it does not authorize the borrower to violate the terms of any leases with the tenants.

(d) For those projects where there is rental assistance and/or HUD section 8 assistance, explian that for those receiving subsidy assistance, their costs for rent and utilities will continue to be based on 25 percent of their adjusted montly income.

(e) If rental assistance units are not available, approve the rent increase subject to the borrower's acceptance of the units when they become available. Acknowledge that the borrower has applied for rental assistance on behalf of other tenants who are eligible for rental assistance.

(f) Require that the borrower must notify the tenants individually at least 30 days before any approved increase is put into effect.

(g) For profit motivated borrowers which do not desire to convert to limited profit and apply for rental assistance, and where rental assistance units are not available, suggest that the borrower advise tenants of the availability of Section 8 assistance for low-income tenants and that they may apply to the local HUD office or State or local Public Housing Agency for certification of eligibility.

(h) Grant the rent increase conditioned on the requirement that the borrower plan for energy conservation measures as determined necessary by the energy audit. Allow a sufficient time frame for completion of the work and offer FmHA assistance, if necessary, to finance the improvements needed.

(i) Advise the borrower and the tenants of either party's right to file an appeal regarding the rent increases as approved within 45 days of the date of the notice by writing to the Administrator, Farmers Home Administration, Washington, D.C. 20250. Until the appeal is resolved, the tenants are required to pay the increased amount of rent as indicated in the Notice of Approval.

(j) Require that the borrower post the Letter of Approval in a conspicuous place for the information of the tenants.

3. *Automatic Adjustment Factors for Section 8 Units.* If the State Director disapproves a rental rate increase requested as a result of HUD's automatic adjustment increase for units receiving Section 8 assistance or approves a rent increase for a lesser amount than the increase permitted by HUD, the State Director must require the borrower to deposit any excess funds into the Reserve Account. If this results in a buildup of excess funds in the Reserve Account, the interest reduction on a Section 8/515 project should be further reduced or canceled.

4. *Return on Investment.* Limited profit borrowers can take their 8 percent return if the project produces adequate income to cover all expenditures in accordance with the actual "Statement of Budget Income and Expense." If income is not adequate in any given accounting year to cover the return to owner, the return can be recouped in future years, provided it does not result in a rent increase.

V. Special Problem Cases: Problem cases which cannot be handled under this Subpart should be submitted to the National Office for review with the State Director's recommended plan of action.

Exhibit C-1—Notice to Tenants of Proposed Rent Increase

_____

Date Posted

This will advise you that the

_____

has filed with the Farmers Home Administration (FmHA), United States Department of Agriculture, a request to approve an increase in the monthly rental rates of the

_____

project for the following reasons:

1.
2.
3.
4.

Planned rent increases are as follows:

Project name	Unit	Present rent		Proposed rent		Amount increase
		Basic	Market	Basic	Market	

(Use where applicable:

Since you receive rent subsidy, your rent will not be changed so long as your income remains unchanged.)

All materials justifying the proposed rent increases will be made available for the tenants to inspect and copy at

_____

during the hours of .

_____

Tenants may submit comments or objections in writing to the District Director of the FmHA District Office for a 30 day period or until

_____

The FmHA District Director is

_____

and the District Office is located at

_____

These comments will be reviewed by the FmHA District Director and forwarded to the FmHA State Director and a decision will be made as to whether the rent increase should be granted.

Each tenant will be notified of the FmHA decision and at least 30 days before the effective date of any authorized rent increase.

By

_____

Borrower or Borrower's Representative

_____

This final rule has been reviewed in accordance with Subpart G of Part 1901 of this Chapter, "Environmental Impact Statements." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

(42 U.S.C. 1480; delegation of authority by the Secretary of Agriculture 7 CFR 2.23)

(FCDA No. 10.405, Farm Labor Housing Loans and Grants); (FCDA No. 10.415, Rural Rental Housing Loans); (FCDA No. 10.427, Rural Rental Assistance Payments); (FCDA No. 10.411, Rural Housing Site Loans)

Dated: September 30, 1980.

Gordon Cavanaugh,

Administrator, Farmers Home Administration.

Dated: October 2, 1980.

Alex P. Mercure,

Assistant Secretary for Rural Development, U.S. Department of Agriculture.

[FR Doc. 80-33342 Filed 10-24-80; 8:45 am]

BILLING CODE 3410-07-M

7 CFR Parts 1822, 1933, and 1944 Rural Rental Housing; Revision—Redesignation of Loan Regulations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration amends and redesignates its regulations concerning rural rental housing loans. The action is taken because of the general administrative restructuring of Agency regulations and restructuring of the Agency field staff. It is also taken to strengthen the Agency's mission of rural development and strengthen Agency efforts to assist distressed communities and rural areas which have significant populations of poor and disadvantaged persons. The action will clarify and update the regulations and will provide uniformity between the numbering of FmHA regulations and the Code of Federal Regulations.

EFFECTIVE DATE: October 27, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Antonio O. Izquierdo, Loan Officer, Rural Rental Housing Loan Division, Room 5331, South Agriculture Building, 14th St. and Independence Avenue, SW, Washington, DC 20250, Telephone 202-447-7207. The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from the Farmers Home Administration, Office of the Chief, Directives Management Branch, Room 6346, South Agriculture Building, 14th St. and Independence Ave., SW, Washington, DC 20250.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant".

This action is taken in reply to findings and recommendations of the USDA Office of the Inspector General which requires that certain changes be made to the rural rental housing regulations as soon as possible in order to better protect the integrity of the program and to provide verification of proper use of Federal funds to more effectively meet the needs of the primary beneficiaries of the program. This action also implements certain requirements established in the Housing and Community Development Amendments Act of 1979 and 1980, which were effective on the ratification of the Acts in December 1979 and October 1980, respectively. In addition, due to a reorganization of the Agency field staff, authorities must be made official to the individuals responsible for loan processing and review.

The FmHA programs and projects which are affected by this instruction are subject to state as local clearinghouse review in the manner delineated in FmHA Instruction 1901-H.

The Farmers Home Administration amends its regulations under Chapter XVIII, Title 7 in the Code of Federal Regulations by revising and redesignating the present Subpart D "Rural Rental Housing Loan Policies, Procedures, and Authorizations" of Part 1822, to a new Subpart E "Rural Rental Housing Loan Policies, Procedures, and Authorizations" under Part 1944. As a result of publication of the amendments in **Federal Register** Vol. 44, No. 23 Part V on Friday, November 30, 1979, for proposed rule the Agency received 44 comments from the general public, other Federal agencies and FmHA field offices. These comments addressed the specific changes or amendments indicated in the preamble to the proposed rule publication, but in addition, some of them addressed other sections of the proposed regulations. Based on the comments received certain other sections have been amended, deleted or revised. Therefore, the specific amendments contained in the regulations are as follows:

1. Section 1944.205(f) has been revised to include the bedroom to tenant occupancy ratios permitted and to require that a tenant be of legal age.

2. Section 1944.205(g) has been amended to better define the trade area of a community.

3. Section 1944.205(k) has been revised to clarify eligible legal, professional and technical services and to include costs incurred in relocating persons on a proposed project site to be acquired by a public body.

4. Section 1944.211(a)(5)(iii) has been added to allow the borrower's initial two percent operating capital to be returned after two years.

5. Section 1944.211(a)(8) and § 1944.211(a)(9)(i)(F) have been amended for clarification purposes.

6. Section 1944.212(k) has been amended to clarify legal, technical and professional services which can be paid from loan funds.

7. Section 1944.212(q) has been added to include the costs incurred under the Uniform Relocation Assistance and Real Property Acquisition Act of 1970.

8. Section 1944.213(a) has been revised to equate the amount of the State Directors approval authority with the amount of loan that can be approved on any one project at any one time without the prior written concurrence of the National Office.

9. Section 1944.213(a)(1) is amended to clarify the two percent borrower investment in the project.

10. Section 1944.213(b)(11) has been deleted.

11. Section 1944.213(b)(15) has been added to clarify that loan funds cannot be used to compensate an applicant for land in excess of the five percent initial contribution.

12. Section 1944.213(c) has been amended to clarify acceptable cost before closing and to comply with certain requirements of the National Environmental Policy Act.

13. Section 1944.215(a)(1) has been revised to accommodate solar and alternate methods of energy uses.

14. Section 1944.215(b) has been revised to make rent determinations more equitable in congregate housing units with those of regular rental units.

15. Section 1944.215(c) has been amended. Deferring of principal payments will no longer be permitted in loans using interim financing for the construction period.

16. Section 1944.215(d) has been amended to include the requirements of the Housing and Community Development Amendments of 1979 on repayment penalties.

17. Section 1944.215(i)(1) has been revised to require eligibility for occupancy to be determined based upon

the combined incomes of all adult occupants.

18. Section 1944.215(i)(2) has been added to clarify conditions under which the seemingly more temporary residents of the community may be considered eligible for occupancy.

19. Section 1944.215(i)(7) has been added to comply with the HUD Section 8/515 program requirements.

20. Section 1944.215(l)(1) has been revised to clarify that the borrower's initial investment in a project wil not include any cash equity contribution which, when added to the loan amount, is in excess of the security value of the project.

21. Section 1944.215(l)(2) has been revised to recognize the applicant's amount over and above the five percent intial contribution as part of the contribution.

22. Section 1944.215(u) has been added to include the requirements of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970.

23. Section 1944.231 has been revised to: (a) Specify that while primary responsibility for loan making and servicing is in the District Office, County Offices may accept preapplications and assist applicants as needed; (b) specify the actions to be taken by the District Director; (c) specify the information necessary for submission to the National Office when review at the National Office level is either desired or required; (d) specify the priority criteria and weighting system to be used in selecting preapplications for further processing; and (e) specify the conditions under which selected preapplications can be authorized for development into completed loan applications.

24. Section 1944.231(d)(3)(iii) has been revised to clarify the point system to be used in approving projects in accordance with comments received.

25. Section 1944.232(b) has been revised to establish the District Director's responsibilities in application processing and review. It is also revised to permit the use of any processing check-list that may be developed to assist in application development and review.

26. Section 1944.235(b)(1)(iii) has been revised to eliminate the requirement that banks limit their disbursements to no more than 60 percent of the work in place during the construction period.

27. Section 1944.235(b)(1)(vii) has been added to clarify under what conditions FmHA may close an RRH loan with debts outstanding.

28. Section 1944.235(h) has been added to include the requirements of a prerent-up conference.

29. Section 1944.236(b)(4) has been added to comply with certain requirements of the Housing and Community Development Amendments of 1979.

30. Section 1944.250 has been changed to comply with Section 514 of the Housing and Community Development Act of 1980, which prescribes prepayment requirements for loans approved prior to December 21, 1979.

31. Exhibit A, Section 5 under "Applying for a Loan" has been revised to clarify certain requirements.

32. Exhibit A, Section 5 under "Developing the Loan Docket" has been revised for clarification.

33. Exhibit A, Section 8 under "Developing the Loan Docket" has been revised to include requirements of the National Environmental Policy Act.

34. Exhibit A–5 has been deleted. The "Statement of Budget, Income and Expense" has been converted into Form FmHA 1930–7.

35. Exhibit A–6 has been revised to: (a) Permit the acceptance of a certificate of net worth in lieu of a financial statement from a limited partner in a limited partnership; (b) require proposed general partners, stockholders, members, or beneficiaries to collectively possess sufficient cash or other liquid assets to meet any equity capital and initial operating capital requirements of applicant organizations not yet in legal existence at the time the preapplication is submitted; (c) require a certification of truth and accuracy on all financial statements; (d) clarify the information necessary to pass the test for other credit; (e) require a written, dated, and signed statement disclosing any identity of interest between the applicant and others to be used in connection with the construction of the project; (f) require the completion of Form FmHA 449–10, "Applicant's Environmental Impact Evaluation," and (g) request the social security number of the applicant and all associates.

36. Exhibit A–7 has been revised to: (a) Clarify the demand for the project which can help justify the size of the project and mix of units proposed; (b) require a copy of the proposed management agreement; (c) clarify the contents of an acceptable management plan; and (d) require a schedule of any separate charges for the use of non-shelter services to be provided in a congregate housing project.

37. Exhibit A–8, A–8A, A–8B, and A–8C have been deleted and transferred to FmHA Instruction 1930–C.

38. Exhibit B, III A has been revised to no longer accept Plan I as an acceptable Interest credit plan.

39. Exhibit B, VII B has been changed to permit the changing of Interest Credit Plans at anytime during the year.

40. Exhibit C II A has been added to permit an amount in excess of the $400 allowed for extended health care in regards to the ?????

41. Exhibit C, paragraph V C 1 has been revised to be more definitive concerning the information necessary for National Office review of exception requests.

42. Exhibit C, paragraph VI has been revised to permit borrowers to select tenants for congregate housing projects in accordance with selection criteria specified in their FmHA approved management plans.

43. Exhibit C, Section VI A 3 has been deleted since it was repetitious of the preceding section.

44. Exhibit C, X A 1 c and X C 2 have been added to require energy audits before rent increases or rental assistance are approved.

45. Exhibit J through R (inclusive) have been deleted. These loan resolutions and loan agreements have been condensed into three new FmHA forms.

46. Numerous revisions have been made to place responsibility for loan making and servicing in the hands of District Directors rather than County Supervisors.

47. Numerous revisions have been made to eliminate any connotation of sexual bias.

48. Numerous editorial changes have been made.

Accordingly, Chapter XVIII has been amended as follows:

SUBCHAPTER B—LOANS AND GRANTS PRIMARILY FOR REAL ESTATE PURPOSES

PART 1822—RURAL HOUSING LOANS AND GRANTS

§ 1822.81—1822.98

(Subpart D—Rural Rental Housing Loan Policies, Procedures, and Authorizations) [Deleted]

1. Subpart D of Part 1822 is hereby deleted from the Code of Federal Regulations.

Subpart F—Rural Cooperative Housing Loans

§ 1822.231 [Amended]

2. In § 1822.231, line 8, change the reference from "Subpart D of this part" to "Part 1944 Subpart E".

§ 1822.232 [Amended]

3. In § 1822.232, paragraph (h), lines 1 and 2, change the reference from "Subpart D of this part" to "Part 1944 Subpart E".

4. Section 1822.232, paragraph (i) is amended to read as follows:

§ 1822.232 Definitions.

* * * * *

(i) Definitions in § 1944.205 except those in paragraphs (h) through (l) of this section are applicable to this subpart.

* * * * *

§ 1822.233 [Amended]

5. In § 1822.233, paragraph (a)(1), line 5, change the reference from "§ 1822.82(c)" to "§ 1944.205(f)."

6. In § 1822.233, paragraph (a)(2), lines 2 and 3, change the reference from "§ 1822.83(a) (3), (4), (5), (6), (7), (8), and (10)" to "§ 1944.211(a) (3), (4), (5), (6), (7), and (8)."

§ 1822.234 [Amended]

7. In § 1822.234, line 2, change the reference from "§ 1822.84" to "§ 1944.212". In line 3 change the reference from paragraph (a)(8) of § 1822.84" to "applicable paragraphs of Part 1944 Subpart E." In lines 4 and 5, change the reference from "paragraph (h) of § 1822.84" to "§ 1944.212(k)".

§ 1822.235 [Amended]

8. In § 1822.235, lines 1 and 2, change the reference from "§ 1822.87, except paragraph (d)" to "§ 1944.215, except paragraph (d)."

§ 1822.237 [Amended]

9. In § 1822.237, line 1, change the reference from "Section 1822.89" to "§ 1944.222".

§ 1822.238 [Amended]

10. In § 1822.238, line 1, change the reference from "§ 1822.91" to "§ 1944.231".

§ 1822.239 [Amended]

11. In § 1822.239, line 2, change the reference from "§ 1822.92" to "§ 1944.232".

§ 1822.240 [Amended]

12. In § 1822.240, paragraph (b), line 2, change the reference from "§ 1822.93(b)" to "§ 1944.233(b)".

§ 1822.241 [Amended]

13. Section 1822.241 is amended to read as follows:

§ 1822.241 Loan Closings.

The provisions of § 1944.236 for loans to organizations are applicable.

SUBCHAPTER G—RURAL HOUSING SITE LOANS POLICIES, PROCEDURES, AND AUTHORIZATIONS

§ 1822.272 [Amended]

14. In § 1822.272, lines 1 and 2, change the reference from "paragraph (b)(2) of § 1822.93 Subpart D of this Part" to "§ 1944.233 (b) of Subpart E to this Part".

§ 1822.273 [Amended]

15. In § 1822.273, line 3 change the reference from "§ 1822.97" to "§ 1944.235".

§ 1822.277 [Amended]

16. In § 1822.277, line 8, change the reference from "§ 1822.97" to "§ 1944.239".

SUBCHAPTER H—PROGRAM REGULATIONS

PART 1933—LOAN AND GRANT PROGRAM (GROUP)

Subpart I—Self-Help Technical Assistance Grants

§ 1933.404 [Amended]

17. In § 1933.404, paragraph (a)(4)(iii), lines 3, 4, 5, 6 and 7, change the reference from "Exhibit D and E of Subpart D of Part 1822 (Exhibits D and E of FmHA Instruction 444.5)" to "Exhibits E and F of Subpart E of Part 1944".

§ 1933.416 [Amended]

18. In § 1933.416, paragraph (b), lines 1, 2 and 3, change the reference from "paragraph (b)(2)(i) of § 1822.93 Subpart D of Part 1822 Subchapter B of this Chapter" to "§ 1944.233(b) (1) and (2) of Subpart E of Part 1944 Subchapter H of this Chapter".

PART 1944—HOUSING

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations.

§ 1944.182 [Amended]

19. In § 1944.182, lines 3, 4 and 5, change the reference from "Exhibit R of Subpart D of Part 1822 of this Chapter (Exhibits R of FmHA Instruction 444.5)" to "Exhibit C of Subpart E of Part 1944 of Subchapter H of this Chapter".

Subpart E—Rural Rental Housing Loan, Policies, Procedures, and Authorizations.

20. Subpart E of Part 1944 is added and reads as follows:

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

Sec.

1944.201 General.
1944.202 Objective.
1944.203–1944.204 [Reserved].
1944.205 Definitions.
1944.206–1944.210 [Reserved].
1944.211 Eligibility requirements.
1944.212 Loan purposes.
1944.213 Limitations.
1944.214 Rates and terms.
1944.215 Special conditions.
1944.216–1944.220 [Reserved].
1944.221 Security.
1944.222 Technical, legal and other services.
1944.223–1944.230 [Reserved].
1944.231 Processing preapplications.
1944.232 Preparation of completed loan docket.
1944.233 Loan approval.
1944.234 [Reserved].
1944.235 Actions Subsequent to loan approval.
1944.236 Loan closing.
1944.237 Subsequent RRH loans.
1944.238 Coding loans as to initial or subsequent.
1944.239 Complaints regarding discrimination in use and occupancy of RRH housing.
1944.240 Exception authority.
1944.241–1944.249 [Reserved].
1944.250 Prepayment of RRH loans approved prior to December 21, 1979.
Exhibit A How to bring rental housing to your town.
Exhibit A–1 Legal services agreement.
Exhibit A–2 Survey of existing rental housing.
Exhibit A–3 Rental housing survey.
Exhibit A–4 Rental housing survey summary.
Exhibit A–5 Housing allowances for utilities and other public services.
Exhibit A–6 Information to be submitted with preapplication for rural rental housing (RRH) loan.
Exhibit A–7 Information to be submitted with Application for Federal Assistance (short form).
Exhibit B Interest Credits on Insured RRH and RCH loans.
Exhibit B–1 Example of Interest Credit determination for RRH or RCH projects (Plan II).
Exhibit C Rental Assistance Program.
Exhibit D Guide letter for use in Informing Interim Lender of FmHA's Commitment.
Exhibit E Articles of Incorporation (Not for Profit).
Exhibit F Bylaws.
Exhibit G RRH Loans and the HUD Section 8 Housing Assistance Payments Program (Existing Units).
Exhibit H RRH Loans and the HUD Section 8 Housing Assistance Payments Programs (New Construction).
Exhibit H–1 Memorandum of Understanding on use of Section 8 of the United States Housing Act of 1937 and Section 515 of the Housing Act of 1949.
Exhibit H–2 Section 8 Housing Assistance Payments program: Information For New Construction.
Exhibit H–3 Suggested Proposal Certification Format (Section 8/515 Program).
Exhibit H–4 Equal Opportunity Site And Neighborhood Standards Checklist.
Exhibit H–5 Certification by the applicant.

Exhibit H–6 Guide letter for Architect's Certification: New Construction: Inspecting Architect's Certification.
Exhibit H–7 Suggested Project Completion Certification Format (Section 8/515 program).
Exhibit I Memorandum of Understanding Between Farmers Home Administration and Administration on Aging.
Exhibit J Form FmHA 1944–33, "Loan Agreement for an RRH Loan to an Individual Operating on a Profit Basis or RRH Loan to an Individual Operating on a Limited Profit Basis."
Exhibit K Form FmHA 1944–34, "Loan Agreement for an RRH Loan to a Partnership Operating on a Profit Basis or RRH Loan to a Limited Partnership Operating on a Profit Basis or RRH Loan to a Partnership Operating on a Limited Profit Basis or RRH Loan to a Limited Partnership Operating on a Limited Profit Basis."
Exhibit L Form FmHA 1944–35, "Loan Resolution for an RRH Loan to a Broadly Based Nonprofit Corporation or RRH Loan to a Profit Type Corporation or RRH Loan to a Profit Type Corporation Operating on a Limited Profit Basis."
Exhibit M FHA Form 2530, "Previous Participation Certificate."

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70.

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

§ 1944.201 General.

This subpart sets forth the policies and procedures and delegates authority for making Rural Rental Housing (RRH) loans under Sections 515 and 521 of the Housing Act of 1949.

§ 1944.202 Objective.

The basic objective of RRH loans is to provide eligible occupants economically designed and constructed rental housing and related facilities suited to their living requirements.

§§ 1944.203–1944.204 [Reserved].

§ 1944.205 Definitions.

(a) *Household.* One or more persons who maintain or will maintain residency in one rental unit. Eligibility for occupancy is outlined in § 1944.215(i) of this Subpart.

(b) *Senior citizens or handicapped persons.* Any senior citizen provision in this Subpart will also apply to handicapped persons. Senior citizens or handicapped persons will be considered eligible occupants without regard to income for projects operated on a for profit basis only. The two terms are defined as follows:

(1) *Senior citizen.* A person 62 years of age or over and may be either the tenant or co-tenant. A person(s) younger than 62 years of age may reside with a senior citizen provided the person is considered a member of the household of the senior citizen. The term "senior citizen" also includes the elderly as used in this Subpart.

(2) *Handicapped person.* A person, or in the case of a household either the tenant or co-tenant, who does not need constant supervision or constant medical or nursing care, but meets either of the following qualifications:

(i) A person who has an impairment which (A) is expected to be of long-continued and indefinite duration, (B) substantially impedes the ability to live independently, and (C) is of such a nature that such ability could be improved by more suitable housing conditions.

(ii) A person who is developmentally disabled. A developmentally disabled individual is a handicapped person with a severe, chronic disability which: (A) Is attributable to a mental or physical impairment or combination of mental and physical impairments; (B) is manifested before the person attains age twenty-two; (C) is likely to continue indefinitely; (D) results in substantial functional limitations in three or more of the following areas of major life activity; (*1*) self-care, (*2*) receptive and expressive language, (*3*) learning, (*4*) mobility, (*5*) self-direction, (*6*) capacity for independent living, and (*7*) economic sufficiency; and (E) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

(c) *Resident assistant.* A person(s) residing in the living unit who is essential to the well being and care of the senior citizen or handicapped person(s) and who is not related by blood, marriage, or operation of law to the senior citizen or handicapped person(s) residing in the unit and receiving supportive service(s).

(d) *Low or moderate income household.* Households having incomes within the limits of the maximum adjusted income as outlined in Exhibits C and D of Subpart A of Part 1822, (Farmers Home Administration (FmHA) Instruction 444.1).

(e) *Plan I and Plan II.* The two interest credit plans outlined in Exhibit B of this Subpart.

(f) *Eligible occupants.* Eligible occupants in a project may be either the elderly, handicapped, or low- and moderate-income households, or any combination thereof as planned for the project and shown on the applicant's loan resolution or loan agreement and who comply with the following number of authorized persons in the units and in accordance with paragraph V B 1 of Exhibit B to Subpart C of Part 1930:

	Occupants	
	Minimum	Maximum
0-Bedroom	1	2
1-Bedroom	1	2
2-Bedroom	2	4
3-Bedroom	4	6
4-Bedroom	6	8
5-Bedroom	8	10

The term "occupant" also includes the term "tenant" as used in this Subpart. The occupants must:

(1) Be eligible households usually living in the local community and the surrounding area capable of caring for themselves. However, in the case of congregate housing with supportive services, this may include elderly or handicapped persons who require some supervision and central services, but are otherwise able to care for themselves. All occupants, however, must meet the following criteria:

(i) Not be totally dependent on others to be able to vacate the unit for their own safety in emergency situations.

(ii) Be able to provide for their own sustenance in projects that provide less than full food service.

(iii) The occupant or legal guardian must possess the legal capacity to enter into a lease agreement.

(iv) The tenant or co-tenant must be of legal age.

(2) For a direct loan or a loan developed under Plan I, be:

(i) A senior citizen or handicapped person with a low or moderate income, or

(ii) Any household with a low-income.

(3) For loans developed under Plan II, be persons with a low or moderate-income.

(4) For all other loans be persons with a low or moderate income or senior citizens or handicapped without regard to income.

(g) *Housing.* Structures in a rural area which are or will be suitable for, and available to, eligible occupants for dwelling use to provide congregate or completely independent living on a rental basis. The structures may include related facilities where appropriate. For the purpose of a loan developed under this Subpart, generally be to provide housing for eligible households usually living in the local community and the surrounding area capable of caring for themselves.

(h) *Congregate housing.* Housing that affords an assisted independent living environment that offers the senior citizen or handicapped person who may be functionally impaired or socially deprived, but in good health (not acutely physically ill), the residential accommodations, central dining facilities, related facilities, and supporting service(s) required to achieve, maintain or return to a semi-independent life style and prevent premature or unnecessary institutionalization as they grow older. Congregate housing is also:

(1) Housing which has complete kitchen facilities in each unit. However, some or all of the units may have limited kitchen facilities, such as a cooktop with a small oven and a refrigerator. In the case of group living arrangements, each single person dwelling is considered a unit.

(2) A group living arrangement where one or more senior citizens or handicapped persons may share living space within a rental unit and in which a resident assistant is required. Such housing may be one or more single person dwellings or a multi-unit structure.

(i) *Related facilities.* Related facilities may consist of community rooms or buildings, cafeterias, dining halls, appropriate recreation facilities, and other essential service facilities such as central heat and cooling, sewerage, light systems, ranges and refrigerators, clothes washing machines and clothes dryers, and a safe domestic water supply. Under special conditions, such as a congregate housing project or a project housing handicapped tenants, space may be provided for cafeterias, dining areas, an infirmary, therapy room, special bathing room, and other special areas needed by the elderly and handicapped tenants when determined to be economically feasible. The cost of kitchen equipment such as stoves, ovens, steam tables and other such items may be included in the loan. However, the cost of specialized equipment such as that used for training and therapy will not be included in the RRH loan to equip these facilities. When ranges, refrigerators, dish washing machines, dish dryers and other kitchen equipment are included, they will be attached to the real estate in a manner to prevent easy removal.

(j) *Project.* A project is the total number of rental housing units to be built or to be purchased by one applicant in one market area at any one time. Subsequent loans may be made to complete the units started with the initial loan. Additional units or additional projects in the same market area may be developed on a contiguous or separate tract of land at a later time if it can be shown that there is a need for this project in the market area and if the project already developed is operating successfully and in accordance with § 1944.213(a) of this Subpart.

(k) *Development cost.* The cost of constructing, purchasing, improving, altering, or repairing housing and related facilities and the value or cost of purchasing and improving the necessary land. It includes necessary architectural, engineering, legal, official and other appropriate technical and professional fees and charges. However, legal, technical and official fees are not intended to include the costs incurred in the formation or incorporation of the applicant organization except as indicated in § 1944.212(k) of this Subpart. For nonprofit organizations and State or local public agencies the development cost may include initial operating expenses up to 2 percent of the aforementioned costs. It does not include fees, charges, or commissions such as payments to brokers, negotiators, or other persons for the referral of prospective applicants or solicitation of loans. In the case of State or local public agencies the costs incurred in the relocation of individuals may be included as part of the total development cost in accordance with § 1944.215(u) of this Subpart.

(l) *Rural Area.* Open country or rural places as defined in § 1822.3(c) of Subpart A to Part 1924 (paragraph III C of FmHA Instruction 444.1).

(m) *Individual.* A natural person.

(n) *Organization.* A private nonprofit corporation, profit corporation, consumer cooperative, association, State or local public agency, trust, partnership, or limited partnership.

(o) *Private nonprofit corporation.* A corporation which (1) is controlled by private persons or interests, (2) is organized and operated for purposes other than making gains or profits for the corporation or its members, (3) is legally precluded from distributing to its members any gains or profits during its existence, and (4) in the event of its dissolution, is legally bound to transfer its net assets to a nonprofit corporation of a similar type or to a municipal corporation which will operate the housing for the same or similar purposes.

(p) *Profit corporation.* A corporation (1) which is controlled by private persons or interests, (2) whose organization permits the making of gains or profits for the corporation or its members, (3) which is authorized to do business in the state, and (4) which can legally carry out the purposes of the loan.

(q) *Consumer cooperative.* A corporation which (1) is organized as a cooperative, (2) will operate the housing on a nonprofit besis solely for the benefit of the occupants, and (3) is legally precluded from distributing, during the life of the loan, any gains or profits from operation of the housing. For this purpose any patronage refunds to occupants of the housing would not be considered gains or profits. A consumer cooperative may accept nonmembers as well as members for occupancy of the housing.

(r) *Limited profit basis.* An individual or organization applicant who, in order to obtain interest credit assistance, will agree to limit the amount of profit to be obtained. Applicants operating on this basis will be permitted to receive a return on their initial investment in accordance with the requirement outlined in § 1944.215 (l) of this Subpart. The applicant will legally obligate itself to regulate rents, charges, rate of return, and methods of operation.

(s) *Profit basis.* An individual or organization applicant who will operate the housing at rental rates low- and moderate-income persons, senior citizens and handicapped persons can afford, and whose return on their initial investment will not be limited to a certain percentage per year.

(t) *Limited partnership.* A partnership consisting of (1) one or more general partners jointly and severally responsible as ordinary partners, and by whom the business is conducted, and (2) one or more special partners, contributing in cash payments a specific sum as capital to the common stock, and who are not liable for the debts of the partnership beyond the funds so contributed.

(u) *Owner-builder.* A qualified builder-applicant who has experience and demonstrated ability and capability and will build the RRH project.

(v) *Security value.* As used in this Subpart, the security value means the present market value of the real estate offered as security for the loan as determined by the loan approval official less than unpaid principal balance plus past-due interest on any other liens against it. Other liens will include any prior liens and junior liens to be or likely to be taken or subordinated at or immediately after loan closing. The security value of the real estate offered as security will be determined in accordance with the provisions of Subpart B to Part 1922 (FmHA Instruction 1922–B), "Appraisal of Real Estate Security for Rental, Cooperative, and Labor Housing Loans."

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(w) *Gains or profits.* For the purpose of paragraphs (o) and (p) of this section, gains and profits do not include dividends payable on stock which is (1) nonvoting, (2) limited as to the amount of dividends that can be paid thereon, and (3) limited as to liquidation value in the event of corporate dissolution.

(x) *Members and membership.* These terms include stockholders and stock when appropriate.

(y) *Board and directors.* The governing body and members of the governing body of an organization.

(z) *Note.* This term also includes a bond or other form of obligation.

(aa) *Mortgage.* This term also includes any appropriate form of security instrument.

(bb) *Office of the General Counsel (OGC).* The Regional Attorney or the attorney in charge who provides legal services to the FmHA for the particular State.

§§ 1944.206–1944.210 [Reserved]

§ 1944.211 Eligibility requirements.

(a) *Eligibility of applicant.* To be eligible for an RRH loan, the applicant must:

(1) Be either an individual who is a citizen of the United States or a legally admitted alien for permanent residence in the United States, or an organization as defined in § 1944.205 (n) of this Subpart which will provide housing for eligible occupants as defined in § 1944.205 (f) of this Subpart.

(2) Be unable to provide the housing from its own resources and with the exception of a state and local public agency, be unable to obtain the necessary credit from private or cooperative sources on terms and conditions that would enable the applicant to rent the units for amounts that are within the payment ability of eligible low- and moderate-income, senior citizen or handicapped occupants.

(i) For an individual, the assets of both the applicant and spouse will be considered.

(ii) For profit organizations, the assets of the individual members or stockholders will be considered.

(iii) For nonprofit organizations, the assets of the individual members will not be considered.

(iv) For a loan to provide congregate housing with central dining facilities or space for other services, provided by the RRH loan, the applicant must be able to (A) operate such facilities with its own funds other than rent, or (B) obtain such funding from other sources, or (C) lease such facilities to an individual organization or firm with the ability to operate the facilities. In the case of a lease, the payment to the borrower should be sufficient to cover the annual operating expenses, debt service, and reserve account attributable to the leased portion of the project. The cost of the food and other support services will not be reflected in the FmHA budget that shows the operation and maintenance cost of the housing project. This will not preclude tenants who voluntarily use the service from paying a separate charge for these services.

(3) Have the ability and intention to maintain and operate the housing for the purposes for which the loan is made.

(4) Own the housing and related land, or become the owner when the loan is closed. An owner may include, in addition to the owner of full marketable title, a lessee of a tract of land owned by a State, political subdivision, public body or public agency, or Indian tribal lands which are not available for purchase. It may also include land when the State Director determines that long-term leasing of sites by nonpublic bodies is a well established practice and such leaseholds are fully marketable in the area, provided:

(i) The applicant is unable to obtain fee title to the property.

(ii) A recorded mortgage constituting a valid and enforceable lien on the applicant's leasehold will be given as security.

(iii) The amount of the RRH loan against the property will not exceed the maximum security value determined in accordance with Subpart B of Part 1922 (FmHA Instruction 1922–B).

(iv) The unexpired term of the lease on the date of loan approval is at least 25 percent longer than the repayment period of the loan and rental charged for the lease should not exceed the rate being paid for similar leases in the area.

(v) The borrower's interest may not be subject to summary foreclosure or cancellation.

(vi) The lease must:

(A) Not restrict the right to foreclose the RRH mortgage or to transfer the lease.

(B) Permit FmHA to bid at a foreclosure sale or to accept voluntary conveyance of the security in lieu of foreclosure.

(C) Permit FmHA after acquiring the leasehold through foreclosure, or voluntary conveyance in lieu of foreclosure, or in event or abandonment by the borrower, to occupy the property, or to sublet the property and to sell the leasehold for cash or credit.

(D) Permit the borrower, in the event of default or inability to continue with the lease and the RRH loan, to transfer the leasehold, subject to the RRH mortgage, to a transferee with assumption of the RRH debt.

(vii) The advice of OGC will be obtained as to legal sufficiency of the lease. When the State Director is uncertain as to whether a loan can be made on a leasehold, the request should be submitted to the National Office for evaluation and instructions.

(5) Have or be able to obtain initial operating capital and other assets needed for a sound loan. RRH loans made to nonprofit organizations and to State or local public agencies may include up to 2 percent of the development cost for initial operating expenses.

(i) Initial operating capital should be sufficient to pay for such costs as property and liability insurance premiums, fidelity bond premiums if an organization, utility hookup deposits, maintenance equipment, movable furnishing and equipment, printing lease forms, and other initial operating expenses. The initial operating capital required will be at least 2 percent of the total development cost of the project. It shall be deposited into the general fund account in accordance with the provisions of the Loan Agreement or Loan Resolution prior to the start of construction or loan closing, (whichever is first) and will be used for such authorized purposes only.

(ii) When the applicant is to provide other movable equipment and furnishings, the initial capital will be increased sufficiently to cover the cost of these items.

(iii) In cases where the borrower has provided for the initial 2 percent operating expense amount from the borrower's own funds, the State Director may authorize the return of the balance of those funds still remaining of the original initial operating and expense amount to the borrower after two year's operation of the project, provided the borrower has submitted the year-end audit, the estimated and actual budget, has paid for all required expenses, and they have been reviewed and approved by the State Director.

(iv) In the case of congregate housing involving a group living arrangement, the applicant/borrower will not include in the budget items (Form FmHA 1930–7, "Statement of Budget, Income and Expense," item 8) any salary, wages or expense items to compensate the resident assistant(s). Therefore, these expense items must be provided by other sources. However, this will not preclude the resident assistant from receiving compensation for any duties performed by a resident manager or caretaker in a typical RRH project.

(8) Possess the ability, experience, and the legal and financial capacity to incur and carry out the undertakings and obligations required for the loan.

(7) Agree to comply with all FmHA requirements such as those set forth in the loan resolutions, loan agreement, the form of note, the mortgage, and FmHA regulations.

(8) Provide necessary management to assure the successful operation of the project. Management services may be provided by the applicant, a management firm, or an agent. If the borrower or a member of the borrower organization does not live close enough to the project to provide the general supervision, a management firm or an individual located in close proximity who is experienced and has full authority to act on behalf of the owner must be retained. Generally, projects of more than 12 units should have a resident manager/contact person on the project site. Projects which are not large enough to justify a resident manager must, at a minimum, have a tenant who agrees to serve as a contact person or have a person easily accessible to the project who will be a contact person able to speak on behalf of project management or owner. An attractive sign should be placed in a conspicuous location providing the name, address, and telephone number of the local contact person able to speak on behalf of project management.

(9) In the case of a private nonprofit organization:

(i) If operating in one community and its trade area, meet the following additional requirements:

(A) Each member must be limited to one vote in the affairs of the organization.

(B) A majority of the members must reside in the community or the trade area where the housing will be located.

(C) The Board of Directors must not be less than 5, and must be selected by a procedure that insures that the interests of minorities and women are adequately represented.

(D) The directors must be members of the organization.

(E) Not less than five of the directors must be recognized as leaders in civic, governmental, fraternal, religious, and other community organizations of the community where the housing will be located.

(F) The organization must have and maintain a broadly-based membership representing or reflecting a variety of interests in the community. For a loan of less than $500,000, the organization should have at least 25 members. The number of members should be increased for larger projects.

(G) The organization should adopt articles of incorporation and bylaws substantially conforming to the model articles and bylaws set forth in the appropriate FmHA State Supplement. The State Director, with the assistance of OGC, will develop a model set of articles of incorporation and bylaws for the State which will be consistent with the provisions of Exhibits E and F, modified as appropriate in accordance with the State law.

(ii) If operating in more than one community or on a county or regional basis and providing or planning to provide rental housing in more than one community, meet the following requirements in addition to those in paragraph (a)(9)(i) of this section with the exception of § 1944.211 (a)(9)(i)(B):

(A) The membership base should be representative of the area being served with at least 5 members representing a variety of interests from each community where the housing will be located. Each member must be limited to one vote in the affairs of the organization.

(B) The Board of Directors should be representative of each community or trade area where the housing is located.

(C) The total number of directors should not be less than 5 and the directors must be members of the organization.

(D) The organization's articles of incorporation and bylaws must include the requirements outlined in paragraphs (a)(9)(ii) (A) and (B) of this section.

(10) In the case of a limited partnership the general partners:

(i) Will be required to maintain a minimum of 5 percent financial interest in the organization.

(ii) Must agree that new partners can be brought into the organization only with the consent of the Government.

(b) *Authorized representative of applicant.* FmHA will deal only with the applicant or a bona fide representative of the applicant and the representative's technical advisers. An authorized representative of a nonprofit applicant must have no pecuniary interest in the award of the architectural or construction contracts, the purchase of equipment, or the purchase of the land for the housing site.

§ 1944.212 Loan purposes.

RRH loans may be made to qualified applicants to:

(a) Construct new housing.

(b) Purchase and rehabilitate existing housing only when major modifications, repairs, or improvements to the housing are necessary to meet the requirements of decent, safe, and sanitary living units. Loans will not be made for the purchase of adequate housing not in need of major rehabilitation. Major rehabilitation shall not be considered to be minor items of development work such as painting, cleaning, and improvements to related facilities.

(1) The structure to be rehabilitated must be physically and structurally sound enough to afford maximum safety (including fire safety) to the eventual residents of the structure after rehabilitation.

(2) Rehabilitation must be planned and accomplished so that the resulting housing will:

(i) Meet the Minimum Property Standards (MPS) requirements for new construction as approved by the respective loan approving official.

(ii) Create a suitable and appealing living environment, and be substantially equivalent to new construction in quality, livability, design, and all other respects.

(iii) Have a total development cost equal to or less than that of new construction in the same area.

(3) Complete plans and specifications for rehabilitation will be provided for review and approval. The plans, specifications, and other pertinent documents must be in sufficient detail to leave no question as to the work to be performed or the materials to be used.

(4) The rehabilitated project must generally meet the provisions of § 1944.215(a).

(5) When the downtown location of a rehabilitation project dictates such, a portion of the structure (such as part of the ground floor and basement) could be designated for commercial use on a lease basis. RRH loan funds, however, cannot be used to finance *any* cost associated with that commercial space. In order to determine the correct RRH loan amount for the residential development of such a structure, the following guidelines will apply:

(i) The applicant must supply a complete cost breakdown for purchasing and rehabilitating the entire structure into its joint residential/commercial use.

(ii) From the complete cost breakdown, the costs that can be easily and appropriately identified as being part of the commercial portion of the structure should be isolated as such, and likewise the costs easily and appropriately identified with the residential portion should be isolated.

(iii) The costs which cannot be easily and appropriately isolated (such as the cost associated with repair and renovation of a boiler, the value of the structure "as is," and certain mechanical or electrical components that will benefit both commercial and residential occupants) should be prorated between

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the two uses based on the percentage of equipment load (example—central boiler or air conditioning) which would be necessary for each portion of the structure.

(iv) For the purposes of the loan limitations set forth in § 1944.213(a) (1) of (2) of this Subpart, the term "development cost" shall mean the development costs associated with prorated to the residential use of the structure, and the term "security value" shall mean the security value of the project exclusive of the value contributed to the land and structuure(s) by the commercial space. The capitalization approach to value is one means by which FmHA may establish the value contributed by the commercial space.

(v) The applicant must rely on other sources of financing for all costs associated with or prorated to the commercial space, given the FmHA security requirements of § 1944.221 of this Subpart.

(6) The applicant may not lease any commercial space which may be permitted in a structure in accordance with paragraph (b)(5) of this section without the prior written consent of the State Director. The advice of OGC will be obtained prior to loan closing as to any modifications needed in the mortgage, loan agreement, or loan resolution to enforce this requirement. In addition, the District Director may not consent to any lease unless:

(i) The lease contains a provision by which the lessee agrees to vacate the premises should FmHA withdraw its consent to the lease.

(ii) The proposed use of the leased space has a mutually supportive relationship to the needs of the residential tenants and to the use of the residential portion of the structure as rental housing.

(iii) The terms of the lease and the proposed use of the leased space does not jeopardize the interests of the tenants of the project or the continued use of the residential portion of the structure for the purposes for which the loan is made.

(iv) The lease has been reviewed by OGC and found to be legally sufficient and in compliance with the requirements of this Subpart.

(c) Purchase and improve the necessary land on which the housing will be located.

(1) Loan funds used to purchase land may not exceed the present market value in its present condition. Present market value will be determined by a current FmHA appraisal in accordance with applicable FmHA regulations. Purchase price in excess of present market value will not be included in determining the applicant's initial investment.

(2) Loan funds will not be used to buy land from an applicant or a member of an applicant-organization, or from another organization in which any member of the applicant-organization has an interest except that with prior approval of the State Director loan funds may be used to buy land from a member of a broadly-based nonprofit applicant-organization.

(3) Loan funds may be used to acquire land in excess of that needed for the housing, including related facilities, when:

(i) The cost of the excess land is a reasonable portion of the loan.

(ii) The applicant cannot acquire only the needed land at a fair price, can justify the acquisition, agrees to sell the land as soon as practicable and apply proceeds on the loan, and has legal authority to acquire and administer the land.

(d) Develop and install water supply, sewage disposal, streets, heating, cooling and light systems necessary in connection with the housing. If the facilities are located offsite, the following requirements must be met:

(1) The applicant will hold the title to the facility or have a legally assured right to use of the facility for at least the life of the loan and such title or right can be transferred to any subsequent owner of the site.

(2) The facilities are provided for the exclusive use of the RRH project, or funds are limited to the prorated part of the total cost of the facility, according to the use and benefit to the project. The applicant will agree in writing to the application, as extra payments on the RRH loan, of any subsequent collection by the borrower from other users or beneficiaries of the facility.

(3) Adequate security can be obtained with or without a mortgage based on the offsite facilities.

(e) Develop other related facilities in connection with the housing such as:

(1) Maintenance workshop and storage facilities.

(2) Recreation center including lounge if the project is large enough to justify such a facility.

(3) Central cooking and dining facilities when the project is large enough to justify such services to supplement the kitchen facilities in each unit. All equipment purchased with loan funds for the central cooking and dining facilities, such as stoves, refrigerators, ovens, dish washing machines and steam tables should be attached to the real estate in a manner to prevent easy removal. In determining whether to finance such facilities, the long-term availability of assistance from local organizations and other State or Federal agencies such as the Area Agency on Aging or the local office of the State Vocational Rehabilitation Agency or State developmental disabilities or mental health agency should be considered. Exhibit I of this subpart is to be used as a guide in working with the Administration on Aging (AoA) and State agencies in providing support services. If needed in the community, FmHA may permit facilities in the project larger than that required solely by the tenants provided other sources of funds are available to pay a prorata share of the cost. Whenever such facilities are provided with loan funds, the following conditions must be met:

(i) The meals to be provided must be wholesome and economical. A minimum of one cooked meal per day, at least 5 days per week, must be provided. If tenants are charged for meals, such charges must be separate from their rental charges.

(ii) If the operator of the facility is the type of entity that is eligible to accept Food Stamps under the regulations of the Food and Nutrition Service (FNS) of the USDA, such operator must be authorized by FNS to accept Food Stamps from the tenants for the purchase of meals.

(iii) The services to be provided and the fees to be charged (if any) for those services must be fully documented by a signed statement from the applicant, if it will provide the services, or in a lease agreement, if the services will be provided by others. Any lease agreement must be approved by the State Director or the loan approval official and contain the following statement:

This agreement shall not be effective unless and until approved by the State Director of the Farmers Home Administration, U.S. Department of Agriculture, or the State Director's delegated representative.

Farmers Home Administration

(Date)_____

By _____

(Title)_____

(4) Space for a small infirmary for emergency care only when justified.

(5) Laundry room and equipment.

(6) Appropriate recreational and other facilities to meet essential needs.

(f) Construct office and living quarters for the resident manager and other operating personnel if such facilities would be to the advantage of the project and the Government. The State Director should make a determination and the justification will be included in the docket.

(g) Construct fallout shelters or similar structures.

(h) Purchase and install ranges, refrigerators, drapes, drapery rods, clothes washers, and clothes dryers. Laundry facilities are required in all projects, and clothes washers and dryers should be provided in a central laundry room. Normally, about one washer and dryer should be provided for every 8 to 12 units in the project at a minimum. Clothes washers and clothes dryers may not be installed in individual rental units if the inclusion of such items in the individual units is not customary in the area for the size of project and type of housing involved. In any case, both central and individual laundry facilities will not be provided in a single project.

(i) Purchase and install essential equipment which upon installation becomes a part of the real estate. Sections 1944.205(i) and 1944.213(b) contain further guidance on the use of loan funds to purchase certain equipment.

(j) Provide landscaping, seeding or sodding of lawns, and other necessary facilities related to buildings such as walks, yards, fences, parking areas, and driveways.

(k) Pay related costs such as fees and charges for legal, architectural, engineering, and other appropriate technical and official services. Such fees and charges may be paid to an applicant or to an officer, director, trustee, stockholder, member, or agent of the applicant provided such fees and charges are reasonable and typical for that area and are earned. Legal, technical and official fees do not include the costs incurred in the formation or incorporation of the applicant entity or the payment of a "packaging" or development fee. Ordinarily FmHA will furnish the needed guidance for the development of an RRH loan docket and project. However, the State Director may authorize the use of loan funds to enable a nonprofit corporation or consumer cooperative to pay a qualified consulting organization or foundation, operating on a nonprofit basis, charges for necessary legal, technical and professional services, provided the State Director determines that:

(1) Either (i) the applicant, with available FmHA assistance, cannot meet all requirements for a sound loan without the services, or (ii) the services would permit significant financial savings to the Government, either directly or by lightening the workload involved in processing applications, and

(2) The charges are reasonable in amount, considering (i) the amount and the purpose of the loan, (ii) the payment ability of the borrower, and (iii) the cost of similar services in the same or similar rural areas.

(l) Pay interest which will accrue on the RRH loan during the estimated construction period.

(m) Pay interest and other customary charges necessary to obtain interim financing.

(n) Pay initial operating expenses up to 2 percent of the development cost for nonprofit organizations and State and local public agencies.

(o) Purchase housing from an interim lender that holds free and clear title to an RRH project upon which construction commenced pursuant to § 1944.235(b)(1) and after issuance of a letter of commitment to the interim lender in accordance with this Subpart, when all of the following conditions exist:

(1) The interim lender holds title to the property because the original RRH applicant for whom funds were obligated will not or cannot continue with the project after a letter such as that shown as Exhibit D to this Subpart was issued.

(2) The owner of the property is the interim lender to whom FmHA issued a letter such as that shown in Exhibit D to this Subpart for the construction of the project.

(3) The project is substantially complete, see § 1944.235(b)(1)(vi) of this Subpart, all work has been satisfactorily completed in a workmanlike manner in accordance with the originally approved drawings, specifications, and contract documents, and is in compliance with Subpart A of Part 1924 and Subpart D of Part 1804 of this Chapter (FmHA Instructions 1924–A and 424.5).

(4) There are no unpaid obligations outstanding in connection with the project.

(5) All other requirements of this subpart have been met.

(p) Purchase an RRH project in which the original applicant/borrower or the contractor has defaulted before the project is completed, and in which a letter of commitment dated prior to July 26, 1978, was issued to an interim lender.

(q) Pay for related costs incurred in compliance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 and in accordance with § 1944.215(u) of this Subpart.

§ 1944.213 Limitations.

(a) *Loan limits.* For all applicants, the amount of the RRH loan or loans on each project at any one time will be limited to the maximum amount of the State Director's loan approval authority unless prior written concurrence and authorization to develop an application for a larger project is obtained in advance from the National Office. If the State Director recommends a larger project, the preapplication and detailed information on the need and market for the project will be submitted to the National Office with the State Director's specific recommendations before Form AD–622, "Notice of Preapplication Review Action," or any other notice is given to the applicant indicating that the loan can be made. Additional loans may be made on the same or contiguous site, without regard to this limitation provided the previous project is completed and the housing has been successfully operated for at least 12 months. A clear market demand must be evidenced for any additional units to be provided. Each loan will also be subject to the following additional requirements:

(1) For private nonprofit corporations, consumer cooperatives, State or local public agencies, and other nonprofit organizations, the amount of the RRH loan or loans will be limited to the development cost or the security value of each project, whichever is less plus the 2 percent initial operating capital and/or the relocation costs incurred as indicated in § 1944.215(u) of this Subpart.

(2) For all other applicants, the amount of the RRH loan or loans will be limited to no more than 95 percent of the development cost or 95 percent of the security value of each project, whichever is less. The applicant's contribution must be in the form of either cash or land or a combination of both.

(b) *Limitations on use of loan funds.* Loans will not be made for:

(1) The purchase of a partially completed project except as provided in § 1944.212(p) of this Subpart or for the purchase of an existing housing project unless the provisions of § 1944.212(b) of § 1944.212(o), as applicable, can be met.

(2) Housing or related facilities which are elaborate or extravagant in design or materials.

(3) Nursing or medical facilities other than a small emergency-care infirmary when justified by the size of the project and the fact that facilities for the emergency care expected to be needed by the occupants are not readily accessible elsewhere.

(4) Specialized equipment for training and therapy.

(5) Any commercial facilities except essential service-type facilities for use by the tenants when such facilities are not otherwise conveniently available in the area.

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(8) Housing to be used primarily for serving temporary residents of the community, or to be used for any transient or hotel purposes. No rental term will be for less than 30 days.

(7) Nursing homes, special care facilities, or institutional-type homes. This limitation should not, however, preclude making loans for housing which is designed for occupancy by senior citizens or handicapped persons who are capable of caring for themselves, but will not live on a totally independent basis because of a need for some supervision and central services. Loan funds will not be used to finance these support services.

(8) Operating capital for a central dining facility or any items which do not become affixed to the real estate security, such as special portable equipment, furnishings, kitchen ware, dining ware, eating utensils, movable tables and chairs, etc.

(9) Any facility not essential to the needs of the tenants.

(10) Refinancing debts of the applicant except:

(i) As authorized in § 1944.213(c) and § 1944.235(b)(1) of this Subpart, or

(ii) When a nonprofit organization or a State or local public agency applicant already owns land on which a lien exists and a subordination or release cannot be obtained, and the applicant does not have the financial resources necessary to obtain a release of the existing lien(s). In this situation, loan funds may be used to obtain a release of the land needed for the site of the proposed project. The amount of funds used for such purposes shall be limited to the amount necessary to obtain the release and, in any case, shall not exceed the "as is" value of the land as determined in accordance with Subpart B of Part 1922 (FmHA Instruction 1922–B, available in any FmHA Office).

(11) Housing which the applicant plans to lease to another operator except for leases to public housing authorities.

(12) Payment for any fee, charge, or commission to any broker, negotiator, or other person for the referral of a prospective applicant or solicitation of a loan.

(13) Payment of any fee, salary, commission, profit, or compensation to an applicant, or to any officer, director, trustee, stockholder, member, or agent of an applicant, except as provided in §§ 1944.212(c)(2) and 1944.222(d) of this Subpart.

(14) Land which the applicant or a member of an applicant-organization owns, or from any other organization in which any member of the applicant-organization has an interest, except as authorized in § 1944.212(c)(2).

(15) Compensation to an applicant for value of land contributed in excess of the five percent initial contribution.

(c) *Obligations incurred before loan closing.* When an applicant files an application for a loan, the County Supervisor or District Director, as appropriate, will advise the applicant not to start construction or incur any indebtedness until the loan is closed, with the exception of those cases involving interim financing, and then the guidelines outlined in § 1944.235 (b)(1) of this Subpart will apply. During the period of application review and processing, applicants shall not take any actions with respect to their applications which would have an adverse impact on the environment or limit the choice of reasonable alternatives. This requirement does not preclude development by applicants of preliminary plans or designs or performance of other work necessary to support an application for Federal, State, or local permits or assistance. However, the development of detailed plans and specifications shall be discouraged when the costs involved inhibit the realistic consideration of alternative actions. If, nevertheless, the applicant incurs debts for work, materials, land purchase, or other authorized fees and charges before the loan is closed, the State Director may authorize the use of loan funds to pay such debts when the State Director finds that all the following conditions exist:

(1) The debts were incurred: (i) After the applicant filed a written application for a loan with FmHA; or (ii) after the submission of a preliminary proposal to the Department of Housing and Urban Development (HUD) in the case of a project involving the Section 8 Housing Assistance Payments program with a loan made in compliance with this subpart; or (iii) prior to the date of application as part of a predevelopment loan specifically intended as temporary financing from a public agency or nonprofit organization and prior concurrence of the National Office is obtained; or (iv) prior to the date of application as part of a development loan made to a State or local public agency specifically intended as temporary financing and prior concurrence of the National Office is obtained.

(2) The applicant is unable to pay such debts from the applicant's own resources or to obtain credit from other sources, and failure to authorize the use of loan funds to pay debts would impair the applicant's financial position.

(3) The debts were incurred for authorized loan purposes.

(4) Contracts, materials, construction, and any land purchased meet FmHA standards and requirements.

(5) Payment of the debts will remove any liens which have attached, and any basis for liens that may attach, to the property on account of such debts.

§ 1944.214 Rates and terms.

(a) *Interest.* Loans will be made at interest rates specified in Exhibit B to Subpart A of Part 1810 (FmHA Instruction 440.1) available in any FmHA office.

(b) *Amortization period.* Each loan will be scheduled for payment within such period as may be necessary to assure that the loan will be adequately secured, taking into account the probable depreciation of the security. The payment period will not exceed 50 years from the date of the note.

§ 1944.215 Special conditions.

(a) *Type of housing.* All housing must meet the following requirements:

(1) Be economical in construction and not of elaborate or extravagant design or materials and all new construction shall be in conformance with HUD MPS 4910.1. As a general rule, the square footage living area of new rental units and related facilities to be constructed with RRH loan funds should be within the guidelines listed below.

Type of unit	Maximum living area (ft^2)
0-Bedroom unit	425–525
1-Bedroom units	570–700
2-Bedroom units	700–850
3-Bedroom units	850–1,020
4-Bedroom units	1,020–1,200

(i) An additional 100–120 square feet of living area may be added to the 4-bedroom unit guideline for each bedroom in excess of 4.

(ii) In townhouse units where living is on two floor levels of the rental unit, the maximum square footage of living area may be exceeded by up to 12 percent, but only to the extent necessary to accommodate interior stairways.

(iii) Room sizes must be in compliance with the HUD MPS 4910.1. Minimum room sizes may be determined by the minimum areas and least dimensions listed in the MPS or on a required furnishing basis.

(iv) When community rooms or buildings are provided as part of the related facilities, their gross square footage area should be within the guidelines set forth in the HUD Manual of Acceptable Practices (MAP) 4930.1.

(v) Additional area to accommodate energy conserving and solar heating elements such as vestibules, heat sinks, solar greenhouses, solar heat storage devices and the like may be allowed in excess of the stated maximum size guidelines. However, such devices, if included, must be justified on a cost effective basis.

(2) As a general rule, consist of multi-unit type housing with two or more person units and any appropriate related facilities. However, in some congregate housing cases, single household dwelling may provide for a group living arrangement, if the senior citizen or handicapped persons' need cannot be met in multi-unit structures. Such group-type single household dwellings, if financed, must meet the following requirements:

(i) Consist of single houshold dwellings that can be easily converted to a rental or homeownership unit for a family in the event the need for such housing by senior citizens or handicapped persons ceases.

(ii) The applicant must show that adequate support services needed by the tenants will be available on a continuous long range basis. As a general rule the support services must be provided by a State or local public agency. However, a nonprofit organization with a good track record and an ongoing program may be considered capable of providing these support services.

(iii) The senior citizen or handicapped person(s) to be housed must be capable of caring for themselves except for some supervision and support services.

(3) Be residential in character and be designed to meet the needs of eligible occupants. Generally, RRH units should not be more than two-story structures. However, in some cases, especially those projects designed for occupancy by senior citizens or handicapped persons, low-rise structures with elevators can be considered on an individual case-by-case basis, with prior written authorization from the National Office, when the following conditions exist:

(i) There is a serious shortage of suitable building sites, and the number of units needed cannot be built due to lack of space on the site and other building sites are not available.

(ii) Land costs are such that one- or two-story construction would result in a unit cost and rental rates in excess of what eligible occupants can afford.

(iii) The number of stories proposed for the rural rental housing structure is compatible with other rental structures in the community. If there are no other low-rise rental structures in the community, the proposed structure must be in character with surrounding structures and the applicant's market survey report, submitted in accordance with Exhibit A–7 of this Subpart, must identify market acceptability for the number and type of low-rise rental units proposed.

(iv) The cost of the units should compare favorably with one- and two-story construction financed with RRH loans. If the costs are higher, the loan will not be approved until the FmHA State Architect or Engineer has reviewed the plans, specifications, and cost data to assure that further cost savings cannot be achieved without sacrificing the quality and serviceability of the housing.

(v) Elevators will be provided in accordance with the HUD MPS 4910.1. If elevators are included, the subsoil conditions of the site must be adequate for the installation of hydraulic elevators and sufficient service personnel must be available in the area for service and repair work.

(4) Consideration must be given to safety, convenience, and comfort of the prospective tenants.

(5) Based on the demand shown by a market analysis, it may include "efficiency" type, one, two, three or more bedroom units.

(6) Contain bathroom and kitchen facilities in each unit. In the case of group living arrangements, each single household dwelling is considered a unit. Congregate housing projects with central dining facilities may have somewhat limited kitchen facilities, but must contain as a minimum, a cooktop, a refrigerator, and a small oven in each unit. The kitchen facilities in a single household dwelling for a congregate housing group living arrangement may be designated to meet the special needs of the tenants.

(7) All units in projects to be constructed will be individually metered for utilities unless adequate justification is provided to show that it would be infeasible or excessively costly.

(8) Be designed to provide for the greatest energy conservation and promote the concept of modest housing and yet provide a highly desirable and attractive environment for the tenants.

(b) *Determination of per unit rental rates for group living arrangments.* To determine the amount of rental payment to be collected per unit for congregate housing involving a group living arrangement (and only for this particular determination), the total annual cost to operate the facility (item 8 of Form FmHA 1930–7, "Statement of Budget. Income and Expense") will be divided by the total square footage to be occupied by the tenant. If the project also includes conventional rental apartment units (1, 2, 3, etc. bedroom units), the square footage of those *units* (not bedrooms) will be added to the square footage of the other units (bedrooms) contained in the housing involving group arrangement, and the total square footage of all the units will be divided into item 8 of Form FmHA 1930–7. The number arrived at by dividing the total square footage into item 8 of Form FmHA 1930–7 will then be multiplied by the square foot area of each *unit* to determine the rental rate for that particular *unit*. In the case of congregate housing involving a group living arrangement, each bedroom will be counted as if it were one rental unit. However, the bedroom occupied by the resident assistant will be excluded from this number and will not be counted in making the determination of rental payment to be charged to all the other bedrooms occupied by the tenant(s). Once this charge per unit has been calculated, the rental payment by the tenant(s) will be determined in the usual manner.

(c) *Deferred principal payments.* (1) When necessary and advisable, principal payments may be deferred for the first full year or the first full two years after loan closing in cases of multiple advances only. Principal payments should not be deferred beyond the first annual anniversary date of the note following the anticipated date of construction completion, since payments are deferred only to permit the project to be completed. Payments of accrued interest cannot be deferred.

(2) Monthly payments of accrued interest should be implemented beginning the month construction is completed. However, if the project is not completed by the date of the interest only payment(s) as shown on the note, the note date(s) will determine the time of the interest only payment. (See Forms Manual Insert (FMI) for Form FmHA 440–16, "Promissory Note," available at any FmHA Office, for the payment schedule.)

(d) *Refinancing RRH loans.* Each borrower must agree to refinance the unpaid balance of the RRH loan at the request of FmHA whenever it appears to FmHA that the borrower is able to obtain a loan from responsible cooperative or private credit sources at rates and terms which FmHA considers reasonable and still rent the units to eligible occupants at rental rates within their payment ability. The refinancing of an RRH loan must comply with the restrictions indicated in § 1944.236(b)(4) of this Subpart. For all loans closed prior

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to December 21, 1979, the State Director shall comply and the borrower agrees to, the restrictive provisions of § 1944.250 of this Subpart as a condition for the State Director's approval or acceptance of prepayment of the FmHA loan.

(e) *Loan resolution or loan agreement.* The loan resolution or loan agreement contains provisions of policy and procedure which should be carefully read and fully understood by the applicant. This is particularly important for applicants operating on a limited profit basis. If any provisions are not appropriate to a particular case, proposed substitute language will be approved by FmHA and OGC. Subpart C of Part 1930 (FmHA Instruction 1930–C) provides for the maintenance of certain accounts and the pledge of housing income as security. It contains regulatory provisions governing and giving the FmHA power to impose requirements regarding the housing and related operations of the applicant. Types of loan resolutions and loan agreements are contained as Exhibits J, K and L to this Subpart and are incorporated as part of this regulation. All sections and requirements as determined applicable by OGC shall form part of any other loan resolution or agreement that may be submitted by the applicant. These are:

(1) Exhibit J. Form FmHA 1944–33, "Loan Agreement for an RRH Loan to an Individual Operating on a Profit Basis or RRH Loan to an Individual Operating on a Limited Profit Basis."

(2) Exhibit K. Form FmHA 1944–34, "Loan Agreement for an RRH Loan to a Partnership Operating on a Profit Basis or RRH Loan to a Limited Partnership Operating on a Profit Basis or RRH Loan to a Partnership Operating on a Limited Profit Basis or RRH Loan to a Limited Partnership Operating on a Limited Profit Basis."

(3) Exhibit L. Form FmHA 1944–35, "Loan Resolution for an RRH Loan to a Broadly Based Nonprofit Corporation or RRH Loan to an Profit Type Corporation or RRH Loan to a Profit Type Corporation Operating on a Limited Profit Basis."

(4) Exhibit M. HUD Form 2530, "Previous Participation Certificate."

(f) *Multiple advances.* Loan funds will be disbursed in accordance with the provisions outlined in § 1944.235 of this Subpart.

(g) *Interest credits and rental assistance.*

(1) Borrowers may receive interest credits provided they meet the requirements outlined in Exhibit B of this Subpart.

(2) Rental assistance may be provided to eligible tenants in eligible projects in accordance with Exhibit C of this Subpart.

(h) *Nondiscrimination in use and occupancy.* The borrower will not discriminate, or permit discrimination by any agent, lessee, or other operator in the use or occupancy of the housing or related facilities because of race, color, religion, age, sex, marital status, handicap, or national origin, and will comply with Subpart E of Part 1901.

(i) *Eligibility for occupancy.* Loans will be made on the basis of the housing being occupied by eligible occupants as defined in § 1944.205 paragraph (f) of this Subpart. The following policies will apply:

(1) When a household consists of only one individual an additional individual or individuals may reside in the unit provided the unit has adequate space for their total needs and provided the combined incomes of the occupants does not exceed the levels set for the project in accordance with § 1944.205(f) of this Subpart and as defined in Exhibits C and D of Subpart A to Part 1822 (FmHA Instruction 444.1). A resident assistant may occupy living space in a congregate housing group living arrangement without regard to income. In cases involving deceased senior citizens or handicapped tenants, only the surviving member(s) of the household of the deceased senior citizen or handicapped person who was living in the unit under the above stated guidelines with the deceased senior citizen or handicapped person at the time of his or her death may continue to occupy the rental unit as a tenant. The surviving household member(s) must meet all the eligibility requirements for occupancy except that of being a senior citizen or a handicapped person and must be approved by the State Director. If it is determined by the State Director that the integrity of the project cannot be maintained, the surviving household member(s) may be allowed to remain in the project for a period not to exceed one year. If the borrower receives interest credits, the rent paid for the unit will be based on the combined incomes of the occupants, except in those cases prior to the implementation date of this Subpart, where the incomes of two or more individuals sharing a unit were considered separately for occupancy eligibility. These situations should be phased out by attrition.

(2) Although the purpose of the program is to provide adequate housing for the eligible permanent residents of the community, a student resident of the community who is otherwise eligible and seeks occupancy in a project may be considered an eligible tenant if all of the following conditions are met:

(i) The person seeking occupancy is either of legal age in accordance with applicable State law or is otherwise legally able to enter into a binding contract under State law.

(ii) The person seeking occupancy has established a household separate and distinct from the person's parents or legal guardians.

(iii) The person seeking occupancy is no longer claimed as a dependent by the person's parents or legal guardians pursuant to Internal Revenue Service regulations, and evidence is provided to this effect.

(iv) The person seeking occupancy signs a written statement indicating whether or not the person's parents, legal guardians, or others provide any financial assistance and such financial assistance is considered as part of current annual income and is verified in writing by the borrower.

(3) Ineligible persons may occupy the housing for temporary periods in order to protect the interest of the Government in accordance with Exhibit B of this Subpart and § V B 4 of Exhibit B to Subpart C to Part 1930 (FmHA Instruction 1930–C).

(4) For housing projects financed with RRH loans and limited to occupancy by eligible senior citizens or handicapped tenants, the State Director is authorized to permit the borrower to rent units to other eligible low- or moderate-income families and persons, provided such units will be rented on a temporary basis and only until they can be rented to eligible senior citizens or handicapped persons.

(5) Congregate housing projects which involve a group living arrangement may limit occupancy to eligible developmentally disabled individuals. This limitation will be outlined in the applicant/borrower's management plan.

(6) In congregate housing projects, including those involving group living arrangements, a further critical dimension is added by the selection and placement of tenants. This involves a determination concerning the ability of a tenant with a functional impairment to sustain relative independence, given the supportive service(s) provided. While this determination can be made by the project management, it is recommended that it be made by a professionally qualified tenant selection committee, and the decision presented to the project management for acceptance or rejection. This determination can be made in a highly technical fashion using scientifically developed scales of competence in the activities of daily living, or it can be made through social

or medical sources. The functional impairments of tenants should be verified by one of the following methods.

(i) Certification by a physician, or State or local agency responsible for supportive services to the tenant as to the tenant's ability to remain independent with an assist from service(s).

(ii) By the use of any objective guide, such as the following three objective guides which are further explained in Exhibit B–10 of Subpart C of Part 1930 (FmHA Instruction 1930–C):

(A) The Physical Self Maintenance Scale, Exhibit B–10A of Subpart C of Part 1930 (FmHA Instruction 1930–C) may be used to measure a person's capacity for personal care.

(B) The Instrumental Activities of Daily Living Scale, Exhibit B–10B of Subpart C of Part 1930 (FmHA Instruction 1930–C) may be used to measure a person's capacity for continued living in the project.

(C) The Index of Independence in Activities of Daily Living, Exhibit B–10C of Subpart C of Part 1930 (FmHA Instruction 1930–C) may be used to measure the relationship of functional capacity to the accomplishment of daily activities, such as bathing, dressing, toilet performance, transferring (from prone to upright position and back again) continence, and eating.

(7) If a family type rental unit receiving HUD Section 8 assistance is to be occupied by a one member household the State Director must request the prior authorization of the respective HUD Filed Office Director.

(j) *Tenant certification.* Initial certification and recertifications will be executed on Form FmHA 444–8, "Tenant Certification," as follows:

(1) Initial certification will be executed for each household when it initially occupies the housing. Borrowers will promptly provide the District Director with an executed copy of these forms.

(2) Recertification will be completed by having a new Form FmHA 4448–8 executed at least annually by each tenant except in senior citizen projects in which all the units are assisted with Section 8 housing assistance payments, in which case tenant recertification will be done at least every two years. The certification forms will be obtained by the borrower and a copy provided to the District Director to verify continued tenant eligibility and the amount of interest credit or rental assistance given to the borrower.

(3) The incomes reported by all tenants must be verified by the borrower. Such verification may be obtained on verification forms prepared by the borrower or other sources. However, any such form must include among other items the following:

(i) Income of person during the previous 12 months.

(ii) Current rate of pay (weekly, biweekly, monthly or by hour).

(iii) Expected income of person for the next 12 months.

(iv) Any income indicated should be subdivided into basic salary, bonuses, and overtime.

(v) In the case of the elderly or other persons whose income is not from wages or salary, by actually examining the income checks, check stubs, or other reliable data the tenant possesses.

(4) Form FmHA 444–8 need not be required of tenants who have executed Form HUD 52659 "Application for Tenant Eligibility and Recertification." A copy of Form HUD 52659 will, however, be provided to the FmHA District Director on an annual basis.

(k) *Supervisory assistance.* Supervision will be provided borrowers, in accordance with Subpart C of Part 1930 of this Chapter (FmHA Instruction 1930–C), to the extent necessary to achieve the objective of the loan and to protect the interests of the Government.

(l) *Limited profit determinations.* Applicants agreeing to operate on a limited profit basis will be permitted a return not to exceed 8 percent per annum on their initial investment determined at the time of loan approval. This amount shall be reflected in the loan agreement of loan resolution and will not be changed once it is determined. The initial investment may exceed the required 5 percent in § 1944.213(a)(2) of this Subpart and may include the following:

(1) Any cash contribution which, when added to the FmHA loan amount, is not in excess of the security value of the project.

(2) Value of the building site or essential related facilities contributed by the applicant. Value will be determined by an appraisal in accordance with applicable FmHA regulations on an "as is" basis by the FmHA employee authorized to make the appraisal for the project less any amount owed on the property. The value of the building site or essential related facilities contributed by the applicant in excess of the five percent initial contribution may be counted as part of the initial contribution.

(m) *RRH loans made in connection with HUD Section 8 Housing Assistance Payments program.* RRH loans involving the HUD Section 8 Housing Assistance Payments program under the Memorandum of Understanding (Exhibit H–1) will be handled in accordance with Exhibit H of this Subpart. Any applicant who has obtained approval of use of Section 8 units from HUD or a State Housing Finance Agency, which cannot be processed in accordance with Exhibit H, may be processed in accordance with HUD's regulations under a dual track processing system provided all other requirements of this Subpart are met. When a dual track processing system is followed, the provisions of paragraph II of Exhibit H to this Subpart allowing for an interest rate reduction (interest credit) may be followed. Section 8 Housing Assistance Payments for existing housing will be handled in accordance with Exhibit G of this Subpart.

(n) *Implementation of Office of Management and Budget (OMB) Circular A–95 concerning formulation, evaluation, and review of Federal programs and projects having significant impact on area and community development.* When projects will have 25 or more units, the provisions of FmHA Instruction 1901–H will be applicable. FmHA shall give all due consideration to clearinghouse comments and priority recommendations.

(o) *Guidelines for preparing environmental assessments and environmental impact statements.* All projects shall comply with Subpart G of Part 1901 of this Chapter (FmHA Instruction 1901–G). Projects involving Section 8/515 loans shall also comply with Exhibit H of this Subpart.

(p) *National flood insurance.* The provisions of the National Flood Insurance Act of 1968 as amended by the Flood Disaster Protection Act of 1973 and Executive Order 11988 are applicable to FmHA authorities permitting financing of rental housing now located in, or to be located in, special flood or mudslide-prone areas as designated by the Federal Insurance Administration (FIA) of HUD. Subpart B of Part 1806 of this Chapter (FmHA Instruction 426.2) will apply.

(q) *Location of housing.* (1) The location of the housing project should expand the supply of decent, safe, and sanitary housing for low- and moderate-income, senior citizens, and handicapped persons in a nondiscriminatory way outside areas of concentration of economically disadvantaged or minority residents. The location should promote a greater choice of housing opportunities and avoid undue concentration of eligible tenants in areas containing a high proportion of low-income persons, and should further fair housing.

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(2) Project locations should promote an equal opportunity for the inclusion of all groups regardless of race, color, religion, sex, national origin, age, marital status, or physical or mental handicap (mentally handicapped must possess the capacity to enter into a legal contract except as indicated in § 1944.205(f)(1)(iii) of this Subpart), thereby opening up nonsegregated housing opportunities for minorities and helping overcome the effects of any past discrimination. To the extent possible, the location of an RRH project should provide housing opportunities for minorities outside areas of minority concentration and areas which are already substantially racially mixed. An area of minority concentration is any part of a community adjacent to or within the confines of a greater area such as a place, town, village, or city in which the majority of the residents are minority. If the proposed location is in an area of minority concentration, it will not be accepted unless:

(i) Comparable housing opportunities exist outside the minority area for minorities in the income range to be served by the project; or

(ii) The applicant provides written documentation which adequately demonstrates that there are no other acceptable sites available outside the area of minority concentration, and housing on the proposed site is necessary to meet an overriding housing need in the market area.

(3) Except as otherwise permitted by paragraph (q)(4) of this section housing projects must be located in residential areas as part of established rural communities where essential public facilities (such as schools, hospitals, and generally central water and sewer systems) and services (such as shopping, medical services, and pharmaceutical services) are readily available in close and convenient proximity to the site. Public facilities and services must be adequate to support the needs of the tenants and the housing project.

(4) FmHA will consider financing new construction or the purchase and rehabilitation of existing structures in accordance with § 1944.212(b) of this Subpart, located in the downtown business areas of those rural communities that have established a comprehensive strategy for meeting their community development and housing needs, and that strategy includes the redevelopment, rehabilitation, restoration, or revitalization of the downtown business area. The proposed project site must be located within the downtown business redevelopment/revitalization area and the following conditions must be met:

(i) Essential public facilities (such as schools, hospitals, and generally central water and sewer systems) and services (such as shopping, medical services, and pharmaceutical services) must be readily available in close and convenient proximity to the site, and they must be adequate to support the needs of the tenants and the housing project.

(ii) The community must have an official short-term community development and housing plan which sets forth its comprehensive strategy for meeting identified community development and housing needs, particularly the needs of eliminating or preventing economic decay, slums, or blight; the needs of benefiting the lower income population; or other community development needs having a particular urgency. The strategy should include a community-wide component which describes the development strategy of the governing body, the major objectives the governing body seeks to accomplish, the priorities it has established, the factors taken into account in selecting areas for treatment, and the anticipated public and private sources of funds necessary to conduct the treatment of each area selected. In addition, the plan should contain the following component strategies:

(A) Neighborhood revitalization: The strategy for alleviating physical deterioration, for maintaining viable neighborhoods, and for stimulating investment to upgrade neighborhoods affected by blight and deterioration.

(B) Housing: The community-wide strategy to improve housing conditions and to meet the housing assistance needs that have been identified. Reference to any current HUD approved Housing Assistance Plan would be helpful as part of this component strategy.

(C) Economic development: The strategy for attracting private investment in the business community and for solving the critical problems which may be the result of a stagnating or declining tax base, or from population outmigration.

(iii) Evidence must be presented from the local governing body verifying that the community has adopted, through resolution or other official act, the community development and housing plan referenced in paragraph (q)(4)(ii) of this section. A copy of the adopted plan should be made available to FmHA. While it is not necessary that the downtown redevelopment/revitalization area be formally designated as an urban renewal or other similar area, evidence supporting a local determination that the downtown business area meets the criteria established in the community development and housing plan must be maintained in the locality's records. Documentation received from the local governing body must also identify the site or structure involved in the applicant's RRH proposal as part of or essential to the downtown redevelopment/revitalization area.

(iv) Evidence must be made available to FmHA verifying the intended commitment of public and private resources which will be available for completing the other integrally related redevelopment/revitalization activities being undertaken in the downtown business area together with applicant's proposed RRH project.

(v) If the structure to be built or rehabilitated is more than two stories, the housing must be designated and designed for occupancy only by senior citizens and handicapped persons.

(vi) Prior review and concurrence must be received from the FmHA National Office before the FmHA State Director or District Director authorizes the applicant to develop a complete application. All of the information requested in § 1944.215(q)(4) must be provided by the applicant before National Office review.

(r) *Clean Air Act and Water Pollution Control Act requirements.* (1) As a condition for FmHA's making a loan in excess of $100,000 and unless otherwise exempted, an applicant for a loan will:

(i) Comply with all requirements of section 114 of the Clean Air Act (42 U.S.C., 1857 C–9) and section 308 of the Federal Water Pollution Control Act (33 U.S.C., 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 of the Clean Air Act and section 308 of the Federal Water Pollution control Act and all regulations and guidelines issued thereunder after the award of the contract. (Such regulations and guidelines can be found at 40 CFR 15.4 and 40 FR 17126, April 28, 1975.)

(ii) As a condition for the award of contract, notify FmHA of the receipt of any communication from the Environmental Protection Agency (EPA) indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities. (Prompt notification is required prior to contract award.)

(iii) Certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities pursuant to 40 CFR 15.20 as of the date of contract award; and

(iv) Include or cause to be included the above criteria and requirements in every nonexempt subcontract and will take such action as the Government may direct as a means of enforcing such provisions.

(2) As a further condition for FmHA's making a loan in excess of $100,000 but not otherwise exempted, the applicant for the loan will secure the services of a contractor who agrees to comply with the provisions in paragraph (r)(1) of this section. (3) The term "facility" as used in this section only means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a grantee, cooperator, contractor, or subcontractor, to be utilized in the performance of a grant, agreement, contract, subgrant, or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, EPA, determines that independent facilities are co-located in one geographical area.

(s) *Approval of construction contracts.* Construction contracts between the borrower and contractor for development of an RRH project will contain a provision that the contract is not in full force and effect until it has been approved by the State Director or the State Director's delegate in writing. This approval relates to form, content, and proper execution of the document and statement that FmHA is not to be considered a party to the contract or incur any liability thereunder. Therefore, before loan closing or before the start of construction, whichever occurs first, the State Director or the State Director's delegated representative will approve the contract form, content, and execution by including the following paragraph at the end of the contract:

> The Farmers Home Administration, as potential lender or insurer of funds to defray the costs of this contract, and without liability for any payments thereunder, hereby approves the form, content, and execution of this contract.
> Date _____
> Farmers Home Administration
> By: _____
> Title: _____

(t) *Historic preservation requirements.* the District Director should take the necessary action to assure that the applicant will comply with the provisions of Subpart F of Part 1901 of this Chapter (FmHA Instruction 1901–F). This regulation concerns compliance with the National Historic Preservation Act of 1966, the Archeological and Historic Preservation Act of 1974 (Pub. L. 93–291), and Executive Order 11593 dated May 13, 1971.

(u) *Uniform Relocation Assistance and Real Property Acquisition Act of 1970.* Compliance with the requirements of this Act applies to public bodies and agencies which have the power of emminent domain and/or condemnation. It will be the responsibility of the applicant to provide assistance required for relocation of displaced persons from the site on which a section 515 RRH project will be located. FmHA loan funds may be increased to cover costs incurred in the relocation of displaced persons from the site over and above the appraised value of the property. Until national FmHA instructions are published the Department regulations found at Part 21 of this Chapter should be followed and the National Office should be consulted for guidance in developing an RRH or RCH loan for a project affected by this Act. However, the following should be considered:

(1) Generally, if there are alternative sites of equal quality which meet the Agency's requirements, the site with the least relocation impact shall be selected.

(2) For the purpose of determining the appraisal value of the site to be acquired in respect in RRH and RCH projects only, the designated FmHA multiple family housing appraiser or such other agency designated appraiser shall be used.

§§ 1944.216–1944.220 [Reserved].

§ 1944.221 Security.

Each loan will be secured in a manner that adequately protects the financial interest of the Government. A first mortgage, except as indicated in paragraphs (a) and (c) of this section, will be taken on the property purchased or improved with the loan. A mortgage should be taken on only that part of the land which is necessary to provide adequate security for the loan as determined by the appraisal, except when excess land is purchased as authorized in § 1944.212(c)(3) of this Subpart.

(a) A second mortgage will be taken on a site developed with prior RRH loan(s) when a subsequent loan is made to complete or finish out units on the site, or when a second initial loan is made to develop units on a contiguous site.

(b) Personal liability will not be required for the members or stockholders of any corporation or trust or any partners in a limited partnership. Personal liability will be required of all members of other partnerships. For limited partnerships the State Director will obtain the advice of the Regional Attorney as to any modifications needed in the Promissory Note and mortgage.

(c) If it is impossible or inadvisable for an applicant which is a public or quasi-public organization to give a real estate mortgage, the security to be taken will be determined by the National Office upon the recommendation of the State Director. The State Director should consult OGC as to whether the proposed security is legally permissible.

§ 1944.222 Technical, legal, and other services.

(a) *Appraisals.* When real estate is taken as security, the property will be appraised by the multiple housing appraiser or such designated FmHA employee authorized to make real estate appraisals. If the security does not involve more than two rental units, the property will be appraised in accordance with the policies outlined in FmHA Instruction 422.3, available in any FmHA Office. For security involving more than two rental units, the appraisal will be made in accordance with Subpart B of Part 1922 of this Chapter (FmHA Instruction 1922–B). Form FmHA 426–1, "Valuation of Buildings," will be completed to show the depreciated replacement value of all the buildings existing or to be constructed on the property to be taken as security.

(b) *Title clearance and legal services.* When the applicant is an organization or an individual with special title or loan closing problems, title clearance and legal services will be obtained in accordance with instructions from OGC. In other cases, the provisions of Part 1807 and Subpart A of Part 1822 of this Chapter (FmHA Instructions 427.1 and 444.1 respectively) regarding title clearance and legal services will apply.

(c) *Architectural and engineering services.* (1) Housing and related facilities will be planned and developed in accordance with Subpart A of Part 1924 and Subpart D of Part 1804 of this Chapter (FmHA Instructions 1924–A and 424.5). The housing will be designed to meet the needs of the types of occupants who will likely occupy it.

(2) A written contract for architectural and engineering services will be required as outlined in Subpart A of Part 1924 of this Chapter (FmHA Instruction 1924–A).

(d) *Construction and development policies.* (1) Construction and development will be performed in accordance with Subpart A of Part 1924 and Subpart D of Part 1804 of this Chapter (FmHA Instructions 1924–A and 424.5), except that § 1924.6(b)(3)(i) of

Subpart A of Part 1924 will not apply to projects constructed by the owner-builder method. These projects will be governed by the following:

(i) The Development cost may include a typical builder's fee. The typical builder's fee may be determined by local investigation and also from HUD data for the area.

(ii) The Development cost cannot exceed that which is typical for similar type projects in the area.

(iii) The Development cost for each individual case will be determined by the Multiple Family Housing Coordinator with the advice of the State Architect.

(iv) The plans and specifications must be specific and complete so that there is a clear understanding as to how the facility will be constructed and the materials that will be used.

(2) In all cases of RRH, loans exceeding $50,000, interim financing for the construction period will be obtained when it is available at reasonable rates and terms in order to preclude the necessity for multiple advances of FmHA loan funds.

(i) The applicant shall provide preliminary evidence concerning the availability of interim financing with the application, or in any event, prior to loan approval.

(ii) FmHA loan funds will be obligated before the applicant proceeds with the final arrangements or interim financing.

(e) *Compliance with Federal, State and local codes, regulations and ordinances.* Planning, construction, and operation of housing financed with an RRH loan will conform with any applicable laws, ordinances, codes, and regulations (including any licensing required governing such matters as construction, heating, plumbing, electrical installation, fire prevention, health, sanitation, use and occupancy), and must meet all the applicable laws and statutes pertaining to the operation of a facility in which some of the occupants may require some supervision and central services.

(f) *Contracts for legal services.* On projects requiring extensive legal services, the applicant will be required to have a written contract when loan funds will be used for these services. All such contracts will be subject to review and approval by FmHA and, therefore, should be submitted to FmHA before execution by the applicant. Contracts will provide for the types of services to be performed and the amount of the fees to be paid, either in lump-sum on the completion of all services or in installments as services are performed.

(g) *How to Apply for a Rural Housing Loan.* Exhibit A may be used as a guide for organization applicants applying for loans to finance projects of substantial size. Extra copies may be obtained from the Finance Office for applicants after preliminary discussions indicate that a loan may be developed. Exhibits A–1 through A–5 of this Subpart may be adapted for use by States so that adequate supplies will be available to applicants.

(h) *Technical services by consultant organizations.* Technical services by consultant organizations will be governed by § 1944.212 (k) of this Subpart.

(i) *Optioning of land.* If a loan includes funds to purchase real estate, the applicant will be responsible for obtaining an option on the parcel to be purchased. Form FmHA 440–34, "Option to Purchase Real Property," or other option form with provisions acceptable to FmHA and the applicant may be used. When an option form other than Form FmHA 440–34 is used, it is recommended that a provision be included indicating that the option is contingent upon FmHA making a loan to the buyer. After the loan is approved, the District Director will have Form FmHA 440–35, "Acceptance of Option," or other appropriate form of acceptance complete, signed, and mailed to the seller.

(j) *Use of, and accountability for loan funds.* Loan funds and any funds furnished by the borrower for eligible loan purposes may be deposited in accordance with the loan agreement or loan resolution and the provisions of Subpart A to Part 1902 (FmHA Instruction 1902–A) and Subpart C to Part 1930 (FmHA Instruction 1930–C). Collateral for deposit of funds will be pledged in accordance with § 1902.7 of Subpart A of Part 1902. Funds furnished by the borrower for the purchase of special equipment and furnishings to be used in connection with the project, for which loan funds could not be used, should not be deposited in the supervised bank account with loan funds. Withdrawals of funds from the supervised bank account may be made only for legally eligible loan purposes.

(k) *Insurance.* The loan approval official will determine the minimum amounts and types of insurance the applicant will carry.

(1) Fire and extended coverage will be required on all buildings included in the security for the loan in accordance with Subpart A of Part 1806 (FmHA Instruction 426.1).

(2) Suitable Workman's Compensation Insurance will be carried by the applicant for all its employees.

(3) The applicant will be advised of the possibility of incurring liability and encouraged, or required when appropriate, to obtain liability insurance.

(4) Flood Insurance will be required on all buildings located in or to be located in special flood or mudslide prone areas in accordance with Subpart B of Part 1806 (FmHA Instruction 426.2)

(l) *Bonding.* (1) The provisions of Subpart A of Part 1924 of this Chapter (FmHA Instruction 1924–A) pertaining to surety bonds are applicable to RRH loans. When interim financing is used during the construction period, the decision concerning whether or not to require surety bonds shall be the interim lender's. If the *interim lender* decides not to require surety bonds, a bond waiver is not required from the National Office.

(2) If the applicant is an organization, it will provide fidelity bond coverage for the officials, employees, and management agents entrusted with the receipt, custody, and disbursement of its funds and the custody of any other negotiable or readily salable personal property. The amount of the bond will be at least equal to the maximum amount of money that the applicant will have on hand at any one time exclusive of loan funds deposited in a supervised bank account. The United States will be named co-obligee in the bond if not prohibited by State law. Form FmHA 440–24, "Position Fidelity Schedule Bond," may be used if permitted by State law.

(m) *Previous participation certification.* The applicant, the applicant's architect, and the contractor of the proposed project (when known) will each be required to submit HUD Form 2530, "Previous Participation Certificate" fully completed.

§§ 1944.223–1944.230 [Reserved]

§ 1944.231 Processing preapplications.

Preapplications will be processed in accordance with this section to assure that loan funds are used, to the extent possible, to provide housing for eligible occupants in need of adequate housing.

(a) *Preapplications.* Preapplication information is used to determine the applicant's eligibility and priority for available funds, and to eliminate any proposals which have little or no chance for funding in the near future. Information necessary in a preapplication consists of Form AD–621, "Preapplication for Federal Assistance," and all of the additional information and material outlined in Exhibit A–6. Preapplications should be filed in the FmHA District Office, but may also be filed in the County Office.

(b) *Action by the County Office.* The County Office may handle initial inquiries and provide basic information about the program. They are to provide the preapplication form (Form AD–621), Exhibit A–6 to this Subpart, and Form FmHA 449–10, "Applicant's Environmental Impact Evaluation." The County Supervisor may assist applicants as needed in completing Form AD–621 and the information required in Exhibit A–6. Preapplications filed in the County Office will be immediately forwarded to the FmHA District Office. The County Office will inform the applicant that further processing will be handled by the District Office, and will advise the applicant not to prepare or develop an application until notified by FmHA to proceed. An information folder will be established and maintained by the County Office once a preapplication is received.

(c) *Actions by the District Office.* Upon receipt of the preapplication, Form AD–621 and all other required information and material will be thoroughly reviewed by the District Director for completeness, accuracy, and conformance with program policy and regulations. Incomplete preapplications will be returned to the applicant for completion. In the event that the preapplication is filed in the District Office, the District Director may assist the applicant in completing the preapplication requirements. In such case, however, the District Director will send the County Supervisor all of the appropriate information necessary to establish the County Office information file. The District Director may request the County Supervisor's written comments and recommendations on the proposed site and local housing market demand. After the District Director has fully reviewed the preapplication material, has determined that the preapplication is complete and accurate, and has properly assembled the preapplication material in an applicant case file, the District Director will then forward the following to the State Director:

(1) Form AD–621.

(2) All information and material listed in Exhibit A–6.

(3) Original and one copy of Form FmHA 440–46, "Environmental Impact Assessment."

(4) Eligibility determination and recommendations.

(5) General comments and recommendations.

(6) Comments and recommendations of the proposed project site resulting from an on-site visit to determine its overall desirability as well as conformance with the site location requirements indicted in § 1944.215 (q). In those cases where the District Director determines the applicant not eligible, the District Director will so inform the applicant by issuing an AD–622 and inform the applicant of their appeal rights in accordance with Subpart B to Part 1900 (FmHA Instruction 1900–B).

(d) *Actions by the State Office.* (1) Unless the applicant is an individual or an organization adopting without change the "Articles and Bylaws" prescribed by Exhibits E and F of this Subpart or by State Supplements or has received clearance form OGC for the same type financing, the appropriate documentation necessary in order to make the appropriate eligibility determination and any questions or comments of the State Director will be submitted to OGC for a preliminary opinion as to whether the applicant and the proposed loan meet or can meet the requirements of State Law and this Subpart.

(2) When the State Director determines it necessary, and for all preapplications in excess of the State Director's approval authority, the preapplication will be sent to the National Office for evaluation, authorization, and instructions. When projects are submitted to the National Office, the following information must be included in the submission:

(i) The complete and properly assembled preapplication case file.

(ii) The schematic or preliminary plans and specifications, together with the architectural comments and recommendations of the State Office Architect.

(iii) The information required by § 1944.213(a) of this Subpart.

(iv) The comments and recommendations of the District Director.

(v) The comments and recommendations of the State Director.

(3) The State Director, with the assistance, advice, and council of the Multiple Family Housing Coordinator, will review the preapplication information, credit report(s), and the District Director's eligibility determination and recommendations.

(i) When considering authorizing the development of applications for loan funds, the State Director should consider the remaining funds in the State or district, as appropriate, and the amount of time necessary to complete the final application. All preapplications on hand for which no Form AD–622 has been issued will be ranked semi-annually (on or about October 1 and April 1) according to the priority order established in this subpart. Applications which obviously cannot be funded within a six month period of this time, and within 150 percent of the State's or District's allocation, will be given adverse notice through Form AD–622 and advised of their appeal rights in accordance with Subpart B to Part 1900 (FmHA Instruction 1900–B). The State Director should not authorize the development of applications for more than 150 percent of the Funds available in the State or District. The fact that a preapplication is rejected during one rating period does not preclude the applicant from seeking reconsideration of the project at a subsequent time. In addition, where an applicant prevails on an appeal from a rejection, the preapplication should be reinstated and given the priority it would have had originally.

(ii) Preference in selecting and processing loan requests within the annual allocations, will be based on the priorities indicated and in the order they are listed below:

(A) Projects using FmHA's Rental Assistance (RA) or HUD's Section 8 program. Thirty points to be distributed in the following manner:

(1) Section 8:

0–20 percent of units, 5 points
21–40 percent of units, 10 points
41–60 percent of units, 15 points
61–80 percent of units, 25 points
81–100 percent of units, 30 points

(2) Rental Assistance:

5–20 percent of units, 15 points
21–40 percent of units, 30 points
41–60 percent of units, 25 points
61–70 percent of units, 23 points
71–80 percent of units, 22 points
81–90 percent of units, 21 points
91–100 percent of units, 20 points

(B) Projects in areas or communities having a higher percentage of substandard housing. For this purpose FmHA will use the county data provided by the National Office, unless better and more specific data approved by the National Office is available for a particular State. Twenty points to be distributed in the following manner:

Over 25 percent, 20 points
16–25 percent, 15 points
11–15 percent, 10 points
0–10 percent, 5 points

(C) Projects in areas or communities having the lowest medium per capita income. This data will be provided by the FmHA National Office. Twenty points to be distributed in the following manner:

100 percent or more of State per capita income, 5 points

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85–89 percent of State's per capita income, 10 points
70–84 percent of State's per capita income, 15 points
Less than 69 percent of State's per capita income, 20 points

(D) Projects having the highest percentage of three or more bedroom units, where the market data indicates a need. Fifteen points to be distributed in the following manner:

With more than 50 percent of 3 or more bedrooms, 15 points
With 30–49 percent of 3 or more bedrooms, 10 points
With 15–29 percent of 3 or more bedrooms, 5 points
With 0–14 percent of 3 or more bedrooms, 0 points

(E) Projects which will serve the needs of rural communities located a number of miles from the FmHA eligibility line from a town with a population of 50,000 or more. Ten points to be distributed in the following manner:

50 or more miles, 10 points
30–49 miles, 8 points
20–29 miles, 6 points
10–19 miles, 4 points
0–9 miles, 0 points

(iii) In situations where priorities among competing loan requests are essentially equal, preference will be given to preapplications from public bodies and nonprofit corporations. In other cases were requests are essentially equal, preference will be given to preapplications on the basis of preapplication date.

(4) After completing the review, determining priority, and making a decision concerning selection, the State Director will notify the District Director of the results of the review action. The State Director will return the preapplication information and the executed original Form FmHA 440–46 to the District Office with authorization for the District Director to prepare and issue Form AD–622.

(5) Form AD–622 will be prepared by the District Director stating the results of the review action. The original will be signed and delivered to the applicant, with a copy to the applicant's case file, a copy to the County Supervisor, and a copy to the State Director.

(i) Applicants with preapplications which are not favorably considered will be notified in writing of the reasons why the request was not favorably considered, and will be informed in accordance with Subpart B of Part 1900 (FmHA Instruction 1900–B), that they may request a further review of this decision.

(ii) Applicants with preapplications which are favorably considered, but are unable to be selected for further processing within approximately 150 percent of the State Office or District Office allocation of funds, will be notified that their preapplications lack sufficient priority for further consideration at the present time. Applicants should be advised in accordance with Subpart B of Part 1900 (FmHA Instruction 1900–B) that they may request a further review of this action. In addition, such applicants will be advised against incurring obligations for legal and architectural and engineering work, perfecting interests in land rights, and inviting construction bids or making other commitments which cannot be fulfilled without loan funds, until funds are actually made available.

(iii) When an applicant is notified to proceed with an application, the following paragraphs should be contained on or attached to Form AD–622: "The review action taken by FmHA is based upon representations made in your preapplication presented to FmHA. Any changes in approximate project costs, size or scope of the project, rental rates to the tenants or subsidy costs to the Government, scope of services, sources of funds, or any other significant changes in the project or applicant, must be reported to and approved by FmHA in writing. Any changes not approved by FmHA shall be cause for discontinuing processing of the application. All applicants requesting changes will be required to give full justification for each change, and if FmHA approval is not given, written reasons should be provided along with a 30 day negotiation period to resolve the differences. This action is not to be considered as loan approval or as a representation of the availability of funds. The loan docket may be completed on the basis of a loan not to exceed the amount shown on Form AD–622. If a complete application has not been developed in approvable condition by the date specified on Form AD–622, FmHA reserves the right to discontinue processing the application."

§ 1944.232 Preparation of completed loan docket.

(a) *Information needed.* If the applicant has been requested to file an application, Form AD–625, "Application for Federal Assistance (Short Form)," with the additional forms, materials, and information outlined in Exhibit A–7, will be assembled and submitted to the District Director. An application is not considered complete until all required information has been submitted in a complete and acceptable form.

(b) *District Director's responsibility.* (1) When an applicant is notified to proceed with an application, the District Director should arrange for a pre-application conference with the applicant to provide copies of appropriate Exhibits and forms; furnish guidance necessary for orderly application processing; and initiate a processing checklist, (if one has been adopted for use in the State), for use in establishing a time schedule for completion of docket items. The District Director will confirm decisions made at this conference by letter to the applicant and will provide the applicant a copy of any processing checklist initiated. The original and a copy of the processing checklist will be retained in the District Office and a copy will be forwarded to the State Office. The original and copy retained in the District Office will be kept current as application processing actions are taken. The copy will be periodically updated and routed through the State Office and back to the District Office for use in updating the State Office copy of the checklist.

(2) The District Director will assist the applicant in application assembly and processing, and will work closely with the applicant as the loan docket is being developed. As the application is being processed and the need develops for additional conferences, the District Director will arrange with the applicant for such conferences, and will extend and update any processing checklist initiated in connection with the application.

(3) The District Director will review and check all information and materials furnished by the applicant for completeness, correctness, and adequacy. The District Director will review the applicant's rental market survey in detail, and will determine its completeness and accuracy. A random sampling will be made if necessary to verify the completeness and accuracy of the survey. The proposed site will be inspected and the District Director will consider its overall desirability as well as conformance with the site location requirements of § 1944.215(q) of this Subpart. In addition, the District Director will evaluate the information presented concerning the manner in which the applicant plans to conduct its business and financial affairs, and will comment on the adequateness and appropriateness of the proposed management.

(c) *County Committee certification.* County Committees will not be used to review RRH loan applications.

(d) *Assembly, review, and distribution of complete loan docket items.* Ordinarily, FmHA staff review will proceed as applications are being developed. However, prior to presenting the application to the loan approval official, the District Director will thoroughly examine all items to make sure they are properly and accurately prepared and are complete in all respects, including dates and signatures. The District Director will also set forth the proposed conditions of loan approval.

(1) Prior to presenting the properly assembled application to the approval official, the District Director will provide comments and recommendations, and obtain the written analysis and recommendations of the FmHA State Office Architect/Engineer. The District Director will also obtain the analysis and recommendations of the Multiple Family Housing Coordinator. This analysis will include a review of and recommendations concerning the proposed conditions of loan approval.

(2) Loan docket items will be assembled in the following order for distribution after loan approval:

Form No.	Name of form or document	Total number of copies	Signed by borrower	Number for loan docket	Copy for borrower
FmHA 444–5	Multiple Family Housing Fund Analysis	4		4–O&3C	
FmHA 440–1	Request for Obligation of Funds	5	O&C	4–O&3C	1
AD–621	Preapplication for Federal Assistance	3	1	2–O&1C	1–C
Exhibit A–6	Information to be Submitted with Preapplication for RRH Loan.	2	0	1–O	1–C
AD 622	Notice of Preapplication Review of Action	4		3–C	1–O
AD 625	Application for Federal Assistance (Short Form)	3	1	2–O&1C	1–O
HUD Form 2530	Previous Participation Certificate	2	1	2–O&1C	1–C
Exhibit A–7	Information to be Submitted with Application for Federal Assistance (Short Form).	2	0	1–O	1–C
FmHA 400–4	Nondiscrimination Agreement	2	2–O&1C	1–C	1–C
FmHA 400–1	Equal Opportunity Agreement	2		1–O	1–C
FmHA 400–3 [1]	Notice to Contractors and Applicants	3		1–C	1–C
FmHA 400–6	Compliance Statement (when applicable)	3		1–C	1–C
	Evidence of Legal Authority (copies of citation of specific provisions of State constitution and statutory authority) [1].	2	1	1–O	1–C
FmHA 422–7	Appraisal Report for Multiunit Housing	1		1–O	
FmHA 426–1	Valuation of Buildings	1		1–O	
	Proof of Organization (certified copy of character or articles of incorporation) [2].	2	1	1–O	1–C
	Certified copies of bylaws or regulations [2]	2	1	1–O	1–C
	List of names and addresses of officers, directors, and members, and membership interest held by each [2].	2	1	1–O	1–C
	Certified copy of Loan Resolution [2]	1	1	1–O	
	Loan Agreement or Resolution, if applicable	2	1	1–O	1–C
	Survey of land given as security, plans, specifications, cost estimates, and proposed manner of construction [1].	3	1	1–O	1–C
FmHA 1930–7	Operating budget (first year)	2	1	1–C	1–C
FmHA 1930–7	Operating budget (typical year)	2	1	1–O	1–O
Exhibit A–5	Housing Allowances For Utilities and Other Public Services, if applicable.	2	1	1–O	1–C

[1] One copy for contractor.
[2] When applicant is an organization.

(3) Other loan Docket Items. A preliminary Title and a Final Title Opinion or a title insurance binder, an Affirmative Fair Housing Marketing plan, a mortgage title insurance policy, and a copy of deed, purchase contract, or other instrument of ownership.

(4) When applicable, include copy of lease or lease form to be used between borrower and public housing authority or other authorized lessees, report of lien search, option or foreclosure notice agreement, and items of information concerning prior mortgage.

(e) *Submission of docket to State Office.* When submitting the loan docket to the State Office for the review required in § 1944.232 (d)(1), or in those cases where the loan will be approved in the State Office, the docket must be properly completed and assembled, and must contain the comments and recommendations of the District Director. The State Director, with the advise of OGC if requested or needed, will prepare a memorandum to the District Director setting forth the conditions of loan approval, or requesting additional information if the material submitted is inadequate.

(f) *Submission of docket to National Office.* If the State Director considers it necessary after completing the review of the docket, the State Director may submit recommendations, a copy of a proposed memorandum of approval, and the complete loan docket to the National Office for review and recommendations. If the docket was required to be reviewed (or was reviewed) by OGC, the comments of that office will be included.

(g) *Press release.* When it is determined that the loan can be approved, a press release will be prepared in accordance with Subpart C to Part 2015 (FmHA Instruction 2015–C), available from any FmHA State Office.

§ 1944.233 Loan approval.

(a) *Authority.* Loans will be approved or disapproved in accordance with this Subpart and Subpart A of Part 1901 (FmHA Instruction 1901–A). The State Director may redelegate loan approval authority in writing to State Office employees.

(b) *Loan approval action*—(1) *Responsibilities of loan approval official.* The loan approval official is responsible for reviewing the docket to determine that the proposed loan complies with established policies and all pertinent regulations. In making this review, the loan approval official will determine that:

(i) The applicant is eligible, and has legal authority to contract for a loan and enter into the required agreements.

(ii) The location of the housing meets the requirements outlined in § 1944.215 (q) of this Subpart.

(iii) The State Director has taken the necessary action to comply with § 1901.406 of Subpart I of Part 1901 (FmHA Instruction 1901–I). on projects of 4 or less units.

(iv) The funds are requested for authorized purposes.

(v) The proposed loan is sound.

(vi) The security is adequate.

(vii) All pre-approval requirements have been met, including the applicant's execution of Form FmHA 400–4.

(viii) All other requirements will be met.

(2) *Approval or disapproval of a loan*—(i) *Approval.* Before the loan approval official executes documents evidencing loan approval, a complete review of the project location and proposed management and rental procedures must be made to assure compliance with Title VI of the Civil Rights Act of 1964 and the Rehabilitation Act of 1973. If the loan approval official is assured of compliance after a review of the site location, management and rental procedures, and FmHA Instruction 1901–E, the loan approval official may then execute the loan approval documents. When a loan is approved:

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(A) The loan approval official will prepare and sign Form FmHA 440–1 in an original and two copies. The State Director or a designee will telephone the Finance Office Check Request Station requesting that loan and/or grant funds for a particular project be obligated.

(B) Immediately after contacting the Finance Office, the requesting official will furnish the requesting office's security identification code. Failure to furnish the security code will result in the rejection of the request for obligation. After the security code is furnished, all information contained on Form FmHA 440–1 will be furnished the Finance Office. Upon receipt of the telephone request for obligation of funds, the Finance Office will record all information necessary to process the request for obligation in addition to the date and time of request.

(C) The individual making the request will record the date and time of request and sign Form FmHA 440–1 in section 37.

(D) The Finance Office will terminally process telephone obligation requests. Those requests for obligation received before 2:30 p.m. Central Time will be processed on the date of the request. Requests received after 2:30 p.m. Central Time to the extent possible will be processed on the date received; however, there may be instances in which a request will be processed on the next working day.

(E) Each working day the Finance Office will notify the State Office by telephone of all projects for which funds are reserved during the previous night's processing cycle and the date of obligation. If funds cannot be reserved for a project, the Finance Office will notify the State Office that funds are not available within the State allocation. The obligation date will be 6 working days from the date the request for obligation is processed in the Finance Office. The Finance Office will mail to the State Offices Form FmHA 440–57, "Acknowledgement of Obligated Funds/Check Request," confirming the reservation of funds with the obligation date inserted as required by item No. 9 on the FMI for Form FmHA 440–57.

(F) After notification by the Finance Office that the funds have been reserved, the original only of Form FmHA 444–5 will be mailed to the Finance Office. Forms FmHA 440–1 for those obligations requested by telephone *will not* be mailed to the Finance Office. Immediately after notification by telephone of the reservation of funds, the State Director will call the Information Division in the National Office as required by Subpart C of Part 2015 (FmHA Instruction 2015–C). Notice of approval to the applicant will be accomplished by mailing the applicant's signed copy of Form FmHA 440–1 on the obligation date. The State Director or the State Director's designee will record the actual date of application notification on the original of the form as a permanent part of the District Office project file with a copy in the State Office file.

(ii) *Disapproval.* If a loan is disapproved after the docket has been developed, the reason for such action will be shown on the original Form FmHA 440–1, will be initialed and dated. The District Director will notify the applicant of the disapproval of the loan and the reasons therefor. The disapproved docket will then be handled in accordance with Subpart A of Part 2033 (FmHA Instruction 2033–A). If disapproval is not at the applicant's request or by mutual agreement, the applicant will be notified that it may request a further review of the decision in accordance with Subpart B of Part 1900 (FmHA Instruction 1900–B).

(3) *Distribution of items.* After the loan is approved, the contents of the docket will be distributed as follows:

(i) To the Finance Office: Form FmHA 444–5 (original). After being processed, an original and copy of Form FmHA 440–57 will be processed and distributed by the Finance Office.

(ii) To the State Office: One copy of Forms FmHA 440–1 and FmHA 444–5.

(iii) To the District Office: One copy of Form FmHA 440–1 and the remainder of the loan docket.

(iv) To the National Office: A copy of Form FmHA 444–5.

(4) *To OGC.* For a loan to an organization, or for a loan to an individual in special cases, the approved loan docket, including any title evidence, will be sent through the State Office to OGC for preparation of closing instructions and any special legal documents required for closing. A certified copy of a required loan resolution or the original executed witnessed loan agreement must be supplied by the applicant in time to be included in the loan docket. No docket will be considered which fails to include such a required resolution or agreement. The OGC will route the docket, including closing instructions and any such legal documents, to the District Office through the State Office for review and for inclusion of any further instructions needed in closing the loan.

§ 1944.234 [Reserved].

§ 1944.235 Actions subsequent to loan approval.

(a) *Pre-commitment or closing actions.* After loan approval, the loan docket will be processed to the stage where a construction loan would normally be closed prior to the start of construction. During this processing, the following actions should be taken:

(1) Obligation of FmHA loan funds.

(2) Execution by the borrower of the appropriate loan agreement or loan resolution required in accordance with § 1944.215 (e) of this Subpart.

(3) Obtain closing instructions from OGC in accordance with the requirements of Part 1807 of this Chapter (FmHA Instruction 427.1), § 1944.233 (b)(4) and § 1944.236 (a) of this Subpart.

(4) Unless initial operating and maintenance capital is included in the loan in accordance with § 1944.212 (n) of this Subpart, the applicant will furnish evidence of the deposit of initial operating and maintenance capital into the general fund account of the project.

(5) The borrower will provide evidence indicating the terms and final arrangements for interim financing.

(b) *Financing during the construction period.*—(1) *Interim financing.* In all cases of RRH loans exceeding $50,000, when it is possible for funds to be borrowed at reasonable interest rates on an interim basis from commercial or public sources for the construction period, such interim financing will be obtained to preclude the necessity for multiple advances of FmHA funds. Interim financing will be used subject to the following:

(i) FmHA will assume the same responsibilities as if FmHA funds had been advanced from the standpoint of approving construction contracts, inspection of construction, and assuring compliance with applicable equal opportunity, nondiscrimination, and Davis-Bacon Act requirements, where Section 8 is involved.

(ii) The FmHA State Director or District Director will deliver a copy of Form FmHA 440–57 to the proposed interim lender as evidence of the FmHA commitment to the applicant. The guide letter shown as Exhibit D of this Subpart will be used by the State Director or District Director to inform a proposed interim lender that funds in specified amounts have been obligated and will be available to retire the interim financing if the applicant complies with the approval conditions, the builder's performance is acceptable and all construction bills are paid.

(iii) Since FmHA's commitment to the interim lender is contingent upon acceptable performance by the builder and payment of all construction bills, the interim lender should be advised of the additional risk involved if the builder is unable to provide, or the interim lender does not require a payment and performance bond. Although partial payments to the builder constructing the project by the contract method of construction must be made in accordance with the approved construction contract, the interim lender should not be permitted to make disbursements of more than 90 percent of the value of acceptable work in place.

(iv) Any cash for land purchase or development that is to be furnished by the applicant in fulfillment of the applicant's contribution requirement in § 1944.213 (a)(2) of this Subpart must be placed on deposit with the interim lender and disbursed prior to any disbursement of interim loan funds. Obligations incurred prior to loan closing and the start of construction will be handled in accordance with § 1944.213 (c).

(v) A supervised bank account need not be established for funds obtained through interim financing. However, in order to assure that funds are requested and used for authorized purposes, requests for partial payment shall be submitted through the District Director on Form FmHA 424–18, "Partial Payment Estimate," or other professionally recognized form containing the certifications of the architect, applicant, and FmHA representative shown on Form FmHA 424–18. For recordkeeping purposes, Form FmHA 402–2, "Statement of Deposits and Withdrawals," should be used to record the deposit of applicant funds for construction with the interim lender, and FmHA approved disbursements of interim loan funds.

(vi) When the project is substantially complete, the FmHA loan may be scheduled for closing. A project is substantially complete when it is possible in accordance with any contract documents, applicable State or local codes or ordinances, and the FmHA approved drawings and specifications, to permit safe and convenient occupancy and use of the buildings. Upon substantial completion the owner's architect must issue a dated and signed statement certifying to substantial completion. The owner's architect will, with FmHA's assistance, also prepare and verify a punch list of any minor items of development that need to be corrected and completed.

(vii) The FmHA loan may be closed, permanent instruments issued to evidence the FmHA indebtedness, and FmHA loan funds used to retire the interim indebtedness when the project is substantially complete and all bills have been paid. As evidence of the fact that there are no unpaid obligations outstanding in connection with the project, the applicant will be required to submit to the District Director, at or prior to loan closing, signed statements from the contractor, architect, engineer, and attorney indicating that obligations for material, labor, or services have been paid in full, and have been paid in accordance with their contracts or other agreements, less any funds withheld for minor punch list items. Form FmHA 424–10, "Release by Claimants" or other similar form may be used for this purpose. If such statements cannot be obtained, the loan may be closed provided all of the following can be met:

(A) Statements to the extent possible are obtained;

(B) The interests of FmHA can be adequately protected and its security position is not impaired;

(C) Adequate provisions are made for paying the unpaid accounts by withholding or escrowing sufficient funds to pay such claims or obtaining a release bond.

(2) *Multiple advances of RRH loan funds.* In the event interim financing is not available, and applicant supplies such evidence, multiple advances will be used subject to the following:

(i) In those cases where relatively large amounts of funds are to be expended for purchases of real estate or for other reasons at the time of closing, separate checks for such purposes may be ordered and endorsed by the borrower to the seller or other appropriate party. This will preclude the necessity for depositing such loan funds in the supervised bank account and reduce the amount of required collateral.

(ii) Except as indicated in paragraph (b)(2)(i) of this Section, advances will be made only as needed to cover disbursements required by the borrower for a 30-day period. Normally, the advances should not exceed 24 in number or extend longer than 2 years beyond loan closing. The retained percentage withheld from the contract to assure that construction will be completed in accordance with the contract documents will ordinarily be included in the last advance. Advances will be requested in sufficient amounts to insure that ample funds will be on hand to pay costs of construction, land purchase, legal, engineering, or architectural costs, interest, and other expenses as needed. The borrower will prepare Form FmHA 440–11, "Estimate of Funds Needed for 30-day Period Commencing ," modified as needed, to show the amount of funds required during the 30-day period. This form will be approved by the District Director or the District Director's delegate. After it is determined that the estimate prepared by the borrower is adequate, the advance will be requested on Form FmHA 440–57 in accordance with the FMI and it will be forwarded to the Finance Office. As an example, for a loan of $100,000, the advances may be made as follows: Assuming that the loan will be closed on July 1, the borrower will complete Form FmHA 440–11 in sufficient time so that the funds will be available on the day of loan closing. The estimates should be broken down for the first advance in a manner similar to the following:

Construction	$30,000
Land Acquisition	5,000
Architectural	4,000
Legal	1,000
Total	40,000

An advance in the amount of $40,000 would then be available on July 1, the date of loan closing. The second advance will also be based on the borrower's estimate prepared on Form FmHA 440–11, and will be prepared in sufficient time so that the estimated amount of funds will be available on August 1. This estimate of funds might be broken as follows:

Construction	$20,000
Architectural	1,000
Total	21,000

A copy of Form FmHA 440–57 specifying the amount then will be forwarded to the Finance Office. The same routine will be followed for each advance until the project is completed.

(iii) When the project is substantially complete, final payment to the contractor may be scheduled for disbursement. A project is substantially complete when it is possible in accordance with any contract documents, applicable State or local codes or ordinances, and the FmHA approved drawings and specifications, to permit safe and convenient occupancy and use of the buildings. Upon substantial completion, the owner's architect must issue a dated and signed statement certifying to substantial completion. The owner's architect will, with FmHA's assistance, also prepare and verify a punch list of any minor items of development that need to be corrected and completed. More than adequate funds to cover the costs associated with correcting or completing the minor items identified will be withheld in accordance with the requirements of Subpart A to Part 1924

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(FmHA Instruction 1924–A) from the contractor's final payment until full performance.

(iv) Any deviation from the multiple advance procedure must have the prior approval of the National Office.

(c) *Requesting check.* When loan approval conditions can be met, including any real estate lien required, and a date for FmHA loan closing has been agreed upon, the District Director will determine the amount of funds needed in accordance with either paragraph (b)(1) or (2) of this section. The District Director or the District Director's delegate will then order the loan check so that it will be available on or just before the date set for loan closing.

(d) *Increase or decrease in the amount of the loan.* If it becomes necessary for the amount of the loan to be *increased* within the *same fiscal year* but prior to loan closing, the loan approval official or District Director will request that all distributed docket forms be returned to the District Office. The loan docket will be revised accordingly and reprocessed. If it becomes necessary for the amount of the loan to be *increased after the fiscal year* of the loan obligation has passed, but prior to loan closing, the District Director will process a subsequent loan for the amount of increase. If it becomes necessary that the amount of the loan be *decreased* prior to loan closing, the District Director will notify the Finance Office of the decreased loan amount by memorandum. The District Director's memorandum will, at a minimum, contain the following:

(1) The applicant's name.
(2) The applicant's case number.
(3) The fund code.
(4) The nature of the request.
(5) The amount of decrease.
(6) The new amount of loan (after decrease).

(e) *Cancellation of loan.* Loans may be cancelled after approval and before loan closing as follows:

(1) The District Director will prepare Form FmHA 440–10, "Cancellation of Loan or Grant Check and/or Obligation" in an original and two copies (3 copies if the check is received in the District County Office from the Regional Disbursing Office). The original and copies will be sent to the State Director with the reasons for requesting cancellation. If the State Director approves the request for cancellation, the original request will be forwarded to the Finance Office after making appropriate adjustments in the records to control loan allocations. A copy or copies of Form FmHA 440–10 will be returned to the District Office.

(2) If the loan check is received in the District Office, the District Director will return it to the Disbursing Center, U.S.Treasury Department, Post Office box 3329, Kansas City, Kansas 66103, with a copy of Form FmHA 440–10.

(3) All interested parties will be notified of the cancellation as provided in Part 1807 of this chapter (FmHA Instruction 427.1). Unless the cancellation of the loan is by mutual agreement, the applicant will be notified that the decision may be appealed in accordance with Subpart B to Part 1900 (FmHA Instruction 1900–B).

(f) *Handling loan check.* The loan check will be handled in accordance with paragraph IV of FmHA Instruction 102.1 (available in any FmHA office) and Subpart A of Part 1902 (FmHA Instruction 1902–A).

(g) *Property insurance.* Buildings will be insured in accordance with Subpart A of Part 1806 of this Chapter (FmHA Instruction 426.1).

(h) *Prerent–up conference.* To promote proper planning for initial rent up and occupancy, the District Director will convene with the applicant soon after loan approval to discuss the affirmative fair housing marketing plan or any other similar agreement approved for the project with the applicant and the applicant's management firm, if any.

(1) The District Director will review the applicant's marketing plan to determine that it is complete with all supplemental information provided. If it is determined that the plan should be modified before marketing activity begins, approval must be granted from the official authorized to approve the assistance requested prior to modification.

(2) The District Director should be assured that the applicant will sincerely direct marketing activity in an effort to attract applications for housing from all groups in the housing marketing area. If it is anticipated that applications for housing may result in a concentration of occupancy by race, color, religion, sex, or national origin, outreach efforts shall be extended to those persons who would not be expected to apply for the housing. Such efforts shall be conducted for a reasonable period of time prior to the normal period for receipt of applications and commencing not less than 90 days prior to project completion.

(3) Prior to initial occupancy of any tenant, the District Director and the applicant will reconvene to assess implemented marketing activity by thoroughly reviewing the marketing plan, anticipated occupancy results and the extent of achievement of plan objectives. If original marketing concepts prove to be less than effective, and/or if there are changes in the housing market, the applicant may be required to modify the marketing plan for the project. Should the District Director determine the applicant in noncompliance to the plan and a modification to the plan not warranted, the matter will be refered to the FmHA Administrator, attention Equal Opportunity Officer, through the State FmHA Compliance Officer.

§ 1944.236 Loan closing.

(a) *Applicable instructions.* RRH loans will be closed in accordance with applicable provisions of Part 1807 of this Chapter (FmHA Instruction 427.1) and any State Supplements. Loan dockets for an individual in special cases will be sent through the State Office to OGC for closing instructions. A profit or limited profit organization applicant may use any designated attorney or title insurance company to close the loan in accordance with the applicable loan closing instructions, provided the attorney or title insurance company and their principals or employees are not members, officers, directors, trustees, stockholders or partners of the applicant entity. Nonprofit organizations may use a designated attorney who is a member of their organization provided the cost is in accordance with § 1944.212(k) of this Subpart.

(b) *Mortgage.* Unless OGC determines the form to be inappropriate, real estate mortgage Form FmHA 427–1 (State), "Real Estate Mortgage for ," will be used. For loans to organizations, Form FmHA 427–1 will be modified as prescribed by or with the advice of OGC with respect to the name, address, and other identification of the borrower, the style of execution, and the acknowledgment.

(1) The mortgage or other instrument will contain the following covenant:

> The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the Rehabilitation Act of 1973 and the regulations issued pursuant thereto for so long as the property continues to be used for the same or similar purpose for which financial assistance was extended or for so long as the purchaser owns it, whichever is longer.

(2) When a loan resolution or loan agreement is used, an additional paragraph will be included in the mortgage to read as follows:

> This instrument also secures the obligations and covenants of Borrower set forth in Borrower's Loan Resolution (Loan Agreement) of (*Date*), which is hereby incorporated herein by reference.

(3) In case of a loan to an individual where a loan agreement is not used, additional paragaphs will be included in the mortgage to read as follows:

> Occupancy of the housing and related facilities on the property will be limited to eligible occupants as defined in the regulations of the Farmers Home Administration, unless the Government gives prior written approval to other Occupancy.
>
> As required by the Government: Borrower will permit the Government to inspect and examine the operation of the housing and the books, records, and operations of Borrower; submit regular and special reports pertinent to the loan or the Government's financial interests; subject rents and charges and other terms of rental agreements with occupants of the housing, and compensation to employees connected with its operation, to prior approval by the Government, or to adjustment at the direction of the Government when necessary in its judgment to carry out the purpose of the loan or protect its financial interests; and comply with any other requirements which in the discretion of the Government are reasonably appropriate to the purpose of the loan or protection of the Government's interests. Revenue from the housing shall be first used to pay operation and maintenance costs of such housing and to make adequate provision to meet required payments as they become due on the FmHA rural rental housing loan.

(4) For all RRH Section 515 loans approved on or after December 21, 1979, the following language will be included in the mortgage:

> The borrower and any successors in interest agree to use the housing for the purpose of housing people eligible for occupancy as provided in section 515 of Title V of the Housing Act of 1949 and FmHA regulations then extant during this (15 years for unsubsidized and 20 years for subsidized loans) year period beginning (the date the last loan on the project is closed). No person occupying the housing shall be required to vacate prior to the close of such (15 years for unsubsidized and 20 years for subsidized loans) year period because of early repayment. The borrower understands that should an unsubsidized project be converted to subsidized within 15 years from the date the last loan on the project is closed, that the period will be increased by 5 years. The borrower will be released during such period from these obligations only when the Government determines that there is no longer a need for such housing or that Federal or other financial assistance provided to the residents of such housing will no longer be provided. A tenant may seek enforcement of this provision as well as the Government.

Any borrower whose loan was approved prior to December 21, 1979, and was closed on or after that date with the prospective restrictive prepayment language in the Mortgage, Loan Resolution or Agreement should be notified that they have the option of having these instruments modified if they so desire. The change would be solely deletion of the restrictive prepayment language. Any cost associated with the modification must, however, be borne by the borrower. Any action in this area should be approved by the Office of the General Counsel.

(c) *Promissory note.* (1) Form FmHA 440–16 will be used. Regular amortized payments for principal and interest will be scheduled on a monthly basis. Instructions for preparation in the FMI for the note will be followed.

(2) The amount to be shown in the note will be the same as shown on Form FmHA 440–1. The note will be dated the date of loan closing except as authorized in Part 1807 of this Chapter (FmHA Instruction 427.1).

(3) Payments on RRH loans will be scheduled on the note in accordance with the FMI. As provided in § 1944.215(c) of this Subpart, the principal installments during the first and second years after loan closing may be deferred.

(4) The note(s) will be signed in accordance with the FMI and Part 1807 of this Chapter (FmHA Instruction 427.1).

(d) *Recorded mortgage.* When the real estate mortgage is returned by the recording official, the District Director will retain the original in the borrower's case folder. If the original is retained by the recording official for the county records, a conformed copy including the recording data showing the date and place of recordation and book and page number will be prepared and filed in the borrower's case folder. A copy of the mortgage, conformed as to all matters except the recording date, will be delivered to the borrower.

(e) *Date of closing—establishment of account.* (1) An RRH loan is considered closed when the security instrument is filed of record or, if no security instrument is filed of record, when the loan funds are deposited in the supervised bank account or otherwise made available to the borrower after the borrower executes and delivers the note and any other required instruments.

(2) After the loan is closed, the account and case folder will be established at the District Office following the requirements of FmHA Instructions 405.1 and 2033–A (available in any office), respectively.

§ 1944.237 Subsequent RRH loans.

A subsequent RRH loan is a loan made to an applicant or borrower to complete or repair the units planned with the initial loan.

§ 1944.238 Coding loans as to initial or subsequent.

A borrower may obtain financing for more than one project. Each project will be coded as an initial loan when the total number of units are built or purchased at one place at one time. A subsequent loan will be coded when an additional loan or loans are necessary to complete or repair the units planned with the initial loan. As an example, the borrower may obtain initial loans for more than one project in the same county, in different counties under the same District Office jurisdiction, or in more than one District Office jurisdiction. Codes to be used will be in accordance with the FMI for Forms FmHA 440–1, FmHA 440–57, and FmHA 444–5.

§ 1944.239 Complaints regarding discrimination in use and occupancy of RRH housing.

Any occupant or applicant for occupancy or use of RRH housing or related facilities who believes he or she has been discriminated against because of age, race, color, religion, sex, marital status, handicap or national origin should file a complaint with the Secretary of Agriculture (or with the Office of Equal Opportunity), U.S. Department of Agriculture, Washington, DC 20250. If a complaint is made to an FmHA county, district, or State office, the complaint should be directed to the Office of Equal Opportunity (USDA–OEO) by the FmHA employee in charge of that office. If the complaint is forwarded to USDA–OEO by a county or district office, the State Director will be made aware of the complaint.

(a) It is preferred that the complaint be in writing and signed by the complainant. The complaint may, however, be telephoned to the FmHA Districe Office. The complainant should provide the following information:

(1) The name and address (including telephone number) of the complainant.

(2) The name and address of the person committing the alleged discrimination.

(3) Date and place of the alleged discrimination.

(4) Any other pertinent information that will assist in the investigation and resolution of the complaint.

(b) If a complaint is received by an FmHA Office, the County Supervisor, District Director, or State Director will acknowledge receipt of the complaint and promptly forward it to the USDA Office of Equal Opportunity, Washington, DC 20250.

(c) Accompanying the complaint should be a statement from the District Director or State Director as to whether

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the security instrument or other document executed by the borrower contains a nondiscrimination agreement. The statement also should include any other information which the State Director or District Director has pertaining to the complaint. The District Director or State Director should delay a comprehensive investigation of any complaint until requested to do so by the National Office.

(d) The USDA Office of Equal Opportunity will determine whether discrimination did in fact occur. Appropriate steps will be taken to ascertain the essential facts. The USDA Office of Equal Opportunity will handle complaints in accordance with Department regulations (which are found at 7 CFR 15.6).

(e) If it is found that the complaint is without substance, the parties concerned will be so notified.

(f) If it is found that the borrower's discrimination agreement in the security instrument or elsewhere was violated, FmHA will inform the parties of such finding and advise the violator to take the action necessary to correct the violation and to give appropriate assurance of future compliance.

(g) If the borrower should fail to take such action and assure future compliance, the Administrator may take further appropriate action.

§ 1944.240 Exception authority.

The Administrator of the Farmers Home Administration may, in individual cases, make an exception to any requirements of this Subpart not required by the authorizing statute if the Administrator finds that application of such requirement would adversely affect the interest of the Government, the immediate health or safety of the tenants or the community. The Administrator will exercise the authority only at the request of the State Director. The State Director will submit the request supported by data: Demonstrating the adverse impact; identifying the particular requirement involved; showing proper alternative courses of action; and, identify how the adverse impact will be eliminated.

§§ 1944.241–1944.249 [Reserved].

§ 1944.250 Prepayment of RRH loans approved prior to December 21, 1979.

The District Director will accept prepayment of any RRH loan approved prior to December 21, 1979, provided the following conditions are met:

(a) The borrower will:

(1) Provide written notice to each tenant sixty (60) days prior to submitting an offer to prepay. This notice should include information outlining the possible change of ownership and any resulting changes that would occur in rental rates or management practices as a result of prepayment. This information should also be posted within the building(s) at the same time each tenant is notified. The District Director will review such notification procedure and the information contained therein prior to approving the prepayment offer.

(2) When prepayment is approved, provide written notice of said approval and the anticipated future disposition of the units to each tenant. This notice should include a statement advising the tenants of their priority rights if they are displaced as a result of the prepayment. The tenants should be advised in the notice that they have six (6) months from the date of the prepayment to exercise their priority right by applying for a letter of priority from the District Director. The tenants then have thirty (30) days to submit this letter of priority to other FmHA projects within a reasonable commuting distance of the affected project. This information should be posted within the building(s) upon notification of approval.

(b) The District Director will: Upon application within six (6) months of the prepayment by a tenant displaced as a result of said prepayment, provide a letter of priority entitlement to such affected tenant to all other FmHA RRH projects in the area. This area includes FmHA projects which are within a reasonable commuting distance of the affected project. The letter of priority entitlement should include a statement that the affected tenant has thirty (30) days from the date of issuance of the letter of priority entitlement to apply with other FmHA RRH projects in the area. The letter of priority entitlement will enable such tenants to move to the top of any waiting list in those projects. A list of FmHA RRH projects in the area will be included as part of the letter of priority entitlement.

(c) The State Director will send a report on each prepayment case approved to the National Office to the Attention of the Multiple Housing Management and Servicing Division containing the following information:

(1) The number of units in the project.

(2) The number of eligible tenants presently occupying the units.

(3) The estimated replacement cost of the units.

(4) The estimate of the number of families that will be displaced as a result of prepayment.

(5) The estimate of the relocation cost of the families being displaced.

(6) An indication of the displaced families' ability to pay relocation costs.

(7) The income range of the tenants presently in the project.

(8) The number of elderly tenants in the project.

(9) The present and projected rents.

(10) The number of Section 8 or RA units and whether Section 8 will continue after prepayment.

(11) Any cause of displacement other than rent.

(12) The availability of other vacant units in the area.

Exhibit A—How to Bring Rental Housing To Your Town

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Introduction

Most areas in rural America need more adequate rental housing. The elderly with modest incomes often live in improvised flats or apartments that are cold in the winter and hot in the summer because adequate housing at a reasonable rent is not available. Others such as school teachers and the newly married often cannot find suitable rental housings of any kind in the rural community where they work. Other households who prefer to rent have the choice of either commuting many miles to work or living in the substandard rental housing that is available in small rural communities.

To help reduce this rental housing shortage, the Farmers Home Administration (FmHA) finances rental housing in rural communities. Nonprofit organizations, other types of organizations as well as individuals may qualify for loans. Information about these loans is available at the local office of the Farmers Home Administration.

This handbook has been written to assist interested persons and groups in completing an application and obtaining the information required for a loan docket. It also briefly explains

requirements regarding the construction and operation of the rental housing.

The basic guidelines in this handbook apply to all applicants; however, some requirements will vary depending on the size of the project and whether the applicant is a nonprofit organization, other type of organization, or an individual.

The objective of the Rural Rental Housing (RRH) loan program is to provide credit for good rental housing, designed for independent or congregate living, at rental rates that senior citizens, handicapped persons, and other people with low and moderate incomes can afford.

Successful rental housing depends on the existence of three important conditions; namely:

There must be a need for the rental housing to be built.

The housing must fit the needs of prospective occupants from the standpoint of design, location, and cost.

The applicant must provide good management.

An applicant for a loan will need to provide adequate information to FmHA to show that these basic conditions can be met.

Applying For a Loan

An individual, organization, or group organizing for this purpose may apply for an RRH loan to finance rental housing. The application should be made to the local FmHA County Supervisor, but also may be made to the FmHA District Director serving the area in which the housing is to be located.

The FmHA pamphlet on RRH loans should be read by the applicant before applying for a loan. The applicant also should discuss the proposed housing with the County Supervisor or District Director before completing an application.

Applying for a loan begins with a "Preapplication for Federal Assistance" on Form AD–621. Attached or included with the preapplication form should be the supporting material or information listed in Exhibit A–6. Together, this information will enable FmHA to determine:

Eligibility of the applicant,

Feasibility of the proposed housing, and

Whether the proposed housing can appropriately be financed by the FmHA.

This information usually can be furnished by the applicant without formally hiring professional services. It should be factual and specific based on objective investigations and realistic estimates. In addition to the information shown in Exhibit A–6, the following paragraphs will provide guidance concerning the subjects that need to be addressed in a preapplication:

1. *Identification of the applicant.*

The name, social security number, address, and occupation of individual applying for an insured RRH loan should be provided. The providing of the social security number will only be on a volunteer basis and a loan will not be denied for refusal to furnish the number. Organizations should attach a certified copy of their charter or articles of incorporation and bylaws, names of members of the board of directors, and a list of names and addresses of stockholders, partners, or members showing their percentage interest in ownership of the organization. Groups being organized should list the names and addresses of the organizers, their proposed percentage interest in ownership, and the type of organization they plan to form.

2. *Experience of applicant in operating rental housing.*

Describe any experience the applicant has had with rental housing, the location of the housing, and the applicant's duties in connection with the housing.

3. *Applicant's financial situation.*

A current, dated, and signed financial statement showing assets and liabilities, together with information on the repayment schedule and status of each debt, must be included in the preapplication. If the applicant is a closely held corporation, a financial statement should be provided by each director and by each member who holds an interest in excess of 10 percent in the corporation.

4. *Test for other credit.*

The key to the test for other credit is not merely an applicant's inability to obtain credit from other real estate lenders. The key is whether the credit that is available will enable the applicant to rent the rental units to eligible tenants at rental rates within their payment ability. Applicants other than State or local public agencies should contact other lenders making long-term loans for housing in the area in order to determine (a) the amount of the loan the lender is willing to provide, (b) the interest rate and terms at which the loan would be available, and (c) if credit is not available, the reasons why the lender is not willing to extend credit.

5. *General description of the housing planned.*

A brief narrative description of the housing planned would be helpful. It should include the following items:

The type of project and structures proposed, (such as garden apartments for senior citizens and handicapped persons, townhouses for low- and moderate-income persons, or congregate housing for senior citizens and handicapped persons).

The size of each type of living unit measured in square feet of living area. Square feet of living area will be measured from outside dimension to outside dimension.

In cases where apartments share a common wall, the dimension will be taken from the center line of the common wall. In the case of the common wall between an apartment and a public corridor or hall the dimension will be taken from the face of the wall on the corridor side.

The total number of units proposed, and the number of each type of living unit proposed.

The type of construction proposed.

The estimated total development cost, the cost per unit and the estimated loan amount.

Schematic design drawings should be included with this narrative description, and should include the proposed plot plan, unit plans, and typical elevation.

6. *Applicant's contribution.*

Applicants may contribute cash, free and clear title to the building site, or a combination of both as an equity contribution. In addition, applicants should show the amount of funds available to cover the cost of any furnishings and for initial operating expenses.

7. *Location of housing to be built.*

Describe the site and how it is located in relation to services occupants of the housing will require. A map of the community with the site, stores, churches, schools, pharmacies, doctors, and hospitals, is a convenient way to do this. The map also should show significant features such as main highways, railroads, rivers and lakes. The use of property surrounding the site also should be indicated.

8. *Why is the housing needed?*

An individual, organization, or group interested in applying for an RRH loan should investigate the need for more rental housing in the community and become acquainted with families who might be eligible for the kind of rental housing FmHA can finance. The application should include a summary of the information obtained by the applicant to show that there are enough people in the community and its trade area who are eligible to occupy the housing and are willing and able to pay the required rent.

Success of the project will depend on the need for the housing in the community, the rental levels, and the applicant's ability to properly manage the housing. The applicant's basis for conclusion that the proposed rental housing will be successful should be included in a brief statement.

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Review of Application

The preapplication and supporting information may be sent to the FmHA County Supervisor or the FmHA District Director. The County Supervisor will forward the preapplication material to the FmHA District Director who in turn will notify the applicant when FmHA reaches a conclusion after it has reviewed the material submitted. If it appears a loan can be made, the District Director will explain to the applicant the additional steps that will be required. In case favorable action cannot be taken on the application, the District Director will explain the reasons and may be able to suggest changes to permit a loan to be made.

Developing the Loan Docket

When authorized to proceed with the loan docket and assemble a complete loan application, the District Director will review with the applicant each of the items listed in Exhibit A–7 with Form AD–625, "Application For Federal Assistance (Short Form)," to complete the docket. The amount of information required will vary based on the complexity and size of the proposed housing project. The District Director will also provide forms and guides to assist the applicant in recording required information. Some of the guides are included as Exhibits in this handbook. The applicant is responsible for providing the information required. The District Director will assemble this information and complete the docket.

The following are steps which may be followed in developing a loan docket. The first two steps are applicable only to nonprofit organizations. The other steps apply to any applicant.

1. *Getting organized if applicant is a nonprofit organization and has not adopted articles of incorporation and bylaws.*

Steering Committee. The groups may choose a steering committee to act for them. An attorney will usually be required to advise the organization on incorporation and assist in developing the loan application. The steering committee should select an attorney who is interested in the proposed housing and will render the necessary services promptly and for a reasonable fee.

Articles of Incorporation and Bylaws. FmHA has developed model articles of incorporation and bylaws for nonprofit organizations. The steering committee should arrange for the District Director to meet with the attorney. The District Director will give the attorney copies of the FmHA model articles of incorporation and bylaws and explain FmHA requirements.

Attorney's Fees. Reasonable attorney's fees may be included in the FmHA loan. A written agreement between the applicant and attorney is required. See Exhibit A–1 for a sample copy of such an agreement.

Board of Directors. The steering committee usually selects the incorporators for the corporation. The board of directors of the corporation is responsible for conducting the corporation's business, including not only obtaining the loan, but also providing overall management after the housing is completed.

2. *Obtaining broadly based membership.*

A nonprofit corporation applying for a loan must have and maintain a broadly based local membership representing a variety of interests in the community, including leaders in the community. The members may be both individuals and organizations, but each member is limited to one vote.

The purpose of the broadly based membership requirement is to obtain community support, provide enough members to be able to rotate officers and members of the board of directors, protect the Government's financial interest as mortgagee, and provide assurance that the housing will be a success and the purpose of the loan carried out.

In RRH loans made to nonprofit organizations and public bodies, there is no profit incentive. The term of the loan may be for as long as 50 years. Therefore, factors such as the prospect for continuous competent management and supervision, maintenance, and adequate community support of the housing project over the expected life of the loan are important.

A membership list showing the names and addresses of each member should be maintained by the secretary of the organization.

Number of members required. The number of members required to meet the "broadly based membership" requirement will vary, depending upon such facts as the applicant's experience and financial condition, the size of the housing project, the size of the community, and the ratio of loan to the appraised value of the security. The board of directors with the advice of FmHA should decide the number of members needed to assure their organization of sufficient community support.

Contributions by members. Nonprofit corporations may require a membership fee or ask prospective members for a contribution. This is the method often used by nonprofit corporation applicants to raise initial operating capital. However, no such fee or contribution can entitle a member or prospective member to a preference in occupancy of the housing.

3. *Initial Operating Capital.*

All applicants must have enough initial operating capital to get started. When justified, FmHA may include these funds in the loan when the loan is made to a nonprofit organization or public body. Initial operating capital should be sufficient to pay such costs as property and liability insurance premiums, fidelity bond premiums when applicant is an organization, utility hook-up charges and deposits, maintenance and other equipment, lease forms, furnishings, loan payments that may become due during construction, and other initial expenses.

The applicant can determine the amount required by working out a detailed budget of income and expenses for the period of time until the housing is ready for occupancy and rental income will be available. Two percent of the total cost of the proposed project will usually cover the costs of getting the housing started if the applicant does not intend to provide furniture or movable equipment for the units. The actual budget, however, may indicate that more than 2 percent is needed.

4. *Analysis of Market to Determine Demand for Rental Housing.*

Applicants should discuss with the District Director the type of market analysis that will be needed. This will vary with the community and the size of the project. Applicants who are interested in developing larger (10 units or more) projects will have to make a complete market analysis showing the need and demand for rural rental housing in the area. The market analysis will indicate the demand for rental housing from prospective eligible occupants in the community in which the housing will be located and the trade area around it.

Since the intent of the program is to provide adequate housing for the eligible permanent residents of the community, the economic justification for the size of the project and the type of units provided should be based primarily upon the need and demand from eligible prospective occupants who are permanent residents of the community. Demand from the more temporary residents of a town (such as college students), should be discounted in determining project size. The information needed in a rental market analysis includes:

a. Estimate of number of houses or apartments in the area currently for rent.

b. Characteristics of available rental housing, such as location, quality and size of units, type of building, age of structure, vacancy rate, reasons for vacancies, and rental levels.

c. Characteristics of the eligible occupants, such as single or couples, male or female, size and composition of household, number of senior citizens, number of nonsenior citizens, and number of handicapped.

d. Income and financial condition of the people in the area who would be eligible to occupy the housing as planned.

e. Present living arrangements of eligible occupants in the area and the extent to which inadequate housing is associated with health or financial conditions.

f. Estimate of the number of eligible occupants who are willing and financially able to occupy the proposed housing.

In order to verify that the information presented in the market analysis is accurate, the applicant may also be requested to conduct a rental market survey to identify the number of tenants the applicant can expect for the kind of housing planned. The rental market survey will involve the identification of individuals who are both eligible to occupy the proposed housing and actually ready and financially able to occupy the proposed rental housing.

To assure full occupancy as soon as the housing is completed, about 50 percent more eligible prospective occupants than the number of units to be built should be identified in the market survey before the loan docket is submitted. Prospective occupants who are temporary residents of the community should not be included in the market survey.

People interested in becoming occupants can be identified by:

Personal solicitation by the applicant.

A public meeting. (The District Director can arrange to have someone from FmHA assist the applicant in conducting the meeting).

Newspapers, TV and radio. (Coupons that can be clipped from a newspaper and sent to the applicant to indicate interest have been used by some applicants. The applicant should contact each interested person to find out if he or she would be eligible, willing and able to move into the housing when it is completed. A list of the names of prospective occupants should be maintained in the order in which they indicated their interest. The possibility exists that the list could serve as a preliminary waiting list from which the first occupants of the housing may be selected.

Exhibits A–2, A–3, and A–4 are sample forms which may be modified as necessary by the applicant and used to assist in the assembly of the information for the rental market analysis and the rental market survey.

5. *List of prospective occupants.*

In order to assure that the proposed housing will be fully occupied shortly after completion of construction, the applicant should begin developing a waiting list of prospective eligible occupants early in the development of a loan docket. In order to promote proper planning for initial rent-up and occupancy, the District Director will convene with the applicant soon after loan approval to discuss the Affirmative Fair Housing Marketing Plan or any other similar agreement approved for the project.

6. *Planning to Fit the Market.*

Planning the housing to fit the market existing in the community involves more than obtaining a blueprint of the building. It requires a careful evaluation of conditions in the community and careful planning to assure that the result will be good rental housing designed for independent living at a cost senior citizens, handicapped persons, and other people with low to moderate incomes can afford. Well planned housing is:

Convenient, attractive, safe, and comfortable.

Easily maintained.

Located where its occupants can have easy access to the goods and services they require for daily living.

Planned to meet the local codes and regulations.

Designed to fit the market for the future as well as the present.

Priced to rent for no more than the prospective occupants believe they can afford.

Energy efficient and complies with any energy requirements of FmHA.

A word of caution: Do not build more units than needed in the area. Keep the rents down to the level prospective tenants are able and willing to pay. Start with a modest number and if experience demonstrates a need for more units, additional loans to create more rental units can be considered.

The District Director can provide information that will help the applicant in planning the housing.

7. *Selecting an Architect.*

The services of an architect are required for all rental housing projects unless they involve only a few units (usually not more than 4), standard type plans are used, and architectural services are not required by State law. The cost of an architect/engineer registered to perform architectural engineering services in the State may be included in the loan.

Before anything more than schematic drawings are prepared, the Architect, the FmHA Architect/Engineer, the applicant and the District Director should arrange a meeting. The purpose of this meeting will be to acquaint the applicant's architect with the purposes of the housing and the requirements of FmHA. This will be helpful in eliminating misunderstandings. Among the topics that should be discussed are:

Objectives of the rental housing program:

Services the architect will be expected to perform.

Agreement between architect and applicant.

Stages at which FmHA should review plans and specifications.

Design requirements that will produce good housing at a reasonable cost.

8. *Selecting a Site.*

The location of the housing is an important part of planning to fit the market. Tenants will require easy access to required services. A desirable residential setting within a rural community is essential. Cost also is important.

The total cost of the site, including the cost of site improvement as well as the price of the land, must be considered. Both may be included in the loan.

Before buying a site, it is essential that the applicant consult with the architect to determine the suitability of the site for the proposed housing. The structure to be placed on the site must not only take into consideration the needs of those that will be occupying it, but also the potential environmental impacts of this location and important contraints, i.e., the presence of floodplains, wetlands, prime or unique farmlands or other sensitive environmental features.

The applicant should also consult with local authorities with regard to building restrictions, zoning, public utilities, taxes and any proposed public work in the area. The applicant should not enter into any firm agreement to buy a site with the expectation of receiving and FmHA loan without consulting with the FmHA District Director and prior to the Agency's completion of the environmental impact review.

Loan funds made available to purchase land may not exceed the present market value of the land in its present condition as determined by an FmHA appraisal.

9. *Plot Plan, Detailed Preliminary Plans and Specifications, and Cost Estimates.*

The size, complexity and cost of rental housing projects can vary from a duplex unit located on a residential building lot, to a complex of buildings located on a site containing several acres. The applicant is required to provide preliminary plans and

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specifications in enough detail to enable FmHA officials to determine whether or not the proposed housing will be the kind of rental housing FmHA is authorized to finance. The District Director or other FmHA representative will explain to the applicant and the applicant's architect the kind of plot plan, preliminary plans, and specifications, cost estimates required for the loan docket. The docket also will contain a detailed trade-item cost breakdown showing such items as: land, building construction by trades, equipment, utility connections, site improvements, architectural services, interest during construction pro-rated share of any off site improvements, closing costs, and legal services. Items not being financed with loan funds should be shown separately.

The preliminary plans should include a plot plan showing the relationship of the proposed structures, the property lines, streets, utility lines, alleys, adjacent structures and their uses. It should also show proposed off-street parking for the occupants and their visitors. Other facilities such as private and public walks, private drives and recreation areas on and off the property, laundry drying areas, and garbage and refuse holding areas which are sufficient for the period between collections in the neighborhood should be shown.

10. *Financial Statement.*

A current financial statement will be required at the time the loan docket is submitted for approval. Individuals applying for an insured rental housing loan may obtain forms from the District Director to provide their financial statement. The financial statement should show all assets and liabilities in sufficient detail to permit a thorough evaluation of the applicant's financial position. The status of each debt and the repayment terms also should be shown.

11. *Budgets.*

The initial budget should cover the period from the date the first construction expenses are incurred until the end of the applicant's first fiscal year following completion of the housing. After the final cost estimate has been made and the amount of the loan needed has been determined, a budget for a typical year should be developed.

This budget should be based on a typical annual operation several years after the loan is made. Budgeting is an important part of the management. The applicant should spend enough time working on it to assure that the estimates are realistic. Budgets will be required each year until the FmHA loan is repaid in full. The budget serves several purposes namely it:

Helps determine rental rates.
Indicates financial soundness.
Serves as a guide for paying expenses.

Form FmHA 1930–7, "Statement of Budget, Income and Expense" and its accompanying Exhibit A–5 is a sample budget form and utility allowance form.

12. *Loan Resolution or Loan Agreement.*

When the applicant is a corporation, or an individual applying for a loan above certain amounts, a copy of the required loan resolution or loan agreement should be obtained from and discussed with the District Director before the loan docket is developed. Among other things, this document outlines how the income from the housing is to be used. These requirements should be understood at the time the budget is developed.

13. *Management Plan.*

A detailed management plan will be developed which will outline the basic policies and procedures to be followed, and the duties of the officers and employees. The applicant must manage the project in accordance with the requirements of this Subpart and of Subpart C to Part 1930 (FmHA Instruction 1930–C).

14. *Manager and Caretaker.*

The success of the housing will depend to a large extent on how well it is managed. A carefully written plan should be developed by the applicant outlining the proposed management of the housing and giving such information, if known, as who will be the manager, the manager's experience, any management training planned, and other facts about the manager's qualifications.

The manager should be readily available to the tenants. The manager might be one of the occupants, or a member of the board of directors of a nonprofit corporation. A caretaker may be needed for larger projects to:

Take care of minor repairs,
Mow the lawns and maintain the property, and
Remove garbage and trash.

The board of directors of a corporation is responsible for overall supervision and management of all its affairs. The board should delegate actual operating and management responsibility to committees or individuals and meet often enough to see that the job is being done right and the enterprise is being managed successfully.

15. *Occupancy Policies.*

Applicants should review carefully with the District Director the occupancy requirements. Particular attention should be given to the following requirements:

The housing must be open to all eligible occupants regardless of race, color, religion, sex, National origin, age, handicapped or marital status.

The incomes of tenants must be within the maximum income limits approved by FmHA, except for senior citizens or handicapped occupants of housing operated on a for profit basis.

Additional guidance concerning occupancy in congregate housing projects can be found in Exhibit B–10 to Subpart C to Part 1930 (FmHA Instruction 1930–C).

16. *Rules and Regulations.*

The rules and regulations for tenants should be developed by the applicant and a copy included in the loan docket.

17. *Lease.*

The applicant should develop a form of application for occupancy and lease agreement form in accordance with the requirements indicated in Subpart C to Part 1930 (FmHA Instruction 1930–C). Copies of these forms should be included in the loan docket.

Review of the Complete Docket

When the applicant has developed the information needed to complete the loan docket, the applicant should furnish the information and discuss it with the District Director. Form AD–625, the information and materials listed in Exhibit A–7 plus FmHA forms provided by the District Director become the loan docket.

The District Director will submit this docket to the FmHA State Director for consideration. The State Director will send dockets for projects in excess of the State Director's loan approval authority to the FmHA National Office in Washington, D.C., for review.

The docket will be reviewed and returned to the District Director. A letter from the State Director will indicate any special requirements that need to be met before loan approval or loan closing. Complete final plans and specifications and firm trade-item cost estimates will be obtained before the loan can be approved. In some cases competitive bidding will be required to determine actual construction cost. In the case of multiple advances of FmHA loan funds for construction, the note and mortgage will be signed by the applicant and the loan funds deposited in a joint bank account at loan closing. At this time the applicant becomes a borrower. The loan funds are disbursed from the bank account as needed, by checks signed jointly by the borrower and the District Director. Checks on the account must be signed by the borrower and countersigned by the FmHA District Director.

If interim financing is available during the construction period at reasonable rates and terms, FmHA can make a conditional commitment to the interim lender that will loan the funds to finance the construction of the project. The commitment will be conditioned upon acceptable performance by the builder and payment of all construction bills. After the conditions have been met, the FmHA loan will be closed to pay off the interim construction indebtedness. Draws of interim loan funds will be made only as needed, and will require the joint approval of the applicant and the FmHA District Director.

Construction

With the start of construction will come the first physical signs that the housing will become a reality. The construction period, however, is a most critical period of time.

1. *Storting Construction.*

Construction should not be started until after the FmHA loan is closed, or until the FmHA commitment has been made to the interim lender, as appropriate.

2. *Competitive Bidding.*

Competitive bidding is recommended and may be required by FmHA in some cases. If required, the State Director's letter received after the loan docket has been reviewed and the loan authorized, will instruct the District Director to have the applicant or the applicant's architect complete the necessary bid documents.

The applicant and the architect should invite competent contractors to bid on the housing. The architect should be sure contractors understand the plans and specifications, and other conditions.

If bids are within the estimates, the successful bidder will be selected and the contract for construction will be awarded. During construction the District Director, the applicant and the applicant's architect will inspect the work. Payment will be made from the FmHA loan funds, or interim loan funds, according to provisions in the contract.

3. *Construction Without Competitive Bidding.*

Where competitive bidding is not required, the loan docket will include reliable cost estimates or a firm offer to build from a builder selected by the applicant. A contract approved by FmHA will be executed by the applicant and the contractor. If full architectural services are obtained by the applicant, supervision and inspection of the work will be performed by the architect's staff. The applicant and FmHA will also inspect the construction, and will have sole responsibility for doing this when an architect is not involved. Payment will be made to the contractor in accordance with the terms of the contract.

Open House

The applicant may wish to create interest in the housing and build up the list of prospective occupants by having a dedication ceremony. This will attract attention and reacquaint the people of the locality with what the housing means to the community. This is especially recommended for housing developed by nonprofit corporations.

Exhibits

The following guides may be used when applicable and, if necessary, adopted to meet needs of application consideration.

Exhibit

A–1. Legal Services Agreement
A–2. Survey of Existing Rental Housing
A–3. Rental Housing Survey
A–4. Rental Housing Survey Summary
A–5. Housing Allowances for Utilities and Other Public Services
A–6. Information to be Submitted with Preapplication for Rural Rental Housing (RRH) Loan
A–7. Information to be Submitted with Application for Federal Assistance (Short Form)

Exhibit A–1—Legal Services Agreement (for Nonprofit Organizations)

Agreement made this ——— day of ———, 19——

between the

_____

hereinafter called the owners, and

_____

hereinafter called the attorney, witnesseth:

Whereas the owners intend to form a nonprofit corporation, hereinafter called the corporation, to construct and operate a rural rental housing project in

_____

(Town) (County) (State) and to obtain a loan from the Farmers Home Administration to finance the construction, and the attorney agrees to perform all legal services necessary to incorporate the Corporation, and to perform all other customary legal services necessary to the organization, financing, construction, and initial operation of the proposed rural rental housing project, such services to include but not to be restricted to the following:

1. Prepare and file necessary incorporating papers and supervise and assist in taking other necessary or incidental actions to create the Corporation and authorize it to finance, construct, and operate the proposed housing project.

2. Prepare for, and furnish advice and assistance to the owners, and to the Board of Directors and officers of the Corporation, in connection with (a) notices and conduct of meetings; (b) preparation of minutes of meetings; (c) preparation of adoption of necessary resolutions in connection with the authorization, financing, construction, and initial operation of a rural rental housing project; (d) necessary construction contracts; (e) preparation of adoption of bylaws and related documents; (f) any other action necessary for organizing the Corporation or financing, constructing, and initially operating the proposed housing project.

3. Review of construction contract, bid-letting procedure, and surety and performance bonds.

4. Examination of real estate titles and preparation, review and recording of deeds and any other instruments.

5. Cooperation with the architect employed by the owners or the Corporation in connection with preparation of survey sheets, easements, and any other necessary title documents, construction contracts, and other instruments.

6. Rendering of legal opinions as required by the owners or the Corporation or the Farmers Home Administration, United States Department of Agriculture.

7. Owners agree to pay to the attorney for professonal services in accordance with this agreement, as follows:

_____

_____

The fees to be payable in the following manner and at the following times:

_____

_____

The attorney states and agrees that of the above total fees, ——— represents fees for services in connection with the organization and incorporation of the Corporation.

The owners and the attorney further covenant and agree that, if upon organization and incorporation, the Corporation fails or refuses to adopt and ratify this Agreement by appropriate resolution within —— days, this Agreement shall terminate and owners shall be liable only for payment for legal services rendered in connection with such organization and incorporation.

Signed this ——— day of ———, 19——.

Attorney: _____
Owners: _____

_____

_____

_____

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Exhibit A-2

SURVEY OF EXISTING RENTAL HOUSING

Name of town: _____ Date: _____

Listing of dwellings or Apartments for rent	Type of Dwelling or Apertment	Number of Bedrooms	Age of Unit	Central Heat		Is it Occupied		If vacant state no. of months	Monthly rental	Quality			Location		
				Yes	No	Yes	No			Good	Fair	Poor	Good	Fair	Poor

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Exhibit A-3—Rental Housing Survey

A rental housing project is being planned for this community. The project would provide comfortable living at reasonable rental rates. Your opinion on the following will help us to determine whether such a project is practical. This information does not obligate you in any way.

1. What age group are you in? 62 or over [ ] 50–61 [ ] 35–49 [ ] Under 35 [ ]

2. Are you or members of the household handicapped or impaired and in need of specially designed housing arrangements? Yes [ ] No [ ]

3. Number of person(s) in your household: 1 [ ] 2 [ ] 3 to 4 [ ] 5 to 6 [ ] 7 to 8 [ ] 9 or more [ ]

4. Annual income from all sources (including any social security, retirement pension, payments made on behalf of minor children, public assistance, etc.): Less than $3,410 [ ] $3,410–$4,925 [ ] $4,926–$6,440 [ ] $6,441–$7,960 [ ] $7,961–$9,475 [ ] $9,476–$10,990 [ ] $10,991–$12,505 [ ] $12,506–$14,020 [ ] $14,021–$15,540 [ ] $15,541–$17,055 [ ] Over $17,055 [ ]

5. Do you own ( ) or rent ( ) present residence? If you rent, what is your present rental rate? _____

6. Do you live in house ( ) Apartment ( ) Room ( ) On a farm ( ) In town ( )

7. Is your present housing modern ( ) Not modern, but adequate ( ) Inadequate ( ) If so, in what respect? _____

8. What amount of monthly rent do you pay with utilities included? Less than $55 [ ]; $55–85 [ ]; $86–115 [ ]; $116–145 [ ]; $146–175 [ ]; $176–205 [ ]; $206–235 [ ]; $236–265 [ ]; $266–295 [ ]; $296–325 [ ]; Over $325 [ ].

9. Would you want to maintain own yard ( ) Flower garden ( )

10. Would you be willing to move in if apartment was available _____, 19——? Yes ( ) No ( )

11. Name _____ Address _____ Telephone Number _____ Location of employment _____

12. Number of meals you would like prepared for you per day? _____

13. What other services would you like to have available to you?

a. Housekeeping services? Yes ( ) No ( )

b. Personal care services? Yes ( ) No ( )

c. Social and recreational activities services? Yes ( ) No ( )

d. Linen and laundry services? Yes ( ) No ( )

e. Health and medical related services? Yes ( ) No ( )

f. Beauty and barber services? Yes ( ) No ( )

g. Transportation or access services? Yes ( ) No ( )

h. Other (Specify) _____.

14. Type of building preferred

1-story ——

2-story ——

More than 2-storys ——

15. List any hobbies or organizational membership you have.

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Exhibit A-4
Page 1

RENTAL HOUSING SURVEY SUMMARY

Item	Age Head of Household: 62 or over	50 to 61	35 to 49	Under 35
Handicapped:				
Yes				
No				
Household Size (Bedrooms Needed)				
1 or 2 persons (1 bedroom)				
3 to 4 persons (2 bedrooms)				
5 to 6 persons (3 bedrooms)				
7 to 8 persons (4 bedrooms)				
Annual Income:				
Less than $3,420				
$3,421 - 4,925				
$4,926 - 6,440				
$6,441 - 7,960				
$7,961 - 9,475				
$9,476 - 10,990				
$10,991 - 12,505				
$12,506 - 14,020				
$14,021 - 15,537				
$15,538 - 17,053				
Over $17,054				
Present Housing:				
House				
Apartment				
Room				
Rent				
Own				
Modern				
Not modern, but adequate				
Inadequate				

Exhibit A-4
Page 2

RENTAL HOUSING SURVEY SUMMARY

Item	Age - Head of Household: 62 or over	50 to 61	35 to 49	Under 35
Rent:				
Less than $55				
$55-85				
$86-115				
$116-145				
$146-175				
$176-205				
$206-235				
$236-265				
$266-295				
$296-325				
Over $325				
Willing to move into Housing when completed:				
Yes				
No				

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Exhibit A-4
Page 3

RENTAL HOUSING SURVEY GRAPHICAL DISPLAY

Annual Income
(Adjusted Annual Income with 2 minors)

Present Rent Paying	Less than $3,410 ($2,640)	$3,411 - 4,925 ($2,641 - 4,080)	$4,926 - 6,440 ($4,081 - 5,520)	$6,441 - 7,960 ($5,521 - 6,960)	$7,961 - 9,475 ($6,961 - 8,400)	$9,476 - 10,990 ($8,401 - 9,840)	$10,991 - 12,505 ($9,841 - 11,280)	$12,506 - 14,020 ($11,281 - 12,720)	$14,021 - 15,540 ($12,721 - 14,160)	$15,541 - 17,055 ($14,161 - 15,600)	Over $17,055 ($15,600)
Less than $55											
$56-85											
$86-115											
$116-145											
$146-175											
$176-205											
$206-235											
$236-265											
$266-295											
$296-325											
Over $325											

1. Respondents falling below and to the left of the heavy line could perhaps benefit from FmHA Rental Assistance or HUD Section 8 since they are willing to pay more than 25 percent of their adjusted monthly income for the costs of rent and utilities.

2. Respondents, in the middle boxes would be willing to pay 25 percent of their adjusted monthly income for the costs of rent and utilities.

3. Respondents above and to the right of the diagonal boxes are not willing to pay 25 percent of their adjusted months income for the cost of rent and utilities.

4. Respondents in the right column are not likely eligible for occupancy.

Exhibit A-5
Page 1

HOUSING ALLOWANCES FOR UTILITIES AND OTHER PUBLIC SERVICES

NAME OF BORROWER

LOCATION AND IDENTIFICATION OF PROJECT

Part I

UTILITY OR SERVICE	Monthly Dollar Allowances 0-BR	1-BR	2-BR	3-BR	4-BR	5-BR
HEATING						
a. Natural Gas						
b. Bottle Gas						
c. Oil						
d. Electric						
AIR CONDITIONING						
COOKING						
a. Natural Gas						
b. Electric						
c. Bottle Gas						
OTHER ELECTRIC LIGHTING, REFRIGERATION, ETC.						
WATER HEATING						
a. Natural Gas						
b. Electric						
c. Bottle Gas						
d. Oil						
WATER						
SEWER						
TRASH COLLECTION						
OTHER (Specify)						
TOTAL ALLOWANCE (Round to next highest dollar)						

PREPARED BY: _____
Borrower or Agent Title Signature Date

APPROVED BY FARMERS HOME ADMINISTRATION

_____
Name Title Signature Date

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Exhibit A-5
Page 2

HOUSING ALLOWANCES FOR UTILITIES AND OTHER PUBLIC SERVICES

PART II

BLOCK A	BLOCK B
TO: _____ Name of Tenant	ALLOWANCE FOR UTILITIES AND SERVICES BILLED DIRECTLY TO AND PAID BY TENANT — Per Month
Address of Tenant	Heating..... $ _____
No. of Bedrooms _____	Air Conditioning..... _____
You will be billed directly for utilities and service charges. Block B sets forth the allowances credited in your rent for the payments of utilities. You may be billed for more or less than shown in Block B depending on your use of utilities.	Cooking..... _____
	Other Electric..... _____
	Water Heating..... _____
	Water..... _____
	Sewer..... _____
	Trash Collection..... _____
	Other (Specify)..... _____
	_____..... _____
Signature of Borrower or Agent	TOTAL (Round to next highest dollar) $ _____
_____ Date	

BILLING CODE 3410-07-C

Instructions for Preparation and Use of Housing Allowances for Utilities and Other Public Services

I. *General.* These instructions are for completing Exhibit A-5 for the establishment and use of approved utility allowances for tenants. The objective shall be to establish allowances at levels that will apply to the majority of the households assigned to the proper size unit.

II. *Determining Allowances.*

A. *Existing Construction.* The borrower shall provide information which shows the utility bills and fees for public services which have been charged to units in the project in previous years. If possible, this historical data should cover a period of at least 24 months and should show billings to all types and sizes of units in the project. If data is not available on the specific project, data from similar projects may be substituted. Consideration should be given to making proper adjustments in the data caused by some tenants' excessive use of utilities. Current rate schedules and known rate increases shall be used to estimate utility allowances. The following local sources should be contacted as appropriate:

(1) Electric utility suppliers
(2) Natural gas utility suppliers
(3) Water and sewer suppliers
(4) Fuel oil and bottle gas suppliers
(5) Public service commissions
(6) Real estate and property management firms
(7) State and local agencies including public housing authorities.

In those cases where a project utilizes a single meter for more than one living unit or where a single fuel supply or heating or cooling plant is used for more than one unit, the following factors shall be used to determine the prorata share of utility costs or public service fees per living unit:

Size of Unit	Factor
0-BR	0.5
1-BR	0.7
2-BR	0.9
3-BR	1.1
4-BR	1.4
5-BR	1.6

Example: An eightplex structure containing four one-bedroom apartments and four two-bedroom apartments has an average annual consumption of 42,000 kilowatt-hours of electricity. Allowance per unit is calculated thus:

Four (one-bedroom) @ .7 = 2.8
Four (two-bedroom) @ .9 = 3.6
Total 6.4

$\frac{\text{total use}}{\text{total of factors}}$ x cost per kilowatt-hour (kwh) = average billing (assume $.04 per kwh)

$\frac{42,000}{6.4}$ x .04 = 262.50

unit factor x average billing = unit allowance

(one bedroom) .7 x 262.50 = $183.75/yr.

(two bedroom) .9 x 262.50 = $236.25/yr.

B. *New Construction.* The applicant with assistance from the applicant's architect, mechanical engineer or other heating and cooling system specialists shall provide heating and cooling load calculations for each type and size of unit. Heating and/or cooling costs shall be calculated from these load factors using current rate schedules and known rate increases. Procedures described in the American Society of Heating, Refrigeration and Air Conditioning Engineers "Handbook of Fundamentals," the National Association of Homebuilders "Insulation Manual Home, Apartments" or other recognized authority may be used.

General appliance and lighting loads and fees for public services should be estimated using data from the local utility companies and from other sources listed in paragraph II A above.

C. *Type of Allowances.*

1. Separate heating and cooling allowances shall be established for the various types of multiple family housing financed by FmHA in the project. For example, separate allowances may be needed for duplexes, row or townhouses, garden and low and medium rise apartments. In addition to establishing different heating and cooling allowances for various types of structures, attention should be given to different allowances for water depending on whether tenants will have responsibilities for lawn care.

2. Allowances for air-conditioning shall be established only for those projects in which the owner furnishes a central air-conditioning system or other type unit as a part of the permanent equipment.

3. The cost of gas and electricity varies according to amounts consumed as shown on the appropriate rate schedules of the supplier. It is not possible to compute exactly the cost of electricity for any given function without knowing the total electrical usage for a unit. However, because neither the borrower nor the families know beforehand just what will be the combination of utilities for any unit rented, it will be necessary to approximate the allowances for each function (e.g., heating, cooking, etc.) as follows: For electricity the rates used for lighting, refrigeration, and appliances should be from the top of the rate schedule or the higher unit costs. Allowances for electric cooling, water heating, and space heating should be computed from the middle or lower steps in the rate schedules. Similarly, allowances for gas used for water heating and cooking should be computed using rates from the top of the rate

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schedule and for heating from the lower steps.

III. *Preparation By Borrower or Applicant.*

A. *Applicable Projects.* Except for projects operating on a profit basis, Exhibit A–5 will be completed in the original and three copies in all instances where the tenants pay utilities or authorized services directly. Where the borrower pays all utilities, Part I of Exhibit A–5 may also be required as part of the budget submitted for any new project if the loan approval official determines it is needed to properly evaluate projected utility costs. This form will establish the allowances for all size units in the project. The allowance shall be adequate for all utilities and any authorized services which are or will be payable directly by the tenants, except telephone and cable TV. The forms will be signed by the borrower. The original and two copies of the form will be submitted to FmHA. Back-up data and necessary documentation should be included with the submission.

B. *Submission of Supporting Data to FmHA.* The applicant will submit to FmHA adequate data to justify the utility allowance for the project. The data will include the following:

1. Completed Exhibit A–5.

2. List of local sources contacted for information and copies of any data provided by such sources.

3. Any data on allowances already established for the area.

4. Complete narrative statement and computations on method used in arriving at the allowances.

IV. *Actions by FmHA.* If FmHA finds the allowances acceptable, the approval portion of Part I will be completed on all copies and the original and one copy returned to the District Director. The District Director will keep a copy for the District Office file and return the original to the borrower. If the proposed utility allowance is unacceptable, the borrower will be requested to revise the data and resubmit it for further consideration.

V. *Subsequent Action by Borrower.* After approval by FmHA the borrower will complete Part II of the form and provide copies for each tenant paying utilities directly, by attaching it to the lease entered into by the borrower and tenant. The form will provide the household with the amount of allowance for each of the utilities and services which is to be paid by the tenant. If all utilities and services are paid by the borrower, Exhibit A–5 need not be attached to the lease.

Exhibit A–6—Information to be Submitted With Preapplication for Rural Rental Housing (RRH) Loan

The following information is to be submitted with Form AD–621, "Preapplication For Federal Assistance":

1. *Eligibility:*

(a) Financial Statement—Each applicant must submit a current, dated, and signed financial statement, showing assets and liabilities, with information on the status and repayment of each debt. If the applicant is a corporation other than a nonprofit corporation or a trust, a current financial statement will be required from each member, stockholder or beneficiary who holds an interest in the organization in excess of 10 percent. A dated and signed financial statement will be required of all general partners or trustees who hold an interest in a partnership or trust. A dated and signed certificate is required of each limited partner in a limited partnership, certifying to the approximate net worth of the limited partner. In any case in which a financial statement is required from an individual, it will also include the financial interests and signature of the spouse. The applicant must have initial operating capital and other assets needed for a sound loan. The initial operating capital required will amount to at least 2 percent of the total cost of the project to cover these costs. Loan funds may be included in the loan to pay the initial operating expense up to 2 percent of the development cost for nonprofit organizations and State and local public agencies. The applicant must also possess sufficient cash or land to meet any equity or development requirements. If the applicant is an organization which has not been formed at the time of filing the preapplication, the financial statements for the proposed general partners, stockholders, members, or beneficiaries must collectively (and in proportion to the proposed ownership interest of each) reflect sufficient cash or other liquid assets to meet any equity capital and initial operating capital requirement of the applicant organization. Prior to loan approval, however, the applicant must be legally organized and must submit a financial statement meeting these requirements. All financial statements and certificates of approximate net worth submitted in fulfillment of these requirements must contain the following statement immediately preceding the signature line:

(I) or (we) certify the above statements contained herein are a true and accurate statement of (my) or (our) financial condition as of the date stated herein. This statement is given for the purpose of inducing the United States of America to make a loan as requested in the loan preapplication or application of which this statement is a part.

(b) Evidence Concerning the Test for Other Credit—Applicants other than State or local public agencies are responsible for showing not only that they are credit worthy, but that other credit is not available at rates and terms that will enable the rental units to be rented to eligible tenants at rental rates within their payment ability. Applicants other than State or local public agencies should provide letter from other local real estate lenders evidencing the amount of loan funds they are willing to extend, the rates and terms at which the loans would be available, and if credit is not available, the reasons why other lenders are not willing to extend credit.

(c) Statement of applicant's experience in operating rental housing and related business—with a statement on the proposed method of operation and management.

(d) For an Organization Applicant—A copy of, or an accurate citation to, the specific provisions of State law under which the applicant is, or is to, be organized; a certified copy of the applicant's actual or a copy of the applicant's proposed charter, Articles of Incorporation, Bylaws, partnership agreement, certificate of limited partnership, or other basic authorizing documents; the names and addresses of the applicant's members, directors, and officers; and if a member of a subsidiary of another organization, its name, address, and principal business, if available.

(e) A written, dated, and signed statement from the applicant stating the following:

(I) or (we) understand and agree that the Farmers Home Administration (FmHA) will consider and identity of interest to exist between the loan applicant as the party of the first part and general contractors, architects, engineers, attorneys, interim lenders, subcontractors, material suppliers, or equipment lessors as parties of the second part under any of the following conditions: (1) When there is any financial interest of the party of the first part in the party of the second part; (2) when one or more of the officers, directors, stockholders, or partners of the party of the first part is also an officer, director, stockholder, or partner of the party of the second part; (3) when any officer, director, stockholder, or partner of the party of the first part has any financial interest whatsoever in the party of the second part; (4) when the party of the second part advances any funds to the party of the first part other than an interim lender advancing funds to enable the applicant to pay for construction and other authorized and legally eligible expenses during the construction period; (5) when the party of the second part provides and pays on behalf of the party of the first part the cost of any legal services, architectural services, engineering services, or interim financing other than those of a survey, general superintendent, or engineer employed by a general contractor in connection with obligations under the construction contract; (6) when the party of the second part takes stock or any interest in the party of the first part as part of the consideration to be paid them; and (7) when there exists or comes into being any side deals, agreements, contracts, or undertakings entered into thereby altering, amending, or cancelling any of the required closing documents or approval conditions as approved by FmHA. (I) or (we) certify that there is not now, nor will there be an identity of interest between or among the applicant, contractor, architect, engineer, attorney, interim lender, subcontractors, material suppliers, equipment lessors, or any of their members, directors, officers, stockholders, partners, or beneficiaries without prior written identification to FmHA and written consent to such identity of interest by FmHA. This statement is given for the purpose of inducing the United States of America to make a loan as requested in the loan preapplication or application of which this statement is a part.

(f) The social security number will be requested of the following:

(i) In the case of an individual, the applicant's and that of the spouse, if applicable.

(ii) In the case of a partnership, of all the general partners and their spouses.

(iii) In the case of a limited partnership, of all the general partners and their spouses.

(iv) In the case of a company, corporation, or nonprofit organization the IRS number and the social security number of it's officers, if at all possible.

The request for the social security number is only on a voluntary basis. The loan will not be denied for refusal to furnish the number.

(g) The applicant, the proposed architect and contractor (if known at this time) will be required to submit HUD Form 2530, "Previous Participation Certificate" fully completed.

2. *Need and Demand:*

(a) A realistic estimate of need and demand for the number of living units of the type proposed, based on the availability of rental housing and the number of eligible tenants living in the community and its trade area willing and able to pay the proposed rental rates. Applicants for loans to provide congregate housing with central dining area or space for support services including housing involving a group living arrangement, must furnish a narrative statement from local, State, and government agencies supporting the current and long-range need for such facilities by the handicapped in the community and its trade area.

(b) A schedule of proposed rental rates, and in the care of congregate housing proposal, a separate schedule listing the proposed cost of any non-shelter services to be provided.

3. *Site:*

(a) Size of tract, and a plat map identifying its boundaries.

(b) A map showing the location and other supporting information on its neighborhood and existing facilities, such as distance to shopping area, neighborhood churches, schools, available transportation, drainage, sanitation facilities, water supply, and access to essential services such as doctors, dentists, pharmacies, and hospitals.

(c) The identification of potential environmental impacts of the site and important constraints, i.e., the presence of floodplains, wetlands, prime or unique farmlands or other sensitive environmental features.

(d) The applicant should provide evidence of having control of the proposed site either by ownership or by executing an option to buy.

(e) The applicant should submit a written statement as to the proposed method of construction, i.e., owner/builder, negotiated bid or public bid.

4. *General Description of the Housing Planned* including the following:

(a) Schematic design drawings showing the proposed plot plan, typical unit plans, and elevations. If available, the proposed preliminary drawings and specifications may be submitted. This would be of assistance if it is determined that the loan must receive National Office authorization.

(b) Type of construction.

(c) The total number of living units and the number of each type of living unit proposed.

(d) Type of utilities such as water, sewer, gas, and electricity and whether each is public, community, or individually owned.

5. *Form FmHA 449–10, "Applicant's Environmental Impact Evaluation."*

Exhibit A–7—Information To Be Submitted With Application for Federal Assistance (Short Form)

The following information is to be submitted with Form AD–625, "Application for Federal Assistance (Short Form)":

1. A plot plan, detailed preliminary plans and specifications and any special design features for senior citizens or handicapped persons.

2. A detailed trade-item cost breakdown of the project for such items as land and right-of-way, building construction, equipment, utility connections, architectural/engineering and legal fees, and both on- and off-site improvements. The cost breakdown also should show separately the items not included in the loan, such as furnishings and equipment. This trade-item cost breakdown should be updated just prior to loan approval.

3. Information on the method of construction, on the proposed contractor if a construction contract is to be negotiated and on the architectural, engineering, and legal services to be provided.

4. Satisfactory evidence of review and approval of the proposed housing by applicable State and local officials whose approval is required by State or local laws, ordinances, or regulations.

5. A market survey report which should be based on the number of eligible occupants in the area who are willing and financially able to occupy the housing at the proposed rental levels. The economic justification for the housing and the size of the project should be based primarily upon the housing need and demand from eligible prospective occupants who are permanent residents of the community and its surrounding trade area. Permanent residents include those eligible residents of the community that are year-round farm laborers, civilian employees or military personnel of any military installation that may be located within the trade area of the community. Since the intent of the program is to provide adequate housing for the eligible permanent residents of the community, demand from the more temporary residents of a community (such as college students in a college town) should be discounted in determining project size. A market survey report will include:

(a) For a proposed project which will contain 10 or fewer units and will be in a community where an effective demand for rental housing obviously exists, statements supported by statistical data describing and explaining the basis for expecting a continued effective demand for the rural rental housing over the period of the loan. Such information may be assembled from census reports, county market evaluations made by the Department of Housing and Urban Development and other published data that shows the number of occupants living in the town or trade area who are eligible to occupy the proposed housing and the condition of the housing they occupy. This information will be used to help determine the maximum number of rental units that may be financed.

(b) For a proposed project that will include more than 10 units and for any smaller project where there is any doubt concerning the demand, a complete

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rental housing market analysis showing the need and demand for rural rental housing in the area based on the best information available. It will include:

(1) An estimate of number of houses or apartments in the area for rent or sale. Exhibit A–2 or a similar form should be used for this purpose.

(2) Characteristics of available rental housing such as location, quality and size of unit, type of building, age of structure, house value, tenure, vacancy rate, nature of vacancies, and price or rental levels.

(3) Characteristics of the persons eligible for occupancy of the proposed housing, such as single or couple, size of household, number of senior citizens, nonsenior citizens or handicapped persons, and income financial condition.

(4) Present living arrangements of eligible occupants in the area and the extent to which inadequate housing is associated with health or financial reasons.

(5) Estimate of the number of eligible occupants who are willing and financially able to occupy the proposed housing.

(6) In the case of a proposal involving congregate housing, with central dining area, space for support services, or housing involving a group living arrangement, a narrative statement from local, State, and/or Federal Government agencies supporting the current and long-range need for such facilities in the community and its trade area.

(c) If the housing is located in an area where there are relatively few eligible occupants, or for any other reason there is a question as to whether the housing will be fully occupied, signed expressions of interest in occupancy from a sufficient number of eligible occupants will be obtained so as to clearly indicate that full occupancy will occur soon after construction is completed. Exhibit A–3 or a similar form may be used for this purpose.

(d) The applicant will provide a written, signed certification that the information provided in the market study is true and accurate.

(e) For all projects containing over four units the applicant will submit an affirmative Fair Marketing Housing Plan for approval by FmHA.

6. A current dated and signed financial statement showing the debt structure of the applicant. (See item 1 a of Exhibit A–6)

7. Detailed operating budgets, showing a schedule of proposed rental rates, for the first year's operation and a typical year's operation. The first year's budget should show that the applicant has sufficient operating capital on hand or sufficient planned income to pay all operating costs and meet scheduled payments on debts during the planning and construction period prior to occupancy. The typical year's budget should show there will be ample income to pay essential operating costs, meet required debt payments, and permit accumulation of required reserves. Form FmHA 1930–7 "Statement of Budget, Income and Expense," and Exhibit A–5 (or similar forms) may be used for this purpose. The operating budgets should be updated if necessary just prior to loan approval.

(a) The initial budgets should include an allowance of 10 percent for vacancies, nonpayment of rent, and contingency expense. Projects being developed utilizing HUD's Section 8 Housing Assistance Payments program for new construction may use a lower rate; however, in no case should the allowance be less than 5 percent. The allowance in subsequent year budgets may be adjusted to be consistent with the actual past experience in vacancy, nonpayment of rent, and contingency needed for the project.

(b) The budgets should provide for accumulating a reserve at the rate of one percent per annum of the value of the loan amount until a reserve equal to 10 percent of the loan is reached. Budgets should not include an additional item for depreciation since the purpose of a reserve account is to provide funds for this purpose.

(c) All applicable taxes, including Federal and any State income taxes, should be included in the budgets and separately identified. If the applicant considers itself tax-exempt, evidence of exemption must be included in the loan docket before the loan is closed. In case of a nonprofit organization whose articles of incorporation and bylaws conform to Exhibits E and F of this Subpart, evidence of exemption from Federal income tax need not be obtained before the loan is closed if the applicant applies for a determination of exemption and agrees in writing to make any changes in its organizational documents that may be required by the Internal Revenue Service (IRS). Information as to Federal income tax exemption may be obtained from the District Office of the IRS. An eligible nonprofit organization should ordinarily be able to qualify for Federal income tax exemption under section 501(c)(4) of the Internal Revenue Code.

8. A description and justification of any related facilities (including but not limited to workshops, community buildings, recreation center, central cooking and dining facilities, or other similar facilities to meet essential needs) to be financed wholly or in part with loan funds.

9. A statement in narrative form outlining the proposed manner of management of the housing, such as whether by owner or by hired management firm or agent. Experience and other factors pertaining to be qualifications of the manager should be set forth and will be taken into consideration. If management will be performed by a hired management firm or agent a copy of the proposed management agreement should be submitted. It must contain the clause indicating that it is not in full force and effect unless and until approved by FmHA.

10. A management plan which sets forth clear and concise statements of policy concerning management and operation of the project and in accordance with the requirements of Section IV of Exhibit B to FmHA Instruction 1930–C. An acceptable management plan should be responsive in depth to each of the following applicable areas:

a. The relationship between owner and management agent (if applicable).
b. Personnel policy and staffing arrangements.
c. Publicizing and achieving early occupancy and affirmative marketing.
d. Tenant certification and vertification of income.
e. Tenant admissions policies and leasing policies.
f. Rent collection.
g. Rent increases.
h. Maintenance.
i. Records maintenance and reports.
j. Energy conservation measures.
k. Management-tenant relations.
l. Termination of leases and evictions.
m. Management agreement (if applicable).

In addition, attached to the management plan should be a copy of the proposed application for admission, waiting lists, lease or rental agreement, and rules and regulations governing administration and occupancy. The management plan must be submitted in writing and the applicant must certify that it is in compliance with the requirements of Subpart C to Part 1930 (FmHA Instruction 1930–C).

11. A schedule of any separate changes for the use of any related facilities, and in the case of congregate housing, a schedule of any separate charges for non-shelter services (such as meals, personal care, and housekeeping). These schedules should be supported by appropriate operating budgets for services to be provided.

12. When land is being purchased or a building site will be part of a tract owned by the applicant, or in any other case when necessary to clearly identify the property, a satisfactory survey of the land to be given as security prepared by a licensed surveyor will be included in the loan docket. If necessary, a new survey will be obtained.

13. An affirmative fair housing market plan on Form HUD 935.2 or the applicant must provide evidence of being a signatory to a voluntary affirmative marketing agreement approved by the Department of Housing and Urban Development. (See § 1901.203 of Subpart E, to Part 1901 (FmHA Instruction 1901–E) specifically § 1901.203.) The affirmative fair housing marketing plan must be prepared in a complete, meaningful, responsive, and detailed manner.

Exhibit B—Interest Credits on Insured RRH and RCH Loans

I. *Purpose:* This Exhibit outlines the policies and conditions under which interest credits will be made on insured Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) loans.

II. *Definitions:* As used in this Exhibit.

A. *"Interest Credit"* means the amount of assistance the Farmers Home Administration (FmHA) may give a borrower toward making its payments on an insured RRH or RCH loan.

B. *"Interest Credit and Rental Assistance Agreement"* means an agreement between FmHA and the borrower providing for interest credits and/or rental assistance, RRH, or RCH loans. This agreement will be on Form FmHA 444–7, "Interest Credit and Rental Assistance Agreement (RRH and RCH loans)."

C. *"Project"* means the housing and related facilities financed with the RRH or RCH loan.

D. *"Basic Rental"* means a unit rental charge determined on the basic of operating the project with payments of principal and interest on a loan to be repaid over a 40- or 50-year period at 1 percent per annum.

E. *"Market Rental"* means a unit rental charge determined on the basis of operating the project with the payments of interest which the borrower is obligated to pay under the terms of the promissory note.

F. *"Overage"* means the amount by which total rental payments paid by the tenants of a project exceed the total basic monthly charge. The amount of overage will be computed as interest in excess of a 1 percent rate.

III. *Eligibility:* Borrowers may receive interest credits provided the loan (1) was made on or after August 1, 1968, to a nonprofit corporation, consumer cooperative, State or local public agency, or to any individual or organization operating on a limited profit basis; (2) is repaid over a period of 40 years or more; and (3) meets the other requirements of this Exhibit subject to the following limitations:

A. Plan I will be only to broadly based nonprofit corporations and consumer cooperatives. However, Plan I will no longer be available June 1, 1980. All RRH borrowers operating under Plan I as of that date may continue operating under it in accordance with the applicable requirements of this Exhibit and of this subpart.

B. Plan II will be available to broadly based nonprofit corporations, consumer cooperatives. State or local public agencies, or to profit organizations and individuals operating on a limited profit basis.

IV. *Options of Borrowers:* An eligible borrower operating under Plan I or Plan II, as described below, will determine interest credits on its loan in the respective manner indicated.

A. *Plan I.*

1. Borrowers operating under this plan must agree to limit occupancy of the housing to low-income nonsenior citizens and low- and moderate-income senior citizens or handicapped persons.

2. A borrower under Plan I generally must:

a. Determine that there is a firm market and continuing demand for rental housing by persons within the applicable income limits.

b. Prepare a budget on the basis of a 3 percent loan.

c. Determine rentals to be charged.

B. *Plan II.*

1. Borrowers operating under this plan must agree to limit occupancy of the housing to households, persons, and senior citizens and handicapped persons of low and moderate incomes. Under Plan II interest credits are based on the cost of operating the project and the size and income of the household.

2. A borrower under Plan II generally must:

a. Prepare two budgets, one on the basis of a 1 percent interest rate loan to determine basic rental, and a second budget on the basis of a loan at the interest rate shown in the promissory note to determine market rental.

b. Determine both basic rental and market rental for the different units based on the two budgets (See Exhibit B–1)

c. Determine adjusted personal income of each tenant and have each tenant complete Form FmHA 444–8, "Tenant Certification." Determine the monthly rent to be paid by each tenant household.

d. Determine the required monthly payment on the loan at one percent interest and overage month for the total units developed with any one loan. The amount of payment will be computed separately for each loan using Form FmHA 444–29, "Project Worksheet for Interest Credit and Rental Assistance."

V. *Determining the Amount of Payment:*

A. *For Plan II.* The amount of payment will be determined by using the amortization factor for a payment at a three percent interest rate (use the same number of years that was used for computing the regular installment on the note) plus all surcharges.

B. *For Plan II.* The amount of payment will be determined by using the amortization factor for a payment at a one percent interest rate (use the same number of years that was used for computing the regular installment on the note) plus all overages.

VI. *Special Conditions.*

A. *Leases.*

1. Monthly or annual leases will be executed with each tenant occupying a rental unit in accordance with the requirements of Subpart C of Part 1930 (FmHA Instruction 1930–C). The State Director should issue State supplements covering any State laws, special conditions or local customs affecting leasing arrangements that may exist in the state. The lease form, for projects operating under Plan II, in addition to other statements outlining the conditions of the lease, should contain the following statement: "I understand and agree that the monthly rental payment under this lease will be $———. I also understand and agree that my monthly rental payment under this lease may be raised or lowered, based on changes in by income and changers in the number and age of persons living in my household. The rental payment will not, however, be less than $——— (Basic Rental) nor more than $——— (Market Rental) during the terms of this lease.

2. The lease agreement in congregate housing cases must include in the major provisions a statement that the tenant's ability to live independently in the project with the support services available will be evaluated on a continuous basis. The tenant may be requested to vacate if a determination is made that the tenant is no longer able to live in the project without additional assistance. This would involve cases where the tenant has progressed or regressed to a state of health that requires, in the opinion of the management, a level of care not available in the congregate housing facility.

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3. Loans will be made on the basis of the units being rented to eligible tenants under Plan II as described in paragraph IV of this Exhibit. If in connection with the servicing of the loan it becomes necessary to permit ineligible persons to occupy the housing for temporary periods in order to protect the financial interest of the Government, the State Director may authorize the borrower in writing to rent units to ineligible persons subject to the State Director determining that:

a. The borrower has made a diligent but unsuccessful effort to rent the units to eligible tenants.

b. The borrower will continue to try to find eligible tenants.

c. The units will be rented on a monthly basis and only until they can be rented to eligible persons.

d. The ineligible tenants will be charged a rental surcharge as described in paragraph VI B of this Exhibit.

4. All lease agreements must include a statement indicating that the project is financed by the Farmers Home Administration and is subject to the Title VI nondiscrimination provisions, and that all complaints are to be directed to the Secretary of Agriculture or to the Office of Equal Opportunity, USDA.

B. *Rental Surcharges to Ineligible Tenants.* If a unit is rented in accordance with the provisions of paragraph VI A 3 to a tenant who is ineligible because the income exceeds the maximum income limits, the ineligible tenant will:

1. Under Plan I, be charged a 25 percent rental surcharge. To illustrate, if the unit normally rents for $60 per month, this ineligible tenant would pay $75 per month. The 25 percent surcharge or $15 in this illustration, would be paid on the account and would be included with, but in addition to, the regular payment on the loan.

2. Under Plan II, be charged the market rental.

C. *Vacancies.*

1. When construction is completed and all the units are ready for occupancy, vacant units will be assumed to be rented at the basic monthly rental in computing the amount of payment.

2. When all construction is not completed but all FmHA loan funds are outstanding, some of the units are ready for occupancy, and the contractor consents in writing to permit occupancy, the incompleted units will be assumed to be rented at the market monthly rentals in computing the amount of payment.

D. *Interest Credit for Projects Under the Department of Housing and Urban Development (HUD) Housing Assistance Payments Program or FmHA Rental Assistance.* When rental units in an RRH project are leased under the Section 8 program, Form FmHA 444–7 will be completed in accordance with Exhibit H for new construction and Exhibit G for existing units. Projects authorized to utilize rental assistance will complete Form FmHA 444–7 in accordance with Exhibit C.

E. *Special Cases.* Cases and situations not covered by this Exhibit or Exhibit C or H will be handled on an individual case basis with instructions from the National Office.

F. *Understanding Eligibility.* The borrower should understand the eligibility requirements for occupancy of the housing and that the housing is or will be rented only to eligible tenants unless authorized in writing by FmHA.

VII. *EXECUTION OF AGREEMENTS:*

A. *Interest Credit and Rental Assistance Agreement.* Interest credits may become effective at the beginning of the month in which construction is completed on a structure and the units are ready for occupancy. When the project consists of more than one structure, interest credits may become effective for each structure as it is completed and ready for occupancy. When the borrower knows the date the interest credit should become effective, the borrower should notify the District Director and execute Form FmHA 444–7. A separate Interest Credit and Rental Assistance Agreement will be executed for each loan the borrower receives.

B. *Change in Interest Credit Plan.* A borrower under Plan I may change, if it can meet the requirements of the other plan, by executing a new Interest Credit and Rental Assistance Agreement.

C. *Borrowers who are not Receiving Interest Credit.* If an eligible borrower did not execute an Interest Credit and Rental Assistance Agreement in accordance with paragraph VII A, it may do so at anytime during the year. Form FmHA 444–7 will be executed and should be effective prior to the next payment date.

VIII. *TENANT CERTIFICATION:* Tenant certification and recertification for interest credit borrowers will be in accordance with § 1944.215 (j) of Subpart E of Part 1944.

IX. *LOAN PAYMENTS:* With each payment made, the borrower will complete Form FmHA 444–29. The FmHA representative handling the transmittal to the Finance Office will complete Form FmHA 444–9, "Multiple Housing Certification and Payment Transmittal." The forms will be executed in accordance with the requirements of the Forms Manual Insert. The transmittal of these will be handled in accordance with FmHA Instruction 1951–B.

A. *Plan I.*

1. The borrower will make monthly payments in an amount necessary to repay the loan as if the loan carried a 3 percent interest rate. When a rental surcharge is collected as described in paragraph VI B of this Exhibit, the surcharge will be included and will be credited as interest to the account as a regular payment. The special handling of payments involving rental surcharges is explained in paragraph IX A 2 of this Exhibit.

2. When a payment is made for any month that involves a rental surcharge, Forms FmHA 444–29 and FmHA 444–9 will be completed with the amount of the surcharge being inserted in the spaces provided. These forms will be completed and the amount shown and transmitted regardless of whether the surcharge is actually collected by the borrower.

B. *Plan II.* The borrower will make monthly payments as though the note was written at a 1 percent interest note plus any overage due and payable whether or not collected from the tenant.

X. *SERVICING:* Any unusual case that cannot be serviced in accordance with this Exhibit should be submitted to the National Office with the facts involved and the State Director's recommendations.

Exhibit B–1—Example of Interest Credit Determination for RRH or RCH Projects (Plan II)

$100,000 RRH Loan—Approved During 1972 Fiscal Year—Project Contains Four 1-Bedroom Units (600 Sq. Ft. each) and Four 2-Bedroom Units (700 Sq. Ft. each)

Budget for Market Rent [1]

Operating, maintenance, vacancy, and contingency allowance, reserve and return to investor, if applicable, $5,277.
Loan repayment at 9% interest, $100 M×$91.23 [2], $9,123.
Total Annual Cost, $14,000.
One bedroom rent: 600/5200=.11538×1,200=$138.46.
Two bedroom rent: 700/5200=.13462×1,200=$161.54.
($138.46×4)+($161.54×4)=$1,200 monthly income.
$14,440÷12=$1,200 cost per month.

[1] Two complete and accurate budgets must be prepared. One for the Market Rent and one for the Basic Rent. (The expense items in the budgets shown in this illustration are only for illustration purposes and are not intemized).

[2] Factor for 50 years. If the regular installment on the note was amortized using a factor for less than 50 years, substitute the appropriate factor for a corresponding number of years.

Budget for Basic Rent [1]

Operating, maintenance, vacancy, and contingency allowance, reserve and return to investor, if applicable, $5,277.
Loan repayment at 1% interest, $100 M×$25.52 [2], $2,552.
Total Annual Cost, $7,829.
One bedroom rent: 600/5200=.11538×652=$75.23.
Two bedroom rent: 700/5200=.13462×652=$87.77.
($75.23×4)+($87.77×4)=$652 monthly income.
$7,829÷12=$652 [3] cost per month.

Exhibit C—Rental Assistance Program

I. *General.* The objective of the rental assistance program is to reduce the rents paid by low-income households. This Exhibit sets forth the policies and procedures and delegates authority under which rental assistance (RA) will be extended to eligible tenants occupying eligible Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) projects financed by FmHA. This Exhibit also applies to Farm Labor Housing (LH) projects when the borrower is a broadly-based nonprofit organization, nonprofit organization of farmworkers, or a State or local public Agency. Rental assistance will supplement the benefits available to tenants under the interest credit program outlined in Exhibit B to this Subpart.

II. *Definitions.*

A. *Adjusted Annual Income.* This is the total planned income of the household for the next 12 months as defined in § 1822.3(n) of Part 1822 Subpart A (paragraph III N of FmHA Instruction 444.1), less 5 percent, thereof, and less an additional $300 for each minor person, excluding the tenant and co-tenant, who is a member of the household and lives in the rental unit. For RRH and RCH loans the fixed $400 maximum deduction for continued and extended health care of a member of the household will not apply in determining the rental payment amount. However, as to determining tenant eligibility it will remain at a maximum of $400 per month.

B. *Adjusted Monthly Income.* This is the amount obtained by dividing the Adjusted Annual Income by 12 and rounded to the nearest dollar.

C. *Eligible Tenants.* Any low-income household, handicapped person, or senior citizen that is unable to pay the approved rental rate plus utility allowance for an eligible FmHA RA units within 25 percent of their adjusted monthly income and whose adjusted annual income does not exceed the limit established for the State as indicated in Exhibit C to Part 1822 Subpart A (FmHA Instruction 444.1).

D. *Eligible Project.*

1. All projects must convert to Interest Credit Plan II before they are eligible to receive rental assistance except (a) LH loans and grants, and (b) direct RRH, and insured RRH loans approved prior to August 1, 1968. All new RRH projects must also operate under Plan II to receive rental assistance. For a borrower to have an eligible project, the loan must be a:

a. RRH insured or direct loan made to a broadly-based nonprofit organization, or State or local agency, or

b. RRH insured loan to an individual or organization who has or will execute a Loan Resolution or Loan Agreement agreeing to operate the housing on a limited profit basis as defined in § 1944.205(r) of this Subpart, or

c. RCH insured or direct loan, or

d. LH loan, or an LH loan and grant combination, made to a broadly-based nonprofit organization or nonprofit organization of farmworkers or a State or local public Agency.

2. Projects with all or a part of the rental units under contract with the Department of Housing and Urban Development (HUD) developed under the Section 8 program for new construction or rehabilitation by either the dual or single track processing procedures will not be considered an eligible project. This exemption does not prohibit the borrower from utilizing HUD's Section 8 Housing Assistance Payments Program for existing housing and FmHA rental assistance for other eligible households in the same project.

E. *Rental Assistance.* Rental assistance, as used in this Exhibit, is the difference between 25 percent of the household's adjusted monthly income and the approved rental rate (including costs of all utilities and services, when applicable) for the rental unit being occupied by the household. When the household's adjusted monthly income is less than the allowance established for utilities and services billed directly to and paid by the tenant, the owner will pay the household that difference in accordance with paragraph VII A of this Exhibit. Rental Assistance is further defined as:

1. For projects operating on Interest Credit Plan II, it is the difference between 25 percent of the household's adjusted monthly income and the basic rent including utilities for the rental unit.

2. For all direct RRH loans, insured RRH loans approved prior to August 1, 1968, and all eligible LH loans, it is the difference between 25 percent of the household's adjusted monthly income and the approved market rental rate including utilities for the rental unit.

F. *Approved Rental Rate.* The rental rates (basic and/or market rent) determined by the budget for the project and approved by FmHA. Rental rates will be considered approved if the budget for the year has been approved in accordance with § 1930.124 Part 1930 Subpart C (FmHA Instruction 1930–C) and utility allowances, when required, have been determined and approved in accordance with paragraph VIII B of this Exhibit. The rental rate includes the amortized principal and interest payments, operating and maintenance costs, required deposits to the reserve account and a return on the owner's initial investment when allowed by FmHA regulations. The cost of utilities and other public services when paid by the owner will be included in the operating and maintenance expenses to determine the approved rental rates.

G. *Utility Allowances.* The allowance approved by FmHA to cover the cost of utilities which are payable directly by the households.

III. *Eligibility of Borrower.* All borrowers who meet the eligible project definition in paragraph II D of this Exhibit are eligible and are encouraged to utilize the rental assistance program and receive rental assistance payments on behalf of low-income tenant as provided for in accordance with this Exhibit. Generally, the borrower will initiate the processing of a rental assistance application. A borrower who does not request rental assistance may be encouraged to do so by the District Director if rental assistance units are available and 20 percent or more of the households eligible for rental assistance in an eligible project petition the borrower to obtain rental assistance on their behalf. The petitions shall be in writing to the borrower and contain the signature of the head of each household who is paying more than 25 percent of their adjusted monthly income for rent including utilities and desiring rental assistance. A copy of the petition will be submitted to the District Director.

IV. *Eligibility of Tenants.* All tenants as defined in paragraph II C of this Exhibit are eligible to receive the benefits of rental assistance when occupying a rental unit in an eligible project provided the project owner has agreed to provide such assistance in accordance with this Exhibit and there are RA units available.

V. *Priority of Rental Assistance Applications.* The National Office may establish a State quota on the number of rental units that may receive rental assistance in any fiscal year. The State Director will limit the approval of rental

[2] Rounded to nearest dollar.

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assistance to no more than the number of units allocated to the State. Unless otherwise stated by the National Office, the State allocation will indicate the number of Rental Assistance (RA) units for existing projects and the number of RA units to be used with the applications for loans. The priority in allocating RA units will be as follows:

A. *Allocation to Projects Within a State.* The State Director will distribute any RA units allocated to the State in accordance with any specific instructions from the National Office and approve requests for rental assistance to projects in accordance with the provisions of this Exhibit.

1. *Existing Housing:* The State Director will distribute any RA units allocated to the State for existing RRH, RCH, and LH projects by considering Forms FmHA 444–25, "Request for Rental Assistance," that have been submitted by eligible borrowers. The State Director shall authorize rental assistance to projects with priority given to projects based on the earliest date that Form FmHA 444–25 and other required information is submitted to FmHA in acceptable form. (Also see paragraph X). The number of RA units to be granted in any project will be based on the number of households in the project needing rental assistance up to the maximum allowed. The National Office shall notify the State Director each year of any specific date by which all requests for rental assistance must be submitted to FmHA for consideration.

2. *New Housing:* Any RA units allocated to the State for new construction (which includes substantial rehabilitation) shall be distributed on a priority basis in the following order:

a. RRH or RCH projects to be provided in areas where HUD Section 8 units under the FmHA set-aside are not available.

b. Applications for RRH and RCH loans where the market survey information indicates that without RA, a large percentage of the prospective tenants will be paying in excess of 25 percent of their adjusted monthly income for rent including utilities. When the number of RA units available is inadequate to cover all such applications, the units will be distributed giving priority to those projects located in areas identified as having the greatest housing needs and selected for funding in accordance with § 1944.231(d)(3) of this Subpart.

c. For LH projects, RA units will be allocated by the National Office on a case-by-case basis at the time the projects are considered for funding at the National Office level.

3. *Limitation on number of units of rental assistance in each project:* The maximum number of rental units in a project to obtain rental assistance is limited to the following:

a. No limitation for eligible labor housing loan and grant projects.

b. No limitation for RRH, RCH or SCH projects designed and limited to housing for the senior citizen or handicapped except that the State Director may limit the percentage of RA units granted to senior citizen or handicapped projects to no more than 40 percent of the number of rental units if it appears that the number of RA units distributed to the State will not be adequate to approve all requests for rental assistance.

c. An RCH or RRH project designed and/or primarily occupied by low- and moderate-income households will be limited to not more than 40 percent of the total number of rental units in the project.

d. An RCH or RRH project planned and designed for a mix of senior citizen or handicapped persons and low- and moderate-income households will be limited to not more than 40 percent of the total number of rental units designed for low- and moderate-income households and no limitations on the rental units designed for and occupied by senior citizens or handicapped persons.

B. *Granting Exceptions.*

1. *State Directors Authority.* An exception to the 40 percent limitation indicated in paragraphs V A 3 a, c and d of this Exhibit may be granted by the State Director for up to 70 percent of the rental units in any particular project (fractional units will be rounded to the next higher whole number). However, the total number of units of rental assistance granted by the State Director including exceptions, cannot exceed the number of RA units allocated to that State. Exceptions will be granted only when RA units are or can be made available and the following conditions exist:

a. When more than 40 percent of the rental units are occupied by households who are paying more than 25 percent of their adjusted income for rent including utilities, and such units are no larger than needed to meet the household's need, or

b. The tenants in a project that is being assisted at the 40 percent level experience a hardship as a result of an income decrease or a rental increase and must obtain rental assistance to remain in the project, or

c. The project is being developed in an area of extremely low-income households and the majority of the proposed tenants will be paying in excess of 25 percent of their income for rent including utilities.

2. *National Office Authority.* If the project is located in or is being developed in an area of extremely low-income households and the majority of the tenants are, or will be, paying in excess of 25 percent of their income for rent including utilities, the National Office may authorize the State Director to grant approval for a greater number of RA units on a case-by-case basis for up to 100 percent of the rental units to receive rental assistance. Such requests will be submitted to and approved by the National Office prior to loan granting or requesting obligation of rental assistance for more than 70 percent of the rental units in the project.

C. *Processing Exception Requests.*

1. A request for an exception to the 40 percent limitation for existing projects will be submitted by the borrower to the District Director. After reviewing the request for completeness, accuracy, and sufficient documentation to fully support the request, the District Director will submit the request with supporting documentation and recommendations to the State Office by memorandum for approval. Included in the memorandum will be the number and percentage of rental units in excess of the 40 percent limit and justification for the approval. When National Office authorization is required to exceed the 70 percent limitation, the State Director will request this authorization by memorandum and will include the following:

a. For new projects, Form FmHA 444–25, complete data and documentation on the rental housing market situation, complete data and documentation on the income of the households likely to be served, the comments of the District Director, and the comments and recommendations of the State Director. If an applicant requests authority to exceed the 70 percent limitation for a new project after the loan is approved, such requests will not be approved until the project is completed, and at least partially occupied and it is apparent that full rentup will not occur unless the 70 percent limitation is exceeded.

b. for existing projects, Form FmHA 444–25, Form FmHA 444–29, "Project Worksheet for Interest Credit and Rental Assistance," with columns 1 through 12 completed for each tenant in the project, a copy of the project's waiting list for occupancy identifying eligible prospective tenants whose incomes have been verified and who are willing to occupy vacant units if an exception to the 70 percent limitation were made. A copy of any existing Rental Assistance Agreement and

modifications thereto which may be in effect on the project, the comments of the District Director, and the comments and recommendations of the State Director.

2. The State Director will maintain form FmHA 444–28, "Record of Rental Assistance Agreement." The record will include the borrower's case number, fund code, loan number, number of rental units in the project, number of units for rental assistance authorized and the effective date of each agreement and amendment. This information will be obtained from Form FmHA 444–25, Form FmHA 444–26, "Request for Obligation of Rental Assistance", and Form FmHA 444–27, "Rental Assistance Agreement." Any changes which are made in the number of rental units assisted will be recorded in the Record of Rental Assistance Agreements. Form FmHA 444–28 will be used for keeping this record.

VI. *Priority Among Eligible Households Within a Project Receiving Rental Assistance.* The borrower will determine priority for RA among tenants living in a project and among households applying for occupancy in accordance with this paragraph.

A. *In Existing Projects:*

1. If the project is fully occupied at the time the rental assistance is granted, priority will be given to households in residence paying the highest percentage of its annual adjusted income for rent including utilities. However, no eligible household occupying a rental unit in the project will be required to move from the project to allow a household applying for a rental unit who has a higher priority for rental assistance to move in.

2. If the project has vacancies or vacancies occur and rental assistance is available, priority will be given to households already living in the project who are eligible for rental assistance before any prospective tenants are considered for occupancy and rental assistance. Priority for occupancy by new tenants in congregate housing projects will be based upon the selection criteria set forth in the borrower's statement of policy regarding management and operation submitted in accordance with Exhibit A–7 to this Subpart and approved by FmHA. Priority for occupancy by new tenants in other projects will be based on the date of the household's application for occupancy. If more than one household applies for a rental unit on the same date, the application will be time dated. If the household with the earliest date of application for occupancy is unable or does not want to accept rental assistance, the rental unit will be offered to the next earliest application for occupancy. The occupancy application of a household who is unable for personal reasons or does not want to accept rental assistance when notified, will be returned and noted in the record as of the current date just in case the household wishes to be considered for occupancy at a later date.

3. If the project has vacancies or vacancies occur and rental assistance is not available, a household eligible for rental assistance may accept occupancy but cannot receive rental assistance. Such households will be considered for rental assistance in accordance with paragraph VI A 1. If such households elect not to accept occupancy because rental assistance is not available, their application for a unit will retain its original date for priority.

4. Tenants receiving the benefits of rental assistance shall continue receiving such benefits as long as they remain eligible tenants and there is a rental assistance agreement in effect.

B. *In New Projects.* Applications for occupancy should be accepted during the construction phase of the project. Priority in congregate housing projects will be given based on the selection criteria set forth in the borrower's FmHA approved statement of policy regarding management and operation. Priority in other projects will be given based on the date of the household's application for occupancy and in accordance with Section V D to Exhibit B to Subpart C to Part 1930 (FmHA Instruction 1930–C). If all or a percentage of the rental units are authorized to receive rental assistance, such number of units will not be rented to households whose adjusted annual income exceeds the limits established for the State as indicated in Exhibit C to Part 1822 Subpart A (FmHA Instruction 444.1) without the written approval of the District Director. The District Director will not grant such approval until a review has been made of the borrower's method of advertising the rental units and it has been determined that households eligible for rental assistance are not available or do not desire occupancy.

VII. *Responsibilities of Borrower in Administering the Rental Assistance Program.* Each borrower and management agent for each project that is to receive rental assistance should fully understand the responsibilities and requirements of carrying out the program. The borrower and management agent are the key to the successful operation of the program. The following guidelines will be followed:

A. Direct rental assistance payments will not be made to eligible tenants receiving rental assistance except in those instances when utilities are paid by the household and 25 percent of the household's monthly adjusted income is less than the allowance for utilities. In these cases, the borrower will pay the household that difference upon the household providing the borrower evidence that the utility bills are due or have been paid (See paragraph VIII A). The borrower will maintain an accurate accounting of each tenant's utility allowance and payments made to tenants.

B. The borrower must initially submit Form FmHA 444–8, "Tenant Certification," for each tenant. The initial tenant certification will be submitted to the FmHA District Office with the next monthly payment following the date that the tenant occupies the rental unit. Subsequent tenant certifications must be obtained annually and submitted to the District Office with the first monthly payment following the date of the certification. The borrower or management agent will establish an adequate recordkeeping system of tenant certifications to assure this responsibility is carried out.

C. The incomes reported by the tenants must be verified by the borrower in accordance with § 1944.215(j)(3) of this Subpart.

D. Borrowers utilizing RA must comply with § 1930.124 Part 1930 Subpart C (FmHA Instruction 1930–C). RA will not be approved for projects until the operating budgets have been approved by the FmHA State Office or the District Director. District Directors, with assistance from the State Office, must closely supervise and assist borrowers in complying with all accounting and management requirements.

E. A borrower participating in the RA program must have an FmHA approved lease with the assisted household.

1. Monthly or annual leases will be executed with each household occupying a rental unit. The State Director may issue State supplements covering any special conditions or local customs affecting leasing arrangements. In addition to other statements outlining the conditions of the lease, the lease form for tenants receiving RA should contain the following statements rather than those required in paragraph VI A of Exhibit B to this Subpart:

I understand and agree that as long as I receive rental assistance, my total monthly payment for rent and utilities will be $———— (25 percent of my adjusted monthly income). If I pay any or all utilities directly (not including telephone or cable TV), a

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utility allowance of $——— will be deducted from my monthly payment for rental and utilities. If the utility allowance is in excess of 25 percent of my adjusted monthly income, the lessor will pay me this excess.

I further agree to notify the lessor of any permanent increase in adjusted monthly income or change in the number of members living in the household. I understand that should I receive rental assistance benefits to which I am not entitled that I may be required to make restitution and I agree to pay any amount of benefits received to which I was not entitled.

I also understand and agree that my monthly payment for rent under this lease may be raised or lowered, based on changes in household income and changes in the number and age of members living in my household. Should I no longer receive rental assistance as a result of these changes, I understand and agree that my monthly payment for rent may be adjusted to no less than $——— (basic rental) nor more than $——— (market rental) during the remaining term of this lease.

Eligible borrowers with LH loans and grants, direct RRH loans, or insured RRH loans approved before August 1, 1968, may omit the words "no less than $——— (basic rental) nor more than" from the last sentence of the above statement.

2. Lease clauses which fall within the classifications listed below shall not be included in any new lease or lease that must be renewed.

a. *Confession of Judgment.* Prior consent by tenant to any lawsuit the landlord may bring against the tenant in connection with the lease and to a judgment in favor of the landlord.

b. *Distraint for Rent or Other Charges.* Authorization to the landlord to take property of the tenant and hold it as a pledge until the tenant performs any obligation which the landlord has determined the tenant has failed to perform.

c. *Exculpatory Clause.* Agreement by tenant not to hold the landlord or landlord's agents liable for any acts or omissions whether intentional or negligent on the part of the landlord or the landlord's authorized representative or agents.

d. *Waiver of Legal Notice by Tenant Prior to Actions for Eviction or Money Judgments.* Agreement by tenant that the landlord may institute suit without any notice to the tenant that the suit has been filed.

e. *Waiver of Legal Proceedings.* Authorization to the landlord to evict the tenant or hold or sell the tenant's possessions whenever the landlord determines that a breach or default has occurred, without notice to the tenant or any determination by a court of the rights and liabilities of the parties.

f. *Waiver of Jury Trial.* Authorization to the landlord's lawyer to appear in court for the tenant and to waive the tenant's right to a trial by jury.

g. *Waiver of Right to Appeal Judicial Error in Legal Proceedings.* Authorization to the landlord's lawyer to waive the tenants right to appeal on the grounds of judicial error in any suit or the tenant's right to file a suit in equity to prevent the execution of a judgment.

h. *Tenant Chargeable with Costs of Legal Actions Regardless of Outcome.* Agreement by the tenant to pay attorney's fees or other legal costs whenever the landford decides to take action against the tenant even though the court finds in favor of the tenant. (Omission of such clause does not mean that the tenant, as a part to a lawsuit, may not be obligated to pay attorney's fees or other costs if the tenant loses the suit.)

3. A copy of a completed Exhibit A-5 of this Subpart when the tenants pay part or all of the utilities and a copy of the established rules and regulations for the project will be provided to the tenant as attachments to the lease.

VIII. *Handling Utility Allowances and Determining the Amount of Rent.*

A. *Payment of Utilities.* All units in projects to be constructed will be individually metered for utilities unless adequate justification is provided to show that it would be infeasible or excessively costly. In an existing project which is not individually metered, the project will be converted to individual meters if feasible and an energy savings can be achieved. In every case, the approved rents for the projects must include the cost of utilities (except telephone and charges for cable TV) paid by the owner. In a project where the tenant is billed directly for the utilities, the tenant receiving the benefit of rental assistance will pay the owner as rent the difference between the established allowance for utilities which the tenant pays and 25 percent of the household's adjusted monthly income. If, however, 25 percent of the household's adjusted monthly income is less than the monthly allowance for utilities, the owner will pay the tenant that difference as prescribed in paragraph VII A. In a project where the owner pays all the utilities, the tenant will pay the owner the full 25 percent of the adjusted monthly income toward the approved rent for the rental unit being occupied.

B. *Determining the Allowance.* The utility allowance will be determined and recorded by the use of Exhibit A-5 of this Subpart and submitted to FmHA for approval. The data will be analyzed by the FmHA State Office to determine the allowance that will be permitted. The utility allowance is to be approved on a project-by-project basis. If the allowances are reasonable for the project, the Exhibit A-5 will be approved. The allowable amounts will be indicated in each lease agreement between the owner and tenant.

C. *Changes in Allowances.* The utility allowance should be adjusted annually to reflect substantial changes in utility and public service rates. Normally, allowances will be adjusted on an annual basis if necessary when the owner submits a new budget for approval. Changes in utility allowance which will result in increasing the amount of the rent paid by tenants will be processed in accordance with Part 1930 Subpart C Exhibit C.

IX. *Terms of the Rental Assistance Agreement.*

A. *Effective Date.* The effective date of the Rental Assistance Agreement will be the first day of the month it is executed unless assistance is granted under appeal in accordance with paragraph XII of this Exhibit; then, the effective date will be retroactive to the first of the month in which assistance was denied.

B. *Term.*

1. *For New Construction.* The term of the agreement shall be for a period of twenty (20) years from the effective date of the agreement, unless superceded by a modified agreement in accordance with Section 4 of the rental assistance agreement or terminated in accordance with conditions stated in Section 8 or 10 of the rental assistance agreement. Modified agreements will extend only for the remaining period of an original agreement. (A new construction project is one in which no unit has been occupied.) Upon expiration of the twenty year period, a new agreement may be executed. If a new agreement is considered, it will be made for a period not to exceed five (5) years.

2. *For Existing.* The term of the agreement shall be for a period of five (5) years from the effective date of the agreement, unless superceded by a modified agreement in accordance with Section 4 of the rental assistance agreement or terminated in accordance with conditions stated in Section 8 or 10 of the rental assistance agreement. Modified agreements will extend only for the remaining period of an original agreement. (An existing project is one in which one or more units have been occupied.) Prior to the termination date of any agreement a new Form FmHA 444-25 may be submitted. If a new agreement is consummated, it will be made for a period not to exceed five (5) years.

X. *Processing of Rental Assistance Applications.* All requests for rental assistance will be processed in accordance with this paragraph and may be approved by the State Director.

A. *Existing Projects.*

1. A borrower with an eligible project in which there are tenants paying in excess of 25 percent of their adjusted income for rent is encouraged to file Form FmHA 444-25, with the District Director. A separate Form FmHA 444-25 will be submitted for each project. The borrower should include the following with each request.

a. Form FmHA 444-29, "Project Worksheet for Interest Credit and Rental Assistance," with columns 1 through 12 completed for each tenant in the project.

b. Approved or proposed budget for the year with Exhibit A-5 of this Subpart attached when applicable.

c. An energy audit for the project conducted in accordance with the procedures established for the Department of Energy (DOE) Resource Conservation Service (RCS) or other energy auditing procedures acceptable to the State Director. This audit will determine what improvements could be made to conserve energy in the project, how much energy would be saved and what the estimated costs of the improvements would be.

2. The District Director will review the budget, Exhibit A-5, and form FmHA 444-25 submitted by the borrower to assure that the items are complete and accurate. The District Director will complete Form FmHA 444-25 and submit all data provided by the borrower to the State Director.

B. *Projects to be Funded.*

1. Applicants requesting funding under the RRH or LH programs planning to utilize the rental assistance program should submit a completed Form FmHA 444-25 to the County Supervisor or District Director, as appropriate, when submitting a preapplication or application for funding.

2. The number of units of rental assistance requested should be based on the market data for the area, the proposed rental rates as reflected in a budget for the project, and the income levels of the prospective tenants.

C. *State Director Action on Requests for Rental Assistance.*

1. *Timing of Action.* If the State Director determines that rental assistance can be granted or a change in the number of rental assisted rental units is needed, Form FmHA 444-26 will be prepared. Form FmHA 444-26 will be prepared and distributed in accordance with the Forms Manual Insert. *Form FmHA 444-27 will not be executed until the request for Obligation of Rental Assistance has been returned from the Finance Office indicating that the requested number of RA units and funds have been obligated for the project.*

2. The State Director shall consider the amount of proposed rent increase attributable to increased energy costs and compare that to the amount of monthly payments necessary to amortize a subsequent loan for energy improvements which would yield utility cost savings equivalent to the proposed rent increase attributable to energy costs. Where the amortized loan payment is equal to or less than the cost of energy which would be saved the State Director shall approve the rent increase only if the cost effective energy conservation measures are taken.

3. *Initial Request.* Once the initial request for rental assistance has been obligated by the Finance Office, the State Director will prepare an original and three copies of Form FmHA 444-7, "Interest Credit and Rental Assistance Agreement RRH and RCH Loans," and an original and two copies of Form FmHA 444-27. The State Director will keep one copy of the Forms in the State Office borrower file. The original and two copies of Form FmHA 444-7 and the original and one copy of Form FmHA 444-27 will be sent to the District Office with a covering memorandum authorizing the District Director to execute the agreements. Both originals and copies will be executed by the borrower and District Director. The District Director will retain the original of Form FmHA 444-27 in the borrower file and the executed copy will be given to the borrower. The District Director will send the original of Form FmHA 444-7 to the Finance Office, retain a copy in the borrowers file and an executed copy will be given to the borrower.

4. *Modification of an Existing Agreement.* When a change in the amount of rental assistance has been obligated by the Finance Office, the Form FmHA 444-27 will be prepared, signed and distributed in the same manner as provided for in paragraph X C 2 except a Form FmHA 444-7 is not required.

5. If rental assistance cannot be provided, the State Director will by letter, through the District Director, inform the borrower in writing of the reasons.

XI. *Method of Payment of Rental Assistance to Borrower.* The borrower will prepare a separate report for the project using Form FmHA 444-29. The worksheet will be prepared and distributed in accordance with the instructions for preparation or the Forms Manual Insert. This information will be used by the District Director in preparation of Form FmHA 444-9, "Multiple Housing Certification and Payment Transmittal." The form must be completed in accordance with the FMI. The required payment will be transmitted with the form to the Finance Office. The rental assistance payment will be mailed by the Finance Office directly to the borrower within 15 working days of receipt of a properly completed Form FmHA 444-9. Since the check will be sent directly to the borrower, the District Director must be sure that the borrower's address on Forms FmHA 440-57, "Acknowledgement of Obligated Funds/Check Request," and 450-14, "Annual Statement of Loan Account," are correct. If the address shown on these forms is not correct, the District Director will complete Form FmHA 450-10, "Advice of Borrower's Change of Address or Name," prior to any request for payment of rental assistance. However, when a borrower has more than one project within a county, all checks must be sent to the same address.

XII. *Rights for Appeal if Rental Assistance is not Granted by Farmers Home Administration.*

A. Tenants who have requested rental assistance in writing but have been denied such assistance (whether in whole or in part) by the borrower are to be notified in writing of the specific reasons why they have been denied rental assistance. The tenant will be notified that he or she can appeal the adverse decision in accordance with § 1944.555 (c) of Subpart L to Part 1944 (FmHA Instruction 1944-L) within 5 days of receipt of the notice of adverse action.

B. Borrowers who have requested rental assistance and are denied such assistance, in whole or in part by the Farmers Home Administration, will be notified in writing of the specific reasons why such assistance was denied. The letter informing the borrower of the denial will advise the borrower that the decision may be appealed in accordance with the provisions of Subpart B to Part 1900 (FmHA Instruction 1900-B). The letter informing the borrower of the denial of assistance and the reasons therefor must include:

1. In case the determination was made by the borrower, that the decision is subject to appeal to the FmHA District Director giving name and address.

2. In case the decision was made by the District Director, that an appeal may

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be made to the State Director giving name and address.

3. In case the decision was made by the State Director, that an appeal may be made to the Administrator giving name and address.

4. A statement that "any appeal must be filed within 45 days of the date of this notice of denial of assistance."

D. If the State Director denies an appeal for assistance, the borrower may appeal that decision to the Administrator, Farmers Home Administration, Washington, DC 20250. The Administrator upon review of the appeal shall either affirm or reverse the decision.

E. If at any time, it is determined that a borrower or a household was eligible to receive assistance after the effective date of this Exhibit and assistance could have been made available in accordance with this Exhibit, the provision of the assistance will be retroactive to the first of the month in which assistance was initially denied.

F. All actions by FmHA officials must be within 30 days of receipt of an appeal.

XIII. *Forms and Exhibits.* Exhibits A–5 and Form FmHA 444–7 are to be utilized in determining amount of rental assistance to be provided.

Exhibit D—Guide Letter for Use in Informing Interm Lender of FmHA's Commitment

(Name and Address of Private Lender)

Dear Mr. ———

(For Organizations)

Reference is made to a request from the (Smith Housing Assoc.) through (John Smith) its President, for interim financing from your firm to construct a rental housing facility at the interest rate and terms and conditions agreed upon as reflected in the attached letter.

(For Individuals)

Reference is made to a request from (John Jones) for interim financing from your firm to construct a rental housing facility at the interest rate and terms and conditions agreed upon as reflected in the attached letter.

This letter is to confirm certain understandings on behalf of the Farmers Home Administration (FmHA).

Final Drawings, specifications, and all other contract documents have been prepared and approved, and the applicant is prepared to commence construction. It has been determined by the applicant and the Farmers Home Administration that the conditions of loan closing can be met. Funds have been obligated for the project, as evidenced by the attached copy of Form FmHA 440–57, "Acknowledgement of Obligated Funds/Check Request."

The applicant has been required by FmHA to deposit $ ——— with your firm to be utilized prior to any interim loan funds. The applicant has proposed and FmHA has agreed that you may first advance any applicant funds on deposit, and then advance the proceeds of the interim loan in accordance with the terms and conditions stated in your attached letter, as needed to pay for construction and other authorized and legally eligible expenses incurred by the applicant. It is understood, however, that advances of both the applicant's funds and the interim loan funds will be made only upon presentation of proper statements and partial payment estimates prepared by the builder, and approved for payment by the consulting architect, the applicant, and the FmHA District Director.

We have scheduled the Farmers Home Administration loan to be closed when construction to be financed with loan funds is substantially complete in accordance with the FmHA approved [contract documents,]* drawings and specifications, (except for minor punch list items), and the applicant provides evidence and a signed certification indicating that there are no unpaid obligations outstanding in connection with the project. At that time, funds not exceeding the FmHA loan amount will be available to pay off the amount of loan advances your lending institution has made for authorized approved purposes, including accrued interest to the date of closing.

FmHA cannot provide you with an unconditional letter of commitment guaranteeing FmHA loan closing. Factors such as noncompletion, default, unacceptable workmanship, and marked deviation from approved drawings and specifications could prevent the FmHA loan from being closed.

These problems can be minimized by making a thorough review of the [contract documents,]* drawings and specifications, evaluating the qualifications and past performance of the builder, and obtaining an adequate corporate surety bond guaranteeing both payment and performance. If the builder is unable to provide a surety bond, we suggest that your lending institution consider making advances for partial payments to the builder [in accordance with the provisions of the construction contract]* based upon no less than 60 percent and no more than 90 percent of the value of acceptable work in place, less the aggregate of previous payments.

The following are additional safeguards to help assure FmHA loan closing:

1. We invite you or your representatives to accompany FmHA personnel during construction inspections so that at least 3 or 4 joint inspections at critical points during construction, (including the final inspection), can be made to help assure that construction is proceeding in accordance with the FmHA approved drawings and specifications.

2. FmHA will maintain its commitment in the amount of the obligated loan funds for a reasonable period of time after the expiration of any specified completion dates, provided work on the project is progressing satisfactorily and any identified problems have been resolved.

3. FmHA will not arbitrarily abandon your lending institution in the event of default. Should the contractor default, FmHA will attempt to provide financial assistance to the applicant in accordance with our administrative procedures and lending requirements, provided a new contractor can complete the project for a total cost within the security value of the project. If this is not possible, or should the FmHA loan applicant become unable or unwilling to continue with the project, FmHA also will attempt to provide financial assistance to any eligible applicant (subject to the availability of funds, our administrative procedures, and our lending requirements), to purchase the completed project from your lending institution.

4. FmHA is aware that circumstances, such as subsurface ground conditions and change orders necessitated by required changes in the work to be performed, may cause cost increases after FmHA loan approval and the obligation of FmHA loan funds. When justified FmHA may make subsequent loans when necessary to help cover these eligible costs, provided additional loan funds are available the change orders were approved by FmHA, the increased costs are legitimate and are for authorized loan purposes, and the total cost of the project is within its security value.

Your assistance to the applicant is appreciated.

Sincerely,

State Director.

*These words may be omitted for projects constructed by the owner-builder method of construction without a construction contract.

Exhibit E—Articles of Incorporation (Not for Profit)

We, the undersigned, incorporators, hereby associate ourselves together to form and establish a corporation not for profit under the laws of the State of ———.

First: The name of the corporation is ———.

Second: The location of its principal place of business in this State is ———, ——— County.

Third: The location of its registered office in this State is ———, ——— County.

Fourth: The name and address of its resident agent in this State is ———, ———, ———, ——— County.

Fifth: This corporation is organized not for profit under

and the objects and purposes to be transacted and carried on are to promote the general social welfare of the community and for that purpose:

to acquire, construct, provide, and operate rental housing and related facilities suited to the special needs and living requirements of eligible occupants as determined by Farmers Home Administration regulations, without regard to age, race, color, religion, sex, marital status, physical or mental handicap (must posses capacity to enter into a legal contract) or national origin;

to acquire, improve, and operate any real or personal property or interest or right therein or appurtenant thereto;

to sell, convey, assign, mortgage, lease any real and personal property;

to borrow money and to execute such evidence of indebtedness and such contracts, agreements, and instruments as may be necessary, and to execute and deliver any mortgage, deed of trust, assignment of income, or other security instrument in connection therewith; and

to do all things necessary and appropriate for carrying out and exercising the foregoing purposes and powers.

Sixth: The number of directors shall be prescribed in the bylaws, but shall be not less than five nor more than nine.

Seventh: The corporation formed hereby shall have no capital stock. It shall be composed of members rather than shareholders. The conditions and regulations of membership and the rights or other privileges of the classes of members shall be determined and fixed by the bylaws.

Eighth: The corporation is not organized for precuniary profit and shall have no power to declare dividends. No part of its net earnings shall inure to the benefit of any member, director, or individual. The balance, if any, of all money received by the corporation from its operations, after payment in full of all operating expenses, debts, and obligations of the corporation of whatsoever kind and nature as they become due, shall be used to make advance payments on a ——— owed by the corporation, to lower the lease-rental charge to occupants of the housing, to provide additional housing and related facilities, or for some related purpose.

Ninth: The name and place of residence (post office address) of each of the incorporators and initial directors until the first annual meeting:

Incorporators	Directors

Tenth: In the event of dissolution of this corporation, or in the event it shall cease to carry out the objectives and purposes herein set forth, all business, property, and assets of the corporation shall go and be distributed to one or more such nonprofit corporations or municipal corporations as may be selected by the board of directors of this corporation, to be used for, and devoted to the purpose of carrying on a nonprofit housing project for such rural residents or other purpose to promote the general social welfare of the community. In no event shall any of the assets or property, in the event of dissolution thereof, go or be distributed to members, either for the reimbursement of any sum subscribed, donated, or contributed by such members or for any other purposes, provided that nothing herein shall prohibit the corporation from paying its just debts.

Eleventh: The duration of the existence of this corporation shall be perpetual.[1]

In testimony whereof, We have here unto subscribed our names on ———, 19——.

(Insert acknowledgement or other form if required by State law.)

Exhibit F—Bylaws

Bylaws of

A nonprofit corporation.

Article I—Office.

Section 1.01. Principal Office.

The principal office of the corporation in the State of ——— shall be located at ———, County of ———.

Section 1.02. Registered Office and Agent.

The corporation shall have and continuously maintain in the State of ——— a registered office and a registered agent whose office is identical with such registered office.

[1]Duration should be perpetual, or long enough to cover the period of the loan plus five years, or for the longest period permitted by the State law.

Article II—Members.

Section 2.01. Eligibility for membership.

The corporation shall have one class of members. Members may be individuals or organizations. Any legally competent person of good reputation who resides in the Town of ——— or in the surrounding trade area, applies for membership, and pays the required membership fee shall be eligible.

Section 2.02. Approval of Applications for Membership.

All applications for membership shall be approved at (1) any special or regular meeting of the board of directors, when a quorum is present, by a majority vote of the board members or (2) by a majority vote of the exisitng membership present at any annual or special meeting held in accordance with Article III herein.

Section 2.03. Voting Rights.

Each member shall be entitled to one vote on each matter submitted to a vote of the members.

Section 2.04. Termination of Membership. A member may be suspended or expelled, for cause, by the vote of not less than three-fourths of the members present at a meeting of the members, provided notice of such proposed action shall have been duly given in the notice of the meeting and provided the member has been informed in writing of the charges preferred against the member at least ten days before such meeting. The members shall be given an opportunity to be heard at such meeting. The members of the board, by a majority vote of those present at any regularly constituted meeting, may terminate the membership of any member who becomes ineligible for membership and may suspend or expel any member who shall be in default with respect to any financial obligation to the corporation.

Section 2.05. Resignation. Any member may resign by filing a written resignation with the secretary.

Section 2.06. Reinstatement. Upon written request signed by a former member and filed with the secretary, the board may reinstate such former member to membership upon such terms as the board may deem appropriate.

Section 2.07. Transfer of Membership. Membership in this corporation is not transferable or assignable.

Section 2.08. Membership—Fees. The membership fee shall be $——— or such other amount as may be fixed by the members at any annual meeting or at any special meeting called for the purpose. No person shall attain

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membership before paying the treasurer the membership fee.

Section 2.09. Membership—Liability for Corporation's Obligations. Fully paid members shall not be liable for any debts or obligations of the corporation and shall not be subject to any assessment; but the members at any annual meeting or at any special meeting called for the purpose, may fix reasonable annual dues to become effective after not less than 30 days' notice to all members of such action.

Section 2.10. Membership—Minimum Number. The board will make all reasonable efforts to maintain a broad community-wide membership of not less than 25 members at any time.[1]

Section 2.11. Membership—Residence. A majority of the members shall be residents of the community where the housing is or will be located.

Article III—Meetings of Members.

Section 3.01. Annual Meeting. An annual meeting of the members shall be held at ———— on the ———— of the month of ———— each year, beginning with the year 19—— at the hour of —— o'clock, ——. M., for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday in said State, such meeting shall be held on the next succeeding business day. If the election of directors shall not be held on the day designated herein for any annual meeting, or at any adjournment thereof, the board shall cause the election to be held at a special meeting of the members as soon thereafter as convenient.

Section 3.02. Special Meetings. Special meetings of the members may be called by the president, the board, or not less than one-tenth of the members.

Section 3.03. Place of Meeting. The board of directors may designate any place within or not more than ———— miles from ———— as the place for an annual meeting or for any special meeting called by the board. If no designation is made or if a special meeting be otherwise called, the place of meeting shall be the registered office of the corporation in said State.

Section 3.04. Notice of Meetings. Written or printed notice stating the place, day, and hour of any meeting of members shall be delivered either personally or by mail, to each member entitled to vote at such meeting, not less than seven or more than thirty days before the date of such meeting, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting. In case of a special meeting or when required by statute of these bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the member at the address as it appears on the records of the corporation, with postage thereon prepaid.

Section 3.05. Informal Action by Members. Any action required by law to be taken at a meeting of the members, or any action which may be taken at a meeting of the members, may be taken without a meeting upon written consent or approval of all the members, setting forth the action so taken.

Section 3.06. Quorum. At such a meeting a quorum shall consist of 30 percent [2] of the members, or twice the number of directors, whichever is greater. If a quorum is not present at any meeting of members, a majority of the members present may adjourn the meeting from time to time without further notice.

Section 3.07. Proxies.

(a) At any meeting of the members, a member entitled to vote may vote by proxy executed in writing by the member. No proxy shall be valid after eleven months from the date of its execution. A proxy may be cancelled by notice executed by the member with like formality and delivered to the secretary.

(b) At each meeting of the members, every member shall be entitled to vote in person or by proxy and shall be entitled to cast one vote. The votes for directors shall be by ballot. Only the person in whose name membership is standing in the books of the corporation on the day such meeting shall be entitled to vote in person or by proxy.

(c) For any person to represent a member by proxy, such person must submit a power of attorney to the secretary of the board for examination at least one hour before the time of meeting. When the secretary has certified the power of attorney is in good order, the proxy holder shall have the right to do any and all things which might be done by the member were the member present in person, which right shall include the establishment of a quorum and the organizing of any meeting.

Article IV—Board of Directors.

Section 4.01. General Powers. The affairs of the corporation shall be managed by its board of directors.

Section 4.02. Number, Tenure, and Qualifications. The number of directors shall be ————.[3] The directors elected at the annual meeting to succeed the directors named in the Articles of Incorporation shall be elected for staggered terms of three, two, and one year. As the terms of such directors expire, their successors shall be elected for terms of three years and until their successors are elected and have qualified. Directors shall be members of the corporation and residents of the community where the housing is or will be located. Of the total number directors, at least five must be among the leaders in such community.

Section 4.03. Regular Meetings. A regular annual board shall be held, without other notice than these bylaws, immediately after and at the same place as the annual meeting of the members. The board may provide by resolution the time and place, within or not more than ———— miles from ————, for holding of additional regular meetings of the board without other notice than such resolution.

Section 4.04. Special Meetings. Special meetings of the board may be called by or at the request of the president and shall be called by the secretary at the request of any two directors. The authorized person or persons calling a special meeting of the board may fix any place within or not more than ———— miles from ———— as the place for holding such meeting.

Section 4.05. Notice. Notice of any special meeting of the board shall be given at least two days previously thereto by written notice delivered personally, or four days notice sent by mail or telegram, to each director at the directors address as shown by the records of the corporation. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any director may waive notice of any meeting. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. The business to be transacted at the meeting need not be specified in the notice or waiver of notice of such meeting, unless specifically required by law or these bylaws.

Section 4.06. Quorum. A majority of the board shall constitute a quorum for the transaction of business at any meeting of the board; but if less than a majority of the directors are present at said meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

Section 4.07. Manner of Acting. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the board, unless the act of a greater number is required by law or by these bylaws. The board may also act by written consent of all the directors of the corporation setting forth the action taken.

Section 4.08. Vacancies. Any vacancy occurring in the board shall be filled by the board until the next meeting of the members and until a successor has been elected by the members to fill a vacancy. Such person shall be elected for the unexpired term of office of the predecessor in office.

Section 4.09. Compensation. Directors shall not receive any compensation for their services as directors.

Section 4.10. Directors—Absence from meetings. Any director who is absent from —— consecutive meetings without excuse satisfactory to the board shall be deemed to have surrendered the office as director.

Section 4.11. Directors—Residuary Powers. The board shall have the powers and duties necessary or appropriate for the administration of the affairs of the corporation. All powers of the corporation except the specifically granted or granted or reserved to the members by law, the articles of incorporation, or these bylaws shall be vested in the board.

Section 412. Directors—Removal from Office. A director may be removed from office, for cause, by the vote of not less than three-fourths of the members present at a meeting of the members, provided notice of such proposed action shall have been duly given in the notice of the meeting and provided the director has been informed in writing of the charges preferred against the director at least 10 days before such meeting. The director involved shall be given an opportunity to be heard at such meeting. Any vacancy created by the removal of a director shall be filled by a majority vote, which may be taken at the same meeting at which such removal takes place.

Article V—Officers

Section 5.01. Officers. The officers of the corporation shall be a president, a vice president, a secretary, and a treasurer. The board may elect or appoint such other officers as it shall deem desirable, such officers to have the authority and perform the duties prescribed, from time to time, by the board. The offices of secretary and treasurer may be combined and held by one person.

Section 5.02. Election and Term of Office

(a) The officers of the corporation specified in Section 5.01 shall be elected from the membership of the board by the board at its annual meeting or as soon thereafter as feasible. New offices may be created and filled at any meeting of the board. Each officer shall hold office until the next annual election of directors and until a successor shall have been duly elected and shall have qualified.

(b) The term of office shall be one year. Election of officers shall take place at the annual board meeting and shall be by ballot cast by qualified directors. A plurality of votes cast shall elect.

Section 5.03. Removal. Any officer elected or appointed by the board may be removed by the board by two-thirds vote of the remaining directors whenever in its judgment the best interests of the corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the officer so removed.

Section 5.04. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or otherwise, may be filled by the board by majority vote for the unexpired portion of the term.

Section 5.05. The president shall be the principal executive officer of the corporation and shall in general supervise and control all the business and affairs of the corporation. The President shall preside at all meetings of the members and of the board. The president may sign, with attestation of the secratary or any other proper officer of the corporation authorized by the board, any deeds, mortgages, bonds, contracts, or other instruments which the board authorizes to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the board or these bylaws or statute to some other officer or agent of the corporation and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the board from time to time.

Section 5.06. Vice President. In the absence of the president or in the event of an inability or refusal to act, the vice president shall perform the duties of the president and, when so acting, shall have all the powers of and be subject to all the restrictions upon the president. Any vice president shall perform such other duties as from time to time may be assigned by the President of the board.

Section 5.07. Treasurer. The treasurer shall give a bond for the faithful discharge of duties in such sum and with such surety or sureties as the board shall determine. The treasurer shall have charge and custody of and be responsible for all funds and securities of the corporation; receive and give receipts for moneys due and payable to the corporation, from any source whatsoever, deposit all such moneys in the name of the corporation in such banks, trust companies, or other depositories as shall be selected in accordance with the provisions of Article VIII of these bylaws; and in general perform all duties incident to the office of treasurer and such other duties as from time to time be assigned by the president or the board.

Section 5.08. Secretary. The secretary shall keep the minutes of the meeting of the members and the board in one or more books provided for that purpose, see that all notices are duly given in accordance with the provisions of these bylaws or as required by law; be custodian of and see that the seal of the corporation is affixed to all documents the execution of which on behalf of the corporation under its seal is duly authorized in accordance with the provisions of these bylaws; keep a register of the post office address of each member, which shall be furnished to the secretary by such member; and in general perform all duties incident to the office of secretary and such other duties as from time to time may be assigned by the president or the board.

Article VI—Order of Business

Section 6.01. Order of Business. The order of business at any regular or special meeting of the members or the board shall be:

(a) Reading and approval of any unapproved minutes.

(b) Reports of officers and committees.

(c) Unfinished business.

(d) New business.

(e) Adjournment.

Section 6.02. Parlimentary Prodcedure. On questions of parlimentary procedure not covered in these bylaws, a ruling by the president shall prevail.

[1] For projects exceeding $100,000, the minimum of members should be larger than 25, and should be at least one member per unit in the project.

[2] For large organizations, a smaller figure may be used if it will not result in a quorum of less than 20 members.

[3] Number of directors must be not less than 5 and must be selected by a procedure that insures that the interest of minorities and women are adequately represented.

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Article VII—Committees

Section 7.01. Committee of Directors. The board of directors, by resolution adopted by majority of the directors in office, may designate one or more committees, each of which shall consist of one or more directors, which committees, to the extent provided in said resoluton shall have and exercise the authority of the board in the management of the corporation; but the designation of such committees and the delegation thereto of authority shall not operate to relieve the board, or any individual director, of any responsibility imposed upon the board or any individual director by law.

Section 7.02. Other committees. Other committees not having and exercising the authority of the board in the management of the corporation may be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. Except as otherwise provided in such resolution, members of each such committee shall be members of the corporation, and the president of the corporation shall appoint the members thereof. Any member thereof may be removed by the person or persons authorized to appoint such member whenever in their judgment the best interest of the corporation shall be served by such removal.

Section 7.03. Term of Office. Each member of a committee shall continue as such until the next annual meeting of the members of the corporation and until a successor is appointed, unless the committee shall be sooner terminated, or unless such member be removed from such committee, or unless such member shall cease to qualify as a member thereof.

Section 7.04. Chairman. One member of each committee shall be appointed chairman by the persons authorized to appoint the members thereof.

Section 7.05. Vacancies. Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

Section 7.06. Quorum. Unless otherwise provided in the resolution of the board of directors designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

Section 7.07. Rules. Each committee may adopt rules for its own government not inconsistent with these bylaws or with rules adopted by the board of directors.

Article VIII—Contracts, Checks, Deposits, and Funds

Section 8.01. Contracts. The board may authorize any officer or officers, agent or agents of the corporation, in addition to the officers so authorized by these bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation; and such authority may be general or confined to specific instance.

Section 8.03. Deposits. All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories as the board may select.

Section 8.04. Gifts. The board may accept on behalf of the corporation any contribution, gift, bequest, or devise for the general purposes or for any special purpose of the corporation.

Article IX—Certificates of Membership

Section 9.01. Certificates of membership. The board may provide for the issuance, and determine the form of certificates evidencing membership in the corporation. Such certificates shall be signed by the president and the secretary, sealed with the seal of the corporation, and consecutively numbered. The name and address of each member and the date of issuance of the certificate shall be entered on the records of the corporation. If any certificate becomes lost, multilated, or destroyed, a new certificate may be issued upon such terms and conditions as the board may determine.

Section 9.02. Issuance of Certificates. When a member has been elected to membership and has paid any dues that may then be required, a certificate of membership shall be issued in his or her name and delivered to the member by the secretary.

Article X—Books and records

The corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, the board, and committees having any of the authority of the board of directors, and shall keep at the registered or principal office a record giving the names and addresses of the members. All books and records of the corporation may be inspected by any member, or members agent or attorney, for any reasonable time. The board shall cause an audit of the records of the corporation to be made each year by a competent auditor.

Article XI—Fiscal Year

The fiscal year of the corporation shall begin on the first day of January and end on the last day of December in each year.

Article XII—Seal

The board shall provide a corporate seal, which shall be in the form of a circle and shall have inscribed thereon the name of the corporation and the words, "corporate seal."

Article XIII—Waiver of Notice

Whenever any notice is required to be given under the provisions of the statutes of said State or the articles of incorporation or the bylaws of the corporation, a waiver thereof in writing signed by the person or person entitled thereto, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Article XIV—Repeal or Amendment of Bylaws

Section 14.01. These bylaws may be repealed or amended by a majority vote of the members present at any annual meeting of the members, or at any special meeting of the members called for such purpose, at which a quorum is present: provided, however no such action shall change the purposes of the corporation so as to impair its rights and powers under the laws of said State, or to waive any requirements of bond or any provision for the safety and security of the property and funds of the corporation or its members or to deprive any member without an express assent of rights, privileges, or immunities then existing. Notice of any amendment to be offered at any meeting shall be given not-less than 7 nor more than 30 days before such meeting and shall set forth such amendment.

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned secretary of the corporation identified in the foregoing bylaws does hereby certify that the foregoing bylaws were duly adopted by the members of said corporation, as bylaws of said corporation, on the ——— day of ——————— 19—— at a duly called and constituted meeting of the members, and that they do now constitute the bylaws of said corporation.

———————————

Secretary

[Corporate Seal]

Exhibit G—RRH Loans and the HUD Section 8 Housing Assistance Payments Program (Existing Units)

I. *General.* The Exhibit contains the policies and procedures that will be followed by the Farmers Home Administration (FmHA) to permit the utilization of *existing Section 515 rural rental housing (RRH) units* for leasing under the Department of Housing and Urban Development (HUD) Section 8 Housing Assistance Payments Program.

II. *Applicability.* All FmHA RRH borrowers are authorized to utilize the procedure outlined in this Exhibit and the HUD Section 8 Housing Assistance Payments Program for existing housing as outlined in HUD's regulations 24 CFR Part 882, (as amended.) To promote the use of the Section 8 Housing Assistance Payments Program with existing projects, the following action should be taken:

A. District Directors should inform all RRH borrowers operating in the area of their jurisdiction of the contents of this Exhibit.

B. The HUD Section 8 program could benefit any eligible tenant in an RRH project who is paying more than 25 percent of the tenant's income for rent. Therefore, RRH borrowers should advise tenants occupying a unit of a project who are paying more than 25 percent of their adjusted income for housing of the possibility of obtaining Section 8 housing assistance payments. *Section 8 assistance for existing housing is administered by local housing agencies* authorized by HUD to administer the program in the area. In areas where no housing agency has been established to administer the program, interested citizens and the local government may wish to establish such an agency.

III. *FmHA policies concerning rental rates and payments.* A. Under the Section 8 Housing Assistance Payments Program, HUD will pay that portion of the tenant's rent including utility allowance in excess of 15–25 percent of the household's income. The contract rent to be established under the HUD Section 8 program will be as follows: (1) For borrowers with a 3 percent direct RRH loan and borrowers operating in accordance with interest credit *Plan I,* the *contract rent will be the market rental rate* for the units as determined by the current approved annual budget *using a 3 percent amortization factor* for principal and interest payments, (2) for borrowers operating *without interest credit* the *contract rent will be the market rental rate* for the unit as determined by the current approved annual budget using the amortization factor for the note rate of interest for principal and interest payments, (3) for borrowers operating in accordance with interest credit *Plan II,* the *contract rent will be the basic rental rate* as determined by the current approved annual budget using a 1 percent interest amortization factor for principal and interest payments.

B. The method of calculation and transmittal of the scheduled payment to the Finance Office will be in accordance with Exhibit B of this Subpart.

IV. *Responsibilities.* A. *Household.* A household must obtain a Certificate of Family Participation to obtain Section 8 assistance. A household receiving housing assistance under the Section 8 program will be responsible for fulfilling all of its obligations under the Certificate of Family Participation issued to it by the Public Housing Agency (PHA) and under the lease with the owner.

B. *Owner (FmHA Borrower).* The owner, upon being presented a Certificate of Family Participation, shall contact and enter into a Housing Assistance Payments Contract with the PHA and a lease with the tenant. Owners shall be responsible (and subject to review or audit by the PHA or HUD) for performing all of their obligations under the contract and lease.

C. *FmHA.* 1. FmHA, in accordance with existing regulations, will be responsible for normal loan servicing and supervision, including but not limited to:

a. Obtaining and reviewing all reports from the borrower in accordance with Subpart G of Part 1802 of this Chapter, (FmHA Instruction 430.2).

b. Review and approval of budgets and rental rates; and

c. Collection of required payments and review of the borrower's establishment and maintenance of required accounts.

2. FmHA will not be responsible for the requirements and conditions of the contract entered into between the PHA and the owner but will cooperate with HUD and the PHA to the extent possible to assure that the borrower carries out all obligations under the contract.

V. *Special Conditions.* A. *Eligibility.* 1. The PHA will determine a household's eligibility before the Certificate of Family Participation is issued. To be eligible for Section 8 assistance, the household's income as determined by HUD may not exceed 80 percent of the median income for the area. The household's eligibility for housing assistance payments under the Section 8 program will continue until the amount payable by the household equals or is greater than the gross rental rate. However, when 25 percent of the household's income equals or is greater than the gross rental rate chargeable for the unit, the household may still be able to occupy a rental unit under FmHA interest credit programs if 25 percent of the family's income is greater than the lowest established rental rate for the unit.

2. *Form FmHA 444–8,* "Tenant Certification," *will not be required* for tenants who have obtained a Certificate of Household Participation from the PHA. A copy of the Certificate of Household Participation will, however, be provided to the FmHA District Director.

3. The tenant's adjusted household income must not exceed the maximum income limitations as authorized by FmHA for the project.

B. *Security deposits.* According to HUD regulations, the owner may require a household to pay a security deposit, the maximum amount shall be the greater of the amount of rent payable by the household towards two month's gross rent or $50.00. Under HUD regulations, if a household vacates a unit and the security deposit is insufficient, the owner may claim reimbursement from the PHA in an amount not to exceed one month's contract rent.

C. *Payment for vacated units.* According to HUD regulations, *If a household vacates the unit in violation of the provisions of the lease, the owner may receive the full housing assistance payments for the month in which the family vacates and then in the amount of 80 percent of the contract rent* for a vacancy period not exceeding *an additional month* or the expiration or other termination of the lease, whichever comes first.

D. *Limitation of owners participation in the program.* HUD's regulation provides that assistance under Section 8 will not exceed 40 percent of the total number of units in the project; however, this limitation may be exceeded for the purpose of relieving hardship of a particular household or households with the approval of the HUD field office.

E. *Special problems.* Any problems on utilizing the HUD Section 8 program for existing RRH projects not covered by this Exhibit should be referred to the National Office by the State Director.

RRH Loans and the HUD Section 8 Housing Assistance Payments Program (New Construction)

I. *General.* The attached Exhibit H–1 is a Memorandum of Understanding between the Department of Housing and Urban Development (HUD) and the Department of Agriculture, Farmers Home Administration (FmHA), concerning the application processing and operation of rural rental projects involving HUD Section 8 housing assistance payments. The Memorandum provides for a set aside of contract authority under Section 8 of the U.S. Housing Act of 1937 for new construction projects financed by FmHA

under Section 515. Only units charged against this set aside are eligible under these procedures. This Exhibit and HUD's regulations published in 24 CFR Part 883 Subparts G and H contain the policies and procedures that will be followed by FmHA in implementing and carrying out the provisions of the Agreement.

II. *Establishment of Interest Rate for Section 8 Units.* FmHA will provide an interest reduction for all units under Section 8, except units in projects operated on a profit basis and approved after September 20, 1977. Since the advantage of this interest reduction must be passed through to the tenant in the form of lower rents, the budget for the Section 8 units should not reflect an excess of income over operating and maintenance expenses, debt repayment, reserve requirements, and for limited profit borrowers, a return on initial investment. If the borrower will operate the project on a nonprofit or limited profit basis, the payment of interest on the RRH loan will be based on at least a 1 percent interest reduction below the established interest rate for RRH loans for the units of a project under HUD's Housing Assistance Payments Contract (Contract). However, when the budget is prepared on the basis of a 1 percent reduction and the proposed Contract Rents exceed the applicable Fair Market Rents, the State Director may approve an interest reduction of 2 percent below the note rate of interest for the units utilizing the HUD Housing Assistance Payments Program. The State Director, in making this determination, must be sure that the budget is accurate and reflects reasonable and typical costs for the area and is necessary to make the project feasible. If the reduction of 2 percent below the interest rate of the note does not result in rental rates which are equal to or less than the Fair Market Rate, the State Director will submit a request including the budget, a narrative budget analysis, and other supporting data, to HUD's Field Office Director for approval of higher Contract Rents. HUD may approve increases of up to 20 percent above the Fair Market Rents. The interest rate shown on the note, however, will be in accordance with Exhibit B of Subpart A to Part 1810 (FmHA Instruction 440.1 available at any FmHA office). This reduction in interest or interest credit will be accomplished in the manner indicated for Plan I and Plan II in Exhibit B of this Subpart and in accordance with paragraph IV of this Exhibit.

III. *Section 8 Contract Rents.* The Section 8 Contract Rent rates will be determined by FmHA. The Contract Rents will be determined as outlined in paragraphs II and IV of this Exhibit. The State Director should contact the HUD field office to obtain the Fair Market Rents (including additional allowance for the elderly) in effect for the proposed project's location at the time the certification is made.

IV. *Budgets and Interest Credit Agreements.* Budgets and interest credit agreements must be prepared in accordance with Exhibit B and the following:

A. *Total Project Under Section 8.* If a project is developed with all units of the project covered by Section 8, one budget will be prepared. The budget will be based on an interest rate which has been set for the project in compliance with paragraph II of this Exhibit. When applicable, a Form FmHA 444–7, "Interest Credit and Rental Assistance Agreement" will be entered into with the borrower to show the amount of interest reduction. (RRH and RCH loans) Check Plan I S 8 of the agreement and show the amount of interest credit as the difference between the amortized payment at the note rate of interest and the amortized payment calculated at the effective interest rate.

B. *Mixed Project for Profit.* If a mixed project is developed (a project with only a part of the units covered by Section 8 contract) and the borrower is operating on a profit basis, one budget will be prepared based on market rent. The market rent and contract rent set must be the same. If the borrower agrees to operate on a limited profit or nonprofit basis, paragraph IV C of this Exhibit will apply.

C. *Mixed Project for Nonprofit and Limited Profit.* When a mixed project is developed (a project with only a part of the units of the project covered by HUD's contract and a part of the units to utilize interest credit Plan II) in accordance with paragraph IV B of Exhibit B of this Subpart, three budgets must be prepared. The budgets must be for basic rent, Section 8 contract rent, and market rent. An "Interest Credit and Rental Assistance Agreement", will be entered into with the borrower to allow interest credit on all units. Check Plan II of the agreement. The loan payments will be based on the amortized payment at 1 percent interest plus all overages. The amount of overage for those units under Section 8 contract will be the difference between the basic rent and the contract rent. The amount of overage for those units not under Contract will be in accordance with Exhibit B of this Subpart.

V. *Compliance and Certifications Required.* To comply with the provisions of the Memorandum of Understanding with HUD, certain requirements must be met and certifications made. These requirements and certifications are listed below:

A. *Minimum Property Standards.* 1. Since FmHA has adapted HUD's Minimum Property Standards (MPS) 4910.1, no additional requirement other than compliance with Subpart A of Part 1924 of this Chapter (FmHA Instruction 1924–A), shall be necessary to assure that the housing is planned in accordance with the MPS. However, appropriate state and local laws, codes, ordinances and regulations must also be met.

2. The borrower's architect engineer will provide a certification that the final drawings and specifications meet all MPS, state and local laws, codes, ordinances, and regulations.

B. *Rent Certification.* The State Director will certify for each project that the rental rates to be used in the contract for the units of the project are reasonable based on quality, location, amenities, management and maintenance services, and unless HUD has authorized higher rates, do not exceed the applicable Fair Market Rents for newly constructed Section 8 units as published in the Federal Register and in effect at the time the certification is made. Exhibit H–3 contains the necessary language for this certification.

C. *Site and Neighborhood Standards.* The State Director will certify that the location of each project is in compliance with § 1944.215(q) of this Subpart. Exhibit H–4 will be used to assist in determining compliance with this requirement. Exhibit H–3 contains the necessary language for this certification.

D. *Equal Opportunity.* 1. FmHA agrees to assure compliance with the requirements of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968 and Executive Order 11246 in accordance with FmHA Instruction 1901–E and the Rehabilitation Act of 1973. Obtaining properly executed Form FmHA 400–1 "Equal Opportunity Agreement," Form FmHA 400–4, "Assurance Agreement," and Form FmHA 400–6, "Compliance Statement," and completion and transmittal of Form FmHA 400–3, "Notice to Contractors and Applicants," will meet those requirements.

2. To comply with Executive Order 11063 and Title VIII of the Civil Rights Act of 1968, the applicant must complete HUD Form 935.2, "Affirmative Fair Housing Marketing Plan." The State Office will obtain the form and instructions for filing from the HUD area office and supply them to District Offices for distribution to applicants. The completed form will be reviewed for adequacy and approved by the loan approval official. Marketing of the units must begin no later than 90 days before project completion. To further comply with Executive Order 11063 the mortgage must contain the covenants as required in § 1944.238(b) of this Subpart.

3. The applicant must agree to and sign a certification that there will be compliance with the provisions of Section 3 of the Housing and Urban Development Act of 1968 as it pertains to business opportunity, training, and employment of lower income residents. Exhibit H–5 may be used for this purpose.

4. The State Director will prepare a certificate for each project that all of the above equal opportunity requirements will be met. Exhibit H–3 contains the necessary language for this purpose.

E. *Environmental Standards.* 1. Subpart G to Part 1901 (FmHA Instruction 1901–G) outlines the program actions requiring environmental assessment and, if found necessary, an environmental impact statement. Subpart G to Part 1901 (FmHA Instruction 1901–G) sets generally a threshold for multiple housing projects at 50. The references to 50 will be disregarded in the case of section 8/515 loans and *a threshold of 5* will apply to conform with the Memorandum of Understanding with HUD. Consideration must also be given to the effects of the environment and neighborhood activity on the project. The proposal will be rejected if, after appropriate modifications, there would remain environmental impacts which are unacceptable under FmHA policies. All other requirements of Subpart G to Part 1901 (FmHA Instruction 1901–G) will be followed.

2. In compliance with paragraph VI C of the Memorandum of Understanding, the State Director will prepare a certification for each project that it complies with the National Environmental Policy Act and all rules, regulations, and requirements issued by FmHA pursuant thereto and that an environmental assessment on projects consisting of a total of 5 units or more has been made. Exhibit H–3 contains the necessary language for this purpose.

F. *Relocation.* Compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 applies to Public Housing Agency applicants only. It will be the responsibility of the applicant to provide any assistance required for relocation of occupants of the site on which the section 8/515 rural rental project will be located. The requirements of § 1944.215 (u) of this Subpart will be followed in cases involving relocation of individuals from the site to be acquired. Generally, sites will not be selected which are occupied if relocation is necessary.

G. *Davis-Bacon Wage Rates.* 1. The provisions of the Davis-Bacon Act apply to all section 8/515 projects with *9 or more Section 8 assisted units.* Subpart D to Part 1901 (FmHA Instruction 1901–D), outlines the procedures to follow to comply with this Act.

2. In compliance with paragraph VIII B of the Memorandum of Understanding, the State Director will prepare a certification for each project that there will be compliance with the Davis-Bacon Act. Exhibit H–3 contains the necessary language for this purpose.

H. *Other Federal Requirements.* 1. § 1944.215(r) of this Subpart outlines the requirements of the Clean Air Act and Federal Water Pollution Control Act.

2. Subpart F to Part 1901 (FmHA Instruction 1901–F) and § 1944.215(t) of this Subpart states that the applicant must comply with the requirements of the National Historic Preservation Act, the Archaeological and Historic Preservation Act of 1974, and Executive Order 11593.

I. *Previous Participation.* It will be the responsibility of all applicants and applicant principals holding an interest in the entity to complete HUD Form 2530, "Previous Participation Certificate." (The State Office will obtain the form and instructions for filing from HUD and supply them to District Offices for distribution to applicants.) The complete form will be transmitted to HUD at the same time as transmitting the Form AD–621 "Preapplication for Federal Assistance," for their review, clearance and comment.

J. *Project Completion.* 1. The borrower's inspecting architect will provide a certification as outlined in Exhibit H–6. This certification and other data required are a part of the backup material necessary for the State Director to provide HUD with the certification required to comply with paragraph XII B of the Memorandum of Understanding.

2. The State Director, after receipt of the borrower's inspecting architect's certification and compliance with other requirements, will prepare a certification similar to Exhibit H–7 for transmittal to HUD indicating that:

a. The project was completed in accordance with the requirements in the Agreement to Enter Into a Housing Assistance Payments Contract.

b. The project is in good and tenantable condition.

c. The project has been constructed in substantial compliance with drawings and specifications except for ordinary punchlist items or incomplete work awaiting seasonal opportunity.

d. There has been no change in management capability.

VI. *Processing Application.* A. Applicants desiring to develop projects utilizing the Section 8/515 loan program should contact the County Supervisor or District Director before completion of the requirements of the Form AD–621. If the applicant desires to submit a preapplication, after couseling with FmHA personnel, the preapplication will be accepted and processed in accordance with existing regulations and this Exhibit. *In addition to items required in Exhibit A–6, the applicant will submit required copies of HUD Form 2530.* If obtainable, the applicant should also submit comments on the proposed project from the local governing body in which the project is to be located.

B. The District Director, upon receipt of Form AD–621 and required attachments, will review the preapplication for completion and accuracy. The District Director will then forward the completed preapplication to the State Director for submission of copies to HUD for review and comments. A letter of transmittal will be prepared by the State Director to HUD listing the data submitted for review.

C. Upon receipt of comments from HUD, Form AD–622, "Notice of Preapplication Review Action," will be completed and transmitted to the applicant outlining any further data required or conditions which must be met before or in completion of Form AD–625, "Application for Federal Assistance (Short Form)." The applicant should at this time be advised of the requirement for completion of Exhibit H–5.

D. Upon completion of the Form AD–625 and other requirements by the applicant, the District Director will review the information for completeness and accuracy, prepare comments and recommendations, and submit the docket to the State Director for review and approval in accordance with existing regulations. The State Director will prepare and submit the required certifications to HUD. The Agreement to Enter into a Housing Assistance Payments Contract will then be completed by HUD and the owner (applicant).

E. Construction of the project will not be permitted until (1) the Agreement to Enter Into a Housing Assistance Payments Contract has been executed, (2) the loan funds have been obligated, (3) interim financing has been arranged, or in case of multiple advances, the loan has been closed.

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F. When the project is completed, the State Director will prepare the Certification of Project Completion (Exhibit H–7), and submit it to HUD. HUD will prepare the Housing Assistance Payments Contract for execution. Upon execution, the project will be considered to be in operation.

G. All borrowers will provide reports to FmHA in accordance with Subpart C of Part 1930 of this Chapter, (FmHA Instruction 1930–C), Subpart E to Part 1944 (FmHA Instructions 1944–E), and applicable loan agreements or loan resolutions. Borrowers will also be required to comply with HUD's reporting requirement for Housing Assistance Payments Contract. FmHA will inform HUD of any irregularities found upon review of the borrower's reports submitted to FmHA.

VII. *Tenant Certifications.* Form FmHA 448–8, "Tenant Certification," need not be required of tenants who have executed Form HUD 52659, "Application for Tenant Eligibility and Recertification." A copy of Form HUD 52659 will, however, be provided to the FmHA District Director.

Exhibit H–1.—Memorandum of Understanding on use of Section 8 of the United States Housing Act of 1937 and Section 515 of the Housing Act of 1949

I. Introduction

For the purpose of encouraging and facilitating the use of assistance under Section 8 of the United States Housing Act of 1937 and Section 515 of the Housing Act of 1949, as amended, to provide newly constructed housing for lower-income families in rural areas, the Department of Agriculture [hereinafter referred to as the Farmers Home Administration (FmHA)] and the Department of Housing and Urban Development (HUD) hereby agree to the policies, procedures and joint working arrangements set forth in this Memorandum. The Secretary of each Department will expedite all necessary actions to implement this memorandum.

II. Property Standards

FmHA agrees that any Section 515 Rural Rental Housing Project to be assisted by the Section 8 Housing Assistance Payments Program pursuant to this Memorandum will be in accord with HUD Minimum Property Standards. (7 CFR 1804.3) and appropriate State and local laws, codes, ordinances and regulations.

III. Contract and Fair Market Rents

A. FmHA agrees to provide interest credit on any newly constructed Section 515 project to be assisted by Section 8 housing assistance payments. The effective interest rate applicable to the Section 8 units will be reduced by at least one percentage point below the FmHA interest rate in effect for Section 515 loans at the time of loan closing. The requirement that an interest credit be provided shall not apply to projects approved after the effective date of this paragraph and which are operated on a profit basis as defined by FmHA regulations.

B. HUD agrees to accept FmHA certifications on a project-by-project basis that Contract Rents are reasonable based on the quality, location, amenities and management and maintenance services to be provided and do not exceed the applicable Fair Market Rents for newly constructed Section 8 units. HUD will provide the FmHA State Directors on request with the current applicable Fair Market Rents for newly constructed Section 8 units as published in the **Federal Register** and in effect at the time the certification is made.

C. HUD agrees to provide the FmHA State Director on request with the current income limits for determining eligibility for the Section 8 program.

IV. Site and Neighborhood Standards

The site (location) and neighborhood standards to be set forth in the revised FmHA regulations which have been agreed to by HUD and FmHA shall be applicable to all newly constructed Section 515 projects to be assisted by Section 8 housing assistance payments. HUD agrees to accept FmHA's certification as to compliance with such standards on a project-by-project basis.

V. Equal Opportunity Requirements

A. FmHA agrees to assure compliance with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Orders 11063 and 11246, and Section 3 of the Housing and Urban Development Act of 1968 and will issue regulations pursuant thereto.

B. HUD agrees to accept certification from FmHA that projects approved by FmHA will be developed and operated in accordance with the provisions of paragraph V (A) above.

VI. Environmental Standards

A. HUD and FmHA have issued regulations to implement the National Environmental Policy Act (NEPA) in accordance with guidelines issued by the Council on Environmental Quality (CEQ). HUD and FmHA agree to discuss their environmental regulations, procedures and forms to achieve uniform thresholds and forms.

B. FmHA shall comply with NEPA and all rules, regulations and requirements issued by FmHA pursuant thereto including:

1. Environmental assessments will be made for such projects with five or more units.

2. The suitability and effect of the existing environment will be considered for each project for which an assessment is required, as well as the impacts that would result from a project approval.

3. Proposals shall be rejected if, after appropriate modifications to a proposal, there would remain environmental impacts which are unacceptable under NEPA and FmHA policies.

C. HUD agrees to accept the certification that sites approved by FmHA are in accordance with the provisions of paragraph VI (B) above.

VII. Relocation

In the case of a Public Housing Agency (PHA)-Owner project which is to be constructed on a site which has occupants, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 will be met.

VIII. Davis-Bacon Wage Rates

A. FmHA agrees to assure that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (49 Stat. 1011), shall be paid to all laborers and mechanics employed in the development of any new construction projects with nine or more assisted units.

B. HUD agrees to accept a certification on a project-by-project basis from FmHA that there will be compliance with the provisions of paragraph VIII (A) above.

IX. Other Federal Requirements

FmHA agrees to comply with the following requirements:

1. Clean Air and Federal Water Pollution Control Act and all rules and regulations and requirements issued by FmHA pursuant thereto.

2. The National Historic Preservation Act (Pub. L. 93–291) and Executive Order 11593 on Protection and Enhancement of the Cultural Environment.

X. Distribution of Housing Assistance Funds

A. Housing assistance funds shall be allocated by HUD in accordance with the requirements of Section 213(d)(1) of the Housing and Community Development (HCD) Act of 1974 and HUD regulations pursuant thereto.

B. The HUD field office director, in planning the utilization of housing assistance funds in accordance with the Section 213(d)(1) factors, shall consult with the appropriate FmHA State Director(s) in order that the use of the housing assistance funds be coordinated as nearly as possible with FmHA Section 515 activities.

C. HUD agrees to make a set-aside during Fiscal Year 1978, including the transition quarter, sufficient Section 8 contract authority to assist not less than 4,000 newly constructed dwelling units to be financed by the FmHA under the Section 515 rural rental housing program. Subject to congressional authorization of contract authority, HUD agrees to make a set-aside of such assistance for not less than 10,000 units in subsequent fiscal years.

D. To the extent any Section 8 housing assistance funds set-aside for use with Section 515 projects are not committed to such projects 45 days prior to the end of any fiscal year, HUD may withdraw and redistribute such funds except that HUD will not withdraw any Section 8 funds which FmHA advises HUD will be committed before the end of the fiscal year. Funds shall be deemed to be committed for such projects after receipt and review by HUD of the Form AD–621 (Preapplication for Federal Assistance) and the verification by HUD's Regional Accounting division of the availability of funds.

XI. Basic Processing

A. When FmHA has a completed Form AD–621 (Preapplication for Federal Assistance) for a Section 515 project for which a commitment for Section 8 assistance is desired, it shall transmit a copy of the completed form and all completed attachments with a covering letter stating that Section 8 is desired. Upon receipt thereof, the HUD field office director shall initiate reviews under Section 213 of the HUD Act, all reviews to establish acceptability under HUD's previous participation requirements, and any reviews necessary to establish consistency with the Section 8 requirements. HUD shall indicate to FmHA any negative information on the proposed project as submitted, the availability of funds and that funding is contingent upon compliance with Section 213 requirements and clearance under the previous participation requirements.

B. Such reports as may be deemed necessary by HUD and FmHA concerning Section 8/Section 515 projects will be provided to HUD.

XII. Execution of Agreement to Enter Into a Housing Assistance Payments Contract

A. HUD will prepare an Agreement to Enter Into a Housing Assistance Payments Contract for execution by the owner only after receipt of certifications on a project-by-project basis by FmHA. The certifications to be submitted by this time are as specified in paragraphs III(B), IV, V(B), VI(C) and VIII(B).

B. HUD will prepare a Housing Assistance Payments Contract for execution by HUD and the owner after the project is completed and FmHA submits on a project-by-project basis, certifications that:

1. The project was completed in accordance with the requirements of the Agreement to Enter Into Housing Assistance Payments Contract.

2. The project is in good and tenantable condition.

3. The project has been constructed in substantial compliance with drawings and specifications except for ordinary punchlist items or incomplete work awaiting seasonal opportunity.

4. There has been no change in management capability.

C. If HUD has any information or other substantial reason to question the correctness of any FmHA certification, HUD shall promptly bring the matter to the attention of FmHA and FmHA shall advise HUD of its final determination in the matter.

XIII. HUD Review Responsibilities

A. FmHA assumes no responsibility for assuring compliance by the owner with the terms of the Housing Assistance Payments (HAP) Contract. FmHA and HUD agree to attempt to work out procedures for FmHA to assume responsibility for Housing Assistance Payments Contract compliance for Private-Owner and Public Housing Agency Owner-projects.

B. It is understood that to carry out its responsibilities for the administration of the Section 8 program, HUD may audit and review FmHA Section 8 related activities for compliance with outstanding HUD requirements covered by the provisions of this Memorandum of Understanding.

XIV. Interdepartmental Task Force

FmHA and HUD agree to the establishment of an interdepartmental task force, consisting of Headquarters and field office personnel, which will periodically, and as needed, convene for the purpose of reviewing program issues and recommending solutions thereto to assure the effective coordination of the Section 8 and Section 515 in areas served by the FmHA.

XV. Training

FmHA and HUD agree to make available appropriate personnel to carry out any interdepartmental training that may be necessary to implement an effective combination of the Section 8 and Section 515 programs.

Secretary of Agriculture

Date

Secretary of Housing and Urban Development

Date

Exhibit H–2.—Section 8 Housing Assistance Payments Program: Information For New Construction

The Section 8 Housing Assistance Payments Program was authorized by the United States Housing Act of 1937 as amended by Section 201 of the Housing and Community Development Act of 1974.

Basic Concept

The Department of Housing Urban and Development (HUD) will provide housing assistance payments on behalf of eligible lower-income households (i.e. households whose income does not exceed 80 percent of median income for the locality) occupying newly constructed housing. This payment will make up the difference between the approved rent for the unit and the amount the household is required to pay which is not less than 15 percent nor more than 25 percent of the household's adjusted income.

New Construction and Substantial Rehabilitation

Who May Participate

Housing projects may be owned by private owners, both profit-motivated and nonprofit, and by public housing agencies.

How Do They Participate

Applicants will submit required data to Farmers Home Administration (FmHA) County or District Offices. If both the preliminary and final data submitted is acceptable to FmHA and HUD, HUD will enter into an agreement that upon completion of the project, it will enter into a Housing Assistance Payments Contract with the owner for a specified term. Under this Contract, HUD will make housing assistance payments with respect to units occupied by eligible households.

Initial Maximum Rents to Owners

The rents approved under the Contract (Contract Rents) may not exceed the HUD established Fair

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Market Rents for new construction for the housing market area in which the project will be located, and must be reasonable in relation to the quality, location, amenities, and the management and maintenance services provided by the owner.

Rent Adjustments

Contract rents to the owner will be adjusted annually by the HUD established Automatic Annual Adjustment Factor. Special additional adjustments may be approved to reflect actual and necessary expenses of owning and maintaining the project whch have resulted from substantial general increases in real property taxes, utility rates or similar cost (i.e., assessments and utilities not covered by regulated rates), but only to the extent that such general increases are not compensated for by the Automatic Annual Adjustments.

Term of Housing Assistance Payments Contract

The maximum term for the Contract is 20 years, or 40 years in the case of a project owned by a State or local agency. The criteria for determining the actual term are stated in the respective HUD regulations.

Responsibilities of the Owner

The owner will be responsible for performance of all maintenance and management functions (including taking of applications, selection of households, collection of rents, termination of tenancies, reexamination of household income and compliance with equal opportunity requirements). In connection with selection of families, the owner is responsible for leasing at least 30 percent of the units to Very Low-Income Households (i.e., households whose income does not exceed 50 percent of the median income for the locality). The owner may contract with another entity to perform such services provided the management contract will not shift any of the owner's responsibilities or obligations. However, no entity which is responsible for administration of the Contract (i.e., a PHA in the case of a Private-Owner/PHA project) may contract to perform such services.

Exhibit H–3—Suggested Proposal Certification Format

(Section 8/515 Program)

(Date)

To: (HUD Field Office Manager)
(Address)

Subject: (Name of Project) (HUD Project Number) (Project Address: Street, Municipality, State) (Owner Name and Address)

This is to certify that:

(1) I have determined the Contract Rents to be reasonable based on the quality, location, amenities and management and maintenance services to be provided, and are based upon a — percent interest reduction(s) that would otherwise be applicable to the Contract Units:

Type of unit	Size	Number of contract units	Contract rent	Allowance for utilities	Gross rent
Detached, Semidetached, row, walk-up, elevator.	Number of bedrooms		$	$	$

If the Gross Rents are above the applicable Fair Market Rent, the cost and budget analysis and data are attached.

(2) I have determined that the site complies with the Farmers Home Administration site and neighborhood standards published at 7 CFR 1944.215 (q).

(3) I have determined that the Owner has certified that the project will be developed and operated in accordance with Title VI of the Civil Rights Act of 1964; Title VIII of the Civil Rights Act of 1968; Executive Orders 11063 and 11246; and Section 8 of the Housing and Urban Development Act of 1968.

(4) I have determined that the site is approved on the basis of the FmHA environmental rules, regulations and requirements, and the following additional procedures were used in determining the approvability of the site:

1. Environmental assessments were made for projects with 5 or more units;

2. The suitability and effect of the existing environment was considered for each project for which an assessment is required, as well as the impacts that would result from a project approval.

(5) I have determined that the Owner will pay not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (49 Stat. 1011), to all laborers and mechanics employed in the development of any new construction project with nine or more assisted units.

(Signature of State Director)

Exhibit H–4—Equal Opportunity Site and Neighborhood Standards Checklist

1. Is the site located in an area of minority concentration?[1] ☐Yes ☐No
2. If answer to question 1 is Yes, do sufficient and comparable housing opportunities exist outside the minority area for minority households in the income range to be served by the proposed project? ☐Yes ☐No
3. If Yes, the project can be approved.
4. If no, has a fully documented justification acceptable to the reviewer been presented that the project at the proposed site is necessary to meet overriding housing needs which cannot otherwise be met in the market area? ☐Yes ☐No
5. If yes, the reviewer may approve the site, noting in writing the reasons for approval.
6. If answer to number 1 is No, is site located in a racially mixed area? ☐Yes ☐No
7. If answer to question number 6 is Yes, will the effect of locating the proposed project in this area be such as to increase significantly the number of minority to nonminority households by fostering a change to predominately minority residency in the area? ☐Yes ☐No
8. If answer to number 7 is Yes, disapprove the site.
9. If answer to number 7 is No, the site is acceptable.

Exhibit H–5.—Certification by the Applicant

"I/we, the undersigned, understand that as a condition of obtaining assistance under the HUD section 8 program in connection with a section 515 rural rental housing loan from the Farmers Home Administration, that I/We are required to carry out the applicable provisions of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701U, the Davis-Bacon Act, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Orders 11063 and 11246, and the requirements of the Clean Air and Water Pollution Control Acts. I/We hereby certify that these provisions will be carried out in accordance with applicable regulations.

Name of Applicant _____
Date: _____
By: _____

[1] An area of minority concentration is defined as any part of a community adjacent to or within the confines of a greater area such as a place, town, village or city, in which the majority of residents are minority.

Date: _____
By: _____

Exhibit H–6.—Guide Letter for Architect's Certification New Construction Inspecting Architect's Certification

This certification applies to the project developed for (name of owner) _____, (address of owner) _____, located at (street address) _____, (city) _____, (county) _____, (state) _____.

I, _____, Registered Architect, to the best of my knowledge, belief and professional judgment, do hereby certify, for the purpose of satisfying FmHA requirements with respect to the subject project, that:

(1) I was responsible for the inspection of construction of the subject project consisting principally of _____;[1]

In accordance with Working Drawings and Specifications identified as _____,[2] which were the subject of a previous certification to FmHA by the Design Architect;

(2) Inspections were performed by me or under my supervision with frequency and thoroughness required by the generally accepted standards of professional care and judgment;

(3) The project has been completed in conformance with the certified Working Drawings and Specifications for the project or approved changes thereto;

(4) The project is in good and tenantable condition;

(5) There are no defects or deficiencies in the project except for ordinary punchlist items or incomplete work awaiting seasonal opportunity;

(6) The project has been constructed in accordance with applicable State and local laws, zoning, building, housing, and other codes, ordinances or regulations, as modified by any waivers obtained from appropriate officials.

Changes in the Working Drawings and Specifications were approved as listed in attachment: ———.[3]

Punchlist or incomplete items are listed in attachment ———.[3]

Waivers of codes, etc., were obtained as listed in attachment: ———.[3]

Signed _____
Architect _____
Business Address _____
Telephone _____
License Number _____
Date _____

Warning: Title 18 U.S.C. 1001, provides in part that whoever knowingly and willfully makes or uses a document containing any false, fictitious, or fraudulent statement or entry, in any matter in the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than five years or both.

[1] List number and type of units, describe property, etc.

[2] Identify Drawings and Specificatoas including information normally found in the Title Block of drawings.

[3] Identify attachment.

Exhibit H–7.—Suggested Project Completion Certification Format

(Section 8/515 Program)

(Date)———

To: (HUD Field Office Manager)
(Address)

Subject: (Project Name)
(HUD Project Number)

This to certify that:

(1) The project has been completed in accordance with the requirements of the Agreement;

(2) The project is in good and tenantable condition;

(3) There are no defects or deficiencies in the project other than punchlist items, or incomplete work awaiting seasonal opportunity;

(4) There has been no change in *management capability.*

(Signature of State Director)

Exhibit I.—Memorandum of Understanding Between Farmers Home Administration and Administration on Aging

A. Introduction

The lack of adequate, affordable housing is a serious problem for the elderly, particularly those who live in nonmetropolitan areas. Date indicate that 44 percent of the substandard housing in rural America is occupied by persons 60 years of age and older. Moreover, at least 60 percent of older persons living in rural communities occupy homes that were built prior to 1920.

The housing requirements for older persons are significantly different than those for the rest of the population, due to the progressive limitations of their mobility and physical capabilities over time. This creates seemingly contradictory needs and demands, with the progressive need for medical and support services vying with the ability to maintain an active life. Congregate housing is an alternative for the elderly who need an assisted residential living environment. It offers the functionally impaired or socially deprived but not ill elderly residential accommodations with supporting services to assist them in maintaining or returning to an independent or semi-independent life style and prevent premature or unnecessary institutionalization as they grow older.

In light of this, the Farmers Home Administration (FmHA) of the U.S. Department of Agriculture and the Administration on Aging (AOA) of the U.S. Department of Health, Education, and Welfare have joined forces to enhance the quality of housing provided for the rural elderly.

B. Objectives

The Memorandum of Understanding encourages and fosters coordinated efforts between FmHA and AOA to meet these objectives:

1. To support a joint demonstration to establish in several selected communities model congregate housing facilities for the elderly with adequate supportive services. Some of the services provided the occupants will also be available for other elderly persons residing in the community.

2. To ensure the participation of local FmHA and AOA counterparts as well as the developers and community representatives in the planning, development, and implementation of the model congregate housing and related facilities.

3. To encourage the provision and expansion of outreach and information and referral services in the selected rural communities to inform older residents of this and other FmHA programs from which they may benefit.

4. To encourage the replication of this effort in other rural communties throughout the country.

C. Relevant Programs Administered by FmHA

FmHA administers several programs which can benefit senior citizens (By FmHA definition, persons 62 years of age or over and, in the case of a married couple, only one of whom must be 62 years of age or over).

Under Section 515 of the Housing Act of 1949 as amended, loans for rental housing in rural areas are available to individuals and various types of organizations to provide living units for eligible persons, including the elderly. The Congregate Housing for the Elderly Program is a new use of the Section 515 Rural Rental Housing Loan Program.

Other pertinent FmHA programs from which the elderly may benefit are listed below. All programs are authorized under the Housing Act of 1949 as amended.

1. Section 502, Rural Housing Loans, which may be made available to individuals to buy, build, rehabilitate, improve, or relocate a dwelling and related facilities to be used as permanent residence. The regulations for this program are being revised to allow the addition of a separate independent living unit to be added onto the family dwelling for senior relatives of the immediate family. It is expected that the regulations will be available by June 1979.

V 45 OC 27 80 UMI

2. Section 504, Home Repair Programs, under which low-interest loans and/or grants may be made to owner-occupants who because of inadequate income do not qualify for Section 502 loans to enable them to make basic repairs to their dwellings or to make such dwellings safe and sanitary.

3. Sections 523 and 524, Rural Housing Site Loans, which may be made for the purchase of land and development of building sites for housing.

D. Relevant Programs Administered by the Administration on Aging

Under the authority of the Older Americans Act of 1965, as amended, programs administered by AOA are designed to foster the development of comprehensive and coordinated service systems which promote independence and reduce the need for institutionalization among the elderly. State and Area Agencies on Aging have major responsibilities in the areas of planning, management, and serve as focal points for all matters pertaining to older persons in the State and community. Funds are awarded to State and Area Agencies on Aging to enable them to enter into cooperative arrangements with other agencies and providers of social services to remove individual and social barriers to economic and personal independence for older persons.

In its assigned role as focal point of all aging-relating activities at the Federal level, the Administration on Aging is currently directing its efforts in new directions to begin to develop comprehensive community-based service systems in areas throughout the country to meet the needs of the Nation's older population. In order to successfully establish the proposed comprehensive community-based service systems to serve older persons, most services, including housing, need to be developed, expanded, or improved in local communities, particularly in rural communities.

Under the new amendments to the Older Americans Act, enacted in October 1978, previous Titles III, V, and VII have been consolidated under one Title III. The new Title III provides for the planning and development of comprehensive and coordinated service systems, authorizing funding and providing for one administrative structure of three key service areas—social services, nutrition services, and senior centers.

Under the new amendments, no State receives less than that received in Fiscal Year 1978. Provisions have been made in the Act, however, to address the special needs of the rural elderly including that provision under Section 307 which requires States to increase their allocations to rural areas by 5 percent.

E. *Joint Demonstration effort.*

The Farmers Home Administration, under the authority of Section 515 of the Housing Act of 1949, as amended, is implementing its Congregate Housing for the Elderly Program. In doing so, a demonstration effort is being proposed to develop, in six diversified rural areas, model congregate housing projects for older persons with FmHA funds being used to construct the facilities and AOA funds being used to support the service components of those facilities.

F. *FmHA.*

FmHA is earmarking for Fiscal Year 1979 a total of $6.0 million for the construction of model congregate housing facilities in six (8) rural areas.

G. *Criteria for Site Selection.*

In selecting the sites for demonstration purposes, priority will be given to those areas which meet the following minimum criteria:

1. Areas that provide a diversity of racial and ethnic composition or low-income elderly.

2. Areas with a significant number of persons 62 years of age and older who need and want to occupy rural housing.

3. Areas that are representative of diverse rural communities.

4. Areas known to have poor housing facilities for the elderly.

5. Areas where planning and service areas are or can be covered by Area Agencies on Aging.

6. Areas accessible to central services, that is, shopping, medical facilities, transportation assistance.

7. Areas where State and local officials understand and support the intent and objectives of the joint demonstration program.

8. Areas where there are no other resources to support such an effort.

9. Areas where water and sewer facilities are available.

H. *AOA.*

AOA is reserving grants in the amount of $500,000 for each year of the 3-year demonstration period beginning in FY 1979. These nonrenewable grants will be provided for the following purposes:

1. To support a full-time Project Director for each site to ensure the successful implementation of this effort. (The Project Director would be selected by the Area Agency on Aging, using as a guide the criteria appearing in this agreement and would be considered a member of the Area Agency Staff.) Such a position is expected to attract persons with some experience in neighborhood organization and community development and with some degree of knowledge and experience in working with aging and housing programs, rural populations, and ethnic and low-income groups. The duties of the Project Director would include:

a. Seeking the support of community leaders to assure the availability of appropriate and necessary supportive services at the housing site both during the demonstrations period and to seek such continued support beyond the demonstration period.

b. Initiating outreach efforts to identify potential residents.

c. Conducting a needs assessment survey to identify the housing and housing-related needs for the elderly living in the community.

d. Working with developers through FmHA to assure that the physical design of the congregate structure reflects the needs of the potential residents.

e. Arranging for provision of supportive services which, at a minimum, would include:

(1) meal service-full or partial;

(2) housekeeping elements for those unable to perform these responsibilities;

(3) personal care and service for those who need assistance in daily care;

(4) transportation and other areas to essential services; and

(5) social and recreational activities.

f. Serving as a resource housing specialist for older persons in the community.

2. To assist in supporting the cost of gap-filling services based on the availability of local resources.

I. *Modification/Cancellation Provision*

Request for modifications and amendments to the Memorandum of Understanding may be initiated by either party. Such modifications or amendments will only be effective upon mutual agreement by both parties.

Signatures

Dated: January 22, 1979.

Gordon Cavanaugh,
Administrator, Farmers Home Administration.

Dated: January 23, 1979.

Alex P. Mercure,
Assistant Secretary for Rural Development.

Dated: January 26, 1979.

Bob Bergland,
Secretary of Agriculture.

Dated: January 26, 1979.

Robert Benedict,
Commissioner, Administration on Aging.

Dated: January 26, 1979.

Arabella Martinez,
Assistant Secretary for Human Development Services.

Dated: January 30, 1979.

Patricia Harris,
Secretary of Health, Education, and Welfare.

Exhibit J.—U.S. Department of Agriculture; Farmers Home Administration

Form FmHA 1944–33 (Rev. 4–1–80)
Loan Agreement for an:

☐ RRH Insured Loan to an Individual Operating on a Profit Basis;

or

☐ RRH Loan to an Individual Operating on a Limited Profit Basis

1. *Parties and Terms Defined.* This agreement dated of the Undersigned , herein called "Borrower" whether one or more, whose post office address is , with the United States of America acting through the Farmers Home Administration, United States Department of Agriculture, herein called "the Government," is made in consideration of a loan, herein called "the loan," to Borrower in the amount of $ made or insured, or to be made or insured, by the Government pursuant to sections 515 (b) of the Housing Act of 1949 to build a RRH project. The loan may be sold and insured by the Government. The loan shall be used solely for the specific eligible purposes for which it is approved by the Government in order to provide rental housing and related facilities for eligible occupants, as defined by the Government in rural areas. Such housing and facilities and the land constituting the site as herein called "the housing." The indebtedness and other obligations of Borrower under the note evidencing the loan, the related security instrument and any related agreement are herein called the "loan obligations."

2. *Equal Opportunity and Nondiscrimination Provisions.* The Borrower will comply with (a) any undertakings and agreements required by the Government pursuant to Title VIII of the Civil Rights Act of 1968 related to Fair Housing and regarding nondiscriminaton in the use and occupancy of housing, (b) Farmers Home Administration Form FmHA 400–1 entitled "Assurance Agreement," including an "Equal Opportunity Clause" to be incorporated in or attached as a rider to each construction contract the amount of which exceeds $10,000 and any part of which is paid for with funds from the loan, and (c) Farmers Home Administration Form FmHA 400–4, entitled "Assurance Agreement" (Under Title VI, Civil Rights Act of 1964), a copy of which is attached hereto and made a part thereof, and any other undertakings and agreements required by the Government pursuant to lawful authority.

3. *Borrower Contribution.* The amount of $ to be contributed from the borrower's own funds for land purchase or development will be placed or deposited with the lender and dispersed prior to any disbursement of interim or FmHA loan funds which ever should occur first.

4. *Accounts for Housing Operations and Loan Servicing.* The individual shall establish on its books the following accounts, which shall be maintained so long as the loan obligations remain unsatisfied: a General Operating Account, a Tax and Insurance Escrow Account, a Security Deposit Account and a Reserve Account.

a. *General Operating Account.* By the time the Farmers Home Administration loan is closed or interim funds are obtained to preclude the necessity for multiple advances of Farmers Home Administration loan funds, whichever occurs first, the Borrower shall from the Borrower's own funds deposit in the General Operating Account the amount of $ in the form of cash.

b. *Reserve Account.* Transfers at a rate not less than $ annually shall be made to the Reserve Account until the amount in the Reserve Account reaches the sum of $ and shall be resumed at any time when necessary, because of disbursements from the Reserve Account to restore it to said sum. Use of funds deposited to this account will be in accordance with FmHA Regulation 7 CFR part 1930–C. With prior consent of the Government, funds in the Reserve Account may be used by the Borrower—

☐ For any purpose desired by the Borrower, provided the Borrower determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 4 b to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

☐ To pay in dividends to the Borrower of up to 8 percent per annum of the borrower's initial investment of $ provided Borrower determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 4b to be accumulated by that time, and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

5. *Regulatory Covenants.* So long as the loan obligations remain unsatisfied, the Borrower shall comply with all appropriate FmHA regulations and shall:

(a) Impose and collect such fees, assessments, rents, and charges that the income of the housing will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

(b) Maintain complete books and records relating to the housing's financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government or its representative to inspect such books and records at all reasonable times.

(c) If required or permitted by the Government, revise the accounts herein provided for, or establish new accounts, to cover handling and disposition of income from and payment of expenses attributable to the housing or to any other property securing the loan obligations, and submit regular and special reports concerning the housing or financial affairs.

(d) Unless the Government gives prior consent—

(1) Not use the housing for any purpose other than as rental housing and related facilities for eligible occupants.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

(3) Not cause or permit any transfer or encumbrance of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise.

(4) Not borrow any money, nor incur any liability aside from current expenses as defined in section 7 which would have a detrimental effect on the housing.

(e) Submit for the housing the required reports as per FmHA Regulation 7 CFR Part 1930–C for prior review.

(f) If required by the Government, modify and adjust any matters covered by clause (e) of this section.

(g) Do other things as may be required by the Government in connection with the operation of the housing, or with any

of the Borrower's operations or affairs which may affect the housing, the loan obligations, or the security.

☐ (h) If the return on investment for any year exceeds 8 percent per annum of Borrower's initial investment for $, the Government may require that the Borrower reduce the following year and/or refund the excess return on the investment to the tenants or use said excess in a manner that will best benefit the tenants.

6. *General Provisions.*

(a) It is understood and agreed by the Borrower that any loan made or insured will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government in this agreement or elsewhere may be exercised by it in its sole discretion.

(b) Borrower shall also comply with all covenants and agreements set forth in the note, security instrument, and any related agreements executed by Borrower in connection with the loan.

(c) The provisions of this agreement are representations to the Government, to induce the Government, to make or insure a loan to the Borrower as aforesaid. If the Borrower should fail to comply with or perform any provision of this agreement or any requirement made by the Government pursuant to this agreement, such failure shall constitute default as fully as default in payment of amounts due on the loan obligations. In the event of such failure, the Government at its option may declare the entire amount of the loan obligations immediately due and payable and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

(d) Any provisions of this agreement may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Borrower, after this agreement becomes contractually binding, to any extent such provisions could legally have been foregone or agreed to in amended form, by the Government initially.

(e) Any notice, consent, approval, waiver or agreement must be in writing.

(f) This resolution may be cited in the security instrument and any other instruments as the "Loan Agreement of ————, 19—.

Witness— ————————————
Borrower— ————————————
Witness— ————————————

————————————
Borrower

Exhibit K—U.S. Department of Agriculture; Farmers Home Administration

[Form FmHA 1944–34 (Rev. 4–1–80)]

Loan agreement for an:

☐ RRH Loan to a Partnership Operating on a Profit Basis

☐ RRH Loan to a Limited Partnership Operating on a Profit Basis

☐ RRH Loan to a Partnership Operating on a Limited Profit Basis

☐ RRH Loan to a Limited Partnership Operating on a Limited Profit Basis

1. *Parties and Terms Defined.* This agreement dated ———— of the ————, a Partnership, duly organized and operating under ————, herein called "Partnership," whose post office address is ————, with the United States of America acting through the Farmers Home Administration, United States Department of Agriculture, herein called "the Government," is made in consideration of a loan, herein called "the loan," to Partnership in the amount of $———— made or insured, or to be made or insured, by the Government pursuant to sections 515(b) of the Housing Act of 1949 to build a ———— RRH project. The loan may be sold and insured by the Government. The loan shall be used solely for the specific eligible purposes for which it is approved by the Government in order to provide rental housing and related facilities for eligible occupants, as defined by the Government in rural areas. Such housing and facilities and the land constituting the site as herein called "the housing." The indebtedness and other obligations of the Partnership under the note evidencing the loan, the related security instrument and related agreement are herein called the "loan obligations."

2. *Execution of Loan Instruments.* To evidence the loan the Partnership shall issue a promissory note (herein referred to as "the note"), signed by ———— for the amount of the loan, payable in installments over a period of ——— years, bearing interest at a rate, and containing other terms and conditions, prescribed by the Government. To secure the note or any indemnity or other agreement required by the Government, ———— are to execute a real estate security instrument giving a lien upon the housing and upon such other real property of the Partnership as the Government shall require, including an assignment of the rents and profits as collateral security to be enforced in the event of any default by the Partnership, and containing other terms and conditions prescribed by the Government. ———— are to execute any other security instruments and other instruments and documents required by the Government in connection with the making or insuring of the loan. The indebtedness and other obligations of the Partnership under the note, the related security instrument, and any related agreement are herein called the "loan obligation."

3. *Equal Opportunity and Nondiscrimination Provisions.* The Partnership will execute (a) any undertakings and agreements required by the Government pursuant to Title VIII of the Civil Rights Act of 1968 related to Fair Housing and regarding nondiscrimination in the use and occupancy of housing, (b) Farmers Home Administration Form FmHA 400–1 entitled "Equal Opportunity Agreement," including an "Equal Opportunity Clause" to be incorporated in or attached as a rider to each construction contract the amount of which exceeds $10,000 and any part of which is paid for with funds from the loan, and (c) Farmers Home Administration Form FmHA 400–4, entitled "Assurance Agreement [Under Title VI, Civil Rights Act of 1964)," a copy of which is attached hereto and made a part thereof and any other undertakings and agreements required by the Government pursuant to lawful authority.

4. *Borrower Contribution.* The amount of $———— to be contributed by the Partnership from its own funds for the land purchase or development will be placed or deposited with the lender and dispersed prior to any disbursement of interim loan funds or any FmHA loan funds.

5. *Accounts for Housing Operations and Loan Servicing.* The Partnership shall establish on its books the following accounts, which shall be maintained in accordance with FmHA Regulation 7 CFR Part 1930–C so long as the loan obligations remain unsatisfied: A General Fund Account, a Tax and Insurance Escrow Account, a Security Deposit Account and a Reserve Account.

a. *General Operating Account.* By the time the Farmers Home Administration loan is closed or interim funds are obtained to preclude the necessity for multiple advances of Farmers Home Administration loan funds, which ever occurs first, the Partnership shall from its own funds deposit in the General Operating Account the amount of $————.

b. *Reserve Account.* Transfers at a rate not less than $———— annually shall be made to the Reserve Account until the amount in the Reserve Account reaches the sum of $———— and shall be resumed at any time when necessary, because of disbursements from the Reserve Account to restore it to said sum. Use of funds deposited to this account will be in accordance with FmHA Regulation 7 CFR Part 1930–C. With prior consent of the Government funds in the Reserve Account may be used by the Partnership—

☐ To pay dividends to the partners of up to 8 percent per annum of the borrower's initial investment of $————, provided the Partnership determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 5 b to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

☐ To pay dividends to the partners or for any other purpose desired by the Partnership, provided the Partnership determines that after such disbursement (a) the amount in the Reserve Account will not be less than that required by subsection 5 b to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

6. *Regulatory Covenants.* So long as the loan obligations remain unsatisfied, the Partnership shall comply with all appropriate FmHA regulations and shall:

(a) Impose and collect such fees, assessments, rents, and charges that the income of the housing will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

(b) Maintain complete books and records relating to the housing's financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

(c) If required or permitted by the Government, revise the account herein provided for, or establish new accounts, to cover handling and disposition of income from and payment of expenses attributable to the housing or to any other property securing the loan obligations, and submit regular and special reports concerning the housing or financial affairs.

(d) Agree that if any provisions of its organizational documents or any verbal understandings conflict with the terms of this loan agreement, the terms of the loan agreement shall prevail and govern.

(e) Unless the Government gives prior consent—

(1) Not use the housing for any purpose other than as rental housing and related facilities for eligible occupants.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

(3) Not change the membership by either the admission or withdrawal of any partner(s) (16) *nor permit the general partner(s) to maintain less than a 5 percent fin in the organization* nor cause or permit voluntary dissolution of the Partnership nor cause or permit any transfer or encumbrance of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise.

(4) Not borrow any money, nor incur any liability aside from current expenses as defined in section 7 which would have a detrimental effect on the housing.

(f) Submit for the housing the required reports as per FmHA Regulation 7 CFR Part 1930–C to the Government for prior review.

(g) If required by the Government, modify and adjust any matters covered by clause (f) of this section.

(h) Comply with all its agreements and obligations in or under the note, security instrument, and any related agreement executed by the Partnership in connection with the loan.

(i) Not alter, amend, or repeal without the Government's consent this agreement or the Partnership Agreement, which shall constitute parts of the total contract between the Partnership and the Government relating to the loan obligations.

(j) Do other things as may be required by the Government in connection with the operation of the housing, or with any of the Partnership's operations or affairs which may affect the housing, the loan obligations, or the security.

☐ (k) If return on investment for any year exceeds 8 percent per annum of borrower's initial investment of $————, the Government may require that the borrower reduce rents the following year and/or refund the excess return on investment to the tenants or use said excess in a manner that will best benefit the tenants.

7. *General Provisions.*

(a) It is understood and agreed by the Partnership that any loan made or insured will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government in this agreement or elsewhere may be exercised by it in its sole discretion.

(b) The provisions of this agreement are representations to the Government, to induce the Government, to make or insure a loan to the Partnership as aforesaid. If the Partnership should fail to comply with or perform any provision of this agreement or any requirement made by the Government pursuant to this agreement, such failure shall constitute default as fully as default in payment or amounts due on the loan obligations. In the event of such failure, the Government at its option may declare the entire amount of the loan obligations immediately due payable and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

(c) Any provisions of this agreement may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Partnership, after this agreement becomes contractually binding, to any extent such provisions could legally have been foregone or agreed to in amended form, by the Government initially.

(d) Any notice, consent, approval, waiver, or agreement must be in writing.

(e) This agreement may be cited in the security instrument and any other instruments as the "Loan Agreement of ————, 19— (date of this agreement).

————————————
Partnership name
By:
————————————
————————————
————————————

Exhibit L.—U.S. Department of Agriculture; Farmers Home Administration

[Form FmHA 1944–35 (Rev. 4–1–80)]

Loan Resolution for an:

☐ RRH Loan to a Broadly Based Nonprofit Corporation.

☐ RRH Loan to a Profit Type Corporation.

☐ RRH Loan to Profit Type Corporation Operating on a Limited Profit Basis.

Loan Resolution of ————, 19—. Resolution of the board of directors of ———— providing for borrowing $———— to finance rental housing and related facilities in a rural area for ————, the

collection, handling, and disposition of income, the issuance of installment promissory note and real estate security instrument, and related matters.

Whereas ———————— (herein referred to as the "Corporation") is a corporation duly organized and operating under ————————, the Board of Directors of the Corporation (herein referred to as the "board") has decided to provide certain rental housing and related facilities for eligible occupants in rural areas. The board has determined that the Corporation is unable to provide such housing and facilities with its own resources or to obtain from other sources for such purpose sufficient credit upon terms and conditions which the Corporation could reasonably be expected to fulfill:

Be it resolved:

1. *Application for Loan.* The Corporation shall apply for and obtain a loan (herein called "the loan") of $———— from the United States of America acting through the Farmers Home Administration, United States Department of Agriculture, (herein called the "Government") pursuant to section 515(b) of the Housing Act of 1949. The loan may be sold and insured by the Government. The loan shall be used solely for the specific eligible purposes for which it is approved by the Government, in order to provide rental housing and related facilities for eligible occupants, as defined by the Government in rural areas. Such housing and facilities and the land constituting the site are herein called "the housing."

2. *Execution of Loan Instruments.* To evidence the loan the Corporation shall issue a promissory note (herein referred to as "the note"), signed by its President and attested by its Secretary, with its corporate seal affixed thereto, for the amount of the loan, payable in installments over a period of —— years, bearing interest at a rate, and containing other terms and conditions, prescribed by the Government. To secure the note or any indemnity or other agreement required by the Government, the President and the Secretary are hereby authorized to execute a real estate security instrument giving a lien upon the housing and upon such other real property of the Corporation as the Government shall require, including an assignment of the rents and profits as collateral security to be enforced in the event of any default by the Corporation, and containing other terms and conditions prescribed by the Government. The President and Secretary are further authorized to execute any other security instruments and other instruments and documents required by the Government in connection with the making or insuring of the loan. The indebtedness and other obligations of the Corporation under the note, the related security instrument, and any related agreement are herein called the "loan obligation."

3. *Equal Opportunity and Nondiscrimination Provisions.* The President and the Secretary are hereby authorized and directed to execute on behalf of the Corporation: (a) any undertakings and agreements required by the Government pursuant to Title VIII of the Civil Rights Act of 1968 related to Fair Housing and regarding nondiscrimination in the use of occupancy of housing; (b) Farmers Home Administration Form FmHA 400–1 entitled "Equal Opportunity Agreement" including an "Equal Opportunity Clause" to be incorporated in or attached as a rider to each construction contract the amount of which exceeds $10,000 and any part of which is paid for with funds from the loan, and (c) Farmers Home Administration Form FmHA 400–4, entitled "Assurance Agreement" (Under Title VI, Civil Rights Act of 1964) a copy of which is attached hereto and made a part thereof and any other undertakings and agreements required by the Government pursuant to lawful authority.

4. *Borrower Contribution.* The amount of $———— to be contributed from the corporation's own funds for the land purchase or development will be placed or deposited with the lender and dispersed prior to any disbursements of interim loan funds or FmHA loan funds which ever occurs first.

5. *Accounts for Housing Operations and Loan Servicing.* The Corporation shall establish on its books the following accounts, which shall be maintained in accordance with FmHA Regulation 7 CFR Part 1930–C so long as the loan obligations remain unsatisfied: A General Operating Account, a Tax and Insurance Escrow Account, a Security Deposit Account and a Reserve Account.

a. *General Operating Account.* By the time the Farmers Home Administration loan is closed or interim funds are obtained to preclude the necessity for multiple advances of Farmers Home Administration loan funds, which ever occurs first, the Corporation shall from its own funds deposit in the General Operating Account the amount of $————.

b. *Reserve Account.* Transfers at a rate not less than $———— annually shall be made to the Reserve Account until the amount in the Reserve Account reaches the sum of $———— and shall be resumed at any time when necessary, because of disbursements from the Reserve Account to restore it to said sum. Use of funds deposited to this account will be in accordance with FmHA Regulation 7 CFR Part 1930–C. With prior consent of the Government funds in the Reserve Account may be used by the Corporation—

☐ To pay dividends to stockholders or for any purpose duly authorized by the board, of up to 8 percent per annum of the borrower's initial investment of $———— provided the board determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 5 b to be accumulated by the time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

☐ To pay dividends to stockholders or for any other purpose duly authorized by the board, provided the board determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 5 b to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

6. *Regulatory Covenants.* So long as the loan obligations remain unsatisfied, the Corporation shall comply with all applicable FmHA regulations and shall:

(a) Impose and collect such fees, assessments, rents, and charges that the income of the housing will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

(b) Maintain complete books and records relating to the housing's financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

(c) If required or permitted by the Government, revise the account herein provided for, or establish new accounts, to cover handling and disposition of income from and payment to expenses attributable to the housing or to any other property securing the loan obligations, and submit regular and special reports concerning the housing or financial affairs.

(d) Unless the Government gives prior consent—

(1) Not use the housing for any purpose other than as rental housing and related facilities for eligible occupants.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

(3) Not cause or permit voluntary dissolution of the Corporation nor merge or consolidate with any other organization, nor cause or permit any transfer or encumbrance of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise.

(4) Not cause or permit the issue or transfer of stock, borrow any money, nor incur any liability aside from current expenses as defined in section 7 which would have a detrimental effect on the housing.

(e) Submit for the housing the required reports as per FmHA Regulation 7 CFR Part 1930–C to the Government for prior review.

(f) If required by the Government, modify and adjust any matters covered by clause (e) of this section.

(g) Comply with all its agreements and obligations in or under the note, security instrument, and any related agreement executed by the Corporation in connection with the loan.

(h) Not alter, amend, or repeal without the Government's consent this resolution or the bylaws or articles of incorporation of the Corporation, which shall constitute parts of the total contract between the Corporation and the Government relating to the loan obligations.

(i) Do other things as may be required by the Government in connection with the operation of the housing, or with any of the Corporation's operations or affairs which may affect the housing, the loan obligations, or the security.

(j) If return on investment for any year exceeds 8 percent per annum of borrower's initial investment of $————, the Government may require that the borrower reduce rents the following year and/or refund excess return on investment to the tenants or use said excess in a manner that will best benefit the tenants.

7. *General Provisions.*

(a) It is understood and agreed by the Corporation that any loan made or insured will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government herein or elsewhere may be exercised by it in its sole discretion.

(b) The provisions of this resolution are representations to the Government, to induce the Government, to make or insure a loan to the Corporation as aforesaid. If the Corporation should fail to comply with or perform any provisions of this resolution or any requirements made by the Government pursuant to this resolution, such failure shall constitute default as fully as default in payment or amounts due on the loan obligations. In the event of such failure, the Government at its option may declare the entire amount of the loan obligations immediately due and payable and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

(c) Any provisions of this resolution may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Corporation, after this resolution becomes contractually binding, to any extent such provisions could legally have been foregone or agreed to in amended form, by the Government initially.

(d) Any notice, consent, approval, waiver, or agreement must be in writing.

(e) This resolution may be cited in the security instrument and any other instruments as the "Loan Resolution of ————————, 19—."

Certificate

The undersigned, ————————, the Secretary of the Corporation identified in the foregoing Loan Resolution, hereby certifies that the foregoing is a true copy of a resolution duly adopted by the board of directors on ————————, 19—, which has not been altered, amended, or repealed.

(Date)

(Secretary)

[SEAL]

BILLING CODE 3410-07-M

Exhibit M

FHA FORM NO 2530
REV 3/76

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING ADMINISTRATION
PREVIOUS PARTICIPATION CERTIFICATE

Form Approved
OMB No 63-R1406

HUD Area or Insuring Office _____ Project Number _____
Proposed Project Name _____ Location _____
Proposed Mortgage Amount $ _____ Number of Units _____

We, the undersigned, request consideration of the above identified project proposal to be financed with a mortgage insured under the National Housing Act We, individually and collectively, represent that we are the sole Principals in the project (or that all other Principals have filed a similar certificate), that we have not been Principals or had an interest in any FHA insured or other HUD programs except as shown below, and that no project in which we have had any interest is, or ever was, in default or received mortgage relief except as shown below. We agree that any change of the Principals listed herein, or additions thereto, will be reported to FHA and we will inform them of the requirement to file a similar certificate.

Previous Project Name and Location	FHA or MUD No.	Name of Principal	Type of Participation	Default	Mortgage Relief

Employer Identification or Social Security Number

DATE _____ SIGNATURE _____

PLEASE TYPE NAME AND INTEREST IN PROPOSED PROJECT _____ CITY, STATE AND ZIP CODE _____

DATE _____ SIGNATURE _____

PLEASE TYPE NAME AND INTEREST IN PROPOSED PROJECT _____ CITY, STATE AND ZIP CODE _____

DATE _____ SIGNATURE _____

PLEASE TYPE NAME AND INTEREST IN PROPOSED PROJECT _____ CITY, STATE AND ZIP CODE _____

DATE _____ SIGNATURE _____

PLEASE TYPE NAME AND INTEREST IN PROPOSED PROJECT _____ CITY, STATE AND ZIP CODE _____

DATE _____ SIGNATURE _____

PLEASE TYPE NAME AND INTEREST IN PROPOSED PROJECT _____ CITY, STATE AND ZIP CODE _____

WARNING: Section 1010 of Title 18, U.S.C., "Department of Housing and Urban Development transactions," provides: "Whoever, for the purpose of . . . influencing in any way the action of such Department . . . makes, passes, utters, or publishes any statement, knowing the same to be false . . . shall be fined not more than $5,000 or imprisoned not more than two years, or both."

PART 4 SEND TO DIRECTOR, PARTICIPATION AND COMPLIANCE REVIEW DIVISION, HPMC-FHA, WASHINGTON, D.C.

BILLING CODE 3410-07-C

BILLING CODE 3410-07-C

Environment Impact Statement

This document has been reviewed in accordance with FmHA Instruction 1901–G "Environmental Impact Statements". It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190 an Environmental Impact Statement is not required.

The reporting and/or record keeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

(42 U.S.C. 1480; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70)

(FCDA 10.415, Rural Renting Housing Loans)

Dated: September 30, 1980.

Gordon Cavanaugh,

Administrator, Farmers Home Administration.

[FR Doc. 80-33343 Filed 10-24-80; 8:45 am]

BILLING CODE 3410-07-M

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7 CFR Part 1944

Housing; Tenant Grievance and Appeals Procedure

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration amends its regulations regarding tenant grievances and appeals. This action is taken to provide a means for resolving disputes between tenants and owners in FmHA-financed projects. This action is taken as a result of comments received on a previous publication.

EFFECTIVE DATE: October 27, 1980.

FOR FURTHER INFORMATION CONTACT: Paul Conn, Division Director, Management and Support Division, FmHA, Rm. 5321 South Building, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone: 202–447–7207. The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from the Office of the Chief, Directives Management Branch, Farmers Home Administration, Room 6346 South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant."

This instruction does not directly affect any FmHA programs or projects which are subject to A–95 clearinghouse review.

FmHA amends Subpart L of Part 1944, Subchapter H, Chapter XVIII, Title 7, Code of Federal Regulations. Section 503 of the Housing and Community Development Amendments of 1978, Pub. L. 95–57, dated October 31, 1978, amended Section 510 of the Housing Act of 1949 to expressly provide, among other things, for an appeals procedure for tenants in FmHA-financed dwelling units and persons denied admission as tenants. There is need for provision of such tenant grievance and appeals procedure to resolve problems and disputes between tenants and owners in FmHA financed projects.

The Farmers Home Administration (FmHA) published a regulation on September 24, 1979, prescribing a Tenant Grievance and Appeals Procedure. The regulation applies to project financed under the Rural Rental Housing Loan Program and Farm Labor Housing Loan and Grant Program to provide a grievance and appeals procedure for tenants and an appeal right for persons who have been denied admission as tenants. The intended effect of that action was to provide a means whereby a tenant can present a grievance against or appeal an FmHA borrower-landlord's proposed adverse action, such as termination of the lease and eviction. The appeal right would also extend to persons who have been denied admission to occupancy as tenants. This action was needed since previously the only grievance and appeals procedure in existence for tenants in FmHA-financed rental units and those denied admission to occupancy as tenants was the recourse available under the Fair Housing Act of Title VIII of the Civil Rights Act of 1968, which provides protection against discrimination because of race, color, religion, sex, marital status, or national origin. Public comments were received.

Major concerns reflected in the comments were as follows:

1. State Laws have set procedures to be followed for termination of leases and evictions.

The procedures are intended to discourage evictions for other than material noncompliance with the lease or other good cause. § 1944.554 has been amended to state that if the proposed eviction is due to the tenant's failure to make timely rental payments including any "grace period" under the lease, the tenant waives his/her rights under the Tenant Grievance and Appeals Procedure unless the past-due rent is paid and rental payments are made on a timely basis while the appeal is in process. The procedure has also been amended to state that the procedure does not apply to eviction situations where a tenant's continued occupancy constitutes a threat to the health or safety of other residents or management employees (normally involving a violent action such as the use of firearms, arson, etc.) and judicial process is undertaken.

2. Hearing Officers and panelists should be compensated.

This recommendation was not acted upon because a provision for such compensation is not feasible.

3. Increases in rents to cover administrative costs will be costly to good tenants and FmHA.

We believe that the amendment described under number 1 regarding rent payments will mitigate this concern.

4. The FmHA District Director should have more information than just the decision of the hearing officer or hearing panel before determining that it is contrary to FmHA regulations.

The procedure is intended to minimize the involvement of the FmHA District Director; therefore, the recommendation was not acted upon.

5. The coverage of the grievance rights should be expanded to include violation of state or local laws or ordinance by the borrower.

The intent of the procedure is to provide tenants with an opportunity to present a grievance relating to a borrower's actions or failure to act in accordance with the lease and/or FmHA regulations which results in a denial, significant reduction or termination of benefits. We have not expanded the scope of the procedure to include violations of state or local laws or ordinances.

6. Borrowers and applicants or tenants should be required to meet informally.

Paragraph 1944.555(a) has been amended so as to make an informal meeting between the borrower-landlord and the tenant a condition precedent to the hearing process.

7. An applicant or tenant should not be required to personally present a grievance or response to a borrower's notice of proposed adverse action but should be permitted to use a representative.

Since the tenant may make the presentation either orally or in writing, we believe that to permit a tenant representative in lieu of the tenant to

personally present the grievance or appeal at this stage would contradict the intent of the informal hearing requirement; i.e., to encourage borrowers, landlords, and tenants to settle disputes through informal meetings without resorting to the hearing process.

8. Procedures governing the hearing (§ 1944.557(d)) should be revised to put the burden of proof on the borrower.

Simple justice dictates that each party espousing a position should go forward with that position. Using such terms as "burden of proof," which is a judicial form, would tend to confuse both borrowers and tenants.

9. Tenants should have the right to repair and deduct and escrow only the balance of rent due.

The intent of the provision for an escrow deposit in the procedure is to permit the escrow of rent when there is a rent increase not authorized by FmHA or where the borrower fails to maintain the premises in a decent, safe, and sanitary manner. We did not amend the procedure to include a provision for a tenant to repair and deduct, since a provision is included for an escrow until a grievance regarding the borrower's failure to maintain the premises in a decent, safe, and sanitary manner, is resolved.

10. The decision of the hearing officer or hearing panel should not affect the rights of a tenant to a trial de novo.

§ 1944.558 has been revised to state that the decision of the hearing officer or hearing panel does not preclude either party's rights thereafter to seek relief through the courts.

Other changes made in the procedure are as follows:

1. Section 1944.551 has been amended to specify situations to which the procedure does not apply:

(a) rent increases authorized by FmHA

(b) Denials of Rental Assistance

(c) Discrimination complaints

2. Paragraph 1944.553(a) has been revised to clarify that a person who has been denied an application for admission has rights under the procedure except when applications are not being processed due to the fact that it will be a while before additional applicants can be reached on a waiting list. In such cases, applicant inquiries will be handled in accordance with paragraph V C 1 of Exhibit B to Subpart C of Part 1930.

3. Paragraph 1944.553(d) has been revised to clarify that a tenant whose tenancy is to be terminated by the borrower at the end of the *lease term* also has rights under the procedures.

4. Paragraph 1944.555(b) has been amended to:

(a) change from 5 to 10 calendar days the length of time in which the applicant or tenant is required to respond to a borrower's Notice of Proposed Adverse Action.

(b) Provide that in those projects where there is a concentration of non-English speaking individuals, the notice must be in the non-English concentration language if necessary for the tenant's understanding.

5. Paragraph 1944.555(c) has been amended to:

(a) change from 5 to 10 calendar days the length of time the borrower has to prepare the summary of informal meeting with a tenant.

(b) Provide for the summary to be in a non-English concentration language if necessary for the tenant.

6. § 1944.556(d) has been amended to provide for the tenant to examine at a *reasonable time* before the hearing, documents, records, and regulations of the borrower which the borrower intends *to use at* the hearing. This provision is made in those cases where the borrower has provided the tenant or applicant with a Notice of Proposed Adverse Action.

7. § 1944.559 has been amended to insert a paragraph regarding the responsibilities of the District Director in assuring that borrowers and tenants are made aware of the procedure.

The reporting and/or recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

(FCDA No. 10.405) (Farm Labor Housing Loans and Grants)

(FCDA No. 10.415) (Rural Rental Housing Loans)

Therefore as amended, Subpart L of Part 1944 reads as follows:

PART 1944—HOUSING

Subpart L—Farmers Home Administration Tenant Grievance and Appeals Procedure

Sec.

1944.551 Purpose.
1944.552 Objective.
1944.553 Definitions.
1944.554 Reasons for grievance and appeal.
1944.555 Informal settlement of grievances and appeals.
1944.556 Procedure for obtaining a hearing.
1944.557 Procedures governing the hearing.
1944.558 Decision of the hearing officer or hearing panel.
1944.559 Responsibilities of the FmHA District Director.
1944.560–1944.600 [Reserved]
Exhibit A—Summary of Meeting.

Subpart L—Farmers Home Administration Tenant Grievance and Appeals procedure

§ 1944.551 Purpose.

The purpose of this Subpart is to set forth uniform requirements for grievance and appeals procedures in all existing and future Rural Rental Housing (RRH) and Labor Housing (LH) projects financed by the Farmers Home Administration (FmHA) under Sections 514, 515, and 516 of the Housing Act of 1949. Borrowers will promptly implement these requirements. This Subpart is in addition to a tenant's rights and duties under a lease. This Subpart does not apply to:

(a) Rent increases authorized by FmHA in accordance with the requirements of Exhibit C of Subpart C of Part 1930, where tenants are provided an opportunity to provide comments to FmHA on a borrower's Notice of Proposed Rent Increase.

(b) Denials of rental assistance which will be handled in accordance with Exhibit C of Subpart E of Part 1944, where tenants are provided an opportunity to appeal to FmHA.

(c) Discrimination complaints, which will be handled in accordance with Subpart C of Part 1930.

§ 1944.552 Objective.

The objective of this Subpart is to ensure the fair treatment of tenants while providing for an equitable manner by which borrowers can operate, maintain, and safeguard rental projects. The right to appeal under this Subpart shall also extend to persons who seek admission as tenants.

§ 1944.553 Definitions.

(a) *Applicant.* For the purpose of this Subpart, applicant shall mean a person whose application for admission to occupancy in a RRH or LH project has been rejected. This includes persons who have been denied an application for admission except when applications are not being processed due to the fact that it will be awhile before additional applicants can be reached on a waiting list. In such cases, applicant inquiries will be handled in accordance with paragraph V C 1 of Exhibit B to Subpart C of Part 1930. An applicant is also one of the parties to the hearing.

(b) *Tenant.* A tenant is an eligible lessee occupant of an RRH or LH project and is one of the parties to the hearing.

(c) *Borrower.* The borrower (landlord) is the owner or the owner's authorized representative, of an RRH or LH project and is also one of the parties to the hearing.

(d) *Eviction.* Eviction means dispossession of the tenant from an RRH or LH unit as a result of termination of the tenancy, including a termination before or at the end of the lease term.

(e) *Grievance.* A dispute which a tenant may have with respect to a borrower's action or failure to act in accordance with the lease and/or FmHA regulations which result or may result in denial, significant reduction, or termination of benefits.

(f) *Hearing.* A hearing, as used in this Subpart, is an informal proceeding at which a tenant's grievance or appeal of a borrower's adverse action or decision or an applicant's appeal of a rejected application or denial of an application for admission is heard before an impartial hearing officer or hearing panel.

(g) *Lease.* A lease is the written agreement between the borrower and tenant, approved by FmHA.

§ 1944.554. Reasons for grievance and appeal.

(a) Grievance and appeal provide a means whereby a tenant in an FmHA financed rental project is afforded an opportunity to meet with a borrower and to obtain a hearing if the tenant has a grievance relating to a borrower's action or failure to act in accordance with the lease and/or FmHA regulations which results in a denial, significant reduction, termination of benefits, or when a tenant contests a borrower's notice of proposed adverse action as provided in accordance with § 1944.555(b) of this Subpart. This may include:

(1) Failure to maintain the premises in such manner that provides decent, safe, and sanitary housing.

(2) Violation of lease covenants and rules.

(3) Modification of lease.

(4) Rule changes.

(5) Rent increases not authorized by FmHA in accordance with Exhibit C of Subpart C of Part 1930.

(6) Eviction. However, if the proposed eviction is due to the tenant's failure to make timely rental payments including any "grace period" under the lease, the tenant waives his/her rights under the Tenant Grievance and Appeals Procedure. The past-due rent must be paid and rental payments must be made on a timely basis while the appeal is in process for this procedure to apply. Also, the procedure does not apply to eviction situations where a tenant's continued occupancy constitutes an imminent threat to the health or safety of other residents or management employees (normally, involving violent action such as the use of firearms, arson, etc.) and judicial process is undertaken.

(b) Grievance and appeal provide an appeal right for a person whose application for admission to occupancy in a RRH or LH project has been rejected, as well as for persons who have been denied an application for admission, except in those cases where applications are not being processed as provided for in paragraph V C 1 of Exhibit B to Subpart C of Part 1930. This appeal right does not apply to those persons who are clearly not eligible for occupancy under FmHA regulations.

(c) This Subpart shall not apply to disputes between tenants not involving the borrower.

§ 1944.555 Informal settlement of grievances and appeals.

(a) *General.* Borrowers and applicants or tenants are encouraged to attempt to settle disputes through informal meetings without resorting to the hearing process further described in this Subpart.

(b) *Notice to applicant or tenant.* In the case of a borrower's proposed adverse action which results or may result in a denial of admission to occupancy, or eviction, the borrower must notify the applicant or tenant in writing, by certified mail, giving specific reasons for the proposed action. The notice must also advise the applicant or tenant of his/her right to respond to the notice within 10 calendar days after receipt, in accordance with paragraph (c) of this Section and of the right to a hearing in accordance with § 1944.556 of this Subpart. In projects where there is a concentration of non-English speaking individuals, the notice must also be in the non-English concentration language if necessary for the tenant's understanding.

(c) *Presentations of grievances or responses to notice of proposed adverse actions.* Within 10 days after occurrence of the grievance or receipt of a notice of proposed adverse action, an applicant or tenant shall personally present to the borrower or borrower's designee, either orally or in writing, any grievance or response to a borrower's notice of proposed adverse action. The borrower shall prepare a summary of any discussion within 10 calendar days after the informal meeting and one copy shall be given to the tenant and one retained in the borrower's files. A copy of the summary shall be sent to the FmHA District Director. The summary shall specify the names of the participants, date of meeting, the nature of the proposed disposition of the grievance or response to the notice of proposed adverse action and the specific reasons therefor, and the procedures by which a hearing may be obtained if the applicant or tenant is not satisfied. Exhibit A should be used as a guide. In projects where there is a concentration of non-English speaking individuals, the notice must be in the non-English concentration language if necessary for the tenant's understanding.

§ 1944.556 Procedure for obtaining a hearing.

(a) *Request for hearing.* The applicant or the tenant shall submit to the borrower a written request for a hearing within 10 days after receipt of the summary of any informal meeting. The written request shall specify:

(1) The reasons for the grievance or contest of the borrower's proposed action, and

(2) The action or relief sought.

(b) *Selection of hearing officer or hearing panel.* In order to properly evaluate grievances and appeals, the borrower shall have a hearing officer or hearing panel for each project. The hearing officer shall be an impartial, disinterested person selected jointly by the borrower and the tenant and who is willing to render his/her services without compensation. If the borrower and the tenant cannot agree on a hearing officer, they shall each appoint a member to a hearing panel and the members so selected shall select a third member. Members of the hearing panel must be willing to render their services without compensation. The hearing officer or hearing panel would have the authority to reverse the borrower's decision.

(c) *Standing hearing panel.* In lieu of the procedure set forth in paragraph (b) of this section for each grievance or appeal presented, a borrower may provide that a standing panel be organized for each project. Such a panel may be organized soon after initial rent-up or at any time in the case of existing projects. Such a panel will be selected and have a membership as follows:

(1) Permanent panelist(s) of the tenants would be elected by the tenants. Either two alternates could be elected or three panelists of the tenants could be elected with equal status. The tenant in this latter case would designate one of the three tenant panelists to participate in the hearing. All tenants would be notified of the time, date, and purpose of the meeting to elect permanent hearing panelists at least two weeks before the appointed date. The notice shall be conspicuously posted in the rental office and in each apartment building or structure and the meeting shall be held at a place which is convenient and accessible to the tenants.

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(2) Permanent borrower panelist(s) selected by the borrower. One or two alternates may also be designated.

(3) A permanent mutual panelist, to serve as the chair, selected by the other two persons or groups, including alternates, in which case each "group" gets one vote.

(4) All standing hearing panel members serve one year and may be re-elected. They must be willing to render their services without compensation.

(5) A panel for a hearing shall consist of 3 members, one tenant panelist, one borrower panelist and the chair.

(d) *Examination of records.* When the borrower has provided the tenant or applicant with a notice of proposed adverse action, the tenant shall have the opportunity, at a reasonable time before the hearing and, at the expense of the tenant, to examine and/or copy all documents, records, and regulations of the borrower which the borrower intends to use at the hearing unless otherwise prohibited by law.

(e) *Scheduling of hearing.* A hearing shall be scheduled to be held within 15 days after receipt of the tenant's request for a hearing at a time and place mutually convenient to both parties. If the parties cannot agree on a meeting place or time, the hearing officer or hearing panel will designate the place or time.

(f) *Escrow deposit.* Provided the tenant's rental payments are otherwise current, an escrow deposit of rental payments may be used by tenants in the case of a grievance involving a rent increase not authorized by FmHA or failure of the borrower to maintain the property in a decent, safe, and sanitary manner. When an escrow deposit is used, the tenant must deposit into escrow the amount required by the lease when the rent is due, until the complaint is resolved through informal discussion or by the hearing officer or panel. The rent shall be deposited in a financial institution or with an independent agent. Failure to make timely escrow payments shall result in a termination of the tenant grievance and appeals procedure and all sums immediately will become due and payable under the lease.

(g) *Failure to request a hearing.* If the tenant or applicant does not request a hearing within the time provided by § 1944.556(a), the borrower's disposition of the grievance or appeal shall become final.

§ 1944.557 Procedures governing the hearing.

(a) Subject to paragraph (b) hereof, the hearing will be an informal proceeding before a hearing officer or hearing panel at which evidence may be received without regard to whether that evidence could be employed in judicial proceedings.

(b) The hearing shall be structured so as to provide the basic safeguards for both the borrower and the tenant, which shall include:

(1) The right of both parties to be represented by counsel or other person chosen as his or her representative.

(2) The right of the tenant or applicant to a private hearing unless he/she requests a public hearing.

(3) The right of the tenant or applicant to present evidence and arguments in support of his/her grievance or appeal and to refute the evidence of all witnesses on whose testimony or information the borrower relies.

(4) The right of the borrower to present evidence and arguments in support of his/her decision, to refute evidence relied upon by the tenant, and to confront and examine all witnesses on whose testimony or information the tenant relies.

(5) A decision based solely and exclusively upon the facts presented at the hearing.

(c) At the hearing the tenant or applicant must present evidence that he/she is entitled to the relief sought and thereafter the borrower will present evidence showing the basis of its action or failure to act against that which the grievance or appeal is directed.

(d) The hearing shall be conducted informally by the hearing officer or hearing panel and oral or documentary evidence pertinent to the facts and issues raised by the grievance or notice of proposed adverse action may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings. The hearing officer or hearing panel shall require that the borrower, the tenant or applicant, counsel and other participants or spectators conduct themselves in an orderly manner. Failure to comply with the directions of the hearing officer or hearing panel to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate.

(e) If the tenant or applicant (or his/her representative) fails to appear at a scheduled hearing, the hearing officer or hearing panel may make a determination to postpone the hearing for not to exceed five business days or may make a determination that the party has waived his or her right to a hearing under this Subpart. Both the tenant and the borrower shall be notified of the determination of the hearing officer or hearing panel.

§ 1944.558 Decision of the hearing officer or hearing panel.

(a) The hearing officer or hearing panel shall prepare a written decision, together with the reasons therefor, within 10 calendar days after the hearing. The written decision must be specific as to the facts presented which were the basis upon which the decision was rendered. Copies of the decision shall be sent to the borrower, the tenant or applicant, and the FmHA District Director.

(b) The decision of the hearing officer or hearing panel shall be binding upon the parties to the hearing unless the parties to the hearing are notified by the District Director that the decision is contrary to FmHA regulations. However, the decision of the hearing officer or hearing panel does not preclude either party's right thereafter to seek relief through the courts. The notification of the District Director will specify the FmHA regulation that the decision is contrary to and the hearing officer or hearing panel shall amend the decision to comply with the regulation(s) within 10 days of receipt of the notice.

(c) Upon notification from the District Director that the decision is in compliance with FmHA regulations, the decision is binding upon the borrower and tenant, and the borrower and tenant shall take the necessary action, or refrain from any actions, necessary to carry out the decision.

§ 1944.559 Responsibilities of the FmHA District Director.

(a) The District Director will assure that a copy of this Subpart is sent to each borrower with a requirement that the regulations be permanently posted in a conspicuous place for the information of tenants, such as the rental offices, laundry area, activities room, or other such place where it will be noticed by tenants. The District Director will also require that the borrower maintain copies in his/her files available for inspection by the tenants and FmHA upon request. The District Director will assure that where there is a concentration of non-English speaking individuals, the regulation is made available to the tenants in both English and the non-English concentration language.

(b) The District Director will encourge the borrower and tenant or applicant to resolve grievances and appeals through informal discussion; however, upon receipt of a summary of informal discussion as required by § 1944.555(c) of this Subpart, the District Director will immediately review the summary to ascertain that the tenant or applicant has received a copy of the summary and a copy of the procedures to obtain a hearing if matters could not be resolved through informal discussion.

(c) Upon receipt of the decision by the hearing officer or hearing panel in accordance with § 1944.558(a) of this Subpart, the District Director will immediately review the decision to determine its compliance with FmHA regulations.

(d) The District Director will notify the parties to the hearing within 5 working days after receipt of the copy of the decision whether:

(1) The decision is in compliance with FmHA regulations.

(2) The decision is contrary to FmHA regulations and is reversed.

§§ 1944.560–1944.600 [Reserved]

Exhibit A.—Summary of Meeting

Name and Address of Borrower:

Name and Address of Project:

Name and Address of Complainant:

Date of Meeting:

Participants in Meeting:

Decision and Specific Reasons Therefore:

Tenant's Acknowledgement:

I hereby acknowledge receipt of a copy of this summary and have been advised of my rights to use the attached procedures to obtain a hearing if I so choose.

Tenant

Procedures for Obtaining a Hearing:

The following procedures may be used to obtain a hearing if you are not satisfied with the decision made as a result of our discussion on (date) _____.

1. Request for a Hearing: Send a written request for a hearing within ten days after you receive this notice to the address shown in the summary. Indicate specifically (1) the reason for your grievance or your contest of our proposed action and (2) the action or relief you seek.

2. Selection of Hearing Officer or Hearing Panel. (Strike out paragraph not needed.)

(a) As you probably already know, a Standing Hearing Panel is available to conduct the hearing.

(b) We need to meet soon after your request for a hearing is received to select a hearing officer/hearing panel.

3. Scheduling of Hearing: The hearing will be scheduled to be within 15 days after we receive your request for a hearing. It will be held at a time and place convenient for both of us. If we cannot agree on a place, the hearing officer/hearing panel will designate the place.

Examination of Records: You have the opportunity before the hearing to examine and, at your own expense, to copy all documents, records, and regulations that are relevant to the hearing unless otherwise prohibited by law.

Procedures Governing Hearing:

1. The hearing will be an informal proceeding before a hearing officer or hearing panel at which both parties will have an opportunity to present their sides of the dispute.

2. Both parties may be represented by legal counsel or another person of one's choice.

3. You have a right to a private hearing, unless you request a public hearing.

4. Both parties have the right to present evidence, arguments, and witnesses to support their sides of the dispute, to refute evidence relied upon by the other party, and to confront and cross-examine all witnesses.

5. A decision will be based solely and exclusively upon the facts presented at the hearing.

This final rule has been reviewed in accordance with Subpart G of Part 1901 of this Chapter, "Environmental Impact Statements." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

(42 U.S.C. 1480; delegation of authority by the Secretary of Agriculture 7 CFR 2.23)

Dated: September 30, 1980.

Gordon Cavanaugh,

Administrator, Farmers Home Administration.

[FR Doc. 80-33278 Filed 10-24-80; 8:45 am]

BILLING CODE 3410-27-M

Animal and Plant Health Inspection Service

9 CFR Part 82

Exotic Newcastle Disease; and Psittacosis or Ornithosis in Poultry; Areas Quarantined and Released

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of these amendments is to quarantine a portion of Cabell County in West Virginia because of the existence of exotic Newcastle disease and to release a portion of Washington County in Oregon from the areas quarantined because of exotic Newcastle disease. Exotic Newcastle disease was confirmed in such portion of Cabell County, West Virginia, on October 17, 1980. Therefore, in order to prevent the dissemination of exotic Newcastle disease it is necessary to quarantine the affected area. Further surveillance activity indicates that exotic Newcastle disease no longer exists in the area quarantined.

EFFECTIVE DATE: October 21, 1980.

FOR FURTHER INFORMATION CONTACT: C. G. Mason, Chief, National Emergency Field Operations, Emergency Programs, Veterinary Services, USDA, 6505 Belcrest Road, Federal Building, Room 751, Hyattsville, MD 20782, 301–436–8073.

SUPPLEMENTARY INFORMATION: These amendments quarantine a portion of Cabell County in West Virginia, because of the existence of exotic Newcastle disease. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement and their carcasses, and parts thereof, and certain other articles, from quarantined areas, as contained in 9 CFR Part 82, as amended, will apply to the quarantined area.

These amendments also release a portion of Washington County in Oregon from the areas quarantined because of exotic Newcastle disease. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR Part 82, as amended, will no longer apply to the released area.

Accordingly, Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respects:

1. In § 82.3 (a)(9)(i), is added to read:

§ 82.3 Areas quarantined.

(a) * * *

* * * * * *

(9) *West Virginia.* (i) The premises of Vincent Perego, 3984 Beechwood Road, Ona, Cabell County.

* * * * * *

2. In § 82.3(a)(17), relating to the State of Oregon, subdivision (ii) relating to the premises of Pet Kingdom, 1075 S.E. Baseline Road, Hillsboro, Washington County, is deleted.

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132 (21 U.S.C. 111–113, 115, 117, 120, 123–126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141)

These amendments impose certain restrictions necessary to prevent the interstate spread of exotic Newcastle disease, a communicable disease of poultry, and must be made effective immediately to accomplish their purpose in the public interest. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

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The amendment releasing the quarantined area relieves certain restrictions no longer deemed necessary to prevent the spread of exotic Newcastle disease. It should be made effective immediately in order to permit affected persons to move poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles interstate from such area without unnecessary restrictions. It does not appear that public participation in this rulemaking proceeding would make additional relevent information available to the Department.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register.**

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by J. C. Jefferies, Acting Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without opportunity for prior public comment or preparation of an impact analysis statement at this time.

This final rule implements the regulations in Part 82. It will be scheduled for review on conjunction with the periodic review of the regulations in that Part required under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 21st day of October 1980.

Pierre A. Chaloux,

Deputy Administrator, Veterinary Services.

[FR Doc. 80-33368 Filed 10-24-80; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 82

Exotic Newcastle Disease; and Psittacosis or Ornithosis in Poultry; Areas Released From Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of these amendments is to release a portion of Palm Beach County, portions of Broward County, and a portion of Dade County in Florida; and a portion of Lancaster County in Nebraska from areas quarantined because of exotic Newcastle disease. Surveillance activity indicates that exotic Newcastle disease no longer exists in the areas quarantined.

EFFECTIVE DATE: October 21, 1980.

FOR FURTHER INFORMATION CONTACT:
C. G. Mason, Chief, National Emergency Field Operations, Emergency Programs, Veterinary Services, USDA, 6505 Belcrest Road, Federal Building, Room 751, Hyattsville, MD 20782, 301-436-8073.

SUPPLEMENTARY INFORMATION: These amendments exclude a portion of Palm Beach County, portions of Broward County, and a portion of Dade County in Florida; and a portion of Lancaster County in Nebraska from the areas quarantined because of exotic Newcastle disease under the regulations in 9 CFR Part 82, as amended. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR Part 82, as amended, will not apply to the excluded areas.

Accordingly, Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respects.

§ 82.3 [Amended]

1. In § 82.3(a)(1) relating to the State of Florida, subdivisions (ii), (v), (vi), and (viii) relating to the following premises are deleted:

(a) * * *

(1) * * *

(ii) The premises of Pet Carousell, Inc., 7573 W. Oakland Park Blvd., Ft. Lauderdale, Broward County. [Deleted]

* * * * *

(v) The premises of Fernwood Gardens (Robert Wiener), 7800 S.W. 117th Avenue, Miami, Dade County. [Deleted]

(vi) The premises of House of Hamsters, 282 N.W. 2nd Street, Deerfield Beach, Broward County. [Deleted]

* * * * *

(viii) The premises of Ed Lundgren, 888 Auleria Street, Boca Raton, Palm Beach County. [Deleted]

* * * * *

2. In § 82.3(a)(18), relating to the State of Nebraska, subdivision (i) relating to the premises of Pet Ark, 3860 South Street, Lincoln, Lancaster County is deleted.

(Secs. 4-7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; secs. 1-4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; (21 U.S.C. 111-113, 115, 117, 120, 123-126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141)

These amendments relieve certain restrictions no longer deemed necessary to prevent the spread of exotic Newcastle disease, and must be made effective immediately to be of maximum benefit to affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register.**

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by J. C. Jefferies, Acting Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without opportunity for prior public comment or preparation of an impact analysis statement at this time.

This final rule implements the regulations in Part 82. It will be scheduled for review in conjunction with the periodic review of the regulations in that part required under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 21st day of October 1980.

Pierre A. Chaloux,

Deputy Administrator, Veterinary Services.

[FR Doc. 80-33367 Filed 10-24-80; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 82

Exotic Newcastle Disease; and Psittacosis or Ornithosis in Poultry; Areas Released From Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of these amendments is to release a portion of San Diego County in California and a portion of Du Page County in Illinois from areas quarantined because of exotic Newcastle disease. Surveillance activity indicates that exotic Newcastle disease no longer exists in the areas quarantined.

EFFECTIVE DATE: October 21, 1980.

FOR FURTHER INFORMATION CONTACT:
C. G. Mason, Chief, National Emergency Field Operations, Emergency Programs, Veterinary Services, USDA, 6505 Belcrest Road, Federal Building, Room 751, Hyattsville, MD 20782, 301-436-8073.

SUPPLEMENTARY INFORMATION: These amendments exclude a portion of San Diego County in California and a portion of Du Page County in Illinois from the areas quarantined because of exotic Newcastle disease under the regulations in 9 CFR Part 82, as amended. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR Part 82, as amended, will not apply to the excluded areas.

Accordingly, Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respects.

§ 82.3 [Amended]

1. In § 82.3(a)(2), relating to the State of California, paragraph (iii) relating to the premises of Blue Pacific Pet Shop (Terry Kempf), 4828 Newport Avenue, San Diego, San Diego County is deleted.

2. In § 82.3(a)(7), relating to the State of Illinois, paragraph (i) relating to the premises of Bird Mart, 7701 South Grant Avenue, Burr Ridge, Du Page County is deleted.

(Secs. 4-7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; secs. 1-4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; (21 U.S.C. 111-113, 115, 117, 120, 123-126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141)

These amendments relieve certain restrictions no longer deemed necessary to prevent the spread of exotic Newcastle disease, and must be made effective immediately to be of maximum benefit to affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register.**

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by J. C. Jefferies, Acting Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without opportunity for prior public comment or preparation of an impact analysis statement at this time.

This final rule implements the regulations in Part 82. It will be scheduled for review in conjunction with the periodic review of the regulations in that Part required under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 21st day of October 1980.

Pierre A. Chaloux,

Deputy Administrator, Veterinary Services.

[FR Doc. 80-33366 Filed 10-24-80; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Parts 302, 303, 305, and 309

Public Works and Development Facilities Program; Miscellaneous Amendments—Correction

AGENCY: Economic Development Administration, Commerce.

ACTION: Rule: correction.

SUMMARY: This document corrects a rule primarily affecting EDA's Public Works and Development Facilities Program that was published at 45 FR 67062 on October 9, 1980.

DATES: Effective date: October 9, 1980.

FOR FURTHER INFORMATION CONTACT:
Otto B. Bird, Office of Chief Counsel, (202) 377-5441.

SUPPLEMENTARY INFORMATION: EDA published amendments to several of its regulations on October 9, 1980 (45 FR 67062, FR Doc. 80-31467). The "Action" line to that publication stated that the action was a "final rule". As indicated in the "Supplementary Information" section to the October 9 publication, EDA intended the amendments to be published as an "interim rule". This rule modifies that publication by correcting the "Action" line to read "Action: Interim rule".

In addition, the "Summary" section to the October 9 publication contained an incorrect reference and may have been confusing to the reader. Accordingly, this document corrects the rule EDA published on October 9, 1980, by revising the "Action" line and by providing a more descriptive "Summary" section. These two items are corrected to read as follows:

ACTION: Interim rule.

SUMMARY: This rule (45 FR 67062) amends six regulations to make minor technical changes to clarify certain requirements. EDA is amending a seventh regulation, 13 CFR 305.5, to allow municipalities located in designated areas to become eligible to receive maximum grant rates on the basis of municipal statistical information. EDA is making this change to § 305.5 to improve the targeting of resources to areas of greatest need and to facilitate administration.

The other material of the October 9 publication remains unchanged and the reader is referred to that publication for a description of the changes made and the text of the amendments.

Since this rule makes a minor correction of a previously published rule, it does not constitute a "significant regulation" under the criteria of Executive Order 12044. As a result, this rule is not subject to the procedural requirements imposed on significant regulations by that order. The official "Catalogue of Federal Domestic Assistance" number and title for the Public Works and Development Facilities Program is "11.300, Economic Development—Grants and Loans for Public Works and Development Facilities". Projects under this program are subject to requirements imposed by Office of Management and Budget Circular No. A-95 as set forth in 13 CFR 309.17.

(Sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211). Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended))

Dated: October 21, 1980.

Robert T. Hall,

Assistant Secretary for Economic Development.

[FR Doc. 80-33323 Filed 10-24-80; 8:45 am]

BILLING CODE 3510-24-M

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 80-NE; Amdt. 39-3953]

Airworthiness Directives; UOP, Inc., Model 900 Series Aircraft Seats

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires the inspection and repair or replacement of cracked rear stretcher tubes found on UOP Model 900 series aircraft seats. The AD is prompted by reports of cracks in the rear stretcher tubes, which could result in failure of the seat and possible injury to passengers.

DATES: Effective date—November 25, 1980. Compliance schedule—As prescribed in body of AD.

ADDRESSES: The applicable service bulletin may be obtained from Aerospace Division, UOP, Inc., Bantam, Connecticut 06750.

A copy of the service bulletin is contained in the Rules Docket, Office of the Regional Counsel, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Bernard Schaffer, Systems and Equipment Section (ANE-213), Engineering and Manufacturing Branch, Flight Standards Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone: (617) 273-7332.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, requiring the inspection and repair or replacement of cracked rear stretcher tubes found on UOP Model 900 series aircraft seats, was published in the **Federal Register** at 45 FR 30448. The proposal was prompted by reports of cracks in the rear stretcher tubes, which could result in failure of the seat and possible injury to passengers.

Interested persons have been afforded an opportunity to participate in the making of the amendment. Three comments were received from United Airlines. The Air Transportation Association of America also submitted a copy of the United Airlines comments.

The first comment suggested a minor change in wording of the note after paragraph 1 of the proposal. The FAA disagrees with this suggestion since it believes the language is clear, and is similar to the wording in the applicable UOP service bulletin. The second comment suggests a change to the second sentence in paragraph 2 to require the placarding only of the seat position adjacent to the cracked stretcher end. The FAA agrees with this suggestion since the possibility of failure of any cracked rear stretcher tubes would not be increased by passengers occupying the other seats of any seat assembly. The proposal is amended accordingly. The third comment concerns the method of measuring the crack length on the stretcher tube. Because of the chamfer at the botton of the tube ends, it would be possible to measure two different crack lengths depending on whether the measurement was made on the top or botton of the tube. The FAA agrees with the suggestion and the proposal is amended.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulation (14 CFR 39.13) is amended by adding the following new airworthiness directive:

UOP, INC.

Applies to Model 900 series aircraft seats. Compliance is required as indicated, unless already accomplished.

To prevent the possible failure of a passenger seat caused by a crack in the rear stretcher tube, accompish the following: 1. Within the next 90 days after the effective date of this AD, visually inspect all UOP, Inc., Model 900 series aircraft seats for cracks in the rear stretcher tube.

Note.—Direct particular attention to the aisle end of the tube at the side arm attaching bolt hole.

2. Except as provided in Paragraph 3 below, replace all cracked tubes with serviceable units. Until cracked tubes are replaced, placard or otherwise mark the seat position adjacent to the cracked stretcher tube end as unusable and not to be occupied.

3. Stretcher tubes with cracks less than 1.19 inches, measured along the tube longitudinal axis from the centerline of the attach hole, may be repaired with clamp P/N 81672-1, in accordance with installation instruction in UOP, Inc., Service Bulletin 25-634, dated April 3, 1980. this repair is not authorized for Model 900-200B-2L seats. An equivalent method may be approved bya the Chief, Engineering and Manufacturing Branch. If after installation of the clamp, the crack extends beyond the end of the clamp, the stretcher tube must be replaced.

This amendment becomes effective November 25, 1980.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

Note.—The FAA has determined that this document involves a final regulation which is not considered to be significant under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A final regulatory evaluation prepared for this document is contained in the public docket, and a copy may be obtained by writing Federal Aviation Administration, New England Region, Office of Regional Counsel, Attention: Rules Docket (ANE-7), Docket No. 80-NE-18, 12 New England Executive Park, Burlington, Massachusetts 01803.

Issued in Burlington, Massachusetts, on October 10, 1980.

The incorporation by reference provisions in this document was approved by the Director of the Federal Register on June 19, 1967.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 80-33426 Filed 10-24-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 77-WE-18-AD; Amdt. 39-3952]

Airworthiness Directives; Hughes Helicopters Model 369D Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) applicable to Hughes Helicopters Model 369D helicopters by deleting the reporting requirements and extending the repetitive inspection interval from 25 hours to 100 hours' time in service to helicopters equipped with certain main rotor strap pack assemblies, horizontal stabilizers, and main rotor dampers which have been developed subsequent to the issuance of the original AD. This amendment is needed to relieve an undue inspection burden on operators who have incorporated the improved design features.

DATE: Effective October 30, 1980. Compliance schedule—As prescribed in the body of the AD.

FOR FURTHER INFORMATION CONTACT: Jerry Presba, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536-6351.

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39-2978 (42 FR 37086) AD 77-15-09, which currently requires repetitive inspection at intervals of 25 hours' time in service on Hughes Helicopters Model 369D helicopter's main rotor retention straps in the area of and within the pitch housing.

After issuing Amendment 39-2978, the FAA has determined that the incorporation of certain design improvements in concept relieves the problem, which was the reason for the mandatory 25 hours' time in service inspection interval, to the degree that this interval may safely be increased to 100 hours. Additionally, the FAA has determined that the reporting requirements of the original AD have satisfied their purpose and no significant value is derived from continuance. Therefore, the FAA is amending Amendment 39-2978 (42 FR 37086) AD 77-15-09 by extending the repetitive inspection interval specified in the AD to 100 hours' time in service on those Hughes Helicopters Model 369D helicopters incorporating all three specific design features described in the body of this amendment, and by deleting the reporting requirements of the AD.

Since this amendment relieves a restriction and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and good cause exists for making the amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by amending Amendment 39-2978 by deleting the original text of paragraph (d) and adding a new paragraph (d) to read as follows:

§ 39.13 [Amended]

* * * * *

(d) For helicopters equipped with all three design features as listed below:

(1) Main Rotor Retention Straps, P/N 369D21210-501, S/N 7000, and subsequent; and,

(2) Horizontal Stabilizer, P/N 369D23601-503; and

(3) Main Rotor Dampers, P/N 369D21400-503, or M50452.

The repetitive inspections of paragraphs (a) and (b) of this AD may be accomplished at intervals not to exceed 100 hours' additional time in service since the last such inspection.

* * * * *

Amendment 39-2978 became effective July 28, 1977 for all persons, except those to whom it was made effective by airmail letter dated June 23, 1977.

This amendment becomes effective October 30, 1980.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89)

Note.—The FAA has determined that this document involves a final regulation which is not considered to be significant under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Los Angeles, California on October 10, 1980.

John D. Mattson,

Director, FAA Western Region.

[FR Doc. 80-33195 Filed 10-23-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Airworthiness Docket No. 80-ASW-28, Amdt. 39-3954]

Bell Models 206A, 206B, 206A-1, 206B-1, 206L and 206L-1 Helicopters; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) applicable to Bell Models 206A, 206B, 206A-1, 206B-1, 206L and 206L-1 helicopters by adding a new paragraph to permit adjustment of the compliance times and inspection intervals. The amendment is needed because the FAA has determined that in some cases the magnetic particle inspection interval may be increased and still maintain airworthiness.

DATES: Effective November 24, 1980. Compliance schedule as prescribed in the AD.

ADDRESSES: Copies of the applicable service bulletins may be obtained from the Regional Counsel, Attention: Docket No. 80-ASW-28, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. Bell service information may be obtained from Product Support Department, Bell Helicopter Textron, P.O. Box 482, Fort Worth, Texas 76101.

FOR FURTHER INFORMATION CONTACT: Tom Dragset, Airframe Section, Engineering and Manufacturing Branch, ASW-212, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas, telephone number (817) 624-4911, Extension 517.

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39-3884, 45 FR 55707, AD 80-18-04, which currently requires repetitive magnetic particle inspections and replacement as necessary for certain main rotor trunnions on Bell Models 206A, 206B, 206A-1, 206B-1, 206L and 206L-1 helicopters. After issuing Amendment 39-3884, the FAA has determined that in some cases the magnetic particle inspection interval may be increased and still maintain airworthiness.

Since this amendment relieves a restriction and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and good cause exists for making the amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by amending Amendment 39-3884, 45 FR 55707, AD 80-18-04, by adding the following new paragraph at the end thereof:

(j) Upon submission of substantiating data through an FAA Aviation Safety Inspector, the Chief, Engineering and Manufacturing Branch, Southwest Region, may adjust the inspection intervals. This amendment becomes effective November 24, 1980.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c); 14 CFR 11.89))

Issued in Fort Worth, Texas, on October 15, 1980.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 33345 Filed 10-24-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Airworthiness Docket No. 80-ASW-44, Amdt. 39-3950]

Bell Model 206 L-1 Helicopters; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires a reduction in service life from 4,800 hours to 1,200 hours on certain serial numbered main rotor grips, P/N 206-011-132-009, installed on Bell Model 206 L-1 helicopters. The AO is needed to prevent possible in-flight failure of the main rotor grip, P/N 206-11-132-009.

which could result in loss of the helicopter.

DATE: Effective October 27, 1980. Compliance required as prescribed in the AD.

ADDRESSES: Copies of the applicable service bulletins may be obtained from the Regional Counsel, Attention: Docket No. 80–ASW–44, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. Bell service information may be obtained from Product Support Department, Bell Helicopter Textron, P.O. Box 482, Fort Worth, Texas 76101.

FOR FURTHER INFORMATION CONTACT: Tom Dragset, Airframe Section, Engineering and Manufacturing Branch, ASW–212, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas, telephone number (817) 624–4911, extension 517.

SUPPLEMENTARY INFORMATION: The FAA has determined that certain serial number main rotor grips, P/N 206–011–132–009, installed on Bell Model 206 L–1 helicopters, were delivered from Bell Helicopter Textron without the shotpeen process being completed on the surface of the pitch horn attaching face. This reduces the grips' fatigue resistance thus reducing service life. Therefore, an airworthiness directive is being issued which requires a reduction in service life from 4,800 hours to 1,200 hours for the affected main rotor grips.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Bell.—Applies to Model 206 L–1 helicopters, certificated in all categories (Airworthiness Docket No. 80–ASW–44). Compliance required as indicated.

To prevent possible fatigue failure of the main rotor grip, P/N 206–011–132–009, remove and replace as specified below, the main rotor grips having serial numbers: A1–00001, A1–00004 through A1–00007, A1–00009, A1–00010, A1–00014, A1–00016, A1–00017, A1–00019, A1–00021 through A1–00024, A1–00027 through A1–00029, A1–00031 through A1–000136, A1–00038 through A1–00040, A1–00042 through A1–00044, A1–00046 through A1–00050, A1–00053 through A1–00057, A1–00059, A1–00061, A1–00062, A1–00064, A1–00066 through A1–00068, A1–00071, A1–00073 through A1–00075, A1–00077, A1–00078, A1–00080, A1–00083 through A1–00093, A1–00095, A1–00096, A1–00098 through A1–00101, A1–00103 through A1–00106, A1–00111, A1–00113, A1–00115, A1–00116, A1–00118 through A1–00120, A1–00124, A1–00130 through A1–0036, A1–00192, A1–00222, A1–00248, A1–00287, A1–00300, A1–00305, and A1–00308.

a. Replace those grips with less than 1,150 hours' total time in service on the effective date of this AD, prior to accumulating 1,200 hours' total time in service.

b. Replace those grips with 1,150 or more hours' total time in service on the effective date of this AD, within 50 hours' time in service.

c. Compliance with Bell Helicopter Textron Alert Service Bulletin 206L–80–15, dated July 29, 1980, fulfills compliance with this AD.

d. The retirement time of those main rotor grips specified above is reduced from 4,800 hours to 1,200 hours by this AD.

e. The helicopter may be flown in accordance with FAR 21.197 to a base where repairs can be performed.

This amendment becomes effective October 27, 1980.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89))

Issued in Fort Worth, Tex., on October 9, 1980.

F. E. Whitfield

Acting Director, Southwest Region.

[FR Doc. 80–33346 Filed 10–24–80; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 80–CE–26–AD; Amendment 39–3959]

Airworthiness Directives; Cessna Models 335, 340 and 340A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), AD 80–21–04, applicable to all Cessna Model 335, 340 and 340A airplanes and codifies the corresponding emergency AD letter dated October 2, 1980, into the **Federal Register.** This AD requires, prior to further flight and, thereafter, repetitive visual inspections of the elevator balance weight attachment structure and outboard hinge areas of the stabilizer and elevators for cracks, loose joints and chafing in accordance with Cessna Multi-engine Customer Care Service Information Letter ME79–44, Revision 5. Any defective parts found during any such inspection must be replaced. This action will better ensure the integrity of the elevator outboard hinge and balance weight attachment structure, the failure of which may have been a contributing factor in a recent fatal accident.

EFFECTIVE DATE: November 3, 1980, to all persons except those to whom it has already been made effective by airmail letter from the FAA dated October 2, 1980.

COMPLIANCE: As prescribed in the body of the AD.

ADDRESSES: Cessna Multi-engine Customer Care Service Information Letter ME79–44, Revision 5, dated September 29, 1980, applicable to this AD, may be obtained from Cessna Aircraft Company, Marketing Division, Attention: Customer Service Department, Wichita, Kansas 67201; telephone (316) 685–9111. A copy of Service Information Letter is also contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106; and Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Lawrence S. Abbott, Aerospace Engineer, Aircraft Certification Program, Room 238, Terminal Building 2299, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 942–4219.

SUPPLEMENTARY INFORMATION: Elevator balance weights of Cessna Model 335, 340 and 340A airplanes are secured by structure under a fiberglass tip cover. Cessna issued Service Information Letter ME79–44 on December 20, 1979, that specified a one-time inspection within 25 hours time-in-service on all 340A model airplanes with over 150 hours time-in-service of the various horizontal stabilizer components and of the elevator balance weight attach structure. Subsequent to the issuance of the aforementioned Servie Information Letter, there were reports concerning the integrity of the balance weight attachment structure and outboard hinge areas of the stabilizer and elevators installed on these airplanes, the failure of which may have been a contributing factor in a recent fatal accident. Accordingly, the manufacturer issued Cessna Multi-engine Customer Care Service Information Letter ME79–44, Revision 2, which recommended an initial visual inspection prior to further flight and repetitive visual inspections of the elevator balance weight attachment structure and outboard hinge areas of the stabilizer and elevators for cracks, loose joints on Cessna Model 335 and 340A airplanes that have 100 hours or more time-in-service, and on Model 340 airplanes that have accumulated 100 hours or more time-in-service since being modified by installing engines of more than 285 maximum continuous horsepower. Since the FAA determined that this was an unsafe condition that may exist in other airplanes of the same type design mandatory compliance with the aforementioned Service Letter was required by issuance of an AD. It was also determined that an emergency condition existed, that immediate corrective action was required and that notice and public procedure thereon was impractical and contrary to the public interest. Accordingly, the FAA notified all known registered owners of the airplanes affected by the AD by airmail letter dated August 23, 1980. The AD became effective as to these individuals upon receipt of that letter and was identified as AD 80–18–06. Specifically, AD 80–18–06 required the elevator balance weight covers to be removed and the P/N 0832250–4, –33 and –75 ribs, and the P/N 0832000–61, –62 gussets inspected at repetitive intervals for cracks and/or loose rivets. In addition, it required the outboard elevator hinges, the horizontal stabilizer, except Cessna Model 340A (S/N's 340A1036 through 340A1038) and the elevator to be repetitively inspected for cracks, loose rivets and/or signs of chafing. Due to the incorporation of FAA-approved production design changes on the horizontal stabilizer, the AD did not require that the aforementioned three serial numbered Cessna 340A aircraft undergo the horizontal stabilizer inspection specified in Cessna Service Information Letter ME79–44, Revision 2. In addition, due to the incorporation of FAA-approved production design changes of the elevator, S/N 340A1039 airplanes and higher were exempt from the requirements of this AD. Any discrepant parts were to be replaced.

At the time AD 80–18–06 was issued, there was no indication that elevator failure would occur on airplanes that had accumulated less than 100 hours time-in-service since new or last inspected. As a result of compliance with AD 80–18–06, reports were received which showed that components of the elevators on these airplanes failed at total times-in-service much less than the 100-hour intervals specified in the AD. In addition a review of the maintenance records of the aircraft involved in the fatal accident disclosed that it had been inspected approximately 20 hours prior to that accident. Consequently, since the condition described herein was likely to exist or develop in other aircraft of the same type design, an emergency letter AD was issued, superseding AD 80–18–06, applicable to Cessna Models 335, 340 (regardless of engine size) and 340A series airplanes. That AD, identified as AD 80–19–17 and dated September 12, 1980, required prior to further flight and at each 10 hours time-in-service intervals thereafter the visual inspections required by AD 80–18–06.

When emergency AD's 80–18–06 and 80–19–17 were issued, the manufacturer had developed and was installing an improved design horizontal stabilizer and elevators on new production Cessna Model 340A airplanes. Preliminary testing of these new designed components indicated they would not be subject to the same failures which had been reported on in-service airplanes. Therefore, airplane serial numbers with the new design were not included in these AD's. Subsequent thereto, ongoing testing of the new design revealed certain failures in the tail structure. Consequently, since the conditions described herein are likely to exist on other aircraft of the same type design, a new emergency AD letter, AD 80–21–04, has been issued dated October 2, 1980, which supersedes AD 80–19–17 and makes the initial and repetitive visual inspections of the horizontal stabilizer and elevators applicable to all Cessna Models 335, 340 and 340A airplanes.

Pending the receipt and analysis of additional data, the FAA may give consideration to changing the repetitive inspection intervals. In addition, since the unsafe condition described herein may still exist on other Cessna Models 335, 340A and 340 airplanes, AD 80–21–04 is being published in the **Federal Register** as an amendment to Part 39 of the Federal Aviation Regulations (14 CFR Part 39) to make it effective to all persons who did not receive the letter notification.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive.

Cessna.—Applies to Model 335 (S/N 335–0001 and up), Model 340 (S/N 340–0001 and up) and Model 340A (S/N 340A0001 and up) airplanes certificated in all categories.

Compliance: Required as indicated, unless already accomplished.

To ensure the integrity of the elevator balance weight support structure and specified components of the horizontal stabilizer, accomplish the following:

(A) Prior to further flight and at each 10 hours time-in-service interval thereafter, accomplish the following in accordance with Cessna Multi-engine Customer Care Service Information Leter ME79–44, Revision 5, dated September 29, 1980:

1. On all airplanes, remove the elevator tip cover and visually inspect the elevator balance weights for looseness.

a. On all Models 335 and 340 airplanes and on Model 340A (S/N's 340A0001 thru 340A1038) airplanes, visually inspect the P/N 0832250–4, –33 and –75 ribs, and P/N 0832000–61, –62 gussets for cracks and/or loose rivets.

b. On Model 340A (S/N's 340A1039 and up) airplanes, visually inspect the P/N 832250–100 and –33 ribs, P/N 5334108–2 channel, –3 spar extension and –4 gussets for cracks and/or loose rivets.

2. Visually inspect the horizontal stabilizer outboard hinge bracket assembly [on Models 340 (all S/N's) and 340A (S/N's 340A0001 through 340A1035) the P/N is 5132013–5; on Model 340A (S/N's 340A1036 and up) the P/N is 5132013–10; and on Model 335 (all S/N's) the P/N is 5132013–7], the outboard hinge bearing, the aft spar, and the tip ribs for cracks, loose rivets, or signs of chafing.

3. Replace any defective parts found during any inspection required by this AD with airworthy parts of the same part number.

(B) Within 24 hours following any inspection specified by paragraph (A) the owner/operator must submit a written report of any cracks, loose rivets, or signs of chafing discovered during any inspection required by this AD to the Federal Aviation Administration, Aircraft Certification Program, Room 238, Terminal Building 2299, Mid-Continent Airport, Wichita, Kansas 67209. (Reporting approved by the Office of Management and Budget Order OMB No. 04–R0174.)

(C) Any equivalent method of compliance with this AD must be approved by the Chief, Aircraft Certification Program, Federal Aviation Administration, Room 238, Terminal Building No. 2299, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 942–4285.

This AD, 80–21–04, supersedes emergency letter ADs on the same subject dated August 23, 1980, and September 12, 1980, which were identified as ADs 80–18–06 and 80–19–17 respectively.

This amendment becomes effective on November 3, 1980, to all persons except those to whom it has already been made effective by an airmail letter from the FAA dated October 2, 1980, and is identified as AD 80–21–04.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421 1423); sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(a)); sec. 11.89 of the Federal Aviation Regulations (14 CFR sec. 11.89)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A copy of the final evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to FAA, Office of the Regional Counsel, Room 1558, Central Region, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 17, 1980.

Paul J. Baker,

Director, Central Region.

[FR Doc. 80–33356 Filed 10–24–80; 8:45 am]

BILLING CODE 4910–13–M

V 4 5 O C 2 7 8 0 UMI

14 CFR Part 71

[Airspace Docket No. 80-SO-42]

Alteration of Transition Area, Somerset, Kentucky

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule alters the Somerset, Kentucky, transition area and lowers the base of controlled airspace southwest of the Somerset Pulaski County Airport from 1,200 to 700 feet above the surface. New standard instrument approach procedures have been developed for the airport. Additional controlled airspace is required to protect aircraft executing the approach procedures. The airspace must be designated before the approach procedures can become effective.

EFFECTIVE DATE: 0901 G.m.t., November 30, 1980.

ADDRESS: Federal Aviation Administration, Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

FOR FURTHER INFORMATION CONTACT: Harlen D. Phillips, Airspace and Procedures Branch, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: 404–763–7646.

SUPPLEMENTARY INFORMATION: A Notice of proposed Rulemaking was published in the **Federal Register** on Thursday, August 21, 1980 (45 FR 55756), which proposed the alteration of the Somerset, Kentucky, transition area. This action adopts the proposal and thereby provides controlled airspace protection for aircraft executing new standard instrument approach procedures, NDB RWY 4 and SDF RWY 4, at the Somerset-Pulaski County Airport. The establishment of the nonfederal SDF facility and relocation of the nonfederal nondirectional radio beacon from on-airport to southwest of the airport, which will support the approach procedures, are presently being accomplished. No objections were received from this notice.

Adoption of the Amendment

Accordingly, Subpart G, § 71.181 (45 FR 445) of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t., November 30, 1980, as follows:

Somerset, Kentucky

All after "* * * within * * *" is deleted and "* * * 3.5 miles each side of the 222° bearing from the Cumberland River RBN (latitude 36°59'48"N., longitude 84°40'51.5"W.); extending from the 8.5-mile radius area to 8.5 miles southwest of the RBN, excluding the portion within the Monticello, Kentucky, transition area * * *" is substituted therefor.

(Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)) sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in East Point, Ga., on October 15, 1980

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 80-33350 Filed 10-24-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket Number 80-CE-19]

Alteration of Transition Area—Joplin, Missouri

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: The nature of this federal action is to alter the 700-foot transition area at Joplin, Missouri, by amending the NDB approach to the Joplin, Missouri, Municipal Airport, utilizing the Lunns NDB (Non-Directional Radio Beacon) as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: December 25, 1980.

FOR FURTHER INFORMATION CONTACT: Dwaine E. Hiland, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-537, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

SUPPLEMENTARY INFORMATION: The NDB approach procedure to the Joplin Municipal Airport, Joplin, Missouri, is being amended utilizing the Lunns Non-Directional Radio Beacon (NDB) as a navigational aid. The amendment of this instrument approach procedure based on this navigational aid entails the alterations of the transition area at Joplin, Missouri, at and above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the amended approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Discussion of Comments

On page 53163 of the **Federal Register** dated August 11, 1980, the Federal Aviation Administration published a Notice of Proposed Rule Making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Joplin, Missouri. Interested persons were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rule Making.

Accordingly, Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1980, (45 FR 445), is amended effective 0901 G.M.T., December 25, 1980, by altering the following transition area:

Joplin, Missouri

That airspace extending upward from 700' above the surface within an 8-mile radius of Joplin Municipal Airport (Latitude 37°09'05"N Longitude 94°29'55"W) within 3 miles each side of the Joplin NDB (LUNNS LOM, Latitude 37°12'11"N, Longitude 94°33'30"W) 306° bearing, extending from the 8-mile radius area to 8.5 miles northwest of the NDB.

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); sec. 11.69 of the Federal Aviation Regulations (14 CFR 11.69).)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Kansas City, Mo., on October 14, 1980.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 80-33351 Filed 10-24-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-SO-32]

Designation of Transition Area, Camden, Alabama

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This rule designates the Camden, Alabama, transition area. A standard instrument approach procedure, NDB RWY 36, has been developed for the Camden Municipal Airport. Additional controlled airspace is required to protect aircraft executing the approach procedure. The airspace must be designated before the approach procedure can become effective.

EFFECTIVE DATE: 0901 G.m.t., December 4, 1980.

ADDRESS: Federal Aviation Administration, Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

FOR FURTHER INFORMATION CONTACT: Harlen D. Phillips, Airspace and Procedures Branch, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: 404–763–7646.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking was published in the **Federal Register** on Thursday, July 3, 1980 (45 FR 45308), which proposed the designation of the Camden, Alabama, transition area.

The transition area description contained an arrival extension north of the Camden Municipal Airport which would protect aircraft executing the NDB RWY 18 standard instrument approach procedure.

The Department of Air Force objected because the airspace associated with the approach procedure would conflict with military flight activities in the Camden Ridge Military Operations Area (MOA). On September 25, 1980, the Camden Airport Authority, FAA and Department of Air Force agreed to establishment of the NDB RWY 36 instrument approach procedure and adjustments to the MOA which permit simultaneous use of the MOA and approach procedure.

The establishment of the nonfederal nondirectional radio beacon on the ariport, which will support the approach procedure, is presently being accomplished.

Adoption of the Amendment

Accordingly, Subpart G, § 71.181 (45 FR 445) of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t., December 4, 1980, by adding the following:

Camden, Ala.

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Camden Municipal Airport (latitude 31°58'49"N., longitude 87°20'13"W.); within 3 miles each side of the 186° bearing from the Wilcox County RBN (latitude 31°58'49"N., longtitude 87°20'13"W.), extending from the 6.5-mile radius area to 8.5 miles south of the RBN.

(Sec. 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)) sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in East Point, Ga. on October 10, 1980.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 80-33352 Filed 10-24-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 18605/80-AWA-10]

Alteration of Group II Terminal Control Area, St. Louis, Mo.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment reconfigures the Group II Terminal Control Area (TCA) at St. Louis, Mo., which first became effective on January 1, 1974. This action adds airspace to accommodate a new air traffic control arrival procedure to Runways 12 and 30 at St. Louis International Airport and removes from the TCA a large segment of airspace no longer essential to safety of flight operations. The changes adopted by this amendment are the products of discussions with a broad representation of the aviation community.

EFFECTIVE DATE: November 27, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. B. Keith Potts, Airspace and Air Traffic Rules Division (AAT-200), Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–3731.

History

As part of a comprehensive program announced on December 27, 1978, in the FAA Administrator's Plan for Enhanced Safety in the National Airspace System, St. Louis was a candidate for Group I TCA designation and possible expansion of the designated TCA airspace. Consequently, the St. Louis TCA was reviewed in depth. The goal was to provide the most safe and efficient configuration for all airspace users. Aspects that were considered included noise abatement, costs to users, safety for passengers and aircraft, and the safe and efficient use of airspace.

The review disclosed that Group I designation would not be necessary. The analysis also disclosed that a high level of safety can be maintained in that area while at the same time reducing the amount of airspace in the TCA. Concurrently, the FAA was developing arrival procedures to increase airspace use capability.

This action reconfigures parts of the former TCA and reduces the overall TCA airspace. This reduction will provide greater flexibility to aircraft wishing to avoid TCA airspace. It was necessary to propose an expansion of portions of TCA airspace to accommodate new arrival procedures to Runways 12 and 30. This expansion will ensure that IFR and turbojet powered aircraft operations continue to be contained within TCA airspace and that the high level of safety provided by the TCA will not be reduced.

After experience is gained with the revised TCA configuration, consideration may be given to proposing any modifications that appear necessary. Any future modifications that may be proposed would be thoroughly coordinated with airspace users.

The action contained in this rule was preceded with broad and helpful public participation with the FAA in considering the development of an airspace description for a TCA that is responsive to the need to increase safety and to the needs of both transient and local aircraft operators who might be affected. An extensive publicity effort was made to invite all interested persons to participate in a meeting held on April 24, 1980. Invitations were extended to all fixed-base operators and pilots in the local area. Notice of the meeting was also given through radio, telephone, mail, and posting announcements. As a result of the meeting, adjustments to the TCA configurations were developed and were reflected in the notice. Another informal airspace meeting was held on Tuesday,

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September 9, 1980, at 7 p.m. at Noah's Ark Restaurant, 1500 South 5th Street, St. Charles, Mo. The purpose of that meeting was to discuss the proposed alteration of the St. Louis, Mo., TCA.

Discussion of Comments

The FAA received eight written comments from individuals, citizen groups and aviation and trade industry associations in response to the proposed modification to the St. Louis TCA. The FAA has also had the benefit of discussions at user group meetings. The FAA appreciates the thoughtful and meaningful contributions and interest expressed by all of those who took time to participate in this rulemaking proceeding.

In reviewing the comments submitted verbally and in writing, the following categories of comments emerged:

A. Suggestions were made to raise the base altitude of the area between the 20 and 25 nautical mile (NM) circle southeast and northwest of the St. Louis International Airport from 4,000 feet MSL to 4,500 feet MSL. The Aircraft Owners and Pilots Association (AOPA) recommends raising the floors in the same areas from 4,000 feet MSL to 5,500 feet MSL.

The FAA reviewed local approach, departure and radar vectoring procedures with those changes in mind. It was found that by changing the normally used vectoring altitudes, the base of the TCA in those areas could be raised to 4,500 feet MSL without an adverse impact on Instrument Flight Rules (IFR) TCA operations. Raising the base altitude of those segments to a higher level would require radar vectoring arrivals at higher altitudes, disrupting the sequencing of arrivals and the separation of departures, and causing increased delays and increased fuel consumption.

B. The operators of Arrowhead and Creve Coeur Airports feel that changes to allow use of visually identifiable highways as the eastern boundaries for the airspace for VFR around those airports would be beneficial. Further, they stated that the 2-mile radius arc taken out of the TCA core area for their uncontrolled operations is inadequate when operating high performance aircraft in an out of either airport.

The airport traffic patterns at both airports were reanalyzed. The 2 mile area for operations at those airports is well within the airport traffic pattern specifications, and buffer zone, for category "A" type operations. The majority of all operations conducted at those airports are of category "A" or lesser category, lower performance aircraft. Few high performance or multi-engine aircraft use those airports. In addition, expansion of the uncontrolled area around the Creve Coeur and Arrowhead Airports would have an adverse impact on St. Louis International Airport Runway 6 approaches because there would be inadequate airspace for those arriving aircraft to be properly and efficiently sequenced. Aircraft executing a localizer backcourse approach to Runway 6 would exit the base of the TCA at approximately 4.5 NM from the runway and reenter the TCA at 3 miles from the runway on final approach. Southwesterly departures from Runways 24 or 30L would have to exceed a 700 feet per mile rate of climb to remain within the TCA (approximately 300 feet per mile is a normal rate of climb upon which many procedures are designed). Uncontrolled aircraft could operate within 3 NM of the St. Louis International Airport, possibly creating unsafe conditions. The current airspace configuration around Creve Coeur and Arrowhead Airports has existed since January 1974, without any reported safety problems or Federal Aviation Regulations (FARs) violations because of TCA infringement.

C. The Air Line Pilots Association (ALPA) does not concur in the portion of the proposal which would increase TCA airspace necessary to accommodate the "proposed new arrival procedure to Runways 12 and 30." The reason for their nonconcurrence is that ALPA thoroughly objects to the proposed LDA/DME arrival procedures for those runways. Since they do not agree with those approach procedures they believe that designation of airspace for that purpose is unnecessary and premature.

The new TCA airspace designated between the 20- and 25-mile radius arcs along the extended centerline of Runways 12 and 30 is the airspace in question. That airspace would encompass the proposed LDA/DME approach. That airspace is also required for efficient radar vectoring and for separation of departing and arriving aircraft. Designating that additional TCA airspace permits arriving aircraft to approach at higher rates of speed and higher altitudes (approximately 210 instead of 160 knots). Additional airspace is necessary to maneuver at higher airspeeds and this airspace provides the additional airspace needed for higher and faster vectoring. That results in significant fuel and time savings for high performance aircraft.

D. Four commenters, including AOPA, complimented the FAA on this rule, particularly as it relates to not expanding the TCA vertically.

E. It was suggested that the TCA floor in the Webster Groves area be raised from 3,000 feet MSL to 3,500 feet MSL. It would not be possible to raise the TCA floor in that area and still contain IFR arrivals and departures at St. Louis International Airport within TCA airspace. IFR arrivals to St. Louis International Airport Runway 30, particularly those using the ILS Runway 30L and RNAV Runway 30L approach procedures are often radar vectored to the final approach course at an altitude of 3,000 feet MSL. If the TCA floor were 3,500 feet MSL, those aircraft would either be outside of TCA airspace in an area where uncontrolled aircraft may operate in the St. Louis terminal area or they would have to be vectored at a higher altitude, probably 4,000 or 5,000 feet MSL, to a point further out on the final approach course in order to be able to descend safely for a landing. The latter choice would result in increased fuel consumption and more delays for arrivals to St. Louis International Airport Runways 30R and 30L. If the TCA floor were raised in the Webster Groves area, many southerly departures from Runways 24 and 30 would not be able to climb fast enough, particularly on high density altitude days, to remain within the TCA airspace. The current 3,000 feet MSL TCA floor has been in effect in the Webster Groves area since the St. Louis TCA was first designated without any apparent operational problems. After careful consideration, it is necessary to retain that TCA floor altitude.

Local Benefits

The modifications of the Group II TCA will: (1) Provide greater accessibility to aircraft wishing to avoid TCA airspace at the outer areas; and (2) accommodate sufficient airspace for higher altitude and airspeed vectoring and new arrival procedures, thereby reducing delays and consequently reducing fuel consumption. All IFR and turbine powered aircraft arrival and departure profiles will be contained within TCA airspace for air safety purposes, with the TCA having a minimum adverse impact on aircraft not required to be under Air Traffic Control (ATC) due to this action.

Economic Impacts

The costs of modifying the St. Louis TCA were considered as part of this regulatory decision being made. Since all turbine powered and IFR aircraft will continue to be contained in the TCA as reconfigured, there will be no change in economic effect for those flights. Uncontrolled aircraft will have a larger amount of airspace in which to conduct their activities and therefore will have an increased degree of flexibility to plan their flights to use more economic routes or altitudes. Any adverse economic impact that may now exist will be the same or reduced as available airspace is increased for traffic not operating within the TCA.

The existing TCA configuration as compared to this configuration demonstrates no change in impacted airports, number of operations, the number of airports receiving diverted traffic, the distance in air miles or ground miles flown by diverted traffic, the number of aircraft expected to relocate or divert due to the TCA, the special use operations conducted within the core area of the TCA or other segments of the TCA and adjacent airspace, and no change in operational procedures at adjacent airports.

Environmental Impacts

An environmental assessment has been prepared which addresses the aircraft noise, aircraft emissions, and fuel consumption impacts of the altered TCA. It concludes that those impacts would not significantly affect the quality of the human environment. That assessment is in both the Regional and Washington dockets.

Adoption of the Amendment

Accordingly, § 71.401(b) of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 669) is amended, effective November 27, 1980, by amending the St. Louis, Mo., TCA to read as follows:[1]

Subpart K-Terminal Control Areas

§ 71.401 Designation.

* * * * *

(b) Group II, Terminal Control Areas:

* * * * *

St. Louis, Mo., Terminal Control Area
Primary Airport
St. Louis International Airport (lat. 38°44'54"N., long. 90°21'47"W.)
Boundaries.

Area A. That airspace extending upward from the surface to and including 8,000 feet MSL within a 6-mile radius arc of the St. Louis International Airport ASR Antenna (lat. 38°44'25"N., long. 90°22'14"W.), excluding that airspace within a 2-mile radius arc of the Creve Coeur Airport (lat. 38°43'35"N., long. 90°30'35"W.).

Area B. That airspace extending upward from 2,000 feet MSL to and including 8,000 feet MSL within a 10-mile radius arc of the St. Louis International Airport ASR Antenna, excluding Area A and excluding the area south of the Foristell VORTAC 093° radial.

Area C. That airspace extending upward from 3,000 feet MSL to and including 8,000 feet MSL within a 15-mile radius arc of the St. Louis International Airport ASR Antenna, and that area which lies south of the Foristell VORTAC 093° radial which is contained within the 10-mile radius arc of the St. Louis International Airport ASR Antenna, excluding Areas A and B, and excluding the area within and underlying Area E.

Area D. That airspace extending upward from 4,500 feet MSL to and including 8,000 feet MSL between the 15-mile and 20-mile radii arcs of the St. Louis International Airport ASR Antenna, excluding an area bounded on the east by a line 5 miles northwest of and parallel to the St. Louis International Airport Runway 24 ILS localizer northeasterly course, counterclockwise to a line 8 miles south of and parallel to the St. Louis International Airport Runway 12R ILS localizer northwesterly course, and excluding an area bounded on the south by a line 5 miles south of and parallel to the St. Louis International Airport Runway 6 localizer southwesterly course, counterclockwise to a line 8 miles north of and parallel to the St. Louis International Airport Runway 30L ILS localizer southeasterly course.

Area E. That airspace extending upward from 3,600 feet MSL to and including 8,000 feet MSL within a 15-mile radius arc of the St. Louis International Airport ASR Antenna, bounded on the northwest by the Troy VORTAC 229° radial, and on the west by a line extending from lat. 38°35'00"N., long. 90°12'00"W., to lat. 38°10'00"N., long. 90°07'00"W.

Area F. That airspace extending upward from 4,500 feet MSL to and including 8,000 feet MSL in two areas: (1) Within 8 miles of each side of the St. Louis International Airport Runway 12R ILS localizer northwesterly course extending outward from the 15-mile radius arc to the 25-mile radius arc of the St. Louis International Airport ASR Antenna; and (2) Within 8 miles of each side of the St. Louis International Airport Runway 30L ILS localizer southeasterly course extending outward from the 15-mile radius arc to the 25-mile radius arc of the St. Louis International Airport ASR Antenna.

(Secs. 307(a), 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.69.)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the regulatory evaluation prepared for this action is contained in the Washington and Regional dockets. A copy of it may be obtained by contacting the person identified above under the caption "for further information contact * * *."

Issued in Washington, D.C., October 20, 1980.

R.J. Van Vuren,
Director, Air Traffic Service.

[FR Doc. 80-33353 Filed 10-24-80; 8:45 am]

BILLING CODE 4910-13-M

[1] Map filed with the original document.

14 CFR Part 71

[Airspace Docket No. 80-SO-68]

Alteration of Control Zone and Transition Area, Greenville, Mississippi

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This rule alters the descriptions of the Greenville, Mississippi, control zone and transition area by changing the name of the Greenville International Airport to the Greenville Municipal Airport.

EFFECTIVE DATE: 0901 GMT, December 25, 1980.

ADDRESS: Federal Aviation Administration, Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

FOR FURTHER INFORMATION CONTACT: Harlen D. Phillips, Airspace and Procedures Branch, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone 404-763-7646.

SUPPLEMENTARY INFORMATION: In the Greenville, Mississippi, control zone described in § 71.171 (45 FR 356) and transition area described in § 71.181 (45 FR 445), the name of the airport is listed as "Greenville International Airport." On August 19, 1980, the City Council of Greenville changed the name to "Greenville Municipal Airport." Therefore, it is necessary to alter the descriptions to reflect the change. Since this amendment is editorial in nature, notice and public procedure hereon are unnecessary.

Adoption of the Amendment

Accordingly, Subpart F, § 71.171 (45 FR 356) and Subpart G, § 71.181 (45 FR 445) of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) are amended, effective 0901 G.m.t., December 25, 1980, as follows:

Greenville, Mississippi

"* * * Greenville International Airport * * *" is deleted and "* * * Greenville Municipal Airport * * *" is substituted therefor.

(Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)) and sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this

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action does not warrant preparation of a regulatory evaluation.

Issued in East Point, Ga., on October 17, 1980.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 80-33355 Filed 10-24-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-ANE-33]

Alteration of VOR Federal Airway

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment realigns VOR Federal Airway V-167 between Hartford, Conn., and Providence, R.I., by making it a direct route. The airway alteration will improve the air traffic control service and aid flight planning. Also, the shortened route will save fuel.

EFFECTIVE DATE: December 25, 1980.

FOR FURTHER INFORMATION CONTACT: Lewis Still, Airspace Regulations (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION: On August 28, 1980, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of V-167 in the vicinity of the Hartford, Conn., area by making it a direct route (45 FR 57434). This airway alteration eliminates a dogleg thereby providing an airway in an area where aircraft are normally vectored. Also, some fuel savings will be realized. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in the **Federal Register** on January 2, 1980, (45 FR 307).

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) realigns VOR Federal Airway V-167 between Hartford, Conn., and Providence, R.I., by making the airway a direct route. This action improves air traffic control service by providing an airway where aircraft are usually vectored. Also, the shortened route conserves fuel.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.123 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 307) and amended (45 FR 31973) is further amended, effective 0901 GMT, December 25, 1980, as follows:

Under V-167

"Hartford; INT Hartford 081° and Providence, R.I., 270° radials; Providence;" is deleted and "Hartford, Conn.; Providence, R.I.;" is substituted therefor.

(Secs. 307(a), 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a), 1510; Executive Order 10854 (24 FR 9565); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.69)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on October 20, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-33354 Filed 10-24-80; 8:45 am]

BILLING CODE 4910-13-M

[Airspace Docket No. 80-AWE-12]

14 CFR Part 71

Designation of VOR Federal Airways; California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates new VOR Federal Airways V-332 from Friant, Calif., to Red Bluff, Calif., and V-338 from Linden, Calif., to Lake Tahoe, Calif. Designation of these airways provides bypass routes into the Sacramento, Calif., area and permits additional flexibility for arrival and departure traffic in the Sacramento terminal area.

EFFECTIVE DATE: December 25, 1980.

FOR FURTHER INFORMATION CONTACT: Lewis Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION: On August 14, 1980, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate two new VOR Federal Airways in the vicinity of Sacramento, Calif., V-332, from Friant, Calif., direct to Hangtown, Calif., direct to Red Bluff, Calif., and V-338, from Linden, Calif., direct to Hangtown, direct to Lake Tahoe, Calif. These new airways enhance air traffic control by permitting traffic flow flexibility necessary to expedite arrival and departure operations in the Sacramento, Calif., area (45 FR 54072). Also, VOR/DME approaches for Placerville, Calif., Airport at Hangtown will be established. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.123 was republished in the **Federal Register** on January 2, 1980 (45 FR 307).

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates VOR Federal Airway V-332 from Friant, Calif., via Hangtown, Calif., direct to Red Bluff, Calif., and V-338 from Linden, Calif., via Hangtown, direct to Lake Tahoe. This action enhances arrival and departure traffic flow in the Sacramento and Placerville airport terminal areas, thereby increasing air safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 307) is amended, effective 0901 G.m.t., December 25, 1980, as follows:

Under § 71.123

"V-332 From Friant, Calif., via Hangtown, Calif.; to Red Bluff, Calif." is added.

"V-338 From Linden, Calif., via Hangtown, Calif.; to Lake Tahoe, Calif." is added.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on October 20, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-33197 Filed 10-24-80; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 241

[Release No. 34-17231]

Regulation of Clearing Agencies

AGENCY: Securities and Exchange Commission.

ACTION: Extension of date by which clearing agencies are required to file Form CA-1 and related materials.

SUMMARY: On June 17, 1980 the Commission announced the publication of standards that the Division of Market Regulation will use in reviewing applications for registration as a clearing agency in accordance with Section 17A(b)(3) of the Securities Exchange Act of 1934. Notice of the standards was given by Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (June 23, 1980). That release also requested that by October 31, 1980, each clearing agency currently temporarily registered with the Commission submit a new Form CA-1, 17 CFR 249b.200, amendments to its current rules to comply with the standards set forth in the release, and, if appropriate, alternative approaches to the standards that satisfy the statutory criteria contained in Section 17(A)(b)(3) or exemptive requests from such statutory criteria. Because several clearing agencies have indicated that they anticipate difficulty in submitting all of the requested material by the October 31, 1980 deadline, the Commission is extending the time for submitting the requested material until December 15, 1980.

EFFECTIVE DATE: October 20, 1980.

FOR FURTHER INFORMATION CONTACT: JoAnn Carpenter, Esq., Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, (202) 272-2902.

By the Commission.

George A. Fitzsimmons,

Secretary.

October 20, 1980.

[FR Doc. 80-33393 Filed 10-24-80; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 80-255]

Foreign Discriminating Duties of Tonnage and Impost With Respect To Vessels of and Certain Imports From the Netherlands Antilles Suspended and Discontinued

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This rule adds the Netherlands Antilles to the list of nations whose vessels are exempted from the payment of higher tonnage duties than are applicable to vessels of the United States and from the payment of light money. Satisfactory evidence has been obtained by the Department of State that no discriminating duties of tonnage or impost are imposed in ports of the Netherlands Antilles upon vessels belonging to citizens of the United States or on their cargoes.

EFFECTIVE DATE: The exemption became effective December 5, 1957.

FOR FURTHER INFORMATION CONTACT: John Mathis, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5706).

SUPPLEMENTARY INFORMATION:

Background

Generally, the United States imposes regular and special tonnage taxes, and a duty of a specified amount per ton, known as "light money," on all foreign vessels which enter United States ports (46 U.S.C. 121, 128). However, vessels of a foreign nation may be exempted from the payment of special tonnage taxes and light money upon presentation of proof satisfactory to the President that no discriminatory duties of tonnage or imposts are imposed by that foreign nation on United States vessels or their cargoes (46 U.S.C. 141). The President has delegated the authority to grant this exemption to the Secretary of the Treasury. Section 4.22, Customs Regulations (19 CFR 4.22), lists those nations whose vessels have been exempted from the payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money.

On August 1, 1979, the Department of State advised the Department of the Treasury that under Article XIX of the Treaty of Friendship, Commerce and Navigation between the United States and the Kingdom of the Netherlands, signed March 27, 1956 (T.I.A.S. 3942), vessels of both parties are accorded national and most-favored-nation treatment within each other's ports and waters. Hence, the treaty precludes either party from imposing any charges on the other party's vessels which are any higher than those imposed on its own vessels or the vessels of any third nation which call at its ports.

This provision of the treaty was extended to the Netherlands Antilles, as from the date the treaty entered into force, by an exchange of notes in Washington on November 5, 1957, pursuant to the procedure set forth in Article XXIV of the treaty. Consequently, there is satisfactory evidence which would permit the Secretary of the Treasury to find that effective December 5, 1957, the date the treaty entered into force, vessels of the Netherlands Antilles are entitled to the exemption, and the Department of State has requested that such vessels be afforded the exemption.

Declaration

Therefore, by virtue of the authority vested in the President by section 4228 of the Revised Statutes, as amended (46 U.S.C. 141), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951, as amended by Executive Order No. 10882, July 18, 1960 (3 CFR, 1959-1963 Comp., Ch. II), and pursuant to the authorization provided by Treasury Department Order No. 101-5 (44 FR 31057), I declare that the foreign discriminating duties of tonnage and impost within the United States are suspended and discontinued, in respect to vessels of the Netherlands Antilles and the produce, manufactures, or merchandise imported into the United States in such vessels from the Netherlands Antilles or from any other foreign country.

This suspension and discontinuance shall take effect from December 5, 1957, in respect to vessels of the Netherlands Antilles and shall continue only for so long as the reciprocal exemptions of vessels wholly belonging to citizens of the United States and their cargoes shall be continued.

Amendment to the Regulations

In accordance with this declaration, § 4.22, Customs Regulations (19 CFR

4.22), is amended by adding "Netherlands Antilles" in the appropriate alphabetical sequence in the list of nations whose vessels are exempted from the payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money.

(R.S. 251, as amended, 4219, as amended, 4255, as amended, 4228, as amended, sec. 3, 23 Stat. 119, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624, 46 U.S.C. 5, 121, 128, 141))

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this amendment merely implements a statutory requirement and involves a matter in which the public is not particularly interested, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary. Further, for the same reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d).

Regulations Determined To Be Nonsignificant

In a directive published in the **Federal Register** on November 8, 1978 (43 FR 52120), implementing Executive Order 12044, "Improving Government Regulations" the Treasury Department stated that it considers each regulation or amendment to an existing regulation published in the **Federal Register** and codified in the Code of Federal Regulations to be "significant." However, regulations of this nature, which are nonsubstantive, are essentially procedural, do not materially change existing or establish new policy, and do not impose substantial additional requirements or costs on, or substantially alter the legal rights or obligations of, those affected, may, with Secretarial approval, be determined not to be significant. Accordingly, it has been determined that this amendment does not meet the Treasury Department criteria in the directive for "significant" regulations.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations and Research Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other officers of the Customs Service and the Departments of State and the Treasury participated in its development.

Dated: October 6, 1980.

Richard J. Davis,

Assistant Secretary of the Treasury.

[FR Doc. 80-33436 Filed 10-24-80; 8:45 am]

BILLING CODE 4810-22-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

Referral of Persons Eligible for Supplemental Security Income to Other Agencies

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: We are revising and reorganizing our rules on referrals (Subpart Q) under the Supplemental Security Income (SSI) Program. These rules explain whom we refer to other agencies for vocational rehabilitation services, whom we refer for treatment for alcohol or drug abuse, and the consequences of refusing these services or treatments.

DATES: Effective date October 27, 1980.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Dyer, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-7454.

SUPPLEMENTARY INFORMATION: We published these regulations as a Notice of Proposed Rule Making (NPRM) in the **Federal Register** on April 24, 1980 (45 FR 27783), with a 60-day comment period.

Background

In order to receive or continue to receive SSI benefits due to disability the law requires that some individuals be referred to other agencies for services under a program of vocational rehabilitation or for treatment of alcoholism or drug addiction. This provision is designed to assist the person in recovering from his or her disability. This regulation describes who must participate in these programs and the consequences of not doing so.

Referral for Vocational Rehabilitation

These rules (§§ 416.1710 and 416.1715) explain that we will refer disabled or blind (but not aged) individuals to an appropriate vocational rehabilitation agency which determines if they should receive available services. These services are to assist the individuals to become able to work so that they will no longer need SSI benefits. We do this at the time we find them eligible for SSI benefits or at any other time we find that these services might help them earn a living. We also explain that these individuals are ineligible for SSI benefits if they reject these services without having good cause. Section 416.1715(b) gives examples of good cause.

Referrals for Treatment of Alcoholism or Drug Addiction

These rules (§§ 416.1720 and 416.1725) describe whom we refer for treatment of alcoholism or drug addiction and what happens if the individual does not accept this treatment. We refer for this particular type of treatment only those individuals who receive SSI benefits because they are disabled, and alcoholism or drug addiction is a contributing factor to their disability. We also explain that these individuals are ineligible for SSI benefits if they reject available treatment or do not comply with the conditions of the treatment.

Difference between the Final Regulations and the Current Regulations

The entire regulation has been rewritten in simpler language and has been organized in a way that it should be easier to understand.

We have added a new section (§ 416.1705) to define terms that are used throughout this subpart.

We have added two new examples of good cause for not accepting vocational rehabilitation services, namely when an individual will have to be away from home for a period long enough to endanger the health or welfare of his or her family and when an individual is working or expected to be working within 3 months. This is consistent with our present practice.

We are relocating the rule in § 416.1731 to Subparts K and L. This rule excludes certain income and resources of individuals who have an approved plan for achieving self support. These other subparts contain the rules for excluding income and resources.

Comments

We received comments as the result of the NPRM from two individuals. The comments concerned payment of SSI benefits, a subject which is dealt with in other subparts rather than to referrals for treatment or services.

One commenter suggested that this regulation should make it clear that we should continue payment of SSI benefits throughout a person's participation in a program of vocational rehabilitation. Recent changes in the law which will be effective December, 1980 permit continuance of payments for people participating in a vocational rehabilitation program. We intend to publish proposed rules on this shortly.

The second comment dealt with the treatment of the property of SSI recipients and is not related to the subject matter contained in the subpart.

In light of the fact that we have received no comments directly relating to the rules in this subpart, we have adopted as the final regulation the language contained in the NPRM without change except for the addition of two more examples of good cause for not accepting vocational rehabilitation services and the correction of two typographical errors. The additional examples of good cause are consistent with present operating policy.

The proposed regulations are adopted as set forth below.

(Catalog of Federal Domestic Assistance Program No. 13,807, Supplemental Security Income)

Dated: September 22, 1980.

William J. Driver,

Commissioner of Social Security.

Approved: October 21, 1980.

Patricia Roberts Harris,

Secretary of Health and Human Services.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart Q of Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is revised to read as follows:

Subpart Q—Referral of Persons Eligible for Supplemental Security Income to Other Agencies

General

Sec.

416.1701 Scope of subpart.
416.1705 Definitions.

Referral for Vocational Rehabilitation Services

416.1710 Whom we refer and when.
416.1715 Effect of your rejecting vocational rehabilitation services.

Referral for Treatment of Alcoholism or Drug Addiction

416.1720 Whom we refer.
416.1725 Effect on your rejecting treatment for alcoholism or drug addiction.

Authority: Secs. 1102, 1611(e)(3)(A), 1615 and 1631 of the Social Security Act, as amended, 49 Stat. 647, as amended, 86 Stat. 1466, 1474, and 1475 (42 U.S.C. 1302, 1382(e)(3)(A), 1382d, and 1383).

Subpart Q—Referral of Persons Eligible for Supplemental Security Income to Other Agencies

General

§ 416.1701 Scope of subpart.

This subpart describes whom we refer to agencies for (a) vocational rehabilitation services or (b) treatment for alcoholism or drug addiction. The purpose of these services or treatments is to restore your ability to work. This subpart also describes the conditions under which you can refuse these services or treatments after we have referred you. If these conditions are not met, this subpart describes how your benefits are effected when you refuse these services or treatments.

§ 416.1705 Definitions.

As used in this subpart—

"Vocational rehabilitation services" refers to services provided blind or disabled persons under the State plan approved under the Rehabilitation Act of 1973 (see 45 CFR 401.120ff for requirements of these State plans).

"We" or "us" refers to either the Social Security Administration or the State agency making the disability or blindness determination.

"You" or "your" refers to the person who applies for or receives benefits or the person for whom an application is filed.

Referral for Vocational Rehabilitation Services

§ 416.1710 Whom we refer and when.

(a) *Whom we refer.* If you are 16 years of age or older and under 65 years old, and receiving supplemental security income (SSI) benefits, we will refer you to the State agency providing vocational rehabilitation services. If you are under age 16, we will refer you to an agency administering services under the State plan for crippled children's services. (See 42 CFR 51a.300ff)

(b) *When we refer.* We will make this referral when we find you eligible for benefits or at any other time that we find you might be helped by vocational rehabilitation services.

§ 416.1715 Effect of your rejecting vocational rehabilitation services.

(a) *Ineligible for benefits if you do not have good cause.* If we refer you to the State agency providing vocational rehabilitation services, you are not eligible for SSI benefits for any month that you refuse, without good cause, to accept services available to you (see § 416.1328(a) on suspension because of a refusal). If you believe good cause exists to refuse these services, you will be asked to submit proof showing this.

(b) *Examples of good cause.* If you can show good cause for not accepting vocational rehabilitation services offered to you, you will continue to be eligible for benefits. Examples of good cause include the following: (1) The services that are offered are not designed to restore your ability to work.

(2) You are already in a program (either governmental or private) that is expected to restore your ability to work.

(3) You are regularly attending a school, college, or university or are attending a course of vocational or technical training, and the program you are attending is designed to restore your ability to work.

(4) You are physically or mentally unable to participate in the services that are offered.

(5) The services offered would interfere with a medical program provided for you.

(6) The services would require you to be away from home and your absence would be harmful to the health and welfare of your family.

(7) You are working at the present time or you will be working within 3 months.

(8) You are a member or a follower of a recognized church or religious sect which teaches its members or followers to rely solely on prayer or other spiritual means for the treatment and care of any physical or mental illness, and you refuse to accept these services solely because of your belief in these teachings.

Referral for Treatment of Alcoholism or Drug Addiction

§ 416.1720 Whom we refer.

We will refer you to an approved facility for treatment of your alcoholism or drug addiction if—

(a) You are disabled;

(b) You are not blind;

(c) You are not 65 years old or older; and

(d) Alcoholism or drug addiction is a contributing factor to your disability.

§ 416.1725 Effect of your rejecting treatment for alcoholism or drug addiction.

You are not eligible for SSI benefits for any month if—

(a) We have referred you to an approved facility (defined in § 416.938) for treatment;

(b) Appropriate treatment (described in § 416.937) is available (see § 416.939); and

(c) You are not undergoing this treatment even though you are able, or you do not show that you are complying with the conditions of this treatment

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(see § 416.1326 on suspension because of rejecting treatment).

[FR Doc. 80-33365 Filed 10-24-80; 8:45 am]
BILLING CODE 4110-07-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[T.D. 7727]

Excise Tax on Fuel Used in Commercial Waterway Transportation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final rulemaking.

SUMMARY: This document provides final regulations relating to the new excise tax on the use of fuel in commercial waterway transportation. Changes to the applicable tax law were made by section 202 of the Inland Waterways Revenue Act of 1978. The regulations affect all operators of commercial vessels used on certain inland and intracoastal waterways.

EFFECTIVE DATE: These regulations apply to fuel consumed after September 30, 1980.

FOR FURTHER INFORMATION CONTACT: John R. Harman of the Legislation and Regulations Division, Office of the Chief Counsel Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: CC:LR:T, LR-175-78, 202-566-4351, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

Section 202 of the Inland Waterways Revenue Act of 1978 (the "Act"), Pub. L. 95-502, 92 Stat. 1996, imposes an excise tax on the use of liquid fuel in commercial waterway transportation. It taxes only fuel used by certain types of commercial vessels along particular inland and intracoastal waterways.

On June 9, 1980, the Federal Register published a proposed amendment to the Excise Tax Regulations (26 CFR 48) under section 4042 of the Internal Revenue Code of 1954 (Code) (45 FR 38411). The amendment was proposed to conform the regulations to the amendment of the Code made by the Act. A correction to the initially published proposal was published on July 29, 1980 (45 FR 50368). A public hearing on the proposed regulations was held on September 25, 1980. After consideration of all comments regarding the proposed amendment, final regulations are adopted by this Treasury decision.

These regulations meet the Treasury criteria for significant regulations.

Summary of Comments and Substantive Revisions

Twenty-two organizations submitted comments in response to the invitation in the notice. Several organizations objected to implementation of the Act on constitutional grounds, claiming the Act conflicts with the tax uniformity clause, the ports preference clause, and the due process clause. *See generally* U.S. Const. art. 1, § 8, cl. 1; U.S. Const. art. 1, § 9, cl. 6; U.S. Const. amend. V.

Several commentators expressed concern that the statement regarding the general purpose of the fuel tax, contained in the supplementary information to the proposal, might be misapplied. They were concerned that the statement could be construed to impose a restriction on the ultimate uses of the tax collected, a result which was not intended. The statement was not substantive. As a result of the comments, it has been deleted from the supplementary information to these final regulations.

The tax only applies to vessels used in commercial tranportation. Several commentators requested clarification of whether commercial transportation vessels will be subject to the tax while fleeting barges into a single tow and while used to dislodge a tow grounded on a sandbar. The final regulations clarify that they are, *see* § 48.4042-1(f)(1). Congress intended to tax fuel consumed in vessels used for commercial waterway transportation, but not to limit the tax to fuel consumed by vessels while actually transporting property. Vessel operators seeking a ruling as to whether other uses of vessels constitute commercial waterway transportation, within the meaning of § 48.4042-1(f)(1), should consult Rev. Proc. 80-20, 1980-26 I.R.B. 7.

Only fuel used on waterways specified in section 206 of the Act is taxable. Several comments pointed out ambiguities in the descriptions of three of the specified waterways; namely, the Atlantic Intracoastal Waterway, the Gulf Intracoastal Waterway, and the Illinois Waterway. Those descriptions are clarified by the final regulations to better apprise operations of where fuel consumption is taxable. *See* § 48.4042-1(g)(6), (g)(11), and (g)(12).

By imposing a tax on the use of liquid fuel, Congress intended to impose a tax similar to a preexisting tax on liquid fuel used in motor vehicles (Code section 4041), which had been interpreted to apply only to propulsion fuels. Accordingly, § 48.4042-2(a)(1), as proposed, provided that only fuel used in the propulsion system of the vessel is taxed. That section has been modified in response to several requests to define what constitutes a propulsion system. The final regulations clarify that a propulsion system means any engine generating movement of a vessel, including bow thrusters used for steering.

Several commentators expressed concern that § 48.4042-2(b) might be interpreted to require vessel operators to install fuel gauges and that § 48.4042-2(c) might be interpreted to require operators to maintain a second set of records duplicating records already contained in vessel logs and invoices of fuel purchases. Such expenditures are not required by the regulations.

Many comments pointed out situations where, because of an operator's circumstances, maintaining certain records listed in § 48.4042-2(c)(1) would serve little or no purpose—such as (1) requiring fuel refining firms operating barges to maintain records of fuel acquired for all purposes and (2) requiring records of arrival and departure times for a vessel used exclusively in taxable waterways. Section 48.4042-2(c)(1) has been changed to clarify that a vessel operator is only required to maintain records sufficient to establish to the satisfaction of the district director the amount of fuel used for taxable purposes.

Several comments pointed out the fact that many vessels do not have identification numbers, but rather are assigned names. Section 48.4042-2(c)(1) has been changed to allow operators to maintain records for each vessel under either a vessel name or identification number.

Several commentators requested clarification of whether interim deposits will be required and whether filing can be delayed until a later date when the operator is allowed until that later date to report another tax with the Form 720—such as the windfall profits tax. The final rules, §§ 48.4042-2(d) and 48.6302(c)-1(f), clarify that interim deposits are not required. *See* Rev. Proc. 80-23, 1980-26 I.R.B. 30, for the extension currently allowed taxpayers using Form 720 to report taxes subject to different reporting deadlines.

Many changes were requested which would be contrary to Congress' intent or the language of the statute itself and for that reason have not been made. Those requests include: Collecting the tax from persons selling fuel; making lessees and charterers pay the tax regardless of who operates the vessel; excluding fuel used in the propulsion engine to create energy for nonpropulsion purposes; excluding fuel used by private operators

transporting property destined for a State or local government's use; excluding fuel used by tugs to move LASH and SEABEE barges regardless of whether the tow is comprised exclusively of such barges.

Drafting Information

The principal author of these regulations is John R. Harman of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of amendments to the regulations

Accordingly 26 CFR Part 48 is amended as follows:

Paragraph 1. There are added immediately after § 48.4041-14 the following new sections:

§ 48.4042-1 Tax on fuel used in commercial waterway transportation.

(a) *In general.* Section 4042(a) imposes an excise tax on the use of liquid fuel in the propulsion system of commercial transportation vessels while traveling on certain inland and intracoastal waterways (*see* § 48.4042-1 (f)). The tax applies generally to all types of vessels, including ships, barges, and tugboats. It is in addition to all other taxes imposed on the sale or use of fuel.

(b) *Amount of tax.* The tax imposed by section 4042(a) shall be determined from the following table:

If the use occurs:	The tax is:
After Sept. 30, 1980 and before Oct. 1, 1981.	4 cents a gallon.
After Sept. 30, 1981 and before Oct. 1, 1983.	6 cents a gallon.
After Sept. 30, 1983 and before Oct. 1, 1985.	8 cents a gallon.
After Sept. 30, 1985	10 cents a gallon.

(c) *Person liable for tax.* The person operating the vessel in which the propulsion fuel is consumed is the user of liquid fuel for purposes of section 4042(a). Thus, a person who operates (or whose employees operate) a vessel is responsibile for filing returns and paying the tax. If a vessel owner (or lessee) contracts with an independent contractor to operate the vessel, the independent contractor is the user of liquid fuel for purposes of section 4042(a), regardless of who purchases the fuel.

(d) *Time of use.* Fuel is not taxed by section 4042(a) when put into a vessel's tanks. For purposes of section 4042(a), fuel is used when it is actually consumed by a vessel's engine.

(e) *Liquid fuels.* For purposes of section 4042(a), liquid fuel includes any liquid fuel, including—

(1) Diesel fuel, or

(2) Bunker C residual fuel oil, or

(3) Special motor fuel as defined in paragraph (f) of § 48.4041-7, or

(4) Gasoline as defined in paragraph (b) of § 48.4082-1.

(f) *Commercial waterway transportation*—(1) *In general.* For purposes of section 4042(a) and § 48.4042-2(c)(1), the term "commercial waterway transportation" means the use of a vessel on the waterways specified in paragraphs (g) (1) through (26) of this section if—

(i) Use of the vessel is in the business of transporting property for compensation or hire, or

(ii) Use of the vessel is in transporting property in the business of the owner, lessee, or operator of the vessel (whether or not a fee is charged).

Except for the operation of certain fishing vessels, the operation of all vessels satisfying the requirements of paragraphs (f)(1)(i) or (1)(ii) of this section will be deemed "commercial waterway transportation," regardless of whether the vessel is actually engaged in the transportation of property on a particular voyage. Thus, "commercial waterway transportation" includes the operation of vessels while moving empty of cargo, while awaiting passage through locks, while dislodging vessels grounded on a sandbar, while moving to or from a repair facility, while maneuvering around loading and unloading docks, and while fleeting barges into a single tow.

(2) *Fishing vessels exception.* A vessel does not transport property in the business of the owner, lessee, or operator, for purposes of paragraph (f)(1)(ii) of this section, by merely transporting fish or other aquatic animal life caught on the voyage. The tax imposed by section 4042(a) does not apply to fuel used by a fishing vessel while traveling to a fishing site, while engaged in fishing, or while returning from the fishing site with its catch. However, the tax applies to fuel used by a commercial vessel along the taxable waterways while traveling to pick up aquatic animal life caught by another vessel and while transporting the catch of such other vessel.

(g) *Specified waterways.* Only fuel used on those waterways specified in section 206 of the Inland Waterways Revenue Act of 1978 (specified waterways) is taxable. The specified waterways are as follows:

(1) Alabama-Coosa Rivers: From junction with the Tombigbee River at river mile (hereinafter referred to as RM) 0 to junction with the Coosa River at RM 314.

(2) Allegheny River: From confluence with the Monongahela River to form the Ohio River at RM 0 to the head of the existing project at East Brady, Pennsylvania, RM 72.

(3) Apalachicola-Chattachoochee and Flint Rivers: Apalachicola River from mouth at Apalachicola Bay (intersection with the Gulf Intracoastal Waterway) RM 0 to junction with Chattachoochee and Flint Rivers at RM 107.8. Chattachoochee River from junction with Apalachicola and Flint Rivers at RM 0 to Columbus, Georgia, at RM 155 and Flint River, from junction with Apalachicola and Chattachoochee Rivers at RM 0 to Bainbridge, Georgia, at RM 28.

(4) Arkansas River (McClellan-Kerr Arkansas River Navigation System): From junction with Mississippi River at RM 0 to port of Catoosa, Oklahoma, at RM 448.2.

(5) Atchafalaya River: From RM 0 at its intersection with the Gulf Intracoastal Waterway at Morgan City, Louisiana, upstream to junction with Red River at RM 116.8.

(6) Atlantic Intracoastal Waterway (A.I.W.W.): Two inland water routes approximately paralleling the Atlantic coast between Norfolk, Virginia, and Miami, Florida, for 1,192 miles via both the Albermarle and Chesapeake Canal and Great Dismal Swamp Canal routes. For vessels traveling along the A.I.W.W. no matter how short the distance, the A.I.W.W. includes the main channel, all alternate channels, and all adjoining bays and sounds, regardless of depth. However, vessels merely crossing the A.I.W.W. on route either to a coastal port or to a nonspecified waterway will not be treated as traveling on the A.I.W.W.

(7) Black Warrior-Tombigbee-Mobile Rivers: Black Warrior River System from RM 2.9, Mobile River (at Chickasaw Creek) to confluence with Tombigbee River at RM 45. Tombigbee River (to Demopolis at RM 215.4) to port of Birmingham, RM's 374—411 and upstream to head of navigation on Mulberry Fork (RM 429.6), Locust Fork (RM 407.8), and Sipsey Fork (RM 430.4).

(8) Columbia River (Columbia-Snake Rivers Inland Waterways): From The Dalles at RM 191.5 to Pasco, Washington (McNary Pool), at RM 330, Snake River from RM 0 at the mouth to RM 231.5 at Johnson Bar Landing, Idaho.

(9) Cumberland River: Junction with Ohio River at RM 0 to head of

navigation, upstream to Carthage, Tennessee, at RM 313.5.

(10) Green and Barren Rivers: Green River from junction with the Ohio River at RM 0 to head of navigation at RM 149.1.

(11) Gulf Intracoastal Waterway (G.I.W.W.): From the mouth of St. Mark's River, Florida, to Brownsville, Texas, 1,134.5 miles. For vessels traveling along the G.I.W.W. no matter how short the distance, the G.I.W.W. includes the main channel, all alternate channels, and all adjoining bays and sounds, regardless of depth. However, vessels merely crossing the G.I.W.W. on route either to a coastal port or to a nonspecified waterway will not be treated as traveling on the G.I.W.W.

(12) Illinois Waterway: Illinois River from junction with the Mississippi River at RM 0 to the Des Plaines River and along the Des Plaines River to Lockport Lock and Dam at RM 291. Chicago Sanitary and Ship Canal from Lockport Lock and Dam at RM 291 to the South Branch Chicago River and along the South Branch Chicago River to Lake Street, Chicago at RM 325.5 near Chicago Harbor. Calumet-Sag Channel from junction with the Chicago Sanitary and Ship Canal to the Little Calumet River and along the Little Calumet and Calumet Rivers to turning basin 5, near the entrance to Lake Calumet, an additional 23.8 RMS. Total waterway distance approximately 350 RMs.

(13) Kanawha River: From junction with Ohio River at RM 0 to RM 90.6 at Deepwater, West Virginia.

(14) Kaskaskia River: From junction with the Mississippi River at RM 0 to RM 36.2 at Fayetteville, Illinois.

(15) Kentucky River: From junction with Ohio River at RM 0 to confluence of Middle and North Forks at RM 258.6.

(16) Lower Mississippi River: From Baton Rouge, Louisiana, RM 233.9 to Cairo, Illinois, RM 953.8.

(17) Upper Mississippi River: From Cairo, Illinois, RM 953.8 to Minneapolis, Minnesota, RM 1,811.4.

(18) Missouri River: From junction with Mississippi River at RM 0 to Sioux City, Iowa, at RM 734.8.

(19) Monongahela River: From junction with Allegheny River to form the Ohio River at RM 0 to junction of the Tygart and West Fork Rivers, Fairmont, West Virginia, at RM 128.7.

(20) Ohio River: From junction with the Mississippi River at RM 0 to junction of the Allegheny and Monongahela Rivers at Pittsburgh, Pennsylvania, at RM 981.

(21) Ouachita-Black Rivers: From the mouth of the Black River at its junction with the Red River at RM 0 to RM 351 at Camden, Arkansas.

(22) Pearl River: From junction of West Pearl River with the Rigolets at RM 0 to Bogalusa, Louisana, RM 58.

(23) Red River: From RM 0 to the mouth of Cypress Bayou at RM 238.

(24) Tennessee River: From junction with Ohio River at RM 0 to confluence with Holstein and French Rivers at RM 652.

(25) White River: From RM 9.8 to RM 255 at Newport, Arkansas.

(26) Willamette River: From RM 21 upstream of Portland, Oregon, to Harrisburg, Oregon, at RM 194.

§ 48.4042-2 Special rules.

(a) *Dual use of liquid fuels*—(1) *Dual use by the propulsion engine.* The tax imposed by section 4042(a) applies to all taxable liquid used as a fuel in the propulsion system of the vessel, regardless of whether the engine (or other propulsion system) is used for a purpose other than propulsion of the vessel. For purposes of this section, any engines generating movement of a vessel (including bow thrusters used for steering) are part of the propulsion system. The tax does not apply to fuel consumed in engines which are not used to generate movement of a vessel. When the propulsion engine operates special equipment by means of a power take-off or power transfer, the tax applies to all liquid fuel consumed by that engine. For example, the tax applies to all fuel used in the engine operating an alternator, a generator, or pumps, if that engine is used to generate movement of a vessel.

(2) *Common tank.* If the liquid fuel consumed by a nonpropulsion engine is drawn from the same tank as fuel consumed by a propulsion engine, a reasonable determination of the quantity of fuel used in such a separate engine will be acceptable for purposes of excluding from taxation a portion of the fuel consumed by the vessel. The determination of the amount of fuel consumed by the nonpropulsion engine may be based primarily on the operating experience of the person using the fuel; however, in order to exclude fuel from taxation under the rule set out in this paragraph (a)(2), the taxpayer must maintain records which will support the allocation used.

(b) *Voyages crossing boundaries of the specified waterways.* Fuel consumed by a vessel traveling along the specified waterways is taxable only to the extent of fuel consumed for propulsion while on the specified waterways. Generally, the operator may calculate the amount of fuel consumed while on the specified waterways during a particular voyage by mulitplying total fuel consumed in the propulsion engine by a fraction. The numerator of the fraction is the time spent operating on the specified waterways; the denominator is the total time spent operating on the specified and nonspecified waterways during the voyage. This calculation may not be used when it is unreasonable. It may be determined to be unreasonable by:

(1) Better evidence of fuel consumed (*e.g.*, readings from an accurate fuel gauge or records from similar voyages); or

(2) The existence of factors causing a substantial discrepancy between the rate of fuel consumption on the specified and nonspecified waterways.

(c) *Records required.* (1) All operators of vessels used in commercial waterway transportation must maintain records sufficient to establish to the satisfaction of the district director the amount of fuel used for taxable purposes. Those records may include, when relevant to establish liability: (i) Quantity of fuel and date of acquisition of all liquid fuels acquired for both taxable and nontaxable purposes, whether delivered to storage tanks or tanks on a vessel;

(ii) Date and quantity of fuel pumped into tanks on each vessel;

(iii) Identification number or name of each vessel using fuel; and

(iv) Departure time, departure point, route traveled, destination, and arrival time for each vessel.

(2) Vessel operators seeking a tax exemption provided by section 4042(c) must maintain records which will support any exemption claimed. Where applicable, the records shall contain: (i) The draft of the vessel on each voyage (for exemption under section 4042(c)(1));

(ii) The type of vessel in which fuel is consumed and the type of vessel in which cargo is transported (for exemption under section 4042(c) (1), (2) or (4); and

(iii) The ultimate use of cargo transported (for exemption under section 4042(c)(3)).

(d) *Date for filing return.* In general, the return (Form 720, Quarterly Federal Excise Tax Return) must be filed and the tax paid by the last day of the first month following the quarter in which tax liability has accrued. Thus, for the first taxable quarter (October through December 1980) the return is due and the tax must be paid by January 31, 1981. Notwithstanding any provisions in this part to the contrary, the tax imposed by section 4042(a) need not be deposited with a government depository.

§ 48.4042-3 Certain types of commercial waterway transportation excluded.

(a) *Deep draft ocean-going vessels*—(1) *In general.* Under section 4042(c)(1), there is no tax imposed by section 4042(a) if: (i) The vessel was designed primarily for use on the high seas; and

(ii) The vessel has a draft of more than 12 feet on the voyage for which the fuel tax exclusion is sought (*e.g.* 12 feet 1 inch).

(2) *Meaning of "designed primarily for use on the high seas."* Section 4042(c)(1) requires a determination of the primacy of the design features rendering the vessel useful for service on the high seas, as opposed to the features which render the vessel useful for service on all less turbulent waters. Thus, whether a ship is "designed primarily for use on the high seas" must be determined from all the facts, including structural features and equipment. If the predominant use of a vessel is on the high seas, it shall be presumed to be "designed primarily for use on the high seas." If the predominant use of a vessel is on waters other than the high seas, it shall be presumed not to be "designed primarily for use on the high seas."

(3) *Meaning of "high seas."* For purposes of this section, "high seas" shall mean waters other than the territorial waters of the United States or any other country. Thus, the high seas shall not include the internal waters of any country, the Great Lakes, harbors, or narrow coastal indentations.

(4) *Twelve foot draft*—(i) *Definition.* For purposes of section 4042(c)(1), "draft" shall mean the maximum vertical distance between the mean water line and the bottom of the keel. In cases where a vessel has a skeg or other appendage extending locally below the line of the keel, the draft shall be measured from the deepest appendage. A separage determination of draft must be made for each voyage when the vessel has its greatest load of cargo and fuel. For purposes of this determination, the term "voyage" means a round trip voyage. Therefore, if a vessel travels into the specified waterway system to pick up cargo and has a draft sufficient to qualify for the exclusion when loaded, then for purposes of section 4042(c)(1) the vessel satisfies the 12 foot draft requirement for the entire voyage. Similarly, if a vessel loaded with cargo travels into the specified waterway system with a draft sufficient to qualify for the exclusion provided by section 4042(c)(1), then the fuel consumed on the entire voyage may be excluded, regardless of the vessel's draft after the cargo is unloaded.

(ii) *Example.* The following example illustrates the application of paragraph (a)(4)(i) of this section:

Example. A ship with a design draft of 20 feet (maximum certified draft when fully loaded) travels into a taxable waterway with only a partial load, such that the draft is 12 feet. The ship unloads and departs the waterway empty. The portion of the fuel consumed for propulsion of the vessel on the specified waterway is taxable because only vessels with a draft greater than 12 feet are eligible for the section 4042(c)(1) exemption from tax.

(b) *Commercial passenger vessels.* Under section 4042(c)(2), the tax imposed by section 4042(a) does not apply to fuel consumed by vessels used primarily for the transportation of persons. Thus, commercial passenger vessels while being operated as passenger vessels are not subject to tax, even if such vessels in fact transport property in addition to transporting passengers. Similarly, ferry boats carrying passengers are not subject to tax, even if such vessels carry the passengers' automobiles.

(c) *Exemption for State or local governments*—(1) *In general.* Under section 4042(c)(3), there is no tax imposed by section 4042(a) if: (i) The vessel is being used by a State or local government; and

(ii) The vessel is being used in transporting property in the State or local government's business.

(2) *State or local government.* For purposes of paragraph (c)(1)(i) of this section a "vessel is being used by a State or local government" if it is operated by any State, the District of Columbia, or any political subdivision of a State. If a private party is contracted to haul for a State or local government, the vessel is not "being used by a State or local government." Similarly, if a person other than a State or local government is contracted to supply vessel operators, the fuel consumed by the vessel is not used "by a State or local government," regardless of ownership of the vessel. However, when a local government leases barges and employees of the local government operate the barges, the vessel is being used by the local government.

(3) *Government business.* The test for whether a vessel is being used "in transporting in a State or local government's business," within the meaning of paragraph (c)(1)(ii) of this section, is whether the ultimate use of the cargo is for a function which is ordinarily carried out by governmental units. For example, when the cargo transported is salt to be spread on icy roads, the vessel is being used "in transporting in a State or local business" because the use to which the cargo will be put (road maintenance) is a function ordinarily performed by governmental units. Fuel consumed in a vessel transporting property for compensation or in furtherance of a business not ordinarily carried out by a governmental unit is not exempt from taxation by section 4042(c)(3).

(d) *Ocean-going barges.* Under section 4042(c)(4), the tax imposed by section 4042(a) does not apply to fuel consumed by tugs moving exclusively barges released by ocean-going carriers solely to pick up or deliver international cargos. The tax exemption provided by section 4042(c)(4) applies to LASH barges, SEABEE barges, and all other ocean-going barges carried aboard ocean-going vessels. There is no exemption under section 4042(c)(4) while: (1) One or more of the barges in the tow is not a LASH barge, SEABEE barge, or other ocean-going barge carried aboard on ocean-going vessel; or

(2) One or more of the barges in the tow is not on an international voyage; or

(3) Part of the cargo in the tow is not being transported internationally.

Par. 2. Section 48.6302(c)–1 is amended by adding a new paragraph (f) as set forth below.

§ 48.6302(c)–1 Use of Government depositaries.

* * * * *

(f) *Special rule for the tax imposed by section 4042(a).* For purposes of the computations provided by this section, the tax imposed by section 4042(a) shall be disregarded.

(Sec. 7805, Internal Revenue Code of 1954 (68A Stat. 917; (26 U.S.C. 7805)))

Approved: October 16, 1980.

Jerome Kurtz

Commissioner of Internal Revenue.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 80-33339 Filed 10-22-80; 11:39 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

Seaway Regulations; Miscellaneous Amendments

AGENCY: Saint Lawrence Seaway Development Corporation.

ACTION: Final rule.

SUMMARY: This rule corrects errors which appeared in the recent publication (August 7, 1980) of a Final Rule amending 33 CFR Part 401 in the Federal Register.

EFFECTIVE DATE: October 27, 1980.

FOR FURTHER INFORMATION CONTACT:
Frederick A. Bush, General Counsel (315–764–0271, Ext. 245).

SUPPLEMENTARY INFORMATION: On August 7, 1980, the Seaway Corporation published in the Federal Register (45 FR 52376) a final rule amending existing Seaway Regulations. The amendments had been developed jointly with the Seaway Corporation's counterpart Canadian agency, the St. Lawrence Seaway Authority and had been published as a proposed rulemaking on June 19, 1979 (44 FR 35256). This final rule supplements that published on August 7, 1980 and corrections published on August 25, 1980 by supplying correct buoy numbers which were inadvertently given in the earlier publications. The changes and the reasons for them, are discussed in detail in the earlier publication.

As noted in the earlier publication, the Seaway Corporation has determined that the expected impact of this regulation is so minimal that it does not warrant either a Regulatory Analysis or a formal Evaluation as required by the Secretary of Transportation's Order concerning Regulatory Policies and Procedures (44 FR 11034). It is expected to result in negligible cost to a few vessel owners. There should be no added cost to or impact on consumers and/or Federal, state and local governments.

Since these amendments supplement regulations already in effect, good cause exists for making them effective upon publication.

1. Schedule II, "Table of Speeds*", is amended by revising entries to read as follows:

From	To	Maximum speed over the bottom (knots)	
		Col. III	Col. IV
3. Upper Entrance	Lake St. Francis	8.6 (10 mph upb)	8.6 (10 mph upb).
Beauharnois Lock	Buoy D3	10.4 (12 mph dnb)	10.4 (12 mph dnb).
4. Lake St. Francis	Lake St. Francis	15.5 (18 mph)	15.5 (18 mph).
Buoy D3	Buoy D49		
5. Lake St. Francis	Snell Lock	8.6 (10 mph upb)	7.7 (9 mph upb).
Buoy D49		10.4 (12 mph dnb)	10.4 (12 mph dnb).

(68 Stat. 93–96, 33 U.S.C. 981–990, as amended and secs. 4, 5, 6, 7, 8, 12, and 13 of sec. 2 of Pub. L. 95–474, 92 Stat. 1471)

Issued at Washington, D.C., on October 16, 1980.

Saint Lawrence Seaway Development Corporation.
D. W. Oberlin,
Administrator.

[FR Doc. 80–33211 Filed 10–24–80; 8:45 am]
BILLING CODE 4910–61–M

33 CFR Part 402

Tariff of Tolls; Revision

AGENCY: Saint Lawrence Seaway Development Corporation, Department of Transportation.

ACTION: Final rule.

SUMMARY: This regulation revises the tariff of tolls which the Saint Lawrence Seaway Development Corporation publishes and administers jointly with the St. Lawrence Seaway Authority of Canada for the use of the St. Lawrence Seaway. The effect of this revision is to incorporate into the tariff of tolls the provisions for post-clearance date operational surcharges which were previously published as part of the Navigation Closing Procedures.

EFFECTIVE DATE: October 27, 1980.

FOR FURTHER INFORMATION CONTACT:
Robert D. Kraft, 800 Independence Avenue, SW, Washington, D.C. 20591.

SUPPLEMENTARY INFORMATION: On June 11, 1979, the Saint Lawrence Seaway Development Corporation published in the Federal Register (44 FR 33 402) Navigation Season Closing Procedures for the Montreal-Lake Ontario section of the St. Lawrence Seaway. Included as a part of these procedures was a provision for the assessment of operational surcharges on those vessels which failed to report to designated call-in points by specified dates.

In developing the closing procedures which included the operational surcharges, the Seaway entities of both countries solicited and considered public comments as well as those of the affected industry. In view of the opportunity for public participation at that time and the fact that no material change in the substance of the regulation is being made; it was determined that a public hearing on the amendment was not practicable.

On October 25, 1979, the President of the St. Lawrence Seaway Authority of Canada and the Administrator of the Saint Lawrence Seaway Development Corporation of the United States agreed to recommend to their governments that the existing St. Lawrence Seaway Tariff of Tolls be amended to include these post-clearance date operational surcharges. On October 9, 1980, the Governments of the United States and Canada exchanged diplomatic notes formalizing the amendment to the Tariff of Tolls.

Since this regulation involves a foreign affairs function of the United States it is not subject to Executive Order 12044 or the Regulatory Policies and Procedures of the Department of Transportation and formal notice and public procedure thereon are unnecessary and it may be made effective upon publication in the Federal Register.

In consideration of the foregoing, Part 402 of Chapter IV of Title 33, Code of Federal Regulations is revised to include a new § 402.8 as appears below.

§ 402.8 Post-clearance date operational surcharges.

If the Authority and the Corporation so determine, they may establish a clearance date for the transit of the Montreal-Lake Ontario section. Each vessel which does not comply with the conditions announced by the Authority and the Corporation in establishing the clearance date may be required to pay in dollars an operational surcharge as follows:

(a) Vessels reporting during the 24 hour period immediately following the clearance date: $20,000.00.

(b) Vessels reporting more than 24 hours late, but less than 48 hours after the clearance date: $40,000.00

(c) Vessels reporting more than 48 hours late, but less than 72 hours after the clearance date: $60,000.00.

(d) Vessels reporting more than 72 hours late: $80,000.00.

Assessed operational surcharges will be prorated on a per lock basis. Surcharges representing transit through U.S. locks will be for the account of the Corporation and payable in U.S. funds and surcharges representing transit through Canadian locks will be for the account of the Authority and payable in Canadian funds.

(68 Stat. 92–96, 33 USC 981–990)

Issued at Washington, D.C. on October 17, 1980.

Saint Lawrence Seaway Development Corporation,
D. W. Oberlin,
Administrator.

[FR Doc. 80–33212 Filed 10–24–80; 8:45 am]
BILLING CODE 4910–61–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

41 CFR Ch. 18, Parts 3, 7, 13 and 20

[Procurement Regulation Directive 80–7 (dated August 14, 1980)]

Procurement Regulations; Miscellaneous Amendments

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This document amends the NASA Procurement Regulation (41 CFR Ch. 18). It reflects amendments contained in Procurement Regulation Directive 80–7 concerning the following areas:

1. Competition Under Blanket Purchase Agreements
2. Government Property Furnished for Repair
3. Evaluation and Negotiation of Procurements Conducted in Accordance with the Source Evaluation Board Manual (NHB 5103.6A)
4. Non-Use of Foreign-Flag Vessels Engaged in Cuban and North Vietnam Trade
5. Limitation of Government's Obligation (LOGO)
6. Inspection Clauses
7. Government Property Clause (Short Form)
8. Submission of Master Buy Plan.

EFFECTIVE DATE: October 27, 1980.

FOR FURTHER INFORMATION CONTACT:
James H. Wilson, Policy Division (Code HP–1, Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: 202–755–2237.

SUPPLEMENTARY INFORMATION:

(1) In Part 3, 3.605–4 is revised to indicate that the cumulative dollar value of awards to various vendors is an example of the factors that should be considered in connection with the equitable distribution of calls under concurrent blanket purchase agreements for similar items.

(2) In Part 3, 3.608–2 is revised to update the dollar thresholds for the use of Government property clauses in small purchases (not more than $10,000).

(3) In Part 3, 3.106–3(a)(ii), 3.804–2, 3.804–3 and 3.805–1(c) are revised to incorporate the coverage previously incorporated in NASA Procurement Regulation Directive 70–15 (Revised) (Title 41 of CFR, 1980 Edition, p. 472.) NASA Procurement Regulation Directive 70–15 (Revised), dated December 3, 1975, is hereby superseded.

(4) In Part 7, the clause in 7.104–59, 7.204–59, 7.303–59, 7.403–59 and 7.452–59 is deleted since it is no longer applicable as a result of actions previously taken by the Maritime Administration.

(5) In Part 7, 7.204–53 and 7.304–51 are revised to permit use of the LOGO clause where the total value of the contract including options (Part 1, Subpart 15) is $1 million or more even though the basic contract value is less than $1 million.

(6) In Part 7, 7.302–4 is revised to facilitate the incorporation of the desired Inspection clause into solicitations and contracts, by reference.

(7) In Part 13, 13.710 is revised to increase the acquisition cost of Government-furnished property which may be covered by the short form Government-Furnished Property clause in NASA contracts.

(8) In Part 20, 20.5103 is revised to—

(i) ensure that Master Buy Plan submissions include later phases of the same project to the Guidelines for Project Planning concept prescribed in NASA Handbook 7121.4 and/or Major System Acquisitions concept prescribed by NASA Management Instruction 7100.14A; and

(ii) Make it clear that the requirement to list prior procurements that were selected for Headquarters approval is applicable only to fiscal year Master Buy Plan.

Authority: The provisions of this document are issued under 42 U.S.C. 2473(c)(1).

L. E. Hopkins,
Acting Director of Procurement.

PART 3—PROCUREMENT BY NEGOTIATION

3.106–4 [Amended]

1. In Part 3, in the Table of Contents, the page number for "3.106–4 Disclosure of Information Prior to Selection of Contractor" is amended to read 3–1:6 in place of 3–1:5.

2. In Part 3, Table of Contents, 3.804–3 through 3.807–1 are revised to read as follows:

* * * * *

3.804–3 Evaluation and Negotiation of Procurements Conducted in Accordance with the Source Evaluation Board Manual (NHB 5103.6A) 3–8:15
3.804–4 Disclosure of Information Prior to Selection of Contractor 3–8:18B
3.805 Conduct of Negotiations 3–8:18C
3.805–1 General 3–8:18C
3.805–2 Cost-Reimbursement Type Contracts 3–8:18E
3.805–3 Use of Parallel Short-Term Contracts in Selecting System Design Concepts 3–8:18E
3.806 Cost, Profit, and Price Relationships 3–8:18E
3.807 Pricing of Negotiated Contracts 3–8:18F
3.807–1 General 3–8:18F

* * * * * *

3. In Part 3, 3.106–3(a)(ii) is revised to read as follows:

3.106–3 Award Information to Unsuccessful Offers.

(a) * * *

(ii) in the case of procurements for which a Source Evaluation Board has been appointed and one or more than one offeror has been selected for negotiations, those offerors not selected for either preliminary negotiations or final negotiations will be notified in writing of the fact that the proposal is no longer considered for contract award, together with a general, reasonably brief explanation of the reason(s).

* * * * *

3.106–3 [Amended]

4. In Part 3, 3.106–3(d) is amended by adding at the end of the paragraph the following sentence: "(See also 3.804–3(b)(7)).."

3.216–4 [Amended]

5. In Part 3, 3.216–4 is amended by deleting the reference "16.901" and inserting "Part 21" at the end of the paragraph.

6. In Part 3, 3.605–4 is revised to read as follows:

3.605–4 Competition Under Blanket Purchase Agreement. Calls against blanket purchase agreements shall be placed only after compliance with 3.604. When concurrent agreements for similar items are in effect, calls not in excess of $500 shall be equitably distributed (e.g., the cumulative dollar value of awards to various vendors should be considered). In those instances where there are an insufficient number of BPA's for any given class of supplies or services to assure adequate competition, the individual placing the order shall solicit quotations from other sources.

7. In Part 3, 3.608–2(b)(vi) is revised to read as follows:

3.608–2 Order for Supplies or Services (NASA Form 1379 or Standard Form 147; Standard Form 36; NASA Form 1379B and Standard Form 30).

* * * * *

(b) * * *

(vi) Where Government property having an acquisition cost in excess of $50,000 is to be furnished (for use in performance of contract or for repair),

the "Government Property (Fixed-Price)" clause in 13.702 shall be inserted in the Schedule. Where Government property having an acquisition cost not in excess of $50,000 is to be furnished for use in performance of the contract or for repair, the "Government-Furnished Property (Short Form)" clause in 13.710 shall be inserted in the Schedule: *provided* that use of the clause shall be optional where the acquisition cost of property furnished for repair is not in excess of $10,000. Where a "Government Property" clause is inserted in the Schedule, the contractor's signature shall be obtained on NASA Form 1379B.

* * * * *

8. In Part 3, the introductory text in 3.804–2 is revised to read as follows:

3.804–2 Evaluation Procedures Not Involving Source Evaluation Board. The evaluation procedures set forth in (a) through (c) shall be utilized. However, the procedures set forth in 3.804–3 may be used to supplement those specified herein, provided they are not peculiar to the SEB process.

* * * * *

9. In Part 3, 3.804–3 is revised to read as follows:

3.804–3 Evaluation and Negotiation of Procurements Conducted in Accordance With the Source Evaluation Board Manual (NHB 5103.6A).

(a) *Applicability.*

(1) These procedures shall be used for all competitively negotiated procurements conducted in accordance with NHB 5103.6A (including those ADP procurements set forth in 3.1150(a) (i) through (iv), but excluding procurements for architect-engineer services, and procurements for which the procedures have been specifically waived), when:

(i) the estimated cost of the contract will exceed $5,000,000;

(ii) the estimated cost of the contract will not exceed $5,000,000, but it is likely that the source selected will receive other contracts for later phases of the same project which, cumulatively, would total more than $5,000,000 (Examples of this category: (A) options as defined in Part 1. Subpart 15: (B) agreements-to-agree, wherein the parties agree to negotiate for the extension of the supplies or services being procured; and (C) later phases of the same project subject to the Guidelines for Phase Project Planning concept prescribed by NHB 7121.1 and/or the Major Systems Acquisition concept prescribed by NMI 7100.14A.); or

(iii) a Source Selection Official determines that the use of the Source Evaluation Board procedures is desirable. Except where the relevance of this paragraph is peculiar to the SEB procedure, the principles expressed herein also apply to other negotiated procurements conducted in accordance with this Regulation. The requirements of this paragraph with respect to written or oral discussions need not be applied to procurements specified in 3.101(a) (i) and (ii).

(2) The detailed procedures regarding the designation and operation of Source Evaluation Boards are set forth in NHB 5103.6A.

(3) Evaluation of system design concepts resulting from requests for alternative system design concept proposals in support of a major system acquisition subject to NMI 7100.14A policies and procedures, should, in addition to proposed system function and performance capabilities to meet mission needs and program objectives, include an analysis of resources required and benefits to be derived by trade-offs, where feasible, among technical performance, acquisition costs, ownership costs, time to develop and procure, and the relevant accomplishment record of competitors.

(4) The detailed procedures with regard to the evaluation of contractor proposals for the purposes of preventing wage busting for professionals under service contracts, which augment the evaluation procedures specified herein, are set forth in 12.1053.

(b) *Evaluation and Selection Procedures.*

(1) *Responsibility of Source Selection Official.* In the final analysis, NASA judgment on the totality of the evaluation will be that of the Source Selection Official. This includes assessment of the procedures followed by the Board, the validity of its substantive evaluations, the relative significance of the several areas of evaluation, and the weightings previously assigned by the SEB, in the light of all the information produced by the source evaluation and selection process. The Source Selection Official will select the contractor (or contractors) which he considers can perform the contract in a manner most advantageous to the Government.

(2) *Evaluation Criteria and Weights.* The establishment of evaluation criteria and their weights requires the exercise of judgment on a case-by-case basis. Evaluation criteria and their weighting factors should be tailored to the requirements of each particular procurement. An SEB should not give scores for cost as such. Technical excellence, price or estimated cost, and contractor management capability are important factors in selection. Their relative importance depends on the nature of the products or services procured, with technical considerations having paramount importance in research and development. Any factor may tip the balance when competition is very close as to other factors. Evaluation criteria shall be described in each request for proposals fully enough to inform evaluators and prospective offerors of the significant matters to be addressed in the proposals. A general description of the relative weights of categories of evaluation criteria shall be furnished prospective offerors.

(3) *Initial Identification of Proposals Not Considered Acceptable.*

(i) Subsequent to the review of committee ratings and other information known to the committees or the Board and prior to ranking of proposals by the Board, the Board may discontinue the evaluation of any proposal which is unacceptable because:

(A) it does not represent a reasonable initial effort to address itself to the essential requirements of the RFP, or clearly demonstrates that the offeror does not understand the requirements of the RFP;

(B) in research or development procurement, a substantial design drawback inheres in the proposal, and sufficient correction or improvement to consider the proposal acceptable would require virtually an entirely new technical proposal; or

(C) it contains major technical or business deficiencies or omissions, or out-of-line costs, which discussions with the offeror could not reasonably be expected to cure. Simple technical nonresponsiveness in the sense in which the term is used in formal advertising is not alone sufficient to constitute unacceptability, if the proposal is otherwise competitive, and negotiations after selection reasonably offer the likelihood of resolution. When there is doubt as to whether a proposal should be rejected initially as unacceptable, that doubt shall be resolved by including it for further consideration.

(ii) Documentation must be prepared by the Board as to why the deficiencies of any proposal are believed to be of sufficient significance to warrant discontinuing the evaluation of a proposal at this point in the evaluation process.

(4) *Board Determinations of Competitive Range.* After initial identification of proposals not considered acceptable, the Board will tentatively rank the remaining proposals in accordance with the established scoring system. After this ranking is completed, the proposals will be reviewed with a view toward determining the proposals within

competitive range; namely, those which have a reasonable chance of being selected for final award. In making this determination, the Board will evaluate the potential for improving the competitive position of the proposals by written or oral discussions conducted in accordance with paragraph (5) below. The competitive range will consist of the best proposals, considering mission suitability, cost or price, experience and past performance, and other factors. When there is doubt as to whether a proposal is within the competitive range, that doubt shall be resolved by including it. The initial number of offerors considered as being within the competitive range may be narrowed as a result of the written or oral discussions. However, a proposal initially included in the competitive range should not be rejected without giving the offeror an opportunity to submit a revised proposal to serve as the basis for establishing the new competitive range, unless the discussions relating to an ambiguity or omission makes it clear that the proposal should not have been in the competitive range initially.

(5) *Conduct of Written or Oral Discussions.*

(i) *General.* Careful judgment will be exercised in determining the extent of discussions. In some cases, good business practice may warrant having more than one round of discussions with all or some of those firms considered in the competitive range. The time available, the expense and administrative limitations, and the size and significance of the procurement should all be considered in deciding on the type, duration, and depth of the discussions.

(ii) *Cost-Reimbursement Type Contracts and All Contracts for Research and Development.* The contracting officer, in concert with or on behalf of the SEB, will conduct written or oral discussions of the work to be done and the cost of the work with those concerns whose proposals are within the competitive range. The discussions are intended to assist the SEB or other evaluators (A) in understanding fully the proposals and their strengths and weaknesses based upon the individual efforts of each offeror; (B) in assuring that the meanings and the points of emphasis of RFP provisions have been adequately conveyed to the offerors so that all are competing equally on the basis intended by the Government; (C) in evaluating the personnel proposed by each firm; and (D) in presenting a report to the selection official that makes the discriminations among proposals clear and visible. In this process, prior to contractor selection, the Government's interests are not served by its assuming the role of an information exchange or clearing-house.

In cost-reimbursement type contracts and all research and development contracts, the contracting officer shall point out instances in which the meaning of some aspect of a proposal is not clear, and instances in which some aspects of the proposal fails to include substantiation for a proposed approach, solution or cost estimate.

However, where the meaning of a proposal is clear, and where the Board has sufficient information to assess its validity, and the proposal contains a weakness which is inherent in an offeror's management, engineering, or scientific judgment, or which is the result of its own lack of competence or inventiveness in preparing its proposal, the contracting officer shall not point out the weaknesses. Discussions are useful in ascertaining the presence or absence of strengths and weaknesses. The possibility that such discussions may lead an offeror to discover that it has a weakness is not a reason for failing to inquire into a matter where the meaning is not clear or where insufficient information is available, since understanding of the meaning and validity of the proposed approaches, solutions, and cost estimates is essential to a sound selection. Offerors should not be informed of the relative strengths or weaknesses of their proposals in a relation to those of other offerors. To do so would be contrary to other regulations which prohibit the use of "auction techniques" (see 3.805–1(c)). In the course of discussions, Government participants should be careful not to transmit information which could give leads to one offeror as to how its proposal may be improved or which could reveal a competitor's ideas.

The foregoing guidelines are not all-inclusive. Careful judgment must be exercised in the light of all the circumstances of each procurement to promote the most advantageous selection from the standpoint of the Government while, at the same time, maintaining the fairness of the competitive process.

At the conclusion of discussions, the contracting officer shall give each offeror a reasonable opportunity (with a common cut-off date for all) to support and clarify its proposal. An offeror may, on its own initiative, revise its proposal and make corrections or improvements until the established cut-off date.

(iii) *Fixed-Price Contracts, Other Than for Research and Development.* In fixed-price type contracts, other than for research and development, the specifications ordinarily describe the Government's requirements with more particularity than is possible in cost reimbursement or research and development contracting, so that less emphasis is placed on an offeror's introduction of scientific, engineering, and management innovations. The contracting officer will conduct discussions in accordance with the provisions of paragraph (ii) above, except for the following difference:

The contracting officer in written or oral discussions shall point out instances in which some aspect of a proposal contains a weakness in relation to the Government's requirements. But, as provided in (5)(ii) above, he shall neither point out the relative strengths or weaknesses of a proposal in relation to those of other offerors, nor transmit information which could give leads to one offeror as to how its proposal may be improved or which could reveal a competitor's ideas. He shall point out price elements that do not appear to be justified and shall encourage offerors to put forward their most favorable price proposals; but in so doing shall not discuss, disclose, or compare price elements of any other offeror.

(6) *Conduct of Negotiations Prior to Selection.* If after conclusion of written or oral discussions it is considered by the SEB that the evaluation findings, thus far completed, are not sufficiently comprehensive for the selection official to make a decision, it may be prudent and necessary to conduct further discussions or final negotiations with those offerors remaining in the competitive range prior to presentation of the findings to the selection official. This course of action must be considered as an exception to the SEB process and therefore may be accomplished only with the approval of the Director of Procurement.

(7) *Notice and Debriefing.* When a proposal is no longer to be considered for contract award, the offeror will be promptly notified, in writing, together with a general, reasonably brief explanation of the reasons. If a concern requests, in writing, a debriefing as a result of such notice, the concern will be accorded a formal debriefing in accordance with NMI 5103.1 (see also 3.106–3(d)). Such a debriefing will be provided at the earliest feasible time which normally shall be after announcement of the selection decision and prior to award of the contract. However, where the exigency of the situation will not permit delaying the award in order to debrief unsuccessful

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offerors, such debriefing may be conducted after award.

(8) *Report to Selection Official.* The SEB report, or similar memorandum in a procurement not involving an SEB, shall contain a summary of the primary points of discussion and will show the effect of the discussions on the evaluation of proposals. The report or memorandum shall set forth the strengths and weaknesses of each proposal, with an estimate of the potential for correction of the principal weaknesses identified. The report should state also the Board's estimate of the approximate impact on cost or price that will result from the elimination of correctible weaknesses during negotiations after selection.

10. In Part 3, 3.805–1(c) is revised to add two sentences at the end of the paragraph to read as follows:

3.805–1 General.

* * * * *

(c) Whenever negotiations are conducted with more than one offeror, auction techniques are strictly prohibited. An example would be indicating to an offeror a price which must be met to obtain further consideration, or informing him that his price is not low in relation to that of another offeror. On the other hand, it is permissible to inform an offeror that his price is considered by the Government to be too high. After receipt of proposals, no information regarding the number or identity of the offerors participating in the negotiations shall be made available to the public or to any one whose official duties do not require such knowledge (see 1.1050). Whenever negotiations are conducted with several offerors, while such negotiations may be conducted successively, all offerors selected to participate in such negotiations (see (a) above) shall be offered an equitable opportunity to submit such price, technical, or other revisions in their proposals as may result from the negotiations. All such offerors shall be informed of the specified date (and time if desired) of the closing of negotiations and that any revisions to their proposals must be submitted by that date. The notification establishing the cutoff date for receipt of proposal revisions shall also specify the period of time from that date within which the Government may accept the revised proposal, and shall request those offerors not submitting proposal revisions to indicate their consent to the acceptance period specified. All such offerors shall be informed that any revision received after such date shall be treated as a late proposal in accordance with the "Late Proposals" provisions of the request for proposals. All such offerors shall also be informed that after the specified date for the closing of negotiation no information other than notice of unacceptability of proposal, if applicable (see 3.106–3), will be furnished to any offeror until award has been made. Such notice of unacceptability of proposals shall include a general, brief explanation of the reasons for unacceptability. If a concern requests, in writing, a debriefing as the result of the notice of unacceptability, such debriefing shall be in accordance with 3.804–3(b)(7) and 3.106–3(d).

PART 7—CONTRACT CLAUSES

11. In Part 7, Table of Contents, the title "Non-use of Foreign-Flag Vessels Engaged in Cuban and North Vietnam Trade" in 7.104–59, 7.204–59, 7.303–59, 7.403–59 and 7.452–59 is deleted and the paragraphs are marked "Reserved." The page numbers for 7.302–5 through 7.302–16 and 7.303–2 through 7.303–5 are revised as follows:

* * * * *

7.302–5 Assignment of Claims.....7–3:2A
7.302–6 Examination of Records by Comptroller General.....7–3:2A
7.302–7 Federal, State, and Local Taxes.....7–3:2A
7.302–8 Utilization of Small Business and Small Disadvantaged Business Concerns.....7–3:2A
7.302–9 Default.....7–3:2A
7.302–10 Termination for the Convenience of the Government.....7–3:2A
7.302–11 Disputes.....7–3:2A
7.302–12 [Reserved].....7–3:2A
7.302–13 Buy American Act.....7–3:2A
7.302–14 Convict Labor.....7–3:2A
7.302–15 Walsh-Healey Public Contracts Act.....7–3:2A
7.302–16 Contract Work Hours Standards Act—Overtime Compensation.....7–3:3
* * * * *
7.303–2 Filing of Patent Applications.....7–3:4A
7.303–3 through 7.303–5 [Reserved].....7–3:4A

* * * * *

7.104–59, 7.204–59, 7.303–59, 7.403–59, 7.452–59 [Deleted and Reserved]

12. In Part 7, the text in 7.104–59, 7.204–59, 7.303–59, 7.403–59 and 7.452–59 is deleted and the paragraphs are marked "Reserved."

13. In Part 7, 7.204–53(i) is revised to read as follows:

7.204–53 Limitation of Government's Obligation

* * * * *

(i) the total value of the contract (including options as defined in Part 1, Subpart 15) is $1,000,000 or more;

* * * * *

14. In Part 7, 7.302–4 is revised to read as follows:

7.302–4 Inspection.

(a) *Short Form Clause.* The following clause shall be inserted in all contracts subject to this Subpart where the clause in (b) below is not used.

Inspection (September 1962)

The Government, through any authorized representatives, has the right, at all reasonable times, to inspect, or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection or evaluation is made by the Government on the premises of the contractor or a subcontractor, the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

(b) *Long Form Clause.* Where a more detailed provision covering inspection is desired, as where the primary contract objective is delivery of end items other than designs, drawings, or reports, the clause set forth below shall be used unless the contracting officer determines that use of the longer clause is impracticable.

Inspection (September 1962)

(a) All work under this contract shall be subject to inspection and test by the Government, to the extent practicable, at all times (including the period of performance) and places, and in any event prior to acceptance. The Government through any authorized representative may inspect the premises of the Contractor or any subcontractor engaged in the performance of this contract.

(b) The Government may reject any work that is defective or otherwise not in conformity with the requirements of this contract. If the Contractor fails or is unable to correct or to replace such work, the Contracting Officer may accept such work at a reduction in price which is equitable under the circumstances. Failure to agree on the reduction in price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide, without additional charge, all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. If the Government inspection or test is made at a point other than the premises of the Contractor or subcontractor, it shall be at the expense of the Government. All inspections and tests by the Government shall be performed in such a manner as not unduly to delay the work. Final inspection and acceptance or rejection of the work shall be made as promptly as practicable after delivery except as otherwise provided in this contract; but failure to inspect and accept, or reject the work shall neither relieve the Contractor from responsibility for such of the work as is not in accordance with the contract requirements nor impose liability on the Government therefor.

(d) The inspection and test by the government of any work shall not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance. Except as otherwise provided in this contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(e) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the government during the performance of this contract and for such longer period as may be specified elsewhere in this contract.

15. In Part 7, 7.304–51(i) is revised to read as follows:

7.304–51 Limitation of Government's Obligation.

* * * * *

(i) the total fixed price of the contract (including options as defined in Part 1, Subpart 15) is $1,000,000 or more;

* * * * *

7.451–12 [Amended]

16. In Part 7, the text in 7.451–12 is deleted and the paragraph is marked "Reserved."

PART 13—GOVERNMENT PROPERTY

13.710 [Amended]

17. In Part 13, Table of Contents, the page number for 13.710 is revised to read 13–7:21.

18. In Part 13, 13.710, the introductory text in (a) is revised to read as follows:

13.710 Government-Furnished Property Clause (Short Form).

(a) The following short form clause and/or the clause in 13.311 may be used in contracts under which the Government is to furnish to the contractor Government property having an acquisition cost of $50,000 or less.

* * * * *

PART 20—ADMINISTRATIVE MATTERS

19. In Part 20, 20.5103–1 is revised to read as follows:

20.5103–1 Submission of Master Buy Plan. Prior to July 15th of every year, each installation will submit to the Director of Procurement (Code HS–1) a Master Buy Plan (original and eight copies) for the next fiscal year, listing therein every known procurement that meets the criteria set forth in 20.5102, and that (i) is expected to be initiated in that fiscal year, and (ii) has not been included in a previous Master Buy Plan or amendment to a Master Buy Plan. If applicable, the plan will include procurements that are for later phases of the same project (see 3.852–2(b)(iii)). The plans will be prepared in accordance with the format shown in 20.5106, and, for every procurement listed therein, an identification will be provided as to the individual procurement documents that are involved (20.5104). Procurement documents that require Headquarters approval (see 20.5104) will be held in abeyance until receipt of the notification required by 20.5103–3 (a) or (b). This is not to preclude the planning for or initiation of such actions up to that point where Headquarters approval may be required. The fiscal year Master Buy Plan shall include a listing of those procurements that were selected for Headquarters review and approval from prior fiscal year(s)' Master Buy Plans and amendments to Master Buy Plans that have not been completed. The procurements should be listed by the appropriate fiscal year Master Buy Plan and should show the current status of the individual procurement documents previously selected for Headquarters review and approval.

[FR Doc. 80–33315 Filed 10–24–80; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 193

[Amdts. 192–36 and 193–2; Docket OPSO–46]

Liquefied Natural Gas Facilities; Federal Safety Standards

Correction

In FR Doc. 80–33115 in the issue of Thursday, October 23, 1980, first column, under "EFFECTIVE DATES", eighth line from the bottom, "July 23, 1980" should read "July 23, 1981".

BILLING CODE 1505–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Eleventh Revised Service Order No. 1473]

Various Railroads Authorized To Use Tracks and/or Facilities of the Chicago, Rock Island & Pacific Railroad Co., Debtor (William M. Gibbons, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Eleventh Revised Service Order No. 1473.

SUMMARY: Pursuant to Section 122 of the Rock Island Transition and Employee Assistance Act, Public Law 96–254, this order authorizes various railroads to provide interim service over Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee), and to use such tracks and facilities as are necessary for operations. This order permits carriers to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

EFFECTIVE DATE: 12:01 a.m., October 23, 1980, and continuing in effect until 11:59 p.m., November 30, 1980, unless otherwise modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275–7840.

Decided: October 21, 1980.

Pursuant to Section 122 of the Rock Island Transition and Employee Assistance Act, Public Law 96–254, the Commission is authorizing various railroads to provide interim service over Chicago, Rock Island and Pacific Railroad Company, Debtor, (William M. Gibbons, Trustee), (RI) and to use such tracks and facilities as are necessary for that operation.

In view of the urgent need for continued service over RI's lines pending the implementation of long-range solutions, this order permits carriers to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

Eleventh Revised Service Order No. 1473, modifies Appendix A of the previous order by adding Item 6. C., granting additional authority to the Fort Worth and Denver Railway Company from Amarillo, Texas, to Liberal, Kansas, via Etter and Morse Junction, Texas; between Morse Junction and Pringle, Texas, and including the trackage rights of the RI over The Atchison, Topeka and Santa Fe Railway Company between Amarillo and Etter, Texas. Appendix A is further modified

by adding Item 23., granting additional authority to the Keota Washington Transportation Company from Keota to Washington, Iowa, in order to effect interchange at Washington with the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, and to serve any industries on the RI which are not being served presently. Appendix A is further modified by deleting the authority of the Chicago and North Western Transportation Company (CNW) between Purina and Des Moines, Iowa, and changing Item 7.D., to read: from Clear Lake Junction (milepost 191.1) to Purina, Iowa, (milepost 147.0). (The CNW has notified the Railroad Service Board of its withdrawal from this interim service, effective 12:01 a.m., October 22, 1980, because of its inability to provide such service without needed rehabilitation, due to existing track conditions.

The Federal Railroad Administration on October 15, 1980, certified the application of the CNW and the need for directed service between Purina and Des Moines, Iowa. Coincidental with this notice and certification, the Commission has issued Third Revised Service Order No 1482, effective 12:01 a.m., October 22, 1980, authorizing compensated directed service by the CNW between Purina and Des Moines, Iowa.)

It is the opinion of the Commission that an emergency exists requiring that the railroads listed in the attached appendix be authorized to conduct operations using RI tracks and/or facilities; that notice and public procedure are impracticable and contrary to the public interest; and good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

§ 1033.1473 Service Order No. 1473.

(a) Various railroads authorized to use tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company, Debtor, (William M. Gibbons, Trustee). Various railroads are authorized to use tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company (RI), as listed in Appendix A to this order, in order to provide interim service over the RI.

(b) The Trustee shall permit the affected carriers to enter upon the property of the RI to conduct service essential to these interim operations.

(c) The Trustee will be compensated on terms established between the Trustee and the affected carrier(s); or upon failure of the parties to agree as hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by Section 122(a) Public Law 96–254.

(1) The authority contained in Item 5(E) of Appendix A of this order, previously operated by the Union Pacific Railroad Company (UP) between Colby and Caruso, Kansas (milepost 387.8 to 429.3), is conditioned upon the assumption by Burlington Northern, Inc. (BN) of the negotiated agreement between UP and the Rock Island Trustee with regard to the compensation to be paid the Trustee for that line segment until a new agreement is reached between the Trustee and the BN.

(d) Interim operators authorized in Appendix A to this order, shall, within fifteen (15) days of its effective date, notify the Railroad Service Board of the date on which interim operations were commenced or the expected commencement date of those operations.

(e) Interim operations, authorized in Appendix A to this order, shall, within thirty days of commencing operations under authority of this order, notify the RI Trustee of those facilities they believe are necessary or reasonably related to the authorized operations.

(f) During the period of these operations over the RI lines, interim operators shall be responsible for preserving the value of the lines, associated with each interim operation, to the RI estate, and for performing necessary maintenance to avoid undue deterioration of lines and associated facilities.

(g) Any operational or other difficulty associated with the authorized operations shall be resolved through agreement between the affected parties or, failing agreement, by the Commission's Railroad Service Board.

(h) Any rehabilitation, operational, or other costs related to the authorized operations shall be the sole responsibility of the interim operator incurring the costs, and shall not in any way be deemed a liability of the United States Government.

(i) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(j) *Rate applicable.* Inasmuch as this operation by interim operators over tracks previously operated by the RI is deemed to be due to carrier's disability, the rates applicable to traffic moved over these lines shall be the rates applicable to traffic routed to, from, or via these lines which were formerly in effect on such traffic when routed via RI, until tariffs naming rates and routes specifically applicable become effective. The operator under this temporary authority will not be required to protect transit rate obligations incurred by the RI or the directed carrier, Kansas City Terminal Railway Company, on transit balances currently held in storage.

(k) In transporting traffic over these lines, all interim operators involved shall proceed even through no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to that traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and betwen the carriers; or upon failure of the carriers to so agree, the divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(l) In providing service under this order interim operators, to the maximum extent practicable, shall use the employees who normally would have performed work in connection with the traffic moving over the lines subject to this Order.

(m) *Effective date.* This order shall become effective at 12:01 a.m., October 23, 1980.

(n) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., November 30, 1980, unless otherwise modified, amended, or vacated by order of this Commission.

This action is taken under the authority of 49 U.S.C. 10304–10305 and Section 122, Public Law 96–254.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John H. O'Brien. Joel E. Burns not participating.

Agatha L. Mergenovich,
Secretary.

Appendix A—RI Lines Authorized To Be Operated by Interim Operators

1. Louisiana and Arkansas Railway Company (L&A):

A. Tracks one through six of the Chicago, Rock Island and Pacific Railroad Company's (RI) Cadiz yard in Dallas, Texas, commencing at the point of connection of RI track six with the tracks of the Atchision, Topeka and Santa Fe Railway Company (ATSF) in the southwest quadrant of the crossing of the ATSF and the Missouri-Kansas-Texas Railroad Company (MKT) at interlocking station No. 19.

2. *Peoria and Pekin Union Railway Company (P&PU):* All Peoria Terminal Railroad property on the east side of the Illinois River, located within the city limits of Pekin, Illinois.

3. *Union Pacific Railroad Company (UP):*

A. Beatrice, Nebraska

B. Approximately 36.5 miles of trackage extending from Fairbury, Nebraska, to RI Milepost 581.5 north of Hallam, Nebraska

C. Limon, Colorado

4. *Toledo, Peoria and Western Railroad Company (TP&W):*

A. Keokuk, Iowa

B. Peoria Terminal Company trackage from Hollis to Iowa Junction, Illinois

5. *Burlington Northern, Inc. (BN):*

A. Burlington, Iowa (milepost 0 to milepost 2.06)

B. Fairfield, Iowa (milepost 275.2 to milepost 274.7)

C. Henry, Illinois (milepost 126) to Peoria, Illinois (milepost 164.35) including the Keller Branch (milepost 1.55 to 8.62).

D. Phillipsburg, Kansas (milepost 282) to CBQ Junction, Kansas (milepost 325.9)

E. CBQ Junction, Kansas (milepost 325.9) to Seibert, Colorado (milepost 487).

6. *Fort Worth and Denver Railway Company (FW&D):*

A. Terminal trackage at Amarillo, Texas, including approximately (3) three miles northerly along the old Liberal Line, and at Bushland, Texas.

B. North Fort Worth, Texas (milepost 603.0 to milepost 611.4).

C. from Amarillo, Texas, to Liberal, Kansas (milepost 153.2) via Etter and Morse Junction, Texas, and between Morse Junction and Pringle, Texas; including the trackage rights of the former RI over The Atchison, Topeka and Santa Fe Railway Company between Amarillo and Etter, Texas.

7. *Chicago and North Western Transportation Company (C&NW):*

A. from Minneapolis-St. Paul, Minnesota, to Kansas City, Missouri

B. from Rock Junction (milepost 5.2) to Inver Grove, Minnesota (milepost 0)

C. from Inver Grove (milepost 344.7) to Northwood, Minnesota

*D. from Clear Lake Junction (milepost 191.1) to Purina, Iowa (milepost 147.0)

E. from Short Line Junction Yard (milepost 354) to West Des Moines, Iowa (milepost 364)

F. from Short Line Junction (milepost 73.6) to Carlisle, Iowa (milepost 64.7)

G. from Carlisle (milepost 64.7) to Allerton, Iowa (milepost 0)

H. from Allerton, Iowa (milepost 363) to Trenton, Missouri (milepost 415.9)

I. from Trenton (milepost 415.9) to Air Line Junction, Missouri (milepost 502.2)

J. from Iowa Falls (milepost 97.4) to Esterville, Iowa (milepost 206.9)

K. from Bricelyn, Minnesota (milepost 57.7) to Ocheyedan, Iowa (milepost 246.7)

L. from Palmer (milepost 454.5) to Royal, Iowa (milepost 502)

M. from Dows (milepost 113.4) to Forest City, Iowa (milepost 158.2)

N. from Cedar Rapids (milepost 100.5) to Cedar River Bridge, Iowa (milepost 96.2) and to serve all industry formerly served by the RI at Cedar Rapids

O. from Newton (milepost 320.5) to Earlham, Iowa (milepost 388.6)

P. Sibley, Iowa

Q. Worthington, Minnesota

R. Altoona to Pella, Iowa

S. Carlisle, Indianola, Iowa

T. Omaha, Nebraska, (between milepost 502 to milepost 504)

U. Earlham, (milepost 388.6) to Dexter, Iowa (milepost 393.5)

8. *Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee):*

A. from West Davenport, through and including Muscatine, to Fruitland, Iowa, including the Iowa-Illinois Gas and Electric Company near Fruitland

B. Washington, Iowa

C. from Newport, to a point near the east bank of the Mississippi River, sufficient to serve Northwest Oil Refinery, at St. Paul Park, Minnesota.

9. *Davenport, Rock Island and North Western Railway Company (DRI):*

A. Davenport, Iowa

B. Moline, Illinois

C. Rock Island, Illinois, including 26th Street yard

D. from Rock Island through Milan, Illinois, to a point west of Milan sufficient to include service to the Rock Island Industrial complex

E. from East Moline to Silvis, Illinois

F. from Davenport to Iowa City, Iowa

G. from Rock Island, Illinois, to Davenport, Iowa, sufficient to include service to Rock Island arsenal

10. *Illinois Central Gulf Railroad Company (ICG):* Ruston, Louisiana.

11. *St. Louis Southwestern Railway Company (SSW):* operating the Tucumcari Line from Santa Rosa, NM, to St. Louis, MO (via Kansas City, KS/MO), a total distance of 965.2 miles. The line also includes the RI branch line from Bucklin to Dodge City, KS, a distance of 26.5 miles, and North Topeka, KS. Also between Brinkley and Briark, Arkansas, and at Stuttgart, Arkansas.

12. *Little Rock & Western Railway Company:* from Little Rock, Arkansas (milepost 135.2) to Perry, Arkansas (milepost 184.2); and from Little Rock (milepost 136.4) to the Missouri Pacific/RI Interchange (milepost 130.6).

13. *Missouri Pacific Railroad Company:* from Little Rock, Arkansas (milepost 135.2) to Hazen, Arkansas (milepost 91.5); Little Rock, Arkansas (milepost 135.2) to Pulaski, Arkansas (milepost 141.0); Hot Springs Junction (milepost 0.0) to and including Rock Island milepost 4.7

14. *Missouri-Kansas-Texas Railroad Company/Oklahoma, Kansas and Texas Railroad Company:*

A. Herington-Ft. Worth Line of Rock Island: beginning at milepost 171.7 within the City of Herington, Kansas, and extending for a distance of 439.5 miles to milepost 613.5 within the City of Ft. Worth, Texas, and use of Fort Worth and Denver trackage between Purina Junction and Tower 55 in Ft. Worth.

B. Ft. Worth-Dallas Line of Rock Island: beginning at milepost 611.9 within the City of Ft. Worth, Texas, and extending for a distance of 34 miles to milepost 646, within the City of Dallas, Texas.

C. El Reno-Oklahoma City Line of Rock Island: beginning at milepost 513.3 within the City of El Reno, Oklahoma, and extending for a distance of 16.9 miles to milepost 496.4 within the City of Oklahoma City, Oklahoma.

D. Salina Branch Line of Rock Island: beginning at milepost 171.4 within the City of Herington, Kansas, and extending for a distance of 27.4 miles to milepost 198.8 in the City of Abilene, Kansas, including RI trackage rights over the line of the Union Pacific Railroad Company to Salina, (including yard tracks) Kansas.

E. Right to use joint with other authorized carriers the Herington-Topeka Line of Rock Island: beginning at milepost 171.7 within the City of Herington, Kansas, and extending for a distance of 81.6 miles to milepost 89.9 within the City of Topeka, Kansas, as bridge rights only.

F. Rock Island rights of use on the Wichita Union Terminal Railway Company and the Wichita Terminal Association, all located in Wichita, Kansas.

G. Rock Island right to use interchange tracks to interchange with the Great Southwest Railroad Company located in Grand Prairie, Texas.

H. The Atchison Branch from Topeka, at milepost 90.5, to Atchison, Kansas, at milepost 519.4 via St. Joseph, Missouri, at milepost 0.0 and 498.3, including the use of interchange and yard facilities at Topeka, St. Joseph and Atchison, and the trackage rights used by the Rock Island to form a continuous service route, a distance of 111.6 miles.

I. The Ponca City Line at approximately milepost 26.1 at Billings, Oklahoma, to North Enid, Oklahoma, at milepost 339.5 on the Southern Division main line, a distance of 26.1 miles.

J. That part of the Mangum Branch Line from Chickasha, milepost 0.0 to Anadarko at milepost 18, thence south on the Anadarko Line at milepost 460.5 to milepost 485.3 at Richards Spur, a distance of 42.8 miles.

K. Oklahoma City-McAlester Line of Rock Island: Beginning at milepost 496.4 within the City of Oklahoma City, Oklahoma, and extending for a distance of 131.4 miles to milepost 365.0 within the City of McAlester, Oklahoma.

15. *The Denver and Rio Grande Western Railroad Company:*

A. From Colorado Springs (milepost 609.1) to and including all rail facilities at Colorado Springs and Roswell, Colorado, (milepost 602.8), all in the vicinity of Colorado Springs, Colorado.

16. *Norfolk and Western Railway Company:* is authorized to operate over tracks of the Chicago, Rock Island and Pacific Railroad Company running southerly from Pullman Junction, Chicago, Illinois, along the western shore of Lake Calumet approximately four plus miles to the point, approximately 2,500 feet beyond the railroad bridge over the Calumet Expressway, at which point the RI track connects to Chicago Regional Port District track; and running easterly from Pullman Junction approximately 1,000 feet into the lead to Clear-View Plastics, Inc., for the purpose of serving industries located adjacent to such tracks and connecting to the Chicago Regional Port District. Any trackage rights arrangements which existed between Chicago, Rock Island and Pacific Railroad

*Changed.

Company and other carriers, and which extend to the Chicago Regional Port District Lake Calumet Harbor, West Side, will be continued so that shippers at the port can have NW rates and routes regardless of which carrier performs switching services.

17. *St. Louis-San Francisco Railway Co.:*

A. At Okeene, Oklahoma.

B. At Lawton, Oklahoma.

18. *Southern Railway Company:*

A. At Memphis, Tennessee.

19. *Cadillac and Lake City Railroad:*

A. From Sandown Junction (milepost 0.1) to and including junction with DRGW Belt Line (milepost 3.9) all in the vicinity of Denver, Colorado.

20. *Baltimore and Ohio Railrood Company:*

A. From Blue Island, Illinois (milepost 15.7) to Bureau, Illinois. (milepost 114.2), a distance of 98.5 miles.

21. *Louisiana Midland Railway Company:*

A. From Hodge, Louisiana (milepost 173.3) to Alexandria, Louisiana (milepost 247.8), which includes assumption of RI's trackage rights over the Louisiana and Arkansas Railway Company between Winnfield, Louisiana, and Alexandria, Louisiana, and the RI's track and yard in Alexandria, Louisiana.

22. *Ceder Rapids and Iowa City Railway Company (CIC):*

A. From the west intersection of Lafayette Street and South Capitol Street, Iowa City, Iowa, southward for approximately 2.2 miles, terminating at the intersection of the RI tracks and the southern line of Section 21, Township 79 North, Range 6 West, Johnson County, Iowa, including spurs of the main trackage to serve various industry; and to effect interchange with the Davenport, Rock Island and North Western Railway Company.

**23. *Keota Washington Transportation Company:*

A. From Keota to Washington, Iowa; to effect interchange with the Chicago, Milwaukee, St. Paul and Pacific Railroad Company at Washington, Iowa, and to serve any industries on the former RI which are not being served presently.

[FR Doc. 80-33416 Filed 10-24-80; 8:45 am]

BILLING CODE 7035-01-M

**Added.

V 45 OC 27 80 UMI

Proposed Rules

Federal Register
Vol. 45, No. 209
Monday, October 27, 1980

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

Section 22 Import Quotas; Certain Dairy Products

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Proposed rule.

SUMMARY: It is proposed to amend Import Regulation 1, which governs the administration of an import licensing system for certain dairy products subject to quota under the authority of Section 22 of the Agricultural Adjustment Act of 1933, as amended. The purpose of the proposed amendments is to: (1) assure that licensees holding a historical license for Italian-type cheese in original loaves (TSUS Appendix Item 950.10) from the European Community (EC) will receive their full basic annual allocation (BAA); (2) make the necessary changes in anticipation of a Presidential Proclamation, and (3) make several changes which are necessary for consistency and clarity of the regulation and ease of operation of the licensing program.

DATE: In order to assure consideration, written comments on this proposed rule must be received on or before November 26, 1980.

ADDRESS: Send or hand deliver written comments to: Carol M. Harvey, Head, Dairy and Import Group, Dairy, Livestock and Poultry Division, Commodity Programs, Foreign Agriculture Service, Room 6616, South Building, Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Carol M. Harvey, (202) 447-5270. The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified as "not significant".

Thomas Hughes, Administrator, Foreign Agricultural Service (FAS), has determined that an emergency situation exists which warrants less than a 60-day comment period on this proposed action because a timely adoption of the regulation is necessary in order to issue licenses for 1981 in accordance with these amendments.

This proposed rule is designed to make the following changes:

1. Effective as of the 1981 quota year, add 91 metric tons to the Argentine quota under Group IV(a) in Appendix 1, and remove 91 metric tons from Group IV(a) from that country under Appendix 2;

2. Add to Group V(c) in Appendix 2, 71 metric tons for "Other Countries" and stipulate that historical eligibility for this article from "Other Countries" be established only for importers not holding any Appendix 1 or Appendix 2 historical license for any article;

3. Redefine EC to include Greece;

4. Redefine the Licensing Authority as the Head of the Import Licensing Group;

5. Remove from paragraph (c)(2)(i) of § 6.26 the words "to the extent practicable, the difference between the applicant's Appendix 2 historical quota share for such article and", in order to make this paragraph more consistent with paragraph (c)(2)(ii) of § 6.26;

6. Insert a new paragraph (c)(4) to § 6.26 which will permit the Licensing Authority to grant a supplementary license at less than the minimum prescribed by the regulation if such smaller quantity is requested by the importer;

7. Revise § 6.26(d)(1) to provide a penalty where a historical license is not used in a given year or where a licensee uses less than 85 percent of the total of his or her original license amount and any reallocated quota granted to the licensee for the same article;

8. Insert in § 6.26(e)(2)(ii) reference to supplementary licenses in order to make all licensees eligible for reallocated quota shares for as given article from a given country if quota amounts for such article remain after reallocation according to § 6.26(e)(2)(ii) among the licensees already holding license for such article from such country; and

9. Change § 6.26(b)(3) to make the Director, Dairy, Livestock and Poultry Division, FAS the first level of appeal and the Administrator, FAS the final level of appeal.

The change in item 1 above rectifies an error in the distribution of the Argentine quotas for Italian-type cheese in original loaves (TSUS Appendix Item 950.10) (hereafter "Italian-type cheese") between Appendices 1 and 2 which was made at the time the current regulation (revision 7) was promulgated. Under the present distribution of Argentine quota for Italian-type cheese between Appendices 1 and 2, there is a risk that some historical licensees holding a license for this article from the EC under Appendix I would not be able to receive their full BAA in a given year. The change will ensure that those historical licensees for Italian-type cheese who have only an EC based historical license will receive an EC license of sufficient size to fill their BAA and that those holding mixed base EC historical licenses (Argentine and EC base) will receive a combination of EC and Argentine license of sufficient size to fill their BAA.

This will be accomplished by the Department first filling the BAA of those historical licensees who have entirely EC based licenses from the EC quota, then using the rest of the EC quota to fill on a pro rata basis the major portion of the BAA's of the mixed base (EC and Argentine) historical licenses and filling the remainder of the BAA of these mixed base licenses with Argentine quota. The Argentine based historical licenses for Italian-type cheese will also receive their full BAA.

The change in item 2 above is being made in anticipation of a Presidential Proclamation which will increase the amount of quota for Other Cheese-NSPF (TSUS Appendix Item 950.10D) for "Other Countries" from 130 to 201 metric tons. The increased amount of 71 tons will be administered under Appendix 2, with the stipulation that no holder of any historical licenses under Appendix 1 or 2 be eligible for a historical license from this new amount. This is being done in order to permit importers whose business was solely with "Other Countries" and who have had no imports during 1980 to obtain a license

for a reasonable amount from the small extra quota being made available. The addition of 71 metric tons to the overall quota established in the Presidential Proclamation 4708 (44 FR 72069) dated December 11, 1979 will not exceed the 111,000 metric ton limit on cheese imports imposed by Section 701 of the Trade Agreements Act of 1979. This change will not be incorporated in the final rule if the Presidential Proclamation is not issued.

The change in item 3 above is being made because Greece will join the EC on January 1, 1981.

The change in item 4 above will make the Head of the Import Licensing Group, Dairy, Livestock and Poultry Division, FAS, rather than the Director Dairy, Livestock and Poultry Division, FAS, the Licensing Authority. See also the explanation below of the change in item 9.

The change in Item 5 above reconciles the parameters for the amount of a supplementary license for licensees who have Appendix 2 historical licenses set forth in paragraph (c)(2)(i) of § 6.26 with the procedure for allocating supplementary licenses in paragraph (c)(2)(ii) of § 6.26. As these paragraphs now read, an applicant may receive a minimum share for a supplementary license provided under paragraph (c)(2)(ii) which may be greater than the maximum share allowed under paragraph (c)(2)(i). This disparity will be corrected by providing that the maximum share shall be the larger of (1) an amount equal to the applicant's historical share or (2) the amount in the supplementary quota share allocated to applicants who have no Appendix 2 historical quota share.

The change in item 6 above is to correct an oversight by making the treatment of nonhistorical and supplementary licenses consistent with regard to the Department granting no more license than a licensee requests.

The change in item 7 above is being made to provide for penalties to a licensee in certain cases.

The change in item 8 above would implement the intent of the regulation regarding reallocation of returned quota shares, i.e., to allow all licensees to be eligible to obtain a share of the returned quantities once the requests of those licensees holding a license for a given article have been met.

The change in item 9 above is in line with the change in item 4. It creates a more logical appeal process in the case of license cancellation by first requiring an appeal to the Director of the Dairy, Livestock and Poultry Division, FAS, and then permitting a further appeal to the Administrator of FAS.

Proposed Rule

In consideration of the foregoing, it is proposed to amend 7 CFR Part 6, Subpart—Section 22 Import Quotas as follows:

Appendix 1 [Amended]

Group IV(a) is amended by changing the line for Argentina to read:

Argentina	8,191,000	7,034,878

Appendix 2 [Amended]

Group IV(a) is amended by changing the line for Argentina to read:

Argentina	659,000	1,452,832

Group V(c) is amended by adding the line:

Other Countries	71,000	156,526

§ 6.21 [Amended]

1. Paragraph (m) is amended by replacing the word "nine" with "ten" and adding the word "Greece," between the words "France," and "Ireland".

2. Paragraph (s) is ameneded to read as follows:

"Licensing Authority" means the Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Foreign Agricultural Service U.S. Department of Agriculture, or in his or her absence the Assistant Import Control Manager, or any other officer or employee of the Department designated in writing as the Acting Head.

§ 6.25 [Amended]

Paragraph (a)(2) is amended by adding after the first sentence, the following sentence:

Further, eligibility for articles in Group V(c) from "Other Countries" in Appendix 2 may be established only by importers who hold no other historical license for any article under Appendix 1 or Appendix 2 as of *(the effective date of this regulation)*.

§ 6.26 [Amended]

1. Paragraph (c)(2)(i) is amended by deleting the words "to the extent practicable, the difference between the applicant's Appendix 2 historical quota share for such article and".

2. § 6.26(c) is amended by adding a new paragraph (4) to read as follows:

(4) Supplementary quota shares for an article may not be smaller than the applicable minimum quantity set forth above unless requested in writing by the applicant, but in no case shall the quota share be greater than the quantity requested by the applicant.

3. Paragraph (d)(1) is amended as follows:

a. add after the second sentence the following new sentence: If a historical license is not used by its holder in a given year, then the amount allocated to the holder for the following quota year shall be one-quarter of the basic annual allocation of that license.

b. add the following sentences at the end thereof: This paragraph applies to a licensee who receives any extra quota shares from other reduced licenses or reallocated portions. If less than 85 percent of the combined total of the license amount and the reallocated amount is used, then the licensee will be ineligible for reallocated portions and in some cases for extra quota shares from other reduced licenses the following quota year whether or not the quota share in the following year is below the basic annual allocation for that license.

4. Paragraph (e)(2)(ii) is amended by deleting in the first sentence the words "historical or nonhistorical" and adding in lieu thereof the words "historical, nonhistorical or supplementary".

§ 6.29 [Amended]

Paragraph (b)(3) is amended as follows:

a. delete the word "Administrator," and substitute the words "Director, Dairy, Livestock and Poultry Division," wherever it occurs.

b. add after the last sentence, the following sentence: A further appeal may be made to the Administrator, FAS, within five working days of the notification of the decision.

(Sec. 3, Pub. L. 80–897, 62 Stat. 1248, as amended (7 U.S.C. 624); secs. 701, 703, Pub. L. 96–39, 93 Stat. 268, 272 (19 U.S.C. 1202 note). Part 3 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202))

Signed, this 21st of October 1980.

Thomas R. Hughes,

Administrator, Foreign Agricultural Service.

[FR Doc. 80-33347 Filed 10-24-80; 8:45 am]

BILLING CODE 3410-01-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 32, 70, and 150

Exemption of Technetium-99 and Low-Enriched Uranium as Residual Contamination in Smelted Alloys

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is considering amending its regulations to exempt from licensing and regulatory requirements technetium-99 and low-enriched uranium as residual contamination in any smelted alloy. The Commission is also proposing requirements for issuing specific licenses to persons desiring to smelt scrap or to initially transfer smelted alloys containing technetium-99 or low-enriched uranium as a residual contamination. The Commission is proposing these rule changes in response to a Department of Energy request to amend the Commission's present specific licensing requirements that have the effect of inhibiting trade in metal scrap contaminated with small amounts of these two radioactive materials.

DATES: Comment period expires December 11, 1980. Comments received after December 11, 1980 will be considered if it is practical to do do, but assurance of consideration cannot be given except as to comments filed on or before.

ADDRESSES: All interested persons who desire to submit written comments or suggestions for consideration in connection with the proposed amendments and draft environmental impact statement should send them to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 29555, Attention: Docketing and Service Branch. Copies of correspondence cited below and comments on the proposed amendments and draft environmental impact statement may be examined at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. J. J. Henry, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (301–443–5948).

SUPPLEMENTARY INFORMATION: Under current NRC regulations, no person may possess, use, or transfer technetium-99 or low-enriched uranium (defined in 10 CFR 70.51(a)(2) as that uranium whose isotope content is less than 20 percent uranium-235 by weight) as contaminants in metals except as authorized in a specific license issued by the NRC pursuant to 10 CFR Part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material," or 10 CFR Part 70, "Domestic Licensing of Special Nuclear Materials," as appropriate. The effect of the requirements for specific licenses has been to inhibit trade in metal scrap contaminated with small amounts of these two radioactive materials and prevent recycling by the secondary metals industry of smelted alloys containing these two radioactive materials as residual contamination.

Rulemaking Initiation

The Department of Energy has underway Cascade Improvement Programs and Cascade Upgrading Programs begun by the AEC at all three U.S. uranium enrichment plants—Oak Ridge, TN, Portsmouth, OH, and Paducah, KY. In the early 1970s, a market survey showed that no scrap dealers or processors would purchase any of the metal scrap generated by the programs if their customers would be required to hold specific licenses to possess or use recycled contaminated scrap.

Without relief from requirements for licenses, sizeable quantities of enrichment plant scrap—31,800 metric tons of iron and steel, 8,400 metric tons of nickel, and 1,600 metric tons of copper—would have to be treated as radioactive waste and buried by 1981 instead of being sold for tens of millions of dollars.

Based on these and other factors, the Director, Division of Waste Management and Transportation, AEC, by memorandum dated February 12, 1974, requested the assistance of the Director, Directorate of Regulatory Standards, AEC, in establishing a de minimis quantity for enriched uranium in scrap metal. The memorandum of response dated March 28, 1974, noted impending legislation to amend the Atomic Energy Act of 1954 to authorize AEC to exempt special nuclear material and suggested coordination so that language of any proposed exemption would be consistent with the legislation.

In the spring of 1974, L. Rogers, Director of Regulatory Standards, Atomic Energy Commission, presented a statement before the Joint Committee on Atomic Energy, U.S. Congress supporting an amendment of section 57 of the Atomic Energy Act of 1954 to give authority to exempt small quantities of special nuclear material to the former Atomic Energy Commission, the predecessor of the Nuclear Regulatory Commission. In his testimony, Mr. Rogers stated:

> . . . Equipment and materials in the nuclear industry are sometimes contaminated with levels of special nuclear material which cannot practically be removed but which are low enough that they do not constitute a radiation safety problem. An exemption from licensing of such special nuclear material would allow the reuse of recycling of the contaminated equipment and materials in an economic manner which would also conserve resources, rather than requiring the otherwise unnecessary controlled disposal of such contaminated equipment and materials as radioactive wastes.

After further consideration and data collection, the Energy Research and Development Administration (a successor of AEC) by letter dated September 8, 1976, transmitted to NRC an environmental impact assessment in which ERDA proposed: (1) An exemption of smelted metal contaminated with uranium enriched up to 20% uranium-235 providing the total uranium content in the metal does not exceed 17.5 parts per million; and (2) The addition of technetium-99 at a concentration of 8.6×10^{-2} microcuries/gram (equivalent to 5 parts per million) to Column II, Schedule A, 10 CFR 30.70, "Exempt Concentrations."

By letter dated July 9, 1979, the Department of Energy indicated the department's continued need or regulations to allow the sale of metal scrap contaminated with de minimis quantities of enriched uranium and technetium-99.

Proposed Action

The Commission is proposing to exempt from licensing and regulatory requirements any person who receives, possesses, uses, or transfers technetium-99 or low-enriched uranium as a residual contamination in any smelted alloys. The technetium-99 and low-enriched uranium would be minor constitutents less than 5 parts per million and 17.5 parts per million, respectively, of representative samples of smelted alloy products.

The proposed exemptions would not authorize the transfer of smelted alloy containing byproduct material other than technetium-99 as residual contamination, source material, other than low-enriched uranium as residendual contamination. In that event, the smelted alloy would also have to be exempt from the other applicable licensing and regulatory requirements of 10 CFR Parts 30–35, 40, and 70 to be transferred for use under the proposed exemptions.

Persons who smelt scrap contaminated with technetium-99 or low-enriched uranium or persons who initially transfer for sale or distribution smelted alloys containing technetium-99 or low-enriched uranium as residual contamination in the smelted alloys would not be exempt from requirements for specific licenses authorizing transfer to exempt persons. This means, among other things, that the slag produced by licensed smelters would be subject to specific licensing controls with regard to transfer of byproduct material (10 CFR 30.41) and special nuclear material (10 CFR 70.42). It is expected that slag from scrap generated at Department of Energy facilities would be returned to

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the Department of Energy for ultimate disposal. Slag from scrap generated at NRC licensed facilities would be disposed of in a safe manner, for example by transfer to commercial firms to the extent specific services and volumes are available for disposal of such low-level radioactive waste.

Basis for Technetium-99 Limit

The major source of technetium compounds and mixtures stems from the fission of uranium-235. Among the most important of the technetium isotopes is technetium-99, which exhibits a high fission yield from uranium-235 of 6.2 percent and a long half-life of 210,000 years. The nature of technetium is such that in the presence of hydrogen fluoride it forms volatile compounds and thereby becomes a trace contaminant of uranium hexafluoride.

Feed material specifications, published by the U.S. Department of Energy for uranium hexafluoride delivered to uranium enrichment plants, control the content of technetium-99 in the feed material by a specification on maximum beta particle radiation which allows a maximum beta activity of only 10 percent of the beta activity of aged natural uranium.

During the enrichment process, technetium deposits on all materials that come in contact with uranium hexafluoride. In the case of scrap metal generated in the Cascade Improvement Program and Cascade Upgrading Program, the combination of feed material specification, deposition rates, and mechnical and chemical decontamination results in scrap metal contaminated with a maximum of 5 parts per million technetium-99.

There is essentially no removal of technetium from metal during smelting processes. Therefore, the Commission is proposing for technetium-99 a concentration limit of 5 parts per million which is achievable by mechanical and chemical decontamination techniques prior to smelting scrap metal.

Basis for Uranium Limit

Because the proposed amendments of Part 70 involve special nuclear material, the Commission is proposing to base the uranium element concentration limit on the concentration of the uranium-235 isotope in the smelted alloys. By specifying that the uranium be low-enriched uranium (uranium whose isotope content is less than 20 percent uranium-235 by weight) at a maximum concentration of 17.5 parts per million uranium element in smelted alloys, the Commission is proposing to place a maximum concentration limit of 3.5 parts per million for uranium-235 in smelted alloys. This is consistent with the uranium-235 concentration in any alloy that is exempt under paragraph (a) of 10 CFR 40.13, "Unimportant Quantities of Source Material." The alloy is exempt if it contains less than 0.05 percent by weight source material which includes uranium whose isotope content is 0.711 percent or less of uranium-235 by weight.

The Commission is proposing that the low-enriched uranium be residual contamination in smelted alloys. Based on this and the other factors set out above, the Commission considers the low-enriched uranium would be diluted in such a way that it would no longer be usable for any nuclear activity relevant from the point of view of safeguards and would be practicably irrecoverable.

Specific Licensing Conditions

The requirements for specific licenses to smelt scrap or to initially transfer smelted alloys containing technetium-99 or low-enriched uranium specify that the applicant must submit a description of decontamination and smelting procedures, sampling procedures, and analytical procedures.

The proposed amendments, in effect, will make the persons initially transferring smelted alloys responsible for assuring that such alloys meet the specifications set out in proposed 10 CFR 30.21 and/or 10 CFR 70.15. The specifically licensed person who smelts scrap or initially transfers smelted alloys must be able to certify to any interested person that the smelted alloy initially transferred has been smelted, sampled, and analyzed using procedures sufficient to provide reasonable assurance that the technetium-99 or low-enriched uranium is residual contamination in the smelted alloy in which the technetium-99 or low-enriched uranium are minor constituents less than 5 parts per million or 17.5 parts per million, respectively, of representative samples of billets, ingots, or other smelted alloy products. (The Department of Energy, and certain of its contractors, are exempt from licensing and could therefore make transfers to exempt persons without specific NRC authorization. The Commission relies upon the Department to establish internal control procedures that will assure that the contamination levels of smelted scrap which it transfers are within the limits set forth in these rules.)

The requirement for a specific license to smelt scrap is not intended to require a specific license to recycle any material from smelted alloys. Susbequent possession, use, transfer, and disposal of the technetium-99 and low-enriched uranium in resmelted alloys, the resulting slag, and new products by all other persons would be exempted from licensing and regulatory requirements of the Commission under 10 CFR Parts 30 and 70.

Benefits and Costs

The benefits of the proposed action come from the value added, costs saved, and energy saved by recycling contaminated metal scrap into salable smelted alloys.

If the total net benefits are expresed in dollars for building a smelter at Oak Ridge, TN, they would be (for enrichment plant scrap) $34.2 million from 8,400 metric tons of nickel, $2.3 million from 1,600 metric tons of copper, and $5.1 million from 31,800 metric tons of steel. Other alternatives (commercial smelter, Fernald, OH, smelter) yield similar total net dollar benefits.

The costs of the proposed action are primarily the radiological impacts from the smelting of scrap and the subsequent possession, use, and disposal of smelted alloys by exempt persons. The nonradiological impacts are similar for both contaminated and noncontaminated metal scrap.

If the radiological impacts are expressed in individual doses, collective doses, and health effects, they would be (for enrichment plant scrap):

Maximum Individual Total-Body Dose Rate (working 1000 hr/yr inside "vault").	0.01 rem/yr.
Maximum Individual Total-Body Dose Commitment (daily ingestion of iron tonic over 1 year).	0.002 rem.
Maximum Individual Local Skin Dose (dose to wrist from bracelet worn 50 years).	15 rems.
Maximum Individual Contact Bone Dose (dose from pin implanted 50 years).	20 rems.
Occupational (total scrap smelting)	0.01 person-rem.
General Population (total scrap)	80 person-rems.
Health Effects from Population Dose (incremental number of cancers in exposed population).	<1.

Proposed Findings

The Commission is considering a finding that exemption from licensing requirements for the receipt, possession, use, or transfer of technetium-99 as residual contamination in any smelted alloy under the conditions set forth below will not constitute an unreasonable risk to the common defense and security and to the health and safety of the public.

The Commission is also considering a finding that exemption from licensing requirements for the receipt, possession, use, or transfer of low-enriched uranium as residual contamination in any smelted alloy under the conditions set forth below would not be inimical to the common defense and security and would not constitute an unreasonable risk to the health and safety of the public.

The provisions of § 150.15(a)(6) of 10 CFR Part 150, "Exemptions and Continued Regulatory Authority in Agreement States Under Section 274," would be amended to cover any equipment, device, commodity, or other product containing special nuclear material. Accordingly, the transfer of possession or control by persons in Agreement States who produce smelted alloys for use by exempt persons would be subject to the Commission's licensing and regulatory requirements, even though the scrap is smelted under an Agreement State license. Such producers wishing to transfer possession or control of smelted alloys for use by exempt persons would be required to obtain a specific license issued by the Commission.

Availability of Draft Environmental Statement

Pursuant to the National Environmental Policy Act of 1969, and the Commission's regulations in 10 CFR Part 51, "Licensing and Regulatory Policy and Procedures for Environmental Protection," the Commission's Office of Standards Development has prepared a draft environmental impact statement using the enrichment plant scrap as an example source for smelted alloys. (The decommissioning of uranium enrichment plants, nuclear power reactors, uranium hexafluoride plants, and fuel facilities would, under present regulations, all be major Federal actions requiring the preparation of environmental impact statements to evaluate, among other things, the environmental, economic, and radiological health impacts of smelting scrap and transferring smelted alloy.) The statement is available for inspection by the public in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. Single copies of the statement (NUREG–0518) may be obtained by request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Office of Standards Development.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of title 5 of the United States Code, notice is hereby given that adoption of the following amendments to 10 CFR Parts 30, 32, 70, and 150 is contemplated.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. In 10 CFR Part 30, a new § 30.21 is added to read as follows:

§ 30.21 Smelted alloys containing technetium-99 as residual contamination.

(a) Except as provided in paragraph (c) of this section, any person is exempt from the requirements for a license set forth in section 81 of the Act and from the regulations in Parts 30–35 of this chapter to the extent that such person receives, possesses, uses, or transfers technetium–99 as residual contamination (1) in any smelted alloy in which the technetium–99 is a minor constituent less than 5 parts per million of a representative sample of the smelted alloy, or (2) in any material into which such smelted alloy or its constituents may have been converted.

(b) The exemption in paragraph (a) of this section does not authorize the transfer of smelted alloy containing:

(1) Byproduct material other than technetium–99 as residual contamination except in accordance with the requirements of this part and Parts 31–35 of this chapter; or

(2) Source material or special nuclear material except in accordance with the requirements of Parts 40 and 70 of this chapter.

(c) Any person who desires to smelt scrap contaminated with technetium-99 or who desires to initially transfer for sale or distribution smelted alloys containing technetium-99 as residual contamination in the smelted alloy to persons exempt under paragraph (a) of this section or equivalent regulations of an Agreement State, should apply for a specific license issued pursuant to § 32.30 of this chapter, which license states that the technetium-99 as residual contamination in the smelted alloy may be transferred by the licensee to persons exempt under paragraph (a) of this section or equivalent regulations of an Agreement State

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

2. In 10 CFR Part 32, the authority statement immediately preceding § 32.1 is revised to read as follows

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, 42 U.S.C. 2111, 2201, 2232, 2233. For the purposes of sec. 223, 68 Stat. 958, as amended; 42 U.S.C. 2273, 32.12, 32.16, 32.20, 32.25(c), 32.29(c), 32.30(b), 32.52, 32.56, 32.60, 32.63 issued under sec. 161, 68 Stat. 950, as amended; 42 U.S.C. 2201(o), unless otherwise noted.

3. In 10 CFR Part 32, a new § 32.30 is added to read as follows:

§ 32.30 Smelted alloys containing technetium-99 as residual contamination: requirements for license to smelt scrap or to initially transfer.

(a) An application for a specific license to smelt scrap contaminated with technetium-99 or to initially transfer for sale or distribution smelted alloys containing technetium-99 as residual contamination for use pursuant to § 30.21 of this chapter or equivalent regulations of an Agreement State, will be approved if:

(1) The applicant satisfies the general requirements of § 30.33 of this chapter: *Provided, however*, That the requirements of § 30.33(a)(2) and (3) of this chapter do not apply to an application for a license to transfer technetium-99 in any alloy smelted pursuant to a license issued by an Agreement State; and

(2) The applicant submits a description of:

(i) Procedures for prior decontamination of the scrap and smelting of the scrap sufficient to provide reasonable assurance that the technetium-99 will be residual contamination in the resulting billets, ingots, or other smelted alloy products in which the technetium-99 is a minor constituent less than 5 parts per million of representative samples of the billets, ingots, or other smelted alloy products;

(ii) Sampling procedures sufficient to demonstrate that the material taken for analysis is a representative sample of the billet, ingot, or other smelted alloy product being analyzed; and

(iii) Analytical procedures to estimate technetium-99 concentrations with sufficient precision and accuracy to provide reasonable assurance that the technetium-99 is less than 5 parts per million of representative samples of the billets, ingots, or other smelted alloy products being analyzed.

(b) Each person licensed under paragraph (a) of this section shall file an annual report with the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the appropriate NRC Regional Office listed in Appendix D of Part 20 of this chapter, which shall identify the type and quantity of smelted alloy produced during the reporting period and the concentrations of technetium-99 in the smelted alloy billets, ingots, or other products at the time of transfer of the technetium-99 by the licensee. If no transfers of technetium-99 have been made pursuant to paragraph (a) of this section during the reporting period, the

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report shall so indicate. The report shall cover the year ending June 30, and shall be filed within 30 days thereafter.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

4. In 10 CFR Part 70, the authority statement immediately preceding the undesignated center heading GENERAL PROVISIONS is revised to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, as amended, 948, as amended, 953, as amended, 954 (42 U.S.C. 2071, 2073, 2201, 2232, 2233); secs. 202, 206, 68 Stat. 1244, 1246 (42 U.S.C. 5842, 5846) unless otherwise noted. For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), 70.32(a)(6) and 70.41(a) issued under sec. 161b., 68 Stat. 948; 42 U.S.C. 2201(b) and 70.38(b) and 70.51 to 70.55 issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)), unless otherwise noted

5. In 10 CFR Part 70, new §§ 70.15 and 70.38 are added to read as follows:

§ 70.15 Low-enriched uranium as residual contamination in smelted alloys.

(a) Except as provided in paragraph (c) of this section, any person is exempt from the requirements for a license set forth in section 53 of the Act and from the regulations in this part to the extent that such person receives, possesses, uses, or transfers low-enriched uranium as residual contamination (1) in any smelted alloy in which the uranium element is a minor constituent less than 17.5 parts per million of a representative sample of the smelted alloy, or (2) in any material into which such smelted alloy or its constituents may have been converted.

(b) The exemption in paragraph (a) of this section does not authorize the transfer of smelted alloy containing:

(1) Byproduct material or source material except in accordance with the requirements of Parts 30 or 40 of this chapter; or

(2) Special nuclear material other than low-enriched uranium as residual contamination except in accordance with the requirements of this part.

(c) Any person who desires to smelt scrap contaminated with low-enriched uranium or who desires to initially transfer for sale or distribution smelted alloys containing low-enriched uranium as residual contamination in the smelted alloy to persons exempt under paragraph (a) of this section or equivalent regulations of an Agreement State, should apply for a specific license issued pursuant to § 70.38, which license states that the low-enriched uranium as residual contamination in the smelted alloy may be transferred by the licensee to persons exempt under paragraph (a) of this section or equivalent regulations of an Agreement State.

§ 70.38 Specific licenses to smelt scrap or to initially transfer smelted alloys containing low-enriched uranium as residual contamination.

(a) An application for a specific license to smelt scrap contaminated with low-enriched uranium or to initially transfer for sale or distribution smelted alloys containing low-enriched uranium as residual contamination for use pursuant to § 70.15 or equivalent regulations of an Agreement State, will be approved if:

(1) The applicant satisfies the general requirements of § 70.23: Provided, however, That the requirements of § 70.23(a)(3) and (4) do not apply to an application for a license to transfer low-enriched uranium in any alloy smelted pursuant to a license issued by an Agreement State.

(2) The applicant submits a description of:

(i) The history of the scrap, or the isotopic analyses performed, sufficient to provide reasonable assurance that the uranium element in or on the scrap is low-enriched uranium;

(ii) Procedures for prior decontamination of the scrap and smelting of the scrap sufficient to provide reasonable assurance that the low-enriched uranium will be residual contamination in the resulting billets, ingots, or other smelted alloy products in which the low-enriched uranium is a minor constituent less than 17.5 parts per million of representative samples of the billets, ingots, or other smelted alloy products;

(iii) Sampling procedures sufficient to demonstrate that the material taken for analysis is a representative sample of the billet, ingot, or other smelted alloy product being analyzed; and

(iv) Analytical procedures to estimate uranium concentrations with sufficient precision and accuracy to provide reasonable assurance that the uranium element is less than 17.5 parts per million of representative samples of the billets, ingots, or other smelted alloy products being analyzed.

(b) Each person licensed under paragraph (a) of this section shall file an annual report with the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the appropriate NRC Regional Office listed in Appendix D of Part 20 of this chapter, which shall identify the type and quantity of smelted alloy produced during the reporting period and the concentrations of low-enriched uranium in the smelted alloy billets, ingots, or other products at the time of transfer of the low-enriched uranium by the licensee. If no transfers of low-enriched uranium have been made pursuant to paragraph (a) of this section during the reporting period, the report shall so indicate. The report shall cover the year ending June 30, and shall be filed within 30 days thereafter.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES UNDER SECTION 274

6. In 10 CFR Part 150, § 150.15(a)(6) is revised to read as follows:

§ 150.15 Persons not exempt.

(a) Persons in Agreement States are not exempt from the Commission's licensing and regulatory requirements with respect to the following activities:

* * * * *

(6) The transfer of possession or control by the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing special nuclear material, source material, or byproduct material whose subsequent possession, use, transfer, and disposal by all other persons are exempted from licensing and regulatory requirements of the Commission under Parts 30, 40, and 70 of this chapter.

* * * * *

(Secs. 53, 57d., 81, 161b., 274, Pub. L. 88–489, 78 Stat. 602 (42 U.S.C. 2073), Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077), Pub. L. 83–703, 68 Stat. 935, 948 (42 U.S.C. 2111, 2201(b)), Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); Sec. 201, Pub. L. 93–438, 88 Stat. 1242 (42 U.S.C. 5841). For the purposes of sec. 223, 68 Stat. 958, as amended, 42 U.S.C. 2273, 32.30(b) and 70.38(b) issued under sec. 161o., 68 Stat. 950, as amended (42 U.S.C. 2201(o))

Dated at Washington, D.C., this 20th day of October, 1980.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretory of the Commission.

[FR Doc. 33268 Filed 10-24-80; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 80-ASW-43]

Designation of Compulsory Reporting Point; Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate TRIAD Intersection as a compulsory reporting point. TRIAD is located on V-477, 28 miles south of Scurry, Tex., VORTAC. Designation of TRIAD as a compulsory reporting point would provide for a more efficient flow of traffic between Scurry and Houston and enhance air safety.

DATES: Comments must be received on or before November 26, 1980.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Southwest Region, Attention: Chief, Air Traffic Division, Docket No. 80-ASW-43, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101.

The official docket may be examined at the following location: FAA Office of the Chief Counsel, Rules Docket (AGC-204), Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

Lewis Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Southwest Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101. All communications received on or before November 26, 1980 will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591; or by calling (202) 426-8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to § 71.203 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that would designate TRIAD, Tex., Intersection as a compulsory reporting point. TRIAD Intersection, located 28 miles south of Scurry, Tex., on V-477 is currently depicted on charts as a noncompulsory reporting point. This action would enhance air traffic safety by requiring aircraft to report TRIAD. Section 71.203 of Part 71 was republished in the **Federal Register** on January 2, 1980, (45 FR 645).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.203 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 645) as follows:

Under § 71.203 "TRIAD, Tex." is added.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65)

Note. The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Washington, D.C., on October 20, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-33190 Filed 10-24-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 80-EA-34]

Canadair CL-44D4 and CL-44J; Airworthiness Directive

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to adopt an airworthiness directive applicable to Canadair CL-44D4 and CL-44J type airplanes. The proposal would require an alteration of a fuel swivel fitting with increased fire resistance, and to reposition all wiring aft to the nacelle firewall. The alterations will improve the fire resistance of both altered items.

DATES: Comments must be received on or before December 22, 1980.

ADDRESSES: Send comments on the proposal in triplicate to: Chief, Engineering and Manufacturing Branch, AEA-210, Eastern Region, Federal Aviation Administration, Federal Building, J.F.K. International Airport, Jamaica, New York 11430. The docket may be examined at the following location: FAA, Office of Regional Counsel, AEA-7, Federal Building, J.F.K. International Airport, Jamaica, New York.

FOR FURTHER INFORMATION CONTACT:

A. T. Farrar, Propulsion Section, AEA-214, Flight Standards Division, Engineering and Manufacturing Branch, Federal Aviation Administration, Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Tel. 212-955-2894.

SUPPLEMENTARY INFORMATION:

Interested person may participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Communications should identify the docket number and be submitted in triplicate to the Director, Eastern Region, Attention: Chief, Engineering and Manufacturing Branch, Federal Aviation Administration, Federal Building J.F.K. International Airport, Jamaica, New York 11430. All communications received on or before December 22, 1980, will be considered before action is taken on the proposed amendment. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substances of the proposed Ad will be filed in the docket. Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Chief, Engineering and Manufacturing Branch AEA-210, Eastern Region, Federal Aviation Administration, Federal Building, Jamaica, New York 11430, or by calling (212) 995-2842.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 39.13 of Part 13 of the Federal Aviation Regulations (14 CFR Part 39) as follows:

Canadair: Applies to CL-44D4 and CL-44J aircraft.

Compliance required within the next 1700 hours after the effective date of this Ad unless previously accomplished.

To provide a fuel swivel fitting with improved fire resistance and to ensure controlled separation between the electrical harness and the firewall, accomplish the following:

a. Modify the (engine) powerplant installation in accordance with the instructions shown in the section entitled, "Modification Data", of Canadair Service Bulletin No. CL44-488 dated April 26, 1979, or an equivalent procedure.

b. Equivalent procedures must be approved by the Chief, Engineering and Manufacturing Branch, Federal Aviation Administration (FAA) Eastern Region.

c. As permitted by FAR Parts 21.197 and 21.199, aircraft may be flown to a base where maintenance required by this Airworthiness Directive can be accomplished.

(Sec. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, 49 U.S.C. 1354(a), 1421, and 1423; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c); and 14 CFR 11.89)

Note.—The Federal Aviatinn Administration has determined that this document involves a regulation which is not significant under Executive Order 12044 as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Jamaica, New York, on October 15, 1980.

Lonnie D. Parrish,

Acting Director, Eastern Region.

[FR Doc. 80-33348 Filed 10-24-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR PART 39

[Docket No. 80-CE-36-AD]

Cessna 150, A150, 152 and A152 Series Airplanes; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance notice of proposed rule making.

SUMMARY: The FAA is considering rule making action with respect to certain models of Cessna 150, A150, 152, and A152 series airplanes. The contemplated action would prevent accumulation and freezing of water at the fuel system's lowest point forward of the fuel selector valve. Accumulation and/or freezing of water at this location may restrict or prevent fuel flow to the engine and result in engine power loss or stoppage. Since the FAA recognizes that several possible alternative courses of action may achieve this objective, the agency is seeking comments and information from interested persons to aid the FAA in selecting the most appropriate action to correct this problem.

DATES: Comments must be received on or before December 27, 1980.

ADDRESSES: Send comments on the proposal to: FAA, Central Region, Office of the Regional Counsel, ACE-7, Attn: Rules Docket Clerk, Docket No. 80-CE-36AD, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT:

Leon Edwards, Aerospace Engineer, Aircraft Certification Program, Room 238, Terminal Building No. 2299, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 942-7927.

SUPPLEMENTARY INFORMATION:

Invitation for Comments

This advance notice of proposed rule making is being issued in accordance with the FAA's policy for the early institution of public rule making proceedings. An "advance" notice is issued when it is found that the resources of the FAA and reasonable inquiry outside of the agency do not yield a sufficient basis to identify and select a tentative or alternate courses of action, or where it would be helpful to invite public participation in the identification and selection of a course or alternative courses of action with respect to a particular rule making problem. The subject matter of this notice involves a situation contemplated by that policy.

Interested persons are invited to participate in the formulation of the FAA action by submitting such written data, information, or comments as they may desire. Communications should identify the docket number and be submitted to the address of the Regional Counsel specified above. All communications received on or before the date specified above will be considered by the Administrator before taking additional action. All communications will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. If it is determined to be in the public interest to proceed with regulatory action, after consideration of the available data and comments, a Notice of Proposed Rule Making will be issued.

Scope of Problem

The problem defined herein and any inquiry is confined to those airplanes having a fuel system configuration introduced on Cessna Model 150F (S/N 15061533) and subsequent manufactured Cessna 150, A150, 152 and A152 series airplanes. There have been several accidents/incidents involving loss of engine power or stoppage on certain of the above airplanes during cold weather operation. Investigation of these occurrences by the FAA discloses that in some cases water and/or ice was present at the tee fitting located at the lowest point in the fuel system forward of the fuel selector valve. A removable cap is installed on the leg of the tee which extends through the belly of the airplane fuselage for drainage purposes. It is accessible for removal at this location, but simple hand tools are required for this removal. The applicable manufacturer's Pilot's Operating Handbook and Aircraft Service Manual require that this fitting be drained whenever water is found during drainage of the fuel strainer and at each 100 hour/annual inspection or at 1-hour intervals on progressive inspections. Based on FAA's investigations, the agency has found that the presence of water or ice at this location may have contributed to the incidents specified above. Further, the FAA concludes that more frequent or possibly daily drainage of the fuel system at the tee fitting is necessary during cold weather operation to preclude accumulation and freezing of water and resultant engine power loss or stoppage. Notwithstanding the FAA's findings and conclusions, the manufacturer, based on its investigations, disagrees with the FAA and has refused the FAA's request to provide corrective action to resolve this problem. As a result of the manufacturer's refusal to provide a modification to facilitate easy drainage of the fuel system at this location, the FAA has no alternatives except to impose a drainage requirement which is burdensome or develop other action which will accomplish the desired objectives.

Topics of Inquiry

The FAA believes that action is necessary to eliminate the accumulation of water/ice at the tee fitting location. Notwithstanding the manufacturer's position, the FAA is considering the necessity for additional rule making or other action which would preclude the accumulation of water at this location. In this regard the agency is especially interested in comments and viewpoints on the questions set forth in Attachment A hereto which is incorporated herein by reference.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); sec. 11.85 of the Federal Aviation Regulations (14 CFR Sec. 11.85)).

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A copy of the final evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to FAA, Office of the Regional Counsel, Room 1558, Central Region, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 10, 1980.

John E. Shaw,

Acting Director, Central Region.

Attachment A

(1) Has water/ice been found at the tee fitting location when draining the fuel system?

(2) Does the airplane incorporate quick drains at the fuel tank sumps? If incorporated, are these drained daily, at each preflight or after refueling?

(3) Have you experienced engine power loss or stoppage attributed to water at the tee fitting location?

(4) What operational or maintenance procedures are followed in drainage of the fuel system at the tee location?

(a) How often?

(b) At what ambient air temperatures?

(5) Has the airplane been modified to incorporate quick drainage provisions at this location?

(6) Have you experienced or do you anticipate damage to the fuel system resulting from the daily removal of the tee fitting cap?

(7) If a quick drain is not installed, would the existing drainage provisions discourage daily drainage of the fuel system at this location?

(8) Irrespective of FAA action in this matter, would you install quick drainage provisions at the tee location if available?

(9) Do you have suggestions other than those addressed above for precluding accumulation of water at the tee fitting location in the fuel system?

[FR Doc. 80-33357 Filed 10-24-80; 8:45 am]

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14 CFR Part 71

[Airspace Docket No. 80-ASW-47]

Proposed Alteration of Transition Area: Clinton, Okla. (Clinton-Sherman Airport)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The nature of the action being taken is to propose alteration of the transition area at Clinton, Oklahoma (Clinton-Sherman). The intended effect of the proposed action is to reduce the controlled airspace designated for aircraft executing instrument approach procedures to the Clinton-Sherman Airport. The circumstance which created the need for this action is that a review of controlled airspace revealed that airspace designated is in excess of that needed for the protection of aircraft.

DATES: Comments must be received on or before November 26, 1980.

ADDRESSES: Send comments on the proposal to: Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101.

The official docket may be examined at the following location: Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas.

A informal docket may be examined at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

Kenneth L. Stephenson, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101; telephone: (817) 624-4911, extention 302.

SUPPLEMENTARY INFORMATION: Subpart G § 71.181 (45 FR 445) of FAR Part 71 contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft conducting instrument flight rules (IFR) activity. Alteration of the transition area at Clinton, Oklahoma (Clinton-Sherman), will necessitate an amendment to this subpart.[1]

Comments Invited

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. All communications received on or before November 26, 1980, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and procedures Branch. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

[1] Map filed as part of the original document.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rule making (NPRM) by submitting a request to the Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, or by calling (817) 624-4911, extension 302. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should contact the office listed above.

The Proposal

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area at Clinton, Oklahoma (Clinton-Sherman). The FAA believes this action will enhance IFR operations at the Clinton-Sherman Airport by providing controlled airspace for aircraft executing instrument approach procuedres. Subpart G of Part 71 was republished in the **Federal Register** on January 2, 1980 (45 FR 445).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 445) by substituting the following for the present description:

Clinton, Okla. (Clinton-Sherman)

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the Clinton-Sherman Airport (latitude 35°20'25"N., longitude 99°12'00"W.), excluding the portion within the Elk City, Oklahoma, transition area.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—The FAA has determined that his document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Proccedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a

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regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Forth Worth, Tex., on October 15, 1980.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 80-33349 Filed 10-24-80; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 9072]

Chrysler Corp., et al.; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, accepted subject to final Commission approval, would require Aurora Chrysler-Plymouth, Inc., a Seattle, Wash. automobile dealership, among other things, to adopt and adhere to the "Repossessed Vehicle Surplus' Deficiency" system established by Chrysler Corporation pursuant to the disposition of Docket 9072 as to Chrysler Corporation. The firm would be further required to establish to the reasonable satisfaction of the Commission that it has paid all surpluses realized from February 10, 1973 from repossessed vehicles returned to the company; corrected all prior erroneous credit reports; and provided credit reporting agencies with corrected information.

DATE: Comments must be received on or before December 26, 1980.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and Pennsylvania Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Thomas Armitage, Director, 10R, Seattle Regional Office, Federal Trade Commission, 28th Floor, Federal Bldg., 915 Second Ave., Seattle, Wash. 98174. (206) 442–4655.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

Agreement Containing Consent Order as to Aurora Chrysler-Plymouth, Inc.

In the matter of Chrysler Corporation, Chrysler Credit Corporation, and Aurora Chrysler-Plymouth, Inc., Corporations.

This agreement, between Aurora Chrysler-Plymouth, Inc. ("respondent"), a corporation, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rules govering consent order procedures. Chrysler Corporation and Chrysler Credit Corporation are not party to this agreement.

The parties hereby agree that:

1. Respondent Aurora Chrysler-Plmouth, Inc. is a Delaware corporation with its office and principal place of business at 13733 Aurora Avenue North, Seattle, Washington 98133.

2. Respondent has been served with a copy of the Complaint issued by the Commission charging it and others with violation of Section 5 of the Federal Trade Commission Act, as amended, and has filed an Answer denying the violations of law alleged in the Complaint.

3. Respondent admits the jurisdictional facts set forth in the Complaint.

4. Respondent waives:

a. any further procedural steps;

b. the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

c. all rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement.

5. This agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty days and information in respect thereto will be publicly released. the Commission therearfter may either withdraw its acceptance of this agreement and so notify respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the Complaint.

7. This agreement contemplates that if it is accepted by the Commission and such acceptance is not subsequently withdrawn by the Commission pursuant to Section 3.25(f) of the Commission's Rules of Practice, the Commission may, without further notice to respondent, issue its decision containing the following order "(Order)" in disposition of the proceeding as to respondent and make information public with respect thereto. When so issued, the Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders of the Commission. The Order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the Order, to respondent's address as stated in Paragraph 1 above, shall constitute service. Respondent waives any rights it may have to any other manner of service. The Complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or in this agreement may be used to vary or contradict the terms of the Order.

8. The relief set forth in Paragrph II.A of the Order satisfies any claim for restitution or other consumer redress the Commission may have against respondent under Sections 5(a)–(b) and 19(b) of the Federal Trade Commission Act, as amended, arising out of the acts and practices alleged in the Complaint which occurred prior to service of the Order. By its final acceptance of this agreement, with such modifications, if any, as the parties may make prior to said final acceptance, the Commission waives its right to commence a civil action against respondent under Section 19(a)(2) of the Federal Trade Commission Act, as amended, with respect to those acts and practices.

9. Final acceptance of this agreement is contingent on issuance of a final order in Docket 9072 directing Chrysler Corporation to establish a system for determining surpluses and deficiencies on repossessed vehicles, and for accounting for surpluses and for any deficiencies sought.

10. Respondent has read the Complaint and Order and understands that after service of the Order (1) it will be required to file one or more compliance reports showing that it has complied fully with the order, and (2) it may be liable for civil penalties in the amount provided by law for each violation of the Order.

Order

I. It is ordered that resondent Aurora Chrysler-Plymouth, Inc., a coproration, and its successors, assigns, officers, agents, representatives and employees, and any corporation, subsidiary, division or device through which they act directly or indirectly, shall forthwith (A) adopt and adhere to the "Repossessed Vehicle Surplus/Deficiency" system established by Chrysler Corporation pursuant to the disposition of Docket 9072 as to Chrysler Corporation, and (B) deliver a copy of the Repossessed Vehicle Surplus/Deficiency system to all appropriate supervisory personnel.

II. It is further ordered that respondent shall, no later than 60 days after service of this Order:

A. Establish to the reasonable satisfaction of the Commission that (1) all surpluses generated from repossessed vehicles returned to respondent between February 10, 1973 and the date of service of this Order have been paid, and (2) for each such surplus, corrected information has bee provided to any credit reporting agency to which respondent had previously reported the existence of a deficiency.

B. File with the Commission a written report setting forth in detail the manner and form in which respondent has complied with this Order.

III. It is further ordered that respondent notify the Commission at least 30 days prior to any dissolution or other proposed change in the corporate respondent (such as assignment or sale resulting in the emergence of a successor corporation or corporations), or any other corporate change (including the creation or dissolution of subsidiaries) which may affect compliance obligations arising out of this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Aurora Chrysler-Plymouth, Inc. ("Aurora"). The proposed consent order has been placed on the public record for 60 days. Interested persons may comment on the proposed order during this period. The comments will become part of the public record. After 60 days the Commission will review the agreement and any comments received, and will decide whether to withdraw from the agreement or make the order final.

Aurora is an automobile dealer. The Commission's complaint, issued in February 1976, charged that Aurora was withholding surpluses received when it resold repossessed cars and trucks. (A "surplus" is the money left over after the underlying debt is paid off and reasonable expenses of repossession and resale are met.) The failure to return a repossession surplus to the consumer/debtor was alleged to be in violation of state law and an unfair practice under the FTC Act.

The complaint also charged that many other Chrysler/Plymouth/Dodge dealers have engaged in the same practice, and that Chrysler's credit subsidiary (Chrysler Credit) shares responsibility for any dealer's withholding of a surplus on resale of a repossessed vehicle obtained from Chrysler Credit under a "repurchase" obligation. Chrysler and Chrysler Credit have agreed to a consent settlement providing for Chrysler's adoption of a "Repossessed Vehicle Surplus/Deficiency" system applicable to all dealers.

The proposed consent order as to Aurora would assure its payment of correctly calculated surpluses on future repossessions by requiring that Aurora follow Chrysler's new Repossessed Vehicle Surplus/Deficiency system. Under this system, Aurora will obtain the best available price in reselling each repossessed vehicle and will pay any resulting surplus to the consumer/debtor, with a prescribed written summary, within 45 days of the resale. The only expenses which may be deducted are reasonable, actual out-of-pocket costs incurred as a direct result of repossessing, holding, preparing for sale or reselling the vehicle.

In addition, Aurora must establish to the reasonable satisfaction of the Commission that all past surpluses back to February 10, 1973 (a date three years prior to issuance of the complaint) have been paid. Also, any prior erroneous reports to credit reporting agencies, that these transactions were deficiencies, must be corrected.

This analysis is intended to encourage public comment on the proposed order. It does not constitute an official interpretation of the agreement and proposed order nor a modification of their terms.

Carol M. Thomas,

Secretary.

[FR Doc. 80-33437 Filed 10-24-80; 8:45 am]

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16 CFR Part 13

[Docket No. 9072]

Chrysler Corp., et al.; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, accepted subject to final Commission approval, among other things, would require a Highland Park, Mich. motor vehicle manufacturer (Chrysler and its Troy, Mich. credit corporation subsidiary (Chrysler Credit)), to timely provide dealerships with a prescribed system, together with a standardized form, to be used in calculating and recording payment of surpluses realized on repossessed vehicles; and to make the "Repossessed Vehicle Surplus/Deficiency system" a part of Chrysler's Dealer Uniform Accounting System Manual. The companies would be required to conduct training programs designed to familiarize dealers with their obligations in handling repossessions; and follow up the programs with a series of audits to verify that surpluses are being correctly calculated and paid. The order would further require that Chrysler take specified measures with respect to repayment of surpluses realized by Chrysler-owned dealerships from May 1, 1974; send bulletins to dealers urging them to pay surpluses on vehicles returned to them by Chrysler Credit since May 1, 1974; and notify each customer whose vechicle is repossessed of the nature and duration of customer's rights to redemption or refund of surpluses. Additionally, Chrysler Credit would be required to develop revised retail installment contract forms that include a clear, concise statement advising customers that in the event of repossession, they are entitled to a refund of any surplus realized from the resale of the vehicle.

DATE: Comments must be received on or before December 26, 1980.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and Pennsylvania Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Thomas Armitage, Director, 10R, Seattle Regional Office, Federal Trade Commission, 28th Floor, Federal Bldg., 915 Second Ave., Seattle, Wash. 98174. (206) 442–4655.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)). notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

United States of America Before Federal Trade Commission

In the Matter of Chrysler Corporation, Chrysler Credit Corporation, and Aurora Chrysler-Plymouth, Inc., corporations. Docket No. 9072, Agreement Containing Consent Order.

This Agreement, by and between (1) Chrysler Corporation and Chrysler Credit Corporation, corporations, respondents in a proceeding initiated by the Federal Trade Commission, by their duly authorized officers and their counsel and (2) counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rules governing consent order procedures. Aurora Chrysler-Plymouth, Inc. is not a party to this Agreement.

The parties hereby agree that:

1. Respondents Chrysler Corporation and Chrysler Credit Corporation ("Chrysler respondents") are Delaware corporations with their offices and principal places of business at 12000 Lynn Townsend Drive, Highland Park, Michigan 48288 and 900 Tower Drive, Troy, Michigan 48084, respectively. Chrysler Credit Corporation is a wholly owned subsidiary of Chrysler Financial Corporation which is a wholly owned subsidiary of Chrysler Corporation.

2. The Chrysler respondents have been served with a copy of the Complaint issued by the Commission in this proceeding charging them with violations of Section 5 of the Federal Trade Commission Act, as amended, and have filed an Answer denying the violations of law alleged in the Complaint.

3. Solely for the purposes of the order to be issued pursuant to this Agreement (the "Order"), and any further proceedings in connection therewith, the Chrysler

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respondents admit the jurisdictional facts set forth in Paragraph Three of the Complaint, and that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Chrysler respondents and has jurisdiction to issue the Order contained in this Agreement.

4. The Chrysler respondents waive:

a. any further procedural steps in connection with Docket 9072;

b. the requirement that the Commission's Decision contain a statement of findings of fact and conclusions of law; and

c. all rights to seek judicial review or otherwise to challenge or contest the validity of the Order, but do not waive the right to seek judicial review or otherwise to challenge or contest the validity of any order issued under Part VII of the Order or §§ 2.51 or 3.72 of the Commission's Rules of Practice.

Provided, however, that such waivers shall cease to be effective if the Commission rejects this Agreement or returns this proceeding to adjudication as to the Chrysler respondents. The waiver of procedural steps shall not apply to any procedural actions taken by the Commission (with respect to this Agreement, and prior to final acceptance) other than those actions described in Section 3.25 of the Commission's Rules of Practice.

5. This Agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto will be publicly released. It is recognized that the Commission may thereafter withdraw its acceptance of this Agreement and take further action in accordance with Rule 3.25(f). Any written press or news release announcing this Agreement shall contain the substance of Paragraph 6 hereof.

6. This Agreement is for settlement purposes only and does not constitute an admission by the Chrysler respondents that the law has been violated as alleged in the Complaint.

7. This Agreement contemplates that if it is accepted by the Commission and such acceptance is not subsequently withdrawn by the Commission pursuant to § 3.25(f) of the Rules of Practice, the Commission may, without further notice to the Chrysler respondents, issue its Decision containing the Order in disposition of the proceeding as to the Chrysler respondents and make information public with respect thereto. Any written press or news release announcing the Commission's Decision and Order in this proceeding shall contain the substance of Paragraph 6 hereof. When so issued, the Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders of the Commission. The Order shall become final upon service. Mailing the Decision and Order to the Chrysler respondents' addresses as stated in this Agreement shall constitute service. The Chrysler respondents waive any rights they may have to any other manner of service. The Initial Compliance Report referred to in Paragraph 9 below (and, to the extent it may be necessary and appropriate, the Complaint) may be used in construing the terms of the Order. No other agreement, understanding, representation, or interpretation not contained in the Order or in this Agreement may be used to construe, vary or contradict the terms of the Order.

8. By its final acceptance of this Agreement, the Commission waives its right to commence a proceeding against either of the Chrysler respondents seeking restitution or other consumer redress under Sections 5 or 19(a)(2) of the Federal Trade Commission Act, as amended, with respect to the acts and practices alleged in the Complaint to be unfair or deceptive arising at any time prior to the filing of the final Annual Audit Summary required by Subparagraph IV.C of the Order, except with regard to acts, practices or omissions of the Chrysler respondents (a) which occur after the effective date of the Order and are violations of the Order, (b) which occur after the effective date of a Trade Regulation Rule and are violations of that Rule, or (c) which occur after entry of an order by the Commission setting aside the Order.

9. The Chrysler respondents submit with this Agreement an Initial Compliance Report setting forth details of the manner in which they will comply with the Order. Final acceptance of this Agreement shall constitute acceptance of the Initial Compliance Report and shall also constitute advice under § 2.41(d) of the Rules of Practice that implementation of the Initial Compliance Report will constitute compliance with applicable portions of the Order until such time as the Commission seeks additional evidence of compliance.

10. The Chrysler respondents have read the Complaint and Order and understand that after service of the Order (1) they may be required to file additional compliance reports showing that they have complied fully with the Order, and (2) they may be liable for a civil penalty in the amount provided by law for each violation of the Order, provided that a violation of this Order by either of the Chrysler respondents shall not subject any individual to personal liability.

Order

I

It is ordered that for purposes of this Order the following definitions shall apply:

A. "Chrysler Respondents" means Chrysler Corporation ("Chrysler") and Chrysler Credit Corporation ("Chrysler Credit"). It shall not refer to Aurora Chrysler-Plymouth, Inc. References to either or both of the Chrysler respondents shall include their successors, assignees of any of their business operations subject to this Order, officers, agents, representatives and employees, as well as any corporations, subsidiaries, divisions or other forms of business organization through which they may act in the United States. *Provided, however,* that references to Chrysler shall not include Chrysler Credit, and references to Chrysler Credit shall not include Chrysler, and references to either or both of the Chrysler respondents shall not include Dealerships.

B. "Vehicle" means a passenger car or a truck with a gross Vehicle weight less than 26,000 pounds (11,794 kilograms).

C. "Dealer" or "Dealership" means a corporation, partnership or proprietorship that is a Chrysler, Plymouth or Dodge Vehicle Dealership pursuant to a Direct Dealer Agreement with Chrysler or any subsequent comparable agreement but excludes truck Dealerships whose principal business is the sale of trucks with a gross Vehicle weight of more than 8,000 pounds (3,629 kilograms).

D. "Retail Sale" means the installment credit sale of a Vehicle, other than for purposes of resale (*e.g.*, sale to Dealerships or wholesalers), lease or rental, to a purchaser who is not a fleet purchaser.

E. "Repurchase Financing" means the financing of a Retail Sale subject to an agreement between a finance company or institution and a Dealership (generally called a "repurchase," "recourse," or "guaranty" agreement) which provides that the Dealership is obligated to pay off the outstanding obligation to the finance company or institution after receiving a transfer of the repossessed Vehicle.

F. "Repurchase Dealer" or "Repurchase Dealership" means a Dealership that engages more than occasionally in Repurchase Financing transactions.

G. "Equity Dealership" means a Dealership in which Chrysler holds more than 50 percent of the voting stock or is entitled to elect more than 50 percent of the board of directors.

H. "Liquidating Dealership" means an Equity Dealership whose business has been or is being wound up by Chrysler or under Chrysler's supervision. It shall not mean a Dealership not previously an Equity Dealership whose assets come into the possession or control of either of the Chrysler Respondents by virtue of default on or compromise of a debt obligation.

I. "Financing Customer" means a purchaser of a Vehicle from a Dealership by means of a Retail Sale.

J. "Disposition" or "Dispose" refers to a Dealership's sale or initial lease of a repossessed Vehicle previously sold by that Dealership and returned to it by or for a finance company or institution pursuant to a repurchase agreement. Such sale or lease includes only transactions with an independent third party; *i.e.*, it does not include a sale or lease to the finance company or institution, the Dealership or their representatives, or to a person or firm liable under a guaranty, endorsement, or repurchase agreement covering the repossessed Vehicle. Disposition or Dispose shall not refer to the repurchase of a repossessed Vehicle by a Dealership pursuant to a repurchase agreement, or refer to a sale subsequent to a judicial sale in Louisiana.

K. "Proceeds" means whatever is received upon Disposition in exchange for the repossessed Vehicle, but exclusive of sales taxes, service contracts or separately priced warranties.

L. "Allowable Expenses" means only actual out-of-pocket expenses incurred as the result of a repossession. The expenses must be reasonable and directly resulting from the repossessing, holding, preparing for Disposition and Disposing of the Vehicle, and not otherwise reimbursed to the Dealership. They are limited to the following charges (if allowable under applicable state law):

1. Expenses paid to others, who are not employees of the Dealership or of the finance company or institution that financed the Vehicle, for repossessing, towing or transporting the Vehicle;

2. Filing fees, court costs, cost of bonds, fees paid to a sheriff or similar officer, and fees and expenses paid to an attorney who is not an employee of the Dealership or the finance company or institution for obtaining possession of or title to the Vehicle;

3. Fees paid to others to obtain title to the Vehicle, to obtain legally required inspection of the Vehicle, or to register the Vehicle;

4. Expenses paid to others for storage (excluding a charge for storage at facilities operated by the Dealership);

5. Labor and associated parts and supplies furnished by the Dealership for the repair, reconditioning or maintenance of the Vehicle in preparation for Disposition, computed at Dealership cost (as defined in the Initial Compliance Report);

6. Amounts paid to others for labor and associated parts and supplies purchased for the repair, reconditioning or maintenance of the Vehicle in preparation for Disposition;

7. Cost of sales commissions paid for actual participation in the Disposition of the particular Vehicle, computed at a rate no higher than for a similar nonrepossessed Vehicle and excluding portions of commissions attributable to the selling of service contracts, separately priced warranties, financing or insurance;

8. Expenses of advertisements that specifically mention the particular Vehicle, including a proportional share of any advertisement that also mentions other Vehicles;

9. Auctioneer expenses and fees paid;

10. Amounts paid to others for communication (including telephone calls, postage, and military locator fees) and photocopying necessary in arranging for the repossession, holding, transportation, reconditioning and Disposition of the Vehicle; and

11. Amounts paid to insure the particular Vehicle while holding it.

M. "Contract Balance" means (1) the unpaid balance as of the date of repossession less unearned finance charge and insurance premium rebates deducted by the finance company or institution, plus (2) other charges authorized by contract or law and actually assessed or incurred prior to repossession.

N. "Surplus" means the excess of (1) the Proceeds plus applicable insurance or warranty reimbursements received by the Dealership or finance company or institution plus any other applicable rebates or credits not deducted by the finance company or institution, over (2) the Contract Balance, Allowable Expenses, and amounts paid to discharge any security interest provided for by law.

O. "Pay" or "Paid," in reference to payment of a Surplus, means a reasonable attempt to pay in accordance with the standards set forth in the Initial Compliance Report.

II

It is further ordered that Chrysler shall provide to all existing Dealerships within sixty (60) days of the effective date of this Order, and to each new Dealership within thirty (30) days of entering into a Direct Dealer Agreement, a system for determining the existence of Surpluses and for accounting for Surpluses and for any deficiencies sought (hereinafter the "Repossessed Vehicle Surplus/Deficiency system").

A. The Direct Dealer Agreements presently in effect between Chrysler and Dealerships provide that the Dealership "will use and keep accurate and current at all times a uniform accounting system and will follow accounting practices, both satisfactory to Chrysler". Chrysler shall make the Repossessed Vehicle Surplus/Deficiency system part of the uniform accounting system and accounting practices referred to in the Direct Dealer Agreements and any subsequent comparable agreements. So long as the Direct Dealer Agreements or subsequent comparable agreements remain in effect, Chrysler shall not change them so as to affect the status of the Repossessed Vehicle Surplus/Deficiency system without sixty (60) days notice to the Commission and shall not change those agreements so as to affect the status of the Repossessed Vehicle Surplus/Deficiency system if the Commission, within that time period, advises Chrysler that it objects to the change.

B. The Repossessed Vehicle Surplus/Deficiency system shall include a standardized form ("Record of Repossessed Vehicle Sale") for Dealerships' use in determining the existence and amount of Surpluses and of any deficiencies sought, and in recording payment of each Surplus in accordance with the provisions of Paragraph II.C below.

C. The Repossessed Vehicle Surplus/Deficiency system shall contain provisions that:

1. Each Surplus is to be determined according to Paragraphs I.J through I.N of this Order and Paid to the defaulting customer within forty-five (45) days of Disposition.

2. Expenses other than Allowable Expenses are not to be deducted in calculating Surpluses and deficiencies sought.

3. Dispositions are to be commercially reasonable, which in practice means that the Dealership should make the same efforts to Dispose of the repossessed Vehicle at the best available price as would be made for a comparable used Vehicle except that a Dealership is not required to offer a warranty without extra charge even though such warranties are provided on other used Vehicles.

4. If any rebate owing to the defaulting customer's account has not been received at the time the Record of Repossessed Vehicle Sale is completed, such rebate is to be applied for promptly.

5. If any rebate is received after completion of the Record of Repossessed Vehicle Sale, any Surplus or deficiency sought is to be redetermined, a new or amended Record of Repossessed Vehicle Sale is to be prepared, and any remaining Surplus Paid within forty-five (45) days of Disposition or within ten (10) days of receiving the rebate, whichever is later.

6. The Record of Repossessed Vehicle Sale is to be prepared by the Dealership for each Disposition of a repossessed Vehicle and:

a. Is to set forth the calculation of each Surplus, and of each deficiency sought;

b. Is to be certified by a person authorized to sign retail installment contracts on behalf of the Dealership;

c. A copy of the form is to be sent with the Surplus payment to each defaulting customer to whom a Surplus is Paid and to each defaulting customer from whom a deficiency is sought; and

d. Is to be retained by the Dealership, together with all relevant books and records, for at least two (2) years from the date of Disposition.

7. Dealerships are not to seek or obtain waivers of Surplus or redemption rights from Financing Customers, except in the precise manner and circumstances contemplated by the applicable version of Section 9–505 of the Uniform Commercial Code. Under Section 9–505 a waiver of a customer's right to a surplus may not be sought unless the Dealer intends to retain the collateral for its own use for the immediate future rather than to resell the collateral in the ordinary course of business. If a waiver is sought, the Dealer shall not represent that it thereby proposes to forego its right to a deficiency judgment unless it intends to seek such a judgment should the waiver not be given.

8. The Dealership may seek a deficiency only to the extent allowed by state law.

9. The Dealership shall, in accordance with state law, permit redemption of a repossessed Vehicle at any time prior to a binding agreement for its Disposition, except as may otherwise be provided by the laws of the individual states.

D. The Repossessed Vehicle Surplus/Deficiency system shall state that:

1. The Repossessed Vehicle Surplus/Deficiency system is part of the uniform accounting system and accounting practices referred to in Paragraph 9 of the Direct Dealer Agreement between Chrysler and the Dealership.

2. Failure to adhere to the standards of Paragraph II.C or to account properly to customers for Surpluses may expose the Dealership to legal action by the Federal Trade Commission and/or consumers.

E. Chrysler shall give the Federal Trade Commission thirty (30)days advance notice of any change in its manner and form of carrying out the requirements of Part II of this Order.

F. The Repossessed Vehicle Surplus/Deficiency system shall not apply to sales of repossessed Vehicles subsequent to judicial sales in Louisiana.

G. The Federal Trade Commission has proposed a Trade Regulation Rule that defines duties involved in disposing of a repossessed Vehicle differently from the method described in Subparagraph II.C.3 above. Said Subparagraph is not to be considered a ratification or acceptance by the Commission of that method of Disposition except for purposes of this Order.

III

A. It is further ordered that Chrysler:

1. Shall, in the manner and in accordance with the schedule set forth in the Initial Compliance Report, develop and provide assistnce and detailed educational materials

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to each Repurchase Dealership to carry out the purposes of Part II of this Order and of Part VI (insofar as it relates to reinstatement and redemption rights).

2. Shall, commencing no later than one hundred eighty (180) days after the effective date of this Order, include detailed information on all pertinent aspects of Part II of this Order and Part VI (insofar as it relates to reinstatement and redemption rights) in the "Dealership Accounting Conference" and in all comparable successor courses of instruction, and courses and training materials dealing with repossession accounting or the rights and duties of the parties with respect to Surpluses, deficiencies, redemption, and reinstatement which may be made available by Chrysler to Dealerships.

3. Shall provide no instructions to Dealerships inconsistent with this Order.

4. Shall, within ninety (90) days of the effective date of this Order, send to each Repurchase Dealership a letter which contains information to the following effect, with nothing to the contrary or in mitigation thereof:

a. State law requires that any surplus generated on the disposition of a repossessed Vehicle must be returned to the defaulting customer;

b. The duty to pay surpluses has existed for many years and the company urges Dealerships to pay all Surpluses on repossessed Vehicles disposed of prior to the date of the letter, as well as those arising later;

c. Except in California and Louisiana, state law provides that if a Dealership does not pay a surplus owed, the defaulting customer has the right to recover a penalty equal to "an amount not less than the credit service charge plus 10 percent of the principal amount of the debt or the time price differential plus 10 percent of the cash price";

d. If a customer to whom a Surplus is owed has been reported by the Dealership or its agent to a credit reporting agency as owing a deficiency, the Dealership should promptly advise such agency of the correct facts; and

e. The Federal Trade Commission has issued complaints against three automobile Dealerships charging that their failure to pay past Surpluses violated federal law.

5. Shall include in the above mailing a copy of this Order and of the Commission's published Analysis of Consent Order, except those portions of the Analysis referring to the Order as a "proposed" Order open to public comment.

6. Shall, within ninety (90) days of the effective date of this Order, develop and provide to all Marketing Investment Department branch personnel (other than clerical employees) educational materials and training to carry out the purposes of Parts II and V of this Order, as described in the Initial Compliance Report.

7. Shall provide to authorized representatives of the Federal Trade Commission upon thirty (30) days written notice a set of mailing labels addressed to an apropriate officer or manager of each Dealership, together with a list containing the same information and a certification that the labels and list are complete and accurate. These materials need be provided only once and are to be used by the Commission solely in connection with the service on Dealerships of any final order issued in Docket Nos. 9072, 9073 or 9074, and related notices.

B. It is further ordered that Chrysler Credit:

1. Shall, within one hundred five (105) days of the effective date of this Order, send to each Dealership to which Chrysler Credit has returned a Vehicle, pursuant to a repurchase agreement, that was repossessed since May 1, 1974:

a. Chrysler Credit's endorsement of the statements in Subpargraphs III.A.4.a–e above; and

b. A list containing the following data for each Chrysler Credit repossession returned to the Dealership between May 1, 1974 and the effective date of this Order: name, address and account number of the Financing Customer, net payoff and date of repossession of the Vehicle.

2. Shall, within ninety (90) days of the effective date of this Order, develop and provide to all Chrysler Credit branch personnel involved in Repurchase Financing transactions (other than clerical employees) educational materials and training to carry out the purposes of Parts II and VI of this Order, as described in the Initial Compliance Report.

3. Shall provide no instructions to Repurchase Dealerships inconsistent with this Order.

It is further ordered that:

A. To determine whether Dealerships are correctly calculating and Paying Surpluses after implementation of Part II of this Order, Chrysler shall conduct or cause to be conducted a series of audits of Repurchase Dealers as described below and in the Initial Compliance Report.

1. Four successive twelve-month periods shall be audited, as further described in the Initial Compliance Report.

2. One hundred ten (110) Repurchase Dealers and not more than three thousand (3,000) of their Repurchase Financing repossessions per twelve-month audit period shall be audited, selected pursuant to procedures established by the staff of the Federal Trade Commission and set forth in the Initial Compliance Report, plus not more than sixty (60) Dealerships found in the preceeding twelve-months' audit to require a further audit as set forth in the Initial Compliance Report.

3. The audit process shall consist of examination of the prescribed number of Repurchase Financing repossessions with resort to relevant books and records as set forth in the Initial Compliance Report. The audit shall include, for each Dealership audited, the preparation of a report ("Dealer Report") as described in the Initial Compliance Report. The Dealer Report shall contain a certification that it is accurate to the best of the knowledge of the person who performed the audit, and that such person has informed the Dealership in writing that it should retain the relevant books and records relating to any non-complying transaction for at least three (3) years after the audit. For each non-complying transaction, the person performing the audit shall attach to the Dealer Report (a) a Transactional Report Form completed in connection with the audit as described in the Initial Compliance Report, and (b) any worksheet he or she prepares in connection with such transaction.

B. Dealer Reports and documents prepared in the course of an audit pursuant to Paragraph IV.A, by the person who performed the audit, shall be maintained by Chrysler for four (4) years following the end of the twelve-month audit period for which they were prepared.

C. Chrysler shall file with the Commission an "Annual Audit Summary" within one (1) year after the end of each twelve-month audit period described in Subparagraph IV.A.1; *provided, however,* that the filing deadline for any such summary otherwise due between the 10th and 31st of December shall instead be January 31 of the following year. Each Annual Audit Summary shall contain the following information in aggregate form:

1. The period audited, the number of Repurchase Dealers audited, and the total number of Repurchase Financing repossessions returned to those dealerships during that period;

2. The number of Repurchase Financing repossessions audited and, with respect to those repossessions:

a. The number and total dollar amount of Surpluses properly calculated and Paid by the Dealers, and the number and total dollar amount of those Surpluses as to which the Dealers' attempts to pay were unsuccessful;

b. The number and total dollar amount of Surpluses which were properly calculated by the Dealers but not Paid, and the number of Dealerships involved;

c. The number of Surpluses not properly calculated by the Dealers, the number of Dealerships involved, and the total dollar amount which was not Paid;

d. The number of deficiencies sought in an amount in excess of the amount permitted by the Repossessed Vehicle Surplus/Deficiency system, the number of Dealerships involved, and the total excess dollar amount sought;

e. The number of repossession transactions in which a waiver of the customer's Surplus rights was sought or obtained, and the number of Dealerships involved;

f. The number of repossession transactions in which one or more entries on the Record of Repossessed Vehicle Sale were not substantiated by information contained in Dealership books and records and (i) as a result thereof the person performing the audit was unable to determine whether or not the disposition resulted in a Surplus or the correct amont thereof in accordance with the Repossessed Vehicle Surplus/Deficiency system, or (ii) the Dealership sought a deficiency in excess of the amount substantiated by information contained in its books and records; and the number of Dealerships involved;

g. The number of repossessed Vehicles disposed of other than to an Independent third party, and the number of Dealerships involved;

h. The number of repossessed Vehicles sold at wholesale; and

3. A statement describing the action(s) taken by Chrysler, although none is required, to correct the non-compliance of Dealerships discovered during the audit to have failed to follow the Repossessed Vehicle Surplus/Deficiency system in calculating or Paying Surpluses or in seeking deficiencies.

D. The audits described in Subparagraph IV.A shall be performed by qualified persons as defined in the Initial Compliance Report. The following conditions shall be observed:

1. The Chrysler respondents shall not inform Dealerships or other third parties of the details of the random selection process established by the staff of the Federal Trade Commission, except to the extent described in this Order and in the Initial Compliance Report.

2. The Chrysler respondents shall not inform Dealerships or other third parties (excluding third parties engaged to participate in the audit process) of the details of the audit procedure, the audit periods, or the identity of Dealerships selected for audit, except to the extent described in this Order and in the Initial Compliance Report.

3. Dealerships selected for audit under this Part IV shall not be given more than ten (10) business days advance notice of the scheduled audit.

V

It is further ordered that:

A. Chrysler shall, as a shareholder holding a majority of the voting stock of each Equity Dealership (or as it otherwise may become entitled to elect more than 50 percent of the board of directors pursuant to any change in its relationship with Equity Dealerships), exercise all of its lawful rights for the purpose of causing the directors thereof to vote for resolutions requiring that each such Dealership:

1. Within sixty (60) days of the effective date of this Order or within sixty (60) days of initiating operation as a Dealership, whichever is later, adopts and maintains the Repossessed Vehicle Surplus/Deficiency system described in Part II of this order;

2. Pays all Surpluses with respect to repossessed Vehicles returned to the Dealership after the effective date of this Order;

3. Shall not seek or obtain waivers of Surplus or redemption rights from Financing Customers except in strict conformity with Paragraph II.C.7 of this Order; and

4. Has an annual examination of its documents by a certified public accounting firm to determine whether the Dealership is following the Repossessed Vehicle Surplus/Deficiency system.

a. The first such examination after the effective date of this Order shall include an inspection of the relevant books and records and the Record of Repossessed Vehicle Sale forms (described in Part II of this Order) for all Repurchase Financing repossessions returned to the Dealership by financing institutions since January 1, 1979; *provided, however,* that such examination need not include repossessions audited pursuant to Part IV of this Order or examined for these purposes in a prior examination by a certified public accounting firm and reported to the Dealership board of directors regarding any non-compliance.

b. Subsequent examinations in succeeding years shall include an inspection of the relevant books and records and the Record of Repossessed Vehicle Sale forms (described in Part II of this Order) for all Repurchase Financing repossessions returned to the Dealership by financing institutions since the period covered by the last annual examination pursuant to Subparagraph V.A.4 and not audited pursuant to Part IV of this Order.

c. Each such examination shall be followed by a report to the Dealership board of directors regarding any non-complying transactions.

B. If any examination required by Subparagraph V.A.4 or any audit conducted under Part IV reveals that an Equity Dealership has any non-complying transaction as defined in the Initial Compliance Report which has not been corrected by the Dealership, then Chrysler shall, as a shareholder holding a majority of the voting stock of that Equity Dealership, exercise all of its lawful rights for the purpose of causing the directors thereof to institute appropriate measures to correct the non-compliance.

C. Chrysler shall (1) ascertain, for each Equity Dealership which becomes a Liquidating Dealership after the effective date of this Order, whether any unpaid Surpluses have arisen since the effective date of the Order or the period covered by the last annual audit by an independent certified public accounting firm during which repossession transactions were examined pursuant to the standards set forth in Part IV of this Order and the Initial Compliance Report, whichever is later, and (2) cause each such Surplus to be paid. *Provided,* that the provisions of Paragraphs V.A.B, and C shall remain in effect for seventy-five (75) years from the effective date of this Order, at which time the provisions of said Paragraphs will be of no further force or effect.

D. Chrysler shall, within the one hundred eighty (180) days of the effective date of this Order, with respect to repossessed Vehicles returned between May 1, 1974 and December 31, 1978 to Dealerships which are Equity Dealerships as of the effective date of this Order, establish to the reasonable satisfaction of the Commission, as described in the Initial Compliance Report, that:

1. All Surpluses have been Paid; and

2. In each instance where a defaulting customer entitled to receive a Surplus pursuant to Subparagraph V.D.1 above had been previously reported by the Dealership or its agent to a credit reporting agency as owing a deficiency, such agency has been subsequently notified of the correct facts.

E. Chrysler shall, within three hundred sixty (360) days of the effective date of this Order, with respect to repossessed Vehicles returned between May 1, 1974 and the effective date of this Order to any Liquidating Dealership which began Operation as an Equity Dealership after July 30, 1978 or whose books and records, as of July 30, 1978, were located at the Kansas City, San Francisco or Troy liquidating centers or at the Dealership, establish to the reasonable satisfaction of the Commission, as described in the Initial Compliance Report, that:

1. All Surpluses have been Paid; and

2. In each instance where a defaulting customer entitled to receive a Surplus pursuant to Subparagraph V.E.1 above had been previously reported by the Dealership or its agent to a credit reporting agency as owing a deficiency, such agency has been subsequently notified of the correct facts.

VI

It Is further ordered that Chrysler Credit:

A. Shall develop revised Chrysler Credit retail installment contract forms that include a clear, concise statement in lay language that, in the event of repossession:

1. No expenses other than reasonable expenses incurred as a direct result of reposessing (including, where permitted, attorneys' fees and court costs), holding, preparing for Disposition and Disposing of the Vehicle may be deducted from the Proceeds in determining a Surplus or deficiency; and

2. Any Surplus realized on the resale or other Disposition of the Vehicle is to be Paid to the customer.

B. Shall distribute the revised retail installment contract forms to all Dealers who use Chrysler Credit installment contract forms, within one year after the Commission issues a final rule or final adjudicated order no less restrictive than the Paragraph VI.A statements concerning allowable expenses and the duty to pay surpluses. If the Commission's final rule or final adjudicated order is deemed by Chrysler Credit to be less restrictive than the said Paragraph VI.A statements, Chrysler Credit shall (1) within forty-five (45) days after written notice by Commission staff to the Secretary of Chrysler Credit that such rule or order has become final, request a reopening of this proceeding to conform the Paragraph VI.A statements to such rule or order; and (2) perform the above distribution of revised forms within one year after the Commission has acted on its request for conformance.

C. Shall, no later than twelve (12) months after the effective date of this Order, cease and desist the use of any Chrysler Credit retail installment contract form which represents that the debtor may be liable to pay a deficiency where Chrysler Credit knows or should know that it is not entitled under state or federal law to collect a deficiency.

D. Shall direct its branch offices that, commencing thirty (30) days after the distribution to a Dealership of revised Chrysler Credit retail installment contract forms pursuant to Paragraphs VI.B and/or C, they are not to purchase from that Dealership Chrysler Credit forms of retail installment contracts that are not on the revised forms. For a period of two (2) years thereafter, Chrysler Credit shall examine its branch office files at least every twelve (12) months in accordance with the procedures established in the Initial Compliance Report to determine whether prior retail installment contract forms are being used, and, if so, shall institute appropriate corrective action.

E. Shall, commencing seventy-five (75) days after the effective date of this Order, include the following information in clear lay language in a notice (which may be included in a notice of intent to repossess) sent prior to repossession to those Chrysler Credit Financing Customers to whom a notice of intent to repossess is sent:

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1. The total amount past due as of the date stated in the notice, which shall be mailed within five (5) days of the date stated in the notice;

2. In transactions where the customer is entitled under state law to reinstatement of the contract, the customer will have an absolute right to such reinstatement and to regain possession of the Vehicle by paying all past due installments and by paying such other amounts and fulfilling such other conditions as provided by laws, or provided by contract and not prohibited by law;

That the customer will have an absolute righ to redeem the Vehicle at any time prior to a binding agreement for its Disposition, except as otherwise provided by state law, and that this right can be exercised by paying the Contract Balance plus all reasonable expenses incurred as a direct result of repossessing the Vehicle (including, where permitted, attorneys' fees and court costs), holding it, and preparing it for Disposition;

4. The date prior to or interval of time during which the Vehicle will not be Disposed of;

5. That if the Vehicle is not redeemed (nor the contract reinstated) the customer will be entitled to a refund of any Surplus, and that where the Vehicle is returned to the Dealership such refund is to be made within forty-five (45) days after Disposition (the notice may also state that the refund should be made by the Dealer);

6. The failure to account for and refund a Surplus will give the customer a right to sue for the amount of the Surplus and, except in California and Louisiana, for statutory penalties as provided by state law; and

7. The statutory limitations and restrictions on the right of Chrysler Credit and the Dealership to collect a deficiency.

F. Shall, within sixty (60) days after the effective date of this Order, establish and follow a procedure for uniformly sending a written notice ("post-repossession notice") to each Chrysler Credit Financing Customer as soon as practicable after repossession. The post-repossession notice shall specify in clear, lay language:

1. The name, address and telephone number of the Dealership to which the Vehicle has been or will be returned for Disposition, if applicable, and the address and telephone number of the Chrysler Credit branch office to be contacted;

2. The date or interval of time within which the customer may reinstate the contract in states where the creditor is required to permit reinstatement of the contract;

3. The net amount necessary to redeem the Vehicle, and, in transactions where the customer is entitled to reinstatement, the amount necessary to reinstate the contract, at the time the notice is sent;

4. The date or interval of time prior to which the Vehicle will not be sold;

5. That the Vehicle can be redeemed at any time prior to a binding agreement for its Disposition, except as otherwise provided by state law;

6. That under the law the only expenses which need be paid upon redemption are reasonable expenses incurred as a direct result of repossessing the Vehicle, holding it, and preparing it for Disposition; and that these may increase in amount if redemption is delayed;

7. That Chrysler Credit should be contacted for further information about reinstatement of the contract, in states where the customer is entitled to reinstatement;

8. That Chrysler Credit should be contacted for further information about redemption including the procedure for redeeming the Vehicle;

9. That if the Vehicle is not redeemed (nor the contract reinstated) the customer is entitled to a refund of any surplus, and that where the Vehicle is returned to the Dealership such refund is to be made within forty-five (45) days after Disposition (the notice may also state that the refund should be made by the Dealer);

10. That in those instances where the Vehicle is returned to the Dealership, the Dealership is to send a copy of the Record of Repossessed Vehicle Sale to each defaulting customer to whom a Surplus is Paid or from whom a deficiency is sought;

11. That failure to account for and refund a Surplus will give the customer a right to sue for the amount of the Surplus and, except in California and Louisiana, for statutory penalities as provided by state law;

12. That the customer may be liable for a deficiency or that state law restricts or prohibits Chrysler Credit and the Dealership from collecting a deficiency (the notice is to include the applicable language only); and

13. That the customer has the right to direct the Dealership to apply for a rebate of any unearned premiums payable by any insurance carrier or agent from whom the Dealership has, on behalf of the customer, obtained a credit life, accident and health, or collision insurance policy.

G. Shall, for a period of two (2) years commencing seventy-five (75) days after the effective date of this Order, examine its branch files at least once every twelve (12) months in accordance with the procedures established in the Initial Compliance Report to determine whether the notices required by Paragraphs VI.E and F have been and are being sent, and shall institute appropriate actions to assure that this procedure is adhered to.

H. Shall take no action to obtain or attempt to obtain or bring about any waiver of a Financing Customer's redemption or Surplus rights, except in the precise manner and circumstances contemplated by the applicable version of Section 9–505 of the Uniform Commercial Code. Under Section 9–505 a waiver of a customer's right to a surplus may not be sought unless the secured party intends to retain the collateral for its own use for the immediate future rather than to (1) resell it in the ordinary course of business or (2) return it to another party pursuant to a repurchase agreement. If a waiver is sought, Chrysler Credit shall not represent that it thereby proposes to forego its right to a deficiency judgment unless it intends to seek such a judgment should the waiver not be given.

I. Shall instruct it branch office personnel involved in Repurchase Financing transactions to cease and desist from making any representation, directly or by implication, contrary to the representations required by Paragraphs VI.E and F of this Order, and shall within sixty (60) days of the effective date of this Order establish procedures which reasonably assure strict adherence by branch personnel to these instructions.

J. Shall, within twelve (12) months after the effective date of this Order, revise all pertinent Chrysler Credit forms (including but not limited to repurchase agreement forms, form letters, and notices) and internal written procedures to be consistent with the provisions of this Order, as described in the Initial Compliance Report.

VII

It is further ordered that:

A. In the event the Federal Trade Commission issues a final Trade Regulation Rule establishing standards less restrictive on automobile manufacturers, finance companies or institutions, or Vehicle Dealerships than a provision or provisions of this Order relative to (1) the disposition of repossessed Vehicles, (2) the determination, calculation or communication of the existence of or the amount of Surpluses or deficiencies, including waivers of Surplus rights, or the time or manner of paying or accounting for surpluses or deficiencies, or (3) the determination or communication of reinstatement or redemption rights (including their duration and/or the amount necessary to reinstate or redeem), then such less restrictive standards shall, on the effective date of the Rule, supersede and replace the corresponding provision(s) of this Order. The enumeration of the subject matter contained in clauses (1), (2) and (3) of this paragraph is exclusive. *Provided, however,* that a Chrysler Respondent shall advise the Commission of its intention to rely upon any provision of a Trade Regulation Rule as having superseded any provision of this Order thirty (30) days in advance of reliance thereon. *Provided further* that this Paragraph shall not be construed as exempting the Chrysler Respondents from any Trade Regulation Rule, or as limiting in any way their legal right or standing to challenge or otherwise contest any Trade Regulation Rule.

B. In the event any of the proceedings bearing Docket Nos. 9072, 9073, or 9074 results in a final adjudicated or consent order applying standards less restrictive on any automobile manufacturer, finance company, or Vehicle Dealership than a provision or provisions of this Order relative to:

1. The disposition of repossessed Vehicles;

2. The determination, calculation or communication of the existence of or the amount of surpluses or deficiencies, including waivers of Surplus rights,or the time or manner of paying or accounting for Surpluses or deficiencies; or

3. The determination or communication of reinstatement or redemption rights (incuding their duration and/or the amount necessary to reinstate or redeem);

then the Commission shall, within one hundred twenty (120) days of a Chrysler Respondent's request pursuant to § 2.51 of the Commission's Rules of Practice, reopen this proceeding and order modifications of this Order and/or other relief, as necessary and appropriate, to conform this Order to such less restrictive standards applied in the other order(s). The enumeration of the subject matter contained in clauses B.1, 2, and 3 of this Paragraph is exclusive.

C. In the event a Chrylser Respondent is of the opinion that changed conditions of law or fact require that this Order be altered, modified, or set aside, or that the public interest so requires, the Chrysler Respondent may, pursuant to Section 2.51 of the Commission's Rules of Practice, file a request for reopening of this proceeding for that purpose.

VIII

It is further ordered that:

A. Each Chrysler Respondent shall, as described in the Initial Compliance report, maintain complete business records relative to the manner and form of its compliance with this Order and shall retain all such records for at least three (3) years, and shall, upon reasonable notice, make them available for inspection and photocopying by authorized representatives of the Federal Trade Commission. Except as provided in Paragraph III.A.7 of this Order, respondents will disclose the identity or identities of any individual Dealership or Dealerships to Commission representatives only upon service of a civil investigative demand issued under Section 2.7 of the Rules of Practice of the Federal Trade Commission.

B. Each of the Chrysler Respondents shall, within one hundred eighty (180) days after the effective date of this Order, file with the commission a written report setting forth in detail the manner and form in which it has complied with this Order and has implemented the Initial Compliance Report submitted with the Agreement Containing Consent Order.

C. Chrysler shall, within four (4) weeks of the effective date of this Order, distribute a copy of this Order to its U.S. Automotive Sales Division, to each Zone Manager, and to its Marketing Investment Department and each of its branch offices. Chrysler Credit shall, within the same time frame, distribute a copy of this Order to each of its branch offices.

D. Each of the Chrysler Respondents shall notify the Commission at least thirty (30) days prior to any corporate change which may reasonably be expected to affect compliance obligations arising out of this Order such as those dissoultions, assignments or sales resulting in the emergence of a successor corporation or corporations, the creation of dissolution of subsidiaries, or any other change which may reasonably be expected to affect compliance with this Order. Chrysler shall notify the Commission at least thirty (30) days prior to effectuating any changes in its program for investing in Equity Dealerships, which may reasonably be expected to affect compliance with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Chrysler Corporation and its credit subsidiary, Chrysler Credit Corporation.

The proposed consent order and a proposed initial compliance report submitted by Chrysler and Chrysler Credit have been placed on the public record for 60 days. During this period all interested persons may comment on the proposed order and compliance report. Such comments will become part of the public record. After 60 days the Commission will review the agreement and comments, and will decide whether to withdraw from the agreement or make the order final.

This analysis is intended to encourage public comment on the proposed order. It does not constitute an official interpretation of the agreement and proposed order nor a modification of their terms.

Nature of the Case

The Commission's complaint was issued in February 1976. It made a number of allegations about repossession practices involving Chrysler Credit and Chrysler/Plymouth/Dodge dealers, including the following:

1. Each year Chrysler Credit repossesses numerous cars and trucks from credit customers. State law and "fairness" under the FTC Act require that on each resale of a repossessed vehicle, after paying off the underlying debt and meeting certain reasonable expenses of repossession and resale, any money left over (the "surplus") must be paid to the person from whom the vehicle was repossessed.

2. Chrysler Credit has arrangements with many Chrysler, Plymouth and Dodge dealers whereby it returns the repossessed car or truck to the dealer who had previously sold it. The *dealer* then handles the resale and becomes obligated (along with Chrysler Credit) to see that any surplus is paid. But many such transactions have resulted in surpluses which were not in fact paid by either Chrysler Credit or the dealer.

3. Chrysler Credit and dealers misrepresented their right to collect a deficiency in states where that right is limited.

4. Chrysler Credit and dealers have not provided defaulting customers with necessary information about their right to redeem (buy back) their repossessed car or truck under state law.

Another aspect of the case involves allegations of *Chrysler* Corporation responsibility for dealerships in which it owns all or part of the voting stock (about 4% of all Chrysler/Plymouth/Dodge dealers). The complaint charged that such "owned" dealerships have failed to pay surpluses and/or provide necessary redemption information on repossessed vehicles returned to them by various financing institutions (such as banks) under arrangements similar to those described above.

The complaint specifically named Aurora Chrysler-Plymouth, Inc., a Seattle dealer, as a participant in the challenged practices. Aurora has entered into a separate consent order agreement, accepted subject to public comment simultaneously with this one.

The Proposed Settlement

The proposed consent order with Chrysler and Chrysler Credit is designed to bring about correct calculation and prompt payment of all surpluses on repossessed vehicles resold by Chrysler dealers. It provides that Chrysler's Dealer Uniform Accounting System Manual (which is binding on all dealers) will be changed to include specific procedures for determining surpluses. The complete new "Repossessed Vehicle Surplus/Deficiency" system is on the public record as an attachment to the report of Chrysler's intended manner of compliance with the order.

Under the required procedure, each dealer will obtain the best available price in reselling any repossessed vehicle returned to it, and will pay any resulting surplus within 45 days of the resale. The only expenses which may be deducted are reasonable, actual out-of-pocket costs incurred as a direct result of repossessing, holding, preparing for sale or reselling the vehicle. A prescribed written summary will be prepared and sent by the dealer within the 45-day period to each customer entitled to a surplus or from whom an attempt is made to collect any further amount (a "deficiency").

The agreed-to order represents a significantly different approach from that of the "notice" version published with the complaint. That version would have held Chrysler Credit responsible for surpluses arising from Chrysler Credit repossessions, and Chrysler Corporation responsible for surpluses involving its "owned" dealerships. Although the settlement leaves open the questions of the Chrysler companies' responsibilities for payment of surpluses, the remedial technique of a Chrysler-wide accounting manual modification provides coverage of *all* repossessed vehicles returned to Chrysler/Plymouth/Dodge dealers (regardless of financing institution and regardless of who owns the dealership). Through this inclusion of bank-repossessed vehicles returned to non-owned dealerships, the number of repossession transactions affected by the order has been more than quadrupled (as compared to the "notice" version).

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The consent order requires that Chrysler institute training programs to familiarize dealers with their obligations in handling repossessions. The training will be followed by a series of field audits conducted by Chrysler over a four-year period, to verify that dealers are in fact calculating and paying surpluses correctly. Any instances of noncompliance will be reported to the FTC and the dealers involved will be re-audited.

Other provisions of the proposed order would require:

1. Specialized measures with respect to surpluses realized by Chrysler's "owned" dealerships, including payment of surpluses on vehicles repossessed as far back as May 1974.

2. Bulletins to all dealers setting forth their longstanding duty to pay surpluses, urging them to pay surpluses on past repossessions and identifying all repossessed vehicles returned to them by Chrysler Credit since May 1, 1974.

3. A notice to each customer whose vehicle is hereafter repossessed by Chrysler Credit, stating the nature and duration of the customer's rights to get the vehicle back ("redeem" or "reinstate") and the amount needed to do so, and setting forth the customer's right to a refund of any surplus monies left over after resale.

4. Elimination of incorrect statements of deficiency rights from Chrysler Credit's retail installment contract forms.

5. Statements of customers' surplus and/or redemption rights to be included in the future in Chrysler Credit installment contracts and certain other documents provided to customers, and in Chrysler Credit's contractual arrangements with dealers.

6. Qualified prohibitions against obtaining waivers of customers' surplus or redemption rights.

Carol M. Thomas,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 33-6248; 34-17222; IC-11403; File No. S7-858]

Purchases of Certain Equity Securities by the Issuer and Others

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is reproposing for comment a revised rule under the Securities Exchange Act of 1934 to regulate purchase of certain classes of common stock and preferred stock by or for the issuer, any affiliate of the issuer, or any "affiliated purchaser," as that term is defined in the rule. If adopted, the rule would impose disclosure requirements and substantive purchasing limitations on an issuer and on any affiliated purchaser. It also would impose certain of the purchasing requirements on a broker-dealer or other person acting for the issuer or for an affiliated purchaser in connection with purchases of the issuer's common stock or preferred stock. In addition, the issuer, its affiliates and affiliated purchasers, as well as certain other persons, would be subject to a general antifraud provision in connection with their purchases of the issuer's common or preferred stock. The Commission also is reproposing for comment revised amendments to a rule that regulates purchases of securities during a distribution of those securities. If the amendments are adopted, that rule no longer will prohibit purchases of an issuer's securities by the issuer or by an affiliate where the issuer is engaged in certain distributions of the securities and the purchases are made in compliance with the proposed rule.

DATE: Comments should be submitted on or before January 15, 1981.

ADDRESSES: Interested persons should submit six copies of their written data, views and arguments to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C. 20549, and should refer to File No. S7-858. All submissions will be available for public inspection at the Commission's Public Reference Section, Room 8101, 1100 L Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mary E. Chamberlin, Esq. (202-272-2880); or John B. Manning, Esq. (202-272-2874); Office of Legal Policy and Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

Introduction

The Securities and Exchange Commission is publishing for comment a revised version of proposed Rule 13e-2 [§ 240.13e-2] pursuant to the Securities Exchange Act of 1934 (the "Act") to regulate purchases of the common and preferred stock of certain issuers by or on behalf of issuers and certain other persons.

It has been almost seven years since the Commission previously proposed Rule 13e-2 for comment. During that period, the Commission has devoted considerable attention to the need for a program of regulation pertaining to issuer repurchases. It has adopted Rules 13e-3 [§ 240.13e-3] [1] and 13e-4 [§ 240.13e-4] [2] to regulate going private transactions and issuer tender offers, respectively. In addition, the Commission has continued to regulate certain other issuer repurchases through a program of exemptions granted pursuant to Rule 10b-6 [§ 240.10b-6] under the Act. On the basis of its experience with those initiatives, and for the reasons discussed below, the Commission believes that it should adopt Rule 13e-2 as a rule of general applicability to issuer repurchases.

The regulatory predicate that underlies the Commission's proposed Rule 13e-2 is the need for a scheme of regulation that limits the ability of an issuer and persons whose purchases are closely related to those of the issuer to control the price of the issuer's securities. That predicate stems in part from the unique incentives that an issuer and those related persons have to control the price of the issuer's securities. It stems also from the fact that the antifraud and antimanipulative provisions of the Act are very general in language and may not provide adequate guidance. A rule such as Rule 13e-2 can curb the opportunity for abuse while at the same time providing greater clarity and certainty, both to issuers and to broker-dealers who assist in their repurchase programs, as to the permissible limits for such programs. In that way, it can assist issuers, broker-dealers and others in avoiding what might otherwise be a substantial and unpredictable risk of securities law liability. By providing that guidance, it can facilitate the operation of legitimate repurchase programs.

The issuer's special incentives to control the price of its securities may arise under varying circumstances. For example, the issuer may seek to raise capital through the issuance of additional securities in a manner that would minimize dilution of the ownership interest of existing shareholders. That desire to avoid dilution may provide an incentive to peg or even to raise the price of the issuer's stock. Similar incentives may arise from

[1] Securities Exchange Act Release No. 16075 (August 2, 1979), 44 FR 46736 (1979).

[2] Securities Exchange Act Release No. 16112 (August 16, 1979), 44 FR 49406 (1979).

the issuer's desire to use shares to purchase assets for the issuer or to engage in stock-for-stock acquisitions of other companies.

The insiders of a company, including those who agree to coordinate their purchases with those of the issuer or who control the issuer by virtue of their ownership of the issuer's securities, may have parallel incentives to varying degrees. For example, the controlling shareholders of a company may have an identity of interest with the issuer in connection with its desire to raise capital cheaply, to acquire other companies and other assets cheaply, and to preserve the value of their shareholdings. Incumbent management itself, of course, has an incentive to prevent the issuer's existing shareholders from becoming dissatified with it (as might be occasioned by a substantial drop in the price of the issuer's stock), and to preserve an appearance of prosperity and to prevent erosion in the market value of the issuer's securities. In that connection, management may be chronically dissatisfied with the performance of the issuer's stock and that dissatisfaction may present its own rationale for action.

During an actual distribution of the issuer's securities, and for a period of varying length preceding the distribution of securities to the public, purchases by the issuer or by those participating in the distribution are regulated under existing rules, particularly Rule 10b-6. Nevertheless, that rule does not prevent issuers from controlling the price during the period immediately preceding the time Rule 10b-6 becomes applicable, or during what may be a relatively unsettled or declining market following the completion of the distribution.

Rules 13e-2 would not impose any absolute prohibition such as the one Rule 10b-6 establishes. Instead, it would impose only those limitations that appear necessary to prevent the issuer from leading or dominating the market through its repurchase program. In fashioning those limitations, the Commission has balanced the need to curb the opportunity to engage in manipulative conduct against the need to avoid excessively burdensome restrictions. The Commission thereby has endeavored to tailor the restrictions imposed to the particular circumstances of the markets as they exist today. It also has attempted to exempt as many transactions as could be identified where the likelihood of manipulative abuse is not sufficient to justify imposing the restrictions of the rule. In addition, the Commission has provided for additional case-by-case exemptive authority for specific transactions to which application of some or all of the restrictions of the proposed rule would be inappropriate.

The Commission has not attempted to determine whether all transactions that exceed the specific limitations would be inherently fraudulent, deceptive, or manipulative. Instead, the Commission has relied upon it authority under Section 13(e) of the Act to define means reasonably designed to prevent fraudulent, deceptive and manipulative acts and practices in connection with issuer repurchases. Defining those means necessarily involves predictive judgments as to conduct that, on balance, is sufficiently likely to result in abuse that it should be prohibited.

Proposed Rule 13e-2 would codify a prohibition on certain kinds of conduct by issuers that the Commission has long viewed as inappropriate and that have been the subject of enforcement actions under the antifraud and anti-manipulative provisions of the Act [3] In particular, the purchasing restrictions found in the proposed rule, including limitations on the volume, timing, pricing and manner of purchases, reflect that effort to codify prior interpretations of the law and prior Commisson policy. The volume limitations are designed to prevent the issuer from dominating the market in its securities by purchasing large amounts of those securities relative to trading by independent parties. The time limitations are designed to prevent issuers from establishing either the opening price of the security or the closing price of the security, both of which are viewed by market professionals and investors as guides to the trend of the market in a security. Although not as stringent as the Commission's stabilizing rules, [4] the price limitations are designed to prevent an issuer from leading the market in its securities to new price levels or from maintaining the price at levels that would not be supported by independent buying interest. Finally, the requirement that the issuer purchase through only one broker or dealer on a given trading day is designed to prevent the use of several brokers to create a false appearance of widespread purchasing interest in the securities.

Limitations similar to those of the proposed rule have been imposed on certain issuers under Rule 10b-6, and the Commission understands that many issuers that are not subject to that rule comply with those limitations (or with those set forth in prior versions of proposed Rule 13e-2) in order to minimize the risk of incurring liability under the anti-manipulative provisions of the Act. The Commission believes that if the proposed rule is adopted it will eliminate the need to refer to those earlier interpretive and exemptive guidelines and in large measure clarify existing law and policy.

In addition to the purchasing limitations, and not as a substitute for them, the Commission has proposed specific disclosure requirements that pertain to issuer repurchase programs of substantial size. In certain circumstances, those requirements may exceed the requirements imposed on issuers under existing antifraud provisions. They are designed to give the market an opportunity to react to the fact that the issuer may account for a substantial amount of purchasing activity in its securities.

While the Commission believes that the required disclosures are necessary or appropriate to prevent fraud, deception and manipulaton, it does not believe that disclosure alone can take the place of the substantive regulation embodied elsewhere in the rule. Disclosure is unlikely to prevent manipulative conduct from having improper effects on the market since market manipulation is not solely a matter of deception and cannot be cured solely by preventing deception. For example, an issuer that every day participated in the opening and closing transactions in its securities could significantly and improperly affect the price of those securities despite the fact that its conduct was fully disclosed. Similarly, disclosure of an issuer repurchase program that involved purchases that dominated the market would not eliminate the effects of that domination. Disclosure of an issuer's efforts to drive the price of its securities up or to maintain it at artificial levels, by engaging several brokers to bid against one another or through other measures, would not cure the ill effects of such a manipulation. Moreover, given the often considerable fluctuations in market conditions and the rapid pace at which market transactions occur, it is questionable whether full and timely disclosure of certain practices could ever be made in a fashion that would protect the markets and investors as fully or efficiently as can more direct prohibitions on manipulative practices. For these reasons, the proposed rule would prohibit the practices proscribed by the purchasing limitations, instead of merely requiring their disclosure.

If adopted, proposed Rule 13e-2 would impose the purchasing

[3] *See* text at nn. 10-12, *infra*.

[4] *See* Rules 10b-7 and -8 under the Act, §§ 240.10b-7 and 240.10b-8.

restrictions described above, and certain disclosure requirements, on (i) any issuer with a class of equity securities registered under Section 12 of the Act, (ii) any closed-end investment company registered under the Investment Company Act of 1940, and (iii) any "affiliated purchaser" of such issuer, as that term would be defined in the rule, in connection with a bid for or purchase of the issuer's common stock or preferred stock.[5] The substantive purchasing restrictions would not apply to privately negotiate purchases (those not made from or through a broker or dealer). Broker-dealers and other persons acting for the issuer of affiliated purchaser also would be required to comply with certain provisions of the proposed rule. In addition, all of the foregoing persons, and any person affiliated with the issuer, would be subject to a general antifraud provision with respect to their purchases of the issuer's common stock or preferred stock. Finally, issuers that are required to file reports pursuant to Section 15(d) of the Act would be required to comply with the disclosure provisions of the proposed rule.

The Commission also is reproposing revised amendments to Rule 10b-6 [§ 240.10b–6] under the Act that are related to Rule 13e–2. If amended as proposed, Rule 10b–6 no longer would prohibit an issuer or any affiliate from bidding for or purchasing the issuer's securities if (i) the issuer would be deemed to be engaged in a distribution of the securities to be purchased solely because it had outstanding a class of securities convertible into or exchangeable for such securities and (ii) the bids or purchases were made in accordance with Rule 13e–2. In addition, the proposed amendments to Rule 10b–6 would incorporate into that rule certain of the staff's current interpretive positions regarding bids and purchases by independent agents for employee or shareholder plans sponsored by an issuer. During this rulemaking proceeding, however, the Commission's Office of Legal Policy and Trading Practices in the Division of Market Regulation will continue to consider requests for exemptive relief from, and interpretive advice under, Rule 10b–6 in connection with transactions that would be exempted from Rule 10b–6 under the proposed amendments.

The Commission has considered carefully the issues raised in connection with prior versions of proposed Rule 13e–2 that have been published for comment and in connection with the regulation of certain issuer repurchases under Rule 10b–6 under the Act.[6] Since the Commission already has devoted considerable attention to regulating such purchases, and since the regulatory approach reflected in the proposed rule remains largely consistent with the one taken in earlier proposed versions of the rule, the Commission expects to be able to conclude this rulemaking proceeding expeditiously after it has considered the comments received in response to this amended proposal.

In order to facilitate public comment, this release contains (i) a discussion of the administrative background of proposed Rule 13e–2; (ii) a description of the current regulation of purchases of an issuer's securities by the issuer or an affiliate; (iii) a summary of the background and purpose of Section 13(e); (iv) an overview of the coverage of proposed Rule 13e–2; (v) a section-by-section analysis of proposed Rule 13e–2; and (vi) a description of the proposed amendments to Rule 10b–6. In addition, the Commission solicits comments on the proposed rules generally and on certain specific issues.

I. Administrative Background

Purchases by an issuer of its own securities have been the subject of three previous public rule proposals. The first was a Commission draft of a proposed Rule 10b–10 published in 1967 by the United States Senate in connection with hearings on proposed legislation that became the Williams Act Amendments of 1968.[7] The Commission subsequently published for comment a revised proposal denominated Rule 13e–2 in 1970 (the "1970 Proposal")[8] and another in 1973 (the "1973 Proposal").[9] Those regulatory initiatives were directed at preventing abuses often associated with corporate repurchases, including

1. During mergers and acquisitions, purchasers designed to support or raise the market price of the issuer's securities for the purpose of making exchange ratios appear more favorable to target company security holders;[10]

2. After mergers and acquisitions, purchasers designed to support or raise the market price of the issuer's securities for the purpose of reducing the number of shares required to be issued pursuant to contingent obligations owed to former shareholders of the target company;[11]

3. Purchases designed to support the price of the issuer's securities in order to assist insides in disposing of their holdings at or above the pegged price; and

4. Purchases designed to support the market price of the issuer's securities in order to maintain the value of securities pledged by insiders as collateral for bank loans.[12]

Draft Rule 10b–10 would have required an issuer to disclose certain information and to comply with specific restrictions in connection with purchases of its own securities. The 1970 and 1973 Proposals would not have imposed any independent disclosure obligations on issuers, but would have imposed substantive restrictions, similar to those contained in draft Rule 10b–10, on the time, manner, volume, and price of issuer repurchases. In its regulatory approach, Rule 13e–2 as proposed in this release is substantially consistent with these earlier proposals.

II. Current Indirect Regulation of Issuer Repurchases

The Commission has regulated indirectly certain issuer repurchases under Rule 10b–6. That rule prohibits, among other things, an issuer or any of its affiliates from bidding for a security or purchasing it outside a distribution if the security is the subject of a distribution that is conducted by, or is attributable to, the issuer.

A class of securities may be the subject of a distribution for purposes of Rule 10b–6 in a number of circumstances that do not involve an underwritten public offering. For example, for purposes of Rule 10b–6, a distribution is deemed to exist with respect to a class of securities if the issuer has outstanding securities immediately exchangeable or exercisable for, or convertible into, that class. Also, regardless of whether an underwriter is involved, a distribution may be deemed to exist if the issuer has registered a substantial amount of securities for resale from time to time by one or more persons whose sales would be attributable to the issuer. In many cases, the Division of Market Regulation, pursuant to delegated authority, has granted exemptions from Rule 10b–6 to permit an issuer, or another person whose purchases would be attributable to the issuer, to make purchases of a security that was the subject of the distribution.[13] Frequently, the exemptions from Rule 106b–6 have been conditioned on compliance with certain conditions similar to those of proposed Rule 13e–2.[14]

The development of exemptive conditions under Rule 10b–6 has provided the Commission and its staff with valuable regulatory oversight of issuer repurchases. The Commission believes, however, that proposed Rule 13e–2, if adopted, would protect more adequately and directly the issuer's shareholders, and the investing public in general, since it would regulate an issuer's purchases of its own stock regardless of whether there existed a distribution of the issuer's securities, for purposes of Rule 10b–6, that was conducted by, or was attributable to, the issuer. In addition, if Rule 13e–2 were adopted, it would substantially reduce the burden associated with filing written requests with the Commission for interpretive or other relief under Rule 10b–6.

III. Background and Purpose of Section 13(e)

The Commission's authority for adopting Rule 13e–2 under the Act would be based, in part, on Section 13(e).[15] That section expressly grants the Commission the authority to adopt rules that define, and prescribe means reasonably designed to prevent, acts and practices that are fraudulent, deceptive, or manipulative in connection with an issuer's purchases of its own securities.[16] Section 13(e) also specifically authorizes the Commission to require an issuer to make appropriate disclosures to its shareholders concerning its repurchases.

Some commentators on the 1970 and 1973 Proposals questioned the Commission's authority to regulate substantively he manner in which issuer repurchases are made. Those commentators suggested, on the basis of the legislative history of Section 13(e), that the Commission's authority under that provision may be limited to promulgating disclosure requirements in connection with an issuer's purchases of its own securities.

The Commission does not believe that its authority under Section 13(e) is so limited. The Commission's authority in Section 13(e)(1) is a broad power that is similar to other rulemaking provisions of the Act under which the Commission has adopted extensive substantive requirements.[17] That authority is not restricted by the additional language in that Section that provides specifically that the Commission's rulemaking authority includes the power to require issuers to make appropriate disclosures concerning their repurchases.[18]

A narrow and constricted reading of the Section 13(e)(1) power would be inconsistent with the congressional purposes underlying the enactment of that section. Purchases by an issuer of its own securities had previously been (and today remain) fully subject to the general anti-fraud and anti-manipulative provisions of the federal securities laws, such as Sections 9(a)(2) and 10(b), and Rule 10b–5 [§ 240.10b–5]. At the same time, the enactment of Section 13(e) as part of the Williams Act Amendments of 1968 indicates that the specific concerns raised by those purchases were sufficient to prompt the Congress to grant the Commission more extensive and specific rulemaking authority, independent of Sections 9(a)(2) and 10(b), to regulate them.

The legislative history of Section 13(e) supports this conclusion. The Congress recognized the complex nature of the issues raised by issuer repurchases. The Senate Committee observed:

> Corporate repurchases of their own securities may serve a number of legitimate purposes. For example, they may result from a desire to reduce outstanding capital stock following the cash sale of operating divisions or subsidiaries, or to have shares available for options, acquisitions, employee or stock purchase plans, and the like, without increasing the total number of shares outstanding. Repurchase programs, however, may also be utilized by management to preserve or strengthen their control by counteracting tender offers or other attempted takeovers, or may be made in order to increase the market price of the company's shares. Whatever the motive behind a repurchase program, if the repurchases are substantial they will have a significant impact on the market.[19]

In view of the special considerations attendant to issuer repurchases, the Congress enacted Section 13(e) to provide the Commission with ample authority to regulate them. The Congress did so with full knowledge that the Commission might well use the authority in Section 13(e) to adopt a rule like the draft Rule 10b–10 it had furnished to the Senate (which, as noted above, is a close antecedent of the subsequent Rule 13e–2 proposals). As the Commission stated to the Congress during the hearings on the Williams Act:

> While the Commission has substantial authority under the antifraud provision[s] of existing legislation, under the rule-making authority provided in the bill, the Commission could adopt more specific rules designed to deal with a variety of problems arising out of corporations' repurchases of their own shares.[20]

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[5] *See* text at subsection IV.C., *infra*.

[6] *See* text at Section II., *infra*.

[7] Pub. L. No. 90–439, 82 Stat. 454 (July 29, 1968). Proposed Rule 10b–10 was reprinted in *Hearings on S.510 before the Subcomm. on Securities of the Senate Comm. on Banking and Currency*, 90th Con., 1st Sess. 214–216 (1967) ("Senate Hearings"). That rule proposal should not be confused with a different (and wholly unrelated) Rule 10b–10 [§ 240.10b–10] that was adopted by the Commission in 1977 to regulate the confirmation of securities transactions.

[8] Securities Exchange Act Release No. 8930 (July 13, 1970), 35 FR 11410 (1970).

[9] Securities Exchange Act Release No. 10539 (December 6, 1973), 38 FR 34341 (1973).

[10] *See Genesco, Inc.*, [1964–66 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶77,354 (May 10, 1966) (excerpt of prospectus). Although formal action was not brought against Genesco, the Commission delayed the effective date of a registered public offering of Genesco common stock until additional disclosures had been made in the prospectus relating to substantial purchases of Genesco stock by certain of Genesco's employee plans and a retirement trust while the company was engaged in various acquisitions. In addition, Genesco agreed to restrict future repurchases in accordance with terms the Commission specified.

[11] *See, e.g., Georgia-Pacific Corporation* [1964–1966 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶91,680 (S.D.N.Y. 1966) (complaint); [1964–1966 Transefer Binder] Fed. Sec. L. Rep. (CCH) ¶91,692 (S.D.N.Y. 1966) (consent judgment). Under the terms of the consent judgment, Georgia-Pacific was required to comply with certain restrictions on purchases of its securities. Those restrictions were similar to the ones imposed upon Genesco, Inc., as discussed at n. 10, *supra*.

[12] *See, e.g.*, Securities Exchange Act Release No. 4657 (December 6, 1963), in which the Commission issued a stop order pursuant to Section 8(d) of the Securities Act of 1933 [15 U.S.C. 77h(d)] suspending the effectiveness of the registration statement of Atlantic Research Corporation upon a finding that the issuer had made extensive and undisclosed open market purchases of its securities through several of its subsidiaries for the purpose, among others, of supporting the market price of the registrant's stock in order to maintain the value of an insider's securities pledged as collateral on certain loans.

[13] Such exemptions are granted under paragraph (f) of Rule 10b–6 in circumstances where it appears that the proposed transactions do not present the potential for manipulative abuse that the Rule is designed to prohibit.

[14] These conditions are set forth in an appendix (denominated Appendix C) that is attached to, and made a part of, the staff's letter granting exemptive relief. Appendix C is reprinted in 2 Fed. Sec. L. Rep. (CCH) ¶22,727; Sec. Reg. & L. Rep. (BNA), No. 465 at F–1 (August 9, 1978).

[15] In addition to Section 13(e), Rule 13e–2 is being proposed under the Act generally and particularly Sections 2, 3, 9(a)(6), 9(b), 10(b), 15(c) and 23(a).

[16] The Commission has adopted three rules under Section 13(e). Rule 13e–1 [§ 240.13e–1] prohibits an issuer from purchasing any of its equity securities after a third party has filed with the Commission a Schedule 14D–1 relating to a tender offer for any of those securities, unless the issuer complies with the filing and disclosure requirements of that Rule. *See* Securities Exchange Act Release Nos. 8370 (July 30, 1968); 8392 (August 30, 1968); and 8556 (March 24, 1969). Rule 13e–3 regulates going private transactions by issuers and their affiliates, and Rule 13e–4 regulates issuer tender and exchange offers. *See* nn. 1–2, *supra*.

[17] *See, e.g.*, Section 15(c)(2) of the Act [15 U.S.C. 78*o*(c)(2)], and the rules thereunder. § 240.15c2–1 *et seq.*

[18] The frist sentence of subsection 13(e)(1), in essence, authorizes the Commisison to adopt rules designed to prevent fraudulent, deceptive, or manipulative acts and practices. This authorization would appear to contemplate regulatory rules that prohibit or restrict certain types of conduct. If the subsection had stopped there, it could habe been argued that it did not authorize rules requiring disclosure, particularly in view of the fact there where the Congress intended to authorize disclosure rules, it often did so explicitly, as in Section 12 and Section 13(a). Consequently, it appears that the second sentence of subsection 13(e)(1) was designed to make it clear that disclosure rules were also authorized, rather than to limit the authorization clearly granted in the first sentence.

[19] S. Rep. No. 550, 90th Cong., 1st Sess. at 5 (1967). *See also Senate Heorings, supro* n. 7, at 37.

[20] *Id.* at 212.

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Section 13(e) explicitly grants the Commission authority to regulate more than an issuer's disclosure responsibilities in connection with purchases of its own securities. It does so by authorizing the Commission to adopt rules in the public interest or for the protection of investors [21] that define, and prescribe means reasonably designed to prevent acts and practices that are fraudulent, deceptive, or manipulative. Pursuant to the specific authority in Section 13(e)(1), and the more general authority in other provisions of the Act, the Commission has defined such acts in paragraph (b) of proposed Rule 13e–2, and has proposed certain other requirements intended to prevent such acts and practices.

Some commentators on the 1973 Proposal suggested that the rule should be drafted as a "safe harbor" from liability under the antifraud and anti-manipulative provisions of the federal securities laws such as Section 10(b) (and Rule 10b–5) and Section 9(a)(2) of the Act. Although these commentators discussed certain policy considerations for structuring the rule as a safe harbor, their suggestion appeared in large measure to be based on questions relating to the Commission's authority to adopt a rule that would prescribe specific requirements, such as the time and price limitations, as means designed to prevent fraudulent, deceptive, or manipulative acts and practices. As discussed above, the Commission believes that Section 13(e) provides the authority to adopt the rule as proposed. Moreover, as a policy matter, the Commission is concerned that the suggested "safe harbor" approach would not sufficiently deter improper issuer conduct. The standards embodied in the proposed rule, particularly the volume limitations, are likely to be the most confining in the cases where they may also be the most needed, *i.e.*, in their application to issuers whose securities are thinly-traded. Particularly in view of the difficulty in many instances of proving whether a manipulation has or has not in fact occurred, the purposes sought to be achieved by the proposed rule would likely not be achieved if the rule were only a safe harbor and the issuer were free to engage in transactions that exceeded the rule's limits.

[21] As discussed in the releases proposing and adopting Rule 13e–3 and the release adopting Rule 13e–4, the Commission believes it would be appropriate for the federal courts to imply a private right of action under Section 13(e). *See* Securities Exchange Act Release Nos. 14185 (November 27, 1977), 41 FR 56099–60100 (1977); 16075 (August 2, 1979), 44 FR 46136 (1979); 16112 (August 16, 1979), 44 FR 49406 (1979). The Commission adheres to this view in connection with proposed Rule 13e–2.

IV. Coverage of Proposed Rule 13e–2

Proposed Rule 13e–2 would apply to any bid or purchase that constituted a "Rule 13e–2 bid" or a "Rule 13e–2 purchase," as defined by the Rule, unless an exception for the particular bid or purchase were available. Paragraph (a)(5) would define a "Rule 13e–2 purchase" as a purchase of common stock or preferred stock of an issuer by or for the issuer or any affiliate or affiliated purchaser [22] of the issuer. Whether a particular bid or purchase (collectively referred to below as a "purchase") was a Rule 13e–2 bid [23] or a Rule 13e–2 purchase would depend on three factors:

(1) Whether the issuer of the security to be purchased was subject to the rule;

(2) Whether the class of securities to be purchased was a common stock or preferred stock subject to the rule; and

(3) Whether the person making the purchase was subject to the rule.

If a bid or a purchase were determined to be a Rule 13e–2 bid or a rule 13e–2 purchase, the remaining inquiry would be whether it fell within one or more of the enumerated exceptions to the rule.

A. Issuers Subjects to the Rule

Proposed Rule 13e–2 would apply to two defined classes of issuers. First, the proposed rule would apply to any "Section 13(e) issuer," which would be defined as any issuer that has a class of equity securities registered pursuant to Section 12 of the Act, or that is a closed-end investment company registered under the Investment Company Act of 1940.[24] Section 13(e) issuers would be subject to all the requirements of the rule.

Second, the proposed rule would apply to any "Section 15(d) issuer," which would be defined as any issuer that is required to file periodic reports pursuant to Section 15(d) of the Act.[25] Those issuers would be subject to the specific disclosure requirements of the proposed rule, but (unlike Section 13(e) issuers) they would not be subject to the antifraud provision in paragraph (b) or to the purchasing limitations in paragraph (e) of the proposed rule.[26] In light of the class of issuers with which the Congress was directly concerned in formulating Section 13(e), the Commission believes it appropriate to impose through Rule 13e–2 more limited requirements on Section 15(d) issuers. Nevertheless, Section 15(d) and other issuers are subject to other anti-manipulative provisions of the federal securities laws, such as Section 10(b) and Rule 10b–5. The Commission believes that issuers that made repurchases in a manner that was inconsistent with the kinds of limitations contained in the rule might incur liability under those provisions. In a manner consistent with other rules under the Act that regulate issuer repurchases, the proposed rule would impose disclosure obligations on Section 15(d) issuers.[27]

B. Securities Covered by the Rule

The second inquiry to determine the applicability of Rule 13e–2 would be whether the securities to be purchased were common or preferred stock of a class subject to the rule. It appears that most issuer repurchase programs are limited to securities of a class that is registered under Section 12 or that subjected the issuer to Section 15(d). For that reason, the Commission does not currently believe that the application of the proposed rule need be extended, in cases where a Section 13(e) issuer has more than one class of common or preferred stock, to purchases of a class of common stock or preferred stock if that class itself is not registered under Section 12 of the Act, or to purchases of common stock or preferred stock of a Section 15(d) issuer if that class (i) has not been the subject of a registration statement declared effective by the Commission under the Securities Act of 1933, or (ii) is held by fewer than 300 persons.

In addition, the Commission solicits comment on whether purchases of preferred stock generally present a potential for manipulative abuse that

[22] The concept of "affiliated purchaser" is discussed below. *See* text at subsection IV.C., *infra*.

[23] Paragraph (a)(6) would define the term "Rule 13e–2 bid" as (i) a bid for securities that, if accepted, or (ii) a limit order to purchase securities that, if executed, would result in a Rule 13e–2 purchase. Limit orders (*i.e.*, in this case orders to purchase a stated amount of the security at a price not exceeding a specified one) would be separately included in view of the rules of certain exchanges that are interpreted so as not to treat as bids purchase orders at prices away from the current price. *See, e.g.*, New York Stock Exchange Rules 70 and 71, 2 New York Stock Exchange Guide (CCH) ¶¶2070, 2071; American Stock Exchange Rule 126(c), (d) and (e), 2 American Stock Exchange Guide (CCH) ¶9276. Limit orders away from the market would be subject to the purchasing restrictions in view of the market impact they may have. That impact derives in part from the effects limit orders have on exchange specialists and other market participants whose own conduct in the markets may be substantially influenced by knowledge of those orders.

[24] Proposed rule 13e–2(a)(3).

[25] Proposed rule 13e–2(a)(4).

[26] The purchasing requirements are discussed below in text at subsection V.C., *infra*.

[27] Rule 13e–3 requires an issuer subject to Section 15(d) that proposes to engage in a going private transaction to comply with the filing, disclosure and dissemination requirements of that Rule. In addition, Rule 13e–4 governs any tender offer by a Section 15(d) issuer for its equity securities.

justifies the restrictions imposed under the proposed rule. The Commission also inquires whether it would be desirable or feasible to apply limitations similar to those contained in the proposed rule to purchases by an issuer of any other of its equity securities such as warrants, rights, and convertible debt securities. Specific comment is requested on whether purchases of listed call options or sales of listed put options by the issuer of the underlying stock should be regulated by limitations analogous to those contained in the proposed rule in view of the possible effects of such transactions on the market price of the underlying security.

C. Persons Subject to the Rule

Once it had been determined that the issuer of the securities to be purchased was subject to the proposed rule, and that the securities being purchased were of a class covered by the rule, the third inquiry would be whether the rule would apply to the person making the purchase. In addition to their application to the issuer itself, various provisions of the rule would apply to affiliates of the issuer, affiliated purchasers of the issuer, and to any broker, dealer, or other person acting for the issuer or affiliated purchaser in making purchases.

The question of whether, and to what extent, purchases by persons other than the issuer should be subject to restrictions similar to those imposed on purchases by the issuer itself is a complex one. Section 13(e)(2) of the Act provides that, for purposes of Section 13(e), a purchase by or for the issuer, or any person controlling, controlled by, or under common control with the issuer, or a purchase subject to control of the issuer or any such person, shall be deemed a purchase by the issuer. Thus, the Act recognizes that purchases of an issuer's securities by affiliates of the issuer, and purchases otherwise controlled by the issuer, may give rise to the same abuses as purchases by the issuer itself. Nevertheless, the Act explicitly gives the Commission authority to promulgate exemptive rules covering situations in which it deems it unnecessary or inappropriate to attribute purchases described in Section 13(e)(2) to the issuer.

By operation of Section 13(e)(2), the 1973 Proposal would have applied to purchases by the persons described in that Section. The Commission specifically inquired, however, whether and to what extent such persons should be covered by the rule, and it received a substantial amount of commentary on this issue. Some commentators suggested that purchases by affiliates should be unconditionally exempted from the proposed rule. Others suggested that it should apply to such purchases only to the extent that affiliates act in concert with, or at the request of, the issuer. A third group of commentators indicated that purchases of insubstantial amounts of securities by affiliates, in terms of either trading volume or units of the security, should be permitted without requiring that such purchases be aggregated with purchases by the issuer.

The Commission believes that it may not be necessary to subject all purchases of an issuer's securities by affiliates of the issuer to the same restrictions as apply to the issuer, particularly where (i) the purchases are truly independent of any purchasing activity or control by the issuer, (ii) the affiliate does not control the issuer by means of his ownership of the issuer's stock, and (iii) the affiliate is a natural person. To the extent that officers, directors, or other natural persons who may be deemed to be in a control relationship with the issuer otherwise than by reason of their ownership of the issuer's securities independently determine to invest in the issuer's securities, a requirement that such persons comply with the time and price limitations applicable to the issuer, together with a requirement that purchases by such persons be aggregated with those by the issuer for purposes of the volume limitations, currently seems unnecessary. Such a requirement might result in a substantial burden on an issuer and its affiliates that would not be outweighed by regulatory benefits to be achieved. in view of that problem the Commission is proposing generally to subject an affiliate [28] of an issuer who is a natural person, and does not control the issuer by virtue of stock ownership, only to the general antifraud provisions of proposed Rule 13e–2(b)(1) unless that affiliate is also an "affiliated purchaser" described below. Of course, affiliates would remain fully subject to other provisions of the federal securities laws such as Rule 10b–5 and Section 16 of the Act in connection with their purchases of the issuer's securities.[29]

The Commission believes, however, that there are several classes of persons whose purchases present the same potential for manipulative abuse as purchases by the issuer. Purchases by such persons should be deemed to be purchases by the issuer and should be regulated co-extensively with issuer purchases. Proposed Rule 13e–2 would reach those purchasers through the definition of the term "affiliated purchaser" in paragraph (a)(2). The term would be defined as (i) a person acting with the issuer for the purpose of acquiring securities of the issuer,[30] (ii) a person who controls the issuer's purchases of such securities, whose purchases are controlled by the issuer, or whose purchases are under common control with those of the issuer,[31] (iii) a person who controls the issuer through stock ownership, or (iv) an affiliate that is not a natural person. All purchases by affiliated purchasers would be required to be aggregated with others made by or for the issuer for purposes of the volume test in paragraph (e)(4) of the proposed rule, and would have to be effected in accordance with the other purchasing requirements contained in paragraph (e).[32]

[28] Paragraph (a)(1) of proposed Rule 13e–2 would define the term "affiliate" to mean a person that directly or indirectly controls, is controlled by, or is under common control with the issuer.

[29] Although the Commission currently believes that the treatment of affiliates is a sensible one, it is prepared to reverse course and subject purchases by affiliates to all the requirements that would apply to purchases by the issuer if persuaded that that result would be preferable. In this connection, the Commission notes that exemptions from Rule 10b–6 have been granted to permit issuers and their affiliates to make purchases of the issuer's securities, and have required that all such purchases be aggregated for purposes of determining the applicable volume limitations. Since experience under Rule 10b–6 may be significant in determining the appropriate parameters of proposed Rule 13e–2, the Commission believes that it would be helpful if commentators on the proposed rule referred to their experience with the aggregation requirement used in the administration of Rule 10b–6.

[30] Purchases by an affiliate that occurred at or about the same time as purchases by the issuer itself or by affiliated purchasers might well raise questions as to whether the affiliate was in fact an affiliated purchaser. In the absence of proof to the contrary, an affiliate might be deemed to be an affiliated purchaser in some circumstances of that kind, particularly if other facts were present that suggested an identity of purpose between the issuer and the affiliate in connection with the purchases, or a common purchasing plan, or consciously parallel purchasing behavior. In addition, if the issuer and another person or other group of persons acted together in acquiring the issuer's securities, the other person or group would be deemed to be acting with the issuer, and, accordingly, would be affiliated purchasers regardless of whether purchases for the account of the issuer itself were made.

[31] The term "affiliated purchaser" would not include a broker, a dealer, or another person acting on behalf of the issuer and for its account. Such persons independently would be subject to certain provisions of the proposed Rule. *See* text at nn. 33–36, *infra*. If the "affiliated purchaser" provisions were adopted, the determination as to whether a particular person was an affiliated purchaser would have to be made by the issuer and other persons involved in the transaction. The Commission's staff would not render interpretations or no-action advice concerning specific factual situations in which persons might be deemed to be affiliated purchasers.

[32] The issuer would be responsible for coordinating its purchases with those of its affiliated purchasers. The Commission expects that

Footnotes continued on next page

The limitations contained in paragraph (e) of the proposed rule relating to the time, price and volume of issuer repurchases also would apply to broker-dealers and to other persons who make Rule 13e–2 bids or effect Rule 13e–2 purchases by or on behalf of Section 13(e) issuers or their affiliated purchasers.[33] Because of their proximity to the marketplace, broker-dealers (and others similarly situated) generally would be in the best position to determine whether bids they made and purchases they effected were done in compliance with the time and price limitations under the rule.[34] For that reason, they would be liable for their own failures to comply with those limitations. If the issuer complied with the single broker limitation of the rule, the broker, dealer, or other person would be in a position also to ensure that purchases on behalf of the issuer did not exceed the volume limitation. The proviso to paragraph (b)(2)(i) states, however, that the issuer (or the affiliated purchaser) would not be liable for the conduct of brokers, dealers, or others acting for it in connection with transactions effected on its behalf solely by reason of that conduct if the issuer or the affiliated purchaser did not know or have reason to know that the broker, dealer, or other person was engaging or would engage in such conduct, and if the issuer had taken reasonable steps to assure that the broker, dealer, or other person would comply with the rule. The proviso in paragraph (b)(2)(ii) would state that a broker, dealer or other person acting for the issuer or affiliated purchaser would not be liable for the conduct of the issuer or affiliated purchaser if it did not know or have reason to know that the issuer or affiliated purchaser would engage in such conduct.

Brokers, dealers and others acting on behalf of the issuer or an affiliated purchaser would not be subject to direct liability for a failure by the issuer or an affiliated purchaser to comply with the single broker provision. The single broker requirement is designed to prevent issuers from exerting unusual and manipulative buying pressure on the market. For example, it would prevent an issuer from giving orders to several brokers for the purpose of creating a false impression of widespread demand for its stock. Where, however, the issuer engages a single coordinating broker-dealer to make its repurchases, it does not seem necessary or appropriate to prevent that broker-dealer from making appropriate and customary arrangements with other broker-dealers, including exchange specialists and "two-dollar" brokers on exchange floors, to execute repurchase transactions. The coordinating broker-dealer would remain subject to the antifraud provisions of the Act and paragraph (b) (1) of the rule in connection with all such transactions and arrangements.[35] The broker-dealer could be liable as an aider or abettor in cases where it knew or had reason to know that the issuer or affiliated purchaser was violating the single broker-dealer limitation.

In order to put broker-dealers in a better position to comply with the proposed rule, paragraph (d)(3) of the proposal would provide that a Section 13(e) issuer or affiliated purchaser that directed a broker-dealer to make purchases for its account would have to disclose to the broker-dealer that such purchases had to be made in compliance with the rule, and would be responsible for disclosing to the broker-dealer all facts necessary to enable it to comply with the rule. If the broker-dealer used another person (*e.g.*, a "two-dollar" broker) to make the purchases, it would have to disclose to that person that the purchases had to be made in compliance with the rule.

The fact, however, that an issuer had made the required disclosure to a broker-dealer concerning the application of the rule would not by itself insulate the issuer from liability if the broker-dealer did not make purchases in compliance with it. As reports concerning such purchases usually are furnished to the issuer by the broker-dealer effecting the repurchase program, the Commission expects that the issuer would examine such reports promptly and with due care, and that it would take appropriate measures to prevent any continuing or future violations of the rule.

The Commission solicits comment on whether the proposed requirement that issuers and affiliated purchasers disclose to a broker-dealer or other person acting on their behalf that purchases must be made in compliance with Rule 13e-2 would adequately facilitate compliance with the rule by such person, or whether further or different provisions should be adopted.

D. Exceptions

The final inquiry to determine the applicability of Rule 13e-2 would be whether the transaction was exempt under paragraph (f) of the rule. Paragraph (f) of the proposed rule would except certain bids for and purchases of an issuer's securities that either are regulated sufficiently under existing rules, or generally do not present the potential for the kind of abuse the proposed rule would be designed to prohibit.[36] In addition, paragraph (g) would authorize the Commission to exempt certain transactions upon written request or upon its own motion.

V. Section-by-Section Analysis of Proposed Rule 13e–2

A. Definitions

Paragraph (a) would define certain terms used in the proposed rule. The terms defined in paragraphs (a) (9) through (12) would reflect implementation of the consolidated transaction reporting system ("consolidated system") contemplated by Rule 11Aa3–1 [§ 240.11Aa3–1] under the Act for reporting last sale data and the consolidated quotation system contemplated by Rule 11Ac1–1 [§ 240.11Ac1–1] under the Act for reporting quotation information.

The proposed rule would define "reported," "exchange traded" and "NASDAQ" securities in paragraphs (a) (10), (a) (11), and (a)(12), respectively. A reported security would be defined as any security as to which last sale information is reported in the consolidated system. An exchange traded security would be defined as any security, other than a reported security, that is listed, or is admitted to unlisted trading privileges, on a national securities exchange. A NASDAQ security would be defined as any security, except a reported security, as to which quotation information is reported in NASDAQ.

The daily volume limitation on Rule 13e-2 purchases would be a percentage of trading volume. Paragraph (a) (13) would define "trading volume" as a daily average based upon the total daily volume in all markets that made volume data available in the four calendar weeks preceding the week in which the Rule 13e-2 purchase was to be effected. Trading volume would exclude any Rule 13e-2 purchases by or for the issuer or any affiliated purchaser. That exclusion would be designed to assure that the trading volume figures used to calculate the permissible volume of issuer purchases reflected only transactions independent of the issuer.

The Commission is proposing two alternative definitions of the term "block" in paragraphs (a)(16A) and (a)(16B) of the proposed rule. That term is significant since the volume restrictions of the proposed rule would not prohibit the purchase of blocks.[37] A block would be defined in paragraph (a)(16A) on a sliding scale as any number of shares of a security with an aggregate purchase price equal to at least a specified minimum dollar amount that would vary according to the purchase price per share. This definition was contained in the 1973 proposal. Substantially all of the commentators supported the definition based on a sliding scale. The Commission, however, also is proposing as a possible substitute for the sliding scale a simpler formulation of the term "block." Paragraph (a)(16B) would define that term to mean a number of shares of a security that had an aggregate purchase price of not less than $50,000 and, if the aggregate purchase price was less than $200,000, a number of shares that was not less than $5,000. The Commission believes this second alternative may be preferable not only since it is simpler than the sliding scale but also since it eliminates the somewhat arbitrary distinctions drawn under the sliding scale near the "breakpoints."[38] In any event, the Commission solicits comment on which of the two definitions would be more appropriate.

Paragraphs (a)(16)(A) and (B) each contain a separate (and alternative) definition of the term "block" that would be designed to enable issuers to engage in exempted block transactions, even though the securities were not heavily traded, or consisted of a relatively small number of shares outstanding. Under this definition, at least twenty round lots of a security, if that quantity was equal to at least 150 percent of the trading volume in that security, would constitute a block under either paragraph (a)(16A)(ii) or paragraph (a)(16B)(iii). If trading volume data for the security were not available, twenty round lots would constitute a block if that amount equaled at least one-tenth of one percent of the outstanding shares of such security, exclusive of any shares owned by any affiliate.

Under any of the definitions of the term, however, a block would not include any amount that a broker-dealer assembled or accumulated for the purpose of sale or resale to the issuer or an affiliated purchaser,[39] or any amount that a broker or dealer sold short to the issuer or affiliated purchaser if the issuer or affiliated purchaser knew or had reason to know that the short sale was made.[40]

The proposed definitions of the term "block" also would require that the issuer or affiliated purchaser exclude any shares of stock that it acquired upon its exercise of a listed call option. The Commission is concerned that exercises of calls by the issuer or affiliated purchaser may result in substantial purchasing activity by the call writers who are assigned exercise notices. For that reason, the Commission does not believe that stock acquired by the issuer or affiliated purchaser upon exercise of calls should be included in the block determination.[41]

B. Disclosure

The 1973 proposal did not contain any express disclosure requirements. The Commission solicited comment, however, on whether an issuer should be required to disclose specified information with respect to its repurchases and, if so, the manner and timing of such disclosure. Certain commentators suggested that, in light of an issuer's disclosure responsibilities under other provisions of the Federal securities laws, additional disclosure requirements in an issuer repurchase rule would be unnecessary. Other commentators suggested that a disclosure requirement in the proposed rule would be appropriate.

The Commission is proposing for comment the disclosure provisions contained in paragraph (d) of the rule. Those requirements would be intended to cover Rule 13e–2 purchases under a repurchase program that sought the acquisition of more than two percent of the outstanding class of securities during any twelve-month period, regardless of whether the program was undertaken pursuant to formal authorization by a corporation's board of directors.[42] Before engaging in any Rule 13e–2 purchase that was part of such a program, the issuer or affiliated purchaser would have to disclose the information required by paragraph (d)(1)(i)–(iv) in a manner reasonably calculated to inform investors.[43] Paragraph (d) would require disclosure of (i) the time period during which Rule 13e–2 purchases would be effected; (ii) the maximum number of shares that would be purchased or the maximum amount of funds that would be

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issuers would take whatever steps were reasonably necessary to inform affiliated purchasers of their responsibilities under the rule.

[33] Proposed Rule 13e–2(b)(2)(ii).

[34] For example, paragraph (a)(16) would exclude from the definition of "block" (which is used in conjunction with special provisions that apply to blocks) any quantity of a security that a broker-dealer had assembled or accumulated for the purpose of resale to the issuer or an affiliated purchaser. Thus, in a given transaction, the broker-dealer might be the only person practically capable of knowing whether the securities would qualify as a block under the proposed rule.

[35] In making such arrangements, the broker-dealer would have to ensure that it did not organize or facilitate a manipulative or deceptive purchasing program. For example, the use of more brokers or other intermediaries than would be customary for transactions or programs of like character that did not involve an issuer repurchase might well subject the coordinating broker-dealer to liability if a manipulation was being attempted. *See also* text at n. 48, *infra*.

[36] *See* text at subsection V.F., *infra*.

[37] *See* text at subsection V.C.4, *infra*.

[38] For example, under the sliding scale a "block" might consist of only 3,948 shares of a $19 stock but would have to be at least 6,250 shares of a $20 stock.

[39] As a result, a repurchase would not qualify for the block exception to the extent that the broker-dealer had assembled or accumulated any portion of the block with the intention of selling to the issuer or to an affiliated purchaser the shares so assembled or accumulated. The Commission believes that the exception of blocks from the volume limitations should not apply in view of the likely market impact of the assembly or accumulation. In a case where a broker-dealer sold to the issuer or to an affiliated purchaser a block that contained shares so assembled or accumulated, the transaction would not qualify for the block exception unless the remaining shares would independently be large enough to meet the definition of the term "block." While the remaining portion, if it independently was a "block," would be exempt from the volume limitations, the part that was assembled or accumulated would not and would count against the issuer's permissible volume.

[40] This proviso to the definition of the term "block" would incorporate in the rule the position expressed by the Commission in the 1973 Proposal. *See* 1973 Proposal, 38 FR at 34345, nn. 9–10.

[41] Shares of stock acquired upon exercise of a call option would be included for purposes of the volume limitations. *See* text at n. 68, *infra*.

[42] Although the Commission believes that the disclosure obligations of paragraph (d) generally would arise upon formal action by a corporation's board of directors, there may be other instances where an issuer or affiliated purchaser would seek the acquisition of greater than two percent of the issuer's outstanding securities. Paragraph (d) would apply in any of those circumstances.

The Commission is aware that certain issuer repurchase programs might constitute tender offers under the definition proposed in November 1979. Proposed Rule 14d–1 would define the term to include one or more offers to purchase more than 5 percent of a class of securities during any 45-day period that are directed to more than ten persons. *See* Securities Act Release No. 6159 (November 29, 1979), 44 FR 70326 (1979). Pending adoption of any definition, however, the question whether a purchase program constitutes a tender offer must be evaluated on the basis of existing standards. *See, e.g., Securities and Exchange Comm'n v. Sun Co.*, reported sub nom., *Wellman v. Dickinson* [Current] Fed. Sec. L. Rep. (CCH) ¶96,918 (S.D.N.Y. 1979); *Cottlemen' Investment Co. v. Fears*, 343 F. Supp. 1248 (W.D. Okla. 1972).

[43] Although the proposed rule does not specify the time at which, or the manner in which, disclosure must be made before commencing Rule 13e–2 purchases, the requirement that disclosure be made "in a manner reasonably calculated to inform investors" would be intended to govern both the timeliness of disclosure and the method used. Depending on the particular facts and circumstances, disclosure in a press release shortly before the date of commencement of Rule 13e–2 purchases probably would satisfy this requirement. If any of the information required to be disclosed by the proposed rule was not known at the time disclosure was made, a statement to that effect would have to be included, and the information would have to be disclosed as soon as it became known.

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expended; [44] (iii) the purpose or purposes to be achieved through acquisition of the shares; and (iv) any plan or proposal that related to, or would result in, the disposition of the shares. Paragraph (d)(2) also would require prior disclosure of such information to each national securities exchange where the security to be purchased was registered and listed for trading, or admitted to unlisted trading privileges, and to the NASD if the security was authorized for quotation in NASDAQ.[45]

An issuer's plan to engage in a repurchase program, regardless of the percentage of outstanding securities sought to be purchased, may involve the expenditure of a material amount of assets, or may otherwise involve an event of material importance to security holders. Under these circumstances, disclosure obligations independent of those under Rule 13e–2(d) arise. Paragraph (d), however, would be intended to assure that certain information concerning the repurchase program, whether or not material to the issuer itself under a particular set of circumstances, was disclosed publicly. That disclosure requirement is intended to insure that not only the parties to the issuer's transactions but also the marketplace in general would be on notice that an issuer or affiliated purchaser might account for a substantial percentage of purchasing activity in the subject securities. The specific disclosure requirements proposed would not be intended to affect existing obligations of an issuer or any person subject to the proposed rule under Rule 10b–5 and other antifraud provisions of the federal securities laws in the context of transactions by such person in securities of the issuer.

The Commission recognizes that there may be circumstances in which it would be impracticable for an issuer to make the disclosure required by paragraph (d) before effecting a purchase. For example, the issuer may receive an unsolicited offer to sell a block of its securities that equals more than two percent of that class of securities, and may be required to consider the offer within a short period of time. The Commission solicits comments on whether the rule should require disclosure of such a purchase as soon as practicable after it is consummated, or should entirely except from the disclosure requirements of paragraph (d) Rule 13e–2 purchases where it would be impracticable to make prior disclosure.

C. Purchasing Requirements

1. Single Broker-Dealer Limitation. Proposed Rule 13e–2(e)(1) would provide that all Rule 13e–2 purchases not specifically excepted from the requirements of that paragraph would have to be made exclusively from or through one broker on any given day. If no broker was used on that day, purchases could be made from one dealer. The issuer and any affiliated purchaser would have to use the same broker-dealer on any single day in effecting Rule 13e–2 purchases. As noted above, the single broker-dealer limitation would be designed to prevent the manipulative technique of creating the appearance of widespread interest and trading activity in the security through the use of several broker-dealers to acquire the issuer's securities.[46]

The rule would except all unsolicited Rule 13e–2 purchases from the single broker-dealer limitation regardless of whether other Rule 13e–2 purchases were solicited by or for the issuer or an affiliated purchaser on the same day.[47] This exception is a liberalization of the 1973 Proposal, which would have imposed the limitation on all purchases except block purchases, effected either on or off an exchange, that were not solicited by or for the issuer. In view of the abuse the single broker-dealer limitation would be designed to prevent, the Commission does not believe that the size of the purchase should determine the applicability of the limitation.

In addition, the proposed rule has been revised to delete the requirement contained in the 1973 Proposal that bids and purchases, otherwise than in privately negotiated transactions, be made by the issuer "under the supervision and control" of only one broker-dealer. Some commentators expressed concern that a "control" requirement would preclude the use a subagent, such as a "two-dollar" broker, to execute a purchase order on the floor of an exchange. Proposed Rule 13e–2 would permit the single broker-dealer to use such subagents under appropriate circumstances. The "supervision" requirement has been deleted in order to preclude any interpretation of the single broker-dealer limitation that would have permitted a single, supervising broker to engage several different brokers sumultaneously to bid for the issuer's securities in the same market or through the same quotation medium.[48]

2. Time Restrictions

The 1973 Proposal would have restricted the times during which Rule 13e–2 purchases in less than block size could be made by or for the issuer on a national securities exchange or through NASDAQ. The time restrictions would have applied on a market-by-market basis. The 1973 Proposal would have proscribed such purchases on an exchange before the entry of an independent opening transaction on the exchange or within one-half hour of the close of trading on the exchange, or in NASDAQ until after an independent bid had been entered or within one-half hour of the termination of Level 1 service.[49] The prohibition on opening bids and purchases by or for the issuer was designed to prevent such transactions from setting the character of the day's trading. The prohibition on bids and purchases near the close of trading was designed to prevent the issuer from creating or sustaining a high bid or transaction price at or near the close.[50]

As revised, the time restrictions contained in proposed Rule 13e–2(e)(2) would apply to all Rule 13e–2 purchases, including block purchases, except those that were not effected from or through a broker or dealer. Unlike the 1973 Proposal, the rule as now proposed would not restrict the times at which a dealer acting for the issuer or for an affiliated purchaser could effect Rule 13e–2 purchases in NASDAQ securities if an independent bid currently was reported in Level 2 [51] of NASDAQ.

In light of the implementation of the consolidated system, time restrictions would apply to Rule 13e–2 purchases in reported securities on a uniform basis. Accordingly, a Rule 13e–2 purchase in a reported security on a national securities exchange or in the over-the-counter market would be prohibited if the purchase would constitute all or part of the opening transaction reported in the consolidated system. Once an independent opening transaction had been reported (regardless of the market in which the transaction occurred), Rule 13e–2 purchases could be made by or for the issuer or affiliated purchaser, the proposed rule would prohibit Rule 13e–2 purchases of reported securities during the period commencing one-half hour before the close of trading in the principal market for the security,[52] and ending with the termination of the period in which last sale prices are reported in the consolidated system. The latter period would be the same for all United States markets in which a particular security was traded.[53]

The periods during which the proposed rule would prohibit Rule 13–2 bids for and purchases of exchange traded securities [54] would continue to be determined on a market-by-market basis. A Rule 13e–2 bid on a national securities exchange would be prohibited if it would constitute the opening bid for the security on that exchange. Rule 13e–2 bids and purchases also would be prohibited during the one-half hour before the scheduled close of trading on that exchange.

The absence of an independent opening transaction on a given trading day would preclude any bids or purchases by or for an issuer or an affiliated purchaser from being effected on that day, with the exception of bids and purchases that were not effected from or through a broker or dealer. Certain commentators suggested, and the Commission recognizes, that the operation of this requirement, together with the volume limitation, might prevent issuers of thinly-traded securities from acquiring those securities on a regular basis or in substantial amounts. Nevertheless, the Commission believes that the proposed requirement of an independent opening transaction is appropriate since the potential for issuer domination of such a market—even in the absence of deliberate manipulative abuse—may be greater in the context of trading in such securities.[55]

3. Price Limitations

The maximum price at which an issuer could purchase its securities under the 1973 Proposal would have been based on the prevailing price in the principal market for the security. If the principal market for the security was an exchange, the maximum permissible price for purchases in less than block size from or through a broker-dealer and in privately negotiated purchases, regardless of size, would have been the higher of the last sale price or the highest independent bid on that exchange. If the principal market was otherwise than on an exchange, the price limitation would have been the mean between the highest current independent bid and lowest independent ask quotations for the security.

Purchases of a block by the issuer from or through a broker-dealer would have been subject to more restrictive price limitations under the 1973 Proposal. If the principal market for a security was an exchange, the price limitation for a block of the security would have been limited to the lower of the last sale price or the highest independent bid on such exchange. The price limit on purchases of a block of a security for which the principal market was not an exchange would have been the highest current independent bid.

In light of the development of the consolidated system, the Commission has deleted the principal market standard for determining price limits on purchases of reported securities. In addition, the price limits for Rule 13e–2 purchases, whether or not of block size, would be the same.[56] Thus, the price limit for purchases of reported securities

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[44] The proposed rule would not require that the issuer or affiliated purchaser disclose both the maximum number of shares and the maximum amount of funds. If both items were material, however, the antifraud provisions of the Federal securities laws would require that they be disclosed to the purchasers. *See Securities and Exchange Comm'n v. Texas Gulf Sulphur Co.*, 401 F.2d 833 (2d Cir. 1968), *cert. denied*, 404 U.S. 1005 (1971).

[45] Generally, telephonic notice to the exchanges and to the NASD would satisfy this requirement. The Commission understands that the exchanges generally require, and the NASD suggests, that an issuer notify the exchange or the NASD of material impending developments which may affect market activity in the issuer's securities prior to the public announcement of such developments. *See, e.g.*, NYSE Company Manual, Section A2, Part II, at A–23; American Stock Exchange Company Guide, Part 4, § 402, NASD Notice No. 1–79 (February 2, 1979).

[46] *See United States v. Stein*, 456 F.2d 844 (2d Cir.), *cert. denied*, 408 U.S. 922 (1972); *United States v. Dardi*, 330 F.2d 316 (2d Cir. 1964), *cert. denied*, 379 U.S. 845, and 869 (1965); *Charles C. Wright*, 3 SEC 190 (1938), *rev'd on other grounds sub nom. Wright v. Securities and Exchange Comm'n*, 112 F.2d 89 (2d Cir. 1940); *R. J. Koeppe & Co. v. Securities and Exchange Comm'n*, 95 F.2d 550 (7th Cir. 1938); *Securities and Exchange Comm'n v. Georgia Pacific Corp., supra*, n. 11; *Allessandrini & Co.*, Securities Exchange Act Release No. 10466 (October 31, 1973); and *Cohen Goven Equities Inc.*, Securities Exchange Act Release No. 10252 (June 28, 1973).

[47] Some commentators on the 1973 Proposal expressed the fear that, in circumstances where the issuer was obligated (by the disclosure provisions of the proposed rule or otherwise) to disclose its intent to engage in Rule 13e–2 purchases, the issuer might be deemed to have solicited all indications of interest it thereafter received. Nevertheless, disclosure of the information contained in paragraph (d)(1), or a general public announcement by an issuer of a repurchase program, would not necessarily cause all subsequent Rule 13e–2 purchases to be deemed to be solicited.

[48] Exchange rules such as NYSE Rule 122 and Amex Rule 157 independently preclude members, member organizations and allied members from maintaining with more than one broker, for execution on the exchange, market orders or orders at the same price for the purchase or sale of the same security, if such person knows that such orders are for the account of the same principal.

In order to permit a broker-dealer or other person that acted on behalf of the issuer or affiliated purchaser to accumulate the issuer's securities, paragraph (b)(2)(ii) would provide that the broker-dealer or other person would not be subject to the single broker-dealer limitation. That provision is designed to allow the broker-dealer to make appropriate and customary arrangements with executing brokers, such as "two-dollar" brokers and specialists. It is not intended to permit a broker-dealer to engage several different brokers sumultaneously to bid for the issuer's securities in the same market or through the same quotation medium. Even if the use by a broker-dealer of more than one broker to execute orders on behalf of the issuer would not independently be prohibited by exchange rules, it would be inconsistent with the rule for the broker-dealer to employ more than one floor broker at the same time on the same exchange to make bids or to execute purchases on behalf of the issuer.

[49] *See* n. 51, *infra*.

[50] This trading practice, sometimes called "marking the close," is a variation of the technique known as "painting the tape." It is a potentially manipulative device because opening and closing transaction data receive wide coverage by the media and are disseminated daily to the investing public. Purchases of a reported or exchange traded security at the opening or close of a trading day generally are thought to be significant indicia of the current market value of the security inasmuch as they tend to forecast the direction of trading and to suggest the strength of demand. In Litigation Release No. 7850 (March 30, 1977), the Commission announced the filing of a civil complaint (in response to which the defendant consented to an entry of a permanent injunction) alleging violations of Sections 9(a)(2) and 10(b) of the Act and Rule 10b–5 by Chromalloy American Corporation and certain of its affiliates. The complaint alleged, among other things, that Chromalloy and those affiliates manipulated the price of Chromalloy common stock by repeatedly "upticking" the price of the stock at or near the close of trading on the New York Stock Exchange.

[51] As a result of the recent adoption of Rule 11Acl–2 under the Act [§ 240.11Acl–2], which governs the display of transaction reports, last sale data and quotation information, Level 1 service of NASDAQ now displays the best bid and offer made available by NASDAQ market makers rather than a "representative" bid and offer. It is the level generally used by registered representatives in retail trading. Level 2 displays the best bid and offer as well as a montage of the current quotations of individual NASDAQ market makers for a given security. Level 3 is the only level that accepts user input, allowing a market maker to enter, update, or remove its price quotations.

[52] The principal market for a security would be the market that reported the greatest volume of trading in the security.

[53] The purchasing restrictions of the rule would not apply to Rule 13e–2 purchases effected in foreign markets.

[54] As noted above, the term "exchange traded" securities, as used in the proposed rule, refers to those securities traded on a national securities exchange for which last sale data are not reported on the consolidated tape.

[55] One commentator recommended that the execution by a specialist of limit orders placed by the issuer should be excepted from the time restrictions since an issuer or other person subject to the rule might inadvertently violate it if a limit order entered within a permissible time period was executed later as an opening transaction or within the prohibited period near the close of trading. The Commission believes, however, that such an exception would be inconsistent with the purposes of the time restrictions of the proposed rule. *See* text at n. 50, *supra*. Accordingly, any limit order by or for the issuer or an affiliated purchaser for a reported security or an exchange traded security could be entered only after an independent opening transaction was reported in the consolidated system or on a particular exchange, respectively, and the order would be required to be canceled if it had not been executed before one-half hour preceding the close of trading.

[56] The rationale for the stricter price limit on block purchases in the 1973 Proposal primarily was based on the assumption that most blocks trade at a discount. *See* 4 Institutional Investor Study Report of the Securities and Exchange Commission at 1825, H.R. Doc. No. 92–64, 92d Cong., 1st Sess. (1971). While this assumption currently may be valid, the Commission does not believe that the purchase of a block presents any additional potential for manipulative abuse that would necessitate a more restrictive price limitation than purchases of less than block size.

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would be the higher of the last sale price or highest independent published bid, regardless of the market reporting that figure.[57] The price limit applicable to purchases of exchange traded securities in transactions on an exchange would be the higher of the highest current independent bid quotation or the last sale price on such exchange.[58]

The 1973 Proposal would have limited the price at which purchases of securities for which the principal market was otherwise than on an exchange to a price no higher than the mean between the highest independent bid and the lowest independent offer, and no purchase of those securities could be made at a price above such mean price "plus a customary or negotiated commission." In view of the difficulty an issuer might encounter in determining the amount of any commission equivalent, mark-up, or differential paid to a dealer in the over-the-counter market,[59] the price limitations applicable to purchases of those securities have been revised to incorporate a pricing standard based on the net price (*i.e.*, a price that would include all dealer mark-ups and other transaction costs charged to the customer).[60] Purchases of a NASDAQ security otherwise than on an exchange could be made at a net price no higher than the lowest current independent offer quotation reported in Level 2 of NASDAQ.[61] The price limit for purchases of securities that are not reported or NASDAQ securities otherwise than on an exchange would be the lowest current independent offer quotation ascertained on the basis of reasonable inquiry.[62] The purchase price under proposed Rule 13e–2(e)(3)(iii)–(iv) would include any commission equivalent, mark-up, or differential paid to a dealer.[63]

Commentators on the 1973 Proposal generally did not address the proposed price restrictions on purchases of securities in the over-the-counter market. Accordingly, the Commission specifically solicits comment on whether the proposed price restrictions, contained in paragraphs (e)(iii)–(iv) of the rule, on purchases of NASDAQ and other securities traded over-the-counter would be appropriate, or whether limitations similar to those contained in the 1973 Proposal would be preferable.

The 1973 Proposal would have imposed the price limitations on purchases that were solicited by the issuer even if they were not effected from or through a broker or a dealer. Although there might be some impact on the market for an issuer's stock if the issuer extensively solicited those purchases, the Commission does not believe that the potential for manipulative abuse in the context of such transactions is sufficient to warrant imposition of the price limitations particularly since applying the price limitations in that fashion might prevent an issuer from buying out a shareholder at a premium over market price in a privately negotiated transaction that had little if any destructive market impact. Accordingly, the price restrictions would not apply to Rule 13e–2 purchases that were not from or through a broker or a dealer, regardless of whether a solicitation was involved.[64]

4. Volume Limitations

The volume limits of the proposed rule would be designed to prevent an issuer or affiliated purchaser from dominating the market for the issuer's securities through substantial purchasing activity. Notwithstanding the other requirements of the rule that would prevent the issuer or affiliated purchaser from leading the market for the securities by establishing new high bids or from creating the appearance of widespread interest through the use of many brokers, the Commission believes that domination of the market in terms of the amount of securities purchased may mislead investors and deprive the public of a pricing mechanism free of issuer control. In addition, issuer domination of the market can be manipulative even in the absence of price leadership. As one commentator has noted:

> Moreover, the price of a security may be raised without raising the bid. Following the market too closely on a raise with either purchases or bids may be just as instrumental in creating a price rise. The obvious effect of promptly putting a new floor under the market each time it goes up as a result of an independent purchase or bid is to exhaust the supply of securities which may be offered at lower levels and thus to force others to raise their bids.[65]

As a means designed to prevent this form of manipulative abuse, paragraph (e)(4) of the proposed rule would restrict the aggregate amount of securities that could be purchased on any day by the issuer or affiliated purchaser to a percentage of the total trading volume, as that term would be defined by the rule.

The 1973 Proposal would have used a principal market standard to determine the permissible volume of an issuer's repurchases. If the principal market for a security was an exchange, the 1973 Proposal would have limited the daily volume of the issuer's purchases on any exchange to fifteen percent of the average daily trading volume on such exchange during the preceding four calendar weeks. The volume limitations would have applied separately to purchases in each market in which the security was traded, provided that volume data in each market were made available by the appropriate self-regulatory organization. If the principal market for a security was otherwise than on a national securities exchange, the 1973 Proposal would have limited the daily volume of issuer repurchases to fifteen percent of the average daily trading volume reported in NASDAQ in the four preceding calendar weeks, or, if the security was not quoted in NASDAQ, to 0.04 percent of the outstanding securities of the class per week. Any issuer would have been permitted to purchase at least one round lot per day. Block and privately negotiated purchases would not have been subject to any volume limitations.

The volume limitations of proposed Rule 13e–2 have been revised substantially in response to comments received on the 1973 Proposal and the implementation of the consolidated transaction reporting system. Proposed Rule 13e–2(a)(13) would define average daily trading volume ("trading volume") for reported securities, exchange traded securities and NASDAQ securities that are not exchange traded securities. In all instances, trading volume would be an average based upon the total daily volume, exclusive of Rule 13e–2 purchases, reported by all markets that made volume data available in the four weeks preceding the week in which the Rule 13e–2 purchases were to be effected. The daily volume limitation for all securities for which volume data were reported is set forth in paragraph (e)(4). That limitation would be the higher of one round lot or that number of round lots closest to fifteen percent of defined trading volume.[66] The volume limitation for other securities would be the higher of one round lot per day or, in any consecutive seven-day period, 0.05 percent of the shares of the class of securities. Block purchases and purchases that were not made from or through a broker or dealer would not be subject to the volume limitations.[67] As a general matter, the Commission believes that the market impact of a block purchase is likely to be less than that of a series of purchases of smaller amounts that in the aggregate are equal in size to the block but are accomplished over a period of time.

The exercise of listed call options to purchase the issuer's stock by the issuer or an affiliated purchaser may in turn require the persons who are assigned the exercise notices to purchase in the open market. In view of the potential market impact of these purchases, paragraph (e)(4) would require that any shares that the issuer or affiliated purchaser acquired upon its exercise of a listed call option be included in the volume limitations of the proposed rule. For example, if proposed Rule 13e–2 would permit an issuer to purchase 2,000 shares on any day, the issuer could purchase all the shares in the open market, exercise 20 options contracts,[68] or do a combination of those things, so long as the total amount acquired through exercises and market purchases did not exceed 2,000 shares.

D. Purchases on Behalf of Employee and Shareholder Plans

Sections 13(e) of the Act does not address purchases of an issuer's securities by an employee or shareholder plan ("plan") sponsored by the issuer or an affiliate. Rather, Section 13(e)(2) contains a control standard for determining whether purchases by a person other than the issuer shall be deemed to be purchases by the issuer for purposes of any rule promulgated by the Commission under Section 13(e)(1).[69] Proposed Rule 13e–2 would establish criteria for determining whether a purchase by a trustee or other purchasing agent ("agent") for a plan sponsored by an issuer or an affiliate was a purchase subject to the control of, and thereby attributable to, the issuer or an affiliate for purposes of Section 13(e)(2) of the Act.

With certain exceptions, noted below, the provisions of proposed Rule 13e–2 that would apply to purchases on behalf of plans would be substantially similar to those contained in the 1973 Proposal. The definition of a Rule 13e–2 purchase contained in paragraph (a) would exclude any purchase effected by or for an issuer plan [70] if the transaction were effected by an agent independent of the issuer. Paragraph (a)(8) of the proposed rule would define the term "agent independent of the issuer." In order to be independent, the agent for the issuer plan could not be an affiliate of the issuer [71] and would have to be independent of the issuer's control in effecting transactions. The criteria that would be used to satisfy these tests of independence would be designed to insulate the market in the issuer's securities from potentially manipulative influence by the issuer or an affiliate.[72]

The transactional independence test would contain five criteria. Under paragraph (a)(8)(ii), an agent would be independent if neither the issuer nor any affiliate, directly or indirectly, had any control or influence over the time, price, amount, and manner of purchases for the plan, or the selection of the broker-dealer through which purchases would be executed. Each of these factors is discussed below. Generally, however, any restrictions imposed by an issuer or affiliate on purchases by an agent, other than those attributable to the timing of the issuer's prescheduled payments of funds, might well preclude a determination that the agent was independent. The discretion of an issuer to elect to contribute cash or securities to a plan, which by definition must be exercised before any contribution to the plan, would not be deemed to constitute control over the agent, notwithstanding the fact that exercise of such discretion might determine the amount of any market purchases by the agent.

1. Timing of Purchases

In order for the agent to be deemed independent, the agent would have to retain full discretion with respect to the timing of purchases on behalf of a plan. For example, the issuer could not require the agent to make or refrain from making purchases during any particular part of the day, or that the agent commence or complete purchasing for a plan on any specified date or within any specified period of time after receipt of contributions from the issuer.[73]

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[57] Proposed Rule 13e–2(e)(3)(i).

[58] Proposed Rule 13e–2(e)(3)(ii).

[59] Except in the case of "riskless" principal transactions, Rule 10b–10 under the Act [§ 240.10b–10] currently does not require disclosure on the customer confirmation of the amount of remuneration received from the customer by the broker-dealer acting as principal for its own account.

[60] Use of the net price standard would be limited to over-the-counter transactions in securities that are not reported. In the case of over-the-counter transactions in reported securities, the purchase price would be defined to exclude any commission paid to a broker acting as agent, or commission equivalent, mark-up, or differential paid to a dealer. *See* Proposed Rule 13e–2(a)(14)(i). The requirement that such charges be excluded in connection with third market transactions should not, in the Commission's view, present any difficulties of computation since exclusion of such charges is currently required under NASD rules in computing the price at which third market trades are reported for inclusion in the consolidated system.

[61] Proposed Rule 13e—2(e)(3)(iii).

[62] Proposed Rule 13e–2(e)(3)(iv). Whether an inquiry was "reasonable" would depend upon customary practice within the securities industry as well as the circumstances surrounding a particular transaction, such as the number of dealers that submitted quotations for publication by the National Quotation Bureau, Inc. and the frequency with which such dealers submitted quotations.

[63] *See* proposed Rule 13e–2(a)(14), which defines the term "purchase price."

[64] A program of active solicitation, however, may suggest that the issuer is making a tender offer that must be conducted in compliance with applicable rules and regulations (e.g., Rule 13e–4).

[65] 3 Loss, *Securities Regulation* at 1551 (1961). *Cf. Kidder, Peabody & Co.*, 18 SEC 559, 570 (1945); *Holsey, Stuart & Co., Inc.*, 30 SEC 106, 129 (1949) (over-the-counter manipulation).

[66] *See* text at subsection IV.C. *supra*. As published by the Senate in 1967, the Commission's draft Rule 10b–10 would have treated purchases for any employee plan of the issuer, its parent or subsidiaries as purchases by the issuer. The Commission recommended that a comparable provision be included in S. 510. The bill originally passed by the Senate included an amendment that would have regulated all purchases of an issuer's securities by an employee plan of the issuer or an affiliate. In response to industry comment, the House proposed an amendment which subsequently was enacted as Section 13(e)(2) of the Act. That amendment deleted previous references to employee plans and substituted the control standard for determining whether purchases by persons other than the issuer should be deemed to be purchases by the issuer. *See* H.R. Rep. No. 1711, 90th Cong., 2d Sess. 18 (1968).

[67] *But see* n. 64, *supra*.

[68] Generally, one call option contract gives the holder the right to buy 100 shares of the underlying stock.

[69] The term "issuer plan" would be defined in paragraph (a)(7) to mean any bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock option, stock ownership, dividend reinvestment, or similar plan for employees or security holders of the issuer or any affiliate.

[70] Certain commentators suggested incorporating in the rule the position that neither a common directorship between the issuer and the agent, nor the issuer's right to remove the agent, would itself constitute control over the agent. Although the Commission generally adheres to this view, it does not believe that a common directorship or the issuer's right to remove the agent should never be considered to be evidence of control. Since the determination of whether a control relationship exists between the issuer and the agent would be a factual one to be made on a case-by-case basis by the issuer, the Commission has determined not to delineate further indicia of that relationship in the rule.

[71] Where 15% of average daily volume equaled a multiple of round lots plus half or more of an additional round lot, the "closest to" language would permit maximum permissible purchases to be rounded up to the next higher number of round lots.

[72] Even where purchases for a plan are made through an independent agent, the Commission believes that the magnitude of those purchases may have a significant impact on the market price of the issuer's securities. Given the proliferation of diverse plans in recent years, the aggregate amount of purchases of an issuer's securities by or for plans sponsored by the issuer or its affiliates in many instances may exceed the amount of purchases by the issuer and its affiliates. The Commission may consider whether to authorize its Directorate of Economic and Policy Analysis to conduct a voluntary survey to determine the approximate market share represented by purchases by independent agents to fund employee and shareholder plans relative to purchases by or attributable to the issuer. The survey would be designed to produce empirical data from which the Commission may draw inferences regarding the impact that plan purchases have on the market prices for issuers' securities.

[73] Certain timing limitations that were imposed otherwise than by the issuer would not compromise the independence of the agent. For example, the Commission's Division of Investment Management requires that purchases with contributions to dividend reinvestment plans be made within 30 days from the date contributions are received by the agent if the plan is not to be deemed to be an investment company. *See* Letter dated May 6, 1974

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The proviso to paragraph (a)(8)(ii) relating to the frequency of an issuer's contribution to a plan is intended to address an issuer's indirect control over the timing of purchases by an agent. If the issuer were permitted to change the frequency of its contribution more than once in any six-month period, the agent would not be deemed to be independent.

2. Price of Purchases

To satisfy this criterion of independence, the issuer could not control the price at which the agent made purchases for a plan. For example, the issuer could not set a minimum or maximum price per share to be paid for its securities, or require that purchases be made at a price not higher or lower than a particular current market price or closing price of the security.

The Commission understands that some plans contain a provision requiring the agent to purchase the issuer's securities at "fair market value" at the time purchases are made. Such a provision may be imposed by statute,[74] or in the absence of a statutory mandate may be intended to insure that the agent's purchases for the plan are consistent with the interests of the beneficiaries. In either case, the provision would not preclude a determination that the agent was independent.

3. Amount of Purchases

Under this test of independence, the issuer could not direct the agent to make purchases for a plan in specified amounts, or in transactions of a particular size (*e.g.*, block, round lot, or odd lot).[75] In addition, the issuer could not impose any restriction with respect to the volume of purchases made by the agent.

Paragraph (a)(8)(ii) also would provide that an agent would not be deemed to be independent of the issuer if the issuer revised the basis for determining the amount of its contributions to the plan more than once in any six-month period.[76] This provision would be intended to address the indirect control an issuer could exercise over the amount of purchases by an agent if permitted frequently to revise the formula used to determine the amount of its contributions.

4. Manner of Purchases

To satisfy this criterion, the issuer could not retain the discretion to direct the agent to make or refrain from making purchases in a particular market, or to make purchases by means of particular kinds of orders (*e.g.*, limit orders or market orders).

5. Selection of the Broker-Dealer

The 1973 Proposal provided that, in order for the agent to be independent of the issuer, the issuer could not select the broker-dealer through which purchases for a plan could be executed. The Commission was concerned that the issuer's retention of the power to direct brokerage for the plan could tend to undermine the regulatory objectives of insulating the plan from any control or influence of the issuer. This concern would be particularly significant where the agent acted merely as a conduit for funds between the issuer and the executing broker-dealer, even if the broker-dealer was not otherwise in a control relationship with the issuer.

Several commentators on the 1973 Proposal criticized the prohibitions on broker-dealer selection as a criterion of an agent's independence. They expressed concern that it would preclude brokerage firms from acting as both agent and executing broker for the plan as, for example, in the case of monthly investment plans currently operated by such firms on behalf of numerous issuers. In view of that concern, and the possibly anticompetitive consequences of the 1973 Proposal, the Commission has modified the requirement so that a broker-dealer would be permitted to act both as agent and as executing broker.

E. Broker-Dealer Issuers

The 1973 Proposal would have imposed special restrictions on repurchases by issuers that are registered as broker-dealers under Section 15 of the Act. Under that proposal, all such purchases would have had to be made through an agent independent of the issuer and the broker-dealer issuer could not execute purchases made on its behalf by the independent agent.

The Commission has deleted that proposed requirement. A broker-dealer enjoys the ability to gain access to the marketplace on terms that are not generally available to other issuers. Nevertheless, the Commission currently believes that the disclosure obligations and the purchasing restrictions of the rule, as well as the general antifraud provisions and the Commission's administrative jurisdiction over broker-dealers, make it unnecessary to require also that a broker-dealer use an independent agent for its repurchase transaction.

F. Exceptions

Paragraph (f) would contain eleven exceptions to the substantive purchasing restrictions of the proposed rule. The general antifraud provision of the proposed rule, however, would apply to excepted bids and purchases. The exceptions would be intended to cover purchases that either do not appear to present the potential for manipulative abuse the rule would be intended to prohibit, or that already are subject to other regulatory safeguards.

Exception (1) would apply to purchases of any security that are subject to, and made in compliance with, Rule 10b–7 under the Act.[77] New exception (2) would apply to any purchase made in connection with a tender offer by a third party for securities of the issuer if the issuer complied with Rule 13e–1 under the Act before making it. Exceptions (3) and (4) would except purchases pursuant to a tender offer that is subject to, and made in compliance with, Rule 13e–4 under the Act, or with Section 14(d) of the Act and the rules applicable thereto, respectively.

Exception (5) would apply to the call or redemption of any security in accordance with the terms and conditions of its governing instrument or instruments. Exception (6) would except purchases of securities pursuant to a merger, acquisition or similar transaction involving a recapitalization. Exception (7) would apply to purchases of securities of dissenting shareholders who asserted rights of appraisal with respect to their shares.[78]

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from the Division of Investment Management Regulation to Lucky Stores, Inc. *See also* Rule 10b–10(d)(4), which defines the term "periodic plan."

[74] Trustees for plans subject to the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.*, generally are subject to the "fair market value" requirement.

[75] It would be permissable, however, for the issuer to establish at the beginning of a repurchase program an aggregate maximum number of shares to be purchased for the plan.

[76] The 1973 Proposal contained a priviso that would have attributed purchases by an otherwise independent agent to the issuer if the issuer revised the amount of its contributions to the plan more than once every six months. The commentators suggested that this provision was overly restrictive since the issuer would be unable to control fluctuations in the amount of contributions resulting from changes in the number of participating employees or shareholders, amounts of salaries and profits, or dividend rates. Accordingly, the proviso has been modified as described above.

[77] The 1973 Proposal containing an exception for purchases of equity securities by an issuer or affiliate made in compliance with Rule 10b–8 under the Act. [§ 240.10b–8.] In view of the fact that the rule as proposed would not apply to purchase of rights, which are the only securities subject to the purchasing restrictions of Rule 10b–8, that exception has been deleted.

[78] The 1973 Proposal contained a similar exception, but would have required that

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Several commentators of the 1973 Proposal suggested that the proposed rule should except an issuer's purchases of its securities if the purchases were made in order to satisfy sinking fund obligations. Those commentators stated that the exception would be appropriate since it might otherwise be difficult for an issuer subject to the purchasing restrictions to accumulate a sufficient amount of the security to satisfy its obligation, particularly if the security was not actively traded. The Commission understands that most sinking fund obligations arise in connection with debt securities and convertible debentures, which are not covered by the proposed rule. Nevertheless, in view of the concerns raised by the commentators, the Commission is proposing new exception (8), which would cover situations where the issuer was required to make purchases of preferred stock to satisfy sinking fund obligations. The exception would apply only in the context of mandatory sinking fund obligations that must be satisfied not more than one year from the time the purchases are made. The Commission does not believe that the exception should apply to purchases to satisfy sinking fund obligations that are not current or mandatory.

Exceptions (9) and (10) are substantially the same as exceptions proposed in 1973. Exception (9) would apply to purchases of fractional interests in a security, and exception (10) would apply to purchases of securities from employees pursuant to a pre-existing right or obligation.

The 1973 Proposal would have excepted purchases of any security not traded on a national securities exchange for which no dealer market existed. Several commentators suggested that the term "dealer market" should be defined. As revised, exception (11) would apply to purchases of any security not traded on a national securities exchange and with respect to which the issuer thereof did not know or have reason to know that any dealer acts as market maker if neither the purchaser nor any person acting on his behalf has engaged in any solicitation in connection with the transaction.

Finally, paragraph (g) of the proposed rule would authorize the Commission to exempt any Rule 13e–2 purchase from one or more paragraphs of the rule as not comprehended within the intended meaning and purpose of such paragraph or paragraphs.

VI. Proposed Amendments to Rule 10b–6

As discussed earlier in this release,[79] the Commission has taken the position that, for purposes of Rule 10b–6, an issuer is deemed to be engaged in a distribution of a class of securities if it has outstanding a publicly held series of securities that are immediately convertible into, or exchangeable or exercisable for, that class of securities. Exemptions from Rule 10b–6 frequently have been granted to permit an issuer or an affiliate to make purchases of a security which is the subject of such a distribution. The exemptions generally have been conditioned on compliance with certain purchasing restrictions. If Rule 13e–2 were adopted, it would impose substantially similar limitations on all persons subject thereto. Accordingly, it would no longer be necessary to regulate under Rule 10b–6 purchases of a security that was the subject of a so-called "technical distribution."[80] The Commission, therefore, is proposing to amend paragraph (f) of Rule 10b–6 to provide that purchases of equity securities would not be subject to Rule 10b–6 if (i) they were subject to Rule 13e–2, and also subject to Rule 10b–6 solely because the issuer had outstanding securities convertible into, or exchangeable or exercisable for, such securities,[81] and (ii) the purchases were subject to and made in compliance with Rule 13e–2, to the extent the rule was applicable to the person making the purchases.[82]

Proposed paragraph (g) to Rule 10b–6 would codify the staff's position concerning purchases of an issuer's securities by or on behalf of issuer-sponsored plans.[83] Those purchases would be deemed to be purchases by the issuer unless effected by an agent independent of the issuer, as that term is proposed to be defined in Rule 13e–2(a)(8).

VII. Statutory Basis

Proposed Rule 13–e and the amendments to Rule 10b–6 would be promulgated under the Act, 15 U.S.C. 78a *et seq.*, and particularly Sections 2, 3, 9(a)(6), 9(b), 10(b), 13(e), 15(c), and 23(a), 15 U.S.C. 78b, 78c, 78i(a)(6), 78i(b), 78j(b), 78m(e), 78o(c), and 78w(a).

On the basis of the above discussion and analysis, the Commission is proposing to amend Part 240 of Chapter II of Title 17 of the Code of Federal Regulations as follows.

1. By adding 17 CFR § 240.13e–2 as follows:

§ 240.13e–2 Purchases of certain equity securities by the issuer and others.

(a) Definitions. Unless the context otherwise requires, all terms used in this section shall have the same meaning as in the Act. In addition, unless the context otherwise requires, the following definitions shall apply:

(1) The term "affilate" means any person that directly or indirectly controls, is controlled by, or is under common control with, the issued;

(2) The term "affiliated purchaser" means

(i) A person acting with the issuer for the purpose of acquiring the issuer's securities; or

(ii) A person who controls the issuer's purchases of such securities, whose purchases are controlled by the issuer, or whose purchases are under common control with those of the issuer; or

(iii) A person who controls the issuer by means of his ownership of the issuer's securities; or

(iv) Any affiliate that is not a natural person; *Provided, however,* That the term "affiliated purchaser" shall not include a broker, dealer, or other person solely by reason of his making Rule 13e–2 bids or effecting Rule 13e–2 purchases on behalf of the issuer and for its account;

(3) The term "Section 13(e) issuer" means an issuer that has a class of equity securities registered pursuant to section 12 of the Act or that is a closed-end investment company registered under the Investment Company Act of 1940;

(4) The term "Section 15(d) issuer" means an issuer that is required to file periodic reports pursuant to section 15(d) of the Act;

Footnotes continued from last page
shareholders exercise their appraisal rights "in accordance with statutory provisions." Since certain statutes do not provide for, or are unclear on the timing of, appraisal rights, that phrase has been deleted.

[79] *See* text at n. 13, *supra*.

[80] Rule 10b–6 would continue to apply if the issuer were engaged in any other distribution (e.g., an underwritten offering) of the security to be purchased.

[81] Paragraph (f) of Rule 10b–6, was recently added to the rule to except purchases pursuant to tender offers by issuers and affiliates, subject to Rule 13e–4 or Section 14(d) of the Act, where Rule 10b–6 would apply only because of the kind of distribution described above. *See* Securities Act Release No. 6197 (March 13, 1980), 45 FR 18914 (1980).

[82] For example, if a Section 15(d) issuer would be subject to Rule 10b–6 solely because of outstanding securities convertible into its common stock, Rule 10b–6 would not prohibit its purchases of common stock if it complied with the disclosure requirements of paragraph (d). *See* text at nn. 25–27, *supra*.

[83] The Commission recently proposed to amend paragraph (e) of Rule 10b–6 to except from the operation of that rule distributions of securities by an issuer to its employees or shareholders pursuant to a plan, as that term is defined in paragraph (c)(4) of the rule. *See* Securities Act Release No. 6198 (March 13, 1980), 45 FR 18948 (1980). The Commission anticipates that it will take further action on these amendments in the near future.

(5) The term "Rule 13e–2 purchase" means a purchase of common stock or preferred stock of a Section 13(e) issuer, or a Section 15(d) issuer, by or for the issuer or any affilate or affiliated purchaser, but does not include

(i) Any purchase of common stock or preferred stock of a Section 13(e) issuer if the class of such stock is not registered pursuant to section 12 of the Act;

(ii) Any purchase of common stock or preferred stock of a Section 15(d) issuer if the class of such stock has not been the subject of a registration statement that has become effective pursuant to the Securities Act of 1933, or if the class is held of record by fewer than 300 persons; or

(iii) Any purchase of a security effected by or for an issuer plan if the transaction is effected by an agent independent of the issuer;

(6) The term "Rule 13e–2 bid" means

(i) A bid for securities that, if accepted, or

(ii) A limit order to purchase securities that if executed, would result in a Rule 13e–2 purchase;

(7) The term "issuer plan" means any bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock option, stock ownership, divident reinvestment or similar plan for employees or security holders of the issuer or any affiliate;

(8) The term "agent independent of the issuer" means a trustee or other person who is independent of the issuer. The agent shall be deemed to be independent of the issuer only if

(i) The agent is not an affiliate of the issuer; and

(ii) Neither the issuer nor any affiliate has any direct or indirect control or influence over the times when, or the prices at which, the independent agent may purchase the issuer's common stock or preferred stock for the issuer plan, the amounts of the security to be purchased, the manner in which the security is to be purchased, or the selection of a broker or dealer (other than the independent agent itself) through which purchases may be executed; *Provided, however,* That the issuer or affiliate will not be deemed to have such control or influence solely because it has the power to revise not more than once in any six-month period the basis for determining the amount of its contributions to the issuer plan or the basis for determining the frequency of its allocations to the issuer plan;

(9) The term "consolidated system" means the consolidated transaction reporting system contemplated by Rule 11Aa3–1 [§ 240.11Aa3–1];

(10) The term "reported security" means any security as to which last sale information is reported in the consolidated system;

(11) The term "exchange traded security" means any security, except a reported security, that is listed, or admitted to unlisted trading privileges, on a national securities exchange;

(12) The term "NASDAQ security" means any security, except a reported security, as to which bid and offer quotations are reported in the automated quotation system ("NASDAQ") operated by the National Association of Securities Dealers, Inc. ("NASD");

(13) The term "trading volume" means

(i) With respect to a reported security, the average daily trading volume for each security reported in the consolidated system in the four calendar weeks preceding the week in which the Rule 13e–2 purchase is to be effected or the Rule 13e–2 bid is to be made;

(ii) With respect to an exchange traded security, the average of the aggregate daily trading volume, including the daily trading volume reported on all exchanges on which the security is traded and, if such security is also a NASDAQ security, the daily trading volume for such security made available by the NASD, for the four calendar weeks preceding the week in which the Rule 13e–2 purchase is to be effected or the Rule 13e–2 bid is to be made; and

(iii) With respect to a NASDAQ security that is not an exchange traded security, the average daily trading volume for such security made available by the NASD for the four calendar weeks preceding the week in which the Rule 13e–2 purchase is to be effected or the Rule 13e–2 bid is to be made;

Provided, however, that such trading volume under paragraph (a)(13) (i), (ii) and (iii) shall not include any Rule 13e–2 purchases by or for the issuer or any affiliated purchaser, and shall not include any amount of shares acquired pursuant to the exercise by the issuer or affiliated purchaser of listed call options.

(14) The term "purchase price" means the price paid per share

(i) For a reported security, or an exchange traded secuity on a national securities exchange, exclusive of any commission paid to a broker acting as agent, or commission equivalent, mark-up, or differential paid to a dealer;

(ii) For a NASDAQ security, or a security that is not a reported security or a NASDAQ security, otherwise than on a national securities exchange, inclusive of any commission equivalent, mark-up, or differential paid to a dealer;

(15) The term "round lot" means 100 shares or other customary unit of trading for a security;

(16A) The term "block" means a quantity of stock that either

(i) Has an aggregate purchase price of not less than (A) $50,000 if the purchase price per share is less than $10, (B) $75,000 if the purchase price per share is at least $10 but less than $20, (C) $125,000 if the purchase price per share is at least $20 but less than $35, (D) $175,000 if the purchase price per share is at least $35 but less than $50, or (E) $200,000 if the purchase price per share is $50 or more; or

(ii) Is at least 20 round lots of the security and totals 150 percent or more of the trading volume for that security or, in the event that trading volume data are unavailable, is at least 20 round lots of the security and totals at least one-tenth of one percent (.001) of the outstanding shares of the security, exclusive of any shares owned by any affiliate;

Provided, however, That a block under paragraph (a)(16)(i) and (ii) shall not include any amount that a broker or a dealer has assembled or accumulated for the purpose of sale or resale to the issuer or to any affiliated purchaser; or any amount that a broker or dealer has sold short to the issuer or affiliated purchaser if the issuer or affiliated purchaser knows or has reason to know that the sale was a short sale; and shall not include any amount of shares acquired pursuant to the exercise by the issuer or affiliated purchaser of listed call options;

(16B) The term "block" means a quantity of stock that either

(i) Has a purchase price of $200,000 or more; or

(ii) Is at least 5,000 shares and has a purchase price of at least $50,000; or

(iii) Is at least 20 round lots of the security and totals 150 percent or more of the trading volume for that security or, in the event that trading volume data are unavailable, is at least 20 round lots of the security and totals at least one-tenth of one percent (.001) of the outstanding shares of the security, exclusive of any shares owned by any affiliate;

Provided, however, that a block under paragraph (a)(16) (i), (ii) and (iii) shall not include any amount that a broker or a dealer has assembled or accumulated for the purpose of sale or resale to the issuer or to any affiliated purchaser; or any amount that a broker or dealer has sold short to the issuer or affiliated purchaser if the issuer or affiliated

purchaser knows or has reason to know that the sale was a short sale; and shall not include any amount of shares acquired pursuant to the exercise by the issuer or affiliated purchaser of listed call options.

(b) *Application of section to Section 13(e) issuers and certain other persons.*

(1) It shall constitute a fraudulent, deceptive, or manipulative act or practice within the meaning of section 13(e) of the Act for a Section 13(e) issuer, for an affiliate or an affiliated purchaser of such issuer, or for a broker, a dealer, or any other person acting for such an issuer or affiliate or affiliated purchaser, in connection with a Rule 13e–2 purchase, or with a Rule 13e–2 bid, effected or made by or for such issuer or affiliate or affiliated purchaser

(i) To employ any device, scheme, or artifice to defraud any person;

(ii) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(iii) To engage in any act, practice, or course of business which operates or would operate as a fraud or decit upon any person.

(2) As a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices in connection with a Rule 13e–2 purchase, or with a Rule 13e–2 bid, it shall be unlawful, by the use of any means or instrumentality of interstate commerce or of the mails

(i) For any Section 13(e) issuer, or for any affiliated purchaser of such an issuer, to effect a Rule 13e–2 purchase or to make or cause to be made a Rule 13e–2 bid unless that issuer or affiliated purchaser complies with paragraphs (d) and (e) of this section; *Provided, however,* That the issuer or affiliated purchaser shall be deemed not to have violated paragraph (e)(2), (e)(3), or (e)(4) of this section if a violation occurred solely by reason of the conduct of a broker, dealer, or other person acting for it if the issuer or affiliated purchaser did not know or have reason to know that the broker, dealer, or other person was engaging or would engage in such conduct, and if the issuer or affiliated purchaser had taken reasonable steps to assure that the broker, dealer, or other person would comply with paragraphs (e)(2), (e)(3), and (e)(4) of this section.

(ii) For any broker, dealer, or other person acting for a Section 13(e) issuer, or for an affiliated purchaser of such an issuer, to effect any Rule 13e–2 purchase or to make or cause to be made any Rule 13e–2 bid that he knows or has reason to know is a Rule 13e–2 purchase or a Rule 13e–2 bid unless that broker, dealer, or other person complies with paragraphs (e)(2), (e)(3), and (e)(4) of this section; *Provided, however,* That the broker, dealer, or other person shall be deemed not to have violated paragraph (e)(2), (e)(3), and (e)(4) of this section if a violation occurred solely by reason of the conduct of the Section 13(e) issuer or affiliated purchaser if the broker, dealer, or other person did not know or have reason to know that such issuer or affiliated purchaser was engaging or would engage in such conduct.

(c) *Application of section to Section 15(d) issuer or any affiliated purchaser of such issuer.*

It shall be unlawful as a fraudulent, deceptive, or manipulative act or practice for any Section 15(d) issuer, or for any affiliated purchaser of such an issuer, to effect a Rule 13e–2 purchase or to make or cause to be made any Rule 13e–2 bid unless that issuer or affiliated purchaser complies with paragraph (d) of this section.

(d) *Disclosure of certain information.*

(1) A person who is required to comply with paragraph (d) shall not effect a Rule 13e–2 purchase, or a series of Rule 13e–2 purchases, that seeks the acquisition of more than two percent of the outstanding shares of any class of common stock or preferred stock within any 12-month period, unless disclosure is made of the following information in a manner reasonably calculated to inform investors before any such Rule 13e–2 purchase is effected, or any Rule 13e–2 bid that could result in any such Rule 13e–2 purchase is made:

(i) The estimated time at which, or time period during which, the purchase or purchases are proposed to be effected;

(ii) The maximum number of shares of the security proposed to be purchased or the maximum amount of funds or other consideration to be expended;

(iii) The purpose or purposes to be achieved through acquisition of the shares to be purchased; and

(iv) Any plan or proposal that relates to, or would result in, the disposition of the shares to be purchased.

(2) A person who is required by paragraph (d)(1) of this section to disclose the information described therein shall also disclose that information, before any Rule 13e–2 purchase is effected, or any Rule 13e–2 bid is made, to each national securities exchange on which the securities to be purchased are registered and listed for trading and to the NASD if the securities to be purchased are authorized for quotation in NASDAQ.

(3) A person who is required to comply with paragraph (e) of this section shall disclose to any broker, dealer, or other person acting on his behalf in connection with a Rule 13e–2 purchase that the transaction is a Rule 13e–2 purchase and that it must be effected in accordance with paragraph (e) of this section.

(e) *Purchasing requirements.*

(1) *One broker or dealer.* A person required to comply with paragraph (e)(1) shall not effect any Rule 13e–2 purchase or purchases with a dealer, or from or through more than one broker on any single day, nor shall such person make or cause to be made any Rule 13e–2 bid to any dealer, or through more than one broker on any single day; *Provided, however,* That

(i) If a broker is not used on a day, Rule 13e–2 purchases may be effected with, and Rule 13e–2 bids may be made to, a single dealer on that day;

(ii) This paragraph (e)(1) shall not apply to Rule 13e–2 purchases that are not solicited by or on behalf of that person; and

(iii) Where Rule 13e–2 purchases or Rule 13e–2 bids are made by or on behalf of more than one affiliated purchaser (or the issuer and one or more affiliated purchasers) on a single day, this paragraph (e)(1) shall apply to all such bids and purchases in the aggregate.

(2) *Time limitations.* A person required to comply with paragraph (e)(2) shall not effect any Rule 13e–2 purchase from or through a broker or dealer

(i) In a reported security for which the principal market is a national securities exchange, (A) if such purchase would constitute the opening transaction in the security reported in the consolidated system; or (B) during the period commencing one-half hour before the scheduled close of trading in the principal market for the security and ending with the termination of the period in which last sale prices are reported in the consolidated system;

(ii) In a reported security for which the principal market is not on a national securities exchange, (A) if such purchase would constitute the opening transaction in the security reported in the consolidated system; or (B) during the one-half hour before the termination of the period in which last sale prices are reported in the consolidated system;

(iii) On a national securities exchange, in any exchange traded security, (A) if the Rule 13e–2 bid would constitute the opening bid for the security on such exchange; or (B) during the one-half hour before the scheduled close of trading on the exchange;

(iv) Otherwise than on a national securities exchange in any NASDAQ security unless a current independent

bid quotation for the security is reported in Level 2 of NASDAQ.

(3) *Price limitations.* A person required to comply with paragraph (e)(3) shall neither effect any Rule 13e–2 purchase from or through a broker or dealer at a purchase price, nor make nor cause to be made any Rule 13e–2 bid at a price

(i) For a reported security, higher than the published bid, as that term is defined in Rule 11Acl–1(a)(9) under the Act [§ 240.11Acl–1(a)(9)], that is the highest current independent published bid or the last independent sale price reported in the consolidated system, whichever is higher;

(ii) On a national securities exchange, for an exchange traded security, higher than the highest current independent bid quotation or the last independent sale price on that exchange, whichever is higher;

(iii) Otherwise than on a national securities exchange, for a NASDAQ security, higher than the lowest current independent offer quotation reported in Level 2 of NASDAQ; or

(iv) Otherwise than on a national securities exchange, for a security that is not a reported security or a NASDAQ security, higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry.

(4) *Volume limitations.* A person required to comply with paragraph (e)(4) shall not effect from or through a broker or dealer any Rule 13e–2 purchase, other than a block purchase, or any purchase through the exercise of an exchange listed call option

(i) Of a reported security, an exchange traded security or a NASDAQ security, in an amount that, when added to the amounts of all other Rule 13e–2 purchases and purchases through the exercise of an exchange listed call option effected by or for the issuer or any affiliated purchaser on that day, exceeds the higher of (A) one round lot or (B) the number of round lots closest to 15 percent of the trading volume for the security;

(ii) Of any other security, in an amount that, (A) when added to the amounts of all other Rule 13e–2 purchases and purchases through the exercise of an exchange listed call option effected by or for the issuer or any affiliated purchaser on that day, exceeds one round lot and (B) when added to the amounts of all other Rule 13e–2 purchases and purchases through the exercise of an exchange listed call option effected by or for the issuer or any affiliated purchaser during that day and the preceding six calendar days, exceeds 1/20th of one percent (0.0005) of the outstanding shares of the security, exclusive of shares known to be owned beneficially by affiliates.

(f) Paragraph (e) of this section shall not apply to a bid or purchase that is:

(1) Subject to, and made in compliance with, Rule 10b–7 under the Act [§ 240.10b–7];

(2) By the issuer and is subject to, and made in compliance with, Rule 13e–1 under the Act [§ 240.13e–1];

(3) Pursuant to a tender offer that is subject to, and made in compliance with, Rule 13e–4 under the Act [240.13e–4];

(4) Pursuant to a tender offer that is subject to, and made in compliance with, section 14(d) of the Act and the rules and regulations thereunder;

(5) Pursuant to the call or redemption of any security in accordance with the terms and conditions of its governing instrument or instruments;

(6) Pursuant to a merger, acquisition, or similar transaction involving a recapitalization;

(7) A bid for or purchase of securities of a dissenting shareholder who has asserted rights of appraisal with respect to his shares;

(8) Made to satisfy mandatory sinking fund obligations that must be satisfied not more than one year from the time such bids or purchases are made;

(9) A bid for or purchase of any fractional interest in a security, evidenced by a scrip certificate, order form, or similar document;

(10) A bid for or purchase of securities from an employee upon termination of the employment relationship, or from a former employee of the issuer or of any wholly-owned subsidiary thereof, or from the estate of such employee, pursuant to any right or obligation to purchase such securities established in connection with the employment of, or the sale of such securities to, the employee; and

(11) A bid for or purchase of any security that is not traded on a national securities exchange and with respect to which the issuer thereof does not know or have reason to know that any dealer acts as market maker if neither the purchaser nor any person acting on his behalf has engaged in any solicitation in connection with the transaction.

(g) The Commission may, upon written request or upon its own motion, exempt any Rule 13e–2 bid or Rule 13e–2 purchase from one or more paragraphs of this section, either unconditionally or upon specified terms or conditions, as not comprehended within the intended meaning and purpose of this section or of such paragraph or paragraphs.

2. By amending paragraph (f) of § 240.10b–6, redesignating paragraph (g) thereof as paragraph (h) and adding a new paragraph (g), as follows (Attention—The text of the following proposed amendments uses ** to indicate additions and [ ] brackets to indicate deletions):

§ 240.10b–6 Prohibitions against trading by persons interested in a distribution.

* * * * *

(f) If [the provisions of] this section would apply to bids for or purchases of any equity security [pursuant to an issuer tender offer, as that term is defined in Rule 13e–4(a)(2) under the Act, or to a tender offer subject to section 14(d) of the act and the rules applicable thereto,] solely because the issuer [has] *had* outstanding securities [which are] immediately convertible into, or exchangeable or exercisable for, [the security for which the tender offer is to be made] *that security,* [such provisons] *this section* shall not apply to *any* such bid[s] [and] *or* purchase[s if such bids and purchases are subject to and made in accordance with the provisions of Rule 13e–4 or section 14(d) and the rules applicable thereto] *that is subject to, and is made or effected in accordance with (1) Rule 13e–2 under the Act, (2) Rule 13e–4 under the Act, or (3) section 14(d) of the Act and the rules and regulations thereunder.*

(g) A bid for or purchase of any security made or effected by or for a plan shall be deemed to be a purchase by the issuer unless the bid is made, or the purchase is effected, by an agent independent of the issuer, as that term is defined in Rule 13e–2(a)(8) under the Act.*

VIII. Solicitation of Comments

All interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should submit six copies thereof to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, not later than January 15, 1981. Reference should be made to File No. S7–858. All submissions will be made available for public inspection at the Commission's Public Reference Section, Room 6101, 1100 L Street, NW, Washington, D.C.

By the Commission.

George A. Fitzsimmons,

Secretary.

October 17, 1980.

[FR Doc. 80–33392 Filed 10–24–80; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 18 and 112

Carriers, Cartmen, and Lightermen; Proposed Amendments to the Customs Regulations Relating to the Carriage of Bonded Merchandise by Private Carriers

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes an amendment to the Customs Regulations to simplify the requirements that a private carrier must meet to be designated as a carrier of bonded merchandise. The proposed amendment would provide that a private carrier may be designated as a carrier of bonded merchandise if (1) the merchandise (including containerized merchandise) transported is the property of the private carrier, and (2) the private carrier files a proper Customs bond. Conforming amendments are also proposed.

DATE: Comments must be received on or before December 26, 1980.

ADDRESS: Comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations and Research Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington D.C. 20229.

FOR FURTHER INFORMATION CONTACT:
Legal Aspects: Donald F. Beach, Carriers, Drawback and Bonds Division (202–566–5856) Operational Aspects: Bradley Lund, Inspection and Control Division (202–566–5354) U.S. Customs Service, 1301 Constitution Avenue, NW., Washington D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

Section 551, Tariff Act of 1930, as amended (19 U.S.C. 1551), provides that in the discretion of the Secretary of the Treasury, a private carrier, upon application, may be designated as a carrier of bonded merchandise, subject to such regulations and, in the case of each applicant, to such special terms and conditions, as the Secretary may prescribe to safeguard the revenues of the United States with respect to the transportation of bonded merchandise by the applicant.

Section 112.11(a)(4), Customs Regulations (19 CFR 112.11(a)(4)), provides that district directors may authorize a private carrier to receive and transport imported merchandise in bond if:

(i) The private carrier is the proprietor of a Customs bonded warehouse or bonded container station;

(ii) The merchandise (including containerized merchandise) to be transported is his property, having been imported by him or purchased from another importer; and

(iii) The merchandise is to be transported:

(A) From the port of importation, or port where entered for warehouse, to the private carrier's Customs bonded warehouse or bonded container station for physical deposit;

(B) From the private carrier's Customs bonded warehouse or bonded container station to another Customs bonded warehouse for physical deposit; or

(C) If for exportation, from the private carrier's Customs bonded warehouse or bonded container station to a Customs bonded warehouse at the port of exportation.

Customs is of the opinion that the present requirements in section 112.11(a)(4), which must be met by an applicant before being designated as a carrier of bonded merchandise, are needlessly restrictive. The goal of these requirements, as set out in 19 U.S.C. 1551, is to safeguard the revenue. Requiring a private carrier to be a proprietor of a Customs bonded warehouse or bonded container station and restricting a private carrier to transporting merchandise to or from the private carrier's bonded warehouse or bonded container station are not necessary to accomplish this goal and severely limit the number of carriers able to qualify as carriers of bonded merchandise. The carrier's bond and security requirements concerning container stations in sections 19.40–19.49, Customs Regulations (19 CFR 19.40–19.49), are considered adequate to protect the revenue if the private carrier is restricted to carrying property which it owns.

Accordingly, it is proposed to amend section 112.11(a)(4) by deleting the requirements in subparagraphs (i) and (iii), and by providing that a private carrier may be designated as a carrier of bonded merchandise if (1) the merchandise (including containerized merchandise) transported is the property of the private carrier (present subparagraph (ii)), and (2) the private carrier files Customs Form 3588, "Private Carrier's Bond".

The deletion of the requirements in subparagraphs (i) and (iii) would allow a private carrier's vehicles, which now return empty to company locations after delivering merchandise at ports of export, to load imported merchandise for transportation under the bond for exportation or transportation or for transportation and exportation (Customs Forms 7557, 7559). Private carriers also would be able to deliver their bonded merchandise by the most direct route.

On the basis of the requirement in present section 112.11(a)(4) that a private carrier must be the proprietor of a Customs bonded warehouse or bonded container station to be designated as a carrier of bonded merchandise, section 112.12(b)(3) provides that if a private carrier is the proprietor of Customs bonded warehouses in two or more Customs districts to which imported merchandise will be transported, he shall file Customs Form 3588, the "Private Carrier's Bond", with the district director of Customs for one of the districts, accompanied by a statement showing the location of each warehouse and an additional copy of the bond for each additional district.

It is necessary to amend section 112.12(b)(3) to conform to the proposed amendment to section 112.11(a)(4) which would delete the requirement that a private carrier must be the proprietor of a Customs bonded warehouse or bonded container station to be designated as a carrier of bonded mechandise. It is proposed to amend section 112.12(b)(3) to provide that the private carrier shall file Customs Form 3588 with the district director in the district where the private carrier intends to operate. If the private carrier intends to operate in two or more districts, he shall file the bond with the district director for one of the districts, send a copy of the bond to the district director for each additional district, and include with the bond and copies of the bond a list of all districts in which he intends to operate. If the private carrier is the proprietor of one or more Customs bonded warehouses or bonded container stations to which imported merchandise will be transported, he shall accompany the bond and copies of the bond by a statement showing the location of each warehouse and container station.

It is also necessary to amend section 18.2(e), Customs Regulations (19 CFR 18.2(e)), to conform to the proposed amendment to section 112.11(a)(4). Section 18.2(e) provides that any entry for immediate transportation in bond by a private carrier shall be accompanied by a commercial invoice setting forth the particulars of the merchandise and a statement verified by the district director of the district in which the private carrier's warehouse is located requesting permission to transport the

merchandise to the private carrier's warehouse. The proposed amendment to section 112.11(a)(4) would delete the requirement that a private carrier must be the proprietor of a Customs bonded warehouse or bonded container station to be designated as a carrier of bonded merchandise.

Accordingly, it is proposed to amend section 18.2(e) to provide that the commercial invoice must contain a statement verified by the district director of the district to which the mechandise will be carried requesting permission to transport the merchandise under a carrier's bond for the purposes of either (1) transportation without prior placement in a warehouse under the bond for exportation or transportation or transportation and exportation (Customs Forms 7557 or 7559), or (2) direct entry at another port without placement in a warehouse, or (3) transporation to his warehouse or to a warehouse operated by others.

The proposed amendments do not affect Customs requirements relating to the transportation of merchandise in bond by bonded common carriers, contract carriers, or freight forwarders.

Proposed Amendments

It is proposed to amend Parts 18 and 112, Customs Regulations (19 CFR Parts 18, 112), in the following manner:

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

It is proposed to amend § 18.2(e), Customs Regulations (19 CFR 18.2(e)), to read as follows:

§ 18.2 Receipt by carrier, manifest

* * * * *

(e) In addition to the foregoing, any entry for immediate transportation presented at the port of arrival for merchandise to be transported in bond by a private carrier shall be accompanied by a commercial invoice setting forth the particulars of the merchandise and a statement in the following form verified by the district director of the district to which the merchandise will be carried:

The undersigned hereby requests permission to transport under the provisions of his carrier's bond, dated ——— on file at the port of ———, the merchandise described in the attached invoice from the port of ——— for the purposes of either (1) transportation to ——— without prior placement in a warehouse under the bond for exportation or transportation or transportation and exportation (Customs Forms 7557 or 7559), or (2) direct entry at the port of ——— without placement in a warehouse, or (3) transportation to his warehouse or to a warehouse operated by others located at ———.

Carrier ———
Date ———

* * * * *

PART 112—CARRIERS, CARTMEN, AND LIGHTERMEN

1. It is proposed to amend § 112.11(a)(4), Customs Regulations (19 CFR 112.11(a)(4)), to read as follows:

§ 112.11 Carriers which maybe authorized

(a) *From port to port in the United States.* The district director may authorize the following types of carriers to receive merchandise for transportation in bond from one port to another in the United States upon compliance with the provisions of this subpart:

* * * * *

(4) Private carriers, if:

(i) The merchandise (including containerized merchandise) to be transported is the property of the private carrier; and (ii) the private carrier files Customs Form 3588, "Private Carriers Bond".

2. It is proposed to amend § 112.12(b)(3), Customs Regulations (19 CFR 112.12(b)(3)), to read as follows:

§ 112.12 Application for Authorization.

* * * * *

(b) *Special requirements.* In addition to the requirements in paragraph (a) of this section, the specified carriers shall also file with the district director the following documents:

* * * * *

(3) *Private carriers.* The private carrier shall file the bond with the district director in the Customs district where the private carrier intends to operate. If the private carrier intends to operate in two or more Customs districts, he shall file the bond with the district director for one of the districts, send a copy of the bond to the district director for each additional district, and include with the bond and copies of the bond a list of all Customs districts in which he intends to operate. If the private carrier is the proprietor of one or more Customs bonded warehouses or bonded container stations to which imported merchandise will be transported, he shall accompany the bond and copies of the bond by a statement showing the location of each warehouse and container station.

Authority

These amendments are proposed under the authority of R.S. 251, as amended (19 U.S.C. 66), and sections 551, 565, 624, 46 Stat. 742, as amended, 747, as amended, 759 (19 U.S.C. 1551, 1565, 1624).

Comments

Before adopting this proposal, consideration will be given to any written comments that are submitted timely to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with § 103.8(b), Customs Regulations (19 CFR 103.8(b)), during regular business hours at the Regulations and Research Division, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington D.C. 20229.

Regulation Determined To Be Nonsignificant

In a directive published in the **Federal Register** on November 8, 1978 (43 FR 52120), implementing Executive Order 12044, "Improving Government Regulations", the Treasury Department stated that it considers each regulation or amendment to an existing regulation published in the **Federal Register** and codified in the Code of Federal Regulations to be "significant".

However, regulations of this nature which are nonsubstantive, essentially procedural, do not materially change existing, or establish new policy, and do not impose substantial additional requirements or costs on, or substantially alter the legal rights or obligations of, those affected, may, with Secretarial approval, be determined not to be significant. Accordingly, it has been determined that these porposed amendments do not meet the Treasury Department criteria for "significant" regulations.

Drafting Information

The principal author of this document was Laurie Strassberg Amster, Regulations and Legal Publications Division, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

William T. Archey,
Commissioner of Customs.

Approved: October 21, 1980.

Richard J. Davis,
Assistant Secretary (Enforcement and Operations).

[FR Doc. 80-33435 Filed 10-24-80; 8:45 am]
BILLING CODE 4810-22-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 201

[Docket No. R-80-883]

Combination Mobile Home and Lot Loan Program; Waiver Request

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of congressional waiver request.

SUMMARY: Section 7(o)(4) of the Department of Housing and Urban Development Act permits the Secretary to request waiver of the legislation's requirements in appropriate instances. This notice lists and briefly summarizes for public information an interim rule with respect to which the Secretary is presently requesting waiver.

FOR FURTHER INFORMATION CONTACT: Burton Bloomberg, Director, Office of Regulations, Office of General Counsel, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755-6207.

SUPPLEMENTARY INFORMATION: Concurrently with issuance of this Notice the Secretary is forwarding to the Chairman and Ranking Minority members of both Congressional Banking Committees the interim rule listed below. The purpose of the transmittal is to request waiver of the 15 day pre-publication review and the 20 day delayed effective date requirements for the interim rule under Section 7(o) (2) and (3) of the Department of Housing and Urban Development Act. A summary of the rulemaking document for which waiver has been requested is set forth below:

Interim Rule—24 CFR 201-Subpart D—Combination Mobile Home and Lot Loan Program.

This rule provides for increased mortgage limits and terms as authorized by the Housing and Community Development Amendments of 1979. Other major provisions in the amendment are; (1) increased loan advances on the mobile home, (2) removing the condominum prohibition, and (3) permitting a one percent origination fee and, (4) clarification of the definition of a developed lot.

(Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); Section 324 of the Housing and Community Development Amendments of 1978)

Issued at Washington, D.C., October 16, 1980.

Victor Marrero,
Under Secretary, U.S. Department of Housing and Urban Development.

[FR Doc. 80-33332 Filed 10-24-80; 8:45 am]
BILLING CODE 4210-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[LR-232-78]

Revision of Rules on Tax Classification of Limited Partnerships In Light of Certain Recent Legislative Developments

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the classification, for federal tax purposes, of limited partnerships. The proposed regulations provide that references in the classification rules to the Uniform Limited Partnership Act (ULPA) refer to that Act both as originally promulgated and as revised in 1976. The proposed regulations also clarify the significance, for classification purposes, of a power in the limited partners to remove a general partner.

DATES: Written comments and requests for a public hearing must be delivered or mailed by December 26, 1980. The amendments are proposed to be effective for taxable years beginning after 1953.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T [LR-232-78], Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Paul A. Francis [202-566-6640].

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR Part 301) under section 7701 of the Internal Revenue Code of 1954. These regulations are proposed to make clear the application of certain tax classification rules to limited partnerships and are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

References to the ULPA

For federal tax purposes various entities may be classified as associations (which are taxable as corporations), partnerships, or trusts. Section 7701(a) (2) and (3) of the Code and §§ 301.7701-1 through 301.7701-4 of the Regulations on Procedure and Administration set forth the definitions and rules that control the tax classification of entities. Section 301.7701-2 provides that the classification of an entity depends upon the presence or absence of corporate characteristics. That section also includes certain special rules for determining whether an entity organized under a statute corresponding to the ULPA possesses or lacks the corporate characteristics of continuity of life, centralization of management, and limited liability.

The National Conference of Commissioners on Uniform State Laws revised the ULPA in 1976. The proposed regulations provide that references in § 301.7701-2 to the ULPA shall be deemed to refer to that Act both as originally promulgated and as revised in 1976. Thus, the same classification rules will apply to entities organized under a statute corresponding to the revised ULPA as apply to entities organized under a statute corresponding to the original ULPA.

Power to Remove General Partner

The proposed regulations provide that all the facts and circumstances must be taken into account in determining whether the characteristic of centralized management is found in a limited partnership whose limited partners may remove the general partner. The proposed regulations note that a substantially restricted removal power would not itself cause the partnership to possess centralized management.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Drafting Information

The principal author of these proposed regulations was Paul A. Francis of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other

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offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Proposed amendments to the regulations

For the reasons stated, it is proposed to amend § 301.7701-2 of the Regulations on Procedure and Administration (26 CFR Part 301) by adding a new subparagraph (5) at the end of paragraph (a) and by adding two new sentences at the end of paragraph (c) (4). These added provisions read as follows:

§ 301.7701-2 Associations.

(a) *Characteristics of corporations.*

* * *

(5) All references in this section to the Uniform Limited Partnership Act shall be deemed to refer both to the original Uniform Limited Partnership Act (adopted in 1916) and to the revised Uniform Limited Partnership Act (adopted by the National Conference of Commissioners on Uniform State Laws in 1976).

* * * * *

(c) *Centralization of management.*

* * *

(4) * * * Furthermore, if all or a specified group of the limited partners may remove a general partner, all the facts and circumstances must be taken into account in determining whether the partnership possesses centralized management. A substantially restricted right of the limited partners to remove the general partner (*e.g.*, in the event of the general partner's gross negligence, self-dealing, or embezzlement) will not itself cause the partnership to possess centralized management.

* * * * *

Jerome Kurtz,

Commissioner of Internal Revenue.

[FR Doc 80-33406 Filed 10-24-80; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 353]

The Fennville Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of the first viticultural area in the State of Michigan, to be known as "Fennville." This proposal is the result of a petition submitted by an industry member.

DATES: Written comments must be received by December 26, 1980.

ADDRESS: Send written comments to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044.

Copies of the petition, the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Reading Room, Room 4407, Federal Building, 12th and Pennsylvania Avenue, NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Norman P. Blake, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR for the listing of approved viticultural areas.

Section 9.11, Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.), which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map with the boundaries prominently marked.

Petition

ATF has received the first petition to establish a viticultural area within the State of Michigan to be known as "Fennville." The proposed area is primarily located in Allegan County with a small portion located in Van Buren County. This general area of Michigan is known as the "fruit belt" and is located in the southwestern portion of Michigan. This proposed area consists of approximately 75,000 acres.

The petitioner claims that the proposed viticultural area is historically known as a fruit growing area and more recently known for the distinctive French hybrids and vinifera grapes grown for the locally produced wine. In addition, the area is distinguished from the surrounding area by natural geographical boundaries and features. The petitioner bases these claims on:

(a) Fennville is the name of a small community of approximately 850 people which has been associated with the growing and processing of fruits since the late 1880's. In 1888 the Fruit Shippers Association was established, in 1897 the Fennville Fruit Company co-operative was organized. The community of Fennville has continued to be a major crossroad and trading center within the proposed appellation.

(b) The proposed area generally consists of sandy loam soil and rolling terrain which is well drained and ideal for growing peaches, apples, cherries, plums, pears, and grapes. The climate within the proposed area is distinguished from the surrounding area by a more moderate high and low temperature range which is attributed to its proximity to Lake Michigan and the protecting sand dunes. The majority of the proposed area consists of rolling terrain within a 650 to 700 foot elevation. The Lake Michigan shore has an elevation of 618 feet which rises to 650 feet and forms a natural barrier.

(c) The boundaries of the proposed area are distinguished on three sides by natural features; the Kalamazoo River on the north, the Black River and Middle Fork of the Black River on the south, and Lake Michigan's eastern shore on the west.

The boundaries of the proposed viticultural area, using landmarks and points of reference are as follows: starting at the most southwestern point, the intersection of the Black River as it empties into Lake Michigan at the City of South Haven; northward along the eastern shore of Lake Michigan approximately 20 miles to the intersection of the Kalamazoo River; easterly along the course of the Kalamazoo River for approximately 11.25 miles (seven miles due east) to 86°5' west longitude which is 1.25 miles east of the community of New Richmond; south along 86°5' west longitude for 13.5 miles to the intersection of the Middle Fork of the Black River; westerly along the course of the twisting Middle Fork of the Black River until it joins the Black River, continuing west for a total of 12.5 miles (10 miles due west) to the starting point. The entire viticultural area comprises approximately 75,000 acres.

The exact boundaries of the proposed area and the appropriate U.S.G.S. maps used to determine the boundaries are listed in the proposed regulations.

Public Participation—Written Comments

ATF requests comments from all interested persons concerning this proposed viticultural area. Furthermore, while this document proposes possible boundaries for Fennville viticultural area, suggestions concerning other alternative boundaries will be given consideration prior to any final decision.

All comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material and comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of any person submitting comments is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing to the Director within the 60-day comment period. The Director, however, reserves the right to determine, in the light of all circumstances, whether a public hearing should be held.

Drafting Information

The principal author of this document is Norman P. Blake, Specialist, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority

Accordingly, under the authority in 27 U.S.C. 205, the Director proposes the amendment of 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Par. 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.33. As amended, the table of sections reads as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.33 Fennville.

Par. 2. Subpart C is amended by adding § 9.33. As amended, Subpart C reads as follows:

§ 9.33 Fennville.

(a) *Name.* The name of the viticultural area described in this section is "Fennville."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Fennville viticultural area are three U.S.G.S. maps. They are entitled:

(1) "Fennville Quadrangle, Michigan-Allegan County," 15 minute series;

(2) "Bangor Quadrangle, Michigan," 15 minute series; and

(3) "South Haven Quadrangle, Michigan," 15 minute series.

(c) *Boundaries.* The Fennville viticultural area is primarily located in the southwestern portion of Allegan County, Michigan, with a small finger extending into the northwest corner of Van Buren County, Michigan.

(1) The western boundary is the eastern shore of Lake Michigan, extending from the Black River, at the City of South Haven, north to the Kalamazoo River.

(2) The northern boundary is the Kalamazoo River, extending easterly from Lake Michigan to 86°5' west longitude.

(3) The eastern boundary is the 86°5' west longitude meridian, extending south from the Kalamazoo River to the intersection with the Middle Fork of the Black River.

(4) The southern boundary is the Middle Fork of the Black River extending westerly from 86°5' west longitude until it joins the Black River, continuing west along the Black River to the eastern shore of Lake Michigan.

Signed: September 25, 1980.

G. R. Dickerson,

Director.

Approved: October 14, 1980.

Richard J. Davis,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 80-33459 Filed 10-24-80; 8:45 am]

BILLING CODE 4810-31-M

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27 CFR Part 9

[Notice No. 350]

Guenoc Valley Viticultural Area; Wine Labeling

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in California to be known as "Guenoc Valley." This proposal is the result of a petition submitted by an interested person.

DATES: Written comments must be received by December 26, 1980.

ADDRESS: Send written comments to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044.

Copies of the petition, the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Reading Room, Room 4407, Federal Building, 12th and Pennsylvania Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roger L. Bowling, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an application of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas to be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally

and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.), which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map with the boundaries prominently marked.

Petition

ATF has received a petition proposing an area in Lake County, California, as a viticultural area known as "Guenoc Valley." The proposed area consists of 4396.3 acres.

The petition claims that the proposed viticultural area is historically and currently known by that name and is distinguished from surrounding areas by soil classifications, physiographic characteristics, and climate. The petitioner bases these claims on the following:

(a) The valley was a portion of Rancho Guenoc, a land grant from the Mexican Government to George Rock in 1845. The United States surveyed the area in 1857. In the field notes of the surveyor, W. M. Denton, Deputy U.S. Surveyor, the name "Guenoc" was given this area. The names "Guenoc Rancho," "Guenoc Valley," and "Guenoc" continue to be associated with this property through their use in legal documents;

(b) In 1888, Lillie Langtry purchased a ranch of 4,000 acres which includes much of the proposed viticultural area. An admirer, Frederick Gebhard, purchased an adjacent ranch of approximately equal size. These two ranches comprise most of Guenoc Valley. There was a vineyard and winery in operation on Mrs. Langtry's property prior to her purchase of it. The winery operation continued until Prohibition;

(c) Mrs. Langtry published her autobiography, "The Days I knew," in 1925, in which she recounted her stay in Guenoc Valley;

(d) Guenoc Valley is located about 6 miles east of Middletown, California. During the growing season, generally days are warm with cool nights. Rainfall is less than that received in the Middletown area, and fog is generally less severe that that in Middletown;

(e) The valley floor elevation varies from 900 to 1000 feet above sea level. The soil consists largely of alluvial and younger terrace deposits, unconsolidated sand, gravel, silt, and clay, which forms a single continuous unit. Sand and gravel alluvial deposits, along Bucksnort Creek and other large drainages, are usually 5 to 15 feet thick. Thinner alluvium with silt and clay is common along the smaller drainages. Local clay, sand, and silt alluvial deposits, estimated at 5 to 10 feet in thickness, occur at the bases of steep slopes.

The boundaries of the proposed viticultural area, using landmarks and points of references are as follows: "Starting from the southwest end of Detert Reservoir Dam to just north of Foley Reservior No. 1, thence across McCreary Ridge and McCreary Lake to Jim Davis Peak thence to Goat Hill thence southwesterly to the foothills adjacent to the southern open areas of Guenoc Valley, thence back to Detert Reservoir Dam."

The proposed regulations describe this area through the use of angles and feet from one reference point to another. The exact boundaries of the proposed area and the appropriate U.S.G.S. maps used to determine the boundaries are listed in the proposed regulations.

Public Participation—Written Comments

ATF requests comments from all interested persons concerning this proposed viticultural area. Furthermore, while this document proposes possible boundaries for Guenoc Valley viticultural area, comments concerning other possible boundaries for this viticultural area will be given consideration.

All comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material and comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of any person submitting comments is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing to the Director within the 60-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing should be held.

Drafting Information

The principal author of this document is Roger L. Bowling, Specialist, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, other personnel of the Bureau and of the Treasury Department have participated in the preparation of this document, both in matters of substance and style.

Authority

Accordingly, under the authority in 27 U.S.C. 205, the Director proposes the amendment of 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Par. 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.26. As amended, the table of sections reads as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.26 Guenoc Valley.

Par. 2. Subpart C is amended by adding § 9.26. As amended, Subpart C reads as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.26 Guenoc Valley.

(a) *Name.* The name of the viticultural area described in this section is "Guenoc Valley."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Guenoc Valley viticultural area are four U.S.G.S. maps. They are entitled:

(1) "Middletown Quadrangle, California-Lake Co.," 7.5 minute series;

(2) "Jericho Valley Quadrangle, California," 7.5 minute series;

(3) "Detert Reservoir Quadrangle, California," 7.5 minute series; and

(4) "Aetna Springs Quadrangle, California," 7.5 minute series.

(c) *Boundaries.* The Guenoc Valley viticultural area is located in Lake County, California.

(1) Beginning at Station 20 of Denton's Survey of said Guenoc Rancho, as said Station is shown on the United States General Land Office Plat for Township 11 North, Range 6 West, M.D.B. & M. filed for record and approved by the Surveyor General's Office, San Francisco, California, on February 12, 1890, said Station being designated by said Denton as a post on the top of a Sugar Loaf Mountain (Jim Davis Peak), and is presently marked by 1½ inch galvanized pipe; and is herein noted as Point (1);

(2) Thence from said point of beginning S. 07° 49' 34" E., 9,822.57 feet to U.S.G.S. Triangulation Station "Guenoc," Point (2);

(3) Thence S. 29° 14' 31" W., 10,325.08 feet, Point (3);

(4) Thence S. 00° 00' W., 2,100.00 feet, Point (4);

(5) Thence N. 90° 00' W., 4,150.00 feet, Point (5);

(6) Thence N. 24° 23' 11" W., 16,469.36 feet, Point (6);

(7) Thence N. 75° 47' 20" E., 7,943.08 feet, Point (7); and

(8) Thence N. 60° 47' 00" E., 7,970.24 feet, to Point (1), the point of beginning, containing 4,396.3 acres.

Signed: September 24, 1980.

G. R. Dickerson,

Director.

Approved: October 14, 1980.

Richard J. Davis,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 80-33359 Filed 10-24-80; 8:45 am]

BILLING CODE 4810-31-M

27 CFR Part 9

[Notice No. 352]

Lime Kiln Valley Viticultural Area; Wine Labeling

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in San Benito County, California, to be known as "Lime Kiln Valley." This proposal is the result of a petition from an industry member.

DATE: Written comments must be received by December 26, 1980.

ADDRESSES: Send written comments to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, D.C. 20044.

Copies of the petition, the proposed regulations, the appropriate map, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Room 4407, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Roger L. Bowling, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, D.C. 20226, (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas to be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. A petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the name specified in the petition.

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition.

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas.

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale.

(e) A copy of the appropriate U.S.G.S. map with the boundaries prominently marked.

Petition

ATF has received a petition proposing an area in San Benito County, California, as a viticultural area to be known as "Lime Kiln Valley." The proposed area is a valley consisting of approximately 9,472 acres.

The petitioner claims that the proposed viticultural area is distinguished from surrounding areas physically and historically. The petitioner bases these claims on the following:

(a) The valley is located about 19 miles from the San Joaquin Valley and approximately 18 miles from the Pacific Ocean.

(b) Rainfall averages over 40 inches per year in the upper western reaches of Lime Kiln Valley, and over sixteen inches per year in the lower eastern reaches. The valley receives over two inches more rainfall per year than Hollister, California, located approximately 11 miles northwest from Lime Kiln Valley.

(c) Winter temperatures are well below freezing. Summer temperatures average between 85–95 degrees Fahrenheit, while dropping at night to between 45–50 degrees. Usual morning fog during early summer is burned off by mid-morning. The prevailing winds are predominantly northwesterly from the ocean.

(d) The soil structure of the valley is basically a sandy and gravelly loam over bedrock of limestone and dolomite.

(e) The Coulter pine is the dominant vegetation. It grows in limited areas due to climatic conditions. In the area here, the pine grows only within the watershed boundary which very closely approximates the boundary of the viticultural area.

(f) Ground water is available in the form of natural springs and artesian wells.

(g) Historical and current usage is well established.

(1) The area has been a grape-growing area since 1887. San Benito County histories relate to vine cuttings brought from France and obtained by the Spanish padres.

(2) The general area has long been known as Limekiln. On September 6, 1977, the County Board of Supervisors unanimously adopted a resolution naming the valley surrounding Limekiln as Lime Kiln Valley.

(3) The area derived its name from a number of lime kilns built in the area. Many of the kilns were in operation prior to 1910.

The proposed boundaries closely approximate the watershed boundary. The proposed boundaries are based on features found on one U.S.G.S. map entitled "Gonzales Quadrangle, California." Begining at the intersection point of Thompson Creek and Cienega Road, the boundary proceeds in a southwest direction to the northwest corner of Section 33, then in a southwesterly direction to McPhails Peak, following the county line around to the northwest corner of Section 34, northward to Mt. Harlan, in a straight line to the southeast corner of Section 23, then proceeding in a line to the northwest corner of Section 19, then

northward to the southwest corner of Section 18, eastward to the Cienega School Building then along Cienega Road to the point of beginning. The regulations describe the boundary by using the summits of peaks as reference points. The petitioner believes this area adequately encompasses the land in the valley suitable for grape-growing.

Public Participation—Written Comments

ATF requests comments from all interested persons concerning this proposed viticultural area. Furthermore, while this document proposes possible boundaries for Lime Kiln Valley viticultural area, comments concerning other possible boundaries for this viticultural area will be given consideration.

Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material and comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting comments is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing to the Director within the 60-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing should be held.

Drafting Information

The principal author of this document is Roger L. Bowling, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, other personnel of the Bureau and of the Treasury Department have participated in the preparation of this document, both in matters of substance and style.

Authority

Accordingly, under the authority in 27 U.S.C. 205, the Director proposes the amendment of 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Par. 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.27. As amended, the title of sections reads as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

§ 9.27 Lime Kiln Valley.

Par. 2. Subpart C, is amended by adding § 9.27. As amended, Subpart C reads as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.27 Lime Kiln Valley.

(a) *Name.* The name of the viticultural area described in this section is "Lime Kiln Valley."

(b) *Approved map.* The appropriate map for determining the bondaries of the Lime Kiln Valley viticultural area is one U.S.G.S. map. It is entitled:

"Gonzales Quadrangle, California", 15 minute series.

(c) *Boundaries.* The Lime Kiln Valley viticultural area is located in San Benito County, California. From the beginning point at the intersection of Thompson Creek and Cienega Road, the boundary proceeds, in a straight line to the summit of an unnamed peak (1270 feet) along the section line of Sections 21 and 28, T. 14 S./R. 6E.;

(1) Thence in a straight line to the summit of an unnamed peak (1375 feet) in the center of Section 28, T. 14 S./R. 6 E.;

(2) Thence in a straight line to the summit of an unnamed peak (1847 feet) in the northwest corner of Section 33, T. 14 S./R. 6 E.;

(3) Thence in a straight line to the summit of McPhails Peak (3335 feet) in the east ½ of Section 1, T. 15 S./R. 5 E.;

(4) Thence following the San Benito County and Monterey County line to the summit of an unnamed peak (2054 feet) along the section lines of Sections 33 and 34, T. 14 S./R. 5 E.;

(5) Thence in a straight line to the summit of an unnamed peak (2707 feet) in the northwest corner of Section 27, T. 14 S./R. 5 E.;

(6) Thence in a straight line to the summit of Mt. Harlan (3262 feet) in the center of Section 22, T. 14 S./R. 5 E.;

(7) Thence in a straight line to the summit of an unnamed peak (2768 feet) in the southern half of Section 23, T. 14 S./R. 5 E.;

(8) Thence in a straight line to the summit of an unnamed peak (1974 feet) in the northwest corner of Section 19, T. 14 S./R. 6 E.;

(9) Thence in a straight line to the summit of an unnamed peak (2240 feet) in the southwest corner of Section 18, T. 14 S./R. 6 E.;

(10) Thence in a straight line to the summit of an unnamed peak (1713 feet) in the southeast corner of Section 18, T. 14 S./R. 6 E.;

(11) Thence in a straight line to the Cienega School Building along Cienega Road;

(12) Thence following Cienega Road back to the point of beginning.

Signed: September 25, 1980.

G. R. Dickerson,

Director.

Approved: October 14, 1980.

Richard J. Davis,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 80-33362 Filed 10-24-80; 8:45 am]

BILLING CODE 4810-31-M

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27 CFR Part 9

[Notice No. 351]

San Pasqual Valley Viticultural Area; Wine Labeling

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in San Diego County, California, to be known as "San Pasqual Valley." This proposal is the result of a petition from a representative of an industry member.

DATES: Written comments must be received by December 26, 1980.

ADDRESS: Send written comments to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, D.C. 20044.

Copies of the petition, the proposed regulations, the appropriate maps, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Room 4407, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Roger L. Bowling, Research and Regulations Branch, Bureau of Alcohol, Tabacco and Firearms, 1200 Pennslyvania Avenue, NW., Washington, D.C. 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas to be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing reglon as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. maps with the boundaries prominently marked.

Petition

ATF has received a petition proposing an area in San Diego County, California, as a viticultural area to be known as "San Pasqual Valley." The proposed area is a natural valley consisting of approximately 9,000 acres.

The petitioner claims that the proposed viticultural area is distinguished from surrounding areas physically and historically. The petitioner bases these claims on the following:

(a) San Pasqual Valley is a natural, sheltered valley located about 10 miles inland from the Pacific Ocean in the Santa Ysabel watershed, south of Escondido and north of the City of San Diego.

(b) The valley is surrounded on three sides by low mountain ranges rising to 1,500 feet above sea level; the valley is fed by natural streams, culminating in the San Dieguito River which empties into Lake Hodges on the west (fourth) side.

(c) The elevation of the valley floor varies from 300 to 350 feet above sea level, while the sides of the alluvial plain rise to approximately 500 feet above sea level.

(d) The soil structure of the valley floor is alluvial fill, while the slopes are of a decomposed granite base.

(e) The climatic conditions of the area are basically uniform with a strong coastal influence. Summer temperatures are warm, rarely above 95 degrees, with cool nights, uniformly below 65 degrees, resulting from a prevailing ocean breeze. Any haze is burned off by the sun, however, due to its low elevation, freezes are fairly common in winter.

(f) Historical and current usage of "San Pasqual Valley" is well established—

(1) In December of 1846, the area was the scene of a battle between Californians led by Anres Pico and U.S. Army troops under General Kearney. This battle is known as the "Battle of San Pasqual." A monument is present denoting the battle and name.

(2) A book, published in 1887, entitled "Picturesque San Diego" described the agricultural and social aspects of San Pasqual Valley.

(3) A quadrangle map of the area is entitled "San Pasqual, California."

(4) Schools and government offices have included "San Pasqual" in their names.

(5) The portion of the valley lying within the city limits of San Diego is known as the "San Pasqual Agricultural Reserve."

(6) The portion of the valley used as an adjunct of the San Diego Zoo is called the "San Pasqual Wild Animal Park."

(7) Since 1973, a partnership under the name of San Pasqual Vineyards has been involved in planting and cultivating grapes for the production of wine.

The proposed area is delineated by the traversing of Interstate 15 across San Pasqual Valley on the west end and thereafter delineated by the 500 foot contour line. The petitioner believes this delineation adequately encompasses land in the valley suitable for grape-growing. The 500 foot contour line corresponds to the height above sea level of the alluvial plain.

The boundaries of the proposed San Pasqual Valley viticultural area may be found on two U.S.G.S. 7.5 minute quadrangle maps ("Escondido Quadrangle, California" and "San Pasqual Quadrangle, California").

The boundaries are as follows:

(1) From the beginning point at the intersection of Interstate 15 and the 500 foot contour line, north of intersection point between Interstate 15 and T.12 S./T.13 S., the boundary line follows the 500 foot contour line to;

(2) The point nearest the San Pasqual Road and the 500 foot contour line, the boundary follows the Escondido Corporate Boundary line to the 500 foot contour line on the hillock and circumnavigates the hillock back to the Escondido Corporate Boundary line returning to the 500 foot contour line at the point nearest the San Pasqual Road and;

(3) Continues following the 500 foot contour line around the San Pasqual Valley to a point were the 500 foot contour line intersects with the Pomerado Road, at this point the boundary line, in a straight, northwesterly direction, crosses over to;

(4) The 500 foot contour line of Battle Mountain, following the 500 contour line around Battle Mountain to a point nearest to Interstate 15, at which point the boundary crosses to Interstate 15 and;

(5) Continues northward along Interstate 15 to the point of beginning.

Public Participation—Written Comments

ATF requests comments from all interested persons concerning this proposed viticultural area. Furthermore, while this document proposes possible boundaries for San Pasqual Valley viticultural area, comments concerning other possible boundaries for this viticultural area will be given consideration.

Comments received before the closing date will be carefully considered. Comments recieved after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting comments is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing to the Director within the 60-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing should be held.

Drafting Information

The principal author of this document is Roger L. Bowling, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, other personnel of the Bureau and of the

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Treasury Department have participated in the preparation of this document, both in matters of substance and style.

Authority

Accordingly, under the authority in 27 U.S.C. 205, the Director proposes the amendment of 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph. 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.25. As amended, the table of sections reads as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.25 San Pasqual Valley.

Par. 2. Subpart C is amended by adding § 9.25. As amended, Subpart C reads as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.25 San Pasqual Valley.

(a) *Name.* The name of the viticultural area described in this section is "San Pasqual Valley."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the San Pasqual Valley viticultural area are two U.S.G.S. maps. They are titled:

(1) "Escondido Quadrangle, California—San Diego County," 7.5 minute series; and

(2) "San Pasqual Quadrangle, California—San Diego County," 7.5 minute series.

(c) *Boundaries.* The San Pasqual Valley viticultural area is located in San Diego County, California. From the beginning point at the intersection of Interstate 15 and the 500 foot contour line, north of intersection point between Interstate 15 and T. 12 S./T. 13 S., the boundary line follows the 500 foot contour line to:

(1) The point nearest the San Pasqual Road and the 500 foot contour line, the boundary follows the Escondido Corporate Boundary line to the 500 foot contour line on the hillock and circumnavigates said hillock to the Escondido Corporate Boundary line and returns to the 500 foot contour line at the point nearest to the San Pasqual Road and;

(2) Continues following the 500 foot contour line completely around San Pasqual Valley to a point where the 500 foot contour line intersects with the Pomerado Road, at this point the boundary line, in a straight, northwesterly direction crosses over to;

(3) The 500 foot contour line of Battle Mountain, following the 500 foot contour line around Battle Mountain to a point nearest to Interstate 15, at which point the boundary crosses to Interstate 15 and;

(4) Continues northward along Interstate 15 to the point of beginning.

Signed: September 25, 1980.

G. R. Dickerson,

Director.

Approved: October 14, 1980.

Richard J. Davis,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 80-33361 Filed 10-24-80; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Grand Teton National Park; Proposed Rulemaking and Publication of Noise Abatement Plan for Jackson Hole Airport

Correction

In FR Doc. 80-32382 appearing at page 68687 in the issue of Thursday, October 16, 1980 and corrected on page 70287 in the issue of Thursday, October 23, 1980, first column, last two lines of the correction on page 70287, "November 17, 1980" should be corrected to read "November 14, 1980."

BILLING CODE 1505-01-M

POSTAL SERVICE

39 CFR Part 111

Second-Class Supplements

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend section 425.4 of the Domestic Mail Manual to relax the eligibility requirements for supplements in second-class publications. The proposal would delete a number of unnecessary and technical impediments to the use of supplements.

DATE: Comments must be received on or before November 10, 1980.

ADDRESS: Written comments should be directed to the Director, Office of Mail Classification, Rates and Classification Department, U. S. Postal Service, 475 L'Enfant Plaza, West, SW., Washington, D.C. 20260. Copies of all written comments received will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in the Office of Mail Classification, Room 1640, 475 L'Enfant Plaza West, S.W., Washington, D.C. 20260.

FOR FURTHER INFORMATION CONTACT: Gordon S. Proud at 202/245-4659.

SUPPLEMENTARY INFORMATION: Supplements may be included as part of a second-class publication if they are germane to the issue with which they are mailed. Current postal regulations also provide that

(1) Publications which are distinct from and independent of the regular issue are not germane to the issue and are not acceptable as supplements,

(2) Advertising supplements must be specifically prepared for inclusion in second-class publications,

(3) If advertising supplements are produced primarily for distribution either through the mails or outside the mails as separate and independent advertising material, they are not permissible supplements in second-class publications,

(4) If a second-class publisher is furnished material to be carried as a preprinted advertising supplement, he must ascertain that more than 50 percent of the total number of copies which will be distributed by any means will be included in second-class publications,

(5) An advertising rate or charge must be paid for including preprinted advertising supplements, and

(6) Supplements must bear the title of the publication preceded by the words *Supplement to.*

Many second-class publishers have requested that these enumerated requirements be deleted because they impose unnecessary and technical impediments on the use of supplements. The Postal Service agrees and is proposing a simplified regulation to govern second-class supplements. If the proposed rule is adopted, a publisher could include any supplement in the regular issue of a publication entered as second-class mail provided the supplement is germane to the issue, having been omitted in the interest of space, time, or convenience. The supplement would also have to be folded and mailed with the regular issue of the publication.

The Postal Service finds good cause to publish this proposal with a shortened comment period. There is strong mailer interest in its adoption. Morever, the proposal, if adopted, would only remove current restrictions on supplements in second-class mail—no new restrictions would be imposed.

Although exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comment on the following proposed revision of the Domestic Mail Manual, which is incorporated by reference in the Federal Register. See 39 CFR 111.1

PART 425—WHAT MAY BE MAILED AT THE SECOND-CLASS RATES

In part 425, amend section 425.4 to read as follows: 425.4 Supplements. Publishers may include supplements in the regular issue of a publication entered as second-class mail subject to the following conditions:

a. The supplements must be germane to the issue, having been omitted in the interest of space, time or convenience.

b. The supplement must be folded and mailed with the regular issue.

An amendment to 39 CFR 111.3 will be published if this proposal is adopted.

(39 U.S.C. 401(2), 404(a)(2))

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 80-33415 Filed 10-24-80; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A5 FRL 1643-3]

Michigan State Implementation Plan; Extension of Comment Period

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rulemaking, notice of extension of comment period.

SUMMARY: The U.S. EPA is giving notice that the comment period for the notice of proposed rulemaking on the Michigan State Implementation Plan (SIP) revision to control particulate emissions from iron and steel process sources in the State of Michigan published September 9, 1980, (45 FR 59329) has been extended from October 9, 1980 to November 30, 1980.

DATE: Comments are now due on or before November 30, 1980.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Air Enforcement Branch, Enforcement Division, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 996-4254.

SUPPLEMENTARY INFORMATION: This notice extends the period for submitting comments on the notice published September 9, 1980 (45 FR 59329) proposing rulemaking on revisions to Michigan's SIP. These revisions pertain to the control of particulate emissions from iron and steel process sources in the State of Michigan.

Ford Motor Company on October 1, 1980, and Great Lakes Steel on October 3, 1980, requested thirty (30) day extensions of time for filing their comments regarding U.S. EPA's proposed action on the revisions. In addition, the State of Michigan, Department of Natural Resources, on October 7, 1980, requested a sixty (60) day extension of time for filing their comments.

U.S. EPA has decided that the extension of the public comment period is appropriate and the comment period is hereby extended to November 30, 1980.

Dated: October 9, 1980.

John McGuire,

Regional Administrator.

[FR Doc. 80-33414 Filed 10-24-80; 8:45 am]

BILLING CODE 6560-26-M

40 CFR Part 81

[A4 1643-2]

Designation of Areas for Air Quality Planning Purposes; North Carolina: Proposed Redesignation of Spruce Pine Area

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: It is proposed to change the particulate attainment status designation of the Spruce Pine area to attainment from unclassifiable for the primary standards and nonattainment for the secondary standard. This change is based on eight consecutive quarters of air quality measurements showing no violation of any national standard. The public is invited to submit written comments on this proposal.

DATE: To be considered, comments must be received on or before November 26, 1980.

ADDRESSES: Copies of the materials submitted by North Carolina in support of the redisignation may be examined during normal business hours at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Library, EPA, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Walter Bishop of the EPA Region IV, Air Programs Branch, 404/881-3043 (FTS 257-3043).

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962 at 9019), the Administrator designated portions of Avery, Mitchell and Yancey Counties, North Carolina, in and around Spruce Pine as nonattainment for particulate matter. On August 20, 1979 (44 FR 48679), the Administrator changed the designation for the primary particulate standards from nonattainment to unclassifiable, leaving the designation for the secondary standard as nonattainment. On September 3, 1980, the state submitted information showing that no ambient particulate standard had been violated in the area during the period April 1979 through March 1980, and requested that the designation for Spruce Pine be revised to attainment. EPA proposes to grant this request.

As mentioned in the notice of August 20, 1979, the improvement in air quality in Spruce Pine since 1976 and 1977 is attributable to the completion of road construction project in the vicinity (within 0.3 miles) of the City Hall monitoring site. In addition, local initiatives taken since the nonattainment designation have led to the paving of a number of unpaved streets and other open areas which emit fugitive dust, as well as to a continuing exchange among operators of local mines and mineral processing plants of information on a control techniques for fugitive dust and fugitive emissions. The annual geometric mean particulate concentration measured at the City Hall site has dropped from 102 $\mu g/m^3$ in calendar year 1977 to 63 $\mu g/m^3$ for 1979. A second monitor operated nearby since March 1979 has yielded consistently lower measurements (geometric mean of 50 $\mu g/m^3$ for the period April 1979–March 1980).

The public is invited to participate in this rulemaking by submitting written comments on the proposed redesignation. After considering all pertinent comments received, the Administrator will take final action on North Carolina's request.

(Sec. 107 of the Clean Air Act (42 U.S.C. 7407))

Dated: October 17, 1980.

John A. Little,

Acting Regional Administrator.

[FR Doc. 80-33413 Filed 10-24-80; 8:45 am]

BILLING CODE 6560-26-M

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40 CFR Part 81

[A4 FRL 1643-1]

Designation of Areas for Air Quality Planning Purposes; North Carolina: Proposed Redefinition of TSP and SO_2 Attainment Areas

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule

SUMMARY: North Carolina has requested that the Section 107 designation of TSP and SO_2 attainment areas in 40 CFR 81.334 be changed from "Rest of State" and "Statewide" respectively to a list of the individual counties covered by those designations. The purpose of the proposed change is to facilitate the tracking of increment consumption under EPA's regulations for the prevention of significant deterioration of air quality. EPA proposes to grant North Carolina's request. The public is invited to submit written comments on the proposed action.

DATE: To be considered, comments must be received on or before November 26, 1980.

ADDRESS: Copies of the North Carolina request may be examined during normal business hours at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Library, EPA Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Walter Bishop of the EPA Region IV, Air Programs Branch, 404/881-3043 or FTS 257-3043.

(Sec. 107 of the Clean Air Act (42 U.S.C. 7407))

Dated: October 17, 1980.

John A. Little,

Acting Regional Administrator.

[FR Doc. 80-33407 Filed 10-24-80; 8:45 am]

BILLING CODE 6560-26-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 32

[CGD 78-121]

Tankships; Hatch Covers on Cargo Tanks

AGENCY: Coast Guard, DOT.

ACTION: Proposed rules.

SUMMARY: These proposed regulations would require U.S. Tankships that have aluminum hatch covers on cargo tanks, except vessels carrying liquefied or compressed gas in bulk, to be retrofitted with steel hatch covers. Based upon recent testing, and upon analysis of a 1974 tankship casualty involving the SS *Keytrader*, the Coast Guard has determined that aluminum hatch covers pose a serious safety hazard on most tankships carrying oil or other flammable or combustible liquids in bulk. Aluminum hatch covers on cargo tanks, when exposed to intense heat from a deck fire, melt quickly and expose any cargo in the tanks to a further fire and explosion hazard. Prohibiting the use of aluminum hatch covers would eliminate the fire and explosion hazard caused by these hatch covers.

DATE: Comments on these proposed rules must be received on or before December 11, 1980.

ADDRESSES: Comments should be mailed to Commandant (G-CMC/TP24), (CGD 78-121), U.S. Coast Guard, Washington, D.C. 20593. The comments, Draft Evaluation, and materials referenced in this notice will be available for examination and copying between 7:30 a.m. and 4:30 p.m., Monday through Thursday, at the Marine Safety Council (G-CMC/TP 24), Room 2418, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Randall Eberly, c/o Commandant (G-MMT/TP 12), U.S. Coast Guard, Washington, D.C. 20593, (202) 426-2205.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 78-121), and the specific section to which their comments apply, and give reasons for the comments. The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on these proposed rules.

Drafting Information

The principal persons involved in drafting these proposed rules are: Randall Eberly, Office of Merchant Marine Safety, and William R. Register, Office of the Chief Counsel.

Discussion of Proposed Rules

1. Part 32 of Title 46, Code of Federal Regulations, contains hull requirements and requirements for machinery and special equipment on tank vessels. These regulations include requirements that tank vessel hulls be of steel or iron construction or, in the case of wood hull vessels, that independent cargo tanks be of steel or iron construction. The Coast Guard has continually interpreted these requirements to apply also to hatch covers on most cargo tanks, which are considered to be an extension of, or a part of, a vessel's hull or cargo tank. Part 32 also includes requirements that materials used on tank vessels and their cargo tanks be at least equivalent to the requirements of the American Bureau of Shipping, or of some other recognized classification society. ABS requirements for oil tankers call for steel hatch covers.

2. Since 1965, use of aluminum hatch covers, except those of unusual size or application, has been allowed as an equivalent to steel construction required by Part 32. Use of equivalent construction is authorized under § 30.15-1 of Title 46. The determination to allow aluminum hatch covers was made based upon the safety benefits derived from their lighter weight and resulting ease of handling.

3. On January 18, 1974, a collision occurred in the Lower Mississippi River between the tanker SS *Keytrader* and the Norwegian vessel, SS *Baune*. The ensuing fire caused the deaths of six persons and the consumption of more than 840,000 gallons of gasoline. The force of the collision caused the breaching of two cargo tanks on the SS *Keytrader*. The heat from the fire, however, caused the melting of aluminum hatch covers which permitted the fire to spread to other cargo tanks not initially involved. The resulting fire was of such magnitude that more than 50 hours were spent in extinguishing the fire. As a result of this casualty, the National Transportation Safety Board recommended that the Coast Guard prohibit the use of aluminum and similar metals with low melting points as hatch covers on tankships. (See Recommendation M-77-5 of the NTSB action on the marine casualty involving the SS *Keytrader*.)

4. Subsequent to the SS *Keytrader* casualty, the Coast Guard conducted a survey of the U.S. tanker fleet to determine how many tankships are fitted with aluminum hatch covers. It was determined that between 10 and 20 percent are so equipped. A survey was also conducted of foreign governments to determine if aluminum hatch covers are permitted on foreign flag tankers. None of the administrations who replied stated that they permit the installation of such hatch covers. Subsequent to these surveys, fire tests were conducted at the Coast Guard's Fire and Safety Detachment in Mobile, Alabama. The results of these tests showed that under typical conditions, aluminum hatch covers melted and fell into the cargo tanks after 15 to 17 minutes of test exposure while steel covers remained intact and in position for the duration of the 30 minute test. [See D. Beene, "Fire Endurance of Aluminum and Steel Hatch Covers", U.S. Coast Guard Research and Development Center Report CG-D-82-77, June 1977). Based upon these tests, and upon analysis of the NTSB recommendation, the Coast Guard has determined that aluminum hatch covers on board most tankships carrying oil or other flammable or combustible liquids in bulk constitute a serious safety hazard when exposed to fire. Also on the basis of the tests and analysis, the practice of granting equivalencies to install aluminum hatch covers has been stopped.

5. The proposed regulations would require most tankships with aluminum hatch covers to be retrofitted with steel hatch covers. The regulations further provide, however, that retrofitting could be postponed until the next inspection for certification so that replacement covers could be installed during a vessel's normal repair and drydocking schedule without causing any substantial disruption in operations.

6. The effective date for these regulations, when finalized, is currently planned to be 90 days after their publication in the **Federal Register** as final rules. Section 30.01-15(a) of Part 30 of this chapter provides that regulatory changes to the tank vessel regulations will normally be made effective 90 days after publication, and the 90 day period is necessary for these regulations in order to allow vessel owners sufficient time to obtain and install replacement covers on vessels due for inspection shortly after the regulations become effective.

7. These regulations would not apply to vessels carrying liquefied or compressed gas in bulk that meet the requirements of Part 38 or Part 154 of this chapter. Parts 28 and 154 already contain adequate fire protection requirements for cargo tanks on vessels that meet those requirements. These regulations would also not apply to tank barges. The Coast Guard is currently conducting a study to determine the extent and severity of the fire safety hazard posed by using aluminum hatch covers on tank barges. Depending upon the results of the study, proposed regulations for barges will be prepared.

8. The purpose of the regulations would be to alleviate the fire safety hazard documented in the recent Coast Guard fire tests and SS *Keytrader* casualty. The regulations would also have a secondary purpose of providing for effective functioning of a vessel's inert gas system during a deck fire. An inert gas system cannot function properly if cargo hatch covers have melted and fallen into the cargo tanks. Subpart 32.53 of Title 46 contains requirements for certain tank vessels to have an inert gas system. Also, as a part of the President's recent initiatives to upgrade the level of safety on tank vessels, the Coast Guard has recently adopted regulations that would require additional categories of tank vessels to have inert gas systems. These regulations were published in the **Federal Register** of November 19, 1979 (44 FR 66500).

Draft Evaluation

9. These proposed regulations are considered to be nonsignificant and, accordingly, a draft evaluation has been prepared and placed in the public docket as required by the Regulatory Policies and Procedures of the Department of Transportion (44 FR 11040-11045). The DOT Order requires that each draft evaluation include an economic analysis which quantities, the extent practicable, the estimated cost of the regulations to the private sector, consumers, and Federal, State and local governments, as well as the anticipated benefits and impacts of the regulations.

10. The estimated costs of these regulations would be as follows:

(a) The minimum expected retrofitting costs based upon the known number of tankships would be: 26 vessels × 19 covers × $3,000 = $1,482,000.

(b) The maximum expected retrofitting costs, based upon the assumption that twice as many tankships would hve aluminum hatch covers and in larger numbers and cost, would be: 52 vessels × 30 covers × $4,000 = $6,240,000.

(c) Government costs of inspecting retrofitted covers would be absorbed within existing Coast Guard resources.

11. The anticipated benefits and impacts of the regulations would be a reduction in fire explosion hazards on tank vessels and a resulting increased level of safety.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 32 of Title 46, Code of Federal Regulations, as follows:

Subpart 32.60—Hull Requirements for Tank Vessels Constructed on or After July 1, 1951

1. By adding a new paragraph (c) to § 32.60-40 to read as follows:

§ 32.60-40 Construction and testing of cargo tanks and bulkheads.

* * * * *

(c) Each tankship that has aluminum hatch covers on cargo tanks must be retrofitted with steel hatch covers at or before its next inspection for certification occurring after [the effective date of this paragraph]. This paragraph does not apply to vessels that comply with Parts 38 or 154 of this chapter.

Subpart 32.65—Hull Requirements for Tank Vessels Constructed on or After November 10, 1936, and Prior to July 1, 1951

2. By adding a new paragraph (d) to § 32.65-40 to read as follows:

§ 32.65-40 Construction and testing of cargo tanks and bulkheads.

* * * * *

(d) Each tankship that has aluminum hatch covers on cargo tanks must be retrofitted with steel hatch covers at or before its next inspection for certification occurring after [the effective date of this paragraph]. This paragraph does not apply to vessels that comply with Parts 38 or 154 of this chapter.

Supart 32.70—Hull Requirements for Steel Hull Tank Vessels Constructed Prior to November 10, 1936

3. By designating the existing text in § 32.70-25 as paragraph (a) of that section, and by adding a new paragraph (b) to that section to read as follows:

§ 32.70-25 Cargo tanks.

(a) * * *

(b) Each tankship that has aluminum hatch covers on cargo tanks must be retrofitted with steel hatch covers at or before it next inspection for certification occurring after [the effective date of this paragraph]. This paragraph does not apply to vessels that comply with Parts 38 or 154 of this chapter.

Subpart 32.75—Hull Requirements for Wood Hull Tank Vessels Constructed Prior to November 10, 1936

4. By designating the existing text in § 32.75-10 as paragraph (a) of that section, and by adding a new paragraph (b) to that section to read as follows:

§ 32.75-10 Cargo tanks.

(a) * * *

(b) Each tankship that has aluminum hatch covers on cargo tanks must be retrofitted with steel hatch covers at or before its next inspection for certification occurring after [the effective date of this paragraph]. This paragraph does not apply to vessels that

comply with Parts 38 or 154 of this chapter.

(Sec. 5, Pub. L. 95-474 (46 U.S.C. 391a, as amended); 49 CFR 1.46)

Dated: October 21, 1980.

Henry H. Bell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc 80-33447 Filed 10-24-80; 8:45 am]

BILLING CODE 4910-14-M

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46 CFR Part 157

[CGD 78-027]

Manning of Vessels

AGENCY: Coast Guard, DOT.

ACTION: Proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its regulations pertaining to the manning requirements for uninspected vessels of 200 gross tons or over navigating on the high seas. This action would remove from the regulations a currently existing affirmative requirement for the minimum manning of uninspected vessels that is not authorized by statute.

DATE: Comments must be received on or before December 11, 1980.

ADDRESSES: Comments should be mailed to Commandant (G-CMC/24) (CGD 78-027), U.S. Coast Guard, Washington, D.C. 20593. Between the hours of 7:30 a.m. and 5:00 p.m., Monday through Thursday, comments may be delivered to, and will be available for inspection or copying at the Marine Safety Council (G-CMC/24), Room 2418, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: Commander Scott D. McCowen, Office of Merchant Marine Safety, Vessel Manning Branch (G-MVP-5/14), Room 1400 G, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593 (202-426-2240).

SUPPLEMENTARY INFORMATION: Interested parties are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Persons sumbitting comments should provide their name and address, identify this notice (CGD 78-027), indicate the specific section of the notice to which the comment applies, and give the reasons for the comment. Persons desiring acknowledgement that their comment has been received should enclose a stamped, self-addressed postcard or envelope. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this proposal are: Commander Scott D. McCowen, Project Manager, Office of Merchant Marine Safety and Lt. Kenneth E. Johnson, Project Attorney, Office of the Chief Counsel.

Discussion of the Proposed Regulations

The Officer's Competency Certificates Convention, 46 U.S.C. 224a, applies to merchant vessels of 200 gross tons or over navigating on the high seas. It is the only statutory requirement for licensed officers on uninspected vessels. 46 CFR 157.30-10 implements the provisions of 46 U.S.C. 224a with respect to uninspected vessels.

The present phrasing of § 157.30-10(c) as an affirmative requirement for the minimum manning of uninspected vessels has led to the filing of improper reports of violation, actions to collect penalties, and actions to suspend or revoke licenses.

The wording of this section originally provided a rule of evidence. Over the years it has evolved into an affirmative manning requirement calling for two licensed deck officers and two licensed engineers on uninspected vessels subject to 46 U.S.C. 224a, when engaged on a voyage of more than twelve hours duration upon the high seas, and not equipped with pilothouse controls for the propulsion machinery. A Federal Court decision in *United States v. Silva*, 272 F. Supp. 46 (D.C.; S.D. Cal. 1967), however, has found that the requirements of this section are not authorized by statute. This proposed regulatory amendment would delete subsection (c) from section 157.30-10 in order to bring the regulation into compliance with statutory authority.

This proposal has been reviewed under the Department of Transportation "Regulatory Policies and Procedures" published on February 28, 1979 (44 FR 11034), and is not considered a significant rulemaking. A draft evaluation is not warranted since the expected impact upon all sectors concerned will be minimal.

§ 157.30-10 [Amended]

In consideration of the foregoing, the Coast Guard proposes to amend Part 157 of Title 46, Code of Federal Regulations by deleting subsection (c) of § 157.30-10.

(46 U.S.C. 224(a); 49 U.S.C. 1655(b), 46 CFR 1.46(b))

Dated: October 21, 1980.

Henry H. Bell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 80-33446 Filed 10-24-80; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 80-190; RM-3630]

Amendment of Form 324—Annual Financial Report of Broadcast Stations; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Action taken herein extends the comment and reply comment dates in the proceeding to revise FCC Form 324, the Annual Financial Report of Broadcast Stations (BC Docket No. 80-190). Metromedia, Inc. requested this extension in order that it be able to include any relevant information that may develop based on its participation in the Commission's pre-test of the proposed form.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

DATE: Comments must be filed on or before November 17, 1980, and reply comments by December 17, 1980.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell, Broadcast Bureau, (202) 632-6302.

Adopted: October 7, 1980.

Released: October 17, 1980.

In the matter of amendment of Form 324 Annual Financial Repoort of Broadcast Stations, BC Docket No. 80-190, RM-3630.

1. On April 24, 1980, the Commission adopted a *Notice of Proposed Rulemaking* looking toward revision of FCC Form 324, the Annual Financial Report of Networks and Licensees of Broadcast Stations. Comments on this matter are presently due by October 9, 1980 and reply comments by November 28, 1980.

2. Metromedia, Inc. has asked the Commission to extend the time for filing comments in this proceeding to November 17, 1980. In requesting this extension, Metromedia states that one of its stations has been selected to participate in the Commission's pre-test of the proposed form and that the additional time will allow them to include in their comments any information they may develop based on their participation. The proposed new date would extend slightly beyond the October 31, 1980 date for submission of the completed pre-test forms.

3. We believe that such an extension would make it easier for Metro-media and others participating in the pre-test to prepare comments in this matter and are therefore granting the additional time requested. In order to provide sufficient time for replies to all commenters, we are also extending the date for filing reply comments to December 17, 1980. As indicated in the Notice, we intend to issue a report on evidence gathered throught the pre-test and will provide an opportunity for comment at such time as the report is released.

4. Accordingly, it is ordered that the above request for an extension of filing time is granted, and the date for filing comments is extended to November 17, 1980 and for reply comments to December 17, 1980.

5. This action is taken pursuant to Section 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 80-33429 Filed 10-24-80; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR PART 73

[BC Docket No. 80-657; RM-3670]

TV Broadcast Station in Victoria, Texas; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: In response to a petition filed by Community Television of Victoria, this action proposes to assign UHF television Channel 31 to Victoria, Texas, as that community's third television channel assignment.

DATES: Comments must be filed on or before December 15, 1980, and reply comments must be filed or or before January 4, 1981.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Joaquin R. Cantu, Broadcast Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

Adopted: October 15, 1980.

Released: October 24, 1980.

In the matter of amendment of § 73.606(b), *Table of Assignments*, Television Broadcast Stations. (Victoria, Texas), BC Docket No. 80-657, RM-3670.

1. The Commission has before it a petition for rule making[1] filed by Community Television of Victoria ("CTV") on April 30, 1980. The petition seeks to have the Commission assign UHF television Channel 31 to Victoria, Texas, as that community's third television channel assignment.

2. Victoria (population 41,349)[2] seat of Victoria County (population 53,766), is located in south central Texas, approximately 195 kilometers (120 miles) southwest of Houston, Texas. Currently assigned to Victoria are UHF Channel 19 (KXIX) and Channel 25 (for which an application for a translator station, BPTT/80031311, is pending [3]).

3. Petitioner CTV submits that the proposed assignment of Channel 31 to Victoria is warranted since economic data gathered from the City and Chamber of Commerce records indicates a need for an additional assignment. CTV states that it will apply for the channel, if assigned.

4. Although not stated in the petition, CTV appears to be seeking an additional channel assignment so that it may operate a 1,000 watt television translator station. Petitioner refers to having filed an application for the use of Channel 25 in Victoria. On March 13, 1980, an educational translator application was also filed with the Commission requesting the use of Channel 25 at Victoria. On April 28, 1980, petitioner amended its application for Channel 25 to specify Channel 55, with a transmitter output power of 100 watts in place of the originally requested 1,000 watts. However, a request for 1,000 watts on Channel 55 would have required a waiver of the transmitter power rule since Channel 55 is not listed in the Television Table of Assignments for Victoria.

5. Channel 31 can, as petitioner asserts, be assigned to Victoria in full compliance with the Commission's minimum distance separation requirements. Indeed, there appears to be an abundance of UHF television channels available for assignment of the Victoria area. Therefore, based upon the information submitted by petitioner CTV and upon the Commission's own examination of the matter, we conclude that petitioner's proposal should be pursued as a means of allocating an additional 1,000 watt translator UHF station for Victoria. However, petitioner should decide whether it wishes to pursue the application for Channel 25. If so, it would not be permitted to also apply for Channel 31. Generally, a TV assignment will not be made without the existence of a potential applicant.

6. Mexican concurrence in the matter must be obtained.

7. Accordingly, it is proposed to amend § 73.606(b) of the Commission's Rules, the Television Table of Assignments, As follows:

City	Channel No.	
	Present	Proposed
Victoria, Texas	19+, 25	19+, 25, 31

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

9. Interested parties may file comments on or before December 15, 1980, and reply comments on or before January 4, 1981.

10. For futher information concerning this proceeding, contact Joaquin R. Cantu, Broadcast Bureau, (202) 632-9660. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division Broadcast Bureau.

Appendix

[BC Docket No. 80-657 RM-3670]

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g), and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's

[1] The Commission published a Public Notice of the petition on May 28, 1980, Report No. 1230.

[2] Population figures are taken from the 1970 U.S Census.

[3] CTV has submitted an application for a full broadcast station which has not yet been accepted.

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rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 80-33428 Filed 10-24-80; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 80-520; RM-3558]

FM Broadcast Stations in Aguada, Arecibo, Cidra, Lajas, Manati, Mayaguez, Quebradillas, and Utuado, P.R.; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Action taken herein extends the time for filing comments and reply comments in the proceeding involving proposed FM channel assignments to cities in Puerto Rico. Radio Americas Corporation, Guayama Broadcasting Company, Inc., and Arecibo Radio Corporation, Inc., request the additional time to prepare and submit engineering data.

DATE: COMMENTS MUST BE FILED ON OR BEFORE OCTOBER 31, 1980, AND REPLY COMMENTS ON OR BEFORE NOVEMBER 20, 1980.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

Adopted: October 14, 1980.

Released: October 21, 1980.

In the matter of amendment of § 73.202(b) *Table of Assignments* FM Broadcast Stations (Aguada, Arecibo, Cidra, Lajas, Manati, Mayaguez, Quebradillas and Utuado, Puerto Rico), BC Docket No. 80-520, RM-3558.

1. On August 15, 1980, the Commission adopted a *Notice of Proposed Rule Making*, proposing to change the FM Table of Assignments for several cities in Puerto Rico (45 FR 58624, published September 4, 1980), in response to a joint petition filed by Aurio Matos, Arzuaga and Davila Associates, Radio Musical, Inc., and Enrique Leon. Comments are presently due October 17, 1980, and reply comments November 6, 1980.

2. On October 7, 1980, counsel for Radio Americas Corporation, Guayama Broadcasting Company, Inc., and Arecibo Radio Corporation, Inc., filed a joint request seeking an extension of time for filing comments and reply comments to and including October 31, 1980, and November 20, 1980, respectively. Counsels state that due to the complexity of this proceeding, additional time is needed for analysis and preparation of engineering data. They note that counsel for the petitioners have been apprised of their intent to file this request.

3. We belive that the public interest would be served by granting the extension so that Radio Americas Corporation, Guayama Broadcasting Company, Inc., and Arecibo Radio Corporation, Inc., may file any information which may be helpful to the Commission in resolving the issues in this proceeding.

4. Accordingly, it is ordered, that the dates for filing comments and reply comments in BC Docket No. 80-520 (RM-3558) are extended to and including October 31, and November 20, 1980, respectively.

5. This action is taken pursuant to Sections 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 80-33427 Filed 10-24-80; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 80-14; Notice 2]

Federal Motor Vehicle Safety Standards; Extension of Comment Period

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Proposed rule, extension of period for public comments.

SUMMARY: This notice responds to a petition for extension of the period for public comments on the notice of proposed rulemaking to delete the tire tables from Appendix A of Federal Motor Vehicle Safety Standard No. 109. The comment closing date is changed from October 27, 1980, to November 26, 1980.

DATE: Comments must be received on or before November 26, 1980.

ADDRESS: Comments on the proposed rule should be submitted to: Docket Section, Room 5108, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Steve Kratzke, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-2992).

SUPPLEMENTARY INFORMATION: On August 28, 1980, at 45 FR 57466, the National Highway Traffic Safety Administration responded to a petition by Michelin Tire Corporation by proposing that Table I, relating to tire sizes and load factors, be deleted from Standard No. 109 (49 CFR § 571.109). This step would expedite the introduction of new tire sizes by the various tire manufacturers.

The Rubber Manufacturers Association, which represents most American tire manufacturers, has petitioned for a 30-day extension of the comment period. According to that group, "Many complex issues are raised which require careful detailed study by technical personnel of the various tire manufacturers and the appropriate RMA committees." This agency had originally established a 60-day comment period. After consideration of this petition, it has been determined that the extension of the comment period will aid in ensuring that the issues raised in the notice are adequately considered by all interested parties. Accordingly, the petition is granted and the comment period is hereby extended until November 26, 1980.

(Secs. 102, 119, and 202, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407, and 1422); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on October 23, 1960.

Carl Nash,

Acting Associate Administrator for Rulemaking.

[FR Doc. 80-33517 Filed 10-23-80; 3:35 pm]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1003, 1005, 1056, 1310, and 1322

[Ex Parte No. MC 19 (Sub-36)]

Practices of Motor Common Carriers of Household Goods (Revision of Operational Regulations)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission intends to cancel the operational regulations now appearing in 49 CFR 1056 applicable to motor common carriers of household goods and to adopt new regulations in conformity with the Household Goods Transportation Act of 1980. It is intended to eliminate all regulation of household goods transportation cost estimating which pertains to the procedure or form of estimates or which require the final charges for the transportation of a shipment to be determined by an estimate. Also intended is the restructuring of the requirements for weighing household goods shipments to provide for more flexible requirements, including the permitting of backweighing. Further changes are intended in the form and content of pre-move information provided to shippers; in the procedures whereby carriers assume liability for the value of cargo while in possession of the carriers and the procedures and requirements relating to the collection of transportation charges from shippers. We also intend to consider requiring Class I and II household goods carriers to establish and maintain specific procedures for receiving and handling complaints and inquiries from shippers.

This proceeding is instituted in compliance with the Household Goods Transportation Act of 1980 which requires that, no later than 60 days after enactment, the Commission shall institute a rulemaking proceeding in which it shall review and revise all of its operational regulations pertaining to the transportation of household goods.

The purpose of the proposal is to reduce the paperwork burden on household goods carriers, to encourage innovative rate and service modifications, to provide performance standards where appropriate, to eliminate regulation to the maximum extent feasible, and to provide increased consumer protection in those areas where such protection is necessary.

DATES: Comments must be filed on or before November 26, 1980.

ADDRESS: An original and 15 copies, if possible, of comments should be sent to: Ex Parte No. MC-19 (Sub No. 36), Room 7205, Office of Consumer Protection, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: W. F. Sibbald, Jr, (202) 275-7148.

SUPPLEMENTARY INFORMATION: This proceeding provides for a complete review of all of the Commission's regulations for the protection of the rights of consumers who, collectively, employ the services of the household goods transportation industry to perform in excess of one million interstate moves each year.

The primary objective is to restructure the regulations appearing in 49 CFR 1056. In furtherance of this objective, amendments are also proposed with reference to other regulations appearing in 49 CFR 1003, *List of Forms*, 49 CFR 1005, *Principles and Practices For the Investigation and Voluntary Disposition of Loss and Damage Claims and Processing Salvage*, 49 CFR 1310, *Freight Rate Tariffs and Classifications of Motor Carriers* and 49 CFR 1322, *Extension of Credit to Shippers By Motor Carriers.*

Appendix A to this notice contains the regulations being proposed. Appendix B is a section-by-section discussion of the present and proposed regulations. Comment is solicited regarding the regulations proposed and additional or alternative regulations considered necessary.

Appendix C is a draft of the consumer information publication, Form OCP-100, *Your Rights and Responsibilities When You Move*, which will be distributed to prospective shippers under the requirements of proposed 49 CFR 1056.2(a)(1).

It will be further required that performance standards be developed whenever appropriate to apply to those regulations continued in effect or adopted for the protection of individual shippers. Comments and recommendations are solicited with respect to identifying those regulations to which performance standards should be applied; to establishing the guidelines or basis for such standards and to determining the most effective application of the standards once established. Comments are also solicited with respect to the establishing of performance standards in this rulemaking proceeding as opposed to instituting a separate rulemaking proceeding as opposed to instituting a separate rulemaking proceeding for that purpose.

In commenting on the development and implementation of performance standards, all parties are encouraged to take into account and provide comment on the following criteria in each regulatory area where the maintenance of performance standards is recommended:

"(A) the level of performance that can be achieved by a well-managed motor common carrier transporting household goods;

"(B) the degree of harm to individual shippers which could result from a violation of the regulation;

"(C) the need to set the level of performance at a level sufficient to deter abuses which result in harm to consumers and violations of regulations;

"(D) service requirements of the carriers;

"(E) the cost of compliance in relation to the consumer benefits to be achieved from such compliance; and

"(F) the need to set the level of performance at a level designed to encourage carriers to offer service responsive to shipper needs."

Implementation of the regulations as proposed will result in a substantial reduction and liberalization in the

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number and scope of the regulations applying to household goods carriers. To the maximum extent feasible, the industry is being encouraged to regulate itself by responsible tariff publication and by observance of operating policies and practices which recognize the industry's obligation to provide a reasonable and adequate service to consumers.

We encourage innovation in the nature of the service provided to consumers and in the rate structure applicable to the service. Areas where such innovations should be explored are the expanded use of containers and intermodal transportation; the further reduction of paperwork; the development of new and improved estimating techniques, and the reduction of cargo loss and damage. We believe the current proposal is flexible enough not just to permit, but to encourage, a wide range of innovative behavior on the part of the carriers and their agents. We will look favorably on comments that point out any failure to achieve this goal.

This notice of proposed rulemaking is issued under the authority of 49 U.S.C. 10321, 11109 and 5 U.S.C. 553.

Decided: September 29, 1980.

By the Commission: Chairman Gaskings, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis and Gilliam.

Agatha L. Mergenovich,

Secretary.

Appendix A

Proposed Revisions of the Regulations Contained in Title 49, Code of Federal Regulations, Applicable to the Operations of Household Goods Motor Carriers.

Part 1056 of Title 49 would be revised to read as follows:

PART 1056—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE OR FOREIGN COMMERCE

Sec.

1056.1 Applicability and definitions.
1056.2 Information for shippers.
1056.3 Estimates of charges.
1056.4 Final charges on shipments subject to minimum weight or volume provisions.
1056.5 Order for service.
1056.6 Receipt or bill of lading.
1056.7 Determination of Weights.
1056.8 Reasonable dispatch.
1056.9 Notification of charges.
1056.10 Signed receipt for shipment.
1056.11 Selling of insurance to shippers.
1056.12 Inability of carriers.
1056.13 Complaint or inquiry handling.
1056.14 Responsibility of principal carriers for acts of agents.
1056.15 Reporting and disclosure requirements—agents.
1056.16 Collection of freight charges on household goods shipments involving loss or destruction in transit.
1056.17 Collection of freight charges on household goods shipments transported on more than one vehicle.
1056.18 Advertisements, false, deceptive and misleading practices.
1056.19 Preparation and filing of annual performance report.
1056.20 Use of charge card plans.

Authority: 49 U.S.C. 10321, 11109 and 5 U.S.C. 553.

§ 1056.1 Applicability and definitions.

(a) The regulations in this part are applicable to the operations of motor carriers engaged in the transportation of household goods as defined in paragraph (B)(1) in interstate or foreign commerce.

(b) *Definitions.* As used in this part:

(1) *Household Goods.* The term "household goods" means personal effects and property used or to be used in a dwelling when a part of the equipment or supply of such dwelling and such other similar property as the Commission may provide by regulation; except that this definition shall not be construed to include property moving from a factory or store except such property as a householder has purchased with intent to use in his dwelling and which is transported at the request of, and the transportation charges paid to the carrier by, the householder. The regulations under this part do not apply to the transportation of property transportable under 49 USC 10102(10)(B) and (C).

(2) *Reasonable dispatch.* The term "reasonable dispatch" means the performance of transportation, excluding transportation provided under tariff provisions requiring guaranteed service dates, on the dates or during the period of time agreed upon by the carrier and the shipper and shown on the Order For Service/Bill of Lading, *Provided, however,* That the defenses of force majeure as construed by the courts shall not be denied the carrier.

(3) *Advertisement.* The term "advertisement" means any communication to the public, in written or printed form, in connection with an offer or sale of any interstate or foreign transportation service, but shall not be construed to include a listing of a carrier name, address, and telephone number in a telephone directory or similar publication.

(4) *Certified Scales.* As used in this part a certified scale is any scale designed for weighing motor vehicles, including trailers or semi-trailers not attached to a tractor, designed, installed and maintained in compliance with the minimum standards of Handbook 44 as published by the National Bureau of Standards and certified by an authorized scale inspection and licensing authority to meet those standards. A certified scale may also be a platform or warehouse type scale meeting the Handbook 44 standards and properly inspected and certified. The use of axle scales for the weighing of vehicles is prohibited.

(5) *Individual Shipper.* As used in this part, "individual shipper" refers to any person who is the consignor and/or consignee of a household goods shipment and who pays the transportation charges out of his or her own funds without the payment of the charges being guaranteed in the bill of lading contract by a third person, normally the employer of the consignor and/or consignee. Shipments for individual shippers may be transported on a prepaid, collect on delivery or credit basis at the discretion of the carrier.

(6) *Commercial Shipper.* As used in this part, "commercial shipper" refers to (i) any person who is the consignor and /or consignee of a household goods shipment which is transported under a bill of lading agreement that the transportation charges are guaranteed and/or paid by a third party, normally the employer of the consignor and/or consignee; or, (ii) any person, excluding the federal government, which is named as the consignor and/or consignee in a bill of lading contract who is not the owner of the goods being transported but who assumes the responsibility for payment of the transportation charges for the account of the beneficial owner of the goods normally an employee of the consignor and/or consignee or, (iii) a freight forwarder which tenders a shipment to a carrier in furtherance of authorized or exempt freight forwarder operations. Shipments for commercial shippers may be transported on a prepaid, collect on delivery or credit basis at the discretion of the carrier.

(7) *Government Bill of Lading Shipper.* As used in this part, "government bill of lading shipper" refers to any person whose property is transported under the terms and conditions of a government bill of lading issued by any department or agency of the federal government to the carrier responsible for the transportation of the shipment.

(8) *Other terms.* Where any other terms used in the regulations in this part are defined in 49 USC 10102, such definitions shall be controlling. Where terms are used in this part which are neither defined herein nor in 49 USC 10102, they shall have the ordinary practical meaning of such terms.

§ 1056.2 Information for shippers.

(a) Prior to the execution of an order for service relating to the proposed transportation for an individual shipper, of a shipment of household goods as defined in 49 CFR 1056.1(b)(1), every motor common carrier holding out to perform the service shall cause to be furnished to the prospective shipper the following publications.

(1) Publication OCP–100, *Your Rights and Responsibilities When You Move,* as prescribed in the appendix to this Section.

(2) A concise easy-to-read, accurate summary of any dispute settlement program, as provided in 49 USC 11711 and approved by the Commission, in which the carrier participates.

(b) Class I and II motor common carriers of household goods shall also furnish each prospective individual shipper:

(1) A copy of the Form OCP–101, *Annual Performance Report,* most recently filed with the Commission if the carrier is required by 49 CFR 1056.19 to prepare and file such report. In lieu of furnishing a copy of the actual report the carrier may reproduce and distribute the reported data appended to Publication OCP–100 provided the data is reproduced on a separate page in the same format as that of the Form OCP–101 without alteration or amendment and without any subjective evaluation or commentary appearing on the same page as the required performance information.

(2) A publication describing the customer complaint and inquiry handling procedures established and maintained by the carrier as required by 49 CFR 1056.13. Included in this publication there shall be a telephone number, either for a toll-free service or for a regular telephone service at which collect calls will be accepted, which the shipper may use to communicate with the principal office of the carrier.

Appendix—Requirements for Publication OCP–100, "Your Rights and Responsibilities When You Move"

General requirements

(1) The text, format and arrangement of the publication shall not be changed without the written approval of the Director, Office of Consumer Protection, Interstate Commerce Commission.

(2) The Director, Office of consumer Protection, Interstate Commerce Commission, shall, within 60 days following the effective date of a decision of the Interstate Commerce Commission changing any rule or regulation published at 49 CFR 1056, cause to be published in the **Federal Register** a notice of amendment to Publication OCP–100 reflecting such change or changes. Future amendments to Publication OCP–100 will become effective 60 days after publication in the **Federal Register.**

(3) The dimensions of the publication shall be optional, provided, however, the product of multiplying the length by the width shall be not less than 36 square inches.

(4) The color and design of the front and back cover of the publication shall be optional, providing, however, the only words printed or appearing on the front cover shall be *"Your Rights and Responsibilities When You Move."*

Text, Format or Arrangement of Publication OCP–100, "Your Rights and Responsibilities When You Move."

See Appendix C for Text and Format of Proposed Publication OCP–100.

§ 1056.3 Estimates of charges.

(a) *Binding estimates.* Motor common carriers engaged in the transportation of household goods as defined in 49 CFR 1056.1(b)(1) may provide in their tariffs for the preparation and furnishing to shippers of binding estimates of the costs which the shippers will be required to pay for the services included in the estimates. Such estimates must be furnished in writing to the shipper or other person responsible for payment of the freight charges and a copy of each such estimate must be retained by the carrier as an addendum to the bill of lading. All such estimates shall have clearly indicated on the face thereof that the estimate is binding upon the carrier and that the charges shown are the maximum charges which will be assessed for the services identified in the estimate.

(b) *Non-binding estimates.* Motor common carriers engaged in the transportation of household goods as defined in 49 CFR 1056.1(b)(1) may without charge provide estimates of the approximate costs which will be assessed for the transportation of such shipments. Estimates of approximate costs shall not be binding on the carriers providing such estimates. The final charges on such estimated shipments shall be those appearing in the carriers' tariffs applicable to the transportation. Non-binding estimates must be furnished in writing to the shipper or other person responsible for payment of the freight charges and a copy of each such estimate must be retained by the carrier as an addendum to the bill of lading. All such estimates shall have clearly indicated on the face thereof that the estimate is not binding on the carrier and that the charges shown are the approximate charges which will be assessed for the services identified in the estimate. Non-binding estimates of approximate costs shall specify the units used in setting charges for all line-haul, accessorial and storage charges and valuation or insurance charges; the carrier's charge per unit; and the estimated units included in the estimate.

(c) *Estimated Charges Required to be Entered on the Order For Service and Bill of Lading.* Motor common carriers furnishing non-binding estimates of approximate cost under provisions of paragraph (b) of this section shall enter on the order for service, if an order for service is required to be prepared under the provisions of 49 CFR 1056.5, and the bill of lading relating to the shipment the amount of the approximate charges estimated and the maximum amount required to be paid at time of delivery as provided in paragraph (d) of this section.

(d) *Maximum Charges Required to be Paid At Time of Delivery on Collect on Delivery Shipments Subject to Non-binding Estimates of Approximate Costs.* At time of delivery of a collect on delivery shipment, except when such shipment is delivered to a warehouse for storage at the request of the shipper, on which a non-binding estimate of the approximate costs has been furnished by the carrier under the provisions of paragraph (b) of this section, the shipper or his or her representative may request delivery of the shipment upon payment, in a form acceptable to the carrier, of an amount not exceeding 110 percent of the estimated charges. The carrier shall relinquish possession of the shipment upon payment of not more than 110 percent of the estimated charges and shall defer demand for the payment of the balance of any final charges for a period of 30 days following the date of delivery. A carrier relinquishing possession of a collect on delivery shipment without payment of the total final charges under the provisions of this paragraph may require that the shipper or other person responsible for payment of the freight charges sign a 30-day non-interest bearing promissory note for the unpaid portion of the final charges as a condition precedent to relinquishing possession of the shipment. Any document used for this purpose must be clearly identified as a non-interest bearing promissory note requiring payment of a sum certain on a specific date and shall not be incorporated in or be part of any other document.

§ 1056.4 Final charges on shipments subject to minimum weight or volume provisions.

(a) Motor common carriers engaged in the transportation of household goods, as defined in 49 CFR 1056.1(b)(1), providing service for individual shippers on rates based on the transportation of a minimum weight or volume shall, prior to the execution of an order for service relating to shipments which appear to be subject to minimum weight or volume

based rates, advise the shipper of the minimum weight or volume based rates and the minimum line-haul charges applicable to the shipment.

(b) Failure to comply with the requirements of paragraph (a) of this section shall require and the governing tariff shall contain a rule providing that the final line-haul charges relating to such a shipment be computed based on the actual weight or volume of the shipment and the rate applicable to a minimum weight or volume shipment.

§ 1056.5 Order for service.

(a) *Order for service required.* Every motor common carrier shall, prior to the receipt of a shipment of household goods as defined in 49 CFR 1056.1(b)(1) to be moved for an individual shipper, prepare an order for service which contains the following minimum information:

(1) Shipper's name, address and telephone number.

(2) Consignee's name, address and telephone number.

(3) Name, address and telephone number of the delivering carrier's office or agent located at or nearest to the destination of the shipment.

(4) A toll-free telephone number, or the number of a telephone at which collect calls will be accepted, by which means the shipper/consignee may contact the carrier.

(5) Agreed pickup date and agreed delivery date, or in lieu of specific dates, the agreed period or periods of time within which pickup, delivery, or the entire move, will be accomplished. If the shipment is to be transported on a guaranteed service basis, the guaranteed dates or periods of time for pickup, transportation and delivery and the penalty or per diem requirements of the agreement shall be entered under this item.

(6) Complete description of any special or accessorial services ordered.

(7) Any identification or registration number assigned the shipment by the carrier.

(8) Amount of estimated approximate charges and method of payment of total charges and maximum amount required to be paid at time of delivery to obtain possession of the shipment by the consignee or his representative under the provisions of 49 CFR 1056.3(c).

(9) Amount of charges required to be paid based on a binding estimate and the terms of payment under that estimate.

(10) Whether the shipper requests notification of the charges prior to delivery and the telephone number or address at which such communications will be received.

(11) A statement concerning the shipper's right to request the reweighing of a shipment reading as follows:

Important Information About the Reweighing of Your Shipment

As the person responsible for paying the charges on a shipment of household goods, or a representative of that person, you have the right to request the reweigh of a shipment weighed at the origin at any time prior to the actual commencement of the unloading. The carrier is required to inform you of the total charges and the weight of the shipment before commencing unloading. The carrier and/or delivering driver must perform the reweigh as requested; you must be advised of the time and specific location where each weighing will be performed and you must be given a reasonable opportunity to be present to observe both weighings.

Should the weight of the shipment as determined by the reweigh be greater or less than the weight now shown on the freight bill, the carrier may recompute the total charges based on the reweigh net weight if the net weight is increased and must reduce charges if the net weight is decreased based on the reweigh net weight if both the gross and tare reweighs are performed on the same scale and are observed by the person responsible for paying the charges or a representative of that person or unless the right to observe the weighings is specifically waived.

(11) *Signatures required.* The order for service shall be signed by the shipper or his or her representative who is ordering the service, and by the carrier or its agent. A copy of the order for service shall be dated and furnished the shipper or his or her representative at the time it is executed.

(b) *Amendments to an Order For Service.* Following the preparation and signing of an Order For Service any change or amendment of the agreed service dates, as provided in paragraph (a)(6) of this section; or, the amount of the estimated charges or amount required to be paid at time of delivery, as provided in paragraph (a)(9) of this section, shall be in writing and must be signed by the shipper or his or her representative who is ordering the service, and by the carrier or its agent. A copy of the amendment shall be dated and furnished the shipper or his or her representative at the time it is executed.

§ 1056.6 Receipt or bill of lading.

(a) *Issuance of a recept or bill of lading.* Every motor common carrier engaged in the transportation of household goods as defined in 49 CFR 1056.1(b)(1) shall issue a receipt or bill of lading at the time a shipment is received for transportation. The receipt or bill of lading containing the minimum information required by § 1056.6(b) and the terms and conditions of the contract, shall be furnished to the shipper, or his or her representative, prior to the commencement of the loading of a shipment, *Provided, however,* That the receipt or bill of lading when furnished to the shipper, or his or her representative, shall not impose on the carrier any liability for the property to be transported prior to the acceptance of the shipment for transportation as provided by § 1056.6(c).

(b) *Minimum information required on a receipt or bill of lading.* Whenever a receipt or bill of lading is issued in compliance with paragraph (a) of this section, the carrier shall cause to be included therein the following minimum information:

(1) The name and address of the motor carrier issuing the receipt or bill of lading.

(2) The names and addresses of any other motor carriers which will participate, through interline, in the transportation of the shipment.

(3) The name, address and telephone number of the office of the carrier issuing the receipt or bill of lading that should be contacted in relation to the transportation of the shipment.

(4) When the transportation is to be performed on a collect on delivery basis, the name, address and telephone number of a person to whom notification provided for in § 1056.7(b) of the regulations in this part shall be given.

(5) When the transportation is to be performed for an individual shipper, and except when the transportation is to be performed subject to tariff provisions providing for guaranteed service dates,the agreed date or period of time for pickup of the shipment and the agreed date or period of time for the delivery of the shipment. The agreed dates or periods of time for pickup and delivery entered on the receipt or bill of lading shall conform to the agreed dates or periods of time for pickup and delivery entered on the order for service or a proper amendment to the order for service.

(6) When the transportation is to be preformed subject to tariff provisions providing for guaranteed pickup, transportation and delivery service, the dates for pickup and delivery and the penalty or per diem entitlements due the shipper under the agreement.

(7) The actual date of pickup.

(8) The company or license numbers of the vehicle on which the shipment is loaded.

(9) The terms and conditions for payment of the total charges.

(10) When the transportation is to be performed on a collect on delivery basis and if a pre-move estimate of the charges is provided to the shipper, the maximum amount required to be paid at the time of delivery to obtain delivery of the shipment.

(11) The released rates valuation statement required by 49 CFR 1307.201(c).

(12) Evidence of any insurance coverage sold to or procured for the shipper, including the amount of the premium for such insurance.

(c) *Requirements for an inventory of the items in a shipment.* Every motor common carrier of household goods as defined in 49 CFR 1056.1(b)(1) shall prepare an inventory of the individual items included in each shipment. The inventory shall either be incorporated in the format of the receipt or bill of lading issued at the time of tender and acceptance of the shipment for transportation or prepared on a separate inventory form. In the event a separate inventory form is used a true copy of the completed inventory form shall be appended to and become part of the receipt or bill lading. The inventory shall be signed by the carrier, or its representative. In the preparation of the inventory cartons, boxes and other similar shipping containers containing more than one item shall be listed on the inventory as one item. Items disassembled into their component parts for the purposes of transportation shall be listed on the inventory by a separate entry to identify each component part.

(d) *Copy of Receipt or Bill of Lading to accompany shipment.* A copy of the receipt or bill of lading, with a copy of the completed inventory appended thereto, shall accompany a shipment at all times while in the possession of a carrier. When the shipment is loaded on a vehicle for transportation the receipt or bill of lading shall be in possession of the driver responsible for the shipment.

§ 1056.7 Determinaton of weights.

(a) *Tare weight, gross weight and net weight.* (1) Every motor common carrier transporting household goods under this part shall determine the weight of each shipment transported prior to the assessment of any charges dependent on the shipment weight. Except as otherwise provided herein the weight shall be obtained on a scale meeting the definition of a certified scale as provided in 49 CFR 1056.1(b)(4).

(2) *Weighing procedure.* Except as otherwise provided herein the weight of each shipment shall be obtained by determining the difference between the tar weight of the vehicle on which the shipment is to be loaded prior to the loading and the gross weight of the same vehicle after the shipment is loaded thereon or, when suitable scales are not reasonably available at the point of loading, the gross weight of the vehicle with the shipment loaded thereon and the tare weight of the same vehicle after the shipment is unloaded.

(3) At the time of both weighings the vehicle shall have installed or loaded thereon all pads, dollies, handtrucks, ramps and other equipment required in the transportation of such shipments. No packing or crating materials or supplies shall be loaded on the vehicle at the time of the tare weighing. Neither the driver nor any other persons shall be on the vehicle at the time of either weighing.

(4) The fuel tanks on the vehicle shall be full at the time of each weighing or, in the alternative, no fuel may be added between the two weighings when the tare weighing is the first weighing performed.

(5) The trailer of a tractor-trailer vehicle combination may be detached from the tractor and weighed separately at each weighing providing the length of the scale platform is adequate to accommodate and support the entire trailer at one time. The use of axle scales is prohibited at all times.

(6) When an automobile is included in a shipment the manufacturer's shipping weight entered on the certificate of title or certificate of registration for the vehicle being transported may be used in lieu of a scale weight obtained at the time of transporation.

(7) Shipments weighing 1000 pounds or less may be weighed on a certified platform or warehouse scale prior to loading for transportion or subsequent to unloading.

(8) The net weight of shipments transported in containers shall be the difference between the tare weight of the container, including all pads, blocking and bracing used or to be used in the transportation of the shipment and the gross weight of the container with the shipment loaded therein. No packing or crating materials or supplies shall be loaded in the container at the time of the tare weighing.

(9) The shipper or any other person responsible for the payment of the freight charges or a representative thereof shall have the right to observe all weighings performed with respect to the determination of the weight of any shipment. The carrier must advise the shipper or any other person entitled to observe the weighings of the time and specific location where each weighing will be performed and must give that person a reasonable opportunity to be present to observe the weighings. Waiver by a shipper of the right to observe any weighing or reweighing is permitted and does not affect any rights of the shipper under these regulations or otherwise.

(b) *Weight tickets.* (1) The carrier shall obtain a separate weight ticket for each weighing required under this section except when both weighings are perfomed on the same scale one weight ticket may be used to record both weighings. Every weight ticket must be signed by the person performing the weighing and must contain the following minumum information:

(1) The complete name and address of the scale owner or operator.

(2) The date and time of each weighing.

(3) Identification of the weight entries thereon as being the tare, gross and/or net weights.

(4) The license number and State of registration of the vehicle. In the event of the weighing of a tractor-trailer unit the license numbers and State of registration of both the tractor and the trailer shall be entered.

(5) The last name of the shipper as it appears on the Bill of Lading.

(6) The carrier's shipment registration or Bill of Lading number.

(7) The original weight ticket or tickets relating to the determination of the weight of a shipment must be retained by the carrier as part of the file on the shipment. All freight bills presented to collect any shipment charges dependent on the weight transported must be accompanied by true copies of all weight tickets obtained in the determination of the shipment weight.

(c) *Reweighing of shipments.* Prior to the actual commencement of the unloading of a shipment, which shall not commence until the shipper or other person responsible for payment of the freight charges is informed in writing of the billing (net) weight and total charges due, the shipper, or his or her representative, may request a reweigh of a shipment which was weighed to determine the transportaion charges prior to the tender for delivery. Such request must be in writing on form furnished by the carrier with the following notice printed thereon in contrasting color in letters at least double the height of any other print on the form:

Important—Read Before Requesting Reweighing of Your Shipment

As the person responsible for paying the charges on a shipment of household goods, or a representative of that person, you have the right to request the reweigh of a shipment weighed at origin at any time prior to the actual commencement of the unloading. The carrier is required to inform you of the total charges and the weight of the shipment before commencing unloading. The carrier and/or delivering driver must perform the reweigh as requested; you must be advised of

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the time and specific location where each weighing will be performed and you must be given a reasonable opportunity to be present to observe both weighings.

Should the weight of the shipment as determined by the reweigh be greater or less than the weight now shown on the freight bill, the carrier may recompute the total charges based on the reweigh net weight if the net weight is increased and must reduce charges if the net weight is decreased based on the reweigh net weight if both the gross and tare reweighs are performed on the same scale and are observed by the person responsible for paying the charges or a representative of that person or unless the right to observe the weighings is specifically waived.

Do Not Sign This Request for Reweigh Until You Have Thoroughly Read and Understand the Above Notice

A copy of the written request for reweigh must be given to the shipper, or his or her representative, at the time the request is made. The original request for reweigh must be retained by the carrier as part of the file on the shipment.

§ 1056.8 Reasonable dispatch.

(a) Except when accepted for transportation subject to tariff provisions providing for guaranteed pickup, transportation and delivery service on agreed dates;

(1) *Reasonable dispatch required.* Each motor common carrier accepting shipments of household goods as defined in 49 CFR 1056.1(a) for transportation for the account of individual shippers shall cause such shipments to be transported with reasonable dispatch as defined in 49 CFR 1056.1(b). The carrier may publish tariffs which provide for the payment of per diem to the shipper when pickup or delivery does not fall on the dates or during the periods of time specified in the order for service. Incentive tariffs for expedited delivery may also be published.

(2) *Notification of delay in providing service with reasonable dispatch.* Whenever a carrier is unable to perform either or both the pickup and delivery of a shipment being transported for an individual shipper on the dates or during the periods of time specified in the order for service, the carrier shall notify the shipper or his or her representative by telephone or in person, at the carrier's expense, of the delay. Such notification shall be given as soon as it becomes apparent to the carrier that it will be unable to provide the service in compliance with the terms of the order for service.

(3) *Carrier-shipper agreement on extended dates or periods of time for the providing of service.* At the time of notification of delay the carrier shall advise the shipper of the dates or periods of time that pickup and/or delivery can be made and obtain the consent of the shipper to the amended dates or periods of time. If the notification of delay occurs prior to the pickup of the shipment, the amendment shall be in writing as required by 49 CFR 1056.4(b). If the notification of delay occurs subsequent to the pickup of the shipment, the carrier representative notifying the shipper of the delay shall prepare a written record of the date, time and manner of notification and the amended date or period of time for delivery agreed to by the carrier and shipper, which record shall be retained by the carrier as part of its file on the shipment and a true copy thereof shall be furnished, by first class mail or in person, to the shipper.

(b) *False or misleading information.* No carrier or carrier agent, employee or representative shall knowingly and willfully give false or misleading information as to the reasons for delay in picking up and delivering shipments.

(c) *Tendering for delivery.* Except upon the request or concurrence of the shipper, or his representative, a shipment being transported for an individual shipper shall not be tendered for delivery prior to the agreed delivery date or period of the time specified on the bill of lading: *Provided, however,* That whenever a carrier is able to tender such a shipment for final delivery more than 24 hours prior to such specified date or the first day of such specified period of time, and the shipper or his representative has not requested or concurred in such early delivery, the carrier may, at its option, place the shipment in storage for its own account and at its own expense in a warehouse located in close proximity to the destination point of the shipment. Whenever a carrier shall exercise such option it shall immediately notify the shipper of the name and address of the warehouse in which the shipment has been placed, and shall make and keep a record of such notification as a part of its record of shipment. The carrier's responsibility for the shipment under the terms and conditions of the bill of lading and its responsibility for the charges for redelivery handling and storage thereof shall continue until final delivery: *Provided, however,* That the carrier's responsibility under the bill of lading shall not extend beyond the agreed delivery date or the first day of the period within which delivery was to have been accomplished as specified in the bill of lading.

§ 1056.9 Notification of charges.

(a) Whenever an individual shipper of a shipment being transported on a collect on delivery basis specifically requests notification of the actual weight or volume and charges on a shipment, and supplies the carrier with an address or telephone number at which the communication will be received, the carrier shall comply with such a request immediately upon determining the actual weight and charges.

(b) Such notification shall be made by telephone, telegraph, or in person at the carrier's expense unless the carrier provides in its tariff that the actual cost of such notification shall be collected from the shipper.

(c) Whenever a shipper, or his or her representative, requests notification of the weight or volume and charges on a shipment as provided in paragraph (a) of this section, the notification must be received by the shipper, or his or her representative, at least one full 24-hour day, excluding Saturdays, Sundays and legal holidays, prior to any tender of the shipment for delivery. The 24-hour notification requirement shall not apply on a shipment which, with the agreement of the shipper, or his or her representative, is to be picked up and delivered within a time period encompassing two consecutive weekdays, or on a shipment on which the charges have been estimated and the maximum amount required to be paid at time of delivery is 110 percent of the estimated charges.

§ 1056.10 Signed receipt for shipment-release prohibited.

No delivery acknowledgment on any shipping document to be signed by the consignee at time of delivery shall contain any language which purports to release or discharge the carrier or its agents from liability, other than a statement that the property has been received in apparent good condition except as noted on the shipping documents.

§ 1056.11 Selling of insurance to shippers.

(a) When a shipment is released for transportation at a value not exceeding 60 cents per pound per article, and the shipper does not declare a valuation of $1.25 or more per pound and pay or agree to pay the carrier for assuming liability for the shipment equal to the declared value, any common carrier of household goods as defined in 49 CFR 1056.1(b)(1), or any employee, agent, or representative thereof, may sell, or offer to sell or procure for any shipper, any kind of insurance, under any type of policy, covering loss or damage in excess of the specified carrier liability to a shipment or shipments of household goods to be transported in interstate or foreign commerce by such carrier; PROVIDED, that the shipper is issued a policy or other appropriate evidence of the insurance purchased, and a copy therof be furnished to the shipper at the time the insurance is sold or procured. Carrier issued policies shall be written in plain English and shall clearly specify the nature and extent of coverage. Failure to issue a policy or other appropriate evidence of insurance purchased shall subject the carrier to full liability for any claims to recover for loss or damage attributed to the carrier.

(b) Any carrier offering or selling or procuring insurance as provided in (a) shall provide in its tariff for the provision of such service. The tariff shall also provide for the base transportation charge to include assumption by the carrier for full liability for the value of the shipment in the event a policy or other appropriate evidence of the insurance purchased by the shipper is not issued to the shipper at the time of purchase.

§ 1056.12 Liability of carriers.

(a) *Liability restricted.* Except as provided in Section 1056.11(a), common carriers by motor vehicle of household goods as defined in 49 CFR 1056.1(b)(1) shall not assume any liability in excess of that for which they are legally liable under their lawful bills of lading and published tariffs.

(b) *Limitations of liability.* A common carrier by motor vehicle of household goods shall be liable for loss of or damage to any articles caused by it while being transported or while being held for storage-in-transit, including incidental pickup or delivery, and including liability for loss or damage to any article or appliance resulting from the servicing of such article or appliance by a third person engaged by the carrier to perform such service, to the extent provided in the outstanding released rates order; except that the carrier may exempt its liability in the following instance:

(1) No liability need be assumed for perishable articles included in the shipment without the knowledge of the carrier; and a carrier accepting for shipment perishable articles may impose reasonable conditions necessary to insure the safe transportation of such commodities.

(c) *Storage-in-transit.* A common carrier by motor vehicle of household goods holding goods for storage-in-transit (S.I.T.) shall, no less than 10 days prior to the expiration of either the specified period of time during which the goods are to be held in such storage or the maximum period of time provided in the carrier's tariff for storage-in-transit, notify the shipper in writing (1) of the date of conversion to permanent storage, (2) of the existence of a nine-month period subsequent to the date of conversion to permanent storage during which shipper may file claims against the carrier for loss and/or damage which occurred to the goods in transit or during the S.I.T. period, and (3) of the fact that on the date of conversion, the liability of the carrier shall terminate and the property shall be subject to the rules, regulations, and charges of the warehouseman. Notification shall be by certified mail, return receipt requested. A common carrier by motor vehicle of household goods holding goods for storage-in-transit for a period of time less than 10 days shall, no less than one day prior to the expiration of the specified time during which the goods are to be held in such storage, give notification to the shipper of the information specified in paragraph (d) (1), (2), and (3) of this section, and maintain a record thereof as part of its record of the shipment. Failure or refusal of a carrier to notify the shipper in accordance with the foregoing shall automatically effect a continuance of carrier liability pursuant to the applicable tariff provisions with respect to S.I.T., until the end of the day following the date upon which notice is given.

§ 1056.13 Complaint and inquiry handling.

(a) Class I and II motor common carriers engaged in the transportation of household goods as defined in 49 CFR 1056.1(a) shall establish and maintain a procedure for responding to complaints and inquiries from shippers for which such transportation is provided. As a minimum the procedure shall provide:

(1) A means whereby shippers may communicate with the principal office of the carrier by telephone without expense to the shipper during the period of time commencing with the date of the signing of an order for service and ending with the date of final settlement of all claims arising out of the transportation as provided in 49 CFR 1005 or, if no claims is filed, the expiration of the period provided for the filing of claims.

(2) The carrier shall retain and make part of the file relating to a shipment a written record of all complaints and inquiries received from a shipper by any means of communication. The record shall include, as a minimum, the date of the complaint or inquiry; the nature or description of the complaint or inquiry; the date of resolution or final handling of the complaint or inquiry and the full name of the carrier or employee responsible for the handling or resolution.

(b) The carriers shall publish in their tariffs applicable to the transportation a full description of the complaint and inquiry handling procedure and shall not amend or otherwise change the published procedure in any manner which will result in the providing of a diminished complaint and inquiry handling procedure without filing notice of the amendment or change by appropriate amendment of the applicable tariffs.

§ 1056.14 Responsibility of principal carriers for acts of agents.

(a) Each principal carrier shall be absolutely responsible for all acts or omissions of any of its agents which relate to the performance of household goods transportation services (including accessorial or terminal services) in interstate or foreign commerce when those services are held out or performed for the principal carrier or when the shipper is led to believe that those transportation services would be performed by the principal carrier.

(b) Each principal carrier shall use due diligence and reasonable care in selecting and maintaining agents who are sufficiently knowledgeable, fit, willing, and able to provide adequate household goods transportation services (including accessorial and terminal services), and to fulfill the obligations imposed upon them by the Commission and by their principal.

§ 1056.15 Reporting and disclosure requirements.

(a) For the purpose of § 1056.14 agents employed by or providing transportation services for any principal carrier shall be defined as follows:

(1) Prime agents are defined as all agents who are permitted or required under the terms of any agreement or arrangement with a principal carrier to provide any transportation service for or on behalf of the principal carrier, including the selling of or arranging for any transportation service, and who perform such services on other than an emergency or temporary basis.

(2) Military agents are defined as all agents who are permitted or required under the terms of any agreement or arrangement with a principal carrier to provide origin and/or destination services only on shipments transported on Government bills of lading issued by the Department of Defense, and who perform such services on other than an emergency or temporary basis.

(3) Temporary agents are defined as all agents who are permitted or required under the terms of any agreement or

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arrangment with a principal carrier to provide origin and/or destination services on behalf of the principal carrier, excluding the selling of or arranging for any transportation service, and who perform such services on an emergency or temporary basis .

(b) Each principal carrier must disclose the following information to each prospective prime agent and to each prospective military agent:

(1) The names under which the principal will do business.

(2) Official names and addresses and principal places of business of the principal carrier and any affiliated carriers that will engage in business with the prospective agent.

(3) A balance sheet and profit and loss statement for each year of the most recent three-year period of the principal carrier's operations.

(4) A statement of the standards (if any) by which the principal carrier determines whether the agency should be terminated. If no such standards are generally applicable, the principal carrier must state either that the agency may be terminated at will or that standards governing termination are subject to negotiation between the principal carrier and the prospective retained agent.

(5) A complete statement of the rights and obligations of the principal and the agent, including rights and obligations with respect to training, advertising, claims handling, and frequency and method of payment. The principal carrier also must furnish a copy of its most recent performance report (as described in 49 CFR 1056.19); state the number of vehicles in its vehicle fleet; and list the tariffs under which it operates.

(6) The names, addresses, and telephone numbers of the five agencies whose principal offices are in the closest geographic proximity to the prospective agent. If the principal maintains fewer than five agencies, it shall furnish a statement that it maintains fewer than five agencies.

(7) A statement of the territorial protection offered by the principal carrier or a statement that no such territorial protection is offered.

(8) A statement of the training required of the agent and its employees and the rules and regulations with which the agent and its employees must be familiar and for which they must be responsible.

(9) A statement concerning the methods (if any) by which disputes between the principal and its agents are settled.

(c) The information required by § 1056.15(b) must be received in writing by a prospective prime or military agent prior to the signing of an agency agreement, and the principal must obtain a receipt for that written information, signed by the prospective agent on the date of its receipt.

(d) Agreements between principal carriers and their prime or military agents must be reduced to writing and signed by the principal and the retained agent, and copies of any such agreements must be retained in the files of the principal carrier for a period of not less than 24 months following the date of termination of each agreement.

§ 1056.16 Collection of freight charges on household goods shipments involving loss or destruction in transit.

(a) No motor common carrier of household goods in interstate or foreign commerce shall collect, or shall require a shipper thereof to pay, any published freight charges (including any charges for accessorial or terminal services) when that shipment is totally lost or destroyed in transit. The provisions of this subsection shall apply only to the transportation of household goods as defined in § 1056.1(b)(1) of these rules. Notwithstanding any other provisions of this subsection, a carrier shall collect, and the shipper shall be required to pay, any specific valuation charge that may be due. This subsection shall not be applicable to the extent that any such loss or destruction is due to the act or omission of the shipper.

(b) In the event that any portion, but less than all, of a shipment of household goods is lost or destroyed in transit, no motor common carrier of household goods in interstate or foreign commerce shall collect, or shall require a shipper thereof to pay, at the time of delivery, that proportion of its published freight charges (including any charges for accessorial or terminal services) corresponding to that portion of the shipment which is lost or destroyed in transit. In order to calculate the charges applicable to the shipment as delivered, the carrier shall multiply the percentage corresponding to the portion of the shipment delivered by the total charges (including accessorial and terminal charges) applicable to the shipment as tendered by the shipper. If the charges computed in the manner set forth above exceed the charges otherwise applicable to the weight or volume corresponding to the weight or volume of the shipment as delivered, the lesser of those charges shall apply. The provisions of this paragraph shall apply only to the transportation of household goods as defined in § 1056.1(b)(1) of these rules. Notwithstanding any other provisions of this subsection, a carrier shall collect, and the shipper shall be required to pay, that proportion of any accessorial or teminal services rendered which corresponds to the proportion of the shipment not lost or destroyed in transit and any specific valuation charge that may be due. In the event that any shipment of household goods to which this subsection applies shall sustain loss or destruction in transit amounting to 10 percent or less of that shipment, by weight or volume, notwithstanding any other provisions of this subsection, the carrier may collect freight charges (including charges for accessorial or terminal services) for that portion of the shipment lost or destroyed in transit; Provided, that such charges shall not be considered due or owing to the carrier, and provided further that the carrier must, within 90 days of the date of delivery of any portion of that shipment, refund to the shipper any charges (including charges for accessorial or terminal services) assessed for that portion of the shipment lost or destroyed in transit. The provisions of this subsection shall not be applicable to the extent that any such loss or destruction is due to the act or omission of the shipper. Carriers shall determine, at their own expense, the weight or volume of that part of the shipment not lost or destroyed in transit.

(c) The rights provided by this section are in addition to, and not in lieu of, any other rights which the shipper of household goods may have with respect to a shipment of household goods which is lost or destroyed, or partially lost or destroyed, in transit, whether or not that shipper has exercised the rights provided in paragraphs (a) and (b) of this section.

§ 1056.17 Collection of freight charges on shipments transported on more than one vehicle.

(a) Whenever a shipment of household goods, as defined in 49 CFR 1056.1(b)(1), is transported on more than one vehicle on a collect on delivery basis, the carrier delivering such split or divided shipment shall observe the requirements of subparagraphs (1), (2) and (3) in the collection of the charges.

(1) The collection of the charges attributable to the transportation of the portion of the shipment transported on each vehicle may be deferred until all portions of the shipment are delivered, or,

(2) Providing that all portions of the shipment have been weighed or that the total volume of the shipment has been determined and the final charges determined as if the entire shipment was transported on one vehicle, the carrier may collect at the time of delivery of any portion of the shipment that percentage of the final charges represented by the portion of the shipment tendered for delivery, or,

(3) In the event that the combined weight or volume of all portions of the shipment and the final charges due the carrier for the transportation of the entire shipment can not be reasonably determined at the time any portion of the shipment is tendered for delivery, the carrier shall determine the weight or volume of the portion of the shipment being delivered and collect the charges due the carrier for the transportation of a shipment of that weight or volume: Provided, That at the time of tender of delivery of the final portion of the shipment the total charges due the carrier for the transportation of the entire shipment shall be determined and the charges required to be paid at the time of delivery of the final portion of the shipment shall be not more than the difference between the total of the charges paid at the time of delivery of previously delivered portions of the shipment and the total charges due from the transportation of the entire shipment.

(b) In the event of the loss or destruction of any part of a portion of a shipment being transported on more than one vehicle the collection of charges as provided in paragraph (a) of this section shall also be in conformity with the requirements of 49 CFR 1056.16.

§ 1056.18 Advertising by motor common carriers of household goods.

(a) Every motor common carrier engaged in the transportation of household goods in interstate or foreign commerce, including any carriers providing any accessorial service incidental to or part of such interstate or foreign transportation, shall include, and shall require each of its agents to include, in every advertisement as defined in Section 1056.1(d), the name or trade name of the motor carrier under whose operating authority the advertised service will originate, and the certificate or docket number assigned to such operating authority by the Interstate Commerce Commission.

(b) Such certificate or docket number shall be in the following form in every advertisement: "I.C.C. No. MC ——" but shall not include any sub numbers which may have been assigned.

(c) No motor common carrier engaged in the transportation of household goods, as defined in 49 CFR 1056.1(a), or any agent or other representative of such a carrier, shall publish or cause to be published or use any advertisement as defined in 1056.1(c), which is false, misleading or deceptive.

(d) No agent of a motor common carrier engaged in the transportation of household goods, as defined in 49 CFR 1056.1(b)(1) which is also a motor common carrier of household goods under authority issued by the Interstate Commerce Commission shall in the solicitation of the sale of transportation or transportation related services to be performed under the authority of the agent employ, use or distribute to a prospective shipper any sales literature, brochure, form, document or advertisement bearing the name, emblem, logo, certificate or docket number or any other written or printed matter, picture or color scheme which, regardless of intent, might cause the prospective shipper to assume or believe that the transportation or transportation services will be performed by any motor common carrier other than the agent.

(e) No motor common carrier engaged in the transportation of household goods as defined in 49 CFR 1056.1(b)(1), shall in the performance of such transportation employ, use or distribute any forms, documents or other written or printed material bearing a name, emblem, logo, certificate or docket number or any other written or printed matter, picture or color scheme which might cause the shipper, or his representative, to assume or believe that the transportation is being performed by any motor common carrier other than the carrier responsible for the issuance of the bill of lading, provided, however, the names and addresses of connecting carriers and agents employed in the performance of the service may appear on the bill of lading and other documents when required.

§ 1056.19 Preparation and Filing of Annual Performance Report.

(a) *Minimum filing requirement.* Each motor common carrier for household goods as defined in 49 CFR 1056(b)(1), which delivers 100 or more interstate shipments for individual shippers as defined in 49 CFR 1056.1(b)(5), during any calendar year shall, on or before March 31 of the following year cause to be filed with the Office of Consumer Protection, Interstate Commerce Commission, Washington, D.C. 20423, a report of the service performed during the report year. The report shall be submitted on Form OCP–101.

(b) *Prescribed Annual Performance Report Form.*

BILLING CODE 7035-01-M

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INTERSTATE COMMERCE COMMISSION OFFICE OF CONSUMER PROTECTION ANNUAL PERFORMANCE REPORT	FOR YEAR ENDED DECEMBER 31, 19___	
CARRIER'S NAME	CARRIER'S ADDRESS	
ICC NUMBER		

PART A

During the year the total number of shipments delivered for each type of shipper was:

1. Individual shipper .....
2. Government Bill of Lading shipper.....
3. Commercial shipper.....

PART B

With reference to shipments delivered for individual shippers as defined in 49 CFR 1056.1(b)(5):

1. The number of shipments delivered upon payment of the amount of a binding estimate (49 CFR 1056.3(a)).....
2. Percent of the shipments on which a non-binding estimate was furnished for which the final charges for the services included in the estimate did not exceed the amount of the estimate.....
3. Percent of shipments delivered which were picked up on or before the last date for pickup specified in the order for service/bill of lading.....
4. Percent of shipments delivered which were delivered on or before the last date for delivery as specified in the bill of lading contract.....
5. Percent of shipments delivered which did not result in the filing of a claim by the shipper within 60 days following the date of delivery for property loss or damage in excess of $50.....
6. Percent of shipments delivered which did not result in the filing of a claim in excess of $50 by the shipper within 60 days following the date of delivery for damages and expenses arising out of the delayed pickup or delivery of the shipment....
7. The average number of days between the date of filing of a claim for property loss or damage or delay in excess of $50 and the date of final settlement of such a claim..
8. The percent of all claims for amounts in excess of $50 filed for property loss or damage or for damages or expenses incurred as result of delayed pickup or delivery.
   a. Which were resolved through the use of a dispute settlement (arbitration) program maintained or participated in by the carrier.....
   b. Which were not referred to a dispute settlement program and which were concluded after the carrier received legal notice of suit by claimant to recover.....

OCP-101 (5/80)

BILLING CODE 7035-01-C

(c) *Instructions for Preparation of Annual Performance Report, Form OCP-101.*

Instructions for Preparaton

Part A

1. Enter the total number of shipments delivered which were transported for individual shippers.
2. Enter the total number of shipments delivered on government Bills of Lading. Do not include shipments transported for a freight forwarder.
3. Enter the total of all other shipments transported for commercial shippers as defined in 49 CFR 1056.1(b)(6). Include shipments transported for freight forwarders in this total.

Part B

1. Enter the number of shipments delivered on which a binding estimate was furnished and on which the final charges were the same as the estimated charges.
2. Enter the percent of the shipments on which a non-binding estimate of approximated costs was furnished which were delivered upon payment of an amount not exceeding the estimated approximated costs.
3. Enter the percent of the shipments entered under Part A item 1 which were picked up or before the last date for pickup as specified in the order for service. *Include in the computation of the percent all shipments picked up late, regardless of the reason or the party responsible for the delay.*
4. Enter the percent of all shipments entered under Part A item 1 which were delivered on or before the last date for delivery as specified in the bill of lading. *Include the computation of the percent all shipments delivered late regardless of the reason or the party responsible for the delay.*
5. Enter the percent of the shipments entered under Part A item 1 which did not result in the filing of a claim by the shipper within 60 days following the date of delivery for property loss or damage in excess of $50. For the purposes of this report, a "claim filed" shall be considered as any claim otherwise meeting the minimum requirements of 49 CFR 1005.2(b) and for an apparent loss in excess of $50.
6. Enter the percent of shipments entered under Part A item 1 which did not result in the filing of a claim by the shipper within 60 days following the date of delivery for damages or expenses in excess of $50 incurred as a result of the delayed pickup and/or delivery of the shipment. For the purpose of this report, a "claim filed" shall be considered as any claim otherwise meeting the minimum requirements of 49 CFR 1005.2(b) and for apparent damages or expenses in excess of $50.
7. Enter the average number of days required to reach a final settlement of all claims for $50 or more relating to the transportation of shipments entered under Part A item 1 arising out of property loss or damage or the delayed pickup and/or delivery of shipments during the report year. For the purposes of this report a claim shall be considered to be a "claim filed" if it meets the criteria set forth in (7) and (8) and shall be considered as being finally settled on the 60th day following the date on which a written offer of settlement is mailed or delivered in person to a claimant unless the offer of settlement is accepted prior to the 60th day or on the 60th day following the date on which denial of liability is mailed or delivered in person to the claimant unless the claimant assents to the denial prior to the 60th day.

8a. Enter the percent of the loss and damage or delay claim for $50 or more arising out of the transportation of shipments entered under Part A item 1 which were settled during the report year through the use of a dispute resolution or arbitration procedure maintained or participated in by the carrier.

8b. Enter the percent of loss and damage or delay claims for $50 or more arising out of the transportation of shipments entered under Part A item 1 which were settled during the year on a date subsequent to the date on which legal notice of suit to recover was received by the carrier.

General Instructions

1. Date for the completion of Form OCP-101 may be obtained by random sampling providing that in every instance the universe sampled is all shipments delivered for individual shippers during the report year or all claims arising out of the transportation of individual shipper shipments which were received or settled, as appropriate, during the report year.
2. When random sampling is used, the minimum sample size in every instance shall be 400 shipments or claims, as appropriate, in replicates of 100 shipments or claims each. All samples must conform to standard deviation with a 95% confidence level.
3. Carriers submitting Form OCP-101 shall retain and make available for review by an authorized Commission employee all working papers, notes and other files relating to the preparation of each report for a period of not less than 24 months following the date of filing such a report.

§ 1056.20 Use of charge card plans.

Motor common carriers of household goods, as defined in 49 CFR 1056(b)(1), may provide in their tariffs for the acceptance of charge cards for the payment of freight charges whenever shipments are transported under agreements and tariffs requiring payment by cash, certified check or money order payment by charge card shall be considered the same as payment by cash, certified check or money order. Any tariff rule or item permitting the acceptance of charge cards shall identify the charge card plans participated in by the carrier.

PART 1322—EXTENSION OF CREDIT TO SHIPPERS BY MOTOR CARRRIERS

It is proposed to revise § 1322.6 to read as follows:

§ 1322.6 Charge card plans not included (under credit regulations).

The provisions of this Part shall not apply to the payment of interstate transportation charges by use of charge cards as provided in 49 CFR 1059.19 and when the shipper of household goods does not force an involuntary extension of credit by the carrier by causing the charge card issuer to reverse the charge transaction and charge payments back to the carrier's account.

PART 1003—LIST OF FORMS

§ 1003.1 Motor carrier and broker forms [Amended].

It is proposed to eliminate from the list of prescribed forms Form BOp-101, *Quarterly Report of Underestimates and Overestimates* and Form BOp-103, *Summary of Information For Shippers of Household Goods* and to add to the list of prescribed forms Publication OCP-100, *Your Rights and Reponsibilities When You Move* and Form OCP-101, *Annual Performance Report.*

PART 1005—PRINCIPLES AND PRACTICES FOR THE INVESTIGATION AND VOLUNTARY DISPOSITION OF LOSS AND DAMAGE CLAIMS AND PROCESSING SALVAGE

It is proposed to amend 49 CFR 1005.1 by deleting that portion of the section following the words *Interstate Commerce Act* and by removing the semi-colon following *Act* and inserting instead a period. As revised section will read:

§ 1005.1 Applicability of regulations.

The regulations set forth in this part shall govern the processing of claims for loss, damage, injury, or delay to property transported or accepted for transportation, in interstate or foreign commerce, by each railroad, express company, motor carrier, water carrier, and freight forwarder (hereinafter called carrier), subject to the Interstate Commerce Act.

And to amend 49 CFR 1005.5 by identifying the present paragraph under that section as paragraph (a) and adding paragraph (b) to read:

§ 1005.5 Disposition of claims.

* * * * *

(b) When settling a claim for loss or damage, a common carrier by motor vehicle of household goods as defined in 49 CFR 1056.1(b)(1) shall use the replacement costs of the lost or damaged item as a base to apply a depreciation factor to arrive at the current actual value of the lost or damaged item: *Provided,* That where an

item cannot be replaced or no suitable replacement is obtainable, the proper measure of damages shall be the original costs, augmented by a factor derived from a consumer price index, and adjusted downward by a factor depreciation over average useful life.

PART 1310—FREIGHT RATE TARIFFS AND CLASSIFICATIONS OF MOTOR CARRIERS

It is proposed to amend 49 CFR 1310.15 by adding an additional sub-paragraph to paragraph (a) to read:

§ 1310.15 Terminal and Other Services—Charges and Allowances (Rule 15).

(a) * * *

(3) Tariffs containing line-haul rates for the transportation of household goods shall not provide for the inclusion in the line-haul rates of any accessorial services normally associated with or required in the transportation of household goods. Tariffs establishing such accessorial charges shall separately state each such service to be rendered and the charge therefor. The separate tariff charges so established for containers, for packing and for unpacking are to be stated in amounts per container. Charges for other services shall be separately stated on a unit or hourly basis, whichever is appropriate. Tariffs may state an hourly labor charge applicable to miscellaneous labor service performed at the request of a shipper in connection with the transportation, when a rate is not separately stated for the service so requested. Except as otherwise provided by orders of the Commission tariffs containing rates for the line-haul transportation of household goods or charges for accessorial services incidental to the transportation of household goods shall not provide for the providing of such transportation or services "free" or "without charge" unless such terms are published to apply on transportation which is authorized to be performed free by the Interstate Commerce Act.

* * * * *

Appendix B

Section-by-Section Discussion of Proposed Revisions of the Regulations Contained in Title 49, Code of Federal Regulations, Applicable to the Operations of Household Goods Motor Carriers.

Section 1056.1—*Applicability and Definitions.*

Section 1056.1(b)(1) provides a definition of household goods which includes only those household goods as described in 49 USC 10102(10)(A). The transportation of household goods as described in 49 USC 10102(10)(B) and (C) is specifically excluded from the application of the 49 CFR 1056 rules.

Shippers of household goods moving under 49 USC 10102(10)(B) and (C) are usually commercial or professional enterprises which do not require the degree of protection required for the shipper of household goods moving under the description in 49 USC 10102(10)(A).

The definition of reasonable dispatch in 49 CFR 1056.1(b)(2) is unchanged from the definition of that term as it appears in the present regulations.

Section 1056.1(b)(3) providing a definition of what constitutes an advertisement is the same as appears in the present regulations with the addition of the phrase, "in a telephone directory or similar publication" to complete the last sentence and to make clear what is intended.

Section 1056.1(b)(4) has been added to the definitions section to make clear what is intended when reference is made elsewhere in Part 1056 to certified scales. Even though the first Ex Parte No. MC–19 proceeding, which was concluded in 1939, made references to "certified scales" and in other decisions and regulations since that date that term has appeared, the meaning of the term has never previously been explained or defined.

A definition is provided for each of the three types or classes of shippers which employ the services of household goods carriers for the transportation of household goods as defined in 49 CFR 1056.1(b)(1).

The term "individual shippers" is used to identify those shippers who have in the past been identified as "COD shippers." The proposed redefinition removes any implication that individual shippers are entitled only to have their property transported on a prepaid or collect on delivery basis and makes clear that individual shippers may be extended credit at the discretion of the carrier.

The proposed definition of a "commercial shipper" is intended to overcome certain deficiencies which exist when such persons are identified as "national account shippers." In the majority of the so-called national account shipments the consignor named in the bill of lading contract is actually the owner of the goods being transported and the "national account," normally the employer of the party being moved, is identified in the contract only as being the party who is to be billed for the transportation charges. Under such circumstances the degree to which the national account is actually involved in the transportation transaction varies. In some instances the national account does not participate at all in the transaction beyond paying the transportation charges. More frequently the national account participates in or directs the selection of a carrier, negotiates the terms and conditions of the transportation with the carrier, and assists the owner of the goods transported to recover for any loss or damage resulting from the transaction.

A minority of the shipments in this class are transported on bill of lading contracts which identify the so-called national account as the consignor and/or consignee. When this occurs the national account functions as a bailee for the purposes of transporting the goods an is clearly a commercial shipper in such instances. A freight forwarder also functions in the same capacity in its routine operations.

The proposed definition of government bill of lading shipper is intended to group all shipments moved on government bills of lading in one class and to erase the distinction beween GBL shipments transported on bills of lading issued by the Department of Defense and GBL shopments tendered by other depaltments and agencies of the federal government.

Section 1056.2—*Information for Shippers.*

The proposed Section 1056.2 is intended to supercede and cancel the requirements now appearing in 49 CFR 1056.7.

Proposed Section 1056.2 provides for every individual shipper to be provided with specified minimum information which experience has shown a novice shipper requires to successfully represent his or her own best interest in transactions with the carriers.

Carriers engaged in the moving of household goods customarily provide a variety of publications to customers regarding such matters as claim free packing, arranging for utility service and other suggestions on how to make a move successful. The present BOp–103 *Summary of Information For Shippers of Household Goods,* also contains material of this nature.

It is proposed in the future to include in the publications required to be given shippers only information about the specific rights and responsibilities of the shipper, and indirectly of the carrier. It is believed that this approach will result in a better informed consumer in those areas where the absence of critical information or knowledge can lead to unnecessary cost and inconvenience for both the shipper and carrier.

The requirement that carriers furnish each shipper a copy of Public Advisory No. 4 relating to the prevention and settlement of claims for loss, damage or inconvenience is being discontinued. It is intended to continue to publish the Public Advisory No. 4 and to furnish copies of the publication to consumers who contact the Commission for information about moving. Discontinuance of the requirement that the Public Advisory No. 4 be furnished should encourage the moving industry to voluntarily provide information such as that contained in the Advisory to their customers.

The requirement that a shipper be informed of the procedure established by a Class I or II carrier for receiving and handling shipper complaints and inquiries is intended to make it easier for shippers to communicate directly with the carriers and to make less frequent the need for the Commission to intercede on behalf of a shipper in obtaining information or assistance from a carrier. Presumably the fact that Class I and II carriers will be required to provide information about their complaint and inquiry handling procedures to each shipper will also encourage better performance by the carriers in that area of their operations.

Discontinuance of the present requirement that a receipt be obtained for the pre-move information should not adversely affect the distribution of the required materials to prospective shippers. Carriers will be expected to comply with the requirement that the material be furnished to every prospective shipper and it is within the abilities of the Commission to assure that this is done.

Section 1056.3—*Estimates of Charges.*

The regulations proposed in this section are intended to cancel and supercede the regulations presently appearing in 49 CFR 1056.8.

The regulations proposed in Section 1056.3 take into consideration the intent of the legislation recently enacted to prohibit the adoption of any regulations relating to the form or manner in which household goods carriers prepare estimates of the costs of their services. It is also noted that the intent of the legislation is to prohibit the adoption by the Commission of any regulations which will determine the final cost of a household goods transportation service based on an estimate. Further, the legislation requires the Commission to permit carriers to publish tariff rules providing for the furnishing of binding estimates.

Section 1056.3(a) is concerned with the proposition of binding estimates. This section provides that carriers may publish appropriate rules in their tariffs relating to the preparation and furnishing of binding estimates of costs. Presumably some carriers may elect to provide in their tariffs for the furnishing of binding estimates with a proviso that if the tariff charges on a shipment are less than the estimated charges the shipper will be given the benefit of the lower of the two charges.

To discourage disputes or misunderstanding arising out of the use of binding estimates, the requirement is made that such estimates shall be in writing, that the shipper shall be furnished a copy of the estimate and that a copy of the estimate must be appended to the bill of lading.

Section 1056.3(b) relates to the preparation and funishing of non-binding estimates. The proposed section requires that such estimates of approximate costs must be furnished in writing and may be prepared in any manner suitable to the carrier and shipper subject to a minimum requirement that the estimate must specify the units, i.e., per hundred pounds or per cubic foot, hours or other unit of measurement, used in determining the estimated charges for line haul transportation, accessorial and storage charges and valuation or insurance charges; the carrier's charges per unit, and the estimated number of units included in the estimate.

Section 1056.3(c) requires that carriers, when non-binding estimates of approximate costs are furnished, enter on the order for service and the bill of lading the total amount of the estimated approximate costs and the maximum charges required to be paid at the time of delivery as set forth in Section 1056.3(d).

Section 1056.3(d) provides for the continuation of the so-called 110% rule now provided by Section 1056.8(b). However, there are two modifications of the present rule which are intended to overcome two problems encountered with the present rule.

First, it is made clear that the 110% rule does not apply when shipments are placed in storage at the request of a shipper. From the outset the intent of the present 110% rule has been to prevent shipments being placed in storage at the expense of the shipper when at the time of delivery the shipper is unprepared to pay the tariff charges due to being misinformed as result of an underestimate. However, at times shippers have taken the position that they may place their goods in storage and then require the carrier to make delivery on the payment of only 110% of the estimated charges when there is an underestimate. The inclusion of the phrase, "except when such shipment is delivered to a warehouse for storage at the request of the shipper," is to make clear that when a shipper elects to place a shipment in storage the 110% rule no longer applies.

Second, certain shippers have refused to voluntarily pay the balance of the final charges at the conclusion of the 15-day grace period. The sum involved may not be of sufficient consequence to encourage the carrier to go to court to collect the balance and as a result such shippers have obtained the transportation of their goods at less than the tariff charges.

To overcome this problem, provision is made in the proposed rule for an extension of the grace period for credit from 15 to 30 days and for the carrier to obtain from the shipper a signed non-interest bearing 30-day promissory note for the amount of the balance of the charges. Extension of the credit period from 15 to 30 days may improve the shipper's ability to acquire the funds required to pay the balance of the charges. The creation of a specific 30-day promissory note should serve to impress on the shipper that the balance of the final charges cannot be ignored and make it easier for carriers to enforce collection through local courts. To prevent novice shippers from being required or induced to sign promissory notes without being aware of the nature of the instrument being signed or to sign a blank promissory note prior to any determination being made, as result of weighing the shipment and properly computing the charges, that an underestimate has occurred, it is proposed to require that the promissory note be a separate document, i.e., it may not be incorporated in an estimate, order for service, bill of lading or other document, and, at the time the shipper signs the promissory note, it must have entered thereon a sum certain due, which shall be the difference between the total charges due at time of delivery and the charges actually paid at time of delivery, and a specific date when due, which shall be 30 calendar days following the date of delivery.

The proposed regulation also does away with the Report of Underestimates and Overestimates required to be filed under the provisions of the present 49 CFR 1056.8(e). The value of this report or of a similar report relating to the estimating experience of carriers under the proposed regulations is questionable when compared to the time and expense involved in the preparation of such reports. The Commission's improved abilities to monitor the operations of carriers by means of complaint data also serves to lessen the need for such reports.

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Section 1056.4—*Final Charges on Shipments Subject to Minimum Weight or Volume Provisions.*

Under the requirements of present 49 CFR 1056.6(c) a carrier which publishes rates based on a minimum weight provision is required to advise a shipper whose shipment appears to be subject to those provisions of the minimum weight requirements prior to the acceptance of such a shipment for transportation. As a general rule it is believed that most responsible carriers are now complying with this requirement.

However, as line-haul rates on minimum weight shipments approach $50 per hundred pounds, the failure of a carrier sales representative to fully advise a novice shipper of the minimum weight provisions can have seriously adverse consequences on the shipper. In most instances the shipper who tenders a minimum weight shipment to a carrier is the type of consumer most incapable of paying unanticipated charges.

The purpose of proposed Section 1056.4 is to require that shippers be informed fully of the consequences of the minimum weight provisions and to provide an equitable means for determining the final charges when the required notice is not given.

It is not proposed to require that a specific record be kept regarding giving of the notice. It will be incumbent on a carrier under such circumstances to create some form of definite record of such notice, such as a notation on the shipper and carrier copies of the order for service, to assure that the notice requirement is complied with in the event of disputes.

Should a carrier elect to publish rates on the basis of volume instead of on weight the proposed requirement for notice to the shipper of a specified minimum volume would be the same as if the rates applicable were based on weight.

Section 1056.5—*Order for Service.*

The proposed regulation requiring the preparation and use of an order for service is in most respects a restatement of the present regulations appearing in Section 1056.9. There are, however, several significant modifications or amendments being proposed.

First, in Section 1056.5(a) the requirement for an order for service is made applicable only to shipments to be transported for an individual shipper.

A significant percent of the shipments moved for commercial shippers are transported subject to the terms, conditions or requirements of a purchase order or letter or authorization issued by a business enterprise. When this occurs, the order for service becomes nothing more than a restatement of the requirements or agreements contained in the purchase order or letter of authorization and serves no useful purpose. Approval of the proposed regulation will in no way prevent a carrier from preparing and using an order for service in the event that a commercial shipper does not issue a purchase order or letter of authorization prior to the movement of a shipment.

With respect to shipments moving on government bills of lading the combination of the terms and conditions of the government bill of lading and the provisions of the carrier's tender under 49 U.S.C. 10721, formerly Section 22 of Part I of the Interstate Commerce Act, makes the requirement for an order for service on government shipments unnecessary.

Under Section 1056.5 (a)(4) it is proposed that carriers be required to insert on the order for the service a telephone number the shipper may use to contact the principal office of the carrier during the period of time commencing with the date of the signing of an order for service and ending with the date of final settlement of all claims arising out of the transportation. If no claims are filed, the expiration of the period will be that provided by the terms and conditions of the bill of lading contract for the filing of claims.

Whenever an order for service is issued by a Class I or II carrier the telephone number entered on the order for service should be the same as the number used to contact the carrier regarding complaints and inquiries as required by proposed Section 1056.13.

It is not considered that the imposition of this requirement will place an unreasonable burden, financially or otherwise, on any carrier and the ability of the shipper to deal directly with the carrier in the event of a service inquiry or complaint will be enhanced. Many major carriers already provide such a communications service to shippers and it is considered likely that the existing rate structure includes the costs of this service. Experience has shown, however, that there are carriers which do not voluntarily provide such a service and shippers employing such carriers are required to bear the expense of contracting the carrier when shipments are delayed or when questions arise as result of loss or damage and the handling of the resultant claims.

The requirement in the present regulations that the location of the certified scale to be used in weighing the shipment be inserted in the order for service is proposed to be eliminated. This is in the recognition of the fact that the carrier representative at the time of the preparation of the order for service usually cannot, with any degree of certainty, identify the scale which will be used. In lieu of this order for service requirement provision is made in the weighing regulation being proposed, under Section 1056.7 (a)(9), for the shipper to be advised of the specific location of the scales to be used in all weighings.

Under proposed Section 1056.5(a)(5), it is required that if the shipment is to be transported under the regular reasonable dispatch requirements the agreed dates or periods of time for pickup and delivery must be entered. If the carrier has in effect tariff provisions for a guaranteed pickup and delivery service, with predetermined penalties or per diem for non-performance, the guaranteed service dates and the amount or method of determination of the penalty or per diem payments to which the shippers will be entitled in the event of non-performance must be entered.

Under proposed Section 1056.5(a)(8), it is required that there be entered on the order for service the amount of the charges estimated under the provisions of Section 1056.3(b) and the amount of the maximum charges required to be paid at time of delivery as provided in Section 1056.3(d). It is also proposed to require that the amount of the charges estimated under the binding estimates provisions of Section 1056.3(a) be entered on the order for service.

Proposed Section 1056.5(b) provides for the amending of an order for service and requires that any amendment to the agreed service dates or amount of the non-binding estimated approximate costs be in writing, signed by the carrier and shipper and appended to the order for service. These are normally the two most significant elements of a pre-move agreement between a carrier and shipper and experience with shipper complaints indicates that any change of either the agreed service dates or the estimated costs should be confirmed in writing and made part of the original written agreement. It is anticipated that provision for amendments to binding estimates or guaranteed service dates will be included in the tariff rules or items relating to those services.

Section 1056.6—*Receipt or Bill of Lading.*

The proposed regulations under Section 1056.6 incorporates to a large degree the present receipt or bill of lading requirements under 49 CFR 1056.10. However, there are significant differences between the present and proposed requirements.

All motor common carriers are required to issue a receipt or bill of lading at the time a shipment is tendered and accepted for transportation. It is intended that the requirement set forth in Section 1056.6(a) be applicable to the transportation of all shipments of houshold goods as defined in 49 CFR 1056.1(b)(1). In the Transportation of household goods under the descriptions provided in 49 USC 10102(10)(B) and (C), carriers will be subject to the receipt or bill of lading requirements appearing in 49 CFR 1051.1(a) since that transportation is beyond the intended application of the 49 CFR 1056 regulations.

The requirement that the receipt or bill of lading containing the enumerated minimum entries be furnished to the shipper prior to the commencement of the loading of the shipment is intended to improve the shipper's position in the transaction with the carrier. At the present time it is not customary for a carrier to provide a shipper with a copy of the bill of lading contract until after a shipment is loaded. If it is at that time that the shipper discovers that the entries on the document, such as the dates for delivery, do not correspond with the dates agreed upon at the time an Order For Service was prepared the shipper is put at a severe disadvantage in any attempt to require the carrier to amend the bill of lading entries to correspond with the previously agreed dates.

The receipt or bill of lading entries enumerated under Section 1056.6(b), paragraphs (1) through (12) will be required to be completed with respect to all shipments of household goods as defined in 49 CFR 1056.1(b)(1) which are transported for individual shippers. The information required in paragraphs (4), (5) and (10) will not be required with respect to shipments moved for commercial or GBL shippers. The "maximum amount required to be paid at time of delivery" required by paragraph (10) will be either the maximum final charges determined by a binding estimate of costs or the amount of the non-binding estimated approximate costs plus 10 percent of that amount, depending on the type of estimate furnished the shipper. The information required in paragraph (12) will only be required when insurance is sold to or procured for a shipper.

No requirement that entries relating to the tare, gross or net weight of the shipment be made on the bill of lading is included in the enumeration of the minimum information required. This is in recognition of the amended weighing procedures proposed in Section 1056.7. Under the amended procedures, backweighing is permissible when the weighing cannot reasonably be performed at the time of the pickup of the shipment. When a shipment is backweighed, no weight information will be available until after the shipment is unloaded. Whenever the bill of lading is also used as a freight bill for the assessment of the charges under the provisions of 49 CFR 1051.1(b), the net weight of the shipment will be required to be entered on the document. Also, under proposed Section 1056.7 true copies of the weight tickets will be required to be attached to the freight bill.

Proposed Section 1056.6(c) relates to the preparation of an inventory of the items included in a shipment. This is a new requirement as the preparation and use of an inventory has not been required previously by regulation. However, it is customary for all carriers to prepare inventories on household goods shipments and the imposition of the regulatory requirement will not serve to increase the documentation required of a carrier. The purpose in proposing an inventory as part of the bill of lading is to improve the degree of protection provided the shipper in transactions with the carrier. In those instances when an inventory is not prepared at the time of pickup of a shipment, the shipper can be harmed when all or a portion of the shipment is lost or damaged while in the possession of the carrier. Further, requiring that an inventory be prepared and retained as part of the file on a shipment should enhance the abilities of carriers and the Commission in efforts to assure the accuracy of shipment weights as there is a statistically predictable relationship between the number of items listed on an inventory and the weight of a shipment.

Section 1056.6(d) is intended to put into regulation form a decision of the Commission in Ex Parte No. MC–19 (Sub-No. 8), served April 13, 1978 to interpret the regulations as regards the requirement that a receipt or bill of lading accompany a shipment while in the possession of a carrier.

The Statement presently required to be printed at the bottom of every household goods bill of lading warning about the knowing and willful falsification, destruction, mutilation or alteration of a bill of lading will no longer be required under the proposed regulation. As a practical matter, the requirement that this notice be on every bill of lading has served no useful purpose and has caused some shippers to assume that any addition to or alteration of the entries made on a bill of lading at the time of issue will automatically result in the carrier, agent or driver being fined $5000. As a result, complaints of questionable validity have been made against the carriers over the years because of this one item.

The penalties stated in the notice are intended to be applied in only those instances when a person alters or falsifies a bill of lading contract for such purposes as fraudulently converting an order notify bill to a straight bill of lading or to provide for the conversion of the possession of the goods to other than the lawful holder of title. As such, the requirement that the notice apear on every bill of lading is misleading and serves no useful purpose.

Section 1056.7—*Determination of weights.*

The regulations applying to the determination of shipment weights now appearing in the present 49 CFR 1056.6 have been restructured in the proposed Section 1056.7 to reflect the thrust of the recently enacted legislation. The proposed requirements are more liberal in several major areas and at the same time the interests of the consumer are better protected.

The key points of the proposed Section 1056.7 requirements are:

(1) It is required that the weight of every shipment which is transported on the basis of weight be determined by the use of certified scales prior to the assessment of any charges based on the shipment weight.

(2) The use of constructive weights will no longer be permitted. Only a minute fraction of all shipments move on constructive weights at the present time and with the more liberal weighing procedures being permitted by the proposed regulations there should be no reason why every shipment should not be weighed when the charges are dependent on the shipment weight.

(3) Reverse or back weighing would be permitted in those instances when a regular weighing cannot be reasonably obtained at origin.

(4) The present requirement that the driver be on the vehicle at the time of each weighing is eliminated. Under the proposed regulation no persons will be permitted to be on the vehicle at the time of weighing. This amendment will bring the Commission's regulation into line with the weighing procedures enforced by most of the States and will encourage more accurate weighing by eliminating the inconsistencies brought about by "body bumps" of the vehicle and shipment weight.

(5) The fuel tanks of a vehicle will be required to be full at the time of each weighing or, as an alternative, there can

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be no fuel added to the tanks between the tare and gross weighing when the tare weighing is the first weighing performed.

(6) Provision is made for detaching a trailer from a tractor and weighing the trailer separately when scales long enough to accommodate a combination vehicle are not available. The determination of weights by the use of axle scales would be specifically prohibited.

(7) When an automobile is included in a shipment the carrier will have the option of using the manufacturers shipping weight entered on the Certificate of Title or State registration receipt for the vehicle in lieu of actually weighing the vehicle.

(8) The provision for weighing shipments of 1000 pounds or less on a warehouse or platform scale will be continued.

(9) The provisions for weighing shipments being transported in containers will be continued.

(10) The right of a shipper or his or her representative to observe all weighings performed to determine the weight of a shipment will be made definite. A requirement that the carrier inform the shipper or any other person entitled to observe a weighing of the specific location of the scales to be used and to allow the shipper or his or her representative a reasonable opportunity to be present is imposed. The shipper may, however, waive the right to observe any weighing or reweighing.

(11) The requirements for entries on weight tickets are expanded. The identity of the scale used will be made more definite. In addition to the date of each weighing it will also be required that the time of day of each weighing be entered on the weight ticket.

(12) The use of one weight ticket for recording both weighings when both weighings are performed on the same scale will be permitted.

(13) The requirement that the weight tickets be signed by a "certified weighmaster" or the driver will be amended to require only that the tickets be signed by the person performing the weighing. Only a minority of the States have laws providing for "certified weighmasters" and this requrement has been inconsistent.

(14) The requirement that the tare and gross weights be entered on the receipt or bill of lading is eliminated and instead a specific requirement that all weight tickets relating to the weighing of a shipment be attached to any freight bill presented for the collection of charges is imposed.

(15) The requirement for the preparation and use of a Drivers Weight Certificate presently required under 49 CFR 1056.11 is elimiated.

(16) With respect to the reweighing of shipments, specific requirements are imposed. Carriers will not be permitted to require shippers to pay for reweighings since the final charges on a shipment can be increased in the event the reweigh net weight is greater than the original billing weight.

(17) It will be required that at the time of requesting a reweigh the shipper be specifically advised that the reweigh can result in increased final charges. All requests for reweighs will be required to be confirmed in writing over the signature of the shipper or his or her representative. A copy of the written request will be required to be retained by the carrier as part of the file on the shipment.

Section 1056.8—*Reasonable dispatch.*

The reasonable dispatch requirements now appearing in 49 CFR 1056.12 are proposed to be substantially amended in the interests of providing improved service and protection to those shippers who require such protection and to eliminate from the reasonable dispatch requirements shipments tendered by commercial and government bill of lading shippers, who do not appear to require such protection. This change is based on continuing review of annual performance reports filed by household goods carriers which disclose that the commercial and government bill of lading shippers appear to receive a more adequate service in the area of reasonable dispatch than do the individual shippers and, therefore, do not need the same degree of regulatory protection.

Eliminating the commercial and government bill of lading shipments from the specific reasonable dispatch requirement does not preclude the statutory requirements that the carriers provide a safe and adequate service on such shipments, 49 U.S.C. 11101(a). Further, there would appear to be no prohibition against carriers publishing an appropriate tariff rule to permit the furnishing of service with reasonable dispatch as defined in 49 CFR 1056.1 (b)(2) on shipments transported for commercial or government bill of lading shippers.

With respect to the Section 1056.8 regulation being proposed the requirement set forth in paragraph (a) is essentially the same as in 49 CFR 1056.12 (a) at present with an amendment to limit the application of the requirement to the transportation of shipments for individual shippers.

Paragraph (b) of proposed Section 1056.8 requires that shippers be given timely notification when a carrier is unable to provide service as agreed. The providing of such notice by telegram has been eliminated to eliminate the practice of providing such notifications by mailgram. Experience has shown that the use of mailgrams for this purpose is unsatisfactory due to the frequently delayed delivery of such communications. In addition, any provision for giving notification by mailgram, straight telegram or by letter would serve to deny the shipper the opportunity to consent or concur in an alternate date or period of time for the service to be provided.

The requirement that the carrier retain a separate written record of notification of delay in pickup is eliminated as it will be required under paragraph (c) that the carrier obtain the shipper's consent to any amended dates or periods of time for providing service and the amendment to the agreed service dates will be required to be reflected by a written or printed amendment to the order for service. If the delay becomes apparent after the pickup of the shipment the carrier will be required to prepare and retain as part of the shipment file a written record of the notification and the amended service dates consented to by the shipper and to immediately provide to the shipper, in person or by first class mail, a copy of the written record of amendment.

Shipments accepted for transportation under tariff provisions for guaranteed service will be excluded from the application of the reasonable dispatch requirements since it is anticipated that the shipper will be protected from the adverse consequences of untimely performance by the terms of the bill of lading contract which incorporates the applicable tariff provisions.

The proposal is to apply the reasonable dispatch requirements to, at most, only approximately 40 percent of all household goods shipments. The carriers should, after being relieved of the reasonable dispatch requirements represented by the commercial and government bill of lading shipments, be able to better control the dispatching of vehicles and use of other resources with a resultant significant improvement in their ability to meet reasonable dispatch agreements on individual shipper shipments. We do not believe that any shippers will be adversely affected to any significant degree by this amended regulatory approach.

Experience has shown that at those times when the demands for service are at their peak there is a tendency on the part of some carriers to fail to provide factual information to shippers as to the reasons for delayed service or the location of the shipments. For that reason paragraph (d) is proposed to be included in proposed Section 1056.8 to make it the carriers' obligation to provide truthful information on delays.

The requirement that carriers obtain a shipper's consent to any amendment to the agreed service dates is intended to overcome two significant problems that have existed in the application of the present regulations.

Under the present regulations, it is possible for a carrier to induce shippers to sign an order for service by promising to provide service on whatever dates or periods of time the shipper desires. Responsible carriers send frequent communications to their offices and agents establishing specific time frames for the providing of service on shipments of varying descriptions. Experience indicates, however, that some industry sales representatives ignore those restraints in their commitments made to prospective shippers. Under the unilateral situation at present, a shipper often receives notification, as late at the date of pickup, from the carrier that the anticipated service will not be performed until some future date which the carrier determined without any consultation with the shipper. The requirement that a carrier obtain a shipper's consent to amended dates should serve to make industry sales representatives more aware to the carriers' responsibilities in this respect.

In addition to encouraging more responsible sales representations, the requirement that carriers obtain a shipper's consent to the amending of service dates should overcome the problem which arises when a shipment is delayed on delivery and the carrier unilaterally sets a new delivery date or period of time without consulting with the shipper to determine if the shipment can be received on the amended dates or periods of times. Often for valid reasons shippers or their representatives cannot accept delivery on the dates set by the carrier. Under such circumstances shipments can be placed in storage at the shipper's expense or, in the alternative, the carrier may hold a shipment on a line-haul vehicle for several days, a practice which is disruptive to the carrier's operations and wasteful of energy and other resources.

It is proposed to recodify the present 49 CFR 1056.12 as Section 1056.8(e) with amending language to make the new paragraph applicable only to shipments transported for individual shippers. The intent of the paragraph is to avoid having shippers be made subject to storage charges when a shipment is placed in storage at destination when the shipper is unable or unwilling to accept early delivery. The protection provided by the requirements of this paragraph are reasonable and should be continued.

Section 1056.9—*Notification of charges.*

The requirement existing throughout the industry that collect on delivery shippers pay shipment charges in cash or by certified check or money order often creates problems for shippers moving into locations where they do not have established banking connections. Responsible carriers recognize that the imposition of this requirement places on them an obligation to assure that the shipper is given timely notification of the charges in order to make it possible for the shipper to obtain the required cash, certified check or money order, prior to the arrival of the shipment at destination. However, shippers are disadvantaged when carrier, agents and drivers fail to comply with shipper's request that notice of the shipment weight or volume and charges be given prior to delivery.

Proposed Section 1056.9 is intended to make it a regulatory requirement that those shippers who request to be notified of the weight or volume and charges be given such notice immediately upon the determination of the weight or volume and charges by the carrier. Under paragraph (c) the notice will be required to be received by the shipper, or his or her representative, at least one 24-hour week day prior to the intended date of delivery. The only exceptions to the 24-hour before delivery requirement will be when a shipment is picked up and delivered on two consecutive week days or whenever the shipper has been given an estimate and has been advised that at the time of delivery the maximum charges which will be required to be paid to obtain delivery will not exceed 110 percent of the estimated charges.

Assuring that the shipper has at least one full week day prior to the delivery of the shipment to obtain the necessary cash, certified check or money order while the banks and other financial institutions in a community are usually open should relieve disadvantages imposed on a shipper by the customary payment requirements.

Section 1056.10—Signed receipt for shipment—Release prohibited.

Proposed Section 1056.10 is a verbatim reproduction of the present 49 CFR 1056.14. The purpose of the requirement of this section is to prevent carriers from evading liability for loss and damage by the use of any delivery receipt which, when signed by a shipper or his representative, will relieve the carrier of any further liability.

Section 1056.11—Selling of insurance to shippers.

Proposed Section 1056.11 provides for a reversal of the present prohibition against the selling of insurance to shippers and instead permits carriers, their agents and representatives to sell or procure insurance if requested by the shipper.

To protect the shippers against the possibility that they may pay for insurance at the time of making their transportation arrangements and then finding later, presumably after experiencing loss or damage, that the desired insurance was not made effective, for whatever reason, it is proposed that a record of the insurance purchase be required on the bill of lading (proposed Section 1056.6(b)(12)) and that a policy or other appropriate evidence of the insurance purchase be issued with a copy being furnished to the shipper. Failure to comply with this requirement will subject the carrier to full liability for any claims to recover for loss or damage attributed to the carrier.

It will also be required that a shipper release a shipment for transportation at a value not exceeding 60 cents per pound per article as a condition precedent to the carrier being permitted to sell or procure insurance on the shipment. Further, insurance can only be sold or procured when a shipper does not declare a lump-sum valuation on the shipment and pay or agree to pay the carrier for assuming the liability expressed by the lump-sum declaration. The imposition of this latter requirement removes the possibility that a shipper might be induced to declare a specific value on a shipment and pay the carrier to assume that liability and also be induced to purchase insurance to apply to the same liability.

Section 1056.12—*Liability of Carriers.*

The proposed Section 1056.12 is a reproduction of the present 49 CFR 1056.16 with paragraphs (b) and (d) eliminated and paragraphs (c) and (e) redesignated as paragraphs (b) and (c). Also, to make clear the intent that the proposed section apply only to household goods shipments for individual householders the words "as defined in 49 CFR 1056.1(b)(1)."; are inserted following "household goods" in the first sentence of paragraph (a).

Paragraph (b) of the present 49 CFR 1056.16 is made unnecessary by the requirements of proposed Section 1056.17 and will be discussed in reference to that proposed section.

Paragraph (d) of the present 49 CFR 1056.16 is proposed to be recodified under 49 CFR 1005.5(b) as the subject matter of that paragraph relates directly

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to the settlement of loss and damage claims.

Section 1056.13—*Complaint and Inquiry Handling.*

Proposed Section 1056.13 provides for the establishing and maintaining of specific programs and procedures for the receipt, handling and recording of complaints and inquiries originating with individual shippers being served by Class I and II motor common carriers of household goods as defined in 49 CFR 1056.1(b)(1). An essential element of any such program established by a carrier will be the providing of a means whereby a shipper may communicate with the principal office of the carrier without cost to the shipper during a specified period of time commencing with the signing of an order for service and concluding with either the date of resolution of all claims arising out of the transportation service or, if no claims are filed, the last date on which a claim may be filed and not be denied solely because of the running of the statute of limitations imposed by the carrier's bill of lading contract.

Many household goods carriers already have in effect complaint and inquiry handling programs and procedures substantially in conformity with the proposed requirement. Adoption of the proposed Section 1056.13 will not have any substantial impact on their present operations or operating costs. For those carriers which have not already established such programs and procedures, the affirmative results of compliance with the requirements should more than offset the costs involved.

The ultimate objective of the proposed requirement is to assure that a shipper receives a better quantum of service in the transaction with the carrier. Other affirmative results which should come about with compliance with the proposed requirement will be the accumulation of data which will enable a carrier to better evaluate and control the day-to-day operations of agents and owner-operators, an increased degree of control by the carrier of its operations and a reduction in the number of complaints and inquiries directed to the commission by shippers who are unable to obtain the cooperation of the carriers in the resolution of complaints and inquiries.

The intended overall thrust of the proposed requirement is to assure that the shipper who contracts with a mover for the performance of a service is provided with a cost-free and convenient means of communicating directly with the mover instead of being required to rely on the carrier's agents, owner-operators and other third parties to respond on behalf of the carrier to requests for information or the resolution of complaints.

Section 1056.14—*Responsibility of Principal Carriers for Acts of Agents.*

Proposed Section 1056.14 is a verbatim reproduction of the present 49 CFR 1056.20

Paragraph (a) of proposed Section 1056.14 is essentially a restatement of the law of agency and in some quarters the inclusion of this paragraph in the 49 CFR 1056 regulations is considered to be redundant. While there is merit to that position there are two reasons why the paragraph shuld be retained in the regulations. First, many persons subject to or affected by the 49 CFR 1056 regulations are not adequately familiar with the requirements or intent of the law of agency and the inclusion of paragraph (a) assures that carriers, agents and others are informed in that regard.

Second, the inclusion of paragraph (a) in 49 CFR 1056.14 assures that in those instances when a carrier attempts to disavow or ignore its responsibilities for the acts of an agent the Commission will be enabled to take action for non-compliance with a specific regulatory requirement instead of being required to rely on what could be a rather uncertain position under the law of agency.

Inclusion of paragraph (a) will in no manner limit or infringe on a shipper's right to hold a carrier responsible under civil law for the acts of an agent.

Section 1056.15—*Agent Recruiting and Retention Requirements.*

The regulations now appearing in 49 CFR 1056.19 are proposed to be amended and recodified in proposed Section 1056.15.

Paragraph (a) of proposed Section 1056.15 is a verbatim reproduction of paragraph (a) of the present 49 CFR 1056.19. Paragraph (b) of the proposed section is the same as the present paragraph (b) of 49 CFR 1056.19 with the deletion of the requirement in the present subparagraph (3) that a prospective agent be provided a copy of schedule 10 (organization) to the carrier's most recent motor carrier annual report form M–1 or M–2 (as appropriate). Considering the nature of the other information required to be furnished to a prospective agent under the remaining numbered sub-paragraphs of paragraph (b) the requirement imposed by the present sub-paragraph (3) appears to be unneccessary. Further, the annual report schedule referred to is now identified as schedule 100 and the report forms are now MH–1 and MH–2. With the deletion of the present sub-paragraph (3) the present sub-paragraphs (4) through (10) are redesignated as sub-paragraphs (3) through (9) in proposed Section 1056.13 (b).

The present paragraphs (c) and (d) in 49 CFR 1056.19 are repeated verbatim in the proposed section with an amendment of the reference to Section 1056.19 (b) to read Section 1056.15(b) and the addition of the words "for a period of not less than 24 months following the date of termination of each agreement" at the end of the sentence in paragraph (d).

It is proposed to delete in their entirety paragraphs (e) and (f) of the present 49 CFR 1056.19 and thereby discontinue the requirement that notices of agency agreements and the termination of agency agreements be filed with the Commission. Experience has shown that the use made of the information required to be filed with the Commission is miniscule when compared to the expense imposed on the industry and the commission in the preparation, submission and processing of the filings. The requirement in paragraph (d) that a principal carrier retain copies of all agency agreements on file for a period of time extending 24 months beyond the date of terminaton assures that the Commission will have access to the information now provided by paragraphs (e) and (f) without the unnecessary expense incurred in filing and processing the notices of agreements and terminations.

Section 1056.16—*Collection of Freight Charges on Household Goods Shipment Involving Loss or Destruction in Transit.*

Proposed Section 1056.16 is essentially a restatement of the requirements now presented in 49 CFR 1056.26. Everywhere in the present regulation where reference is made to Section 1056.1(a)(1) the reference has been amended to read Section 1056.1 (b)(1).

The major amendment is the deletion of paragraph (c) in the present regulation and the renumbering of the present paragraph (d) as paragraph (c). Also, the wording of the section has been amended where necessary to make the requirements of the section applicable to shipments moved on either weight or volume based rates.

The present paragraph (c) is being recodified as proposed Section 1056.17 to make the requirements of the paragraph as amended apply to all shipments of household goods as defined in 49 CFR 1056.1(b)(1) instead of limiting the intent of the paragraph to just those shipments involving loss or destruction in transit. This will be discussed further in the commentary relating to proposed Section 1056.17.

Section 1056.17—*Collection of Freight Charges on Shipments Transported on More Than One Vehicle.*

In the routine operations of household goods carriers it is at times required that a shipment be split or divided in two or more portions with each portion being transported on a separate vehicle. Over the years the Commission has received complaints from shippers concerning the manner in which different carriers assess the charges on such split shipments. Generally these complaints involve a situation wherein the carrier is demanding payment of the final charges for the entire shipment at the time of tender of delivery of the first portion of the shipment. When the shipper refuses to pay the entire final charges under such circumstances the reaction of the carrier may be to place the portion of the shipment offered for delivery in storage at the expense of the shipper.

Proposed Section 1056.17 is intended to impose specific procedures to apply to the collection of freight charges on split shipments under the varying circumstances which are known to exist in the handling of such shipments. The proposed procedures are reasonable and attainable and should work to the advantage of both the shipper and carrier and reduce future complaints to the Commission relating to the subject matter of the proposed section.

Section 1056.18—*Advertising—False, Misleading or Deceptive Advertisements or Operating Procedures Prohibited.*

Proposed Section 1056.18 is intended to continue in effect the requirements of present Section 1056.30 (a) and (b). In addition paragraphs (c) through (e) have been added to deal with misrepresentations frequently encountered in the operations of the industry.

Paragraph (c) as proposed will, if adopted, eliminate the need for paragraph (b) in present 49 CFR 1056.16 and paragraph (d) in 49 CFR 1056.15 since both of those paragraphs relate to false, misleading or deceptive advertising regarding insurance. Paragraph (c) will also make unlawful the practice of carriers advertising that they provide services beyond the geographical scope of their operating authority without identifying those locations or areas which require the concurrence of a connecting carrier to provide the advertised service. Also made unlawful will be the misleading advertisements such as an advertisement stating that a shipment of a certain size will be transported between two named points or locations for a specified price without stating that the price advertised includes only the line-haul transportation charges and does not include the various surcharges, valuation and accessorial charges which will normally be required to be paid. Paragraph (c) is intended to apply only to factual misrepresentations which are false, misleading or deceptive. It is not intended that the thrust of the paragraph be directed toward making unlawful the "puffing" of a service or product such as is normally encountered in a responsible marketing effort.

Proposed paragraph (d) is directed toward the practice of some carriers, which are also agents of another, usually larger, carrier, of employing the sales literature, forms, documents and other printed or written material intended to be used in the solicitation of customers on behalf of the principal carrier, in the sales solicitation efforts made to attract shippers to be moved under the authority of the agent. Such a practice can be misleading to a shipper to the extent that he or she may be unware of the identity of the carrier actually responsible for the move. In the atmosphere of increased competition which it appears will exist in the future, the need for reasonable guidelines or restraints to prevent false, misleading or deceptive advertisements, or carrier operating procedures appears desirable.

Proposed paragraph (e) is intended primarily to deal with the problem of small carriers, which may or may not be an agent for another carrier, using forms carrying the name, logo, emblem or other identification of another carrier in the transportation of shipments under their own authority. This practice is misleading and frequently results in complaints about claims, services or charges being directed to the Commission with the wrong carrier being identified as being responsible.

Section 1056.19—*Preparation ond Filing of Annual Performance Report.*

The proposed revision of the annual performance report required of household goods carriers is intended to retain the affirmative portions of the present report, with modifications, and to eliminate those portions or features of the present report which are of no benefit or consequence to consumers and the Commission.

The present requirement is that every household goods carrier file an annual performance report. Experience has shown that those carriers which deliver less than 100 shipments for individual shippers a year are frequently unable to present data that is correctly representative of the overall quality of the carriers' service and frequently results in a misleading and inaccurate portrayal of a carrier's abilities to provide reasonable and adequate service.

Requiring that the annual performance report requirements apply only to those carriers which deliver 100 or more shipments for individual shippers per year will result in only 100 to 125 carriers being required to comply with the reporting requirement. However, the reports that are filed will relate to in excess of over 90 percent of all such shipments delivered. There will be no prohibition against carriers delivering less than 100 shipments preparing and filing annual performance reports if they desire to do so on a voluntary basis.

Adoption of the proposed minimum filing requirement will eliminate about 90 percent of the reports now required with a substantial reduction in the expense now imposed on the industry and the Commission. Further, the reduction in the number of the reports will improve the abilities of the Commission to assure that the reports which are filed accurately describe a reporting carrier's performance.

Elimination of the present requirement that service performance with respect to those shipments transported for commercial or government bill of lading shippers be reported will have no adverse effect on those consumers most in need of the data presented in such reports, the novice shippers who move on a collect on delivery basis. Those shippers which are in position to tender their shipments to carriers on a credit basis are generally knowledgeable commercial or government shippers who do not require such a report to evaluate a carrier's ability to provide the service they require.

It is proposed to require that the annual performance data be filed on a standard form to improve the abilities of the Commission to evaluate the data and to compile industry performance statistics. This same affirmative result will also benefit consumers who make use of the reported data in their evaluations of individual carriers.

The proposed annual performance report has been designed to provide for the presentation of a carrier's performance data in an affirmative manner as compared to the present report format which requires that the data be presented in a negative manner. This modification should overcome many of the objections to the reporting requirement which have been raised by the industry in the past and should have no adverse effect on the value of the report to consumers.

It is proposed to provide specific instructions for the preparation of the report and to permit the use of random sampling within prescribed guidelines.

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This is intended to remove uncertainty regarding the proper compilation of the data presented in the report and should result in more accurate reports in the future.

Section 1056.20—*Use of Charge Card Plans.*

The proposed regulation is intended to make possible the use of charge cards at the option of the carriers to collect freight charges which would otherwise be required to be paid by cash, certified check or money order. The proposed rule is intended to cancel and supersede the present charge card regulations appearing in 49 CFR 1058.25(f). The requirement for quarterly reports during the first year following approval would also be discontinued.

For the purpose of the regulations under Part 1056 shipments on which the charges are paid by the use of charge card plans will be considered as collect on delivery shipments and the regulations pertaining to the extension of credit now appearing in Part 1322 will have no application except under the provisions of the proposed amendment to 49 CFR 1322.6.

Approval of the proposed Section 1056.20 and the amendment to 49 CFR 1322.6 will enable those consumers who are financially able to qualify under the requirements of the various charge card plans to use a charge card for the purposes of paying the costs of having their household goods moved to realize the convenience and other advantages offered by this method of payment. Relaxation of the regulatory restraints in this area should offer increased competitive options to the industry with a resulting affirmative effect on the industry's ability to provide reasonable and adequate service to consumers.

Proposed Amendment to Part 1005 and Deletion of Present Part 1056.17.

Section 1005.1—*Applicability of Regulations.*

It is proposed to amend the applicability section of Part 1005 to delete reference to the regulations presently in 49 CFR 1056.17 (a) and (b) by changing the semi-colon following Interstate Commerce Act in Section 1005.1 to a period and deleting the remainder of the section. This will make the remaining sections of Part 1005 applicable as appropriate to household goods carriers and will eliminate the necessity for continuing 49 CFR 1056.17 (a) and (b) in effect.

It is proposed to eliminate the requirement for retention of a freight claims register now appearing in 49 CFR 1056.17(c). Under the provisions of Part 1005 all carriers are required to set up and maintain specified minimum files relating to each claim received and the need for requiring a register in addition to those files does not appear warranted. Discontinuing the requirements in present 49 CFR 1056.17 (c) will reduce the paperwork required of the carriers and should have no substantial adverse impact on the Commission's actions to require compliance with Part 1005.

It is also proposed to recodify the present paragraph (d) of 49 CFR 1056.16, which relates to the determination of the current actual value of lost or damaged household goods items, under 49 CFR 1005.5(b) as there is a direct relationship between the requirements of this paragraph and the other requirements under Part 1005.

Section 1310.15—*Terminal and Other Services—Changes and Allowances (Rule 15).*

The proposed addition of paragraph 1310.15(a)(3) to Section 1310.15 is intended to incorporate in Part 1300 the tariff construction requirements now appearing in 49 CFR 1056.3 (a), (b) and (c). This proposal is in keeping with the intended objective to place all requirments relating to tariff construction under Part 1300.

It is proposed to discontinue the prohibition against space reservation now contained in 49 CFR 1056.3(d) and to cancel that sub-paragraph in its entirety.

Recommended Disposition of Part 1056 Regulations not Incorporated in Proposed Revisions of Parts 1056, 1005 and 1310.

Section 1056.2—*Establishment of Rates Stated in Amounts Per Hundred Pounds and Not Upon Any Other Basis; Cancellation of Rates Otherwise Established.*

It is recommended that the present Section 1056.2 be cancelled in its entirety. The requirements of the section appear to discourage competitive, innovative ratemaking, such as the publication of rates on a volume basis. Concurrent with the cancellation of Section 1056.2 household goods carriers would become fully subject to the tariff publication requirements of 49 CFR 1310.

Section 1056.4—*Discounts Prohibited; Rates Based on Prepayment of Charges Prohibited.*

It is recommended that the present Section 1056.4 be cancelled in its entirety. The prohibitions contained in the section appear to be inconsistent with any objective looking toward encouraging competitive, innovative ratemaking.

Section 1056.5—*Absorption or Advancement of Dock Charges.*

It is recommended that the present Section 1056.5 be cancelled in its entirety. The use of a warehouseman's dock appears to be a "service" as contemplated by the use of that term in 49 CFR 1310.15(b)(3) and, as result, the present Section 1056.5 is redundant and imposes restraints also provided for in Section 1310.15(b)(3).

Section 1056.18—*Prohibition Against Carrier Action as Agent For Another Carrier.*

It is recommended that the present Section 1056.8 be cancelled in its entirety. The requirements of the Section appear to be violative of the intent of the "Household Goods Transportation Act of 1980" to the extent that future compliance with Section 1056.18 would be contrary to the anti-trust provisions of the Act.

Section 1056.21—*Uniform Rates For Identical Services.*

It is recommended that the present Section 1056.21 be cancelled in its entirety. The requirements of the Section appear to be anti-competitive and intended to discourage innovative ratemaking. Adequate safeguards exist otherwise to prevent discriminatory or predatory rates and the restraints imposed by the present Section appear to be unnecessary.

Appendix C

COVER—DIMENSIONS OPTIONAL PROVIDING LENGTH X WIDTH EQUALS OR EXCEEDS 36 SQUARE INCHES. COLOR OPTIONAL. NO PRINTING EXCEPT AS BELOW

YOUR RIGHTS AND RESPONSIBILITIES

WHEN YOU MOVE

YOUR RIGHTS AND RESPONSIBILITIES

WHEN YOU MOVE

Prepared by the

INTERSTATE COMMERCE COMMISSION, OFFICE OF CONSUME PROTECTION

Furnished by

Your Mover

Note.—The name of the carrier distributing the publication may be substituted for "Your Mover"

Publication OCP–100.

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Introduction

Every interstate motor common carrier of household goods providing service to consumers to move the furniture and other items of personal property used in and around a residence is subject to regulations of the Interstate Commerce Commission. The purpose of the regulations is to protect the interests of consumers and to make definite the rights and responsibilities of the movers which provide the services and of the consumers who employ the services of interstate moving companies.

This publication is furnished to you by the mover to provide information about your rights and responsibilities as a shipper of household goods. While every effort has been made to provide all information possible you should not hesitate to discuss with the sales representative of the mover who furnished you this publication any additional information which you require. Also, if the mover has annual revenues in excess of one million dollars the sales representative will furnish you with a publication describing the procedure which the mover has in effect to assist you if you have a complaint or inquiry concerning the mover's services or charges. Included in that publication will be a telephone number which you may use to communicate with the principal office of the moving company without expense to you. If information is desired which cannot be satisfactorily furnished by the sales representative, you should call the mover's principal office for assistance. You may also obtain assistance or information about moving by calling the American Movers' Conference, 1117 North 19th Street, Arlington, Va. 22209. The toll-free telephone number is 800–336–3094 (In the Washington, D.C. dialing area call (703) 524–5440).

If after discussing your move with the sales representative, a service representative at the mover's principal office and the American Movers Conference, you are still in need of information or assistance, you may obtain help from the National Consumer Assistance Center, Interstate Commerce Commission, Washington, D.C. 20423, or by calling the Center using the toll-free number (800) 424–9312 (275–0860 within the District of Columbia).

Moving Service Questionnaire

Included with this publication is a brief questionnaire which you may complete and mail, postage free, to the Interstate Commerce Commission's National Consumer Assistance Center. The information which you provide will assist the Commission to evaluate the effectiveness of its regulations and the quality of the service being provided by the moving industry.

Please provide a response to every question if possible. The name and ICC number of the moving company responsible for your move will be found at the top of the bill of lading. The shipment registration or identification number will be found on the order for service and the bill of lading relating to your shipment.

Please do not attempt to use the Service Questionnaire as a complaint or inquiry form. If you have a complaint or inquiry concerning the mover's services which requires assistance from the Commission either call or write to the National Consumer Assistance Center as explained further in this booklet.

Estimates

The Interstate Commerce Commission is not permitted by law to require that moving companies provide estimates of the costs of their services. However, it is customary for movers to provide estimates and when you are furnished an estimate you have certain rights and responsibilities. Movers often offer two types of estimates. It is important that you understand the type of estimate which you are furnished and the effect these estimate has on the charges you will be required to pay the mover.

* Binding Estimates

When a mover provides a binding estimate the mover cannot require you to pay total charges in excess of the amount estimated for performing the services included in the estimate. The mover is required to furnish binding estimates in writing, to furnish you a copy of the estimate at the time it is prepared and to attach a copy to the bill of lading relating to your shipment. The mover may assess a nominal charge for providing a binding estimate.

If you receive a binding estimate you are responsible for having available at the time of delivery, funds usually in the form of cash, certified check or money order, adequate to pay the estimated costs unless the mover has agreed to extend credit or to accept payment by charge card. If you are unable to pay the amount required at the time the shipment is offered for delivery, the mover may place your shipment in storage at your expense until the maximum charges are paid.

*Non-Binding Estimates of Approximate Cost

When a mover provides a non-binding estimate of approximate cost the final charges which you will be required to pay will depend on the distance your shipment is transported, the weight or volume of the shipment and the accessorial services performed in the transportation of the shipment. An estimate of approximate cost is not binding in the mover and, even though the mover's sales representative preparing such an estimate is expected to use expertise and good judgment in estimating the approximate cost, there is no guarantee that the final charges will not be greater than estimated.

Non-binding estimates of approximate cost must be in writing and must specify: the unit of measurement used in setting charges for transportation, accessorial and storage services and valuation or insurance; the carrier's charge per unit; and the estimated units included in the estimate. Any time a mover provides such an estimate it is required that the amount of the charges estimated must be entered on the order for service and bill of lading relating to your shipment. If you are furnished a non-binding estimate of approximate cost, do not sign or accept the order for service or bill of lading unless the amount estimated is entered on each form when prepared by the mover. The mover is not permitted to charge for providing a non-binding estimate.

Household Goods Moving Service Questionnaire

To: Interstate Commerce Commission

1. Name of the moving company _____
2. Mover's ICC number _____
3. Your shipment registration or identification number _____

4. Moved from _____ Moved to _____ (State) (State)
5. Date your shipment was picked up _____ delivered _____
6. Did you receive an estimate [ ] Yes [ ] No
7. Were the final charges [ ] More [ ] Less [ ] The Same As the estimated charges? (Check One)
8. Was your shipment picked up [ ] Before [ ] On [ ] After the agreed pickup date? (Check One)
9. Was your shipment delivered [ ] Before [ ] On [ ] After the agreed delivery date? (Check One)
10. Have you or do you intend to file a claim with the mover for property loss or damage in excess of $50? [ ] Yes [ ] No
11. Would you use the same mover again? [ ] Yes [ ] No
12. Was the Your Rights and Responsibilities When you Move booklet helpful to you in your move? [ ] Yes [ ] No
13. Your Name _____

Note.— This questionnaire will be printed on a franked post card addressed to the Interstate Commerce Commission, National Consumer Assistance Center, Washington, D.C. 20423. This card is to be inserted between pages 2 and 3 of the booklet and should be perforated to permit easy removal. The carrier's name and ICC number may be preprinted on the questionnaire.

If you are furnished a non-binding estimate of approximate cost you may required the mover to deliver your shipment upon payment by you at the time of delivery of an amount not exceeding 110 percent of the amount of the estimated charges if the actual charge due the mover for performing the services included in the estimate exceed the 110 percent amount. *This does not relieve you of the responsibility for paying the mover*

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the balance of the charges due for the transportation of the shipment. Also, If the *mover is required to provide services in excess of those included in the estimote the mover may require payment in full for those excess services at time of delivery.*

Following the date of delivery you have 30 days to pay the remaining charges. Before delivering a shipment to you upon payment of 110 percent of the estimated costs, the mover may require you to sign a 30-day non-interest hearing promissory note for the balance of the charges.

Order for Service

Moving companies are required to prepare an order for service on every shipment transported for an individual shipper. You are entitled to a copy of the order for service when it is prepared.

The order for service is not a contract. Should for any reason your move be cancelled or delayed or if you decide to not use the services of the mover issuing an order for service, you should promptly notify the mover of any changes in your plans but you are not required to permit a mover to move your property simply because an order for service was prepared.

The purpose of the order for service is to provide a written record of your agreement with the mover, and the mover's agreement to provide service on agreed dates and under agreed conditions, prior to the issuance of a receipt or bill of lading contract.

Should there be any change in the dates on which you and the mover agreed that your shipment will be picked up and delivery, or if a non-binding estimate is furnished, in the amount of charges estimated, the mover may prepare a written amendment to the order for service if the change occurs prior to the pickup of your shipment. The written amendment should be attached to the order for service and when this is done the amendment supersedes that portion of the original order for service which it amends.

Bill of Lading Contract

The bill of lading is the contract between you and the mover relating to the transportation service provided by the mover. The mover is required by law to prepare a bill of lading with reference to every shipment transported.

The information entered on a bill of lading is required to be in agreement with the information about your move shown on the order for service. The driver who loads your shipment is required to furnish to you a copy of the bill of lading contract prior to commencing to load your shipment and to obtain your signature to show agreement with the terms of the contract.

It is your responsibility to read carefully the entries on the bill of lading before you sign it. If for any reason you do not agree with any entry on the form do not sign it until the discrepancy is explained to your satisfaction or changed to correspond with your agreement with the mover at the time the order for service was prepared.

Under the terms of the bill of lading the mover becomes obligated to provide the transportation service you have requested and you become obligated to pay the mover the charges due for the service. *The bill of lading is an important document. Do not lose or misplace your copy.* Have it available for reference until your shipment is delivered, all charges are paid and all claims, if any, are settled.

Inventory

At the time the mover's driver loads your shipment he or she is required to prepare an inventory of the items loaded. The inventory should list any damage or unusual wear he or she observes at time of inspection The purpose of this is to make a record of the condition of each item at the time it was accepted by the mover for transportation.

After completing the inventory the driver will sign each page and will ask that you also sign each page. Before signing make sure that the inventory lists every item in your shipment and that the entries regarding the condition of each item are correct. If when your shipment is delivered an item is missing or damaged your ability to recover from the mover or the insurance company for the loss or damage may depend on what is shown by the inventory.

The driver will give you a copy of each page of the inventory. Attach the complete inventory to your copy of the bill of lading. It is your receipt for the goods which you have tendered to the mover for transportation.

At the time your shipment is delivered it is your responsibility to check the items delivered against the items listed on your inventory. Customarily the driver will have placed a small numbered tag on each item as he prepared the inventory at origin. The numbers will correspond to the numbered lines on the inventory form and facilitate checking the items off as they are brought into your new residence. Check each item for damage or wear that did not exist when the shipment was loaded. If new damage is discovered make a record of it in the space provided on the inventory form and call the damage to the attention of the driver and request that he make record of the damage on this copy of the inventory.

After the complete shipment is unloaded the driver will request that you sign his copy of the inventory to signify that you received the items listed. Do no sign the inventory until you have assured yourself that it is accurate and that proper notations are entered on the form regarding any missing or damaged items. When you sign the inventory at the time of unloading you are giving the driver a receipt for your goods. Make sure all entries on the inventory are correct before you sign.

Shipments Subject to Minimum Weight or Volume Charges

Movers customarily provide in their tariffs for a minimum weight or volume charge for transporting a shipment. Usually the minimum is the charge for transporting a shipment weighing at least 500 pounds.

If your shipment appears to weigh less than the minimum weight provided in the tariff the mover is required to advise you of the minimum charges which you will be required to pay before agreeing to transport the shipment. Should the mover's representative fail to advise you of the minimum charge and, after weighing your shipment is found that it is less than the minimum weight, the trasportation charge must be based on the actual weight instead of the minimum weight.

Determining the Weight of Your Shipment

Before assessing any charges relating to the transportation of your shipment which are dependent on the weight of the shipment the mover is required to weigh the shipment. Unless your shipment weights less than 1,000 pounds and can be weighed on a warehouse platform scale, the mover is required to determine the weight of your shipment by one of the following processes.

Origin Weighing—If suitable scales are reasonably available in the city or area you are moving from the driver is required to weigh the truck on which your shipment is to be transported before coming to your residence to load your shipment. At the time of this first weighing the truck may already be partially loaded with one or more other shipments. This will not affect the weight of your shipment. The truck will also contain pads, dollies, handtrucks, ramps and other equipment normally used in the transportation of household goods shipments.

After obtaining the empty weight, called the tare weight, the driver will come to your residence and load the shipment. After loading, the truck will be weighed again to obtain the loaded weight, called the gross weight. The net weight of your shipment is then obtained by subtracting the tare weight from the gross weight.

Destination Weighing—Occasionally scales suitable for weighing moving vans are not reasonably available at or near the point where your shipment is loaded. When this situation exists the mover is permitted to detertmine the weight of your shipment at the destination at the time of unloading. The fact that a shipment is weighed at the destination instead of at the origin will not affect the accuracy of the weight of your shipment. The most important difference is that the mover can not require you to pay any charges relating to the transportation which are dependent on the weight transported before the actual weight of the shipment is determined.

Destination weighing is done in the reverse to the origin weighing. After arriving in the city or area you are moving to the driver will weigh the truck, with your shipment loaded on it, before coming to your new residence to unload. After unloading your shipment he or she will again weigh the truck and the weight of your shipment will be the difference between the two weights.

Each time a weighing is performed the driver is required to obtain a weight ticket showing the time, date and place of weighing and the weight obtained. The ticket is also required to have your name and shipment number entered on it along with the license numbers of the truck. The ticket must be signed by the person who performed the weighing. If both the empty (tare) and loaded (gross) weighings are performed on the same scale, the record of both weighings may be entered on one weight ticket.

At the time the mover presents a freight bill to collect the charges for transporting your shipment a copy of every weight ticket obtained in the determination of the weight of your shipment must accompany your copy of the freight bill.

If your shipment includes an automobile the mover may, instead of performing a separate weighing at origin or destination to determine the weight of the automobile, use the manufacture's weight shown on your certificate of title or on the license tag receipt for the automobile.

You have the right to observe every weighing performed to determine the weight of your shipment. The mover is required to inform you of the specific location of each scale that will be used and to allow you a reasonable oportunity to be present. If you desire to observe either or both of the weighings you should advise the representative of the mover at the time the order for service is prepared if possible or, in any event, before the day of your move. This will enable the mover to contact you before the weighing to advise you of the time and location of the scale.

Reweighing of Shipments

If your shipment is moved under an agreement with the mover that you will pay the charges at time of delivery, the mover is required to provide you with written notice of the weight and charges on your shipment before commencing to unload at your destination residence. If your shipment was weighed at origin and you are of the opinion that the weight is not accurate, you have the right to request that the shipment be reweighed. This request must be made before the unloading commences. If you request reweighing the mover is required to make available a form which you must complete and sign to make record of the request. You will be given a copy of the signed form.

The mover is not permitted to charge for the reweighing. However, if you observe both the gross and tare reweighings and if the weight of your shipment at the time of the reweigh is found to be greater than the weight determined at the origin weighing, the mover may recompute the charges which you must pay for the transportation based on the increased weight. If the weight of your shipment at the time of the reweigh is found to be less than the weight determined at the origin weighing, the mover must recompute the charges based on the lesser weight.

The decision to request that your shipment be reweighed is one which you must make. Before requesting a reweigh you may find it to your advantage to estimate the weight of your shipment using the following method:

(1) Count the number of items listed on the inventory of your shipment. Usually there will be either 30 or 40 items listed on each page of the inventory. For example, if there are 30 items per page and your inventory consists of four complete pages and a fifth page with 15 items listed, the total number of items will be 135. *If an automobile is listed on the inventory do not include that item in the count of the total items.*

(2) If the weight of an automobile was included in the weight of your shipment at the time of the origin weighing, subtract the manufacturer's weight of the automobile, which may be obtained from the certificate of title or license receipt in most instances, from the weight of the shipment. For example, if the charges on your shipment are based on a weight of 8,600 pounds and included in the shipment is an automobile which weighs 3,200 pounds, subtract 3,200 from 8,600.

(3) After subtracting the weight of the automobile, if one is included in your shipment, divide the number of items in your shipment into the weight. If the average weight resulting from this exercise is in the range between 35 and 45 pounds per article, it is unlikely that a reweigh will prove beneficial to you and could result in your payment of higher total charges.

Experience has shown that the average shipment of household goods will weigh about 40 pounds per item listed on the inventory. If a shipment contains a large number of heavy items, such as cartons of books, boxes of tools or heavier than average furniture, the average weight per item may be 45 pounds or more. However, the higher the average weight per item above 45 pounds per item in the above calculation the better are the chances that if your shipment is reweighed the results will be less than the first weight. On the other hand, the lower the average weight per item below 35 pounds per item the greater are the chances that if the shipment is reweighed the results may exceed the origin weight and the charges which you are required to pay for the transportation of your shipment can be increased accordingly.

No representative of the mover or of the Interstate Commerce Commission can tell you whether you should or should not request that your shipment be reweighed. Neither can anyone tell you with certainty what the reweigh weight will be. That is a decision which you, as the person responsible for paying for the transportation, must make yourself.

Picking Up and Delivering Shipments on the Agreed Dates

At the time you make the arrangements for the transportation of your household goods it is required that the mover's representative reach an agreement with you on when your shipment is to be picked up and delivered. It is your responsibility to determine on what date, or between what dates, you need to have the shipment picked up and on what date or between what dates, you required delivery. It is the mover's responsibility to tell you if the service can be provided on or between those dates or, if not, on what dates the service can be provided.

In the process of reaching an agreement with the mover's representative on when your shipment will be picked up and delivered it may be necessary for you to alter your moving and travel plans if the mover cannot provide service on the specific dates you desire. On the other hand, there may be days, such as your sabbath, that you cannot have your shipment picked up or delivered and the mover may be required to exclude such days as dates on which pickup or delivery services will be provided.

Do not agree to have your shipment picked up or delivered "aa soon as possible." The dates or periods of time

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you and the mover's representative agree on must be definite.

Once an agreement is reached on the dates service is to be provided the mover's representative is required to enter those dates on the order for service. Do not sign or accept an order for service that does not have the agreed dates for service entered on the form. Do not sign or accept an order for service which has dates for the pickup or delivery entered on it which are different from those dates you have agreed to based on an oral representation by the mover's representative that he or she will "guarantee" that the pickup or delivery will actually be performed on the date or dates you require. Once the dates entered on an order for service are entered on a bill of lading those dates become part of your contract with the mover and there is no obligation on the mover to provide service on other dates based on an oral representation by a salesperson that service will be provided on different dates.

Do not agree to have your shipment picked up and delivered between a spread of dates, such as pickup between the first and fifth of the month and delivery between the tenth and fifteenth of the month when your circumstances absolutely require that your shipment be picked up on the fourth and delivered on the twelfth days of the month. If you do agree to such a spread of dates, the mover may legally insist on picking up your shipment on the second day of the month and making delivery on the fifteenth day of the month, for example. In such a case the mover has complied with its contractual agreement and you will have no basis for a claim to recover any damages for any inconvenience which results. If a mover is unable or unwilling to agree at the time of the preparation of an order for service, to provide the specific service you require, you should contact other movers until you find one that can agree to provide the specific service you require.

Once a mover issues a bill of lading providing for the performance of a specific service the mover is contractually bound to provide that service. The only defense for non-performance is called the defense of force majeure. This is a legal term which means that if circumstances which could not have been foreseen and which are beyond the control of the mover prevent the performance of the service as agreed in the bill of lading contract the mover is not responsible for damages resulting from the non-performance.

If, subsequent to the preparation of the order for service, the mover is for any reason unable to make the pickup or delivery on the dates or between the dates agreed to, the mover is required to contact you by telephone or in person and advise you of the delay and the date or between what dates your shipment can be picked up or delivered. If for any reason you are unable or unwilling to accept pickup or delivery on the dates or between the dates named by the mover you should attempt to reach agreement with the mover on mutually agreeable dates. The mover must obtain your consent to the dates or between what dates the shipment will be picked up or delivered.

Your consent to a delayed pickup or delivery date does not relieve the mover from liability for damages resulting from the failure to provide service as agreed under the bill of lading contract. The mover continues to have the defense of force majeure. When you consent to delivery on dates other than as specified to in the bill of lading contract, it is your responsibility to be available to accept delivery on the dates consented to. If you, or your representative, are not available and willing to accept delivery, the mover has the right to place your shipment in storage at your expense or hold the shipment on its truck and impose waiting charges if this can be done without causing delay to other shipments.

If, subsequent to the pickup of your shipment, you request the mover to amend the delivery date, most movers will agree to do so providing the request will not result in unreasonable delay to their equipment or interfere with their commitments to provide service to other shippers. However, the mover is not required to consent to amended delivery dates and has the right to place your shipment in storage if you are unwilling or unable to accept delivery on the date or between the dates agreed to in the bill of lading contract.

If the mover fails to pick up and deliver your shipment on the dates or between the dates entered on the bill of lading contract and damages result, such as you being subjected to expenses you would not have incurred otherwise, you may be able to recover those damages from the carrier. This is what is called an inconvenience or delay claim. Should a mover refuse to honor such a claim and you continue to believe that you are entitled to be paid damages, your recourse is then to sue the mover to recover. *The Commission has no authority to order the mover to pay such claims.*

Most movers recognize that there will be times through the fault of the mover that a shipment will not be picked up and delivered as agreed. This occurs in only a small percentage of the shipments moved.

At the time you make the arrangements for your move, you should ask the mover's representative what the mover's policy is with respect to inconvenience or delay claims. You will find that some movers have an established policy on what expenses they will compensate you for and what expenses they will not voluntarily pay. It is possible that the mover may provide for an automatic payment of a set penalty or per diem amount for each day that service is delayed. While it is hoped that your shipment will not be delayed, you should consider this possibility and find out before you agree for a mover to transport your shipment what you can expect if the service is delayed through the fault of the mover.

If a shipment is delayed for some reason which is your fault, such as not being ready to move on the day the shipment is supposed to be picked up, the mover will ordinarily not have any responsibility for any extra expenses which you incur.

Space Reservations, Expedited Service, Exclusive Use of a Vehicle and Guaranteed Pickup and Delivery

It is customary for movers to offer service options which are intended to accommodate the specific needs of their customers.

The total cost of your move may be substantially increased if you select one of these options. Before you agree to have your shipment transported under a bill of lading contract providing for one of the service options, you should have a clear understanding with the mover what the additional cost will be. You should always consider that you may find that other movers can provide the service you require without requiring that you pay the additional charges.

One of the usual service options is space reservation. If you agree to have your shipment transported under a space reservation agreement you are required to pay for a minimum number of cubic feet of space in the moving van regardless of how much space in the van is actually occupied by your shipment. If the mover's charges are based on weight, the number of cubic feet which you reserve are converted into a weight figure by multiplying the number of cubic feet reserved by the weight of an average cubic foot of household goods, which is 7 pounds. For example, if you agree to reserve 1,000 cubic feet of van space you will be required to pay for the transportation of 7,000 pounds even though your shipment may weigh only 5,000 pounds.

Another service option is expedited service to accommodate shippers who must have their shipments transported on or between specific dates which the mover could not ordinarily agree to do in its normal operations. If you require expedited service, the charges on your shipment will be based on a predetermined minimum weight even though the weight of your shipment is less than that minimum weight. Should you agree to pay for expedited service and for any reason, except through your fault, the mover fails to pick up and deliver the shipment as agreed, the charges will be adjusted to what they would have been had you not requested expedited service. To recover for any damages resulting from the mover's failure to perform as agreed in the bill of lading contract you would have to file an inconvenience or delay claim with the mover. If the claim cannot be voluntarily settled to your satisfaction, your recourse would be to sue the mover to recover.

The third customary service option is exclusive use of a vehicle. If for any reason you desire or require that your shipment be moved by itself on the mover's truck or trailer, most movers will provide such service. However, the charges which you pay will be based on the cubic capacity of the truck or trailer convered to a weight figure using the 7 pounds per cubic foot factor. For example, if your shipment weights 8,000 pounds and you request the exclusive use of a truck with an 1,800 cubic feet capacity, the charges for your shipment will be based on a weight of 7 × 1,800 or 12,600 pounds.

Another service option is guaranteed service on or between agreed dates. If you elect to take this service option you enter into an agreement with the mover that provides for your shipment to be picked up, transported to destination, and delivered on specific guaranteed dates. If the mover fails to provide the service as agreed, you are entitled to be compensated at a predetermined penalty or per diem rate regardless of the amount of any expense you actually might have incurred as result of the mover's failure to perform as agreed.

Before requesting or agreeing to any of the described service options, be sure to question the mover's representative about the final costs you will be required to pay and consider all possible alternatives if you feel that the charges will be more than you can pay.

Notification of Charges

If, prior to the time of delivery, you require being notified of the weight or volume and charges on your shipment, you should advise the mover's representative at the time you make the arrangements for the move.

You are required to provide the mover with a telephone number or address at which the notification will be received and, if the mover assesses a charge for the notification, to pay the charge at the time you pay the transportation charges.

The mover is required to provide you the notification of charges at least one 24-hour week day prior to the delivery except when the shipment is picked up one day for delivery on the next day. The 24-hour requirement does not apply when you obtain an estimate of the costs prior to the move.

Receipt for Delivery of the Shipment

At the time of delivery the mover will expect you to sign a receipt for your shipment. This is usually accomplished by having you sign each page of the mover's copy of the inventory.

Movers are prohibited from having you to sign a receipt which relieves the mover from all liability for loss or damage to the shipment. Do not sign any receipt which does not provide that you are signing for your shipment *in apparent good condition except as noted on the shipping documents.*

The Mover's Liability for Loss or Damage

All property transportation companies are required to assume liability for the value of the goods which they transport. Normally the amount charged for the transportation includes the amount required to compensate the transportation company for assuming the risk of loss or damage.

Since no two household goods shipments have exactly the same value in relation to their weight, it is not possible for movers to include in their charges a specific amount for the assumption of liability without charging some customers too much and other customers too little.

To overcome this problem movers publish what are known as released value rates. The rate per hundred pounds which the mover charges for transporting your shipment requires that the liability assumed by the mover will not exceed 60 cents per pound per article in your shipment. For example, if your shipment includes a lamp that is worth $100 and weighs 12 pounds, the mover's liability if the lamp is lost or damaged is 60 cents per pound or $7.20.

Probably you will require more liability protection than is provided by the base per hundred weight transportation charge. You may obtain the amount of protection you require in one of several ways.

First, unless you sign a specific statement on the bill of lading releasing your goods to the mover for transportation at a value of 60 cents per pound per article, the mover is required to assume liability for the entire shipment at an amount equal to $1.25 per pound for the entire shipment. For example, if the shipment weighs 4,000 pounds the mover will be liable to you for loss or damage up to $5,000. In return for assuming this liability the mover is entitled to charge you $5.00 for each $1,000 of liability assumed. *This is not insurance.* In the event of loss or damage the mover is required to pay you, if it is responsible for the loss or damage, out of its own funds.

Second, if the value of your shipment exceeds $1.25 per pound you may obtain additional liability protection from the mover in the amount you require by declaring a specific lump sum dollar value for your shipment. The amount you declare must exceed $1.25 per pound. The mover will charge you $5.00 for each $1,000 of declared value. For example, if you declare the value of your shipment to be $10,000 the charge will be $50,000. Again, *this is not insurance.*

Third, the mover can sell you or procure for you liability insurance in the amount you require if you release your shipment for transportation at a value of 60 cents per pound per article. In the event of loss or damage which is the responsibility of the mover the mover would be liable only for an amount not exceeding 60 cents per pound per article and the balance of the loss would be recoverable from the insurance company subject to the amount of insurance purchased. The mover's representative can advise you of the availability of such liability insurance and the cost per $1,000 of coverage.

Fourth, you can release your goods for transportation at a value of 60 cents per pound per article and obtain insurance yourself direct from an insurance company. The homeowner liability policies issued by some insurance companies include provision for insuring goods while being transported by a mover. Unless you are sure that you already have this protection you should check with your insurance agent to determine if you are covered against this type of liability.

If you purchase liability insurance from or through the mover, if is required that the mover issue a policy or other written record of the purchase and to provide you with a copy of the policy or other document at the time of purchase. If the mover fails to comply with this requirement, it becomes fully liable for any claim for loss or damage attributed to its negligence.

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Complaints and Inquiries About the Mover's Service

All movers are expected promptly to respond to complaints or inquiries from their customers. Movers with gross revenues in excess of one million dollars per year are required to establish a definite procedure for receiving and handling complaints and inquiries. If the mover which transports your shipment is subject to this requirement the mover's representative will, at the time you make the arrangements for your move, furnish to you a publication describing the mover's complaint and inquiry procedure. In this publication you will find a toll-free or collect telephone number which you can use to contact the mover's principal office at any time throughout your move.

Should you have a complaint or question about your move you should first attempt to obtain a satisfactory response from the mover's local agent, the sales representative who handled the arrangements for your move, or the driver assigned to your shipment.

If for any reason you are unable to obtain a satisfactory response from one of the persons mentioned you should then contact the mover's principal offices using the toll-free telephone number. When you make such a call be sure to have available your copies of all the documents relating to the move. Particularly important is the number assigned to your shipment by the mover.

You may also call the American Movers Conference's Consumer Assistance Office, toll-free, telephone 800–336–3094, for assistance.

If you are still unable to obtain a satisfactory response you may contact the Interstate Commerce Commission's National Consumer Assistance Center. The toll-free telephone number is 800–424–9312 (in the Washington, D.C. dialing area call 275–0860) and the mailing address is:

Interstate Commerce Commission, National Consumer Assistance Center, Washington, D.C. 20423.

Anytime you contact the National Consumer Assistance Center regarding your shipment please have available the number assigned to your shipment by the mover. If you write to the Center be sure to include that number in your correspondence.

Many of the moving companies that, because of the amount of their annual revenues are not required to maintain a complaint and inquiry procedure, may voluntarily provide procedures to assist their customers with complaints or inquiries. At the time you make the arrangements for your move, you should ask the mover's representative what you should do if you have a complaint or inquiry.

Payment of the Transportotion Charges

At the time of payment of the transportation charges, the mover is required to present a freight bill identifying the services provided and the charge for each service. It is customary for most overs to use a copy of the bill of lading as a freight bill, however, some movers use an entirely separate document for this purpose.

Regardless of the form used, the freight bill must specifically identify each service performed, the rate per unit for each service and the total charges for each service. Do not accept or pay a freight bill which does not contain this information.

If your shipment was transported on a collect on delivery basis you will be expected to pay the total charges appearing on the freight bill at the time of delivery unless the mover provided an estimate of approximate cost and the total charges *for the services included in the estimate* exceed 110% of the estimated charges. See page 2 for information about your rights and responsibilities when this occurs.

It is customary for movers to provide in their tariffs that freight charges must be paid in cash or by certified check or money order. When this requirement exists the mover will not accept personal checks. At the time you make arrangements for your move you should question the mover's representative about what form of payment is acceptable to the mover.

Some movers permit payment of freight charges by use of a charge card providing that approval for the use of a charge card is obtained from the mover prior to the move. Do not assume that because you have a nationally recognized charge or credit card that it will be acceptable for payment of the transportation charges. Check with the mover's representative at the time the arrangements are made for the move.

If you do not pay the transportation charges at the time the freight bill is presented, the mover has the right under the bill of lading contract to refuse to release your goods to you and to place them in storage at your expense until the charges are paid.

If prior to payment of the transportation charges you discover an error in the charges, you should attempt to reconcile the error with the driver, the mover's local agent; or, by contacting the carrier's principal office, before paying the charges. If an error is discovered subsequent to the payment, you should advise the mover in writing at the mover's principal office (the address will be on the freight bill) of the error and request a refund.

Movers customarily audit all shipment files and freight bills subsequent to a move to assure that the charges collected were accurate. If an overcharge is found you will be notified and a refund made. If an undercharge occurred you will be billed for the additional charges due.

Payment of the Transportotion Charges on Shipments Transported on Two or More Vehicles

Although all movers try to move each shipment on one truck it becomes necessary at times to divide a shipment between two or more trucks. This frequently occurs when an automobile is included in the shipment and the automobile is transported on a vehicle specially designed to transport automobiles instead of being loaded on the same van as the remainder of your shipment. When this occurs your transportation charges are the same as if the entire shipment was moved on one truck.

If your shipment is divided for transportation on two or more trucks you are not required to pay the *total* charges until all portions of the shipment have been delivered. As each portion of the shipment is delivered, the mover can require payment of the percentage of the total charges represented by the percentage of the shipment offered for delivery. Or, if the total charges for the entire shipment are not known, the mover can compute the charges for the first portion delivered as if it was an separate shipment. At the time of delivery of the remainder of the shipment the mover must adjust the balance of the charges due to reflect any amount you were overcharged or undercharged at the time of delivery of the first portion.

Movers are also permitted, but not required, to delay the collection of the charges until all portions of the shipment are delivered. At the time you make the arrangements for your move you should question the mover's representative about the policies of the mover in this respect.

Payment of Transportation Charges on Shipments Lost or Destroyed in Transit

Movers customarily use a large amount of skill and care to assure that while your shipment is in their possession for transportation, no items are lost, damaged or destroyed.

However, despite the precautions taken, articles may be lost or destroyed while in the custody of the mover.

In addition to any amounts you may recover from the mover or an insurance company to compensate for lost or destroyed articles you are also entitled to recover that portion of the transportation charges represented by the portion of the shipment lost or destroyed.

Should your entire shipment be lost or destroyed while in the mover's possession the mover is not entitled to require that you pay any of the transportation charges except the amount you have paid or agreed to pay for liability protection or insurance as described in *The Movers Liability for Loss or Damage* section of this publication. The fact that you do not pay any transportation charges does not affect any right you may have to recover compensation for the lost or destroyed articles providing you pay the charges for liability protection or insurance.

If a portion of your shipment is lost or destroyed in transit the mover must, if the portion of the shipment exceeds 10 percent of the entire shipment by weight or volume, deduct from the total charges that portion of the charges represented by the articles lost or destroyed.

If less than 10 percent of the shipment by weight or volume is lost or destroyed in transit the mover can require that you pay the total charges at time of delivery. However, at the time you file a claim to recover compensation for the lost or destroyed articles you are entitled to include in your claim the charges paid for transporting the lost or destroyed articles and the mover is required to refund those charges.

Filing of Claims for Loss and Damage or Delay; Dispute Resolution Programs

Most of the items included in the average household goods shipment are subject to being easily damaged while being moved. Despite this the majority of all household goods shipments are transported with little or no loss or damage.

Should your move result in the loss of or damage to any of your property you have the right to file a claim with the carrier to recover compensation for the loss or damage which came about through negligence by the mover, its agents, drivers or other representatives.

By law you have a period of nine months following either the date of delivery or the date on which the shipment should have been delivered to file a claim. You should endeavor to file the claim as promptly as possible. If you fail to file a claim within 120 days following delivery and later bring a legal action against the mover to recover the damages you may find that you can not recover attorney fees under certain circumstances even though you win the court action.

The Interstate Commerce Commission has no authority to adjudicate cargo loss and damage claims. Should it not be possible to arrive at a satisfactory voluntary settlement of a claim you can file a civil action to seek recovery in court or, if the mover participates in a dispute resolution program you may find submitting your claim to arbitration under such a program a less expensive and more convenient way to seek recovery. Movers which participate in dispute resolution program are required to advise all shippers of the existence and details of the program before they accept a shipment to be transported. If the mover's sales representative does not provide information about a dispute resolution program at the time an order for service is prepared you should not hesitate to ask if the mover participates in such a program.

In Conclusion

The Commissioners and staff of the Interstate Commerce Commission realize that moving your household goods and personal belongings can often be a difficult and trying situation, even under the best of conditions. The owners and employees of the moving companies are also aware that moving is not an easy proposition regardless of how much they may try to smooth out the problems presented by each move.

This booklet has been prepared by the staff of the Interstate Commerce Commission and furnished to you by the mover to provide all the information possible about your rights and responsibilities before, during and after your move.

Should you have any questions about your move, which are not answered in this publication, do not hesitate to ask the mover's representative who handled the arrangements for your move, the driver who transports your shipment or contact the mover's principal office for additional information.

If after contacting those sources you still require advice or assistance, call or write the Interstate Commerce Commission, National Consumer Assistance Center, Washington, D.C. 20423. The toll-free telephone number is 800–424–9312 (in the Washington, D.C. dialing area 275–0860).

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Paronychia Argyrocoma var. Albimontana (Silverling), To Be a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to determine a plant, *Paronychia argyrocoma* var. *albimontana* (silverling), to be a threatened species under the authority contained in the endangered Species Act of 1973. The silverling occurs in Maine, New Hampshire and Massachusetts on State, private, and U.S. Forest Service lands. The plant is threatened due to taking, vandalism, and trampling by hikers, and due to its highly restricted range and small population sizes. A determination of *Paronychia argyrocoma* var. *albimontana* to be a Threatened species would implement the protection provided by the Endangered Species Act of 1973 as amended.

DATES: Comments from the public must be received on or before December 26, 1980. Comments from the Governors of Maine, New Hampshire, and Massachusetts must be received on or before January 26, 1980.

ADDRESSES: Comments and materials concerning this proposal, preferably in triplicate, should be sent to the Director (FWS/OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and materials received will be available for public inspection by appointment during normal business hours at the Service's Office of Endangered Species, 1000 N. Glebe Road, Fifth Floor, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Chief, Office of Endangered Species, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240. (703)235–1975.

SUPPLEMENTARY INFORMATION: *Paronychia argyrocoma* var. *albimontana* was first collected by Edward Tuckerman in the 1800's from a slide on Mt. Clinton in the White Mountains, Coos County, NH. In 1906, the botanist Merritt L. Fernald recognized the plant, by then collected from several sites in Maine, New Hampshire, and Massachusetts, as distinct from *Paronychia argyrocoma*

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var. *argyrocoma* growing on mountains in the southeast. Fernald named this distinct variety "var. *olbimontana*" ("of the White Mountains").

This small perennial herb of the carnation family forms branched tufts several inches in height. Small flowers are densely aggregated at the tops of the stems, and are surrounded by conspicuous silvery bracts, which give the plant its silvery appearance.

Paronychia argyrocoma var. *albimontana* occurs on the tops of mid-elevation mountains and ledges (generally below 4000'), and in several cases along rocky stream shores or on riverside ledges. Those plants which occupy ledge habitats generally grow in rock crevices in thin, gravelly soil. Occasionally species such as the three-toothed cinquefoil *(Potentilla tridentata)* and purple crowberry *(Empetrum atropurpureum)* are found in association with the silverling. The plants and habitat are exposed to harsh weather conditions and often to heavy hiker traffic, as several populations occur at the tops of frequently-visited mountains or alongside trails.

This rule porposes to determine *Paronychia argyrocoma* var. *albimontana* to be Threatened, which would implement the protection provided by the Endangered Species Act of 1973. The following paragraphs further discuss the actions to date involving this plant, the threats to the plant, and effects of the proposed action.

Background

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Director published a notice in the **Federal Register** [40 FR 27823–27924] of his acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within. *Paronychia argyrocoma* var. *albimontana* was included in the July 1, 1975 notice of review. At this time the Service has sufficient information to warrant proposing *Paronychia argyrocoma* var. *albimontana*. Comments which are received during the comment period for this proposal will be summarized in the final rule.

Summary of Factors Affecting the Species

Section 4(a) of the Endangered Species Act (16 U.S.C. 1531 et seq.) states that the Secretary of Interior shall determine whether any species is an Endangered species or a Threatened species due to one or more of the five factors described in Section 4(a) of the Act. These factors and their application to *Paronychia argyrocoma* (Michx.) Nutt. var. *albimontana* Fernald (silverling) are as follows:

Paronychia Argyrocoma var. *Albimontana*

(1) *Present or threatened destruction, modification, or curtailment of its habitat or range.* The taxon has been documented from a total of approximately 27 locations in New England since its first collection in the early 1800's. Thirteen of these sites have been verified in recent years. Nine of the existing sites occur in Carroll and Coos counties, New Hampshire; three occur in Oxford County, Maine; and one occurs in Essex County, Massachusetts. Five sites formerly occupied by the species in New Hampshire were examined and no plants were found. Poor locality information from herbarium specimens has precluded surveys of other reported sites.

The majority of the sites in New Hampshire occur in the White Mountain National Forest and are heavily used by hikers. Damage to plants occurring near trails is evident in several locations. In addition, all of the New Hampshire populations are quite small, ranging in size from 1–60 colonies per population, and occupy small areas. These sites could be seriously damaged or eliminated by trampling or natural factors. An additional threat to a population in Carter Notch, Coos County, New Hampshire consisted of a proposal for the construction of a helicopter pad in the area occupied by the plants. It was decided that approval for construction would not be requested, partly in consideration of the existence of *Paronychia* on the site. This does, however, illustrate the nature of threats to these populations in mountainous areas, as well as the necessity of protecting the areas from future threats.

Other recently documented sites in New Hampshire occur on State and privately owned lands. Several of these populations also occur on mountain tops or ledge areas which receive fairly heavy recreational use. One population, in an area used by rock climbers, consisted of a single individual in 1977. Another site receiving frequent use by hikers contained plants evidently killed by trampling, although healthy colonies were present in a relatively inaccessible area nearby.

The single Massachusetts population has fluctuated in size since an early description of the site in 1945. At that time, 196 colonies of the plant were reported on a small ledge on an island in the Merrimack River, Essex County. In 1978, 56 colonies were reported at the site. A census taken in 1980 revealed 104 mature colonies, 93 seedlings, and 10 dead or nearly dead colonies. The cause of this fluctuation is unknown, although it may be due to human disturbance, or to natural population fluctuations. The area is maintained as a State Wildlife Sanctuary, and regulations prohibit the picking of plants, in addition to prohibiting use by overnight campers. These regulations are difficult to enforce, however.

Little is known about the status of *Paronychia* in Maine. A total of seven sites have been reported by herbarium specimens. Only three of these have been rediscovered in recent years. The remainder of the sites have not been examined recently due to scanty location information on herbarium specimen labels. Of the three known sites in Maine, two occur on U.S. Forest Service land (White Mountain National Forest), and the third site is state-owned.

(2) *Overutilization for commercial, sporting, scientific or educational purposes.* Collecting for scientific specimens has removed a significant number of plants from the wild. Collecting poses a serious threat to the smallest populations, several of which consist of only one plant. No commercial activities are known to involve this plant.

(3) *Disease or predation* [including grazing]. Not applicable to this species.

(4) *Inadequacy of existing regulatory mechanisms.* Although *Paronychia argyrocoma* var. *albimontana* appears on State lists which were developed by botanists in Maine, New Hampshire, and Massachusetts, no State legislation currently offers it specific protection in any of these three States. The Forest Service's regulations governing the land on which several of the New Hampshire and Maine populations occur prohibit removing, destroying, or damaging any plant that is classified as a threatened, endangered, rare, or unique species (36 CFR 261.9)

In Maine, several land use planning laws provide protection to rare plants indirectly through zoning regulations. Title 12 of the Maine Revised Statutes, Chapter 10, designates zoning rules and regulations administered by the Land Use Regulatory Commission. These regulations provide for zoning in specific "resource protection districts" within unorganized territories in Maine. Resource protection districts include shorelands, wetlands, floodplains, high elevation areas (above 2700'), historically, archeological areas and the like. Zoning regulations and a permit system would be implemented if an activity would adversely impact these areas (Title 12 Section 4811–14). Since *Paronychia* occurs in some of these areas protected by zoning laws, as well as on U.S. Forest Service lands, portions of the habitat of the plant are offered some protection under Maine law.

The Maine Critical Areas Program (Title 5, Chapter 312, Section 3310–3314), though non-regulatory, provides protection to unique areas through consultation with private landowners.

Two Massachusetts State laws protect certain plant species, but no legal protection is presently offered to Federally Endangered or Threatened species. Protected plant species are *Epigaea repens* (Mayflower) [Massachusetts General Laws Chapter 2 Section 7]; and all wild azaleas, orchids, and the cardinal flower [Massachusetts General Laws Chapter 266 Section 116a].

The Endangered Species Act will provide additional protection to this species.

(5) *Other natural or man-made factors affecting its continued existence.* Taking poses a significant threat to the species. Collection of *Paronychia* by wildflower enthusiasts for rock gardens is also known to have occurred. Since these plants occur in open, exposed areas near hiking trails, there is a very real threat of increased taking or vandalism should these areas be publicized through Critical Habitat proposal.

The species is threatened due to its small number of populations and small population sizes in addition to taking and vandalism threats. This combination of restricted range and small population sizes makes the taxon vulnerable to changes in climate, to predation or disease, or to changes in human behavior (such as increased recreational pressure). Each of these populations is of major importance to the survival of the taxon, and loss of any population would constitute a serious threat to the survival of the taxon.

Critical Habitat

Critical Habitat is not being proposed at this time. It is felt that designation of Critical Habitat would not be in the best interest of the species, but would, in fact cause the species to be in greater jeopardy. This is due to the occurrence of the plant in recreational areas receiving great amounts of use. Human trampling and taking are primary threats to the taxon. The habitat in which the species occurs in fragile and easily disturbed by hikers. Designation of Critical Habitat would only serve to attract public attention to these fragile areas and to the small but attractive plants. At present, trampling in most of these areas is inadvertent. The increase in attention that certain sites would derive from Critical Habitat designation would cause an increase in trampling from curiosity seekers and would expose the plants to increased taking and vandalism pressures.

Effects of This Proposal if Published as a Final Rule

In addition to the effects discussed above, the effects of this proposal if published as a final rule would include, but would not necessarily be limited to, those mentioned below.

The Act and implementing regulations published in the June 24, 1977 **Federal Register** set forth in series of general prohibitions and exceptions which apply to all Endangered plant species. All of those prohibitions and exceptions also apply to any Threatened species, excluding seeds of cultivated plants treated as Threatened, unless a special rule pertaining to that Threatened species has been published and indicates otherwise.

The regulations referred to above, which pertain to Endangered and Threatened plants, are found at §§ 17.61 and 17.71, of 50 CFR and are summarized below.

With respect to *Paronychia argyrocoma* var. *albimontana* all prohibitions of Section 9(a)(2) of the Act, as implemented by Sections 17.61 and 17.71 would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions would apply to agents of the Service and State conservation agencies. The Act and 50 CFR Section 17.62 also provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered or Threatened species under certain circumstances.

Section 7(a) of the Act provides that each Federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under Section 4.

Section 7(a) of the Act also requires Federal agencies to evaluate their actions with respect to any species which is listed as Endangered or Threatened. This protection would accrue to *Paronychia argyrocoma* var. *albimontana* if it is later determined to be Threatened as a result of this proposal.

Provisions for Interagency Cooperation implementing Section 7 are codified at 50 CFR Part 402. If published as a final rule this proposal would require Federal agencies to insure that activities they authorize, fund, or carry out, are not likely to jeopardize the continued existence of *Paronychia argyrocoma* var. *albimontana*.

This rule would have no effect on private landowners in areas where *Paronychia argyrocoma* var. *albimontana* occurs, other than those mentioned in the above paragraphs. The U.S. Forest Service, however, would be required to insure that their activities are not likely to jeopardize the continued existence of the species. This may require the Forest Service to conduct a monitoring program to determine how best to protect this species. Steps such as trail relocation, building of small barriers to keep hikers on trails, and posting of signs to alert hikers of the fragility of the vegetation may be necessary to give the populations adequate protection.

National Environmental Policy Act

A draft environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia, and may be examined by appointment during regular business hours. A determination will be made at the time of final rulemaking whether this is a major Federal action which would significant affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Public Comments Solicited

The Director intends that the rules finally adopted will be as accurate and effective as possible in the conservation of an Endangered or Threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of these proposed rules are hereby solicited.

Comments particularly are sought concerning:

(1) Biological or other relevant data concerning any threat (or lack thereof) to the species included in this proposal;

(2) Additional information concerning the range and distribution of this species; and

(3) Current or planned activities in the subject area.

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Final promulgation of the regulations on *Paronychia argyrocoma* var. *albimontana* will take into consideration the comments and any additional information received by the Director, and such communications may lead him to adopt a final regulation that differs from this proposal.

This proposal is being published under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.; 87 Stat. 884). The primary author of this proposed rule is Ms. Irene M. Storks, Washington Office of Endangered Species (703/235–1975).

Note.—The Department of the Interior has determined that this is not a significant rule and does not require preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Regulations Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. It is proposed to amend § 17.12 by adding, in alphabetical order, the following to the list of plants:

§ 17.12 Endangered and threatened plants.

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Caryophyllaceae—Pink family: *Paronychia argyrocoma* var. *albimontana.*	Silverling, Silver whitlow-wort.	USA: ME, NH, MA....	T	.....	NA	NA

Dated: October 17, 1980.

Robert S. Cook,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 80-33324 Filed 10-24-80; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 45, No. 209
Monday, October 27, 1980

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Agency Decisional Processes, Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–163), notice is hereby given of a meeting of the Committee on Agency Decisional Processes of the Administrative Conference of the United States, to be held at 10:00 a.m., Monday, November 10, 1980 at the office of Ginsburg, Feldman, Weil & Bress, 1700 Pennsylvania Avenue, N.W., Suite 300, Washington, D.C.

The Committee will meet to reconsider its proposed recommendation based on Dean Paul Verkuil's report on intragovernmental communications in informal rulemaking proceedings and to review comments received on the proposed recommendation. The proposed recommendation appears at 45 FR 68948 (October 17, 1980).

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman of the Administrative Conference at least two days in advance. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the Committee before, during or after the meeting.

For further information concerning this meeting contact Charles R. Pouncy at the Office of the Chairman of the Administrative Conference, 2120 L Street, N.W., Suite 500, Washington, D.C. 20037 (202–254–7065). Minutes of the meeting will be available on request.

Richard K. Berg,

Executive Secretary.

October 22, 1980.

[FR Doc. 80-33430 Filed 10-24-80; 8:45 am]

BILLING CODE 6110-01-M

Select Committee on Ex Parte Communications; Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–163), notice is hereby given of a meeting of the Select Committee on Ex Parte Communications of the Administrative Conference of the United States, to be held at 10:00 a.m., Friday, November 7, 1980 in the library of the Administrative Conference, Suite 500, 2120 L Street, N.W., Washington, D.C.

The Committee will meet for the second time to discuss Professor Michael Asimow's study of separation of functions in administrative proceedings and to consider comments received on the Committee's tentative recommendation, published 45 FR 68949.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman of the Administrative Conference at least two days in advance. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the Committee before, during or after the meeting.

For further information concerning this meeting, contact Jeffrey Lubbers (202–254–7065). Minutes of the meeting will be available on request.

Richard K. Berg,

Executive Secretary.

October 22, 1980.

[FR Doc. 80-33431 Filed 10-24-80; 8:45 am]

BILLING CODE 6110-01-M

CIVIL AERONAUTICS BOARD

[Order 80-10-120]

Air International Fitness Proceeding

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 80–10–120 Instituting Hearing.

SUMMARY: The Board is instituting the *Air International Fitness Proceeding* and a hearing on the issue of Air International's fitness to receive a section 401 certificate authorizing service to 25 Erie, Pennsylvania markets and on whether we should approve or exempt certain relationships under Section 408/409 of the Act. The complete text of this order is available as noted below.

DATES: All interested persons who wish to request additional evidence should file their responses by November 3, 1980. In addition, petitions for leave to intervene should be filed by November 3, 1980.

ADDRESSES: Responses should be filed in the Dockets Section, Civil Aeronautics Board, Washington, D.C., 20428, Docket 38866, Air International Fitness Proceeding.

In addition, copies of such filing should be served on Air International, all certificated carriers, the mayors of Philadelphia, Pa., Chicago, Ill., South Bend, Ind., Tampa, Fla., Denver, Colo., Atlanta, Ga., Baltimore, Md., Cleveland, Ohio, Detroit, Mich., Washington, D.C., Newark, N.J., Binghamton, N.Y., Johnson City, N.Y., Pittsburgh, Pa., Ft. Wayne, Ind., Akron, Ohio, Canton, Ohio, Harrisburg, Pa., Kansas City, Mo., Allentown, Pa., Bethlehem, Pa., Easton, Pa., Little Rock, Ark., Oklahoma City, Ok., Tulsa, Ok., Memphis, Tenn., Erie, Pa., Toledo, Ohio; the managers of the airports in Philadelphia, Pa., Chicago, Ill., South Bend, Ill., Tampa, Fla., Denver, Colo., Atlanta, Ga., Baltimore, Md., Cleveland, Ohio, Detroit, Mich., Washington, D.C., Newark, N.J., New York, N.Y., Endicott, N.Y., Binghamton, N.Y., Johnson City, N.Y., Pittsburgh, Pa., Ft. Wayne, Ind., Kansas City, Mo., Allentown, Pa., Little Rock, Ark., Oklahoma City, Ok., Toledo, Ohio, Tulsa, Ok., Memphis, Tenn., Erie, Pa.; the manager of Chemung County Airport, Horseheads, N.Y., Akron-Canton Regional Airport, North Canton, Ohio, Capital City Airport, New Cumberland, Pa., Toledo-Lucas County Port Authority, Colorado Department of Highways, Aviation Transportation Section, Georgia Department of Transportation, Bureau of Aeronautics, Illinois Division of Aeronautics, Indiana Aeronautics Commission, Maryland Department of Transportation, Michigan Department of Transportation, Ohio Department of Transportation, Pennsylvania Department of Transportation, New Jersey Department of Transportation, Arkansas Division of Aeronautics, Oklahoma Aeronautics Commission, Tennessee Department of Transportation, and the Port Authority of New York and New Jersey.

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FOR FURTHER INFORMATION CONTACT: Laurie Schaffer, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; (202) 673–5009.

SUPPLEMENTARY INFORMATION: The complete text of Order 80–10–120 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 80–10–120 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: October 21, 1980.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80–33394 Filed 10–24–80; 8:45 am]

BILLING CODE 6320–01–M

[Docket 38733]

Continental-Western Merger Case; Hearing

Notice is hereby given, pursuant to the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding will be held on November 24, 1980, at 9:30 A.M. (local time), in Room 1003, Hearing Room "D", Universal North Building, 1875 Connecticut Avenue, N.W., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., October 22, 1980.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 80–33396 Filed 10–24–80; 8:45 am]

BILLING CODE 6320–01–M

[Docket No. 38851, et al.]

Flying Tiger Line, et al.; Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations

Notice is hereby given that, during the week ended October 17, 1980 CAB has received the applications listed below, which request the issuance, amendment, or renewal of certificates of public convenience and necessity or foreign air carrier permits under Subpart Q of 14 CFR 302.

Answers to foreign permit applications are due 28 days after the application is filed. Answers to certificate applications requesting restriction removal are due within 14 days of the filing of the application. Answers to conforming applications in a restriction removal proceeding are due 28 days after the filing of the original application. Answers to certificate applications (other than restriction removals) are due 28 days after the filing of the application. Answers to conforming applications or those filed in conjunction with a motion to modify scope are due within 42 days after the original application was filed. If you are in doubt as to the type of application which has been filed, contact the applicant, the Bureau of Pricing and Domestic Aviation (in interstate and overseas cases) or the Bureau of International Aviation (in foreign air transportation cases).

SUBPART Q APPLICATIONS

Date filed	Docket No.	description
Oct. 16, 1980	38851	The Flying Tiger Line Inc., 7401 World Way West, International Airport, Los Angeles, California 90009. Application of The Flying Tiger Line Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations, requests authority (a) to provide foreign air transportation of property and mail as follows: Between a point or points in the United States, and points in Argentina, Barbados, Brazil, Columbia, the Dominican Republic, Ecuador, Haiti, Jamaica, the Netherlands Antilles, Nicaragua, Mexico, Panama, Peru, and Venezuela; and, (b) to transport, at the expense of the shipper, one or more attendants with any shipment, provided that such attendant or attendants may be transported only when actually accompanying the shipment and may not be transported from the destination of the shipment to its origin or otherwise. Conforming Applications are due November 13, 1980.
Oct. 17, 1980	38857	Republic Airlines, Inc., Hartsfield-Atlanta International Airport, Atlanta, Georgia 30320. Application of Republic Airlines, Inc. pursuant to Section 401(e)(7)(B) of the Act and Subpart Q of the Board's Procedural Regulations, requests amendment of its certificate of public convenience and necessity for Route 86 so as to remove the restriction on its authority which prohibits nonstop service in the Chicago, Illinois (O'Hare)-Sioux Falls, South Dakota market. Republic requests that this be accomplished in time for it to inaugurate nonstop Chicago (O'Hare)-Sioux Falls service on January 1, 1981. Conforming Applications and Answers may be filed by October 31, 1980.
Oct. 17, 1980	38858	Societe Antillaise De Transports Aeriens, d.b.a. Air Guadeloupe, c/o V. Michael Straus, Suite 401, 1001 Connecticut Avenue, N.W., Washington, D.C. 20036. Application of Air Guadeloupe pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations, requests a foreign air carrier permit authorizing it to carry persons, property and mail between St. Maarten, Netherlands Antilles and San Juan, Puerto Rico, using F-27J aircraft. San Juan will be the only U.S. point served, and there will be no non-traffic stops. Answers may be filed by November 14, 1980.

Phillis T. Kaylor,

Secretary.

[FR Doc. 80–33395 Filed 10–24–80; 8:45 am]

BILLING CODE 6320–01–M

[Order 80–10–117; Docket 38803]

Sun Pacific Airlines; Application for Certificate Authority Under Subpart Q and Request for Approval of Section 408 and 409 Relationships

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 80–10–117, Application of Sun Pacific Airlines under Subpart Q for a Certificate of Public Convenience and Necessity for authority between and among San Francisco, Fresno, Bakersfield, Las Vegas, Los Angeles and Ontario (Docket 38803). Sun Pacific has also requested, to the extent required, approval of section 408 and 409 relationships.

SUMMARY: The Board is instituting an investigation to determine (a) whether Sun Pacific Airlines is fit to operate the authority it requests and (b) whether certain relationships should be approved under sections 408 and 409. The Board is waiving the 28-day answer period set forth in 14 CFR 320.1720(d) with regard to the fitness, 408 and 409 issues. Interested persons will have ample opportunity to deal with these issues in the formal proceeding. The Board will deal with the public convenience and necessity issues in accordance with its expedited procedures.

DATES: Evidence Requests and Requests to Intervene: Interested persons shall file, and serve upon all persons listed below no later than November 3, 1980, requests for additional evidence and requests to intervene.

ADDRESSES: Requests for Additional Evidence and Requests to Intervene should be filed in Docket 38803, Docket Section, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Steven B. Farbman, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673–5340.

SUPPLEMENTARY INFORMATION: Requests for Additional Evidence and Requests to Intervene should be served upon the persons listed in Ordering Paragraph 5 of Order 80–10–117.

The complete text of Order 80–10–117 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area may send a postcard request for the order to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: October 21, 1980.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80–33397 Filed 10–24–80; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Survey of Distributors Stocks of Canned Foods; Determination

In conformity with title 13, United States Code, sections 182, 224, and 225, and due Notice of Consideration having been published October 2, 1980 (45 FR 65268), I have determined that year-end data on stocks of 30 canned and bottled products, including vegetables, fruits, juices, and fish, are needed to aid the effieicnt performance of essential government functions, that the data have significant application to the needs of the public and industry, and that they are not publicly available from nongovernmental or other governmental sources. This is a continuation of the survey conducted in previous years.

All respondents will be required to submit information covering their December 31, 1980 inventories of 30 canned and bottled vegetables, fruits, juices, and fish. Reports will not be required from all firms, but will be limited to a scientifically selected sample of wholesalers and retail multiunit organizations handling canned foods in order to provide, with measurable reliability, year-end inventories of the specified canned food items. These stocks will be measured in terms of actual cases, with separate data requested for "all sizes smaller than No. 10" and for "sizes No. 10 or larger." (In addition, multiunit firms reporting separately by establishment will be requested to update the list of their establishments maintaining canned food stocks.)

Report forms will be furnished to firms covered by the survey. Copies of the forms are available on request to the Director, Bureau of the Census, Washington, D.C. 20233.

I have, therefore, directed that this annual survey be conducted for the purpose of collecting these data.

Dated: October 22, 1980.

Vincent P. Barabba,

Director, Bureau of the Census.

[FR Doc. 80–33341 Filed 10–24–80; 8:45 am]

BILLING CODE 3510–07–M

Natonal Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit

On September 10, 1980, Notice was published in the Federal Register (45 FR 59608), that an application had been filed with the National Maine Fisheries Service by Dr. Daniel P. Costa, Physiological Research Laboratory, Scripps Institution of Oceanography, La Jolla, California 92093, for a permit to take 30 northern elephant seals (*Mirounga angustirostris*) for the purpose of scientific research.

Notice is hereby given that on October 21, 1980, and as authorized by provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Scientific Research Pemit for the above taking to conduct physiological studies on 30 northern elephant seals subject to certain conditions set forth therein.

This permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Maine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: October 21, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80–33423 Filed 10–24–80; 8:45 am]

BILLING CODE 3510–22–M

National Oceanic and Atmospheric Administration

Fishermen's Contingency Fund

AGENCY: National Oceanic and Atmospheric Administration/ Department of Commerce.

ACTION: Notice of agency recommendation on claims filed under title IV, Outer Continental Shelf Lands Act Amendments of 1978 (Title IV).

SUMMARY: Notice is given that the Agency intends to recommend to the NOAA Office of Administrative Law Judges, which will decide the matters, that Title IV Claim Numbers FCF–44–79 and FCF–56–79 be denied because claimants have not met their burdens of proof that the losses to their shrimp trawling rigs either occurred in an area affected by oil or gas energy activities on the Outer Continental Shelf (OCS) or were caused by an item associated with such activities. Interested persons have 15 days to request the Administative law Judge (ALJ) to conduct an oral hearing concerning the claims or to request to be admitted as parties to any hearing on the claims.

DATES: Requests for oral hearing or to be admitted as a party must be received by November 12, 1980.

ADDRESS: Send requests to: NOAA Office of General Counsel (GCEL), Room 275, Page 1 Building, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell or M. Timothy Conner (address above). Telephone: (202) 254–8350.

SUPPLEMENTARY INFORMATION: Title IV, 43 USC 1841, established the Fishermen's Contingency Fund (Fund) to compensate commercial fishermen for gear damage and lost profits caused by items associated with oil or gas energy activities on the Outer Continental Shelf (OCS). On April 27, 1979, Claim Number FCF–44–79 was filed. The claim seeks compensation from the Fund of $12,320.64 for loss of and damage to a shrimp trawling rig and accessories ($4,998.22), lost profits ($7,112.42), and claim documentation expenses ($210.00) caused by claimant's catching his gear on an obstruction on April 14, 1979, at coordinates 27°31.2'N and 97°13.2'W. On June 22, 1979, Claim Number FCF–56–79 was filed. The claim seeks compensation from the Fund of $10,021.97 for loss of a complete shrimp trawling rig and damage to accessories ($2,983.22) and lost profits (47,038.75) caused by claimant's catching his gear on an obstruction on June 10, 1979, at coordinates 28°37.5'N and 94°36.7'W.

As required by the 50 CFR Part 296 regulations implementing Title IV, notice of the claims were published on April 28, 1980 (45 FR 28179). That notice gave interested persons, as defined in 50 CFR 296.2, 30 days to advise the Chief of the National Marine Fisheries Service's Financial Services Division (FSD) that they wished to submit evidence concerning the claims or be admitted as parties at any hearing held in respect to the claims. No responses have been received.

That notice also advised that FSD may forward to NOAA General Counsel proposed agency recommendations concerning the claims. FSD has done so in this case, with the proposal that the Agency recommend to the ALJ that the claims be denied in full.

As provided by 50 CFR 296.8(d)(3), notice is given that NOAA General Counsel has determined that the proposal set out above will be the official agency recommendation in these cases. A claim filed under Title IV is entitled to a presumption of validity if claimant establishes, among other things, that the loss occurred in an area affected by Outer Continental Shelf activities, and that the claimant filed a timely 5-day report of the loss in accordance with 50 CFR 296.7(a). Claim number FCF–44–79 arises from a loss which did not occur on the OCS, but in State of Texas waters, and the file does not establish that the area in question was affected by OCS oil or gas energy activities, as that term is defined in 50 CFR 296.2. Claim number FCF–56–79 also does not establish that the area in question was affected by OCS oil or gas activities and claimant failed to file a timely 5-day report. In the absence of a presumption of validity, a claim may be paid only if claimant meets his burden of proving by a preponderance of the evidence that the item causing the damage was associated with OCS oil or gas activity. The claimants in these cases have failed to do so.

Any interested person who objects to these recommendations, or the claimants, may request that the ALJ who will be assigned to the case conduct an oral hearing concerning either claim. Any interested person may also request to be admitted as a party to any hearing concerning the claims. In either event, the request must be in writing and must be filed with General Counsel at the address and by the date set out above. If the request is for an oral hearing, the request must state the reasons why an oral hearing should be held. If the request is to be admitted as a party, the request must state why it was not filed in a timely manner under 50 CFR 296.8(a)(3)(v). The ALJ will rule on all such requests under 50 CFR 296.10(a)(3). Any interested person may obtain a copy of such portions of the claims as are disclosable by law by writing General Counsel at the above address.

At the close of the 15-day period referred to at the beginning of this notice, General Counsel will refer the claims, together with the agency recommendations and any requests received in response to this notice, to the NOAA Office of Administrative Law Judges for adjudication. It is the present intention of General Counsel to request the ALJ to decide these claims without oral hearing.

Final regulations governing the Title IV Program were published on January 24, 1980 (45 FR 6062), and July 2, 1980 (45 FR 44942).

Signed at Washington, D.C., this 21st day of October, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80-33318 Filed 10-24-80; 8:45 am]

BILLING CODE 3510-22-M

Fishermen's Contingency Fund

AGENCY: National Oceanic and Atmospheric Administration/ Department of Commerce.

ACTION: Notice of agency recommendation on claims filed under Title IV, Outer Continental Shelf Lands Act Amendments of 1978 (Title IV).

SUMMARY: Notice is given that the Agency intends to recommend to the NOAA Office of Administrative Law Judges, which will decide the cases, that the following claims be approved for payment from the Fishermen's Contingency Fund:

Claim Number and Approved Amount

FCF–07–79—$721.50 (Actual damage: $550.00; Economic loss: $171.50).

FCF–16–79—$4,647.12 (Actual damage: $3,082.20; Economic loss: $1,564.92).

FCF–24–79—$2,466.969 (Actual damage: $2,110.20; Economic loss: $356.49).

FCF–29–79—$10,787.44 (Actual damage: $10,150.53; Economic loss: $636.91).

FCF–52–79—$1,438.00 (Actual damage: $1,133.00; Economic loss: $305.00).

FCF–58–79—$1,471.15 (Actual damage: $913.15; Economic loss: $558.00).

FCF–63–79—$9,334.88 (Actual damage: $6,164.00; Economic loss: $3,170.88).

FCF–69–79—$3,718.54 (Actual damage: $1,316.71; Economic loss: $2,391.31, Claim Documentation, Expenses: $10.52).

Interested persons have 15 days to request that the Administrative Law Judge (ALJ) conduct an oral hearing concerning the claims or to request to be admitted as parties to any hearing on the claims.

DATE: Requests for oral hearing or to be admitted as a party must be received by November 12, 1980.

ADDRESS: Send requests to: NOAA Office of General Counsel (GCEL), Room 275, Page 1 Building, 2001 Wisconsin Avenue, NW, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell or M. Timothy Conner (address above). Telephone: (202) 254–8350.

SUPPLEMENTARY INFORMATION: Title IV, 43 U.S.C. 1841, established the Fishermen's Contingency Fund (Fund) to compensate commercial fishermen for gear damage and lost profits caused by items associated with oil and gas activities on the Outer Continental Shelf. On January 31, 1979, Claim No. FCF–07–79 was filed. The claim seeks compensation from the Fund of $1,590.00 for damage to a shrimp trawl ($550) and lost profits ($1,040) caused by claimant's catching a heavy iron flange in his net on December 11, 1978, at coordinates 29°18.5'N, and 92°31.5'W..

Claim number FCF–16–79 was filed on February 28, 1979 and seeks compensation in the amount of $14,891.51 for the loss of a complete shrimp rig ($3,141.51), lost profits ($11,270.00) and expenses ($480.00) caused by claimant's hanging his rig on an underwater obstruction on February 20, 1979, at coordinates 28°41.1'N and 91°29.1'W.

Claim number FCF–24–79 was filed on March 16, 1979, and seeks compensation in the amount of $8,966.20 for the loss of two shrimp trawls and related equipment ($2,470.20) and loss profits ($6,496.00) caused when claimant hung both trawls on an underwater obstruction on February 24, 1979, at coordinates 28°29.4'N and 91°21.2'W.

Claim number FCF–29–79 was filed on May 21, 1979, and seeks compensation in the amount of $16,350.53 for damage to a shrimp trawler ($10,150.53), lost profits ($5,700) and consequential expenses ($500.00) caused by the claimant's hanging her rigging on an underwater obstruction on March 24, 1979, at coordinates 28°44.9'N and 92°32.4'W.

Claim number FCF–58–79 was filed on July 30, 1979, and seeks compensation in the amount of $1,471.15 for loss of a shrimp trawl ($913.15) and lost profits ($558.00) caused by claimant's hanging one of his trawls on an underwater obstruction on June 29, 1979, at coordinates 28°48.5'N and 90°25.4'W.

Claim number FCF–63–79 was filed on July 23, 1979, and seeks compensation in the amount of $20,420.60 for loss of two shrimp trawls and related equipment ($6,146.60) and lost profits ($14,256.00) caused when claimant hung both trawls on an underwater obstruction on July 17, 1979, at coordinates 28°44.4'N and 91°37.6'W.

Claim number FCF–69–79 was filed on July 17, 1979, and seeks compensation in the amount of $13,612.30 for loss of a shrimp rig ($1,601.78), lost profits ($12,000) and claim documentation expenses ($10.52) caused when the claimant hung his rig on an underwater obstruction on July 5, 1979, at coordinates 29°05.3'N and 92°47.9'W.

As required by the 50 CFR Part 296 regulations implementing Title IV, notice of claims FCF–07, 16, 24, 29, 52, 58–79 were published on April 28, 1980 (45 FR 28179) and notice of claims FCF–63, and 69–79 were published on June 16, 1980 (45 FR 40632). These notices gave interested persons, as defined in 50 CFR 296.2, 30 days to advise the Chief of the National Marine Fisheries Service's Financial Services Division (FSD) that they wished to submit evidence concerning the claims or be admitted as parties at any hearings held in respect to the claims. No responses have been received.

These notices also advised that FSD may negotiate with the claimants proposed settlements of their claims. As indicated in the "Approved Amount" column set out earlier in this notice, FSD has either approved the claims as submitted or negotiated settlements.

As provided by 50 CFR 296.8(d)(3), notice is given that NOAA General Counsel has determined that the proposed settlements set out above will be the official agency recommendations in these cases. Any interested person or a claimant who objects to any of these recommendations, may request that the ALJ who will be assigned to a case conduct an oral hearing concerning the claim. Any interested person may also request to be admitted as a party to any hearing concerning any claim. In either event, the request must be in writing and must be filed with General Counsel at the address and by the date set out above. If the request is to be admitted as a party, the request must state why it was not filed in a timely manner under 50 CFR 296.8(a)(3)(v). The ALJ will rule on all such requests under 50 CFR 296.10(a)(3). Any interested person may obtain a copy of such portions of the claim as are disclosable by law by writing General Counsel at the above address.

At the close of the 15-day period referred to at the beginning of this notice, General Counsel will refer the claims, together with the agency recommendations and any requests received in response to this notice, to the NOAA Office of Administrative Law Judges for adjudication. It is the present intention of General Counsel to request the ALJ to decide these claims without oral hearing.

Final regulations governing the Title IV Program were published on January 24, 1980 (45 FR 6062), and July 2, 1980, (45 FR 44942).

Signed at Washington, D.C. this 21st day of October, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80-33319 Filed 10-24-80; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and, possibly, foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of patents cited are available from the Commissioner of Patents & Trademarks, Washington, DC 20231, for $.50 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $5.00 each ($10.00 outside North American Continent). Requests for copies of patent applications must include the PAT-APPL number. Claims are deleted from patent application copies sold to avoid premature disclosure. Claims and other technical data will usually be made available to serious prospective licensees upon execution of a non-disclosure agreement.

Requests for information on the licensing of particular inventions should be directed to the addresses cited for the agency-sponsors.

Douglas J. Campion,

Program Coordinator, Office of Government Inventions and Patents, National Technical Information Service, U.S. Department of Commerce.

U.S. Department of the Air Force, AF/JACP, 1900 Half Street, S.W., Washington, D.C. 20324

Patent application 6–149,792: Mixed Flow Augmentor Incorporating a Fuel/Air Tube; filed May 14, 1980.

Patent application 6–152,232: Interferometric Distance Measurement Method; filed May 22, 1980.

Patent application 6–152,234: Intruder Detection System having Multiple Discrete RF Sensor Elements Illuminated by a Remote RF Transmitter; filed May 22, 1980.

Patent application 6–160,259: Aerial Refueling Boom Control Apparatus; filed June 17, 1980.

Patent application 4–207,520: Multiple Frequency Digital Eddy Current Inspection System; filed April 6, 1978, patented June 10, 1980. Not available NTIS.

U.S. Department of Agriculture, Program Agreements and Patent Branch, Administrative Service Division, Federal Building, Science and Education Administration, Hyattsville, Md. 20782

Patent application 6–150,550: Encapsulation by Entrapment; filed May 16, 1980.

Patent application 4–207,068: Process for Producing Chambray and Other Dyed Fabrics Through Phosphorylation; filed October 16, 1978, patented June 10, 1980. Not available NTIS.

U.S. Department of Energy, Assistant General Counsel for Patents, Washington, D.C. 20545

Patent application 6–005,264: Thermochemical Cycles for the Production of Hydrogen; filed January 22, 1979.

Patent application 6–005,942: Process for Purifying Geothermal Steam; filed January 24, 2979.

Patent application 6–033,088; Process for Treating Weldments; filed April 25, 1979.

Patent application 6–050,379: Thermochemical Cyclic System for Splitting Water and/or Carbon Dioxide by Means of Cerium Compounds and Reactions Useful Therein; filed June 20, 1979.

Patent application 6–068,359: Method for Storing Spent Nuclear Fuel in Repositories; filed August 21, 1979.

Patent application 6–070,548: Method for Storing Nuclear Fuel in Repositories; filed August 28, 1979.

Patent application 4–164,373: Spectrometer Employing Optical Fiber Time Delays for Frequency Resolution; filed January 12, 1978, patented August 14, 1979. Not available NTIS.

Patent application 4–179,608: Right/Left Assignment in Drift Chambers and Proportional Multiwire Chambers (PWC's) Using Induced Signals; filed May 10, 1978, patented December 18, 1979. Not available NTIS.

U.S. Department of Health and Human Services, National Institutes of Health, Chief, Patent Branch, Westwood Building, Bethesda, Md. 20205

Patent application 6–092,102: Polymer Alloy Blood Compatible Surface and Method of Making Same; filed November 7, 1979.

Patent application 6–094,814: Homocysteine Thiolactone Perchlorate and a Method of Making Same; filed November 16, 1979.

Patent application 6–100,496: N-Acetyl-Cysteine Protects Against Cardiac Damage from Subsequently-Administered Cardio-Toxic Anthracycline in Cancer Therapy; filed December 5, 1979.

V 4 5 O C 2 7 8 0 UMI

Patent application 6–104,806: L-Acetyl Carnitine Infusion to Prevent Glucose and Fatty Acid Oxidation during Myocardial Ischemia, Anoxia, and Other Diseases; filed December 18, 1979.
Patent application 6–126,106 Absorbed Dose Water calorimeter; filed February 29, 1980.
Patent application 6–139,236: Hepatitis B Immune Globulin Used to Inactivate Hepatitis B Virus in Injectable Biological Products; filed April 11, 1980.
Patent application 6–141,764: Illuminated Surgical Instrument; filed April 21, 1980.
Patent application 6–144,043: Optical Sensor of Plasma Constituents; filed April 28, 1980.
Patent application 6–145,350: Irreversible Anti-Glucocorticoids; filed April 30, 1980.
Patent application 6–148,491: Apparatus and Method for Continuous Countercurrent Extraction and Particle Separation; filed May 9, 1980.
Patent application 6–165,690: A Short Total Synthesis of Dihydrothebainone, Dihydrocodeinone, and Nordihydrocodeinone; filed July 3, 1980.
Patent application 4–200,110: Fiber Optic pH Probe; filed November 28, 1977, patented April 29, 1980. Not available NTIS.
Patent application 4–200,689: Method of Cell Culture Using a Dual Circuit, Woven Artificial Capillary Bundle; filed August 29, 1978, patented April 29, 1980. Not available NTIS.
Patent application 4–203,971: Neisseria Gonorrhoeae Vaccine. Filed March 23, 1978, patented May 20, 1980. Not available NTIS.
Patent application 4–205,057: Cerebrospinal Fluid Protein Fragments; filed January 17, 1978, patented May 27, 1980. Not available NTIS.
Patent application 4–206,015: Method of Simulation of Lymphatic Drainage Utilizing a Dual Circuit, Woven Artificial Capillary Bundle: filed August 29, 1978, patented June 3, 1980. Not available NTIS.
Patent application 4–207,308: Process for Purifying Iodinated Bile Acid Conjugates; filed June 13, 1977, patented June 10, 1980. Not available NTIS.
Patent application 4–209,300: Hemoglobin-Oxygen Equilibrium Curve Analyzer; filed September 25, 1978, patented June 24, 1980. Not available NTIS.
Patent application 4–210,639: 5'-Deoxy-5'-(Isobutylthio)-3-Deazaadenosine, Method of Making Same and Its Antiviral Effect on Rous Sarcoma Virus and Gross Murine Leukemia Virus; filed August 29, 1978, patented July 1, 1980. Not available NTIS.

U.S. Department of the Navy, Assistant Chief for Patents, Office of Naval Research, Code 302, Arlington, Va. 22217

Patent application 6–142,796: Bow Dock; filed April 22 1980.
Patent application 6–147,440: Self-Contained Backflush/Start System for Suction LFC Undersea Vehicle; filed May 7, 1980.
Patent application 4–187,676: Bi-Metallic Thermal Compensator for Mounting and a Solid Propellant Grain; filed March 13, 1978, patented February 12, 1980. Not available NTIS.
Patent application 4–187,760: Inflight, Stores, Forces and Moments Measuring Device; filed September 19, 1978, patented February 12, 1980. Not available NTIS.
Patent application 4–187,761: Variable Force Control System for Weapon Ejection Mechanisms; filed September 19, 1978, patented February 12, 1980. Not available NTIS.
Patent application 4–192,906: Mass-Transport Separator for Alkaline Nickel-Zinc Cells and Cell; filed June 15, 1979, patented March 11, 1980. Not available NTIS.
Patent application 4–193,952: Extrusion of Solid Propellant Including Ammonium Perchlorate Whiskers; filed May 4, 1972, patented March 18, 1980. Not available NTIS.
Patent application 4–196,895: Ring-Loaded Flexural Disc Spring; filed July 21, 1978, patented April 8, 1980. Not available NTIS.
Patent application 4–198,474: Seawater Battery; filed February 26, 1979, patented April 15, 1980. Not available NTIS.
Patent application 4–199,003: Flow Control System with Density Compensation; filed December 15, 1978, patented April 22, 1980. Not available NTIS.
Patent application 4–204,475: Arming-Safing System for Airborne Weapons; filed April 29, 1969, patented May 27, 1980. Not available NTIS.
Patent application 4–204,552: Dual Speed Fluid Control Apparatus; filed October 24, 1978, patented May 27, 1980. Not available NTIS.
Patent application 4–205,396: Automatic Difar Cardioid Former; filed March 25, 1975, patented May 27, 1980. Not available NTIS.
Patent application 4–206,510: Automatic Detection and Classification Device; filed June 27, 1955, patented June 3, 1980. Not available NTIS.
Patent application 4–212,064: Beam-Former for FFT-Based Signal Processor; filed November 20, 1978, patented July 8, 1980. Not available NTIS.

National Aeronautics and Space Administration, Assistant General Counsel for Patent Matters, NASA Code GP–2, Washington, D.C. 20546

Patent application 6–145,208: Heating and Cooling System; filed April 30, 1980.
Patent application 6–154,725: Hermetic Seal for a Shaft; filed May 30, 1980.
Patent application 6–154,728: Stark Effect Spectrophone for Continuous Absorption Spectra Monitoring; filed May 30, 1980.
Patent application 6–157,150: Diesel Engine Catalytic Combustor System; filed June 6, 1980.
Patent application 6–158,183: Frequency Tracked Pulse Technique for Ultrasonic Analysis; filed June 10, 1980.
Patent application 6–163,837: Cloud Cover Sensor; filed June 27, 1980.
Patent application 6–163,840: An Improved Head for High Speed Spinner Having a Vacuum Chuck; filed June 27, 1980.
Patent application 4–199,650. Modification of the Electrical and Optical Properties of Polymers; filed November 7, 1978, patented April 22, 1980. Not available NTIS.

[FR Doc. 80-33360 Filed 10-24-80; 8:45 am]
BILLING CODE 3510-04-M

Office of the Secretary

[Dept. Organization Order 25–5B, Amdt. 1]

National Oceanic and Atmospheric Administration; Statement of Organization and Functions and Delegations of Authority

Effective Date: October 1, 1980.

This order effective October 1, 1980 amends the material appearing at 45 FR 64616 of September 30, 1980.

Department Organization Order 25–5B, dated August 18, 1980 is hereby amended as shown below. The purpose of this amendment is to (1) abolish the Office of Ocean Engineering (OOE) and to transfer its functions (except those functions relating to undersea research), and the NOAA Diving Program, to the Assistant Administrator for Oceanic and Atmospheric Services; and (2) transfer the Ocean Dumping Program from the Assistant Administrator for Oceanic and Atmospheric Services to the Assistant Administrator for Research and Development.

1. In *Section 10. Assistant Administrator for Research and Development:* a. The introductory paragraph is revised to read as follows:

"The *Assistant Administrator for Research and Development* shall administer an integrated program of research and technology development related to the oceans, the Great Lakes, the United States' coastal waters, the lower and upper atmosphere and the space environment, so as to increase understanding of the environment, human influences thereon, and thus, provide the scientific basis for improved services. The Assistant Administrator for Research shall serve as the principal advisor to the Administrator on all research and special research technology matters. To carry out these responsibilities the Assistant Administrator shall have and direct the following units."

b. In pen and ink, delete paragraph .03, and renumber paragraphs .04 and .05, as .03 and .04.

2. In *Section 11. Assistant Administrator for Oceanic and Atmospheric Services:* a. The introductory paragraph is revised to read as follows:

"The *Assistant Administrator for Oceanic and Atmospheric Services* shall administer programs which entail monitoring and predicting the state of the physical environment to provide a wide variety of meteorologic, hydrologic, climatologic, map and chart, geodetic, and oceanographic data and services to government, industry, the scientific and engineering communities, and the general public. In addition, the Assistant Administrator shall administer programs dealing with NOAA diving safety activities and with ocean technology, engineering and development services to NOAA components. To carry out these responsibilities, the Assistant Administrator shall have and direct the following units."

b. Paragraph .01 line seven, in pen and ink after *Organization,* insert "Ocean Engineering and Technology Council," and in line fourteen after *surveys,* insert "ocean engineering and advanced technology development services,."

c. Paragraph .02 line six, in pen and ink delete *including those from ocean dumping;* and insert "manage the NOAA diver safety program; conduct studies relevant to the evaluation, certification and efficiency of diving procedures and equipment;."

d. A new paragraph .05 is added to read as follows:

".05 The *Ocean Technology and Engineering Services (OTES)* shall provide ocean engineering and development services to NOAA components and serve as the NOAA focal point for interaction with other Federal agencies and scientific and technical groups in ocean engineering and related technology. OTES shall have responsibility for: Planning and budget integration for NOAA ocean engineering activities; systems analysis to support scientific and technology program development to meet future program requirements; systems design and development to support NOAA services; metrology standards calibration, and procedures to assure data quality; data buoy and marine systems support to meet NOAA's operational needs for marine environmental data; support to selected national programs for other Federal agencies such as ocean energy development, when this is consistent with NOAA's objectives; and for the Ocean Engineering and Technology Council review of long-range plans to meet NOAA's ocean engineering requirements."

3. The organization chart, Exhibit 1, attached to this amendment, supersedes the organization chart dated August 18, 1980. A copy of the organization chart is filed with the original of this document in the Office of the Federal Register.

David Farber,

Deputy Assistant Secretary for Operations.

[FR Doc. 80-33363 Filed 10-24-80; 8:45 am]
BILLING CODE 3510-17-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting Import Restraint Levels for Certain Cotton and Man-Made Fiber Apparel Products From Taiwan

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Increasing the levels of restraint for cotton and man-made fiber textile products in Categories 340, 341, 333/334/335, 338/339, 638, 639, 645/646 and 659pt. (only T.S.U.S.A. numbers 703.0500 and 703.1000) by the agreement year which began on January 1, 1980 by the application of swing and, where applicable, carryforward. Overshipment charges are being applied to Category 659pt. (only T.S.U.S.A. numbers 703.0500 and 703.1000).

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), and August 12, 1980 (45 FR 53506).)

SUMMARY: The bilateral agreement of June 8, 1978, as amended, concerning cotton, wool and man-made fiber textile products, produced or manufactured in Taiwan, provides, among other things, for percentage increases in certain levels of restraint during an agreement year (swing) and for the borrowing of designated percentages of yardage from the succeeding year's levels with the amounts used deducted from the ceilings in the succeeding year (carryforward). In accordance with the terms of the agreement, the levels for Categories 340, 341, 333/334/335, 338/339, 638, 639, 645/646 and 659pt. (only T.S.U.S.A. numbers 703.0500 and 703.1000) are being increased for the agreement year which began on January 1, 1980 and extends through December 31, 1980.

EFFECTIVE DATE: October 27, 1980.

FOR FURTHER INFORMATION CONTACT: Ronald J. Sorini, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–4212).

SUPPLEMENTARY INFORMATION: On December 28, 1979, there was published in the **Federal Register** (44 FR 76839) a letter dated December 21, 1979 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which established levels of restraint for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in Taiwan, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1980 and extends through December 31, 1980. In accordance with the terms of the bilateral agreement, the letter published below from the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton and man-made fiber textile products in Categories 340, 341, 333/334/335, 338/339, 638, 639, 645/646 and 659pt. (only T.S.U.S.A. numbers 703.0500 and 703.1000) in excess of the increased levels of restraint.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements,
October 22, 1980.
Commissioner of Customs,
Department of the Treasury,
Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 21, 1979 from the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Taiwan.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Cotton, Wool and Man-Made Fiber Textile Agreement of June 8, 1978, as amended, concerning textile products from Taiwan, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed further to amend, effective on October 27, 1980, the twelve-month levels of restraint established for Categories 333/334/335,338/339, 340, 341, 638, 639, 645/646 and 659pt. to the following:

Category	Amended 12-mo level of restraint[1]
333/334/335	106,652 dozen of which not more than 55,855 dozen shall be in Cat. 333/334 and not more than 66,795 dozen shall be in Cat. 335.
338/339	569,000 dozen.
340	656,737 dozen.
341	373,251 dozen.
638	1,575,556 dozen.
639	5,205,207 dozen.
645/646	3,947,021 dozen.
659pt.[2]	3,010,925 pounds.

[1] The levels of restraint have not been adjusted to account for any imports after December 31, 1979.
[2] In Category 659, only T.S.U.S.A. numbers 703.0500 and 703.1000.

The actions taken with respect to the authorities in Taiwan and with respect to imports of cotton and man-made fiber textile products from Taiwan have been determined

by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementotion of Textile Agreements.

[FR Doc. 80-33410 Filed 10-24-80; 8:45 am]

BILLING CODE 3510-25-M

Increasing Import Restraint Level for Certain Man-Made Fiber Apparel Product Imports From Mexico

October 22, 1980.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Increasing to 281,020 dozen the import restraint level established for man-made fiber woven blouses in Category 641, exported from Mexico during the year which began on January 1, 1980 by the application of swing and carryover.

[A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463) and August 12, 1980 (45 FR 53506).)

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 28, 1979, as amended, between the Governments of the United States and Mexico, provides, that specific ceilings may be increased by designated percentages (swing); and for the carryover of shortfalls in certain categories from the previous agreement year (carryover). Pursuant to the terms of the bilateral agreement, and at the request of the Government of Mexico, the import restraint level for Category 641 is being increased to 281,020 dozen during the agreement year which began on January 1, 1980 and extends through December 31, 1980.

EFFECTIVE DATE: October 22, 1980.

FOR FURTHER INFORMATION CONTACT: William J. Boyd, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230. (202/377-5423).

SUPPLEMENTARY INFORMATION: On December 26, 1979, a letter dated December 18, 1979 was published in the Federal Register (44 FR 76383) from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which established the levels of restraint applicable to certain specified categories of cotton and man-made fiber textile products, including Category 641, which have been produced or manufactured in Mexico and exported to the United States during the twelve-month period which began on January 1, 1980. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to permit entry for consumption, or withdrawal from warehouse for consumption, of man-made fiber textile products in Category 641 at the increased level of restraint of 281,020 dozen during the agreement year which began on January 1, 1980.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

October 22, 1980.

Committee for the Implementation of Textile Agreements,
Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: On December 18, 1979, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry during the twelve-month period beginning on January 1, 1980 and extending through December 31, 1980 of cotton, and man-made fiber textile products in certain specified categories, produced or manufactured in Mexico, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment. [1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 28, 1979, as amended, between the Governments of the United States and Mexico; and in accordance with the provisions of Executive Order 11651 of March 3, 1972 as amended by Executive Order 11951 of January 6, 1977, you are directed, effective on October 22, 1980, to increase the twelve-month level of restraint for Category 641 to 281,020 dozen. [2]

The action taken with respect to the Government of Mexico and with respect to imports of man-made fiber textile products from Mexico have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80-33409 Filed 10-24-80; 8:45 am]

BILLING CODE 6450-01-M

[1] The terms "adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 28, 1979, as amended between the Governments of the United States and Mexico which provide, in part, that: (1) specific limits or specific sublimits may be exceeded by not more than seven percent in any agreement period; (2) these same limits may be increased for carryover and carryforward up to 11 percent of the applicable category limit or sublimit; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[2] The level of restraint has not been adjusted to reflect any imports after December 31, 1979.

Soliciting Public Comment on Bilateral Textile Consultations With the Government of the People's Republic of China To Include a Review of Trade in Categories 445 and 446 (Wool Sweaters)

October 22, 1980.

Pursuant to the bilateral textile agreement of September 17, 1980 between the Governments of the United States and the People's Republic of China, the United States has requested, and anticipates holding, consultations in the near future with the Government of the People's Republic of China.

Any party wishing to comment or provide data or information regarding the treatment of Categories 445 and 446 (wool sweaters) under the agreement with the People's Republic of China, or on any other aspect thereof, or to comment on domestic production or availability of textiles and apparel affected by the agreement, is invited to submit such comments or information in ten copies to Mr. Paul O'Day, Chairman, Committee for the Implementation of Textile Agreements and Deputy Assistant Secretary of Commerce for Textiles, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Since the exact timing of the consultatons is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 2808, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230, and may be obtained upon written request. Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreements or the implementation thereof is not a waiver in any respect of the exemption

contained in 5 U.S.C. 553(a)(1) and 554(a)(4) relating to matters which constitute "a foreign affairs function of the United States."

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80-33408 Filed 10-24-80; 8:45 am]

BILLING CODE 3510-25-M

COMMODITY FUTURES TRADING COMMISSION

Publication of and Request for Comment on Proposed Rules Having Major Economic Significance; Amendments to the GNMA-CD Futures Contract of the Chicago Board of Trade; Correction

In FR Doc. 80-31125 appearing on page 66493 in the issue of Tuesday, October 7, 1980, make the following correction: In the second column, second paragraph, thirteenth line, delete the word "or".

Issued in Washington, D.C., on October 21, 1980.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 80-33443 Filed 10-24-80; 8:45 am]

BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

[Petition CP 80-2]

Portable Kerosene Heaters

AGENCY: Consumer Product Safety Commission.

ACTION: Denial of petition.

SUMMARY: A petition to prohibit the sale of portable kerosene heaters because of their potential fire hazard is denied by the Commission since there is not sufficient information to show that a ban is needed at this time to address the low frequency of fire incidents from these heaters. Available information shows that a more stringent voluntary standard now under development may be adequate to address any fire hazard that may be associated with portable kerosene heaters where such heaters may be permitted in residences by local laws.

FOR FURTHER INFORMATION CONTACT: Elaine A. Tyrrell, Office of Program Management, Consumer Product Safety-Commission, Washington, D.C. 20207, (301) 492-6453.

SUPPLEMENTARY INFORMATION: Under section 10 of the Consumer Product Safety Act (15 U.S.C. 2059), any interested person may petition the Commission to begin a proceeding to issue, amend or revoke a consumer product safety rule (standard or ban). Section 10 also provides that if the petition is denied the Commission must publish its reasons for denial in the Federal Register.

Background

On October 1, 1979, the Commission was petitioned by John P. Caufield, the Director of the Fire Department of Newark, New Jersey, to declare that portable kerosene heaters are banned hazardous products because of the fire hazards they present. Mr. Caufield's petition, CP 80-2, describes nine fire-related deaths attributed to portable kerosene heaters that occurred in Newark during 1961-62. He notes that large numbers of these heaters have recently appeared in retail stores, possibly because of rising energy costs. He also states that these heaters are being advertised as suitable sources of heat, despite the fact that the City of Newark prohibits their use in residences. The petitioner believes that many of these heaters are not approved by nationally-recognized testing laboratories and are not safe.

The Commission considered the matter of liquid-fueled space heaters several years ago. Based on information available at that time, the Commission concluded that only gas-fired space heaters appeared to present an unreasonable risk of injury to the public (40 FR 41172, Sept. 5, 1975).

In evaluating the information included in this petition, the Commission reviewed economic, engineering and injury information concerning portable kerosene heaters, state/local regulation of these products, and technical analyses of the current proposed voluntary industry standard of Underwriters Laboratories (UL), "Proposed First Edition of the Standard for Unvented Kerosene-Fired Heaters and Portable Heaters, UL 647."

Description of the Product

A portable kerosene heater generally consists of a cabinet enclosing a burner, a fire chamber, and a fuel storage container. The burner serves as a means of transport for fuel; combustion takes place in the fire chamber. From reviewing available information and from observation of a limited sample of representative portable kerosene heaters under laboratory conditions, Commission engineers identified the following potential flammability hazards associated with these products: (1) contact burns—because the cabinet generally houses the fire chamber, surface temperatures of the heater are high; (2) fuel fires—these can occur when a heater is tipped over since kerosene is a combustible liquid. The potential for tipover is present because most portable kerosene heaters are small, light in weight, and are generally placed on the floor where people can walk into them and knock them over.

Commission engineers believe that certain design features now available could lead to safer products. For example, some heaters now on the market are not easy to tip over. Some heaters include a device that extinguishes the flame if the heater is knocked over; little fuel is spilled should tipover occur. Other heaters provide for battery-operated ignition rather than ignition by match. However, not all heaters currently being marketed in this country have such features.

The Commission staff reports that in Japan and parts of Europe and Asia, the portable kerosene heater is the primary source of heat for a majority of homes. However, in the U.S., with the possible exception of mild-climate sections of the south, portable kerosene heaters are generally used only as a supplemental heat source. Approximately 2 to 2.5 million portable kerosene heaters for consumer use may exist in the U.S. today; approximately 600,000 are sold annually, the majority of which are imported from Japan and England. Portable kerosene heaters are generally used in nonliving areas such as workshops and garages, in living areas to supplement central heat, or occasionally for emergency backup heat. In addition, an undetermined number of portable kerosene heaters are used for commercial and industrial purposes, primarily in the construction trades. Approximate retail prices of portable kerosene heaters used in and around the home range from $30 to $220; most models cost between $50 and $150. Commission staff projects that as energy prices increase, the use of portable kerosene heaters for supplemental heat could also increase. Therefore, manufacturers of portable kerosene heaters consider that the U.S. market for these heaters is an expanding one and some manufacturers have increased advertising of their heaters.

Evaluation of Petition

Commission statisticians report that U.S. Fire Administration data from 15 states show 92 fires, 21 injuries and 7 deaths during 1978 from portable heaters using kerosene and other liquid fuels. An estimated 500 injuries associated with kerosene/oil burning devices are treated annually in hospital emergency rooms (this figure includes both fixed and portable heaters as well as

kerosene grills). Approximately 52% of these injuries are thermal burns; the hospitalization rate for these injuries was 13% during 1976–79 compared to a hospitalization rate of 3 to 4% for injuries associated with all consumer products.

The exact circumstances surrounding fire-related incidents associated with kerosene/oil heaters are often difficult to reconstruct because of the destructive nature of these incidents. However, the major causative factors—identified from Commission data sources including in-depth investigations, newspaper clippings, consumer complaints and U.S. Fire Administration data—include mechanical failure, overturning, explosion, placing combustible materials too close to the heater, and accidents related to refueling.

Based on currently available information, Commission staff indicate that the number of portable kerosene heaters in use is relatively small; for example, they estimate that there are at least 10 times more electric heaters than kerosene heaters in use. The incidence of fires and injuries associated with kerosene heaters compared with other kinds of heaters also appears to be relatively small. However the data tend to show that the relative risk of fire from kerosene heaters is higher than for other heaters and, given a fire, the risk of death or injury is higher for portable kerosene heaters than for other heaters.

To help determine whether portable kerosene heaters are thought to present a hazard in areas of the south where their use in residences may not be prohibited by local ordinances, CPSC staff conducted an informal survey of 25 fire service officials in southern communities of various sizes. Most of the fire chiefs could not recall a single fire from these heaters within recent memory. The officials reported infrequent use of portable kerosene heaters apparently as a matter of consumer preference for other kinds of heating, although the fire chiefs generally perceived portable kerosene heaters as presenting potential hazards. In summary, the survey suggests that portable kerosene heaters do not appear to be a frequent source of fires in southern communities.

In addition to the survey of fire service officials in the south, Commission staff also contacted appropriate authorities throughout the country concerning state and local regulation of portable kerosene heaters. Of the 352 state and local jurisdictions contacted, 107 jurisdictions, primarily in the north central, northeastern and southeastern sections of the country, reported some form of regulation of liquid-fueled portable heaters. These regulations range from requiring installation only of heaters that bear an approval certification by a nationally recognized testing laboratory to bans against the installation of portable kerosene heaters. All except two jurisdictions reported enforcement of their regulations, although information regarding the level of enforcement was not available.

Underwriters Laboratories (UL) is the major facility for testing portable kerosene heaters in the U.S. A UL proposed voluntary standard that is currently in use by manufacturers and importers was issued in 1958. A new proposed standard is currently being written to apply to portable kerosene heaters up to 20,000 BTU per hour capacity. The standard is to provide stringent endurance tests for any shutoff device that may be part of a heater and will also provide for an increased number of tipover tests. Also to be included are provisions concerning maximum surface temperatures and cautionary labeling requirements.

Commission technical staff have analyzed the newly-developed provisions of the UL standard and believe the new voluntary standard will be a significant improvement over the earlier 1958 edition. Based on CPSC laboratory tests of three wick-type portable kerosene heaters and a review of foreign standards, Commission engineers have forwarded several additional suggested changes to UL technical personnel which Commission staff believe would further improve the UL voluntary standard. These suggested changes deal with flame extinction on tipover, fuel leakage on tipover and protection from hot surfaces. The CPSC technical staff suggestions are being considered by UL; should these changes be incorporated into the UL standard, they could exert a positive influence favoring voluntary action in any continuing Commission consideration of portable kerosene heaters.

Conclusion

Information on fire hazards associated with portable kerosene heaters indicates a relatively low incidence of injuries at this time. The extent of consumer use of portable kerosene heaters whether due to lack of interest, state/local regulations concerning residential use, or otherwise, also appears at this time to be relatively low. In addition, the Commission expects that the new UL voluntary standard will have substantially more stringent requirements to address fire hazards of portable kerosene heaters. Therefore, from the information now available, four of the five members of the Commission conclude that it is not reasonably necessary at this time to address, by mandatory regulation, any risks of injury from fire hazards that may be associated with portable kerosene heaters. A dissenting opinion by Commissioner Edith Barksdale Sloan, dated July 30, 1980 is part of the public record of the Commission's deliberations in this matter; it may be seen in or obtained from the Office of the Secretary of the Commission, Washington, D.C. 20207, (202) 634–7700.

Accordingly, petition CP 80–2, requesting the Commission to ban portable kerosene heaters is denied. Should the factors discussed above on which the Commission based this conclusion indicate that the fire hazard potential of this product has increased, the Commission would consider what further steps may be necessary.

Dated: October 20, 1980.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 80-33424 Filed 10-24-80; 8:45 am]

BILLING CODE 6355-01-M

[CPSC Docket No. 80–8]

State Fair of Texas, et al.; Publication of Complaint

AGENCY: Consumer Product Safety Commission.

ACTION: Publication of a complaint under the Consumer Product Safety Act.

SUMMARY: Under provisions of its Rules of Practice for Adjudicative Proceedings (16 CFR Part 1025), the Consumer Product Safety Commission must publish in the **Federal Register** Complaint in the matter of State Fair of Texas; Steck and Stapf Attractions, Inc.; Wayne Gallagher, and individual and officer of State Fair of Texas; and Charles Noland, and individual and officer of Steck and Stapf Attractions Inc.

Dated: October 16, 1980.

Sadye E. Dunn,

Secretary, consumer Product Safety Commission.

Consumer Product Safety Commission

[CPSC Docket No. 80–8]

In the Matter of *State Fair of Texas*, a corporation, *Steck and Stapf Attractions, Inc.*, a corporation, *Wayne Gallagher*, an individual and officer of State Fair of Texas, and *Charles Noland*, an individual and officer of Steck and Stapf Attractions, Inc.

Complaint

Jurisdiction

1. This proceeding is instituted pursuant to the authority contained in sections 15 (b), (d), (e), and (f), 19 and 20 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2064 (b), (d), (e), and (f); 2068 and 2069.

Parties

2. Respondent State Fair of Texas (State Fair) is a non-profit corporation organized under the laws of the State of Texas with its principal place of business at State Fair Grounds, Post Office Box 26010, Dallas, Texas. Respondent State Fair of Texas is the owner of an aerial tramway known as a "Swiss Skyride" (herein referred to as Skyride) located on the respondent's preises, the fair grounds of the State Fair of Texas.

3. Respondent Steck and Stapf Attractions, Inc. (Steck and Stapf) is a corporation organized and existing under the laws of the State of Texas with its principal corporate offices at 1810 Hinton Street, Dallas, Texas 75228. Steck and Stapf Attractions, Inc. have operated and maintained the "Swiss Skyride" since 1972.

4. Respondent Charles Noland is President of Steck and Stapf Attractions, Inc., Fair Park, Dallas, Texas 75226 and as such is responsible for its acts, operations, and policies.

5. Respondent Wayne Gallagher is Executive Vice President and General Manager of State Fair of Texas, Fair Park, Dallas, Texas and, as such, is responsible for its acts, operations, and policies.

The Consumer Product

6. "Swiss Skyride" is an amusement park ride, specifically an aerial tramway that consists of substantial permanent structure on which passengers are given rides in gondola cars along a cable route suspended in the air. The tramway is approximately 1 mile long.

7. The Skyride was partially manufactured by von Roll Ltd., Berne, Switzerland. It was imported into the United States and erected on the grounds of the State Fair of Texas prior to October 1, 1964 by Rogers and Gulledge, Inc., a corporation organized and existing under the laws of the State of Texas with its principal corporate office at 212 East Mimosa Circle, San Marcos, Texas, 78666. The State Fair of Texas purchased the Swiss Skyride in December 1971 from Rogers and Gulledge, Inc. and since this purchase the Skyride has been operated and maintained for the State Fair by Steck and Stapf Attractions, Inc.

8. The Skyride is a ride which was produced and distributed for the personal use, consumption, or enjoyment of consumers in recreation or otherwise and is a consumer product within the meaning of section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1)

9. The Skyride was open to public ridership during two periods each year—on weekends April 1 through September 1 and during the State Fair in October. Since the date of the accident October 21, 1979, the ride has not reopened. The ride was distributed in commerce within the meaning of sections 3(a)(11) and (12) of the CPSA, 15 U.S.C. 2052(a)(11) and (12), and sections 15 (c) and (d) of the CPSA, 15 U.S.C. 2064 (c) and (d).

10. State Fair of Texas has manufactured, produced or assembled the Skyride and is thereby a manufacturer within the meaning of section 3(a)(4) of the CPSA, 15 U.S.C. 2052(a)(4). In the alternative State Fair of Texas as owner of the Skyride has contracted with Steck and Stapf to open and operate the Skyride for the public's recreational use. State Fair is thereby a distributor within the meaning of section 3(a)(5) of the CPSA, 15 U.S.C. 2052(a)(5).

11. Steck and Stapf Attractions, Inc. sells tickets to the public to ride on the Skyride for their enjoyment in recreation and operates the ride. Steck and Stapf is thereby a retailer within the meaning of section 3(a)(6) of the CPSA, 15 U.S.C. 2052(a)(6).

12. The Skyride consists of machine drive systems, cable support towers, and other equipment manufactured and sold by von Roll, Ltd., a Swiss manufacturer, under the name of "von Roll Sky Way," as well as passenger gondolas, terminal stations, foundations and other ancillary structures which have been procured or constructed by the State Fair of Texas.

13. The ride has eight towers supporting a haul rope cable that runs between two stations. Passengers may be loaded and unloaded onto the gondolas (cars) at either station.

14. The gondolas are attached to a single wirerope cable (hereinafter referred to as a cable) by a cable grip or cable coupling assembly. Roller batteries support the cable atop each tower and the roller batteries, by pivoting a few degrees, allow the cable grip to pass over the tower.

15. The ride has two electrical circuits: a high voltage circuit which runs the Skyride's main drive system and a lower voltage circuit which operates the various safety switches. The ride has a variety of such safety switches that are designed to shut down the ride instantly. There are safety switches at each station that determine whether the cable grip of each gondola is properly clamped to the cable. In addition, there are upper and lower limit switches on the counterweight that should shut down the ride in the event of changes in cable tension. There are also derailment switches on each roller battery that are designed to shut down the ride in the event the cable comes off the roller battery sheaves. Manual emergency shutdown switches are located at each station. In the event of an opening of the safety circuit, the ride is designed to shut down immediately.

Count I

The Substantial Product Hazard

16. Paragraphs 1–15 are realleged.

17. On October 21, 1979 a fatal accident occurred at the State Fair of Texas, Fair Park, Dallas, Texas when two gondolas on the Swiss Skyride fell to the ground. Besides the one death, there was also one person paralyzed, two persons incapacitated for over a month and, in all, eighteen persons injured as a result of this incident.

18. At the time of the accident, winds in the vicinity of the State Fair were blowing in excess of 21 mph with gusting in excess of 31 mph. Witness reports indicated that the gondolas were swaying from west to east (the Skyride runs north to south) and in some cases hitting the ride's towers. The side-to-side swaying of a gondola caused a dislocation of the cable out of the sheaves on the roller battery of the fourth tower.

19. While the cable remained suspended on the roler battery, a gondola became hung up on the roller battery. As the cable continued to pass through the gondola's cable grip, the other gondolas were pulled into the fourth tower's roller battery where they piled into one another. When the fourth gondola struck the three stationary gondolas at the tower, the cable came off the roller battery entirely and became free of the tower. This caused two gondolas (the second and third in the pileup) to come off the cable and plummet to the ground.

20. Although the Skyride was equipped with a derailment switch on the roller battery, emergency stop buttons in the stations, and counterweight limit switches, none of these functioned during the accident sequence. The Skyride continued to operate for approximately one minute after the gondolas fell, and the ride had to be shut down at the main engine.

21. Prior to or during the accident sequence a break occurred in the electrical wiring to the roller battery derailment switch and the wiring between the secondary safety circuit in one or both of the stations. A break in the wiring is supposed to open the circuit and shut down the ride. The tripping of the derailment or counterweight switches, or the emergency switch should have shut down the ride. It appears, however, that the safety circuit had been bypassed at some time prior to the accident.

22. There was no functioning electrical safety system and this lack of a functioning electrical safety system constitutes a defect in the ride within the meaning of section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2).

23. The ride was not equipped with a device to measure the wind velocity. Such a device would inform the operator of the ride that it would be unsafe to continue operation and necessary to shut the ride down. This lack of a wind detection device is a defect in the ride within the meaning of section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2).

24. The ride was not equipped with cable catchers to retain the cable on the roller batery. Cable catchers are recommended by the manufacturer as an integral safety device. This lack of cable catchers is a defect in the ride within the meaning of section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2).

25. The defects in the ride arise from the ride's design and/or operation.

26. The defects have and will manifest themselves during normal use of the ride by consumers.

27. The Skyride contains defects which because of the pattern of defects, the seriousness of the injury that can occur, and the population exposed to the risk of injury create a substantial risk of injury within the meaning of section 15(a)(2) and (d) of the CPSA, 15 U.S.C. 2064(a)(2), and (d).

28. The Skyride creates a "substantial product hazard" to the public within the meaning of sections 15(a)(2), and (d) of the CPSA, 15 U.S.C. 2064(a)(2), and (d).

Count II

The Failure To Inform the Commission

29. Paragraphs 1–28 are hereby realleged.

30. Section 15(b) of the CPSA, 15 U.S.C. 2064(b) requires every manufacturer, distributor or retailer of a consumer product distributed in commerce to immediately notify the Commission upon receipt of information which reasonably supports the conclusion that such product contains a defect(s) which could create a substantial product hazard, unless such party has actual knowledge that the Commission is adequately informed.

31. Violations of the requirements of section 15(b) of the CPSA are prohibited acts under sections 19(a)(3) and 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(3) and 2068(a)(4).

32. After the October 21, 1979 accident on the Skyride, respondents refused to permit Commission investigators complete access to the ride and to provide information concerning the ride, its operation and the accident.

33. Respondents knowingly failed to immediately and adequately inform the Commission upon having obtained information which reasonably supported the conclusion that the Skyride contained a defect or defects which could create a substantial product hazard, as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b). This information includes the fact that the Skyride had no functioning electrical safety system, no device to measure wind velocity, and insufficient cable catchers.

Relief Sought

Wherefore in the public interest the staff of the Consumer Product Safety Commission requests that the Commission, after affording interested persons an opportunity for a hearing:

1. Determine that the Skyride is a consumer product within the meaning of section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1) as produced "for the personal use . . . or enjoyment" of consumers "in recreation".

2. Determine that the product is distributed in commerce within the meaning of section 3(a) (11) and (12) of the CPSA, 15 U.S.C. 2052(a) (11) and (12) when the riders occupy Skyride cars and are exposed to whatever dangers they may present.

3. Determine that the Skyride presents a "substantial product hazard" and that an action under section 15(d) of the CPSA, 15 U.S.C. 2064(d), be determined to be in the public interest.

4. Order respondents to:

(a) repair the Skyride to eliminate the defects in a manner satisfactory to the Commission;

(b) after the ride has been repaired, conduct tests on it acceptable to the Commission that are designed to show that the hazard has been eliminated.

(c) provide proof, acceptable to the Commission, of the safe operation of the ride after it has been repaired.

5. Prohibit respondents from distributing the ride until they have complied with the provisions of paragraph 4(a) through (c) above.

6. Order respondents to:

(a) keep records of any and all repairs and modifications of the rides and any and all tests of the ride;

(b) provide all of the records in paragraph (a) above and/or extracts of information from them to the Commission on request;

(c) file reports with the Commission containing information that may be requested by the staff to determine compliance with any order issued in this proceeding at thirty (30) day intervals until the actions required in paragraph 4 above is completed and the Commission agrees that reports are no longer necessary;

(d) permit inspections at respondents' ride and other places of business to verify data in reports submitted and ascertain compliance with any order issued in this proceeding.

7. Order the respondents to notify the Commission at least thirty (30) days prior to any change in its business (such as incorporation, dissolution, assignment, sale, or declaration of bankruptcy) that results in the emergence of a successor corporation, the creation or dissolution of subsidiaries, the dissolution of the corporation, or any other change that might affect compliance obligations under any Commission order.

8. Assess an appropriate civil penalty pursuant to section 20 of the CPSA against State Fair and Steck & Stapf for knowingly violating sections 19(a)(3) and 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(3) and 2068(a)(4).

9. Grant such other and further relief as the Commission deems necessary to protect the public health and safety and to implement the Consumer Product Safety Act.

Dated: August 28, 1980.

David Schmeltzer,

Associate Executive Director for Compliance & Enforcement.

[FR Doc. 80-33422 Filed 10-24-80; 8:45 am]

BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY ACT

[CPSC Docket No. 80-7]

Marriott Corp.; Publication of Complaint

AGENCY: Consumer Product Safety Act.

ACTION: Publication of a complaint under the Consumer Product Safety Act.

SUMMARY: Under provisions of its Rules of Practice for Adjudicative Proceedings (16 CFR Part 1025), the Consumer Product Safety Commission must publish in the Federal Register Complaints which it issues under the Consumer Product Safety Act. Printed below is a Complaint in the matter of the Marriott Corporation.

Dated: October 16, 1980.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Consumer Product Safety Commission

[CPSC Docket No. 80-7]

In the Matter of Marriott Corporation, a corporation.

Complaint

Jurisdiction

1. This is an adjudicative proceeding governed by 16 CFR Part 1025 (Rules of Practice for Adjudicative Proceedings) to assess a civil penalty against Marriott Corporation and is instituted pursuant to the authority contained in sections 15(b), 19 and 20 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2064(b), 2068 and 2069.

Parties

2. Respondent Marriott Corporation is a corporation organized and existing under the laws of the State of Delaware with its principal corporate offices at Marriott Drive, Bethesda, Maryland (mailing address Washington, D.C. 20058). Respondent owns and operates amusement rides.

3. Through its wholly owned division or subsidiary J.J.G. Construction Company, respondent Marriott Manufactured, i.e., produced or assembled within the meaning of sections 3(a)(4) and (6) of the CPSA, 15 U.S.C. 2052(a)(4) and (6), a roller coaster amusement ride known as the "Willard's Whizzer," manufactured under the name "Speedracer."

4. Between 1976 and March 29, 1980, respondent Marriott "distributed" the rides in commerce as that term is defined in section 3(a)(11), 15 U.S.C. 2052(a)(11).

5. Respondent Marriott is a manufacturer and retailer of the rides within the meaning of sections 3(a)(4) and (6) of the CPSA, 15 U.S.C. 2052(a)(4) and (8).

6. Whenever this Complaint refers to any act of the respondent, the reference shall be deemed to mean that the act was authorized by respondent or by directors, officers, employees or agents of respondent and that at the time of the authorization these persons were actively engaged in the management, direction, control, or central management, direction, or control of the affairs of respondent and were acting within the scope of their employment.

The Consumer Product

7. The "Willard's Whizzer," is an amusement park ride, specifically a steel roller coaster powered by electricity.

8. Respondent owns and operates two Willard's Whizzer rides of the same design and construction, one at each of its "Great America" theme parks in Santa Clara, California and Gurnee, Illinois.

9. The Willard's Whizzer has a metal track on which up to five "trains" of four "cars" each can run at one time. Each car has three seats and can carry six persons. Each train weighs approximately 9,200 pounds empty and up to approximately 12,000 pounds when loaded. The trains reach speeds of up to approximately 42 mph.

10. Between 1976 and March 29, 1980 the rides were equipped with three brakes in the station area: the first or "trim brake" consisting of four sets of caliper brakes which is intended to slow incoming trains from about 20 to 28 mph to about 2.0 mph (1 meter per second); the second or "station brake" consisting of one set of caliper brakes which is intended to stop or slow trains coming out of the trim brakes too quickly; and the third or "transfer brake" which is a manually applied brake intended to stop a slow moving train and prevent it from traveling into the loading platform area.

11. Until March 29, 1980, the station brake was manually activated by an operator unless a train were located in the area just ahead of the station brake in which case it engaged automatically.

12. The Willard's Whizzer rides were produced and distributed for the personal use, consumption, or enjoyment of consumers in recreation or otherwise and are consumer products within the meaning of section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1).

13. The rides were distributed in commerce, within the meaning of sections 3(a) (11) and (12), and sections 15 (c) and (d) of the CPSA, 15 U.S.C. 2064 (c) and (d).

Reportable Information

14. Section 15(b) requires every manufacturer, distributor, or retailer of a consumer product distributed in commerce to immediately inform the Commission on obtaining information that such product contains a defect which could create a substantial product hazard unless it has actual knowledge that the Commission is adequately informed of such defect.

15. On July 24, 1976, thirteen persons were injured during an accident on respondent's Willard's Whizzer ride in Gurnee, Illinois, and required medical attention. The accident occurred when one train was detained in the brake on the approach to the station area, and a second train collided into it.

16. On August 18, 1976, eighteen persons were injured on respondent's Willard's Whizzer ride in Gurnee, Illinois, when a train rolled back to the station area and collided with another train.

17. On information and belief, respondent knew of other incidents occurring between 1976 and 1979, on the Willard's Whizzer ride in Gurnee, Illinois, involving collision in the station area, and/or brake failures, and/or injuries to guests on the ride.

16. Between 1976 and 1979, respondent knew of at least 11 incidents on the Willard's Whizzer ride in Santa Clara, California, involving collisions in the station area, and/or brake failures, and/or injuries to guests on the ride.

19. On March 29, 1980, a thirteen-year-old boy was killed on respondent's ride in Santa Clara, California, when a train collided with the train he was boarding. He fell onto the track and was crushed under the on-coming train. Eight other persons were injured in that accident.

20. In 1976, respondent had actual knowledge of its obligation to report to the Commission pursuant to section 15(b) of the CPSA.

21. On July 24, 1976, and in any event no later than September 1979, respondent had obtained information that collisions occurred between the trains of its Willard's Whizzer ride in the station area, and/or that the ride's brakes failed, and/or that the ride's brakes were not sufficient to prevent collisions.

22. On July 24, 1976, and in any event no later than September, 1979, respondent had obtained information which reasonably supported the conclusion that the Willard's Whizzer ride contained a defect or defects which could create a substantial product hazard or hazards, within the meaning of section 15(b) of the CPSA, 15 U.S.C. 2064(b).

23. Respondent failed to immediately report this information to the Commission as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b).

24. Respondent knowingly committed a prohibited act or acts under section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4) by failing to immediately inform the Commission that its Willard's Whizzer ride contained a defect or defects which could create a substantial product hazard, as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b).

Relief Sought

The staff of the Consumer Product Safety Commission believes that the following relief is in the public interest and requests that the Commission, after affording interested persons an opportunity for a hearing:

1. Determine that the respondent knew or reasonably should have known that its Willard's Whizzer rides contained a defect or defects which could create a substantial product hazard.

2. Determine that the respondent failed to immediately report the existence of a defect which could create a substantial product hazard, as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b), which failure is a prohibited act under section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

3. Assess an appropriate civil penalty pursuant to section 20(a) of the CPSA, 15 U.S.C. 2069(a), for knowingly violating sections 19(a)(3) and 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(3) and 2068(a)(4), by failing to inform the Commission as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b).

4. Grant such other and further relief as the Commission deems necessary and proper to protect the public health and safety and to implement the Consumer Product Safety Act.

Dated: August 28, 1980.

David Schmeltzer,

Associate Executive Director for Compliance and Enforcement Consumer Product Safety Commission.

[FR Doc. 80-33425 Filed 10-24-80; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF THE DEFENSE

Corps of Engineers, Department of the Army

Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) Considering Potential Solutions to the Flooding Problems in the Island Creek Basin, Logan County, W. Va.

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: 1. The alternatives to be considered and presented in a draft feasibility report (Survey Report) and DEIS are formulated to alleviate the flood problems and other water resource related problems in the Island Creek Basin of Logan County, West Virginia.

2. The alternatives presently being considered as a part of the Island Creek study are:

a. No action—Do nothing to alleviate the water resource problems in the basin.

b. Channel Plan 1—Sixteen stream miles would be modified. Concrete channels totaling 6.6 miles would be needed in congested areas. The channel widths are the minimum necessary to achieve some degree of flood reduction without major relocations of structures. Relocation of 38 families, 11 commercial establishments, and 1 institutional structure would be required; as well as replacement or modification of 20 bridges. A redevelopment site would be considered for those who would be relocated.

c. Channel Plan 2—This plan is similar to the previous plan, although some channel reaches have been increased in width to improve flow characteristics. Concrete channel length would be increased to 6.9 miles. The plan would require relocation of 87 families, 19 commercial establishments, and 2 institutional structures; as well as replacement or modification of 25 bridges. Provision of a redevelopment site would be considered.

d. Channel Plan 3—This is the largest channel plan in width. The concrete channel length would be increased to 8½ miles. Replacement or modification of 26 bridges would be required. 123 families, 24 commercial establishments, and 2 institutional structures would be relocated. Provision of a redevelopment site would be considered.

e. Channel Plan 1A—This plan generally follows the alignment of the

above alternatives. However, concrete channel was eliminated or replaced by concrete retaining walls. A total of 1¼ miles of roads would require relocation. Twenty-five bridges would be replaced and 13 would be removed. The plan would require relocation of 148 homes, 28 commercial establishments, and one other structure. Provision of a redevelopment site will be considered.

f. Channel Plan 1B—This plan is the same as Plan 1A with nonstructural components integrated into it to provide 100-year flood protection. An additional 431 homes in the floodway would be acquired, and those in the fringe area (807) would be raised. Nonresidental structures would be acquired, and a redevelopment site would be provided.

g. Nonstructural Plan—The only effective nonstructural technique to reduce or eliminate flood damages is to remove or raise the affected structures. Approximately 554 homes in the fringe area of the 100-year floodplain would be raised in place, and 1084 homes within the floodway would be removed. All nonresidential structures would be removed from the 100-year floodplain. Redevelopment sites would be provided for those homes and businesses which would be removed from the floodway.

3. Public meetings, workshops, widely distributed public announcements, and close cooperation with local agencies and persons, and State and Federal agencies were and will continue to be significant to the scoping process. The most recent public involvement includes a public workshop on 24 January 1980 and a public meeting scheduled for 6 November 1980. Following the development of the draft report and DEIS and distribution for public review, a final public meeting will be scheduled for mid-1982 to review the evaluation of the alternatives and the tentative selected plan. Additional public involvement activities will be held as the need develops during the study.

a. In addition to the Corps of Engineers other agencies known to have an active interest in the studies are the U.S. Fish and Wildlife Service, the West Virginia Department of Natural Resources, the Office of Surface Mining Reclamation and Enforcement, and the U.S. Environmental Protection Agency. Other affected Federal, State, and local agencies and other interested private organizations and parties are invited to provide suggestions, reviews, and comments during the study process.

b. Issues to be considered in the DEIS include: (1) environmental impacts upon the aquatic and terrestrial quality; (2) socio-economic impacts upon community cohesion and growth, recreation, transportation, housing, aesthetics, and noise; and (3) regional development impacts upon property values, tax revenues, facilities and services, and land use.

c. In addition to information obtained from other agencies, the U.S. Fish and Wildlife Service is preparing Planning Aid Reports which provide evaluations and recommendations to preserve, mitigate, and/or enhance natural resources.

d. In addition to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act of 1969 (NEPA), the following environmental review and consultation requirements are applicable: (1) Clean Water Act; (2) Endangered Species Act of 1973; (3) Federal Water Projects Recreation Action Act; (4) Fish and Wildlife Coordination Act; (5) Historic Sites Act of 1935; (6) National Historic Preservation Act of 1966; (7) Preservation of Historic and Archaeological Data Act of 1974; (8) River and Harbor Act of 1899; (9) Executive Order 11514, Protection and Enhancement of Environmental quality; (10) Executive Order 11593, Protection and Enchancement of the Cultural Environment; and (11) Advisory Council on Historic Preservation regulations on protection of historic and cultural properties.

4. The scoping process, which invites public and agency contributions, is to be discussed at a public meeting on 6 November 1980 at Logan High School, Logan, West Virginia. A public workshop will be held in 1981 as alternative plans and impacts become more clearly defined.

5. The DEIS is scheduled for distribution to the public in the latter part of 1982.

ADDRESS: Questions about the potential actions and DEIS can be answered by: Raymond Gesling, Study Manager, Huntington District, Corps of Engineers, Huntington, WV 25721, 304–529–5639.

Dated: October 22, 1980.

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 80-33405 Filed 10-24-80; 8:45 am]

BILLING CODE 3710-GM-M

DEPARTMENT OF EDUCATION

Community Education Advisory Council; Meeting

AGENCY: Department of Education, Community Education Advisory Council.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for the forthcoming meeting of the Community Education Advisory Council. It also describes the functions of the Council. Notice of these meetings is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: Meeting: November 12, and 13, 1980.

ADDRESS: The Executive Inn, 978 Phillips Lane, Louisville, Kentucky 40213.

FOR FURTHER INFORMATION CONTACT: Margaret Beavan, Department of Education, Community Education Program, 7th and D Streets, SW., Regional Office Building Three, Room 5622, Washington, D.C. 20202. Telephone: (202) 245–0691.

SUPPLEMENTARY INFORMATION: The Community Education Advisory Council is authorized under Public Law 95–561. The Council is established to advise on policy matters relating to the interest of community schools.

All sessions of this meeting are open to the public. The meeting will begin at 9:00 a.m. on Wednesday, November 12, 1980, and end at 4:30 p.m. On Thursday, November 13, 1980, the meeting will begin at 9:00 a.m. and end at 3:00 p.m.

At the last meeting held in San Diego, California on July 28, and 29, 1980, the Council reviewed the concept paper on the School-Community-Home National Forum; discussed and approved its revised management plan; and examined the inter-intra agency and state advisory council on-going inititatives.

Proposed agenda items for this meeting include:

(1) Update on the Council's interagency and state advisory council initiatives;

(2) Report on the national evaluation;

(3) Review and discussion of the assessment process;

(4) Examination of future Council roles, functions, and projects; and

(5) Discussion of other administrative matters and related business.

Records shall be kept of all Council proceedings and shall be available for public inspection in Regional Office Building Three, Room 5622, 7th and D Streets SW., Washington, D.C. 20202.

Signed at Washington, D.C. on October 20, 1980.

Ron Castaldi,

Acting Director, Community Education Program.

[FR Doc. 80-33288 Filed 10-24-80; 8:45 am]

BILLING CODE 4000-01-M

Intergovernmental Advisory Council on Education; Meeting

AGENCY: Intergovernmental Advisory Council on Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the meeting of the Intergovernmental Advisory Council on Education. This notice also describes the functions of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: November 12, 1980 from 1:00 p.m. to 5:00 p.m. and November 13, 1980 from 8:00 a.m. to 12:00 noon.

ADDRESS: Auraria College, 301 Central Classroom Building, 3rd Floor, (Metro-Administration Building), Arapahoe Walk and Auraria Mall, 1006—11th Street, Denver, Colorado 80204.

FOR FURTHER INFORMATION CONTACT: Donna Rhodes, Office of the Deputy Under Secretary for Intergovernmental Affairs, Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202 (202) 245–7904.

SUPPLEMENTARY INFORMATION: The Intergovernmental Advisory Council on Education is established under Section 213 of the Department of Education Organization Act. The Council advises the Secretary of the Department of Education and the President concerning intergovernmental policies relating to education.

The meeting of the Council is open to the public. The proposed agenda includes reports from the following subcommittees:

1. Search for Executive Director.

2. Council Priorities and Work Agenda.

3. Administration, Rules, and Budget.

Records are kept of all Council proceedings and are available for public inspection at the Office of the Deputy Under Secretary for Intergovernmental Affairs between the hours of 8:30 a.m. and 3:00 p.m. at the Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202.

Signed at Washington, D.C. on October 20, 1980.

Michael J. Bakalis,

Deputy Under Secretary for Intergovernmental Affairs.

[FR Doc. 80-33329 Filed 10-24-80; 8:45 am]

BILLING CODE 4000-01-M

Intergovernmental Advisory Council on Education; Search Subcommittee, Council Priorities and Work Agenda Subcommittee, and Administrative, Rule, and Budget Subcommittee; Meeting

AGENCY: Intergovernmental Advisory Council on Education.

ACTION: Notice of Search Subcommittee, Council Priorities and Work Agenda Subcommittee, and Administration, Rules, and Budget Subcommittee Meetings.

DATE: November 12, 1980 from 9:00 am to 12:00 noon.

ADDRESS: Plaza Cosmopolitan Hotel, 1780 Broadway, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Donna Rhodes, Office of the Deputy Under Secretary for Intergovernmental Affairs, Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202 (202) 245–7904.

SUPPLEMENTARY INFORMATION: The Intergovernmental Advisory Council on Education is established under Section 213 of the Department of Education Organization Act. The Council Advises the Secretary of the Department of Education and the President concerning intergovernmental policies relating to education.

The meeting of the Council Subcommittees are open to the public.

The proposed agenda of the Search Subcommittee includes developing criteria and procedures for evaluating applications for the position of Executive Director.

The proposed agenda for the Subcommittee on Priorities and Work Agenda includes identification of major priorities to present the Council and work plan.

The proposed agenda of the Subcommittee on Administration Rules and Budget includes discussion of draft procedures for council operation.

Records are kept of all Council proceedings and are available for public inspection at the Office of the Deputy Under Secretary for Intergovernmental affairs between the hours of 8:30 am and 3:00 pm at the Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202.

Signed at Washington, D.C., on October 20, 1980.

Michael J. Bakalis,

Deputy Under Secretary for Intergovernmental Affairs.

[FR Doc. 80-33330 Filed 10-24-80; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Fuel Economy for Motor Vehicles; Availability of First Edition of the 1981 Gas Mileage Guide

The Department of Energy (DOE) hereby gives notice of the availability of the First Edition of the 1981 *Gas Mileage Guide*. The Environmental Protection Agency (EPA) has issued regulations on Fuel Economy, Testing, Labeling and Information Disclosure Procedures and Requirements (40 CFR Part 600) which, among other things, contain requirements for dealers of 1981 and later model year automobiles and light trucks to have copies of a booklet, the *Gas Mileage Guide*, available on display in their showrooms and to keep an adequate stock on hand to meet public demand. In this booklet prospective purchasers will be able to find the fuel economies of the various model vehicles certified as of September 9, 1980 for sale in the United States. DOE is required by Section 506(b)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 *et seq.*), as amended by Section 301 of the Energy Policy and Conservation Act (42 U.S.C. 6201 *et seq.*), to publish and distribute this booklet. Section 600.405–77 of the EPA regulations states that dealers will be expected to make these booklets available as soon as they are received by them, but in no case later than 15 working days after notification is given of booklet availability. The publication today of this notice constitutes such notification.

The First Edition of the 1981 *Gas Mileage Guide* is available for display and distribution by dealers in their showrooms. Any dealer who has not already received *Guides* from DOE or requires additional copies should request copies by writing to the following address, specifying the quantity desired of the 49-State and/or the California version:

For bulk copies, write: Fuel Economy Distribution, Technical Information Center, Department of Energy, P.O. Box 62, Oak Ridge, Tennessee 37830.

Issued in Washington, D.C. October 20, 1980.

Frank DeGeorge,

Principol Deputy Assistant Secretary Conservation and Solar Energy.

[FR Doc. 80-33306 Filed 10-24-80; 8:45 am]

BILLING CODE 6450-01-M

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Economic Regulatory Administration

[Docket No. ERA-R-80-33]

Report to the Department of Energy on "Designing Methods for Distributing Petroleum During a Shortage and Selecting Standby Distribution Mechanisms"

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of additional public hearing date.

SUMMARY: The Economic Regulatory Administration of the Department of Energy hereby gives notice that an additional public hearing has been scheduled in Washington, D.C. on the Report to the Department of Energy on "Designing Methods for Distributing Petroleum During A Shortage and Selecting Standby Distribution Mechanisms" (45 FR 63909, September 26, 1980). In addition to the hearing date in Washington, D.C. of November 13, 1980, which remains as scheduled, a second public hearing has been scheduled for December 2, 1980, to accommodate the schedules of interested parties wishing to present oral testimony. Both the November 13, 1980, and the December 2, 1980, public hearings on this matter will be held in Room 2105, 2000 M Street N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:
Lorraine Hall (Office of Public Hearing Management), Economic Regulatory Administration, Room B-210, 2000 M Street N.W., Washington, D.C. 20461 (202) 653-3971
William L. Webb (Office of Public Information), Economic Regulatory Administration, Room B-110, 2000 M Street N.W., Washington, D.C. 20461 (202) 653-4055
William E. Caldwell (Office of Regulatory Policy), Economic Regulatory Administration, Room 7202, 2000 M Street, N.W., Washington, D.C. 20461 (202) 653-3256
Joel Yudson (Office of General Counsel), Department of Energy, Room 6A-127, 1000 Independence Avenue, S.W., Washington, D.C. 20585 (202) 252-6744

Issued at Washington, D.C., on October 21, 1980.

F. Scott Bush,

Assistant Administrator, Office of Regulatory Policy, Economic Regulatory Administration.

[FR Doc. 80-33305 Filed 10-24-80; 8:45 am]
BILLING CODE 6450-01-M

Bob's Oil Co.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on consent order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective date: October 2, 1980. Comments by: November 26, 1980.

ADDRESS: Send comments to: Kenneth E. Merica, District Manager of Enforcement, P.O. Box 26247, Belmar Branch, Lakewood, Colorado, 80228.

FOR FURTHER INFORMATION CONTACT:
Kenneth E. Merica, District Manager of Enforcement, P.O. Box 26247, Belmar Branch, Lakewood, Colorado, 80226. PHONE: (303) 234-3195.

SUPPLEMENTARY INFORMATION: On October 2, 1980, the Office of Enforcement of the ERA executed a Consent Order with Bob's Oil Company (Bob's) of Martin, South Dakota. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of les than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

Bob's with its home office located in Martin, South Dakota, is a firm engaged in the business of purchasing covered products and reselling them to wholesale purchasers and ultimate consumers, without substantially changing their form, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR, Parts 210, 211 and 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Bob's, the Office of Enforcement of ERA, and Bob's entered into a Consent Order, the significant terms of which are as follows:

1. Total alleged overcharge during the audit period (September 1, 1979, through November 30, 1979) on all sales of gasoline, plus interest through June 30, 1980, was: $2,389.88.

2. The Office of Enforcement alleged that Bob's violated the gasoline price regulations contained in 10 CFR 212.93(a)(1) of the Mandatory Petroleum Price regulations by exceeding its "maximum legal selling price" for gasoline sold by Bob's during the audit period.

3. Bob's has agreed to refund the total overcharge, plus interest accrued through June 30, 1980.

4. Bob's has agreed to pay a civil penalty of $500.00.

5. The provisions of 10 CFR 205.199J, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, Bob's agrees to refund, in full settlement of any civil liability (except civil penalties) with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I.1. above, the sum of $2,389.88 which includes interest. Refund of those overcharges will be in the form of a cetified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA.

These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system it is likely that overcharges have been passed through as higher prices to subsequent purchasers. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount specified in I.1. above, should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of the Consent Order.

You should send your comments or written notification of a claim to Kenneth E. Merica, District Manager of Enforcement, P.O. Box 26247, Belmar Branch, Lakewood, Colorado 80226. You may obtain a free copy of this Consent Order by writing to the same address or by calling (303) 234-3195.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Bob's Oil Company Consent Order". We will consider all comments we receive by 4:30 p.m., local time, on or before November 26, 1980. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Lakewood, Colorado, on the 7th day of October, 1980.

Kenneth E. Merica,

District Manager of Enforcement, Rocky Mountain District.

[FR Doc. 80-33420 Filed 10-24-80; 8:45 am]
BILLING CODE 6450-01-M

Mountain Fuel Supply Co.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and an opportunity for comment on Consent Order.

SUMMARY: The economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective date: September 25, 1980. Comments by: November 26, 1980.

ADDRESS: Send comments to: Kenneth E. Merica, District Manager of Enforcement, Rocky Mountain District, Department of Energy, P.O. Box 26247, Belmar Branch, Lakewood, CO 80226: (303) 234-3195.

SUPPLEMENTARY INFORMATION: On September 25, 1980, the Office of Enforcement of the ERA executed a Consent Order with Mountain Fuel Supply Company (Mountain) of Salt Lake City, Utah. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less that $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

Mountain, with its home office located in Salt Lake City, Utah, is a firm engaged in the recovery and sale of pipeline condensate (crude oil) from assorted gathering points and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211 and 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Mountain, the Office of Enforcement of the ERA and Mountain have entered into a Consent Order, the significant terms of which are as follows:

1. Mountain is a crude oil producer as currently defined by 10 CFR 212.31 and as formerly defined at 6 CFR 150.352.

2. During the period September 1973 through December 1979, pricing of domestic crude oil was controlled under Cost of Living Council regulations (8 CFR 150.1, *et seq.*) and successor regulations thereto (10 CFR 212.1, *et seq.*), hereinafter collectively referred to as the "DOE regulations").

3. The DOE has alleged that during the period September 1, 1973 through December 31, 1979, certain sales of pipeline condensate (crude oil) were made by Mountain at prices in excess of the maximum allowable prices in violation of 10 CFR 212.73 and formerly 6 CFR 150.354,. since Mountain improperly characterized certain volumes of crude oil as "new" or "upper tier" crude oil exempt from the "old" oil or "lower tier" ceiling price rule.

4. Mountain, without admission of any facts or of any violation of DOE rules or regulations, desiring to resolve all civil disputes arising from the ERA's audit concerning compliance with all applicable pricing rules and regulations of the DOE pertaining to the recovery and sale of crude oil from the identified gathering points without any further formal compliance proceeding has agreed to refund $275,000.

5. The provisions of 10 CFR 205.199J are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In the Consent Order, Mountain agrees to refund, in full settlement of any and all civil liability within the jurisdiction of the Department of Energy in regard to actions that might be bought by the DOE arising out of the specified transactions, the sum of $275,000.00 within ten (10) business days from the date this Consent Order becomes effective. Refund shall be by certified check made payable to the United States Department of Energy and delivered to the Assistant Adminstrator for Enforcement, Economic Regulatory Administration. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amount in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system it is likely that overcharges have been passed through as higher prices to subsequent purchasers. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossiblity to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount held by DOE should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established.

Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Kenneth E. Merica, District Manager of Enforcement, Rocky Mountain District, Department of Energy, P.O. Box 26247, Belmar Branch, Lakewood, Colorado 80226. You may obtain a free copy of this Consent Order by writing to the

same address or by calling (303) 234–3195.

You should identify you comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Mountain Fuel Supply Company Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on November 26, 1980. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Lakewood, Colo. on the 8th day of October 1980.

Robert Templeton,

Acting District Manager, Office of Enforcement Rocky Mountain District, Economic Regulatory Administration.

[FR Doc. 80-33417 Filed 10-24-80; 8:45 am]

BILLING CODE 6450-01-M

Mesa Petroleum Co.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on consent order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective date: October 20, 1980. Comments by: November 26, 1980.

ADDRESS: Send comments to: Wayne I. Tucker, District Manager of Enforcement, Southwest District, Department of Energy, P.O. Box 35228, Dallas, Texas 75235.

FOR FURTHER INFORMATION CONTACT: Wayne I. Tucker, District Manager of Enforcement, Southwest District, Department of Energy, P.O. Box 35228, Dallas, Texas 75235, phone 214/767–7745.

SUPPLEMENTARY INFORMATION: On October 20, 1980, the Office of Enforcement of the ERA executed a Consent Order with Mesa Petroleum Company (Mesa) of Amarillo, Texas. Under 10 CFR 205.199J(b), the Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

Mesa Petroleum Company, with its office located in Amarillo, Texas, is a firm engaged in crude oil production, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR, Parts 210, 211 and 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of crude oil sales, the Office of Enforcement, ERA, and Mesa entered into a Consent Order, the significant terms of which are as follows:

1. The period covered by the audit was September 1, 1973 through November 30, 1979 and it included all sales of crude oil from certain properties operated by the firm during that period.

2. Mesa allegedly misapplied the provisions of 6 CFR Part 150, Subpart L, and 10 CFR Part 212, Subpart D, when determining the prices to be charged for crude oil; and as a consquence, charged prices in excess of the maximum lawful sales prices resulting in overcharges to its customers.

3. In order to expedite resolution of the disputes involved, the DOE and Mesa have agreed to a settlement in the amount of $340,000.00. The negotiated settlement was determined to be in the public interest as well as the best interests of the DOE and Mesa.

4. Because the sales of crude oil were made to refiners and the ultimate consumers are not readily identifiable, the refund will be made through the DOE in accordance with the Consent Order.

5 The provisions of 10 CFR § 205.199J, including the publication of this Notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, Mesa agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I.1. above, the sum of $340,000.00 within ninety (90) days of the effective date of the Consent Order. Refunded overcharges will in the form of a certified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order. You should send your comments or written notification of a claim to Wayne I. Tucker, District Manager of Enforcement, Southwest District, Department of Energy, P.O. Box 35228, Dallas, Texas 75235. You may obtain a free copy of this Consent Order by writing to Mary Johnson at the same address or by calling 214/767–7745.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Mesa Petroleum Company Consent Oder." We will consider all comments we received by 4:30 p.m., local time, on November 26, 1980. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Dallas, Texas on the 20th day of October, 1980.

Wayne I. Tucker,

District Manager, Southwest District Enforcement Economic Regulatory Administration.

[FR Doc. 80-33441 Filed 10-24-80; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 80-CERT-036]

Yale University; Application for Certification of the Use of Natural Gas to Displace Fuel Oil

On October 14, 1980, Yale University (Yale), Central P.O. Box 1501–A, New Haven, Connecticut 06520, filed an application with the Administrator of the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at the Yale University Campus located in New Haven, Connecticut, pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). More detailed information is contained in the application on file with the ERA and available for public inspection at the ERA, Division of Natural Gas Docket Room, Room 7108, 2000 M Street, NW., Washington, D.C. 20461, from 8:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

In its application, Yale states that the volume of natural gas for which it requests certification is up to 450,000 Mcf anticipated to be used between November 1, 1980, and May 31, 1981. This volume is estimated to displace the use of approximately 73,000 barrels of No. 6 fuel oil (0.5 percent maximum sulfur) between November 1, 1980 and May 31, 1981.

The eligible seller is the National Fuel Gas Distribution Corporation, 10 LaFayette Square, Buffalo, New York 14203. The gas will be transported by the Tennessee Gas Pipeline Company (interstate pipeline), P.O. Box 2511, Houston, Texas 77001; and the Southern Connecticut Gas Company (local distribution company), 55 Church Street, New Haven, Connecticut.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Room 7108, RG–55, 2000 M Street, NW., Washington, D.C. 20461, Attention: Mr. Albert F. Bass, on or before November 6, 1980.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within ten (10) day comment period. The request should state the person's interest, and, if appropriate, why the person is a proper representative of a group or class of persons that has such as interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines that an oral presentation is necessary, further notice will be given to Yale and any persons filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., on October 22, 1980.

F. Scott Bush,

Assistant Administrator, Office of Regulatory Policy, Economic Regulatory Administration.

[FR Doc. 80-33445 Filed 10-24-80; 8:45 am]

BILLING CODE 6450-01-M

Proposed remedial Orders

Pursuant to 10 CFR § 205.192(c), the Economic Regulatory Administration of the Department of Energy hereby gives Notice that the following Proposed Remedial Orders have been issued. These Proposed Remedial Orders allege violations of applicable law as indicated.

A copy of the Proposed Remedial Orders, with confidential information deleted, may be obtained from Thomas M. Holleran, Program Manager for Product Retailers, 2000 M Street, NW, Washington, DC 20461, phone 202/653–3569. On or before November 12, 1980, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, NW, Washington, DC 20461, in accordance with 10 CFR § 205.193.

Issued in Washington, D.C., on the 20th day of October, 1980.

Robert D. Gerring,

Director, Enforcement Program Operations Division, Economic Regulatory Administration.

Station	Address	Date	Violation amount	Cents per gallon in violation
Proposed Remedial Orders—Northeast District				
Buster's Cove Marina	3100 Whaleneck Drive, Merrick, NY 11566	8–26–80	$799.05	23.4
Sunshine Marina	23 Rampasture Road, Hampton Bays, NY 11946.	8–15–80	274.74	16.6
Glen Cove Yacht Service	88 Shore Road, Glen Cove, NY 11542	8–15–80	603.87	17.2
Proposed Remedial Order—Central District				
Richard's Standard Service	219 South Neltner, West Chicago, IL 60185	9–30–80	$4,249.22	3.9

[FR Doc. 80-33421 Filed 10-24-80; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF ENERGY—FEDERAL REGISTER NOTICE

Proposed Remedial Orders

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the Department of Energy hereby gives Notice that the following Proposed Remedial Orders have been issued. These Proposed Remedial Orders allege violations of applicable law as indicated.

A copy of the Proposed Remedial Orders, with confidential information deleted, may be obtained from Thomas M. Holleran, Program Manager for Product Retailers, 2000 M Street, NW, Washington, DC 20461, phone 202/653–3569. Within 15 days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, NW, Washington, DC 20461, in accordance with 10 CFR 205.193.

Issued in Washington, D.C., on the 20th day of October 1980.

Robert D. Gerring,

Director, Enforcement Program Operations Division, Economic Regulatory Administration.

Station	Address	Date	Violation amount	Cents per gallon in violation
Proposed Remedial Orders—Northeast District				
Matty's Service Station	538 South Broadway, Yonkers NY 10705	3-25-80	$1,034.05	5.8
Post Road Chevron, Inc	529 Boston Post Road, Marlboro, MA 01752.	8-12-80	823.58	10.1
Proposed Remedial Orders—Washington, D.C., Metro Area				
New York Avenue Sunoco	101 New York Ave., NE, Washington, DC 20002.	10-6-80	$1,811.35	1.4
Proposed Remedial Orders—Central District				
Skokie & Main Shell	8356 Skokie Blvd., Skokie, IL 60077	7-7-80	$1,842.89	15.7
Indian Point Boat Dock	SR 1 Box 538, Branson, MO 65616	7-31-80	387.76	2.1
Baxter Boat Dock, Inc	Lampe, MO 65681	7-28-80	1,119.94	14.6
Cape Fair Boat Dock	P.O. Box 6, Cape Fair, MO 65624	7-29-80	797.14	8.3
Sun and Ski Marina	3981 Cass Elizabeth, Lake Road, Pontiac, MI 48054.	7-31-80	228.13	24.8
Zinner's Marina	32895 South River Road, Mt. Clemens, MI 48095.	7-30-80	1,075.74	16.6
Richard's Standard Service	219 South Neltner, West Chicago, IL 60185	7-31-80	3,841.42	3.9
Lake Perry Marina	Lake Perry, KS 66073	6-19-80	690.54	16.0
Webbs Boat Service & Marina	25837 W. Rt. 173, Antioch, IL 60002	5-30-80	1,075.64	15.8
Korpen's Landing	112 E. Lake View Ave., Fox Lake, IL	6-2-8-0	3,077.32	16.7
Ben Watts Marine, Inc	116 South Rt. 12, Fox Lake, IL 60020	6-4-80	904.94	13.3
John's North Lake Service	1218 N. Lake St., Aurora, IL 60506	6-4-80	1,109.92	2.1
Gordy's Lake Front Marina	147 Avenue, Fontana, WI 53125	6-11-80	5,649.87	66.8
The Abbey	One Lake Geneva, Fontana, WI 53125	6-18-80	4,242.21	30.5
Geneva Boat Co	523 S. Lake Shore Dr., Fontana, WI 53125	6-19-80	2,227.83	27.7
D.J.'s Rock Creek Marina	Route 1, Ozawkie, KS 66070	6-19-80	1,398.50	24.0
Proposed Remedial Orders—Southwest District				
Dave's Fina	1520 N. MacArthus, Oklahoma City, OK 73127.	7-16-80	$1,124.14	7.3
Hilliard's Chevron	511 E. Santa Fe, Grants, New Mexico	6-16-80	205.60	3.9
Proposed Remedial Orders—Western District				
Village Parkway Mobil	7197 Village Parkway, Dublin, CA 94566	6-12-80	$488.28	3.2
Fred Hartmann Chevron	505 A Street, Hayward, CA 94541	6-12-80	902.21	3.1
Peterson & Hill	3157 Danville Blvd., Alamo, CA 94507	6-27-80	2,565.47	5.0
Walt's Danville Chevron	530 San Ramon Valley Rd., Danville, CA 94528.	6-27-80	12,134.16	10.3
Gary Pfister's Mobile	2298 Appian Way, Pinole, CA 94564	6-27-80	4,029.11	2.4
Crow Canyon Shell	2735 Crow Canyon Rd., San Ramon, CA 94583.	6-27-80	535.55	3.9
Pete Algian Chevron	3005 Grove Way, Castro Valley, CA 94546	6-27-80	6,725.78	8.4
De Cota's Redhill Union 76	930 Sir Francis Drake Blvd., San Anselmo, CA 94960.	6-12-80	3,379.63	8.4
Gene's Chevron	101 Redhill Avenue, San Anselmo, CA 94960.	6-12-80	809.43	4.2
Art Gordon Chevron	2009 El Camino Real, San Mateo, CA	6-12-80	2,163.63	5.1
Buchanan Shell, Inc	1315 Buchanan Rd., Pittsburg, CA 94565	6-12-80	2,588.37	7.5
Wolfe's Union Service	28250 Hesperian Blvd., Hayward, CA 94541	6-12-80	686.65	6.5
Bob Daylamy Texaco	910 Baywood Dr., Petaluma, CA	6-12-80	1,327.64	7.8
Willow Pass Chevron Service	3400 Willow Pass Road, Concord, CA 94519	6-27-80	867.76	7.6
Davidson's Service	224 E. First Street, Santa Ana, CA 92701	7-09-80	2,307.23	14.3
Doug Myers Chevron Service	734 E. Main Street, Santa Maria, CA 93454	7-08-80	9,412.76	8.2

Station	Address	Date	Violation amount	Cents per gallon in violation
Proposed Remedial Orders—Northeast District				
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Post Road Chevron, Inc	529 Boston Post Road, Marlboro, MA 01752.	8-12-80	823.58	10.1
Proposed Remedial Orders—Washington, D.C., Metro Area				
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Baxter Boat Dock, Inc	Lampe, MO 65681	7-28-80	1,119.94	14.6
Cape Fair Boat Dock	P.O. Box 6, Cape Fair, MO 65624	7-29-80	797.14	8.3
Sun and Ski Marina	3981 Cass Elizabeth, Lake Road, Pontiac, MI 48054.	7-31-80	228.18	24.8
Zinner's Marina	32695 South River Road, Mt. Clemens, MI 48095.	7-30-80	1,075.74	16.6

Station	Address	Date	Violation amount	Cents per gallon in violation
Proposed Remedial Orders—Central District—Continued				
Richard's Standard Service	219 South Neltner, West Chicago, IL 60185	7-31-80	3,841.42	3.9
Lake Perry Marina	Lake Perry, KS 66073	6-19-80	690.54	16.0
Webbs Boat Service & Marina	25837 W. Rt. 173, Antioch, IL 60002	5-30-80	1,075.64	15.8
Korpen's Landing	112 E. Lake View Ave., Fox Lake, IL	6-2-8-0	3,077.32	16.7
Ben Watts Marine, Inc	116 South Rt. 12, Fox Lake, IL 60020	6-4-80	904.94	13.3
John's North Lake Service	1218 N. Lake St., Aurora, IL 60506	6-4-80	1,109.92	2.1
Gordy's Lake Front Marina	147 Avenue, Fontana, WI 53125	6-11-80	5,649.87	66.8
The Abbey	One Lake Geneva, Fontana, WI 53125	6-18-80	4,242.21	30.5
Geneva Boat Co	523 S. Lake Shore Dr., Fontana, WI 53125	6-19-80	2,227.83	27.7
D.J.'s Rock Creek Marina	Route 1, Ozawkie, KS 66070	6-19-80	1,398.50	24.0
Proposed Remedial Orders—Southwest District				
Dave's Fina	1520 N. MacArthur, Oklahoma City, OK 73127.	7-16-80	$1,124.14	7.3
Hilliard's Chevron	511 E. Santa Fe, Grants, New Mexico	6-16-80	205.60	3.9
Proposed Remedial Orders—Western District				
Village Parkway Mobil	7197 Village Parkway, Dublin, CA 94566	6-12-80	$488.28	3.2
Fred Hartmann Chevron	505 A Street, Hayward, CA 94541	6-12-80	902.21	3.1
Peterson & Hill	3157 Danville Blvd., Alamo, CA 94507	6-27-80	2,565.47	5.0
Walts Danville Chevron	530 San Ramon Valley Rd., Danville, CA 94526.	6-27-80	12,134.16	10.3
Gary Pfister's Mobile	2298 Appian Way, Pinnole, CA 94564	6-27-80	4,029.11	2.4
Crow Canyon Shell	2735 Crow Canyon Rd., San Ramon, CA 94583.	6-27-80	535.55	3.9
Pete Algian Chevron	3005 Grove Way, Castro Valley, CA 94546	6-27-80	6,725.78	8.4
De Cota's Redhill Union 76	930 Sir Francis Drake Blvd., San Anselmo, CA 94960.	6-12-80	3,379.63	8.4
Gene's Chevron	101 Redhill Avenue, San Anselmo, CA 94960.	6-12-80	809.43	4.2
Art Gordon Chevron	2009 El Camino Real, San Mateo, CA	6-12-80	2,163.63	5.1
Buchanan Shell, Inc	1315 Buchanan Rd., Pittsburg, CA 94565	6-12-80	2,588.37	7.5
Wolfe's Union Service	28250 Hesperian Blvd., Hayward, CA 94541	6-12-80	686.65	8.5
Bob Daylamy Texaco	910 Baywood Dr., Petaluma, CA	6-12-80	1,327.64	7.6
Willow Pass Chevron Service	3400 Willow Pass Road, Concord, CA 94519	6-27-80	867.76	7.6
Davidson's Service	224 E. First Street, Santa Ana, CA 92701	7-09-80	2,307.23	14.3
Doug Myers Chevron Service	734 E. Main Street, Santa Maria, CA 93454	7-08-80	9,412.76	8.2

[FR Doc. 80-33442 Filed 10-24-80; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER FRL 1642-8]

Intent To Prepare an Environmental Impact Statement

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of intent to prepare an environmental impact statement (EIS) on the East Texas Lignite and Gasification Project.

PURPOSE: To fulfill the requirements of Section 102(2)(c) of the National Environmental Policy Act, EPA has identified a need to prepare an EIS and therefore issues this Notice of Intent pursuant to 40 CFR 1501.7.

FOR FURTHER INFORMATION CONTACT: Mr. Clinton B. Spotts, Regional EIS Coordinator, USEPA, Region 6, 1201 Elm Street, Dallas, Texas 75270, Telephone: (Commercial) 214-767-2716 (FTS) 729-2716.

SUMMARY:

1. Description of Proposed Action

The East Texas Lignite Mining and Gasification Project proposed by Exxon Coal USA, Inc. and Exxon Company, U.S.A. would be located in portions of Rusk, Smith, and Cherokee Counties, Texas. Fifteen million tons/year of lignite would be mined from an area covering approximately 35,000 surface acres. The plant would produce about 800 million cubic feet per day of intermediate BTU gas to be pipelined to industrial fuel users or chemical manufacturers. The proposed lignite mine has been determined a "New Source" as defined in Section 306 of the Clean Water Act. Therefore, the issuance of a National Pollutant Discharge Elimination System (NPDES) permit for the mine discharge is to be subject to the requirements of the National Environmental Policy Act.

2. Alternatives

- EPA issues New Source NPDES permit for lignite mine as proposed.
- EPA issues New Source NPDES permit for modified project.
- EPA denies New Source NPDES permit.
- Exxon operates gasification plant and lignite mine as proposed.
- Exxon operates gasification plant and lignite mine as modified by EPA.
- Exxon takes no action.

3. Public and Private Participation in EIS Process

The issues and concerns identified during the scoping process will help determine the nature and extent of the impact analysis in the EIS. EPA invites full participation by individuals, private organizations, and local, State and Federal agencies. EPA will involve and encourage the public to participate in the planning and EIS process to the maximum extent possible.

4. Scoping

EPA, Region 6, has initiated the scoping process and will conduct a public meeting for the purpose of identifying issues for consideration in the preparation of the Environmental Impact Statement. The "scoping meeting" will be held at 7:30 p.m. on Thursday, November 20, 1980 in the R. C. Buckner Chapel at Jacksonville College, Pine and Patton Streets, Jacksonville, Texas.

5. Timing

EPA estimates the draft EIS will be available for public review and comment around September 1981. Time limits have been set for completion of the environmental review at the following milestones:

- Developing the scope of the EIS—January 15, 1981.
- Availability of the Draft EIS—October 1, 1981.
- Completion of the Record of Decision—June 1, 1982.

6. Request for Copies of Draft EIS

For a copy of the Draft Environmental Impact Statement, getting on the mailing list, or for other NEPA related information, please submit your name and address to Clinton Spotts at the above address.

Dated: October 20, 1980.

William N. Hedeman, Jr.,

Director, Office of Environmental Review (A-104).

[FR Doc. 80-33340 Filed 10-24-80; 8:45 am]

BILLING CODE 6560-37-M

V 45 OC 27 80 0 UMI

FEDERAL COMMUNICATIONS COMMISSION

FM and TV Translator Applications Ready and Available for Processing and Notification of Cutoff Date

Released: October 28, 1980.

Cutoff Date: November 25, 1980.

Notice is hereby given that the TV and FM translator applications listed in the attached Appendix will be considered ready and available for processing after November 25, 1980. An application, in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on November 25, 1980, which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and submitted for filing at the offices of the Commission in Washington, D.C., by the close of business on November 25, 1980.

Petitions to deny any application on this list must be on file with the Commission no later than the close of business on ?

Federal Communications Commission.

William J. Tricarico,

Secretary.

UHF TV Translator Applications

BPTT–800305IE (K71BH), Mulford & Rural, etc., Utah, University of Utah. Req: Change frequency to Channel 63, 764–770 MHz.,

BPTT–800305IF (K82BA), Rural Juab, et al., Utah, University of Utah. Req: Change frequency to Channel 49, 680–686 MHz.

BPTT–800310ID (K72DT), Bemidji, Minnesota, Headwaters TV Translator Corporation. Req: Change frequency to Channel 46, 662–668 MHz, Change primary TV Station to KDLH, Channel 3, Duluth, Minnesota.

BPTT–800310IF (K80CK), Bemidji, Minnesota, Headwaters TV Translator Corporation. Req: Change frequency to Channel 50, 686–692 MHz.

BPTT–800604ID (new), Camp Verde, Texas, Via Cable Incorporated. Req: Channel 59, 740–746 MHz, 20 watts. Primary: KSAT–TV, San Antonio, Texas.

BPTT–800710IA (new), Minneapolis, Minnesota, Antoinette C. & David M. Gibbons. Req: Channel 57, 728–734 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800723IC (new), Sacramento, California, Arike Logan, M.D. Req: Channel 61, 752–758 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800721IC (new), Dennis, Massachusetts, Bogner Broadcast Equipment Corporation. Req: Channel 67, 752–758 MHz, 100 watts. Primary: WQTV–TV, Boston, Massachusetts.

BPTT–800724IA (new), Reno, Nevada, Leslie Alan Williams. Req: Channel 55, 716–722 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800724IV (new), Nashville, Tennessee, Talley Television, Corporation. Req: Channel 69, 800–806 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800728IB (new), Jacksonville, Florida, Trans America Television, Corporation. Req: Channel 69, 800–806 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800728IC (new), Birmingham, Alabama, Trans America Television, Corporation. Req: Channel 52, 698–704 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800728IF (new), Charlotte, North Carolina, Trans America Television, Corporation. Req: Channel 24, 530–536 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800728IG (new), Buffalo, New York, Trans American Television, Corporation. Req: Channel 58, 734–740 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800729IE (new), Durham, North Carolina, James K. & Hope S. Smith. Req: Channel 69, 800–806 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800730IB (new), Las Vegas, Nevada, Leslie Williams. Req: Channel 69, 800–806 MHz, 100 watts. Primary: KSTS–TV, San Jose, California.

BPTT–800807IB (new), Dennis, Massachusetts, Bogner Broadcast Equipment Corporation. Req: Channel 58, 734–740 MHz, 100 watts. Primary: WSMW–TV, Worcester, Massachusetts.

BPTT–800807IC (new), Westbury, Carle Place, Mineola, Hempstead, East Meadow, Hicksville, New York, Bogner Broadcast Equipment Corporation. Req: Channel 63, 764–770 MHz, 100 watts. Primary: WVIA–TV, Scranton, Pennsylvania.

BPTT–800815IA (new), Shreveport, Louisiana, Antoinette C. & David M. Gibbons. Req: Channel 69, 800–806 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800815IB (new), Tacoma, Washington, Jackie R. Brown. Req: Channel 39, 620–626 MHz, 100 watts. Primary: KSTS–TV, San Jose, California.

BPTT–800821ID (new), Norfolk-Portsmouth, Virginia, Barbara J. & Horace Ward, Jr. Req: Channel 65, 776–782 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800822IA (new), High Point, North Carolina, Barbara J. & Horace Ward, Jr. Req: Channel 67, 788–794 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800822IC (new), Phoenix, Arizona, Sunburst Broadcasting Corporation. Req: Channel 55, 716–722 MHz, 100 watts. Primary: KSTS–TV, San Jose, California.

BPTT–800822ID (new), Austin, Texas, Gwendolyn May. Req: Channel 68, 794–800 MHz, 1000 watts. Primary: KSTS–TV, San Jose, California.

BPTT–800825IA (new), Jackson, Mississippi, Leslie Alan Williams. Req: Channel 69, 800–806 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800827ID (new), Chicago, Illinois, Gwendolyn May. Req: Channel 62, 758–764 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800828IB (new), Mobile, Alabama, Barbara J. & Horace Ward, Jr. Req: Channel 69, 800–806 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800813IA (new), Southampton, L.I., New York, Bogner Broadcast Equipment Corporation. Req: Channel 23, 524–530 MHz, 100 watts. Primary: WVIA–TV, Scranton, Pennsylvania.

BPTT–800602ID (new), Santa Maria, Orcutt, Guadalupe, Nipomo, California, Central Coast Good News, Incorporated. Req: Channel 65, 776–782 MHz, 100 watts. Primary: KTBN–TV, Fontana, California.

BPTT–800602IE (new), Poplar Bluff, Missouri, Turner-Farrah, Incorporated. Req: Channel 15, 476–482 MHz, 1000 watts. Primary: WSIL–TV, Harrisburg, Illinois.

BPTT–800604IB (new), Camp Verde, Texas, Cable, Incorporated. Req: Channel 55, 716–722 MHz, 20 watts. Primary: KMOL–TV, San Antonio, Texas.

BPTT–800604IC (new), Camp Verde, Texas, Cable, Incorporated. Req: Channel 57, 728–734 MHz, 20 watts. Primary: KENS–TV, San Antonio, Texas.

BPTT–800702IJ (new), Madison, Wisconsin, Lloyd Hearing Aid Corporation. Req: Channel 47, 668–674 MHz, 1000 watts. Primary: WORF–TV, Rockford, Illinois.

BPTT–800815IC (new), Knoxville, Tennessee, Titilola Payne. Req: Channel 43, 644–650 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800816IB (new), Charleston, South Caroline, Barbara Smith. Req: Channel 69, 800–806 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800821IC (new), Chattanooga, Tennessee, Talley Television, Corporation. Req: Channel 67, 788–794 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800827IE (new), Pittsburgh, Pennsylvania, Barbara Smith. Req: Channel 63, 764–770 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800827IF (new), Columbia, South Carolina, Barbara Smith. Req: Channel 63, 764–770 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800904IA (new), Baton Rouge, Louisiana, Panorama Broadcasting Corporation. Req: Channel 55, 716–722 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800903IE (new), Atlanta, Georgia, Corporation For Black Television Of Atlanta. Req: Channel 14, 470–476 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800926IA (new), Syracuse, New York, Bogner Broadcast Equipment Corporation. Req: Channel 68, 794–800 MHz, 100 watts. Primary: KTBN–TV, Fontana, California.

BPTT–800926IB (new), Granada Hills, California, Bogner Broadcast Equipment Corporation. Req: Channel 60, 746–752 MHz, 100 watts. Primary: KTBN–TV, Fontana, California.

BPTT–800926IC (new), Falmouth, Maine, Bogner Broadcast Equipment Corporation. Req: Channel 57, 728–734 MHz, 100 watts. Primary: KTBN–TV, Fontana, California.

BPTT–800926ID (new), Thousand Oaks, California, Bogner Broadcast Equipment Corporation. Req: Channel 66, 782–788 MHz, 100 watts. Primary: KTBN–TV, Fontana, California.

BPTT–800926IE (new), Cedar Hills, Texas, Bogner Broadcast Equipment Corporation. Req: Channel 55, 716–722 MHz, 100 watts. Primary: KTBN–TV, Fontana, California.

BPTT–800926IF (new), Houston, Texas, Bogner Broadcast Equipment Corporation. Req: Channel 56, 722–728 MHz, 100 watts. Primary: KTBN–TV, Fontana, California.

BPTT–800926IG (new), Santa Ana, California, Bogner Broadcast Equipment Corporation. Req: Channel 62, 758–764 MHz, 100 watts. Primary: KTBN–TV, Fontana, California.

BPTT–800926IH (new), Coral City, Florida, Bogner Broadcast Equipment Corporation. Req: Channel 64, 770–776 MHz, 100 watts. Primary: KTBN–TV, Fontana, California.

BPTT–800926II (new), Union Park, Florida, Bogner Broadcast Equipment Corporation. Req: Channel 61, 752–758 MHz, 100 watts. Primary: KTBN–TV, Fontana, California.

BPTT–800926IJ (new), Haltom City, Texas, Bogner Broadcast Equipment Corporation. Req: Channel 63, 764–770 MHz, 100 watts. Primary: KTBN–TV, Fontana, California.

BPTT–800926IK (new), Driver, Virginia, Bogner Broadcast Equipment Corporation. Req: Channel 68, 794–800 MHz, 100 watts. Primary: KTBN–TV, Fontana, California.

VHF TV Translator Applications

BPTTV–800822IF (new), Rock River, Wyoming, Town of Rock River. Req: Channel 4, 66–72 MHz, 10 watts. Primary: KCA–TV, Denver, Colorado.

FM Translator Applications

BPFT–800408IC (new), Galena, Alaska, City of Galena. Req: Channel 261, 100.1 MHz, 10 watts. Primary: KSKA–TV, Anchorage, Alaska.

BPFT–800625ID (new), Kamiah, Grangeville, Kooskia & Cottonwood, Idaho, Alacca Bible Conference. Req: Channel 215, 90.9 MHz, 10 watts. Primary: KMBI–FM, Spokane, Washington.

BPFT–800707ID (new), Joplin, Missouri, Stahl Incorporated. Req: Channel 257, 99.3 MHz, 10 watts. Primary: KRFG–FM, Greenfield, Missouri.

BPFT–800724 (new), Fort Dodge, Iowa, The Sonshine Foundation. Req: Channel 276, 103.1 MHz, 10 watts. Primary: KRGS–FM, Spencer, Iowa.

BPFT–800812IB (new), Jacksonville & Ashland, Oregon, Hill Radio, Inc. Req: Channel 288, 105.5 MHz, 10 watts. Primary: KRWQ–FM, Gold Hill, Oregon.

BPFT–800821IB (new), Richfield, Utah, Sanpete County Broadcasting Company. Req: Channel 237, 95.3 MHz, 10 watts. Primary: KMXU–FM, Manti, Utah.

BPFT–800421IC (new), Gold Beach, Oregon, KURY Radio, Inc. Req: Channel 285, 104.9 MHz, 10 watts. Primary: KURY–FM, Brookings, Oregon.

BPFT–800422IA (new), Bullhead City, River, Arizona & Needles, California, Trinity Temple Church DBA Tri-State Translators. Req: Channel 285, 104.9 MHz, 10 watts. Primary: KILA–FM, Henderson, Nevada.

BPFT–800623IG (new), Big Bend & Bush Bar, California, Indian Springs School District. Req: Channel 282, 104.3 MHz, 1 watt. Primary: KOIT–FM, San Francisco, California.

BPFT–800623IF (new), Big Bend & Bush Bar, California, Indian Springs School District. Req: Channel 295, 106.9 MHz, 1 watt. Primary: K101–FM, San Francisco, California.

BPFT–800906JM (new), Yakima, Washington, Thomas W. Read. Req: Channel 240, 95.9 MHz, 10 watts.

BPFT–800909IQ (new), Gold Beach, Oregon, BER–TEC Broadcasting, Inc. Req: Channel 240, 95.9 MHz, 10 watts. Primary: KCRE–FM, Crescent City, California.

BPFT–800909IS (new), Kennwick, Pasco, Richland & West Richland, Washington, Thomas W. Read. Req: Channel 265, 100.9 MHz, 10 watts. Primary: KDRK–FM, Spokane, Washington.

BPFT–800912IS (new), Traverse City, Michigan, Jack G. Martin d/b/a Martin TV Sales & Service; also, Northern Tower Erection Company. Req: Channel 232, 94.3 MHz, 1000 watts. Primary: WITW–FM, Cadillac, Michigan.

BPFT–800905IE (new), Junction, Texas, Sonora Broadcasting, Inc. Req: Channel 272, 102.3 MHz, 10 watts. Primary: KVRN–FM, Sonora, Texas.

BPFT–800903IF (new), Ithaca, New York, Cornell University. Req: Channel 238, 95.5 MHz, 1 watt. Primary: WHCU–FM, Ithaca, New York.

BPFT–800825IS (new), Union, Oregon, First National Broadcasting, Corporation. Req: Channel 240, 95.9 MHz, 10 watts. Primary: KUUZ–FM, Boise, Idaho.

BPFT–800812IA (new), Grants Pass, Oregon, YILL Radio, Inc. Req: Channel 288, 105.5 MHz, 10 watts. Primary: KRWQ–FM, Gold Hill, Oregon.

BPFT–800804IA (new), Rifle, Colorado, West Broadcasting, Inc. Req: Channel 244, 96.7 MHz, 10 watts. Primary: KMTS–FM, Glenwood Springs, Colorado.

BPFT–800428IC (new), Ephrata, Soap Lake, Wilson Creek, Moses Lake, Washington. Peoples TV Association, Inc. Req: Channel 232, 94.3 MHz, 10 watts. Primary: KREM–FM, Spokane, Washington.

BPFT–800428ID (new), Ephrata, Soap Lake, Wilson Creek, Moses Lake, Washington, Peoples TV Association, Inc. Req: Channel 221, 92.1 MHz, 10 watts. Primary: KHQ–FM, Spokane, Washington.

BPFT–800428IE (new), Ephrata, Soap Lake, Wilson Creek & Moses Lake, Washington, Peoples TV Association, Inc. Req: Channel 280, 103.9 MHz, 10 watts. Primary: KXLY–FM, Spokane, Washington.

BPFT–800428IF (new), Ephrata, Soap Lake, Wilson Creek & Moses Lake, Washington, Peoples TV Association, Inc. Req: Channel 296, 107.1 MHz, 10 watts. Primary: KPQ–FM, Wenatchee, Washington.

BPFT–800425IF (new), Houghton, Michigan, Michigan Technological University. Req: Channel 269, 101.7 MHz, 10 watts. Primary: WGGL–FM, Houghton, Michigan.

BPFT–800512IE (new), Sutherlin, Oregon, W.R.R. Incorporated. Req: Channel 280, 103.9 MHz, 10 watts. Primary: KRSB–FM, Roseburg, Oregon.

BPFT–800509IC (new), Emery Town, Utah, Emery Town. A Municipal Corporation. Req: Channel 292, 106.3 MHz, 10 watts. Primary: KSFI–FM, Salt Lake City, Utah.

BPFT–800512ID (new), Riddle, Oregon, W.R.R. Incorporated. Req: Channel 280, 103.9 MHz, 10 watts. Primary: KRSB–FM, Roseburg, Oregon.

BPFT–800519IM (new), Wenatchee, Ellensburg, & Quincy, Washington, Wenatchee FM Translator Council. Req: Channel 206, 89.5 MHz, 10 watts. Primary: KGTS–FM, Walla Walla, Washington.

BPFT–800527IC (new), Lovelock, Nevada, Pershing County Television Tax District. Req: Channel 221, 92.1 MHz, 10 watts. Primary: KSRN–FM, Reno, Nevada.

BPFT–800529IB (new), Sebring, Florida, The Moody Bible Institute of Chicago. Req: Channel 240, 95.9 MHz, 1 watt. Primary: WKES–FM, St. Petersburg, Florida.

BPFT–800603IC (new), Weed, California, Shasta Cascade Broadcasting Corporation. Req: Channel 276, 103.1 MHz, 10 watts. Primary: KEDY–FM, Mt. Shasta, California.

BPFT–800603ID (new), Steamboat Springs, Colorado, Yampa Valley TV Association. Req: Channel 249, 97.7 MHz, 10 watts. Primary: KRDO–FM, Colorado Springs, Colorado.

BPFT–800620IF (new), Clifton, Duncan, Morenci, Sheldon, & York, Arizona, York Sheldon Television Association. Req: Channel 282, 104.9 MHz, 10 watts. Primary: KQYT–FM, Phoenix, Arizona.

BPFT–800624IB (new), Battle Mountain, Nevada, Argenta TV Maintenance District. Req: Channel 257, 99.3 MHz, 10 watts. Primary: KSRN–FM, Reno, Nevada.

BPFT–800624IC (new), Babbitt, Minnesota, Iron Range Broadcasting, Inc. Req: Channel 288, 105.5 MHz, 10 watts. Primary: WEVE–FM, Eveleth, Minnesota.

BPFT–800624ID (new), Ely, Minnesota, Iron Range Broadcasting, Inc. Req: Channel 288, 105.5 MHz, 10 watts. Primary: WEVE–FM, Eveleth, Minnesota.

BPFT–800625IC (new), Lewiston, Idaho & Clarkston, Washington, Alacca Bible Conference. Req: Channel 265 100.9 MHz, 10 watts. Primary: KMBI–FM, Spokane, Washington.

UHF TV Translator Applications

BMPTT–800305ID (K66BJ), Smoky Valley, Nevada, Smoky Valley TV District. Req: Change primary TV Station to KOLC–TV, Channel 6, Reno, Nevada.

BMPTT–800310IE (K75AM), Bemidji, Minnesota, Headwaters TV Translator Corporation. Req: Change frequency to Channel 48, 674–680 MHz, Primary TV Station to KBJR–TV, Channel 6.

VHF TV Translator Applications

BPTTV–800325IH (K08AA), Wyodak, Wyoming, Wyodak TV Association. Req: Add Gillette and Rural Campbell County area to present principal community increase output power to 10 watts.

BPTTV–800825IU (new), Dixon, Embudo & Rinconada, New Mexico, Dixon Social Action Committee. Req: Channel 2, 54–60 MHz, 5 watts. Primary: KGGM–TV, Albuquerque, New Mexico.

BMPTTV–800305IA (K09OC), Round Mountain, Nevada, Smoky Valley TV District. Req: Change primary TV Station to KTVN–TV, Channel 2, Reno, Nevada.

BMPTTV–800305IB (K11OT), Round Mountain, Nevada, Smoky Valley TV District. Req: Change primary TV Station to KCRL–TV, Channel 4, Reno, Nevada.

FM Translator Applications

BPFT–800304IB (new), Eureka Springs, Arkansas, Earldun Broadcasting, Inc. Req:

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Channel 265, 100.9 MHz, 10 watts. Primary: KSCC–FM, Berryville, Arkansas.
BPFT–800407IC (new), Santa Cruz, California, Christian Broadcasting Fellowship. Req: Channel 292, 106.3 MHz, 1 watt. Primary: KAMB–FM, Merced, California.
BPFT–800804IB (K249AP), Johnstonville, Etc., California, Lloyd E. Pochop. Req: Change frequency to Channel 272, 102.3 MHz.
BPFT–800902IX (W288AD), Wausau, Wisconsin, Wisconsin Valley Christian Radio, Inc. Req: Change frequency to Channel 261, 100.1 MHz.
BPFT–800930IA (new), Petersburg (Southern Extremity) St. John's Harbor, Summer, Strait, Alaska, Narrows Broadcasting, Corporation. Req: Channel 280, 103.9 MHz, 1 watt. Primary: KFSK–FM, Petersburg, Alaska.
BPFT–800930IC (new), Petersburg (Scow Bay to Papkes' Landing, Alaska, Narrows Broadcasting Corporation. Req: Channel 276, 103.1 MHz, 1 watt. Primary: KFSK–FM, Petersburg, Alaska.
BPFTB–800924IA (new), Twin Peaks, Blue Jay, Lake Arrowhead, California, Southwest Broadcasting Company, Inc. Req: Channel 244, 96.7 MHz, 10 watts. Primary: KCAL–FM, Redlands, California.
BPFTB–800805IA (new), West Hollywood, California, KPPC, Inc. Req: Channel 296, 107.1 MHz, 10 watts. Primary: KMAX–FM, Arcadia, California.
BPFTB–800807IA (new), Concord, California, American Broadcasting Companies, Inc. Req: Channel 279, 103.7 MHz, 10 watts. Primary: KSFX–FM, San Francisco, California.
BMPFT–800327IA (W228AC), Winter Park, Etc., Florida, Moody Bible Institute of Chicago. Req: Change freqency to Channel 255, 98.9 MHz.
BPFT–800701II (new), Rockford, Illinois, First Evangelical Free Church. Req: Channel 292, 106.3 MHz, 1 watt. Primary: WMBI–FM, Chicago, Illinois.
BPFT–800702IK (new), Wenatchee & East Wenatchee, Washington, Thomas W. Read. Req: Channel 276, 103.1 MHz, 10 watts. Primary: KDRK–FM, Spokane, Washington.
BPFT–800706IB (new), Casper, Wyoming, John C. Learned. Req: Channel 257, 99.3 MHz, 10 watts. Primary: KLEN–FM, Cheyenne, Wyoming.
BPFT–800710IB (new), Santa Barbara, Goleta, California, University of Southern California. Req: Channel 204, 88.7 MHz, 10 watts. Primary: KUSC–FM, Los Angeles, Californai.
BPFT–800711IH (new), Pleasanton, California, King Radio Broadcasting, Company. Req: Channel 228, 93.5 MHz, 10 watts. Primary: KYA–FM, San Francisco, California.
BPFT–800717IA (new), Ephrata, Moses Lake & Soap Lake, Washington, Thomas W. Read. Req: Channel 249, 97.7 MHz, 10 watts. Primary: KDRK–FM, Spokane, Washington.
BPFT–800722IB (new), Bozeman, Montana, Christian Enterprises, Incorporated. Req: Channel 252, 98.3 MHz, 10 watts. Primary: KGVW–FM, Belgrade, Montana.
BPFT–800728IK (new), Carlin, Elko, Lamoille & Jiggs, Nevada, Elko Television, District. Req: Channel 288, 105.5 MHz, 10 watts. Primary: KSFI–FM, Salt Lake City, Utah.
BPFT–800701IH (new), Saratoga, California, United Broadcasting, Company. Req: Channel 261, 100.1 MHz, 1 watt. Primary: KBAY–FM, San Jose, California.
BPFTB–800703IA (new), Saratoga, California, United Broadcasting, Company. Req: Channel 262, 100.3 MHz, 10 watts. Primary: KBAY–FM, San Jose, California.
BPFTB–800725IA (new), Walnut Creek, Pleasant Hill and Concord, California, Metromedia, Inc. Req: Channel 235, 94.9 MHz, 10 watts. Primary: KSAN–FM, San Francisco, California.
BMPFT–800701IG (W276AE), Birmingham, Alabama, Briarwood Continuing Presbyterian Church. Req: Change frequency to Channel 237, 95.3 MHz.
BMPFT–800709ID (K249AS), Minturn, Avon, Colorado, Vail Mountain Broadcasters, Inc. Req: Change frequency to Channel 257, 99.3 MHz.
BMPFT–800709IE (K257AS), Silverthorne, Colorado, Vail Mountain Broadcasters, Inc. Req: Change frequency to Channel 249, 97.7 MHz.

[FR Doc. 80–33311 Filed 10–24–80; 8:45 am]
BILLING CODE 6712–01–M

[Report No. A–18]

TV Broadcast Applications Accepted for Filing and Notification of Cutoff Date

Released: October 24, 1980.
Cut-Off Date: December 8, 1980.

Notice is hereby given that the applications listed in the attached appendix are accepted from filing. They will be considered to be ready and available for processing after December 8, 1980. An application, in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on December 8, 1980 which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and tendered for filing at the offices of the Commission in Washington, D.C. no later than the close of business on December 8, 1980.

Petitions to deny any application on this list must be on file with the Commission not later than the close of business on December 8, 1980.

Applications for new stations may not be filed against any application on the attached list which is designated by an asterisk (*).

Federal Communications Commission.
William J. Tricarico,
Secretary.

BPCT–800926KE (New), Oklahoma City, Oklahoma, Satellite Broadcasting Co., Channel 52. ERP: Vis. 820 kW; HAAT: 340 feet.
BPCT–800910KF (New), Saginaw, Michigan, Saginaw Communications, Inc. Channel 49. ERP: Vis. 1000 kW; HAAT: 1023 feet.
BPCT–800918KE (New), Burlington, North Carolina, Carolina Christian Broadcasting, Inc., Channel 16. ERP: Vis. 210 kW; HAAT: 506 feet.
*BMLCT–800917KE, WPTA(TV), Fort Wayne, Indiana, WPTA, Inc., Channel 21. Change city of license from Roanoke, Indiana.
*BPCT–800915KF, WCPT–TV, Crossville, Tennessee, WCPT–TV, Inc., Channel 20. Change site; increase ERP Vis. to 2816 kW; increase HAAT to 2772 feet.
BPCT–800625KG (New), Victoria, Texas, Community Television of Victoria, Channel 25. ERP: Vis. 14 kW; HAAT: 514 feet.
*BPET–800611KI, WUNF–TV, Asheville, North Carolina, University of North Carolina, Channel 33. Increase ERP Vis. to 1472 kW.
*BPCT–800702KG, (New Major Amendment), Gary, Indiana, Great Lakes Broadcasting, Inc., Channel 56. Transfer of control and change of applicant from GWWX–TV, Inc.

[FR Doc. 80–33310 Filed 10–24–80; 8:45 am]
BILLING CODE 6712–01–M

Advisory Committee on Radio Broadcasting and Its Technical and Allocations Subgroups; Meeting

October 16, 1980.

The following open meetings will be held on Thursday, November 13, 1980, at the times stated below, in Room A–110 of the FCC Annex, 1229–20th Street, N.W., Washington, D.C.

A. The ninth meeting of the Advisory Committee on Radio Broadcasting, starting at 9:30 a.m. The agenda will be:

1. Call to order by the Chairman;
2. Approval of minutes of previous meeting;
3. Recess for conduct of meetings of the Subgroups on Allocations and Technical Matters;
4. Reconvening of meeting of the Advisory Committee;
5. Receipt of reports by Allocations Subgroup;
6. Receipt of reports by Technical Subgroup;
7. Other business;
8. Future meeting dates;
9. Adjournment.

B. The second meeting of the Subgroup on Radio Spectrum Allocations, starting after Item No. 3 of the Advisory Committee Agenda. The agenda for the subgroup will be:

1. Call to order;
2. Approval of minutes of previous meeting;
3. Reports on status of tasks performed by members of the Subgroup;
4. Assignment of tasks to be performed and reported by designated persons;
5. Other business;
6. Next meeting date;
7. Adjournment.

C. The second meeting of the Subgroup on Technical Matters, starting upon conclusion of the second meeting of the Subgroup on Radio Spectrum Allocations. The agenda will be:

1. Call to order;
2. Approval of minutes of previous meeting;
3. Reports on status of tasks performed by members of the Subgroup;
4. Assignment of tasks to be performed and reported to the Subgroup;
5. Other business;
6. Next meeting date;
7. Adjournment.

Additional open meetings of the Advisory Committee on Radio Broadcasting and of its Allocations and Technical Subgroups will be held on December 17, 1980, at the same place and times, and on the same agendas as announced above for their November 13, 1980, meetings.

If it should not be possible to complete consideration of an entire agenda on the scheduled date, that meeting will be continued at an announced date and time.

All interested parties are invited to participate and may submit comments, addressed to Mr. Henry L. Baumann, Chairman, Advisory Committee on Radio Broadcasting, Federal Communications Commission, Washington, D.C. 20554.

Federal Communications Commission.
William J. Tricarico,
Secretory.

[FR Doc. 80–33312 Filed 10–24–80; 8:45 am]
BILLING CODE 6712–01–M

[CC Docket No. 80–637, File No. 20615–CD–P–4–80; Docket No. 80–638, File No. 21089–CD–P–80]

Airsignal International, Inc., and Mobile Tel & Pager, Inc.; Designating Applications for Consolidated Hearing on Stated Issues

Memorandum Opinion and Order

Adopted October 8, 1980.
Released October 17, 1980.

In re applications of AIRSIGNAL INTERNATIONAL, INC. For construction permit for new two-way station on 454.025 MHz in the Domestic Public Land Mobile Radio Service at Atlanta, Georgia and MOBILE TEL & PAGER, INC. For construction permit to change antenna system for two-way station KUS219 on 454.025 MHz in the Domestic Public Land Mobile Radio Service at Griffin, Georgia.

By the Common Carrier Bureau:

1. Presently before the Chief, Common Carrier Bureau, pursuant to delegated authority, are the captioned applications of Airsignal International, Inc., and Mobile Tel & Pager, Inc. These applications are electrically mutually exclusive; [1] therefore, a comparative hearing will be held to determine which applicant would better serve the public interest. We find the applicants to be otherwise qualified.

2. Accordingly, it is ordered, pursuant to Section 309 of the Communications Act of 1934, as amended, that the applications of Airsignal International, Inc., File No. 20615–CD–P–4–80, and Mobile Tel & Pager, Inc., File No. 21089–CD–P–80, are designated for hearing in a consolidated proceeding upon the following issues:

(a) to determine on a comparative basis, the naure and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilitiea pertaining thereto;

(b) to determine on a comparative basis, the areas and populations that each applicant will serve within the prospective 39 dBu contours, based upon the standards set forth in Section 22.504(a) of the Commission's Rules, [2] and to determine the need for the proposed services in said areas; and

(c) to determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience and necessity.

3. It is further ordered, That the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

4. It is further ordered, That the Chief, Common Carrier Bureau, is made a party to the proceeding.

5. It is further ordered, That the applicants may avail themselves of an opportunity to be heard by filing with the Commission pursuant to Section 1.221(c) of the Rules within 20 days of the release date hereof, a written notice stating an intention to appear on the date for the hearing and present evidence on the issues specified in this Memorandum Opinion and Order.

6. The Secretary shall cause a copy of this Order to be published in the Federal Register.

Philip L. Verveer,
Chief, Common Carrier Bureau.

[FR Doc. 80–33399 Filed 10–24–80; 8:45 am]
BILLING CODE 6712–01–M

[1] We note that while Airsignal is applying to construct a new facility, Mobile Tel & Pager is seeking to improve its antenna system for its existing station, KUS219. A grant of either application would preclude a grant of the other.

[2] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 39 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in two-way communications service on frequencies in the 450 MHz band. Propegation data set forth in Section 22.504(b) are the proper bases for establishing the location of service contours F(50,50) for the facilities involved in this proceeding.

[FCC 80–576; Gen Docket No. 80–619]

ATS Mobile Telephone, Inc. v. General Communications, Inc.; Instituting Investigation

Memorandum Opinion and Order

Adopted: October 3, 1980.
Released: October 3, 1980.

In the Matter of Petition for Issuance of a Cease and Desist Order and an Order to Show Cause filed by ATS Mobile Telephone, Inc. against General Communications Company, Inc., a licensee in the Business Radio Service.

By the Commission:

1. The Commission has under consideration the above-captioned matter on remand from the United States Court of Appeals for the District of Columbia Circuit.

2. By way of background, ATS Mobile Telephone, Inc. (ATS) filed a petition for the issuance of a cease and desist order and an order to show cause why the license for station KWW–288 issued to General Communications Company, Inc., (GCC) in the Business Radio Service should not be revoked pursuant to Section 312 of the Communications Act of 1934, as amended. The petition was denied by the Chief of the Safety and Special Radio Services Bureau by letter dated December 16, 1978, under delegated authority contained in Section 0.331 of our rules. [1] ATS then petitioned for reconsideration. That petition was treated as an application for review and was considered by the Commission *en banc*. The Commission denied it, and affirmed the decision by the Chief of the Bureau. [2] ATS then filed a Petition for Review in the United States Court of Appeals for the District of Columbia (Case No. 79–1925). We asked the court to remand the case to us for further consideration in view of the more expanded arguments advanced by the Petitioner and Intervenor [3] in their brief. By order issued on August 5, 1980, the court remanded the case to us.

[1] The Safety and Special Radio Services Bureau is now named the Private Radio Bureau, and it will be referred to as such.

[2] *ATS Mobile Telephone, Inc., Memorandum Opinion and Order*, FCC 79–342, released June 21, 1979, 72 FCC 2nd 309 (1979).

[3] By order entred October 11, 1979, Telocator Network of America (Telocator) was granted leave to intrvene in this case.

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3. ATS Mobile Telephone, Inc., (ATS) is a radio common carrier providing paging and two-way service in the Omaha, Nebraska area. It is licensed in the Domestic Public Land Mobile Radio Service. General Communications Corporation, Inc. (GCC) is in the business of selling and servicing radio equipment for two-way and one-way (paging) radio communications systems also in the Omaha, Nebraska area. The radio transmitting facility under consideration is owned by GCC and it is used by GCC to transmit one-way messages to its own employees and to demonstrate equipment to potential customers. In addition, GCC rents the use of this facility to others for joint or shared use. Users of this facility obtain their own radio station authorizations from the Commission. The joint use of the GCC base station facility has been authorized to the various licensees under our longstanding policies in the private land mobile services, under which we allow more than one licensee, eligible in the same radio service, to operate the same transmitting facility. See *Multiple Licensing—Safety and Special Radio Services, Memorandum Opinion and Order and Notice of Proposed Rule Making*, Docket 18921, 24 FCC 2d 510 (1970). Under this procedure each user is licensed separately for the base transmitter, for his or her control point, and, in two-way communications systems, for the mobile radio units.

4. It is the joint use of the GCC facility which is the cause of ATS' complaint. As we understand its argument, ATS alleges that GCC is using this facility for purposes which are, in its view, essentially "common carrier" in nature, contrary to "traditional business radio operations," "wholly illegal," and "* * * at odds with the FCC regulatory scheme." ATS argues that GCC "masquerades" as a private radio system, when, in fact, it is a "pseudo common carrier," and provides an "unregulated" and "unauthorized" "common carrier service" in competition with a "legitimate common carrier," and urged that GCC should be ordered to cease and desist from its "* * * unauthorized conduct * * *" and that its license should be revoked for "failure of requisite licensee qualifications."

5. We have reconsidered the case in its entirety, *de novo*, and have examined the record before us and we believe that, while ATS' allegations are serious and should be given further consideration, we do not have sufficient information to determine whether to institute proceedings looking toward imposition of the serious sanctions requested by the petitioner. Moreover, in view of the history of this case, we believe that a public investigatory proceeding would be the appropriate vehicle for obtaining the additional information we need to make our decision in this case.

6. Accordingly, it is ordered, pursuant to Section 403 of the Communications Act of 1934, as amended, that an inquiry is hereby instituted to determine the full facts and circumstances concerning the operation and use of the radio paging facility owned by GCC which is the subject of ATS' petition, and to determine whether a sufficiently substantial basis exists warranting the institution of the revocation and cease and desist proceedings ATS has requested. The place and date of the hearing will be specified by subsequent order. And while we do not want to impose limits on the precise scope of the inquiry, we wish to develop as complete a record as possible on the following matters:

A. The nature and configuration of the GCC physical paging facility, including the method used to interconnect the facility with the public telephone system.

B. The methods used by General Communications Company (GCC) to market the radio equipment associated with the paging facility, as well as the facility itself.

C. The arrangement between GCC and each of GCC's customers (which are licensees of the Commission and others, if any) concerning the use of the paging facility and of any associated equipment, such as paging receivers, control points, and telephone facilities, if any.

D. The precise manner in which each licensee or user gains access to and operates the facility for the transmission of messages.

E. Information indicating whether or not GCC has used its own license, call sign KWW–288, to provide communication service to persons or entities other than its own employees.

F. Information indicating whether GCC misrepresented to this Commission material facts concerning this operation.

7. It is further ordered, That ATS Mobile Telephone, Inc., General Communications Company, and the Chief, Private Radio Bureau ARE MADE PARTIES to this proceeding. While we are not making the users of the facility parties, we would expect that the presiding Administrative Law Judge would entertain favorably any petitions for intervention from any such user.

8. It is further ordered, That the inquiry shall be a public proceeding and that the provisions of Section 1.27 of the Commission's Rules shall apply to the production of oral and documentary evidence under subpoena.

9. It is further ordered, That pursuant to Section 5(d)(1) of the Communications Act of 1934, as amended, for the purpose of this inquiry authority is hereby delegated to the Chief Administrative Law Judge of the Commission to require by subpoena the production of books, papers, correspondence, memoranda and other records deemed relevant to the inquiry; to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and to perform such other duties in connection therewith as may be necessary or appropriate to the compilation of a complete record concerning the subject matter of this inquiry.

10. It is further ordered, That the Chief Administrative Law Judge is specifically authorized to designate a Commission Administrative Law Judge to exercise the authority conferred by this Order; and to require witnesses to testify and produce evidence under authority of, and in the manner provided in, Section 409 of the Communications Act of 1934, as amended, when requested to do so by Commission Counsel.

11. It is further ordered, That the subpoena powers delegated by this Order shall be exercised in accordance with Sections 1.331 through 1.340 of the Commission's Rules. Motions to quash or limit subpoena shall be directed to the presiding Administrative Law Judge in accordance with Section 1.334 of the Rules. Applications for review of the presiding Administrative Law Judge's rulings on such motions may be filed with the Commission within ten (10) days after the issuance by the presiding Administrative Law Judge of such rulings.

12. It is further ordered, That upon conclusion of the inquiry ordered herein, the presiding Administrative Law Judge shall certify the record to the Commission.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-33401 Filed 10-24-80; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 80–640, File No. BPH–790829AA, et al.]

Composite Communications, Inc., et al.; Designating Applications for Consolidated Hearing on Stated Issues

Hearing Designation Order

Adopted: October 10, 1980.

Released: October 21, 1980.

In re Applications of Composite Communications, Inc. Belpre, Ohio, BC Docket No. 80–640 File No. BPH–790829AA, Req: 107.1 MHZ, Channel 296A 1.81 KW (H&V) 370 feet; Family Broadcasting Services, Inc. Belpre, Ohio, BC Docket No. 80–641 File No. BPH–800516AD, Req: 107.1 MHZ, Channel 296A 2.2 KW (H&V) 346 feet; Tillis Communications of Mid Ohio Valley, Inc. Belpre, Ohio BC Docket No. 80–642 File No. BPH–800519AG, Req: 107.1 MHZ, Channel 296A 2.25 KW (H&V) 346.5 feet; and Wm. Gerald Willis and Charles A Preston d/b/a, Belpre Broadcasting Company Belpre, Ohio, BC Docket No. 80–643 File No. BPH–800519AH, Req: 107.1 MHz, Channel 296A 1.3 KW (H&V) 430 feet. For Construction Permits for a New FM Station.

By the Chief, Broadcast Bureau:

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority has under consideration the above-captioned mutually exclusive applications.

2. *Belpre.* Applicants for new broadcast stations are required by § 73.3580(f) of the Commission's Rules to give local notice of the filing of their applications. They must then file with the Commission the statement described in § 73.3580 (h) of the Rules.We have no evidence that Belpre published the required notice. To remedy this deficiency, Belpre will be required to publish local notice of this application, if it has not already done so, and to file a statement of publication with the presiding Administrative Law Judge.

3. Belpre indicates in its application that it will require five full-time and five part-time employees to operate the proposed station. Section VI of Form 301 and Section 73.2080 of the Rules require that an Equal Employment Opportunity Plan detailing the applicant's hiring and promotion policies be submitted if there will be five or more full-time station employees. Belpre did not submit such a statement. Accordingly, an issue will be specified.

4. Analysis of the financial portion of Belpre's application reveals that Belpre will require $32,025.00 to construct its proposed facility and operate for three months, without revenue, itemized as follows:

Building	$4,200.00
Miscellaneous	4,300.00
Three Months Operating Expenses	23,525.00
Total	32,025.00

To meet these requirements, Belpre intends to rely on existing capital of $22,000 and a loan of $60,000 from First National Bank of Louisville, Kentucky. The applicant did not submit a loan commitment letter from the bank to show that these funds are available. Accordingly, a limited financial issue will be specified.

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether Belpre has complied with Section 73.2080 of the Rules regarding equal employment opportunity.

2. To determine with respect to Belpre the availability of funds in addition to the $22,000 indicated, and, in light thereof, whether Belpre is financially qualified to construct and operate the proposed station.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. It is further ordered, That Belpre publish local notice of the filing of its application with the Commission in accordance with § 73.3580(h) of the Rules and file a statement of publication with the presiding Administrative Law Judge.

8. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

9. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594(g) of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

Federal Communications Commission.

Jerold L. Jacobs,

Chief, Broadcast Facilities Division.

[FR Doc. 80-33398 Filed 10-24-80; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 80–635, File No. BPH–11094; Docket No. 80–636, File No. BPH–800317AH]

W.H.A.B. Radio, Inc., and Appling County Broadcaster; Designating Applications for Consolidated Hearing on Stated Issues

Hearing Designation Order

Adopted: October 7, 1980.

Released: October 20, 1980.

In re Application of W.H.A.B. RADIO, INCORPORATED, Baxley, Georgia Req: 94.5 MHz, Channel 233, 100 KW (H&V), 411 feet, and APPLING COUNTY BROADCASTER, Baxley, Georgia Req: 94.5 MHz, Channel 233, 100 KW (H&V), 432 feet. For Construction Permits for a New FM Station.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration: (i) the above-captioned mutually exclusive applications filed by W.H.A.B. Radio, Incorporated (WHAB) and Appling County Broadcaster (Appling); (ii) a petition to deny filed by WHAB;[1] and (iii) petitions for extension of time, leave to amend, and related pleadings, filed by Appling.[2]

2. *WHAB.* WHAB has failed to comply with the requirements of the *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 21 RR 2d 1507 (1971). From the information before us, it appears that the applicant has failed to survey

[1] The petition to deny is essentially a petition to specify issues. WHAB's application was tendered for filing on April 18, 1978 and appeared on public notice of cut-off effective July 30, 1980. Appling's application was tendered for filing on March 17, 1980. Accordingly, the amendment and predesignation issue pleadings procedures of former §§ 1.522 and 1.584 of the Rules were applicable. However, pursuant to the Commission's *Report and Order* in re *Revised Procedures for the Processing of Contested Broadcast Applications; Amendments of Part 1 of the Commission's Rules*, 72 FCC 2d 202, 45 RR 2d 1220 (1979), which directed the deletion of all issue pleadings in pending cases, the matters sought to be raised by the parties in issue pleadings and amendments have been considered herein only to the extent they relate to qualifications issues specifically included in this order. Accordingly an opportunity to raise any allegations contained in the issue pleadings which have not been discussed herein will be afforded the parties post designation pursuant to § 1.229.

[2] Appling's petition for extention of time and petition for leave to amend in answer to W.H.A.B.'s petition to deny will be granted.

leaders of several significant population groups set forth in its demographic study, as required by Questions and Answers 10, 13(a) & 16 of the *Primer*. For example, WHAB has omitted representatives of women, blacks, labor, military, charities, culture, environment and planning. Accordingly, a limited ascertainment issue will be specified.

3. WHAB has failed to specify a non-short-spaced site in compliance with Section 73.207 of the Rules. The Commission has consistently afforded a competing applicant specifying a short-space site, even upon designation for hearing, a period within which to amend to specify a non-short-spaced site or in the alternative be dismissed and denied comparative hearing with other non-short-spaced applicants. *Nelson County Broadcasting Co., Inc.*, 64 FCC 2d 932 (1977). In this instance, affording WHAB thirty days to amend to a site in compliance with Section 73.207 would serve the public interest. If WHAB does not exercise this opportunity to amend and comply with Section 73.207, its application will be dismissed.[3]

4. *Appling.* Appling has failed to comply with the requirement of the *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 21 RR 2d 1507 (1971). From the information before us, it appears that the applicant has merely copied the WHAB's Exhibit P–1 and submitted it as Appling's own demographic study. The applicant has stated he is personally familiar with Baxley and the information in the WHAB study is accurate. Therefore, we will not prohibit this showing as a part of Appling's application. However, Appling has failed to survey leaders of the significant population groups, as required by Questions and Answers 10, 13(a) and 16 of the *Primer*. For example, Appling has omitted representatives of women, blacks, elderly, charities, consumer services, culture, labor and military. In addition, Question and Answer 6 of the *Primer* requires an applicant to ascertain the problems of major communities which are outside the city of license and which the applicant undertakes to serve. Question and Answer 7 provides that ascertainment in such communities consist of consultations with leaders who can be expected to have a broad overview of community problems. In the alternative, if an applicant chooses not to serve such a community, it must explain why. Appling's application indicates that Hazlehurst (pop. 4,065); Jesup (9,091); Glennville (2,965) and Reidsville (1,806) are within the proposed 1.0 mV/m contour. Considering the size of the proposed city of license (3,503 in 1970), Hazlehurst, Jesup, Glennville and Reidsville are major communities as contemplated by Questions and Answers 6 and 7. Appling has neither consulted leaders of these communities nor explained why it does not intend to serve these communities. A limited ascertainment issue will be specified.

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applicants are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine whether W.H.A.B. Radio, Incorporated interviewed leaders of women, blacks, labor, military, charities, culture, environment and planning in connection with its ascertainment effort.

2. To determine with respect to the efforts of appling to ascertain the needs of its proposed service area:

(a) Whether the applicant interviewed leaders of women, blacks, elderly, charities consumer services, culture, labor and the military in Baxley;

(b) Whether the applicant has complied with Questions and Answers 6 and 7 of the *Primer* with respect to the communities of Hazlehurst, Jesup, Glennville and Reidsville.

3. To determine which of the proposals would on a comparative basis, better serve the public interest.

4. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications, if either, should be granted.

7. It is further ordered, That the petition filed by WHAB is granted to the extent indicated and is denied in all other respects.

8. It is further ordered, That Appling County Broadcaster's petition for extension of time and petition for leave to amend are granted.

9. It is further ordered, That the application of W.H.A.B. Radio, Incorporated shall be retained for a period of thirty (30) days to permit amendment to a non-short-spaced site.

10. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this order.

11. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594(g) of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Jerold L. Jacobs,

Chief, Broadcast Facilities Division.

[FR Doc. 80-33400 Filed 10-24-80; 8:45 am]

BILLING CODE 6712-01-M

[3] The Chief, Broadcast Bureau, granted WHAB's Section 73.207 waiver request based upon economic factors for the purpose of accepting the application as the first filed proposal and placing it on an "A" cutoff list. However, Commission policy requires amendment to a non-short-spaced site when comparative consideration is sought with another mutually exclusive application specifying a non-short-spaced site.

FEDERAL MARITIME COMMISSION

[Agreement No. T-3927]

Availability of Finding of No Significant Impact; City of Los Angeles and Overseas Terminal Co., Inc.

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Environmental Analysis (OEA) has determined that the environmental issues relative to the referenced agreement do not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* and that preparation of an environmental impact statement is not required under section 4332(2)(c) of NEPA.

Agreement No. T–3927, between the City of Los Angeles (City) and Overseas Terminal Company, Inc. (Overseas), provides for the nonexclusive preferential assignment by City to Overseas of Berths 228–230 at Los Angeles Harbor. As compensation, Overseas will pay City a minimum of $705,700 per annum, as well as a percentage of annual tariff charges in excess of $705,700. The term of the agreement is for five years. The agreement further provides that Overseas shall not solicit and serve any customer which is a tenant or is regularly served by a tenant of the Port of Los Angeles without the prior approval of the City's Port General Manager. The OEA's major environmental concern was whether the agreement would significantly increase energy usage and/or affect the quality of the air, water, noise and biological environment.

The OEA has determined that the Commission's final resolution of Agreement No. T–3927 will cause no significant adverse environmental effects in excess of those created by existing uses.

The environmental assessment is available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523–5725. Interested parties may comment on the environmental assessment by November 17, 1980. Such comments are to be filed with the Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573. If a party fails to comment within this period, it will be presumed that the party has no comment to make.

Francis C. Hurney,

Secretary.

[FR Doc. 80-33301 Filed 10-24-80; 8:45 am]

BILLING CODE 6730-01-M

[Agreement No. T-3926]

Availability of Finding of No Significant Impact; Virginia Port Authority and Port Authority Terminals

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Environmental Analysis (OEA) has determined that the environmental issues relative to the referenced agreement do not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* and that preparation of an environmental impact statement is not required under section 4332(2)(c) of NEPA.

Agreement No. T–3926, between the Virginia Port Authority (VPA) and Port Authority Terminals, Inc. (PAT), provides that VPA will lease to PAT the Newport News Marine Terminal to be operated by PAT as a public marine facility. PAT will compensate VPA according to a mutually agreed formula as set forth in the agreement. The term of the lease is five years with provisions for extension periods. The lease is the basic document to be used to support a $10.3 million bond issue with the proceeds of the bond issue being used to lengthen a container berth and to pave 30 acres of storage. The OEA's major environmental concern was whether the improvements to be made by VPA would significantly increase energy usage and/or affect the quality of the air, water, noise and biological environment.

The OEA has determined that the Commission's final resolution of Agreement No. T–3926 will cause no significant adverse environmental effects in excess of those created by existing uses.

The environmental assessment is available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523–5725. Interested parties may comment on the environmental assessment by November 6, 1980. Such comments are to be filed with the Secretary, Federal Maritime Commission, 1100 L Street, NW, Washington, D.C. 20573. If a party fails to comment within this period, it will be presumed that the party has no comment to make.

Francis C. Hurney,

Secretary.

[FR Doc. 80-33302 Filed 10-24-80; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL MARITIME COMMISSION

[Independent Ocean Freight Forwarder License No. 1607R]

Norma E. Sanchez; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.9 of Federal Maritime Commission General Order 4 further provides that a license will be automatically revoked or suspended for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Norma E. Sanchez, Room 302, Grosch Bldg., No. 402, Comercio St., Old San Juan, Puerto Rico 00901, FMC No. 1607R, was cancelled effective October 17, 1980.

An attempt was made by the Federal Maritime Commission to advise Norma E. Sanchez, by letter dated September 22, 1980, that Independent Ocean Freight Forwarder License No. 1607R would be automatically revoked or suspended unless a valid surety bond was filed with the Commission. That letter, addressed to Norma E. Sanchez at her last known address, was returned to the Federal Maritime Commission as unclaimed by the Post Office.

Norma E. Sanchez has failed to furnish a valid surety bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised), section 5.01(d) dated August 8, 1977;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 1607R be and is hereby revoked effective October 17, 1980.

It is ordered, that Independent Ocean Freight Forwarder License No. 1607R, issued to Norma E. Sanchez, be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Norma E. Sanchez.

Robert G. Drew, *Director,*

Bureau of Certification and Licensing.

[FR Doc. 80-33303 Filed 10-24-80; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First United Bancshares, Inc., Formation of Bank Holding Company

First United Bancshares, Inc., El Dorado, Arkansas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger to The First National Bank of El Dorado, El Dorado, Arkansas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 17, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 20, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33328 Filed 10-24-80; 8:45 am]

BILLING CODE 6210-01-M

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F.N.B. Stinnett Bancshares, Inc.; Formation of Bank Holding Company

F.N.B. Stinnett Bancshares, Inc., Stinnett, Texas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares less directors' qualifying shares, of First National Bank of Stinnett, Stinnett, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 13, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 20, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board

[FR Doc. 80-33327 Filed 10-24-80; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than November 20, 1980.

A. *Federal Reserve Bank of Richmond* (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

Southern Bancorporation, Inc., Greenville, South Carolina (consumer finance; South Carolina): to engage through its subsidiary, World Acceptance Corporation, in making extensions of credit as a licensed consumer finance lender. These activities would be conducted from an office in Muskogee, Oklahoma, serving Muskogee, Oklahoma.

B. *Federal Reserve Bank of Kansas City* (Thomas M. Hoenig, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

C.S.B. Co., Cozad, Nebraska (insurance activities; Nebraska): to engage in general insurance agency activities in a town with a population of less than 5,000, including the provision of life, auto, fire, marine (and allied lines), hail, and health and accident insurance and fidelity bonds. These activities would be conducted from an office in Cozad, Nebraska, serving an area within a nine-mile radius of Cozad.

C. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, October 21, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33391 Filed 10-24-80; 8:45 am]

BILLING CODE 6210-01-M

First National Boston Corp.; Acquisition of Bank

First National Boston Corporation, Boston, Massachusetts, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of The Haverhill National Bank, Haverhill, Massachusetts. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Boston. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than November 20, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 20, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33388 Filed 10-24-80; 8:45 am]

BILLING CODE 6210-01-M

M.B. Group, Inc.; Formation of Bank Holding Company

M.B. Group, Inc., Marathon, Florida, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of The Marathon Bank, Marathon, Florida. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 12, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 21, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33390 Filed 10-24-80; 8:45 am]

BILLING CODE 6210-01-M

Platte Valley Bancorp; Proposed Acquisition of Valley Bancorp, Inc.

Platte Valley Bancorp, Brighton, Colorado, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Valley Bancorp, Inc., and thereby of its subsidiary, Yampa Valley Industrial Bank ("Industrial Bank"), both of Steamboat Springs, Colorado.

Applicant states that the proposed subsidiary would engage in the activities of industrial banking and act as an insurance agent with respect to insurance directly related to extensions of credit or the provision of other financial services by Industrial Bank. These activities would be performed from offices of Industrial Bank in Steamboat Springs, Colorado, and the geographic area to be served is within a 40-mile radius of Steamboat Springs, Colorado. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as geater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than November 20, 1980.

Board of Governors of the Federal Reserve System, October 21, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33386 Filed 10-24-80; 8:45 am]

BILLING CODE 6210-01-M

Raymond Bancshares, Inc.; Formation of Bank Holding Company

Raymond Bancshares, Inc., Raymond, Minnesota, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 88 percent or more of the voting shares of Farmers State Bank, Raymond, Minnesota. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 21, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 21, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33389 Filed 10-24-80; 8:45 am]

BILLING CODE 6210-01-M

West Bancshares, Inc.; Formation of Bank Holding Company

West Bancshares, Inc., West, Texas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of West Bank & Trust, West, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 21, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 21, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33387 Filed 10-24-80; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health

Subcommittee on Data Concepts and Methodology of the National Committee on Vital and Health Statistics; Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92-463), notice is hereby given that the Subcommittee on Data Concepts and Methodology of the National Committee on Vital and Health Statistics, pursuant to functions established by Section 306(k), Paragraph (4) of the Public Health Service Act (42 U.S.C. 242(k)), will convene on Monday, November 10, 1980, at 9:00 a.m., in Room 337A-339A of the Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201.

Principal consideration and discussion will be devoted to the report on program plans for the Subcommittee for submission to the National Committee on Vital and Health Statistics. Agenda items subject to change as priorities dictate.

Further information regarding this meeting of the Subcommittee or other matters pertaining to the National Committee on Vital and Health Statistics may be obtained by contacting Samuel P. Korper, Ph.D., M.P.H., Executive Secretary, National Committee on Vital and Health Statistics, Room 17A-55, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: 301-443-2660.

Dated: October 22, 1980.

Wayne C. Richey, Jr.,

Associate Director for Program Support, Office of Health Research, Statistics, and Technology.

[FR Doc. 80-33449 Filed 10-24-80; 8:45 am]

BILLING CODE 4110-85-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-80-1036]

Privacy Act of 1974; New System of Records

AGENCY: Department of Housing and Urban Development.

V 45 OCT 27 80 UMI

ACTION: Notification of System of Records.

SUMMARY: The Department is giving notice of a system of records that it maintains which is subject to the Privacy Act of 1974.

EFFECTIVE DATE: This notice shall become effective November 26, 1980, unless comments are received on or before that date which would result in a contrary determination.

ADDRESS: Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Robert English, Departmental Privacy Act Officer, Telephone 202–557–0605. This is not a toll free number.

SUPPLEMENTARY INFORMATION: The system is IDEAS Program Case Files. It consists of records used to process HUD employee suggestions under the HUD Ideas Program. The purpose for maintaining the records is to process recommendations for improving the efficiency and effectiveness of the Department's operations. Ideas that are adopted and implemented may result in cash payments to the suggester or honorary recognition. For ideas that have been adopted, the name of the suggester will be reported and published in Governmental or Departmental publications and may be released to news media. Appendix A, which lists the addresses of HUD's field offices, was published at 45 FR 67626 (October 10, 1980). A new system report was filed with the Speaker of the House, the President of the Senate, and the Office of Management and Budget on September 16, 1980.

HUD/DEPT-65

SYSTEM NAME:

IDEAS Program Case Files.

SYSTEM LOCATION:

Headquarters and Field Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal employees who submit Ideas for improving Departmental efficiency and effectiveness.

CATEGORIES OF RECORDS IN THE SYSTEM:

Idea subject, suggester name, Idea number, position title of suggester, title of organization to which suggester is assigned, location of suggester's organization, suggester's room number, suggester's phone number, statement of organization responsible for implementing ideas, statement of current use, statement of anonymity, statement of cash award waiver, agreement to waive further rights, description of Idea, Social Security Number, disposition of Idea, cash award amount.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Government Employees Incentive Awards Act (45 U.S.C. 5).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To news media to publicize awards; to other Government agencies for evaluation and possible adoption; in the case of cash awards, to Treasury to issue check; to printing firms to produce award certificates.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

In file folders and on magnetic media.

RETRIEVABILITY:

Subject, name, number, originating organization, evaluating organization, disposition.

SAFEGUARDS:

Paper files are kept in lockable cabinets in secured areas. Magnetic files will be maintained in a separate secured area. Access to either type of file is limited to authorized personnel.

RETENTION AND DISPOSAL:

Manual and automated records are retained in accordance with officially approved mandatory standards contained in HUD Handbooks 2225.6 and 2228.2.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Management Systems and Organization Division, Office of Organization and Management Information, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR Part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) in relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A; (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

RECORD SOURCE CATEGORIES:

Suggesting individual, processing organization, evaluating organization.

Authority: 5 U.S.C. 552a, 88 Stat. 1896; Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Issued at Washington, D.C., October 16, 1980.

Vincent J. Hearing,

Deputy Assistant Secretary for Administration.

[FR Doc. 80-33333 Filed 10-24-80; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F-14844-A]

Alaska Native Claims Selection; Cantwell Yedatene Na Corp.

Correction

In FR Doc. 80-30308 appearing on page 64723 in the issue Tuesday, September 30, 1980, make the following correction:

On page 64725, third column, the 22nd line from the top of the page now reading "Those portions of Tract A more particularly described as protracted:" should have read "Those portions of Tract D more particularly described as protracted:".

BILLING CODE 1505-01-M

[F-19573-A and F-19573-B]

Alaska Native Claims Selections; King Island Native Corp.

Correction

In FR Doc. 80-30445 appearing on page 64742 in the issue of Tuesday, September 30, 1980, make the following correction:

(1) In the middle column of page 64742, under *Kateel River Meridian, Alaska, (Unsurveyed), State Selection*

F-44526, the line reading "Containing approximately 9,525 acres" should have read "Containing approximately 9,524 acres".

BILLING CODE 1505-01-M

[F-14946-A and F-14946-B]

Alaska Native Claims Selection; Teller Native Corp.

Correction

In FR Doc. 80-30315 appearing on page 64755 in the issue of Tuesday, September 30, 1980, make the following changes:

1. On page 64755, first column, "**Kateel River Meridian, Alaska, (Unsurveyed)**" should have read "**Kateel River Meridian, Alaska, (Surveyed)**".

2. In the third column of page 64755, under T.3S., R. 37W., "Sec. 6, lots 1, 2, 3, all 4, all;" should have read "Sec. 6, lots 1, 2, 3, and 4, all,".

3. On page 64756, first column, under T.3S., R. 36 W., "Sec. 26, lot 1, excluding Native allotments F-16510 Parcel A and F-18396" should have read "Sec. 26, excluding Native Allotments F-16510 Parcel A and F-18396".

BILLING CODE 1501-01-M

National Park Service

Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with Pub. L. 92-464 that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, November 14, 1980, at 1:30 pm at the Headquarters Building, Cape Cod National Seashore, Marconi Station Area, South Wellfleet, Massachusetts.

The Commission was established pursuant to Pub. L. 91-383 to meet and consult with the Secretary of the Interior on general policies and specific matters relating to the development of Cape Cod National Seashore.

The members of the Advisory Commission are as follows:

Dexter M. Keezer, Truro
Francis R. King, Wellfleet
Sally H. Lunt, Weston
Nathan Malchman, Provincetown
Barbara S. Mayo, Provincetown
Joshua A. Nickerson, Chatham
David F. Ryder, Chatham
Sherrill B. Smith, Jr., Orleans
Clifford H. White, Wrentham
Elizabeth F. Worthing, Eastham

The Commission will have a field trip at 10:30 am to view the Atwood-Higgins historic complex in Wellfleet.

At the meeting at 1:30 pm the Commission will consider the following matter: Review of Analysis of Management Alternatives, Off-Road Vehicle Use.

The meeting is open to the public. It is expected that 15 persons will be able to attend the session in addition to Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from Herbert Olsen, Superintendent, Cape Cod National Seashore, South Wellfleet, Massachusetts 02663, Telephone 617-349-3785. Minutes of the meeting will be available for public information and copying four weeks after the meeting at the Office of the Superintendent, Cape Cod National Seashore, South Wellfleet, Massachusetts.

Dated: October 16, 1980.

Herbert Olsen,

Superintendent, Cape Cod National Seashore.

[FR Doc. 80-33385 Filed 10-24-80; 8:45 am]

BILLING CODE 4310-70-M

National Capital Memorial Advisory Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Advisory Committee will be held at 1:30 p.m. on Wednesday, November 19, 1980, in Room 234 at the National Capital Region Headquarters, 1100 Ohio Drive, SW., Washington, D.C.

The Committee was established for the purpose of preparing and recommending to the Secretary broad criteria, guidelines and policies for memorializing persons and events on Federal lands in the National Capital Region (as defined in the National Capital Planning Act of 1952, as amended) through the media of monuments, memorials and statues. It is to examine each memorial proposal for adequacy and appropriateness, make recommendations to the Secretary with respect to site location on Federal land in the National Capital Region and to serve as an information focal point for those seeking to erect memorials on Federal land in the National Capital Region.

The members of the Committee are as follows:

Mr. Russell E. Dickenson (Chairman), Director, National Park Service, Washington, D.C.
Mr. David Childs, Chairman, National Capital Planning Commission, 1325 G Street, NW., Washington, D.C.
Mr. George M. White, Architect of the Capitol, Washington, D.C.
General Mark W. Clark, Chairman, American Battle Monuments Commission, Washington, D.C.
Mr. J. Carter Brown, Chaiman, Commission of Fine Arts, Washington, D.C.
Honorable Marion S. Barry, Mayor of the Disrict of Columbia, Washington, D.C.
Mr. A. R. Marshall, Commissioner, Public Buildings Service, Washington, D.C.

The purpose of the meeting will be to review final designs for the Memorial to the 56 Signers of the Declaration of Independence and site plans for the Maine Lobsterman Memorial. The meeting will conclude with a field trip to review examples of methods to clean outdoor bronze memorials.

The meeting will be open to the public. Any person may file with the Committee a written statement concerning the matters to be discussed. Persons who wish to file a written statement or who want further information concerning the meeting may contact Mr. John G. Parsons, Associate Regional Director, Land Use Coordination, National Capital Region, at (202) 426-7750. Minutes of the meeting will be available for public inspection 2 weeks after the meeting at the National Capital Region Headquarters, Room 208, 1100 Ohio Drive, SW., Washington, D.C.

Dated: October 17, 1980.

Manus J. Fish, Jr.,

Regional Director, National Capital Region.

[FR Doc. 80-33384 Filed 10-24-80; 8:45 am]

BILLING CODE 4310-70-M

Ozark National Scenic Riverways, Missouri; Availability and of Public Hearings, Environmental Assessment, General Management Plan

Notice is hereby given of the availability of an Environmental Assessment for the General Management Plan, Ozark National Scenic Riverways, which the National Park Service has prepared in accordance with 40 CFR 1508.9 in the implementation of the National Environmental Policy Act of 1970, as amended, 42 U.S.C. 4321 et seq.

Notice is further given of public meetings to be conducted as follows:

November 10, 1980—Eminence, Missouri, West Eminence Elementary School Auditorium, 7 p.m.
November 11, 1980—Van Buren, Missouri, High School Auditorium, 7 p.m.
November 12, 1980—St. Louis, Missouri, Jefferson National Expansion Memorial National Historic Site Auditorium, 7 p.m.

November 13, 1980—Columbia, Missouri, Physics Building, Rooms 114 and 126, University of Missouri Campus, 7 p.m.
November 14, 1980—Independence, Missouri, Heart of America 4–H Youth Center, 2820 South Highway 291, 7 p.m.

Copies of the Environmental Assessment, including components on Natural Resources Management and Cross-Country Trail Rides, are available from or may be inspected at the following locations:

Superintendent, Ozark National Scenic Riverways, P.O. Box 490, Van Buren, Missouri 63965.
Regional Director, Midwest Regional Office, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102.

Written comments should be submitted to the Superintendent, Ozark National Scenic Riverways, at the above address by December 12, 1980.

Dated: October 14, 1980.

Randall R. Pope,

Acting Regional Director, Midwest Region.

[FR Doc. 80-33383 Filed 10-24-80; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL COMMUNICATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459) and Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), I hereby determine that the following objects in the exhibit of Edvard Munch paintings:

1. The Voice (1893),
2. Dagny Juell (1893),
3. Red and White (1894),
4. Red Vine (1898),
5. Melancholy (1899),
6. The Death of Marat (1907),
7. Workers on Their Way Home (1913),
8. Model by Wicker Chair (1919/21),
9. Starry Night (1923/24), and
10. Between the Clock and the Bed (1940),

imported from abroad for the temporary, consecutive exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements between the National Gallery of Art and the Munch Museum, Oslo, Norway. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, D.C., beginning on or about October 27, 1980, to on or about October 1, 1985, is in the national interest.

Public Notice of this determination is ordered to be published in the Federal Register.

Dated: October 21, 1980.

Charles W. Bray III,

Acting Director, International Communication Agency.

[FR Doc. 80-33300 Filed 10-24-80; 8:45 am]

BILLING CODE 8230-01-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-19 (Sub-42F)]

Baltimore & Ohio Railroad Co., Allegheny & Western Railway Co., Buffalo, Rochester & Pittsburgh Railway Co. and the Pittsburgh and Western Railroad Co., Abandonment and Discontinuance of Service Between New Castle Branch, Big Run Branch and Marquis Spur, Pa.; Notice of Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision decided September 4, 1980, a finding, which is administratively final, was made by the Administrative Law Judge, stating that, the present and future public convenience and necessity permit the abandonment by the Allegheny and Western Railway Company and Buffalo, Rochester and Pittsburgh Railway Company of the Big Run Branch, a distance of 5.18 miles, and Marquis Spur, a distance of 1.01 miles and the discontinuance of service thereover by the Baltimore and Ohio Railroad Company; abandonment by the Pittsburgh and Western Railroad Company of the New Castle Branch, a distance of 2.17 miles, and service thereover by the Baltimore and Ohio Railroad Company; and abandonment by the Baltimore and Ohio Railroad Company of trackage rights over Consolidated Rail Corporation between mileposts 2.21 and 2.28 of the New Castle Branch; all in Lawrence County, PA, subject to the conditions for the protection of employees discussed in *Oregon Short Line R. Co., Abandonment Goshen,* 360 I.C.C. 91 (1979), and further that applicants shall keep intact all of the right-of-way underlying the track including all the bridges and culverts for a period of 120 days from October 1, 1980, to permit any state or local government agency or other interested party to negotiate the acquisition for public use of all or any portion of the right-of-way. A certificate of abandonment will be issued to the Baltimore and Ohio Railroad Company, Allegheny and Western Railway Company, and Buffalo, Rochester & Pittsburgh Railway Company and the Pittsburgh and Western Railroad Company based on the above-described finding of abandonment, 30 days after publication of this notice (November 26, 1980), unless within 15 days from the date of publication (November 12, 1980), the Commission further finds that:

(1) a financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued. The offer must be filed with the Commission and served concurrently on the applicants, with copies to Ms. Ellen Hanson, room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice; and

(2) it is likely that such proffered assistance would:

(a) cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed. An offer may request the Commission to set conditions and amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of an offer, and no request is made on the Commission to set conditions or amount of compensation, a certificate of abandonment will be issued no later than 50 days after this notice is published (December 16, 1980). Upon notification to the Commission of the execution of an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the Federal Register on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-33377 Filed 10-24-80; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-59F)]

Burlington Northern, Inc.—Abandonment—Near Aledo and Joy in Mercer County, Ill.; Notice of Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision entered on December 27, 1979, and the decision of the Commission, Division 2, acting as an Appellate Division, served July 16, 1980, adopted the decision of the Commission, Review Board Number 5, which is administratively final, stating that, the public convenience and necessity permit the abandonment by the Burlington Northern, Inc. of its line of railroad between milepost 39.40 near Aledo, IL, and milepost 45.18 at the end of the line near Joy, IL, a distance of 5.78 miles in Mercer County, IL, subject to the conditions for the protection of employees discussed in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). A certificate of abandonment will be issued to the Burlington Northern, Inc. based on the above-described finding of abandonment, 30 days after publication of this notice (November 26, 1980), unless within 15 days from the date of publication (November 12, 1980), the Commission further finds that:

(1) a financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued. The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission Building, Washington, D.C. 20423, no later than 10 days from publication of this Notice.

(2) it is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed. An offer may request the Commission to set conditions and amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of an offer, and no request is made on the Commission to set conditions or amount of compensation, a certificate of abandonment will be issued no later than 50 days after this notice is published. Upon notification to the Commission of the execution of an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the Federal Register on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-33375 Filed 10-24-80; 8:45 am]

BILLING CODE 7035-01-M

[AB 6 (SDM)]

Burlington Northern, Inc., Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23 that the Burlington Northern, Inc. has filed with the Commission its amended color-coded system diagram map in docket No. AB 6 (SDM). The Commission on June 2, 1980, received a certificate of publication as required by said regulation which is considered the effective date on which the system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the commission, Section of Dockets, by requesting docket No. AB 6 (SDM).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-33374 Filed 10-24-80; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 311]

Expedited Procedures for Recovery of Fuel Costs

Decided: October 21, 1980.

In our recent decisions, a 13-percent surcharge was authorized on all owner-operator traffic, and on all truckload traffic whether or not owner-operators were employed. We ordered that all owner-operators were to receive compensation at this level.

The weekly figures set forth in the appendix for transportation performed by owner-operators and for truckload traffic is 13.2-percent. We are authorizing that the 13-percent surcharge for this traffic remain in effect, and that all owner-operators are to receive compensation at this level.

No change is authorized in the 2.3-percent surchare on less-than-truckload (LTL) traffic performed by carriers not utilizing owner-operators, the 1.3-percent surcharge for United Parcel Service, nor in the 4.9-percent surcharge authorized for the bus carriers.

Notice shall be given to the general public by mailing a copy of this decision to the Governor of each State and to the Public Utilities Commissions or Boards of each State having jurisdiction over transportation, by depositing a copy of the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection and by delivering a copy to the Director, Office of the Federal Register for publication therein.

It is ordered:

This decision shall become effective Friday 12:01 a.m., October 24, 1980.

By the Commission. Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam. Commissioner Gilliam absent and not participating.

Agatha L. Mergenovich,

Secretary.

Appendix—*Fuel Surcharge*

Base date and price per gallon (including tax)

January 1, 1979 ..... 63.5¢

Date of current price measurement and price per gallon (including tax)

October 20, 1980 ..... 113.2¢

	Transportation performed by—Owner operator [1]	Other [2]	Bus carrier	UPS
	(1)	(2)	(3)	(4)
Average percent fuel expenses (including taxes) of total revenue	16.9	2.9	6.3	3.3
Percent surcharge developed	13.2	2.3	4.9	[3] 2.1
Percent surcharge allowed	13.0	2.3	4.9	[4] 1.3

[1] Apply to all truckload rated traffic.
[2] Including less-than-truckload traffic.
[3] The percentage surcharge developed for UPS is calculated by applying 81 percent of the percentage increase in the current price per gallon over the base price per gallon to UPS average percent of fuel expense to revenue figure as of January 1, 1979 (3.3 percent).
[4] The developed surcharge is reduced 0.8 percent to reflect fuel-related increase already included in UPS rates.

[FR Doc. 80-33373 Filed 10-24-80; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-102 (Sub-8F)]

Missouri-Kansas-Texas Railroad Co.—Abandonment—at Burkburnett, Tex., and Altus, Okla. in Wichita County, Tex., and Cotton, Tillman, and Jackson Counties, Okla.; Notice of Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision decided February 8, 1980, a finding, which is administratively final, was by the Administrative Law Judge, stating that, the present and future public convenience and necessity permit the abandonment by the Missouri-Kansas-Texas Railroad Company of those portions of the line of railroad, and operations thereof, extending northwestwardly from milepost 14.0–B at Burkburnett, TX, to milepost 78.560–B at Altus, OK, a distance of about 64.5 miles, in the County of Wichita, TX, and the Counties of Cotton, Tillman and Jackson, OK, subject to the conditions for the protection of employees discussed in *Oregon Short Line R. Co.—Abandonment Goshen*, 360 I.C.C. 91 (1979), and further that applicant shall keep intact all of the right-of-way underlying the track, including all the bridges and culverts for a period of 120 days from the date of first publication of this notice to permit any state or local government agency or other interested aprty to negotiate the acquisition for public use of all or any portion of the right-of-way. A certificate of abandonment will be issued to the Missouri-Kansas-Texas Railroad Company based on the above-described finding of abandonment, 30 days after publication of this notice (November 26, 1980), unless within 15 days from the date of publication (November 12, 1980), the Commission further finds that:

(1) a financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued. The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice; and

(2) it is likely that such proffered assistance would:

(a) cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed. An offer may request the Commission to set conditions and amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of an offer, and no request is made on the Commission to set conditions or amount of compensation, a certificate of abandonment will be issued no later than 50 days after this notice is published (December 16, 1980). Upon notification to the Commission of the execution of an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the **Federal Register** on March 31, 1978, at 41 FR 13891, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decisions.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-33378 Filed 10-24-80; 8:45 am]
BILLING CODE 7035-01-M

Policy and Procedures Relating to Proceedings Involving Compliance by Household Goods Agents of Certain Statutory Requirements

AGENCY: Interstate Commerce Commission.

ACTION: Policy statement.

SUMMARY: The Interstate Commerce Commission has the responsibility under the Household Goods Transportation Act of 1980 to require compliance of various statutory provisions by Household Goods Agents. The Interstate Commerce Commission's policy will be to pursue that responsibility vigorously and in that regard this statement is intended to identify the guidelines that will be followed.

FOR FURTHER INFORMATION CONTACT: Richard S. Lewis, (202) 275–7811.

Policy Statement

The Household Goods Transportation Act of 1980 increases the Commission's authority to regulate household goods agenta. The legislative history, however, clearly shows that Congress does not expect the Interstate Commerce Commission to create a new regulatory structure for household goods agents. Rather, the Congress' concern is with the limited number of household goods agents who disproportionately account for a high percentage of complaints. The Act has vested the Commission with authority to move directly against household goods agents by initially requiring compliance after an oral hearing and subsequently after a second hearing (on the modified procedure) limiting, conditioning or prohibiting transportation or services incidental to the transportation of household goods in interstate commerce.

This statement is intended to convey the Commission's proposed policy concerning the increased authority over household goods agents. In accord with Congressional intent to protect consumers against serious abuses by household goods agents, the Commission believes that this objective can best be achieved by establishing certain guidelines rather than to adopt regulations specifically designed for household goods agents. These general procedures comply with the existing Rules of Practice.

Section 10934(a) of the Act provides that a household goods carrier is responsible for the acts or omissions of its agents and the accompanying legislative history clearly comments on that obligation of the carrier. The Interstate Commerce Commission has always and will continue to hold household goods carriers operating under our jurisdiction responsible for the actions of their agents. We expect each carrier to engage in self-regulation of its agents and we will not hesitate to seek redress and compliance from a carrier for the acts of its agents.

Section 10934(c)(1), however, authorizes the Commission to move directly against household goods agents who allegedly violate Section 11901(j) or 11917 [1] of the Act or are found to be

Footnotes continued on next page

[1] Section 11901(j)—

Any person that knowingly engages in or knowingly authorizes an agent or other person (1) to falsify documents used in the transportation of household goods subject to the jurisdiction of the Commission under subchapter II of chapter 15 of this title which evidence the weight of a shipment, or (2) to charge for accessorial services which are not performed or for which the carrier is not entitled to be compensated in any case in which such services are not reasonably necessary in the safe and adequate movement of the shipment, is liable to the United States for a civil penalty of not more than $2,000 for each violation and of not more than $5,000 for each subsequent violation. Any state may bring a civil action in the United States district

consistently not fit, willing and able to provide adequate household goods transportation service (including accessorial and terminal services). The Commission's Office of Consumer Protection (OCP) has the responsibility of conducting field investigations of household goods agents either as part of a regular compliance monitoring program or because of complaints from shippers which request OCP's assistance. In instances where OCP concludes that the facts developed in the field investigations support the issuance of a complaint against a household goods agent, OCP will prepare and submit a complaint [2] to the Commission's Chief Administrative Law Judge. The complaint will be forwarded to the Office of the Secretary for service of the complaint on the household goods agent, the household goods carrier who serves as the agent's principal carrier, and the OCP. The complaint will be accompanied by a notice designating the Administrative Law Judge assigned to the case and setting the location and date of hearing. As required by Section 10934(c)(1) of the Act, the hearing will be held no later than 60 days after service of the complaint to the agent. The agent has a statutory right under Section 10934(c)(2) of the Act to appear at the oral hearing and rebut the charges in the complaint.

The Act further provides at Section 10934(c)(3) that in the event the agent does not appear at the oral hearing or upon a finding of the Administrative Law Judge that the agent has violated Section 11901(j) or 11917 or is consistently not fit, willing and able to provide adequate service, an order may be issued compelling compliance by the agent.

An appeal from the order may be filed within the time limits provided for in 49 CFR 1100.97. The Commission will expeditiously review and decide any administrative appeal.

Footnotes continued from last page

courts to compel a person to pay a civil penalty assessed under this subsection.

Section 11917(a)—

(a) For the purpose of this section, "weight-bumping" means the knowing and willful making or securing of a fraudulent weight on a shipment of household goods which is subject to the jurisdiction of the Commission under subchapter II of chapter 15 of this title.

(b) Any individual who has been found to have committed weight-bumping shall, for each offense, be fined at least $1,000 but not more than $10,000, imprisoned for not more than 2 years, or both.

The analysis for chapter 119 of title 49, United States Code, is amended by inserting "11917. Weight-bumping in household goods transportation.

[2] The Commission Rules of Practice, 49 CFR 1100.24 as to the number of copies and 1100.25 as to form and allegations apply to complaints discussed above.

If the Commission upholds a compliance order, OCP will monitor subsequent performance by the household goods agent. If, a field investigation develops information showing willful failure by the agent to comply with the order issued at least 30 days earlier, the Commission, based on information supplied by OCP alleging failure will issue an order to show cause why it should not limit, condition, or prohibit the household goods agent from the transportation or services incidental to the transportation of household goods.

After reviewing the record submitted by the agent and the OCP, the Commission will issue a decision either finding the agent in compliance or finding non-compliance. If an agent is found not to be in compliance, an order will be issued to limit, condition or prohibit a household goods agent from any involvement in the transportation or services incidental to the transportation of household goods. This order will be considered a final action of the Commission. Compliance with this order must be immediate.

An agent subject to a final Commission order may at any time file a petition to rescind the order. The Commission will refer the petition to the Chief Administrative Law Judge for immediate assignment of the case for oral hearing by an Administrative Law Judge other than the one who conducted the initial hearing. The Judge will issue a notice to the agent and OCP designating the location and date of the hearing.

At the conclusion of the hearings, the Administrative Law Judge will issue an initial decision which will be subject to a right of appeal to the Commission pursuant to 49 CFR 1100.97.

These procedures are also available to any party without the OCP's participation in the process. The notable difference is that the party filing the complaint has the burden of proving that the household goods agent violated the particular statutory provisions of concern here, or that the agent is consistently not fit, willing and able to provide adequate service. Complaints should be sent to the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

Dated: October 14, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam. Commissioner Trantum was absent and did not participate in the disposition of this proceeding.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-33378 Filed 10-24-80; 8:45 am]
BILLING CODE 7035-01-M

[Permanent Authority Decisions Volume No. OP4-098]

Motor Carriers; Decision-Notice

Decided: October 20, 1980.

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the **Federal Register** on July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested only on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed by December 11, 1980 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon

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compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. On or before December 26, 1980 an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board Number 2, Members: Chandler, Eaton, and Liberman. Member Chandler not participating.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

MC 149486F, filed October 10, 1980. Applicant: RANGEN TRANSPORTATION, INC., P.O. Box 706, Buhl, ID 83316. Representative: Bruce W. Shand, 430 Judge Bldg., Salt Lake City, UT 84111. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

[FR Doc. 80-33369 Filed 10-24-80; 8:45 am]

BILLING CODE 7035-01-M

[Permanent Authority Decisions Volume No. OP4-097]

Motor Carriers; Decision-Notice

Decided: October 20, 1980.

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the Federal Register of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before December 11, 1980 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. On or before December 26, 1980 an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board Number 2, Members: Chandler, Eaton, and Liberman. Member Chandler not participating.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

MC 1977 (Sub-49), filed October 14, 1980. Applicant: NORTHWEST TRANSPORT SERVICE, INC., 5601 Holly St., Commerce City, CO 80022. Representative: Leslie R. Kehl, 1600 Lincoln Center, 1660 Lincoln St., Denver, CO 80264. Transporting *such commodities* as are dealt in or used by a manufacturer of containers and packaging materials between points in Canyon County, ID, on the one hand, and, on the other, points in Box Elder and Sanpete Counties, UT.

MC 5987 (Sub-5F), filed October 14, 1980. Applicant: KULB TRUCKING, INC., 789 Rambler Rd., Warminster, PA 18974. Representative: Albert Kulb (address same as applicant). Transporting *iron and steel articles*, between Philadelphia, PA, on the one hand, and, on the other points in MI, IN, KY, TN, MS, OH, AL, WV, VA, NC, SC, GA, FL, PA, NY, VT, NH, ME, MA, CT, NJ, DE, MD, and DC. Condition: Issuance of a certificate in this proceeding is subject to prior or coincidental cancellation, at applicant's written request, if its certificates in MC 5987 (Sub-Nos. 1 and 3).

MC 59856 (Sub-91F), filed, September 29, 1980. Applicant: SALT CREEK FREIGHTWAYS, a corporation, 3333 West Yellowstone, Casper, WY 82601. Representative: John R. Davidson, 805 First Bank Bldg., Billings, WY 62601. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, and household goods as defined by the Commission), (1) between Minneapolis, MN, and Billings, MT, over Interstate Hwy 94, serving no intermediate points; (2) Between Minneapolis, MN, and Casper WY, from Minneapolis over Interstate Hwy 35 to junction Interstate Hwy 90, then over Interstate Hwy 90 to junction WY Hwy 59, then over WY Hwy 59 to junction WY Hwy 387, then over WY Hwy 387 to junction Interstate Hwy 25, and then over Interstate Hwy 25 to Casper, and return over the same routes, serving the intermediate points of Rapid City, SD, and Gillette, WY; (3) Between Minneapolis, MN, and Denver, CO, from Minneapolis over Interstate Hwy 35 to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction Interstate Hwy 76, and then over Interstate Hwy 76 to Denver, and return over the same route, serving no intermediate points; (4) Between Minneapolis, MN, and Cheyenne, WY; from Minneapolis over Interstate Hwy 35 to junction Interstate Hwy 80, then over Interstate Hwy 80 to Cheyenne, and return over the same route, serving no intermediate points; (5) Between Salt Lake City, UT, and Butte, MT, over Interstate Hwy 15, serving the intermediate points of Clearfield and Ogden, UT, and Pocatello and Idaho Falls, ID; and (6) Between Salt Lake City, UT, and Cheyenne, WY: (a) from Salt Lake City over Interstate Hwy 80 to Cheyenne, and return over the same route, serving all intermediate points in WY, and (b) from Salt Lake City over Interstate Hwy 15 to junction Interstate Hwy 80N, then over Interstate Hwy 80N to junction Interstate Hwy 80, and then over Interstate Hwy 80 to Cheyenne, and return over the same route, serving the intermediate points of Clearfield and Ogden, UT, and all intermediate points on Interstate Hwy 80 in WY.

Note.—applicant intends to tack this authority with its existing regular-route authority.

MC 70557 (Sub-35F), filed October 14, 1980. Applicant: NIELSEN BROS. CARTAGE CO., INC., 4619 W Homer St., Chicago, IL 60639. Representative: Carl L. Steiner, 39 S LaSalle St., Chicago, IL 60603. Transporting (1) *carbonated beverages and soft drinks and* (2) *materials, equipment and supplies* used in the manufacture, sale, and distribution of the commodities in (1) above, between points in AL, FL, GA, LA, MS, OK, SC, TN, and TX.

MC 95876 (Sub-369F), filed, October 14, 1980. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Ave., No., St. Cloud, MN 56301. Representative: William L. Libby (same as applicant). Transporting *such commodities* as are dealt in or used by manufacturers and distributors of prefabricated metal buildings (except commodities in bulk), between points in Andrew and Buchanan Counties, MO, on the one hand, and, on the other, points in the U.S.

MC 102567 (Sub-254TA), filed October 16, 1980. Applicant: McNAIR TRANSPORT, INC., 4295 Meadow Lane, P.O. Drawer 5357, Bossier City, LA 71111. Representative: E. Stephen Heisley, 605 McLachlen Bank Bldg., 666 Eleventh St., N.W., Washington, DC 20001. Transporting *commodities in bulk*, (1) between points in AR, LA, and TX, on the one hand, on the other, points in the U.S., and (2) from points in the U.S. to points in AL, MS, TN, OK, and NM.

MC 106207 (Sub-561TA), filed October 15, 1980. Applicant: FROZEN FOOD EXPRESS, INC., P.O. Box 225888, Dallas, TX 75265. Representative: M. W. Smith (same address as applicant). Transporting *tires, tubes, and wheels*, from points in Shelby County, TN, Adams County, MS, Stephenson County, IL, and Marion County, IN, to points in TX.

MC 117686 (Sub-292TA), filed October 14, 1980. Applicant: HIRSCHBACH MOTOR LINES, INC., 920 W. 21st St., P.O. Box 155, S. Sioux City, NE 68776. Representative: George L. Hirschbach (same address as applicant). Transporting *food or kindred products*, as described in Item 20 of the Standard Transportation Commodity Code Tariff, from points in FL to points in KS, NE, ND, SD, MN, WI, and IA.

MC 120636 (Sub-10TA), filed October 10, 1980. Applicant: BRUNTON STORAGE & VAN CO., INC., Sixth and Locust St., Chatsworth, IL 60921. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St., NW., Washington, DC 20001. Transporting (1) such commodities as are dealt in by manufacturers and distributors of glass containers, and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above, between Streater, IL, Lawrenceburg, IN, Elmira, NY, and Wharton, NJ, on the one hand, and, on the other, points in IL, IA, KY, MI, MN, MO, IN, NJ, NY, NC, OH, PA, TN, and WI.

MC 124117 (Sub-43TA), filed October 16, 1980. Applicant: EARL FREEMAN AND MARIE FREEMAN, d.b.a. MID-TENN EXPRESS, P.O. Box 101, Eagleville, TN 37060. Representative: Roland M. Lowell, 618 United American Bank Bldg., Nashville, TN 37219. Transporting (1) *metal and plastic castings* and *component parts* for fuel dispensing equipment, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between the facilities used by Middle Tennessee Plastics, at Lewisburg, TN, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 136786 (Sub-236F), filed October 15, 1980. Applicant: ROBCO TRANSPORTATION, INC., 4475 N.E. 3rd St., Des Moines, IA 50313. Representative: Stanley C. Olsen, Jr., 7400 Metro Blvd., Suite 411, Edina, MN 55434. Transporting *foodstuffs*, between points in Shelby County, TN, on the one hand, and, on the other, points in the U.S.

MC 138956 (Sub-18F), filed October 15, 1980. Applicant: ERGON TRUCKING, INC., 202 East Pearl St., Jackson, MS 39201. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205. Transporting *liquid caustic soda*, in bulk, from points in Mobile County, AL, to points in Santa Rosa County, FL.

MC 138956 (Sub-19F), filed October 15, 1980. Applicant: ERGON TRUCKING, INC., 202 East Pearl St., Jackson, MS 39201. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205. Transporting *cement and mineral filler*, between points in Orleans Parish, LA, on the one hand, and, on the other, points in AL, FL, MS, and TX.

MC 139006 (Sub-16F), filed October 15, 1980. Applicant: RAPIER SMITH, R.R. 5, Loretto Rd., Bardstown, KY 40004. Representative: Robert H. Kinker, 314 W. Main St., P.O. Box 464, Frankfort, KY 40602. Transporting *alcoholic beverages*, from points in KY, MI, IL, NY, and MO, to Indianapolis, IN.

MC 143356 (Sub-4F), filed October 16, 1980. Applicant: MIRACL MOTOR SERVICE LTD., 1825 N. California Ave., Chicago, IL 60647. Representative: Stanley Phillips, 5527 N. Central Ave., Chicago, IL 60630. Transporting *composition board*, and *materials, equipment, and supplies* used in the manufacture and distribution of composition board, between the facilities of Abitibi-Price Corporation, at or near Toledo, OH, on the one hand, and, on the other, points in IN, IA, IL, and WI.

MC 143956 (Sub-19F), filed October 15, 1980. Applicant: GARDNER TRUCKING CO., INC., P.O. Drawer 493, Walterboro, SC 29488. Representative: Steven W. Gardner, 3574 Piedmont Rd., Atlanta, GA 30305. (1) *Electronic calculators and cash registers*, and (2) *parts* for the commodities in (1) above, between points in the U.S., restricted to traffic originating at or destined to the facilities used by Victor Business Products.

MC 146226 (Sub-6F), filed October 15, 1980. Applicant: J & P TRUCKING CO., INC., P.O. Box 457, Lincolnton, NC 28092. Representative: Dwight L. Koerber, Jr., P.O. Box 1320, 110 N. 2nd St., Clearfield, PA 16830. Transporting (1) *textiles and textile products*, and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), between Lincolnton, NC, and LeMoyne, AL, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 147316 (Sub-1F), filed October 14, 1980. Applicant: CRESTON TRANSPORTATION, INCORPORATED, East Highway 34, Creston, IA 50801. Representative: David L. Charles, 2600 Ruan Center, Des Moines, IA 50309. Transporting *petroleum products* and *liquefied natural gas*, between points in NE, KS, MO, OK and MN, on the one hand, and, on the other, points in IA. Condition: To the extent any certificate issued in this proceeding authorizes the transportation of liquefied natural gas it shall be limited in point of time to a period expiring five (5) years from its date of issuance.

MC 148647 (Sub-4F), filed October 14, 1980. Applicant: HI-CUBE CONTRACT CARRIER CORP., 5501 West 79th St., Burbank, IL 60459. Representative: Arnold L. Burke, 180 North LaSalle St., Chicago, IL 60601. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with Dayco Corporation, of Dayton, OH.

MC 148647 (Sub-5F), filed October 15, 1980. Applicant: HI-CUBE CONTRACT

CARRIER CORP., 5501 W. 79th St., Burbank, IL 60459. Representative: Arnold L. Burke, 180 No. LaSalle St., Chicago, IL 60601. Transporting *malt beverages*, and *materials, equipment, and supplies* used in the manufacture and distribution of malt beverages, between points in the U.S., under continuing contract(s), with Pabst Brewing Company, of Milwaukee, WI.

MC 149546F, filed September 29, 1980. Applicant: D & T TRUCKING CO., INC., 498 First St., N.W., New Brighton, MN 55112. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440. Transporting *meats, meat products, and meat byproducts, and articles distributed by meat-packing houses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), between Minneapolis, MN, on the one hand, and, on the other, points in ND, SD, NE, KS, AR, LA, MO, MN, WI, MI, IA, IL, IN, OH, PA, NY, NJ, CT, VT, NH, ME, MA, MD, TN, AL, GA, FL, NC, SC, VA, DE, WV, WI, KY, MS, and DC.

MC 149577F, filed October 10, 1980. Applicant: O. W. SMITH TRANSPORT, INC., Hwy 71 No., Rt. 1, Box 112, DeQueen, AR 71832. Representative: Thomas B. Staley, 1550 Tower Bldg., Little Rock, AR. 72201. Transporting *such commodities* as are dealt in or used by manufacturers of (a) forest products, (b) lumber and lumber products, (c) paper products, and (d) building materials, (except commodities in bulk, in tank vehicles), between points in the U.S., under continuing contract(s) with the Weyerhaeuser Company.

MC 150147 (Sub-1F), filed October 14, 1980. Applicant: CLYDE YORK AND RONALD YORK, d.b.a. YORK FARMS, R.R. No. 4, Jacksonville, IL 62650. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701. Transporting *fertilizer and anhydrous ammonia*, between points in IL, IN, IA, KY, MO and WI.

MC 150567 (Sub-7F), filed October 14, 1980. Applicant: TRAVIS TRANSPORTATION, INC., 123 Coulter Ave., Ardmore, PA 19003. Representative: William E. Collier, 8916 Tensoro Dr., Suite 515, San Antonio, TX 78217. Transporting (1) *foodstuffs* (except in bulk), and (2) *materials, equipment and supplies* used in the manufacture of foodstuffs (except commodities in bulk), between points in the U.S., under continuing contract(s) with Right Away Foods Corporation at McAllen, TX.

[FR Doc. 80-33371 Filed 10-24-80; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Decision-Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find: Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed on or before November 17, 1980. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices on or before November 26, 1980, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

By the Commission, Review Board Number 5, The Motor Carrier Board, Members Krock, Williams and Taylor.

MC-FC-78679. By decision of July 19, 1980, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 5 approved the transfer to SHAKER MOUNTAIN TRANSPORT, INC., of Burbank, CA, of Permit No. MC-141368 issued February 17, 1977 to BASE TRANSPORTATION, INC., of Montclair, CA, authorizing the transportation of *paint, and paint thinners and solvents* (except in bulk), from the facilities of Perro Paint Co. at Los Angeles, CA, to points in Arizona, Idaho, Nevada, New Mexico, and Utah, under contract with Perro Paint Company. Applicant's representative is: Donald R. Hedrick, P.O. Box 88, Norwalk, CA 90650. Transferee is not a carrier. TA lease is not sought.

MC-FC-78720. By decision of September 26, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132 Review Board Number 5 approved the transfer to K. G. CONSTRUCTION CO., Gillette, Wyoming of Certificate No. MC-112575 issued August 6, 1980 to YOUNG TRUCKING COMPANY, Gillette, Wyoming authorizing common carrier transportation of *machinery, equipment, materials and supplies*, used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by products, not including the stringing or picking up of pipe in connection with pipelines; *machinery, equipment, materials, and supplies*, used in, or in connection with the construction, operation, repair, servicing, maintenance and dismantling of pipelines, including the stringing and picking up of pipe in connection with main or truck pipelines; and *commodities* (not including those specified above), which, because of size or weight, require the use of special equipment, subject to the following conditions: Applicant's representative is: Ward A. White (307) 634-2184, P.O. Box 568, Cheyenne, Wyoming 82001.

MC-FC-78751. By decision of September 19, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 5 approved the transfer to FOE TRUCKING, INC. of Roanoke, VA, of Certificate No. MC-107544 (Sub-No. 82) issued September 26, 1969 to LEMMON TRANSPORT COMPANY, Incorporated of Marion, VA, authorizing the transportation of *asphalt* and *asphalt products*, in bulk, from the plant site and storage facilities of the Shell Oil Company and Asphalt Terminal, Inc., at Bristol, VA, to points in Tennessee, North Carolina, Virginia, and those in Bell, Harlan, Letcher, Knott, Floyd, and Pike Counties, KY, and Raleigh, Wyoming, McDowell, Summers, Mercer, and Monroe Counties, WV, with no transportation for compensation on return except as otherwise authorized. Applicants' representative: Calvin F. Major, Attorney, 200 W. Grace Street, Suite 415, Richmond, VA 23220.

Notes.—(1) TA has not been filed.

MC-FC-78755. By decision of September 24, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132. Review Board Number 5 approved the transfer to JOY M. GEARY, d.b.a. WESTERFELD TOURS, of Dallas, TX, of License No. MC-12761 issued July 14, 1965 to MARY MASSEY McELREE, d.b.a. WESTERFELD TOURS, of Dallas, TX, authorizing a brokerage service at Dallas, TX, as follows: Passengers and their baggage, beginning and ending at Dallas, TX, and extending to points in the U.S., including AK and HI. Applicants' representative is: Merl H. Scheffey, 4209 McKinney Ave., Dallas, TX 75205. Transferee holds no authority.

MC-FC-78759. By decision of September 22, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 5 approved the transfer to GRAY LINE TRANSFER CORPORATION portions of Certificate No. MC-69394 issued November 20, 1956 and No. MC-69394 (Sub-No. 8) issued January 14, 1970 both of which were issued to the GRAY LINE INC., authorizing the transportation, over irregular routes, of (1) *passengers and their baggage* in round to trip or one-way charter operations, with no seasonal restriction, beginning and ending at Boston, MA, and extending to points in Gaine, New Hampshire, Rhode Island, Connecticut, New York, The District of Columbia, and ports of entry on the International Boundary line between the United States and Canada in Vermont and (2) *passengers and their baggage*, restricted to traffic originating at the points indicated in round trip or one-way charter operation, beginning and ending at Boston, MA, and extending to points in Connecticut, New Hampshire, New York, Pennsylvania, Rhode Island and and Vermont. Applicants' representative: Daniel D. Sullivan, 10. S. LaSalle Street, Suite 1600, Chicago, IL 60603.

MC-FC-78762. By decision of September 19. 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. Part 1132 Review Board Number 5 approved the transfer to NEW LEASING, INC., of New Jersey, of Trenton, NJ, of Certificate No. MC-36734 and subs thereunder to FLEMING's EXPRESS, INC., of Plainville, MA, authorizing the transportation of *Flowers, shrubs*, and *greenhouse and plant nursery products*, from Yardley and Morrisville, PA, to New York, NY: From Yardley across the Delaware River, thence over New Jersey Highway 29 to Trenton, NJ, thence over U. S. Highway 1 to New York. From Yardley to Trenton as specified above, thence over New Jersey Highway 27 to Elizabeth, NJ, and thence over U.S. Highway 1 to New York; from Morrisville, PA, across the Delaware River to Trenton, thence to New York as specified above. *Seeds, plant bulbs, florists' supplies*, and *materials, supplies*, and *equipment*, used or useful in the operation of greenhouses and plant nurseries, from New York, NY to Morrisville and Yardley, PA: From New York over the above-specified routes to Morrisville and Yardley. Service is authorized to and from all intermediate points and off-route points in New Jersey within ten miles of the above-specified routes and those in Pennsylvania south of a line extending from Yardley to Doylestown, PA, thence to Hatfield, PA, and east of a line extending from Hatfield to Philadelphia, including the points specified. *General commodities*, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between Philadelphia, PA, and Trenton, NJ, serving no intermediate points: From Philadelphia over U.S. Highway 1 to Trenton, and return over the same route. From Philadelphia across the Delaware River to Camden, NJ, thence over U.S. Highway 130 to Yardsville, NJ, and thence over New Jersey Highway 37 to Trenton, and return over the same route. Irregular routes: *Flowers, shrubs*, and *greenhouse and plant nursery products*, between Madison, NJ, on the one hand, and, on the other Cranbury, NJ, and points in the above-specified Pennsylvania territory. *Seeds, plant bulbs, florists' supplies*, and *materials, supplies* and *equipment* used or useful in the operation of greenhouses and plant nurseries, from New York, NY, and Cranbury, NJ, to Madison, NJ, with no transportation for compensation on return except as otherwise authorized. *Fruits, farm produce, sea food, poultry, groceries*, and *empty containers* therefor, between Philadelphia, PA, on the one hand, and, on the other, Camden, NJ, and New York, NY. In MC-36734 (Sub. No. 3) *Antimony lead, waste and scrap materials, crude rubber, lubricating oil* in containers, and *groceries*, between Boston, MA, on the one hand, and, on the other, Newark, Perth Amboy, Carteret, and Butler, NJ, and points in Connecticut, Massachusetts, Rhode Island, and New York, NY, Commerical Zone, as defined by the Commission. *Oil*, in containers, and *empty oil containers*, between Boston, MA, on the one hand, and, on the other, points in New Hampshire. In MC-36734 (Sub No. 4) *Groceries, packing-house products*, and *dairy products*, from Boston, MA, to Manchester and Nashua, NH, and points in Massachusetts within 60 miles of Boston, with no transportation for compensation on return except as otherwise authorized. Between Boston, MA, on the one hand, and, on the other, Pawtucket and Providence, RI and a portion in MC-26734 (Sub. No. 5) *Such commodities* as are dealt in by retail furniture and department stores when transported on the delivery instructions of such stores, from Boston, MA, to points in Vermont, New Hampshire, Maine, Rhode Island, and Connecticut; and *uncrated new furniture* when transported on the delivery instructions of a retail furniture or department store, from Portland, Maine, to points in Massachusetts, Connecticut, Rhode Island, Vermont, and New Hampshire; and *rejected, returned, or refuse shipments* of the next two above specified commodities, from the next two above-specified destination points to Boston, MA, and Portland, ME. *Refrigerators, refrigerating units, ranges, washing machine, water coolers, water-cooling equipment, electrical applicances, air-conditioning units*, and *display and show materials* pertaining to such commodities, between Boston, MA, and points within 25 miles of Boston, on the one hand, and, on the other, points in Connecticut, Maine, Massachusetts, Rhode Island, and Vermont. *Commodities specified immediately above*, or *materials pertaining thereto* when solely for display and show purposes, between Boston, MA, and points within 25 miles of Boston, on the one hand, and, on the other, points in New Hampshire. *New furniture*, crated and uncrated, other than new furniture included in household goods description as defined by the Commission, from Boston, MA, to points in Massachusetts and New Hampshire, with no transportation for compensation on return except as otherwise authorized. *New furniture*, between Nashua, NH, and Boston, MA, and points within five miles of Boston, on the one hand, and, on the other, Baltimore, MD, Washington, DC, Richmond, VA, points in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, Rhode Island, and Vermont those in Pennsylvania within 25 miles of Philadelphia, PA, including Philadelphia, and those in New York within 20 miles

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of New York, NY, including New York, NY. *General commodities,* except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between Boston, MA, on the one hand, and, on the other, points in Massachusetts within 25 miles of Boston. Application for TA has not yet been filed. Transferee presently holds no authority from the Commission. Applicant's representative is: Andrew C. Schultz, Attorney, One State Street, Boston, MA 02109.

MC–FC–76763. By decision of September 17, 1980, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 5 approved the transfer to RAMON R. BIONE, of Christopher, IL, of Certificate MC–1445, issued to ANGELO BIONE, d.b.a. BIONE TRUCK SERVICE, of Christopher, IL, authorizing the transportation of *drugs* and *such drug store supplies as ice cream, magazines, newspapers,* and *small machinery parts,* between St. Louis, MO, and Christopher, IL, as follows: From St. Louis across the Mississippi River to East St. Louis, IL, thence over Illinois Highway 15 to Mt. Vernon, IL, thence over Illinois Highway 37 to Marion, IL, thence over Illinois Highway 13 to Harrisburg, IL, thence over U.S. Highway 45 to Eldorado, IL thence over country road to Raleigh, IL thence over Illinois Highway 143 to Benton, IL, and thence over Illinois Highway 14 to Christopher. All intermediate points; and from Christopher over Illinois Highway 14 to junction U.S. Highway 51, thence over U.S. Highway 51 to Du Quoin, IL, thence over Illinois Highway 152 to junction Illinois Highway 13, thence over Illinois Highway 13 to East St. Louis, IL, and thence across the Mississippi River to St. Louis. Between Ashley, IL and Merrin, IL, as follows: From Ashley over U.S. Highway 51 to junction Illinois Highway 14, thence over Illinois Highway 14 to junction Illinois Highway 148, thence over Illinois Highway 148 to junction Illinois Highway 149, thence over Illinois Highway 149 to junction unmarked highway, thence over unmarked highways via Carterville and Colp, IL, to Herrin. All intermediate points; and from Herrin over Illinois Highway 148 to Christopher, IL, thence over Illinois Highway 14 to junction U.S. Highway 51, and thence over U.S. Highway 51 to Ashley. Applicant's representative is Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. TA application has not been filed. Transferee holds no authority.

MC–FC–78768. By decision of September 19, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. Part 1132 Review Board Number 5 approved the transfer to MARIANNA COACH LINES INC., of Paducah, KY, of Certificate Nos. MC–116248 and MC–116248 (Sub. No. 10) issued July 10, 1974, and June 9, 1977, respectively, to TRI-STATE BUS LINES, INC., of Paducah, KY, authorizing the transportation in MC–116248 of *Passengers and their baggage,* and *newspapers,* in the same vehicle with passengers, between Popular Bluff, MO, and Willow Springs, MO, serving all intermediate points: From Popular Bluff over U.S. Highway 60 to Willow Springs, and return over the same route. Restriction: The operations authorized above are subject to such further limitations, restrictions, or modifications as the Commission may hereafter find it necessary to impose in order to insure that the service shall not unduly restrain competition. *Passengers and their baggage,* and *express and newspapers,* in the same vehicle with passengers, between Popular Bluff, MO, and Cairo, IL, serving all intermediate points: From Popular Bluff over U.S. Highway 60 to Cairo, and return over the same route. Between Cairo, IL, and Wickliffe, KY, serving all intermediate points: From Cairo over U.S. Highway 62 to Wickliffe, and return over the same route. Between Wickliffe, KY, and Paducah, KY, serving all intermediate points: From Wickliffe over U.S. Highway 60 to Paducah, and return over the same route. In *MC–116248 Sub-10 Passengers and their baggage* and *express and newspapers,* in the same vehicle with passengers: Between Paducah and Louisville, KY, serving all intermediate points; from Paducah over U.S. Highway 62 to its junction with Interstate Highway 65, thence over Interstate Highway 65 to Louisville and return over the same route. Restriction: The authority granted herein above is restricted against service between Elizabethtown and Louisville. Between St. Charles and Nortonville, KY, serving all intermediate points: From St. Charles over Kentucky Highway 112 to its junction with Alternate U.S. Highway 41, thence over Alternate U.S. Highway 41 to Nortonville, and return over the same route. Between Madisonville, and Nortonville, KY, serving all intermediate points: From Madisonville over Alternate U.S. Highway 41, to Nortonville, and return over the same route. Irregular routes: *Passengers and their baggage,* in charter operations, beginning and ending at Viola, Paducah, and Princeton, KY, and extending to points in the United States, except those in Kentucky, Alaska, and Hawaii. Applicant's representative is: George M. Catlett, Attorney at Law, Suite 708—McClure Building, Frankfort, KY 40601. Application for TA has been filed. Transferee presently holds no authority from the Commission.

MC–FC–78773. By decision of September 23, 1980, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. Part 1132 The Motor Carrier Board approved the transfer to WESTERN TURF EXPRESS INC. of certificate No. MC–129156 (Sub-No. 1) issued April 7, 1975 to GIDDI-UP-GO HORSE TRANSPORTATION, INC. authorizing the transportation of *horses, other than ordinary, mascots, personal effects of attendants, trainers, and exhibitors,* and *supplies and equpment used in the care and exhibition of such animals* between points in Arizona, Arkansas, California, Illinois, Kentucky, Louisiana, Michigan, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Texas, Utah, and Washington. Applicant's representative is: Earl Brown, 1316 Southwest 16th, Renton, WA 98055. TA application has not been filed.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80–33372 Filed 10–24–80; 8:45 am]

BILLING CODE 7035–01–M

[Section 5b Application No. 2[1]]

Western Railroads; Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of postponement of compliance date, and request for additional comments.

SUMMARY: The November 1, 1980 compliance date in this proceeding is post-poned to January 15, 1981. The interim approval of the proposed rate bureau agreements, entered October 26, 1976, in Ex Parte No. 297 (Sub-No. 1), is also extended to this date. The Commission requests comments regarding the new statutory provisions governing rate bureaus contained in the Staggers Rail Act of 1980, as they may affect the issues in this proceeding.

DATES: Comments should be filed on or before November 26, 1980.

ADDRESSES: An original and 15 copies, if possible, of any comments should be sent to: Room 5340, Interstate Commerce Commission, Washington, D.C. 20423.

[1] This proceeding also embraces Section 5b Application No. 3, Eastern Railroads—Agreement, and Section 5b Application No. 6, Southern Railroads—Agreement.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder or Jane F. Mackall, (202) 275–7656.

SUPPLEMENTARY INFORMATION: In a decision served August 13, 1980, 364 I.C.C. 1, the Commission ordered the interim approval of these rate bureau agreements terminated October 14, 1980, or upon the filing by the railroads of amended agreements. The proceeding was held open for a period of 45 days to allow parties to file comments on: (1) the definitions of "practicably participate", and "broad tariff changes; (2) the proposal to prohibit the docketing of independent rate actions, and (3) the findings with respect to general rate increases (or decreases) and broad tariff changes. On September 26, 1980, the October 14, 1980 compliance date was extended to November 1, 1980.

After these decisions were made, the Staggers Rail Act of 1980 was enacted. Our final decision in this case must be consistent with the new law. Therefore, comments are invited concerning the need for any changes in our decision required by the new law.

Interim antitrust immunity for current agreements is extended until January 15, 1981. The November 1, 1980 compliance date in this proceeding is postponed to January 15, 1981.

By separate notice, we are scheduling oral argument to be held December 11, 1980.

This action does not affect the quality of the human environment or the conservation of energy resources.

(49 U.S.C. 10706)

Decided: October 17, 1980.

By the Commission, Darius W. Gaskins, Jr., Chairman.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80–33279 Filed 10–24–80; 8:45 am]

BILLING CODED 7035–01–M

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register.** One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F–67

The following applications were filed in region 1. Send protests to: Interstate Commerce Commission, Regional Authority Center, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 28536 (Sub-1–1TA), filed September 23, 1980. Applicant: FOX & GINN, INC., 207 Perry Road, Bangor, ME 04401. Representative: Elliot Bunce, Suite 1301, 1600 Wison Blvd., Arlington, VA 22209. *Common carrier:* regular route: *General commodities (except those of unusual value, classes A & B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* (1) between Milford, ME, and the International Boundary line between the US and CD near Fort Kent, ME, from Milford over US Hwy 2 to junction US Hwy 1 to the International Boundary line, and return over the same route, serving all intermediate points; (2) between junction US Hwy 2 and Maine Hwy 157 and junction Maine Hwy 11 and US Hwy 1, near Fort Kent, ME from junction US Hwy 2 and Maine Hwy 157 over Maine Hwy 157 to junction Maine Hwy 11, and then over Maine Hwy 11 to junction US Hwy 1, and return over the same route, serving all intermediate points; (3) between Houlton, ME, and the International Boundary line between the US and CD, over US Hwy 2, serving all intermeditate points; (4) between Mars Hill, ME, and the International Boundary line between the US and CD, near Fort Fairfield, ME, from Mars Hill over US Hwy 1A to Fort Fairfield, and then over Maine Hwy 167 to the International Boundary line, and return over the same route, serving all intermediate points; (5) between junction US Hwy 1A and unnumbered highway approximately 5 miles north of Mars Hill, ME, and the International Boundary line between the US and CD, over unnumbered highway, serving all intermediate points; (6) between Presque Isle and Fort Fairfield, ME, over Maine Hwy 167, serving all intermediate points; (7) between Caribou and Fort Fairfield, ME, over US Hwy 1A, serving all intermediate points; (8) between Caribou, ME, and the International Boundary line between the US and CD, near Limestone, ME, from Caribou over Maine Hwy 89 to junction Maine Hwy 229, and then over Maine Hwy 229 to the International Boundary line, and return over the same route, serving all intermediate points; (9) between Van Buren, ME, and the International Boundary line between the US and CD near Van Buren, over unnumbered highway, serving all intermediate points; and (10) between Madawaska, ME, and the International Boundary line between the US and CD near Madawaska, over unnumbered highway, serving all intermediate points. Authority is requested at all other points in Aroostook County, ME, and Millinockett, East Millinockett, Medway, Orrington, and Bucksport, ME, as off-route points in connection with the above-described routes. Authority is requested to serve all points. Supporting shippers: There are 55 statements in support of this application which may be examined at the I.C.C. Regional Office in Boston, MA.

MC 123063 (Sub-1–1TA), filed October 14, 1980. Applicant: KIRBERY TRANSPORTATION, INC., 425 Main Street, Woodbridge, NJ 07095. Representative: Michael R. Werner, 167 Fairfield Road, P.O. Box 1409, Fairfield, NJ 07006. *Water base asphalt emulsion products,* from Clark, NJ to Rockland, MA and their respective commercial zones. Supporting shipper: Karnak Chemical Co., 330 Central Ave., Clark, NJ 07066.

MC 134806 (Sub-1–7TA), filed October 14, 1980. Applicant: B-D-R TRANSPORT, INC., P.O. Box 1277, Vernon Drive, Brattleboro, VT 05301. Representative: Francis J. Ortman, 7101 Wisconsin Avenue, Suite 605, Washington, D.C. 20014. *Contract carrier:* irregular routes. *cast iron wood-burning stoves,* from Bethel, VT to Sparks, NV. Supporting shipper: Vermont Castins, Inc., Prince Street, Randolph, VT 05060.

MC 113843 (Sub-1–16TA), filed October 14, 1980. Applicant:

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REFRIGERATED FOOD EXPRESS, INC., 316 Summer Street, 5th Floor, Boston, MA 02210. Representative: Lawrence T. Sheils, 316 Summer Street, 5th FLoor, Boston, MA 02210. *(1) Such commodities as are dealt in by grocery and food business houses, and empty containers (except commodities in bulk) and (2) materials, supplies and equipment used in the manufacture and distribution of commodities in (1) above (except commodites in bulk)* between points in CT, DE, IL, IN, KY, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, VT, VA, WV, WI, and DC. Supporting shipper(s): There are statements from twenty-nine supporting shippers attached to this application which may be examined at the ICC Regional Office in Boston, MA.

MC 124328 (Sub-1–7TA), filed October 15, 1980. Applicant: BRINK'S INCORPORATED, Thorndal Circle, Darien, CT 06820. Representative: Richard H. Streeter, Wheeler & Wheeler, 1729 H Street, NW., Washington, DC 20006. *Contract carrier:* irregular routes: *Silver and gold bullion and sweeps* from Jackson, OH to all points in the continental U.S. under continuing contract with Jackson Precious Metals, Inc., 305 Water St., Jackson, OH 45640.

MC 151211 (Sub-1–2TA), filed October 15, 1980: Applicant: TABLOID SHIPPERS, INC., 1101 Tonnele Avenue, North Bergen, NJ 07047. Representative: William J. Augello, Esq., Augello, Pezold & Hirschmann, P.C., 120 Main Street, P.O. Box Z, Huntington, NY 11743. *Contract carrier:* irregular routes: *Printed matter* from Spartanburg, SC to Warsaw, IN. Supporting shipper: R. R. Donnelly & Sons Co., 2223 So. Martin Luther King Drive, Chicago, IL 60616.

MC 152189 (Sub-1–1TA), filed October 14, 1980. Applicant: GARY LEE EDWARDS, d.b.a., EDWARDS TRUCKING COMPANY, 145 Bellevue Avenue, Rutland, VT 05701. Representative: James M. Burns, 1383 Main Street, Suite 413, Springfield, MA 01103. Contract carrier: irregular routes: Building materials and equipment, materials and supplies used in the manufacture, sale and distribution of such commodities, between points in Rutland County, VT, and points in the contiguous 48 states, under a continuing contract(s) with STO Energy Conservation, Inc., Rutland, VT 05701. Supporting shipper: STO Energy Conservation, Inc., Rutland, VT 05701.

MC 11504 (Sub-1–1TA), filed October 15, 1980. Applicant: STARR TRANSIT CO., INC., 2531 E. State Street, Trenton, NJ 08619. Representative: Alan R. Squires, Esq., Steinberg, Greenstein, Gorelick & Price, 818 Widener Building, 1339 Chestnut Street, Philadelphia, PA 19107. *Common carrier:* regular routes: (A) *Passengers and their baggage in the same vehicle with passengers* over regular routes between Levittown, PA and Atlantic City, NJ, serving all intermediate points, beginning in Levittown, PA on the corner of Olds Boulevard and Queene Anne Drive to Oxford Valley Road north to Route 1 south to the intersection of Route 95, south to Route 132, west to the intersection of Hulmeville Road and Route 132 in Bensalem, PA; thence, reversing on Route 132 going south to Route 95, south to the Walt Whitman Bridge to the Atlantic City Expressway to Atlantic City, NJ, and return over the same route; (B) *Passengers and their baggage in the same vehicle with passengers* between Richboro, PA, and Atlantic City, NJ, serving all intermediate points, beginning in Richboro, PA on Route 532, thence south on Route 532 to the intersection of Route 132 and Route 532 in Feasterville, PA; thence south on Route 132 to the intersection of Route 132 and Hulmeville Road in Bensalem; thence, south on Route 132 to Route 95 south to the Walt Whitman Bridge to the Atlantic City Expressway to Atlantic City, NJ, and return over the same route. This application is supported by 36 witnesses whose affidavits can be reviewed at the Regional Office of the ICC in Boston, MA.

MC 152163 (Sub-1–1TA), filed October 15, 1980. Applicant: DARTMOUTH CONTRACT CARRIERS, INC., 438 Dartmouth Street, New Bedford, MA 02742. Representative: Thomas N. Willess, 1000 Sixteenth Street, NW., Suite 502, Solar Building, Washington, DC 20036. *Contract carrier:* irregular routes: *Such commodities as are dealt in or used by manufacturers of paint, chemicals, and related articles,* between the facilities of The Sherwin Williams Company located in Essex County, NJ, on the one hand, and, on the other, Woburn, Medford, and Somerville, MA, and Portland and Scarborough, ME, under continuing contract(s) with The Sherwin Williams Company, P.O. Box 6875, Cleveland, OH 44101. Supporting shipper: The Sherwin Williams Company, P.O. Box 6875, Cleveland, OH 44101.

MC 152162 (Sub-1–1TA), filed October 10, 1980. Applicant: MANHATTAN COACH LINES, Route 46, Elmwood Park, NJ 07407. Representative: Robert E. Goldstein, 370 Lexington Avenue, New York, NY 10017. *Contract carrier:* irregular routes: *Passengers and their baggage, in the same vehicle with passengers, in charter operations,* between points in the US under continuing contract with Consolidated Terminal & Travel Bureau, Inc. Supporting shipper: Consolidated Terminal & Travel Bureau, Inc., 46 W. 43rd St., New York, NY 10036.

MC 152174 (Sub-1–1TA), filed October 15, 1980. Applicant: IBI SECURITY SERVICE, INC., 29–19 39th Avenue, Long Island City, NY 11101. Representative: Bruce J. Robbins, Esq., Robbins & Newman, P.C., 118–21 Queens Boulevard, Forest Hills, NY 11375. *Contract carrier:* irregular routes: *Coin, currency and negotiable securities,* between the New York, NY Commercial Zone, on the one hand, and, on the other, points in the States of CT and NJ. Supporting shipper: Consumers Distributing Co., Ltd., 205 Campus Plaza, Edison, NJ 08817.

MC 143127 (Sub-1–25TA), filed October 14, 1980. Applicant: K. J. TRANSPORTATION, INC., 6070 Collett Road, Victor, NY 14564. Representative: Linda A. Calvo, 6070 Collett Road, Victor, NY 14564. *Such commodities as are dealt in or used by retail and variety department stores (except foodstuffs and commodities in bulk),* between MI and NY, on the one hand, and, on the other, points in the US. Supporting shipper: Naums Catalog Sales, 2373 W. Ridge Road, Rochester, NY 14626.

MC 152191 (Sub-1–1TA), filed October 14, 1980. Applicant: ELIZABETH FREIGHT FORWARDING CORP., 120 South 20th Street, Irvington, NJ 07111. Representative: Edward F. Bowes, Esq., 167 Fairfield Road, P.O. Box 1409, Fairfield, NJ 07006. *Contract carrier:* irregular routes: *Bakery products,* from Weymouth, MA to points in NJ, NY, RI, CT and MD. SUPPORTING SHIPPER: S. B. Thomas, Inc. 930 North Riverview Drive, Totowa, NJ 07511.

MC 134806 (Sub-1–8TA), filed October 14, 1980. Applicant: B-D-R TRANSPORT, INC., P.O. Box 1277, Vernon Drive, Brattleboro, VT 05301.Representative: Francis J. Ortman, 7101 Wisconsin Avenue, Suite 605, Washington, DC 20014 *Contract carrier:* irregular routes: *Boot and shoe parts and materials,* from Windsor, VT to Denver, CO, Salt Lake City, UT, Reno, NV, Seattle, WA, Portland and Eugene, OR, and points in CA. Supporting shipper: The Goodyear Tire and Rubber Company, 1144 E. Market Street, Akron, OH 44316.

MC 151893 (Sub-1–1TA), filed October 14, 1980. Applicant: B & Q DISTRIBUTION SERVICE, INC., R.D. #4 Baldwinsville, NY 13027. Representative: C. Andrew Pappas, Ali, Pappas, & Cox, P.C., Gridley Building, Syracuse, NY 13200. *Such commodities thot are dealt in by grocery and food business houses (except commodities in bulk) in vehicles equipped with mechanical refrigeration devices,* between points in the NY State counties of Broome, Cayuga, Chemung, Chenango, Cortland, Jefferson, Madison, Oneida, Onondaga, Ontario, Oswego, Seneca, Tioga, Thompkins, Wayne, and all points in PA. Supporting shippers: There are 5 statements in support attached to this application which may be examined at the ICC Regional Office in Boston, MA

MC 58852 (Sub-1–2TA), filed October 10, 1980. Applicant: SALEM MOTOR TRANS. INC., 121 Webster Avenue, Chelsea, MA 02150. Representative: Wesley S. Chused, 15 Court Square, Boston, MA 02108. *General commodities (except Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment),* between points in the Boston, MA Commerical Zone, on the one hand, and, on the other, points in NH. Supporting shipper: Wilmington Warehousing Corp., 121 Webster Avenue, Chelsea, MA 02150.

MC 152120 (Sub-1–2TA), filed October 14, 1980. Applicant: CLEAN HARBORS, INC. 436 West Street, West Bridgewater, MA 02379. Representative: Alan S. McKim, 436 West Street, West Bridgewater, MA 02379. *Hazardous waste, in bulk and in drums,* between states east of the Mississipi River. Supporting shipper: Interex Corporation, 3 Strathmore Road, Natick, MA 01760.

MC 150987 (Sub-1–3TA), filed October 14, 1980. Applicant: DOWN EAST TRUCKING, INC., MRC 156, Bangor, ME 04401. Representative: Chester A. Zyblut, 366 Executive Building, 1030 Fifteenth St. NW., Washington, DC 20005. *Building supplies and materials (except commodities in bulk),* from points in PA, NJ, MD, DE, MA, NY, IL, and OH to points in ME. Supporting shipper(s): Bangor Roofing, Bangor, ME 04401; J. K. Sales, Inc., New Lewiston Road, Topsham, ME 04086; Gagne & Sone, Route 27, Belgrade, ME 04917.

MC 117676 (Sub-1–2TA), filed October 14, 1980. Applicant: HERMS TRUCKING, INC., 620 Pear Street, Trenton, NJ 08648. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. *Plastic and plastic products, and materials, equipment and supplies used in the manufacture and distribution of the foregoing commodities (except in bulk),* from the facilities of Cosden Oil & Chemical Company, in NJ, to Atlanta, GA, Middlefield, OH, and points in FL. Supporting shipper: Cosden Oil & Chemical Company, P.O. Box 410, Dallas, TX 75221.

MC 3753 (Sub-1–4TA), filed October 15, 1980. Applicant: AAA TRUCKING CORP., 3630 Quaker Bridge Road, P.O. Box 8042, Trenton, NJ 08650. Representative: Zoe Ann Pace, Esq., Zelby, Burstein, Hartman & Burstein, Suite 2373, One World Trade Center, New York, NY 10048. *Common carrier:* regular route: *General commodities, (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment),* between Hagerstown, MD and Martinsburg, WV serving all intermediate points and off route points located in Berkley, Jefferson and Morgan Counties, WV, from Hagerstown, MD to Martinsburg, WV over Interstate Hwy 81 and return over the same route. Supporting shipper(s): There are 57 statements in support attached to this application which may be examined at the ICC Regional Office in Boston, MA.

MC 150447 (Sub-1–3TA), filed October 14, 1980. Applicant: GSC TRANSPORT, INC., 1050 State Street, Perth Amboy, NJ 08861. Representative: John L. Alfano, Esq., Alfano & Alfano, P.C., 550 Mamaroneck Avenue, Harrison, NY 10528. *Contract carrier:* irregular routes: *Containers, contoiner closures, glassware, packaging products, container components and scrap materials and material, equipment, and supplies used in the manufacture, sale, and distribution of the foregoing commodities (except commodities in bulk, in tank vehicles, and those which because of size and weight require the use of speciol equipment),* between New Orleans, LA, Boston, MA, Baltimore, MD, New York, NY, and points in PA, on the one hand, and, on the other, points in CT, IL, IN, KY, MD, MA, MI, NJ, NY, OH, PA, VA, and WV, under continuing contract(s) with Owen-Illinois, Inc. of Toledo, OH. Supporting shipper: Owens-Illinois, Inc., P.O. Box 1035, Toledo, OH 43666.

MC 150451 (Sub-1–3TA), filed October 14, 1980. Applicant: G & L TRANSPORT, Route 9, Troy, ME 04987. Representative: George Cole, Route 9, Troy, ME 04987. *Contract carrier:* irregular routes: *Tonning materials, animal skins and parts thereof,* from points in ND, SD, WY, CO, NE, KS, OK, TX, MD, IA, MO, AR, LA, WI, MI, IL, IN, MS, KY, TN, AL, OH, GA, FL, SC, NC, VA, WV, MD, DE, NJ, PA, NY, CT, RI, MA, VT, NH, to Hartland ME, under a continuing contract(s) with Irving Tanning Company of Hartland, ME. Supporting shipper: Irving Tanning Co., Hartland, ME 04943.

MC 99569 (Sub-1–1TA), filed October 14, 1980. Applicant: STOTT & DAVIS MOTOR EXPRESS, INC., 18 Garfield Street, Auburn, NY 13021. Representative: Michael R. Werner, Esq., P.O. Box 1409, 167 Fairfield Road, Fairfield, NJ 07006. *General commodities (except classes A & B explosives and household goods as defined by the Commission)* between points in Erie, Niagara, Genesee, Orleans, Monroe, Ontario, Wayne, Seneca, Oswego, Jefferson, St. Lawrence, Franklin, Lewis, Madison, Oneida, Cayuga and Onondaga Counties, NY. Supporting shippers: There are 34 statements in support of this application which may be examined at the ICC Regional Office in Boston, MA.

MC 152196 (Sub-1–1TA), filed October 14, 1980. Applicant: M.G.A. LEASING & TRUCKING CORP., P.O. Box CC, Port Richmond, S.I. NY 10303. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Contract carrier:* irregular routes: *Candy and confectionery, and materials and supplies used in the manufacturing, sales and distribution thereof, (except in bulk)* from New York, NY, Commercial Zone to points in the US, (except AK and HI). Supporting shipper: Leader Candy Company, 132 Harrison Place, Brooklyn, NY 11237.

MC 228 (Sub-1–1TA), filed October 7, 1980. Applicant: HUDSON TRANSIT LINES, INC., 17 Franklin Turnpike, Mahway, NJ 10021. Representative: Samuel B. Zinder, P.C., 98 Cutter Mill Road, Great Neck, NY 11020. *Common carrier:* regular routes: *Passengers and their baggage and express and newspapers, in the same vehicle with passengers,* between New York, NY and Freeport, NY from New York, NY over NY Hwy 27 to junction Main Street in Freeport, NY, thence over Main Street, Federal Plaza West, to NY Hwy 27 and return over the same route serving all intermediate points, between Hempstead, NY and Freeport, NY from junction Clinton Street and Fulton Street in Hempstead, NY over Clinton Street to junction Henry Street, thence over Henry Street to junction Greenwich Street, thence over Main Street to Sunrise Hwy in Freeport and return over the same route serving all intermediate points. Applicant requests tacking with existing authorities at New York, NY. Supporting shippers: Monroe, NY Bus Terminal, 9 Mill Pond Parkway, Monroe, NY; Suffem, NY Bus Terminal, 40 Lafayette Ave., Suffem, NY; Newburgh, NY Bus Terminal, 351 Broadway, Newburgh, NY.

MC 3753 (Sub-1–5TA), filed October 15, 1980. Applicant: AAA TRUCKING

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CORP., 3630 Quaker Bridge Road, P.O. Box 8042, Trenton, NJ 08650. Representative: Zoe Ann Pace, Esq., Zelby, Burstein, Hartmen & Burstein, Suite 2373, One World Trade Center, New York, NY 10048. *Common carrier:* regular route: *General commodities except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment,* between Hagerstown, MD and Winchester, VA serving all intermediate points and the off-route points located in Clarke, Frederick and Warren Counties, VA. From Hagerstown, MD to Winchester, VA over Interstate Hwy 81 and return over the same route. Supporting shipper(s): There are 69 statements in support attached to this application which may be examined at the ICC Regional Office in Boston, MA.

MC 138510 (Sub-1–3TA), filed October 15, 1980. Applicant: RICCI TRANS. CO., INC., Odessa Ave. and Aloe St., Pomona, NJ 08240. Representative: Joseph A. Keating, Jr., 121 S. Main Street, Taylor, PA 18517. *Contract carrier:* irregular routes: *Malt beverages, in containers,* from Albany, GA to Pleasantville and Wildwood, NJ. Supporting shipper: South Jersey Distributors Co., Inc., Canal Dr. and Delilah Rd., Pleasantville, NJ 08232.

MC 129995 (Sub-1–1TA), filed October 9, 1980. Applicant: CONSOLIDATED TRUCK SERVICE, INC., One Scout Avenue, S. Kearny, NJ 07032. Representative: Janis Pulton, One Scout Avenue, S. Kearny, NJ 07032. *Contract carrier:* irregular routes: *Equipment or raw material used in the manufacture of small electric kitchen appliances and small electric kitchen appliances,* between points in NY, NJ, CT, and PA under a continuing contract with Van Wyck International, Inc. Supporting shipper: Van Wyck International, Inc., 49 Windsor Avenue, Minneola, NY 11501.

MC 127905 (Sub-1–1TA), filed October 14, 1980. Applicant: LYNN H. SCOTT, 8532 Blossvale Road, Blossvale, NY 13308. Representative: John D. Shannon, John A. Shannon & Son, Accountants, 326 Stone Street, Oneida, NY 13421. *Copper wire on reels or spools, copper rod, copper scrape in bales, drums, or bulk, empty reels, or rejects, and other copper products* from all points in the counties of Oneida, Oswego, Onondaga, and Cayuga, NY on the one hand, and, on the other, all points in the US, except AK and HI; from all points in the US, except AK and HI, to the counties of Oneida, Oswego, Onondaga, and Cayuga, NY. Supporting shipper: Omega Wire, Inc.; Williamstown, NY 13493; Laribee Wire Manufactuing Co., Inc., 29 Harden Boulevard, Camden, NY 13316; Camden Wire Co., Camden, NY 13316.

MC 22425 (Sub-1–2TA), filed October 8, 1980. Applicant: MALFIN EXPRESS, INC., d.b.a. LOVEJOY'S EXPRESS, INC., 155 Lenox Street, Norwood, MA 02062. Representative: Robert G. Parks, 20 Walnut Street, Suite 101, Wellesley Hills, MA 02181. *(1) Fabric piece goods, adhesives, cleaning compounds, synthetic fibers and tricot,* and *(2) equipment, material and supplies* used in the manufacture, processing and distribution of the commodities named in (1), above, between points in MA, on the one hand, and, on the other, points in the US. Supporting shipper: American London of New England, 930 Washington Street, Norwood, MA 02062.

MC 87451 (Sub-1–3TA), filed October 14, 1980. Applicant: CARGO TRANSPORT, INC., 100 Garfield Avenue, P.O. Box 268, Somerville, MA 02143. Representative: William F. Mix, 153 Grove Street, Lexington, MA 02173. *Meats, meat products, meat by-products, and articles distributed by meat-packing houses as described in Sections A & C of Appendix 1 to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 & 766 (except hides and commodities in bulk),* between points in the US in and East of the States of ND, SD, NE, CO, OK, and TX. Supporting shipper: Colonial Provisions Co., Inc., 1100 Mass. Ave., Roxbury, MA 02119.

MC 90373 (Sub-1–1TA), filed October 10, 1980. Applicant: R L S TRUCKING CORPORATION, Inman Avenue, Ivenel, NJ 07001. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Contract carrier:* irregular routes: *Asphalt in bulk in tank vehicles* from Linden, Kearny, and Petty's Island, NJ to points in CT, and parts of NY on and south of US Hwy 20 and on east of US Hwy 11, and that part of PA on and east of US Hwy 15, under a continuing contract with West Bank Oil, Inc., P.O. Box 638, Pennsauken, NJ 08110. Supporting shipper: West Bank Oil, Inc., P.O. Box 638, Pennsauken, NJ 08110.

MC 134349 (Sub-1–3TA), filed October 8, 1980. Applicant: B.L.T. CORPORATION, 405 Third Avenue, Brooklyn, NY 11215. Representative: Eugene M. Malkin, Suite 1832, Two World Trade Center, New York, NY 10048. *Contract carrier:* irregular routes: *Point drying catalysts; toxic and or corrosive pesticides and fungicides; paint additives; ketoximes; and mercury, cobalt and lead compounds (except in bulk),* from Newark, NJ, to points in the US (except AK, FL, GA, HI, LA, MS, NC, TN, TX and VA) under a continuing contract(s) with Troy Chemical Corporation of Newark, NJ. Supporting shipper: Troy Chemical Corporation, One Avenue L, Newark, NJ 07105.

MC 133841 (Sub-1–7TA), filed October 15, 1980. Applicant: DAN BARCLAY, INC., 362 Main Street, P.O. Box 428, Lincoln Park, NJ 07035. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *(1) Machinery and machinery parts; and (2) Materials, equipment, and supplies used in the manufacture, sale, and distribution of the commodities named in (1) above (except commodities in bulk in tank vehicles),* between Bridgeport, CT, on the one hand, and, on the other, Los Angeles, CA; Lafayette and Muncie, IN; Waterloo, IA; Shreveport, LA; North Berwick, ME; Hagerstown, MD; Everett and Lynn, MA; Portsmouth, NH; Akron, Dayton, Evansdale, and Toledo, OH; Allentown, PA; Cameron and Ironton, TX; LaCrosse and Racine, WI; and the piers in the New York, NY harbor. Supporting shipper: The Bullard Co., 286 Caufield Ave., Bridgeport, CT 06609.

THE FOLLOWING APPLICATIONS WERE FILED IN REGION 2. SEND PROTEST TO: ICC, FEDERAL RESERVE BANK BLDG., 101 N. 7TH ST., ROOM 620, PHILADEPHIA, PA 19106.

MC 115703 (Sub-II–7TA), filed October 9, 1980. Applicant: KREITZ MOTOR EXPRESS, INC., P.O. Box 6331, Wyomissing, PA 19610. Representative: Bernard L. Quaglia (same as applicant). *Contractor's equipment, heavy and bulky articles, machinery and machine parts, and articles requiring special handling or rigging,* between points in Cuyahoga and Seneca Counties, OH on the one hand, and, on the other, points in the U.S. (except AK and HI) for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): National Machinery Company, Greenfield St., Tiffin, OH 44883; Industrial Applications International, Inc., 32915 Aurora Rd., Solon, OH 44139; George R. Hall, Inc., 24400 Sperry Dr., Westlake, OH 44145; Boehm & Klein Packaging, 10750 Berea Rd., Cleveland, OH 44102; Domestic & International Transportation Services, 1944 Scranton Rd., Cleveland, OH 44113.

MC 150432 (Sub-II–6TA), filed October 9, 1980. Applicant: H & M TRANSPORTATION, INC., U.S. 42 and 70, London, OH 43140. Representative: Owen B. Katzman, 1828 L Street, N.W., Suite 1111, Washington, DC 20036. Contract—irregular: *Steel Strapping,* from Columbus, OH, to points in the US (except AK and HI), under a continuing contract with Samuel Strapping Systems, Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Samuel Strapping Systems, Inc., 3900 Groves Road, Columbus, OH 43227.

MC 143394 (Sub-II–14TA), filed October 7, 1980. Applicant: GENIE TRUCKING LINE, INC., 70 Carlisle Springs Rd., P.O. Box 840, Carlisle, PA 17013. Representative: G. Kenneth Bishop, (same address as applicant). Contract: Irregular: *Foodstuffs, Health and Beauty Aids, Cleaning Compounds, Kitchen Gadgets, Dog and Cat Food, Beverages (except alcoholic beverages), Plastic and Paper Products and Light Bulbs and Equipment and Supplies* used in the preservation, display and storage of the above listed commodities *and Meat and Meat Products.* Between points in the US under continuing contract(s) with Autry Greer and Sons, Inc., Mobile, AL, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Autry Greer & Sons, Inc., W. Main at Greer Avenue, P.O. Box 13190, Mobile, AL 36613.

MC 152133 (Sub-II–1TA), filed October 9, 1980. Applicant: THE JOHN R. TRUCKING CO., INC., 321 E. Wyoming Ave., Lockland, OH 45219. Representative: Michael Spurlock, 275 E. State St., Columbus, OH 43215. *Roofing materials, including asphalt and asphalt products* (except in bulk, between Cincinnati, OH, and its commercial zone, on the one hand, and, on the other, points in KY and IN, for 270 days. Supporting shipper(s): Koch Asphalt Co., P.O. Box 2256, Wichita, KS 67201.

MC 142703 (Sub-II–5TA), filed October 9, 1980. Applicant: INTERMODAL TRANSPORTATION SERVICES, INC., 750 W. Third St., Cincinnati, OH 45203. Representative: Robert E. Tucker, (same address as applicant). *General commodities,* except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, between Memphis, TN, and its commercial zone, on the one hand, and, on the other, points in Calhoun, Etowah, Jefferson, Lauderdale, Mobile, Montgomery, Morgan, Tuscaloosa, and Winston Counties, AL, for 270 days. Restricted to the transportation of shipments having a prior or subsequent movement by rail. Carrier intends to interline with rail carriers at Memphis, TN. Supporting shipper(s): There are six supporting shippers' statement to this application which statements may be examined at the Phila. Regional office.

MC 2780 (Sub-II–1TA), filed October 7, 1980. Applicant: HORN'S MOTOR EXPRESS, INC., 115 Spring Valley Rd., Chambersburg, PA 17201. Representative: Edgard N. Jacobs (same address as applicant). *General commodities, except those of unusuol value, Class A and B explosives, livestork, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment,* between points in the States of DE, DC, MD, NJ, PA, VA and WV, for 270 days. Applicant intends to tack authority sought with authority now held under docket MC–2780 and all subs thereunder. Applicant intends to interline at Baltimore and Hagerstown, MD; Chambersburg and Harrisbury, PA, as well as other points. Supporting shipper(s): There are eight supporting shippers' statement attached to this application which may be examined at the Phila. Regional office.

MC 115181 (Sub-II–10TA), filed October 8, 1980. Applicant: HAROLD M. FELTY, INC., R. D. #1, Box 148, Pine Grove, PA 17963. Representative: Lee E. High, 541 Penn St., Reading, PA 19601. *Metallic waste material,* in bulk, in dump vehicles, from points in Decatur Township, Mifflin County, PA to Old Bridge, NJ, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Sitkin Smelting & Refining, Inc., RD #3, Lewistown, PA 17044.

MC 152104 (Sub-II–1TA), filed October 6, 1980. Applicant: HOME RUN, INC., 1299 Lavelle Dr., Xenia, OH 45385. Representative: Boyd B. Ferris, 50 West Broad St., Columbus, OH 43215. *Building and component parts, materials, supplies and fixtures used in the erection or assembly of buildings,* from the facilities of Best Lumber Co., Inc. at or near Indianapolis, IN, on the one hand, and, on the other, points in OH and KY, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Best Lumber Co., Inc., 1002 East 42nd St., Indianapolis, IN 46205.

MC 134082 (Sub-II–1TA), filed October 6, 1980. Applicant: K. H. TRANSPORT, INC., 4796 Linthicum Rd., Dayton, MD 21036. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St., N.W., Washington, DC 20005. *Decorated laminated plastic sheets and materials and supplies used in the manufacture and distribution of the aforementioned commodities (except in bulk),* between Odenton, MD, on the one hand, and, on the other, points in the U.S. (except MD, AK and HI), for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Nevamar Corporation, Odenton, MD 21113.

MC 121420 (Sub-II–4TA), filed October 10, 1980. Applicant: DART TRUCKING, CO., INC., 61 Railroad St., Canfield, OH 44406. Representative: David]. Best (same as applicant). *Fluorspar,* in bulk, in dump vehicles, from Allegheny County, PA to Boyd County, KY. for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Cametco, Inc., 201 Penn Center Blvd., Pittsburg, PA 15235.

The following applications were filed in Region 3. Send protests to ICC, Regional Authority Center, P.O. Box 7600, Atlanta, GA 30357.

MC 120368 (Sub-3–1TA), filed October 8, 1980. Applicant: DIXIE TRUCKING COMPANY, INC., 4901 Sunset Road, Charlotte, NC 28213. Representative: K. D. Shaver, Sr. (address same as above). *General commodities (except household goods as defined by the Commission and classes A and B explosives),* (1) Between points in the following NC counties: Alamance, Anson, Beaufort, Bladen, Cabarrus, Catawba, Chowan, Cleveland, Columbus, Craven, Cumberland, Durham, Edgecombe, Forsyth, Gaston, Granville, Guilford, Halifax, Harnett, Hertford, Hoke, Lee, Mecklenburg, Montgomery, Moore, New Hanover, Pasquotank, Randolph, Richmond, Robeson, Rockingham, Scotland, Stanly, Union, Vance, Wake, Wayne and Wilson. (2) Between points in the following SC counties, and between points in these counties, on the one hand, and, on the other, points in counties named in Paragraphs (1) and (3): Cherokee, Chester, Chesterfield, Fairfield, Greenville, Kershaw, Lancaster, Laurens, Newberry, Richland, Spartanburg, Union and York. (3) Between points in the following NC counties, and between points in these counties, on the one hand, and, on the other, points in counties named in Paragraphs (1) and (2): Alexander, Brunswick, Davidson, Davie, Iredell, Lincoln, Nash, Rowan and Yadkin. Interchange: Traffic will be interchanged at Charlotte, NC. Certificates of support: There are attached fifty-two (52) shipper Certifications of Support of Application for Temporary Motor Carrier Authority which may be examined at the ICC Regional Office in Atlanta, GA.

MC 124687, (Sub-3–9TA), filed October 8, 1980. Applicant: SHELTON TRUCKING SERVICE, INC., Route 1, Box 230, Altha, FL 32421. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *Chemicals and equipment, materials and supplies* used in the manufacture and distribution of

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chemicals. (Except comodities in bulk), between Bay County and Gulf County, FL on the one hand and on the other, points in the United States. (Except AL and HI). Supporting shipper: Sylvachem Corporation, P.O. Box 389, Jacksonville, FL 32201.

MC 2934 (Sub-3–14TA), filed October 9, 1980. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Road, Carmel, IN 46032. Representative: W. G. Lowry (same address as above). *Metal office furniture,* from Youngstown, OH, to points and places in the states of AL, AR, CT, DE, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NH, NJ, NY, NC, PA, RI, SC, TN, TX, VT, VA, WV and WI. Supporting shipper: G. F. Business Equipment, 32 East Dennick Avenue, Youngstown, OH 44501.

MC 112395 (Sub-3–1TA), filed October 8, 1980. Applicant: CITIZEN EXPRESS, INC., 38 N. French Broad Avenue, Asheville, NC 28801. Representative: Philip G. Carson, P.O. Box 7246, Asheville, NC 28807. *Petroleum products,* from bulk storage facilities in Mecklenburg and Guilford Counties, NC; Spartanburg, Anderson and Charleston Counties, SC; and Knox County, TN, to Buncombe, Henderson, Haywood, Transylvania, Madison and McDowell Counties, NC. Supporting shippers: Smoky Mountain Petroleum Co., Inc., 244 Swannanoa River Road, Asheville, NC 28805; Biltmore Oil Company, 233 Biltmore Avenue, Asheville, NC 28801; Grace Fuel Company, Inc., 1420 Merrimon Avenue, Asheville, NC 28804.

MC 128521 (Sub-3–2TA), filed October 8, 1980. Applicant: BIRMINGHAM-NASHVILLE EXPRESS, INC., P.O. Box 100417, Nashville, TN 37210. Representative: Robert S. Durrett (same address as applicant). *(1) Alcoholic liquors, and (2) materials, equipment, and supplies used in the manufacture and distribution of alcoholic liquors (except in bulk, in tonk vehicles),* between KY and TN, on the one hand, and, on the other, points in LA. Restricted to traffice originating at or destined to the facilities of Pan-American Import Co., Inc. Supporting shipper: Pan-American Import Co., Inc., P.O. Box 52829, New Orleans, LA 70119. Applicant seeks to interline at Nashville, TN

MC 145873 (Sub-3–2TA), filed October 8, 1980. Applicant: RAMSEY TRUCKING, INC., 604 Hudson Road, Chattanooga, TN 37405. Representative: Billy R. Ramsey (same address as above). *Coke,* in dump vehicles, between points in the states of AL, GA, MS, and TN, having a prior or subsequent movement by water. Supporting shipper: Kock Carbon, Inc., 888 Worchester St., Wellesley, MA 02181.

MC 2934 (Sub-3–16TA), filed October 8, 1980. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Road, Carmel, IN 46032. Representative: W. G. Lowry (same as above). *Furniture and furniture parts,* from points and places in the states of: AR, GA, MS, NC, IN and VA to: points and places in the states of: IL, IN, MI, MN, MO, NY, OH, PA AND WI. Supporting shipper: Wickes Furniture, 351 West Dundee Road, Wheeling, IL 60090.

MC 2934 (Sub-3–17TA), filed October 8, 1980. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Road, Carmel, IN 46032. Representative: W. G. Lowry (same as above). *New hospital and laboratory equipment,* from Two Rivers, WI to: AL, AR, CT, DE, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NH, MJ, NY, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA and WV. Supporting shipper: American Hamilton, 1316 18th Street, Two Rivers, WI 54241.

MC 125689 (Sub-3–1TA), filed October 6, 1980. Applicant: BEATTYVILLE TRANSPORT, INC., Ice Dam Lane, Box 675, Catlettsburg, KY 41129. Representative: Fred H. Daly, 2550 M Street, N.W. Washington, D.C. 20037. *Animal grease, chemicals, petroleum, rolling processing fluids and lubricating oils, wire drawing compounds, ingredients and raw materials used in the manufacture of rolling processing fluids and lubricating oils* between Franklin County, OH and points in the United States. Supporting shipper: The Ironsides Company, 270 West Mound Street, Columbus, OH 44219

MC 124687 (Sub-3–10TA), filed October 8, 1980. Applicant: SHELTON TRUCKING SERVICE, INC., Route 1, Box 230, Altha, FL 32421. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksoville, FL 32202. *Chemicals and equipment, materials and supplies* used in the manufacture and distribution of chemicals. (except commodities in bulk), between Forest County, MS on the one hand, and, on the other, points in the United States. (Except Al and HI.) Supporting shipper: Sylvachem Corporation; P.O. Box 289, Jacksonville, FL 32201.

MC 115841 (Sub-3–28TA), filed October 8, 1980. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., McBride Lane, P.O. Box 22168, Knoxville, TN 37922. Representative: Michelene Good (same as above). *Foodstuffs and specialty gift items (except commodities in bulk),* from Monroe and Madison, WI to Greensboro, NC; Houston and Dallas, TX; Atlanta, GA; Jacksonville and Miami, FL; Denver, CO; Phoenix, AZ; Albuquerque, NM; Los Angeles, Vernon, Gardena, San Jose and Oakland, CA; Portland, OR; Seattle, WA; and their respective Commerical Zones. Supporting shipper: Swiss Colony, Inc., 1112-7th Avenue, Monroe, WI 53566.

MC 146222 (Sub-3–1TA), filed October 8, 1980. Applicant: ILCO TRUCKING, INC., P.O. Box 528, Leads, AL 35094. Representative: H. G. Jackson, Jr. (same as above). *Iron and steel articles (except commodities in bulk)* from points in the United States in and east of MT, WY, CO, and NM to the facilities of Atlas Metals Company, Inc., located in or near Birmingham, AL. Supporting shipper: Atlas Metals Company, Inc., 2066 Montevallo Rd., SW, Birmingham, AL 35211.

MC 151395 (Sub-3–3TA), filed October 8, 1980. Applicant: SNEAKER FREIGHT LINE, INC., 4215 Thurman Rd., P.O. Box 768, Conley, GA 30027. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. (a) *Polyethylene film and bags,* from Clayton County, GA, to points in AL, FL, KY, MD, MS, NC, SC, TN and VA; and (b) *Materials, equipment and supplies* used in the manufacture or distribution of polyethylene film or bags, from points in AL, FL, KY, MD, MS, NC, SC, TN and VA to Clayton County, GA. Supporting shipper: Dixie Bag Company, 4880 Massachusetts Blvd., College Park, GA 30337.

MC 128095 (Sub-3–7TA), filed October 8, 1980. Applicant: IBCO TRUCK LINE, INC., P.O. Box 1402, Tupelo, MS 38801. Representative: Robert L. McArty, P.O. Box 22628, Jackson, MS 39205. *New furniture and furniture parts* from the facilities of Douglas Furniture Corporation at Chicago, IL to Birmingham, AL; Orlando and Tampa, FL; Atlanta and Madison, GA; New Orleans, LA; and, Memphis, TN. Supporting shipper: Douglas Furniture Corporation, 5020 West 73rd Street, Chicago, IL 60638.

MC 128095 (Sub-3–8TA), filed October 8, 1980. Applicant: IBCO TRUCK LINE, INC., P.O. Box 1402, Tupelo, MS 38801. Representative: Robert L. McArty, P.O. Box 22628, Jackson, MS 39205. *Furniture, furniture parts, and materials, equipment and supplies used in the manufacture, sale and distribution thereof (except commodities in bulk, in tank vehicles)* from the facilities of The Hon Company at or near Muscatine, IA to points in AL, AR, GA, IL, IN, KY, LA, MS, NC, OH, SC, TN and VA. Supporting shipper: The Hon Company, Muscatine, IA 52761

MC 144688 (Sub-3–12TA), filed October 8, 1980. Applicant: READY TRUCKING, INC., 2717 Campbell Boulevard, Ellenwood, GA 30049. Representative: Lavern R. Holdeman, P.O. Box 81849, Lincoln, NE 58501. *(1) Plastic pails and containers; and (2) materials and supplies used in the manufacture, sale and distribution of plastic containers (except in bulk),* between the facilities of Roper Plastics, Inc., at or near Atlanta, GA, on the one hand, and, on the other, points in the state of FL. Supporting shipper: Roper Plastics, Inc., 175 Lake Mirror Road, Forest Park, GA 30050.

MC 152161 (Sub-3–1TA), filed October 8, 1980. Applicant: PONSELL SUPPLY CO., INC., 1702 Swan Street, Jacksonville, FL 32204. Representative: Norman J. Bolinger, 3100 University Blvd. S., Suite 225, Jacksonville, FL 32216. *Roofing materials; asbestos building, roofing, and sheathing paper; composition and prepared roofing; shingles and siding; roofing cement; asbestos wallboard; and plastic pipe, conduit, fittings, and products;* from the facilities of Johns-Manville Sales Corporation at or near Green Core Springs, FL and Savannah, GA, to points in the U.S. in and east of the States of LA, AR, MO, IA, and MN. Supporting shipper: Johns-Manville Sales Corporation, P.O. Box 4487, Atlanta, GA 30302.

MC 148050 (Sub-3–1TA), filed October 8, 1980. Applicant: L & J MOTOR LINES, INC. P.O. Box 7267, High Point, NC 27264. Representative: Wilmer B. Hill, Suite 805, 666 Eleventh Street NW., Washington, DC 20001. *Petroleum products* from Baltimore, MD to points in NC. Supporting shipper: Ilderton Oil Company, P.O. Box 7145, High Point NC 27264.

MC 85970 (Sub-3–13TA), filed October 8, 1980. Applicant: SARTAIN TRUCK LINE, INC., 1625 Hornbrook Street, Dyersburg, TN 38024. Representative: Warren A. Goff, 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. Common; Regular *General Commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment)* between St. Louis, MO and Nashville, TN, serving no intermediate points; from St. Louis, over I–55 to its junction with I–155, then over I–155 to Dyersburg, TN, then over U.S. Hwy. 51 to its junction with Tennessee Hwy. 20, then over Tennessee Hwy. 20 to Jackson, TN, then over I–40 to Nashville, TN and return over the same route. There are 10 certificates of support which may be examined at the Atlanta, GA Regional Office.

Note.—Applicant intends to interline at St. Louis, MO and Nashville, TN.

MC 59150 (Sub-3–8TA), filed October 8, 1980. Applicant: PLOOF TRUCK LINES, INC., 1414 Lindrose Street, Jacksonville, FL 32206. Representative: Martin Sack, Jr., 203 Marine National Bank Bldg., 311 W. Duval Street, Jacksonville, FL 32202. *Packaged sand and salt,* between points in FL, GA, AL and SC. Supporting shipper: Great Southern Salt Company, Inc., P.O. Box 1411, Brunswick, GA 31521.

MC 148050 (Sub-3–2TA), filed October 8, 1980. Applicant: L & J MOTOR LINES, INC., P.O. Box 7267, High Point, NC 27264. Representative: Wilmer B. Hill, Suite 805, 666 Eleventh Street, NW., Washington, DC 20001. *Insulating materials,* from Barrington, NJ to points in NC and SC. Supporting shipper: Presnell Insulation Co., Inc., P.O. Box 25551, Charlotte, NC 28212.

MC 148050 (Sub-3–3TA), filed October 8, 1980. Applicant: L & J MOTOR LINES, INC., P.O. Box 7267, High Point, NC 27264. Representative: Wilmer B. Hill, Suite 805, 666 Eleventh Street NW., Washington, DC 20001. *Petroleum products,* from Bradford, PA to points in NC. Supporting shipper: Kennedy Oil Company, Inc., P.O. Box 1426, High Point, NC 27261.

MC 47171 (Sub-3–10TA), filed October 9, 1980. Applicant: COOPER MOTOR LINES, INC., P.O. Box 2820, Greenville, SC 29602. Representative: Harris G. Andrews (same address as applicant). *General commodities, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment;* between points in NC east of U.S. Hwy 77, on the one hand, and, on the other, points in Culpepper, Suffolk, Windsor, Norfolk, Madison Heights, Petersburg, Lester Manor, Richmond, Fredericksburg, Warrenton, Franklin, Lynchburg, Farmville, Smithfield, Danville, South Boston, Victoria, and Roanoke, VA; Washington, DC; CT, Baltimore and Cumberland, MD; Wilmington and Cheswold, DE; MA, PA, NJ, NY, RI. There are six statements of support on file at the ICC Regional Office in Atlanta, GA.

MC 115093 (Sub-3–4TA), filed October 9, 1980. Applicant: MERCURY MOTOR EXPRESS, INC., 2511 North Grady Ave., Tampa, FL 33607. Representative: Joseph W. Watson (same address as above). *General Commodities (except household goods as defined by the Commission and Classes A and B explosives);* between points in FL, GA and SC. Supporting shipper: There are approximately 56 statements of support which may be examined at the ICC Regional Office, Atlanta, GA.

Note.—Applicant intends to interline with other carriers at Atlanta, GA and Florence, SC.

MC 107515 (Sub-3–79TA), filed October 16, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Foret Park, GA 30050. Representative: Alan E. Serby, Esq., 3390 Peachtree Rd. N.E., 5th Floor, Lenox Towers South, Atlanta, GA 30326. *Alcoholic Beverges (except in bulk)* from points in CA to points in St. Paul, MN and its commercial zone. Supporting shippers: Griggs Cooper & Co., Inc., 475 No. Prior Avenue, St. Paul, MN 55104, and Johnson Brothers Wholesale Liquor, 2341 University Avenue, St. Paul, MN 55114.

MC 107515 (Sub-3–80TA), filed October 16, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. serby, Esq., 3390 Peachtree Rd. N.E., 5th Floor, Lenox Towers South, Atlanta, GA 30326. *(1) Automotive Care and Maintenance Supplies, and (2) Materials and Supplies Used in the Production and Distribution of commodities in (1)* between points in the US (except AK and HI) on the one hand, and, on the other, facilities utilized by Union Carbide Corporation at or near Paulsboro, NJ; Milford, CT; Wyoming, NY; Middlebury, VT; North Warren, PA; Logans Ferry, PA; New Kensington, PA; East Butler, PA; Hamilton, OH; Danville, IL; Holland, MI; Owosso, MI; Wixom, NI; Chicago, IL; Milwaukee, WI; Edgerton, WI; Alsip, IL; Freehold, NJ; Texas City, TX; and Torrence, CA. Supporting shipper: Union Carbide Corporation, 270 Park Avenue, New York, NY 10017.

MC 107515 (Sub-3–78TA), filed October 16, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, Esq., 3390 Peachtree Rd. N.E., 5th Floor, Lenox Towers South, Atlanta, GA 30326. *Health Care Products* between facilities of Johnson & Johnson Products, Inc. at or near Cook and Will Counties, IL; Sherman, TX; North Brunswick, NJ; Menlo Park, CA; and Atlanta, GA. Supporting shipper: Johnson & Johnson Products, Inc., New Brunswick, NJ 08903.

MC 107515 (Sub-3–81TA), filed October 16, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA

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30050. Representative: Alan E. Serby, Esq., 3390 Peachtree Rd. N.E., 5th Floor, Lenox Towers South, Atlanta, GA 30326. *(1) Plastic Products, and (2) Materials, Equipment and Supplies used in the manufacture, distribution and sale of plastic products (except in bulk)* between points in the US restricted to transportation of traffic originating at or destined to the facilities of Sewell Plastics, Inc. Supporting shipper: Sewell Plastics, Inc., 5111 Phillip Lee Drive, S.W., Atlanta, GA 30336.

MC 126736 (Sub-3–4TA), filed October 15, 1980. Applicant: FLORIDA ROCK AND TANK LINES, INC., 155 East 21st Street, Jacksonville, Florida 32201. Representative: L. H. Blow, 155 East 21st Street, Jacksonville, Florida 32201. *Petroleum and Petroleum Products, in bulk, in tank vehicles,* from points in Macon and Columbus, GA to all points in FL. Supporting shipper: Exxon, 5601–77 Center Drive, Suite 200, Charlotte, NC 28210.

MC 151646 (Sub-3–2TA), filed October 14, 1980. Applicant: MISS–ALA DISTRIBUTORS, INC., Highway 45 South, P.O. Box 1728, Columbus, MS 39701. Representative: Peter A. Greene, 900 17th Street, N.W., Washington, D.C. 20006. *Contract,* irregular: *(1) kitchen cabinets; and (2) materials, equipment and supplies used in the manufacture, installation and distribution of kitchen cabinets,* between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Triangle Pacific Corporation. Supporting shipper: Triangle Pacific Corporation, 16803 Dallas Parkway, Dallas, TX 75248.

MC 138958 (Sub-3–4TA), filed October 14, 1980. Applicant: ERGON TRUCKING, INC., 202 East Pearl St., Jackson, MS 39201. Representative: Robert L. McArty, P.O. Box 22628, Jackson, MS 39205. *Cement and mineral filler* from the facilities of Louisiana Cement at New Orleans, LA to points in AL, FL, MS and TX. Supporting shipper: Louisiana Cement, Division of OKC Coporation, 14900 Intracoastal Drive, New Orleans, LA 70129.

MC 146293 (Sub-3–24TA), filed October 15, 1980. Applicant: REGAL TRUCKING CO., INC., P.O. Box 829, Lawrenceville, GA 30246. Representative: Richard M. Tettelbaum, Fifth Floor, Lenox Towers S, 3390 Peachtree Rd. N.E., Atlanta, GA 30326. *Electronic equipment,* from the Port of Entry on the US-Mexico Border at or near Nogales, AZ to facilities of Magnavox Consumer Electronics Co., Jefferson City and Greenville, TN. Supporting shipper: Magnavox Consumer Electronics Co., P.O. Box 479, Greenville, TN.

MC 114848 (Sub-3–4TA), filed October 16, 1980. Applicant: WHARTON TRANSPORT CORPORATION, 1498 Channel Avenue, Memphis, TN 38113. Representative: James M. Wharton, 1498 Channel Avenue, Memphis, TN 38113. *Bulk Sugar, in pneumatic vehicles,* from St. Bernard Parrish, LA to Shelby County, TN. Supporting shipper: Sugar Services, Inc., P.O. Box 18375, Memphis, TN 38118.

MC 107515 (Sub-3–77TA), filed October 16, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, Esq., 3390 Peachtree Rd., N.E., 5th Floor, Lenox Towers South, Atlanta, GA 30326. *Paper and Paper Products* from Groveton, NH to Atlanta, GA and its commercial zone. Supporting shipper: AMB-Ansley Business Materials, 770 Mercury Blvd., Chesterfield, MO 63017.

MC 146293 (Sub-3–25TA), filed October 16, 1980. Applicant: REGAL TRUCKING CO., INC., P.O. Box 829, Lawrenceville, GA 30246. Representative: Richard M. Tettelbaum, Fifth Floor, Lenox Towers S, 3390 Peachtree Rd. NE., Atlanta, GA 30326. *Batteries, and parts required in the manufacture thereof,* from Atlanta and Conyers, GA to points in OK and TX. Supporting shipper: C&D Battery, an ELTRA Company, Division of Allied Chemical Co., 1835 Industrial Blvd., Conyers, GA 30207.

MC 121654 (Sub-3–14TA), filed October 16, 1980. Applicant: COASTAL TRANSPORT & TRADING CO., P.O. Box 7438, Savannah, GA 31408. Representatives: Bruce E. Mitchell and Alan E. Serby, 3390 Peachtree Road, NE., 5th Floor, Lenox Towers South, Atlanta, GA 30326. *Drugs, Intravenous Solutions, Patient Treatment Kits and Rubber Gloves* from the facilities of Abbott Laboratories at or near Rocky Mount, NC to Dedham, MA; Jersey City, NJ; King of Prussia and Pittsburgh, PA; and Baltimore, MD. Supporting shipper: Abbott Laboratories, 1400 Sheridan Rd., North Chicago, IL 60064.

MC 121654 (Sub-3–15TA), filed October 16, 1980. Applicant: COASTAL TRANSPORT & TRADING CO., P.O. Box 7438, Savannah, GA 31408. Representative: Alan E. Serby, Esq., 3390 Peachtree Rd. NE., 5th Floor, Lenox Towers South, Atlanta, GA 30326. *(1) Air Pollution Control Equipment, and (2) Materials and Equipment used in the manufacture and sale thereof (except in bulk)* from Jacksonville, FL to facilities of Andersen 2000, Inc., College Park, GA. Supporting shipper: Andersen 2000, Inc., P.O. Box 20769, Atlanta, GA 30320.

MC 115311 (Sub-3–10TA), filed October 16, 1980. Applicant: J & M TRANSPORTATION CO., INC., P.O. Box 488, Milledgeville, GA 31061. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. (1) *Malt beverages and related advertising matter* from the facilities of Pabst Brewing Co. at or near Milwaukee, WI; Peoria, IL; Pabst, GA and Newark, NJ to Denver, CO (and its commercial zone) and (2) *Can ends* from Denver, CO (and its commercial zone) to the facilities of Pabst Brewing Co. at or near Milwaukee, WI; Peoria, IL; Pabst, GA and Newark, NJ. Supporting shipper: Pabst Brewing Co., P.O. Box 766, Milwaukee, WI 53201.

MC 124887 (Sub-3–11TA), filed October 16, 1980. Applicant: SHELTON TRUCKING SERVICE, INC., Route 1, Box 230, Altha, FL 32421. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. (1) *Primary Metal Articles* and (2) *Materials and Supplies used in the manufacture and distribution of primary metal articles,* between points in TX, on the one hand, and, on the other, points in and east of ND, SD, NE, KS, OK and TX. Supporting shipper: Linebacker Steel, 5301 S. Westmoreland, Dallas, TX 75237.

MC 152213 (Sub-3–1TA), filed October 16, 1980. Applicant: MISSISSIPPI RIVER TRUCKING, INC., 1424 Lamar Ave., Memphis, TN 38104. Representative: R. Connor Wiggins, Jr., Suit 909, 100 N. Main Bldg., Memphis, TN 38103. *Such goods as are dealt in and distributed by wholesale and retail grocery houses* from points in and east of ND, SD, NE, KS, OK and TX to Memphis and Jackson, TN; Birmingham, AL; Little Rock, AR; Indianola and Tupelo, MS; and Sikeston and Cape Girardeau, MO; and (2) *Metal cans* from facilities of Allied Foods, Inc. at Atlanta, GA, to Memphis and Jackson, TN; Birmingham, AL; Little Rock, AR; Indianola and Tupelo, MS; and Sikeston and Cape Girardeau, MO. Supporting shippers: Port Clyde Foods, Inc., P.O. Box E, Hicksville, Long Island, NY, 11802; R. D. Michie Brokerage Co., P.O. Box 4879, Memphis, TN, 38104; Allied Foods, Inc., P.O. Box 93326, Atlanta, GA 30318; Woldert Canning, Inc., P.O. Box 1140, Tyler, TX 75710; SSC International, Inc., P.O. Box 825, Hackensack, NJ 07602.

MC 133917 (Sub-3–4TA), filed October 16, 1980. Applicant: CARTHAGE FREIGHT LINE, INC., P.O. Box 315, Carthage, TN 37030. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St. NW., Washington, DC 20004.

General Commodities (except classes A&B explosives, commodities of unusual value, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), between Chattanooga, TN, and points in its commercial zone, on the one hand, and, on the other, points in GA. Supporting shipper(s): A total of 70 supporting shippers are submitted with this application.

Note.—Applicant intends to tack with docket number MC 133917 and subs at Chattanooga and to underline at all authorized points.

MC 115322 (Sub-3–2TA), filed October 16, 1980. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, FL 32809. Representative: James E. Wharton, Suite 811, Metcalf Building, 100 South Orange Avenue, Orlando, FL 32801. *General commodities (except articles of unusual value, household goods as defined by the Commission, commodities in bulk, classes A and B explosives, and articles which, by reason of size or weight, require specialized handling and equipment) have a prior or subsequent movement by rail in interstate or foreign commerce* between points in FL. Supporting shipper: Southern Railway, 920 15th Street NW, Washington, DC 20005.

MC 113528 (Sub-3–2TA), filed October 14, 1980. Applicant: MERCURY FREIGHT LINES, INC., P.O. Box 1247, Mobile, AL 36633. Representative: Joy Stephenson (same address as applicant). *Common carrier,* regular routes: *General commodities (with the usual exceptions),* serving Bayou La Batre, AL as an off route point in connection with carrier's otherwise authorized regular route operation. Supporting shipper: Sun Propeller, Inc., P.O. Box 682, Bayou La Batre, AL 36509. Carrier intends to tack existing authority and subs.

MC 106644 (Sub-3–3TA), filed October 15, 1980. Applicant: SUPERIOR TRUCKING COMPANY, INC., P.O. Box 916, Atlanta, GA 30301. Representative: Louis C. Parker, III (same as above). *Steel beams,* between Cayce, SC; Greensboro, NC and Savannah, GA, on the one hand, and, on the other, points on the international boundry at or near Douglas, AZ. Restricted to traffic originating at or destined to points in the state of Sanora, Mexico. Supporting shipper: Pioneer Steel Company, 2200 Congaree Drive, Cayce, SC 29033.

MC 144503 (Sub-3–5TA), filed October 14, 1980. Applicant: ADAMS REFRIGERATED EXPRESS, INC., P.O. Box F, Forest Park, GA 30050. Representative: Charles L. Redel, 212 Hoeschler Exchange Building, La Crosse, WI 54601. *Transporting foodstuffs and such merchandise as is dealt in by retail gift and curio shops and catalog distribution centers in vehicles equipped with mechanical refrigeration* from the plantsite of The Swiss Colony, Inc., Monroe, WI, and The Swiss Colony Stores, Inc., Madison, WI, to all points and places in the Continental United States. Supporting shipper: The Swiss Colony, Inc., 1112 Seventh Ave., Monroe, WI 53566.

MC 95540 (Sub-3–21TA), filed October 15, 1980. Applicant: WATKINS MOTOR LINES, INC., 1144 West Griffin Road, P.O. Box 1636, Lakeland, Florida 33802. Representative: Jackie Hill (same address as applicant). *Swinging and boxed meats* from Grenada, MS to points in FL and WI. Supporting shipper: Pioneer Beef Company, P.O. Box 119, Grenada, MS 38901.

MC 146270 (Sub-3–1TA), filed October 15, 1980. Applicant: WINFORD NOAH WILLIAMS, P.O. Box 578, Aberdeen, N.C. 28315. Representative: Winford Noah Williams (address same as applicant). *General Commodities, except class A and B explosives and motor vehicles having a prior or subsequent movement by rail in trailer or flat car service,* between points in Anson, Richmond, Robeson, Scotland, Moore, Montgomery, Lee and Hoke Counties, N.C.; and Chesterfield and Marlboro Counties, S.C. Supporting shippers: There are 9 statements of support attached to this application which may be examined at the ICC Regional Office, Atlanta, Ga.

MC 152215 (Sub-3–1TA), filed October 16, 1980. Applicant: HILL's SCRAP & SALVAGE, INC., d.b.a. BILL HILL'S TRANSPORTATION, RR. 11, Box 226, McMinnville, TN 37110. Representative: Roland M. Lowell, 618 United American Bank Building, Nashville, TN 37219. *Valves, materials, supplies and equipment used in the manufacturing and distribution of valves* between the facilities utilized by Flo-Con System, Inc., at or near Champaign, Fisher, and Forest Park, IL, Sarasota, FL, Jackson and Forest, MS, and Grove City, PA on the one hand, and, on the other, points in the U.S. Supporting shipper: Flo-Con System, Inc., 1404 Newton Drive, Champaign, IL 61820.

MC 147886 (Sub-3–5TA), filed October 15, 1980. Applicant: A M & M, INCORPORATED, P.O. Box 1627, Jackson, TN 38301. Representative: R. Connor Wiggins, Jr., Suite 909, 100 N. Main Bldg., Memphis, TN 38103. (1) *Such goods as are dealt in and distributed by wholesale and retail grocery houses* from points in and east of ND, SD, NE, KS, OK and TX to Memphis and Jackson, TN; Birmingham, AL; Little Rock, AR; Indianola and Tupelo, MS; and Sikeston and Cape Girardeau, MO; and (2) *Metal cans* from facilities of Allied Foods, Inc. at Atlanta, GA, to Memphis and Jackson, TN; Birmingham, AL; Little Rock, AR; Indianola and Tupelo, MS; and Sikeston and Cape Girardeau, MO. Supporting shippers: R. D. Michie Brokerage Co., P.O. Box 4879, Memphis, TN 38104; Allied Foods, Inc., P.O. box 93326, Atlanta, GA 30318; and SSC International, Inc., P.O. box 825, Hackensack, NJ 07602.

The following protests were filed in Region 4. Send protests to: Consumer Assistance Center, Interstate Commerce Commission, 219 South Dearborn Street, Room 1304, Chicago, IL 60604.

MC 123407 (Sub-4–46TA), filed October 9, 1980. Applicant: SAWYER TRANSPORT, INC., Sawyer Center, Route 1, Chesterton, IN 46304. Representative: H. E. Miller, Jr. (same address as applicant). *Metal building products* from Tulsa, OK, to points in and east of ND, SD, NE, KS, OK, and TX.* Supporting shipper: Jo-Moco Products Company, 1102 E. Second Street, Tulsa, OK 74120.

*An underlying ETA seeks 120 days authority.

MC 48441 (Sub-4–4TA), filed October 15, 1980. Applicant: R.M.E., INC., P.O. Box 418, Streator, Illinois 61364. Representative: Michael D. Bromley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, D.C. 20001. *Common;* Irregular *Malt beverages, and materials, equipment and supplies used in the manufacture and distribution of malt beverages,* between points in the U.S. in and east of MT, WY, UT, CO, and NM, restricted against transportation of traffic originating at or destined to points in the Upper Peninsula of MI. and further restricted to the transportation originating at or destined to the facilities of Miller Brewing Company. Supporting shipper: Miller Brewing Company, 3939 West Highland Boulevard, Milwaukee, WI: 53201.

MC 87303 (Sub-4–2TA), filed October 14, 1980. Applicant: BEN–LEE MOTOR SERVICE CO., 3344 South Lawndale Avenue, Chicago, IL 60623. Representative: Allan C. Zuckerman, 39 South LaSalle Street, Chicago, IL 60603. *Chemicals, drugs, medicines, toilet preparations, pharmaceutical products, household products,* and *foodstuffs* (all restricted against commodities in bulk), between Cook County, IL, on the one hand, and, on the other, Milwaukee, Racine and Kenosha Counties, WI. Supporting shipper: Bristrol-Meyers Company, P.O. Box 8528, Chicago, IL 60680.

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MC 144621 (Sub-4–8TA), filed October 14, 1980. Applicant: CENTURY MOTOR LINES, INC., 52275 U.S. Highway 31, North, South Bend, IN 46637. Representative: Charles J. Kimball, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. *Candy and confectionary products,* (1) from the facilities of New England Confectionary Co. at or near Cambridge, MA to points in the U.S. (except AK and HI), (2) from AL, GA, IL, IN, TX, and UT to points in MA, for 270 days. Supporting shipper: New England Confectionary Co., 254 Massachusetts Avenue, Cambridge, MA 02139.

MC 123907 (Sub-4–2TA), filed October 14, 1980. Applicant: DAHLMAN TRUCK LINES, INC., 2041 Madison St., Stevens Point, WI 54481. Representative: Attorney Joseph E. Ludden, 324 Exchange Bldg., P.O. Box 1567, La Crosse, WI 54601. *General commodities (except those of unusual value, class A and Class B explosives, and household goods as defined by the Commission* between the Chicago, IL commercial zone on the one hand, and, on the other, MN, WI, and the Upper Peninsula of MI. An underlying ETA seeks 120 days authority. Supporting shipper: Crooks Terminal Warehouses, Inc., 9441 W. Fullerton Avenue, Franklin Park, IL 60131.

MC 150050 (Sub-4–1TA), filed October 14, 1980. Applicant: FLEET ROAD SERVICE, INC., 558 W. 20th Place, Chicago, IL 60616. Representative: Gilbert J. Green, 5957 South Rutherford Avenue, Chicago, IL 60636. *Common, irregular, General commodities* (except items of extraordinary value, class A and B explosives; commodities in bulk; commodities injurious or contaminating to other lading, commodities requiring special equipment; livestock; and household goods) having prior or subsequent service via Railroad Piggyback, between Cook County, IL on the one hand, and, on the other, points and places in the states of IL, IN, MI, OH, and WI. An underlying ETA seeks 120 days authority. Supporting shipper: East-West Shippers Association, 414 Plaza Drive, Westmont, IL 60559.

MC 148705 (Sub-4–7TA), filed October 14, 1980. Applicant: TWIN CONTINENTAL TRANSPORT CORP., 5738 Olson Highway, Minneapolis, MN 55422. Representative: Stephen F. Grinnell, 1000 First National Bank Bldg., Minneapolis, MN 55402. *Alcoholic beverages* from New Orleans, LA to points in the Minneapolis-St. Paul Commercial Zone. Supporting shipper: Ed Phillips and Sons Co., 2345 Kennedy Street NE., Minneapolis, MN 55413.

MC 111594 (Sub-4–6TA), filed October 14, 1980. Applicant: CW TRANSPORT, INC., 610 High Street, Wisconsin Rapids, WS 54494. Representative: Donald B. Levine, 39 South La Salle Street, Chicago, IL 60603. *Fabricated Metal Products* (except Ordnance, Machinery and Transportation equipment) between Ramsey County, MN on the one hand, and points in GA, KY, MI, TN, VA, WV and WI on the other. Supporting shipper: Simcote, Inc., 1645 Redrock Road, St. Paul, MN 55164.

MC 107295 (Sub-4–22TA), filed October 14, 1980. Applicant: PRE-FAB TRANSIT CO., P.O. Box 146, Farmer City, IL 61842. Representative: Duane Zehr (same address as applicant). *Grout, concrete forming systems and accessories* thereto between Atlanta, GA; Converse, TX; Denver, CO; Hayward, CA; Houston, TX; Long Beach, CA; Los Angeles, CA; Oakland, CA, and Seattle, WA, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: The Burke Company, 2655 Campus Drive, San Mateo, CA 94403.

MC 123407 (Sub-4–45TA), filed October 8, 1980. Applicant: SAWYER TRANSPORT, INC., Sawyer Center, Route 1, Chesterton, IN 46304. Representative: H. E. Miller, Jr., (same address as applicant). *Plastic pipe and plastic fittings* from Gainesville, TX, to points in AR, CO, LA, OK, and NM. *Supporting shipper(s): Pyramid Plastics, P.O. Box 1164, Gainesville, TX 76240.

MC 129189 (Sub-4–2TA), filed October 14, 1980. Applicant: WING CARTAGE COMPANY, 4141 George Place, Schiller Park, IL 60176. Representative: Arnold L. Burke, 180 North LaSalle Street, Chicago, IL 60601. *Prestressed concrete building materials* from Hodgkins, IL to KY. Supporting shipper: Composite Structures, Inc., 475 W. 55th St., Countryside, IL 60525.

MC 19311 (Sub-4–4TA), filed October 10, 1980. Applicant: CENTRAL TRANSPORT, INC., 34200 Mound Road, Sterling Heights, MI 48077. Representative: Patrick O. Smith, 755 West Big Beaver, Suite 1200, Troy, MI 48084. *General Commodities,* except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment, serving Bedford, Seymour and West Lebanon, IN as off-route points in connection with carrier's presently authorized regular route operations. An underlying ETA seeks 120 days authority. There are 20 Certificates of Support.

MC 20824 (Sub-4–5TA), filed October 15, 1980. Applicant: COMMERCIAL MOTOR FREIGHT, INC. OF INDIANA, 2141 S. High School Rd., Indianapolis, IN 46241. Representative: C. C. Boyd, Traffic Manager, 2141 S. High School Rd., Indianapolis, IN 46241. Common, Regular *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), (1) Between Danville, IL and Moline, IL: From Danville over Interstate Highway 74 to junction Interstate Highway 80, and thence over Interstate Highway 80 to Moline, and return over the same routes; (2) Between Chicago, IL and East Dubuque, IL, over U.S. Highway 20; (3) Between Danville, IL and Kansas City, MO: From Danville over Interstate Highway 74 to junction Interstate Highway 72, thence over Interstate Highway 72 to junction U.S. Highway 36, thence over U.S. Highway 36 to junction U.S. Highway 24, and thence over U.S. Highway 24 to Kansas City, and return over the same routes; (4) Between Terre Haute, IN and Kansas City, MO, over Interstate Highway 70; (5) Between Evansville, IN and St. Louis, MO: From Evansville over U.S. Highway 41 to junction Interstate Highway 64, and thence over Interstate Highway 64 to St. Louis, and return over the same routes; (6) Between Chicago, IL and Sikeston, MO, over Interstate Highway 57; (7) Between Chicago, IL and St. Louis, MO, over Interstate Highway 55; (8) Between Dayton, OH and Toledo, OH, over Interstate Highway 75; (9) Between Columbus, OH and Ashtabula, OH: From Columbus over Interstate Highway 71 to Cleveland, OH, thence over Interstate Highway 90 to junction Ohio Highway 11, and thence over Ohio Highway 11 to Ashtabula, and return over the same routes; (10) Between Columbus, OH and Bridgeport, OH, over Interstate Highway 70; (11) Between Columbus, OH and Portsmouth, OH, over U.S. Highway 23; (12) Between Columbus, OH and Marietta, OH: From Columbus over U.S. Highway 33 to Athens, OH, thence over U.S. Highway 50 to junction Ohio Highway 7, and thence over Ohio Highway 7 to Marietta, and return over the same routes; (13) Between Fort Wayne, IN and Toledo, OH, over U.S. Highway 24; (14) Between Fort Wayne, IN and Youngstown, OH: From Fort Wayne over U.S. Highway 30 to junction Interstate Highway 71, thence over Interstate Highway 71 to junction Interstate Highway 76, thence over Interstate Highway 76 to junction Interstate Highway 80, and thence over Interstate Highway 80 to Youngstown, and return over the same routes; (15) Between Evansville, IN and Cairo, IL: From Evansville over U.S. Highway 41 to junction U.S. Highway 60, thence over U.S. Highway 60 to Wickliffe, KY, and thence over U.S. Highway 51 to Cairo, and return over the same routes; (16) Between Evansville, IN and Chattanooga, TN, over U.S. Highway 41; (17) Between Evansville, IN and Owensboro, KY: From Evansville over Indiana Highway 66 to junction U.S. Highway 231, and thence over U.S. Highway 231 to Owensboro, and return over the same routes; (18) Between Louisville, KY and Memphis, TN: From Louisville over Interstate Highway 65 to Nashville, TN, and thence over Interstate Highway 40 to Memphis, and return over the same routes; (19) Between Cincinnati, OH and Chattanooga, TN, over Interstate Highway 75; (20) Between Cincinnati, OH and Ashland, KY: From Cincinnati over U.S. Highway 52 to Portsmouth, OH, and thence over U.S. Highway 23 to Ashland, and return over the same routes; (21) Between Louisville, KY and Ashland, KY: From Louisville, over Interstate Highway 64 to junction U.S. Highway 60, thence over U.S. Highway 60 to Ashland, and return over the same routes; (22) Between junction Interstate Highway 57 and 24, on the one hand, and Chattanooga, TN, on the other, over Interstate Highway 24; (23) Between St. Louis, MO and Joplin, MO, over Interstate Highway 44; (24) Between St. Louis, MO and Sikeston, MO: From St. Louis over Interstate Highway 55 to junction U.S. Highway 60 and thence over U.S. Highway 60 to Sikeston, and return over the same routes; (25) Between St. Louis, MO and Hannibal, MO, over U.S. Highway 61; (26) Between Kansas City, MO and Saint Joseph, MO, over Interstate Highway 29; (27) Between St. Louis, MO and Memphis, TN, over Interstate Highway 55; (28) Between Rockville, IN and Saint Joseph, MO, over U.S. Highway 36; (29) Between Louisville, KY and Springfield, MO, over U.S. Highway 60; (30) (a) Serving all intermediate points in IL, IN, KY, MO, OH, and TN on Routes (1) through (29) above, and (b) serving all points in IL, IN, KY, MO, OH and TN as off-route points in connection with Routes (1) through (29) above and carrier's presently authorized regular route operations.

Note.—Applicant intends to serve the commercial zones of all points requested and will tack with existing authority in MC–20824. Applicant also intends to interline with other carriers. Thence are 65 supporting shippers.

MC 142310 (Sub-4–3TA), filed October 16, 1980. Applicant: H. O. WOLDING, INC., Box 56, Nelsonville, WI 54458. Representative: Michael J. Wyngaard, 150 East Gilman Street, Madison, WI 53703. (1) *Foodstuffs* from the facilities of the Campbell Soup Company at Chicago, IL to points in MN, ND, SD, WI and the Upper Peninsula of MI. (2) *Materials, equipment and supplies used or useful in the manufacture, sale or distribution of foodstuffs* from points in MN, ND, SD, WI and the Upper Peninsula of MI to the facilities of Campbell Soup Company at Chicago, IL. An underlying ETA seeks 120 days authority. Supporting shipper: The Campbell Soup Company, 2550 W. 35th Street, Chicago, IL

MC 110948 (Sub-4–1TA), filed October 16, 1980. Applicant: SOO-SECURITY MOTORWAYS, INC., 60 Eagle Drive, Winnipeg, Manitoba, CD R3C 2L8. Representative: Andrew R. Clark, 1000 First National Bank Bldg., Minneapolis, MN 55402. *Common Regular: General commodities* except household goods, and class A and B explosives (1) between the port of entry on the U.S.-Canada border at Pembina, ND and Minneapolis, MN, in foreign commerce: over Interstate Highway 29 to the junction of Interstate Highway 29 and Interstate Highway 94; then over Interstate Highway 94 to Minneapolis, MN and return over the same route, serving no intermediate points. (2) between the port of entry on the U.S.-Canada border at Portal, ND and Minneapolis, MN in foreign commerce: over U.S. Highway 52 to the junction of U.S. Highway 52 and Interstate Highway 94; then over Interstate Highway 94 to Minneapolis, MN and return over the same route, serving no intermediate points. There are over 225 supporting shippers.

MC 124078 (Sub-4–38TA), filed October 16, 1980. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. *Lime,* from the plantsite of the United States Gypsum Company at New Orleans, LA to TX, MS, AR, and AL. An underlying ETA seeks 30 days authority. Supporting shipper: United States Gypsum Company, 101 South Wacker Drive, Chicago, IL 60606.

MC 151556 (Sub-4–3), filed October 16, 1980. Applicant: ALLSTATE TRANSPORTATION COMPANY, 10700 Lyndale Avenue South, P.O. Box 877, Minneapolis, MN 55440. Representative: George L. Hirschbach, P.O. Box 417, Sioux City, IA 51102. *Air cleaners, air filters, mufflers, hydraulic filters, liquid clarifiers, dust collectors, particle pulverizers and parts used in the sale and manufacture thereof,* between St. Paul, MN; Cresco, Grinnell, and Oelwein, IA; Chillicothe and Kirksville, MO; Dixon, IL; Baldwin and Stevens Point, WI, on the one hand, and, on the other, points in IA, IL, IN, KS, MO, MI, MN, NE, ND, SD and WI. Supporting shipper: Donaldson Company, Inc., 1400 West 94th Street, Minneapolis, MN 55440.

MC 152076 (Sub-4–1TA), filed October 16, 1980. Applicant: BETTY A. DOUGHERTY d.b.a. MIDWEST MEAT & PRODUCE, 115 W. Woodley Street, Northfield, MN 55057. Representative: Stephen F. Grinnell, 1000 First National Bank Bldg., Minneapolis, MN 55402. *Meat, meat products, meat byproducts and articles dealt in by meat packinghouses;* from South St. Paul, MN to points in CA, IL, NE, OH, OK and WI. Supporting shipper: Sunstar Foods, Inc., Beef Division, P.O. Box 297, 425 South Concord, South St. Paul, MN 55075.

MC 133178 (Sub-4–3TA), filed October 16, 1980. Applicant: PAPER CARGO CORPORATION, 2465 Burlingame, SW., Wyoming, MI 49509. Representative: George A. Pendleton, P.O. Box 51, 5116 Brookgate, NW., Comstock Park, MI 49321. *Contract*—Irregular: *Expanded plastic packaging materials* and *materials, equipment and supplies* used in the manufacture and sale of expanded plastic articles, between IL, on the one hand, and, on the other, points in MI, IN, OH, and WI, under a continuing contract or contracts with Free-Flow Packaging Corp., Thornton, IL. Supporting shipper: Free-Flow Packaging Corporation, 2500 Middlefield Road, Red Wood City, CA 94064.

MC 152206 (Sub-4–1TA), filed October 16, 1980. Applicant: SUJAX, INC., Route 2, Box 30D, Union Grove, WI 53182. Representative: Richard C. Alexander, 710 N. Plankinton Avenue, Milwaukee, WI 53203. Contract: Irregular, *Parts, materials, supplies, and equipment used in the manufacture of automobiles,* between Kenosha, WI, on the one hand, and, on the other, points in IL, IN, MI, OH, PA, and WV, and Louisville, KY, St. Louis, MO, and Chattanooga, TN. An underlying ETA seeks 120 days authority. Supporting shipper: American Motors Corporation, 5625–25th Avenue, Kenosha, WI 53140.

MC 103798 (Sub-4–4TA), filed October 14, 1980. Applicant: MARTEN TRANSPORT, LTD., Route 3, Mondovi, WI 54755. Representative: Stephen F. Grinnell, 1000 First National Bank Bldg., Minneapolis, MN 55402. *Foodstuffs,* from Vesper and Menomonie, WI to points in IA, IL, MO and NE. An underlying ETA

*An underlying ETA seeks 120 days authority.

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seeks 120 days authority. Supporting shipper: Sanna Division, 6501 Grand Teton Plaza, Madison, WI 53704.

MC 135208 (Sub-4-2TA), filed October 14, 1980. Applicant: GEORGE L. BIGELOW TRUCKING, INC., 135 Wright St., Delavan, WI 53115. Representative: Richard A. Westley, Attorney, 4506 Regent Street, Suite 100, Madison, WI 53705. *Fuel tanks* from the facilities of Stolper Industries, Inc., located at or near Walworth, WI to East Moline, IL. Supporting shipper: Stolper Industries, Inc., Brick Church Rd., Walworth, WI 53184.

MC 55896 (Sub-4-9TA), filed October 10, 1980. Applicant: R-W SERVICE SYSTEM, INC., 20225 Goddard Road, Taylor, MI 48180. Representative: Martin J. Leavitt, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. *Iron and steel articles* from Wayne County, MI to Kanawha County, WV. Supporting shipper: McLouth Steel Corporation, 1060 W. Jefferson Avenue, Trenton, MI 48183.

MC 84648 (Sub-4-1TA), filed October 16, 1980. Applicant: SPINDLER TRANSFER CO. d.b.a. SPINDLER'S SERVICE, 211 Cumming Ave., Superior, WI 54880. Representative: Robert D. Gisvold, 1000 First National Bank Bldg., Minneapolis, MN 55402. *Deicing salt,* from Superior, WI to points in MN. An underlying ETA seeks 120 days authority. Supporting shipper: Cutler Magner Co., P.O. Box 6807, Duluth, MN 55806.

MC 125708 (Sub-4-13TA), filed October 16, 1980. Applicant: THUNDERBIRD MOTOR FREIGHT LINES, INC., 425 W. 152nd Street, East Chicago, IN 46312. Representative: Edward F. V. Pietrowski, 3300 Birney Avenue, Moosic, PA 18507. *Non-ferrous metals and non-ferrous metal products,* Detroit, Bay City, Grand Rapids, Flint, Ithaca, Holland, Muskegon, and Kalamazoo, MI to points in NY, NJ, TX IL, OH, MO, NC, AR and PA. An underlying ETA seeks 120 days authority. Supporting shipper(s): Metalsco, Inc., Suite 822, 111 West Port Plaza, St. Louis, MO 63141.

MC 28961 (Sub-4-2TA), filed October 16, 1980. Applicant: McDUFFEE MOTOR FREIGHT, INC., 8050 West Warren Ave., P.O. Box 610, Dearborn, MI 48121. Representative: LaVergne L. Adsit (same as applicant). *Common;* regular; *General Commodities (STCC51)* (except those of unusual value, class A and B explosives, household goods as described by the Commission, commodities in bulk and those requiring the use of special equipment). Serving Pikeville, TN as an off route point in connection with Applicant's present regular route operations to and from Nashville and Knoxville, TN. Supporting shippers: International Harvester Co., 6125 Urbana Road, Springfield, OH 45501. Ferror Manufacturing Corporation, P.O. Box 190, Ferro Road, Pikeville, TN 37367.

MC 152127 (Sub-4-1TA), filed October 16, 1980. Applicant: MIGLER, INC., 329 N. State St., Kendallville, IN 46755. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. *Contract;* Irregular, *Petroleum oils, greases and lubricants, between Chicago, IL, Cleveland, OH, and Detroit, MI, on the one hand, and on the other, points in IN, IL, KY, OH, MI, and WV. Restricted to service performed under a continuing contract with Polar Inc. Supporting shipper: Polar, Inc., 92 East Franklin St., Dayton, OH 45459.*

MC 128837 (Sub-4-21TA), filed October 16, 1980. Applicant: TRUCKING SERVICE, INC., P.O. Box 229, Carlinville, IL 62626. Representative: Michael W. O'Hara, 300 Reisch Building, Springfield, IL 62701. *Foodstuffs (except in bulk),* from the facilities of Ocean Spray Cranberries Incorporated at Hopkins County, TX to points in AR, CO, KS, LA, MO, MS, NM, OK, and TN. An underlying ETA seeks 120 days authority. Supporting shipper: Ocean Spray Cranberries Incorporated, 7800 South 60th Avenue, Kenosha, WI 53142.

MC 127651 (Sub-4-3TA), filed October 16, 1980. Applicant: EVERETT G. ROEHL, INC., East 29th Street, Box 7, Marshfield, WI 54449. Representative: Richard A. Westley, 4506 Regent Street, Suite 100, Madison, WI 53705. *Canned and preserved foodstuffs, and materials, equipment and supplies used in the production and distribution thereof* between the facilities of Loyal Canning Corp. at or near Loyal, WI on the one hand, and, on the other, points in AL, AR, FL, GA, IL, IN, IA, KY, LA, MI, MS, MO, NJ, NY, NC, OH, PA, SC, TN, VA and WV. Supporting shipper: Loyal Canning Corp., Box 278, Loyal, WI 54446.

MC 103993 (Sub-4-21TA), filed October 15, 1980. Applicant: MORGAN DRIVE-AWAY, INC., 28651 U.S. 20 West, Elkhart, IN 46515. Representative: Kenneth Hays (same address as above). *Motor vehicles,* between Richmond, IN, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Wayne Transportation, Division of Wayne Corporation, Industry Road, P.O. Box 1447, Richmond, IN.

MC 116519 (Sub-4-4TA), filed October 15, 1980. Applicant: FREDERICK TRANSPORT LIMITED, R.R. 6, Chatham, Ontario, Canada. Representative: Jeremy Kahn, 1511 K Street NW., Suite 733, Investment Bldg., Washington, DC. *Aluminum sheets,* in coils, from the facilities of Alcan Canada Products Limited at Bracebridge, ON, CD, to the facilities of Alcan Aluminum Corp., at or near Fairmont, WV (U.S. portion begins at International Boundary Line in NY). An underlying ETA seeks 120 days authority. Supporting shipper: Alcan Smelters and Chemicals, Ltd., P.O. Box 6090, Montreal, PQ, CD H3C 3H2.

MC 16903 (Sub-4-5TA), filed October 16, 1980. Applicant: MOON FREIGHT LINES, INC., P.O. Box 1275, Bloomington, IN 47402. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. *Lumber,* from the U.S.-Canada International Boundary near Detroit, MI, to points in IN and KY. An underlying ETA seeks 120 days authority. Supporting shipper: Green Forest Lumber, Ltd., 250 Murton Street, Toronto, Ontario, Canada.

MC 152207 (Sub-4-1TA), filed October 16, 1980. Applicant: C.W.C. CO., 4700 Quebec Avenue North, New Hope, MN 55428. Representative: Stephen F. Grinnell, 1000 First National Bank Bldg., Minneapolis, MN 55402. *Building materials* between points in IA, IL, MN, ND, SD, and WI. An underlying ETA seeks 120 days authority. There are 5 supporting shippers.

MC 126555 (Sub-4-23TA), filed October 15, 1980. Applicant: UNIVERSAL TRANSPORT, INC., P.O. Box 3000, Rapid City, SD 57709. Representative: Stockton and Lewis, The 1650 Grant Street Building, Denver, CO 80203. *Lumber* from WA, OR, MT, ID, and WY to ND, SD, and NE. Supporting shipper: McFarland Cascade, P.O. Box 2667, Eugene, OR 97402.

MC 150327 (Sub-4-3TA), filed October 16, 1980. Applicant: AMANON, INCORPORATED, 38294 Rickham Court, Westland, MI 48185. Representative: John S. Barbour, 2711 East Jefferson, Suite 202, Detroit, MI 48207, *Contract,* irregular, *Industrial paint finishing equipment and materials, equipment and supplies (except commodities in bulk) used in the installation thereof* between Troy and Madison Heights, MI, one the one hand, and on the other, all points in the U.S. except AK, HI, and MI, under continuing contracts with Alpha-Debon Industries, Inc. Supporting shipper: Alpha-Debon Industries, Inc., 1743 Larchwood, Troy, MI 48084.

MC 152100 (Sub-4-1TA), filed October 15, 1980. Applicant: W & H TRUCK SYSTEMS, INC., 7601 West 59th Street, Summit, IL 60501. Representative: Abraham A. Diamond, 29 South La Salle Street, Chicago, IL 60603. *(a) Foodstuffs, other than in bulk; and (b) Materials,*

equipment and supplies used or useful in the manufacture, sale and distribution of foodstuffs, other than in bulk; between points in the continental U.S. in and east of MT, WY, CO and NM. Supporting shipper: D'Amico Marcaroni Co., 2601 Bond Street, Park Forest South, IL 60444. An underlying ETA seeks 120 days authority.

MC 114055 (Sub-4-2TA), filed October 15, 1980. Applicant: RAY KOLNIK, d.b.a. RAY KOLNIK TRUCKING, Route 1, Prairie View Road, Walworth, WI 53184. Representative: Attorney Joseph E. Ludden, 324 Exchange Building, P.O. Box 1567, La Crosse, WI 54601. *Malt Beverages,* from St. Paul, Washington, County, MN., Belleville, St. Clair County, IL, and Frankenmuth, Saginaw County, MI, to Elgin, Kane County, IL and Fox River Grove, McHenry County, IL. An underlying ETA has been granted for 120 days. Supporting shippers: Elgin Beverage Co., 1685 Fleetwood Drive, Elgin, IL 60120. L & V Distributors, Inc., 104 Northwest Highway, Fox River Grove, IL 60021.

MC 148314 (Sub-4-32TA), filed October 15, 1980. Applicant: INTER-FREIGHT TRANSPORTATION, INC., 655 East 114th St., Chicago, IL 60628. Representative: Donald B. Levine, 39 S. LaSalle St., Chicago, IL 60603. *Plastic film,* from Cleveland and Akron, OH, to Chicago and Lansing, IL; and Hammond, IN. Supporting shipper: Land-O-Frost, Inc., 16850 Chicago Ave., Lansing, IL 60438.

MC 145820 (Sub-4-2TA), filed October 14, 1980. Applicant: NORTH CENTRAL DISTRIBUTING CO., P.O. Box 5453 University Station, Fargo, ND 58105. Representative: Richard P. Anderson, 502 First National Bank Bldg., Fargo, ND 58126. *Contract* irregular: *Lumber and wood products* from points in WA, OR, ID, MT and CA, to points in ND, SD, MN, WI, IA and IL under contract with Louisiana-Pacific Corporation. An underlying ETA seeks 120 days authority. Supporting shipper: Louisiana-Pacific Corporation, 1300 SW 5th Avenue, Portland, OR 97201.

MC 115242 (Sub-4-3TA), filed October 14, 1980. Applicant: DONALD MOORE, 601 North Prairie Street, Prairie du Chien, WI 53821. Representative: Michael S. Varda, 121 S. Pinckney Street, Madison, WI 53703. *Lumber construction board and insulation* from points in AL, AR, GA, LA, MS and Pevely, MO to Janesville, LaCrosse, Madison and Prairie du Chien, WI. Supporting shipper(s): Quality Wood Treating Co., Inc., 1520 South 16th Street, Prairie du Chien, WI 53821; and Lumbermens Service, a corporation, 6124 McKee Road, Madison, WI 53711.

MC 142920 (Sub-4-7TA), filed October 14, 1980. Applicant: OLIVER TRUCKING CORP., 2203 W. Oliver Street, Indianapolis, IN 46221. Representative: Morton E. Kiel, Suite 1832, 2 World Trade Center, New York, NY 10048. *Contract* irregular: *Such commodities as are dealt in or used by manufacturers or distributors of sound, communications, educational or enterainment equipment and materials (except in bulk),* from Terre Haute and Indianapolis, IN, to points in TX under continuing contract(s) with CBS, Inc. Supporting shipper: CBS, Inc., 51 W 52 Street, New York, NY 10009. An underlying ETA seeks 120 days authority.

MC 149492 (Sub-4-2TA), filed October 14, 1980. Applicant: CHICAGO-LAND-QUAD CITIES EXPRESS, INC., 817 W. 21st St., Chicago, IL 60608. Representative: Philip A. Lee, 120 W. Madison St., Chicago, IL 60602. *Contract* irregular: *Plastic pellets and granules,* from Calument City, IL to Mauldin, SC.; Neenah, WI.; Finderne, NJ.; Terre Haute, IN.; Kalamazoo, MI.; Ada, OK.; Adrian, MI.; French Lick, IN. Under continuing contract(s) with American Thermoplastics. Supporting shipper: American Thermoplastics, 142nd & Paxton Ave., Calument City, IL 60409. An underlying ETA seeks 120 days authority.

MC 139151 (Sub-4-4TA), filed October 16, 1980. Applicant: CANUS TRUCKING, LTD., 150 Sutherland Ave., Winnipeg, Manitoba, Canada R2W 5K4. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St., N.W., Washington, D.C. 20005. *Common, irregular, lime and limestone products,* from Manitowoc County, WI, to the port of entry on the US/Canada boundary line at or near Noyes, MN. Supporting shipper: Rockwell Lime Company, Manitowoc, WI 54220.

MC 19311 (Sub-No.4-5TA), filed October 16, 1980. Applicant: CENTRAL TRANSPORT, INC., 34200 Mound Road, Sterling Heights, MI 48077. Representative: Patrick O. Smith, 755 West Big Beaver—Suite 1200, Troy, MI 48084. *Common;* irregular; *General Commodities,* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment,) serving points in Macomb and St. Clair Counties, MI on and south of Michigan Highway 21 in connection with carrier's presently authorized regular route operations. An underlying ETA seeks 120 days authority. There are 45 Certificates of Support filed with the application.

MC 139667 (Sub-No. 4-1TA), filed September 19, 1980. Applicant: CHARLES SCHMIDT TRUCKING COMPANY, INC., 101 W. Sanger, Salem, IL 62881. Representative: Brenda Schmidt (same address as applicant) *Building Materials,* to and from Centralia, IL. to points in 48 states (except AK and HI). An underlying ETA seeks 120 days authority. Supporting shipper: American Solartron Corporation, Route 5, Box 170, Centralia, IL. 62801.

MC 152141 (Sub-4-2TA), filed October 14, 1980. Applicant: Young TRANSPORTATION, INC., 2526 North Western Ave., Plymouth, IN 46563. Representative: David G. Abraham, 6400 Goldsboro Road, Suite 304, Washington, D.C. 20034. *Contract,* irregular, *lumber or wood products, except furniture* as described in Item 24 of the Standard Transportation Commodity Code Tariff; *pulp, paper or allied products* as described in Item 26 of the STCC Tariff; *chemicals or allied products* as described in Item 28 of the STCC Tariff; *rubber or miscellaneous plastics products* as described in Item 30 of the STCC Tariff; *clay concrete, glass or stone products* as described in Item 32 of the STCC Tariff; and *fabricated metal products except ordnance* as described in Item 34 of the STCC Tariff; between points in the U.S., under continuing contracts with Young Door Company, Midwest Division, Plymouth, IN; Young Door Company, South Central Division, Hartselle, AL; Young Door Company, Eastern Division, Sunbury, PA; and Challenge Metal Products, Inc., Ligonier, IN.

MC 136293 (Sub-4-3TA), filed October 15, 1980. Applicant: LOUIE SENSKE and JIM SENSKE d.b.a. SENSKE AND SON TRANSFER, 117 Fourth Avenue North, Crookston, MN 56716. Reprsentative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58108. Trailers and buildings in sections, between points in IA, MN, MT, NE, ND, SD, WI and WY. Supporting shippers: There are 7 statements of support attached.

MC 147644 (Sub-4-6TA), filed October 15, 1980. Applicant: JMC TRANSPORT, INC., 1719 Potters LN., Jeffersonville, IN 47130. Representative: Gerald K. Gimmel, Suite 145, 4 Professional Dr., Gaithersburg, MD 20760. *Alcoholic beverages* (except in bulk), from Cincinatti, OH and Frankfort, KY to points in AZ, CA, NM, NV and UT. Supporting shipper: National Distilleries, Inc., 126 Section Road, Cincinatti, OH 45216. An underlying ETA seeks 120 days authority.

MC 145095 (Sub-4-2TA), filed October 15, 1980. Applicant: POWER FUELS,

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INC., P.O. Box 1369, Minot, ND 58701. Representative: F. J. Smith, Suite 307, 420 N. 4th St., Bismarck, ND 58501. *Anhydrous ammonia in bulk, tank vehicles,* from Velva, ND to Reserve, MT. Supporting shipper: Cominco America, Inc., 205 NW 25th, Fargo, ND 58104.

MC 152194 (Sub-4–1TA), filed October 15, 1980. Applicant: NECOMA TRANSPORT, INC., 11 South 360 Madison Street, Hinsdale, IL 60521. Representative: Stephen H. Loeb, Suite 2027, 33 North LaSalle Street, Chicago, IL 60602. *Liquid cleaning compounds,* in bulk, in tank vehicles, from the facilities of Onyx Chemical Co., at Blue Island, IL to St. Louis, MO, Ft. Madison, IA, and points in OH, IN, MI, and WI. Supporting shipper: Onyx Chemical Co., 14000 South Seeley Avenue, Blue Island, IL 60406.

MC 146643 (Sub-4–31TA), filed October 15, 1980. Applicant: INTER-FREIGHT TRANSPORTATION, INC., 655 East 114th St., Chicago, IL 60628. Representative: Donald B. Levine, 39 S. LaSalle St., Chicago, IL 60603. *Contract;* Irregular: *Foodstuffs and materials, equipment and supplies used in the manufacture thereof (except in bulk),* between the facilities of D'Amico Foods Company at or near Steger, IL, on the one hand, and, on the other, points in the U.S. in and east of ND, SD, NE, KS, OK and TX. Supporting shipper: D'Amico Foods Company, 3601 Chicago Road, Steger, IL 60475. An underlying ETA seeks 120 days authority.

The following applications were filed in Region 5. Send protests to: Consumer Assistance Center, Interstate Commerce Commission, Post Office Box 17150, Fort Worth, TX 76102.

MC 35320 (Sub-5–35TA), filed October 14, 1980. Applicant: T.I.M.E.-DC, INC., 2598 74th Street, P.O. Box 2550, Lubbock, TX 79408. Representative: Kenneth G. Thomas (same address as applicant). Common, regular. *General commodities, except household goods as defined by the Commission, and Classes A and B explosives,* serving New Orleans, LA and its commercial zone as an off-route point in connection with carrier's otherwise authorized regular route operations. Supporting shippers: Eight.

Note.—Applicant intends to tack and interline.

MC 40270 (Sub-5–1TA), filed October 15, 1980. Applicant: CRABBS TRANSPORT, INC., P.O. Box 3486, Enid, OK 73701. Representative: R. H. Lawson, Attorney, 2753 Northwest 22nd Street, Oklahoma City, OK 73107. *Salt and Salt Products, in bulk or in packages on pallets,* between Hutchinson, KS, on the one hand, and, on the other, points in OK on and south of a line beginning at the OK-TX State line and extending along U.S. Highway 66 to Oklahoma City, OK, then along U.S. Highway 62 to junction U.S. Highway 266, then along U.S. Highway 266 to junction U.S. Highway 64, and then along U.S. Highway 64 to the OK-AR State line. Supporting shippers: Cargill, Inc., P.O. Box 9300, Minneapolis, MN, Carey Salt Div. of Procesed Minerals, Inc. P.O. Box 459, Hutchinson, KS

MC 58902 (Sub-5–1TA), filed October 14, 1980. Applicant: MANLEY TRUCK LINE, INC., P.O. Box 1575 SSS, Springfield, MO 65806. Representative: Frank W. Taylor, Jr., 1221 Baltimore Ave., Suite 600, Kansas City, MO 64105. Common; Regular: *General commodities, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities requiring special equipment, and those injurious or contaminating to other lading,* (1) between Joplin, MO and Fort Smith, AR, serving all intermediate points and the off-route points in Newton and McDonald Counties, MO and Benton, Washington, Crawford, Sebastian Counties, AR: from Joplin over U.S. Hwy 71 to Fort Smith and return over the same route; (2) between Springfield, MO and Fort Smith, AR, serving all intermediate points: from Springfield over U.S. Hwy 60 to Junction U.S. Hwy 71, then over U.S. Hwy 71 to Fort Smith and return over the same route; (3) between Tulsa, OK and Fort Smith, AR, serving no intermediate points and serving the junction of U.S. Hwys 64 and 69 for purposes of joinder only: from Tulsa over U.S. Hwy 64 to Fort Smith and return over the same route; (4) between Neosho, MO and Miami, OK: from Neosho over U.S. Hwy 71 to Junction U.S. Hwy 60, then over U.S. Hwy 60 to Junction MO Hwy 43, then over MO Hwy 43 to Junction MO County Hwy U, then over MO County Hwy U to MO/OK border and Junction OK Hwy 10 C, then over OK Hwy 10C to Junction OK Hwy 10, then over OK Hwy 10 to Miami and return over the same route; (5) between Springdale, AR and Tulsa, OK, serving all intermediate points in AR and the junction of OK Hwy 33 and U.S. Hwy 69 for purposes of joinder only: from Springdale over AR Hwy 68 to Junction OK Hwy 33, then over OK Hwy 33 to Tulsa, and return over the same route; (6) between Muskogee, OK and Junction U.S. Hwys 69 and 66, serving the junction of U.S. Hwys 69 and 66 and the junction of OK Hwy 33 and U.S. Hwy 69 for the purpose of joinder only and serving Muskogee for the purpose of joinder only: from Muskogee over U.S. Hwy 69 to Junction U.S. Hwy 66 and return over the same route. There are 28 supporting shippers.

Note.—Applicant proposes to serve all of the commercial zones of all of the specified points and intermediate points as shown in Routes (1) through (5) above. Applicant proposes to tack the authority sought above with its existing authority so as to provide a through service. Applicant also proposes to interline traffic transported under the above-listed authority with other carriers at various terminal locations.

MC 59367 (Sub-5–5TA), filed October 14, 1980. Applicant: DECKER TRUCK LINE, INC., P.O. Box 915, Ft. Dodge, IA 50501. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. *Frozen foods,* between points in Webster County, IA, on the one hand, and, on the other, points in CO, KS, MN, MO, NE, ND, SD and WI. Supporting shipper: General Foods Corporation, 250 North St., White Plains, NY 10625.

MC 60066 (Sub-No. 5–4TA), filed October 15, 1980. Applicant: BEE LINE MOTOR FREIGHT, INC., 1804 Paul Street, Omaha, NE 68102. Representative: Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106. *Shock absorbers, and parts, materials, equipment and supplies used in the manufacture of shock absorbers,* between Dawson County, NE on the one hand, and, on the other, points in the U.S. (except NE, AK and HI). Supporting shipper: Monroe Auto Equipment Co., International Drive, Monroe, MI 48161.

MC 67234 (Sub-5–10TA), filed October 15, 1980. Applicant: UNITED VAN LINES, INC., One United Drive, Fenton, MO 63026. Representative: B. W. LaTourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, MO 63105. *Furniture or Fixtures, Furnishings, crated and uncrated,* between Los Angeles, CA, on the one hand, and on the other, points in the U.S. Supporting shipper: Boyd Furniture Manufacturing, Inc., 21640 Wilmington Avenue, Carson, CA 90810.

MC 78400 (Sub-5–16TA), filed October 14, 1980. Applicant: BEAUFORT TRANSFER COMPANY, P.O. Box 151, Gerald, MO 63037. Representative: Ernest A. Brooks II, 1301 Ambassador Bldg., St. Louis, MO 63101. *Containers, and materials and supplies used in the manufacture thereof,* between points in the U.S., in and east of ID, UT, and AZ, restricted to traffic originating at or destining to the facilities of Alton Box Board Company. Supporting shipper: Alton Box Board Company, 401 Alton Street, Alton, IL 62002.

MC 99427 (Sub-5–5TA), filed October 14, 1980. Applicant: ARIZONA TANK

LINES, INC., 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check, 666 Grand Avenue, Des Moines, IA 50309. *Residual fuel oils,* in tank vehicles from points in San Juan County, NM to points in CO and AZ. Supporting shipper: Giant Refining, Inc., P.O. Box 256, Farmington, NM 87401.

MC 106398 (Sub-No. 5–47TA), filed October 15, 1980. Applicant: NATIONAL TRAILER CONVOY, INC., 705 South Elgin, Tulsa, OK 74120. Representative: Gayle Gibson, National Trailer Convoy, Inc., 705 South Elgin, Tulsa, OK. *Iron and steel articles,* between points in AR, KS, OK, TX, CO, NM, MS and LA. Supporting shipper: Singer Steel, P.O. Box 3528, Enid, OK 73701.

MC 106398 (Sub-No. 5–48TA), filed October 15, 1980. Applicant: NATIONAL TRAILER CONVOY, INC., 705 South Elgin, Tulsa, OK 74120. Representative: Gayle Gibson, National Trailer Convoy, Inc., 705 South Elgin, Tulsa, OK 74120. *Buildings, complete, knocked down or in sections, including all component parts and accessories* from the facilities of National Steel Products, Inc. at Houston, TX; to points in the states of NM, CO, UT, ID, WA, OR, CA, NV and AZ. Supporting shipper: National Steel Products, Inc., P.O. Box 40490, Houston, TX.

MC 106398 (Sub-5–49TA), filed, October 15, 1980. Applicant: NATIONAL TRAILER CONVOY, INC., 705 South Elgin, Tulsa, OK 74120. Representative: Gayle Gibson, Director of Traffic, National Trailer Convoy, Inc., 705 South Elgin, Tulsa, OK 74120. *Composition board,* from the facilities of United States Gypsum Company, Greenville, MS; to points in CT, DE, DC, ME, MD, MA, NH, NJ, NY, PA, RI and VT. Supporting shipper: United States Gypsum Company, 101 South Wacker Drive, Chicago, IL 60606.

MC 111231 (Sub-5–13TA), filed, October 15, 1980. Applicant: JONES TRUCK LINES, INC., 610 East Emma Avenue, Springdale, AR 72764. Representative: Don A. Smith, P.O. Box 43, 510 North Greenwood Avenue, Fort Smith, AR 72902. *Plastic Pipe, Fittings, Gaskets, Sealer and Accessories,* between plant site of MARATHON PLASTICS, INC., at or near Litchfield, IL, on the one hand, and, on the other, points in the U.S., except AK, AL, AR, FL, GA, HI, IN, IA, KS, KY, MS, MI, MN, MO, NE, NC, ND, OH, OK, SC, SD, TN, VA, and WI. Supporting shipper: Marathon Plastics, Inc., P.O. Box 189, Litchfield Industrial Park, Litchfield, IL 62056.

MC 113362 (Sub-5–15TA), filed, October 14, 1980. Applicant: ELLSWORTH FREIGHT LINES, INC., 310 East Broadway, Eagle Grove, IA 50533. Representative: Milton D. Adams, P.O. Box 429, Austin, MN 55912. *Foodstuffs (except in bulk),* from the facilities Sanna Division, Beatrice Foods Company, at Menomonee, Cameron, Vesper, Wisconsin Rapids, and Eau Claire, WI to points in AR, KS, LA, MS, MO, OK, TX, and Memphis, TN. Supporting shipper: Sanna Division, Beatrice Foods Company, P.O. Box 8046, 6501 Grand Teton Plaza (53719), Madison, WI 53708.

MC 113908 (Sub-5–22TA), filed, October 14, 1980. Applicant: ERICKSON TRANSPORT CORP., 2255 North Packer Road, P.O. Box 10068 G.S., Springfield, MO 65804. Representative: B. B. Whitehead (same address as applicant). *Lecithin and kindred products, (non-exempt farm products; crude petroleum, natural gas or gasoline; non-exempt food or kindred products; textile mill products; lumber or wood products, except furniture; pulp, paper, or allied products; chemicals or allied products; petroleum or coal products; rubber or miscellaneous plastics products; general commodities, except household goods as defined by the Commission and classes A & B explosives),* between points in the U.S. Supporting shippers: (a) American Lecithin Company, P.O. Box 4056, Atlanta, GA 30302. (b) P.G. Consultants, Inc., P.O. Box 903, Arlington Heights, IL 60006. (c) Riceland Foods, Inc., P.O. Box 927, Stuttgart, AR 72160.

MC 114273 (Sub-5–32TA), filed, October 14, 1980. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core, Corporate Counsel (same as above). *Air conditioning, heating, and cooling equipment and component parts, materials and supplies used in their manufacture, repair, packaging and distribution,* between those pts in the U.S. in and east of ND, SD, NE, CO, OK and TX. Restricted to the transportation of traffic originating at or destined to those facilities of Fedders Corporation. Supporting shipper(s): Fedders Corporation, Woodbridge Avenue, Edison, NJ 08817.

MC 114284 (Sub-5–8TA), filed October 15, 1980. Applicant: FOX–SMYTHE TRANSPORTATION CO., P.O. Box 82307, Oklahoma City, OK 73148. Representative: William B. Barker, 641 Harrison Street, P.O. Box 1979, Topeka, KS 66601. *Candy,* from the facilities utilized by E. J. Brach & Sons at or near Chicago and Carol Stream, IL; Kansas City, MO; Little Rock, AR; and Oklahoma City, OK, to points in AR, NM, OK, and TX. Supporting shipper; E. J. Brach & Sons, 4656 West Kinzie Street, Chicago, IL 60644.

MC 115331 (Sub-5–12TA), filed October 14, 1980. Applicant: TRUCK TRANSPORT, INCORPORATED, 11040 Manchester Road, St. Louis, MO 63122. Representative: J. R. Ferris, (same as applicant). *Lime,* from the plant site of the U.S. Gypsum Company at New Orleans, LA to points in TX, MS, AR and AL. Supporting shipper(s): The United States Gypsum Company, 101 South Wacker Drive, Chicago, IL 60606.

MC 117119 (Sub-5–36TA), filed October 15, 1980. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, AR 72728. Representative: L. M. McLean (same address as applicant). *Such commodities as are dealt in or used by manufacturers and distributors of paint, chemicals, and related articles* (except in bulk) between all points in the U.S. (except AK and HI). Supporting shipper(s): The Sherwin-Williams Company, P.O. Box 6875, Cleveland, OH 44101.

MC 119399 (Sub-5–30), filed October 14, 1980. Applicant: CONTRACT FREIGHTERS, INC., P.O. Box 1375, 2900 Davis Boulevard, Joplin, MO 64801. Representative: Thomas P. O'Hara (same address as applicant). *Fibrous glass products and materials; mineral wool; mineral wool products and materials; insulated air ducts; insulating products and materials; glass fibre rovings; yarn and strands; glass fibre mats and mattings; flexible air duct* (except commodities in bulk) between the facilities of CertainTeed Corp. at or near Kansas City, KS on the one hand, and, on the other points in AR, LA, OK, and TX. Supporting shipper: CertainTeed Corporation, P.O. Box 860, Valley Forge, PA 19482.

MC 119399 (Sub-5–31TA), filed October 14, 1980. Applicant: CONTRACT FREIGHTERS, INC., P.O. Box 1375, 2900 Davis Boulevard, Joplin, MO 64801. Representative: Thomas P. O'Hara (same address as applicant). *Malt beverages* from Pottawattamie County, IA and Douglas County, NE to points in AR and MO (except Joplin, Springfield and West Plains, MO). Supporting shipper: PL Distributing Company, P.O. Box 38, Council Bluffs, IA.

MC 119399 (Sub-5–32TA), filed October 14, 1980. Applicant: CONTRACT FREIGHTERS, INC., P.O. Box 1375, 2900 Davis Boulevard, Joplin, MO 64801. Representative: Thomas P. O'Hara (address same as applicant). *Commodities that are dealt in by retail and wholesale food business houses, (except commodities in bulk)* between points in CA, CO, KS, MN, MO, OK and TX restricted to traffic originating or

destined to the facilities of the Pillsbury Company. Supporting shipper: The Pillsbury Company, LeSuer, MN 56058.

MC 119741 (Sub-5–20), filed October 14, 1980. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., 1515 Third Avenue, N.W., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (same as applicant). *Fireplaces and fireplace parts and accessories,* from the facilities of Heatilator, a Division of Vega Industries, Inc. at Centerville and Mount Pleasant, IA to all points in the U.S. Supporting shipper: Heatilator, a Division of Vega Industries, Inc., P.O. Box 409, Mount Pleasant, IA 52641.

MC 119741 (Sub-5–21), filed October 14, 1980. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., 1515 Third Avenue, N.W., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (same as applicant). *Such merchandise as is dealt in or used by retail or variety and department stores (except foodstuffs and commodities in bulk),* between points in AL, AR, CO, CT, DE, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, VT, VA, WV, and WI, for the account of Naum Bros. Inc. Supporting shipper: Naum Bros. Inc., 2373 West Ridge Road, Rochester, NY 14626.

MC 119789, (Sub-5–37TA), filed October 15, 1980. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: James K. Newbold, Jr. (same as applicant). *Foodstuffs (except in bulk),* from Lafayette and New Iberia, LA to ID, MT, and UT. Supporting shipper: B. F. Trappey's Sons, Inc.; Locker Drawer 400; New Iberia, LA, 70560.

MC 121658 (Sub-5–7TA), filed October 15, 1980. Applicant: STEVE D. THOMPSON TRUCKING, INC., 710 Prairie St., Winnsboro, LA 71295. Representative: Robert L. McArty, P.O. Box 22628, Jackson, MS 39205. *Common, regular, general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment)* between Bastrop, LA and Crossett, AR: from Bastrop over LA Hwy 139 to its juction with LA Hwy 142; over LA Hwy 142 to its junction with AR Hwy 133; over AR Hwy 133 to Crossett, and return over the same route, serving no intermediate points, but serving the commercial zones of Bastrop, LA and Crossett, AR. Supporting shippers: 7.

Note.—Applicant intends to interline and tack.

MC 123285 (Sub-5–1TA), filed October 15, 1980. Applicant: CLETEX TRUCKING, INC., P.O. Box 812, Cleburne, TX 76031. Representative: Clint Oldham, 1108 Continental Life Building, Forth Worth, TX 76102. *Flyash and lime, in bulk,* from Johnson County and Freestone County, TX, to points in MS. Supporting shipper: Woodbine Corporation, 2510 Decatur, Forth Worth, TX, 76106.

MC 124174 (Sub-5–25TA), filed October 15, 1980. Applicant: MOMSEN TRUCKING CO., 13811 "L" Street, Omaha, NE 68137. Representative: Karl E. Momsen, 13811 "L" Street, Omaha, NE 68137. *Scrap, metal, and metal articles,* from Douglas County, NE to Bourbon County, KS. Supporting shipper(s): Aaron Ferer & Sons Co., 909 Abbot Drive, Omaha, NE 68130.

MC 124711 (Sub-5–5TA), filed October 15, 1980. Applicant: BECKER CORPORATION, P.O. Box 1050, El Dorado, KS. 67042. Representative: Rod Parker (same as applicant). *Lube Oil,* from West Memphis, AR to Tulsa, OK, Skiatook, OK and Wichita, KS. Supporting shipper: Rapid Oil Company, 7214 East 38th, Tulsa, OK 74145.

MC 128709 (Sub-5–2TA), filed October 14, 1980. Applicant: PARIS MOTOR FREIGHT, INC., P.O. Box 1787, Ft. Smith, AR 72901. Representative: David B. Schneider, P.O. Box 1540, Edmond, OK 73034. *Household appliances, and parts for household applicances;* and *television sets, recorders (tape or wire), and accessories for television sets and recorders,* from Little Rock, AR to points in OK. Supporting shipper: General Electric Company, 6901 Lindsey Road, Little Rock, AR 72206.

MC 128883 (Sub-5–5TA), filed October 15, 1980. Applicant: NORTH IOWA EXPRESS, INC., 1921 N.E. 58th Avenue, Des Moines, IA 50313. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. *General commodities, except Class A and B explosives, commodities in bulk and those requiring special equipment* between Des Moines, IA, and Omaha, NE, serving all intermediate points over U.S. Highway 6 and Interstate Highway 80. Applicant intends to interline with other carriers and join the subject authority with its present operations. Supporting shippers: 10.

MC 133655 (Sub-5–11TA), filed October 15, 1980. Applicant: TRANS-NATIONAL TRUCK, INC., P.O. Box 402535, Dallas, TX 75240. Representative: Matthew J. Reid, Jr., P.O. Box 2298, Green Bay, WI 54306. *Such commodities as are dealt in or used by manufacturers and distributors of chemicals (except commodities in bulk)* from those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX to points in AR, LA, MS, OK, TN, and TX, restricted to movement from, to, or between facilities of or used by McKesson Chemical Company. Supporting shipper: McKesson Chemical Company, 3525 No. Causeway Blvd., Metarie, LA 70002.

MC 135078 (Sub-5–7–TA), filed October 14, 1980. Applicant: AMERICAN TRANSPORT, INC., 7850 "F" Street, Omaha, NE 68127. Representative: Arthur J. Cerra, P.O. Box 19251, 2100 TenMain Center, Kansas City, MO 64141. *General Commodities (except household goods as defined by the Commission and classes A & B Explosives)* from points in AL, GA, NC and SC to the Commercial Zones of Des Moines, IA; El Dorado Springs, Kansas City and Lexington, MO; and Omaha, NE. Supporting shippers: Wholesale Carpets, Inc., 13425 "I" Circle, Omaha, NE 68137; Mattingly Stores, Inc., Thirteenth & Franklin, Lexington, MO 64067; Dunbrooke Sportswear Co., P.O. Box 430 Lexington, MO 64067.

MC 135797 (Sub-5–74TA), filed October 15, 1980. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant, Esq. (address same as applicant). *General commodities (with the usual exceptions),* between points in the United States (except AK and HI). Restricted to traffic originating at or destined to the facilities of Specialty Materials Company. Supporting shipper: Specialty Materials Company, P.O. Box 3452, El Paso, TX 79923.

MC 136553 (Sub-5–3TA), filed October 14, 1980. Applicant: ART PAPE TRANSFER, INC., 1080 East 12th Street, Dubuque, IA 52001. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. *Construction materials and materials and supplies used in the manufacture and distribution of construction materials,* between Dubuque, IA, on the one hand, and, on the other, points in KS, MN, MO, NE, ND, SD, and TN. Supporting shipper: Dubuque Lumber Co., 2655 Lincoln Avenue, Dubuque, IA 52001.

MC 136786 (Sub-5–35TA), filed October 14, 1980. Applicant: ROBCO TRANSPORTATION, INC., P.O. Box 10375, Des Moines, IA 50313. Representative: Stanley C. Olsen, Jr., Gustafson & Adams, P.A., 7400 Metro Boulevard, Suite 411, Edina, MN 55435. *Such merchandise as is dealt in or used by retail stores,* between Forsyth County, NC, Kanawha County, WV, Osage-Tulsa Counties, OK, East Baton Rouge County, LA, Marion County, IN,

and points in TN, on the one hand, and, on the other, points in the U.S. Supporting shipper: Ardan Wholesale, Inc., P.O. Box 2260, Des Moines, IA 50310.

MC 138104 (Sub-5–6TA), filed October 15, 1980. Applicant: MOORE TRANSPORTATION CO., INC., 3509 N. Grove Street, Fort Worth, TX 76106. Representative: Bernard H. English, Fort Worth, TX 76116. *(1) pellet mills, conveyors, and attachments, and (2) materials, supplies and equipment used in the manufacture of the commodities described in (1) above,* (1) from Tarrant County, TX to points in AL, AR, CA, CO, FL, GA, IA, IL, IN, KS, LA, MN, MO, MS, NC, NE, OK, PA, SC, and TN, and (2) above, in the reverse direction. Supporting shipper: Landers Machine Company, Inc., 207 E. Broadway, Fort Worth, TX 76104.

MC 138627 (Sub-5–2TA), filed October 14, 1980. Applicant: SMITHWAY MOTOR XPRESS, INC., P.O. Box 404, Fort Dodge, IA 50501. Representative: Arlyn L. Westergren, Westergren & Hauptman, P.C., Suite 106, 7101 Mercy Road, Omaha, NE 68106. *Masonary products* from East Canton, OH and Bradford and Summerville, PA to points in AR, KS, MO, and OK. Supporting shipper: S–G Metals Industries, Inc., P.O. Box 2039, Kansas City, KS 66110.

MC 138627 (Sub-5–3TA), filed October 15, 1980. Applicant: SMITHWAY MOTOR XPRESS, INC., P.O. Box 404, Fort Dodge, IA 50501. Representative: Arlyn L. Westergren, Westergren & Hauptman, P.C., Suite 106, 7101 Mercy Road, Omaha, NE 68106. *Salt* from Hutchinson, KS to Fort Dodge, IA. Supporting shipper: Olson Distributing Company, Inc., 227 South 21st Street, P.O. Box 842, Fort Dodge, IA 50501.

MC 138627 (Sub-5–4TA), filed October 14, 1980. Applicant: SMITHWAY MOTOR XPRESS, INC., P.O. Box 404, Fort Dodge, IA 50501. Representative: Arlyn L. Westergren, Westergren & Hauptman, P.C., Suite 106, 7101 Mercy Road, Omaha, NE 68106. *Iron and steel articles,* from Granite City, IL and its Commercial Zone to points in AR, IN, IA, KS, KY, MI, MN, MO, NE, ND, OH, OK, SD, TN, TX, and WI. Supporting shipper: Michigan Metal Processing Corporation, P.O. Box H, Granite City, IL 62040.

MC 138686 (Sub-5–1TA), filed October 14, 1980. Applicant: L.C.W. TRUCKING, INC., 101 Hampton Road East, Crowley, TX 76102. Representative: M. Ward Bailey, 2412 Continental Life Bldg., Fort Worth, TX 76102. *Cheese and cheese products* from points in WI, Lena, IL, St. Olaf and Luana, IA to Dallas, Houston and San Antonio, TX.

MC 140033 (Sub-5–8TA), filed October 15, 1980. Applicant: COX REFRIGERATED EXPRESS, INC., 10606 Goodnight Lane, Dallas, TX 75220. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245. *Anti-freezing compounds, except in bulk,* from Weatherford, TX to points in the States of OR, WA, CA, ID, NV, AZ, UT, NM, CO, WY, and MT. Supporting shipper: Power Service Products, Inc., 1410 Bowie, Weatherford, TX 76086.

MC 140364 (Sub-5–8TA), filed October 15, 1980. Applicant: ARMOUR FOOD EXPRESS COMPANY, P.O. Box 2785, Amarillo, TX 79105. Representative: R. L. Gordon, Manager-Transportation, 111 West Clarendon, Phoenix, AZ 85013. Contract, irregular: *Foodstuffs and materials and supplies used in the manufacture thereof,* between points in the U.S., restricted to traffic for the account of, originating at, or destined to the facilities utilized by Armour and Company. Supporting shipper: Armour and Company, Greyhound Tower, Phoenix, AZ 85077.

MC 140665 (Sub-5–39TA), filed October 14, 1980. Applicant: PRIME, INC., P.O. Box 4208, Springfield, MO 65804. Representative: Ann Holcombe, P.O. Box 786, Ravenna, OH 44266. *General commodities, except articles of unusual value, Class A & B explosives, household goods as defined by the Commission, commodities in bulk, and articles because of their size and weight requiring special equipment,* (1) between points in AL, CO, CT, DE, DC, FL, IL, KS, MD, MA, MN, NE, RI, SD, SC, TN, VA and WI on the one hand, and on the other, points in AL, AZ, AR, CA, CO, FL, GA, ID, IL, IA, KS, KY, LA, MN, MS, MO, MT, NE, NV, NM, OH, OK, OR, SD, TN, TX, VT, WA, WI and WY; and (2) between AR, GA, IA, KY, MI, MO, NJ, NC, and OK on the one hand, and, on the other points, in AL, AR, FL, GA, IL, IA, KS, KY, MN, MS, MO, NE, OK, SD, and WI; and (3) between IN, LA, NY, OK, PA, and WV, on the one hand, and, on the other, AL, AR, FL, GA, IL, IA, KS, KY, MN, MS, MO, NE, OK, OH, SD, TN, and WI; and (4) between TX on the one hand, and on the other, AL, AR, FL, GA, IL, IA, KS, KY, MN, MS, MO, NE, OK, SD, and WI. (Restricted against the transportation of traffic moving between points within AL, AR, CO, FL, GA, IL, IA, KS, KY, MN, MS, MO, NE, OH, OK, SD, TN, and WI.) Supporting shipper: ITOFCA, Inc., Two Walker Avenue, Clarendon Hills, IL 60514.

MC 140665 (Sub-5–40TA), filed October 14, 1980. Applicant: PRIME, INC., P.O. Box 4208, Springfield, MO 65804. Representative: H. J. Anderson, P.O. Box 4208, Springfield, MO 65804. *General commodities (except articles of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and articles requiring special equipment,* between points in Tennessee East of the Tennessee River, on the one hand, and on the other, points in AZ, CA, ID, NV, OR, UT, WA, restricted to traffic moving on Mid-South Shippers Association, Inc., bills of lading. Supporting shipper: Mid South Shippers Association, Inc., 230 Willow Street, Nashville, TN 37210.

MC 140665 (Sub-5–41), filed October 14, 1980. Applicant: PRIME, INC., P.O. Box 4208, Springfield, MO 65804. Representative: H. J. Anderson, P.O. Box 4208, Springfield, MO 65804. *Plastics, dried flowers and cloth flowers and such commodities as are dealt in or used by distributors of floral products,* between Bolivar, MO, on the one hand, and on the other, Atlanta, GA, Dallas, TX, and New Albany, IN. Supporting shipper: Teters Floral Products Company, Box 210, Bolivar, MO 65613.

MC 142207 (Sub-5–1TA), filed October 15, 1980. Applicant: BRANNAN SYSTEMS, INC., P.O. Box 29287, New Orlenas, LA 70189. Representative: Bruce E. Mitchell, Fifth Floor, Lenox Towers South, 3390 Peachtree Road, N.E., Atlanta, GA 30326. *(1) Petroleum and petroleum products, except in bulk, and (2) materials, equipment and supplies used in the production or distribution of the commodities above* between Good Hope and Metairie, LA on the one hand, and, on the other, points in AL, FL, MS, KY, TN, and TX. Supporting shipper: Chevron U.S.A., Inc., P.O. Box 1706, Atlanta, GA 30301.

MC 144603 (Sub-5–26TA), filed October 14, 1980. Applicant: F.M.S. TRANSPORTATION, INC., 2564 Harley Drive, Maryland Heights, MO 63043. Representative: Raymond C. Dougherty (same address as applicant). *General commodities, (except Classes A & B explosives, commodities in bulk, commodities of unusual value, household goods and those requiring the use of special equipment)* from Los Angeles, CA and its Commercial Zone to Atlanta, GA, and Charlotte, NC, and their Commercial Zones (restricted to traffic from or to facilities of Greater Atlanta Shippers Assn., Inc. and Charlotte Freight Association, Inc.). Supporting shippers: Greater Atlanta Shippers Assn., Inc., 6168 Boat Rock Blvd., S.W., P.O. Box 43862, Atlanta, GA 30336 and Charlotte Freight Association, Inc., 2508 Starita Road, Charlotte, NC 28208.

MC 144622 (Sub-5–53TA), filed October 15, 1980. Applicant: GLENN

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BROS. TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: J. B. Stuart, P.O. Box 179, Bedford, TX 76021. *(1) Drugs, medicines, toilet preparations, chemicals, soaps and animal feed supplements; and (2) Such commodities as are dealt in and sold by department stores, supermarkets, hardware and drug stores;* (a) From West Springfield, MA; Clifton, NJ; May's Landing, NJ; Memphis, TN; and Ft. Madison, IA to Sparks NV; (b) From West Springfield, MA; Clifton, NJ; and May's Landing, NJ to Memphis, TN; (c) From Pearl River, NY to Los Angeles, CA; Portland, OR; Dallas, TX; Atlanta, GA; and Chicago, IL. Supporting shipper: American Cyanamid Company, Berdan Avenue, Wayne, NJ 07470.

MC 144682 (Sub-5-8TA), filed October 14, 1980. Applicant: R. R. STANLEY, 1738 Empire Central, Dallas, TX 75235. Representative: D. Paul Stafford, Suite 1125, Exchange PK, P.O. Box 45538, Dallas, TX 75245. *Soda ash, sodium bicarbonate, borax, boric acid, pesticides and surfactants, in containers,* (1) from CA, Green River, WY, Denver, CO, and Salt Lake City, UT, to Points in TX, and (2) from points in TX to points in NM. Supporting shipper: Van Waters & Rogers, A Division of Univar Corporation, 4707 Alpha Rd., Dallas, TX 75234.

MC 144682 (Sub-5-9TA), filed October 15, 1980. Applicant: R. R. STANLEY, 1738 Empire Central, Dallas, TX 75235. Representative: Lawrence A. Winkle, P.O. Box 45538, Dallas, TX 75245. *Foodstuffs (except commodities in bulk)* (1) From Milton, PA to points in NC, SC, GA, FL, AL, MS, LA, AR and TN; (2) From Vacaville, CA to points in OR and WA, and (3) Between Milton, PA, Vacaville, CA and La Porte, IN. Supporting shipper: American Home Foods, 685 Third Avenue, New York, NY 10017.

MC 145384 (Sub-5-9TA), filed October 14, 1980. Applicant: ROSE-WAY, INC., P.O. Box 4644, Des Moines, IA 50306. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. *Lumber, lumber products, wood products and millwork,* From Eugene, Baker, Dillard, Grants Pass, Klamath Falls, Bend, Madras, Prineville, and Portland, OR and Kettle Falls, Spokane, Sumner, Hoquiam, Aberdeen and Seattle, WA to points in IA, IL, IN, MI, MN, OH, WI, PA, and NY. Supporting shipper: Lawrence R. McCoy & Co., Inc., 120 Front street, Worsecester, MA 01608.

MC 145743 (Sub-5-2TA), filed October 15, 1980. Applicant: T.F.S. INC., RR 2, Box 126, Grand Island, NE 68801. Representative: A. J. Swanson, Quaintance & Swanson, P.O. Box 1103, 226 North Phillips Avenue, Sioux Falls, SD 57101. *Meats and packinghouse products* from Darr, NE, to Montgomery, AL and points in its commercial zone. Supporting shipper: Dugdale of Nebraska, Inc., P.O. Box 166, Cozad, NE 69130.

MC 146336 (Sub-5-5TA), filed October 15, 1980. Applicant: WESTERN TRANSPORTATION SYSTEMS, INC, 1609 109th St., Grand Prairie, TX 75050. Representative: D. Paul Stafford, Suite 1125, Exchange Pk., P.O. Box 45538, Dallas, TX 75245. Contract; irregular; *disposable surgical supplies, and pieced or finished paper or non-woven fabric used in the manufacture of disposable supplies;* (1) from Grand Prairie, Arlington, and Sherman, TX, to Jacksonville, FL, Denver, CO, and Seattle, WA, and (2) from Lake Charles, LA and Houston, TX, to Grand Prairie and Arlington, TX. Shipments in (2) above restricted to traffic having a prior movement by water. Supporting shipper: Surgikos, Inc., 2500 Arbrook Dr., Arlington, TX.

MC 146448 (Sub-5-11TA), filed October 15, 1980. Applicant: C & L TRUCKING, INC., P.O. Box 409, Judsonia, AR 72081. Representative: Timothy C. Miller, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101. *Tile and materials, equipment and supplies used in the installation, manufacture and sale thereof* from the facilities of American Olean Tile Co. at Cloverport and Lewisport, KY, to points in the United States (except AK and HI). Supporting shipper: American Olean Title Company, 1006 Cannon Avenue, Lansdale, Pa 19446.

MC 147214 (Sub-5-2TA), filed October 14, 1980. Applicant: DETERMANN INDUSTRIES, INC., 1425 No. Washington Blvd., Camanche, IA 5273. Representative: Carl E. Munson, 469 Fischer Building, Dubuque, IA 52001. *Corn germ, in bulk,* from Cedar Rapids IA, to Decatur, IL. Supporting shipper: Cargill, Inc., Cedar Rapids, IA.

MC 148548 (Sub-5-3TA), filed October 15, 1980. Applicant: KEIM TRANSPORTATION, INC., P.O. Box 226, Sabetha, Ks. 66534. Representative: Clyde N. Christey, KS Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS. 66612. Contract, irregular; *Iron & Steel Articles (except "Mercer" commodities as defined in 74 MCC 459, 543 or earth drilling commodities as described in Roy L. Jones et al 103, MCC 825, 832),* Part 1) Between points and places in CO, NE, KS, OK, IA, and MO. Part 2) Between points and places in CO, NE, KS, OK, IA, MO on the one hand and points in OR, IL, IN, OH, MI, KY, TN, AL, GA, IA, and PA on the other hand. Supporting shipper: Steel and Pipe Supply Co. Inc., P.O. Box 703, Osage St., Manhattan, KS 66502.

MC 149155 (Sub-5-1TA), filed October 15, 1980. Applicant: JOHN PEPPER d.b.a. MIDWEST CARTAGE COMPANY, P.O. Box 318, Atchison, KS 66002. Representative: Arthur J. Cerra, 2100 TenMain Center, P.O. Box 19251, Kansas City, MO 64141. *Non-exempt food or kindred products (STCC No. 20)* between points in Buchanan County, MO, and York County, ME. Supporting shipper: Prime Tanning Co., Inc., 205 Florence, St. Joseph, MO 64504.

MC 150311 (Sub-5-14TA), filed. October 14 1980. Applicant: P & L MOTOR LINES, INC., P.O. Box 4616, Fort Worth, TX 76106. Representative: Billy R. Reid, 1721 Carl Street, Fort Worth, TX 76103. *Such commodities dealt in or used by wholesale grocers, except commodities in bulk in tank vehicles,* between Rochester, NY and points in the U.S. Supporting shipper: Wegmans Food Markets, Inc., P.O. Box 844, 1500 Brooks Ave., Rochester, NY 14603.

MC 150425 (Sub-5-8TA), filed. October 15, 1980. Applicant: TRANS-CONTINENTAL EXPRESS, INC., P.O. Box D, Clarksville, TX 75426. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. *Malt beverages,* from the facilities of Miller Brewing Co. at or near Ft. Worth, TX to Bossier Parish, LA. Supporting shipper: G and G Distributing, Inc., 410 Hamilton St., Bossier City, LA 71111.

MC 150440 (Sub-5-4), filed October 14, 1980. Applicant: UNIVERSAL EXPRESS, LTD., 536 S. 19th Street, West Des Moines, IA 50265. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. *Household and commercial laundry and kitchen applicances and parts and materials used in the repair or manufacture of such applicances (except commodities in bulk, in tank vehicles),* (1) Between Farfield and Hampton, IA, on the one hand, and, on the other, points in DC, DE, IN, KS, KY, MD, MI, MO, NJ, NC, OH, OK, PA, SC, TX, VA, and WV, and (2) between Newton, Fairfield, and Hampton, IA, on the one hand, and, on the other, points in AL, AR, VT, CO, CT, FL, GA, IL, MA, ME, MS, LA, NE, NH, NY RI, TN, and WY. Supporting shipper: The Maytag Company, Newton, IA 50268.

MC 150493 (Sub-5-2TA), filed October 15, 1980. Applicant: CARL HATCHER TRUCKING, INC., Route 3, Antlers, OK 74523. Representative: R. H. Lawson, Attorney, 2753 Northwest 22nd Street, Oklahoma City, OK 73107. Contract irregular: *Oil, used in the treatment of lumber, posts and poles, in bulk,* from Mt. Pleasant, TX to the facilities of Julian Lumber Company in Pushmataha County, OK and *Creosote, used in the treatment of lumber, posts and poles, in bulk,* from Houston and Lone Star, TX and Lake Charles, LA to the facilities of Julian Lumber Company in Pushmataha County, OK. Supporting shipper: Julian Lumber Company, Rattan, OK 74562.

MC 151118 (Sub-5-6TA), filed October 15, 1980. Applicant: MDR CARTAGE, INC., 516 West Johnson, Jonesboro, AR 72401. Representative: Douglas C. Wynn, P.O. Box 1295, Greenville, MS 38701. (1) *Plastic and plastic articles (except commodities in bulk);* and (2) *equipment, materials and supplies used in the manufacture, sale and distribution of commodities described in (1) above (except commodities in bulk and those requiring special equipment):* Between the facilities of The Vollrath Company at Arlington and Gallaway, TN, on the one hand, and, on the other, points in the United States (except AK & HI). Supporting shipper: The Vollrath Company, 209 Vollrath Drive, Gallaway, TN 38036.

Note.—Dual operations may be involved.

MC 152171 (Sub-5-10TA), filed October 15, 1980. Applicant: C & L TRUCKING, INC., P.O. Box 409, Judsonia, AR 72081. Representative: Timothy C. Miller, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101. Contract; Irregular. *Chemicals, drugs, insecticides, soap, toilet preparations, cleaning compounds, buffing compounds and materials, supplies and articles used in the manufacture, sale and distribution thereof (except in bulk)* (1) from West Springfield, MA, Clifton and Mays Landing, NJ, Philadelphia, PA and Memphis, TN to Sparks, NV; and, (2) from Philadelphia, PA and Baltimore, MD to Memphis, TN; and, (3) between West Springfield, MA and Clifton and Mays Landing, NJ, on the one hand, and, on the other, Memphis, TN and Fort Madison, IA, under contract with American Cyanamid Company. Supporting shipper: American Cyanamid Company, Berdan Avenue, Wayne, NJ 07470.

MC 152172 (Sub-5-1TA), filed October 14, 1980. Applicant: DENNIS KEAR, d.b.a. DENNIS KEAR TRUCKING, P.O. Box 112, York, NE 68467. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Alcohol,* between points in NE, on the one hand, and, on the other, Atchison County, MO. Supporting shipper: Nebraskahol, P.O. Box 214, York, NE 68467.

MC 152172 (Sub-5-2TA), filed October 14, 1980. Applicant: DENNIS KEAR d.b.a. DENNIS KEAR TRUCKING, P.O. Box 112, York, NE 68467. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. (1) *Electrical equipment,* from the facilities of Larad Industries, Inc. at or near York, NE, to pts in the U.S. (except AK and HI); and (2) *Materials, equipment and supplies used in the production and distribution of electrical equipment,* from pts in the U.S. (except AK and HI) to the facilities of Larad Industries, Inc. at or near York, NE. Supporting shipper: Larad Industries, Inc., South Highway 81, Box 586, York, NE 68467.

MC 152190 (Sub-5-1TA), filed October 15, 1980. Applicant: HOUGHTON TRUCKING, INC., Houghton, IA 52631. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. *Liquid fertilizer, in bulk,* (1) From Montrose, Ames, and Pleasant Hill, IA, to points in MO and IL; and (2) from the facilities of Merschmann Seed & Grain, Inc., at or near Fort Madison, IA, to points in MO and IL. Supporting shipper: Kaiser Agricultural Chemical, Division of Kaiser, Aluminum & Chemical Sales, Inc., P.O. Box 65897, West Des Moines, IA 50265. Merschmann Seed & Fertilizer, Inc., P.O. Box 67, West Point, IA 52656.

MC 152192 (Sub-5-1TA), filed October 15, 1980. Applicant: EDWARD R. TEMMEN, Star Route 2, Jefferson City, MO 65101. Representative: James C. Swearengen, Hawkins, Brydon & Swearengen P.C., P.O. Box 456, Jefferson City, MO 65102. (A) *fertilizer,* from the plant site and facilities of Cooperative Farm Chemical Association, at or near Lawrence, KS, to all points in MO; and (B) *animal and poultry feed and feed ingredients,* from points in KS and IA, to points in MO. Supporting shipper: MFA Incorporated, 201 South 7th Street, Columbia, MO 65201.

MC 152199 (Sub-5-1TA), filed October 15, 1980. Applicant: VELDE EXPRESS, INC., 534 No. Iris Drive, Irving, TX 75061. Representative: Billy R. Reid, 1721 Carl Street, Fort Worth, TX 76103. Contract, Irregular: *Confectionery, and materials, equipment and supplies,* used in the manufacture and distribution of confectionery, between points in the U.S. Supporting shipper: Pangburn Company, P.O. Box 15050, Fort Worth, TX 76119.

MC 152200 (Sub-5-1TA), filed October 15, 1980. Applicant: C.M.W., INC. d.b.a. WIL-DOU TRUCKING, 1370 Sheffield Dr., Houston, TX 77015. Representative: W. Douglas McKinney (same as above). Contract: Irregular. *Oil field valves, machines, oil field related supplies and accessories in bulk and boxes.* Between Houston, TX and all points in LA, on the one hand, and OK, AR, and MS and their commercial zones, on the other. Supporting shipper: Sella Valve Corp., 4460 West 12th Street, Houston, TX 77055.

MC 96878 (Sub-5-1TA), republished filed September 18, 1980. Applicant: CONSOLIDATED TRANSFER AND WAREHOUSE CO., INC., 1251 Taney, North Kansas City, MO 74116. Representative: Robert L. Winsky (same address as applicant). *Pipe and Tubing: brass, bronze, copper, cement and asbestos fibre, concrete, conduit, cooling, cupro-nickel, drain, finned, iron, or steel (covered, lined, or wrought), machinery, metal, NOI, plastic, resin and mineral composition, sewer, sheet metal, steel, surface irrigation, welded, wrought iron, oilfield, heat-exchangers, irrigation, water; Materials Required for the Manufacture of Pipe and Tubing: iron or steel (NOI, flat, coil, rod, strip, angle, channel, plate, wire, rope)* between points in the U.S. Applicant intends to tack to its existing authority. Supporting shipper: La Barge Pipe, Inc., 20 South Fourth St., St. Louis, MO 63102.

MC 99427 (Sub-5-6TA), filed October 17, 1980. Applicant: ARIZONA TANK LINES, INC., 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check (same address as applicant). *Sulfuric acid,* from Milan, NM (Reid Siding), to Inspiration Copper, Inspiration, AZ. Supporting shipper: Chemical Marketing Services, P.O. Box 1026, Grants, NM 87020.

MC 112713 (Sub-5-19TA), filed October 17, 1980. Applicant: YELLOW FREIGHT SYSTEM, INC., 10990 Roe Avenue, Overland Park, KS 66207. Representative: Robert E. DeLand (same as applicant). Common, Regular. *General Commodities (except commodities in bulk, household goods as defined by the Commission, those requiring special equipment, those of unusual value and Classes A and B explosives),* between Parkersburg, WV and Clarksburg, WV. From Parkersburg over U.S. Hwy 50 to Clarksburg, serving no intermediate points, but serving their commercial zones. Supporting shipper: None.

Notes.—Applicant intends to tack and interline the authority sought with that contained in MC 112713.

MC 113908 (Sub-5-23TA), filed October 17, 1980. Applicant: ERICKSON TRANSPORT CORP., 2255 North Packer Road, P.O. Box 10068 G.S., Springfield, MO 65804. Representative: B. B. Whitehead (same address as applicant). *Fruit juice and fruit juice concentrates (non-exempt form products; non-exempt food or kindred products),* between (Wapato), Yakima County, WA, on the one hand, and, on the other, points in

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OH. Supporting shipper: Gama Foods, Inc., Route One, Wapato, WA 98951.

MC 116077 (Sub-5–10TA), filed October 17, 1980. Applicant: DSI TRANSPORTS, INC., 5851 San Felipe, Suite 800, Houston, TX 77027. Representative: J. C. Browder, Manager of Traffic—Operations, DSI Transports, Inc., 5851 San Felipe, Suite 800, Houston, TX 77027. *Commodities, in bulk, in tank vehicles,* between points in the U.S. (except AK and HI). Restricted to traffic originating at or destined to the facilities of the Temple-Eastex, Inc., at or near Evadale, TX.

MC 116142 (Sub-5–4TA), filed October 16, 1980. Applicant: M. BRUENGER & CO., INC., 6250 North Broadway, Wichita, KS 67219. Representative: Lester C. Arvin, 814 Century Plaza Building, Wichita, KS 67202. *Meat, meat products, meat by-products and articles distributed by meat packinghouses as described in Sections A & C of Appendix I to the Report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766,* from the facilities of Iowa Beef Processors, Inc., at or near Holcomb, KS to points in the U.S. Supporting shipper(s): Iowa Beef Processors, Inc., Dakota City, NE 68731.

MC 119700 (Sub-5–8TA), filed October 16, 1980. Applicant: STEEL HAULERS, INC., 306 Ewing Avenue, Kansas City, MO 64125. Representative: Frank W. Taylor, Jr., 1221 Baltimore Ave., Suite 600, Kansas City, MO 64105. *Iron and steel articles* from Oklahoma County, OK to points in AR, CO, IL, IN, IA, KS, LA, MN, MO, NE, NM, SD, TX, and WI. Supporting shipper: Oklahoma Steel Mill, Inc., 2700 S.W. 15th, Oklaboma City, OK 73108.

MC 119741 (Sub-5–22), filed October 16, 1980. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., 1515 Third Avenue, NW., P.O. Box 1235, Fort Dodge, IA 50001. Representative: D. L. Robson (same as applicant). *Washers and dryers, attachments, parts, and accessories thereof, and materials, equipment, and supplies used in the manufacture, distribution, and sale of the above-named commodities,* between Greene and Hamilton Counties, IA, on the one hand, and, on the other, points in the U.S. Supporting shipper: Webster City Products Co., 600 Stockdale Street, Webster City, IA 50595.

MC 119741 (Sub-5–23TA), filed October 17, 1980. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., 1515 Third Avenue, NW., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (same as applicant). *Pneumatic rubber tires, molded and extruded rubber parts, reinforced rubber hose, tread rubber, and tubes,* from the facilities of Cooper Tire & Rubber Company at Hancock and Wood Counties, OH to points in IA, KS, MN, MO, NE, ND, SD, and WI. Supporting shipper: Cooper Tire & Rubber Company, P.O. Box 550, Findlay, OH 45840.

MC 119741 (MC-5–24TA), filed October 17, 1980. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., 1515 Third Avenue, NW., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (same as applicant). *(1) Fireplaces, oil and gas space heaters, fireplace accessories, and firebrick, and (2) materials, equipment, and supplies used in the manufacture and distribution of commodities named in (1) above,* between Wisconsin Rapids, WI, on the one hand, and, on the other, points in the U.S. Supporting shipper: Preway, Inc., 1430 Second Street, North, Wisconsin Rapids, WI 54494.

MC 124174 (Sub-5–26TA), filed October 17, 1980. Applicant: MOMSEN TRUCKING CO., 13811 "L" Street, Omaha, NE 68137. Representative: Karl E. Momsen, 13811 "L" Street, Omaha, NE 68137. *Beverages, malt liquors, and related advertising, promotional materials, and empty containers or rejected shipments on return,* between points in WI, MN, IL, NE, OH, NY, NJ, TX, and OK. Supporting shipper(s): Rich Dist. Co., 1101 Enterprise Ave. Bay 12, Oklahoma City, OK 73132; Sooner Suds, Inc., 7120 E 13th Street, Tulsa, OK 74112.

MC 124174 (Sub-5–27TA), filed October 17, 1980. Applicant: MOMSEN TRUCKING CO., 13811 "L" Street, Omaha, NE 68137. Representative: Karl E. Momsen, 13811"L" Street, Omaha, NE 68137. *(1) Stove pipe, chimneys, ducts, flashings, and metal products and (2) equipment, materials, and supplies used in the manufacture, sale, and distribution of (1) above (except commodities in bulk, in tank vehicles),* between Redwood City, CA and Cincinnati, OH, on the one hand, and on the other, points in the USA (except AK and HI). Supporting shipper(s): Dura-Vent Transport Corp., 2525 El Camino Real, Redwood City, CA 94064.

MC 124174 (Sub-5–28TA), filed October 17, 1980. Applicant: MOMSEN TRUCKING CO., 13811 "L" Street, Omaha, NE 68137. Representative: Karl E. Momsen, 13811"L" Street, Omaha, NE 68137. *Ties, timbers, poles, railroad rails (new or used) and materials used in the maintenance and construction thereof,* between points in MO, CO, KS, TX, NE, IA, and OK. Supporting shipper(s): Ties & Tracks, Inc., 8500 Flora Street, Kansas City, MO 64131.

MC 124236 (Sub-5–10TA), filed October 17, 1980. Applicant: CHEMICAL EXPRESS CARRIERS, INC., 4645 North Central Expressway, Dallas, TX 75205. Representative: Rodney D. Cokendolpher, Traffic Menager, Chemical Express Company, 4645 North Central Expressway, Dallas, TX 75205. *Lime, in bulk,* from the plant site of the United States Gypsum Company at New Orleans, LA, to TX, MS, AR, and AL. Supporting shipper(s): United States Gypsum Company, 101 South Wacker Drive, Chicago, IL 60606.

MC 124511 (Sub-5–4TA), filed October 17, 1980. Applicant: OLIVER MOTOR SERVICE, INC., P.O. Box 223, East Highway 54, Mexico, MO 65265. Representative: Leonard R. Kofkin, 39 South La Salle Street, Chicago, IL 60603. *Iron and Steel Articles,* from Detroit, MI to points in MO. Supporting shipper: A. B. Chance Company, North Allen Street, Centralia, MO 65240.

MC 126118 (Sub-5–32TA), filed October 16, 1980. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: David R. Parker, P.O. Box 81228, Lincoln, NE 68501. *Metallic ores,* from points in PA to points in TN. Supporting shipper; Powmetl Co., Carolyn Pilcher, Office Manager, Route 3, Box 360, Ripley, TN 38063.

MC 126118 (Sub-5–33TA), filed October 17, 1980. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: David R. Parker, P.O. Box 81228, Lincoln, NE 68501. *Such commodities as are dealt in or used by manufacturers and distributors of containers (except in bulk, in tank vehicles),* between San Antonio, TX and its commercial zone, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Concept Enterprises, Inc., Robert L. Autrey, Secretary, 10604 Sentinal, San Antonio, TX 78217.

MC 128709 (Sub-5–3TA), filed October 17, 1980. Applicant: PARIS MOTOR FREIGHT, INC., P.O. Box 1787, Ft. Smith, AR 72902. Representative: David B. Schneider, P.O. Box 1540, Edmond, OK 73034. Common; regular. *General commodities (except household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* (a) Between Oklahoma City, OK and Dallas, TX serving the Junction of Interstate Hwy 35 and Interstate Hwy 35W for the purpose of joinder only. From Oklahoma City over Interstate Hwy 35 to Dallas and return over the same route; (b) Between the Junction of Interstate Hwy 35 and Interstate Hwy 35W and Fort Worth, TX, serving the Junction of Interstate Hwy 35 and Interstate Hwy 35W for the purposes of joinder only. From the Junction of Interstate Hwy 35 and Interstate Hwy 35W to Fort Worth and return over the same route. Supporting shipper: 32.

MC 133805 (Sub-5–29TA), filed October 14, 1980. Applicant: LONE STAR CARRIERS, INC., Route 1, Box 48, Tolar, TX 76476. Representative: Don Garrison, Esq., P.O. Box 1065, Fayetteville, AR 72701. *Porcelain and Pottery and Iron Parts,* between points in the U.S. (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Lapp Insulators, Inc. Supporting shipper: Lapp Insulators, Inc., P.O. Box 772, Sandersville, GA 31082.

MC 133805 (Sub-5–30TA), filed October 17, 1980. Applicant: LONE STAR CARRIERS, INC., Route 1, Box 48, Tolar, TX 76476. Representative: Don Garrison, Esq., P.O. Box 1065, Fayetteville, AR 72701. *General Commodities, (except commodities in bulk, household goods as defined by the Commission, those requiring special equipment, those of unusual value and Classes A and B explosives),* between all points in the U.S. Restricted to the transportation of traffic having a prior or subsequent movement by water, and restricted to the transportation of the traffic of Transconex in their N.O.V. operations. Supporting shipper: Transconex, Inc., P.O. Box 3295, Jacksonville, AR 72701.

MC 135007 (Sub-5–8TA), filed October 16, 1980. Applicant: AMERICAN TRANSPORT, INC., 7850 "F" Street, Omaha, NE 68127. Representative: Arthur J. Cerra, 2100 TenMain Center, P.O. Box 19251, Kansas City, MO 64141. *Contract,* Irregular: *Chemicals or Allied Products (STCC No. 28)* between points in the U.S. Supporting shipper: Thompson-Hayward Chemical Company, 4400 Vandalia Road, Des Moines, IA 50315.

Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant, Esquire, P.O. Box 130, Lowell, AR 72745. *Such commodities as are dealt in or used by wholesale, retail discount or variety stores (except in bulk)* from points in the U.S. (except AK and HI), to the facilities of Hart Stores, Inc. located in OH and WV. Supporting shipper: Hart Stores, Inc., 770 W. Goodale, Columbus, OH 43212.

MC 135797 (Sub-5–76TA), filed October 17, 1980. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant, Esquire, P.O. Box 130, Lowell, AR 72745. *Foodstuffs,* between Memphis, TN on the one hand, and on the other, points in the U.S. (except AK and HI). Supporting shipper: Adams Packing Association, Inc., P.O. Box 37, Auburndale, FL 33823.

MC 136786 (Sub-5–36TA), filed October 17, 1980. Applicant: ROBCO TRANSPORTATION, INC., 4475 N.E. 3rd Street, Des Moines, IA 50313. Representative: Stanley C. Olsen, Jr., Gustafson & Adams, P.A., 7400 Metro Boulevard, Suite 411, Edina, MN 55435. *Chemicals, and materials, equipment and supplies used in the manufacture and distribution thereof,* between Hanover County, VA, on the one hand, and, on the other, points in the U.S. Supporting shipper: Chemical Treatment Company, 500 Lickinghole Road, Ashland, VA 23005.

MC 138469 (Sub-5–23TA), filed October 17, 1980. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representative: Daniel O. Hands, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. *Such commodities as are dealt in or used by manufacturers of rubber caster wheels (except commodities in bulk)* from points in TX and Lake Charles, LA, and its Commercial Zone to Tulsa, OK and (2) from Tulsa, OK to points in CA, IL, MI, OH, PA, TN, and WI, restricted to the transportation of traffic originating at or destined to the facilities of Unarco Rubber Products, Div. of Unarco Industries. Supporting shipper: Unarco Rubber Products Division, Unarco Industries, 6235 East 13th Street, Tulsa, OK 74112.

MC 139034 (Sub-5–1TA), filed October 16, 1980. Applicant: W. F. BARTHELME, d.b.a., W. F. BARTHELME DIST. CO., 1602 North Broadway, Pittsburg, KS 66762. Representative: Laurel D. McClellan, 401 North Sixth Street, P.O. Box 478, Fredonia, KS 66736. Contract; Irregular. *Hides* from the facility of Iowa Beef Processors, Inc., at or near Holcomb, KS to points in the U.S., except HI and AK. Supporting shipper: Iowa Beef Processors, Inc., Dakota City, NE 68731.

MC 140125 (Sub-5–1TA), filed October 17, 1980. Applicant: SCHUSTER GRAIN COMPANY, INC., P.O. Box 616, LeMars, IA 51031. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Feed ingredients,* from points in IA, to Dakota County, NE. Supporting shipper: Central Soya Company, Inc., 39th and Dakota Avenue, South Sioux City, NE 68776.

MC 142288 (Sub-5–2TA), filed October 17, 1980. Applicant: HAMILTON TRUCKING COMPANY OF OKLAHOMA, INC., 12612 E. Admiral Place, Tulsa, OK 74115. Representative: Virginia Hamilton (same address as applicant). *Cement Clinker,* between OK and CO. Supporting shipper: Martin-Marietta Cement Mid-West Division, P.O. Box 45586, Tulsa, OK 74145.

MC 143638 (Sub-5–1TA), filed October 16, 1980. Applicant: JOHNSON'S TRUCKING, INC., Route 1, Box 31, Inola, OK 74306. Representative: Troy Johnson (same address as applicant). *Coal, in bulk,* between AR, KS, MO, TX. Supporting shipper: Cherokee Coal Company, Box 179, Porter, OK 74454.

MC 143638 (Sub-5–2TA), filed October 17, 1980. Applicant: JOHNSON'S TRUCKING, INC., Route 1, Box 31, Inola, OK 74306. Representative: Troy Johnson (same address as applicant). *Fertilizer, in bulk,* Between KS, MO, AR, OK, TX and NM. Supporting shipper: Chem-Quip, 5101 W. 21st St., Tulsa, OK 74107.

MC 144166 (Sub-5–4TA), filed October 17, 1980. Applicant: BILL STARR TRUCKING, INC., 1041 Vista Drive, Independence, MO 64055. Representative: Alex M. Lewandowski, 1221 Baltimore Avenue, Suite 600, Kansas City, MO 64105. Contract; Irregular. *Newsprint in rolls and paper products,* from the facilities of the Southland Division, St. Regis Paper Company at or near Herde, TX and at or Near Sheldon, TX to North Kansas City, MO. Supporting shipper: Clark Printing Co., 1534 Burlington, North Kansas City, MO 64116.

MC 144622 (Sub-5–54TA), filed October 16, 1980. Applicant: GLENN BROTHERS TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: J. B. Stuart, P.O. Box 179, Bedford, TX 76021. *Drugs, medicines, and rubber or plastic articles* from Malvern, PA to Atlanta, GA; Buena Park, CA; Kent, WA; and points in TX. Supporting shipper: Wyeth Laboratories, P.O. Box 861, Paoli, PA 19301.

MC 145947 (Sub-5–2TA), filed October 7, 1980. Applicant: SHELTON D. SMITH, d.b.a. PROTOCOL TRUCKING CO., a sole proprietorship, P.O. Box 40098, Garland, 75040. Representative: William D. White, Jr., 4200 Republic National Bank Tower, Dallas, 75201. Contract; irregular; (1) *machinery, equipment, materials, and supplies used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, (2) machinery, materials, equipment, and supplies used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipe lines, including the stringing and picking up thereof, (3) earth drilling machinery and equipment, and*

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machinery, equipment, materials, supplies, and pipe incidental to, used in, or in connection with, (a) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites, and (d) the injection or removal of commodities into or from holes or wells, and (4) castings, forging and parts thereof used in the manufacture of drilling bits. (1) Between Dallas County, on the one hand, and on the other, points in LA; (2) Between Dallas County, on the one hand, and on the other, TX Gulf ports for export shipments only. Supporting shipper: Dresser Industries, P.O. Box 6504, Houston, TX 77005.

MC 150578 (Sub-5–12TA), filed October 16, 1980. Applicant: STEVENS TRANSPORT, a division of STEVENS FOODS, INC., 2944 Motley Drive, Mesquite, TX 75150. Representative: Jackson Salasky, P.O. Box 45538, Dallas, TX 75245. *Lard, shortening, vegetable oil, cooking or salad oil, margarine and edible tallow,* from the facilities of the Bunge Edible Oil Corp. located at or near Ft. Worth, TX to points in the states of CA, CO, MS, WA, NV, OR and Atlanta, GA, Chattanooga, TN and Miami, FL. Supporting shipper(s) Bunge Edible Oil Corp. P.O. Box 192, Kankakee, IL 60901.

MC 151384 (Sub-5–5TA), filed October 17, 1980. Applicant: G AND J TRUCKING, INC., 3701 Spradlin Ave., P.O. Box 4201, Ft. Smith, AR 72914. Representative: Jay C. Miner, P.O. Box 313, Harrison, AR 72601. *Containers and materials and supplies used in the manufacture of containers,* between the facilities of American Can Company in Ft. Smith, AR, on the one hand, and, on the other, Denver, CO, Dallas, TX and Lenexa, KS. Supporting shipper: American Can Company, 4411 Midland Blvd., Ft. Smith, AR 72904.

MC 151400 (Sub-5–1TA), filed October 17, 1980. Applicant: MARTIN L. LEWIS, d.b.a. M.L. LEWIS DISTRIBUTING, 790 Woodland, EL Paso, TX 79922. Representative: Martin L. Lewis, 790 Woodland, El Paso TX 79922. Contract; Irregular. *Agricultural Products, Chemicals, Fertilizer, Building Products, Carpet, Floor Tile, Steel and Iron Articles,* between El Paso, TX on one hand, and on the other, points in KY, VA, TN, NC, SC, GA, LA, MS, FL, and all points West of the Mississippi River. Supporting shipper: 8.

MC 151534 (Sub-No. 5–3TA), filed October 17, 1980. Applicant: R&D TRANSPORTATION, 618 5th Ave., P.O. Box 1908, Des Moines, IA 50306. Representative: Craig D. Vermie, 1350 Financial Center, Des Moines, IA 50309. *(1) Irrigation systems, (2) parts for irrigation systems, (3) pipe, tubing, poles and such material, equipment and supplies as are used in the installation and maintenance thereof, (4) iron and steel articles, (5) accessories, parts, equipment, materials and supplies used in the manufacture of assembly of the commodities described in (1) through (4) above and ocean carrier owned or leased equipment, loaded or empty,* between the facilities of Valmont Industries, Inc. located in Douglas County, NE on the one hand and, on the other, the ports of Houston and Galveston, TX. and New Orleans, LA. Supporting shipper; Valmont Industries, Inc., Hiway 275 West Valley, NE 68064.

MC 151768F (Sub-5–3TA), filed October 16, 1980. Applicant: ARM TRANSPORTATION CORPORATION, P.O. Drawer 9480, Amarillo, TX 79105. Representative: A.J. Swanson, Att'y, P.O. Box 1103, Quaintance & Swanson, Sioux Falls, SD 57101. *General Commodities (except those of unusual value, class A and B explosives, household goods as defined by the commission, commodities in bulk, and those requiring special equipment)* between points in the U.S. Restricted to traffic originating at or destined to the facilities of Ardan, Inc. Supporting shipper: Ardan, Inc., 2320 Euclid Ave., Des Moines, IA 50310.

MC 151768F (Sub-5–4TA), filed October 17, 1980. Applicant: ARM TRANSPORTATION CORPORATION, P.O. Drawer 9480, Amarillo, TX 79105. Representative: A.J. Swanson, Att'y, Quaintance & Swanson, P.O. Box 9480, Sioux Falls, SD 57101. *Foodstuffs (except in bulk in tank vehicles)* from the plantsite of Adams Packing Association, Inc., at or near Memphis, TN. to points in the U.S. (except AK. and HI.) Supporting Shipper: Adams Packing Association, Inc., P.O. Box 37, Auburndale, FL 33823.

MC 152219 (Sub-5–1TA), filed October 17, 1980. Applicant: RAINBOW BUS COMPANY, 610 South Industrial, Euless, TX 76039. Representative: Elohim Ranyak, 10334 Portrush Drive, Dallas, TX 75243. *Passengers and their baggage in round trip pleasure tours in special and charter operations,* beginning and ending in Dallas and Tarrant Counties, TX to points in NM, CO and LA. Supporting shippers: 28.

MC 152245 (Sub-5–1 TA), filed October 17, 1980. Applicant: ARMOUR FOOD EXPRESS COMPANY, P.O. Box 2785, Amarillo, TX 79105. Representative: R. L. Gordon, Manager-Transportation, 111 West Clarendon, Phoenix, AZ 85013. *Food or kindred products,* between ALAMEDA COUNTY, CA, and points in OR. Supporting shipper: Cornnuts, Inc., P.O. Box 6759, Oakland, CA 94603.

THE FOLLOWING APPLICATIONS WERE FILED IN REGION 6. SEND PROTESTS TO: INTERSTATE COMMERCE COMMISSION, REGION 6 MOTOR CARRIER BOARD, P.O. BOX 7413, SAN FRANCISCO, CA 94120.

MC 26739 (Sub-6–2TA), filed October 9, 1980. Applicant: ALFARM TRUCKLINES, 1703 Embarcadero Road, Palo Alto, CA 94303. Representative: Richard G. Lougee, P.O. Box 10061, Palo Alto, CA 94303. *Steel and steel products* between Houston, TX; Denver, CO; and Norfolk, NE, on the one hand, and, on the other, all points in the states of AR, CO, IL, IA, KS, KY, LA, MN, MS, NE, NM, OK, TN, TX, UT, WI, and WY, for 270 Days. An underlying ETA seeks 120 days authority. Restriction: Restricted to shipments originating at or destined to the facilities of Continental Steel. Supporting shipper: Continental Steel Co., 5305 Steele Street, Denver, Colorado 80216.

MC 135904 (Sub-6–1TA), filed October 14, 1980. Applicant: ALLTRANS LTD., 4878 Manor Street, Burnaby, BC, Canada, V5G 1B3. Representative: Jack R. Davis, 1100 IBM Building, Seattle, WA 98101. *Paper and paper products* (excluding newsprint) between points on the international boundary line between the United States and Canada in WA and points in CA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Belkin Packaging Limited, 8255 Wiggins Street, Burnaby, BC, Canada.

MC 52793 (Sub-6–11TA), filed October 14, 1980. Applicant: BEKINS VAN LINES CO., New Products Division, 3090 Via Mondo, Compton, CA 90221. Representative: David P. Christianson, 707 Wilshire Blvd., Suite 1800, Los Angeles, CA 90017. *Filing cabinets SU & KD and related parts,* from Mayville, WI, to all points in VA, MD, DE, NJ, NY, PA, CT, MA, NH, VT and ME, for 270 days. Supporting shipper: Tab Products Co., P.O. Box 153, Mayville, WI 53050.

MC 148178 (Sub-6–1TA), filed October 14, 1980. Applicant: FORREST D. BELVIN, d.b.a., DALE BELVIN TRUCKING, 277 West Sierra, Clovis, CA 93612. Representative: Forrest D. Belvin (same as above). *Contract Carrier,* Irregular routes: *Tires and tubes,* from Warren, OH to AZ, CA, CO, OR, UT and WA, for 270 days. Supporting shipper: Denman Rubber Manufacturing Co., 400 Diehl Rd., Leavittsburg, OH 44430.

MC 152096 (Sub-6–1TA), filed October 10, 1980. Applicant: TERRANCE E. CARLSON and KENNETH O. CARLSON d.b.a., CARLSON BROS., P.O. Box 1406, Lewiston, ID 83501. Representative: Donald A. Ericson, 708 Old National Bank Bldg., Spokane, WA 99201. *Contract Carrier: Irregular Routes: Wood chips, sawdust, shavings, mixed loads of sawdust and shavings, plywood trim, hog fuel, and sawmill refuse,* between points in WA, OR, and ID north of the southern boundary of Idaho County, ID for 270 days. Supporting shipper(s): Potlatch Corporation, P.O. Box 1016, Lewiston, ID 83501.

MC 106523 (Sub-6–3TA), filed October 10, 1980. Applicant: CARLSON TRANSPORT, INC., P.O. Box 20214, Billings, MT 59104. Representative: Charles A. Murray, Jr., 2822 Third Ave., N, Billings MT 59101. *Heavy equipment of unusual size and weight; machinery, equipment and supplies used in construction; including, but not limited to those commodities listed in the Standard Transportation Commodity Code, groups 32, 33, 34 and 35* between points in MT and points in ND, SD, WY, CO and ID, for 270 days. Supporting shippers: There are ten shippers. Their statements may be examined at the San Francisco Regional office.

MC 115523 (Sub-6–5TA), filed September 15, 1980. Applicant: CLARK TANK LINES COMPANY, P.O. Box 1695, Salt Lake City, UT 84110. Representative: William S. Richards, P.O. Box 2465, Salt Lake City, UT 84110. *Soda ash,* from Little America, WY to points in AZ, CA, CO, ID, MT, NV, NM, OR, UT and WA for 270 days. An underlying ETA seeks 120 days authority. No supporting shipper.

MC 151028 (Sub-6–3TA), filed October 8, 1980. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. *Contract carrier,* irregular routes: *General commodities, (except household goods as defined by the Commission, and Classes A and B explosives),* from Lake Charles, LA, Bayport, TX, Houston, TX and Baton Rouge, LA to Louisville, KY, Chicago, IL, Youngstown, OH, Livonia, MI and Columbus, OH, for the account of Hercules Incorporated, for 270 days. Supporting shipper(s): Hercules, Incorporated, 910 Market Street, Wilmington, DE 19899.

MC 42487 (Sub-6–37TA), filed October 9, 1980. Applicant: CONSOLIDATED FREIGHTWAYS, CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. *Common carrier,* regular routes: *General commodities, (except those of unusual value, Classes A and B explosives, livestock, green hides, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading),* serving the facilities of Reliance Electric Company at or near Madison, IN, as an off-route point in connection with carrier's otherwise authorized regular route operations, for 270 days. Applicant proposes to tack to its existing authority and any authority it may acquire in the future. The proposed authority will be tacked or joined, as an off-route point, with authority in Docket No. MC 42487 Subs 500, 578 and 744. These authorities, in turn, will be tacked or joined with other present authorities of Applicant at such points as Indianapolis, IN, Chicago, IL, St. Louis, MO, Des Moines, IA, Minneapolis, MN, Cincinnati, OH, Buffalo, NY, Boston, MA and Detroit, MI, to permit service to and from points throughout the United States. Applicant proposes to interline traffic with its present connecting carriers at authorized interline points throughout the United States as provided in tariffs on file with the Interstate Commerce Commission. Supporting shipper(s): Reliance Electric Company, 220 Eastview Drive, Brooklyn Heights, OH 44131.

MC 42487 (Sub-6–38TA), filed October 14, 1980. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. *Common carrier,* regular routes: *General commodities, (except those of unusual value, Classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, assembled automobiles and commodities requiring special equipment),* serving Monticello, IA as an off-route point in connection with carrier's otherwise authorized regular route operations, for 270 days. Applicant intends to tack to its existing authority and any authority it may acquire in the future. The proposed authority will be tacked or joined with authority in Docket No. MC 42487 Sub 578 and Docket No. MC 42487 sub 646 as off-route points. These authorities, in turn, will be tacked or joined with other present authorities of Applicant at such points as Boston, MA, Buffalo, NY, Chicago, IL, Cincinnati, OH, Des Moines, IA, Detroit, MI, Denver, CO, Indianapolis, IN, Kansas City, MO, Minneapolis, MN and St. Louis, MO, to permit service to and from points throughout the United States. Applicant proposes to interline traffic with its present connecting carriers at authorized interline points throughout the United States as provided in tariffs on file with the Interstate Commerce Commission. Supporting shipper(s): There are nine (9) supporting shippers. Their statements may be examined at the Regional office listed.

MC 113678 (Sub-6–26TA), filed October 15, 1980. Applicant: CURTIS, INC., 4810 Pontiac St., Commerce City, CO 80022. Representative: Roger M. Shaner (same as above). *General commodities* (except household goods and Classes A and B explosives) from Atlanta, GA; Chicago, IL; Boston, MA; St. Louis, MO; New York, NY; Charlotte and Greensboro, NC; Philadelphia, PA; Greenville, SC; and Memphis, TN, and points in their respective commercial zones, to Oakland, Sacramento, and San Jose, CA, and points in their respective commercial zones for 270 days. Supporting shipper: Bay Area Shippers Consolidating Assoc., P.O. Box 12154, Oakland CA 94604.

MC 143570 (Sub-6–1TA), filed October 14, 1980. Applicant: D & G TRUCKING, INC., 4420 E. Overland Road, Meridian, ID 83642. Representative: David E. Wishney, P.O. Box 837, Boise, ID 83701. *Asphalt in packages,* from points in Davis County, UT to points in ID, for 270 days. Supporting shippers: Building Specialties Wholesale Co., Inc., 8620 Franklin Rd., Boise, ID 83709.

MC 56640 (Sub-6–6TA), filed October 14, 1980. Applicant: DELTA LINES, INC., P.O. Box 2081, Oakland, CA 94604. Representative: Kirk Wm. Horton, 333 Hegenberger Road, Suite 400, Oakland, CA 94621. *Cleaning and washing compounds, merchandise, soaps, and related articles* between points in Santa Clara County, CA, on the one hand, and, on the other, points in AZ, OR, and WA, for 270 days. An underlying ETA seeks 120 day authority. Supporting shipper: Economics Laboratory, Inc., 640 Lentest Road, San Jose, CA 95133.

MC 144606 (Sub-6–3TA), filed October 14, 1980. Applicant: DUNCAN & SON LINES, INC., 714 E. Baseline, Buckeye, AZ 85326. Representative: Andrew V. Baylor, 337 E. Elm St., Phoenix, AZ 85012. *Expanded plastic articles;* from Monrovia, CA to New Orleans, LA, for 270 days. Supporting shipper: Reid Valve Company, Inc., 133 E. Maple Ave., Monrovia, CA 91016.

MC 152211 (Sub-6–1TA), filed October 14, 1980. Applicant: R. L. FALLON, 12927 N. 107th St., Longmont, CO 80501.

Representative: R. L. Fallon (same as applicant). *Coal* from points in Jackson, County, CO to points in WY for 270 days. ETA filed seeking 120 days authority. Supporting shipper: Walden Coal Company, POB 37, Cowdrey, CO 80434.

MC 151057 (Sub-6–3TA), filed October 9, 1980. Applicant: FASHIONABLE FURNITURE MFG., CO., 3170 Airway Ave., Costa Mesa, CA 92628. Representative: Donald R. Hedrick, Post Office Box 88, Norwalk, CA 90650. *New data processing devices and system component parts used in the assembly thereof; and, radio or television receiving sets, loudspeakers, talking machines, and, vision and radio receiving sets and talking machines combined,* between points in CA, OR, WA, ID, NV, MT, WY, UT, AZ, CO, NM, SD, NE, KS, OK, TX, and IN, for 270 days. Applicant intends to interline with other carriers at Indianapolis, IN. Supporting shipper: Electro-sport, Inc., 17842 Cowan, Irvine, CA 92714.

MC 152203 (Sub-6–1TA), filed October 15, 1980. Applicant: WADEN C. FULTZ, JR., Fort Benton, MT 59442. Representative: Jerry Brooke, 1216 Front Street, Fort Benton, MT 59442. (1) General commodities from Great Falls, MT to Fort Benton, MT, for 270 days. Applicant will interline. Supporting shipper(s): RENN Industries, Inc., Fort Benton, MT 59442.

MC 152216 (Sub-6–1TA), filed October 14, 1980. Applicant: GILBERT TRUCK LINES, INC., WESTERN, 5005 South Braun St., Morrison, CO 80465. Representative: Jack B. Wolfe, 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. *Contract carrier,* irregular routes: *Vegetable oils and vegetable meals and by-products,* from the facilities of Cargill, Inc. at Riverside, ND to all points in the U.S. (except AK and HI) for 270 days, under contract with Cargill, Inc. Supporting shipper: Cargill, Inc., P.O. Boox 9300, Minneapolis, MN 55440.

MC 152217 (Sub-6–1TA), filed October 14, 1980. Applicant: GYPSY TRUCKING, 706 So. March Point Rd., Anacortes, WA 98221. Representative: Robert G. Gleason, 1127–10th East, Seattle, WA 98102. *Boats, boat molds, boat trailers and boat accessories,* between the states of WA, OR, ID, MT, WY, UT, AZ, NM, CA, MV, CO, TX and AK, for 270 days. Supporting shipper(s): There are 5 supporting shippers. Their statements may be viewed at the regional office listed.

MC 150726 (Sub-6–3TA), filed October 9, 1980. Applicant: HILGO TRANSPORT, INC., P.O. Box 149, Selma, CA 93662. Representative: Thomas M. Loughran, Loughran & Hegarty, 100 Bush Street, 21st Fl., San Francisco, CA 94104. *Water soluble can coating,* in bulk, in tank vehicles, from San Francisco, CA to points in AZ, CO, ID, MT, NV, NM, OR, UT, WA and WY for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Glidden, Division of SCM Corporation 1000–16th St., San Francisco, CA 94107.

MC 139906 (Sub-6–42TA), filed October 10, 1980. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, P.O. Box 30303, Salt Lake City, UT 84127. Representative: Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501. *Petroleum catalysts and spent petroleum catalysts* between the facilities of Filtrol Corporation, at or near Salt Lake City, UT on the one hand, and, on the other, points in NJ, PA, TX, LA, CA, IL, IN, DE, KS, KY, NY, OH, OK, WA, and MN for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Filtrol Corporation, 5959 West Century Blvd., Los Angeles, CA 90045.

MC 139906 (Sub-6–43TA), filed October 10, 1980. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, P.O. Box 30303, Salt Lake City, UT 84127. Representative: Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501. *Chemicals* (1) from the facilities of Stauffer Chemical Co. at or near Monongahela, PA and Lemoyne, AL to points in the U.S. and (2) from the facilities of Stauffer Chemical Co., at or near Freeport, TX to points in the states of DE, ID, ME, MD, MS, MT, NE, NH, OR, RI, SD, TX, UT, VT, WA, WV, and WY for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Stauffer Chemical Co., Nyala Farms Rd., Westport, CT 06880.

MC 139906 (Sub-6–44TA), filed October 10, 1980. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, P.O. Box 30303, Salt Lake City, UT 84127. Representative: Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501. *Printers ink* (except in bulk) from Edison, NJ to Tampa, FL; Murfreesboro, TN; Denver, CO, and Richmond, VA and points in their respective commercial zones for 270 days. An underlying ETA seeks authority for 120 days. Supporting shipper: J. M. Huber Corp., Thornall, St., Edison, NJ 08817.

MC 147832 (Sub-6–3TA), filed October 10, 1980. Applicant: JIM EDDLEMAN d.b.a. J & J CATTLE COMPANY, 5765 North Logan, Denver, CO 80216. Representative: John Lewis, The 1650 Grant Street Bldg., Denver, CO 80203. (1) *Foodstuffs; (2) Pharmaceutical materials, supplies, and products; (3) Chemicals; (4) Alcoholic beverages; (5) Tobacco products; (6) Pet foods; (7) Such commodities as are dealt in by distribution or consolidation warehouses for the commodities described in (1), (2), (3), (4), (5), and (6); and exempt commodities when moving with regulated commodities.* (1) From all points in: AL, AR, AZ, CA, FL, GA, IA, ID, IL, KS, KY, LA, MI, MN, MO, MS, MT, NE, ND, NM, NV, OK, OH, OR, SD, TN, TX, UT, WA, WI, and WY. To the county of Denver, CO (2) From the county of Denver, CO to all points in: AL, AR, AZ, CA, FL, GA, IA, ID, IL, KS, KY, LA, MI, MN, MO, MS, MT, NE, ND, NM, NV, OK, OH, OR, SD, TN, TX, UT, WA, WI, and WY. An underlying ETA seeks 120 days authority. Supporting shippers: Beatrice Cold Storage, Inc., 4475 E. 50th Ave., Denver, CO 80216 and City Ice Incorporated, 2101 31st St., Denver, CO 80216.

MC 115648 (Sub-6–1TA), filed October 14, 1980. Applicant: LOCK TRUCKING, INC., P.O. Box 278, Wheatland, WY 82201. Representative: Ward A. White, P.O. Box 568, Cheyenne, WY 82001. *Building materials* from points, in ID, OR and WA to points in CO and UT, for 270 days. Supporting shipper: Boise Cascade Corporation, P.O. Box 2885, Portland, OR 97208.

MC 151771 (Sub-6–1TA), filed October 14, 1980. Applicant: MISSOURI RIVER TRANSPORT INC., 2127 Vaughn Road, Great Falls, MT 59404. Representative: Glenn Lagerquist (same as applicant). (1) *Railroad ties, railroad rails and accessories for assembling the same,* from points of entry on the International Boundary line between the U.S. and Canada located in MT and points in MT; to points in CA, NV, AZ and WA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Red River Supply Inc., 2123 Vaughn Road, Great Falls, MT 59404; Crown Distributors, P.O. Box 131, Black Eagle, MT 59414.

MC 144572 (Sub-6–6TA), filed October 9, 1980. Applicant: MONFORT TRANSPORTATION COMPANY, P.O. Box G, Greeley, CO 80631. Representative: James P. Beck, 717—17th St., Suite 2600, Denver, CO 80202. *Inflatable air supported structures and materials, parts, equipment and supplies used in connection with, or the installation of, inflatable air supported structures,* from the facilities of Air-Tech Industries, Inc. located at or near East Rutherford, NJ to points in CA and CO, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Air-Tech Industries, Inc., 85 Madison Circle Dr., East Rutherford, NJ 07073.

MC 141599 (Sub-6–1TA), filed October 10, 1980. Applicant: MOUNTAIN PACIFIC TRANSPORT, LTD., d.b.a. SHADOW LINES, 241 School House Road, Coquitlam, B.C., Canada V3K 4X9. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055. *Dolomite in bulk,* from Chewelah, WA, to ports of entry on the U.S.-Canada boundary line in WA, for 270 days. Supporting shipper: Fibreglass of Canada Ltd., 32700 Mission Way, Mission, B.C., Canada V2V 5X9.

MC 141599 (Sub-6–2TA), filed October 10, 1980. Applicant: MOUNTAIN PACIFIC TRANSPORT, LTD., d.b.a. SHADOW LINES, 241 School House Road, Coquitlam, B.C., Canada V3K 4X9. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055. *Granulated slag* from ports of entry on the U.S.-Canada International boundary line in Whatcom County, WA, to Tacoma, WA, for 270 days. Supporting shipper: Certainteed Corp., Shelter Materials Group, P.O. Box 860, Valley Forge, PA 19482.

MC 152168 (Sub-6–1TA), filed October 8, 1980. Applicant: PIF SYSTEMS, INC. d.b.a. PACIFIC INTERNATIONAL FREIGHT SYSTEMS, 1330 West Walnut Parkway, Compton, CA 90220. Representative: Earl N. Cook (same as applicant). *Bonded or other than bonded general commodities in containers or other than in containers having a prior or subsequent movement by steamship,* Between: Points in the harbors of Los Angeles, San Diego and San Francisco, CA, Houston, TX and Seattle, WA, and: Points in the States of CA, AZ, NV, WA and OR for 270 days. Supporting shippers: There are 7 shippers. Their statements may be examined at the Regional office listed.

MC 152169 (Sub-6–1TA), filed October 10, 1980. Applicant: PACIFIC BASIN INDUSTRIES, INC., Pier 91, Bldg. 50, Seattle, WA 98119. Representative: William D. Redhead (same as applicant). *Prefabricated Aluminum Curtain Walls and Materials, Supplies, and Equipment used in the manufacture thereof,* between points in King County, WA and points in AZ, CA, CO, ID, NM, NV, MT, OR, TX, WA, and WY, for 270 days. Supporting shipper: Fentron Building Products, Inc., 2801 NW. Market Street, Seattle, WA 98107.

MC 149076 (Sub-6–3TA), filed October 9, 1980. Applicant: ROAD WEST, INC., 1315 East Holt Blvd., Ontario, CA 91761. Representative: Robert Fuller, 13215 E. Penn St., Suite 310, Whittier, CA 90602. *Candy and confectionery, other than hollow mold,* and *edible nuts, in packages and in bulk in barrels* from points in GA, OH and TX and import shipments from ports in NY and NJ to points in Los Angeles County, CA for 270 days. Supporting shipper: Betty Zane Corporation, 600 West Terrace Drive, San Dimas, CA 91773.

MC 149078 (Sub-6–4TA), filed October 9, 1980. Applicant: ROAD WEST, INC., 1315 E. Holt Blvd., Ontario, CA 91761. Representative: Bobbie F. Albanese, 13215 E. Penn St., Suite 310, Whittier, CA 90602. *Liquid nickel chloride and liquid nickel sulphate in drums* from Joliet, IL to Buena Park, CA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Oxy Metal Industries, Corp., 32100 Stephenson, Madison, MI 48071.

MC 149078 (Sub-6–5TA), filed October 9, 1980. Applicant: ROAD WEST, INC., 1315 East Holt Blvd., Ontario, CA 91761. Representative: Robert Fuller, 13215 E. Penn St., Suite 310, Whittier, CA 90602. *Frozen foods* from Patterson, CA and points in CA to points in AL, FL, GA, LA, MA, NY, NC, OH, IL, OR, TN, TX and WA for 270 days. Supporting shipper: Patterson Frozen Foods, P.O. Box 114, Patterson, CA 95363.

MC 149078 (Sub-6–6TA), filed October 9, 1980. Applicant: ROAD WEST, INC., 1315 East Holt Blvd., Ontario, CA 91761. Representative: Robert Fuller, 13215 E. Penn St., Suite 310, Whittier, CA 90602. *Fresh Frozen Berries* from CA to points in the United States (except AK and HI) limited to shipments for the account of Naturipe Berry Growers for 270 days. Supporting shipper: Naturipe Berry Growers, P.O. Box A, Watsonville, CA 95076.

MC 124692 (Sub-6–22TA), filed October 9, 1980. Applicant: SAMMONS TRUCKING, P.O. Box 4347, Missoula, MT 59806. Representative: James B. Hovland, Suite M–20, 400 Marquette Ave., Minneapolis, MN 55401. *Metal and metal articles,* between points in the U.S. in and west of WI, IL, MO, OK and TX (except AK and HI), for 270 days. Shippers: There are 36 shippers. Their statements may be examined at the Regional Office listed.

MC 147724 (Sub-6–2TA), filed October 9, 1980. Applicant: TYRONE SCHULZ, an individual d.b.a. TY SCHULZ TRUCKING, Route 1 Box 221, Ione, CA 95640. Representative: Robert G. Harrison, 4299 James Drive, Carson City, NV 89701. *Contract Carrier* Irregular routes: *refractories, brick firebrick, fire clay* and *foundry supplies* and *materials, equipment* and *supplies* used in the manufacture, sale, installation and distribution of the above, under continuing contracts with C.E. Cast Industrial Products and Interpace Corporation, and *paint* and *materials, equipment,* and *supplies* used in the manufacture, sale, installation and distribution of paint, under continuing contracts with Pervo Paint Co., between points in the United States, for 270 days. Supporting shippers: C. E. Cast Industrial Products, P.O. Box 306, Ione, CA. 95640; Interpace Corporation, P.O. Box 785, Ione, CA. 95640; Pervo Paint Co., 6624 Stanford Avenue, Los Angeles, CA 90001.

MC 150852 (Sub-6–3TA), filed October 9, 1980. Applicant: SKYLINE TRANSPORT, INC., 1469 West 6720 South, West Jordan, UT 84084. Representative: Robert G. Simonian (same as applicant). *Contract Carrier:* Irregular routes: *Fertilizers, Insecticides, Farm & Garden Supplies* from points in UT to points in CA, AZ, OR, WA, CO for the account of The Pax Company, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: The Pax Company, 580 West 1300 South, Salt Lake City, UT 84115.

MC 150956 (Sub-6–5TA), filed October 14, 1980. Applicant: SOUTHWEST TRUCK SERVICE, P.O. Box AD, Watsonville, CA 95076. Representative: William F. King, Suite 400, Overlook Bldg., 6121 Lincolnia Rd. Alexandria, VA 22312. *Non-exempt food or Kindred Products* Between Fresno County, CA and the state of AZ., for 270 days. Supporting shipper: Pillsbury Company & its Subsidiaries, 1100 N. 4th St., LeSueur, MN 56058.

MC 126327 (Sub-6–3TA), filed October 14, 1980. Applicant: TRAILS TRUCKING, INC., 1825 De La Cruz Blvd., Suite 11, Santa Clara, CA 95050. Representative: Laura M. Robinson (same as applicant). *Paper and paper products* from Newberg and Oregon City, OR, to points in CA, for 270 days. Supporting shipper: Publishers Paper Co., 6637 Southeast 100th Ave., Portland, OR 97266.

MC 149015 (Sub-6–1TA), filed October 9, 1980. Applicant: UNLIMITED SERVICE PICK-UP AND DELIVERY, 500 Richards Blvd., Sacramento, CA 95810. Representative: Bobbie F. Albanese, 13215 E. Penn St., Ste. 310, Whittier, CA 90602. *General commodities, except those of unusual value, commodities in bulk, household goods as defined by the Commission, and those requiring special equipment,* between Sacramento County, CA, on the one hand, and, on the other, El Dorado County, CA and Douglas and Carson City Counties, NV, for 270 days. Applicant intends to interline. Supporting shippers: There are six supporting shippers. Their statements may be examined at the Regional Office listed.

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MC 151925 (Sub-6-2TA), filed October 9, 1980. Applicant: KEN VAN LEUVEN & SON, INC., 10798 Seneca Drive, Boise, ID 83709. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. *Contract Carrier,* Irregular routes: *Roofing and roofing materials,* from points in CA, OR, and WA to the facility of Building Specialties Wholesale Co., Inc. at or near Boise, ID and Idaho Falls, ID, for 270 days. Supporting shipper: Building Specialties Wholesale Co., Inc., 8620 Franklin Road, Boise, ID 83709.

MC 152167 (Sub-6-1TA), filed October 14, 1980. Applicant: WELLS PROPANE, INC., P.O. Box 485, Wells, NV. 89835. Representative: M.D. Eriksen (same as applicant). *Contract Carrier,* Irregular routes: *Liquefied petroleum gas,* in bulk, in tank vehicles, from Opal and Sinclair, Wy, and from Salt Lake City, Pineview, Altamont and Bluebell, Ut, to Wendover Ut, and Ely, Elko, Jackpot and Wells, Nv, 270 days. Supporting shipper(s): Pargas, Inc., P.O. Box 67, Waldorf, Md. 20601.

MC 142186 (Sub-6-1TA), filed October 14, 1980. Applicant: WHEELS WEST, INC., 11631 Waddle Creek Road S.W., Olympia, WA 98502. Representative: Henry C. Winters, 525 Evergreen Bldg., Renton, WA 98055. *Contract Carrier,* Irregular routes: *Parts and accessories for automobiles and trucks,* from DuBois, PA and Columbia, TN to points in the United States (except AK and HI), for the account of Triangle Auto Spring Co. of DuBois, PA, for 270 days. Supporting shipper: Triangle Auto Spring Co., P.O. Box 425, Maloney Road, DuBois, PA 15801.

MC 89684 (Sub-6-7TA), filed October 14, 1980. Applicant: WYCOFF COMPANY INCORPORATED, P.O. Box 366, Salt Lake City, UT 84110. Representative: John J. Morrell (same as applicant). *Luggage,* between Denver, CO, on the one hand, and, on the other, points in UT and CA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Samsonite Corporation, 11200 East 45th Ave., Denver, CO 80239.

MC 89684 (Sub-6-8TA), filed October 14, 1980. Applicant: WYCOFF COMPANY INCORPORATED, P.O. Box 366, Salt Lake City, UT 84110. Representative: John J. Morrell (same as applicant). *Agricultural implements and tractor parts,* between Denver, CO, on the one hand, and, on the other, points in UT and ID, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: John Deere Parts Depot, 6101 Stapleton N. Drive, Denver, CO 80216.

Republication

MC 77061 (Sub-6-12TA), filed September 16, 1980. Applicant: SHERMAN BROS., INC., P.O. Box 706, Eugene, OR 97440. Representative: Russell M. Allen, 1200 Jackson Tower, Portland, OR 97205. *Lumber and lumber mill products, composition board, plywood, roofing materials and metal products,* from points in OR to points in WA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Georgia Pacific Corporation, 900 S.W. 5th, Portland, OR 97204.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-33280 Filed 10-24-80; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

U.S. Circuit Judge Nominating Commission, First Circuit Panel

Chairperson: Jerome P. Facher.

The First Circuit Panel of the U.S. Circuit Judge Nominating Commission will meet on November 8, 1980 in the Post Office and Federal Courthouse, Boston, Massachusetts at 9:00 a.m. The purpose of the meeting is to interview candidates and will be closed to the public pursuant to Pub. L. 92-463, Section 10(d) as amended. [CF 5 U.S.C. 552b(c)(6)].

Phillip B. Cover,
Advisory Committee Liaison Officer.

[FR Doc. 80-33317 Filed 10-24-80; 8:45 am]
BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 80-20]

Woodfield Drugs, Inc., and Herbert S. Rein, Trading as Crest Pharmacy, West Hempstead, N.Y.; Hearing

Notice is heregy given that on July 3, 1980, the Drug Enforcement Administration, Department of Justice, issued to Woodfield Drugs, Inc., and Herbert S. Rein, t/a Crest Pharmacy, West Hempstead, New York, an Order To Show Cause as to why the DEA Certificate of Registration, AW7513408, issued to Respondents pursuant to Section 303 of the Controlled Substances Act (21 U.S.C. 823) should not be revoked.

Thirty days having elapsed since the said Order To Show Cause was received by the Respondents, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Tuesday, October 28, 1980, in Room 19, Suffolk County Family Court, Building No. 17, Veterans' Memorial Highway, Hauppauge, New York.

October 21, 1980.

Peter B. Bensinger,
Administrator, Drug Enforcement Administration.

[FR Doc. 80-33344 Filed 10-24-80; 8:45 am]
BILLING CODE 4410-09-M

LIBRARY OF CONGRESS

Copyright Office

[Docket LPR-10]

Manufacturing Clause Study

AGENCY: Library of Congress, Copyright Office.

ACTION: Announcement of the undertaking of a study and a request for comments.

SUMMARY: At the request of Congress, the Copyright Office is undertaking a study of the possible economic impact of the elimination of the so-called "manufacturing clause" from the United States Copyright law as provided by section 601 of Title 17 of the United States Code. The "manufacturing clause" is scheduled to be eliminated from the law on July 1, 1982. The Copyright Office must prepare its final findings and recommendations for the Congress to be filed on or about July 1, 1981.

Under the copyright law now in effect, certain nondramatic literary materials in the English language must be manufactured either in the United States or in Canada in order for the work to enjoy the full remedies provided by the copyright law in an action for infringement of the rights of reproduction or distribution. The "manufacturing clause" now applies only to works by American citizens or domiciliaries, and, under special circumstances, even such works may be exempt from the manufacturing clause.

In 1976, the House Committee on the Judiciary, after evaluating the arguments in favor of and against retention of any manufacturing clause in the copyright law, concluded that "there is no justification on principle for a manufacturing requirement in the copyright statute . . .." H. REP. NO. 1476, 94th Cong., 2d Sess. (1976) at 166. The Committee amended section 601 of the then pending copyright revision bill to repeal the manufacturing requirement on July 1, 1981. Following a conference with the Senate, the House amendment was accepted, but the date for

termination of the manufacturing requirement was extended to July 1, 1982.

Senator Hugh Scott, in the course of Senate debate on the copyright revision bill in 1976, stated that the extension of the phaseout date for the manufacturing requirement from July 1, 1981 to July 1, 1982.

"will enable Congress to take a close look at the dangers faced by the printing industry in this country.

To insure that Congress has adequate and accurate information on which to base its reassessment before the phaseout takes place, Senator McClellan and I have written to the Register of Copyrights requesting that such a study be timely undertaken. We have received assurances that the Register would direct that such a study be undertaken." 122 Cong. Rec. S17252, 94th Cong., 2d Sess. (1976).

The subject matter of the study will consist of addressing the issues relating to the "economic impact on United States book manufacturing industry; United States labor rates compared with those abroad; industry health; impact on jobs in U.S. and U.S. industry; advances in printing technology that are relevant; progress on implementation of the Toronto Agreement of 1968;[1] ramifications of granting copyright monopoly on book manufacturing industry; and other relevant factors that . . . [the Copyright Office] should deem appropriate." 122 Cong. Rec. S17253, 94th Cong., 2d Sess. (1976).

The Copyright Office will conduct a hearing (or hearings as needed) in order to give all interested parties an opportunity to express their current views on the scheduled phase-out of the "manufacturing clause" of the 1976 law.

The Copyright Office has requested that the Congressional Research Service (CRS) of the Library of Congress assist in the project by preparing for Congress a statistical evaluation of the economic impact of the elimination of the "manufacturing clause." The CRS has agreed to conduct such a statistical evaluation with the acquiescence of Congress. The Economics Division of the CRS is planning its evaluation based on available relevant statistics and is also considering the feasibility of conducting a survey of a representative sample of industries affected. Although the CRS will conduct its survey and reach its findings independently, there will be careful coordination (and cooperation) with the Copyright Office to insure thorough consideration of all issues and to avoid duplication of effort.

In addition, Mr. William Lofquist of the Bureau of Industrial Economics, U.S. Department of Commerce will act as a consultant on this project.

The Copyright Office actively seeks the comments as to issues and/or questions to be raised not only from organization representatives, but also from any individual whose informed opinion may aid the Copyright Office in preparation for the hearing(s) and the Congressional Research Service in designing its survey.

FOR FURTHER INFORMATION CONTACT: Anthony P. Harrison, Assistant Register of Copyrights, Copyright Office, Library of Congress, Washington, D.C. 20559, (202) 287-8350.

DATES: All comments should be received on or before November 14, 1980.

ADDRESSES: Interested parties should submit ten copies of the written comments, if by mail to: Office of the Register, Copyright Office Library of Congress, Washington, D.C. 20559, or if by hand to the Office of the Register, Copyright Office, Library of Congress, James Madison Memorial Building, Room LM-405.

(917 U.S.C. 601).

Dated: October 15, 1980.

David Ladd,
Register of Copyrights.

Approved:

Daniel J. Boorstin,
The Librarian of Congress.

[FR Doc. 80-33336 Filed 10-24-80; 8:45 am]
BILLING CODE 1410-03-M

[1] Congress exempted copies manufactured in Canada from the manufacturing clause of the Copyright Act because it found that "wage standards in Canada are substantially comparable to those in the United States . . .." H. REP. NO. 1476, 94th Cong., 2d Sess. (1976). The Canadian exemption was made possible in part also by a memorandum agreement known as the "Agreement of Toronto," signed by representatives of some, but not all, American and Canadian business and labor printing organizations in February 1968. American representatives agreed that they would seek an exemption for Canadian-manufactured copies from the manufacturing clause of the United States copyright law. The Canadian representatives agreed that they would "urge the Canadian Government to accept the Florence Agreement as soon as exemption for Canada has been adopted by the U.S. Congress." ["Agreement of Toronto" as contained in Chapter XIV of the "Second Supplementary Report of the Register of Copyrights" (1975) at page 24].

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 80-71]

NASA Advisory Council (NAC); Aeronautics Advisory Committee; Meeting

The ad hoc Advisory Subcommittee on Commuter Air Transport Technology of the NAC Aeronautics Advisory Committee will meet November 19, 20, 21, 1980 in Room 205, Building 211 of the NASA Ames Research Center, Moffett Field, California. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including Subcommittee members and participants).

The Subcommittee will review user requirements and manufacturer viewpoints relative to future commuter transport aircraft, review NASA studies of the potential benefits of advanced technology in such aircraft, and assess the adequacy of NASA's current and planned aeronautics research and technology programs to ensure the availability of any new technologies of particular benefit to this class of aircraft. The Chairperson is Prof. Richard S. Shevell, and there are eight members of the Subcommittee.

FOR FURTHER INFORMATION CONTACT: Mr. Harry W. Johnson, Executive Secretary of the ad hoc Subcommittee on Commuter Air Transport Technology, Code RJG, NASA Headquarters, Washington, DC 20546 (202/755-2380).

AGENDA:

November 19, 1980

8:30 a.m.—Introductory Remarks and Background
9:00 a.m.—Commuter Airline Operators' Requirements
10:30 a.m.—Airframe Studies
2:00 p.m.—In-House Commuter Technology (Ames)
3:00 p.m.—Propulsion Studies

November 20, 1980

8:30 a.m.—General Aviation Technology Program
11:00 a.m.—Transport Aircraft Technology Program
2:00 p.m.—Draft of NASA Report and Recommendations
3:00 p.m.—Manufacturers' Views

November 21, 1980

8:30 a.m.—Development of Subcommittee Report and Recommendations
12:00 noon—Adjourn.

Gerald D. Griffin,
Acting Associate Administrator for External Relations.

October 21, 1980

[FR Doc. 80-33314 Filed 10-24-80; 8:45 am]
BILLING CODE 7510-01-M

[Notice 80-72]

NASA Advisory Council, Informal Executive Subcommittee; Meeting

ACTION: Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces the following meeting:

NAME: NASA Advisory Council, Informal Executive Subcommittee.

DATE AND TIME: November 13, 1980, 9:00 a.m.—5:00 p.m. November 14, 1980, 9:00 a.m.—12:00 noon.

ADDRESSES: Scripps Institution of Oceanography, Director's Conference Room, Director's Office, La Jolla, California 92093.

TYPE OF MEETING: Open—except for a closed session as noted in the agenda below.

AGENDA:

November 13, 1980

9:00 a.m.—Introduction.

9:15 a.m.—Report on Solar System Exploration Committee Initial Activities.

10:00 a.m.—Discussion of candidates for participation in the 1981 Goals Study (Closed Session).

5:00—Adjourn.

November 14, 1980

9:00 a.m.—Plans for NASA Advisory Council 1981 activities.

12:00 noon—Adjourn.

FOR FURTHER INFORMATION CONTACT:
Mr. Carl R. Praktish, Assistant Executive Secretary, National Aeronautics and Space Administration, Washington, DC 20546 (202/755–8380).

SUPPLEMENTARY INFORMATION: The Informal Executive Subcommittee of the NASA Advisory Council was established to assist the Chairperson in planning the activities, establishing meeting agendas, and guiding the activities of its parent unit. The Informal Executive Subcommittee is chaired by the Council Chairperson, Dr. William A. Nierenberg, and membership includes the Council's Vice Chairperson and four other members.

This meeting will be closed to the public from 10:00 a.m. to 5:00 p.m. on November 13 for a discussion of the qualifications of candidates for participation in the proposed 1981 study of future space program goals for NASA. Such a discussion would invade the privacy of the candidates and other individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room (approximately 15 persons, including subcommittee members and other participants).

Gerald D. Griffin,
Acting Associate Administrator for External Relations.

October 21, 1980.

[FR Doc. 80-33313 Filed 10-24-80; 8:45 am]
BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-10]

Commonwealth Edison Co.; Availability of Final Environmental Statement for the Dresden Nuclear Power Station, Unit No. 1 Chemical Decontamination

Pursuant to the National Environmental Policy Act of 1969 and the United States Nuclear Regulatory Commission's (the Commission) regulations in 10 CFR Part 51, notice is hereby given that a Final Environmental Statement has been prepared by the Commission's Office of Nuclear Reactor Regulation, related to chemical decontamination of the primary cooling system at Dresden Nuclear Power Station, Unit 1 located in Grundy County, Illinois. The FES is available for inspection by the public in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555, and in the Local Public Document Room at Morris Public Library, 604 Liberty Street, Morris, Illinois 60451. The FES concludes that the proposed decontamination will not significantly affect the quality of the human environment and that the impacts from the decontamination are outweighed by its benefits.

The notice of availability of the Draft Environmental Statement for chemical decontamination of Dresden Nuclear Power Station, Unit No. 1, and request for comments from interested persons was published in the **Federal Register** on June 6, 1980 (45 FR 36197). The comments received from Federal, State and local agencies and interested members of the public have been included as Appendix A to the Final Statement.

Copies of the Final Environmental Statement (NUREG–0686) may be purchased at current rates, from the National Technical Information Service, Springfield, Virginia 22161, (703) 557–4650.

Final unclassified NUREG-series documents are also available directly from NRC to those with deposit accounts with the Superintendent of Documents, U.S. Government Printing Office (see 44 FR 46005, August 6, 1979). To place orders call (301) 492–7333 or write: ATTN: Publications Sales Manager, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Bethesda, Maryland, this 17th day of October, 1980.

Sincerely,

Dennis M. Crutchfield,
Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 80-33380 Filed 10-24-80; 8:45 am]
BILLING CODE 7590-01-M

[Dockets Nos. 50-329 and 50-330]

Consumers Power Co. (Midland Plant, Units 1 and 2); Issuance of Amendments to Construction Permits

Notice is hereby given that pursuant to a Memorandum and Order dated August 4, 1980 by the Atomic Safety and Licensing Board, the U.S. Nuclear Regulatory Commission has issued Amendment No. 2 to Construction Permit No. CPPR–81 and Amendment No. 2 to Construction Permit No. CPPR–82, which were issued to Consumers Power Company for construction of Midland Plant, Units 1 and 2, located in Midland County, Michigan.

The Board's Order authorizes the addition of antitrust conditions to the construction permits. At the time Construction Permits Nos. CPPR–81 and CPPR–82 were issued, the antitrust proceeding was in progress.

The Commission has found that the provisions of the amendments comply with the requirements of the Atomic Energy Act of 1954, as amended, and the Commission's regulations published in 10 CFR Chapter I. Since the amendments only involve the addition of antitrust conditions, this action involves no safety questions or environmental impacts; i.e., this action does not involve a significant hazards consideration, does not constitute an unreasonable risk to the health and safety of the public, and is not inimical to the common defense and security. In addition, the issuance of these amendments will not result in any significant environmental impact; and pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendments.

A copy of the Memorandum and Order, dated August 4, 1980, the construction permits, the amendments and other related documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Grace Dow Memorial Library, 1710 W. St. Andrews Road, Midland, Michigan. Single copies of the amendments may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 20th day of October, 1980.

For the Nuclear Regulatory Commission.

F. Miraglia,
Acting Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 80-33382 Filed 10-24-80; 8:45 am]
BILLING CODE 7590-01-M

[Dockets Nos. 50-424; 50-425]

Georgia Power Co. (Alvin W. Vogtle Nuclear Plant, Unit Nos. 1 and 2); Request for Action Under 10 CFR 2.206

Notice is hereby given that by petition dated September 25, 1980, Mr. Gary Flack, on behalf of Georgians Against Nuclear Energy (GANE), requested that a proceeding be instituted to assess the need for power from Georgia Power's Vogtle Nuclear Power Plan, Units 1 and 2, and to assess the need for a supplemental Environmental Impact Statement in light of new forecasts for electricity demand submitted by Georgia Power to the Georgia Public Service Commission. This petition is being treated as a request for action under 10 CFR 2.206 of the Commission's regulations, and accordingly, action will be taken on the petition within a reasonable time.

Copies of the petition are available for inspection in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555 and in the local public document room for the Alvin W. Vogtle Plant, Unit Nos. 1 and 2, located at the Burke County Library, 4th Street, Waynesboro, Georgia 30830.

Dated at Bethesda, Maryland this 21st day of October, 1980.

For the Nuclear Regulatory Commission.

E. G. Case,
Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 80-33381 Filed 10-24-80; 8:45 am]
BILLING CODE 7590-01-M

Plan for Developing a Safety Goal

Notice is hereby given that the Commission has instituted a plan for developing a safety goal. The plan, prepared, at Commission direction, by the Commission's Office of Policy Evaluation and Office of the General Counsel, is presented below. Additional copies of the "Plan for Developing a Safety Goal," NUREG–0735, are available for purchase from the NRC–GPO Sales Program, Attention: Sales Agent, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; and the National Technical Information Service, Springfield, Virginia 22161.*

The plan includes provision for a preliminary policy paper, concerning which public comments will be requested. The preliminary paper is scheduled to be submitted for the Commission's consideration by December 29, 1980. Persons wishing to make suggestions to be used in developing the preliminary policy paper should address comments, preferably by November 19, 1980, to the Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Edward J. Hanrahan, Director, Office of Policy Evaluation. Comments received too late for consideration in preparing the preliminary policy paper will be considered in subsequent stages of the program.

Dated at Washington, District of Columbia, this 22d day of October 1980.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,
Office of the Secretary.

Plan for Developing a Safety Goal

(NUREG–0735)

Introduction

This report presents a Commission-approved plan for development and articulation of NRC safety objectives, notably—but not exclusively—with respect to reactors; with special attention to interim objectives attainable in the near term, but including consideration of an overall program as well.

The plan is based on a proposed plan, submitted pursuant to Commission direction, by Edward J. Hanrahan, Director, Office of Policy Evaluation (OPE) and Leonard Bickwit, Jr., General Counsel. The principal authors of the plan were George Sege, Senior Policy Analyst, OPE, and Martin Malsch, Deputy General Counsel. In preparing the plan OPE and the Office of the General Counsel (OGC) had the benefit of consultation with the Offices of Nuclear Regulatory Research (RES), Nuclear Reactor Regulation (NRR), and Standards Development (SD), and ACRS members and staff. Commission comments are reflected.

*A copy of NUREG–0735 is available for inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C.

Background

1. Origin of the Plan

In connection with its consideration of SECY–80–230B, "Update of Chapter V of TMI Action Plan: NRC Policy, Organization, and Management," the Commission directed OPE and OGC to prepare a proposed plan for developing a safety goal, to be submitted to the Commission in August 1980. The plan was to include provisions for utilizing on-going efforts by the Office of Research, NRR, and the ACRS, which are scheduled to be completed in October 1980. (Memo, Secretary to EDO/GC/OPE/OPA, 7–9–80, at item 9.) In response to that direction, OPE and OGC submitted a proposed plan for the Commission's consideration on August 12, 1980. (SECY–80–379)

The Commission further directed that OPE submit, by December 29, 1980, a draft safety policy statement for Commission consideration and public comment. (Memo, Secretary to EDO/GC/OPE/OPA, 7–9–80, at item 10.) Provision for that draft policy statement was included in the proposed plan.

The Commission had previously stated its intentions in this regard:

- In its FY 1982–86 Policy, Planning, and Program Guidance, the Commission stated its intent to seek to define more clearly the level of protection of the public health and safety that it believes is adequate.
- In its letter to Dr. Press commenting on the report of the President's Commission on the Accident at Three Mile Island, the Commission stated that it is prepared to move forward with an explicit policy statement on safety philosophy and on the role of safety-cost tradeoffs in NRC safety decisions.

On October 14, 1980 the Commission approved the proposed plan, subject to certain comments, which are now reflected in the plan.

2. Work Status (Current as of August 12, 1980.)

Pertinent work has been or is being done or sponsored by OGC, the ACRS, RES, and NRR. The status of these efforts is presented in Appendix A (supplemented with further detail concerning the RES-sponsored efforts in Appendix 2).

The NRC and other have underway a number of probablistic plant analyses which are producing estimates of the probability of significant accident sequences (severe core damage or core melt sequences). The Probablistic Analysis Staff (Office of Research) has been suggesting the use of interim criteria and priorities for taking corrective action pending formal

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development of numerical criteria.* The interim criteria suggested by PAS are as follows:

Estimated probability, of severe core damage, per year	Action
Greater than 10^{-2}	Correct in days
10^{-2} to 10^{-3}	Correct in months
10^{-3} to 10^{-4}	Correct in years
10^{-4} to 10^{-5}	Consider correction
Less than 10^{-5}	No action

Users of these interim criteria are urged to weigh possible bias in the analysis, the quality of the analysis, the potential scale of consequences, and other significant factors in applying them.

3. Legislation

The Senate's NRC Authorization bill for FY 1981, S. 2358, would require NRC, after notice and opportunity for public hearing, to develop a safety goal for reactor regulation. The goal would be required to delineate subjective criteria, supplemented to the extent possible by quantitative criteria. The bill calls for consideration of retroactive—as well as prospective—application of the goal. It specifies a June 30, 1981, deadline for a report to Congress. (Section 5 of S. 2358.) There is no corresponding provision in H.R. 7981, the House compromise version of the NRC FY 1981 authorization, which has not yet been considered by the full House.

Discussion

1. The Safety-Goal Issue and Its Parts

The basic principle of a safety goal and its application is simple: a general degree of safety is established as a goal and rules are made and licensing actions taken with that goal in mind. Ideally the goal would be translated into actual decision standards by Commission rules, and the rules (rather than the goal itself) would be applied in individual cases. In practice, development of a safety goal is subject to complications which are of the essence of the issue. They stem from data-base gaps, which limit knowledge of what the risks are; different philosophical perspectives as to criteria that should be used to define when a risk is "acceptable"; and important subsidiary issues, such as those involving economic and equity considerations, and techniques of interpretation under uncertainty.

The questions constituting these essential parts of the issue can be articulated and grouped in many ways. In fact, such articulation and grouping are expected to evolve as the policy development work progesses. The following is a starter list, compiled for initial planning purposes and as a point of departure for later modifications:

a. What estimated risks flow from available licensing-policy options?

(1) What uncertainties surround those estimates?

b. What known risk levels are acceptable?

(1) What uncertainties are acceptable?

(2) To what extent is there increased aversion to risk of high consequences even at low probability?

c. What constrains safety requirements that NRC should impose?

(1) What is the role of safety-cost tradeoffs?

(2) To what extent should benefits of nuclear power—absolute and relative to alternatives—enter safety-requirement decisions?

(3) To what extent is it appropriate for requirements for new and previously approved plants to differ?

(4) How should stringency of safety goals compare with risks accepted from other (non-nuclear) electrical energy sources and with risks arising in various other contexts?

(5) To what extent should equities of distribution of benefits and adverse impacts influence safety requirements?

(6) Should safety goals be applied directly to cases, in order to attain a similar degree of safety from case to case (even though that may result in specific design and operation requirements differing according to circumstances)? Or should goals be applied generically and have *requirements,* rather than estimated degree-of-safety *results,* be uniform?

(7) To what extent should goals reflect protection of individuals regardless of numbers of persons affected, and to what extent should they reflect total, integrated population or societal effects?

What policies are appropriate in the face of gaps in knowledge as to what the risks are and the need for clarity of licensing requirements?

(1) Should there be an overall top-level safety-goal policy that would control lower-order specific decision classes, with toleration of uncertainties in interpretation of overall policy in terms of specific regulations? Or should goals be defined in operationally useful form for narrower areas, thereby achieving better predictability of requirements, though at the cost of losing some overall philosophical consistency and conceptual completeness?

(2) What is the proper balance between stability of requirements and flexibility for modification as knowledge develops and insights change?

e. In veiw of inherent uncertainties, how should probability estimates and consequence predictions be verified?

f. Under uncertainty as to goals or imprecision of goals or doubts as to their interpretation, how should judgments be made in:

(1) Establishing generic requirements?

(2) Cases?

2. Program Approach

The program approach focuses in the near term on (a) general policy statements, (b) articulation of policy with respect to parts of the issue, and (c) isolation of more difficult questions for further consideration. The approach rests on recognition that even if a full and definitive resolution of the safety-goal issue is not a practical near-term objective, highly useful purposes can be served by significant limited contributions to the objectives. In addition, the policy development process itself can perform a useful function of illuminating the safety-goal issue and its place in regulation, thereby helping to rationalize regulatory decision-making.

The program emphasizes development of options for near-term Commission action, while also providing for foundation-laying for subsequent further development of policy.

The method of approach includes the following elements:

- Utilization of results and interim results of ongoing NRC efforts (ACRS, RES, NRR).
- Consideration (and, as appropriate, solicitation) of inputs from outside groups with considered views (AIF, EPRI, other industry groups; nuclear-critic groups).
- Performance of background studies (past AEC/NRC practices, practices of other agencies, approaches in other industrial countries, theories and facts of risk acceptance).
- Workshops, for discussion among knowledgeable persons of varied viewpoints.
- Solicitation and consideration of public comments, with wide and varied opportunities for public participation (including public availability of papers for comment, public meetings, and public attendance at workships, etc.).
- Reception and development of a broad range of alternatives before narrowing to a limited number of significant options (and ultimately perhaps a single recommended approach).
- Staff papers for Commission consideration at critical stages of policy analysis.
- Opportunities for Commission guidance as the work progresses. Preliminary Commissioner views will be sought in interviews early in the program.

The form of eventual Commission action (policy statement, rulemaking, etc.) is left open at this time.

Should there be legislative direction concerning this work, its scope and schedule will be reviewed in light of legislative requirements. The thrust of the Senate's bill (Section 5 of S. 2358) was taken into account in planning, but we judged it to be premature to rely on the scope and schedule specifics of that bill in structing the program.

3. Organization and Management

The capabilities of the ACRS and all pertinent NRC offices will be utilized, supplemented by consultants and contractors as necessary. The plan gives program responsibility to OPE, working with an Inter-Office Steering Group, chaired by the Director, OPE.

Program Plan

1. Objective

To develop an explicit articulation of policy with respect to the fundamental issues of public health and safety and the level of protection the Commission believes is adequate.

2. Scope

The policy articulation to be developed will include some general approach to risk acceptability and safety-cost tradeoffs, and, to the extent that these reasonably lend themselves to articulation, quantitative safety goals, safety improvement goals, and standards for review of past actions in light of new rules and improved practices.

The work will deal primarily—but not exclusively—with power reactors.

3. Overall Plan and Schedule

The proposed plan is keyed to submittal of two papers for Commission consideration and public comment, as follows:

- A preliminary policy paper by December 29, 1980..
- A policy paper within a year of submittal of the plan, which will include alternatives to meet the stated objective.

The milestones are presented in Table 1.

Table 1.—*Program Milestones*

Event	Date
Establish Inter-Office Steering Group.	Oct. 24, 1980.
Preliminary reports on Brookhaven risk studies.	September 1980.
Complete Commissioner interviews..	October 1980.
Final report of ORNL study of approaches to acceptable risk.	October 1980.
ACRS report on quantitative safety goals.	October 1980.
Amplified NRR paper on concepts and issues.	October 1980.
Exploratory meetings on Approaches with NRC/Industry/Public Interest Groups.	October and November 1980.
Complete working paper on Criteria.	Nov. 17, 1980.
Submit information paper on detailed plans and schedule for Background Studies.	* Dec. 1, 1980.
Complete working paper on Alternative Frameworks.	Dec. 1, 1980.
Submit Preliminary Policy Paper.....	* Dec. 29, 1980.
Hold Workshop on Frameworks.....	Feb. 17, 1980.
Receive public comment on Preliminary Policy Paper.	Mar. 16, 1980.
Hold public meeting(s).....	Spring 1981.
Complete Background Studies	Apr. 30, 1981.
Complete preliminary draft of Proposed Approach.	May 20, 1981.
Hold Workshop on Proposed Approach.	June 23, 1981.
Submit Policy Paper.....	Aug. 12, 1981.

* Some background studies may be initiated before that date.

* Issue for public comment after Commission approval for release.

4. Tasks

The proposed work consists of the tasks described below.

Task I: Liaison

1. Follow ongoing NRC and NRC-sponsored activities (including ACRS, RES, and NRR). Obtain final and interim results for consideration in the program. Principal early inputs include ACRS findings on quantitative safety goals (October 1980.); final report on "Approaches to Acceptable Risk" (RES/ORNL/Decision Research, October 1980.); preliminary reports on risk criteria and their impact and on risks of other societal activities (RES/Brookhaven, September 1980.); and a revised, expanded draft of paper on "Concepts, Problems, and Issues in Developing Safety Goals and Objectives for Commercial Nuclear Power" (NRR Division of Safety Technology, October 1980.).

2. Establish and maintain contact with outside groups known or believed to have interest and considered views (including industry and public interest groups). Solicit as necessary and receive for consideration articulated views and analyses from these groups.

3. Establish and maintain information interchange with groups having relevant responsibilities and related interests. (This includes Congressional and NSF/NAS contacts, other governmental contacts, and may include foreign contacts.) (OPE, Inter-Office Steering Group, and to be assigned.)

Task II: Background Studies

A. *Nuclear Regulatory Statutes and Practices.* Update and amplify the Commission paper, "Adequate Protection of the Health and Safety of the Public" (OGC, 10–18–79) as necessary to provide a current compendium including legal analysis, interpretation of safety goals in AEC/NRC regulations and cases, history of changes in law and interpretations, and controversies concerning interpretation. Prepare reports on legal and historic aspects. (OGC/Historian, early 1981.)

B. *Statutes and Practices of Other Agencies.* 1. Select for study 3 to 10 other Federal agencies with important safety responsibilities. (Candidates include EPA; FAA; Department of Transportation, notably with respect to highway safety; NASA; Food and Drug Administration; Consumer Products Safety Commission).

2. Analyze the practices of the selected agencies with respect to safety goals, utilizing analysis of pertinent statutes in the October 1979 OGC paper.

3. Prepare report on findings, including comments concerning relevancy to NRC. (Responsibility and schedule to be determined.)

C. *Approaches of Other Industrialized Countries to Safety Goals.* Using information developed by the ACRS and RES, conduct limited additional study to round out the information concerning nuclear safety goals as viewed in other countries. (Candidate countries include UK, FRG, France, Japan.) Prepare report, including comments on relevancy to U.S. and NRC. (IP/OPE, schedule to be determined.)

D. *Social Acceptance of Risks.* 1. Review the literature on the levels and circumstances of risk acceptance in contexts other than the nuclear industry, including the results of the RES-sponsored study of coal vs. nuclear risks and of recent CONAES studies of risks of various electrical energy sources. (Candidate other contexts include transportation, tobacco, alcohol, home and consumer products, industry, construction, dams, war, sports, natural hazards.)

2. Prepare summary reports (overview). (Responsibility and schedule to be determined.)

E. *Theories of Risk Acceptance.* Describe alternative theories of risk aversion and acceptance, including considerations such as relation to other risks, voluntary or involuntary exposure, nature of hazards, specificity of victim, number of persons at risk, proximity in time and place, relation to benefits, and

*(1) "Interim Quantitative Action Criteria," R. Bernero (PAS) to R. Mattson (NRR), 7/29/80. (2) "Cyrstal River IREP Study and Interim Criteria for Action," R. Bernero to R. Mattson, 7/22/80. (3) R. Bernero, oral presentation at Duke Power Co./NSAC Seminar on Oconee Risk Assessment, Charlotte, N.C., 7/22/80. (4) R. Bernero, oral presentation before ACRS Subcommittee on Reliability and Probabilistic Assessment, Los Angeles, CA., 7/1/80.

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uncertainty as to nature and magnitude of the risk, using the results of ORNL study and adding the limited work necessary. (OPE/RES, schedule to be determined.)

Task III: Policy Development

A. *Criteria.* 1. Develop a set of criteria by which the merits of a safety-goal formulation should be judged. (Candidate criteria may include such considerations as: To what extent does the formulation address significant elements of the issue? How complete is it? To what extent does it lead to coherent and rationale results? To what extent is it acceptable to affected publics? How clearly can it be interpreted in terms of regulatory actions? How useful is it? Etc.)

2. Prepare working paper for use in policy development. (OPE, November 1980.)

B. *Frameworks.* 1. Develop candidate approaches to safety-goal formulation. (These may include frameworks that aim at a comprehensive statement, or statements with respect to only those parts of the issue judged to be tractable; quantitative and/or qualitative formulation approaches; concentrating on individual or social risks, or both; stated in terms of probabilities of events, such as core melt and/or containment failure, or of public consequences, notably radiation exposure risk; etc.) Drawn from work of ACRS, NRR, RES, AIF, EPRI, public interest groups, etc.

2. Prepare working paper on alternative frameworks, presenting a range of alternatives, for use in early policy development. (OPE, December 1, 1980.)

3. Narrow down to a few significant and usable approach options which span the range of approaches, and develop further for use in Subtasks III.C and D. (OPE, December 1980; update July 1981.)

C. *Preliminary Policy Paper.* 1. Prepare a draft policy statement concerning safety goals, setting forth significant approach options, together with underlying rationale, for Commission consideration.

2. Following Commission review, submit for public comment.

3. Prepare proposed updated program plan for next phases of work and submit for Commission consideration. (OPE, December 1980.)

D. *Policy Paper.* 1. Evaluate Commission guidance and peer and public comment on the Preliminary Policy Paper (Subtask III.C).

2. Prepare a draft policy statement concerning safety goals, together with underlying rationale, for Commission consideration and public comment (taking item 1 into account). (OPE, 8/12/81.)

3. Identify and plan for further work and submit for Commission consideration. (OPE, August 1981.)

Task IV: Workshops

Note.—This task envisages holding two workshops, to help illuminate the considerations that should guide the narrowing of options. These will be discussion workshops, with assigned topics (and perhaps subtopics assigned to subgroups), involving invited knowledgeable persons representing a broad range of viewpoints, drawn from technical, social, and humane disciplines, industry, public interest groups, universities, and government. The composition of the two workshops is not expected to be identical. The proposed workshops and associated tasks are as follows.

A. *Workshop on Frameworks and Philosophies of Approach.* 1. Prepare and provide to participants an input package including the Preliminary Policy Paper and topics and guidelines for discussion.

2. Hold workshop to discuss general approaches to safety-goal formulation, including goal forms, assumptions, and decision criteria. (Arrangements responsibility to be determined; February 1981.)

3. Prepare report, for use in Subtasks IV.B and III.D.

B. *Workshop on Proposed Approoch.* 1. Prepare and provide to participants an input package including the Preliminary Policy Paper, preliminary draft of proposed approach, report on Workshop A, and topics and guidelines for discussion.

2. Hold workshop to discuss merits and problems of a reference safety-goal statement and its chief alternatives. (Arrangements responsibility to be determined; June 1981.)

3. Prepare report, for use in Subtask III.D.

Task V: Management

1. Plan, organize, and integrate the project.

2. Measure progress and adjust the program in light of Commission guidance and other developments. (OPE, with assistance of Inter-Office Steering Group.)

5. Public Participation

Wide public participation will be sought.

This plan will be published in the **Federal Register**, with opportunity for public comments and suggestions for consideration in the Preliminary Policy Paper.

The two workshops will be open to the public.

The Preliminary Policy Paper and the Policy Paper will be issued for public comment, and consideration will be given to possible invitations of comment on other papers.

One or more public meetings will be held, to provide further occasion for public input.

6. Organization

The Commission has assigned the principal program responsibility to OPE.

An Inter-Office Steering Group is being established to gain the benefit of NRC-wide participation in guidance of the program and to serve as a focal point for securing work contributions for the various NRC offices. The offices represented include OPE, OGC, RES, NRR, SD, IE, and NMSS. In addition, an ACRS staff member will participate. The members are being chosen on the basis that they should be broadly capable professionals, of inquiring mind, and not averse to challenging established ways. Their participation will be part-time, with a priority adequate to the program's schedule. They are being appointed by the respective Office Directors (or Committee Chairman), with approval of the EDO in the case of offices reporting through the EDO. The group's chairman will be the Director, OPE.

OPE and the steering group will be further assisted in program guidance by outside consultants.

The study work will be done partly by assignment of specific work packages to appropriate NRC offices, contractors, and consultants.

Consideration will be given to retaining the services of a national labotary for "housekeeping" and other contractual support of the goal-development effort.

7. Program Adjustment

As the work progresses, OPE, in consultation with the Inter-Office Steering Group, will develop any needed modifications of this plan, in consonance with the program's objectives, scope and overall schedule, and in accordance with Commission guidance.

Appendix A—Status of NRC Work

• OGC: OGC has submitted for the Commission's information a legal analysis of NRC's present requirements and practices with respect to safety adequacy. ("Adequate Protection of the Health and Safety of the Public," memo to the Commission from L. Bickwit, GC, 10–18–79.)

• ACRS: In May 1979 the ACRS recommended to the Commission that NRC consider the establishment of quantitative safety goals for nuclear power reactors. (Letter to NRC Chairman Hendrie from ACRS Chairman Carbon, 5–16–79.) After expression of interest by Commissioner Ahearne (letter to Chairman Carbon, 6–11–79), the ACRS undertook to develop the concept further and assigned the project to its Subcommittee on Reliability and Probabilistic Assessment. In August 1979 the ACRS wrote that it would take up to a year to arrive at a recommendation that the Committee would find appropriate. (Letter to Commissioner Ahearne from ACRS Chairman Carbon, 8–14–79.) After a series of meetings which included consideration of a number of domestic and foreign risk-analysis and criteria-development programs, the Subcommittee presented a tentative framework for risk management decision-making to the Committee at its June 1980 meeting.

The ACRS Subcommittee on Reliability and Probabilistic Assessment met on July 1, 1980 to continue its evaluation of development of quantitative safety goals for nuclear power plants. Speakers from NRC's Probablistic Analysis Staff (RES), EPRI, AIF, IEEE, and General Atomic, as well as ACRS Fellows and consultants presented and discussed proposed approaches. Based on the information provided to the Subcommittee through its July 1, 1980 meeting, Subcommittee Chairman Okrent informed the Committee on July 12 that he and ACRS Fellows working with him would prepare a draft letter for Committee review at the September or October 1980 ACRS meeting. The draft is expected to be accompanied by background documents describing:

Approaches to safety goals found in the literature.

A possible set of safety goals and decison rules, and their implications.

It is expected that the ACRS will report its findings to the Commission after its September or October 1980 meeting.

• Office of Nuclear Regulatory Research:

The Office of Nuclear Regulatory Research has in progress a research program on quantification of safety decison-making. The specific activities involved and their status are as follows:

A Comparative Risk Assessment and Acceptable Risk Criteria project is being conducted by the Oak Ridge National Laboratory to develop methods for addressing unacceptable and acceptable risk, and to compare public and occupational risk associated with the coal and nuclear fuel cycles. A preliminary draft of a report on Approaches to Acceptable Risk is presently being reviewed, and a draft report on the risk associated with the coal and nuclear cycles is being finalized for distribution in October 1980.

A research task force of a variety of professional disciplines has been established to formulate several possible sets of numerical criteria, using different technical approaches. The formation of the research task force and the conduct of its meetings are being coordinated through the Institute of Electrical and Electronic Engineering (IEEE), with cooperation from other professional engineering societies. The task force has been established in the IEEE SC–5 Reliability Committee, and has completed several working group meetings as of June 1980. Discussions are currently taking place among IEEE, ANS, and AIF concerning the respective roles of these organizations, in efforts to arrive at a coordinated approach.

Brookhaven National Laboratory has been contracted to independently formulate criteria in order to investigate the implications of such criteria and to determine the impact of attempting to satisfy such criteria. Information on risk exposure and risk acceptance cirteria from other societal activities is being collected. Draft reports are expected in September 1980. Also, baseline calculations of WASH–1400 accident sequence probabilities are being revised by using hardware and human error failure rates.

As means of peer review during the BNL project, the National Science Foundation, the National Academy of Science, and the American Statistical Association have been contacted to set up peer review functions. Negotiations are underway to define the specific mechanisms for these peer reviews. The ACRS Subcommittee on Probabilistic Analysis are carrying out independent reviews and formulating their own recommendations.

Several meetings are scheduled to accomplish an integration of these activities. A meeting of nuclear industry representatives was held in Washington, D.C., on March 18, 1980 to discuss fundamental issues involved in establishing risk criteria. It is anticipated that one or more of these meetings will be internationally sponsored.

Task descriptions and schedules of the various RES-sponsored efforts appear in Appendix B.

• Office of Nuclear Reactor Regulation: On July 10, 1980 the NRR's Division of Safety Technology (DST) circulated for comment within NRC a draft paper entitled, "Concepts, Problems, and Issues in Developing Safety Goals and Objectives for Commercial Nuclear Power." In October 1980, DST plans to issue a revised and expanded draft, which is expected to include a fuller treatment of suggested goal forms and assumptions for the goals, together with a rationale for decision criteria for choosing among candidate sets of interrelated goals, standards, and guidelines. In addition, DST is prepared to develop a paper on the desirability of specific safety goals. The paper would be drafted from a licensing perspective and would be intended as a proposed "NRC staff" alternaive, for consideration along with other viewpoints.

Appendix B—Description of RES-Sponsored Projects

Projects to Formulate and Evaluate Quantitative Risk Criteria

Performing Organization: Brookhaven National Laboratory

Task 1. Perform a comprehensive literature review on published articles addressing quantitative risk criteria. Revised draft report due September 15, 1980.

Task 2. Update WASH–1400's curves and tables on risks from activities other than nuclear. Evaluate both individual and societal risks along with associated uncertainties. Revised draft report due September 15, 1980.

Task 3. Review present state-of-the-art of fault tree and event tree modeling and quantitative risk evaluations. Explicitly identify limitations and capabilities in utilizations to determine whether numerical risk criteria are satisfied. Draft report due September 15, 1980.

Task 4. Update WASH–1400 calculations to incorporate new failure data and new quantitative models. The updated WASH–1400 evaluations will serve as baselines to compare with risk evaluations of other plants. Coding of WASH–1400 fault trees and event trees for automatic computer updating to be completed by October 1, 1980.

Task 5. Based on comparative risk considerations, formulate and evaluate quantitative risk criteria based on an acceptable level approach. Consider quantitative criteria for acceptable levels for:

a. Core melt probability.
b. Probability versus curies released.
c. Early fatalities.
d. Latent fatalities.
e. Dollar damage.

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Evaluate different criteria and give the pros and cons for utilizing each criterion along with the risk ramifications. Consider different methods for compliance determinations. Specifically address the treatment of uncertainties and data and models required. Draft report due September 15, 1980.

Task 6. Formulate and evaluate quantitative criteria based on an unacceptability level approach. Consider the same five items as for the acceptable level approach. Consider ramifications and methods for determining compliance. Specifically address the treatment of uncertainties along with data and models required. Draft report due September 15, 1980.

Note.—Final reports will be issued in 1981.

Performing Organizations: Oak Ridge and Decision Research (Paul Slovic, Ralph Keeney, etc.)

Task 1. Consider the comments and reviews made on the draft report of *Approaches to Acceptable Risk* and issue a final report. Final report due October 1, 1980.

Task 2. Formulate and evaluate specific quantitative criteria for acceptable levels of risk from nuclear reactors. Consider quantitative levels for core melt probability, probability versus release, early and latent fatalities, and dollar damage. Consider the different approaches for justifying the criteria (expert judgment, comparative arguments, decision-theoretic approaches, etc.) and discuss possible public reactions. Evaluate ramifications of the criteria and specifically consider methods for implementing and determining compliance with the criteria. Draft report due January 1981.

Task 3. Consider quantitative criteria based on the unacceptable level approach. Perform the same analyses as in Task 1 but addressing defined, unacceptable quantitative criteria. Also consider how the unacceptable level approach might converge to the acceptable level approach. Draft report due January 1981.

Performing Organizations: Oak Ridge and Science Applications

Task: Complete final report on evaluating risks from coal versus nuclear power. The report treats all phases of the nuclear fuel cycle and coal cycle. Final report due October 1, 1980.

Performing Organization: Argonne National Laboratory

Task 1. Begin to quantify the benefits from nuclear power for considerations in risk-benefit evaluations. As phase one of this task, specifically consider the loss of economic benefits from shutdown of one plant or multiple plants. Utilize existing computer codes and consider specific plant shutdowns covering minimum to maximum losses. Considered multiple plant shutdowns by region. Develop an empirical model for decision-theoretic utilizations. Draft report due December 1, 1980.

Task 2. Apply decision-theoretic approaches to regulatory decision-making. Explain in understandable terminology the concepts and inputs required in utilizing formal decision-theoretic approaches. Use the models and analyses obtained from IREP as specific case studies. Perform detailed sensitivity studies to determine the impacts of different value assessments. Develop a formal treatment for handling uncertainties in the decision-making process. Draft report due March 1981.

Note.—In addition to the above projects, the IEEE has established working groups to formulate numerical risk criteria from an industry oriented point of view. The National Academy of Science and National Science Foundation has carried out several forums on acceptable risk criteria. The American Statistical Assocation has also established a committee dealing with the proper use of statistics in risk analyses.

[FR Doc. 80-33379 Filed 10-24-80; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Agency Forms Under Review

October 22, 1980.

Background

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Federal Reports Act (44 U.S.C., Chapter 35). Departments and agencies use a number of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibility under the Act also considers comments on the forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

Every Monday and Thursday OMB publishes a list of the agency forms received for review since the last list was published. The list has all the entries for one agency together and grouped into new forms, revisions, extensions, or reinstatements. Some forms listed as revisions may only have a change in the number of respondents or a reestimate of the time needed to fill them out rather than any change to the content of the form. The agency clearance officer can tell you the nature of any particular revision you are interested in. Each entry contains the following information:

The name and telephone number of the agency clearance officer (from whom a copy of the form and supporting documents is available);

The office of the agency issuing this form;

The title of the form;

The agency form number, if applicable;

How often the form must be filled out;

Who will be required or asked to report;

An estimate of the number of forms that will be filled out;

An estimate of the total number of hours needed to fill out the form; and

The name and telephone number of the person or office responsible for OMB review.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. Our usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the **Federal Register** but occasionally the public interest requires more rapid action.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review. If you experience difficulty in obtaining the information you need in reasonable time, please advise the OMB reviewer to whom the report is assigned. Comments and questions about the items on this list should be directed to the OMB reviewer or office listed at the end of each entry.

If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer of your intent as early as possible.

The timing and format of this notice have been changed to make the publication of the notice predictable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Jim J. Tozzi, Assistant Director for Regulatory and Information Policy, Office of Management and Budget, 726 Jackson Place, Northwest, Washington, D.C. 20503.

DEPARTMENT OF AGRICULTURE

Agency Clearance Officer—Richard J. Schrimper—447-6201.

New Forms

- Economics, Statistics, and Cooperatives Service
U.S. Manufacturers' Use of Casein and Lactalbumin
Single Time
Manufacturers using casein and lactalbumin, 630 responses, 788 hours
Charles A. Ellett, 395-7340
- Farmers Home Administration
7 CFR 1990-A, B & C Biomass Energy and Alcohol Fuels Loans [1] and Guarantees
FMHA 1990-1 and 1990-2
On occasion
Farms and small corporations, 350 responses, 3,500 hours
Charles A. Ellett, 395-7340

Revisions

- Economics, Statistics, and Cooperatives Service
Cattle of Feed Surveys
Monthly
Cattle feeders, 66,760 responses, 4,435 hours
Charles A. Ellett, 395-7340
- Economics, Statistics, and Cooperatives Service
Multiple Frame Hog and Cattle Survey
Quarterly
Hog and cattle producers, 209,800 responses, 52,450 hours
Office of Federal Statistical Policy and Standard, 673-7974

Reinstatements

- Food and Nutrition Service
Report of Child Nutrition Operations
FNS-10
Monthly
State eductional agencies, 672 responses, 672 hours
Charles A. Ellett, 395-7340
- Food and Nutrition Service
Report of Program Operations
FNS-167
Monthly
State agencies, 948 responses, 37,920 hours
Charles A. Ellett, 395-7340
- Food and Nutrition Service
Annual Report of Revenue and Cost
FNS-13
Annually
State educational agencies, 59 responses, 9,515,720 hours
Charles A. Ellett, 395-7340

[1] Final action on this clearance request may occur prior to the close of the normal ten-day public comment period due to urgent need for development of alternative energy resources.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Clearance Officer—Joseph J. Strnad—245-7488.

New Forms

- Food and Drug Administration
FY '80 Multi-Purpose Survey
Single time
Main food shoppers for households; area probability, 1,500 responses, 1,500 hours
Office of Federal Statistical Policy and Standards, 673-7974
- Health Resources Administration
Health Planning Performance Evaluation on Health Promotion/Disease Prevention
Single time
PHS gran. who are st. hlt. plan. and develop agen. and hlt., 40 responses, 120 hours
Richard Eisinger, 395-6880
- Social Security Administration
Quarterly Estimate of Expenditures
OSCE/SSA 65
Quarterly
Administrators of State agencies, 216 responses, 108 hours
Barbara F. Young, 395-6880
- Social Security Administration
State Agency Quarterly Statement of Financial Plan for AFDC
SSA-125
Quarterly
State welfare agencies, 216 responses, 432 hours
Barbara F. Young, 395-6880
- Social Security Administration
Quarterly Budget Estimates
OCSE-25
Quarterly
State welfare agencies, 216 responses, 216 hours
Barbara F. Young, 395-6880
- Social Security Administration
Quarterly Statement of Expenditures and Related Schedules
SSA/OCSE-41, Sched. A, OCSE-4134, 411, 4130, 4140, 4150, 4160, 4111
Quarterly
States, 1,580 responses, 2,250 hours
Barbara F. Young, 395-6880

Reinstatements

- Social Security Administration
State's Quarterly Report of Wages Paid
SSA-3963 and A
Quarterly
Political subdivisions and interstate instrumentalities, 64,000 responses, 122,000 hours
Barbara F. Young, 395-6880

DEPARTMENT OF JUSTICE

Agency Clearance Officer—Donald E. Larue—633-3526.

New Forms

- Offices, Boards, Division
National Opinion Research Center (NORC) Field Test I
BJS (Series 3620)
Single time
Households in Chicago SMSA
Andrew R. Uscher, 395-4814
- Offices, Boards, Division
Computer Assisted Telephone Interviewing (CATI)
BJS (Series 3620)
Single time
Households in Chicago SMSA
Andrew R. Uscher, 395-4814
- Offices, Boards, Division
Survey Research Center Field Test
BJS (Series 3620)
Single time
Households in Chicago SMSA
Andrew R. Uscher, 395-4814
- Offices, Boards, Division
National Field Test
BJS (Series 3620)
Single time
National household sample
Andrew R. Uscher, 395-4814
- Offices, Boards, Division
National Opinion Research Center (NORC) Field Test II
BJS (Series 3620)
Single time
Households in Chicago SMSA
Andrew R. Uscher, 395-4814

DEPARTMENT OF LABOR

Agency Clearance Officer—Paul E. Larson—523-6341.

Revisions

- Employment and Training Administration
Trade Readjustment Determinations and Allowance Activities and Employability Services
ETA 563 telegraphic report
Monthly
SESA's for petitions under the Trade Act, 36,000 responses, 2 hours
Arnold Strasser, 395-6880

C. Louis Kincannon,

Acting Deputy Assistant Director for Reports Management.

[FR Doc. 80-33434 Filed 10-24-80; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 21750; (70-6503)]

Cape Cod Gas Co.; Proposed Issuance and Sale of First Mortgage Bonds to Institutional Investor Pursuant to a Private Offering

October 21, 1980.

Notice is hereby given that Cape Cod Gas Company ("Cape Cod"), P.O. Box 1360, Hyannis, Massachusetts 02601, a public utility subsidiary of Colonial Gas Energy System ("Colonial"), a holding company, has filed a declaration with this Commission pursuant to Sections 6 and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(4) promulgated thereunder regarding the private placement of first mortgage bonds. All interested persons are referred to the amended declaration, which is summarized below, for a complete statement of the proposed transactions.

On October 7, 1977, Colonial filed an application for exemption under Section 3(a)(1) of the Act (File No. 31-763). Its application for exemption is pending. Pursuant to a Stipulation in that proceeding dated January 26, 1978, entered into by Colonial and the Division of Corporate Regulation pending the development of a plan of financial simplification or recapitalization by Colonial appropriate to the requirements for exemption under Section 3(a)(1), Colonial has registered as a public utility holding company under Section 5(a) for the limited purpose of complying with the provisions of Sections 6, 7 and 12(b) of the Act.

Cape Cod is seeking authorization to issue and sell up to $1,000,000 of its 14% first mortgage bonds due 1995 which are to be sold to John Hancock Mutual Life Insurance Company. It claims exception from the competitive bidding requirements of Rule 50(b) pursuant to subparagraph 50(a)(4).

Cape Cod's capital structure as of July 31, 1980, and pro forma is shown in the following table.

Cape Cod

[Thousands omitted]

Unaudited		Pro forma		
	Amount	Percent	Amount	Percent
Long-term debt	$13,713	44 73	$13,488	44.32
Notes payable banks	6,000	19.57	6,000	19 71
Total debt.	19,713	64.30	19,488	64.03
Preferred stock	1,079	3.52	1,079	3.55
Common equity	9,866	32 18	9,866	32.42

Cape Cod—Continued

[Thousands omitted]

Unaudited		Pro forma		
	Amount	Percent	Amount	Percent
Total capitalization.....	30,658	100.00	30,433	100.00

A statement of bond and total fixed charges coverages as of July 31, 1980, is reflected below, based on the reported income for the twelve months ended that day.

	Unaudited	Pro forma
Income before taxes.....	$3,892	$3,692
Bond interest.....	1,246	1,319
Bond interest coverage	2.96 x	2.80 x
Total interest.....	3,050	3,092
Preferred dividends.....	2,035	2,108
Total fixed charges.....	70	70
Coverages for total fixed charges and preferred stock dividends	1.45 x	1.42 x

The bonds will be issued under Cape Cod's Indenture of Mortgage and Deed of Trust, as amended and supplemented, and will be of equal rank with the outstanding bonds. The bonds will have an average life of approximately 10 years and will not be redeemable for five years nor refundable for an additional five years in anticipation of borrowings having a lower effective interest cost. Cape Cod will also agree to certain reasonable limitations on its right to issue additional bonds, incur short-term debt, and pay dividends on its common stock. The exact terms of the bonds will be negotiated and contained in a supplemental indenture to be filed by amendment.

The Cape Cod bonds will mature November, 1995 and will be subject to sinking fund requirements beginning in the third year and increasing at designated intervals. The proceeds of the bonds will be used by Cape Cod to refund approximately $1,000,000 in principal amount of First Mortgage Bonds, Series E, 5½% due November 15, 1980.

The fees and expenses incurred or to be incurred in connection with the proposed transactions will be filed by amendment. The Massachusetts Department of Public Utilities has jurisdiction over the proposed issue and sale of bonds. No other state or federal commission except this Commission, has jurisdiction over such transactions.

Notice is hereby given that any interested person may, not later than November 12, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the amendment which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as amended or as it may be further amended, may be permitted to become effective as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 33321 Filed 10-24-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21749; October 21, 1980 (70-6452)]

Consolidated Natural Gas Co.; Post-Effective Amendment Related to Intrasystem Financing, Issuance of Long-Term Notes of Subsidiaries to Holding Company and Acquisition of Such Notes by Holding Company

October 21, 1980.

In the Matter of Consolidated Natural Gas Company, 30 Rockefeller Plaza, New York, New York 10020, CNG Coal Company, CNG Development Company Ltd., CNG Producing Company, CNG Research Company, Consolidated Gas Supply Corporation, Consolidated Natural Gas Service Company, Inc., Consolidated System LNG Company, The East Ohio Gas Company, The Peoples Natural Gas Company, The River Gas Company, and West Ohio Gas Company.

Notice is hereby given that Consolidated Natural Gas Company ("Consolidated"), a registered holding company, and certain of its subsidiary companies, CNG Coal Company ("Coal Company"), CNG Development Company Ltd., CNG Producing Company ("Producing Company"), CNG Research Company ("Research Company"), Consolidated Gas Supply Corporation ("Gas Supply"), Consolidated Natural Gas Service Company, Inc., Consolidated System LNG Company ("LNG Company"), The East Ohio Gas Company ("East Ohio"), The Peoples Natural Gas Company ("Peoples"). The River Gas Company ("River"), and West Ohio Gas Company ("West Ohio") have filed with this Commission a post-effective amendment to the application-declaration in this proceeding pursuant to Sections 6(a), 7, 9(a), 10, 12(b), and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43 and 45 promulgated thereunder. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transactions.

By order issued June 2, 1980 (HCAR No. 21603), the Commission authorized the intrasystem financing program of Consolidated Natural Gas Company and eleven of its subsidiary companies. Among other things, the order authorized: (1) a short-term bank loan ("Gas Storage Loan") by Consolidated of up to $125,000,000; (2) the issuance of up to $100,000,000 of commercial paper by Consolidated or back-up bank borrowings not exceeding $100,000,000 if the sale of commercial paper is impractical; and (3) the purchase by Consolidated of $110,000,000 par value of subsidiary common stock.

Consolidated would make up to $260,000,000 in open account advances to subsidiaries for gas storage requirements to be financed with proceeds of Gas Storage Loan and proceeds from the sale of commercial paper or back-up bank borrowings. The subsidiaries would use the proceeds from the sale of common stock to finance, in part, their 1980 capital expenditures. On August 28, 1980 a Supplemental Order (HCAR No. 21692) was issued releasing jurisdiction with respect to various matters on which jurisdiction had been reserved pending issuance of state commission orders. On October 7, 1980, Consolidated was authorized to issue and sell $100,000,000 principal amount of ——% Debentures Due October 1, 2000 at competitive bidding.

Consolidated has now filed a post-effective amendment requesting authorization to make long term loans in 1980 to certain subsidiaries to partially finance their 1980 capital expenditures. Such loans would be made following the debenture financing by Consolidated. The consummation of these proposed transactions are contingent upon the issuance in 1980 of the $100,000,000 principal amount of the Debentures authorized in our order of October 7, 1980.

The subsidiary companies listed below propose to issue to Consolidated and Consolidated proposes to acquire up to $100,000,000 principal amount of non-negotiable, long-term notes maturing in the years stated, at a date to be determined by the officers of Consolidated, and bearing interest at a rate predicated upon and substantially equal to the effective cost of money to Consolidated through the issuance and sale by Consolidated of its debenture issue in 1980, such interest to be paid semi-annually, at dates to be determined by the officers of Consolidated, as follows:

CNG Producing Co. (Maturing: $2,125,000 in each year 1985 to 2000, inclusive)	$34,000,000
Consolidated Gas Supply Corp. (maturing: $2,812,500 in each year 1985 to 2000, inclusive).....	45,000,000
The East Ohio Gas Co. (maturing: $625,000 in each year 1985 to 2000, inclusive)	10,000,000
The Peoples Natural Gas Co. (maturing: $625,000 in each year 1985 to 2000, inclusive).....	10,000,000
West Ohio Gas Co. (maturing: $62,500 in each year 1985 to 2000, inclusive)	1,000,000
Total	100,000,000

The order of June 2, 1980 (HCAR No. 21603) authorized the issuance and sale of $110,000,000 of subsidiary company capital stock to Consolidated from time to time up to May 31, 1981. The sale of Debentures and subsequent issuance of long-term notes by subsidiary companies to Consolidated will result in a reduction in the acquisition of the subsidiary companies' capital stock by Consolidated. Consolidated now proposes to purchase from the following subsidiary companies, subject to the sale of the Debentures and receipt of appropriate state commission financing approvals, and the subsidiaries propose to issue and sell, at par value, capital stock to Consolidated aggregating $68,000,000 as follows:

Subsidiary	Number of shares ($100 Par)	Par value
CNG Coal Co.....	20,000	$2,000,000
CNG Producing Co.....	515,000	51,500,000
CNG Research Co	35,000	3,500,000
Consolidated Gas Supply Corp.....	100,000	10,000,000
The River Gas Co	10,000	1,000,000
Total		68,000,000

Assuming that said Debentures are issued and sold as contemplated, it can be anticipated that the amount of open account advances for gas storage inventory and/or working capital similarly authorized by the Commission can be reduced. The extent of such

reduction cannot, however, be presently determined. Therefore, it is requested that authorizations heretofore granted with respect to such open account advances be permitted to continue.

It is stated that the Public Service Commission of West Virginia has jurisdiction over the proposed long-term borrowings of Gas Supply that the Public Utilities Commission of Ohio has jurisdiction over the long-term borrowings proposed by River and West Ohio and that the Public Utility Commission of Pennsylvania has jurisdiction over the long-term borrowings by Peoples.

It is further stated that no other state or federal commission, other than this Commission has jurisdiction over the proposed transactions. The fees and expenses to be incurred in connection with the proposed transactions are estimated not to exceed $600, including $500 for the system service company charges, at cost. All such fees and expenses are to be paid by Consolidated.

Notice is further given that any interested person may, not later than November 10, 1980, request in writing that a hearing be held in respect of such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendment which he desires to controvert; or he may request that he be notified should the Commission order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, now amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-33320 Filed 10-24-80; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 19]

Associate Administrator for Public Communications

Delegation of Authority No. 19 reflects the transfer of all printing contract authority from the Associate Administrator for Data and Management Services to the Associate Administrator for Public Communications. Delegation of Authority No. 19 reads as follows:

I. Pursuant to the authority delegated by the Administrator to the Assistant Administrator for Support Services in Delegation of Authority No. 3A (44 FR 50125), there is hereby delegated to the Associate Administrator for Public Communications, the following authority:

A. Printing Contract Authority.

1. To contract for printing services for the Agency pursuant to Chapter 4 of Title 41, United States Code, as amended, subject to the limitations contained in section 257(a) and (b) of that Chapter.

II. The authority delegated herein may be redelegated.

III. The authority delegated herein may be exercised by any SBA employee officially designated as Acting Associate Administrator for Public Communications.

Effective Date: October 27, 1980.

Dated: October 17, 1980.

Paul D. Sullivan,

Assistant Administrator for Support Services.

[FR Doc. 80-33335 Filed 10-24-80; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council; Public Meeting

The Small Business Administration Region III Advisory Council, located in the geographical area of Pittsburgh, Pennsylvania, will hold a public meeting at 9:00 a.m., on Wednesday, November 19, 1980, at the Holiday Inn, 2750 Mosside Boulevard, Monroeville, Pennsylvania, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Jack C. Forbes, District Director, U.S. Small Business Administration, 1401 Federal Building, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222—(412) 644-2780.

Dated: October 20, 1980.

Michael B. Kraft,

Deputy Advocate for Advisory Councils.

[FR Doc. 80-33336 Filed 10-24-80; 8:45 am]

BILLING CODE 8025-01-M

Region VII Advisory Council, Public Meeting

The Small Business Administration Region VII Advisory Council, located in the geographical area of Omaha, Nebraska, will hold a public meeting from 9:30 a.m. to 2:00 p.m., on Friday, November 21, 1980, in the Conference Room, Omaha District Office, U.S. Small Business Administration, 19th & Farnam, Omaha, Nebraska, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Rick Budd, District Director, U.S. Small Business Administration, 19th & Farnam, Omaha, Nebraska 68102—(402) 221-3620.

Dated: October 20, 1980.

Michael B. Kraft,

Deputy Advocate for Advisory Councils.

[FR Doc. 80-33337 Filed 10-24-80; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-5404]

First Puerto Rico Capital, Inc.; Issuance of a License To Operate as a Small Business Investment Company

On June 25, 1980, a notice was published in the Federal Register (45 FR 42918) stating that First Puerto Rico Capital, Inc., located at 54 W. McKinley Street, Mayaguez, Puerto Rico 00708, has filed an application with the Small Business Administration pursuant to 13 CFR 107.102 (1980) for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended.

Interested parties were given until the close of business July 10, 1980, to submit their comments to SBA. No comments were received.

Notice is hereby given that having considered the application and other pertinent information, SBA has issued License No. 02/02-5404 to First Puerto Rico Capital, Inc. on October 14, 1980.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies.)

Peter F. McNeish,

Acting Associate Administrator for Investment.

October 20, 1980.

[FR Doc. 80-33440 Filed 10-24-80; 8:45 am]

BILLING CODE 8025-01-M

Small Business Investment Company, Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.301(c) sets forth the SBA Regulation governing the maximum annual cost of money to small business concerns for Financing by small business investment companies.

Section 107.301(c)(2) requires that SBA publish from time to time in the Federal Register the current Federal Financing Bank (FFB) rate for use in computing the maximum annual cost of money pursuant to § 107.301(c)(1). It is anticipated that a rate notice will be published each month.

13 CFR 107.301(c) does not supercede or preempt any applicable law that imposes an interest ceiling lower than the ceiling imposed by that regulation. Attention is directed to new subsection 308(i) of the Small Business Investment Act, added by section 524 of Pub. L. 96-221, March 31, 1980 (94 Stat. 161), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

Effective November 1, 1980, and until further notice, the FFB rate to be used for purposes of computing the maximum cost of money pursuant to 13 CFR § 107.301(c) is 11.765 percent per annum.

Peter F. McNeish,

Acting Associate Administrator for Investment.

October 22, 1980.

[FR Doc. 80-33439 Filed 10-24-80; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA) Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Executive Committee to be held on November 19, 1980 at the Sheraton National Motor Hotel, South Ball Room, Columbia Pike and Washington Boulevard, Arlington, Virginia commencing at 2:00 p.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks and Introductions; (2) Approval of Minutes of Meeting Held on September 11, 1980; (3) Special Committee Activities Report for September and October 1980; (4) Chairman's Report on RTCA Administration and Management; (5) Consideration of Establishing New Special Committees; (6) Approval of Special Committee 133 Report on Minimum Operational Performance Standards for Airborne Weather and Ground Mapping Pulsed Radars; (7) Approval of Special Committee 133 Report on Minimum Operational Performance Standards for Airborne Radar and Beacon Systems for Helicopters; (8) Comments and Reports of RTCA International Associate Representatives; and (9) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1717 H Street, NW, Washington, D.C. 20006; (202) 296–0484. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on October 17, 1980.

Karl F. Bierach,

Designated Officer.

[FR Doc. 80-33322 Filed 10-24-80; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-80-29]

Petitions for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation administration (FAA), DOT.

ACTION: Notice of petitions for exemptions received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I) and of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 17, 1980.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Rocket (AGC–204), Petition Docket No. ——, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426–3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on October 20, 1980.

Edward P. Faberman,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

Petitions for Exemptions

Docket No.	Petitioner	Regulations affected	Description of relief sought
20781	World Airways, Inc	14 CFR 121.291	To permit the introduction of petitioner's B–747–200C aircraft in service with a 520 passenger seat configuration without conducting the required emergency evacuation demonstration.
20793	Lundy Aeronautics	14 CFR 63.39(b)(2)	To allow the practical test for a flight engineer rating to be conducted in an FAA-approved flight simulator.
20664	Swift Aire Lines	14 CFR 145.73	To enable petitioner to use Fokker F–27 parts provided or repaired by Icelandair.
13204	Executive Air Fleet	14 CFR 121.155 and SFAR 38	Extension of Dec. 31, 1980, termination date of Exemption No. 2030E. The exemption allows petitioner to operate notwithstanding the "exclusive use" provisions.
20478	S.B.S. Aero Center	14 CFR 141.27(c)(2)	To permit petitioner to obtain a provisional pilot school certificate in less than 180 days after the date of their previously expired certificate.
20631	The Budd Company	14 CFR 91.32(b)(1)	To permit the pilots of petitioner's Gates Learjet Model 35 airplanes to operate those aircraft up thru the aircraft's maximum certificated altitude (FL 450) without either pilot wearing an oxygen mask.

Dispositions for Petitions for Exemptions

Docket No.	Petitioner	Regulations affected	Description of relief sought—disposition
20577	Air Florida, Inc	14 CFR 121.153(a)(1)	To permit petitioner to operate two B–737–100 aircraft under foreign ownership and/or registry. Granted 8/22/80.
19475	Flight Safety International	14 CFR various sections	To extend the expiration date past October 31, 1980 of Exemption No. 2654 which permits FSI trainees to complete a practical test for a type rating in a flight simulator. Granted 10/9/80.
16955	American Airlines Training Corp	14 CFR 61.58(c)	To allow pilots to conduct the entire 24-month pilot in command proficiency check in a digital flight simulator. Granted 10/9/80.
19587	Executive Air Fleet	14 CFR 135.25	To allow the petitioner to operate aircraft listed in its operations specifications without exclusive use of such aircraft. Withdrawn 8/26/80.
20567	Swift Aire Lines, Inc	14 CFR 121.310(d)	To permit Nord 262 aircraft to operate with a cockpit control device that does not have an "on", "off", and "armed" function. Withdrawn 8/22/80.
20782	Philippine Airlines	Portions of Parts 21 and 81	To be allowed to operate and maintain aircraft leased from Hughes Airwest using an FAA-approved MMEL and Hughes continuous airworthiness program. Granted 10/3/80.
19634	Douglas Aircraft Company	14 CFR 121.310(d)(4)	To permit Part 121 operation of McDonnell Douglas DC–8 aircraft with an emergency light system without a cockpit control device that has an "on," "off," and "armed" position. Granted 10/10/80.
20352	Amway Corporation	14 CFR 61.58	To permit the petitioner's pilots to complete the entire 24-month pilot-in-command check in an FAA approved flight simulator. Granted 10/16/80.
20815	Royal Air Marac	Portions of 14 CFR Parts 21, 61, 63, and 91.	To permit petitioner to operate (U.S.) registered Boeing 707 aircraft leased from Trans World Airlines from October 5 to 19, 1980, in accordance with Federal Aviation Administration approved master minimum equipment list, to maintain the aircraft in accordance with TWA's FAA-approved continous airworthiness maintenance program, and to use certain flight crewmembers who do not have U.S. airman certificates. Granted 10/4/80.
19834	Flying Tiger Line and Venezolana Inter'l Aviacion, S. A.	Portions of Parts 21, 91, and 121.	To amend Exemption No. 2939 to delete Seaboard World Airlines' name and to reflect various changes that would occur with the merger of Flying Tiger and Seaboard World, scheduled to be completed on 9/30/80. Granted 10/8/80.

[FR Doc. 80-33318 Filed 10-24-80; 8:45 am]

BILLING CODE 4910-13-M

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Sunshine Act Meetings

Federal Register
Vol. 45, No. 209
Monday, October 27, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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[M-298]

CIVIL AERONAUTICS BOARD

October 22, 1980.

TIME AND DATE: 9:30 a.m., October 29, 1980.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of items adopted by notification.

2. Docket 38197, Petition by Delta Air Lines to amend the Board's rules on Terminations, suspensions, and reductions in service in Part 323. (OGC, BDA)

3. Dockets 38845 and 38844, Air Florida's notice and exemption request to suspend service at Daytona Beach, FL, before the expiration of the 90-day notice period. (BDA, OCCR)

4. Docket 38776, Application of the Department of International Affairs, General Administration of Civil Aviation of China d.b.a. CAAC for an exemption to perform scheduled and charter foreign air transportation into the United States beginning December 1, 1980 (BIA, OGC)

5. Notice of Proposed Rulemaking to amend the CAB rules to include a civil penalty for violation of Part 300 and to amend the authority line for Part 300. (Memo No. 9996, BCP, OGC)

6. Notice of Proposed Rulemaking to require carriers to re-file fitness data when they have not begun service within 2 years of being authorized, or have ceased to operate for 2 years. (Memo No. 9994, OGC, BDA)

7. Notice of Proposed Rulemaking to conform the air taxi operator rules in Part 298 to the new data requirements for fitness determinations in Part 204. Amendment to Part 204 to clarify that it does not apply to Alaskan mail carriers that have not been designated as essential air service carriers and do not provide scheduled passenger service. (Memo No. 9995, OGC, BDA)

8. Dual authority, to allow certificated carriers to engage in air taxi operations. (BDA, OGC)

9. Docket 22890, Caribbean-Atlantic Airlines, Inc.-Eastern Air Lines, Inc., Acquisition Case (Complaint of Melvin Graciani for labor protective provision relief). (Memo No. 008, OGC)

10. Docket 37167, (Steve Sami d.b.a. Arya Travel Agency v. Iran National Airlines Corporation) Motion for review of BCP's dismissal of third-party complaint. (Memo No. 9997, OGC)

11. Docket 28366, Denver-Alaska Service Investigation, Order Dismissing Petition. (Memo No. 007, OGC)

12. Docket 38456, *Petition of Parsons, Kansas,* Order to Show Cause. (Memo No. 9999, OGC)

13. Docket EAS-519, Appeal of the Essential Air Transportation Determination of Binghamton/Endicott/Johnson City, New York filed by Broome County, New York. (Memo No. 9998, OGC, OCCR, BDA)

14. Dockets EAS-153, 255, 331, 332, and 231—Alaska Airlines appeals of Essential Air Service Determinations for Cordova, Petersburg, Wrangell, Yakutat and Middleton Island, Alaska; Docket 38563—Alaska Airlines' notice to reduce air service from seven days per week to five days per week at Cordova, Petersburg, Wrangell and Yakutat, Alaska. (Memo No. 003, BDA, OCCR, OGC)

15. Docket 38667—American Airlines' notice under section 401(j) to suspend all service at Des Moines, Iowa, and Omaha, Nebraska. (Memo No. 004, BDA, OCCR)

16. Dockets 38267 and EAS-251, Century Airlines notice of intent to reduce service below the essential level at Eureka/Arcata, California, under section 419(a)(3)(B) of the act. (BDA, OCCR)

17. Docket 34556, Piedmont's notice to suspend service at London-Corbin, Kentucky. (Memo No. 006, BDA, OCCR)

18. Docket 37751, Revision to Nor East's interim rate of compensation for providing essential air service at New Bedford. (Memo No. 002, BDA, OCCR)

19. Docket 37830, Petitions for a stay of Order 80-6-15, June 3, 1980—award of Orange County-San Jose authority to PSA under automatic market entry provision. (BDA)

20. Docket 37013, Munz Northern Airlines, Inc. Bush Points Proceeding. (Memo No. 005, BDA)

21. Docket 38579, Application of Cayman Airways Limited for an exemption from section 402 of the Federal Aviation Act of 1958, as amended. (BIA, OGC, BCP)

22. Docket 37868, Petition of Capitol International Airways, Inc., for reconsideration of Order 80-5-8, which granted the Boston-London exemption to World Airways, Inc. (BIA, BCP, OGC)

23. Dockets 34900 and 38723, (1) application of Transporte Aereo Dominicano, S.A. for exemption authority to operate U.S.-Dominican Republic and U.S.-Hailti Passenger and cargo service; (2) petition of Aeromar C. por A. for Board review of Order 80-8-14. (BIA, OGC)

24. Docket 34783, Application of KLM for an amended foreign air carrier permit. (BIA, OGC)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 763-5068.

[S-1968-80 Filed 10-23-80; 3:24 pm]

BILLING CODE 6320-01-M

2

FEDERAL COMMUNICATIONS COMMISSION.

The Federal Communications Commission will hold a Special Open Meeting on the subjects listed below On Tuesday, October 28, 1980 at 9:30 a.m., in room 856, at 1919 M Street NW., Washington, D.C.

Agenda, Item Number, and Subject

Common Carrier—1—*Title:* Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)—Docket 20828. *Summary:* The Commission will consider petitions for reconsideration of the *Final Decision* in the Second Computer Inquiry.

Common Carrier—2—*Title:* In the Matter of Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor (CC Docket No. 79-252). *Summary:* The Commission will consider a proposal to amend its tariff filing and facilities authorization requirements for certain non-dominant carriers providing domestic communications service. This and the other item concerning CC Docket 79-252 will be considered together.

Common Carrier—3—*Title:* In the matter of policy and rules concerning rates for competitive common carrier services and facilities authorizations therefor. CC Docket 79-252. *Summary:* The Commission will consider the issue of its discretion to define a communications common carrier as well as to forbear from imposing Title II regulation.

Broadcast—1—*Title:* Petition to reassign VHF-TV Channel 9 from New York City to a northern New Jersey community. *Subject:* The Commission will consider a petition from Senators Bradley and Williams of New Jersey to reassign VHF-TV Channel 9 from New York to a northern New Jersey community. Channel 9 is currently subject to an outstanding license (Station WOR-TV, RKO General, Inc.) which has not been renewed (appeal pending) and an application for a new station from Multi-State Communications.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254-7674.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[S-1961-80 Filed 10-23-80; 11:30 am]

BILLING CODE 6712-01-M

3

FEDERAL COMMUNICATIONS COMMISSION.

FCC schedules oral argument in WWLE(AM), Cornwall on Hudson, N.Y., renewal case (Docket 20591-92).

The Commission has scheduled an oral argument in the WWLE(AM) renewal case for November 20 at 10:50 AM.

FCC Administrative Law Judge Thomas B. Fitzpatrick, in an initial decision released October 20, 1977, had concluded that willful concealment and misrepresentation by WWLE, incorporated principals with respect to the company's ownership warranted the denial of WWLE's license renewal and the grant of Mechanicville Broadcasting Co.'s application for a new license.

WWLE subsequently contended that its application had been erroneously designated for hearing, the burden of proof on the ownership issue had been improperly placed, and the judge misevaluated the evidence, applied incorrect legal standards and failed to admit new evidence. It also moved to dismiss the Mechanicville application on the grounds that its station WMVI has been silent for over four years.

The Commission said WWLE, Mechanicville and the Broadcast Bureau would have 20 minutes each in which to present their arguments, with WWLE being able to reserve part of its time for rebuttal.

Issued: October 22, 1980.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[S-1966-80 Filed 10-23-80; 3:07 pm]

BILLING CODE 6712-01-M

4

FEDERAL COMMUNICATIONS COMMISSION.

Commission will hear oral argument on WIGO license revocation November 20 (BC Docket No. 78-53).

The FCC will hear WIGO, Inc., licensee of WIGO(AM), Atlanta, Ga., argue against having its license revoked on November 20 at 9:30 A.M., 1919 M St. NW., Washington, D.C.

In an initial decision released in June 1979, FCC Administrative Law Judge John H. Conlin revoked WIGO's broadcast license for knowingly broadcasting information about Atlanta's illegal number game.

The Commission allocated WIGO and the FCC Broadcast Bureau each 20 minutes for argument, and said WIGO could reserve part of its time for rebuttal.

Issued: October 22, 1980.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[S-1964-80 Filed 10-23-80; 3:06 pm]

BILLING CODE 6712-01-M

5

FEDERAL COMMUNICATIONS COMMISSION.

Additional item considered at Commission meeting Tuesday, October 21st.

During the Open Meeting scheduled for October 21, 1980, the Commission discussed the reconsideration of *Petitions for Reconsideration of the Commission's Report and Order Revising the Processing Policies for Waiver of the Telephone Company-Cable Television "Cross Ownership Rules."*

The prompt and orderly conduct of Commission business did not permit prior notice of this additional item.

Additional information concerning this matter may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: October 23, 1980.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[S-1963-80 Filed 10-23-80; 3:06 pm]

BILLING CODE 6712-01-M

6

FEDERAL COMMUNICATIONS COMMISSION.

Delection of agenda item from October 21st open meeting.

The following item was deleted from the list of agenda items scheduled for consideration at the October 21, 1980, Open Meeting, and previously listed in the Commission's Public Notice of October 14, 1980 (#00441).

Agenda, Item Number, and Subject

General—2 *Title:* In re petition by Lee M. Holmes (RM-3467) for amendment of Parts 2, 22, and 73 of the FCC's Rules and Regulations. *Summary:* Lee M. Holmes has filed a petition with the FCC requesting the reallocation of VHF-TV Channel 5 or 6 for TV broadcasting in the State of Hawaii. The Commission is also considering reallocating the band 98-108 MHz to FM broadcating in Hawaii. Both bands are presently allocated exclusively to the common carrier fixed service for inter-island use. The item before the Commission discusses the merits of these actions.

Additional information concerning this item may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: October 23, 1980.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[S-1967-80 Filed 10-23-80; 3:07 pm]

BILLING CODE 6712-01-M

7

FEDERAL COMMUNICATIONS COMMISSION.

FCC sets oral argument in WMJX(FM), Miami, Fla., renewal case for November 20 (Docket 20626).

The Commission has scheduled an oral argument for November 20, at 10:00 a.m., to consider exceptions to the January 18, 1978, initial decision of FCC Administrative Law Judge Thomas B. Fitzpatrick denying Bartell Broadcasting of Florida, Inc. renewal of its license for FM station WMJX (formerly WMYQ), Miami, Fla.

In the initial decision Judge Fitzpatrick found that Bartell had failed to abide by representations made to the Commission, that false, misleading and deceptive matter had been broadcast with respect to contests conducted by WMJX and that newscasts concerning station-conducted contests had been distorted and falsified. He therefore concluded that Bartell did not have the requisite qualifications to operate WMJX and that the public interest would not be served by granting renewal.

The Commission allocated Bartell and the Chief of the FCC Broadcast Bureau each 20 minutes for argument, and said that Bartell could reserve part of its time for rebuttal.

Issued: October 22, 1980.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[S-1965-80 Filed 10-23-80; 3:06 pm]

BILLING CODE 6712-01-M

8

FEDERAL ENERGY REGULATORY COMMISSION.

October 22, 1980.

TIME AND DATE: 10 a.m., October 29, 1980.

PLACE: Room 9306, 825 North Capitol Street NE., Washington, D.C. 20426.

V 45 OC 27 80 UMI

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357–8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Power Agenda—467th Meeting, October 29, 1980, regular Meeting (10 a.m.)

CAP–1. Project No. 3113, South San Joaquin Irrigation District.
CAP–2. Project No. 3114, Merced Irrigation District.
CAP–3. Project No. 3115, Merced Irrigation District.
CAP–4. Project No. 3116, Merced Irrigation District.
CAP–5. Project No. 3136, Turlock Irrigation District.
CAP–6. Project No. 3235, Greater Lawrence Sanitary District.
CAP–7. Docket No. ER80–222, Georgia Power Co.
CAP–8. Docket No. ER77–614, Union Electric Co.

Miscellaneous Agenda—467th Meeting, October 29, 1980, Regular Meeting

CAM–1. Docket No. RM81– , revision to the regulations governing preservation of records.
CAM–2. Suspension of filing date for annual report due from Federal authority.
CAM–3. Docket No. RM80–69, annual report of Gas supply for certain natural gas pipelines: Form No. 15.
CAM–4. Docket No. RM79–53, Part 273 regulations under the Natural Gas Policy Act of 1978.
CAM–5. Docket No. RM80–75, interim rule amending section 282.202(a) of the Commission's regulations under the Natural Gas Policy Act of 1978.
CAM–6. Docket Nos. RA79–4, RA79–22, RA80–44 and RA81–1–000, Arizona Fuels Corp.
CAM–7. Docket No. RA80–79, Bogert Brothers, Exxon.

Gas Agenda—467th Meeting, October 29, 1980, Regular Meeting

CAG–1. Docket No. RP81–1–000, Michigan Wisconsin Pipe Line Co.
CAG–2. Docket No. TA81–1–14–000 (PGA81–1), Lawrenceburg Gas Transmission Corp.
CAG–3. Docket No. RP81–3–000, Southwest Gas Corp.
CAC–4. Docket No. RP80–126, Equitable Gas Co.
CAG–5. Docket No. RP80–145, Columbia Gulf Transmission Co.; Docket No. RP80–146, Columbia Gas Transmission Corp.
CAG–6. Docket No. RP80–147, Texas Eastern Transmission Corp.
CAG–7. Docket No. TA80–2–27 (PGA80–3 and IPR80–3], North Penn Gas Co.
CAG–8. Docket No. TA80–2–25 (PGA80–3, IPR80–3, AP80–2, LFUT80–2, TT80–2 and STR80–2), Mississippi River Transmission Corp.
CAG–9. Docket No. RP77–62, Tennessee Gas Pipeline Co., a division of Tenneco Inc.
CAG–10. Docket No. RP80–7, Kentucky West Virginia Gas Co.
CAG–11. Docket No. CI62–965, Gulf Oil Corp.; Docket No. CI72–438, Shell Oil Co.; Docket No. CI72–389, Exchange Oil & Gas Corp.; Docket No. CI74–352, Champlin Petroleum Co.; Docket No. CS80–123, Calpetco V; Docket No. CS80–133, Workover One, Inc.; Docket No. CI71–751, Phillips Petroleum Co.; Docket No. CI70–50, Chevron U.S.A. Inc.; Docket No. CI70–78, Chevron U.S.A. Inc.; Docket No. CS71–761, Alison Suzanne Robertson Murphy and A & F Enterprises, Inc. (Alison Suzanne Robertson); Docket No. CS71–762, Corbin J. Robertson, Jr. and Bridgeport, Inc. (Corbin J. Robertson Jr.); Docket No. CS71–772, Elizabeth Robertson Geiselman and WRG, Inc. (Elizabeth Robertson Geiselman); Docket No. CS71–774, Carroll Christine Robertson Hochner & Ener Corp. (Carroll Christine Robertson); Docket No. CS71–779, Hugh Roy Marshall and HRM Enterprises Inc.; Docket No. CS71–778, Wilhelmina Anne Barnhart; Docket No. CS80–176, H & H Gas Co.; Docket No. CI71–726, McCulloc Oil & Gas Corp.; Docket No. CI72–294, Exxon Corp.; Docket No. CI75–338, American Petrofina Co. of Texas; Docket No. CI77–47, Exxon Corp.; Docket No. CI77–122, Exxon Corp.; Docket No. CI73–120, Anadarko Production Co.; Docket No. CI78–392, Cities Service Co.; Docket Nos. CI80–254 amd CI80–259, Ocean Production Co., et al.; Docket No. CI80–365, Conoco Inc.; Docket No. CI80–281, Marathon Oil Co.; Docket No. CI80–382, Shell Oil Co.; Docket No. CI80–383, Canadian Superior Oil (U.S.) Ltd.; Docket No. CI80–294, Texaco Inc.; Docket No. CI80–385, Alminex U.S.A., Inc.; Docket No. G–16388, The Superior Oil Co.; Docket No. CI80–286, Conoco Inc.; Docket No. CI80–355, Mesa Petroleum Co.; Docket No. CI80–359, Mesa Petroleum Co. (operator), et al.; Docket No. CI80–423, Diamond Shamrock Corp.; Docket Nos. CI80–452 and CI80–453, Aminoil U.S.A. Inc.; Docket No. CI80–476, Natresco Inc.; Docket No. CI80–477, The Superior Oil Co.; Docket No. CI73–119, Transocean Oil, Inc.
CAG–12. FERC gas rate schedule No. 89, the Superior Oil Co.
CAG–13. Docket No. RI79–2, Logue & Patterson, Inc.
CAG–14. Docket No. TC81–9–000, Texas Gas Transmission Corp.
CAG–15. Docket No. CP80–65, Tennessee Gas Pipline Co., a division of Tenneco Inc.; Docket No. CP80–260, Consolidated Gas Supply Corp.; Docket No. CP80–277, Honeoye Storage Corp.; Docket Nos. CP76–492, et al., National Gas Storage Corp.
CAG–16. Docket No. CP80–82, Michigan Wisconsin Pipe Line Co., Texas Eastern Transmission Corp. and Transcontinental Gas Pipe Line Corp.
CAG–17. Docket No. CP78–340, Trunkline Gas Co.
CAG–18. Docket No. CP80–257, Southern Natural Gas Co. and Florida Gas Transmission Co.
CAG–19. Docket No. CP80–335, Arkansas Louisiana Gas Co.
CAG–20. Docket Nos. CP66–110, et al., (CP66–121), Midwestern Gas Transmission Co.; Docket No. CP79–161, Midwestern Gas Transmission Co.; Docket Nos. CP66–110, et al., Great Lakes Gas Transmission Co.; Docket No. CP79–169, Michigan Wisconsin Pipe Line Co.
CAG–21. Docket Nos. CP66–110, CP70–100, CP71–299, CP70–19 and CP71–222, Great Lakes Transmission Co.
CAG–22. Docket No. CP70–19, Great Lakes Gas Transmission Co.

Power Agenda—467th Meeting, October 29, 1980, Regular Meeting

I. Licensed Project Matters

P–1. Project No. 3032, Riceland Electric Cooperative, C & L Electric Cooperative & Arkansas Electric Cooperative; Project No. 3144, Arkansas Power & Light Co.
P–2. Project No. 3042, Riceland Electric Cooperative, C & L Electric Cooperative & Arkansas Electric Cooperative Corp.; Project No. 3145, Arkansas Power & Light Co.
P–3. Project No. 3044, Arkansas Valley Electric Cooperative Corp. and Arkansas Electric Cooperative Corp.; Project No. 3146, Arkansas Power & Light Co.
P–4. Project No. 3045, Riceland Electric Cooperative, Arkansas Electric Cooperative Corp. and C & L Electric Cooperative; Project No. 3146, Arkansas Power & Light Co.
P–5. Project No. 2030, Portland General Electric Co.

II. Electric Rate Matters

ER–1. Docket Nos. ER77–488 and ER78–520 (phase II), El Paso Electric Co.
ER–2. Docket No. ER80–204, CP National Corp.
ER–3. Docket No. ER80–329, Central Power & Light Co.
ER–4. (A) Docket No. ER80–2011, Bonneville Power Administration (system rates); (B) E–9563, Bonneville Power Administration (wheeling rates).
ER–5. Docket No. RM79–29, amendments to part 35 of the regulations under the Federal Power Act; proposed limitation on adders for all electric rates; Docket Nos. ER80–782 and ER80–779, Commonwealth Edison Co.; Docket Nos. ER80–779 and ER80–749, Central Illinois Public Service Co.; Docket No. ER80–750, Public Service Co. of Indiana, Inc.; Docket No. ER80–733, Southern Indiana Gas & Electric Co.; Docket No. ER80–782, Wisconsin Power & Light Co.; Docket Nos. ER80–720, ER80–721 and ER80–722, Dayton Power & Light Co.; Docket No. ER80–721, Cincinnati Gas & Electric Co.; Docket No. ER80–726, Columbus & Southern Ohio Electric Co.; Docket No. ER80–726, Dayton Power & Light Co.; Docket No. ER80–662, Ohio Edison Co.; Docket No. ER80–646, Indiana & Michigan Electric Co.; Docket No. ER80–646, Central Illinois Public Service Co.; Docket No. ER80–732, Wisconsin Electric Power Co.; Docket No. ER80–732, Commonwealth Edison Co.; Docket Nos. ER80–747, ER80–748 and ER80–754, Central Illinois Public Service Co.; Docket No. ER80–731, Illinois Power Co.; Docket No. ER80–678, Union Electric Co.; Docket No. ER80–678, Missouri Public Service Co.; Docket No. ER80–678, St. Joseph Light & Power Co.; Docket Nos. ER80–616, ER80–818, ER80–667 and ER80–668, Wisconsin Power & Light Co.; Docket Nos. ER80–616 and ER80–618, Wisconsin Public Service Corp.; Docket No. ER80–618, Madison Gas & Electric Co.; Docket No. ER80–667, Northern States Power Co. (Minnesota); Docket No. ER80–667, Northern States Power Co. (Wisconsin).

Miscellaneous Agenda—467th Meeting, October 29, 1980, Regular Meeting

M–1. Docket No. RM80–65, exemption from all or part of part 1 of the Federal power act of small hydroelectric power projects with an installed capacity of 5 megawatts or less.
M–2. Docket No. RM81– , eligibility, rate and exemptions of qualifying and utility-owned geothermal small power production facilities.
M–3. Reserved.
M–4. Reserved.
M–5. (A) Docket No. RM78–15, rules relating to investigations; (B) Docket No. RM81– , amendment to the standards of conduct.
M–6. Docket No. RM80–60, ex parte and separation of function rules.
M–7. Docket No. RM80–8, bona fide offers; right of first refusal.
M–8. (A) Docket No. RM80–50, high-cost natural gas: production enhancement procedures; (B) Docket No. RM80–14, final regulations under section 105 and 106(b) of the Natural Gas Policy Act of 1978; (C) Docket No. RM80–21, regulations under section 110, 105 and 106(b) of the Natural Gas Policy Act of 1978; (D) Docket No. SA80–90, American Petrofina Co. of Texas, et al.
M–9. Docket No. RM80–73, Natural Gas Policy Act of 1978, section 110, gathering allowance.
M–10. Docket No. RM80–74, Natural Gas Policy Act of 1978, section 110, compression allowance.
M–11. Docket No. RM80–11, statement of policy on distributor access to Outer Continental Shelf Gas
M–12. Docket No. GP80–6, Arkansas Louisiana Gas Co.; Docket No. GP80–7, Caprock Pipeline Co.; Docket No. GP80–28, Cimarron Transmission Co.; Docket No. GP80–31, Cities Service Gas Co.; Docket No. GP80–8, Colorado Interstate Gas Co.; Docket No. GP80–11, Columbia Gas Transmission Corp.; Docket No. GP80–12, Consolidated Gas Supply Corp.; Docket No. GP80–45, Eastern Shore Natural Gas Co.; Docket No. GP80–40, El Paso Natural Gas Co.; Docket No. GP80–9, Equitable Gas Co.; Docket No. GP80–29, Florida Gas Transmission Co.; Docket No. GP80–39, Kentucky-West Virginia Gas Co.; Docket No. GP80–4, Louisiana-Nevada Transit Co.; Docket No. GP80–14, McCulloch Interstate Gas Co.; Docket No. GP80–16, Mid-Louisiana Gas Co.; Docket No. GP80–17, Mississippi River Transmission Corp.; Docket No. GP80–32, Montana-Dakota Utilities Co.; Docket No. GP80–30, Mountain Fuel Supply Co.; Docket No. GP80–5, Natural Gas Pipeline Co., of America; Docket No. GP80–44, Natural Fuel Gas Supply Corp.; Docket No. GP80–43, Northern Natural Gas Co.; Docket No. GP80–36, Northwest Pipeline Corp.; Docket No. GP80–37, Oklahoma Natural Gas Gathering Corp.; Docket No. GP80–18, Pacific Gas Transmission Co.; Docket No. GP80–19, Panhandle Eastern Pipe Line Co.; Docket No. GP80–33, South Texas Natural Gas Co.; Docket No. GP80–35, Southern Natural Gas Co.; Docket No. GP80–20, Tennessee Gas Pipeline Co.; Docket No. GP80–21, Texas Eastern Transmission Corp.; Docket No. GP80–22, Texas Gas Pipe Line Corp.; Docket No. GP80–23, Texas Gas Transmission Corp.; Docket No. GP80–25, Transwestern Pipeline Co.; Docket No. GP80–26, Trunkline Gas Co.; Docket No. GP80–34, West Texas Gathering Co.; Docket No. GP80–27, Western Gas Interstate Co.; Docket No. GP80–10, Western Transmission Corp.; Docket No. GP80–38, Zenith Natural Gas Co.; Docket No. GP80–13, Kansas-Nebraska Natural Gas Co.
M–13. Docket No. RM79–21, regulations implementing alternative fuel price ceilings on incremental pricing under the Natural Gas Policy Act of 1978.

Gas Agenda—467th Meeting, October 29, 1980, Regular Meeting

I. Pipeline Rate Matters

RP–1. Docket No. RP78–58, Valero Interstate Transmission Co. (formerly South Texas Natural Gas Gathering Co.).

II. Producer Matters

CI–1. Docket Nos. CI79–178, CI78–1268, CI79–200, CI78–1251, CI78–1272, CI78–816, G–11083, et al., CI75–16, et al., Exxon Corp.; Docket Nos. CI78–180, et al., CI78–532, CI79–519, and CI79–522, Texaco Inc.; Docket No. G–5010, et al., Exxon Corp.; Docket No. CI79–512, Exxon Corp.; Docket No. CI79–593, Texaco Inc.; Docket No. CI78–713, Champlin Petroleum Co.; Docket Nos. CI79–309 and CI79–153, Gulf Oil Corp.; Docket Nos. CI79–620 and CI80–55, Exxon Corp.; Docket Nos. CI77–797, CI79–461, CI79–529, CI79–485, CI78–736, CI79–128, CI79–44, CI78–519, CI79–631, and FERC gas rate schedule No. 89, Gulf Oil Corp.; Docket No. CI79–537, Texaco Inc.; Docket No. CI80–59, Exxon Corp.; FERC gas rate schedule No. 12, et al., Gulf Oil Corp.; FERC gas rate schedule No. 316, et al., Gulf Oil Corp.; FERC gas rate schedule Nos. 9 and 271, et al., Gulf Oil Corp.; Docket Nos. CI78–1232, CI78–1173, CI78–604, G–14515, CI77–123, CI78–674, CI78–993, G–12154, and CI75–22, Gulf Oil Corp.; FERC gas rate schedule Nos. 590, 599, 624, and 272, Gulf Oil Corp; Docket Nos. CI79–249, CI76–215, CI76–239, CI77–263, and CI80–189, Gulf Oil Corp.; Docket No. CI80–147, Louisiana Land Offshore Exploration Co. Inc.; Docket No. CI76–783, Arkla Exploration Co.; Docket No. CI79–648, Champlin Petroleum Co.; Docket Nos. CI79–522 and CI79–553, Exxon Corp.; Docket No. CI79–514, the Louisiana Land & Exploration Co.; Docket No. CI80–204, Aminoil of Louisiana Inc.; Docket No. CI78–1128, Arkla Exploration Co.; Docket Nos. CI80–43, CI79–103, CI79–199 and CI64–349, Exxon Corp.; FERC gas rate schedule No. 273, et al., Gulf Oil Corp.; FERC gas rate schedule No. 42, et al., Warren Petroleum Co., a division of Gulf Oil Corp.; FERC gas rate schedule Nos. 150, 348, 533, 49, 84, 93, 110, 311, 426, 455, 594, 502, and 543, et al., Gulf Oil Corp.; Docket No. CI80–325, Gulf Oil Corp; Docket Nos. CI80–237, CI77–688, G–15058, et al., CI80–177, CI80–248, CI80–298 and CI79–220, Exxon Corp.; Docket Nos. CI80–306, CI80–324 and CI80–332, Texaco Inc.; FERC gas rate schedule Nos. 42, 55, 67 and 22, Warren Petroleum Co.; Docket No. CI80–457, Aminoil USA, Inc.; FERC gas rate schedule Nos. 87, 92, 130, 142, 159, 160, 197, 498, 503 and 530, Gulf Oil Corp.; Docket No. CI80–294, Texaco Inc.
CI–2. Docket No. CI79–355, Conoco Inc.; Docket Nos. CI79–282, CI79–284 and CI79–285, Tenneco Exploration, Ltd.; Docket No. CI79–283, Tenneco Exploration II, Ltd.; Docket No. CI79–286, Tenneco Oil Co.; Docket Nos. CI78–473, CI78–485 and CI78–486, Texaco Inc.; Docket No. CI79–522, Texaco, Inc.
CI–3. Docket Nos. CI77–298 and IN79–3, Tenneco Inc., et al.; Docket Nos. G–3973, G–7368, G–11936, G–11943 and G–11946, Mobil Oil Corp.
CI–4. Docket Nos. RI74–188 and RI75–21, Independent Oil & Gas Association of West Virginia.

III. Pipeline Certificate Matters

CP–1. Docket No. TC80–93, Mid Louisiana Gas Co.
CP–2. Docket No. CP80–135, Northern Natural Gas Co., a division of internorth, Inc.
CP–3. Docket No. CP80–347, Natural Gas Pipeline Co. of America.
CP–4. Docket No. CP79–402, Lone Star Gas Co., a division of Enserch Corp.
CP–5. (A) Docket Nos. CP78–123, et al., Northwest Alaskan Pipeline Co.; Docket No. CP78–124, Northern Border Pipeline Co.; Docket No. CP78–60, Pacific Gas Transmission Co.; (B) Delegation to the Federal inspector of certain authority under section 4, 5, 7 and 8 of the Natural Gas Act.

Kenneth F. Plumb,
Secretary

[S–1960–80 Filed 10–23–80; 11:19 am]
BILLING CODE 6450–85–M

9

FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. No. 45, issue N. 204, page No. 69340, published: Monday, October 20, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OR MEETING: 9:30 a.m., October 23, 1980.

PLACE: 1700 G Street NW., sixth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202–377–6677).

CHANGES IN THE MEETING: The following items have been withdrawn from the open meeting:

V 45 OC 27 80 UMI

Branch Office Application—First Federal Savings & Loan Association of Lake Worth, Lake Worth, Florida.
Application for Bank Membership and Insurance of Accounts—Superior Savings & Loan Association, Los Angeles, California.

No. 411, October 23, 1980.

[S–1959–80 Filed 10–23–80; 10:32 am]
BILLING CODE 6720–01–M

10

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published.

STATUS: Closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Thursday, October 16, 1980.

CHANGES IN THE MEETING: Additional meeting/deletion. The following item will be considered by the Commission at a closed meeting scheduled for Wednesday, October 22, 1980, at 9:30 a.m.

Regulatory matters bearing enforcement implications.

The following item was not considered at a closed meeting scheduled for Wednesday, October 22, 1980, following the 10:00 a.m. open meeting:

Regulatory matters bearing enforcement implications.

Chairman Williams and Commissioners Loomis, Evans and Friedman determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Marcia MacHarg at (202) 272–2468.

October 22, 1980.

[S–1962–80 Filed 10–23–80; 12:48 pm]
BILLING CODE 8010–01–M

V 45 OCT 27 80 UMI

Reader Aids

Federal Register
Vol. 45, No. 209
Monday, October 27, 1980

INFORMATION AND ASSISTANCE

PUBLICATIONS

Code of Federal Regulations

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Printing schedules and pricing information	523–3419

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Agency services	523–3408
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Los Angeles, Calif.	213–688–6694
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CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Proposed Rules:
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3 CFR

Administrative Orders:
Presidential Determinations:
No. 80–24 of August 7, 1980 (Amended by 80–27 of September 21, 1980) 65993
No. 80–27 of September 21, 1980 65993
No. 80–28 of September 30, 1980 68365
Executive Orders:
11157 66439
12137 (Amended by 12245) 66769
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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator. Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Friday, October 24, 1980

Note: The **Rules Going Into Effect Today** listing appearing in the issue for Friday, October 24, 1980, incorrectly contains entries which will not be effective until November 24, 1980. Please disregard those items. The correct entries for October 24, 1980 are the following:

ENERGY DEPARTMENT

Conservation and Solar Energy Office—

63432 9-24-80 / Residential Conservation Service Program; final and interim rules

FEDERAL COMMUNICATIONS COMMISSION

63279 9-24-80 / FM broadcast station in Ackerman, Miss.; changes in table of assignments

61633 9-17-80 / FM broadcast station in Effingham, Ill.; changes in table of assignments

61633 9-17-80 / FM broadcast station in Hudson Falls, N.Y.; changes in table of assignments

61832 9-17-80 / FM broadcast station in Iron River, Mich. and Crandon, Wis.; changes in table of assignments

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration—

62978 9-23-80 / D&C Violet No. 2; listing of color additives subject to certification

Rules Going Into Effect Sunday, October 26, 1980

TRANSPORTATION DEPARTMENT

Office of the Secretary—

63493 9-25-80 / Relocation of the boundary line of the Pacific time zone to include Juneau, Alaska, and parts of the surrounding area.

Rules Going Into Effect Today

COMMERCE DEPARTMENT

International Trade Administration—

63836 9-26-80 / Implementation of Export Administrative Act of 1970, additional amendments to regulations

ENERGY DEPARTMENT

Conservation and Solar Energy Office—

64108 9-26-80 / Energy conservation program for consumer products; waiver of consumer test procedures

ENVIRONMENTAL PROTECTION AGENCY

63843 9-26-80 / Air quality; ozone attainment status designation of Chatham County, Ga.

50086 7-28-80 / Assessment and collection of noncompliance penalties by EPA and approved of State noncompliance penalty program

FEDERAL COMMUNICATIONS COMMISSION

63490 9-25-80 / Clarification by the relationship between open Commission meetings and other procedural and pleading rules

63857 9-26-80 / Radio broadcast services. Separate operation of visual and aural transmitters of TV station

63280 9-24-80 / Specification of circumstances under which class II-B public coast stations may be exempt from watch requirements on 156.8MHz

INTERIOR DEPARTMENT

Fish and Wildlife Services—

63812 9-25-80 / Endangered and threatened wildlife and plants; listing as threatened with critical habitat for the Coachella Valley Fringed-toed lizard

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing October 24, 1980

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PRINCIPLES OF REGULATIONS WRITING SEMINAR

WHAT: The aim of the seminar is to improve the quality of Federal regulations by teaching how to design and draft clear regulations.
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WHO: Any Federal employee who drafts documents or who reviews for substance documents that are published in the **Federal Register.**

WHEN: November 19, 1980; January 21, 1981; February 25, 1981; May 13, 1981

HOW: Register for the class by sending a training authorization form to us. After we receive your training authorization form, we will mail you a confirmation letter that will serve as an admission ticket to the class. Tuition will not be charged for an applicant who cancels a confirmed reservation five work days before the day of the class. Someone may substitute for the applicant if the agency training office approves.

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COST: $75 for each person.

FOR MORE INFORMATION: Phone Viola Wilson (202) 523–5240.

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Improving Government Regulations; Inventory of Regulations

71140 Part III—Interior/BLM:
Outer Continental Shelf; Central and Northern California, Proposed Oil and Gas Lease Sale No. 53

71156 Part IV—DOT/FAA:
U.S. National Aviation Standard; Active Beacon Collision Avoidance System

71195 Part V—DOT/FAA:
Completion of Airworthiness Review Program

71198 Part VI—USDA/AMS:
Milk in the Southwestern Idaho-Eastern Oregon Marketing Area; Revised Recommended Decision and Opportunity To File Written Exceptions on Proposed Marketing Agreement and Order

71236 Part VII—DOT/Sec'y:
Washington National Airport; Special Air Traffic Rules and Airport Traffic Patterns; Proposed Rulemaking

71251 Part VIII—DOT/FAA:
Metropolitan Washington Airports, Future Operation and Development; Delay in Implementation of Policy and Regulations

71254 Part IX—DOE:
Organization and Functions of the Department of Energy; Proposed Rulemaking

71266 Part X—DOD/Army/EC
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71314 Part XI—DOE:
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71326 Part XII—DOE:
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50 CFR Ch. II–IV; VI

Improving Government Regulations; Inventory of Regulations

AGENCY: U.S. Department of Commerce.

ACTION: Inventory of regulations for review under E.O. 12044.

SUMMARY: The Department of Commerce (DOC) has developed an Inventory of Regulations as a basis for reviewing regulations that are subject to Executive Order (E.O.) 12044, "Improving Government Regulations." The Inventory includes a list of both "significant" and "nonsignificant" rules and regulations to be reviewed by DOC. The Inventory is intended to facilitate comments and views by interested public parties on the Department's regulatory review efforts.

FOR FURTHER INFORMATION CONTACT: For information about specific regulations, please refer to the "agency contact" listed below each entry.

For information on the Inventory of Regulations generally contact: Robert T. Miki, Deputy Assistant Secretary for Regulatory Policy (Acting), U.S. Department of Commerce, Washington, D.C. 20230, (202) 377–2482.

For information on this edition of the Inventory of Regulations contact: Roger J. Mallet, Senior Economist, Office of Regulatory Policy, U.S. Department of Commerce, Washington, D.C. 20230, (202) 377–2153.

SUPPLEMENTARY INFORMATION: On March 23, 1978, President Carter signed E.O. 12044, "Improving Government Regulations." To comply with the Executive Order, DOC published in the Federal Register (44 *FR* 2062 January 9, 1979) Department Administrative Order (DAO) 218–7, "Issuing Departmental Regulations." The DAO, including appendices, establishes the overall procedures to be followed by the Department units in developing and promulgating regulations, as well as the procedures to be followed in reviewing existing regulations. The DAO further directs Department units to review their "significant" regulations once every four years.

In addition to providing broad guidelines for determining which regulations should be treated as "significant", E.O. 12044 directed each agency to develop specific criteria for identifying significant regulations. In developing regulatory review programs, each Department unit head is directed by DAO 218–7 to consider:

- The continued need for the regulation;
- The type and number of complaints or suggestions received since the regulation was adopted or last reviewed;
- The need to simplify or clarify language;
- The need to eliminate overlapping and duplicative regulations; and
- The length of time since the regulation has been evaluated or the degree to which technology, economic conditions or other factors have changed.

Department unit heads are further required to ensure that regulations selected for review are included in a notice of review in DOC's semiannual Agenda of Regulations, and that a regulatory analysis is prepared for those regulations determined to be "major." Further criteria are provided in the appendices to the DAO.

The Office of the Assistant Secretary for Policy is responsible for Department oversight on E.O. 12044. The Deputy Assistant Secretary for Regulatory Policy, through the Office of Regulatory Policy (ORP), coordinates regulatory activities and monitors DOC progress and compliance with the Executive Order.

DOC's Inventory of Regulations is not required by the Executive Order. The Inventory is the result of departmental efforts, initiated by ORP, to improve regulatory programs. In the Department's review, a central directory of regulations is a necessary management tool for overseeing and coordinating DOC's diverse regulatory responsibilities.

The Inventory serves a threefold purpose. First, the Inventory provides a central directory of regulations and their relative importance. Second, the Inventory provides a data base for response to more detailed reporting, compliance and management requirements. Third, the Inventory provides DOC with a summary of its total regulatory review activities as well as the necessary information to determine whether Department units are making progress in reviewing their existing regulations in a timely and logical sequence.

The Inventory organizes DOC regulations by programmatic activities within Department units. It consists of Schedules A and B:

- Schedule A provides a list of rules and regulations determined to be "significant" by the Department units. The schedule provides the title of the regulation, agency contact, and the date the regulation was last reviewed, or if not, when the unit will review the regulation. The schedule also indicates the date the Department unit expects to publish a notice of proposed rulemaking in the Federal Register if it believes changes will be made in the regulation. Also, the schedule identifies regulations which require a regulatory analysis or which are possible candidates for elimination.
- Schedule B provides a list of rules and regulations determined to be "nonsignificant" by the Department units. This schedule provides the title of the regulation, agency contact, and anticipated date of review.

Schedules A and B also provide rankings of the relative importance of each regulation and the degree of improvement that is anticipated once the regulation is reviewed by the Department unit. An explanation of the Department's ranking scheme is given in the "Explanation of Information" section.

The Department is committed to review "significant" regulations once every four years. The current review cycle for significant regulations ends December 1982.

A total of 241 regulations are listed in the Inventory.[1] Of this total 90 regulations are considered to be "significant." The remaining 151 regulations are considered to be "nonsignificant."

List of Abbreviations

The following Department units have reported regulations in this Inventory:

ADMIN—Assistant Secretary for Administration
EDA—Economic Development Administration
ITA—International Trade Administration
MARAD—Maritime Administration
NOAA—National Oceanic and Atmospheric Administration

[1] The Economic Development Administration's (EDA) regulations are not included in the Inventory. EDA is awaiting congressional action on amendments to its basic statutory authority, the Public Works and Economic Development Act of 1965. The amendments will provide EDA with new program authorities which will require EDA to revise most of its regulations. In light of this, EDA believes that it is best to postpone publication of an Inventory of EDA's regulations.

OMB—Office of Management and Budget
NMFS—National Marine Fisheries Service
OCZM—Office of Coastal Zone Management
NTIA—National Telecommunications and Information Administration
OCE—Office of the Chief Economist
BEA—Bureau of Economic Analysis
CENSUS—Bureau of the Census
OFSPS—Office of Federal Statistical Policy and Standards
OADS—Office of Associate Deputy Secretary
ORD—Office of Regional Development
PTI—Assistant Secretary for Productivity, Technology and Innovation
NBS—National Bureau of Standards
NTIS—National Technical Information Service
PTO—Patent and Trademark Office
USTS—United States Travel Service

Explanation of Information

The Department units ranked the "importance" and the "margin for regulatory improvement" of each regulation. The "importance" of each regulation is ranked on a scale of 1–5. The larger the number, the more important it is. The "margin for regulatory improvement" is ranked on a scale of A–C. The letter following the numerical ranking indicates the potential "margin for regulatory improvement," (A=low, B=moderate, and C=high).

The "importance" and "margin for regulatory improvement" are determined on the basis shown below:

Ranking and Determination of "Importance"

1—The regulation is not significant to the agency or the public.
2—The regulation is significant to the agency but not significant to the public.
3—The regulation is not significant to the agency but is significant to the public.
4—The regulation is significant to the public and requires a regulatory analysis according to the Department unit criteria contained in DAO 218–7.
5—The regulation is significant to the public and will likely receive broad public attention; *or* the annual economic impact associated with the regulation is estimated to reach the $100 million threshold figure in E.O. 12044 for performing a regulatory analysis.

Ranking and Determination of "Margin for Regulatory Improvement"

A—A review will likely lead to few or no changes in the existing regulation, either in language or in substance.
B—A review will lead to substantive changes in the regulation; *or* a major rewriting of the regulation may occur to improve its clarity and understandability to the public.
C—A review will lead to major changes in the regulation to make it more cost effective and less burdensome on the public; *or*, the regulation is no longer warranted and should be eliminated.

Table I summarizes the number and ranking of regulations reported by each Department unit.

Public Comments

The inventory of Regulations is published to provide the public with an early opportunity to comment on the regulatory reviews being undertaken by the Department units. In particular, DOC would like to solicit comments on the following questions: (1) Which regulations should be reviewed together because they are closely related? (2) Which regulations present the most problems to the public in terms of compliance costs or reporting? (3) Which regulations are candidates for possible elimination? (4) Which regulations should be subject to a regulatory analysis?

Please send us any comments and suggestions that you may have on this Inventory. Comments should be submitted by November 30, 1980 to: Robert T. Miki, Deputy Assistant Secretary for Regulatory Policy (Acting), U.S. Department of Commerce, Washington, D.C. 20230, (202) 377–2482.

Jerry J. Jasinowski,
Assistant Secretary for Policy.

Table I.—*Summary of DOC's Inventory of Regulations*

Department unit	Regulations ranked according to—[1] Regulatory importance: Rank	Number	Margin for regulatory improvement: Rank	Number
ADMIN	1	6	A	7
	2	0	B	1
	3	3	C	1
	4	0		
	5	0		
EDA[2]	NA	NA	NA	NA
ITA	1	21	A	4
	2	0	B	16
	3	0	C	4
	4	1		
	5	2		
MARAD	1	17	A	38
	2	37	B	30
	3	3	C	9
	4	0		
	5	20		
MBDA	(3)	(3)	(3)	(3)
NOAA/OMB	1	0	A	3
	2	2	B	0
	3	1	C	0
	4	0		
	5	0		
NOAA/NMFS	1	17	A	51
	2	15	B	14
	3	20	C	8
	4	18		
	5	5		
NOAA/OCZM	1	0	A	8
	2	9	B	2
	3	0	C	2
	4	2		
	5	1		
NTIA	1	0	A	0
	2	0	B	1
	3	0	C	0
	4	0		
	5	0		
OCE/BEA	1	3	(4)	(4)
	2	1	(4)	(4)
	3	2	(4)	(4)
	4	0	(4)	(4)
	5	0	(4)	(4)
OCE/BIE	1	0	(4)	(4)
	2	0	(4)	(4)
	3	1	(4)	(4)
	4	0	(4)	(4)
	5	0	(4)	(4)
OCE/CENSUS	1	1	(4)	(4)
	2	1	(4)	(4)
	3	6	(4)	(4)
	4	0	(4)	(4)
	5	0	(4)	(4)
OCE/OFSPS	1	0	(4)	(4)
	2	1	(4)	(4)
	3	0	(4)	(4)
	4	0	(4)	(4)
	5	0	(4)	(4)
OADS	1	0	A	0
	2	1	B	0
	3	0	C	1
	4	0		
	5	0		
ORD	1	8	A	1
	2	7	B	8
	3	0	C	6
	4	0		
	5	0		
PTI/NBS	1	2	(4)	(4)
	2	0	(4)	(4)
	3	0	(4)	(4)
	4	0	(4)	(4)
	5	0	(4)	(4)
PTI/PTO	1	1	A	2
	2	0	B	4
	3	1	C	1
	4	0		
	5	5		
USTS	1	1	A	0
	2	0	B	1
	3	0	C	0
	4	0		
	5	0		

[1] See explanation of criteria for rankings in the text. Ranking for "Regulatory Importance" is on a scale of 1 to 5 with 1 indicating the least important and 5 indicating the most important. For ranking of "Margin for Regulatory Improvement", a scale of A to C was employed, with the greatest degree of improvement expected as the "C" level.
[2] EDA has not completed its Inventory of Regulations. Its basic legislation, the Public Works and Economic Development Act of 1965, is currently under review by Congress.
[3] Unit has no regulations.
[4] All regulations have been reviewed.
[5] Regulation has been reviewed.

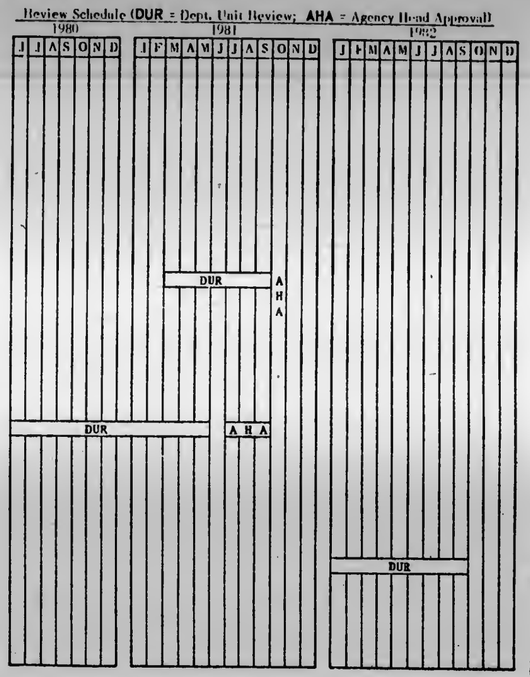
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U.S. Department of Commerce

Schedule A: INVENTORY OF SIGNIFICANT REGULATIONS

Title/Description		Rank 1/	Last Reviewed	Federal Register Notice 2/
ADMIN 101S	Public Information (Freedom of Information)(15 CFR 4.1-9) CONTACT: Marilyn McLennan, Office of Organization and Management Systems, (202) 377-4217	3/A	February 1980	--
ADMIN 102S	Privacy Act (15 CFR 4b.1-14) CONTACT: Marilyn McLennan (202) 377-4217	3/A	March 1980	--
ADMIN 103S	Nondiscrimination in Federally Assisted Programs of the Department of Commerce: Effectuation of Title VI of the Civil Rights Act of 1964 (15 CFR 8.1-15) CONTACT: Calvin Brooks, Office of Civil Rights, (202) 377-3940	3/A	February 1979	July 1981
ITA 501S	Export Administration Regulations (15 CFR Parts 368 and 370-399) CONTACT: Kent Knowles, Office of Export Administration, (202) 377-4293	4/B**	Under Review	Fall 1981
ITA 502S	Restrictive Trade Practices or Boycotts (15 CFR Part 369) CONTACT: Richard Seppa, Office of Anti-boycott Compliance, (202) 377-5914	5/A	1977	--

Review Schedule (DUR = Dept. Unit Review; AHA = Agency Head Approval)



1/ "Importance" of each regulation is ranked on a scale of 1 to 5, with the highest digit indicating the most important regulation(s). Schedule A lists only significant regulations ranked 3 to 5. Schedule B covers those regulations ranked at the 1 or 2 level. The letter following the numerical ranking indicates the potential "Margin for Regulatory Improvement", (A = low, B = moderate and C = high). A critical review of high potential regulations ("C") may lead to substantial regulatory improvements.

2/ Anticipated date of Federal Register notice indicates that a regulation will be revised, modified, or terminated. Absense of a date indicates that the Department unit does not anticipate changes in substance or language.

* Review may lead to elimination of the regulation.

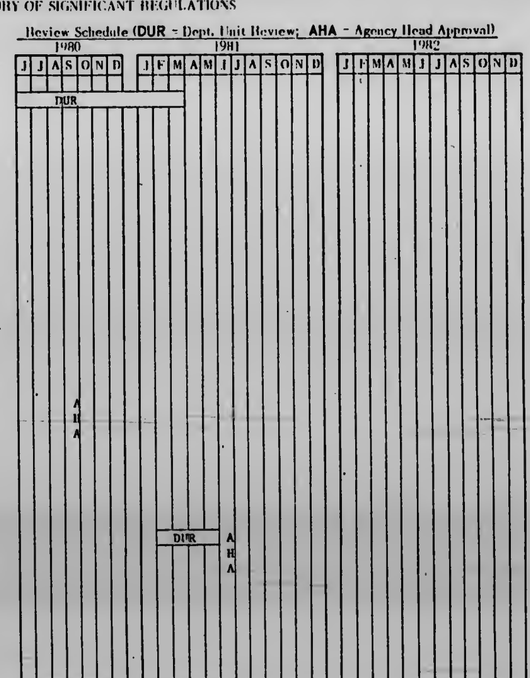
** Regulatory analysis required.

U.S. Department of Commerce

Schedule A: INVENTORY OF SIGNIFICANT REGULATIONS

Title/Description		Rank 1/	Last Reviewed	Federal Register Notice 2/
ITA 503S	Antidumping Duties and Countervailing Duties (19 CFR Parts 353 and 355) CONTACT: B. Waring Partridge, Deputy to the Dep. Asst. Secy. for Import Administration, (202) 377-1780	5/A	Under Review	--
MARAD 701S	Rules of Practice and Procedure Before MARAD and the Maritime Subsidy Board (46 CFR Part 201) CONTACT: M. F. McMorrow, Office of the General Counsel, (202) 377-2751	5/B	1979	NPRM -- Published June 25, 1979
MARAD 702S	Procedures for Review by the Secretary of Commerce of Actions by the Maritime Subsidy Board (46 CFR Part 202) CONTACT: R. J. Patton, Jr., Secretary, Maritime Subsidy Board, (202) 377-2056	5/B	Spring 1980	October 1980
MARAD 703S	Statistical Data Required for Use in Operating-Differential Subsidy Application Hearings (46 CFR Part 207) CONTACT: J. B. Young, Office of Trade Studies and Statistics, (202) 377-4758	5/A	1976	July 1981

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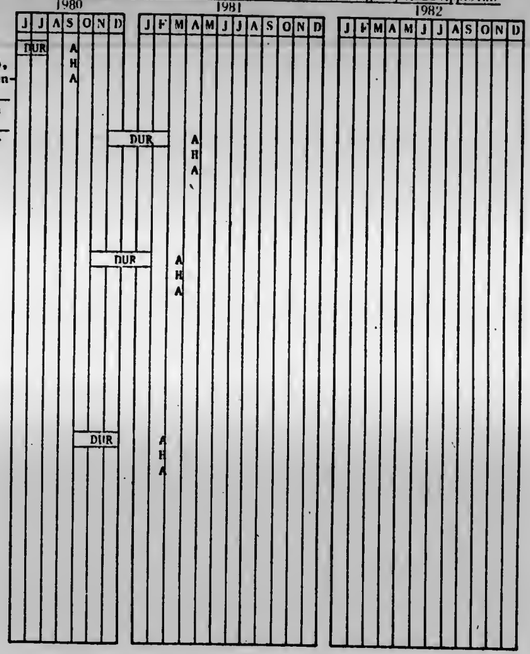
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U.S. Department of Commerce

Schedule A: INVENTORY OF SIGNIFICANT REGULATIONS

Title/Description		Rank 1/	Last Reviewed	Federal Register Notice 2/
MARAD 704S	Approval of Certain Vessel Transfers or Charters; Citizenship Declarations by Owners or Mortgagees; Uniform Barebost Charter Agreement; Fees for Processing Vessel Transfer Applications (46 CFR Part 221) CONTACT: B. T. Kyle Office of Ship Operations (202) 377-5157	5/B	Under Review Sections 221.4, 221.7 and Appendix 1979 - Section 221.14 Remaining Sections to Part 221 Reviewed Over Period 1962-1968	October 1980 -- April 1981
MARAD 705S	Participation by Vessels Built with Construction-Differential Subsidy in the Carriage of Oil from Alaska in the Domestic Trade (46 CFR Part 250) CONTACT: J. B. Young Office of Trade Studies and Statistics (202) 377-4758	5/B	1977	April 1981
MARAD 706S	Application for Subsidies and Other Direct Financial Aid; Charges for Processing Applications to Transfer Ownership or Vessels Built with Construction-Differential Subsidy (46 CFR Part 251) CONTACT: E. A. Uttridge Office of Subsidy Contracts (202) 377-3797 J. B. Young Office of Trade Studies and Statistics (202) 377-4758	5/B	1974	Unknown

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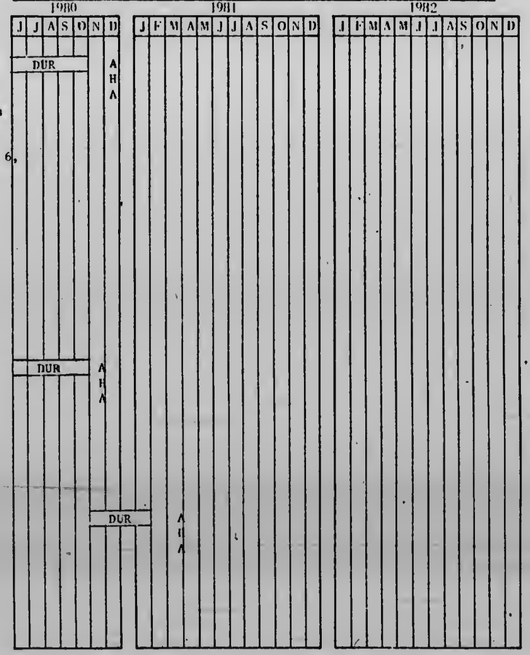
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U.S. Department of Commerce

Schedule A: INVENTORY OF SIGNIFICANT REGULATIONS

Title/Description		Rank 1/	Last Reviewed	Federal Register Notice 2/
MARAD 707S	Operating-Differential Subsidy for Bulk Cargo Vessels Engaged in Worldwide Services (46 CFR Part 252) CONTACT: F. R. Larson Office of Ship Operating Costs (202) 377-5532	5/B	1979-Section 252.21 Final Rule, May 8, 1980; Sections 252.22 and 252.31 Final Rule February 6, 1980	December 1980 (Major revisions to be made to entire Part 252)
MARAD 708S	Policy and Procedure Regarding Conduct of Subsidy Condition Surveys and Accomplishment of Subsidized Vessel Maintenance and Repairs (46 CFR Part 272) CONTACT: B. T. Kyle Office of Ship Operations (202) 377-5157	3/B	1979-1980	Proposed Amendments to be Published October 1980
MARAD 709S	Construction-Differential Subsidy Repayment: Total Repayment Policy and Procedure (46 CFR Part 276) CONTACT: E. A. Uttridge Office of Subsidy Contracts (202) 377-3797	3/C**	Under Review	Unknown - NPRM Published May 5, 1980 (Reconsideration is being given to policy in proposed revision to regulations)
MARAD 710S	Employment in the Foreign-to-Foreign Trade of Liquid and Dry Bulk Vessels Constructed with the Aid of Construction-Differential Subsidy (46 CFR Part 278) CONTACT: E. A. Uttridge (202) 377-3797	5/B	1973	April 1981

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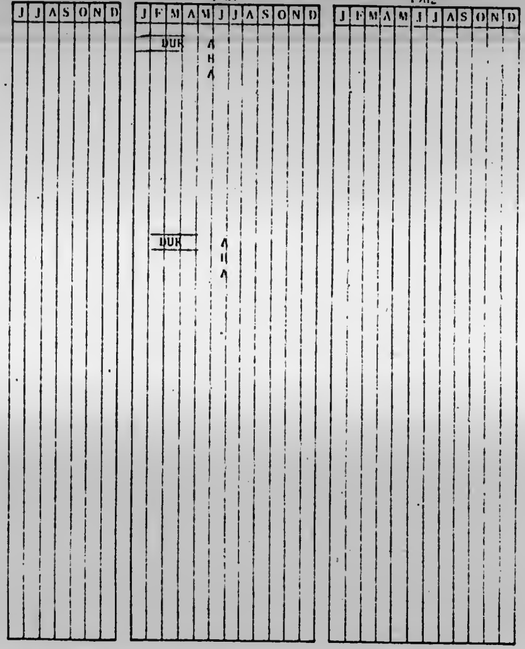
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U.S. Department of Commerce

Schedule A: INVENTORY OF SIGNIFICANT REGULATIONS

Title/Description		Rank 1/	Last Reviewed	Federal Register Notice 2/
MARAD 711S	Operating-Differential Subsidy for Bulk Cargo Vessels in United States Foreign Commerce on the Great Lakes, Connecting Rivers, St. Lawrence River, Gulf of St. Lawrence (46 CFR Part 279) CONTACT: F. R. Larson Office of Ship Operating Costs (202) 377-5532	5/A	1972	June 1981.
MARAD 712S	Limitations on the Award and Payment of Operating-Differential Subsidy for Liner Operators (46 CFR Part 280) CONTACT: E. A. Uttridge Office of Subsidy Contracts (202) 377-3797	5/B	1977	July 1981
MARAD 713S	Conservative Dividend Policy Restrictions on Cash Dividend Payments by Vessel Operators Under Operating-Differential Subsidy Agreements (46 CFR Part 283) CONTACT: E. A. Uttridge (202) 377-3797	5/A	1979	Final Rule June 3, 1980
MARAD 714S	Insurance Requirements for Construction-Differential Subsidy Vessels, Operating-Differential Subsidy Vessels and of Vessels Sold or Adjusted Under the Merchant Ship Sales Act of 1946 (46 CFR Part 289) CONTACT: K. H. Green Office of Maritime Insurance (202) 377-4820	3/A	1980	--

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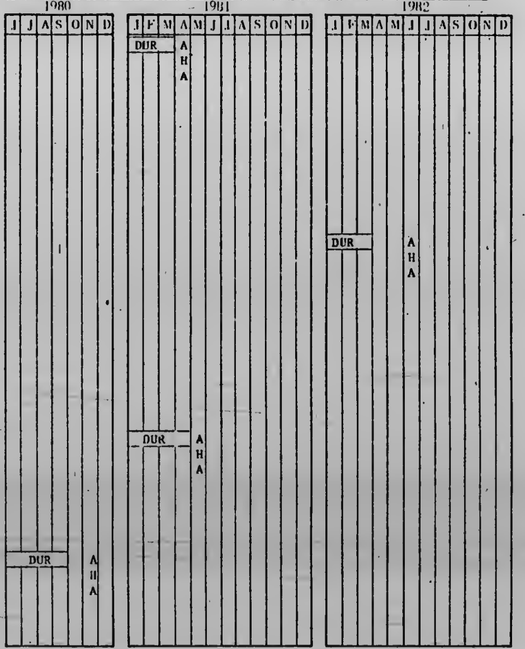
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U.S. Department of Commerce

Schedule A: INVENTORY OF SIGNIFICANT REGULATIONS

Title/Description		Rank 1/	Last Reviewed	Federal Register Notice 2/
MARAD 715S	Operating-Differential Subsidy for Bulk Cargo Vessels Engaged in Carrying Bulk Raw and Processed Agricultural Commodities from the United States to the Union of Soviet Socialist Republics (46 CFR Part 294) CONTACT: E. A. Uttridge Office of Subsidy Contracts (202) 377-3797	5/B	Various Sections 1974-76	May 1981
MARAD 716S	Obligation Guarantee Program (46 CFR Part 298) CONTACT: E. Fitzgerald Office of Ship Financing Guarantees (202) 377-3773 E. L. Loe Office of Financial Management (202) 377-3824	5/A	1977	1982
MARAD 717S	Valuation of War Risk Hull Insurance (46 CFR Part 309) CONTACT: K. H. Green Office of Maritime Insurance (202) 377-4820	5/A	1974	May 1981
MARAD 718S	Merchant Marine Training at U.S. Merchant Marine Academy and State Maritime Academies and Colleges (46 CFR Part 310) CONTACT: A. Friedberg Office of Maritime Manpower (202) 377-3018	5/B	Under Review	November 1980

Review Schedule (DUR = Dept. Unit Review; AHA = Agency Head Approval)



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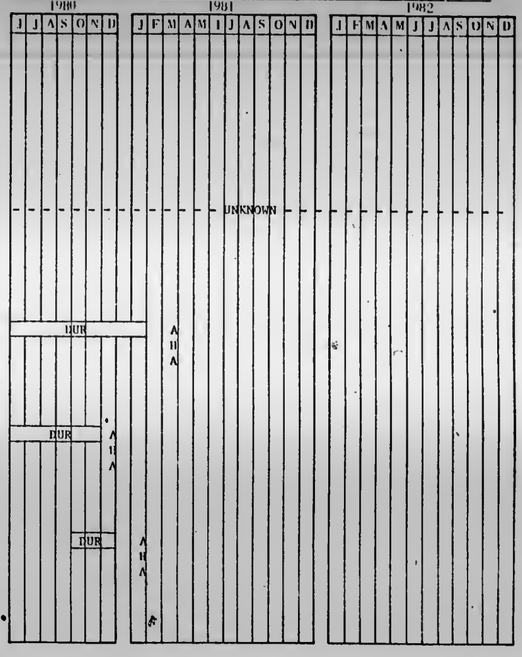
** Regulatory analysis required.

U.S. Department of Commerce

Schedule A INVENTORY OF SIGNIFICANT REGULATIONS

Title/Description		Rank 1/	Last Reviewed	Federal Register Notice 2/
MARAD 719S	Requirements for Establishing United States Citizenship to Qualify for Participation in MARAD Financial Assistance Programs (46 CFR Part 355) CONTACT: D. Lansberry Office of the General Counsel (202) 377-3235	5/B	1979	Proposed Revisions Published October 5, 1979
MARAD 720S	Cargo Preference - U.S. Flag Vessels (46 CFR Part 381) CONTACT: L. C. Paine Office of Market Development (202) 377-3325	5/B	1977	Unknown
MARAD 721S	Capital Construction Fund Program (46 CFR Part 390) CONTACT: E. A. Uttridge Office of Subsidy Contracts (202) 377-3797	5/B	1976	March 1981
MARAD 722S	Federal Income Tax Aspects of the Capital Construction Fund (46 CFR Part 391) CONTACT: E. A. Uttridge (202) 377-3797	5/A	1976	January 1981
MARAD 723S	Radar Observer Certificates, Ship's Safety, and Use of Radar (32A CFR Part 1867) CONTACT: B. T. Kyle Office of Ship Operations (202) 377-5157	5/B	1960	Feb. 1981-(Rev. of remaining Natl. Shipping Regs. to be initiated Oct. 1981 (32A CFR Ch. XVIII to be transferred to 46 CFR to accomodate Ofc. of Fed. Reg.)]

Review Schedule (DUR = Dept. Unit Review; AHA = Agency Head Approval)



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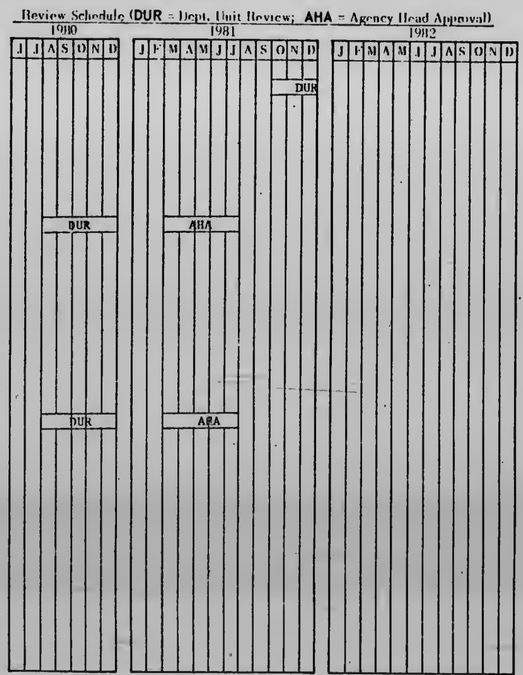
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U.S. Department of Commerce

Schedule A: INVENTORY OF SIGNIFICANT REGULATIONS

Title/Description		Rank 1/	Last Reviewed	Federal Register Notice 2/
NOAA/ OMB 1101S	Uniform Relocation Assistance and Real Property Acquisition Policies (15 CFR Part 916) CONTACT: Edwin F. McCann Office of Administrative Operations (301) 443-0134	3/A	Unknown	--
NOAA/ NMFS 1301S	Marine Mammals: Pribilof Islands (General)(50 CFR Part 215, Subpart A) CONTACT: Georgia Cranmore Office of Marine Mammals and Endangered Species (202) 634-7471 Walter Kirkness Pribilof Islands Program (206) 399-7777	3/B	Under Review	September 1981
NOAA/ NMFS 1302S	Marine Mammals: Pribilof Islands Public Display of Living Fur Seals (50 CFR Part 215, Subpart B) CONTACT: Gary Barone Office of Marine Mammals and Endangered Species (202) 634-7461	3/B	Under Review	September 1981

Review Schedule (DUR = Dept. Unit Review; AHA = Agency Head Approval)



1/ "Importance" of each regulation is ranked on a scale of 1 to 5, with the highest digit indicating the most important regulation(s). Schedule A lists only significant regulations ranked 3 to 5. Schedule B covers those regulations ranked at the 1 or 2 level. The letter following the numerical ranking indicates the potential "Margin for Regulatory Improvement". (A = low, B = moderate and C = high). A critical review of high potential regulations ("C") may lead to substantial regulatory improvements.

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** Regulatory analysis required.

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Schedule A: INVENTORY OF SIGNIFICANT REGULATIONS

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NOAA/ NMFS 1303S	Marine Mammals: Pribilof Islands (Administration)(50 CFR Part 215, Subpart C) CONTACT: Georgia Cranmore, Office of Marine Mammals and Endangered Species, (202) 634-7471 Walter Kirkness, Pribilof Islands Program, (206) 399-7777	3/B	Under Review	DUR (1980) AHA (1981)	September 1981
NOAA/ NMFS 1304S	Regulations Governing the Taking and Importing of Marine Mammals: Introductions and Prohibitions (50 CFR Part 216, Subparts A and B) CONTACT: Gary Barone, Office of Marine Mammals and Endangered Species, (202) 634-7461	3/A	Under Review	DUR (1980) AHA (1981)	September 1981
NOAA/ NMFS 1305S	Regulations Governing the Taking and Importing of Marine Mammals: Native Exceptions (50 CFR 216.23) CONTACT: Georgia Cranmore, Office of Marine Mammals and Endangered Species, (202) 634-7471	3/A	Under Review	DUR (1980) AHA (1981)	September 1981

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NOAA/ NMFS 1306S	Regulations Governing the Taking and Importing of Marine Mammals: Taking and Related Acts Incidental to Commercial Fishing Operations (50 CFR 216.24) CONTACT: Thomas McIntyre, Office of Marine Mammals and Endangered Species, (202) 634-7471 Kenneth Hollingshead, Office of Marine Mammals and Endangered Species, (202) 634-7471	5/B	October 1977	DUR (1981) AHA (1982)	June 1982
NOAA/ NMFS 1307S	Regulations Governing the Taking and Importing of Marine Mammals: Scientific Research Permits and Public Display Permits (50 CFR 216.31) CONTACT: Gary Barone, Office of Marine Mammals and Endangered Species, (202) 634-7461	3/B	Under Review	DUR (1980) AHA (1981)	September 1981
NOAA/ NMFS 1308S	Regulations Governing the Taking and Importing of Marine Mammals: Waivers of the Moratorium (50 CFR 216.32) CONTACT: Gary Barone, (202) 634-7461	3/C	Under Review	DUR (1980) AHA (1981)	September 1981

1/ "Importance" of each regulation is ranked on a scale of 1 to 5, with the highest digit indicating the most important regulation(s). Schedule A lists only significant regulations ranked 3 to 5. Schedule B covers those regulations ranked at the 1 or 2 level. The letter following the numerical ranking indicates the potential "Margin for Regulatory Improvement", (A = low, B = moderate and C = high). A critical review of high potential regulations ("C") may lead to substantial regulatory improvements.

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NOAA/ NMFS 1309S	Regulations Governing the Taking and Importing of Marine Mammals: Procedures for Issuance of Permits and Modifications, Suspension, or Revocation Thereof (50 CFR 216.33) CONTACT: Gary Barone, Office of Marine Mammals and Endangered Species, (202) 634-7461	3/C*	Under Review	DUR / AHA	September 1981
NOAA/ NMFS 1310S	Regulations Governing the Taking and Importing of Marine Mammals: Possession of Permits (50 CFR 216.34) CONTACT: Gary Barone (202) 634-7461	3/C*	Under Review	DUR / AHA	September 1981
NOAA/ NMFS 1311S	Endangered Species, General Provisions (50 CFR Part 217) CONTACT: Gary Barone (202) 634-7461	3/B	Under Review	DUR / AHA	September 1981
NOAA/ NMFS 1312S	Marine Mammals: Civil Procedures (50 CFR Part 218) CONTACT: Morris Pallozzi, Enforcement Division (202) 634-7265	3/A	June 1980		—
NOAA/ NMFS 1313S	Marine Mammals: Seizure and Forfeiture Procedures (50 CFR Part 219) CONTACT: Morris Pallozzi (202) 634-7265	3/B	July 1980		—

1/ "Importance" of each regulation is ranked on a scale of 1 to 5, with the highest digit indicating the most important regulation(s). Schedule A lists only significant regulations ranked 3 to 5. Schedule B covers those regulations ranked at the 1 or 2 level. The letter following the numerical ranking indicates the potential "Margin for Regulatory Improvement". (A = low, B = moderate and C = high). A critical review of high potential regulations ("C") may lead to substantial regulatory improvements.

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NOAA/ NMFS 1314S	Endangered Species: General Permit Procedures (50 CFR Part 220, Subparts A, B, C, and D) CONTACT: Gary Barone, Office of Marine Mammals and Endangered Species, (202) 634-7461	3/B	Under Review	DUR / AHA	September 1981
NOAA/ NMFS 1315S	Endangered Species: Permits Involving Endangered or Threatened Sea Turtles (50 CFR Part 220, Subpart E) CONTACT: Gary Barone (202) 634-7461	3/B	Under Review	DUR / AHA	September 1981
NOAA/ NMFS 1316S	Endangered Species: Importation and Exportation at Designated Ports (50 CFR Part 221) CONTACT: Gary Barone (202) 634-7461	3/A	Under Review	DUR / AHA	September 1981
NOAA/ NMFS 1317S	Endangered Fish and Wildlife (50 CFR Part 222) CONTACT: Morris Pallozzi, Enforcement Division (202) 634-7265	3/A	August 1980		—
NOAA/ NMFS 1318S	Threatened Fish and Wildlife (50 CFR Part 227) CONTACT: Gary Barone, Office of Marine Mammals and Endangered Species, (202) 634-7461	3/A	Under Review	DUR / AHA	September 1981

1/ "Importance" of each regulation is ranked on a scale of 1 to 5, with the highest digit indicating the most important regulation(s). Schedule A lists only significant regulations ranked 3 to 5. Schedule B covers those regulations ranked at the 1 or 2 level. The letter following the numerical ranking indicates the potential "Margin for Regulatory Improvement". (A = low, B = moderate and C = high). A critical review of high potential regulations ("C") may lead to substantial regulatory improvements.

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NOAA/ NMFS 1319S	Whaling Provisions (50 CFR Part 230) CONTACT: Lynn Haines, Office of Marine Mammals and Endangered Species, (202) 634-7287; Dean Swanson, Office of Marine Mammals and Endangered Species, (202) 634-1792	5/A**	March 1980		--
NOAA/ NMFS 1320S	Northwest Atlantic Commercial Fisheries: Transportation of Wildlife (50 CFR Part 246) CONTACT: Morris Pallozzi, Enforcement Division, (202)-634-7265	3/A	Summer 1979		--
NOAA/ NMFS 1321S	Processed Fishery Products, Processed Products Thereof, and Certain Other Processed Food Products: Inspection and Certification (50 CFR Part 260) CONTACT: I. D. Sackett, Seafood Quality and Inspection Division, (202) 634-7451	4/A	1977	DUR; AHA	April 1982
NOAA/ NMFS 1322S	Processed Fishery Products, Processed Products Thereof, and Certain Other Processed Food Products: U.S. Standards for Grades of Whole or Dressed Fish (50 CFR Part 261) CONTACT: J. R. Brooker, Seafood Quality and Inspection Division, (202) 634-7458	4/A	1977	DUR; AHA	June 1982

1/ "Importance" of each regulation is ranked on a scale of 1 to 5, with the highest digit indicating the most important regulation(s). Schedule A lists only significant regulations ranked 3 to 5. Schedule B covers those regulations ranked at the 1 or 2 level. The letter following the numerical ranking indicates the potential "Margin for Regulatory Improvement". (A = low, B = moderate and C = high). A critical review of high potential regulations ("C") may lead to substantial regulatory improvements.

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NOAA/ NMFS 1323S	Processed Fishery Products, Processed Products Thereof, and Certain Other Processed Food Products: U.S. Standards for Grades of Fish Steaks (50 CFR Part 262) CONTACT: J. R. Brooker, Seafood Quality and Inspection Division, (202) 634-7458	4/A	1977	DUR; AHA	June 1982
NOAA/ NMFS 1324S	Processed Fishery Products, Processed Products Thereof, and Certain Other Processed Food Products: U.S. Standards for Grades of Fish Fillets (50 CFR Part 263) CONTACT: J. R. Brooker (202) 634-7458	4/A	1979		--
NOAA/ NMFS 1325S	Processed Fishery Products, Processed Products Thereof, and Certain Other Processed Food Products: U.S. Standards for Grades of Frozen Fish Blocks and Products Made Therefrom (50 CFR Part 264) CONTACT: J. R. Brooker (202) 634-7458	4/A	1979		--

1/ "Importance" of each regulation is ranked on a scale of 1 to 5, with the highest digit indicating the most important regulation(s). Schedule A lists only significant regulations ranked 3 to 5. Schedule B covers those regulations ranked at the 1 or 2 level. The letter following the numerical ranking indicates the potential "Margin for Regulatory Improvement". (A = low, B = moderate and C = high). A critical review of high potential regulations ("C") may lead to substantial regulatory improvements.

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NOAA/ NMFS 1326S	Processed Fishery Products, Processed Products Thereof, and Certain Other Processed Food Products: U.S. Standards for Grades of Crustacean Shellfish Products (50 CFR Part 265) CONTACT: J. R. Brooker, Seafood Quality and Inspection Division, (202) 634-7458	4/A	1977	DUR (1980); AHA (1981)	--
NOAA/ NMFS 1327S	Processed Fishery Products, Processed Products Thereof, and Certain Other Processed Food Products: U.S. Standards for Grades of Molluscan Shellfish (50 CFR Part 266) CONTACT: J. R. Brooker, (202) 634-7458	4/A	1979		--
NOAA/ NMFS 1328S	Fishery Marketing Cooperatives: Issuance of Cease and Desist Orders by the Government (50 CFR Part 290) CONTACT: Jukka Kolhonen, Fisheries Development Division, (202) 634-7451	3/A**	Never Reviewed	DUR (1981); AHA (1981)	January 1982

1/ "Importance" of each regulation is ranked on a scale of 1 to 5, with the highest digit indicating the most important regulation(s). Schedule A lists only significant regulations ranked 3 to 5. Schedule B covers those regulations ranked at the 1 or 2 level. The letter following the numerical ranking indicates the potential "Margin for Regulatory Improvement", (A = low, B = moderate and C = high). A critical review of high potential regulations ("C") may lead to substantial regulatory improvements.

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NOAA/ NMFS 1329S	International Whaling Commission: Whaling (50 CFR Part 351) CONTACT: Lynn Hainen, Office of Marine Mammals and Endangered Species, (202) 634-7207 Dean Swanson, Office of Marine Mammals and Endangered Species, (202) 634-1792	5/A**	December 1979		--
NOAA/ NMFS 1330S	Fishery Conservation and Management: Guidelines for Development of Fishery Management Plans (50 CFR 602.2) CONTACT: Daphne White, Office of Resource Conservation and Management, (202) 634-7218	5/A	Under Review	DUR (1980); AHA (1981)	September 1981
NOAA/ NMFS 1331S	Fishery Conservation and Management: Foreign Fishing (50 CFR Part 611) CONTACT: Denton Moore, Permits and Regulations Division, (202) 634-7432	4/A	June 1980		--
NOAA/ NMFS 1332S	Fishery Conservation and Management: Citations (50 CFR Part 620) CONTACT: Steve Powell, Office of General Counsel, (202) 254-8350	3/A	June 1980		--

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NOAA/ NMFS 1333S	Fishery Conservation and Management: Atlantic Groundfish, Cod, Haddock and Yellowtail Flounder (50 CFR Part 651)(Amendment No. 4) CONTACT: Allen E. Peterson Northeast Region (617) 837-9200	4/A**	September 1980		--
NOAA/ NMFS 1334S	Fishery Conservation and Management: Atlantic Surf Clam and Ocean Quahog Fisheries (50 CFR Part 652) (Amendment No. 2) CONTACT: Allen E. Peterson (617) 837-9200	4/A**	November 1979		--
NOAA/ NMFS 1335S	Fishery Conservation and Management: Atlantic Herring Fishery of the Northwestern Atlantic Ocean (50 CFR Part 653) (Amendment No. 3) CONTACT: Allen E. Peterson (617) 837-9200	4/A**	August 1980		--
NOAA/ NMFS 1336S	Fishery Conservation and Management: Squid Fishery of the Northwestern Atlantic Ocean (50 CFR Part 655) CONTACT: Allen E. Peterson (617) 837-9200 Robert Banks Northeast Region (617) 837-9200	4/A**	June 1980		--

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NOAA/ NMFS 1337S	Fishery Conservation and Management: Atlantic Mackerel Fishery of the Northwestern Atlantic Ocean (50 CFR Part 656) CONTACT: Allen E. Peterson Northeast Region (617) 837-9200	4/A**	June 1980		--
NOAA/ NMFS 1338S	Fishery Conservation and Management: Commercial Tanner Crab Fishery (50 CFR Part 671) (Amendment No. 5) CONTACT: Robert McVey Alaska Region (907) 586-7221 Philip Chitwood Alaska Region (907) 586-7221	4/A**	October 1979		--
NOAA/ NMFS 1339S	Fishery Conservation and Management: Trawl Fishery of the Gulf of Alaska/ Groundfish of the Gulf of Alaska (50 CFR Part 672) CONTACT: Robert McVey (907) 586-7221 Philip Chitwood (907) 586-7221	4/A**	November 1979		--

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NOAA/ NMFS 1340S	Fishery Conservation and Management: High Seas Salmon Fisheries Off the Coast of Alaska (50 CFR Part 674) CONTACT: Robert McVey, Alaska Region, (907) 586-7221 Phillip Chitwood, Alaska Region, (907) 586-7221	4/A**	August 1980		--
NOAA/ NMFS 1341S	Fishery Conservation and Management: International Agreements (50 CFR Part 680) CONTACT: William G. Gordon, Office of Resource Conservation and Management, (202) 634-7218 Allen E. Peterson, Northeast Region, (617) 837-9200 Director, Northwest Region, (206) 399-7575	5/A	September 1979		--
NOAA/ OCZM 1501S	Coastal Zone Management Program, Development and Approval Provisions (15 CFR Part 923) CONTACT: Jane Rogers, Policy, Evaluation and External Relations Staff, (202) 634-4245	4/A	March 1979	DUR (1981); A H A (1981)	Fall 1981

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NOAA/ OCZM 1502S	Consistency for Department of the Interior Outer Continental Shelf (OCS) Prelease Sale Activities and for Other Federal Activities (15 CFR Part 930) CONTACT: Jane Rogers, Policy, Evaluation and External Relations Staff, (202) 634-4245	4/A	June 1979	DUR (1982)	--
NOAA/ OCZM 1503S	Coastal Energy Impact Program Regulations (15 CFR Part 931) CONTACT: Eileen Mulaney, Coastal Energy Impact Program Office, (202) 254-8000	5/A	Regulation Adopted May 29, 1979	DUR (1981); A H A (1981)	Fall 1981
NTIA 1701S	Public Telecommunications Facilities Program (15 CFR Part 2301) CONTACT: John Cameron, Public Telecommunications Division, (202) 724-3307 Kenneth D. Salomon, Deputy Chief Counsel, (202) 377-1866	5/B	May 1979	DUR (1981); AHA (1982)	December 1981-NPRM March 1981-Final Regulations
OCE/ BEA 1901S	Foreign Direct Investment in the United States (15 CFR Part 804) CONTACT: George Kruer, International Investment Division, (202) 523-0657	3/C*	1979		Fall 1980 to be Revoked

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OCE/ BEA 1902S	Preliminary Survey of International Leasing Transactions in 1975 (15 CFR Part 805) CONTACT: Christopher Bach, Balance of Payments Division, (202) 523-0621	3/C*	1979		Fall 1980 to be Revoked
OCE/ BIE 2101S	Determination of Bona Fide Motor Vehicle Manufacturer (15 CFR Part 615) CONTACT: Rolf R. Nordlie, Transportation and Capital Equipment Division, (202) 566-7408	3/A	November 1979		--
OCE/ CENSUS 2301S	Foreign Trade Statute (15 CFR Part 30) CONTACT: Shirley Kallek, Office of Economic Fields, (301) 763-5274	3/A	June 1979		Revisions Published May 5, 1980
OCE/ CENSUS 2302S	Special Services and Studies by the Bureau of the Census (15 CFR Part 50) CONTACT: George E. Hall, Office of Demographic Fields, (301) 763-5167	3/A	December 1979		--

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OCE/ CENSUS 2303S	Public Information (15 CFR Part 60) CONTACT: James D. Lincoln, Office of Administration, (301) 763-7980	3/A	December 1979		--
OCE/ CENSUS 2304S	Cut-Off Dates for Recognition of Boundary Changes for the 1980 Census (15 CFR Part 70) CONTACT: George E. Hall, Office of Demographic Fields, (301) 763-5167	3/A	June 1979		--
OCE/ CENSUS 2305S	Furnishing Personal Census Data from Census of Population Schedules (15 CFR Part 80) CONTACT: James D. Lincoln, Office of Administration, (301) 763-7980	3/A	December 1979		--
OCE/ CENSUS 2306S	Certain Population and Per Capita Income - Estimates Challenge Procedures (15 CFR Part 90) CONTACT: Richard A. Engel, Office of Associate Director for Demographic Fields, (301) 763-7892	3/A	Regulation Adopted April 6, 1979		--

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U.S. Department of Commerce

Schedule A: INVENTORY OF SIGNIFICANT REGULATIONS

Title/Description		Rank 1/	Last Reviewed	Review Schedule (DUR = Dept. Unit Review; AHA = Agency Head Approval) 1980 J J A S O N D / 1981 J F M A M J J A S O N D / 1982 J F M A M J J A S O N D	Federal Register Notice 2/
PTI/ PTO 3501S	Secrecy of Certain Inventions and Licenses to File Applications in Foreign Countries (37 CFR Part 5) CONTACT: S. W. Engle, Special Laws Administration Group, (703) 557-2877	5/B	January 1980		November 1980
PTI/ PTO 3502S	Government Inventions Jurisdiction (37 CFR Subchapter B) CONTACT: O. A. Neumann, Office of Government Employee Inventions, (703) 557-3539	3/B	Unknown	DUR ... AHA	December 1982
PTI/ PTO 3503S	Rules of Practice in Trademark Cases, Forms for Trademark Cases, and Classification of Goods and Services Under the Trademark Act (37 CFR Parts 2, 4 and 6) CONTACT: David J. Kera, Member Trademark Trial and Appeal Board, (202) 557-3551	5/B	May 1980		December 1980
PTI/ PTO 3504S	Regulations for the Use of the Facilities of the Patent and Trademark Office. Published in the Official Gazette of the U.S. Patent and Trademark Office, 984 OG 26, 984 TMOG 20 CONTACT: Bradford B. Huther, Deputy Assistant Commissioner for Administration, (703) 557-2290	5/A	Revised June 1979		--

1/ "Importance" of each regulation is ranked on a scale of 1 to 5, with the highest digit indicating the most important regulation(s). Schedule A lists only significant regulations ranked 3 to 5. Schedule B covers those regulations ranked at the 1 or 2 level. The letter following the numerical ranking indicates the potential "Margin for Regulatory Improvement", (A = low, B = moderate and C = high). A critical review of high potential regulations ("C") may lead to substantial regulatory improvements.

2/ Anticipated date of Federal Register notice indicates that a regulation will be revised, modified, or terminated. Absense of a date indicates that the Department unit does not anticipate changes in substance or language.

* Review may lead to elimination of the regulation.

** Regulatory analysis required.

U.S. Department of Commerce

Schedule A: INVENTORY OF SIGNIFICANT REGULATIONS

Title/Description		Rank 1/	Last Reviewed	Review Schedule (DUR = Dept. Unit Review; AHA = Agency Head Approval) 1980 J J A S O N D / 1981 J F M A M J J A S O N D / 1982 J F M A M J J A S O N D	Federal Register Notice 2/
PTI/ PTO 3505S	Procedures for Enforcing Regulations Relating to the Use of Patent and Trademark Office Records Facilities. Published in the Federal Register, 43 FR 21345 CONTACT: Bradford R. Huther, Deputy Assistant Commissioner for Administration, (703) 557-2290	5/A	Adopted May 1978	DUR	--
PTI/ PTO 3506S	Rules of Practice in Patent Cases, and Forms for Patent Cases (37 CFR Parts 1 and 3) CONTACT: R. Franklin Burnett, Special Assistant to the Assistant Commissioner for Patents, (703) 557-3054	5/B	June 1978 (Part 1) May 1978 (Part 3)	DUR DUR	Unknown Unknown

1/ "Importance" of each regulation is ranked on a scale of 1 to 5, with the highest digit indicating the most important regulation(s). Schedule A lists only significant regulations ranked 3 to 5. Schedule B covers those regulations ranked at the 1 or 2 level. The letter following the numerical ranking indicates the potential "Margin for Regulatory Improvement", (A = low, B = moderate and C = high). A critical review of high potential regulations ("C") may lead to substantial regulatory improvements.

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** Regulatory analysis required.

U.S. Department of Commerce

Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank [1]	Anticipated Date of Review
ADMIN	101N	Employee Responsibilities and Conduct (15 CFR 0.735) CONTACT: Joseph Brown Office of Personnel (202) 377-4007	1/A	May 1981
ADMIN	102N	Seal of the Department of Commerce (15 CFR 1.1-3) CONTACT: David Farber Office of Publications (202) 377-3721	1/A	Completed January 1980 No Changes Required
ADMIN	103N	Procedure for Handling and Settlement of Claims Under the Federal Tort Claims Act (15 CFR 2.1-8) CONTACT: Meir Gabbay Office of the Controller (202) 377-4407	1/A	November 1980
ADMIN	104N	Rules of Procedures for Handling Contract Appeals (15 CFR 3.1-34) CONTACT: Hugh Dolan Appeals Board (202) 377-3135	1/C*	To Be Revoked Appeals Board to be Abolished
ADMIN	105N	Classification/Declassification and Public Availability of National Security Information (15 CFR 4a.1-42) CONTACT: William Randolph Office of Investigations and Security (202) 377-4371	1/B	October 1980
ADMIN	106N	Operation of Vending Standa (15 CFR 5.1-8) CONTACT: Tony Stadeker Office of Administrative Services (202) 377-4501	1/A	December 1980
ITA	501N	Instruments and Apparatus for Educational and Scientific Institutions (15 CFR Part 301) CONTACT: Richard Seppa Statutory Import Programs Staff (202) 377-3525	1/B	Under Review

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Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank [1]	Anticipated Date of Review
ITA	502N	Foreign Excess Property Regulations (15 CFR Part 302) CONTACT: Richard Seppa Statutory Import Programs Staff (202) 377-3525	1/A*	Under Review
ITA	503N	Watches and Watch Movements (15 CFR Part 303) CONTACT: Richard Seppa (202) 377-3525	1/A	June 1981
ITA	504N	DMS Reg. 1: Basic Rules of the Defense Materials System [15 CFR Part 330 (old 32A CFR Part 621)] CONTACT: Iain S. Baird Office of Industrial Mobilization (202) 377-2233	1/B	Under Review
ITA	505N	DMS Reg. 1, Dir. 1: Self Authorization Procedure for MRO Needed to Fill Mandatory Acceptance Orders [15 CFR Part 331 (old 32A CFR Part 621a)] CONTACT: Iain S. Baird (202) 377-2233	1/B	Under Review
ITA	506N	DMS Reg. 1, Dir. 2: Controlled Materials Producers and Distributors [15 CFR Part 332 (old 32A CFR Part 621b)] CONTACT: Iain S. Baird (202) 377-2233	1/B	Under Review
ITA	507N	DMS Order 1: Iron and Steel [15 CFR Part 340 (old 32A CFR Part 631)] CONTACT: Iain S. Baird (202) 377-2233	1/B	Under Review
ITA	508N	DMS Order 2: Nickel Alloys [15 CFR Part 341 (old 32A CFR Part 632)] CONTACT: Iain S. Baird (202) 377-2233	1/B	Under Review
ITA	509N	DMS Order 3: Aluminum [15 CFR Part 342 (old 32A CFR Part 633)] CONTACT: Iain S. Baird (202) 377-2233	1/B	Under Review

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Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank 1/	Anticipated Date of Review
ITA	510N	DMS Order 4: Copper and Copper-Base Alloys [15 CFR Part 343 (old 32A CFR Part 634)] CONTACT: Iain S. Baird Office of Industrial Mobilization (202) 377-2233	1/B	Under Review
ITA	511N	DPS Reg. 1: Basic Rules of the Defense Priorities System [15 CFR Part 350 (old 32A CFR Part 651)] CONTACT: Iain S. Baird (202) 377-2233	1/B	Under Review
ITA	512N	DPS Reg. 2: Operations of the Priorities and Allocation Systems Between Canada and the U.S. [15 CFR Part 351 (old 32A CFR Part 652)] CONTACT: Iain S. Baird (202) 377-2233	1/B	Under Review
ITA	513N	DPS Reg. 3: Compliance and Enforcement Procedures [15 CFR Part 352 (old 32A CFR Part 653)] CONTACT: Iain S. Baird (202) 377-2233	1/B	Under Review
ITA	514N	DPS Order 1: Metalworking Machines [15 CFR Part 353 (old 32A CFR Part 661)] CONTACT: Iain S. Baird (202) 377-2233	1/B	Under Review
ITA	515N	DPS Order 2: Nickel [15 CFR Part 354 (old 32A CFR Part 662)] CONTACT: Iain S. Baird (202) 377-2233	1/B	Under Review
ITA	516N	Effects of Imported Articles on the National Security (Interim Rule) [15 CFR Part 359 (old 31 CFR Part 9)] CONTACT: John Richards Office of Industrial Mobilization (202) 377-3695	1/B	Under Review

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Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank 1/	Anticipated Date of Review
ITA	517N	China Trade Act Corporations (15 CFR Part 363) CONTACT: Harry R. Stringer, Jr. Office of Country Marketing (202) 377-2210	1/C*	Under Review
ITA	518N	General Regulations Governing Foreign-Trade Zones in the U.S., with Rules of Procedure (15 CFR Part 400) CONTACT: R. Waring Partridge Office of Import Administration (202) 377-1780	1/B	Under Review
ITA	519N	T-1: Shipping Restrictions [44 CFR Part 401 (old 32A CFR Part 701)] CONTACT: Seymour Goodman Office of Export Administration (202) 377-4351	1/C	Unknown
ITA	520N	T-1: Int. 1: Shipments on American Flag Ships and Aircraft [44 CFR Part 402 (old 32A CFR Part 701a)] CONTACT: Seymour Goodman (202) 377-4351	1/C	Unknown
ITA	521N	T-2: Shipping Restrictions: North Korea and the Communist-Controlled Area of Vietnam [44 CFR Part 403 (old 32A CFR Part 702)] CONTACT: Seymour Goodman (202) 377-4351	1/C	Unknown
MARAD	701N	Contracts with MARAD and Maritime Subsidy Board - Contractor Redress of Appeals from Audit Findings, Interpretations or Decisions of MARAD (46 CFR Part 205) CONTACT: E. L. Loe Office of Financial Management (202) 377-3824	1/A	March 1981

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Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank [1]	Anticipated Date of Review
MARAD	702N	Fees for Statistical Data and Reports, Copies of Regulations and Applications for Sale of Subsidized Vessels (46 CFR Part 206) CONTACT: J. B. Young, Office of Trade Studies and Statistics, (202) 377-4758 R. J. Patton, Jr., Secretary, Maritime Subsidy Board, (202) 377-2056 E. A. Uttridge, Office of Subsidy Contracts, (202) 377-3797	1/A	1982
MARAD	703N	Repairs to Vessels Under Bareboat Charter from the U.S. (46 CFR Part 237) CONTACT: B. T. Kyle, Office of Ship Operations, (202) 377-5157	1/C	1982
MARAD	704N	Formulae for Determining Sea Speed of Vessels to Establish Eligibility for Financial Assistance (46 CFR Part 246) CONTACT: R. K. Kiss, Office of Ship Construction, (202) 377-4373	1/B	1982
MARAD	705N	Payments from Capital Reserve Fund Authorized for Container Construction and Research; Development and Design Expenses for Ships and Equipment (46 CFR Part 255) CONTACT: E. A. Uttridge, Office of Subsidy Contracts, (202) 377-3797	1/C*	October 1980
MARAD	706N	Minimum-Wage; Minimum-Manning and Reasonable Working Conditions with Respect to Vessels with Operating-Differential Subsidy (46 CFR Part 262) CONTACT: A. Friedberg, Office of Maritime Manpower, (202) 377-3018	1/C	April 1981

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Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank [1]	Anticipated Date of Review
MARAD	707N	Domestic and Foreign Trade; Interpretations for Guam, Midway and Wake (46 CFR Part 277) CONTACT: J. B. Young, Office of Trade Studies and Statistics, (202) 377-4758	1/A	1982
MARAD	708N	Establishment and Maintenance of the Statutory Capital and Special Reserve Funds and Determination of "Capital Necessarily Employed in the Business" and "Net Earnings" with Respect to Subsidized Operators (46 CFR Part 286) CONTACT: E. A. Uttridge, Office of Subsidy Contracts, (202) 377-3797 E. L. Loe, Office of Financial Management, (202) 377-3824	1/C*	Reviewed To Be Revoked
MARAD	709N	Establishment of Construction Reserve Funds (46 CFR Part 287) CONTACT: E. A. Uttridge, Office of Subsidy Contracts, (202) 377-3797	1/C	September-December 1980
MARAD	710N	Statements Required to be Filed by Certain Contractors or Their Representatives; Foreign Trade Cargo Reports; Penalties (46 CFR Part 222) CONTACT: R. J. Patton, Jr., Secretary, Maritime Subsidy Board, (202) 377-2051 J. B. Young, Office of Trade Studies and Statistics, (202) 377-4758	2/C	1982
MARAD	711N	Requirements for Maintaining Boom Lifting Capacities and Other Features for Ships Built with Construction-Differential Subsidy (46 CFR Part 253) CONTACT: R. K. Kiss, Office of Ship Construction, (202) 377-4373	2/A	Completed Spring 1980

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Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank [1]	Anticipated Date of Review
MARAD	712N	Policy and Procedure Regarding Conducting of Subsidy Condition Surveys and Accomplishment of Subsidized Vessel Maintenance and Repairs (46 CFR Part 272) CONTACT: B. T. Kyle, Office of Ship Operations, (202) 377-5157	2/B	Completed Spring 1980
MARAD	713N	Determining Amount of Construction-Differential Subsidy with Respect to Materials and Equipment; Bid Procedure (46 CFR Part 275) CONTACT: R. K. Kiss, Office of Ship Construction, (202) 377-4373	2/C	January 1981
MARAD	714N	Information and Procedure Required Under Liner Operating-Differential Subsidy Agreements (46 CFR Part 281) CONTACT: E. L. Loe, Office of Financial Management, (202) 377-3824 F. R. Larson, Office of Ship Operating Costs, (202) 377-5532 J. B. Young, Office of Trade Studies and Statistics, (202) 377-4758	2/B	July 1981
MARAD	715N	Uniform System of Accounts for Maritime Carriers (46 CFR Part 282) CONTACT: E. L. Loe, Office of Financial Management, (202) 377-3824	2/A	1982
MARAD	716N	Valuation of Vessels for Determining Capital Employed and Net Earnings Under Operating-Differential Subsidy Agreements (46 CFR Part 284) CONTACT: E. A. Uttridge, Office of Subsidy Contracts, (202) 377-3797 E. L. Loe, Office of Financial Management, (202) 377-3824	2/A*	October 1980

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U.S. Department of Commerce

Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank [1]	Anticipated Date of Review
MARAD	717N	Determination by MARAD of Profit in Contracts and Subcontracts for Construction, Reconditioning, or Reconstruction (46 CFR Part 285) CONTACT: T. Pross, Office of Shipbuilding Costs, (202) 377-4452 E. L. Loe, Office of Financial Management, (202) 377-3824	2/A*	January 1981
MARAD	718N	Standard Forms for Construction Contracts and General Provisions of Operating-Differential Subsidy Contracts (46 CFR PArt 290) CONTACT: R. J. Patton, Jr., Secretary, Maritime Subsidy Board, (202) 377-2056	2/A*	January 1981
MARAD	719N	Definition of Capital Necessarily Employed in the Business By Subsidized Operators (46 CFR Part 291) CONTACT: E. A. Uttridge, Office of Subsidy Contracts, (202) 377-3797 E. L. Loe, Office of Financial Management, (202) 377-3824	1/C*	Reviewed To Be Revoked
MARAD	720N	Procedure to be Followed By Operators in the Rendition to MARAD of Annual and Final Accounting Under Operating-Differential Subsidy Agreements (46 CFR Part 292) CONTACT: E. L. Loe, (202) 377-3824	2/B	January 1981
MARAD	721N	Requirements Under Merchant Ship Sales Act of 1946 (46 CFR Part 299) CONTACT: E. L. Loe, (202) 377-3824	2/A*	May 1981

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U.S. Department of Commerce

Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank 1/	Anticipated Date of Review
MARAD	722N	War Risk Insurance Eligibility, Applications and Reporting Requirements (46 CFR Part 308) (Review to be limited to developing single application forms for the three types of War Risk coverage) CONTACT: K. H. Green Office of Marine Insurance (202) 377-4820	2/A	Under Review
MARAD	723N	Seamen's Service Awards for Wartime Service in Korea and Vietnam; Replacement of Awards Issued for World War II Service (46 CFR Part 350) CONTACT: A. Friedberg Office of Maritime Manpower (202) 377-3018	1/A	1982
MARAD	724N	Depositories Qualified to Accept Deposits of Funds Under Programs Authorized By Merchant Marine Act of 1936 (46 CFR Part 351) CONTACT: E. L. Loe Office of Financial Management (202) 377-3824	2/A *	1982
MARAD	725N	Transfer of Marine Equipment to Ship Operators and Shipyards By MARAD in Cases of Emergency (46 CFR Part 360) CONTACT: B. T. Kyle Office of Ship Operations (202) 377-5157	2/A	March 1981
MARAD	726N	Processing of Time-Barred Claims Against the Government (46 CFR Part 370) CONTACT: S. Jenkins Assistant General Counsel (202) 377-2422	2/A	December 1980
MARAD	727N	Procedores for Considering Applicstions for Operating-Differential Subsidy By Those with Interests in Coastwise or Intercoastal Service (46 CFR Part 380) CONTACT: J. B. Young Office of Trade Studies and Statistics (202) 377-4758	2/A	April 1981

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U.S. Department of Commerce

Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank 1/	Anticipated Date of Review
MARAD	728N	Service Agreements with the National Shipping Authority to Operate Vessels Owned By the United States (32A CFR Part 1801) CONTACT: B. T. Kyle Office of Ship Operations (202) 377-5157	2/B	October 1980
MARAD	729N	Appointment of General Agents, Agents, and Berth Agents (32A CFR Part 1802) CONTACT: B. T. Kyle (202) 377-5157	2/B	October 1980
MARAD	730N	Bonding of Ship's Personnel (32A CFR Part 1803) CONTACT: E. L. Loe Office of Financial Management (202) 377-3824 B. T. Kyle Office of Ship Operations (202) 377-5157	2/A	October 1980
MARAD	731N	Compensation Payable to Agents, General Agents, and Berth Agents (32A CFR Part 1804) CONTACT: E. L. Loe (202) 377-3824 B. T. Kyle (202) 377-5157	2/B	October 1980
MARAD	732N	Duties of Berth Agents and General Agents (32A CFR Part 1805) CONTACT: B. T. Kyle Office of Ship Operations (202) 377-5157 A. Armstrong Office of Port and Intermodal Development (202) 377-4123	2/B	October 1980

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Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank 1/	Anticipated Date of Review
MARAD	733N	Certificate of Ownership and Operation for General Agency Vessels (32A CFR Part 1806) CONTACT: E. L. Loe, Office of Financial Management, (202) 377-3824 B. T. Kyle, Office of Ship Operations, (202) 377-5157	2/A	October 1980
MARAD	734N	Authority of General Agents to Provide for American Merchant Marine Library Service (32A CFR Part 1807) CONTACT: E. L. Loe, (202) 377-3824 B. T. Kyle, (202) 377-5157	1/A	October 1980
MARAD	735N	Applicability of Former Maritime Commission and War Shipping Administration Orders, Regulations and Instructions and Allowability of Expenses Under Service Agreements with the National Shipping Authority (32A CFR Part 1808) CONTACT: E. L. Loe, (202) 377-3824 B. T. Kyle, (202) 377-5157	1/A	October 1980
MARAD	736N	Maximum Brokerage Commission Applicable to National Shipping Authority Vessels (32A CFR Part 1822) CONTACT: E. L. Loe, (202) 377-3824 B. T. Kyle, (202) 377-5157	1/A	October 1980
MARAD	737N	Procedural Rules for Financial Transactions Under Agency Agreements (32A CFR Part 1831) CONTACT: E. L. Loe, (202) 377-3824 B. T. Kyle, (202) 377-5157	1/A	October 1980

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Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank 1/	Anticipated Date of Review
MARAD	738N	Procedure to be Followed By General Agents in Preparation of Invoices and Payment of Compensation (32A CFR Part 1832) CONTACT: E. L. Loe, (202) 377-3824 B. T. Kyle, (202) 377-5157	2/A	October 1980
MARAD	739N	Marine Protection and Indemnity Insurance Instructions Under General Agency and Berth Agency Agreements (32A CFR Part 1841) CONTACT: K. H. Green, Office of Marine Insurance, (202) 377-4820 B. T. Kyle, Office of Ship Operations, (202) 377-5157	2/A	December 1980
MARAD	740N	Seamen's Claims; Administrative Action and Litigation (32A CFR Part 1851) CONTACT: K. H. Green, (202) 377-4820 B. T. Kyle, (202) 377-5157	2/B	Under Review
MARAD	741N	Slop Chests (32A CFR Part 1861) CONTACT: E. L. Loe, Office of Financial Management, (202) 377-3824 B. T. Kyle, Office of Ship Operations, (202) 377-5157	1/A	October 1980
MARAD	742N	Voyage Data (32A CFR Part 1862) CONTACT: B. T. Kyle, Office of Ship Operations, (202) 377-5157 J. R. Young, Office of Trade Studies and Statistics, (202) 377-4758	2/B	October 1980

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U.S. Department of Commerce

Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank [1]	Anticipated Date of Review
MARAD	743N	Launch Services (32A CFR Part 1863) CONTACT: E. L. Loe, Office of Financial Management, (202) 377-3824 B. T. Kyle, Office of Ship Operations, (202) 377-5157	1/A	October 1980
MARAD	744N	Authority and Responsibility of the Operator to Undertake to Decommission and Deliver Ships to Reserve Fleets (32A CFR Part 1864) CONTACT: B. T. Kyle, (202) 377-5157	2/A	October 1980
MARAD	745N	Repatriation of Seamen (32A CFR Part 1865) CONTACT: B. T. Kyle, (202) 377-5157	2/A	October 1980
MARAD	746N	Authority and Responsibility of General Agents to Undertake to Decommission Tankers to be Withdrawn from Operation and Placed in a Reserve Fleet (32A CFR Part 1866) CONTACT: B. T. Kyle, (202) 377-5157	2/A	October 1980
MARAD	747N	Authority and Responsibility of General Agents to Undertake Emergency Repairs in Foreign Ports (32A CFR Part 1882) CONTACT: E. L. Loe, Office of Financial Management, (202) 377-3824 B. T. Kyle, Office of Ship Operations, (202) 377-5157	2/B	October 1980

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Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank [1]	Anticipated Date of Review
MARAD	748N	Authority and Responsibility of General Agents to Undertake in Continental United States Ports Voyage Repairs and Service Equipment of Vessels Operated for the Account of the National Shipping Authority Under General Agency Agreement (32A CFR Part 1883) CONTACT: B. T. Kyle, Office of Ship Operations, (202) 377-5157	2/B	October 1980
MARAD	749N	General Agent's Responsibility in Connection with Foreign Repair Custom's Entries (32A CFR Part 1884) CONTACT: B. T. Kyle, (202) 377-5157	2/B	October 1980
MARAD	750N	Procedure for Accomplishment of Vessel Repairs Under the National Shipping Authority Master Lump Sum Repair Contract (32A CFR Part 1885) CONTACT: B. T. Kyle, (202) 377-5157	2/B	October 1980
MARAD	751N	Procedure for Accomplishment of Ship Repairs Under the National Shipping Authority Individual Contract for Minor Repairs (32A CFR Part 1886) CONTACT: B. T. Kyle, (202) 377-5157	2/B	October 1980
MARAD	752N	National Shipping Authority Control and Utilization of Ports During a War or National Emergency (32A CFR Part 1901) CONTACT: A. S. Armstrong, Office of Port and Intermodal Development, (202) 377-4123	2/A	Under Review
MARAD	753N	Federal Port Controllers Designated Under a Standard Form of Service Agreement with the National Shipping Authority (32A CFR Part 1902) CONTACT: A. S. Armstrong, (202) 377-4123	2/A	Under Review
MARAD	754N	Standard Form of Marine Terminal Operating Contract (32A CFR Part 1903) CONTACT: A. S. Armstrong, (202) 377-4123	2/A	Under Review

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U.S. Department of Commerce

Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank 1/	Anticipated Date of Review
NOAA/ OMB	1101N	Public Information (Mission Information and Freedom of Information Act Request--Not Public Affairs) (15 CFR Part 903) CONTACT: Irma Lee Westrell Administrative Documentation Officer (301) 443-8192	2/A	Fall 1981
NOAA/ OMB	1102N	Coordination of Federal and Federally-Assisted Programs and Projects: Grants and Cooperative Agreements (15 CFR Part 905) CONTACT: Ann Terbush Grants Officer (301) 443-8575	2/A	Fall 1981
NOAA/ NMFS	1301N	North Pacific Commercial Fisheries: (50 CFR Part 210) CONTACT: Robert McVey Alaska Region (907) 586-7221	2/A	January 1981
NOAA/ NMFS	1302N	Regulations Governing the Taking and Importing of Marine Mammals: Actions Permitted By International Treaty, Convention, or Agreement (50 CFR 216.21) CONTACT: Georgia Cranmore Office of Marine Mammals and Endangered Species (202) 634-1792	1/C	January 1981
NOAA/ NMFS	1303N	Regulations Governing the Taking and Importing of Marine Mammals: Taking By State and Local Government Officials (50 CFR 216.22) CONTACT: Thomas McIntyre Office of Marine Mammals and Endangered Species (202) 634-1792	2/B	Under Review
NOAA/ NMFS	1304N	Regulations Governing the Taking and Importing of Marine Mammals: Exempted Marine Mammals and Marine Mammal Products (50 CFR 216.25) CONTACT: Thomas McIntyre (202) 634-1792	1/C*	January 1981
NOAA/ NMFS	1305N	Regulations Governing the Taking and Importing of Marine Mammals: Collection of Certain Marine Mammals Parts (50 CFR 216.26) CONTACT: Thomas McIntyre (202) 634-1792	2/B	January-April 1980

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U.S. Department of Commerce

Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank 1/	Anticipated Date of Review
NOAA/ NMFS	1306N	Regulations Governing the Taking and Importing of Marine Mammals: Importation at Designated Ports (50 CFR 216.40) CONTACT: Gary Barone Office of Marine Mammals and Endangered Species (202) 634-7461	1/C*	January 1981
NOAA/ NMFS	1307N	Regulations Governing the Taking and Importing of Marine Mammals: Penalties and Procedures for Their Assessment (50 CFR Part 216, Subpart F) CONTACT: Steve Powell Office of the Assistant General Counsel for Enforcement and Litigation (202) 254-0350	2/B	January 1981
NOAA/ NMFS	1308N	Regulations Governing the Taking and Governing of Marine Mammals: Notice and Hearing on Section 103 Regulations (50 CFR Part 216, Subpart C) CONTACT: Eric Erdheim Office of the Assistant General Counsel (202) 443-R066	1/A	Summer 1981
NOAA/ NMFS	1309N	Regulations Governing the Taking and Importing of Marine Mammals: Approval and Review of State Laws and Regulations (50 CFR Part 216, Subpart H) CONTACT: Georgia Cranmore Office of Marine Mammals and Endangered Species (202) 634-1792 Ronald Naveen Office of Assistant General Counsel - Fisheries (202) 634-4224	1/A	January 1981
NOAA/ NMFS	1310N	Marine Mammals: Federal/State Cooperation in the Conservation of Endangered and Threatened Species (50 CFR Part 225) CONTACT: Tom Loughlin Office of Marine Mammals and Endangered Species (202) 634-7471	2/A	January 1981

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Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank [1]	Anticipated Date of Review
NOAA/ NMFS	1311N	Aid to Fisheries: Fisheries Loan Fund Procedures (50 CFR Part 250) CONTACT: James Meehan, Financial Services Division, (202) 634-7466	1/A	September 1980
NOAA/ NMFS	1312N	Aid to Fisheries: Financial Aid Program Procedures (50 CFR Part 251) CONTACT: Michael L. Grable, Financial Services Division, (202) 634-7496	1/A	September 1980
NOAA/ NMFS	1313N	Aid to Fisheries: Financial Aid Program Procedures, Conditioned Fisheries (50 CFR Part 251, Subpart B) CONTACT: James Meehan, Financial Services Division, (202) 634-7466	1/A	September 1980
NOAA/ NMFS	1314N	Aid to Fisheries: Commercial Fisheries Research and Development (50 CFR Part 253) CONTACT: Leo Fisher, State/Federal Division, (202) 634-7454	2/A	September 1981
NOAA/ NMFS	1315N	Aid to Fisheries: Control or Elimination of Jellyfish (50 CFR Part 254) CONTACT: Leo Fisher, (202) 634-7454	1/C	September-December 1980
NOAA/ NMFS	1316N	Aid to Fisheries: Fishing Vessel Obligation Guarantee Program Procedures (50 CFR Part 255) CONTACT: James Meehan, Financial Services Division, (202) 634-7466	1/C	September-December 1980
NOAA/ NMFS	1317N	Aid to Fisheries: Fishing Vessel Construction-Differential Subsidy Procedures (50 CFR Part 256) CONTACT: Jack Kelly, Financial Services Division, (202) 634-7496	1/A	September 1980
NOAA/ NMFS	1318N	Aid to Fisheries: Notice and Hearing on Subsidies (50 CFR Part 257) CONTACT: Jack Kelly, (202) 634-7496	1/A	September 1980

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U.S. Department of Commerce

Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank [1]	Anticipated Date of Review
NOAA/ NMFS	1319N	Aid to Fisheries: Fishermen's Protective Act Procedures (50 CFR Part 258, Subpart A) CONTACT: Kathryn E. Hensley, Financial Services Division, (202) 634-7496	1/A	September 1980
NOAA/ NMFS	1320N	Aid to Fisheries: Fishermen's Protective Act Procedures: Compensation for Damage Caused By Foreign Vessels in the Fishermen's Protective Zone (50 CFR Part 258, Subpart B) CONTACT: Kathryn E. Hensley, (202) 634-7496	1/A	September 1980
NOAA/ NMFS	1321N	Aid to Fisheries: Fishermen's Protective Act Procedures: Compensation for Fishing Vessel or Fishing Gear Damage in a U.S. Fishery Attributable to Other Vessels or Acts of God (50 CFR Part 258, Subpart C) CONTACT: Kathryn E. Hensley, (202) 634-7496	1/A	September 1980
NOAA/ NMFS	1322N	Aid to Fisheries: Capital Construction Fund (50 CFR Part 259) CONTACT: Lee Bowersox, Financial Services Division, (202) 634-7496	1/A	September 1980
NOAA/ NMFS	1323N	Tuna Fisheries: Pacific Tuna Fisheries (50 CFR Part 280) CONTACT: Alan W. Ford, Southwest Region, (213) 793-2575	2/A	March 1981
NOAA/ NMFS	1324N	Tuna Fisheries: Restrictions on Tuna Imports (50 CFR Part 281) CONTACT: Alan W. Ford, (213) 793-2575	2/A	March 1981
NOAA/ NMFS	1325N	Anadromous Fisheries Conservation, Development and Enhancement (50 CFR Part 401) (Joint regulations with the Department of the Interior) CONTACT: Richard Schaefer, State/Federal Division, (202) 634-7454	2/A	September 1981

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Schedule B INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank [1]	Anticipated Date of Review
NOAA/ NMFS	1326N	Interagency Cooperation - Endangered Species Act of 1973 (50 CFR Part 402)(Joint regulations with the Department of the Interior) CONTACT: Ron Naveen Office of the Assistant General Counsel - Fisheries (202) 377-2977	1/B	Summer 1981
NOAA/ NMFS	1327N	Fishery Conservation and Management: Regional Refishery Management Councils (50 CFR Part 601) CONTACT: Joe Clem Office of Resource Conservation and Management (202) 634-7218 Daphne White Office of Resource Conservation and Management (202) 634-7218	2/A	August-December 1980
NOAA/ NMFS	1328N	Fishery Conservation and Management: Guidelines for Development of Fishery Management Plans (50 CFR Part 602) (NOTE: 602.2 regulations are significant and have been included in Schedule A) CONTACT: Daphne White (202) 634-7218	2/A	June 1981
NOAA/ NMFS	1329N	Fishery Conservation and Management: Confidentiality of Statistics (Reserved)(50 CFR Part 603) (NOTE: Published in interim final 12-7-79) CONTACT: B. G. Thompson Office of Resource Conservation and Management (202) 634-7415	2/A	August-December 1980
NOAA/ NMFS	1330N	Fishery Conservation and Management: Civil Procedures (50 CFR Part 621) CONTACT: Steve Powell Office of the Assistant General Counsel for Enforcement and Litigation (202) 254-8350	2/B	Summer 1981
NOAA/ NMFS	1331N	Fishery Conservation and Management: Stone Crab Fishery of the Gulf of Mexico (50 CFR Part 654) CONTACT: Regional Director Southeast Region (813) 826-3141	2/A	August-December 1980

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U.S. Department of Commerce

Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank [1]	Anticipated Date of Review
NOAA/ NMFS	1332N	Fishery Conservation and Management: Northern Anchovy Fishery (50 CFR Part 662) CONTACT: Alan W. Ford Southwest Region (213) 793-2575	2/A	May 1981
NOAA/ OCZM	1501N	Section 305 Allocation Formula, Coastal Zone Management Program (15 CFR Part 926) CONTACT: Jane Rogers Office of Policy, Evaluation and External Relations Staff (202) 634-4245	2/A*	September 1981
NOAA/ OCZM	1502N	Coastal Zone Management, Research, Study and Training Program, Funding and Operations (15 CFR Part 933) CONTACT: Jane Rogers (202) 634-4245	2/C*	September 1981
NOAA/ OCZM	1503N	Coastal Zone Management, Interstate Grants (15 CFR Part 932) CONTACT: Jane Rogers (202) 634-4245	2/C*	September 1981
NOAA/ OCZM	1504N	Coastal Energy Impact Program, Engineering and Construction Guidelines for Applicants (Guidelines may be developed into regulations in the near future) CONTACT: Bart Chambers Coastal Energy Impact Program Office (202) 634-4128	2/A	October-November 1980
NOAA/ OCZM	1505N	Estuarine Sanctuary Guidelines (15 CFR Part 921) CONTACT: James W. MacFarland Sanctuary Program Office (202) 653-7301	2/B	Reviewed 1980
NOAA/ OCZM	1506N	Monitor Marine Sanctuary (15 CFR Part 924) CONTACT: Nancy Foster Sanctuary Program Office (202) 634-4236	2/A	June 1981

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Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank [1]	Anticipated Date of Review
NOAA/ OCZM	1507N	Designation and Management of Marine Sanctuaries (15 CFR Part 922) CONTACT: Nancy Foster Sanctuary Program Office (202) 634-4236	2/A	February 1981
NOAA/ OCZM	1508N	Key Largo Coral Reef Marine Sanctuary (15 CFR Part 929) CONTACT: Nancy Foster (202) 634-4236	2/B	Under Review
NOAA/ OCZM	1509N	Coastal Energy Impact Program, Project Assessments and Environmental Impact Statements (42 FR 44400, September 2, 1977) CONTACT: Eileen Mulaney Coastal Energy Impact Program Office (202) 634-4128	2/A	October-November 1980
OCE/ BEA	1901N	Annual Reporting of Revenues for Carrying Imports to, and Expenditures in, the United States of Shipping and Air Transport Operators of Foreign Nationality (15 CFR Part 802) CONTACT: Christopher Bach Balance of Payments Division (202) 523-0621	1/A	Review Completed No Changes
OCE/ BEA	1902N	Reports of International Transactions in Royalties and Fees with Unaffiliated Foreign Residents (15 CFR Part 803) CONTACT: Christopher Bach (202) 523-0621	1/A	Review Completed No Changes
OCE/ BEA	1903N	Public Information (15 CFR Part 807) CONTACT: Lester G. Welch Management Services Division (202) 523-0505	2/A	Review Completed No Changes

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Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank [1]	Anticipated Date of Review
OCE/ BEA	1904N	Direct Investment Surveys (15 CFR Part 806) CONTACT: George Kruer International Investment Division (202) 523-0657	1/A	Review Completed No Changes
OCE/ CENSUS	2301N	Seal (15 CFR Part 20) CONTACT: James D. Lincoln Office of Administration (301) 763-7980	1/A	Review Completed No Changes
OCE/ CENSUS	2302N	Training of Foreign Participants in Census Procedures and General Statistics (15 CFR Part 40) CONTACT: Suzann Evinger Office of Federal Statistical Policy and Standards (202) 673-7965	2/A	Review Completed No Changes
OCE/ OFSPS	2501N	Metropolitan Statistical Classification (Standard developed under authority contained in 31 U.S.C. 18b) CONTACT: George E. Hall Office of Demographic Fields (301) 763-5167	2/A	Review Completed-Final Revisions Published in FR January 1980
OADS	2701N	Procedural Regulation Setting Forth the Criteria for Applications for Federal Recognition of International Expositions (15 CFR Part 1202) CONTACT: Kenneth R. Clark Office of the Assistant General for International Trade (202) 377-5305	2/C	Summer 1981
ORD	2901N	Economic Development Regions (13 CFR Part 500) CONTACT: Frances Pappas Program Development Officer (202) 377-5174	2/B	Winter 1982
ORD	2902N	Modification of Regional Boundaries (13 CFR Part 510) CONTACT: Frances Pappas (202) 377-5174	2/B	Winter 1982

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Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank [1]	Anticipated Date of Review
ORD	2903N	Regional Commissions (13 CFR Part 520) CONTACT: Frances Pappas Program Development Officer (202) 377-5174	1/C	Winter 1982
ORD	2904N	Review of Commission Plans (13 CFR Part 530) CONTACT: Frances Pappas (202) 377-5174	2/B	Winter 1982
ORD	2905N	Administration (13 CFR Part 540) CONTACT: Frances Pappas (202) 377-5174	2/A	Winter 1982
ORD	2906N	Technical and Planning Assistance (13 CFR Part 550) CONTACT: Frances Pappas (202) 377-5174	2/B	Spring/Summer 1982
ORD	2907N	Regional Transportation (13 CFR Part 551) CONTACT: Frances Pappas (202) 377-5174	1/C	Spring/Summer 1982
ORD	2908N	Energy Demonstration Projects and Programs (13 CFR Part 552) CONTACT: Frances Pappas (202) 377-5174	1/C	Spring/Summer 1982
ORD	2909N	Health and Nutrition Demonstration Projects (Reserved)(13 CFR Part 553) CONTACT: Frances Pappas (202) 377-5174	1/C	Spring/Summer 1982
ORD	2910N	Education Demonstration Projects (Reserved)(13 CFR Part 554) CONTACT: Frances Pappas (202) 377-5174	1/C	Spring/Summer 1982

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U.S. Department of Commerce

Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank [1]	Anticipated Date of Review
ORD	2911N	Indigenous Arts and Crafts Demonstration Projects (13 CFR Part 555) CONTACT: Frances Pappas Program Development Officer (202) 377-5174	1/B	Spring/Summer 1982
ORD	2912N	Supplements to Federal Grants-in-Aid (13 CFR Part 560) CONTACT: Frances Pappas (202) 377-5174	2/B	Spring/Summer 1982
ORD	2913N	Coordination (13 CFR Part 580) CONTACT: Frances Pappas (202) 377-5174	2/B	Fall 1982
ORD	2914N	Interagency Evaluation, Review and Coordination of Programs and Projects (13 CFR Part 581) CONTACT: Frances Pappas (202) 377-5174	1/B	Fall 1982
ORD	2915N	Rules and Procedures of the Federal Cochairmen (13 CFR Part 590) CONTACT: Frances Pappas (202) 377-5174	1/C	Fall 1982
PTI/ NBS	3101N	Barrels and Other Containers for Lime (15 CFR Part 240) CONTACT: Allen J. Farrar Office of Legal Adviser (301) 921-2425	1/C*	Completed June 1980 To Be Revoked
PTI/ NBS	3102N	Barrels for Fruits, Vegetables and Other Dry Commodities, and for Cranberries (15 CFR Part 241) CONTACT: Allen J. Farrar (301) 921-2425	1/C*	Completed June 1980 To Be Revoked
PTI/ PTO	3501N	Register of Government Interests in Patents (37 CFR Part 7) CONTACT: B. R. Padgett Group Art Unit 223 (703) 557-2037	1/C	June 1981

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Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank 1/	Anticipated Date of Review
USTS	3701N	Procedural Regulation Governing Applications of States, Cities and Non-Profit Organizations for Matching Grants to Promote International Tourism to U.S. (15 CFR Part 1200)	1/B	Unknown

CONTACT: Vito A. Passemante
Administrative Office
(202) 377-3811

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[FR Doc. 80-32894 Filed 10-24-80; 8:45 am]
BILLING CODE 3510-BT-C

federal register

Monday
October 27, 1980

Part III

Department of the Interior

Bureau of Land Management

Outer Continental Shelf; Central and Northern California, Proposed Oil and Gas Lease Sale No. 53

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management

Outer Continental Shelf

Central and Northern California

Proposed Oil and Gas Lease Sale No. 53

In connection with oil and gas leasing on the Outer Continental Shelf (OCS), the Secretary of the Interior has established a policy pursuant to Sec. 19 of the OCS Lands Act, as amended, relating to sale notices to further and enhance consultation with the affected coastal states. That policy includes providing the affected States with the opportunity to review the draft proposed sale notice prior to its final publication in the Federal Register. The following is a draft sale notice for proposed Sale No. 53 in the offshore waters of Central and Northern California. This notice is hereby published as a matter of information to the public.

Ed Hastey
Director, Bureau of Land Management
Associate

Dated: 10/17/80

Approved:

James A. Joseph
Secretary of the Interior

Proposed Sale Notice

1. Authority. This notice is published pursuant to the Outer Continental Shelf Lands Act of 1953 (43 U.S.C. 1331-1343), as amended, (92 Stat. 629), and the regulations issued thereunder (43 CFR Part 3300).

2. Filing of Bids. Sealed bids will be received by the Manager, Pacific Outer Continental Shelf (OCS) Office, Bureau of Land Management, 1340 West 6th Street, Room 200, Los Angeles, California 90017. Bids may be delivered, either by mail or in person, to the above address until 4:00 p.m., p.s.t., _____; or by personal delivery to the (place of sale), (address), (city and State) between the hours of 8:30 a.m., p.s.t. and 9:30 a.m., p.s.t., _____. Bids received by the Manager later than the times and dates specified above will be returned unopened to the bidders. Bids may not be modified or withdrawn unless written modification or withdrawal is received by the Manager prior to 9:30 a.m., p.s.t., _____. All bids must be submitted and will be considered in accordance with applicable regulations, including 43 CFR Part 3300. The list of restricted joint bidders which applies to this sale was published in ___ FR _____. _____.

3. Methods of Bidding. A separate bid in a sealed envelope, labeled "Sealed Bid for Oil and Gas Lease (insert number of tract), not to be opened until 10:00 am., p.s.t. _____" must be submitted for each tract. A suggested form appears in 43 CFR Part 3300 Appendix A. Bidders are advised that tract numbers are assigned solely for administrative purposes and are not the same as block numbers found on official protraction diagrams or leasing maps. All bids received shall be deemed submitted for a numbered tract. Bidders must submit with each bid one-fifth of the cash bonus in cash or by cashier's check, bank draft on a solvent bank, or certified check, payable to the order of the Bureau of Land Management. No bid for less than a full tract as described in paragraph 12 will be considered. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, as well as submit a sworn statement that the bidder is qualified under 43 CFR Subpart 3316. The suggested form for this statement to be used in joint bids appears in 43 CFR Part 3300 Appendix B. Other documents may be required of bidders under 43 CFR 3316.4. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bidding Systems. All leases awarded for this sale will provide for a yearly rental of $8 per hectare or fraction thereof. Except for the fixed net profit share tracts listed in paragraph 4(c) of this notice all leases awarded will provide for a minimum annual royalty payment of $8 per hectare or fraction therof. The following systems will be utilized.

(a) Bonus Bidding with 33 1/3 percent Royalty. Bids on tracts 53-138, 53-142, 53-143, 53-145, 53-146, 53-147, 53-149, 53-150, 53-151, 53-153, 53-154, 53-155, 53-159, 53-160, 53-161, 53-235, 53-236 and 53-239 must be on a cash bonus basis with a fixed royalty of 33 1/3 percent.

(b) Bonus Bidding with a Fixed Sliding Scale Royalty. Bids on tracts 53-185, 53-186, 53-192, 53-193, 53-197, 53-198, 53-199, 53-202, 53-203, 53-204, 53-205, 53-208, 53-209, 53-210, 53-211, 53-212, 53-213, 53-214, 53-215, 53-216 53-217, 53-218, 53-219, 53-220, 53-221, 53-222, 53-223, 53-224, 53-225, 53-226, 53-227, 53-228, 53-229, 53-230, 53-231, 53-232, 53-233 and 53-234 must be submitted on a cash bonus basis with the percent royalty due in amount or value of production saved, removed or sold fixed according to the sliding scale formula described below. This formula fixes the percent royalty at a level determined by the value of lease production during each calendar quarter. For purposes of determining the royalty percent due on production during a quarter, the value of production during the quarter will be adjusted for inflation as described below. The determination of the value of the production on which royalty is due will be made pursuant to 30 CFR 250.64.

The fixed sliding scale formula operates in the following way; when the quarterly value of production, adjusted for inflation, is less than or equal to $14.7878536 million, a royalty of 16.66667 percent in amount or value of production saved removed or sold will be due on the unadjusted value or amount of production. When the adjusted quarterly value of production is equal to or greater than $14.7878537 million, but less than or equal to $1197.2061410 million, the royalty percent due on the unadjusted value or amount of production is given by

The form of the sliding scale royalty schedule is illustrated in Figure 1. Note that the effective quarterly royalty rate depends upon the inflation adjusted quarterly value of production. However, this rate is applied to the unadjusted quarterly value of production to determine the royalty payments due.

In adjusting the quarterly value of production for use in calculating the percent royalty due on production during the quarter, the actual value of production will be adjusted to account for the effects of inflation by dividing the actual value of production by the following inflation adjustment factor. The inflation adjustment factor used will be the ratio of the GNP fixed weighted price index for the calendar quarter preceding the quarter of production to the value of that index for the quarter preceding the issuance of the lease. The GNP fixed weighted price index is published monthly in the Survey of Current Business by the Bureau of Economic Analysis, U.S. Department of Commerce. The percent royalty will be due and payable on the actual amount or value of production saved, removed, or sold as determined pursuant to 30 CFR 250.64. The timing of procedures for inflation adjustments and determinations of the royalty due will be specified at a later date. Table 1 provides hypothetical examples of quarterly royalty calculations using the sliding scale formula just described under two different values for the quarterly price index.

$$R_j = b[\ln (V_j/s)]$$

where

R_j = the percent royalty that is due and payable on the unadjusted amount or value of all production saved, removed or sold in quarter j

b = 11.0

ln = natural logarithm

V_j = the value of production in quarter j, adjusted for inflation, in millions of dollars

s = 3.25

When the adjusted quarterly value of production is equal to or greater than $1197.2061410 million, a royalty of 65.00000 percent in amount or value of production saved, removed or sold will be due on the unadjusted quarterly value of production. Thus, in no instance will the quarterly royalty due exceed 65.00000 percent in amount or value of quarterly production saved, removed or sold.

In determining the quarterly percent royalty due, R_j, the calculation will be carried to five decimal places (for example, 21.25878 percent). This calculation will incorporate the adjusted quarterly value of production, V_j, in millions of dollars, rounded to the sixth digit, i.e., the nearest dollar (for example, 15.392847 millions of dollars).

Figure 1
Form of the Sliding Royalty Schedule

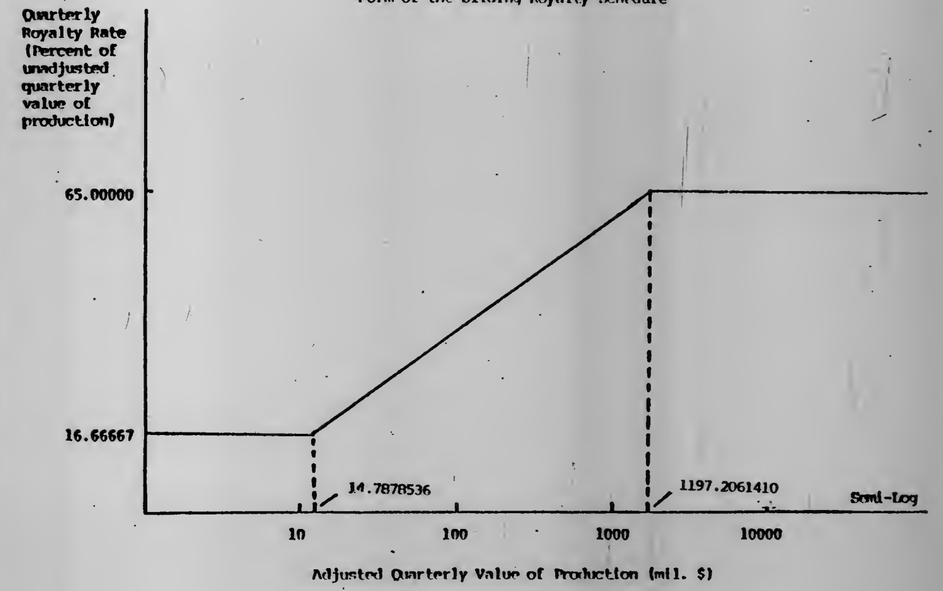


TABLE 1. HYPOTHETICAL QUARTERLY ROYALTY CALCULATIONS

(A) Actual Value of Quarterly Production (Millions of Dollars)	(B) GNP Fixed Weighted Price Index	(C) Inflation Factor[1]	(D) Adjusted Value of Quarterly Production[2] (Vj, Millions of $)	(E) Percent Royalty Rate (Rj)	(F) Royalty Payment[3] (Millions of Dollars)
10.000000	200.0	4/3	7.500000	16.66667	1.666667
30.000000	200.0	4/3	22.500000	21.28346	6.385039
90.000000	200.0	4/3	67.500000	33.36819	30.031378
270.000000	200.0	4/3	202.500000	45.45293	122.722921
810.000000	200.0	4/3	607.500000	57.53767	466.055118
10.000000	250.0	5/3	6.000000	16.66667	1.666667
30.000000	250.0	5/3	18.000000	18.82888	5.648665
90.000000	250.0	5/3	54.000000	30.91362	27.822257
270.000000	250.0	5/3	162.000000	42.99835	116.095557
810.000000	250.0	5/3	486.000000	55.08308	446.173028

1 Column (B) divided by 150.0 (assumed value of GNP fixed weighted price index at time leases are issued).

2 Column (A) divided by Inflation Factor.

3 Column (A) times Column (E). All values are rounded for display purposes only.

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(c) Bonus Bidding with a Fixed Net Profit Share. Bids on tracts 53-165, 53-166, 53-167, 53-168, 53-169, 53-170, 53-171, 53-172, 53-173, 53-174, 53-175, 53-176, 53-177, 53-178, 53-179, 53-180, 53-181, 53-182, 53-183, 53-184, 53-190 and 53-191 must be submitted on a cash bonus basis with a fixed net profit share rate of 45 percent and a fixed capital recovery factor of 1.00 (which is a fixed capital recovery multiplier of 2.00). Note: The capital recovery factor represents the actual capital recovery premium that is debited to the net profit share lease capital account, which is made in addition to the debit for actual expenses. The net profit share payment shall be calculated according to the Department of Energy regulations 10 CFR 390 (45 FR 36784, May 30, 1980).

(d) Bonus Bidding with a 16 2/3 Percent Royalty. Bids on the remaining tracts to be offered at this sale must be submitted on a cash bonus basis with a fixed royalty of 16 2/3 percent.

5. Equal Opportunity. Each bidder must have submitted by 9:30 a.m., p.s.t., _____, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form 1140-8 (November 1973), and the Affirmative Action Representation Form, Form 1140-7 (December 1971).

6. Bid Opening. Bids will be opened on _____, beginning at 10:00 a.m., p.s.t., at the address stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing and recording bids received and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight, _____, that bid will be returned unopened to the bidder, as soon thereafter as possible.

7. Deposit of Payment. Any cash, cashier's checks, certified checks or bank drafts on a solvent bank, submitted with a bid may be deposited in a suspense account in the Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. Withdrawal of Tracts. The United States reserves the right to withdraw any tract from this sale prior to issuance of a written acceptance of a bid for that tract.

9. Acceptance or Rejection of Bids. The United States reserves the right to reject any and all bids for any tract. In any case, no bid for any tract will be accepted and no lease for any tract will be awarded to any bidder unless:

(a) The bidder has complied with all requirements of this notice and applicable regulations;

(b) The bid is the highest valid cash bonus bid; and

(c) The amount of the bid has been determined to be adequate by the Secretary of the Interior.

No bid will be considered for acceptance unless it offers a cash bonus in the amount of $62 or more per hectare or fraction thereof.

10. Successful Bidders. Each person who has submitted a bid accepted by the Secretary of the Interior will be required to execute copies of the lease specified below, pay the balance of the cash bonus bid together with the first year's annual rental and satisfy the bonding requirements of 43 CFR Subpart 3318 within the time provided in 43 CFR 3316.5.

11. Leasing Maps/Official Protraction Diagrams. Tracts offered for lease may be located on the following official protraction diagrams which are available from the Manager, Pacific Outer Continental Shelf Office at the address stated in paragraph 2, at a cost of $2.00 each:

Outer Continental Shelf Official Protraction Diagrams:

NI 10-3 San Luis Obispo

NI 10-6 Santa Maria

12. Tract Descriptions. The tracts offered for bids are as follows: Note: There may be gaps in the numbers of the tracts listed. Some of the blocks identified in the final environmental statement may not be included in this notice.

Tentative Tract List
OCS Sale #53

OCS Official Protraction Diagram, San Luis Obispo, NI 10-3

(Approved March 26, 1976)

Tract	Block	Description	Hectares
53-129	589	All	2304.00
53-130	590	All	2304.00
53-131	591	All	2304.00
53-132	633	All	2304.00
53-133	634	All	2304.00
53-134	635	All	2304.00
53-135	677	All	2304.00
53-136	678	All	2304.00
53-137	679	All	2304.00
53-138	680	1/	1528.66*
53-139	721	All	2304.00
53-140	722	All	2304.00
53-141	723	All	2304.00
53-142	724	1/	1848.35*
53-143	725	1/	16.86*
53-144	767	All	2304.00
53-145	768	All	2304.00
53-146	769	1/	1196.23
53-147	770	1/	10.37
53-148	811	All	2304.00
53-149	812	All	2304.00
53-150	813	All	2304.00

*Estimated

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OCS Official Protraction Diagram, San Luis Obispo, NI 10-3 continued

(Approved March 26, 1976)

Tract	Block	Description	Hectares
53-151	814	1/	1663.03
53-152	855	All	2304.00
53-153	856	All	2304.00
53-154	857	All	2304.00
53-155	858	All	2304.00
53-156	897	All	2304.00
53-157	898	All	2304.00
53-158	899	All	2304.00
53-159	900	All	2304.00
53-160	901	All	2304.00
53-161	902	All	2304.00
53-162	941	All	2304.00
53-163	942	All	2304.00
53-164	943	All	2304.00
53-165	944	All	2304.00
53-166	945	All	2304.00
53-167	946	All	2304.00
53-168	947	All	2304.00
53-169	985	All	2304.00
53-170	986	All	2304.00
53-171	987	All	2304.00
53-172	988	All	2304.00
53-173	989	All	2304.00
53-174	990	All	2304.00
53-175	991	All	2304.00

OCS Official Protraction Diagram, Santa Maria, NI 10-6

(Approved March 26, 1976)

Tract	Block	Description	Hectares
53-176	16	All	2304.00
53-177	17	All	2304.00
53-178	18	All	2304.00
53-179	19	All	2304.00
53-180	20	All	2304.00
53-181	21	All	2304.00
53-182	22	All	2304.00
53-183	61	All	2304.00
53-184	62	All	2304.00
53-185	63	All	2304.00
53-186	64	All	2304.00
53-187	65	All	2304.00
53-188	66	All	2304.00
53-189	67	All	2304.00
53-190	105	All	2304.00
53-191	106	All	2304.00

OCS Official Protraction Diagram, Santa Maria, NI 10-6 continued

(Approved March 26, 1976)

Tract	Block	Description	Hectares
53-192	107	All	2304.00
53-193	108	All	2304.00
53-194	109	All	2304.00
53-195	110	All	2304.00
53-196	111	All	2304.00
53-197	150	All	2304.00
53-198	151	All	2304.00
53-199	152	All	2304.00
53-200	153	All	2304.00
53-201	154	All	2304.00
53-202	155	All	2304.00
53-203	156	1/	2245.37
53-204	195	All	2304.00
53-205	196	All	2304.00
53-206	197	All	2304.00
53-207	198	All	2304.00
53-208	199	All	2304.00
53-209	200	1/	2051.92
53-210	201	1/	10.63
53-211	239	All	2304.00
53-212	240	All	2304.00
53-213	241	All	2304.00
53-214	242	All	2304.00
53-215	243	All	2304.00
53-216	244	All	2304.00
53-217	245	1/	917.10*
53-218	283	All	2304.00
53-219	284	All	2304.00
53-220	285	All	2304.00
53-221	286	All	2304.00
53-222	287	All	2304.00
53-223	288	All	2304.00
53-224	289	1/	719.12
53-225	328	All	2304.00
53-226	329	All	2304.00
53-227	330	All	2304.00
53-228	331	All	2304.00
53-229	332	1/	1976.80
53-230	333	1/	8.13
53-231	373	All	2304.00
53-232	374	All	2304.00
53-233	375	All	2304.00
53-234	376	1/	1761.43
53-235	418	All	2304.00

*Estimated

OCS Official Protraction Diagram, Santa Maria, NI 10-6 continued

(Approved March 26, 1976)

Tract	Block	Description	Hectares
53-236	419	All	2304.00
53-237	420	1/	2277.34
53-238	421	1/	738.55
53-239	463	1/	2190.91*
53-240	464	1/	2076.54*
53-241	465	1/	1962.21*
53-242	466	1/	1847.86*
53-243	467	1/	1733.53*

*Estimated

1/ That portion seaward of the three geographical mile line.

13. Lease Terms and Stipulations. All leases issued as a result of this sale will be for an initial term of 5 years. Leases issued as a result of this sale will be on Form 3300-1 (September 1978), available from the Manager, Pacific Outer Continental Shelf Office, at the address stated in paragraph 2.

(a) For leases resulting from this sale for tracts offered on a cash bonus basis with a fixed net profit share, listed in paragraph 4(c), Form 3300-1 will be amended as follows:

Sec. 4 Rentals. The phrase "which commences prior to a discovery in paying quantities of oil or gas on the leased area" is hereby deleted and replaced by "which commences prior to the date the first profit share payment becomes due."

Sec. 5. Minimum Royalty. Hereby deleted.

Sec. 6. Royalty on Production. Hereby replaced by Fixed Net Profit Share. The lessee agrees to pay a net profit share rate of 45 percent with a fixed capital recovery factor of 1.00 (which is a fixed capital recovery multiplier of 2.00) calculated pursuant to 10 CFR 390.

(b) For leases resulting from this sale for tracts offered on a cash bonus basis with fixed sliding scale royalty, listed in paragraph 4(b), Form 3300-1 will be amended as follows:

Sec. 6 Royalty on Production. (a) The lessee agrees to pay the lessor royalty of that percent in amount or value of production saved, removed or sold from the leased area as determined by the sliding scale royalty formula as follows. When the quarterly value of production, adjusted for inflation, is less than or equal to $14.7878536 million, a royalty of 16.66667 percent in amount or value of production saved, removed or sold will be due on the unadjusted value or amount of production. When the adjusted quarterly value of production is equal to or greater than $14.7878537 million, but less than or equal to $1197.2061410 million, the royalty percent due on the unadjusted value or amount of production is given by

$$Rj = b[Ln (Vj/S)]$$

where

Rj = the percent royalty that is due and payable on the unadjusted amount or value of all production saved, removed or sold in quarter j

b = 11.0

Ln = natural logarithm

Vj = the value of production in quarter j, adjusted for inflation, in millions of dollars

S = 3.25

when the adjusted quarterly value of production is equal to or greater than $1197.2061410 million, a royalty of 65.00000 percent in amount or value of production saved, removed or sold will be due on the unadjusted quarterly value of production. Thus, in no instance will the quarterly royalty due exceed 65.00000 percent in amount or value of quarterly production saved, removed or sold.

In determining the quarterly percent due, Rj, the calculation will be carried to five decimal places (for example, 21.25878 percent). This calculation will incorporate the adjusted quarterly value of production, Vj, in millions of dollars, rounded to the sixth digit, i.e., to the nearest dollar (for example, 15.392847 millions of dollars). Gas of all kinds (except helium) is subject to royalty. The lessor shall determine whether production royalty shall be paid in amount or value.

(c) Except as otherwise noted, the following stipulations will be included in each lease resulting from this proposed sale. In the following stipulations the term DCMOFO refers to the Pacific Area Deputy Conservation Manager, Offshore Field Operation of the Geological Survey and the term Manager refers to the Manager of the Pacific OCS Office of the Bureau of Land Management.

Stipulation No. 1

(a) If the DCMOFO has reason to believe that biological populations or habitats exist and require protection, he shall give the lessee notice that the lessor is invoking the provisions of this stipulation and the lessee shall comply with the following requirements. Prior to any drilling activity or the construction or placement of any structure for exploration or development on lease areas including, but not limited to, well drilling and pipeline and platform placement hereinafter referred to as "operation," the lessee shall conduct site specific surveys as approved by the DCMOFO and in accordance with prescribed biological survey requirements to determine the existence of any special biological resource including, but not limited to:

(1) Very unusual, rare, or uncommon ecosystems or ecotones.

(2) A species of limited regional distribution that may be adversely affected by any lease operations.

If the results of such surveys suggest the existence of a special biological resource that may be adversely affected by any lease operation, the lessee shall: (1) relocate the site of such operation so as not to adversely affect the resources identified; (2) establish to the satisfaction of the DCMOFO, on the basis of the site specific survey, either that such operation will not have a significant adverse effect upon the resource identified or that a special biological resource does not exist. The DCMOFO will review all data submitted and determine, in writing, whether a special biological resource exists and whether it may be significantly affected by the lessee's operations. The lessee may take no action until the DCMOFO has given the lessee written directions on how to proceed.

(b) The lessee agrees that if any area of biological significance should be discovered during the conduct of any operations on the leased area, he shall report immediately such findings to the DCMOFO, and make every reasonable effort to preserve and protect the biological resource from damage until the DCMOFO has given the lessee directions with respect to its protection.

Stipulation No. 2

If the DCMOFO, having reason to believe that a site, structure or object of historical or archaeological significance, hereinafter referred to as a "cultural resource," may exist in the lease area, gives the lessee written notice that the lessor is invoking the provisions of this stipulation, the lessee shall upon receipt of such notice comply with the following requirements.

Prior to any drilling activity or the construction or placement of any structure for exploration or development on the lease, including but not limited to, well drilling and pipeline and platform placement, hereinafter in this stipulation referred to as "operation," the lessee shall conduct remote sensing surveys to determine the potential existence of any cultural resource that may be affected by such operations. All data produced by such remote sensing surveys as well as other pertinent natural and cultural environmental data shall be examined by a qualified marine survey archaeologist to determine if indications are present suggesting the existence of a cultural resource that may be adversely affected by any lease operation. A report of this survey and assessment prepared by the marine survey archaeologist shall be submitted by the lessee to the DCMOFO and the Manager for review.

If such cultural resource indicators are present the lessee shall: (1) locate the site of such operation so as not to adversely affect the identified location; or (2) establish, to the satisfaction of the DCMOFO, on the basis of further archaeological investigation conducted by a qualified marine survey archaeologist or underwater archaeologist using such survey equipment and techniques as deemed necessary by the DCMOFO, either that such operation shall not adversely affect the location identified or that the potential cultural resource suggested by the occurrence of the indicators does not exist.

A report of this investigation prepared by the marine survey archaeologist or underwater archaeologist shall be submitted to the DCMOFO and the Manager for their review. Should the DCMOFO determine that the existence of a cultural resource which may be adversely affected by such operation is sufficiently established to warrant protection, the lessee shall take no action that may result in an adverse effect on such cultural resource until the DCMOFO has given directions as to its preservation.

The lessee agrees that if any site, structure, or object of historical or archaeological significance should be discovered during the conduct of any operations on the leased area, he shall report immediately such findings to the DCMOFO and make every reasonable effort to preserve and protect the cultural resource from damage until the DCMOFO has given directions as to its preservation.

Stipulation No. 3

(a) To be included in any lease resulting from this sale for tracts:

53-156, 53-157, 53-158, 53-159, 53-162, 53-163, 53-164, and 53-165.

Exploratory drilling operations, emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas, and the emplacement of pipelines will not be allowed within the potentially unstable portion of a lease block unless or until the lessee has demonstrated to the DOMOFO's satisfaction that mass movement of sediments is unlikely or that exploratory drilling operations, structures (platforms), casing, wellheads and pipelines can be safely designed to protect the environment in case such mass movement occurs at the proposed location. This may necessitate that all exploration for and development of oil or gas be performed from locations outside of the area of unstable sediments, either within or outside of this lease block.

If exploratory drilling operations are allowed, site specific surveys shall be conducted to determine the potential for unstable bottom conditions. If emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas is allowed, all such unstable areas must be mapped. The DOMOFO may also require soil testing before exploration and production operations are allowed.

(b) To be included in any lease resulting from this sale for tracts:

53-226, 53-227, 53-228, 53-231, 53-232, 53-233, 53-235, 53-236, 53-237, and 53-239.

Exploratory drilling operations, emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas or emplacement of pipelines will not be allowed within the potentially unstable portions of this lease block unless or until the lessee has demonstrated to the DOMOFO's satisfaction that exploratory drilling operations, structures (platforms), casing, wellheads and pipelines can be safely designed to protect the environment at the proposed location. This may necessitate that all exploration for and development of oil or gas be performed from locations outside of the area of submarine canyons or channels, either within or outside of this lease block.

If exploratory drilling operations are allowed, site specific surveys shall be conducted to determine the potential for unstable bottom conditions. If emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas are allowed, all such unstable areas must be mapped. The DOMOFO may also require soil testing before exploration and production operations are allowed.

(c) To be included in any lease resulting from this sale for tracts:

53-131, 53-138, 53-142, 53-143, 53-146, 53-147, 53-150, 53-151, 53-155, 53-161, 53-168, 53-175, 53-182, 53-189, 53-196, 53-203, 53-209, 53-210, 53-217.

Exploratory drilling operations, emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas and the emplacement of pipelines will not be allowed in the vicinity of the fault until the lessee has demonstrated to the DOMOFO's satisfaction that exploratory drilling operations, structures (platforms), casing, wellheads and pipelines can be safely designed to protect the environment in case fault movement occurs at the proposed location. This may necessitate that all exploration for and development of oil or gas be performed from locations outside of the area of potential fault movement, either within or outside of this lease block.

If exploratory drilling operations are allowed, site specific surveys shall be conducted to determine the potential for active faulting. If emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas are allowed, all fault zones must be mapped. The DOMOFO may also require soil testing before exploration and production operations are allowed.

Stipulation No. 4

This stipulation applies to those tracts located in military operating areas. The tracts affected are listed with the appropriate military geographical area coordinator.

Tracts 53-129 through 53-243: Commander, Western Space and Missile Center (WSMC) and the Commander, Pacific Missile Test Center (PMTC), or other appropriate military agency.

(a) The lessee agrees that prior to operating or causing to be operated on its behalf boat or aircraft traffic into individual, designated warning areas, the lessee shall coordinate and comply with instructions from the Commander, Western Space and Missile Center (WSMC), and the Commander, Pacific Missile Test Center (PMTC), or other appropriate military agency. Such coordination and instruction will provide for positive control of boats and aircraft operating in the warning areas at all times.

(b) The lessee, recognizing that mineral exploration and exploitation and recovery operations of the leased areas of submerged lands can impede tactical military operations, hereby recognizes and agrees that the United States reserves and has the right to temporarily suspend operations of the lessee under this lease in the interests of national security requirements. Such temporary suspension of operations, including the evacuation of personnel, and appropriate sheltering of personnel not evacuated (an appropriate shelter shall mean the protection of all lessee personnel for the entire duration of any Department of Defense activity from flying or falling objects or substances), will come into effect upon the order of the DOMOFO, after consultation with the Commander, Western Space and Missile Center (WSMC), and the Commander, Pacific Missile Test Center (PMTC), or other appropriate military agency, or higher authority, when national security interests necessitate such action. It is understood that any temporary suspension of operations for national security may not exceed seventy-two hours; however, any such suspension may be extended by order of the DOMOFO. During such periods equipment may remain in place.

(c) The lessee agrees to control his own electromagnetic emissions and those of his agents, employees, invitees, independent contractors or subcontractors emanating from individual, designated defense warning areas in accordance with requirements specified by the Commander, Western Space and Missile Center (WSMC), and the Commander, Pacific Missile Test Center (PMTC), or other appropriate military agency, to the degree necessary to prevent damage to, or unacceptable interference with Department of Defense flight, testing or operations activities conducted within individual, designated warning areas. Necessary monitoring, control, and coordination with the lessee, his agents, employees, invitees, independent contractors or subcontractors, will be effected by the Commander of the appropriate onshore military installation conducting operations in the particular warning area: provided, however, that control of such electromagnetic emissions shall permit at least one continuous channel of communication between a lessee, its agents, employees, invitees, independent contractors or subcontractors and onshore facilities.

Stipulation No. 5

To be included in any lease resulting from this sale for tracts: 53-129 through 53-243.

Whether or not compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occurs in, on, or above the Outer Continental Shelf, to any person or persons or to any property of any person or persons who are agents, employees or invitees of the lessee, its agents, independent contractors or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the Outer Continental Shelf, if such injury or damage to such person or property occurs by reason of the activities of any agency of the U.S. Government, its contractors, or subcontractors, or any of their officers, agents or employees, being conducted as a part of, or in connection with, the programs and activities of the Western Space and Missile Center (WSMC), the Pacific Missile Test Center (PMTC), or other appropriate military agency.

Notwithstanding any limitations of the lessee's liability in section 14 of the lease, the lessee assumes the risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of their officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee, and to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the aforementioned military installations and agencies, whether the same be caused in whols or in part by the negligence or fault of the United States, its contractors, or subcontractors, or any of their officers, agents, or employees and whether such claims might be sustained under theories of strict or absolute liability or otherwise.

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Stipulation No. 6

a) Pipelines will be required: 1) if pipeline rights-of-way can be determined and obtained; 2) if laying of such pipelines is technologically feasible and environmentally preferable; and 3) if, in the opinion of the lessor, pipelines can be laid without net social loss, taking into account any incremental costs of pipelines over alternative methods of transportation and any incremental benefits in the form of increased environmental protection or reduced multiple use conflicts. The lessor specifically reserves the right to require that any pipeline used for transporting production to shore be placed in certain designated management areas. In selecting the means of transportation, considerations will be given to any recommendation of the intergovernmental planning program for assessment and management of transportation of Outer Continental Shelf oil and gas with the participation of Federal, State, and local governments and the industry.

b) Following the completion of pipeline installation, no crude oil production will be transported by surface vessel from offshore production sites, except in the case of emergency. Determinations as to emergency conditions and appropriate responses to these conditions will be made by the DCMDFO.

c) Where the three criteria set forth in the first sentence of this stipulation are not met and surface transportation must be employed, all vessels used for carrying hydrocarbons to shore from the leased area will conform with all standards established for such vessels, pursuant to the Port and Tanker Safety Act of 1978 (PL 95-474).

Stipulation No. 7

(a) Wells. Subsea well heads and temporary abandonments, or suspended operations that leave protrusions above the sea floor, shall be protected, if feasible, in such a manner as to allow commercial trawl gear to pass over the structure without snagging or otherwise damaging the structure or the fishing gear. Latitude and longitude coordinates of these structures, along with water depths, shall be submitted to the DCMDFO. The coordinates of such structures will be determined by the lessee utilizing state-of-the-art navigation systems with accuracy of at least ±50 feet (15.25 meters) at 200 miles (322 kilometers).

(b) Pipelines. All pipelines, unless buried, including gathering lines, shall have a smooth surface design. In the event that an irregular pipe surface is unavoidable due to the need for valves, anodes or other structures, those irregular surfaces shall be protected in such a manner as to allow trawl gear to pass over the object without snagging or otherwise damaging the structure or the fishing gear.

Stipulation No. 8

The lessee shall include in his exploration and development plans, submitted under 30 CFR 250.34, a proposed fisheries training program for review and approval by the DCMDFO. The training program shall be for the personnel involved in vessel operations (related to offshore exploration and development and production operations), and platform and shorebased supervisors. The purpose of the training program shall be to familiarize persons working on the project of the value of the commercial fishing industry and the methods of offshore fishing operations and the potential hazards, conflicts and impacts resulting from offshore oil and gas activities. The program shall be formulated and implemented by qualified instructors.

Stipulation No. 9

To be included only in the leases resulting from this sale for the 33 1/3 percent royalty tracts and the fixed sliding scale royalty tracts identified in paragraph 4(a) and 4(b) of this notice.

(a) The royalty rate on production saved, removed or sold from this lease is subject to consideration for reduction under the same authority that applies to all other oil and gas leases on the Outer Continental Shelf (30 CFR 250.21). The Director, U.S. Geological Survey, may grant a reduction for only one year at a time and reduction of royalty rates will not be approved unless production has been under way for one year or more.

(b) Although the royalty rate specified in section 6 (a) of this lease or as subsequently modified in accordance with applicable regulations and stipulations is applicable to all production under this lease, not more than 16-2/3 percent of the production saved, removed or sold from the lease area may be taken as royalty in amount, except as provided in sec. 15(d); the royalty on any portion of the production saved, removed or sold from the lease in excess of 16-2/3 percent may only be taken in value of the production saved, removed or sold from the lease area.

14. Information to Lessees. The Department of the Interior will seek the advice of the State of California and other Federal agencies to identify areas of special biological or cultural resources.

Bidders are advised that the Department of Energy is authorized, under Section 302(b) & (c) of the Department of Energy Organization Act, to establish production rates for all Federal oil and gas leases.

Operations on some of the tracts offered for lease may be restricted by designation of fairways, precautionary zones, or traffic separation schemes established by the Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq). Corps of Engineers permits are required for construction of any artificial islands, installations and other devices permanently or temporarily attached to the seabed located on the Outer Continental Shelf in accordance with section 4(e) of the Outer Continental Shelf Lands Act of 1953, as amended.

Bidders are advised that the Departments of the Interior and Transportation have entered into a Memorandum of Understanding dated May 6, 1976, concerning the design, installation, operation and maintenence of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

Bidders are also advised that in accordance with Sec. 16 of each lease offered at this sale, the lessor may require a lessee to operate under a unit, pooling or drilling agreement, and that the lessor will give particular consideration to requiring unitization in instances where one or more reservoirs underlie two or more leases with either a different royalty rate or a net profit share payment.

15. OCS Orders. Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Pacific Region Orders, as of their effective date, and any other applicable OCS Order as it becomes effective.

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federal register

Monday
October 27, 1980

Part IV

Department of Transportation

Federal Aviation Administration

U.S. National Aviation Standard; Active Beacon Collision Avoidance System

DEPARTMENT OF TRANSPORTATION

U.S. National Aviation Standard; Active Beacon Collision Avoidance System

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Invitation for public comment on the Final U.S. National Aviation Standard for the Active Beacon Collision Avoidance System (BCAS).

SUMMARY: Active BCAS is a collection of airborne installations that make use of air-air transmissions for the purpose of aircraft separation assurance in low-to-medium density airspace. It is intended to satisfy the operational need for an airborne separation assurance service and to ensure compatibility with all other elements of the National Airspace System. Its operation does not depend upon the existence of any of these other elements except Air Traffic Control Radar Beacon System (ATCRBS) transponders with altitude encoders or Discrete Address Beacon System (DABS) transponders with altitude encoders in other aircraft. The standard defines the system and the performance characteristics, including technical parameters, of its subsystems. While not regulatory, the standard may provide the basis for later rule making concerning airborne collision avoidance equipment.

FOR FURTHER INFORMATION CONTACT: R. L. Bowers, Aircraft Separation Assurance Branch, ARD-244, Communications and Surveillance Division, Systems Research and Development Service, Federal Aviation Administration, Department of Transportation, Nassif Building, 400 7th Street SW., Washington, DC 20590, telephone 202-426-8432. Additional copies of this notice may be obtained from the same address.

Invitation of Public Comments

Interested persons are invited to submit written data and comments on this U.S. National Aviation Standard as they may desire. Communications should identify the notice number and be submitted in duplicate to: Director, Systems Research and Development Service, Attn: ARD-10, Federal Aviation Administration, Department of Transportation, Nassif Building, 400 7th Street SW., Washington, DC 20590, on or before February 27, 1981. Copies of comments received will be made available through ARD-10 for examination before and after the closing date for comments.

Description

The Active Beacon Collision Avoidance System is an important element of the engineering and development program for Aircraft Separation Assurance (ASA). The other elements include Full-Capability BCAS, Automatic Traffic Advisory and Resolution Service (ATARS), Conflict Alert, Conflict Resolution and Automated Terminal Service. It is intended to be a stand-alone development which is independent of the other elements of the ASA program but which will operate compatibly and cooperatively with the other elements should any or all of them be implemented. Use of the signal formats of the Discrete Address Beacon System (DABS) has been selected for BCAS to provide for high quality system communications and to allow evolutionary transition to the enhanced performance capabilities of that system when it is implemented.

History

The "Proposed U.S. National Aviation Standard for the Active Beacon Collision Avoidance System" was published in the **Federal Register** (43 FR 59565) on December 21, 1978, with a supplementary notice published in 44 FR 4920 on February 15, 1979. The BCAS National Standard has been extensively revised since that time. Changes to the standard fall into three major areas:

1. Editorial. The standard has been reorganized into the same style and sequence as used for the DABS National Standard. Additionally, most of the tutorial material has been eliminated.

2. Formats and Protocols. These have been changed to conform with the current DABS National Standard.

3. Collision Avoidance Algorithm. Certain functions of the collision avoidance algorithm have been included to ensure that the Active BCAS units interface satisfactorily with each other, with ATARS, with Full-Capability BCAS, and with the air traffic control system.

Definition of U.S. National Standard

U.S. National Aviation Standards are system standards embodying descriptions of system characteristics. They are issued by the Administrator of the Federal Aviation Administration in accordance with Section 312(c) of the Federal Aviation Act (49 USC 1353(c)). They describe the performance characteristics (the technical parameters, tolerances and techniques) of major elements of the system to the extent necessary to assure proper operation and interface compatibility among elements of the National Airspace System (NAS). U.S. National Aviation Standards generally are limited to cooperative air-to-ground subsystems involving government owned ground equipment and private airborne equipment. They are not equipment specifications or standards pertaining to planning, programming, siting, installation, availability, reliability or maintainability.

Relationship of U.S. National Aviation Standards to Federal Aviation Regulations

U.S. National Aviation Standards issued by the Administrator in agency orders are binding only on FAA organizational elements. They establish the technical basis and description of the NAS and component subsystems. A National Aviation Standard is not a standard of general or particular applicability designed to implement or prescribe law or policy. It does not fall within the definition of "rule" contained in the Administrative procedures Act (5 USC 551). There is no requirement that a National Aviation Standard be published as a notice of proposed rule making in the **Federal Register**. However, U.S. National Aviation Standards may serve as the basis for subsequent rule making actions. Accordingly, because of the relationship between the Standards and possible subsequent regulator actions, FAA publishes such Standards in the **Federal Register** and solicits public comment prior to their approval by the Administrator.

The Standard

Accordingly, the Federal Aviation Administration proposes to adopt the following BCAS Standard.

Issued in Washington, DC, on October 20, 1980.

Robert W. Wedan,

Director, Systems Research and Development Service Engineering and Development, Federal Aviation Administration Department of Transportation.

U.S. National Aviation Standard for the Active Beacon Collision Avoidance System (Final Standard for Public Comment

October 20, 1980

Systems Research and Development Service, Federal Aviation Administration, Washington, D.C. 20590

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U.S. NATIONAL AVIATION STANDARD FOR THE ACTIVE BEACON COLLISION AVOIDANCE SYSTEM

1. General.

1.1 System Features

1.1.1 The Function of Active BCAS

The Active Beacon Collision Avoidance System (Active BCAS) is a collection of airborne installations that make use of air-air beacon transmissions for the purpose of aircraft separation assurance in low-to-medium density airspace. The principal functions of a BCAS unit installed on an aircraft are:

a. Detect the presence of other aircraft flying in the vicinity and make position measurements. A BCAS unit is capable of detecting and tracking in range and altitude aircraft that are equipped with BCAS units and aircraft that are equipped with Air Traffic Control Radar Beacon System (ATCRBS) transponders with altitude encoders or Discrete Address Beacon System (DABS) transponders with altitude encoders.

b. Determine if any of these aircraft represents a collision threat.

c. Determine an appropriate aircraft vertical maneuver to resolve an encounter if a threat is detected.

d. Coordinate the maneuver decision with the other aircraft if it is also equipped with separation assurance capability so that the resulting maneuvers are compatible.

e. Communicate the maneuver decision (resolution advisory) to the pilot.

1.1.2 Rationale for the BCAS National Standard

1.1.2.1 Legal Rationale

Under Section 312(c) of the Federal Aviation Act as amended (49 U.S.C. 1353(c)), the Department of Transportation has the responsibility for the development and operation of a common system of air traffic control and navigation for both military and civil aircraft. Explicitly, the Act requires the Secretary to develop, modify, test and evaluate systems, procedures, facilities, and devices, as well as define the performance characteristics thereof, to meet the needs for safe and efficient navigation and traffic control of all civil and military aviation, except for those needs of military agencies which are peculiar to air warfare and primarily of military concern. The promulgation of a national aviation standard for Active BCAS is in keeping with this directive, as it will permit uniformity among aircraft collision avoidance systems, promoting greater efficiency and safety in aviation.

1.1.2.2 Technical Rationale

U.S. national aviation standards are system standards containing descriptions of those systems selected for implementation as a result of these developments, modifications and test and evaluation efforts. They describe system characteristics, including technical parameters that ensure proper operation and compatibility between elements of the National Airspace System.

1.2 Coordination of BCAS With Other Elements of the National Airspace System

BCAS is compatible with other existing and proposed elements of the National Airspace System, and the operation of BCAS may be automatically coordinated with the operation of these other elements.

1.2.1 Coordination With Ground Air Traffic Control

The operation of BCAS does not require ground equipment. However, where appropriate ground units are available, the operation of airborne BCAS equipment can be automatically coordinated with the air traffic control system. The DABS transponder on board the BCAS aircraft is used for communicating with DABS ground sensors and is the principal means for coordinating with ground air traffic control (ATC) in areas of DABS coverage. Where there is no DABS ground sensor, BCAS can communicate with a special unit on the ground known as an RBX. The RBX may be used for coordination with ground air traffic control facilities.

1.2.2 Coordination With the Automatic Traffic Advisory and Resolution Service

The Automatic Traffic Advisory and Resolution Service (ATARS) is a ground-based collision avoidance service which employs a DABS ground sensor for aircraft surveillance and ground-air communications. Provisions are included in the BCAS airborne equipment for coordinating with ATARS when in areas of ATARS coverage.

1.2.3 Compatibility With ATCRBS and DABS Surveillance Systems

The BCAS is designed for full operational compatibility with ATCRBS and DABS equipment. BCAS provides surveillance of both ATCRBS and DABS transponders and includes safeguards to prevent interference with the operation of ATCRBS and DABS ground surveillance systems.

1.2.4 Compatibility With ATCRBS IFF Mark XII System (AIMS)

The BCAS system is designed for full operational compatibility with AIMS including Mode 4.

1.2.5 Compatibility With Full-Capability BCAS

Full-capability BCAS (Full BCAS) is an extended Beacon Collision Avoidance System designed to operate in all airspace. It provides pilot resolution advisories both in the horizontal and vertical planes through the use of modes of operation not available in Active BCAS. Active BCAS is designed for full operational compatibility with Full BCAS.

1.3 Scope of This Standard

This document describes and standardizes those characteristics of the Active Beacon Collision Avoidance System which must be controlled to provide compatibility among components of the system and to prevent impairment of services to other users of the airspace. The document standardizes signal characteristics and coordination protocols and provides limits on radiated energy. All applications of Active BCAS messages are standardized and no experimental or ad hoc applications should be implemented without prior approval of the Federal Aviation Administration.

1.3.1 Relationship to Other U.S. National Aviation Standards

Since the BCAS interacts with other systems and subsystems which are also part of the National Airspace System, the standards governing pertinent other systems are referenced herein (1.6). In the event of conflict between this Standard and either of the referenced standards, this Standard takes lower precedence.

1.3.2 Items Not Covered

This Standard does not prescribe the detailed technical features and capabilities of Active BCAS ground or airborne equipment nor the minimum performance standards which must be met for operation in the National Airspace System. Other documentation will prescribe such minimum performance standards for both ground-based and airborne equipment. This Standard does not in any way define or constrain the media, devices or formats for cockpit display of BCAS advisories or traffic information.

1.4 Overall System Capability

1.4.1 Coverage

The airborn BCAS equipment performs surveillance of all aircraft equipped with ATCRBS or DABS transponders and encoding altimeters within its line-of-sight coverage airspace. BCAS equipment can be designed, in accordance with this Standard, to provide serviceable coverage at air-air ranges out to 20 nmi; a particular installation may be adapted to shorter ranges to match the performance capability of the aircraft in which is is installed. Similarly, RBX equipment can provide serviceable performance at ranges out to 50 nmi, while particular installations may be adapted to shorter ranges. Serviceable coverage corresponds to a link margin of 3 dB given nominal equipment and antenna parameters.

1.4.2 BCAS Operation

BCAS alternates between DABS and ATCRBS surveillance modes. The airborne BCAS equipment may use non-directional antennas, hence surveillance data may consist of range and altitude information only. Because of this, the threat detection and resolution logic limits its resolution advisories to the vertical dimension. BCAS may use antennas with direction finding capability in generating proximity warnings (1.4.8).

1.4.3 Coordination With Other BCAS Aircraft

The availability of an air-air link allows BACS to interact with the detected aircraft if it is BCAS equipped in order to provide coordinated resoultion, thereby preventing ties in the selection of escape maneuvers.

1.4.4 Functional Elements

The principal elements of the BCAS airbourne equipment are DABS and ATCRBS surveillance subsystems, a conflict resolution logic function and a pilot display. Every BCAS aircraft has a DABS transponder to provide BCAS–BCAS maneuver coordination and to coordinate with ATARS and the RBX.

1.4.5 DABS Surveillance

The DABS surveillance subsystem detects and tracks DABS-equipped aircraft. BCAS listens to squitters and replies generated by DABS transponders in response to ground interrogations in order to determine their altitudes and DABS addresses.

After BACS has received replies from a new aircraft, it compares the altitude of the aircraft against its own altitude to determine whether the aircraft should be interrogated to determine its range. If the measured range and the reported speed capability indicate that it is or could soon be a collision threat, the aircraft is regularly interrogated and the resulting track data are fed to the conflict resolution algorithms.

1.4.6 ATCRBS Surveillance

ATCRBS surveillance is accomplished by the transmission of modified ATCRBS Mode C interrogations at regular intervals. These interrogations elicit replies from ATCRBS transponders but, to minimize interference, DABS transponders do not reply.

ATCRBS synchronous interferences may be controlled by alternating Mode C interrogations and ATCRBS suppression transmissions at varying power levels to reduce the population of ATCRBS transponders replying to each interrogation.

1.4.7 Conflict Resolution

BCAS generates the following types of resolution advisories:

a. Positive advisories.

b. Negative advisories.

c. Vertical speed limit advisories.

d. Vertical speed minimum advisories.

An advisory is generated for each aircraft whose tracked range, range rate, altitude and altitude rate indicate that its projected separation is within predefined bounds. These threat boundaries vary according to local traffic and airspace conditions. Such variations are either based on external inputs, pilot inputs, or aircraft altitude. If the threat aircraft is also BCAS or ATARS equipped, a coordination procedure is performed before displaying the advisory to the pilot to assure that the aircraft maneuvers are compatible.

1.4.8 Proximity Warnings

BCAS may generate warnings of proximate aircraft that provide the ranges, range rates, altitudes, altitude rates, and bearings of such aircraft. Proximity warnings may be provided for intruding aircraft for which resolution advisories are unnecessary or may be accompanied by resolution advisories.

1.4.9 Display

The display indicates to the pilot the advisories generated by the conflict resolution function. The BCAS display is also used for the display of Automated Traffic Advisory and Resolution Service messages received by the DABS transponder from the ground.

1.5 Acronyms and Abbreviations

1.5.1 Acronyms

ASA: Aircraft Separation Assurance
ATARS: Automatic Traffic Advisory and Resolution Service
ATC: Air Traffic Control
ATCRBS: Air Traffic Control Radar Beacon System
BCAS: Beacon Collision Avoidance System
DABS: Discrete Address Beacon System
RAR: Resolution Advisory Register
RBX: Radar Beacon Transponder

1.5.2 Abbreviations

ABS(X): absolute value of X
FPM: feet per minute
FPS^2: feet per second per second
.GE.: is greater than or equal to
.GT.: is greater than
.LE.: is less than or equal to
LSB: least significant bit
.LT.: is less than
MAX(X): the maximum of the elements of the set X
MIN(X): the minimum of the elements of the set X
MSB: most significant bit
VSL: Vertical Speed Limit
VSM: Vertical Speed Minimum

1.6 References

Reference A: "U.S. National Standard for the IFF Mark X (SIF)/Air Traffic Control Radar Beacon System Characteristics", Attachment 1 to DOT/FAA Order 1010.51A, 8 March 1971.

Reference B: "U.S. National Aviation Standard for the Discrete Address Beacon System".

Note.—A reference to paragraph 4.1 of reference B would be shown herein as ref. B: 4.1.

2. Signals In Space

2.1 RF Characteristics

The radio frequency characteristics of all signals employed by BCAS conform to either the U.S. National Aviation Standard for ATCRBS or the U.S. National Aviation Standard for DABS (ref. A or B).

3. Signal Content

Note.—The DABS National Standard (ref. B) describes the location and coding of the general information contained in DABS transmissions. This section summarizes that description for the message formats used for BCAS/ATARS/RBX messages.

3.1 Data Blocks

The interrogation and reply data blocks can contain either 56 or 112 bits.

3.2 Format Structure

DABS transmission formats consist of 56 or 112 bits of which 24 bits are used as the address while the rest are used

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for information transfer. The interrogation and reply formats which can contain BCAS/ATARS/RBX information are presented in Figures 3.2–1 and 3.2–2.

3.2.1 Bit Numbering and Sequence

The bits are numbered in order of their transmission, beginning with bit 1. Numerical values are encoded with the MSB transmitted first.

3.2.2 Fields

Information is coded in fields which consist of one or more bits. In this document the decimal equivalent of the binary code formed by the bit sequence within a field is used as the designator of the field function or command.

Note.—As an example, the 5-bit UF field is used to designate the uplink format type. The surveillance interrogation with identity is designated by a UF code of 001 01. Since 001 $01_2 = 5_{10}$, this format is designated as UF=5.

3.2.2.1 Essential Fields

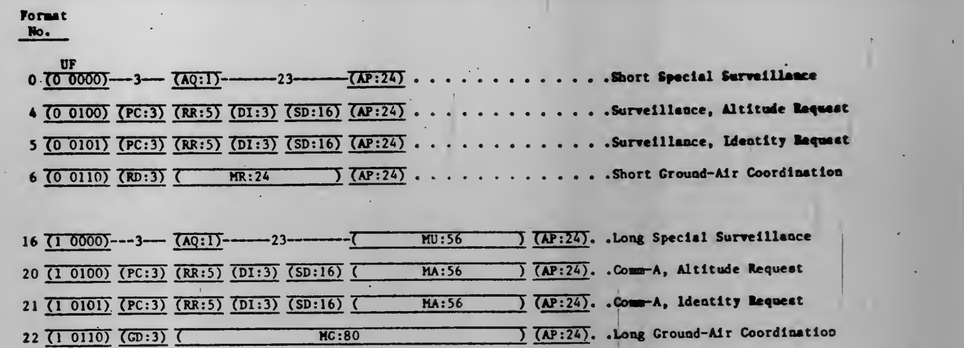
Each DABS transmission contains two essential fields: One describing the format and the other providing the address. The format descriptor is a 5 bit field at the beginning of the transmission and the address field always occurs at the end of the transmission. The formats are described by the UF (Uplink Format) or DF (Downlink Format) fields. The 24 bit address field carries parity information according to ref. B: 4.1. The designator is AP (Address/Parity).

3.2.2.2 Mission Fields

The remaining coding space is used to transmit the mission fields. For specific missions, a specific set of fields is prescribed.

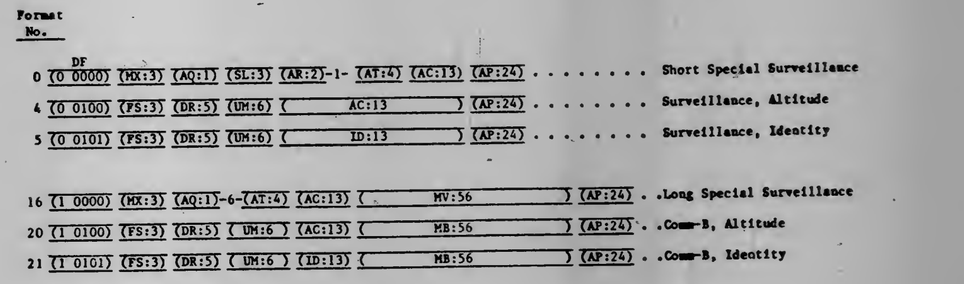
Note.—Mission fields have two-letter designators within this Standard.

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Note: (1) (XX:M) denotes a field designated "XX" which is assigned M bits.
(2) ---N--- denotes unassigned coding space, N bits; must be set to all zeroes.
(3) The format number in the above uplink formats (UF) corresponds to the binary code in the first 5 bits of the interrogation.
(4) UF=6 is used for RBX ground-air communications, and UF=22 is used for RBX air-ground communications.

Fig. 3.2-1. DABS Interrogation or Uplink Formats Used for BCAS/ATARS/RBX Messages.



Note: (1) (XX:M) denotes a field designated "XX" which is assigned M bits.
(2) ---N--- denotes unassigned coding space, N bits; must be set to all zeroes.
(3) The format number in the above downlink formats (DF) corresponds to the binary code in the first 5 bits of the reply.

Fig. 3.2-2. DABS Reply or Downlink Formats Used for BCAS/ATARS/RBX Messages.

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3.2.2.3 Subfields

Subfields may appear within mission fields.

Note.—Subfields are labelled with three-character alphanumeric designators within this Standard. Information which appears as a subset of a subfield is labelled with a four-character alphanumeric designator.

3.3 Field Descriptions

The fields and subfields which are applicable to the formats containing BCAS/ATARS/RBX information are described in this section. Fields and subfields defined by the DABS National Standard are described in 3.3.1; fields and subfields introduced by this Standard are defined in 3.3.2. Table 3.3–1 provides an index of these fields and subfields.

3.3.1 Fields and Subfields Defined by DABS National Standard

Note.—Certain coding reserved for ASA services in the DABS National Standard is further described in this section.

3.3.1.1 AC Altitude Code

Downlink, 13 bits, 20 through 32. Appears in downlink formats which report aircraft altitude (DF=0, 4, 16, 20). Coded according to pattern of ref. A: 2.7.13.2.5 and ref. A: Figure 1 if bit 26 is zero. Starting with bit 20, the sequence is C1, A1, C2, A2, C4, A4, M, B1, D1, B2, D2, B4, D4. Zero is transmitted in each of the 13 bits if altitude information is not available. Metric altitude is contained in this field if the M bit (bit 26) is set to '1'.

Note.—Metric altitude codes are not included in this Standard but may be defined in a future Standard. Currently, there is no standard metric Mode C altitude code.

3.3.1.2 AP Address/Parity

Uplink and downlink, 24 bits, 33 through 56 or 89 through 112. Appears in all formats. Parity is overlaid on the address according to ref. B: 4.1.2.

3.3.1.3 AQ Acquisition, Special

Uplink and downlink, 1 bit, 9. Appears in special surveillance formats UF=DF=0, and UF=DF=16. The code appearing in this field, when received in the uplink is repeated in the downlink. For protocol see 4.2.2.1 and 4.2.2.2.

3.3.1.4 AT ATARS

Downlink, 4 bits, 16 through 19. Appears in special surveillance formats DF=0, 16. For protocol see ref. B: 4.16.1.1.

Coding:

Bits 16 through 19 are assigned to ATARS address codes A through D sequentially; bit 16 representing site A.

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Table 3.3-1a
FIELD INDEX - SHEET A

Field	Sub Field	Bits No.	Bits Position	Formats Up	Formats Down	Reference Paragraph(s) Content	Reference Paragraph(s) Protocol
AC		13	20-32		X	3.3.1.1	4.2.3
AP		24	33-56 or 89-112	X	X	3.3.1.2	4.2.1;4.5.2.1; 4.5.3.1 Ref. B: 4.1.2; B: 4.2.1.1; B: 4.2.1.2
AQ		1	9	X	X	3.3.1.3	4.2.2.1;4.2.2.2 4.2.3.1;4.2.3.2 Ref. B: 4.18.1.1
AR		2	13,14		X	3.3.2.1	4.2.3
AT		4	16-19		X	3.3.1.4	4.2.3; Ref. B: 4.18.1.1
DF		5	1-5		X	3.3.1.5	4.2.1;4.2.3; 4.3.2.1;4.4.3 4.3.2.2;4.4.2.1; 4.4.2.2;4.4.4
DI		3	14-16	X		3.3.1.6	4.4.5
DR		5	9-13		X	3.3.1.7	4.4.4; Ref. B: 4.11.2; B: 4.12.2
FS		3	6-8		X	3.3.1.8	4.2.1; Ref. B: 4.5
GD		3	6-8	X		3.3.2.2	4.5.4.1
ID		13	20-32		X	3.3.1.9	
MA		56	33-88	X		3.3.1.10	
	ATARS Resolution Advisory Message subfields of MA:						4.4.1
	ADS	8	33-40			3.3.2.3.1	
	COL	14	42-55			3.3.2.3.1	
	IRA	1	41			3.3.2.3.1	
	SIT	3	86-88			3.3.2.3.1	

Table 3.3-1b
FIELD INDEX - SHEET B

Field	Sub Field	Bits No.	Bits Position	Formats Up	Formats Down	Reference Paragraph(s) Content	Reference Paragraph(s) Protocol
	ATCRBS Track Block Message subfields of MA:						4.4.1
	ADS	8	33-40			3.3.2.3.2	
	ADT	7	76-82			3.3.2.3.2	
	ALT	10	66-75			3.3.2.3.2	
	ATU	1	41			3.3.2.3.2	
	BRG	6	60-65			3.3.2.3.2	
	RDT	7	53-59			3.3.2.3.2	
	RNG	8	45-52			3.3.2.3.2	
	SEQ	3	42-44			3.3.2.3.2	
	SIT	3	86-88			3.3.2.3.2	
MB		56	33-88		X	3.3.1.11	
	Extended Capability Report subfields of MB:						4.4.3
	ACS	16	45-60			3.3.1.11.2	
	ARC	2	69-70			3.3.2.4.3	
	BDS	8	33-40			3.3.1.11.2	
	CBS	1	41			3.3.1.11.2	
	ECS	16	71-86			3.3.1.11.2	
	EDS	2	87-88			3.3.1.11.2	
	FDS	1	44			3.3.1.11.2	
	RAR Reply Message to ATARS subfields of MB:						4.4.2.1
	BDS	8	33-40			3.3.2.4.1	
	HO1	3	41-43			3.3.2.4.1	
	HO2	3	49-51			3.3.2.4.1	
	HO3	3	57-59			3.3.2.4.1	
	HO4	3	65-67			3.3.2.4.1	
	HO5	3	73-75			3.3.2.4.1	
	HO6	3	81-83			3.3.2.4.1	
	VE1	5	44-48			3.3.2.4.1	
	VE2	5	52-56			3.3.2.4.1	
	VE3	5	60-64			3.3.2.4.1	
	VE4	5	68-72			3.3.2.4.1	
	VE5	5	76-80			3.3.2.4.1	
	VE6	5	84-88			3.3.2.4.1	

Table 3.3-1c
FIELD INDEX - SHEET C

Field	Sub Field	Bits No.	Bits Position	Formats Up	Formats Down	Reference Paragraph(s) Content	Reference Paragraph(s) Protocol
	RAR Busy Message to ATARS subfields of MB:						4.4.2.2
	BDS	8	33-40			3.3.2.4.2	
MG		80	9-88		X	3.3.2.5	
	BCAS-to-RBX Interrogation MG subfields:						4.5.4.1
	AID	13	15-27			3.3.2.5.1	
	ALC	13	42-54			3.3.2.5.1	
	DID	24	65-88			3.3.2.5.1	
	DRA	14	28-41			3.3.2.5.1	
	RAN	10	55-64			3.3.2.5.1	
	SLR	3	12-14			3.3.2.5.1	
MR		24	9-32		X	3.3.2.6	
	RBX Squitter subfield of MR:						4.5.2
	RAD	24	9-32			3.3.2.6.1	
	RBX Reply subfields of of MR:						4.5.3.2
	RTR	6	27-32			3.3.2.6.2	
	SLC	3	22-24			3.3.2.6.2	
MU		56	33-88		X	3.3.1.12 and 3.3.2.7	
	RAR Request and Resolution Message subfields of MU:						4.3.1;4.3.1.1;
	AR1	4	47-50			3.3.2.7.1	4.3.1.2;
	AR2	4	53-58			3.3.2.7.1	
	DID	24	65-88			3.3.2.7.1	4.3.1.2.1;
	DR1	4	43-46			3.3.2.7.1	
	DR2	4	51-54			3.3.2.7.1	
	LCK	1	41			3.3.2.7.1	
	MTB	1	42			3.3.2.7.1	
	UDS	8	33-40			3.3.2.7.1	

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Table 3.3-1d
FIELD INDEX - SHEET D

Field	Sub Field	Bits No.	Bits Position	Formats Up	Formats Down	Reference Paragraph(s) Content	Reference Paragraph(s) Protocol
MV		56	33-88		X	3.3.1.13 and 3.3.2.8	
	RAR Reply Message to BCAS subfields of MV:						4.3.2.1
	HO1	3	41-43			3.3.2.8.1	
	HO2	3	49-51			3.3.2.8.1	
	HO3	3	57-59			3.3.2.8.1	
	HO4	3	65-67			3.3.2.8.1	
	HO5	3	73-75			3.3.2.8.1	
	HO6	3	81-83			3.3.2.8.1	
	VDS	8	33-40			3.3.2.8.1	
	VE1	5	41-48			3.3.2.8.1	
	VE2	5	52-56			3.3.2.8.1	
	VE3	5	60-64			3.3.2.8.1	
	VE4	5	68-72			3.3.2.8.1	
	VE5	5	76-80			3.3.2.8.1	
	VE6	5	84-88			3.3.2.8.1	
	RAR Busy Message to BCAS subfields of MV:						4.3.2.2
	VDS	8	33-40			3.3.2.8.2	
MX		3	6-9		X	3.3.1.14	4.2.3.1;4.2.3.2 Ref. B: 4.18.1.1
PC		3	6-8	X		3.3.1.15	Ref. B: 4.3; B: 4.11; B: 4.12
RD		3	6-8	X		3.3.2.9	4.5.2.1; 4.5.3.1
RR		5	9-13	X		3.3.1.16	4.4.1.1; 4.4.2.1; Ref. B: 4.2.2.1; B: 4.6.2; B: 4.6.3
SD		16	17-32	X		3.3.1.17	
	Special Designator for DI=2 (ATARS Information) subfields of SD:						4.4.5; Ref. B: 4.18
	AIS	4	17-20			3.3.1.17.1	
	RAS	1	21			3.3.1.17.1	
	SLC	3	22-24			3.3.2.10.1	
SL		3	10-12			3.3.2.11	4.2.3

Table 3.3-1e
FIELD INDEX - SHEET E

Field	Sub Field	Bits No.	Bits Position	Formats Up	Formats Down	Reference Paragraph(s) Content	Reference Paragraph(s) Protocol
UF		5	1-5	X		3.3.1.18	4.2.2; 4.3.1.1 4.3.1.2;4.4.1.1; 4.4.1.2;4.4.5; 4.5.2.1;4.5.3.1; 4.5.4.1
UM		6	14-19		X	3.3.1.19	Ref. B: 4.6.2; B: 4.7; B: 3.3.33.2

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3.3.1.5 DF Downlink Format

Downlink, 5 bits, 1 through 5. Appears in all downlink transmissions. This field is the downlink descriptor. Coding according to Fig. 3.2–2.

3.3.1.6 DI Designator, Identification

Uplink, 3 bits, 14 through 16. Appears in uplink surveillance and Comm-A formats, UF=4,5,20,21. Contains identification of coding in the SD field
Coding:
0=SD not used
1=SD contains multisite information (ref. B: 4.13.1.1)
2=SD contains ATARS information (3.3.1.17.1, 3.3.2.10.1)
3–6=not assigned
7=SD contains extended reply request (ref. B: 4.11.1.1.1)
BCAS examines the content of the SD field whenever DI=2.

3.3.1.7 DR Downlink Request

Downlink, 5 bits, 9 through 13. Appears in surveillance and Comm-B replies, DF=4,5,20,21.
Coding:
0=No downlink request
1=B bit set
2=RAR bit set
3=RAR bit set and B bit set
4–15=not assigned
16–31=see Comm-D protocol, (ref. B: 4.12.2.1)
When the RAR bit is set, i.e., RAR is non-empty, BCAS causes DR=2 or 3 to be set, as appropriate.

Note.—Requests associated with codes 1–15 take priority over requests associated with codes 16–31.

3.3.1.8 FS Flight Status

Downlink, 3 bits, 6 through 8. Appears in downlink surveillance and Comm-B formats, DF=4,5,20,21. Contains flight status.
Coding:
0=Airborne and no ALERT and no SPI
1=Airborne and no ALERT and no SIP and BCAS interrogating
2=ALERT
3=Not assigned
4=SPI
5=Not assigned
6=ALERT and SPI
7=On the ground and no ALERT and no SPI

Note.—FS=1, unless pre-empted by a higher number FS code, when BCAS operates at sensitivity levels 2 through 7. The meaning of the other codes is explained in ref. B: 4.5.

3.3.1.9 ID Identification, (4096 code)

Downlink, 13 bits, 20 through 32. Appears in downlink formats DF=5, 21 which report aircraft identification. Coded to pattern corresponding to ref. A: 2.6.

3.3.1.10 MA Message, Comm-A

Uplink, 56 bits, 33 through 88. Appears in Comm-A interrogations, UF=20,21. The MA field is used to transmit ATARS ATCRBS track block and resolution advisory information to BCAS. Contains 8-bit ADS (Comm-A Definition) subfield.

Note.—Message content and codes not related to BCAS are not included in this Standard.

3.3.1.10. Subfield in MA: ADS, A-Definition Subfield

Uplink, 8 bits, 33 through 40, subfield in MA. Defines the data contained in the remainder of MA. For convenience in coding, ADS is expressed in two groups of 4 bits each, ADS1, 33 through 36, and ADS2, 37 through 40. ADS1 defines a specific A-sink (Comm-A destination) and ADS2 defines the specific message type for that A-sink. ATARS ATCRBS track block and resolution advisory messages use ADS1=1 and 3 respectively.

3.3.1.11 MB Message, Comm-B

Downlink, 56 bits, 33 through 88. Appears in Comm-B replies, DF=20,21. The MB field is used by BCAS to transmit RAR information and extended capability reports (ref. B: 4.6.3) to the ground. Contains 8-bit BDS (Comm-B Definition) subfield.

3.3.1.11.1 Subfield in MB: BDS, B-Definition Subfield

Downlink, 8 bits, 33 through 40, subfield in MB. Defines the data contained in MB. For convenience in coding, BDS is expressed in two groups of 4 bits each, BDS1, 33 through 36, and BDS2, 37 through 40. BDS1 defines a specific B-source (Comm-B source) and BDS2 defines the specific message type from that source. Extended capability and RAR messages use BDS1=1 and 3 respectively.

3.3.1.11.2 Subfields in MB for Extended Capability Report

The following subfields defined by the DABS National Standard appear in MB for an extended capability report:
ACS: A-Capability, 16 bits, 45 through 60. Contains identity of on-board Comm-A destinations.
Coding:
To report ADS1=x, bit 45 + x is set to '1'.

Note.—BCAS aircraft must have ADS1=1 (ATARS ATCRBS track block) and ADS1=3 (ATARS resolution advisory/RAR) A-sinks on board. An A-sink is an on-board destination for long messages.

BDS: B-Definition Subfield, 8 bits, 33 through 40 (3.3.1.11.1). An extended capability report is identified by BDS1=1 and BDS2=0, the combination of which is equivalent to BDS=16.
CBS: Continuation Bit, 1 bit, 41.
Coding:
0=Capability reported only in BDS1=1, BDS2=0
1=Further capability reported in BDS1=1, BDS2.GT.0
ECS: Extended Capability, 16 bits, 71 through 86. Contains identity of on-board sources of Comm-B messages.
Coding:
To report BDS1=x, bit 71 + x is set to '1'.

Note.—BCAS aircraft must have BDS1=1 (extended capability) and BDS1=3 (RAR) B-sources on-board. A B-source is an on-board source of long messages.

EDS: ELM Description, 2 bits, 87 through 88.
Coding:
0=No ELM capability
1=Uplink ELM capability
2=Not assigned
3=Uplink and downlink ELM capability
FDS: Flight Identification, 1 bit, 44.
Coding:
0=No flight identification capability
1=Flight identification capability

Note.—A description of the remaining subfield, ARC, in MB for an extended capability report is contained in 3.3.2.4.3 because ARC is not defined in the DABS National Standard.

3.3.1.12 MU Message, Special Interrogation

Uplink, 56 bits, 33 through 88. Appears in long special surveillance interrogation, UF=16. The MU field is used by BCAS to transmit air-air coordination information.

3.3.1.13 MV Message, Special Reply

Downlink, 56 bits, 33 through 88. Appears in long special surveillance reply, DF=16. The MV field is used by BCAS (and ATARS-only aircraft) to transmit air-air coordination information.

3.3.1.14 MX Maximum Airspeed Field

Downlink, 3 bits, 6 through 8. Appears in special replies, DF=0, 16 when AQ=1. Bits 6 through 8 are free coding space when AQ=0.
Coding:
0=No data available
1=Airspeed is up to 75 knots
2=Airspeed is between 75 knots and 150 knots
3=Airspeed is between 150 knots and 300 knots
4=Airspeed is between 300 knots and 600 knots
5=Airspeed is between 600 knots and 1200 knots
6=Airspeed is more than 1200 knots
7=Aircraft is on the ground (see ref. B: 4.5.2)
The maximum true airspeed flown in normal operation is used.

3.3.1.15 PC Protocol

Uplink, 3 bits, 6 through 8. Appears in surveillance and Comm-A interrogations UF=4,5,20,21. Contains operating commands to the transponder.
Coding:
0=No action
1=General All-Call lockout (ref. B: 4.3.1)
2=Squitter lockout (ref. B: 4.3.2)
3=General All-Call lockout and squitter lockout
4=Cancel B (ref. B: 4.11.2)
5=Cancel C (ref. B: 4.12.1.3.4)
6=Cancel D (ref. B: 4.12.2.3)
7=Not assigned

3.3.1.16 RR Reply Request

Uplink, 5 bits, 9 through 13. Appears in surveillance and Comm-A interrogations, UF=4,5,20,21. Contains length and content of requested reply. The RR codes to which BCAS responds are 17 and 19.
Coding:

RR Code	Reply Length	MB Content	UM Content
17	Long	Extended Capability (ref. B: 4.6.3)	*
19	Long	RAR (4.4.2.1)	*

*The contents of UM may be specified by coding in the SD field of the interrogation. If no UM content is specified, a voluntary message may be provided (ref. B: 4.7).

Note 1.—1.If bit 1 of the RR code is a one, the last four bits of the 5-bit RR code, if transformed into their decimal equivalent, designate the number (BDS1) of the requested source.

Note 2.—2.Voluntary messages are currently undefined.

3.3.1.17 SD Special Designator

Uplink, 16 bits, 17 through 32. Appears in surveillance and Comm-A interrogations, UF=4,5,20,21. Contains control codes. Coding depends on the content of the DI field.
BCAS examines the contents of SD when DI=2 for ATARS information.

3.3.1.17.1 Subfields in SD for DI=2 (ATARS Information)

The following subfields defined by the DABS National Standard appear in SD if DI=2:
AIS: ATARS Identity, 4 bits, 17 through 20.
Coding:
0=No change in ATARS site register
1=Set ATARS site A
2=Set ATARS site B
3=Set ATARS site C
4=Set ATARS site D
5–8=Not assigned
9=Reset ATARS site A (remove site register)
10=Reset ATARS site B (remove site register)
11=Reset ATARS site C (remove site register)
12=Reset ATARS site D (remove site register)
13–15=Not assigned
RAS: Reply ATARS, 1 bit, 21.
Coding:
0=No request for ATARS register content
1=Request for ATARS register content

Note 1.—A description of the remaining subfield, SLC, in SD when DI=2 is contained in 3.3.2.10.1 because SLC is not defined in the DABS National Standard.

Note 2.—Other subfields within SD are described in ref. B: 4.11.1.1.1. and B: 4.13.1.1.

3.3.1.18 UF Uplink Formot

Uplink, 5 bits, 1 through 5. Appears in all uplink transmissions. This field is the uplink descriptor. Coding according to Fig. 3.2–1.

Note.—This field uniquely identifies the structure and content of all DABS interrogations.

3.3.1.19 UM Utility Message

Downlink, 6 bits, 14 through 19. Appears in surveillance and Comm-B replies, DF=4,5,20,21. Contains requested or volunteered data (see ref. B: 4.7).

Note.—The UM field is provided in order to accomplish simple message interchanges between the aircraft and the ground. UM is not used for BCAS.

3.3.2. BCAS Fields and Subfields

Location and coding of fields and subfields required for transmission of BCAS information not specified by the DABS National Standard (ref. B) are described in alphabetical order in the following paragraphs.

3.3.2.1. AR ASA Resolution Capability Report

Downlink, 2 bits, 13 through 14. Appears in special surveillance reply format, DF=0. Contains ASA resolution capability of aircraft.
Coding:
0=No ASA resolution capability
1=ATARS only
2=Active BCAS
3=Not assigned

3.3.2.2. GD G-Definition Field

Uplink, 3 bits, 6 through 8. Appears in long ground-air coordination (RBX) interrogation format, UF=22. Defines data content and coding in the MG field.
Coding:
0=MG not used
1=MG contains Active BCAS-RBX interrogation information (3.3.2.5.1)
2–7=Not assigned.

3.3.2.3 MA Message, Comm-A

ATARS uses the MA field (3.3.1.10) of Comm-A interrogations to transmit ATARS resolution advisories and ATCRBS track blocks.

3.3.2.3.1 Subfields in MA for an ATARS Resolution Advisory Message

ADS: A-Definition Subfield, 8 bits, 33 through 40 (3.3.1.10.1). An ATARS Resolution Advisory Message is identified by ADS1=3 and ADS2=0, the combination of which is equivalent to ADS=48.
COL: ATARS Resolution Advisory Column, 14 bits, 42 through 55.
Coding:
Each bit in the COL subfield is a dedicated bit representing a specific ATARS resolution advisory. The bits in COL have the following meaning:

V 45 OC 27 80 0 UMI

Bit ond ATARS Resolution Advisory
42—Climb
43—Don't descend
44—Don't descend faster than 500 FPM
45—Don't descend faster than 1000 FPM
46—Don't descend faster than 2000 FPM
47—Descend
48—Don't climb
49—Don't climb faster than 500 FPM
50—Don't climb faster than 1000 FPM
51—Don't climb faster than 2000 FPM
52—Turn left
53—Turn right
54—Don't turn left
55—Don't turn right

A bit set to '1' indicates that ATARS intends the associated resolution advisory to be active (associated RAR bit set to '1'). A bit set to '0' indicates that ATARS intends the associated resolution advisory to be inactive (associated RAR bit set to '0').

IRA: Initial Resolution Advisory Bit, 1 bit, 41.

Coding:
0=Not first time resolution advisory transmitted
1=First time resolution advisory transmitted

SIT: ATARS Site ID Code, 3 bits, 86 through 88.
0=No ATARS site ID reported
1=ATARS site A
2=ATARS site B
3=ATARS site C
4=ATARS site D
5–7=Not assigned

Note.—Structure of MA for ATARS Resolution Advisory Message.

Position	Number of bits	Subfield	Remarks
33 to 36	4	ADS1	Equal 3.
37 to 40	4	ADS2	Equal 0.
41	1	IRA	
42 to 55	14	COL	
56 to 85	30		Not assigned.
86–88	3	SIT	

3.3.2.3.2 Subfields in MA for an ATCRBS Track Block Message

An ATCRBS Track Block Message describes the position of an ATCRBS-equipped aircraft in the vicinity of BCAS. The plan position of the ATCRBS aircraft is given as range and bearing from the BCAS aircraft; altitude is given relative to mean sea level (29.92 inches of Mercury).

ADS: A-Definition Subfield, 8 bits, 33 through 40 (3.3.1.10.1). An ATCRBS track block message is identified by ADS1=1 and ADS2=3, the combination of which is equivalent to ADS=19.

ADT: ATCRBS Threat Altitude Rate, 8 bits, 78 through 85.

Coding:
The altitude rate is transmitted in two's complement notation with an LSB of 2 ft/sec. The minimum and maximum values are −256 ft/sec and +254 ft/sec respectively.

ALT: ATCRBS Threat Altitude, 10 bits, 68 through 77.

Coding:
The altitude is transmitted in positive binary notation with an LSB of 100 ft. The minimum and maximum values are −1000 ft and +101,300 ft respectively.

ATU: ATCRBS Track Update Bit, 1 bit, 41.

Coding:
0=Drop track
1=Add/update ATCRBS track block

BRG: ATCRBS Threat Bearing, 6 bits, 62 through 67.

Coding:
The bearing is transmitted in two's complement notation with an LSB of 5.625°. The minimum and maximum values are −180° and +174.375° respectively. Bearing is measured positive clockwise from magnetic north.

RDT: ATCRBS Threat Range Rate, 8 bits, 54 through 61.

Coding:
The range rate is transmitted in two's complement notation and is expressed as two-way range delay per unit time with an LSB of 250 μsec/hr. The minimum and maximum values are −32,000 μsec/hr. and +31,750 μsec/hr. respectively.

Note.—All BCAS range codes are expressed in terms of two-way range delay. Nominal transponder reply delays are not included in the range delay. To obtain the one-way range, multiply the two-way range delay by c/2, where c is the speed of light. For example, using $c=3*10^8$ m/sec, a 1 μsec two-way range delay is equivalent to a range of 150 meters, and a 250 μsec/hr range delay rate is equivalent to a range rate of 37,500 meters/hr.

RNG: ATCRBS Threat Range, 9 bits, 45 through 53.

Coding:
The range is transmitted in positive binary notation and is expressed as two-way range delay with an LSB of 1 μsec. The minimum and maximum values are 0 μsec and 511 μsec respectively. Any range greater than 511 μsec is expressed as 511 μsec.

SEQ: ATARS Track Sequence Number, 3 bits, 42 through 44.

Coding:
The decimal equivalent of the binary code formed by the bit sequence of the SEQ subfield denotes the track sequence number.

SIT: ATARS Site ID Code, 3 bits, 86 through 88.

Coding:
0=No ATARS site ID reported
1=ATARS site A
2=ATARS site B
3=ATARS site C
4=ATARS site D
5–7=Not assigned

Note.—Structure of MA for ATCRBS Track Block Message.

Position	Number of bits	Subfield	Remarks
33 to 36	4	ADS1	Equal 1.
37 to 40	4	ADS2	Equal 3.
41	1	ATU	
42 to 44	3	SEQ	
45 to 53	9	RNG	
54 to 61	8	RDT	
62 to 67	6	BRG	
68 to 77	10	ALT	
78 to 85	8	ADT	
86 to 88	3	SIT	

3.3.2.4 MB Message, Comm-B

BCAS uses the MB field (3.3.1.11) of Comm-B replies to transmit to the ground sensor (ATARS) and RAR Reply Message to ATARS, an RAR Busy Message to ATARS and an extended capability report. The technique for encoding the RAR Reply Message to ATARS is described in 5.2.3.3.

3.3.2.4.1 Subfields in MB for an RAR Reply Message to ATARS

BDS: B-Definition Subfield, 8 bits, 33 through 40 (3.3.1.11.1). An RAR Reply Message to ATARS is identified by BDS1=3 and BDS2=0, the combination of which is equivalent to BDS=48.

HO1: RAR Column 1 Horizontal Advisories, 3 bits, 41 through 43. Contains the horizontal resolution advisories set (if any) in column 1 (ATARS site A column) of the RAR.

Coding:
0=No horizontal resolution advisories
1=Not assigned
2=Turn left
3=Turn right
4=Don't turn left
5=Don't turn right
6=Not assigned
7=Don't turn left and don't turn right

HO2: RAR Column 2 Horizontal Advisories, 3 bits, 49 through 51. Contains the horizontal resolution advisories set (if any) in column 2 (ATARS site B column) of the RAR.

Coding:
As specified for HO1.

HO3: RAR Column 3 Horizontal Advisories, 3 bits, 57 through 59. Contains the horizontal resolution advisories set (if any) in column 3 (ATARS site C column) of the RAR.

Coding:
As specified for HO1.

HO4: RAR Column 4 Horizontal Advisories, 3 bits, 65 through 67. Contains the horizontal resolution advisories set (if any) in column 4 (ATARS site D column) of the RAR.

Coding:
As specified for HO1.

HO5: RAR Column 5 Horizontal Advisories, 3 bits, 73 through 75. Contains the horizontal resolution advisories set (if any) in column 5 (Own BCAS column) of the RAR.

Coding:
As specified for HO1.

HO6: RAR Column 6 Horizontal Advisories, 3 bits, 81 through 83. Contains the horizontal resolution advisories set (if any) in column 6 (All other BCAS column) of the RAR.

Coding:
As specified for HO1.

VE1: RAR Column 1 Vertical Advisories, 5 bits, 44 through 48. Contains the vertical resolution advisories set (if any) in column 1 (ATARS site A column) of the RAR.

Coding:
0=No vertical resolution advisories
1–3=Not assigned
4=Don't descend
5=Don't descend faster than 500 FPM
6=Don't descend faster than 1000 FPM
7=Don't descend faster than 2000 FPM
8=Don't climb
9=Don't climb faster than 500 FPM
10=Don't climb faster than 1000 FPM
11=Don't climb faster than 2000 FPM
12=Not assigned
13=Climb
14=Not assigned
15=Descend
16=Don't descend and don't climb
17=Don't descend and don't climb faster than 500 FPM
18=Don't descend and don't climb faster then 1000 FPM
19=Don't descend and don't climb faster than 2000 FPM
20=Don't descend faster than 500 FPM and don't climb
21=Don't descend faster than 500 FPM and don't climb faster than 500 FPM
22=Don't descend faster than 500 FPM and don't climb faster than 1000 FPM
23=Don't descend faster than 500 FPM and don't climb faster than 2000 FPM
24=Don't descend faster than 1000 FPM and don't climb
25=Don't descend faster than 1000 FPM and don't climb faster than 500 FPM
26=Don't descend faster than 1000 FPM and don't climb faster than 1000 FPM
27=Don't descend faster than 1000 FPM and don't climb faster than 2000 FPM
28=Don't descend faster than 2000 FPM and don't climb faster than 500 FPM
30=Don't descend faster than 2000 FPM and don't climb faster than 1000 FPM
31=Don't descend faster than 2000 FPM and don't climb faster than 2000 FPM.

VE2: RAR Column 2 Vertical Advisories, 5 bits, 52 through 56. Contains the horizontal resolution advisories set (if any) in column 2. (ATARS site B column) of the RAR.

Coding:
As specified for VE1.

VE3: RAR Column 3 Vertical Advisories, 5 bits, 60 through 64. Contains the vertical resolution advisories set (if any) in column 3 (ATARS site C column) of the RAR.

Coding:
As specified for VE1.

VE4: RAR Column 4 Vertical Advisories, 5 bits, 68 through 72. Contains the vertical resolution advisories set (if any) in column 4 (ATARS site D column) of the RAR.

Coding:
As specified for VE1.

VE5: RAR Column 5 Vertical Advisories, 5 bits, 76 through 80. Contains the vertical resolution advisories set (if any) in column 5 (Own BCAS column) of the RAR.

Coding:
As specified for VE1.

VE6: RAR Column 6 Vertical Advisories, 5 bits, 84 through 88. Contains the vertical resolution advisories set (if any) in column 6 (All Other BCAS column) of the RAR.

Coding:
As specified for VE1.

Note 1.—Structure of MB for RAR Reply Message to ATARS.

Position	Number of bits	Subfield	Remarks
33 to 36	4	BDS1	Equal 3.
37 to 40	4	BDS2	Equal 0.
41 to 43	3	HO1	
44 to 48	5	VE1	
49 to 51	3	HO2	
52 to 56	5	VE2	
57 to 59	3	HO3	
60 to 64	5	VE3	
65 to 67	3	HO4	
68 to 72	5	VE4	
73 to 75	3	HO5	
76 to 80	5	VE5	
81 to 83	3	HO6	
84 to 88	5	VE6	

Note 2.—An RAR Reply Message to ATARS with all HOx and VEx subfields containing all zeroes implies an empty RAR.

3.3.2.4.2. Subfields in MB for an RAR Busy Message to ATARS

BDS: B-Definition Subfield, 8 bits, 33 through 40 (3.3.1.11.1). An RAR Busy Message to ATARS is identified by BDS1=3 and BDS2=1, the combination of which is equivalent to BDS=49.

Note.—Structure of MB for RAR Busy Message to ATARS.

Position	Number of bits	Subfield	Remarks
33 to 36	4	BDS1	Equal 3.
37 to 40	4	BDS2	Equal 1.
41 to 88	48		Not assigned.

3.3.2.4.3 Subfield in MB for Extended Capability Report

The following subfield appears in MB for an extended capability report:

ARC: ASA Resolution Capability, 2 bits. 69 through 70. Contains ASA resolution capability of aircraft.

Coding:
0=No ASA resolution capability
1=ATARS only
2=Active BCAS
3=Not assigned

Note.—Structure of MB for Extended Capability Report.

Position	Number of bits	Subfield	Remarks
33 to 36	4	BDS1	Equal 1.
37 to 40	4	BDS2	Equal 0.
41	1	CBS	
42 to 43	2		Not assigned.
44	1	FDS	
45 to 60	16	ACS	
61 to 68	8		Not assigned.
69 to 70	2	ARC	
71 to 86	16	ECS	
87 to 88	2	EDS	

The ACS, BDS1, BDS2, CBS, ECS, EDS and FDS subfields are described in 3.3.1.11.2.

3.3.2.5 MG Message, Long Ground-Air Cpordination (RBX) Interrogation

Uplink, 80 bits, 9 through 88. Appears in long ground-air coordination (RBX) interrogation format, UF=22. Contains BCAS–RBX interrogation information. Data content and coding depend on the content of the GD field (3.3.2.2).

3.3.2.5.1 Subfields in MG for Active BCAS–RBX Interrogation Message

The following subfields appear in MG if GD=1:

AID: ATCRBS Identification, 13 bits, 15 through 27. Contains ATCRBS mode A identification code (4096 code) of

interrogating BCAS aircraft. Coded to pattern corresponding to ref. A: 2.6.

ALC: Altitude Code, 13 bits, 42 through 54. Coded according to pattern of ref. A: 2.7.13.2.5 and ref. A: Figure 1, if bit 48 is zero. Starting with bit 42, the sequence is C1, A1, C2, A2, C4, A4, M, B1, D1, B2, D2, B4, D4. Zero is transmitted in each of the 13 bits if altitude information is not available. Metric altitude is contained in this field if the M bit (bit 48) is set to '1'.

DID: DABS Address, 24 bits, 65 through 88. Contains discrete address of interrogating BCAS aircraft.

DRA: Displayed Resolution Advisory, 14 bits, 28 through 41. Contains resolution advisory displayed to pilot (5.2.3.5.2).

Coding:

Each bit in the DRA subfield is a dedicated bit which, when set to '1', identifies a particular resolution advisory component displayed to the pilot. A bit set to '0' indicates that the resolution advisory component associated with that bit is not displayed. When set to '1', each bit has the following meaning:

Bit	Active resolution advisory component
28	Climb.
29	Don't descend.
30	Don't descend faster than 500 FPM.
31	Don't descend faster than 1000 FPM.
32	Don't descend faster than 2000 FPM.
33	Descend.
34	Don't climb.
35	Don't climb faster than 500 FPM.
36	Don't climb faster than 1000 FPM.
37	Don't climb faster than 2000 FPM.
38	Turn left.
39	Turn right.
40	Don't turn left.
41	Don't turn right.

Note.—A DRA subfield set to all zeroes indicates no resolution advisory is being displayed to the pilot.

RAN BCAS to RBX Range, 10 bits, 55 through 64.

Coding:

The range is transmitted in positive binary notation and is expressed as two-way range delay with an LSB of 2 μsec. The minimum and maximum values are 0 μsec and 2044 μsec respectively. The RAN field in the initial (acquisition) BCAS to RBX interrogation is set to all ones to indicate that no data are available.

Note.—An RAN field set to all ones causes the RBX to reply with the SLC field set to the zero code (3.3.2.6.2).

SLR: Sensitivity Level Command Report, 3 bits, 12 through 14. Contains the last sensitivity level command received from the RBX to which this interrogation is addressed.

Coding:

0=No sensitivity level received
1=Last sensitivity level command received: set to level 1
2=Last sensitivity level command received: set to level 2
3=Last sensitivity level command received: set to level 3
4=Last sensitivity level command received: set to level 4
5=Last sensitivity level command received: set to level 5
6=Last sensitivity level command received: set to level 6
7=Last sensitivity level command received: set to level 7

Note.—Structure of MG for Active BCAS-RBX Interrogation Message.

Position	Number of bits	Subfield	Remarks
9 to 11	3		Not assigned.
12 to 14	3	SLR	
15 to 27	13	AID	
28 to 41	14	DRA	
42 to 54	13	ALC	
55 to 64	10	RAN	
65 to 88	24	DID	

3.3.2.6 *MR Message, Short Ground-Air Coordination Interrogation*

Uplink, 24 bits, 9 through 32. Appears in short ground-air coordination (RBX) interrogation format, UF=6. The MR field is used to transmit RBX squitter and reply information to BCAS. Data content and coding depend on the content of the RD field (3.3.2.9).

3.3.2.6.1 *Subfields in MR for an RBX Squitter*

The following subfield appears in MR if RD=1.

RAD: RBX Address, 24 bits, 9 through 32. Contains discrete address of RBX unit.

Note.—Structure of MR for RBX Squitter Message.

Position	Number of bits	Subfield	Remarks
9 to 32	24	RAD	

3.3.2.6.2 *Subfields in MR for an RBX Reply*

The following subfields appear in MR if RD=2.

RTR: RBX Threshold Range, 6 bits, 27 through 32.

Coding:

RTR is transmitted in positive binary notation and is expressed as two-way range delay with an LSB of 16 μsec. The minimum and maximum values are 0 μsec and 1008 μsec respectively.

SLC: BCAS Sensitivity Level Command, 3 bits, 22 through 24.

Coding:

0=No command issued
1=Set BCAS sensitivity level to 1
2=Set BCAS sensitivity level to 2
3=Set BCAS sensitivity level to 3
4=Set BCAS sensitivity level to 4
5=Set BCAS sensitivity level to 5
6=Set BCAS sensitivity level to 6
7=Set BCAS sensitivity level to 7

Note 1.—In an initial RBX Reply, SCL=0
Note 2.—Strutrue of MR for RBX reply message.

Position	Number of bits	Subfield	Remarks
9 to 21	13		Not assigned.
22 to 24	3	SLC	
25 to 26	2		Not assigned.
27 to 32	6	RTR	

3.3.2.7 *MU Message, Special Interrogation*

BCAS uses the MU field (3.3.1.12) of a long special surveillance interrogation for air-air coordination. The RAR Request Message and the Resolution Message share a common MU message format and are distinguished by the setting of the LCK subfield (see 3.3.2.7.1).

3.3.2.7.1 *Subfields in MU for an RAR Request Message and Resolution Message*

AR1: Add Resolution Advisory, 4 bits, 47 through 50. Contains the complement (don't climb or don't descend) of own resolution advisory chosen with respect to the interrogated threat to be added to the "All Other BCAS" column of the threat RAR.

Coding:

0=No complement to be added
1=Not assigned
2=Don't descend
3–6=Not assigned
7=Don't climb
8–15=Not assigned

AR2: Add Resolution Advisory, 4 bits, 55 through 58. This field is used by Full BCAS to post horizontal maneuver restrictions in the RAR of Active BCAS airborne equipments. Such restrictions are processed by Active BCAS while updating the RAR with ATARS resolution advisories (5.2.3.1.3.). In RAR Request Messages and Resolution Messages transmitted by Active BCAS, AR2 is set to all zeroes to indicate no message.

Coding:

0=No complement to be added
1–12=Not assigned
13=Don't turn left
14=Don't turn right
15=Not assigned

DID: DABS address, 24 bits, 65 through 88. Contains discrete address of interrogating BCAS aircraft.

DR1: Delete Resolution Advisory, 4 bits, 43 through 46. Contains the complement of own resolution advisory chosen with respect to the interrogated threat to be deleted from the "All Other BCAS" column of the threat RAR.

Coding:

0=No complement to be deleted
1=Not assigned
2=Don't descend
3–6=Not assigned
7=Don't climb
8–15=Not assigned

DR2: Delete Resolution Advisory, 4 bits, 51 through 54. This field is used by Full BCAS to post horizontal maneuver restrictions in the RAR of Active BCAS airborne equipments. Such restrictions are processed by Active BCAS while updating the RAR with ATARS resolution advisories (5.2.3.1.3.). In RAR Request Messages and Resolution Messages transmitted by Active BCAS, DR2 is set to all zeroes to indicate no message.

Coding:

0=No complement to be deleted
1–12=Not assigned
13=Don't turn left
14=Don't turn right
15=Not assigned

LCK: Extended RAR Lock Bit, 1 bit, 41. When set to '1', LCK instructs the interrogated BCAS aircraft to lock its RAR and maintain the lock state until a second coordination interrogation (Resolution Message) is received.

Coding:

0=Do not maintain RAR lock state for a second coordination interrogation.
1=Maintain RAR lock state until a second coordination interrogation is received.

Note.—The LCK subfield implicitly distinguishes an RAR Request Message from a Resolution Message because LCK is always set to '1' in an RAR Request Message while it is always set to '0' in a Resolution Message.

MTB: Multiple Threat Bit, 1 bit, 42.

Coding:

0=Interrogating BCAS has no more than one threat
1=Interrogating BCAS has more than one threat

UDS: U-Definition Subfield, 8 bits, 33 through 40. Defines the data content and coding in the remainder of MU.

For convenience in coding, UDS is expressed in two groups of 4 bits each, UDS1, 33 through 36, and UDS2, 37 through 40. UDS1 defines the destination of the MU message and UDS2 defines the specific message type.

RAR Request Messages and Resolution Messages are identified by UDS1=3 (RAR) and UDS2=1, the combination of which is equivalent to UDS=49.

Note.—Structure of MU for RAR Request Message and Resolution Message.

Position	Number of bits	Subfield	Remarks
33 to 36	4	UDS1	Equal 3.
37 to 40	4	UDS2	Equal 1.
41	1	LCK	
42	1	MTB	
43 to 46	4	DR1	
47 to 50	4	AR1	
51 to 54	4	DR2	
55 to 58	4	AR2	
59 to 64	6		Not assigned.
65 to 88	24	DID	

3.3.2.8 *MV Message, Special Reply*

BCAS uses the MV field of a long special surveillance reply (3.3.1.13) to transmit to another BCAS aircraft either an RAR Reply Message to BCAS or an RAR Busy Message to BCAS.

3.3.2.8.1 *Subfields in MV for an RAR Reply Message to BCAS*

The technique for encoding the RAR Reply Message to BCAS is described in 5.2.3.2.3.

H01: RAR Column 1 Horizontal Advisories, 3 bits, 41 through 43. Contains the horizontal resolution advisories set (if any) in column 1 (ATARS site A column) of the RAR.

Coding:

As specified for H01 in 3.3.2.4.1.

H02: RAR Column 2 Horizontal Advisories, 3 bits, 49 through 51. Contains the horizontal resolution advisories set (if any) in column 2 (ATARS site B column) of the RAR.

Coding:

As specified for H01 in 3.3.2.4.1.

H03: RAR Column 3 Horizontal Advisories, 3 bits, 57 through 59. Contains the horizontal resolution advisories set (if any) in column 3 (ATARS site C column) of the RAR.

Coding:

As specified for H01 in 3.3.2.4.1.

H04: RAR Column 4 Horizontal Advisories, 3 bits, 65 through 67. Contains the horizontal resolution advisories set (if any) in column 4 (ATARS site D column) of the RAR.

Coding:

As specified for H01 in 3.3.2.4.1.

H05: RAR Column 5 Horizonatal Advisories, 3 bits, 73 through 75. Contains the horizontal resolution advisories set (if any) in column 5 (Own BCAS column) of the RAR.

Coding:

As specified for H01 in 3.3.2.4.1.

H06: RAR Column 6 Horizontal Advisories, 3 bits, 81 through 83. Contains the horizontal resolution advisories set (if any) in column 6 (All Other BCAS column) of the RAR.

Coding:

As specified for H01 in 3.3.2.4.1.

VDS: V-Definition Subfield, 8 bits, 33 through 40. Defines the data content and coding in the remainder of MV. For convenience in coding, VDS is expressed in two groups of 4 bits each, VDS1, 33 through 36, VDS2, 37 through 40. VDS1 defines the source of the MV message and VDS2 defines the specific message type from that source.

An RAR Reply Message to BCAS is identified by VDS1=3 (RAR) and VDS2=0, the combination of which is equivalent to VDS=48.

VE1: RAR Column 1 Vertical Advisories, 5 bits, 44 through 48. Contains the vertical resolution advisories set (if any) in column 1 (ATARS site A column) of the RAR.

Coding:

As specified for VE1 in 3.3.2.4.1.

VE2: RAR Column 2 Vertical Advisories, 5 bits, 52 through 56. Contains the vertical resolution advisories set (if any) in column 2 (ATARS site B column) of the RAR.

Coding:

As specified for VE1 in 3.3.2.4.1.

VE3: RAR Column 3 Vertical Advisories, 5 bits, 60 through 64. Contains the vertical resolution advisories set (if any) in column 3 (ATARS site C column) of the RAR.

Coding:

As specified for VE1 in 3.3.2.4.1.

VE4: RAR Column 4 Vertical Advisories, 5 bits, 68 through 72. Contains the vertical resolution advisories set (if any) in column 4 (ATARS site D column) of the RAR.

Coding:

As specified for VE1 in 3.3.2.4.1.

VE5: RAR Column 5 Vertical Advisories, 5 bits, 76 through 80. Contains the vertical resolution advisories (if any) in column 5 (Own BCAS column) of the RAR.

Coding:

As specified for VE1 in 3.3.2.4.1.

VE6: RAR Column 6 Vertical Advisories, 5 bits, 84 through 88. Contains the vertical resolution advisories set (if any) in column 6 (All Other BCAS column) of the RAR.

V 4 5 O C 2 7 8 0 UMI

Coding:
As specified for VE1 in 3.3.2.4.1.

Note 1: Structure of MV for RAR Reply Message to BCAS.

Position	Number of bits	Subfield	Remarks
33 to 36	4	VDS1	Equal 3.
37 to 40	4	VDS2	Equal 0.
41 to 43	3	H01	
44 to 48	5	VE1	
49 to 51	3	H02	
52 to 56	5	VE2	
57 to 59	3	H03	
60 to 64	5	VE3	
65 to 67	3	H04	
68 to 72	6	VE4	
73 to 75	3	H05	
76 to 80	5	VE5	
81 to 83	3	H06	
84 to 88	5	VE6	

The structure of the MV field for an RAR Reply Message to BCAS is identical to the structure of the MB field for an RAR Reply Message to ATARS (3.3.2.4.1).

Note 2.—An RAR Reply Message to BCAS with all H0x and VEx subfields containing all zeroes implies an empty RAR.

3.3.2.8.2 Subfields in MV for an RAR Busy Message to BCAS.

VDS: V-Definition Subfield, 8 bits, 33 through 46 (3.3.2.8.1). An RAR Busy Message to BCAS is identified by VSD1=3 (RAR) and VDS2=1, the combination of which is equivalent to VDS=49.

Note.—Structure of MV for RAR Busy Message to BCAS.

Position	Number of bits	Subfield	Remarks
33 to 36	4	VDS1	Equal 3.
37 to 40	4	VDS2	Equal 1.
41 to 88	48		Not assigned.

The structure of the MV field for an RAR Reply Message to BCAS is identical to the structure of the MB field for an RAR Busy Message to ATARS (3.3.2.4.2).

3.3.2.9 RD R—Defintion Field

Uplink, 3 bits, 6 through 8. Appears in short ground-air coordination (RBX) interrogation format, UF=6. Defines data content and coding in the MR field.
Coding:
0=MR not used
1=MR contains RBX squitter information (3.3.2.6.1)
2=MR contains RBX reply information (3.3.2.6.2)
3–7=Not assigned

3.3.2.10 SD Special Designator

Ground ATARS equipment uses the SD field format associated with the DI=2 code (3.3.1.17.1) of surveillance and Comm-A interrogations to transmit to BCAS a senstivitiy level command.

3.3.2.10.1 Subfield in SD for DI=2 (ATARS Information)

The following subfield appears in SD if DI=2.
SLC: BCAS Sensitivity Level Command, 3 bits, 22 through 24.
Coding:
0=No command issued
1=Set BCAS sensitivity level to 1
2=Set BCAS sensitivity level to 2
3=Set BCAS sensitivity level to 3
4=Set BCAS sensitivity level to 4
5=Set BCAS sensitivity level to 5
6=Set BCAS sensitivity level to 6
7=Set BCAS sensitivity level to 7

Note.—Structure of SD for DI=2 (ATARS Information).

Position	Number of bits	Subfield	Remarks
17 to 20	4	AIS	
21	1	RAS	
22 to 24	3	SLC	
25 to 32	8		Not assigned.

The AIS and RAS subfields are described in 3.3.1.17.1.

3.3.2.11 SL BCAS Sensitivity Level Report

Downlink, 3 bits, 10 through 12. Appears in short special surveillance reply, DF=0. Contains sensitivity level at which BCAS aircraft is currently operating.
Coding:
0=No BCAS sensitivity level reported
1=BCAS is operating at sensitivity level 1
2=BCAS is operating at sensitivity level 2
3=BCAS is operating at sensitivity level 3
4=BCAS is operating at sensitivity level 4
5=BCAS is operating at sensitivity level 5
6=BCAS is operating at sensitivity level 6
7=BCAS is operating at sensitivity level 7

Note.—A DABS aircraft with no ASA capability (AR=0) or which is only ATARS equipped (AR=1) causes SL to be set to the zero code.

3.3.2.12 Unassigned Coding Space

Unassigned coding space as indicated in Figures 3.2–1 and 3.2–2 contains all zeroes as transmitted by interrogators and transponders. Coding space currently unassigned is reserved for possible future use.

Note.—This rule assures that future assignments in this coding space define a "zero-block" as a default code, i.e., no message is sent and/or no capability exists.

4. Protocol

4.1 ATCRBS Surveillance.

4.1.1 ATCRBS Interrogation.

4.1.1.1 ATCRBS-Only All-Call.

For surveillance of aircraft equipped with ATCRBS transponders, the ATCRBS-Only All-Call interrogation is used (ref. B: 2.3.2).

Note 1.—This interrogation format causes all ATCRBS-equipped aircraft to reply and all DABS-equipped aircraft to not reply. The absence of replies from DABS transponders is desirable since such replies are unnecessary and would add to the interference environment. Absence of these replies from the BCAS synchronous interference environment is particularly beneficial.

Note 2.—An ATCRS-Only All-Call can be in mode A or mode C. A BCAS transmits mode C interrogations and thereby obtains range and altitude surveillance information. Mode A interrogations may also be used, but these are not necessary for basic range and altitude surveillance.

4.1.1.2 Control of Synchronous Interference

To control ATCRBS synchronous interference and facilitate BCAS operation in airspace with higher traffic densities, a feature called "whisper-shout" may be used. In this feature, a single interrogation is replaced by a sequence of interrogations at different power levels. Each of these interrogations, other than the one at lowest power, is preceded by a suppression pair (a pair of pulses spaced by 2 μs, with characteristics the same as the 2-pulse SLS control transmission defined in ref. A: 2.4.4). The suppression pair is transmitted at a power level lower than that of the accompanying interrogation. The suppression pair begins at a time 4 ± 1 μs before the beginning of the interrogation.

Note.—Figure 4.1–1 shows an example of a whisper-shout sequence with 4 interrogations from the top antenna and 4 interrogations from the bottom antenna. The four power levels are spaced uniformly by 6 dB, and each suppression pair is 8 dB below its accompanying interrogation. The intended mechanism is that each aircraft replies to one or at most two of the four interrogations in a group. Given a situation in which multiple aircraft are near enough in range to synchronously interfere with each other, it is likely they do not all reply to the same interrogation, and as a result the severity of synchronous interference is reduced. Use of whisper-shout has additional benefits in reducing the severity of the effects of multipath on the interrogation link.

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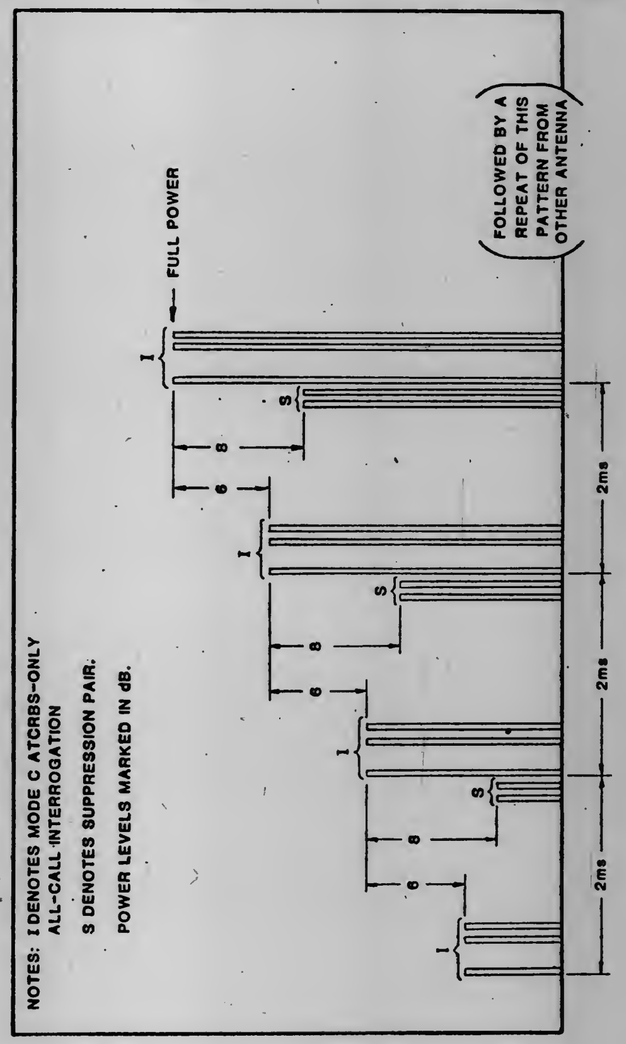


FIG. 4.1–1. EXAMPLE OF WHISPER–SHOUT SEQUENCE.

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4.2 DABS Surveillance

Note.—This section describes the interactions between the airborne BCAS and a DABS-equipped aircraft required for the proper functioning of the BCAS DABS surveillance tasks.

4.2.1 Detection

BCAS detects the presence of DABS equipped aircraft by listening at 1090 MHz, to transmissions containing altitude data, DF=4. These DABS transponder transmissions may occur in response to ground sensor discrete interrogations or as squitters.

BCAS derives the discrete address and altitude of the DABS aircraft from the AP and AC field, respectively. Additionally, BCAS examines the Flight Status, FS, field in these transmissions to determine if the other carrier has an interrogating BCAS (FS=1) or is on the ground (FS=7).

Note 1.—The fact that the other DABS aircraft has an interrogating BCAS is used as input into the computation of permissible interrogation rates (5.1.2).

Note 2.—If the other DABS aircraft is on the ground, BCAS does not need to track it.

4.2.2 Surveillance Interrogations

The response to the initial detection of a near-coaltitude DABS aircraft is a range acquisition interrogation, UF=0. When the range, altitude, and maximum speed capabilities of the BCAS aircraft and the detected DABS aircraft indicate that the detected aircraft is or could soon become a collision threat, periodic interrogations of the DABS aircraft are made using a short special surveillance interrogation, UF=0. Otherwise, interrogations to the DABS aircraft are temporarily suspended.

4.2.2.1 Acquisition

BCAS sets AQ=1 (3.3.1.3) in the short surveillance interrogation, UF=0, when a DABS aircraft is undergoing range acquisition. This serves as an aid in distinguishing the reply to own interrogation from replies elicited by other BCAS units.

4.2.2.2 Roll Call

BCAS sets AQ=0 (3.3.1.3) in the short special surveillance interrogation, UF=0, when a track has been established for a DABS aircraft.

4.2.3 Surveillance Replies

On receipt of a short special interrogation, UF=0, from a BCAS, a DABS transponder replies with a short special surveillance reply, DF=0. In this reply, the altitude, the contents of the ATARS site register, and the ASA capability of the aircraft are reported in the AC (3.3.1.2), AT (3.3.1.5) and AR (3.3.2.1) fields respectively. If the AR field is set to 2, indicating an Active BCAS capability, the SL field (3.3.2.11) further specifies the sensitivity level at which the BCAS is operating (5.2.4). If AR=0 or 1, the SL field has no meaning and is set to all zeroes.

4.2.3.1 Acquisition

On receipt of a short special surveillance interrogation with the AQ field set to "1", the AQ field of the reply is correspondingly set to "1" by a DABS transponder indicating a range acquisition reply. The maximum airspeed is reported by a DABS transponder in the MX field (3.3.1.14) of an acquisition reply.

4.2.3.2 Roll Call

On receipt of a short special surveillance interrogation with the AQ field set to "0", the AQ field of the reply is correspondingly set to "0" by a DABS transponder indicating a roll-call reply.

4.3 Coordination With Other Aircraft

Note.—This section describes the interactions between the airborne BCAS and a BCAS or ATARS equipped aircraft required for the proper functioning of the BCAS air-air conflict resolution coordination tasks.

4.3.1 BCAS Coordinotion Interrogations

When BCAS declares another BCAS or ATARS equipped aircraft to be a collision threat, interrogations to it are initiated for conflict resolution coordination (5.2.3.2). Coordination interrogations are periodically made to the other aircraft as long as it remains a collision threat. Two types of BCAS coordination interrogations are transmitted; an RAR Request Message and a Resolution Message. For a newly declared threat, the coordination sequence involves first sending an RAR Request Message and then a Resolution Message. For an established threat, the coordination sequence involves sending only a Resolution Message.

4.3.1.1 RAR Request Message.

An RAR Request Message (5.2.3.2.1) uses the long special surveillance interrogation, UF=16, with the MU field containing the subfields specified in 3.3.2.7.1 and contains the codes:

AR1=0 (no complement to be added)
DR1=0 (no complement to be deleted)
LCK=1 (interrogated BCAS to keep RAR locked for receipt of second coordination interrogation).

4.3.1.2 Resolution Message

A Resolution Message (5.2.3.2.2) uses the long special surveillance interrogation, UF=16, with the MU field containing the subfields specified in 3.3.2.7.1 and contains the code:

LCK=0 (interrogated aircraft to unlock its RAR after processing this interrogation).

4.3.1.2.1 New Threat

A Resolution Message is transmitted as the second of a two-coordination interrogation sequence to a new threat. The Resolution Message contains in AR1 the complement to be added to the threat's RAR. DR1 is set to the zero code.

4.3.1.2.2 Established Threat

Coordination with established threats and with aircraft that have changed from a threat status to a non-threat status (dropped threats) involves only a single transaction, that is, transmission of a Resolution Message. The complements (if any) to be added (or continued) and/or deleted in the threat's RAR are coded in AR1 and DR1 respectively.

4.3.2 Coordination Replies to BCAS

Upon acceptance of a BCAS coordination interrogation, the threat aircraft replies with either an RAR Reply Message to BCAS or an RAR Busy Message to BCAS (5.2.3.2.3).

4.3.2.1 RAR Reply Message to BCAS

An RAR Reply Message to BCAS uses the long special surveillance reply, DF=16, with the MV field containing the subfields specified in 3.3.2.8.1.

Note.—Even though an RAR Reply Message is sent in response to receipt of a Resolution Message, the RAR information in the reply is not used. The reply serves only as a technical acknowledgment.

4.3.2.2 RAR Busy Message to BCAS

An RAR Busy Message to BCAS uses the long special surveillance reply, DF=16, with the MV field containing the subfields specified in 3.3.2.8.2.

4.4 Coordination With Ground ATARS Equipment

Note.—This section describes the coordination interactions between an airborne BCAS equipment and DABS ground sensors with ATARS.

4.4.1 ATARS Coordination Interrogations

When ATARS has determined that a BCAS aircraft requires a resolution advisory to resolve a collision conflict with one or more threat aircraft, an ATARS Resolution Advisory Message is uplinked via the DABS transponder to the RAR of the BCAS aircraft. In addition, for all ATCRBS aircraft in the near vicinity of a BCAS aircraft, ATARS transmits positional information to BCAS in an ATCRBS Track Block Message. A separate ATCRBS Track Block Message is sent for each such ATCRBS aircraft.

Note.—ATARS ATCRBS track block are correlated with surveillance data for ATCRBS threats detected by BCAS. If the track block and the surveillance data correlate, BCAS defers resolution of the conflict to ATARS (5.2.1.2.2). This process reduces the number of unnecessary alerts generated by BCAS.

4.4.1.1 ATARS Resolution Advisory Message

An ATARS Resolution Advisory Message uses a Comm-A interrogation, UF=20 or 21, with the MA field containing the subfields specified in 3.3.2.3.1. Accompanying each ATARS Resolution Advisory Message is a downlink request for the RAR content of the BCAS aircraft. The ground sensor intiates this RAR downlink request by inserting RR=19 in the RR field of the Comm-A used for the ATARS resolution advisory.

4.4.1.2 ATCRBS Track Block Message

An ATCRBS Track Block Message uses a Comm-A interrogation, UF=20 or 21, with the MA field containing the subfields specified in 3.3.2.3.2.

4.4.2 Coordination Replies to ATARS

For coordination, ground ATARS equipment may request the RAR content of the BCAS aircraft by setting RR=19 in a surveillance or Comm-A interrogation, UF=4,5,20,21. When these requests are received via the DABS transponder, BCAS replies with an RAR Reply Message to ATARS or an RAR Busy Message to ATARS (5.2.3.3).

4.4.2.1 RAR Reply Message to ATARS

An RAR Reply Message to ATARS uses a Comm-B reply, DF=20 or 21, with the MB field containing the subfields specified in 3.3.2.4.1.

4.4.2.2 RAR Busy Message to ATARS

An RAR Busy Message to ATARS uses a Comm-B reply, DF=20 or 21, with the MB field containing the subfields specified in 3.3.2.4.2.

4.4.3 Extended Capability Report

The presence of operating Active BCAS equipment on board an aircraft causes the CA=2 code (extended capability) to be set in all DABS All-Call replies, DF=11, to the ground sensor (ref B: 3.3.6). The ground sensor learns of the specific extended capabilities on board the aircraft by using the extended capability report protocol specified in ref. B: 4.6.3. An Active BCAS on board the aircraft causes the following codes to be set in the MB subfields of an extended capability message (3.3.1.11.2, 3.3.2.4.3):

ACS: bit 46=1 (ATARS ATCRBS track blocks), bit 48=1 (ATARS resolution advisory/RAR)
ARC=2 (Active BCAS)
ECS: bit 72=1 (Extended Capability), bit 74=1 (RAR).

4.4.4 RAR Downlink Request

BCAS signals to the ATARS ground sensor if one or more of the bits in the RAR bit matrix is set to "1" (RAR not empty), to initiate transmission of the RAR to ground ATARS. Whenever a non-empty RAR exists, the DR field in a surveillance or Comm-B reply, DF=4,5,20,21, is set to DR=2 (RAR bit set) or DR=3 (RAR bit set and B-bit set) as appropriate.

4.4.5 BCAS Sensitivity Level Control

BCAS sensitivity level control by ground ATARS equipment is accomplished by the transmission of a surveillance or Comm-A interrogation, UF=4,5,20,21, in which DI=2 (SD contains ATARS information) and the appropriate sensitivity level command is set in the SLC subfield (3.3.2.10.1) of the corresponding SD field. The ATARS site ID information required to correlate the sensitivity level command with a given ATARS site is contained in the AIS subfield (3.3.1.17.1) of the same SD field.

4.5 Coordination With Ground RBX Equipment

Note.—This section describes the interactions between BCAS and RBX required for automatic control of the BCAS sensitivity level and for the transfer of displayed resolution advisories to ATC. Airborne BCAS equipments within the RBX range threshold regularly communicate with ground RBX equipment in order to determine range to the RBX and to transmit this information along with altitude and displayed resolution advisories. RBX replies to BCAS contain sensitivity level commands to BCAS.

4.5.1 RBX–BCAS Transmission Waveforms

All transmissions between the BCAS-equipped aircraft and the ground RBX equipment use the 1030 MHz DABS interrogation waveform (ref. B: 2.1). The SLS control pulse P5 is not transmitted.

4.5.2 RBX Squitter

Note.—Ground RBX units transmit squitters (unsolicited replies) at a regular rate to facilitate acquisition by the BCAS-equipped aircraft.

4.5.2.1 Squitter Acceptance

An RBX squitter is accepted, evaluated and acted upon by the DABS transponder in accordance with the criteria defined for interrogations with UF=6 (ref. B: 4.2.2.3.2). UF=6 identifies the transmission as originating from an RBX. RD=1 identifies the transmission as an RBX squitter. The RBX squitter contains a broadcast address, that is, all ones, in the AP field.

4.5.3 RBX Reply

4.5.3.1 Reply Acceptance

An RBX reply is accepted, evaluated and acted upon by the DABS transponder in accordance with the criteria defined for interrogations with UF=6 (ref. B: 4.2.2.3.2). UF=6 identifies the transmission as originating from an RBX. RD=2 identifies the transmission as an RBX reply. The RBX reply contains the discrete address of the interrogating BCAS aircraft in the AP field. The SLC subfield contains the sensitivity level command. The RTR subfield contains the range threshold value to indicate the radius within which the BCAS aircraft is required to maintain continuous track of the RBX.

4.5.3.2 Reply Delay and Jitter

The sync phase reversal of the P6 pulse in the RBX reply waveform occurs 500 ± 0.25 μsec after receipt of the sync phase reversal of the BCAS interrogation waveform. The jitter of the RBX reply delay does not exceed 0.05 μsec, rms.

4.5.4 BCAS to RBX Interrogation

The response to an accepted squitter (4.5.2.1) from an RBX with which BCAS is not currently communicating is a discrete interrogation with UF=22 and GD=1 (3.3.2.2). This is a range acquisition interrogation which contains a range field RAN of all ones. This and all subsequent interrogations to the RBX contain any currently displayed resolution advisory in the DRA field and the ATCRBS ID code in the AID field. When the range threshold value (RTR), the RBX range, and the BCAS maximum speed capability indicate that the BCAS aircraft has already penetrated or could soon penetrate the RBX range threshold, BCAS establishes and maintains communication with the RBX by discrete interrogations at 4-second intervals with UF=22 and GD=1. These interrogations contain RBX–BCAS range estimates based on the previous reply. They also contain the last sensitivity level command received from the RBX. If the BCAS aircraft could not soon penetrate the range threshold, interrogations to the RBX are temporarily suspended.

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5. Characteristics of Airborne BCAS Equipment

5.1 Interference Control

5.1.1 RF Peak Output Power

The peak RMS output power of each pulse of a BCAS airborne transmission, measured at the terminals of the antenna, is less than or equal to 27 dBW.

5.1.1.1 Unwanted Output Power

When the airborne BCAS equipment is not transmitting an interrogation, the RF output power at the terminals of the antenna does not exceed -50 dBm at any frequency.

5.1.2 Interference Limiting

An airborne BCAS unit counts the number of other BCAS-equipped aircraft within detection range by noting the number of DABS replies and squitters (DF=4) which have FS=1 and different DABS address codes. If necessary, BCAS controls own surveillance transmissions so that the BCAS interrogations received at any point in space by an ATCRBS transponder do not materially reduce the transponder reply probability. Specifically, the interrogation rate or power, or both, of an airborne BCAS unit are adjusted, as necessary, to hold the following inequality true:

$$\frac{(\beta * 10^{\alpha}) + 1}{250} * ((D * P_D) + (S * \sum_{i=1}^{n} P_i)) .LE. 570$$

Where:

α=(MTL + 74)/10

β=number of interrogating BCAS aircraft detected by squitter reception.

MTL=1090-MHz receiver threshold for squitter reception (dBm referred to antenna)

D=DABS interrogation rate (per sec)

P_D=DABS-mode interrogation peak power (watts referred to antenna)

S=ATCRBS-mode scan rate (sequences/sec)

n=number of interrogations in an ATCRBS interrogation sequence within one scan. If whisper-shout (4.1.1.2) is used, an ATCRBS suppression pair followed by an ATCRBS-only All-Call interrogation is counted as a single interrogation.

P_i=peak power of the i-th ATCRBS interrogation (watts referred to antenna)

Note.—Typical values are MTL=-74 dBm, P_D=250 watts, S=1 scan/sec., and, for the example whisper-shout sequence shown in Fig. 4.1-1, n=8. For an airborne BCAS that does not use whisper-shout, typically n=2 (one interrogation from the top antenna and one from the bottom). Interrogation limiting is very rarely invoked. When interrogation limiting is not invoked the overall ATCRBS and DABS interrogation rates are as follows: The ATCRBS interrogation rate (independent of traffic environment) is typically 8 per second. The DABS interrogation rate depends on the number of DABS-equipped aircraft in the vicinity and is very small when flying in airspace of low traffic density. When there are 6 DABS-equipped aircraft within 10 nmi, the interrogation rate is typically 6 to 18 DABS interrogations per second.

5.1.3 Interrogation Rate Jitter

The time interval between successive interrogation or groups of interrogations from an airborne BCAS unit varies sufficiently to preclude synchronous interference with other equipment.

5.1.4 Suppression of Own Aircraft Transponder

The DABS transponder on board the aircraft is suppressed during each BCAS transmission. The suppression interval is 250 ± 50 microsecond beginning at the time of the first pulse of the BCAS transmission.

Note.—The purpose of this suppression is to assure that the BCAS does not interrogate its own transponder.

5.2 Collision Avoidance Algorithms

BCAS airborne equipments contain algorithms that implement the following functions as illustrated in Figure 5.2-1.

a. Surveillance.
b. Tracking.
c. Threat Detection.
d. Resolution.
e. Communication and Coordination.

Certain of these functions or subfunctions must be standardized to ensure that the airborne BCAS units interface satisfactorily with each other, with ATARS, and with the conventional air traffic control (ATC) system. Parameters used in the algorithms are adjusted automatically to maintain collision avoidance protection with minimal interference to normal ATC operations. Each of the functions or subfunctions which is standardized is discussed in a paragraph below.

5.2.1 Threat Detection

All aircraft which are tracked by BCAS are considered intruders and potential collision threats. The characteristics of an intruder which are used to define a threat are:

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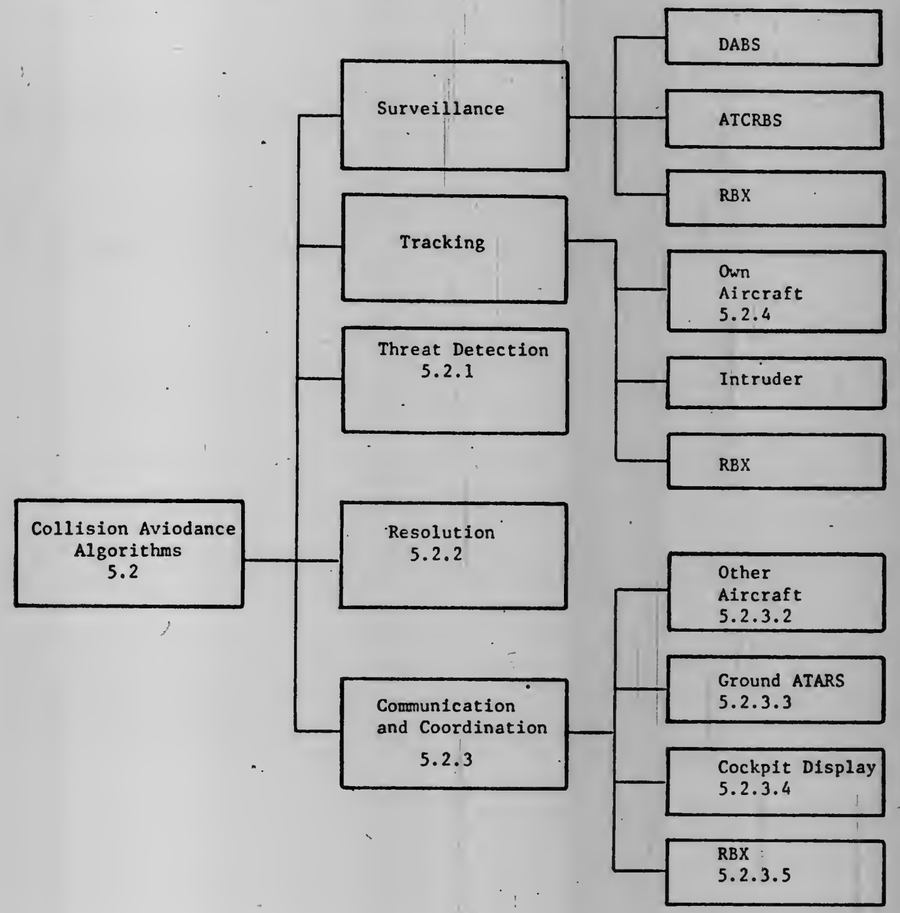


Figure 5.2-1. Functional Elements of BCAS Collision Avoidance Algorithms.

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Altitude—ZINT.
Rate of Change in Altitude—ZDINT.
Slant Range—R.
Rate of Change in Slant Range—RD.
BCAS Equipage (yes or no)—BEQ
Sensitivity Level of BCAS Operation—SLINT.
ATARS Coverage (yes or no) (4 entries)—ACINT(4).

BEQ is "YES" only if the intruder is equipped with BCAS and its resolution function is not inhibited (5.2.1.2.1). In addition, the following characteristics of the BCAS aircraft are used in threat definition:
Altitude—ZOWN.
Rate of Change in Altitude—ZDOWN.
Sensitivity Level of BCAS Operation—SLOWN.
ATARS Coverage (yes or no) (4 entries)—ACOWN(4).

Notes.—All altitudes are measured relative to 29.92 inches of mercury.

5.2.1.1 Parameter Selection

Calculations defining threats use parameter values (Table 5.2–1) which are selected based on the above characteristics.

5.2.1.2 Definition of Threat

BCAS evaluates each intruder through a prescribed sequence of tests to declare the intruder either a threat or a non-threat. BCAS generates resolution advisories (5.2.2) for all intruders declared threats.

Note.—BCAS does not generate resolution advisories for non-threats. However ATARS may, and BCAS coordinates and displays such advisories (5.2.3.3).

5.2.1.2.1 BCAS Resolution Status

The first test is to determine whether or not BCAS resolution of threats is inhibited. If BCAS resolution is inhibited, the intruder is a non-threat. Otherwise, the test of BCAS responsibility (5.2.1.2.2) is performed. BCAS resolution is inhibited when its sensitivity level (SLOWN, 5.2.4) is either "2" (Resolution Inhibited) or "1" (Interrogation of Aircraft Inhibited).

5.2.1.2.2 BCAS Responsibility

If BCAS is not responsible for the intruder, the intruder is a non-threat. Otherwise, the test of range divergence (5.2.1.2.3) is performed. BCAS is not responsible if both the intruder and BCAS are within coverage of the same ATARS site (have one or more common ATARS identity bits set). Thus if ACOWN(bit).EQ.1 and ACINT(bit).EQ.1 for any one common bit position, the intruder is declared a non-threat.

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TABLE 5.2-1

PARAMETERS USED IN THREAT DEFINITION

Parameter	BEQ is 'YES'					BEQ is 'NO'				
	MAX (SLINT,SLOWN)					MAX (SLINT,SLOWN)				
	3	4	5	6	7	3	4	5	6	7
DMOD NMI	0.075	0.1	0.3	1.0	1.3	0.075	0.1	0.3	1.0	1.3
TAU s	16	18	25	30	35	18	20	25	30	35
TVPOID s	35	40		45	48	35	40		45	48
H1 NMI^2/s	0.002	0.00278			0.004	0.002	0.00278			0.004
ZTHR	See below									

ZOWN FT	ZTHR FT
less than 18,000	750
18,000 to 30,000	850
greater than 30,000	950

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ACINT for an ATCRBS-equipped intruder is determined through spatial correlation of intruder characteristics with ATCRBS track blocks (4.4.1.2).

5.2.1.2.3 Range Divergence

If the intruder range is diverging, the divergence hyperbola test (5.2.1.2.3.1) is performed. Otherwise, the test of time to range convergence (5.2.1.2.4) is performed. The range is diverging if RD is positive.

5.2.1.2.3.1 Divergence Hyperbola

If R*RD.LE.H1, the test of current range separation (5.2.1.2.3.2) is performed. Otherwise, the intruder is a non-threat.

5.2.1.2.3.2 Current Range Separation

If R.GT.DMOD, the intruder is a non-threat. Otherwise, the test of current altitude separation (5.2.1.2.5) is performed.

5.2.1.2.4 Time to Range Convergence

If (R–DMOD).GT.(TAU)*(-RD), the intruder is a non-threat. Otherwise, the test of current altitude separation (5.2.1.2.5) is performed.

5.2.1.2.5 Current Altitude Separation

If ABS(ZOWN–ZINT).GE.ZTHR, the test of altitude convergence (5.2.1.2.5.1) is performed. Otherwise, the test of vertical miss distance (5.2.1.2.6) is performed.

5.2.1.2.5.1 Altitude Covergence

If (ZOWN–ZINT) and (ZDINT-ZDOWN) have the same sign, altitude separation is decreasing and the test of time to altitude covergence (5.2.1.2.5.2) is performed. Otherwise, the intruder is a non-threat.

5.2.1.2.5.2 Time to Altitude Convergence

If ((ZOWN–ZINT)/(ZDINT–ZDOWN)).GT.TAU, the intruder is a non-threat. Otherwise, the test of vertical miss distance (5.2.1.2.6) is performed.

5.2.1.2.6 Vertical Miss Distance

If the projected vertical miss distance is small, the intruder is a threat. Otherwise, the test of range at co-altitude (5.2.1.2.7) is performed. The projected vertical miss distance is small if ABS((ZOWN–ZINT) +((ZDOWN–ZDINT)*TRTRU)).LE.ZTHR, where TRTRU=MIN(ABS(R/RD),TVPCMD) for RD.LT.O. If RD.GE.O, TRTRU=O.

5.2.1.2.7 Range at Co-Altitude

If altitude separation is decreasing (5.2.1.2.5.1) and the projected range at the time of co-altitude is small, the intruder is a threat. Otherwise, the intruder is a non-threat. The projected range at the time of co-altitude is small if ABS(R+(RD*TAUV)).LT.DMOD, where TAUV=(ZOWN–ZINT)/ZDINT–ZDOWN).

5.2.2 Computation of Resolution Advisories

BCAS considers the advisory options of Table 5.2–2 in resolving collision threats. Each threat is processed individually for selection of a resolution advisory. The sequence of resolution processing is as follows: a. Lock RAR (5.2.3.1).

b. Communicate with new threat (5.2.3.2.1).

c. Select sense of advisory for new threat (5.2.2.1).

d. Select magnitude of advisory (5.2.2.2).

e. Evaluate multi-aircraft situation (5.2.2.3).

f. Update RAR (5.2.3.1.1).

g. Unlock RAR (5.2.3.1).

h. Communicate with threat (5.2.3.2.2).

Note.—Items (a), (f), (g), and (h) of this sequence are also executed once for each newly declared non-threat that was previously a threat.

5.2.2.1 Selection of Sense

When an intruder is first declared a threat, BCAS selects the sense (climb or descend) of the maneuver. This sense selection remains unchanged throughout the encounter.

BCAS evaluates maneuver options by modeling the corresponding altitude separations after an escape maneuver at time of closest approach TESC, where TESC=MIN(ABS(R/RD).TVPESC); (Table 5.2–3). Options which imply vertical rates inconsistent with the current composite resolution advisory (5.2.3.4) are not modeled. Climbs and descents are modeled at nominal rates of 1000 FPM unless the current rate exceeds that magnitude, in which case the current rate is used. BCAS provisionally selects the sense of the maneuver which yields the greater altitude separation. If the threat is unequipped (BEQ is "NO") and the difference in separation resulting from a climb maneuver versus separation resulting from a descend maneuver is small (e.g. 150 ft or less), BCAS notes that its provisional sense selection is not significant.

5.2.2.1.1 Exception for Threats in a Multi-Aircraft Conflict

If the threat is BCAS-equipped (BEQ is "YES") and is in a multi-aircraft conflict, if own BCAS is not in a multi-aircraft conflict, and if own BCAS has received a message conveying maneuver sense from the threat BCAS (5.2.3.2.3), own BCAS selects the sense oposite that selected by the threat. Otherwise, BCAS makes no exception for multi-aircraft conflict conditions in selecting the sense of the resolution advisory other than that provide in 5.2.2.3.

Table 5.2–2.—*Resolution Advisory Options*

Down Sense	Up sense
Positive Advisories	
Descend	Climb.
Vertical Speed Minimums	
Descend faster than 500 FPM.	Climb faster than 500 FPM.
Descend faster than 1,000 FPM.	Climb faster than 1,000 FPM.
Descend faster than 2,000 FPM.	Climb faster than 2,000 FPM.
Negative Advisories	
Don't climb	Don't descend.
Vertical Speed Limits	
Don't climb faster than 500 FPM.	Don't descend faster than 500 FPM.
Don't climb faster than 1,000 FPM.	Don't descend faster than 1,000 FPM.
Don't climb faster than 2,000 FPM.	Don't descend faster than 2,000 FPM.

TABLE 5.2-3

PARAMETER USED IN RESOLUTION ADVISORY SELECTION

PARAMETER	MAX (SLINT,SLOWN)				
	3	4	5	6	7
TVPESC s	25	30	30	35	40
ALIM	See below				

ZOWN FT	ALIM FT
less than 10,000	340
10,000 to 18,000	440
18,000 to 30,000	640
greater than 30,000	740

5.2.2.1.2 Yielding to Prior Sense Selection by Threat

If the threat has already selected and communicated a vertical sense selection to BCAS, BCAS selects the sense opposite to that selected by the threat if the corresponding altitude separation at the time of closest approach (TESC, 5.2.2.1) is greater than 400 ft.

5.2.2.1.3 Path Prediction

BCAS models its own and the threat's trajectory based on threat's displayed resolution advisory (5.2.3.5.2) and own vertical maneuver options. The model of each aircraft's altitude profile is a projection with one maneuver at constant acceleration to a new altitude rate (equations below).

If the threat's current altitude rate (ZDINT) satisfies the displayed resolution advisory obtained from its RAR, the threat is modeled as continuing at its current altitude rate. Otherwise, the threat is modeled as accelerating to a rate which satisfies its displayed resolution advisory with minimum change in vertical rate.

If TCUR.LT.T.LE.DELAY+TCUR,
Z(T)=Z(TCUR)+(ZD(TCUR)
*(T−TCUR))

If
DELAY+TCUR.LT.T.LE.DELAY+TCUR
+(ABS(SE
NSE*ZDGOAL−ZD(TCUR))/VACCEL),
Z(T)=Z(TCUR)+(ZD(TCUR)
*(T−TCUR))+
(SENSE*.5*VACCEL
*(T−DELAY−TCUR)²)

If
T.GT.DELAY+TCUR+(ABS((SENSE
*ZDGOAL)−Z
D(TCUR))/VACCELL),
Z(T)=Z(TCUR)+(ZD(TCUR)*(DELAY
+(ABS((S
ENSE*ZDGOAL)−ZD(TCUR))/
VACCEL)))+(SENSE*.5*VACCEL
*(ABS((SENSE*ZDGOAL)−
ZD(TCUR))/VACCEL)²)+((T−DELAY−
TCUR−(ABS((SENSE*ZDGOAL)−
ZD(TCUR))/
VACCEL))*ZDGOAL*SENSE).

TCUR=Current Time
T=Time of Prediction
DELAY=Pilot Response Time
(=5 Sec for New Advisories)
(=1 Sec for Changed Advisories)
Z(X)=Altitude at time X
ZD(X)=Altitude Rate at Time X
ZDGOAL=Altitude Rate Objective of Resolution Advisory
(=MAX(1000 FPM,ABS(ZDOWN)) for Positive Advisories)
(=0 FPM for Negative Advisories)
(=−500 FPM: if ABS(VSL)=500)
(=−1000 FPM: if ABS(VSL)=1000)
(=−2000 FMP: if ABS(VSL)=2000)
SENSE=Sense Selection
(=+1 for "Up" Sense)
(=−1 for "Down" Sense)
VACCEL=Acceleration Rate
(=8 FPS²)

5.2.2.2 Selection of Advisory Magnitude

BCAS selects a resolution advisory which results in a predicted safe altitude separation at time of closest approach (TESC, 5.2.2.1) with the least impact on the current flight path by following the sequence of tests described below. Certain parameter values used in the prediction of safe altitude separation are selected based on the characteristics of own and threat aircraft.

5.2.2.2.1 Current Altitude Separation

The first test is to determine whether or not the current altitude separation is small. If the current altitude separation is small, the test of predicted altitude separation (5.2.2.2.2) is performed. Otherwise, the test of threat equipage (5.2.2.2.2.1) is performed. The current altitude separation is small if ABS (ZOWN−ZINT).LT.ALIM.

5.2.2.2.2 Predicted Altitude Separation

If the predicted altitude separation is small, a positive advisory of the established sense (5.2.2.1) is selected. Otherise, the test of extension of own vertical rate (5.2.2.2.3) is performed. The predicted altitude separation is small if ABS((ZOWN−ZINT) + ((ZDOWN–ZDINT)* TRUTRU)).LT.ALIM, where TRTRU=MIN(ABS(R/RD), TVPCMD).

5.2.2.2.2 Threat Equipage

If BEQ is "YES", the test of extension of own vertical rate (5.2.2.2.3) is performed. Otherwise, the test of threat altitude rate (5.2.2.2.2.2) is performed.

5.2.2.2.2.2 Threat Altitude Rate

If threat has no vertical rate (ZDINT near zero), the test of extension of own vertical rate (5.2.2.2.3) is performed. Otherwise, the test of predicted altitude separation (5.2.2.2.2) is peformed.

5.2.2.2.3 Extension of Own Vertical Rate

If extending own vertical rate will resolve the encounter, the vertical speed minimum test (5.2.2.2.3.1) is performed. Otherwise, the vertical speed limit test (5.2.2.2.4) is performed. Extending own vertical rate will resolve the encounter if the predicted vertical separation (5.2.2.1.3) at time TESC (5.2.2.1) is greater in magnitude than ALIM for all rates in the direction of ZDOWN (5.2.1) that are equal to or which exceed the magnitude of ZDOWN.

5.2.2.2.3.1 Vertical Speed Minimum

BCAS selects the lowest magnitude Vertical Speed Minimum (Table 5.2–2) which provides a vertical rate for own BCAS resulting in a predicted vertical separation (5.2.2.1.3) at time TESC (5.2.2.1) greater in magnitude than ALIM. If no such Vertical Speed Minimum exists, BCAS selects a positive advisory of the established sense (5.2.2.1).

5.2.2.2.4 Vertical Speed Limit

BCAS selects the highest magnitude Vertical Speed Limit (Table 5.2–2) that provides a vertical rate for own BCAS resulting in a predicted vertical separation (5.2.2.1.3) at time TESC (5.2.2.1) greater in magnitude than ALIM. If the lowest magnitude Vertical Speed Limit does not result in a predicted vertical separation at time TESC greater in magnitude than ALIM, BCAS selects a negative advisory of the established sense (5.2.2.1).

5.2.2.3 Multi-Aircraft Conflicts

BCAS converts existing resolution advisories as illustrated in Table 5.2–4 when it determines that own BCAS has more than one simultaneous threat. Sense selections which were noted to be not significant (5.2.2.1) do not constrain multi-aircraft resolution advisory selection, and may be changed as a result of multi-aircraft resolution. After conversion, all resolution advisories have significant sense.

5.2.3 Communication

BCAS airborne equipments communicate with BCAS aircraft, with ATARS aircraft, and with ATARS and RBX ground stations. The principal interface for these communications is the Resolution Advisory Register (RAR), illustrated by Figure 5.2–2. The RAR stores all current resolution advisories by source using a single bit to indicate which advisory components have been established by which source.

5.2.3.1 RAR Management

Access to the RAR is limited to one user at a time. This user may be own aircraft, a threat BCAS, or an ATARS ground site. To ensure that the RAR is not accessed while it is in the process of being updated, BCAS excludes any user other than the updating user from communicating with its RAR (except as provided in 5.2.3.2.3). That is, BCAS locks out all other users for the duration of the update. In order to protect against extended RAR lock intervals due to communications failures, the maximum duration of any RAR lock is 0.1 seconds.

5.2.3.1.1 Update RAR With Own BCAS Advisories

All advisories selected by own BCAS to resolve conflicts for which own BCAS is responsible are posted in the "Own BCAS" column of the RAR (Figure 5.2–2). A vertical speed minimum is stored

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as a positive advisory of the same sense. The column is updated each time an advisory is added (new threat resolved) or an advisory for an existing threat is modified or deleted. If the current advisory for a threat is to be deleted, BCAS enters a "0" in the appropriate row of the RAR if that advisory is not also posted for another threat. If an advisory is to be added or refreshed for some threat, BCAS enters a "1" in the appropriate row of the RAR if a "1" is not already present. If an existing bit in the "Own BCAS" column is not refreshed within 6 seconds, it is set to "0".

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TABLE 5.2-4

CONVERSION OF RESOLUTION ADVISORIES

FOR MULTI-AIRCRAFT CONFLICTS

Existing Resolution Advisory		Converted Resolution Advisory	
Sense	Magnitude	No Significant 'UPWARD' or 'DOWNWARD' Sense Selections	One or More 'DOWNWARD' Sense Selections but No Significant 'UPWARD' Sense Selections	One or More 'UPWARD' Sense Selections but No Significant 'DOWNWARD' Sense Selections	Significant 'UPWARD' and 'DOWNWARD' Sense Selections
Upward	VSM	No Change	DESCEND	DON'T DESCEND	DON'T DESCEND
Upward	CLIMB	No Change	DESCEND	No Change	DON'T DESCEND
Upward	DON'T DESCEND	No Change	DESCEND	No Change	No Change
Upward	VSL	No Change	DESCEND	No Change	No Change
Downward	VSL	No Change	CLIMB	No Change	No Change
Downward	DON'T CLIMB	No Change	CLIMB	No Change	No Change
Downward	DESCEND	No Change	CLIMB	DON'T CLIMB	DON'T CLIMB
Downward	VSM	No Change	CLIMB	DON'T CLIMB	DON'T CLIMB

Each resolution advisory will be converted from the list on the left hand side to the advisory shown.

V 4 5 O C 2 7 8 0 UMI

RAR BIT MATRIX 14 ROWS AND 6 COLUMNS 1 = ADVISORY ACTIVE 0 = ADVISORY NOT ACTIVE	ATARS SITE A	ATARS SITE B	ATARS SITE C	ATARS SITE D	OWN BCAS	ALL OTHER BCAS
CLIMB						
DON'T DESCEND						
DON'T DESCEND FASTER THAN 500 FPM						
DON'T DESCEND FASTER THAN 1000 FPM						
DON'T DESCEND FASTER THAN 2000 FPM						
DESCEND						
DON'T CLIMB						
DON'T CLIMB FASTER THAN 500 FPM						
DON'T CLIMB FASTER THAN 1000 FPM						
DON'T CLIMB FASTER THAN 2000 FPM						
TURN LEFT						
TURN RIGHT						
DON'T TURN LEFT						
DON'T TURN RIGHT						

FIGURE 5.2-2. RESOLUTION ADVISORY REGISTER (RAR).

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5.2.3.1.2 Update RAR With Other BCAS Advisories

The advisory complements (Table 5.2–5) received from all other BCAS aircraft (5.2.3.2.2) are posted in the "All Other BCAS" column of the RAR (Figure 5.2–2). If there is a complement to delete (own BCAS dropped as a threat), BCAS enters a "0" in the appropriate row of the RAR if that complement is not also posted for another aircraft. If there is a complement to add or to be refreshed, BCAS enters a "1" in the appropriate row of the RAR if a "1" is not already present. If an existing bit in the "All Other BCAS" column is not refreshed within 6 seconds, it is set to "0".

5.2.3.1.3 Update RAR With ATARS Advisories

The first step in updating the RAR with a resolution advisory received from ATARS (4.4.1.1) is to write all zeroes received directly into the appropriate rows of the RAR column associated with that ATARS site. Then, all advisory components set to "1" are tested against the contents of the RAR (all columns) for compatibility (Figure 5.2–3). Any advisory component that is incompatible is not accepted. Any advisory component accepted is entered into the RAR as a "1" in the appropriate row. If the contents of any RAR column are not updated within 10 seconds, all bits in the column are set to "0".

5.2.3.2 Coordination With Other Aircraft

BCAS coordinates conflict resolution with other BCAS-equipped or ATARS-equipped aircraft (Figure 5.2–4).

5.2.3.2.1 Transmission of RAR Request Message

BCAS transmits the RAR Request Message (4.3.1.1) to a newly declared BCAS-equipped or ATARS-equipped threat and waits for a reply (4.3.2). If BCAS receives an RAR Busy Message (4.3.2.2), BCAS retransmits the RAR Request Message.

5.2.3.2.2 Transmission of Resolution Message

After selecting a resolution advisory for a threat, BCAS unlocks own RAR and then transmits the Resolution Message (4.3.1.2) to that threat. If BCAS receives an RAR Busy Message (4.3.2.2), BCAS retransmits the Resolution Message.

5.2.3.2.3 Coordination Reply to BCAS

If BCAS receives an RAR Request Message (4.3.1.1) from a BCAS aircraft and own RAR is not locked, BCAS locks the RAR for access only by the requestor and replies with an RAR Reply Message (4.3.2.1). If BCAS receives an RAR Request Message (4.3.1.1) while own RAR is locked to process the interrogating aircraft as a threat, and the DABS address code of the interrogating aircraft is less than the DABS address code of own BCAS, then own BCAS locks its RAR to deny access to all users other than the interrogating aircraft and replies with an RAR Reply Message (4.3.2.1). Otherwise, BCAS replies with an RAR Busy Message (4.3.2.2).

Table 5.2-5.—*Complements of Resolution Advisories*

Resolution Advisory	Complement
Climb faster than 500 FPM	Don't climb.
Climb faster than 1,000 FPM	Don't climb.
Climb faster than 2,000 FPM	Don't climb.
Climb	Don't climb.
Don't descend	Don't climb.
Don't descend faster than 500 FPM.	Don't climb.
Don't descend faster than 1,000 FPM.	Don't climb.
Don't descend faster than 2,000 FPM.	Don't climb.
Descend faster than 500 FPM.	Don't descend.
Descend faster than 1,000 FPM.	Don't descend.
Descend faster than 2,000 FPM.	Don't descend.
Descend	Don't descend.
Don't climb	Don't descend.
Don't climb faster than 500 FPM.	Don't descend.
Don't climb faster than 1,000 FPM.	Don't descend.
Don't climb faster than 2,000 FPM.	Don't descend.

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COMPATIBLE RESOLUTION ADVISORIES

1 = COMPATIBLE
0 = NOT COMPATIBLE

	CLIMB	DON'T DESCEND	DON'T DESCEND FASTER THAN 500 FPM	DON'T DESCEND FASTER THAN 1000 FPM	DON'T DESCEND FASTER THAN 2000 FPM	DESCEND	DON'T CLIMB	DON'T CLIMB FASTER THAN 500 FPM	DON'T CLIMB FASTER THAN 1000 FPM	DON'T CLIMB FASTER THAN 2000 FPM	TURN LEFT	TURN RIGHT	DON'T TURN LEFT	DON'T TURN RIGHT
CLIMB	1	1	1	1	1	0	0	0	0	0	1	1	1	1
DON'T DESCEND	1	1	1	1	1	0	1	1	1	1	1	1	1	1
DON'T DESCEND FASTER THAN 500 FPM	1	1	1	1	1	0	1	1	1	1	1	1	1	1
DON'T DESCEND FASTER THAN 1000 FPM	1	1	1	1	1	0	1	1	1	1	1	1	1	1
DON'T DESCEND FASTER THAN 2000 FPM	1	1	1	1	1	0	1	1	1	1	1	1	1	1
DESCEND	0	0	0	0	0	1	1	1	1	1	1	1	1	1
DON'T CLIMB	0	1	1	1	1	1	1	1	1	1	1	1	1	1
DON'T CLIMB FASTER THAN 500 FPM	0	1	1	1	1	1	1	1	1	1	1	1	1	1
DON'T CLIMB FASTER THAN 1000 FPM	0	1	1	1	1	1	1	1	1	1	1	1	1	1
DON'T CLIMB FASTER THAN 2000 FPM	0	1	1	1	1	1	1	1	1	1	1	1	1	1
TURN LEFT	1	1	1	1	1	1	1	1	1	1	1	0	0	1
TURN RIGHT	1	1	1	1	1	1	1	1	1	1	0	1	1	0
DON'T TURN LEFT	1	1	1	1	1	1	1	1	1	1	0	1	1	1
DON'T TURN RIGHT	1	1	1	1	1	1	1	1	1	1	0	1	1	1

Figure 5.2-3. ATARS Advisory Compatibility.

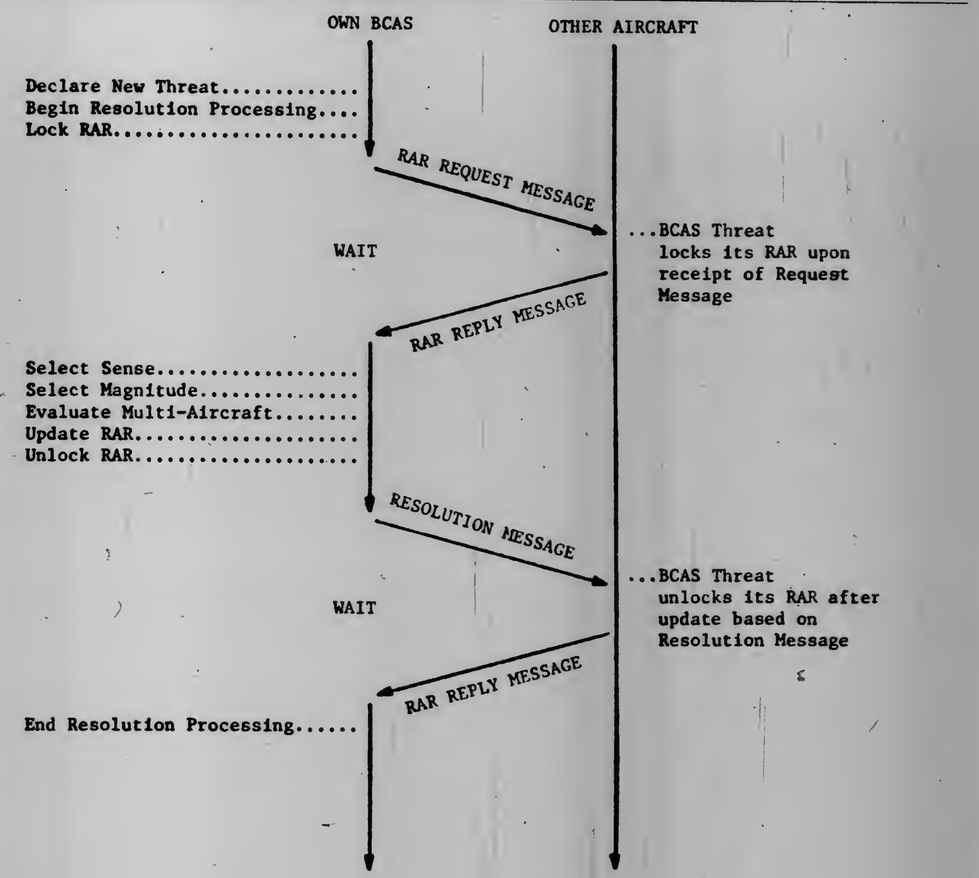


Figure 5.2-4a. Coordination With New Threat Aircraft.

V 45 O C 27 80 UMI

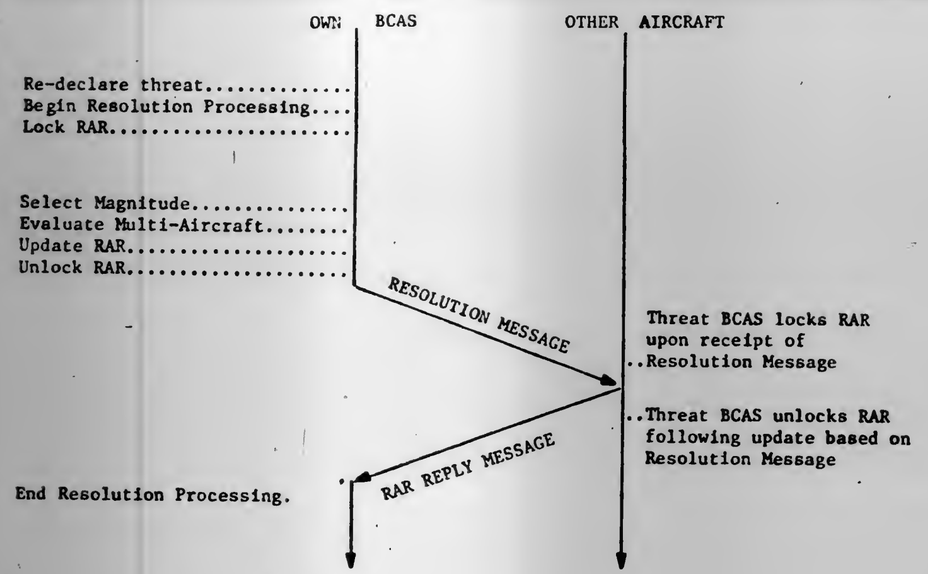


Figure 5.2-4b. Coordination with Established Threat Aircraft.

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Note.—If BCAS relinquishes access to its RAR in favor of an interrogating aircraft, BCAS reacquires access when the interrogating aircraft unlocks the BCAS RAR.

If BCAS receives a Resolution Message (4.3.1.2) and own RAR is not locked, BCAS locks own RAR for access only by the requestor, replies with an RAR Reply Message (4.3.2.1), updates own RAR (5.2.3.1.2) and then unlocks own RAR. If BCAS receives a Resolution Message (4.3.1.2) and own RAR is locked for access only by the interrogating BCAS, BCAS replies with an RAR Reply Message (4.3.2.1), updates own RAR (5.2.3.1.2) and then unlocks own RAR. Otherwise BCAS replies with an RAR Busy Message (4.3.2.2).

The RAR Reply Message to BCAS (4.3.2.1) contains an encoded image of each column of own RAR (3.3.2.8.1). The horizontal advisories of a column are encoded by scanning the "Left Component" list of Table 5.2–6 and selecting the first advisory contained in the column, and then scanning the "Right Component" list of Table 5.2–6 and selecting the first advisory contained in the column. The two horizontal components thus selected are then encoded in accordance with 3.3.2.8.1. The vertical advisories of a column are encoded using the same technique employed for encoding horizontal advisories except that the "Up Component" and "Down Component" lists of Table 5.2–6 are scanned.

5.2.3.3 Coordinotion With Ground ATARS Equipment

If BCAS receives an ATARS Resolution Advisory Message (4.4.1.1) and the RAR is not locked to deny access to the corresponding ground ATARS equipment, the RAR is locked to deny access to all other users, an RAR Reply Message (4.4.2.1) is transmitted, the RAR is updated (5.2.3.1.3), and the RAR is unlocked. Otherwise, an RAR Busy Message (4.4.2.2) is transmitted.

If BCAS receives a request from ground ATARS equipment to transmit RAR contents (RR=19, 4.4.2) and the request is not an ATARS Resolution Advisory Message, and if the RAR is not locked to deny access to the corresponding ATARS ground site, then the RAR is locked to deny access to all other users, an RAR Reply Message (4.4.2.1) is transmitted, and the RAR is unlocked. Otherwise, an RAR Busy Message (4.4.2.2) is transmitted.

The RAR Reply Message to ATARS (4.4.2.1) contains an encoded image of each column of own RAR (3.3.2.4.1). The horizontal and vertical advisories of each column are encoded using the technique employed for the RAR Reply Message to BCAS (5.2.3.2.3).

5.2.3.3.1 Commond of Sensitivity Level From Ground ATARS Equipment

BCAS accepts a sensitivity level command from ground ATARS equipment (4.4.5). A sensitivity level command received from ATARS remains effective until replaced by the same site. If an existing command is not refreshed within 14 seconds, it is set to "0".

Table 5.2–6.—*Hierarchy of Resolution Advisories*

Left component	Right component
Turn left	Turn right.
Don't turn right	Don't turn left.
Up component	Down component.
climb	Descend.
climb faster than 2,000 FPM	Descend faster than 2,000 FPM.
climb faster than 1,000 FPM	Descend faster than 1,000 FPM.
Climb faster than 500 FPM	Descend faster than 500 FPM.
Don't descend	Don't climb.
Don't descend faster than 500 FPM.	Don't climb faster than 500 FPM.
Don't descend faster than 1,000 FPM.	Don't climb faster than 1,000 FPM.
Don't descend faster than 2,000 FPM.	Don't climb faster than 2,000 FPM.

5.2.3.4 Cockpit Display

To develop the composite resolution advisory output to the cockpit, BCAS scans the resolution advisories stored in the four ATARS columns of the RAR and the resolution advisories that own BCAS has generated for all threats for which it is responsible. A composite resolution advisory with up to four components is synthesized by selecting one or fewer advisories from each of the four lists in Table 5.2–6. An advisory, if any, is selected from each list by starting at the top of the list and selecting the first advisory that appears in any one of the ATARS columns or among the advisories generated by own BCAS.

Note 1.—An example of a four-component resolution advisory is "Don't Climb, Don't Descend, Don't Turn Right, Don't Turn Left."

Note 2.—The "Own BCAS" column of the RAR does not fully represent all advisories generated by own BCAS because Vertical Speed Minimum advisories are posted as positive advisories of the same sense. The "All Other BCAS" column is not used in synthesizing the composite resolution advisory.

5.2.3.5 Coordinotion With Ground RBX Equipment

BCAS communicates with any ground RBX equipment for which the range to the RBX is less than the range threshold for the RBX (4.5). BCAS accepts sensitivity level commands from each such RBX, and transmits displayed resolution advisories (5.2.3.5.2) to the RBX.

5.2.3.5.1 RBX Commond of Sensitivity Levels

BCAS accepts sensitivity level commands from an RBX (4.5.3). A sensitivity level command received from an RBX remains effective until modified by the same RBX. If a command is not refreshed within 14 seconds, it is set to "0".

5.2.3.5.2 Displayed Resolution Advisory

The displayed resolution advisory is the composite resolution advisory derived from the four ATARS columns and the "Own BCAS" column of an RAR. The displayed resolution advisory transmitted to the RBX (4.5.4) is derived from own RAR. A displayed resolution advisory derived from the threat RAR is used for path prediction (5.2.2.1.3).

A displayed resolution advisory with up to four components is synthesized by selecting one or fewer advisories from each of the four lists in Table 5.2–6. An advisory, if any, is selected from each list by starting at the top of the list and selecting the first advisory that appears in any one of the four ATARS columns or in the "Own BCAS" column.

5.2.4 Selection of SLOWN

BCAS selects the lowest nonzero command as the value of SLOWN from all the current sensitivity level commands received from ground ATARS equipment (5.2.3.3.1) and ground RBX equipment (5.2.3.5.1). If there is no current nonzero command and ZOWN (5.2.1) is greater than 10,000 ft, SLOWN is selected as 7. Otherwise, SLOWN is selected as 5.

5.3 Interfoces

5.3.1 DABS Transponder Inputs

The following inputs to the DABS transponder are also input to the airborne BCAS equipment: a. ATCRBS Mode A (4096) code.

b. Altitude OFF signal.

c. On the ground signal.

d. DABS address code.

e. Own maximum operating airspeed code.

f. Pressure altitude.

Note.—The ATCRBS Mode A code and the altitude off input are from the DABS transponder control panel; the on the ground signal may be either from the control panel or from an automatic air-ground switch.

5.3.2 Additionol Inputs

Additional inputs may be provided to the airborne BCAS equipment. For

example: a. A manual input for selection of sensitivity level.

b. An input signal from a radar altimeter which allows descend advisories to be inhibited at low altitudes and which permits automatic sensitivity level switching when in proximity to the ground.

c. Magnetic heading as provided by a directional gyroscope may be used with ATCRBS intruder bearing (as provided by a BCAS antenna with direction finding capability) for correlation with intruder bearing in ATCRBS track blocks by ground ATARS equipment (5.2.1.2.2).

5.4 Airborne Antenna System

A BCAS unit transmits interrogations and receives replies via two antennas, one top mounted and the other bottom mounted. These may be dedicated antennas or shared with other avionics.

Note.—A BCAS unit and DABS transponder may share a single pair of antennas.

5.4.1 Polarization

The antennas are vertically polarized.

5.4.2 Radiation Pattern

The radiation pattern of each antenna when installed on an aircraft is nominally equivalent to that of a quarter-wave monopole on a ground plane. This gives a nominal 3 dB vertical beamwidth of 30 degrees and an omnidirectional pattern in the horizontal plane.

Note.—Airborne BCAS equipment may use one or more antennas with direction finding capability and may use antennas with directional radiation patterns. If directional radiation patterns are employed, the antenna(s) must be so designed that BCAS surveillance is provided throughout the volume serviced by top and bottom mounted quarter-wave monopoles with antenna gains no less than that provided by the monopoles minus 3 dB.

5.4.3 Antenna Selection

5.4.3.1 Squitter Listening

A BCAS unit receives squitters via the top and bottom antennas. This can take the form of simultaneous reception using two receivers and two decoders or switched reception using one receiver. If reception is switched, the switching times are controlled to avoid undesirable synchronism with the squitters transmitted by DABS diversity transponders.

Note.—A DABS diversity transponder transmits squitters at the rate of nominally 1 each second alternating between its two antennas. An example of a switching pattern by which a BCAS unit can listen for squitters while avoiding undesirable sychronism is to switch receiving antennas once every 2 seconds; then in each 4-second period, squitters are transmitted/received via all four antenna pairs.

5.4.3.2 Interrogation

A BCAS unit transmits each ATCRBS or DABS interrogation via one or the other of the two antennas. Interrogations are not transmitted simultaneously via both antennas.

6. Characteristics of Ground RBX Equipment

6.1 Interference Control

6.1.1 RF Peak Effective Radiated Power

The maximum effective radiated peak power of any RBX squitter or reply pulse is +40 dBW including antenna gain and transmission loss.

6.1.2 Unwanted RF Output Power

When the RBX is not transmitting a squitter or reply, its output in the frequency band from 1027 to 1033 MHz does not exceed −35 dBW effective radiated power.

6.1.3 Squitter Rate

The squitter rate for a single RBX is one squitter every four seconds.

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federal register

Monday
October 27, 1980

Part V

Department of Transportation

Federal Aviation Administration

Completion of Airworthiness Review Program

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. 1

[Docket No. 13542; Notice No. 74-5E]

Airworthiness Review Program: Completion

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice announcing completion of a Regulatory Review Program.

SUMMARY: With this notice the FAA completes the Airworthiness Review Program initiated in February 1974. The purpose of this Review was to update and improve the certification and operating regulations containing airworthiness standards and related procedural requirements. This notice also announces the availability of an index of the proposals made during the Review and the disposition of each one.

FOR FURTHER INFORMATION CONTACT: Marvin J. Walker, Regulatory Review Branch, AVS-22, Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; Telephone: (202) 755-8714.

SUPPLEMENTARY INFORMATION: In recognition of the rapid growth and technological advances within the aviation industry of the United States and other countries, the FAA gave notice of its Airworthiness Review Program on February 15, 1974. The FAA invited all interested persons to submit proposals to change the Federal Aviation Regulations involved for consideration as part of the regulatory process (see Notice 74-5; 39 FR 5785). The objective of the program was to update and improve certification and operating regulations, airworthiness standards, and related procedural requirements in the Federal Aviation Regulations. In the notice, the FAA announced that it would make available for comment a Compilation of Proposals to be given further consideration as possible agenda items for an Airworthiness Review Conference.

Over 1,000 proposals were submitted by the FAA and interested persons in response to Notice 74-5. A number of proposals received pertained solely to form numbers and other minor clarifying revisions. These were dealt with in Notice 74-33, the first of eight notices of proposed rule making issued under the Airworthiness Review Program.

On May 22, 1974, the FAA announced the availability of a Compilation of Proposals and invited all interested persons to submit comments (see Notice 74-5A; 39 FR 18662). In response to that invitation, the FAA received over 4,900 individual comments contained in 74 submissions. Of this number, one group of proposals was considered at the time to be straightforward, noncontroversial, and adequately justified. Notice 75-10, the second notice of proposed rule making issued under the Airworthiness Review Program, dealt with that group of proposals.

An Airworthiness Review Conference was held by the FAA December 2-11, 1974, in Washington, D.C., to obtain the views of those concerned with the remaining proposals. Over 600 persons attended. The proposals and related discussions culminated in the issuance of six additional notices of proposed rule making.

Notices of Proposed Rule Making Issued

The following notices of proposed rule making were issued as part of this Airworthiness Review Program:

Notice No., Title and Federal Register Citation

74-33 Form Number and Other Clarifying Revisions (39 FR 36595; Oct. 11, 1974)
75-10 Miscellaneous Proposals (40 FR 10802; Mar. 7, 1975)
75-19 Powerplant Proposals (40 FR 21866; May 19, 1975)
75-20 Equipment Deviation List (40 FR 22110; May 20, 1975)
75-23 Equipment and Systems Proposals (40 FR 23048; May 27, 1975)
75-25 Flight Proposals (40 FR 24664; June 9, 1975)
75-28 Airframe Proposals (40 FR 24802; June 10, 1975)
75-31 Aircraft, Engine, and Propeller Airworthiness, and Procedural Proposals (40 FR 29410; July 11, 1975)

At one time the FAA considered issuing an additional notice of proposed rule making dealing with a group of proposals for periodically updating the type certificates of aircraft and products with lengthy service cycles. The proposals were listed as being deferred for this purpose in Notice 75-31, Appendix I, Group 2 (40 FR 29410; July 11, 1975). Accordingly, the FAA has issued a notice of proposed rule making (45 FR 57688; August 28, 1980) proposing amendments to the certification procedures regulations applicable to the type design approval of aircraft, aircraft engines, and propellers. The proposals, therefore are removed from the Airworthiness Review Program.

Amendments Issued

Based on the comments received on the notices and further review within the FAA, the following amendments were issued as part of this Airworthiness Review Program:

Title Federal Register Citation

Form Numbers and Clarifying Revisions (40 FR 2578; Jan. 14, 1975)
Rotorcraft Anticollision Light Standards (41 FR 5290; Feb. 5, 1976)
Miscellaneous Amendments (41 FR 55454; Dec. 20, 1976)
Powerplant Amendments (42 FR 15034; March 17, 1977)
Equipment and Systems Amendments (42 FR 36960; July 18, 1977)
Flight Amendments (43 FR 2302; Jan. 16, 1978)
Airframe Amendments (43 FR 50578; Oct. 30, 1978)
Minimum Equipment Lists (MEL) (44 FR 43714; July 26, 1979)
Cabin Safety and Flight Attendant Amendments (45 FR 7750; Feb. 4, 1980)
Aircraft, Engine, and Propeller Airworthiness, and Procedural Amendments (45 FR 60154; Sept. 11, 1980)

Description of Index

To ensure that action has been taken in all areas of concern, the FAA has compiled an index of proposals which lists each proposal made during the Airworthiness Review, identification of its proponent, its disposition (adopted as a rule, deferred, removed from the airworthiness review, or withdrawn from consideration) and a reference to the volume number, page number, and date of publication of the **Federal Register** in which disposition was announced.

Of 1,996 proposals submitted, 1,203 were adopted as rules, 267 deferred, 194 removed from the Airworthiness Review, and 332 withdrawn from consideration.

The index is routinely being distributed to known interested persons. Copies of the index of proposals may be obtained by contacting the FAA Regulatory Review Branch at the address listed in the "FOR FURTHER INFORMATION CONTACT" paragraph.

(Secs. 313(a), 601, 603, and 604, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1423, and 1424); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—The Federal Aviation Administration has determined that this document is not significant in accordance with the criteria required by Executive Order 12044, and set forth in the "Department of Transportation Regulatory Policies and Procedures" published in the **Federal Register** on February 26, 1979 (44 FR 11634).

Issued in Washington, D.C., on October 20, 1980.

William J. Sullivan,

Chief, Safety Regulations Staff, Federal Aviation Administration.

[FR Doc. 80-33269 Filed 10-24-80; 8:45 am]
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federal register

Monday
October 27, 1980

Part VI

Department of Agriculture

Agricultural Marketing Service

Milk in the Southwestern Idaho-Eastern Oregon Marketing Area; Revised Recommended Decision and Opportunity To File Written Exceptions on Proposed Marketing Agreement and Order

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1135 (Tentative)

[Docket No. AO-380]

Milk in the Southwestern Idaho-Eastern Oregon Marketing Area; Revised Recommended Decision and Opportunity To File Written Exceptions on Proposed Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends that a Federal milk order be established for the proposed Southwestern Idaho-Eastern Oregon marketing area. The milk order was proposed by three cooperative associations and was considered at a public hearing held December 5–8, 1978, and at a later reopening of the hearing on February 5–8, 1980. An analysis of the hearing evidence developed at both hearings indicates that dairy farmers are experiencing disorderly marketing conditions to an extent that warrants the adoption of a milk order for the area. Based on evidence presented at the December 1978 hearing, the Department initially recommended that an order not be established for this area.

DATE: Comments are due on or before November 26, 1980.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7183. A separate Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "significant."

Prior documents in this proceeding:

Notice of Hearing: Issued October 19, 1978; published October 24, 1978 (43 FR 49704).

Correction: Published October 27, 1978 (43 FR 50187).

Correction: Published November 13, 1978 (43 FR 52496).

Extension of time for filing briefs: Issued February 23, 1979; published February 28, 1979 (44 FR 11236).

Recommended decision: Issued August 13, 1979; published August 16, 1979 (44 FR 48128).

Extension of time for filing exceptions: Issued September 14, 1979; published September 19, 1979 (44 FR 54307).

Notice of reopened hearing: Issued November 27, 1979; published November 30, 1979 (44 FR 68853).

Notice of rescheduling of reopened hearing: Issued December 19, 1979; published December 27, 1979 (44 FR 76551).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this revised recommended decision with respect to a proposed marketing agreement and order regulating the handling of milk in an area tentatively identified as the Southwestern Idaho-Eastern Oregon marketing area.

Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250, November 26, 1980. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The above notice of filing of the decision and of opportunity to file exceptions thereto is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The recommendations, as hereinafter set forth, concerning the tentative marketing agreement and order were formulated on the basis of the record of a hearing conducted at Boise, Idaho, on December 5–8, 1978, and a reopening hearing on February 5–8, 1980, pursuant to notices thereof which were issued October 19, 1978 (43 FR 48704), November 30, 1979 (44 FR 68853), and December 19, 1979 (44 FR 76551).

The material issues of record relate to:

1. Whether the handling of milk produced for sale in the proposed marketing area is in the current of interstate commerce, or directly burdens, obstructs, or affects interstate commerce in milk or its products;

2. Whether marketing conditions show the need for the issuance of a milk marketing agreement or order which will tend to effectuate the policy of the Act; and

3. If an order is issued what its provisions should be with respect to:

(a) Handlers to be regulated and milk to be priced and pooled;

(b) The classification of milk and assignment of receipts to classes of utilization;

(c) Pricing of milk;

(d) Distribution of proceeds to producers; and

(e) Administrative provisions.

On the basis of the record of the initial hearing held December 5–8, 1978, the Deputy Administrator, Marketing Program Operations, issued a recommended decision (44 FR 48128) in which it was tentatively concluded that the hearing evidence did not provide a sufficient basis for establishing a new order for the proposed marketing area. Interested parties were then invited to submit written exceptions to the decision. In their exceptions to the Department's tentative conclusions, proponents of the new order indicated that there was additional evidence concerning the need for an order which they desired to make available at a reopened hearing.

Based on the exceptions filed by proponents, it was concluded that in the public interest the hearing should be reopened for the purpose of receiving additional evidence concerning the economic and marketing conditions that related to any of the issues and proposals set forth in the original notice of hearing. The reopened hearing was held February 5–8, 1980, in Boise, Idaho.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at both the initial and reopened hearings and the records thereof:

1. *Character of commerce.* The area that was proposed for regulation includes 23 contiguous counties. Eighteen of the counties are in southwestern Idaho, and the remainder are in eastern Oregon. Of the 216 Grade A milk producers who resided in the area in June 1978 and whose milk was available to milk dealers serving the area, 198 reside in Idaho and 18 in Oregon.[1] The producers produced 27 million pounds of milk in June 1978 and supplied milk to 12 milk dealers in the area that was proposed. The fluid milk

[1] Most of the detailed statistical information pertaining to production, marketing, and pricing of Grade A milk for the proposed marketing area was available only for June 1978. Accordingly, the data used herein will apply to June except where more recent data are available.

sales of the dealers were about 10 million pounds. Essentially all fluid milk sales by milk dealers in the area are within the marketing area that was proposed.

The milk of dairy farmers associated with the proposed marketing area that is not needed for fluid use is made into manufactured dairy products at plants in Idaho and Utah. These products are sold in Idaho, Oregon, and other states. Dairymen's Creamery Association, Inc. (DCA), a proponent of the milk order, with a plant at Caldwell, Idaho, manufactures milk into American cheese, butter, and nonfat dry milk for distribution in several states. Another proponent cooperative association, Mountain Empire Dairymen's Association (MEDA), moves such milk to manufacturing plants in Idaho and Utah. The dairy products made in these plants are then sold in several states.

Milk dealers who operate fluid milk plants in the area that was proposed for Federal milk regulation distribute fluid milk products in Idaho and Oregon from such plants. Also, they compete in the area for fluid milk sales with at least 6 out-of-state fluid milk plants located in Oregon, Washington, and Utah which are regulated either by the Inland Empire, Oregon-Washington, or Great Basin Federal milk orders.

The Agricultural Marketing Agreement Act of 1937, as amended, provides in section 608(c)(1) that milk orders issued by the Secretary shall regulate such agricultural commodity, or product thereof, as is in the current of interstate commerce, or which directly burdens, obstructs, or affects interstate or foreign commerce in such commodity or product thereof. It is concluded that the handling of milk in the proposed marketing area is in the current of interstate commerce. Accordingly, the Department has appropriate jurisdiction in establishing a Federal milk order for this area.

2. *Need for an order.* Marketing conditions in the proposed Southwestern Idaho-Eastern Oregon area justify the issuance of a marketing agreement or order for the area.

Three dairy farmer cooperative associations, DCA, MEDA, and Western General Dairies, Inc. (WGDI), proposed an order for the Southwestern Idaho-Eastern Oregon area. In June 1978, DCA and MEDA represented about 70 percent of the producers who supply plants which would be regulated by this order. The third proponent, WGDI, does not have producer members that supply fluid plants who would be regulated by the order. Although the cooperative has 104 members in Idaho, all of this milk is marketed to plants that are regulated by the Great Basin Federal milk order.

At the time of the reopened hearing, DCA represented 196 Grade A producers. All of these producers' farms were located within the geographical territory of the proposed marketing area. In December 1979, receipts from these producers were about 18 million pounds, with more than half of such receipts associated with three fluid milk plants that would be regulated by the order.

With the exception of the supply from one nonmember producer, DCA is the exclusive supplier of milk to Associated Dairies, Inc. (Associated), which operates fluid milk plants at Boise, Idaho, and Twin Falls, Idaho. The cooperative owns 50 percent of Associated. In June 1978, these two plants had about 4.5 million poinds of fluid milk sales. Practically all of such sales were within the proposed marketing area.

Beginning in April 1979, DCA also became the exclusive supplier of Sun Ray Drive-In Dairy at Boise. This plant received about 350,000 pounds of milk from DCA in December 1979. In June 1978, Sun Ray had about 9 percent of the fluid sales in the proposed marketing area.

DCA also operates a plant at Caldwell, Idaho, which is a pool supply plant under the Oregon-Washington milk order. Presently, about 40 percent of the cooperative's Grade A member receipts are pooled under that order. Additionally, about 10 percent of such receipts are pooled under the Great Basin order. The cooperative's Grade A milk that is not needed for fluid use in the proposed marketing area is manufactured into dairy products at the association's Caldwell manufacturing plant.

Another proponent of the order, MEDA, operates on a regional basis with a large proportion of its member milk marketed under the Eastern Colorado order. The cooperative's member producers are located in Colorado, Idaho, Nebraska, Oregon, and Wyoming. It represents 119 producer members who reside in the Idaho-Oregon area, 87 of whom are available to supply fluid milk plants in the proposed area. The milk of MEDA's remaining producers in Idaho and Oregon is pooled under the Great Basin order.

Since the middle seventies, MEDA has sold milk on a supplemental basis (balancing the daily and seasonal variations in total milk needs) to the Meadow Gold fluid milk plant in Boise. This plant would be fully regulated under the proposed order. In June 1978, for instance, the association sold 572,000 pounds to the Meadow Gold plant, which represented about 11 percent of the plant's total producer supplies for the month. In more recent months, however, Meadow Gold has sharply reduced its purchases from MEDA, purchasing only 45,000 pounds in November 1979 and nothing at all in December 1979. The Meadow Gold plant receives the major part of its supply from about 25 producers who are not members of a cooperative association. In June 1978, the plant purchased 5 million pounds of milk from producers and sold 3.6 million pounds as fluid milk products.

The milk of MEDA producer members that is not sold for fluid use in the area is disposed of to manufacturing plants in Idaho and Utah, including DCA's manufacturing plant at Caldwell, Idaho. MEDA operates no manufacturing facilities in Idaho; it is a marketing organization exclusively.

In addition to the three fluid milk plants supplied by DCA and MEDA, the fluid market was serviced in June 1978 by four other plants located in the area that pasteurized, packaged, and distributed fluid milk products. The receipts from producers at the four plants for the month totalled 3.2 million pounds, and fluid sales were 1.8 million pounds. Also, six fluid milk plants outside the proposed marketing area were selling fluid milk products in the area. Such milk was priced and pooled under neighboring Federal milk orders.

The three fluid milk plants to which proponents were selling milk accounted for 68 percent of the June 1978 fluid milk sales in the area. The other four plants in the area accounted for 16 percent of the sales, and the six plants outside the area accounted for 14 percent of the sales. In addition, five milk dealers were distributing unpasteurized milk products and accounted for two percent of the fluid milk sales in the area.

DCA represented 42 percent of the 216 producers whose milk was available to the fluid market in June 1978. MEDA represented 31 percent of the producers. An additional 23 percent of the producers shipping milk to local dealers were not members of a cooperative association, and four percent of the producers supplied all or part of the milk needs of their own fluid processing operations.

a. *Testimony adduced at the December 5–8, 1978, hearing.* At the initial hearing, the proponent cooperative associations were represented by five dairy farmer witnesses who testified in support of the Federal milk order that was proposed. Certain employees of the cooperative

testified about the specific milk order provisions that were proposed.

One of the dairy farmer witnesses, who has produced milk in Canyon County, Idaho (in the proposed area) for 44 years, related some of the history of the market from his own experience. He stated that when he first started producing Grade A milk, it was customary for milk dealers to accept milk from farmers only when they needed it and to cut part of the farmers off the market during periods of seasonally high milk production.

By 1954, he said, about 150 dairy farmers had organized into a cooperative association (Grade A Milk Producers Association or GAMPA) and had attempted to negotiate supply contracts with milk dealers. In these attempts, the farmers were largely unable to reach a satisfactory agreement with respect to prices.

He testified that by 1970 the number of milk dealers operating in the market had decreased substantially, and GAMPA had only three outlets for its members' milk. This was reduced further when DCA bought one of the fluid milk plants.

The witness stated that this development intensified competition between the two remaining milk dealers for sales of fluid milk products. As the milk dealers lowered their retail prices, they pushed down the prices paid to the farmers. He stated that one result of this was that farmers received four different prices from a milk dealer depending on the area where fluid milk sales were made. Farmers paid the transportation cost to more distant areas from the Boise, Idaho, area, he said, or took a lower price so that the milk dealer could meet competition at locations outside the Boise area.

The witness stated that in 1972 GAMPA lost another buyer and began marketing milk in Oregon, Washington, and Utah to provide outlets for its members' milk. This led to a merger with MEDA which provided an outlet for milk in the Eastern Colorado market (Denver area). In this producer's view, a Federal milk order would provide orderly marketing for dairy farmers in contrast to the instability which characterized the southwestern Idaho market during his years of experience with it.

Aside from the historical development of the market, other proponent cooperative witnesses testified collectively that a Federal milk order is needed for the marketing area that was proposed because necessary elements of orderly marketing are lacking there.

Proponent witnesses testified that milk dealers competing for sales in the area do not pay farmers on the basis of a uniform classification plan that reflects the way milk is utilized, such as the higher-valued fluid milk products being included in a Class I classification and the lower-valued manufactured products being included in a Class II classification. It was stated that, while one of the dealers pays for milk on a classified use basis, there is no uniform classification plan for the market as a whole. It was claimed that another dealer pays for milk at a Class I utilization that is lower than its actual Class I use. In this connection, the witness indicated the handler establishes what the utilization scheme will be, but the dairy farmers have no way of verifying the utilizations on which they are paid. It was stated that another dealer pays a lower "flat" price for milk even though most or all of the milk distributed by the handler is in the form of fluid milk products.

Proponents' witnesses testified that there is a wide variation in prices paid dairy farmers for milk, and that such variation also is evident from the varying butterfat differentials paid by dealers. They said that it is essential for orderly marketing that minimum prices be paid for each class of milk by all milk dealers competing for sales in the marketing area. Proponents stated that such a pricing arrangement would prevent dealers from "shortchanging" dairy farmers through price determinations that do not reflect market values.

Proponents' witnesses testified also that in the absence of a Federal milk order, farmers and their cooperative associations cannot verify how their milk was used by milk dealers. Also, they stated that without an order there is no means of verifying the weight and butterfat content of the milk they deliver to the dealers.

Proponents' witnesses testified about another element of orderly marketing which they believe is lacking in the marketing area that was proposed. In the absence of an order, it was stated, there is no means for equitably distributing returns among producers from the sale of milk in each use classification. It was stated that cooperatives divert milk to manufacturing plants that is not needed for fluid use by milk dealers. Proponents assert that this diversion accrues to the benefit of all producers. It was stated that in the absence of marketwide pooling, as provided by a Federal milk order, producers who are members of a cooperative association realize a lower price for their milk than producers who are not members of a cooperative; and that the average prices received by all producers vary significantly form plant to plant. Proponents maintain that marketwide pooling under a Federal milk order would assure all farmers of an equal sharing of utilization in each class and would result in a more orderly market.

A final element of orderly marketing that proponents believe is lacking with respect to the area in question is that there is no means for farmers, consumers, milk dealers, or other interested parties to evaluate market conditions because there is no published information about milk production, sales, and other relevant market statistics. In proponents' view, one of the benefits of a Federal milk order for the area would be the availability of such information on a timely basis.

Three dairy farmers who were not affiliated with a cooperative association testified in opposition to the proposed milk order. One stated that he was being paid for his milk on the basis of 70 percent Class I utilization. he was apprehensive that a Federal milk order would cause the Class I utilization percentage of the market to drop continually. The other farmers expressed similar views.

b. *Testimony adduced at the February 5–8, 1980, reopened hearing.* At the reopened hearing, the three dairy farmers mentioned above testified in favor of the proposed order. Generally, these farmers stated they now favor an order because it would provide market stability. Two of the farmers testified that in the period between the December 1978 hearing and the February 1980 reopened hearing they had been cut off by handlers because of alleged quality problems with their milk. They maintained they had no unusual quality problems, and this was not refuted by the handlers involved.

One of these farmers also complained of having to balance the fluid needs of the fluid milk plant to which he delivers his milk. On days when his milk wasn't needed there, he testified, he had to haul it at his own expense to a manufacturing plant; and he would receive a lower price for this milk. The witness argued that the fluid milk operator, who produces the balance of his fluid needs with his own herd, should share in bearing the burden of the reserve supplies for the plant.

Another dairy farmer testified that he is now in favor of an order because he has experienced discrepancies in the butterfat testing of his milk and never knows if he is getting paid fairly for his butterfat. He said an order would provide a means to verify handlers' butterfat tests. Also, he said, he

supports an order because it would provide greater market security.

The witness stated that he had recently joined MEDA because the handler to which he was delivering his milk kept cutting his price. At first, he said, the handler promised him a fluid milk price on 100 percent of his milk. Then the handler told him he could only pay him the fluid price on 80 percent of his milk which, after some time, was dropped to 70 percent of his milk.

Several individual producer members and officers of DCA and MEDA also testified in support of the proposed order. The president of DCA testified that DCA has lost members to a proprietary handler (Meadow Gold) because the handler is able to pay its producers a higher price than can the cooperative. The DCA spokesman indicated this is because the cooperative helps carry the market's reserve milk supplies while Meadow Gold does not. Even though DCA charges its customers a higher Class I price then Meadow Gold pays, Meadow Gold can outpay the cooperative, it was claimed, because Meadow Gold does not carry its full share of the market's surplus, which results in a diluted blend price to the producer members of the cooperative.

The general manager of DCA testified that DCA owns half-interest in Associated Dairies and that DCA is, with one exception, the exclusive supplier of Associated Dairies and Sun Ray Drive-In Dairy. He said that DCA's Class I price to these handlers is based on the Minnesota-Wisconsin (M–W) price for the second preceding month plus $1.85. This price, however, moves only when the M–W price changes by 23 cents per hundredweight. The contracts with these handlers are under stress, he said, because Meadow Gold and other handlers in the market are able to acquire milk at lower prices.

The witness referred to an exhibit introduced at the December 1978 hearing which shows prices paid by the various handlers in the market. He pointed out that the average price paid by Associated to DCA for the months of January-October 1978 was $10.87 per hundredweight for Class I milk. During these same months, he said, Meadow Gold paid its own producers $10.59 per hundredweight for Class I milk and paid MEDA $11.04 per hundredweight for the small portion of supplemental milk it purchased from them.

He also pointed to the difference in butterfat differentials used by the various handlers in the market. He said Associated Dairies pays 12.8 cents for each tenth of a pound of butterfat variation above 3.5 pounds, while Meadow Gold pays 12.5 cents to MEDA but only 7.25 cents to its own producers.

The witness cited December 1979 as a more recent example of the price disparities in the market. In that month, he said, Meadow Gold paid a Class I price of $1.45 over the M–W price, while Associated paid $1.85 over M–W; yet the Meadow Gold producers received a blend price of $12.28 per hundredweight while DCA producers received a blend price of $11.84, or 44 cents less. He testified that the net result of this disparity in prices is that Associated has had to operate on lower margins that do not allow it to replace assets as needed. He said that margins were down 15 percent in 1979 and could be expected to decline further in 1980. As a result of the economic advantages to competing handlers, Associated has been unable to achieve the volume level it realized in is first year of operation, which was six years ago. This in time, according to the witness, has adversely affected the earnings of the cooperative.

The witness testified that the other handler supplied by DCA also is disadvantaged because of the wide differences in prices paid to producers for Class I milk. He said Sun Ray Dairy lost a major account to Meadow Gold last fall and that both Associated and Sun Ray have been losing sales to Falconhurst Dairy in Buhl (near Twin Falls). Falconhurst, he said, purchases milk at a price equal to the local cheese market price plus 75 cents. He stated that this meant a current (at the time of the reopened hearing) price of $11.95 paid by Falconhurst compared to $13.21 paid by Associated and Sun Ray.

The witness concluded his direct testimony by summarizing the history of the market and his position about a federal order for the area. He said that security and stability for dairy farmers has been and is still absent in this area due to the lack of a uniform system of classified pricing for the total market. Without a Federal order that will insure uniform price, audits, and verification of tests, weights, and utilization, he said, the instability that now exists in the market will intensify even more in the future.

The president and general manager of Associated Dairies testified that an order is needed in this area to equalize prices to handlers. He said that if the present marketing situation continues he would have to recommend to the company's board of directors that the present pricing arrangement between DCA and Associated, which has been in effect over six years, be changed to provide Associated with lower prices for milk so as to be competitive in the marketplace.

A producer, who is also a director of DCA, explained that the present disorder in the area stems from the fact that producers have no basis of determining a fair return. He stated that as long as one producer can be convinced he is getting a little more than his neighbor, it makes him happy. Accordingly, he said, as the market prices move up and down seasonally, producers jump from one supplier to another trying to better themselves in relation to one another.

The president of MEDA testified that the absence of a regulated system of classified pricing in the proposed marketing area has been a constant source of disorder for dairy farmers. He indicated that the disorder has stemmed from the ability of unregulated bottling plants to obtain milk from producers for less than its economic value.

Another MEDA member testified that there has been a significant shift of producers since the December 1978 hearing. He said MEDA has signed up several producers who formerly delivered their milk to Meadow Gold. The immediate impact of this shift was that MEDA delivered more milk to Meadow Gold for a short period of time. Gradually, however, Meadow Gold replaced the MEDA milk with other nonmember producers to the point where, by the end of 1979, it was purchasing virtually no milk from MEDA. Consequently, as of February 1980, MEDA had no share of the market's Class I sales. Other MEDA witnesses indicated that the constant shift of producers between processing plants has heightened tensions between handlers and producers in the market, particularly between MEDA and Meadow Gold.

The general manager of MEDA testified that the cooperative has 87 producer members in Southwestern Idaho-Eastern Oregon that he considers available to supply milk to handlers that would be regulated by the proposed order. He said that an order is needed to preclude handlers from passing on to these dairy farmers adverse impacts of competitive problems in the resale market. Without a classified pricing program, he noted, handlers can use various means to lessen their competitive problems by requiring dairy farmers to take lower prices for milk.

The witness claimed that in the past two years 87 producers in the Oregon-Idaho area have lost their fluid market because Meadow Gold discontinued buying their milk. Although, the cooperative ultimately was able to dispose of their milk, the witness said it was forced to take a lower return for it, thus reducing the total amount of money

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available to MEDA's producers. He testified that MEDA's sales to Meadow Gold declined from 46 million pounds in 1974 to 11 million pounds in 1978 and that this displacement of one group of producers by another group was attributable solely to the absence of regulation.

The witness stated that the absence of regulation has enabled unregulated handlers to expand their distribution of fluid milk products at the expense of nonmember producers as well as MEDA producers. He alleged that nonmembers supplying certain handlers have been short-changed in being paid less for their milk than the prices charged these same handlers by DCA and MEDA. Also, he noted, the nonmember producers have not received the full butterfat value for their milk, nor do they have any way of being assured of getting paid for the full weight and test of their milk.

The spokesman also reiterated testimony of another MEDA witness that, if MEDA is unable to reverse the displacement of its member milk, it will be forced to cut the price of milk or establish its own fluid milk distributing plant to regain its share of the Class I market. Either alternative, he noted, would result in the kind of chaos and disorderly marketing conditions that the Agricultural Marketing Agreement Act was designed to prevent.

The Idaho operations manager for MEDA described the pricing arrangement between MEDA and Meadow Gold in 1975, which was prior to the time MEDA insisted on a change in pricing and Meadow Gold began replacing MEDA's milk with nonmember producers. The prices paid to MEDA by Meadow Gold varied according to how the milk was used, at which Meadow Gold plant the milk was received, where Meadow Gold distributed the milk, or which account Meadow Gold was serving. For example, for the month of March 1975, Meadown Gold paid a Class I price of $9.14 per hundredweight with a butterfat differential of 8.5 cents per point of fat for milk sold in the primary area (described as all fluid sales in the Boise area other than sales to the Circle K chain); it paid a price of $8.51 with a butterfat differential of 8.0 cents for milk sold in an area described as Area 1; it paid a price of $8.47 with a butterfat differential of 8.5 cents for milk sold in an area described as Area 2; it paid a price of $8.74 with a butterfat differential of 8.5 cents in an area described as the Circle K—Local Area in which the Circle K chain had stores; it paid a price of $6.86 with a butterfat differential of 7.7 cents for milk used in its Bannock Street distributing plant for other than fluid use (including shrinkage); and it paid a price of $7.11 with a butterfat differential of 8.3 cents for milk delivered to its Miller Street manufacturing plant (a few blocks away from the Bannock Street fluid milk plant, both in Boise).

The witness testified that at that time in 1975 this pricing system had been in effect for several years but that it was getting to the breaking point because it was deteriorating MEDA's blend price to the point where the cooperative could no longer live with it. Accordingly, he said that in April 1975 MEDA and Meadow Gold negotiated a new pricing arrangement whereby Meadow Gold paid MEDA the Great Basin Class I price for 75 percent of the milk delivered to its Bannock Street plant and the Great Basin Class III price (i.e., the Minnesota-Wisconsin price) for the remaining 25 percent.

The witness explained that after about one year Meadow Gold negotiated with MEDA for some milk for its Miller Street butter-powder plant. The parties agreed to an arrangement whereby Meadow Gold paid MEDA the Class I price on 80 percent of its milk delivered to the Bannock Street plant on the condition that it deliver a certain amount of milk to the Miller Street plant. Meadow Gold paid MEDA the "manufacturing price" for the milk delivered to the Miller Street plant. Under this arrangement, the witness said, MEDA at times received less from Meadow Gold than it would have received had it sold its milk to a cheese plant instead.

The record does not relate what transpired next, whether MEDA refused to supply milk to the Miller Street plant or whether it began charging a higher price. It does show, however, that Meadow Gold began purchasing less and less milk from MEDA. As a result of these declining purchases by Meadow Gold, MEDA, in about March of 1978, instituted a 10-cent per hundredweight service charge on top of the Great Basin Class I price (which was equal to the M–W price plus $1.90). Then, in late 1979 when Meadow Gold stopped purchasing all but spot shipments from MEDA, MEDA increased the service charge to 50 cents over the Class I price.

The president of Western General Dairies, Inc., a cooperative representing 630 Grade A producers in Utah, Wyoming, and Idaho, also testified in support of an order for the Southwestern Idaho-Eastern Oregon marketing area. Although WGDI would not have producers or plants under the proposed order, the spokesman testified that an order would provide needed stability and orderly marketing to the general region. He said WGDI's experience with the Great Basin order, under which WGDI operates fully regulated plants, has shown that an order provides producers with the security necessary to meet the tremendous investments needed for producers of Grade A milk. He said that an order eliminates the possibility of unreasonable profit by a processor at the expense of producers in the way he purchases milk for various uses and that it promotes better feelings among producers since they share equally in the Class I sales and in the sales of surplus milk used for by-products.

The manager of Safeway's Salt Lake City distributing plant, which is regulated under the Great Basin order, also testified in support of an order for the Boise area. Although this plant would not be regulated under the proposed order, the spokesman for Safeway indicated that it supported an order for the area because an order would subject its competitors to the same rules under which it operates. At the time of the reopened hearing, Safeway operated 14 stores in the proposed marketing area that were supplied with milk from its Salt Lake plant.

Opposition testimony to the adoption of the proposed order was presented at the reopened hearing by two individual dairy farmers. Both producers ship to Meadow Gold. One producer testified that an order would probably lower his price. He also said dairy farmers couldn't afford to give up their freedom of milk marketing which he believed a milk order for the area would take away.

The other producer opposed to the order testified that he had previously marketed his milk under the Great Basin order. The same problems exist under that order, he said, as exist in the proposed marketing area. He stated that he didn't feel there was any need for a marketing order here because he didn't believe there were chaotic marketing conditions existing in this area, and even if there were, he didn't see how an order would help this condition.

c. *Findings and conclusions on the need for an order.* On the basis of the testimony and evidence developed at the initial and reopened hearings, an order is needed to stabilize marketing conditions currently existing in the area. An order would establish and maintain orderly marketing conditions through the operation of a classified pricing plan applied uniformly to competing handlers for milk purchased from producers and an equitable basis of dividing among all

such producers the proceeds from the sale of their milk.

This market is in a region of heavy milk production and limited fluid milk sales. The outlet for fluid milk sales in the Southwestern Idaho-Eastern Oregon area is limited because the area is sparsely populated, with no large population centers. The estimated current population of the proposed marketing area in about 508,000.[2] Based on an estimated daily consumption of fluid milk of 0.9 pound per person, the total population of the proposed marketing area would provide a market for about 165 million pounds of Class I sales annually. In June 1978, about 14 percent of the estimated Class I sales in the proposed marketing area were supplied by handlers under other orders. Hence, dairy farmers who would be producers under the proposed order supply the remaining Class I sales of about 140 million pounds annually.

From data contained in the record, probably about 225 dairy farmers would be producers under the terms of the order as adopted herein. This number may be as few as 150 or as many as 250 producers, depending upon whether the order's blend price attracts milk now associated with other Federal order markets. If the number of producers associated with the market is about 225, total deliveries of their milk to be pooled under the order would be about 325 million pounds annually. At that rate, about 40 to 45 percent of producer milk would be used as Class I milk.

Within the proposed order's area, there is available from nearby producers a great deal more Grade A milk than can be used by distributing plants in the area. Moreover, it is likely that such milk supplies will increase in the future as more Grade B milk production is converted to Grade A and becomes available for the fluid market. This is becoming an increasingly significant factor in the market. Such a supply situation fosters disorderly marketing.

In this supply situation, handlers have an incentive to seek milk otherwise destined for manufacturing use for Class I purposes at prices that are little more than the prices paid for manufacturing grade milk in the region, which would be below the economic value of such milk under orderly marketing conditions. The availability of such cheaper milk weakens producers' bargaining position and lessens their ability to compete effectively for a Class I market.

The record establishes that certain handlers have exploited this situation as is evidenced by the significant differences in purchasing arrangements that distributing plants serving the area have with their producers. As indicated, the three distributing plants supplied by DCA purchase their milk on the basis of utilization under a three-class system. The class prices charged by DCA under this arrangement generally follow the prices established under the Great Basin order. The purchasing arrangements of other unregulated distributing plants in the marketing area have very little relation to the actual utilization made of the milk by the individual plants. One of these plants with nearly 100 percent Class I utilization pays little more for its milk than prices paid for Grade A milk by local manufacturing plants. Another plant, Meadow Gold, pays its producers on the basis of a fixed 70 percent Class I—30 percent Class II utilization under a two-class system where the Class I price is the Minnesota-Wisconsin manufacturing milk price plus $1.45 and the Class II price is the M–W price. However, the record indicates that this plant's actual Class I utilization is higher than the 70 percent figure that is used as a basis in determining the prices it pays dairy farmers.

The cost of Class I milk under the various purchasing arrangements used by 5 of the 7 [3] distributing plants expected to be regulated under the proposed order varied in December 1979 from about $12.09 to $13.22. This wide range in plants' cost of milk is resulting in decreasing returns to producers. The plants whose Class I milk costs are low relative to others have a competitive advantage in their milk costs which they have used in lowering their resale prices to take away business from other plants. Consequently, producers supplying plants who now pay Class I prices at the high end of the range are in danger of either having their buyers lose additional Class I sales to plants paying lower prices or being forced to accept lower prices from them.

This is the marketing situation that confronts proponent DCA at the present time. The purchasing arrangement between Associated Dairies and DCA is now being strained by the competitive pressures from plants having lower Class I milk costs. DCA's general manager testified that the impact of such competitive pressures reduced Associated Dairies' operating margin in 1979 about 15 percent; and, under current marketing conditions, he expects it to be lower in 1980. Also, DCA lost additional fluid sales to another buyer because this buyer lost a major wholesale account to a plant paying lower prices to producers for Class I milk.

There are also wide variations in butterfat differential values used by the plants in adjusting prices for milk containing other than 3.5 percent butterfat. In June 1978, for example, butterfat differentials used by plants purchasing milk from producers varied from a low of 7.25 cents to a high of 13.4 cents for each 1/10 percent variation from the basic test of 3.5 percent. This compares to a June 1978 butterfat differential in most Federal orders of 12.3 cents per 1/10 percent variation from 3.5 percent. This lack of a uniform butterfat differential that reflects market values for butterfat results in gross inequities in the prices received by producers and, in fact, reduces returns to those producers whose milk tests above the basic 3.5 percent butterfat test.

As indicated, the largest buyer of nonmember milk (Meadow Gold) has no uniform system of paying its producers according to the utilization of their milk. This has resulted in general dissatisfaction among many of its nonmember producers to the end that in early 1979 a number of them joined MEDA to improve their bargaining position. Shortly after this happened, Meadow Gold not only replaced these producers but also the remainder of MEDA's producers who supplied milk to Meadow Gold on a supplemental basis to balance the daily and seasonal requirements of the handler. MEDA must now channel the milk of these former producers of Meadow Gold to manufacturing plants where they receive a lower return for the milk.

The ability of some high Class I use plants to purchase milk at prices which do not reflect the value of milk for such use is causing market disorder. Under such marketing conditions an order can provide a marketing environment in which producers can obtain the full economic value of their milk under orderly marketing conditions. An order will insure that all handlers are paying producers the same minimum class prices and will provide equity among handlers relative to their product costs.

While an order will tend to mitigate competitive problems at the farm level resulting from unequal raw product costs among handlers, it does not guarantee any producer a fluid milk outlet. However, with a proper minimum class price structure under an order, the present disparities in raw product costs will be eliminated, or at least mitigated.

[2] Official notice is taken of "Estimates of the Population of Counties and Metropolitan Areas", Series P–25, No. 873, Issued February 1980, Bureau of Census, U.S. Department of Commerce.

[3] The record did not provide any pricing information for two small distributing plants at Buhl and Payette, Idaho.

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Thus, any producer favorably located to the market's fluid milk outlets should be in a favorable position to supply such outlets.

The record indicates that another source of market disorder experienced by producers regularly supplying the Southwestern Idaho-Eastern Oregon market is the absence of any plan to distribute equitably among producers the burden of reserve supplies of milk necessarily associated with the fluid milk sales of the area. This is a source of much discord among dairy farmers which poses a continuing threat to orderly marketing in the area.

The distributing plants located in the proposed marketing area tend to receive only enough milk to meet their fluid milk and cottage cheese requirements. Some of these plants, however, rely on the proponent cooperatives in varying degrees to meet their day-to-day and season-to-season fluctuations in milk supply needs. Associated and Sun Ray, for instance, arrange for DCA to supply them with practically all of their milk at the time and in the quantities needed.

Other handlers in the market, notably Meadow Gold, receive most of their milk supply directly from nonmember producers and rely on cooperatives, MEDA in this case, for supplemental supplies. In both supply situations, the proponent cooperatives assume the burden of disposing of the milk distributing plants do not have an immediate need for but which represents a necessary reserve supply for the market. Additionally, another distributing plant operator relies to a large extent on his own farm production for the plant's milk supply. To balance the plant's daily fluctuation in milk supply needs, the handler purchases supplemental supplies from a local producer. On the days of the week when the plant has no need for the producer's milk, the producer markets the excess to a manufacturing plant and receives the lower manufacturing price for such surplus. Under this supply arrangement, the handler is assured of sharing to the fullest extent possible in the plant's total Class I milk on his own farm production while the producer bears the burden of the reserve milk that is necessarily associated with the plant's operation.

Under the various supply arrangements presently existing in this market, the lower returns associated with the market's reserve or surplus milk supplies are not being equally shared among all producers in the area. Consequently, substantial inequity results among producers, particularly between the members of cooperatives who are supplying milk to the market for fluid use and other dairy farmers who supply the market. Accordingly, an order for the area, with provision for marketwide pooling, will provide the means of equitably apportioning the burden of reserve milk among all producers and will contribute to more orderly marketing conditions for the area. The marketwide pooling of milk as adopted herein assures that all producers will share equally in the higher-priced Class I uses to the extent that there is a market for Class I milk. They will also share equally in the lower-priced reserve milk supplies that are necessarily associated with a fluid market.

The evidence in the record indicated that a great deal of confusion exists among producers over the prices (their levels and how they are computed) they are paid by handlers for their milk. When asked what the proper price level should be in this area, one producer responded that that was part of the problem—no one knew what the true value of milk was in this market.

An order will remove this uncertainty by establishing an official minimum "value" for milk in this area. Producers will no longer wonder, then, whether they are getting the full use value for their milk.

Producers also expressed a great deal of concern over whether they were being paid for their milk according to accurate weights and butterfat tests. Several testified about discrepancies in their weights and tests.

An important function of an order is to insure that such tests and weights are accurate. Except where a cooperative association is performing this service for its members, the market administrator will insure that each producer is being paid by handlers on the basis of proper milk weights and butterfat tests.

Another market service which is now needed and will be provided by an order is the collection and publication of accurate market data. Statistics showing the amount of milk pooled, the utilization of such milk in each class, the computation of the uniform price, and other data will be regularly published by the market administrator and sent to producers who are not getting such information through a cooperative association.

In the initial recommended decision denying an order for this area, it was found that "it is doubtful that a Federal milk order to establish classified pricing, marketwide pooling, and other provisions would provide any substantial benefits for producers that would justify the disadvantages of Federal government intervention" (44 FR 48130). At the reopened hearing, it was evident that a very large percentage of the producers serving the market, and several handlers as well, strongly feel that the advantages of Federal regulation far outweigh any costs or other disadvantages involved.

The costs of regulation would essentially be the administrative assessment (not more than 5 cents per hundredweight, or less than ½ cent per gallon) charge to handlers to cover the administration of the order by the market administrator and his staff; the market service fee (not more than 7 cents per hundredweight) charged to producers to cover the costs of check-testing their milk and providing them with market information; and any miscellaneous costs incurred by handlers for keeping the required records and filing the necessary reports with the market administrator.

It is concluded that a Federal order for the Southwestern Idaho-Eastern Oregon marketing area as herein proposed will stabilize and improve milk marketing conditions in the area. The order is in the public interest in that it will establish orderly marketing conditions for producers and handlers relative to milk distributed in the proposed marketing area and will assure a continuing and adequate supply of high-quality milk for consumers. Moreover, the order will effectuate the declared policy of the Act by providing for:

1. The establishment of uniform prices to handlers for milk received from producers according to a classified plan based upon the utilization made of the milk;
2. A regular and dependable procedure that affords all interested parties the opportunity to participate, through public hearings, in the determination of changes that may be required in the marketing plan in order to insure an orderly market;
3. An impartial audit of handlers' records to verify the payment of required prices;
4. A system for verifying the accuracy of the weight and butterfat content of milk purchased;
5. Uniform returns to producers supplying the market based upon an equal sharing among all such producers of the returns from the higher-valued Class I milk and the lower returns from the sale of reserve milk which cannot be marketed for fluid use; and
6. Marketwide information on receipts, sales, prices, and other related data concerning milk marketing conditions and practices in the area.

Although it did not take a position on the proposed order at either hearing, Meadow Gold, in its post-hearing briefs, opposed the adoption of the proposed order on the basis that the record

evidence does not demonstrate a need for the order. The briefs were general in nature and do not provide a sound basis for reaching a different conclusion on this issue.

3(a) *Handlers to be regulated and milk to be priced and pooled.* It is necessary to designate clearly what milk and which persons would be subject to the various provisions of the order. This is accomplished by providing specified definitions to describe the category of persons, plants, and milk products to which the applicable provisions of the order relate.

Marketing area. The marketing area for the proposed order should include all territory, including government reservations and installations, within the 18 contiguous Idaho counties of Ada, Adams, Blaine, Boise, Camas, Canyon, Casssia, Elmore, Gem, Gooding, Jerome, Lincoln, Minidoka, Owyhee, Payette, Twin Falls, Valley, and Washington; and the 5 contiguous Oregon counties of Baker, Grant, Harney, Malheur, and Union. This 23-county marketing area as specified herein was proposed by the proponents of the order. There was no opposition to the inclusion of these counties in the marketing area.

As indicated earlier, the estimated July 1, 1978, population of the proposed marketing area is 508,000. Ada County, in which Boise, Idaho, is located, contains the greatest concentration of population in the 23-county area. Its population of 153,000 represents more than 30 percent of the area's population. Much of the area is predominantly rural; 17 counties had less than 20,000 inhabitants on July 1, 1978. Only four counties (Ada, Canyon, and Twin Falls in Idaho, and Malheur in Oregon) had 25,000 or more inhabitants at that time. Principal cities in the proposed marketing area include Boise, Nampa, and Twin Falls, Idaho.

As specified herein, the marketing area should include all government reservations, installations, institutions, or other establishments operated by municipal, county, state, or Federal governments. The record indicates that such installations include the Boise Inter-Agency Fire Center, Boise; the Idaho Air National Guard Base, Boise; the Veterans Administration Hospital, Boise; the Mountain Home Air Force Base, Mountain Home, Idaho; the Baker Air Force Station, Baker, Oregon; and the Burns Air Force Station, Burns Oregon.

A spokesman for proponents testified that the proposed area includes the most heavily populated centers in the distribution territories covered by major handlers in this area. He said that in deciding upon an appropriate marketing area, proponents sought to include sufficient territory to effectively regulate the market without bringing under regulation several small handlers, primarily farmers, distributing milk in minimal quantities or in remote small communities.

The principal exhibit prepared on behalf of proponents shows that the following handlers would likely be subject to full regulation under the order: Associated Dairies, in Boise and Twin Falls, Idaho; Falconhurst Dairy, Buhl, Idaho; Meadow Gold Dairies, Boise, Idaho; Smith's Dairy, Buhl, Idaho; Stoker's Dairy, Burley, Idaho; and Sun Ray Drive-In Dairy, Boise, Idaho. Grade A milk sold for fluid consumption by these handlers throughout the defined marketing area must be approved by duly constituted regulatory agencies whose health ordinances conform to the U.S. Public Health Service Grade A Pasteurized milk ordinance.

The principal source of supply of handlers who would be regulated by the proposed order is from producer-members of two of the three cooperatives proposing an order for the area—DCA and MEDA. In June 1978, these cooperatives represented and marketed the milk of more than 70 percent of the approximately 216 producers on the market. Besides the approximately 216 producers supplying handlers in the proposed area, an additional six farms are operated by handlers whose principal source of supply is the production from their own farms. These handlers accounted for about 4 percent of the estimated total Class I distribution in the proposed marketing area. As proposed herein, the handlers with own-farm production would be exempt from the pooling and payment provisions of the order if they qualify as "producer-handlers" as specified in the attached order.

In addition to these handlers, six other handlers who operated plants that are fully regulated under three other orders distributed fluid milk products in the proposed marketing area. In June 1978, these handlers accounted for about 14 percent of the estimated total Class I distribution in the proposed marketing area. Four of these handlers operated plants that were fully regulated under the Oregon-Washington order, while one of the remaining two was regulated under the Great Basin order and the other under the Inland Empire order.

The route distribution of the plants that would be regulated is confined largely to the proposed marketing area; only two have sales outside the proposed area. The out-of-area disposition of these two plants is confined to nearby areas adjacent to the proposed marketing area and was 21 percent and 2 percent, respectively, of their total fluid sales in June 1978.

Because a significant portion of the sales of fluid milk by handlers who would be regulated is in relatively rural communities, it is appropriate that the marketing area be defined along county lines rather than on the basis of city boundaries. The marketing area as proposed herein includes all of the countries in which handlers in the area have a majority of the fluid sales. Accordingly, it is concluded that the marketing area as proposed should result in effective regulation of the principal handlers who compete for sales in the Idaho-Oregon area without bringing under full regulation plants having minimal fluid sales within the marketing area.

All producer milk received at regulated plants must be subject to classified pricing under the order regardless of whether it is disposed of within or outside the marketing area. Otherwise, the effect of the order would be nullified and the orderly marketing process would be jeopardized.

If only a pool handler's "in-area" sales were subject to classification, pricing, and pooling, a regulated handler with Class I sales both inside and outside the marketing area could assign any value to its outside sales. The handler thereby could reduce the aveage cost of all its Class I milk below that of other regulated handlers having all, or substantially all, of their Class I sales within the marketing area. Unless all milk of such a handler were fully regulated under the order, the handler would not be subject to effective price regulation.

The absence of effective classification, pricing, and pooling of such milk would disrupt orderly marketing conditions within the regulated marketing area and could lead to a complete breakdown of the order. If a pool handler were free to value a portion of its milk at any price that such handler chooses, it would be impossible to enforce payment of uniform prices by all fully regulated handers to the producers who supply the market. It is essential, therefore, that the order price all the producer milk received at a pool plant regardless of the point of disposition.

Route disposition. A definition for "route disposition" is a convenience for specifying the various kinds of fluid milk sales outlets that will be considered in determining whether a distributing plant would be regulated under the order. As proposed by proponents and adopted herein, route disposition would mean any delivery of a fluid milk product

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classified as Class I milk to a retail or wholesale outlet (except to a plant), either directly or through any distribution facility or vendor, and including any disposition from a plant store or through a vending machine. It would not include delivery of fluid milk products to distribution points of the handler. The distribution from such points would be considered a route disposition from the milk plant.

Plant. Although a "plant" definition was not proposed by proponents, the order should nevertheless contain one for purposes of clarity, ease of order interpretation and reference. As adopted herein, "plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed, or packaged. Separate facilities used only as a distribution point for storing packaged fluid milk products in transit would not be a plant. Similarly, separate facilities at which milk is only reloaded from one tank truck to another would not be a plant as defined herein.

Distributing Plant. A "distributing plant" would be a plant that is approved by a duly consistuted regulatory agency for the handling of Grade A milk and at which fluid milk products are processed or packaged and from which there is route disposition in the marketing area during the month. In this definition and in the following "supply plant" definition, proponents in their proposed order language referred to "milk approved by a duly constituted regulatory agency for fluid consumption." The record indicates that the States of Idaho and Oregon have adopted and operate under the Grade A Pasteurized Milk Ordinance and Code, 1965 Recommendations of the United States Public Health Service, U.S. Department of Health, Education and Welfare. This means that the farms of diary farmers must be inspected and approved for the production of Grade A milk. Likewise, all plants processing or packaging milk for fluid use must be approved for handling Grade A milk. Accordingly, it is appropriate to refer in the order to "Grade A milk" rather than to milk approved for fluid consumption.

Supply plant. A "supply plant" also should be defined under the order. As adopted herein, "supply plant" means a plant that is approved by a duly consistuted regulatory agency for the handling of Grade A milk and from which fluid milk products are moved during the month to a pool distributing plant. This definition is similar to the one suggested by proponents of the order.

A proposal by Kraft, Inc., to modify proponents' proposed supply plant definition by including in a supply plant's movement of milk diversions as well as transfers to distributing plants should not be adopted. This modification was made in connection with another proposal by Kraft that would allow a pool supply plant to meet its shipping requirements through both transfers and diversions of milk from the supply plant to pool distributing plants, rather than through transfers only. As discussed in greater detail under the "handler" definition, the proposed order as adopted herein would allow any plant operator to be the handler on milk delivered for its account to the pool plant of another handler. It would appear that this type of a "handler" definition is an appropriate alternative to the objectives sought by Kraft to allow a pool supply plant operator to be the handler on milk delivered directly from producers' farms to pool distributing plants. Accordingly, a "supply plant" should be defined in terms of its primary function of transferring fluid milk products to pool distributing plants.

A supply plant, as envisioned for this area, would be a plant some distance from the consumption centers which performs the traditional function of assembling milk and supplying distribution plants with supplemental milk supplies during short-production months or heavy bottling days. Because of its distance from the market center, this type of plant would find it more efficient to receive milk from the farm and then transfer it to larger over-the-road tank trucks for transshipment to distributing plants.

Pool plant. Essential to the operation of a marketwide pool is the establishment of minimum performance requirements to distinguish between those plants engaged in serving the fluid needs of the regulated market and those that do not serve the market in a way or to a degree that warrants their sharing (by being included in the pool) in the Class I utilization of the market. A pool plant must either distribute milk in the marketing area or transfer milk to a pool plant which does. Because of differences in marketing practices and functions between distributing plants and supply plants, separate performance standards are provided in the attached order.

The following discussion sets forth the pooling standards that should apply to distributing plants and supply plants. To facilitate the discussion, it is noted that the pooling standards for a distributing plant or a supply plant provide that the plant's required association with the market shall be measured in terms of the proportion of its milk supply that is disposed of in the market. It is intended that such milk supply shall include any producer milk that is diverted from the plant by the plant operator to other plants. Although diverted milk is not physically received at the plant from which diverted, it is, nevertheless, an integral part of that plant's supply of milk and acquires pool status by virtue of its association with such plant. Therefore, diverted milk must be included as a receipt for purposes of establishing the diverting plant's qualification for pooling.

Milk that a cooperative or proprietary bulk tank handler may divert from a pool plant of another handler should not be included in such plant's receipts for purposes of determining the plant's pool status. A pool plant operator has no control over how much milk is being diverted from such operator's plant by a bulk tank handler supplying such plant. Consequently, the plant could fail to meet the pooling standards by virtue of diverted milk being associated with the plant without the operator's knowledge. The diversion limitations discussed later will effectively limit diversions by a cooperative or proprietary bulk tank handler to an appropriate level without the necessity of this milk being included as part of the pool plant's receipts.

To qualify as a pool plant, a distributing plant would be required to meet performance standards related to the proportion of its supply used in route disposition, including such disposition in the marketing area. As defined, pool distributing plants would include only those plants substantially engaged in the distribution of fluid milk products. In this connection, a pool distributing plant's total route disposition each month both inside and outside the marketing area, should not be less than 40 percent of its receipts from all sources of Grade A fluid milk products that are physically received at such plant or diverted from the plant to nonpool plants by the operator of such distributing plant. The route disposition in the marketing area of such a plant should be at least 10 percent of its total Grade A receipts.

This definition is similar to the one proposed by the proponent cooperatives, except that their proposal called for a total route disposition requirement of 50 percent. The 40 percent requirement herein provided should be appropriate under existing marketing conditions in the proposed marketing area. It is related to the

project marketwide Class I utilization which is about 40 percent.

The 10-percent minimum in-area distribution requirement adopted herein for a pool distributing plant was proposed by the order proponents. This requirement is reasonable under current marketing conditions. It will provide a reasonable indication of when a distributing plant is associated with the market to the extent that warrants its full regulation under the order.

A "pool supply plant" qualifies for pool status by shipping a certain percentage of its receipts from dairy farmers to pool distributing plants. As provided herein, receipts from dairy farmers would include deliveries by the plant's own producers and deliveries by cooperative and proprietary bulk tank handlers. Included also would be milk which the plant operator diverts to other plants. Under the adopted standards, a supply plant must ship 40 percent of its dairy farmer receipts each month to qualify for pool plant status. However, if the supply plant met the 40 percent shipping requirement during the months of September-February, it would be eligible to be pooled during the following months of March-August without making any shipments to distributing plants. This would be in recognition of the seasonal swings in production and the probability that milk from supply plants would not be needed in the spring and summer months when supplies are heavy relative to demand.

Only milk actually needed by a distributing plant should count as a qualifying shipment for a supply plant. For this reason, the order should include a net shipment requirement which would exclude from a supply plant's qualifying shipments to pool distributing plants any milk shipped back to the supply plant or to another plant operated by the same handler. This will prevent any wasteful "back-hauling" from occurring between a distributing plant and a supply plant for the sole purpose of qualifying a supply plant as a pool plant.

As published in the initial notice of hearing, proponents of the order proposed that a supply plant must transfer at least 50 percent of its receipts (including diversions) to pool distributing plants during the month to qualify as a pool plant. Under their proposal, a supply plant that qualified as a pool plant during each of the months of August through February would retain automatic pool status in each of the following months of March through July without having to meet any minimum shipping requirements. At the initial hearing, however, proponents modified their proposal to provide that a supply plant that met the 50 percent shipping requirement during each of the months of September through March would acquire automatic pooling status in the subsequent months of April through August.

Kraft, Inc., proposed an alternative pool supply plant provision that would reduce the performance requirements for a supply plant from those proposed by the order proponents. Kraft's proposal, which was a modification of its initial proposal, would require a supply plant to ship milk to distributing plants at a level of 35 percent during September-December, 30 percent during January and February, and 20 percent during other months. The proposal further provided for a pool supply plant to acquire automatic pooling status during the March-August period if such plant met the shipping requirements during the preceding months of September-February.

Under the Kraft proposal, a supply plant could meet the shipping requirement through shipments to pool distributing plants directly from producers' farms as well as by tranfer from the plant. Also, shipments to plants of producer-handlers, partially regulated distributing plants, distributing plants fully regulated under other Federal orders, and unregulated plants (to the extent that the supply plant shipments are disposed of as route disposition in the marketing area) would count as qualifying shipments.

Finally, the Kraft proposal provided for "unit pooling" of supply plants whereby a handler operating two or more supply plants could file a request with the market administrator that such plants be considered as a single plant for purposes of meeting the shipping requirements.

Neither the cooperatives' nor Kraft's proposals should be adopted in all respects. While Kraft's proposal would provide for certain marketing efficiencies by allowing unit pooling and direct deliveries, these efficiencies can be realized much more simply through the proprietary bulk tank handler provision adopted herein and discussed later in the decision.

As noted previously, this area has a great deal of milk produced within a short distance of the population centers of the market, i.e., Boise and Twin Falls. For this reason, the market has not had to rely on supply plants. Instead, the milk is shipped directly from producers' farms to pool distributing plants. When the milk is not needed at pool distributing plants, it is diverted to manufacturing plants for processing into butter, cheese, or nonfat dry milk.

In recent years, many of the dairy farmers supplying manufacturing plants—not only in Idaho but in other parts of the country as well—have upgraded their facilities so that they qualify for the production of Grade A milk. When this happens, the manufacturing plant operators receiving this milk have been forced to return a Grade A price to these producers in order to keep them as shippers. Typically, the handlers do this by pooling their milk under a Federal order.

Under most existing orders, the only way a proprietary manufacturing plant operator can pool the milk of producers is to qualify the manufacturing plant, or part of it, as a pool supply plant. Since the pool supply plant has to be approved by a regulatory authority for handling Grade A milk, it usually involves either construction of a separate plant or, at least, construction of a separate Grade A receiving room attached to the existing manufacturing plant.

The Southwestern Idaho-Eastern Oregon market is not presently serviced by any plant that specializes in the collection of milk for cooling and transshipment to a distributing plant. In fact, most markets today have no need for such plants, which generally lost their usefulness with the advent of farm bulk tanks, refrigerated trucks, and a modern highway system. Nevertheless, such supply plants have continued to be associated with some Federal order markets, in many cases largely because they have represented the means through which manufacturing plant operators could pool Grade A milk supplies under an order.

Under this new order, it is preferable that the building of unnecessary Grade A plants or receiving rooms not be encouraged when such facilities serve no other function than to qualify a manufacturing plant as a pool plant. For this reason, an alternative means should be provided for manufacturing plant operators to qualify as pool handlers and thereby be able to pool their Grade A milk supplies that normally, through one means or another, will become associated with a fluid market. A discussion of this new provision is included later under the "handler" definition.

As indicated, the proposed order provides that a supply plant that was a pool plant in each of the immediately preceding months of September-February should be a pool plant for the months of March-August irrespective of its shipments unless the operator of such a plant elects nonpool status for the plant. Providing pooling status to a plant in March-August on the basis of shipments in the preceding months

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recognizes that the demand for supply plant milk usually varies seasonally and will be greatest during the season of low production. Moreover, this feature of pooling would enable dairy farmers associated with a qualified supply plant continued pool status throughout the year and will insure orderly marketing.

The record evidence does not support, as Kraft proposed, the need for lower pooling standards for supply plants than those adopted in the proposed order. Kraft's proposal of relatively low performance requirements required for pool status would make it possible for plants specializing in manufacturing dairy products to be pooled without being involved to a significant degree in supplying the fluid market. The stated objective of Kraft's proposal to provide the opportunity to pool the available Gade A production in the area can more appropriately be realized by other pooling techniques as adopted in the proposed order. Accordingly, Kraft's proposal is denied.

Certain plants should be excluded from "pool plant" status even though they meet the pooling standards of the order. A distributing plant that meets the pooling standards of the order but that also qualifies as a pool plant under another order and which has greater route disposition in the other order's marketing area should be qualified as a pool plant under the other order. Similarly, a supply plant that meets the shipping requirements of this order and another order but which has greater shipments to distributing plants regulated under the other order should be pooled under the other order. An exception, however, should be made in the case of a supply plant that is automatically qualified as a pool plant under this order during the months of March-August by virtue of its qualification during the preceding months of September-February. In its case, if the transfers to the other order plant are for surplus disposition and the operator of the supply plant elects to retain pool status under this order, the plant should remain pooled under this order.

Distributing plants with a minimal degree of route disposition in the marketing area should also be excluded from regulation under the order. As suggested by the proponent cooperatives, any distributing plant with an average of less than 300 pounds per day of Class I disposition in the marketing area should be exempt from regulation under the order. It is not necessary, in maintaining the integrity of the order, to regulate such a small operation.

Nonpool plant. A definition of "nonpool plant" is provided to facilitate the formulation of the various order provisions as they apply to such a plant. A nonpool plant means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The "nonpool plant" definition sets forth specific categories of nonpool plants, which are described below.

An "other order plant" would be a plant that is fully regulated under another Federal order. As such, it cannot be a pool plant under this order.

A plant of a "producer-handler" would be considered a nonpool plant since, by the nature of the operation, as discussed later, the plant is specifically exempt from pool status.

A "partially regulated distributing plant" would also be considered to be a nonpool plant. A partially regulated distributing plant would be a distributing plant that does not qualify as a pool plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant. Generally, such a plant would be one that has less than 10 percent of its route disposition in the defined marketing area of this order.

An "unregulated supply plant" means a supply plant that does not qualify as a pool supply plant, an other order plant, a producer-handler plant, or an exempt distributing plant. In essence, it is a plant which transfers milk to a pool distributing plant, but not to an extent that would qualify it for pool status under the order.

As suggested by the order proponents and adopted herein, an "exempt distributing plant" means a distributing plant with an average route disposition in the marketing area of less than 300 pounds per day. If would also be included among the nonpool plants specified in the order.

Handler. The impact of regulation under an order is primarily on handlers. A handler definition is necessary to identify those persons from whom the market administrator must receive reports, or who have financial responsibility for payment for milk in accordance with its classified use value. As herein provided, the following persons are defined as handlers under the order:

(1) The operator of a pool plant;

(2) A cooperative association with respect to bulk tank milk that is picked up at the farm and delivered to a pool plant or diverted for its account from a pool plant to a nonpool plant;

(3) The proprietary operator of a dairy products manufacturing plant located in the marketing area with respect to bulk tank milk that is picked up at the farm and delivered to a pool plant or diverted to a nonpool plant;

(4) The operator of a partially regulated distributing plant;

(5) A producer-handler;

(6) The operator of an other order plant from which milk is disposed of in the area;

(7) The operator of an unregulated supply plant; and

(8) The operator of an exempt distributing plant.

All of the categories of handlers listed above, with the exception of the "proprietary bulk tank handler", were proposed by proponents and are common to most milk orders. Each person that may incur an obligation (reporting and/or financial) under the order should be designated a handler. This will assure that all information necessary to determine their status under the order can be readily determined by the market administrator.

The handler who receives milk from producers at a pool plant should be responsible for reporting in detail the quantities of milk received from each producer and each other source. Such handler also should be responsible for reporting the necessary information to determine the utilization of such milk, and for making payments to producers, cooperative associations, and the producer-settlement fund in accordance with the terms of the order.

A cooperative association should be a handler under the order for farm bulk tank milk moved by the cooperative to a pool plant(s) or diverted to a nonpool plant(s). In the case of such movements to a pool plant, a cooperative should be the handler for milk received for its account from the farm of a producer that is delivered to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative. However, should there be a mutual agreement between the cooperative and the pool plant operator whereby such operator agrees to be the handler for the milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the cooperative need not be the handler for such milk.

Requiring a cooperative to be the handler on milk picked up for its account at the farm of a producer and delivered to a pool plant provides a practicable basis for the complete accounting of such milk. It also recognizes the current handling arrangements used by the cooperatives operating in the market in allocating their members' milk among distributing plants.

As indicated earlier, a large proportion of the milk received by the plants that would be fully regulated by the proposed order is picked up at the farm in trucks owned and operated by, or under contract to, cooperatives. In such circumstances, it is only the cooperative that has the opportunity to measure and sample the milk of individual producers that is received at a plant. In the absence of any agreement by the plant operator to be the handler on such milk, the cooperative must be the responsible handler for the milk as it leaves the farm.

The attached order provides that the milk delivered to a pool plant by the cooperative as a "bulk tank handler" would be considered as a receipt of producer milk by the operator of the pool plant at which it was physically received. Under this arrangement, the pool plant operator's obligation for such milk to the producer-settlement fund, to the administrative assessment fund, and to the cooperative would be the same as for producer milk received directly from the farm of an individual producer. The cooperative would be obligated to the producer-settlement and administrative assessment funds on only that portion of the milk picked up for its account that exceeds the quantity delivered to pool plants.

This accounting and payment procedure for bulk tank milk received from a cooperative will simplify the accounting for such milk by the pool plant operator. It will facilitate the administration of the order with respect to such items as financial responsibility, enforcement, and subsequent audit adjustments that may arise. Since the actual use of the milk reflects the receiving pool plant's operation, it is reasonable that the responsibility for the accounting and payment of such milk be placed directly on such pool plant operator.

The attached order also provides that a cooperative would be a handler on the milk of a producer which it diverts for its account from a pool plant of another handler to a nonpool plant. This handling arrangement will facilitate the movement of milk not needed for fluid use to nonpool plants for manufacturing. It also will assist the principal cooperatives (DCA and MEDA) in balancing supplies among the several distributing plants serving the market.

Under this handling arrangement, the diverting cooperative would be obligated to the producer-settlement and administrative assessment funds on the milk diverted. Conversely, the operator of the nonpool plant that received the milk from the diverting cooperative would not incur an obligation under the order.

As mentioned earlier, a problem that has been common throughout the Federal order system is that manufacturing plant operators have been faced with a gradual conversion of their milk supplies to Grade A. When this happens, the handles have found it necessary to pay these dairy farmers a price comparable to what they could get by having their milk pooled and priced under a Federal order. In order to accommodate these producers, the manufacturing plant operators have sought to pool their Grade A supplies under an order. To do this, however, the operator of such a plant has to qualify the entire plant, or at least a portion of it, as a "pool supply plant" under an order. This usually involves either building a separate Grade A facility or a Grade A receiving room on to the existing manufacturing plant. The milk of the operator's producers is picked up and delivered to this "supply plant," reloaded onto a tank truck, and then delivered to a pool distributing plant. In most cases, it would be feasible and more efficient to pick up a producer's milk and deliver it directly to a distributing plant, without first receiving the milk at a supply plant. However, a manufacturing plant operator that did this be the "handler" on this milk; instead, the distributing plant operator would be the handler, would have to account to the pool for this milk, and would be responsible for paying the producers.

The new order should recognize this problem by providing a way for a manufacturing plant operator to pool a Grade A milk supply without having to construct unnecessary facilities and without having to handle and transport milk unnecessarily. Accordingly, a provision similar, but not identical, to the cooperative bulk tank handler provision should be included for the proprietary operator of a manufacturing plant.

As provided herein, the proprietary operator of a plant located in the marketing area which manufactures milk into cheese, butter, nonfat dry milk, ice cream, or some other dairy product could be the handler on Grade A milk picked up at producers' farms and moved directly to the pool plant of another handler. The tank trucks used for this purpose would be required to be owned and operated by, or under the control of, such "proprietary bulk tank handler." In addition, prior to pooling milk in this manner, the "proprietary bulk tank handler" would have to submit to the market administrator a statement signed by the proprietary bulk tank handler and the pool plant operator receiving the milk specifying that the proprietary bulk tank handler will be the responsible handler for this milk.

When the milk picked up by the proprietary bulk tank handler is not needed at a pool distributing plant, such handler may divert it to the handler's own manufacturing plant or some other nonpool plant. However, the handler would be subject to the same diversion limitations applicable to pool plant operators and cooperative bulk tank handlers. This will assure that the proprietary bulk tank handler would be supplying a proportionate share of the milk needed by pool distributing plants.

The proprietary bulk tank handler provision should be restricted to handlers who have plants located in the marketing area. It there were no such restriction, a handler could pool a supply of milk based on its manufacturing plant in California, New York, or some other distant location, which is not the intent of this provision. Moreover, any plant located beyond the marketing area would probably find it more efficient to assemble milk and transfer it to larger over-the-road tank trucks for transshipment to pool distributing plants. In such case, the plant could qualify for pool status as a pool supply plant.

The attached proposed order recognizes that a pool plant operator may purchase milk from a cooperative bulk tank handler or a proprietary bulk tank handler on the basis of farm weights and tests or weights and tests taken when the milk is received at the plant. When the milk is purchased on the basis of farm weights and tests, the pool plant operator would get a Class III shrinkage allowance of 2 percent of the farm weight for the milk lost in handling and processing. In this case, the bulk tank handler would get no shrinkage allowance. However, when the pool plant operator purchases the milk on the basis of plant weights and tests, the plant operator would get a Class III shrinkage allowance of 1.5 percent, while the bulk tank handler would get a shrinkage allowance of .5 percent. As explained later, the shrinkage allowance is included in orders to recognize that a certain amount of milk will inevitably be lost in pumping it from the farm bulk tank to the truck, from the truck into the plant, and in the act of processing it in the plant. Accordingly, handlers are only required to pay the Class III price for this milk classified as "shrinkage."

As indicated, a pool plant operator's obligation on milk that is purchased from a cooperative bulk tank handler would be the same as for producer milk

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received directly from the farm of an individual producer. The plant operator must account to the pool for this milk according to the classification assigned to the milk based on the plant's utilization. The pool plant operator in turn settles with the cooperative by paying the uniform price for the milk.

The accounting and payment procedure would be different, however, when a pool plant operator purchases milk from a proprietary bulk tank handler. In this case, the milk is the "producer milk" of the bulk tank handler, who must account to the pool for it. This is done by passing back to the bulk tank handler the classification of the milk assigned to the pool plant. Such milk would be classified on the same basis as transfers and diversions between pool plants. The payment for this milk between the two handlers is left to them.

The reason for the difference in treatment accorded the proprietary bulk tank handler is that the Act does not provide for the enforcement of payments between proprietary handlers. Accordingly, the proprietary bulk tank handler must be held as the accountable handler for milk delivered to the pool plant of another handler.

A pool plant operator receiving farm bulk tank milk from a cooperative should be responsible for paying to the market administrator the administrative assessment on such milk, just as such handler does on milk received directly from producers. However, if a pool plant operator receives milk from a proprietary bulk tank handler, it is the latter who should be held accountable for paying the administrative assessment on such milk. This is because the proprietary bulk tank handler must be the accountable handler for the milk as described above.

The new order should afford all cooperatives in the market flexibility in the arrangements under which they sell milk to pool plants or dispose of reserve supplies. If it so chooses, a cooperative should be able to pick up the milk of nonmember producers along with the milk of members for delivery to a pool plant or diversion to a nonpool plant. This procedure will enable the cooperative to act as the marketing agent for a nonmember producer who has contracted with the cooperative to market his or her milk. Nothing in the order would require a cooperative to pick up the milk of nonmember producers. It would provide, however, that when a cooperative does pick up milk of nonmember producers on trucks under its control, it must assume varying degrees of responsibility with respect to such milk, depending on the handling arrangements made.

The Capper-Volstead Act provides the criteria by which cooperative associations are determined to be qualified cooperatives under the Agricultural Marketing Agreement Act. With the adopted handler definition, the new order would be consistent with that provision of the Capper-Volstead Act which recognizes that cooperatives "may deal in the products of nonmembers" and which limits such dealings to amounts not greater in value than those "handled by it for members."

In the event a cooperative does market the milk of a producer who is not a member of the association, a question arises about the appropriate method of paying such producer. If the nonmember producer has signed a contract with the cooperative whereby the producer authorizes the cooperative to market his or her milk and collect payments for it, the cooperative may pay the nonmember in accordance with the contract. If such marketing functions occur in the absence of a written contract, the cooperative would be required to pay the nonmember producer not less than the prices prescribed by the order.

Producer-handler. The order should exempt "producer-handlers" from the pooling and pricing provisions of the order.

Experience under Federal orders has demonstrated that effective regulation can be insured without the full regulation of individuals who process and distribute milk produced on their own farm and who buy no milk from other dairy farmers. Such operations are basically self-sufficient in that they rely primarily on their own farm production and assume the burden of maintaining the necessary reserve supply of milk associated with their fluid milk operation and of disposing of any daily or seasonal surpluses they may produce. Because of the costs associated with producing all of the milk needed for their fluid sales and handling the reserve supplies, producer-handlers seldom are able to gain any competitive edge in the marketplace by virtue of their exempt status.

As adopted herein, a "producer-handler" would be any person who operates a dairy farm and a distributing plant with route disposition in the marketing area, and who essentially relies on his/her own farm production for the plant's total supply. Such a person should be allowed to purchase a small amount of supplemental supplies from fully regulated handlers. Therefore, as proposed by the order proponents, a producer-handler could purchase 5,000 pounds per month or 5 percent of such handler's Class I utilization for the month, whichever is less. Such supplemental supplies could only be purchased from the following fully regulated handlers: pool plant operators, operators of other order plants, a cooperative association acting as a bulk tank handler, or a proprietary bulk tank handler.

This provision regarding purchases of supplemental milk from other sources differs slightly from the one suggested by proponents. As proposed at the hearing, the producer-handler would be restricted to buying fluid milk products by transfer only from pool plants or other order plants.

What is essential in imposing a restriction on supplemental purchases by a producer-handler is to insure that a producer-handler will not have any significant advantage over regulated handlers. Moreover, the requirement that such supplemental purchases be Class I compensates producers for carrying necessary reserve milk supplies for the market.

This objective can be accomplished without restricting supplemental purchases by a producer-handler to transfers from pool plants or other order plants. As indicated earlier, in this market the most efficient way to obtain supplemental supplies would be to have the milk delivered directly from producers' farms since there is an abundant supply of Grade A milk available within a short distance of any fluid processing plant in the market. Accordingly, it is reasonable to allow a producer-handler to buy milk that is moved directly from the farm by a pool plant operator, other order plant operator, or a handler on bulk tank milk, up to the limits provided on such purchases.

Certain other conditions proposed at the hearing and adopted herein would also apply to a producer-handler. Such a handler should not be permitted to reconstitute or convert milk products into fluid milk products, but should be allowed to increase the nonfat solids content of the milk produced or purchased by adding nonfat dry milk. It is necessary to preclude a producer-handler from reconstituting or conveting milk products into fluid milk products because such products have a surplus value and, if permitted, would place the producer-handler in a significant competitive advantage over regulated handlers in terms of product costs.

Under the proposed order, producer-handler status would be contingent on such person proving to the market administrator that the operation of the dairy farm and processing plant in question are at his/her sole risk. A producer-handler's exemption from the pooling and pricing provisions is based upon the basis self-sufficiency of the total operation. Accordingly, no other person should be permitted to share the risk involved with the operation of a producer-handler's farm or his/her plant. All resources necessary to his/her own farm production of milk must be his/her personal risk. Similarly, all risk associated with the operation of the processing plant must be that of the producer-handler.

Producer. The term "producer" defines those dairy farmers who constitute the regular source of supply for the market. The producer definition adopted herein follows closely the one proposed and supported by proponents of the order.

Producer status under the order should be provided for any dairy farmer who produces milk approved by a duly constituted regulatory agency for disposition as Grade A milk and whose milk is received at a pool plant directly from his/her farm or is picked up at the farm by a bulk tank milk handler and delivered to a pool plant. Producer status also should be accorded such a dairy farmer who has an established association with the market and whose milk is diverted to a nonpool plant, usually for surplus disposal. To determine a producer's association with the market and to insure the marketability of such producer's milk in Grade A channels, it is reasonable to require that a dairy farmer's milk be received at a pool plant at least once during each of the months of September through February in order to be eligible for diversion to a nonpool plant. No individual producer delivery requirement need apply during the months of March through August for a producer having an established association with the market. The milk of a new dairy farmer coming on the market shall not be eligible for diversion until one day's production of the dairy farmer is physically received at a pool plant.

A producer-handler, who would have exempt status under the order, is excepted from the producer definition. In addition, provision must be made to preclude the possibility of a dairy farmer being a producer under two orders with respect to the same milk. In this regard, the producer definition should exclude a dairy farmer with respect to milk which is received at a pool plant under this order by diversion from a pool plant under another order if the dairy farmer is a producer under the other order with respect to such milk and the milk is allocated to Class II or Class III use under this order. Also, the definition should exclude a dairy farmer with respect to milk which is diverted to a pool plant under another order from a pool plant under this order if the milk is assigned to Class I milk under the other order.

Producer milk. The "producer milk" definition is intended to define the milk that would be priced and pooled under the order. The definition adopted herein contains the basic features suggested by the order proponents.

As provided herein, producer milk would include: (1) milk received directly from a producer at a pool plant by the plant operator or milk of a producer received at the pool plant from a cooperative association acting as a bulk tank handler; (2) milk picked up by a "proprietary bulk tank handler" and either delivered to a pool plant or diverted, within the limits specified, to a nonpool plant; (3) milk diverted by a pool plant operator or by a cooperative association from a pool plant to a nonpool plant within the limits specified in the order; and (4) milk picked up by a cooperative bulk tank handler for delivery to a pool plant but which is not received at the plant because of "shrinkage".

When milk is not needed at a pool plant, it usually must be diverted to a nonpool plant for use in manufactured milk products. Provision under the order should be made for "diversions," but within limits to insure that the pool distributing plants in the market are adequately supplied first. The diversion limits adopted for the order would be computed on a handler's aggregate receipts rather than in terms of individual producers.

As adopted herein, a pool plant operator (other than a cooperative association) may divert any milk that is not under the control of a cooperative that is diverting producer milk or a proprietary bulk tank handler. The total quantity that may be diverted during the month should be limited to 60 percent during the months of September through February and to 70 percent in all other months.

A cooperative association that is the handler for bulk tank milk and a proprietary bulk tank handler also should be allowed to divert milk for their respective accounts to nonpool plants. The same limits applicable to a pool plant operator should also apply to these handlers.

The proponents of the order suggested diversion limits of 50 percent during April-August and 40 percent in other months. Kraft, Inc., proposed diversion limits of 60 percent during September-December, 70 percent during January and February, and 100 percent in other months. As indicated, the market's annual Class I utilization is expected to be about 40–45 percent. Accordingly, diversion limits of 60 percent during September-February and 70 percent during March-August would approximate the seasonal surplus disposition requirements of the market.

Another feature of proponents' proposal would require that the milk of an individual producer be received at a pool plant 8 days during the month before such producer's milk is eligible for diversion to a nonpool plant. Kraft proposed that the milk of an individual producer must be received at a pool plant at least one day during each of the months of September-February, with no delivery requirement applicable in other months.

Marketing efficiency is optimized when a handler can decide how and where to move milk supplies under such handler's control. Producers supplying a plant can be very widely dispersed. For this reason a handler usually needs several different farm bulk routes to pick up producer supplies. In this circumstance, it makes much more sense to receive the milk of those producers closest to a handler's plant on a regular basis and to receive the milk of more distant producers only when such handler needs the extra milk. Of course, the reverse would also be true. The handler would want to divert to nonpool plants for manufacture the milk of the distant producers more often than those producers who are located closest to a pool plant.

For this reason, no valid purpose is served in requiring each producer's milk to be received at a pool plant 8 days per month. It may be far better to have one producer's milk received 100 percent of the time at a pool plant and another producer's milk received only 20 percent of the time. Of course, circumstances will vary according to the location of a handler's producers. Whatever the circumstances may be, they can best be accommodated by letting the handler decide which milk to receive at or ship to a pool plant and which milk to divert to a nonpool plant. Accordingly, the diversion limits applicable to the various handlers in the market should be established in terms of their aggregate supply of milk and not in terms of individual producers.

It is reasonable that there be some minimal "touch-base" requirement that would require each producer's milk to be occasionally received at a pool plant. For this purpose, a one-day delivery requirement during each of the months of September-February is sufficient. This

will insure that a producer's milk is available to the market and is of sufficient quality to be used for fluid use. For a producer who was on the market during February, no further delivery to a pool plant would be required until the following September. However, the milk of a producer who comes on the market during the months of March through August would have to be received once at a poolplant before it could be diverted to a nonpool plant. After establishing such association with the market, the milk of such producer could then be diverted to a nonpool plant continuously until September, when it would again have to be received at a pool plant one time during each of the months of September through February.

Kraft, Inc., proposed that a dairy farmer who is a "producer" under an order with a base-excess payment plan during any of the months of March through August could also be a producer under the Southwestern Idaho-Eastern Oregon order during any of these months only if the dairy farmer delivered at least 40 percent of his/her production during the month to the Southwestern Idaho-Eastern Oregon market. According to a Kraft witness, the purpose of the proposal is to prevent the surplus milk of another market from being pooled on the Boise order area market.

This proposal should not be adopted on the basis of the limited testimony contained in the record. It is fair to point out that certain other Federal orders contain the type of provision proposed by Kraft because of the problem of having surplus milk "dumped" on a market that does not have a base-excess plan. In such instance, the otherwise "excess milk" of a producer under a base-excess plan order would be eligible for a "uniform price" under the order without the base-excess plan. The "uniform price" would be higher than the "excess price" that would apply to the milk under the base-excess order.

Without knowing the actual circumstances that might be involved, it is preferable at this time not to establish the restrictions on milk movements as proposed. If, after gaining some experience with the new order, a clear pattern of abuse appears with respect to such movements of milk, it may be appropriate to give further consideration to the type of provision proposed by Kraft.

As suggested by the order proponents, two or more cooperative associations should be permitted to have their allowable diversions computed on the basis of their combined deliveries of producer milk to pool plants. A request to this effect should be filed with the market administrator prior to the first day of the month the agreement is effective. The request should specify the basis for assigning over-diverted milk to the producer deliveries of each cooperative in the event the cooperatives exceed the diversion limits specified in the order. The method for assigning over-diverted milk must be approved by the market administrator.

When a handler diverts milk in excess of the limits prescribed in the order, the quantity that is over-diverted cannot qualify as producer milk and be priced under the order. In such case, the handler may designate the dairy farmers whose milk is over-diverted. If the handler fails to designate the over-diverted milk, the market administrator would disqualify all of the milk diverted by the handler on the last day of the month, then all the milk diverted on the second-to-last day, and so on in daily allotments until all of the over-diverted milk is accounted for. For example, if a handler over-diverted 10,000 pounds of milk for the month, but diverted 45,000 pounds on the last day of the month, the entire 45,000 pounds would be disqualified.

The procedure suggested by proponents would have required the market administrator to disqualify all of the milk diverted by the handler during the month if the handler failed to designate the dairy farmers whose milk would be disqualified. The alternative procedure adopted above will provide a less severe penalty for a handler who inadvertently over-diverts. In the event a handler does not identify which producers' milk is over-diverted, the procedure herein adopted will allow the market administrator to make this determination in a fair and orderly manner.

The order, wherever possible, should promote the most efficient handling of milk. To this end, the operator of a pool plant should be permitted to divert milk supplies to another pool plant and retain the producer milk status and payroll responsibility for such milk. Permitting diversions of milk between pool plants will promote efficient handling of milk and also will facilitate more simplified accounting procedures on producer milk weights, butterfat testing, and payrolling.

It should be noted that while diversions would be permitted between pool plants, diversions from a pool supply plant to another pool plant would not count as qualifying shipments for the supply plant. As discussed earlier, supply plants would qualify solely on the basis of their transfers to pool distributing plants.

Other Source Milk. An "other source milk" definition should be provided in the order. In addition to milk received from producers, a handler may receive milk or milk products from other sources. The other source milk definition identifies these various categories of receipts.

Fluid milk products and bulk fluid cream products from any source other than producers, cooperative and proprietary bulk tank handlers, pool plants, and plant inventories at the beginning of the month should be considered as other source milk.

Other source milk should also include any receipts in packaged form of fluid cream products, eggnog or yogurt (or any filled product resembling such products). These are Class II products under the classification plan adopted herein. Although no handler obligation would apply under the order to the receipts of packaged Class II products, it is desirable for accounting purposes that such receipts be defined as other source milk. This accounting procedure will preclude the recordkeeping difficulties that might otherwise be experienced in accounting separately for inventories and sales of Class II products processed in the handler's plant versus those received at the plant in packaged form from other plants. As provided herein, such receipts would be allocated directly to the handler's Class II utilization rather than being allocated to the extent possible to the handler's lowest utilization as is provided in some cases for other types of other source milk.

All manufactured products from any source (including those produced at the plant) that are reprocessed, converted into, or combined with another product in the plant during the month should be defined as other source milk. For accounting purposes under the order, such manufactured products should include dry curd cottage cheese received at a pool plant to which cream is added before distribution to consumers. When used to produce cottage cheese or lowfat cottage cheese, the receipts of dry curd would be allocated directly to the handler's Class II utilization, and no handler obligation would apply under the order to such receipts.

Other source milk also should include any disappearance of manufactured products for which the handler fails to establish a disposition. It is reasonable that each handler be required to account fully for all milk and milk products received or processed at its plant. Otherwise, a handler with inadequate records could have an opportunity to gain a competitive advantage over competitors who properly account for all

milk. Specifying any unexplained disappearance of manufactured milk products as other source milk will contribute to a uniform application of the regulatory plan to all handlers.

Cooperative association. A definition of "cooperative association" is provided to facilitate formulation of the various order provisions as they apply to such an association of producers. A cooperative association means any cooperative marketing association of producers which the Secretary determines, after application by the cooperative associaton:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk for its members; and

(c) To have its entire activities under the control of its members.

(b) *Classification of milk.* The statutory authority for Federal milk orders specifies that an order shall classify milk in accordance with the form in which or the purpose for which the milk is used. As proposed by proponents, the order should provide for three classes of utilization.

The products included in Class I milk and sold in the proposed marketing area are required by health authorities to be produced in compliance with the inspection requirements of a duly constituted health authority. This is in contrast to the absence to the absence of such requirements for manufactured dairy products such as butter and hard cheese. Because of the extra cost of getting quality milk produced and delivered to the market in the condition and quantities required, it is necessary to establish a separate class for such milk to which a price above the manufactured milk price may be applied. The higher price for Class I milk must be at a level which, together with the prices applicable to other classes, will yield a blend price that will encourage production of milk to meet the fluid requirements of the market.

Class I milk should include all skim milk and butterfat disposed of in the form of milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids. Skim milk and butterfat disposed of in any such product that is flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted likewise should be classified as Class I milk. Such classification should apply whether the products are disposed of in fluid or frozen form.

Skim milk disposed of in any product described above that is modified by the addition of nonfat milk solids should be Class I milk only to the extent of the weight of the skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

Class I milk should not include skim milk or butterfat disposed of in the form of evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, or whey.

Each product designated herein as a Class I product would be considered a "fluid milk product" as defined in the order. In addition to these fluid milk products, Class I milk would include any skim milk and butterfat not specifically accounted for in Class II or III, other than shrinkage permitted a Class III classification.

As provided, skim milk or butterfat disposed of in any filled milk which is disposed of in fluid form shall be classified as Class I milk. This classification is identical to the treatment of filled milk in all Federal order markets. The basis for the uniform treatment of filled milk under the Federal orders is set forth in the Assistant Secretary's Decision issued October 13, 1969 (34 F.R. 16881). This decision was received into evidence as an exhibit at the initial hearing held in December 1978 for this market. The record evidence indicates that the findings and conclusions of this decision are equally applicable under current marketing conditions in the proposed marketing area.

Class III milk should include products which are made from surplus Grade A milk and which compete in a national market with similar products made from manufacturing grade milk. These products include cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese), butter, any milk product in dry form (such as nonfat dry milk), any concentrated milk product in bulk, fluid form that is used to produce a Class III product, and evaporated or condensed milk (plain or sweetened) in a consumer-type package. Class III milk also should include any product not specified in Class I or Class II.

An intermediate class, Class II, should apply to certain products which can command a higher value than Class III products but which must be competitively priced below Class I in order to compete with non-dairy substitute products or manufactured dairy products that can be used in making Class II products. Class II milk should include skim milk and butterfat disposed of in the form of a "fluid cream product," eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles one of these products. As defined in the order, "fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

Class II milk would also include bulk fluid milk products disposed of to any commercial food processing establishment at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages. In addition, it would include milk used to produce cottage cheese, lowfat cottage cheese, dry curd cottage cheese, milkshake and ice milk mixes containing 20 percent or more total solids, frozen desserts, frozen dessert mixes, and certain other products as specified in the order.

The classification scheme adopted herein was proposed by the order proponents and is identical to the uniform classification plan contained in 29 other Federal order markets. It is based on exhaustive hearings held on this issue in 1971. The final decision on this matter was issued February 19, 1974 (39 FR 9012) and was received into evidence as an exhibit at the initial hearing held in December 1978 for this market. It contains a detailed discussion of the classification issue.

Proponents testified that this classification system would be fully appropriate for the proposed order and would comport with the need for greater uniformity among those essential provisions of marketing orders that should be uniform.

Classification of shrinkage. The Southwestern Idaho-Eastern Oregon order should contain provisions for classifying skim milk and butterfat in shrinkage. The shrinkage provisions adopted herein are similar to the shrinkage provisions now provided in most orders.

Total plant shrinkage should be prorated between (1) those kinds of receipts on which the Class III shrinkage limitations apply, and (2) other receipts, principally other source milk in the form

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of fluid milk products requested for Class II or Class III use. To the extent that the quantity of shrinkage prorated to the first category exceeds the established Class III limit, the excess would be classified in Class I.

The shrinkage provisions provided herein recognize that shrinkage normally varies with the type of handling involved. More loss is usually experienced in plant processing than in merely receiving milk for delivery to another handler. Thus, with respect to milk picked up at producers' farms and delivered to a plant, a Class III shrinkage allowance of 0.5 percent for such milk is provided. Any excess shrinkage over 0.5 percent is classified as Class I milk.

A Class III shrinkage allowance of 1.5 percent to cover milk lost in processing is provided for the pool plant operator. This provides a total of 2 percent Class III shrinkage allowance for such milk from producers in the receiving and processing operations.

The total shrinkage allowance applicable to a pool plant operator depends upon whether the plant operator purchases the milk at farm weights and tests or at plant weights and tests. The provisions allow the plant operator up to 2 percent shrinkage in Class III if the milk is purchased on the basis of weights determined at the farm and butterfat tests determined from farm bulk tank samples. In this case, there is no shrinkage allowance for any other handler who may have delivered the milk from the farm to the pool plant.

As provided herein, when bulk milk is transferred to another plant, the shrinkage allowance to the transferor handler would be reduced at the rate of 1.5 percent of the quantity transferred. This is similar to provisions now applicable under most orders.

In the case of milk diverted from a pool plant to another plant, a shrinkage allowance in Class III of 0.5 percent would be provided the diverting handler if the operator of the plant to which the milk is deverted purchases such milk on the basis of weights and tests determined at the plant. If the milk is purchased at farm weights and tests, no shrinkage allowance would apply for the diverting handler. This same procedure would apply to cooperative or proprietary bulk tank deliveries to pool plants when similar handling is involved.

This devision of the 2 percent shrinkage allowance, both in the case of deliveries from bulk tank handlers to plants and for transfers between plants, has been found practical and has been well accepted in Federal order markets where it now applies.

Shrinkage should be accounted for on an individual plant basis in the case of a handler operating more than one pool plant under the order. This procedure will best promote plant efficiency in the Southwestern Idaho-Eastern Oregon market.

Classification of milk transferred or diverted to other plants. Some fluid milk products or fluid cream products may be disposed of by regulated handlers to other plants. It is necessary, therefore, to provide specific rules so that the classification of such movements may be determined under this order.

Under the adopted classification plan, fluid cream products would be classified as Class II products. If such products are transferred to another plant in packaged form, the skim milk and butterfat contained therein should be classified as Class II milk since these items are moved in final form. The classification of fluid cream products when disposed of in bulk form, however, is determinable only by following the movement of the bulk product to its subsequent use. Thus, it is necessary that fluid cream products that are transferred in bulk from a pool plant to another plant be classified in a manner similar to that used in classifying transfers of bulk fluid milk products.

Some skim milk or butterfat may be transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant. Such transfers should be classified as Class I milk unless both handlers request the same classification in another class in their monthly reports to the market administrator and sufficient Class II or Class III utilization is available at the transferee-plant after the allocation of its receipts of other source milk. If the shipping plant received other source milk in the form of nonfat dry milk, for example, during the month, the skim milk and butterfat so transferred should be classified so as to allocate the least possible Class I utilization to the other source milk. If the shipping handler received other source milk from an unregulated supply plant or an other order plant, the transferred quantities, up to the total of such receipts, should not be Class I to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee-plant.

As provided in this decision, bulk fluid milk products may be diverted from one pool plant to another pool plant. The classification of such diversions between pool plants should be treated in the same manner as bulk transfers of fluid milk products between pool plants.

Deliveries by a proprietary bulk tank handler to the pool plant of another handler also should be treated like a transfer or diversion between pool plants. Such deliveries should be classified as Class I unless both handlers request a different classification. However, a different treatment should apply to deliveries from a cooperative bulk tank handler to the pool plant of another handler. Since such deliveries are considered to be the "producer milk" of the pool plant operator, they should be assigned pro rata with other producer milk to the utilization remaining in the plant after classifying all other types of receipts at the plant.

The provisions governing transfers and diversions between pool plants described herein will contribute to obtaining the best possible utilization of producer milk. Such provisions will tend to insure that producer milk used in Class I will not be classified in a lower class when interplant shipments involve a pool plant with receipts of other source milk. Unless such safeguards are provided, a high-utilization plant could be used as a conduit for assigning milk obtained from nonpool sources for manufacturing purposes to a higher utilization (at the expense of producer milk) than it would receive by direct delivery to the plant at which it is actually utilized.

Skim milk or butterfat may be transferred or diverted from a pool plant to another order plant in the form of a fluid milk product or transferred from a pool plant to another order plant in the form of a bulk fluid cream product. The classification of such transfers or diversions shall apply only to the skim milk and butterfat in excess of any receipts at the pool plant from the other order plant.

The order should provide for the diversion of milk to other order plants for Class II or Class III use. Such provisions will foster the efficient handling of surplus milk in the market by permitting the disposal of such milk directly from farms to manufacturing plants in other markets, rather than having such intermarket movements limited to the more expensive method of transferring milk from one plant to another. With the safeguards adopted herein, returns to producers in the market to which the milk is diverted will not be affected by the processing of this surplus milk in their market since the diverted milk wil continue to be pooled in the Southwestern Idaho-Eastern Oregon market.

Fluid milk products transferred or diverted to other order plants and bulk fluid cream products transferred to such

plants will be classified in accordance with the classes to which such milk is allocated under the other order. If information concerning the classification of transfers and diversions is not available to the market administrator in time to compute handler pool obligations, such transfers shall be classified in Class I, subject to adjustments when the information is available. In addition, the order should provide that if the other order provides for a different number of classes than the Southwestern Idaho-Eastern Oregon order, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified in Class I and skim milk and butterfat allocated to other classes shall be classified as Class III milk. The order also provides that if a fluid milk product is transferred to an other order plant and such product is not defined as a fluid milk product under the other order, classification of such transfer shall be in accordance with the classification provisions of this order.

The order should prescribe a method for classifying the skim milk and butterfat in transfers and diversions from a pool plant to a producer-handler. If such skim milk and butterfat are in the form of a fluid milk product, such transfers should be classified as Class I milk. As described elsewhere in this decision, such a classification is necessary to assure that producers are not burdened with maintaining reserve supplies associated with the Class I sales of producer-handlers.

Skim milk and butterfat in the form of bulk fluid cream products transferred from a pool plant to a producer-handler should be assigned to the extent possible to the latter's Class III use, and then Class II use. If the producer-handler does not have enough utilization in these classes to cover such transfers, any remaining transfers should be classified as Class I milk.

The order must also provide for the classification of bulk deliveries from a cooperative or proprietary bulk tank handler to a producer-handler. Such deliveries should be treated the same as transfers or diversions from a pool plant to a producer-handler and be classified as Class I milk.

The order also must prescribe a procedure for classifying transfers or diversions to a nonpool plant that is not an other order plant or a producer-handler plant. Bulk fluid milk products transferred or diverted and bulk fluid cream products transferred should be classified as Class I milk unless a lower classification is requested and the operator of the nonpool plant makes available books and records to the market administrator for the purpose of verifying the receipts and utilization of milk and milk product at the nonpool plant. To determine such lower classification, the nonpool plant's utilization must be assigned to its receipts of milk from various sources.

Under the adopted assignment priorities, the first step is to assign the nonpool plant's Class I utilization to its receipts of packaged fluid milk products from all federally regulated plants. Such receipts should receive first priority on the nonpool plant's Class I use since all orders provide that such packaged transfers from a pool plant to an unregulated nonpool plant shall be classified as Class I milk. Thus, any Class I route disposition of the nonpool plant in the Southwestern Idaho-Eastern Oregon marketing area, and any transfers of packaged fluid milk products from the nonpool plant to Southwestern Idaho-Eastern Oregon pool plants, would be assigned, first, to the nonpool plant's receipts of packaged fluid milk products from plants fully regulated under the Southwestern Idaho-Eastern Oregon order and, second, to any such remaining packaged receipts from plants fully regulated under other Federal orders.

A similar assignment of any such remaining disposition (i.e, the aforesaid Class I route disposition and transfers of packaged fluid milk products) then would be made to the nonpool plant's receipts of bulk fluid milk products from pool plants and other order plants. Any other Class I disposition of packaged fluid milk products from the nonpool plant, such as route disposition in unregulated areas, would be assigned to any remaining unassigned receipts of packaged fluid milk products at the nonpool plant from plants fully regulated under any Federal order.

After these assignments, any Class I use at the nonpool plant that is attributable to the Class I allocation at a Federal order plant of fluid milk products transferred in bulk from the nonpool plant to the regulated plant would be assigned next. Such use would be assigned first to the nonpool plant's remaining unassigned receipts of fluid milk products from plants fully regulated under the Southwestern Idaho-Eastern Oregon order and second to any such remaining receipts from plants fully regulated under other orders.

Any remaining unassigned Class I utilization at the nonpool plant then would be assigned to the plant's receipts of Grade A milk from dairy farmers and unregulated nonpool plants that are determined to be regular sources of Grade A milk for the nonpool plant. Any remaining unassigned receipts of fluid milk products at the nonpool plant from plants fully regulated under any order would be assigned to any of the nonpool plant's remaining Class I utilization, then to its Class III utiltzation, and then to its Class II utilization.

Following these assignments, any receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants would be assigned to the nonpool plant's remaining unassigned utilization in each class. Such assignment would be made in sequence beginning with the lowest class.

In determining the classification of any transfers or diversions from a pool plant to a nonpool plant, the utilization of any transfers from the nonpool plant to another unregulated nonpool plant also must be established. In this case, the same assignment priorities just outlined should apply also at the second nonpool plant.

The method herein provided for classifying transfers and diversions to nonpool plants accords equitable treatment to order handlers and also gives appropriate recognition to handlers in other regulated markets in the classification of milk transferred to a common nonpool plant. Giving highest use priority to dairy farmers directly supplying a nonpool plant recognizes that they are the regular and dependable source of supply of milk for fluid use at such plant. The proposed method of classification will safeguard the primary functions of the transfer and diversion provisions of the order by promoting orderly disposal of reserve supplies and in assuring that shipments to nonpool plants will be classified in an equitable manner.

Allocation of receipts to utilization. Because the value of producer milk is based on its classification, the Southwestern Idaho-Eastern Oregon order must provide a procedure for assigning a handler's receipts from different sources to the handler's utilization for the purpose of establishing such classification.

Proponents of the order testified that the system of allocating handlers' receipts to the various classes should be the same as that adopted in the decision issued June 19, 1964 (29 FR 9002), for 76 milk orders. This decision dealt with the issue of integrating into each order's regulatory plan milk which is not subject to classified pricing under any order and receipts at pool plants from other order plants. This decision was received into evidence in the form of an exhibit at the initial hearing. The decision established a procedure for allocating over a pool plant's total utilization the receipts at the plant from all nonpool sources and

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for making payment into the producer-settlement fund on unregulated milk allocated to Class I.

Proponent representatives testified that the method developed for all Federal milk marketing orders as discussed in the June 19, 1964, decision is appropriate in the Southwestern Idaho-Eastern Oregon marketing area and will coordinate these regulations with respect to the treatment of unregulated milk and other order milk with comparable regulations under other Federal orders.

The aforesaid decision sets forth the standards for dealing with unregulated milk under Federal orders and the system of allocation to be included in all orders. It describes the appropriate treatment of other order milk received at pool plants that is used for coordinating the applicable regulations on all movements of milk between Federal order markets. This record indicates that the findings and conclusions of the aforesaid decision are equally applicable under current conditions in the proposed marketing area.

The order also provides that handlers using certain types of other source milk (whether in the form received or in reconstituted form) in the processing of Class II products be permitted to have such other source milk allocated directly to their Class II uses. Under the classification plan provided herein, such other source milk to which direct allocation could apply would be limited to milk products (such as nonfat dry milk and condensed milk or skim milk) that are not fluid milk products or fluid cream products.

Handlers rely largely on producers for a regular supply of milk for the products herein included in Class II. The major use of other source milk in making these Class II products is the addition of nonfat dry milk to cream products, mainly half and half, and to skim milk being used for the manufacture of cottage cheese. On occasion, when producer supplies are short, handlers also may reconstitute nonfat dry milk for cottage cheese production. Condensed milk or skim milk may be similarly used. Handlers choosing to use such other source milk in this way should be permitted to have such milk allocated directly to their Class II utilization rather than allocated first to any Class III utilization they may have.

It is not intended that the Class II outlet for producer milk necessarily be reserved for local producers. This use class merely recognizes that some additional value attaches to producer milk used by regulated handlers in the Class II products. Pricing this milk at a level above the Class III price serves also to reduce the burden on the Class I price of attracting a supply of producer milk for the Class I market. It is not intended that producer returns be enhanced for the purpose of also attracting a full supply of producer milk for handlers' Class II uses. Accordingly, no obligation to the pool (commonly known as a compensatory payment) would be imposed on any other source milk which regulated handlers may use in Class II or on any Class II products that may be distributed in the market by nonpool plants, either directly on routes or through pool plants.

As long as the Class II price for producer milk remains in proper relationship with the cost of alternative supplies, it is not expected that this direct allocation of nonfluid other source milk to Class II will induce handlers to use other source milk in preference to producer milk for processing Class II products. Under the adopted Class II price, producers would represent in most circumstances the most economical source of milk for Class II use. As indicated elsewhere, this would be so with respect to the alternative use of nonfat dry milk, the type of other source milk most commonly used in Class II products.

Nonfat dry milk has certain advantages for handlers that producer milk cannot provide. It can be added easily to milk or milk products to increase their nonfat milk solids content. Also, its storability permits handlers to have a concentrated form of nonfat milk solids on hand at all times for emergency use. Nevertheless, the higher cost of nonfat dry milk relative to producer milk would tend to limit its use to only those situations where the nonfat dry milk has a distinct processing advantage for handlers.

No provision should be made for the direct allocation of a handler's Class II utilization of other source milk received in fluid form. Unlike the handling of nonfat dry milk, it would not be unusual for a handler to commingle receipts of fluid other source milk with receipts of producer milk. In this circumstance, it would not be possible to know just how much of the other source milk may have been used in the processing of a Class II product. The difficulty which a handler would have in demonstrating the actual use of fluid other source milk in a Class II product, and the administrative difficulty in verifying such claimed use, warrants the allocation of such milk to Class III.

It should be noted that the order would provide for the specific allocation to a handler's Class II and Class III utilization of any receipts of bulk fluid milk products from an other order plant or an unregulated supply plant for which the handler requests a Class II or Class III classification. Such receipts would be allocated to the extent possible first to the handler's Class III utilization and then to his Class II utilization. This would be the case even if a Class II classification were requested by the handler.

The attached order provides that, in the case of a multiple-plant handler, each of the handler's pool plants shall be considered separately for purposes of allocating receipts to utilization. In accordance with the "compensatory payment" decision referred to earlier, however, certain receipts of milk from unregulated supply plants and other Federal order plants are to share in varying degrees with local producer milk in the receiving handler's Class I utilization at all of the handler's pool plants combined. The order, therefore, provides a procedure whereby the milk from unregulated supply plants and other order plants is classified on the basis of the handler's total system, but is assigned to classes at the pool plant of actual receipt. Under this procedure, the situation may arise where there is not enough utilization in a specific class at the plant of actual receipt to which such other source milk must be assigned (as determined from receipts and utilization of a handler's entire system). In this case, an accounting technique is used for increasing the utilization in such class at the plant of actual receipt and making a corresponding reduction in the same class at one or more of such handler's other pool plants in the system. This technique, however, does not change the amount of milk to be accounted for at each plant or the classification of milk within the handler's entire system.

Classification of end-of-month inventory. The order should provide for the classification of inventory on hand at the end of the month. Fluid milk products in either packaged or bulk form that are in a handler's end-of-month inventory should be classified as Class III milk. Ending inventory of fluid cream products, eggnog, and yogurt, when held in bulk form, likewise should be classified in Class III. Such products held in packaged form at the end of the month should be classified as Class II milk.

Inventories classified in Class III should be subject in the following month to reclassification in a higher class, as determined through the allocation of receipts to utilization. A charge to the handler at the difference between the Class III price for the preceding month and the Class I or Class II price, as applicable, for the current month would apply to any reclassified inventory.

Because of the regulatory treatment being accorded certain other source milk, it is necessary that fluid cream products, yogurt, and eggnog on hand in packaged form at the end of the month be classified in Class II, the class of expected ultimate use, rather than in Class III as would be the case for ending inventories of such products in bulk form. The higher classification will accommodate the treatment adopted herein whereby such products that are received at a pool plant in packaged form and disposed of in the same packages would be permitted to "pass through" the plant without any pool obligation or down-allocation. In this connection, the ending Class II inventory, as Class II inventory on hand at the beginning of the next month, would be allocated in such month directly to the handler's Class II utilization.

For the first month the order is in effect, a slightly different classification of inventory must apply. Beginning inventories of fluid cream products in packaged form normally would be allocated directly to a handler's Class II utilization. Such allocation assumes that the products were priced at the Class II price in the preceding month. Since this would not be the case for the first month to under the new order, such inventories should be allocated in the first month the extent possible to Class III, as in the case of inventories of fluid milk products and bulk fluid cream products. A reclassification charge should apply in the following month if a higher classification results.

(c) *Pricing of milk.* In order to promote and maintain orderly marketing conditions for the Southwestern Idaho-Eastern Oregon market, minimum class prices for producrers must be established a levels that reflect economic conditions affecting the market supply and demand for milk and that tend to maintain a supply of milk sufficent to meet the fluid needs of the market plus a reserve to provide for daily and seasonal fluctuations in demand.

The Class I price must not be so high as to attract unneeded supplies to the market. On the other hand, the price must be high enough to encourage the production of an adequate quantity of high-quality milk required for the fluctuating daily and seasonal fluid needs of the market.

The Class II price should be high enough above the manufacturing price to compensate producers for a least a part of the cost of delivering sufficient Grade A milk to meet the needs of handlers for cream products, cottage cheese, ice cream, and related items for which handlers want Grade A milk.

The Class III price must be fixed at a level that will insure that milk produced in excess of the Class I and II requirements of the market can be processed into Class III products and disposed of in competition with similar products from unregulated manufacturing plants.

Class prices, as well as uniform prices to producers, should be computed and annunced on a 3.5 percent butterfat content basis. This will conform to prevailing practice in the market and throughout the Federal order system.

Class I price. For an 18-month period beginning with the effective date of the order, the Class I price should be computed each month by adding $1.50 to the "basic formula price" for the second preceding month. As defined herein, the "basic formula price" (also referred to as the "Minnesota-Wisconsin price") means the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, adjusted to a 3.5 percent butterfat basis.

The price for milk used for fluid purposes in the marketing area has a direct relationship to the price paid for milk used for manufacturing puroses. The Minnesota-Wisconsin or "M–W" price used in determing the price for Class I milk gives appropriate consideration to the economic factors underlying the general level of prices for milk and manufactured dairy products. It is used as the basic formula price in all Federal order markets and would be equally appropriate for use in the Southwestern Idaho-Eastern Oregon order. The differential over manufacturing milk prices is necessary to cover the added cost of meeting quality requirements in the production of milk for fluid use and the cost of moving it to the market.

Proponents of the order proposed that the Minnesota-Wisconsin manufacturing milk price be used as the basic formula price. This price is an average of prices paid at a large number of manufacturing plants in the two States. Plant operators report the total pounds of manufacturing grade milk received from dairy farmers, the total butterfat content, and the total dollars paid to dairy farmers for such milk, f.o.b. plant. These prices are reported on a current basis. The "M–W" price is announced by the Department for each month on or before the fifth day of the following month.

Cooperatives proposed that the Class I price for the order be established at $1.75 over the basic formula price for the second preceding month. A spokesman testified that this price level is necessary to assure the market's consumers of adequate supplies of pure and wholesome milk. He also stated that it will provide price alignment with other Federal order markets in the area and that it recognizes the ability and willingness of consumers to purchase milk.

At the time of the reopened hearing in February 1980, DCA was supplying Associated Dairies in Boise and Twin Falls and Sun Ray Drive-In Dairy in Boise. DCA was charging a Class I price equal to the M–W price for the second preceding month plus $1.85. However, this price moved only in 23-cent increments so that, for any given month, the actual price charged could be more or less than the M–W price plus $1.85. In addition, DCA also provided a minus adjustment to the price of 8.3 cents per hundredweight for milk moved by Associated from its Boise plant to its Twin Falls plant. As a result of these adjustments, the average Class I differential price charged by DCA during the period from January 1979 through February 1980 was $1.76.

The other cooperative in the market, MEDA, had been charging Meadow Gold a Class I price equal to the M–W price for the second preceding month plus $1.90. This is the basic Class I Price of the neighboring Great Basin order. When Meadow Gold began cutting back on its purchases of milk from MEDA in early 1979, the cooperative added a 10-cent service charge to the Class I price, bringing it up to $2.00. Later in 1979, when Meadow Gold was only purchasing spot shipments from MEDA, the service charge was increased to 50 cents per hundredweight.

As of the February 1980 hearng, Meadow Gold was purchasing essentially all of its milk from non-member producers. The price paid these non-member producers for Class I milk was equal to the Great Basin Class I price minus 45 cents, or a Class I differential price of about $1.45. This price was being paid on an arbitrarily established Class I utilization basis of 70 percent of a producer's milk. The price for other than Class I milk was equal to the Class III price under the Great Basin order, which is the M–W price for the month.

A Class I price equal to the basic formula price (i.e., the M–W price for the second preceding month) plus $1.50 is appropriate for this market. This price should result in a uniform price to producers that is 50 to 60 cents per hundredweight above the manufacturing price for the month assuming a 40 percent Class I utilization for the market. A uniform price at this level

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should allow handlers to procure adequate supplies of milk for fluid use in competition with local manufacturing plants.

In determining the appropriate Class I differential, consideration should be given to the relationship of the supply arrangements for the various handlers and the Class I prices being paid. When a handler purchases milk from a cooperative which is balancing the handler's fluid requirements, payrolling producers, and providing field services, it is expected that the price charged by the cooperative would reflect these services. A study introduced in the record indicates that it could cost a cooperative as much as 35 cents per hundredweight to provide a handler with a full supply of milk. According to testimony in the record, DCA is recouping such costs through the $1.85 Class I differential now charged to Associated Dairies and Sun Ray. In addition, testimony by a MEDA representative indicated that their costs in supplying Meadow Gold were similarly covered in the $1.90 Class I differential charged by MEDA.

In establishing the appropriate minimum price that is to be paid by regulated handlers, it is not intended that the order Class I price reflect or include the costs that cooperatives incur in supplying handlers. A handler buying milk from a cooperative would be expected to pay the minumum order price plus an amount that would cover the procurement costs that are being incurred by the cooperative. If a handler were to buy its milk directly from producers rather than from a cooperative, the handler, of course, would have to bear the procurement costs in addition to paying the minimum order price. On this basis, a minimum Class I differential of $1.50 under the order would be a reasonably close approximation of the prevailing pricing arrangements in this market.

The Class I price adopted approximates the average price paid by handlers in the market weighted according to their share of Class I sales in the market. Thus, it does not represent an increase in price over the existing fluid milk price level. Therefore, the adopted Class I price should have little impact on the retail price level in the market.

The Class I price adopted for the order should be reviewed within 18 months of the effective date of the order. By such time, data relative to milk supplies and sales in the market will have been accumulated. This will allow for a careful examination of the appropriate Class I price level for this market at a public hearing.

Class III price. The Class III price should be the basic formula price for the month, as proposed by the order proponents.

Reserve milk disposed of in manufactured product uses should be priced at a level that will result in the orderly disposition of all excess supplies. Establishment of a price too high to clear the market of milk excess to fluid requirements would interfere with the orderly marketing of milk for both processors and producers. Fixing a price too low would encourage handlers to associate additional supplies with the market simply to obtain low-cost milk for manufacturing uses.

The Minnesota-Wisconsin price is the best available indicator of the value of milk used in butter, nonfat dry milk, and cheese, which are usually the last-resort uses for surplus milk. The M-W price is an average of the prices being paid by processors of these products who are meeting the competitive test of the unregulated marketplace. Use of the M-W pay price series for the Southwestern Idaho-Eastern Oregon market will provide consistency between this order and other Federal order markets which also use the M-W price series as the basic formula price for pricing Class III milk. In addition, it achieves parity between regulated and unregulated plants since it provides the regulated manufacturer with essentially the same margin for processing as is experienced in the unregulated market.

Class II price. The price for Class II milk should be the basic formula price for the month, plus 10 cents. This price level, which was proposed by the order proponents, will obtain for producers some extra return for producer milk used in Class II products above its value in other manufactured dairy products.

Class II products, other than cream products, need not be made from Grade A milk. For this reason, the price charged under the order for milk used in Class II products must be competitive with prices being paid by unregulated manufacturing plants making such products from manufacturing grade milk.

Although not required, many handlers nevertheless prefer to use Grade A milk in products such as ice cream and cottage cheese. These products constitute more than surplus disposal for a handler; they usually constitute part of the handler's regular line.

Producers should be compensated for making high-quality milk available to handlers on a steady basis for use in Class II products. Experience in Federal orders throughout the country has shown that milk used in Class II can be priced somewhat higher than the Minnesota-Wisconsin price without impairing the market for producer milk. A 10-cent differential, as proposed, together with the Class I differential, will help to insure producers of a uniform price which will compensate them for the production of a steady supply of high-quality milk.

Location adjustments. Location adjustments for Class I and uniform prices should not be included in the proposed order.

Most Federal orders provide for location adjustments on milk received at plants located more than certain distances from a designated basing point within the marketing area. These adjustments serve two basic purposes: (1) they assist in encouraging the movement of milk from supply areas to the principal population centers where it is processed for fluid use; and (2) they assist in maintaining proper price alignment with nearby markets. Circumstances in the Southwestern Idaho-Eastern Oregon market, however, do not require the use of such adjustments under the order.

As indicated, it is expected that 7 distributing plants, all of which are located in the proposed marketing area, would be fully regulated under the order. Three of these plants are located in Boise, one is in Twin Falls, two are in Buhl (18 miles west of Twin Falls), and one is in Burley (about 40 miles east of Twin Falls). There are no supply plants associated with the market.

The three distributing plants in Boise, which is in Ada County, were estimated to have sales of fluid milk products in June 1978 of about 8.5 million pounds. Production figures indicate that milk production in Ada County alone averages 11.5 million pounds per month. Over 12 million pounds per month are produced in Canyon County, which adjoins Ada County. It is apparent, then, that the Boise handlers should be able to obtain adequate milk supplies from nearby farms.

A similar situation exists in the Twin Falls area. In June 1978, the four distributing plants in the Twin Falls area had sales of about 2 million pounds. Milk production in Twin Falls County averages more than 8 million pounds per month. In adjacent Cassia County, where one of the four distributing plants is located, production averages roughly 6 million pounds per month.

The figures indicate that abundant supplies of milk are produced within short distances of each of the distributing plants in the market. Thus, there is no reason to assemble milk at a supply plant and transship it many miles, as is the case in some markets, in order to satisfy handlers' Class I requirements. In view of this, there is no basis to conclude that location adjustments are needed to compensate for hauling milk from distant plants to distributing plants.

Proponents of the order originally proposed no location adjustments for the order. At the hearing, however, they altered their position and proposed adjustments at the rate of minus 10 cents per hundredweight for any plant located 100–110 miles from Boise and minus 2 additional cents per each 10 miles beyond 110 miles. A spokesman for proponents testified that this would result in a location adjustment of minus 16 cents at Twin Falls, or an adjusted Class I differential of $1.59. He said this would provide a price at Twin Falls that was identical to the adjusted Class I price at Twin Falls under the Great Basin order.[4]

Proponents failed to make a convincing argument why the price at Twin Falls should be any lower than the price at Boise. Similarly, there was no valid basis presented for having the price at Twin Falls under the new order about the same as the price there under the Great Basin order. It is noted, however, that the price under the new order would be within six cents of the Great Basin order price at Twin Falls.

The record clearly shows that milk from Twin Falls need not move to Boise to satisfy handler's requirements there. Therefore, no basis exists for having a minus location adjustment at Twin Falls.

Butterfat differential. The order should have a producer butterfat differential equal to .115 times the average wholesale price of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. This differential was proposed by proponents and is common to most other orders.

A butterfat differential reflects the incremental value of milk containing more or less butterfat than the standard announced level. Prices under the order will be announced for milk containing 3.5 percent butterfat. Milk containing less than 3.5 percent butterfat will be worth less than the 3.5 percent price, while milk testing above 3.5 percent will be worth more than the announced price. This adjustment will insure equitable payments reflecting such variations in butterfat content of milk delivered by individual producers.

Use of equivalent prices. If for any reason a price or pricing constituent needed by the market administrator in administering the order is not available, the market administrator is authorized by the order to use an equivalent price or pricing constituent as determined by the Secretary. Including such provision in the order will leave no uncertainty with respect to the procedure to be followed in the absence of any data customarily used and thereby will prevent interruption in the operation of the order.

d. *Distribution of proceeds to producers.* Marketwide pooling of producer returns should be provided in the order as the means of distributing among producers the proceeds from the sale of their milk. Such pooling method will assure each producer supplying the market a proportionate share of the market's total Class I sales.

The facilities in the various plants in the area for handling producer milk in excess of that needed for Class I purposes vary considerably. While a number of plants in the market are primarily Class I operations and handle little or no surplus milk, others utilize varying proportions of their supplies for Class II or Class III purposes. Under these conditions, a marketwide pool will facilitate the marketing of producer milk since the type of facilities at the plant will not be a determining factor in the price the plant can pay its producers compared to other plants.

A marketwide pool also will make it possible for producer associations to divert any weekly or seasonal reserves of milk and still keep producers on the market who are needed to fulfill the year-round requirements of the market. It will assist further in apportioning among all producers the lower returns from reserve milk manufactured when otherwise this burden would vary by individual groups of producers.

A marketwide pool thereby will contribute to market stability and the maintenance of an adequate and dependable supply of producer milk at reasonable prices.

Computation of uniform price. A key feature of marketwide pooling is the computation of a single uniform price to producers. Essentially, a uniform price is the weighted average value of all of the milk in the pool. It is computed by adding together the classified use value (or total pool obligation) of all the handlers in the market. This total value is then divided by the amount of milk in the pool to arrive at a "uniform price" to producers.

In order to compute the uniform price, the market administrator must first receive the report of receipts and utilization from all of the handlers in the pool. These reports, which would be due by the 7th day of the month, would include the total receipts and utilization of milk by each handler for the preceding month. Allowing time for receipt of these reports and computation of the uniform price, the market administrator should be able to announce the uniform price by the 11th day of the month.

Producer-settlement fund. Marketwide pooling requires the use of a producer-settlement fund which enables all handlers in the market to pay a uniform price to their producers. Payments into the producer-settlement fund are made by handlers whose total classfied use value of milk exceeds the value of their milk at the uniform price. Payments out of the producer-settlement fund are made to handlers whose use value is below the weighted average value (i.e., the uniform price) for the market. This transfer of funds enables handlers with a use value below the average for the market to pay their producers the same uniform price as handlers whose Class I utilization exceeds the market average.

As adopted herein, payments into the producer-settlement fund would be due on the 13th day of the month and payments out of the producer-settlement fuind would be made by the 15th day of the month. This 2-day interval should enable the market administrator to receive the payments into the fund in time to make the payments out of the fund. In the event that the balance in the producer-settlement fund is insufficient to make the required payments out of the fund, the market administrator should reduce uniformly such payments. However, the market administrator should complete such payments as soon as the necessary funds become available.

Payments to producers and cooperative associations. Each handler under the order should pay each producer for milk received from such producer, and for which payment is not made to a cooperative, at not less than the applicable uniform price. Provision also should be made for partial payments for milk received during the first half of the month.

Under the terms of payment as adopted herein, handlers would make a partial payment to producers on or before the last day of the month for milk received during the first 15 days of the month at not less than the Class III price for the preceding month. On or before the 18th day of the following month, handlers would be required to pay producers at the applicable uniform price for milk received in the preceding month. Such final payment would be exclusive of any partial payment made

[4] Our figures show a distance of 233 miles between Salt Lake City and Twin Falls. This would yield an adjusted Great Basin Class I differential price of $1.56. The Great Basin order specifies an adjustment of 22 cents for the first 160 miles and 1.5 cents for each additional 10 miles.

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and any deductions authorized by the producer.

Provision also is made in the attached order for a cooperative association to receive payment for member producer milk which is received by a pool plant. Providing for a cooperative association to collect for its individual producer members will permit the cooperative association to reblend the proceeds from the sale of such milk, as authorized by the Act. It will also facilitate the movement of milk among pool plants and the orderly disposal of reserve milk supplies to other plants for manufacturing use.

As provided in the attached order, each handler, upon request, should pay cooperatives the full amount due for producers' milk in lieu of payments to individual producers. Both the partial and final payments to a cooperative association should be made at least 2 days prior to the date payments are due to individual producers. This will enable cooperative associations to pay their producer members on the same day other producers are paid.

The proponents of the order proposed that the market administrator collect from handlers all order payments due producers. Under the proponents' proposal, each handler would make partial payments to the market administrator by the 25th day of the month for milk received during the first 15 days of the month. The partial payment rate would be the Class III price for the preceding month. The remainder of the handler's obligation for milk received during the month would be paid to the market administrator by the 14th day of the following month. Following the receipt of partial payments by handlers, the market administrator would pay producers such monies by the last day of the month. The market administrator would make final payment to producers by the 19th day after the close of the month. In those cases where a cooperative is collecting the payments for milk of its members, the proposal would require partial and final payments by the market administrator two days prior to the date payments are due individual producers.

In their post-hearing brief to the initial hearing, proponents indicated no opposition to having payments being made to nonmember producers by either the market administrator or by handlers receiving such producer milk.

Proponents stated that under their proposed method of payment to producers, the market administrator would know promptly when a handler is delinquent in making payments for producer milk. This, they claimed, would permit the market administrator to institute action more promptly in the collection of delinquent payments.

Other reasons cited by proponents for having the market administrator pay producers are: (1) It would provide handlers with a stronger incentive for making prompt payment of their order obligations than if handlers pay producers directly; (2) it would simplify handlers' accounting to the producer-settlement fund; (3) such a plan has operated quite successfully in a number of other federal order markets; and (4) it assures that no handler competing for fluid milk sales in the area has an advantage over another handler by using producer money to enhance their own competitive position.

Two handlers—Kraft and Meadowgold—opposed this payment arrangement. Witnesses for the handlers indicated they prefer to pay their own producers. Having the market administrator pay producers, they contended, would unnecessarily add an additional party to the transaction between them and their producers and thus would interfere with normal handler-producer relations. The opposing handlers also indicated that the proposed payment arrangement could adversely affect their cash flow position because they would have to make full payment for their order obligations several days earlier than if they paid producers directly.

The record does not establish that cooperatives and individual producers in this market have been experiencing difficulties in collecting payments from handlers on a timely basis. The payment method adopted herein is presently used under most Federal orders and should work satisfactorily under the proposed order. This payment method will result in the least amount of change in the current payment arrangements of handlers. Should experience show that a serious payment problem has developed in the market, the payment method proposed by the cooperatives could be considered at a later time.

Regardless of the payment method used, handlers need a reasonable time each month to file their reports of receipts and disposition with the market administrator. Likewise, the market administrator must, in turn, have adequate time to process such reports and compute the uniform prices. The dates for producer payments provided in the proposed order are reasonable considering the reporting and price computations that must take place.

The attached proposed order provides that at the time final settlement is made for milk received from producers during the month, the handler is required to furnish each producer (or cooperative association) a supporting statement. This statement should show the pounds and butterfat tests of milk received from such producer, the rate(s) of payment for such milk and an itemization of any deductions claimed by the handler.

(e) *Administrative Provisions.—Charges on overdue accounts.* The order should provide a charge on all handler obligations to the market administrator that are overdue. Such charge should be 1 percent per month and should apply on the first day that a payment is overdue and on the same day of each succeeding month until the obligation is paid. Payments subject to the charge would be those due the market administrator for the producer-settlement fund, order administration, marketing services, and audit adjustments.

Proponents originally proposed that a charge of .75 percent be applied to overdue accounts. At the hearing, however, a representative testified that they had modified their proposal so that the rate could fluctuate with changes in the prime interest rate. He stated that their revised proposal would establish the charge at not less than the prime rate that was effective on the first day of the calendar month in which the obligation becomes due. The prime rate to be used would be the one set by the Idaho First National Bank, a primary bank in the area.

It is essential to the effective operation of the order that handlers make their payments to the market administrator on time. Under the marketwide pooling arrangement, it is necessary that handlers with Class I utilization higher than the market average pay part of their total use value of milk to the producer-settlement fund. Through this means, money is made available to handlers with lower than average Class I utilization so that all handlers in the market, irrespective of the way they use the milk, can pay their producers the uniform price. The success of this arrangement depends on the solvency of the producer-settlement fund.

Also, the prompt payment of amounts due the administrative expense and market service fund is essential to the performance by the market administrator of the various administrative functions prescribed by the order. Delinquent payments to these funds could impair the ability of the market administrator to carry out his duties in a timely and efficient manner.

Payment delinquency also results in an inequity among handlers. Handlers who pay late are, in effect, borrowing money from producers. In the absence of any late-payment charge that approximates the cost of borrowing money from commerical sources, handlers who are delinquent in their payments have a financial advantage relative to those handlers making timely payments.

It should be noted that late-payment charges are not a substitute for prompt payment by handlers. Those delinquent in their obligations will be subject to legal enforcement action as authorized under the Act.

It is concluded that a late-payment charge of 1 percent per month of the unpaid balance on overdue handler obligations to the market administrator, applicable the first day the obligation is overdue, is appropriate for the order. The charge should apply irrespective of whether the obligation is paid 1 day later or 10 days late.

Under the provisions adopted herein, overdue handler obligations that are payable to the market administrator would be increased by 1 percent on the day after the due date. Any remaining unpaid portion of the original obligation would be further increased by 1 percent on the same date of each succeeding month until the obligation is paid. The late-payment charge would apply not only to the original obligation but also to any unpaid charges previously assessed.

Proponents suggested that the late-payment charge be applied on the third day following the date that a payment was due under the order. The purpose of this proposal presumably was to allow for mail delays. As adopted herein, payments will be considered to have been paid on time if they are postmarked by the date specified in the order. If a payment must be postmarked by a certain date, it reasonably should be received a day or two later. In view of this application of the due date, the late-payment charge should be applied on the day after the due date.

As proposed at the hearing, the order should apply a late-payment charge on overdue obligations of a handler operating a partially regulated distributing plant. Under certain conditions, such a handler may be required to make payments to the producer-settlement and administrative expense funds. In the absence of any late-payment charge, a partially regulated handler could have an advantage on such order obligations relative to fully regulated handlers who are subject to the additional charge when they fail to make timely payments. Also, as pointed out earlier, prompt payments to the administrative expense fund are essential to the performance of the market administrator's duties.

A late-payment charge should not apply at this time on handler obligations to producers and cooperatives. Under the payment system adopted herein, handlers will pay producers and cooperative associations. In this situation, it is more difficult to know with certainty when payment has been made. This, of course, presents a problem of knowing when a late-payment charge should apply. Producers and cooperatives in this market are in the best position to ensure prompt payments for their milk. Accordingly, a late payment charge should not apply to this type of transaction.

Expense of administration. Each handler should be required to pay to the market administrator, a proportionate share of the cost of administering the order. For this purpose, a charge of 5 cents per hundred weight, or such lesser amount as the Secretary may prescribe, on producer milk (including milk of such handler's own production) and on other source milk allocated to Class I (except milk so assessed under another Federal order) is provided.

The market administrator must have sufficient funds to administer properly the terms of the order. The Act provides that the cost of administration shall be financed through an assessment on handlers. A principal function of the market administrator is to verify the receipts and disposition of milk from all sources. Equity in sharing the cost of administration of the order among handlers will be achieved, therefore, by applying the administrative assessment on the basis of milk received from dairy farmers and on other source milk allocated to Class I milk.

The proposed order provides that a cooperative shall be the handler on milk it delivers in tank trucks from producers' farms to pool plants of other handlers. The cooperative is the handler on such milk basically for the purpose of making payments to its individual members. For all accounting purposes, however, the milk would be considered as producer milk at the plant of the receiving handler. It, therefore, would be treated the same as any other direct receipts from producers.

The market administrator must verify by audit the receipts and utilization at each pool plant, whether the plant operator buys milk directly from producers or through a cooperative as a bulk tank handler. It is appropriate, therefore, that the pool plant operator receiving such milk pay the administrative assessment on it on the same basis as for all other producer milk received at the plant. The cooperative bulk tank handler would be liable only for the administrative assessment on the quantity of milk picked up at producers' farms that is not received at the pool plant.

The proposed order also provides that a proprietary bulk tank handler may be the handler on milk delivered in tank trucks from producers' farms to the pool plants of other handlers. In addition, a pool plant operator is permitted to divert milk from producers' farms to the pool plant of another handler. In both of these instances, it is the handler for whose account the milk is being diverted who is responsible for making payments to the individual producers involved. Likewise, it is this handler who must be held accountable for paying the administrative assessment on milk.

The order specifies minimum performance standards that must be met to obtain regulated status. The operator of a plant not meeting such standards (i.e., a partially regulated distributing plant) is required to either (1) make specified payments (discussed elsewhere in this decision) into the producer-settlement fund on route disposition in the marketing area in excess of offsetting purchases of Federal order Class I milk, or (2) otherwise pay into such fund and/or to dairy farmers an amount not less than the classified use value of all receipts from dairy farmers computed as though such plant were a fully regulated plant.

In administering the order as it applies to partially regulated distributing plants, the market administrator incurs expenses in essentially the same manner as in applying the order to pool handlers, even though the order is not applicable to the partially regulated handler to the same extent as to fully regulated handlers. Hence, payment of the administrative assessment on the partially regulated handler's in-area sales only would reasonably constitute such handler's pro rata share of the administrative expense.

In the case of unregulated milk that enters the market through a regulated plant for Class I use, it is the regulated handler who utilizes the unregulated milk and who must report to the market administrator the receipt and use of such milk. Also, the receipts and utilization of all milk at the regulated handler's plant are subject to verification by the market administrator. Hence, it is appropriate that the regulated handler be responsible for payment of the administrative assessment on such unregulated milk.

The order is designed so that the cost of administration is shared equitably among handlers distributing milk in the proposed marketing area. However, to prevent duplication, an assessment

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should not be made on other source milk on which an assessment was made under another Federal order.

Provision should be made so that the Secretary may reduce the amount of the administrative assessment without the necessity of amending the order. The rate can thus be reduced when experience indicates a lower rate will be sufficient to provide adequate funds for the administration of the order.

Marketing services. Provision should be made in the order for furnishing marketing services to producers, such as verifying the tests and weights of producer milk and furnishing market information. These services should be provided by the market administrator, and the cost should be borne by producers for whom the services are rendered. However, any cooperative association, if approved for such activity by the Secretary, may perform such services for its producers in lieu of having the market administrator perform the services.

There is a need for a marketing service program in connection with the administration of a Federal milk order for the Southwestern Idaho-Eastern Oregon area. The weighing and testing of the milk of all producers is closely related to the main provisions of the order, which are the classification and pricing provisions. The latter provisions are the basis of the computation of the minimum uniform price payable to producers.

The order requires all regulated handlers to submit to the market administrator each month a report showing the total quantity of skim milk and butterfat received from producers and the utilization of such skim milk and butterfat in the three price classifications provided. To verify that a handler has reported all receipts and disposition correctly and to insure that producers receive proper payment for their deliveries, the market administrator audits each handler's operation. The quantity of skim milk and butterfat received by a handler must balance, of course, with the quantities of skim milk and butterfat in the products processed and disposed of by the handler. This requires the availability of the weight and butterfat test of each producer's deliveries.

Milk produced on a handler's own farm should be exempt from marketing service deductions, even though it is subject to other provisions of the order. There are no payments to other persons on such milk. Hence, there is no need to provide the same marketing services as are provided other producers.

The other service provided, that of furnishing market information, is designed to keep the producer informed of developments that might affect such producer's price or market outlet in order that the producer may better evaluate marketing conditions. The objective of the program is to aid producers to achieve and maintain orderly marketing conditions for their milk.

In the case of producers who market their milk through a cooperative association, the Act authorizes such cooperative to perform these marketing services, and the costs of these services normally are borne by such producers through membership dues.

Proponent cooperative associations proposed that 8 cents per hundredweight be provided in the order as a marketing services deduction. Kraft, Inc., testified that 6 cents per hundredweight ought to be an adequate marketing service assessment, arguing that the costs of verifying producer tests could be substantially reduced if the market administrator were to use handler laboratory facilities rather than to maintain separate facilities.

In the absence of specific testimony introduced to indicate that the 8-cent rate is necessary, it is concluded that a rate of 7 cents per hundredweight should be provided. This represents the maximum rate established in any Federal order, regardless of market size. It is anticipated that such maximum rate will cover the costs that are likely to be incurred by the market administrator in providing the necessary services for producers. If experience indicates that marketing services can be performed at a lesser rate, provision is made whereby the Secretary may adjust the rate downward without the necessity of a hearing.

General provisions. The Southwestern Idaho-Eastern Oregon order proposed herein incorporates, by reference, certain terms, definitions, and administrative provisions that are included in Part 1000 of the Code of Federal Regulations. The provisions are common to all Federal milk orders, having been so adopted effective July 1, 1971 (36 FR 9844).

The first section (§ 1000.1) states that the uniform provisions included in Part 1000 shall be a part of each Federal milk marketing order as if set forth in full in each order, except in any order where any such provision is expressly defined or modified otherwise.

The second section (§ 1000.2) includes definitions of five general terms used in all Federal milk orders: Act, Order, Department, Secretary, and Person.

The third section (§ 1000.3) deals with the designation, powers, and duties of the market administrator.

The fourth section (§ 1000.4) pertains to the continuity and separability of provisions in an individual order. For the most part these are internal administrative rules and instructions to Department employees regarding procedures involved in the suspension, termination, or liquidation of any or all provisions of a Federal milk order.

The fifth section (§ 1000.5) describes a handler's responsibility with respect to records and facilities.

The final section (§ 1000.6) relates to the termination of obligations.

The standard provisions of Part 1000 have the same intent and purpose in each Federal milk order, and they have worked effectively since the adoption of Part 1000 in July 1971 for all Federal orders. Adopting Part 1000 by reference for the Southwestern Idaho-Eastern Oregon order will promote uniform application of these provisions, which have the same intent and purpose in all orders.

A detailed discussion of the need and basis for incorporating the general provisions in each order is contained in a decision issued by the Assistant Secretary on April 15, 1971 (36 FR 7514). The findings and conclusions thereof were received into evidence at the initial hearing and are made a part hereof by reference as the basis for adopting the same provisions in the Southwestern Idaho-Eastern Oregon order.

Ruling on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

(a) The tentative marketing agreement and the order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the market area. The minimum prices specified in the proposed marketing agreement and order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The proposed marketing agreement and order will regulate the handling of milk in the same manner as, and will be applicable only to pesons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order

The recommended marketing agreement is not included in this decision because the regulatory provisions of such agreement would be the same as those contained in the proposed order. The following order regulating the handling of milk in the Southwestern Idaho-Eastern Oregon marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

PART 1135—MILK IN THE SOUTHWESTERN IDAHO-EASTERN OREGON MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

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1135.1 General Provisions.

Definitions

1135.2 Southwestern Idaho—Eastern Oregon marketing area.
1135.3 Route disposition.
1135.4 Plant.
1135.5 Distributing plant.
1135.6 Supply plant.
1135.7 Pool plant.
1135.8 Nonpool plant.
1135.9 Handler.
1135.10 Producer-Handler.
1135.11 [Reserved]
1135.12 Producer.
1135.13 Producer milk.
1135.14 Other source milk.
1135.15 Fluid milk product.
1135.16 Fluid cream product.
1135.17 Filled milk.
1135.18 Cooperative association.

Handler Reports

1135.30 Reports of receipts and utilization.
1135.31 Payroll reports.
1135.32 Other reports.

Classification of Milk

1135.40 Classes of utilization.
1135.41 Shrinkage.
1135.42 Classification of transfers and diversions.
1135.43 General classification rules.
1135.44 Classification of producer milk.
1135.45 Market administrator's reports and announcements concerning classification.

Class Prices

Sec.
1135.50 Class prices.
1135.51 Basic formula price.
1135.52 [Reserved]
1135.53 Announcement of class prices.
1135.54 Equivalent price.

Uniform Price

1135.60 Handler's value of milk for computing uniform price.
1135.61 Computation of uniform price.
1135.62 Announcement of uniform price and butterfat differential.

Payments For Milk

1135.70 Producer-settlement fund.
1135.71 Payments to the producer-settlement fund.
1135.72 Payments from the producer-settlement fund.
1135.73 Payments to producers and to cooperative associations.
1135.74 Producer butterfat differential.
1135.75 [Reserved]
1135.76 Payments by a handler operating a partially regulated distributing plant.
1135.77 Adjustment of accounts.
1135.78 Charges on overdue accounts.

Administrative Assessment and Marketing Service Deduction

1135.85 Assessment for order administration.
1135.86 Deduction for marketing services.

Authority: 7 U.S.C. 601, et seq.

General Provisions

§ 1135.1 Geneal Provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

Definitions

§ 1135.2 Southwestern Idaho-Eastern Oregon marketing area.

"Southwestern Idaho-Eastern Oregon marketing area," hereinafter called the "marketing area," means all territory within the boundaries of the following Idaho and Oregon counties, including all reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed counties:

Idaho

Ada	Gooding
Adams	Jerome
Blaine	Lincoln
Boise	Minidoka
Camas	Owyhee
Canyon	Payette
Cassia	Twin Falls
Elmore	Valley
Gem	Washington

Oregon

Baker	Harney	Union
Grant	Malheur	

§ 1135.3 Route disposition.

"Route disposition" means any delivery of a fluid milk product classified as class I milk from a plant to a retail or wholesale outlet (including any delivery through a distribution point or a vendor and disposition from a plant store or through a vending machine) except a delivery to another plant.

§ 1135.4 Plant.

"Plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed, or packaged. Separate facilities used only as a distribution point for storing packaged fluid milk products in transit or used only for reloading milk from one tank truck to another for transshipment shall not ba a "plant" under this definition.

§ 1135.5 Distributing plant.

"Distributing plant" means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and at which fluid milk products are processed or packaged and from which there is route disposition in the marketing area during the month.

§ 1135.6 Supply plant.

"Supply plant" means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and from which fluid milk products are transferred during the month to a pool distributing plant.

§ 1135.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant from which there is:

(1) Route disposition (except filled milk) in the marketing area during the month equal to not less than 10 percent of the Grade A fluid milk products received at such plant (including milk diverted from such plant by the plant operator pursuant to § 1135.13); and

(2) Total route disposition (except filled milk) during the month equal to not less than 40 percent of such receipts.

(b) A supply plant from which during the month the volume of fluid milk products, except filled milk, transferred to pool distributing plants is 40 percent or more of the Grade A milk received at the plant from dairy farmers (including producer milk diverted from the plant by the plant operator but excluding producer milk diverted to the plant pursuant to § 1135.13), subject to the following conditions:

(1) Any supply plant that has qualified as a pool plant in each of the immediately preceding months of September through February shall be a pool plant in each of the following

months of March through August unless written request for nonpool status for any such month is filed by the plant operator with the market adminstrator prior to the fist day of any such month. In such case, nonpool status will be effective until the plant again qualifies as a pool plant by meeting the transfer requirements; and

(2) The volume of fluid milk products included as qualifying shipments to a distributing plant pursuant to this paragraph shall be reduced by the volume of any fluid milk products transferred or diverted by such pool distributing plant operator to the supply plant or to any other plant under the control of the supply plant operator.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section that also meets the pool plant requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, was disposed of as route disposition during the month in such other Federal marketing area than was disposed of as route disposition in this marketing area, and which is fully subject to the classification and pricing provisions of such other order.

(3) A distributing plant qualified pursuant to paragraph (a) of this section that also meets the pool plant requirements of another Federal order on the basis of route disposition in such other marketing area, and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month as route disposition in this marketing area than is disposed of in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order;

(4) A supply plant qualified pursuant to paragraph (b) of this section that also meets the pool plant requirements of another Federal order and from which greater qualifying transfers are made during the month to plants regulated under such other order than are made to plants regulated under this order, unless during the months of March through August the transfers to the other order plant are classified as Class II or Class III milk and the operator of the supply plant elects to retain automatic pooling under this part; or

(5) A distributing plant from which less than an average of 300 pounds of Class I milk per day, except filled milk, is disposed of in the marketing area during the month.

§ 1135.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a distributing plant that does not qualify as a pool plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant.

(d) "Unregulated supply plant" means a supply plant that does not qualify as a pool supply plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant.

(e) "Execpt distributing plant" means a distributing plant defined in § 1135.7(c)(4).

§ 1135.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) Any cooperative association with respect to milk of a producer that is diverted pursuant to § 1135.13 for the account of the cooperative association;

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler for such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples;

(d) Any person, except a cooperative association, with respect to milk that it receives for its account from the farm of a producer in a tank truck owned and operated by, or under the control of, such person and which is delivered during the month for the account of such person to the pool plant of another handler or diverted pursuant to § 1135.13, subject to the following conditions:

(1) Such person (who, if qualified pursuant to this paragraph, shall be known as a "proprietary bulk tank handler") must operate a plant located in the marketing area at which milk is processed only into Class II or Class III products; and

(2) Prior to operating as a handler pursuant to this paragraph, such person must submit to the market administrator a statement signed by the applicant and the operator of the pool plant to which the milk will be delivered specifying that the applicant will be the responsible handler for the milk;

(e) Any person in his capacity as the operator of a partially regulated distributing plant;

(f) Any person defined as a producer-handler;

(g) Any person in his capacity as the operator of another order plant described in § 1135.7(c)(2) and (3);

(h) Any person in his capacity as the operator of an unregulated supply plant;

(i) Any person in his capacity as the operator of an exempt distributing plant.

§ 1135.10 Producer-handler.

"Producer-handler" means any person who meets all of the following conditions:

(a) Operates a dairy farm and a distributing plant at which Grade A milk of his own production is processed and packaged, and from which there is route disposition in the marketing area;

(b) Receives no milk or fluid milk products from any source other than pool plants, other order plants, and bulk tank handlers described in § 1135.9(b) and (d);

(c) Such receipts do not exceed the lesser of 5 percent of his Class I utilization during the month or 5,000 pounds;

(d) Does not reconstitute or convert milk products into fluid milk products except to increase by the addition of nonfat dry milk the nonfat milk solids content of its own farm production or of fluid milk products received from other sources; and

(e) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for his own farm production and the operation of the processing and packaging business are the personal enterprise and risk of such person.

§ 1135.11 [Reserved]

§ 1135.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved by a duly constituted regulatory agency for disposition as Grade A milk and whose milk is:

(1) Received at a pool plant directly from such person;

(2) Received by a handler described in § 1135.9(c) or (d); or

(3) Diverted from a pool plant in accordance with § 1135.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person who produces milk that is diverted to a pool plant from another order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1135.44(a)(8)(iii) and the corresponding step of § 1135.44(b); or

(3) Any person who produces milk that is reported as diverted to another order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order or the other order designates such person as a producer under such order.

§ 1135.13 Producer milk.

"Producer milk" means the skim milk and butterfat in milk of a producer that is:

(a) Received at a pool plant directly from such producer by the operator of the plant;

(b) Received at a pool plant from a handler described in § 1135.9(c);

(c) Received by a handler described in § 1135.9(c) in excess of the quantity delivered to pool plants;

(d) Received by a handler described in § 1135.9(d) that is not diverted pursuant to paragraph (f) of this section;

(e) Diverted from a pool plant for the account of the handler operating such plant to another pool plant; or

(f) Diverted from a pool plant to a nonpool plant by a pool plant operator or a handler described in § 1135.9(b) or (d), subject to the following conditions:

(1) Milk of a dairy farmer who was not a "producer" in the preceding month shall not be eligible for diversion until one day's production of milk of such dairy farmer is physically received at a pool plant;

(2) During each of the months of September through February milk of a dairy farmer shall not be eligible for diversion unless during the month one day's production of milk of such dairy farmer is physically received as producer milk at a pool plant;

(3) The total quantity of milk diverted by a cooperative association during the month may not exceed 60 percent in the months of September through February, and 70 percent in other months, of the producer milk that the cooperative association causes to be delivered to or diverted from pool plants during the month. Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of the producer milk which the associations cause to be delivered to pool plants or diverted from pool plants during the month if each association has filed a request in writing with the market administrator on or before the first day of the month the agreement is to be effective. This request shall specify the basis for assigning over-diverted milk to the producer deliveries of each cooperative according to a method approved by the market administrator;

(4) The total quantity of milk diverted during the month by a proprietary bulk tank handler described in § 1135.9(d) may not exceed 60 percent in the months of September through February, and 70 percent in other months, of the producer milk that the handler causes to be delivered to or diverted from pool plants during the month;

(5) The operator of a pool plant may divert for its account any milk that is not under the control of a cooperative association or a proprietary bulk tank handler that diverts milk during the month pursuant to paragraph (f)(3) or (4) of this section. The total quantity so diverted during the month may not exceed 60 percent in the months of September through February, and 70 percent in other months, of the producer milk received at or diverted from such pool plant during the month that is eligible to be diverted by the plant operator; and

(6) Any milk diverted in excess of the limits prescribed in paragraph (f)(3), (4), and (5) of this section shall not be producer milk. The diverting handler may designate the dairy farmers whose diverted milk will not be producer milk. Otherwise, the total milk diverted by the handler on the last day of the month, then the second-to-last day, and so on in daily allotments will be excluded until all of the over-diverted milk is accounted for.

§ 1135.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk fluid cream products from any source other than producers, handlers described in § 1135.9(c) and (d), pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1135.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1135.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1135.40(b)(1)) for which the handler fails to establish a disposition.

§ 1135.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaportated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1135.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk and skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1135.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent non-milk fat (or oil).

§ 1135.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the cooperatiave association:

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(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act",

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk for its members; and

(c) To have its entire activities under the control of its members.

Handler Reports

§ 1135.30 Reports of receipts and utilization.

On or before the seventh day after the end of the month, each handler shall report to the market administrator, in the detail and on the forms prescribed by the market administrator, the following information for such month:

(a) Each handler, with respect to each of its pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1135.9(c);

(3) Receipts of milk from handlers described in § 1135.9(d);

(4) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(5) Receipts of other source milk;

(6) Inventories at the beginning and end of the month of fluid milk products specified in § 1135.40(b)(1); and

(7) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1135.9(b), (c), and (d) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through(c) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may presecribe.

§ 1135.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1135.9 (a), (b), (c), and (d) shall report to the market administrator, in the detail prescribed by the market administrator, the following information showing for each producer for such month;

(1) His/her name and address;

(2) The number of days on which milk was received from such producer;

(3) The total pounds of milk received from such producer;

(4) The average butterfat content of his/her milk;

(5) In the case of cooperative associations, the identify of producers for whom the cooperative association is authorized to collect payment pursuant to § 1135.73; and

(6) The amount and nature of any deductions authorized in writing by the producer to be made from payments due such producer for milk delivered.

(b) Each handler operating a partially regulated distributing plant who elects to make payments pursuant to § 1135.76(b) shall report for each dairy farmer who woud have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1135.32 Other reports.

In addition to the reports required pursuant to §§ 1135.30 and 1135.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

Classification of Milk

§ 1135.40 Classes of utilization.

Except as provided in § 1135.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1135.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product

that was included within the fluid milk product definition pursuant to § 1135.15; and

(6) In shrinkage assigned pursuant to § 1135.41(a) to the receipts specified in § 1135.41(a)(2) and in shrinkage specified in § 1135.41 (b) and (c).

§ 1135.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1135.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from handlers described in § 1135.9 (c) and (d));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from handlers described in § 1135.9 (c) and (d) and in milk diverted to such plant from another pool plant, except that, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amonts of skim milk and butterfat to which percentages are applied in paragraph (b)(1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1135.9 (b) or (c) or a proprietary bulk tank handler is the handler pursuant to § 1135.9(d), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat test determined from farm bulk tank samples, the applicable percentage for the cooperative association or the propietary bulk tank handler shall be zero.

§ 1135.42 Classification of tranfers and diversions.

(a) *Transfers and diversions (including deliveries by a handler described in § 1135.9(d)) to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or from a handler described in § 1135.9(d) to a pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk, and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computation pursuant to § 1135.44(a)(12) and the corresponding step of § 1135.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1135.44(a)(7)and the corresponding step of § 1135.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1135.44(a) (11) or (12) or the corresponding steps of § 1135.44(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or transferred in the form of a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, tranfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such tranfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustments when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat

allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1135.40.

(c) *Transfers and diversions to producer-handlers and to exempt distributing plants.* Skim milk or butterfat in the following forms that is transferred or diverted by a handler described in § 1135.9(a), (b), or (d) to a producer-handler under this or any other Federal order or to an exempt distributing plant shall be classified:

(1) As Class I milk, if moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if tranferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt distributing plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or transferred in the form of a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i)(*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2)(ii) through (viii) of this section;

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1135.30 for the month with which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk field milk products at such nonpool plant from other order plants; and

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk field milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants to the extent possible, first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

§ 1135.43 General classification rules.

In determining the classification of producer milk pursuant to § 1135.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1135.30 and shall compute separately for each pool plant, and for each handler pursuant to § 1135.9 (b), (c), and (d) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1135.40, 1135.41, and 1135.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by e handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk of a handler pursuant to § 1135.9 (b), (c), or (d) shall be determined separately from the operations of any pool plant operated by such handler.

§ 1135.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1135.9(a) for each of the handler's pool plants separately and of each handler described in § 1135.9 (b), (c), and (d) by allocating the handler's receipts of skim milk and butterfat to its utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1135.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1135.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1135.40(b)(1) that were in inventory at the beginning of the month in package form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1135.40(b), but not in excess of the pounds of skim remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1135.40(b)(1) that were not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section; and

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from an exempt distributing plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount;

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section if Class II or Class III classification is requested by the operator of the orther order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1135.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section:

(11) Subject to the provisions of paragraph (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received;

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph (a)(1) exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other

pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) and (8)(iii) of this section;

(i) Subject to the provisions of paragraphs (a)(12)(ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk;

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1135.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computation pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant and from 9(d) handlers according to the classification of such products pursuant to § 1135.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1135.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1135.44(a)(12) and the corresponding step of § 1135.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1135.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler as described in § 1135.9(a), (b) and (d) who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association that so requests the amount and class utilization of producer milk delivered by members of such cooperative association to each handler receiving such milk. For the purpose of this report, the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

Class Prices

§ 1135.50 Class prices.

The class prices for the month per hundredweight of milk shall be as follows:

(a) *Class I price.* For the first 18 months this order is effective, the Class I price shall be the basic formula price for the second preceding month plus $1.50.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1135.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1135.52 [Reserved]

§ 1135.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month:

(a) The Class I price for the following month.

(b) The Class II and Class III prices for the preceding month.

§ 1135.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

Uniform Price

§ 1135.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1135.9 (b), (c), and (d) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1135.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1135.44 (a)(14) and the corresponding step of § 1135.44(b) by the applicable class prices;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1135.44(a)(9) and the corresponding step of § 1135.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1135.44(a)(7)(i) through (iv) and the corresponding step of § 1135.44(b), excluding receipts of bulk fluid cream products from another order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1135.44(a)(7)(v) and (vi) and the corresponding step of § 1135.44(b); and

(f) Add the amount obtained from multiplying Class I price by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1135.44(a)(11) and the corresponding step of § 1135.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1135.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1135.60 for all handlers who filed reports prescribed by § 1135.30 for the month and who made the payments pursuant to § 1135.71 for the preceding month;

(b) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(c) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1135.60(f); and

(d) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall by the "uniform price."

§ 1135.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The 5th day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

Payments for Milk

§ 1135.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit the appropriate payments made by handlers pursuant to §§ 1135.71, 1135.76, 1135.77, and 1135.78 and out of which he shall make all payments due handlers pursuant to §§ 1135.72 and 1135.77. Payments due from the fund shall be offset by payments due from such handler.

§ 1135.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1135.60.

(2) The sum of:

(i) The value at the uniform price of such handler's receipts of producer milk; and

(ii) The value at the uniform price of other source milk for which a value is computed pursuant to § 1135.60(f).

§ 1135.72 Payments from the producer-settlement fund.

On or before the 15th day after then end of the month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to 1135.71(a)(2) exceeds the amount computed pursuant to § 1135.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary fund become available.

§ 1135.73 Payments to producers and to cooperative associations.

Each handler shall pay for milk received from producers and cooperative association as follows:

(a) On or before the last day of the month, each handler shall pay to each producer from whom milk was received during the first 15 days of the month not less than the Class III price per hundredweight for the preceding month.

(b) On or before the 18th day of the following month, each handler shall pay to each producer from whom milk was received during the month, the uniform price per hundredweight as adjusted pursuant to § 1135.74, less:

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(1) Payments made pursuant to paragraph (a) of this section;

(2) Deductions for marketing services pursuant to § 1135.86; and

(3) Other proper deductions authorized by such producer in writing.

(c) On or before the second day prior to the dates specified in paragraphs (a) and (b) of this section, each handler shall pay a cooperative association for milk from producers who market their milk through the cooperative and who have authorized the cooperative to collect payments on their behalf an amount equal to the sum of the individual payment otherwise payable to such producers pursuant to paragraphs (a) and (b) of this section.

(d) In the event a handler has not received full payment from the market administrator pursuant to § 1135.72 by the 18th day of the month, the handler may reduce pro rata the payments to producers pursuant to paragraph (b) and (c) of this section by not more than the amount of such underpayment. Following receipt of the balance due from the market administrator, the handler shall complete payments to producers not later than the next payment date provided under this paragraph.

(e) In making payments to individual producers as required by this section, each handler shall furnish each producer with a supporting statement in such form that it may be retained by the producer, which shall show:

(1) The month involved, and the identity of the handler and the producer;

(2) The total pounds and the average butterfat content of the milk received from the producer;

(3) The minimum rate at which payment is required pursuant to this order;

(4) The rate used in making payment, if such rate is other than the applicable minimum;

(5) The amount (or rate) per hundredweight of each deduction claimed by the handler, including any deduction claimed under § 1135.86, together with a description of the respective deductions; and

(6) The net amount of the payment to the producer.

§ 1135.74 Producer butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth of one percent variation from 3.5 percent by a butterfat differential rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1135.75 [Reserved]

§ 1135.76 Payments by a handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1135.30(b) and 1135.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants, handlers pursuant to § 1135.9(b) and (d), and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price; and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1135.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant, a handler described in § 1135.9(b) and (d), and another order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or another order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1135.60 shall be priced at the uniform price of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest Class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1135.60 for such handler shall include, in lieu of the value of other source milk specified in § 1135.60(f) less the value of such other source milk specified in § 1135.71(a)(2)(ii), a value of milk determined pursuant to § 1135.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1135.7(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1135.30(b) and 1135.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1135.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing

the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1135.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1135.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1135.77 Adjustments of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts or other verification discloses errors resulting in money due the market administrator from such handler or due such handler from the market administrator, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred.

§ 1135.78 Charges on overdue accounts.

Any unpaid obligation pursuant to §§ 1135.71, 1135.76, 1135.77, 1135.78, 1135.85, and 1135.86, shall be increased 1 percent each month beginning with the day following the date such obligation was due under the order. Any remaining amount due shall be increased at the same rate on the corresponding day of each month thereafter until paid. The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation and shall include any unpaid charges previously made pursuant to this section. For the purpose of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

Administrative Assessment and Marketing Service Deduction

§ 1135.85 Assessment for order administration.

As his pro rata share of the expenses of administration of the order, each handler shall pay to the market administrator on or before the 13th day after the end of the month 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1135.44(a) (7) and (11) and the corresponding steps of § 1135.44(b), except such other source milk that is excluded from the computations pursuant to § 1135.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1135.76(a)(2).

§ 1135.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments directly to producers (other than himself) pursuant to § 1135.73, shall deduct 7 cents per hundredweight, or such lesser amount as the Secretary may prescribe with respect to all milk received from producers' farms during the month, and shall pay such deductions to the market administrator on or before the 13th day after the end of such month. Such moneys shall be expended by the market administrator to provide for market information and to verify the weights, samples, and tests of milk of producers who are not receiving such services from a cooperative association.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers and on or before the 16th day after the end of each month shall pay such deductions to the cooperative association rendering such services, accompanied by a statement showing the quantity of milk for which a deduction was computed for each producer.

Signed at Washington, D.C., on: October 21, 1980.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

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Monday
October 27, 1980

Part VII

Department of Transportation

Office of the Secretary

Washington National Airport; Special Air Traffic Rules and Airport Traffic Patterns; Proposed Rulemaking

V 4 5 O C 2 7 8 0 UMI

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 93

[Docket No. 70, Notice No. 80-16]

Special Air Traffic Rules and Airport Traffic Patterns

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes procedures for allocating the hourly number of instrument flight operations (takeoffs and landings or "slots") that may be reserved at Washington National Airport (DCA) in accordance with the FAA's High Density Rule. The alternatives proposed include: Administrative allocation, slot auction and variations thereof. Comments are also solicited on the continued use of the airline scheduling committee. In addition, adjustments to each of the three systems are proposed to assure that small and medium-sized communities do not lose nonstop service to National to larger markets.

The two new proposed methods of allocation are consistent with the concerns expressed by the Chairman of the Civil Aeronautics Board and the Department of Justice about continuing the antitrust immunity under which the airline scheduling committees currently allocate slots at the high density airports. They are also consistent with the policy set forth in the Airline Deregulation Act of 1978 that maximum reliance be placed on competitive market forces and on actual and potential competition to provide an efficient, innovative and well-managed air transportation system.

DATE: Comments must be received by December 26, 1980. In addition, interested persons will have until January 26, 1981 to reply to any comment contained in the public docket.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Docket Clerk, Office of the Secretary, Docket No. 70; Notice 80-16, Office of the General Counsel, Department of Transportation, Washington, D.C. 20590 or be delivered in duplicate to Room 10421, 400 Seventh Street, S.W., Washington, D.C. 20590.

Comments delivered must be marked: Docket No. 70.

Comments may be inspected at Room 10421 between 9:00 a.m. and 5:30 p.m.

Commenters wishing the DOT to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments on Docket No. 70." The postcard will be dated and time stamped and returned to the commenter.

FOR FURTHER INFORMATION CONTACT:

Mr. Harvey B. Safeer, AVP-1, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, Telephone (202) 426-3331.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adoption of the proposals contained in this notice are invited. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All communications received on or before December 26, 1980, and reply comments received on or before January 26, 1981, will be considered by the Secretary before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with DOT personnel concerned with the rulemaking will be filed in the docket.

The Relationship to Notice No. 80-14

On October 16, 1980, the Department issued a Notice and Request for Comments (Notice 80-14) concerning the allocation of slots at Washington National Airport during the period December 1, 1980, until April 26, 1981. (45 FR 69403, October 20, 1980) The October 16 Notice is somewhat related to this Notice of Proposed Rule Making; however, this Notice proposes several alternative, long-term methods of allocating slots at Washington National Airport while the October 16 Notice concerns itself only with the need to resolve a short-term problem raised by the failure of the Scheduling Committee to allocate slots for the December-April period.

Public Hearing

A public hearing on the proposal will be scheduled within 30 days and a notice announcing the time and place of the hearing will be published.

Discussion of the Proposed Rule

Background

This notice is related to a Final Rule, Amendment Nos. 93-37 and 159-20 and a Policy (45 FR 62398, September 18, 1980 issued by the Department which sets forth a policy with implementing regulations for the future operation and development of Washington National Airport and Dulles International Airport.

The Federal Aviation Administration has broad authority under the Federal Aviation Act of 1958, as amended (FAAct) to regulate and control the use of navigable airspace of the United States. Under Section 307(a) of the FAAct (49 U.S.C. 1348(a)), the agency is authorized to develop plans for and to formulate policy with respect to the use of navigable airspace and to assign by rule, regulation, or order the use of navigable airspace under such terms, conditions, and limitations as may be deemed necessary in order to insure the safety of aircraft and the efficient utilization of such airspace. Under Section 307(c) of the FAAct (49 U.S.C. 1348(c)), the agency is further authorized and directed to prescribe air traffic rules and regulations governing the efficient utilization of the navagible airspace.

Under the authority of this statutory mandate, the FAA promulgated the "High Density" Rule (14 CFR 93.123 *et. seq.*) in Amendment 93-13 (33 FR 17896, December 3, 1968), effective on April 27, 1969.

The High Density Rule designates high density traffic airports and prescribes limitations on the operations that can be conducted at those airports. Section 93.123 establishes limits on the number of IFR (Instrument Flight Rules) operations that may be conducted at high density airports and further allocates those allowable IFR operations among the specified classes of users at high density airports. The preamble to the amendment described the purpose of the rule in terms of effecting the efficient utilization of the navigable airspace, stating it was "to provide relief from excessive delays at certain major terminals."

In conjunction with the high density regulations and as a means of implementing the regulations, in 1968 and 1969 the air carriers and air taxis formed committees to schedule their operations allocated under the rule. Under the authority of section 412 of the FAAct, the CAB approved the Air Carrier Scheduling Agreements (Order 68-12-11) and the air taxi scheduling agreements (Order 69-2-52) finding them to be not adverse to the public interest. In approving the agreements, which provided the air carrier

scheduling committee with immunity from the anti-trust laws, the CAB stated:

> Furthermore, the agreements appear to be a necessary step in the implementation of the FAA regulations * * * Considering the complexities which would be involved in any attempt by the government to allocate scheduled assignments among the various individual airline users, we believe that the allocation of operations among the various individual carriers serving the high density airports should be left preferably to resolution by a voluntary cooperative effort by the carriers. Order 68-12-11, p. 4.

On September 2, 1966, the Civil Aeronautics Board approved an earlier agreement (Agreement CAB 19078) filed by various air carriers which was responsive to outstanding FAA NPRMs [1] concerning National Airport.

The Board stated that the agreement was responsive to FAA's program, but cautioned that the establishment of schedules by air carrier agreements have certain competitive implications.

In a letter dated October 9, 1968, to the CAB, the Assistant Attorney General, Antitrust Division, Department of Justice, stated "under the circumstances that now exist, the Department does not object in principle to properly limited agreements among air carriers to meet FAA air traffic congestion regulations." In another letter of that same date to the Acting Administrator of the FAA, the Assistant Attorney General stated:

> The Department of Justice recognizes the urgent and critical nature of the air traffic congestion problem. The Department's interest in this matter is that the problem of air traffic congestion be dealt with, quickly and effectively, in a manner consistent with competitive principles.

The Assistant Attorney General also suggested that another method of performing this task would be for the FAA itself to allocate slots at congested airports. The letter to the FAA concluded:

> We do not believe that in allocating airspace to reduce air traffic congestion, the FAA would be assuming an unmanageable task. In any event, such a responsibility would have to be exercised by the FAA to implement its proposed regulations should the airlines be unable to reach satisfactory agreements. The statutory authority for the FAA to do so is evidenced by a clear Congressional intent to place with the FAA primary responsibility for promoting and insuring the safe and efficient utilization of the navigable airspace and plenary authority to implement its responsibilities under the Act. 1958 U.S. Code Cong. & Adm. News 3741. The language of Sections 102, 307, 313, 601, and 1002 of the Act, together with its legislative history and general principles of administrative law, support the conclusion that the FAA has the authority to order any individual airspace user to reduce its operations at congested airports in the interest of safe and efficient airspace utilization, subject only to the requirement that the particular remedy fashioned by the FAA have a clear and substantial relation to its objectives and not be unreasonable, arbitrary, or capricious.

In July 1978, the CAB amended its practice of 12 years by announcing that it would reexamine "the need for and desirability of continued approval" of the airline scheduling committee agreements. (CAB Order 78-7-110, July 21, 1978.) In November, 1979, the FAA/CAB jointly circulated a report prepared by Polinomics Research Laboratories, Inc. This report is discussed in detail later in this notice. The Antitrust Division of the United States Department of Justice in commenting on the Polinomics Study [2] recommended "replacement of the airline scheduling committees with some type of market mechanism for allocating slots." Both the CCAB and the Department of Justice have advised the DOT of their concerns about the anti-competitive aspects of the airline scheduling committee process.[3] As a result of these concerns and the possible demise of the scheduling committees, the DOT believes it to be in the public interest to consider alternate allocation methodologies that ensure efficient utilization of the navigable airspace and further attempt to ensure that any such allocation methodology is consistent with antitrust concerns. The DOT also believes that these same concerns are applicable to the commuter air carrier association at National and require the consideration of alternative allocation methodologies for this association as well as the scheduling committees.

If all levels of air travel continue to increase, it is anticipated that the congestion problems, which faced the FAA in 1969 when the "High Density" Rule was first promulgated, will become more acute. Therefore, any proposal which would eliminate consideration of an allocation system and relies upon a first-come-first-serve system, at a time when there are problems of serious airspace congestion as an increasing number of users seek access to a limited resource, would be contrary to the DOT's mandate to prescribe rules and regulations for the efficient utilization of the airspace. The first-come-first-served system remains the basic FAA approach, but it assumes that all users can be reasonably accommodated—that is, that airspace resources are adequate. That philosophy cannot be reasonably applied when the resources available are not sufficient to satisfy the demands placed upon them. A system that allows only the first group of aircraft arriving at a terminal to land, while keeping all other aircraft in holding patterns or requiring them to divert to some location other than their intended destination because the hourly slot allocation at a given airport has been reached, cannot be considered an "efficient utilization of airspace." In fact, this would not only recreate the problems faced by the FAA when the High Density Rule was first promulgated, but would also compound them.

Even if airspace congestion did not materialize under a first-come, first-served system, serious problems could nevertheless be caused by ground congestion. The difficulties resulting from the groundside congestion at DCA were recognized by the CAB in June, 1967, when it instituted an investigation of congestion at the airport (See Order E-25319, June 20, 1967). Similar problems could occur at all high density airports and could affect other airports served by flights to or from them. The overall result would be an inefficient and unreliable system of air transportation service. Thus, the elimination of the scheduling committees would require the DOT to develop an alternative method of slot allocation to assure the efficient use of air and ground space.

As a result of the aforementioned, the DOT must continue to explore alternate methods of allocation. In view of the increasing demand for access to the relatively scarce resource of navigable airspace, the DOT does not consider it to be in the public interest to delay consideration of alternative action. Furthermore, since the demand for slots at DCA has increased dramatically and since the final rule implementing the policy for future operations at DCA (Amendment No.) will further reduce the availability of reservations for air

[1] On July 1, 1966, the Federal Aviation Administration issued a document entitled "Policies Covering Use of Washington National Airport" (31 FR 9143, July 2, 1966). In order to insure that the air carriers' operations were consistent with the hourly limitations in existence at the time, a policy was adopted that all changes or additions to air carrier schedules required written approval of the Director of the Bureau of National Capital Airports. On July 27, 1966, the Federal Aviation Administration issued an NPRM (cancelling the 1966 Policy) which proposed a limitation of 40 air carrier operations per hour at National Airport. The notice stated "the agency hopes that the limitations of 40 air carrier operations an hour can be accomplished among the various air carriers."

[2] The Justice Department's comments, as well as all comments received in response to the Polinomics study, are contained in the docket.

[3] As the Justice Department stated in its comments, it is "the executive agency charged with the responsibility of enforcing the antitrust laws and for furthering the nation's fundamental economic policy of competition."

carriers, the allocation proposals contained herein will, at this time, only be proposed for DCA. After a trial period there, the procedures if promulgated or variations thereof, if they are effective, may be expanded to cover all high density airports. It must be emphasized that although these options are prepared for DCA, other options may be more appropriate and they may be proposed for other high density airports. Such expansion would occur only after further rulemaking. Special provisions would be considered at airports serving foreign air commerce.

In exploring these allocation alternatives, the DOT has been mindful of Congressional intent, as stated in the Airline Deregulation Act of 1978, that maximum reliance be placed on competitive market forces.

Polinomics Study

After discussions between CAB, FAA and the Office of the Secretary of Transportation, the CAB, in conjunction with the FAA, commissioned Polinomics Research Laboratories, Inc. (PRL), to research the slot allocation problem and to report its findings on:

(1) The workings of the scheduling committee process;

(2) The possibility of employing some type of price mechanism to allocate slots; and

(3) Any other possible solution to the problem, excluding administrative allocation, which could successfully allocate the slots among the carriers consistent with FAA regulations as well as the mandates of the Airline Deregulation Act.

The PRL study recommended:

(1) A primary slot market organized as a sealed-bid, one price auction (each winning bidder paying the same price, i.e., the value of the lowest accepted bid);

(2) A computerized aftermarket to enable users to buy and sell slots;

(3) A separate market for small communities;

(4) Varying slot definitions to reflect individual airport capacity problems;

(5) Funds generated in auction to be used for expanding airport capacity, where possible. If not possible to expand capacity, funds should be used to subsidize less desirable off-peak traffic;

(6) Sanctions to prevent nonuse of substantial numbers of slots; and

(7) A gradual introduction.

Econ, Inc. Study

The FAA contracted in August, 1979, with Econ, Inc., of Princeton, New Jersey to further analyze slot allocation by auction. The contractor's report will also be included in the docket. The contract included a week-long evaluation exercise (February 11–15, 1980) in which an actual slot auction of the type proposed in this rulemaking was conducted with the MIT/Flight Transportation Associates Airline Management Game. This evaluation was a realistic computer model that permitted competing airline teams to schedule hypothetical air transportation networks and estimate carrier performance through the simulation of resulting traffic flows, costs, revenues, and load factors. Both the proposed "trading post" auction and administrative allocation systems were tested by teams made up of management and professional staff of eight airlines. The final report of this evaluation will be included in the docket and will be available from the Director of the Office of Aviation Policy, whose address is printed above.

I. Allocation Alternatives

Based upon a review of the PRL and Econ studies, an analysis of the comments submitted on the PRL study and further review of this area, it is proposed that Part 93 be amended to contain specific methodology for allocation of slots at DCA. The alternative allocation methods being considered by the DOT are:

A. Administrative allocation.

B. Allocation by auction.

C. Allocation by the present scheduling committee (the status quo) or modification thereof.

Regardless of the procedure that may be adopted, there are elements of the allocation process which are applicable to each method and should be considered. Specifically, these elements are:

—How should a "slot" or "reservation" be defined?

—Should all airport users compete for all slots or should there be separate allocations for different classes of users?

—Who should be eligible to bid for slots?

—Over how long a time period should a slot be awarded?

—What property rights, if any, do recipients of a slot have with respect to resale of slots?

—Should there be a penalty for nonuse of a slot?

—What provision is provided to assure that slots are available for essential air service?

—Should provision be made to restrict the use of slots to assure that carriers do not substitute more profitable service to larger cities for existing service to smaller communities?

With respect to these elements, the DOT proposes that:

1. A "reservation" be defined as authority to schedule one operation, either landing or takeoff, during a given one hour interval between 7:00 a.m. and 8:59 p.m. or the half hour interval between 9:00 p.m. and 9:30 p.m. The term "slot" as used in this document refers to a single reservation.

2. Three classes of reservations be defined. The first would be for "air carriers," which would be as defined in Part 1 of the Federal Aviation Regulations (FAR), that conduct operations with aircraft having a maximum passenger seating capacity of 56 or more; the second would be for "scheduled air taxis" [4] which would be defined as air taxis or an air carriers as defined in Part 1 of the FAR that conduct operations with aircraft having a maximum seating capacity of less than 56; and the third would be for other operations which would include general aviation. This is consistent with the classes of users adopted in Amendment No. 93–37. The first two categories of slots would be subject to the carrier agreement, administrative allocation or auction processes. The DOT further proposes that allocations for the first two catetories of reservations should be made through separate allocations for each category. Finally, a procedure for establishing fees for the third class of user would be set forth in a separate section.

3. Bidding or application for reservations would be limited to carriers operating under a certificate of convenience and public necessity issued by the CAB or registered with CAB and exempted from certification under 14 CFR Part 298.

4. Reservations would be awarded for a period of six months starting either in October or April immediately following the award of reservations. This would follow the current procedure of the airline scheduling committee, which allocates slots in January for the six-month period starting the last Sunday in April, and in July for the six-month period starting the last Sunday in October. Some questions have been raised as to whether a six month "reservation" period would create problems for commuter air carriers. Comments are solicited on this point.

5. The air carrier slots available under each of the three proposed allocation methods would be sudivided into three parts, with three different sets of slots

[4] This class of user is more appropriately identified as "commuter air carrier." The term "scheduled air taxi," is used in this section to be consistent with the language in FAR Part 93. This term will be changed in a later amendment.

devoted to three categories of airports served: large hub, medium hub, and small and non-hub.

The question of a marketable property rights for holders of a slot and the question of a penalty being levied for nonuse of a slot are dealt with in the discussions of each of the procedures under consideration. In addition, under the administrative allocation procedure, the DOT proposes, as one alternative, to allocate slots specifically for the purpose of providing the minimum level of essential air service as determined by the CAB. The DOT recognizes that there may be some problems with this proposal and, therefore, solicits comments on other alternatives which may be more effective for the allocation of slots for essential air service under any allocation procedure chosen.

The following is a description of the administrative, auction and scheduling committee allocation alternatives and the proposed modification to each to preserve an equitable distribution of traffic to small, medium and large hub airports.

A. Administrative Procedures

In order to assure continuity of operation at DCA, the DOT has been analyzing several alternative administrative procedures for allocating IFR reservations. The easiest way to allocate slots would be to freeze all allocations at their existing levels. While this may suffice in the short run (one scheduling period), over the longer term it is neither adequate nor desirable. Such a static situation is inconsistent with the goals and objectives of the Airline Deregulation Act to encourage increased competition and permit access by new entrant carriers. New entrants could participate only to the extent that incumbent carriers were willing to relinquish slots.

The problems of new entrants could be resolved by awarding new entrants a portion of the slots and prorating the remainder among the prior users. This approach stands at one end of the spectrum. At the other end is an allocation process based upon a complex mathematical linear programming model. The model would operate on a series of constraints represented by the different airlines, the aircraft they own, the markets that they could serve, the markets they have historically served, the number of passengers that potentially exist in each market pair, the operating costs of each aircraft type for each airline and some estimate of expected fares. The objective would be to (1) maximize the number of passengers carried, industry profits, or some specially defined social welfare function or (2) minimize total cost, cost per revenue passenger mile or some weighted social cost function. The solution to this model is the slot allocaion that is expected to achieve the objective function.

The DOT has been experimenting with these types of models. The development of such models, however, has not reached the point where they can be effectively utilized to allocate slots. A procedure has been developed, however, which has some of the attributes of the two extremes. The initial objectives in developing this procedure were: (1) Not to generate extreme changes in allocations from one scheduling period to the next, even though over a long period of time, extensive changes to allocations could occur; (2) to provide for new entrants and potential slot increases for "efficient" users of existing slots; and (3) to incorporate some concept of "public service" achieved in the use of the slots. To some extent, these objectives reflect the concerns expressed by both those who support and those who oppose the present scheduling committee process or the market allocation (auction) process.

The alternative being proposed by DOT (Alternative A) involves a two-step procedure. This procedure is described in detail in the FAA reprt, "A Method for Administrative Assignment of Runway Slots" a copy of which is contained in the docket. Each air carrier wanting an IFR reservation would be requested to submit an initial reservation request. For any given hour, an air carrier could request one or more reservations as desired. These requests would have to be submitted by January 1 and July 1 of each year. All the requests would be aggregated. If there is a resolution, i.e., the number of reservations requested is less than or equal to the number available in each hour, all requests would be granted. If there is no resolution, it would become necessary to determine the total number of reservations to be awarded to each air carrier.

Assuming there is no resolution, each air carrier's award is then computed as a function of:

(a) Number of slots allocated in preceding scheduling period, with a minimum of four slots;

(b) Number of passengers enplaned per departure;

(c) Number of passengers deplaned per arrival;

(d) Number of different cities to which nonstop service was provided in preceding scheduling period relative to number of slots allocated.

The number of slots requested by each carrier would constitute the upper bond of the number of slots allocated to the air carrier.

Each air carrier, including new entrants, would at a minimum receive at least four reservations per day (but not more than the number requested). Sufficient reservations would also be allocated to provide essential air service as determined by the CAB. The four reservation minimum could be changed by future rulemaking to balance changes in total daily IFR reservations and the number of air carriers requesting reservations.

Consideration of the number of slots currently allocated to a specific air carrier would provide for continuity and stability of existing service patterns. At present, the DOT is considering allocating half of the available slots based upon the existing allocation. The second and third factors are measures of service provided in the past with the slots that have been allocated. Average enplanements or deplanements per operation, however, tend to favor those operators using large aircraft in high density markets. One of the factors discussed by many respondents was the potential for concentration of slots in such markets to the exclusion of smaller markets. Thus, the fourth factor has been included, namely, the number of different cities provided direct air service by each air carrier. This criteria along with the enplanement/deplanement criteria is considered a measure of public service. The "cities served" criteria is intended to obtain a better distribution of service to and from high density markets among the three area airports, National, Dulles and Baltimore-Washington, and to provide direct access to and from National to the maximum number of cities.

Reservations for air taxi operations would be allocated in the same manner.

Specific issues that comments should address include:

1. The relative weights to be given to the factors. DOT is currently considering 50 percent for factor (a), 15 percent each for factors (b) and (c), and 20 percent for factor (d);

2. In computing factors (b) and (c), the DOT is considering crediting a carrier for the number of passengers enplaning or deplaning and are thus served by the aircraft making the stop.

3. In computing factor (d), DOT is considering crediting a carrier only for the number of different cities to and from which nonstop service is provided. Other alternatives in addition to or in lieu of (d) are:

x. Consider only those cities to which a carrier provides sole service;

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y. Consider all cities to which service is provided within the established perimeter;

z. Consider all cities to which connections are provided in the United States.[5]

4. Allocation factors (b) and (c), enplanements and deplanements, encourage the maximum efficient use of available runway capacity. Aircraft load factors are a widely accepted measure of the maximum efficient use of aircraft. An alternative or additional criteria for allocating runway slots could be the load factor of flights to and from Washington National Airport attained by carriers during the preceding six month period. However, in order to prevent double counting some passengers, the DOT invites comments on a modification to the traditional method of computing load factors, i.e., the ratio of enplanements or deplanements to the available seats on each flight out of or into Washington National Airport.

Once each carrier is awarded a total number of reservations for the day, the second part of the process would commence—award by hour of day. Each carrier would be required to submit several alternative schedules showing the hourly distribution of its total daily reservation award. The number of operations in each schedule alternative would not be allowed to exceed the carrier's total daily reservation award. In addition, each carrier would be requested to provide preference rank for each alternative. The DOT would attempt to develop one or more feasible consolidated schedules for air carriers and for air taxis from the alternative schedules submitted by air carriers and air taxis. Feasible schedules would be those in which total operations in each hour do not exceed the IFR hour reservation maximum. In the event that more than one consolidated schedule is feasible, the DOT would select the consolidated schedule which maximizes attainment of individual carrier preferences as expressed by their preference ranking of schedules.

Participants in the previously mentioned week-long evaluation exercise (February 11–15, 1980) sponsored by the FAA and conducted by Econ, Inc., simulated application of the administrative allocation method described above in the context of the MIT/Flight Transportation Associates Airline Management game. Comments of participants in the exercise with respect to the administrative procedure are set forth below:

- The weights in the entitlement formula are arbitrary and cannot be shown to favor all carriers equally at all airports. As a result, carriers would end up tailoring their schedules to serve the entitlement formula rather than passenger convenience.
- The method might favor the larger carrier which would get many slots based on its extensive pattern of service and large volumes of connecting passengers.
- Computerized consolidation of individual carrier plans may never result in a combination which matches the hourly quota necessitating either submission of additional alternative plans by carriers or some other adjustment to develop a consolidated plan.
- The criteria to allocate slots should include through passengers.
- The consolidated plan for the hourly use of slots may adopt an individual carrier's least desirable alternative.
- The administrative method might be improved simply by limiting its use to overall allocation of slots and then using a scheduling committee to determine hourly allocations.
- Airlines are not free to revamp schedules capriciously in order to accommodate a particular allocation method. A schedule change at one airport has a ripple effect which impacts other segments served by the same flight.
- Incumbent carriers would lack reasonable certainty of obtaining slots for new markets and would have to reduce existing services to accommodate new carriers.

Comments are invited with respect to the overall mechanism, the specific weighting factors to be assigned to each component of the allocation formula, the minimum allocation to new entrants, the separate applicability to both the scheduled airline slots and the commuter slots and the set-aside for essential service.

B. Auctions

In a market economy, scarce resources are normally allocated by means of a price mechanism. One price mechanism that has been suggested as a means of allocating slots at National Airport is an auction. Auctions may vary as to whether they are conducted orally or by submission of sealed bids. Auctions may begin at a low bid and work upward to a final price or begin at a high price and work downward to a final price. Final auction prices may be established at the exact value of each qualifying bid or as "one price" (the value of the lowest qualifying bid or the highest rejected bid).

Before discussing auction variations, it is appropriate to point out that in accordance with 31 U.S.C. 482 and 483a, the money received as a result of any auction system will not be retained by DOT but will be paid into the Treasury of the United States. Other disposition of the revenues, although not now authorized by statute, may be more appropriate. For example, the money received as a result of any auction system could be paid into an appropriately dedicated fund for National Airport or some other aviation related purpose. Comments are invited on potential uses and legislation necessary to permit them.

It should be clearly understood that the auction process proposed herein is not intended to replace landing fees. Landing fees are only intended to recover the cost of maintaining and operating the airfields; they do not provide for and are not related to a system which would assure efficiency of access through the navigable airspace when operating to or from a particular airport, which is not what is contemplated by this auction process.

The DOT is proposing a semi-annual procedure (Alternative B) for National Airport with separate auctions for air carrier and commuter reservations. Reservation auctions would allow for the competitive pricing of the reservations. For hours when reservations are in high demand, the price of a reservation would be high. Conversely, for hours when there is less demand for reservations, the price would drop toward zero and would become $1.00 if there is excess supply. The specific procedure proposed by DOT consists of two elements: A "reservation auction" followed by a continuously operating "reservation exchange." The auction procedure termed the "Trading Post Auction" is described in considerable detail in a report entitled "The Allocation of Runway Slots by Auction" prepared by Econ, Inc. A copy is available for review in the docket. The proposal for air carriers is as follows (A similar procedure would be used for air taxis):

1. Each air carrier wanting an IFR reservation would be required to submit, by January 1 and July 1 of each year, sealed bids for the reservations that it desires for the six month period beginning the following April or October. For any given hour, an air carrier could bid for one or more reservations, all at the same price or at differing prices. Each bid would be required to identify the price and specific hour for which the reservation is requested. A carrier may submit bids for as many reservations as desired in the same or different hours.

2. Within 72 hours after the receipt deadline for initial bids, the DOT would make public the aggregate demand curves for each hour (but not the individual airline demand curves), the market price for each hour's slots and a conditional allocation of the number of slots that they would have obtained as a result of their bids. The aggregate demand would be arrived at by adding together, at each possible price, the number of slots that each bidder desires. Either the total demand would be equal to or less than the supply of slots that are available, in which case all demands are met at a dollar price, or the demand would exceed the available supply. In the case of excess demand, the market price would be established at the highest bid price that is rejected. For example, at Washington National, the air carrier quota for any hour would initially be set at 36 slots (as adopted in Amendment Nos. 93–37 and 159–20). The highest bidders for the 36 slots would obtain them at the highest price bid but insufficient to obtain the 36th slot which would be the 37th highest price bid. Therefore, all successful bidders would pay the same price for each reservation at that hour.

3. If the conditional allocations and prices are agreeable to all bidders, an efficient, competitive equilibrium would have been found. In this case, all reservations would be awarded based upon the initial bid prices. It would be expected, however, that many of the bidders would not be satisfied with the initial results.[6]

4. An air carrier wishing to submit new bids would be allowed to do so within 72 hours after the DOT announces tentative awards in accordance with proposed § 93.135(a)(2). Only air carriers who have made a bid in the first round of bidding would be allowed to submit a bid in a subsequent round. During this additional round of bidding, a bidder would bid on any number of reservations in any hours. The sealed, secret, individual bids would be accumulated by the same procedure employed in the first round, and new conditional allocations, trading prices and total demands would be announced. This process is repeated so that instead of a one-time auction, there would be a series of auctions. Each iteration would increase the information available to the bidders, each would add to the bidder's insight into the demand pressure over all hours of the day. If, at any step, no bidder wishes to change its bid, then the process would terminate at an equilibrium solution.

5. After any 72 hour period during which no bid revisions are received by the DOT or if the only bids received, within 72 hours since the DOT last made public the number of reservations requested, are minimally different from the last bids received, bidding would close and prices would be established. A minimum difference may be in price or in the number of bids submitted. The DOT proposes to use a minimum bid difference procedure to establish a bidding "equilibrium" that will preclude minor fluctuations in carrier bids unnecessarily extending the time it takes to accomplish the slot auction. Based on the FAA's experience with the auction simulation performed last February, the DOT proposes that a minimum difference be established as 20% or less. For example, if the last determined bid price was $40 per reservation and the only newly submitted bid for that hour was $47, the new bid would be rejected and bidding would be closed since the difference between the two bid prices ($47–$40 which is $7) is less than 20% of the last bid price. A minimally different submission of bids would be a change in 20% or less of the overall awards. For example, if only 20 bids are submitted (out of a total 522 bids available in any day) for reservations, bidding would close since that is below 20% of the total number of slots available. In these instances, the bidders would be required to accept that slots awarded them and the obligations of payment at the final trading post prices.

6. Alternatively, the auction would be terminated and the most recent conditional awards and prices finalized, if all participating bidders inform the DOT within 24 hours after the announcement of conditional awards that they elect to terminate the auction.

7. The DOT would notify each successful bidder in writing of the amount of its accepted bid prices. The bidder would be required to submit to the DOT payment for one-sixth of the total amount accepted within 14 days after it has received such notification. The balance would be payable in five equal increments starting on the 1st day of the reservation period. Succeeding payments would be made on the first day of each month until the balance is paid.

8. At any time between award of reservations and the end of the time period over which they were purchased, reservation owners could sell their reservation to other users through a DOT reservation exchange. Any reservation owner wishing to sell a reservation and any air carrier or air taxi wishing to purchase a reservation would notify the DOT in writing of its intention. The DOT would maintain a list of available reservations and desired reservations and bid prices, but the names of the bidders and offerors would not be disclosed until the transaction is completed. This would eliminate special deals, collusion or conspiracy among the members of any class of user. The DOT would hold available reservations open to bids for a minimum of 24 hours after notification of their availability. The DOT would sell the reservation to the highest bidder; however, the seller would not receive more for the particular slot than it paid. The excess amount over the original purchase price would be paid to the Treasury (unless authority is obtained to place the money elsewhere, as previously discussed). The seller would be absolved of any payment requirement associated with the relinquished reservation provided that the resale price received by the DOT is equal to or exceeds the seller's payment obligation. Air carrier reservations could be purchased by air carriers or scheduled air taxis while scheduled air taxi reservations could be purchased by scheduled air taxis only.

In support of a market mechanism for allocating slots at airports with quotas, the Department of Justice stated:

> By requiring carriers to compete and pay for slots in the marketplace, carriers operating in the markets that placed the greatest demand on access to these airports would have the greatest incentive to acquire them. In this way, consumer welfare would be maximized, thereby, furthering Congress' intent to rely on market forces to allocate scarce transportation resources.

Increased economic efficiency would result from several changes emanating from a price allocation system. By requiring carriers to pay explicitly for slot rights, an auction method would assure that the slots go to those carriers that can most profitably use them. New entry and expansion by the more efficient carriers would be encouraged, while less efficient carriers would be discouraged from entering or expanding at the airport.

[5] Regulatory Alternative A uses all nonstop service as a basis for determining the number of reservations given to each carrier. After further review of the proposal and the comments received, alternatives x, y, and/or z may be added to proposed Section 93.135(a)(1), and (b)(1).

[6] At this point in the PRL procedure, for any single quota airport the bidding would stop and adjustments would have to occur through a secondary slot market. The proposal described herein continues with additional rounds of bidding. This is why the allocations are considered conditional. The first round gives each bidder information concerning the demand pressures which exist for each scheduling hour. On the basis of the information obtained about the results of the first round of bidding, and of each air carrier's individual needs, each air carrier could submit new bids in a second round of the slot exchange auction.

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By creating a marketplace for slots, a carrier desiring to discontinue marginal or unprofitable service to a high density airport could sell its slots in the secondary market and thereby be relieved of slot payment requirements. If the carrier decides at a future date to reenter the high density airport, it could either buy slots in the secondary market or await the next periodic auction and bid for slots directly. The auction process would further work to improve efficiency by permitting carriers to dispose of slots without affecting their future ability to obtain slots. Under the scheduling committee process, airlines are reluctant to release a slot since their chances of ever getting the slot back are diminished as demand for slots increases.

One of the key areas addressed during the development of the Policy for the Metropolitan Washington Airports was the redistribution of passenger traffic from National Airport to Dulles or Baltimore-Washington International Airports. With slots at National free for the asking (within the quota ceilings), carriers have little incentive to establish connecting networks at the other two airports. By charging for the slots at National, via an auction system, it is expected that the cost of providing service between any other market and Washington will rise for service provided from National relative to that provided from either of the other two airports. Thus, there could be a cost advantage resulting from operating at either Dulles or Baltimore Washington International that could be reflected in lower fares, thereby promoting not only the Metropolitan Washington Airports Policy, but also the objectives of the Airline Deregulation Act. Even though there is a possibility that some carriers would choose not to reflect the additional cost of serving National by passing it through to National passengers through higher fares, the higher cost of National operations would nevertheless create an incentive for increased flights at the other airports.

While the Department of Justice recommends development of a market based system for allocating slots, there are some further considerations that it proposes. Specifically:

- The market mechanism chosen should result in the last added costs to carriers so that fares do not rise unduly;
- The objective of the system should *not* be to generate as much revenue as possible, but rather, only to require the *minimum* amount of expenditure necessary to assure that slots go to the carriers that value them most;
- Any market mechanism should take into account the needs of, and problems associated with, small community service;
- A computerized secondary market designed to facilitate expeditious buying and selling of slots should accompany the market mechanism;
- The interval between auctions should be one that balances the reliance on the primary auction market and the secondary market.

In commenting on the PRL report, carriers and trade organizations almost universally opposed the specific recommendations of the PRL report and the general concept of slot auctions. Comments by foreign flag operators will receive careful attention if the DOT considers auctions at high density airports where international service is provided, but the specific issues of international agreements are not germane to this NRPM because it addresses only National Airport which does not serve foreign air carriers. Some of these considerations are, however, relevant to review of comments in this rulemaking, since the procedures developed under it will serve as a model if implemented at National Airport. The analysis of the PRL proposal submitted by British Airways is typical of those received and is included in the docket for public review.

The arguments set forth in opposition to an auction (or other market) mechanism are set forth below.

- Airport development involves a complex balancing of commercial, environmental and land-use policies, and of Federal and local perspectives, which our society has firmly committed to the political process rather than blind economic forces.
- Lack of airport capacity in the U.S. and elsewhere *does not* arise from a lack of available development funds and will not be alleviated by the "profits" generated by auctions.
- An alternative use of the funds might be to subsidize off-peak traffic, which is the very kind of cross-subsidization among airline passengers and shippers that the pro-competitive policies of the Airline Deregulation Act are intended to eliminate.
- The auction principle ignores the policy of the United States, in company with most of the world, to regard the provision of airport services as a Governmental or public utility monopoly which must be undertaken on a nondiscriminatory basis for reasonable, cost-related fees.
- In the International Air Services Transit Agreement, 59 Stat. 1693 (1945), in force between the United States and 86 other nations, the United States has committed itself to impose, or permit to be imposed on international air services only "just and reasonable charges" for the use of American airports, and further, that "these charges shall not be higher than would be paid for the use of such airports and facilities by U.S. aircraft operators engaged in similar international services." These obligations are reiterated in one form or another in every bilateral air service agreement the United States has made with other nations.
- The slot auction approach to financing airport development is inconsistent with the balance Congress struck in the Airport and Airway Revenue Act of 1970 for allocating the development burden among the classes of users. Specifically, would the revenues generated by the slot auctions be in addition to or instead of the tax structure currently in place?
- The efficiencies that proponents of a slot auction foresee are based on a misunderstanding of airline operational and their economics. An auction for airport slots where the bidding is heavily influenced by operations and scheduling constraints as well as sunk marketing and capital costs will not ensure that slots are allocated to the carriers that can use them most profitably. Nor will it ensure that slots are awarded to the most efficient carriers, enabling them to enter new markets and grow in existing ones.
- The bidding system will not result in the use of slots by more efficient carriers, but by carriers serving large long-haul markets. Market economics (costs and revenue for city-pair service) and not necessarily airline efficiency will tend to be the driving factor in determining how much will be bid for a slot. The longer the market, the bigger the revenue. The long-haul markets also have a marked cost advantage since average seat-mile costs decline sharply with stage-length. The advantage is compounded in bigger markets where larger aircraft with more revenue per plane mile and lower average seat mile costs can be utilized.

In conjunction with the preceding points, comments are invited with respect ot the basis for such arguments given the fact that under any of the market mechanisms being considered all carriers would pay the *same* price for a slot during a given time period. Price discrimination would occur *between time periods* and not specifically between carriers.

- Two analyses submitted by Piedmont Airlines and the Commuter Airlines Association of America are available in the docket for review. These studies conclude that an auction procedure would result in a loss of service in short-haul markets, impair

connecting services and in general have a disproportionate impact on those airlines that provide service to small communities using small aircraft. As a result, that service which would be provided to small communities would be a significantly higher prices.

These comments raise the question of compatibility between the auction method of allocating slots and the proposed policy of maintaining National Airport's role as that of the region's "medium" and "short haul" airport. Respondents are requested to address the issue of slot auctions at National Airport and the impact that it might have on the relative air service roles that might result between National, Dulles and Baltimore-Washington Airports. The DOT is also interested in receiving any substantive data or analyses that address the issues raised by both proponents and opponents of slot auctions.

The DOT solicits comments on the auction as proposed (Alternative B). In addition to seeking comments on the entire proposal, the DOT specifically seeks comments on the following:

1. As an alternative form of auction, the agency is considering a one round only auction process. Under this procedure, bids would only be accepted under proposed § 93.135(a)(1). Subsequent rounds of bidding would not be accepted. The agency solicits comments on this one step auction as opposed to the multi-step or "Trading Post" auction.

2. Under the proposal, bids must be submitted for the hourly reservation requested. Reservations would be awarded for the entire auction period. Bids would not be accepted for only certain days during the auction period. The DOT will consider a modification to the proposal which would allow bids to be submitted for only certain days during the auction period. Comments are solicited on this suggested modification.

3. The DOT seeks comments on the time periods contained in the proposal. Particularly solicited are comments on whether the time periods would give air carriers or air taxis sufficient time to plan schedules. If the proposed time schedules are unacceptable, then commenters are requested to submit alternate time schedules.

4. Under the proposal, there is no requirement that reservations purchased be utilized (although payment must be made without regard to reservation use). The DOT solicits comments on the feasability of requiring that all reservations obtained be utilized for a minimum number of days each auction period. If not utilized that minimum amount of time, the reservation might be forfeited.

5. Comments are also requested with respect to the "slot exchange" concept, the necessity for a secondary market and the appropriateness of allowing airlines to profit (or incur losses) through the sale of slots.

6. Comments are also solicited on what should be considered as "minimally different" in accordance with proposed (Alternative B) § 93.135(a)(6).

C. Scheduling Committees

As noted above, the high density airport rules limit the number of slots that may be utilized per hour at four airports: Washington National, LaGuardia, John F. Kennedy International, and O'Hare. In lieu of individual reservation requests for the slots, the FAA accepts for each airport a consolidated schedule allocating slot reservations among different air carriers submitted by the Air Transport Association (ATA). Airline scheduling committees, made up of representatives of the air carriers and chaired by the ATA, work up the schedule on the basis of unanimous agreement. The Civil Aeronautics Board is currently investigating whether slot agreements substantially reduce or eliminate competition within the meaning of Section 412 of the Federal Aviation Act and whether it should continue to grant anti-trust immunity to slot ageements (80-9-). Civil Aeronautics Board permission in the form of an antitrust law exemption is required for the Committees to operate. (Section 414 of the Federal Aviation Act, 49 U.S.C. 1384). The Department of Justice, which will inherit the exemption-granting authority when the Board expires in 1985, has also opposed the scheduling committees as anticompetitive. While the DOT does not have statutory authority to authorize the continued operation of the committees, it is soliciting comments on them as part of its consideration of a non-action alternative.

If, in the light of public comments, the Department of Transportation concludes that the committee does not have a serious anticompetitive effect, and that it results in an economically efficient pattern of air service or that its operations can be modified in some manner to cure its perceived deficiencies, the Department will be prepared to make appropriate recommendations to the Board and the Justice Department.

Scheduling committees operate under a strict set of rules designed to prevent collusion and overtly anticompetitive behavior. To a degree, they are successful; they are criticized on antitrust grounds for faults inherent in their processes, not for active anticompetitive behavior. Members of the committee are identified by carrier name only. Economic matters, including the routes to be flown with the slots each carrier seeks, may not be discussed. Side agreements are not permitted, and individual carriers are not permitted to make direct exchanges of slots. All proposals are made publicly. Committee meetings are not "resolved," that is, a consolidated schedule is not adopted, until unanimous agreement has been reached.

At the beginning of each scheduling committee meeting, each carrier submits a list of the slots it desires for each hour. The chairman, an ATA employee, begins negotiations by attempting to persuade the members to reduce their request, especially for the most desirable hours where requests often far exceed the number of slots available, calling the roll of airlines in alphabetical order. When the total number of slots has been reduced to a level close to the total number of slots available for the day, the chairman directs the Committee's attention to the "sliding" process. At this stage, the carriers are asked to shift slot requests for hours in which total requests exceed the hourly limitation to other hours that are undersubscribed. At any time in the proceeding, the chair accepts proposed "exercises" from the members, such as a shift in the basic consolidated schedule being discussed by a uniform percentage reduction for each carrier, or by taking a prior season's schedule as a starting point. An individual carrier also may make a unilateral offer of a package of reductions and "slides" of its own request, which is often followed by corresponding offers from other carriers. When all carriers agree on a consolidated schedule, the meeting is "resolved," and the ATA submits the schedule to the FAA. If, after the meeting, a carrier notifies the ATA that it is not using a slot or slots, the members of the Committee are notified and another carrier is permitted to use it.

This process has been criticized for a number of weaknesses:

—The Committee's decisions do not turn on the economic efficiency of particular flights, and their results are not necessarily economically efficient overall.

—The negotiation process tends to lead participants to overstate their needs and cling to more slots than necessary in order to protect their position for future meetings.

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—The veto each airline holds on the entire process, enables full participation by new entrants, but allows them to insist on more slots than they can economically use.

—There is no penalty for failure to use slots.

—The outcome of the meetings depends largely on what the carriers expect to happen if they do not agree. Their perception of what the DOT or the Congress would mandate in the absence of agreement skews the results in a way that does not provide for economic efficiency.

—While the scheduling committee agreement recognizes that carriers have no continuing right to the slots they use, the carriers view their previous allocations as "entitlements," and are reluctant to accept fewer slots.

Those favoring the scheduling committees argue that they do in fact make economically sound decisions, that the alleged distortions in the process are negligible, if they exist at all, and that the process is efficient, with minimal cost to the carriers and none to the Government.

The DOT invites specific comments on the appropriateness of the operations of the present committee system, as well as any suggestions for modifications to the rules under which the committees function that would improve the results. In addition, comments are invited on the current system used to allocate air taxi slots. Under that system, slots allocated to commuters are essentially frozen. New entrants or additional flights by a given air taxi can only be added when another air taxi relinquishes a slot or when the number of slots is increased. These will be weighed against objections to aspects of the auction and administrative allocation process to determine whether regulatory action under Alternatives A or B is advisable. In addition, these comments will be considered if Alternative A or B is adopted and proves unworkable, inefficient, or otherwise undesirable in actual practice.

D. Air Carrier Subcategories for Allocation

Part 93 of the Federal Aviation Regulations divides the available slots at Washington National Airport into three broad categories: Air carriers (scheduled operations of aircraft with more than 56 seats); commuters (scheduled operations of aircraft with 56 seats or less); and general aviation (all operations not included in the other two catetories). As set forth above, the three alternatives would in effect require users seeking slots to compete against other users in the same category, but not against users in some other category.

In the past, several airlines that primarily serve small or non-hub markets have indicated to the DOT that they could not compete on an economic basis for slots against carriers serving long-distance, dense, high-profit markets. In a similar vein, representatives of many small cities currently being served with nonstop service at National Airport have also expressed a concern that with fewer slots available, increased demand for slots, and an allocation mechanism based upon "economics" or "market efficiency," they would lose service altogether. The concerns of both the carriers and the communities served have some basis in fact, since the trend in slot usage at Washington National, as at other major airports, has been toward the more profitable longer haul and/or high passenger level markets.

There are a number of ways to reduce the potential adverse impact on smaller communities that currently have nonstop service to Washington National. At the one extreme, one could "grandfather" the existing slots to guarantee the present level of service. If a carrier chose to drop service to a specific city, it would lose its slots to any other carrier who offered to serve the affected city. Only if there were no carriers willing to provide such service could the slots be used to serve some other city. The DOT has decided not to consider such a system to preserve the *status quo*. Such grandfathering would not be responsive to the needs of those communities that do not currently have such service, nor would it be responsive to changing economic or market conditions. Indeed, it might even preserve service even if there was no need for it.

To address these concerns more flexibly, the DOT is considering adoption of a mechanism for stratifying the markets served from National Airport by scheduled air carriers into market subsets. Alternative bases for these subsets could be:

- Distance from Washington, D.C. (e.g. concentric rings)
- Geographic quadrants within 1000 mile perimeter (e.g. New England, Middle Atlantic, Southeast, etc.)
- City hub-size

While each of these methods has advantages and disadvantages, the DOT presently believes that city hub-size be the criteria for an initial division of the air carrier slots into subsets which would then be further allocated to specific carriers through one of the mechanisms described elsewhere in this NPRM.

The process [7] would start with a determination of the percent of total slots which are currently being used to serve the three market categories. During June, 1980, the distribution was:

	Percent
Large hub	54
Medium hub	28
Small nonhub	18

These percentages would then be applied to the total number of slots to be made available during the forthcoming scheduling period. This would set the size of the three air carrier "submarkets."

The second phase would be to allocate the slots independently in each of these submarkets using either scheduling committees, slot auctions or the administrative procedure. There would be no transfer of slots between "submarkets" unless the total demand for slots fell short of the number available. Using hub size as a criteria for establishing the allocation subset has the advantage of placing together markets of relatively comparable economic strength. While this mechanism would not guarantee that every small or nonhub would continue to receive the same amount of non-stop service to and from Washington National, it would tend to protect these markets from losing slots to the larger markets, and to compete more equitably for a limited resource with similarly situated competitors.

The DOT would be interested in any comments pertaining to:

- The need for a two-step process for air carrier slot allocation;
- Alternative criteria for subdividing the air carrier allocation and supporting rationale;
- Criteria for reallocating slots among allocation subgroups, if relevant;
- The basis for determining how many slots are allocated to each category of airports in subsequent scheduling periods;
- The distribution of slots by hour of day by airport classification.

With respect to the possible two-step process for allocation, DOT is also proposing that if the slots are not used to serve the specified hub type, they would revert to the DOT for reallocation.

[7] No specific regulatory language is proposed in this NPRM implementing this proposal. For purpose of submittal of comments, commenters should assume that any final rule relating to air carrier subcategories would include an amendment to § 93.123 which would break the hourly air carrier IFR operations permitted at Washington National Airport into subcategories with specific allocation for each category.

General Aviation Fees

Many of the respondents to the PRL study have raised the issue of pricing of access for general aviation. Given limited resources (slots) and the desire to achieve economic efficiency, they contend that it is inefficient to allocate slots specifically to general aviation users. Rather, they contend, such users should compete in the auction process for slots. In opposition to this is the argument that general aviation users do not require slots on a regularly scheduled basis. The specific issue of slots distribution among types of users was addressed in the Airports Policy. this NPRM addresses the issue of slot allocation among users within a class.

Two laternatives are being considered.

Alternative 1—Continue the present system of landing fees. This would not require a regulatory change.

Alternative 2—Set the fee for the use of a reservation (takeoff or landing) in any hour at the bid price established during the auction for scheduled air taxi reservations. this alternate (proposed § 93.135(f)) would only be promulgated if Allocation Alternate B is issued. In this connection, it must be noted that if an additional fee is imposed on general aviation, those falling within this class of user, as well as all others wishing to operate at DCA, would utilize other airports in the area including Dulles International Airport. The imposition of such a fee would be consistent with the court's decision in *Aircraft Owners and Pilots Association* v. *Port Authority of New York* (305 F. Supp. 93, 1969).

Comments with respect to these alternatives are solicited.

Extra Sections

It may be advisable to establish a pricing mechanism for extra sections authorized under current § 93.123(b)(4) if an auction slot allocation is adopted. The mechanism proposed for this alternative is that the same bid price for the first section would be charged for each extra section. This would require a regulatory change which is reflected in the Extra Section Alternate. Under this proposal the exemption for extra sections would remain in § 93.123(b)(4); however, the air carrier utilizing that extra section would pay the same bid price for the reservation as is paid by other air carriers for reservations during the hour in which the extra section is operated.

Comments are requested on whether such a provision is necessary or advisable.

Effective Date

DOT expects that it will need several months after the close of the comment period to analyze the comments received. In addition, the DOT believes that the effective date of the final rule will be 90 days after issuance of the rule. Comments on the effective date are invited.

Proposed Amendment

In consideration of the above, the DOT proposes to amend subpart K of Part 93 of the Federal Aviation Regulations (14 C.F.R. Part 93) as follows:

Allocation Alternate A: By adding a new § 93.135 to Subpart K as follows:

§ 93.135 Allocations at Washington National Airport.

(a) IFR reservations for air carriers at Washington National Airport as limited by § 93.123 shall be allocated in accordance with the following procedure:

(1) By January 1 and July 1 of each year, each air carrier that wants IFR reservations shall submit to the DOT a reservation request which contains the following information—

(i) A list of all reservations requested per hour;

(ii) A certified statement setting forth the total enplanements and deplanements at Washington National Airport during the preceding twelve-month period;

(iii) the total number of operations at Washington National Airport during the preceding twelve-month period;

(iv) A list of reservations held during the preceding six-month period showing effective dates, actual utilization, and equipment used;

(v) A list of all cities provided nonstop service to or from Washington National airport during the preceding twelve-month period; and

(vi) A list of all essential service determinations made by the CAB designating service to the Washington area as essential and currently being served through Washington National Airport and the subject carrier.

(2) Within 72 hours after the deadline for receipt of reservation requests, the DOT shall make public the total number of reservations requested and the total number of reservations per day awarded each carrier.

(3) If the total number of reservations requested by all air carriers for the day are less than or equal to the number of reservations available for the day, each carrier shall be awarded the total number of daily reservations it requested. If the total number of reservations requested for each hour of the day by all air carriers is less than or equal to the total available for the hour, each carrier shall be awarded the number of reservations requested each hour.

(4) If the number of reservations requested for the day by all air carriers exceeds the number available, each requesting carrier shall be awarded a total of four reservations per day (but not more than the number requested) plus two reservations per day for each minimum essential service flight specified by the CAB involving Washington National Airport and the subject air carrier. This initial award shall be termed "exempted reservations." The remaining total number of daily reservations (termed "nonexempted reservations") shall be awarded to each carrier based upon the following procedure:

(i) Each carrier presently serving the airport shall at the minimum either be awarded the lesser of (A) its requested total number of nonexempted reservations (requested reservations, less exemptions), or (B) the number of reservations calculated according to the following entitlement formula and rounded to integers.

$$Ai = .5(A)Bi + .3(A)Pi + .2(A)Ci$$

where:

Ai—carrier's allocation of total nonexempted slots to be allocated
A—total nonexempted reservations to be allocated
Bi—carrier's relative share of total daily slots during the preceding period
Pi—carrier's relative share of total enplanements and deplanements at the airport during the preceding period
Ci—ratio of number of cities served directly by the air carrier from the airport to the sum of the number of cities served directly from the airport by all carriers
i—subscript denoting individual carrier

(ii) If the allocation of any carrier calculated according to the entitlement formula given in paragraph (a)(4)(i) of this section exceeds the number of nonexempted reservations requested by the carrier, the excess number of slots shall be awarded to carriers desiring more nonexempted reservations than they are awarded by the entitlement formula. Such awards shall be in proportion to the recipient airline's relative share of total entitlements.

(5) If, in accordance with paragraphs (a)(3) or (a)(4) of this section, air carriers are awarded a total number of reservations per day, but no hourly award is made, within 30 days from the date of this award, each carrier must submit to the DOT a number of alternative plans specifying the hour by hour utilization of its awarded slots. Each carrier shall submit a minimum

number of plans where the minimum number is equal to the square root of the number of total slots awarded (both exempted and non-exempted) rounded to the next highest integer. Each carrier shall also submit a preference value between 1 and 100 for each plan; with 100 indicating the most preferred alternative.

(6) Within 30 days after the deadline for submitting hourly utilization plans, the DOT shall make public the number of reservations awarded to each carrier by hour of the day. In making these awards, the DOT shall attempt to develop a consolidated air carrier schedule of hourly reservations from among the alternative plans submitted by individual carriers in accordance with paragraph (a)(5) of this section. In the event that more than one consolidated schedule can be constructed, the DOT shall base hourly reservation awards on the consolidated schedule which maximizes, in the aggregate, the attainment of the carrier preference order submitted with the various alternative individual carrier plans. In the event that a consolidated schedule cannot be constructed from the alternative plans submitted by carriers, hourly reservations awards shall be based on a consolidated air carrier schedule developed by the DOT from the alternative plans submitted by the carriers in conjunction with minor changes in these plans as specified by the DOT after consultation with all carriers having been awarded slots.

(7) At any time after the public notification of reservation awards by hour through the end of the reservation period, carriers may cancel their reservations or request additional reservations from the DOT. The DOT shall reallocate cancelled reservations to carriers requesting additional reservations on a first come, first served basis.

(b) IFR reservations for scheduled air taxis at Washington National Airport, as limited by § 93.123, shall be allocated in accordance with the following procedure:

(1) By January 1 and July 1 of each year, each scheduled air taxi that wants IFR reservations shall submit to the DOT a reservation request which contains the following information:

(i) A list of all reservations requested per hour;

(ii) A certified statement setting forth the total enplanements and deplanements at Washington National Airport during the preceding six-month period;

(iii) The total number of operations at Washington National Airport over the preceding twelve-month period; (iv) A list of reservations held during the preceding six-month period showing effective dates, actual utilization, and equipment used;

(v) A list of all cities provided nonstop service to or from Washington National Airport during the preceding six-month period; and

(vi) A list of all essential service determinations made by the CAB designating service to the Washington area as essential and currently being served through Washington National Airport and the subject scheduled air taxi.

(2) Within 72 hours after the deadline for receipt of reservation requests, the DOT shall make public the total number of reservations requested and the total number of reservations per day awarded each scheduled air taxi.

(3) If the total number of reservations requested by all scheduled air taxis for the day is less than or equal to the total number of reservations available for the day, each scheduled air taxi shall be awarded the total number of daily reservations it requested. If the total number of reservations requested for each hour of the day by all scheduled air taxis is less than or equal to the total available for the hour, each scheduled air taxi shall be awarded the number of reservations it requested in each hour.

(4) If the number of reservations requested for the day by all scheduled air taxis are greater than the number available, each requesting scheduled air taxi shall be issued two reservations (but not more than requested) per day plus two reservations per day for each minimum essential service flight specified by the CAB involving Washington National Airport and the subject air taxi. This initial award shall be termed exempted reservations. The remaining total number of daily reservations (termed nonexempted reservations) shall be awarded to each scheduled air taxi based upon the following procedure:

(i) Each scheduled air taxi presently serving the airport shall at the minimum either be awarded the lesser of (A) its requested total number of nonexempted reservations (requested reservations, less exemptions), or (B) the number of reservations calculated according to the following entitlement formula and rounded to integers.

$$Ai = .5(A)Bi + .3(A)Pi + .2(A)Ci$$

where:

Ai—scheduled air taxi's allocation of total non-exempted slots to be allocated
A—total non-exempted reservations to be allocated
Bi—scheduled air taxi's relative share of total daily slots during the preceding period
Pi—scheduled air taxi's relative share of total enplanements and deplanements at the airport during the preceding period
Ci—ratio of number of cities served directly by the air taxi from the airport to the sum of the number of cities served directly from the airport by all air taxis
i—subscript denoting individual air taxi

(ii) If the allocation of any air taxi calculated according to the entitlement formula given in paragraph (b)(4)(i) of this section exceeds the number of nonexempted reservations requested by the air taxi, the excess number of reservations shall be awarded to air taxis desiring more nonexempted reservations than they are awarded by the entitlement formula. Those awards shall be in proportion to the recipient air taxi's relative share of total entitlements.

(5) If, in accordance with paragraphs (b)(3) or (b)(4) of this section, air taxis are awarded a total number of reservations per day, but no hourly award is made, within 30 days from the date of this award, each air taxi must submit to the DOT a number of alternative plans specifying the hour by hour utilization of its awarded slots. Each air taxi shall submit a minimum number of plans where the minimum is equal to the square root of the number of total reservations awarded (both exempted and non-exempted) rounded to the next highest integer. Each air taxi shall also submit a preference value between 1 and 100 for each plan, with 100 indicating the most preferred alternative.

(6) Within 30 days after the deadline for submitting hourly utilization plans, the DOT shall make public the number of reservations awarded to each scheduled air taxi by hour of the day. In making these awards, the DOT shall attempt to develop a consolidated scheduled air taxi schedule of hourly reservations from among the alternative plans submitted by individual air taxis in accordance with paragraph (b)(5) of this section. In the event that more than one schedule can be constructed, the DOT shall base hourly reservation awards on the consolidated schedule which maximizes, in the aggregate, the attainment of the air taxi preference order submitted with the various alternative individual air taxi plans. In the event that a consolidated schedule cannot be constructed from the alternative plans submitted by air taxis, hourly reservations awards shall be based on a consolidated air taxi schedule developed by the DOT from the alternative plans submitted by the air taxis in conjunction with minor changes in these plans as specified by the DOT after consultation with all air taxis having been awarded slots.

(7) At any time after the public notification of reservation awards by hour through the end of the reservation period, air taxis may cancel their reservations or request additional reservations from the DOT. The DOT shall reallocate cancelled reservations to air taxis requesting additional reservations on a first come, first served basis.

(c) For purposes of this section—

(1) The term "air carrier" or "air carrier except air taxis" means an air carrier as defined in Part 1 of this chapter that conducts operations with aircraft having a maximum passenger seating capacity of 56 or more.

(2) The term "scheduled air taxis" means a scheduled air taxi or an air carrier as defined in Part 1 of this chapter that conducts operations with aircraft having a maximum capacity of less than 56.

Allocation Alternate B: By adding a new § 93.135 to Subpart K as follows:

§ 93.135 Allocation at Washington National Airport.

(a) IFR reservations for air carriers at Washington National Airport, as limited by § 93.123(a), shall be allocated in accordance with the following procedure:

(1) By January 1 and July 1 of each year, each air carrier desiring an IFR reservation for the 6 month period beginning the following April or October, as appropriate, shall submit to the DOT an initial bid for reservations. Bids must identify the bid price and the hour of the day for which a reservation is requested.

(2) Within 72 hours after the receipt deadline for initial bids, the DOT shall make public the total number of reservation bids for each hour received and the number and price of reservations tentively awarded to each successful bidder. If, for any hour, the total number of reservation bids is equal to or less than the number available, all reservation bids for that hour shall be tentatively awarded at a $1 price. For those hours where the number of reservation bids exceeds the number of reservations available, reservations shall be tentatively awarded to the highest bidders for the hourly reservation. The award price for each hour shall be set at the highest rejected bid price.

(3) Within 72 hours after the announcement of tentative awards, any bidder who submitted initial bids may withdraw any or all of the bids previously submitted and may also submit new bids. New bids need not coincide with bids already submitted. Initial bids submitted in accordance with paragraph (a)(1) of this section shall remain valid unless formally withdrawn.

(4) Within 72 hours after the receipt deadline for bid revisions as set forth in paragraph (a)(3) of this section, the DOT shall again make public the total number of reservation bids for each hour and the number and price of reservations tentatively awarded to each successful bidder. Tentative awards and prices shall be established according to the same procedure as specified in paragraph (a)(3) of this section.

(5) After each tentative reservation award, any bidder may continue to submit bid revisions in accordance with paragraph (a)(3) of this section. The DOT, in the event new bids are submitted, shall make public bid, award and the price information as specified in paragraph (a)(4) of this section.

(6) Reservations shall be awarded based upon the last set of bids received by the DOT if one of the following occurs:

(i) No additional bids are received during any 72 hour period.

(ii) The only bids received, within 72 hours since the DOT last made the last tentative award, are minimally different from the last bids received.

(iii) All bidders inform the DOT within 24 hours since the DOT made the last tentative award, that they desire to terminate the auction.

(b) IFR reservations for scheduled air taxis at Washington National Airport, as limited by § 93.123(a), shall be allocated in accordance with the following procedure:

(1) By January 1 and July 1 of each year, each air taxi desiring an IFR reservation for the 6 month period beginning the following April or October, shall submit to the DOT an initial bid for reservations. Bids must identify the bid price and the hour of the day for which a reservation is requested.

(2) Within 72 hours after the receipt deadline for initial bids, the DOT shall make public the total number of reservation bids for each hour and the number and price of reservations tentatively awarded to each successful bidder. If, for any hour, the total number of reservation bids is equal to or less than the number available, all reservation bids for that hour shall be tentatively awarded at a one dollar price. For those hours where the number of reservation bids exceeds the number of reservations available, reservations shall be tentatively awarded to the highest bidders for the hourly reservation. The award price for each hour shall be set at the highest rejected bid price.

(3) Within 72 hours after the announcement of tentative awards, any bidder who submitted initial bids may withdraw any or all of the bids previously submitted and may also submit new bids. New bids need not coincide with bids already submitted. Initial bids submitted in accordance with paragraph (a)(1) of this section shall remain valid unless formally withdrawn.

(4) Within 72 hours after the receipt deadline for bid revisions as set forth in paragraph (b)(3) of this section, the DOT shall again make public the total number of reservations bids for each hour and the number and price of reservations tentatively awarded to each successful bidder. Tentative awards and prices shall be established according to the same procedure as specified in paragraph (b)(2) of this section.

(5) After each tentative reservation award, any bidder may continue to submit bid revisions in accordance with paragraph (b)(3) of this section. The DOT, in this event, shall make public the bid, award and price information as specified in paragraph (b)(4) of this section.

(6) Reservations shall be awarded based upon the last set of bids received by the DOT if one of the following occurs:

(i) No additional bids are received during any 72 hour period.

(ii) The only bids received, within 72 hours since the DOT made the last tentative award, are minimally different from the last bids received.

(iii) All bidders inform the DOT within 24 hours since the DOT made the last tentative award, that they desire to terminate the auction.

(c) A successful bidder has 14 days after being notified in writing of the amount of its final accepted bid prices to submit to the DOT payment for one-sixth of the total amount accepted. The balance shall be paid in five equal increments starting on the 1st day of the reservation period. Succeeding payments shall be made on the first day of each month until the balance is paid. Original bidders shall be liable for full payment of the accepted bid price even if the reservation is subsequently resold subject to resale credits as described in paragraph (d) of this section.

(d) In the event that a successful bidder wishes to relinguish a reservation after the final award, it may so inform the DOT. The DOT shall offer the reservation for sale to the highest bidder. The DOT shall hold available reservations open to bids for a 24 hour period after being notified of the

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availability of the reservation. Any air carrier or air taxi wishing to purchase reservations offered by an air carrier may do so. Reservations offered by air taxis may only be purchased by other air taxis. Air carriers or air taxi purchasing resale reservations shall reimburse the DOT. An initial payment equal to one month's prorata share of the total period purchase price shall be made to the DOT 14 days after being notified in writing of the award. The balance shall be paid in equal monthly installments starting on the first day of the first full month remaining in the reservation period. The DOT shall credit the seller of any reservation with monies received by the DOT from the resale of the reservation in an amount not exceeding the original purchase price.

(e) For purposes of this section—

(1) The term "air carrier" or "air carrier except air taxis" means an air carrier as defined in Part 1 of this chapter that conducts operations with aircraft having a maximum passenger seating capacity of 56 or more.

(2) The term "scheduled air taxis" means a scheduled air taxi or an air carrier as defined in Part 1 of this chapter that conducts operations with aircraft having a maximum capacity of less than 56.

(f) Each bidder wishing to submit a bid in accordance with this section shall, prior to its submission of any bid, designate in writing, an individual or individuals who will be authorized to represent the bidder in all actions taken under this section.

Extra Sections Alternate: By adding a paragraph (g) to § 93.135 (as proposed in Allocation Alternate B) to read as follows:

§ 93.135 Allocation at Washington National Airport.

* * * * *

(g) The bid price for extra sections operated by air carriers, in accordance with § 93.123(b)(4), shall be identical to the hourly price paid by air carriers during the hour in which the extra section is operated.

General Aviation Operations: By adding a paragraph (h) to § 93.135 (as proposed in Allocation Alternate B) to read as follows:

§ 93.135 Allocation at Washington National Airport.

* * * * *

(h) The bid price for "other" operations conducted in accordance with § 93.123 will be identical to the hourly price paid by air taxis during the hour in which the operations is conducted.

(Secs. 103, 307(a), (c), 313(a), of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1303, 1348(a), (c), 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); sec. 2 of the Act for the Administration of Washington National Airport, 54 Stat. 688)

Note.—The Department has determined that this document involves a proposed regulation which is significant under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the draft Regulatory Analysis prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Washington, D.C., on October 21, 1980.

William J. Beckham, Jr.,

Acting Secretary of Transportation.

[FR Doc. 80-33404 Filed 10-22-80; 4:20 pm]

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federal register

Monday
October 27, 1980

Part VIII

Department of Transportation

Federal Aviation Administration

Metropolitan Washington Airports, Future Operation and Development; Delay in Implementation of Policy and Regulations

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DEPARTMENT OF TRANSPORTATION

14 CFR Parts 93 and 159

[Docket No. 19948, Amendments Nos. 93-38 and 159-22]

Metropolitan Washington Airports

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule, notice of change of effective date.

SUMMARY: On September 18, 1980, DOT/FAA published the Metropolitan Washington Airport Policy (45 FR 62398) and implementing regulations (Amendments 93-37 and 159-20) to guide the future operation and development of Washington National Airport and Dulles International Airport (45 FR 62406). The implementing regulations were to become effective on January 5, 1981. The Department of Transportation and Related Agencies Appropriations Act, 1981, Pub. L. 96-400, however, prohibits the full implementation of the DOT/FAA policy and regulations until April 26, 1981. Therefore, this notice is being issued to announce a delay in the implementation of the entire Metropolitan Washington Airport Policy and to change the effective date of all the implementing regulations until April 26, 1981.

EFFECTIVE DATE: As of October 27, 1980, the effective date of the regulations published at 45 FR 62406 has been delayed until April 26, 1981.

FOR FURTHER INFORMATION CONTACT: Edward Faggen (Telephone (703) 557-8123), or Charles C. Erhard (Telephone (703) 557-0972), Metropolitan Washington Airports, Washington National Airport, Hangar 9, Washington, D.C. 20001.

SUPPLEMENTARY INFORMATION: On September 18, 1980, DOT/FAA published the Metropolitan Washington Airport Policy and implementing regulations (Amendments 93-37 and 159-20) to guide the future operation and development of Washington National Airport and Dulles International Airport (45 FR 62398). The implementing regulations were to become effective on January 5, 1981. The Department of Transportation and Related Agencies Appropriations Act, 1981, Pub. L. 96-400, states that none of the funds in the Act shall be used to mandate any reduction of the number of certificated air carrier slots per hour at Washington National Airport below the number authorized on September 12, 1980, until April 26, 1981. Therefore, it is necessary that the effective date of Amendments 93-37 and 159-20 be amended.

By letter dated September 23, 1980, the Secretary of Transportation notified the Chairmen of the Subcommittees on Transportation, Committees on Appropriations of the House of Representatives and United States Senate that:

> It is essential that all elements of the (Metropolitan Washington Airports) Policy be implemented together. We are cutting back the number of certificated air carrier operations at National, allowing for the use of widebody aircraft, and modifying the non-stop service perimeter. We would not undertake to do one of these things without doing the others. Nor would we want to make a substantial investment in National's redevelopment with its future unresolved. In short, the Policy was developed as a package because it is the only way to overcome the continuing controversy over National's future. The environmental impact statement that was prepared under a court order addressed the Policy as a whole, not in fragments. We are, therefore, not prepared to proceed with certain elements of the policy in January while the reduction in flights is deferred.
>
> In summary, the policy for National and Dulles airports must be implemented on time and with all parts of the balanced package in place.

For the reasons discussed above, additional notice and public procedure on this change to the effective date of Amendments 93-37 and 159-20 is unnecessary and good cause exists for making this change effective upon publication in the **Federal Register**. For the same reasons, full compliance with the procedures of Executive Order 12044, as implemented by the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), is not possible.

Accordingly, consistent with the position expressed in the Secretary's letters of September 23, effective (**Federal Register** Publication Date), the effective date of Amendments 93-37 and 159-20, which were published in the **Federal Register** on September 18, 1980 (45 FR 62406), is changed from January 5, 1981, to April 26, 1981.

(Secs. 103, 307(a), (b), and (c), and 313(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. Sections 1303, 1348(a), (b) and (c) and 1354(a)); Sections 2 and 5 of the Act for the Administration of Washington National Airport, 54 Stat. 688, as amended by 61 Stat. 94; Section 4 of the Second Washington Airport Act, 64 Stat. 770; Section 6 of the Department of Transportation Act (49 U.S.C. Section 1655))

Note.—The FAA has determined that this rulemaking is significant under Executive Order 12044, as implemented by the DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); the impact of this document is, however, minimal and does not warrant a full regulatory evaluation.

Issued in Washington D.C., on October 21, 1980.

Langhorne Bond,
Administrator.

[FR Doc. 80-33412 Filed 10-22-80; 4:16 pm]
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Monday
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Part IX

Department of Energy

Organization and Functions of the Department of Energy; Proposed Rulemaking

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DEPARTMENT OF ENERGY

10 CFR Parts 701 and 1003

Organization and Functions of the Department of Energy

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and invitation for public comment.

SUMMARY: This proposed rule describes the organization of the Department of Energy, the major officers and elements, and their principal responsibilities. The rule will assist the public to determine which officials and elements of the Department are responsible for specific Departmental programs.

DATE: Comments must be received on or before November 14, 1980.

ADDRESS: Send written comments to: Mr. K. Dean Helms, Director of Organization and Management Systems, U.S. Department of Energy, Room 4D 035, 1000 Independence Ave., SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Mr. William A. Dorsey, Office of Organization and Management Systems, U.S. Department of Energy, Room 4D 023, 1000 Independence Ave., SW, Washington, DC 20585, (202) 252–6760.

Mr. Kenneth Cohen, Office of the General Counsel, U.S. Department of Energy, Room 6A 171, 1000 Independence Ave., SW, Washington, DC 20585, (202) 252–3665.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of Energy, hereinafter "the Department" or "DOE", was established by the Department of Energy Organization Act (Pub. L. 95–91, 91 State. 565, 42 U.S.C. 7101), hereinafter "the Act", and it was activated on October 1, 1977, by Executive Order 12009, dated September 13, 1977, published on September 15, 1977, at 42 FR 16267. Part 701 of 10 CFR Chapter III which describes the organization and functions of the former Atomic Energy Commission, is now merged into the DOE, is being removed. The Act consolidated in the Department various functions relating to energy that had been carried out by several government agencies. The Energy Research and Development Administration and the Federal Energy Administration were abolished and their functions transferred to and merged in the Department. The Federal Power Commission also was abolished and its functions divided between the Secretary of Energy and the Federal Energy Regulatory Commission, which was established as an independent regulatory commission within the Department. Also transferred to the Department were:

(1) From the Department of Interior, the power marketing functions, certain research and development functions from the Bureau of Mines, and certain functions regarding leases of energy resources on Federal lands;

(2) From the Department of Housing and Urban Development, authority related to energy conservation standards for new buildings and the renewable resource demonstration program;

(3) From the Interstate Commerce Commission, the regulation of the transportation of oil by pipeline;

(4) From the Department of Navy, responsibility for the administration of the Naval Petroleum and Oil Shale Reserves; and

(5) From the Department of Commerce, responsibility for industrial energy conservation programs.

Following Subpart A, the Introduction and General Statements, Subpart B of this rule prescribes the principal responsibilities of the major officers and Headquarters elements of the Department. Subparts C, D, and E outline the major field installations and organizations through which the programs of the Department are carried out.

B. Comment Procedure

Interested persons are invited to submit written comments with respect to the proposed regulations to the address provided above. Comments should be so identified on the outside of the envelope: "Comments on DOE Organization."

C. Miscellaneous

In accordance with section 501(c)(1) of the Department of Energy Organization Act, DOE determined that these regulations present no substantial issue of fact or low, and are unlikely to have a substantial impact on the economy or large numbers of individuals or businesses. Accordingly, no public hearing is required.

For the same reasons DOE has determined that these regulations are not "significant" as that term is defined by DOE in its notice of "Regulatory Reform-Improving Government Regulations," 44 FR 1032, January 3, 1979, in implementation of Executive Order 12044.

Since this document is unlikely to have any significant effect on the environment, DOE has determined that the provisions of section 7(a)(2) of the Federal Energy Administration Act, as amended, requiring that proposals having such effect be submitted to the Environmental Protection Agency for review and comment, do not apply.

In accordance with the foregoing, it is proposed that 10 CFR Chapter III be amended by revoking Part 701, and that Chapter X be amended by addition of new Part 1003 as set forth below.

DOE has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821, and OMB Circular A–107.

Issued in Washington, D.C., October 20, 1980.

Lynn R. Coleman,
Acting Deputy Secretary.

PART 701—[REVOKED]

10 CFR Chapter X is proposed to be amended by adding a new Part 1003 to read as follows:

PART 1003—ORGANIZATION AND FUNCTIONS

Subpart A—Introduction

Sec.
1003.1 Background.
1003.2 Definitions.
1003.3 General explanation.
1003.4 Organization concepts and overview.
1003.5 Mailing addresses.
1003.6 Additional information.

Subpart B—Major Positions and Organization Elements

1003.11 Secretary.
1003.12 Deputy Secretary.
1003.13 Under Secretary.
1003.14 Chief Financial Officer.
1003.15 General Counsel.
1003.16 Federal Energy Regulatory Commission.
1003.17 Economic Regulatory Administration.
1003.18 Energy Information Administration.
1003.19 Assistant Secretary for Conservation and Solar Energy.
1003.20 Assistant Secretary for Resource Applications.
1003.21 Assistant Secretary for Fossil Energy.
1003.22 Assistant Secretary for Nuclear Energy.
1003.23 Assistant Secretary for Defense Programs.
1003.24 Assistant Secretary for Environment.
1003.25 Assistant Secretary for Policy and Evaluation.
1003.26 Assistant Secretary for International Affairs.
1003.27 Office of Energy Research.
1003.28 Office of Alcohol Fuels.
1003.29 Office of Inspector General.
1003.30 Office of Minority Economic Impact.
1003.31 Office of Hearings and Appeals.
1003.32 Special Assistant.
1003.33 Executive Assistant.

Sec.
1003.34 Office of Legislative Affairs.
1003.35 Office of Public Affairs.
1003.36 Office of Intergovernmental Affairs.
1003.37 Office of Consumer Affairs.
1003.38 Controller.
1003.39 Directorate of Administration.
1003.40 Directorate of Procurement and Contracts Management.
1003.41 Office of the Executive Secreary.
1003.42 Office of Equal Opportunity.
1003.43 Board of Contract Appeals.

Subpart C—Power Administrations

1003.61 Alaska Power Administration.
1003.62 Bonneville Power Administration.
1003.63 Southeastern Power Administration.
1003.64 Southwestern Power Administration.
1003.65 Western Area Power Administration.

Subpart D—Regional and District Offices.

1003.71 Regional Representatives of the Secretary.
1003.72 District Managers of the Economic Regulatory Administration.
1003.73 Regional Offices of the Federal Energy Regulatory Commission.

Subpart E—Field Installations.

1003.81 Field installations generally.
1003.82 Field installations: Under Secretary.
1003.83 Field installations: Assistant Secretary for Resource Applications.
1003.84 Field installations: Assistant Secretary for Environment.
1003.85 Field installations: Assistant Secretary for Fossil Energy.
1003.86 Field installations: Assistant Secretary for Nuclear Energy.
1003.87 Field installations: Assistant Secretary for Defense Programs.

Subpart F—[Reserved]

Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599, 42 U.S.C. 7254; Sec. 501 Pub. L. 95–91, 91 Stat. 587, 42 U.S.C. 7191; 5 U.S.C. 552.

Subpart A—Introduction

§ 1003.1 Background.

The Department of Energy was created by the Department of Energy Organization Act of August 4, 1977, Pub. L. 95–91, 91 Stat. 565, 42 U.S.C. 7101. Secretary of Energy took office on August 5, 1977. Pursuant to the provisions of section 901 of the Act, the President by Executive Order 12009, dated September 13, 1977, prescribed October 1, 1977, as the effective date of the Act. The Executive Order was published in the **Federal Register** on September 15, 1977, 42 FR 46267.

§ 1003.2 Definitions.

As used in this part—

(a) "Department" and "DOE" mean the Department of Energy.

(b) "Secretary" means the Secretary of Energy.

(c) "The Act" means the Department of Energy Organization Act.

§ 1003.3 General explanation.

(a) The Act consolidated in the Department various functions relating to energy that previously were carried out by other Government agencies. The Energy Research and Development Administration and the Federal Energy Administration were abolished, and their functions were transferred to and merged in the Department. The Federal Power Commission also was abolished; certain of its functions are vested in the Federal Energy Regulatory Commission, which is established as an independent regulatory commission within the Department; and other functions are vested in the Secretary, who is given authority to assign them to the Commission as well as to other officers of the Department. Also transferred to the Department are:

(1) From the Department of the Interior, the power marketing functions, certain research and development functions from the Bureau of Mines, and certain functions regarding Federal oil and gas, coal, oil shale, tar sands and geothermal leases;

(2) From the Department of Housing and Urban Development, authority related to energy conservation standards for new buildings and the renewable resource demonstration program;

(3) From the Interstate Commerce Commission, the regulation of the transportation of oil by pipeline;

(4) From the Department of Navy, responsibility for the administration of the Naval Petroleum and Oil Shale Reserves; and

(5) From the Department of Commerce, responsibility for industrial energy conservation programs.

(b) The Act establishes the principal positions and elements of the Department and prescribes other organizational features. Otherwise, the Secretary is given broad authority to delegate his authority to subordinates, to establish positions and organizational units, and generally to supervise and administer the Department.

§ 1003.4 Organization concepts and overview.

(a) *Reporting Relationships.* The principal elements of the Department are divided into three general groups. The first group reports directly to the Secretary and Deputy Secretary. The second group reports to the Secretary and Deputy Secretary through the Under Secretary. The third group reports to the Secretary and Deputy Secretary through the Chief Financial Officer. This organizational arrangement frees the Secretary and Deputy Secretary of day-to-day management responsibilities for a number of DOE components and permits better integrated management at the Under Secretary level.

(b) *Organizations reporting directly.* Organizations that report directly to the Secretary and the Deputy Secretary are:

(1) General Consel.
(2) Office of Inspector General.
(3) Office of Alcohol Fuels.
(4) Office of Minority Economic Impact.
(5) Office of Hearings and Appeals.
(6) Assistant Secretary for Policy and Evaluation.
(7) Assistant Secretary for International Affairs.
(8) Economic Regulatory Administration.
(9) Energy Information Administration.
(10) Office of Legislative Affairs.
(11) Office of Public Affairs.
(12) Board of Contract Appeals.

In addition, the Office of Consumer Affairs and the Office of Intergovernmental Affairs report to the Secretary and Deputy Secretary through the Executive Assistant to the Secretary. The Office of Small and Disadvantaged Business Utilization reports to the Secretary and Deputy Secretary on all matters pertaining to Title II, Chapter 3, Section 221 of the Small Business Act (Pub. L. 95–507). The Regional representatives of the Secretary also report directly to the Secretary and Deputy Secretary. The Office of the Executive Secretary reports to the Secretary and the Deputy Secretary through the Special Assistant to the Secretary.

(c) *Organizations reporting through the Under Secretary.* The Under Secretary has supervisory responsibility for the major DOE operating programs. Organizations reporting to the Secretary and Deputy Secretary through the Under Secretary include:

(1) Assistant Secretary for Conservation and Solar Energy.
(2) Assistant Secretary for Nuclear Energy.
(3) Assistant Secretary for Fossil Energy.
(4) Assistant Secretary for Resource Applications.
(5) Assistant Secretary for Defense Programs.
(6) Assistant Secretary for Environment.
(7) Office of Energy Research.

(d) *Organizations reporting through the Chief Financial Officer.* The Chief Financial Officer is the equivalent of the Under Secretary as a principal officer of the Department and advisor to the Secretary and Deputy Secretary. The position of Chief Financial Officer was

created by the Secretary to focus on key management activities to assure their coordination internally and with other program and support activities of the Department; to assure that adequate management systems have been established in each of these areas; and to identify and remove obstacles to effective performance. Organizations reporting to the Secretary and the Deputy Secretary through the Chief Financial Officer are:

(1) Controller.

(2) Directorate of Administration.

(3) Directorate of Procurement and Contracts Management.

(4) Office of Equal Opportunity.

In addition, the Office of Minority Economic Impact coordinates its activities with the Chief Financial Officer.

§ 1003.5 Mailing address.

(a) The mailing address for all officials of the Department of Energy based in Washington, DC, other than the Federal Energy Regulatory Commission is:

U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

(b) The mailing address for all officials of the Federal Energy Regulatory Commission and all filings to be made with the Commission is:

Federal Energy Regulatory Commission
825 North Capitol Street, NE
Washington, DC 20426

§ 1003.6 Additional information.

For additional information on the Department's organization and functions of its Headquarters and field installations, see the "U.S. Government Manual."

Subpart B—Major Positions and Organization Elements

§ 1003.11 Secretary.

(a) All of the statutory authority under which the Department functions is vested in the Secretary, except for certain authorities and responsibilities assigned by the Act to specific officers or components of the Department. The Secretary may generally redelegate his authority, organize and reorganize the positions and units within the Department, issue rules, enter into agreements, acquire and maintain property, and generally administer the Department. The Secretary directs and supervises the administration of the Department, decides major policy issues, acts as the principal energy advisor to the President, and serves as the principal spokesman for the Department.

§ 1002.12 Deputy Secretary.

The Deputy Secretary shall act for and exercise the functions of the Secretary during the absence or disability of the Secretary or in the event the office of the Secretary is vacant. The Deputy Secretary serves as an alter ego for the Secretary, and assists the Secretary in speaking for the Department, decides administrative matters of Department-wide scope, and acts as Co-Chairman (for the Department) of the Leasing Liaison Committee.

§ 1003.13 Under Secretary.

The Under Secretary bears primary responsibility within the Department for energy conservation. The Under Secretary in responsible for management of the major operating programs of the Department on a day-to-day basis and for supervision of the formulation of research and development policy and budget options for presentation to the Secretary and Deputy Secretary.

§ 1003.14 Chief Financial Officer.

The Chief Financial Officer coordinates the key management activities of the Department with each other and with the other program and support activities of the Department to identify and remove obstacles to effective performance. The Chief Financial Officer concentrates on matters dealing with resource planning and management, internal management systems and policies, and program and project management support and control.

§ 1003.15 General Counsel.

The General Counsel is responsible for all legal services within the Department, except for those within the exclusive jurisdiction of the Federal Energy Regulatory Commission. The General Counsel is the chief law officer of the Department and legal advisor to the Secretary and other principal staff within the Department. In addition, the General Counsel exercises the authority of the Secretary with respect to all intellectual property matters pursuant to the Energy Reorganization Act of 1974, the Federal Nonnuclear Energy Research and Development Act of 1974, and the Atomic Energy Act of 1954, all as amended: takes final action on all claims arising under the Federal Tort Claims Act, as amended 28 U.S.C. 2671–2680; and takes final action on all claims arising under the Military Personnel and Civilian Emnployees' Claims Act of 1964, as amended, 31 U.S.C. 240 *et seq.*

§ 1003.16 Federal Energy Regulatory Commission.

(a) The Act establishes the Federal Energy Regulatory Commission (FERC) as an independent regulatory commission within the Department. The Commission is composed of five members, appointed by the President, with the President designating one member as Chairman. The Chairman is responsible, on behalf of the Commission, for the executive and administrative operation of the Commission. The description of the organization and functions of the Federal Energy Regulatory Commission is set forth in 18 CFR Part 3.

(b) The functions of the Commission include:

(1) To establish and enforce rates and charges for electric energy transmission and sale, electric energy interconnections, natural gas transportation and sale, and natural gas producer and gatherer prices;

(2) To issue and enforce hydroelectric project permits and licenses;

(3) To conduct investigations and assess payments for headwater benefits;

(4) To participate in national water resources planning;

(5) To regulate permanent interconnections of electric utilities;

(6) To determine adequacy of interstate electrical service upon complaint of a state commission and appropriate notice and hearing;

(7) To regulate electric power mergers and dispositions of property;

(8) To implement and administer the Public Utility Regulatory Policies Act;

(9) To issue and enforce certificates for natural gas sales and transportation;

(10) To establish and enforce curtailments of natural gas;

(11) To regulate acquisitions and sales of natural gas pipeline facilities;

(12) To implement and administer the Natural Gas Policy Act;

(13) To establish and enforce oil pipeline rates, charges, and valuations;

(14) To establish and enforce oil pipeline common carrier duties;

(15) To regulate issuance and acquisitions of securities;

(16) To review and authorize interlocking directorates;

(17) To establish, administer, and enforce accounting rules, procedures and the Uniform Systems of Accounts;

(18) To review DOE Energy Action Proposals and proposed rules affecting FERC functions; and

(19) To review appeals from DOE Remedial Orders and Denials of Adjustments.

§ 1003.17 Economic Regulatory Administration.

The Economic Regulatory Administration (ERA) is headed by an Administrator who is the principal advisor to the Secretary on the development, management, and direction of economic regulatory programs other than those which are the responsiblity of the Federal Energy Regulatory Commission (FERC) or other DOE organizational elements. Activities include identifying the need for developing, promulgating and enforcing regulations; defining regulatory data requirements; and directing, designing, and implementing pricing, allocation, and import/export programs to ensure price stability and the equitable distribution of supplies to domestic users of crude oil, petroleum products, and natural gas liquids. In addition to programs relating to oil pricing and allocation, the Administrator directs other regulatory programs, including conversion of oil and gas fired utility and industrial facilities to coal or other alternate fuels; natural gas and electric power import/export controls; natural gas curtailment priorities and emergency allocations; regional coordination of electric power system planning and reliability of bulk power supply; contingency planning; and an active internvention program on behalf of the Secretary before the FERS and other Federal and State regulatory agencies in support of Departmental policy objectives.

§ 1003.18 Energy Information Administration.

(a) The Energy Information Administration (EIA) is headed by an Administrator who is responsible for collecting, evaluating, assembling, analyzing and disseminating energy data and information.

(b) The Administrator:

(1) Carries out a central, comprehensive, and unified energy data and information program to collect, evaluate, assemble, analyze, and disseminate data and information, including forecasts, which are relevant to energy resource reserves, energy production, demand, and technology, and related economic and statistical information, or which are relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs;

(2) Ensures the availability of adequate, comparable, and accurate energy information to the department, to other Government agencies, to the Congress, and to the public.

(3) Issues certain reports and other information documents independently of any other officer of the United States.

(4) Develops and operates energy data and applied analysis programs, including data collection, validation, analysis, interpretation, modeling and dissemination.

(5) Responds to the data and analytical needs of the Congress, the energy industry, the public, and other DOE organizations.

(6) Organizes the review and improvement of analytical methodologies to modify or eliminate deficiencies or redundancy and contributers to advances in the state-of-the-art of analytical methodologies.

§ 1003.19 Assistant Secretary for Conservation and Solar Energy.

The Assistant Secretary for Conservation and Solar Energy is responsible for the development of comprehensive energy conservation strategies for the Nation and for the continued development and application of solar energy technology. The Assistant Secretary for Conservation and Solar Energy develops, recommends and implements conservation policies and programs, including technology application programs, to improve energy efficiency and systems utilization and reduce energy consumption in transportation, buildings and community systems, industry and commerce, and utilities; and to encourage recycling of energy resources; and fosters solar energy research, development and demonstration, including heating and cooling of buildings, and agriculture and industrial process heating. Also, the Assistant Secretary for Conservation and Solar Energy conducts energy conservation and solar energy commercialization activities and manages the small scale technology program.

§ 1003.20 Assistant Secretary for Resource Applications.

The Assistant Secretary for Resource Applications develops, recommends and implements policies and programs:

(a) To reduce regulatory and financial constraints to resource development and utilization, and to demonstrate and encourage the commercial use of developed energy supply technologies;

(b) To carry out the Department's energy resource leasing functions, power marketing and transmission functions (involving the supervision and direction of the power administrations), and uranium enrichment and resource evaluation functions; and

(c) To manage the naval petroleum and oil shale reserves and to acquire, construct, maintain and operate a strategic petroleum reserve.

(d) To manage research, development and technology demonstration in geothermal energy and electric energy systems.

§ 1003.21 Assistant Secretary for Fossil Energy.

The Assistant Secretary for Fossil Energy develops, recommends, and implements research, development and demonstration programs involving fossil fuels, i.e., coal, petroleum and gas. The program effort includes applied research, technology development, engineering development and technology demonstration related to fossil fuel extractions, recovery, supply, conversion and utilization.

§ 1003.22 Assistant Secretary for Nuclear Energy.

The Assistant Secretary for Nuclear Energy is the principal advisor to the Secretary of nuclear fission energy and is responsible for the development and execution of DOE programs dealing with nuclear research and development, both civilian and naval, and for the management of nuclear waste. More specifically, the Assistant Secretary for Nuclear Energy:

(a) Develops and recommends a comprehensive fission energy plan as part of the National Energy Plan;

(b) Plans, develops, and executes DOE programs for nuclear waste management;

(c) Plans, develops, and executes DOE programs for nuclear reactor research and development, including improvements in the productivity, safety and efficiency of commercial nuclear power plants; development of liquid metal and gas cooled fast breeder reactors and advanced systems for the separation of uranium isotopes on a large scale as required for the nuclear fuel cycle; and assembly and analysis of nuclear power plant performance data in the U.S. and foreign electric utility industries, with an evaluation of the technical and economic aspects of nuclear power plant systems;

(d) Provides technical analyses and advice concerning non-proliferation, and represents the Department in all reviews connected with the International Nuclear Fuel Cycle Evaluation program; and

(e) Reviews, evaluates, and makes recommendations concerning alternative nuclear systems and new reactor and fuel cycle concepts and evaluates proposed advanced nuclear fission energy concepts and technical improvements.

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§ 1003.23 Assistant Secretary for Defense Programs.

The Assistant Secretary for Defense Programs is responsible for conducting experiments and performing research and development work in the military application of atomic energy, and production and surveillance of nuclear weapons, as well as for other functions connected with security and the national defense. The Division of Military Application, an organizational unit of the Department, reports to the Assistant Secretary for Defense Programs. The Assistant Secretary for Defense Programs is the principal advisor to the Secretary on national security matters and the manager of the nuclear weapon program and the weapon complex as well as the programs of inertial confinement fusion, international security affairs, classification, safeguards and security, special materials production, and nuclear materials.

§ 1003.24 Assistant Secretary for Environment.

The Assistant Secretary for Environment is responsible for providing policy guidance to assure Department-wide compliance with environmental, health, and safety laws and regulations. The Assistant Secretary for Environment coordinates activities under the National Environmental Policy Act, Pub. L. 91–190 independently reviews and approves environmental impact statements and assessments prepared within the Department, and provides Departmental comments on environmental impact statements and assessments prepared elsewhere. In addition, the Assistant Secretary for Environment develops, recommends and implements a comprehensive program of research and development related to health, safety, and environmental aspects of energy technologies and programs.

§ 1003.25 Assistant Secretary for Policy and Evaluation.

The Assistant Secretary for Policy and Evaluation is the principal advisor to the Secretary for formulating and recommending national energy policy and for carrying out a systematic evaluation of DOE programs to ensure that each contributes toward attainment of National Energy Policy goals. More specifically, the Assistant Secretary for Policy and Evaluation:

(a) Develops, analyzes and recommends major energy policy initiatives and ensures the review and integration of policy proposals developed in the various program areas;

(b) Conducts in-depth analyses and evaluations of Departmental policies and continual assessments of the Nation's energy situation;

(c) Ensures that Departmental policies and programs promote competition and antitrust policies in the energy industries and that consumer impact is considered in Department decision making;

(d) Develops and analyzes legislative proposals to support policy objectives;

(e) Manages the Department of Energy Planning, Programming, and Budgeting System;

(f) Analyzes and evaluates DOE regulatory proposals for consistency with Departmental policy and effectiveness in achieving policy objectives and oversees development of regulatory impact analyses;

(g) Formulates DOE policy for use of tax incentives, loan guarantees, cooperative agreements, loans, grants, price supports and other financial incentives;

(h) Develops pricing policies for DOE energy services and products; and

(i) Prepares and coordinates the National Energy Policy Plan.

§ 1003.26 Assistant Secretary for International Affairs.

The Assistant Secretary for International Affairs formulates and recommends the international component of overall national energy policy; assesses world energy supply vulnerability and the international implications of U.S. contingency plans; develops Departmental positions for international negotiations; supports development and implementation of U.S. international nonproliferation policies, including international energy programs, coordinates cooperative international energy programs; and maintains relationships with foreign governments and international energy organizations and supporting international organizations.

§ 1003.27 Office of Energy Research.

The Office of Energy Research is headed by a Director who advises the Secretary on physical research programs; well-being and management of the multipurpose laboratories (excluding the weapons complex); education and training for basic and applied research activities, including financial assistance for such research activities, and monitors the Department's energy research and development programs for undesirable duplication or gaps. The Director of Energy Research develops, recommends and implements basic and physical research programs, magnetic confinement fusion energy programs, and selected advanced research and technology programs.

§ 1003.28 Office of Alcohol Fuels.

The Office of Alcohol Fuels is headed by a Director who is responsible for research, development, engineering, testing, evaluation, and demonstration programs designed to support increased production of biomass derived alcohol fuels and the development of a biomass-derived alcohol industry. Also, the Director of the Office of Alcohol Fuels is responsible for encouraging the development and utilization of biomass-derived alcohol, reducing and removing barriers to the effective utilization of such fuels; and managing Federal assistance programs for alcohol fuels production in the nature of loans, loan guarantees, price supports, purchase agreements, and grants.

§ 1003.29 Office of Inspector General.

The Office of Inspector General is headed by the Inspector General who reports to, and is under the general supervision of, the Secretary. The Inspector General is the principal advisor to the Secretary concerning the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations of the Department, including the Federal Regulatory Commission. More specifically, the Inspector General:

(a) Supervises, coordinates and provides policy direction for auditing, investigating, and inspecting activities relating to the promotion of economy and efficiency in the administration of, or the prevention or detection of fraud or abuse in, programs, and operations of the Department and its contractors;

(b) Recommends policies for, and conducts, supervises, or coordinates other activities carried out or financed by the Department for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, the programs and operations for the Department;

(c) Recommends policies for, and conducts, supervises, or coordinates relationships between the Department and other Federal agencies, State and local Government agencies and other non-governmental entities with respect to the prevention and detection of fraud and abuse in, programs and operations administered or financed by the Department, and the identification and prosecution of participants in such fraud or abuse; and

(d) Keeps the Secretary and the Congress fully and currently informed concerning fraud and serious problems,

abuses, and deficiencies relating to the administration of Department programs and operations.

§ 1003.30 Office of Minority Economic Impact.

The Office of Minority Economic Impact is headed by a Director, who is the principal advisor to the Secretary on the effect of energy policies, regulations, and other actions of the Department on minorities and minority business enterprises. The Director, Office of Minority Economic Impact provides management and technical assistance to minority education institutions and minority business enterprises, and provides, as appropriate, financial assistance in the form of loans to minority business enterprises as a means of assisting them in participating in contract activities of the Department.

§ 1003.31 Office of Hearings and Appeals.

(a) The Office of Hearings and Appeals is headed by a Director who is responsible for carrying out certain adjudicatory functions, and for issuing orders of an adjudicatory nature with respect to any program within the Department except those within the jurisdiction of the Federal Energy Regulatory Commission (FERC) and the Board of Contract Appeals (BCA). The Office of Hearings and Appeals is a separate organizational entity within the Department. Certain Decisions and Orders issued by the Office of Hearings and Appeals are subject to review on appeal by the Federal Energy Regulatory Commission.

(b) The Director, Office of Hearings and Appeals:

(1) Issues all decisions with respect to a request that an applicant be excepted or exempted from the obligation that it comply with any general regulatory or other mandatory program within the jurisdiction of the Department (other than FERC or BCA) and supervises discoveries, conducts formal adversary hearings and decides motions made during the course of its consideration of these submissions;

(2) Makes final determinations on behalf of the Department in connection with Proposed Remedial Orders issued by the Economic Regulatory Administration;

(3) Analyzes and decides all applications and petitions that seek review of any order of an adjudicatory nature issued by an organization of the Department (other than FERC and BCA);

(4) Considers and decides Applications for Stay filed in connection with any appeal of exception proceedings, Applications for Modification or Recision, and Petitions for Special Redress filed under Section 21 of the Federal Energy Administration Act;

(5) Publishes in the Federal Register and circulates among interested parties notices concerning official proceedings and the issuance of Decisions and Orders and maintains a Public Docket Room pursuant to existing regulatory requirements; and

(6) Participates in the development of and concurs in all procedural regulations of the Department and issues, reviews, and keeps current those rules of practice and procedure for which the Department is responsible.

§ 1003.32 Special Assistant to the Secretary.

The Special Assistant to the Secretary assists the Secretary and the Deputy Secretary in those areas concerned with the internal management of the Department and performs special projects as assigned. The Special Assistant to the Secretary also supervises the activities of the Office of the Executive Secretary.

§ 1003.33 Executive Assistant to the Secretary.

The Executive Assistant to the Secretary assists the Secretary and the Deputy Secretary in external liaison activities, including liaison with the Executive Office of the President, and supervises the activities of the Office of Consumer Affairs and the Office of Intergovernmental Affairs. The Executive Assistant to the Secretary is also responsible for providing administrative support to the Department's Energy Coordinating Committee, and for performing special projects as assigned.

§ 1003.34 Office of Legislative Affairs.

The Office of Legislative Affairs is headed by the Assistant to the Secretary for Legislative Affairs who is the principal advisor to the Secretary, Deputy Secretary and the Under Secretary on Congressional matters. The Office of Legislative Affairs is the Departmental contact with the Congress.

§ 1003.35 Office of Public Affairs.

The Office of Public Affairs is headed by the Assistant to the Secretary for Public Affairs who is the principal advisor to the Secretary, Deputy Secretary and Under Secretary on public and media relations. The Assistant to the Secretary for Public Affairs recommends public affairs policy and manages the overall public affairs program for the Department, integrating the public affairs activites of Headquarters program organizations and field elements.

§ 1003.36 Office of Intergovernmental Affairs.

The Office of Intergovernmental Affairs is headed by the Director of Intergovernmental Affairs who is the principal advisor to the Secretary, Deputy Secretary and Under Secretary on DOE relations with State and local governments, Indian tribes and associations, and labor organizations. The Office of Intergovernmental Affairs communicates DOE policy and program decisions to and facilitates the exchange of policy-related information between the Department and State/local governments and Indian tribes. Also, the Director provides day-to-day supervision of the Regional Representatives of the Secretary, including the coordination of assignments made to the Regional Representatives of the Secretary.

§ 1003.37 Office of Consumer Affairs.

The Office of Consumer Affairs is headed by the Director of Consumer Affairs who is the principal advisor to the Secretary, Deputy Secretary and Under Secretary on consumer and energy education activities. The Director of Consumer Affairs is responsible for responding to citizen-oriented energy initiatives, assuring a public review of proposed DOE programs and policies and serving as Advisory Committee Management Officer for the Department.

§ 1003.38 Office of the Controller.

The Controller is responsible for the overall management and control of the Department's financial resources; for Department-wide budget formulation and execution; for Departmental accounting practices and procedures; for developing, implementing and maintaining the Departmental project management system for major operating programs; for controlling the establishment of management information systems; for determining the cost of Departmental products and services furnished to others; and for establishing policies and procedures for administration of the Department's construction program and providing central DOE functional direction over construction program and project planning and execution.

§ 1003.39 Directorate of Administration.

The Director of Administration is responsible for personnel management; for organization and management analysis; for Headquarters administrative services; for internal DOE labor relations, equal opportunity programs, and wage and salary administration at contractor operated facilities of the Department; for

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automatic data processing and telecommunications policy; for automatic data processing equipment acquisition and management; for Departmental facility energy management; for real property management; for site selection policy, and for oversight of the industrial relations functions at the Government owned, contractor operated facilities of the Department.

§ 1003.40 Directorate of Procurement and Contracts Management.

The Director of Procurement and Contracts Management is responsible for all procurement, Federal assistance agreements, contracting, personal property management and related business activities of the Department, and therefore establishes and maintains Departmental policies, regulations, standards and procedures; enters into, extends and modifies contracts, Federal assistance instruments, (e.g., cooperative agreements, grants, loan guarantees, loans, price supports, etc.) and settles terminations thereof; enters into, extends and modifies agreements between the DOE and other governmental agencies; approves subcontracts and extensions, modifications, and settlement of terminations thereof; makes the final determination in bid protest cases and notifies the contracting officer of the course of action to be taken; develops issues, maintains, and enforces policies, procedures and plans to assure equitable treatment of all elements of the private sector, provides operational procurement and Federal assistance support to Headquarters elements; and develops, issues, and maintains Department policies, standards, procedures and systems pertaining to personal property management and to the Defense Production Act priorities and allocations programs.

§ 1003.41 Office of the Executive Secretary.

The Executive Secretary is responsible for providing support services to the Secretary, Deputy Secretary, Under Secretary and staff members of the Office of the Secretary in the areas of document control and action assignment coordination and tracking.

§ 1003.42 Office of Equal Opportunity.

The Director of the Office of Equal Opportunity is responsible for all equal opportunity programs of the Department, excluding equal opportunity programs applicable to the contractor operated facilities of the Department which are administered by the Director of Administration. The Director of the Office of Equal Opportunity is responsible to the Secretary, Deputy Secretary, and Under Secretary with respect to equal opportunity matters affecting programs under the primary cognizance of each major Departmental component.

§ 1003.43 Board of Contract Appeals.

The Board of Contract Appeals, as an adjudicatory arm of the Department, has jurisdiction over appeals involving contracts, debarments, work hour standard cases, and contract adjustment applications. The Board is also responsible for appeals involving: all contract-related disputes; invention appeals; and financial assistance instruments such as cooperative agreements, grants, and loan guarantees. The Board, under statute, or acting for the Secretary, hears and resolves, with finality, appeals pertaining to contract-related matters, and to such other delegated matters as appropriate and not inconsistent with its adjudicatory functions.

Subpart C—Power Administrations

§ 1003.61 Alaska Power Administration.

(a) The Alaska Power Administration markets power from and operates hydroelectric power projects, and performs certain water resource and power studies and planning functions. The Alaska Power Administration is headed by an Administrator and is a separate and distinct organizational entity within the Department; the Secretary exercises the functions of the Alaska Power Administration by and through the Administrator.

(b) The mailing address for the Administrator is:

Administrator,
Alaska Power Administration,
U.S. Department of Energy,
P.O. Box 50,
Juneau, Alaska 99802.

§ 1003.62 Bonneville Power Administration.

(a)The Bonneville Power Administration markets power from Federal hydroelectric power projects located in the Pacific Northwest. Its authority includes authority to sell revenue bonds to the Treasury and to spend revenues without appropriation. The Bonneville Power Administration is headed by an Administrator and is a separate and distinct organizational entity within the Department; the Secretary exercises the functions of the Bonneville Power Administration by and through the Administrator.

(b) The mailing address for the Administrator is:

Administrator,
Bonneville Power Administration,
U.S. Department of Energy,
P.O. Box 3621,
Portland, Oregon 97208.

§ 1003.63 Southeastern Power Administration.

(a) The Southeastern Power Administration markets power from hydroelectric power projects a ten-state area of the southeastern United States. The Southeastern Power Administration is headed by an Administrator and is a separate and distinct organizational entity within the Department; the Secretary exercises the functions of the Southeastern Power Administration by and through the Administrator.

(b) The mailing address for the Administrator is:

Administrator,
Southeastern Power Administration,
U.S. Department of Energy,
Samuel Elbert Building,
Elberton, Georgia 30635.

§ 1003.64 Southwestern Power Administration.

(a) The Southwestern Power Administration markets power from hydroelectric power projects in a six-state area of the southwestern United States. The Southwestern Power Administration is headed by an Administrator and is a separate and distinct organizational entity within the Department; the Secretary exercises the functions of the Southwestern Power Administration by and through the Administrator.

(b) The mailing address for the Administrator is:

Administrator,
Southwestern Power Administration,
U.S.Department of Energy,
P.O. Drawer 1619,
Tulsa, Oklahoma 74101.

§ 1003.65 Western Area Power Administration.

(a) The Western Area Power Administration performs power marketing functions which include the sale and distribution of power produced at Federal hydroelectric generation facilities and construction, operation, and maintenance of transmission lines and attendant facilities in 15 western States. The Western Area Power Administration is headed by an Administrator and is a separted and distinct organizational entity within the Department; the Secretary exercises the functions of the Western Area Power Administration by and through the Administrator.

(b) The mailing address for the administrator is:

Administrator,
Western Area Power Administration,
U.S. Department of Energy,
P.O. 3403,
Golden, Colorado 80401.

Subpart D—Regional and District Offices

§ 1003.71 Regional Representatives of the Secretary.

(a) The Secretary of Energy is represented in each of the ten Standard Federal Regions, established by Office and Management and Budget Circular No. A–105, by a Regional Representative for such Region. The Regional Representatives of the Secretary may be contacted at the addresses set forth below. Each Regional Representative is spokesperson for the Secretary in the region. Duties also include liaison with the State Governors to establish Regional Energy Advisory Boards; assuring effective regional outreach programs including interaction with regional business, labor, and consumer groups; involving, as appropriate, regional groups in Departmental decision-making; providing feedback to the Department on the effects of Departmental policies and programs; and performing other non-regulatory tasks as assigned in areas such as regional planning, conservation, energy resource development, and energy data collection.

(b) The mailing addresses of the Regional Representatives of the Secretary are:

Region and Address

I.—Regional Representative, U.S. Department of Energy, Analex Building—Room 700, 150 Causeway Street, Boston, Massachusetts 02114.
II.—Regional Representative, U.S. Department of Energy, 26 Federal Plaza, Room 3206, New York, New York 10007.
III.—Regional Representative, U.S. Department of Energy, 1421 Cherry Street, 10th Floor, Philadelphia, Pennsylvania 19102.
IV.—Regional Representative, U.S. Department of Energy, 1655 Peachtree Street, N.E., 8th Floor, Atlanta, Georgia 30309.
V.—Regional Representative, U.S. Department of Energy, 175 West Jackson Boulevard, Room A–333, Chicago, Illinois 60604.
VI.—Regional Representative, U.S. Department of Energy, P.O. Box 35228, 2626 West Mockingbird Lane, Dallas, Texas 75235.
VII.—Regional Representative, U.S. Department of Energy, 324 East Eleventh Street, Kansas City, Missouri 64106.
VIII.—Regional Representative, U.S. Department of Energy, P.O. Box 26247—Belmar Branch, 1075 South Yukon Street, Lakewood, Colorado 80226.
IX.—Regional Representative, U.S. Department of Energy, 333 Market Street, San Francisco, California 94105.
X.—Regional Representative, U.S. Department of Energy, 1992 Federal Building, 915 Second Avenue, Seattle, Washington 98174.

§ 1003.72 District Managers of the Economic Regulatory Administration.

(a) The field structure of the Economic Regulatory Administration (ERA) is divided into six districts, each headed by an ERA District Manager. The ERA District Managers each exercise supervisory and program responsibilities for all ERA field activities in the District with the exception of the functions of the Special Counsel for Compliance. These activities are: petroleum allocations, enforcement, fuels conversion, and utility power supply and reliability. Many of the ERA field components reporting to District Managers are collocated with the Regional Representatives of the Secretary. However, ERA programmatic activities are separate from the external relations and other activities performed by the Regional Representatives of the Secretary.

(b) The mailing addresses of the ERA District Managers are:

District and Address

Northeast.—ERA District Manager, U.S. Department of Energy, 1421 Cherry Street, Philadelphia, Pennsylvania 19102.
Central.—ERA District Manager, U.S. Department of Energy, 324 East 11th Street, Kansas City, Missouri 64106.
Southeast.—ERA District Manager, U.S. Department of Energy, 1655 Peachtree Street, N.E., Atlanta, Georgia 30309.
Rocky Mountain.—ERA District Manager, U.S. Department of Energy, 1075 South Yukon Street, P.O. Box 26247—Belmar Branch, Lakewood, Colorado 80226.
Southwest.—ERA District Manager, U.S. Department of Energy, 2626 West Mockingbird Lane, P.O. Box 35228, Dallas, Texas 75235.
Western.—ERA District Manager, U.S. Department of Energy, 333 Market Street, San Francisco, California 94105.

§ 1003.73 Regional Offices of the Federal Energy Regulatory Commission.

(a) The regional offices of the Federal Energy Regulatory Commission are responsible for the investigation of electric power system resource requirements; load interruptions, reductions and accidents; and power plant fuel supplies and environmental issues. In addition, the regional offices conduct field portions of power surveys and coordinate emergency preparedness planning and Coastal Zone Management at the field level.

(b) The mailing addresses are:

Region and Address

Atlanta.—Regional Engineer, Federal Energy Regulatory Commission, 730 Peachtree Building, Room 500, Atlanta, Georgia 30308.
Chicago.—Regional Engineer, Federal Energy Regulatory Commission, 230 South Dearborn Street, Chicago, Illinois 60604.
Fort Worth.—Regional Engineer, Federal Energy Regulatory Commission, 819 Taylor Street, Room 9A–05, Fort Worth, Texas 76102.
New York.—Regional Engineer, Federal Energy Regulatory Commission, 26 Federal Plaza, Room 2207, New York, New York 10007.
San Francisco.—Regional Engineer, Federal Energy Regulatory Commission, 333 Market Street, Sixth Floor, San Francisco, California 94105.

Subpart E—Field Installations

§ 1003.81 Field installations generally.

In addition to the Departmental Headquarters in Washington, D.C., the Power Administrations, described in Subpart C of this part, and the Regional and District Offices described in Subpart D of this part, the Department is responsible for, and conducts major activities through, a wide variety of field installations. Many of these installations are, in turn, responsible for individual laboratories, test facilities, sub-offices, satellite installations, area offices and other subordinate organizational elements not described herein. The subsequent sections of this subpart describe the principal field installations reporting to or otherwise controlled by Departmental officials.

§ 1003.82 Field installations: Under Secretary.

The five multi-program Operations Offices, which report to the Under Secretary, are responsible for the implementation of a wide range of Departmental research, development, and demonstration programs. The functions of the Operations Offices include procurement, contract management, and project management, as well as oversight of the major Government owned, contractor operated facilities of the Department. The mailing addresses of these offices are:

(a) Manager and Regional Representative, Chicago Operations and Regional Office, U.S. Department of Energy, 9800 South Case Avenue, Argonne, Illinois 60439.
(b) Manager, Idaho Operations Office, U.S. Department of Energy, 550 Second Street, Idaho Falls, Idaho 98401.
(c) Manager, Oak Ridge Operations Office, U.S. Department of Energy, P.O. Box E, Oak Ridge, Tennessee 37830.
(d) Manager, Richland Operations Office, U.S. Department of Energy, 825 Jadwin Avenue, P.O. Box 550, Richland, Washington 99352.

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(e) Manager, San Francisco Operations Office, U.S. Department of Energy, 1333 Broadway, Oakland, California 94612.

§ 1003.83 Field installations: Assistant Secretary for Resource Applications.

The field installations listed below are each headed by a Manager who reports to the Assistant Secretary for Resource Applications:

(a) *Strategic Petroleum Reserve Project Management Office.* The Strategic Petroleum Reserve Project Management Office is the major field office of the Strategic Petroleum Reserve Program. The mission is to construct and maintain facilities to store crude oil to diminish U.S. vulnerability to severe crude oil supply interruption. The mailing address is:

Project Manager, Strategic Petroleum Reserve Project Management Office, U.S. Department of Energy, 900 Commerce Road East, New Orleans, Louisiana 70123.

(b) *Naval Petroleum Reserve in California.* The Naval Petroleum Reserve in California manages the exploration, conservation, development, and operation of the Naval Petroleum Reserves located in California. The mailing address is:

Director, Naval Petroleum Reserves in California, U.S. Department of Energy. P.O. Box 11, Tupman, California 93276.

(c) *Naval Petroleum and Oil Shale Reserves in Colorado, Utah, and Wyoming.* Naval Petroleum and Oil Shale Reserves in Colorado, Utah and Wyoming are administered through an Office in Casper, Wyoming. The mission of the organization is to explore, prospect, conserve, develop, use and operate the Naval Petroleum Reserves located in the states above. The mailing address is;

Director, Naval Petroleum and Oil Shale Reserves in Colorado, Utah and Wyoming—NPR–3, U.S. Department of Energy, 400 East Forest Street, Suite 311, Casper, Wyoming 82061

(d) *Grand Junction Office.* The primary mission of the Grand Junction Office is to conduct a program to make increasingly reliable estimates of the nation's uranium resources and to determine areas favorable to uranium deposits. The Grand Junction Office also estimates uranium production capability; develops and evaluates improved exploration, assessment and production technology; administers leasing of mineral lands; and carries out activities relating to environmental effects of uranium mining and milling operations. The mailing address of the Office is:

Manager, Grand Junction Office, U.S. Department of Energy, 2597 B–¾ Road (South Redlands), Grand Junction, Colorado 81502.

§ 1003.84 Field installations; Assistant Secretary for Environment.

(a) The Environmental Measurements Laboratory is responsible for evaluating the exposure of man to environmental radiation, radioactivity, and other toxic materials. It develops and improves techniques for studying pathways of contaminants from source to man and applies new technology developments to the detection and analysis of ionizing radiation, traces metals and other pollutants.

(b) the mailing address for the laboratory is:

Director, Environmental Measurements Laboratory, U.S. Department of Energy, 376 Hudson Street, New York, New York 10014.

§ 1003.85 Field installations: Assistant Secretary for Fossil Energy.

The five Energy Technology Centers and two Mining Technology Centers, which report to the Assistant Secretary for Fossil Energy, conduct in-house research and development activities and manage small technology base projects in the area of fossil energy. The Centers and their mailing addresses are:

(a) Energy Technology Centers (ETC's)

(1) Director, Bartlesville energy Technology Center, U.S. Department of Energy, P.O. Box 1398, Bartlesville, Oklahoma 74003.

(2) Director, Grand Forks Energy Technology Center, U.S. Department of Energy, Box 8213, University Station. Grand Forks, North Dakota 58202.

(3) Director, Laramie Energy Technology Center, U.S. Department of Energy, P.O. Box 3395, University Station, Laramie, Wyoming 82071.

(4) Director, Morgantown Energy Technology Center,U.S. Department of Energy, P.O. Box 880, Morgantown, West Virginia 26505.

(5) Director, Pittsburgh Energy Technology Center, U.S. Department of Energy, 4800 Forbes Avenue, Pittsburgh, Pennsylvania 15213.

(b) Mining Technology Centers (MTC's):

(1) Director, Carbondale Mining Technology Center, U.S. Department of Energy, P.O. Box 2587, Carbondale, Illinois 62901.

(2) Director, Pittsburgh Mining Technology Center, U.S. Department of Energy, 4800 Forbes Avenue, Pittsburgh, Pennsylvania 15213.

§ 1003.86 Field installations: Assistant Secreatry for Nuclear Energy.

The field installations listed below report to the Assistant Secretary for Nuclear Energy:

(a) The Naval Reactors Offices in Pittsburgh and Schenectady administer the operations of atomic power laboratories and test facilities devoted to nulcear propulsion systems. The mailing addresses of these offices are:

(1) Manager, Pittsburgh Naval Reactors Office, U.S. Department of Energy, P.O. Box 109, West Mifflin, Pennsylvania 15122.

(1) Manager, Schenectady Naval Reactors Office, U.S. Department of Energy, P.O. Box 1069, Schenectady, New York 12301.

The Clinch River Breeder Reactor Plant Project Office is charged with design, licensing, construction, and testing of the nations's first large scale liquid sodium cooled breeder reactor power plant, and with operating the plant as part of a utility system. The mailing address of the project office is:

(1) Director, Clinch River Breeder Reactor Plant Project Office, U.S. Department of Energy, P.O. Box U, Oak Ridge, Tennessee 37830

(c) the Fast Flux Test Facility Project Office manages the contractor operations of a sodium-cooled fast flux reactor designed specifically for irradiation testing of reactor fuels and materials. The mailing address of the facility is:

(1) Director, Fast Flux Test Facility Project Office, U.S. Department of Energy, 825 Jadwin Avenue, Richland, Washington 99352.

§ 1003.87 Field installations; Assistant Secretary for Defense Programs.

The field installations listed below report to the Assistant Secretary for Defense Programs:

The Albuquerque Operations Office is primarily responsible for management of the nuclear weapons research, development, and production complex which includes 13 installations in 10 states. In addition, the office manages projects for other departmental programs including solar, geothermal, fossil and fusion reaserch. The mialing address is:

Manager, Albuquerque Operations Office, U.S. Department of Energy, P.O. Box 5400, Albuquerque, New Mexico 87115.

(b) The Nevada Operations Office is assigned responsibility for nuclear weapons testing and other related programs at the Nevada Test Site. The mailing address is:

Manager, Nevada Operations Office, U.S. Department of Energy, P.O. Box 14100, Las Vegas, Nevada 89114.

(c) The Savannah River Operations Office is responsible for energy research and development; production of special nuclear materials primarily for national defense, and related environmental research activities. The mailing address is:

Manager, Savannah River Operations Office, U.S. Department of Energy, P.O. Box A, Aiken South Carolina 29801

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Monday
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Part X

Department of Defense

Corps of Engineers, Department of the Army

Amendments to Real Estate Handbook

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DEPARTMENT OF DEFENSE

Corps of Engineers

Department of the Army

32 CFR Part 644

[EP 405-1-2]

Amendments to Real Estate Handbook

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: This amendment revises a previously published section to reflect the renaming of one of the Divisions within the Directorate of Real Estate of the U.S. Army Corps of Engineers. This amendment also describes the existing procedures of the Corps of Engineers relating to disposal of real property. The procedures are included in the Real Estate Handbook (Engineer Pamphlet 405-1-2) and replace Engineer Regulations 405-1-900, 405-1-901, 405-1-902, 405-1-903, 405-1-904, 405-1-906, 405-1-907, 405-1-908, 405-1-909, 405-1-910, 405-1-911, 405-1-913, 405-2-999, 405-3-905, 405-3-916, 405-23-912, and 405-34-915.

EFFECTIVE DATE: October 8, 1900.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie L. Pitchford, Jr., Chief, Programs Division, Real Estate Directorate, Office of the Chief of Engineers, Washington, DC 20314 (202-272-0522).

SUPPLEMENTARY INFORMATION: On 15 January 1979 a final rule was published in the **Federal Register** (44 FR 3168) and amended on 8 February 1979 (44 FR 8184), 30 May 1979 (44 FR 31116), and 19 June 1979 (44 FR 35219) to describe existing procedures pertinent to certain other real estate activities of the Corps of Engineers. Further amendments will be published as existing Engineer Regulations are changed to the new format of the Real Estate Handbook.

Since this handbook only provides procedural guidance to personnel of the Office of the Chief of Engineers and Corps of Engineers field operating agencies having real estate responsibilities, notice of proposed rulemaking and the procedures thereto are considered unnecessary.

Date: October 3, 1980.

Forest T. Gay, III,

Colonel, Corps of Engineers, Executive Director, Engineer Staff.

In consideration of the above, paragraph (a) of § 644.184 of Subpart D is revised to read as indicated below, and Part 644 is amended by adding Subpart F and changing the Table of Sections to read as set forth below:

§ 644.184 Responsibilities

(a) The Director of Real Estate, OCE, acting for and on behalf of the Chief of Engineers, has been delegated authority and responsibility for the administration of this program. There has been established within the Directorate of Real Estate the Realty Services Division which constitutes a central office of control responsible for supervision, inter-agency coordination, development of policies and procedures, Congressional liaison, and processing of appeals

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Authority.—5 U.S.C. 301; 10 U.S.C. 3012.

Subpart F—Disposal

§ 644.311 General.

Subpart F sets forth general authority, responsibilities, procedures, methods, and guidance for the performance of real property disposal functions.

§ 644.312 Applicability.

Subpart F is applicable to Division and District Engineers having real estate responsibilities.

§ 644.313 Authority.

The major portion of real property disposal actions performed by the Corps of Engineers is predicated on authority derived from the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471, et seq.), hereinafter referred to as the Federal Property Act, and the rules, regulations and delegations of authority issued by the General Services Administration (GSA) thereunder. Other authorities relating to the disposal of military real property are found in AR 405–90. The Army and Air Force Basic Real Estate Agreements covering disposal of Air Force real estate are found in AR 405–5 and AFR 87–15.

§ 644.314 Rules and regulations of the General Services Administration (GSA).

Under the rules, regulations and delegations of authority issued by GSA under the Federal Property Act, the military departments are authorized to dispose of the following:

(a) Real property under its control (except land withdrawn or reserved from the public domain), together with the improvements thereon and related personal property, which has a value of less than $1,000.

(b) Leases, permits, licenses, easements, or similar interests, including Government-owned improvements on the premises, unless it is determined that the interest should be included with the disposal of other property being reported to GSA for disposal.

(c) Fixtures, structures, and improvements of any kind to be disposed of without the underlying land.

(d) Standing timber and embedded gravel, sand, and stone to be disposed of without the underlying land.

§ 644.315 Disposal priorities.

Consistent with the best interest of the United States and with applicable laws and regulations, the following priorities should be followed in disposing of real property no longer needed by the Departments of the Army and Air Force:

(a) Transfer to other Department of Defense agencies and the U.S. Coast Guard.

(b) Transfer to other Federal agencies.

(c) Conveyance to eligible non-Federal agencies.

(d) Sale to the public.

§ 644.316 Environmental considerations.

The National Environmental Policy Act of 1969 (NEPA), as amended, (42 U.S.C. 4321 et seq.) directs that a five point Environmental Impact Statement (EIS) be prepared, circulated among interested Federal, State and local agencies, and filed with the Environmental Protection Agency (EPA) before a major Federal action is taken which affects the quality of the human environment. This may include some disposals. No major disposal action will be undertaken where the Corps of Engineers is the disposal agency, or is acting for the disposal agency, until the required EIS has be submitted to the EPA unless a "Finding of No Significant Impact" (FONSI) has been prepared for the action, or if the action is classified as a "categorically excluded" item because it has no significant effect on the environment. The Environmental Assessment is subject to review and approval in accordance with instructions found in AR 200–1 and AR 200–2 (to be printed) for military real property disposal, and the forthcoming Engineer Regulation for civil works real property disposal. Where property is reported to GSA for disposal, GSA is responsible for compliance with NEPA.

§ 644.317 Preserving historic landmarks and properties.

Purposes of the National Historic Preservation Act of 1966, as amended, (16 U.S.C. 470) and Executive Order 11593, Protection and Enhancement of the Cultural Environment (13 May 1971) will be set forth in Subpart H (to be published) and the authorities there cited also apply to the disposal of real property. Specific policy guidance in connection with disposals having historic significance is published in AR 200–1 and AR 405–90 for military real properties and in ER 1105–2–460 for civil works real properties.

(a) The Criteria of Adverse Effect on eligible properties may occur under conditions which include but are not limited to:

(1) Destruction or alteration of all or part of a property.

(2) Isolation from or alteration of the property's surrounding environment.

(3) Transfer or sale of a property without adequate conditions or restrictions regarding preservation, maintenance, or use.

(b) It is normally intended that the agency responsibilities under Section 106 of the National Historical Preservation Act of 1966 and Executive Order 11593 run concurrently with the NEPA review process. However, obligations pursuant thereto are independent from NEPA requirements and must be complied with even when an environmental impact statement is not required.

§ 644.318 Compliance with State Coastal Zone Management Programs.

Subpart H will outline the provisions of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.). These provisions also apply to the disposal of land or water resources when the action is subject to the Federal consistency requirements of the Act and when the disposal is consistent with an approved state management program.

§ 644.319 Protection of wetlands.

The requirements of Executive Order 11990, Protection of Wetlands, 42 FR 26961, (24 May 1977) are applicable to the disposal of Federal lands and facilities, and the policy and procedures implementing the Order will be set forth in Subpart H (to be published).

§ 644.320 Floodplain management.

The requirements of Executive Order 11988, Floodplain Management, 42 FR 26951, (24 May 1977) and its implementation will be outlined in Subpart H (to be published). In accordance with ER 1165–2–26, paragraph 13, when civil works property in floodplains is proposed for disposal to non-Federal public or private parties, the Corps of Engineers shall reference in the conveyance those uses that are restricted under Federal, State and local floodplain regulations and attach other restrictions to uses of the property as may be deemed appropriate.

§ 644.321 Nondiscrimination covenant.

As required by Section 101–47.307–2 of the Federal Property Management Regulations (FPMR), substantially the following covenant will be included in all deeds or other disposal instruments to public bodies when the sale is negotiated under Section 101–47.304.9(4) of the FPMR:

The grantee convenants for itself, its heirs, successors, and assigns and every successor in interest to the property hereby conveyed, or any part thereof, that said grantee and such heirs, successors, and assigns shall not discriminate upon the basis of race, color, religion, age, sex, handicap, or national origin in the use, occupancy, sale, or lease of the property, or in their employment practices conducted thereon. The convenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this convenant without regard to whether it remains the owner of any land or interest therein in the locality of the property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

§ 644.322 Disposition of proceeds from disposal.

(a) *Land and Water Conservation Fund.* Except as provided in (b) and (c) of this section and unless otherwise obligated by existing or future acts of Congress, all proceeds received from any civil works project disposal of surplus real property or related personal property under the Federal Property Act, shall be covered into the land and water conservation fund in the Treasury of the United States (16 U.S.C. 460L–5(a), FPMR Section 101–47.307–6). This includes the net proceeds from the sale of timber and structures.

(b) *Department of Defense Family Housing Management Account.* Section 501(b) of Public Law 87–554, as amended, 42 U.S.C. 1594a–1, provides that the proceeds from the disposal of family housing of the Department of Defense, including related land and improvements, shall be transferred to Family Housing Management Account, Defense. This does not include civil works housing, or houses on land acquired for military purposes unless the housing was specifically acquired to house military personnel. This means that excess military family housing and related land and improvements should be reported to GSA on Standard Form 118 separate and apart from Reports of Excess for other portions of an excess installation. Particular care should be taken to ensure that the following statement be included in each such report of excess to GSA:

Net proceeds from the sale of family housing, including related land and improvements, shall be remitted to the Department of Defense for deposit to Family Housing Management Account, Defense (97 X 0700).

(c) *Proceeds from Sale or Transfer of Property Acquired.* Under Section 5 of the Act of 13 June 1902, as amended (33 U.S.C. 558), the proceeds from a sale or transfer of buildings or other improvements on river and harbor improvement projects may be credited to the appropriation for the work for which the property was acquired. Buildings or other improvements, including timber, which are on nonexcess land come within the purview of this law. Where both land and buildings or other improvements are excess, proceeds from the sale of land and buildings, or either one, will be deposited in the land and water conservation fund as provided in paragraph (a) of this section.

§ 644.323 Neutral language.

Wherever the words "man", "men", or their related pronouns appear in this Subpart, either as words or as parts of words (other than when referring to a specific individual), they have been used for literary purposes and are meant to include both female and male sexes.

§ 644.324 [Reserved]

§ 644.325 [Reserved]

Procedure for Placing Real Property in Excess Status

§ 644.326 Army military real property.

Military real property, including industrial real property, under the control of the Department of the Army will be placed in excess status as outlined in AR 405–90.

§ 644.327 Air Force military real property.

Military real property under the control of the Department of the Air Force will be placed in excess status as outlined in AFR 87–4.

§ 644.328 Army military leased property.

(a) Department of the Army command installations or parts thereof held by lease, permit, or other similar right of occupancy, excess to the needs of the using service will be reported direct to the Division of District Engineer for disposition wherever essential continuing operations of the installation will not be adversely affected, and the annual rental does not exceed $50,000.

(b) Division Engineers are authorized to make the finding that leased real estate of the Corps of Engineers, where essential continuing operations of the installation are not adversely affected, and the annual rental does not exceed $100,000, is excess and to take necessary action to cancel or otherwise dispose of leases.

(c) Any leased command real estate not coming within the category outlined in (a) and (b) of this section will not be considered by the Division Engineer as excess until notice is received from the Chief of Engineers (COE) that the property has been placed in excess status in accordance with AR 405–90.

§ 644.329 Army Civil Works real property.

(a) *Fee-Owned Land and Easements.* (1) Action by Division/District Engineer (DE). When the DE is of the opinion that real property acquired in fee or easement for a civil works project is no longer required for such purpose, he will submit a report and recommendation to HQDA (DAEN–REM) WASH DC 20314, accompanied by:

(i) A brief description of the character or nature of the land with an appropriately marked map showing the

approximate acreage consideration to be excess. Detailed perimeter descriptions need not be procured or furnished with the report and recommendation for excessing.

(ii) Description of buildings and improvements.

(iii) Information as to circumstances that might hinder or prevent disposition, e.g. remoteness of location, unfavorable topography, and lack of legal access.

(iv) Information as to when and how the property was acquired.

(v) Information as to the estate which the Government has in the land, reservations and exceptions in and to the Government's title, and outstanding interests granted by the Government or reserved or excepted in the acquisition of the land, will be stated with particularity. The map or plat will delineate any grant, exception or reservation, such as telephone, telegraph, electric transmission, oil, gas, and water lines.

(vi) Purchase price of lands (estimate if only a portion of original tract), buildings and improvements acquired with the lands, and the cost of buildings and improvements, if any, constructed by the United States.

(2) *Action by the Office of the Chief of Engineers.* When the value of an easement interest reported pursuant to (a)(1) of this section does not exceed $1.500, OCE will make the final determination of excess and authorize action accordingly. In the case of fee-owned land regardless of value, or easement interests having a value in excess of $1,500, when OCE finds that no requirement for the property exists, a recommendation will be made to the Secretary of the Army that authority be granted for disposal of the property.

(b) *Leaseholds.* When the DE is of the opinion that real property acquired by lease for a civil works project is no longer required for such purpose, and after screening the property for other Federal requirements in accordance with Sections 644.333 through 644.339, he will take necessary action to terminate the lease in accordance with the procedure outlined in § § 644.444 through 644.471.

§ 644.330 [Reserved]

§ 644.331 [Reserved]

§ 644.332 [Reserved]

Screening, Reassignment and Transfer of Real Property

§ 644.333 Screening for defense needs.

Real property which becomes excess to the needs of any element of the Army or Air Force will be screened against requirements of other Department of Defense (DOD) agencies and the U.S. Coast Guard in order to promote and obtain the most efficient and complete utilization of real property before disposing of it.

(a) *Procedure for Screening Army Military Property.* Screening for defense requirements with respect to base closures publicly announced by the Secretary of Defense or Secretary of the Army which result in excessing of real property will not be accomplished unless directed by HQDA (DAEN–ZCI) Washington DC 20314. Instructions to screen will be included in the disposal directive transmitted to the DE when such action is desired. In the absence of such instructions, it is presumed that DOD has negatively evaluated all possible requirements of DOD agencies before making the public announcement.

(1) *Fee-owned Land.* Screening is required in all other cases unless specifically directed otherwise. Property will be screened simultaneously against other Army requirements, and for Navy, Air Force, Coast Guard, and Defense agency requirements. The property should also be screened against known Department of the Army Civil Works requirements.

(i) The DE will dispatch a screening message promptly upon receipt of an excess directive or recommendation pursuant to AR 405–90. The sample screening message in EP 405–1–2 at Figure 11–1, or a letter similar in form and content will be used without substantial deviation.

(ii) All action addressees and parties listed for information on Figure 11–1 in EP 405–1–2 will be included, except that Air Force real property in Hawaii will be screened with the Commander-in-Chief, Pacific Air Forces, in lieu of HQ, USAF. The appropriate major Army command, when not the using command, will be listed as an action addressee.

(iii) In no case will screening be deferred unless authorized by DAEN–REM. At the expiration of the screening period (normally 30 days) a report of results will be forwarded and subsequent action initiated as provided in paragraph (e) of this section.

(iv) For certain cases, most frequently in connection with base realignments or Executive Order 11954 surveys, accelerated screening procedures are set out in AR 405–90.

(2) *Copehart and Wherry Housing Projects.* Due to the complicated financial arrangements under which such projects are constructed and operated, the disposal thereof, whether separately or as a part of a larger installation, requires careful study. In order to assure maximum time in which to discover and evaluate problems arising in each of such cases, the DE will notify HQDA (DAEN–REM) Washington DC 20314, by teletype, immediately upon receipt of information of an installation commander's recommendation of excess involving Capehart and acquired Wherry housing projects. Included with this notice will be advice on the source of utilities and any problems of which the DE may be aware.

(b) *Leaseholds, Buildings and Improvements.* Leaseholds, buildings, and other improvements will not be screened formally within the Department of the Army (DA). When such property is made available or disposal under AR 405–90 and § 644.326 through 644.329, it will be screened by the responsible DE with the Air Force, Coast Guard, and Navy and against known Army military and civil works requirements within the Division. Screening with the Air Force of leaseholds having an annual rental in excess of $50,000 will be addressed to HQ, USAF. Other Air Force screening under this subparagraph will be with local Air Force installations. Screening with the Navy will be addressed to the appropriate naval district. Screening with the Coast Guard and Defense agencies will be with the local representatives of those agencies. Property under the jurisdiction of GSA which has been assigned to the DA or Department of the Air Force (DAF) for use is not subject to this screening procedure, but the DE will determine whether such property would serve any current unfulfilled real property acquisition directives pending in his office.

(1) *Family Housing Leases.* Family housing leases under authority of Section 515, Public Law 84–161, 69 Stat. 352, as amended and extended, will be terminated promptly upon determination that the property is excess to the needs of the using command, without screening for other requirements.

(2) *Limit Screening.* Screening which would serve no useful purpose is to be avoided. Screening of buildings and improvements on sites needed for approved construction should be limited as construction schedules require. The DE will take timely action to minimize additional cost and rental payments due to screening and may, at his discretion, limit screening of leaseholds and improvements to be removed from the site to informal notices to appropriate local Defense agencies. The DEs are authorized to waive screening of nonassignable or short term interests in real property when such screening would serve no useful purpose.

(3) *Notice of Restoration Requirements.* All screening notices of

leaseholds and improvements available for off-site removal will indicate that transferees will be required to perform necessary site restoration as a prerequisite to obtaining transfer and will reflect the extent of restoration required.

(c) *Procedure for Screening Civil Works Property.* Buildings and improvements, leaseholds, and fee-owned land that have been determined excess to civil works requirements in accordance with this Part will be screened with the appropriate major Army and local service commanders, and with the Navy, Air Force, Coast Guard, and Defense agencies. (GSA property assigned to the Army for use is not subject to formal screening hereunder but will be screened against known acquisition directives or requirements in the DE office.) Except to the extent that DEs determine they are inappropriate, screening procedures for civil works property will be the same as for Army military property.

(d) *Screening of Air Force Property.* HQ, USAF and the major Air Force commands screen Air Force real property before authorizing disposal action by the Corps of Engineers in accordance with AFR 87–4. DEs will act on requests for disposal action on buildings and improvements and leased property received directly from major Air Force commands which conform with AFR 87–4. Disposal directives on fee-owned land and easements will be issued by HQ, USAF and referred through DAEN–REM.

(e) *Report on Screening and Related Actions.* Immediately following the screening of fee-owned land, the DE will forward to DAEN–REM a report of the results of the screening (with comments and recommendations where a further Army or other Defense requirement is indicated). This report will serve as one of the basis of a determination whether the property is excess to the rquirements of the DOD. Upon dispatch of the screening report, the DE will proceed with further action pursuant to Sections 644.340 through 644.347 and Sections 644.385 through 644.389. No report on screening of civil works property is required unless there is a request for transfer or reassignment of the property screened.

(f) *Property with an Estimated Value of $50,000 or Less.* If the property has an estimated value of $50,000 or less, the determination that the property is excess to Army requirements will be made by the Department of the Army without referral to DOD, and the Chief of Engineers will direct the DE accordingly. Upon receipt of this disposal directive, prompt action will be taken to report the property to GSA or take other disposal action as appropriate.

(g) *Estimated Value in Excess of $50,000.* If military property has an estimated value in excess of $50,000, it must be reported to the Armed Services Committees of Congress pursuant to Title 10, United States Code, Section 2662. The final Army determination of excess and recommendations to the Assistant Secretary of Defense (MRA&L) to approve the proposed disposal report to the Armed Services Committees by the Chief of Engineers, utilizing Real Estate Disposal Report, ENG Form 2187R, are combined in a single action. The Chief of Engineers will advise of DOD approval of the proposed disposal when made. Upon receipt of this information responsible Division and District Engineers will furnish GSA a preliminary report of excess. The preliminary report of excess will be finalized, upon receipt of instructions from the Chief of Engineers. This procedure is also applicable to Air Force disposals. If the preliminary report of excess is sufficiently complete and accurate, it may be finalized by letter or simple statement on Standard Form 118, Report of Excess Real Property.

(h) *Date of Excess for Reporting Purposes.* From the above, it will be noted that where property has an estimated value in excess of $100,000, the determination that the property is excess to the requirements of the Department of the Army is, in effect, made concurrently with the determination that the property is excess to the requirements of the DOD, or is approved for transfer to another military department. For all practical purposes, these determinations are best evidenced by the Assistant Secretary of Defense's approval of the proposed disposal. The date of approval may be used as the date the property was determined excess to Army requirements for reporting purposes.

§ 644.334 Reassignment and transfer procedures.

Reassignment refers to the changing of the administrative or command jurisdiction of real property from one command to another within the same military department. Reassignments may be accomplished by the Secretary or the staff without prior approval of the DOD or the Armed Services Committees of the Congress. *Transfer* refers to changing the jurisdiction for using and administering real property from one military department to another.

(a) *Reassignment Procedures—Army.* (1) *Military.* Reassignments of military real property are accomplished pursuant to a directive from DAEN–REM. These are not real estate disposal actions.

(2) *Civil Works.* Reassignments from civil works to military jurisdiction, and vice versa, are accomplished pursuant to directive or approval of the Secretary of the Army based on the recommendations of the Chief of Engineers.

(3) *Information Required.* Information to support recommendation for reassignments of military or civil real property to another using service of the Army, or to change the military or civil accountability within the Corps, will be furnished by the DE to DAEN–REM as follows:

(i) Reference to excess directive, if any.

(ii) Description and map of lands.

(iii) Date, manner, and cost of acquisition of land and improvements.

(iv) Reference to any encumbrances which might affect the reassignment and use.

(v) Proposed effective date of reassignment.

(vi) Proposed new use.

(b) *Reassignment of Air Force Property.* The Air Force Staff reassigns real property within the Department of the Air Force.

(c) *Transfer of Military Property.* Procedure for transfer among military departments is substantially the same as for transfer to other Federal agencies, and is set forth in §§ 644.400 through 644.443 and §§ 644.472 through 644.500.

§ 644.335 Screening of excess DOD property for nondefense Federal agency needs.

(a) *Screening by GSA.* (1) GSA will screen all excess real property reported to it for disposal, to determine whether the property is surplus to all Federal agencies.

(2) GSA will screen certain classes of excess real property which must be reported to it for screening, even though the Department of the Army will act as the disposal agency (§§ 644.348 through 644.367).

(3) Under the FPMR, Federal agencies are allowed 30 days to advise whether there is a tentative or firm requirement and another 30 days to determine and advise whether the tentative requirement is firm. Where there is a firm requirement, agencies are allowed an additional 60 days to prepare and submit a formal request for transfer pursuant to FPMR Section 101–47.203–7. The DE should obtain from GSA information on the status of screening if advice is not furnished promptly after expiration of the screening period.

(b) *Screening by Corps of Engineers.* Properties which are not reported to

GSA for disposal or screening will be screened by the DE with nondefense Federal agencies at the same time they are screened with Defense agencies. Screening of such properties will be limited to agencies that maintain local offices and may be done on an informal basis. The DE may waive screening of nonassignable and short term interests in real property when they determine such screening will serve no useful purpose. When screening discloses no requirement, the property will be determined surplus and disposed of.

§ 644.336 Notices to Departments of Interior (DI); Health and Human Resources (HHR); Education; and Housing and Urban Development (HUD).

Simultaneously with screening under § 644.335 notices of availability will be given to DI of land suitable for public park and recreation or an historical monument site; to HHR and/or Department of Education property suitable for educational purposes or to protect the public health, and to HUD of property for housing and related facilities (Section 101–47.203.5 FPMR). Where such notice is given, these departments will be notified promptly, if screening discloses another Federal requirement for the property. They will also be notified if there is no other Federal requirement and the property is determined surplus.

§ 644.337 [Reserved]

§ 644.338 [Reserved]

§ 644.339 [Reserved]

Clearances—Army Military Real Property

§ 644.340 Reports to the Armed Services committees.

(a) Sections 644.340 through 644.347 describe the responsibilities of the Chief of Engineers in, and prescribes procedures for, clearing proposals for certain leasing and for disposals of Army real property with the Department of Defense and the Armed Services Committees of the Senate and House of Representatives. (The Air Force obtains its own clearance.) It is applicable to Division and District Engineers having military real estate responsibility. Clearance is not required for civil works properties.

(b) Title 10 U.S.C. 2662 as amended by P.L. 96–418, dated 10 Oct. 1980, provides, in part that:

(a) The Secretary of a military department, or his designee, may not enter into any of the following listed transactions by or for the use of that department until after the expiration of 30 days from the date upon which a report of the facts concerning the proposed transaction is submitted to the Committees on Armed Services of the Senate and of the House of Representatives:

* * * * *

(3) A lease or license of real property owned by the United States, if the estimated annual fair market rental value of the property is more than $100,000.

(4) A transfer of real property owned by the United States to another Federal agency or another military department or to a State, if the estimated value is more than $100,000.

(5) A report of excess real property owned by the United States to a disposal agency, if the estimated value is more than $100,000.

(6) Any termination of modification by either the grantor or grantee of an existing license or permit of real property owned by the United States to a military department, under which substantial investments have been or are proposed to be made in connection with the property by the military department.

* * * * *

(c) This section applies only to real property in the United States, Puerto Rico, Guam, the American Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands. It does not apply to real property for river and harbor projects or flood control projects, or to leases of Government-owned real property for agricultural or grazing purposes or to any real property acquisition specifically authorized in a Military Construction Authorization Act.

(d) A statement in an instrument of conveyence, including a lease, that the requirements of this section have been met, or that the conveyance is not subject to this section, is conclusive.

(c) While not specifically required by 10 U.S.C. 2662, DOD has directed that all proposed relinquishments of public domain land will be reported to the Armed Services Committees where (1) the area exceeds 500 acres or (2) the estimated fair market value of the property exceeds $100,000.

§ 644.341 Clearance with the Armed Services committees.

(a) Prior to a final report of excess, or transfer to another Federal agency or a State, of any Government-owned military real property with an estimated value, including the value of existing improvements, in excess of $100,000, the proposed disposal must be reported to the Committees. Also, proposals to outlease military real property for other than agricultural or grazing purposes must be reported if the estimated annual rental consideration is more than $100,000. A formal appraisal for estimating value need not be made. Reports to the Committees pertaining to Army military real property are made by the Chief of Engineers, and copies of reports are furnished the two senators of the State, and the congressman of the district where the property is located. Reports pertaining to Air Force property are made by that department. DEs, upon request, will assist Air Force commands in assembling the required data.

(b) For Army property, data will be furnished in the format shown in Figure 11–2 (ENG Form 2187–R, Real Estate Disposal Report) in EP 405–1–2, and three copies forwarded to HQDA (DAEN–REM) WASH DC 20314. The information should be submitted within three weeks after dispatch of the screening message, or within three weeks after receipt of the disposal directive when screening is not required.

(c) Clearance for transfer to another military department is obtained by the acquiring department. However, HQDA (DAEN–REZ–L) obtains clearance for transfer of Army property to a nondefense Federal agency where authorized by law.

§ 644.342 Prior approval of Department of Defense.

(a) DOD Instruction 4165.12 requires advance approval by the Assistant Secretary of Defense (MRA&L) of disposal actions requiring congressional committee clearance. DOD approval is also required for withdrawal from excess of real estate, or an interest in real estate, which has an estimated fair market value in excess of $100,000.

(b) The data submitted pursuant to § 644.341 will be used to obtain DOD approval of projects to be submitted to the Armed Services Committees. Appropriate information will be furnished to obtain required DOD approval of withdrawals from excess.

§ 644.343 Additional data for clearance with the committees.

To support Army witnesses appearing before the Armed Services Committees, and to satisfy other information requirements, include the following data when forwarding the ENG Form 2187–R:

(a) Four copies of a site plan of the installation, clearly depicting the property involved, and four copies of a real estate map, color coded with legend, showing the area and acreage to be excessed.

(1) Segment-size maps and plans should be of excellent quality, current, show accurate acreages, and current name of installation. They must be clearly visible at a distance of 30 feet or more.

(2) Basic color codes for maps are:
Red—Excess Area(s)
Green—Retained Area
Yellow—Previously Excessed Area(s)
Black or Dark Blue—Installation Boundary, heavy definition
Other Colors—for other purposes

(b) Copy of last utilization inspection report, plus information as to when and how the excess property was last used by the Army.

(c) Basis for disposal: Base closure announcement; E. O. Survey; Command Report of Excess; Report of Availability; etc.

(d) A list of and general terms of any outgrants in effect on the excess area.

(e) Wether continuing military activities are housed on the property proposed for disposal; arrangements which have been made to provide space for these activities; estimated cost of leasing or converting space for that purpose, and any other costs of closing or severing the installation and relocating the activities.

(f) Whether civilian employees will lose their employment, number of employees involved, and to what extent they can be employed elsewhere.

(g) Details of significant history of acquisition, development, and disposal, if not included in ENG Form 2187–R. Include official name of installation and former designations.

(h) Description of any related or off-post family housing, giving number of units, type (MCA-Capehart, etc.) acreage of site, land and construction costs, and distance from installations served.

(i) Probable impact on local economy, if any.

(j) Estimate of any annual savings in operating and maintenance costs.

(k) Statement as to exchange potential of excess area.

(l) Estimate of value, including any restrictions or limitations on prospective use of the land by subsequent users.

(m) Character and use of area in vicinity of excess area.

(n) Care and custody costs for excess area.

(o) Staff/MACOM coordination.

(p) Environmental Assessment.

(q) Any other pertinent information, e.g., any adverse factors severance or undesirable impact on utility systems, and local interest in acquiring the property.

(r) Congressional district in which the property is located.

§ 644.344 Coordination with GSA.

At the time of formal submission of the Disposal Report to the Armed Services Committees, DAEN-REM will furnish copies to the DEs and to the central and regional offices of GSA as advance information to permit preliminary disposal planning.

§ 644.345 [Reserved]

§ 644.346 [Reserved]

§ 644.347 [Reserved]

Reports of Excess Real Property and Related Personal Property to General Services Administration (GSA)

§ 644.348 Delegation of authority to division and district engineers.

Much of the authority and responsibility of the COE as real estate agent for the Departments of the Army and Air Force to report excess real and related personal property to GSA in accordance with the provisions of the Federal Property Act, and the Federal Property Management Regulations (FPMR), subpart 101–47.3, has been delegated to Division and District Engineers having responsibility for real estate operations. Final reports will be made only after the property has been determined excess to the needs of the Department of Defense, in accordance with §§ 644.333 through 644.339, and has been cleared with congressional committees, if required, in accordance with §§ 644.340 through 644.347.

§ 644.349 Excess property reported for disposal.

The following types of excess real property must be reported to GSA for disposal, utilizing Standard Form 118 (SF 118), Report of Excess Real Property, as set forth in section 644.355:

(a) *Fee-owned.* All fee-owned property, with improvements and related personal property, which has, in the opinion of the DE, an estimated fair market value of $1,000 or more, together with such incidental, related, or appurtenant lesser interests, with or without Government-owned improvements and related personal property, held under lease, permit, license, easement, or similar instrument, useful in connection therewith, except property which is subject to:

(1) A lease containing an option to purchase;

(2) A lease containing a right of first refusal to purchase or to lease for an additional period;

(3) A right in the Government's grantor to the reversion of title; or

(4) A right reserved by the Government's grantor to repurchase the property.

(b) *Public Domain.* All withdrawn or reserved public domain lands, together with the improvements thereon which, in the opinion of the DE, have an estimated fair market value of $1,000 or more, and for which notification, pursuant to 43 CFR 2374.1, has been received from the Bureau of Land Management (BLM) that the property, in effect, has been determined excess within the meaning of the Federal Property Act (see §§ 644.376 through 644.384 for procedures for disposal of public domain land). Minerals in the lands will be specifically excluded from the report of excess unless BLM advises otherwise. The Report of Excess, SF 118, will include as a part of the report on the Government's legal title, a true copy of the notice by BLM to report the property excess, and information of record in BLM on claims, if any, by other agencies, and any claims or encumbrances under the public land laws.

§ 644.350 Excess property reported for screening.

The types of property described in (a), (b), and (c) of this section must be reported to GSA for screening purposes notwithstanding the fact that the military departments have been delegated authority to dispose of such property. SF 118 will be utilized for reporting these types of property without attaching the usual Schedules A, B, and C and supporting documents. A notice should be included on the face sheet that "This report is made for screening purposes only. Disposal will be accomplished by the Corps of Engineers." Distribution of copies of such reports within the departments is not required.

(a) Land held under lease, permit, license, easement, or similar instrument, other than listed in § 644.351.

(b) Improvements located on nonexcess Government-owned lands (including improvements on land held under permit from another Government agency; see §§ 644.376 through 644.384, for preliminary procedure in these cases), which improvements, with related personal property, in the opinion of the responsible DE, have an estimated net salvage value of $1,000 or more.

(c) Improvements located on excess land held under lease or other temporary right of occupancy (even though a report of excess is not required for the leasehold itself or other right of occupancy interest under the criteria set forth in § 644.351) when, in the opinion of the DE, the improvements have a net salvage or market value of $1,000 or more, and it is proposed to dispose of such improvements by sale for removal from site. The report of excess will contain an estimate of the cost of restoration necessary under the lease that a prospective transferee agency will be required to assume.

(d) Fee-owned property which, with improvements and related personal property, in the opinion of the

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responsible Division or District engineer, have a fair market value of $1,000 or more, and is not reported to the General Services Administration for disposal as a result of the exception contained in § 644.349(a) (because of outstanding options to purchase, etc., or because of rights retained by the Government grantor).

§ 644.351 Excess property exempted from reporting.

No reports to GSA are required for the following types of excess property:

(a) Fee-owned land, including withdrawn or reserved public domain land which BLM made available for disposal under Federal Property Act, together with the Government-owned improvements and related personal property, having an estimated fair market value of less than $1,000 in the opinion of the responsible DE;

(b) Excess non-Government-owned property held under lease, license, easement, or similar instrument, when Government-owned improvements with related personal property have a net salvage value of less than $1,000 or are to be transferred to the owner of the land in restoration settlement, and;

(1) The lease or similar instrument is subject to termination by the grantor of the premises within nine months; or

(2) The remaining term of the lease or similar instrument, including renewal rights, will provide for less than nine months of use and occupany; or

(3) A provision of the lease or similar instrument would preclude transfer to another Federal agency or disposal to a third party; or

(4) The lease or similar instrument provides for use and occupany of space for office, storage, and related facilities, which does not exceed a total of 2,500 square feet; or

(5) Where additional rental would be incurred.

(c) Excess Government-owned improvements on nonexcess land, which improvements, in the opinion of the responsible DE, have a net salvage value of less that $1,000.

(d) Leased space assigned by GSA, and land and improvements owned by and permitted from other Government agencies.

(e) Excess timber, sand, gravel and stone-quarried products, and growing crops on nonexcess land regardless of value.

(f) Excess withdrawn or reserved public domain lands, regardless of value, which are offered to and accepted by the Department of the Interior for return to the public domain pursuant to §§ 644.376 through 644.384.

(g) Prefabricated movable structures, such as Butler-type storage warehouses and quonset huts, and housetrailers (with or without undercarriages), which are located on nonexcess land for off-site use. These types of structures shall be reported as personal property in accordance with FPMR, Part 101–43, Utilization of Personal Property. However, when such structures are located on leased or permitted land subjecting the Department to any restoration obligations, the property will be treated as real property for the purpose of satisfying such obligations to the maximum extent feasible.

§ 644.352 Evaluation and reporting of flood hazards.

Pursuant to Executive Order 11296, 10 August 1968, the DE having civil works responsibility for the area where property proposed for disposal is located will evaluate the property (civil or military) for the presence of flood hazards. If such hazards are found, a report will be forwarded to HQDA (DAEN-REM) recommending appropriate restrictions with respect to future uses of the property, or that the property be withheld from disposal. If decision is made to proceed with disposal, detailed information regarding the flood hazard will be reported to GSA on SF 118 as required by FPMR, 101–47.202–2, with the appropriate restrictions with respect to use of the property by a purchaser and his successors. (See ER 1105–2–40 for information on the Flood Plain Management Services Program.)

§ 644.353 Determination of values for reporting.

Where more than one parcel or item of excess property is involved at the same project or installation, the total value of all such parcels or items will be included in determining whether the property has an estimated value of $1,000 or more for the purpose of making reports of excess. Estimates of value should be made by qualified real estate employees, but not necessarily by a professional appraiser.

§ 644.354 Conditional reports of excess.

As an exception to its general policy, GSA has agreed with the Department of Defense to accept reports of excess on some facilities with instructions on their disposal, specifically:

(a) *Defense Industrial Reserve (DIR).* The Defense Industrial Reserve Act 50 U.S.C. 451 et seq., authorizes the Secretary of Defense to determine which excess industrial properties should become a part of DIR and to formulate a national security clause or recapture provisions to preserve the production capacity of the plants for use in the event of a national emergency. Excess DIR plants are reported to GSA for disposal subject to the national security clause or the recapture provisions. (See FPMR Subsection 101–47.306–2 for procedures where GSA is unable to dispose of the property because of the restrictions imposed by the national security clause or recapture provisions.)

(b) *Reserving Property for Civil Defense Purposes.* GSA has agreed to accept reports of excess of missile sites and other facilities having similar protective features, with restrictions on their disposal. DEs will be notified when DOD advises that a specified local government unit is interested in acquiring such property. Reports of excess will specify the local government unit interested. Disposal of the property will be limited to conveyance to the local government unit, with conditions restricting its use to civil defense purposes for a period of 20 years, with reverter to the United States for breach of condition. In appropriate cases, GSA will enter into a temporary lease arrangement if necessary to afford a local government unit an opportunity to obtain the necessary funds for purchase. This procedure is limited to cases where DOD has determined and advised there is a civil defense need. Disposal action will not be delayed pending receipt of such advise.

§ 644.355 Preparation and submission of reports of excess.

(a) *Preparation.* (1) *General.* Reports of excess will be prepared on SF 118, with schedules, in accordance with the instructions contained in FPMR section 101–47.4902, and § 644.349 herein. However, since the type of information called for a Block 9 of standard form (SF) 118 and Columns f, g, h, and i of schedule A is not generally applicable to camps, airfields, etc., such information will be furnished only when it is available and can be furnished without additional cost. Reports of excess will include all related or appurtenant easements, licenses, and related personal property. Decontamination data will be included as prescribed in §§ 644.516 through 644.539. Information on flood hazard will be included as required by § 644.352.

(2) *GSA Regulations.* Pursuant to GSA regulations, all final reports of excess will be made only after the property has been determined excess to the needs of the Department of Defense and will bear the statement: "This property has been screened against the known defense needs of the Department of Defense." Report of excess will indicate that the

provisions of Title 10, United States Code, Section 2662, requiring reports to the Armed Services Committees of Congress, have been met, or that the report of excess is not subject to this section.

(3) *Reports of Excess—Air Force Property.* The Air Force will prepare SF 118, with Schedules A and C, and transmit them to the DE for completion and execution. Land descriptions, title reports, and other data required by the FPMR will be the responsibility of the DE.

(4) *Reports of Excess—Army Property.* DEs will prepare the SF 118 and the schedules for excess Army property.

(b) *Submission.* Reports of excess will be transmitted directly by the DE to the appropriate regional office of GSA. Each DE making such reports of excess will assign a number in Block 1 of SF 118, beginning with No. 1 for the first report and continuing in numerical sequence for succeeding reports made during the calendar year. The number will be preceded by the symbol of the DE making the report and the calendar year e.g., SWF–79–6, for the sixth report submitted by Fort Worth District of Southwestern Division for calendar year 1979.

§ 644.356 Report on Government title.

In all cases where Government-owned land is reported, there shall be attached to and made a part of SF 118 (original and copies thereof), a report prepared by a qualified employee of the holding agency on the Government's title to the property, based upon his review of the records of the agency. The report shall recite:

(a) The description of the property.

(b) The date title vested in the United States.

(c) All exceptions, reservations, conditions and restrictions relating to the title acquired.

(d) Detailed information concerning any action, thing or circumstance that occurred from the date of the acquisition of the property by the United States to the date of the report which in any way affected, or may have affected, the right, title, and interest of the United States in and to the real property (together with copies of such legal comments or opinions as may be contained in the file concerning the manner in which and the extent to which such right, title or interest may have been affected). In the absence of any such action, thing or circumstance, a statement to that effect shall be made a part of the report.

(e) The status of legislative civil and criminal jurisdiction over the land peculiar to the property by reason of it being Government-owned land. If the United States does not hold such legislative jurisdiction, the report on government title should so state.

(f) All exceptions, reservations, conditions and restrictions imposed by higher authority on the property at time of disposal. No additions or substantive changes to these will be made without prior approval from HQDA (DAEN–REM), WASH, DC 20314.

(g) If the property, or any portion of it, has been listed in the National Register of Historic Places, or has been nominated for listing or nomination, this should be included in the SF 118. Specific fixtures and related personal property having possible historic or artistic value should also be included. (See § 644.317 for information on historic preservation.)

§ 644.357 Outgrant instruments, appraisals and muniments of title.

There shall be transmitted with the SF 118 copies of outgrants involving the property reported, all conveyances, encumbrances and other instruments affecting the use and operation of the property, including deeds, mortgages, and agreements covering and licenses to use any patents, processes, techniques, or inventions. Where there is more than one like instrument as, for example, agricultural leases, it may be preferable to list them, locate them on the land use map, and furnish a sample copy. FPMR contemplates that muniments of title will be transmitted with the report of excess. The title report (§ 644.356 above) will state that HQDA (DAEN–REP) WASH DC 20314 is the custodian of title papers and has been requested by the DE to transmit applicable title papers direct to the GSA Regional Office. Accordingly, as soon as practicable after receipt of an information copy of the declaration of excess by the using service, and a disposal directive, the DE will assign a disposal report number and advise DAEN–REP to transmit the pertinent title papers directly to the appropriate GSA Regional Office, citing the disposal report number as a reference. Simultaneous action by DAEN–REP and the DE to assemble necessary reporting data is important to avoid delay of acceptance by GSA of the Report of Excess. If experience should demonstrate that such simultaneous preparation and transmittal of data is not practical in saving time and effort, the DE will arrange in advance for transmittal of the necessary title data from DAEN–REP for incorporation in the Report of Excess before transmittal by the DE to the GSA Regional Office.

§ 644.358 Deposit of proceeds from disposal of family housing in the family housing management account.

(a) Title 42 U.S.C. 1594a–1(b) provides that the proceeds from the disposition of Department of Defense Housing, including related land and improvements, shall be transferred to the DOD Family Housing Management Account for the purpose of debt service. Arrangements have been made between DOD and GSA to implement this law and apply it to excess MCA housing as well as to housing encumbered by mortgage debts such as Capehart and Wherry Housing projects. (See § 644.322(b).)

(b) The agreement with GSA calls for separate identification and description in the Report of Excess (SF 118) of those improvements which are considered family housing within the purview of the law and a request in the report that proceeds from disposal be transferred to the DOD Family Housing Management Account. (The actual transfer of funds will be accomplished at Washington level.)

(c) Where the Report of Excess includes both housing and property not related to housing, separate schedules (SF 118 a and b) will be prepared to cover the housing involved, including related land and other improvements. The housing schedules should be annotated and arranged categorically to show:

(1) Number of structures by type of authorization, i.e. Wherry Act, Capehart Act, Military Construction Authorization Act, Lanham Act, etc.

(2) The number of family units.

(3) Those improvements and collateral facilities which are considered "related" to the housing.

(4) Where reasonably apparent, a description of the acreage or boundaries of the family housing areas as distinguished from other excess lands.

(5) A statement as follows: "Net proceeds from the sale of this family housing, including related lands and improvements, shall be remitted to DOD for deposit to Family Housing Management Account, Defense 97X0700."

§ 644.359 Supplemental information.

The DE will cooperate to the greatest extent practicable in furnishing further information and assistance requested by GSA Regional Offices. However, requests for engineering surveys should be carefully monitored in the interest of economy. When such requests appear excessive or other requests for services appear to require unnecessary expenditures, DAEN–REM will be fully informed, with recommendations, in

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order that the matter may be resolved through appropriate coordination with the GSA central office.

§ 644.360 Reports submitted for screening.

Excess leaseholds and buildings and improvements to be disposed of separately from the land which, pursuant to § 644.350, must be reported to GSA for screening purposes only, will be reported immediately when the property is determined to be excess to the particular military department having jurisdiction. The report will contain the statement: "This property is reported for screening with civilian agencies by GSA prior to its disposal by the Corps of Engineers. The property is being screened within DOD and when the screening has been completed, appropriate certification will be submitted to GSA." Screening against defense requirements, pursuant to §§ 644.333 through 644.339, will then be completed and GSA notified of the result. If such screening results in the development of a requirement by one of the other military services, the Report of Excess will be withdrawn and the transfer of the property to the requesting military service effected. This specialized procedure for this type of property is adopted to allow screening for defense requirements by the Corps of Engineers to be accomplished simultaneously with the screening of civilian agencies by GSA. Where circumstances require that this type of property be screened within a limited period of time, the period should be specified and an explanation set forth on the face of the Report of Excess, as, for example: "Buildings are in the way of planned new construction and must be removed or demolished not later than (date). Accordingly, advice must be received on or before (date) as to whether a requirement exists for the property, or whether it is to be transferred or assigned to another Federal agency for removal within the time specified." If such advice is not received by the time specified, the property should be disposed of without further delay and GSA notified of the action.

§ 644.361 Distribution of report of excess.

Copies of the final Report of Excess (SF 118) will be distributed simultaneously as follows:

(a) Complete copies to: (1) Regional Office, GSA—original and four copies.

(2) District Engineer—one copy.

(b) Division Engineer—one copy of the cover sheet (SF 118), and transmittal letter.

(c) A complete copy, except Schedule C (SF 118c), to HQDA (DAEN–REP) WASH DC 20314 and one copy of the cover sheet to HQDA (DAEN–REM) WASH DC 20314.

(d) Where family housing is involved, one copy of the cover sheet and the pertinent schedules A and B to the Deputy Assistant Secretary of Defense (Installations and Housing), Washington, DC 20301.

§ 644.362 Notice of receipt.

GSA should promptly notify the holding agency of the date of acceptance of each Report of Excess (SF 118). The date GSA will assume the expense of cost and custody as provided in §§ 644.368 through 644.375, will be figured from this date.

§ 644.363 Withdrawals or corrections of reports of excess.

(a) Subject to the approval of GSA, and to such conditions as GSA considers appropriate, Reports of Excess may be withdrawn or corrected at any time prior to disposition of the property, by filing a corrected SF 118 with the regional office of GSA. Corrections and withdrawals will bear the same number as the report of excess to which they pertain, but will bear a letter suffix beginning with "A" for the first correction or withdrawal and continuing in alphabetical sequence for succeeding corrections or withdrawals. "Correction" will be conspicuously stamped on the face of the SF 118 for both withdrawals and corrections. Distribution of requests for withdrawal or correction will be the same as that made of the Report of Excess to which the withdrawal or correction pertains.

(b) Property which is reported to GSA for disposal will not be withdrawn without the prior approval of HQDA (DAEN–REM) WASH DC 20314, nor will return of the SF 118 be accepted without the approval of DAEN–REM. (See §§ 644.340 through 644.347, concerning prior approval of DOD for withdrawals from excess of real property having an estimated fair market value in excess of $50,000.)

§ 644.364 Supply of forms.

Standard forms 118, 118a, 118b, and 118c, are not available in normal Army Adjutant General supply channels. The forms should be procured from GSA.

§ 644.365 [Reserved]

§ 644.366 [Reserved]

§ 644.367 [Reserved]

Care and Custody of Excess and Surplus Property

§ 644.368 Procedures and responsibilities for care, custody, accountability, and maintenance.

(a) *Department of the Army Military Property.* Care, custody, accountability, and maintenance of excess Army military real property will be as prescribed in AR 405–90.

(b) *Department of the Army Civil Works Property.* DEs will retain custody and accountability of all excess civil works real property under their jurisdiction until final disposition is effected.

(c) *Department of the Air Force Property.* Pursuant to AFR 87–4, the Department of the Air Force is responsible for care and custody of excess Air Force real property. However, upon request by the Air Force DEs may assume custody if no costs are involved, or where cost is involved if funds therefor are furnished upon request by the DE.

(d) *Department of Energy (DOE), National Aeronautics and Space Administration (NASA), and Other Federal Agencies.* Where the Corps of Engineers is acting as real estate agent for other Federal agencies, DEs, at the request of the agency, may assume care and custody of excess real property on a reimbursable basis.

§ 644.369 Guidelines for protection and maintenance of excess and surplus real property.

Detailed guidelines are provided in FPMR Subsection 101–47.4913.

(a) *Calculated Risk.* These guidelines, which are binding on holding agencies, embody the principle of calculated risk. In applying this principle, the anticipated losses and deteriorations, including pilferage and vandalism, in terms of realizable values are expected to be less than expenditures to minimize the risks. Normally, where property is of little value, only periodic surveillance is necessary and care and custody forces will not be maintained. However, where property, regardless of realizable value, is potentially an attractive nuisance to children and curiosity seekers, or is inherently dangerous, the public should be protected by guards stationed on the property or by other satisfactory means. Every effort should be made to minimize the cost of care, protection and maintenance consistent with these principles.

(b) *Improvements or Alterations.* FPMR Subsection 101–47.401–5, provides that improvements and alterations to excess and surplus real property may be considered, with the prior approval of GSA, where disposal cannot be made. However, it is not considered likely that a situation will arise in the Corps' disposal operations where such improvements or alterations can be justified. Repairs necessary for protection and maintenance of marketable property will not be undertaken except to prevent serious loss to the Government. Excess equipment or facilities should not be updated or improved. At predisposal conferences, or earlier where practicable, the DE, in coordination with GSA representatives, will furnish specific guidance to the using command as to the minimum acceptable GSA requirement for care and custody. The requirement for minimum maintenance does not extend to historic places. Historic places in excess or suplus status will be maintained in accordance with the letter and spirit of approved Department of the Army criteria for protection, preservation and maintenance of historic places.

§ 644.370 Transfer of custody to General Services Administration (GSA).

(a) Custody of an excess installation reported to the GSA for disposal will continue to be held until GSA transfers to its purchaser or other designee. All expenses pertaining to care, custody and maintenance will be borne by the holding department or agency, except that such expense for property reported to GSA for disposal and not disposed of within 12 months from the date the formal report of excess was received by GSA, shall be assumed by GSA as of the first day of the succeeding quarter of the fiscal year. GSA will give notice of the receipt of the report of excess and will, within 15 days, furnish advice on the acceptability of the report. (See FPMR as amended, Subsection 101–47.202–10.) Any request made to the disposal agency to defer disposal action, or failure to submit an acceptable report, will extend the obligation of the department with respect to expenses for care and custody caused by such deferment. In the event the department is not relieved of custody within the period for which it is obligated to stand the expense thereof, the retention of care and custody thereafter will be reimbursed by the disposal agency. Because of the magnitude of custodial expense for larger installations and the longer periods of time often consumed in effecting their disposal, it is imperative that reports of excess be made as promptly as possible in order that the 12-month period may commence and terminate as soon as possible and the department's expense minimized.

(b) The DE will maintain close liaison with GSA with a view to obtaining prompt transfer of custody and accountability from the department to that agency, and will coordinate transfers between the using service and GSA. However, DEs will not take over custody of an installation or coordinate the transfer of custody until a statement of clearance or a statement that such clearance is not necessary because of the use of the installation has been furnished. Under GSA procedures, the department generally retains the responsibility for care, custody, and accountability of its excess facilities until final disposition is made by GSA. Until that time, the property is to be carried on the real property inventory of the department.

§ 644.371 Contracting for care and custody.

Care and custody of excess and surplus installations should be performed by contract whenever it is legally possible and more economical to do so. Due to the temporary nature of such services and the extreme variations in kind and fluctuations in quality of such services required from time to time, contracting for custodial service will often prove to be more economical and efficient. In contracting for such services which include watchman, patrol and protective services, attention is invited to the prohibition against hiring detective agencies pursuant to the following Act of Congress: "* * * An individual employed by the Pinkerton Detective Agency, or similar organization, may not be employed by the Government of the United States or the Government of the District of Columbia." (5 U.S.C. 3108). This has been construed to apply to employees of organizations which provide services of a detective agency, but not to organizations which are organizations to render watchman, patrol or protective services and do not include detective services as one of their functions (26 Comp. Gen. 303). Custodial and protective services referred to herein are the type ordinarily procured by contract by GSA and other Government agencies charged with the responsibility for care and handling of excess and surplus real property pending its disposal in accordance with the FPMR.

§ 644.372 Care and custody through interim use.

(a) *General.* Upon receipt of initial information that real property is excess, the DE should promptly initiate planning for interim productive use. Interim use should be planned to save care and custody expense but must not interfere with, delay, or retard transfer of the property to another Federal agency or its disposal otherwise. Any permit or lease must have the prior approval of GSA, and shall be for a period not exceeding one year and shall be revocable on 30 days' notice (FPMR Sections 101–47.203–9 and 101–47.312).

(b) *Permits to other Federal Agencies.* Interested Federal agencies will be afforded a priority in the interim use of excess and surplus real property. The permit will require the Federal agency to perform care and custody and perform routine maintenance. 41 CFR Section 101–47.203–8, provides for temporary assignment, conditional transfers, and rental or user charges for use of excess property by Federal agencies.

(c) *Leases for Non-Federal Use.* Leases of excess and surplus property are made under authority of the Federal Property and Administrative Services Act of 1949, as amended and AR 405–80. Such leases are subject to the Economy Act (40 U.S.C. 303b), and must be for a money consideration only. The lessee can and should, however, be made responsible for ordinary maintenance and restoration as required by standard Corps of Engineers lease forms. Where a portion of an excess or surplus installation is leased, it may be advantageous to enter into an agreement with the lessee for care and custody of the remainder. The agreement cannot provide for a reduction of rental for the portion leased. The Economy Act may not apply in some cases where industrial plants are determined excess subject to the National Security Clause or similar recapture conditions. Such cases should be coordinated with DAEN–REM on an individual basis.

§ 644.373 [Reserved]

§ 644.374 [Reserved]

§ 644.375 [Reserved]

Return of Public Domain Lands and Lands Obtained on a Temporary Basis From Another Federal Agency

§ 644.376 Procedure for disposal of public domain land.

(a) Lands withdrawn or reserved from the public domain, together with Government-owned improvements, which have been determined to be excess to the department, after screening with other DOD agencies and

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the U.S. Coast Guard in accordance with §§ 644.333 through 644.339, will be processed for disposal in accordance with 43 CFR 2370–2374 and § 644.381 hereof. The DE will file a Notice of Intention to Relinquish as provided by 43 CFR 2372.1. The notice will be filed in the Bureau of Land Management (BLM) Land Office having jurisdiction.

Excess buildings and improvements on the property should be left in place and no disposal action taken thereon pending further instructions from BLM, unless it is determined that they should be abandoned in accordance with the procedures set forth in §§ 644.472 through 644.500. A copy of the Notice of Intention to Relinquish submitted to the appropriate BLM Land Office will be transmitted to HQDA (DAEN–REM) Washington, D.C. 20314 and to the appropriate GSA regional office.

(b) If any restoration, or other work, is proposed to be performed on the land, the matter will be forwarded to DAEN–REM for prior approval. Where the DE recommends disposition of the land by GSA as excess property rather than return to the public domain, no restoration of the property will be proposed (see 43 CFR 2372.1). Generally, lands which are unimproved, or contain only minor improvements, will be recommended for return to the public domain. Exception to this procedure should be made where development surrounding, or in the vicinity of the land, has changed its character, although the land itself has not been improved. Another exception would be the situation described in § 644.350(d). Generally lands which are extensively improved will be recommended to BLM for disposal as excess property.

(c) If the authorized officer of BLM determines, pursuant to 43 CFR 2372.3, that the conditions prescribed by that regulation have been met and that the land is suitable for return to the public domain, he will notify the DE, as the representative of the holding agency, that the Department of the Interior accepts accountability and responsibility for the property. A copy of this notification will be furnished to HQDA (DAEN–REP) Washington, D.C. 20314.

(d) If the authorized officer of BLM determines, pursuant to 43 CFR 2374.1, that the land is not suitable for return to the public domain because it is substantially changed in character, and GSA concurs in this determination, he will notify the DE to report the land and improvements, with or without minerals, to GSA as excess property. Upon receipt of this notice, the DE will advise DAEN–REP and report the property to GSA on SF 118, Report of Excess Real Property, including the information on claims and encumbrances furnished by BLM under 43 CFR 2374.1 (c). The holding agency has the same responsibility for care, custody, and accountability of excess public domain as for other property reported to GSA for disposal.

§ 644.377 Formal revocation of public land withdrawals and reservations.

When the authorized officer of BLM determines that the land is suitable for return to the public domain, the BLM Land Office will transmit to the DE a draft of public land order (PLO) designed to formally revoke the order or reservation which withdrew or reserved the land. The DE will review the draft PLO for accuracy and return it unsigned. The draft PLO will be transmitted through BLM channels to DAEN–REM for signature of the Secretary of the Army or Air Force and return to the Washington office of BLM.

§ 644.378 Cancellation of permits.

(a) Land obtained by permit, or some other form of instrument, from another Federal agency on a temporary basis which has not been substantially improved while being utilized by the Department, when determined to be excess in accordance with the procedure set forth in §§ 644.326 through 644.332, will be returned to the Federal agency from which it was obtained.

(b) When it is determined by the DE that land obtained by permit, or other form of instrument, from another Federal agency on a temporary basis has been substantially improved while being utilized by the Department, the DE will request DAEN–REM to determine whether the land is excess, or is expected to become excess, to the requirements of the agency from which it was obtained.

(1) If the agency from which the land was obtained advises that the land is excess, or is expected to become excess, to its requirements, the improvements will be reported to GSA on SF 118 in accordance with the procedure described in §§ 644.348 through 644.347, with a statement that the agency from which the land was obtained has advised that the land is excess, or is expected to become excess to its requirements, and that the agency will be or has been requested to reassume administrative control over the land. Coincident with the report of excess, action will be initiated to return the land to the agency from which it was obtained.

(2) If the agency from which the land was obtained advises that the land is not excess, and is not expected to become excess to its requirements, improvements constructed thereon while the property was being utilized by the Department will be disposed of in accordance with the provisions of § 644.381. Where the improvements are substantial, and cannot be utilized effectively by the agency from which the land was obtained, and it appears that the best interests of the Government may not be served by disposal of the improvements for removal from the site, a report, with recommendations, should be forwarded to DAEN–REM for a determination whether the permit and improvements should be reported to GSA for disposal, or whether other action would be appropriate.

(c) The Chief of Engineers, or his duly authorized representatives, will execute and deliver necessary papers effecting the relinquishment of permits and the transfer of real property to other Federal agencies when the installations to which such real property or permits pertain have been determined to be excess. However, where permits were obtained at local level, DEs will effect relinquishment in the same manner. Unless otherwise instructed, no action will be taken by the DE to restore or return the lands pertaining to an industrial installation to the agency which granted the permit. DEs will, however, submit the report required in § 644.379.

(d) Where an installation embraces lands acquired in fee by a military department and lands acquired for temporary use from other departments or agencies, and if return of the latter type of lands to the department or agency which granted the permit would destroy the integrity of the installation or affect its ultimate disposal as a unit, a report will be made to DAEN–REM with recommendations that they will provide disposition instructions.

§ 644.379 Procedure for cancellation of permits.

(a) When permitted land is excess and the permit is to be executed, the DE will submit the following information with his recommendations to DAEN–REM:

(1) Description and location of the property;

(2) Date use was acquired;

(3) Department or agency from which acquired;

(4) Manner of acquisition; that is, by permit or other means, with copy of document;

(5) ENG Form 1440–R, Cost of Restoration (Engineer Estimate and Appraisal), which includes a statement of cost and value of improvements or structures placed on the lands by the department;

(6) Statement of restoration work performed by the department if any;

(7) Statement of local representative of owning agency as to whether restoration will be required, or, where restoration work has been performed, whether such restoration is satisfactory; and

(8) Statement that no clearance of explosives or other harmful elements is necessary because of the manner in which the land was used, or, if otherwise, statement of clearance action taken or necessary.

(b) Upon receipt of the foregoing information, the Chief of Engineers will effect relinquishment of the land by letter. Where the DE has authority to relinquish the land as outlined in § 644.378(c), he will effect relinquishment by letter addressed to the permittor, with a copy to DAEN–REM.

§ 644.380 Restoration of lands made available by other Government agencies.

(a) *Requirement.* Where the Department retransfers real property, the use of which has been obtained from other Federal agencies (including withdrawals from the public domain recommended for return to the public domain) by means of use permits, public land orders, or other methods, the property should be restored to a condition as good as that which existed at the time the department took possession, damages by the elements or by circumstances over which the Department has no control excepted, unless the agency from which the property was obtained expressly waives restoration. Restoration of public domain land will not be initiated until the determination is made that the land is suitable for return to the public domain. Public domain land that is to be reported excess to GSA will not be restored. The procedure enunciated in §§ 644.516 through 644.539 relative to neutralization of unexploded bombs or artillery projectiles located on leased premises applies with equal force to Government-owned lands returned to other Federal agencies and to public domain land that is to be reported as excess for disposal by GSA.

(b) *Authority.* The report of the Senate Appropriations Committee on the DOD Appropriation Bill, 1966 (Senate Report 625, 89th Congress, dated 18 August 1965), contained the following language:

> Such funds as may be required may be used to restore lands under jurisdiction of other Government agencies, damaged while being used for military training purposes under agreement with such agencies.

The Comptroller General considers the foregoing to be a clear expression of Congressional intent, and that authority exists for the Department of the Army to restore (or make payment in lieu thereof) lands of other Federal agencies which have been damaged by the Army while being used under agreement.

(c) *Determination of Restoration Costs.* ENG Form 1440–R, Cost of Restoration, appropriately modified, will be used for the preparation of an estimate of cost of restoration, or salvage or market value, for the purpose of determining the cost of restoration.

(d) *Payments for, or in Lieu of Restoration.* (1) *Work Performed by the Department of the Army.* If the work is performed by the Department, payment will be made from funds available to the office performing the work.

(2) *Work Performed by Controlling Agency.* If the work has been performed by the agency having administrative control over the property, pursuant to agreement with the Department, reimbursement to that agency may be made by properly supported SF 1080, Voucher for Transfer Between Appropriations and/or Funds, from funds available to the DE.

(3) *Payment in Lieu of Restoration.* If the work has not been performed by either agency and a payment is desired in lieu of restoration, the payment is, in effect, an advance of funds. As such, the advance of funds will be accomplished in OCE, based on submission by the controlling agency of SF 1080 properly supported.

§ 644.381 Disposal of buildings and other improvements.

Where improvements have a net salvage value and are not to be reported to GSA for disposal with the land, the permitting agency, or Department of the Interior in the case of public domain land, will be required to reimburse the Army for their net salvage value, or the buildings or improvements will be disposed of in accordance with §§ 644.472 through 644.500.

§ 644.382 [Reserved]

§ 644.383 [Reserved]

§ 644.384 [Reserved]

Predisposal Action

§ 644.385 Record of excess classification.

The DE will establish a record on ENG Form 836A, Real Property Disposal Report, of the excess classification of each Army property and each Air Force property for which a preliminary or final real estate directive has been issued.

§ 644.386 Utilization for other needs.

The DE will determine the feasibility of utilizing each installation classified as excess to fulfill current directives for acquisition of real estate or known or foreseen potential needs of the Army or Air Force, which may have been generated since the screening process. If redistribution for this purpose is deemed advantageous, recommendations will be submitted to HQDA (DAEN–REM) WASH DC 20314 on the proposed action, indicating when excess status was determined and by which element of the Departments of the Army or Air Force.

§ 644.387 Suspension of acquisition action on installations proposed for disposal.

When a fee-owned installation is recommended for excess by the installation commander, or a preliminary or final real estate disposal directive is issued by the Air Force, any pending acquisition in connection with the installation will be suspended, unless the directive provides otherwise. A recommended plan for curtailment of uncompleted acquisition will be submitted to HQDA (DAEN–REA–L) WASH DC 20314. The plan will include the following information: Identification by tract numbers, names of owners, and area of each tract for which an option has been accepted or a declaration of taking filed, but as to which it is considered practicable and economical to obtain cancellation of the option or a stipulation for dismissal of the condemnation proceeding and revestment of title. Specific information as to the extent and nature of demolition of improvements, new construction, or other damages or changes made by the Government to the premises, and the probable cost of restoration in case of such cancellation or stipulation, will be included. Pertinent public relations aspects should also be covered. Generally, tracts on which a declaration of taking has been filed will not be returned to the owners by stipulation for amendment or dismissal of the condemnation proceedings. Exceptions to this may be recommended when shown to be in the best of interest of the United States.

§ 644.388 Army military—screening, clearance, preliminary report of excess, except where an E.O. 11954 survey has been made.

Upon receipt of a copy of the installation commander's recommendation of excess, the DE will take the following actions:

(a) Immediately notify DAEN–REM by teletype, furnishing a brief statement of the real estate included in the recommendation.

(b) Promptly screen the property against Army and other defense

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requirements if required by and in accordance with §§ 644.333 through 644.339, and advise DAEN–REM of the results.

(c) As soon as the screening message is dispatched under § 644.388(b), or immediately upon receipt of a disposal directive from DAEN–REM when screening is not required by §§ 644.333 through 644.339, DEs will prepare and forward:

(1) SF 118, Report of Excess Real Property and other documentation required in reporting the excess property to GSA.

(2) ENG Form 2187–R, Disposal Report, for clearance with DOD and the Armed Services Committees (ASC) of Congress where required in accordance with §§ 644.340 through 644.347. This should be forwarded to DAEN–REZ–L within three weeks of dispatch of the screening message, or receipt of the disposal directive. This schedule will allow the Chief of Engineers to process the disposal assembly through the DA and DOD secretariats and to obtain necessary clearances from the ASC. DAEN–REM will furnish the DE copies of the DOD approval and the report to the ASC. This office will also furnish copies of the ASC report to the Washington and regional offices of GSA, to permit screening with other Government agencies.

(d) DOD approval of the disposal (property having estimated value in excess of $100,000) signifies the property is excess to Defense requirements. Upon receipt of this approval, the DE will forward a preliminary Report of Excess to GSA by transmitting necessary copies of the completed SF 118, with attachments, carefully identified as preliminary. Where screening is negative for property having an estimated value of $100,000 or less, the property is considered excess to Defense requirements and a final report of excess should be forwarded promptly to GSA.

§ 644.389 Army military—modified predisposal procedures where E.O. 11954 surveys have been made.

(a) DEs will be advised of military installations to be surveyed under E.O. 11954 by a DOD or GSA survey team.

(b) If property is to be declared excess as a result of a decision by the Department of the Army, appropriate commanders and DEs will be advised. The major commander will be requested to submit a Report of Excess pursuant to AR 405–90 to HQDA (DAEN–REM) Washington, DC 20314 within 15 days. DEs will be furnished a copy of the report.

(c) Upon receipt of advice that property will be excessed, the DE, in coordination with the installation commander concerned, will commence preparation of ENG Form 2187–R, if required, for submission to DAEN–REZ–L.

(d) When the Report of Excess is approved, DAEN–REM will advise the DE and will request that screening be initiated. The approved report will be promptly referred through channels to the DE for further appropriate action.

(e) The ENG Form 2187–R will be forwarded to DAEN–REM not later than 15 days after receipt of the approved Report of Excess.

(f) As soon as the areas to be excessed are clearly defined, action will be initiated to assemble all necessary data so that the final SF 118 may be submitted to GSA within 30 days after necessary Congressional clearance is obtained under 10 U.S.C. 2662.

(g) When the estimated value of the property does not exceed $100,000 and preparation of an ENG Form 2187–R is not required, the DE, upon being notified of the approval of the Report of Excess, will notify DAEN–REM of the date the SF 118 will be submitted to GSA.

§ 644.390 Executive Order 11954 surveys of civil works properties.

Procedures to be followed by DEs when civil works properties are surveyed by GSA under E.O. 11954 are contained in Chapter 8 of EP 405–1–2.

§ 644.391 Predisposal conference.

(a) Where a substantial Army installation, or portion thereof, is involved, the DE will convene a predisposal conference with representatives of the using command, GSA, and other interested parties. Where an Air Force installation is involved, the Major Air Command will take the initiative in convening the conference. In any cases involving flying facilities, Federal Aviation Administration representatives will be invited. The agenda of the predisposal conference should provide for:

(1) Determinations on maintenance guidelines based on probable future uses of the property with emphasis on agreements concerning responsibility for assumption of care and custody, in accordance with AR 405–90, AFR 87–4, and §§ 644.368 through 644.375.

(2) Review of the SF 118 to assure its acceptability to GSA.

(3) Review with GSA, when appropriate, of the advisability of transferring custody and maintenance responsibilities to GSA at an early date.

(4) Planning for and, to the extent possible, making definite determinations on interim utilization pending disposal by GSA.

(b) It is of utmost importance that excess installations be put to productive use as military operations are phased out. This will do much to lessen the impact of the installation's closing on the economy of the local community. For this purpose, installations, in many cases, will be reported to GSA prior to phase out of military operations. In these cases, the DE has responsibility to insure, to the extent practicable, that other productive use is phased in as military operations are phased out. This can be accomplished only by careful planning and continuous coordination by the DE with using command and GSA. The using command will plan and execute the military phase out. However, the DE will assure that the Report of Excess to GSA specifically identifies and excludes the real and personal property to be retained by the military department. This information is required by GSA for disposal purposes.

(c) A report on the predisposal conference will be forwarded to DAEN–REM. Any difficulties indicated by GSA will be summarized in the report, along with any other problems encountered or foreseen.

(d) When requested, and on an individual project basis, the DE will prepare a real estate disposal study concerning the transfer of custody and maintenance responsibilities to GSA prior to final disposal. This study will be developed in conjunction with appropriate using command and GSA representatives. Its purpose will be to determine whether the transfer of the excess property to GSA would be more economical and in the best interest of the Government. Important benefits to DOD agencies would be reduction in expenditures and personnel of the military departments for such functions. Copies of the study will be furnished the using command concerned for timely review and recommendations.

§ 644.392 Air Force—preliminary report of excess.

The DAF will issue a preliminary real estate disposal directive when a disposal project is forwarded to the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) for clearance. (Air Force screens its own properties for other defense requirements and clears the disposal with DOD and the Armed Services Committees of the Congress.) When the preliminary real estate disposal directive is received, the DE, unless directed otherwise, will proceed to perform all necessary actions in coordination with the installation commander concerned, for submission of a preliminary Report of Excess to GSA.

§ 644.393 Final report of excess to GSA.

Where a preliminary Report of Excess is made to GSA, the DE will promptly finalize the report upon receipt to the final Air Force disposal directive. In all cases where a disposal is reported to the Armed Services Committee, the DE will furnish HQDA (DAEN–REM) advice when the final report is made to GSA. Where the report is finalized by statement confirming a preliminary report as final, copies of the preliminary report and confirming statement should be distributed in accordance with §§ 644.348 through 644.367. Distribution of preliminary Reports of Excess, except to GSA, will not be made in other cases.

§ 644.394 Protection of disposal information.

To prevent premature disclosure to the public, information on and plans for disposal of all or a portion of an installation should be protected (AR 340–16), until such time as the property is determined excess to Army or Air Force requirements. (The Air Force preliminary real estate disposal directive is not issued until a determination has been made that the property is excess to Air Force requirements.) After determinations of excess are made, it is desirable that information on the availability of the property for disposal be widely disseminated. "FOR OFFICIAL USE ONLY" marking on plans and correspondence pertaining to the excess action may be cancelled by any recipient or holder. Where the classification "CONFIDENTIAL" or higher has been used, documents must be declassified in accordance with AR 380–5.

§ 644.395 Coordination on disposal problems.

If any major change or problem requires a significant revision in the time schedule for disposal, prompt action will be taken to advise offices concerned. HQDA (DAEN–REM) should be promptly informed of any problem adversely affecting a specific disposal project or the overall program for disposal or property.

§ 644.396 Assignment of personnel to administer.

To extent appropriate according to the circumstances and nature of the property, the DE will assign a responsible representative to each installation, or group of installations, to act under his staff supervision in performance of the following functions:

(a) Monitoring and expediting the actions described in §§ 644.385 through 644.399 and maintaining close liaison with GSA on disposal problems and actions.

(b) Monitoring and expediting performance of such demolition, dismantling or other construction work as may be authorized.

(c) Administration, operation and maintenance of the excess installation until final disposal, making every effort by consolidation of activities and otherwise to reduce the costs consistent with economic management of the facilities.

(d) Coordination of ultimate transfer of assumed custodial responsibility to other agencies or persons as directed.

§ 644.397 [Reserved]

§ 644.398 [Reserved]

§ 644.399 [Reserved]

Disposal of Fee-Owned Real Property and Easement Interests

§ 644.400 Authorities—general.

(a) *Statutory Authorities.* Power to dispose of real estate belonging to the United States is vested in Congress (paragraph 2, Section 3, Article IV, Constitution of the United States), and no real estate of the Department will be sold or otherwise disposed of without authority of Congress. By the Federal Property and Administrative Services Act of 1949 (Federal Property Act), (Public Law 152, 81st Congress; 63 Stat. 377) as amended, (40 U.S.C. 471 et seq.), Congress provided authority for utilization of excess property and the disposal of surplus Federal property, and established the General Services Administration (GSA) to administer the provisions of that Act. All excess and surplus Federal real estate and real property components will be disposed of under authority of the Federal Property Act, as amended, unless other statutory authority for such disposal is specifically withheld under the provisions of the Act or enacted subsequent thereto. In connection with disposals made under statutory authority other than the Federal Property Act, attention should be given to the purposes of the legislation and insofar as practicable, disposal of property should be in accordance with the provisions of the Act and the regulations issued thereunder, in order that the greatest overall efficiency and economy be effected.

(b) *Rules and Regulations.* (1) *Issued by the GSA.* Rules and regulations issued by the GSA to effectuate its authority in respect to disposal of real estate and real property components are contained in FPMR, Section 101–47, as amended, including disposition of timber, embedded sand, gravel and stone, buildings and other structures, and leaseholds and other rights to use or occupy real estate. The DE will be governed by these rules and regulations. GSA also issues, from time to time, special delegations of authority to the Department of Defense with power of redelegation.

(2) *Issued by the Departments.* Policies and procedures of the departments with respect to the control, management, maintenance, and disposition of real estate and real property components located within the continental United States and its territories and possessions, placed in excess status or to be placed in excess status are contained in AR 405–90, AFR 87–4, and AR 405–5/AFR 87–15, except Army civil works property which is governed by EP 405–1–2.

(c) *Authorities Delegated to the Department of Defense.* Under the publications and special delegations issued by GSA, the Department of Defense has been designated disposal agency categories enumerated in § 644.314.

(d) *Authorities Delegated to the Army and Air Force.* Department of Defense Directive 4165.6, among other things, redelegates to the Secretaries of the Army, Navy and Air Force, and to such individuals as they may designate for the purpose of administering real estate actions within their respective departments, the authorities which were then, or may hereafter be, assigned and delegated to, or vested in the Secretary of Defense by:

(1) Sections 401 and 402 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 511 and 512) and regulations of the GSA promulgated thereunder.

(2) The Administrator of General Services, pursuant to Section 203 (a), (b) and (c) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 484).

(3) Other specific delegations from the Administrator of General Services.

(e) *Authorities (Special).* In addition to the general authority cited in paragraph (d)(2) of this section, the Department derives authority from a number of special purpose statutes to transfer real property to other Federal agencies and to dispose of real property for special purposes, or to special classes or in a specific manner to achieve a specific objective. Some of these acts are utilized in conjunction with regulations of GSA and some are exercised independently thereof

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according to the nature of the particular law. These laws are described in subsequent sections of EP 405–1–2.

§ 644.401 Transfers—general.

Resumés of the principal legislative acts authorizing transfer of Army and Air Force real property to other Federal departments are contained in sections 644.402 through 644.408. The authorities in these acts are exercised independently of GSA regulations. Transfers under these authorities are made without reimbursement. Real property can also be transferred under the Federal Property Act within the scope of disposal authority delegated by GSA. Transfers under the Federal Property Act are subject to reimbursement as prescribed by FPMR, section 101–47.203–7. Property reported to GSA for disposal will be transferred only at the direction of GSA. Excess property excepted from reporting may be transferred by the DE under GSA regulations. Transfers to the Department of the Interior of surplus lands chiefly valuable for migratory bird management are subject to GSA regulations but are made without reimbursement (§ 644.429).

§ 644.402 Transfers among the armed services.

10 U.S.C. 2571(a) authorizes the interchange without reimbursement of military stores, supplies, and equipment of every character, including real estate owned by the Government, between the Army, Navy, Air Force and Coast Guard upon request by the head of one service and with the approval of the head of the other service.

§ 644.403 Transfers to Tennessee Valley Authority.

10 U.S.C. 831f(b) authorizes the President of the United States to provide for the transfer to the Tennessee Valley Authority of the use, possession and control of such real or personal property of the United States as he may from time to time deem necessary and proper for its purposes. This authority is applicable to property under the jurisdiction or control of the Secretaries of the Army and the Air Force. The authority vested in the President by this law has been delegated to the Office of Management and Budget by Executive Order No. 10530 dated 11 May 1954, as amended (see footnote to 3 U.S.C. 301).

§ 644.404 Transfers to Federal Prison Industries, Inc.

18 U.S.C. 4122 authorizes any department or agency of the Department of Defense to transfer without exchange of funds, to Federal Prison Industries, Inc., any property or equipment suitable for use in performing the functions and duties covered by agreement entered into under subsection (d) of this Act. The provisions include the industrial employment and training of prisoners convicted by general courts-martial and confined in any institution under the jurisdiction of any DOD agency or department.

§ 644.405 Transfers to Veterans Administration.

38 U.S.C. 5003 authorizes the Secretaries of the military departments to transfer, without reimbursement, to the Veterans Administration, facilities, supplies, equipment, or material necessary and proper for the authorized care of veterans. The word "facilities," as used in this Act, has been construed to include buildings and grounds.

§ 644.406 Transfers to Secretary of Transportation and the National Weather Service.

49 U.S.C. 1157 authorizes the Department of Defense to transfer, without charge, to the Secretary of Transportation, airport property and airway property, exclusive of meteorological facilities in territory outside the continental limits of the United States (including Alaska). Section (b) of this Act similarly authorizes transfer of meteorological facilities, without charge, to the National Weather Service.

§ 644.407 Transfers to District of Columbia.

40 U.S.C. 122 authorizes Federal and District authorities administering properties within the District of Columbia, owned by the United States or by the District, to transfer jurisdiction over parts or all of such property among or between themselves for purposes of administration and maintenance under such conditions as may be mutually agreed upon, provided that, prior to the consummation of any such transfer, the proposed transfer shall be recommended by the National Capital Planning Commission. All such transfers and agreements shall be reported to Congress by the District authorities concerned.

§ 644.408 Interchange of national forest and military and civil works lands.

16 U.S.C. 505a, 505b authorizes the Secretary of Agriculture, with respect to national forest lands, and the Secretary of a military department, with respect to lands under the control of the military department which lie within or adjacent to the exterior boundaries of a national forest, to interchange such lands, or parts thereof, without reimbursement or transfer of funds whenever they shall determine that such interchange will facilitate land management and provide maximum use thereof, for authorized purposes. This law further provides that no transfer thereunder shall become effective until 45 days after the submission to the Congress by the respective Secretaries of notice of intention to make the interchange. The law also provides, in effect, that lands so transferred shall thereafter be subject only to the laws applicable to the lands of which the transferred lands become a part. Lands under the administrative control of the Congress, both military and civil, and that of the Air Force are within the scope of this law.

§ 644.409 Procedures for interchange of National Forest Lands.

(a) *General.* The interchange of national forest lands is accomplished in three steps: first, agreement must be reached between the two departments involved as to which lands will be interchanged; second, the two departments will jointly notify the Speaker of the House of Representatives and the President of the Senate, by letter, of the intention of the two departments to make the interchange agreed upon; third, upon the expiration of 45 days from the date of submission of the notice of intention (counting only days occurring during any regular or special session of the Congress) the two secretaries will execute jointly and cause to be published in the **Federal Register** an order transferring the respective lands of each department to the other.

(b) *Initiation of Requests for Interchange.* Requests for interchange of lands may be originated by either the military department involved or the Department of Agriculture. Those originated by the Department of the Army may result from land requirements generated by newly authorized civil works or military construction projects or from authorized expansion of existing projects or as a result of property utilization surveys. Department of the Air Force requirements may develop similarly. When a request originates with the Department of the Air Force requirements may develop similarly. When a request originates with the Department of Agriculture pertaining to a civil works project or a military installation, it will be analyzed and coordinated by the DE with local representatives of the Department of Agriculture and the using service, as appropriate, to determine the feasibility of and need for the acquisition of any forest land to improve administration of the Army project or installation and the availability of Army lands for transfer to the Department of Agriculture. When coordinated analysis indicates the propriety of an interchange, an interchange planning report will be developed by the DE, in coordination with interested local elements of the two departments and submitted to HQDA (DAEN–REM) WASH DC 20314, with appropriate recommendations.

(c) *Contents of Interchange Planning Report.* The planning report should include the following information:

(1) Location of the areas proposed for interchange, including the county or municipality, names of the forest, project or installation, and number of acres to be interchanged by each department.

(2) If the areas involved include public domain lands, the number and date of the Executive Order or Public Land Order by which withdrawn or established.

(3) If the areas include acquired lands:

(i) Approximate dates, methods and cost of acquisition of Department of the Army lands proposed for interchange.

(ii) Interest, restrictions and reservations currently outstanding, to which the lands were subject when acquired, together with such rights subsequently granted by the Government and presently in force.

(4) Any additional reservations, conditions or restrictions under which the interchange is to be made.

(5) A map, in triplicate, indicating by appropriate color scheme the lands of each department which are to be interchanged. The map should show the jurisdictional boundary, and, where appropriate, the contour elevations used as a basis for determining the extent of the interchange.

(6) An informal estimate of the current values of the areas to be interchanged.

(7) Information upon which to base a determination by the two Secretaries that the interchange will facilitate land management and provide maximum use thereof for authorized purposes.

(8) Any other information or data that might be helpful to representatives of the Department of the Army in answering pertinent questions that may be raised by the committees of Congress.

(9) A draft of order of interchange prepared, in sextuplicate, in coordination with representatives of the Forest Service for execution jointly by the two Secretaries.

(10) Recommendations of the District and Division Engineers.

(d) *Relinquishment and Assumption of Possession.* Upon notification by the Chief of Engineers that an order of interchange has been published, the DE will coordinate with local representatives of the Forest Service, and the using service if appropriate, the exchange of custody and accountability of the respective areas.

§ 644.410 Procedure for other transfers.

(c) *Applicability—Exceptions.* Sections 644.410 through 644.412 are applicable to all transfers of real and related personal property to other Federal agencies by the Army and Air Force except as provided above.

(b) *Authority to Execute.* (1) *Secretaries of the Army and Air Force.* Instruments effecting the transfer of fee-owned land (except fee-owned land that has been reported to GSA and is transferred at the direction of GSA) will be executed at Secretarial level. The Secretary of the Army, or his designee, will execute instruments transferring Air Force land to other Federal agencies.

(2) *Division and District Engineers* will execute instruments transferring real property and related personal property to other Federal agencies: (i) which has been reported to GSA and which is transferred at the direction of GSA; (ii) leaseholds, easements, and other lesser interests in lands; and (iii) buildings, fixtures, and other improvements.

§ 644.411 Form of inter-agency transfer instrument.

(a) Inter-agency transfer instruments will be prepared by the Chief of Engineers in either memorandum or letter form. The instruments will be prepared for signature of the Secretary of the transferring department and will be addressed to the Secretary of head of the receiving department or agency. The instrument will provide, as a minimum, the following: citation of statutory authority for the transfer; statement as to whether the transfer is made with or without reimbursement; statement of the reimbursement amount, if applicable; statement as to whether the requirements of 10 U.S.C. 2662 have been met or that the transfer is not subject thereto; statement as to the acreage of land involved; and, by means of an inclosure, a description of the property being transferred. Based on the circumstances and nature of the property, other appropriate data outlined below will be included in the instrument.

(1) Effective date of transfer (where right-of-entry has been granted or custody transferred, this date will be used.)

(2) Restrictions, conditions, reservations and exceptions, as necessary.

(3) When, where, how and by whom transfer of physical possession and accountability for the property will be accomplished.

(4) Location and proposed disposition of title papers pertaining to the property.

(5) Description of the land and copy of map depicting the property and reflecting its relation to retained property, if any, and to encumbrances such as rights-of-way, easements, and leaseholds.

(6) Instructions concerning payment of rent where a lease is involved. The transfer will be conditioned upon assumption of all obligations incurred in connection with the leasehold, including obligations to restore the premises.

(7) Instructions concerning removal and site restoration where buildings or timber, or sand and gravel, or other separable property is involved.

(8) Statement of source of title and cost of acquisition where land is involved. Reservations and exceptions in and to the Government's title and easements and other rights in the property granted by the Government will be stated with particularity.

(9) List and description of buildings and improvements and cost of buildings and improvements not acquired with the land.

(10) A reference to excess or other directive making the property available for transfer when instrument is executed by District Engineer.

(11) Statement of responsibility and reimbursement for utility services.

(12) Reference to Report of Excess, Standard Form 118, where property has been reported to GSA.

(13) Other appropriate information.

(b) The DE will provide the data outlined in paragraph (a) of this section to HQDA (DAEN–REM) WASH DC 20314 for use in preparing transfers to be executed at the Secretariat level. The forwarding correspondence will contain sufficient information for a full and complete understanding of the proposed transfer action, including an appraisal when reimbursement is required, together with other appropriate comments and recommendations.

§ 644.412 Transfer of custody and accountability.

The DE will transfer custody and accountability or will coordinate the transfer, as appropriate. The DE will collect any reimbursement and obtain any releases required. Where a leasehold is involved, the DE will furnish the transferee a copy of the lease and advice of the last rental paid and when the next rent is due. Upon completion of the transfer, proper notice will be given to the General Accounting Office, the lessor, and the Finance Officer as to the responsibility of the

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transferee for future rental payments. This action will be initiated or completed promptly upon receipt of a copy of the executed instrument, and a conformed copy thereof will be furnished to HQDA (DAEN–REP) WASH DC 20314.

§ 644.413 Exchanges of fee-owned land and easement interests.

The statutes identified in sections 644.414 through 644.417 authorize the exchange of Government-owned lands and interests therein for private lands and lands owned by States, other non-Federal agencies, and their instrumentalities. As a general rule, any exchange of lands should be restricted to lands of approximately equal value. Where the Government property proposed for exchange has a value substantially in excess of the private land to be acquired, the question of whether the transaction is truly an exchange arises. In drafting relocation contracts, care must be exercised to insure that there is legal authority for execution of the conveyance or easement proposed.

§ 644.414 MCA acts.

The annual military construction authorization acts usually contain general authority for the acquisition, "by donation, purchase, exchange of Government-owned lands, or otherwise," of lands and interests therein at specified installations or for specified military purposes. The annual acts must be examined to determine that specific authority exists to acquire land by exchange, unless a contemplated exchange falls within the scope of one of the special laws mentioned in §§ 644.415 through 644.419.

§ 644.415 Army military and Air Force lands—$50,000 limitation.

(a) 10 U.S.C. 2672 authorizes the Secretary of a military department to acquire land and interests in land, by gift, purchase, exchange of Government-owned land, or otherwise, that:

(1) The Secretary or his designee determines is needed in the interest of national defense, and

(2) Does not cost more than $50,000.

(b) 10 U.S.C. 2672a authorizes the Secretary of a military department to acquire any interest in land, including by exchange of Government-owned land, that:

(1) The Secretary or his designee determines is needed in the interest of national defense;

(2) Is required to maintain the operations integrity of a military installation; and

(3) Considerations of urgency do not permit the delay necessary to include the required acquisition in an annual Military Construction Authorization Act.

§ 644.416 Army civil works lands.

The Secretary of the Army is authorized to exchange lands acquired for river and harbor and flood control projects for privately-owned lands required for such purposes (33 U.S.C. 558b and 558b–1).

§ 644.417 For MCA family housing.

The Act of 1 September 1954, Public Law 765, 83rd Congress (68 Stat. 1119), as amended by Sec. 415 of Public Law 968, 84th Congress, Act of 3 August 1956 (70 Stat. 1018) authorizes the acquisition of real estate by donation, purchase, exchange of Government-owned lands, or otherwise, for "Military Construction-Army Family Housing at Military Installations and Facilities."

§ 644.418 Procedure for exchange.

(a) Each agreement for the exchange of real property should be formalized by written contract specifying the terms and conditions of the exchange, including, by reference to exhibits incorporated therein or otherwise, the form and terms of the conveyance of the title to the property to and from the Government. The agreement, in the case of relocation contracts, will be developed in accordance with ER 1180–1–1. Where an exchange of land or interests therein is considered desirable in the course of a condemnation proceeding, the agreement can be incorporated in a stipulation therein (§§ 644.111 through 644.121)

(b) Submission to the Chief of Engineers of draft of conveyance.

(1) Conveyance will usually be executed by the Secretary or head of the agency involved § 644.441. To avoid impinging on his discretionary powers, the execution of any contract or agreement involving an exchange of real property interests must be approved in advance, be deferred pending execution of the conveyance, or provide that the terms and conditions of any grant to be made pursuant to the contract will be subject to approval by the Secretary or agency head. It is considered preferable that the contract contain a draft of conveyance as an exhibit thereto and, where time will permit, be submitted to DAEN–REM for review prior to final execution of the contract in order to avoid possible difficulties arising from subsequent disagreement over terms acceptable to the signatory of the Government's conveyance.

(2) In submitting for final approval and execution the conveyance of the Government's interest in land pursuant to a contract for exchange, the following data should included to support the proposed action:

(i) Description and map of the property to be conveyed.

(ii) Statements as to how and when the Government acquired title to the property, the nature and extent of its interest therein, and a statement of any encumbrance to which the property is subject and the nature thereof, such as easements for road rights-of-way, utility lines, etc.

(iii) A sufficient number of drafts or the conveyance to permit distribution thereof to interested agencies and the grantee.

(iv) Two copies of the contract, option, stipulation in condemnation or other agreement which provides for the proposed conveyance, or, in lieu thereof, pertinent excerpts therefrom sufficient to clearly show the nature and extent of the Government's obligation to execute the conveyance.

(v) A citation of the statutory authority on which the execution of the conveyance is to be predicated.

(vi) Any additional information necessary to a proper understanding of the proposed transaction.

(vii) When the exchange agreement is other than a relocation contract, an appraisal report showing the relative fair values of the properties to be exchanged.

(viii) A copy of the conveyance to be made to the United States, or a statement by the Attorney General that an acceptable conveyance has been executed and delivered to the United States, and that an opinion of good title has been made or is not required by regulation to be made.

(ix) Recommendations of the Division and District Engineers.

§ 644.419 Public Law 87–852 easements.

Public Law 87–852, approved 23 October 1962 (76 Stat. 1129), authorizes executive agencies to grant easements on real property of the United States for rights-of-way or other purposes on terms and considerations deemed necessary to protect the interest of the United States, with or without monetary consideration, or other consideration, including any interest in real property. The Act also authorizes the relinquishment of legislative jurisdiction to the State.

§ 644.420 Disposal of property in which the military departments have a continuing interest under special acts of Congress.

General. Because of the continuing interest of the departments in the following properties and in view of the determinations under the Acts on which the disposals are premised, properties that can be conveyed under authorities discussed in §§ 644.421 through 644.424 are not considered surplus or excess within the meaning of these terms as defined in the Federal Property Act.

§ 644.421 Highway purposes.

Title 23 U.S.C. 317 provides that upon application of the Secretary of Transportation, land or materials may be transferred to a state for the construction or maintenance of a right-of-way for any highway adjacent to a Government installation. If, within a period of four months after such application by the Secretary of Transportation, the Secretary of the Department shall not have certified to the Secretary of Transportation that the proposed appropriation of such land or material is contrary to the public interest or inconsistent with the purpose for which such land or materials have been reserved, they may be appropriated and transferred to the state for such purposes. When the need for such land or material ceases to exist, they shall revert to the control of the department. This section applies only to projects constructed on a Federal-aid system, or under the provisions of Chapter 2 of Title 23 U.S.C. Usually applications for highway rights-of-way or the use of borrow material made under this Act by the Federal Highway Administration, Department of Transportation, on behalf of a particular state can be and are more simply satisfied by the issuance of a road easement or a license to take borrow material. This latter procedure is also desirable in that controls necessary to satisfy military requirements may be retained. Title 23 U.S.C. 107(d) directs Federal agencies to cooperate with the Secretary of Transportation in providing rights-of-way, including control of access, for the interstate highway system over lands and interests in lands owned by the United States.

§ 644.422 Authorized widening of a public highway, street, or alley.

40 U.S.C. 345c authorizes the conveyance, upon application, of such interest in real property as is determined will not be adverse to the interests of the United States, to the states or political subdivisions for authorized widening of a public highway, street, or alley. The conveyance may be made with or without consideration, and subject to terms and conditions deemed necessary to protect the interests of the United States. Excepted from this authority is the conveyance of any interest in real property that can be transferred under Title 23 of the United States Code (see § 644.421), and to public lands in the National Forest System.

§ 644.423 Airport development.

(a) *Authority.* 49 U.S.C. 1723 provides that

(a) . . . whenever the Secretary of Transportation determines that use of any lands owned or controlled by the United States is reasonably necessary for carrying out a project for airport development under this subchapter, or for the operation of any public airport, including lands reasonably necessary to meet future development of an airport in accordance with the national airport system plan, he shall file with the head of the department or agency having control of the lands a request that the necessary property interests therein be conveyed to the public agency sponsoring the project in question or owning or controlling the airport. The property interest may consist of the title to, or any other interest in, land or any easement through or other interest in airspace. (b) Upon receipt of a request from the Secretary under this section, the head of the department or agency having control of the lands in question shall determine whether the requested conveyance is inconsistent with the needs of the department or agency, and shall notify the Secretary of his determination within a period of four months after receipt of the Secretary's request. If the department or agency head determines that the requested conveyance is not inconsistent with the needs of that department or agency, the department, or agency head is hereby authorized and directed, with the approval of the President and the Attorney General of the United States, and without any expense to the United States, to perform any acts and to execute any instruments necessary to make the conveyance requested. A conveyance may be made only on the condition that, at the option of the Secretary, the property interest conveyed shall revert to the United States in the event that the lands in question are not developed for airport purposes or used in a manner consistent with the terms of the conveyance. If only a part of the property interest conveyed is not developed for airport purposes, or used in a manner consistent with the terms of the conveyance, only that particular part shall at the option of the Secretary, revert to the United States.

(b) *Approval.* The requirement for approval by the President was waived by Executive Order 12079 dated 18 September 1978. The Attorney General delegated his authority to approve to the Assistant Attorney General, Land and Natural Resources Division, by Section 0.67 of Title 28 of the Code of Federal Regulations (Order No. 468.71 of the Attorney General, October 22, 1971: 36 F.R. 20428). The instrument of conveyance must cite authority for the waiver and the delegation as shown in the suggested format of deed in EP 405–1–2.

(c) *Requirements for Conveyance Instrument.* Under authority delegated by the Secretary of Transportation to the Federal Aviation Administration (FAA), when the Administrator of the FAA requests a conveyance from a military department, the instrument of conveyance requires the following provisions as covenants running with the land, binding the grantee, its successors and assigns.

(1) That the grantee will use the property interest for airport purposes, and will develop that interest for airport purposes within one year after the date of this conveyance, except that if the property interest is necessary to meet future development of an airport in accordance with the National Airport System Plan the grantee will develop that interest for airport purposes on or before the period provided in the plan or within a period satisfactory to the Administrator and any interim use of that interest for other than airport purposes will be subject to such terms and conditions as the Administrator may prescribe.

(2) That the airport, and its appurtenant areas and its buildings and facilities, whether or not the land is conveyed, will be operated as a public airport on fair and reasonable terms, without discrimination on the basis of race, color, religion, age, sex, handicap or national origin, as to airport employment practices, and as to accommodations, services, facilities, and other public uses of the airport.

(3) That the grantee will not grant or permit any exclusive right forbidden by Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1349(a)) at the airport, or at any other airport now owned or controlled by it.

(4) That the grantee agrees that no person shall be excluded from any participation, be denied any benefits or be otherwise subjected to any discrimination, on the grounds of race, color, religion, age, sex, handicap or national origin.

(5) That the grantee agrees to comply with all requirements imposed by or pursuant to Part 21 of the Regulations of the Office of the Secretary of Transportation (49 CFR 21)—nondiscrimination in federally assisted programs of the Department of Transportation—effectuation of Title IV of the Civil Rights Act of 1964.

(6) That in furtherance of the policy of the FAA under this covenant, the grantee:

(i) Agrees that, unless authorized by the Administrator, it will not, either directly or indirectly, grant or permit any person, firm or corporation the exclusive right at the airport, or at any other airport now owned or controlled by it, to conduct any aeronautical

activities, including, but not limited to, charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity;

(ii) Agrees that it will terminate any existing exclusive right to engage in the sale of gasoline or oil, or both, granted before 17 July 1962 at such an airport, at the earliest renewal, cancellation, or expiration date applicable to the agreement that established the exclusive right; and

(iii) Agrees that it will terminate forthwith any other exclusive right to conduct any aeronautical activity now existing at such an airport.

(7) That any later transfer of the property interest conveyed will be subject to the covenants and conditions in the instrument of conveyance.

(8) That, if the covenant to develop the property interest (or any part thereof) for airport purposes within one year after the date of this conveyance is breached, or if the property interest (or any part thereof) is not used in a manner consistent with the terms of the conveyance, the Administrator may give notice to the grantee requiring him to take specified action towards development within a fixed period. These notices may be issued repeatedly, and outstanding notices may be amended or supplemented. Upon expiration of a period so fixed without completion by the grantee of the required action, the Administrator may, on behalf of the United States, enter, and take title to, the property interest conveyed or the particular part of the interest to which the breach relates.

(9) That, if any covenant or condition in the instrument of conveyance, other than the covenant contained in paragraph (c)(7) of this section, is breached, the Administrator may, on behalf of the United States, immediately enter, and take title to, the property interest conveyed or, in his discretion, that part of that interest to which the breach relates.

(10) That a determination by the Administrator that one of the foregoing covenants has been breached is conclusive of the facts; and that, if the right of entry and possession of title stipulated in the foregoing covenants is exercised, the grantee will, upon demand of the Administrator, take any action (including prosecution of suit or executing of instruments) that may be necessary to evidence transfer to the United States of title to the property interest conveyed, or, in the Administrator's discretion, to that part of that interest to which the breach relates.

(d) *Procedure for Conveyance.* Upon receipt of a deed from the District Engineer, DAEN-REM will submit the deed to the appropriate Secretary for execution, and to the Assistant Attorney General, Land and Natural Resources Division, for approval, before returning it to the District Engineer for delivery to the grantee.

(1) The deed assembly submitted will contain, in triplicate:

(i) The request from the Administrator of FAA to the Secretary of the military department concerned;

(ii) The reply from the Secretary involved to the Administrator, making the property available;

(iii) The resolution by the appropriate governing body of the public agency sponsoring the project in question indicating authorization for acquisition by such agency and its concurrence with the terms and conditions of the conveyance.

(2) Transmittal correspondence shall also set forth:

(i) The type and condition of the property, including improvements acquired therewith or constructed since acquisition;

(ii) Whether there has been any change in the nature, quantity, etc., of the property requested by the agency from the date of its original request to the present. If so, details should be furnished together with an appropriate amendatory resolution (in triplicate) by the governing body of the sponsoring agency;

(iii) Expenses of transfer. In view of the provision in the Act that the conveyance will be made without any expense to the United States, if land surveys are required the transferee agency will be required to pay cost of making such surveys.

§ 644.424 Development of public port or industrial facilities.

(a) *Authority.* Section 108 of Public Law 86-645 approved 14 July 1960 (33 U.S.C. 578) authorizes the Secretary of the Army, after certain determinations are made, to convey land which is a part of a water resource development project to a state, political subdivision thereof, port district, port authority, or other body created by the State or through a compact between two or more States for the purpose of developing or encouraging the development of public port or industrial facilities.

(b) *Limitation.* Only lands within a navigation project will be made available for conveyance for these purposes.

(c) *Delegations, Rules, and Regulations.* Pursuant to rules and regulations published in the Federal Register 11 March 1961 (26 FR 2117-2118; 33 CFR 211.141-211.147),

(1) The Chief of Engineers or the Director of Civil Works has been delegated authority to determine:

(i) That the development of public port or industrial facilities on land within a project will be in the public interest;

(ii) That such development will not interfere with the operation and maintenance of the project;

(iii) That the disposition of the land for these purposes under this Act will serve the objectives of the project;

(iv) If two or more agencies file applications for the same land, which agency's intended use of the land will best promote the purpose for which the project was authorized; and

(v) The conditions, reservations and restrictions to be included in a conveyance under the Act.

(2) The District Engineer has been delegated authority to:

(i) Give notice of any proposed conveyance under the Act and afford an opportunity to interested eligible agencies in the general vicinity of the land to apply for its purchase; and

(ii) Determine the period of time in which applications for conveyances may be filed.

(3) *Notice.* The District Engineer shall give notice of the availability of any land for conveyance under this Act and afford an opportunity to eligible agencies in the general vicinity of the land to apply for its purchase (i) by publication at least twice at not less than 15-day intervals in two newspapers having general circulation within the state in which the available land is located and, if any agency of an adjoining state or states may have an interest in the development of such land for public port or industrial facilities, by publication at least twice at not less than 15-day intervals in two newspapers having general circulation within such state or states, and (ii) by letters to all agencies who may be interested in the development of public port or industrial facilities on the available land.

(4) *Filing of Application.* Any agency interested in the development of public ports or industrial facilities upon the available land shall file a written application with the District Engineer within the time designated in the public notice. The application shall state fully

the purposes for which the land is desired and the scope of proposed development.

(5) *Price.* No conveyance shall be made for a price less than the fair market value of the land.

(6) *Conveyance.* Any conveyance of land under this Act for public port or industrial facilities will be by quitclaim deed in the form of Figure 11-5 in EP 405-1-2 executed by the Secretary of the Army.

(d) *Procedure.* (1) Proposals to convey land included in navigation projects for development of public port or industrial facilities will be forwarded by the District Engineer, through the Division Engineer, to HQDA (DAEN-REM), with recommendations, and with the information required by § 644.329, and such additional information as will enable the Chief of Engineers to make the determinations required under paragraph (c)(1) of this section.

(2) Upon receipt of notification from the Chief of Engineers that the property is available for sale for development of public port or industrial facilities, the District Engineer shall give notice of such availability in accordance with paragraph (c)(3) of this section. The public notice will follow substantially the guide format in Figure 11-4 of EP 405-1-2.

(3) If two or more applications are received from eligible agencies, all applications, with recommendations, will be forwarded, through the Division Engineer, to DAEN-REM for the determination referred to in paragraph (c)(1)(iv) of this section.

(4) Upon determination of the actual property to be included in a conveyance, the fair market value thereof will be established by an appraisal.

(5) Upon the acceptance of an application, negotiations will be conducted at the price established by the appraisal. However, the applicant will be advised that the price is subject to approval by the Secretary of the Army. This is necessary since the Secretary of the Army has not delegated his authority to determine the fair market value for conveyances under this Act. If public port facilities that can be used in connection with proposed industrial facilities have not been constructed in the vicinity, no disposal under this authority will be authorized which does not provide for construction of public port facilities.

(6) Upon completion of negotiations a quitclaim deed following the sample format in Figure 11-5 of EP 405-1-2 will be prepared and forwarded, through the Division Engineer, to HQDA (DAEN-REM) for execution by the Secretary of the Army, in accordance with the general procedure for submission of deeds for execution as outlined in § 644.441.

§ 644.425 Authority and procedure for disposal of surplus property by DA to eligible public agencies.

FPMR Section 101-47.303-2 provides that the disposal agency shall allow a reasonable period of time for states, municipalities, and their instrumentalities, to perfect a comprehensive and coordinated plan of use and procurement of surplus property in which they may be interested. This provision applies to surplus property that can be disposed of by negotiated sale under the special acts listed in §§ 644.428 through 644.432 for public highways, streets, and alleys under the Act listed in §§ 644.421 and 644.422, by transfer to the District of Columbia under § 644.407, and under the individual agency negotiating authority of the Federal Property Act, (40 U.S.C. 484(e)(3). A listing of the special acts, with the eligible public agencies, and some guides for classification of property for disposal are contained in FPMR, Section 101-47.4905.

§ 644.426 Classification.

Pursuant to FPMR, Section 101-47.303-1, any item of surplus land not reported to GSA for disposal in accordance with §§ 644.348 through 644.367 will be classified according to its highest and best use, e.g., industrial, commercial, agricultural, or for disposal under the special acts referred to above. Where required by the special acts, classification will be coordinated with the interested Federal agency. The classification will be recorded on ENG Form 1825 (Real Property Classification), with sufficient information to justify the classification. Surplus property may be reclassified from time to time whenever such action is deemed appropriate. Based on its classification, notice of the availability of surplus land for disposal will be given to public agencies eligible to procure such property as provided in § 644.427.

§ 644.427 Notice to eligible public agencies.

FPMR, Sections 101-47.303-2 and 101-47.308-1, et seq., provide a procedure of formal notice to eligible public agencies of the availability of surplus land for disposal. Notices are not required for property having an estimated fair market value of less than $1,000, except where the disposal agency has reason to believe that an eligible public agency may be interested in the property. Notices as provided in this section will be given for all surplus airport property and surplus fee-owned land for which the Army is the disposal agency, that is classified for disposal under a special act, or if there is reason to believe that a public agency may be interested in acquiring the land by negotiation at its appraised fair market value under the Federal Property Act (40 U.S.C. 484(e)(3)(H).

§ 644.428 Airport property.

(a) *Eligible Transferees.* The right to acquire surplus property without monetary consideration for airport purposes, under 50 U.S.C. 1622(g), with the approval of the Administrator of GSA, is limited to states, political subdivisions, municipalities and tax-supported institutions. This is the proper statutory provision governing transfers of entire military airports to state or local agencies for their use as public airports. The right of such transferees is subordinate to the priority of Federal agencies to acquire the property for their own use. Airport property will not be disposed of for any other non-Federal use until every reasonable effort has been made to dispose of it for airport purposes.

(b) *Preliminary Procedures.* (1) Request a determination by the Administrator of the FAA that the surplus land is essential, suitable or desirable for the development, improvement, operation or maintenance of a public airport as required by 50 U.S.C. 1622(g)(1).

(2) Upon receipt of a determination by the Administrator of FAA, furnish the FAA Regional Office with a description of the property, or a copy of the Standard Form 118 if the property has been reported to GSA for screening, together with a list of the operating and maintenance equipment available for disposal with the airfield, and request that a survey under the Surplus Property Act be made and that, based thereon, recommendations for classification of the property under the Act be furnished.

(c) *Classification.* District Engineers are authorized to approve ENG Form 1825, Real Property Classification, based on FAA recommendations. Generally, the recommendations of FAA in regard to classification of property, will be followed, except the following will be forwarded to DAEN-REM without final classification action: cases involving reduction in land areas, runways, taxiways, etc.; controversial cases; and cases where changes in the reservations, restrictions, or conditions specified in the Act are recommended by FAA. District Engineers will not classify as airport property, property in excess of that recommended by FAA or property of which the highest and best use is

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determined to be industrial. Where the District Engineer does not agree with the report of FAA, he will immediately submit complete data setting forth all objections to the report, together with his recommendations, to DAEN–REM.

(d) *Notice of Availability.* Upon classification of the property as airport property, notice of the proposed disposal will be sent by certified mail to the political subdivisions, or municipalities in which the property is located, and also to any other state, political subdivision, municipality, or tax-supported institution which the District Engineer has reason to believe may be interested in the property. A reasonable time will be allowed eligible agencies to submit an acceptable application. Figure 11–6 in EP 405–1–2 is a format for use in preparing the notice.

(e) *Advertising.* The proposed disposal of airport property will be advertised in at least two newspapers of general circulation within the state in which the airport is located. This advertising will insure notification to political subdivisions, tax-supported institutions, and others that the property is available. Property not classified as airport property will be advertised in accordance with the applicable requirements for the type of property. However, the first advertising of non-airport property adjacent to an airport will contain a statement that the property may be acquired under Section 13(g) of the Surplus Property Act of 1944, as amended, for airport purposes, provided FAA approves such acquisition.

(f) *Form of Application.* Public agencies desiring to acquire surplus airport property will be required to submit an Application For Airport Property (Figure 11–7 in EP 405–1–2). The application includes the provisions of Section 13(g) of the Surplus Property Act of 1944, as amended. If the applicant desires to enter and use the property prior to conveyance, such other terms and conditions considered desirable and necessary governing interim use of the property by the applicant will be included. The application will be signed by the applicant and forwarded to DAEN–REM for acceptance by proper authority in the Department. Evidence of the applicant's legal and financial ability to maintain and operate the property, as proposed, will also be submitted with the application.

(g) *Request for Modifications in the Provisions of Section 13(g) of the Surplus Property Act of 1944, as Amended.* Should an applicant request modifications in the restrictions and conditions imposed by Section 13(g) of the Surplus Property Act of 1944, as amended, the application and all pertinent data, including the FAA report, will be forwarded to DAEN–REM. If the requested modification is approved, the case will again be referred to FAA for its recommendation. If FAA does not concur in the modification, the fact will be reported to DAEN–REM for further necessary action.

(h) *Personal Property.* Non-industrial personal property of any other nature or description made available for disposal with an airport and located on it may be transferred with the airport on recommendation by FAA.

(i) *Meetings with Public Bodies.* Close cooperation will be maintained with FAA, and its representatives will be invited to participate in negotiations with public bodies in connection with transfer of airport property.

(j) *Land Survey.* In the event that a property survey is required to establish a correct metes and bounds description of the land to be transferred as airport property, a survey will be provided by the prospective transferee without cost to the Government.

(k) *Transfer Instruments.* The type of instrument used in conveying or transferring the Government's interest will vary according to the type of property that may be involved, i.e., wholly Government-owned, mixed owned and leased, and leased property. However, instruments of conveyances will contain provisions required by the Surplus Property Act of 1944, as amended. Where a lease is involved and it is from other than the prospective transferee, such transferee will be required to obtain a long term lease on the land prior to conveyance of the Government-owned improvements. Execution of the lease to the prospective transferee and acceptance of the application by the Government should be handled simultaneously. Figure 11–8 in EP 405–1–2 is a format of quitclaim deed covering fee-owned and leased land (Airport Property). A quitclaim deed can be used to surrender leased land and convey the improvements and related personal property, or this can be done by supplemental agreement to the lease or other type of contract as considered desirable in accordance with local conveyancing practices.

(l) *Recordation.* All transfer instruments will be recorded by and at the expense of the transferee.

(m) *Compliance.* The Administrator, FAA, is responsible for determining and enforcing compliance of conditions and restrictions contained in any instrument of disposal of airport property, and is authorized to reform, correct, or amend any such instrument for such action as deemed necessary by him under applicable law. Care will be exercised to furnish copies of the application, classification, and instrument of conveyance to FAA so that it can properly perform its compliance function.

§ 644.429 Wildlife purposes.

(a) *Authority.* The military departments, when acting as a disposal agency, are authorized under the provisions of 16 U.S.C. 667b–d, in connection with land and improvements that: (1) can be utilized for wildlife conservation purposes by the agency of the state exercising administration over the wildlife resources of the state wherein the real property lies, or by the Secretary of the Interior; and (2) are chiefly valuable for use for any such purpose and which, in the determination of the GSA is available for such use, to convey such property to such agency without reimbursement or transfer of funds if the management thereof for the conservation of wildlife relates to other than migratory birds, or to the Secretary of the Interior if the property has particular value in carrying out the national migratory bird program. Personal property cannot be conveyed or transferred under this authority and only such improvements as the District Engineer determines to be necessary for proper execution of the applicant's program may be conveyed.

(b) *Notice of Availability.* If property is considered by the District Engineer to be valuable for wildlife conservation purposes, or if interest has been shown in acquiring the property for that purpose, notice of availability should be given to the agency administering state wildlife resources and to the Federal Fish and Wildlife Service if the property has particular value in carrying out the national migratory bird program.

(c) *Classification—Factors to be Considered and Determinations to be Made by Disposal Agency.* Should the property be classified as being chiefly valuable for purposes other than wildlife conservation purposes, such as agricultural, commercial, etc., the property may not be transferred to any state or to the Department of the Interior, under the authority cited in paragraph (a) of this section. However, should an application be received for conveyance of the property for wildlife conservation purposes, and the classification of the property indicates that it is chiefly valuable for other purposes, the classification, all pertinent papers and the application, together with the Division Engineer's recommendation, will be forwarded to HQDA (DAEN–REM), Washington, D.C. 20314. In addition to the determination that the property is chiefly valuable for wildlife conservation purposes and is available for such use, the Division Engineer will determine, when recommending that property be conveyed for such use, that the applicant has the legal and financial ability to acquire, operate and maintain the property as proposed, and will furnish information to DAEN–REM to support his opinion. With proper safeguards, contaminated property can be made available for use in the wildlife conservation program.

(d) *Application.* Any state desiring to make application for property for wildlife conservation will be furnished copies of Application For Real Property For the Conservation of Wildlife with accompanying instructions for preparation. In evaluating the application, the responsible District Engineer will request review of the application by the Regional Office of the Fish and Wildlife Service, Department of the Interior, and will obtain that Service's recommendation as to the value of the property for wildlife conservation purposes.

(e) *Instrument of Conveyance.* Any instrument of conveyance of property for wildlife conservation will contain the restrictions and conditions required by 16 U.S.C. 667b, c, d. A Sample Deed for Conveyance of Land and Improvements For Conservation of Wildlife, with the statutory restrictions and conditions is provided as Figure 11–10 in EP 405–1–2.

(f) *Publication of Order.* The order required to be published in the **Federal Register** after disposal of the property under this authority will be processed for publication by the Chief of Engineers.

§ 644.430 Shrines, memorials, or religious purposes.

Pursuant to the provisions of FPMR, Section 101–47.308–5, when the Department, acting as a disposal agency, determines that a chapel may properly be used in place, a suitable area of land may be sold with the chapel for use as a shrine, memorial, or for religious purposes. The sale price of land for this purpose will be its fair market value based on its highest and best use as established by an appraisal. Deeds conveying lands for such purposes will contain no restriction on the use of the land. Sale of the chapel building will be subject to the procedure and terms and conditions provided in §§ 644.472 through 644.500.

§ 644.431 Power transmission lines.

(a) *Authority.* Pursuant to the provisions of Section 13(d) of the Surplus Property Act of 1944, as amended (50 U.S.C., App. 1622(d)), any state, or political subdivision thereof, or any state or Government agency or instrumentality may certify to the disposal agency that a surplus power transmission line and the right of way acquired for its construction is needed for or adaptable to the requirements of a public or cooperative power project. Whenever any property is reported to GSA for screening, it will be assumed that GSA has screened Federal agencies for such purpose and no further screening with such agencies is necessary. Property not reported to GSA for screening will be screened in accordance with §§ 644.333 through 644.339. Screening with the appropriate state agencies will be conducted in all cases.

(b) *Procedure.* Whenever a State, or political subdivision thereof, or state or Federal agency or instrumentality certifies that such property is needed for or adaptable to the requirements of a public or cooperative power project, the property may be sold for such utilization at its appraised fair market value. In the event that a sale cannot be consummated and the certification is not withdrawn, such facts will be reported to DAEN–REM in order that a determination of the action to be taken may be obtained from the Administrator, GSA. If no certification from a state or Federal instrumentality as outlined above is received after proper notice is given, the property may be disposed of in the same manner as other excess or surplus real property.

§ 644.432 Assignment to Department of Health, Education, and Welfare (HEW) or successor agencies for health or educational purposes.

(a) *Authority.* Under Section 203(k)(1) of the Federal Property Act of 1949, as amended (40 U.S.C. 484(k)(1)) the Administrator, GSA is authorized, under such regulations as he may prescribe and in his discretion, to assign to the Secretary of HEW for disposal, such surplus real property as is recommended by the Secretary of HEW as being needed for school, classroom, or other educational use, or for use in the protection of public health, including research. The Secretary of HEW is authorized under Section 203(k)(1), subject to disapproval by the Administrator, GSA after notice to him from the Department of Health, Education, and Welfare (HEW), to sell or lease surplus real property for such purposes. Pursuant to FPMR, Section 101–47.308–4, a military department, when acting as disposal agency is authorized to assign property to HEW for disposal for education or health purposes and to disapprove, within 30 days after notice, any transfer of property proposed to be made by HEW for such purposes.

(b) *Notice to Department of Health, Education, and Welfare or Successor Agencies.* When real property is reported to GSA for screening prior to disposal by the military department, notification will be given HEW by the GSA Regional Office simultaneously with notification to the District Engineer that the property has been determined surplus to Federal requirements. The District Engineer will furnish such notification directly to the appropriate regional representative of the Department of HEW in the case of nonreportable real property immediately after he determines that the property is surplus to Federal requirements. Such notification will include the following information:

(1) A brief description of the property in sufficient detail to enable a determination of its probable suitability for uses authorized in Section 203(k)(1) of the Act.

(2) When the property may be inspected and where and how arrangements may be made for inspection of the property.

(3) That the property will be withheld from advertisement for bids for a period of 20 days from the time of the notification unless the office submitting the notification is sooner informed in writing as to whether the property is needed for school, classroom, or other educational use, or for use in the protection of public health, including research. If within that time notice is received of a known potential need, the property will be held for an additional 45 days or until a certification of need or request for assignment is received, whichever occurs first.

(4) The District Engineer shall not give such notification to HEW on surplus buildings and improvements located on surplus leaseholds where their removal from the site will increase the Government's restoration obligations under the lease. Where such a situation exists and GSA is to screen the property prior to disposal by the Department, GSA should be advised to this effect. Where any surplus buildings and improvements (on leaseholds or fee-owned land) are available for off-site disposal, notification will be given HEW (unless time restrictions prohibit as set out in §§ 644.333 through 644.339 and §§ 644.346 through 644.367) but the notification will include the same restoration obligations as would be placed in a sale of the property to a private party.

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(5) During the 20-day period, action will be taken preparatory to advertising the property for sale. All inquiries received concerning acquisition of the property for such purposes from the state, or local agencies, or qualified organizations seeking the purchase of available real property for health or educational purposes will be referred to the appropriate field representatives of HEW. If, within the 20-day period, HEW shall inform the District Engineer of any known potential requirement, the District Engineer will withhold disposition until a certification of need is received but not to exceed 45 days.

(6) Upon receipt from HEW of a certification that the property is needed for educational or public health purposes and a request from HEW for assignment of the property, if the property is available for such purposes, it will be assigned by the responsible District Engineer by letter addressed to the HEW office from which the request for assignment was received, citing the Act and GSA regulations as authority therefor. A copy of such letter of assignment will be furnished to the Regional Office of GSA.

(7) When notification of the proposed disposal is received from HEW, subsequent to assignment, if their is no reason for disapproval of the proposed disposition, notice from the responsible District Engineer to HEW of approval thereof is not necessary. Under Section 203(k)(1), approval is automatically given in the absence of notice of disapproval within 30 days from the date of notification of the proposed disposal. If in the request for assignment HEW furnishes the name of the proposed transferee and states that an application from the transferee is on file and that the proposed use by the transferee is one authorized under Section 203(k)(1), the District Engineer, in making the assignment to HEW, may state that no objection is interposed to the proposed transfer of the property.

(8) GSA has advised that it is not anticipated that the Corps of Engineers, in acting as the disposal agency, would investigate each request to it by the Department of HEW, because to make such investigations in each case would clearly duplicate the function assigned to the Department of HEW. Doubtful cases would only arise in connection with property for which the highest and best use is industrial or commercial, or where further study may be required by the Federal Government concerning future requirements for the property. In accordance with a further suggestion by GSA, where there is a reasonable doubt as to the propriety of an assignment to HEW or a proposed disposal by it, the request will be referred to GSA for final decision. Such referrals will be made through DAEN–REM.

(9) The District Engineer making the assignment of the property will request HEW to furnish two copies of the sales contract. Upon receipt of these copies, together with a request from HEW that the property be transferred, custody will be given to the grantee or transferee named in the sales contract.

§ 644.433 Surplus disposal to private parties.

General. Sections 644.435(b) through 644.440 cover general procedures for the sale of surplus fee-owned land and easement interests and includes actions to be taken preliminary to proceeding with the appropriate sale procedures set forth in §§ 644.540 through 644.557.

§ 644.434 Cottage site disposal.

Disposal of lots for cottage site development and use is authorized by P.L. 84–999 (16 U.S.C. 460e). No new allocations of land for private cottage use will be made. The policy concerning phasing out of existing cottage site areas is set out in ER 1130–2–400. The DE has delegated authority to sell or lease cottage sites. Contract of Sale, ENG Form 3297–R, will be used.

§ 644.435 Procedure.

(a) *Fee-owned land.* When fee-owned land for which the department is acting as disposal agency has been found to be surplus to requirements of the Federal Government, has been classified under § 644.426 and disposal is not made to a state, political subdivision, etc., the property will be offered for sale to the highest responsible bidder, except under special circumstances provided in §§ 644.540 through 644.557.

(b) *Easements.* Easements that are readily assignable will be disposed of in the same manner as fee-owned land. Easements will usually be disposed of with land to which they are appurtenant. Easements may be disposed of to the owner of land which is subject to the easement (the servient estate). A determination should be made as to whether the disposal should be with or without reimbursement to the Government on the basis of all the circumstances and factors involved and with due regard to the acquisition cost to the Government. The amount of such reimbursement should be the appraised fair market value of the easement. In the case of disposal of an easement acquired for the deposit of spoil material a minimum charge of $225.00 will be imposed where relinquishment is being accomplished for the benefit of the owner of the servient estate and where no direct benefit will inure to the Government. A statement as to the commercial value will be made when recommending an easement for disposal. The circumstances and factors leading to these determinations shall be documented and retained in the files (FPMR, Section 101–47.313–1).

§ 644.436 Appraisal.

Under the usual circumstances prompt action will be taken to appraise surplus property concurrently with its classification. Appraisals will not be undertaken for property which has been or is likely to be classified for disposal for any of the following purposes: airport; wildlife conservation; public highways, streets and alleys; disposal to the District of Columbia; and property assigned to HEW for disposal. Property that is to be disposed of for other than the above listed purposes will be appraised.

§ 644.437 Disposal plan for fee-owned land.

A disposal plan will be made for each surplus property. It will include the District Engineer's recommendation of the method or methods of disposal and the reasons therefor; for example, whether improvements or minerals and lands should be sold separately; improvements cannibalized; whether the property should be subdivided; the media for advertising; and other pertinent factors. In addition, the following will be included as part of the disposal plan:

(a) Description and map of the lands.

(b) Description of buildings and other improvements.

(c) Appraisal made in accordance with §§ 644.41 through 644.49, unless exempted by § 644.436.

(d) Information as to when, from whom, and how the property was acquired.

(e) Information as to the estate which the Government has in the land, and reservations and exceptions in and to the Government's title. Outstanding interests granted by the Government or reserved or excepted in the acquisition of the lands will be stated with particularity. The map or plat will delineate any grant, exception, or reservation, such as telephone and telegraph, electric transmission, oil, gas and water lines.

(f) Purchase price of land, buildings and improvements acquired with the lands, and the cost of buildings and improvements, if any, constructed by the United States.

(g) If there is an indication of valuable minerals, such statement will be made with full explanatory data.

(h) Where the estimated value of the land together with improvements and related personal property is in excess of $1,000, the disposal plan will be submitted to DAEN–REM for approval.

§ 644.438 Disposal plan for easements.

When recommending disposal of a surplus easement the District Engineer will submit the following:

(a) Information as to when and from whom the easement was acquired.

(b) The consideration paid therefor.

(c) Identification of the installation to which it is appurtenant.

(d) If the easement has no commercial value, the amount that should be paid by the owner of the servient estate, representing a rebate on the purchase price, or the amount paid for severance damages will be specified. (For example, if the easement was acquired for a 15-year period and the price paid therefor was substantial and one year after acquisition it is returned to the owner of the servient estate, an effort should be made to obtain a rebate on the purchase price although the easement has no commercial value. The same would be applicable to the payment for severance damages).

(e) If the owner of the servient estate, or other prospective grantee, is not willing to pay the appraised value in consideration of the release of an easement acquired for a substantial consideration, all action to release the easement will be held in abeyance until such time as an adequate consideration can be obtained for the release. Note the minimum payment for release of spoil easments discussed in paragraph (b) of § 644.435.

§ 644.439 Sale and conveyance.

Sales procedure, including advertising, will be in accordance with §§ 644.540 through 644.557. Normally, conveyance will be by deed, prepared and executed as provided in § 644.441.

§ 644.440 Application of antitrust laws.

Section 207 of the Federal Property Act provides that real property and related personal property with an aggregate total cost of $1,000,000 or more, or patents, processes, techniques, or inventions, regardless of costs, shall not be disposed of until the advice of the Attorney General has been received as to whether the proposed disposal would tend to create or maintain a situation inconsistent with the antitrust laws. Prior to obligating the Government on any such disposal, the District Engineer will furnish DAEN–REM information on the probable terms or conditions. DAEN–REM will use this information as the basis for a request to the Attorney General for advice (FPMR, Section 101–47.301–2).

§ 644.441 Preparation and execution of deeds.

(a) *Authority to Execute.* All conveyances of fee ownership and other permanent interests in land which the Army and Air Force have authority to convey under the statutory authorities and delegations set forth in §§ 644.400 through 644.443 will be executed by the Secretary of the Army, for Army land, and by direction of the Secretary of the Air Force, for Air Force land. Conveyances of surplus property that have been assigned to HEW for disposal will be executed by officers of that department.

(b) *Form of Deed or Instrument.* Conveyances of fee-owned land and easements shall be by quitclaim deed prepared in conformance with local law and practice except where it is found that another form of conveyance is necessary or desirable to obtain a reasonable price for the property, or to render the title marketable, or for other reasons. Appropriate recommendations will be forwarded to DAEN–REM. Forwarding correspondence should contain information as to the requirements of local law for witnesses, acknowledgment, authentication of acknowledgment, and other special requirements. The instrument of conveyance should contain a statement that the requirements of 10 U.S.C. 2662 have been met, or that the conveyance is not subject to these requirements.

(c) *Authority for Conveyance.* Authority for conveyance will be recited in the granting clause. Conveyances under the Federal Property Act will recite: "* * * under and pursuant to the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and the delegation of authority to the Secretary of Defense from the Administrator of General Services Administration (41 C.F.R. 101–47.601) and the redelegation of authority from the Secretary of Defense to the Secretary of the Army (Air Force) (20 F.R. 7113)." Conveyances to states and their instrumentalities under the special statutes, listed in §§ 644.425 through 644.432, will recite the special statutes, as continued in effect by the Federal Property Act and the delegations. Conveyances to states for wildlife conservation purposes under Public Law 537, 80th Congress (§ 644.429) will cite the special act and recite that the property has been determined surplus under the Federal Property Act and delegations thereunder. Conveyances releasing the restrictions contained in a flowage easement prohibiting the construction and maintenance of structures for human habitation should cite as authority for the conveyance the Federal property and Administrative Services Act of 1949 (63 Stat. 377) as amended, and the Federal Property Management Regulations (101–47.313–11).

(d) *Conditions in the Conveyance.* The deed will contain the reservations, restrictions, or conditions, required by: (1) the directive which authorized the disposal; (2) any special acts under which the property is conveyed; and (3) by any contract of sale, agreement to extend credit, or relocation contract, pursuant to which conveyance is made.

(e) *Acceptance by Grantee.* Where the instrument of conveyance imposes obligations on the grantee, the instrument will be executed and excepted by or on behalf of the grantee prior to forwarding for execution. If the grantee is a corporation or body politic, the instrument will contain a certificate attesting to the authority of the officer executing the instrument to act for and bind the corporation or body politic, and that his signature is genuine. Where a resolution or other special action is necessary to legally bind the grantee, a copy will be attached to the instrument.

(f) *Execution of Deed.* (1) The Division Engineer will forward to DAEN–REM a draft of the deed, prepared in final form, together with copies of as many of the items listed below as are appropriate depending on the nature and purpose of the conveyance, any other information necessary for a complete understanding of the case, and the remarks and recommendations of the Division and District Engineer. Upon approval of the proposed disposal by DAEN–REM, the deed will be forwarded to higher authority for execution and returned to the District Engineer for delivery and distribution.

(2) Items to be forwarded with draft of deed proposed for execution, as appropriate:

(i) Real Property Classification, ENG Form 1825.

(ii) Application or plan for use and procurement with recommendations and determinations of other interested Federal agencies when the conveyance is under one of the special acts listed in §§644.425 through 644.432.

(iii) Disposal plans.

(iv) Appraisal where not included in (iii) above.

(v) Statement on advertising conducted.

(vi) Abstract of bids.

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(vii) Relocation contract or change agreement.

(g) *Distribution of Deeds.* Deeds will be delivered by the District Engineer and recorded by or at the expense of the grantee. Upon delivery and recordation of any deed conveying Army, Air Force, or nondefense property, the District Engineer will conform two copies by endorsing thereon the date and manner of delivery, and the date, time and place of recordation in the public land records. One conformed copy will be forwarded to HQDA (DAEN–REM) WASH DC 20314, and the other conformed copy to HQDA (DAEN–REP) WASH DC 20314. This requirement extends to copies of deeds executed by other disposal agencies and furnished District Engineers pursuant to FPMR, Section 101–47.307–3(b). Two additional copies of deeds delivered by District Engineers will be conformed and furnished any other Federal agency charged with compliance enforcement of any reservations, restrictions, or conditions in the deed.

§ 644.442 [Reserved]

§ 644.443 [Reserved]

Disposal of Leaseholds and Leasehold Improvements

§ 644.444 Authority.

Surplus leasehold interests in real property are disposed of under authority delegated by the General Services Administration (GSA) to the Department of Defense (DOD). DOD has redelegated this authority to the military departments. DEs, within the limits of the authority delegated, have been authorized to terminate leases, execute agreements in settlement of restoration obligations, and perform necessary restoration work required by lease terms, directly or by contract, in accordance with the provisions stated in Sections 644.444 through 644.471. Exceptions are where: (a) under the terms of the lease the leasehold is transferable to third parties or Government-owned improvements on leased airport or other special types of leased property have an in-place value to the lessor for airport or other special purposes; or (b) the leasehold or Government-owned improvements may be disposed of to eligible public agencies under special statutes (FPMR 101–47.4905). in which cases the procedures provided in §§ 644.400 through 644.443 will be applied to the extent applicable. Disposals within the scope of the above exceptions require the prior approval of DAEN–REM.

§ 644.445 Procedure for termination of leases.

When leased premises are no longer required for use by the Government, a notice of termination will be given to the lessor in accordance with the terms of the lease, effective as of the date of vacation. The termination notice will be served sufficiently in advance to allow time for compliance by the Government with terms of leases providing for removal of improvements and restoration of premises. Where a lease does not contain provision for continuing renewal without notice and will automatically expire, the Government is not required to give notice when it intends to surrender the premises at the expiration of the lease. However, the lessor should be informed, as far in advance as possible, of the Department's intention to vacate, in order that he may plan for a new tenant for other use of the premises. Where a lease provides for a continuing renewal without notice, the DE will ascertain in advance of the beginning of each fiscal year whether the using service has need during the next fiscal year for the premises. When the premises are no longer required, a notice of termination will be served in accordance with the terms of the lease. In the event the lease does not provide for termination by the Government, but the lessor will consent to termination, either in its entirety or partially, a supplemental agreement should be entered into to terminate or amend the lease as of the date the premises will be vacated, Government improvements removed, and restoration completed.

(a) *Forms of Notice of Termination.* Where leases provide for restoration, Notice of Cancellation (Restoration) will be prepared in sextuplet in accordance with Figure 11–11 in EP 405–1–2. Notice of Cancellation, Figure 11–12 in EP 405–1–2, will be used for leases which do not provide for restoration or for leases where written notice requiring restoration has been submitted by the lessor prior to termination. Notice of termination will be prepared on the letterhead of the DE concerned, who will assign his own form-letter number.

(b) *Manner of Serving Notice of Cancellation.* The Notice of Termination must conform to requirements of state law, and will, whenever possible, be served personally upon the lessor. In some states, to be legally effective personal service is mandatory, unless expressly waived. The lessor will be requested to execute the acknowledgment of receipt of notice on the form. Where the service is effected by registered or certified mail, a return receipt will be requested and a sufficient number of days (in addition to the stipulated period of notice) will be allowed for transmission and receipt of notice. The return receipt properly signed will be evidence that full notice required by the lease has been given. Should the owner refuse or fail to acknowledge receipt of the notice, the officer serving the notice will so certify thereon, giving the date and method of service. In the case of an absentee lessor, where time will not permit use of certified or registered mail for effecting service, notice will be given by telegram to be delivered, not telephoned, to the addressee. In the case of notice by personal service, any available Army facility or personnel in the lessor's locality may be used.

(c) *Distribution of Notice of Termination.* The original notice of termination will be delivered to the lessor; one copy to the finance and accounting officer who pays the rental; one copy to the using service; and one copy to the DE office files.

§ 644.446 Vacation and protection of premises.

The DE will take action to insure that the premises are vacated by the using service on or before the date specified in the termination notice (or the date of expiration of the lease where formal notice is not required), and will assure provision is made by either the using service or the DE, as appropriate, for proper protection of the property pending the transfer of custody to the lessor pursuant to §§ 644.368 through 644.375 and AR 405–90.

§ 644.447 Joint survey of premises.

(a) *When Required.* As soon as practical after restoration is requested by the lessor, a terminal condition report to reflect the condition of the leased property as of the termination of the lease, and a terminal survey to determine the extent of restoration required, if any, will be prepared. The lessor will be invited to have his estimators accompany the survey party. The lessor's estimates of restoration costs should be obtained promptly, and included in the terminal survey for purposes of comparison in accordance with paragraph (c) of § 644.454. Survey and condition reports will not be limited to items for which the lessor specifically requests restoration, but will include all items which the DE determines should be restored in order to fulfill the Government's obligation under the lease.

(b) *Contents.* The report will show, in detail, the work items necessary to place the premises in as good a condition as they were at the time they were taken over by the Government, as disclosed by the survey and condition report made at that time, reasonable and ordinary wear and tear, damages by the elements, or circumstances over which the Government has no control, excepted.

(c) *Housing Leases.* The tenant of leased housing is personally responsible for damage to the property, beyond reasonable and ordinary wear and tear, resulting from his acts, the acts of members of his family, his invitees and licensees. Restoration of leased housing therefor should be coordinated with the using service to minimize payments for repairs which are the obligation of the Government's tenant.

§ 644.448 Limits on government obligation to restore.

The standard lease forms may provide that the Government will, if stipulated notice is given by the lessor, restore the premises to as good a condition as they were in at the time of entering into possession, reasonable and ordinary wear and tear, and damages by the elements, or circumstances over which the Government has no control, excepted. This requirement is subject to certain limitations.

(a) *Restoration Not to Exceed Fee Simple Value.* The cost of restoration, or settlement in lieu thereof, will not exceed the fee simple value of the property restored to the condition that existed at time of entering into possession, reasonable and ordinary wear and tear, and damages by the elements, or circumstances over which the Government has no control, excepted. The valuation should be fixed as of the time of termination of the lease.

(b) *Where Estimated Cost of Restoration Exceeds Diminution in Value.* When it appears that the estimated cost of restoration substantially exceeds the diminution in the value of the premises, occasioned by the Government's use and the damage therefrom, an appraisal will be made of the present value of the property in its unrestored condition and a separate appraisal will be made of the present value of the property, assuming restoration is accomplished as provided in the lease. The difference between the unrestored and restored value, as determined by comparison of the appraisals will be the amount of diminution in the value of the lessor's property and will be the maximum amount of the restoration obligation. As to the measure of damages to be used in establishing the Government's restoration obligation under leases which contain the standard restoration provision, the Comptroller General decided that, "This office would not be warranted in concluding that any greater amount could be legally expended for restoration or paid to the lessor in lieu thereof than the amount by which the market value of the premises has been diminished" (28 Comp. Gen 206). As a corollary, restoration, or payment in lieu thereof, is not authorized where Government improvements enhance the value of the property. Representatives of the General Accounting Office have advised informally that it is not the intention to have appraisals made of the before and after value in each instance and that the lack of such appraisals will not be the cause for questioning a restoration settlement. It is considered, however, that where the estimated cost of restoration is a substantial amount in comparison with the value of the property covered by the lease, such appraisals should be made. Obviously, however, it would not be to the Government's advantage to make appraisals where the estimated restoration cost is small.

§ 644.449 Requirement for notice by lessor.

Ordinarily, notification by the lessor of his intention to require restoration of the premises is, when required by the terms of the lease, a condition precedent to any obligation on the part of the Government to restore and is a vested contract right which no part of the Government has authority to give away or surrender (16 Comp. Gen 92; Simpson vs. United States, 172 U.S. 372; United States vs. American Sales Corp., 27 F. 2d 389, affirmed in 32 F. 2d 141, certiorari denied, 280 U.S. 574; Pac. Hardware Co. vs. United States, 49 Ct. CL 327, 335). However, it has been held in the case of Smith vs. United States, 96 Ct. CL 326, that a formal written notice of demand for restoration might be waived, provided knowledge of the lessor's intention to require restoration was conveyed to the Government orally or by implication at, or prior to, the time required under the terms of the lease. In opinion B–48678, 10 April 1945, the Comptroller General expressed the following views along this line:

(a) In leases pertaining to provisions for termination by the Government prior to the end of the term, and which require 60 days written notice of demand for restoration, a supplemental agreement relinquishing space prior to the end of the term, which contains a stipulation excepting restoration from the provisions of the release may be regarded as notice to the Government of the lessor's intention to require restoration and an otherwise proper claim for restoration may be considered where the entire transaction is in the interest of the United States.

(b) In leases which require 30 days written notice of termination and 30 days notice of demand for restoration, waiver of termination notice by the lessor would constitute sufficient consideration to support a waiver of restoration notice by the Government where the effect of waiving the notices would be to protect more adequately the Government's interest through immediate termination of the lease.

(c) Generally, in leases which require 90 days written notice of demand for restoration and 30 days written notice of termination, if it is determined administratively under the particular facts, that the failure to give restoration notice until receipt of termination notice does not affect the merits of the claim for restoration, or operate to the prejudice of the United States, an otherwise proper claim for restoration may be considered.

(d) As a general rule, in leases which require 30 days written notice of termination and 30 days written notice of demand for restoration, notice of demand for restoration given within a reasonable time after receipt of termination notice would be sufficient and, in this connection, a few days delay would not be regarded as unreasonable. Where restoration is predicated on other than strict compliance by the lessor with requirements of the lease relative to notice requiring restoration, the facts will be clearly stated in the restoration assembly.

§ 644.450 Items excluded from usual restoration obligation.

Damage to the following items will not ordinarily be restored as under the standard provisions of the lease it will be attributable to reasonable and ordinary wear and tear, damage by the elements, or damages by circumstances over which the Government has no control. (However, where the lease requires the Government to maintain the interior or exterior, or both, such of the items as the Government is obligated to repair during the term of the lease should be included in the restoration if they have not been maintained adequately by the Government and are not in the required condition upon the termination of the lease.)

(a) Foundation work.
(b) Waterproofing or membraning.
(c) Exterior tuck pointing.
(d) Cleaning or repair of catch basins, cesspools, or manholes.

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(e) Repair of: (1) Interior unfinished walls.

(2) Unfinished hollow tile, concrete block, or gypsum block walls.

(3) Floor joints, roof trusses (including roof boards and roofing), and framing timbers (including studs, sheathings, and exterior surface).

(4) Insulating materials in walls necessitated by leakage in walls or roofs.

(5) Damage to plaster caused by leakage in wall or roof.

(6) Windows and floors, where the damage is caused by elements or inadequate hinging, counterweighting, caulking or sealing.

(7) Sheet metal such as eaves, gutters, downspouts, flashings, hips, valleys, skylights, ventilators, and metal ceilings.

(8) Structural steel or iron.

(9) Fire escapes.

(10) Heating systems.

(11) Plumbing systems.

(12) Ventilating systems and air conditioning systems.

(13) Power plants.

(14) Electric wiring.

(15) Lighting fixtures (or replacement).

(16) Sprinkler systems.

(f) Settling or subsidence.

(g) Other structural repairs to buildings or equipment.

§ 644.451 Nature of required restoration.

Restoration by the Government will ordinarily include the following:

(a) Wear and tear beyond that which is reasonable and ordinary.

(b) Damage due to negligence by Government personnel.

(c) Restoration or reinstallations necessitated by alterations or removals by the Government.

(d) Neutralization of unexploded bombs or artillery projectiles, disposition of military scrap, and decontamination of chemically contaminated lands or improvements. (See §§ 644.516 through 644.539).

§ 644.452 Minor restoration cases—determining extent of restoration required.

(a) In minor restoration cases, ENG Form 1440A–R, Joint Terminal Condition Survey, will be used. The Government representative, in these cases, will also make a detailed investigation as to the extent of damages, cost of repairs, and other factors sufficient to properly complete and sign ENG Form 1440B–R, Cost of Restoration. In order to effect economies, the DE may arrange for the utilitization of the services of the Facilities Engineer or the using service to perform joint terminal condition surveys. Such use, however, should be coupled with issuance of proper instructions for guidance of the respective personnel. A restoration case is considered to be minor under the following conditions:

(1) The initial cost of Government improvements or alterations did not exceed $5,000; and,

(2) The net salvage value of Government improvements remaining does not exceed $1,000; and

(3) The cash payment to the lessor in lieu of restoration does not exceed $1,000; and

(4) The lessor has agreed to accept a cash settlement in lieu of physical restoration.

(b) *Preparation of ENG Form 1440–R.* Use of ENG Form 1440B–R is premised upon the ability of the field investigator to adequately analyze conditions and develop sufficient supporting data as to the cost of the items of restoration involved. While this form is considered self-explanatory, the following is to be noted:

(1) The procedure hereunder envisions the use of both ENG Form 1440A–R and ENG Form 1440B–R, which complement each other.

(2) The use of ENG Form 1440B–R for estimating restoration costs does not waive the requirements for a proper evaluation of the Government's restoration obligations either as to the legal principles or as to the proper measure of damages.

(3) Distribution of these forms, together with any supporting exhibits, will be accomplished in the same manner as set forth in paragraph (b) of § 644.460.

§ 644.453 Major restoration cases—determining extent of restoration required.

(a) *Engineer Estimate and Appraisal.* Any restoration case not covered by the definitions of minor restoration case in paragraph (a) of § 644.452 is a major restoration case. A complete engineer estimate and appraisal will be prepared by the DE for use in negotiating a cash settlement, or to determine the cost of restoration, if the work is to be performed by the Government. ENG Form 1440–R, Cost of Restoration, will be used for this purpose. A copy of this form will be transmitted to the General Accounting Office in support of settlements made with landowners in the case of military property and contains the minimum data required by that office. Such transmittal is not required when civil works property is involved. In order to afford a measure of flexibility, ENG Form 1440–R is divided into five parts, each relating to specific factors, to be used as conditions may require.

(b) *Preparation of ENG Form 1440–R.* Comments and instructions for preparation of ENG Form 1440–R are contained in the following paragraphs which are keyed to the item numbers on the Recapitulation sheet, Part I of the form:

(1) "1" to "6" Self-explanatory.

(2) "7. Original Cost (Actual or Estimated) of Government-owned improvements, fixtures and alterations: (Part 4)." The General Accounting Office requires that, in all cases involving the relinquishment of Government-owned improvements to lessors in lieu of restoration, and in any other cases where a contract is entered into between the Government and another party to transfer improvements, the original cost of the improvements be given. If not ascertainable, an estimate should be submitted. In exceptional cases, where, because of the circumstances or expense of the work involved, neither the original cost nor a reasonably accurate estimate can be given, an explanation of the facts and circumstances is required. Where structures have been built under contract, or improvements made under contract, a citation to the contract under which the work was performed should be submitted with the original cost statement, estimate, or explanation.

(3) "8. Estimated Market Value, (Value in place of Government-owned improvements, fixtures, and alterations): (Part 4)." An estimate will be made of the current market value of the buildings or improvements in place. In those cases where it is indicated that the Government-owned buildings or improvements located on leased lands may materially enhance the value of the leased site, an appraiser will estimate the market value of the fee title to the leased area in its unrestored condition. He will also separately estimate the market value of the site, assuming restoration as provided in the existing lease. The difference between the fee title value and restored land value will be reported as the "value in place" of the improvements to be sold or otherwise disposed of. "Value in place" is defined as the amount by which the improvements involved enhance the market value of the leased site. This value will serve to establish the top sales price expectancy in negotiations with the landowner.

(4) "9. Gross Salvage Value of Government-owned property: (Part 4)". The "gross salvage value" is the highest price obtainable in the open market for Government-owned improvements when sold for use elsewhere than on the leased premises, assuming that no expense to the buyer is involved in the dismantling and/or removal of the improvements from the leased property to the nearest probable market or location of future use. The estimate of gross salvage value should be made in accordance with established property appraisal procedures. Because market demand usually determines the highest and best use to which the components of a group of improvements will be put (e.g., whether a building will be worth more on the market for moving intact to a new site for continued use as a building, or worth more as a stockpile of used construction material), it is important to consider not only prevailing market prices and demand for used construction materials in the vicinity by contacting sources such as local building trades, wrecking companies, used material dealers, etc., but to also give consideration to possible interest by house moving and construction companies and individuals who might utilize improvements intact. Due consideration should also be given in making the estimate to the effect that such facts as the original cost of the improvements, the original cost of the materials therein, and the deterioration or depreciation of the materials in place might have upon the market value.

(5) "10. Estimated Cost of Dismantling and/or Removal of Government-owned Property: (Part 4)." The estimated dismantling cost and/or cost of removal will be itemized in the appropriate column opposite the itemized listing of improvements on the ENG Form 1440–R (Part 4), and the total will be reflected on the recapitulation sheet (Part 1). The dismantling cost is the amount of expenditure necessary to accomplish dismantlement in a manner providing the greatest net return to the Government. Net return is the value of the improvements when detached or dismantled, less the cost of dismantling or detaching, and less the cost of removal. The cost of removal is the cost of moving the detached or dismantled improvements to the nearest probable market or the nearest installation of the Department having adequate storage space. In cases of frame buildings having concrete or similar permanent-type floors or foundations, the cost of removal of such floors or foundations will not be included as an item of dismantling and/or removal cost. Instead, it will be treated as an item in the estimated "Cost of Restoration other than Cost of Dismantling and Removal" (Item 12). In developing estimates of gross salvage value and costs of dismantling and/or removal, inquiry should be made of experienced tradesmen, used material dealers, wrecking contractors, etc., familiar with the local market for the types of materials and services involving the current costs of loading, hauling, unloading, cleaning, stockpiling and other economic factors contributing to the current local market value of similar materials in useable form.

(6) "11. Estimated Net Salvage Value of Government-owned Property: (Part 4)". This amount is obtained by subtracting the estimated cost of dismantling and/or removal (Item 10) from the estimated gross salvage value (Item 9).

(7) "12. Cost of Restoration other than Cost of Dismantling and Removal: (Part 3)". From information developed by the joint survey of the property, § 644.447 above, it is the responsibility of the real estate officer, or his representative, to advise the personnel responsible for preparing the restoration cost estimate of the items which will require restoration, repair or replacement under the terms of the lease. A brief statement as to the probable cause of damage, in excess of ordinary wear and tear, or resulting from other than circumstances over which the Government has no control, will be included in the supporting data.

(8) "13. Total Cost of Restoration: (Item 10 plus Item 12)". The estimates of cost under Items 10 and 12 will be based on sound estimating practices generally employed for the type of work involved. The estimates will be predicated on performance of the work by contract and, therefore, consideration will be given to justifiable allowances for contractor's profits, insurance, employees compensation payments, and overhead.

(9) "14. Net Cost of Restoration: (Item 9 minus Item 13)". In those cases where the cost of dismantling and/or removal of Government-owned improvements (as defined in Item 10), and the other costs of restoration (as defined in Item 12), exceed the gross salvage value (as defined in Item 9), the difference is a minus quantity and constitutes the maximum amount of money which the Government can pay the lessor, in addition to transferring all improvements to him in lieu of restoration and paying rent during the estimated period of restoration (provided such improvements are not considered to have an "in place" value). If this is a plus quantity, it represents the minimum amount of cash that the Government can accept from the lessor after transferring to him all items of property or equipment shown in the report, less the allowance for rental during the estimated period of restoration.

(10) "15. Approximate Time Required for Actual Salvaging and Restoration Operations". So long as the owner is deprived of use of his property he is entitled to rental stipulated in the lease. A fair allowance will be made in a settlement with the lessor to cover a reasonable time required to fit the premises for use. If all improvements are to be left in place, it may well be that no allowance for rental will be required by the lessor for time required for salvaging.

§ 644.454 Negotiating restoration settlements.

Negotiated settlements in lieu of performance of actual restoration work by the Government are ordinarily favored because they most satisfactorily achieve the objectives of fulfilling the Government's obligations under the lease in the most efficient and economical manner, recouping the greatest amount of the Government's investment in improvements to leased property and maintaining good public relations in the acquisition and disposal of leaseholds. However, because of variable circumstances, this principle cannot be stated as an inflexible rule applicable to every case. It is the responsibility of the DE to carefully consider all possible approaches within the scope of this chapter and select the best course of procedure in each case.

(a) *Financial Limitations Which Preclude Actual Restoration.* In view of the limitations of the Government's restoration obligations to amounts not in excess of the fee value of the leased property, or the difference in values of the leased property with and without restoration, actual performance of restoration work is precluded where these amounts would be exceeded, and a settlement in lieu of restoration is in order in amounts not to exceed the limitations indicated.

(b) *Settlement Where Property Enhanced in Value by Improvements.* Where the leased property has been enhanced in value by the Government's improvements, no restoration should be performed nor payment by the Government made in lieu thereof. Instead, effort should first be made to obtain from the lessor a cash payment to the Government equal to the in place value of the improvements, together with a full release of the Government from any restoration obligations. If the lessor is not willing to pay the in place value, but will offer a lesser amount in excess of the estimated net salvage value, settlement may be reached on that basis. If the lessor will not agree to make payment of any amount, or will offer only an amount which is less than the net salvage value of the improvements, consideration should be

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given to selling the improvements for removal and accomplishing any remaining restoration by payment in lieu thereof or by actual performance of the work. If it becomes necessary or advisable to arrange for separate sale of any or all of the improvements, the sale should be accomplished in accordance with §§ 644.540 through 644.557. The terms of sale in such case will require the removal of the improvements on or before the expiration or termination of the lease and contains any other special requirements applicable to the particular case, including site restoration. Bids received should be compared with the highest price offered by the lessor, due consideration being given to the cost of restoration, if any, which would remain after removal of the improvements. It must always be borne in mind that the disposition of public property to private parties must be at prices which can be shown to be in the best interests of the Government.

(c) *Reaching Agreement on Estimotes of Cost.* The terminal survey and condition reports specify the items to be restored and the lessor's estimate of cost. Those items reflected on the ENG Form 1440–R (Part 3) afford comparison between the lessor's and the Government's estimates. Where there is a variance in the estimates and the lessor's total estimate is lower, effort will be made to settle on the basis of his estimate. If the lessor's overall estimate is higher than the Government's, effort will be made to reach agreement on acceptance of the Government's total estimate. If the lessor's estimate is substantially higher on specific items, it may be desirable to disclose the basis on which the Government's estimate is predicated in order to demonstrate its reasonableness. The Government's estimate of cost for items of restoration may be made available to the lessor upon request. When the lessor requests items of work not shown on the Government's estimate, careful consideration will be given to his request, further inspection of the premises made, when necessary, and a determination made as to whether the Government is obligated under the lease to perform the work. If no liability is determined to exist, the lessor will be fully informed as to the reasons for noninclusion in the estimate. If liability is determined to exist, the estimate will be adjusted accordingly. In any case where the existence or extent of the legal obligation of the Government to restore is questionable, the DE will submit the facts, in writing, to DAEN-REM together with his recommendation. No lease restoration settlement will be allowed to become involved in litigation or formal claims procedure without the matter having been submitted to DAEN–REM for review. When a satisfactory cash settlement by the Government cannot be negotiated, the DE is authorized to perform the actual restoration work.

§ 644.455 Claims for loss or damage of personal property.

In some cases, owners have been allowed to store personal property, owned by them or under their control, on premises leased from such owners by the Government, the personal property not being covered by the lease. The rooms in which this property was stored have been broken into and, upon termination of the lease, it has been found that much of the property is damaged or is missing. Unless the lease specifically places some responsibility on the Government, payment for such damaged or missing property cannot be included in restoration settlements for payment. In the event the lessor refuses to sign a full release, a provision may be included in the supplemental agreement releasing the Government from all liability except for claims for damage, loss, or destruction of personal property stored on the leased premises and not covered by the lease, and the lessor advised that he may submit a claim for the amounts which he considers due him.

§ 644.456 Rent during the period required for restoration.

A sufficent period of time for performance of the restoration, commencing on the date premises are vacated by the Government, will be specified in the Government's estimate, and rent allowed in the settlement during such period to the extent that the lessor is actually deprived of beneficial use. If there is an outstanding maintenance and operation contract with the lessor, contained in either the lease or in an independent instrument, which fixes compensation in addition to the rent, the settlement agreement with the lessor will include the rent and such part of the compensation for maintenance and operation as will be necessarily incurred by the lessor during the performance of restoration.

§ 644.457 Settlement where part of the premises is surrendered.

Where there is a partial reduction of area in a lease requiring restoration, the supplemental agreement may contain a settlement in lieu of restoration of the area surrendered. A waiver of further claims covering the space released will be contained in the supplemental agreement.

§ 644.458 Documenting lease terminations and restoration settlements.

In the case of leases in which there is no obligation to restore, and in all cases of leases where terminal survey discloses no damage to the premises for which the Government is liable, an effort will be made to obtain an unqualified release from the lessor as of the date the premises are vacated and Governemnt improvements removed. Releases will also be obtained as indicated in § 644.462.

(a) *Form to be Used.* Releases will be executed, in triplicate, on ENG Form 232–R, Release (Corporation), or ENG Form 231, Release (Partnership), according to whether the lessor is a corporation or partnership. If signed by an attorney or agent, evidence of authority should be attached to the release. If the lessor is an individual, a letter incorporating a Notice of Termination and a Release Clause will be sent. The letter will substantially follow the form shown in Figure 11–16 in EP405–1–2. Distribution of releases will be accomplished in the same manner as set forth in § 644.460.

(b) *Qualified Release.* In case the lessor declines to sign an unqualified release, he should be requested to execute an appropriate release subject to exceptions. The exceptions may be enumerated on the reverse side of the form.

§ 644.459 Preparation of supplemental agreements effecting settlement.

The terms of settlement in lieu of restoration, negotiated with the lessor, will be embodied in a supplemental agreement to the lease, antedating termination, substantially in accordance with ENG Form 341, Supplemental Agreement Transferring Improvements to Lessor. Supplemental agreements may be used to effect restoration settlements of obligations incurred under permits, trespass right agreements, and other unnumbered contracts for the temporary use of land. Restoration settlements may also be effected even though the premises were occupied rent free and without formal contract, provided use of the premises was authorized properly by the Government (Decision of the Comptroller General B–63340, February 1947). Care should be exercised in determining the existence and extent of the legal obligation of the Government to restore. Payment will not be made for doubtful items; instead, the other party to the agreement will be advised of his right to submit a claim. On the other hand, every effort will be made to agree upon a reasonable settlement as to items for which the Government is legally responsible.

§ 644.460 Supplemental agreement assembly.

(a) *Composition.* Supplemental agreement assembly, covering agreement for settlement in lieu of restoration, will be composed of the following:

(1) Completed Notice of Termination.

(2) ENG Form 340 (Supplemental Agreement Accepting Proposed Restoration) or ENG Form 341 (Supplemental Agreement Transferring Improvements to Lessor).

(3) Lessor's notice requiring restoration, unless the lessor has signified that restoration is not required.

(4) Joint terminal survey and condition report.

(5) ENG Form 1440–R, or 1440A–R and 1440B–R.

(6) Estimated cost of restoration of leased personal property if not otherwise included.

(7) Statement of cost of any restoration actually performed by the Government.

(b) *Distribution.* An executed copy of the assembly will be retained by the DE. An executed copy of the supplemental agreement will be furnished the lessor. Conformed copies will be transmitted to the major command, the installation commander and, when monetary consideration is involved, to the appropriate finance and accounting office.

§ 644.461 Payment for restoration or settlement in lieu of restoration.

Voucher forms, appropriate to the circumstances, will be used in making payment of the settlement. Reference should be made on the voucher to the lease and supplemental agreement. The cost of restoration work performed directly by the Government, or by contract, or compensation in any settlement agreement in lieu of restoration, will be paid from funds available for the payment of rental. The limitations of Section 322 of the Economy Act of 1932, as amended (40 U.S.C. 278a and b), on the expenditure of funds for the alteration, improvement, or repair of leased premises to 25 percent of rent for the first year, are not applicable to costs of performing restoration work pursuant to obligations of the lease nor for payments of settlements in lieu thereof (20 Comp. Gen. 105).

§ 644.462 Performance of restoration work by district engineer—extension of time.

Where the lessor will not accept a cash settlement in lieu of restoration, or desires the work to be done by the Government, the restoration will be performed, without delay, directly or by contract, within the limitations outlined in this Subpart. Any contract entered into for such work should provide for required restoration work to be performed on or before the determined effective date of termination of the lease. A complete record of the items of work performed and the costs thereof will be kept. If the lessor, prior to commencement of the work, is not agreeable to executing ENG Form 340, DA Supplemental Agreement Accepting Proposed Restoration, efforts will be made, upon completion of the work, to obtain a release on ENG Forms 232–R, or 231, or on ENG Form 341 in the event of a cash settlement for that part of the restoration not performed. Where the Government is obligated to perform restoration and remove improvements, and it cannot be accomplished by the Government prior to the effective date of termination, a supplemental agreement will be prepared, antedating the effective date of termination, for such periods as may be required to effect restoration and to remove improvements, if the lessor is unwilling to terminate the lease and rental thereunder, with the reservation that the Government will have a right upon the premises for the purpose of performing restoration, conducting sales of improvements thereon, or doing similar acts related to restoration.

§ 644.463 Termination and settlement of leasehold condemnation proceedings.

(a) *Leasehold Condemnation Termination Assembly.* When leasehold estates in land, or other similar limited estates or terms for years, acquired or in the process of acquisition, have been determined surplus a prompt report will be made to DAEN–REM containing the following items of information as appropriate and necessary to a full understanding of the proposed disposition action:

(1) Name of project and using service.

(2) Style and civil number of the condemnation proceedings in which the land is involved.

(3) Particular tract or tracts involved.

(4) A citation of the authority pursuant to which the surplus status has been determined.

(5) Three copies of ENG Form 1440–R, or 1440A–R and 1440B–R.

(6) The proposed date of vacation of premises by Government.

(7) The term condemned and rights of the Government as to extension and cancellation thereof.

(8) Whether a declaration of taking, or supplement thereto, has been filed and the amount of deposit, if any.

(9) Whether an award or order for payment has been made, and the amount of the owner's withdrawal, if any.

(10) The estimated rental cost through the end of the term acquired in the condemnation proceeding.

(11) The estimated fair rental value of the land for the period of occupancy by the Government, including time for restoration.

(12) Recommendation as to the advisability of abandoning the proceeding.

(13) Request for termination of condemnation proceeding.

(b) *Action by Chief of Engineers.* DAEN–REM will review the termination assembly and settlement proposal recommended and, if approved, recommend to the Department of Justice a basis for settlement at the same time requesting the Department of Justice to move for termination or conclusion of the proceedings.

§ 644.464 Negotiating stipulation where proposed settlement not acceptable.

Should the court overrule the motion for abandonment, or should it appear that claims for damages will be interposed by the property owner, the responsible DE and the Department of Justice representative will negotiate with the owner for the purpose of obtaining his consent to the abandonment of the condemnation action. The Government will agree to pay the owner a sum representing the rental value of the premises for the period of occupancy by the Government, plus the cost of restoration as determined under §§ 644.452 and 644.453. Such estimate will include the value of personal property, buildings, crops, and other property damaged, destroyed or lost by the Government. DAEN–REM upon recommendation of the DE will request the amendment of the proceeding to include the taking of any property for which compensation is to be paid. The same criteria for settlement with lessors as under a negotiated lease will govern. In the event the landowner will not agree to settle, his best offer will be submitted to DAEN–REM, with the DE's recommendation, for consideration. If a tentative settlement is reached, the terms will be included in a stipulation to be filed in the condemnation proceedings, after approval by DAEN–REM and the Department of Justice,

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which stipulation will specifically provide:

(a) That the property owner releases and relinquishes all claims of any nature whatsoever which have arisen, or may arise, out of the Government's occupancy of the property; and

(b) That the owner consents to the abandonment and dismissal of the condemnation proceedings. Where the settlement amount is to be paid directly to the owner by the DE in lieu of deposit in the proceedings, the stipulation will so provide.

§ 644.465 Physical restoration where stipulation not obtained.

If such stipulation is not obtainable, then, whether or not a declaration of taking has been filed, the owner will be requested to designate, in writing, the restoration for which he believes the Government is liable. The Government will restore the property to the condition existing at the time of first entry by the Government, except for reasonable and ordinary wear and tear, damage due to acts of God, or circumstances over which the Government has no control. The cost of restoration or settlement in lieu thereof will be limited as outlined in this subpart.

§ 644.466 Release and record of physical restoration.

The responsible DE, upon completion of restoration, will make every effort to obtain a release of further claims for damages. A complete record of all items of restoration and the cost will be kept for use at the final hearing in condemnation or in any collateral proceedings, in the event a release is not obtained. Where litigation is anticipated, photographic evidence of work peformed will be obtained.

§ 644.467 Condition reports.

Survey and inspection reports covering the real estate, and inventory and condition reports covering the personal property located therein, made prior to first entry by the Government under condemnation proceeding, will be compared with the condition shown by similar reports made when the using service vacates the property.

§ 644.468 Settlement of claims.

Claims for damages or restoration filed in condemnation cases, when practicable, will be settled in the condemnation proceeding to avoid separate suit by the owner to recover compensation to which he may be entitled. In such cases request will be made of DAEN–REA–C to have the proceeding amended to enlarge the issues to include restoration.

§ 644.469 [Reserved]

§ 644.470 [Reserved]

§ 644.471 [Reserved]

Disposal of Buildings and Other Improvements (Without the Related Land)

§ 644.472 Authority.

Under authority vested in the GSA by the Federal Property Act, and the delegation of such authority made by GSA in FPMR, Section 101–47.302–2, the Department of the Army is designated as the disposal agency for the following property:

(a) Leases, permits, licenses, easements, and similar real estate interests held by the government in non-Government-owned property (including Government-owned improvements located on the premises), except when it is determined by either the holding agency or GSA that the Government's interest will be best served by the disposal of such real estate interests together with other property owned or controlled by the Government, that has been or is being reported to GSA as excess; and

(b) Fixtures, structures, and improvements of any kind to be disposed of without the underlying land.

§ 644.473 Methods of disposal.

Excess buildings and other improvements may be disposed of by the following methods:

(a) By demolition for utilization of salvage materials in the overall Army or Air Force construction or maintenance program. Screening with other military departments is not necessary for this purpose.

(b) By transfer to another Federal agency.

(c) By assignment to the Department of HEW for disposal for health or educational purposes pursuant to Section 203k(1) of the Federal Property Act (FPMR 101–47.308–4).

(d) By sale intact for removal from site to the most appropriate of the following, according to the circumstances:

(1) Eligible public agencies (§§ 644.400 through 644.443 and §§ 644.540 through 644.557).

(2) Boy Scouts of America (§§ 644.540 through 644.557).

(3) Military chapel buildings and chapel equipment to nonprofit organizations for use, first as a shrine or memorial and, second as a denominational house of worship.

(4) Owner of the underlying land as a part of restoration settlement where disposal of a leasehold is involved.

(5) An emergency Plant Facilities contractor.

(6) The general public, through competitive bidding, unless special circumstances warrant a negotiated sale for a specific purpose.

(e) By donation, abandonment or destruction.

§ 644.474 Determining method of disposal.

DE's are designees of the Chief of Engineers under AR 405–90 to determine the method of disposal authorized by law or regulations which is most advantageous to the Government. Where alternatives are presented, there will be an affirmative finding that the method of disposal approved is most advantageous. In the exercise of this authority, due consideration will be given to the effect of particular methods of disposal on safety and sanitation in the area, the proposed or probable future utilization of Government-owned sites by the Government, or in the case of leased lands, the restoration obligations of the Government under the lease. In order to assure consideration of these factors, disposals by transfer to other Government agencies or by sale intact will be brought to the attention of the installation commander or his representative prior to initiation of disposal action. Reasonable requirements for site clearance consistent with the foregoing criteria should be favorably considered and disposal conditioned accordingly, notwithstanding the fact that such action may result in a greater burden to transferee agencies or, in the case of disposal by sale intact, may result in a reduction in the monetary return which might be reasonably expected in a sale involving less stringent site clearance requirements. DAEN-REM will be informed of any instances of excessive or unreasonable requirements with respect to site clearance. The DE will determine by inspection and survey the method to be used in disposal of buildings and improvements.

§ 644.475 Excessing Army military and Air Force property.

The procedures for placing buildings and improvements in excess status are set forth in AR 405–90 and AFR 87–4. In instances of land acquisition where buildings and improvements were acquired incident thereto, DEs are designated by the Chief of Engineers under AR 405–90 to make disposition of this property. Coordination with the installation commander concerned is required. When, under AFR 87–4, the responsible DE is called upon by the Air Force Command to furnish an estimate of the value of buildings and improvements for the purpose of determining the approval authority for

excessing the property, no formal appraisal will be made. If, in his opinion, the total property exceeds a value of $50,000, he will furnish only a rough estimate of its value in round figures. If the property is, in his opinion, of a value of $50,000 or less, he will limit his statement to this fact and will not specify an estimated valuation.

§ 644.476 Excessing civil works property.

The DE are authorized to approve the disposal of buildings and improvements acquired incidental to the acquisition of land in reservoir areas, regardless of the original cost thereof, when they are in the way of authorized construction or when the land upon which they are located is to be permanently or frequently inundated. DEs may authorize the disposal of buildings and other improvements in any one or more of the following categories, which are located on lands which are not excess and which are not expected to become excess, and the sale is to be made after advertising:

(a) Buildings or improvements on land acquired by the Government determined to be available for disposal pursuant to ER 735–2–1 (Property Accounting Procedures-Civil).

(b) Buildings or improvements which cannot be kept in repair at a reasonable cost.

(c) Buildings or improvements which are dangerous to life or likely to damage adjoining structures or have become hazardous or nuisances.

(d) Buildings or improvements which are damaged or unsuitable for public service.

(e) Buildings or improvements constructed by the Federal Government which occupy or interfere with sites for new construction or for other civil works purposes.

(f) Temporary buildings or improvements which have served the purpose for which they were constructed.

§ 644.477 Civil works property—reimbursement of appropriation.

Under Title 33, United States Code, Section 558, the proceeds from a sale or transfer of buildings or improvements may be credited to the appropriation for the work for which the property was acquired. Buildings or other improvements, including timber, on non-excess land come within the purview of this law. For further instructions on disposition of proceeds, see § 644.322.

§ 644.478 Demolition of buildings and other improvements for utilization of salvage material.

With respect to DA property, demolition may be undertaken by the DE of buildings on non-excess land made available for disposal, when the salvage is to be used in construction or maintenance work by the Corps of Engineers or upon specific request from another service where funds for the purpose are made available. Real Estate funds will not be used for such demolition. Determination of practicability for use of buildings or improvements in authorized new construction at other sites or for salvage of materials will be made by the DE in accordance with existing instructions relating to use of materials in new construction. Where restoration of leased premises is being performed, it is the responsibility of the Corps of Engineers to perform the necessary demolition work as part of the restoration obligation, as set forth in §§ 644.444 through 644.471. Demolition may be accomplished under contract when special or expert services are required for removal of certain types of structures and funds are available therefor. Unused salvage materials will be turned over to redistribution and salvage officers for redistribution or disposal in accordance with existing regulations pertaining to personal property. The relocation of buildings or improvements on the same installation or for re-erection at another installation is not to be accomplished as a real estate function (AR 420–70). Further, it is provided in AR 420–70 that demolition of buildings or improvements where retention of the salvage for use at the installation is approved, or where no requirement or market is found for buildings or improvements approved for disposal by the Corps of Engineers, is a facilities engineering responsibility. Pursuant to AFR 87–4, disposal of AF buildings and improvements by sale will be accomplished by the Corps of Engineers, but all disposal of such property by salvage will be accomplished by the base commander.

§ 644.479 Authority for transfer of buildings and improvements to other Federal agencies.

Buildings and other imporvements which have been screened for defense requirements, as outlined in §§ 644.333 through 644.339, may be transfered to another Federal agency as hereinafter outlined. The authority for the transfer of such property to other Federal agencies is outlined in §§ 644.400 through 644.443. The responsible DE is authorized to transfer buildings or structures for removal from the site, which have been made available for disposal by proper authority, upon receipt of a request signed by an official of another Federal agency.

§ 644.480 Procedure for transfer.

Transfer of buildings to other Federal agencies will be accomplished by DD Form 1354. An estimate of value will be shown on DD Form 1354, Transfer and Acceptance of Military Real Property, or other forms used and, in the case of transfer without reimbursement, the following footnote will be made: "Transfer to (Department or Agency), adjustment of funds not required." When the transfer is made at the direction of GSA, an explanation therefor will also be made on the form. Buildings and other improvements which are reported to GSA for screening against requirements of other Federal agencies (§§ 644.348 through 644.367) will be transferred to another Federal agency only at the direction of GSA and for the amount of reimbursement, if any, determined by GSA. Buildings and improvements which are not required to be reported to GSA will be screened against requirements of other Federal agencies by the responsible DE as provided in §§ 644.333 through 644.339. Upon request by a Federal agency for transfer of such property, the responsible DE will determine the amount of reimbursement, if any, in accordance with the criteria outlined in §§ 644.400 through 644.443.

§ 644.481 Responsibility of transferee.

Where buildings or other improvements are on lands leased to the United States, the agency requesting the buildings will be expected to remove the building and restore the premises, as required by the terms of the lease, or to accept an assignment of the lease together with all obligations thereunder. Where the buildings or other improvements are to be removed from non-excess land, the transferee agency will be expected to perform reasonable site clearance as may be required by the commanding officer.

§ 644.482 Assignment to Department of HEW or successor agencies.

Pursuant to delegation of authority contained in FPMR, Section 101–47.308–4, as set forth in §§ 644.400 through 644.443, the responsible DE may assign buildings or other improvements made available for disposal and not required for Federal purposes to HEW upon receipt of request therefore from the appropriate regional representative of that department for disposal for public health or educational purposes. Assignments will be effected by letter addressed as indicated in § 644.483. Further, pursuant to delegation of authority the Department may disapprove within 30 days after notice from HEW, any transfer of property

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proposed to be made by that agency for such purpose. The DE will be guided by the policy set forth in §§ 644.400 through 644.443 in regard to the delegation to disapprove transfers by HEW.

§ 644.483 Notification of Department of HEW or successor agencies.

When buildings or other structures are reported to GSA for screening pursuant to §§ 644.348 through 644.367, the Reports of Excess are available to HEW by the Regional Office of GSA, and no notice of the proposed disposal need be given by the DEs. Where buildings and other structures are not reported to GSA simultaneously with circularization of other Federal agencies, HEW will be notified in writing of the availability of such structures. Such notification will be addressed to the appropriate field representative of HEW, and will include the following information:

(a) A brief description of the buildings and improvements, including dimensions of buildings, types of construction, and demountable characteristics, if any.

(b) The extent of building site clearance expected.

(c) That the improvements must be removed and site clearance completed within a specified definite period from the date of assignment to HEW (usually 60 to 90 days, depending upon the size of the removal operation).

(d) When improvements may be inspected.

(e) That the improvements will be withheld from advertisement for bids for a period of 20 days from the date of the notification, unless the office submitting the notification is sooner informed in writing that such property is not needed for school, classroom, or other educational use or for use in the protection of public health, including research. If within the 20-day period, notice is received of a potential need, the property may be held an additional 45 days until a certification of need or request for assignment is received.

§ 644.484 Procedure for disposal through the Department of HEW or successor agencies.

During the period held, action preparatory to the publication of Invitations for Bids and Specifications of Sale of Buildings and Improvements will be taken in order to minimize the time lapse between the expiration of the 20-day period and the beginning of the sale procedure. Inquiries received prior to the expiration of the holding period from state or local agencies or qualified organizations seeking the purchase of available improvements for health or educational purposes, will be referred to the appropriate field representatives of HEW.

(a) Final disposal is not effected until the improvements have been transferred by HEW to an eligible recipient. Therefore, in the letter of assignment, HEW will be requested to furnish to the responsible DE, three copies of the sales contract. One copy of the contract will be forwarded to the officer accountable for the property, together with a certificate of performance upon completion of the operation (the latter to be furnished by the HEW contracting officer), and one copy will be furnished to the property auditor charged with periodic audit of the property records.

(b) Should HEW fail to consummate disposition of the improvements after assignment to it and request cancellation of the assignment, the assignment may be cancelled by a letter of cancellation and appropriate disposition of the improvements affected. If there is an excessive number of such requests, DAEN–REM will be informed in order that corrective action may be requested of HEW.

§ 644.485 Sale of buildings and other improvements.

Buildings and other improvements made available for disposal by competent authority and not needed for further Federal utilization, or assigned to HEW, will be diposed of by sale by the responsible DE. Sales will be accomplished in the following manner:

(a) *Sale to Lessor Where Restoration is not Required.* Where the terms of a lease do not require restoration by the Government, it may nevertheless be in the best interest of the Government to negotiate a sale of the improvements to the lessor. In such cases, the DE is authorized to negotiate such sale where the net salvage value of all improvements located on the premises involved in any one lease is less than $1,000, and the sales price is determined to be as high as can be expected under the circumstances and compares favorably with the Government estimate prepared in accordance with paragraph (d) of this section.

(b) *Sale Under Options.* All leases or other rights of occupancy will be examined to determine whether the owner of the land has an option to purchase buildings or other improvements. See § 644.486 for sale of improvements constructed under Emergency Plant Facilities or similar contracts.

(c) *Sale to Eligible Public Agencies, the Boy Scouts, and the Public.* The sales procedure, including notice to eligible public agencies and advertising, set forth in §§ 644.540 through 644.557 will be followed in the sale of buildings or other improvements.

(d) *Appraisal.* Except as otherwise provided in Sections §§ 644.540 through 644.557 buildings and other improvements will be appraised prior to sale. Except as provided in § 644.490, appraisal will be based on the highest and best use which may be for (1) removal and use intact; or (2) for dismantling, and removal and stockpiling the salvageable material for reuse or sale.

§ 644.486 Disposal of buildings and improvements constructed under emergency plant facilities (EPF) or similar contracts.

Procedure for the disposal of property constructed under a facilities contract on lands neither owned by nor leased to the Department is set forth as follows:

(a) *By Using Service.* Disposal of structural components as well as equipment may be accomplished by the using service. The term "structure" is defined to mean plant equipment which:

(1) Is held under a facilities contract of the Department;

(2) Is not readily severable;

(3) Is a separate building or a complete structural addition to a building in which the Government otherwise has no interest, such as a wing, and in which a defense contractor carries on part or all of his defense production.

(b) *By the Corps of Engineers.* Where disposal of structures, as well as other plant equipment located within such structure, is to be accomplished by the Corps of Engineers, instructions will be issued as to the extent to which the Corps of Engineers will participate in such action. Subject to special instructions by DAEN–REM, the following coordinated actions will be taken:

(1) The using service will report to the Corps of Engineers the property which is excess to the Department's needs.

(2) The excess directive report will include the designation by name and address of a responsible officer of the using service to join with the DE concerned as a representative of the Chief of Engineers. These two representatives will meet with the contractor within seven days of their appointment to determine his interest in acquiring all or any part of the facilities. This determination will be made in the shortest possible time.

(3) The meeting with the contractor will promptly establish those facilities to be retained by the contractor and those to be declared excess. Waiver of existing options will be obtained where necessary.

(4) Equipment that is of no interest to the contractor will be disposed of by using service in accordance with applicable regulations.

(5) Custody of and accountability for the entire facility remains with the using service until other arrangements have been completed.

(6) The Corps of Engineers will complete negotiations for property to be retained by the contractor as rapidly as possible.

(7) When an agreement has been reached with the contractor, the DE or his contracting officer may execute the supplemental agreement to the lease or facilities contract transferring improvements, including machinery and equipment as a unit. Authority for the transfer should be recited in the supplemental agreement. In the case of a supplemental agreement to a facilities contract, authority will be obtained from the using service through its local representative for the DE or his contracting officer to sign the supplemental agreement transferring the improvements, including machinery and equipment to the contractor. (Figure 11–18 in EP 405–1–2 is the suggested format for Supplemental Agreement to Emergency Plant Facilities Contract.)

(8) Upon completion of negotiations, the responsible DE will issue instructions to the using service to dispose of equipment not included in the final negotiations in accordance with applicable regulations. Accountability for the property will be transferred at this time to the new owner or, in the case of real property retained by the Department, to the Corps of Engineers.

(9) Property not disposed of to the contractor will be disposed of in the same manner as improvements located on surplus leasehold property.

§ 644.487 Procedure for disposal of surplus chapels.

By direction of the President and pursuant to GSA and Army regulations, special procedures have been established for disposal of chapels. Surplus chapels must be segregated from other buildings for sale intact, separate and apart from the land, for use as shrines, memorials, or for religious purposes. Where the chapel is located on surplus land and it is determined the chapel may properly be used in place, a suitable area of land may be set aside for such purposes and sold with the chapel (§ 644.430).

§ 644.488 Soliciting applications for purchase of chapels.

Promptly upon receipt of an approved DA Form 337 (Request for Approval of Disposal of Building and Improvements) or AF Form 300, the DE will solicit applications by public advertising. Advertising will consist of publication of notice in newspapers, paid advertising when necessary, posting of notices in public places, and mailing of invitations to all known local churches. A period of thirty (30) days will be allowed in which to file written applications. Instructions will provide that the applicant will give his name, address, and denomination if applicable. The advertisement will describe the chapel, give its location, terms and conditions of sale, and the time and place where application must be filed. The advertisement will also state that the sale price will be made available upon request of interested parties, and that the Chief of Chaplains will select the purchaser. To assist that office in making a recommendation, the following information should be included in applications for the purchase of chapels:

(a) Purpose and intent of the use of the chapel.

(b) Facilities currently being used by the church/organization applying.

(c) Membership size of the church/organization.

(d) History of the church/organization and when established locally.

(e) Denomination and/or organization.

§ 644.489 Conditions of sale of chapels.

When sold under the provisions of § 644.490, chapels shall be sold subject to the condition that during their useful life they will be maintained and used as shrines or memorials, or for religious purposes, and not for any commercial, industrial, or other similar use. The contract or deed of sale will provide further that in the event the purchaser fails to maintain and use the chapel for such purposes there shall become due and payable to the Government the difference, if any, between the appraised fair market value of the chapel, as of the date of the sale, without restriction on its use, and the price actually paid. This difference should be figured at the time of sale and included in the contract of sale or deed of conveyance.

§ 644.490 Determining price and provisions of sale for chapels.

(a) *Price.* The sale price of the chapel structure in the case of sale for use as a shrine, or memorial, or denominational house of worship, will be at its fair value in the light of the conditions imposed relating to its future use, and the estimated cost of removal from the site. Appraisals made to establish the price of specific chapels will be predicated on:

(1) The fair value of the material in place, less the cost of dismantling, removal of the material to the outside limits of the installation, and the cost of restoring the site.

(2) The restrictions imposed on the future use of the chapel with due regard to the difference between the fair value price obtainable in the open market and that which might be obtainable in the limited market to which sale is restricted.

(3) In addition to the criteria set forth in paragraphs (a)(1) and (2) of this section cogizance will be taken of the prevailing prices of chapels being sold by other disposal agencies within the general area in which chapels are being disposed of by the Corps of Engineers.

(b) *Provisions of Sale.* (1) Disposal of chapels which are not excess or surplus will be conditioned on the removal of the chapels from the premises. In the disposal of chapels located on excess or surplus leased land, no commitments will be made to purchasers for the continued use of utilities and services (sewer, water, electric, fire protection, guarding). Arrangements may be made between the lessor of the premises and the purchaser to leave the chapels in place, provided the lessor releases the Government from any and all obligations to restore the premises occupied by the chapel.

(2) Care will be exercised that, prior to the disposal of the chapel, equipment such as organs, hymn books, and other ecclesiastical furnishings have been removed or shipped in accordance with applicable regulations.

(3) All copies of the contract evidencing the sale of chapels will be accompanied by copies of the instructions, if any, received from the Chief of Chaplains authorizing the disposal. If no such instructions have been received, the DE will attach a statement that in the absence of instructions, all known interested parties have been contacted and that the disposal has been made after due consideration of applications, the uses to be made of the chapel building and the need therefor.

§ 644.491 Coordination with the Chief of Chaplains.

The DE will submit applications for the purchase of chapels to DAEN–REM, who will request the Chief of Chaplains to select the purchaser and advise DAEN–REM of his selection. Where no applications are obtained as a result of the advertising, the DE will so advise the Chief of Chaplains, reporting steps taken to obtain a purchaser, and recommending that the chapel be sold without conditions, in the same manner as provided for disposal of other buildings. If the Chief of Chaplains does

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not approve this recommendation or issue other appropriate disposal instructions within a period of 60 days, DAEN–REM will be informed.

§ 644.492 Report on disposal of chapel.

As soon as practicable after the sale has been consummated, notification of disposal of chapels will be made by the DE direct to the Chief of Chaplains, with a copy to HQDA (DAEN–REM) WASH DC 20314, by letter, which will contain the following information:

(a) Location and brief description of chapel or chapels.

(b) Reference to disposal instructions, if any, received from the Chief of Chaplains.

(c) Identity of purchaser and price paid.

§ 644.493 Release of restrictions on chapels sold.

Where the purchaser fails to maintain and use the chapel in accordance with the conditions of sale, or the purchaser requests release of the conditions, the facts will be reported to DAEN–REM with appropriate recommendations. DAEN–REM may release the purchaser from the conditions of sale without payment of a monetary consideration upon a determination that the property no longer serves the purpose for which it was sold, or that such release will not prevent accomplishment of the purpose for which the property was sold.

§ 644.494 Donation, abandonment or destruction.

(a) *General.* Improvements may be abandoned, destroyed or donated to a public body, upon a finding in writing by the DE (but in no event shall such finding be made by the official directly accountable for the property) that the property has no commercial value or that the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale, or that abandonment or destruction is required by military necessity, or by considerations of health, safety or security.

(b) *Finding of Fact.* The finding will be prepared as a separate document headed: Finding of Fact for ———— The finding will be sufficiently complete within itself to justify the decision to donate, abandon, or destroy the property proposed, without outside reference. It will be drafted to provide, where the finding is made by the District Engineer, for approval by the Division Engineer. Finding of fact concerning property which had an original cost in excess of $500,000 requires the approval of DAEN–REM. A copy of each such finding, so approved, will be forwarded by the DE to the regional office of GSA.

§ 644.495 Donation to a public body.

A public body, as defined by GSA for this purpose, means any State, territory or possession of the United States, any political subdivision thereof, the District of Columbia, any agency or instrumentality of any of the foregoing, or any agency of the Federal Government. Property as to which findings of fact have been made, may be donated to a public body.

§ 644.496 Abandonment.

Abandonment, as used herein, has reference to cases where the lessor or a permittor Government agency is unwilling to accept transfer of buildings or improvements in lieu of restoration, but is willing to permit the Department to leave buildings or improvements having no net salvage value on their premises. It is desirable to transfer title of or accountability for improvements having no net salvage value to lessors or permittors instead of obtaining their consent to abandon such improvements. Abandonment as authorized herein will not be a means for dropping accountability or responsibility for maintenance of improvements on non-excess land.

§ 644.497 Destruction.

Disposal by the Corps of Engineers, as authorized in AR 405–90, does not contemplate expenditure of funds for destruction of improvements which have no sale or salvage value. Accordingly, where such improvement have been approved for disposal by the Corps of Engineers, they will be referred back to the appropriate Army of Air Force command for disposal action under AR 405–90 or AFR 87–4 as appropriate. However, improvements with little or no salvage value may be included in the same item with other improvements being offered for sale which are more attractive improvements without an expenditure of Government funds.

§ 644.498 [Reserved]

§ 644.499 [Reserved]

§ 644.500 [Reserved]

Disposal of Standing Timber, Crops, and Embedded Gravel, Sand and Stone

§ 644.501 Authority.

(a) *Crops.* Crops are defined as personal property in FPMR Section 101–47.103–12 and are disposed of under FPMR Section 101–45.309–1 (Sale, Abandonment, or Destruction of Personal Property). The Corps of Engineers does not dispose of crops on military lands. However, when lands are in the custody of the Corps for construction purposes, the Corps will dispose of crops thereon.

(b) *Standing Timber, Embedded Gravel, Sand or Stone.* These are defined as real property (FPMR Section 101–47.103–12(c)). The holding agency is designated as disposal agency for standing timber and embedded gravel, sand, and stone to be disposed of without the underlying land. (FPMR Section 101–47.302–2).

(c) *Small Lots of Standing Timber.* In accordance with AR 405–90, installation commanders are authorized to sell small lots of standing timber with a value not more than $1,000 that are in conformity with the installation Forest Management Plan. Public notice is required of the availability of the timber for sale. The total of such sales in any one calendar year will not exceed $10,000.

(d) *Restriction on Removal of Sand, Clay, Gravel, Stone and Similar Material.* The Army is without authority to remove such products from public domain land located within the military installation where the material is to be used off the installation. With permission of the Secretary of the Interior, such material may be removed pursuant to 30 U.S.C. 601. In such cases, DAEN–REM will obtain the necessary permission.

§ 644.502 Determination of excess status.

(a) *Military.* The procedure for excessing and disposal of standing timber and embedded gravel, sand and stone is outlined in AR 405–90. The procedure for the determination of availability of timber for disposal is outlined in AR 420–74.

(b) *Civil Works.* (1) When the DE believes that standing timber, embedded gravel, sand or stone (whether designated for disposition with the land or by severance and removal from the land) is excess to requirements, he will submit a recommendation to DAEN–REM for approval. The DE is authorized, however, to dispose of standing timber or other forest products required to be removed incident to construction and operational requirements of the project; that which is generated incident to recreational development or the management of public park and recreational areas or wildlife management areas; or that which is generated in accordance with approved forest management supplements to the approved Master Plan (ER 1130–2–400). As far as practicable, high grade species in short supply will not be disposed of, but will be retained for possible defense requirements. When the amount for sawtimber under the above criteria

available for disposal exceeds 5,000,000 board feet, request will be made to DAEN–REM, for determination of whether there are any defense requirements for the timber. The request will include an estimate of the amounts by species and the range in sizes. All timber disposals, except those involving timber below the project clearing line or in construction sites, will be compatible with the planned use of the areas for the purpose to which they are allocated in approved Master Plans and such disposals will be incidental to that use. The DE may authorize the disposal of growing crops when their disposal is deemed necessary to prevent waste.

(2) Under the provisions of Section 5 of the Act of 13 June 1902, as amended, (33 U.S.C. 558), proceeds from disposal of these items on civil works property may be returned to the appropriation.

§ 644.503 Methods of disposal.

Standing timber, crops, sand, gravel, or stone-quarried products, authorized for disposal in accordance with the foregoing, will be disposed of by transfer to another Federal agency or by sale.

§ 644.504 Disposal plan for timber.

The DE take appropriate action to assure that construction contractors are not authorized, in the clearance of construction sites, to burn or otherwise destroy merchantable timber unless circumstances exist which preclude sale or salvage. In preparing for disposal of timber, a disposal plan will be prepared which will include the following:

(a) Live timber and merchantable dead timber will be marked for cutting in accordance with the land management plan, Master Plan, or forestry supplement thereto, and cutting will be limited to the timber so marked. The disposal plan will contain sufficient information in this respect to permit preparation of specifications for inclusion in the invitation for bids.

(b) Utilization of existing roadways and construction of new roads and saw mills should be limited to the minimum necessary.

(c) Requirement that the customary practices in elimination of fire hazards be observed with necessary specifications therefor.

(d) The installation commander will be consulted to obtain his desires in connection with security measures, and other matters affecting the installations, and the requirements of such measures will be set forth specifically.

(e) Any measures considered necessary to protect timber and young growth not marked for cutting will be specified.

(f) Where an appraisal is required, the appraisal report will be prepared by a competent forester. The report will indicate the number and size of each species and classification of trees to be cut; the estimated board feet in log scale measurement; linear estimates of pole timber, and amount of cord wood. The appraiser should indicate in the appraisal report what, in his opinion, should be acceptable as a minimum price for different types of timber, as well as a total or lump sum estimate for the whole. Methods of administration and sale of timber by the Army or Air Force should follow the same general rules employed by the U.S. Forest Service in its sales and forestry practices. U.S. Forest Service personnel may be available for this work, if desired, on a reimbursable basis, provided the size of the area in question and the location render such arrangements feasible.

(g) Minor sales, involving lots with an estimated value of $1,000 or less, may be accomplished by the reservoir manager on civil works projects under general guidance issued by the DE Real Estate Branch. In such minor sales, two or more informal bids, in writing, will be obtained, if possible. If only one bid can be obtained, the proposed sale will be posted for a period of ten (10) days.

§ 644.505 Disposal plan for embedded gravel, sand or stone.

Prior to offering sand, gravel, or stone for disposal, a disposal plan will be prepared, which will include the following:

(a) Control of transportation facilities which will limit use of roads and construction of new roads to the minimum necessary.

(b) Security measures established by consultation with the installation commander to properly protect Government property and other interests of the Government.

(c) Where applicable, the depth or level to which the material may be removed, and any restoration of the site after removal.

(d) Specifications as to methods to establish amount of material removed for the purpose of payment.

(e) With certain exceptions as disussed in paragraph (d) of § 644.544 an appraisal report will be prepared by a person familiar with the material involved and the operations for mining, quarrying or otherwise removing it, giving the type or grade of material involved and an opinion as to the minimum price that should be acceptable.

§ 644.506 Procedure for transfer to another Federal agency.

As soon as possible after standing timber, embedded sand, gravel, or stone are made available for disposal, other Federal agencies having activities within the vicinity of the location of the property and which, in the opinion to the responsible DE, may desire transfer of the property will, to the extent practicable or economical, be notified of the availability of the property for disposal. Such notification should include the following: information concerning how arrangements can be made to inspect the property; information concerning conditions governing cutting, harvesting, mining, or removal of the property and a statement that the property will be advertised for sale upon the expiration of fifteen (15) calendar days from the date of the notification, unless a request for transfer of the property, or a statement that a request for transfer of the property, or a statement that a request therefor may be made, is received within the fifteen (15) day period. Should a Federal agency request within the fifteen (15) day period, that disposal of the property be withheld pending determination of a requirement, disposal will be withheld not longer than sixty (60) days from the date of notice of availability, unless DAEN–REM approves withholding disposal for a longer period. Disposal will not be withheld for such sixty (60) day period, extended if applicable, if to do so would interfere with construction or other necessary operations. Should a request be received from a Federal agency for transfer of the property, the property will be transferred in accordance with existing procedures without reimbursement except as provided by FPMR Section 101–47.203–7. If no request for transfer is received, the property will be considered surplus and disposed of by one of the methods outlined in §§ 644.507 and 644.508. The foregoing instructions do not apply to land clearance operations performed either by contract or force account. It applies only to those cases where it is proposed to offer property for sale.

§ 644.507 Sales.

DEs will be governed by the general procedure set forth in Sections 644.540 through 644.557 in selling standing timber, growing crops, embedded sand or gravel or stone products.

§ 644.508 Agreement with Small Business Administration (SBA) on sale of timber.

The Department of Defense has entered into an agreement with the SBA for the development of a program of assistance for small concerns operating

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in the timber business. This agreement is published for compliance as Figure 11–19 in EP 405–1–2. In the implementation of this agreement, the DE will cooperate with field representatives of SBA to the fullest extent compatible with efficient administration of the Army's timber disposal program.

§ 644.509 Status as small business.

(a) *Definition.* Each invitation for bids for the sale of timber with an estimated value of $2,000 or more will contain a definition of small business and provision for self-certification of the bidder's status within its terms. A definition for use in invitations for bids on Army timber is provided in the "Certificate as to Small Business Status" (Figure 11–20 in EP 405–1–2).

(b) *Self-Certification.* 13 CFR 121.3–9(c) provides: "In the absence of a written protest or other information which would cause him to question the veracity of the self-certification, the contracting officer shall accept the self-certification at face value for the particular sale involved."

(c) *Definition for Set-Asides.* The definition of small business provided in Figure 11–20 in EP 405–1–2 omits portions of the definition prescribed by SBA regulations which are not presently applicable to sales of Army timber. The omitted portions relate to sales of timber reserved for or involving preferential treatment of small business § 644.512. These portions of the definition are subject to frequent revision by SBA.

§ 644.510 Information for SBA on timber sales.

Representatives of SBA will visit District offices from time to time for purposes of coordination and assistance; to furnish names and information on prospective bidders from the SBA facilities list; and to obtain information on programmed sales of Army timber. In addition to the information which may be furnished during the course of these visits, the following items of information will be furnished to appropriate SBA field offices on each sale of timber products with an estimated value of $2,000 or more:

(a) Advice on proposed or prospective timber sales of Army timber.

(b) Copies of invitation for bids.

(c) Name of successful bidder, his status as a small business, the bid price, and an estimate of the amount of timber sold.

§ 644.511 Certificate of competency by SBA.

Section 8(b)(7) of the Small Business Act (15 U.S.C. 637(b)(7)) authorizes the SBA to certify the competency of a small business concern as to capacity and credit. In any case where timber is being sold on a credit basis, if the bid is being questioned solely on the financial ability of the bidder and the bidder is a small business concern, the DE will notify the appropriate SBA field office immediately and follow the other procedures provided by Section III of the DOD–SBA Agreement. A certificate of competency issued by SBA will be honored in such cases.

§ 644.512 DA–SBA joint set-aside determination.

Section 15 of the Small Business Act (15 U.S.C. 644), provides that where certain joint determinations are made by the SBA and a disposal agency, the award of a contract for the sale of Government property shall be made to a small business concern. Section IV, Joint Set-Aside Determination of the DOD–SBA Agreement implements Section 15 of the Small Business Act. It is not anticipated that SBA will recommend that Army timber be reserved or set aside for sale to small business concerns on an exclusive or preferential basis. In the event recommendations on set asides of Army timber are received from SBA field offices, the SBA recommendations will be forwarded promptly to HQDA (DAEN–REM) WASH DC 20314 with DE comments and recommendation.

§ 644.513 [Reserved]

§ 644.514 [Reserved]

§ 644.515 [Reserved]

Clearance of Explosive Hazards and Other Contamination From Proposed Excess Land and Improvements

§ 644.516 Clearance of Air Force lands.

The Chief of Engineers has no responsibility for inspecting or clearing excess Air Force land of explosives or chemical/biological contaminants. When a target or bombing range, or other land under the control of the Department of the Air Force, which might be contaminated with explosives or other harmful or dangerous substances, becomes excess to Defense requirements, the appropriate DE will obtain a certificate as to the extent of contamination and clearance thereof from the Commander, Air Force Logistics Command (AFLC), Wright-Patterson Air Force Base, Ohio 45433. The Corps of Engineers will continue to be the agency with which the disposal agencies, purchasers, and former lessors will communicate when explosives or objects resembling explosives, are discovered on the land after dispostion has been effected. The AFLC, upon request of the DE, will neutralize or remove such objects or substances and make a report to the requesting agency or person. See § 644.535 for support required of the Corps.

§ 644.517 Clearance of Army lands.

The responsibility for performing clearance of ordnance contaminated excess Army military real property is placed upon and remains with the using command. That command, after completion of the clearance work, will furnish the DE a "Statement of Clearance" (Appendix E, AR 405–90) and a record of the clearance work performed. In addition to the Statement of Clearance, the following information will be furnished to the DE upon completion of the neutralization:

(a) Records of the neutralization work performed, including statement of methods employed.

(b) List of dangerous and explosive materials removed.

(c) Number and names of demolition technicians employed.

(d) Other data that may be pertinent in the defense of any suit or claim that might subsequently arise as a result of civilian occupancy.

§ 644.518 Determination of categories.

Prior to making a recommendation for excess, the state of contamination of the property must be determined by the installation commander as either of the following:

(a) *Category One.* Those lands such as ammunition plants, storage, test, impact and training areas, bombing or target ranges, which may contain explosives or unexploded ordnance. The report will include proposed methods of neutralization and the costs thereof.

(b) *Category Two.* Those lands or buildings which are suspected of being contaminated with radiological, industrial-military chemicals, or explosives. The U.S. Army Toxic and Hazardous Materials Agency (USATHAMA), Aberdeen Proving Ground, Maryland 21010, will be requested to determine if the land contains any of the above contaminants, to determine the extent of the contamination, and to decontaminate, if necessary before such property is reported for disposal.

§ 644.519 Responsibilities.

(a) *Category One.* The DE, as designee of the Chief of Engineers, will satisfy himself that the clearance work, as certified in the Statement of Clearance, has been performed and that such clearance complies with the requirements of this section. If the DE determines that the completed clearance work is not sufficient, he will request the using command to perform the necessary additional clearance. The Department of Defense Explosives Safety Board (DDESB), has responsibility for reviewing and approving, from an explosive safety veiwpoint, clearance reports for real property declared excess and offered for disposal. DDESB should be consulted for review and analysis of accomplished clearance work for Category One property when determinations of adequacy are not within the capacities of the DE. Requests, fully documented, for review and/or analysis by the Board may be forwarded to DAEN–REM for submission to the Board. Department of Defense procedures include staff study of all proposed excess reports by the Board before grant of "Prior Approval" for those disposals requiring reports to the Armed Services Committees (10 U.S.C. 2662). When the clearance work has been satisfactorily performed, disposal action will be continued as set forth in this Subpart F. If the DE determines that further clearance work is necessary to render the land safe for use but that such further clearance work is not economically justified, he will make a report to DAEN–REM with his recommendations and pertinent supporting data. The report will include a statement of the current status of the excess action.

(b) *Category Two.* The U.S. Army Toxic and Hazardous Materials Agency (USATHAMA) is responsible for the identification and containment and elimination of all toxic and hazardous materials, and related contamination on all and/or buildings where an excessing action is planned. USATHAMA will conduct the survey and assessments of all proposed excess property to establish the type and quantities of contaminants and then plan, direct and control the program to decontaminate and clean up the property. Following the completion of the decontamination clean up program, USATHAMA will prepare a clearance statement stating the property has been cleared of all toxic and hazardous materials reasonably possible to detect using present state-of-the-art methodology, and it will provide any exceptions or restriction for utilization of the property. Clearance statements which identify contaminations of ammunition and explosives will be submitted to the DDESB for review. Category Two items may include chemical munitions or agents, liquid propellants and pyrotechnics. The clearance statement will be forwarded through the Major Army Command (MACOM) to DAEN–REM.

(1) Decontamination of Category Two real property will comply with the requirements of TB 700–4 (Decontamination of Facilities and Equipment). The Bulletin provides general policies, responsibilities and procedures applicable whenever potentially contaminated facilities are disposed of to other Government agencies, qualified users in industry, or to the general public.

(2) The degrees of decontamination are designated in TB 700–4. Contaminated real and personal property excessed for disposal shall be decontaminated to XXXXX before it can be removed from the Government premises, or transferred to nonqualified Government or industry users.

§ 644.520 Contaminated industrial property.

(a) GSA may arrange to sell contaminated chemical or other industrial plants to a purchaser whose operations will result in the same type of contamination, or who agrees to perform the necessary decontamination. Any decontamination work required will be monitored by USATHAMA who will also review the completed program for adequacy of decontamination. If these arrangements cannot be worked out, USATHAMA will decontaminate the property at the request of the Office, Chief of Engineers (OCE), or the property may be withdrawn from excess and returned to the using command for care and custody.

(b) A Statement of Clearance is required for industrial property to be declared excess in order to establish a qualitative and quantitative base line for the contaminants present. In the Statement, USATHAMA will provide an adequate description of the nature and extent of the contamination. The description furnished to the DE should include the following information:

(1) Name and location of installation.

(2) Date of final clearance.

(3) Reference to attached real estate map showing locations of contaminated, cleared and restricted areas. The map(s) will be attached to the description of contamination.

(4) Statement that the area has been cleared of toxic and hazardous materials reasonably possible to detect either by present state-of-the-art methodology or by a visual inspection.

(5) Recommendation as to whether the land or structures may be used for any purpose for which it is suited, clearly identifying any areas recommended for restricted use and listing restricted tract and building numbers.

§ 644.521 Limitations on clearance cost.

The following principles are established for determination of the financial limit of clearance operations at excess installations:

(a) *Government-owned land.* Clearance work will not be undertaken where the estimated cost thereof exceeds the value of the land after decontamination plus the estimated cost of keeping it security-fenced and posted for a period of 25 years.

(b) *Leased land.* Clearance will not be undertaken where the estimated cost, plus the cost of any other required land restoration work, exceeds the value of the land after clearance and restoration plus the estimated cost of keeping it security-fenced and posted for a period of 25 years.

§ 644.522 Clearance of military scrap.

Military scrap can contain or be contaminated with explosives, chemicals, and other hazardous materials. The primary consideration in determining whether scrap metal will be removed should be the safety of persons coming on the land in question and, secondarily, the prevention of accidents resulting from the sale and/or use of the scrap metal subsequent to the land passing from the jurisdiction of the Department. The DE will insure the removal or destruction, by using command, of all military scrap and scrap metal from lands suitable for cultivation or other subsurface operations. In the case of land unsuitable for cultivation or other subsurface operations, all military scrap will be removed or destroyed and scrap metal removed, if it is reasonably possible to do so. Cases where it is considered impracticable to remove the scrap metal, will be reported to DAEN–REM for final decision. In such instances, pertinent data and the recommendation of the DE will be furnished. Disposition of military scrap or scrap metal by dumping into inland waters or by land burial in other than an approved landfill is prohibited.

§ 644.523 Restricting future of artillery and other ranges.

Experience indicates that, on ranges where high explosive projectiles have been fired or dropped, such as artillery, bombs, mortars, rockets, grenades, and the like, it is impossible to make certain that land in impact areas is absolutely safe for unrestricted use. Such impact areas receive a high concentration of

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fire, and the properties of these projectiles are such that many duds are deeply buried. Depth of burial, as well as the concentration of fragments or components, will affect the dependability of mine detectors. Since there is no known definite period within which such projectiles will become inert through weathering and corrosion, such contaminated areas can be safely released for restricted use only, even after decontamination work has been carried to its practicable limit. Such restrictions will usually be in the form of a recommendation that the land be restricted to surface use only. Restrictions will be based solely on the type and/or extent of contamination. If land is contaminated to such a degree that it is considered it cannot be rendered safe for any use, disposal action will be suspended and the facts will be reported to DAEN–REM–C with the DE recommendations.

§ 644.524 Reporting contaminated land to the General Services Administration.

Contaminated areas, except industrial properties as covered by § 644.520 will not be included in a Report of Excess to GSA until such time as the affected areas have been cleared by the using command to the satisfaction of the DE and a Statement of Clearance has been received. If an exception is granted and the Department of the Army, with the concurrence of GSA, reports contaminated nonindustrial property excess, the report of excess will include statements concerning:

(a) The extent and type of such contamination;

(b) Plans for decontamination, if any; and

(c) The extent to which the property may be excessed without future decontamination.

§ 644.525 Statement of clearance in reporting excess property to GSA.

The Report of Excess will include the Statement of Clearance furnished by the using command (§ 644.517). The record of the clearance work performed by the using command will not be included in the Report of Excess but will be preserved in the permanent records of the DE. It is anticipated in these cases that the disposal agency (GSA) will, at the time the land is offered for sale of lease, give public notice of the circumstances surrounding its past and future restricted use. Included in such notice will be the statement that the Department of the Army is willing to remove or destory any potentially dangerous materials discovered at any time in the future, subject to the availability of funds for this purpose.

§ 644.526 Reporting target ranges.

All Reports of Excess to GSA covering lands which have been used as target ranges of any kind will contain an affirmative or negative statement in regard to contamination. This will be by appropriate schedule and reference thereto in the following manner:

(a) If the statement is negative, it will declare that no explosive or other contaminating materials were used or stored on any portion of the installation.

(b) If the statement is affirmative, reference will be made to appropriate schedules of the Report of Excess containing statements of clearance on the installation, or portions thereof.

§ 644.527 Recording Statements of Clearance.

On property disposals for which the Corps of Engineers is the disposal agency, the DE will have the Statement of Clearance recorded, if possible, as part of the permanent history of the property involved, with the proper county land record office. A copy of the report of clearance work performed will be furnished DAEN–REM and DAEN–REP.

§ 644.528 Return of contaminated leased land to owners.

Where leased land has been contaminated, whether excess to military requirements or being used, it may often prove advisable and economical to acquire the fee to such properties. Prior to considering the return of contaminated leased land to owners, District Engineers will assist installation commanders in preparing an analysis as a basis for recommendation to acquire or not acquire such areas. In the case of recommended restriction of use, notice should be given the lessor as described in § 644.525.

(a) Where such a restriction reduces the value of the land, the Department will, if consistent with the terms of the lease, pay damages equal to the reduction in value as of the effective date of termination.

(b) As stated in § 644.525, the owner should be advised that the Department is willing to remove or destory any potentially dangerous materials that may be discovered in the future, subject to the availability of funds.

§ 644.529 Supplemental agreement with owner of contaminated leased land.

In the event that it becomes necessary to pay damages to a lessor in lieu of restoration i.e., decontamination, the following clause, appropriately modified to fit the circumstances, will be made a part of the supplemental agreement terminating the lease and effecting monetary settlement in lieu of restoration. Additionally, in order to protect the Government from possible claims for damages from future purchasers, the executed supplemental agreement will, in those jurisdictions permitting recordation, be recorded by the DE thus providing legal notice to subsequent purchasers of the condition of the premises.

Suggested Clauses for Use in Supplemental Agreement

Whereas, by reason of the use made of the premises by the Government it is impossible to ascertain after completion of decontamination operations by the Government that the following described portion of land is safe for unrestricted use by the lessor (or state because of use made by Government that use of land must be restricted to grazing, etc.):

(Legal Description; utilize hachured/annotated map(s) as attachment plus legal description.)

Now, therefore, in consideration of the payment by the Government of the United States to the lessor, (Name of Lessor) , of dollars ($), representing the estimated compensation to which the lessor is entitled by reason of the loss of the unrestricted use of the above described property, the lessor hereby releases the Government from all claims for damages to property and/or injury to persons which may arise out of the existence on the premises of unexploded ammunition or chemical/biological agents. It is mutually understood, however, that for a period of 25 years from the date hereof, the Government shall, upon request of the lessor, remove or destroy any potentially dangerous materials that may be discovered on the land, provided that adequate appropriations are available to cover the cost of such service. (If use of the land is restricted to surface use, the lessor should agree and convenant, in consideration of the payment, to use the land for such purposes only.)

§ 644.530 Conditions in conveying land suspected of contamination.

The following conditions, appropriately modified to conform to local law, will be included in deeds conveying land which is, or is suspected of being, contaminated with explosive or toxic materials and is restricted to surface use: (GSA should be requested to include these conditions in deeds that they prepare.)

Whereas, said property was a part of (Name of Installation) , a military installation used for , and portions of this property were subject to contamination by the introduction into the said installation of bombs, shells and other charges (insert reference to toxic chemical/biological agents, if applicable) either below or upon the surface thereof; and

Whereas, the grantor has caused the property to be inspected and has decontaminated the said property to the extent deemed reasonably necessary, and, to the extent deemed consistent with sound economic limitations, has cleared the property of all dangerous and explosive materials and/or chemical/biological agents, reasonably possible to detect, and has made certain recommendations pertaining to the use to which the land may be devoted, and the said recommendations are contained in a statement, a copy of which is attached hereto and made a part hereof; and

Whereas, the grantor, by attaching such statement, does not intend to make, nor shall it be construed to have made, any representations or warranties pertaining to the condition of the land; and

Whereas, the hereinafter-designated grantee has entered into a contract to purchase said property with full knowledge of, and notwithstanding the foregoing recitals which are incorporated for the purpose of disclosing the former use made of the property hereinafter described; and

Whereas, by acceptance of this instrument, the grantee admits and confesses to full knowledge with respect to the facts contained in the foregoing recitals as to possible contaminated condition of the property;

Now, therefore, by acceptance of this instrument, and as a further consideration for this conveyance, the grantee here convenants and agrees for himself, his heirs, successors, or assigns, to assume all risk for all personal injuries and property damages arising out of ownership, maintanance, use, and occupation of the foregoing property; and further covenants and agrees to indemnify and save harmless the United States of America, its servants, agents, officers, and employees, against any and all liability, claims, causes of action, or suits, due to, arising out of, or resulting from, immediately or remotely, the possible contaminated condition, ownership, use, occupation, or presence of the grantee, or any other person, upon the property, lawfully or otherwise.

§ 644.531 Warning to public of danger in handling explosive missiles.

When any land which has been contaminated with explosive objects, or chemical/biological agents, is released for disposal to, or use by, the general public in addition to the clearance statement furnished to the disposal agency, the DE will publicize, to the fullest extent practicable, the possibility of contaminants remaining on the land and the inherent danger of handling explosives or other contaminants. Such publication should be in the form of articles in official news media, or posting of the premises whenever the later is considered most feasible. Such publicity should include instructions that, in the event of the discovery of an explosive missile, or an object resembling an explosive missile, or other contaminant, or in the event of an injury caused by an explosion or exposure to toxic agents, such discovery or injury should be reported immediately to the DE. An effort should be made to obtain the cooperation of local law enforcing agencies to insure the prompt reporting of an accident, or the discovery of an explosive missile. The majority of accidents are the result of the removal of explosive missiles by individuals for sale to scrap dealers. Scrap dealers in the vicinity of contaminated lands should be informed of the inherent dangers and asked to cooperate by refusing to buy military scrap from private parties.

§ 644.532 Reporting accidents.

Immediately upon receipt of information of an accident involving, or appearing to involve, explosive or chemical/biological elements remaining on, or carried from an excess or surplus installation, whether under the jurisdiction of the Corps of Engineers, other Government agency, or sold or returned to public or private owners, the DE will institute an investigation and prepare a report prescribed by AR 385–40 and OCE Supplement thereto. Further, upon determination that an accident has occurred, the former using command should be requested to send qualified explosive, chemical or biological specialists to the scene of the accident immediately, in order that proper corrective measures to eliminate future accidents may be instituted. HQDA (DAEN–REM) will be immediately informed, by teletype, of any accidents due to explosives on lands which have been used by the Department involving injuries to persons and/or animals, or damages to private property.

§ 644.533 Contamination discovered after return of land to owner, or sale.

When land has been previously declared clear of explosives or other dangerous material so as to be safe for all uses and disposed of, but is later found to have been contaminated to such an extent that, in his opinion, it is dangerous to the public, the DE will request the former using command to re-examine the land for the purpose of determining the extent to which the original Statement of Clearance should be revised and to determine the kind and cost of any further clearance work by the using command which would be required to place the property in the condition set forth in the original Statement of Clearance. If further clearance work is necessary and considered economically justified, the DE will request the using command to perform such work and furnish a new Statement of Clearance and record of the further clearance effected. If further clearance work is not considered economically justified, he will make a report thereof to DAEN–REM with his recommendations and pertinent supporting data. Recommendation for reacquisition of contaminated lands will be limited to those which involve full restrictions of both surface and subsurface uses. Where subsurface use of lands only is to be restricted, it is preferable to make compensation to the owners through claim procedure, when and if instituted by the owner on his own initiative.

§ 644.534 Return of public domain land.

(a) *General.* The procedures described elsewhere in §§ 644.516 through 644.539 to carry out the continuing responsibility of the Department of the Army to assist and advise the land holder and protect the public from dangerous substances on or in the land after release are equally applicable to public domain lands. Air Force policy and procedures are generally comparable.

(b) *Congressional.* A provision has been added to several laws enacted by Congress that upon request of the Secretary of the Interior at the time of final termination of the reservation effected by the Act, the Department of the Army shall make safe for nonmilitary uses the land withdrawn and reserved, or such portions thereof as may be specified by the Secretary of the Interior, by neutralizing unexploded ammunition, bombs, artillery projectiles, or other explosive objects and chemical agents. The intent of the provision is explained by a statement of the Committee on Interior and Insular Affairs, House of Representatives, in Report No. 279, 87th Congress, 1st Session: The committee concluded that it would be appropriate to amend the bill to designate the Secretary of the Interior to act on behalf of the Federal Government in delineating the areas to be made safe for nonmilitary use when the lands are no longer required for defense purposes. "It is expected that the Secretary of the Interior will not require the Department of the Army to proceed with expensive cleanup work in areas where there would be no direct benefit. On the other hand, it is anticipated that when potential resources or use values are such as to make dedudding or decontamination advisable, the Secretary of the Interior will identify those resources and values for the Secretary of the Army. This will permit a full and complete justification in the event that a separate appropriation therefor is required." Report No. 279 also quoted the following policy statement by the then Bureau of the Budget: ". . . requirement for decontamination should be related to a standard not only of practicability, but also to one of economic feasibility that

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takes into account the desired future use and value of the land to be decontaminated."

(c) *Army.* The congressional policy outlined above does not change the existing Army policy. Its principal effect is to make it clear that the Secretary of the Interior has an equal interest with the Secretary of the Army in the final decision on whether it is practicable or feasible to clear lands for return to the public domain, and the extent of clearance. No difficulties in reaching agreement with Interior in these matters are anticipated. Where large expenditures are involved it will usually be necessary to request a special appropriation, leaving the final decision to Congress. In any instance, if difficulty in reaching agreement with officials of the Bureau of Land Management (or the Secretary of the Interior) should occur, it will be reported promptly to DAEN–REM with complete background data for review and instructions.

§ 644.535 Support in clearance of Air Force lands.

Where Air Force range lands are proposed for disposal, the AFLC, in most cases, will make an economic study to determine the extent of clearance that is justified by the relative values of the property before and after decontamination. For this purpose, AF commands declaring range lands excess will submit a copy of the excess recommendation to the AFLC. Upon request, the DE will prepare and furnish a disposal planning report to the AF Logistics Command for assistance in making the economic study. The disposal planning report will include, but need not be limited to, the following:

(a) A map which depicts and annotates differing areas according to their estimated highest and best use.

(b) An appraisal report reflecting the fair market value of each of the differing areas based on their highest and best use, and based on the assumption that the lands are entirely free of dangerous materials or other contamination. AFLC will compare such evaluation with cost of decontamination work. While needed primarily in connection with the return of AF range lands to the public domain, economic studies may be made and disposal planning reports requested by the AF in other areas.

§ 644.536 [Reserved]

§ 644.537 [Reserved]

§ 644.538 [Reserved]

§ 644.539 [Reserved]

Sale Procedure

§ 644.540 Advertising.

(a) *Definition and Purposes.* GSA regulations require that disposal agencies shall widely publicize all surplus real property which becomes available for sale. Sales will be made to the highest responsible bidder after advertising. Advertising consists of the preparation of Invitation for Bids, the posting of copies thereof in public places, their distribution to interested persons or prospective bidders, and publication of notice of sale in newspapers where such publication is deemed advisable or is required by this Subpart F. The purpose of advertising and obtaining competition in selling Government property is:

(1) To give all qualified persons equal opportunity to bid for the property.

(2) To secure for the Government the benefits which flow from competition.

(3) To prevent criticism that favortism has been shown by officers or employees of the Government in making sales of public property.

(b) *Notice to Department of Commerce.* A condensed statement of proposed sales of surplus real property by advertising for competitive bids, except where the estimated fair market value of all the property included in the advertisement is less than $5,000, shall be prepared for publication in the U.S. Department of Commerce publications, "Commerce Business Daily." Guideline is contained in the Defense Acquisition Regulation (DAR) 1–1005.1, (formerly the Armed Services Procurement Regulation). Forward statement to: U.S. Department of Commerce, Commerce Business Daily, P.O. Box 5999, Chicago, Illinois 60680.

(c) *Procedure.* Whether newspaper advertising in addition to distribution and posting of Invitation for Bids is desirable will depend upon the value of the property and in some instances the anticipated interest in the property. The ever-changing market requires different methods or efforts to obtain the best price for the Government. The time allowed for submission of bids will depend upon the time available, usually 30 days. If available, a longer period may be desirable based on value and other factors. A shorter period may be necessary and, in an emergency, a period of less than 10 days may be allowed. However, the contracting officer should make a record of written findings to support such a decision. If the emergency is based on requirements of the using command that appear questionable, a report with recommendations should be forwarded to DAEN–REM by the most expeditious means.

(d) *Bidders Mailing Lists.* Instructions contained in procurement regulations are applicable generally for establishing, maintaining, and controlling bidders mailing lists (DAR 2–205). Generally, all proposed sales should be preceded by an advance notice, to eliminate disinterested bidders and as a measure of economy in printing and distributing voluminous Invitation for Bids. Notice to bidders will provide that their failure to respond to two successive sales offerings will result in the removal of their names from the bidders list. When time does not permit an advance notice, one copy of the Invitation may be sent to the potential bidder, which contains the following notice: *"Attention Bidders.* If interested in bidding on any or all items, three (3) additional copies will be furnished on request." The advance notice will describe the property offered and ordinarily provide that Invitation for Bids will be mailed on request or may be picked up at the installation or project at the time the property is inspected.

(e) *Inspection of the Property.* Upon request, interested persons should be permitted to make appropriate inspection of the property, including inventory records, plans, specifications, and engineering reports, subject to any restrictions necessary in the interest of national security and to such reasonable rules as may be prescribed by the using command or the DE.

§ 644.541 Award of contract.

(a) *Opening of Bids.* All bids shall be opened and publicly disclosed by a duly authorized representative of the responsible DE at the time and place stated in the Invitation and advertisements.

(b) *Award and Notice to Bidders.* Award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the Invitation for Bids, will be most advantageous to the Government, price and other factors considered, provided that any or all bids may be rejected when it is in the public interest to do so. When an award is made, unsuccessful bidders should be notified promptly and their earnest money deposits returned.

(c) *Equal Offers.* Equal offers mean two or more offers that are equal in all respects taking into consideration the best interests of the Government. When equal acceptable offers are received, award shall be made by a drawing by lot limited to the equal acceptable offers received (See also § 644.542.)

(d) *Public Auction.* When authorized by GSA, sales of surplus property may be made through contract auctioneers. Consideration should be given to auction sales when there is likely to be considerable interest in the property. GSA Regional Offices have had experience with actions, maintain lists of qualified auctioneers, are in a position to give other advice and assistance, and may authorize auction sales on behalf of GSA, pursuant to FPMR, Section 101–47.304–7. Auctioneers retained under contract shall be required to publicly advertise for bids in accordance with applicable provisions of that regulation. The prior approval of DAEN–REM will be obtained before auction sales are undertaken.

§ 644.542 Application of anti-trust laws.

The Federal Property Act provides that real property and related personal property with an aggregate total cost of $1,000,000 or more (or personal property with an acquisition cost of $3,000,000 or more) or patents, processes, techniques, or inventions, regardless of cost, shall not be disposed of to any private interest until the advice of the Attorney General has been received as to whether the proposed disposal would tend to create or maintain a situation inconsistent with the anti-trust laws. Prior to obligating the Government on any such disposal, Division Engineers will furnish DAEN–REM information on the probable terms and conditions of the sale. DAEN–REM will use the information as the basis for a request to the Attorney General for advice. Under the provision cited, the Attorney General is allowed up to 60 days to furnish the advice requested. The Federal Property Management Regulation, Section 101–47.301.2 provides guidance on the information to be furnished. Where indentical bids in excess of the $2,500 are received, FPMR, Section 101–47.304–8 provides for a report to the Department of Justice. Section 101–47.304–8 provides guidance for such reports to be addressed to the Attorney General, WASH, DC, 20530.

§ 644.543 Determination of acceptable offers after advertising.

(a) Generally an acceptable offer is one which:

(1) Is submitted by a responsible bidder.

(2) Conforms to the Invitation for Bids.

(3) Equals or exceeds the appraised fair market value of the property.

(4) Was independently arrived at in open competition.

(b) A formal appraisal is not required where real property components:

(1) Are to be offered on a competitive sale basis that will adequately test the market.

(2) Are at the same location and are to be sold under a single advertisement.

(3) Have a total estimated fair market value of $10,000 or less for all property to be sold.

The determination as to necessity for a formal appraisal because of the $10,000 limitation may be made by an experienced real estate employee who need not be a real estate appraiser. This determination may be in the form of a simple written statement that in the judgment of the signer the property is not considered to exceed $10,000 in value. In these cases, awards will be supported by a determination by the DE that the market was adequately tested, and the price bid reasonable. For the purpose of records and reports, the sale price will be recorded as the fair market value. If it appears the market was not adequately tested, bids will be rejected and the property readvertised, or, if time does not permit readvertising, a sale may be consummated using the procedure provided in paragraphs (d) and (e) of this section.

(c) All land, irrespective of estimated value, and all other real property and components with an estimated value in excess of $10,000 will be appraised. Where an acceptable offer, as defined in paragraphs (a) and (b) of this section, is not received for such property as a result of public advertising, it will be readvertised unless the responsible DE determines, based upon written findings which shall be preserved as part of the permanent file, that further public advertising will serve no useful purpose.

(d) Where no acceptable bid is received as a result of the second advertising, or a determination was made that further advertising would serve no useful purpose or is not feasible, the DE may negotiate a sale at the highest price obtainable, provided:

(1) All bids are first rejected.

(2) The total of the appraised value for all property included in any single sales contract does not exceed $1,000.

(3) All past bidders, on any of the items, and any other known interested parties are afforded a fair opportunity to participate in the negotiations.

(4) The sale price is in excess of the highest bid received as a result of advertising.

(5) In his opinion the price is reasonable.

(e) Where the appraised or estimated value of all items to be included in a single sales contract exceeds $1,000, and no acceptable bid is received, the high bidder may at the discretion of the DE be given a reasonable period, not to exceed five working days, to increase his bid. At the same time all other bids shall be rejected and bid deposits returned. If the high bidder increases his offer to an amount equal to the total appraised or estimated value of the items involved, the DE may consummate the sale. All other cases will be forwarded to DAEN–REM together with an opinion as to whether the market was adequately tested and the highest price offered is reasonable, and with recommendations as to the course of action to be followed. If a negotiated sale to other than the highest bidder is recommended, information for preparation of a report to the Government Operations Committees of Congress will be included, as required in paragraph (c)(2) of § 644.544.

§ 644.544 Negotiated sales.

(a) *To Private Parties.* Negotiated sales to private parties are not viewed with favor. Generally, such negotiated sales will be approved only where an emergency exists that will not permit advertising, where advertising would serve no useful purpose, or where a negotiated sale is in the best interest of the Government. Emergencies which justify sales without advertising do not ordinarily justify sales without competition. Instances are rare where the emergency is such that time does not permit the oral solicitation of quotations from more than one source. In any sales which are made without benefit of advertising, competition by informal solicitation and quotation will be obtained to the maximum extent feasible under the circumstances. Such sales should be negotiated at the best terms obtainable and at not less than the appraised fair market value.

(b) *To Eligible Agencies.* (1) Acts of Congress listed in the Federal Property Management Regulation, Section 101–47.4905 (Illustrations), authorize negotiated sales of surplus real property to states and other eligible public agencies listed therein. The Acts listed, except Section 203(c)(3)(H) of the Federal Property Act (40 U.S.C. 484(c)(3)(H)), cover special classifications of property for specialized use, the most important of which is disposal of airport property. The Section of the Act cited authorizes negotiated sales of surplus property to states, territories, possessions, political subdivisions thereof, or tax-supported agencies thereof, provided the appraised fair market value of the property and other satisfactory terms of disposal are

obtained. (The other Acts listed in Section 101–47.4905 provide for disposal subject to conditions of use but without consideration, or at reduced consideration, except power transmission lines which are sold without conditions but at the appraised fair market value.) Notification that surplus property is available for disposal will be given to eligible public agencies for all airport property and for any other property where there is reason to believe that an eligible public agency may be interested in the property or that the property may be adaptable to the agency's use (Sections 644.400 through 644.443).

(2) Title 10, United States Code, Section 4682, authorizes the Secretary of the Army to sell obsolete or excess material at fair value to the National Council of the Boy Scouts of America. The Judge Advocate General has held that buildings and other improvements no longer required by the Department be sold to that organization at the appraised fair market value.

(c) *Authority to Negotiate.* (1) The DE is authorized to dispose of land, improvements, related personal property and real property components (including standing timber and embedded sand, gravel, and stone-quarried products in their unmined or natural state) with an estimated fair market value of $1,000 or less by negotiated sale without advertising, provided that such action is within the purview of paragraphs (a) and (b) of this section, and satisfactory terms of disposal can be obtained. Except as provided in § 644.543 and paragraph (b) of § 644.544 all sales are not less than the appraised fair market value. See paragraph (d) of this section for requirement for appraisal by contract.

(2) All other proposals to negotiate sales without advertising will be submitted to DAEN–REM for advance approval. In submitting such proposals, the nature of the emergency or other situation justifying the waiver of advertising will be clearly stated. The property involved will be adequately defined, and the appraised fair market value and proposed price will be set forth. Negotiated sales of surplus property with an appraised value in excess of $1,000 under provisions of the Federal Property Act cited in paragraph (b)(1) of this section, require submission of an explanatory statement to the Government Operations Committees of Congress. Under the FPMR, a statement must be submitted at least 35 days in advance of each such negotiated disposal. When required, the DE will forward a draft of statement to HQDA (DAEN–REM) for transmittal to GSA for submission to the Committees.

(d) *Appraisal by Contract.* Pursuant to Federal Property Management Regulation, Section 101–47.304–9(b), where sales are to be negotiated under the authority provided by paragraphs (a) and (b) of this section, a contract appraisal should be obtained provided that the cost of such a contract would not be out of proportion to the recoverable value of the property and is in the best interest of the Government. If such is not the case, the head of the disposal agency, or his designee, may authorize any other appropriate method to obtain an estimate of fair market value. Requests for waiver will be forwarded to DAEN–REM.

(e) *Record to Justify Waiver of Advertising.* (1) A written justification for negotiated sales made under the authority of these instructions will be prepared and filed by the DE with the record of disposal in each case. A copy of Standard Form 1036 may be used for this purpose.

(2) Except for those cases covered by paragraph (b) of this section, the nature of the emergency compelling waiver of advertising, the reason why it was considered that advertising would serve no useful purpose, or why the negotiated sale was considered to be in the best interest of the Government, will be clearly stated. In cases where an explanatory statement is transmitted to the Committees on Government Operations, a copy of that statement will be furnished the appropriate GSA Regional Office and filed with the record of the case as the required documentation of justification for waiver of advertising. DAEN–REM will make available to the DE necessary copies of such statements for filing or distribution.

§ 644.545 Form of invitation for bids and contract of sale.

Sale contract forms will be prepared by the DE conducting the sale. ENG Form 571–R, Invitation for Bids, Bid and Acceptance, Sale of Surplus Real Property will be used as a guide in sales of bare land or improved land and related personal property. ENG Form 1038–R, Invitation for Bids, Bid and Acceptance, Sale and Removal of Buildings (or other Real Estate Improvements), will be used as a guide in sales of buildings and other improvements for removal from the site. These forms are designed for use in normal sales of land and real estate improvements pursuant to existing delegations of authority. The DE is authorized to change the formats, to rearrange the sequence of paragraphs, and to add or to delete paragraphs in whole or part, as local circumstances require, but no substantive departure from the forms is authorized without prior specific approval of DAEN–REM. Whenever a sale is to be conducted pursuant to a special delegation of authority, and whenever the circumstances of a sale are such as to render use of these forms inappropriate, a form will be devised by the DE to meet the requirements of the particular sale involved, and forwarded to DAEN–REM for approval. Suggested additional provisions and conditions for use in the sale of standing timber are contained in ENG Form 2140–R, Supplement to Standard Form 114 for use in Timber Sales Contract. In preparing sale contract forms, the following instructions will be followed:

(a) A definite date and time will be set for the opening of bids.

(b) Bids will be prepared in quadruplicate, all copies to be signed by the bidder.

(c) The Invitation for Bids will require each bidder to submit with his bid a certified check, cashier's check, traveler's check, or United States postal money order drawn to the order of the "Treasurer of the United States" for at least 20 percent of the bid. When the cash bid may be a small part of the total consideration (where such dismantling and restoration is involved), the DE should set a definite higher amount as a bid deposit. Also, in such cases a performance bond, adequate to discourage breach of contract after only partial performance, may be required.

(d) For real property components the Invitation for Bids will require payment in full within seven days after the successful bidder is notified that his bid is accepted and, in any event, prior to removal of the property. The time specified for completion of payment for land will depend upon the sum of money involved.

(e) Bids may be submitted for one or any number of items. Items or lots of real property will be offered in such reasonable quantities as to permit all bidders, small as well as large, to compete on equal terms. Land, however, will not be subdivided solely for this purpose, and in the case of timber sales or sales of embedded sand, gravel and stone, it may not be feasible to have more than one purchaser operating in the same area. Further, it may not be to the Government's interest. Buildings will be offered for sale as single items whenever practicable but submission of bids covering specified groups as an item or all of the buildings may be permitted if the DE considers such a procedure is in the best interest of the Government. It may sometimes be advantageous to divide the buildings into appropriate groups and to permit bidding on individual buildings or on specified groups of buildings or on the entire lot. When such bids are permitted, the Invitation for Bids, ENG Form 1038–R, will be flagged to inform bidders that lump sum bids on the entire lot (and specified groupings, if this procedure is appropriate) may be made but will not be accepted unless the lump sum bid exceeds the total of the highest bids received on each item (or on the groupings).

§ 644.546 Credit.

Payment of the purchase price over an extended period of time should be considered only when the price is a considerable amount, and it may be to the Government's interest to extend credit. Prior to offering property for sale on an extended payment plan basis, approval from DAEN–REM will be obtained. Extension of credit will be within the limitations of FPMR, Section 101–47.304–4. Credit cannot be extended, except to state or local governments, nor can any other special condition be applied, unless provision was made for it in the Invitation for Bids.

§ 644.547 Extensions of time.

Granting an extension of time, where unusual or unforeseeable circumstances are not present, is contrary to the form of the Invitation for Bids, and amounts to the application of special conditions not provided for therein. This violates GSA regulations and the principles of fair competition. Adoption of the following guides in the development and administration of sales programs will help to avoid unjustified requests for extensions of time:

(a) Establishment of realistic periods for completion of the sales contract.

(b) Necessary and justified extensions to be authorized subject to posting additional bond to insure performance and payment of adequate consideration where use of Government land is involved.

(c) Reasonable restrictions on resale of improvements at the site.

(d) Prohibition against posting advertising signs and storage of salvaged material on the installation pending sale to other customers.

§ 644.548 Abstract of bids.

At the opening of bids, DD Form 1501 or 1501–1 (Abstract of Bids) will be prepared showing all bids received, the amount for each item, and the total. The successful bid will be encircled in red or typed in red.

§ 644.549 Payments.

All payments should be in the form of cash, cashier's check, money order, traveler's check, draft, or any other form of payment not subject to stoppage or revocation. All such checks, money orders, or drafts should be drawn to the order of the "Treasurer of the United States."

§ 644.550 Sale to employees or military personnel.

The sale of Government real property will not be made to civilian employees or military members of the Department of Defense (including an agent, employee or member of the immediate family of such personnel) whose duties include any functional or supervisory responsibility for the disposal of real property under Army control.

§ 644.551 Equal opportunity—sales of timber, embedded sand, gravel, stone, and surplus structures.

Consistent with Executive Order No. 11246 as amended by Executive Order No. 11375, every Government contract involving employment shall include provisions for equal opportunity in employment, in connection with the performance of work under the contract. The equal employment opportunity clause in DAR 7–103.18 will be included in all contracts and first-tier subcontracts over $10,000 pertaining to the following real estate actions in the United States and its possessions, unless exempted under the provisions of DAR 12–805:

(a) Sale of standing timber.

(b) Sale of embedded sand, gravel, and stone in their natural state.

(c) Sale of surplus structures where an appreciable amount of dismantling and site restoration is involved.

§ 644.552 Statement of contingent or other fees.

The instructions and procedures contained in Section I, Part 5, DAR, are applicable to the sale of Government-owned real property and will be followed. Where applicable the statement set forth in DAR 1–506 will be included in Invitation for Bids and Contracts of Sale and an identical signed statement will be secured from the prospective purchaser where the property is to be sold without advertising for competitive bids. In addition to the statement, Standard Form 119 (Contractor's Statement of Contingent or Other Fees for Soliciting or Securing, or Resulting From Award of Contract) will be completed where either part of the statement is answered in the affirmative. The exceptions to the use of the statement and Standard Form 119 are set forth in DAR 1–506–3 and may apply generally to real property sales of the Army, Air Force and non-defense agencies except that the monetary limitation prescribed by DAR 1–506.3 is $1,000 insofar as sales or property of the Department of Energy are concerned.

§ 644.553 Preparation and distribution of sales documents and reports of sales.

(a) *Report of Funds Received.* As funds are collected from sales, reports will be prepared promptly. Sales may be allowed to accumulate to permit the making of fewer reports, but in no case will they go unreported longer than 48 hours. DD Form 1131 and supporting papers will be signed by the DE conducting the sale.

(b) *Numbering of Contracts.* The numbering of contracts involving the receipt or expenditure of funds will be in accordance with ER 1180–1–1 (ECI 30–203).

(c) *Documentation and Reports of Sale.* The DE responsible for the sale will prepare and retain copies of documents pertaining to the sale, and will make required distribution of the following (see paragraph (d) of this section).

(1) Contract—one signed and two authenticated copies.

(2) DD Form 1501 or 1501C (Abstract of Bids)—one copy (not required for negotiated sales).

(3) DD Form 1131—four copies. All sales will be listed on DD Form 1131, extended if necessary. Separate forms are not required for each contract. When receipts from more than one contract are reported on one DD Form 1131, all related contracts will be attached to and transmitted with the form.

(4) Standard Form 1036, Statement and Certificate of Award, attached to the original signed contract and the DE's copy of each contract, or separate statement justifying negotiation (paragraph (e) of § 644.544).

(5) Advertisement, if any—two copies.

(6) Bond, if any—two signed copies.

(d) *Distribution of Reports of Sale.*

(1) *Military Property.* The finance officer will be furnished one authenticated copy of the contract and four executed copies of DD Form 1131, together with funds collected. The finance officer will retain the contract, funds, and one copy of DD Form 1131, and will receipt and return to the responsible DE three copies of DD Form 1131.

(2) *Civil Works Property.* The finance officer will be furnished four executed copies of DD Form 1131, together with funds collected, an authenticated copy of each contract, Standard Form 1036 or a statement justifying negotiation, copy

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of advertisement, if any, and original signed bond, if any. Three copies of DD Form 1131 (Cash Collection Voucher) will be receipted and returned to the DE.

§ 644.554 Insurance against loss or damages to buildings and improvements by fire or acts of God.

The Department does not carry property insurance of any nature. Vendees, however, may be advised as to their liability for certain losses and that insurance protection against such risks is optional. Under the FPMR, the vendee must provide insurance to protect the United States when credit is extended (Section 101–47.304–4(f)).

§ 644.555 [Reserved]

§ 644.556 [Reserved]

§ 644.557 [Reserved]

Inspections To Insure Compliance With Disposal Conditions

§ 644.558 Properties requiring compliance inspections.

The principal properties conveyed which require inspections are for the training of civilian components of the Armed Forces. However, other properties are sometimes conveyed under special acts of Congress subject to conditions required by the authorizing act. These properties will also be inspected for compliance with such conditions.

§ 644.559 Civilian component training facilities.

(a) *Authority.* Under the provisions of the Surplus Property Act of 1944, as amended, a number of surplus real properties of the United States certified by the Governor of the state in which located and by the Secretary of the Army, Navy or Air Force as the case was, as being suitable and needed for use in training and maintaining civilian components of the Armed Forces under their respective jurisdictions, were conveyed by the Administrator of the War Assets Administration or by the General Services Administration to states, their political subdivisions or tax-supported instrumentalities for such purposes. These conveyances contained a number of covenants, conditions, restrictions and reservations, designed to insure the use and maintenance of the property and appurtenances for the purpose for which conveyed and otherwise to protect the interest of the United States. The Secretary of Defense is authorized by (40 U.S.C. 484(k)(4)(d)) to:

(1) Determine and enforce compliance with the terms, conditions, reservations and restrictions contained in any instrument by which such transfer was made;

(2) Reform, correct, or amend any such instrument by the execution of a corrective, reformative, or amendatory instrument where necessary to correct such instrument or to conform such transfer to the requirements of applicable law; and

(3) Grant releases from any of the terms, conditions, reservations and restrictions contained in, and convey, quitclaim, or release to the transferee or other eligible user any right or interest reserved to the United States by any instrument by which such transfer was made, if he determines that the property so transferred no longer serves the purpose for which it was transferred, or that such release, conveyance, or quitclaim deed will not prevent accomplishment of the purpose for which such property was transferred: Provided, that any such release, conveyance, or quitclaim deed may be granted on, or made subject to, such terms and conditions as he shall deem necessary to protect or advance the interest of the United States.

(b) *Authority Delegated.* The authority vested in the Secretary of Defense under the Act cited in paragraph (a) of this section has been redelegated to the Secretary of the Army and the Secretary of the Air Force, respectively (Department of Defense Directive 5100.10, dated 16 March 1972).

§ 644.560 Inspections of civilian component training facilities and other properties conveyed subject to conditions.

The DE, within whose areas of military real estate operations are located the facilities conveyed under the authority mentioned in § 644.559, will make physical inspections thereof for the purpose of determining compliance with the terms of the conveyance. Any evidence of noncompliance should be reported to DAEN-REM in order that appropriate recommendations may be made to the respective Secretary for corrective action. A detailed statement of the facts and recommendations of the DE should be included in the report. Inspections should be scheduled and integrated with outlease compliance inspection itineraries in the interest of economy. This requirement for inspections extends to properties conveyed by the Secretary of the Army or Air Force under special legislation, where the deed of conveyance imposes conditions on future use of the land. These inspections need not be made annually but frequently enough so that the DE is assured that the conditions are being observed, and at least every three years. Compliance with conditions in deeds for property conveyed for airport purposes under 49 U.S.C. 1723 and 50 App. U.S.C. 1622g is the responsibility of the Secretary of Transportation; for property conveyed for purposes of health and education, the Secretary of Health, Education, and Welfare or its successor agencies (40 U.S.C. 484(k)(4)). The Commander, U.S. Army Materiel Development and Readiness Command, is responsible for compliance with the National Security Clause, and similar conditions, in deeds conveying industrial properties.

§ 644.561 Inspections of civil works properties.

Disposal of real estate interests which impose restrictions on the use of the land, or reserve an estate in the land, will be inspected for compliance on an annual or other reasonable basis to assure compliance.

§ 644.562 [Reserved]

§ 644.563 [Reserved]

§ 644.564 [Reserved]

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federal register

Monday
October 27, 1980

Part XI

Department of Energy

International Energy Program; Voluntary Agreement and Plan of Action; Approvals by the Deputy Secretary of Energy Pursuant to Section 5 of the Voluntary Agreement

DEPARTMENT OF ENERGY

International Energy Program; Voluntary Agreement and Plan of Action; Approvals by the Deputy Secretary of Energy Pursuant to Section 5 of the Voluntary Agreement

AGENCY: Department of Energy.

ACTION: Publication of approval of participation by U.S. Reporting Companies in the International Energy Agency's Third Allocation Systems Test.

SUMMARY: The text of letters of approval and recordkeeping requirements with respect to U.S. Reporting Companies participation in the Third Test of the IEA's International Oil Allocation System which were issued September 30, 1980 are published herewith.

EFFECTIVE DATE: October 1, 1980.

FOR FURTHER INFORMATION CONTACT: Craig S. Bamberger or Martin S. Kaufman, Office of General Counsel, International Trade and Emergency Preparedness, GC-11, Room 6E-067, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585 (202) 252-2900.

SUPPLEMENTARY INFORMATION: Pursuant to Section 252 of the Energy Policy and Conservation Act, 42 U.S.C. 6272 and the Voluntary Agreement and Plan of Action to Implement the International Energy Program (Voluntary Agreement), 2 CCH Federal Energy Guidelines, para. 15,845, U.S. oil companies participating in the Voluntary Agreement are afforded an antitrust defense for activities in connection with the preparation or testing of the International Energy Agency (IEA) Emergency Oil Allocation System. Pursuant to Section 5(b) of the Voluntary Agreement, specific approval is required if participants in the Voluntary Agreement are to provide or exchange confidential or proprietary information or data in connection with such activities. Beginning October 1, 1980 the IEA is conducting a third test of its emergency oil allocation system (AST-3). U.S. Reporting Companies which participate in the Voluntary Agreement have been given written approval pursuant to Section 5(b) of the Voluntary Agreement for participation in AST-3.

The documents published herewith are the letter of approval sent to the 20 U.S. Reporting Companies participating in the Voluntary Agreement and in AST-3, the requirements for recordkeeping in connection with such participation (which requirements apply and elaborate existing DOE regulations contained in 10 C.F.R. Part 209) and correspondence among the Department of Energy, the Department of Justice, the Department of State and the Federal Trade Commission evidencing consultation among those agencies and the required concurrence of the Department of Justice in the issuance of the letter of approval by the Department of Energy. Notice of a meeting of the Industry Supply Advisory Group and its participation in AST-3 was published in the Federal Register on October 1, 1980 (45 FR 65026).

COMMENTS RECEIVED: The proposed letter of approval and recordkeeping guidelines were published in the Federal Register for public comment, 45 FR 56126 (August 22, 1980). Four written comments were submitted; one by a law firm which has previously commented on industry activities pursuant to the Voluntary Agreement; one each from two U.S. oil companies which are participants in the Voluntary Agreement and will be participating in AST-3; and one from counsel to several U.S. oil companies participating in the Voluntary Agreement and in AST-3.

The comment received from the law firm which has previously participated in hearings and rulemakings with respect to section 252 of EPCA and in connection with industry participation in the Voluntary Agreement was premised on the belief that the letters of approval and recordkeeping guidelines were in the nature of a "rule, regulation or order" of the DOE, and asserted that the Federal Register notice requesting public comment did not comply with statutory requirements or general principles of administrative due process. The premise of this comment is mistaken; the letters of approval and recordkeeping guidelines are not rules, or orders as those terms are used in the DOE Organization Act, 42 U.S.C. 7101 or as the terms are used in the Administrative Procedure Act, 5 U.S.C. 551. The letters are neither rules of general applicability, nor are they orders granting or denying rights, privileges or licenses. The letters merely apply the Voluntary Agreement, and the DOE's recordkeeping regulations, 10 CFR Part 209, to a particular activity. The letters of approval are specifically required by section 5(b) of the Voluntary Agreement, which itself is authorized by section 252 of EPCA, as a condition of the availability of the statutory antitrust defense for certain voluntary activities. The letters of approval, do not have to be accompanied by a regulatory analysis or impact statement as this commenter asserted. This same commenter noted, with respect to the recordkeeping guidelines, that Congressional intent in adopting section 252 of EPCA and requiring the presence of a full-time Federal employee at any industry meeting was to ensure that the monitoring agency maintained a "sleepless eye" on such meetings. Section 4(a) of the recordkeeping requirements explicitly states that a U.S. representative will be present throughout all test meetings. However, recognizing the potentially irregular work hours necessitated by a simulated emergency, the recordkeeping requirements permits individual work by ISAG members when U.S. Government observers are not available; in extraordinary circumstances off-site communications and on-site phone calls by ISAG members also will be permitted in the absence of U.S. Government observers, provided such communications are adequately recorded and justified. Such an arrangement is necessary if AST-3 is to simulate, to a reasonable extent, an actual allocation exercise; we believe section 252 of EPCA and the Voluntary Agreement recognize a need to balance antitrust monitoring and attaining a workable emergency allocation system.

One of the oil companies which commented had four specific recommendations. The first was that the statement in section 6 of the approval letter that U.S. test participants will keep a "full and complete" record of communications should be changed to a requirement that U.S. participants maintain a log of their communications. The recordkeeping requirements state that U.S. ISAG members must maintain a full and complete record of test site communications, test site telephone conversations or off-site communications by means of a standard log. This log, if appropriately kept, will be a full and complete record of communications as required by Section 252 of EPCA and the recordkeeping requirements. The same commenter also suggested that the reference to U.S. company employees serving on National Emergency Sharing Organizations (NESOs) and the statement that such activities are not covered by the approval be accompanied by a statement that approval by the U.S. Government is not necessary. Such a change was not made in the final approval letter because it was determined to be inappropriate for the U.S. Government to reach any conclusion about participation in foreign NESOs by U.S. company personnel or personnel of affiliates of U.S. companies because such activities are primarily within the jurisdiction of foreign governments and because the precise nature of the operation of foreign NESOs is not sufficiently understood by the U.S. Government for it to be in a position to make any statement concerning such activities. The exclusion of such activities from the scope of the approval letter does not imply any intention to prohibit, disapprove or discourage participation by U.S. companies or their foreign affiliates on NESOs. This commenter also suggested that section 7(j) of the draft approval letter (section 7(k) of the final approval letter) be modified to require that interim approvals for the discussion of additional information or data, not specifically described in sections 7(a)-(j), be in writing so as to avoid the ambiguous situation of an oral approval which has not been reduced in writing. This suggestion has been incorporated. Finally, this commenter observed that in view of the recordkeeping and submission requirements, there was no need for U.S. Government officials to have access to offices of U.S. participants to inspect records, interview employees or observe AST-3 activities. However, such access is required by the recordkeeping requirements in order to permit U.S. observers to evaluate the adequacy of various monitoring systems which will be employed during AST-3, particularly with respect to monitoring of company-to-company communications which are approved for the first time in AST-3. In addition, section 8 of the Voluntary Agreement requires participants to keep records in connection with actions under the Voluntary Agreement for 5 years, and access to such records at U.S. company offices will enable U.S. Government observers to evaluate the adequacy of that provision.

The other U.S. oil company participating in AST-3 which submitted written comments also made a number of suggestions. The first comment concerned the disapproval, in Section 8(b) of the letters, of ISAG access to opening inventory data, closing inventory level and inventory level changes for October 1979 because such data would also disclose company inventory positions at the close of September 1979, a period not included in the AST-3 data base. In light of this comment, and after considerable discussion with the IEA and ISAG manager, we have determined that ISAG need not, as a routine matter, have access to opening inventory data as of October 1, 1979, data showing inventory level changes in October 1979 and the "check total" in as reflected in the Questionnaire A data for October 1979. Analysis by U.S. Government agencies concerned leads to the conclusion that such data may not be essential for ISAG's tasks. However, if experience during AST-3 shows that ISAG needs such information to perform adequately, such access can be granted under the procedure outlined in section 8(b) of the approval letter. A second point raised by this commenter concerns the provision of interim approval by U.S. Government representatives for disclosure of or access to data not specifically enumerated in approval letter and suggested that the approval be valid for more than the 24 hours provided in section 7(k). This suggestion has not been adopted because we are confident that the U.S. Government representatives from the Department of Energy, the Department of Justice and the Federal Trade Commission will be able to consult with one another and decide whether to extend an interim approval within 24 hours from the issuance of the original interim approval. This commenter also stated that the limitations in section 8(a) of the approval were too narrow and that ISAG personnel should be permitted to discuss logistic or supply anomalies with one another. Section 8(a) has been modified to permit an ISAG member to discuss such anomalies, to the extent of confirming whether the data submitted is accurate, with another ISAG member who is employed by the company which submitted the data in question, as well as the company itself, and the IEA Secretariat. This change was made because it is quite possible that an ISAG member employed by a company submitting questionable data might be in a position to know if that data submission is accurate; however, in our view it is unlikely that an ISAG member not employed by the submitting company would know whether that company's data are accurate. This commenter also made a number of recommendations with respect to the recordkeeping requirements. It suggested that section 8(a) and 8(b) of the recordkeeping requirements seem to create duplicative reporting; this duplication is intentional because it is useful, for antitrust monitoring purposes, for the U.S. Government to receive written communication as promptly as possible from the originator, which is the intention of section 8(a). Section 8(b) requires that the recipient also provide a copy to the Federal agencies concerned; the purpose of this is to ensure that there is a cross-check as to the completeness of the submissions under 8(a). This commenter also urged that the time for submitting records of unwritten communications provided in section 8(c) be lengthened from 24 hours to three working days. This suggestion has been adopted so as to make this transmission requirement consistent with other filing deadlines in the recordkeeping requirements. It was also suggested that section 8(e) of the recordkeeping requirements, which provides for conference telephone calls involving U.S. monitors, is impracticable. One of the purposes of AST-3, from the perspective of the U.S. agencies, is to test possible monitoring modalities, and AST-3 will provide an opportunity to learn whether such conference calls are useful. Section 8(e) of the recordkeeping requirements, which provides for on-site inspection of company offices was criticized as being undersirable from an operational and legal standpoint because company personnel involved in AST-3 will also be involved in regular company business activities. The purpose of on-site monitoring, as previously stated, is to permit the U.S. Government to evaluate methods of monitoring company-to-company communications which are permitted in AST-3 for certain limited purposes. It is expected that the on-site monitoring can be arranged in such a way to minimize interference with normal company business not related to AST-3. Finally, this commenter stated that section 9(a) of the recordkeeping requirements will require duplicative reporting since most actions taken as part of AST-3 will be reflected in data submission, voluntary offer communication or other records submitted under other provisions of the recordkeeping requirements. If the requirements of section 9(a) are satisfied by other record submissions, then a separate report would only have to refer to those other submissions and incorporate them by reference and therefore would not be duplicative or unduly burdensome. Moreover, the requirement of a record of "actions taken" is explicitly provided in Section 8 of the Voluntary Agreement.

The comments by counsel to several U.S. companies participating in the Voluntary Agreement and in AST-3 were detailed and numerous. The first point made was that verbatim transcripts of the test are impractical and should not be employed in AST-3. To the contrary, the experience of U.S. Government observers during the Second Allocation Systems Test (AST-2) was that verbatim transcripts were useful for certain types of EPCA meetings or work sessions and pursuant to the statutory requirement of Section 252 of EPCA such transcription will continue to be employed for those portions of the test which are susceptible to accurate transcription. Also in connection with transcripts, it

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was noted that explicit provision for review of transcripts should be made. Section 5 of the approval letter now includes a statement that transcripts will be available for review by participants or their counsel either during the test or later. It is anticipated that most verbatim transcripts will be available for review during the test, but it is also possible that some transcripts may not be available until after the test officially ends and those will have to be reviewed subsequent to AST–3. This commenter also suggested that the approval letter contain a general statement permitting access by U.S. ISAG members to any confidential or proprietary data which might be reasonably required during the test. We feel that the substance of this suggestion is already taken into account in section 7(k) of the approval letter, but that the open-ended approval of access to any data submitted during the test, without specification or without prior consideration by U.S. officials would not be consistent with the standards established in section 252 of EPCA and Voluntary Agreement. This comment also suggested, as did one of the oil companies, that section 7 of the approval letter recite that approval of participation by U.S. company or U.S. company affiliate personnel in NESOs was not necessary. This suggestion has been discussed previously. It is also suggested in this comment that section 7 specifically take into account data related to marine transportation which may be included in the test. Section 7(c) has been amended to refer specifically to data concerning availability of marine tonnage to transport crude oil or petroleum products, so as to reflect a more precise description of the role of the ISAG Marine Advisor contained in the final version of the AST–3 Test Guide. The comment also suggested that section 7 refer specifically to information contained in voluntary offer submissions; a new section 7(j) has been added to such effect. Although we believe that all of the information or data contained in voluntary offers is likely to be subsumed in sections 7(b) through (i), the explicit mention of voluntary offers will serve to eliminate any ambiguity, and takes into account the experience of AST–2 in which an additional approval was necessary to allay the concern of test participants in this regard. The commenter also suggested that section 7(a) could be interpreted as requiring that all data except that specified in the last sentence of 7(a) be disrupted whereas in actual fact other data may not be disrupted, but would be subject to disruption so as to make it impossible for anyone other than the submitting company to know whether the data is disrupted. The comment suggests that the phrase "may include as" be changed to "are only required" but this suggestion, in our view, does not accurately reflect the stipulation of the AST–3 test guide which permits companies to "mask" any data, particularly data which is not disrupted. We believe that the sentence as written does not create any serious ambiguities and that the tenor of section 7 of the approval letter, taken as a whole, makes it clear that all data except the three items specified mentioned in the last sentence of section 7(a) may or may not be disrupted and that the items specifically mentioned in the last sentence of section 7(a) will not be disrupted. The next suggestion made by this commenter is that section 7(i) be changed because the first and second sentences of that section appear inconsistent. We note, however, that the data format for national or regional product imbalances do not contain company specific data, and that such information could, if necessary, be provided in particular cases where it is necessary. The fact that submission of individual company product imbalance data is approved in the first sentence of section 7(i) is not inconsistent with limitation on access to such data by ISAG personnel; company specific product imbalance information may be provided to the IEA Secretariat under the approval but can only be provided to ISAG personnel if circumstances during AST–3 justify a further approval under section 7(k). The alternate language suggested by the commenter in this regard, which specifically refers to access to information otherwise approved in the letter of approval, has been adopted. This change should ameliorate any perceived inconsistency. This commenter also noted that references to the Deputy ISAG Manager requesting specific approvals would be inappropriate because the Deputy ISAG manager is not a U.S. citizen and is not employed by a U.S. company. Although we do not feel that this need be a matter of great sensitivity, in order to avoid any potential difficulties, all references to Deputy ISAG manager have been changed to "designee" of the ISAG manager.

This commenter also observed that section 8(i) (now designated 8(a)) of the proposed approval as originally written would prevent interaction between ISAG members concerning anomalies and precluded ISAG personnel communicating with reporting companies about anomolous data contained in NESO data submissions. As to the first criticism, it has been noted earlier that section 8(a) has been revised to permit discussions between the ISAG person who detects the anomalies and an ISAG Person who is normally employed by the company which submits the data. It is extremely unlikely, in our view, that an ISAG person not employed by a submitting company would have definitive information as to the accuracy of data. Section 8(a) has also been revised to permit ISAG personnel to talk with the company submitting the data or the company whose data a NESO has submitted about data anomalies. As did one of the oil company commenters, this commenter questioned the exclusion, in section 8(ii) (now 8(b)), of ISAG access to opening inventory data. The broad restriction contained in the draft approval has been modified so as to apply only to opening inventory data as of October 1, 1979 and other information from which that information could be derived. The limitation as to opening inventory data as of October 1 was imposed because such inventory data might well not be affected by the hypotehetical disruption upon which AST–3 is premised; moreover, we did not perceive significant utility in permitting ISAG to have routine unrestricted access to such data unless the hypotehetical disruption scenario significantly affected stock positions. As noted before, if access to October 1, 1979 opening inventory data is necessary, specific approval can be given by U.S. Government observers at the test. The commenter suggested with respect to section 12 of the approval, that the absolute prohibition of removal of test related documents by ISAG Personnel was unwarranted. Because we recognize that ISAG personnel may bring reference materials to the test site, and would understandably wish to retrieve them at the end of the test, the approval authorizes U.S. Government representatives at the test to permit removal of certain documents. The commenter suggested that section 14 of the approval, which provides for access by U.S. Government representatives at the test to data available to ISAG be limited to that data which is furnished pursuant to the approval. This suggestion would circumscribe U.S. Government access to data submitted by non-U.S. companies even if such data were available to U.S. company personnel serving on ISAG; such a limitation would not be consistent with the U.S. Government observers' obligation to monitor all actions of U.S. oil company personnel involved in ISAG, including use of foreign company data. As did another commenter, this commenter objected to access to U.S. Reporting Company offices. As indicated previously, the purpose of such access is to monitor company-to-company communications, which are a novel aspect of this test.

This commenter also made a number of suggestions relating to the recordkeeping requirements. The first suggestion was that the prohibition of substantive communication between ISAG members at the test site in the absence of U.S. Government representatives was unduly restrictive. While we recognize that the requirement for presence of a U.S. Government representative may be inconvenient both for ISAG members and the U.S. Government observers, our understanding of the statutory requirements and the Voluntary Agreement indicates that to the extent practicable all ISAG communications should be subject to monitoring. Certain essential exceptions are recognized in the recordkeeping requirements, but the U.S. observers at AST–3 are committed to being availabe at the test site when communications between ISAG members are likely. During AST–2 this was the case, and little or not inconvenience was encountered in complying with an analogous provision in the AST–2 approval letter. With respect to the use of recording devices, the commenter noted that taping of meetings could result in inaccuracies or omissions; the agencies concerned recognize this problem and intend to use recording devices only in assisting them in memoralizing their notes of meetings, not directly to record meetings or other communications. The daily log referred to in section 4(d)(v) of the recordkeeping requirements is a document which will be prepared by U.S. observers and this has been made explicit in that section. Section 5(a) of the recordkeepoing requirements has been revised pursuant to a suggestion by this commenter that when a U.S. Government observer is present and indicates he will record a test site communication, the ISAG Members involved need not do so. Sections 7 and 8 of the recordkeepoing requirements have been slightly revised to include communications between the U.S. reporting companies and the IEA and to make it clear that only communications by a U.S. reporting company need be sent simultaneously to the Department of Energy, the Department of Justice, and the Federal Trade Commission. The time for submission of copies of documents or communications has been changed from 24 hours to three working days in a number of instances so as to reduce the burden on companies involved. With respect to the duplicative transmission of copies for records by reporting companies, previously discussed, the U.S. Government feels that such duplication is warranted as a means of evaluating different methods of recording the same event and determining, for the future, which method is most appropriate. With respect to the asserted burden of the requirement that U.S. companies report actions taken as part of the test (section 9 of the recordkeeping requirements), it is our view that such a requirement is wholly consistent with the Volunatry Agreement and should not be unduly burdensome.

Certain other stylistic, grammatical, organizational, and minor substantive changes have been made. The substantive changes derive from changes in the AST-3 Test Guide which was finally issued on September 9, 1980.

EFFECTIVE DATE: The final approval letter and recordkeeping guidelines are dated September 30, 1980 and are effective as of October 1, 1980.

Issued in Washington, D.C., October 21, 1980.

Eric J. Fyji,
General Counsel.

Appendices

A. Letter of Approval from Deputy Secretary John C. Sawhill to U.S. Reporting Companies.
B. Recordkeeping Guidelines.
C. Letter from Deputy Secretary of Energy to the Assistant Attorney General, Antitrust Division, Department of Justice.
D. Letter from the Deputy Secretary of Department of Energy to Assistant Secretary of State.
E. Letter from Assistant Secretary of State for Economic and Business Affairs to Secretary of Energy.
F. Letter from Deputy Assistant Attorney General for Antitrust Division, Department of Justice for Deputy Secretary of Department of Energy.
G. Letter from Federal Trade Commission to the Assistant Attorney General for Antitrust Division, Department of Justice.

Appendix A

Dear _____:

1. The International Energy Agency (IEA) will conduct in the near future a third test of the emergency allocation system (AST-3). The department of Energy (DOE) considers AST-3 a vital part of our preparedness activities. We hope your company will participate and provide full cooperation to the IEA in this undertaking.

2. This letter sets out guidelines for participation in AST-3 by U.S. oil companies and personnel of U.S. oil companies and provides required approvals for the exchange of confidential and proprietary information or data in connection with AST-3, as required by the Voluntary Agreement and Plan of Action to Implement the International Energy Program ("Voluntary Agreement"), 2 CCH Federal Energy Guidelines, para. 15,845. Participation by U.S. companies is governed by section 252 of the Energy Policy and Conservation Act (EPCA), DOE regulations at 10 C.F.R. Part 209, and the Voluntary Agreement.

3. AST-3 will begin on October 1, 1980 and will continue for approximately 10 weeks. The primary objective of AST-3 is to further test the concepts, procedures, data collection and data processing systems which have been devised to implement the emergency oil allocation procedures of the Agreement on an International Energy Program (IEP) (TIAS 8278, November 18, 1974), as amended, including modifications and improvements made since the Second Allocation Systems Test in the spring of 1978, as further delineated in the Emergency Management Manual of the IEA (EMM), the ISAG/Secretariat Operations Manual (ISOM) and the AST-3 Test Guide issued by the AST-3 Design Group. AST-3 also will be used to assess the interface of the IEA emergency oil sharing system with that of the European Community, as described in the EMM. The test will serve as a vehicle for training personnel of the IEA Secretariat, the Industry Supply Advisory Group (ISAG), Reporting Companies and their affiliates, participating country National Emergency Sharing Organizations (NESOs), and in some cases Non-Reporting Companies, in the functioning of the emergency allocation system. The scope of AST-3 is designed to be significantly broader than the first Allocation System Test (AST-1) held in the autumn of 1978 and the second Allocation Systems Test (AST-2) held in the spring of 1978 and will more fully involve NESOs of member countries, Reporting Companies, affiliates of Reporting Companies and some Non-Reporting Companies.

4. Industry will participate in several ways. First, industry representatives will staff the ISAG, which, with the IEA's Allocation Coordinator, Secretariat and an SEQ Emergency Group composed of representatives of IEA member countries, will comprise the IEA Emergency Management Organization at IEA headquarters in Paris, France conducting the test. Second, Reporting Companies will submit IEA Questionnaire A and other data to te IEA Secretariat and the ISAG, and will discuss these data with the IEA Secretariat and with the ISAG to the extent required for the test; their affiliates will make similar data submissions and have similar discussions with the NESO's of the participating countries in which they operate. Third, Reporting Companies will propose and simulate the carrying out of certain hypothetical supply reallocation measures called "Type 2" allocation by the IEA; in this connection, Reporting Companies may communicate with other Reporting Companies (i) for the purpose of identifying

suitable suppliers or receivers of oil to formulate "closed loop" Type 2 offers, (ii) to enable Reporting Companies to work out logistics needed to implement, or (iii) to undertake needed subsequent modification of Type 2 offers which have previously been accepted by the Allocation Coordinator. Finally, it is our understanding that some NESOs may have employees of Reporting or Non-reporting Companies or their affiliates as members of advisors.

5. In Paris, the test will be conducted, for notice purposes under the Voluntary Agreement, as a single meeting of ISAG carried out in accordance with Section 5 of the Voluntary Agreement. In addition to individual tasks and contacts with the Secretariat by ISAG members, working sessions will include meetings of all ISAG members, smaller group meetings of several ISAG members, as well as joint working sessions of a few ISAG members assigned to solve particular problems. The ISAG Manager or his designee may meet with members of the Control Group, consisting of the Chairman of the IAB, the Chairman of the SEQ and the IEA Executive Director. A verbatim transcript of certain sessions will be made under the supervision of U.S. Government observers; such transcripts will be available for review by participants in the sessions so transcribed, or their counsel, either during the test or later. For some ISAG sessions, a full and complete record will be prepared by U.S. Government observers who are present. A full and complete record of other communications will be maintained by the U.S. test participants. More detailed recordkeeping requirements, including operating procedures, are set out in the attachment to this letter. These recordkeeping requirements have been prepared in cooperation with the Department of State, the Department of Justice and the Federal Trade Commission, and are to be considered an integral part of this letter of approval.

6. In order to carry out the test, it will be necessary for Reporting Companies to provide the IEA Secretariat and the ISAG with certain information or data on IEA questionnaire forms and IEA formats, and to submit voluntary offers to supply or receive reallocated oil, and they may have to engage in other communications with the IEA Secretariat or ISAG to clarify, amplify, correct, or supplement such data submissions and voluntary offers. Further, ISAG members may have to exchange this and other information or data among themselves, with members of the IEA Secretariat, with IEA Reporting Companies, and with NESOs. Access to such information or data and to ISAG discussions and work sessions will be open to official observers from the European Community and IEA member countries authorized by the IEA to be present at the test. Aside from the IEA questionnaire and format data and information as to voluntary offers, much of the data or information will be available from public sources, particularly that described below in paragraph 7(b) through (g). Some such information or data, while actually public information, may not be definitely know to be publicly available by those exchanging it or it may be considered confidential by some companies. Some of the data or information needed to be provided or exchanged clearly will be confidential or proprietary.

7. Accordingly, approval under section 5(b) of the Voluntary Agreement is hereby given to Voluntary Agreement participants and their employees engaged in AST–3 to submit and exchange the types of information or data listed below which involve or might involve disclosure of confidential or proprietary information or data. However, this approval is granted only to the extent that the submission or exchange of these types of confidential or proprietary information or data is necessary to implement the oil allocation procedures of the IEP as delineated in the EMM and the ISOM and as elaborated in the AST–3 Test Guide, and to meet specific problems as they arise during AST–3. Approval is further limited to information or data covering the historical period October, November and December 1979 and January, February and March 1980. This letter neither approves nor disapproves the activities of company employees serving on NESOs or any communication between a Reporting Company or its affiliates and a NESO. Under these limitations, and those set forth in paragraphs 8, 9, 10, and 12, the submission and exchange of the following types of information or data is approved:

(a) Disaggregated October 1979 through March 1980 Questionnaire A or B data submitted during AST–3, *i.e.*, data as required by the Questionnaire A and B reporting instructions in effect for AST–3 as further defined in the AST–3 Test Guide, including:

—indigenous production of crude oil and natural gas liquids (NGLS) and feedstocks;

—imports and exports of crude oil, NGLSs and feedstock;

—petroleum product imports and exports (in crude oil equivalent);

—international marine bunkers; and

—inventory levels and changes.

This data base will be disrupted by Reporting Companies, coordinating with their affiliates as required, and by NESOs for Non-Reporting Companies operating within their boundaries, based on the Secretariat's disruption telex at the beginning of each cycle, and as elaborated during each cycle by updating telexes from the Secretariat. Reporting Companies may mask data if they so choose in accordance with the procedures established in the AST–3 Test Guide. Reporting Companies will rearrange their international supply plans to reflect the reduced availability of certain types of crude oil as well as certain other restrictions as indicated in the disruption telex and updating telexes and will report the new supply plan on Questionnaire A submitted to the Secretariat. In addition, each NESO will compile Questionnaire B from information or data received from Reporting Companies or their affiliates operating within its country and from non-Reporting Companies operating with its country and will submit Questionnaire B to the Secretariat. Company submissions to the Secretariat may include as actual undisrupted data the following:

—starting inventories as of October 1, 1979;

—indigenous crude/NGL production through all six months in the data base; and

—international marine bunkers.

(b) Capability of a refinery to process crude oils or specific crude oils, and the capability of a pipeline, dock, terminal or other storage or transit facility to receive, store, or throughput crude oils and petroleum products or specific crude oils or petroleum products.

(c) Availability of suitable marine tonnage to transport the available crude oil or petroleum products; and the capability of a port, installation, or waterway to receive or move vessels of various sizes and configurations.

(d) Main characteristics of crude grades and product types, excluding individual company product specifications.

(e) Actual and estimated historical production data on crude oil and NGLs for individual countries.

(f) Specific refinery considerations that prevent acceptance or processing of certain crudes, *e.g.*, the inability of the refinery to make certain specialty products for which the crude is particularly suited; the inability of a crude to meet certain general product specifications; hazards to refinery operations which use of a particular crude might cause; or the need for a refinery to operate at a minimum throughput level.

(g) Identification of supply logistics problems relating to certain countries.

(h) Identification of the existence of certain individual company considerations, involving:

(i) commercial policy,

(ii) supply or transportation factors, or

(iii) affiliate, third-party, concessional or other contractual arrangements,

which would preclude or make impracticable a proposed movement of oil. In each case, these considerations only would be described as such, without disclosure of calculations or examples of specific costs, prices or other financial information, or any other underlying facts.

Identification of product imbalances in certain countries or regions of certain countries, on EMM Format 7, and communications between NESOs and ISAG personnel concerning such product imbalances. Any discussion or communication about product imbalance questions with ISAG or to which ISAG personnel may have access shall not include disclosure of individual company confidential or proprietary information or data, other than the information or data approved in this letter, or which may be approved pursuant to subparagraph (k) of this paragraph 7.

(j) Voluntary offers to supply or receive reallocated oil.

(k) Such additional information or data or types of information or data as may be utilized to implement the oil allocation procedures of IEP as elaborated in the EMM, the ISOM and AST–3 Test Guide and to meet specific problems as they arise within ISAG, the disclosure of which is adequately justified in writing by the ISAG Manager or his designee and which is approved in writing on an interim basis by a U.S. Government representative attending the test. Such interim approval can be terminated by the Department of Energy representative or the Department of Justice representative. Such interim approval shall not be applicable to information or data disclosed more than twenty-four hours after the interim approval is granted, unless it is extended in writing by the Department of Energy representative, with the concurrence of the Department of Justice representative, after consultation with the representative of the Federal Trade Commission. Such approvals shall be telexed to the U.S. Reporting Companies involved, if appropriate. Any such request by the ISAG Manager or his designee shall, to the extent practicable, be processed within twenty-four hours after receipt.

(l) Clarification, amplification, correction, explanation or supplementation of the types of information or data enumerated in subparagraphs (a) through (k), provided that this subparagraph (l) does not supersede any specific prohibition contained in subparagraphs (a) through (k) or elsewhere in this letter.

8. In order to carry out the test, these data and information must be provided and exchanged on a disaggregated basis and the finding required by section 5(b)(2) of the Voluntary Agreement in this regard is hereby made, with the following limitations:

(a) During each test cycle, U.S. ISAG personnel will examine Questionnaire As and Bs to detect supply or logistical anomalies that might indicate that an error had been made by a Reporting Company or NESO in transmitting the data. After detecting a potential supply or logistical anomaly, a U.S. ISAG member may discuss such anomaly only with Secretariat personnel, member of ISAG who is regularly employed by the Reporting Company whose data is thought to be anomalous, the Reporting Company or NESO which transmitted the anomalous Questionnaire A or B data and the Reporting Company whose data is included in a Questionnaire B and which data is thought to be such an anomaly. U.S. ISAG personnel may not discuss suspected anomalies with any other persons. When responding to an inquiry from the ISAG member regarding such anomalies, a U.S. Reporting Company or its employee serving on ISAG only may confirm the accuracy of the reported data or provide corrected data. An explanation of such anomalies may be provided to personnel of the IEA Secretariat.

(b) Company-specific opening inventory data as of October 1, 1979, data showing inventory level changes in October 1979 and the "check total" for October 1979 as reflected in Questionnaire As and Bs shall not be made available to ISAG personnel on a routine basis, but only as necessary to solve specific supply problems when they arise. A U.S. Government observer present at the AST–3 test site may give written approval for disclosure of such data, upon receipt and consideration of a written request from the ISAG Manager or his delegate stating that access to such data is necessary.

(c) The Department of Energy representative, with the concurrence of the Department of Justice representative, after consultation with the Federal Trade Commission representative at AST–3, may terminate this approval as it applies to the conduct of any supply analysis by U.S. ISAG personnel if such anlysis may lead to unwarranted disclosure of competitively sensitive supply or logistical information, or have any other unwarranted anticompetitive effect.

9. This approval does not extend to provision or exchange of:

(a) Confidential or proprietary crude oil or petroleum product prices;

(b) Costs or market shares of crude oil or petroleum products (other than those which can be derived from the Questionnaire A or B data submitted during AST–3); or

(c) Individual company information regarding overall long-term investment, divestment, refining, operating, transportation or marketing programs.

10. A U.S. Reporting Company will be permitted to communicate with another Reporting Company only to enable them to formulate "closed-loop" voluntary offers, to enable them to arrange the logistics needed to implement Type 2 offers which have been accepted by the Allocation Coordinator, and to modify previously approved voluntary offers if necessary. Type 2 transactions are those intended to balance allocation rights/obligations and to remove significant product imbalances. These communications will be limited to discussions of the quality and volumes of oil that would be involved in a voluntary offer and the timing or logistics involved in effecting the physical transfer of such oil. No other confidential or proprietary information or data shall be discussed or exchanged. Prices or value of the oil shall not be discussed. Type 1 transactions are transactions made by a company to satisfy its own commercial supply, distribution or logistics needs in response to an oil supply emergency situation. Type 1 transactions will be assumed to have occurred without inter-company communications during AST–3.

Communications between Reporting Companies (involving one or more U.S. Companies) as described in this Paragraph 10 are permitted from October 15 through October 28, 1980 (for Cycle 1) and November 16 through 26, 1980 (for Cycle 2). During the period October 29 through November 15, 1980, communications between such Reporting Companies are permitted if, in the supplying or receiving company's opinion, they are necessary to modify a Cycle 1 Type 2 transaction approved for implementation by the Allocation Coordinator.

11. Participation in AST–3 does not create an obligation on U.S. ISAG members or U.S. Reporting Companies to provide or exchange any information or data which may be confidential.

12. In no case shall an employee or representative of a U.S. company participant in the Voluntary Agreement or any affiliate of a U.S. company, which affiliate is listed as a participant in the Voluntary Agreement, supply to his company or to any other person, any confidential or proprietary information or data obtained as a consequence of his membership in the ISAG or participation in any NESO, except such information or data as is necessary to be supplied in the course of carrying out AST–3 or related NESO activities. No U.S. ISAG member may remove any documents related to the test from the IEA premises, except as authorized in writing by a U.S. Government representtive attending the test.

13. One copy of all Questionnaire A data shall be provided on Questionnaire A formats, as distinquished from telex form, to:

Voluntary Agreement Coordinator, International Affairs, IA–12, Department of Energy, Forrestal Building, Room 7F–031, 1000 Independence Ave., S.W., Washington, D.C. 20585, Telex and Twx No. 7108220176.

An additional copy shall be sent to each of the following:

Office of General Counsel, International Trade and Emergency Preparedness, GC–11, Department of Energy, Forrestal Building, Room 6E067, 1000 Independence Ave., S.W., Washington, D.C. 20585, Telex and Twx No. 7108220176.

Donald A. Kaplan, Energy Section, Antitrust Division, Department of Justice, P.O. Box 14141, Washington, D.C. 20044, Twx No. 7108221907.

14. Any confidential or proprietary information or data exchanged or furnished pursuant to the test shall be supplied upon request to U.S. Government observers from the Department of Energy, Department of Justice or Federal Trade Commission. During AST–3 U.S. Government observers may obtain access to the offices of U.S. participants at the test site in Paris or in the United States for the purpose of observing AST–3 related activities, reviewing records kept in connection with AST–3 or interyiewing employees participating in AST–3.

15. This approval may be modified or revoked in writing by the Department of Energy representative, with the concurrence of the Department of Justice representative in consultation with the Federal Trade Commission representative, if developments during AST–3 indicate that modification or revocation is warranted. Any modification or revocation shall be in writing and conveyed to all participants in the Voluntary Agreement and the ISAG Manager or his designee. No modification or revocation shall have retroactive effect.

16. This approval of U.S. company participation in the test and the provision of certain data and information (including the need to provide it in disaggregated form) has been the subject of consultation with the Department of State and has been concurred in by the Department of Justice, after consultation with the Federal Trade Commission, all as required by the Voluntary Agreement. Copies of correspondence reflecting our consultation with the Department of State, and the Department of Justice's concurrence in our approval, after consultation with the Federal Trade Commission, are annexed.

Sincerely,

_____,

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Appendix B.—Requirements for Recordkeeping by U.S. Companies Participating in the Third Allocation Systems Test (AST–3)

1. Introduction

The following requirements apply existing U.S. recordkeeping requirements (10 CFR Part 209) to the third IEA Allocation Systems Test (AST–3). These requirements apply to U.S. Reporting Companies and to U.S. Reporting Company employees who are members of the Industry Supply Advisory Group (ISAG) who will be participating in the test in Paris.

If experience indicates the need, the U.S. Government representatives will have discretion to allow alternative recordkeeping procedures consistent with Section 252 of the Energy Policy and Conservaiton Act and existing regulations.

2. Definitions

For purposes of these requirements the following definitions apply:

(a) The term "Communication" means any exchange of data or other informaiton relating to the carrying out of AST–3, except that such term does not include administrative, procedural, or ministerial information exchanged within the test site.

(b) The term "Test Site" means that portion of the building housing the headquarters of the International Energy Agency where IEA offices and conference rooms are located and such other office space or conference rooms as may be assigned by the IEA during the test.

(c) The term "Test Site Communication" means any face-to-face communication occurring within the test site which involves two or more ISAG members, at least one of whom is an employee of a U.S. company participant in the Voluntary Agreement or its affiliates.

(d) The term "Test Site Telephone Conversation" means any telephonic communication between a U.S. ISAG member and (i) another ISAG member, (ii) a Reporting Company, (iii) the Chairman of the Industry Advisory Board (IAB) to the IEA, (iv) any NESO representative, or (v) the IEA Secretariat.

(e) The term "Test Meeting" means the following Test Site Communications:

(i) Meetings of the entire ISAG;

(ii) Meetings of the ISAG Country Supply, Supply Coordination or Supply Analysis subgroups;

(iii) Meetings of the ISAG manager and/or deputy manager with ISAG subgroup heads.

3. Communicotions by U.S. ISAG Members

(a) *Permissible Communications.* Subject to the procedures and limitations in Sections 4 and 5, the following types of oral communications are permitted:

(i) Test Site Communications;

(ii) Test Site Telephone Conversations;

(iii) Off-Site Communications;

(iv) Communications by a U.S. ISAG member with representatives of the AST–3 Control Group. Such communication shall be considered a test site communication and recorded pursuant to paragraph 5 below.

(v) Communications by a U.S. ISAG member with representatives of the IEA Secretariat or members of the SEQ Emergency Group. The recordkeeping requirements set out in Section 5 below do not apply to such communications.

(b) *Restrictions on Communications.* All communications shall occur on the test site except when special circumstances make an off-site communication necessary, *e.g.*, when a need for immediate communication arises unexpectedly or otherwise makes a return to the test site impracticable, or when time zone differences involved in necessary communications would otherwise require very early morning arrival or very late night stay at the test site.

4. U.S. Government Monitoring and Recordkeeping at Paris

(a) A U.S. Government representative shall be present throughout all test meetings. He may be present during any other communications. While it is intended that U.S. Government representatives will be present continusouly at the test site to monitor test meetings, communications, work sessions and individual work by ISAG members (1) during such regular work hours as ISAG adopts and (2) at any extraordinary hours if given advance notice, it will not be necessary for U.S. Government observers to be present at times other than the above for permissible communications other than Test Site Communications, or individual work by ISAG members to be undertaken.

(b) Test meetings shall be monitored by a U.S. Government employee who shall be responsible for keeping a "full and complete" written record of each session, or for ensuring that a verbatim transcript is made.

(c) U.S. Government representatives may make use of tape recording devices or other recording devices, to assist in their personal recordkeeping.

(d) The "full and complete" record of the Paris portion of AST–3 shall consist of (i) the records of all test meetings; (ii) records of other test site communications which may be taken by U.S. Government representatives; (iii) the communication records required to be supplied to U.S. Government representatives by U.S. ISAG members pursuant to Section 6(a); (iv) the telexes, written communications and other records required to be supplied to U.S. Government representatives pursuant to Sections 6(b) through (d); and (v) a daily log summarizing the overall test activities of ISAG at Paris to be prepared by the U.S. Government observers. As they are accumulated in appropriate batches, these materials will be transmitted to the U.S. Government in Washington at approximately weekly intervals, to be correlated and analyzed with the remainder of the test records, *i.e.*, the records of Reporting Company communications on voluntary offers and their reports of actions taken, as required pursuant to Section 7.

5. Recordkeeping Requirements for U.S. ISAG Members

Recordkeeping with respect to test site communications other than test meetings will be conducted in accordance with subsections (a) through (c) below:

(a) A U.S. ISAG member shall maintain the full and complete record of a test site communication (except when a U.S. Government observer present indicates he will maintain such record), test site telephone conversation or off-site communications, by means of entering in a standardized log the date, time, identity of the parties (by name and organization) and a description of the transaction or information discussed, including identification of any problem involved and any conclusions reached or recommendations made. In the case of an off-site communication, he shall also state the special circumstances necessitating this communication.

(b) Where a U.S. ISAG member has been assigned to joint work sessions to solve specific identified problems, the overall subject matter of which is already contained in a full and complete record of a test meeting, and the results of which will be reported at a session where a full and complete record will be maintained, then, notwithstanding subsection (a), the record of such session to be kept by the U.S. ISAG member need only include the date, time, identity of the parties and a brief identification of the substance of the discussion during the work session, with a reference to the rest meeting where it was more fully discussed.

(c) Where more than one U.S. ISAG member is involved, the parties may designate who shall make and supply such records. By mutual agreement, non-U.S. ISAG members may make records of communications with U.S. Reporting Companies and with U.S. ISAG members if such records are kept in the rquired form and supplied to the U.S. Government representatives promptly, in accordance with these guidelines.

6. Disposition of Records at the Test Site

(a) Copies of records required to be maintained by U.S. ISAG members under Section 5 shall be submitted to a U.S. Government representative within three working days following the communication involved.

(b) Documents, information or data furnished by the IEA to U.S. ISAG members to be used in balancing allocation rights and obligations, including the member country allocation rights and obligations and any other information furnished in Step 1 of the IEA *Allocation Implementation Steps*, as described in the EMM and the ISOM, shall be provided to a U.S. Government representative.

(c) All documents, information or data furnished by or on behalf of U.S. Reporting Companies or the ISAG to the IEA in connection with balancing allocation rights and obligation shall be submitted to a U.S. Government representative at the test site.

(d) Telexes or other written communications from the ISAG to U.S. Reporting Companies and from U.S. Reporting Companies to the ISAG shall be provided to a U.S. Government representative at the test site.

7. Records of U.S. Reporting Companies

(a) A U.S. Reporting Company is required to maintain intra-corporate documents relating to the Voluntary Agreement. With respect to the test, this is expected to include telexes received and sent, memoranda concerning intra-company discussions of hypothetical sales or exchanges, documentation concerning actions requested by the ISAG or proposed by a Reporting Company, communications with the IEA Secretariat, and any other documents generated by the test.

(b) A U.S. Reporting Company is also required to make a full and complete record of any communication with ISAG members, including any of its own employees who are members of the ISAG, except when the Reporting Company has agreed with the ISAG or with an ISAG member that the communication will be recorded by the ISAG or the ISAG member. Such records made by a U.S. Reporting Company shall be sent to the Department of Energy, the Department of Justice and the Federal Trade Commission within three working days of its occurrence.

(c) A U.S. Reporting Company is required to maintain copies of all written communications with another company, ISAG or the IEA Secretariat or make a full and complete written record of any non-written communication with another company, ISAG or the IEA Secretariat, in connection with carrying out the test, *i.e.*, a communication with respect to developing or implementing a voluntary offer.

(d) Records of *unwritten* communications should be made in the manner described in section 5(a) of these guidelines.

(e) Each U.S. Reporting Company is required to forward within two weeks copies of all test records set forth in section 7(a) through (d) to an appropriate office at company headquarters, where they shall be maintained for five years separately from other company records. These records may be subject to U.S. Government examination during and after the test.

8. Reports of Communications With Other Companies

(a) A copy of any written communication by a U.S. Reporting Company with another Reporting Company shall be simultaneously sent to the Departments of Energy and Justice and the Federal Trade Commission by the same means of transmission as used to send the original.

(b) A U.S. Reporting Company shall make a copy of each written communication received from another company and forward it to the Departments of Energy and Justice and the Federal Trade Commission within three working days of its receipt by the company office and/or individual to whom it is specifically addressed.

(c) A U.S. Reporting Company shall forward to the Departments of Energy and Justice and the Federal Trade Commission, within three working days of its occurrence, a copy of each record of an unwritten communication required to be made pursuant to Section 7(c).

(d) Upon advance notice by the Department of Energy, U.S. Reporting Companies shall permit personnel from the Departments of Energy and Justice and the Federal Trade Commission to monitor communications with other companies by means of on-site inspections at that Reporting Companies' office or three-way conference telephone calls.

9. Reports of Actions Taken

(a) Under the Voluntary Agreement U.S. Reporting Companies must report to the U.S. Government actions taken pursuant to a plan of action. Therefore, for the purposes of AST–3, each U.S. Reporting Company shall report to the Departments of Energy and Justice and the Federal Trade Commission actions taken as part of the test, such as details of voluntary offers made, those accepted, and simulated reallocations of supply in response to requests for voluntary offers.

(b) A report should be submitted within seven days of the end of the week in which the action was taken.

(c) The manner and particular content of a report is left to the discretion of the individual U.S. Reporting Company. It can be submitted in any fashion a company believes will best reflect what it has done. In the case of voluntary offers, the record should include substantially all of the information contained in the voluntary offer itself.

10. Addresses of Reporting Company Reports to the U.S. Government

Reports to U.S. Government agencies required pursuant to Sections 7, 8 and 9 of these Recordkeeping Requirements should be addressed, respectively, as follows:

Office of General Counsel, International Trade and Emergency Preparedness, GC–11, Department of Energy, Forrestal Building, Room 6E–067, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Telex and Twx No. 7108220176.

Donald A. Kaplan, Chief, Energy Section, Antitrust Division, Department of Justice, Post Office Box 14141, Washington, D.C. 20044, Twx No. 7108221907.

Ronald B. Rowe, Assistant Director, Bureau of Competition, Federal Trade Commission, 4125 13th Street, N.W., Suite 932, Washington, D.C. 20004.

Appendix C

Department of Energy,
Washington, D.C. 20585.

Hon. Sanford M. Litvack,
Assistant Attorney General for the Antitrust Division, Department of Justice, Washington, D.C. 20530.

Dear Mr. Litvack: As you know, the International Energy Agency (IEA) is in an advanced stage of preparation for the third test of its Emergency Allocation System (AST–3) which will begin on October 1.

Reporting Companies which are participants in the Voluntary Agreement and Plan of Action to Implement the International Energy Program (Voluntary Agreement) will be requested to assist the IEA in conducting AST–3. Such participation by U.S. Reporting Companies requires approval by the Department of Energy, as the Administrator of the Voluntary Agreement, for the submission and exchange of confidential and proprietary information or data. Participation by U.S. companies also is governed by Section 252 of the Energy Policy Conservation Act, 42 U.S.C. 6272 (EPCA), and DOE regulations, 10 C.F.R. Part 209.

AST–3 will begin on October 1 and will continue through approximately December 5, 1980. The primary objective of AST–3 is to test the procedures and data systems which have been designed by the IEA to implement the emergency oil allocation procedures of the Agreement on an International Energy Program (TIAS 8270, November 18, 1974) (IEP) as more specifically delineated in the IEA Emergency Management Manual (EMM), the ISAG/Secretariat Operations Manual (ISOM), and the AST–3 Test Guide. The test will be used to train IEA Secretariat personnel, members of the Industry Supply Advisory Group (ISAG), employees of Reporting Companies and their affiliates, and officials of National Emergency Sharing Organizations (NESOs) of participating IEA countries, in the functioning of the IEA Emergency Allocation System.

Industry will participate in a number of ways. Industry representatives will staff the ISAG which, together with the IEA Allocation Coordinator, the IEA Secretariat and the SEQ Emergency Group, will comprise the Emergency Management Organization at IEA Headquarters. Reporting Companies will submit data to the IEA on Questionnaire A forms and in other ways, and will discuss test data with the IEA Secretariat and the ISAG, for purposes of the test. Reporting Company affiliates will submit similar data and have similar discussions with NESOs of participating countries. Reporting Companies will propose and simulate the carrying out of hypothetical supply reallocation measures, denominated by the IEA as "Type 2" allocation; in this connection Reporting Companies may communicate with each other to formulate "closed loop" Type 2 offers and to work out logistics needed to implement such offers or to modify previously approved Type 2 offers.

The categories of confidential or proprietary information or data which we propose to approve for exchange during AST–3 are enumerated in paragraph 7 of the proposed approval. The data base for the test consists of import, export, indigenous production and stock level information for the historical period October 1979 through March 1980. Most of this data will be disrupted by the emergency scenario designed to simulate a severe supply interruption. Paragraph 7(j) authorizes U.S. Government antitrust observers at the test to approve the provision or exchange of additional information or data if that is necessary for proper and efficient performance of AST–3 functions. Paragraphs 8, 9, and 10 of the proposed approval limit access to certain types of information and also prohibit or limit the provision or exchange of certain information or data which are not considered necessary for this test of the IEA Emergency Allocation System or are necessary for limited purposes only. Paragraph 12 of the proposed approval explicitly prohibits the disclosure of confidential or proprietary information or data for purposes other than the conduct of AST–3, and explicitly prohibits removal of such information or data from the test site without U.S. Government approval. The age of the data to be used in the test, its distortion or potential distortion by the "disruption", the possibility of data masking by companies, and the limitations and other safeguards included in the proposed approval

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e believe effectively eliminate any potential nticompetitive effects of provision or xchange of such data for purposes of onducting AST–3.

Annexed to the proposed approval letter re "Requirements for Recordkeeping by U.S. Companies Participating in the Third llocation System Test (AST–3)". These ecordkeeping requirements are consistent ith the recordkeeping provisions of Section 52 of EPCA, the Voluntary Agreement and 0 C.F.R. Part 209. Many of the ISAG group essions during AST–3 will be tenographically transcribed; others will be emorialized by U.S. Government observers, ho will have access to all ISAG meetings nd all information or data made available to SAG. Provision is also made for monitoring f inter-company communications regarding Type 2" voluntary offers. In our view, the ecordkeeping procedures should ensure that he U.S. Government agencies concerned will ave a full and complete record of activities f U.S. companies participating in AST–3.

The proposed approval and the ecordkeeping requirements were published or public comment in the Federal Register, 45 .R. 56126, August 22, 1980. We intend to ublish the final approval letter, as sent to .S. Reporting Companies, in the Federal egister prior to the commencement of AST–.

The draft approval letter which was ublished and the approval letter which I ropose to send to Reporting Companies ere developed in cooperation with the staffs f the Antitrust Division, Department of ustice, the Department of State and the ederal Trade Commission.

In our view the participation of U.S. oil ompanies and U.S. oil company personnel in he ISAG and the disclosure and exchange of onfidential or proprietary information and ata as specifically set forth in the proposed pproval letter are essential to the evelopment, preparation and testing of mergency allocation measures.

We hereby request your concurrence in our ntended approval.

Sincerely,

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Appendix D

Department of Energy,
Washington, D.C. 20585.

Hon. Deane C. Hinton,
Assistant Secretary, Economic and Business Affairs, Department of State, Washington, D.C. 20520.

Dear Mr. Hinton: As you know, the International Energy Agency (IEA) is in an advanced stage of preparation for the third test of its Emergency Allocation System (AST–3) which will begin on October 1.

Reporting Companies which are participants in the Voluntary Agreement and Plan of Action to Implement the International Energy Program (Voluntary Agreement) will be requested to assist the IEA in conducting AST–3. such participation by U.S. Reporting Companies requires approval by the Department of Energy, as the Administrator of the Voluntary Agreement, for the submission and exchange of confidential and proprietary information or data. Participation by U.S. companies also is governed by section 252 of the Energy Policy Conservation Act, 42 U.S.C. 6272 (EPCA), and DOE regulations, 10 C.F.R. Part 209.

AST–3 will begin on October 1 and will continue through approximately December 5, 1980. The primary objective of AST–3 is to test the procedures and data systems which have been designed by the IEA to implement the emergency oil allocation procedures of the Agreement on an International Energy Program (TIAS 8270, November 18, 1974) (IEP) as more specifically delineated in the IEA Emergency Management Manual (EMM), the ISAG/Secretariat Operations Manual (ISOM), and the AST–3 Test Guide. The test will be used to train IEA Secretariat personnel, members of the Industry Supply Advisory Group (ISAG), employees of Reporting Companies and their affiliates, and officials of National Emergency Sharing Organizations (NESOs) of participating IEA countries, in the functioning of the IEA Emergency Allocation System.

Industry will participate in a number of ways. Industry representatives will staff the ISAG which, together with the IEA Allocation Coordinator, the IEA Secretariat and the SEQ Emergency Group, will comprise the Emergency Management Organization at IEA Headquarters. Reporting Companies will submit data to the IEA on Questionnaire A forms and in other ways, and will discuss test data with the IEA Secretariat and the ISAG, for purposes of the test. Reporting Company affiliates will submit similar data and have similar discussions with NESOs of participating countries. Reporting Companies will propose and simulate the carrying out by hypothetical supply reallocation measures, denominated by the IEA as "Type 2" allocation; in this connection Reporting Companies may communicate with each other to formulate "closed loop" Type 2 offers and to work out logistics needed to implement such offers or to modify previously approved Type 2 offers.

The categories of confidential or proprietary information or data which we propose to approve for exchange during AST–3 are enumerated in paragraph 7 of the proposed approval. The data base for the test consists of import, export, indigenous production and stock level information for the historical period October 1979 through March 1980. Most of this data will be disrupted by the emergency scenario designed to simulate a severe supply interruption. Paragraph 7(j) authorizes U.S. Government antitrust observers at the test to approve the provision or exchange of additional information or data if that is necessary for proper and efficient performance of AST–3 functions. Paragraphs 8, 9, and 10 of the proposed approval limit access to certain types of information and also prohibit or limit the provision or exchange of certain information or data which are not considered necessary for this test of the IEA Emergency Allocation System or are necessary for limited purposes only. Paragraph 12 of the proposed approval explicitly prohibits the disclosure of confidential or proprietary information or data for purposes other than the conduct of AST–3, and explicitly prohibits removal of such information or data from the test site without U.S. Government approval. The age of the data to be used in the test, its distortion or potential distortion by the "disruption", the possibility of data masking by companies, and the limitations and other safeguards included in the proposed approval we believe effectively eliminate any potential anticompetitive effects of provision or exchange of such data for purposes of conducting AST–3.

Annexed to the proposed approval letter are "Requirements for Recordkeeping by U.S. Companies Participating in the Third Allocation System Test (AST–3)". These recordkeeping requirements are consistent with the recordkeeping provisions of Section 252 of EPCA, the Voluntary Agreement and 10 C.F.R. Part 209. Many of the ISAG group sessions during AST–3 will be stenographically transcribed; others will be memorialized by U.S. Government observers, who will have access to all ISAG meetings and all information or data made available to ISAG. Provision is also made for monitoring of inter-company communications regarding "Type 2" voluntary offers. in our view, the recordkeeping procedures should ensure that the U.S. Government agencies concerned will have a full and complete record of activities of U.S. companies participating in AST–3.

The proposed approval and the recordkeeping requirements were published for public comment in the Federal Register, 45 FR 56126, August 22, 1980. We intend to publish the final approval letter, as sent to U.S. Reporting Companies, in the Federal Register prior to the commencement of AST–3.

The draft approval letter which was published and the approval letter which I propose to send to Reporting Companies were developed in cooperation with the staffs of the Antitrust Division, Department of Justice, the Department of State and the Federal Trade Commission.

In our view the participation of U.S. oil companies and U.S. oil company personnel in the ISAG and the disclosure and exchange of confidential or proprietary information and data as specifically set forth in the proposed approval letter are essential to the development, preparation and testing of emergency allocation measures.

We hereby request your views with respect to our intended approval.

Sincerely,

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Appendix E

Department of State,
Washington, D.C. 20520.

September 25, 1980.

Hon. John C. Sawhill,
Deputy Secretary, Department of Energy.

Dear Mr. Sawhill: Thank you for your letter of September 24 requesting the views of the State Department on your proposed approval for participation by U.S. Reporting Companies in the IEA's third test of its emergency oil allocation system (AST–3).

Periodic tests of the allocation system are vital to assure that it will operate effectively to minimize the ill effects of an actual shortfall in the supply of oil to the industrialized countries. Since Reporting Companies are the foundation of the allocation system, realistic testing of that system requires their participation. We therefore strongly support your approval of their participation under the conditions which you have stipulated.

Sincerely,

Ernest Johnston,
Acting Assistant Secretary for Economic and Business Affairs.

Appendix F

U.S. Department of Justice,
Washington, D.C. 20530

September 30, 1980.

Hon. John C. Sawhill,
Deputy Secretary, Department of Energy, Washington, D.C. 20461.

Dear Dr. Sawhill: This is in response to your letter requesting our concurrence in your approval for U.S. Reporting Companies to provide and exchange certain confidential and proprietary information in the course of assisting the International Energy Agency (IEA) in carrying out a third test of its emergency oil-sharing system (AST–3) during the period October 1–December 5, 1980. These approvals are required under Section 5(b) of the Voluntary Agreement and Plan of Action to Implement the International Energy Program, which is authorized pursuant to Section 252 of the Energy Policy and Conservation Act, 42 U.S.C. § 6272.

You enclose a draft of a proposed letter to these companies with an annexed paper on recordkeeping requirements for AST–3. Approval is conditioned on compliance with these requirements and other limitations and antitrust safeguards set forth in the letter.

Earlier, the proposed approval and recordkeeping requirements were published as a matter of public information in the Federal Register, 45 FR 56126 (August 22, 1980), with a deadline of September 12, 1980 for public comments. We note your intention to publish in the Federal Register the formal issuance of approval to the companies prior to commencement of AST–3. This will include a statement reviewing the public comments received and the changes made in response to them after intensive interagency discussions among the staffs of the Departments of Energy, State and Justice and the Federal Trade Commission.

The confidential data clearances and recordkeeping requirements are based on those successfully employed in the first two IEA allocation system tests in 1976 and 1978. These precedents have been modified in essential respects only to incorporate provisions covering activities undertaken for the first time in AST–3 and to provide more effective monitoring based on our experience in the last test. We believe that the conditions, limitations and safeguards incorporated in the approval, as set forth briefly in your letter, will effectively deter any anticompetitive abuse of the statutory antitrust defense accorded these companies arising from their provisions and exchange of confidential data and other activities to assist the IEA in carrying out its test.

These safeguards, of course, must be adequately monitored, and careful provision has been made for this surveillance. The required recordkeeping, exchanges of data and other company activities undertaken at test headquarters in Paris will be monitored continuously by an interagency team of U.S. Government representatives from the four agencies. Five staff members from the Antitrust Division will participate and at least one will be present at the test site throughout the test. Other required recordkeeping and exchanges of data by U.S. companies participating in the test will be monitored by staff based in Washington.

Accordingly, I hereby concur in your approval of the proposed letter on submission and exchange of confidential and proprietary information and data by U.S. oil company participants in AST–3 and the annexed recordkeeping requirements for the test. I enclose a copy of a letter from the Federal Trade Commission evidencing the consultations we have held with that agency on this matter, as required by Section 5(b) of the Voluntary Agreement.

Sincerely yours,

Richard J. Favretto,
Deputy Assistant Attorney General Antitrust Division.

Appendix G

Federal Trade Commission,
Office of the Secretary,
Washington, D.C. 20580.

September, 30, 1980.

Hon. Sanford M. Litvack,
Assistant Attorney General for the Antitrust Division, Department of Justice, Washington, DC 20530.

Dear Mr. Litvack: The Honorable John C. Sawhill, Deputy Secretary of Energy and Administrator of the Voluntary Agreement and Plan of Action to Implement the International Energy Program ("Voluntary Agreement"), has requested your concurrence on the attached clearance letter. The letter provides clearance for the oil-company signatories of the Voluntary Agreement to exchange confidential and proprietary information among themselves and to provide such information and data to the International Energy Agency ("IEA") during the IEA's third test of the emergency oil allocation system ("AST–3"), beginning October 1, 1980. Under the Voluntary Agreement, the Attorney General or his delegate in Voluntary Agreement matters must consult with the Commission before concurring in the information exchange.

Section 252 of the Energy Policy and Conservation Act, 42 U.S.C. § 6272, directs the Attorney General and the Federal Trade Commission to monitor the carrying out of the Voluntary Agreement to ensure that the purposes of the International Energy Program ("IEP") are substantially achieved in the least anticompetitive manner practicable. The Commission has examined the types of data and information proposed to be exchanged during AST–3. The data to be used during AST–3 will be from 6 to 12 months old, likely to be distorted due to the hypothetical supply disruption, or subject to masking (disguising) by the submitting company. Additionally, U.S. Government monitors will be at the IEA site during the conduct of the test, and will spot-check telephonic communications between Reporting Companies occurring off-site. A full and complete record will be made of all communications among U.S. oil company personnel, including a verbatim transcript of most group meetings. Finally, removal of documents from the test site without written U.S. Government approval will be prohibited, as will the communication of confidential information learned at the test to persons not involved in the test.

The safeguards employed and the limited competitive significance of the data appear to strike the appropriate balance between achieving the objectives of the IEP and ensuring that the test is conducted in the least anticompetitive manner practicable. Accordingly, the Commission does not object to your approval of the information and data exchange needed to carry out AST–3. However, the Commission's staff will monitor AST–3 and continue to assess whether the allocation system can be modified to further limit its anticompetitive potential without jeopardizing the sytem's effectiveness.

By direction of the Commission.

Carol M. Thomas,
Secretary.

[FR Doc. 80-33448 Filed 10-24-80; 8:45 am]

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federal register

Monday
October 27, 1980

Part XII

Department of Energy

Federal Energy Management and Planning Programs; Methodology and Procedures for Life Cycle Cost Analysis (Average Fuel Costs); Correction and Extension of Comment Period

DEPARTMENT OF ENERGY

10 CFR Part 436

[Docket No. CAS-RM-79-107]

Federal Energy Management and Planning Programs; Methodology and Procedures for Life Cycle Cost Analysis (Average Fuel Costs); Correction and Extension of Comment Period

AGENCY: Department of Energy.

ACTION: Proposed rules; correction and extension of comment period.

SUMMARY: The Department of Energy corrects an inadvertent error in the proposed rule on Methodology and Procedures for Life Cycle Cost Analysis, published on October 7, 1980 (45 FR 66632), and extends the comment period accordingly.

DATE: Comments on the proposed rule, as corrected, must be submitted on or before December 24, 1980.

ADDRESS: Send comments to: Carol Snipes, Office of Hearings and Dockets, Department of Energy, Mail Stop 6B-025, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-9319.

FOR FURTHER INFORMATION CONTACT: Jack Vitullo (202) 252-9467, Neal Strauss (202) 252-9519.

SUPPLEMENTARY INFORMATION: On January 23, 1980, the Department of Energy (DOE) published a final Life-Cycle Cost rule (LCC rule) (45 FR 5620), which established the methodology and procedures for estimating and evaluating the life-cycle costs of proposed investments to conserve energy or to increase the use of renewable energy resources in existing and new Federal buildings.

On October 1, 1980, DOE issued a notice of proposed rulemaking to amend the methodology by updating the energy price projections, modifying the discount rate and the study period and inserting minor technical corrections (45 FR 66632, October 7, 1980). As published, the proposed rule contained the original tables of energy price Projections appended to the January 23, 1980, final rule rather than the revised tables which should have appeared. Thus the tables in appendices A, B, and C starting at 45 FR 66635 are in error. This notice substitutes the correct tables for the ones that were printed in error.

To ensure that the public has an adequate opportunity to review the proposed rule, as corrected, DOE is extending the comment period from December 8, 1980, to December 24, 1980.

Authority: Energy Policy and Conservation Act, as amended, 42 U.S.C. 6361(a)(2); Executive Order 11912, as amended by Executive Order 12003, 42 FR 37523 (July 20, 1977); National Energy Conservation Policy Act, as amended, Title V, Part 3, Pub. L. 95-619; Department of Energy Organization Act, 42 U.S.C. 7254.

Issued in Washington, D.C., on October 21, 1980.

Francis D. DeGeorge,

Principal Deputy Assistant Secretary.

The following correction is made to the **Federal Register** notice of proposed rulemaking at 42 FR 66632 (October 7, 1980):

Delete Appendices A, B, and C, at pages 66635-66654 and insert in lieu thereof the following:

BILLING CODE 6450-85-M

TABLE A-2. UPW FACTORS, BASED ON A 7 PERCENT DISCOUNT RATE, FOR FINDING THE PRESENT VALUE OF FUTURE ANNUALLY RECURRING (NONFUEL) COSTS, SUCH AS ROUTINE MAINTENANCE COSTS[1]

Study Period (Years)	Factor
1	0.94
2	1.81
3	2.62
4	3.39
5	4.10
6	4.77
7	5.39
8	5.97
9	6.52
10	7.02
11	7.50
12	7.94
13	8.36
14	8.75
15	9.11
16	9.45
17	9.76
18	10.06
19	10.34
20	10.59
21	10.84
22	11.06
23	11.27
24	11.47
25	11.65

[1] The formula for finding the present value (P) of an annually recurring uniform amount (A) is the following:

$$P = \frac{A(1+d)^n - 1}{d(1+d)^n},$$

where d = the discount rate, and

n = the number of corresponding periods over which A occurs.

Appendix A To Subpart A of Part 436

TABLE A-1. SPW FACTORS, BASED ON A 7 PERCENT DISCOUNT RATE, FOR FINDING THE PRESENT VALUE OF FUTURE NONANNUALLY RECURRING (NONFUEL) AMOUNTS, SUCH AS REPLACEMENT COSTS AND SALVAGE VALUES[1]

Study Period (Years)	Factor
1	0.93
2	0.87
3	0.82
4	0.76
5	0.71
6	0.67
7	0.62
8	0.58
9	0.54
10	0.51
11	0.48
12	0.44
13	0.42
14	0.39
15	0.36
16	0.34
17	0.32
18	0.30
19	0.28
20	0.26
21	0.24
22	0.23
23	0.21
24	0.20
25	0.18

[1] The formula for finding the present value (P) of a future amount (F) is the following:

$$P = \frac{F}{(1+d)^n},$$

where d = the discount rate, and

n = the year in which F occurs.

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TABLE B-1--UPW* DISCOUNT FACTORS ADJUSTED FOR ENERGY PRICE ESCALATION[1]
DOE REGION 1
(MAINE, NEW HAMPSHIRE, VERMONT, MASSACHUSETTS, CONNECTICUT, RHODE ISLAND)

	Residential Sector			Commercial Sector				Industrial Sector				
Study Period[2]	Electricity	Natural Gas	Distillate	Electricity	Natural Gas	Distillate	Residual	Electricity	Natural Gas	Distillate	Residual	Coal
1	0.93	0.95	0.97	0.93	0.95	0.97	1.00	0.93	0.95	0.97	1.01	1.02
2	1.81	1.86	1.90	1.81	1.86	1.90	2.01	1.81	1.86	1.90	2.02	2.07
3	2.62	2.72	2.80	2.62	2.72	2.80	3.03	2.62	2.72	2.80	3.03	3.15
4	3.39	3.54	3.67	3.39	3.53	3.67	4.05	3.39	3.54	3.67	4.05	4.25
5	4.10	4.31	4.52	4.10	4.31	4.51	5.07	4.10	4.32	4.52	5.08	5.38
6	4.76	5.07	5.32	4.76	5.07	5.32	6.06	4.76	5.07	5.33	6.07	6.45
7	5.38	5.79	6.10	5.38	5.80	6.10	7.00	5.38	5.81	6.12	7.03	7.46
8	5.96	6.49	6.85	5.96	6.51	6.85	7.91	5.96	6.52	6.88	7.96	8.43
9	6.50	7.17	7.57	6.50	7.21	7.57	8.78	6.50	7.21	7.62	8.86	9.34
10	7.00	7.83	8.26	7.00	7.88	8.26	9.61	7.00	7.68	8.33	9.73	10.20
11	7.46	8.45	8.93	7.46	8.52	8.94	10.42	7.45	8.53	9.02	10.57	10.98
12	7.86	9.04	9.58	7.87	9.13	9.59	11.22	7.85	9.18	9.70	11.40	11.69
13	8.23	9.61	10.21	8.23	9.71	10.23	11.99	8.21	9.80	10.35	12.21	12.32
14	8.56	10.15	10.82	8.57	10.27	10.85	12.75	8.53	10.42	10.99	13.00	12.90
15	8.86	10.66	11.42	8.86	10.81	11.46	13.49	8.81	11.02	11.61	13.77	13.41
16	9.13	11.15	12.00	9.13	11.31	12.04	14.21	9.07	11.61	12.21	14.52	13.88
17	9.38	11.61	12.56	9.38	11.80	12.61	14.91	9.29	12.19	12.80	15.26	14.30
18	9.60	12.06	13.11	9.59	12.26	13.17	15.60	9.50	12.75	13.37	15.97	14.68
19	9.79	12.48	13.65	9.79	12.71	13.71	16.27	9.68	13.30	13.93	16.67	15.02
20	9.97	12.88	14.16	9.97	13.13	14.23	16.93	9.84	13.84	14.47	17.35	15.33
21	10.13	13.26	14.67	10.13	13.53	14.74	17.57	9.98	14.37	14.99	18.02	15.61
22	10.28	13.63	15.15	10.27	13.92	15.24	18.19	10.11	14.89	15.50	18.67	15.86
23	10.41	13.98	15.63	10.40	14.29	15.73	18.80	10.23	15.39	16.00	19.30	16.09
24	10.52	14.31	16.09	10.52	14.64	16.20	19.40	10.33	15.89	16.48	19.92	16.29
25	10.63	14.62	16.54	10.62	14.97	16.65	19.98	10.42	16.37	16.95	20.53	16.48

[1] These "modified" uniform present worth discount (UPW*) factors are based on a 7 percent discount rate and include the EIA projected real escalation rates in energy prices developed from the Mid-Term Energy Forecasting System (MEFS), for the periods mid-1980 to mid-1985, mid-1985 to mid-1990, and mid-1990 to mid-1995 and beyond. The formula for calculating these UPW* factors is the following: For 1 to k escalation periods,

$$UPW^* = \sum_{j=1}^{n_1} \left(\frac{1+e_1}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \sum_{j=1}^{n_2} \left(\frac{1+e_2}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \sum_{j=1}^{n_3} \left(\frac{1+e_3}{1+d}\right)^j + \ldots + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \ldots \left(\frac{1+e_{k-1}}{1+d}\right)^{n_{k-1}} \sum_{j=1}^{n_k} \left(\frac{1+e_k}{1+d}\right)^j .$$

where n_k = the length of the period for a given escalation rate in a given period, and the subscript k indicates the escalation period;

d = the discount rate; and $\sum_{j=1}^{n_k} \left(\frac{1+e}{1+d}\right)^j = \left(\frac{1+e}{d-e}\right)\left(1 - \left(\frac{1+e}{1+d}\right)^{n_k}\right)$.

[2] Study Period 1 is Mid-1980 to Mid-1981.

TABLE B-2--UPW* DISCOUNT FACTORS ADJUSTED FOR ENERGY PRICE ESCALATION[1]
DOE REGION 2
(NEW YORK, NEW JERSEY, PUERTO RICO, VIRGIN ISLANDS)

	Residential Sector			Commercial Sector				Industrial Sector				
Study Period[2]	Electricity	Natural Gas	Distillate	Electricity	Natural Gas	Distillate	Residual	Electricity	Natural Gas	Distillate	Residual	Coal
1	0.93	0.95	0.97	0.93	0.95	0.97	1.00	0.93	0.95	0.97	1.00	1.02
2	1.81	1.86	1.90	1.81	1.86	1.90	2.01	1.81	1.86	1.90	2.01	2.07
3	2.62	2.72	2.80	2.62	2.72	2.80	3.03	2.62	2.72	2.80	3.03	3.14
4	3.39	3.54	3.67	3.39	3.53	3.67	4.05	3.39	3.53	3.67	4.05	4.24
5	4.10	4.31	4.52	4.10	4.31	4.52	5.07	4.10	4.31	4.52	5.07	5.36
6	4.76	5.06	5.33	4.76	5.06	5.33	6.06	4.76	5.07	5.33	6.06	6.43
7	5.37	5.78	6.10	5.37	5.79	6.11	7.00	5.37	5.81	6.11	7.00	7.44
8	5.94	6.47	6.85	5.94	6.48	6.85	7.91	5.93	6.54	6.86	7.90	8.41
9	6.47	7.13	7.57	6.47	7.16	7.57	8.78	6.45	7.24	7.58	8.77	9.32
10	6.97	7.77	8.26	6.97	7.81	8.27	9.61	6.94	7.93	8.27	9.60	10.19
11	7.43	8.37	8.93	7.42	8.43	8.94	10.42	7.39	8.61	8.94	10.41	11.01
12	7.85	8.94	9.58	7.85	9.01	9.59	11.22	7.80	9.27	9.60	11.20	11.78
13	8.25	9.49	10.21	8.24	9.58	10.23	11.99	8.19	9.91	10.23	11.97	12.51
14	8.62	10.01	10.82	8.61	10.11	10.85	12.75	8.55	10.54	10.85	12.73	13.20
15	8.96	10.50	11.42	8.96	10.62	11.45	13.48	8.88	11.16	11.46	13.46	13.86
16	9.28	10.97	12.00	9.28	11.11	12.04	14.20	9.19	11.76	12.05	14.17	14.47
17	9.58	11.41	12.56	9.57	11.57	12.61	14.91	9.48	12.35	12.62	14.87	15.05
18	9.86	11.84	13.11	9.85	12.01	13.17	15.59	9.74	12.93	13.17	15.55	15.60
19	10.12	12.24	13.64	10.11	12.43	13.71	16.26	9.99	13.49	13.71	16.21	16.14
20	10.36	12.62	14.16	10.35	12.83	14.23	16.91	10.22	14.04	14.24	16.86	16.60
21	10.58	12.98	14.66	10.57	13.21	14.74	17.55	10.43	14.58	14.75	17.49	17.07
22	10.79	13.33	15.15	10.77	13.57	15.24	18.17	10.63	15.10	15.25	18.11	17.50
23	10.98	13.65	15.62	10.97	13.92	15.72	18.78	10.81	15.61	15.73	18.71	17.91
24	11.16	13.97	16.08	11.15	14.24	16.19	19.37	10.98	16.12	16.20	19.29	18.30
25	11.33	14.26	16.53	11.31	14.56	16.65	19.94	11.14	16.61	16.66	19.86	18.66

[1] These "modified" uniform present worth discount (UPW*) factors are based on a 7 percent discount rate and include the EIA projected real escalation rates in energy prices developed from the Mid-Term Energy Forecasting System (MEFS), for the periods mid-1980 to mid-1985, mid-1985 to mid-1990, and mid-1990 to mid-1995 and beyond. The formula for calculating these UPW* factors is the following: For 1 to k escalation periods,

$$UPW^* = \sum_{j=1}^{n_1} \left(\frac{1+e_1}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \sum_{j=1}^{n_2} \left(\frac{1+e_2}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \sum_{j=1}^{n_3} \left(\frac{1+e_3}{1+d}\right)^j + \ldots + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \ldots \left(\frac{1+e_{k-1}}{1+d}\right)^{n_{k-1}} \sum_{j=1}^{n_k} \left(\frac{1+e_k}{1+d}\right)^j .$$

where n_k = the length of the period for a given escalation rate in a given period, and the subscript k indicates the escalation period;

d = the discount rate; and $\sum_{j=1}^{n_k} \left(\frac{1+e}{1+d}\right)^j = \left(\frac{1+e}{d-e}\right)\left(1 - \left(\frac{1+e}{1+d}\right)^{n_k}\right)$.

[2] Study Period 1 is Mid-1980 to Mid-1981.

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TABLE B-3--UPW* DISCOUNT FACTORS ADJUSTED FOR ENERGY PRICE ESCALATION[1]
DOE REGION 3
(PENNSYLVANIA, MARYLAND, WEST VIRGINIA, VIRGINIA, DISTRICT OF COLUMBIA, DELAWARE)

Study Period[2]	Residential Sector			Commercial Sector				Industrial Sector				
	Electricity	Natural Gas	Distillate	Electricity	Natural Gas	Distillate	Residual	Electricity	Natural Gas	Distillate	Residual	Coal
1	0.93	0.95	0.97	0.93	0.95	0.97	1.00	0.93	0.95	0.97	1.00	1.02
2	1.81	1.86	1.90	1.81	1.86	1.90	2.01	1.81	1.86	1.90	2.01	2.07
3	2.62	2.72	2.80	2.62	2.72	2.80	3.03	2.62	2.72	2.80	3.03	3.15
4	3.39	3.53	3.67	3.39	3.53	3.67	4.05	3.39	3.54	3.67	4.05	4.25
5	4.10	4.31	4.51	4.10	4.31	4.52	5.07	4.10	4.31	4.52	5.07	5.38
6	4.77	5.06	5.32	4.77	5.06	5.32	6.06	4.77	5.11	5.33	6.06	6.46
7	5.40	5.79	6.10	5.40	5.79	6.10	7.00	5.41	5.91	6.10	7.00	7.48
8	6.00	6.48	6.84	6.00	6.50	6.85	7.90	6.01	6.73	6.85	7.90	8.46
9	6.56	7.16	7.56	6.56	7.18	7.57	8.76	6.58	7.57	7.57	8.77	9.39
10	7.09	7.80	8.25	7.10	7.84	8.26	9.59	7.12	8.42	8.26	9.60	10.28
11	7.59	8.42	8.91	7.59	8.47	8.94	10.39	7.62	9.21	8.93	10.41	11.12
12	8.05	9.00	9.56	8.05	9.07	9.59	11.18	8.09	9.93	9.59	11.20	11.91
13	8.48	9.56	10.19	8.48	9.64	10.23	11.95	8.52	10.61	10.22	11.96	12.66
14	8.87	10.08	10.80	8.88	10.18	10.85	12.69	8.93	11.23	10.84	12.71	13.37
15	9.25	10.58	11.39	9.25	10.70	11.45	13.42	9.30	11.81	11.44	13.44	14.04
16	9.59	11.06	11.97	9.60	11.19	12.04	14.13	9.65	12.35	12.02	14.15	14.67
17	9.91	11.51	12.53	9.92	11.66	12.61	14.82	9.97	12.84	12.59	14.85	15.27
18	10.21	11.93	13.07	10.22	12.10	13.16	15.49	10.27	13.30	13.14	15.52	15.83
19	10.49	12.34	13.60	10.50	12.52	13.70	16.14	10.55	13.72	13.68	16.18	16.37
20	10.75	12.72	14.11	10.76	12.93	14.22	16.78	10.81	14.12	14.20	16.82	16.87
21	11.00	13.09	14.60	11.00	13.31	14.73	17.40	11.06	14.48	14.70	17.45	17.35
22	11.22	13.43	15.09	11.23	13.67	15.23	18.01	11.28	14.81	15.20	18.06	17.80
23	11.43	13.76	15.55	11.44	14.02	15.71	18.60	11.49	15.13	15.67	18.65	18.22
24	11.63	14.08	16.01	11.63	14.35	16.18	19.18	11.69	15.41	16.14	19.23	18.63
25	11.81	14.37	16.45	11.81	14.66	16.64	19.74	11.87	15.68	16.59	19.79	19.01

[1] These "modified" uniform present worth discount (UPW*) factors are based on a 7 percent discount rate and include the EIA projected real escalation rates in energy prices developed from the Mid-Term Energy Forecasting System (MEFS), for the periods mid-1980 to mid-1985, mid-1985 to mid-1990, and mid-1990 to mid-1995 and beyond. The formula for calculating these UPW* factors is the following: For 1 to k escalation periods,

$$UPW^* = \sum_{j=1}^{n_1} \left(\frac{1+e_1}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \sum_{j=1}^{n_2} \left(\frac{1+e_2}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \sum_{j=1}^{n_3} \left(\frac{1+e_3}{1+d}\right)^j + \ldots + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \ldots \left(\frac{1+e_{k-1}}{1+d}\right)^{n_{k-1}} \sum_{j=1}^{n_k} \left(\frac{1+e_k}{1+d}\right)^j,$$

where n_k = the length of the period for a given escalation rate in a given period, and the subscript k indicates the escalation period;

d = the discount rate; and $\sum_{j=1}^{n} \left(\frac{1+e}{1+d}\right)^j = \left(\frac{1+e}{d-e}\right)\left(1 - \left(\frac{1+e}{1+d}\right)^{n_k}\right)$.

[2] Study Period 1 is Mid-1980 to Mid-1981.

TABLE B-4--UPW* DISCOUNT FACTORS ADJUSTED FOR ENERGY PRICE ESCALATION[1]
DOE REGION 4
(KENTUCKY, TENNESSEE, NORTH CAROLINA, SOUTH CAROLINA, MISSISSIPPI, ALABAMA, GEORGIA, FLORIDA, CANAL ZONE)

Study Period[2]	Residential Sector			Commercial Sector				Industrial Sector				
	Electricity	Natural Gas	Distillate	Electricity	Natural Gas	Distillate	Residual	Electricity	Natural Gas	Distillate	Residual	Coal
1	0.93	0.95	0.97	0.93	0.95	0.97	1.00	0.93	0.95	0.97	1.00	1.02
2	1.81	1.86	1.90	1.81	1.85	1.90	2.01	1.81	1.86	1.90	2.01	2.07
3	2.62	2.72	2.80	2.62	2.71	2.80	3.03	2.62	2.72	2.80	3.03	3.15
4	3.39	3.53	3.67	3.39	3.53	3.67	4.05	3.39	3.53	3.67	4.05	4.25
5	4.10	4.31	4.52	4.10	4.31	4.52	5.07	4.10	4.31	4.52	5.07	5.37
6	4.78	5.05	5.32	4.78	5.05	5.32	6.06	4.78	5.10	5.33	6.06	6.44
7	5.42	5.77	6.10	5.42	5.77	6.10	7.00	5.43	5.91	6.10	7.00	7.46
8	6.03	6.45	6.85	6.03	6.46	6.85	7.91	6.05	6.73	6.85	7.91	8.43
9	6.61	7.10	7.56	6.61	7.12	7.57	8.78	6.64	7.56	7.57	8.78	9.35
10	7.17	7.72	8.25	7.16	7.76	8.26	9.62	7.21	8.41	8.26	9.62	10.22
11	7.68	8.31	8.91	7.68	8.36	8.94	10.43	7.74	9.22	8.93	10.43	11.04
12	8.17	8.87	9.56	8.17	8.93	9.59	11.23	8.24	10.01	9.59	11.23	11.82
13	8.63	9.39	10.19	8.63	9.47	10.23	12.01	8.71	10.78	10.22	12.01	12.55
14	9.06	9.89	10.80	9.05	9.98	10.85	12.77	9.16	11.52	10.84	12.77	13.24
15	9.46	10.36	11.39	9.46	10.46	11.46	13.51	9.57	12.23	11.44	13.51	13.88
16	9.84	10.80	11.96	9.84	10.91	12.03	14.23	9.96	12.92	12.02	14.24	14.49
17	10.20	11.21	12.52	10.19	11.34	12.60	14.94	10.33	13.59	12.59	14.95	15.07
18	10.53	11.61	13.06	10.53	11.75	13.16	15.63	10.68	14.23	13.14	15.64	15.61
19	10.85	11.98	13.59	10.84	12.14	13.70	16.31	11.01	14.85	13.68	16.32	16.12
20	11.14	12.33	14.10	11.13	12.50	14.22	16.97	11.31	15.46	14.20	16.98	16.60
21	11.42	12.66	14.59	11.41	12.84	14.73	17.61	11.60	16.04	14.71	17.63	17.05
22	11.68	12.97	15.07	11.67	13.17	15.22	18.24	11.87	16.60	15.20	18.26	17.48
23	11.92	13.27	15.54	11.91	13.48	15.71	18.86	12.13	17.14	15.68	18.88	17.88
24	12.15	13.55	15.99	12.14	13.77	16.17	19.46	12.37	17.67	16.15	19.48	18.26
25	12.37	13.81	16.43	12.36	14.04	16.63	20.04	12.59	18.17	16.60	20.07	18.61

[1] These "modified" uniform present worth discount (UPW*) factors are based on a 7 percent discount rate and include the EIA projected real escalation rates in energy prices developed from the Mid-Term Energy Forecasting System (MEFS), for the periods mid-1980 to mid-1985, mid-1985 to mid-1990, and mid-1990 to mid-1995 and beyond. The formula for calculating these UPW* factors is the following: For 1 to k escalation periods,

$$UPW^* = \sum_{j=1}^{n_1} \left(\frac{1+e_1}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \sum_{j=1}^{n_2} \left(\frac{1+e_2}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \sum_{j=1}^{n_3} \left(\frac{1+e_3}{1+d}\right)^j + \ldots + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \ldots \left(\frac{1+e_{k-1}}{1+d}\right)^{n_{k-1}} \sum_{j=1}^{n_k} \left(\frac{1+e_k}{1+d}\right)^j,$$

where n_k = the length of the period for a given escalation rate in a given period, and the subscript k indicates the escalation period;

d = the discount rate; and $\sum_{j=1}^{n_k} \left(\frac{1+e}{1+d}\right)^j = \left(\frac{1+e}{d-e}\right)\left(1 - \left(\frac{1+e}{1+d}\right)^{n_k}\right)$.

[2] Study Period 1 is Mid-1980 to Mid-1981.

TABLE B-5--UPW* DISCOUNT FACTORS ADJUSTED FOR ENERGY PRICE ESCALATION[1]
DOE REGION 5
(MINNESOTA, WISCONSIN, MICHIGAN, ILLINOIS, INDIANA, OHIO)

	Residential Sector			Commercial Sector				Industrial Sector				
Study Period[2]	Electricity	Natural Gas	Distillate	Electricity	Natural Gas	Distillate	Residual	Electricity	Natural Gas	Distillate	Residual	Coal
1	0.93	0.95	0.97	0.93	0.95	0.97	1.01	0.93	0.95	0.97	1.01	1.02
2	1.81	1.86	1.90	1.81	1.85	1.90	2.02	1.81	1.86	1.90	2.02	2.07
3	2.62	2.72	2.80	2.62	2.71	2.80	3.03	2.62	2.72	2.80	3.03	3.14
4	3.39	3.53	3.67	3.39	3.53	3.67	4.05	3.39	3.53	3.67	4.05	4.24
5	4.10	4.31	4.51	4.10	4.31	4.52	5.08	4.10	4.31	4.52	5.08	5.36
6	4.77	5.06	5.32	4.77	5.06	5.33	6.06	4.78	5.09	5.33	6.06	6.43
7	5.41	5.78	6.10	5.41	5.78	6.11	7.01	5.42	5.87	6.11	7.01	7.44
8	6.01	6.47	6.85	6.01	6.48	6.86	7.92	6.02	6.65	6.86	7.91	8.40
9	6.57	7.13	7.57	6.57	7.15	7.58	8.79	6.60	7.42	7.58	8.78	9.31
10	7.11	7.77	8.26	7.11	7.80	8.28	9.62	7.15	8.20	8.28	9.62	10.18
11	7.61	8.37	8.94	7.61	8.41	8.95	10.44	7.66	8.96	8.95	10.44	11.09
12	8.07	8.94	9.59	8.08	8.98	9.61	11.24	8.13	9.69	9.61	11.23	11.78
13	8.51	9.47	10.23	8.51	9.53	10.26	12.02	8.58	10.40	10.26	12.02	12.51
14	8.92	9.98	10.85	8.92	10.05	10.88	12.78	8.99	11.09	10.88	12.78	13.20
15	9.29	10.46	11.46	9.30	10.53	11.49	13.52	9.38	11.77	11.49	13.52	13.85
16	9.65	10.91	12.04	9.65	11.00	12.08	14.25	9.74	12.42	12.08	14.25	14.46
17	9.98	11.33	12.61	9.98	11.43	12.66	14.96	10.07	13.05	12.66	14.96	15.04
18	10.29	11.73	13.17	10.29	11.84	13.22	15.66	10.39	13.67	13.22	15.66	15.59
19	10.57	12.11	13.71	10.58	12.23	13.77	16.34	10.68	14.27	13.77	16.34	16.19
20	10.84	12.47	14.24	10.85	12.60	14.31	17.00	10.95	14.85	14.31	17.00	16.59
21	11.09	12.80	14.75	11.10	12.95	14.83	17.65	11.21	15.41	14.83	17.65	17.05
22	11.33	13.12	15.25	11.33	13.27	15.33	18.28	11.44	15.96	15.33	18.29	17.48
23	11.54	13.42	15.73	11.55	13.58	15.82	18.90	11.66	16.49	15.82	18.91	17.89
24	11.75	13.71	16.20	11.76	13.88	16.30	19.51	11.87	17.01	16.30	19.52	18.28
25	11.94	13.97	16.66	11.95	14.15	16.77	20.10	12.06	17.51	16.77	20.11	18.64

[1] These "modified" uniform present worth discount (UPW*) factors are based on a 7 percent discount rate and include the EIA projected real escalation rates in energy prices developed from the Mid-Term Energy Forecasting System (MEFS), for the periods mid-1980 to mid-1985, mid-1985 to mid-1990, and mid-1990 to mid-1995 and beyond. The formula for calculating these UPW* factors is the following: For 1 to k escalation periods,

$$UPW^* = \sum_{j=1}^{n_1} \left(\frac{1+e_1}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \sum_{j=1}^{n_2} \left(\frac{1+e_2}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \sum_{j=1}^{n_3} \left(\frac{1+e_3}{1+d}\right)^j + \ldots + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \ldots \left(\frac{1+e_{k-1}}{1+d}\right)^{n_{k-1}} \sum_{j=1}^{n_k} \left(\frac{1+e_k}{1+d}\right)^j,$$

where n_k = the length of the period for a given escalation rate in a given period, and the subscript k indicates the escalation period;

d = the discount rate; and $\sum_{j=1}^{n_k} \left(\frac{1+e}{1+d}\right)^j = \left(\frac{1+e}{d-e}\right)\left(1-\left(\frac{1+e}{1+d}\right)^{n_k}\right)$.

[2] Study Period 1 is Mid-1980 to Mid-1981.

TABLE B-6--UPW* DISCOUNT FACTORS ADJUSTED FOR ENERGY PRICE ESCALATION[1]
DOE REGION 6
(TEXAS, NEW MEXICO, OKLAHOMA, ARKANSAS, LOUISIANA)

	Residential Sector			Commercial Sector				Industrial Sector				
Study Period[2]	Electricity	Natural Gas	Distillate	Electricity	Natural Gas	Distillate	Residual	Electricity	Natural Gas	Distillate	Residual	Coal
1	0.93	0.95	0.97	0.93	0.95	0.97	1.00	0.93	0.95	0.97	1.01	1.02
2	1.81	1.86	1.90	1.81	1.85	1.90	2.01	1.81	1.86	1.90	2.01	2.07
3	2.62	2.72	2.80	2.62	2.71	2.80	3.03	2.62	2.72	2.80	3.03	3.15
4	3.39	3.53	3.67	3.39	3.53	3.67	4.05	3.39	3.54	3.67	4.05	4.25
5	4.10	4.31	4.51	4.10	4.31	4.51	5.07	4.10	4.32	4.52	5.07	5.38
6	4.77	5.07	5.32	4.78	5.07	5.32	6.06	4.78	5.09	5.33	6.06	6.45
7	5.42	5.81	6.10	5.42	5.83	6.10	7.00	5.43	5.85	6.10	7.09	7.46
8	6.02	6.54	6.85	6.03	6.57	6.85	7.91	6.04	6.61	6.85	7.91	8.43
9	6.60	7.25	7.57	6.61	7.29	7.57	8.78	6.63	7.35	7.58	8.78	9.34
10	7.15	7.94	8.26	7.16	8.01	8.27	9.61	7.19	8.09	8.27	9.62	10.20
11	7.66	8.60	8.93	7.67	8.70	8.94	10.43	7.72	8.80	8.94	10.43	11.02
12	8.14	9.23	9.58	8.15	9.36	9.60	11.22	8.20	9.49	9.60	11.23	11.78
13	8.58	9.84	10.21	8.60	9.99	10.24	12.00	8.66	10.14	10.24	12.01	12.50
14	8.99	10.42	10.83	9.01	10.59	10.86	12.76	9.08	10.78	10.86	12.77	13.19
15	9.38	10.97	11.43	9.40	11.18	11.46	13.51	9.47	11.38	11.47	13.52	13.81
16	9.74	11.50	12.01	9.76	11.74	12.05	14.24	9.84	11.97	12.06	14.24	14.41
17	10.07	12.01	12.58	10.10	12.27	12.63	14.95	10.18	12.53	12.63	14.96	14.97
18	10.39	12.49	13.12	10.41	12.79	13.18	15.64	10.50	13.07	13.19	15.65	15.49
19	10.68	12.96	13.66	10.70	13.28	13.73	16.32	10.80	13.59	13.73	16.33	15.99
20	10.95	13.40	14.18	10.98	13.75	14.25	16.98	11.07	14.09	14.26	16.99	16.46
21	11.20	13.82	14.68	11.23	14.21	14.77	17.63	11.33	14.57	14.78	17.64	16.90
22	11.44	14.23	15.17	11.47	14.64	15.27	18.26	11.57	15.03	15.28	18.28	17.31
23	11.66	14.62	15.65	11.69	15.06	15.75	18.88	11.79	15.48	15.76	18.90	17.70
24	11.86	14.99	16.11	11.89	15.46	16.23	19.49	12.00	15.91	16.24	19.50	18.06
25	12.05	15.34	16.56	12.08	15.85	16.69	20.08	12.19	16.32	16.70	20.09	18.40

[1] These "modified" uniform present worth discount (UPW*) factors are based on a 7 percent discount rate and include the EIA projected real escalation rates in energy prices developed from the Mid-Term Energy Forecasting System (MEFS), for the periods mid-1980 to mid-1985, mid-1985 to mid-1990, and mid-1990 to mid-1995 and beyond. The formula for calculating these UPW* factors is the following: For 1 to k escalation periods,

$$UPW^* = \sum_{j=1}^{n_1} \left(\frac{1+e_1}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \sum_{j=1}^{n_2} \left(\frac{1+e_2}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \sum_{j=1}^{n_3} \left(\frac{1+e_3}{1+d}\right)^j + \ldots + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \ldots \left(\frac{1+e_{k-1}}{1+d}\right)^{n_{k-1}} \sum_{j=1}^{n_k} \left(\frac{1+e_k}{1+d}\right)^j,$$

where n_k = the length of the period for a given escalation rate in a given period, and the subscript k indicates the escalation period;

d = the discount rate; and $\sum_{j=1}^{n_k} \left(\frac{1+e}{1+d}\right)^j = \left(\frac{1+e}{d-e}\right)\left(1-\left(\frac{1+e}{1+d}\right)^{n_k}\right)$.

[2] Study Period 1 is Mid-1980 to Mid-1981.

TABLE 8-7--UPW* DISCOUNT FACTORS ADJUSTED FOR ENERGY PRICE ESCALATION[1]
DOE REGION 7
(KANSAS, MISSOURI, IOWA, NEBRASKA)

Study Period[2]	Residential Sector			Commercial Sector				Industrial Sector				
	Electricity	Natural Gas	Distillate	Electricity	Natural Gas	Distillate	Residual	Electricity	Natural Gas	Distillate	Residual	Coal
1	0.93	0.95	0.97	0.93	0.95	0.97	1.01	0.93	0.95	0.97	1.01	1.02
2	1.81	1.86	1.90	1.81	1.85	1.90	2.02	1.81	1.86	1.90	2.02	2.07
3	2.62	2.72	2.80	2.62	2.71	2.80	3.03	2.62	2.71	2.80	3.03	3.14
4	3.39	3.53	3.67	3.39	3.53	3.67	4.05	3.39	3.53	3.67	4.05	4.24
5	4.10	4.31	4.52	4.10	4.31	4.52	5.08	4.10	4.31	4.52	5.08	5.36
6	4.76	5.06	5.33	4.76	5.06	5.33	6.06	4.76	5.12	5.33	6.06	6.43
7	5.37	5.79	6.10	5.38	5.79	6.11	7.01	5.37	5.97	6.11	7.01	7.44
8	5.95	6.49	6.85	.95	6.51	6.86	7.92	5.94	6.85	6.86	7.91	8.41
9	6.48	7.17	7.58	6.48	7.19	7.58	8.79	6.47	7.78	7.59	8.78	9.33
10	6.97	7.83	8.27	6.97	7.86	8.28	9.62	6.95	8.74	8.28	9.62	10.20
11	7.43	8.45	8.94	7.43	8.50	8.96	10.44	7.41	9.73	8.96	10.43	11.02
12	7.86	9.04	9.60	7.86	9.10	9.62	11.23	7.84	10.75	9.62	11.23	11.80
13	8.26	9.59	10.24	8.26	9.67	10.27	12.01	8.23	11.78	10.27	12.01	12.52
14	8.64	10.12	10.86	8.64	10.21	10.89	12.77	8.61	12.85	10.89	12.77	13.21
15	8.99	10.62	11.47	8.99	10.72	11.50	13.52	8.95	13.94	11.51	13.51	13.86
16	9.32	11.09	12.06	9.31	11.20	12.10	14.24	9.28	15.05	12.10	14.24	14.47
17	9.62	11.53	12.63	9.62	11.66	12.68	14.95	9.58	16.19	12.68	14.95	15.04
18	9.91	11.95	13.19	9.91	12.10	13.24	15.65	9.87	17.36	13.25	15.64	15.58
19	10.18	12.35	13.73	10.17	12.51	13.79	16.32	10.13	18.56	13.80	16.32	16.09
20	10.43	12.73	14.26	10.42	12.90	14.33	16.99	10.38	19.79	14.33	16.98	16.57
21	10.66	13.09	14.78	10.66	13.27	14.85	17.63	10.61	21.04	14.85	17.63	17.02
22	10.88	13.42	15.28	10.87	13.62	15.36	18.26	10.83	22.33	15.36	18.26	17.44
23	11.08	13.74	15.76	11.08	13.95	15.85	18.88	11.03	23.65	15.86	18.88	17.84
24	11.27	14.04	16.24	11.27	14.26	16.33	19.48	11.22	25.00	16.34	19.48	18.22
25	11.45	14.33	16.70	11.45	14.56	16.80	20.07	11.39	26.38	16.81	20.07	18.57

[1] These "modified" uniform present worth discount (UPW*) factors are based on a 7 percent discount rate and include the EIA projected real escalation rates in energy prices developed from the Mid-Term Energy Forecasting System (MEFS), for the periods mid-1980 to mid-1985, mid-1985 to mid-1990, and mid-1990 to mid-1995 and beyond. The formula for calculating these UPW* factors is the following: For 1 to k escalation periods,

$$UPW^* = \sum_{j=1}^{n_1} \left(\frac{1+e_1}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \sum_{j=1}^{n_2} \left(\frac{1+e_2}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \sum_{j=1}^{n_3} \left(\frac{1+e_3}{1+d}\right)^j + \ldots + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \ldots \left(\frac{1+e_{k-1}}{1+d}\right)^{n_{k-1}} \sum_{j=1}^{n_k} \left(\frac{1+e_k}{1+d}\right)^j,$$

where n_k = the length of the period for a given escalation rate in a given period, and the subscript k indicates the escalation period;

d = the discount rate; and $\sum_{j=1}^{n_k} \left(\frac{1+e}{1+d}\right)^j = \left(\frac{1+e}{d-e}\right)\left(1 - \left(\frac{1+e}{1+d}\right)^{n_k}\right)$.

[2] Study Period 1 is Mid-1980 to Mid-1981.

TABLE 8-8--UPW* DISCOUNT FACTORS ADJUSTED FOR ENERGY PRICE ESCALATION[1]
DOE REGION 8
(MONTANA, NORTH DAKOTA, SOUTH DAKOTA, WYOMING, UTAH, COLORADO)

Study Period[2]	Residential Sector			Commercial Sector				Industrial Sector				
	Electricity	Natural Gas	Distillate	Electricity	Natural Gas	Distillate	Residual	Electricity	Natural Gas	Distillate	Residual	Coal
1	0.93	0.95	0.97	0.93	0.95	0.97	1.00	0.93	0.95	0.97	1.00	1.02
2	1.81	1.86	1.90	1.81	1.86	1.90	2.01	1.81	1.86	1.90	2.01	2.07
3	2.62	2.72	2.80	2.62	2.71	2.80	3.03	2.62	2.72	2.80	3.03	3.13
4	3.39	3.53	3.67	3.39	3.53	3.67	4.05	3.39	3.54	3.67	4.05	4.22
5	4.10	4.31	4.52	4.10	4.31	4.52	5.07	4.10	4.32	4.51	5.07	5.33
6	4.75	5.07	5.32	4.74	5.07	5.32	6.05	4.74	5.08	5.32	6.06	6.37
7	5.33	5.80	6.10	5.33	5.81	6.10	7.00	5.31	5.83	6.10	7.00	7.34
8	5.87	6.51	6.85	5.86	6.52	6.85	7.90	5.82	6.57	6.85	7.91	8.25
9	6.36	7.21	7.57	6.34	7.22	7.57	8.77	6.29	7.29	7.57	8.78	9.10
10	6.80	7.88	8.26	6.78	7.91	8.27	9.60	6.70	7.99	8.26	9.61	9.89
11	7.20	8.52	8.93	7.18	8.56	8.94	10.42	7.07	8.67	8.94	10.43	10.64
12	7.57	9.14	9.58	7.54	9.18	9.60	11.21	7.40	9.33	9.59	11.23	11.34
13	7.90	9.73	10.22	7.87	9.78	10.24	11.99	7.70	9.96	10.23	12.01	12.00
14	8.21	10.29	10.83	8.17	10.36	10.86	12.75	7.97	10.56	10.85	12.77	12.62
15	8.49	10.83	11.43	8.44	10.91	11.47	13.50	8.21	11.14	11.46	13.52	13.20
16	8.74	11.35	12.02	8.68	11.43	12.06	14.22	8.43	11.70	12.05	14.25	13.75
17	8.97	11.84	12.59	8.91	11.94	12.63	14.94	8.62	12.23	12.62	14.96	14.27
18	9.19	12.31	13.14	9.11	12.42	13.19	15.63	8.80	12.75	13.18	15.66	14.75
19	9.38	12.77	13.67	9.30	12.88	13.74	16.31	8.96	13.24	13.72	16.34	15.21
20	9.55	13.20	14.20	9.47	13.33	14.27	16.97	9.10	13.72	14.25	17.01	15.64
21	9.71	13.61	14.71	9.62	13.75	14.78	17.62	9.22	14.18	14.77	17.67	16.04
22	9.86	14.01	15.20	9.76	14.16	15.29	18.26	9.34	14.62	15.27	18.30	16.42
23	9.99	14.38	15.68	9.89	14.55	15.78	18.88	9.44	15.04	15.75	18.93	16.78
24	10.11	14.75	16.15	10.00	14.92	16.25	19.49	9.53	15.45	16.23	19.54	17.11
25	10.22	15.09	16.60	10.11	15.28	16.72	20.08	9.61	15.84	16.69	20.14	17.43

[1] These "modified" uniform present worth discount (UPW*) factors are based on a 7 percent discount rate and include the EIA projected real escalation rates in energy prices developed from the Mid-Term Energy Forecasting System (MEFS), for the periods mid-1980 to mid-1985, mid-1985 to mid-1990, and mid-1990 to mid-1995 and beyond. The formula for calculating these UPW* factors is the following: For 1 to k escalation periods,

$$UPW^* = \sum_{j=1}^{n_1} \left(\frac{1+e_1}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \sum_{j=1}^{n_2} \left(\frac{1+e_2}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \sum_{j=1}^{n_3} \left(\frac{1+e_3}{1+d}\right)^j + \ldots + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \ldots \left(\frac{1+e_{k-1}}{1+d}\right)^{n_{k-1}} \sum_{j=1}^{n_k} \left(\frac{1+e_k}{1+d}\right)^j,$$

where n_k = the length of the period for a given escalation rate in a given period, and the subscript k indicates the escalation period;

d = the discount rate; and $\sum_{j=1}^{n_k} \left(\frac{1+e}{1+d}\right)^j = \left(\frac{1+e}{d-e}\right)\left(1 - \left(\frac{1+e}{1+d}\right)^{n_k}\right)$.

[2] Study Period 1 is Mid-1980 to Mid-1981.

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TABLE B-9--UPW* DISCOUNT FACTORS ADJUSTED FOR ENERGY PRICE ESCALATION[1]
DOE REGION 9
(CALIFORNIA, NEVADA, ARIZONA, HAWAII, TRUST TERRITORY OF THE PACIFIC ISLANDS, AMERICAN SAMOA, GUAM)

Study Period[2]	Residential Sector			Commercial Sector				Industrial Sector				
	Electricity	Natural Gas	Distillate	Electricity	Natural Gas	Distillate	Residual	Electricity	Natural Gas	Distillate	Residual	Coal
1	0.93	0.95	0.97	0.93	0.95	0.97	1.00	0.93	0.95	0.97	1.00	1.02
2	1.81	1.86	1.90	1.81	1.86	1.90	2.01	1.81	1.86	1.90	2.01	2.07
3	2.62	2.72	2.80	2.62	2.72	2.80	3.03	2.62	2.72	2.80	3.03	3.15
4	3.39	3.53	3.67	3.39	3.53	3.67	4.05	3.39	3.54	3.67	4.05	4.25
5	4.10	4.31	4.51	4.10	4.31	4.51	5.07	4.10	4.32	4.51	5.07	5.37
6	4.77	5.05	5.32	4.77	5.05	5.33	6.05	4.77	5.07	5.33	6.06	6.44
7	5.40	5.75	6.10	5.40	5.75	6.11	7.00	5.40	5.79	6.11	7.00	7.45
8	5.99	6.41	6.85	5.98	6.42	6.86	7.91	5.99	6.49	6.86	7.91	8.40
9	6.54	7.04	7.58	6.54	7.05	7.59	8.78	6.54	7.17	7.59	8.79	9.31
10	7.06	7.64	8.27	7.06	7.66	8.28	9.62	7.07	7.82	8.28	9.63	10.17
11	7.53	8.20	8.95	7.53	8.22	8.97	10.44	7.54	8.44	8.97	10.45	10.98
12	7.97	8.72	9.60	7.96	8.75	9.63	11.25	7.97	9.02	9.63	11.26	11.74
13	8.36	9.21	10.24	8.36	9.25	10.28	12.03	8.36	9.56	10.28	12.05	12.46
14	8.72	9.67	10.87	8.72	9.71	10.91	12.80	8.72	10.08	10.91	12.82	13.14
15	9.05	10.10	11.47	9.05	10.15	11.52	13.55	9.04	10.57	11.52	13.57	13.79
16	9.35	10.51	12.06	9.36	10.55	12.12	14.29	9.34	11.03	12.12	14.31	14.39
17	9.63	10.88	12.64	9.63	10.94	12.70	15.01	9.60	11.46	12.70	15.03	14.96
18	9.88	11.24	13.20	9.89	11.30	13.27	15.71	9.84	11.87	13.27	15.74	15.50
19	10.10	11.57	13.74	10.12	11.63	13.83	16.40	10.07	12.25	13.83	16.43	16.01
20	10.31	11.88	14.27	10.33	11.95	14.37	17.08	10.27	12.62	14.37	17.10	16.49
21	10.50	12.17	14.78	10.52	12.24	14.89	17.74	10.45	12.96	14.89	17.76	16.94
22	10.68	12.45	15.29	10.70	12.52	15.40	18.38	10.61	13.28	15.40	18.41	17.37
23	10.83	12.70	15.77	10.86	12.78	15.90	19.01	10.76	13.59	15.90	19.04	17.77
24	10.98	12.94	16.25	11.01	13.02	16.39	19.63	10.90	13.88	16.39	19.66	18.15
25	11.11	13.17	16.71	11.14	13.25	16.87	20.24	11.02	14.15	14.87	20.27	18.51

[1] These "modified" uniform present worth discount (UPW*) factors are based on a 7 percent discount rate and include the EIA projected real escalation rates in energy prices developed from the Mid-Term Energy Forecasting System (MEFS), for the periods mid-1980 to mid-1985, mid-1985 to mid-1990, and mid-1990 to mid-1995 and beyond. The formula for calculating these UPW* factors is the following: For 1 to k escalation periods,

$$UPW^* = \sum_{j=1}^{n_1} \left(\frac{1+e_1}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \sum_{j=1}^{n_2} \left(\frac{1+e_2}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \sum_{j=1}^{n_3} \left(\frac{1+e_3}{1+d}\right)^j + \ldots + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \ldots \left(\frac{1+e_{k-1}}{1+d}\right)^{n_{k-1}} \sum_{j=1}^{n_k} \left(\frac{1+e_k}{1+d}\right)^j .$$

where n_k = the length of the period for a given escalation rate in a given period, and the subscript k indicates the escalation period;

d = the discount rate; and $\sum_{j=1}^{n_k} \left(\frac{1+e}{1+d}\right)^j = \left(\frac{1+e}{d-e}\right)\left(1 - \left(\frac{1+e}{1+d}\right)^{n_k}\right)$.

[2] Study Period 1 is Mid-1980 to Mid-1981.

TABLE B-10--UPW* DISCOUNT FACTORS ADJUSTED FOR ENERGY PRICE ESCALATION[1]
DOE REGION 10
(WASHINGTON, OREGON, IDAHO, ALASKA)

Study Period[2]	Residential Sector			Commercial Sector				Industrial Sector				
	Electricity	Natural Gas	Distillate	Electricity	Natural Gas	Distillate	Residual	Electricity	Natural Gas	Distillate	Residual	Coal
1	0.93	0.95	0.97	0.93	0.95	0.97	1.01	0.93	0.95	0.97	1.01	1.02
2	1.81	1.86	1.90	1.81	1.86	1.90	2.02	1.81	1.86	1.90	2.02	2.07
3	2.62	2.72	2.80	2.62	2.72	2.80	3.03	2.62	2.72	2.80	3.03	3.15
4	3.39	3.54	3.67	3.39	3.53	3.67	4.05	3.38	3.54	3.67	4.05	4.24
5	4.10	4.31	4.51	4.10	4.31	4.51	5.08	4.09	4.31	4.51	5.08	5.37
6	4.79	5.07	5.32	4.79	5.07	5.33	6.07	4.81	5.09	5.33	6.06	6.45
7	5.46	5.80	6.10	5.46	5.81	6.11	7.02	5.53	5.86	6.11	7.01	7.48
8	6.11	6.52	6.85	6.12	6.54	6.86	7.93	6.26	6.62	6.86	7.92	8.46
9	6.74	7.21	7.58	6.75	7.25	7.59	8.81	7.00	7.37	7.59	8.80	9.41
10	7.36	7.88	8.27	7.37	7.94	8.28	9.66	7.74	8.12	8.28	9.64	10.31
11	7.94	8.49	8.95	7.95	8.56	8.97	10.49	8.45	8.85	8.97	10.47	11.13
12	8.49	9.04	9.60	8.50	9.12	9.63	11.30	9.12	9.56	9.63	11.27	11.87
13	9.00	9.53	10.24	9.02	9.63	10.28	12.09	9.76	10.25	10.28	12.06	12.55
14	9.49	9.99	10.87	9.52	10.08	10.91	12.87	10.37	10.92	10.91	12.84	13.16
15	9.95	10.39	11.47	9.98	10.50	11.52	13.63	10.96	11.57	11.52	13.59	13.72
16	10.39	10.76	12.06	10.42	10.87	12.12	14.38	11.51	12.20	12.12	14.33	14.22
17	10.80	11.10	12.64	10.84	11.20	12.70	15.11	12.04	12.82	12.70	15.06	14.68
18	11.19	11.40	13.20	11.23	11.50	13.27	15.83	12.54	13.41	13.27	15.77	15.10
19	11.55	11.68	13.74	11.60	11.77	13.83	16.53	13.02	13.99	13.83	16.46	15.48
20	11.91	11.93	14.27	11.95	12.01	14.37	17.22	13.48	14.56	14.37	17.14	15.82
21	12.24	12.15	14.78	12.28	12.23	14.89	17.90	13.92	15.11	14.89	17.80	16.13
22	12.55	12.36	15.29	12.59	12.43	15.40	18.56	14.33	15.64	15.40	18.45	16.42
23	12.84	12.54	15.77	12.89	12.61	15.90	19.20	14.73	16.16	15.90	19.09	16.67
24	13.12	12.71	16.25	13.17	12.77	16.39	19.84	15.11	16.66	16.39	19.71	16.90
25	13.38	12.86	16.71	13.44	12.92	16.87	20.46	15.47	17.15	16.87	20.32	17.12

[1] These "modified" uniform present worth discount (UPW*) factors are based on a 7 percent discount rate and include the EIA projected real escalation rates in energy prices developed from the Mid-Term Energy Forecasting System (MEFS), for the periods mid-1980 to mid-1985, mid-1985 to mid-1990, and mid-1990 to mid-1995 and beyond. The formula for calculating these UPW* factors is the following: For 1 to k escalation periods,

$$UPW^* = \sum_{j=1}^{n_1} \left(\frac{1+e_1}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \sum_{j=1}^{n_2} \left(\frac{1+e_2}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \sum_{j=1}^{n_3} \left(\frac{1+e_3}{1+d}\right)^j + \ldots + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \ldots \left(\frac{1+e_{k-1}}{1+d}\right)^{n_{k-1}} \sum_{j=1}^{n_k} \left(\frac{1+e_k}{1+d}\right)^j .$$

where n_k = the length of the period for a given escalation rate in a given period, and the subscript k indicates the escalation period;

d = the discount rate; and $\sum_{j=1}^{n_k} \left(\frac{1+e}{1+d}\right)^j = \left(\frac{1+e}{d-e}\right)\left(1 - \left(\frac{1+e}{1+d}\right)^{n_k}\right)$.

[2] Study Period 1 is Mid-1980 to Mid-1981.

TABLE B-11--UPW* DISCOUNT FACTORS ADJUSTED FOR ENERGY PRICE ESCALATION[1]
UNITED STATES AVERAGE

Study Period[2]	Residential Sector			Commercial Sector				Industrial Sector				
	Electricity	Natural Gas	Distillate	Electricity	Natural Gas	Distillate	Residual	Electricity	Natural Gas	Distillate	Residual	Coal
1	0.93	0.95	0.97	0.93	0.95	0.97	1.00	0.93	0.95	0.97	1.00	1.02
2	1.81	1.86	1.90	1.81	1.86	1.90	2.01	1.81	1.86	1.90	2.01	2.07
3	2.62	2.72	2.80	2.62	2.71	2.80	3.03	2.62	2.72	2.80	3.03	3.15
4	3.39	3.53	3.67	3.39	3.53	3.67	4.05	3.39	3.53	3.67	4.05	4.24
5	4.10	4.31	4.51	4.10	4.31	4.52	5.08	4.10	4.31	4.52	5.07	5.37
6	4.77	5.06	5.32	4.77	5.06	5.33	6.06	4.77	5.09	5.32	6.06	6.44
7	5.40	5.78	6.10	5.40	5.79	6.11	7.00	5.41	5.86	6.10	7.00	7.45
8	6.00	6.47	6.85	5.99	6.49	6.86	7.90	6.01	6.63	6.85	7.91	8.42
9	6.56	7.14	7.57	6.55	7.17	7.58	8.77	6.59	7.40	7.57	8.78	9.33
10	7.09	7.78	8.26	7.08	7.83	8.27	9.60	7.13	8.16	8.27	9.61	10.21
11	7.58	8.39	8.93	7.57	8.45	8.95	10.41	7.63	8.90	8.94	10.43	11.02
12	8.04	8.96	9.58	8.03	9.05	9.60	11.21	8.10	9.61	9.60	11.22	11.79
13	8.46	9.50	10.22	8.45	9.61	10.24	11.98	8.54	10.30	10.24	12.00	12.52
14	8.86	10.02	10.83	8.84	10.14	10.86	12.73	8.95	10.97	10.86	12.76	13.20
15	9.23	10.50	11.43	9.20	10.64	11.47	13.47	9.33	11.61	11.47	13.51	13.84
16	9.57	10.96	12.02	9.54	11.12	12.06	14.19	9.68	12.23	12.06	14.23	14.44
17	9.89	11.40	12.58	9.86	11.57	12.63	14.89	10.01	12.83	12.63	14.94	15.01
18	10.18	11.81	13.13	10.15	11.99	13.19	15.57	10.31	13.41	13.19	15.63	15.54
19	10.45	12.20	13.67	10.42	12.40	13.73	16.24	10.59	13.97	13.73	16.31	16.04
20	10.71	12.57	14.19	10.67	12.78	14.25	16.89	10.86	14.51	14.26	16.97	16.51
21	10.94	12.91	14.69	10.91	13.15	14.77	17.53	11.10	15.03	14.77	17.62	16.95
22	11.16	13.24	15.19	11.13	13.49	15.27	18.15	11.33	15.54	15.27	18.25	17.37
23	11.37	13.56	15.66	11.33	13.82	15.75	18.76	11.54	16.03	15.76	18.87	17.76
24	11.56	13.85	16.13	11.52	14.13	16.22	19.35	11.74	16.50	16.23	19.47	18.13
25	11.73	14.13	16.58	11.69	14.42	16.68	19.93	11.93	16.95	16.69	20.06	18.47

[1] These "modified" uniform present worth discount (UPW*) factors are based on a 7 percent discount rate and include the EIA projected real escalation rates in energy prices developed from the Mid-Term Energy Forecasting System (MEFS), for the periods mid-1980 to mid-1985, mid-1985 to mid-1990, and mid-1990 to mid-1995 and beyond. The formula for calculating these UPW* factors is the following: For 1 to k escalation periods,

$$UPW^* = \sum_{j=1}^{n_1} \left(\frac{1+e_1}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \sum_{j=1}^{n_2} \left(\frac{1+e_2}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \sum_{j=1}^{n_3} \left(\frac{1+e_3}{1+d}\right)^j + \ldots + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \ldots \left(\frac{1+e_{k-1}}{1+d}\right)^{n_{k-1}} \sum_{j=1}^{n_k} \left(\frac{1+e_k}{1+d}\right)^j .$$

where n_k = the length of the period for a given escalation rate in a given period, and the subscript k indicates the escalation period;

d = the discount rate; and $\sum_{j=1}^{n_k} \left(\frac{1+e}{1+d}\right)^j = \left(\frac{1+e}{d-e}\right)\left(1-\left(\frac{1+e}{1+d}\right)^{n_k}\right)$.

[2] Study Period 1 is Mid-1980 to Mid-1981.

TABLE C-1--BASE-YEAR ENERGY PRICES
(MID-1980 PRICES PER MILLION BTU IN MID-1980 DOLLARS)

DOE Region and Fuel Type	DOE 1	DOE 2	DOE 3	DOE 4	DOE 5	DOE 6	DOE 7	DOE 8	DOE 9	DOE 10	U.S. Average
RESIDENTIAL SECTOR											
Electricity	25.56	25.15	18.85	14.22	17.30	18.84	18.79	18.85	20.09	7.29	17.58
Natural Gas	4.86[a]	4.44[a]	3.95[a]	3.46[a]	3.55[a]	3.69[a]	3.50	3.62	4.34	4.58[a]	3.83[a]
Distillate	7.19	7.27	7.46	7.53	6.98	7.20	6.92	7.04	6.84	6.84	7.21
COMMERCIAL SECTOR											
Electricity	26.20	23.96	18.41	14.60	16.83	17.68	17.77	17.46	21.25	7.06	18.06
Natural Gas	4.12[a]	3.77[a]	3.43[a]	2.90[a]	3.18[a]	3.10	3.05	3.37	3.76	3.92[a]	3.33[a]
Distillate	6.94	7.01	7.05	7.06	6.78	6.94	6.73	6.80	6.55	6.55	6.91
Residual	4.96	5.03	5.29	4.96	4.97	4.97	5.00	4.88	4.73	4.57	4.99
INDUSTRIAL SECTOR											
Electricity	21.66	15.85	13.72	10.87	12.16	14.02	14.23	13.05	17.06	3.31	12.61
Natural Gas	5.81	5.77	4.77	3.90	4.16	2.76	3.24	2.83	5.43	4.89	3.58
Distillate	6.75	6.99	7.15	7.14	6.78	6.92	6.72	6.84	6.55	6.55	6.93
Residual	4.79	5.12	5.22	4.93	4.95	4.96	4.98	4.83	4.72	4.68	4.96
Coal	1.83[b]	1.63[b]	1.42[b]	1.59[b]	1.29[b]	1.49[b]	1.15[b]	0.90[b]	1.89	1.55[b]	1.46[b]

Prices are developed from average U.S. prices projected for the year 1980 as reported in "Short-Term Energy Outlook," DOE/EIA-0202/2, February 1980. Regional breakdown of 1980 prices is based on the proportional relationship of regional prices to U.S. average prices estimated by the DoE Mid-Term Energy Forecasting System (MEFS) for the year 1985. Simple arithmetic averaging of the regional prices shown will not yield the exact U.S. average prices shown due to energy consumption weighting reflected in the U.S. average prices.

[a] The reduction in the 1980 U.S. average price of natural gas relative to that published in the January 23, 1980, Federal Register reflects a downward revision in the EIA short-term natural gas price forecast.

[b] The reduction in the 1980 U.S. average price of coal relative to that published in the January 23, 1980, Federal Register reflects the current softness in the spot market for coal.

TABLE C-2--BASE-YEAR ENERGY PRICES[a]
(MID-1980 PRICES PER UNIT OF ENERGY PURCHASED IN MID-1980 DOLLARS)

DOE Region and Fuel Type	DOE 1	DOE 2	DOE 3	DOE 4	DOE 5	DOE 6	DOE 7	DOE 8	DOE 9	DOE 10	U.S. Average
RESIDENTIAL SECTOR											
Electricity (kWh)	0.091	0.086	0.064	0.049	0.059	0.064	0.064	0.064	0.069	0.025	0.060
Natural Gas (cu ft)	0.005	0.005	0.004	0.004	0.004	0.004	0.004	0.004	0.004	0.005	0.004
Distillate (gal)	0.997	1.008	1.035	1.044	0.968	0.999	0.960	0.976	0.949	0.949	1.000
COMMERCIAL SECTOR											
Electricity (kWh)	0.089	0.082	0.063	0.050	0.057	0.060	0.061	0.060	0.073	0.024	0.062
Natural Gas (cu ft)	0.004	0.004	0.004	0.003	0.003	0.003	0.003	0.003	0.004	0.004	0.003
Distillate (gal)	0.963	0.972	0.978	0.979	0.940	0.963	0.933	0.943	0.908	0.908	0.958
Residual (gal)	0.742	0.753	0.792	0.742	0.744	0.744	0.748	0.730	0.708	0.684	0.747
INDUSTRIAL SECTOR											
Electricity (kWh)	0.074	0.054	0.047	0.037	0.041	0.048	0.049	0.045	0.058	0.011	0.043
Natural Gas (cu ft)	0.006	0.006	0.005	0.004	0.004	0.003	0.003	0.003	0.006	0.005	0.004
Distillate (gal)	0.936	0.969	0.992	0.990	0.940	0.960	0.932	0.949	0.908	0.908	0.961
Residual (gal)	0.717	0.766	0.781	0.738	0.741	0.742	0.745	0.723	0.707	0.701	0.742
Coal (ton)	41.175	36.675	31.950	35.775	29.025	33.525	25.875	20.250	42.525	34.875	32.850

[a] Note that prices in tables C-1 and C-2 are equivalent prices stated in different units of energy. table C-1 prices are per million Btu (MBtu); table C-2 are per unit of energy typically sold, e.g., kWh of electricity, cubic feet of natural gas, and gallons of oil.

Prices in table C-2 were derived from the prices in table C-1 by multiplying the price per MBtu times the ratio of the Btu content per sales unit of energy to 1 MBtu. The conversions from price per MBtu to price per sales unit are based on the following assumed equivalencies: 3,412 Btu per kWh of electricity, 1,030 Btu per cu ft of natural gas, 138,690 Btu per gallon of distillate, 149,690 Btu per gallon of residual, and 22,500,000 Btu per short ton of coal. For example, price per kWh of electricity = price per MBtu x $\frac{3,412}{1,000,000}$; hence in DoE Region 1, the price per kWh of residential electricity = $26.56 x $\frac{3,412}{1,000,000}$ = $0.091.

TABLE C-3--PROJECTED MID-1985 ENERGY PRICES
(MID-1985 PRICES PER MILLION BTU IN MID-1980 DOLLARS)

DOE Region and Fuel Type	DOE 1	DOE 2	DOE 3	DOE 4	DOE 5	DOE 6	DOE 7	DOE 8	DOE 9	DOE 10	U.S. Average
RESIDENTIAL SECTOR											
Electricity	26.54	25.12	18.84	14.21	17.29	18.82	18.77	18.84	20.08	7.28	17.56
Natural Gas	5.31	4.85	4.31	3.77	3.87	4.03	3.82	3.95	4.74	5.00	4.18
Distillate	8.49	8.59	8.81	8.90	8.24	8.50	8.17	8.32	8.07	8.07	8.51
COMMERCIAL SECTOR											
Electricity	26.19	23.94	18.40	14.59	16.82	17.67	17.76	17.44	21.24	7.05	18.05
Natural Gas	4.50	4.11	3.74	3.16	3.47	3.38	3.32	3.67	4.10	4.28	3.63
Distillate	8.19	8.28	8.33	8.34	8.01	8.19	7.95	8.03	7.73	7.73	8.16
Residual	7.13	7.23	7.60	7.13	7.15	7.14	7.20	7.01	6.79	6.58	7.17
INDUSTRIAL SECTOR											
Electricity	21.64	15.83	13.71	10.86	12.15	14.01	14.22	13.04	17.05	3.30	12.59
Natural Gas	6.35	6.30	5.21	4.26	4.54	3.02	3.53	3.09	5.93	5.34	3.91
Distillate	7.98	8.26	8.45	8.44	8.01	8.17	7.94	8.07	7.73	7.73	8.18
Residual	6.89	7.36	7.50	7.09	7.12	7.13	7.16	6.94	6.78	6.74	7.13
Coal	2.90	2.57	2.25	2.51	2.03	2.36	1.81	1.40	2.98	2.45	2.30

Prices based on DOE Mid-Term Energy Forecasting System (MEFS) Projection Series "A" (High Case).

TABLE C-4--PROJECTED MID-1990 ENERGY PRICES
(MID-1990 PRICES PER MILLION BTU IN MID-1980 DOLLARS)

DOE Region and Fuel Type	DOE 1	DOE 2	DOE 3	DOE 4	DOE 5	DOE 6	DOE 7	DOE 8	DOE 9	DOE 10	U.S. Average
RESIDENTIAL SECTOR											
Electricity	26.27	24.36	19.67	15.47	18.21	20.31	18.22	16.40	20.55	8.80	18.32
Natural Gas	6.25	5.55	5.04	4.25	4.45	5.02	4.52	4.79	5.09	6.04	4.83
Distillate	9.75	9.86	10.08	10.17	9.51	9.77	9.45	9.55	9.35	9.35	9.80
				12.49	12.02						
COMMERCIAL SECTOR											
Electricity	25.93	23.18	19.23	15.85	17.74	19.15	17.21	15.01	21.70	8.57	18.71
Natural Gas	5.44	4.82	4.46	3.63	4.05	4.37	4.02	4.52	4.45	5.33	4.31
Distillate	9.46	9.54	9.60	9.61	9.28	9.47	9.23	9.27	9.01	9.01	9.43
Residual	8.13	8.25	8.61	8.15	8.17	8.16	8.22	8.00	7.81	7.60	8.16
INDUSTRIAL SECTOR											
Electricity	21.39	15.07	14.55	12.11	13.08	15.49	13.67	10.61	17.52	4.83	13.45
Natural Gas	7.66	7.83	7.98	6.49	6.36	4.02	6.15	3.94	6.97	7.22	5.39
Distillate	9.46	9.52	9.72	9.71	9.28	9.45	9.21	9.31	9.01	9.01	9.46
Residual	8.19	8.37	8.52	8.11	8.14	8.15	8.18	7.93	7.81	7.76	8.14
Coal	3.12	2.79	2.48	2.73	2.20	2.53	1.97	1.40	3.19	2.75	2.50

Prices based on DOE Mid-Term Energy Forecasting System (MEFS) Projection Series "A" (High Case).

TABLE C-5--PROJECTED MID-1995 ENERGY PRICES
(MID-1995 PRICES PER MILLION BTU IN MID-1980 PRICES)

DOE Region and Fuel Type	DOE 1	DOE 2	DOE 3	DOE 4	DOE 5	DOE 6	DOE 7	DOE 8	DOE 9	DOE 10	U.S. Average
RESIDENTIAL SECTOR											
Electricity	21.93	23.86	19.32	15.84	18.09	20.04	18.20	14.47	18.24	9.29	17.80
Natural Gas	6.88	6.03	5.44	4.46	4.67	5.64	4.80	5.39	5.16	5.17	5.13
Distillate	11.85	11.97	12.20	12.29	11.63	11.89	11.56	11.66	11.44	11.44	11.92
COMMERCIAL SECTOR											
Electricity	21.59	22.67	18.88	16.24	17.62	18.89	17.19	13.09	19.41	9.06	18.17
Natural Gas	6.06	5.30	4.88	3.85	4.28	4.98	4.30	5.11	4.52	4.44	4.62
Distillate	11.55	11.66	11.72	11.73	11.40	11.58	11.34	11.38	11.10	11.10	11.53
Residual	10.11	10.24	10.61	10.16	10.21	10.20	10.26	10.02	9.82	9.62	10.14
INDUSTRIAL SECTOR											
Electricity	17.04	14.57	14.18	12.49	12.96	15.23	13.65	8.69	15.22	5.32	13.16
Natural Gas	9.64	9.81	7.60	7.69	7.71	4.63	9.73	4.53	7.30	8.78	6.35
Distillate	11.55	11.64	11.84	11.83	11.40	11.56	11.33	11.42	11.10	11.10	11.57
Residual	10.18	10.36	10.51	10.11	10.18	10.19	10.21	9.95	9.82	9.76	10.17
Coal	2.61	2.93	2.62	2.84	2.31	2.61	2.05	1.45	3.35	2.38	2.58

Prices based on DOE Mid-Term Energy Forecasting System (MEFS) Projection Series "A" (High Case).

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TABLE C-6—ENERGY PRICE ESCALATION RATES MID-1980 TO MID-1985[a]
(PERCENTAGE CHANGE COMPOUNDED ANNUALLY)

DOE Region and Fuel Type	DOE 1	DOE 2	DOE 3	DOE 4	DOE 5	DOE 6	DOE 7	DOE 8	DOE 9	DOE 10	U.S. Average
RESIDENTIAL SECTOR											
Electricity	-0.02	-0.02	-0.02	-0.02	-0.01	-0.02	-0.02	-0.02	-0.01	-0.02	-0.02
Natural Gas	1.78	1.78	1.77	1.75	1.75	1.76	1.75	1.76	1.77	1.78	1.76
Distillate	3.38	3.39	3.38	3.39	3.37	3.38	3.38	3.39	3.37	3.37	3.38
COMMERCIAL SECTOR											
Electricity	-0.01	-0.02	-0.01	-0.01	-0.02	-0.01	-0.01	-0.02	-0.01	-0.02	-0.02
Natural Gas	1.77	1.76	1.75	1.73	1.74	1.74	1.73	1.75	1.76	1.76	1.75
Distillate	3.38	3.39	3.38	3.38	3.39	3.38	3.40	3.38	3.38	3.38	3.39
Residual	7.53	7.52	7.52	7.53	7.55	7.52	7.55	7.51	7.50	7.57	7.53
INDUSTRIAL SECTOR											
Electricity	-0.01	-0.03	-0.01	-0.02	-0.01	-0.02	-0.02	-0.01	-0.01	-0.05	-0.03
Natural Gas	1.80	1.76	1.78	1.76	1.77	1.79	1.74	1.80	1.79	1.79	1.75
Distillate	3.39	3.40	3.39	3.39	3.39	3.38	3.40	3.37	3.38	3.38	3.38
Residual	7.54	7.53	7.53	7.53	7.54	7.53	7.54	7.53	7.51	7.55	7.53
Coal	9.62	9.51	9.63	9.58	9.49	9.62	9.50	9.30	9.56	9.56	9.55

[a] Derived from DOE 1980 and 1985 Price Forecasts shown in Tables C-1 and C-3.

TABLE C-7—ENERGY PRICE ESCALATION RATES MID-1985 TO MID-1990[a]
(PERCENTAGE CHANGE COMPOUNDED ANNUALLY)

DOE Region and Fuel Type	DOE 1	DOE 2	DOE 3	DOE 4	DOE 5	DOE 6	DOE 7	DOE 8	DOE 9	DOE 10	U.S. Average
RESIDENTIAL SECTOR											
Electricity	-0.02	-0.61	0.87	1.72	1.04	1.53	-0.59	-2.73	0.47	3.85	0.85
Natural Gas	3.33	2.74	3.15	2.38	2.84	4.53	3.43	3.95	1.44	3.86	2.92
Distillate	2.81	2.80	2.74	2.71	2.91	2.83	2.94	2.82	2.97	2.97	2.85
COMMERCIAL SECTOR											
Electricity	-0.19	-0.64	0.89	1.67	1.07	1.62	-0.63	-2.98	0.43	3.97	0.73
Natural Gas	3.88	3.20	3.60	2.82	3.15	5.26	3.85	4.22	1.66	4.50	3.49
Distillate	2.91	2.88	2.89	2.88	2.99	2.93	3.01	2.91	3.09	3.09	2.94
Residual	2.66	2.68	2.52	2.71	2.70	2.71	2.69	2.67	2.84	2.92	2.61
INDUSTRIAL SECTOR											
Electricity	-0.23	-0.98	1.19	2.20	1.47	2.03	-0.78	-4.05	0.55	7.89	1.32
Natural Gas	3.81	4.46	8.89	8.82	6.98	5.88	11.74	4.95	3.26	6.20	6.64
Distillate	3.47	2.88	2.85	2.85	2.99	2.94	3.02	2.90	3.09	3.09	2.93
Residual	3.53	2.60	2.58	2.73	2.71	2.71	2.70	2.69	2.87	2.86	2.68
Coal	1.47	1.65	1.97	1.69	1.67	1.45	1.76	0.00	1.36	2.39	1.66

[a] Derived from DOE Mid-Term Energy Price Forecasts shown in Tables C-3 and C-4.

TABLE C-8—ENERGY PRICE ESCALATION RATES MID-1990 TO MID-1995 AND BEYOND[a]
(PERCENTAGE CHANGE COMPOUNDED ANNUALLY)

DOE Region and Fuel Type	DOE 1	DOE 2	DOE 3	DOE 4	DOE 5	DOE 6	DOE 7	DOE 8	DOE 9	DOE 10	U.S. Average
RESIDENTIAL SECTOR											
Electricity	-3.55	-0.42	-0.36	0.48	-0.13	-0.26	-0.02	-2.47	-2.35	1.10	-0.57
Natural Gas	1.92	1.68	1.56	1.01	0.97	2.33	1.23	2.36	0.26	-3.09	1.24
Distillate	3.97	3.95	3.89	3.86	4.10	4.00	4.13	4.06	4.13	4.13	4.01
COMMERCIAL SECTOR											
Electricity	-3.60	-0.44	-0.37	0.48	-0.14	-0.28	-0.03	-2.70	-2.21	1.13	-0.59
Natural Gas	2.16	1.93	1.80	1.18	1.11	2.67	1.38	2.49	0.29	-3.58	1.39
Distillate	4.08	4.09	4.07	4.06	4.20	4.12	4.22	4.18	4.27	4.27	4.09
Residual	4.47	4.41	4.26	4.50	4.56	4.56	4.54	4.60	4.68	4.82	4.43
INDUSTRIAL SECTOR											
Electricity	-4.45	-0.68	-0.50	0.63	-0.19	-0.34	-0.03	-3.91	-2.78	1.97	-0.43
Natural Gas	4.72	4.60	-0.95	3.41	3.92	2.89	9.60	2.84	0.93	3.99	3.35
Distillate	4.08	4.10	4.02	4.02	4.20	4.13	4.22	4.16	4.27	4.27	4.12
Residual	4.43	4.35	4.28	4.52	4.58	4.57	4.53	4.64	4.68	4.71	4.55
Coal	-3.47	1.00	1.12	0.79	0.98	0.60	0.77	0.62	0.94	-2.87	0.61

[a] Derived from DOE Mid-Term Energy Price Forecaste shown in tables C-4 and C-5, and assumed to extend up to 10 years beyond mid-1995 to encompass a study period of 25 years beginning in 1980.

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federal register

Tuesday
October 28, 1980

Highlights

Briefing on How To Use the Federal Register—For details on briefings in **Washington, D.C.**, see announcement in the **Reader Aids** section at the end of this issue

71347 **Foreign Service Salary Schedule** Executive Order

71432 **Grant Programs—Family Planning** HHS/HSA announces that competitive applications are now being accepted for grants in fiscal year 1981 for family planning training projects; apply by 4–1–81

71367 **Taxes** Treasury/IRS proposes rules relating to investment credit for qualified rehabilitated buildings; comments and requests for hearing by 12–29–80

71353 **Credit Unions** NCUA specifies when Federal Credit Unions can charge more than 15 percent per annum on Government insured or guaranteed loans; effective 10–28–80

71393 **Broadcasting** FCC proposes rules concerning the airing of public service announcements by broadcast licensees; effective 11–17–80

71432 **Grant Programs—Health** HHS/HSA announces that competitive applications are now being accepted for grants in fiscal year 1981 for specialized training in maternal and child health; apply by 1–16–81

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Highlights

71538 **Air Pollution Control** EPA proposes standards of performance to limit emissions of volatile organic compounds from publication rotogravure printing presses; comments by 12–22–80; hearing on 11–25–80 (Part IV of this issue)

71364 **Polychlorinated Biphenyls (PCB's)** USDA/FSQS, HHS/FDA and EPA extends comment period and announces meeting on proposed regulations affecting use of PCB-containing equipment in food, feed, agricultural pesticide and fertilizer facilities; comments by 12–4–80; meeting on 11–7–80

71498 **Grant Programs—Energy Conservation** DOE proposes establishing procedures for the coordination of State energy conservation grant programs providing weatherization assistance for low-income persons; comments by 12–29–80 (Part III of this issue)

71486 **Beans** USDA/FGIS proposes to revise format of grade tables in the standards for beans; comments by 12–29–80 (Part II of this issue)

71558 **Electric Power** DOE/ERA issues rules to implement provisions specifying that the export of electric energy shall be authorized provided that transmission will not impair supply within the United States; effective 11–1–80 (Part V of this issue)

71363 **Government Employees** OPM proposes rules that would clarify how agencies identify employees with transferring positions under the transfer of function provisions of their reduction in force regulations; comments by 12–22–80

71351 **Loan Programs—Agriculture** USDA/CCC issues rules governing Grain Reserve Program for 1976 and subsequent crops; effective 10–23–80

71426 **Medicare** HHS/HCFA announces that the surgical procedure known as bilateral carotid body resection, performed to relieve respiratory distress, is not a covered service; effective 10–28–80

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71465 **Sunshine Act Documents**

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Title 3—

The President

Executive Order 12249 of October 25, 1980

Foreign Service Salary Schedule

By the authority vested in me as President of the United States of America under Section 403 of the Foreign Service Act of 1980 (Public Law 96–465 approved October 17, 1980), and in order to establish a new Foreign Service Schedule, it is hereby ordered as follows:

1–101. Salary classes for certain members of the Foreign Service are established as set forth in the Foreign Service Schedule attached hereto and made a part hereof.

1–102. Notwithstanding the provisions of Executive Order No. 12248, and pursuant to the provisions of Section 2101 of the Foreign Service Act of 1980, the salary rates set forth in the attached Foreign Service Schedule shall take effect on the first day of the first pay period which begins on or after October 1, 1980.

Jimmy Carter

THE WHITE HOUSE,
October 25, 1980.

The Foreign Service Schedule

	1	2	3	4	5	6	7
Class 1	$44,547	$45,883	$47,260	$48,678	$50,138*	$51,642*	$53,191*
2	36,097	37,180	38,295	39,444	40,627	41,846	43,102
3	29,249	30,126	31,030	31,961	32,920	33,908	34,925
4	23,701	24,412	25,144	25,899	26,676	27,476	28,300
5	19,205	19,781	20,375	20,986	21,615	22,264	22,932
6	17,169	17,684	18,215	18,761	19,324	19,904	20,501
7	15,348	15,808	16,283	16,771	17,274	17,793	18,326
8	13,721	14,133	14,557	14,993	15,443	15,906	16,384
9	12,266	12,634	13,013	13,403	13,805	14,220	14,646

	8	9	10	11	12	13	14
Class 1	$54,787*	$56,431*	$57,912*	$57,912*	$57,912*	$57,912*	$57,912*
2	44,395	45,727	47,096	40,511	49,967	51,466*	53,010*
3	35,973	37,052	38,163	39,308	40,487	41,702	42,953
4	29,149	30,024	30,924	31,852	32,808	33,792	34,806
5	23,620	24,328	25,058	25,810	26,584	27,302	28,203
6	21,116	21,749	22,402	23,074	23,766	24,479	25,213
7	18,076	19,442	20,026	20,626	21,245	21,083	22,539
8	16,875	17,381	17,903	18,440	18,993	19,563	20,150
9	15,086	15,538	16,004	16,484	16,979	17,488	18,013

* Basic pay is limited by Section 5308 of Title 5 of the United States Code to the rate for level V of the Executive Schedule which is, as of the effective date of this schedule, $58,500. See also Note 1.

Note 1. Notwithstanding the above rates, the maximum rate payable, as of the effective date of this schedule, is $50,112.50. (The effect of Section 101(c) of Public Law 96-369 (the continuing resolution approved October 1, 1980) is to limit the use of the funds so appropriated so that they are not available to pay salaries in this schedule in excess of the rate payable for level V of the Executive Schedule on September 30, 1980.)

[FR Doc. 80-33767
Filed 10-27-80; 11:31 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 45, No. 210
Tuesday, October 28, 1980

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273 and 274

Food Stamp Program; Clarity Revisions and Corrections to Rules Issued Since January 1, 1980

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule—corrections and clarity revisions.

SUMMARY: This document (1) corrects errors in paragraph numbering or referencing of regulatory citations for the following regulations: *Points and Hours of Certification and Issuance Services* (45 FR 2609), *Food Stamp Benefits: Procedures for Reducing, Suspending or Cancelling* (45 FR 22007), *Food Stamp Program Group Living Arrangements Provisions of 1979 Amendments* (45 FR 23291), *and 1980 Food Stamp Act; Eligibility Limits* (45 FR 46041); (2) amends the complaint procedures regulations to reflect a change in zip code for writing to the Food and Nutrition Service Southeast Regional Office; (3) makes corrections to certain sections regarding definitions, resource exclusions, recertification, authorized representatives, and reduction or termination of benefits, by reinstating provisions which had been unintentionally deleted by other publications; and (4) revises other sections pertaining to income calculations, issuance office services, deductible expenses, and treatment of nonhousehold members, for clarity.

FOR FURTHER INFORMATION CONTACT: Larry R. Carnes, Chief, Policy and Regulations Section, Program Standards Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Washington, D.C. 20250, 202-447-9075.

EFFECTIVE DATE: This regulation is effective (October 28, 1980).

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified not significant. (1) At 45 FR 2609, issued January 11, 1980, § 272.1(g)(4), *Implementation: Amendment 147*, was misnumbered; the correct number is § 272.1(g)(5). Also, at page 2612, § 272.5(b)(5)(ii) is being revised for clarity. We have received several comments that this particular provision as worded is unclear. The revised language is for clarification only and does not change the principle nor the policy intent of the provision.

(2) At 45 FR 22007, issued April 2, 1980, the instruction under § 274.3 to add a sentence to subparagraph (f)(6) was incorrect. The sentence should be added to subparagraph (b)(6) of § 274.3.

(3) At 45 FR 23291, issued April 4, 1980, the reference to § 273.11(e) contained in paragraph (2)(ii) of § 273.1(f) is incorrect. The reference should be § 273.11(f).

(4) At 45 FR 46041, issued July 8, 1980, paragraph (c)(5) under § 273.11 should have been divided into two separate paragraphs. The paragraph is being revised in this document to indicate where this division should appear. Additionally, at page 46041, § 273.8(h)(3), the reference to "paragraphs (e)(3), (4) and (5)" should be changed to read "paragraphs (e)(3), (4) or (5)".

(5) Section 271.6 is being amended to reflect a change in the zip code when writing to FNS' Southeast Regional Office in Atlanta, Georgia.

(6) Sections 273.6(e), 273.10(e)(1)(ii) and 273.10(d) are being revised for accuracy to bring the provisions into conformance with other parts of regulations. Specifically, § 273.6(e) provides means for a person to end a disqualification period for not supplying a social security number (SSN). That provision states that a person can end the disqualification by demonstrating that application for an SSN has been made at the Social Security Administration. Since other parts of regulations allow a person to file an application for an SSN with the local food stamp office, § 273.6(e) is revised to provide an end to disqualification if the application for an SSN is filed at either the SSA or the local food stamp office.

Section 273.10(e)(1) provides procedures for rounding numbers when calculating net monthly income and the shelter cost deduction. Since there is now a deduction for medical cost for certain household members, § 273.10(e)(1)(ii) is revised to provide that the same rounding procedures used in calculating the shelter deduction are also applicable when calculating the medical cost deduction.

Section 273.10(d) states that deductible expenses include only certain costs of dependent care and shelter as described in § 273.9. This section is being revised to include medical expenses also described in § 273.9.

(7) Sections 271.2 and 273.11(e)(5) are being amended and sections 273.2(f)(9)(i), 273.8(e)(11), and 273.11(c)(5), are being revised to incorporate provisions that had been unintentionally deleted by publication of other rules. Specifically, § 271.2 is amended to add the definitions of "Communal dining facilities," "Coupon," "Drug addiction or alcoholic treatment and rehabilitation program," "Meal delivery service," "Nonprofit cooperative food purchasing venture," "Staple food," and "wholesaler food concern;" § 273.11(c)(5) is revised to reinstate a provision regarding a requirement to issue a Notice of Adverse Action when persons are disqualified under the social security numbers provisions; § 273.11(e)(5) is amended to add provisions regarding authorized representatives and change report form when a household leaves a drug or alcoholic treatment or rehabilitation center; § 273.8(e)(11) is revised to reflect an exclusion from consideration as a resource earned income tax credits received as a result of Pub. L. 95-600; § 273.2(f)(9)(i) is being revised to incorporate a sentence regarding verification procedures at time of recertification.

The revisions and amendments read as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

7 CFR Part 271 is being amended as follows:

1. In § 271.2, the following seven definitions are being added in alphabetical order:

§ 271.2 Definitions.

* * * * *

"Communal dining facility" means a public or nonprofit private establishment, approved by FNS, which prepares and serves meals for elderly persons, or for supplemental security income (SSI) recipients, and their spouses, a public or private nonprofit establishment (eating or otherwise) that feeds elderly persons or SSI recipients, and their spouses, and federally subsidized housing for the elderly at which meals are prepared for and served to the residents. It also includes private establishments that contract with an appropriate State or local agency to offer meals at concessional prices to elderly persons or SSI recipients, and their spouses.

"Coupon" means any coupon, stamp or type of certification provided pursuant to the provisions of this subchapter for the purchase of eligible food.

"Drug addiction or alcoholic treatment and rehabilitation program" means any drug addiction or alcoholic treatment and rehabilitation program conducted by a private nonprofit organization or institution which is certified by the State agency or agencies designated by the Governor as responsible for the administration of the State's programs for alcoholics and drug addicts pursuant to Pub. L. 91–616, "Comprehensive Alcohol Abuse and Alcoholism Prevention Treatment and Rehabilitation Act of 1970" and Pub. L. 92–255, "Drug Abuse Office and Treatment Act of 1972" as providing treatment that can lead to the rehabilitation of drug addicts or alcoholics.

"Meal delivery service" means a political subdivision, a private nonprofit organization, or a private establishment with which a State or local agency has contracted for the preparation and delivery of meals at concessional prices to elderly persons, and their spouses, and to the physically or mentally handicapped and persons otherwise disabled, and their spouses, such that they are unable to adequately prepare all of their meals.

"Nonprofit cooperative food purchasing venture" means any private nonprofit association of consumers whose members pool their resources to buy food.

"Staple food" means those food items intended for home preparation and consumption, which include meat, poultry, fish, bread and breadstuffs, cereals, vegetables, fruits, fruit and vegetable juices, and dairy products. Accessory food items, such as coffee, tea, cocoa, carbonated and uncarbonated drinks, candy, condiments, and spices are not staple foods for the purpose of qualifying a firm to participate in the program as a retail food store.

"Wholesale food concern" means an establishment which sells eligible food to retail food stores or to meal services for resale to households.

§ 271.6 [Amended]

2. In § 271.6, paragraph (b)(1)(ii) is amended by changing the zip code of 30309 to 30367.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

§ 272.1 [Amended]

1. At 45 FR 2609, issued January 11, 1980, paragraph (g)(4) of § 272.1 was misnumbered. The correct paragraph number is (g)(5).

2. At 45 FR 2609, issued January 11, 1980, paragraph (b)(5)(ii) of § 272.5 is revised to read as follows:

§ 272.5 Locations and hours of operations of certification and issuance services.

* * * * *

(b) *Issuance services.* * * *

(5) * * *

(ii) FNS may approve exceptions to the distance requirement specified in paragraph (b)(4) of this section if a State agency demonstrates that participants normally travel more than 30 miles to a location in order to conduct personal business and use their coupons. To be granted this exception, the State agency shall demonstrate that the participant households would receive issuance services for the time periods described in paragraphs (b)(4)(ii) and (b)(4)(iii) of this section, whichever applies, in the location where they normally conduct their personal business and buy their food. The State agency may request FNS approval to provide issuance services in this location rather than closer to the participants (i.e. within 30 miles). Exceptions may be granted for either entire counties and cities or parts thereof.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

7 CFR Part 273 is being amended as follows:

A. In § 273.1, paragraph (b)(7) is revised to read as follows:

§ 273.1 Household concept.

* * * * *

(b) *Nonhousehold members.* * * *

(7) *Disqualified individuals.* Individuals disqualified for fraud, as set forth in § 273.16, or for failure to provide an SSN, as set forth in § 273.6.

* * * * *

B. In § 273.2, paragraph (f)(9)(i) is revised to read as follows:

§ 273.2 Application processing.

* * * * *

(f) *Verification.* * * *

(9) *Verification subsequent to initial certification.*

(i) *Recertification.* At recertification, the State agency shall verify a change in income, medical expenses or actual utility expenses claimed by a household if the source has changed or the amount has changed by more than $25 since the last time such expenses were verified. State agencies may verify income, actual utility expenses, or medical expenses claimed by a household which are unchanged or have changed by $25 or less, provided verification is, at a minimum, required when information is questionable as defined in paragraph (f)(2) of this section. All other changes reported at the time of recertification shall be subject to the same verification procedures as apply at initial certification. Unchanged information, other than income and medical or utility expenses, shall not be verified at recertification unless the information is questionable as defined in paragraph (f)(2) of this section. Newly obtained social security numbers shall be verified at recertification in accordance with verification procedures outlined in § 273.2(f)(10)(v).

* * * * *

C. In § 273.6, paragraph (e) is revised to read as follows:

§ 273.6 Social Security numbers.

* * * * *

(e) *Ending disqualification.* The household member(s) disqualified may become eligible upon providing the State agency with an SSN or demonstrating that an application has been made for a social security number.

* * * * *

D. In § 273.8, paragraph (e)(11) is amended by renumbering subparagraph (viii) regarding energy assistance payments, as (ix) and adding a new subparagraph (viii) to read as follows:

§ 273.8 Resource eligibility standards.

* * * * *

(e) *Exclusions from resources.* * * *

(11) * * *

(viii) Earned income tax credits received as a result of Pub. L. 95–600, the Revenue Act of 1978 which are received before January 1, 1980.

* * * * *

E. In § 273.10, paragraph (d) and paragraph (e)(1)(ii) are revised to read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(d) *Determining deductions.* Deductible deductions include only certain dependent care, shelter, and medical costs as described in § 273.9.

* * * * *

(e) *Calculating net income and benefit levels.*

(1) *Net monthly income.* * * *

(ii) In calculating net monthly income, the State agency shall use one of the two following procedures:

(A) Round down each income and allotment calculation that ends in 1 through 49 cents and round up each calculation that ends in 50 through 99 cents; or,

(B) Apply the rounding procedure that is currently in effect for the State's Aid to Families with Dependent Children (AFDC) program. If the State AFDC program includes the cents in income calculations, the State agency may use the same procedures for food stamp income calculations. Whichever procedure is used, the State agency may elect to include the cents associated with each individual shelter cost in the computation of the shelter deduction and round the final shelter deduction amount. Likewise, the State agency may elect to include the cents associated with each individual medical cost in the computation of the medical deduction and round the final medical deduction amount.

* * * * *

F. In § 273.11, paragraph (e)(5) is amended by adding two sentences to the end of the paragraph to read as follows:

§ 273.11 Action on households with special circumstances.

* * * * *

(e) *Residents of drug/alcoholic treatment and rehabilitation programs.* * * *

(5) * * * Once the household leaves, the center is no longer allowed to act as that household's authorized representative. The center shall, if possible, provide the household with a change report form to report to the State agency the individual's new address and other circumstances after leaving the center, and shall advise the household to return the form to the appropriate office of the State agency within 10 days.

* * * * *

§ 273.11 [Amended]

2. At 45 FR 23291, issued April 4, 1980, the reference to § 273.11(e) appearing in paragraph (2)(ii) of § 273.1(f) is incorrect. The correct reference is § 273.11(f).

§ 273.8 [Amended]

3. At 45 FR 46041, issued July 8, 1980, § 273.8(h)(3), the reference to "paragraphs (e)(3), (4), and (5)" should be changed to read "paragraphs (e)(3), (4), or (5)".

4. Also at 45 FR 46041/46042, paragraph (c)(5) of § 273.11 is revised to read as follows:

§ 273.11 Action on households with special circumstances.

* * * * *

(c) *Treatment of income and resources of disqualified members.* * * *

(5) *Reduction or termination of benefits within the certification period.* Whenever an individual is disqualified within the household's certification period, the State agency shall determine the eligibility or ineligibility of the remaining household members based, as much as possible, on information in the case file.

(i) If a household's benefits are reduced or terminated within the certification period because one of its members has been disqualified for fraud, the State agency shall notify the remaining members of their eligibility and benefit level at the same time the disqualified member is notified of its disqualification. The household is not entitled to a notice of adverse action but may request a fair hearing to contest the reduction or termination of benefits.

(ii) *SSN disqualification.* If a household's benefits are reduced or terminated within the certification period because one or more of its members required to provide an SSN is being disqualified for failure to meet the SSN requirement, the State agency shall issue a notice of adverse action, in accordance with § 273.13(a)(2), which informs the household that the individual without an SSN is being disqualified, the reason for the disqualification, the eligibility and benefit level of the remaining members, and the actions the household must take to end the disqualification.

* * * * *

PART 274—ISSUANCE AND USE OF FOOD COUPONS

§ 274.3 [Amended]

At 45 FR 22007, issued April 2, 1980, the instruction under § 274.3 to add a sentence to paragraph (f)(6) is incorrect. The sentence should be added to paragraph (b)(6) of § 274.3.

(91 Stat 958 (7 U.S.C. 2011–2027))

(Catalog of Federal Domestic Assistance, No. 10.551, Food Stamps)

Dated: October 2, 1980.

Carol Tucker Foreman,

Assistant Secretary.

[FR Doc. 80–33560 Filed 10–27–80; 8:45 am]

BILLING CODE 3410–30–M

Commodity Credit Corporation

7 CFR Part 1421

[CCC Grain Price Support Regulations, Grain Reserve Program Supplement, Amendment 4]

Subpart—Regulations Governing the Grain Reserve Program for 1976 and Subsequent Crops

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to amend the regulations governing the Grain Reserve Program for 1976 and Subsequent Crops to provide that when the national average market price is at or above 175 percent of the national average loan rate for wheat or 140 percent of the national average loan rate for feed grains, for five consecutive market days, the loan shall be called. The change is necessary to provide uniformity between farmer-owned grain reserve programs in the manner in which call determinations are made.

EFFECTIVE DATE: This regulation shall become effective October 23, 1980.

ADDRESS: Price Support and Loan Division, ASCS, USDA, 3741 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Harold Jamison, ASCS, (202) 447–7973.

The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under procedures established in Secretary's Memorandum No. 1955 to implement Executive Order 12044, and has been classified as "significant." Jerome F. Sitter, Director, Price Support and Loan Division, ASCS, USDA, has determined that an emergency situation exists which warrants publication without opportunity for a public comment period on this final action. Current procedure provides that reserve loans shall be called immediately after the call level is reached. An extended period for making a call determination is needed to be certain market conditions reflect a

stable or rising price trend and to provide uniformity between farmer-owned grain reserve programs. The national average market price for corn placed in the Farmer-Owned Grain Reserve Program for 1976 and Subsequent Crops is near the call price. If such corn is called in the manner presently provided for in the regulations, it would result in inequities to farmers in this reserve since other farmer-held grain reserve programs provide that reserve loans are not called until the specified levels have been reached for five consecutive market days. Accordingly, this amendment is necessary to provide consistency between the programs and to provide the opportunity for market prices to stablize before the loans are called. Therefore, pursuant to the administrative procedure provisions as provided for in 5 U.S.C. 553 and Executive Order 12044, it is found upon good cause that notice and other public procedure with respect to this emergency final action are impracticable and contrary to the public interest; and good cause is found for making this emergency final action effective less than 30 days after publication of this document in the **Federal Register**. Comments will be solicited for 60 days after publication of this document, and this emergency final action will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the **Federal Register** as soon as possible.

The title and number of the federal assistance programs to which this action applies are: Title: Grain Reserve Program; Number 10.067 as found in the Catalog of Federal Domestic Assistance. This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A-95 was not used to assure that units of local Government are informed of this action.

Final Rule

Accordingly, the regulations at 7 CFR Part 1421 are amended by revising § 1421.543(c)(1) to read as follows:

§ 1421.543 Release levels, redemption, requirements, and early redemption charges.

* * * * *

(c) Redemption of commodity when the national average market price is at least 175 percent for wheat or 140 percent for feed grain of national average loan rate.

(1) When CCC determines that the nationl average market price is at or above 175 percent of the national average loan rate for wheat or 140 percent of the national average loan rate for feed grains, for five consectuve market days, the loan shall be called.

Such call will be determined in the same manner as prescribed for release levels in § 1421.543(a). If the loan is not redeemed within 90 days after notification, CCC may take title to the commodity.

* * * * *

Dated: October 23, 1980.

Dale E. Hathaway,

Acting Secretary of Agriculture.

[FR Doc. 80-33513 Filed 10-23-80; 3:23 pm]

BILLING CODE 3410-05-M

Animal and Plant Health Inspection Service

9 CFR Part 97

Overtime Work at Laboratories, Border Ports, Ocean Ports, and Airports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulation which established charges for overtime work at laboratories, border ports, ocean ports, and airports. Veterinary Services inspectors of the United States Department of Agriculture are charged with performing inspection duties relating to imports and exports at laboratories, border ports, ocean ports, and airports. Such services may be performed outside the regular tour of duty of the inspector when requested by a person, firm, or corporation and the charge for such overtime is recoverable fromthose requesting the services. The following amendment increases the hourly rates for such services performed on a Sunday or holiday, or at any other time outside the regular tour of duty. These increases are commensurate with salary increases provided Federal employees in accordance with the Federal Pay Comparability Act of 1970 (Pub. L. 91-656), and Executive Order 12248 dated October 16, 1980.

EFFECTIVE DATE: October 28, 1980.

FOR FURTHER INFORMATION CONTACT: Dr. E. R. Mackery, USDA, APHIS, VS, Room 870, Federal Building, Hyattsville, Md. 20782, 301-436-8695.

Pursuant to the authority conferred by the Act of August 28, 1950 (64 Stat. 561; 7 U.S.C. 2260), and the Airports and Airways Development Act Amendments of July 12, 1976 (90 Stat. 882; 49 U.S.C. 1741), the first sentence of § 97.1(a), Part 97, title 9, Code of Federal Regulations, is revised to read:

§ 97.1 Overtime work at laboratories, border ports, ocean ports, and airports.[1]

(a) Any person, firm, or corporation having ownership, custody or control of animals, animal byproducts, or other commodities subject to inspection, laboratory testing, certification, or quarantine under this subchapter and subchapter G of this chapter, and who requires the services of an employee of Veterinary Services on a holiday or Sunday or at any other time outside the regular tour of duty of such employee, shall sufficiently in advance of the period of overtime or holiday or Sunday service request the Veterinary Services inspector in charge to furnish inspection, laboratory testing, certification or quarantine service during such overtime or holiday or Sunday period, except as provided in paragraph (b) of this section, shall pay the Administrator of the Animal and Plant Health Inspection Service at a rate of $25.04 per man hour per employee on a Sunday and at a rate of $18.08 per man hour per employee for holiday or any other period; except that for any services performed on a Sunday or holiday, except as provided in paragraph (b) of this section for inspection or quarantine services requested by an owner or operator of an aircraft at an airport on a Sunday or holiday which are performed within regularly established hours of service, or at any time after 5 p.m. or before 8 a.m. on a weekday, in connection with the arrival in or departure from the United States of a private aircraft or vessel, the total amount payable shall not exceed $25 for all inspectional services performed by the Customs Service, Immigration and Naturalization Service, Public Health Service, and the Department of Agriculture. * * *

(64 Stat. 561 (7 U.S.C. 2260))

Determination of the hourly rate for overtime services and of the commuted traveltime allowances depends entirely upon facts within the knowledge of the Department of Agriculture. The Agency has no alternatives to raising the overtime rate. By law, importers/exporters are required to reimburse the Agency for its costs associated with the services rendered. Unless the rate is raised, it will not cover the pay raise which commences October 5, 1980.

Accordingly, pursuant to the Administrative provisions of 5 U.S.C. 553, it is found upon good cause that notice and public procedure on this

[1] * * * * *

amendment are impracticable, unnecessary, and contrary to the public interest and good cause is found for making this amendment effective less than 30 days after publication in the **Federal Register**.

This final rule has been reviewed under the provisions of Executive Order 12044, "Improving Government Regulations." A determination has been made that this action is a matter related to Agency management and is therefore exempt from the provisions of the order (E.O. 12044, Section 6(b)(3)).

Done at Washington, D.C., this 23rd day of October 1980.

R. P. Jones,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 80-33554 Filed 10-27-80; 8:45 am]

BILLING CODE 3410-34-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

[IRPS 80-10]

Statement of Interpretation and Policy; When Federal Credit Unions Can Charge More Than 15 Percent Per Annum on Government Insured or Guaranteed Loans

AGENCY: National Credit Union Administration.

ACTION: Statement of interpretation and policy.

SUMMARY: This document states that on a government insured or guaranteed loan, a Federal credit union may charge an interest rate in excess of 15 percent per annum on the unpaid balance inclusive of all finance charges if a higher rate is either expressly required or expressly permitted by the laws and regulations governing the insured or guaranteed loan program. This interpretation and policy statement is needed because certain government agencies have recently raised the permissible interest rates on insured or guaranteed loans to rates in excess of 15 percent per annum on the unpaid balance inclusive of all finance charges.

EFFECTIVE DATE: October 28, 1980.

ADDRESS: National Credit Union Administration, 1776 G Street, N.W., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: John L. Culhane, Jr., Attorney Advisor, Office of General Counsel, or Thomas C. Buckman, Staff Accountant (Analyst), Office of Examination and Insurance. Telephone Numbers: (202) 357-1030 (Mr. Culhane), (202) 357-1065 (Mr. Buckman).

SUPPLEMENTARY INFORMATION: Recently, certain government agencies have raised the permissible interest rates on insured or guaranteed loans to rates in excess of 15 percent per annum on the unpaid balance inclusive of all finance charges. The Department of Housing and Urban Development has raised the maximum finance charge on insured mobile home loans from 15.00 percent to 15.50 percent. HUD has also raised the maximum charge on insured property improvement loans from 15.00 percent to 15.50 percent. 45 FR 63838 (1980). In addition, the Veterans Administration has raised the maximum rate on energy loans to 15½ percent per annum on the unpaid principal balance. 45 FR 63841 (1980). As a result, the question has been raised whether the Federal Credit Union Act and NCUA's regulations permit Federal credit unions to charge interest rates in excess of 15 per centum per annum on government insured or guaranteed loans.

Section 107(5)(A)(vi) of the Federal Credit Union Act provides that the rate of interest on Federal credit union loans may not normally exceed 15 per centum per annum on the unpaid balance inclusive of all finance charges. 12 U.S.C. 1757(5)(A)(vi). However, a special statutory provision applies in the case of government insured or guaranteed loans. Section 107(5)(A)(iii) of the Federal Credit Union Act states that "a loan secured by the insurance or guarantee of the Federal Government, of a State Government, or any agency of either may be made for the maturity and under the terms and conditions specified in the law under which such insurance or guarantee is provided." 12 U.S.C. 1757(5)(A)(iii). Section 701.21-5 of NCUA's regulations interprets this statutory provision to mean that "a Federal credit union which has been qualified as a lender under a Federal or State insured or guaranteed loan program may make loans to members under the terms and conditions and within the maturities specified by the laws and regulations governing the program." 12 CFR 701.21-5(a).

The National Credit Union Administration concludes that the phrase "terms and conditions" was meant to include the interest rate on loans and that "specified" was meant to cover situations where a term and condition is either expressly required or expressly permitted. Consequently, this interpretive ruling and policy statement has been approved to clarify that a Federal credit union can charge an interest rate in excess of 15 percent per annum on the unpaid balance inclusive of all finance charges on government insured or guaranteed loans, if a higher rate is either expressly required or expressly permitted by the laws and regulations governing the insured or guaranteed loan program. In making this decision, NCUA notes that guarantees and insurance are used by government agencies to encourage lending for certain social or economic objectives. NCUA believes that Congress did not intend for Federal credit unions to be precluded from participating in government insured or guaranteed loan programs simply because of rising interest rates.

Text of Statment of Interpretation and Policy (IRPS 80-10)

Section 107(5)(A)(iii) of the Federal Credit Union act states that "a loan secured by the insurance or guarantee of the Federal Government, of a State Government, or any agency of either may be made for the maturity and under the terms and conditions specified in the law under which such insurance or guarantee is provided." Section 701.21-5(a) of NCUA's regulations states that "A Federal credit union which has been qualified as a lender under a Federal or State insured or guaranteed loan program may make loans to members under the terms and conditions and within the maturities specified by the laws and regulations governing the program."

NCUA interprets the phrase "terms and conditions" to include the interest rate on the loan. NCUA also interprets "specified" to mean that the term and condition is either expressly required or is expressly permitted by the laws and regulations governing the program. Consequently, a Federal credit union may charge an interest rate in excess of 15 percent per annum on the unpaid balance inclusive of all finance charges on a government insured or guaranteed loan if the higher rate is either expressly required or expressly permitted by the laws and regulations governing the program.

Rosemary Brady,

Secretary, NCUA Board.

October 23, 1980.

[FR Doc. 80-33547 Filed 10-27-80; 8:45 am]

BILLING CODE 7535-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 460

Labeling and Advertising of Home Insulation; Trade Regulation Rule

Correction

In FR Doc. 80-32515 appearing at page 68928 in the issue of Friday, October 17, 1980, make the following corrections:

(1) On page 68928, second column, second line from bottom "exception" should be corrected to read "exemption".

(2) On page 68929, second column, second and third lines, "V-Z through V-7" should be corrected to read "X-2 through X-7".

BILLING CODE 1505-01-M

16 CFR Part 460

Trade Regulation Rule: Labeling and Advertising of Home Insulation

Correction

In FR Doc. 80-32517 appearing at page 68920 in the issue of Friday, October 17, 1980, make the following corrections:

(1) On page 68922, first column, first footnote at bottom of column, "[7] In the context" should be corrected to read "[7] In this context".

(2) On page 68924, third column, first paragraph under *B. Availability of Fact Sheets*, second line, "installation" should be corrected to read "insulation".

(3) On page 68924, third column, second paragraph under *B. Availability of Fact Sheets*, line 8, "customs" should be corrected to read "customers".

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 433

[Docket No. 79N-0149]

Exemption of Dermatologic and Vaginal Antibiotic Drug Products From Certification

AGENCY: Food and Drug Administration

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the antibiotic drug regulations to provide for exemption from batch certification of all human antibiotic drug products intended solely for dermatologic and vaginal use that have been approved for marketing in accordance with the requirements of section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357). Because of the high level of manufacturer compliance with existing standards, FDA has determined that batch-by-batch testing by FDA is not necessary to ensure the safety and efficacy of these antibiotic drug products. Under the exemption, manufacturers are not required to obtain, prior to marketing, certification of each batch of antibiotic drug product covered by the exemption.

EFFECTIVE DATE: November 28, 1980.

FOR FURTHER INFORMATION CONTACT: Philip L. Paquin, Bureau of Drugs (HFD-30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5220.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 6, 1979 (44 FR 39469), FDA proposed to amend the antibiotic drug regulations to provide an exemption from batch certification of all human antibiotic drug products intended solely for dermatologic and vaginal use that are the subject of approved regulations, except those dermatologic drug products for which microbiological limits are a requirement for certification. Interested persons were given to September 4, 1979 to submit comments on the proposal.

The agency received comments from six drug manufacturers and one trade association. All the comments supported the proposal. Four of the manufacturers, however, recommended that the scope of the proposal be expanded. Their comments and the agency's conclusions follow:

1. One manufacturer objected to excluding from this exemption dermatologic products for which there are microbiological limits. The comment contended that as long as there is a record of sustained production and assay capability to assure that products meet monograph specifications, duplicative testing and batch certification is not necessary.

In the preamble to the proposal the agency justified excluding these products from the exemption solely because of the risks involved in their use. These products are intended for use in surgery and in other medical conditions where a significant amount of drug is likely to be introduced into an open wound. Because this kind of application presents a significant risk of infection, the agency tentatively concluded that these drug products should continue to be certified to ensure conformity with specified microbiological limits.

Upon reconsideration, in light of the comment, the agency has decided to exempt these products also. The agency notes that the essential element in producing drug products within specified microbiological limits is conformity with current good manufacturing practice (CGMP) regulations (21 CFR Part 211). Special requirements for the production of sterile products or products having microbiological limits are contained in various sections of the CGMP regulations, i.e., 21 CFR 211.42(c)(10), 211.84(c)(3) and (d)(6), 211.113(a) and (b), 211.165(b), and 211.167(a). Compliance with these requirements provides assurance that the methods, facilities, and conditions of production are adequate in design and application to preclude microbiological contamination of drug products. Standardized procedures of demonstrated reliability for production and sterilization processes reasonably ensure the absence of microbiological contamination. Absolute certainty is impractical because it can be obtained only through full testing of every unit.

Before approving an antibiotic Form 5 or 6 or a new drug application the agency must be assured that the manufacturer is conforming with CGMP regulations. Also, manufacturers must conform with those requirements on an on-going basis in order to continue to market drug products subject to such approvals. The agency assures that these products are being produced in conformity with CGMP regulations through factory inspections conducted under section 704 of the act (21 U.S.C. 374). Failure to comply with CGMP regulations is a basis for legal action against the product and the manufacturers and is a basis for the withdrawal of approval of a new drug application.

In the certification program, sterility testing of samples of an antibiotic drug product with microbiological limits is intended basically to confirm a manufacturer's compliance with the applicable CGMP requirements. The sterility testing done with certification does not provide any greater assurance of the sterility of each unit of a drug product than is being provided by assuring that a drug product is manufactured in compliance with the CGMP requirements. Therefore, the agency has concluded that although adherence to microbiological limits is essential for these drug products, sterility testing, because of its limited value in assuring compliance with microbiological limits, is not by itself sufficient justification for continued certification. Accordingly, the final regulation is amended by deleting proposed paragraph (c), thereby removing the exclusion from exemption for those dermatologic and vaginal drug products that have microbiological limits.

2. Two manufacturers recommended that the proposed exemption from certification be extended to include antibiotic drug products for ophthalmic or otic use.

In the preamble to the proposal, FDA stated that it is undertaking an extensive review of antibiotic testing procedures under the certification program with a view toward eliminating or modifying batch certification requirements when they are no longer necessary to ensure safety and efficacy of antibiotic drugs. As a first step in implementing this program, the agency is exempting from batch certification all antibiotic drug products intended solely for dermatologic and vaginal use that are the subject of an approved antibiotic Form 5 or 6. Dermatologic and vaginal antibiotic products have been considered first because their manner of use, (i.e., local or topical application with a relatively low level of absorption poses less risk to the public than other dosage forms) and the fact that limited conditions for their exemption have existed since 1966. The agency has not yet determined that otic and ophthalmic antibiotic products can be safely exempted from certification. The agency believes it can consider these products as candidates for exemption from certification only when more experience has been gained with the policy implemented by this final rule, i.e., exempting broad classes of antibiotics from batch certification requirements.

3. Two manufacturers asked why certain of their dermatologic products were not included in the list of exempted products.

Although the products mentioned in these comments are not subject to approved regulations (monographs), nonetheless they should have been included in the list of exempted products. These products are subject to approved antibiotic Form 5's or Form 6's. Regulations for these products have not yet been published, and, accordingly, marketability under section 507 of the act is contingent on release rather than on batch certification.

As stated in the preamble to the proposal, on the date of approval of an antibiotic Form 5 or 6 for a product for dermatologic or vaginal use, the approved product is exempt from certification and subject to the new drug requirements of section 505 of the act (21 U.S.C. 355). The proposal specifically provided, therefore, and FDA intended, that antibiotic drugs for dermatologic and vaginal use that are subject to approved antibiotic Form 5's or Form 6's, whether or not subject to applicable regulations, would be exempt from batch certification to the same extent as those antibiotics subject to published regulations. Because of the likelihood that this and other inconsistencies may arise from FDA's attempt, as proposed, to list all exempt antibiotics specifically, the agency has decided not to list each antibiotic drug product that meets the conditions for exemption set forth in § 433.1(a). Further, the specific listing of exempted products is unnecessary. The regulation provides for the exemption of all dermatologic and vaginal antibiotic drug products for human use (which include those subject to the Drug Efficacy Study Implementation (DESI) review or the Over-the-Counter (OTC) Drug Review) meeting the conditions prescribed in § 433.1(a). These criteria are sufficiently clear to make specific listing of these antibiotic drugs unnecessary. Therefore, the final regulation is amended by deleting proposed paragraph (b), thereby removing the listing of exempted products.

As stated in the preamble to the proposal, antibiotic drug products exempt from certification that are subject to the DESI review or the OTC Drug Review must continue to conform to the requirements of those reviews. Any action regarding these drugs that is undertaken as a result of those reviews and is inconsistent with the exemption from certification provided by this regulation will be viewed as superseding the exemption.

The agency finds that the wording of proposed paragraph (a)(1) could be construed to imply that a specific manufacturer may not receive an exemption under this regulation unless all antibiotic drug products produced by the manufacturer are approved for marketing under an appropriate antibiotic Form 5 or 6. For the sake of clarity, a minor editorial change has been made in the final regulation to state that the condition for exemption specified under this paragraph applies to the antibiotic drug product only.

The final rule specifies that FDA has the authority to reimpose certification for any exempt antibiotic drug when it is necessary to ensure safety and efficacy of use. Accordingly, § 433.1 has been amended in the final regulation by specifying that all exemptions shall be subject to the conditions or the effectiveness of exemption from certification under § 433.2 (21 CFR 433.2).

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 505, 507, 52 Stat. 1050-1053 as amended, 59 Stat. 463 as amended (21 U.S.C. 355, 357)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 433 is amended by revising § 433.1. to read as follows:

§ 433.1 Exemption of dermatologic and vaginal antibiotic drug products from certification.

(a) Dermatologic and vaginal antibiotic drug products for human use are exempt from the requirements of Part 431 of this chapter for batch certification under the following conditions:

(1) The antibiotic drug product is approved for marketing under an appropriate antibiotic Form 5 or 6.

(2) The drug product is packaged and labeled for dispensing and is labeled solely for dermatologic or vaginal use.

(3) The batch of bulk antibiotic drug used in preparing the drug product has been certified or released by the Food and Drug Administration in accordance with this chapter and has been found to meet the standards of identity, strength, quality, and purity specified in the applicable regulations (monograph) in this chapter.

(4) The drug product meets the standards of identity, strength, quality, and purity specified in the applicable regulations (monograph) in this chapter except that if a monograph was not published, the standards approved in the applicable antibiotic Form 5 or 6 shall apply.

(b) In accordance with provisions of section 507(e) of the act, an antibiotic-containing drug product for human use exempt from the requirements for batch certification under this section is subject to section 505 of the act and applicable regulations for new drug products, generally Parts 310 through 314 of this chapter. For each drug product subject to an exemption under this section:

(1) An approved antibiotic Form 5 is regarded to be an approved new drug application under § 314.1(a) of this chapter.

(2) An approved antibiotic Form 6 is regarded to be an approved abbreviated new drug application under § 314.1(f) of this chapter.

(c) Nothing in this section shall prevent a manufacturer from applying for batch certification of a dermatologic or vaginal antibiotic drug product as provided in section 507(c) of the act.

(d) All exemptions from certification under this section are subject to the conditions of effectiveness under § 433.2 of this chapter.

Effective date. This regulation shall be effective November 28, 1980.

V 45 OC 28 80 UMI

(Secs. 505, 507, 52 Stat. 1050–1053 as amended, 59 Stat. 463 as amended (21 U.S.C. 355, 357))

Dated: October 15, 1980.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 80-33358 Filed 10-27-80; 8:45 am]

BILLING CODE 4110-03-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Methidathion

CFR Correction

In Title 40, Code of Federal Regulations, (Parts 100–399) revised as of July 1, 1980, in Part 180, § 180.298, appearing on page 588, the following entry should be inserted alphabetically in the table as follows:

Safflower seeds	0.5

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 15, and 18

[Docket No. 20790; FCC 80-564]

Establishing a Single System of Identification for Devices Covered Under the Equipment Authorization Program; Delay of Effective Date In Report and Order

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: The Commission has postponed the mandatory compliance date set forth in the Report and Order, Docket 20790, (FCC 79–134), released March 15, 1979 and printed in the Federal Register (44 FR 17175), establishing a single system of identification for radiofrequency devices covered under the Commission's equipment authorization program. The mandatory compliance date has been extended from October 27, 1980, to May 1, 1981.

DATES: The effective date of this order is October 9, 1980. Mandatory compliance date of October 27, 1980 is replaced by the date May 1, 1981.

FOR FURTHER INFORMATION CONTACT: Mrs. Ruby Moore, Office of Science and Technology, 301–725–1585.

In the matter of delay of effective date in Report and Order, Docket No. 20790, establishing a single system of identification for devices covered under the equipment authorization program.

Adopted: October 1, 1980.

Released: October 9, 1980.

By the Commission:

1. On February 28, 1979, the Commission adopted a Report and Order in Docket 20790 (FCC 79–134), which was published in the Federal Register (44 FR 17175) on March 21, 1979. The Report and Order adopted new rules (to become effective April 25, 1979, and mandatory October 27, 1980) providing for a single system of identification for all devices covered under the equipment authorization program. The rules require an FCC Identifier (consisting of grantee or grantee/trade name and manufacturer codes assigned by FCC and a number assigned by the prospective grantee) to be displayed on the nameplate of each device covered under the equipment authorization program.

2. The rules adopted in the above cited Report and Order have provided for voluntary compliance with the new identification system between April 25, 1979 and October 27, 1980. Since the adoption of the rules, our experience gained in application of the rules and assignment of codes to manufacturers and grantees has revealed a need for clarification and some relaxation of the rules before use of the new system becomes mandatory. We expect to accomplish this clarification and relaxation without the need for issuance of proposed rule making, since no additional requirements or burdens will be imposed upon equipment authorization grantees and manufacturers.

3. In addition to the rule clarifications and relaxations mentioned above, our experience has indicated the necessity for improvement in our own computer programming and record keeping methods, in order to enable prompt assignment and accurate record keeping of assigned grantee and manufacturer codes. The number of requests for assignment of grantee and manufacturer codes has considerably exceeded our expectations.

4. We believe that an extension of the October 27, 1980 mandatory compliance date is necessary to permit the drafting and adoption of the rule clarifications and relaxations and the completion of the additional computer programming and record keeping capabilities needed. It will also ease the burden on those grantees and manufacturers who are currently having difficulty in interpreting the new rules and bringing their equipment into compliance.

5. It is therefore ordered that the mandatory effective date for compliance with the single system of identification be postponed from October 27, 1980 until May 1, 1981.

6. Authority for this action may be found in Sections 4(i), 302 and 303(r) of the Communications Act of 1934, as amended.

7. For further information on this proceeding, contact Mrs. Ruby Moore, Authorization & Standards Division, Office of Science and Technology, (301) 725–1585.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

Federal Communications Commission.

William J. Tricarico,

Secretory.

Appendix

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

PART 15—RADIO FREQUENCY DEVICES

PART 18—INDUSTRIAL, SCIENTIFIC, AND MEDICAL EQUIPMENT

The date October 27, 1980, appearing in each of the following sections of the Commission's Rules is deleted and replaced by the date May 1, 1981: §§ 2.925(a), 2.925(b)(4), 2.925(c), 2.925(g), 2.969(a), 2.969(b), 2.1003(a), 2.1003(b), 2.1045(a), 2.1045(b), 15.132(a), 15.132(b), 15.178(b), 15.178(c), 15.186(a), 15.186(b), 15.314(a), 15.314(b), 15.314(b)(1), 15.375(a), 15.375(b), 15.415(a), 15.415(b), 18.74(a)(1), 18.74(a)(2), 18.141(c)(1), 18.141(c)(2).

[FR Doc. 80-33565 Filed 10-27-80; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 32 and 33

Opening of Certain National Wildlife Refuges to Hunting and Sport Fishing

AGENCY: Fish and wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule adds Morgan Brake National Wildlife Refuge, Mississippi; to the list of refuge areas open for migratory game bird hunting. Delta National Wildlife Refuge, Louisiana; and Morgan Brake National Wildlife Refuge, Mississippi are added to the list of refuge areas open to upland game hunting. Eufaula National Wildlife Refuge, Alabama; Delta National Wildlife Refuge, Louisiana; and Morgan Brake National Wildlife Refuge, Mississippi; are added to the list of refuge areas open for big game hunting. Banks Lake National Wildlife Refuge, Georgia; is added to the list of refuge areas open to sport fishing. The Director has determined that this action would be in accordance with the provisions of all laws applicable to the areas, would be compatible with principles of sound wildlife management, would otherwise be in the public interest, and that such use is compatible with the management objectives established for each refuge. Hunting and sport fishing subject to annual special regulations, will provide additional public recreational opportunities.

EFFECTIVE DATE: October 28, 1980.

FOR FURTHER INFORMATION CONTACT: Ronald L. Fowler, Division of Refuge Management, U.S. Fish and Wildlife Service, Washington, D.C. 20240, Telephone 202–343–4305.

SUPPLEMENTARY INFORMATION: Ronald L. Fowler is also the primary author of this final rule. As a general rule, most National Wildlife Refuges are closed to hunting until officially opened by regulation. On September 10, 1980, there was published (45 FR 59603) a notice of proposed rulemaking adding the above cited refuges to the designated lists of open areas. The public was asked to provide comments by October 10, 1980, and was also advised that purusant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), an environmental assessment had been prepared on each of these proposals. These assessments are available for public inspection and copying at Room 2341, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240, or by mail addressing the Director at the address given above. On the basis of these assessments, the Director has determined that this rulemaking does not constitute a major Federal action significantly affecting the human environment.

Letters in support of this proposed rulemaking were received from the State game and fish agencies in Alabama and Mississippi. No other comments were received. The Director has determined that the proposed uses are compatbile with the major purposes for which the areas were established and that funds are available for the development, operation, and maintenance of the permitted forms of recreation. This action will be in accordance with the provisions of all laws applicable to the area, will be compatible with the principles of sound wildlife management, and will otherwise be in the public interest.

Because of the time limitation involved to coordinate the State and Federal hunting regulations and the rapid approach of the hunting season, the U.S. Fish and Wildlife Service has concluded that "good cause" exists within the meaning of 5 U.S.C. 553(d)(3), of the Administrative Procedure Act to expedite the imnplementation of this rulemaking. Therefore, the effective date of this final rule is October 28, 1980.

Note.—The Department of the Interior determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Accordingly, after consideration of all interests and concerns, 50 CFR Parts 32 and 33 are amended by additions in §§ 32.11, 32.21, 32.31 and 33.4 as follows:

§ 32.11 List of open areas, migratory game birds.

* * * * *

Mississippi

* * * * *

Morgan Brake National Wildlife Refuge

* * * * *

§ 32.21 List of open areas; upland game.

Louisiana

* * * * *

Delta National Wildlife Refuge

* * * * *

Mississippi

* * * * *

Morgan Brake National Wildlife Refuge

* * * * *

§ 32.31 List of open areas; big game.

* * * * *

Alabama

Eufaula National Wildlife Refuge

* * * * *

Louisiana

* * * * *

Delta National Wildlife Refuge

* * * * *

Mississippi

* * * * *

Morgan Brake National Wildlife Refuge

* * * * *

§ 33.4 List of open areas; sport fishing.

* * * * *

Georgia

Banks Lake National Wildlife Refuge

(16 U.S.C. 460k, 16 U.S.C. 668dd)

Dated: October 24, 1980.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

[FR Doc. 80-33708 Filed 10-27-80; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 657

Atlantic Butterfish Fishery

AGENCY: National Oceanic and Atmospheric Administration, (NOAA)/ Commerce.

ACTION: Final regulations.

SUMMARY: These regulations implement the Fishery Management Plan for the Butterfish Fishery of the North Atlantic Ocean (FMP) as amended by Amendment No. 1. (45 FR 21307).

This amendment to the FMP extends the plan, with no changes, from April 1, 1980, through March 31, 1981.

The regulations implementing the FMP and this amendment cover both the domestic and foreign butterfish fisheries in the United States fishery conservation zone (FCZ) of the Atlantic Ocean. All regulations in 50 CFR Part 611 governing the foreign fishery for Atlantic butterfish are continued in effect. These final regulations, Part 657, pertain only to the domestic fishery for Atlantic butterfish within the FCZ.

The regulations for the domestic fishery provide: (1) annual catch quotas for domestic fishermen; (2) a fishing year for Atlantic butterfish from April 1 through March 31; (3) domestic vessel registration, recordkeeping and reporting requirements; and (4) criteria for allocating portions of the domestic annual harvest (DAH) to the total allowable level of foreign fishing (TALFF).

EFFECTIVE DATE: The implementing regulations are effective on November 26, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Allen E. Peterson, Jr., Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts 01930; Telephone (617) 281–3500.

SUPPLEMENTARY INFORMATION: The Assistant Administration for Fisheries, NOAA (Assistant Administrator), under authority of the Fishery Conservation

and Management Act of 1976, as amended (Act), approved the FMP with one exception on November 9, 1979. The FMP was published in the **Federal Register** on February 6, 1980 (45 FR 8030) and supersedes that portion of the preliminary fishery management plan for the Foreign Trawl Fisheries of the Northwest Atlantic (PMP) which applied to the butterfish fishery by foreign vessels.

On March 5, 1980, the Assistant Administrator approved an amendment to the FMP which extends the FMP through March 31, 1981. There were no other changes.

The FMP sets forth two major objectives for the fishery to be achieved through the regulations implementing the FMP. Those objectives are: (1) to prevent exploitation of the butterfish resource beyond the maximum sustainable yield (MSY) level; and (2) to promote the growth of the domestic butterfish fishery and export industry. The regulations are intended to meet those objectives as follows:

1. *To prevent exploitation of butterfish beyond the maximum sustainable yield.* The Council has set the 1980–81 MSY at 16,000 metric tons (mt) and the optimum yield (OY) at 11,000 mt. Domestic and foreign catch quotas are established. Further, provisions are made for closing the domestic fishery when the annual quota is approached. The foreign fishery will also be closed once TALFF is reached.

2. *To promote the growth of the domestic butterfish fishery and export industry.* The OY was set at 5,000 mt below MSY with the intention of creating an environment favorable to development of the U.S. export market. The 11,000 mt OY is initially divided between domestic fishermen and foreign fishermen on the basis of an estimated domestic annual harvest of 7,000 mt. The remaining 4,000 mt is apportioned to the foreign fisheries (TALFF). It is believed that 4,000 mt is sufficient to provide a reasonable bycatch of butterfish in the foreign *Loligo* squid fishery, but will not permit a directed foreign fishery on butterfish.

Public Comments

These regulations were proposed on April 1, 1980 (45 FR 21307). Public comments were invited until May 31, 1980. During the comment period, two commenters representing Japanese fishing interests formally requested public hearings. They sought to discuss issues and submit information regarding the specification of OY as well as new data affecting the amended FMP and the draft regulatory analysis. In the interest of decisionmaking on the basis of the best available information, the comment period was re-opened on July 21, 1980, for an additional 10 days (45 FR 48930). This provided an opportunity for those and any other interested parties to submit new information.

Based on the information submitted during the second comment period and arguments contained in those comments, it was determined that a public hearing was not warranted.

A summary of substantive comments received during both comment periods and NOAA's response appear below.

§ 657.2 Definitions.

One comment suggested a new definition for "Vessel of the United States," to include vessels over five net tons which had no U.S. documentation but had a number issued under the National Coordinated Boating Safety Act. NOAA's definition, which is also used in the foreign fishing regulations and in regulations implementing many FMPs, prevents foreign vessels over five net tons from qualifying as a U.S. vessel by obtaining a Boating Safety number from a State. The current definition provides a better expression of the Act's distinction between U.S. and foreign fishing vessels; therefore, no change has been made. NOAA is considering other means to deal with the problem of domestic vessels over five net tons which, for technical reasons, may be ineligible for U.S. documentation.

§ 657.21 Allowable Levels of Harvest.

Other comments focused primarily on the FMP and the methods used to determine OY, DAH, and TALFF. Commenters representing Japanese fishing groups asserted that the OY should be equal to the maximum sustainable yield (MSY), and that the specification of DAH at 7,000 mt was too high. The commenters questioned whether the specifications in the FMP met the requirements of the Act. Those comments suggested that the objective of the FMP to ". . . promote the growth of the U.S. butterfish export market . . ." is not within the statutory authority of the Act. NOAA believes, however, that the FMP establishes OY, DAH, and TALFF in an acceptable manner and that the objective of promoting the growth of the export market is appropriate. Section 3(18)(B) of the Act states that OY shall be "based on MSY as modified by any relevant economic, social, or ecological factors." The Council based its establishment of an OY of 11,000 mt (5,000 mt below the MSY of 16,000 mt) on economic and social considerations. The Council determined that the impact of foreign fishing on the domestic industry's export market is a relevant factor to consider in specifying OY. The Council believes that reduced butterfish landings by foreign fleets will lead to the subsequent development of a U.S. export market for that species. NOAA believes this factor is an appropriate one to use, based on the legislative history of the Act and on legal analysis of Sec. 3(18).

The Japan Fisheries Association and the Japan Deep Sea Trawlers Association dispute the Council's belief and assert that, regardless of the size of the Japanese allocations in the U.S. fishery conservation zone, there will be a market in Japan for butterfish which meet Japanese price and quality standards. They indicate that the butterfish market is expanding in Japan. More specifically, they said that over the last six years the Japanese market for butterfish has tripled in size, and total consumption is believed to be in the range of 40,000 mt annually, with 15,000 mt of the total being imported. Moreover, the Japanese argue that there is no basis for concluding that Japanese imports from the United States are related to a low Japanese butterfish allocation.

During the first half of the April 1980–March 1981 fishing year, domestic landings of butterfish are reported to have totaled 2,090 mt. The fact that most (i.e. 1,083 mt) of this catch occurred between September 15–30, 1980, indicates significant increased activity. This is believed to be due to increased demand (domestic and foreign) as well as increased availability. Since the U.S. fishery for butterfish is primarily a fall/winter fishery, it is too early to judge the validity of the Japanese claims regarding the harvesting capacity and potential for export development of the U.S. fleet.

One foreign comment indicated that a low butterfish TALFF impairs the foreign fleet's ability to catch other species for which they have allocations, and fails to treat butterfish as a stock which is interrelated with *Loligo*, contrary to the requirements of national standard 3 of the Act ("interrelated stocks of fish shall be managed as a unit or in close coordination"). The Council recognized that the foreign fisheries for butterfish and *Loligo* are interrelated because of species intermixing and commonality of fishing gear and methods. Therefore, the Council established a butterfish TALFF of 4,000 mt to allow foreign fishermen to harvest their allocations of Atlantic squid (*Laligo*) with which the butterfish are associated.

Reserved Provisions

§ 657.5 Recordkeeping and reporting requirements.

This section of the regulations requires recordkeeping by fishing vessel operators and fish dealers/processors. The establishment of mandatory dealer and processor reporting is authorized under sections 303(a)(5) and 303(b)(7) of the Act.

An attempt is being made by the National Marine Fisheries Service (NMFS) to standardize the recordkeeping provisions for all regulated Northwest Atlantic Ocean fisheries. Eventually a single comprehensive recordkeeping form will be used for U.S. participants in these regulated fisheries.

The proposed paragraph on record inspection has been reserved as § 657.5(b)(3) and will be reproposed after NOAA has completed development of its processor-reporting system and has determined the data needs with greater specificity. Another reserved paragraph, § 657.5(b)(2) on processing capacity, will be proposed at that time. This paragraph would specify information necessary to assess more accurately domestic processing capacity.

FMP Approval

The Assistant Administrator has reviewed the comments received on the Plan and on Amendment No. 1 to the Atlantic butterfish FMP and finds that the plan as amended is consistent with the national standards, other provisions of the Act, and other applicable law.

Environmental Impact

Development and implementation of the FMP has been deemed a major Federal action significantly affecting the quality of the human environment. Under provisions of the National Environmental Policy Act of 1969 (NEPA), a final environmental impact statement has been prepared and was filed with the Environmental Protection Agency (EPA) on December 15, 1978. Amendment No. 1 was determined to be nonsignificant under NEPA.

Executive Order 12044

On November 9, 1979, the Administrator determined that the FMP was significant with respect to Executive Order 12044. A draft regulatory Analysis (RA) was prepared and made available for comment at the time the proposed rulemaking was published. A final RA has been prepared and is available to the public by contacting the Regional Director, (see "address" above). The FMP amendment was determined to be nonsignificant by the Administrator on March 12, 1980.

Signed at Washington, D.C., this 23d day of October, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

(16 U.S.C. 1801 *et seq.*)

1. Those sections of 50 CFR 611 which govern foreign fishing for butterfish are retained.

2. A new Part 657 is added to 50 CFR to read as follows:

PART 657—ATLANTIC BUTTERFISH FISHERY

Subpart A—General Provisions

Sec.
657.1 Purpose and scope.
657.2 Definitions.
657.3 Relation to other laws.
657.4 Vessel permits and fees.
657.5 Recordkeeping and reporting requirements.
657.6 Vessel identification.
657.7 Prohibitions.
657.8 Enforcement.
657.9 Penalties.

Subpart B—Management Measures

657.20 Fishing year.
657.21 Allowable levels of harvest.
657.22 Allocations.
657.23 Closure of fishery.
657.24 Size restrictions. [Reserved]
657.25 Gear/vessel equipment restrictions. [Reserved]
657.26 Area/time restrictions. [Reserved]

Authority: 16 U.S.C. 1801 et seq.

Subpart A—General Provisions

§ 657.1 Purpose and scope.

(a) The regulations in this Part: (1) implement the Fishery Management Plan for the Atlantic Butterfish Fishery of the Northwest Atlantic Ocean, which was prepared and adopted by the Mid-Atlantic Fishery Management Council and approved by the Assistant Administrator; and (2) govern fishing for Atlantic butterfish by fishing vessels of the United States within that portion of the Atlantic Ocean over which the United States exercises exclusive fishery management authority.

(b) The regulations governing fishing for Atlantic butterfish by foreign vessels in the fishery conservation zone are contained in 50 CFR Part 611. The Appendix to 50 CFR 611.20 contains the total allowable level of foreign fishing for butterfish.

§ 657.2 Definitions.

In addition to the definitions in the Act, the terms used in this part shall have the following meanings:

Act means the Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 *et seq.*

Assistant Administrator means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration, Department of Commerce, or an individual to whom appropriate authority has been delegated.

Atlantic butterfish or butterfish means the species *Peprilus triacanthus.*

Authorized Officer means:

(a) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(b) Any certified enforcement officer or special agent of the National Marine Fisheries Services;

(c) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce and the Commandant of the U.S. Coast Guard to enforce the provisions of the Act; or

(d) Any U.S. Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (a) of this definition.

Catch, take, or harvest includes, but is not limited to, any human activity which results in mortality to any butterfish or in bringing any butterfish on board a vessel.

Fishery Conservation Zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishery Management Plan (FMP) means the Fishery Management Plan for the Atlantic Butterfish Fishery of the Northwest Atlantic Ocean, and any amendments thereto.

Fishing includes any activity, other than scientific research activity conducted by a scientific research vessel, which involves:

(a) The catching, taking, or harvesting of butterfish;

(b) The attempted catching, taking, or harvesting of butterfish;

(c) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of butterfish; or

(d) Any operations at sea in support of, or in preparation for, any activity described in paragraph (a), (b) or (c) of this definition.

Fishing trip means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel returns to port.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for: (a) fishing; or (b) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Fishing week means the weekly period beginning 0001 hours Sunday and ending 2400 hours Saturday.

Operator, with respect to any fishing vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any fishing vessel, means:

(a) Any person who owns that vessel in whole or in part;

(b) Any charterer of the vessel, whether bareboat, time or voyage;

(c) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or

(d) Any agent designated as such by a person described in paragraph (a), (b) or (c) of this definition.

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Person who receives Atlantic butterfish for a commercial purpose means any person (excluding governments and governmental entities) engaged in commerce who is the first purchaser of butterfish. The term includes dealers, brokers, processors, cooperatives, or fish exchanges. It does not include a person who only transports butterfish between a fishing vessel and a first purchaser.

Regional Director means the Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930; or a designee.

Regulated species means any species for which fishing by a vessel of the United States is regulated pursuant to the Act.

United States harvested butterfish means butterfish caught, taken, or harvested by vessels of the United States under this Part, whether or not such butterfish is landed in the United States.

Vessel of the United States means:

(a) Any vessel documented or numbered by the United States Coast Guard under United States law; or

(b) Any vessel under five net tons registered under the laws of any State.

§ 657.3 Relation to other laws.

(a) Persons affected by these regulations should be aware that other Federal and State statutes and regulations may apply to their activities.

(b) All fishing activity, regardless of species sought, is prohibited pursuant to 15 CFR Part 924, on the U.S.S. *Monitor Marine Sanctuary*, which is located approximately 15 miles southwest of Cape Hatteras off the coast of North Carolina (35°00'23"N., 75°24'32"W.).

§ 657.4 Vessel permits and fees.

(a) *General.* Every fishing vessel which fishes for Atlantic butterfish under this Part must have a fishing permit issued under this section. Vessels are exempt from this requirement if they catch no more than 100 pounds of butterfish per trip.

(b) *Eligibility.* [Reserved]

(c) *Application.* (1) An application for a fishing permit under this part must be submitted and signed by the owner or operator of the vessel on an appropriate form obtained from the Regional Director. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) Applicants shall provide all the following information:

(i) The name, mailing address including ZIP code, and telephone number of the owner of the vessel;

(ii) The name of the vessel;

(iii) The vessel's United States Coast Guard documentation number, or the vessel's State registration number for vessels not required to be documented under provisions of Title 46 of the United States Code;

(iv) The home port or principal port of landing, gross tonnage, radio call sign, and length of the vessel;

(v) The engine horsepower of the vessel and year the vessel was built;

(vi) The type of construction, type of propulsion, and type of echo sounder of the vessel;

(vii) The permit number of any current or previous Federal fishery permit issued to the vessel;

(viii) The approximate fish hold capacity of the vessel;

(ix) The type and quantity of fishing gear used by the vessel;

(x) The average size of the crew, which may be stated in terms of a normal range; and

(xi) Any other information concerning vessel and gear characteristics requested by the Regional Director.

(3) Any change in the information specified in paragraph (c)(2) of this section shall be submitted in writing to the Regional Director by the owner within 15 days of any such change.

(d) *Fees.* No fee is required for any permit issued under this Part.

(e) *Issuance.* The Regional Director shall issue a permit to the applicant not later than 30 days from the receipt of a completed application.

(f) *Expiration.* A permit shall expire upon any change in vessel ownership, registration, name, length, gross tonnage, fish hold capacity, home port or the regulated fisheries in which the vessel is engaged.

(g) *Duration.* A permit shall continue in effect until it expires or is revoked, suspended, or modified pursuant to 50 CFR Part 621.

(h) *Alteration.* No person shall alter, erase, or mutilate any permit. Any permit which has been intentionally altered, erased, or mutilated is invalid.

(i) *Replacement.* Replacement permits may be issued by the Regional Director when requested in writing by the owner or operator stating the need for replacement, the name of the vessel, and the fishing permit number assigned. An application for a replacemnt permit shall not be considered a new application.

(j) *Transfer.* A permit issued under this Part is not transferable or assignable. A permit shall be valid only for the fishing vessel owner for which it is issued.

(k) *Display.* A permit issued under this Part must be carried on board the fishing vessel at all times. The operator of a fishing vessel shall present the permit for inspection upon request of any Authorized Officer.

(l) *Sanctions.* Subpart D of 50 CFR Part 621 (Civil Procedures) governs the imposition of sanctions against a permit issued under this Part. As specified in that Subpart D, a permit may be revoked, modified, or suspended if the permitted fishing vessel is used in the commission of an offense prohibited by the Act or these regulations, or if a civil penalty or criminal fine imposed under the Act is not paid.

§ 657.5 Recordkeeping and reporting requirements.

(a) *Fishing vessel records.* (1) The operator of any fishing vessel issued a permit to fish for butterfish under this Part shall:

(i) Maintain on board the vessel an accurate and complete fishing vessel record on forms supplied by the Regional Director;

(ii) Make the fishing vessel record available for inspection or reproduction by an Authorized Officer, or an employee of the National Marine Fisheries Service designated by the Regional Director to make such inspections, at any time during or after a fishing trip;

(iii) Keep each fishing vessel record for one year after the date of the last entry in the fishing vessel record; and

(iv) Submit fishing vessel records, as specified in § 657.5(a)(2).

(2) The owner or operator of any fishing vessel conducting any fishing operation subject to this Part shall:

(i) Submit a complete fishing vessel record to a location designated by the Regional Director 48 hours after the end of any fishing week or fishing trip (whichever time period is longer) during which any regulated species were taken; or

(ii) Submit a statement to a location designated by the Regional Director 48 hours after the end of any calendar week, that fishing for any regulated species did not occur during that week.

(3) Fishing vessel records shall contain information on a daily basis for the entirety of any trip during which butterfish or any other regulated species are caught.

(4) A request for exemption from the provisions of § 657.5(a)(2)(ii) of this section shall be submitted, in writing, to the Regional Director. Such request shall state the reason for the request and the period for which the exemption is to apply. The Regional Director may issue an exemption for a period of time greater than two months and less than ten months. If an exemption is issued, the Regional Director must be notified in writing of the operator's intent to resume fishing before fishing may be resumed.

(5) The Assistant Administrator may revoke, modify, or suspend the permit of a fishing vessel whose owner or operator falsifies or fails to submit the records and reports prescribed by this section, in accordance with the provisions of 50 CFR Part 621.

(b) *Fish dealer or processor reports.* (1) Any person who receives Atlantic butterfish for a commercial purpose from a fishing vessel subject to this Part shall file a weekly report (Sunday through Saturday) to the Regional Director, on forms supplied by him, within 48 hours of the end of any week in which butterfish is received. This report shall include information on all first transfers, purchases, or receipts of butterfish and all other fish made during that week.

(2) Processing capacity. [Reserved]

(3) Inspection of records. [Reserved]

§ 657.6 Vessel identification.

(a) *Official number.* (1) Each fishing vessel subject to this Part and over 25 feet in length shall display its Official Number on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. The Official Number is the documentation number issued by the U.S. Coast Guard for documented vessels or the registration number issued by a State or the U.S. Coast Guard for undocumented vessels.

(2) The Official Number shall be at least 18 inches in height for fishing vessels over 65 feet in length and at least 10 inches in height for all other vessels over 25 feet in length.

(3) The Official Number must be in block Arabic numerals is contrasting color to the background.

(4) The Official Number shall be permanently affixed to or painted on the vessel. However, charter or party boats may use non-permanent markings to display the Official Number whenever the vessel is fishing for butterfish.

(b) *Vessel length.* The length of a vessel, for purposes of this section, is that length set forth in U.S. Coast Guard or State records.

(c) *Duties of operator.* The operator of each fishing vessel shall:

(1) Keep the Official Number clearly legible and in good repair; and

(2) Ensure that no part of the fishing vessel, its rigging, or its fishing gear obstructs the view of the Official Number from an enforcement vessel or aircraft.

§ 657.7 Prohibitions.

It is unlawful for any person to:

(a) Use any vessel for the taking, catching, harvesting, or landing of any Atlantic butterfish (except as provided for in section 657.4(a)), unless the vessel has a valid permit issued pursuant to this Part, on board the vessel;

(b) Fail to report to the Regional Director within 15 days any change in the information contained in the permit application for a vessel;

(c) Falsify or fail to make, keep, maintain, or submit any fishing vessel record or fish dealer or processor report, or other record or report required by this Part;

(d) Make any false statement, oral or written, to an Authorized Officer, concerning the taking, catching, landing, purchase, sale, or transfer of any butterfish;

(e) Fail to affix and maintain vessel markings as required by § 657.6;

(f) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, export, or land any Atlantic butterfish taken in violation of the Act, this Part, or any regulation promulgated under the Act;

(g) Fish for, take, catch, or harvest any Atlantic butterfish from the FCZ after the fishery has been closed pursuant to § 657.23;

(h) Transfer directly or indirectly, or attempt to so transfer, any United States harvested butterfish to any foreign fishing vessel, while such vessel is within the FCZ, unless the foreign fishing vessel has been issued a permit under section 204 of the Act, which authorizes the receipt by such vessel of the United States harvested butterfish;

(i) Refuse to permit an Authorized Officer to inspect any fishing vessel record;

(j) Refuse to permit an Authorized Officer to board a fishing vessel subject to such person's control for purpose of conducting any search or inspection in connection with the enforcement of this Act, this Part, or any other regulation promulgated under the Act;

(k) Fail to comply immediately with enforcement and boarding procedures specified in § 657.8;

(l) Forcibly assault, resist, oppose, impede, intimidate, threaten or interfere with an Authorized Officer in the conduct of any search or inspection under the Act;

(m) Resist a lawful arrest for any act prohibited by this Part;

(n) Interfere with, obstruct, delay, or prevent by any means the apprehension or arrest of another person knowing that such other person has committed any act prohibited by this Part;

(o) Interfere with, obstruct, delay, or prevent by any means the lawful investigation or search in the process of enforcing this Part;

(p) Violate any other provision of this part, the Act, or any regulation promulgated pursuant thereto.

§ 657.8 Enforcement.

(a) *General.* The operator of any fishing vessel subject to this Part shall immediately comply with instructions issued by an Authorized Officer to facilitate safe boarding and inspection of the vessel, its gear, equipment, fishing vessel record, and catch for purposes of enforcing the Act and this Part.

(b) *Signals.* Upon being approached by a U.S. Coast Guard vessel or aircraft, or other vessel or aircraft authorized to enforce provisions of the Act, the operator of the fishing vessel shall be alert for communications conveying enforcement instruction. VHF–FM raidotelephone is the normal method of communication between vessels. Should radiotelephone communications fail, however, other methods of

communication, including visual signals, may be employed. The following signals extracted from the International Code of Signals are among those which may be used, and are included here for the safety and information of fishing vessel operators:

(1) "L" means "You should stop your vessel instantly;"

(2) "SQ3" means "You should stop or heave to; I am going to board you; and

(3) "AA AA AA etc.," which is the call to an unknow station, to which the signaled vessel shall respond by illuminating the vessel's Official Number required by § 657.6.

(c) *Boarding.* A vessel signalled to stop or heave to for boarding shall:

(1) Stop immediately and lay to or maneuver in such a way as to permit the Authorized Officer and his party to come aboard;

(2) Provide a safe ladder for the Authorized Officer and the boarding party;

(3) When necessary to facilitate the boarding, or when requested by an Authorized Officer, provide a man rope, safety line and illumination for the ladder; and

(4) Take such other actions as necessary to insure the safety of the Authorized Officer and his party to facilitate the boarding.

§ 657.9 Penalties.

Any person or fishing vessel found to be in violation of this Part will be subject to the civil and criminal penalty provisions, permit sanction provisions, and forfeiture provisions prescribed in the act, in 50 CFR Part 620 (Citations) and Part 621 (Civil Procedures).

Subpart B—Management Measures

§ 657.20 Fishing year.

The fishing year for Atlantic butterfish is the 12-month period beginning April 1 and ending on March 31 of the following fishing year.

§ 657.21 Allowable levels of harvest.

(a) *Harvest levels.* The total allowable levels of harvest of Atlantic butterfish on a fishing year basis is 11,000 metric tons (mt). The initial annual catch quota for vessels of the United States is 7,000 mt.

(b) *Territorial waters.* These regulations do not restrict harvests of Atlantic butterfish in the waters landward of the FCZ. Harvests from these waters, however, shall be subtracted from the annual domestic quotas set forth in paragraph (a) of this section.

§ 657.22 Allocations.

(a) *General.* This section establishes a procedure which will be followed to make allocations to foreign fishing vessels of part of the domestic quota that will not be harvested by fishermen during the fishing year.

(b) *Criteria.* The Assistant Administrator will determine the domestic harvest of butterfish by reviewing fishing vessel record and fish dealer/processor record data and any other relevant landings statistics for the first seven months of the fishing year (April 1–October 31). If reported domestic harvest (including off-loadings at sea) is equal to or greater than 40 percent of the annual domestic quota of 7,000 mt, no allocation will be made. If the reported domestic harvest for the first seven months of the fishing year is less than 40 percent of the annual domestic quota, the Assistant Administrator may allocate up to one-half the difference between the reported domestic harvest and the initial annual domestic quota in § 657.21(a).

(c) *Notice of intent.* If the Assistant Administrator determines that an allocation is to be made, he will publish in the **Federal Register** a notice proposing to allocate a specified amount of the unharvested portion of the domestic annual quota to the annual quota established for foreign nations. Notice of an intent to allocate will be sent to holders of permits issued under this Part, and to agents of foreign fishing vessels permitted to fish for butterfish under 50 CFR Part 611, on or about the date of publication of the notice in the **Federal Register.**

(d) *Public comment.* The public will be given 15 days from the date of publication to submit written comments on the proposed allocation.

(e) *Consultation.* During the 15-day public comment period, the Assistant Administrator will consult with the Executive Director of the Mid-Atlantic Fishery Management Council on the consistency of the proposed allocation with the objectives of the FMP.

(f) *Final determination.* The Assistant Administrator will make a final determination of the amount of Atlantic butterfish to be allocated after taking into account:

(1) The intent and capability of U.S. fishing vessels to harvest Atlantic butterfish during the remainder of the fishing year;

(2) The consistency of any allocation with the objectives contained in the FMP;

(3) The current harvest of Atlantic butterfish by foreign nations as allowed pursuant to 50 CFR Part 611;

(4) The most recent information available concerning the biological status of the species of Atlantic butterfish; and

(5) Any other information determined by the Assistant Administrator to be relevant.

(g) *Notice of allocation.* The Assistant Administrator will publish a final notice of allocation in the **Federal Register** approximately 15 days prior to the effective date of the allocation. Comments received during the comment period, all relevant information used by the Assistant Administrator in making a final determination on allocations, and the most recent catch statistics available for the domestic harvest of Atlantic butterfish shall be summarized in the **Federal Register** notice of allocation.

(h) *Effective dates.* Any allocation of butterfish shall be effective on January 1 and remain in effect to the end of the fishing year on March 31.

§ 657.23 Closure of fishery.

(a) *General.* The Regional Director will periodically monitor catches and landings of Atlantic butterfish.

(b) *Decision to close.* When 80 percent of the initial annual domestic harvest level specified in § 657.21 has been harvested, the Assistant Administrator shall close the fishery for the remainder of the fishing year.

(c) *Notice of closure.* If the Assistant Administrator determines that a closure of the butterfish fishery is necessary, he shall:

(1) Notify in advance the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils of the closure;

(2) Mail notifications of the closure to all holders of permits issued under § 657.4 at least 72 hours prior to the effective date of the closure; and

(3) Publish a notice of closure in the **Federal Register.**

(d) *Incidental Catch.* During a period of closure, fishing vessels may catch, take, or harvest Atlantic butterfish incidental to fishing for other species of fish, provided that the amount of Atlantic butterfish constitutes no more than 10 percent by weight of the total catch of all other fish on board the vessel at the end of any fishing trip.

§ 657.24 Size restrictions. [Reserved]

§ 657.25 Gear/vessel equipment restrictions. [Reserved]

§ 657.26 Area/time restrictions. [Reserved]

[FR Doc. 80-33559 Filed 10-27-80; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 45, No. 210
Tuesday, October 28, 1980

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 351

Reduction In Force

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: These proposed regulations would clarify how agencies identify employees with transferring positions under the transfer of function provisions of OPM's reduction in force regulations. These regulations are being proposed in response to requests from agencies that OPM clarify its instructions covering transfer of function.

DATE: Written comments will be considered if received no later than December 29, 1980.

ADDRESS: Send or deliver written comments to Associate Director, Staffing Services, Office of Personnel Management, 1900 E Street NW., Room 6526, Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Ted Dow or Tom Glennon, (202) 632–4422.

SUPPLEMENTARY INFORMATION: The transfer of function provisions found in Subpart C of Part 351 of this title are derived from Section 12 of the Veterans Preference Act of 1944, as presently codified in 5 U.S.C. 3503. Additional instructions implementing the transfer of function provisions of Part 351 are contained in Federal Personnel Manual (FPM) Chapter 351. Specifically, Subchapter 3 of FPM Chapter 351 is primarily concerned with transfer of function while Appendix C of that chapter covers the procedures used by agencies to identify the positions of competing employees with a transferring function or functions.

Explanation of Proposed Regulations

These proposed regulations do not represent a change of OPM's present transfer of function policies. The identification procedures set forth in these proposed regulations are intended to clarify provisions presently found in Appendix C of FPM Chapter 351. For reference, the identification procedures were originally issued to Federal agencies in Supplement Number 2 to Departmental Circular 740, dated June 23, 1960.

OPM proposes to make the following specific changes in Part 351:

(1) A new § 351.303 is added. Section 351.303(a) provides that the competitive area losing the function is responsible for identifying the positions of competing employees with the transferring function(s) under Identification Method One or Identification Method Two.

(2) Section 351.303(b) provides that Identification Method One must be used if it is applicable. Otherwise, Identification Method Two is used to identify the positions of competing employees with a transferring function or functions.

(3) Section 351.303(c) covers the applicability and operation of Identification Method One.

(4) Section 351.303(d) covers the applicability and operation of Identification Method Two.

(5) Section 351.303(e) covers employees of the competitive area that is losing the function who volunteer to transfer to the competitive area that is gaining the function.

Proposed § 351.303 is intended to be used in conjunction with final §§ 351.301 and 351.302 published in the **Federal Register** on September 12, 1980 (45 FR 60401).

OPM has determined that this is a significant regulation for the purposes of E.O. 12044.

Office of Personnel Management.

Kathryn Anderson Fetzer,

Assistant Issuance System Manager.

Accordingly, OPM proposes to amend Title 5, Code of Federal Regulations, by adding § 351.303:

§ 351.303 Identification of positions with a transferring function.

(a) The competitive area losing the function is responsible for identifying the positions of competing employees with the transferring function. Two methods are provided to identify employees with the transferring function:

(1) Identification Method One; and

(2) Identification Method Two.

(b) Identification Method One must be used to identify each position to which it is applicable. Identification Method Two is used only to identify positions to which Identification Method One is not applicable.

(c) Under Identification Method One, a competing employee is identified with a transferring function if:

(1) The employee performs the function during all or a major part of his or her work time; or

(2) Regardless of the amount of time the employee performs the function during his or her work time, the function performed by the employee includes the duties controlling his or her grade or rate of pay.

(d) Under Identification Method Two, competing employees are identified with a transferring function in the inverse order of their retention standing.

(e) The competitive area losing the function may permit other employees to volunteer for transfer with the function in place of employees identified under Identification Method One or Identification Method Two, provided that:

(1) No competing employee who is identified for transfer under Identification Method One or Identification Method Two is separated or demoted solely because a volunteer transferred in place of him or her to the competitive area that is gaining the function; and

(2) The employees who volunteer for transfer are in competitive levels with a surplus of employees resulting because of the transfer of function.

If the total number of employees who volunteer for transfer exceeds the total number of employees required to perform the function in the competitive area that is gaining the function, the losing competitive area should give preference to the volunteers with the highest retention standing.

(5 U.S.C. 1302, 3503)

[FR Doc. 80-33553 Filed 10-27-80; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food Safety and Quality Service

7 CFR Part 2859

9 CFR Parts 308 and 381

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 109, 110, 225, 226, 500, and 509

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

Polychlorinated Biphenyls in Food, Feed, Agricultural Pesticide and Fertilizer Facilities

AGENCIES: Food Safety and Quality Service, USDA, Food and Drug Administration; and Environmental Protection Agency.

ACTION: Extension of comment periods; announcement of informal public meeting.

SUMMARY: On May 9, 1980, the Department of Agriculture, the Food and Drug Administration, and the Environmental Protection Agency announced individual proposed regulations affecting the use of PCB-containing equipment in food, feed, agricultural pesticide and fertilizer facilities. This notice extends the comment period on each of these proposals until December 4, 1980. In addition, this notice announces an informal public meeting regarding the three proposals to be held on November 7, 1980.

DATES: Informal public meeting on November 7, 1980, beginning at 10:00 a.m. Requests to appear at the meeting must be received on or before November 5, 1980. Written comments on all three Agency proposals must be received on or before December 4, 1980. (For information on how to make request to make presentations at the meeting, see "For Further Information Contact" section.)

ADDRESSES: The informal public meeting will be held at Room 218–A, Department of Agriculture, Administration Building, 14th and Independence Avenue, SW., Washington, DC.

Written comments on the proposals to:

FSQS Proposal: Regulations Coordination Division, Attn: Annie Johnson, Room 2637, South Agriculture Building, Food Safety and Quality Service, Compliance Program, U.S. Department of Agriculture, Washington, DC 20250. Oral comments on poultry products inspection regulations to Mr. Bartie T. Woods, (202) 447–5627.

EPA Proposal: Joni T. Repasch, Technical Information Specialist, Room 447 (TS–793), Office of Toxic Substances, EPA, 401 M Street, SW., Washington, DC 20460, Attn: Docket Number OTS–62003 (PCB/RR–3).

FDA Proposal: Docket Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Those persons interested in making presentations at the meeting should arrange to schedule their presentation by contacting: Penny Gentilly, Deputy Director, Public Participation, Room 1168, South Agriculture Building, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–7804.

For information on the technical aspects of the proposals:

Mr. Bartie T. Woods, Director, Facilities, Equipment and Sanitation Division, Meat and Poultry Inspection Program, U.S. Department of Agriculture, Food Safety and Quality Service, Washington, DC 20250, (202) 447–5627.

Mr. John B. Ritch, Jr., Director, Industry Assistance Office, Office of Toxic Substances (TS–799), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone toll free (800) 424–9065 (in Washington, 554–1404).

Mr. F. Leo Kaufman, Bureau of Foods (HFF–214), Food and Drug Administration, Department of Health and Human Services, 200 C Street, SW., Washington, DC 20204, (202) 245–1164.

SUPPLEMENTARY INFORMATION: On May 9, 1980, the Department of Agriculture (USDA), the Environmental Protection Agency (EPA), and the Food and Drug Administration (FDA) issued coordinated proposed rulemakings on the use of PCB-containing equipment or machinery in or around food, feed, food-and-feed-packaging material plants or storage facilities, and in facilities manufacturing, processing, or storing fertilizers or agricultural pesticides (45 FR 30980; 30984; 30989).

Specifically, USDA proposed to require that all equipment or machinery containing liquid PCB at levels greater than 50 parts per million by weight (except capcitors with less than 3 pounds of PCB's) would have to be either removed from the meat, poultry, and egg product plants and establishments under its inspection or drained and flushed so that they no longer contain PCB's in the liquid medium at levels greater than 50 parts per million by weight. In addition, any liquids with PCB's above 50 parts per million could no longer enter or be held on the premises for any reason (45 FR 30980–30983).

FDA proposed to prohibit the use of PCB-containing sealed electrical transformers and capacitors used or stored in or around food, feed, and food-and-feed-packaging materials plants or storage facilities, except for capacitors containing less than 3 pounds of fluid. Such equipment would have to be either replaced or drained and flushed so that the residual PCB's in the replacement fluid would be no more than 50 parts per million by weight. In addition, FDA also proposed that certain raw materials used in human food which are susceptible to PCB contamination be examined and analyzed as necessary to ensure that they comply with FDA tolerance levels for PCB's and other poisonous or deleterious substances (45 FR 30984–30988).

EPA proposed to prohibit the use of PCB Items as defined in 40 CFR 761.2(x), such as PCB large, high, and low voltage capacitors, PCB transformers, PCB-contaminated transformers, PCB heat transfer systems, and PCB hydraulic systems in facilities manufacturing, processing, or storing fertilizers or agricultural pesticides. PCB small capacitors (containing less than 3 pounds of fluid) are not to be regulated by the proposal (45 FR 30989–30993).

Initially, each of these proposals established comment periods for the receipt of information and data—USDA and FDA by July 7, 1980, and EPA by July 8, 1980. Subsequently, each of these comment periods was extended for 120 days—until November 4, 1980, for USDA (45 FR 44317, July 1, 1980), and FDA (45 FR 44325, July 1, 1980), and November 5, 1980, for EPA (45 FR 47168–69, July 14, 1980).

In a letter dated September 17, 1980, the American Frozen Food Institute, on behalf of themselves and other interested trade associations,[1] requested an opportunity to discuss in an informal meeting various aspects of the three proposals which they considered common to the three proposals. These issues included potential health risks, the economic impact of the proposals, and the request for special consideration for those companies which have already invested funds in efforts to control PCB's.

PCB's are toxic substances which have been identified for regulatory coordination by the Regulatory Development Work Group of the Interagency Regulatory Liaison Group (IRLG). At all stages of these rulemaking proceedings, the agencies have coordinated their activities, whenever possible. After considering the request of the American Frozen Food Institute, the three agencies have individually determined that it is appropriate to conduct a joint public informal meeting on November 7, 1980, to hear presentations and to offer clarifications on certain aspects of the proposed rules to industry and other interested persons. The agencies will welcome all comments and data relevant to their rulemaking efforts. A transcript will be made of this meeting and will be included in the administrative rulemaking records of the three agencies.

In order to include comments and data gathered at the meeting within the rulemaking records of each Agency, and to afford sufficient time following the meeting for interested parties to submit their comments on the record of that proceeding, the comment period on each of the three proposals is being mutually extended by this notice until December 4, 1980. Persons wishing to request a public hearing under the EPA proposal may do so until the end of the public comment period on December 4, 1980. In all other respects, the procedure specified in the proposed rules published by each Agency on May 9, 1980, shall continue to apply.

Done at Washington, DC.

Dated: October 28, 1980.

Donald L. Houston,

Administrator, Food Safety and Quality Service.

Dated: October 21, 1980.

Jere E. Goyan,

Commissioner of Food and Drugs.

Dated: October 22, 1980.

Douglas M. Costle,

Administrator, Environmental Protection Agency.

[FR Doc. 80-33616 Filed 10-27-80; 8:45 am]

BILLING CODE 3410-DM-M

[1] These other interested Associations include: American Feed Manufacturers' Association, American Meat Institute, Biscuit and Cracker Manufacturers' Association of America, Edison Electric Institute, National Agriculture Chemical Association, National Broiler Council, National Coffee Association, National Food Processors Association, National Frozen Pizza Institute, National Soft Drink Association, National Turkey Federation, Potato Chip/Snack Food Association, Utilities Solid Waste Activities Group.

DEPARTMENT OF AGRICULTURE

Food Safety and Quality Service

9 CFR Parts 317 and 381

Net Weight Labeling; Extension of Comment Period

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On August 8, 1980, the Department published in the **Federal Register** a document proposing to amend the Federal meat and poultry products inspection regulations to provide more uniform labeling requirements and to prescribe uniform procedures for determining compliance with label statements of net contents of meat and poultry products. In response to several requests for additional time to study the proposal and gather data, the Department is extending the comment period for 60 days.

DATE: Comments must be received on or before January 5, 1981.

ADDRESS: Written comments to: Regulations Coordination Division, Attn: Annie Johnson, Room 2637, South Agriculture Building, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments on the poultry products inspection regulations to: Mr. Bill Dennis, (202) 447–3840.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Dennis, Director, Processed Products Inspection Division, Meat and Poultry Inspection Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–3840. The Draft Impact Analysis describing the options considered in developing the proposed rule and the impact of implementing each option was published in its entirety as an appendix in the August 8, 1980, proposed rule.

SUPPLEMENTARY INFORMATION:

Significance

The proposal was reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and was classified "significant."

Background

On August 8, 1980, the Food Safety and Quality Service published in the **Federal Register** (45 FR 53002–53023) a proposed rule to amend the Federal meat and poultry products inspection regulations to set forth more uniform net weight labeling requirements for federally inspected meat and poultry products and prescribe procedures for determining compliance with these requirements. These proposed regulations would establish objective, numerical standards for determining compliance to insure that consumers receive valid information regarding the actual weight of meat and poultry products and to provide for increased uniformity of regulations at the Federal, State, and local levels. Interested persons were given until November 6, 1980, to comment.

The Food and Drug Administration (FDA) also published a similar proposal relating to non-meat and non-poultry food products (45 FR 53023–53031).

The Department has been requested to extend the comment period for 120 days so data, views, or arguments may be submitted or oral views presented by the American Meat Institute, The Grocery Manufacturers Association, the National Broiler Council and others. The requests stated that additional time was needed in order to gather data and study the proposal. Similar requests were presented to the FDA.

After careful consideration and discussions with the FDA, the Department and FDA have jointly decided that sufficient justification exists to extend the comment period for 60 days. The FDA extension of comment period is published elsewhere in this issue of the **Federal Register.** In all other aspects, the procedure specified in the proposed rule published on August 8, 1980, shall continue to apply.

Done at Washington, D.C., on: October 21, 1980.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 80-33503 Filed 10-23-80; 4:56 pm]

BILLING CODE 3410-DM-M

CIVIL AERONAUTICS BOARD

[EDR-408A; Economic Regulations Docket: 38746

14 CFR Parts 221, 296, and 297

Airlines Filing Tariffs Stating Prices as Maximum Amounts

Dated: October 22, 1980.

AGENCY: Civil Aeronautics Board.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The CAB extends the period for public comments on its proposal to allow airlines to file tariffs that state prices as maximum amounts instead of exact amounts, so that any price up to

the maximum could be charged. The proposed rule would also allow the payment of commissions to air freight forwarders and foreign air freight forwarders. The extension was requested by the International Air Transport Association and others.

DATES: Comments by: December 1, 1980. Comments and other relevant information received after this date will be considered by the Board only to the extent practicable.

ADDRESSES: Twenty copies of comments should be sent to Docket 38746, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Copies may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Mark S. Kahan, Assistant Director, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue N.W., Washington, D.C. 20428; 202–673–5371.

SUPPLEMENTARY INFORMATION: In EDR–408 (45 64864; September 30, 1980), the Board proposed to allow airlines to file tariffs that state prices as maximum amounts instead of exact amounts. The Board also proposed to allow the payment of commissions to air freight forwarders and foreign air freight forwarders. Citing the expiration of antirebating injunctions and the need to clarify the legal status of forwarder commissions, EDR-408 established a shorter-than-normal comment period of 30 days. The original due date for comments on the proposed rule was thus October 30, 1980.

On October 9, the International Air Transport Association (IATA) filed a "Motion for an Extension of Time to File Comments and for Coordinated Review Procedures on Parallel Issues in the Competitive Marketing Investigation." IATA asked that the comment period be extended until at least November 28, 1980. In support of this request IATA argued that more time is needed for foreign carriers to prepare their views, consult with their governments, and coordinate their comments. It stated that the proposed rule would bring about fundamental changes in the marketing and distribution of air transportation services, and raised serious legal and international questions. IATA also argued that there is no emergency requiring a short comment period on such and important matter, citing Order 80–9–147 as having eliminated the urgency. That order, issued along with EDR-408, granted several exemptions while the rulemaking is in progress. Finally, IATA argued that an extension of the comment period would not delay the Board's decision because that decision must in any event be coordinated with parallel issues in the *Competitive Marketing Investigation* (Docket 36595).

On October 16, 1980, 15 Electronic Shippers jointly filed an answer in support of the IATA request. On October 17, the Association of Retail Travel Agents (ARTA) filed a motion asking for the same relief. It supported the IATA request and emphasized the importance of the proposed rulemaking to travel agents.

On October 16, the American Society of Travel Agents (ASTA) filed a "Motion to Terminate Notice of Proposed Rulemaking and/or Other Relief." The alternative relief included an order that would explain the relationship between this rulemaking and the *Competitive Marketing Investigation,* with 45 days after that for comments on the proposed rule and 30 days for reply comments.

In view of the importance of the issues presented in this proceeding, and because the Board is especially interested in the views of travel agents and the views of foreign carriers and foreign governments on the international implications of the proposed rule, there is good cause to allow the extension of time requested by IATA and ARTA. The requests are therefore granted. The new comment deadline is December 1, 1980.

The requests for coordinated review procedures on parallel issues in the *Competitive Marketing Investigation,* along with ASTA's motion for termination of the rulemaking or alternative relief, will be considered by the Board. The delegation of authority under which requests to extend comment periods are considered does not extend to such requests.

Accordingly, under authority delegated in 14 CFR 385.20(d), the time for filing comments on EDR–408 is extended to December 1, 1980.

(Secs. 204, 403, 404, 416, and 1002 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 758, 760, 771, and 788, as amended, 49 U.S.C. 1324, 1373, 1374, 1386, and 1482.)

Richard B. Dyson,

Associate General Counsel.

[FR Doc. 80–33525 Filed 10–27–80; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 79N–0292]

Food Labeling; Net Weight Labeling Requirements; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the period for submitting comments on the notice of proposed rulemaking to amend the net weight labeling regulations. This action is based on a number of requests for extension of the comment period received by FDA.

DATE: Written comments must be submitted on or before January 5, 1981.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Howard N. Pippin, Bureau of Foods (HFF–312), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202–245–3092.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 8, 1980 (45 FR 53023), FDA proposed to amend the net weight labeling regulations. These amendments would quantitatively define permissible "reasonable variations" from stated net weights for several food categories, including foods subject to mositure loss. Interested persons were requested to submit comments by November 6, 1980.

FDA has received a number of requests for extension of the comment period ranging from 90 to 120 days. The requests are on file with the FDA Dockets Management Branch. The requests assert, in general, that additional time is needed to gather information and prepare meaningful comments to the proposal.

After carefully evaluating the merits of the requests for extension of the comment period, FDA has concluded that an extension of the comment period is necessary to provide adequate time for the compilation and submission of comments on the proposed rule. The agency has further concluded, however, that a 60-day extension should be adequate and is extending the comment period to January 5, 1981.

The U.S. Department of Agriculture, Food Safety and Quality Service (FSQS), also published in the **Federal Register** of August 8, 1980 (45 FR 53002) a similar proposal covering meat and poultry products. They have also received requests for an extension of the comment period on their proposal. FDA and FSQS agree that additional time is needed for affected industries to submit their comments on the proposals. The FSQS notice of extension of the comment period is published elsewhere in this issue of the **Federal Register.**

Accordingly, interested persons may, on or before January 5, 1980, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the Dockets Management Branch docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 22, 1980.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–33507 Filed 10–27–80; 8:45 am]

BILLING CODE 4110–03–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[191–78]

Investment Credit for Qualified Rehabilitated Buildings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the investment credit for qualified rehabilitated buildings. Changes to the applicable tax law were made by the Revenue Act of 1978 and the Technical Corrections Act of 1979. The regulations would provide taxpayers desiring to qualify for the credit with the guidance needed to comply with the new law.

DATES: Written comments and requests for a public hearing must be delivered or mailed by December 29, 1980. The amendments are effective with respect to qualified rehabilitation expenditures incurred after October 31, 1978.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Eileen Murphy of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3297).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 46 and 48 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 315 of the Revenue Act of 1978 (92 Stat. 2828) and section 103(a)(4) of the Technical Corrections Act of 1979 (94 Stat. 209) and are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Qualified Rehabilitated Building

Under section 48(a)(1)(E), that portion of the basis of a qualified rehabilitated building which is attributable to qualified rehabilitation expenditures qualifies as section 38 property. Section 48(g)(1) and the proposed regulations set forth several requirements for a qualified rehabilitated building.

One requirement for a qualified rehabilitated building is that a twenty-year period must have elapsed between the rehabilitation and the later of (1) the date the building was first placed in service, or (2) the date of any prior rehabilitation for which a credit was allowed under section 48(a)(1)(E).

Another requirement for a qualified building is that the building be rehabilitated. The term "rehabilitation" includes renovation, restoration, or reconstruction. The proposed regulations provide that the rehabilitation must be substantial. Whether a rehabilitation is substantial is determined upon the basis of all the facts and circumstances. In general, for the rehabilitation to be "substantial," it must materially extend the useful life of the building, significantly upgrade its usefulness, or preserve it in a manner that significantly improves its condition or enhances its historic value. The regulations require the rehabilitation to be "substantial" because, as discussed above, in general a credit for rehabilitation under section 48(a)(1)(E) may be taken only once in a twenty-year period with respect to a particular building. Thus, it would not conform with the intent behind section 48(g) to upgrade old buildings if an insubstantial project could preclude taking the credit for twenty years for a major upgrading project.

The proposed regulations do not contain a quantitative test for determining whether a rehabilitation of a building is a substantial rehabilitation. In comments on the proposed regulations, suggestions for a quantitative test are invited. (For example, a quantitative test might require that rehabilitation expenditures be a specific percentage of the value of the building after the rehabilitation.)

The proposed regulations also distinguish between expenditures for new construction and for rehabilitation. Any expenditures attributable to an enlargement of an existing building are considered expenditures for new construction. The proposed regulations contain rules defining an enlargement of a building.

Another requirement for a qualified rehabilitated building is that at least 75 percent of the existing external walls of the building must be retained in place as external walls in the rehabilitation process. An external wall is defined in the proposed regulations as a wall, including its supporting elements, with one face exposed to the weather or earth. Under the proposed regulations, an external wall is considered retained in place even though the existing curtain is covered, reinforced, or replaced, provided that the structural framework of the wall is retained in place.

Section 48(g)(1)(C) and the proposed regulations provide that where there is a separate rehabilitation of a major portion of a building, the major portion may be treated as a separate building for purposes of the definition of a qualified rehabilitated building and the twenty-year requirement. The proposed regulations provide that whether a part of a building constitutes a major portion of the building is determined upon the basis of all the facts and circumstances. Factors such as volume, floor space, and functional differences between such part and other parts of the building are taken into consideration. In general, however, a major portion must be comprised of contiguous portions of the building and must be clearly identifiable (for example, the first 5 stories of a 7 story building or the east wing of a building). In addition, to constitute a major portion, a part of a building must be sufficiently large that it would be reasonable to treat it as a separate building. The leased portion of a

building is a major portion only if that part would be considered a major portion independent of the fact that it is subject to a lease. The public is invited, as part of written comments on these proposed regulations, to address the issue of possible quantitative tests for determining a major portion.

Rehabilitation activity that is done in phases may be considered a single rehabilitation. The proposed regulations provide rules for determining whether noncontinuous rehabilitation activity constitutes a single rehabilitation done in phases.

Qualified Rehabilitation Expenditures

Under section 48(g)(2) and the proposed regulations, the term "qualified rehabilitation expenditure" means any amount properly chargeable to capital account, incurred after October 31, 1978, for property (or additions or improvements to property) with a useful life of five years or more, made in connection with the rehabilitation of a qualified rehabilitated building. The proposed regulations contain special rules for treating a transferee of a building as having incurred the qualified rehabilitation expenditures of a transferor if the building is acquired before the property attributable to such expenditures is placed in service. In addition, expenditures for property which is "section 38 property" (determined without regard to section 48(a)(1)(E)) and (l)), the costs of acquiring an interest in a building, and the costs for an enlargement of a building are not qualified rehabilitation expenditures. Finally, expenditures to rehabilitate a certified historic structure (as defined in section 191 (d)(1) and the regulations thereunder) are not qualified rehabilitation expenditures unless the rehabilitation is a certified rehabilitation (as defined in section 191(d)(4) and the regulations thereunder).

Coordination With Other Sections of the Code

The regulations also provide cross-references to other pertinent provisions of the Code. These provisions relate to the lessee's eligibility to take the credit, the taxable year in which the credit may be claimed, and recapture of the credit.

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Eileen Murphy of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations, both on matters of substance and style.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

Paragraph 1. Section 1.46–4 (d) is amended by adding a new subparagraph (5) to read as follows:

§ 1.46–4 Limitations with respect to certain persons.

* * * * *

(d) *Noncorporate lessors.* * * *

(5) The requirements of this paragraph shall not apply with respect to any property which is treated as section 38 property by reason of section 48 (a)(1)(E).

Par. 2. Section 1.48–1 is amended by revising the second sentence of paragraph (a), by revising the first sentence of paragraph (e)(1), and by adding a new sentence immediately after such first sentence of paragraph (e)(1), to read as follows:

§ 1.48–1 Definition of section 38 property.

(a) *In general.* * * * Except as otherwise provided in this section, the term "section 38 property" means property (1) with respect to which depreciation (or amortization in lieu of depreciation) is allowable to the taxpayer, (2) which has an estimated useful life of 3 years or more (determined as of the time such property is placed in service), and (3) which is (i) tangible personal property, (ii) other tangible property (not including a building and its structural components) but only if such other property is used as an integral part of manufacturing, production, or extraction, or as an integral part of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services by a person engaged in a trade or business of furnishing any such service, or is a research or storage facility used in connection with any of the foregoing activities, (iii) an elevator or escalator which satisfies the conditions of section 48 (a)(1)(C), or (iv) in the case of a qualified rehabilitated building, that portion of the basis which is attributable to qualified rehabilitation expenditures. * * *

* * * * *

(e) *Definition of building and structural components.* (1) Generally, buildings and structural components thereof do not qualify as section 38 property. See, however, section 48(a)(1)(E) and (g), and § 1.48–11 (relating to investment credit for qualified rehabilitated building). * * *

* * * * *

Par. 3. Section 1.48–2 is amended by adding a new paragraph (d) to read as follows:

§ 1.48–2 New section 38 property.

* * * * *

(d) *Special rule for qualified rehabilitated buildings.* Notwithstanding the rules in paragraphs (a) through (c) of this section, that portion of the basis of a qualified rehabilitated building attributable to qualified rehabilitation expenditures is treated as new section 38 property. See section 48(a)(1)(E) and (g), and § 1.48–11.

Par. 4. There is inserted immediately after § 1.48–8 the following new section:

§ 1.48–11 Qualified rehabilitated building.

(a) *In general.* Under section 48(a)(1)(E), that portion of the basis of a qualified rehabilitated building which is attributable to qualified rehabilitation expenditures qualifies as section 38 property. In general, property which is treated as section 38 property by reason of section 48(a)(1)(E) is treated as new section 38 property and therefore is not subject to the $100,000 used property limitation. See § 1.48–2(d). Section 48(g)(1) and paragraph (b) of this section define the term "qualified rehabilitated building". Section 48(g)(2) and paragraph (c) of this section define the term "qualified rehabilitation expenditure". Paragraph (d) of this section provides guidance for coordination of these provisions with other sections of the Code.

(b) *Definition of qualified rehabilitated building*—(1) *In general.* The term "qualified rehabilitated building" means any building and its structural components—

(i) Which has been rehabilitated (within the meaning of subparagraph (3) of this paragraph),

(ii) Which was placed in service before the beginning of the rehabilitation,

(iii) 75 percent or more of the existing external walls of which are retained in

place as external walls in the rehabilitation process, and

(iv) Which meets the twenty-year requirement in paragraph (2) of this paragraph.

In addition, a major portion of a building may be treated as a separate building for purposes of this paragraph if the requirements of paragraph (b)(6) are met.

(2) *Twenty-year requirement*—(i) *In general.* A building is considered a qualified rehabilitated building only if a period of at least 20 years has elapsed between the date physical work on the rehabilitation of the building began, and the later of—

(A) The date the building was first placed in service as a building, or

(B) The date the building was placed in service in connection with a prior rehabilitation with respect to which a credit was allowed by reason of section 48(a)(1)(E).

(ii) *Vacant periods.* The 20-year period includes periods during which a building was vacant or devoted to a personal use and is computed without regard to the number of owners or the identity of owners during the period.

(iii) *Physical work.* For purposes of this subparagraph (2), the term "physical work" does not include preliminary activities such as planning, designing, securing financing, exploring, researching, or developing.

(iv) *Special rule.* If a part of a building meets the twenty-year requirement in subdivision (i) of this subparagraph and a part (for example, an addition) does not, a rehabilitation of that part that meets the requirement may qualify for a credit only if that part constitutes a major portion (as defined in subparagraph (8)) of the building.

(3) *Rehabilitation.* (i) For purposes of this paragraph, rehabilitation includes renovation, restoration, or reconstruction. For a building to be considered rehabilitated, the rehabilitation must be "substantial". Whether a rehabilitation is substantial is determined upon the basis of all the facts and circumstances. In general, to be substantial, the rehabilitation must materially extend the useful life of the building, significantly upgrade its usefulness, or preserve it in a manner that significantly improves its condition or enhances its historic value. A substantial rehabilitation may vary in degrees from gutting and extensive reconstruction of a building's major structural components to the cure of a substantial accumulation of major disrepairs. It may also include renovation, alteration, or remodelling for the conversion of a structurally sound building to a design and condition required for a new use. Cosmetic improvements alone, however, do not qualify as a substantial rehabilitation.

(ii) The provisions of this subparagraph (3) may be illustrated by the following examples:

Example (1). Taxpayer A is the owner of a 30-year old building. The building is air conditioned by means of window air conditioning units. A replaces the window units with a central air conditioning system. The building is not considered rehabilitated within the meaning of this subparagraph because the expenditures incurred by A did not materially extend the building's useful life, significantly upgrade its usefulness, or preserve it in a manner that significantly improves its condition or enhances its historic value.

Example (2). Taxpayer B is the owner of a 10 story office building that is 35 years old. The building is in substantial disrepair and in order to modernize it, B installs new plumbing, electrical wiring, and heating and air conditioning systems. In addition, the layout of each floor is changed by means of tearing down many existing interior walls and partitions and building new walls, partitions, and doors. Old plaster is removed from many walls and replaced by new wall covering. New windows and new flooring are installed throughout the building. The improvements made by B materially extend the useful life of the building and significantly upgrade its usefulness. The building is considered rehabilitated within the meaning of this subparagraph.

Example (3). Taxpayer C is the owner of a 100-year-old building that has substantial historic character, although the building is not a certified historic structure (as defined in section 191(d)(1) and the regulations thereunder). C uncovers and restores the original woodwork, wall coverings and molding throughout the building. The windows and doors are replaced with replicas of the original. The original interior floor plan and the exterior architectural uniqueness of the building are retained in the overall renovation of the building. The improvements made by C significantly preserve the building and enhance its historic value. The building is considered rehabilitated within the meaning of this subparagraph.

(4) *New construction distinguished*—(i) *In general.* Expenditures attributable to new construction do not qualify as rehabilitation expenditures. Whether expenditures are attributable to the rehabilitation of an existing building, or to new construction, is determined upon the basis of all the facts and circumstances. In general, however, in order for expenditures to be considered for rehabilitation and not for new construction, 75 percent or more of the existing external walls of the building must be retained in place as external walls in the rehabilitation process. See subparagraph (5) of this paragraph (b). Any expenditures attributable to an enlargement of a building (as defined in subdivision (ii) of this subparagraph) are considered expenditures for new construction, not for rehabilitation.

(ii) *Enlargement of a building.* A building is enlarged to the extent that the total volume of the building is increased. Thus, an increase in floor space resulting from interior remodelling is not considered an enlargement. Generally, the total volume of a building is equal to the product of the floor area of the building and the height from the underside of the lowest floor (including the basement) to the average height of the finished roof (as it exists or existed) above. For this purpose, floor area is measured from the exterior faces of external walls or from the centerline of walls separating buildings.

(5) *Retention of 75 percent of external walls*—(i) *In general.* A building meets the requirements set forth in paragraph (b)(1)(iii) only if 75 percent or more of the existing external walls (as measured by the total area of the existing external walls) are retained in place as external walls. For this purpose, the area of existing external walls includes the area of windows and doors.

(ii) *External wall.* An external wall is a wall, including its supporting elements, with one face exposed to the weather or earth. A common wall is not an external wall.

(iii) *Retained in place.* An external wall is retained in place even though it is covered (*e.g.*, with new siding) or reinforced. The existing curtain may also be replaced with a new curtain, provided that the structural framework that provides for the support of the existing curtain is retained in place. In addition, an external wall is retained in place notwithstanding that the existing doors and windows in an external wall are replaced or enlarged. An existing external wall is not retained in place, however, if the supporting elements of the wall are replaced.

(iv) *Retention as an external wall.* For purposes of meeting the 75 percent requirement of this subparagraph (5), an existing external wall must be retained in place as an external wall. If an addition is made that results in an existing external wall being converted into an internal wall, the wall is not retained in place as an external wall.

(v) *Special rule.* Solely for the purpose of meeting the 75 percent requirement of this subparagraph (5), the walls of an uncovered internal shaft designed solely to bring light or air into the center of a building which are completely surrounded by external walls of the building and which enclose space not designated for occupancy or other use by people (other than for maintenance

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or emergency) are not considered external walls. Thus, a wall of a light well in the center of an office building is not an external wall. However, walls surrounding an uncovered courtyard which is usable by the building's occupants, *e.g.*, at lunch time, are external walls.

(vi) *Examples.* The provisions of this subparagraph (5) may be illustrated by the following examples:

Example (1). Taxpayer A rehabilitated a building all of the walls of which consisted of wood siding attached to gypsum board sheets (which covered the studs). A covered the existing wood siding with aluminum siding in a part of a rehabilitation that otherwise qualified under this subparagraph. A satisfied the requirement that 75 percent of the existing external walls must be retained in place as external walls.

Example (2). Taxpayer B rehabilitated a building the external walls of which had a masonry curtain. The masonry on the wall face was replaced with a glass curtain. The steel beam and girders supporting the existing curtain were retained in place. B satisfied the requirement that 75 percent of the existing external walls must be retained in place as external walls.

Example (3). Taxpayer C rehabilitated a building which has two external walls measuring 75' x 20' and two other external walls measuring 100' x 20'. C tore down one of the larger walls, including its supporting elements, which accounted for more than 25% of the building's external walls and constructed a new wall. C has not satisfied the requirement that 75 percent of the existing external walls must be retained in place as external walls.

Example (4). The facts are the same as in example 3, except C does not tear down any walls, but makes an addition that results in one of the smaller walls becoming an internal wall. In addition, C englarged 8 of the existing windows on the larger walls, increasing them from a size of 3' x 4' to 6' x 8'. Since the smaller wall accounts for less than 25 percent of the total wall area (and assuming that the rehabilitation otherwise qualifies under this subparagraph), C has satisfied the requirement that 75 percent of the existing external walls must be retained in place as external walls in the rehabilitation process. The enlargement of the existing windows on the larger wall does not change this result.

(6) *Major portion treated as separate building*—(i) *In general.* Where there is a separate rehabilitation of a major portion of a building, such major portion shall be treated as a separate building. Thus, such major portion may qualify as a qualified rehabilitated building if the requirements of this paragraph are met with respect to such major portion.

(ii) *Major portion defined.* Whether a part of a building constitutes a major portion of the building is determined upon the basis of all the facts and circumstances. Factors such as volume, floor space, and functional differences between such part and other parts of the building are taken into consideration. In general, however, a part of a building is considered a major portion of the building only if it is comprised of contiguous portions of the building and is clearly identifiable (for example, the first 5 stories of a 7 story building or the east wing of a building). However, property or fixtures that service such a contiguous portion of the building may be considered part of the major portion. In addition, to constitute a major portion, a part of a building must be sufficiently large that it would be reasonable to treat it as a separate building. In the case of a leasehold interest of a part of a building, the leased part is considered a major portion of the building only if that part would be considered a major portion independent of the fact that it is subject to a lease.

(iii) *Example.* The provisions of this subparagraph (6) may be illustrated by the following example:

Example. Taxpayer A separately rehabilitated the lower 2 floors of a 4-story building. The lower 2 floors are devoted to retail shops, and the upper 2 floors are leased as offices. The lower 2 floors qualify as a major portion of the building, since these floors are functionally distinct from the upper floors and occupy a sufficiently large portion of the volume and area of the building.

(7) *Special rule for rehabilitation done in phases.* If rehabilitation which is not continuous is determined under this subparagraph to be a single rehabilitation done in phases, the requirements of this paragraph (b) are to be applied with respect to the overall rehabilitation and not merely to a phase of the rehabilitation. In such case, a phase of a single overall rehabilitation will not be considered as "prior rehabilitation" for purposes of subparagraph (2)(i)(B) of this paragraph (b). Whether rehabilitation which is not continuous is a single rehabilitation that is done in phases is determined on the basis of all the facts and circumstances. Generally, however, to constitute a single rehabilitation that is done in phases, there must exist, prior to the time any rehabilitation work is commenced, a written set of architectural plans and specifications for all phases of the rehabilitation of the building and a reasonable expectation that all phases of the rehabilitation will be completed, and the period between the time that physical work on the first phase of the overall rehabilitation is to begin and physical work on the last phase of the overall rehabilitation is to begin must be reasonable. Other factors that are relevant include the length of time between each phase of rehabilitation activities and the extent of rehabilitation activity in each phase.

(8) *Cross-reference.* For provisions relating to when property is considered placed in service, see § 1.46–3(d).

(c) *Definition of qualified rehabilitation expenditures*—(1) *In general.* Except as provided in subparagraph (2) of this paragraph, the term "qualified rehabilitation expenditure" means any amount—

(i) Properly chargeable to capital account (as described in subparagraph (2) of this paragraph),

(ii) Incurred after October 31, 1978, for property (or additions or improvements to property) with a useful life of five years or more, and

(iii) Made in connection with the rehabilitation of a qualified rehabilitated building.

(2) *Chargeable to capital account.* For purposes of subparagraph (1)(i) of this paragraph, amounts paid or incurred are chargeable to capital account if under the taxpayer's method of accounting they are properly includible in computing basis under § 1.46–3. Amounts treated as an expense and deducted in the year they are paid or incurred are not chargeable to capital account.

(3) *Incurred by the taxpayer*—(i) *In general.* Generally, to qualify for a credit under section 48(a)(1)(E), qualified rehabilitation expenditures must be incurred by the taxpayer after October 31, 1978. An expenditure is incurred for purposes of this paragraph on the date such expenditure would be considered incurred under the accrual method of accounting, regardless of the method of accounting used by the taxpayer with respect to other items of income and expense.

(ii) *Qualified rehabilitation expenditures treated as incurred by the taxpayer.* (A) Where qualified rehabilitation expenditures are incurred after October 31, 1978, by a person (or persons) and the taxpayer acquires the property attributable to such expenditures (or an interest therein) before such property is placed in service, the taxpayer will be treated as having incurred the expenditures at the time the building is acquired. This subdivision shall apply only if the rehabilitated property is not placed in service during the period beginning with the date the qualified rehabilitation expenditures were incurred by the transferor and ending on the date the taxpayer acquired an interest in the property.

(B) The amount of qualified rehabilitation expenditures treated as incurred by the taxpayer under this paragraph is the lesser of—

(*1*) The qualified rehabilitation expenditures incurred before the date on which the taxpayer acquired an interest in the property attributable to the expenditures, or

(*2*) That portion of the taxpayer's cost or other basis for the property attributable to the qualified rehabilitation expenditures incurred before such date.

The portion of the cost of acquiring a building (or an interest therein) which is not treated under this paragraph as qualified rehabilitation expenditures incurred by the taxpayer is not eligible for a credit under section 48(a)(1)(E). See subparagraph (8) (B) of this paragraph (c).

(iii) *Examples.* The provisions of this subparagraph may be illustrated by the following examples:

Example (1). In 1978, taxpayer A, a cash basis taxpayer, commenced the rehabilitation of a 30-year old building. In June 1978, A signed a contract with a plumbing contractor for replacement of the plumbing in the building. A agreed to pay the contractor as soon as the work was completed. The work was completed in September 1978, but A did not pay the amount due until November 1, 1978. The expenditures for the plumbing are not qualified rehabilitation expenditures because they were not incurred after October 31, 1978.

Example (2). A incurred qualified rehabilitation expenditures of $300,000 with respect to an existing building between January 1, 1980, and May 15, 1980, and then sold the building to B on June 1, 1980. If the property attributable to the expenditures was not placed in service by A during the period from January 1, 1980, to June 1, 1980, B will be treated as having incurred the expenditures.

(4) *Useful life.* The determination whether property has a useful life of five years or more is made by applying the principles of § 1.46–3(e). In the case of expenditures for property made by a lessee, see sections 167 and 178 and the regulations thereunder for rules relating to whether improvements made to leased property are depreciable or amortizable.

(5) *Made in connection with the rehabilitation of a qualified rehabilitated building.* Expenditures attributable to work done to facilities related to a building (*e.g.*, sidewalk, parking lot, landscaping) are not considered made in connection with a qualified rehabilitated building.

(6) *Certain expenditures excluded from qualified rehabilitation expenditures.* (i) The term "qualified rehabilitation expenditures" does not include the following expenditures:

(A) An expenditure for property which is "section 38 property" (determined without regard to section 48 (a)(1)(E) and (l)).

(B) The cost of acquiring a building or any interest in a building (including a leasehold interest) except as provided in paragraph (c)(3) of this section.

(C) An expenditure attributable to enlargement of a building as defined in paragraph (b)(4)(ii) of this section.

(D) An expenditure attributable to rehabilitation of a certified historic structure (as defined in section 191(d)(1) and the regulations thereunder), unless the rehabilitation is a certified rehabilitation (as defined in section 191 (d)(4) and the regulations thereunder).

(d) *Coordination with other provisions of the Code*—(1) *Credit by lessees*—(i) *Rehabilitation performed by lessor.* A lessee may take the credit for rehabilitation performed by the lessor if the requirements of this section and section 48(d) are satisfied.

(ii) *Rehabilitation performed by lessee.* A lessee may take the credit for rehabilitation performed by the lessee, provided that the property (or improvements or additions to property) for which the rehabilitation expenditures are made is depreciable by the lessee (see sections 167 and 178, and the regulations thereunder) and the requirements of this section are satisfied.

(2) *When credit may be claimed.* The investment credit for qualified rehabilitated buildings shall be allowed only in the taxable year in which the property to which the rehabilitation expenditures is attributable is placed in service. See § 1.46–3(d)(1).

(3) *Recapture.* If property described in section 48(a)(1)(E) is disposed of by the taxpayer, or otherwise ceases to be "section 38 property", recapture may result under section 47.

Jerome Kurtz,

Commissioner of Internal Revenue.

[FR Doc. 80-33489 Filed 10-23-80; 1:13 pm]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 884 and 935

Abandoned Mine Lands Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of Intent and Proposed Rule.

SUMMARY: On October 20, 1980, the State of Ohio submitted to OSM its proposed abandoned mine and land reclamation plan under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM is seeking public comment on the adequacy of the State plan.

DATES: Written comments on the plan must be received on or before 5:00 p.m., January 3, 1981. Written comments on whether OSM should hold a public hearing on the plan must be received by 5:00 p.m., November 17, 1980. A public hearing will be held on December 1, 1980 at 2:00 p.m. and will continue until all discussions have been completed. The hearing may be cancelled, as discussed under Supplementary Information, below.

ADDRESS: The public hearing, if held, will be in Room 112D, College Hall, Muskingum Area Technical College, 1555 Newark Road, Zanesville, Ohio 43701.

The hearing may be cancelled, as discussed under Supplementary Information below. Copies of the full text of the proposed Ohio plan are available for review during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Region III, Administrative Record Center, Public Review Facility—Room 511, Federal Building and U.S. Court House, 46 East Ohio Street, Indianapolis, Indiana 46204.

Ohio Department of Natural Resources, Division of Reclamation, Fountain Square, Columbus, Ohio 43224.

Written commments should be sent to: Edgar A. Imhoff, Regional Director, Office of Surface Mining, Federal Building and U.S. Court House, 46 East Ohio Street, Indianapolis, Indiana 46204.

The Administrative Record will be available for public review at the OSM Region III office above, on Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

FOR FURTHER INFORMATION CONTACT: Richard D. McNabb, Assistant Regional Director, AML, Office of Surface Mining, Federal Building and U.S. Court House, 46 East Ohio Street, Indianapolis, Indiana 46202, Telephone (317) 269–2647.

SUPPLEMENTARY INFORMATION: Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. 95–87, 30 U.S.C. 1201 et seq., establishes an abandoned mine land program for the purposes of reclaiming and restoring land and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to

August 3, 1977 and for which there is no continuing reclamation responsibility under State or Federal law.

Title IV provides that if the Secretary determines that a State has developed and submitted a program for reclamation of abandoned mines and has the ability and necessary State ligislation to implement the provisions of Title IV, the Secretary may approve the State program and grant to the State exclusive responsibility and authority to implement the provisions of the approved program.

On October 20, 1980, OSM received a proposed abandoned mine reclamation plan from the State of Ohio. The purpose of this submission is to demonstrate both the intent and capability to assume responsibility for administering and conducting the provisions of SMCRA and OSM's Abandoned Mine Lands (AML) Reclamation Program (30 CFR Chapter VII, Subchapter R) as published in the **Federal Register** (FR) on October 25, 1978, 43 FR 49932–49952.

This notice describes the proposed program and sets forth information concerning public participation in the Director's determination of whether or not the submitted plan may be approved. The public participation requirements for the consideration of a State AML Reclamation Plan are found in 30 CFR 884.13 and 884.14 (43 FR 49948 (1978)). Additional information may be found under corresponding sections of the preamble to OSM's AML Reclamation Program Final Rules (43 FR 49932–49940 (1978)).

The receipt of the Ohio Reclamation Plan submission is the first step in the process which will result in the establishment of a comprehensive program for the reclamation of abandoned mine lands in Ohio.

By submitting a proposed plan, Ohio has indicated that it wishes to be primarily responsible for this program. If the submission as hereafter modified, is approved by the Director of OSM, the State will have primary responsibility for the reclamation of abandoned mine lands in Ohio. If the program is disapproved and the State does not choose to revise the plan, a Federal AML program will be implemented and OSM will have primary responsibility for these activities.

All written comments must be mailed or hand carried to the Regional Director's Office above or may be hand carried to the public hearing, if a public hearing is found to be necessary and submitted as exhibits to the proceedings.

If the Regional Director finds that the State has given the public adequate notice and opportunity to comment in public hearings, and that the record of such hearing does not reflect major unresolved controversies and there are not a significant number of requests during the 15-day period to comment on the need for a hearing, the hearing may be cancelled by a notice published in the **Federal Register** cancelling the scheduled hearing.

Written comments on the issue of waiver of the public hearing must be received by 5:00 p.m., November 17, 1980.

Pursuant to 30 CFR 884.13, OSM will continue the period of review of the proposed Ohio Reclamation Plan at least until a final decision is made by the Secretary of the Interior on the Ohio permanent regulatory program.

The comment period will close at 5:00 p.m., on January 3, 1981. Comments received after that time will not be considered. Representatives of the Regional Director's Office will be available to meet between 8:00 a.m. and 4:00 p.m. at the request of members of the public to receive their advice and recommendations concerning the proposed State AML reclamation program.

Persons wishing to meet with representatives of the Regional Director's Office during this time period may place such request with Ron Lennard, Public Information Officer, telephone 317/269–2603 at the Regional Director's Office above.

Meetings may be scheduled between 8 a.m. and 4:00 p.m. Monday through Friday excluding holidays at the Regional Director's Office.

The Department intends to continue to discuss the State's plan with representatives of the State throughout the review process. All contacts between Departmental personnel and representatives of the State will be conducted in accordance with OSM's guidelines on contacts with States published September 19, 1979 at 44 F.R. 54444.

No Environmental Impact Statement is being prepared in connection with the process leading to the approval or disapproval of the proposed program. The approval of State AML reclamation plans does not have significant environmental impact, but is only a procedural change in terms of the governmental entity that will be performing the work.

The Director has determined that this is not a significant rule within the meaning of 43 CFR Part 14 and no regulatory analysis is being prepared on the Director's decision relating to the Ohio Reclamation Plan for Abandoned Mine Lands.

The Ohio Reclamation Plan for Abandoned Mine Lands can be approved if:

1. The Director finds that the public has been given adequate notice and opportunity to comment, and the record does not reflect major unresolved controversies.
2. Views of other Federal agencies have been solicited and considered.
3. The State has the legal authority, policies and administrative structure to carry out the plan.
4. The plan meets all the requirements of the OSM, AML Reclamation Program Provisions.
5. The State has an approved Regulatory Program, and
6. It is determined that the plan is in compliance with all applicable State and Federal laws and regulations.

The following constitutes a summary of the contents of the Ohio State Reclamation Plan submission:

The Ohio Department of Natural Resources has been designated by the Governor of the State of Ohio to implement and enforce the Abandoned Mine Lands Program in accordance with SMCRA (Pub. L. 95–87). The Division of Reclamation has developed State regulations to carry out State mandate. Contents of the State Plan submission include:

(a) Designation of authorized State Agency to administer the program.

(b) State's Chief Legal Officers opinion of designated Agency to operate the program.

(c) Description of the policies and procedures to be followed in conducting the program including:

(1) Goals and objectives.

(2) Project ranking and selection procedures.

(3) Coordination with other reclamation programs.

(4) Land acquisition, management and disposal.

(5) Reclamation on private land.

(6) Rights of Entry.

(7) Public participation in the program.

(d) Description of the Administrative and Management structure to be used in the program including:

(1) Description of the organization of the designated agency and its relationship to other organizations that will participate in the program.

(2) Personnel staffing policies.

(3) Purchasing and procurement systems and policies.

(4) Description of the accounting system including specific procedures for operation of the reclamation fund.

(e) Description of the public's participation in preparation of the plan.

(f) A general description of activities to be conducted under the reclamation plan including:

(1) Known or suspected eligible lands and water requiring reclamation, including a map.

(2) General description of the problems identified and how the plan proposes to deal with them.

(3) General description of how the lands to be reclaimed and proposed reclamation relate to the surrounding lands and land uses.

(4) A table summarizing the quantities of land and water affected and an estimate of the quantities to be reclaimed during each year covered by the plan.

(5) General description of the social, economic, and environmental conditions in the different geographic areas where reclamation is planned, including:

(i) The economic base.

(ii) Sociologic and demographic characteristics.

(iii) Significant aesthetic, historic or cultural, and recreational values.

(iv) Hydrology including water quality and quantity problems associated with past mining.

(v) Flora and fauna including endangered or threatened species and their habitat.

(vi) Underlying or adjacent coal beds and other minerals and projected methods of extraction.

(vii) Anticipated benefits from reclamation.

Dated: October 22, 1980.

Paul L. Reeves,

Deputy Director.

[FR Doc. 80-33549 Filed 10-27-80; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

National Security Agency

32 CFR Part 299a

[NSA/CSS Regulation 10-35]

Privacy Act Systems of Records-Disclosure and Amendment Procedures-Specific Exemptions

AGENCY: National Security Agency.

ACTION: Notice of proposed rulemaking—exemption rule.

SUMMARY: This proposed rule establishes specific exemptions from certain portions of Public Law 93–579, The Privacy Act of 1974 for a proposed new systems records, identified as GNSA 13, NSA/CSS Archival Records File. The National Security Agency (NSA) has established a repository pursuant to authority delegated by the National Archives and Records Service of the General Services Administration to provide secure storage, except review for declassification and categorization and preservation of cryptographic archives. File retrieval will be by subject matter and, in certain case, by name or other unique individual identifier. Exemptions are needed to protect properly classified material and certain data required by statute to be maintained and used solely for statistical purposes from compromise. Exemptions for these purposes are authorized by subsections 5 U.S.C. 552a(k)(1) and k(4) of the Act respectively.

DATES: Comments must be received by 1 December 1980.

ADDRESS: Comments should be sent to the Office of General Counsel, National Security Agency, Fort George G. Meade, MD 20755.

FOR FURTHER INFORMATION CONTACT: LCdr M. E. Bowman, JAGC, USN, Telephone: (Area code 301) 688–6054.

SUPPLEMENTARY INFORMATION: This proposed specific exemption rule is to be added to the existing NSA exemption rules of systems of records subject to The Privacy Act of 1974. The NSA exemption rules were published in the **Federal Register** on September 28, 1978, at 44 FR 51484. Accordingly, this proposed amendment, if adopted, will add a subsection 299a.10(b)(13) to 32 CFR Part 299a which will read as follows:

§ 299a.10 Specific exemptions.

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SYSTEM NAME: NSA/CSS Archival Records.

EXEMPTION: This system is exempted from the sections of Title 5 U.s.C. 552a cited in paragraph 299a.10(a) and is subject to the statutory limitations noted in that paragraph.

AUTHORITY: 5 U.S.C. 552a(k)(1) and (k)(4).

REASONS: This system of records is exempted from all subsections cited pursuant to exemption (k)(1) to protect from unauthorized disclosure classified information which may be contained in records and files making up the system. The exemption does not limit access to that portion of the records in the system which are not classified or otherwise protected from unauthorized disclosure.

This system is exempted from all subsections cited pursuant to exemption (k)(4) where individual records and files are maintained and used solely for statistical compliance with those requirements with a minimum of administrative burden and expense.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

[FR Doc. 80-33555 Filed 10-27-80; 8:45 am]

BILLING CODE 3810-70-M

Department of the Army

32 CFR Part 505

[Army Regulation 340-21]

Personal Privacy and Rights of Individuals Regarding Personal Records; Exemptions

AGENCY: Department of the Army.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Army is amending exemption rules for fifteen Army systems of records subject to the Privacy Act. Exemptions rules for these fifteen exempted records systems are amended to delete redundant specific exemptions claimed. Additionally, three rules are reidentified and redescribed for clarity and agreement with the system notices to which they apply, i.e., A0201.08b is changed to A0240.01; A0202.08 is changed to A0239.01; and A0401.108 is changed to A401.08. The exemption rules, as proposed to be amended, are printed below in their entirety.

EFFECTIVE DATE: Comments must be received on or before November 28, 1980.

ADDRESS: Comments should be sent to Headquarters, Department of the Army, The Adjutant General Office, Washington, D.C. 20310.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Christian, telephone (area code 202) 693–0973.

SUPPLEMENTARY INFORMATION: The Department of the Army exemption rules were published in the **Federal Register** of September 28, 1979 at 45 FR 51486.

Accordingly,§ 505.9(b) of 32 CFR Part 505 is proposed to be amended by revising exemptions A0225.01aDAPE, A0239.01DAAG, A0240.01DAAG, A0401.08DAJA, A0501.08eUSACIDC, A0508.09DAPE, A0508.11aUSACIDC, A0508.11bUSACIDC, A0508.16DAPE, A0508.17DAPE, A0508.24aDAPE, A0508.25aUSACIDC, A0509.09aDAPE, A0509.18bDAPE, and A0509.21DAPE:

§ 505.9 Exemption rules for Army systems of records.

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EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0225.01aDAPE

SYSNAME—Military Police Management Information System (NPMIS)—Correctional Reporting System (CRS).

EXEMPTION—All portions of this system which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g).

AUTHORITY—5 U.S.C. 552a(j)(2).

REASONS—From subsection (c)(3) because the release of accounting of disclosures would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations. From subsection (d) because granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with the orderly administration of justice. Disclosure of this information could jeopardize the safety and well being of information sources, correctional supervisors and other confinement facility administrators. Disclosure of the information could also result in the invasion of privacy of persons who provide information used in developing individual correctional treatment programs. Further, disclosure could result in a determination of a prisoner's self-image and adversely affect meaningful relationships between a prisoner and his counselor or supervisor. These factors are essential to the rehabilitation process.

Exemption from the remaining provisions is predicated upon the exemption from disclosure or upon the need for proper functioning of correctional programs.

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EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0239.01DAAG

SYSNAME—Request for Information Files.

EXEMPTION—Portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g). Portions of the system maintained by Offices of Initial Denying Authorities which do not have a law enforcement mission and which fall within 5 U.S.C. 552a(k)(1) through (k)(7) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

AUTHORITY—5 U.S.C. 552a(j)(2) and (k)(1) through (k)(7).

REASONS—This system of records is maintained solely for the purpose of administering the Freedom of Information Act and processing routine requests for information. To insure an accurate and complete file on each case, it is sometimes necessary to include copies of records which have been the subject of a Freedom of Information Act request. This situation applies principally to cases in which an individual has been denied access and/or amendment of personal records under an exemption authorized by Title 5 U.S.C. section 552. The same justification for the original denial would apply to a denial of access to copies maintained in the Freedom of Information Act file. It should be emphasized that the majority of records in this system are available on request to the individual and that all records are used solely to process requests. This file is not used to make any other determinations on the rights, benefits or privileges of individuals.

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EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0240.01DAAG

SYSNAME—Privacy Act Case Files.

EXEMPTIONS—Portions of this system which fall within 5 U.S.C. 552a (j)(2) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g). Portions of this system maintained by the DA Privacy Review Board and by those Access and Amendment Refusal Authorities which do not have a law enforcement mission and which fall within 5 U.S.C. 552a(k)(1) through (k)(7) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

AUTHORITY—5 U.S.C. 552a(j)(2) and (k)(1) through (k)(7).

REASONS—This system of records is maintained solely for the purposes of administering the Privacy Act of 1974. To insure an accurate and complete file on each case, it is sometimes necessary to include copies of records which have been the subject of a Privacy Act request. This situation applies principally to cases in which an individual has been denied access and/or amendment of personal records under an exemption authorized by Title 5 U.S.C. section 552a. The same justification for the original denial would apply to a denial of access and/or amendment of copies maintained in the Privacy Act Case File. It should be emphasized that the majority of records in this system are available on request to the individual and that all records are used solely to administer Privacy Act requests. This file is not used to make any other determinations on the rights, benefits or privileges of individuals.

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EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0401.08DAJA

SYSNAME—Prosecutorial Files.

EXEMPTION—Portions of this system of records which fall within 54 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f) and (g).

AUTHORITY—5 U.S.C. 552a(j)(2).

REASONS—From subsection (c)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g) because granting individuals access to information collected and maintained by this component relating to the enforcement of laws could interfere with proper investigations and the orderly administration of justice. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges; and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation. Exemption from access necessarily includes exemption from other requirements.

From subsection (c)(3) because the release of accounting of disclosure would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

From subsection (e)(2) because in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a serious impediment to effective law enforcement.

From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

From subsection (e)(8) because compliance with this provision would provide an impediment to law enforcement by interfering with the ability to issue warrants or supoenas and by revealing investigative techniques, procedures of evidence.

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EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0501.06e USACIDC

SYSNAME—Informant Register.

EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g).

AUTHORITY—5 U.S.C. 552a(j)(2).

REASONS—From subsection (c)(3) because release of accounting of disclosures would provide the informant with significant information concerning the nature of a particular investigation, the internal methods and techniques involved in criminal investigation, and the investigative agencies (state, local or foreign national) involved in a particular case resulting in a serious compromise of the criminal law enforcement processes.

From subsections (c)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g) because disclosure of portions of the information in this system of records would seriously impair the prudent and efficient handling of these uniquely functioning individuals; hamper the inclusion of comments and evaluations concerning the performance, qualification, character, identity, and propensities of the informant; and prematurely compromise criminal investigations which either concern the conduct of the informant himself or investigations wherein he/she is integrally or only peripherally involved. Additionally, the exemption from access necessarily includes exemption from amendment, certain agency requirements relating to access and amendment of records and civil liability predicated upon agency compliance with specific provisions of the Privacy Act.

Subsection (d), (e)(4)(G), (e)(4)(H), and (f) are also necessary to protect the security of information properly classified in the interest of national defense and foreign policy.

From subsection (e)(1) because the nature of the criminal investigative function creates unique problems in prescribing what information concerning informants is relevant or necessary. Due to close liaison and existing relationships with other Federal, state, local and foreign national law enforcement agencies, information about informants may be received which may relate to a case then under the investigative jurisdiction of another Government agency but it is necessary to maintain this information in order to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of both the USACIDC and other agencies. Additionally, the failure to maintain all known information about informants could affect the effective utilization of the individual and substantially increase the operational hazards incumbant in the employment of an informant in very compromising and sensitive situations.

From subsection (e)(2) because collecting information from the informant would potentially thwart both the criminal investigative process and the required management control over these individuals by appraising the informant of investigations or management actions concerning his involvement in criminal activity or with USACIDC personnel.

From subsection (e)(3) because supplying an informant with a form containing the information specified could result in the compromise of an investigation, tend to inhibit the cooperation of the informant, and render ineffectual investigative techniques and methods utilized by USACIDC in the performance of its criminal law enforcement duties.

From subsection (e)(5) because this requirement would unduly hamper the criminal investigative process due to type of records maintained and necessity for rapid information retrieval and dissemination. Also, in the collection of information about informants, it is impossible to determine what information is then accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation or contact brings new details to light. In the criminal investigative process, accuracy and relevance of information concerning informants can only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators to exercise their judgment in reporting information relating to informant's actions and would impede the development of criminal intelligence necessary for effective law enforcement.

From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to criminal law enforcement by revealing investigative techniques, procedures, and the existence of confidential investigations.

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EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0508.09DAPE

SYSNAME—FBI Criminal-Type Reporting Files.

EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

AUTHORITY—5 U.S.C. 552a(j)(2).

REASONS—From subsections (c)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g) because granting individuals access to information collected and maintained by this component relating to the enforcement of laws could interfere with proper investigations and the orderly administration of justice. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges; and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation. Exemption from access necessarily includes exemption from the other requirements.

From subsection (c)(3) because the release of accounting of disclosure would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

From subsection (e)(2) because in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a

serious impediment to effective law enforcement.

From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

From subsection (e)(8) because compliance with this provision would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques procedures or evidence.

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EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0508.11aUSACIDC

SYSNAME—Criminal Investigation and Crime Laboratory Files.

EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g).

AUTHORITY—5 U.S.C. 552a(j)(2)

REASONS—From subsection (c)(3) because the release of accounting of disclosures would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning coordinated investigative effort and techniques and the nature of the investigation, resulting in a serious impediment to criminal law enforcement activities or the compromise of properly classified material.

From subsection (c)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g) because access might compromise ongoing investigations, reveal classified information, investigatory techniques or the identity of confidential informants, or invade the privacy of persons who provide information in connection with a particular investigation. The exemption from access necessarily includes exemption from amendment, certain agency requirements relating to access and amendment of records, and civil liability predicated upon agency compliance with those specific provisions of the Privacy Act. The exemption from access necessarily includes exemptions from the other requirements.

From subsection (e)(1) because the nature of the investigative function creates unique problems in prescribed specific perimeters in a particular case as to what information is relevant or necessary. Also due to close liaison and working relationships with other Federal, State, local and foreign national law enforcement agencies, information may be received which may relate to a case then under the investigative jurisdiction of another Government agency but it is necessary to maintain this information in order to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of both the USACIDC and other agencies.

From subsection (e)(2) because collecting information from the subject of criminal investigations would thwart the investigative process by placing the subject of the investigation on notice thereof.

From subsection (e)(3) because supplying an individual with a form containing the information specified could result in the compromise of an investigation, tend to inhibit the cooperation of the individual queried, and render ineffectual investigation techniques and methods utilized by USACIDC in the performance of their criminal law enforcement duties.

From subsection (e)(5) because this requirement would unduly hamper the criminal investigative process due to the great volume of records maintained and the necessity for rapid information retrieval and dissemination. Also, in the collection of information for law enforcement purposes, its impossible to determine what information is then accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. In the criminal investigative process, accuracy and relevance of information can only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement.

From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to criminal law enforcement by revealing investigative techniques, procedures, and the existence of confidential investigations.

EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0508.11bUSACIDC

SYSNAME—Criminal Information Reports and Cross Index Card Files.

EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of 5 U.S.C. 552a: (c)(3), (c)(4), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g).

AUTHORITY—5 U.S.C. 552a(j)(2).

REASONS—From subsection (c)(3) because the release of accounting of disclosures would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning coordinated investigative effort and techniques and the nature of the investigation, resulting in a serious impediment to criminal law enforcement activities or the compromise of properly classified material.

From subsection (e)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g) because access might compromise ongoing investigations, reveal investigatory techniques and the identity of confidential informants, and invade the privacy of persons who provide information in connection with a particular investigation. The exemption from access necessarily includes exemption from amendment, certain agency requirements relating to access and amendment of records, and civil liability predicated upon agency compliance with those specific provisions of the Privacy Act. In addition, subsections (d), (e)(4)(G), (e)(4)(H), and (f) are necessary to protest the security of information properly classified in the interest of national and foreign policy.

From subsection (e)(1) because the nature of the criminal investigative function creates unique problems in prescribing specific perimeters in a particular case what information is relevant or necessary. Also, due to close liaison and working relationships with other Federal, State, local and foreign national law enforcement agencies, information may be received which may relate to a case then under the investigative jurisdiction of another Government agency but it is necessary to maintain this information in order to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of both the CID and other agencies.

From subsection (e)(2) because collecting information from the subject of criminal investigations would thwart the investigative process by placing the subject of the investigation on notice thereof.

From subsection (e)(3) because supplying an individual with a form containing the information specified could result in the compromise of an investigation, tend to inhibit the cooperation of the individuals queried,

and render ineffectual investigative techniques and methods utilized by USACIDC in the performance of their criminal law enforcement duties.

From subsection (e)(5) because this requirement would unduly hamper the criminal investigative process due to the great volume of records maintained and the necessity for rapid information retrieval and dissemination. Also, in the collection of information for law enforcement purposes, it is impossible to determine what information is then accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. In the criminal investigative process, accuracy and relevance of information can only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators to exericse their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement.

From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to criminal law enforcement by revealing investigative techniques, procedures, and the existence of confidential investigations.

EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0508.16DAPE

SYSNAME—Absentee Case Files

EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

AUTHORITY—5 U.S.C. 552a(j)(2).

REASONS—From subsection (c)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g) because granting individuals access to information collected and maintained by this component relating to the enforcement of laws could interfere with proper investigations and the orderly administration of justice. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges; and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation. Exemption from access necessarily includes exemption from the other requirements.

From subsection (c)(3) because the release of accounting of disclosure would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

From subsection (e)(2) because in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a serious impediment to effective law enforcement.

From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

From subsection (e)(8) because compliance with this provision would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures, or evidence.

EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0508.17DAPE

SYSNAME—Military Police Reporting Files.

EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

AUTHORITY—5 U.S.C. 552a(j)(2).

REASONS—From subsection (c)(4), (d), (e)(4)(G), (e)(4)(H), (e)(4)(I), (f), and (g) because granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly investigations and the orderly administration of justice. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges, and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation.

From subsection (c)(3) because the release of accounting of disclosure would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

From subsection (e)(2) because in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a serious impediment to effective law enforcement.

From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it would compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

From subsection (e)(8) because compliance with this provision would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures, or evidence.

EXEMPTED RECORD SYSTEMS

(Specific Exemptions)

ID—A0508.24aDAPE

SYSNAME—Serious Incident Reporting Files.

EXEMPTION—All portions of this system of records which fall within a 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

AUTHORITY—5 U.S.C. 552a(j)(2).

REASONS—From subsections (c)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g) because granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly investigations and the orderly administration of justice. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of

charges; and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation. Exemption from access necessarily includes exemption from the other requirements.

From subsection (c)(3) because the release of accounting of disclosure would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

From subsection (e)(2) because in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a serious impediment to effective law enforcement.

From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

From subsection (e)(8) because compliance with this provision would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures or evidence.

EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0508.25aUSACIDC

SYSNAME—Index to Criminal Investigative Case Files.

EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of 5 U.S.C. 552a: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g).

AUTHORITY— 5 U.S.C. 552a(j)(2).

REASONS—From subsection (c)(3) because the release of accounting of disclosures would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning coordinated investigative effort and techniques and the nature of the investigation, resulting in a serious impediment to criminal law enforcement activities or the compromise of properly classified material.

From subsection (c)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g) because access might compromise ongoing investigations, reveal investigatory techniques and the identity of confidential informants, and invade the privacy of persons who provide information in connection with a particular investigation. The exemption from access necessarily includes exemption from amendment, certain agency requirements relating to access and amendment of records, and civil liability predicated upon agency compliance with those specific provisions of the Privacy Act. In addition, subsections (d), (e)(4)(G), (e)(4)(H) and (f) are necessary to protect the security of information properly classified in the interest of national and foreign policy.

From subsection (e)(1) because the nature of the criminal investigative function creates unique problems in prescribing specific perimeters in a particular case what information is relevant or necessary. Also, due to close liaison and working relationships with other Federal, State, local and foreign national law enforcement agencies, information may be received which may relate to a case then under the investigative jurisdiction of another Government agency but it is necessary to maintain this information in order to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of both the CID and other agencies.

From subsection (e)(2) because collecting information from the subject of criminal investigations would thwart the investigative process by placing the subject of the investigation on notice thereof.

From subsection (e)(3) because supplying an individual with a form containing the information specified could result in the compromise of an investigation, tend to inhibit the cooperation of the individuals queried, and render ineffectual investigative techniques and methods utilized by USACIDC in the performance of their criminal law enforcement duties.

From subsection (e)(5) because this requirement would unduly hamper the criminal investigative process due to the great volume of records maintained and the necessity for rapid information retrieval and dissemination. Also, in the collection of information for law enforcement purposes, it is impossible to determine what information is then accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. In the criminal investigative process, accuracy and relevance of information can only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement.

From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to criminal law enforcement of revealing investigative techniques, procedures, and the existence of confidential investigations.

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EXEMPTED RECORD SYSTEMS

(General Exemptions

ID—A0509.09aDAPE

SYSNAME—Traffic Law Enforcement Files.

EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

AUTHORITY—5 U.S.C. 552a(j)(2).

REASONS—From subsections (c)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g), because granting individuals access to information collected and maintained by this component relating to the enforcement of laws could interfere with proper investigations and the orderly administration of justice. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges; and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation. Exemption from access necessarily includes exemption from the other requirements.

From subsection (c)(3) because the release of accounting of disclosure would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

From subsection (e)(2) because in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a serious impediment to effective law enforcement.

From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

From subsection (e)(8) because compliance with this provision would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures or evidence.

EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0509.18bDAPE

SYSNAME—Expelled or Barred Person Files.

EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

AUTHORITY—5 U.S.C. 552a(j)(2).

REASONS—From subsections (c)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g) because granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly investigations and the orderly administration of justice. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, and the nature and disposition of charges; and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation.

From subsection (c)(3) because the release of accounting would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

From subsection (e)(2) because in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a serious impediment to effective law enforcement.

From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

From subsection (e)(8) because compliance with this provision would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures or evidence.

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EXEMPTED RECORD SYSTEMS

(General Exemptions)

ID—A0509.21DAPE

SYSNAME—Local Criminal Information Files.

EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

AUTHORITY—5 U.S.C. 552a(j)(2).

REASONS—From subsections (c)(4), (d), (e)(4)(G), (e)(4)(H), (f) and (g) because granting individuals access to information collected and maintained by this component relating to the enforcement of laws could interfere with proper investigations and the orderly administration of justice. Disclosure of this information could result in the concealment, alternation or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges; and jeopardize the safety and well being of informants, witnesses and their families, and law inforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation. Exemption from access necessarily includes exemption from the other requirements.

From subsection (c)(3) because the release of accounting of disclosure would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

From subsection (e)(2) because in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent practible from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a serious impediment to effect law enforcement.

From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identify of witnesses or confidential informants.

From subsection (e)(8) because compliance with this provision would provide an impediment of law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures or evidence.

M. S. Healy,

OSD Federal Register Liaision Officer Washington Headquarters Services Department of Defense.

October 21, 1980.

[FR Doc. 80-33496 Filed 10-27-80; 8:45 am]

BILLING CODE 3710-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-10-FRL 1644-1]

Approval and Promulgation of Michigan Implementation Plan—Ozone

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: This notice proposes approval of the ozone control strategy and transportation control plans for Niles, Michigan, a portion of the South Bend, Indiana urbanized area. The State of Michigan submitted these revisions to the U.S. Environmental Protection Agency to satisfy the requirements of Part D of the Clean Air Act. The purpose of this notice is to discuss the results of USEPA's review of these submittals, to

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propose rulemaking action and to invite public comment on the SIP revision.

DATE: Comments on the revision and on USEPA's proposed rulemaking are due by November 28, 1980.

ADDRESSES: Copies of these SIP revisions are available for public inspection during normal business hours at the following addresses:

United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

United States Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 20460.

Michigan Department of Natural Resources, Air Quality Division, State Secondary Government Complex, General Office Building, 7150 Harris Drive, Lansing, Michigan 48917.

Written comments should be sent to: Mr. Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, U.S. Enviromental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Judy Kertcher, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6038.

SUPPLEMENTARY INFORMATION:

General Information

On March 3, 1978 (43 FR 8962) and October 5, 1978 (43 FR 45993), pursuant to the requirements of section 107 of the Clean Air Act (Act) as amended, USEPA designated certain areas in each state as not meeting the National Ambient Air Quality Standards (NAAQS) for various pollutants. These areas are delineated at 40 CFR Part 81. Part D of the Act, which was added by the 1977 Amendments, requires each State to revise its State Implementation Plan (SIP) to meet specific requirements for areas designated as nonattainment. These SIP revisions must demonstrate attainment of the primary standard as expeditiously as practicable, but not later than December 31, 1982. Under certain conditions that date may be extended to no later than December 31, 1987, for ozone and or carbon monoxide.

On April 25, 1979, the State of Michigan submitted plans for all of the designated ozone and carbon monoxide nonattainment areas in the State. Additional material concerning ozone attainment was submitted by the State on October 26, 1979, and on November 8, 1979. On December 26, 1979, the State of Michigan submitted transportation control plans (TCPs) for the major urban areas in the State. USEPA announced receipt and availability of these SIP revisions on March 14, 1980 (45 FR 16504). On August 8, 1980, the State submitted additional information on the transportation control plans (TCPs) for Niles, Michigan, a portion of the South Bend, Indiana urbanized area. As defined by the U.S. Bureau of the Census in 1970, this area includes the urbanized portions of Cass and Berrien Counties.

In the April 14, 1980 **Federal Register** (45 FR 25087, 25093), USEPA proposed approval of the ozone attainment demonstrations and TCPs for the Detroit, Flint, Lansing and Grand Rapids urban areas. At that time, USEPA also proposed approval of the ozone control strategy for rural counties in the State of Michigan, including Berrien and Cass Counties (45 FR 25087). These rulemaking actions were finalized on June 2, 1980 (45 FR 37188, 37192). At that time, however, USEPA's final rulemaking action approved the plans only for the nonurbanized portions of Berrien and Cass Counties. USEPA stated that action on the plan for urbanized portions of those two counties would be proposed in a separate **Federal Register** notice. On August 8, 1980 the State of Michigan submitted the remaining required information on the TCPs for the Niles area. This notice addresses the ozone control strategy and TCPs for those urbanized areas of Berrien and Cass Counties not approved in the June 2, 1980 **Federal Register** (45 FR 37188, 37192). USEPA solicits public comment on the SIP revision and on USEPA's proposed rulemaking action.

A thirty day comment period is being used to enable publication of final action on the SIP revision as soon as possible. Final action approving the revision would remove the new source growth prohibitions mandated by section 110(a)(2)(I) of the Clean Air Act for all nonattainment areas lacking a federally approved SIP.

Requirements for Transportation Control Plans and Demonstrations of Attainment

USEPA has evaluated the transportation control plan and the attainment demonstration using the requirements for an approvable nonattainment area SIP which appeared in the April 4, 1979 **Federal Register** (44 FR 20372), the "USEPA-USDOT Guideline for Air Quality—Transportation Plans" and the office of Transportation and Land Use Policy "Checklist for Transportation SIPs." To assist the public in preparing comments on the proposed SIP revisions, a summary of the principal requirements is presented below.

1. Technical Assessments, Demonstrations of Attainment, and Reasonable Further Progress. Section 175 of the Act states that the SIP must include a program for selecting transportation measures to attain the emission reduction targets of the SIP. This program must include schedules for the expeditious implementation of adopted transportation measures and schedules for the analysis and adoption of additional transportation measures.

The April 4, 1979 **Federal Register** and its supplements describe the requirements for acceptable attainment demonstrations. A brief summary follows:

a. A definition of the geographic areas covered by the plan.

b. An accurate, comprehensive, and current emission inventory.

c. Emission reduction estimates for each adopted or scheduled control measure or for related groups of control measures.

d. A determination of the level of control needed to demonstrate attainment of the primary NAAQS by 1982 (1987 if attainment cannot be made by 1982 for ozone or carbon monoxide). This should include a consideration of future emission growth.

e. A provision for reasonable further progress (RFP) toward attainment of the primary standards prior to 1982 or 1987.

f. A provision for the annual reporting on the progress toward meeting the compliance schedules outlined in the SIP.

g. An identification and quantification of an emissions growth increment, which will allow for major new or modified stationary sources. Alternatively, an emission offset approach can be adopted to accommodate new sources.

2. Interagency Agreements and Assignments of Tasks. Pursuant to section 174 of the Act, the State and elected officials of affected local governments must determine respective responsibilities of the state air pollution control agency, other state agencies, the lead local agencies, and local units of government. This determination must identify the responsibilities for strategy evaluation, adoption, implementation, and enforcement.

3. Analysis of Alternatives. Pursuant to section 172(b)(2) of the Act, all reasonably available transportation measures must be evaluated and considered for implementation. At a minimum, the strategies listed in section 108(f) of the Act must be considered for each nonattainment area needing transportation related emission reductions. Areas that need an extension of the attainment date for carbon monoxide or ozone must commit to establish, expand or improve public transit and to meet basic transportation needs (Section 110(a)(3)(D) and 110(c)(5)(B)).

4. Implementor Commitments. Pursuant to section 172(b)(10) to the Act, the SIP must include written evidence that the State and other units of government have adopted the necessary requirements in legally enforceable form. Further, the SIP must contain commitments to implement and enforce the SIP strategy as well as annual emission reduction goals.

5. Financial and Manpower Resources. Pursuant to section 172(b)(7) of the Act, the SIP must identify the fiscal resources necessary to carry out the plan provisions.

6. Reporting of Progress. Pursuant to section 172(b)(5) of the Act, the SIP must contain procedures and schedules for periodic monitoring of progress in implementing strategies and in achieving annual emission reductions. Section 176(c) of the Act requires that the lead local agency determine the conformity of its transportation control plan and programs with the SIP.

7. Impacts of Plan Provisions. Pursuant to section 172(b)(9)(A) of the Act, the SIP must identify and analyze the air quality, health, welfare, economic, energy, and social effects of the plan provisions and the alternatives considered.

8. Public Participation. Pursuant to section 172(b)(9) of the Act, the SIP must contain evidence of public, local government and State legislative involvement and consultation regarding the planning process and proposal.

9. Strategies. Each State Implementation Plan must include strategies which will be used to demonstrate attainment of the NAAQS.

USEPA has reviewed the transportation control plans and ozone attainment demonstration for the urbanized areas of Cass and Berrien Counties, Michigan, to determine if they satisfy these requirements. USEPA proposes to approve the transportation control plans and the ozone attainment demonstration for the urbanized areas of Cass and Berrien Counties, Michigan, as discussed below.

Based on observed exceedances of the ozone standard (0.12 ppm) during the 1975 through 1978 period, the State of Michigan designated the Cass and Berrien Counties as nonattainment for ozone. The nonattainment designation of the Michigan counties was based on the statistical evaluation approach for the determination of the expected number of violations as outlined in "Guideline for Interpretation of Ozone Air Quality Standards" (EPA-450/4-790003).

The transportation control plan for the Niles area was prepared by the Michiana Area Council of Governments (MACOG), in cooperation with the Southwestern Michigan Regional Planning Commission (SWMRPC). The Governor designated SWMRPC as the lead local agency for the Niles, Michigan portion of the South Bend, Indiana urbanized area. The ozone control strategy includes transportation control measures which are designed to reduce hydrocarbon emission levels. The control strategy, however, relies primarily on hydrocarbon emission reductions resulting from the Federal Motor Vehicle Control Program (FMVCP) and implementation of reasonably available control technology (RACT) on stationary sources. Michigan's hydrocarbon control strategy for stationary sources was conditionally approved in the May 6, 1980 **Federal Register** (45 FR 29790).

The South Bend urbanized area has a population of approximately 286,000, which is spread over a total land area of about 103 square miles (U.S. Bureau of the Census, 1970). The population of the Niles area is about 13,000 and the urbanized area is approximately five square miles. According to the 1977 emission inventory for the South Bend urbanized area, Niles produced nine percent of the total hydrocarbon emissions for the area. As a result of RACT requirements, stationary sources of hydrocarbon emissions in the urbanized areas of Cass and Berrien Counties, Michigan, are projected to decrease from 2,070 tons in 1977 to 720 tons by the end of 1982, a reduction of sixty-five percent. For mobile sources, the Federal Motor Vehicle Control Program (FMVCP) will reduce hydrocarbon emissions from 770 tons in 1977 to 490 tons by the end of 1982, a reduction of thirty-six percent. This is an overall reduction in hydrocarbon emissions of 1,630 tons or fifty-seven percent in the Niles area. Based on information submitted by the State, an overall reduction in hydrocarbon emissions of eleven percent in the entire South Bend urbanized area is required to demonstrate attainment of the ozone standard by 1982. The required emission reduction was calculated using a design value of .138 and the modified linear rollback approach. Based on RACT stationary source emission reductions in Cass and Berrien Counties and Federal Motor Vehicle Control Program emission reduction in the entire interstate urbanized area, sufficient emission reductions are projected to demonstrate attainment in the urbanized areas of Cass and Berrien Counties by the statutory deadline. USEPA will propose action on the Indiana portion of the urbanized area in a separate **Federal Register** notice.

The State of Michigan's submittal of August 8, 1980, satisfies the requirements of section 172(b)(2) of the Clean Air Act (Act), that all reasonable available transportation measures must be evaluated and considered for implementation. Appropriate strategies have been submitted for inclusion in the SIP. The State's submittal of August 8, 1980 also includes a policy resolution dated May 15, 1980 signed by the Cass County Board of Commissioners and the Cass County Road Commission. Similar resolutions were signed by the Berrien County Road Commission on June 25, 1980 and the City of Niles (under the Mayor's signature) on June 23, 1980. The resolutions contain commitments to meet the goals and objectives of the Act and to conform with the adopted SIP.

The August 8, 1980 submittal included a description of the transportation systems management SIP strategies already adopted and implemented during the 1975-1978 time period and the transportation control measures to be relied upon for continued emission reduction. Funding and cost estimates have been submitted as well as MACOG's unified work plan (UWP) for Fiscal Year 1980. The UWP describes the work underway to accomplish the goals and objectives in the SIP.

MACOG is responsible for the preparation and submittal to the State of an annual report summarizing progress towards achieving air quality standards for ozone. Included in this report will be an updated emission inventory and revised data on emission reductions achieved to indicate reasonable further progress towards attainment of the standard.

The State's submittal of August 8, 1980 also addresses the impact of the plan provisions. Health and welfare impacts, social impacts, economic impacts and energy savings are adequately assessed.

The State has submitted documentation showing that the requirements for public participation have been satisfied. Two public hearings on the plan were held, with advance notice announced in the newspapers and on the radio. MACOG distributed press and public information brochures describing the transportation analyses and projected air quality benefits. Elected officials are involved in the decision making process for air quality planning via the policy

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committees for each metropolitan planning organization.

The transportation control plan contains representative strategies which have been identified for the Niles area. The table below identifies the projects, implementors and the emission reductions associated with the projects.

Strategy	Implementor(s)	Emission reduction (tons per day)
Ridesharing activities: Carpool demonstration.	Southern Michigan Regional Planning Commission.	0.0020
Transit improvements: Increase Niles Dial-A-Ride.	Niles Dial-A-Ride	.0051
Traffic flow improvements—highway and traffic projects:		
17th Street (widening).	City of Niles, Berrien County.	.0038
Burton Road (bridge reconstruction).	Cass County, Michigan Department of Transportation.	.0012
Lake Street (widening).		.0044
U.S. Route 33 (resurfacing).		.0049
MI-51 (resurfacing).		.0044

USEPA has reviewed the control strategy and ozone attainment demonstration developed for the Niles urban area. (A document which details USEPA's complete review is available for inspection at the USEPA Region V Office.) USEPA finds that the transportation control plan and the attainment demonstration portions of the control strategy satisfy all of the nine requirements previously described for an approvable nonattainment area SIP. The State has shown that sufficient emission reductions will be achieved to demonstrate attainment of the ozone standard by 1982. The transportation control plans, taken in conjunction with stationary source RACT requirements in Michigan, represent an acceptable ozone control strategy for the Niles urban area. Therefore, USEPA proposes to approve the transportation control plan and the ozone attainment demonstration for the urbanized areas of Cass and Berrien Counties, Michigan. USEPA will propose rulemaking on the Indiana portion of the South Bend urbanized area in a separate **Federal Register** notice.

Interested persons are invited to comment on the proposed revision to the Michigan SIP, and on USEPA's proposed rulemaking action. Comments should be sent to the address listed in the beginning of this notice.

Under Executive Order 12044 (43 FR 12661), USEPA is required to judge whether a regulation is "significant" and, therefore, subject to certain procedural requirements of the Order or whether it may follow other specialized development procedures. USEPA labels proposed regulations, "specialized." I have reviewed this and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Secs. 110 and 172 of the Clean Air Act (42 U.S.C. 7410, 7502))

Dated: September 30, 1980.

John McGuire,

Regional Administrator.

[FR Doc. 80-33552 Filed 10-27-80; 8:45 am]

BILLING CODE 6560-26-M

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40 CFR Part 52

[A-3-FRL 1644-6]

District of Columbia State Implementation Plan; Proposed Revision

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: This notice announces the Administrator's proposal to approve a revision to the District of Columbia's Implementation Plan of amendments to the District of Columbia's Air Quality Control regulations. These amendments allow the permanent deletion of the requirement that, after October 1, 1978, the maximum sulfur content in all fuels sold and used in the District not exceed 0.5%. The District's currently effective maximum sulfur content of 1.0% would be retained. The revision is applicable to §§ 8-2:704 (Allowable Sulfur in Fuel Oil) and 8-2:705 (Allowable Sulfur Content in Coal) of the District's Air Quality Control Regulations. The Administrator previously approved these amendments but only until December 31, 1980 in a January 4, 1980 **Federal Register** publication (45 FR 1024).

DATE: Comments must be submitted on or before November 28, 1980.

ADDRESSES: Copies of the proposed SIP revision and accompanying support documentation are available for public inspection during normal business hours at the following offices:

U.S. Environmental Protection Agency, Air Programs Branch (3AH11), Curtis Building, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106. ATTN: Joanne T. McKernan;

District of Columbia Department of Environmental Services, Bureau of Air and Water Quality, 5010 Overlook Avenue, SW., Washington, D.C. 20032. ATTN: V. Ramadass;

Public Information Reference Unit, Room 2922-EPA Library, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

All comments on the proposed revision submitted within 30 days of publication of this notice will be considered and should be directed to: James E. Sydnor, Chief, DC, MD, VA Section (3AH11), Air Programs Branch, Air, Toxics & Hazardous Materials Division, U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106. ATTN: AH012DC.

FOR FURTHER INFORMATION CONTACT: Joanne T. McKernan (3AH11), U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, Telephone Number: (215) 597-8182.

SUPPLEMENTARY INFORMATION: On December 27, 1978, the District of Columbia submitted to the Regional Administrator, EPA, Region III, amendments to the District's Air Quality Control Regulations and requested that they be reviewed and processed as a revision of the District of Columbia's Implementation Plan for the attainment and maintenance of National Ambient Air Quality Standards (NAAQS). The amendments consist of changes to §§ 8-2:704 (Allowable Sulfur Content in Fuel Oil) and 8-2:705 (Allowable Sulfur Content in Coal) of the District's Air Quality Control Regulations. The proposed revision amended both regulations by deleting the provision which states that the use and sale in the District of Columbia of fuel oils and coal containing up to 1% sulfur are permitted only until October 1, 1978 (after which time a 0.5% maximum sulfur requirement would be in effect). Some of the arguments presented by the District to support its proposed revision included:

1. The District is presently meeting the Federal ambient air quality standards for sulfur dioxide and it expects to maintain the standards through 1985 with the use of 1% sulfur fuel;

2. The 0.5% sulfur content level would substantially increase the cost of fuel and electricity to the consumer;

3. There is a shortage of the higher grade (lower sulfur content) coal in the East; and

4. Maryland and Virginia maintain a 1% sulfur limit.

On January 4, 1980 (45 FR 1024), the Administrator approved as a revision to the District of Columbia's Implementation Plan the amendments to the regulations, and on August 20, 1980 (45 FR 55422), the Administrator clarified the January 4, 1980 rulemaking to show his intent to approve the revision only until December 31, 1980. The Administrator based his decision to approve the revision only through December 31, 1980 since an October, 1977 study prepared by the Metropolitan Washington Council of Governments (MWCOG) entitled "Air Quality Maintenance Planning, Technical Analysis" predicted that, although there would be no violations of the National Ambient Air Quality Standards for sulfur dioxide during 1980, there was no clear demonstration of air quality levels beyond 1980 due to projected growth in the Region. EPA took exception with the fact that in its demonstration, the District's growth projections were applied to a 1973 air quality baseline and that the District used extrapolations from air quality data collected only at a single site which may not be representative of air quality over the entire District.

By approving the revision through December 31, 1980, the District of Columbia was able to further evaluate the impact on ambient air quality in order to demonstrate to EPA's satisfaction, that the 0.5% sulfur content limit will not be needed after December 31, 1980 to maintain the sulfur dioxide standards. In order to accomplish this within the prescribed timeframe, and due to District staff resource constraints, EPA funded an independent contractor to perform a new air quality dispersion analysis.

The study resulted in a report entitled "Future Ambient SO_2 for Metropolitan Washington, D.C.," which was performed to supplement the information and air quality demonstration submitted by the District of Columbia in its December 27, 1978 SIP submittal. The report utilized the most current and comprehensive emission inventories available and used emission data and meteorological data from the same year in developing a new baseline. The study made new projections of future air quality for SO_2 using updated informaton and diffusion modeling results to determine whether and when violations can be expected and what control strategies may be adopted to prevent such violations. The study concluded that the present limit of 1% sulfur in all fuels sold and burned in the District of Columbia may be extended to 1995 without exceeding the National Ambient Air Quality Standards (NAAQS) for SO_2. This supports the District of Columbia's position that the District is presently meeting the NAAQS for SO_2 and expects to maintain the standard through at least 1985, with the 1% sulfur-in-fuels requirement. Therefore, EPA has determined that the 0.5% sulfur requirement is not necessary to maintain the standards and proposes to approve the deletion of the effective date of that requirement from the District SIP.

A copy of the report and of EPA's evaluation is available at the addresses listed in this Notice.

In the January 4, 1980 final rulemaking, EPA also stated that before an approval of the deletion of the 0.5% sulfur increment could be granted, the District of Columbia would be required to specify a coal sampling method (to be used in conjuction with its test method for sampling sulfur content). On March 3, 1980 (45 FR 13729), EPA approved the District's test procedures for the sulfur-in-fuel regulation (which incorporated by reference the methods specified in 40 CFR 60.45(f)(5)). Although that SIP revision did not clearly specify coal lot size or averaging time which EPA feels is needed to improve the enforceability of the sulfur-in-fuel regulation for coal usage, EPA is working with the District to develop an acceptable sampling procedure and recently forwarded an acceptable procedure (an American Society for Testing and Materials publication numbered D-2234-6, entitled "Standard Method for Collection of a Gross Sampling of Coal") to the District for review. The District has agreed to review the recommended procedure, and if there are no objections, to incorporate the coal sampling method into its procedures and to submit a revision to its State Implementation Plan.

Therefore, since EPA will issue a separate rulemaking on that issue, the Agency does not intend to delay or condition final action on this revision pending resolution of this procedural concern, and EPA is proposing approval of this SIP revision at this time.

The District of Columbia certified that a public hearing with respect to the revision was held on May 23, 1978, in accordance with the requirements of 40 CFR Section 51.4.

The public is invited to submit to the address stated above, comments on whether the amendments to Sections 8-2:704 and 8-2:705 of the District's air pollution control regulations governing the sulfur content in fuels should be approved as a revision of the District of Columbia State Implementation Plan.

The Administrator's decision to act on the proposed revision will be based on the comments received, and on a determination whether the amendments meet the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether is may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and determied that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Authority: 42 U.S.C. §§ 7401-7642)

Dated: October 2, 1980.

A. R. Morris,

Acting Regional Administrator.

[FR Doc. 80-33551 Filed 10-27-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-10-FRL 1647-4]

State of Idaho Implementation Plan; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The purpose of this Notice is to extend the public comment period on EPA's proposed promulgation of a maintenance of pay provision in the State of Idaho State Implementation Plan under Section 110(a)(6).

DATE: Comments must be post-marked no later than November 7, 1980.

ADDRESSES: The relevant material in support of this revision may be examined during normal business hours at the following locations:

Central Docket Section (10A-79-4), West Tower Lobby, Gallery I, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Air Programs Branch, Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101.

Comments should be addressed to:

Laurie M. Kral, Air Programs Branch, M/S 629, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington, 98101.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Lepic, Air Programs Branch, M/S 625, 1200 Sixth Avenue, Seattle, Washington, 98101. Telephone: (206) 442-1125, FTS: 399-1125.

SUPPLEMENTAL INFORMATION: On September 26, 1980 (45 FR 63886), EPA invited public comment on its proposal to promulgate a maintenance of pay provision in the State of Idaho State

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Implementation Plan under Section 110(a)(6), as amended. This provision would protect the employee of a source which uses supplemental, intermittent or other dispersion-dependent control systems from temporary loss of pay.

Public comments on the proposal were invited for a period of 30 days ending October 27, 1980. EPA Region 10 has received a request to extend the comment period for an additional two weeks. In view of this request, EPA is hereby extending the public comment period until November 7, 1980.

Interested parties are invited to comment on this proposed amendment to the Idaho SIP. Comments should be submitted to the address listed in the front of this Notice. Public comments postmarked by November 7, 1980 will be considered in any final action EPA takes on this proposal.

(Section 110, 172 Clean Air Act (42 U.S.C. 7210(a), 7502)).

Date: October 22, 1980.

Donald P. Dubois,

Regional Administrator.

[FR Doc. 80-33623 Filed 10-27-80; 8:45 am]

BILLING CODE 6560-38-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[CC Docket No. 80-584; RM-3304; FCC 80-550]

Policies Governing the Ownership and Operation of Domestic Satellite Earth Stations in the Bush Communities in Alaska

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Communications Commission proposes a rule which would establish local exchange certification as an eligibility requirement for filing an application to construct and operate an Alaskan Bush earth station intended to provide message telephone services. Over the past several years, the Commission has received competing applications to own the earth stations from Alascom, Inc. and various local carriers who provide local exchange service in Bush communities. Because of the small size of these communities, the Commission believes only one application for an earth station can be granted for each community. The proposed rule would establish a Commission policy favoring exchange ownership.

DATES: Comments must be submitted on or before December 29, 1980 and reply comments must be submitted on or before January 29, 1981.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Pamela J. Wisne, Common Carrier Bureau, (202) 632-5930.

SUPPLEMENTARY INFORMATION:

Adopted: September 25, 1980.

Released: October 29, 1980.

By the Commission: Commissioner Lee concurring and issuing a statement; Commissioner Fogarty issuing a separate statement.

Introduction

1. This proceeding concerns the ownership and operation of small antenna domestic satellite earth stations located in rural Alaskan Bush communities providing message telephone service (MTS).[1] The Alaskan "Bush" refers to small villages in rural Alaska which are isolated from the larger cities by rugged terrain and harsh weather conditions. Alascom, Inc.[2] now provides service to the Bush through a variety of facilities, including small diameter earth station antennae, improved mobile telephone service (IMTS), point-to-point microwave and rural and other radio facilities.[3] Local service is provided in some of the Bush communities by local carriers who are regulated and certified by the Alaska Public Utilities Commission (APUC).

2. Presently pending with the Commission are applications for earth station facilities at approximately 35 Bush locations. At each of these locations, separate applications have been filed by Alascom and a local exchange carrier operating in the village where the earth station is located or proposed.[4] All of the applicants seek to provide MTS as well as private-line service. While there are some differences in the financial and technical details of the various proposals, each applicant appears reasonably capable of sustaining the requisite public interest findings. The issue for decision, therefore, is a determination of the appropriate entity to hold the earth station license. Alascom submits that it, as the transferee of the government ACS facilities,[5] is the sole entity authorized to provide interstate service and that the Bush stations are an integral element of its network. The local exchange carriers, on the other hand, argue for the integration of the earth stations with their local exchange plants and propose to interconnect with Alascom or another carrier for the provision of intrastate and interstate communications services.

3. Also pending before the Commission is a petition for proposed rulemaking filed by United Utilities, Inc., (United) a local exchange carrier operating in the Calista region of Alaska.[6] United requests the Commission to initiate a rulemaking proceeding to establish rules which will govern the disposition of the pending applications as well as future applications which may be filed for Bush earth stations. Specifically, the petition seeks a rule which will grant a controlling preference to an applicant who is certified by the APUC to provide local exchange service in the community where the earth station is proposed. Comments in support of the petition were filed by the National Telephone Cooperative Association, (NTCA)[7] Arctic Slope Telephone Association Cooperative, Inc., (ASTAC)[8] and the State of Alaska. Alascom has opposed the petition and alternatively requests the Commission to confirm as a matter of policy its legitimate expectation to own and operate the entire earth station network in Alaska, including the Bush facilities.

4. For the reasons discussed below, we propose herein a rule which will require certification as a local exchange carrier by the APUC as a basic eligibility requirement for the filing of applications to construct and operate earth station facilities providing MTS service to rural Alaskan Bush communities.

[1] While these facilities additionally can and do provide private line services including program reception, our primary focus herein is with MTS.

[2] Alascom, Inc. is a wholly-owned subsidiary of Pacific Power and Light Company, which acquired the operation, formerly known as RCA Alaska Communications, Inc., from the RCA Corporation. See Order and Authorization, FCC 79-305, released May 22, 1979. In the text, we use the term Alascom to refer to the current company as well as its predecessor.

[3] The "Alaska Communications Plan" submitted to the Commission by Alascom in 1974 contemplated the provision of MTS service to every Alaskan community of more than 25 persons.

[4] Earth stations have been constructed and are being operated by Alascom in most of these communities pursuant to temporary authority. See discussion in paragraphs six through nine, *infra*.

[5] See RCA Global Communications, Inc., 22 FCC 2d 200 (1970) (hereinafter ACS Decision).

[6] The Calista region is one of the twelve geographic areas delineated in the Alaska Native Claims Act. See 43 U.S.C. § 1601 et seq. The Region encompasses much of Southwest Alaska, comprising approximately 56,000 square miles. See Application File No. 445-DSE-P/L-79, at 2, n.1.

[7] NTCA is a trade association which represents nearly 300 rural cooperative and commercial telephone systems. Its primary goal is to establish and improve telecommunications service in rural areas.

[8] ASTAC operates local exchanges in the North Slope Borough in Alaska. Its applications for earth stations in several of its exchange communities were recently dismissed at its own request. See application File Nos. 7/13-DSE-P/L-80.

Background [9]

5. The State of Alaska comprises a land area of approximately 566,432 square miles with a population of about 403,000 people. Eighty-four percent of the population resides in non-rural communities, while the remaining population is dispersed throughout rural Alaska in small isolated communities.[10] Land transportation within the State is generally unavailable since Alaska's highways provide access to only about 15% of its communities. Some maritime transportation exists during "open waters" season, primarily from June through September. Hence, the Bush communities rely almost exclusively on air travel and long distance communications for contact with the other communities in Alaska as well as those in the contiguous states.

6. Alascom currently provides inter and intrastate service to nearly 160 Bush communities. Of those communities, approximately 100 receive "lifeline services" via small antennae earth stations. The lifeline service consists of two channels, one which is dedicated to the provision of intrastate and interstate MTS service and the other which is a private line connected to the Alaska Native Health Service (ANHS) which provides emergency and health related assistance to the villages. The telephone which accesses the MTS services is semi-public in that it is generally located in a central location within the village and may often be inaccessible outside of business hours. Thus, the residents sometimes do not have ready access to the phone, must be summoned by a messenger for an incoming call, and due to the public location of the phone, enjoy minimal privacy during their conversations. Where local exchange service is available, however, the communities have access to single party telephone service.

7. Bush local exchange service is generally provided by small family-owned companies or non-profit cooperative associations. The non-profit cooperatives were formed subsequent to the Alaska Native Claims Act and are owned and controlled by natives of their geographic regions.[11] These cooperative systems, as well as the other small operating companies, rely primarily on low interest financing funds from the Rural Electrification Administration (REA) to construct their exchange operations. The State indicates nearly $60 million has been expended by REA to assist in the development of Alaskan rural communications. REA views the earth station as part of the local exchange and therefore eligible for its low interest financing.

8. The operations of the local exchange carriers are roughly analogous to similar operations in the continental states. To provide toll service, the local carrier transfers calls from its toll trunk cables to the toll access facility, generally a small antenna earth station, where it is interconnected to toll trunk lines currently provided by Alascom. Each voice channel from a Bush earth station is assigned its own frequency and is connected by satellite to the Bartlett Gateway earth station in Talkeetna where it is then trunked to Anchorage via microwave for timing, ticketing and toll switching.

9. The Bush earth station controversy began with the State's dissatisfaction with Alascom's initial Bush proposal.[12] It found the proposal to be both technically and economically deficient in meeting long-term Bush requirements. Because of its belief that Alascom was reluctant in pursuing an adequate Bush program, it filed its own applications to construct Bush earth stations.[13] In the *Satcam Construction Order*, the Commission found both the State and Alascom were legally, technically and financially qualified to construct the Bush facilities but that their applications were mutually exclusive in fact.[14] In the interests of initiating service, the State and Alascom agreed to an earth station program and negotiated an interim arrangement for construction and operation of the facilities pending Commission action on their applications. Since 1975, a series of temporary authorizations have been issued granting joint authority to construct and operate, and authority to Alascom, as trustee, for provision of common carrier services.[15] The temporary authorizations have been expressly predicated on the condition, agreed to by the parties, that they would in no way prejudice the ultimate resolution of the question of permanent authority to own and operate the earth station facilities. The State's applications were recently dismissed at its own request and it has indicated that it will convey its ownership interest to the ultimate licensee.[16]

Positions of the Parties

10. Since 1977, the local exchange carriers have been filing applications to construct new earth stations or to acquire those currently operated by Alascom and jointly owned by the State.[17] For the most part, the carriers seek to control the facilities within their geographic and certified regions and anticipate that ownership will provide them with a more significant role in planning the development of the Bush network. They emphasize the importance ownership has to the viability of their local exchanges from both an economic and management point of view. First, the carriers point to the increased revenues which would be derived from the settlements process if the earth station facilities were considered exchange plant. Second, they contend that the availability of low interest REA financing will enable them to improve services at lower ultimate costs to their subscribers. Operationally, they express some dissatisfaction with Alascom's service and interconnection practices and stres the importance of local control over the facilities which, in many instances, provide their service areas with the only link to other communities in Alaska as well as to the contiguous states. To improve services, some of the carriers propose equipment

[9] The general background information, unless otherwise referenced, is gleaned from the Comments of the State of Alaska in Docket No. 21263, filed Feb. 6, 1979, and from Alascom's Comments in CC Docket No. 78-72, filed March 3, 1980. While these comments are used to provide a general perspective for this proceeding, such use in no way constitutes any determination of their respective merits in the proceedings for which they were filed.

[10] The State indicates that of its 347 communities, 21 have populations in excess of 1500 and thus are non-rural.

[11] See e.g., File Nos. 445-DSE-P/L-79 and 911-DSE-P/L-80.

[12] See RCA Global Communication, Inc., 56 FCC 2d 660 (1975) (hereinafter Satcom Construction Order).

[13] The Alaskan legislature appropriated $5 million towards this effort. The State did not intend to operate the facilities but rather proposed to lease the station to the carrier, Alascom or a local entity, offering the most favorable terms. It subsequently indicated that its actions were motivated in part by a desire to preserve the option that these facilities could be owned and operated by local carriers. See State of Alaska's Reply to Response to Petition for Continued Authorizations as Trustee, Application File No. W-P-C-1659.

[14] The finding of mutual exclusivity was based on the conclusion that one facility could provide all the services proposed by either party, and that there did not appear to be any public interest benefits in construction of duplicative facilities in the Bush. Satcom Construction Order, *supra* note 12, at 669. None of the parties in this proceeding has disputed that conclusion. Thus, the parties do not proposed competitive facilities and the questions under consideration in CC Docket No. 78-72 do not arise.

[15] The lifeline service described in paragraph six *supra*, is a result of the interim arrangement.

[16] See letter of May 29, 1980 in File Nos. 65-DSE-P-75 et al. The State's withdrawal appears to have been based in part on the growing strength of local exchange development. In a Statement released in October, 1979, the Governor indicated that the wilingness of the local carriers to compete for earth station ownership made it possible for the State to withdraw its applications.

[17] See Appendix A. Alascom has opposed each of these applications.

redundancy not currently available [18] and have devised local and regional maintenance schemes which they intend to incorporate with their exchange maintenance staffs. Generally, a three-tier maintenance approach is planned. Village personnel will be available at the site for minor repairs such as deicing the antenna or replacing small parts. Regional personnel are to be employed who will service more than one village. Finally, a centralized staff, located within the geographic region, will be capable of responding to the more serious problems which arise. The carriers believe their maintenace approach will eliminate the long service outages which are occasioned by Alascom's practice of centralized staffing and will also obviate the need for two distinct maintenance staffs.

11. The local exchange carriers emphasize that local ownership will better serve the public interest because it will bring local control of essential telecommunications facilities. The carriers claim this local ownership translates into a strong commitment to maintain and upgrade the service while keeping the rates as low as possible. Additionally, they state the availability of on-site and regional maintenance personnel will reduce the long service outages caused by Alascom's practice, perhaps necessitated by the economics of the situation, of dispatching a maintenance staff from a centralized location. Each states it only seeks control of the toll end equipment in their service areas. They encourage resolution of the ownership question through a rulemaking proceeding so that the decision can be based on the broader policy perspective that a rulemaking proceeding permits. The State characterizes the implementation of a policy favoring local ownership as both timely and appropriate. It, therefore, favors a rule which would permit a grant to the local exchange carrier provided the carrier is otherwise qualified to operate the facility.

12. Alascom has opposed the petition on both procedural and substantive grounds. First, it claims the *Ashbacker* doctrine [19] precludes the use of a rulemaking procedure. It claims there are too few filings by local exchange carriers and too many differences among them to justify a general policy favoring exchange ownership. [20] Secondly, it argues that Section 201(a) requires a hearing in each case where local exchange ownership is proposed since interconnection practices will be modified. Finally, it claims its due process rights require that any transfer of its existing toll responsibilities be accomplished on a case by case basis accompanied by the full rigors of an evidentiary hearing.

13. Alternatively, if a rule making proceeding is instituted, Alascom claims the Commission should confirm its "legitimate expectation" to own and operate the earth station network which interconnects the telephone exchanges in Alaska. It claims that, as the ACS transferee, it alone is authorized to own and operate facilities which perform toll functions. Operationally, it argues that its unified control of these stations is critical to the efficient operation of the network. It claims that earth station operations necessarily entail a high level of ongoing engineering coordination regarding equipment, frequency use, testing and other technical matters. By placing control in an indeterminate number of exchange operators, Alsacom believes unnecessary and undesirable risks are presented to the efficient operation of the network. Finally, it claims that its role as "carrier of last resort" would be threatened by a local ownership policy since its ability to obtain earnings on its earth station investments would be impaired. On the other hand, Alascom argues that the potential financial benefit to be derived from the separations and settlements process should not be considered as a basis for decison since those issues are being addressed by a Joint Board in a separate proceeding. [21]

14. In sum, the question of permanent authorization for the Bush earth stations has been outstanding since 1975. Although the entities seeking authorization have changed, two generic interests remain juxtaposed for our consideration. On the one hand, Alascom proposes to operate the facilities as part of its integrated inter and intrastate network. On the other hand, the local exchange carriers seek to operate the facilities in conjunction with their exchange operations, interconnecting at some point between the earth station and the satellite.

Discussion

15. Our central objectives in this proceeding is to establish an ownership structure which satisfies the communications needs of the residents of the Alaska Bush communities in the most efficient and expeditious manner possible. Alaska's pressing need for improved services has previously been documented as well as the special promise satellite technology holds toward that end. [22] While the interim Bush operations have brought at least essential communications services to Bush communities not previously served, it is apparent that far greater progress is needed. Regrettably, the unresolved status of the Bush applications may have led to uncertain network planning to the detriment of the Bush communication users. All of the parties agree that the development of the Bush earth station operations should not be further impaired by continuing controversy over the ownership question. The public interest, therefore, would appear to be furthered by definitive resolution of this controversy.

16. For the reasons discussed herein, we propose to establish local exchange certification as a prerequisite for filing an application for an earth station to provide MTS service in an Alaskan Bush community. Qualified applicants will otherwise be required to establish their financial and technical ability to construct and/or operate the facilities. Provision for waiver of the rule is also proposed for those instances where no certified local exchange carrier has filed, or where a non-certified applicant can demonstrate sufficient justification for waiver of the rule. [23] Moreover, these rules are intended to apply in a renewal situation so that if a waiver was granted, the waiver applicant must demonstrate on the basis of conditions existing at the time of the renewal that a waiver of the rule is still appropriate. Additionally, we are proposing several measures to facilitate implementation of the rules, including *prima facie* showings of financial and technical qualifications. We seek comments on the effect of the proposed rule on coordinating and planning the Alaskan telecommunications satellite network including interconnection practices. Finally, we propose to relax Section 214 procedural requirements in the situation where the local exchange carrier owns and operates the earth station in connection with its local exchange service.

Ownership of the Earth Stations

17. Since the transfer of the ACS facilities, the Commission has accorded Alascom every reasonable opportunity, consistent with the public interest, to develop the Alaska Communications network and its own financial structure. While this Commission has expressly refrained from conferring any sole source status on Alascom, [24] it has adopted particular measures based on the circumstances then before it. For instance, in both the *Talkeetna Interconnectian Order* and in the *Domsat III Decision*, [25] the Commission allowed Alascom to interconnect within the boundaries of the contiguous states, rather than at the satellite, so that it would have reasonable access to the revenues derived from interstate MTS operations. Those decisions were based on the conditions then prevailing and our concomitant perception of how the public interest would be best served. Our central concern has been, and remains, promoting the most expeditious development of Alaskan service as is practicable. The Commission's assessment of how the public interest will be served can change with time [26] and changed circumstances may, in fact, necessitate an altered regulatory response. [27]

18. The circumstances now before the Commission present a choice between two operationally viable and distinct ownership patterns. Alascom proposes to centrally manage and operate the facilities while the local carriers propose to operate the earth station providing toll access as part of their exchange operations. Each claims it needs the operational control and financial benefits associated with ownership to maintain the viability of its respective service markets. [28] Each claims it is better able to meet the communication needs of the Bush residents. Thus, the public interest question is which of these proposals is most likely to result in the most optimal communication services to the Bush residents.

19. Certainly, there are many benefits associated with Alascom's unified control of all earth station facilities. Planning and coordination, traffic allocation, development of circuit requirements, and restoration of interrupted services may be simplified when performed by a single entity. Alascom, additionally, has extensive experience in operating Alaskan earth stations and thus, already has some experience in managing the communications system. There are, however, disadvantages to Alascom's centralized method of providing the Bush service due to the geographic and climatic conditions by which these communities are characterized.

20. Many of the problems associated with Bush service can be attributed to their rugged terrain, geographic isolation and severe weather conditions which combine to strain the reliability and efficiency of service. Due to the high costs of maintaining qualified personnel at each of the station locations, facilities maintenance has been a significant problem for Alascom in serving these communities. During the winter months, travel and weather conditions can cause a delay of several days before an Alascom employee can even reach the facility needing repair. Additionally, since these facilities are unattended by Alascom, power fluctuations and shutdowns and inadequate heating or cooling of the buildings where the facilities are housed have caused outages. Thus, whether toll access or local exchange service is proposed, the providing carrier must be prepared to deal with these conditions in a timely fashion and the resultant effects they can have on service reliability.

21. By virtue of their actual presence in the Bush communities, the local exchange carriers would appear to be better equipped to remedy the problems. Their exchange operations require on-site personnel to maintain the exchange plant and presumably the same personnel could also assume some responsibility for proper operation of the earth station. This on-site availability would likely reduce or eliminate the service outages due to the recurring minor repair problems which now require Alascom to dispatch a maintenance staff from a centralized metropolitan location. While the local carriers do not propose to keep a full-time technician capable of performing all repairs in the community, they are confident their staff can attend to the routine functions such as maintaining an adequate power supply, replacing fuses, resetting circuit breakers and removing snow and ice from the antenna. Additionally, they plan to locate fully qualified regional and centralized staffs within close geographic proximity of the facilities which may need repair. Local ownership would also obviate the need for two maintenance staffs to respond to trouble reports and the resulting expense to Bush ratepayers. Thus, it would appear that local ownership represents the more efficient and economic alternative for meeting the unusual service needs of the Bush earth stations.

22. Moreover, local ownership is likely to produce a more effective means of predicting and satisfying growing communication requirements. Through their local exchange operations, the local carriers have daily contact with the users of the facilities. Thus, they should be better able to assess the needs of the community and whether the existing level of service is adequately satisfying those needs. Additionally, each of the carriers is owned and operated by Bush residents who themselves must rely on the communication services and facilities. [29] Thus, they have a natural incentive to improve the services which link their remote communities with the outside world. With control of the earth station operations, they believe rapid and efficient communication service can be actualized in rural Alaska.

23. Upon the basis of the information now before us, it does not appear that local ownership will detrimentally affect the technical integrity of the network. Daily operation of these facilities requires only a minimum level of supervision to ensure that proper power levels are being used and that the equipment is functioning. For the more serious repairs, the local carriers intend to train personnel and in some instances, they propose equipment redundancy to avoid any service outage during repair. Additionally, the local carriers recognize Alascom's expertise in managing the overall system and intend to abide by the operating

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[18] See e.g., Application File Nos. 444/447-DSE-P/L-79.

[19] Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945).

[20] At the time Alascom's Comments were filed, only five applications by local exchange carriers were pending before the Commission. The remaining applications listed in Appendix A were filed subsequent to the State's request to dismiss its applications.

[21] See Docket No 21263.

[22] *See e.g.*, Domestic Communication Satellite Facilities (Domsat II), 35 FCC 2d 844 (1972); Satcom Construction Order, *supra* note 12, at 689. Since communication by satellite is involved, our jurisdiction is invoked (California Interstate Telephone Co. v. FCC, 328 F. 2d 556 (D.C. Cir. 1964)) and our regulatory responsibility with regard to the Bush is to accomplish the ends of Section 1 of the Act.

[23] We remind the parties that hearings on waivers will not be routinely granted, nor will grounds already fully considered in this proceeding constitute sufficient justification.

[24] *See* ACS Decision, *supra* note 5, at 204; Memorandum Opinion and Order in CC Docket No. 78-72, 75 FCC 2d 664 (1980).

[25] RCA Alaska Communications, Inc., 26 FCC 2d 466 (1970); Domestic Communication Satellite Facilities, 38 FCC 2d 665 (1972).

[26] Pinellas Broadcasting Co. v. FCC, 230 F.2d 204, 206 (D.C. Cir. 1956).

[27] Geller v. FCC, 610 F.2d 973 (D.C. Cir. 1979).

[28] Alascom's total investment in Bush facilities for about 160 locations is approximately 4.5% of its total capital investment. The proposed rule, if adopted, would likely not affect even half of that investment in the foreseeable future, and thus would appear to have minimal effect on Alascom's financial structure. Additionally, the local carriers have claimed ownership will provide needed revenues. While we recognize the ownership of these facilities will affect the settlements and separations process as it relates to the ownership thereof, no party has submitted any concrete figures regarding the benefit of ownership. Therefore, our primary focus in this proceeding is on the operational and structural benefits associated with each of the ownership proposals. We, of course, would welcome additional comments in this regard if the parties believe it appropriate for our consideration.

[29] With one exception, each of the carriers is a native-owned, nonprofit cooperative association.

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parameters established by Alascom.[30] Since the success of their exchange operations depends in part on reliable and efficient toll operations, these carriers have a real incentive to ensure proper functioning of the network so as to optimize the quality of their service offerings.

24. In sum, it does not appear that Alascom, whose service responsibilities encompass the entire state, has the same incentives or ability to operate and develop these facilities in an optimal manner as the Bush exchange carriers do. While it has continually strived to improve communication service to the Bush, it has repeatedly underscored the financial and operational burden these facilities impose.[31] Under these circumstances, it would appear the public interest would be better served by assigning the responsibility for the Bush stations to the carrier whose local exchange is served by the facility. Because of their local operations and ownership characteristics, the local carriers appear to be better suited for responding to the unusual circumstances associated with service to the Bush.

Procedural Authority

25. Alascom has argued that Sections 309 and 201 of the Communications Act of 1934 (the Act) and due process of law bar our ability to determine the ownership question in a rulemaking mode. More precisely, Alascom contends that we cannot formulate a rule which will establish local exchange certification as a qualification for owning and operating a Bush earth station. It does not, however, perceive similar procedural obstacles were the Commission to adopt a policy confirming its belief that it is solely eligible to own the Bush earth stations. We are not persuaded that either of the cited statutory sections negate our ability to determine an ownership policy in this rulemaking proceeding and, furthermore, we believe this proceeding is consistent with due process of law.

26. The Commission has broad latitude when formulating rules and policies which effectuate its responsibilities under the Communications Act. Procedural questions, especially where the Commission's licensing function is invoked, are left to its informed determination so long as the basic requirements for the protection of private rights and the public interest are observed.[32] While generally the "function of filling in the interstices of the Act" should be accomplished through rulemaking proceedings, the choice between proceeding by general rule or *ad hoc* litigation lies primarily in the informed discretion of the agency.[33] Absent constitutional constraints or other compelling circumstances, the agency's procedural choice will be left undisturbed by a reviewing court.[34]

27. Although Section 309 requires that the Commission determine whether the public interest would be served by a grant of an application for a radio license, there is no requirement that the same question be resolved on numerous individual occasions. We believe that our decision here to proceed by rulemaking represents a sound administrative choice. Rather than explore the identical policy questions in a multitude of evidentiary hearings, we are electing a more efficient decisional vehicle. There are numerous applications to own and operate facilities in the same communities and there is every reason to expect similar filings in the future as the local exchange development in Alaska progresses. The differences between the technical proposals before us do not appear decisionally significant and in many instances, the local carriers seek to acquire the facilities currently operated by Alascom. Any comparative process that might be undertaken would be submerged by the precise policy question concerning ownership that this rulemaking is designed to resolve. Furthermore, individual hearings are unlikely to produce sufficiently more information than this proceeding to justify their burden, and would needlessly delay the question of permanent authorization to the detriment of Bush communications users. We do not believe rational decision will be furthered by an excursion into detail that is likely to obscure the fundamental issue of whose ownership will serve the public interest.[35]

28. Moreover, our authority to extract issues from the public interest calculus is well established. In *United States* v. *Storer Broadcasting Company*, 351 U.S. 192 (1956), the Supreme Court confirmed the Commission's ability to withdraw issues from the Section 309 licensing decision via a rulemaking proceeding. Provided the applicants are given an opportunity to apply for a waiver of the promulgated rules, the hearing right, otherwise invoked by Section 309, is not improperly abridged. Since the *Storer* decision, there has been a discernible judicial trend endorsing, if not encouraging, increased reliance on rulemaking proceedings because of the greater efficacy a rulemaking proceeding provides for the broad formulation of policy.[36] The rationale supporting the rulemaking preference is both logical and persuasive in the present instance. This procedure will permit broad participation by all interested parties in the decision making process and will better enable the Commission to develop an integrated plan for ownership of the Bush earth station facilities. The determination thereby derived will be equally applied to all applicants for Bush earth stations.

29. Nor do we believe our action here contravenes the *Ashbacker* doctrine.[37] The purpose of this proceeding is to establish eligibility requirements for filing an application for an Alaskan Bush earth station. Rulemaking proceedings have frequently been used for this purpose without violating the *Ashbacker* doctrine [38] and we see no reason why its use would be inappropriate here. Therefore, we believe this proceeding is procedurally sufficient so long as our substantive decision is based on legitimate public interest factors and is otherwise reasonable.[39]

30. We also find unpersuasive Alascom's contention that Section 201 precludes us from using a rulemaking proceeding to modify the physical point of interconnection betwen the parties. Although Section 201 does provide for an "opportunity for hearing" prior to an interconnection order, our previous use of notice and comment procedures to satisfy the Section 201 hearing

[30] Any improvement or alteration of the facility would, of course, be subject to our regulatory review under Title III and would require coordination with Alascom to assure that the proposed changes do not impair the technical integrity of the network as a whole.

[31] See e.g., Alascom's Comments in CC Docket No. 78-72, filed March 3, 1980.

[32] FCC v. Pottsville Broadcasting Co., 309 U.S. 134, 138 (1940); *See also*, FCC v. Schreiber, 381 U.S. 279 (1965) and Sections 4(i) and 4(j) of the Communications Act, 47 U.S.C. § 154 (i) and (j).

[33] SEC v. Chenery Corp., 332 U.S. 194, 203 (1947).

[34] Vermont Yankee Nuclear Power Co. v. Natural Resource Defense Council, 435 U.S. 519, 542 (1978); *See also*, U.S. v. Florida East Coast Railway Co., 410 U.S. 224 (1973).

[35] WBEN, Inc. v. U.S. 396 F.2d 601, 617 (2nd Cir.), *cert. denied*, 393 U.S. 914 (1968).

[36] *See e.g.*, FCC v. National Citizens Committee for Broadcasting, 436 U.S. 775 (1978); FPC v. Texaco, Inc., 377 U.S. 33 (1964); Washington Utilities & Transportation Commission v. FCC, 513 F.2d 1142, *cert. denied*, 432 U.S. 836 (1975); National Petroleum Refiners Association v. FTC, 482 F.2d 672 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 951 (1974).

[37] Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945). We note in this regard that Storer also involved a situation where a rulemaking affected applications already on file.

[38] *See e.g.*, FCC v. National Citizens Committee for Broadcasting, and FPC v. Texaco, Inc., *supra* note 36; United States v. Storer Broadcasting Co., *supra*.

[39] FCC v. National Citizens Committee for Broadcasting, *supra* note 38, at 793.

requirement was expressly affirmed by the U.S. Court of Appeals for the Third Circuit.[40] The Court found that Section 201(a), construed in conjuction with Section 154(j), conferred procedural discretion on the Commission when deciding interconnection questions.[41] So long as the procedure is related to the issues of the case and the parties are given notice and an opportunity to participate consistent with due process of law, the Section 201(a) hearing requirement is satisfied. While the interconnection issues are more fully discussed below, we believe this rulemaking proceeding is procedurally sufficient to implement any changes in interconnection practices which the proposed rule may necessitate.

31. Alascom, as a common carrier, has a duty pursuant to Section 201(a) to provide physical connection with other carriers "in accordance with the orders of the Commission." As the only common carrier currently providing toll service in Alaska, its duty to establish physical connection with the local exchange carriers for the provision of MTS service would appear to be required by the public interest standard contained in Section 201(a). Alascom presently does provide such physical connection and the proposed rule, if adopted, would merely alter the physical point at which interconnection is currently accomlished.[42] Alteration of that point would be identical in each Bush location where the earth station is owned and operated by the local exchange carrier. To the extent Alascom views this alteration as a significant modification of its Section 201(a) responsibilities, this rulemaking proceeding affords it an opportunity to voice its concerns. We have previously used a rulemaking proceeding to resolve similar issues [43] and we see no reason to question the wisdom of its use here.

32. Finally, we must consider Alascom's claim that due process of law requires us to determine the ownership question on a case by case basis accompanied by the full rigors of an evidentiary hearing. While the argument is not precisely articulated, it appears that Alascom considers a rule favoring local ownership as an action "quasijudicial" in nature and that it will be exceptionally affected in each case upon individual grounds.[44] Even though Alascom is the only interstate carrier now serving the Bush communities, we do not find its argument compelling based on the circumstances before us.

33. Due process of law is defined by the particular interests which are affected, the circumstances which are involved and the procedures which have been prescribed by Congress.[45] Alascom's "interests" in this case are the Bush earth stations which it has been temporarily authorized to construct and operate pursuant to the interim agreement negotiated by it and the State of Alaska. Each of these temporary authorizations was expressly predicated on the condition that it would in no way prejudice the Commission's ultimate determination of who would be permanently authorized to own and operate the Bush earth stations. Therefore, Alascom has accepted these authorizations with notice that it may ultimately be required to relinquish its operation of the stations as well as any financial investment in the facilities. Moreover, Alascom's present role in the provision of interexchange services in Alaska is not the result of a definitive Commission policy according Alascom a *de jure* monopoly over all communication facilities and services in the State.[46]

34. The circumstances of this proceeding additionally militate against Alascom's claim for individual proceedings. We have previously discussed the Congressional intent that the Commission be vested with broad procedural discretion when formulating new policy for an industry. The policies proposed herein are based on the Commission's assessment of the nature of communication service in the Alaskan Bush and how the public interest will be best served. While the proposed rule precludes Alascom from operating a Bush earth station where it does not operate the local exchange and waiver of the rule is inappropriate, the rule would also preclude all other would be applicants similarly situated. Alascom has not proffered any facts or specific lines of inquiry, nor can we perceive any, which would necessitate a separate evidentiary hearing in each instance where local exchange ownership is proposed. Therefore, we conclude this proceeding provides Alascom with an adequate opportunity to present its concerns and is accordingly consistent with due process of law.

Proposed Rule

35. In summary, we believe the proposed rule will foster an improved telecommunications system in Alaska by affording the local carriers a greater role in network operations. We recognize, though, their ownership will alter the current method by which communication services are provided. Because essential communication service is involved, we wish to facilitate an orderly transition in this regard. Our current intention is to implement the rule if appropriate, promptly after the benefit of public comment. Accordingly, we have set forth guidelines toward this end. We wish to provide for the most efficient administrative procedures possible in order to resolve the long-outstanding Bush controversies in a timely fashion. We invite comments from the parties regarding these guidelines and whether they are sufficient to protect the public interest, namely, bringing rapid and efficient communication service to the Bush.

36. The proposed rule is set forth in Appendix B. It is intended to apply only to those small isolated communities traditionally thought to comprise part of the Alaskan rural Bush population. While the Commission has never precisely defined what comprises a Bush community, we do not intend to limit the rule to only those communities currently served by Alascom or to those communities for which applications are currently on file. Rather, our intent is to apply the rule where the general characteristics of a Bush community are present. Therefore, we have excluded from the rule the 32 largest cities where Alascom now operates "mid-route" stations.[47] Comments are specifically requested on the appropriateness of this criterion.

37. The rule will only apply to earth station facilities which are intended to provide public message telephone service as defined in Section 21.2 of the Commission's Rules. In other words, the

[40] Bell Telephone Co. of Pennsylvania v. FCC, 503 F.2d 1250 (3rd Cir.) *cert. denied*, 422 U.S. 1026 (1974).

[41] *Id.* at 1266, 1268. *See also* Vermont Yankee and Florida East Coast Railway Co., *supra* note 34.

[42] As previously indicated, the carriers now interconnect at Alascom's earth station. The proposed rule would move the interconnection point somewhere between the earth station and the satellite. See discussion in paragraphs 44-45, *infra*.

[43] In the Docket No. 15735 proceedings, the Commission adopted policies and procedures governing the ownership and operation of earth stations in the international communications satellite system, the processing of competing applications without comparative hearings, and the interface between terrestrial and satellite facilities and operations. Ownership and Operation of Earth Stations: Report and Order, 35 FCC 1104 (1965), *recon.* 2 FCC 2d 658 (1966); Second Report and Order, 5 FCC 2d 812 (1966).

[44] *Compare* Londoner v. Denver, 210 U.S. 373 (1907) with Bi-Metallic Investment Co. v. State Board of Equalization, 239 U.S. 441 (1915). *See also* Florida East Coast Railway Co., *supra* note 34, at 244-46.

[45] FCC v. WJR, The Goodwill Station, 337 U.S. 265, 275-77.

[46] Memorandum Opinion and Order in CC Docket No. 78-72, *supra* note 24.

[47] The term "mid-route" connotes those facilities which "switch" MTS or private line traffic, which we have previously found do not present the same economic exclusivity considerations. Satcom Construction Order, *supra* note 12, at 689-90.

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rule applies only to those earth stations which are proposed to be operated in conjunction with a local exchange service or which will otherwise be connected with the inter and intrastate network to provide message telephone service. Our intent in this proceeding, and the purpose of the proposed rule, is to establish a policy only for these earth stations in order to avoid duplication of facilities needed to provide essential public message service to the small communities.

38. The rule, if adopted, will be implemented as follows. Those applications which contain appropriate documentation of the applicant's status as the local exchange carrier in the community where the facility is proposed will be processed. Those applications which do not contain such documentation will be deemed unacceptable for filing and will be returned to the applicant. For purposes of the rule, the certification order from the APUC will be sufficient to satisfy the eligibility requirement.

39. A waiver of the rule will be granted for the term of the station license [48] where the applicant can demonstrate one of two conditions. The first condition involves the situation where no certified local exchange carrier is operating and there is no application for such certification pending with the APUC. An affidavit from the waiver applicant attesting to the lack of a certified exchange carrier, or applicant therefor, will be *prima facie* evidence that a grant of the waiver is appropriate. Public notice of the filing of the application and waiver request will be given so that the normal 30 day comment procedures will apply affording all interested parties an opportunity to comment on the appropriateness of the waiver.[49] Since the purpose of the rule is obviously inapplicable in the situation where no local exchange carrier exists, we expect that waivers will be routinely granted.

40. The second condition which invokes grounds for waiver of the rule is where an eligible entity is unwilling to file an application to construct and operate an earth station. An affidavit from the applicant attesting to the local exchange carrier's unwillingness to file an application will be *prima facie* evidence that the eligible entity is unwilling to provide the service. Waiver applicants will additionally be required to serve a copy of their application on the local exchange carrier operating in the community where the facility is proposed. We expect the public notice period will provide interested parties with a fair opportunity to dispute an applicant's showing for waiver.

41. We emphasize that oppositions to waiver applications must set forth with sufficient clarity why waiver of the rule is inappropriate. Oppositions from eligible entities must indicate with specificity that they have a present intent and ability to file an application for an earth station in the same location with operation to commence at essentially the same time. Since we have provided for license terms of three years for a waiver applicant, we do not believe the public interest would be served by delaying permanent authorization, and hence service to the community, based on an eligible entity's intent to file an application at some later date. Moreover, an independent showing of the grounds for waiver must be made with an application for a renewal of the license, based on the conditions existing at the time of renewal. We believe these procedures will provide the most efficient processing of Bush applications since it will afford local carriers an opportunity to plan for acquisition of an earth station and will also permit expeditious resolution of applications where only a non-local exchange applicant appears ready and willing to provide satellite service to the community.

42. We expect eligible applicants to demonstrate their technical and financial qualifications to construct and/or operate the stations consistent with the guidelines articulated in our 1975 public notice,[50] and propose minimum threshold standards for a *prima facie* determination that an applicant is qualified to hold the station license. In those instances where the applicant seeks to acquire existing facilities, it will not be necessary to replicate the information already submitted by Alascom which remains unchanged. We do expect, however, to be apprised of the data which is applicable to the application as well as the technical details concerning any proposed alteration of the facility. Moreover, the applicant should describe its proposed method of acquiring the facility, including the amount of reimbursement flowing to Alascom and the State for their ownership interests in the facilities. We expect that normal commercial practice will prevail and that the facilities will be transferred at net book value.

43. Applicants should also demonstrate their financial ability to construct and/or operate the facilites. Since the local carrier has already undergone financial scrutiny by the APUC during the exchange certification process, we believe local exchange certification will be a *prima facie* showing that the local carrier is financially qualified to operate the facility.

44. We additionally recognize that the proposed rule, if adopted, will modify the physical point of interconnection between the parties. Presently, the local carrier transfers its calls to Alascom's interconnected lines at the earth station. Local ownership will obviously move the physical point of interconnection behind the earth station. We do not view the physical relocation of the interconnection point as a significant alteration of the actual service obligations of the parties.

45. While we do not believe it is necessary to precisely define at what point interconnection will occur under local ownership of the earth station, we wish to make it very clear we are exercising our responsibilities under Section 201 of the Act. Interconnection is crucial to the continuity of essential telephone service to the Bush. Although at what point the interconnection is accomplished may be operationally irrelevant, we suggest a point between the earth station and the satellite so that the space segment costs remain Alascom's responsibility. We specifically request comments from the parties on the appropriateness of this conclusion and, if necessary, we will issue an interconnection order consistent with the comments received in this proceeding.

46. We believe it also desirable to define the respective operation roles of the carriers. Alascom, as the interstate carrier, maintains the overall responsibility for the operation of an integrated and efficient toll network. It provides the necessary space segment capacity based on the circuit requirements assessed by the local carriers. Local ownership will provide the exchange carriers with a greater voice in planning decisions, particularly with respect to channel and service requirements of the communities as well as the requisite reliability requirements. Traffic allocations and circuit requirements must necessarily be a product of mutual agreement between the cariers. Additionally, decisions regarding implementation of technical improvements to the network should be jointly deliberated as much as possible.

[48] Where a waiver is granted, the term of the license shall be three years.

[49] We expect waiver applicants to file their waiver petitions with their formal applications for the facility, thereby avoiding the necessity of separate public notice periods. Copies of the filings should be served on the APUC.

[50] See Public Notice issued Aug. 8, 1975 entitled "Processing Procedures for Domestic Satellite Earth Station Applications," FCC 75-932.

While we expect Alascom to adhere to its obligation by providing network management functions to maintain the technical integrity of the network, joint cooperation between the parties will be essential. Thus, the proposed rule seeks only minimal technical capabilities of the licensee to perform routine, day-to-day functions needed to maintain continuity of service at the particular earth station as a *prima facie* showing of technical qualifications. Comments are requested to the extent additional technical details are needed or desired.

47. In conjunction with this division of responsibility, Alascom is regulated by the Commission pursuant to the provisions of Title II of the Act. In the *Alaska Facilities Order*,[51] we stated that Alascom would be required to separately justify its traffic and circuit requirements and the terms of each acquisition of space segment capacity. According, we did not authorize any definitive amount of capacity but rather directed Alascom to file a separate application pursuant to Section 214 and Part 63 of the Rules.[52]

48. Because we have already implemented effective regulatory oversight through the Section 214 requirements discussed above, we believe it may be unnecessarily duplicative and burdensome to require separate Section 214 applications by the local carriers who own and operate the Bush earth Stations. The information Alascom is required to provide will necessarily be based in part on the circuit utilization of the exchange carriers. Since their circuit uses and projections will already be reviewed in the context of Alascom's Section 214 application, we tentatively conclude that no regulatory objective will be furthered by requiring the submission of a separate application, where only intrastate service or interstate service through connection with a certified interstate carrier is proposed. Moreover, any use of the facilities, as well as any modification thereof, is fully subject to the provisions of Title III. Therefore, in light of the alternate avenues of review as well as the nature of the services the exchange carriers will provide, our tentative conclusion is that separate Section 214 certification will not be required of the local exchange cariers to operate the Bush earth stations, but will be implicit in the Title III authorization.

Conclusion

49. It is our tentative belief that the public interest will be best served by adopting rules which require local exchange certification as a qualification to own and operate earth station facilities in rural Alaskan communities to provide MTS service. As a practical matter this means that native Alaskans will play a larger role in network planning in Bush areas and will exercise more effective control over the operation and maintenance of satellite earth stations serving their communities. We expect this will increase the availability of satellite services to these areas, and therefore promote safety of life, efficient service, more adequate facilities and and other ojectives of Section 1 of the Communications Act. Apart from these substantive benefits, we believe that this rulemaking proceeding provides the most effective procedural tool for deciding the ownership policy question which has plagued the Bush applications for more than five years. We expect its resolution will permit expeditious action on the applications currently pending as well as those that will be filed in the future.

50. This Notice of Inquiry and Proposed Rule Making is issued pursuant to authority contained in § 4(i), 303, and 403 of the Communications Act of 1934, as amended. Interested parties may file comments on or before December 29, 1980 and reply comments on or before January 29, 1981. All relevant and timely comments and reply comments filed in response to this Notice will be considered by the Commission. In accordance with the provisions of Section 1.419 of the Rules, an original and five copies of all comments, replies, briefs, and other documents filed in this proceeding shall be furnished the Commission. Copies of all filings will be available for public inspection during regular business hours in the Commission's public reference room at its headquarters in Washington, D.C.

51. Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in proceedings such as this one. See *Sangamon Valley Television Corp. v. U.S.*, 269 F. 2d 221 (D.C. Cir. 1959). An *ex parte* contact is a message (spoken or written) concerning the merits of the rulemaking made to a Commissioner, a Commissioner's assistant, or other decision making staff members, other than comments officially filed at the Commission or oral presentations requested by the Commission with all parties present. A summary of the Commission's procedures governing *ex parte* contacts in informal rulemaking is available from the Commission's Consumer Assistance Office, FCC, Washington, D.C. 20554, (202) 632-7000.

Federal Communications Commission.[53]

William J. Tricarico,

Secretary.

[51] RCA American Communications, Inc., 79 FCC 2d 435 (1979).

[52] See Application File No. W-P-C-3315.

[53] See attached Statements of Commissioner Lee and Commissioner Fogarty.

Appendix A

Location	File Nos.	Applicant
(1) Akutan	21-DSE-P-76, 922/DSE-P/L-80	Alascom, Inc., Interior Telephone Company.
(2) Alakanuk	183-DSE-P-77, 446-DSE-P/L-80	Alascom, Inc., United Utilities, Inc.
(3) Ambler	59-DSE-P-75, 919-DSE-P/L-80	Alascom, Inc., OTZ Telephone Cooperative, Inc.
(4) Buckland	205-DSE-P-77, 913-DSE-P/L-80	Alascom, Inc., OTZ Telephone Cooperative, Inc.
(5) Chevak	1362-DSE-P/L-80, 1277-DSE-P/L-80	Alascom, Inc., United Utilities, Inc.
(6) Deering	204-DSE-P-77, 914-DSE-P/L-80	Alascom, Inc., OTZ Telephone Cooperative, Inc.
(7) Elim	135-DSE-P-77, 1068-DSE-P-80	Alascom, Inc., Mukluk Telephone Company, Inc.
(8) Emmonak	336-DSE-P/L-76, 444-DSE-P-79	Alascom, Inc., United Utilities, Inc.
(9) Gambell	79-DSE-P-75, 937-DSE-P/L-80	Alascom, Inc., United Utilities, Inc.
(10) Golovin	138-DSE-P-77, 1069-DSE-P/L-80	Alascom, Inc., Mukluk Telephone Company, Inc.
(11) Goodnews Bay	1364-DSE-P/L-80, 1208-DSE-P/L-80	Alascom, Inc., United Utilities, Inc.
(12) Hooper Bay	81-DSE-P-76, 447-DSE-P/L-79	Alascom, Inc., United Utilities, Inc.
(13) Kiana	58-DSE-P-75, 917-DSE-P/L-80	Alascom, Inc., OTZ Telephone Cooperative, Inc.
(14) King Cove	41-DSE-P-75, 924-DSE-P/L-80	Alascom, Inc., Interior Telephone Company.
(15) Kipnuk	79-DSE-P-75, 938-DSE-P/L-80	Alascom, Inc., United Utilities, Inc.
(16) Kivalina	1-DSE-P-75, 916-DSE-P/L-80	Alascom, Inc., OTZ Telephone Cooperative, Inc.
(17) Kobuk	53-DSE-P-75, 920-DSE-P/L-80	Alascom, Inc., OTZ Telephone Cooperative, Inc.
(18) Kotlik	142-DSE-P-77, 934-DSE-P/L-80	Alascom, Inc., United Utilities, Inc.
(19) Koyuk	137-DSE-P-77, 1070-DSE-P/L-80	Alascom, Inc., Mukluk Telephone Company, Inc.
(20) Moutain Village	139-DSE-P-76, 940-DSE-P/L-80	Alascom, Inc., United Utilities, Inc.
(21) Noatak	42-DSE-P-75, 918-DSE-P/L-80	Alascom, Inc., OTZ Telephone Cooperative, Inc.
(22) Noorvik	2-DSE-P-75, 911-DSE-P/L-80	Alascom, Inc., OTZ Telephone Cooperative, Inc.
(23) Pilot Station	143-DSE-P-77, 933-DSE-P/L-80	Alascom, Inc., United Utilities, Inc.
(24) Quinhagak	1365-DSE-P/L-80, 1207-DSE-P/L-80	Alascom, Inc., United Utilities, Inc.
(25) Savoonga	63-DSE-P-75, 932-DSE-P/L-80	Alascom, Inc., United Utilities, Inc.
(26) Selawik	206-DSE-P-77, 915-DSE-P/L-80	Alascom, Inc., OTZ Telephone Cooperative, Inc.
(27) Skaktoolik	136-DSE-P-77, 1072-DSE-P/L-80	Alascom, Inc., Mukluk Telephone Company, Inc.
(28) Shishmaref	404-DSE-P/L-78, 1159-DSE-P-78	Alascom, Inc., Mukluk Telephone Company, Inc.
(29) Shungnak	54-DSE-P-75, 912-DSE-P/L-80	Alascom, Inc., OTZ Telephone Cooperative, Inc.
(30) St. Mary's	339-DSE-P/L-76, 968-DSE-M/P-79, 445-DSE-P/L-79.	Alascom, Inc., United Utilities, Inc.
(31) St. Michael	14-DSE-P-77, 1071-DSE-P/L-80	Alascom, Inc., Mukluk Telephone Company, Inc.
(32) St. Paul	19-DSE-P-76, 921-DSE-P/L-80	Alascom, Inc., Interior Telephone Company.
(33) Tanunak	56-DSE-P-76, 941-DSE-P/L-80	Alascom, Inc., United Utilities, Inc.
(34) Togiak	95-DSE-P-76, 923-DSE-P/L-80	Alascom, Inc., Interior Telephone Company.
(35) Tooksook Bay	57-DSE-P-75, 939-DSE-P/L-80	Alascom, Inc., United Utilities, Inc.

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Appendix B

Proposed Rule

It is proposed to modify Part 25 of the Commission's Rules, 47 CFR 25, by adding a new § 25.391 to read as follows:

§ 25.391 Alaskan earth station authorizations.

(a) For the purposes of this section, an Alaskan Bush earth station is a transmitting earth station located in Alaska, but outside of the 32 largest cities of that state, that is intended to provide, in whole or in part, public message service as defined in § 21.2.

(b) Except as provided for in paragraph (c) below, no application for a construction permit or license renewal for an Alaskan Bush earth station shall be accepted for filing unless the applicant includes a copy of its certification by the appropriate state regulatory agency to provide local telephone exchange service within the community in which the earth station is to be located.

(c) The requirement of paragraph (b) above may be waived for a period of up to three years upon a showing that no entity possesses or has applied for the certificate mentioned in paragraph (b) above, or that the entity possessing such a certificate is unwilling to file an application to construct and operate an earth station in the community. A waiver applicant must file copies with the Alaska Public Utilities Commission and the local exchange carrier, if applicable, and include proof of such service with its waiver application. If such a waiver is granted, the license term for the earth station shall not exceed the term of the waiver.

(d) For purposes of this section, the 32 largest cities are Adak, Anchorage, (Eagle River), Aniak, Barrow, Bethel, Cape Lisburne, Cape Newenham, Cape Romanzof, Cold Bay, Cordova, Dillingham, Fort Yukon, Galena, Iliamna, Indian Mountain, King Salmon, Kodiak, Kotzebue, Lena Point, McGrath, Nome, Put River, Sand Point, Shemya, Sparrevohn, Talkeetna (Bartlett), Tanana, Tin City, Unalakleet, Unalaska, Valdez and Yakutat.

Concurring Statement of Commissioner Robert E. Lee in Re: Ownership of Domestic Satellite Earth Stations in Alaskan Bush Communities

The proposal here to make local telephone exchange certification an eligibility requirement for ownership of earth stations in Alaskan Bush communities presents some provocative issues. I am concurring because I would have preferred to give more attention to these issues in the *Notice*. I hope that the parties to this proceeding will address my concerns in their comments.

The *Notice* proposes to reverse the ownership pattern followed by the rest of the domestic telecommunications system whereby the toll carrier owns the access to the toll system. If the proposal is adopted, local exchange operation will become an eligibility requirement for ownership of a facility used exclusively for toll system access. The *Notice* presumes that, if the local exchange owns the earth station, routine maintenance problems will be solved, toll communications services will be more responsive to local needs and interests, and local exchanges will benefit financially. In short, the proposal is presented as the solution to the problems of communication service in the Alaskan Bush.

I am concerned, however, that the benefits may be more illusory than real. Service to the Alaskan Bush has always been a problem, and it will continue to be a problem under this proposal for the simple reason that the service is a burden financially. This *Notice* merely proposes to shift the ownership of earth stations from the toll carrier to the local exchange carriers. It does not propose to shift the financial burden along with the ownership. Toll ratepayers, both intrastate and intrastate, will be expected to continue subsidizing Bush service through the rates they pay for toll calls.

With regard to routine maintenance, Alascom has been criticized because its centralized maintenance office has not always been able to respond quickly to service outages. This is a problem, but I question whether shifting earth station ownership to local exchange carriers is a necessary solution. Alascom could easily contract with the local carriers to have them provide the same day-to-day maintenance they would provide if they were to own the earth stations.

The *Notice* places a premium on the decision making of the local exchange carriers to build whatever earth stations they deem necessary, useful, or financially beneficial. Thus, the proposed policy may create false incentives to overbuild earth stations—one for every local exchange area rather than one for a cluster of local exchange areas, particularly if the local exchange carriers expect that the cost and a rate of return will be paid out of settlements from the toll systems. Added to the costs of earth stations will be the expenses of maintaining them. These expenses, which presumably will be paid for by the toll ratepayers, will rise as the number of earth stations and centralized maintenance offices increases. I hope that the parties will focus their attention on the impact earth station ownership by local carriers may have on the costs and expenses which ratepayers must pay as well as on the quality of service in Alaska.

The *Notice* assumes that the earth stations will be paid for entirely through the intrastate and interstate settlements process, but it does not address the potential problem of shortfalls. While theoretically there should not be any, the real world does not always function according to theory. I hope that parties will consider whether there could be shortfalls and which ratepayers will bear the burden of covering them.

I am also concerned that this proposal makes Alascom the carrier of last resort in communities without local operating companies while, at the same time, undermining any incentive Alascom might have to provide service in these communities. Alascom will be expected to provide service to communities not served by a local carrier, but it will be allowed to do so only under a waiver which must be renewed every three years. I hope the parties will consider whether this proposal could increase the burden borne by Alascom's ratepayers for Bush service while, possibly, retarding development of service in some areas.

Finally, I believe that this proposal delegates a considerable part of our licensing responsibility to the Alaska Public Utilities Commission and creates possible conflicts between that Commission and the FCC. I hope that the parties will look at the legal and practical consequences of this delegation.

We all want to see a viable communications system in Alaska which maximizes the use of communications facilities and scarce resources, including money. We are looking for the best way to achieve this goal. I trust the parties will advise us of the legal and practical consequences of our options in deciding this earth station ownership issue. I would have preferred to gather this information through an inquiry rather than a rulemaking, but I'm sure that the Commission will thoughtfully review the data generated by this *Notice* before reaching a final decision.

Separate Statement of Commissioner Joseph R. Fogarty

In Re: Policies Governing the Ownership and Operation of Domestic Satellite Earth Stations in the Bush Communities in Alaska—Notice of Proposed Rule Making.

I believe it is entirely wise and proper here for the Commission to proceed by rule making rather than adjudication, to resolve the earth station ownership question presented by the Alaskan Bush applications. *United States* v. *Storer Broadcasting Co.*, 311 U.S. 192 (1956), generally supports the Commission's authority to prescribe by rule eligibility requirements for license applications. This proceeding will allow all interested parties a full and fair opportunity for comment and argument on the eligibility criteria which will best serve the public interest in the optimal use of these facilities.

It is particularly appropriate to engage in rule making on these issues in order to avoid unnecessary duplication, delay, and costs which would attend an oral hearing process. In the unique context of the special and pressing communications needs of the Alaskan Bush communities, such expedition also clearly serves the public interest.

[FR Doc. 80-33545 Filed 10-27-80; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 80-522; RM-3582]

FM Broadcast Station in South Lake Tahoe, Calif.; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Action taken herein extends the time for filing comments and reply comments in the proceeding involving the proposed assignment of FM channels to South Lake Tahoe, California.

DATES: Comments must be filed on or before December 18, 1980, and reply comments on or before January 9, 1981.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

Order Extending Time for Filing Comments and Reply Comments

Adopted: October 16, 1980.

Released: October 22, 1980.

By the Chief, Policy and Rules Division:

1. On August 18, 1980, the Commission adopted a *Notice of Proposed Rule Making*, proposing FM channel assignments to South Lake Tahoe, California, (45 FR 58613, published September 4, 1980). Comments are presently due October 21, 1980, and reply comments November 10, 1980.

2. Counsel for Entertainment Enterprises, Inc. filed a request seeking additional time for filing comments and reply comments to and including December 18, 1980, and January 9, 1981, respectively. Counsel states that due to complicated and unexpected events, additional time is needed to prepare and submit data in response to the *Order to Show Cause* of the *Notice*.

3. Since the Commission believes it would be in the public interest to have all the information available to it in arriving at a decision in this proceeding, we are granting the additional time as requested.

4. Accordingly, it is ordered, That the dates for filing comments and reply comments in BC Docket 80-522 (RM-3582) are extended to and including December 18, 1980, and January 9, 1981, respectively.

5. This action is taken pursuant to authority found in Sections 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and Section 0.281 of the Commission's Rules.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 80-33532 Filed 10-27-80; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 78-251; FCC 80-557]

Petition to Institute a Notice of Inquiry and Proposed Rulemaking on the Airing of Public Service Announcements by Broadcast Licensees

AGENCY: Federal Communications Commission.

ACTION: Report and Order; Termination of Proposed Rulemaking.

SUMMARY: The issues raised in a Memorandum Opinion and Order and Notice of Inquiry, FCC 78-602, 43 FR 37725, released August 24, 1978, are resolved by this action. This document allows greater credit to be given to broadcasters for airing public service announcements (PSA's). Specifically, PSA's may be considered in the "other" programming category of the Annual Programming Report for commercial television licensees, as well as in the renewal application forms for commercial radio and television licenses. Broadcast renewal applicants also may use PSA's as illustrative programming on the annual problems-programs list to be placed in a licensee's public file as part of his ascertainment requirement. This action is necessary because inadequate recognition has been given to licensees for airing PSA's, thus perhaps discouraging the broadcasting of such announcements. The intended effect of the action is to more fully recognize the contribution broadcasters make through the airing of PSA's and thus encourage their use where appropriate and effective.

DATE: Effective November 17, 1980.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Freda L. Thyden, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of petition to institute a notice of inquiry and Proposed Rule Making on the Airing of Public Service Announcements by Broadcast Licensees, BC Docket No. 78-251, RM-2712.

Report and Order—Proceeding Terminated

Adopted: September 25, 1980.

Released: October 27, 1980.

1. This proceeding concerns the airing of public service announcements ("PSA's"),[1] by broadcast licensees. Now before the Commission for consideration are the filings generated in response to a *Memorandum Opinion and Order and Notice of Inquiry ("Notice" of Inquiry")*,[2] FCC 78-602, 43 FR 37725, released August 24, 1978.

Background

2. In order to place this phase of the proceeding in perspective, we will first provide a brief history of the case to date. On October 11, 1977, by *Memorandum Opinion and Order*, FCC 77-685, the Commission in its initial action in this proceeding denied a petition filed by the Public Media Center *et al.*, to institute a Notice of Inquiry and Proposed Rule Making looking toward the adoption of rules imposing specific obligations on broadcasters as to the number, duration, content and source of PSA's which they should present. Petitioners argued that the adoption of such rules would result in allocating more time (especially during more desirable time periods) for the airing of PSA's and in giving local citizens groups and public service organizations a greater proportion of PSA time than they presently receive. Petitioners expressed the view that broadcasters have not been meeting their public service obligation in this regard and contended that PSA's are often given inadequate exposure, usually in the least favorable hours. Moreover, they contended, local charities and citizens groups obtain little access to PSA time which, they argued, is largely monopolized by well-established charities and other entities by virtue of their connection with the Advertising Council.

3. Petitioners proposed to require that broadcasters present a minimum of three PSA's, totalling a minimum of ninety seconds, every two hours

[1] A public service announcement (PSA) is one for which no charge is made and which promotes programs, activities, or services of Federal, State or local governments (e.g., recruiting, sales of U.S. Savings Bonds, etc.) or the programs, activities or services of nonprofit organizations (e.g., UGF, Red Cross Blood Donations, etc.) or any other announcements regarded as serving community interests. See § 73.1810(d)(4) of the Commission's rules.

[2] A list of the parties filing formal comments and/or reply comments is contained in Appendix B.

throughout the broadcast day.[3] Petitioners also would impose a limitation on the number of those PSA's which a licensee or network could accept from a single entity and require that a certain percentage of PSA's be of local origin. It would also call for making station facilities and technical assistance available to local organizations for production of PSA's responsive to ascertained needs. Petitioners also recommended amending the application forms to enable the reporting of a broadcaster's efforts in these respects. Finally, petitioners suggested that the Commission initiate a wide-ranging study into current licensee and network practices with regard to the production and airing of PSA's. Opposing arguments were presented to the effect that the presentation of PSA's falls within an area of licensee programming discretion which the Commission should not disturb through adoption of the proposal. Moreover, these parties asserted that petitioners had not presented the necessary factual basis for taking the action requested.

4. After considering the arguments in favor and in opposition to the proposal, the Commission concluded in the *Memorandum Opinion and Order* that adoption of the proposal would be an inappropriate intrusion into the sensitive area of programming. Because of this concern the Commission has regularly followed a practice of according the licensee broad discretion in programming matters, including the scheduling and selection of PSA's. We noted that decisions as to the quantity, nature, source and scheduling of PSA's aired depend on the community to be served and each licensee's individual situation. We found that petitioners had not substantiated their allegations that inadequate PSA time was being provided or that it was being scheduled improperly, that is customarily during times of little audience. Regarding the allegation of Advertising Council dominance, all that could be said from the information given us on the Advertising Council's role in regard to PSA time was that Council endorsement might facilitate the airing of PSA's. No basis was given for concluding that without such support, PSA's would be denied access to the broadcast medium.

5. Nonetheless, the Commission did agree with petitioners that PSA's can offer an important public service, and we concluded the *Memorandum Opinion and Order* with a statement stressing the Commission's expectation that licensees would make a good faith effort to tailor and schedule PSA's so as to enhance their effectiveness and to provide a meaningful, local, public service. Thus, we noted, the predominant scheduling of PSA's in "graveyard" hours or perfunctory treatment of such announcements could not be considered the type of reasonable effort expected by the Commission. Further, we indicated an expectation that a significant proportion of PSA's on television should be aired during prime-time and on radio during drive-time.

[3] Petitioners contend that such a rule would not only increase the time given to PSA's but would encourage broadcasters in meeting this requirement to fulfill another of petitioners' goals, *viz.* utilizing new and diverse sources for these announcements.

Notice of Inquiry

6. On August 8, 1978, on petitioners' motion, the Commission reconsidered its decision of October 11, 1977. Although concluding that our earlier action declining to propose a specific rule was fully warranted, our view of the merits of conducting an inquiry had shifted. We had come to believe that such an inquiry could serve a useful purpose. What became apparent from new information submitted in the petition for reconsideration [4] necessary preclude to determining whether specific rules should be contemplated. We noted that interest in the use of PSA's has grown considerably, not only on the part of this Commission. Congress, as well as governmental agencies, such as the Federal Trade Commission and the Department of Health and Human Services (formerly known as the Department of Health, Education and Welfare), are interested in the employment of PSA's in answering public needs, a fact evidenced in joint comments filed by those two agencies in support of the reconsideration request. Important issues thus having been raised, the Commission initiated an inquiry into what role PSA's presently play in serving the public and what role they could or should have in this important regard.

[4] In its petition for reconsideration, the Public Media Center presented data on the PSA practices of certain local broadcasters and of the Advertising Council not previously submitted. This information, in most part, was obtained from composite week logs provided in license renewal applications submitted to the Commission after the petition for rule making was filed and from a government report first available after the initial petition was filed. The government document referred to is a General Accounting Office report dated August 31, 1977, on the *Federal Energy Administration's Contract with the Advertising Council* which concluded that the Ad Council "* * * has the unique capability to encourage national and local media to contribute public service time on television and radio * * *." Petitioners also noted a Department of Transportation procurement request stating that the Ad Council is the only instrument for designing, developing and implementing national public service campaigns accepted by the advertising industry and the information media.

7. Two general categories of questions were raised for inquiry in the *Notice* adopted on August 8, 1978. The first sought information about the present use of PSA's by radio and television broadcasters and is of an essentially factual nature. The second was designed to explore the views of the parties on the possible role of PSA's and any rule or policy changes which they believe could or should be made. The specific questions asked in the *Notice* and the comments responding to these inquiries will be discussed in detail in the following paragraphs.

Category I of the Inquiry:

Questions and Answers Concerning the Present Use of PSA's by Broadcast Licensees.

8. The factual information currently available to the Commission in regard to present use of PSA'a is largely limited to the data requested on applications for license renewal. Radio stations are asked to indicate how many PSA's are aired during the composite week; television stations are also asked to provide this information and to indicate how many PSA's were aired between the hours of 8:00 A.M. and 11:00 P.M. during the composite week. This purely statistical information does not give a full picture of current practices. In order to gather more information as to the number, duration, timing, nature and source of and criteria for PSA's aired, we asked the following questions of broadcast stations and/or other interested parties responding to the *Notice of Inquiry:*

(1) As to the time given to and the timing of PSA's:

(a) How many (the number of) PSA's are usually aired by a station on a weekly basis?

(b) How much total time on a weekly basis is usually devoted to PSA's by broadcasters?

(c) What is the duration in time of the usual PSA's?

(d) How are PSA's generally distributed throughout the day? Specifically, how much time is devoted to PSA's during drive (radio) and prime (TV) time?

(e) How are PSA's distributed between the various days of the week?

(f) How many (the number of) PSA's aired on a weekly basis by broadcasters are directed to children under twelve years of age?

(g) How much total time on a weekly basis is usually devoted to PSA's directed to children under twelve years of age?

(h) How are those PSA's directed to children under twelve years of age distributed throughout the day?

(i) In the case of television stations, how much time is devoted to such PSA's during periods of peak child viewing, for example, between 7 and 9 A.M. and 3 and 7 P.M. on weekdays and on Saturday and Sunday mornings?

(j) How many (the number of) PSA's aired on a weekly basis by broadcasters are directed to youth (between twelve years of age and eighteen)?

(k) How much total time on a weekly basis is usually devoted to PSA's directed to youth (between twelve years of age and eighteen)?

(l) How are those PSA's directed to youth (between twelve years of age and eighteen) distributed throughout the day?

(2) As to the nature of PSA's aired:

(a) List those topics which are often the subject of PSA's.

(b) Are most PSA's concerned with local or national issues? Specifically, what percentage of PSA's on a weekly basis usually deal with local versus national topics of interest? Of those PSA's aired on local matters of interest, how many were broadcast on behalf of local groups or organizations?

(c) Do any PSA's aired deal with controversial issues? If so, what is the usual percentage of controversial PSA's broadcast on a weekly basis?

(d) What topics are usually the subject of PSA's directed to children under twelve years of age?

(e) What topics are usually the subject of PSA's directed to youth (between twelve years of age and eighteen)?

(3) As to the sources of PSA's aired:

(a) What and how many production sources are there for PSA's?

(b) Do broadcasters solicit the production of specific PSA's or are PSA's generally provided to broadcasters for their use?

(c) To what extent, if any, are PSA's provided to broadcasters in package form rather than on an individual basis?

(d) Do broadcasters produce their own PSA's and, if so, to what extent?

(e) What are the costs involved in producing the usual PSA?

(f) To what extent are these costs a factor in the presentation of particular PSA's?

(4) As to the criteria for choosing which PSA's will be aired:

(a) What criteria do broadcasters generally employ in determining which PSA's to air?

(b) Do broadcasters employ their list of ascertained community problems, needs and intersts as a guide in determining which PSA's will be aired? [5] If so, what percentage of PSA's on a weekly basis respond to those problems, needs or interests discovered through the community ascertainment process?

(5) Finally, how useful are PSA's in serving the public?

Summary of Formal Comments

9. Approximately ninety parties filed formal comments in response to the *Notice of Inquiry.* These submissions were filed on behalf of interested individuals, the three major networks, a variety of broadcasters' associations, individual broadcast stations, broadcasting and communications corporations, government agencies, The Advertising Council, national charities, public interest and service organizations, national and local citizens' groups and members of the academic community. Of these submissions, approximately twenty-five filings provided substantial data answering questions asked in Category I of the *Inquiry.*

10. The comments providing statistics can be divided into two categories. One category of submissions includes those filed by broadcast stations or groups of stations. These tend to be reports of PSA performance of the particular faciities. It should be noted at the outset that only those stations wishing to respond did so.[6] Thus, the sample may be considered statistically biased. Also, broadcaster filings concern only individual stations with no comparison to others in the market or other areas. The other category of comments consists of studies of the PSA performance of various groups of broadcast stations (market-wide, state-wide, etc.) by non-licensees. These samples involved either portions of large groups of stations, such as those in a large geographic area, randomly selected, or censuses of all stations in a particular market area. A variety of techniques, such as on-the-air monitoring and examination of station logs, were employed by non-broadcasters to develop their data. The lack of a national sample, however, limits the statistical accuracy of these studies. Nevertheless, we believe the data will serve a useful purpose in assisting the Commission to determine what, if any, action it should take regarding the airing of PSA's.

11. The data provided in the submissions generally suppports the following conclusions [7]:

(1) As to the time given to and the timing of PSA's:

(a) On the average, a little less than 200 PSA's are aired per week per station.[8]

(b) About slightly more than two hours of weekly time is devoted to PSA's.[9]

(c) The usual PSA runs approximately 30 seconds.[10]

(d) PSA's seems to be evenly distributed throughout the day, that is they are not necessarily aired in graveyard hours, but also they are not centered in drive and prime-time periods. The ratio for drive and prime-time periods is not significantly different than the non-drive and prime-time ratio, to the extent that specific data is available.

(e) Among the few comments which deal with the days of the week issue it appears that a higher number of PSA's are presented on weekends than weekdays.

(f) Approximately 7% of all PSA's aired (the number thus is about 14 per week) are specifically directed to children under 12 years of age.[11]

(g) 8½ minutes per week is usually devoted to PSA's directed to children under 12 years of age.

(h) Child-directed PSA's are more common during child viewing time. 20% of child-oriented PSA's are broadcast during programming directed to children.

[5] As part of the material submitted for renewal of broadcast licenses, applicants are called upon to provide a showing of their efforts to ascertain and respond to the problems, needs and interests of the community which they are licensed to serve. See the *Primer on Ascertainment of Community Problems by Commercial Broadcast Renewal Applicants ("Renewal Primer")*, 57 F.C.C. 2d 418 (1976). See also the *Primer on Ascertainment of Community Problems by Broadcast Applicants ("Primer for New Applicants")*, 27 F.C.C. 2d 650 (1971), which provides ascertainment guidelines for applicants for construction permits for new commercial broadcast stations; and the *Primer on Ascertainment of Community Problems by Noncommericol Educational Broadcast Applicants ("Nancommerical Primer")* 58 F.C.C. 526 (1976), which delineates the ascertainment requirements for all noncommercial educational radio and television applicants, renewal and otherwise.

[6] Among other things, it is likely that broadcast stations most aware of Commission proceedings, as well as those facilities either performing particularly well in the PSA area or most opposed to a PSA rule making, will file comments in this proceeding.

[7] The parties generally have submitted sketchy data. Nevertheless, we believe that the conclusions drawn from the furnished information, with their apparent limitations, shed further light on the PSA situation at the present time.

[8] Taking all reporting stations into consideration, an average of 1 to 1½ PSA's are aired per broadcast hour.

[9] This amounts to from one to two percent of all broadcast time.

[10] PSA's also run for 10, 20 or 60 seconds but rarely, if ever, any longer.

[11] See Docket No. 19142, FCC 79–851, for a *Notice of Proposed Rule Making* released in *The Children's Televeision Programming and Advertising Practices* proceeding. The Notice was pubished in the **Federal Register** on January 9, 1980, Vol. 45 FR 1976, with comments and reply comments due June 16 and August 1, 1980, respectively.

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(i) Approximately 1½ minutes per hour are devoted to PSA's during child dominant viewing times.

(j) through (l) The comments addressing these questions, which concern youth (ages 12 through 18) are very few. The limited data, however, indicates figures similar to those reported for children (questions and answers (f), (h) and (i)).

(2) As to the nature of the PSA's aired:

(a) The subject matter of PSA's is varied. Those concerning health and safety, however, appear most common. Also dealt with in PSA's are matters relating to social services, civic activities and environmental concerns.

(b) Few responses were received on the issue of local versus national PSA's. On the average, those submissions dealing with the question indicated that about one-third of the PSA's they aired dealt with local topics or were locally produced.[12]

(c) It appears from the data submitted and general statements made by broadcasters that PSA's concerning controversial matters are not usually aired.

(d) The topics usually the subject of PSA's directed to children under twelve years of age concern, as they do for adults, health and safety.

(e) The topics usually the subject of PSA's directed to youth are drug abuse, alcoholism and venereal disease.

(3) As to the sources of PSA's aired:

(a) Production sources for PSA's are numerous since any organization having access to an audio studio and trained assistance can produce such announcements. Therefore, no specific listing could be developed from the furnished information.

(b) Broadcasters tend to have PSA's provided for them and do not on a general basis solicit the production of specific PSA's.

(c) Although PSA's are sometimes provided on an individual basis, they are generally offered to broadcasters in package form.

(d) Broadcasters produce some of their own PSA's but to what extent was not meaningfully revealed by the furnished data.

(e) The data submitted was inadequate to draw any conclusion on the cost of PSA's.

(f) It appears that in comparison to other types of spot announcements, few costs are involved in PSA production and they are not a significant factor in the presentation of particular PSA's.

[12] The majority of commenters take issue with any Commission differentiation between local and national PSA's, generally stating that national PSA's are only aired if they meet the needs of the particular community involved.

(4) As to the criteria for choosing which PSA's will be aired:

(a) Broadcasters generally state that local public service is the criteria for choosing which PSA's to air, whereas non-broadcast parties conclude that availability and convenience are the criteria employed.

(b) Broadcasters employ their list of ascertained community problems, needs and interests as a guide in determining which PSA's will be aired, however, the degree to which they do so appears to vary widely.

(5) Stations and non-broadcast parties find PSA's are useful in serving the public. A question raised in this context, however, is whether repetition of even worthwhile messages is counter-productive.

12. We believe it will be helpful for later discussion to indicate statistical data provided by particular broadcasters, as well as non-licensees, in order to provide a sampling of the information furnished the Commission. Thereby, a more complete record will be provided for the disposition of the issues in this proceeding. Initially, we note that Boston Broadcasters, the licensee of Station WCVB–TV, reported airing PSA's for 118 organizations during the composite week. The station aired over 2 PSA's, or one minute of PSA time, every hour on the average. 35 percent of WCVB's PSA's are aired between 6 a.m. and 12 noon, 30 percent between 12 noon and 11 p.m. and another 35 percent from 11 p.m. to 6 a.m. The station indicates that a greater proportion of PSA's are aired on weekends; 7 percent of their PSA's are for either adolescents or children, with their subject matter being alcoholism, drug abuse and venereal disease for the former and nutrition and safety for the latter; and 80 percent of their PSA's are local. The topics which are frequently the subject of WCVB's PSA's for adults are health, social services, minority affairs and civic activities. WCVB also notes that PSA's are either provided directly by the public service organizations benefiting from the announcements or the announcements are produced by the station for local public service groups and entities, at a cost to the station of $250 per announcement. It submits that $62,000 was spent by the station in 1977 to produce PSA's. When national organizations furnish the PSA's, states WCVB, it is not uncommon for them to be provided in package form. The subjects of its PSA's transcends, WCVB asserts, problems ascertained through its community ascertainment survey.

13. Another television station submitting data to the Commission is Station WBAY licensed to Nationwide Communications. WBAY averaged less than one PSA per hour for a weekly total of approximately 120 PSA's, 7 percent being directed to children and adolescents. The average duration of the station's PSA's is 30 seconds. They are generally distributed throughout the day and the week. PSA's for children are generally aired from 7 a.m. to 9 a.m. weekdays and on weekend mornings. PSA's directed to teenagers are aired during late afternoon periods. The subject of children's PSA's are nutrition, safety and dental care; those for adolescents are drug abuse and education; and those for adults are health, social services, minority affairs, civic activities and safety and environmental concerns. WBAY considers 75 percent of its PSA's as daily with local issues and concludes that few concern controversial issues. PSA's are given to the station by public service organizations, governmental agencies and the Advertising Council. Again, when national organizations provide PSA's, they are often in package form. 10 percent of WBAY's PSA's are provided in that fashion. Approximately 50 percent of those PSA's aired by WBAY on a weekly basis directory responsive to ascertained community needs.

14. As to radio stations, KEZY generally broadcasts 170 PSA's weekly. These announcements average from 10 to 20 seconds in length and frequently include special announcements which range up to one minute in duration. KEZY's PSA's are generally distributed throughout the day, except during the all-night programming. Such announcements are broadcast in one-hour intervals starting at 6:50 a.m. and continuing in that fashion until 1:50 a.m. the following morning.[13] 29 percent of its PSA's are specifically directed to children under twelve years of age. Approximately 100 PSA's are directed to adolescents. KEZY reports that 90 percent of its PSA's are concerned with local as opposed to national issues. The subject matter of the spots for children are the same as listed for Stations WCVB–TV and WBAY–TV. KEZY reports that its PSA material is typically acquired through community inquiry. PSA's are not generally obtained in package form and 10 percent of its spots are produced at its station. 35 percent of the PSA's carried are directly responsive to ascertained community problems.

15. Turning to the networks, CBS states that it airs about one PSA per hour, but the number of stations clearing

[13] Group W stations (Westinghouse Broadcasting Co.) report that they air on an average of 2 PSA's per hour.

such PSA's varies a great deal.[14] CBS owned radio stations broadcast 60, 30, 20 and 10 second spots but 60 second announcements predominate. 30 second spots are the most popular with CBS owned television stations.[15] As to the CBS television network, there is no significant difference in the scheduling of PSA's between the various days of the week. The TV network usually devotes a minimum of 5½ minutes per week to PSA's designed primarily for children.[16] It is also indicated that a majority of PSA's aired by each of the CBS owned TV stations are broadcast on behalf of local sponsors. CBS argues, however, that it is artificial to distinguish between national and local PSA's. A national topic, it submits, is one which by definition has an impact on many communities. CBS' view is that the Commission's questions in this regard implies a preference against PSA's for national organizations or local chapters as compared to some unspecified and unidentified local and community group. As to PSA's addressing controversial issues, CBS network will not consider them for airing. The topics which are often the subject of CBS' PSA's include education, health, safety, social problems, the environment, community welfare, religion, consumer affairs and government information. According to its comments, the majority of PSA's are provided to CBS TV Network and CBS owned stations in package form.[17] That is, three or four or sometimes more PSA's of different length and perhaps content are often received from a single organization. Many of the unsolicited PSA's CBS receives are produced by the public service sponsors themselves.[18] A large number of PSA's are produced by the CBS-owned stations and the CBS Radio Network on behalf of public service sponsors who lack the technical expertise or financial resources to produce their own air-quality PSA's. According to CBS, an average PSA costs a public service sponsor anywhere from $5,000 to $12,000 to produce. It is the general experience of the CBS-owned stations that irrespective of whether there is a conscious decision for PSA's to mirror ascertained needs, the great majority of PSA's broadcast do in fact directly respond to problems discovered through the community ascertainment process. The network also indicates that its stations receive substantial feedback in the form of letters and telephone calls describing various benefits to public service sponsors from exposure given their spots.

16. Turning to some of the specific comments submitted by non-licensees, we note the study of radio PSA's aired in several midwestern states done by Soley and Redd of Michigan State University. They found a wide variance in the number of PSA's aired, a variance that could not be explained by traditional economic and programming factors. The average number of PSA's aired in this survey was 1.3 per hour.[19] In looking at the material submitted on children's programming in the Boston market, submitted by Action for Children's Television ("ACT"), we note that a little over one minute per hour was devoted to PSA's. 20 percent of these spots were considered by ACT to be directed specifically to children with most classified as general or adult oriented in content analysis.[20] The largest share of the PSA's, that is 40 percent, concerned health and safety. ACT reported that few PSA's were in fact local.

17. New York City broadcast stations were examined by Jan Geller who found the most PSA's were scheduled in non-drive and non-prime hours.[21] Most PSA's were found to be neutral in terms of content controversy, an observation supported by station executives interviwed who noted that this was station policy. Few minority-oriented PSA's were aired,[22] according to Geller who also submitted that little attention was given to the scheduling and production of PSA's.

18. The Public Media Center also viewed a number of facilities and found them wanting. As to Station WABC–TV, New York City, petitioners assert that 63.6 percent of all PSA's aired were before 8 a.m. and after 11 p.m., with only 30.6 percent of total PSA time being given to local organizations. As to WCBS–TV, New York City, most PSA's, it is submitted, were aired before 7 a.m. and after 3 a.m., with nearly 30 percent of all PSA time parcelled out to just seven public service campaigns. None of these spots concerned controversial issues. In regard to KTBU–TV, San Francisco, California, although only 164 PSA's were aired during a particular week, that being June 18–24, 1978, petitioners note the station's strong commitment to local PSA's, some of which even addressed controversial topics. KTBU devotes a substantial amount of its PSA time to daylight hours and petitioners state that in their opinion a reasonable portion of prime-time is given to PSA's. Other stations were evaluated, such as WTOP–TV, Washington, D.C., with over 3 hours a week of PSA's, the bulk being in daytime. Petitioners further note that on a weekly basis WTOP gave 3 prime time minutes to PSA's with national PSA campaigns being generally favored over local. Additional data is provided on other broadcast stations with similar fluctuations indicated.

19. Also of interest is the submission filed by the Heart, Lung and Blood Institute of the Department of Health and Human Services citing a 20 percent drop in cardiovascular disease in recent years and attempting to correlate the drop with the airing of PSA's on the subject. Also, the Georgia Department of Human resources quotes a mail survey of theirs which reports that 70 percent of broadcast stations in Georgia use the PSA's sent to them by that Department frequently. Although these submissions are not strictly statistically accurate, we believe their notation is informative.

Category II of the Inquiry: Questions and Answers Concerning the Possible Future Role of PSA's

20. Before discussing those comments which address the subject of what role PSA's now play and what that role could or should be in the future, we point out that the Commission's rules do not presently impose a PSA obligation on broadcasters. Rather, as was stated in our earlier *Memorandum Opinion and Order*, nothing more is specified than that the licensee proceed with good faith. Consequently, in the *Notice of Inquiry* we invited interested parties to indicate whether they thought a specific requirement should be imposed on broadcasters in regard to the presentation of PSA's. Specifically, we asked whether such a requirement was

[14] ABC indicates less than one PSA per hour broadcast.

[15] The duration of PSA's broadcast on NBC–TV usually ranges from 10 to 60 seconds, with 30 second spots being most common. Radio PSA's are usually 10 to 60 seconds, with 30 second spots beimg most common. Radio PSA's usually 10 to 15 seconds long.

[16] NBC–TV stations try to schedule children's PSA's during children's programs. NBC radio stations are generally programmed to attract an audience over 18 years and, therefore, do not broadcast PSA's directed to children.

[17] ABC reports that PSA's generally are provided on an individual basis rather than in package form.

[18] Accordingl to ABC, the overwhelming majority of PSA's aired are voluntarily provided from outside non-profit public service oriented organizations.

[19] The Interfaith Centers Justice analyzed the schedules of Detroit area broadcast stations and determined that the number of PSA's aired was limited, that is less than requested by petitioners.

[20] The FTC asserts that half of the PSA's scheduled during children's television time which is monitored were directed toward a general audience. The FTC also argues that there is limited airing of nutritional PSA's directed its children.

[21] The Interfaith Centers for Racial Justice determined that most PSA's aired by Detroit area stations were broadcast in non-peak audience hours.

[22] The PSA's aired by Detroit area stations, according to the Interfaith Centers, were usually of general appeal rather than directed toward specific and/or minority audiences.

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necessary to ensure that broadcasters air a reasonable number of PSA's. Might we encourage rather than require their presentation if we provided some recognition for airing a greater number of these announcements. This question was raised since present Commission procedures provide little credit to licensees for the airing of PSA's. Although these announcements, to a certain extent, may be used to meet community ascertainment requirements for renewal, as well as for the grant of a construction permit for a new station,[23] they may not be listed as illustrative programming on the annual problem-programs list to be placed in the public file.[24] Nor, for that matter, does the Annual Programming Report (FCC Form 303A), which is to be filed by commercial television licensees and permittees, note the time given to PSA's during the composite week. The only programming categories to be reported are "news," "public affairs" and "other," the last category being exclusive of entertainment, sports and PSA's.

21. In considering whether greater credit should be given to broadcasters for airing PSA's, we raised for inquiry the question of what weight should be given or what procedure established for crediting licensees for a particular level of performance in this regard. For instance, does the record support the consideration of PSA'as as "other programming" on the Annual Progamming Report for the total amount of time given to PSA's.[25] Comments were also invited on possible ways of giving greater recognition to, and thus encouraging the airing of, PSA's during drive and prime-time, perhaps by considering them the equivalent of twice the amount of time presented at other hours.

22. In view of our current concern with children's programming, as indicated by our present inquiry into the matter, we raised the issue of whether (and if so how) licensees should receive credit for broadcasting PSA's tailored for children and youth during programs directed to them, as well as during other programs frequently viewed by them.[26] Comments were also invited on possible ways of encouraging the airing of those announcements. Similarly, should broadcasters receive credit for airing PSA's which serve other specialized audiences, such as those directed to the Spanish speaking and captioned for the deaf?

23. Another matter for consideration in this inquiry is whether radio and television should be treated differently with respect to any PSA obligation imposed or credit given to broadcasters. If so, in what way? Also, should the PSA definition be modified and, if so, in what manner? Specifically, should any new definition reflect the particular purposes to which PSA's may be put? For instance, PSA's may be employed in campaigns concerned with good nutrition, preventive medicine, employment, and consumer items. Should the PSA definition refer to such purposes and/or include a statement that controversial matters may be the subject of PSA's. These were the specific questions asked of those commenting. Of course, they were also invited to make any suggestion they considered pertinent to the subject matter of the proceeding.

Summary of Formal Comments

24. Of the approximately ninety parties filing formal comments in response to the *Notice*,[27] some provide data in answer to the factual questions asked in Category I of the *Inquiry* but do not offer an opinion on the adoption of either specific rules or a credit system for PSA's. As to the filing expressing a viewpoint, that being approximately seventy, slightly more than half were against any Commission action being taken. Of the submissions remaining, half were against specific regulations but in favor of credit procedures and half were in favor of particular PSA rules.

Comments Favoring the Adoption of Specific PSA Rules

25. Those parties favoring the adoption of specific PSA regulations generally argue, as does the United Church of Christ. That most if not all PSA's are scheduled during time slots when commercial messages have not been sold. A number of commenters contend that most broadcast stations will air PSA's during prime-time only if they are required to do so. Volunteer programs, they submit, are not consistent or constant. The Interfaith Centers for Racial Justice also allege that the data provided in answer to questions asked in Category I of the *Inquiry* indicates that television stations, especially network owned facilities, are incapable of carrying out any Commission policy unless quantitive standards are established. Proponents contend that minimum quantitative standards for PSA's are constitutionally permissible and statutorially authorized and are an appropriate mechanism for dealing with what they view as inadequate PSA practices.

26. Various parties attest to the value of PSA's, stating that they can bring the public's attention to signficant social problems. In fact, the Federal Trade Commission ("FTC") notes that a spot message broadcast to a widespread audience is a uniquely effective means of communicating with the public. PSA's can also be useful tools for stimulating a healthy commercial marketplace submits the FTC. PSA's distributed by the Federal Government or nonprofit groups can be used to complement commercial messages, educate the public, disseminate nonbrand comparative produce information and generally improve the quality of consumer choice. The FTC asserts that PSA's are the only cost effective means for government agencies and non-profit organizations with limited funds to communicate with vast numbers of consumers. But PSA's will not have this meaningful impact, it submits, if their timing and frequency is left entirely to the discretion of the broadcasters.

27. Proponents of specific PSA rules also argue, as do individuals Peter Thurston and James Murray, that a relationship must be formulated in the use of the public airways which gives public service messages parity with advertising. As an example of data supporting this opinion, the Southern California Committee for Open Media indicates that while the typical radio station in the Santa Barbara market gives about one percent of its time for PSA's, these same stations allocate an average of twelve to twenty percent of their time for the broadcast of commercial advertisements. Thus, it is argued that a formula should be established which recognizes that PSA's

[23] See Question and Answer 29 of the *Renewal and New Applicant Primers* where it is stated that PSA's may be broadcast to treat ascertained community problems, needs and interests. Also to be noted is Question and Answer 30 of both *Primers*, in which we stated our misgivings about relying solely on PSA's to treat ascertained needs.

[24] See Question and Answer 33 of the *Renewal Primer* and paragraph 48 of the *Noncommercial Primer* for the licensee's obligation to document on an annual basis its efforts to program to meet ascertained community needs. Specifically, the licensee must place in its public inspection file a list of no more than ten significant problems, needs and interests ascertained during the preceding twelve months. Concerning each problem, need or interest listed the licensee must also indicate and describe typical programs broadcast in response to those problems. Such programs are not to include either PSA's or ordinary news coverage.

[25] If a number of PSA's are aired together as a "community bulletin," a licensee presently may receive credit for their broadcast under the category "other programming."

[26] Children's programs are presently defined as those programs produced for children, not those programs viewed by children.

[27] For a description and listing of the parties filing formal comments and reply comments in this proceeding, see para. 9*supra*, and Appendix B *infra*, respectively.

are to be used for promoting public interest concepts and programs in the same manner as paid advertising. Such a PSA/commercial ratio should not only be established, it is submitted, but maintained throughout the broadcast day so that the public through PSA's enjoys the same access to prime time as does the corporate advertiser. In addition, some proponents of specific PSA regulations believe that broadcaster should be required, also on a formula basis, to provide production time and professional program development services.

28. Finally, a few advocates of specific rules in the PSA sphere suggest even more stringent measures than those recommended by petitioners. For instance, the Council on Children, Media and Merchandising ("Council on CM & M") advises that nôt only should broadcasters be required to report their PSA performance on an annual basis as well as at renewal time, but that stations be required to report monthly on various aspects of their PSA performance to their local viewers. Also, the Council on CM & M recommends that the Commission publish a report of all stations' activity in the PSA sphere.

Comments Opposing Any Commission Action Regarding PSA's

29. A number of arguments were offered in opposition to any Commission action being taken in regard to PSA's, that is, any inquiry into or recognition of PSA performance or the adoption of rules mandating a particular level of PSA activity. As stated by Combined Communications Corporation ("CCC") and the National Broadcasting Company ("NBC"), many opponents believe that any rules requiring broadcasters to air a particular number of PSA's, to air them at a particular time or to air those promoting a particular organization would amount to censorship violative of Section 326 of the Communications Act as well as the First Amendment. It is asserted that these provisions prohibit government intrusion into decisions affecting program content. Thus, programming matters have traditionally been left to the discretion of individual licensees, State opponents, rather than governed by regulatory action. Additionally, such commenters as Storer Broadcasting Company and the National Association of Broadcasters ("NAB") conclude that the mere existence of the inquiry may have a chilling effect on broadcasters' future programming decisions despite the Commission's lack of authority to act on the information gathered in this proceeding. The Columbia Broadcasting System ("CBS") also submits that any offer of credit to encourage broadcaster performance in this area is nothing more than another Commission attempt to regulate by means of the raised eyebrow in order to achieve what cannot be attained by the enactment of new rules.

30. In addition to the jurisdictional argument made by some opposing parties, many commenters assert that PSA regulations are unnecessary since broadcasters already meet their public interest responsibilities in this regard. Station KRCR–TV states that this is an area in which no evidence exists that licensees are providing an insufficient number of PSA's, improper placing of such announcements [28] or denying organizations telecast time for the airing of PSA's.[29] In fact, the National Radio Broadcasters Association submits that radio licensees, without government proding, are already providing ample service of the type envisioned by the Commission in its *Notice*. Also, some commenters are concerned that should the Commission establish a quantitative PSA rule, it will become an industry standard and, in effect, the industry maximum.

31. Opponents also argue that adopting quantitative guidelines will affect the quality of a station's PSA efforts. They submit that increasing the amount of PSA's would not necessarily improve the value [30] or effectiveness of such announcements [31] or the overall service a station provides its audience. Of concern to numerous commenters, such as WJER Radio, Inc., is the possibility that imposing specific regulations would in effect indicate a preference for PSA's over programming in meeting public problems and needs. By narrowing broadcasters' programming choices to inflexible governmental standards, states the Daily Telegraph Printing Company, the Commission would remove the licensee's freedom to build a record based on its editorial judgment of the program mix to best serve local needs. [32] Opponents also argue that it would be impossible to derive a standard that is sufficient to meet the needs of large communities without being too great a burden on the stations in small communities. [33] All three networks, among numerous other commenters, take particular note of the Commission's traditional approach of viewing a station's overall performance rather than a particular program type to determine whether the public interest has been served.

32. Finally, opponents submit that regulating the airing of PSA's by broadcasters is inappropriate in light of current social and political trends favoring reductions of governmental interference in the free market system. Such commenters as the American Broadcasting Companies ("ABC") argue that the adoption of specific PSA requirements would, and in fact the inquiry itself does, contravene the Commission's announced policy of deregulation.

Comments Favoring a Credit System

33. There are a substantial number of commenting parties who while opposing any rules, policies or mandatory reporting requirements that would embody specific standards concerning the scheduling and airing of PSA's, do favor an improved system of crediting the broadcast of PSA's.[34] It is suggested

[28] In one of the nine reply pleadings filed in this proceeding, Queen City Communications, Inc., submits that the most significant conclusion to be drawn from the evidence submitted by petitioners is that broadcasters do not follow uniform practices regarding PSA's. Queen City contends that this lack of uniformity is proof that our current system of broadcasting works. True diversity, it states, can exist only if broadcasters are given maximum freedom and discretion to program their own stations.

[29] A significant number of groups, such as the American Radio Relay League, the Boy Scouts of America, the President's Council of Physical Fitness and Sports, the Lexington League of Women Voters and the United Negro College Fund indicate no difficulty in getting their PSA's aired and, thus, see no valid reason for the adoption of any specific PSA requirements. The Lexington League of Women Voters, however, believes that a credit system to encourage the airing of PSA's is an appropriate Commission action.

[30] One factor in determining the right amount of PSA time, it is alleged, is the season of the year. For instance, in the fall when the United Way Campaign takes place there is a particular need to publicize its events.

[31] Metromedia, Inc., submits that a few well produced spots can be far more effective in achieving the desired goal than longer boring spots that are aired *ad nauseum* and are an irritant to the audience. Also Lawrence Soley of the Department of Telecommunications of Michigan State University states that empirical research has indicated that the understanding and effect of a message is maximized with two to five exposures. He submits that advertisers are now realizing that advertising clutter decreases the effectiveness of a message. The addition of PSA's would increase clutter, he argues, making the added PSA less effective as well as decreasing the effectiveness of the paid commercial announcement.

[32] Commenters submit that a radio station with a format based principally upon musical appeal may find that PSA's are most effective when kept short and well separated, whereas a station with an all talk format may elect to treat the organizations and activities that are traditionally the subject of PSA's in more comprehensive program-length fashion.

[33] Harte-Hanks Southern Communications, Inc., notes that a broadcast station in a large community may find it necessary to include a large amount of PSA's in order to accommodate many and varied community services needing publicity, whereas a station in a smaller market with fewer such services would likely perceive a need for fewer PSA's.

[34] ABC argues that the Commission should not establish by indirect procedures what it must legally avoid doing by direct regulation and thus states that

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by the Pennsylvania Association of Broadcasters that before the Commission considers adopting a specific regulatory scheme, it should observe the attitude of broadcasters if they are allowed greater credit for airing PSA's. Various parties note that by giving greater recognition to PSA's, licensees will be encouraged to improve their PSA performance.

34. Some commenters suggest that PSA's be accorded at least equal status with other forms of public affairs and informational programming. Other parties specifically recommend that licensees be permitted to list PSA's under "other" programming or "public affairs."[35] In fact, Strafford Broadcasting Corporation submits that a credit in the public affairs category should only be issued a station at renewal time for broadcasting a "substantial" amount of PSA's dealing with issues It is further argued that broadcasters should not be required to report the airing of PSA's in this fashion for the extra paper work caused by an additional reporting requirement could serve to discourage certain broadcasters from airing PSA's. Thus, Belo Broadcasting Corporation recommends that licensees be permitted, on an optional basis, to log PSA's by duration, program type and program source and to include time devoted to PSA's in any program reports or composite week analysis presently required by the Commission.

35. The comments varied as to what credit weight should be given for airing PSA's generally or for their broadcast on particular subjects or at particular times. For instance, Westinghouse Broadcasting Company suggests that the number of PSA's broadcast should be reported rather than, or perhaps in addition to, the time devoted to PSA's. Whereas, Belo Broadcasting, as noted above, recommended the crediting of PSA's by length of time. [36] A number of broadcast stations believe that licensees should receive special consideration for serving specialized audiences. Also, Station KMET–FM, Los Angeles, California, is most amenable to having drive-time PSA's considered the equivalent of twice the amount of time of a PSA presented in other hours.[37] Another comment stresses that the promise of extra programming credit for each ascertainment based PSA aired in prime or drive-time could be enough of a prod to save PSA's from the late-night early-morning graveyard.

The PSA Definition

36. The PSA definition was another matter raised for comment in this proceeding. The opinions were varied on this subject. Certain parties argued that any change in the PSA definition to reflect specific purposes to which PSA's may be put would involve problems of government favoritism of certain ideas and causes in suppression of others. Therefore, NBC argues that a definition geared to some government specified purpose for PSA's would run afoul of the First Amendment. On the other hand, Westinghouse Broadcasting Company believes that is not necessary to change the definition of a PSA to reflect the specific purposes to which PSA's may be put. It is submitted that PSA's currently address a wide range of issues and any topical limitations are not called for at this time.

37. A number of other commenters disagree, however, with the above opinions. For instance, the United Cerebral Palsy Association submits that the FCC definition is limited and does not reflect the true scope of PSA's. Also, Care, Inc., suggests that the definition be clarified to indicate that the information presented by these announcements be a service to the public. As to specific suggestions, some commenters recommend that the Commission affirmatively state that controversial issues might be dealt with in PSA's, while others suggest that the definition be clarified so as to particularly include non-routine weather announcements. A few parties proposed particular definitions such as the following suggested by the Advertising Council:

A PSA is an announcement for which no commercial charge is made by the broadcasters or by the non-profit agency, government body or individual providing the message, the purpose of which is to improve the health, safety, welfare or enhancement of people's lives and the more effective and beneficial functioning of their community, state or region. Such messages shall not be commercial, political or designed to influence legislation.

The Committee for Open Media also recommended a new PSA definition. It reads as follows:

A Public Service Announcement is a non-routine, non-billable broadcast message which: (1) Informs viewers or listeners about a service program or activity of community interest or (2) which provides a form for individuals or groups to express their ideas, viewpoint or opinions. Time signals, routine weather announcements and station promotional announcements are not PSA's.

Different Treatment of Radio and TV Concerning PSA's

38. Certain parties expressed the belief that there is little value in treating radio and television differently. The Public Service Council indicated that it is the responsibility of the organizations wishing to utilize PSA's to think of these two communications services as separate media able to perform in different ways to meet educational objectives,[38] but saw no need for regulatory differentiation. Other commenters argue that the establishment of quantitative guidelines would be based on the assumption that there is an unlimited number of PSA organizations clamoring for carriage. While this may be the case in large metropolitan markets, asserts Midwest Family Stations ("Midwest"), it is not the case for thousands of stations located in small communities. Midwest also contends that PSA regulations would have quite a negative effect on daytime-only radio stations. If such a station is to avoid announcement clutter, it would have to cut back on the number of commercials carried per hour. This might have a very negative effect on the often tenuous economic viability of stations with limited hours of operation. Finally, it is noted by Metromedia that this proceeding as it relates to radio should be terminated in view of the proceeding looking toward the substantial deregulation of radio.[39]

Summary of Informal Comments

39. There were approximately 170 informal comments filed with the Commission in this proceeding. The majority of these submissions favored specific PSA rules requiring broadcasters to air certain amounts of PSA's during prime or drive-time or other desirable time periods. Although most of the arguments in favor of regulation did not specifically mention the amount or duration of PSA's which should be required by the Commission, proponents all noted the important public service role played by PSA's.

40. Informal proponents of Commission action in the PSA sphere submit, as did a number of formal commenters, that the Advertising Council monopolizes the PSA field to the detriment of non-Council sponsored public service organizations. They also viewed this proceeding as an effort to define in a more exact fashion a broadcaster's responsibility to air PSA's to serve the public interest. Consequently, proponents argued that PSA's meeting ascertained community problems should be given credit at renewal time. Many commenters asserted, again as formal parties did, that PSA's are a more effective means of meeting community needs than lengthy public affairs programs. Those favoring as well as those opposing PSA requirements submitted that whether the informational message is prepared by a "local" or "national" source is irrelevant as long as the announcement is pertinent and appropriate to the needs of the local community.

41. Informal opponents to PSA requirements submitted that it s inappropriate to further regulate at this time since the government is presently considering deregulating several industries including the radio broadcast sphere. A number of broadcasters comment that PSA rules will increase record keeping and paperwork to be filed with the Commission at renewal time, thus imposing an economic burden on licenses. As indicated by a number of formal parties, informal opponents submit that PSA requirements intrude into the area of broadcasters' programming discretion protected by Commission rules. Finally, opposing comments contend that there is no documented evidence of abuses or deficiences in the present PSA system.

Discussion

42. After studying the record of this proceeding, we have concluded that further rule making is inadvisable. We do not believe that the record supports proposing the adoption of rules imposing specific obligations on television and radio broadcasters as to the number, duration, content and source of PSA's which they should present. The evidence does not indicate that inadequate PSA time is being provided or that it is being scheduled improperly if viewed in light of a broadcaster's total programming. Decisions as to the quantity, nature, source and scheduling of PSA's aired depend on the community to be served and each licensee's individual situation. We hesitate to regulate in the sensitive area of programming and thus have regularly followed a practice of according the lisensee broad discretion in programming matters, including the scheduling and selection of PSA's. It has become evident, however, from the information gathered in this proceeding, that greater recognition of the contribution broadcasters make through their airing of PSA's will encourage the use of these announcements where appropriate and effective. Thus, we are modifying our present procedures to enable licensees to receive greater credit for their public interest performance in the PSA sphere if they wish it.

43. In proceeding with our discussion, we will address the significant arguments raised in the comments filed in response to the *Notice of Inquiry*. Initially, it is noted that since specific PSA rules are not thought necessary or appropriate, we need not reach the issue of whether the First Amendment or Section 326 of the Communications Act bars the adoption of particular regulations concerning the airing of PSA's. As to recognizing the value of PSA's, generally all the parties, as well as the Commission, acknowledge what effective tools PSA's can be in transmitting messages to the public. However, we disagree with those commenters who submit that PSA's will only be aired during drive and prime-time if broadcasters are required to do so. The statistical data submitted and analyzed indicates that PSA's are presently aired during these time periods to a meaningful degree although not in a concentrated amount. Further, there is merit to the assertion that any quantitative PSA rule may become an industry standard which, in effect, is the industry maximum. Therefore, such a regulation might have the unfortunate effect of inhibiting the airing of numerous PSA's.

44. Even if one is convinced that PSA "clutter" will lead to PSA ineffectiveness, and we do not find adequate evidence to draw such a conclusion, we do believe that quantitative guidelines are not a fair measure in themselves of a station's PSA efforts. The particular community must be taken into account in regard not only to subject, but also to the number and the time of broadcast. What is of value to an agricultural community is often different from an industrial or suburban area. In addition to the type of community being served, a particular broadcaster's PSA performance should be evaluated in terms of its total programming in meeting its service area's problems and needs. Similarly, a formula giving public service messages parity with commercial advertisements may well overlook the economic realities of broadcasting as a business.

45. No PSA rules are being imposed on broadcasters. Rather, licensees are being provided with an optional system allowing them greater credit, if they seek it, for their PSA performance. Consequently, an accurate crediting of PSA's does not contravene the Commission's policy to deregulate those broadcast areas which could operate more efficiently and effectively under marketplace conditions. Indeed, we note that the failure to credit PSA's might well have discouraged their broadcast. Modification of our credit procedures will merely be an acknowledgment that PSA's have been utilized by broadcasters to serve their respective audiences.

46. Having decided that greater credit should be provided for the airing of PSA's, the question arises as to what weight should be given and what procedure established for crediting licenses for a particular level of PSA performance. We do not agree with those commenters suggesting that PSA's be considered "public affairs" programming. Muddying the definitional waters does not appear to have any merit. In fact, we are concerned that it would discourage the airing of program-length material meeting community problems. Nor is such a classification necessary to achieve our goals. Considering PSA's in the "other" programming category of the Annual Programming Report for commercial television licensees, as well as in the renewal application forms for commercial radio and television licenses,[40] will provide adequate credit

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it is not in favor of a credit system. Further along in its comments, however, ABC submits that if the Commission means that additional credit would represent no more than acknowledgment that PSA's may be utilized by broadcasters in ways that may not have been appropriately recognized in the past, then we have no basic disagreement with the approach.

[35] The Public Media Center *et al.*, the petitioners in this proceeding, however, emphasize the belief that licensees should not be allowed to use PSA's for illustrative programming credit unless the Commission also adopts regulations ensuring that broadcasters achieve minimum quantitative PSA levels. To do the former, it is argued, without adopting minimum PSA standards would permit licensees to air less public affairs programming without assuring that the licensee would air more PSA's.

[36] Some parties view the giving of credit to brodcasters for meeting or exceeding their PSA commitment as a form a bribery.

[37] It is argued by a few broadcasters that once PSA's are given weighted credit, depending on the time of broadcast or the target audience, the government has inevitably made a judgment as to what should be broadcast and when. NBC contends that this would improperly encroach upon and limit broadcaster discretion protected by the First Amendment.

[38] For example, the Council indicates that television is superior to radio for reaching children from ages two through fourteen.

[39] Few reply comments were filed in this proceeding. They have been considered and where warranted have already been discussed. No further discussion of these reply submissions would serve any useful purpose.

[40] In a current rule making proceeding (RM–2898), the Commission is considering deleting the requirement that commercial television stations file the Annual Programming Report (FCC Form 303–A). Also being considered in that docket is the use of short form as the basic application for license renewal and a detailed long form application to be filed by a randomly selected sample of licensees. Even if at the completion of the rule making process the filing of Form 303–A is no longer required and the short form renewal application is adopted, those licensees completing the long form and those randomly selected for audit by the FCC Field Operations Bureau will be expected to indicate how they have programmed their stations. In those situations, licensees will have the opportunity to include PSA's in their "other" programming

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without any apparent negative effect on the broadcasting of public affairs materials.[41] This is not, however, a mandatory policy. Commercial licensees are required to indicate the length of time they operate in particular categories, these being "news," "public affairs" and "other." Although not specifically excluded from the "other" category, PSA's have not been included because broadcasters have not been required to maintain records indicating the length of time their PSA's aired. Licensees may now wish to keep such records in order to exercise their option to include their PSA performance in the "other category.[42]

47. We are considering the employment of PSA's as illustrative programming on the annual problems-programs list for it has become apparent that although PSA's do not possess the length or depth of longer programming, it is the very fact that they are brief, catchy, repetitive announcements that accounts for their dealing in a more effective fashion with certain community problems.[43] This is an important aspect of the PSA role. The problems-programs list which is placed yearly in a station's public file is required of all commercial licensees, even those in smaller markets who are exempt from other ascertainment reporting.[44] This requirement is also imposed on noncommercial educational radio and television applicants, permittees and licensees with the exception of licensees, such as those offering wholly instructional programming, who are exempt from ascertainment requirements. These broadcasters, as well as broadcasters generally, may not only find PSA's more effective than other programming in meeting certain community needs, but a sounder economic method for fulfilling their ascertainment responsibilities. This last factor is of particular importance to stations whose economic viability is not an assured matter. Therefore, we believe it appropriate to allow broadcasters the use of PSA's for purposes of the problems-programs list. However, the use of PSA's should not be a broadcaster's primary method for responding to ascertained needs. Where appropriate they may be used to meet community problems. Where ascertained interests necessitate lengthy discussions, such announcements would be an inappropriate vehicle.

48. A policy of crediting only a "substantial" or "significant" number of spots aired would appear to have a negative effect on the PSA performance of broadcasters. This is just the situation we are attempting to remedy here. That suggestion will not be adopted, nor will the proposal suggesting that prime and drive-time PSA's be considered the equivalent of twice the amount of time as they would be if presented at other hours. The record evidence has not indicated great interest in a double credit procedure. Moreover, the airing of a PSA at 7 p.m. rather than 6 p.m. does not necessarily make it more worthwhile. A value judgment can only be reached if all the facts of the situation are known, that is the particular PSA aired and the particular community in which it is aired. More specifically, was it a PSA directed to children, adolescents, homemakers or breadwinners? Was the PSA aired in traditional drive-timne in the a.m. hours in a farm community? If so, that PSA may have less, rather than more value. If double drive and prime-time credit or double credit for airing PSA's directed to children, youth, the Spanish speaking, etc., were given, we would, in effect, be penalizing communities not fitting the traditional mold of the industrial city or encouraging the broadcast of PSA's during ineffective time periods or for population segments not to any significant extent part of the station's audience, *e.g.*, PSA's aired on radio for children. In view of these difficulties, we considered a complex credit system providing for the many differences discussed above and found such a procedure wanting in merit. If such a system were to be equitable, the particulars of each PSA aired would need to be known. The record keeping this would entail on the part of licensees, as well as the expenditure of time it would cost Commission staff, does not appear warranted by any resulting gains. The system of credit, adopted herein, has the advantage of acknowledging the significant role PSA's play while not becoming an encumbrance.

49. No modification of the PSA definition appears warranted.[45] It has proven to serve its purpose well. The key elements of this term are "no charge" and "serving community interests." Its broad phraseology enables broadcasters to determine what best serves their service areas. Although some parties have complained that PSA's concerning controversial issues are not aired, data was submitted in this proceeding to indicate that indeed such spots were aired although this is not generally the case. Not only does the present definition in no way discourage the airing of such announcements, but controversial spots may be particularly appropriate when responding to ascertained problems. Any definition which more fully described the subject matter allowed might well have a limiting effect on which PSA's receive exposure and thus could be considered an inappropriate programming intrusion.

50. We also conclude that radio and television not be treated differently with respect to the action taken here. The modified procedures adopted today can equally serve both radio and television stations and their audiences. In fact, the very purpose of adopting the credit system is to allow for a true representation of the PSA performance of each individual station, whether radio or television, whether in an agricultural or industrial community, or whether in a small or large market.[46]

51. Where we can achieve a goal without regulation, the public interest is well served. This has been done by the action taken today. Greater credit is given broadcasters for airing PSA's to encourage their use where an appropriate vehicle to impart information to the audience. Thus, the public receives a substantial benefit at a lower regulatory cost, while the broadcaster is enabled to serve his particular community as it requires and not himself be required to meet an artificial standard of performance.

52. Accordingly, it is ordered, pursuant to the authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, that the *Primer on Ascertainment of Community Problems by Commercial Broadcast Renewal Applicants*, and the *Primer on Ascertainment of Community Problems by Noncommercial Educational Broadcast Applicants* are amended, effective November 17, 1980, as described above and set forth in the attached Appendix A.

53. It is further ordered, That this proceeding is terminated.

54. For further information concerning this proceeding contact Freda Lippert Thyden, Broadcast Bureau, (202) 632-7792.

Federal Communications Commission.

William J. Tricarico,

Secretory.

Appendix A

1. In the *Primer on Ascertainment of Community Problems by Commercial Broadcast Renewal Applicants*, paragraph 43 is revised to read as follows:

43. Although we decline to credit ordinary "news inserts" (see § 73.3526(a)(9) of the rules) for purposes of the problems-programs list, public service announcements may be used to respond to significant problems and needs. There is no need for this Commission to defend the importance it attaches to news broadcasts in serving the community of license. While news inserts can sometimes respond to problems and needs, they ordinarily do not possess the length or depth to proceed toward a meeting or solution of problems. For this purpose, we seek programs. It is clear from the *Further Notice* that our concept of a "program," particularly on radio, is flexible enough to accommodate even the all-news station, 53 F.C.C. 2d at 6, and that no licensee which takes seriously its non-entertainment programming obligations will have any trouble finding matter for its problems-programs list. Although public service announcements are not programs in the traditional sense, their very nature, that is brief, catchy messages tailored to the community's needs appears to have made them an effective vehicle for addressing various community problems. Consequently, we are allowing the use of public service announcements to respond to the listed 10 significant problems and needs. However, their use should not be a broadcaster's primary method for responding to ascertained needs. As to NAB's suggestion that the list should be triennial rather than annual in scope, we are not persuaded. While we have elected to change the Community Leader Checklist from annual to triennial (see paras. 13–14, *supra*), the rationale applied in modification of that document does not hold for the problems-programs list. The latter possesses a limit of no more than 10 significant problems for each yearly list, while, theoretically at least, there are no ceilings on leader interviews. More importantly, ascertainment remains *continuous*, in the resolution reached here, whether interviews are counted every year or every three years. And the problems-programs list, as an evaluative tool for broadcaster and citizen respecting the programming results of a continuous ascertainment, rightly deserve more "continuity," or frequency, than the triennial compilation would provide. As for the NAB's concern with the broad overview of a licensee's program service, presumably that is met through appending to the renewal application problems-programs list from each year of the expiring term—not to mention other information of three-year scope found in the same application.

2. In the *Primer on Ascertainment of Community Problems by Commercial Broadcast Renewal Applicants*, Question and Answer 29 are revised to read as follows:

Question 29. In what form may matter be broadcast to treat ascertained community problems, needs and interests?

Answer. Programs, news and public service announcements. This includes station editorials, ordinary and special news inserts, program vignettes, and the like. (But see Question and Answer 33 below regarding the exclusion from the yearly problems-programs list of ordinary news inserts of breaking events.)

3. In the *Primer on Ascertainment of Community Problems by Commercial Broadcast Renewal Applicants*, Question and Answer 33 are revised to read as follows:

Question 33. What documentation must be placed in the station's public inspection file regarding the licensee's efforts to program to meet asertained community problems, needs and interests?

Answer. Each year on the anniversary date of the filing of the station's application for renewal of license, the licensee must place in its public inspection file a list of no more than ten significant problems, needs and interests ascertained during the preceding twelve months. Concerning each problem, need or interest listed the licensee must also indicate typical and illustrative programs broadcast in response to those problems, needs and interests indicating the title of the program or program series, its source, type, a brief description thereof, time broadcast and duration. Such programs do not include news inserts of breaking events (the daily or ordinary news coverage of breaking newsworthy events). However, public service announcements may be used to respond to the listed ten significant problems. Their use, however, should not be a broadcaster's primary method for responding to these needs.

4. In the *Primer on Ascertainment of Community Problems by Noncommercial Educationol Broadcast Applicants*, paragraph 48 is revised to read as follows:

Problems-Program List

48. All non-exempt [13] licensees, radio and television alike, are required to deposit yearly in their public files a list of up to 10 significant problems and needs existing in their service area during the preceding 12 months, and a related list of illustrative programming presented during that period to treat those problems and needs. This list should demonstrate the link between each specific problem and the illustrative program meeting it. Public service announcments may be used to respond to the listed 10 significant problems and needs. They may not, however, be a broadcaster's primary method for responding to such needs. Placement in the station file should occur on the anniversary date of the filing of the renewal application, and, upon sending of that application to the Commission, all such annual problems-programs lists from the term about to expire should be transmitted with it. The requirement also applies to ascertainments in support of applications other than renewal in which cases the lists of problems would be derived from the six-month pre-filing surveys and the programs should be prospective offerings over the initial term of the license.

Appendix B.—Parties Filing Comments

Action for Children's Television
American Broadcasting Companies, Inc.
Antares Broadcasting Company
Basic Communications, Inc.
Bates County Broadcasting Company
Belo Broadcasting Company
Bonneau, Dorothy & Pat
Bonneville International Corporation
Boston Broadcasters, Inc.
Buffalo Broadcasting Co., Inc.
Burlington Graham Broadcasting Company, Inc.
CBS, Inc.
Care, Inc.
Carthage Broadcasting Company, Inc.
Catholic Diocese of Madison, Wisconsin
Combined Communications Corp.
Committee for Open Media
Council on Children, Media, and Merchandising
Daily Telegraph Printing Company, et al.
Firestone, Charles M., UCLA Communications Law Program
Fisher Broadcasting, Inc.
*Federal Trade Commission
Forward Communications Corp., et al.
General Services Administration
Georgia Association of Broadcasters
Georgia Department of Human Resources
Gulf Coast Broadcasting Co.
Harte-Hanks Southern Communications
Interfaith Centers for Racial Justice, Inc.

Footnotes continued from last page

category. In any event, all licensees would continue to retain their composite week logs in their public files and may include PSA's in the "other" category of these records.

[41] The "other" category provided in the application form for new non-commercial facilities (FCC Form 340) and for renewal (FCC Form 342) is distinctly different from the "other" category for commercial stations in that, among other things, it includes sports programs. Because of this difference in its nature, no real purpose would be served by permitting PSA's to be included in the "other" category for noncommercial stations. We also note that there was no indication in the record that such an action was desired, least of all warranted.

[42] We no longer see any valid reason for distinguishing between collective PSA's (community bulletins) and individual announcements. A broadcaster may make a good faith determination that PSA's aired throughout the day in 30, 60 or 90 second spots are more effective than 2-minute spots for its particular audience. In either case, he should receive credit for that performance.

[43] PSA's may presently be used to respond to problems ascertained by applicants for construction permits for new commercial stations. If such announcements are proposed, they are to be identified with the community problem or problems they are designed to meet. See Question and Answer 29 of the *Primer for New Applicants*.

[44] Commercial radio and television stations licensed to communities with a population of 10,000 or less and which are located outside all officially designated Standard Metropolitan Statistical Areas are presently exempt from Commission inquiry into the manner in which they become aware of community problems and needs.

[45] See n. 1 *supra*.

[46] The Commission is presently reviewing the existing scope of radio regulation in a rule making proceeding, BC Docket No. 79-219. Action taken in that docket could mandate removal of the ascertainment requirements currently imposed on radio broadcasters including the obligation to file a problems-programs list, as well as removing any logging requirements for these licensees. If this proves to be the case, the credit procedures provided in this decision, as they affect radio stations, will have limited effect.

[13] Exempt licensees include those offering wholly instructional programming and those operating under Class D, 10-watt authorizations. See paras. 49 and 50 *infra*.

* The comments marked with an asterisk were late-filed but since their consideration is not prejudicial to any party, we have decided to consider them in this proceeding.

V 45 N 210 OCT 28 1980 UMI

Ives, Timothy R. (WJBC–WBNQ)
KEZY, Inc.
KSLA–TV, Inc.
KROC & KROC–FM, KXRB & KIOV–FM, KBLS & KTYD–FM
King TV5
LERC Amateur Radio Club
Lexington League of Women Voters
Lively, Don
Maryland-District of Columbia-Delaware Broadcasters Association, Inc.
Media Access Project
Meriwether, Gordon K., Jr.
Metromedia, Inc.
Michiana Telecasting Corporation
Michigan State University
Midwest Family Stations
*Midwest Radio-Television
Murran, James A., Ph. D.
National Association of Broadcasters
National Association of State Foresters
National Broadcasting Company, Inc.
National Cancer Institute
National Easter Seal Society for Crippled Children and Adults
National Office Boy Scouts of America
National Radio Broadcasters Association
Nationwide Communications, Inc.
Nebraska Broadcasters Association
New Mexico Wildlife Federation
Northern Community Radio
Oakland Livingston Human Service Agency
Oregonians for Utility Reform
Partners in English
Pennsylvania Association of Broadcasters
Public Media Center
Radio Santa Cruz
Sacramento Valley Television, Inc.
Santa Barbara Area Broadcasters
Shenandoah Communications, Inc.
Southern California Committee for Open Media
Southern Minnesota Broadcasting Company
Springfield Television, Inc.
Storer Broadcasting Corporation
Strafford Broadcasting Corp.
The Advertising Council, Inc.
The American Radio Relay League
The Ohio Association of Broadcasters
The President's Council on Physical Fitness and Sports
The Public Service Council, Inc.
The United Negro College Fund
Thurston, Peter W.
United Cerebral Palsy Association, Inc.
United Church of Christ
United States Department of Agriculture Forest Service
United Way of America
University of Wisconsin, Milwaukee
Vacationland Broadcasting Company, Inc.
WFAA–TV
WJER Radio, Inc.
WLW
WNDU AM, FM, TV
WRNR
*Westinghouse Broadcasting Company

Parties Filing Reply Comments

American Broadcasting Companies, Inc.
CBS, Inc.
Communications Media Center
National Association of Broadcasters
National Broadcasting Company, Inc.
Public Media Center
Queen City Communications, Inc.
The Advertising Council, Inc.
WSAU–TV, WSAU, WIFC–FM, et al.

[FR Doc. 80–33460 Filed 10–27–80; 8:45 am]
BILLING CODE 6712–01–M

*The comments marked with an asterisk were late-filed but since their consideration is not prejudicial to any party, we have decided to consider them in this proceeding.

Notices

Federal Register
Vol. 45, No. 210
Tuesday, October 28, 1980

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

National Forest System Advisory Committee; Notice of Meeting

The National Forest System Advisory Committee will meet in Santa Fe, New Mexico, November 12–14, 1980.

This Committee, comprised of 12 members from a broad spectrum of geographic and interest areas, advises the Secretary of Agriculture and the Forest Service on the planning and management of the National Forests. The meeting will highlight the complex cultural setting in the Southwest and the opportunities and challenge this presents to management and use of natural resources. Special emphasis will be on grazing and energy resources and the importance of human resource programs locally and in the conduct of Forest Service programs.

The first day a general overview of the Region's resources, their national significance and the cultural setting affecting the development and management of those resources will be presented as an introduction for the field trip to take place the second day. The field trip will provide an on-the-ground opportunity to see and discuss examples of the opportunities and challenges. The final day will be devoted to a panel discussion on energy and range forage by New Mexico State University and a panel of concerned citizens. The Committee will also take this opportunity to discuss and develop positions on those issues which have surfaced during previous portions of the meeting. Phillip L. Thornton, Acting Deputy Assistant Secretary for Natural Resources and Environment, and Kay Ceniceros, Advisory Committee chairperson will cochair the meeting.

The meeting will be open to the public. Persons who wish to attend should notify Floyd J. Marita, Executive Secretary, USDA-Forest Service, P.O. Box 2417, Room, 3021–S, Washington, D.C. 20013, telephone (202) 447–6341. Written statements may be filed with the Committee before or after the meeting.

Lennart E. Lundberg,
Acting Deputy Chief.
October 23, 1980.

[FR Doc. 80–33528 Filed 10–27–80; 8:45 am]
BILLING CODE 3410–11–M

Soil Conservation Service

High-Vocational School Grounds, Critical Area Treatment R.C. & D. Measure, Tennessee; Finding of No Significant Impact

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of finding of no significant impact.

FOR FURTHER INFORMATION CONTACT:
Mr. Donald C. Bivens, State Conservationist, Soil Conservation Service, U.S. Courthouse, Room 675, 801 Broadway Street, Nashville, Tennessee 37203, telephone 615–251–5473.

Notice: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the High-Vocational School Grounds Critical Area Treatment RC&D Measure, White County, Tennessee.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Donald C. Bivens, State Conservationist, has detemined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for treatment of eroding areas on the grounds of the High-Vocational School in White County, Tennessee. The planned works of improvement include sloping, fertilizing, liming, and seeding to perennial grasses and legumes.

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Donald C. Bivens. The FNSI has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until November 28, 1980.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular No. A–95 regarding State and local Clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: October 14, 1980.

Joseph W. Haas,
Deputy Chief for Natural Resource projects.

[FR Doc. 80–33497 Filed 10–27–80; 8:45 am]
BILLING CODE 3410–16–M

Jacob Swamp Watershed, North Carolina; Finding of No Significant Impact

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of finding of no significant impact.

FOR FURTHER INFORMATION CONTACT:
Jesse L. Hicks, State Conservationist, Soil Conservation Service, P.O. Box 27307, Raliegh, North Carolina 27611, telephone number 919–755–4210.

Notice: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Jacob Swamp Watershed Plan Supplement No. 3, Robeson County, North Carolina.

The environmental assessment of this federally assisted action indicates that the project will not cause signficant local, regional, or national impacts on the environment. As a result of these findings, Jesse L. Hicks, State Conservationist, had determined that the preparation and review of an

environmental impact statement are not needed for this project.

The planned works of improvement include picnic tables, boat ramps, a swimming beach and bathhouse. Rennovation of two borrow pits will include shoreline construction to enhance fishing.

The Notice of Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Jesse L. Hicks, State Conservationist. The FNSI has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until November 28, 1980.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: October 14, 1980.

Joseph W. Haas,

Deputy Chief for Natural Resource Projects.

[FR Doc. 80-33498 Filed 10-27-80; 8:45 am]

BILLING CODE 3410-16-M

Lower Plum Creek Watershed, Texas; Finding of No Significant Impact

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Mr. George C. Marks, State Conservationist, Soil Conservation Service, 101 South Main Street, Temple, Texas 76501, telephone number 817-774-1214.

Notice: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lower Plum Creek Watershed, Caldwell and Hays Counties, Texas.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, George C. Marks, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for the application of critical area treatment on 1,150 acres of eroding lands and installation of five floodwater retarding structures. These measures will consist of practices such as clearing, shaping, preparation for vegetating, mulching, fertilizing, vegetating, fencing and installation of appurtenant grade stabilization structures such as pipe drops, drop inlets, formless concrete chutes, diversions and small embankments. The vegetation to be established will include trees, shrubs, vines, grasses and legumes as appropriate at each of the erosional sites.

The Notice of Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. George C. Marks. The FNSI has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: October 14, 1980.

Joseph W. Haas,

Deputy Chief for Naturol Resource Projects.

[FR Doc. 80-33499 Filed 10-27-80; 8:45 am]

BILLING CODE 3410-16-M

Seneca Creek Watershed, Maryland; Finding of No Significant Impact

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald R. Calhoun, State Conservationist, Soil Conservation Service, Room 522, 4321 Hartwick Road, College Park, Maryland 20740, telephone (301) 344-4180.

Notice: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Seneca Creek Watershed, Montgomery County, Maryland.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Gerald R. Calhoun, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a land treatment plan for reducing crop and forest land erosion and controlled animal waste above the proposed Little Seneca Lake emergency water supply and recreation reservoir.

Water quality will be improved through reduced delivery of sediment, nutrients, and fecal coliform bacteria. Planned measures include grassed waterways, minimum tillage, stripcropping, animal waste management systems, improved cover practices and other related conservation practices.

The Notice of Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Gerald R. Calhoun. The FNSI has been sent to various, Federal, State, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be taken until November 28, 1980.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: October 14, 1980.

Joseph W. Haas,

Deputy Chief for Natural Resource Projects.

[FR Doc. 80-33500 Filed 10-27-80; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

[Docket Nos. 20051 and 20700]

Airline Scheduling Committees, Various Air Taxi Operators; Change in Procedural Schedule

On October 16, 1980, the Air Transport Association (ATA) filed a motion in the above dockets requesting the Board to extend the deadline for filing comments to Order 80-9-148 from November 14, 1980 until December 12, 1980. We will extend the deadline until December 8, 1980. Replies will be due on January 5, 1981.

In order to update our service list in the proceeding, we request that all persons interested in receiving comments notify us within ten days of the date of publication of this notice. Requests to be placed on the updated service list should be addressed to: Ava Kleinman, B-72, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428 (202) 6730-5345.

We will issue an amended service listed shortly thereafter, so that comments and replies may be properly and promptly served.

Dated at Washington, D.C., October 23, 1980.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-33528 Filed 10-27-80; 8:45 am]

BILLING CODE 6320-01-M

[Docket 38767]

New York Air Fitness Investigation; Hearing

Notice is hereby given, pursuant to the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding is assigned to be held on November 17, 1980, at 9:30 a.m. (local time), in Room 1003, Hearing Room "A", Universal North Building, 1875 Connecticut Avenue, NW., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., October 22, 1980.

Elias C. Rodriguez,

Administrative Law Judge.

[FR Doc. 80-33524 Filed 10-27-80; 8:45 am]

BILLING CODE 6320-01-M

[Docket 37294; Order 80-10-118]

Priority and Nonpriority Domestic Service Mail Rates Investigation; Order Fixing Final Service Mail Rates

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 21st day of October, 1980.

By Order 80-9-114, served September 22, 1980, the Board directed all interested persons to show cause why we should not establish the proposed domestic service mail rates as the final rates of compensation for the period October 1 through December 31, 1980. Trans World Airlines, Inc. and Pan American World Airways, Inc. filed notices of objection and answers to that order noting that they had detected a calculation error affecting the proposed rates.

We agree that a calculation error was made and that the rates proposed in Appendix A of Order 80-9-114 should be modified. The escalation factor of 112.21 percent which is applied to the linehaul and terminal-taxi rates is correct. However, it appears that the proposed rates reflect instead the use of a 111.21 percent escalation factor. The attached Appendix reflects the correct final rates using the 112.21 percent escalation factor. This also affects the rates for weight in excess of the minimum chargeable weight for containers and we have modified those rates, too.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, particularly, Sections 204(a) and 406, and the Board's Procedural Regulations promulgated in 14 CFR, Part 302.

1. The fair and reasonable rates of compensation to be paid in their entirety by the Postmaster General pursuant to the provisions of section 406 of the Federal Aviation Act of 1958, as amended, to the carriers for the transportation by aircraft of that mail described in Order 79-7-16, ordering paragraph 3, subparagraphs (c), (d) and (e), between the points listed in subparagraph (c), *supra*, the facilities used and useful therefor, and the services connected therewith, for the period October 1 through December 31, 1980, or until further Board order, are those set forth in the attached Appendix.

2. We amend Order 79-7-16, ordering paragraph 3(g), by adding to it the following:

	Standard container (cents)	Daylight container (cents)
October 1, 1980 through December 31, 1980	3.751	3.721

3. The fair and reasonable temporary rates of compensation for the transportation of mail by aircraft in domestic service for the period from January 1, 1981, until further Board order are the final rates established for the period October 1 through December 31, 1980.

4. The terms and conditions applicable to the transportation of each class of mail at the rates established here are those set forth in Order 79-7-16.

5. A copy of this order shall be served upon all parties to this proceeding.

We shall publish this order in the Federal Register.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

Appendix A.—*Final Domestic Service Mail Rates*

[Oct. 1 through Dec. 31, 1980]

	Calendar year 1974 rates [1] (cents)	Escalation factors [2] (percent)	Final rates Oct. 1, 1980, through Dec. 31, 1980 (cents)
Linehaul charge per billing ton-mile:			
Sack	11.49	112.21	24.38
PAL	6.50		13.79
Standard container	8.79		18.65
Daylight container	7.05		14.96
Terminal charge per pound originated:			
Capacity:			
Taxi:			
Sack	.991	112.21	2.103
PAL	.728		1.545
Standard container	.979		2.078
Daylight container	.973		2.065
Departure:			
Sack	1.186	42.30	1.688
PAL	.873		1.242
Standard container	1.176		1.673
Daylight container	1.164		1.656
Noncapacity:			
Sack	6.064	72.48	10.459
PAL	6.052		10.438
Standard container	1.746		3.012
Daylight container	1.747		3.013
Total terminal charge per pound originated:			
Sack	8.241		14.250
PAL	7.653		13.225
Standard container	3.901		6.763
Daylight container	3.884		6.734

[1] Order 78-11-80, Appendix F.
[2] Appendix B, Order 80-9-114.

[FR Doc. 80-33523 Filed 10-27-80; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 165]

Resolution and Order Approving the Application of the Commercial Development Co. of Puerto Rico for a Foreign-Trade Zone in Guaynabo, P.R., Within the San Juan Customs Port of Entry

Proceedings of the Foreign-Trade Zones Board, Washington, D.C., Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Commercial Development Company of Puerto Rico, filed with the Foreign-Trade Zones Board (the Board) on April 7, 1980 requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Guaynabo, Puerto Rico, within the San Juan Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant To Establish, Operate, and Maintain a Foreign-Trade Zone in the City of Guaynabo, P.R., Within the San Juan Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Commercial Development Company of Puerto Rico (the Grantee) has made application (filed on April 7, 1980) in due and proper form to the Board, requesting the establishment, operation and maintenance of a foreign-trade zone in the City of Guaynabo, within the San Juan Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's Regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 61 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, said grant being subject to the provisions, conditions, and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone sites in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 20th day of October 1980, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Homer E. Moyer, Jr.,

Acting Chairman and Executive Officer.

Attest:

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 80-33451 Filed 10-27-80; 8:45 am]

BILLING CODE 3510-25-M

[Order No. 168]

Extension of Operational Authority for Foreign-Trade Subzone No. 44A, Woodbridge, N.J.

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the operational authority for Foreign-Trade Subzone No. 44A, Woodbridge, New Jersey, approved on October 19, 1978, is due to expire on October 19, 1980;

Whereas, the Department of Labor and Industry of the State of New Jersey, Grantee of the subzone, has applied to the Board for authority to extend this operation for two years because of

delays in activation of the parent zone in Morris County, New Jersey;

Whereas, notice inviting public comments was given in the Federal Register on October 2, 1980 (45 FR 65269), and no opposition has been expressed; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the requested extension is in the public interest;

Now, therefore, the Board hereby orders:

Operational authority for Foreign-Trade Subzone No. 44A, Woodbridge, New Jersey, is hereby extended to October 19, 1982, effective as of October 19, 1980.

Signed at Washington, D.C. this 17th day of October, 1980.

Homer E. Moyer, Jr.

Acting Secretary of Commerce, Chairman and Executive Officer, Foreign-Trade Zones Board.

Attest:

John J. DaPonte, Jr.,

Executive Secretary, Foreign-Trade Zones Board.

[FR Doc. 80-33452 Filed 10-27-80; 8:45 am]

BILLING CODE 3510-25-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting Import Restraint Levels for Certain Cotton Textile Products From the Republic of Singapore

October 23, 1980.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Adjusting the ceiling and removing the sublimits for cotton trousers in Category 347/348 produced or manufactured in the Republic of Singapore and exported during the agreement year which began on January 1, 1980.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463) and August 12, 1980 (45 FR 53506).)

SUMMARY: Pursuant to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 21 and 22, 1978, as amended, between the Governments of the United States and the Republic of Singapore, notes have been exchanged which arrive at an agreed position with regard to the data discrepancy in this category. As a result of the settlement between the two governments, the level for Category 347/348 is being increased by 114,162 dozen to 644,412 dozen. The sublimits under this category are removed.

EFFECTIVE DATE: November 5, 1980.

FOR FURTHER INFORMATION CONTACT: Ronald J. Sorini, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–5423).

SUPPLEMENTARY INFORMATION: On December 20, 1979, there was published in the Federal Register (44 FR 75440) a letter dated December 14, 1979 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, which established levels of restraint for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in Singapore, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1980 and extends through December 31, 1980. In the letter published below, in accordance with the terms of the bilateral agreement, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the twelve-month level previously established for Category 347/348.

Edward Gottfried,

Acting Chairman, Committee for the Implementation of Textile Agreements.

October 24, 1980.

Committee for the Implementation of Textile Agreements,
Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: On December 14, 1979, the Chairman of the Committee for the Implementation of Textile Agreements directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption during the twelve-month period which began on January 1, 1980 and extends through December 31, 1980 of cotton, wool and man-made fiber textile products, produced or manufacturered in Singapore, in certain specified categories, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 21 and 22, 1978, as amended, between the Governments of the United States and the Republic of Singapore; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on November 5, 1980, and for the twelve-month period beginning on January 1, 1980 and extending through December 31, 1980, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 347/348, produced or manufactured in Singapore, in excess of the following adjusted level of restraint. The sublimits for the category are being dropped for the current agreement year.

Category	Adjusted 12-mo level of restraint [2]
347/348	644,412 dozen.

[2] The levels of restraint have not been adjusted to reflect any imports after December 31, 1979.

The actions taken with respect to the Government of the Republic of Singapore and with respect to imports of cotton textile products from Singapore have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will by published in the Federal Register.

Sincerely,

Edward Gottfried,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80-33642 Filed 10-27-80; 8:45 am]

BILLING CODE 3510-25-M

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 21 and 22, 1978, as amended, between the Governments of the United States and the Republic of Singapore which provide, in part, that: (1) within the aggregate and applicable group limits, specific limits and sublimits may be exceeded by designated percentages; (2) specific levels may be increased for carryover and carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Announcing a New Export Visa Requirement for Cotton, Wool and Man-Made Fiber Apparel Products From the Republic of Singapore

October 24, 1980.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Establishing a new visa requirement for cotton, wool and man-made fiber apparel exported from the Republic of Singapore.

SUMMARY: The Governments of the United States and the Republic of Singapore have exchanged letters establishing a new export visa

requirement for cotton, wool and man-made fiber apparel products in Categories 330–359, 431–459 and 630–659, produced or manufactured in the Republic of Singapore. (See Attachments A through F.)

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 31372), as amended on April 23, 1980 (45 FR 27463) and August 12, 1980 (45 FR 53506)).

EFFECTIVE DATE: November 5, 1980 for apparel products in Categories 330–359, 431–459, 630–659, regardless of the date of export. Apparel products, except cotton trousers in Category 347/348, that have been exported prior to November 5, 1980 will be granted visa waivers until December 31, 1980 by the Committee for the Implementation of Textile Agreements (CITA). A facsimile of the format for a request for waiver of visa follows this notice at Attachment G. Two copies of such requests should be addressed to the Office of Textiles and Apparel, International Agreements and Monitoring Division, U.S. Department of Commerce, Room 2814, 14th & Constitution Avenue, N.W., Washington, D.C. 20230, Attention: WAIVERS. A self-addressed stamped envelope should accompany each waiver request. Waiver requests will be validated by an official of the Committee for the Implementation of Textile Agreements (CITA) and returned to importers as promptly as possible for submission by them to the U.S. Customs port of entry.

Visa waivers for goods in Category 347/348 that have been exported prior to October 21, 1980 will be issued by the Singapore Embassy, 1824 R Street, N.W., Washington, D.C. 20009, using the same waiver format (in triplicate and with self-addressed stamped envelope enclosed) as described above. These waivers will also be validated by the Committee for the Implementation of Textile Agreements (CITA) and returned directly to importers.

SUPPLEMENTARY INFORMATION: Effective on November 5, 1980, cotton, wool and man-made fiber apparel products in Categories 330–359. 431–459 and 630–659, produced or manufactured in the Republic of Singapore, shall be visaed or have a visa waiver, regardless of the date of export, in order to be entered into the United States for consumption, or withdrawn from warehouse for consumption.

Merchandise in Categories 330–359, 431–459 and 630–659 imported for the personal use of the importer, not for resale, does not require a visa, regardless of value.

Shipments shall be visaed by the placing of an original stamped marking (the visa) in blue ink on the front of the invoice (Special Customs Invoice form 5515, successor document, or commercial invoice, when such form is used) and will be signed by a designated official of the Government of the Republic of Singapore. A list of officials authorized to issue visas follows this notice at Attachment H. A facsimile of the visa stamp is published as an enclosure to the letter to the Commissioner of Customs which also follows this notice.

Interested parties are advised to take all necessary steps to insure that cotton, wool and man-made fiber apparel products, produced or manufactured in the Republic of Singapore, which are to be entered into the United States for consumption, or withdrawn from warehouse for consumption, will meet the stated visa requirement.

The letter published below from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs establishes the new export visa requirement.

FOR FURTHER INFORMATION CONTACT: Ronald J. Sorini, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230. (202/377–5423).

Edward Gottfried,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[Attachment A]

Tan Song Chuan,
Department of Trade.

Dear Song Chuan: Pursuant to paragraph 10 ot the bilateral textile agreement between Singapore and the United States, I would like to propose the following arrangements with regard to the current problem in Category 347/348.

1. The United States Government (USG) will take all appropriate steps to lift its embargo on Category 347/348 imports from Singapore so that, as a result of the final settlement of data discrepancies for the 1977, 1978, and 1979 agreement years, and taking into account 1980 swing, the USG will permit entry of 54,800 dozen pair above the effective embargoed level of 493,900 dozen pair. The date on which the embargo is to be lifted shall be determined by the two Governments, depending upon discussions on the establishment of a visa system as indicated below. The action shall not prejudice the claims of either government regarding the eventual resolution of the data discrepancies for the 1980 agreement year. It is intended solely to facilitate the orderly flow of trade pending technical discussions within the next few days.

2. An immediate statistical review shall be undertaken by appropriate USG authorities to determine if there have been any mechanical tabulation errors in registering Singapore exports of Category 347/348 products to the United States. This review shall cover Category 347/348 products exported to the United States after January 1, 1980, to the latest data available to the USG authorities. Should such errors be found, they immediately will be credited or debited, as the case may be, to the 1980 agreement year import figure (on a date of export basis).

3. The USG upon request by the Government of Singapore (GOS) shall raise the 1980 adjusted limit on Category 347/348 of 552,900 dozen pair up to an additional 10,000 dozen pair. Nothwithstanding the preceding sentence, if the result of the review described in paragraph 2 is a net credit to the benefit of the GOS, then the 10,000 dozen pair limitation in the preceding sentence shall be reduced by the amount of such net credit. Furthermore, if the review of data discrepancies described in paragraph 7 demonstrates that the USG's Category 347/348 import figures (by date of export) are correct for 1980, then any increase made under this paragraph in the 552,900 dozen pair adjusted limit shall be debited against the 1981 agreement year limit for Category 347/348.

4. It is understood that this arrangement does not constitute a precedent regarding future implementation of the bilateral textile agreement.

5. The two Governments will enter into a visa agreement to cover apparel items. This agreement will take effect as quickly as possible and, in any event, no later than January 1, 1981.

6. If a visa agreement cannot be implemented before January 1, 1981, then the GOS will provide to the U.S. Embassy in Singapore the export licenses issued for Category 347/348 on a weekly basis through December 31, 1980.

7. The USG will dispatch a technical team to Singapore as soon as possible to begin discussions, inter alia, on possible visa arrangements and on the apparent data discrepancies in Category 347/348 for the 1980 agreement year to date. In turn, the GOS will dispatch its appropriate technicians to Washington,to review with appropriate USG authorities, the GOS official export data, including export licenses, against USG import receipts, including customs invoices.

8. The two Governments will accelerate their joint efforts to determine the cause(s) of persistent data discrepancies in Category 347/348, and other categories as appropriate.

If the above proposal is acceptable to you, this letter and your letter of confirmation shall constitute an administrative arrangement under the terms of paragraph 10 of our bilateral agreement of September 21 and 22, 1978, as amended.

With every good wish.

Sincerely,

Frank V. Nash,

Economic/Financial Officer, Embassy of the U.S.A.

[Attachment B]

Mr. Anthony Tan Song Chuan,
Leader, Singapore Textile Delegation, Government of the Republic of Singapore.

Dear Song Chuan: I propose on behalf of my Government that the following visa system be established for exports to the United States of cotton, wool and man-made fiber textiles and textile products from the Republic of Singapore.

1. Each commercial shipment of cotton, wool and man-made apparel products will be accompanied by an export visa issued by an official authorized by your Government. The visa will be stamped in blue ink on the front of the invoice (Special Customs Invoice Form 5515, successor document or commercial invoice). Each visa will include the signature of the official issuing the visa, the visa number and the date of issuance of the visa.

2. Your Government will provide my Government originals in duplicate of the visa stamp marking. Your Government will also provide the names of the officials authorized to issue textile export visas, and subsequently, notifications of any changes therein. A minimum number of officials will be authorized to issue visas.

3. Cotton, wool and man-made fiber apparel products which are not accompanied by an original export visa in accordance with the provisions of Paragraph 1 of this letter will be denied entry by my Government except upon specific request of your Government.

4. My Government will publish in the **Federal Register** the visa requirements set out in this letter upon receipt of (a) your letter confirming your Government's acceptance of this letter's proposals, and (b) the authorized visa stamp and names of the officials authorized by your Government to issue export visas. The visa system proposed by this letter will become effective November 5, 1980, for all apparel regardless of the date these goods were exported from the Republic of Singapore.

5. Either Government may terminate this visa system by giving 90 days written notice to the other.

If the foregoing proposal is acceptable to your Government, this letter and your letter of acceptance on behalf of your Government shall constitute an administrative arrangement between our two Governments.

Sincerely,

Donald McConville,

Chairman, U.S. Textile Delegation to Singapore, Government of the United States of America.

[Attachment C]

Mr. Donald McConville,
Chairman, U.S. Textile Delegation to Singapore, Government of the United States of America.

Dear Don: In response to your letter of October 20, 1980, proposing a visa system, I am pleased to confirm that my Government accepts your proposal.

Sincerely,

Anthony Tan Song Chuan,

Leader, Singapore Textile Delegation, Government of the Republic of Singapore.

[Attachment D]

Mr. Donald McConville,
Chairman, U.S. Textile Delegation to Singapore, Government of the United States of America.

Dear Don: Regarding your concern over the possibility of unwarranted disadvantaging of importers that could occur from immediate enforcement of the visa requirement for imports from Singapore under textile Categories 347 and 348, I wish to assure you of my Government's desire to cooperate in avoiding such situations.

My Government's intentions with respect to goods in Categories 347 and 348 with dates of export prior to October 21, 1980, are as follows:

A. For goods which have previously received proper export authorization from the Government of Singapore and which have not as of this date cleared U.S. Customs: My Government is notifying immediately all Singaporean exporters to submit new special Customs invoices for visaing. Exporters shall be instructed to forward such viased invoices to their customers by expeditious means. Should an exporter for any reason fail to cooperate, the Singapore Embassy in Washington, D.C. will be prepared to authorize visa waivers for shipments verified to have received export authorizations from the Government of the Republic of Singapore.

B. For goods which were not covered by a previous export authorization but were demonstrably sourced in Singapore: Providing there is no reason to believe that the importer, despite having exercised reasonable commercial caution, would have been aware that the exporters had not complied with the applicable laws and regulations of the Government of Singapore, my Government will consider appropriate adjustments. Adjustments visa or authorization of a visa waiver permitting entry with appropriate charge, and/or assisting the importer in obtaining compensation. Recognizing the importance of timing in textile matters; these will be considered on an expeditious basis.

Anthony Tan Song Chuan,

Leader, Singapore Textile Delegation, Government of the Republic of Singapore.

[Attachment E]

Mr. Donald McConville,
Chairman, U.S. Textile Delegation to Singapore, Government of the United States of America.

Dear Don: In the operation of the textile visa system that we signed on October 20, 1980, we have agreed to make the system effective as of November 5, 1980, without regard to the date the goods have been exported from Singapore.

As an interim measure to impede the free flow of exports from Singapore to the United States as little as possible, I request that the United States, until December 31, 1980, grant visa waivers automatically to apparel exported from Singapore on or before November 5, 1980. The automatic waiver provision should not apply to any products in Categories 347/348 of the textile agreement in effect between our Governments.

Sincerely,

Anthony Tan Song Chuan,

Leader, Singapore Textile Delegation, Government of the Republic of Singapore.

[Attachment F]

Mr. Frank Nash,
Economic/Financial Officer, Embassy of the United States of America, 30 Hill Street, Singapore 06170.

Dear Frank: Thank you for your letter of 14 October 1980 regarding the arrangements to the current problems in Categories 347/348.

I confirm that this proposal is acceptable to the Government of the Republic of Singapore.

Kindest regards,

Tan Song Chuan,

For Director, Department of Trade.

[Attachment G]

Application for Visa Waiver

To: Office of Textiles and Apparel, International Agreements Division, Room 2814, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.
Attention: Waivers.
Port of Entry: (Indicate where appropriate whether seaport or airport).
Name and Address of Importer:
Name and Telephone Number of Customs Broker:
Description of Merchandise:
Category and TSUSA Number:
Quantity (Units as set out in TSUSA):
Entry Number or Bill of Lading Number:
Name of Carrier:
Date of Export:
Exporter:

[Attachment H]

Officials of the Government of the Republic of Singapore Authorized to Issue Textile Export Visas:
Cheong Choy Hoong
Indira Devi
Yeong Wai Kuen
Tay Guek Khiam
Aiyadurai Rogini
Nancy Lum Pui Siong

October 24, 1980.

Committee for the Implementation of Textile Agreements,
Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 21 and 22, 1978, as amended, between the Government of the United States and the Republic of Singapore; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on November 5, 1980 and until further notice, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber apparel products in Categories 330–359, 431–459 and 630–659, produced or manufactured in the Republic of Singapore, regardless of the date of export, for which the Government of the Republic of Singapore has not issued an appropriate export visa, fully described below.

The export visa will be an original circular stamp in blue ink on the front of the invoice

V 45 2 28 80 0 UMI OC

(Special Customs Invoice Form 5515, successor document, or commercial invoice, when that form is used) and will be signed by an authorized official of the Government of the Republic of Singapore. A facsimile of the visa stamp is enclosed.

Merchandise for the personal use of the importer and not for resale does not require a visa, regardless of value.

You are further directed to permit entry into the United States for consumption and withdrawal from warehouse for consumption of designated shipments of cotton, wool and/or man-made fiber apparel products, produced or manufactured in the Republic of Singapore, notwithstanding the designated shipment or shipments do not fulfill the aforementioned visa requirements, whenever requested to do so in writing by the Chairman of the Committee for the Implementation of Textile Agreements (CITA).

Beginning November 5 and ending December 31, 1980, all visa waivers will be authorized by the Committee for the Implementation of Textile Agreements (CITA). The waiver will be forwarded to the importer who will present it to the appropriate Customs port for inclusion as part of his entry documentation. Enclosed is a facsimile of the visa waiver that will be used, including the validating stamp of the Committee for the Implementation of Textile Agreements (CITA). Only the original stamp in blue ink, signed by an authorized official of the Committee for the Implementation of Textile Agreements, will be accepted.

A detailed description of the textile catetories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463) and August 12, 1980 (45 FR 53506).

In carrying out the above directions, the Commissioner of Customs shall construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The action taken with respect to the Government of the Republic of Singapore and with respect to imports of cotton, wool and man-made fiber apparel products from Singapore has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register**.

Sincerely,

Edward Gottfried,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Enclosures.

Visa Stamp for Cotton, Wool and Man-Made Fiber Textile Products Exported to the United States



APPLICATION FOR VISA WAIVER

To: Office of Textiles and Apparel,
International Agreements Division,
Room 2814,
U.S. Department of Commerce,
14th and Constitution Avenue, N.W.,
Washington, D.C. 20230.
Attention: Waivers.

Port of Entry: (Indicate where appropriate whether seaport or airport).
Name and Address of Importer:
Name and Telephone Number of Customs Broker:
Description of Merchandise:
Category and TSUSA Number:
Quantity (Units as set out in TSUSA):
Entry Number or Bill of Lading Number:
Name of Carrier:
Date of Export:
Exporter:

CITA

Authorization for release if determined to be of Singapore Origin. If subject to Customs import control, report thru Customs quota system.

Sig. _____
Date _____
Ref. No. _____

[FR Doc. 80-33643 Filed 10-27-80; 8:45 am]
BILLING CODE 3510-25-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Organization of the Joint Chiefs of Staff, National Defense University Panel of the Board of Visitors for National Defense University and Defense Intelligence School; Meeting

The President of the National Defense University has scheduled a meeting of the National Defense University Panel of the Board of Visitors for National Defense University and Defense Intelligence School on Tuesday, November 25, 1980, from 0830–1145 and 1330–1600. The meeting will be held in the Hill Conference Center, Theodore Roosevelt Hall, Building 61, Fort Lesley J. McNair, Washington, D.C. The discussions will include progress and plans for the National Defense University and the curricula, faculty, and students of the Industrial College of the Armed Forces and the National War College. The meeting is open to the public, but the limited space available for observers will be allocated on a first-come, first-served basis. To reserve space, interested persons should write or phone (693–1075), the Assistant to the President, National Defense University, Fort Lesley J. McNair, Washington, D.C. 20319.

M. S. Healy,

OSD Federal Register Liaison, Officer, Washington Headquarters Services, Department of Defense.

October 23, 1980.

[FR Doc. 80-33522 Filed 10-27-80; 8:45 am]
BILLING CODE 3810-70-M

National Security Agency/Central Security Service

Privacy Act of 1974; New System of Records

AGENCY: National Security Agency/Central Security Service.

ACTION: Notice of new record system.

SUMMARY: The National Security Agency is adding a new records systems subject to the Privacy Act of 1974 Pub. L. 93–579 (5 U.S.C. 552a). This new system is identified as GNSA13, entitled: NSA/CSS Archival Records. The record system notice is set forth below.

DATES: This system shall be effective as proposed without further notice on December 1, 1980 unless comments are received on or before 30 November which would result in a contrary determination and require republication for further comment.

ADDRESS: Send comments to the Office of the General Counsel, National Security Agency, Ft. George G. Meade, MD 20755.

FOR FURTHER INFORMATION CONTACT: LCdr M. E. Bowman, JAGC, USN (address as above) Telephone (Area code 301) 688–6054.

SUPPLEMENTARY INFORMATION: The National Security Agency record system notice as prescribed by the Privacy Act of 1974, have been published in the **Federal Register** as follows:

FR Doc. 79-37052 (44 FR 74422) December 17, 1979.

FR Doc. 80-25325 (45 FR 55508) August 20, 1980.

FR Doc. 80-29791 (45 FR 65648) October 3, 1980.

The National Security Agency has submitted a new system report on September 29, 1980 for this system in accordance with the provisions of 5 U.S.C. 552a(o) of the Privacy Act.

M. S. Healy,

OSD, Federal Register Liaison Officer, Washington, Headquarters Services, Department of Defense.

GNSA13

SYSTEM NAME:

NSA/CSS Archival Records

SYSTEM LOCATION:

Primary System—National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755. Decentralized Segments—Each staff, line, contract, and field element as authorized and appropriate.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have contributed to the cryptographic archives and individuals who are significant to the history of signals intelligence.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include organizational files, correspondence, tape recorded interviews, forms, documents, reports, films, magnetic tapes, microfiche, and other related items of crypologic archival interest, most of which are 20 or more years old and have been adjudged to be permanent U.S. Government records not yet declassified.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 90–260, Public Law 81–754, Public Law 86–36, 5 U.S.C. § 552, Executive Order 12065, Executive Order 12036.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To enable the historian to locate source materials; to permit systematic review of classified records; to facilitate access to retired records; and to provide a source from which response to public queries for NSA/CSS records can be more expeditiously handled and, if possible, declassified.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy, microforms, magnetic tape, magnetic disk and pictures.

RETRIEVABILITY:

Generally by subject matter; as to that material furnish by an individual or about an individual significant to the history of crytography by name or other unique indentifier significant to the subject matter and the individual.

SAFEGUARDS:

Secure limited access facilities and within those facilities containers appropriate to the level of classification of particular records.

RETENTION AND DISPOSAL:

Records are permanent, are reviewed periodically for declassification and copies of records declassified are transferred to the National Archives and Records Service of the General Services Administration.

SYSTEM MANAGER AND ADDRESS:

Director, NSA, Ft. George G. Meade, Md. 20755.

NOTIFICATION PROCEDURE:

Requests from individuals for notification shall be in writing addressed to Chief, Office of Policy, National Security Agency/Central Security, Ft. George G. Meade, Md. 20755.

CONTESTING RECORD PROCEDURES:

The NSA/CSS rules for contesting contents and appealing initial determinations may be obtained by written request addressed to Chief, Office of Policy, National Security Agency, Ft. George G. Meade, Md. 20755.

RECORD SOURCE CATEGORIES:

Individual contributors and operational/administrative files; other sources as appropriate.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system may be exempt under 5 U.S.C. § 552a(k)(1) and (k)(4) for additional information, see agency rules contained in 32 CFR Part 299a, (NSA/CSS Regulation 10–35).

[FR Doc. 80-33633 Filed 10-27-80; 8:45 am]
BILLING CODE 3810-70-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA-R-80-33]

Report to the Department of Energy on "Designing Methods for Distributing Petroleum During a Shortage and Selecting Standby Distribution Mechanisms"

AGENCY: Economic Regulatory Administration.

ACTION: Notice of Cancellation of Public Hearing

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of the cancellation of the public hearing on the Report to the Department of Energy on "Designing Methods for Distributing Petroleum During a Shortage and Selecting Standby Distribution Mechanisms" (45 FR 63909, September 26, 1980) scheduled for 9:30 a.m. on October 29, 1980, in Room 208, Dirksen Building, 219 South Dearborn, Chicago, Illinois. The Washington, D.C. hearings remain scheduled for November 13 and December 2, 1980.

FOR FURTHER INFORMATION CONTACT:

Lorrain Hall (Office of Public Hearings Division), Economic Regulatory Administration, Room B-210, 2000 M Street, N.W., Washington, D.C. 20461 (202) 653–3971.

William L. Webb (Office of Public Information), Economic Regulatory Administration, Room B-110, 2000 M Street, N.W., Washington, D.C. 20461 (202) 653–4055.

William E. Caldwell (Office of Regulatory Policy), Economic Regulatory Administration, Room 7202, 2000 M Street, N.W., Washington, D.C. 20461 (202) 653–3256.

Joel Yudson (Office of General Counsel), Department of Energy, Room 6A–127, 1000 Independence Avenue, S.W., Washington, D.C. 20585 (202) 252–6744.

Issued at Washington, D.C. on October 21, 1980.

F. Scott Bush,

Assistant Administrator, Office of Regulatory Policy, Economic Regulatory Administration.

[FR Doc. 80-33574 Filed 10-27-80; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER80-379 and ER80-380]

Utah Power & Light Co.; Amended Rate Filing

October 21, 1980.

Take notice that Utah Power and Light Company on October 8, 1980, tendered for filing revisions of documents originally filed on May 9, 1980, as follows:

Docket No. ER80-379

Ownership and Management Agreement between Deseret Generation and Transmission Co-operative (Deseret) and Utah Power dated September 15, 1980, approved by the Utah Public Service Commission on July 23, 1980. (Supersedes the Ownership and Management Agreement, including the Power Sales Contract, submitted on May 9, 1980.)

Docket No. ER80-380

Resale Electric Service Agreement between Utah Power and Deseret dated ————, 1980, together with Exhibits "A", "B", and "C". (Supersedes Resale Electric Service Agreement submitted on May 9, 1980. Utah Power's FERC Electric Tariff Sheets, Original Volume No. 1, have not been changed from the listing shown in our transmittal letter submitted May 9, 1980.)

The significant changes in the revised Ownership and Management Agreement herein filed as compared to the original filing are: (i) a reduction in the ownership interest to be purchased in Hunter II by Deseret from 49% to 39%; (ii) a provision for the purchase of certain common facilities associated with Hunter II which were to be leased under the original agreement, the total purchase price remaining essentially unchanged, however; (iii) the elimination of (a) all contractual provisions required by the earlier leveraged-lease financing arrangements, (b) an earlier buy-back arrangement, and (c) the percentage adder related to the supply of emergency power, pursuant to the Commission Order No. 84. The amended Resale Electric Service Agreement is substantially the same as that originally filed in Docket No. ER80-380, except that a provision relating to rates for power and energy in excess of contract demands and providing for a 15% adder has been revised to provide for a charge of one mill/kwh or such other cost-supported percentage as the Commission may approve pursuant to Order No. 84.

Utah Power indicates that the filings on May 9, 1980, were predicated on an Ownership and Management Agreement under which Deseret was to purchase an undivided 49% interest in Utah Power's 400-megawatt Hunter II Generating Unit in Central Utah for approximately $115 million. The purchase was to be financed under a leverage-lease arrangement which required that the sale be consummated prior to the commercial operation of the Unit. On May 30, 1980, FERC issued an "Order Accepting for filing and Suspending Proposed Rate Changes, Granting Waiver of Notice Requirements, Consolidating Proceedings and Establishing Procedures." The filings were suspended for one day and permitted to become effective on June 1, 1980, subject to refund. Thereafter, the transactions could not be completed prior to the date the Unit was declared commercial on June 4, 1980, and consequently Utah Power, on June 23, 1980, filed a cancellation notice for the purpose of withdrawing the filings in both Dockets. Subsequently, on July 25, 1980, Deseret filed a "Conditional Protest and Petition to Intervene" with the Commission. According to Utah Power the primary purpose of Deseret's petition was to afford an opportunity to consider whether or not it would be in the best interests of the Commission Staff and the parties to go forward with proceedings in Docket No. ER80-379 and ER80-380 in light of new financing arrangements completed by Deseret and approved by the Utah Public Service Commission in lieu of filing the revised agreements for the Hunter II purchase and sale in new dockets. Utah Power interposed no objection to Deseret's Petition at that time, and now respectfully requests the Commission's permission to withdraw the Notice of Cancellation. Utah Power states that the revised agreements submitted herewith are acceptable to both parties and have been approved by the Utah Commission.

In the original filings of May 9, 1980, an effective date of June 1, 1980 was proposed by Utah Power. The Company now requests an effective date as of the date of the sale, which it anticipates will be on October 24, 1980.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before October 30, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33465 Filed 10-27-80; 8:45 am]

BILLING CODE 6450-85-M

ENVIRONMENTAL PROTECTION AGENCY

[TSH-FRL 1644-8; OPTS 00017]

Administrator's Toxic Substances Advisory Committee; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a meeting of the Administrator's Toxic Substances Advisory Committee from 8:30 am to 5:00 pm on Thursday, November 20, 1980, and from 8:30 am to 12 Noon on Friday, November 21, 1980. The meeting will be held in rooms 3906–3908, Waterside Mall, EPA, 401 M Street, S.W., Washington, D.C. It will be open to the public.

FOR FURTHER INFORMATION CONTACT: Ms. Marsha Ramsay, Executive Secretary Administrator's Toxic Substances Advisory Committee, Office of Pesticides and Toxic Substances (TS-793), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. In Washington, D.C.: (202) 755-4854.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss matters related to EPA's implementation of the Toxic Substances Control Act (Pub. L. 94-569). The agenda includes a presentation and discussion of the Committee's report on the implementation of TSCA in its first three years, and recommendations for the future; an update on the implementation of the Toxic Substances Control Act; and a general discussion of issues pertaining to the control of the use of chlorofluorocarbons (CFC's). At the afternoon session on November 20, time will be set aside for study group work sessions.

The meeting will be open to the public and time will be set aside for public comments. Any member of the public wishing to present an oral or written statement should contact Ms. Marsha Ramsay at the address or phone number listed above.

Dated: October 21, 1980.

Steven D. Jellinek,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 80-33482 Filed 10-27-80; 8:45 am]

BILLING CODE 6560-31-M

[TSH-FRL 1645-7; OPTS-00018]

Interagency Toxic Substances Data Committee; Cancellation of Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The November meeting of the Interagency Toxic Substances Data Committee has been cancelled.

FOR FURTHER INFORMATION CONTACT: Nan Fremont (TS-793), Executive Secretary, Interagency Toxic Substances Data Committee, Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460, (202-755-8040).

SUPPLEMENTARY INFORMATION: The regular meetings of the Interagency Toxic Substances Data Committee take place on the first Tuesday of each month at 9:30 a.m. and are open to the public. The meetings are held in: Room 2010, New Executive Office Building, 17th St. and Pennsylvania Ave. NW., Washington, D.C. 20006.

The November meeting has been cancelled. The next meeting of the Interagency Toxic Substances Data Committee will take place on December 2, 1980.

Dated: October 23, 1980.

Nan Fremont,

Executive Secretary, Interagency Toxic Substances Data Committee.

[FR Doc. 80-33488 Filed 10-27-80; 8:45 am]

BILLING CODE 6560-31-M

[SA-FRL 1644-7]

Science Advisory Board Clean Air Scientific Advisory Committee; Open Meeting

November 13-14, 1980.

Under Pub. L. 92-463, notice is hereby given of a meeting of the Clean Air Scientific Advisory Committee of the Science Advisory Board. The meeting will be held November 13-14, 1980, starting at 9:15 am of each day in Rooms 3906-08 Mall, EPA Headquarters, 401 M Street, SW, Washington, D.C. 20460.

The purpose of the meeting is to allow the Committee to review and provide its advice to EPA on the June 1979 external review draft with annotated changes based on comments received during the public comment period, July-November 1979 of EPA's revised air quality criteria document for the oxides of nitrogen. Copies of this document may be obtained by writing Ms. Diane Chappel, Environment Criteria and Assessment Office, MD-52, EPA, Research Triangle Park, NC 27711, or by calling Ms. Chappel at (919) 541-2525.

The Committee will also review and provide advice to EPA on the first external draft staff paper entitled, "Preliminary Assessment of Health and Welfare Effects Associated with Nitrogen Oxides for Standard Setting Purposes." Copies of this document may be obtained by writing Mr. Michael Jones, Office of Air Quality Planning and Standards, Strategies and Air Standards Divisions, MD-12, EPA, Research Triangle Park, NC 27711, or by calling Mr. Jones at (919) 541-5231.

The meeting is open to the public. Any member of the public wishing to obtain information shall contact Mr. Terry F. Yosie, Science Advisory Board Staff Officer at (202) 755-6634, by close of business November 7, 1980.

Richard M. Dowd,

Director, Science Advisory Board.

October 22, 1980

[FR Doc. 80-33480 Filed 10-27-80; 8:45 am]

BILLING CODE 6560-34-M

[TSH-FRL 1644-3; OPTS-51162]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the **Federal Register** certain information about each PMN within 5 working days after receipt. This Notice announces receipt of three PMN's and provides a summary of each.

DATE: Written comments by December 5, 1980.

ADDRESS: Written comments to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St. SW., Washington, D.C. 20460 (202-755-8050).

FOR FURTHER INFORMATION CONTACT: Rachel S. Diamond, Chemical Control Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-221, 401 M St. SW., Washington, D.C. 20460, (202-426-3980).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the **Federal Register** of May 15, 1979 (44 FR 28558-Initial) and July 29, 1980 (45 FR 50444-Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the **Federal Register** issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the **Federal Register.**

If no generic use description or generic name is provided, EPA will

develop one and after providing due notice to the PMN submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use(s), the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register**.

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, summaries of the data taken from the PMN's are published herein.

Interested persons may, on or before December 5, 1980, submit to the Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–447, 401 M St., SW, Washington, DC 20460, written comments regarding these notices. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS–51162]" and the specific PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: October 21, 1980.

Warren R. Muir,

Deputy Assistant Administrator for Toxic Substances.

PMN 80–276.

The following summary is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. January 4, 1981.

Manufacturer's Identity. Celanese Plastics & Specialties Co., 26 Main St., Chatham, NJ 07928.

Specific Chemical Identity. Specific chemical identity claimed confidential. Generic name provided: Styrene acrylic polymer.

Use. Specific use claimed confidential. Generic use provided: Chemical component.

Production Estimates

	Kilograms per year	
	Minimum	Maximum
1st year	0	50,000
2d year	100,000	200,000
3d year	200,000	450,000

Physical/Chemical Properties

Non-volatile by weight—47–49 percent.
Viscosity (Gardner Holdt)—K–O.
Acid value (mg.KOH/g)—205–215.
Flash point (set aflash)—95°F.
Weight/gallon—8.4–8.5 lb.
Appearance—Clear.
Solubility of polymer—Soluble in ketone, toluene/xylene, butanol, glycol esters, and alkali pH >8; insoluble in water.

Toxicity Data. No data on the PMN substance were submitted.

Exposure.

Activity	Exposure route	Maximum number exposed	Maximum duration		Concentration (ppm)	
			Hours/day	Days/year	Average	Peak
Manufacture	Skin	40	8	120		
Processing	Skin	60	8	100		
Use	Skin	250	8	200		

Environmental Release. The manufacturer states that 100 to 10,000 kilograms of the new substance may be released to the environment (land) per year.

PMN 80–277.

The following summary is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. January 4, 1981.

Manufacturer's Identity. E. I. du Pont de Nemours & Co., Inc., 1007 Market St., Washington, DE 19898.

Specific Chemical Identity. Claimed confidential business information. Generic name provided. Modified terpolymer of mixed alkyl acrylates.

Use. Isolated intermediate.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties. Claimed confidential business information.

Toxicity Data.

Skin irritation test (rabbits)—Mild irritant.

Eye irritation test (rabbits)—Very slight irritant.

Occupational Exposure.

Activity/site	Potential route(s)	Number of potentially exposed workers	Maximum duration of exposure
Manufacturing, Philadelphia, PA	Dermal	2/shift	2 shifts/da; 8 hr/da; 5 da/yr.
Toledo, OH (alternate site)	Dermal	2/shift	2 shifts/da; 8 hr/da; 5 da/yr.
Customer	Dermal	3	1/2 hr/da; 200 da/yr.

Environmental Release/Disposal. Manufacturer's site. E. I. du Pont states that there will be no disposal involved as wash solvent will be recycled and consumed in subsequent batches in the manufacturing process.

Any customer's site. Environmental release will be minimal and incidental; destruction of waste products will be by incineration or land disposal.

PMN 80–278

The following summary is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. January 4, 1981.

Manufacturer's Identity. E. I. du Pont de Nemours & Co., Inc., 1007 Market St., Wilmington, DE 19898.

Specific Chemical Identity. Claimed confidential business information. Generic name provided. Modified terpolymer of mixed alkyl acrylates.

Use. Isolated intermediate.

Production Estimates. Claimed confidential business information.

Physical/Chemical Properties. Claimed confidential business information.

Toxicity Data.

Skin irritation test (rabbits)—Moderate to strong irritant.

Eye irritation test (rabbits)—Moderate to mild irritant.

Occupational Exposure.

Activity/site	Potential route(s)	Number of potentially exposed workers	Maximum duration of exposure
Philadelphia, PA	Dermal	2/shift	2 shifts/da; 8 hr/da; 5 da/yr.
Toledo, OH (alternate site)	Dermal	2/shift	2 shifts/da; 8 hr/da; 5 da/yr.
Customer	Dermal	3	½ hr/da; 200 da/yr.

Environmental Release/Disposal. Manufacturer's site. E. I. du Pont states that there will be no disposal involved as wash solvent will be recycled and consumed in subsequent batches in the manufacturing process.

Any customer's site. Environmental release will be minimal and incidental; destruction of waste products will be by incineration or land disposal.

[FR Doc. 80-33477 Filed 10-27-80; 8:45 am]

BILLING CODE 6560-31-M

[TSH–FRL 1644–4; OPTS–51086B]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces a voluntary suspension by the submitter of the review period for two premanufacture notices (PMN) on the new chemical substances benzenamine, 4,4'-methylene bis [*N*-(1-methylhexylidene)] and benzenamine, 4,4'-methylene bis [*N*-(1-methylbutylidene)] identified as PMN 80–137 and PMN 80–138 respectively.

DATE: Written comments by October 30, 1980.

ADDRESS: Written comments to: Document Control Officer (TS–793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–447, 401 M St. SW., Washington, DC 20460 (202–755–8050).

FOR FURTHER INFORMATION CONTACT: Kirk Maconaughey, Chemical Control Division (TS–794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–210, 401 M St. SW., Washington, DC 20460, (202–426–3936).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemcial substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. After receipt, EPA has 90 days to review a PMN. Under section 5(c), EPA, for good cause, may extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register**.

EPA issued a notice of receipt of two PMN's with a a summary of each, published in the **Federal Register** of July 18, 1980 (45 FR 48243). The PMN's were submitted by a certain company who claimed confidentiality of its identity as provided for in section 14 of TSCA. The PMN's were for the manufacture of the new substances benzenamine, 4,4'-methylene bis [*N*-(1-methylhexylidene)] (PMN 80–138) and benzenamine, 4,4'-methylene bis [*N*-(1-methylhexylidene)] (PMN 80–137).

The conclusion of the 90-day review period for the two PMN's was established as September 15, 1980. This period was subsequently extended to October 30, 1980. The extension, section 5(c) notice, was published in the **Federal Register** of September 18, 1980, (45 FR 62198).

The manufacturer has requested that the premanufacture review for both PMN's be temporarily suspended. The period was extended in order to provide EPA additional time to (1) evaluate the need for additional data on the PMN substances, (2) determine the need for regulatory control in light of EPA's concerns about the PMN substances, and (3) examine possible control options. Extension of the notice period preserves EPA's authority to initiate a regulatory action under section 5 of TSCA if the Agency concludes that such an action is appropriate.

During the 45-day extension period, the manufacturer met with EPA to discuss possible control options that would be implemented to protect workers both in manufacturing and processing operations. The Agency and the company are negotiating these control options at the present time. The manufacturer requested a suspension of the review period in order to provide additional time for these negotiations. Without such a suspension, the Agency would be forced to proceed with its time schedule and serve a section 5(e) order on the manufacturer on October 30, 1980. The manufacturer feels that such a rigid and limited time schedule might not be advantageous to the successful negotiation of an agreed-upon solution. Accordingly, the review period has been suspended for an indefinite period of time to allow negotiations to proceed.

Dated: October 21, 1980.

Warren R. Muir,

Deputy Assistant Administrator for Toxic Substances.

[FR Doc. 80-33478 Filed 10-27-80; 8:45 am]

BILLING CODE 6560-31-M

[TSH–1644–5; OPTS–51092A]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces a voluntary suspension by the submitter of the notice review period for two premanufacture notices (PMN) on the new substances phosphorodithioic acid, *O, O'*-di(isohexyl, isoheptyl, isooctyl, isodecyl) mixed esters, zinc salt and phosphorodithioic acid, *O, O'*-di(isohexyl, isoheptyl, isooctyl, isodecyl) mixed esters identified as PMN 80–146 and PMN 80–147 respectively.

ADDRESS: Written comments to: Document Control Officer (TS–793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm.

E–447, 401 M St. SW., Washington, DC 20460 (202–755–8050).

FOR FURTHER INFORMATION CONTACT: Kirk Maconaughey, Chemical Control Division (TS–794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–210, 401 M St. SW., Washington, DC 20460, (202–426–3936).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. After receipt, EPA has 90 days to review a PMN.

EPA issued a notice of receipt of two PMN's identified as PMN 80–146 and PMN 80–147 with a summary of each, published in the **Federal Register** of July 23, 1980 (45 FR 41954). The PMN's were submitted by a certain company who claimed confidentiality of its identity as provided for in section 14 of TSCA. The PMN's were for the manufacture of the new substances phosphorodithioic acid, *O, O'*-di(isohexyl, isoheptyl, isooctyl, isodecyl) mixed esters, zinc salt (PMN 80–146) and phosphorodithioic acid, *O, O'*-di(isohexyl, isoheptyl, isooctyl, isodecyl) mixed esters (PMN 80–147). The completion of the 90-day review period for both PMN's was originally set for September 23, 1980.

On September 17, 1980 the submitter requested that the premanufacture review period for both PMN's be temporarily suspended until such time that subchronic toxicity data on the substance in PMN 80–146 becomes available. Since the substance in PMN 80–147 is the intermediate for preparation of the other compound, the submitter felt it appropriate that both review periods be suspended simultaneously. Accordingly the review period has been suspended for an indefinite period of time for submission of this data.

The manufacturer states that the preliminary pathology data will be available in early November, 1980 at which time the company will evaluate and forward the data to EPA. At that time the notice review period may be reinstated.

Dated: October 21, 1980.

Warren R. Muir,

Deputy Assistant Administrator for Toxic Substances.

[FR Doc. 80–33479 Filed 10–27–80; 8:45 am]

BILLING CODE 6560–31–M

[TSH–FRL 1645–5; OPTS–51155]

Fatty Acids, Esters With Polyols; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the **Federal Register** certain information about each PMN within 5 working days after receipt. This Notice announces receipt of a PMN and provides a summary.

DATE: Written comments by November 21, 1980.

ADDRESS: Written comments to: Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–447, 401 M St., SW., Washington, DC 20460, (202–755–8050).

FOR FURTHER INFORMATION CONTACT: Cynthia Work, Chemical Control Division (TS–794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–206, 401 M St., SW., Washington, DC 20460, (202–426–2601).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the **Federal Register** of May 15, 1979 (44 FR 28558-Initial) and July 29, 1980 (45 FR 50544-Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the **Federal Register** issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the **Federal Register.**

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use(s), the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, a summary of the data taken from the PMN is published herein.

Interested persons may, on or before November 21, 1980, submit to the Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–447, 401 M St., SW, Washington, DC 20460, written comments regarding this notice. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS–51155]" and the PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Warren R. Muir,

Deputy Assistant Administrator for Toxic Substances.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604)).

Dated: October 16, 1980.

PMN 80–262.

Closed of Review Period. December 21, 1980.

Manufacturer's Identity. Claimed confidential business information. Generic information provided:

Annual sales—In excess of $500 million.

Exposure.

Activity	Exposure route	Maximum number exposed	Maximum duration		Concentration (ppm)	
			Hours/day	Days/year	Average	Peak
Manufacture	Dermal	6	2	14	0–1	

Environmental Release/Disposal.

Media—Amount/Duration of Chemical Release (kg/yr.)
Air—Less than 10. 24 hr/da; 14 da/yr.
Water—Less than 10. 12 hr/da; 14 da/yr.
Land—100–1,000 kg/yr.

After use, the product will be recovered for either reuse or burning. The water or reaction is sent to the water system before being discharged to the receiving stream.

[FR Doc. 80–33487 Filed 10–27–80; 8:45 am]

BILLING CODE 6560–31–M

[TSH FRL 1645–4; OPTS–51154]

Polymer of: Palm Oil, Coconut Oil, Pentaerythritol, Benzoic Acid, Phthalic Anhydride, and Maleic Anhydride; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the **Federal Register** certain information about each PMN within 5 working days after receipt. This Notice announces receipt of a PMN and provides a summary.

DATE: Written comments by November 21, 1980.

ADDRESS: Written comments to: Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–447, 401 M St. SW., Washington, DC 20460. (202–755–8050).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS–794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–206, 401 M St. SW., Washington, DC 20460 (202–426–2601).

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the **Federal Register** on May 15, 1979 (44 FR 28558-Initial) and July 29, 1980 (45 FR 50544-Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the **Federal Register** issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to

publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the **Federal Register.**

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use(s), the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, a summary of the data taken from the PMN is published herein.

Interested persons may, on or before November 21, 1980, submit to the Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–447, 401 M St. SW., Washington, D.C. 20460, written comments regarding this notice. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS–51154]" and the PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: October 19, 1980.

Warren R. Muir,

Deputy Assistant Administrator for Toxic Substances.

PMN 80–261.

Close of Review Period. December 21, 1980.

Manufacturer's Identity. Claimed confidential business information. Generic information provided: Manufacturing site—East-north central U.S. Standard Industrial Classification Code—285.

Physical/Chemical Properties.

	Polymer solution	Dried polymer
Solid content	60.9	
Density	1.0 g/ml	1.28 g/ml.
Solubility in water		0.01 percent at 20°C.
Number average molecular weight	720–910	
Weight average molecular weight	2800–3200	
Flash point (closed cup)	123°F.	Above 212°F.
Hydroxyl value	186 mg KOH/g	
Acid number	9.3 mg KOH/g	
Elemental Analysis		Percent C=69.31. Percent H= 9.93. Percent O=20.76.
Chemical oxygen demand (ugO/g)	1,790,000	

Toxicity Data of Raw Materials.

Pentaerythritol. The LD_{50} in rats is 16 g/kg. A limit for an "inert" dust of 10 mg/m^3 is recommended by the American Conference of Governmental Industrial Hygienists (ACGIH).

Phthalic anhydride. The oral LD_{50} in rats is 800–1,600 mg/kg, and the Threshold Limit Value (TLV) is less than 25 mg/m^3. Phthalic anhydride is a potent skin, eye, and upper respiratory irritant and can cause skin, and possibly pulmonary sensitization.

Maleic anhydride. The oral LD_{50} in rats is 400–800 mg/kg. the skin LD_{50} in the guinea pig was greater than 20 g/kg. A TLV of 1 mg/m^3 is recommended by ACGIH. Maleic anhydride causes burns to the skin and eyes.

Benzoic acid. the oral LD_{50} in rats is 2,530 mg/kg. Acute and chronic toxicity by ingestion is low. Prolonged contact with skin may cause irritation and have a keratolytic effect.

Rule 66 mineral spirits. Used as a solvent in the reaction. ACGIH recommends a TLV of 100 parts per million (ppm).

Specific Chemical Identity. Polymer of: Palm oil, coconut oil, pentaerythritol, benzoic acid, phthalic anyhdride, and maleic anhydride.

The following summary is taken from data submitted by the manufacturer in the PMN.

Use. Claimed confidential business information. The manufacturer states that the substance will be used in an open use that will release less than 50 kilograms (kg) of the substance to the environment per year and that the use may possibly involve exposure to skin and eyes.

Production Estimates

	Kilograms per year	
	Minimum	Maximum
1st year	100,000	220,000
2nd year	150,000	200,000
3rd year	100,000	150,000

Exposure.

Activity	Exposure route	Maximum number exposed	Maximum duration		Concentration (ppm)	
			Hours/day	Days/year	Average	Peak
Manufacture	Inhalation dermal.	3	16	16		1–10
Disposal	Inhalation dermal.	2	2	8		0–1

Environmental Release/Disposal.

Media—Amount/Duration of Chemical Release (kg/yr.)
Air—Less than 10. 16 hr/da; 16 da/yr.

The submitter states that: Each reactor at the manufacturing plant is equipped with an exhaust and fume condenser; effluent (airborne) is treated by an exhaust fume scrubber; scrubber water goes to biological treatment lagoons with a sixty day retention period; and sludge is landfilled.

[FR Doc. 80-33486 Filed 10-27-80; 8:45 am]

BILLING CODE 6560-31-M

[PH-FRC 1645-2; PF-202]

Certain Pesticide Chemicals; Filing of Pesticide and Food Additive Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that certain companies have filed requests with the EPA to establish tolerances for residues of pesticide chemicals in or on raw agricultural commodities and animal feeds.

ADDRESSES: Written comments and inquiries should be directed to: Designated Project Manager (PM), Registration Division (TS–767), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SE., Washington, D.C. 20460.

Written comments may be submitted while a petition is pending before the agency. The comments are to be identified by the document control number "[PF–202]" and the specific petition number. All written comments filed pursuant to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The designated product manager at the telephone number given in each petition.

SUPPLEMENTARY INFORMATION: EPA gives notice that the following pesticide petitions have been submitted to the agency to establish tolerances for residues of certain pesticide chemicals in or on certain raw agricultural commodities and animal feeds in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each specific petition.

OF2413. Union Carbide Corp., 7825 Baymeadows Way, Jacksonville, FL 32216. Proposes amending 40 CFR 180 by establishing a tolerance for residues of the insecticide thiodicarb (dimethyl *N,N'*-[thiobis[(methylimino)carbonyloxy]] bis[ethanimidothioate]) in or on the raw agricultural commodities: cottonseed at 0.4 part per million (ppm), soybean seed at 0.1 ppm, and soybean (straw) at 0.2 ppm. (PM–12, Jay S. Ellenberger, Rm. E–303, 202–426–2635).

FAP OH5275. Union Carbide Corp., 7825 Baymeadows Way, Jacksonville, FL 32216. Proposes amending 21 CFR 561 by establishing a regulation permitting residues of the insecticide thiodicarb (dimethyl *N,N'*-[thiobis[(methylimino)carbonyloxy]] bis[ethanimidothioate]) on the commodities cottonseed hulls at 0.8 ppm and soybean hulls at 0.4 ppm. (PM–12, Jay S. Ellenberger, Rm. E–303, 202–426–2635].

PP OF2406. Shell Oil Co., Suite 200, 1025 Connecticut Ave., NW., Washington, D.C. 20036. Proposes amending 40 CFR 180.362 by establishing a tolerance for residues of hexakis [2-methyl-2-phenylpropyl)-distannoxane] and its organotin metabolites calculated as hexakis [2-methyl-2-phenylpropyl) distannoxane] in or on the raw agricultural commodity strawberries at 10.0 ppm. The proposed analytical method for determining residues is by thin layer chromatography. (PM–12, Jay S. Ellenberger, Rm. E–303, 202–426–2635).

PP OF2401. American Cyanamid, PO Box 400, Princeton, NJ 08540. Proposes amending 40 CFR 180.361 by establishing a tolerance for the combined residues of pendimethalin [*N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine] in or on the raw agricultural commodity rice grain at 0.05 ppm. The proposed analytical method for determining residues is gas chromatography with a Nickel-63 electron capture detector. (PM–25, Robert J. Taylor, Rm. E–359, 202–755–2196).

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 135); 409(b)(5), 72 Stat. 1786, (21 U.S.C. 348))

Dated: October 17, 1980.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-33484 Filed 10-27-80; 8:45 am]

BILLING CODE 6560-32-M

[PH-FRL 1645-3; OPP-30135A]

Elanco Products Co.; Approval of Application To Register a Pesticide Product Containing New Active Ingredient

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Elanco Products Co. has been granted approval to register the product NIBROXANE which contains the active ingredient 5-bromo-2-methyl-5-nitro-1,3-dioxane which was not previously registered in another product.

FOR FURTHER INFORMATION CONTACT: John H. Lee, Product Manager (PM) 31, Registration Division (TS–767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E–322, 401 M St. SW., Washington, D.C. 20460, (202–426–9411).

SUPPLEMENTARY INFORMATION: EPA issued a notice that was published in the **Federal Register** of July 25, 1977 (42 FR 37848) that Elanco Products Co., Box 1750, Indianapolis, IN 46206, had submitted an application to register a pesticide product containing a new active ingredient, NIBROXANE. Active ingredient: 5-bromo-2-methyl-5-nitro-1,3-dioxane at 98%. The application proposed that the product be classified for manufacturing use as an anti-bacterial preservative. Notice of this registration is given in accordance with 40 CFR 162.7(d)(2).

This application was approved September 10, 1980, and the product has been assigned the EPA Registration No. 147–1110. A copy of the approved label and list of data references used to support registration are available for public inspection in the office of the product manager.

The data and other scientific information used to support registration, except for material specifically protected by section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (92 Stat. 819; 7 U.S.C. 135) will be available for public inspection in the Information Services Branch, Rm. EB–35, EPA, 202–426–8850 in accordance with section 3[c][2] of FIFRA, within 30 days after the registration date of September 10, 1980.

V 4 5 OCT 28 80 UMI

Requests for data must be made in accordance with the provisions of the freedom of information act and must be addressed to the Freedom of Information Office (A–101), EPA, 401 M St. SW., Washington, D.C. 20460. Such requests should: (1) identify the product by name and registration number and (2) specify the data or information desired.

(Sec. 3(c)(5), 92 Stat. 824, (7 U.S.C. 135)).

Dated: October 17, 1980.

James M. Conlon,

Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80-33485 Filed 10-27-80; 8:45 am]

BILLING CODE 6560-32-M

[PHS-FRL 1645-1; PP 9G2160/T267]

Fluridone; Establishment of a Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA has established a temporary tolerance for residues of the herbicide fluridone (1-methyl-3-phenyl-5-[3-trifluoromethyl)phenyl]-4-(1*H*)-pyridinone) in or on fish at 0.1 part per million (ppm).

FOR FURTHER INFORMATION CONTACT: Richard Mountfort, Product Manager (PM) 23, Rm. E–351, Registration Division (TS–767), Office of Pesticide Programs, Evironmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202–755–1397).

SUPPLEMENTARY INFORMATION: Elanco Products Co., A Division of Eli Lilly and Co., P.O. Box 1750, Indianapolis, IN 46206 has submitted a pesticide petition (9G2160) to the EPA. The petition requested that a temporary tolerance be established for residues of the herbicide fluridone (1-methyl-3-phenyl-5-[-trifluoromethyl)phenyl]-4-(1*H*)-pyridinone) in or on fish at 0.1 ppm.

This temporary tolerance is being establised to permit the marketing of fish when treated in accordance with an experimental use permit (1471–EUP–67) which has been issued under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, (92 Stat. 819, 7 U.S.C. 136). A food additive regulation (FAP9H5202) was established for residues of fluoridone in potable water resulting from use of pesticide under the experimental use permit.

The scientific data reported and other relevant material were evaluated, and it has been determined that the tolerance is adequate to protect the public health.

The temporary tolerance has been established on the condition that the temporary tolerance and the experimental use permit be used with the following provisions:

1. The total amount of the active herbicide to be used will not exceed the quantity authorized by the experimental use permit.

2. Elanco Product Co. will immediately notify the EPA of any finding from the experimental use that have a bearing on safety. The company will also keep records of production, distribution, and performance, and on request make these records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary tolerance will expire August 20, 1981. Residues not in excess of this temporary tolerance remaining in or on fish after expiration of this tolerance will not be considered actionable if the pesticide is legally applied during the term, and in accordance with, provisions of the experimental use permit and temporary tolerance. This temporary tolerance may be revoked if the experimental use permit is revoked, or if any scientific data or experience with this pesticide indicate such revocation is necessary to protect the public health.

(Sec. 408. (j), 68 Stat. 561, (21 U.S.C. 136(a)(j)))

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-33483 Filed 10-27-80; 8:45 am]

BILLING CODE 6560-32-M

[A5 FRL 1643-4]

Ohio; Extension of the Interim Enforcement Policy for Sulfur Dioxide Emission Limitations

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice for extension of the interim enforcement policy for sulfur dioxide emission limitations in Ohio.

SUMMARY: By this notice, the U.S. Environmental Protection Agency is extending the policy concerning the enforcement of the sulfur dioxide emission limitations in Ohio beyond February 11, 1981. This policy was originally published in the **Federal Register** on February 11, 1980 (45 FR 9101).

This policy was intended to focus the Agency's enforcement resources on those sources of SO2 which presented the greatest environmental threat while the issue of sulfur variability was under review. Although it is now clear that the review and rulemaking procedure will not be completed by February 1981, it is anticipated that this process will be completed by March 1, 1982. Therefore, this policy will be extended until March 1, 1982.

FOR FURTHER INFORMATION CONTACT: Ms. Charlie Smith (312) 353–1681.

Dated: October 17, 1980.

John McGuire,

Regional Administrator.

[FR Doc. 80-33481 Filed 10-27-80; 8:45 am]

BILLING CODE 6560-26-M

[OPTS 10004; FRL 1644-2]

TSCA Chemical Assessment Series; Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability of "Chemical Screening: Initial Evaluations of Substantial Risk Notices, section 8(e), July 1, 1979–January 31, 1980," Volume 2, in the *TSCA Chemical Assessment Series.*

FOR FURTHER INFORMATION CONTACT: Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–447, 401 "M" St., SW, Washington, D.C. 20460, (202) 755–8050.

FOR ORDERING: John B. Ritch Jr., Industry Assistance Office, Environmental Protection Agency, Rm. E–429, 401 "M" St., SW, Washington, D.C. 20460, Toll Free: (800–424–9065), Washington, D.C.: (202–554–1404).

SUPPLEMENTARY INFORMATION: A collection of status reports (evaluations) prepared by scientists in EPA's Office of Pesticides and Toxic Substances (OPTS) on submissions received from chemical manufacturers, processors, and distributors under section 8(e) of the Toxic Substances Control Act (TSCA) between July 1, 1979, and January 31, 1980, has been published in the *TSCA Chemical Assessment Series* and is available to the public.

The information in the volume on the reported chemicals may not be widely known and may, because it provides specific examples of submitted information and EPA's evaluation of it, help anyone subject to section 8(e) to understand better the types of information that should be submitted to the EPA. In addition, this compilation of status reports describes Agency procedures for the processing of information received under section 8(e).

Comments

Because the chemical assessments published in the *TSCA Chemical Assessment Series* often will reflect initial or intermediate steps in EPA's evaluation of a chemical under TSCA, the Agency welcomes the submission of additional information for or comments on its evaluations. Such submissions will be considered either at a subsequent step in the assessment of the subject chemical or in the decision not to proceed with further evaluation. Comments on this volume should bear the identifying docket number OPTS–10004.

Ordering

The Industry Assistance Office (IAO) in OPTS is distributing all volumes in the *TSCA Chemical Assessment Series.* IAO is maintaining two mailing lists: a subscription list of persons who want to receive all volumes in the series and a notification list of persons who want to receive announcements of individual volumes as they become available.

Persons on the subscription list automatically receive the volumes in the Series. A copy will be sent to the manufacturers of a volume's subject chemical substance, known to OPTS through the public TSCA Chemical Substance Inventory. Requests for a volume can be made by persons on IAO's notification list by telephoning the IAO (toll-free 800–424–9065 or, in Washington, D.C., 554–1404) or writing to IAO at the address given here.

Generally, five thousand copies of each volume will be printed. After this supply is exhausted, copies can be purchased from the National Technical Information Service (NTIS), whose "PB" reference number can be found in the OPTS "Comprehensive List of Scientific and Technical Reports," also available from IAO.

Dated: October 20, 1980.

Warren R. Muir,

Deputy Assistont Administrator, Office of Toxic Substonces.

[FR Doc. 80-33476 Filed 10-27-80; 8:45 am]

BILLING CODE 6560-31-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10218; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before November 17, 1980. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No.: 17–40.

Filing party: Gerald J. Flynn, Chairman, Far East Conference, 40 Rector Street, New York, New York 10006.

Summary: Agreement No. 17–40 modifies Article 1 of the basic agreement of the Far East Conference to provide authority for the parties to establish, modify and rescind rules relating to the extension of credit, including authority to adopt a credit agreement with shippers desiring credit and to deny credit privileges to delinquent shippers.

Agreements Nos. 7100–25, 7670–21, 7770–20, and 9214–26.

Filing party: Howard A. Levy, Attorney at Law, Suite 727, 17 Battery Place, New York, New York 10004.

Summary: Agreements Nos. 7100–25, 7670–21, 7770–20, and 9214–26 would amend, respectively, the North Atlantic United Kingdom Freight Conference Agreement, North Atlantic Baltic Freight Conference Agreement, North Atlantic French Atlantic Freight Conference Agreement, and North Atlantic Continental Freight Conference Agreement by increasing the amount of the financial guarantee from $25,000 to $100,000, that each member of each respective Conference is required to furnish.

Agreement No. 9925–3.

Filing party: John R. Mahoney, Esquire, Burlingham Underwood & Lord, One Battery Park Plaza, New York, New York 10004.

Summary: Agreement No. 9925–3 is a proposal by the parties to the Pacific America Container Express Cooperative Working Arrangement to extend the expiration date of the basic agreement for 10 years, through March 31, 1991.

Agreement No.: 9976–5.

Filing party: John R. Attanasio, Esquire, Billig, Sher & Jones, P.C., Suite 300, 2033 K Street, N.W., Washington, D.C. 20006.

Summary: Agreement No. 9976–5, among the members of the Mediterranean Associated Conferences, would extend the term of the basic agreement for a period of three (3) years through March 2, 1984, beyond the present termination date of March 2, 1981.

Agreement No. 10267–5.

Filing party: Howard A. Levy, Esquire, Suite 727, 17 Battery Place, New York, New York 10004.

Summary: Agreement No. 10267–5 is a proposal by the parties to the Container Carriers Discussion Agreement to extend the expiration date of the basic agreement for 3 years, through March 31, 1984.

Agreement No.: 10404.

Filing party: John R. Mahoney, Esquire, Burlingham Underwood & Lord, One Battery Park Plaza, New York, New York 10004.

Summary: Agreement No. 10404 is a proposed Joint Service Agreement between The East Asiatic Company, Ltd. and Knutsen Line, A/S, that will operate under the name EAC-Knutsen Line in the trades between U.S. Pacific Coast ports and ports in Asia, Oceana, and Western/Northwestern Australia, along with trades between points/ports and other points/ports to the extent that the routing is via the aforedescribed trade areas. Each party agrees not to compete with the Joint Service, but may individually carry certain cargo by use of special carriers. The parties shall both either belong to or operate independently from conferences, and will file their own tariff in trades when they do not belong to a conference. EAC-Knutsen Line proposes to use no more than 10 vessels, with carrying capacity of approximately 8,855 container slots together with 5,957,100 cubic feet bale of conventional breakbulk space. The parties will agree on the appointment of common agents and the use of common terminals and stevedores. A committee comprised of representatives of each party will conduct day-to-day operations in an office(s) established by the parties. A pool will administer money flow, with service revenue to be collected, payments to be made for operating expenses, and remaining revenues to be distributed to the parties. Each party maintains a 50 percent pool share. The agreement is proposed to remain in effect for 5 years from the date of its approval.

By Order of the Federal Maritime Commission.

Dated: October 23, 1980.

Francis C. Hurney,

Secretary.

[FR Doc. 80-33510 Filed 10-27-80; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 80–75]

Cargo Export Corp. v. Intermodal Container Service, Ltd., Bangladesh Shipping Corp. and Peralta Shipping Corp.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Cargo Export Corporation against Intermodal Container Service, Ltd., Bangladesh Shipping Corporation and Peralta Shipping Corporation was served October 21, 1980. The complaint

alleges that respondents knowingly and willfully combined and conspired to obtain and permit transportation by water at less than the rates otherwise applicable in violation of section 16 of the Shipping Act, 1916; subjected complainant to rates for transportation in violation of sections 14, 16 and 18 of the Shipping Act, 1916; and further engaged in an unlawful and unreasonable practice in violation of section 17 and unlawful retaliation in violation of section 14 of the Act.

This proceeding has been assigned to Administrative Law Judge Joseph N. Ingolia. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,

Secretary.

[FR Doc. 80-33512 Filed 10-27-80; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 80-72]

North River Insurance Co. and Northwestern National Insurance Co. v. Federal Commerce and Navigation Co., Ltd.; Filing of Complaint and Assignment

Notice is given that a complaint filed by North River Insurance Company and Northwestern National Insurance Company against Federal Commerce and Navigation Company, Ltd. was served October 21, 1980. Complainants allege that respondent, by defending a cargo damage suit of complainants more vigorously than other cargo suits has violated sections 14, 16 and 17 of the Shipping Act, 1916.

This proceeding has been assigned to Chief Administrative Law Judge John E. Cograve. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,

Secretary.

[FR Doc. 80-33511 Filed 10-27-80; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Public Health Service; Alcohol, Drug Abuse, and Mental Health Administration; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HM (Alcohol, Drug Abuse, and Mental Health Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (38 FR 1654, January 11, 1974, as amended most recently in pertinent part at 44 FR 49311, August 22, 1979) is amended to reflect the complete reorganization of the National Institute on Alcohol Abuse and Alcoholism, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA). The reorganization accomplishes the following: (1) creates an Office of Policy Analysis, a Division of Occupational Alcoholism Programs, and a Division of State and Community Assistance; (2) abolishes the Office of Program Development and Analysis and the Division of Resource Development; (3) revises the functional statements and titles for: the Office of Program Support—to be retitled the Office of Planning and Resource Management; the Division of Special Treatment and Rehabilitation—to be retitled the Division of Alcoholism Services Development; and (4) modifies the rest of the functional statements of the Institute.

Section HM-B, Organization and Functions, is amended as follows:

Under ADAMHA (HM), delete all functional statements for the *National Institute on Alcohol Abuse and Alcoholism (HMC)* and substitute the following:

Notional Institute on Alcohol Abuse and Alcoholism (HMC)

Provides leadership, policies, and goals for the Federal effort in the prevention, control, and treatment of alcohol abuse and alcoholism and the rehabilitation of affected individuals. In carrying out these responsibilities the Institute: (1) conducts and supports basic and applied alcohol related investigations, by means of extramural and intramural research programs; (2) conducts and supports research on the development and improvement of alcoholism services delivery, administration and financing; (3) supports alcoholism services programs and projects; (4) supports the training of personnel in research, prevention, control, and treatment of alcoholism; (5) collaborates with and provides technical assistance to State and community efforts in planning, establishing, improving, coordinating and evaluating alcohol abuse and alcoholism programs; (6) plans, supports and stimulates the development and expansion of occupational alcoholism programs; (7) collaborates with, provides assistance to and encourages other Federal agencies, national, international, State and local organizations, hospitals, and voluntary groups to facilitate and expand programs for the prevention of alcohol abuse and alcoholism, and for the care, treatment and rehabilitation of alcoholic persons; (8) provides technical assistance in the development, implementation and administration of an alcoholism detection, referral, and treatment program for Federal civilian employees within the Public Health Service; and (9) carries out administrative and financial management, policy development, planning and evaluation, and public information functions which are required to implement such programs.

Office of the Director (HMC1)

(1) Provides leadership, coordination, and direction in the development and implementation of Institute policies, goals and priorities; (2) plans, directs and provides overall administration of the program and management activities of the Institute; (3) serves as the focal point for the Department's efforts on alcohol abuse and alcoholism; (4) conducts and coordinates interagency, intergovernmental, international and public affairs activities of the Institute; (5) develops Institute program evaluation policy and plans, directs and coordinates program evaluation activities of the Institute; (6) acts as liaison with special populations; and (7) monitors the conduct of the equal employment opportunity activities of the Institute.

Office of Policy Analysis (HMC12)

(1) In conjunction with program offices of the Institute, develops and recommends to the Director, National Institute on Alcohol Abuse and Alcoholism, program policies for potential application at the national, State or local level; (2) monitors broad social policy issues surrounding the field of alcoholism, including labeling of alcoholic beverages, and alcohol beverage control laws; (3) prepares a variety of special alcoholism reports in response to Congressional, departmental, and programmatic needs for alcohol information; (4) serves as the Institute focal point for the development of service financing programs designed to improve and increase the financing of alcoholism services at national, State and local levels; and (5) conducts legislative analyses and provides legislative services.

Office of Extramural Policy and Project Review (HMC14)

(1) Plans, administers and coordinates peer and objective review of grant applications and contract proposals; (2) develops Institute review policies and procedures, provides orientation and guidance on such policies and procedures, and monitors the review process to ensure quality of review and conformance to policy; (3) recommends nominees for review groups; (4) administers the committee management function; (5) coordinates and assures the development of and adherence to program policies related to Institute extramural activities; (6) collects and analyzes data relating to grant applications and contract proposals reviewed, and makes recommendations, as necessary, for changes in Institute committee structure and/or referral guidelines; (7) collaborates with other Institute and OA offices to ensure adequate exchange of information and assure optimum effectiveness of the review process; and (8) participates in the review of proposed DHHS, PHS and ADAMHA policies and documents affecting peer and objective review.

Office of Planning and Resource Management (HMC15)

(1) Coordinates Institute planning activities and participates in the preparation of Institute-wide program plans; (2) analyzes program plans developed within the divisions, and monitors implementation of the plans; (3) provides administrative management support to the Institute in such areas as (a) financial management, (b) grants and contracts management, and (c) administrative services; (4) develops administrative management policies, procedures and guidelines, and conducts management studies of Institute programs and operations; (5) maintains liaison with the management staff of the Office of the Administrator and implements within the Institute general management policies prescribed by ADAMHA and higher authorities; and (6) provides correspondence control services for the Institute.

Division of Alcoholism Services Development (HMC7)

(1) Plans, develops, supports and evaluates a wide range of innovative treatment and rehabilitation demonstration programs directed toward the reduction of alcohol abuse and alcoholism among general and special population groups; (2) develops, tests and implements model treatment and rehabilitation programs, and provides support for replicating these programs; (3) develops and monitors a system for collecting and analyzing information from NIAAA-supported treatment project grants; (4) analyzes the content and quality of alcoholism treatment and rehabilitation programs administered by the division, in order to improve service delivery and the quality of care; (5) conducts health services assessment activities in relation to alcoholism services delivery programs; and (6) plans, develops, supports and evaluates training programs to ensure the availability of qualified and competent personnel working in the alcoholism field.

Division of State and Community Assistance (HMC6)

(1) Plans, develops, supports and evaluates federally funded projects administered by States and communities which support efforts to develop programs dealing with alcohol abuse and alcoholism services; (2) develops national policy and the regulatory framework for the preparation of comprehensive State plans, which pertain to the establishment and delivery of alcoholism services; (3) reviews, evaluates and approves individual State plans and recommends modification; (4) provides assistance and support to State and community governments and collaborates with them in the establishment and development of State and community sponsored alcohol training, prevention, treatment and rehabilitation programs; (5) plans, develops, supports and evaluates the Institute's voluntary resource development program; (6) administers the program of special grants to States, which implements the provisions of the Uniform Alcoholism and Intoxication Treatment Act; and (7) develops and implements a system to collect and analyze information from State-supported alcoholism programs.

Division of Occupational Alcoholism Programs (HMC8)

(1) Plans, develops, supports and evaluates programs within labor unions, occupational groups, individual industries and local Government employee organizations, for the identification and treatment of employees with problems related to alcohol abuse; (2) provides technical assistance and consultation to the Office of Personnel Management, Department of Health and Human Services, Public Health Service, regional offices, and other agencies, in the development and administration of appropriate alcoholism programs for other Federal civilian employees; (3) maintains close liaison with, and provides technical assistance to public and private organizations, to promote the development of effective occupational alcoholism programs; (4) develops, tests and implements model occupational alcoholism programs and provides support for replicating these programs; and (5) stimulates and supports the communication of information related to occupational alcoholism programs, through conferences, workshops and meetings.

Division of Prevention (HMC3)

(1) Develops and analyzes national policies and strategies for the prevention of alcohol abuse and alcoholism; (2) plans, develops, supports and evaluates a broad range of alcohol prevention programs and activities; (3) develops, tests and implements model prevention and public education programs and provides support for replicating these programs throughout the Nation; (4) plans and develops a wide range of alcoholism prevention strategies and initiatives, including national or local public media programs; (5) collaborates with other Federal agencies, such as the Bureau of Alcohol, Tobacco and Firearms, Department of Transportation, Veterans Administration, Federal Trade Commission and the Food and Drug Administration in the development of alcohol prevention activities; (6) collaborates with, and provides technical assistance to public agencies and other nonprofit organizations in the development and implementation of alcoholism prevention programs; and (7) stimulates and supports the communication of educational and programmatic material dealing with alcoholism prevention, through the activities of the National Clearinghouse for Alcohol Information, and by means of conferences, scientific journals, and other publications.

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Division of Extramural Research (HMCA)

(1) Plans, develops, and supports programs of basic and applied research on the multiple determinants and processes of alcoholism and other alcohol-related problems; on the prevention of alcohol abuse; and the diagnosis, treatment, and rehabilitation of persons who abuse alcohol; (2) develops and supports clinical research to assess the efficacy of therapeutic procedures for the treatment of alcoholism and alcohol-related disorders; (3) administers the Institute's National Research Centers program; (4) administers the Institute's research scientists development and research training programs; (5) evaluates the results of research supported by the Division, and stimulates the dissemination of research findings and the interpretation of research data, through consultation and the development of conferences; symposia and major scientific publications; and (6) collaborates with other national and international agencies, universities and scientific organizations undertaking studies related to alcoholism and alcohol abuse.

Division of Intramurol Research (HMCB)

(1) Plans, develops and conducts a program of basic and applied alcohol research, including metabolic, epidemiological, preclinical and clinical investigations, on the multiple determinants and processes of alcoholism and other alcohol-related problems and in the areas of prevention, diagnosis, treatment, and rehabilitation; and (2) collaborates with other agencies, universities, and scientific organizations in the conduct of basic and applied research on alcohol and its effects.

Dated: October 21, 1980.

Patricia Roberts Harris,

Secretory.

[FR Doc. 80-33467 Filed 10-27-80; 8:45 am]

BILLING CODE 4110-88-M

Health Care Financing Administration

Medicare Program; Exclusion From Medicare Coverage of Bilateral Carotid Body Resection to Relieve Pulmonary Distress

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of a HCFA ruling.

SUMMARY: This notice announces a HCFA ruling that restates Medicare policy that the surgical procedure known as bilateral carotid body resection, performed to relieve respiratory distress, is not a covered service. The Medicare statute (section 1862(a)(1) of the Social Security Act) and regulations (42 CFR 405.310(k)) preclude reimbursement for items or services not found to be reasonable and necessary for the diagnosis and treatment of illness or injury or to improve the functioning of a malformed body member. One criterion we have used is the safety and effectiveness of the procedure. Available evidence does not show that bilateral carotid body resection to relieve pulmonary distress is safe and effective. The HCFA ruling assures uniform Medicare policy on coverage of this surgical procedure.

EFFECTIVE DATE: Effective for services furnished after October 28, 1980.

FOR FURTHER INFORMATION CONTACT: Henry J. Hehir, Director, Division of Medical Services Coverage Policy, 301-594-8561.

SUPPLEMENTARY INFORMATION: The text of the HCFA ruling reads as follows:

EXCLUSION FROM MEDICARE COVERAGE OF BILATRAL CAROTID BODY RESECTION TO RELIEVE PULMONARY DISTRESS

HCFAR 80-2

Purpose: This ruling restates policy regarding Medicare coverage of bilateral carotid body resection to relieve pulmonary distress.

Citations: Section 1862(a)(1) of the Social Security Act (42 U.S.C. 1395y(a)(1)); 42 CFR 405.310(k); 20 CFR 422.408.

Pertinent History: The Medicare statute prohibits payment for any expenses incurred for items or services "which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member" (section 1862(a)(1) of the Act). The Health Care Financing Administration (HCFA) has interpreted this statutory provision to exclude from Medicare coverage medical and health care services and items that are not demonstrated to be safe and effective by acceptable clinical evidence. HCFA's source of medical advice on issues of medical safety and efficacy of services and items is the Public Health Service (PHS), National Center for Health Care Technology.

Bilateral carotid body resection is sometimes performed to relieve the symptoms of pulmonary conditions such as asthma and emphysema. While this is not a common surgical procedure, a number of claims have been submitted for Medicare reimbursement. Because of questions about its efficacy and safety, HCFA requested PHS review of the procedure for purposes of Medicare coverage.

PHS has consistently advised HCFA that the bilateral carotid body resection procedure, performed to relieve the symptoms of pulmonary conditions such as asthma and emphysema, lacks general acceptance by the professional medical community because of questions concerning efficacy and safety. A thorough review of these questions was conducted in 1978 by a panel of physician specialists convened by the National Heart, Lung and Blood Institute of the National Institutes of Health (NIH). The panel reviewed all published articles on bilateral carotid resection and obtained comments and opinions from physicians, including surgeons, who were knowledgeable and experienced in the use of this surgical procedure as a treatment for pulmonary distress. In a report (Report of Task Force on Bilateral Carotid Body Resection, dated March 10, 1978) (Appendix I), the NIH panel reaffirmed earlier PHS decisions that there was not sufficient evidence to establish the safety and efficacy of the bilateral carotid body resection procedure for relief of pulmonary distress. The panel indicated its concern with the risks to the patient during the period of hospitalization for the procedure. In addition, the panel noted that "theoretical considerations suggest that the risk of hypoventilation may be increased, especially in patients with chronic obstructive pulmonary disease".

Based on this advice, HCFA issued an instruction to carriers and intermediaries in January, 1979 that Medicare does not cover carotid body resection to relieve pulmonary symptoms. (See Appendix II, *Part A Intermediary Manual,* Chapter II—Coverage of Services Appendix, Coverage Issues.) This is the normal manner in which HCFA announces such decisions.

There have been many decisions by Departmental Administrative Law Judges (ALJs), however, that have not applied this policy and have concluded that bilateral carotid body resections were "reasonable and necessary". In 1979 the Social Security Administration's Appeals Council conducted a consolidated hearing regarding claims for bilateral carotid body resection and determined that the claims were payable under Medicare. HCFA has reviewed those proceedings, and concluded that the coverage policy on this procedure should continue to reflect the medical advice given by PHS. The purpose of this ruling, therefore, is to make our coverage decision binding on ALJs and the Appeals Council. (See 20 CFR 422.408.)

HCFA consulted with PHS when preparing this ruling, and again received advice that there is still insufficient clinical evidence to establish that bilateral carotid body resection is a safe and effective treatment for pulmonary diseases. Furthermore, there is a continued concern that the procedure is unsafe due to the risk of increased hypoventilation.

Ruling: Bilateral carotid body resection performed to relieve and treat pulmonary symptoms and diseases is not established as safe and effective and, therefore, is excluded from Medicare coverage under the authority of section 1862(a)(1) of the Act.

Effective Date: As explained above, we have previously issued policy in manual instructions excluding this service from Medicare coverage. However, since ALJs and the Appeals Council have ruled in several cases that claims for these services are payable, it is possible that some beneficiaries, relying on these rulings, have proceeded to have the operation performed in expectation of Medicare payment. In fairness to those beneficiaries, we are making the ruling effective for services furnished after the date of publication.

Cross-References: Part A Intermediary Manual, Chapter II, Coverage of Services Appendix, Coverage Issues, § 35-7; *Carriers Manual,* Chapter II, Coverage Issues Appendix, § 35-7.

Appendix I—Report of Task Force on Bilateral Carotid Body Resection

March 1978

Division of Lung Diseases, National Heart, Lung, and Blood Institute

U.S. Department of Health, Education, and Welfare

Public Health Service, National Institutes of Health

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Foreword

The Task Force on Bilateral Carotid Body Resection was constituted to advise the Division of Lung Diseases relative to a controversial issue with a long history, many ramifications and significant medical, ethical and economic implications.

In the half-century since the chemoreceptivity of the carotid body was discovered, its role in regulating ventilation under hypoxic conditions has been extensively studied in animals and man. Removal of one carotid body for symptomatic relief of intractable bronchial asthma was first performed in 1941, by K. Nakayama in Japan. In this country R. H. Overholt performed the first unilateral resection in 1961, and B. Winter the first bilateral resection in 1962. Since then thousands of patients have undergone unilateral or bilteral carotid body resection, most often for treatment of asthma, more recently for chronic bronchitis or emphysema.

There is general agreement that, in the hands of experienced surgeons, the operation *per se* is neither difficult nor dangerous; very few deaths are directly attributable to the surgery. There also appears to be general agreement that, in most cases, unilateral resection does not provide symptomatic relief for bronchial asthma. However, the biomedical community is sharply divided over the following questions:

- Does bilateral carotid body resection provide symptomatic relief for patients with bronchial asthma, chronic bronchitis or emphysema?
- Does absence of innervatioin of both carotid bodies place the patient at risk when confronted with situations requiring rapid ventilatory responses?
- Is it ethical to continue to use an irreversible surgical procedure when its efficacy has not been critically assessed in a controlled clinical trial?

The controversy also has economic complications. Patients undergoing bilateral resection for symptomatic relief of bronchospasm or chronic obstructive lung disease are not covered by third party payments, but probably would be if the operation were demonstrated unequivocally to be therapeutic.

The Division of Lung Diseases was drawn into this controversy when, in July 1975, Dr. Benjamin Winter wrote to the Director suggesting that a clinical trial of bilateral carotid body resection be undertaken. Stimulated by this suggestion, the Division obtained informal professional opinions from 12 well-recognized chest physicians. Their letters indicated that much of the available information was anecdotal, but little was based on firm data from controlled studies. In November 1975 a conference on *The Value of Bilateral Carotid Body Resection in Monogement of Patients with Severe Asthmo, Bronchitis or Emphysemo* [1] was held in San Francisco under the chairmanship of Dr. Julius Comroe. The report of the conference included a recommendation to "appoint a panel to prepare a protocol for a controlled, objective, prospective study of the procedure." The Pulmonary Diseases Advisory Committee reviewed the conference report and, in February 1976, recommended (1) covening a panel to develop a protocol for such a clinical trial, and (2) postponing any decision about whether to initiate a trial until a satisfactory protocol had been developed.

Because of the complexity of the issues to be addressed and the need for an indepth examination of the problem, the Division constituted a task force that was charged to:

- Review and assess the reported experimental and clinical evidence that bilateral carotid body resection is therapeutically effective in management of intractable bronchial asthma, chronic bronchitis or emphysema.
- Determine, on the basis of available evidence whether there was need for a clinical trial. If a trial was recommended,
- ✔ Develop a protocol that included defined endpoints and criteria for evaluating the therapeutic efficacy of the procedure.
- ✔ Assess the ethical problems associated with the proposed trial.

The 12-member Task Force on Bilateral Carotid Body Resection, under the chairmanship of Dr. Alan Pierce, met on May 17, and June 13, 1977, and held its final meeting on March 10, 1978. During this ten-month period, it reviewed the literature and obtained oral and written testimony from surgeons and physicians who had direct experience with patients who had undergone the procedure. Dr. Benjamin Winter and his associate Dr. Richard Baum attended the June 1977 meeting to report data on Dr. Winter's patients and, at the same meeting, Drs. Karlman Wasserman and Brian Whipp described their studies of some of Dr. Winter's patients.

Written comments were obtained from nine experts who had either performed bilateral resections or studied patients subsequent to such surgery. Dr. Y. Honda of Chiba University attended the March 1978 meeting and summarized the extensive Japanese experience, which includes 10-year and some 25-year follow-up studies of patients.

The members of the task force are listed . . . [below]. Their report speaks for itself and will be presented to the Pulmonary Diseases Advisory Committee, the National Heart, Lung, and Blood Advisory Council, and the staff of the National Heart, Lung, and Blood Institute. It will also be available for distribution to the large segments of the medical, surgical and biomedical communities interested in the issues, and to Federal and other agencies concerned with its implications for reimbursement of the costs of patient care.

In constituting the task force, the Division of Lung Diseases clearly expressed its commitment to contribute insofar as possible to resolving the controversy surrounding the use of bilateral carotid body resection for treatment of asthma, chronic bronchitis or emphysema. If the Division's Advisory Committee and the Institute's Advisory Council concur with the recommendations of the task force, the Division will take appropriate steps toward development of a protocol for a randomized, prospective clinical study that would be a definitive trial of the efficacy of bilateral resection. However, the role of the Division of Lung Diseases in implementing such a trial will depend upon approval of the Pulmonary Diseases Advisory Committee and the National Heart, Lung, and Blood Advisory

[1] Conference Participants: Drs. Cedric R. Bainton, Julius H. Comroe, Jr., Warren M. Gold, Thomas F. Hornbein, Norman Jones, Robert A. Mitchell, John F. Murray, Jay A. Nadel, John Severinghaus, Karlman Wasserman.

Council and the availability of adequate funds.

The Report of the Task Force on Bilateral Carotid Body Resection reflects the dedication and balanced professional judgments that so many have brought to bear in arriving at the recommendations. To all those who contributed information and professional opinions to the Task Force, to the Chairman, Dr. Alan Pierce, who provided such dynamic leadership, and to all the members, whose painstaking approach, unstiniting efforts and knowledgeable deliberations brought this difficult enterprise to a successful conclusion, I gratefully acknowledge their invaluable help. In expressing sincere thanks, I also speak for the Division of Lung Diseases and the National Heart, Lung, and Blood Institute.

Dated: March 10, 1978, Bethesda, Maryland.

Claude Lenfant, M.D.,

Director, Division of Lung Diseases, National Heart, Lung, and Blood Institute.

Task Force on Bilateral Carotid Body Resection

Chairman: Alan K. Pierce, M.D., Professor of Medicine, University of Texas, Southwestern Medical School, Dallas, Texas

Harry S. Abram, M.D.,[2] Department of Psychiatry, Vanderbilt University, Nashville, Tennessee

David DeMets, Ph.D., Biometrics Research Branch, Division of Heart and Vascular Diseases, National Heart, Lung, and Blood Institute, Bethesda, Maryland

Charles Flagle, Dr. Eng., Professor and Head, Division of Operations Research, Johns Hopkins School of Hygiene and Public Health, Baltimore, Maryland

Ian Higgins, M.D., D.P.H., Professor of Epidemiology, University of Michigan, School of Public Health, Ann Arbor, Michigan

Norman L. Jones, M.D., Professor of Medicine, McMaster University, Hamilton, Ontario

Neil Krupp, M.D., Department of Psychiatry, Cleveland Clinic, Cleveland, Ohio

Jay A. Nadel, M.D., Professor of Medicine and Radiology, University of California, School of Medicine, San Francisco, California

Thomas L. Petty, M.D., Professor and Head, Division of Pulmonary Sciences, University of Colorado, School of Medicine, Denver, Colorado

John Severinghaus, M.D., Professor of Anesthesiology, University of California, School of Medicine, San Francisco, California

Michael Tarter, Ph.D., Associate Professor of Biostastics, University of California, Berkeley, School of Public Health, Berkeley, California

John V. Weil, M.D., Associate Professor of Medicine, University of Colorado Medical Center, Denver, Colorado

[2] Deceased

Report of Task Force on Bilateral Carotid Body Resection

Charge to and Rationale for Creating the Task Force

Over 40,000 deaths in the United States are attributed each year to bronchitis, emphysema, asthma, or chronic obstructive lung disease (International Classification of Disease Codes 490 to 493 and 519.3). It is estimated that there are at least 60,000 additional deaths in which these diseases are contributory causes. Approximately 35,000 Americans become totally disabled from these diseases each year, and emphysema has been second to coronary heart disease as a cause of social security-compensated disability for at least 15 years. Data from the U.S. National Health Survey indicate that chronic respiratory diseases comprise 10 percent of all conditions causing disability of one week or more. Approximately two percent of persons aged 17 years and over interviewed in the Health Interview Survey stated that they had bronchitis and/or emphysema. But this must be a minimal figure since many surveys have reported a prevalence of 10 to 40 percent depending on age, sex, and the definition of disease that is used. The economic cost of these diseases has been estimated at $5.7 billion—direct costs for hospital treatment, physicians' services, and prescribed drugs amounting to $1.0 billion and indirect costs from lost productivity due to morbidity and mortality amounting to $4.7 billion.[3]

It is clear, therefore, that obstructive airways diseases constitute a major health problems for the citizens of this country. Any potentially beneficial therapy for these patients must be examined by as objective criteria as possible to determine if it can play a role in decreasing this awesome morbidity or mortality. Consequently in early 1977, a Task Force on Bilateral Carotid Body Resection was appointed by the Division of Lung Diseases of the National Heart, Lung, and Blood Institute. The Task Force was charged to:

- Review and assess the reported experimental and clinical evidence that bilateral carotid body resection is therapeutically effective in management of intractable bronchial asthma, chronic bronchitis or emphysema.
- Determine, on the basis of available evidence, whether there was need for a clinical trial. If a trial was recommended.

Develop a protocol that included defined endpoints and criteria for evaluating the therapeutic efficacy of the procedure.

Assess the ethical problems associated with the proposed trial.

Scientific Background

Anotomy of Carotid Bodies

The two carotid bodies are small structures dorsal to the bifurcations of the common carotid arteries. In humans they are located on the medial sides of these bifurcations (*1*). Each receives its blood supply from a branch of the carotid artery; blood flow is large relative to the mass of the tissue (*2*). Innervation is through the carotid sinus nerve, predominantly by glossopharyngeal afferent fibers with contributions of sympathetic efferents from the superior cervical ganglia and preganglionic parasympathetic efferent fibers from the vagus nerves (*3*). Utilizing the surgical technique described by Winter (*1*), it is possible to remove the carotid bodies without substantive damage to the lateral tracts of the carotid sinus nerves. Thus, chemoreceptor function may be ablated while preserving baroreceptor function (*4*).

Carotid bodies are composed of two major cell types. Type I (glomus) cells contain cytoplasmic vesicles with electron dense cores, and type II (sustentacular) cells have thin cytoplasmic extensions which ensheath the type I cells. Although the exact mechanisms are not entirely clear (*2,3*), it is believed that the chemoreceptor functions of the carotid bodies are mediated by the interaction of type I cells and the afferent fibers of the glossopharyngeal nerves.

Physiology of Carotid Bodies

The major physiological stimulus to the carotid bodies is a reduction in the arterial oxygen tension (PaO_2) which leads to an increase in ventilation. The carotid bodies are active at a PaO_2 that is normal while breathing ambient air at sea level. This activity is suppressed by the administration of high inspired oxygen concentrations. However, the carotid body effect at such PaO_2's is small and difficult to demonstrate. Conversely, the effects on ventilation at lower PaO_2's are more striking and are readily demonstrated by administering low inspired oxygen concentrations. The hypoxemia-induced hyperventilation is blunted by the effect of the resultant low arterial carbon dioxide tension ($PaCO_2$) acting on central chemoreceptors (*4*). Thus, the carotid body response to low PaO_2's may be more clearly demonstrated by maintaining a constant $PaCO_2$ by the administration of carbon dioxide in the inspired gas.

Some studies of patients who have had both carotid bodies removed (*5, 6*) or who have had carotid endarterectomies (*7*) have demonstrated that the ventilatory response to acute hypoxemia is entirely lost, while others have reported that a weak response remains (*8–11*). The mediators of the small remaining response in some patients are not known but could represent a function of the aortic body or could represent regeneration of sensory terminals at the site of glomectomy (*12*). Not only is there no, or minimal, ventilatory response to severe hypoxemia in patients following bilateral carotid body removal, but there may also be no discomfort or dyspnea when they are subjected to severe hypoxemia. An objective assessment of this latter phenomenon may be the observation that patients without carotid bodies can hold their breaths considerably longer than normal persons when each is subjected to hypoxemia (*11, 13*).

The carotid bodies are also stimulated by a decrease in arterial pH (*14*). The minimal stimulatory effect of increasing $PaCO_2$ is thought to be mainly through its influence on pH (*15*). Stimulation of ventilation by $PaCO_2$ is predominantly through central nervous system chemoreceptors. Carotid body chemoreceptors are also responsible for the increased ventilation which accompanies the metabolic acidosis of heavy exercise, and may contribute to ventilatory drive at the outset of exercise (*16*). Although normal long-term residents of high altitude have an attenuated ventilatory response to acute hypoxemia (*17, 18*), they apparently have normal responsiveness of their carotid bodies during exercise (*18*). Such is not the case for patients who have had bilateral carotid body resections (*5*).

The carotid bodies are sensitive to other stimuli, such as a change in blood temperature and a decrease in blood flow to the chemoreceptor cells, and they initiate a variety of responses in addition to increasing ventilation (*19*). The most important additional reflex for the purpose of the Task Force is the finding of Nadel and Widdicombe that stimuli to the carotid body, such as hypoxemia, cause an increase in airway resistance in dogs (*20*). It was further demonstrated that the glossopharyngeal nerves are the afferent limbs of this reflex, and the vagi are the efferent limbs. This work has been cited (*1, 21*) as the rationale for the symptomatic improvement reported by some patients with airways obstructive disease following bilateral carotid body resection. However, the results of various studies in regard to this reflex in humans are conflicting. Butler *et al.* found no effect of breathing pure oxygen (*22*), but Saunders *et al.* found that hypoxia decreased airway conductance (*23*). Schiffman *et al.* found that oxygen caused attenuation of exercise-induced bronchospasm (*24*) and Astin and Penman presented data suggesting that breathing 30 percent oxygen decreased airway resistance in patients with chronic obstructive airway disease (*25*). Thus, the members of the Task Force are not aware of a definitive demonstration of this reflex in normal humans or patients with airways obstructive disease.

Unilateral Carotid Body Resection

Although unilateral carotid body resections for patients with airways obstructive disease had been practiced in Japan since the 1940's, the first reports in the literature of this country were in 1961 (*26, 27*). Since that time the results of this procedure have been reported both in a large number of patients purported to have asthma and in patients with chromic bronchitis and emphysema (*28–40*). These reports conflict concerning the clinical benefits of unilateral carotid body resection. In these studies neither sham-operated nor unoperated control patients were studied; patients were usually not well characterized as to type of airways disease; pulmonary function studies pre- and post-operatively were usually not reported; and the usual assessment was only the subjective impression of the patients and the surgeons who had performed the operation. Thus, the Task Force views with skepticism those reports suggesting a clinical improvement in a high fraction of patients, and questions whether the reported results were due to a change in pathophysiological mechanisms or to psychological factors.

Three double-blinded or controlled studies of unilateral carotid body resections have been reported (*41–44*). These studies have provided convincing evidence that unilateral resection of a carotid body is of no value in the treatment of airways obstructive disease. Thus, the Task Force agrees with the Committee on Therapy of the American Thoracic Society that "this procedure has no place in the treatment of patients with asthma or emphysema" (*45*)

Bilaterol Carotid Body Resection

The clinical results of patients who have had bilateral carotid body resections for airways obstructive disease have not been as frequently reported (*1, 21, 26, 28–30, 33, 37, 46–49*), and these patients are not separately reported from unilaterally operated patients in some series. Nevertheless, a sufficient number of patients have been operated to have definitively determined the efficacy of this procedure had the patients been studied and reported more completely. Unfortunately, in the judgment of the Task Force, the published reports of patients who have undergone bilateral carotid body resection do not allow the conclusion that the procedure is beneficial to patients with airways obstructive disease. This decision has been reached because of a lack of sufficient information concerning:

1. sham-operated control patients; or
2. similar patients randomized to operated and non-operated groups;
3. characterization of the type of airways disease and its therapy in operated patients;
4. assessment of pulmonary functions pre- and and post-operatively;
5. characterization of results of surgery and long-term follow-up of operated patients; and
6. the potential detrimental effects of such surgery.

Conversely, this same lack of information prevents the definite conclusion that bilaterial carotid body resection does not clinically benefit patients with airways obstructive diseases. In addition to a potential decrease in airway resistance by the reflexes demonstrated in dogs, it could be that an absence of a hypoxemic ventilatory drive might decrease dyspnea and result in greater comfort in selected patients (*50*). The frequency with which a loss of hypoxemic drive during episodes of acute hypoxemia from any cause would lead to potentially fatal events or to more rapidly progressive pulmonary insufficiency also cannot be estimated, and hence the net result to the patient's overall well being cannot be accurately predicted.

Conclusions

The Task Force has carried out an extensive review of published material and solicited comments, both oral and written, from surgeons who perform bilaterial carotid resection and from physicians who follow these patients.

The Task Force is unanimous in its view that before any procedure can be recommended as a therapeutic measure there should be a clear demonstration of efficacy and documentation that risk is acceptably small. The panel believes that in the case of bilaterial carotid body resection neither criterion is met. Specifically, the benefits of bilateral carotid body resection have not been clearly shown. Even in the hands of experienced surgeons the procedure has a significant in-hospital mortality rate, and theoretical considerations suggest that the risk of hypoventilation may be increased, especially in patients with chronic obstructive pulmonary disease. This latter group appears to constitute a major source of candidates for this operation as recent progress in the pharmacological treatment of asthma has markedly reduced the number of asthmatic patients in whom glomectomy would be considered. Thus the patient with chronic obstructive pulmonary disease who is unresponsive to medical therapy is most likely to become a candidate for this operation.

While it has been concluded that bilateral carotid body resection cannot presently be recommended because of currently inadequate demonstrations of benefits and of risks, a clear documentation of the utility of bilateral carotid body resection and its risks could arise from a carefully designed study of patients currently undergoing carotid body resection.

Rationale for Recommendations

Having concluded that there is no incontrovertible evidence to support the use of bilateral carotid body resection as a therapeutic procedure and that the data do not refute the potential that the procedure is harmful, the Task Force recommends that a carefully designed clinical study be undertaken. This trial should be limited to patients with chronic bronchitis and emphysema (COLD). Recent advances such as inhaled steroid preparations, selective β-agonist agents, and cromolyn sodium have made the management of most patients with reversible airways disease, asthma, more satisfactory than in former times. The Task Force does not believe that the permanent ablation of a ventilatory response to hypoxemia can be justified in these generally younger age range patients at the present. The Task Force further recommends that no patient be recruited into such a study who would not otherwise have undergone bilateral carotid body resection.

The best study design would compare patients in whom carotid body resection had been carried out with control subjects in whom a sham operation had been performed. The two groups would be selected at random, assessed pre- and postoperatively and followed concurrently by independent observers who are unaware of the patient's operative status. The Task Force does not believe that, despite the greater scientific validity, sham operations are ethical. A prospective clinical trial of patients with COLD, who desire bilaterial carotid body resection and who have been deemed suitable for this procedure by participating surgeon(s) is therefore recommended. Such subjects will be randomized into a group that receives immediate operation and a group in which this operation is delayed for one year. Initial assessment, randomization and follow-up of both cases and controls and analysis of the resulting data will be performed by physicians and scientists who do not

[3] Respiratory Diseases: Task Force Report on Prevention, Control, Education. March 1977. DHEW Publication No. (NIH) 77-1248.

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themselves perform the operation. Emphasis will be placed on objective methods of evaluation (lung function tests, activity capacity, expectation of life, etc.), though subjective assessment will clearly also be involved (symptoms, medications, feelings and mood). Every effort will be made to incorporate blind assessment of the observers into these subjective evaluations.

Initial assessment should include extensive historical and physiological information to insure that a baseline for future comparisons is secure. The physiological data must be sufficiently extensive to not only determine the exent of pulmonary and cardiac derangement but also to define the type of pulmonary disease insofar as possible. Estimates of exercise capacity and hypoxemia during sleep should be determined. Following randomization and operation of some patients, all patients should have periodic reassessment which includes all of the initial studies on a recurring basis for at least two years. Additionally, patients should keep standardized diaries of symptoms, medications, activity, and feelings and moods.

Short-term physiological studies to assess ventilatory responses should be performed initially and recurrently in operated patients and controls. Such studies will not only confirm the loss of carotid body chemoreceptors in operated patients but will also help establish a basis for improvement if such occurs or of detrimental effect if such occur.

Recommendations

1. A clinical trial to determine the potential benefits and detrimental effects of bilateral carotid body resection should be undertaken. The operation should be performed by a surgical technique which does not interfere with carotid sinus baroreceptors.

2. Potential candidatea for the trial are men and women judged to have chronic obstructive lung disease between the ages of 45 and 74 years. Patients with reversible airways disease, asthma, should be excluded. Exclusion for asthma should be based on the patient's history and/or reversibility of airways obstruction demonstrated by spirometry before and after bronchodilators. Patients with other serious medical diseases such as carcinoma or diabetes should also be excluded.

3. Patients with COLD should not be specifically recruited for the trial of this surgical procedure. Candidates for this trial are patients who have applied to a surgeon to have the operation performed.

4. Patients who have sought surgical intervention should be sent by the cooperating surgeon(s) to a specified neutral observer(s) who will select the potential study patients based on the criteria in recommendation 2. These patients should be fully informed about the potential benefits and risks of bilateral carotid body resection and about the requirements, benefits, and risks of the study. Informed consent must be obtained before entering the trial.

5. Patients entering the trial should be randomly assigned by the neutral observer(s) into a group who will receive bilateral carotid body resection and a control group who will not for at least one year.

6. A two-stage study should be undertaken. In Stage 1 approximately 60 patients should be equally randomized into operated and control groups. When these patients have each been followed for at least one year, all data should be analyzed for statistical differences between the groups. If the observed differences are too small or the variability is too large such that additional observations would not be useful, the trial should be terminated. If the data reveal trends of interest that are not statistically significant, a Stage 2 with the study of additional patients should be undertaken.

7. The initial assessment of each study patient by a neutral observer(s) should include the following:

a. A standardized history such as the modified British Medical Research Council questionnaire and a complete physical examination.

b. Pulmonary functional assessment including spirometry before and after bronchodilators with calculation of FVC, FEV_1, $FEF_{25-75\%}$ lung volumes; diffusing capacity; and arterial blood gases while breathing room air.

c. Cardiac assessment including ECG and chest radiograph for heart size.

d. The blood gas, ventilation, and heart rate response to standardized exercise testing.

e. The respiratory pattern, arterial oxygenation as measured by ear oximetry, and cardiac rhythm during normal sleep.

f. The ventilatory responses outlined in recommendation 10.

g. Psychological and neuropsychological studies such as the Wechsler Adult Intelligence Scale; Wechsler Bellevue Intelligence Scale; Full Scale, Performance, and Verbal IQ's; Wechsler Memory Scale; Bender-Gestalt; Background Interference Procedure; Finger Tapping; and Facial Recognition Test.

8. At the time of the original assessment, the neutral observer(s) should instruct each patient on the maintenance of a standardized diary which includes activities, medications, symptoms, physician visits, hospitalizations, appetite, weight, sleep, and the patient's mood (on a 4-point scale).

9. The neutral observer(s) will repeat the testing indicated in recommendation 7 on the 3rd or 4th postoperative day and at 1, 3, 6, 12, 18, and 24 months. Control patients will have a day assigned that will correspond to the day of operation, and tests will be repeated accordingly. At each test interval the neutral observer(s) will validate and collect the standardized interval diary.

10. Short-term physiological studies to establish a basis for improvement or detrimental effects of bilateral carotid body resection should be performed. These studies should be directed at a potential bronchoconstrictor reflex in humans mediated by the carotid bodies and at the importance of carotid bodies in regulation of respiration.

Studies should be performed to establish whether hypoxemia narrows and hyperoxia dilates the airways of humans. The COLD patients of this trial should be compared in this regard to asthmatic patients and to normal subjects. If hypoxemia constricts the airways, studies should be designed to establish whether the carotid body is involved in the effect. Anticholinergic drugs can be used to study the role of postganglionic cholinergic pathways in the response.

For regulation of respiration studies, it is realized that the patients will have such severe pulmonary disease that rigorous determination of the responses to carbon dioxide and hypoxemia should be expected. However, efforts should be directed toward defining the resting level of blood gases, the set point of PCO_2, and the magnitude of response to carbon dioxide and hypoxemia before and after surgery. In addition, a recording of the ventilatory response to a standardized dose of Doxapram should be carried out. The recommended tests to be done on all patients include:

a. Resting blood gas determinations.

b. Repeat blood gases after 10 minutes of breathing 100 percent oxygen.

c. Doxapram response.

d. Response to elevated CO_2 at high oxygen with at least one steady state point to establish a set point of CO_2.

e. Ventilatory response to reduction of alveolar O_2 at constant, somewhat elevated CO_2 while monitoring some index of arterial oxygenation such as ear oximetry, transcutaneous PO_2 electrode, or in-dwelling arterial PO_2 or saturation indicator.

An extensive analysis and discussion of these tests has been published recently (51).

In addition, the Doxapram test would be helpful intra-operatively before and after carotid body resection under anesthesia. This test would help establish that the removal of carotid body chemoreceptors was complete.

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Appendix II

Part A Intermediary Manual, Chapter II—Coverage of Services, Appendix, Coverage Issues

The material in this appendix represents responses to questions about coverage of services under Medicare.

These responses are based on existing resource material and where there are medical implications on advice received from both Government and non-Government sources, including opinions from appropriate specialists in the medical community.

35–7 Carotid Body Resection/Carotid Body Denervation

Carotid body resection is occasionally used to relieve pulmonary symptoms, including asthma, but has been shown to lack general acceptance of the professional medical community. In addition, controlled clinical studies establishing the safety and effectiveness of this procedure are needed. Therefore, all carotid body resections to relieve pulmonary symptoms must be considered investigational and cannot be considered reasonable and necessary within the meaning of section 1862(a)(1) of the law. No program reimbursement may be made in such cases.

There is, however, one instance where carotid body resection has been accepted by the medical community as effective. That instance is when evidence of a mass in the carotid body, *with or without symptoms*, indicates the need for surgery to remove the carotid body tumor.

Denervation of a carotid sinus to treat hypersensitive carotid sinus reflex is another procedure performed in the area of the carotid body. In the case of hypersensitive carotid sinus, light pressure on the upper part of the neck (such as might be experienced when turning or raising one's head) results in symptoms such as dizziness or syncope due to hypertension and slowed heart rate. Failure of medical therapy and continued deterioration in the condition of the patient in such cases may indicate need for surgery. Denervation of the carotid sinus is rarely performed, but when elected as the therapy of choice with the above indications, this

procedure may be considered reasonable and necessary.

(Secs. 1102 and 1862(a)(1) of the Social Security Act; 42 U.S.C. 1302 and 1395y(a)(1))

(Catalog of Federal Domestic Assistance Program No. 13.773 Medicare-Hospital Insurance and No. 13.774, Medicare-Supplementary Medical Insurance)

Dated: October 16, 1980.

Howard Newman,

Administrotor, Health Core Finoncing Administration.

[FR Doc. 80-33309 Filed 10-27-80; 8:45 am]

BILLING CODE 4110-35-M

Health Services Administration

Assistance Under the Public Health Service Act, Availability of Project Grants for General Family Planning Training

The Health Services Administration announces that competitive applications are now being accepted for grants for fiscal year 1981 for general family planning training projects (Catalog of Federal Domestic Assistance Number 13.260). These grants are authorized by section 1003(a) of the Public Health Service Act (42 U.S.C. 300a-1(a)) which authorizes the Secretary of Health and Human Services (HHS) to make grants to public or nonprofit private entities to provide training for personnel to carry out family planning service programs described in section 1001 of the Public Health Service Act (42 U.S.C. 300). The amounts available under this announcement in Region III is $204,000; Region V, $265,002; and Region VII, $116,000.

The Secretary will make grants to eligible applicants to assist in the establishment and operation of projects which will promote the purposes of section 1003 of the Act, taking into account the degree to which the project meets the requirements of the regulations (see 42 CFR § 59.205 and § 59.206).

Applications are invited for the following three grants:

One general training grant for HHS Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia);

One general training grant for HHS Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin); and

One general training grant for HHS Region VII (Kansas, Missouri, Nebraska, and Iowa).

Completed applications must be submitted to the appropriate A-95 Clearinghouse Agency (see Office of Management and Budget Circular A-95, Revised) and to the appropriate Health Systems Agency(s) at least 60 days before the due date for completed applications to be received by the Bureau of Community Health Services.

Application kits, including all necessary forms, instructions, and information relating to the grant applications may be obtained upon written request from: Grants Management Branch, Bureau of Community Health Services, 5600 Fishers Lane, Room 6-49, Rockville, Maryland 20857.

Completed applications must be received by April 1, 1981. Completed applications should be submitted to the Grants Management Branch at the above address. Applications received after April 1, 1981, will not be considered.

Dated: October 16, 1980.

George I. Lythcott, M.D.,

Administrator, Health Services Administration.

[FR Doc. 80-33505 Filed 10-27-80; 8:45 am]

BILLING CODE 4110-84-M

Office of the Secretary

Maternal and Child Health and Crippled Children's Services Project Grants to Institutions of Higher Learning; Availability of Grants

The Bureau of Community Health Services, Health Services Administration, announces that competitive applications are now being accepted for grants in fiscal year 1981 for specialized training in maternal and child health of several categories of health professionals. The grants are offered under the authority of sections 503(2), 504(2), and 511 of the Social Security Act (42 U.S.C. 703(2), 704(2), and 711) which authorize the Secretary of Health and Human Services to make grants to institutions of higher learning for that purpose. Regulations for the program appear at 42 CFR Part 51a, Subpart D. *Catolog of Federal Domestic Assistonce* numbers are 13.232, 13.211, and 13.233.

"Institution of higher learning" is defined as any college or university accredited by a recognized body or bodies approved for such purpose by the Secretary of Education, and any teaching hospital which has higher learning among its purposes and functions and which has a formal affiliation with an accredited school of medicine and a full-time academic medical staff holding faculty status in such school of medicine.

Grants to eligible applicants may be made by the Secretary for projects which will best promote the purposes of sections 503, 504, and 511 of the Act, taking into account:

1. The relative extent to which the project will contribute to a nationwide distribution of needed services and training with special emphasis on how the applicant will place graduates in State and local health departments and the extent to which the applicant has been successful in recruiting trainees or fellows from minority groups.

2. The capability of the applicant to provide training of high quality and effectiveness.

3. The relative extent to which the project will provide more effective utilization of personnel currently providing health services to mothers and children.

4. The extent to which the project will assist in the development of new information or innovative methods relating to the provision of maternal and child health and crippled children's services.

5. The degree to which the project would meet the requirements as set forth in the regulations (See 42 CFR Part 51a.405).

A document regarding intended disbursement of funds is available to applicants from: Research and Training Services Branch, Office for Maternal and Child Health, Bureau of Community Health Services, Health Services Administration, Parklawn Building, Room 7-44, 5600 Fishers Land, Rockville, Maryland 20857. Telephone: 301-443-2340.

Consultation and technical assistance relative to the development of an application is also available upon request to that address.

Completed applications must be received by January 16, 1981, and will be subject to competitive, objective review. They should be sent to: Grants Management Branch, Bureau of Community Health Services, Health Services Administration, Parklawn Building, Room 6-49, 5600 Fishers Lane, Rockville, Maryland 20857. Applications not received by January 16 will not be considered.

These projects are not subject to A-95 clearinghouse review.

The amount available for new and competing renewal maternal and child health training applications under this announcement is expected to be $4,750,000. Approximately 25 grants will be awarded.

Dated: October 20, 1980.

George I. Lythcott, M.D.,

Administrator, Health Services Administration.

[FR Doc. 80-33506 Filed 10-27-80; 8:45 am]

BILLING CODE 4110-84-M

Social Security Administration

Privacy Act of 1974; Report of New Routine Use

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: Report of New Routine Use.

SUMMARY: In accordance with 5 U.S.C. 552a(e)(11), we are issuing public notice of our intent to establish a new routine use. We will use the proposed routine use to provide information to the Office of the President for the purpose of responding to correspondence it receives from members of the public. We are proposing to add the routine use to the following notices of systems of records. Excerpts from the systems notices appear with this publication.

(1) 09-60-0045—Black Lung Payment System, HHS, SSA, OURV;

(2) 09-06-0089—Claims Folders and Post-Adjudicative Records of Applicants for and Beneficiaries of Social Security Benefits, HHS, SSA, OCO;

(3) 09-60-0090—Master Beneficiary Record, HHS, SSA, OURV;

(4) 09-60-0094—Recovery Accounting for Overpayments, HHS, SSA, OURV; and

(5) 09-60-0103—Supplemental Security Income Record, HHS, SSA, OURV.

We last published systems notices 09-60-0045 and 09-60-0094 in the **Federal Register** on October 9, 1979, Vol. 44, No. 196, pp. 58431 and 58450, respectively, and excerpts from systems notices 09-60-0089, 09-60-0090, and 09-60-0103 on September 10, 1980, Vol. 45, No. 177, pp. 59636-59638.

We invite public comments on this proposal.

DATES: The proposed routine use will become effective as proposed without further notice on November 27, 1980, unless we receive comments on or before that date which would result in a contrary determination.

ADDRESSES: Individuals may comment on this proposal by writing to the SSA Privacy Officer, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235.

FOR FURTHER INFORMATION CONTACT: Mr. Bernard A. Oehlers, Chief, Privacy Branch, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-6978.

SUPPLEMENTARY INFORMATION: SSA receives requests from the Office of the President (White House) for information to answer inquiries the White House receives from members of the public. These inquiries may be written by an individual constituent or by a third party on his or her behalf. The inquiries generally deal with some aspect of an individual's claim for benefits under a program administered by SSA or service rendered him or her by SSA. We have recognized that it may be necessary to provide the White House with personal information about an individual so that it may be responsive to these inquiries.

Therefore, we are proposing to add a new statement of routine use to the above-mentioned systems which would permit us to disclose the information to the White House. The proposed routine use is as follows:

"Disclosure may be made to the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf."

Upon receipt of information under the above proposed routine use, the White House will disclose it only to the individual to whom the information pertains, not to third party inquirers. In these cases where a third party inquiries on behalf of another individual, the White House will respond directly to the subject individual and inform the inquirer of its action.

The Privacy Act allows us to disclose information under a routine use for purposes which are compatible with the purpose for which we collected the information. Our proposed regulation, "Disclosure of Official Records About Individuals," **Federal Register**, April 10, 1979, pages 21496-21502, permits us to disclose information under a routine use where necessary to carry out our programs. We view disclosure that we may make under the proposed routine use as being within the overall scope of administering programs under the Social Security Act. We feel that the routine use is appropriate and that it meets the requirements of the Privacy Act and our regulation 20 CFR Part 401 and therefore, anticipate that it will not have an unfavorable effect on the privacy rights of individuals.

Dated: October 2, 1980.

William J. Driver,

Commissioner of Social Security.

09-60-0045

SYSTEM NAME:

Black Lung Payment System HEW SSA OURV.

* * * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made:

1. To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. In the event of litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

3. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

* * * * * *

09-60-0089

SYSTEM NAME:

Claims folders and Post-Adjudicative Records of Applicants and Beneficiaries for Social Security Administration Benefits HEW SSA OCO.

* * * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. Third party contacts by the Social Security Administration (without the consent of the individual to whom the information pertains) in situations where the party to be contacted has, or is expected to have, information relating to the individual's capability to manage his affairs or his eligibility for or entitlement to benefits under the social security program when:

(1) The individual is unable to provide the information being sought (an

individual is considered to be unable to provide certain types of information when any of the following conditions exist: individual is incapable or of questionable mental capability, cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

(2) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual and it concerns one or more of the following: the individual's eligibility to benefits under a social security program; the amount of a benefit payment; any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement system activities.

b. Third party contacts by the Social Security Administration where necessary to establish or verify information provided by representative payees or payee applicants.

c. A person (or persons) on the rolls when a claim is filed by an individual which is adverse to the person on the rolls; that is:

(1) An award of benefits to a new claimant precludes an award to a prior claimant; or

(2) An award of benefits to a new claimant will reduce the benefit payments to the individual(s) on the rolls; but only for information concerning the facts relevant to the interests of each party in a claim.

d. Employees or former employers for correcting or reconstructing earnings records and for social security tax purposes only.

e. The Treasury Department for collecting social security taxes or as otherwise pertinent to tax and benefit payment provisions of the Social Security Act (including social security number verification services) and for investigating alleged theft, forgery, or unlawful negotiation of social security checks.

f. The United States Postal Service for investigating alleged forgery of theft of social security checks.

g. The Department of Justice for investigating and prosecuting violations of the Social Security Act to which criminal penalties attach, for representing the Secretary, and for investigating issues of fraud by agency officers or employees, or violation of civil rights.

h. The Department of Interior for administering the Social Security Act in the Trust Territory of the Pacific Islands; the Veterans Administration, Regional Office, Philippines for administering the Social Security Act in the Philippines; the American Institute on Taiwan for administering the Social Security Action Taiwan; and the Department of State for administering the Social Security Act in foreign countries; through facilities and services of these agencies.

i. The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Act relating to railroad employment and for administering the Railroad Unemployment Insurance Act.

j. The Veterans' Administration for the purpose of administering 38 U.S.C. 412, and, upon request, of information needed for determining eligibility for or amount of VA benefits or verifying other information with respect thereto.

k. The Department of Labor for administering provisions of Title IV of the Federal Coal Mine Health and Safety Act.

l. State social security administrators for administration of agreements pursuant to section 218 (State and local).

m. State Welfare Departments for administering Sections 205(c)(2)(B)(i)(II) and 402(a)(25) of the Social Security Act requiring information about assigned social security numbers for Aid to Families with Dependent Children program purposes only.

n. State Welfare Departments pursuant to agreements with the Social Security Administration for administration of State supplementation payments, for determinations of eligibility for Medicaid per section 1634, and for enrollment of welfare recipients for medical insurance under Section 1843 of the Social Security Act, and for conducting independent quality assurance reviews of supplemental security income recipient records, provided that the agreement for federal administration of the supplementation provides for such an independent review.

o. State Vocational Rehabilitation agency, or State crippled children's service agency (or another agency providing services to disabled children) for consideration of rehabilitation services per U.S.C. and 1382d.

p. State audit agencies for auditing State supplementation payments and Medicaid eligibility considerations, and expenditures of Federal funds by the State in support of the Disability Determination Section (DDS).

q. Private medical and vocational consultants for use in making preparation for, or evaluating the results of, consultative medical examinations or vocational assessments which they were engaged to perform by the Social Security Administrative or a State agency acting in accord with sections 221 or 1633.

r. Specified business and other community members and Federal, State, and local agencies for verification of eligibility for benefits under section 1631(e).

s. Institutions or facilities approved for treatment of drug addicts or alcoholics as a condition of the individual's eligibility for payment under section 1611e and as authorized by regulations issued by the Special Action Office for Drug Abuse Prevention.

t. To applicants, claimants, prospective applicants or claimants, other than the data subject, their authorized representatives or representative payees to the extent necessary to pursue social security claims and receive an account of benefit payments.

u. To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

v. In the event of litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

w. In response to legal process or interrogatories relating to the enforcement of an individual's child support or alimony obligations, as required by sections 459 and 461 of the Social Security Act.

x. To Federal, State, or local agencies (or agents on their behalf) for administering cash or noncash income maintenance or health maintenance programs.

y. Information necessary to adjudicate claims filed under an international social security agreement that the United States has entered into pursuant to Section 233 of the Social Security Act may be disclosed to a foreign country which is a party to that agreement.

z. to the Internal Revenue Service, Treasury Department, as necessary, for the purpose of auditing the Social Security Administration's compliance with safeguard provisons of the Internal Revenue Code of 1954, as amended.

aa. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

* * * * *

09-60-0090

SYSTEM NAME:

Master Beneficiary Record HEW SSA OURV.

* * * * *

ROUTINE USES OF RECORD MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses for disclosure may be to:

a. Applicants or claimants, prospective applicants or claimants, other than the data subject, their authorized representatives or representative payees to the extent necessary to pursue social security claims and receive and account for benefit payments.

b. Third party contacts by the Social Security Administration (without the consent of the individual to whom the information pertains) in situations where the party to be contacted has, or is expected to have, information relating to the individual's capability to manage his affairs or his eligibility for or entitlement to benefits under the social security programs when:

(1) The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exist: individual is incapable or of questionable mental capability, cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

(2) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: the individual's eligibility to benefits under a social security program; the amount of a benefit payment; any case in which the evidence is being reviewed as a result of suspected abuse or fraud, concern for program integrity, or for quality appraisal, or evaluation and measurement system activities.

c. Third party contacts by the Social Security Administration where necessary to establish or verify information provided by representative payees or payee applicants.

d. A person (or persons) on the rolls when a claim is filed by another individual which is adverse to the person on the rolls:

(1) An award of benefits to a new claimant precludes an award to a prior claimant; or

(2) An award of benefits to a new claimant will reduce the benefit payments to the individual(s) on the rolls; but only for information concerning the facts relevant to the interests of each party in a claim.

e. The Treasury Department for collecting social security taxes or as otherwise pertinent to tax and benefit payment provisions of the Social Security Act, (including social security number verification services) and for investigating alleged theft, forgery, or unlawful negotiation of social security checks.

f. The United States Postal Service for investigating alleged forgery or theft of social security checks.

g. The Department of Justice for investigating and prosecuting violations of the Social Security Act to which criminal penalties attach, for representing the Secretary, and for investigating issues of fraud by agency officers or employees, or violation of civil rights.

h. The Department of Interior for administering the Social Security Act in the Trust Territory of the Pacific Islands; the Veterans Administration, Regional Office, Philippines for administering the Social Security Act in the Philippines; the American Institute on Taiwan for administering the Social Security Act on Taiwan; and the Department of State for administering the Social Security Act in foreign countries; through facilities and services of these agencies.

i. The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment and for administering the Railroad Unemployment Insurance Act.

j. The Veterans' Administration for the purpose of administering 38 U.S.C. 412, and upon request, of information needed for determining eligibility for or amount of VA benefits or verifying other information with respect thereto.

k. The Bureau of Census when it performs as a collecting agent or data processor for research and statistical purposes directly relating to the Social Security Act.

l. The Department of the Treasury. Office of Tax Analysis, for studying the effects of income taxes and taxes on earning.

m. The *Office of Personnel Management (formerly the Civil Service Commission)* for the study of the relationship of civil service annuities to minimum social security benefits, and the effects on the trust fund.

n. State social security administrators for administration of agreements pursuant to section 218 (State and local).

o. State Welfare Departments for administering Sections 205(c)(2)(B)(i)(II) and 402(a)(25) of the Social Security Act requiring information about assigned social security numbers for Aid to Families with Dependent Children program purposes and for determining a recipient's eligibility under the AFDC and Medicaid programs *and for the complete administration of the Medicaid program.*

p. Energy Resources Development Administration for their study of the long-term effects of low-level radiation exposure.

q. A congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

r. Contractors under contract to the Social Security Administration or under contract to another agency with funds provided by the Social Security Administration for the performance of research and statistical activities directly related to the Social Security Act.

s. The Department of Labor, for statistical studies of the relationship of private pensions and social security benefits to prior earnings.

t. In the event litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

u. In response to legal process or interrogatories relating to the enforcement of an individual's child support or alimony obligations, as required by sections 459 and 461 of the Social Security Act.

v. A congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

w. Federal, State, or local agencies (or agents on their behalf) for administering

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cash or noncash income maintenance or health maintenance programs.

x. Information necessary to adjudicate claims filed under an international social security agreement that the United States has entered into pursuant to Section 233 of the Social Security Act may be disclosed to a foreign country which is a party to that agreement.

y. The Department of Education for determining the eligibility of applicants for Basic Educational Opportunity grants.

z. The Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

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09-60-0094

SYSTEM NAME:

Recovery Accounting for Overpayments HEW SSA OURV.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made:

1. To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. In the event of litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

3. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

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09-60-0103

SYSTEM NAME:

Supplemental Security Income Record HEW SSA OURV.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to:

1. the Treasury Department to prepare supplemental security income benefit checks *and energy assistance checks.*

2. the States to establish the minimum income level for computation of State supplement;

3. the following Federal and State agencies to prepare information for verification of benefit eligibility under section 1631(e):

a. Bureau of Indian Affairs
b. Civil Service Commission
c. Department of Agriculture
d. Department of Labor
e. Immigration and Naturalization Service
f. Internal Revenue Service
g. Railroad Retirement Board
h. State Pension Funds
i. State Welfare Offices
j. State Workmen's Compensation
k. Department of Defense
l. United States Coast Guard
m. Veterans Administration

4. a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

5. Identify title XVI eligibles under the age of 16 to State crippled children's agencies (or other agencies providing services to disabled children) for the consideration of rehabilitation services per section 1615 of the Social Security Act.

6. contractors under contract to the Social Security Administration or under contract to another agency with funds provided by SSA for the performance of research and statistical activities directly relating to Social Security Act.

7. State audit agencies for auditing State supplementation payments and Medicaid eligibility consideration;

8. Veterans Administration information requested for the purposes of determining eligibility for or amount of VA

9. the Railroad Retirement Board for administering the Railroad Unemployment Insurance Act.

10. In the event of litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

11. effect and report the fact of Medicaid eligibility of title XVI recipients in the jurisdiction of those States which have elected Federal determinations of Medicaid eligibility of title XVI eligibles and to assist the States in administering the Medicaid program.

12. identify title XVI eligibles in the jurisdiction of those States which have not elected Federal determinations of Medicaid eligibility in order to assist those States in establishing and maintaining Medicaid rolls and in administering the Medicaid program.

13. enable States which have elected Federal administration of their supplementation programs to monitor changes in applicant/recipient income, special needs, and circumstances.

14. enable States which have elected to administer their own supplementation programs to identify SSI eligibles in order to determine the amount of their monthly supplemental payments.

15. enable the States to locate potentially eligible individuals and to make determinations of eligibility for the food stamp program.

16. enable the States to assist in the effective and efficient administration of the supplemental security income program.

17. enable those States which have an agreement with the Secretary, to carry out their functions with respect to Interim Assistance Reimbursement per Section 1631(g) of the Social Security Act.

18. enable States to locate potentially eligible individuals and to make eligibility determinations for extensions of social services under the provisions of title XX.

19. assist the States in determining initial and continuing eligibility in their income maintenance programs and for investigation and prosecution of conduct subject to criminal sanctions under these programs.

20. enable the States to administer energy assistance to low income groups under programs for which the States are responsible.

21. the Department of Education for determining the eligibility of applicants for Basic Educational Opportunity grants.

22. Federal, State, or local agencies (or agents on their behalf) for administering cash or non-cash income maintenance or health maintenance programs.

23. the United States Postal Service for investigating the alleged theft, forgery, or unlawful negotiation of supplemental security income checks.

24. the Treasury Department for investigating the alleged theft, forgery, or unlawful negotiation of supplemental security income checks.

25. to the Internal Revenue Service, Treasury Department, as necessary, for the purpose of auditing the Social Security Administration's compliance with safeguard provisions of the Internal Revenue Code of 1954, as amended.

26. the Office of the President for the purpose of responding to an inquiry received from that individual or from a third party on his or her behalf.

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[FR Doc. 80-33518 Filed 10-27-80; 8:45 am]

BILLING CODE 4110-07-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Carson City District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Carson City District Grazing Advisory Board.

DATE: December 3, 1980—10:00 a.m. to 3:30 p.m.

ADDRESS: Lyon County Library, 20 Nevin Way, Yerington, Nevada.

FOR FURTHER INFORMATION CONTACT: Stephen A. Weiss, Public Affairs Officer, Carson City District, Bureau of Land Management, 1050 East William Street, Suite 335, Carson City, Nevada 89701 (702/882-1631).

SUPPLEMENTARY INFORMATION: The Carson City District Grazing Advisory Board is chartered to advise the Carson City District Manager, Bureau of Land Management, regarding the development of allotment management plans and utilization of range betterment funds on public lands under the jurisdiction of the Carson City District. The agenda for this meeting will include discussion of allotment management plans, range improvement projects for fiscal years 1981 and 1982, range surveys for the Reno and Lahontan planning areas, and wild horse and burro management. The meeting is open to the public. Any person may attend, file a written statement by mail, or appear before the Board at 3:00 p.m.

Thomas J. Owen,

District Manager.

October 20, 1980.

[FR Doc. 80-33501 Filed 10-27-80; 8:45 am]

BILLING CODE 4310-84-M

Lakeview District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR 1780 that a meeting of the Lakeview District Advisory Council will be held on December 2, 1980.

The meeting will begin at 9.a.m., Pacific Standard Time, in the Lakeview BLM District Office Conference Room at 1000 South Ninth Street, Lakeview, Oregon.

The agenda for the Advisory Council Meeting is:

1.Progress Report on the Lakeview District Grazing Environmental Impact Statement.

2. A review of the Fiscal Year 1980 and 1981 Annual Work Plans/budgets.

3. A discussion of the threatened and endangered species program.

4. A discussion of the off-road vehicle designation process.

5. A discussion of the wilderness study area designation process.

6. A review and discusssion of BLM Range Improvement Policy.

7. A discussion of Oregon Range Management flexibility needs.

The meeting is open to the public and news media. Interested persons may make oral statements to the Council between 2 and 3 p.m., or file written statements for the Council's consideration. Anyone wishing to make an oral statement should notify the District Manager, Bureau of Land Management, P.O. Box 151, Lakeview, Oregon 97630, telephone 503-947-2177, by close of business November 25, 1980. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

A report of the Council meeting will be maintained at the Lakeview District Office and be made available for public use. Copies of all or part of the report may be obtained for a fee.

Malcolm T. Shrode,

Acting District Manager.

October 10, 1980.

[FR Doc. 80-33502 filed 10-27-80; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Establishment of San Francisco Bay NWR as a Unit of the National Wildlife Refuge System

ACTION: Notice of Establishment of the San Francisco Bay NWR.

EFFECTIVE DATE: October 28, 1980.

FOR FURTHER INFORMATION CONTACT: R. Kahler Martinson, Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, Oregon 97232 (503) 231-6209 (commercial) or 429-6209 (FTS).

SUMMARY: The Act to authorize the San Francisco Bay NWR was enacted by Congress on June 30, 1972, (Pub. L. 92-334, as amended). This Act provided that the Secretary of the Interior establish the San Francisco Bay NWR as a unit of the National Wildlife Refuge System when the lands, waters, and interests therein became sufficient to constitute an efficiently administrable refuge.

Notice is hereby given, pursuant to the above Act, that the Secretary, through his duly authorized representative, the Regional Director, has so determined and that the San Francisco Bay NWR is so established. A map showing the refuge boundary is available from the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, Oregon 97232.

Dated: October 20, 1980.

R. Kahler Martinson,

Regional Director, Fish and Wildlife Service.

[FR Doc. 80-33504 Filed 10-27-80; 8:45 am]

BILLING CODE 4310-84-M

Heritage Conservation and Recreation Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before October 17, 1980. Pursuant to § 1202.13 of 36 CFR Part 1202, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, Heritage Conservation and Recreation Service, U.S. Department of the Interior, Washington, DC 20243. Written

comments should be submitted by November 12, 1980.

Carol Shull,

Acting Chief, Registration Branch.

COLORADO

Denver County

Denver, *Paramount Theater,* 519 16th St.

MISSISSIPPI

Mississippi Post Offices 1931–1941 Thematic Resources. Reference—see individual listings under Attala, Bolivar, Chickasaw, Copiah, Forrest, Hancock, Holmes, Humphreys, Lamar, Leake, Lowndes, Marion, Monroe, Montgomery, Neshoba, Newton, Noxubee, Panola, Pearl River, Pike, Pontotoc, Prentiss, Scott, Sunflower, Tallahatchie, Tippah, Union, Walthall, Washington, Wayne, and Winston Counties.

Attala County

Kosciusko, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermotic Resources)* 222 E. Washington St.

Bolivar County

Cleveland, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermatic Resources)* 301 S. Sharpe Ave.

Chickasaw County

Houston, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermotic Resources)* Off MS 8

Okolona, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermotic Resources)* 103 Main St.

Copiah County

Crystal Springs, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermatic Resources)* 224 E. Marion St.

Hazlehurst, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermotic Resources)* 130 Caldwell Dr.

Forrest County

Hattiesburg, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermotic Resources)* 115 W. Pine St.

Hancock County

Bay St. Louis, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermotic Resources)* 137 Main St.

Holmes County

Durant, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermatic Resources)* 112 S. Jackson St.

Lexington, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermotic Resources)* 107 Tchula St.

Humphreys County

Belzoni, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermotic Resources)* 102 Church St.

Lamar County

Lumberton, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermatic Resources)* 104 Heber Ladner Dr.

Leake County

Carthage, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermatic Resources)* 201 N. Pearl St.

Lowndes County

Columbus, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermatic Resources)* 524 Main St.

Marion County

Columbia, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermatic Resources)* 615 Main St.

Monroe County

Amory, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermatic Resources)* 215 1st Ave.

Montgomery County

Winona, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermatic Resources)* 306 Summit St.

Neshoba County

Philadelphia, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermatic Resources)* 523 Main St.

Newton County

Newton, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermatic Resources)* 111 E. Church St.

Noxubee County

Macon, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermatic Resources)* 201 S. Jefferson St.

Panola County

Batesville, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thermatic Resources)* 100 Public Square

Peorl River County

Picayune, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thematic Resources)* U.S. 11

Poplarville, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thematic Resources)* 301 Main St.

Pike County

Magnolia, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thematic Resources)* 205 Magnolia St.

Pontotoc County

Pontotoc, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thematic Resources)* 59 S. Main St.

Prentiss County

Booneville, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thematic Resources)* 101 Main St.

Scott County

Eupora, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thematic Resources)* 102 N. Dunn St.

Forest, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thematic Resources)* 119 2nd St.

Sunflower County

Indianola, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thematic Resources)* 100 Percy St.

Tallahatchie County

Charleston, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thematic Resources)* 3 North Square

Tippah County

Ripley, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thematic Resources)* 301 N. Main St.

Union County

New Albany, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thematic Resources)* 135 E. Bankhead St.

Walthall County

Tylertown, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thematic Resources)* 614 Beulah Ave.

Washington County

Leland, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thematic Resources)* 204 N. Board St.

Wayne County

Waynesboro, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thematic Resources)* 704 Azalea St.

Winston County

Louisville, *U.S. Post Office (Mississippi Post Offices 1931–1941 Thematic Resources)* 215 Main St.

NEBRASKA

Douglas County

Omaha, *St. Matthias' Episcopal Church (D009:18–10)* 1423 S. 10th St.

OHIO

EASTLAKE HOUSES OF ASHELY THEMATIC RESOURCES. Reference—see individual listings under Delaware County.

Athens County

Chauncey vicinity, *Clester, Joseph, House,* SE of Chauncey on SR 111

Coshocton County

Coshocton vicinity, *Milligan, Cuthbert, House,* N of Coshocton

Cuyahoga County

Cleveland, *St. Paul's Episcopal Church,* 4120 Euclid Ave.

Cleveland, *Worszowa Neighborhood District,* E. 65th St. and Forman Ave.

North Olmsted, *North Olmsted Town Holl,* 5166 Dover Center Rd.

Darke County

Greenville, *Carnegie Library ond Henry St. Clair Memorial Holl,* 520 Sycamore St. and W. 4th St.

Delaware County

Ashley, *Building at 500 Eost High Street (Eastlake Houses of Ashley Thematic Resources)*

Ashley, *Building at 505 East High Street (Eostlake Houses of Ashley Thematic Resources)*

Ashley, *Building at 101 North Franklin Street (Eastlake Houses of Ashley Thematic Resources)*

Ashley, *Building at 223 West High Street (Eastlake Houses of Ashley Thematic Resources)*

Fairfield County

Amanda, *Barr House,* 350 W. Main St.

Franklin County

CENTRAL COLLEGE MULTIPLE RESOURCE AREA. This area includes: Westerville vicinity, *Central College Presbyterian Church,* Sunbury Rd.; *Fairchild Building,* Sunbury Rd.; *Presbyterian Parsonage,* 6972 Sunbury Rd.; *Woshburn, Rev. Ebenezer, House,* 7121 Sunbury Rd.

Columbus, *Broad Street United Methodist Church,* 501 E. Broad St.

Columbus, *German Village,* Roughly bounded by Livingston Ave., Pearl Alley, Nursery Lane, Blackberry Alley and 9th St. (boundary increase)

Columbus, *Ohio National Bank,* 167 S. High St.

Columbus, *Rankin Building,* 22 W. Gay St.

Lockbourne vicinity, *Herr, Christian S., House,* N of Lockbourne at 1451 Rathmell Rd.

Hamilton County

Cincinnati, *Alkemeyer Commerciol Buildings,* 19–23 W. Court St.

Cincinnati, *Ido Street Viaduct,* Ida St.

Cincinnati, *Ninth Street Historic District,* 9th St. between Vine and Plum Sts.

Jackson County

Wellston, *Clutts House,* 16 E. Broadway St.

Jefferson County

Adena vicinity, *Hamilton-Ickes House,* N of Adena on SR 10

Knox County

Mount Vernon vicinity, *Thompson, Enoch, House,* SW of Mount Vernon on OH 661

Licking County

Newark, *Rhoods, Peter F., House,* 74 Granville St.

Lucos County

Toledo, *Ashlond Avenue Boptist Church,* Ashland Ave.

Medina County

Medina, *Munson, Judge Albert, House,* 231 E. Washington St.

Mercer County

Celina, *Godfrey, Sen. Thomas J., House,* 602 W. Market St.

Monroe County

Graysville vicinity, *Ring, Walter, House and Mill Site,* SE of Graysville on SR 575.

Montgomery County

Dayton, *Dayton Stove and Cornice Works,* 24—28 N. Patterson Blvd.

Dayton, *Lafee Building,* 22 E. 3rd St.

Muskingum County

Zanesville, *Brendel, Charles, House,* 427 Wayne Ave.

Zanesville, *Clossman Hardware Store,* 621—623 Main St.

Zanesville, *Grant School,* Off U.S. 22

Zanesville, *Ohio Power Company,* 604 Main St.

Zanesville, *Wiles, Perry, Grocery Company,* 32 N. 3rd St.

Perry County

Somerset, *Sheridan House,* S. Columbus St.

Seneca County

New Riegel, *St. Boniface Roman Catholic Church, School and Rectory and Convent of the Sisters of the Precious Blood,* N. Perry St.

Stark County

Alliance vicinity, *Maudru House,* SW of Alliance

Trumbull County

Lordstown, *McCorkle, Almon C., House,* 1180 Saltspringe Rd.

Tuscarawas County

Strasburg, *Garver Brothers Store,* 134 N. Wooster Ave.

Van Wert County

Willshire, *Willshire School,* Green St.

Wood County

Bowling Green, *Main Street Historic District,* Main and Wooster Sts.

TENNESSEE

Blount County

Louisville vicinity, *George, Samuel, House, NE of Louisville on Topside Rd.*

Bradley County

Cleveland, *Craigmiles Hall,* 170 Ocoee St., NE.

Davidson County

Nashville, *Ewing, Alexander, House,* 5101 Buena Vista Pike.

Nashville, *Turner-Cole House,* 2122 W. End Ave.

Franklin County

Winchester, *Trinity Episcopal Church,* 213 1st Ave., NW.

Hamilton County

Chattanooga, *Thomos, Benjamin F., House, 938 McCollie Ave.*

Shelby County

Memphis, *Annesdole,* 1325 Lamar Ave.

Memphis, *Tennessee Brewery,* 477 Tennessee St.

Memphis, *Tennessee Club-Court Square Building,* 128—130 Court Ave.

[FR Doc. 80-33198 Filed 10-27-80; 8:45 am]

BILLING CODE 4310-03-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Permanent Authority Decisions

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the **Federal Register** of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither an major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed within 45 days of publication of this decision-notice (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon eompliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OPI–056

By the Commission, Review Board Number 2, Members Chandler, Eaton, and Liberman. Member Chandler not participating.

MC 11220 (Sub-222F), filed October 14, 1980. Applicant: GORDONS TRANSPORTS, INC., 185 West McLemore Ave., Memphis, TN 38101. Representative: James J. Emigh, P.O. Box 59, Memphis, TN 38101. Transporting (1) *pipe and pipe fittings,* and (2) *materials, equipment, and supplies* used in the manufacture, distribution, and installation of the commodities in (1) above, between points in Crawford County, AR, and Posey County, IN, on the one hand, and, on the other, points in the U.S.

MC 29910 (Sub-291F) (Republication), filed September 19, 1980. Applicant: ABF FREIGHT SYSTEM, INC., 301 South Eleventh St., Fort Smith, AR 72901. Representative: Joseph K. Reber (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) between points in St. Charles County, MO, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this republication is to correct the base territory description.

MC 47171 (Sub-187F), filed October 10, 1980. Applicant: COOPER MOTOR LINES, INC., P.O. Box 2820, Greenville, SC 29602. Representative: Harris G. Andrews (same address as applicant). Transporting *such commodities* as are dealt in or used by a manufacturer of paper and paper products, between those points in the U.S. in and east of MN, IA, NE, KS, OK, and TX, restricted to traffic originating at or destined to the facilities used by Stone Container Corporation and its subsidiaries.

MC 60271 (Sub–16), filed October 15, 1980. Applicant: HARPER TRUCK LINE, INC., P.O. Box 288, Monroe, LA 71201. Representative: Sherri L. Roberts (same address as applicant). Transporting *lumber and particleboard,* from the facilities of Manville Forest Products Corporation, at Winnfield and Lillie, LA, to points in AR, LA, and MS.

MC 67450 (Sub-105F), filed October 9, 1980. Applicant: PETERLIN CARTAGE CO., a corporation, 9651 S. Ewing Ave., Chicago, IL 60617. Representative: Joseph Winter, 29 South LaSalle St., Chicago, IL. 60603. Transporting *such commodities* as are dealt in or used by manufacturers of material handling equipment, between points in Hamilton County, TN, on the one hand, and, on the other, those points in the U.S. in and east of WI, IL, KY, TN, MS, and LA.

MC 75840 (Sub-138F), filed October 2, 1980. Applicant: MALONE FREIGHT LINES, INC., P.O. Box 11103, 3400 Third Ave., South, Birmingham, AL 35202. Representative: Raymond Hamilton (same address as applicant). Transporting (1) *pulp, paper, or allied products,* (2) *chemicals or allied products,* (3) *rubber or miscellaneous plastic products,* (4) *primary metal products;* inc. galvanized; except coating or other allied processing, and (5) *instruments, photographic goods or optical goods, watches or clocks,* as described respectively, in Items 26, 28, 30, 33, and 38 of the Standard Transportation Commodity Code Tariff, between points in Harris County, TX, and St. Charles Parrish, LA, on the one hand, and, on the other, those points in the United States in and east of WI, IL, KY, TN, MS, and LA. Condition: Issuance of a certificate in this proceeding is subject to the coincidental cancellation, at applicant's written request, of its certificates in MC 75840 Sub-122F, 123F, 124F, 126F, 128F, and 131F, and any certificate issued in MC 75840 Sub-136F, and (2) the withdrawal, at applicant's written request, of any proceeding still pending in MC 75840 Sub-136F.

MC 104430 (Sub-41F), filed October 9, 1980. Applicant: CAPITAL TRANSPORT COMPANY, INC., P.O. Box 408, McComb, MS 39648. Representative: Robert L. McArty, P.O. Box 22628, Jackson, MS 39205. Transporting *chemicals,* in bulk, in tank vehicles, (1) between Baton Rouge, LA, on the one hand, and, on the other, points in AL, AR, FL, GA, IL, KS, KY, MO, NJ, NC, SC, TN, and TX, and (2) between points in Ascension Parrish, LA, and Pike County, MS.

MC 111611 (Sub-50F), filed October 9, 1980. Applicant: NOERR MOTOR FREIGHT, INC., 205 Washington Avenue, Lewistown, PA 17044. Representative: William D. Taylor, 100 Pine Street, Suite 2550, San Francisco, CA 94111. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in IN, PA, TX, and CA, on the one hand, and, on the other, points in the U.S. Condition: Issuance of a certificate in this proceeding is subject to the coincidental cancellation, at applicant's written request, of certificates No. MC–111611, and Subs 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 46, and 47.

MC 113751 (Sub-38F), filed October 16, 1980. Applicant: HAROLD F. DUSHEK, INC., 10th and Columbia St., Waupaca, WI 54660. Representative: James A. Spiegel, Olde Towne Office Park, 6425 Odana Rd., Madison, WI 53719. Transporting (1) *foodstuffs,* and (2) *materials, equipment, and supplies* used in the manufacture of foodstuffs, from the facilities of Ore-Ida Foods, Inc., at or near (a) Wethersfield, CT, (b) Greenville, MI, (c) Massillon, OH, (d) Westchester, PA, and (e) Plover, WI, to those points in the U.S. in and east of ND, SD, NE, CO, OK, and TX.

MC 114211 (Sub-477F), filed October 8, 1980. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Kurt E. Vragel, Jr. (same address as applicant). Transporting *such commodities* as are dealt in or used by manufacturers and dealers of agricultural, industrial, and construction machinery, between points in the U.S. Condition: Issuance of a certificate in this proceeding is subject to prior or coincidental cancellation, at applicants written request, of its certificates in MC 114211 and Subs 2, 4, 5, 10, 11, 12, 17, 22, 23, 26, 27, 28, 32, 34, 39, 40, 41, 44, 45, 47, 49, 50, 52, 54, 55, 56, 61, 64, 65, 66, 67, 69, 70, 71, 74, 75, 77, 80, 81, 82, 84, 85, 89, 91, 92, 94, 95, 98, 99, 104, 108, 110, 111, 113, 114, 115, 121, 123, 124, 125, 127, 128, 129, 130, 134, 137, 139, 140, 142, 144, 145, 148, 152, 153, 154, 155, 156, 157, 158, 165, 169, 171, 175, 176, 179, 181, 182, 183, 184, 185, 188, 189, 193, 195, 196, 198, 200, 203, 207, 209, 211, 214, 215, 217, 218, 224, 229, 232G, 239, 241, 243, 244, 248, 249, 254, 256, 257, 258, 259, 261, 263, 264, 268, 279, 286, 287, 294, 297, 304, 318, 319, 320, 325, 332, 333, 336, 341, 343, 346, 350, 353, 363, 364, 365, 367, 373, 377, 379, 380, 391, 394, 400, 404, 405, 406, 407, 409, 411, 416, and 453.

MC 115730 (Sub-85F), filed October 6, 1980. Applicant: THE MICKOW CORPORATION, 531 S.W. Sixth St., P.O. Box 1774, Des Moines, IA 50307. Representative: Cecil L. Goettsch, 1100 Des Moines Bldg., Des Moines, IA 50307. Transporting *primary metal products;* inc. galvanized; except coating or other allied processing, as set forth in Item 33 of the Standard Transportation Commodity Code Tariff, between points in CO, ID, IL, IN, IA, KS, MI, MN, MO, NE, ND, OH, OK, SD, TX, UT, WI and WY.

MC 119741 (Sub-280F), filed October 10, 1980. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., 1515 Third Ave., NW., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (same address as applicant). Transporting *general commodities* (except classes A and B explosives), from points in the U.S., to points in Webster County, IA.

MC 120761 (Sub-66F), filed October 15, 1980. Applicant: NEWMAN BROS. TRUCKING COMPANY, a corporation, 6559 Midway Rd., P.O. Box 18728, Fort Worth, TX 76118. Representative: Clint Oldham, 1108 Continental Life Bldg., Fort Worth, TX 76102. Transporting *metal articles* between Points in AR, OK, and TX, on the one hand, and, on the other, points in the U.S.

MC 129790 (Sub-15F), filed October 15, 1980. Applicant: JOSEPH A. BECKER, d.b.a. BECKER HI-WAY FRATE, Route 5, Box 10B, Albert Lea, MN 56007. Representative: Andrew R. Clark, 1000 First National Bank Bldg., Minneapolis, MN 55402. Transporting *plastic articles,* between points in the U.S., under continuing contract(s) with Genpak Corporation, of Glens Falls, NY. Condition: Applicant must submit a statement demonstrating that the proposed service is that of a contract carrier under the criteria of 49 U.S.C. § 10102(12) (B), i.e., by either proposing to dedicate equipment to the supporting shipper's exclusive use or by proposing to furnish transportation services designed to meet the distinct needs of the shipper to be served. If the latter, a complete explanation is necessary. This statement will be examined by a review board prior to issuance of a permit.

MC 131060F, filed October 6, 1980. Applicant: A NICER TOUR SERVICE, INC. P.O. Box 826, Vineland, NJ 08360. Representative: Raymond A. Thistle, Jr., Five Cottman Court, Homestead Road & Cottman St., Jenkintown, PA 19046. As a *broker,* at Vineland, NJ, in arranging for the transportation, by motor vehicle, of *passengers and their baggage,* in the same vehicle with passengers, in special and charter operations, beginning and ending at points in Atlantic (except Atlantic City), Cape May, Cumberland, Gloucester, and Salem Counties, NJ, and extending to points in the U.S.

MC 131061F, filed October 6, 1980. Applicant: UNIVERSAL TOURS CORP. 2742 Biscayne Blvd., Miami, FL 33137. Representative: Morris J. Levin, 1050 Seventeenth St., NW., Washington, DC 20036. As a *broker,* at Miami, FL, in arranging for the transportation, by motor vehicle, of *passengers and their baggage,* in the same vehicle with passengers, in special and charter operations, between points in the U.S.

MC 135760 (Sub-20F), filed October 15, 1980. Applicant: COAST REFRIGERATED TRUCKING CO., INC., P.O. Box 188, Holly Ridge, NC 28445. Representative: Herbert Alan Dubin, 818 Connecticut Ave., NW., Washington, DC 20006. Transporting *meats, meat products and meat byproducts, articles distributed by meat-packing houses, and such commodities as are used by meat packers in the conduct of their business when destined to and for use by meat packers,* as described in Sections A, C, and D of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766, between points in the U.S., under continuing contract(s) with Frederick & Herrud, Inc., of Southfield, MI.

MC 138000 (Sub-77F), filed October 8, 1980. Applicant: ARTHUR H. FULTON, INC., P.O. Box 86, Stephens City, VA 22655. Representative: Dixie C. Newhouse, P.O. Box 1417, Hagerstown, MD 21740. Transporting *tread rubber,* from Athens, GA, to points in VA.

MC 138000 (Sub-78F), filed October 8, 1980. Applicant: ARTHUR H. FULTON, INC., P.O. Box 86, Stephens City, VA 22655. Representative: Dixie C. Newhouse, P.O. Box 1417, Hagerstown, MD 21740. Transporting *canned goods,* from Haddock, GA, to those points in the U.S. in and east of WI, IL, TN, KY, and MS.

MC 142080 (Sub-16F), filed October 9, 1980. Applicant: LITE TRANSPORT, INC., 480 Neponset St., Canton, MA 02021. Representative: Frederick T. O'Sullivan, P.O. Box 2184, Peabody, MA 01960. Transporting *such commodities* as are dealt in or used by grocery and food business houses (except commodities in bulk, in tank vehicles), between points in the U.S., under continuing contract(s) with Hannaford Brothers, of South Portland, ME.

MC 145441 (Sub-123F), filed October 15, 1980. Applicant: A.C.B. TRUCKING, INC., P.O. Box 5130, North Little Rock, AR 72119. Representative: Ralph E. Bradbury (same address as applicant). Transporting *such commodites* as are dealt in or used by discount stores (except commodities in bulk), between points in Ouachita Parish, LA, on the one hand, and, on the other, points in the U.S.

MC 146041 (Sub-6F), filed October 14, 1980. Applicant: CAL-TEX, INC., P.O. Box 1678, Costa Mesa, CA 92626. Representative: Eric Meierhoefer, Suite 423, 1511 K St., NW., Washington, DC 20005. Transporting (1) *ceramic tile,* and (2) *materials, equipment, and supplies* used in the manufacture, distribution, installation, and maintenance of ceramic tile, between points in Montgomery and Bucks Counties, PA, Cattaraugus County, NY, Breckinridge and Hancock Counties, KY, Madison County, TN, Fayette County, AL, and Placer County, CA, on the one hand, and, on the other, points in the U.S.

MC 146290 (Sub-8F), filed October 9, 1980. Applicant: DON THREDE, d.b.a. DON THREDE TRUCKING COMPANY, 1777 Arnold Industrial Highway, Concord, CA 94520.Representative: Eldon M. Johnson, 650 California St., Suite 2808, San Francisco, CA 94108. Transporting *such commodities* as are dealt in or used by a manufacturer of fabricated pipe and fittings, between points in the U.S., under continuing contract(s) with Jay Forni, Inc., of Concord, CA.

MC 149440 (Sub-1F), filed October 14, 1980. Applicant: JOHN CHEESEMAN TRUCKING, INC., 501 North First Street, Fort Recovery, OH 45846. Representative: Earl N. Merwin, 85 East Gay Street, Columbus, OH 43215. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in Mercer County, OH, on the one hand, and, on the other, points in the U.S.

MC 149561F, filed October 6, 1980. Applicant: EDWARD P. CASTERLINE, d.b.a. CASTERLINE TRUCKING, 444 Roosevelt St., Exeter, PA 18643. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517. Transporting (1) *Perforated metal articles,* from points in Luzerne County, PA, to Russellville, AR, Alvin, TX, and Cleveland, OH, and (2) *materials, equipment, and supplies* used in the manufacture of perforated metal articles, from Russellville, AR, Alvin, TX, Cleveland, OH, and Wierton, VA, to points in Luzerne County, PA.

MC 15111 (Sub-1F), filed September 30, 1980. Applicant: CUSTOMER SEVICE, INC., P.O. Box 489, Red Cloud, NE 68970. Representative: D. R. Beeler, RT. 3, Carters Creek Pike, Franklin, TN 37064. Transporting *chemical, toilet preparations, personal care products, buffing and polishing compounds, and foodstuffs* (except commodities in bulk), between Chicago, IL, and Sparks, NV, on the one hand, and, on the other, points in IL, TX, FL, NJ, CA, NV, WA, and OR.

MC 152061F, filed October 1, 1980. Applicant: SMITH TRUCKING COMPANY, a partnership, P.O. Box 626, Seminole, OK 74868. Representative: Rob L. Pyron, P.O. Box 1663, Seminole, OK 74868. Transporting (1) *machinery, equipment, materials, and supplies* used in, or in connection with, the discovery, development production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products

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and by-products, and (2) *machniery, materials, equipment and supplies* used in, or in connection with the construction, operation, repair, servicing, maintenance and dismantling of pipe lines, including the stringing and picking up thereof, between points in KS, OK, and TX.

MC 152180F, filed October 10, 1980. Applicant: INTERSTATE CARTAGE, INC., 2700 Palmyra Rd., Albany, GA 31702. Representative: Norman L. Underwood, Suite 1525, 3400 Peachtree Rd., Atlanta, GA 30326. Transporting (1) *alcoholic beverages,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of alcoholic beverages, between points in Dougherty County, GA, on the one hand, and, on the other, points in AL and FL.

MC 152181F, filed October 9, 1980. Applicant: GOODRICH TRUCKING COMPANY, a corporation, Lehigh, IA 50557. Representative: Patrick B. Northup, 1100 Des Moines Bldg., Des Moines, IA 50307. Transporting (1) *clay products,* and (2) *materials, equipment, and supplies* used in the manufacture and installation of clay products, between points in the U.S., under continuing contract(s) with W. S. Dickey Clay Manufacturing of Pittsburgh, KS.

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Decided: October 21, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill. Member Hill not participating.

MC 1743 (Sub-2F), filed October 8, 1980. Applicant: WICKER TRUCKING, INC., 311 Porter Ave., Scottdale, PA 15683. Representative: Arthur J. Diskin, 806 Frick Bldg., Pittsburgh, PA 15219. Transporting *electric power transformers, machinery, foundry supplies, iron and steel articles, and materials and supplies* used in the manufacture and distribution of iron and steel articles, from Scottdale and Mt. Pleasant, PA, to points in OH and WV.

Note.—The person or persons who appear to be engaged in common control with another carrier must either file an application under 49 U.S.C. § 11343(a) (1978) (formerly section 5(2) of the Interstate Commerce Act), or submit an affidavit indicating why such approval is unnecessary.

MC 43593 (Sub-11F), filed October 6, 1980. Applicant: FUNK'S HAULING SERVICE, INC., 2750 Grant Ave., Philadelphia, PA 19114. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between Philadelphia, PA, on the one hand, and, on the other, points in IL, IN, MD, MI, MO, OH, NC, PA, VA, WV, and WI.

MC 47583 (Sub-133F), filed October 7, 1980. Applicant: TOLLIE FREIGHTWAYS, INC., 1020 Sunshine Rd., Kansas City, KS 66115. Representative: D. S. Hults, P.O. Box 225, Lawrence, KS 66044. Transporting *such commodities* as are dealt in or used by automotive supply and household appliance stores, between points in (a) Delaware County, OH, Baltimore County, MD, Gaston County, NC, Hinds County, MS, Bell County, TX, Saline County, KS, and Shelby County, TN, and (b) Jacksonville, FL, Kansas City, MO, Los Angeles, CA, Chicago, IL, and Jersey City, NJ, on the one hand, and, on the other, points in the U.S.

MC 75192 (Sub-8F), filed October 9, 1980. Applicant: CHARLES T. BROWN TRUCK LINES, INC., 1208 Buff St., Greensboro, NC 27406. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168. Transporting (1) *iron and steel articles and aluminum articles,* (a) between points in NC, on the one hand, and, on the other, points in GA, DE, MD, NC, TN, WV, and DC, (b) between points in SC, on the one hand, and, on the other, points in GA, DE, MD, TN, SC, WV, and DC, and (c) between points in VA, on the one hand, and, on the other, points in GA, DE, MD, SC, TN, VA, WV, and DC; and (2) *aluminum articles,* between points in NC, on the one hand, and, on the other, points in SC and VA.

MC 107012 (Sub-588F), filed October 9, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). Transporting *soap and shampoo,* from San Rafeal and Redding, CA to Dover, DE.

MC 107012 (Sub-589F), filed October 9, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). Transporting (1) *cabinets,* and (2) *parts and accessories* for cabinets, (a) from Moorefield, WV and Berryville, Edinburg, Strasburg, and Winchester, VA, to points in CT, DE, MA, MD, ME, NH, NJ, NY, PA, RI, and VT, (b) from Moorefield, WV, to points in NC and SC, and (c) from Phoenix, AZ, to points in CA, CO, NM, and NV, restricted in (a), (b), and (c) above to traffic originating at the facilities used by American Woodmark Corporation.

MC 107012 (Sub-590F), filed October 8, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). Transporting (1) *vending machines,* and (2) *parts and accessories* for vending machines, from points in CA, to points in AR, CO, IA, MN, ND, OK, SD, and TX.

MC 110012 (Sub-77F), filed October 9, 1980. Applicant: ROY WIDENER MOTOR LINES, INC., 707 North Liberty Hill Rd., Morristown, TN 37814. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th St. NW., Washington, DC 20004. Transporting (1) *new furniture,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of new furniture, between Houston, TX, Chicago, IL, Clifton, NJ, and Atlanta, GA, on the one hand, and, on the other, those points in the U.S., in and east of MN, IA, KS, OK, and TX.

MC 112263 (Sub-10F), filed October 7, 1980. Applicant: IMPERIAL VAN LINES, INC., West, 2805 Columbia St., Torrance, CA 90503. Representative: Alan F. Wohlstetter, 1700 K St. NW., Washington, DC 20006. Transporting *used household goods,* in containers, between points in CA, on the one hand, and, on the other, points in AZ and NM, restricted to traffic having a prior or subsequent movement by water.

MC 115353 (Sub-48F), filed October 8, 1980. Applicant: LOUIS J. KENNEDY TRUCKING COMPANY, a corporation, 342 Schuyler Avenue, Kearny, NJ 07032. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between points in the U.S., under a continuing contract(s) with THYSSEN, INC., of New York, NY.

MC 115353 (Sub-49F), filed October 8, 1980. Applicant: LOUIS J. KENNEDY TRUCKING COMPANY, a corporation, 342 Schuyler Avenue, Kearny, NJ 07032. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048. Transporting *general commodities* (except commodities in bulk, classes A and B explosives, and household goods as defined by the Commission), between points in the U.S., under a continuing contract(s) with Mitsui & Co. (U.S.A.), Inc., of New York, NY.

MC 121372 (Sub-10F), filed October 9, 1980. Applicant: EXPRESS TRANSPORT CO., a corporation, 1217 Dalton St., Cincinnati, OH 45203. Representative: Norbert B. Flick, 715 Executive Bldg., Cincinnati, OH 45202. Transporting *iron and steel articles,* between Nitro and Buckannon, WV and Indiana, PA, on the one hand, and, on the other, points in KY, OH, NY, and PA.

MC 123272 (Sub-50F), filed October 10, 1980. Applicant: FAST FREIGHT, INC., 9651 S. Ewin Ave., Chicago, IL 60617. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602. Transporting (1) *clay and clay products,* (except commodities in bulk), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), between Lowell, FL, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 123383 (Sub-95F), filed October 6, 1980. Applicant: BOYLE BROTHERS, INC. R.D. 2, Box 329C, Medford, NJ 08055. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in Lancaster County, PA, on the one hand, and, on the other, points in CT, DE, PA, MD, MA, NJ, NY, RI, VA, NH, VT, ME, and DC.

MC 123993 (Sub-82F), filed October 8, 1980. Applicant: FOGLEMAN TRUCK LINE, INC., P.O. Box 1504, Crowley, LA 70526. Representative: Austin L. Hatchell, P.O. Box 2165, Austin, TX 78768. Transporting (1) *malt beverages,* and (2) *materials and supplies* (except in bulk) used in the manufacture, sale and distribution of the commodities in (1) above, from New Orleans, LA, to Dermott, AR.

MC 133523 (Sub-7F), filed October 7, 1980. Applicant: EUGENE STONE TRUCKING, INC., 11449 Valleyview Rd., Northfield, OH 44067. Representative: Richard H. Brandon, P.O. Box 97, 220 W. Bridge St., Dublin, OH 43017. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the U.S. (except AK and HI), under continuing contract(s) with The Standard Oil Company of Ohio, of Cleveland, OH, and its wholly-owned subsidiaries.

MC 134323 (Sub-109F), filed Octoer 8, 1980. Applicant: JAY LINES, INC., Box 61467, DFW Airport, TX 75261. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. Transporting (1) *foodstuffs and meats, meat products and meat byproducts, and articles* distributed by meat packing houses, and (2) *materials, equipment and supplies* used in the manufacture, sale and distribution of the commodities named in (1) above, between points in the U.S., under continuing contract(s) with Swift & Company.

MC 138272 (Sub-3F), filed October 10, 1980. Applicant: ALBERT ANDERSON AND ALBERT B. ANDERSON, d.b.a. ANDERSON TRUCKING, 310 South Grove, Lexington, IL 61753. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with Ralston Purina Company, Checkerboard Square, of St. Louis, MO.

MC 141532 (Sub-102F), filed October 8, 1980. Applicant: PACIFIC STATES TRANSPORT, INC., 10244 Arrow Hwy, Rancho Cucamonga, CA 91730. Representative: Michael J. Norton, 1905 South Redwood Rd., Salt Lake City, UT 84104. Transporting (1) *primary metal products; including galvanized;* (except coating or other allied processing), and (2) *fabricated metal products;* (except ordnance), as described in Items 33 and 34, respectively, of the Standard Transportation Code Tariff, between points in San Joaquin County, CA, on the one hand, and, on the other, points in the U.S.

MC 142672 (Sub-156F), filed October 8, 1980. Applicant: DAVID BENEUX PRODUCE & TRUCKING, INC., P.O. Drawer F, Mulberry, AR 72947. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72701. Transporting *ice cream freezers,* from the facilities of Richmond Cedar Works Manufacturing Corporation, at or near Danville, VA, to points in AR, AZ, CA, IL, IN, LA, MI, MO, MS, OK, and TX.

MC 145042 (Sub-7F), filed October 8, 1980. Applicant: ZEELAND FARM SERVICES, INC., 2468–84th St., Zeeland, MI 49464. Representative: James R. Neal, 1200 Bank of Lansing Bldg., Lansing, MI 48933. Transporting *fertilizer and fertilizer ingredients* in bulk, from Portage, IN and Maumee and Cairo, OH, to points in MI.

MC 146293 (Sub-67F), filed October 7, 1980. Applicant: REGAL TRUCKING CO., INC., P.O. Box 829, Lawrenceville, GA 30245. Representative: Richard M. Tettelbaum, Fifth Floor, Lenox Towers S, 3390 Peachtree Rd. NE., Atlanta, GA 30326. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of mineral water, between points in CA and those points in the U.S., in and east of MT, WY, CO. and NM.

MC 146703 (Sub-16F), filed October 6, 1980. Applicant: ROBERTS & OAKE, INC., 4240 Blue Ridge Blvd., Kansas City, MO 64133. Representative: Terrence D. Jones, 2033 K St. NW., Washington, DC 20006. Transporting *general commodities* (except household goods as defined by the Commission and classes A & B explosives), between points in Jackson County, MO, on the one hand, and, on the other, points in AL, AR, GA, IL, IN, IA, KS, KY, LA, MN, MS, NE, ND, OH, OK, SD, TN, and TX.

MC 147193 (Sub-3F), filed October 7, 1980. Applicant: MARTIN RUITER, d.b.a. MARTIN'S FEED CO., P.O. Box 152, Custer, WA 98240. Representative: James T. Johnson 1610 IBM Bldg., Seattle, WA 98101. Transporting *paper products, lignin pitch, wood pulp and pulp board, from Bellingham, WA, to points in AZ and CA.*

MC 148183 (Sub-32F), filed October 3, 1980. Applicant: ARROW TRUCK LINES, INC., P.O. Box 432, Gainesville, GA 30503. Representative: Pauline E. Myers, Suite 348 Pennsylvania Bldg., 425-13th St, NW, Washington, DC 20004. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between the facilities of The Pillsbury Company, in Fulton, Dekalb, and Cobb Counties, GA and points in AL, FL, GA, LA, MS, NC, SC, and TN.

MC 148742 (Sub-2F), filed October 10, 1980. Applicant: JUNE THORNHILL, d.b.a. CENTURION TRUCK LINE, 5425 Illinois Ave., Fair Oaks, CA 95628. Representative: Earl N. Miles, 3704 Candlewood Dr., Bakersfield, CA 93306. Transporting *well drilling compounds,* in bulk, between points in Churchill, Elko, Eureka, and Lander Counties, NV, on the one hand, and, on the other, points in CA.

MC 152153, filed October 8, 1980. Applicant: MOREAUX BROTHERS TRUCKING, INC., P.O. Box 362, China, TX 77613. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street, NW, Washington, DC 20001. Transporting *chemicals and plastics,* between points in Montgomery and Jefferson County, TX, on the one hand, and, on the other, points in Harris and Galveston Counties, TX, and Calcasieu Parish, LA, restricted to traffic having a prior or subsequent movement by water.

By the Commission, Review Board Number 2; Members Chandler, Eaton and Liberman.

MC 106119 (Sub-27F), filed October 10, 1980. Applicant: ASSOCIATED PETROLEUM CARRIERS, INC., P.O. Box 2808, Union Road, Spartanburg, SC 29302. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. Transporting *liquid commodities,* in bulk, in tank vehicles, between points in FL, AL, TN, NC, SC, and GA.

MC 108649 (Sub-19F), filed October 6, 1980. Applicant: STURM FREIGHTWAYS, INC., 8919 North University, Peoria, IL 61614. Representative: Leonard R. Kofkin, 39 South La Salle St., Chicago, IL 60603.Over regular routes, transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), (1) between Chicago, IL and Indianapolis, IN, from Chicago over U.S. Hwy 41 to junction U.S. Hwy 52, then over U.S. Hwy 52 to Indianapolis, and return over the same route, serving the off-route points of Crown Point, Cedar Lake, Lowell, Frankfort, Remington, and Rensselaer, IN; (2) between Danville, IL and Indianapolis, IN, over U.S. Hwy 136, serving the off-route points of Attica, Danville, and Williamsport, IN; (3) between Greenup, IL and Indianapolis, IN, over U.S. Hwy 40, serving the off-route points of Clinton, Danville, and Greencastle, IN; (4) between Des Moines, IA and Chicago, IL (a) from Des Moines over U.S. Hwy 6 to junction U.S. Hwy 34, then over U.S. Hwy 34 to Chicago, and return over the same route, and (b) from Des Moines over U.S. Hwy 6 to junction U.S. Hwy 45, then over U.S. Hwy 45 to Chicago, and return over the same route, serving the off-route points of Brooklyn, Coralville, and Mitchellville, IA, and Aurora, Geneseo, Kewanee, and Naperville, IL; (5) between Des Moines, IA and Chicago, IL, from Des Moines over U.S. Hwy 65 to junction U.S. Hwy 30, then over U.S. Hwy 30 to junction U.S. Hwy 34, then over U.S. Hwy 34 to Chicago, and return over the same route, serving the off-route points of Ames, Anamosa, Belle Plaine, DeWitt, Nevad, and Tipton, IA; (6) between Burlington, IA and junction U.S. Hwy 61 and U.S. Hwy 52, over U.S. Hwy 61, serving the off-route points of Clinton and Washington, IA; (7) between Des Moines, IA and Burlington, IA, from Des Moines over IA Hwy 163 to junction U.S. Hwy 63, then over U.S. Hwy 63 to junction U.S. Hwy 34, then over U.S. Hwy 34 to Burlington, and return over the same route, serving the off-route points of Knoxville and Newton, IA; (8) between Peoria, IL and Minneapolis, MN, from Peoria over U.S. Hwy 150 to junction U.S. Hwy 6, then over U.S. Hwy 6 to junction U.S. Hwy 218, then over U.S. Hwy 218 to junction U.S. Hwy 63, then over U.S. Hwy 63 to junction U.S. Hwy 52, then over U.S. Hwy 52 to Minneapolis, and return over the same route, serving the off-route points of Cedar Falls, Charles City, Marion, and Oelwein, IA and Austin, Burnsville, Hastings, Red Wing, and Winona, MN; (9) between Peoria, IL and Minneapolis, MN, from Peoria over IL Hwy 29 to junction U.S. Hwy 51, then over U.S. Hwy 51 to junction U.S. Hwy 16, then over U.S. Hwy 16 to junction U.S. Hwy 12, then over U.S. Hwy 12 to Minneapolis, and return over the same route, serving the off-route points of Belvidere, DeKalb, and Princeton, IL, Hastings, Stillwater, and White Bear Lake, MN, and Chippewa Falls and LaCrosse, WI; (10) between Omaha, NE and Des Moines, IA over U.S. Hwy 6, serving the off-route points of Ankeny, Avoca, Earlham, Johnston, and Underwood, IA; (11) between Omaha, NE and Minneapolis, MN, from Omaha over U.S. Hwy 73 to junction U.S. Hwy 30, then over U.S. Hwy 30 to junction U.S. Hwy 169, then over U.S. Hwy 169 to Minneapolis, and return over the same route, serving the off-route points of Webster City, IA, Chaska and New Ulm, MN, and Blair, NE; (12) between Des Moines, IA and Minneapolis, MN over U.S. Hwy 65, serving the off-route points of Ames, Ankeny, Clear Lake, Marshalltown, and Osage, IA and Albert Lea, Austin, Farmington, Lakeville, Northlake, and Owattona, MN; (13) between Chicago, IL and Minneapolis, MN, from Chicago over U.S. Hwy 20 to junction U.S. Hwy 51, then over U.S. Hwy 51 to junction U.S. Hwy 16, then over U.S. Hwy 16 to junction U.S. Hwy 12, then over U.S. Hwy 12 to Minneapolis, and return over the same route, serving the off-route points of Chippewa Falls and LaCrosse, WI and Anoka, Blaine, Stillwater, and White Bear Lake, MN; (14) between Chicago, IL and Minneapolis, MN, from Chicago over U.S. Hwy 20 to junction U.S. Hwy 52, then over U.S. Hwy 52 to Minneapolis, and return over the same route, serving the off-route points of Aurora, IL, Burnsville, Hastings, Red Wing, and Winona, MN, and LaCrosse and Prairie Du Chein, WI; and (15) serving all intermediate points on routes (1) through (14) above.

MC 124078 (Sub-1031F), filed August 25, 1980, previously noticed in the **Federal Register** issue of September 23, 1980. Applicant: SCHWERMAN TRUCKING CO., a Corporation, 611 South 28th St., Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. Transporting *cement,* from points in Mayes, Woodward, and Oklahoma Counties, OK, to points in AR, KS, and MO. NOTE: This republication adds Oklahoma County, OK to the origin territory which was inadvertently omitted from the previous publication.

MC 128798 (Sub-6F), filed October 10, 1980. Applicant: GALASSO TRUCKING, INC., 8 Kilmer Rd., Larchmont, NY 10538. Representative: Larsh B. Mewhinney, 555 Madison Ave., New York, NY 10022. Transporting *electrical household appliances,* between points in the U.S., under continuing contract(s) with General Electric Company, of Columbia, MD.

MC 136818 (Sub-115F), filed October 8, 1980. Applicant: SWIFT TRANSPORTATION COMPANY, INC., 335 West Elwood Rd., P.O. Box 3902, Phoenix, AZ 85030. Representative: Donald E. Fernaays, 4040 East McDowell Rd., Suite 320, Phoenix, AZ 85008. Transporting *meats, meat products, meat by-products, and articles distributed by meat-packing houses,* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209, from Phoenix and Tolleson, AZ, to points in the U.S. (except AK and HI).

MC 138438 (Sub-93F), filed October 10, 1980. Applicant: D. M. BOWMAN, INC., Route 2, Box 43A1, Williamsport, MD 21795. Representative: Edward N. Button, 580 Northern Ave., Hagerstown, MD 21740. Transporting *marine systems* and *accessories* for marine systems, between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Teleflex, Inc.

MC 141799 (Sub-1F), filed October 8, 1980. Applicant: BILL'S REFRIGERATED DELIVERY SERVICE, INC., P.O. Box 14464, Memphis, TN 38114. Representative: John Philyaw (same address as applicant). Transporting (1) *such commodities* as are dealt in by (a) retail stores, (b) pharmacies (except prescription drugs), and (c) wholesale grocery and food business houses, and (2) *equipment, materials, and supplies* used in the manufacture and distribution of the commodities described in (1) and (2), between points in Clay, Craighead, Crittenden, Cross, Greene, Lawrence, Lee, Mississippi, Phillips, Poinsett, Randolph, and St. Francis Counties, AR, Alcorn, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Coahoma, Clay, DeSoto, Grenada, Itawamba, Lafayette, Lee, Leflore, Lowndes, Marshall,

Monroe, Montgomery, Oktibbeha, Panola, Pontotoc, Prentiss, Quitman, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Washington, Webster, and Yalobusha Counties, MS, and Benton, Crockett, Chester, Carroll, Dyer, Decatur, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Lake, Lauderdale, Madison, McNairy, Obion, Shelby, Tipton, and Weakley Counties, TN.

MC 143739 (Sub-44F), filed October 8, 1980. Applicant: SHURSON TRUCKING CO., INC., P.O. Box 147, New Richland, MN 56072. Representative: Gary W. Shurson (same address as applicant). Transporting *foodstuffs,* between points in Freeborn County, MN, on the one hand, and, on the other, points in AR, KS, LA, MO, OK, and TX.

MC 148518 (Sub-3F), filed September 24, 1980. Applicant: JUR CORPORATION, d.b.a. RAJOR, INC., P.O. Box 756, 830 Columbia Pike, Franklin, TN 37064. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. Transporting (1) *furniture and fixtures,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1), between points in the U.S., under continuing contract(s) with Jamison Bedding, Inc., of Franklin, TN.

MC 150609 (Sub-1F), filed October 8, 1980. Applicant: RONALD R. McINTYRE, d.b.a. D & R TRANSPORT LEASING, 36077 Road 160, Visalia, CA 93277. Representative: Ronald R. McIntyre (same address as applicant). Transporting (1) *paper and paper products,* and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above between points in the U.S., under continuing contract(s) with Sassoon-Scherman Fibers Co., of Los Angeles, CA.

Volume No. OP5–039

Decided: October 17, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton and Liberman.

MC 17829 (Sub-19F), filed October 8, 1980. Applicant: DiSILVA TRANSPORTATION INC., 50 Middlesex Avenue, Somerville, MA 02145. Representative: James F. Martin, Jr., 8 W. Morse Rd., Bellingham, MA 02019. Transporting *such commodities* as are dealt in or used by (a) chain grocery and food business houses, and (b) department stores (except commodities in bulk), between points in MA, on the one hand, and, on the other, points in ME, NH, VT, RI, CT, NY, NJ, PA, DE, VA, and DC.

MC 113678 (Sub-896F), filed September 20, 1980, previously noticed in **Federal Register** issue of October 8, 1980. Applicant: CURTIS, INC., 4810 Pontiac St., Commerce City, CO 80022. Representative: Roger M. Shaner (same address as applicant). Transporting *such commodities* as are dealt in or used by a manufacturer of printed banking materials, between Phoenix and Tucson, AZ, Concord, CA, Colorado Springs, Denver, Fort Collins, Pueblo, and Wheatridge, CO, Boise, ID, Lawrence, KS, Las Vegas, NV, Albuquerque, NM, Salt Lake City, UT, and Arlington and El Paso, TX.

Note.—This republication is to more accurately describe the sought commodities and territory.

MC 115838 (Sub-9F), filed October 8, 1980. Applicant: COMMODITY HAULAGE CORPORATION, 146–92 New York Blvd., Jamaica, NY 11434. Representative: Morton E. Kiel, Suite 1832, 2 World Trade Center, New York, NY 10048. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in Suffolk and Nassau Counties, NY, on the one hand, and, on the other, New York, NY, Philadelphia, PA, and points in NJ.

MC 117878 (Sub-19F), filed October 10, 1980. Applicant: DWIGHT CHEEK d.b.a. DWIGHT CHEEK TRUCKING, P.O. Box 31538, Amarillo, TX 79120. Representative: Thomas F. Sedberry, P.O. Box 2165, Austin, TX 78768. Transporting *bananas,* from points in Los Angeles County, CA, and Galveston County, TX, to points in NM.

MC 124109 (Sub-19F), filed October 8, 1980. Applicant: B. F. C. TRANSPORTATION, INC., P.O. Box 985, Cedar Rapids, IA 52406. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Transporting (1) *containers and container closures,* and (2) *materials, equipment, and supplies* used in the manufacture, and distribution of the commodities in (1) above (except commodities in bulk), between points in the U.S., under continuing contract(s) with The Continental Group, Inc. of Stamford, CT.

MC 136818 (Sub-114F), filed October 8, 1980. Applicant: SWIFT TRANSPORTATION COMPANY, INC., 335 West Elwood Rd., P.O. Box 3902, Phoenix, AZ 85030. Representative: Donald E. Fernaays, 4040 East McDowell Rd., Suite 320, Phoenix, AZ 85008. Transporting *iron and steel articles,* between points in AZ, CA, CO, ID, KS, MO, MT, NE, NM, NV, OK, OR, TX, UT, WA, and WY.

MC 138279 (Sub-20F), filed October 8, 1980. Applicant: CONALCO CONTRACT CARRIER, INC., P.O. Box 968, Jackson, TN 38301. Representative: Charles W. Teske (same as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, and household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with Dayco Corporation of Dayton, OH.

MC 139349 (Sub-28F), filed October 7, 1980. Applicant: E Z FREIGHT LINES, a Corporation, 70 Gould St., Bayonne, NJ 07002. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904. Transporting *such commodities* as are dealt in by department stores, between points in the U.S., under continuing contract(s) with Howard Bros. Discount Stores, Inc., of Monroe, LA.

MC 142059 (Sub-144F), filed October 9, 1980. Applicant: CARDINAL TRANSPORT, INC., 1830 Mound Rd., Joliet, IL 60436. Representative: Jack Riley (same address as applicant). Transporting (1) *iron and steel articles,* and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in Alleghany, Washington and Westmoreland Counties, PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 147488 (Sub-8F), filed October 8, 1980. Applicant: BURT CLIFFORD TRANSPORT, INC., Box 400, Ruthven, Ontario, Canada N0P 2G0. Representative: Wilhelmina Boersma, 1600 First Federal Bldg., Detroit, MI 48226. In foreign commerce only, transporting *glass products,* between ports of entry on the international boundary line between the U.S. and Canada in MI and NY, on the one hand, and, on the other, points in PA, WV, NY, MD, MI, NJ, and OH.

MC 150339 (Sub-8F), filed October 6, 1980. Applicant: PIONEER TRANSPORTATION SYSTEMS, INC., 151 Easton Blvd., Preston, MD 21655. Representative: J. Cody Quinton, Jr. (same address as applicant). Transporting *general commodities,* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S. under continuing contract(s) with Ralston Purina Company of Fairburn, GA. Condition: The person or persons who appear to be in common control of applicant and another regulated carrier must either file an application for

approval of common control under 49 U.S.C. § 11343, or submit an affidavit indicating why such approval is unnecessary.

MC 152099 (Sub-1F), filed October 6, 1980. Applicant: SNAKE RIVER TRUCKING, INC., Route 2, Box 390, Rigby, ID 83442. Representative: Irene Warr, 430 Judge Bldg., Salt Lake City, UT 84111. Transporting *iron and steel articles*, between points in the U.S., under continuing contract(s) with Brown Strauss, a division of Azcon Corporation, of Pleasant Grove, UT.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-33491 Filed 10-27-80; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the **Federal Register** on July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before December 12, 1980 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. On or before December 29, 1980 an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP1-057

Decided: October 17, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton, and Liberman. Member Chandler not participating.

MC 124141 (Sub-47F), filed October 15, 1980. Applicant: JULIAN MARTIN, INC., P.O. Box 3348, Batesville, AR 72501. Representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 149581F, filed October 8, 1980. Applicant: LUJO TRUCKING CO., INC., 121 Braley Rd., East Freetown, MA 02717. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

Volume No. OP5-037

Decided: October 17, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton, and Liberman.

MC 38799 (Sub-5F), filed October 8, 1980. Applicant: THE EDWARDS TRANSFER AND STORAGE COMPANY, a corporation, P.O. Box 7795, Columbus, OH 43207. Representative: Edward P. Bocko, P.O. Box 322, Cuyahoga Falls, OH 44222. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions) for the U.S. Government, between points in the U.S.

MC 113908 (Sub-511F), filed October 8, 1980. Applicant: ERICKSON TRANSPORT CORP., 2255 North Packer Road, P.O. Box 10068 G. S., Springfield, MO 65804. Representative: Jim G. Erickson (same as applicant). Transporting *shipments* weighing 100 pounds or less if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 128958 (Sub-3F), filed October 10, 1980. Applicant: CENTRAL PENN AIR SERVICE, INC., P.O. Box 192, Middletown, PA 17057. Representative: J. Bruce Walter, 410 North Third St., P.O. Box 1146, Harrisburg, PA 17108. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions) for the United States Government, between points in the U.S.

MC 145409 (Sub-5F), filed October 8, 1980. Applicant: STA-GREEN TRANSPORTATION COMPANY, INC., P.O. Box 540, Sylacauga, AL 35150. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions) for the United States Government, between points in the U.S.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-33492 Filed 10-27-80; 8:45 am]
BILLING CODE 7035-01-M

[Ex Parte No. 334 (Sub-4)]

Order Granting Railroads Flexibility in Setting Per Diem Levels

AGENCY: Interstate Commerce Commission.
ACTION: Notice of adoption of order granting railroads flexibility in setting per diem rates.

SUMMARY: On June 9, 1980 the Commission ordered interested parties to show cause why railroads should not be permitted to reduce per diem rates set by the Commission. In a decision served August 18, 1980, 45 FR 58259 (Sept. 2, 1980) the Commission announced its intent to permit this flexibility based on the rationale that flexible per diem levels would significantly improve car utilization during the present period of car surplus.

The terms of the order are discussed in the August 18 decision and in the supplementary information section of this notice.

DATE: The order will become effective November 11, 1980.

FOR FURTHER INFORMATION CONTACT:
Richard Felder or Jane Mackall (202) 275-7656.

SUPPLEMENTARY INFORMATION: On June 9, 1980 the Commission ordered interested parties to show cause why railroads should not be permitted to reduce per diem on their freight cars below applicable basic per diem or incentive per diem rates [1] set by the Commission. Subsequently, in a decision issued August 18, 1980, 45 FR 58259 (Sept. 2, 1980), we announced our intention to permit any carrier that owns, leases, or otherwise controls a freight car used in transportation by any other rail carrier subject to jurisdiction of the Commission to reduce charges for use of that car below the basic per diem level established by the Commission, or raise the charges to a rate not exceeding the applicable basic per diem rate following a previous reduction, provided: (a) that the changes, if made unilaterally by the owning or controlling carrier, be applicable uniformly to all other carriers, and that such changes be effective only on the first day of any month, with not less than ten days notice to be given through the Railway Equipment Register, the UMLER file, the AAR Car Service Division, and/or other such means as will provide the most rapid and accessible notification possible; (b) that changes in car hire rates not meeting the requirements of paragraph (a) above be made only with the express agreement of those carriers to which they are extended; and (c) that all changes in car hire rates under this order be made only by independent action as provided by Article XIV of Section 5(b) Agreement No. 7.

Further comments were invited and have been received from a number of interested parties. After consideration of the comments we conclude that the present emergency situation created by the current substantial freight car surplus necessitates flexibility in reducing per diem rates.

A number of parties, including Southern Pacific Transportation Company, National Railway Utilization Corporation, Itel Rail, Pittsburgh and Lake Erie Railroad Company, and Consolidated Rail Corporation,[2] suggested that downward flexibility in setting per diem rates must be accompanied by a commensurate upward flexibility in order to allow the recovery of carriers' capital costs during periods of car shortages. However, our order was issued under the emergency car order provisions of section 11122 and 11123 in response to the emergency situation created by a rapidly growing freight car surplus. To discourage cross-hauling of empty cars during periods of car surplus, we found it important for carriers to have flexibility to reduce per diem rates. Nevertheless, the order is designed to be operative only so long as a surplus in equipment exists. The subject of upward flexible per diem will be fully addressed in a notice of proposed rulemaking to be issued shortly. See: Ex Parte No. 334 (Sub-5), *Zone of Reasonableness for Car Hire Charges*.

The Chicago and North Western (CNW) recommends that bilateral agreements be defined as only those in which all carriers in an actual movement have agreed on the same terms and conditions to the reduced per diem rate. To do otherwise, they contend, may impair a carrier's ability to perform common carrier services, by exposing them to potential discriminatory or predatory practices. This issue was fully discussed in our prior order in which we emphasized that the Commission will retain its power to investigate complaints of discrimination and predatory practices and to curb abuses if they occur. It is clear that the agreements envisioned will extend to bridge carriers involved in a particular movement.

Similarly, for reasons stated in our prior order, questions raised by The Railway Association of Canada concerning the effectiveness of permiting flexible reductions in per diem rates do not constitute a show of good cause not to issue the present order. We will, however, monitor the impact of this order. In this regard, we ask that the AAR report to the Commission, within one year, on the effect of this downward flexibility on actual car utilization and acquisition.

Itel suggests that in the case of cars subject to a nonequity lease or similar arrangement the lessee railroad must have approval of the leasing company lessor of such cars prior to changing its per diem rates. They argue this is necessary to protect the lessor who bears the cost of ownership and maintainance and to whose interests the lessee may not be entirely sensitive. This is a subject which should be privately negotiated between the parties and not an issue in which the Commission will interfere.

In response to Itel's request for clarification, we note that concurrance with rate changes by a leasing company lessor involving cars bearing marks of more that one railroad lessee would not constitute or raise an inference of prohibited collective action. Correspondingly, in response to a related question raised by AAR, a single UMLER submission containing statistical data of identical rate charges for several railroads on cars bearing their respective reporting marks would be permissible under the Commission's order.

Conrail seeks clarification that it was not the Commission's intent to prevent multilateral car management agreements that would promote efficient car utilization in the public interest. Indeed, we did not intend to preclude such agreements since our order was directed only at collective rate setting. Additionally, Conrail requests that the Commission restrict the public dissemination of rates set by bilateral and multilateral agreement to avoid the encouragement of price uniformity. However, at least until the Commission has had the opportunity to observe the system in practice we are not prepared to issue orders regarding the dissemination of information.

AAR has raised a number of technical and procedural questions. In answering these questions we want to emphasize that every effort is being made to design a program which is simple and efficient.

Any uncertainty regarding the appropriate terminology for describing change rates, as evidenced by the AAR's comments, should be resolved by compliance with current industry practices. The decision permits changes in car hire rates for an individual freight car, a class of cars, or the carrier's entire fleet. The basic hourly rate and/or the supplemental OT-37—C rate may be changed.

The AAR recommends that the Secretary of the AAR Operating-Transportation Division be named as the party to receive and handle the notices of changed car hire rates. Since the Secretary is responsible for administering the UMLER file, handling car hire rate proposals, and independent actions under section 5(b) Agreement No. 7, we accept the AAR's recommendation.

In response to the AAR's concerns about co-ordinating our decision with its existing procedures we are changing the

[1] Incentive per diem rules and charges were eliminated Ex Parte No. 252 (Sub-5), Elimination of Incentive Per Diem Charges, *364* I.C.C. *116* (1980), 45 FR 59168 (August 14, 1980).

[2] The late-filed comments of the American Iron and Steel Institute which raise the same issue are accepted and have been considered.

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notice period from 10 days to 15 days. The deadline for notifying the AAR of changes in car hire charges will be 5:00 p.m. of the 15th day of the month, or 5:00 p.m. of the last working day when the 15th falls on a Saturday, Sunday or holiday.

The Commission's August 16, 1980 decision is amended to name the Secretary of the AAR Operating-Transportation Division as the party to receive and handle the notices of changed car hire rates.

The decision is further amended to require unilateral rate changes to be made on 15 days notice. Notice must be given to the Secretary of the AAR Operating-Transportation Division by 5:00 p.m. on the 15th day of the month or 5:00 p.m. of the last working day when the 15th falls on a Saturday, Sunday or holiday.

The August 16 decision, as amended, will be effective two weeks after publication in the **Federal Register.**

This action does not significantly affect either the quality of the human environment or conservation of energy resources. Authority: 49 U.S.C. Sec. 10321, 11122, and Sec.11123, and 5 U.S.C. Sec. 553.

Dated: October 15, 1980.

By the Commission, Chairman Gaskins, Vice-Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam. Commissioner Trantum absent and not participating.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-33493 Filed 10-27-80; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

David Frank Micci, M.D.; Denial of Application

On June 19, 1980, the Administrator of the Drug Enforcement Administration (DEA) directed to David Frank Micci, M.D. (Respondent) an Order to Show Cause seeking to deny the application for a DEA Certificate of Registration which Dr. Micci executed on January 27, 1980. The Order to Show Cause was predicated on the March 9, 1976 conviction of the Respondent in the United States District Court for the District of New Mexico, on one (1) count of unlawful distribution of controlled substances in violation of 21 U.S.C. 841(a)(1). This conviction is a controlled substance-related felony. Through counsel, Respondent waived his right to a hearing in a letter, dated August 16, 1980, and submitted affidavits, exhibits and letters. Pursuant to 21 CFR 1301.54(e), the Administrator has considered the investigative file and Respondent's submissions in this matter, and publishes this Final Order pursuant to 21 CFR 1316.66.

The Administrator finds that Dr. Micci pled nolo contendere to one (1) count of a 132 count indictment. He was sentenced by The Honorable E. L. Mechem to a term of five (5) years plus a special parole term of three (3) years. Respondent served approximately seventeen (17) months at Allenwood Prison Camp, being released on August 23, 1979.

The Administrator further finds that at the time of his arrest and plea, Dr. Micci was engaged in the private practice of medicine in Albuquerque, New Mexico. The Administrator finds that Respondent practiced medicine in New Mexico for less than one (1) year. Between July and October, 1977, one individual obtained prescriptions for 23 different people from Respondent. These prescriptions were for over 13,000 dosage units of controlled substances, including 10,550 dosage units of hydromorphone (Dilaudid 4 mg.), a Schedule II controlled substance.

The Administrator finds further that Dr. Micci settled in the Buffalo, New York area upon his release from incarceration. The Administrator finds that Respondent is employed by Cooper Emergency Services of New York, P.C., as an emergency room physician at Our Lady of Victory Hospital in Lackawanna, New York.

The Administrator has considered a letter to DEA from the probation officer handling Respondent's parole. In this letter, the probation officer first sets out what is Respondent's version of the events leading to his arrest and plea, namely that Respondent naively began writing prescriptions for controlled substances for an individual who came to Respondent verbalizing complaints which would normally require such medication. This individual brought friends and family members to Dr. Micci, who prescribed controlled substances for them, too. According to this version, Respondent continued to write prescriptions for controlled substances when these individuals threatened to inform the New Mexico authorities. The Administrator rejects this version of the events and finds, based upon the investigative file in this case, that Respondent was fully aware of his actions in prescribing controlled substances at the time of his arrest and plea, and that he wrote such prescriptions as a profit-making venture.

The Administrator finds further that Respondent wrote prescriptions for controlled substances for patients who did not require them for treatment, and he charged a fee to do so.

The Administrator finds, upon a thorough review of the investigative file and Respondent's submission, that private medical practice is clearly not a viable alternative for Dr. Micci. The Administrator finds further that the public interest will be served if Respondent is permitted to administer or order the administration of controlled substances in the course of his professional practice as an emergency room physician at Our Lady of Victory Hospital. The Administrator further finds that there is no legal or regulatory impediment to his doing so, so long as Respondent remains licensed to practice medicine in the State of New York and confines his practice as an emergency room physician to a hospital properly registered under the Controlled Substances Act. However, 21 CFR 1301.76(a) provides that "a registrant shall not employ as an agent or employee who has access to controlled substances any person who has had . . . his registration revoked, at any time." In order that Dr. Micci may be employed at Our Lady of Victory Hospital or another registered hospital, the Administrator hereby waives the prohibition of 21 CFR 1301.76(a) with respect to the employment of David Frank Micci, M.D., as an emergency room physician.

Having reviewed the investigative file and Respondent's submissions, the Administrator concludes that there are lawful grounds for the denial of Respondent's application for a DEA Certificate of Registration pursuant to 21 U.S.C. 824(a)(2). It is the decision of the Administrator to deny Respondent's application for DEA registration since Respondent David Frank Micci was convicted of a felony relating to controlled substances. Accordingly, pursuant to the authority vested in the Attorney General in 21 U.S.C. 824, and redelegated to the Administrator of the Drug Enforcement Administration, the Administrator hereby denies the application for registration executed by David Frank Micci, M.D., on January 27, 1980, be, and is hereby, revoked, effective November 28, 1980.

Peter B. Bensinger,

Administrator.

October 22, 1980.

[FR Doc. 80-33460 Filed 10-27-80; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal Committee on Apprenticeship; Public Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1) of October 6, 1972, notice is hereby given that the Federal Committee on Apprenticeship will conduct the following open meetings as shown below:

(a) *FCA Subcommittee on Research*

Date: November 5, 1980; *Time:* 9 a.m.–11 a.m.

Place: Conference Room N–4437 C, 200 Constitution Avenue N.W., Washington, D.C.

Agenda: Review, discussion and consensus of DARD Provided Work Statements for FY 81 Research Projects.

(b) *FCA Subcommittee on Fed-State Relations*

Date: November 5, 1980; *Time:* 1:30 p.m. to 3:30 p.m.

Place: Conference Room N–4437 C, 200 Constitution Avenue N.W., Washington, D.C.

Agenda: State-Federal Issues.

(c) *FCA Subcommittee on Relationship of Apprenticeship to Other Training Systems*

Date: Nobember 5, 1980 *Time:* 9 a.m.–12 noon

Place: Multi-purpose Room—PH Building, 601 D St. NW., Washington, D.C.

Agenda:

(1) CETA: The View from Apprenticeship—Discussion of Key Issues

(2) Future Directions of the Subcommittee

(d) *FCA Subcommittee on Equal Apprenticeship Opportunity*

Date: November 5, 1980; *Time:* 1:30 p.m. to 3:30 p.m.

Place: Multi-Purpose Room—PH Building, 601 D St. NW., Washington, D.C.

Agenda:

(1) Intent of Title VII in the Spirit of Equal Employment Opportunity.

(2) Status Report on SAC States complying with the provisions of 29 CFR 30—Equal Employment Opportunity in Apprenticeship and Training.

(3) Walker-Levitas Amendment: What it means? Its implication on equal opportunity in apprenticeship.

(4) Women in Apprenticeship: Prospects for a National Outreach effort.

The FCA will hold a full open meeting on Thursday, November 6 from 9 a.m. to 4:30 p.m.; Friday, November 7, 1980, from 9 a.m. to 12 noon, at the National Association of Home Builders, 15th and M Street, N.W., Washington, D.C.

The agenda for the meeting on November 6 will include:

(1) Opening of Meeting

(2) Swearing in of New Members

(3) Apprenticeship Innovations in Practice Associated General Contractors Staff

(4) Status Report on Certificates of Merit Recommendation

(5) VA Certification of Apprenticeship Training and on-the-Job Training Programs

(6) Apprenticeship Data Services.

The agenda for the meeting on November 7 will include:

(7) *FCA Subcommittee Reports*

—Research

—Equal Apprenticeship Opportunity

—Fed-State Relations

—Relationship of Apprenticeship to Other Training Systems

(8) *Discussion of Future Plans*

The agendas are subject to change due to time constraints and priority items which may come before the Committee between the time of this publication and the scheduled date of the FCA meeting.

Members of the public are invited to attend the proceedings. Any member of the public who wishes to file written data, views or arguments pertaining to the agendas may do so by furnishing it to the Executive Secretary at any time prior to the meeting. Thirty copies are needed for the members and for the inclusion in the minutes of the meeting.

Any member of the public who wishes to speak at this meeting should so indicate in a written statement, also the nature of the intended presentation and amount of time needed. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

Communications to the Executive Secretary shall be addressed as follows:

Mrs. M. M. Winters, Bureau of Apprenticeship and Training, ETA, U.S. Department of Labor, 601 D. Street N.W., (Room 5434), Washington, D.C. 20213.

Signed at Washington, D.C. this 22nd day of October 1980.

Charles B. Knapp,

Acting Assistant Secretary for Employment and Training Administration.

[FR Doc. 80-33515 filed 10-27-80; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-80-140-C]

Eastern Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Eastern Coal Corporation, Lebanon, Virginia 24266 has filed a petition to modify the application of 30 CFR 75.1104 (underground storage, lubricating oil and grease) to its Stone No. 4, Pegs Branch, No. A–4 and No. A–5 Mines located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of five-gallon plastic containers as opposed to 30-gallon metal containers.

2. Petitioner states that the 30-gallon metal containers presently being used in the mine cause or contribute to a diminution of safety for the miners because:

a. The can will conduct electricity;

b. The can, when filled with oil, weighs 220 pounds, which in handling causes numerous back strains, hand and foot injuries;

c. Due to the weight and bulk of the container, an excessive amount of oil is spilled and wasted; and

d. These cans are easily ruptured when loading and unloading them from supply cars.

3. As an alternative method, petitioner proposes to use smaller, five-gallon, approved plastic containers. The petitioner states that these containers eliminate the disadvantages listed above for the 30-gallon ones.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before November 28, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: October 20, 1980.

Frank A. White,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 80-33516 Filed 10-27-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-99-M]

Texasgulf Chemicals Co.; Petition for Modification of Application of Mandatory Safety Standard

Texasgulf Chemicals Co., P.O. Box 100, Granger, Wyoming 82934, has filed a petition to modify the application of 30 CFR 57.21-97 (blasts in gassy mines) to its Wyoming Soda Ash Operation located in Sweetwater County, Wyoming. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a blast must be initiated by electrical current.

2. As an alternate method, petitioner proposes to initiate blasts using caps and fuse in an electrical substation. The area to be shot is above and on the ribs of the electrical substation.

3. Petitioner states that in order to avoid pre-ignition of shots by stray or static currents. Another method of detonating the round must be used. Using caps and fuse eliminates the possibility of any stray or static current detonating the round prematurely.

4. In support of this alternate method, petitioner states the following:

a. The length of the safety fuse would be six feet at a burning rate of forty seconds per foot. No more than fifteen holes will be shot at one time. Two feet in depth will be shot on the arch and on the ribs. Each hole will be cleared with compressed air and loaded with a maximum of 0.50 pounds of explosives.

b. A minimum of 10,000 cubic feet per minute of air will be coursed through the electrical substation when blasting and will be coursed directly to the return.

c. In addition to the required methane examinations as defined in 30 CFR 57.21-99, additional examinations will be made in the adjacent main return airways prior to and after each shot with an approved MSHA "spotter" and a flame safety lamp.

d. The switch gear in the electrical substation is protected from damage while excavation is in progress by steel sets and lagging.

e. A qualified electrician will inspect the switch gear in the electrical substation prior to and after each round is detonated.

f. Barricades will be placed in accordance with 30 CFR 57.6-103.

g. Persons using and handling explosives will be experienced and certified or under the direct supervision of a certified shot firer.

5. Petitioner states that the proposed alternate method above will at all times provide the same degree of safety to the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before November 28, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: October 20, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-33514 Filed 10-27-80; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities Advisory Committee; Meeting

October 22, 1980.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463) notice is hereby given that a meeting of the National Council on the Humanities will be conducted in Washington, D.C. on November 13-14, 1980.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Washington Hotel, 15th and Pennsylvania Avenue NW and the Shoreham Building, 806 15th Street NW., Washington D.C. A portion of the morning and afternoon sessions on November 13 and the last part of the afternoon session on November 14, 1980 will not be open to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated January 15, 1978.

The agenda for the sessions on November 13, 1980 follows:

(Open to the public)

8:30-9:00 Coffee for Council Members in Chairman's Office.

9:00-10:30 Committee Meetings—Policy Discussion (Shoreham Building).

Education Programs—Room 807.

Fellowship Programs—Room 314.

Planning and Special Programs—Room 1025.

Public Programs and State Programs—1st Floor.

Research Programs—Room 1134.

10:30 to Adjourn—Consideration of specific applications (closed to the public for the reasons stated above).

7:00 p.m.—Dutch Treat Dinner for Council Members and guests International Club, 1800 K Street NW. (open to the public).

Note.—Members of the public cannot be accommodated for dinner, but may observe.

The morning session on November 14, 1980 will convene at 8:30 a.m. in the Washington Hotel and will be open to the public. This session will consist of the following discussions: (Coffee for Staff and Council Attending Meeting will be served from 8:30 a.m.-9:00 a.m.)

(1) Report of the Commission on the Humanities

(2) Jefferson Lecture

The afternoon session will convene at 1:00 p.m. in the Shoreham Building on the first floor and will be open to the public for approximately one hour. The agenda for the afternoon session will be as follows:

Minutes of the Previous Meeting

Reports

A. Introductory Remarks & Introduction of New Council Members

B. Program Review and Introduction of New Staff

C. Chairman's Grants & Grants Departing from Council Recommendation

D. Conflicts of Interest Resolution

E. Application Report

F. Gifts and Matching Report

G. FY 1980 Program Funding

H. FY 1981 Appropriation

I. FY 1982 Budget Request to OMB

J. Reauthorization

K. Selected Project Evaluations

L. Committee Reports on Policy and General Matters

a. Public Programs

b. State Programs

c. Fellowship Programs

d. Planning and Assessment Studies

e. Special Programs

f. Research Programs

g. Education Programs

The remainder of the proposed meeting will be given to the consideration of specific applications, (closed to the public for the reasons stated above).

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street NW., Washington, D.C. 20506, or call area code 202-724-0367.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 80-33475 Filed 10-27-80; 8:45 am]

BILLING CODE 7536-01-M

OFFICE OF MANAGEMENT AND BUDGET

President's Commission for a National Agenda for the Eighties; Meeting

October 22, 1980

AGENCY: Office of Management and Budget.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of Panel 1 (Energy, Natural Resources and the Environment) of the President's Commission for a National Agenda for the Eighties, is scheduled for November 6, 1980 from 2:00 p.m. to 5:00 p.m. The meeting will be held in the New Executive Office Building, Room 5104, 17th Street and Pennsylvania Avenue, N.W., Washington, D.C.

The purpose of the meeting is to discuss elements of the Panel's draft report.

Available seats will be assigned on a first-come basis.

The meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT:

President's Commission for a National Agenda for the Eighties, Office of Administration, 744 Jackson Place, Northwest, Washington, D.C. 20006, (202) 275-0616.

Brenda Mayberry,

Acting Budget and Management Officer.

[FR Doc. 80-33461 Filed 10-27-80; 8:45 am]

BILLING CODE 3110-01-M

President's Commission for a National Agenda for the Eighties; Meeting

October 22, 1980

AGENCY: Office of Management and Budget.

ACTION: Notice of meeting (held October 17, 1980).

SUMMARY: Pursuant to Pub. L. 92-463, notice is hereby given that Panel IX (U.S. and World Community) of the President's Commission for a National Agenda for the Eighties held an impromptu meeting on October 17, 1980, from 12:15 p.m. to 1:15 p.m., in Washington, D.C.

The purpose of the meeting was to discuss elements of the Panel's draft report.

Minutes of the meeting are available upon request.

FOR FURTHER INFORMATION CONTACT:

President's Commission for a National Agenda for the Eighties, Office of Administration, 744 Jackson Place, Northwest, Washington, D.C. 20006.

Brenda Mayberry,

Acting Budget and Management Officer.

[FR Doc. 80-33462 Filed 10-27-80; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 21755; 70-6512]

Central Power & Light Co., 120 North Chaparral Street, Corpus Christi, Tex. 78401, Proposed Issuance and Sale of First Mortgage Bonds at Competitive Bidding

October 22, 1980.

Notice is hereby given that Central Power & Light Company ("CP&L"), an electric utility subsidiary company of Central and South West Corporation, a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(b) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

CP&L proposes to issue and sell at competitive bidding up to $100,000,000 principal amount of its First Mortgage Bonds, Series R, Due December 1, 2010. The interest rate of the bonds and the price to be paid to CP&L (which will not be less than 99% nor more than 102.75% of the principal amount thereof) will be determined by competitive bidding. The bonds will have refunding protection until December 1, 1985, and will be subject to a 1% sinking fund beginning in 1982. The bonds will be issued under and secured by CP&L's Indenture, dated November 1, 1943, between it and The First National Bank of Chicago, Trustee, as previously amended and as to be further amended by a Supplemental Indenture to be dated December 1, 1980.

The net proceeds from the issuance and sale of the bonds will be used to repay short-term borrowings which were incurred or expected to be incurred to finance construction expenditures and to finance future construction expenditures. Approximately $75,000,000 of short-term borrowings are expected to be outstanding as of December 23, 1980, the planned date of issuance of the bonds. No funds generated from the bonds nor any of the borrowings retired thereby have been or will be utilized to pay the cost of facilities which would not be needed to provide service to customers of CP&L if it were not part of the Central and South West System. No expenditures will be made by the company for the construction or acquisition of any facility not so needed prior to the time all funds covered by the declaration have been expended. For the purposes of the foregoing representation, it is assumed that none of the facilities, construction or acquisition of which would be part of any proposal forming the subject of the proceedings in *Central and South West Corporation, et al.* (Admin. Proc. File No. 3-4951), would be needed to provide service to customers of CP&L if it were not part of the *Central and South West System.*

CP&L's estimated construction and fuel exploration and development expenditures for the years 1980 through 1981 are estimated at $198,000,000, and $278,000,000, respectively. Approximately $168,000,000 of the 1980 estimated total had been expended as of August 31, 1980.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $120,000, including accountants' fees of $7,500 and legal fees of $18,500. The fee of counsel for the purchasers of the bonds is estimated at $19,500 and is to be paid by the successful bidders. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than November 18, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request

should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-33455 Filed 10-27-80; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 21756; 70-6451]

Columbus & Southern Ohio Electric Co.; Proposed Revisions in Arrangements for Short-Term Borrowings

October 22, 1980.

Notice is hereby given that Columbus and Southern Ohio Electric Co. ("CSOE"), 215 North Front Street, Columbus, Ohio 43215, an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed and amended pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designated Section 6(b) of the Act and Rules 50(a)(2) and 50(a)(5) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application, as amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transactions.

By orders dated May 28, 1980, and September 23, 1980 (HCAR Nos. 21594 and 21723), CSOE was granted a short-term borrowing authorization through July 1, 1981, in an aggregate principal amount not to exceed $200,000,000. CSOE's credit arrangements for such borrowings consisted of (1) lines of credit aggregating $113,066,000 with 38 banks; (2) a loan agreement with certain banks for up to $80,000,000 of loans for used in retiring certain of its preferred shares; (3) a credit agreement for up to $30,000,000 of fuel inventory financing; and (4) arrangements for borrowing up to $23,000,000 from funds managed by certain banks' trust departments.

By post-effective amendment CSOE requests authorization to change its borrowing arrangements under (1) above, and to issue and sell commercial paper, all as further described below. No changes are sought concerning its borrowing arrangements under (2)–(4) above, or in the total amount of short-term debt authorized.

With respect to CSOE's lines of credit, it is stated that CSOE has arrangements for lines of credit totaling $385,926,000 with 46 banks of three classes. Each note to be issued to a Class I and Class II bank will mature not more than 270 days after the date of issuance or renewal thereof, and will be prepayabale at any time without premium or penalty. CSOE's credit arrangements with the Class I banks generally require it to maintain compensating balances equal to a percentage of the line of credit made available by the banks plus a percentage of any amount actually borrowed (not in excess of 10 percent of the line of credit and 10 percent of the amount borrowed). CSOE's credit arrangements with the Class II banks require it to maintain a compensating balance of 5 percent of the line of credit made available and to pay a fee equal to 4 percent of the bank's prime rate then in effect times the size of the line. The combination of a compensating balance of 5 percent and such fee is generally equivalent to a compensating balance not in excess of 10 percent of the line of credit made available. In addition to the compensating balance and feed, CSOE must pay interest on the borrowings at the rate of up to 108.5 percent of the bank's prime rate. Borrowings from one of the Class II banks, Credit Lyonnais, may be made in domestic U.S. dollars and/or in eurodollars, and on any borrowings in eurodollars the interest thereon will be a designated percent of the London Interbank Offering Rate ("LIBOR"). It is stated that the total cost of borrowings from Class II banks would not be greater than the effective rate for borrowings bearing interest at the prime rate with compensating balances equal to 10 percent of the line of credit and 10 percent of the amount borrowed. The effective interest cost of borrowings from either Class I or Class II banks would not exceed 125 percent of the prime rate, or not more than 17.5 percent on the basis of a prime rate of 14 percent.

Concerning its credit arrangements with the Class III banks, CSOE has money market facilities with two banks in an aggregate amount of $20,000,000. These facilities do not represent a formal commitment by the banks to CSOE, but merely represent the ability of CSOE to request unsecured borrowings, in the form of promissory notes, on a case-by-case basis. The facility at one of the Class III banks, the bank of Nova Scotia, is available for unsecured borrowings in domestic U.S. dollars and/or in eurodollars. Borrowings from either Class III bank may be made for up to 180 days and will be prepayable at any time without premium or penalty. No compensating balances are required. The interest rate, which is presently to be neogtiated on a case-by-case basis (using a 360-day year), will be designated percent of the bank's prime rate, except on borrowings made in eurodollars from the Bank of Nova Scotia, upon which the interest rate will be a designated percent of LIBOR. It is stated that the effective interest cost of borrowings from a Class III bank will be lower than the effective interest cost of borrowings from a Class I or Class II bank.

In addition to its borrowing arrangements with banks, CSOE also proposes to issue and sell commercial paper to a dealer in commercial paper, Lehman Commercial Paper Incorporated ("Lehman"), through July 1, 1981, provided that none of such commercial paper shall mature later than March 31, 1982. The commercial paper will be in the form of promissory notes in denominations of not less than $50,000, nor more than $5,000,000, of varying maturities, with no maturity more than 270 days after date of issuance. Such notes will not be prepayable prior to maturity and will be sold at a discount rate not in excess of the discount rate prevailing at the time of issuance for commercial paper of comparable quality and maturity. Lehman will reoffer the commercial paper, at a discount rate of 1/8 of 1 percent less than the discount rate at which such paper was purchased from CSOE, to not more than 200 of Lehman's customers identified and designated in a non-public list prepared by Lehman. It is expected that such customers will hold the commercial paper until maturity, but if any such customer desires to resell prior thereto, Lehman will, pursuant to a verbal repurchase agreement, repurchase such commercial paper and reoffer it to other customers on its non-public list.

CSOE claims exemption from the competitive bidding requirements of Rule 50 for its issuance of short-term notes to banks pursuant to Rule 50(a)(2), and requests an exemption for its sale of commercial paper pursuant to Rule 50(a)(5).

The fees and expenses to be incurred in connection with the proposed transactions are estimated at $500. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may not later than November 17, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application, as amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the application, as amended or as it may be further amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-33458 Filed 10-27-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 17238; File Nos. SR-Amex-80-24, SR-CBOE-80-23, SR-PSE-80-16, SR-Phlx-80-23]

American Stock Exchange, Inc., et al.; Order Approving Proposed Rule Change

October 22, 1980.

In the matter of American Stock Exchange, Inc., 86 Trinity Place, New York, New York 10006; Chicago Board Options Exchange, Incorporated, LaSalle at Jackson, Chicago, Illinois 60604; Pacific Stock Exchange Incorporated, 301 Pine Street, San Francisco, California 94104; and Philadelphia Stock Exchange, Inc., 17th and Stock Exchange Place, Philadelphia, Pennsylvania 19103.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), (the "Act") and Rule 19b–4 thereunder, the above-mentioned options exchanges filed with the Commission copies of proposed rule changes to modify their policies concerning the intervals at which options exercise prices are fixed and the introduction of new options series.[1] Specifically, the policies as modified, would provide that for securities trading below $100 per share exercise prices generally would be fixed at 5 point intervals and for securities trading above $100 per share exercise prices would be fixed at 10 point intervals. The policies, as modified, also would provide that a new options series could be added when the price of the underlying security equaled the highest or lowest exercise price in a particular options class.[2]

Notice of the proposed rule changes together with the terms of substance of the proposed rule changes was given by publication of a Commission Release [3] and by publication in the **Federal Register.**[4] All written statements with respect to the proposed rule changes which were filed with the Commission and all written communications relating to the proposed rule changes between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's Public Reference Room.

[1] The proposed rule changes were filed with the Commission on the following dates: American Stock Exchange, Inc. ("Amex"), August 29, 1980, amended September 29, 1980; Chicago Board Options Exchange, Incorporated ("CBOE"), September 8, 1980, amended September 15 and 24, 1980; Pacific Stock Exchange Incorporated ("PSE"), September 15, 1980, amended September 30, 1980; Philadelphia Stock Exchange, Inc. ("Phlx"), September 16, 1980.

[2] The proposed policy modifications relate to the following options exchanges rules: Amex Rule 903(a); CBOE Rule 5.6, PSE Rule VI, Sec. 4; and Phlx Rule 1012(a).

[3] Notice by publication of a Commission Release was given as follows: Amex, Securities Exchange Act Release No. 17122, September 5, 1980, CBOE, Securities Exchange Act Release No. 17145, September 12, 1980; PSE, Securities Exchange Act Release No. 17155, September 18, 1980; Phlx, Securities Exchange Act Release No. 17156, September 19, 1980.

[4] Notice by publication in the **Federal Register** was given as follows: Amex, 45 FR 60524, September 12, 1980; CBOE, 45 FR 62243, September 18, 1980; PSE, 45 FR 63986, September 26, 1980; Phlx, 45 FR 63596, September 25, 1980.

II. Discussion

The options exchanges state that the proposed reduction of exercise price intervals would enable the exchanges to open options series at exercise prices closer to the market price per share of the underlying stock than is possible under current exchange policies. This, the options exchanges contend, would produce two principal enhancements in the options market. First, the ability to open options series at prices which more closely approximate the market price of the underlying securities would afford public investors enhanced opportunities to engage in hedging and other purchase and writing strategies. Second, by providing greater assurance that, at all times, there will be a liquid "at-the-money" options series, spread transactions by marketmakers would be facilitated, thus reducing the risk inherent in marketmaking and enhancing the ability of marketmakers to fulfull their obligations to maintain fair, orderly and liquid markets.

As the options exchanges suggest, the narrower the intervals between open options series, the greater the flexibility accorded to market participants and the more finely options positions can be tailored to achieve intended objectives. It must be recognized, however, that limitation of the number of exercise prices for a particular options class is an essential element of options contract standardization. Moreover, in order to enable market participants to achieve their investment objectives and to diminish the potential for manipulation, the options series which are traded must have sufficient depth and liquidity. Accordingly, the balance sought by the options exchanges in opening new options series within a particular options class is to accommodate market participants by providing an array of exercise prices while concomitantly ensuring that the number of options series does not produce an excessive dispersion of interest and, as a consequence, excessive dilution of liquidity in open options series.

The Commission is unable to conclude that the introduction of 5 point intervals with respect to securities trading between $50 and $100 per share, and 10 point intervals with respect to securities trading above $200 per share, constitutes an inappropriate resolution of these interrelated concerns. The options exchanges have represented, as stated in the CBOE filing, that the proposed modification would "not result in an undue proliferation in options series." This conclusion is based on the assumption that series opened at the new reduced intervals "would

frequently be replacements for, rather than additions to," series that otherwise would have been opened "further out of the money." Although the Commission cannot concur fully with this conclusion, it has no basis for believing that the increase in the number of options series that would result from approval of the proposed modification would adversely affect the options markets. To the contrary, while the Commission did not receive any comments in response to publication of notice of the rule proposals, letters supporting reduced exercise price intervals were received shortly after the moratorium was lifted in which it was contended that such a measure would improve market liquidity for both options and their underlying securities.[5] In addition, it has been represented that the addition of the new exercise price intervals would not adversely affect exchange operational capabilities. The Commission expects that the options exchanges will take steps to assure that new exercise price intervals will be added in a deliberate and prudent manner consistent with exchange and member firm operational capacities. In this regard, the options exchanges each have indicated that they intend to delay implementing the proposed rule changes until early 1981.[6]

The second aspect of the rule proposals would allow the addition of new options series as soon as the market price of the underlying security equalled the highest or lowest existing exercise price for a particular options class. The options exchanges contend that this proposed policy modification would ensure the existence at all times of exercise prices both in and out of the money. This, in turn, it is contended, would offer public investors greater opportunities to limit their risk through increased hedging and other purchasing and writing strategies, and would better enable marketmakers to make fair and orderly markets. As with the first aspect of the rule proposals, the Commission is inclined to defer to the business judgment of the options exchanges that, as a general matter, the overall quality of the options markets would not be adversely affected by this proposed modification.

[5] *See* letter from Eugene D. Brody, President, New York Institutional Option Society, to Douglas Scarff dated May 7, 1980. *See also* letter from Abraham J. Bronchtein, Vice President, Chemical Bank, to Douglas Scarff dated May 14, 1980.

[6] *See* letter to Gene Carasick, Assistant Director, Division of Market Regulation, from Anne Taylor, Associate General Counsel, CBOE, dated October 3, 1980.

III. Conclusion

In view of the foregoing, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6, and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule changes of CBOE, PSE and Phlx prior to the thirtieth day after the date of publication of notice of filing thereof, in that the terms of those changes are identical to the rule change proposed by Amex. Notice of the Amex proposal was outstanding for the full statutory period and no comments were received.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule changes be, and they hereby are, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-33453 Filed 10-27-80; 8:45 am]

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[Release No. 17237; File Nos. SR-Amex-80-23, SR-CBOE-80-22, SR-PSE-80-15, SR-Phlx-80-21]

American Stock Exchange, Inc., et al.; Order Approving Proposed Rule Changes

October 22, 1980.

In the matter of American Stock Exchange, Inc., 86 Trinity Place, New York, New York 10006; Chicago Board Options Exchange, Incorporated, LaSalle at Jackson, Chicago, Illinois 60604; Pacific Stock Exchange Incorporated, 301 Pine Street, San Francisco, California 94104; Philadelphia Stock Exchange, Inc., 17th and Stock Exchange Place, Philadelphia, Pennsylvania 19103.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), (the "Act") and Rule 19b-4 thereunder, the above-mentioned options exchanges filed with the Commission copies of proposed rule changes [1] to amend their position limit rules to increase from 1,000 to 2,000 contracts the aggregate position that can be maintained in put and call options on the same side of the market on the same underlying security [2] and to amend their exercise limit rules to increase from 1,000 to 2,000 the number of contracts of a given class of options that can be exercised within any period of five consecutive business days.[3]

Notice of each of the proposed rule changes together with the terms of substance of the proposed rule changes was given by publication of a Commission release [4] and by publication in the **Federal Register.**[5] All written statements with respect to the proposed rule changes which were filed with the Commission and all written communications relating to the proposed rule changes between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's Public Reference Room.

II. Discussion

The position limit rules, in combination with the exercise limit rules, are designed principally to minimize the manipulative potential inherent in large options positions and to prevent the accumulation of large options positions that, if exercised against uncovered writers, could affect the price of the underlying security by necessitating purchases in the underlying market to satisfy delivery requirements. In addition, position limit rules limit the financial exposure of market participants.

The Special Study of the Options Market ("Options Study") [6] made several observations concerning the effects of the position limit rules on the options market. In particular, the

[1] The proposed rule changes were filed with the Commission on the following dates: American Stock Exchange, Inc. ("Amex"), August 28, 1980, amended September 29, 1980; Chicago Board Options Exchange, Incorporated ("CBOE"), September 8, 1980, amended September 15, 1980; Pacific Stock Exchange Incorporated ("PSE"), September 2, 1980, amended September 30, 1980; Philadelphia Stock Exchange, Inc. ("Phlx"), September 2, 1980, amended September 16, 1980.

[2] Position limits are set forth in the following options exchange rules: Amex Rule 904; CBOE Rule 4.11; PSE Rule VI, Sec. 5; Phlx Rule 1001.

[3] Exercise limits are set forth in the following options exchange rules: Amex Rule 905; CBOE Rule 4.12; PSE Rule VI, Sec. 6, Phlx Rule 1002.

[4] Notice by publication of a Commission Release was given as follows: Amex, Securities Exchange Act Release No. 17121, September 5, 1980; CBOE, Securities Exchange Act Release No. 17148, September 12, 1980; PSE, Securities Exchange Act Release No. 17147, September 12, 1980; Phlx, Securities Exchange Act Release No. 17146, September 12, 1980.

[5] Notice by publication in the **Federal Register** was given as follows: Amex, 45 FR 60523, September 12, 1980; CBOE, 45 FR 62597, September 19, 1980; PSE, 45 FR 62241, September 18, 1980; Phlx, 45 FR 62245, September 18, 1980.

[6] 96th Cong., 1st Sess., H.R. No. 96-IFC3 (Comm. Print 1978) at 190.

Options Study noted that current position limits have restricted the use of options by institutional investors because they are prevented from writing calls or buying puts on more than 100,000 shares of a particular stock.[7] In this regard, the Options Study suggested that existing position limits do not provide sufficient risk limiting potential for institutional investors. The Options Study also indicated that the impact of position limits on proprietary trading by member firms may impair market liquidity. Member firm proprietary options activities, such as hedging block positioning activities and various forms of arbitrage, may easily involve 1,000 contracts, thereby precluding further proprietary participation in options that may be beneficial to market liquidity. Accordingly, the Options Study recommended that:

> The Division of Market Regulation should undertake a complete review of the position limit rules of the options exchanges. This review should include: (1) the possibility of eliminating position limit rules, (2) the feasibility of relaxing position limit rules for (a) all market participants, (b) for accounts which hold fully paid, freely transferable securities or (c) for "hedged" positions, and (3) whether exemptions from the rules should be granted to options specialists and, if so, under what circumstances.[8]

In lieu of the comprehensive study of position limits suggested by the Options Study, the Commission believes it would be more appropriate for the options exchanges to experiment with position limits by increasing the ceiling from 1,000 to 2,000 options contracts.[9] On balance, the Commission believes that such an increase at this time is not an unacceptable first step in the reconsideration and modification of the current rules. As noted above, there is substantial reason to believe that the current ceiling serves to constrict significantly the options activities of certain market professionals and institutions, possibly to the detriment of market depth and liquidity. In addition, the Commission believes that the surveillance capabilities of the options exchanges with respect to large options positions should minimize the possibility of manipulation. Finally, the Commission believes that the information and experience gained from approval of the proposed modification will enhance the ability of the options exchanges and the Commission to responsibly propose and effectively evaluate possible further modifications, to increase, eliminate, or possibly decrease, position limits in the future.

Nevertheless, the Commission remains concerned that any increase in position limits can create additional incentives to manipulate. Given this fact, the Commission expects the options exchanges to carefully evaluate possible enhancements to their surveillance programs and report to the Commission concerning the enhancements they have made at the end of eight months.[10] In addition, the options exchanges each have undertaken to monitor closely and collect data regarding the effect of the proposed modifications on options and underlying stock trading activity and on market participants. The options exchanges have indicated that at the end of eight months each will submit to the Commission a report, based on the information obtained, analyzing the impact of the increased ceiling on the options and the underlying stock markets.

With respect to the proposed increase in exercise limits, the Commission similarly believes that the modest proposed increase is not an inappropriate first step in experimenting with modification of these rules. The options exchanges appear to have assumed that their proposed increase in position limits should be accompanied by a similar increase of exercise limits. The only rationale proffered for the proposed increase is to permit exercise of any options positions that can be acquired under the proposed new position limits. Given the existence of a liquid secondary options market that allows market participants efficiently to close out options positions without exercise, it is not apparent that any increase or removal of position limits must necessarily be accompanied by a similar change in exercise limits.[11]

III. Conclusion

In view of the foregoing, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6, and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule changes of CBOE, PSE and Phlx prior to the thirtieth day after the date of publication of notice of filing thereof, in that the terms of those change are identical to the rule change proposed by Amex. Notice of the Amex proposal was outstanding for the full statutory period and no comments were received.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule changes be, and they hereby are, approved.[12]

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretay.

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[Release No. 34-17232; File No. SR-CBOE-80-25]

Chicago Board Options Exchange, Inc.; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L.

[7] The Options Study further noted that one rationale for the imposition of position limits, the concern that exercise of a large long call postion may affect the price of the underlying stock, is not applicable to the writers of covered calls. Because covered writers by definition own the underlying stock, there generally is no need to acquire the stock in the market when they receive an exercise notice, thereby possibly affecting stock prices.

[8] Options Study at 192.

[9] In this regard, the options exchanges have indicated that, if warranted by trading experience, further modifications may be proposed in the future. In particular, the CBOE expressed a desire in the statement of purpose for its proposed rule change to conduct experiments, including the removal of position limits for particular options classes or series for specified periods of time, to determine whether further modification of its position and exercise limits may be appropriate. The CBOE has indicated to the Commission staff, however, that the CBOE did not intend these statements of its future intentions to be a subject of the Commission's deliberations on the current CBOE position and exercise limit proposal.

[10] For example, the Commission views with some concern the current inability of the options exchanges to detect intra-day position limit violations. The Commission understands that currently the exchanges routinely capture position data with respect to market participants only as of the close of the trading day and currently the exchanges do not determine whether during the course of a given day position limits are temporarily exceeded. In preliminary discussions, exchange officials have indicated that the creation of such a routine intra-day detection program currently is not feasible. Similarly, the Commission is concerned about the ability of the exchanges to detect manipulative activities of non-marketmaker broker-dealers and public customers under the increased position limits, particularly since the exchanges currently do not receive reports concerning the underlying securities activities of such market participants.

[11] In this regard, the Commission intends to review any future proposed modifications of exercise limits separately from proposed position limit changes, and expects the options exchanges to justify such modifications independently. Nevertheless, for the reasons articulated with respect to position limits, the Commission also believes that this relatively modest increase in exercise limits will not have any significant negative risks.

[12] To coincide with the effective date of the 1980 prospectus of the Options Clearing Corporation, which will reflect the increased position and exercise limits, the SROs each have indicated that they intend to use their authority to fix limits at other than 2,000 contracts to continue in effect the 1,000 contract limits until October 31, 1980.

No. 94–29, 16 (June 4, 1975), notice is hereby given that on October 14, 1980, the above-mentioned self-regulatory organization ("SRO") filed with the Securities and Exchange Commission a proposed rule change as follows:

Text of Substance of the Proposed Rule Change

The text of the proposed rule change is as follows with italics indicating additions.

Market-Maker Defined

Rule 8.1. No change.

. . . Interpretations and Policies:

.01 Options transactions effected on the Exchange which result from orders transmitted from off the floor of the Exchange by a Market-Maker shall be deemed to be initiated on the floor of the Exchange and shall count as Market-Maker transactions for the purposes of this Chapter and Rule 3.1 provided that (a) such orders result in closing transactions or (b) at the time such orders are transmitted to the floor of the Exchange the Market-Maker is temporarily absent from the Exchange floor and such orders result in options transactions which provide a bona fide hedge of open options positions then carried by the Market-Maker in a Market-Maker account.

.02 For the purposes of Interpretation .01, a bona fide hedge shall occur when an adverse change in the market price of the initial options position would be reasonably anticipated to be offset by a countervailing change in the market price of the subsequent options position, provided that such subsequent position is in respect of the same underlying security as the initial options position.

.03. For the purposes of Interpretation .01, a Market-Maker may effect bona fide hedge transactions using off-floor orders on no more than 30 business days per calendar year while temporarily absent from the Exchange floor. Each Market-Maker shall be responsible for determining the number of days on which off-floor bona fide hedge transactions have been executed by him during a calendar year.

Orders Required to Be in Written Form

Rule 6.24. (a) Transmitted to the floor. Each order transmitted to the floor must be recorded legibly in a written form that has been approved by the Exchange, and the member receiving such order must record the time of its receipt on the floor *and, with respect to an order transmitted to the floor for the account of a Market-Maker, the receiving member shall identify the order as being initiated from off the floor and, based upon information obtained from the entering member, mark an opening hedge order as such.* Each such order must be in legible written form when taken to the post for attempted execution.

SRO's Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of the propose change in Rule 8.1 is to allow Market-Makers to effect options transactions which hedge previously established options positions when such Market-Makers are absent from the Exchange floor. Since Rule 8.1 requires that Market-Makers be individuals who are either individual members or nominees of member organizations, such persons must necessarily be absent from the Exchange floor from time to time for brief periods. The proposed rule change would provide Market-Makers with the capability of reducing the market risk inherent in holding options positions previously established pursuant to their obligations under Chapter VIII of the Exchange Rules at times when they are absent from the trading floor.

This proposed rule change should result in greater on-floor adherence to Market-Maker obligations, for Market-Makers able to anticipate a temporary absence will not feel compelled to limit the size of their options positions during the time prior to the commencement of such absence. Presently, many Market-Makers who know they will be away from the Exchange for a short time often perform in a way that leaves them with no open positions during their absence. Consequently, Market-Makers, under this proposal, can more vigorously respond to their continuous obligation to provide liquid markets during the time preceding planned absences, since they will have the ability to protect their options positions during such absences, if necessary. The proposed rule change should thus lead to greater competition among Market-Makers because the enhancement of their ability to protect their open positions will increase their willingness to assume larger positions and to leave such positions open during periods of temporary absence from the Exchange floor.

Moreover, this proposal will also give Market-Makers the capability to compete more effectively with the specialist units on other exchanges which trade the same options as those traded on CBOE. Specialist units with their interchangeable personnel, unlike CBOE Market-Makers, are able to maintain a constant presence on the floors of the exchanges of which they are members. By enabling Market-Makers to offset, to a certain extent, previously established options positions with options orders directed from off the Exchange floor, Market-Makers should be more willing to engage in greater on-floor competition with the specialists of such other exchanges by establishing larger positions and by making tighter markets in size.

Proposed Interpretation .02 would define bona fide hedge as an option transaction which would be reasonably anticipated to offset, by a countervailing change in market price, an open option position in the account of a Market-Makers in respect of the same underlying security. The Exchange recognizes that this definition is, to some extent, a subjective one. Since hedging is by its very nature partly subjective—what is a sufficient hedge for one may be inadequate for another—the Exchange believes it to be desirable to leave sufficient breathing space to permit Market-Makers to make independent, good faith judgments as to what constitutes an appropriate hedge.

The Exchange also believes that the fact that the proposed definition would require hedges to be "bona fide" provides a considerable amount of regulatory protection. The term "bona fide" is used a number of times in the Securities Exchange Act of 1934 and the rules and regulations thereunder to distinguish conduct which is prohibited from that which is exempt, and there has been no indication that these provisions have proved to be unenforceable. For example, Congress in 1975 exempted any "bona fide hedge transaction involving a long or short position in an equity security and a long or short position in a security entitling the holder to acquire or sell such equity security" from the prohibitions of Section 11(a)(1) of the Act. Similarly, the Federal Reserve Board has used the term "bona fide" frequently in Regulation T to distinguish the exempt from the prohibited; see Sections 220.4(c) (bona fide cash transactions), 220.4(d) (bona fide arbitrage transactions), 220.6(d) (bona fide incident to a transaction), 220.6(h) (bona fide deposit of cash) and 220.8(h) (bona fide bids and offers).

The importance of hedging as a risk-limiting trading strategy for Market-Makers has been recognized by the Federal Reserve Board. The Board, in several announcements relating to amendments of Section 220.4(g) of Regulation T, expressly recognized that options Market-Makers are required to assume positions in options in furtherance of their market making obligations and may need to purchase offsetting holdings in underlying stocks in order to reduce risk. The Board's final rule, which became effective on August 11, 1980, was designed to facilitate the making of markets in options by allowing preferential credit treatment to underlying security positions which hedged option positions established in market making transactions. Thus, the Board recognized that such hedging stock transactions, even though not executed on the floor of the options exchange, improved the quality of options market making by reducing the risk of options positions assumed by a Market-Maker in furtherance of his obligations. The same reasoning supports the proposed CBOE rule change.

Proposed Interpretation .03 would set a maximum number of days (30 days per calendar year) during which a Market-Maker may effect bona fide hedge transactions using off-floor orders while temporarily absent from the Exhange floor and still have such transactions treated as Market-Maker transactions under Rule 8.1. The Exchange believes that when a Market-Maker is temporarily absent from the exchange floor due to such things as illnesses, vacations, public transportation strikes, operational failures or severe weather conditions, he should be permitted to hedge his open positions in his Market-Maker's account. The proposed interpretation, by limiting the number of days during which a Market-Maker may effect such transactions, would prevent Market-Makers from making a regular practice of opening new positions through hedging transactions from off the Exchange floor.

The purpose of the proposed change to Rule 6.24 is to require Exchange members to identify off-floor initiated orders for a Market-Maker account and to mark off-floor opening hedge orders as such. This rule change in conjunction with previously filed changes to Exchange Rules 6.24 and 6.51, File No. SR–CBOE–1980–16, will require a member receiving an order from a Market-Maker who is not present on the Exchange floor to mark the order ticket as an off-floor order and to code the transaction as either opening, opening hedge or closing. Exchange regulatory personnel can compare off-floor opening transactions to Market-Maker positions for the purpose of insuring that the provisions of Rule 8.1 are being adhered to.

With this information on the order ticket, clearing members will be able to place each such transaction in the proper account, either a Market-Maker/specialist or a customer account. In addition, Exchange regulatory personnel will be able to review all off-floor orders of a Market-Maker on a periodic basis to ensure that the tickets are properly coded.

The basis under the Act for the proposed rule change is Sections 6(b)(5) and 11A(a)(i)(C)(ii). The proposed rule change will promote just and equitable principles of trade and protect investors and the public interest, for it will encourage greater competition among Market-Makers and facilitate the performance of Market-Maker obligations. Such circumstances will enable Market-Makers to make tighter markets in greater size and thereby enhance the liquidity of options markets on the Exchange. In addition, enabling Exchange Market-Makers to compete more effectively with specialists on other exchanges is consistent with, and in furtherance of, the objectives stated by Congress in Section 11A(a)(i)(C)(ii).

Comments from members were solicited but were not received regarding this proposed rule change.

The Exchange, as stated more fully above, believes this proposed rule change will enhance competition between the Exchange and other exchange markets and among Market-Makers on the Exchange floor.

On or before December 2, 1980, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, Securities and Exchange Commission, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted by November 17, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

October 21, 1980.

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[Release No. 17236, SR–CBOE–80–5, SR–Amex–80–8, SR–PSE–80–5, SR–Phlx–80–9, SR–NASD–80–13]

Chicago Board Options Exchange, Inc., et al.; Order Approving Proposed Rule Changes

October 22, 1980.

In the matter of Chicago Board Options Exchange, Incorporated, LaSalle at Jackson, Chicago, Illinois 60604; American Stock Exchange, Inc., 86 Trinity Place, New York, New York 10006; Pacific Stock Exchange Incorporated, 301 Pine Street, San Francisco, California 94104; Philadelphia Stock Exchange, Inc., 17th and Stock Exchange Place, Philadelphia, Pennsylvania 19103; and National Association of Securities Dealers, Inc., 1735 K Street, N.W., Washington, D.C. 20006.

I. Introduction

The self-regulatory organizations ("SROs") listed above each have filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), (the "Act") and Rule 19b–4 thereunder, copies of proposed rule changes to rescind their respective "restricted" options rules.[1] In general, subject to certain exceptions for covered writing transactions, spread transactions and the purchase of puts offset by long positions in the underlying security, the restricted options rules prohibit customers and non-

[1] The SROs filed their proposed rule changes with the Commission on the following dates: (1) Chicago Board Options Exchange, Incorporated ("CBOE") (SR–CBOE–80–5), filed April 4, 1980; (2) American Stock Exchange, Inc. ("Amex") (SR–Amex–80–8), filed April 23, 1980; (3) Pacific Stock Exchange Incorporated ("PSE") (SR–PSE–80–5), filed May 13, 1980, amended September 2, 1980; (4) Philadelphia Stock Exchange, Inc. ("Phlx") (SR–Phlx–80–9), filed April 23, 1980; (5) National Association of Securities Dealers, Inc. ("NASD") (SR–NASD–80–13), filed July 18, 1980. Notice of the exchanges' proposed rule changes was given by a single Commission release, Securities Exchange Act Release No. 16809, May 15, 1980, and by publication in the **Federal Register**, 45 FR 34093, May 21, 1980. Notice of the proposed rule change by the NASD was given by Commission release, Securities Exchange Act Release No. 17027, July 30, 1980, and by publication in the **Federal Register**, 45 FR 51972, August 26, 1980. No comments were received with respect to the rule filings.

marketmaker members from entering opening transactions in any series of options as to which, as of the close of trading on the previous day, (1) the exercise price of the option was more than $5 out-of-the-money and (2) the closing price of the option was less than $.50 per share.[2] Adoption of the restricted options rules was premised on concerns as to whether trading in deep-out-of-the-money options served a legitimate economic purpose and, more importantly, whether it was suitable for most public customers, in view of the high probability that such options would expire worthless.

II. Discussion

The Commission's Special Study of the Options Markets reviewed the impact of the restricted options rules on the options trading markets and addressed the desirability of eliminating the rules.[3] The Options Study found that as the options trading markets have expanded new uses for restricted options have developed. Numerous market professionals indicated that such options could be utilized effectively in various ways as a part of prudent and viable investment strategies—for example, the purchase of deep-out-of-the-money calls with a small percentage of an investor's funds while placing the remainder in money market instruments, or the utilization of spreads involving the purchase of several restricted options for each lower strike price option held.

The Options Study also found that the restricted options rules result in pricing inefficiencies and a loss of market liquidity for some options series. When previously unrestricted options become restricted, individuals with positions in such options are left with a limited market since a large number of potential buyers and sellers are barred from the marketplace.

The Options Study balanced these factors against the primary objective of the rules; *i.e.*, the protection of investors who may not fully appreciate the risks involved in such options. The Options Study concluded that its recommendations to enhance customer suitability rules and the internal procedures of broker-dealers may ameliorate these concerns and, at a future date, permit elimination of the restricted options rules. Accordingly, the Options Study recommended that "the Division of Market Regulation * * * consider the elimination of the restricted options rules as soon as the overall effectiveness of the Options Study's suitability recommendations can be evaluated."[4]

III. Conclusion

Although the Options Study found that deep-out-of-the-money options can be utilized as part of conservative and prudent investment strategies, the Commission continues to believe that certain more common uses of deep-out-of-the-money options (*e.g.*, the simple purchase or sale of such options) can be among the most risky and speculative of all trading strategies and, thus, are not suitable for most public customers, either because customers do not fully understand the risks of positions in deep-out-of-the-money options or cannot financially bear those risks. In response to the Options Study's recommendations, the SROs have adopted new options suitability rules and broker-dealer supervisory procedures, and have enhanced their broker-dealer examinations. While sufficient time has not passed yet to permit a complete evaluation of the overall effectiveness of these rules and procedures, the Commission and the SROs have taken additional measures to assure the effectiveness of these new rules as they relate to deep-out-of-the-money options. At the Commission's request, the SROs have undertaken measures designed to assure that their member firms understand the application of and comply with the new suitability rules with respect to transactions in deep-out-of-the-money options. The SROs have prepared a joint educational circular which sets forth member firm obligations with respect to recommending transactions in deep-out-of-the-money options. In addition, each SRO has undertaken to focus specifically during its broker-dealer examinations on trading in such options as part of its exam module for suitability.

Moreover, the Commission will enhance oversight of trading in deep-out-of-the-money options by (1) monitoring SRO broker-dealer examinations in connection with the Commission's Office of Inspections compliance program and (2) giving transactions in deep-out-of-the-money options special scrutiny during the Commission's broker-dealer examinations. Of course, should the Commission find that the measures that have been taken are inadequate to prevent abuses in the selling of deep-out-of-the-money options, the Commission would take appropriate remedial action.

Given this regulatory environment, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and a registered securities association, and in particular, the requirements of Sections 6 and 15A, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule changes be, and they hereby are, approved.[5]

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-33457 Filed 10-27-80; 8:45 am]

BILLING CODE 8010-01-M

[2] CBOE Rule 4.17; Amex Rule 910; Rule VI, Section 11; Phlx Rule 1046; NASD Section 8 of Appendix E to Article III, Section 33 of the Rules of Fair Practice.

[3] *See* Report of the Special Study of the Options Markets to the Securities and Exchange Commission, 96th Cong., 1st Sess. at 193–195 (Comm. Print 1978) ("Options Study").

[4] *Id.* at 195.

[5] To coincide with the effective date of the 1980 prospectus of the Options Clearing Corporation, which will reflect the rescission of the SROs' restricted options rules, the SROs each have indicated that they intend to continue in effect the prohibitions contained in the restricted options rules until October 31, 1980 by using their general authority to restrict options transactions. *See, e.g.*, CBOE Rule 4.16 and Amex Rule 909.

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1944]

Georgia; Declaration of Disaster Loan Area

The State of Georgia constitutes a disaster area as a result of physical damage caused by drought and high temperature beginning on or about June 1–October 16, 1980. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on April 21, 1981, and for economic injury until June 8, 1981, at:

Small Business Administration, District Office, 1720 Peachtree Street, NW., 6th Floor, Atlanta, Georgia 30309

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 21, 1980.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 80-33534 Filed 10-27-80; 4:20 pm]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1937]

Iowa; Declaration of Disaster Loan Area

Henry County and adjacent counties within the State of Iowa, constitute a disaster area as a result of damage to homes and non-farm businesses affected by the tornado and high winds that occurred on July 20, 1980.

Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on December 12, 1980, and for economic injury until July 10, 1981, at:

Small Business Administration, District Office, 210 Walnut Street, Room 749, Des Moines, Iowa 50309

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 10, 1980.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 80-33535 Filed 10-27-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1936]

Louisiana; Declaration of Disaster Loan Area

The following 55 Parishes and adjacent parishes within the State of Louisiana constitute a disaster area as a result of natural disasters as indicated:

Parish	*Natural Disaster(s)*	*Date(s)*
Acadia	Drought-extreme high temperatures	June 1, 1980 to Aug. 27, 1980
Allen	Drought-extreme high temperatures	May 15, 1980 to Aug. 27, 1980
Assumption	Drought-extreme high temperatures	Mar. 23, 1980 to Sept. 2, 1980
Ascension	Drought-extreme high temperatures	Apr. 25, 1980 to May 14, 1980, May 21, 1980 to June 18, 1980, and June 20, 1980 to Aug. 25, 1980
Avoyelles	Drought-extreme high temperatures	June 1, 1980 to Aug. 12, 1980
Beauregard	Drought-extreme high temperatures	May 17, 1980 to Aug. 25, 1980
Bienville	Drought-extreme high temperatures	June 1, 1980 to July 29, 1980
Bossier	Drought-extreme high temperatures	June 1, 1980 to Aug. 26, 1980
Caddo	Drought-extreme high temperatures	June 1, 1980 to Aug. 27, 1980
Calcasieu	Drought-extreme high temperatures	May 17, 1980 to Aug. 25, 1980
Caldwell	Drought-extreme high temperatures	June 15, 1980 to Aug. 27, 1980
Cameron	Drought-extreme high temperatures	May 17, 1980 to Aug. 25, 1980
Catahoula	Drought-extreme high temperatures	June 25, 1980 to Aug. 26, 1980
Claiborne	Drought-extreme high temperatures	June 22, 1980 to July 26, 1980
Concordia	Drought-extreme high temperatures	June 23, 1980 to Aug. 26, 1980
DeSoto	Drought-extreme high temperatures	May 20, 1980 to Aug. 28, 1980
East Baton Rouge	Drought-extreme high temperatures	May 22, 1980 to Aug. 27, 1980
East Carroll	Drought-extreme high temperatures	June 1, 1980 to Aug. 28, 1980
Evangeline	Drought-extreme high temperatures	May 26, 1980 to Aug. 27, 1980
Franklin	Drought-extreme high temperatures	June 10, 1980 to Aug. 27, 1980, and
	Hail	July 31, 1980
Grant	Drought-extreme high temperatures	June 8, 1980 to July 30, 1980
Iberia	Drought-extreme high temperatures	May 15, 1980 to Aug. 27, 1980
Iberville	Drought-extreme high temperatures	May 27, 1980 to June 16, 1980, and June 21, 1980 to Aug. 25, 1980
Jackson	Drought-extreme high temperatures	June 2, 1980 to July 27, 1980
Jefferson Davis	Drought-extreme high temperatures	June 1, 1980 to Aug. 5, 1980
Lafayette	Drought-extreme high temperatures	May 16, 1980 to Aug. 27, 1980
Lafourche	Drought-extreme high temperatures	May 23, 1980 to Aug. 26, 1980.
LaSalle	Drought-extreme high temperatures	June 25, 1980 to Aug. 26, 1980
Lincoln	Drought-extreme high temperatures	June 1, 1980 to July 29, 1980
Morehouse	Drought-extreme high temperatures	May 23, 1980 to Aug. 26, 1980
Natchitoches	Drought-extreme high temperatures	May 20, 1980 to July 31, 1980
Ouachita	Drought-extreme high temperatures	May 23, 1980 to Aug. 26, 1980
Pointe Coupee	Drought-extreme high temperatures	June 1, 1980 to Aug. 31, 1980
Rapides	Drought-extreme high temperatures	May 20, 1980 to Aug. 27, 1980
Red River	Drought-extreme high temperatures	May 20, 1980 to Aug. 27, 1980

Parish	Natural Disaster(s)	Date(s)
Richland	Drought-extreme high temperatures	June 1, 1980 to Aug. 28, 1980
Sabine	Drought-extreme high temperatures	May 20, 1980 to July 31, 1980
St. Charles	Drought-extreme high temperatures	May 23, 1980 to Aug. 27, 1980
St. Helena	Drought-extreme high temperatures	June 1, 1980 to Aug. 27, 1980
St. James	Drought-extreme high temperatures	May 23, 1980 to Aug. 27, 1980
St. John	Drought-extreme high temperatures	May 23, 1980 to Aug. 27, 1980
St. Landry	Drought-extreme high temperatures	June 20, 1980 to Aug. 27, 1980
St. Martin	Drought-extreme high temperatures	May 19, 1980 to Aug. 27, 1980
St. Mary	Drought-extreme high temperatures	May 15, 1980 to Aug. 27, 1980
Tangipahoa	Drought-extreme high temperatures	July 1, 1980 to Aug. 12, 1980
Tensas	Drought-extreme high temperatures	June 1, 1980 to Aug. 28, 1980
Terrebonne	Drought-extreme high temperatures	May 22, 1980 to Aug. 29, 1980
Union	Drought-extreme high temperatures	June 20, 1980 to July 30, 1980
Vermilion	Drought-extreme high temperatures	May 18, 1980 to Aug. 27, 1980
Vernon	Drought-extreme high temperatures	June 1, 1980 to July 23, 1980
Washington	Drought-extreme high temperatures	June 1, 1980 to Aug. 31, 1980
Webster	Drought-extreme high temperatures	July 1, 1980 to Aug. 27, 1980
West Baton Rouge	Drought-extreme high temperatures	May 22, 1980 to Aug 27, 1980
West Carroll	Drought-extreme high temperatures	June 1, 1980 to July 20, 1980, and July 28, 1980 to Aug. 29, 1980
	Excessive rain	July 21, 1980
Winn	Drought-extreme high temperatures	June 1, 1980 to July 30, 1980

Eligible persons, firms, and organizations may file applications for loans for physicial damage until the close of business on Arpil 6, 1980, and for economic injury until the close of business on July 6, 1981, at: Small Business Administration, District Office, Plaza Tower, 17th floor, 1001 Howard Avenue, New Orleans, Louisiana 70113, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 6, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-33536 Filed 10-27-80; 8:45 pm]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1940]

Michigan; Declaration of Disaster Loan Area

The following 13 counties and adjacent counties within the State of Michigan constitute a disaster area as a result of natural disasters as indicated:

Country	Natural disaster	Date
Allegan	Severe thunderstorms, wind, hail, and continuous rains	May 29 to Aug. 3, 1980
Barry	Excessive rainfall, hail, frost, and cold weather	May 29 to Aug. 3, 1980
Berrien	Excessive rainfall, hail, wind	May 29 to Aug. 3, 1980
Calhoun	Excessive rain	May 29 to Aug. 3, 1980
Cass	High wind, excessive rainfall and freezing temperatures	May 29 to Aug. 3, 1980
Clinton	Hail, wind, and heavy rain	May 29 to Aug. 3, 1980
Jackson	Severe windstorm, heavy rains	May 29 to Aug. 3, 1980
Kalamazoo	Excessive rain, hail, high winds	May 29 to Aug. 3, 1980
Lapeer	Excessive rain, hail, high winds	May 29 to Aug. 3, 1980
Ottawa	Excessive rain, and windstorms	May 29 to Aug. 3, 1980
St. Joseph	Excessive rain, wind, frost, flooding	May 29 to Aug. 3, 1980
Van Buren	Hurricaine type storms, high winds, heavy rains, and damaging lightining.	May 29 to Aug. 3, 1980
Wayne	Windstorm	May 29 to Aug. 3, 1980

Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on April 9, 1981 and for economic injury until the close of business on July 9, 1981, at: Small Business Administration, District Office 477 Michigan Avenue, Detroit, Michigan 48226 or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated; October 9, 1980.

William H. Mauk,

Acting Administrator.

[FD Doc. 80-33537 Filed 10-27-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1926]

Nebraska; Declaration of Disaster Loan Area

The following counties and adjacent counties within the State of Nebraska constitute a disaster area as a result of physical damage caused by natural disasters as indicated:

County	Natural Disaster	Date
(1) Boyd	Hail	May 29 and June 6, 1980.
	Drought and grasshoppers.	May 10 to August 5, 1980.
(2) Deuel	Hailstorms	May 29 to May 31, 1980.
		June 15 to 16 1980.
	Hot winds	June 22 to July 6, 1980.
(3) Hitchcock	Hail and wind	June 15, 1980.
(4) Knox	Drought	May 10 to July 25, 1980.
(5) Morrill	Hail	June 26, 1980.
(6) Custer	Drought	May 10 to August 18, 1980.
(7) Dodge	Drought	May 10 to September 9, 1980.
(8) Greeley	Drought	May 10 to August 5, 1980.
(9) Howard	Drought and high temperature.	May 10 to August 18, 1980.
(10) Sherman	Drought	May 10 to September 11, 1980.
(11) Saline	Drought	June 8 to September 4, 1980.

Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on April 9, 1981, and for economic injury until the close of business on July 9, 1981, at:

Small Business Administration, District Office, 19th and Farnum Streets, 2nd Floor, Omaha, Nebraska 68102

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: October 9, 1980.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 80-33538 Filed 10-27-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1943]

Ohio, Declaration of Disaster Loan Area

Harrison County and adjacent counties within the State of Ohio constitute a disaster area as a result of damage caused by excessive rain and flooding which occurred on July 27, 1980. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on December 22, 1980, and for economic injury until the close of business on July 21, 1981, at: Small Business Administration, District Office, AJC Federal Building—Room 317, 1240 East Ninth Street, Cleveland, Ohio 44199, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 21, 1980.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 80-33539 Filed 10-27-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1865, Amdt. No. 2]

South Dakota; Declaration of Disaster Loan Area

The above numbered declaration and amendment thereto (See FR 46264 and 59675) are amended further by adding the following county and adjacent counties within South Dakota:

County, natural disaster, and dote

Faulk, Late frost, 5/6/80; Drought, 4/1–7/25/80.

All other information remains the same; i.e., the termination date for filing applications for physical damage is close of business on January 2, 1981 and for economic injury until the close of business on April 1, 1981.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date October 21, 1980.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 80-33540 Filed 10-27-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area § 1939]

Texas; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration of September 26, 1980, I find that the First Precinct of Nolan County within the State of Texas, constitutes a disaster area because of damage resulting from intermittent rains and flooding beginning on or about September 5, 1980, as a result of Tropical Storm Danielle.

Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on November 26, 1980 for economic injury until the close of business on June 26, 1981: Small Business Administration, District Office, 1205 Texas Avenue, Room 712, Lubbock, Texas 79401, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 2, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-33541 Filed 10-27-80; 8:45 am]

BILLING CODE 8025-01-M

[Proposed License No. 09/09-0276]

Novus Capital Corp.; Application for a License as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration pursuant to § 107.102 of the SBA Regulations (13 CFR 107.12 (1980), by Novus Capital Corportation, 5670 Wilshire Boulevard, Los Angeles, California 90036, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*).

The proposed Officers, directors and stockholders are:

Name and Address, title, and percent of ownership

Walter A. Obers, 5110 Valjean Avenue, Encino, CA 91436, Chairman of the Board.
Errol M. Gerson, 2510 Almaden Court, Los Angeles, CA 91316, President and General Manager.
William L. Callender, 4640 Louise Avenue, Encino, CA 91316, Secretary.
James R. Wegge, Jr., 8324 Zitola Terrace, Playa Del Rey, CA 90291, Treasurer.
B. Laurence Rogers, 2030 Fox Hills Drive, Los Angeles, CA 90025, Vice President.
Jerry E. Pohlman, 1665 North Sycamore, Hollwood, CA 90028, Vice President.
P. Edward Kent, 106 Paseo De Suenos, Redondo Beach, CA 90277, Vice President
Helen M. Rockman, 1710 Malcolm Avenue, Los Angeles, CA 90024, Assistant Secretary.
California Federal Savings & Loan Association (CF), 5670 Wilshire Blvd., Los Angeles, CA 90036, 100 percent.

CF is America's largest federally chartered Savings and Loan Association and all of its savers and borrowers totaling approximately 500,000 are

entitled to vote on questions requiring action by members of the Association.

The Applicant proposes to begin operations with a capitalization of $605,000 and will be equity rather than collateral oriented in its investments. Applicant intends to render management consulting services to clients and other small business concerns. Such services will be performed by the officers and directors of the Applicant, all of whom are affiliated with CF.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the new company under this management, including adequate profitability and financial soundness, in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Acting Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in Los Angeles, California.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 22, 1980.

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 80-33542 Filed 10-27-80; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0237]

Zenith Capital Corp.; Issuance of License To Operate as a Small Business Investment Company

On August 12, 1980, a notice was published in the **Federal Register** (45 FR 53629) stating that an application had been filed by Zenith Capital Corp., Suite 218, 5150 North Shepherd, Houston, Texas 77018, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102)), for a license to operate as a small business investment company (SBIC).

Interested parties were given until the close of business August 27, 1980, to submit their written comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, and after having considered the application and all other information, SBA issued License No. 06/06-0237, on October 10, 1980, to Zenith Capital Corp. to operate as an SBIC.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 22, 1980.

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 80-33543 Filed 10-27-80; 8:45 am]

BILLING CODE 8025-01-M

Small Business Continuity; Meeting

Pursuant to statutory authority set forth in Section 634d of Title 15, United States Code, the Chief Counsel for Advocacy of the Small Business Administration, Milton D. Stewart, Esquire, with the approval of the Administrator, A. Vernon Weaver, and the assistance of a Special Task Group of small business people, will conduct a public meeting in Washington, D.C. on November 18, 1980 on the subject of "Small Business Continuity." The meeting will convene in the "California Room" of the Capital Hilton Hotel, 16th & "K" Streets, N.W., at 9:00 AM (EDT).

The Office of the Chief Counsel for Advocacy will continue its study of the question of what changes are needed in laws, regulations or institutions in order to enhance the financing of a change of ownership on the exit or retirement of owners, or the death or disability of founders or family members.

The meeting is open to the public. Any member of the public may participate as an "Observer" and may submit written comments to the Office of the Chief Counsel for Advocacy before, during or after the meeting. All communications or inquiries regarding the meeting should be addressed to: Tim C. Ford, Office of the Chief Counsel for Advocacy, U.S. Small Business Administration, 1441 L Street, N.W., Room 219, Washington, D.C. 20416, (202) 653-6076.

Dated: October 23, 1980.

Milton D. Stewart,

Chief Counsel for Advocacy.

[FR Doc. 80-33544 Filed 10-27-80; 8:45 am]

BILLING CODE 8025-01-M

NATIONAL COMMISSION ON SOCIAL SECURITY

Notice of Meeting

October 20, 1980.

The National Commission on Social Security has changed the dates and location of its Friday, October 31 and Saturday, November 1, meetings in Washington, D.C.

The meeting will now be held on Friday, November 7 and Saturday, November 8, at the Hyatt Regency Hotel, 400 New Jersey Avenue, N.W., Washington, D.C. The meeting on November 7 will be in the Concord Room and the Meeting on November 8 will be in the Columbia III Room. The purpose of the meetings to discuss drafts of the final report of the Commission, is unchanged.

As previously announced, the meeting will begin each day at 9:00 a.m. and continue until Commission business is completed, but no later than 5:00 p.m. The meeting will be open to the public, in accordance with the Federal Advisory Committee Act.

Additional information about the meeting may be obtained from the Commission office: Room 126-Pension Building, 440 G Street, N.W., Washington, D.C. 20218, Phone: (202) 376-2622.

Francis J. Crowley,

Executive Director.

[FR Doc.80-33495 Filed 10-27-80; 8:45 am]

BILLING CODE 6820-AC-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice CM-8/336]

Advisory Committee on International Investment, Technology, and Development; Meeting

The Department of State Advisory Committee on International Investment, Technology, and Development will hold its thirteenth meeting on November 13 from 9:00 a.m. until 4:00 p.m. The meeting will be held in the Loy Henderson Conference Room of the State Department, 2201 C Street, N.W., Washington, D.C. 20520. The meeting will be open to the public. Please use the "C" street entrance to the State Department building.

The purpose of the meeting will be to discuss: (a) recent significant developments in technology and international investment related work in international fora; (b) foreign investment in the U.S.; (c) bilateral investment treaties; and (d) the activities of advisory Committee working groups during the past year and possible areas for future work.

Requests for further information on the meeting should be directed to Philip T. Lincoln, Jr., Department of State, Office of Investment Affairs, Bureau of Economic and Business Affairs, Washington, D.C. 20520. He may be reached by telephone on (area code 202) 632-2728.

Members of the public wishing to attend the meeting must contact Mr. Lincoln's office in order to arrange entrance to the State Department building.

The Chairman of the Advisory Committee, will as time permits, entertain oral comments from members of the public attending the meeting.

Dated: October 21, 1980

Philip T. Lincoln, Jr.,

Executive Secretary.

[FR Doc. 80-33521 filed 10-27-80; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/335]

Advisory Committee on the Law of the Sea; Partially Closed Meeting

In accordance with Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) as amdended by Pub. L. 94-409 Section 5(c), notice is hereby given that the Advisory Committee on the Law of the Sea will meet in closed session on Thursday, November 13 and in open session on Friday, November 14, 1980. The open session of the meeting will convene November 14 at 10:00 a.m. in Room 1205, U.S. Department of State, 21st and C Streets, N.W., Washington, D.C.

The purpose of the closed meeting is to consider specific conference issues and planning and policy preparations for the U.S. Delegation to the Tenth Session of the Third United Nations Conference on the Law of the Sea to be held in either New York or Geneva beginning March, 1981. During these closed sessions, documents classified under the provisions fo Executive Order 12065 will be discussed.

These documents relate to the issues which the United States has negotiated or will negotiate at the Conference. The documents are exempt under 5 USC 552 b(c)(1) and 5 USC 552 b(c)(9), and may be withheld from disclosure in the public interest.

The issues cover such subjects as freedom of navigation on the high seas and in straits used for international navigation and related national security interests, the nature of a deep seabeds mining regime and deep seabed mining legislation, the continental margin, the economic zone, fisheries, marine polution, scientific research, dispute settlement, and other topics involving U.S. national security and foreign relations matters. Premature disclosure of the contents of these documents could adversely affect our foreign relations intrests and jeopardize the chances of obtaining a timely and satisfactory Law of the Sea Treaty.

The open session of the Advisory Committee meeting will discuss all principal agenda issues which have been considered during the Third United Nations Conference on the Law of the Sea, including those issues stated above, but will not examine the classified items discussed during the closed session.

The Advisory Committee on the Law of the Sea represents a broad cross-section of industries, professions, academic disciplines, and other public groups. As such, it will comprehensively review the proposals which have come and will come before the Conference.

At the open session, beginning at 10:00 a.m., November 14, the general public attending may participate in the discussion subject to instructions of the Chairman.

As entrance to the State Department is controlled, members of the public who wish to attend the open session should contact Marsha Bellavance and provide their name and affiliation to facilitate their attendance. Her telephone number is (202) 632-0041.

George Taft,

Director, Office of the Law of the Sea Negotiations.

October 8, 1980.

[FR Doc. 80-33520 Filed 10-27-80; 8:45 am]

BILLING CODE 4710-10-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Additional Hearings on Articles Being Considered for Duty Modification and Correction In List of Such Articles

1. Notice of Public Hearings. Pursuant to section 133 of the Trade Act of 1974 (19 U.S.C. 2153), the Trade Policy Staff Committee, chaired by the Office of the United States Trade Representative, has scheduled public hearings for November 18, 19, and 20, 1980, concerning articles being considered for possible duty modification, notice of which was published in the **Federal Register** of October 15, 1980 (45 FR 68497). Due to the large number of requests received to present testimony at the public hearings scheduled for November 5-7, 1980, some individuals originally scheduled to appear at that time will present their views at the November 18, 19, and 20 hearings instead.

2. Time and Place of Hearings. The Committee's hearings will open at 10:00 a.m., EST, on November 18, 1980, and will continue on November 19, and 20, 1980, if required. They will be held in Washington, DC, Office of the United States Trade Representative, 1800 G Street, NW, Room 730.

3. Requests to Present Oral Testimony. All requests to present oral testimony must be received by the Secretary of the Trade Policy Staff Committee, Room 735, 1800 G Street, NW, Washington, DC 20506 not later than close of business Friday, November 7, 1980. Written briefs in support of the oral testimony are due close of business Friday, November 14, 1980. Procedures for the submission of written briefs and rebuttal briefs, and other relevant information concerning the hearing process is contained in the **Federal Register** of August 28, 1980 (45 FR 57636).

4. All communications with regard to these hearings should be addressed to: Secretary, Trade Policy Staff Committee, Office of the U.S. Trade Representative, 1800 G Street, NW, Room 735, Washington, DC 20506. The telephone number of the Secretary of the Committee is (202) 395-3487.

5. Change in Place of Hearings (November 7). The location of Committee's hearings scheduled for November 7 has been changed to the New Executive Office Building, entrance on 17th Street between Pennsylvania Avenue and H Street, NW, Room 10103.

6. Correction. In the **Federal Register** of August 8, 1980, appearing on Page 52978, Annex I should be corrected by deleting TSUS items 161.71 and 700.58.

Ann H. Hughes,

Chairman, Trade Policy Staff Committee.

[FR Doc. 33464 Filed 10-27-80; 8:45 am]

BILLING CODE 3190-01-M

Trade Policy Staff Committee; Public Consultations on the President's North American Trade Agreement Report to the Congress

The Trade Policy Staff Committee (TPSC), in accordance with section 1104 of the Trade Agreements Act of 1979 (Pub. L. 96-39 S1104), is engaged in the preparation of a Presidential report to the Congress on the desirability of trade agreements with other North American countries.

The report will cover the countries in the northern portion of the western hemisphere (Canada, Mexico, and those of Central America and the Caribbean). It will address all aspects of U.S. economic relationships with those countries that bear upon U.S. trade including agricultural, industrial and trade policies, and energy, transportation, services and investment issues. The report will represent a comprehensive examination and

analysis of North American trade policy issues, and will provide valuable information for the development of U.S. policies concerning North American trade.

Trade is becoming an increasingly important component of the relationship between the United States and other countries of North America. Canada is our single most important trade partner, and Mexico has moved from being our fifth largest trading partner to a position of third in 1980.

In order to obtain the maximum amount of information regarding the issues of concern to the public for inclusion in the report, the TPSC is seeking the public's views on North American trade issues through two mechanisms. First, a series of public consultation sessions are tentatively planned by the TPSC in order to allow TPSC members to hear the views of the public on wide-ranging issues relating to U.S. trade with other North American countries. Second, written submissions (12 typed copies) on these matters are invited from the public to be received on or before January 16, 1981.

The public sessions are being planned to ensure that the report receives the benefit of an exchange of views between the U.S. Government and parties having an interest in the detailed and general aspects of U.S. trade and economic relationships with other North American countries. Presentations from the public providing information, problems, analyses, or proposals concerning any aspect of North American trade issues are invited at these sessions. The conferences will be held in the cities and on the dates noted below, if sufficient interest is demonstrated.

City and Date

Minneapolis—December 16
Seattle—December 18
New York—January 8
Dallas—January 13
Los Angeles—January 15

Parties wishing to make a presentation must notify, by November 14, 1980 for Minneapolis or Seattle, and by December 1, 1980 for New York, Dallas or Los Angeles, to Carolyn Frank, TPSC Secretary (Office of the U.S. Trade Representative, Executive Office of the President, Washington, D.C. 20506) of their intention, giving:

1. Their names, addresses, and telephone number
2. The city in which they will attend the hearing
3. A brief summary of their presentation.

Remarks should be limited to no more than 15 minutes, to allow time for possible questions from the TPSC members and adequate discussion. Participants should provide 10 typed copies of their presentation at the time of the hearings.

The TPSC will notify those wishing to participate in the consultations concerning a confirmation of the hearings and details of the time and place in the cities noted above.

Persons who cannot attend one of the consultations are invited to submit a statement (12 typed copies) to Carolyn Frank, TPSC Secretary (Office of the U.S. Trade Representative, Executive Office of the President, Washington, D.C. 20506) by January 16, 1981.

For further information, please contact Harvey E. Bale, Jr., (202) 395–3510.

Ann H. Hughes,

Chairman, Trade Policy Staff Committee.

[FR Doc. 80-33463 Filed 10-27-80; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF THE TREASURY

Treasury Notes of October 15, 1980, Series X-1982

[Public Debt Series—No. 31-80]

October 23, 1980.

The Secretary announced on October 22, 1980, that the interest rate on the notes designated Series X-1982, described in Department Circular—Public Debt Series—No. 31-80, dated October 15, 1980, will be 12⅛ percent. Interest on the notes will be payable at the rate of 12⅛ percent per annum.

Supplementary Statement: The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

Paul H. Taylor,

Fiscal Assistant Secretary.

[FR Doc. 80-33527 Filed 10-27-80; 8:45 am]

BILLING CODE 4810-40-M

UPPER MISSISSIPPI RIVER BASIN COMMISSION

Notice of Meeting

The 36th Quarterly Commission Meeting of the Upper Mississippi River Basin Commission will be held on Wednesday and Thursday, November 12–13, 1980 at the Landmark Center, 75 West Fifth Street, St. Paul, Minnesota. The Commission meeting will convene in Courtroom 317 on Wednesday, November 12th, at 1:30 P.M. and adjourn at 4:30 P.M. and reconvene on Thursday, November 13th, at 9:30 A.M. The meeting is expected to include regular Commission business and reports on the status of the Master Plan Study.

Neil S. Haugerud,

Chairman.

[FR Doc. 80-33494 Filed 10-27-80; 8:45 am]

BILLING CODE 8410-02-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 210
Tuesday, October 28, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL COMMUNICATIONS COMMISSION.

The following item has been passed at the request of Commissioner Anne P. Jones from the October 28, 1980 Open Meeting to the November 6, 1980 Open Meeting. This item was previously listed in the Commission's Public Notice (#00617) of October 21, 1980.

Agenda, Item Number, and Subject

Broadcast—1—*Title:* Petition to reassign VHF-TV Channel 9 from New York City to a northern New Jersey community. *Subject:* The Commission will consider a petition from Senators Bradley and Williams of New Jersey to reassign VHF-TV Channel 9 from New York to a northern New Jersey community. Channel 9 is currently subject to an outstanding license (Station WOR-TV, RKO General, Inc.) which has not been renewed (appeal pending) and an application for a new station from Multi-State Communications.

Additional information concerning this meeting may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254-7674

Issued: October 24, 1980.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[S-1971-80 Filed 10-24-80; 2:58 pm]

BILLING CODE 8712-01-M

2

FEDERAL ENERGY REGULATORY COMMISSION.

October 22, 1980.

TIME AND DATE: 11:45 a.m., October 22, 1980.

PLACE: Room 9306, 825 North Capitol Street, Washington, D.C. 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Agency's participation in a Civil action.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary; telephone (202) 357-8400.

Kenneth F. Plumb,

Secretary.

[S-1974-80 Filed 10-24-80; 3:14 pm]

BILLING CODE 6450-85-M

3

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published October 27, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., October 29, 1980.

CHANGE IN MEETING: The following item has been added:

Item Number, Docket Number, and Company

RP-2. RP79-64, Florida Gas Transmission Company.

[S-1975-80 Filed 10-24-80; 3:14 pm]

BILLING CODE 6450-85-M

4

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

October 22, 1980.

TIME AND DATE: 10 a.m., Wednesday, October 29, 1980.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Cleveland Cliffs Iron Company, Docket No. VINC 79-68-PM, etc. (Issues include interpretation and application of the berm standard at 30 CFR § 55.9-22).
2. Burgess Mining and Construction Co., Docket No. SE 79-42-R (Issues include interpretation and application of the berm standard at 30 CFR § 77.1605(k)).
3. El Paso Rock Quarries, Docket No. DENV 79-139-PM (Issues are same as in Cleveland Cliffs Iron Co.).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, 202-653-5632.

[S-1969-80 Filed 10-24-80; 10:06 am]

BILLING CODE 6820-12-M

5

NUCLEAR REGULATORY COMMISSION.

DATE: Thursday, October 30 and Friday, October 31, 1980.

PLACE: Commissioners Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open/closed.

MATTERS TO BE CONSIDERED: Thursday, October 30:

10 a.m.

Discussion of Management-Organization and Internal Personnel Matters closed—Exemptions 2 and 6.

Friday, October 31:

2 p.m.

1. Meeting with Industry Groups (AIF) Working on Control Room Design Questions (Approx 2 hours, public meeting).
2. Affirmation Session (public meeting).
   a. Order in Tyrone.
   b. Free Transcripts in LaCrosse Proceeding.
   c. Request by UCS for Stay of Policy Statement.
   d. Notice on Transportation of Waste.
   e. EDO Delegation of Authority.
   f. Indian Point (Cooling Towers).
   g. Order on Instructions to Board on Indian Point Proceeding.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634-1410.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634-1498.

Those planning to attend a meeting should reverify the status on the day of the meeting.

Dated: October 23, 1980.

Walter Magee,

Office of the Secretary.

[S-1973-80 Filed 10-24-80; 3:06 pm]

BILLING CODE 7590-01-M

6

NUCLEAR REGULATORY COMMISSION.

DATE: October 27 and 28, 1980.

PLACE: Commissioners conference room, 1717 H Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: Monday, October 27:

2 p.m.

Continuation of Discussion of Fire Protection Program (approximately 2 hours, public meeting).

Tuesday, October 28:

10 a.m.

Briefing on Clarification of TMI Action

Plan Requirements (approximately 1½ hours, public meeting).

2 p.m.

Presentations by GE; AIF and EPRI on Anticipated Transients Without Scram (ATWS) (approximately 2 hours, public meeting).

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634–1498.

Those planning to attend a meeting should reverify the status on the day of the meeting.

Dated: October 21, 1980.

Walter Magee,

Office of the Secretary.

[S–1976–80 Filed 10–24–80; 3:24 pm]

BILLING CODE 7590–01–M

7

[OPO401]

PAROLE COMMISSION.

(The Commissioners presently maintaining offices at Washington, D.C. Headquarters.)

TIME AND DATE: 9:30 a.m., Thursday, November 6, 1980.

PLACE: Room 724, 320 First Street NW., Washington, D.C. 20537.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Referrals from Regional Commissioners of approximately 5 cases in which inmates of federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSONS FOR MORE INFORMATION: Linda Wines Marble, Chief Case Analyst, National Appeals Board, U.S. Parole Commission (202) 724–3094.

[S–1970–80 Filed 10–24–80; 11:10 am]

BILLING CODE 4410–01–M

V 45 O C 28 80 UMI

federal register

Tuesday
October 28, 1980

Part II

Department of Agriculture

Federal Grain Inspection Service

Proposed Revision to the U.S. Standards for Beans

V 4 5 O C 2 8 8 0 UMI

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

Proposed Revision to the United States Standards for Beans

AGENCY: Federal Grain Inspection Service [1].

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) proposes to revise the format of the grade tables in the U.S. Standards for Beans (7 CFR § 68.101 *et seq.*) issued under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), to include the grade factor limitations presently shown in footnotes, and the special grades and special grade requirements currently shown in § 68.138. The number of grade tables would increase from four to eight allowing the grade tolerances for the classes of beans to be presented in a concise and clear format. Section 68.138 would also be revised to include "U.S. Choice Handpicked" and "U.S. Prime Handpicked" in the class Pea beans, and "U.S. Extra No. 1" in the class Large Lima, Baby Lima, and Miscellaneous Lima beans as special grade designations. The grade designation currently shown in § 68.137 would be revised to clarify the grade U.S. Substandard. Inasmuch as the factor information appears elsewhere on the certificate, FGIS is also proposing that the requirement to show the percentages of splits, damaged beans, contrasting classes, and foreign material on the grade line be deleted when the grade U.S. Substandard is applied. These proposed format revisions to the grade tables in the United States Standards for Beans are made in the interest of clarity and to promote a better understanding of the standards, and do not change any of the present grading factors or grading tolerances.

DATE: Written comments must be submitted on or before December 29, 1980.

ADDRESS: Comments should be submitted in writing in duplicate to the Director, Issuance and Coordination Staff, Federal Grain Inspection Service, USDA, Room 1127, Auditors Building, 1400 Independence Ave., S.W., Washington, D.C. 20250. All comments received will be made available for public inspection at the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: James L. Driscoll, Director, Federal Grain Inspection Service, Standardization Division, U.S. Department of Agriculture, Bldg. #221, Richards-Gebaur AFB, Grandview, Missouri 64030, Telephone (816) 348–2861. The Draft Impact Analysis, describing the options considered in developing this proposed rule and the impact of implementing each option, is available on request from the Director, Issuance and Coordination Staff, (202) 447–3910.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "not significant."

The Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), provides for the issuance by the Secretary of Agriculture of standards with respect to quality, condition, quantity, grade, and packaging of agricultural commodities. It further grants authority for the inspection of commodities upon request from interested parties and the collection of a fee to cover the cost of service.

Pursuant to sections 203 and 205 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622 and 1624), notice is hereby given in accordance with the administrative procedure provisions of Section 553 of Title 5, United States Code, that the U.S Department of Agriculture proposes revisions to the United States Standards for Beans.

The Department, in the interest of clarity and to promote a better understanding of the standards promulgated under the Act, proposes to revise the format of the grade tables in the United States Standards for Beans (7 CFR § 68.101 *et seq.*).

The present format of the United States Standards for Beans has caused some difficulty in correctly applying the standards. Presently, many grade determining factors are cited in footnotes, special grade tolerances are not contained in a tabular form where they could be easily applied, and special grade requirements are separated from other grade requirements.

It is proposed that the tables presently shown in § 68.133 through § 68.138 be revised and that the number of grade tables be expanded from the present four tables to eight tables covering § 68.133 to § 68.140. Further, the present sections 68.137 and 68.138 have been rewritten to incorporate into the appropriate proposed tables some of the information which currently appears in the text of the two sections. In addition, it is proposed that in section 68.137, the designation for the grade U.S. Substandard be amended to delete the requirement that the percentages for splits, damaged beans, contrasting classes, and foreign material be shown on the grade line. This factor information appears elsewhere on the certificate if an official determination is made during the course of inspection. The present § 68.137, Grade Designations, as revised, would be redesignated as § 68.141; and the present § 68.138, Special grades, special grade requirements, and special grade designations, as revised, would be redesignated as § 68.142, Special Grade Designations.

Accordingly, it is proposed that §68.133 through § 68.142 of the United States Standards for Beans read as follows:

Subpart B—United States Standards for Beans [2]

* * * * *

BILLING CODE 3410-02-M

[1] Authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946 as amended (7 U.S.C. 1621–1627) concerning inspection and standardization activities related to grain and similar commodities and products thereof, has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75a; 7 CFR 68.2(e)).

[2] Compliance with the provisions of these standards does not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or other Federal Laws.

GRADES, GRADE REQUIREMENTS, GRADE DESIGNATIONS
SPECIAL GRADES, SPECIAL GRADE REQUIREMENTS AND SPECIAL GRADE DESIGNATIONS

§68.133 Grades, Grade Requirements, Special Grades and Special Grade Requirements for the Class PEA BEANS.

SPECIAL GRADE and GRADE	PERCENT MAXIMUM LIMITS OF ---								
	GENERAL APPEARANCE	MOISTURE 1./	TOTAL DEFECTS (Total damaged, Total foreign material, Contrasting classes, Splits)	BADLY DAMAGED	FOREIGN MATERIAL: TOTAL (include stones)	FOREIGN MATERIAL: STONES	CONTRASTING CLASSES 2./	CLASSES THAT BLEND 3./
U.S. Choice Handpicked	THE SPECIAL GRADE OFF COLOR MAY BE APPLIED	18.0	1.5	0.3	0.0	0.0	0.0	0.0
U.S. Prime Handpicked		18.0	3.0	0.3	0.0	0.0	0.0	0.0
U.S. No. 1		18.0	2.0	2.0	0.4	0.2	0.5	4.0
U.S. No. 2		18.0	3.0	3.0	0.8	0.4	1.0	4.0
U.S. Substandard		18.0	U.S. Substandard shall be beans which do not meet the requirements for the grades U.S. Choice Handpicked through U.S. No. 2 or U.S. Sample grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U.S. Sample grade.					
U.S. Sample grade		18.0	U.S. Sample grade shall be beans which are musty, sour, heating, materially weathered, or weevily; which have any commercially objectionable odor; which contain insect webbing or filth, animal filth, any unknown foreign substance, broken glass, or metal fragments; or which are otherwise of distinctly low quality.					

1./ Beans with more than 18.0 percent moisture are assigned the Special grade high moisture.
2./ Beans with more than 2.0 percent contrasting classes are classed Mixed beans.
3./ Beans with more than 15.0 percent classes that blend are classed Mixed beans.

§68.134 Grades and Grade Requirements for the Class BLACKEYE BEANS.

GRADE	GENERAL APPEARANCE	PERCENT MAXIMUM LIMITS OF ---							
		MOISTURE 1./	TOTAL DEFECTS (Total damaged, Total foreign material, Contrasting classes, Splits)	TOTAL DAMAGED	CLEAN CUT WEEVIL BORED 2./	FOREIGN MATERIAL: TOTAL (include stones)	FOREIGN MATERIAL: STONES	CONTRASTING CLASSES 3./	CLASSES THAT BLEND 4./
U.S. No. 1	THE SPECIAL GRADE OFF COLOR MAY BE APPLIED	18.0	4.0	2.0	0.0	0.5	0.2	0.5	5.0
U.S. No. 2		18.0	6.0	4.0	0.2	1.0	0.4	1.0	10.0
U.S. No. 3		18.0	8.0	6.0	0.5	1.5	0.6	2.0	15.0
U.S. Substandard		18.0	U.S. Substandard shall be beans which do not meet the requirements for the grades U.S. No. 1 through U.S. No. 3 or U.S. Sample grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U.S. Sample grade.						
U.S. Sample grade		18.0	U.S. Sample grade shall be beans which are musty, sour, heating, materially weathered, or weevily; which have any commercially objectionable odor; which contain insect webbing or filth, animal filth, or any unknown foreign substance, broken glass or metal fragments; or which are otherwise of distinctly low quality.						

1./ Beans with more than 18.0 percent moisture are assigned the Special grade high moisture.
2./ Blackeye beans with more than 0.5 percent clean cut weevil bored beans are graded U.S. Sample grade.
3./ Beans with more than 2.0 percent contrasting classes are classed Mixed beans.
4./ Beans with more than 15.0 percent classes that blend are classed Mixed beans.

§68.135 Grades, Grade Requirements, Special Grades, and Special Grade Requirements for the Classes YELLOWEYE BEANS and CRANBERRY BEANS.

SPECIAL GRADE and GRADE	GENERAL APPEARANCE	PERCENT MAXIMUM LIMITS OF ---								
		MOISTURE 1./	TOTAL DEFECTS (Total damage, Total foreign material, Contrasting classes, Splits)	TOTAL DAMAGE (Includes Badly damaged)	BADLY DAMAGED	FOREIGN MATERIAL: TOTAL (Include Stones)	FOREIGN MATERIAL: STONES	CONTRASTING CLASSES 2./	CLASSES THAT BLEND 3./	WHITE BEANS SIMILAR IN SIZE AND SHAPE IN THE CLASS YELLOWEYE BEANS, IN ADDITION TO CLASSES THAT BLEND
[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
U.S. No. 1	THE SPECIAL GRADE OFF COLOR MAY BE APPLIED	18.0	4.0	2.0	2.0	0.5	0.2	0.5	5.0	5.0
U.S. No. 2		18.0	6.0	4.0	4.0	1.0	0.4	1.0	10.0	5.0
U.S. No. 3		18.0	8.0	6.0	6.0	1.5	0.6	2.0	15.0	---
U.S. Substandard		18.0	U.S. Substandard shall be beans which do not meet the requirements for the grades U.S. Choice Handpicked, through U.S. No. 3, or U.S. Sample grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U.S. Sample grade.							
U.S. Sample grade		18.0	U.S. Sample grade shall be beans which are musty, sour, heating, materially weathered, or weevily; which have any commercially objectionable odor; which contain insect webbing or filth, animal filth, any unknown foreign substance, broken glass or metal fragments; or which are otherwise of distinctly low quality.							

1./ Beans with more than 18.0 percent moisture are assigned the Special grade high moisture.
2./ Beans with more than 2.0 percent contrasting classes are classed Mixed beans.
3./ Beans with more than 15.0 percent classes that blend are classed Mixed beans.

§68.136 Grades, Grade Requirements, Special Grades and Special Grade Requirements for the Class PINTO BEANS.

SPECIAL GRADE and GRADE	GENERAL APPEARANCE	PERCENT MAXIMUM LIMITS OF ---						
		MOISTURE 1./	TOTAL DEFECTS (Total damaged, Total foreign material Contrasting classes, Splits)	BADLY DAMAGED	FOREIGN MATERIAL		CONTRASTING CLASSES 2./	CLASSES THAT BLEND 3./
					TOTAL (Include stones)	STONES		
U.S. Choice Handpicked	SMALL RED CRAPE OFF COLOR	18.0	2.0	0.3	0.01	0.01	0.01	5.0
U.S. No. 1 Handpicked		18.0	3.0	0.3	0.01	0.01	0.01	5.0
U.S. No. 2 Handpicked		18.0	5.0	0.3	0.01	0.01	0.01	10.0
U.S. No. 3 Handpicked		18.0	7.0	0.3	0.01	0.01	0.01	15.0
U.S. No. 1	THE SPECIAL GRADE OFF COLOR MAY BE APPLIED	18.0	3.0	3.0	0.5	0.2	0.5	5.0
U.S. No. 2		18.0	5.0	5.0	1.0	0.4	1.0	10.0
U.S. No. 3		18.0	7.0	7.0	1.5	0.6	2.0	15.0
U.S. Substandard		18.0	U.S. Substandard shall be beans which do not meet the requirements for the grades U.S. Choice Handpicked, through U.S. No. 3 or U.S. Sample grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U.S. Sample grade.					
U.S. Sample grade		18.0	U.S. Sample grade shall be beans which are musty, sour, heating, materially weathered, or weevily; which have any commercially objectionable odor; which contain insect webbing or filth, animal filth, any unknown foreign substance, broken glass or metal fragments; or which are otherwise of distinctly low quality.					

1./ Beans with more than 18.0 percent moisture are assigned the Special grade high moisture.
2./ Beans with more than 2.0 percent contrasting classes are classed Mixed beans.
3./ Beans with more than 15.0 percent classes that blend are classed Mixed beans.

§68.137 Grades, Grade Requirements, Special Grades, and Special Grade Requirements for the Classes MARROW, GREAT NORTHERN, SMALL WHITE, FLAT SMALL WHITE, WHITE KIDNEY, LIGHT RED KIDNEY, DARK RED KIDNEY, SMALL RED, PINK, BLACK TURTLE SOUP, and MISCELLANEOUS BEANS.

SPECIAL GRADE and GRADE	GENERAL APPEARANCE	PERCENT MAXIMUM LIMITS OF ---						
		MOISTURE 1./	TOTAL DEFECTS (Total damaged, Total foreign material, Contrasting classes, Splits)	BADLY DAMAGED	FOREIGN MATERIAL		CONTRASTING CLASSES 2./	CLASSES THAT BLEND 3./
					TOTAL (Include Stones)	STONES		
U.S. Choice Handpicked	SMALL RED CRAPE OFF COLOR	18.0	1.5	0.3	0.01	0.01	0.01	5.0
U.S. No. 1 Handpicked		18.0	2.0	0.3	0.01	0.01	0.01	5.0
U.S. No. 2 Handpicked		18.0	4.0	0.3	0.01	0.01	0.01	10.0
U.S. No. 3 Handpicked		18.0	6.0	0.3	0.01	0.01	0.01	15.0
U.S. No. 1	THE SPECIAL GRADE OFF COLOR MAY BE APPLIED	18.0	2.0	2.0	0.5	0.2	0.5	5.0
U.S. No. 2		18.0	4.0	4.0	1.0	0.4	1.0	10.0
U.S. No. 3		18.0	6.0	6.0	1.5	0.6	2.0	15.0
U.S. Substandard		18.0	U.S. Substandard shall be beans which do not meet the requirements for the grades U.S. Choice Handpicked, through U.S. No. 3 or U.S. Sample grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U.S. Sample grade.					
U.S. Sample grade		18.0	U.S. Sample grade shall be beans which are musty, sour, heating, materially weathered, or weevily; which have any commercially objectionable odor; which contain insect webbing or filth, animal filth, any unknown foreign substance, broken glass or metal fragments; or which are otherwise of distinctly low quality.					

1./ Beans with more than 18.0 percent moisture are assigned the Special grade high moisture.
2./ Beans with more than 2.0 percent contrasting classes are classed Mixed beans.
3./ Beans with more than 15.0 percent classes that blend are classed Mixed beans.

§68.138 Grades, Grade Requirements, Special Grades, and Special Grade Requirements for the Class MUNG BEANS.

SPECIAL GRADE and GRADE	GENERAL APPEARANCE	PERCENT MAXIMUM LIMITS OF ---							
		MOISTURE 1./	TOTAL DEFECTS (Total damaged, Total foreign material, Contrasting classes, Splits)	BADLY DAMAGED	CLEAN-CUT WEEVIL BORED 2./	FOREIGN MATERIAL: TOTAL (Include Stones)	FOREIGN MATERIAL: STONES	CONTRASTING CLASSES 3./	CLASSES THAT BLEND 4./
[illegible]	[illegible]	18.0	1.5	0.3	0.1	0.01	0.01	[illegible]	[illegible]
[illegible]	[illegible]	18.0	2.0	0.3	0.1	0.01	0.01	0.01	[illegible]
[illegible]	[illegible]	18.0	4.0	0.3	0.2	0.01	0.01	[illegible]	[illegible]
[illegible]	[illegible]	18.0	6.0	0.3	0.5	0.01	0.01	0.01	[illegible]
U.S. No. 1	THE SPECIAL GRADE OFF COLOR MAY BE APPLIED	18.0	2.0	2.0	0.1	0.5	0.2	0.5	5.0
U.S. No. 2		18.0	4.0	4.0	0.2	1.0	0.4	1.0	10.0
U.S. No. 3		18.0	6.0	6.0	0.5	1.5	0.6	2.0	15.0
U.S. Substandard		18.0	U.S. Substandard shall be beans which do not meet the grade requirements for the grades U.S. Choice Handpicked, through U.S. No. 3 or U.S. Sample grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U. S. Sample grade.						
U.S. Sample grade		18.0	U.S. Sample grade shall be beans which are musty, sour, heating, materially weathered, or weevily; which have any commercially objectionable odor; which contain insect webbing or filth, animal filth, any unknown foreign substance, broken glass or metal fragments; or are otherwise of distinctly low quality.						

1./ Beans with more than 18.0 percent moisture are assigned the Special grade high moisture.
2./ Mung beans with more than 0.5 percent clean cut weevil bored beans are graded U.S. Sample grade.
3./ Beans with more than 2.0 percent contrasting classes are classed Mixed beans.
4./ Beans with more than 15.0 percent classes that blend are classed Mixed beans.

§68.139 Grades, Grade Requirements, Special Grades, and Special Grade Requirements for the Class LARGE LIMA BEANS.

GRADE	GENERAL APPEARANCE	PERCENT MAXIMUM LIMITS OF ---												
		MOISTURE 1./	TOTAL BLISTERED WRINKLED AND DEFECTS (Blistered, wrinkled, Total damage, Total foreign material, Contrasting classes, Splits)	SPLITS	BROKENS	BEANS THROUGH A SIEVE: 30/64"	BEANS THROUGH A SIEVE: 28/64"	BEANS THROUGH A SIEVE: 24/64"	DAMAGED BEANS: TOTAL	DAMAGED BEANS: BADLY DAMAGED	FOREIGN MATERIAL: TOTAL (Include stones)	FOREIGN MATERIAL: STONES	CONTRASTING CLASSES 2./	CLASSES THAT BLEND 3./
[illegible]	[illegible]	[illegible]	[illegible]	2.0	3.0	20	5	—	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
U.S. No. 1	THE SPECIAL GRADE OFF COLOR MAY BE APPLIED	18.0	6.0	3.0	5.0	--	25	5	2.0	0.5	0.5	0.2	0.5	5.0
U.S. No. 2		18.0	9.0	5.0	5.0	--	40	5	3.0	1.0	1.0	0.3	1.0	10.0
U.S. Substandard		18.0	U.S. Substandard shall be beans which do not meet the requirements for the grades U.S. Extra No. 1, through U.S. No. 2 or U.S. Sample grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U.S. Sample grade.											
U.S. Sample Grade		18.0	U.S. Sample grade shall be beans which are musty, sour, heating, materially weathered, or weevily; which have any commercially objectionable odor; which contain insect webbing or filth, animal filth, any unknown foreign substance, broken glass or metal fragments; or which are otherwise of distinctly low quality.											

1./ Beans with more than 18.0 percent moisture are assigned the Special grade high moisture.
2./ Beans with more than 2.0 percent contrasting classes are classed Mixed beans.
3./ Beans with more than 15.0 percent classes that blend are classed Mixed beans.
4./ Must be of good natural color.

§68.140 Grades, Grade Requirements, Special Grades, and Special Grade Requirements for the classes BABY LIMA and MISCELLANEOUS LIMA BEANS.

GRADE	GENERAL APPEARANCE	PERCENT MAXIMUM LIMITS OF ---							
		MOISTURE 1/	BLISTERED WRINKLED AND/OR BROKEN	SPLITS	TOTAL DEFECTS (Total damage, Total foreign material, Contrasting classes)	BADLY DAMAGED	FOREIGN MATERIAL TOTAL (Include stones)	FOREIGN MATERIAL STONES	CONTRASTING CLASSES 2/	CLASSES THAT BLEND 3/
U.S. No. 1	THE SPECIAL GRADE OFF COLOR MAY BE APPLIED	18.0	3.0	3.0	2.0	1.0	0.5	0.2	0.5	5.0
U.S. No. 2		18.0	5.0	5.0	3.0	1.5	1.0	0.3	1.0	10.0
U.S. No. 3		18.0	8.0	8.0	5.0	2.0	1.5	0.6	2.0	15.0
U.S. Substandard		18.0	U.S. Substandard shall be beans which do not meet the requirements for the grades U.S. Extra No. 1 through U.S. No. 3 or U.S. Sample grade. Beans which are not well screened shall also be U.S. Substandard, except for beans which meet the requirements for U.S. Sample grade.							
U.S. Sample grade		18.0	U.S. Sample grade shall be beans which are musty, sour, heating, materially weathered, or weevily; which have any commercially objectionable odor; which contain insect webbing or filth, animal filth, any unknown foreign substance, broken glass or metal fragments; or which are otherwise of distinctly low quality.							

1/ Beans with more than 18.0 percent moisture are assigned the Special grade high moisture.
2/ Beans with more than 2.0 percent contrasting classes are classed Mixed beans.
3/ Beans with more than 15.0 percent classes that blend are classed Mixed beans.
4/ Must be of good natural color.

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§ 68.141 Grade designations.

The grade designation for all classes of beans shall include in the following order: (1) the letters "U.S."; (2) the name or number of the grade or the name of any applicable special grade designation as appears in section 68.142 (a)–(d); (3) the class, and in the case of Mixed beans, the name and percentage of each class in the mixture; and (4) the special grade designations for "high moisture" or "off-color" if applicable as appears in section 68.142 (e) and (f). In addition, the designation for the grade "U.S. Substandard" shall include the percentage of sound beans. Mixed beans shall be graded according to the grade requirements of the class of beans which predominates in the mixture. The factors of contrasting classes, classes that blend and sieve size requirements in Large Limas shall be disregarded in Mixed beans.

§ 68.142 Special grade designations.

(a) *Choice handpicked.* The special grade designation "Choice handpicked" shall be applicable to all classes of beans, except Blackeye, Large Lima, Baby Lima, Miscellaneous Lima, and Mixed beans. The "Choice handpicked" designation shall include in the following order: (1) the letters "U.S."; (2) the words "Choice handpicked"; and (3) the class.

(b) *Prime handpicked.* The special grade designation "Prime handpicked" is applicable only to the class "Pea beans". The "Prime handpicked" designation shall include in the following order: (1) the letters "U.S."; (2) the words "Prime handpicked"; and (3) "Pea beans."

(c) *Handpicked.* The special grade designation "Handpicked" is applicable to all classes of beans, except Pea, Blackeye, Large Lima, Baby Lima, Miscellaneous Lima, and Mixed beans. The "Handpicked" designation shall include in the following order: (1) the letters "U.S."; (2) the numerical grade; (3) the word "Handpicked"; and (4) the class.

(d) *Extra No. 1.* The special grade designation "Extra No. 1" is applicable to the classes Large Lima, Baby Lima and Miscellaneous Lima beans. The "Extra No. 1" designation shall include in the following order: (1) the letters "U.S."; (2) the words "Extra No. 1"; and (3) the class.

(e) *High moisture.* The special grade designation "High moisture" is applicable to all classes of beans containing over 18.0 percent moisture. The "High moisture" designation shall follow the class name with the words "High moisture" and the percentage of moisture.

(f) *Off-color.* The special grade designation "Off-color" shall be applicable to all classes of beans that upon the removal of total defects, are distinctly off-color due to age or any other natural cause but are not materially weathered. The "Off-color" designation shall follow the name of the class with the words "Off-color." The special grades "Choice Handpicked," "Prime Handpicked," "Handpicked" and "Extra No. 1" and the grade U.S. No. 1 in the class Pea beans shall not be applied if the beans are determined to be off-color.

* * * * *

(Secs. 203, 205, 60 Stat 1087, 1090 as amended; 7 U.S.C. 1622, 1624)

Done in Washington, D.C., on: October 22, 1980.

D. R. Galliart,

Acting Administrator.

[FR Doc. 80-33450 Filed 10-27-80; 8:45 am]

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federal register

Tuesday
October 28, 1980

Part III

Department of Energy

Coordinated State Grant Programs; Proposed Rulemaking and Notice of Public Hearings

V 45 OC 28 80 UMI

DEPARTMENT OF ENERGY

10 CFR Parts 420, 440, 455, 465, and 477

Coordinated State Grant Programs

AGENCY: Department of Energy.

ACTION: Proposed rulemaking and notice of public hearings.

SUMMARY: The Department of Energy (DOE) proposes to establish procedures to coordinate energy conservation programs conducted by the States and to consolidate the process by which a State applies to the Department of Energy for financial assistance for these programs. For these purposes, this proposed rulemaking consolidates in 10 CFR Part 420 the regulations for the State Energy Conservation Program (10 CFR Part 420), the Energy Extension Service (10 CFR Part 465) and the Program for Weatherization Assistance for Low-Income Person (10 CFR Part 440). It also establishes the procedure by which a State makes one application for financial assistance for these programs, the Emergency Energy Conservation Program (10 CFR Part 477) and for its expenses administering the Energy Conservation Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions (10 CFR Part 455). Finally, today's proposal establishes requirements for the submission, review and approval of a coordinated State grant application and provides coordinated administrative requirements.

DATES: Written comments must be received on or before December 29, 1980.

Public hearings will be held as follows:

December 3 and 4, 1980—San Francisco, Calif.

December 9 and 10, 1980—Washington, D.C.

See supplementary information, Section III for further information.

ADDRESSES: Public hearing location—Washington, D.C., Department of Energy, Room 2105, 9:30 am, 2000 M Street, NW. All written comments and requests to speak at the Washington, D.C. hearing should be addressed to: Ms. Carol Snipes, Hearings and Dockets Conservation and Solar Energy, Department of Energy, Mail Stop 6B–025, 1000 Independence Avenue, SW., Washington, D.C. 20585, ATTN: CAS–RM–80–510.

Public hearing location: San Francisco, California, Ramada Inn, Fisherman's Wharf, Crocker Hopkins Room, 9:30 am., 590 Bay Street.

Requests to speak at the San Francisco hearing should be addressed to: Terry Osborne, Department of Energy, Region IX, 333 Market Street, San Francisco, California 95105.

FOR FURTHER INFORMATION CONTACT:

Ron Bowes, Grants Management and Technical Assistance, Department of Energy, Mail Stop 2H–027, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–2308.

Richard F. Kessler or Catherine Edgerton, Office of General Counsel, Department of Energy, Mail Stop 6A–152, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252–9519.

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I. Background

Congress, Regions and States have all expressed interest in coordinating the application and administrative procedures for energy conservation and renewable resource programs. This proposed rulemaking represents a first step in addressing these concern and will pave the way for further energy conservation and renewable resource program coordination.

This proposed rulemaking amends the program regulations for four State energy conservation grant programs and provides a funding mechanism for a fifth program, the Emergency Energy Conservation Program. All five programs are administered by the Office of Conservation and Solar Energy of the Department of Energy (DOE). The proposed amendments establish the framework for a consolidated approach to State energy conservation planning and provide uniform procedures to improve the administration of DOE's State energy conservation grant programs. Today's proposal modifies requirements for the following five programs:

- *State Energy Conservation Programs* (SECP), 10 CFR Part 420;
- *Energy Extension Service* (EES), 10 CFR Part 465;
- *Weatherization Assistance for Low-Income Persons*[1] (WAP), 10 CFR Part 440;
- *Emergency Energy Conservation Program* (EECA), 10 CFR Part 477; and
- *Energy Conservation Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions* (IBGP), 10 CFR Part 455.

These programs are collectively referred to as the "coordinated State grant programs". The proposed amendments are described in detail in Section II. To summarize briefly, DOE proposes that each State submit a single annual coordinated State grant application to obtain financial assistance for one or more coordinated State grant programs. Under the proposed amendments a State seeking financial assistance for a coordinated State grant program would submit a coordinated State grant application. The proposed amendments also standardize requirements for submission, review and approval, reporting, recordkeeping and other administrative procedures to the extent possible for the coordinated State grant programs.

These proposed changes will reduce the burden of work on States and DOE Regions by reducing duplication of administrative procedures. While adjustment to the new procedures may cause a temporary increase in work at the State level, DOE believes that the long-term benefits anticipated from these amendments warrant any such increase. DOE is particularly interested in soliciting the States' perspectives and insights on this issue, and invites their response.

Today's proposal was shaped by the existing program legislation. No revisions in the legislation are required. This has meant that the proposed changes cannot permit commingling of funds among programs, because each program has specific, legislatively-mandated objectives, activities, and funding restrictions.

Thus, under the proposed changes, States will be required to account for each program's funds separately and to observe all program-specific restrictions on the use of those funds.

In addition, these proposed amendments apply only to activities for which the grant recipient is the State (i.e., the Governor or a State agency).

[1] The current WAP regulations were published as an interim final rule, 45 FR 13026 (Feb. 27, 1980). DOE expects to publish the final rule in November, 1980. Today's proposed regulation changes are made to the interim final regulations.

Accordingly, although local or tribal organization applicants under WAP are subject to those sections in Subpart A dealing with administrative procedures (see § 420.14(c)–§ 420.19), they will not be required to submit a coordinated State grant application.

Although IBGP Phase I (Preliminary Energy Audits and Energy Audits) comprises grants to States, Phase I activities will not be included in the grants coordination effort. This is because awarding of IBGP Phase I grants was completed in FY 80 and no further grants are anticipated for this phase of IBGP. Today's issuance, therefore, contains no changes to the IBGP Phase I regulations. With regard to Phase II, DOE proposes to amend only the State administrative expenses grant portion of IBGP which provides financial assistance to a State to carry out certain administrative responsibilities.[2] No changes have been made relating to applications for technical assistance or energy conservation measures.

Because its implementation is reserved for emergency conditions, EECA differs from the other coordinated State energy conservation grant program.[3] DOE believes that it is helpful, however, to integrate EECA with the other programs at the planning stage.

[2] DOE has provided IBGP Phase I grants to States to conduct preliminary energy audits and energy audits for schools and hospitals and for units of local government and public care institutions. This award process has been completed and no further Phase I awards are planned for future years. In order to apply for IBGP Phase II (Technical Assistance and Energy Conservation Measures), a State must develop a State plan describing the results of Phase I and outlining the procedures it will use to monitor Phase II activities. Under Phase II, DOE makes technical assistance grants to schools and hospitals and to units of local government and public care institutions and grants for energy conservation measures to schools and hospitals. Although institutions are the primary recipients in Phase II, a State may apply for a State administrative grant as part of Phase II. A State could be eligible to receive a State administrative expenses grant amounting to 5 percent of its total allocation for Technical Assistance and Energy Conservation Measures. See 10 CFR 455.62 and 10 CFR 455.83.

[3] Implementation of EECA occurs when the President, after determining that emergency conditions exist, establishes monthly emergency conservation targets. The conditions requiring the implementation of EECA include an existing or imminent severe energy supply interruption or a need to restrain domestic energy demand in order to fulfill the obligation of the United States under the international energy program. If targets are established by the President, a State must implement its State emergency conservation plan. The EECA regulations in 10 CFR Part 477 discuss the requirements of the State and Federal plans. Proposed 10 CFR Part 420, Subpart E provides a mechanism whereby a State can apply for funds to develop or modify a State emergency conservation plan. Subpart E also establishes procedures whereby a State can apply, through an amendment to its coordinated State grant application, for funds to implement its emergency conservation plan.

For this reason, the proposed regulations provide a mechanism for States to receive funding for developing, modifying amd implementing State emergency conservation plans. In addition, one minor technical amendment is proposed to existing EECA program regulations (10 CFR Part 477).

DOE believes that energy conservation can best be achieved through coordinated efforts. This proposed rulemaking is one attempt to promote a coordinated approach to energy conservation and renewable resource planning and to reduce, by consolidation, the burden of Federal regulation.

II. Proposed Regulation Changes

A. Introduction

The proposed amendments to the coordinated State grant programs are described in detail in this section. Today's issuance proposes essentially procedural changes to both the form and content of the regulations for the coordinated State grant programs.

DOE proposes to revise the format of the present regulations for the coordinated State grant programs by consolidating all of the regulations, except EECA and IBGP, under one part of the Code of Federal Regulations (10 CFR Part 420). This part will be composed of five subparts. Subpart A, General Requirements, contains regulations that are common to all the coordinated State grant programs. For example, this includes the purpose of the coordinated approach, definitions common to all the programs, submission schedule, contents of the coordinated application and plan, DOE review and approval procedures, administrative review procedures, and reporting and recordkeeping requirements.

Subparts B through D will consist of the program-specific regulations for the SECP, EES, and WAP programs, respectively. The proposed amendments to the existing program regulations for SECP, EES and WAP will recodify the regulations, delete requirements that are included in Subpart A and insure that the remaining program-specific regulations will conform to, and not contradict, the provisions of Subpart A. DOE proposes the following new Code of Federal Regulations citations for these three programs:

(a) SECP (10 CFR Part 420) changed to 10 CFR Part 420, Subpart B (§ 420.100 *et seq.*);

(b) EES (10 CFR Part 465) changed to 10 CFR Part 420, Subpart C (§ 420.200 *et seq.*);

(c) WAP (10 CFR Part 440) changed to 10 CFR Part 420, Subpart D (§ 420.300 *et seq.*);

Proposed Part 420, Subpart E, will add new EECA regulations. This subpart will deal with procedures to enable a State to obtain financial assistance to develop, modify or implement a State's emergency conservation plan. Note, however, that the existing EECA regulations under 10 CFR Part 477 are not recodified under Part 420 and contain only one proposed technical amendment that cross-references the funding mechanism established in 10 CFR Part 420, Subpart E.

In addition to these proposed subparts, today's issuance proposes amendments to the IBGP regulations. Although not recodified under 10 CFR Part 420, the proposed changes to the IBGP regulations will enable the State administrative expenses grant portion of the program to be administered as part of the coordinated State grant programs. IBGP has not been recodified because the OBGP regulations deal for the most part with non-State applicants for financial assistance. Since only a small portion of the lengthy IBGP regulations address requirements for the State administrative expenses grant, recodification would decrease the accessibility of proposed 10 CFR Part 420. Additionally, recodification could confuse or mislead IBGP applicants other than a State since it would place IBGP administrative requirements which apply to both State and non-State applicants in Subpart A. For these reasons, these amended regulations have not been assigned a subpart under 10 CFR Part 420, but instead, retain their existing Code of Federal Regulations citation (10 CFR Part 455).

The proposed changes to the IBGP regulations, however, conform to the regulations in proposed Part 420, Subpart A in two ways. Sections in the IBGP regulations that apply only to States, and that relate to the regulations in Subpart A, are cross-referenced to the relevant sections in Subpart A. Proposed § 455.62(a), regarding coordinated State grant applications for State administrative expenses, provided an example of this cross-referencing. Changes are proposed to other IBGP regulations that address both State and local applicants but that pertain to sections in Subpart A, to standardize IBGP as much as possible with the applicable regulations in Subpart A. Proposed § 455.3, concerning administration of grants is an example of this.

B. Proposed General Requirements, Subpart A

1. *Overview.* Proposed Subpart A establishes regulatory requirements common to all coordinated State grant programs. These proposed requirements include the submission of one coordinated State grant application for all coordinated State grant programs, a revised submission schedule and consolidated review process for the coordinated State grant application and new requirements concerning the content of the coordinated State grant application. Subpart A also proposes uniform requirements for recordkeeping and administrative review procedures to be used by the coordinated State grant programs. In some cases, the new uniform procedure differs from the presently existing language of the individual program regulations without substantially altering the requirements. In a few cases, however, the proposed language also provides new substantive requirements.

2. *Uniform Submission and Review Schedule.* A major objective of today's issuance is to propose a uniform submission and review schedule for the coordinated State grant programs in an effort to facilitate program coordination and reduce duplicative administrative requirements for both the States and the Regional DOE offices. Proposed § 420.12(a) will require each State to submit a single annual coordinated State grant application covering all of the coordinated State grant programs for which the State is applying for financial assistance. Under the new procedures, the coordinated State grant application would be submitted according to the following schedule:

(a) Due date for coordinated State grant application: October 1–December 31.

(b) Due date extensions: Not more than 90 days (i.e., not past March 31).

(c) DOE review period: Not specified in the regulations. However, DOE is anticipating a 90 day review period which should include all negotiations between a State and the Regional DOE office.

(d) Budget period: 12 month period. First possible starting day for budget period is January 1. Last possible starting day is July 1. Coordinated State grant programs in each State will select in conjunction with the DOE Regional Office one anniversary date for the State budget period and will adhere to this starting date in subsequent years.

The October 1–December 31 application period proposed in § 420.12(b) provides a State with a three month period during which to submit its coordinated State grant application. The application, in accordance with proposed § 420.12(a), will be submitted by the State agency designated by the Governor as the applicant.

DOE considered two alternatives to the proposed application period. The first alternative would designate an application period from January 1 to March 31. This alternative gives a State additional time after the appropriation of funds has normally been made by Congress for preparation of a coordinated State grant application. However, it precludes a State from selecting a calendar year budget period. DOE considered the advantages and disadvantages of the proposed October 1–December 31 application period versus an alternative January 1–March 31 period. DOE feels that the disadvantage of not permitting a calendar year budget period outweighs the advantages of allowing more time for preparation of the coordinated State grant application since some States prefer a calendar year budget period.

The second alternative is to replace the application period with a single due date, either December 31 or March 31. A set due date does not allow States the flexibility to choose the most appropriate due date and budget period. It also concentrates the review workload for the Regional Offices. For these reaons, DOE believes that a single due date is not an attractive alternative to the proposed regulations.

Proposed § 420.12(f) allows the applicant to request extensions for submission of all or part of the coordinated State grant application. All requests for extensions will be reviewed and approved or disapproved by the Regional Representative. There are two instances where DOE expects that an applicant might request an extension. First, a State might request an extension if it elects a budget period that is toward the end of the allowable January 1–July 1 starting date period and the extension will not delay program operations. The second instance involves a request by the applicant to allow a delay in submission for a specific coordinated State grant program. DOE hopes to discourage this second category of extensions and intends for a State to submit its entire coordianted State grant application at one time.

Moreover, if a State obtains an extension to apply for financial assistance for a coordinated State grant program, it will nevertheless be required to adhere to the budget period selected by the State for the coordianted State grant programs, even if this means a grant for the program will be awarded for less than a 12 month period. For example, if a State chooses a January 1 to December 31 budget period but a program which receives an extension does not obtain its Notice of Grant Award until March 1, then this program's budget period will run from March 1 to December 31.

DOE analyzed two alternatives to the proposed regulations regarding extensions. The first alternative is to follow WAP regulations which do not permit extensions. Since the other coordinated State grant programs allow extensions, DOE believes that this alternative would prove too inflexible. The proposed regulations would, accordingly, extend this flexibility to WAP. DOE does not want to preclude the operation of a coordinated State grant program in cases where special circumstances prevent a State from submitting its coordinated State grant application on time.

The second alternative is to permit extensions for less than 90 days. The proposed submission and review schedule can accommodate extensions of up to 90 days without disruption to the schedule. Therefore, DOE feels that it is not necessary to restrict extensions to fewer than 90 days and that extensions of up to a maximum of 90 days could be granted.

The Regional Representative will review and approve all coordinated State grant applications. In order to insure that a State can begin its coordinated State grant programs on the chosen anniversary date, it is DOE's intent that review of a coordinated State grant application be completed within 90 days of receipt of the application. Note that this period includes all negotiations between a State and the Regional DOE Office.

Under proposed § 420.12(c), each State chooses an anniversary date for a one year budget period. A State may select any anniversary date from January 1 to July 1. Within this range, a State may choose the 12 month budget period it finds most appropriate, including a one year period running with its fiscal year. Barring unforeseen emergencies, States will retain the same budget period each year.

As part of the development of the proposed submission and review schedule described above, DOE considered whether obstacles existed which would prevent any of the five programs from participating in this schedule. Although no insurmountable difficulties have been identified, DOE has noted three potential concerns relating to the proposed submission and review requirements. One concern is that the slowest program could set the pace for the State submission. For

example, a coordianted State grant program desiring a January 1 starting date may have to settle for a later starting date if the January 1 date is unrealistic for the remaining coordinated State grant programs. DOE does not view this as a problem likely to affect a large number of States. However, DOE would like to solicit comments on this issue.

A second concern may arise where a coordinated State grant program switches from a budget period beginning early in the year (i.e., January) to one beginning late in the year (i.e., July). In this instance, the coordinated State grant program will need to use carry-over money for the 6-month period from January to July, since new funding will not become available until July. Stretching existing funds for this additional period may pose a problem for individual coordinated State grant programs. States should notify DOE if they anticipate that this will be a problem.

A third issue relates to WAP. At the State level most WAP programs are run by a different State office, i.e., the State economic opportunity office, than the State energy office which usually manages the other coordinated State grant programs. Submission of a coordinated State grant application will require more coordination between these two State offices than at present. DOE would like to solicit comments on this issue.

3. *Start-Up Time for Coordinated State Grant Programs.* DOE expects to make full use of the coordinated State grant program in the fiscal year 1982 (FY 82) grant cycle. DOE did, however, consider one alternative to requiring all five programs to begin the proposed schedule in FY 82.

The alternative considered is to delay inclusion of WAP until FY 83. This alternative would permit completion of the major WAP program review currently underway and adjustment to any resulting WAP program changes before WAP adopts the proposed schedule. Since the WAP program review has progressed rapidly and is nearing its final stages, DOE foresees no major reason at this time to exclude WAP from the proposed schedule in FY 82. DOE would like to solicit comments on this issue.

4. *Content of Coordinated State Grant Program Application.*—a. *General, Proposed § 420.12(d).* The proposed amendments relating to the contents of an application are designed to provide a State applicant with a logical format for presenting information about the five State grant programs in a way which facilitates the development of comprehensive State energy conservation planning.

Under proposed § 420.12(a), the Governor of each State will designate one State agency to be the applicant for the coordinated State grant application. The grantee designated by the Governor to receive financial assistance for a coordinated State grant program will be specified in the coordinated State grant application. The grantee, not the applicant, will be the actual recipient of financial assistance for a coordinated State grant program. The grantee is, therefore, responsible for program-specific administration and implementation. Under proposed § 420.12(d)(3)(iv), the grantee designated by the Governor for a coordinated State grant program shall execute an assurance that the information contained in the application regarding the program is accurate and complete; and the grantee is ready, willing and able to carry out its responsibilities for the program in a timely manner in accordance with the application. In this way, DOE feels reasonably assured that the agency or department charged to carry out a coordinated State grant program on behalf of a State stands ready and prepared to do so.

The applicant will be responsible for overseeing the preparation of the coordinated State grant application by all the grantees and insuring that it is submitted according to the chosen State submission schedule. The role of the applicant is especially important in coordinating the development of the narrative overview. The applicant will alert the coordinated State grant program grantees as to the kinds of information neeeded for the narrative overview and will facilitate communication between the different coordinated State grant programs.

Proposed § 420.12(d) sets out the requirements for the content for the coordinated State grant application. DOE proposes that the coordinated State grant application consist of three components. The first component of the application contains the name and address of the applicant and all grantees, a list of the coordinated State grant programs for which financial assistance is being requested, budget and milestone information and assurances. See proposed § 420.12(d) (1)–(3). It should be noted that although the name of the State office or agency that receives financial assistance should be given on the application, the grantee is ultimately the State.

The second component, proposed § 420.12(d)(4), is the narrative overview. The narrative overview is a submission requirement only if a State seeks financial assistance for the SECP or EES programs. However, it requires information concerning all of a State's coordinated State grant programs. The narrative overview combines information currently contained in each individual coordinated State grant plan or narrative, plus some additional information, into a single comprehensive statement.

The third component of the coordinated State grant application, proposed § 420.12(d)(3)(ii), consists of the plan, narrative and other program submissions specific to each coordinated State grant program. DOE feels that by requiring both application and plan components, proposed § 420.12 retains in the coordinated State grant application the current distinction between the State application and plan that now exists for each program.

b. *Narrative Overview, Proposed § 420.13.* DOE intends the narrative overview to be primarily a planning document. It is expected to bring together and replace information that is currently discussed elsewhere in program plans. It also includes information that is additional to current requirement, such as a discussion of State management practices. The scope of the narrative overview is broad, which DOE hopes will facilitate more comprehensive State energy conservation and renewable resource planning. This approach is expected to help States minimize program duplication and identify areas where energy conservation and renewable resource efforts are particularly needed.

DOE anticipates that all of the coordinated State grant programs will contribute to the narrative overview. The narrative overview, however, is a submission requirement for only SECP and EES because the authorities for both programs emphasize the need to coordinate the energy conservation efforts of a State. Consequently, the WAP, EECA and IBGP portions of the coordinated State grant application can be approved even if the narrative overview section is incomplete.

Under DOE's proposal, the narrative overview consists of four sections. The first section, as specified in proposed § 420.13(b)(1), is intended to provide a State with an opportunity to delineate its overall energy conservation and renewable resource goals and to formulate a strategy to achieve those goals.[4] Proposed § 420.13(b)(1) requires

[4] The EES State plan currently includes a section on objectives, but the EES discussion is not as comprehensive as the discussion required in the narrative overview.

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discussion of overall State energy conservation goals and the relationship of these goals to the energy consumption and supply patterns of the State. Proposed § 420.13(b)(2) requires discussion of the specific objectives of the coordinated State grant programs, including why these objectives were selected, how they relate to the State energy conservation goals and how they complement other energy conservation activities in the State. Finally, proposed § 420.13(b)(3) will require discussion of the State's strategy to reach its energy conservation goals and a description of how the emphasis and funding given to each coordinated State grant program relates to this strategy.

The second section of the narrative overview is set out in proposed § 420.13(c). It will deal with procedures for coordinating EES, SECP, WAP, IBGP and EECA programs with other energy conservation activities within the State. The EES, SECP, and WAP coordinated State grant programs presently require a discussion of coordination procedures in their respective applications or plans. While the EES requirement is incorporated into proposed § 420.13(c), the requirements for the other two programs will be retained in the program-specific regulations (proposed § 420.114(c)(SECP) and proposed § 420.315(a)(6) (WAP)). However, a State will be able to fulfill all three coordination requirements by placing the necessary information in the narrative overview.

The coordination discussion required as part of the narrative overview by proposed § 420.13(c) is expected to demonstrate that the combined effect of all the energy conservation programs in the State is complementary rather than duplicative. Such discussion will also more specifically describe the ways in which the coordinated State grant programs are collaborating to improve their overall effectiveness. DOE proposed that the State also indicate how other State and Federal resources are being used to reinforce and add to the services being provided by the coordinated State grant programs and how the coordinated State grant programs are supplementing other related energy conservation measures in the State. DOE feels that careful analysis by a State of how the energy conservation programs in the State relate to each other and interrelate as a whole will help the State produce a more effective combination of services.

Proposed § 420.13(d), which deals with the third section of the narrative overview, focuses on the management practices of the coordinated State grant programs. DOE feels that the focus on management in the narrative overview will assist a State in running efficient and accountable coordinated State grant programs. Such discussion will address several management issues, including the State's procedure to insure the timely submission of the coordinated State grant application and other required documents and to insure establishment of reliable financial controls and effective procurement practices. A State will also be required to show that it has assigned responsibilities that insure that each coordinated State grant program will comply with these management policies.

Proposed § 420.13(e) will require the fourth section of the narrative overview to describe the public comment procedures undertaken by the coordinated State grant programs. The EES and WAP regulations currently contain provisions for soliciting public comment on proposed applications and plans. While these requirements will be retained in the program-specific regulations (proposed § 420.211(b)(2)(EES) and proposed § 420.314(a)(WAP)) DOE proposes that the description of how the public comment procedures are obtained and utilized be placed in the narrative overview, in accordance with proposed § 420.13(e). Note that public comment is not currently required by SECP regulation. Proposed § 420.13(e) will make solicitation of public comment mandatory for SECP.

Section 420.13(e) of today's proposed rule requires that the public comment discussion include a summary of all procedures used by the State to obtain public comment on the coordinated State grant programs, the name of the organizations that provided comment, and how these comments affected the contents of each coordinated State grant program. A State may choose to coordinate its solicitation of public comments for all of the programs. For example, WAP is legislatively required to hold a public hearing to receive public comment on the State Weatherization plan. A State may choose to combine this hearing with public hearings planned for other coordinated State grant programs.

5. *Specific Program Plan, Narrative or Submission.* The third component of the coordinated State grant application consists of the individual program submissions currently required for each coordinated State program. The contents of the SECP, EES and WAP plans are specified in proposed § 420.111, § 420.213 and § 420.312, respectively. In today's issuance, DOE proposes several substantive changes to the SECP State plan, several minor changes to the EES State plan and no significant changes to the Weatherization State plan. A State will submit a narrative for IBGP which describes State administrative expenses and a proposal for EECA which discusses development, modification or implementation of an emergency conservation plan.[5]

With the exception of EECA, the proposed regulations require the annual submission of individual program plans or narratives as part of the coordinated State grant application. This corresponds to current WAP and IBGP submission requirements. It differs, however, from existing SECP and EES program requirements. SECP presently submits amendments to the State plan each year, rather than the entire plan. EES currently develops a three year plan with amendments to the plan submitted annually. DOE feels that a State will obtain a more complete picture of how the program plans interrelate if complete plans are submitted each year.

As an alternative to the proposed regulations, DOE is also considering whether to require a two year plan for EES and SECP, but retain annual plans and narratives for WAP and IBGP. DOE feels that a two year plan for SECP and EES could facilitate the development of long-term energy conservation goals. DOE is soliciting comments on the two year plan option for SECP and EES.

Additionally, DOE considered alternatives to the proposed contents of the coordinated State grant application. One alternative is to include a single comprehensive plan in the plan component of the coordinated State grant application, instead of the separate SECP, EES, WAP plans and the IBGP narrative. DOE feels that the development of a single plan, although a seemingly attractive alternative, would require a major effort on the part of the States, as it would be difficult to write a single plan that adequately treats the SECP and EES planning requirements and the WAP and IBGP production requirements. It is also doubtful that a State would be able to attain a level of program coordination beyond that which would be achieved by these propsed regulations. DOE feels that the proposed coordinated State grant application will foster program coordination and comprhensive State energy conservation planning, and at the same time will not unduly burden States.

[5] For a detailed description of these requirements, see Section C. Proposed Program-Specific Regulation Changes, (Section C.1 for SECP, Section C.2 for EES, Section C.3 for WAP, Section C.4 for EECA and Section C.5 for IBGP).

6. *Financial Assistance and Allocation of Financial Assistance, Proposed § 420.10, § 420.11.* Proposed § 420.10(c) directs that financial assistance provided for a specific coordinated State grant program may not be used for any other coordinated program. DOE is not authorized at this time to allow a State to use funds appropriated for one of the coordinated State grant programs for another of the coordinated State grant programs. Proposed § 420.11(c) discusses reallocation of unobligated funds and redistribution of tentatively allocated funds. This proposed section does not alter existing program requirements, nor does it add requirements to programs whose regulations do not address these issues. Instead, it proposes that DOE follow the procedures specified in the program-specific regulations. Existing EES regulations and proposed EECA regulations contain provisions on reallocation. Current WAP regulations provide for the redistribution of tentatively allocated funds based on State program performance. SECP regulations do not address these issues, nor do IBGP regulations for State administrative expenses grants.

Concern was expressed whether a flexible budget period created difficulties in carrying out reallocation of funds under WAP. For example, one State may select the earliest anniversary date, January 1, while another State may select the latest date, July 1. If DOE were to reallocate funds in September, a potentially inequitable situation might arise. First, the January 1 State will have had eight months (January to August) of program performance during the budget period, the July 1 State only two (July and August). Although reallocation decisions will be based on past performance over identical time periods (regardless of budget period), funding decisions made too early in the budget period of any State may result in inadequate funding for the State for the remainder of the budget perod. DOE anticipates making reallocation decisions only once annually in future years, so that no further funds would be available later in the year to correct such situations. However, DOE plans to make adjustment for the length of the remaining budget period. All other things being equal at the time DOE reallocates funds, a State with a remaining eight month budget period would require more funds than a State with a remaining four month budget period.

Proposed § 420.212(b) specifies that under the EES program if a State's allocation is not obligated by the Regional Representative during the fiscal year, the unobligated funds may be reallocated among the States for the next budget period. If partial funding is adopted, this reallocation procedure might pose a problem for a State that chooses a budet period that is toward the end of the January 1 to July 1 cycle. The fiscal year would end soon after the budget period began for the coordinated State grant programs. Any funds not obligated by September 30 would be subject to possible reallocation by DOE. A State would need to consult with its Regional Representative on this issue if partial funding were adopted. DOE notes, however, that it has no current plans to use partial funding for the EES program.

7. *Definitions, Proposed § 420.01.* Proposed § 420.01 includes definitions that apply to the entire Part 420, while program-specific regulations contain definitions that apply only to the individual subparts. Most of these definitions appear in existing program regulations. This proposed section simply consolidates these definitions in one place. Some of these definitions, however, are altered slightly from existing regulatory definitions for standardization purposes. For example, the proposed definition for "State," is standardized, but at the same time worded such that existing program-specific requirements are retained. Other definitions, such as "applicant" and "budget period" are new to all of the coordinated State grant programs. Because IBGP regulations are not included in Part 420, the standardized and new definitions under proposed § 420.01 are added to § 455.2 of the existing IBGP regulations, where appropriate.

8. *Administrative Review, Proposed § 420.15.* Proposed § 420.15, dealing with administrative review, represents a combination of the administrative review requirements of the existing SECP, EES and WAP program regulations. It also establishes Secretarial review in the Financial Assistance Appeals Board Regulations, 10 CFR 1024.

The proposed regulations provide administrative review procedures in three cases: (1) If a resubmitted application fails to meet the review criteria; (2) if the resubmitted application is untimely; or (3) if a Regional Representative finds that a coordinated State grant program is failing to comply with the terms of its award of financial assistance, including compliance with DOE regulations. In accordance with proposed § 420.15, the Regional Representative sends a notice of this determination to the grantee and may suspend payments to the grantee pending final determination. The notice will inform the grantee of a date of the public hearing to be held by a review panel composed of three disinterested members. The review panel will submit a report containing its recommendations to the Regional Representatives who will then make a "final determination" based upon the report. The grantee may then appeal the Regional Representative's decision to the Financial Assistance Appeals Board. If the final determination of the appeal is negative, the grantee will be ineligible to participate in the coordinated State grant program unless and until there is no longer a failure to comply.

9. *Recordkeeping, Reporting and Administration of Financial Assistance Requirements, Proposed § 420.16, 420.17, 420.18.* Proposed § 420.16 requires recipients of financial assistance to provide reports in accordance with 10 CFR Part 600.

Proposed § 420.17 deals with recordkeeping requirements. Existing SECP, EES and WAP regulations describe recordkeeping requirements in detail, while proposed § 420.17 references the recordkeeping requirements contained in the Financial Assistance regulations, 10 CFR Part 600. Although the presentation of the existing and proposed recordkeeping regulations differs, the requirements are essentially unchanged. Existing IBGP regulation, § 455.4, also presents a detailed description of recordkeeping requirements. While this language is retained for IBGP, the requirements for IBGP are similar to those in the Financial Assistance regulations.

Proposed § 420.18(a) consolidates the administration of financial assistance requirements for SECP, EES and WAP currently appearing in existing § 420.15, § 465.15 and § 440.2, respectively. While administration requirements for IBGP are retained in proposed § 455.3, the language and content of the IBGP requirements are standardized as much as possible with the requirements in proposed § 420.18(a).

DOE also proposes several changes to the existing administration of financial assistance requirements. First, OMB A–89, "Catalog of Federal Domestic Assistance" is deleted. All of the coordinated State grant programs will continue to be listed in the "Catalog of Federal Domestic Assistance." However, the reference to A–89 is not included in proposed § 420.18 because it does not specifically deal with the administration of financial assistance. Second, OMB A–73, "Audit on Federal Operations and Programs by Executive

Branch Agencies" (referred to in existing program-specific regulations as Federal Management Circular 73–2), OMB A–97, Rules and Regulations permitting Federal Agencies to Provide Specialized or Technical Services to State and Local Units of Government under Title III of the Intergovernmental Coordination Act of 1968" and Treasury Circular 1082, "Notification to States of Grants-in-Aid Information" are deleted since they describe Federal rather than State responsibilities. Finally, Treasury Circular 1075, "Treasury and Fiscal Requirements Manual," and DOE Assistance Regulations (10 CFR Part 600), which are new to some of the programs, are included in proposed § 420.18(a).

Additionally, proposed § 420.18(b) affirms DOE's policy of assuring that small and disadvantaged businesses and/or Indian tribes are afforded a reasonable opportunity to become equitably involved in its financial assistance programs, including those involving the Conservation and Solar's State Grant Programs. Accordingly, the Department encourages that the State grantees and other proposers make a special effort to substantively involve such businesses in activities offered for support under these grant programs. The DOE encourages its State grantees to institute program policy factors to be used in selecting its sub-grantees under these grant programs which include the extent to which proposals feature small and disadvantaged business and/or Indian tribes involvement. In addition, positive efforts shall be made by grantees to assure utilization of minority-owned or disadvantaged business sources of supplies and services. A goal oriented system should be established in order to maximize disadvantaged business participation. All such efforts should allow these sources the maximum feasible opportunity to compete for subagreements and contracts to be performed utilizing Federal grant funds.

C. Proposed Program-Specific Regulation Changes

This section discusss proposed program-specific regulation changes to the five coordinated State grant programs. The proposed changes to SECP, EES and WAP are primarily technical changes such as recodification, deletion of sections now incorporated into a standardized version in Subpart A of 10 CFR Part 420 and minor revisions in regulatory language. The proposed amendments to IBGP are also primarily technical in nature and relate the State administrative expenses grant portion of the IBPG regulations to the requirements contained in Part 420, Subpart A, where appropriate. The proposed regulations dealing with the funding for State emergency conservation plans are new. They add a new Subpart E to Part 420 of the regulations which addresses the provision of, and application for, financial assistance for developing and modifying and implementing State emergency conservation plans. Also, one minor technical change is proposed for 10 CFR Part 477.

Before discussing in detail the proposed changes to each program's regulations, several technical amendments will be described that have been made to three of the ccordinated State grant programs (SECP, EES and WAP). First, as already mentioned, the SECP, EES, and WP regulations are recodified as Part 420, proposed Subparts B through D, respectively. This proposed change requires the correction of all references in the existing regulations to these sections, as well as revising the term "part" to "subpart" whenever it appears in proposed Subparts B through D and refers to a regulation which is redesignated as a subpart. A second proposed amendment that applies to Subparts B through D is the revision of the term "application" to "coordinated State grant application" indicating that a State will now submit one application which covers all of the coordinated State grant programs. Similarly, DOE proposes to change the term "program" to "coordinated State grant program."

1. *Proposed Programs—Specific Regulation Changes for SECP.*

§ *420.2 Definitions.* (Existing.)

§ *420.101 Definitions.* (Proposed.)

The definitions for "DOE," "Governor," "grantee," "Regional Representative," "Secretary" and "State" are deleted from this section since a standardized version of these definitions is now included in proposed § 420.01 of Subpart A. A proposed definition for "SECP" is added to the section. Two proposed definitions, already used by EES, are added, "Conservation techniques and technologies," and "Technical support." Both are needed to achieve improved coordination between SECP and EES activities. Finally, the terms "Act," "plan" and "supplemental plan," respectively. The proposed definition for SECP and the proposed revisions in terminology permit identification of requirements in Subpart B which are specific to SECP. Proposed Subpart B is revised, where applicable, to reflect this more precise terminology.

§ *420.3 Financial assistance.* (Existing.)

§ *420.110 Financial assistance and allocation of financial assistance.* (Proposed.)

This proposed section has been revised so that financial assistance is provided for an approved coordinated State grant application for financial assistance to carry out an SECP plan, a supplemental SECP plan, or both. DOE feels that the proposed change in title from "Financial assistance" to "Financial assistance and allocation of financial assistance" increases the accuracy of the title and is more consistent with the titles used in comparable sections of other proposed subparts.

Two phrases are inserted, where appropriate, to signify that the regulations under discussion are specific to SECP. The first phrase, "under this subpart" is inserted between the words "assistance" and "to" which appears in paragraphs (a), (b) and (c). The second phrase, "for carrying out an SECP plan, a supplemental plan, or both, in accordance with § 420.113 and § 420.114" is proposed for addition to the end of paragrpah (a).

Proposed § 420.110(d) lists program-specific review criteria. It incorporates existing § 420.5(a) (1), (2) and (3). It also adds a technical correction by explicitly requiring that a supplemental SECP plan meet the minimum program requirements listed in proposed § 420.114.

A final change is the deletion of the phrase "on a calendar year basis," which appears between the terms "both" and "from" in existing paragraph (a). As discussed earlier, proposed § 420.12 of Subpart A consolidates the budget period for the coordinated State grant programs.

§ *420.4 Annual State applications.* (Existing.)

§ *420.111 SECP requirements for annual coordinated State grant applications.* (Proposed.)

This proposed section requires a State to submit a coordinated State grant application in accordance with proposed § 420.12 and lists the specific SECP requirements that a State must address in the coordinated State grant application. The proposed section eliminates the requirement to submit information already obtained under proposed § 420.12, thereby cutting down paperwork by eliminating unnecessary repetition.

Clarifying the SECP requirements for submission of the annual coordinated State grant application necessitates a

number of changes. First, DOE proposes to change the title of the section from "Annual State applications" to "SECP requirements for annual coordinated State grant applications" in order to reflect the fact that this section refers only to SECP-specific requirements for submitting the coordinated State grant application.

Second, DOE proposes to delete portions of existing § 420.4(a), § 420.4(b)(1), § 420.4(b)(2)(ii) (A), (B), (C), (D) and (E) and § 420.4(d) and to incorporate other portions of these regulations into proposed Subparts A and B. The requirements of existing § 420.4(a) regarding the application due date and the number of copies to be submitted are superseded by proposed § 420.12 (a) and (b). The use of DOE Form CS–1 specified by this paragraph, is no longer required. The requirement in existing § 420.4(b)(1) that an application include the name and address of the grantee is now covered for a coordinated State grant application in proposed § 420.12(d)(3)(i). The budget information required by existing § 420.4(b)(2)(ii) (A) and (B) is now addressed by proposed § 420.12(d)(3)(ii) and § 420.13(c)(2). Proposed § 420.12(d)(3)(ii) specifies the inclusion of budget information in the application part of the coordinated State grant application, while proposed § 420.13(c)(2) requires the narrative overview to contain a discussion of how State and Federal resources are being used to supplement assistance provided under this proposed part. The milestone information required by existing § 420.4(b)(2)(ii)(C) now appears in proposed § 420.12(d)(3)(ii). The requirements of existing § 420.4(b)(2)(ii)(B) regarding inclusion in the SECP and supplemental SECP plans of a narrative statement that describes amendments and new program measures is now incorporated into proposed § 420.111(a)(1). Existing § 420.4(b)(2)(ii)(E) requiring an explanation of how the minimum criteria for required program measures will be satisfied is redesignated as § 420.111(a)(2).

DOE proposes to add several new requirements to the SECP and supplemental SECP plans in order to improve these plans and to achieve greater consistency between SECP and EES planning functions. Proposed § 420.111(a) (4)–(7) requires the description of the following elements in a SECP or supplemental SECP plan: The target audience, services to be provided, technical support for each activity, organizational responsibilities, the administering organization, overall centralized technical support, and implementation procedures.

Finally, the requirements contained in existing § 420.4(d) are deleted and appear in a revised format in proposed § 420.12(f).

§ *420.5 Review and approval of annual State applications and State plans.* (Deleted.)

This entire section is deleted. The requirement described in existing § 420.5(a) that the Regional Representative review each timely SECP application is contained in proposed § 420.14(a) of proposed Subpart A which requires review of each timely coordinated State grant application. The criteria for approval listed in existing § 420.5(a) (1), (2) and (3) are retained in proposed Subpart B, § 420.110(d). Proposed § 420.14(b) specifies that approval of the coordinated State grant application for SECP is contingent upon meeting the review criteria listed in proposed § 420.110(d). The requirements of existing § 420.5(b) regarding resubmission of coordinated State grant applications that do not conform with the criteria for approval are slightly revised in proposed § 420.14(c). A determination by the Regional Representative that the initial coordinated State grant application does not meet the review criteria indicates the need for a period of revision and negotiation and not automatic denial of the coordinated State grant application.

§ *420.6 Energy Conservation Goals.* (Existing.)

§ *420.112 Energy Conservation Goals.* (Proposed.)

This section is amended by adding paragraph (d) which seeks to promote program evaluation by the States. It requires States to submit annually an estimate of actual energy savings by program measure, which have occurred as a result of providing program services.

§ *420.10 Administrative review.* (Deleted.)

This entire section is deleted. Proposed § 420.15 consolidates the administrative review requirements applying to all coordinated State grant programs. This proposed section makes one major change to the existing SECP administrative review process. First, the Regional Representative, after receipt of the report of the review panel, will make a determination rather than a recommendation on the hearing. DOE feels that the responsibility for making a decision on the hearing should be delegated to the Regional Representative since he or she is more closely involved with the review and approval of the coordinated State grant applications. The Regional Representative's decision may then be appealed to the Financial Assistance Appeals Board rather than the Secretary.

§ *420.12 Recordkeeping.* (Deleted.)

The entire recordkeeping section is deleted from the SECP program-specific regulations and replaced by proposed § 420.17. DOE proposes to conform recordkeeping requirements to those found in the Financial Assistance Regulations, 10 CFR Part 600. No significant differences exist between the proposed and existing requirements.

§ *420.13 Reports.* (Deleted.)

The entire reporting section is deleted from the SECP program-specific regulations and replaced by proposed § 420.16. DOE proposes to conform reporting requirements to those found in the Financial Assistance Regulations, 10 CFR Part 600. No significant differences exist between the proposed and existing requirements.

§ *420.15 Administration of Financial Assistance.* (Deleted.)

This entire section is deleted. These requirements are incorporated with some revisions in proposed § 420.18. The revisions include the deletion of Federal Management Circular 73–2, Treasury Circular 1082 and OMB A–97.

2. *Proposed Program-Specific Regulation Changes for EES.*

§ *465.2 Definitions.* (Existing.)

§ *420.201 Definitions.* (Proposed.)

DOE proposes addition of a definition for "State EES plan." Proposed § 420.201 changes the terms "Act," "SECP," and "State Program" to "EES Act," "SECP plans" and "State EES program," respectively. Deleted from the proposed definition section and inserted without amendment in proposed Subpart A, § 420.01 are the terms "DOE," "Governor," "grantee," "Regional Representative" and "Secretary." The definition for "State" including eligible territories and possessions is also deleted and inserted in proposed Subpart A, § 420.01 without substantive revision.

§ *465.6 Financial assistance.* (Existing.)

§ *420.211 Financial assistance.* (Proposed.)

Proposed § 420.211(a) emphasizes that EES funds are provided only for EES activities by: (1) Insertion of "under this subpart," between "assistance" and

"from;" (2) insertion of "to conduct a comprehensive EES program," between "available" and "for;" and (3) insertion of "approved for carrying out a State EES plan." DOE proposes adding "in accordance with § 420.14" to the end of proposed § 420.211(a) to bring the financial assistance requirements of proposed § 420.211 into alignment with the uniform review and approval procedures proposed in Subpart A. Finally, "on a calendar year basis" is deleted from existing § 465.6(a) to enable a State to select its own budget period, as discussed above.

Additionally, proposed § 420.211 makes two further significant revisions to § 465.6. First, paragraphs (b), (c), and (d) concerning funding formulas, reallocation and special State projects are moved with minor changes to proposed § 420.212 (Allocation of financial assistance). Next, a new paragraph (b) is added to proposed § 420.211. In this proposed paragraph, DOE sets out the EES information to be included in the coordinated State grant application (along with the requirements specified in proposed § 420.12 and § 420.13 of proposed Subpart A) to make a State eligible for EES financial assistance. Proposed subparagraph (b)(2) incorporates the EES public comment requirements currently included in subparagraph (c)(5) of existing § 465.7, and adds "as part of the submission required by § 420.13(e)." As discussed earlier, the written description of the EES public comment process will be placed in the narrative overview section of the coordinated State grant application.

Finally, DOE proposes the addition of subparagraph (c) to § 420.211 to describe program-specific review and approval criteria. This proposed paragraph incorporates existing § 465.9(a).

§ 465.7 Annual State applications. (Deleted.)

This section is deleted. Existing § 465.7(a) dealing with the invitation to submit an initial State application is no longer needed, as all States and territories have now submitted initial applications. Existing § 465.7(b) and (c)(1), (2), (3), and (d) have been incorporated into proposed Subpart A, § 420.12(a), (b), (d) and (f) (coordinated State grant application) with several changes. Existing § 465.7(b) specifies the number of copies of an EES application to be submitted and the submission due date. Proposed § 420.12(a) will require States to submit an original and two copies of the coordinated State grant application. As discussed earlier, proposed § 420.12(b) specifies a flexible application period (October 1–December 31) which is later than the September 30 due date currently required for EES applications. Although organization of budget and milestones by calendar quarters is no longer requires by the proposed regulations, DOE intends to continue to require budget and milestone information by calendar quarter. The information contained in § 465.7(c)(4),(5) and (6) (funds supplanting, public comment and environmental impact requirements) is moved to proposed § 420.213(a)(9), proposed § 420.211(b) and proposed § 420.213(a)(10), respectively, of this proposed subpart.

§ 465.6 Financial assistance. (Existing.)

§ 420.212 Allocation of financial assistance. (Proposed.)

Proposed § 420.212 comprises information and procedures taken from existing § 465.6(b),(c) and (d). DOE proposes to insert the phrases "to conduct a comprehensive EES program" and "under this subpart" to increase the specificity of the procedures, and to substitute the phrase "budget period" for "calendar year" since State EES programs will not necessarily operate on a calendar year basis. In addition DOE proposes to amend subparagraph (b) by changing the work "shall" to "may." Under the existing regulations, if the Regional Representatives does not obligate all of a State's allocation during the fiscal year, the unobligated funds are reallocated among the States for the next year. DOE proposes to make this reallocation process optional rather than mandatory. The remaining proposed amendments to this section are technical.

§ 465.8 Submission and contents of State plans. (Existing.)

§ 420.213 Contents of State EES plans. (Proposed.)

DOE proposes to delete the words "submission and" from the heading of this section and existing paragraphs (a) through (c) dealing with the existing triennial submission schedule for the EES plan. As required in proposed § 420.12, an EES plan will be submitted annually as part of the coordinated State grant application.

The remainder of proposed § 420.213 includes all EES plan requirements currently in § 465.8(c) except those requirements involving discussion of objectives, strategy, and inter-program coordination currently found in existing § 465.8(c)(1) (i), (ii) and (iii). These will be incorporated in the narrative overview discussion required by proposed § 420.13 (b) (2), (3) and (c).

The remaining proposed amendments to this section are minor technical changes.

§ 465.9 Approval of annual State application and State plans. (Deleted.)

This entire section has been deleted. DOE proposes to move the information contained in § 465.9(a) to proposed § 420.211(c). Section 465.9(b) is superseded by proposed § 420.14, DOE review and approval of the annual coordinated State grant application.

§ 465.10 Development and implementation of a State EES plan by the Director. (Existing.)

§ 420.214 Development and implementation of a State EES plan by the Director. (Proposed.)

Existing § 465.10 remains largely unchanged by the proposed DOE amendments, aside from redesignating existing § 465.11(j) (Administrative review) as proposed § 420.214(f). This proposed paragraph provides for financial assistance to persons other than the grantee in cases where financial assistance to the grantee has been terminated. DOE proposes this change to accommodate an EES-specific requirement not covered by the remainder of the administrative review regulations incorporated under § 420.15 applying to all coordinated State grant programs. DOE proposes to insert the phrase "for financial assistance under this subpart in accordance with § 420.12" to achieve consistency with the standardized procedures proposed in Subpart A, and, at the same time, clarify the specific application of this section to EES.

§ 465.11 Administrative review. (Deleted.)

Aside from moving § 465.11(j) to proposed § 420.214(f), the existing section is superseded in Subpart A by proposed § 420.15. The procedures for administrative review proposed in § 420.15 differ in several important ways from those in existing § 465.11. First, the grantee rather than the Governor is the recipient of the notice of intended denial, termination or suspension of financial assistance. Second, under existing § 465.11, the Regional Representative submitted a recommendation to the Secretary who in turn issued the final decision. As discussed earlier, in proposed § 420.15, the Regional Representative is authorized to issue a decision, with further appeal of this decision by the grantee to the Financial Assistance Appeals Board.

§ 465.4 Comprehensive Program and Plan for Federal Energy Education, Extension and Information Activities. [Reserved] (Existing.)

§ 420.215 Comprehensive Program and Plan for Federal Energy Education, Extension and Information Activities. (Proposed.)

Space for completion of this section was reserved in the existing EES regulations (10 CFR Part 465.34). DOE takes this opportunity to complete this section which, as proposed, describes DOE responsibilities for preparing an annual Comprehensive Program and Plan for Federal Energy Education, Extension and Information Activities.

§ 465.5 National Advisory Board. (Existing.)

§ 420.216 National Advisory Board. (Proposed.)

The proposed amendments to existing § 465.5 are of a minor, technical nature.

§ 465.12 Prohibited expenditures. (Existing.)

§ 420.217 Prohibited expenditures. (Proposed.)

The proposed amendments to existing § 465.12 are technical in nature.

§ 465.13 Recordkeeping. (Deleted.)

The entire recordkeeping section is deleted from the EES program-specific regulations and replaced by proposed § 420.17. DOE proposes to conform recordkeeping requirements to those found in the Financial Assistance Regulations, 10 CFR Part 600. No significant differences exist between the proposed and existing requirements.

§ 465.14 Reports. (Deleted.)

The entire reporting section is deleted from the EES program-specific regulations and replaced by proposed § 420.16. DOE proposes to conform reporting requirements to those found in the Financial Assistance Regulations, 10 CFR Part 600. No significant differences exist between the proposed and existing requirements.

§ 465.15 Administration of financial assistance. (Deleted.)

DOE proposes to eliminate § 465.15 by incorporating it into proposed § 420.18 in Subpart A, with the following proposed changes: (1) addition of the phrase "but without limitation," which permits the inclusion of additional circulars, as desired; (2) inclusion of DOE Assistance Regulations (10 CFR Part 600); and (3) deletion of Federal Management Circular 73–2, OMB A–97 and Treasury Circular 1082.

3. *Proposed Program-Specific Changes for WAP.*[6]

§ 440.2 Administration of grants. (Deleted.)

DOE proposes to delete this section because the requirements contained in it for the administration of financial assistance now appear, with some revisions, in proposed § 420.18. Note, however, that proposed § 420.18 applies to any grant provided under Part 420. Accordingly, local applicants under WAP, therefore, also must comply with these regulations. The proposed amendments to existing § 440.2 include the addition of Treasury Circular 1075, "Treasury and Fiscal Requirements Manual" and the deletion of Federal Management Circular 73–2, OMB A–89, OMB A–97 and Treasury Circular 1082. Existing § 440.2(b), which discusses the ownership of tools and equipment acquired with grant funds, now appears with minor revisions as proposed § 420.316(e).

§ 440.3 Definitions. (Existing.)

§ 440.301 Definitions. (Proposed.)

DOE proposes to amend this section by deleting the definitions for "DOE," "Governor," "grantee," "Regional Representative," "Secretary" and "State," not consolidated in proposed § 420.01 of proposed Subpart A. The proposed definitions for "grantee," "Regional Representative" and "State" include in Subpart A contain minor technical changes necessary for standardization purposes. DOE also proposes to amend the definition for "Governor" incorporated into Subpart A by adding at the end of the definition, the phrase "or a person duly designated in writing by the Governor to act upon his or her behalf." DOE does not feel that this will alter existing program policies. A definition for "State Weatherization plan" is also proposed in § 420.301, and the term "plan" is change to "State Weatherization plan" throughout the text of proposed Subpart D.

§ 440.10 Allocation of funds. (Existing.)

§ 420.310 Financial assistance and allocation of financial assistance. (Proposed.)

DOE proposes to change the title of this section from "Allocation of funds" to "Financial assistance and allocation of financial assistance" in order to more accurately describe the contents of the section.

[6] See n. 1, *supra*.

§ 440.12 State applications. (Existing.)

§ 420.312 Weatherization requirements for coordinated State grant applications. (Proposed.)

This section contains several proposed amendments. One change is to revise the title from "State applications" to "Weatherization requirements for coordinated State grant applications" to indicate that a State applying for financial assistance for WAP must submit a coordinated State grant application fulfilling the program-specific WAP requirements.

A second proposed change is to amend existing § 440.12(a) by inserting the words "To be eligible for financial assistance under this part, a State shall submit a coordinated State grant application in accordance with § 420.12. The Regional Representative shall review each timely coordinated State grant application in accordance with § 420.14 and, if the submission otherwise complies with the applicable provisions of Subpart A and this subpart, provide financial assistance." DOE feels that such a proposed revision emphasizes the requirement that a State submit a coordinated State grant application and specifies the review criteria. The due date information in existing § 440.12(a) is incorporated into proposed § 420.12(b).

DOE also proposes to delete existing § 440.12(b)(1) requesting the name and address of the State agency or office responsible for administering the program, now incorporated into proposed § 420.12(d)(3) of Subpart A. This requires renumbering of subparagraphs (2)–(10).

Finally, DOE proposes to amend existing § 440.12(b)(6), (proposed § 420.312(b)(5)), by adding the phrase "to be shown as milestones required in § 420.12(d)(3)(ii)" between the work "schedule" and "which." While this proposed change repeats the requirements of § 420.12(d)(3)(ii), its placement in this section insures that local applicants are aware of the requirements they must fulfill.

§ 440.13 Local applications. (Existing.)

§ 420.313 Local applications. (Proposed.)

An important revision to this section is the addition of language to paragraph (b) that clarifies how Subpart A relates to local applicants. This is needed since existing § 440.30 (Adminstrative review), § 440.23 (Reports) § 440.22 (Recordkeeping), § 440.2 (Administration of grants) and § 440.15(d) (Antidiscrimination), which apply to local applicants, are incorporated into

proposed § 420.14(c)–420.19 in proposed Subpart A. Since local applications currently comply with these administrative procedures, this proposed language does not add new requirements for local applicants, but instead insures that the regulations inform local applicants of the requirements they must fulfill.

Existing § 440.13(a)(1) is revised by inserting the phrase "for financial assistance under this subpart" after the term "application." DOE feels that such an addition clarifies that the requirements of Subpart D are specific to WAP. Also the phrase "within 90 days after notice" appearing in existing § 440.13(a)(1) between the words "application" and "in" is deleted.

§ *440.14 Administrative requirements.* (Existing.)

§ *420.314 Administrative requirements.* (Proposed.)

Several changes are proposed to this section. First, the phrase "for financial assistance under this subpart" is inserted after the word "application" in paragraph (a). Again, this addition clarifies that the requirements contained in proposed Subpart D are specific to WAP. Second, existing § 440.14(b) is amended by inserting the phrase "in addition to the information required in paragraph (a) of this section," between the words "which" and "shall." DOE feels that this addition clarifies the requirement that the State Weatherization plan must include the requirements of proposed § 420.314(a), as well as those of proposed § 420.314(b).

§ *440.15 Minimum program requirements.* (Existing.)

§ *420.315 Minimum program requirements.* (Proposed.)

Existing paragraph (d), which discusses nondiscrimination, is deleted since an identical provision appears in proposed § 420.19.

§ *440.16 Allowable expenditures.* (Existing.)

§ *420.316 Allowable expenditures.* (Proposed.)

DOE proposes to modify existing § 440.16 by adding the existing § 440.2(b) requirement that tools or equipment acquired with grant funds provided under this proposed subpart are the property of the grantee and redesignating existing § 440.16 as proposed § 420.316.

§ *440.22 Recordkeeping.* (Deleted.)

This entire section is deleted and replaced by proposed § 420.17. DOE proposes to conform recordkeeping requirements to those found in the Financial Assistance Regulations, 10 CFR Part 600. No significant differences exist between the proposed and existing requirements.

The proposed regulation deletes the reference to Federal Management Circular (FMC) 74–7, now superceded by OMB Circular A–102. Recipients of financial assistance are still required to comply with OMB A–102, as cited in proposed § 420.18.

§ *440.23 Reports.* (Deleted.)

This entire section is deleted and replaced by proposed § 420.16. DOE proposes to conform reporting requirements to those found in the Financial Assistance Regulations, 10 CFR Part 600. No significant differences exist between the proposed and existing requirements.

§ *440.30 Administrative review.* (Deleted.)

DOE proposes to delete this entire section. Existing § 440.30 (a) and (b), addressing resubmission of an application which does not conform to the review criteria, now appears with some revision in proposed § 420.14(c). DOE feels that the proposed regulation conveys more clearly that a determination by the Regional Representative that the initial coordinated State grant application does not meet the review criteria indicates the need for a period of revision and negotiation and does not imply an automatic denial.

Existing §§ 440.30(c)–(j), addressing the administrative review requirements, now appear in proposed § 420.15. DOE intends that these consolidated administrative review procedures also apply to local applicants, in accordance with proposed § 420.15(a)(3), if a Regional Representative intends to deny the application of a local applicant. Proposed 420.15 changes the existing WAP administrative review process, by requiring a review panel made up of three disinterested members who present their report to the Regional Representative within 10 working days of the hearing. Proposed 420.15 also specifies that a grantee may appeal "final determinations" to the Financial Assistance Appeals Board rather than the Secretary as provided in existing regulations.

4. *Proposed Program-Specific Changes to EECA.* Proposed Subpart E will establish procedures to enable a State to obtain financial assistance to develop, modify, or implement a State's emergency conservation plan. DOE proposes to involve EECA in the grants coordination process by providing States the opportunity to submit their application for financial assistance to develop an emergency conservation plan prior to the declaration of an emergency as part of the coordinated State grant application. DOE cannot emphasize strongly enough the desirability of a State's developing its emergency conservation plan prior to the declaration of an emergency by the President under § 211 of EECA. After declaration of an emergency, States may submit, under the proposed regulation, an amendment to their coordinated State grant application for financial assistance to develop or implement their emergency conservation plans. As previously mentioned, the proposed regulations do not recodify the existing EECA regulations (10 CFR Part 477) under Part 420, Subpart E, nor do they significantly amend the text of these regulations. The only proposed amendment to Part 477 cross-references the funding mechanism established for EECA under 10 CFR Part 420, Subpart E.

DOE notes that no funds are currently available for financial assistance under this proposed subpart. Nevertheless, DOE feels it is important to obtain public comment concerning the proposed method of funding the development and implementation of emergency conservation plans so that a funding mechanism is in place if financial assistance becomes available. DOE proposes to allocate funds using the funding formula for supplemental SECP plans which provides that 75 percent of available funds will be divided on the basis of State population and 25 percent of available funds will be divided among participating States equally. DOE also wishes to alert States to the 20 percent matching requirements in proposed § 420.410(c) and the reallocation provision described in proposed § 420.410(d). DOE is particularly interested in receiving comments on both of these proposed sections.

In proposed § 420.411(a), DOE proposes procedures for applying for financial assistance to develop or modify a State emergency conservation plan and in proposed § 420.411(b), procedures for applying for financial assistance to implement an emergency conservation plan. Under proposed § 420.411(a), a State may submit, as part of its coordinated State grant application, a proposal for developing or modifying a State emergency conservation plan. DOE urges each State to undertake a continuing emergency energy conservation planning effort. The financial assistance mechanism proposed in § 420.411(a) will allow a State to update its emergency conservation plan annually so that the State will have a current plan ready for approval should the President establish emergency energy conservation targets. According to the EECA Act, the State plans are to be treated as contingency plans under Sections 202 and 203 of the Energy Policy and Conservation Act, 42 U.S.C. 6262–63 (EPCA). Emergency conservation plans may be funded as stand-by plans under the authority of § 362(e) of EPCA, 42 U.S.C. 6322(e).

Because a State may not apply for financial assistance to implement its approved emergency conservation plan until the President has established emergency energy conservation targets, a State will not be able to apply for implementation funds according to the proposed coordinated submission schedule set forth in proposed § 420.12. With this in mind, DOE proposes § 420.411(b) allowing a State to apply for implementation funds by submitting an amendment to its coordinated State grant application. This amended application will be submitted within 15 days of receipt of notice of availability of financial assistance for implementation, or within 15 days after approval of its State emergency conservation plan, whichever is later. It must include a copy of the State's approved emergency conservation plan and a proposal for implementing the plan.

DOE strongly encourages States to develop and update their emergency conservation plans prior to the President's establishment of emergency energy conservation targets. However, if a State has not developed a plan, or if it needs to modify an approved plan in order to comply with the President's targets, the State may apply for financial assistance under proposed § 420.411(a)(2) to complete these activities prior to its application for financial assistance to implement the plan, under proposed § 420.411(b).

5. *Proposed Program-Specific Regulation Changes For IBGP.*

§ *455.2 Definitions.*

DOE proposes to add definitions for "coordinated State grant application" and "Regional Representative" to existing § 455.2, in order to relate the IBGP regulations to proposed Part 420, Subpart A. Also, the existing definition for "grantee" is revised slightly to conform to the definition contained in proposed § 420.01.

§ *455.3 Administration of grants.*

DOE proposes to add OMB Circular A–95, "Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects," Treasury Circular 1075, "Treasury and Fiscal Requirements Manual" and DOE Assistance Regulations (10 CFR Part 600) to this section. These additions are needed to standardize IBGP regulations with proposed § 420.18. Second, DOE proposes to delete Federal Management Circular 73–2, OMB A–89, OMB A–97 and Treasury Circular 1082. Finally, this section is renumbered to accommodate the proposed additions and deletions.

§ *455.5 Suspension and termination of grants.*

This section contains one amendment. The last sentence of existing § 455.5 is deleted, since OMB A–102 and A–110 are both circulars listed in proposed § 455.3 (Administration of grants). The following sentence is added in it place: "A grant to a State made pursuant to § 455.62 and § 455.83 shall be accorded the procedures prescribed in § 420.15 regarding termination and suspension." Note that § 455.5 does not prescribe the administrative review procedures in proposed § 420.15 except for the State administrative expenses portion of IBGP Phase II. Accordingly, the procedures prescribed in proposed § 420.15 would only apply to the termination or suspension of a State administrative expenses grant made in accordance with § 455.62 and § 455.83.

§ *455.62 Grant applications for State administrative expenses.* (Existing).

§ *455.62 Coordinated State grant applications for State administrative expenses.* (Proposed).

DOE proposes to revise the title from "Grant applications for State administrative expenses" to "Coordinated State grant applications for State administrative expenses."

A second proposed change revises § 455.62(a) to include the IBGP State administrative expenses application as part of the coordinated State grant application. While proposed paragraph (a) permits a State to apply for its entire State administrative expenses grant as part of the coordinated State grant application, a State will initially receive only 2 percent of its total allocation for Technical Assistance and Energy Conservation Measures. After a State forwards the ranked Technical Assistance and Energy Conservation Measure applications to DOE in accordance with § 455.71–.72, it may apply for the remaining funds by submitting an amendment to the coordinated State grant application. If a State finds that the total amount of grants awarded in the State equal the State's total allocation for Technical Assistance and Energy Conservation Measures, then the State's amendment to the coordinated State grant application will simply indicate this fact. If the total amount of grants awarded for a State is less than the total State allocation, then the State's amendment to the coordinated State grant application will include modified budget forms showing the revised amount of the State's administrative expenses grant. In both cases, DOE will, upon review and approval of the application amendment, award the State a second grant for an amount not exceeding 5 percent of the total of all grant awards for Technical Assistance and Energy Conservation Measures within that State for that grant program cycle less the amount previously awarded during the same grant program cycle for administrative expenses, so long as this amount does not exceed 50 percent of the total projected administrative expenses.

The third proposed change is deletion of § 455.62(b)(1), which requires a State application to include the name and address of the grantee. This requirement now appears in proposed § 420.12(d)(3). Existing § 455.62(b)(2) is renumbered as proposed § 455.62(b)(1).

The fourth proposed change adds precision to existing § 455.62(b)(2) (proposed § 455.62(b)(1)), clarifying that the requirements listed in this subparagraph represent a partial rather than complete listing of budget requirements for the coordinated State grant application.

Finally, existing § 455.62(b) is amended by adding a new subparagraph (2). Proposed § 455.62(b)(2) stipulates that a State must include in the IBGP portion of its coordinated State grant application any additional information required by DOE.

§ *455.63 Grantee records and reports.*

Section § 455.63(b) is amended by deleting the phrase "by the end of January and July of each year" appearing at the beginning of the paragraph. Also, the word "quarterly" is inserted between the words "a" and "report" in this same paragraph. This brings the IBGP regulations into alignment with the current reporting procedures of the other coordinated State grant programs.

§ *455.73 State duties.*

DOE proposes to revise § 455.73(b) as follows: "Each State shall submit a quarterly report to the Secretary, following State plan approval for the duration of the grant program, providing—." This revised paragraph indicates the required submission of

quarterly reports, as discussed above. Second, § 455.73(c) is amended by deleting the terms "August" and replacing it with the phrase "second quarterly," to indicate that the information required in proposed § 455.73(c) should be included in the second of the quarterly reports.

§ 455.83 Grant awards for State administrative expenses.

Proposed § 455.83(a) amends existing paragraph (a) to bring it into alignment with the grants coordination effort. The proposed language permits the Regional Representative to make an initial State administrative expenses grant, consisting of 2 percent of the State's total allocation for Technical Assistance and Energy Conservation Measures, upon approval of the coordinated State grant application. It further specifies that the Regional Representative may provide an additional State administrative expenses grant after the State has forwarded its ranked Technical Assistance and Energy Conservation Measure applications to DOE, and upon approval of an amendment to the coordinated State grant application. As described above, this second grant will be for an amount not exceeding 5 percent of all grant awards for Technical Assistance and Energy Conservation Measures less any amounts previously awarded during that grant program cycle, and not exceeding 50 percent of the total projected administrative expenses.

Existing § 455.83(b) is redesignated as § 455.83(c) and a new paragraph (b) is added. Proposed § 455.83(b) addresses review and approval procedures for a coordinated State grant application regarding State administrative expenses. By cross-referencing proposed § 420.14 and proposed § 420.15 of Subpart A, proposed § 453.83(b) relates the IBGP regulations to the review and approval procedures and the administrative review procedures of proposed Subpart A. Note that proposed § 455.83(b) identifies the Regional Representative rather than the Secretary as the approving official. This agrees with proposed § 420.14 which also specifies the Regional Representative as the approving official. Furthermore, denial of a State administrative expenses grant portion of a coordinated State grant application is subject to the administrative review provisions of proposed § 420.15.

III. Opportunities for Public Comment

A. Written Comments

Interested persons are invited to participate in this rulemaking by submitting data, views or arguments with respect to the proposal set forth in this notice to: Ms. Carol Snipes, Hearings and Dockets Conservation and Solar Energy, Department of Energy, Mail Stop 6B–025, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Comments should be identified on the outside of the envelope, and on the documents themselves, with the designation "Coordinated State Grant Programs," Docket Number CAS–RM–80–510. Fifteen (15) copies should be submitted. All comments received on or before December 29, 1980, and all other relevant information, will be considered by DOE before final action on this rule.

Any person submitting information which that person believes to be confidential and which may be exempt by law from public disclosure should submit one complete copy, as well as fifteen copies from which the information claimed to be confidential has been deleted. DOE shall make a determination of any such claim. This procedure is set forth in 10 CFR 1004.11 (44 FR 1908, Jan. 8, 1979).

B. Public Hearings

DOE will hold two public hearings on this proposed rule. A public hearing will be held in San Francisco at 9:30 a.m., local time, on December 3 and 4, 1980, at the Ramada Inn, Fisherman's Wharf, Crocker Hopkins Room, 590 Bay Street, San Francisco, California 94133. A second public hearing will be held in Washington, D.C. at 9:30 a.m., local time, on December 9 and 10, 1980, at the Department of Energy, Room 2105, 2000 M Street N.W., Washington, D.C. 20461.

Any person who has an interest in the proposed regulation or who is a representative of a group or class of persons which has an interest in it may make a written request for an opportunity to make an oral presentation. Such a request for the San Francisco hearing should be addressed to Terry Osborn, Department of Energy, Region IX, 333 Market Street, San Francisco, California 94105, (415) 764–7027 and must be received by 4:30 p.m., local time, on November 17, 1980. Requests to speak at the Washington, D.C. hearing should be addressed to Ms. Carol Snipes, Hearings and Dockets Conservation and Solar Energy, Department of Energy, Mail Stop 6B–025, 1000 Independence Avenue, S.W., Washington, D.C. 20585, ATTN: CAS–RM–80–510, (202) 252–9319 and must be received by 4:30 p.m., local time, on November 25, 1980. A request may also be hand delivered between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Requests should be marked the same as for written comments with the additional notation "With Request to Speak."

The person making the request should describe briefly his or her interest in the proceeding and, if appropriate, state why that person is a proper representative of a group. The person should also give a concise summary of the proposed oral presentation and should provide a phone number where the person may be reached. Each person selected to be heard at the public hearing to be held in San Francisco will be notified by DOE by November 21, 1980. Each person selected to be heard at the public hearing to be held in Washington, D.C. will be notified by December 2, 1980. Those persons selected to be heard must bring 15 copies of their statement to the hearing. If a person cannot provide 15 copies, alternate arrangements can be made in advance of the hearing. This should be done in the letter requesting to speak.

C. Conduct of Hearings

DOE reserves the right to select persons to speak at the hearings, to schedule their presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation will be limited, based on the number of persons requesting to speak.

A DOE official will preside at each hearing. These will not be judicial or evidentiary type hearings. Questions may be asked of speakers only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. Any decision made by DOE with respect to the subject matter of the hearings will be based on all the information available to DOE.

Any participant who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant and material, and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Office, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585 between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday except Federal holidays.

Any person may purchase a copy of the transcript from the reporter.

If DOE must cancel a hearing, DOE will make every effort to publish an advance notice of such cancellation in the **Federal Register**. Notice of cancellation will also be given to all persons scheduled to speak at the hearing. Hearing dates after the first scheduled day may be cancelled in the event no public testimony has been scheduled in advance.

IV. Other Matters

A. Notice of Information Requirements for Program Announcements

In compliance with the "Notice of Information Requirements for Program Announcements," issued by OMB on May 27, 1980, 45 FR 35954 (May 28, 1980), the following information is provided. The official program number and title as outlined by OMB Circular A–89, "Catalog of Federal Domestic Assistance," for each coordinated State program is as follows—

81.041 State Energy Conservation Program;
81.043 Supplemental State Energy Conservation Program;
81.050 Energy Extension Service;
81.042 Weatherization Assistance Program for Low-Income Persons;
Not Assigned—Emergency Energy Conservation Program; and
81.052 Energy Conservation for Institutional Buildings.

DOE believes that this listing is likely to be changed once operation of these programs as the coordinated State grant programs begins. As required by proposed § 420.18(a)(1), DOE also notes the applicability of OMB Circular A–95 regarding State and local clearinghouse review of Federal and Federally Assisted Programs and Projects.

B. Environmental Review.

DOE has reviewed the proposed coordinated State grant programs regulatory amendments in accordance with its responsibilities under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* The regulation will serve two primary purposes: 1) to facilitate coordinated and comprehensive State energy conservation planning, and 2) to simplify the administration procedures of coordinated State energy conservation grant programs.

It is DOE's judgment that the function of the coordinated State grant program regulation is primarily administrative in nature. DOE has therefore determined that this proposed regulation does not constitute a major Federal action significantly affecting the environment within the meaning of NEPA, and that an environmental impact statement is not required.

Pursuant to the requirements of NEPA, DOE reviewed, at the time of each proposal, the environmental impacts of each of the five State grant programs affected by this rulemaking. In each instance, DOE determined that the program was not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and that an environmental impact statement was not required to support the action. it is DOE's judgment that the rulemaking proposed herein, being administrative in nature, will not affect the environmental impacts associated with each of the five State grant programs. Under the proposed rule, each program maintains its original identity and specific objectives, which are, in most cases, fairly dissimilar (e.g., weatherizing homes versus reducing highway speed limits in times of energy shortages). The States cannot commingle program funds and any restrictions or limitations in the individual programs would still be in effect. Although the proposed rule encourages greater coordination in the implementation of the five grant programs by decreasing the administrative burden on the States, the proposal is not expected to affect the environmental impacts associated with each of the programs, nor is it anticipated that the proposal would lead to cumulative, significant impacts from the five separate programs, given the very minor impacts originally estimated for each program and the relatively small overlap of individual program objectives and participants. The determinations reached from the prior environmental analyses regarding the absence of the need for environmental impact statements for these programs remain valid. A summary of each of these analyses follows.

1. *State Energy Conservation Program (SECP).* An environmental assessment for the original SECP program under the Energy Policy and Conservation Act was prepared. Notice of the availability of this assessment was published with the proposed rulemaking in the **Federal Register** on June 16, 1977 (41 FR 24410, 24412–13).

A subsequent environmental assessment of the Energy Conservation and Production Act amendments to the program was completed prior to issuance of the guidelines applicable to supplemental plans. Notice of this second assessment was published with the notice of proposed rulemaking in the **Federal Register** on March 25, 1977 (42 FR 16150–51).

Each plan and supplemental plan was required to include a detailed description of the increase or decrease in environmental residuals expected from the implementation of the subject plan and an indication of how the environmental factors were considered in the selection of program measures. Environmental impact determinations were considered and published for each plan prior to funding. Applications for financial assistance submitted in accordance with the regulation will be subject to NEPA review, as appropriate, prior to approval in a manner similar to the treatment of applications filed under existing regulations.

2. *Energy Extension Service (EES).* The environmental assessment (DOE/EA–0042) prepared for EES was discussed in the notice of proposed rulemaking (NOPR) for the EES program published on June 5, 1978 (43 FR 24316) in the **Federal Register**.

3. *Weatherization Assistance for Low-Income Persons (WAP).* DOE published a notice of availability of the environmental assessment (DOE/EA–0085) of WAP on April 10, 1979 in the **Federal Register** (44 FR 21323). DOE subsequently reviewed the environmental impacts of amendments to WAP that were published in the **Federal Register** on February 27, 1980 (45 FR 13028). DOE determined that no new or additional environmental impacts were associated with these amendments and that no additional environmental assessment or impact statement was required.

4. *Energy Conservation Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions (IBGP).* An environmental assessment (DOE/EA–0079) of IBGP was prepared. Notice of the public availability of that environmental assessment, together with the negative determination of environmental impact reached pursuant to an evaluation of the environmental assessment, was published in the **Federal Register** on March 12, 1979 (44 FR 13554). The proposed amendments to the IBGP regulation do not affect this previous determination.

5. *Emergency Energy Conservation Program (EECA).* DOE has reviewed environmental impacts of EECA (10 CFR 477 as published in the **Federal Register** on February 7, 1980). It was DOE's judgment that the function of EECA, being purely administrative in nature, would not have any significant impacts upon the environment.

Regarding the individual energy conservation measures included in the

Standby Federal Plan which could be implemented by the President and are used by the States as guidance in developing their individual conservation plans, it is DOE's judgment that none of these measures will have any significant impacts upon the environment or upon the health or safety of individuals. The impacts of alternative measures which States may elect to substitute for the conservation measures included in the Federal Plan will be evaluated by DOE using the environmental information submitted by each State with its individual plan.

DOE does believe, however, that it is appropriate to take certain steps to ensure that the risk to susceptible individuals of adverse impacts from the buildings temperature restrictions conservation measure is reduced to the maximum extent practicable. DOE has therefore developed provisions in the Federal Plan to provide that information concerning individual actions to mitigate the potential adverse effects of building temperature restrictions is provided to the public should the President implement this measure, or should a State include this measure in its individual conservation plan, and that exemptions are granted in those instances where it is demonstrated that the restrictions will have a significant adverse impact on the health and safety of specified individuals.

C. EPA Review

As required by Section 7(a)(1), 15 U.S.C. 766(a)(1), of the Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*), a copy of this proposed rule was submitted to the Administrator of the Environmental Protection Agency for comments on the impact of this proposed rule on the quality of the environment. The Administrator had no comments to make at this time, but reserved the right to provide further comments in accordance with the Administrator's responsibilities under Section 309 of the Clean Air Act once the proposed rule has been released for more extensive review and public comment.

D. Regulatory Review

It has been determined that the proposed regulation is significant, as that term is used in Executive Order 12044 and amplified in DOE Order 2030. This determination is based on the fact that by increasing coordination between the five State energy conservation grant programs, this proposed rulemaking will encourage a comprehensive approach to energy conservation planning and simplify program procedures. It has been further determined that this regulatory action is not likely to have a major impact, as defined by Executive Order 12044 and DOE Order 2030. Consequently, no regulatory analysis will be prepared in this instance.

E. Urban Impact Analysis

This proposed regulation has been reviewed in accordance with OMB Circular A–116 to assess the impact on urban centers and communities. In accordance with the DOE finding that the regulation is not likely to have a major impact, DOE has determined that no community and urban impact analysis of the rulemaking is necessary, pursuant to section 3(a) of Circular A–116.

In consideration of the following DOE proposes to amend Parts 420, 440, 455, 465 and 477 of Chapter II of Title 10 of the Code of Federal Regulations as set forth below.

(Title III, Part D, as amended, of the Energy Policy and Conservation Act, 42 U.S.C. 6321 *et seq.*; the National Energy Extension Service Act, enacted as Title V of the Energy Research and Development Administration Authorization Act of 1977, 42 U.S.C. 7001 *et seq.*; Federal Grant and Cooperative Agreement Act of 1977, 41 U.S.C. 501 *et seq.*; Title IV, Part A of the Energy Conservation and Production Act, as amended, 42 U.S.C. 6851 *et seq.*; Title III of the National Energy Conservation Policy Act, Pub. L. 95–619, 92 Stat. 3206 *et seq.*; Section 365(e)(2), 42 U.S.C. 6325(e)(2), of the Energy Conservation and Production Act, 42 U.S.C. 3801 *et seq.*; Title II of the Emergency Energy Conservation Act of 1979, Pub. L. 96–102, 93 Stat. 757, 42 U.S.C. 8501 *et seq.*; Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*)

Issued in Washington, D.C., October 7, 1980.

Worth Bateman,

Acting Under Secretary.

1. Part 420 is redesignated and revised to read as follows:

PART 420—COORDINATED STATE GRANT PROGRAMS

Subpart A—General Requirements

Sec.

420.00 Purpose and scope.
420.01 Definitions.
420.02 Coordinated State grant programs.
420.10 Financial assistance.
420.11 Allocation of financial assistance.
420.12 Coordinated State grant application.
420.13 Narrative overview.
420.14 Review and approval.
420.15 Administrative review.
420.16 Reports.
420.17 Recordkeeping.
420.18 Administration of financial assistance.
420.19 Antidiscrimination.

Subpart B—State Energy Conservation Program

420.100 Purpose and scope.
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420.410 Financial assistance and allocation of financial assistance.
420.411 Financial assistance applications.

Authority: (Title III, Part D, as amended, of the Energy Policy and Conservation Act, 42 U.S.C. 6321 *et seq.*; the National Energy Extension Service Act, enacted as Title V of the Energy Research and Development Administration Authorization Act of 1977, 42 U.S.C. 7001 *et seq.*; Federal Grant and Cooperative Agreement Act of 1977, 41 U.S.C. 501 *et seq.*; Title IV, Part A of the Energy Conservation and Production Act, as amended, 42 U.S.C. 6851 *et seq.*; Title III of the National Energy Conservation Policy Act, Pub. L. 95–619, 92 Stat. 3206 *et seq.*; Section 365(e)(2) 42 U.S.C. 6325(e)(2), of the Energy Conservation and Production Act, 42 U.S.C. 3801 *et seq.*; Title II of the Emergency Energy Conservation Act of 1979, Pub. L. 96–102, 93 Stat 757, 42 U.S.C. 8501 *et seq.*; Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*)

Subpart A—General Requirement

§ 420.00 Purpose and scope.

This part establishes procedures to coordinate energy conservation programs conducted by the States and to consolidate the process by which a State applies to the Department of Energy for financial assistance for these programs. For these purposes, this part—

(a) Consolidates in one part the regulations for the State Energy Conservation Program, the Energy Extension Service and the Program for Weatherization Assistance for Low-Income Persons.

(b) Establishes the procedure by which a State makes one application for financial assistance for these programs and—

(1) the Energy Conservation Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions; and

(2) the Emergency Energy Conservation Program.

(c) Establishes requirements for the submission, review and approval of a coordinated State grant application.

§ 420.01 Definitions.

"Applicant" means a department, office or other entity of the State designated by the Governor to submit to the Regional Representative the annual coordinated State grant application.

"Budget period" means the period of 12 consecutive months, commencing upon an anniversary date selected by a State on or after January 1, but not later than July 1, during which a State carries out its coordinated State grant program activities.

"DOE" means the Department of Energy.

"Governor" means the chief executive officer of a State and the Mayor of the District of Columbia, or a person duly designated to writing by the Governor to act upon his or her behalf.

"Grantee" means a State or other entity named in the Notice of Grant Award as the recipient of financial assistance provided for a coordinated State grant program.

"Local applicant" means a Community Action Agency or unit of general purpose local government.

"Regional Representative" means the Regional Representative of the Department of Energy.

"Secretary" means the Secretary of the Department of Energy.

"State" means any State of the United States and the District of Columbia and a Territory.

"Target Audience" means the persons identified by a grantee to receive assistance provided by the grantee under a coordinated State grant program.

"Territory" means with respect to the State Energy Conservation Program, the Energy Extension Service and the Emergency Energy Conservation Plan, any territory or possession of the United States which includes the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands; with respect to the Energy Conservation Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.

§ 420.02 Coordinated State grant programs.

(a) The coordinated State grant programs for which financial assistance is provided under this part consist of the following—

(1) State Energy Conservation Program;

(2) Energy Extension Service;

(3) Program for Weatherization Assistance for Low-Income Persons;

(4) Emergency Energy Conservation Program; and

(5) Energy Conservation Programs for Schools and Hospitals and for Units of Local Government and Public Care Institutions.

(b) Subpart A and the DOE Assistance Regulations, 10 CFR Part 600, prescribe requirements for the coordinated State grant programs. Additional requirements specific to each coordinated State grant program are provided as follows—

Coordinated State grant program	Regulatory provisions
State Energy Conservation Program.	Subpart B
Energy Extension Service	Subpart C
Program for Weatherization Assistance for Low-Income Persons.	Subpart D
Emergency Energy Conservation Program.	Subpart E and 10 CFR Part 477
Energy Conservation Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions.	10 CFR Parts 450 and 455

(c) The Secretary may require, by rule, that a DOE program to provide financial assistance to the States, other than those listed in paragraph (b) of this section, shall be conducted as a coordinated State grant program under this part.

§ 420.10 Financial assistance.

(a) The Regional Representative shall provide financial assistance to a State for a coordinated State grant program from funds available for the program for any fiscal year.

(b) To obtain financial assistance for a budget period for one or more coordinated State grant programs, a State shall submit one annual consolidated grant application in accordance with § 420.12.

(c) Financial assistance provided for a coordinated State grant program shall not be used for any other coordinated State grant program in the absence of express Congressional authority and the prior written approval of DOE.

§ 420.11 Allocation of financial assistance.

(a) DOE shall determine for each State the allocation or tentative allocation of financial assistance for a coordinated State grant program from available funds in accordance with the allocation formula prescribed by rule for the coordinated State grant program, as provided in the following—

Coordinated State grant program	Regulatory provisions
State Energy Conservation Programs.	For plans, § 420.110(b) and for supplemental plans, § 420.110(c)
Energy Extension Service	§ 420.212(a)
Program for Weatherization Assistance for Low-Income Persons.	§ 420.310(b)
Emergency Energy Conservation Program.	§ 420.410(b)
Energy Conservation Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions.	§ 455.83(a)

(b) The Regional Representative shall notify each State of the allocation or tentative allocation for which the State may apply.

(c) DOE may reallocate unobligated funds or redistribute tentatively allocated funds for a coordinated State grant program in accordance with the provisions, if any, prescribed by

regulations applicable to the coordinated State grant program, as follows—

Coordinated State grant program	Regulatory provisions
Energy Extension Service	§ 420.212(b)
Program for Weatherization Assistance for Low-Income Persons.	§ 420.310
Emergency Energy Conservation Program.	§ 420.410(d)
Energy Conservation Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions.	§ 455.102

§ 420.12 Coordinated State grant application.

(a) Financial assistance under this part shall be provided to a State upon approval of an annual application. Application for financial assistance shall be made by the State agency designated by the Governor as the applicant. The applicant shall submit an original and two copies to the Regional Representative of an annual coordinated State grant application executed by the Governor.

(b) The annual coodinated State grant application shall be submitted on or after October 1 but no later than December 31 of each year.

(c) In the first coordinated State grant application submitted under this part, the applicant shall select the anniversary date for its budget period. The budget period shall be a consecutive 12-month period which shall commence on or after January 1, but no later than July 1 and shall apply to the coordinated State grant programs of the State.

(d) An annual coodinated State grant application shall include—

(1) The name and address of the applicant;

(2) The coordinated State grant programs for which the applicant requests financial assistance;

(3) For each coordinated State grant program for which financial assistance is sought—

(i) The name and address of the grantee designated by the Governor as the recipient of financial assistance for the coodrinated State grant program;

(ii) budget information, including where appropriate the source and amount of any non-Federal contributions, and a listing of milestones for the activities to be carried out during the budget period;

(iii) The submission requirements prescribed by the applicable coordinated State grant program regulations referred to in § 420.02(b);

(iv) An assurance executed by the grantee designated in the application as the recipient of financial assistance for a coordinated State grant program that—

(A) The information contained in the application regarding the program is accurate and complete; and

(B) The grantee is ready, willing and able to carry out its responsibilities for the program in a timely manner in accordance with the application; and

(4) If financial assistance is applied for under subparts B or C, a narrative overview prepared in accordance with § 420.13.

(e) The application shall contain the name and address of the public official authorized to amend this application on behalf of the State for each coordinated State grant program for which application for financial assistance is made.

(f) The applicant may request permission to submit all or part of an annual coordinated State grant application after December 31 by submitting a written request to the Regional Representative on or before December 15. The extension shall only be granted for a period not to exceed 90 days if, in the Regional Representative's judgment, appropriate justification is shown, and the Regional Representative determines that participation by the State submitting the request is likely to result in significant progress toward achieving the purposes of this part.

§ 420.13 Narrative overview.

(a) The narrative overview shall discuss the objectives, coordination and management of coordinated State grant programs for which a State is applying for financial assistance under § 420.12.

(b) The discussion of objectives shall describe State energy conservation and renewable resource goals including any Federally mandated goals and shall include—

(1) The relationship of these goals to the energy consumption and supply patterns of the State;

(2) A description of the objectives of the coordinated State grant programs including—

(i) Why these objectives were selected with particular reference to potential energy savings, increased use of renewable resources, and types and number of people affected;

(ii) How these objectives help accomplish the State energy conservation goals;

(3) A description by sector of the strategy to achieve the State energy conservation goals. This description shall include a discussion of how the target audiences to be addressed and the services to be provided by the coordinated State grant programs, including the emphasis and funding given to each, are a part of this strategy.

(c) The discussion of coordination shall describe procedures for ensuring that effective coordination exists among local, State, Federal and privately-funded energy conservation programs contributing to the State energy conservation goals including the coordinated State grant programs, university extension programs and other energy conservation programs, and include a description of—

(1) Strategies used, as applicable, by a coordinated State grant program to increase the effectiveness and productivity of another coordinated State grant program;

(2) How State and other Federal resources are being used to reinforce and supplement assistance provided by the coordinated State grant programs; and

(3) How financial assistance provided under this part is being used to supplement other related energy conservation activities in the State.

(d) The discusison of management shall describe state policies and practices to improve management of all coordinated State grant programs under this part and to build capability in effective program administration. The discussion shall include an explanation of—

(1) The steps taken to carry out procedural requirements relating to coordinated State grant programs including—

(i) Submission of timely, accurate and complete applications, plans and reports;

(ii) Establishment of reliable financeial controls and effective procurement practices; and

(iii) Steps to be taken to review program effectiveness and improve performance;

(2) The assignment of responsibilities, including an organizational chart, designation of an applicant and procedures for the coordinated State grant programs, to assure that the administration of a coordinated State grant program will be conducted in accordance with the State's management practices and policies.

(e) The narrative overview shall also contain a discussion of the opportunities for public participation in the development of coordinated State grant programs including—

(1) A written summary and chronology of the procedures used to obtain public comments; including those required by other provisions of this part; and

(2) The name of the organizations which provided comments and how their comments affected the contents of a coordinated State grant program.

§ 420.14 Review and approval.

(a) The Regional Representative shall review a timely coordinated State grant application. The Regional Representative shall approve, in whole or in part, a coordinated State grant application or modification thereto if he or she determines that—

(1) The application meets the requirements of this part and 10 CFR Part 600;

(2) If financial assistance has been provided for a coordinated State grant program in the preceding 12 months, the State is making satisfactory progress in meeting the purposes for which the financial assistance was provided and required additional financial assistance.

(b) The contents of the application relating to a coordinated State grant program shall meet specific applicable requirements for review and approval for the coordinated State grant program, as follows—

Coordinated State Grant Program and Regulatory Provisions

State Energy Conservation Program—§ 420.110(d)
Energy Extension Service—§ 420.211(c)
Program for Weatherization Assistance for Low-Income Persons—§ 420.411(c)
Emergency Energy Conservation Program—§ 420.411(c)
Energy Conservation Programs for Schools and Hospitals and Buildings Owned by Units of Local Government and Public Care Institutions—§ 455.62(b)

(c) If all or a portion of the annual coordinated State grant application is not approved in accordance with paragraph (a) of this section, the Regional Representative shall return to the applicant the portion of the application which does not meet the criteria in paragraph (a) or (b) of this section together with a written explanation. The Regional Representative shall consult with the applicant to determine a reasonable time period for modifying and resubmitting the disapproved portion(s) of the application.

§ 420.15 Administrative review.

(a) The Regional Representative shall give notice to the applicant in the event that the Regional Representative finds that—

(1) Any part of an application resubmitted by an applicant in accordance with paragraph § 420.14(c) fails to comply with this regulation;

(2) Any part of an application returned to an applicant pursuant to § 420.14(c) is not timely resubmitted as provided in § 420.14(c); or

(3) In the Weatherization Assistance Program, the Regional Representative intends to deny the application of a local applicant.

(b) The Regional Representative shall assure notice is given to a grantee in the event of a finding that there is a failure by the grantee to comply substantially with the provisions of this part.

(c) The Regional Representative shall issue such notice in written form sent by registered mail, return receipt requested, including—

(1) A statement of reasons for a determination regarding the findings referred to in paragraph (a) or (b) of this section which the Regional Representative intends to make, including an explanation whether any amendments or other actions would result in compliance with the regulation;

(2) The date, place, and time of a public hearing to be heard before a review panel, one subject of which shall be the proposed determination, which hearing shall not be later than 15 working days after the receipt of such notice; and

(3) The manner in which views may be presented.

(d) A party which has received notice under paragraph (c) of this section—

(1) May make a written submission of its views with supporting data and arguments to the Regional Representative on or before the date of the public hearing; and

(2) Shall be afforded an opportunity to make an oral presentation at the public hearing.

(e) The review panel shall be appointed by the Regional Representative and shall consist of three disinterested members. The review panel shall consider all relevant views and data including arguments and other submissions made on or before the date of the public hearing.

(f) The review panel shall submit a written report containing its findings and recommendations to the Regional Representative within 10 working days after the date of the public hearing. The Regional Representative shall make, not later than 5 working days after receipt of the report of the review panel, a "final determination" in writing stating the reasons for the determination and give notice of the determination to any party which has received notice under paragraph (c) of this section.

(g) A party may appeal in writing from an adverse "final determination" under paragraph (b) made by the Regional Representative in accordance with paragraph (f) of this section to the Financial Assistance Appeals Board in accordance with the procedures set forth in 10 CFR Part 1024.

(h) Anything herein to the contrary notwithstanding, the public hearing referred to in subparagraph (c)(2) for a determination under subparagraph (a)(3) of this section may be combined, at the discretion of the Regional Representative, with any other public hearing in the State conducted pursuant to this part.

(i) Upon or subsequent to issuance of the notice provided in paragraph (b), the Regional Representative may direct the suspension of payments to any grantee pending a final determination. Upon a final determination of failure to comply, the grantee will be ineligible to participate in the coordinated State grant program under this part for which the determination has been made unless and until the Regional Representative is satisfied that there is no longer a failure to comply.

§ 420.16 Reports.

Reports shall be furnished by any recipient of financial assistance under this part, in such form as may be prescribed, in accordance with 10 CFR Part 600.

§ 420.17 Recordkeeping.

Each State or other entity within a State receiving financial assistance under this part shall make and retain records required by 10 CFR Part 600.

§ 420.18 Administration of financial assistance.

(a) Grants provided under this part shall comply with applicable law including, but without limitation, the requirements of—

(1) Office of Management and Budget Circular A–95, entitled "Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects;"

(2) Office of Management and Budget Circular A–102, entitled "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments;"

(3) Federal Management Circular 74–4 (34 CFR 255), entitled "Cost Principles Applicable to Grants and Contracts with State and Local Governments;"

(4) Treasury Circular 1075, entitled "Treasury and Fiscal Requirements Manual;"

(5) DOE Assistance Regulations (10 CFR Part 600); and

(6) Other procedures which DOE may from time to time prescribe for the administration of financial assistance provided under this part.

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(b) A grantee shall procure supplies and services to assure that disadvantaged businesses are utilized where possible as sources of supplies and services as prescribed in OMB Financial Management Circular A–102.

§ 420.19 Antidiscrimination.

Recipients of DOE financial assistance awards which are provided under DOE Federal Assistance programs shall comply with Part 1040, Chapter X, Title 10 of the Code of Federal Regulations "Nondiscrimination in Federally Assisted Programs" (10 CFR Part 1040).

►Subpart B◄ [Part 420]—State Energy Conservation ►Program◄ [Plans] [1]

Sec.

►420.100◄ [420.1] Purpose and scope.
►420.101◄ [420.2] Definitions.
►420.110◄ [420.3] Financial assistance ►and allocation of financial assistance◄.
►420.111◄ [420.4] ►SECP requirements for annual coordinated State grant applications◄ [Annual State applications].
[420.5 Review and approval of annual State applications and State plans.] [2]
►420.112◄ [420.6] Energy conservation goals.
►420.113◄ [420.7] Minimum criteria for required program measures for ►SECP◄ plans.
►420.114◄ [420.8] Minimum criteria for required program measures for supplemental ►SECP◄ plans.
►420.115◄ [420.9] Extensions for compliance with required program measures.
[420.10 Administrative review.] [3]
►420.116◄ [420.11] Technical assistance.
[420.12 Recordkeeping] [4]
[420.13 Reports.] [5]
►420.117◄ [420.14] Prohibited expenditures.
[420.15 Administration of financial assistance.] [6]

Authority: Title III, Part D, as amended, of the Energy Policy and Conservation Act, 42 U.S.C. 6321 *et seq.*; Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*

§ ►420.100◄ [420.1] Purpose and scope.

(a) This ►sub◄ part prescribes requirements for program measures for the State Energy Conservation Program to be included in plans and supplemental plans, and guidelines for the development, modification and funding of plans and supplemental plans. It is the purpose of this ►sub◄ part to promote the conservation of energy and to reduce the rate of growth of energy demand through the development and implementation of a comprehensive State Energy Conservation [plans] Program and the provision of Federal financial and technical assistance to States ►to support it◄ [in support of such program].

(b) DOE has the responsibility to foster and promote comprehensive State Energy Conservation ►Program◄ plans by providing technical and financial assistance for specific State initiatives to conserve and improve efficiency in the use of energy and to encourage the use of renewable resources. Because of the diversity of conditions among the various States and regions of the Nation, a wholly Federally administered program would not be as effective as one which is tailored to meet local requirements and to respond to local opportunities.

§ ►420.101◄ [420.2] Definitions.

As used in this part—

["Act" means Title III, Part C, as amended, of the Energy Policy and Conservation Act, 42 U.S.C. 6321 *et seq.*] [7]

"ASHRAE 90–75" means those designated standards developed by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Incorporated, as approved by its Board of Directors on August 11, 1975, to provide design requirements for improvements of energy utilization in new buildings.

"Btu" means British thermal unit.

"British thermal unit" means the quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit at 39.2 degrees Fahrenheit and one atmosphere of pressure.

"Building" means any structure which includes provision for a heating or cooling system, or both, or for a hot water system.

"Carpool" means the sharing of a ride by two or more people in an automobile.

"Carpool matching and promotion campaign" means a campaign to coordinate riders with drivers to form carpools and/or vanpools.

"Commercial building" means any building other than residential building, including any building constructed for industrial or public purposes.

►"Conservation techniques and technologies" means actions likely to result in energy conservation.◄

["DOE" means the Department of Energy.] [8]

"Energy audit" means a survey of a building or buildings that is conducted in accordance with § ►420.113 (b)(3)◄ [420.7 (b)(3)] and Subpart B of 10 CFR Part 450 and which—

(a) Identifies the type, size, energy use level and the major energy using systems of such building or buildings;

(b) Determines appropriate energy conservation maintenance and operating procedures; and

(c) Indicates the need, if any, for the acquisition and installation of energy conservation measrues.

"Energy conservation" means energy conservation, efficient energy use or the utilization of renewable energy resources which results in energy savings based upon a net reduction in the use of non-renewable energy resources.

"Energy conservation measure" means a measure which is identified as an energy conservation measure in accordance with Subpart D of 10 CFR Part 450.

"Energy measure" means an energy conservation measure or a renewable-resource energy measure as prescribed in Subpart D of 10 CFR Part 450.

"Environmental residual" means any pollutant or pollution causing factor which results from any activity.

"Exempted building" means—

(a) Any building whose peak design rate of energy usage for all purposes is less than one watt (3.4 Btu's per hour) per square foot of floor area for all purposes;

(b) Any building with neither a heating nor cooling system;

(c) Any mobile home; or

(d) Any building owned or leased in whole or in part by the United States.

"Exterior envelope physical characteristics" means the physical nature of those elements of a building which enclose conditioned spaces through which thermal energy may be transferred to or from the exterior.

["Governor" means the chief executive officer of a State and the Mayor of the district of Columbia, or a person duly designated in writing by the Governor to act upon his or her behalf.

"Grantee" means the State or other entity named in the Notice of Grant Award as the recipient.] [9]

"HVAC" means heating, ventilating and air conditioning.

[1] Language which DOE proposes to add to existing regulations is set off with arrows ►◄ and language which DOE proposes to delete is set off with brackets [ ].

[2] § 420.5(a) (1), (2) and (3) redesignated as § 420.110(d); § 420.5(b) incorporated in § 420.14(c).

[3] § 420.10 incorporated in § 420.15.

[4] § 420.12 redesignated as § 420.17.

[5] § 420.13 incorporated in § 420.16.

[6] § 420.15 incorporated in § 420.18.

[7] "Act" amended to read as "SECP Act" and realphabetized in § 420.101.

[8] "DOE" relocated in § 420.01.

[9] "Governor" and "grantee" relocated in § 420.01.

"Heating, ventilating and air conditioning" means a system that provides heating, ventilation and/or air conditioning within or associated with a building.

"HUD minimum property standard" means any of the rules and regulations adopted by the Department of Housing and Urban Development establishing minimum acceptable levels of site design, site preparation, exterior and interior appurtenances which standard is applied to single or multifamily housing units which seek assistance under one or more programs administered by the Assistant Secretary for Housing and Mortgage Credit of the Department of Housing and Urban Development.

"Industrial plant" means any fixed equipment or facility which is used in connection with, or as part of, any process or system for industrial production or output.

"Major building type" means a class of building within which similar functions occur such as hospitals, restaurants, hotels and supermarkets.

"Metropolitan Planning Organization" means that organization required by the Department of Transportation, and designated by the Governor as being responsible for coordination within the State, to carry out transportation planning provisions in a Standard Metropolitan Statistical Area.

"National energy conservation program" means a program which is authorized by Federal statute and is wholly implemented by the Federal government, without the active participation of a State or local government, other than for usual coordination or acknowledgement.

"Park-and-ride lot" means a parking facility generally located at or near the trip origin of carpools, vanpools, and/or mass transit.

["Plan" means a State energy conservation plan including required program measures in accordance with § 420.7 and otherwise meeting the applicable provisions of this part.] [10]

"Political subdivision" means a unit of government within a State, including a county, municipality, city, town, township, parish, village, local public authority school district, special district, council of governments, or any other regional or intrastate governmental entity or instrumentality of a local government exclusive of institutions of higher learning and hospitals.

"Preferential traffic control" means any one of a variety of traffic control techniques used to give carpools, vanpools and public transportation vehicles priority treatment over single occupant vehicles other than bicycles and other two-wheeled motorized vehicles.

"Program measure" means one or more State actions, in a particular area, designed to effect energy conservation, excluding actions in areas specifically covered by national energy conservation programs.

"Public building" means any building which is open to the public during normal business hours, except exempted buildings, including—

(a) Any building which provides facilities or shelter for public assembly, or which is used for educational, office or institutional purposes;

(b) Any inn, hotel, motel, sports arena, supermarket, transportation terminal, retail store, restaurant, or other commercial establishment which provides services or retail merchandise;

(c) Any portion of an industrial plant building used primarily as office space; or

(d) Any building owned by a State or political sub-division thereof, including libraries, museums, schools, hospitals, auditoriums, sport arenas, and university buildings.

"Public transportation" means any scheduled or nonscheduled transportation service for public use.

["Regional Representative" means the Regional Representative of the DOE.] [11]

"Renewable resource energy measure" means a measure which is identified as a renewable resource energy measure in accordance with Subpart D of 10 CFR Part 450.

"Residential building" means any structure which is constructed for residential occupancy.

["Secretary" means the Secretary of DOE.] [12]

►"SECP" means State Energy Conservation Program.

"SECP Act" means Title III, Part C, as amended, of the Energy Policy and Conservation Act, 42 U.S.C. 632 *et seq.*

"SECP plan" means a State energy conservation program plan including required program measures in accordance with § 420.113 [420.7] and otherwise meeting the applicable provisions of this subpart.◄

["State" means a State, the District of Columbia, Puerto Rico, or any territory or possession of the United States.] [13]

"Suplemental ►SECP◄ plan" means a supplemental State energy conservation ►program◄ plan including required program measures in accordance with § ►420.114◄ [420.8] and otherwise meeting the applicable provisions of this ►sub◄ part.

►"Technical support" means activities provided by a State, such as specialized analyses, preparation of materials, training or other activites, which are necessary to implement a SECP plan or a supplemental SECP plan effectively.◄

"Transit level of service" means characteristics of transit service provided which indicate its quantity, geographic area of coverage, frequency and quality (comfort, travel, time, fare and image).

"Urban area traffic restriction" means a setting aside of certain portions of an urban area as restricted zones where varying degrees of limitation are placed on general traffic usage and/or parking.

"Vanpool" means a group of riders using a vehicle, with a seating capacity of not less than eight individuals and not more than fifteen individuals, for transportation to and from their residences or other designated locations and their place of employment, provided the vehicle is driven by one of the pool members.

"Variable working schedule" means a flexible working schedule to facilitate carpool, vanpool and/or public transportation usage.

§ ►420.110◄ [420.3] Financial assistance ►and allocation of financial assistance.◄

(a) The Regional Representative shall provde financial assistance ►under this subpart◄ to develop, modify or implement ►an SECP◄ [a] plan, a supplemental ►SECP◄ plan, or both, [on a calendar year basis,] from funds available for any fiscal year, to each State having an approved annual ►coordinated State grant◄ application ►for carrying out an SECP plan, a supplemental SECP plan, or both, in accordance with § 420.113 and § 420.114◄.

(b) Financial assistance►under this subpart◄ to develop, implement or modify ►SECP◄ plans shall be allocated among the States from funds available for any fiscal year, based on the following formula—

(1) Forty percent of available funds will be divided on the basis of the resident population of the participating States as of July, 1976, as reported by the Department of Commerce, Bureau of Census, in their most recent publication of "Current Population Reports;"

(2) Twenty-five percent of available funds will be divided among the participating States equally; and

(3) Thiry-five percent of available funds will be divided on the basis of estimated energy savings in calendar

[10] "Plan" amended to read as "SECP Plan", and realphabetized in § 420.101.

[11] "Regional Representative" relocated in § 420.01.

[12] "Secretary" relocated in § 420.01.

[13] "State" relocated in § 420.01.

year 1980 resulting from the implementation of State energy conservation plans; provided, however, that no State shall receive more than 20 percent of the funds available to be divided on the basis of the estimated energy savings in calendar year 1980; and

(c) Financial assistance ►under this subpart◄ to develop, implement or modify supplemental ►SECP◄ plans shall be allocated among the States from funds available for any fiscal year, based on the following formula—

(1) Seventy-five percent of available funds will be divided on the basis of the resident population of the participating States as of July, 1976, as reported by the Department of Commerce, Bureau of Census, in their most recent publication of "Current Population Reports;"

(2) Twenty-five percent of available funds will be divided among the participating States equally.

►(d) The Regional Representative shall provide financial assistance under this subpart if he or she determines in accordance with § 420.14 that—

(1) The submission made in accordance with § 420.111 conforms to the requirements of subpart B;

(2) If financial assistance is to be provided for an SECP plan, the proposed program measures are consistent with a State's achievement of its energy conservation goal and interim goals, if any, in accordance with § 420.112;

(3) The provisions of the application regarding program measures—

(i) For an SECP plan satisfy the minimum program requirements under § 420.113; or

(ii) For a supplemental SECP plan satisfy the minimum program requirements under § 420.114.◄

§ ►420.111◄ [420.4] ►SECP requirements for annual coordinated State grant applications◄ [Annual State applications].

[(a) To be eligible for financial assistance under this part, a State on or before the last day of the calendar year shall submit an original and two copies to the Regional Representative of an annual application, executed by the Governor. The annual application shall be submitted in accordance with DOE Form CS–1 and shall request financial assistance for either a plan or a supplemental plan or for both.

(b) An application shall include—

(1) The name and address of the grantee;][14]

►To be eligible for financial assistance under this subpart, a State shall submit a coordinated State grant application in accordance with §420.12 and shall include with the application—◄

►(a)◄ [(2)] With respect to either ►an SECP◄ [a] plan or supplemental ►SECP◄ plan or both—

►(1)◄ [(i)] ►A copy of the plan showing ◄[A description of] proposed modifications, including new and amended program measures ►and a description of proposed modifications◄;

►(2)◄ [(ii)] For the year in which financial assistance will be provided ◄, ►[—]◄ an explanation of how the minimum criteria for required program measures prescribed in § 420.113 for a SECP plan and §420.114 for a supplemental SECP plan shall be satisfied.◄

[(A) A budget listed by program measure and by object class category;

(B) A narrative statement detailing the nature of amendments and of new program measures;

(C) A listing of milestones by calendar quarter; and

(D) A description of the source and amount of funding, if any, other than financial assistance provided under this part, which is expected to be available to the State;][15]

[(E) An explanation of how the minimum criteria for required program measures prescribed in § 420.7 for SECP plans and § 420.8 for supplemental SECP plans shall be satisfied.][16]

►(3)◄ [(iii)] A detailed description of the estimated energy savings and the estimated cost of implementation for each program measure described in the ►coordinated State grant◄ application; and

►(4) A description for each program measure which shall include—

(i) The target audience, why it was selected and the estimated number of persons in the State which the SECP program expects to reach;

(ii) The services to be provided, including—

(A) How the services will meet the needs of the target audience;

(B) The conservation techniques and technologies to be used in each service;

(C) The type and estimated number of energy audits if any are included; and

(D) The geographic areas in which the services shall be delivered and why these areas were selected;

(iii) Any technical support which is necessary to provide the services, including the organization that will provide the technical support and why the organization was selected; and

(iv) The organization which shall implement the program measure and any other organization which shall provide a service to the target audience, why the selection was made and the approximate number of any new personnel to be employed to implement the program measure,

(5) A description of the organization which shall administer the overall development and implementation of the SECP plan or supplemental SECP plan, which shall include—

(i) Why the administering organization was selected;

(ii) The provisions made for coordination between the administering organization and any other organizations assisting in the implementation of the SECP plan or supplemental SECP plan; and

(6) A description of any additional technical support not described in subparagraph (a)(4)(iii) of this section which is required to facilitate implementation of the SECP plan or supplemental SECP plan including a description of—

(i) The type of technical support provided;

(ii) Why support is needed; and

(iii) The organization that will provide support; and

(7) A description of the procedure that the grantee will use to achieve timely implementation of the SECP plan or supplemental SECP plan;◄

►(b)◄ [(3)] A detailed description of the increase or decrease in environmental residuals expected from implementation of either ►an SECP◄ [a] plan or supplemental ►SECP◄ plan, or both, defined insofar as possible through the use of information to be provided by DOE, and an indication of how these environmental factors were considered in the selection of program measures.

(c) The detailed description of estimated energy savings for ►an SECP◄ [a] plan, specified in subparagraph ►(a)(3)◄ [(b)(2)(iii)] of this section, shall include—

(1) The estimated energy savings in Btu's expected as a result of the implementation of the program measure for calendar year 1980, and beyond;

(2) The sources of numerical data, any assumptions, and the actual calculations used by the State to estimate the energy savings;

(3) For those program measures for which DOE has not made available a methodology for estimating the energy savings, the methodology used to estimate the energy savings; and

(4) The manner in which the State will assess actual energy savings under the program measure.

[14] § 420.4(a) incorporated in § 420.12(a) and (b); § 420.4(b)(1) incorporated in § 420.12(d)(3).

[15] § 420.4(b)(2)(ii)(A), (C) and (D) are incorporated into § 420.12; § 420.4(b)(2)(ii)(B) is incorporated into §420.111(a)(1).

[16] § 420.4(b)(2)(ii)(E) redesignated as § 420.111(a)(2).

[(d) The Governor may request an extension of the annual submission date by submitting a written request to the Regional Representative on or before December 15. The extension shall only be granted, for a period not to exceed three months, if, in the Regional Representative's judgment, acceptable and substantial justification is shown, and the Regional Representative determines that participation by the State submitting the request is likely to result in significant progress toward achieving the purposes of this part.][17]

[§ 420.5 Review and approval of annual State applications and State plans.]

[(a) The Regional Representative shall review each timely annual application and provide financial assistance if he or she determines that—

(1) The application conforms to the requirements of this part;

(2) The proposed program measures are consistent with a State's achievement of its energy conservation goal and interim goals, if any, in accordance with § 420.6;

(3) The provisions of the application regarding program measures satisfy the minimum program requirements prescribed by § 420.7.][18]

[(b) If the annual application is not approved according to paragraph (a) of this section, the Regional Representative shall return it to the State together with a written statement describing why the annual State application fails to meet the requirements of this part. The State will be given a reasonable period of time, as determined by the Regional Representative, to amend its annual application and submit it for reconsideration according to paragraph (a) of this section.][19]

§ ►420.112◄ [420.6] Energy conservation goals.

(a) DOE shall set an energy conservation goal for each State for calendar year 1980 pursuant to § 364 of the ►SECP◄ Act.

(b) DOE may set interim goals for the States pursuant to § 364 of the ►SECP◄ Act.

(c) With regard to interim goals prescribed in accordance with paragraph (b) of this section, DOE shall specify the assumptions used in the determination of the projected energy consumption in each State, taking into account population trends, economic growth, and the effects of national energy conservation programs.

►(d) States shall submit annually an estimate of actual energy savings, by program measure, which have occurred as a result of providing program services (or portions thereof) funded by this grant program.◄

§ ►420.113◄ [420.7] Minimum criteria for required program measures for ►SECP◄ plans.

►An SECP◄ [A] plan shall satisfy all of the following minimum criteria for required program measures.

(a) Mandatory lighting efficiency standards for public buildings shall—

(1) Be under implementation throughout all political subdivisions of the State;

(2) Apply to all public buildings above a certain size, as determined by the State;

(3) For new public buildings, be no less stringent than provisions of section 9 of ASHRAE 90–75; and

(4) For existing public buildings, contain the elements deemed appropriate by the State.

(b) Program measures to promote the availability and use of carpools, vanpools and public transportation shall—

(1) Have at least one of the following actions under implementation in at least one urbanized area with a population of 50,000 or more within the State or in the largest urbanized area within the State if that State does not have an urbanized area with a population of 50,000 or more—

(i) A carpool/vanpool matching and promotion campaign;

(ii) Park-and-ride lots;

(iii) Preferential traffic control for carpoolers and public transportation patrons;

(iv) Preferential parking for carpools and vanpools;

(v) Variable working schedules;

(vi) Improvements in transit level of service for public transportation;

(vii) Exemption of carpools and vanpools from regulated carrier status;

(viii) Parking taxes, parking fee regulations or surcharge on parking costs;

(ix) Full-cost parking fees for State and/or local government employees;

(x) Urban area traffic restrictions;

(xi) Geographical or time restrictions on automobile use; or

(xii) Area or facility tolls; and

(2) Be coordinated with the relevant Metropolitan Planning Organization, unless no Metropolitan Planning Organization exists in the urbanized area, and not be inconsistent with any applicable Federal requirements.

(c) Mandatory standards and policies affecting the procurement practices of the State and its political subdivisions to improve energy efficiency shall—

(1) With respect to all State procurement and with respect to procurement of political subdivisions to the extent determined feasible by the State, be under implementation; and

(2) Contain the elements deemed appropriate by the State to improve energy efficiency through the procurement practices of the State and its political subdivisions.

(d) Mandatory thermal efficiency standards for new and renovated buildings shall—

(1) Be under implementation, with respect to all buildings other than exempted buildings, throughout all political subdivisions of the State;

(2) Take into account the exterior envelope physical characteristics, HVAC system selection and configuration, HVAC equipment performance and service water heating design and equipment selection;

(3) For all new commercial buildings, be no less stringent than a standard consistent with provisions of Section 4–9 of ASHRAE 90–75, unless the operation of Section 327 of the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6297, renders reliance on such standard to be impracticable;

(4) For all new residential buildings, be no less stringent than either the HUD minimum property standards or a standard consistent with the provisions of sections 4–9 of ASHRAE 90–75, unless the operation of Section 327 of the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6297, renders reliance on such standards to be impracticable; and

(5) For renovated buildings—

(i) Apply to those buildings determined by the State to be renovated buildings; and

(ii) Contain the elements deemed appropriate by the State regarding thermal efficiency standards for renovated buildings.

(e) A traffic law or regulation which permits the operator of a motor vehicle to make a right turn at a red light after stopping shall—

(1) Be in a State's motor vehicle code and under implementation throughout all political subdivisions of the State, except as provided in paragraph (e)(3) of this section;

(2) Permit the operator of a motor vehicle to make a right turn (left turn with respect to the Virgin Islands) at a red traffic light after stopping except where specifically prohibited by a traffic sign for reasons of safety or except where generally prohibited in an urban enclave for reasons of safety; and

(3) For any State without such traffic law or regulation in effect before December 31, 1978, be ready for

[17] § 420.4(d) redesignated as § 420.12(f).

[18] See footnote 2.

[19] See footnote 2.

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implementation by June 27, 1979, and fully meet the requirements of paragraphs (e)(1) and (2) of this section thereafter.

§ ►420.114◄ [420.8] Minimum criteria for required program measures for supplemental ►SECP◄ plans.

A supplemental ►SECP◄ plan shall satisfy all of the following minimum criteria for required program measures.

(a) Procedures for carrying out a continuing public education effort to increase significantly public awareness of the energy and cost savings which are likely to result from the implementation, including implementation through group efforts, of energy measures shall—

(1) Be under implementation; and

(2) Provide a public awareness program regarding energy audits with respect to buildings and industrial plants which at least includes a campaign publicizing the availability of energy audits in at least one urbanized area with a population greater than 50,000 or in the largest urbanized area within a State if the State does not have an urbanized area within a State if the State does not have an urbanized area with a population of 50,000 or more. The campaign must make clear reference to the range of technical assistance available to the owner or occupant of the building or industrial plant and provide a point of contact with the organization administering the energy audits, including a telephone number;

(b) Procedures for carrying out a continuing public education effort to increase significantly public awareness of information and other assistance, including information as to available technical assistance, which is or may be available with respect to the planning, financing, installing, and monitoring the effectiveness of measures likely to conserve, or to improve efficiency in the use of energy, including energy measures shall—

(1) Be in place and under implementation; and

(2) Contain the elements considered appropriate by a State.

(c) Procedures for ensuring that effective coordination exists among various local, State and Federal energy conservation programs within and affecting such State, including the comprehensive energy extension service program, under 10 CFR Part [460,]►420, Subpart B◄ shall—

(1) Be in place and under implementation; and

(2) Contain provisions for activities considered appropriate by a State such as coordinating local and State agencies to prevent duplication of energy conservation activities or conducting public hearings to ensure tht individuals and groups concerned with program measures to be incorporated in ►an SECP◄ plan or supplemental ►SECP◄ plan and all other energy conservation programs in the State, shall be afforded the opportunity to participate in their development, implementation, and modification.

(d) Procedures for encouraging and for carrying out energy audits with respect to buildings and industrial plants shall—

(1) Be under implementation throughout all political subdivisions of the State;

(2) Be in accordance with subpart B of 10 CFR Part 450; and

(3) Provide and make available, to the extent feasible, Class A energy audits in at least one political subdivision for the buildings or industrial plants in at least one of the following categories and as many Class C energy audits as are practicable within the State in the remaining categories—

(i) Apartment buildings;
(ii) Educational institutions;
(iii) Hospitals;
(iv) Hotels and motels;
(v) Industrial plants;
(vi) Office buildings;
(vii) Restaurants;
(viii) Retail stories;
(ix) Transportation terminals; [and]
(x) Warehouses and storage facilities; [and]
►(xi) Fast food restaurants;
(xii) Public assemply buildings;
(xiii) Grocery stores; and
(xiv) Light industry; and◄

(4) Make available Class B or C audits to all individuals, as requested by such individuals, who are occupants of residential dwelling units in a State at no direct cost to those persons.

§ ►420.115◄ [420.9] Extensions for compliance with required program measures.

An extension of time by which a required program measure must be ready for implementation may be granted if DOE determines that the extension is justified. A written request for an extension, with accompanying justification and an action plan acceptable to for achieving compliance in the shortest reasonable time, shall be made to the appropriate Regional Representative. Any extension shall be only for the shortest reasonable time that DOE determines necessary to achieve compliance. The action plan shall contain a schedule for full compliance and shall identify and make the most reasonable commitment possible to provision of the resources necessary for achieving the scheduled compliance.

[§ 420.10 Administrative review.

(a) If the Regional Representative intends to deny an annual State application resubmitted by the Governor according to § 420.5(b) or refuses to accept an annual State application resubmitted by the Governor after the time period referred to In § 420.5(b) has expired, the Regional Representative shall give notice to the Governor.

(b) If the Regional Representative determines that implementation of a State plan approved according to § 420.5 fails to meet the requirements of this part, the Secretary shall give notice to the Governor of his or her intent to terminate or suspend financial assistance to the grantee.

(c) The notice required by paragraphs (a) or (b) of this section shall be issued in writing by registered mail with return receipt requested and include—

(1) A statement of the reasons for the intended denial, termination or suspension of financial assistance;

(2) The date, place and time of a public hearing to be held by a review panel concerning the intended denial, termination or suspension of financial assistance, the hearing to be held within 15 working days after the date of receipt by the Governor of the notice; and

(3) The manner in which views may be presented.

(d) The Governor may submit written views with supporting data to the Regional Representative on or prior to the date of the public hearing and shall be offered an opportunity to make an oral presentation at the public hearing.

(e) The review panel shall be appointed by the Regional Representative and shall consist of three disinterested members.

(f) The review panel shall consider all relevant views and data submitted on or prior to the date of the public hearing. The review panel shall submit a written report containing its findings and recommendations to the Regional Representative within 10 working days after the date of the public hearing.

(g) The Regional Representative shall submit the report, together with his or her recommendations, to the Secretary within 5 working days after receipt of the report.

(h) The Secretary shall issue a final determination, accompanied by a statement of the reasons for the actions taken, within 10 working days after receipt of the submission from the Regional Representative.

(i) Upon issuance of the notice referred to in paragraphs (a) and (b) of this section, the Secretary may suspend financial assistance to the grantee pending a final determination. If the Secretary makes a final determination adverse to the grantee, the Regional Representative shall terminate financial assistance to the grantee.] [20]

§ ►420.116◄ [420.11] Technical assistance.

At the request of the Governor of any State to DOE and subject to the availability of personnel and funds, DOE will provide information and technical assistance to the State in connection with effectuating the purposes of this part.

[§ 420.12 Recordkeeping.

Each State or other entity within a State receiving financial assistance under this part shall make and retain records required by the Secretary, including records which fully disclose the amount and disposition of financial assistance received; the cost of administration, the total cost of all activities for which assistance is given or used; the source and amount of any funds not supplied by the Secretary; and any data and information which the Secretary determines are necessary to protect the interests of the United States and to facilitate an effective financial audit and performance evaluation. The Secretary, or any of his or her duly authorized representatives, shall have access, until three years after the completion of the activities involved, to any books, documents, records or receipts which the Secretary determines are related or pertinent, either directly or indirectly, to financial assistance provided under this part.] [21]

[§ 420.13 Reports.

Each State receiving financial assistance under this part shall submit to the Regional Representative a quarterly program performance report and a quarterly financial status report. The report shall contain such information as the Secretary may prescribe in order to monitor effectively the implementation of a plan or supplemental plan. The reports shall be submitted to the Regional Representative within 30 days following the end of each calendar quarter.] [22]

§ ►420.117◄ [420.14] Prohibited expenditures.

Grants awarded under this part shall not be used directly or indirectly—

(a) To purchase equipment, other than office equipment, such as weatherization materials and law enforcement equipment;

(b) For construction, such as construction of mass transit systems and exclusive bus lanes;

(c) To subsidize fares for public transportation; or

(d) For subsidies for utility rate demonstrations or State insulation tax credits.

[§ 420.15 Administration of financial assistance.

Except where this part provides otherwise, the award and administration of this part will be governed by the following—

(a) Office of Management and Budget Circular A–102, entitled "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments;"

(b) Office of Management and Budget Circular A–95, entitled "Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects;"

(c) Federal Management Circular 73–2 (34 CFR 251), entitled "Audit on Federal Operations and Programs by Executive Branch Agencies;"

(d) Federal Management Circular 74–4 (34 CFR 255), entitled "Cost Principles Applicable to Grants and Contracts with State and Local Governments;"

(e) Office of Management and Budget Circular A–97, entitled "Rules and Regulations Permitting Federal Agencies to Provide Specialized or Technical Services to State and Local Units of Government under Title III of the Intergovernmental Coordination Act of 1968;"

(f) Treasury Circular 1082 Revised, entitled "Notification to States of Grant-in-Aid Information;"

(g) Treasury Circular 1075, entitled "Treasury Fiscal Requirements Manual;"

(h) DOE Assistance Regulations (10 CFR Part 600); and

(i) Such procedures applicable to this part as DOE may from time to time prescribe for the award or administration of financial assistance provided under this part.] [23]

►Subpart C◄ [Part 465]—Energy Extension Service

Sec.
►420.200◄ [465.1] Purpose and scope.
►420.201◄ [465.2] Definitions.
►420.210◄ [465.3] Comprehensive Energy Extension Service program.
►420.211◄ [465.6] Financial assistance.
►420.212 Allocation of financial assistance.◄
[465.7 Annual State applications.] [1]
►420.213◄ [465.8] [Submission and] Contents of State ►EES◄ plans.
[465.9 Approval of annual State applications and State plans.] [2]
►420.214◄ [465.10] Development and implementation of a State ►EES◄ plan by the Director
[465.11 Administrative review.] [3]
►420.215◄ [465.4] Comprehensive Program and Plan for Federal Energy Education, Extension and Information Activities.
►420.216◄ [465.5] National Advisory Board.
►420.217◄ [465.12] Prohibited expenditures.
[465.13 Recordkeeping.] [4]
[465.14 Reports.] [5]
[465.15 Administration of financial assistance.] [6]

Authority: National Energy Extension Service Act, enacted as Title V of the Energy Research and Development Administration Authorization Act of 1977, Title V of Pub. L. 95–39, 91 Stat. 191 *et seq.*, 42 U.S.C. 7001 *et seq.;* Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 965 *et seq.*, 42 U.S.C. 101 *et seq.;* Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224, 92 Stat. 3 *et seq.*, 41 U.S.C. 501 *et seq.;* E.O. 12009, 42 F.R. 46267; E.O. 12044, 43 F.R. 12660.

§ ►420.200◄ [465.1] Purpose and scope.

This ►sub◄ part contains the regulation adopted by DOE to establish a comprehensive Energy Extension Service program which shall—

(a) Establish a positive energy outreach program directed toward small businesses and individual energy users and the organizations that influence their energy consumption;

(b) Stimulate, provide for and supplement programs for the conduct of evaluation, planning and other technical assistance of energy conservation efforts, including energy outreach activities of States; and

(c) Provide financial and technical assistance to the States for State ►EES◄ plans which contribute to the implementation of the comprehensive Energy Extension Service program.

§ ►420.201◄ [465.2] Definitions.

As used in this ►sub◄part—

["Act" means the National Energy Extension Service Act, Title V of Pub. L. 95–39, 42 U.S.C. 7001 *et seq.*] [7]

"Barriers to energy conservation" means problems or obstacles identified by small energy users which prevent or hinder them from adopting conservation techniques and technologies.

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[20] See footnote 3.
[21] See footnote 4.
[22] See footnote 5.
[23] See footnote 6.
[1] §465.7(a) is deleted; §465.7(b), (c) (1), (2), (3) and (d) incorporated in § 420.12; §465.7(c) (4) and (5) redesignated as § 420.213(a) (9) and (10); § 420.7(c) (5) redesignated as § 420.211(b).
[2] §465.9(a) redesignated as § 420.211(c); §465.9(b) incorporated in § 420.14(c).
[3] §465.11 incorporated in § 420.15 except §465.11(j) which is redesignated as § 420.214(f).
[4] §465.13 redesignated as § 420.17.
[5] §465.14 incorporated in § 420.16.
[6] §465.15 incorporated in § 420.18.
[7] "Act" amended to read "EES Act", and realphabelized in § 420.201.

"Building" means any structure which includes provisions for a heating, cooling or hot water system, or which is used as a residential dwelling unit.

"Community action agency" means a private corporation or public agency established pursuant to the Economic Opportuntiy Act of 1964, Pub. L. 88–452, 42 U.S.C. 2701 *et seq.*, which is authorized to administer funds received from Federal, State, local or private funding entities to assess, design, operate, finance and oversee antipoverty programs.

"Conservation techniques and technologies" means actions likely to result in energy conservation.

"Director" means the Director of the EES office of DOE.

["DOE" means the Department of Energy.] [8]

"Energy audit" means a procedure to measure the consumption or cost of energy in order to identify conservation techniques and technologies in a building or industrial process.

"EES" means Energy Extension Service.

►"EES Act" means the National Energy Extension Service Act, Title V of Pub. L. 95–39, 42 U.S.C. 7001 *et seq.*◄

"EES office" means the national office of DOE established to develop and carry out the comprehensive EES program in accordance with the provisions of this part.

"Energy conservation" means energy conservation, efficient energy use or the utilization of renewable energy resources.

["Governor" means the chief executive officer of a State and the Mayor of the District of Columbia, or a person duly designated in writing by the Governor to act upon his or her behalf.

"Grantee" means a State or entity of the State named in the notice of grant award as the recipient of financial assistance provided under this part.

"Regional Representative" means the Regional Representative of the Secretary.] [9]

"SECP ►plans◄"means the State energy conservation ►program◄ plans developed and implemented pursuant to ►Subpart B◄ [10 CFR 420.]

["Secretary" means the Secretary of the Department of Energy.] [10]

"Service" means technical assistance, instruction, information dissemination, energy audit or a practical demonstration concerning one or more conservation techniques and technologies.

"Small business" means an independently owned concern which together with its affiliates is not dominant in its field and either does not have average annual receipts for the last three years of more than $12 million or does not have more than 400 employees.

"Small energy users" mean residential consumers, individuals and groups of individuals, small businesses including agricultural and commercial establishments, and units of State and local governments.

"Special State project" means a unique or innovative activity which is likely to being about energy conservation in furtherance of the objectives of the Act, and which is not party of the State ►EES◄ plan.

["State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.] [11]

►"State EES plan" means a State Energy Extension Service plan including the requirements of § 420.115 and otherwise meeting the applicable provisions of this subpart.◄

"State ►EES◄ program" means a set of related services provided to a target audience which is used to implement a portion of a State ►EES◄ plan.

"Target audience" means the persons intended to receive services provided under a State ►EES◄ program.

"Technical assistance" means assistance ►provided by DOE◄, other than direct financial assistance, including instruction, expert advice, information dissemination and practical demonstrations.

"Technical support" means activities provided by a State, such as specialized analyses, preparation of materials, training or other activities, which are necessary to implement a State ►EES◄ plan effectively.

§ ►420.210◄[465.3] Comprehensive Energy Extension Service program.

(a) DOE has established the EES office [,administered by a Director,] to develop and carry out the comprehensive EES program established by this part.

(b) The comprehensive EES program shall identify, develop and demonstrate in a practical manner, opportunities for energy conservation. This program shall be developed and implemented with particular regard for increasing the capability of small energy users to make informed energy decisions.

(c) The Director shall implement the comprehensive EES program by—

(1) Carrying out activities, through technical assistance where appropriate, for the identification, development and practical demonstration of opportunities for energy conservation;

(2) Collecting information and undertaking actions to eliminate barriers to energy conservation identified by small energy users;

(3) Carrying out activities that shall encourage the sharing of information, experience and materials among the States regarding the comprehensive EES program;

(4) Providing financial assistance through the Regional Representative for the implementation of a State ►EES◄ plan, and

(5) Providing technical assistance for the development, implementation or modification of a State ►EES◄ plan.

(d) The Director shall take such steps as he or she may determine to be necessary to minimize conflict between existing services in the private sector that are similar to the services provided under the comprehensive EES program. For this purpose, the Director shall at least once a year—

(1) Consult with the National Advisory Board, referred to in ►§ 420.216◄ [465.5]; and

(2) After publishing a notice of inquiry and public meeting in the Federal Register, obtain written and oral comments from the public.

[§ 465.4 Comprehensive program and plan for Federal energy education, extension and information activities.] [12]

§ 465.5 National Advisory Board.

(a) The Secretary shall appoint a National Advisory Board which shall consist of not less than 15 nor more than 20 members. The members shall include persons representative of the interests of State, county, and local governments, State universities, community colleges, community action agencies, energy users, small businesses and agriculture.

(b) The Secretary shall designate one member of the Board to serve as Chairman and shall provide the Board with the services and facilities, as may be necessary to carry out its functions.

(c) The Board shall carry on a continuing review of the operation of the comprehensive EES program established by § 465.3 and the State plans approved by the Regional Representative according to § 465.9, for the purpose of evaluating their effectiveness in achieving the objectives of the Act and determining how their operation might be improved in order to further these objectives.

(d) The Board shall report annually to the Congress, the Secretary, and the Director on the status of the comprehensive EES program, including any recommendations the Board may have for administrative or legislative changes needed to improve operation of the comprehensive EES program.

(e) The Secretary shall reimburse Board members for the full amount of any expenses necessarily incurred by them in the performance of their duties as such.] [13]

§ ►420.211◄[465.6] Financial assistance.

(a) The Regional Representative shall provide financial assistance [,] ►under this subpart◄ [on a calendar year basis,] from funds available ►to conduct a comprehensive EES program◄ for any fiscal year to each State having an [approved] annual ►coordinated State grant◄ application ►approved for carrying out a State EES plan, in accordance with § 420.14◄ [according to § 465.9].

[(b) Financial assistance shall be allocated among the States from funds available for any fiscal year based on the following formula—

(1) One-half shall be divided equally among all States; and

(2) One-half shall be divided on the basis of the State's population as reported by the Department of Commerce, Bureau of Census, in the most recent decennial census.

(c) If a State's allocation of financial assistance is not obligated by the Regional Representative during the fiscal year, the allocation shall be reallocated among the States for the next calendar year according to paragraph (b) of this section.

(d) Notwithstanding the provisions of paragraph (b) of this section, the Director may reserve from the funds appropriated for any fiscal year an amount to provide financial assistance to States for special State projects. This amount shall be determined by the Director, but in no event shall exceed 10 percent of the appropriated funds.] [14]

►(b) To be eligible for financial assistance under this subpart, a State shall submit a coordinated State grant application in accordance with § 420.12 and shall include with the application:

(1) A State EES plan as required by § 420.213, and◄

►(2) As part of the submission required by § 420.13(e), a written summary and chronology of the procedures which were used to provide organizations and individuals with opportunity to comment on the State EES plan prior to or during its development. The opportunity to comment shall be provided to representatives of energy users and producers, State, county, and local officials, State universities and community colleges, cooperative extension services, community action agencies and other public, private or non-profit organizations which are involved in active energy outreach activities. The written summary shall include—

(i) The name of the organizations afforded an opportunity to comment; and

(ii) How the comments received affected the contents of the State EES plan.◄

►(c) The Regional Representative shall provide financial assistance under this subpart if he or she determines in accordance with § 420.14 that—

(1) The State EES plan meets the objectives of the EES Act;

(2) The annual coordinated State grant application and the State EES plan meet the requirements of § 420.212 and § 420.213 respectively; and

(3) Implementation of the State EES plan by the State conforms to the requirements of this subpart.◄

►§ 420.212 Allocation of financial assistance.◄

►(a) Financial assistance under this subpart shall be allocated among the States from funds available to conduct a comprehensive EES program for any fiscal year based on the following formula—

(1) One-half shall be divided equally among all States; and

(2) One-half shall be divided on the basis of the State's population as reported by the Department of Commerce, Bureau of Census, in the most recent decennial census.◄

►(b) If a State's allocation of financial assistance is not obligated by the Regional Representative during the fiscal year, the allocation may be reallocated among the States for the next budget period according to paragraph (a) of this section.

(c) Notwithstanding the provisions of paragraph (a) of this section, the Director may reserve from the funds appropriated for any fiscal year under this subpart an amount to provide financial assistance to States for special State projects. This amount shall be determined by the Director, but in no event shall exceed ten percent of the appropriated funds.◄

[§ 465.7 Annual State applications.

(a) The Regional Representative shall send a copy of the regulation to the Governor of each State and invite him or her to submit the first annual State application.

(b) To be eligible for financial assistance under this part, a State shall submit an original and two copies to the Regional Representative of an annual State application executed by the Governor. The first annual State application shall be submitted not later than February 19, 1980. Subsequent annual State applications shall be submitted on or before September 30 of the following years.

(c) An annual State application shall contain—

(1) The name and address of the grantee;

(2) The State plan or modifications of it, as required by § 465.8 (a) and (b) respectively;

(3) A budget and listing of milestones for the activities to be carried out in each of the State programs contained in the State plan by calendar quarters for the year in which financial assistance will be provided;] [15]

[(4) A description of policies and procedures employed by the State which assure that financial assistance provided under this part does not supplant the expenditure of State or local funds for the same purposes, but rather supplements Federal, State or local funds, and increases the expenditure of the State or local funds to the maximum extent practicable;] [16]

[(5) A written summary and chronology of the procedures which were used to provide organizations and individuals with opportunity to comment on the State plan prior to or during its development. The opportunity to comment shall be provided to representatives of energy users and producers, State, county and local officials, State universities and community colleges, cooperative extension services, community action agencies and other public, private, or non-profit organizations which are involved in active energy outreach activities. The written summary shall include—

(i) The name of the organizations afforded an opportunity to comment; and

(ii) How the comments received affected the contents of the State plan.] [17]

[(6) A description of anticipated environmental impacts of any services

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[8] "DOE" relocated in § 420.01.
[9] "Governor", "grantee", and "Regional Representative" relocated in § 420.01.
[10] "Secretary" relocated in § 420.01.
[11] "State" relocated in § 420.01.
[12] § 465.4 redesignated as § 420.215.
[13] § 465.5 redesignated as § 420.216.
[14] § 465.6(b)(1)(2)(c)(d) redesignated as § 420.212(a)(1)(2)(b)(c).
[15] See footnote 1.
[16] Ibid.
[17] Ibid.

which include the modification of buildings or structures to provide a practical demonstration of conservation techniques and technologies.] [18]

[(d) The Governor may request an extension of the annual submission date by submitting a written request to the Regional Representative not less than 15 days prior to the date referred to in paragraph (b) of this section. The extension shall only be granted if, in the Regional Representative's judgment, acceptable and substantial justification is shown and the extension would further the objectives of the Act.] [19]

§ ►420.213◄ [465.8] [Submission and] Contents of State ►EES◄ plans.

[(a) A State shall submit a State plan with—

(1) The first annual State application; and

(2) The annual State application submitted every three years thereafter.

(b) A State shall submit, with the annual State application, modifications to the State plan, if appropriate, for the years not referred to in paragraph (a) of this section.

(c) A State plan shall be developed for a three year period and contain—] [20]

►(a) A State EES plan shall contain—◄

(1) A description of ►approaches to EES◄ [the objectives to be achieved for the three year period by implementation of the State plan], which shall include–

[(i) Why the objectives were selected, with particular reference to potential energy savings, increased use of renewable resources and the types and numbers of people affected;

(ii) How the State programs included in the State plan, and the emphasis and funding given to each, together represent a strategy to achieve these objectives;

(iii) How implementation of the State plan shall supplement and be coordinated with other energy conservation programs being carried out in the State with Federal funds or under other Federal laws, with particular reference to university programs providing extension services and the State's SECP; and] [21]

►(i)◄ [(iv)] How existing organizations, including State, local, university or other organizations, will be used to the optimum extent to assist in the implementation of the State ►EES◄ plan.

►(ii)◄ [(v)] How the State ►EES◄ plan provides for information dissemination to small businesses and addresses organizations which influence the energy consumption of small energy users; ►and◄

►(iii)◄ [(vi)] How the State ►EES◄ plan makes energy audits available to small energy users, within personnel and funding limitations;

(2) A description for each State ►EES◄ program in the State ►EES◄ plan, which shall include—

(i) The target audience, why it was selected and the estimated number of persons which the State ►EES◄ program expects to reach,

(ii) The services to be provided, including—

(A) How the services will meet the needs of the target audience;

(B) The conservation techniques and technologies to be used in each service;

(C) The type and estimated number of any energy audits if any are included; and

(D) The geographic areas in which the services shall be delivered and why these areas were selected;

(iii) Any technical support which is necessary to provide the services, including the organization that will provide the technical support and why the organization was selected; and

(iv) The organization which shall implement the State ►EES◄ program and any other organization which shall provide a service to the target audience, why the selection was made and the approximate number of any new personnel to be employed to implement the State ►EES◄ program;

(3) A description of the organization which shall administer the overall development and implementation of the State ►EES◄ plan, which shall include—

(i) Why the administering organization was selected,

(ii) The provisions made for coordination between the administering organization and any other organizations assisting in the implementation of the State ►EES◄ plan; and

(iii) The relationship between the administering organization and the grantee if the two are not the same;

(4) A description of the methods and procedures which shall be used to—

(i) Identify barriers to energy conservation from responses which shall be obtained from target audiences;

(ii) Communicate information concerning the barriers to energy conservation to organizations within the State that have the capability or authority to remove or influence the barriers; and

(iii) Periodically report the results of such communication to the target audiences identified in subparagraph ►(a)(4)(i)◄ [(c)(4)(i)] of this section;

(5) A description of the administrative procedures to be used in the implementation of the State ►EES◄ plan which shall include—

(i) The procedures to be used to respond to suggestions and inquiries from the public regarding energy conservation;

(ii) The procedures to be used to publicize and disseminate up-to-date and easily understood information on the services available to small energy users under the State ►EES◄ plan and under other Federal programs and activities of the State regarding conservation techniques and technologies; and

(iii) The system to be used to review, for technical accuracy, any publication or other material which the State shall prepare or use in a State ►EES◄ program;

(6) A description of the purpose, methods and procedures of the independent evaluation activities, if any, that the State shall undertake regarding the State ►EES◄ programs or services;

(7) A description of any additional technical support not described in subparagraph ►(a)(2)(iii)◄ [(c)(2)(iii)] of this section which is required to facilitate implementation of the State ►EES◄ plan. If existing organizations are not available to provide this additional technical support or the technical support identified in subparagraph ►(a)(2)(iii)◄ [(c)(2)(iii)], the State may propose to establish a technical support institute, at one or more colleges or universities designated by the Governor. The purpose of the technical support institute shall be to assist in the implementation of the State ►EES◄ plan by providing analyses and technical support which is required for effective implementation of the State ►EES◄ plan. If such an institute is proposed, the State shall provide a detailed justification which shall describe—

(i) Why the institute is needed;

(ii) How the institute specifically relates to the implementation of the State ►EES◄ plan; and

(iii) The purpose, location, size, and specific activities of the institute; and

(8)(i) A description of the procedures that the grantee will use to achieve timely implementation of the State ►EES◄ plan; and

(ii) An assurance that the grantee will maintain or require other participating entities within the State to maintain, and make available upon request to the Regional Representative, such records as the Secretary may require, with respect to the use and expenditures of

[18] Ibid.
[19] Ibid.
[20] § 465.8(a), and (b) and (c) is deleted.
[21] § 465.8(c) (1) (i), (ii) and (iii) incorporated in § 420.13(b) [2), (3) and (c).

financial assistance provided to the grantee, or to entities within the State, under this ►sub◄ part ►, in accordance with § 420.17◄.

►(9)◄ A description of policies and procedures employed by the State which assure that financial assistance provided under this part does not supplant the expenditure of State or local funds for the same purposes, but rather supplements Federal, State or local funds, and increases the expenditures of the State or local funds to the maximum extent practicable;

►(10)◄ A description of anticipated environmental impacts of any services which include the modification of buildings or structures to provide a practical demonstration of conservation techniques and technologies.

[§ 465.9 Approval of annual State applications and State plans.]

[(a) The Regional Representative shall review each timely State annual application and provide financial assistance if he or she determines that—

(1) The State plan meets the objectives of the Act;

(2) The annual State application and the State plan meet the requirements of § 465.7 and § 465.8, respectively; and

(3) Implementation of the State plan by the State conforms to the requirements of this part.] [22]

[(b) If the annual State application is not approved according to paragraph (a) of this section, the Regional Representative shall return it to the State together with a written statement describing why the annual State application fails to meet the requirements of this part. The State shall have a reasonable time period, as determined by the Regional Representative, to amend its annual State application and submit it for reconsideration according to paragraph (a) of this section.] [23]

§ ►420.214◄ [465.10] Development and implementation of a State ►EES◄ plan by the Director.

(a) The Director shall develop a State ►ESS◄ plan which meets the requirements of § ►420.213◄ [465.8] if—

(1) A State does not submit an annual► coordinated State grant application ►[State application]◄ for financial assistance under this subpart in accordance with § 420.12◄ [§ 465.7]; or

(2) The Regional Representative finally disapproves an annual ►coordinated State grant application◄ [State application] ►for financial assistance under this subpart◄ according to § ►420.15◄ [465.11].

(b) Prior to developing a State ►EES◄ plan under this section, the Director shall provide written notice and an opportunity for comment to the Governor.

(c) A State ►EES◄ plan developed by the Director shall be transmitted to the Governor of the State and shall not be implemented for 90 days after the date of transmittal. Notwithstanding any provisions of this section to the contrary, no State ►EES◄ plan developed by the Director according to paragraph (a) of this section shall be implemented if the Governor, within the 90-day period, notifies the Secretary in writing of his or her objection to the implementation of the State ►EES◄ plan.

(d) In implementing a State ►EES◄ plan developed according to this section to which the Governor has not objected during the 90-day period referred to in paragraph (c) of this section, the Director shall make maximum use of regional, State or local organizations which deliver services which are appropriate for purposes of this ►sub◄ part. The Director shall coordinate his or her activities in implementing the State ►EES◄ plan with all other regional, State or local organizations which deliver services which are related to, but not directly involved in, the implementation of the State ►EES◄ plan.

(e) A State ►EES◄ plan developed by the Director for a State whose financial assistance has been terminated according to § ►420.18(i)◄ [465.11], shall provide for the continuation of all activities under the State ►EES◄ plan which meet the requirements of this ►sub◄ part.

►(f) If financial assistance to a grantee has been terminated, the Regional Representative may continue to provide financial assistance to persons other than the grantee to implement any acceptable provision of the State plan for the remainder of the ►budget period◄ [calendar year].◄

§ [465.11 Administrative review.

(a) If the Regional Representative intends to deny an annual State application resubmitted by the Governor according to § 465.9(b) or refuses to accept an annual State application resubmitted by the Governor after the time period referred to in § 465.9(b) has expired, the Regional Representative shall give notice to the Governor.

(b) If the Regional Representative determines that implementation of a State plan approved according to § 465.9 fails to meet the requirements of this part, the Secretary shall give notice to the Governor of his or her intent to terminate or suspend financial assistance to the grantee.

(c) The notice required by paragraphs (a) or (b) of this section shall be issued in writing by registered mail with return receipt requested and include—

(1) A statement of the reasons for the intended denial, termination or suspension of financial assistance including an explanation of whether any amendments or other actions would result in compliance with this part.

(2) The date, place and time of a public hearing to be held by a review panel concerning the intended denial, termination or suspension of financial assistance. The hearing shall be held within 15 working days after the date of the receipt by the Governor of the notice; and

(3) The manner in which views may be presented.

(d) The Governor may submit written views with supporting data to the Regional Representative on or prior to the date of the public hearing and shall be offered an opportunity to make an oral presentation at the public hearing.

(e) No person who is a member of the EES office shall be a member of the review panel. The review panel shall be appointed by the Regional Representative and shall consist of—

(1) One person generally representative of State interests other than a person who represents the interests of the State whose application is being considered;

(2) One person representative of DOE; and

(3) One person representative of the EES target audiences in the State affected.

(f) The review panel shall consider all relevant views and data submitted on or prior to the date of the public hearing. The review panel shall submit a written report containing its findings and recommendations to the Regional Representative within 10 working days after the date of the public hearing.

(g) The Regional Representative shall submit the report, together with his or her recommendations, to the Director and to the Secretary within 5 working days after receipt of the report.

(h) The Secretary shall issue a final determination, accompanied by a statement of the reasons for the action taken, within 10 working days after receipt of the submission from the Regional Representative.

(i) Upon issuance of the notice referred to in paragraphs (a) or (b) of this section, the Secretary may suspend financial assistance to the grantee pending a final determination. If the

[22] See footnote 2.
[23] See footnote 2.

Secretary makes a final determination adverse to the grantee, the Regional Representative may terminate continued financial assistance to the grantee.] [24]

[(j) If financial assistance to a grantee has been terminated, the Regional Representative may continue to provide financial assistance to persons other than the grantee to implement any acceptable provision of the State plan for the remainder of the calendar year.] [25]

§ ►420.215◄ [465.4] Comprehensive program and plan for Federal energy education, extension and information activities.

►(a) The Secretary shall prepare and annually revise a Comprehensive Program and Plan which shall be submitted to the President and each House of Congress as part of the annual DOE budget submission and the report required by section 657 of the DOE Organization Act (P.L. 95–91, 42 U.S.C. 7101 *et seq*).

(b) The Comprehensive Program and Plan shall describe the activities conducted under this subpart and serve as a mechanism for Federal Government-wide management and coordination of the activities conducted under this subpart with the energy education, extension and information activities of other Federal agencies. The Comprehensive Program and Plan shall include—

(1) Specific delineation of responsibility of the Federal agencies listed in paragraph (c) of this section in the conduct of this subpart;

(2) The manner in which activities conducted under this subpart will be coordinated with the energy-related activities of the Federal agencies listed in paragraph (c) of this section with a view toward achieving maximum coordination with such other activities;

(3) A detailed summary of all Federal energy education, extension and information activities, which shall include for each activity, objectives, a description, a listing of delivery mechanisms and a budget;

(4) Procedures for measuring the effectiveness of the activities conducted under this subpart and those described according to paragraph (b)(2) of this section, with reference to increased energy efficiency, fuel savings, adoption of new energy technologies and other appropriate criteria;

(5) An assessment of existing energy-related Federal incentives and assistance other than energy education, extension and information activities and the relationship of the incentives and assistance to energy education extension and information activities in achieving the objectives of this subpart;

(6) Procedures, with regard to organizations described in § 420.313(a)(1)(i), to minimize conflict with existing services in the private sector of the economy that are similar to the activities described according to paragraph (b)(3) of this section;

(7) A comprehensive and integrated plan for all Federal energy conservation outreach programs, taking into account paragraphs (b)(1)–(b)(7) of this section.

(c) In the preparation of the Comprehensive Program and Plan the Secretary shall consult with the Secretary of Housing and Urban Development, the Secretary of Agriculture, the Administrator of the Environmental Protection Agency, the Secretary of HEW, the Administrator of the Community Services Administration, the Secretary of Commerce, the Administrator of the Small Business Administration and the heads of other Federal agencies administering energy-related programs.◄

§ ►420.216◄ [465.5] National Advisory Board.

(a) The Secretary shall appoint a National Advisory Board which shall consist of not less than 15 nor more than 20 members. The members shall include persons representative of the interests of State, county, and local governments, State universities, community colleges, community action agencies, energy users, small businesses and agriculture.

(b) The Secretary shall designate one member of the Board to serve as Chairman and shall provide the Board with the services and facilities, as may be necessary to carry out its functions.

(c) The Board shall carry on a continuing review of the operations of the comprehensive EES program established by § 420.110 and the State EES plans approved by the Regional Representative according to § 420.14, for the purpose of evaluating their effectiveness in achieving the objectives of the EES act and determining how their operation might be improved in order to further these objectives.

(d) The Board shall report annually to the Congress, the Secretary, and the Director on the status of the comprehensive EES program, including any recommendations the Board may have for administrative or legislative changes needed to improve operation of the comprehensive EES program.

(e) The Secretary shall reimburse Board members for the full amount of any expenses necessarily incurred by them in the performance of their duties as such.

§ ►420.117◄ [465.12] Prohibited expenditures.

(a) No financial assistance provided to a State under this ►sub◄ part shall be used to—

(1) Construct or repair a building or structure;

(2) Purchase land, a building or structure or any interest therein; or

(3) Conduct, or purchase equipment to conduct, research and development or demonstration of conservation techniques and Technologies not commercially available.

(b) No more than 20 percent of the financial assistance awarded to a State under this ►sub◄ part shall be used to purchase equipment, office supplies or library materials. ►Title to equipment, office supplies and library materials purchased under a grant awarded pursuant to this subpart shall vest on the grantee upon acquisition and shall be subject to the conditions set forth in sections 6 and 7, attachment N, OMB Circular A–102.◄

(c) No more than 10 percent of the financial assistance provided to a State under this ►sub◄ part shall be used to conduct the independent evaluation activities authorized in § ►420.215(a)(6)◄ [465.8(c)(6)].

[§ 465.13 Recordkeeping.

Each State or other entity within a State receiving financial assistance under this part shall make and retain records required by the Secretary, including records which fully disclose the amount and disposition of financial assistance received; the cost of administration; the total cost of all activities for which assistance is given or used; the source and amount of any funds not supplied by the Secretary; and any data and information which the Secretary determines are necessary to protect the interests of the United States and to facilities an effective financial audit and performance evaluation. The Secretary, or any of his or her duly authorized representatives, shall have access, until three years after the completion of the activities involved, to any books, documents, records or receipts which the Secretary determines are related or pertinent, either directly or indirectly, to any financial assistance provided under this part.] [26]

[§ 465.14 Reports.

Each State receiving financial assistance under this part shall submit to the Regional Representative a

[24] See footnote 2.
[25] See footnote 3.
[26] See footnote 4.

quarterly program performance report and a quarterly financial statement. The program performance report shall contain such information as the Director may prescribe in order to monitor effectively the implementation of the State plan. The reports shall be submitted to the Regional Representative within 30 days following the end of each calendar quarter.] [27]

[§ 465.15 Administration of financial assistance.

Grants provided under this part shall comply with the requirements of—

(a) Office of Management and Budget Circular A–102, entitled "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments;"

(b) Office of Management and Budget Circular A–95, entitled "Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects;"

(c) Federal Management Circular 73–2 (34 CFR 255), entitled "Audit on Federal Operations and Programs by Executive Branch Agencies;"

(d) Federal Management Circular 74–4 (34 CFR 255), entitled "Cost Principles Applicable to Grants and Contracts with State and Local Governments;"

(e) Office of Management and Budget Circular A–97, entitled "Rules and Regulations Permitting Federal Agencies to Provide Specialized or Technical Services to State and Local Units of Governments under Title III of the Intergovernmental Coordination Act of 1968;"

(f) Treasury Circular 1082 Revised, entitled "Notification to States of Grant-in-Aid Information;"

(g) Treasury Circular 1075, entitled "Treasury Fiscal Requirement Manual;" and

(h) Other procedures which DOE or the Director may from time to time prescribe for the administration of financial assistance provided under this part.] [28]

►Subpart D◄ [Part 440]—Weatherization Assistance for Low-Income Persons

Sec.
►420.300◄ [440.1] Purpose and scope.
[440.2 Administration of grants.] [1]
►420.301◄ [440.3] Definitions.
►420.310◄ [440.10] ►Financial assistance and allocation of financial assistance.◄ [Allocation of funds.]
►420.311◄ [440.11] Native Americans.
►420.312◄ [440.12] ►Weatherization requirements for coordinated State grant applications.◄ [State applications.]
►420.313◄ [440.13] Local applications.
►420.314◄ [440.14] Administrative requirements.
►420.315◄ [440.15] Minimum program requirements.
►420.316◄ [440.16] Allowable expenditures.
►420.317◄ [440.17] Labor.
►420.318◄ [440.18] Low cost/no cost weatherization activities.
►420.319◄ [440.19] Standards and techniques for weatherization.
►420.320◄ [440.20] Eligible dwelling units.
►420.321◄ [440.21] Oversight, training, and technical assistance.
[440.22 Recordkeeping.] [2]
[440.23 Reports.] [3]
[440.30 Administrative review.] [4]
Appendix A—Standards for weatherization materials.

Authority: Energy Conservation in Existing Buildings Act of 1978, as amended. 42 U.S.C. 6851 *et seq.*; Department of Energy Orgainzation Act, 42 U.S.C. 1701 *et seq.*

§ ►420.300◄ [440.1] Purpose and scope.

This ►sub◄ part contains the regulations adopted by the Department of Energy to carry out a program of weatherization assistance for low-income persons established by Part A of the Energy Conservation in Existing Buildings Act of 1976, 42 U.S.C. 6861 *et seq.*, enacted as Title IV of the Energy Conservation and Production Act, Pub. L. 94–385, 90 Stat. 1125 *et seq.*, and amended by Title II, Part 2, of the National Energy Conservation Policy Act, Pub. L. 95619, 92 Stat. 3206 *et seq.*

§ 440.2 Administration of grants.

(a) Grant awards under this Part shall be administered in accordance with the following—

(1) Federal Management Circular 73–2, 34 CFR 251, entitled "Audit on Federal Operations and Programs by Executive Branch Agencies;"

(2) Federal Management Circular 74–4, 34 CFR 256 entitled "Cost Principles Applicable to Grants and Contracts with State and Local Governments;"

(3) Federal Management Circular 74–7, 34 CFR 256, entitled "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments;"

(4) Office of Management and Budget Circular A–89, entitled "Catalog of Federal Domestic Assistance;"

(5) Office of Management and Budget Circular A–95, entitled "Evaluation, Review and Coordiantion of Federal and Federally Assisted Programs and Projects;"

(6) Office of Management and Budget Circular A–97, entitled "Rules and Regulations Permitting Federal Agencies to Provide Specialized or Technical Services to State and Local Units of Government under Title III of the Intergovernmental Coordination Act of 1968,"

(7) Treasury Circular 1082, entitled "Notification to States of Grant-in-Aid Information;"

(8) DOE Assistance Regulations (10 CFR 600); and

(9) Such procedures applicable to this part as DOE may from time to time prescribe for the administration of grants.

(b) Tools and equipment acquired with grant funds provided under this part shall be the property of the grantee, as more particularly provided for by subparagraph (a)(3) of this section.[5]

§ ►420.301◄ [440.3] Definitions.

As used in this part—

["Act" means the Energy Conservation in Existing Buildings Act of 1976, as amended, 42 U.S.C. 6851 *et seq.*][6]

"CAA" means a Community Action Agency.

"CETA" means the Comprehensive Employment and Training Act of 1973, 29 U.S.C. 801 *et seq.* (Supp. 1980).

"Community Action Agency" means a private corporation or public agency established pursuant to the Economic Opportunity Act of 1964, Pub. L. 88–452, which is authorized to administer funds received from Federal, State, local or private funding entities to assess, design, operate, finance and oversee antipoverty programs.

"Cooling degree days" means a population-weighted annual average of the climatological cooling degree days for each weather station within a State, as determined by DOE.

"Director" means the Director of the Community Services Administration.

["DOE" means the Department of Energy.][7]

"Dwelling unit" means a house, incuding a stationary mobile home, an apartment, a group of rooms, or a single room occupied as separate living quarters.

"Elderly person" means a person who is 60 years of age or older.

"Eligible State" means any of the forty-eight contiguous States, Alaska, or the District of Columbia.

"Family unit" means all persons living together in a dwelling unit.

[27] See footnote 5.
[28] See footnote 6.
[1] § 440.2 incorporated in § 420.18 except § 440.2(b) which is redesignated as § 420.316(e).
[2] § 440.22 incorporated in § 420.17.
[3] § 440.23 redesignated as § 420.18.
[4] § 440.30 incorporated in § 420.15.
[5] See footnote 1. § 440.16(e).
[6] "Act" amended to read as "Weatherization Act" and realphabetized in § 420.301.
[7] "DOE" relocated in § 420.01.

["Governor" means the chief executive officer of a State, including the Mayor of the District of Columbia.

"Grantee" means the State or other entity named in the Notification of Grant Award as the recipient.][9]

"Handicapped person" means any individual—

(a) Who is a handicapped individual defined in section 7(6) of the Rehabilitation Act of 1973,

(b) Who is under a disability as defined in section 1614(a)(3)(A) or 223(d)(1) of the Social Security Act or in section 102(7) of the Developmental Disabilities Services and Facilities Construction Act, or

(c) Who is receiving benefits under chapter 11 or 15 of Title 38, United States Code.

"Heating degree days" means a population-weighted seasonal average of the climatological heating degree days for each weather station within a State, as determined by DOE.

"Indian tribe" means any tribe, band, nation or other organized group or community of Native Americans, including any Alaska native village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, Pub. L. 92-203, 85 Stat. 688, which—

(a) Is recognized as eligible for the special programs and services provided by the United States to Native Americans because of their status as Native Americans; or

(b) Is located on, or in proximity to a Federal or State reservation or rancheria.

"Local applicant" means a CAA or unit of general purpose local government.

"Low income" means that income relation to family size which—

(a) Is at or below 125 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget, except that the Secretary may establish a higher level if the Secretary, after consulting with the Secretary of Agriculture and the Director of the Community Services Administration, determines that such a higher level is necessary to carry out the purposes of this ►sub◄ part and is consistent with the eligibility criteria established for the weatherization program under section 222(a)(12) of the Economic Opportunity Act of 1964; or

(b) Is the basis on which cash assistance payments have been paid during the preceding 12-month period under Titles IV and XVI of the Social Security Act or applicable State or local law.

"Native American" means a person who is a member of an Indian tribe.

"Number of low-income, renter-occupied dwelling units in the State" means the number of such dwelling units in a State, as determined by DOE.

"Percentage of total residential energy used for space cooling" means the national percentage of total energy used for space cooling, as determined by DOE.

"Percentage of total residential energy used for space heating" means the national percentage of total energy used for space heating, as determined by DOE.

["Regional Representative" means a Regional Representative of DOE.][9]

"Rental dwelling unit" means a dwelling unit occupied by a person who pays rent for the use of the dwelling unit.

"Repair materials" means items necessary for the effective performance or preservation of weatherization materials. Repair materials include, but are not limited to lumber used to frame or repair windows and doors which could not otherwise be caulked or weatherstripped, and protective materials, such as paint, used to seal materials installed under this program.

["Secretary" means the Secretary of the Department of Energy.][10]

"Separate living quarters" means living quarters in which the occupants do not live and eat with any other persons in the structure and which have either—

(a) Direct access from the outside of the building or through a common hall; or

(b) Complete kitchen facilities for the exclusive use of the occupants. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements.

"Single-family dwelling unit" means a structure containing no more than one dwelling unit.

"Skirting" means material used to border the bottom of a dwelling unit to prevent infiltration.

["State" means each of the States and the District of Columbia.][11]

►"State Weatherization plan" means a State Weatherization Assistance for Low-Income Persons plan including the requirements of § 420.314 and otherwise meeting the applicable provisions of this subpart.◄

"Sub-grantee" means a weatherization project which receives a grant of funds awarded under this ►sub◄ part from a grantee.

"Tribal organization" means the recognized governing body of any Indian tribe, or any legally established organization of Native Americans which is controlled, sanctioned, or chartered by such governing body.

"Unit of general purpose local government" means any city, county, town, parish, village, or other general purpose political subdivision of a State.

►"Weatherization Act" means the Energy Conservation in Existing Buildings Act of 1976, as amended, 42 U.S.C. 6851 *et seq.*◄

"Weatherization materials" mean—

(a) Caulking and weatherstripping of doors and windows;

(b) Furnace efficiency modifications limited to—

(1) Replacement burners designed to substantially increase the energy efficiency of the heating system;

(2) Devices for modifying flue openings which will increase the energy efficiency of the heating system; and

(3) Electrical or mechanical furnace ignition systems which replace standing gas pilot lights;

(c) Clock thermostats;

(d) Ceiling, attic, wall, floor, and duct insulation;

(e) Water heater insulation;

(f) Storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflective window and door materials; and

(g) The following insulating or energy conserving devices or technologies—

(1) Skirting;

(2) Items to improve attic ventilation;

(3) Vapor barriers;

(4) Materials used as a patch to reduce infiltration through the building envelope; and

(5) Water flow controllers.

§ ►420.310◄ [440.10] ►Financial assistance and allocation of financial assistance◄ [Allocation of funds].

(a) DOE shall allocate financial assistance for each State from sums appropriated for any fiscal year, only upon annual application.

(b) DOE shall determine the tentative allocation for each State from available funds as follows—

(1) The first five million dollars appropriated shall be divided equally among the eligible States; an additional one hundred thousand dollars shall be allocated to Alaska;

(2) The percentage of the remaining available funds allocated to each eligible State shall be determined by the following formula—

[9] "Governor" and "grantee" relocated in § 420.01.

[9] "Regional Representative" relocated in § 420.01.
[10] "Secretary" relocated in § 420.01.
[11] "State" relocated in § 420.01.

(i) The square of the number of heating degree-days in a State multiplied by the percentage of total residential energy used for space heating;

(ii) Plus the square of the number of cooling degree-days in the State multiplied by the percentage of total residential energy used for space cooling;

(iii) Multiplied by the sum of the number of low-income, owner-occupied dwelling units in the State and one-half of the number of low-income, renter-occupied dwelling units in the State;

(iv) Divided by the sum of the result produced for all States by the computation outlined in subparagraphs (i), (ii), and (iii) of this paragraph; and

(v) Multiplied by 100.

(c) DOE may reduce the tentative allocation for a State by the amount DOE determines cannot reasonably be expended by a grantee to weatherize dwelling units during the budget period for which financial assistance is to be awarded. In reaching this determination, DOE will consider the amount of unexpended financial assistance currently available to a grantee under this ►sub◄ part and the number of dwelling units which remain to be weatherized with the unexpended financial assistance.

(d) DOE may increase the tentative allocation of a State by the amount DOE determines the grantee can expend to weatherize additional dwelling units during the budget period for which financial assistance is to be awarded.

(e) The Regional Representative shall notify each eligible State of the tentative allocation for which that State is eligible to apply.

§►420.311◄[440.11] Native Americans.

(a) Notwithstanding any other provision of this ►sub◄ part, the Regional Representative may determine, after taking into account the amount of funds made available to a State to carry out the purposes of this ►sub◄ part, that—

(1) The low-income members of an Indian tribe are not receiving benefits under this part equivalent to the assistance provided to other low-income persons in the State under this ►sub◄ part; and

(2) The members of such tribe would be better served by means of a grant made directly to provide such assistance.

(b) In any State for which the Regional Representative shall have made the determination referred to in paragraph (a) of this section, the Regional Representative shall reserve from the sums that would otherwise be allocated to the State under this ►sub◄ part not less than 100 percent, nor more than 150 percent, of an amount which bears the same ratio to the State's allocation for the fiscal year involved as the population of all low-income Native Americans for whom a determination under paragraph (a) of this section has been made bears to the population of all low-income persons in the State.

(c) The Regional Representative shall make the determination prescribed in paragraph (a) of this section in the event a State shall—

(1) Not apply within the 90 day-time period prescribed in §►420.312◄ [440.12](a);

(2) Recommend that direct grants be made for low-income members of an Indian tribe as provided in §►420.312◄ [440.12](b)(10);

(3) File an application which DOE determines, in accordance with the procedures in §►420.15◄ [440.30], not to make adequate provision for the low-income members of an Indian tribe residing in the State, or

(4) Have received grant funds, and DOE determines, in accordance with the procedures in §►420.15◄ [440.30], that the State has failed to implement the procedures required by §►420.315(a)(7)◄ [440.15(a)(7)].

(d) Any sums reserved by the Regional Representative pursuant to paragraph (b) of this section shall be granted to the tribal organization serving the individuals for whom the determination has been made, or where there is no tribal organization, to such other entity as the Regional Representative determines is able to provide adequate weatherization assistance pursuant to this ►sub◄ part. Where the Regional Representative intends to make a grant to an organization to perform services benefiting more than one Indian tribe, the approval of each Indian tribe shall be a prerequisite for the issuance of a notice of grant award.

(e) Within 30 days after the Regional Representative has reserved funds pursuant to paragraph (b) of this section, the Regional Representative shall give written notice to the tribal organization or other qualified entity of the amount of funds reserved and its eligibility to apply therefor.

(f) Such tribal organization or other qualified entity shall thereafter be treated as a unit of general purpose to local government eligible to apply for funds here under, pursuant to the provisions of §►420.313◄ [440.13].

§►420.312◄ [440.12] Weatherization requirements for coordinated State grant applications [State applications].

(a) To be eligible for financial assistance under this ►sub◄ part, a State shall submit ►a coordinated State grant application in accordance with with § 420.12◄ [an application to DOE in conformity with the requirements of § 440.15 not later than 90 days after the date of notice to apply is received from the Regional Representative]. The Regional Representative shall review each timely ►coordinated State grant application in accordance with §420.14◄ [State application] and, if the submission otherwise complies with the applicable provisions of ►subpart A and of◄ this ►sub◄ part, ►provide financial assistance◄ [approve a final budget and issue a notice of grant award].

(b) Each ►coordinated State grant◄ application shall include—

[(1) The name and address of the State agency or office responsible for administering the program;]

►(1)◄ [(2)] A copy of the final State ►Weatherization◄ plan prepared after notice and a public hearing in accordance with §►420.314(a)◄ [440.14(a)], except that an application by a local applicant need not include a copy of the final State ►Weatherization◄ plan;

►(2)◄ [(3)] A detailed description of the manner in which the minimum program requirements of §►420.315◄ [440.15] will be met;

►(3)◄ [(4)] The budget for total funds applied for under ►this subpart◄ [The Act] which shall include a justification and explanation of any amounts requested for expenditure pursuant to § ►420.316 ◄[440.16];

►(4)◄ [(5)] the total number of dwelling units proposed to be weatherized with grant funds during the budget period for which assistance is to be awarded—

(i) With financial assistance previously obligated under this ►sub◄ part; and

(ii) With the tentative allocation to the State;

►(5)◄ [(6)] A production schedule ► to be shown as milestones required in § 420.12(d)(3)(i) ◄ which shall indicate the number of dwelling units which are expected to be weatherized for each month during the budget period,

►(6)◄ [(7)] An estimate of the number of single-family and multi-family dwelling units to be weatherized;

►(7)◄ [(8)] An estimate of the minimum number of dwelling units to be weatherized where elderly persons reside;

►(8)◄ [(9)] An estimate of the minimum number of dwelling units to be weatherized where handicapped persons reside;

►(9)◄ [(10)] An estimate of the minimum number of dwelling units to be weatherized where Native Americans reside, or a recommendation that a tribal organization be treated as a local applicant eligible to submit an application pursuant to § ► 420.313(b)◄ [440.13(b)];

►(10)◄ [(11)] A management plan showing how labor, program support and materials will be provided in a timely manner to achieve the production schedule provided in accordance with subparagraph ►(b)(5)◄ [(b)(6)] of this section;

►(11)◄ [(12)] Any determination made in accordance with § ►420.314(d)◄[440.14(d)] not to provide funds and the reasons for such determination, except that an application by a local applicant need not include this information; and

►(12) ◄[(13)] Any further information which the Secretary finds necessary to determine whether an application meets the requirements of this part.

►§ 420.313◄ [440.13] Local applications.

(a) The Regional Representative shall give written notice to all local applicants throughout a State of their eligibility to apply for financial assistance under this ►sub◄ part in the event—

(1) A State, within which a local applicant is situated, fails to submit an ►annual coordinated State grant◄ application ►for financial assistance under this subpart◄ [within 90 days after notice] in accordance with § ►420.312(a)◄ [440.12(a)]; or

(2) The Regional Representative finally disapproves the application of a State pursuant to § ►420.15◄ [440.30 of this part].

(b) To be eligible for financial assistance, a local applicant shall submit an application pursuant to § ►420.312(b), and §§ 420.14(c) through 420.19◄ [440.12(b)] to the Regional Representative within 30 days after receiving the notice referred to in paragraph (a) of this section.

(c) In the event one or more local applicants submit a timely application, the Regional Representative shall combine the hearing on the proposed plan pursuant to § ► 420.314(a)◄ [440.14(a)] with a hearing on the intention to deny the timely application of one or more local applicants, as provided in § ► 420.15 ◄ [440.30], to the maximum extent practicable. Based upon the final plan developed by the Regional Representative, the hearing and information submitted by a local applicant and other interested persons, the Regional Representative shall determine whether or not to award a grant to a local applicant and the amount thereof. The Regional Representative may provide financial assistance to a local applicant to carry out one or more weatherization projects.

§ ►4209.314◄ [440.14] Administrative requirements.

(a) Before submitting an ► annual coordinated State grant ◄ application ►for financial assistance under this subpart◄, a State shall give not less than 10 days notice of hearing, reasonably calculated to inform prospective sub-grantees, and shall conduct one or more public hearings for the purpose of receiving comments on a proposed State ► Weatherization ◄ plan. The proposed State ► Weatherization ◄ plan, which shall identify the describe proposed weatherization projects including a statement of proposed sub-grantees and the amount each will receive, shall be published and made available throughout the State prior to the hearing. The notice for the hearing shall specify that copies of the ► State Weatherization ◄ plan are available and how they may be obtained. A transcript of the hearings shall be prepared and written submission of views and data shall be accepted for the record.

(b) Subsequent to the hearing, the State shall prepare a final ►State Weatherization ◄ plan which ► in addition to the information required in paragraph (a) of this section, ◄ shall identify and describe—

(1) Each area to be served by a weatherization project within the State and shall include for each area—

(i) The number of dwelling units to be weatherized;

(ii) The climatic conditions;

(iii) The type of weatherization work to be done;

(iv) The need for weatherization assistance among low-income persons;

(v) The amount of energy to be conserved;

(vi) Mechanisms for providing sources of labor;

(vii) An estimate of the number of eligible dwelling units in which the elderly reside; and

(viii) An estimate of the number of eligible dwelling units in which the handicapped reside;

(2) The manner in which the ► State Weatherization ◄ plan is to be implemented and shall include—

(i) An analysis of the existence and effectiveness of any weatherization project being carried out by a CAA;

(ii) An explanation of the method used to select each area to be served by a weatherization project;

(iii) The extent to which priority will be given to weatherization of single-family dwelling units for the elderly and handicapped.

(iv) The amount of non-Federal resources to be applied to the program;

(v) The amount of Federal resources, other than DOE weatherization grant funds, to be applied to the program;

(vi) The amount of weatherization grant funds allocated to the State under this ►sub◄ part;

(vii) The expected average cost per dwelling to be weatherized, taking into account the total number of dwellings to be weatherized and the total amount of funds, Federal and non-Federal, expected to be applied to program; and

(viii) The number of rental dwelling units to be weatherized by project, if any;

(3) The approach, including a list of measures to weatherize a dwelling unit, developed by the State in accordance with Project Retro-Tech, Conservation Paper Number 28, as revised July 1979, which shall be applied to each dwelling unit by a sub-grantee to determine the optimum set of cost-effective measures, within the allowable expenditures prescribed in § ►420.318◄ [440.16], to be installed in such dwelling unit.

(c) The ►State Weatherization◄ plan shall insure that funds received under the ►Weatherization◄ Act will be allocated to a CAA carrying out a program under Title II of the Economic Opportunity Act of 1964, 42 U.S.C. 2809, as amended, or to other appropriate and qualified entities in the State or geographical are so that—

(1) Funds will be allocated to areas on the basis of the relative need for a weatherization project by low-income persons, taking into account the factors referred to in paragraph (b)(1) of this section; and

(2) (i) Funds allocated to a geographical area served by an emergency energy conservation program carried out by a CAA under section 222(a)(12) of the Economic Opportunity Act of 1964, shall be allocated to the CAA; and

(ii) priority in the allocation of funds will be given to the CAA in so much of the geographical area served by it as is not served by the emergency energy conservation program.

(d) Paragraph (c)(2) of this section shall not apply if the Governor, or the Regional Representative acting pursuant to § ►420.313(c)◄ [440.13(c)], determines on the basis of a public hearing which may be part of the hearing provided under paragraph (a) of

this section that an emergency energy conservation program carried out by a CAA—

(1) Has been ineffective in meeting the purpose of the ►Weatherization◄ Act; or

(2) Is clearly not of sufficient size and cannot in timely fashion develop the capacity to support the scope of the project to be carried out in the area with funds to be granted under this ►sub◄ part.

(e) In making a determination pursuant to paragraph (d) of this section, the Governor, or the Regional Representative acting on behalf of the Governor pursuant to § ►420.313(c)◄ [440.13(c)], shall evaluate the performance of the CAA and shall consider—

(1) The extent to which the emergency energy conservation program being carried out achieves the goals of the program in a timely fashion;

(2) The quality of work performed;

(3) The number, qualifications and experience of staff members; and

(4) The ability to secure volunteers, training participants and public service employment workers, pursuant to CETA.

(f) Any eligible local applicant may request in its application that the Regional Representative determine that the allocation requirement and priority set forth in paragraph (c)(2) of this section shall not be applied. In this event, the Regional Representative shall decide whether to make the determination as part of the notice and public hearing procedure required by § ►420.15◄ [440.30], which hearing may be consolidated by the Regional Representative with the public hearing required by paragraph (a) of this section.

§ ►420.315◄ [440.15] Minimum program requirements.

(a) Prior to the expenditure of any grant funds each grantee shall develop, publish and implement procedures to insure that—

(1) No dwelling unit may be weatherized without documentation that the dwelling unit is an eligible dwelling unit as provided in § ►420.320◄ [440.20];

(2) Priority is given to identifying, and providing weatherization assistance to elderly and handicapped low-income persons and such priority as the applicant determines is appropriate is given to single-family or other, high energy-consuming dwelling units;

(3) Financial assistance provided under this ►sub◄ part will be used to supplement, and not supplant, State or local funds, and, to the maximum extent practicable as determined by DOE, to increase the amounts of these funds that would be made available in the absence of Federal funds provided under this ►sub◄ part;

(4) To the maximum extent practicable, the grantee will secure the services of volunteers, training participants and public service employment workers, pursuant to CETA, to work under the supervision of qualified supervisors and foremen;

(5) The limitations set forth in § ►420.314(c)◄ [440.14(c)] shall be complied with;

(6) To the maximum extent practicable, the use of weatherization assistance shall be coordinated with other Federal, State, local or privately funded programs in order to improve thermal efficiency and to conserve energy;

(7) The low-income members of an Indian tribe shall receive benefits equivalent to the assistance provided to other low-income persons within a State unless the grantee has made the recommendation provided in § ►420.312(b)(9)◄ [440.12(b)(10)]; and

(8) The list of measures to weatherize a dwelling unit, developed by the State in accordance with § ►420.314(b)(3)◄ [440.14(b)(3)], after approval by the Regional Representative, is included in copies of Project Retro-Tech which are furnished by the State to sub-grantees.

(b) A sub-grantee may weatherize a building containing rental dwelling units using financial assistance for dwelling units eligible for weatherization assistance under § ►420.320◄ [440.20], where—

(1) The sub-grantee has obtained the written permission of the owner or his agent;

(2) Not less than 66 percent of the dwelling units in the building—

(i) Are eligible dwelling units; or

(ii) Will become eligible dwelling units within 180 days, under a Federal program for rehabilitating the building or making similar improvments to the building; and

(3) The grantee has established procedures approved by the Regional Representative, to insure that—

(i) Rents shall not be raised because of the increased value of dwelling units due solely to weatherization assistance provided under this ►sub◄ part; and

(ii) No undue or excessive enhancement shall occur to the value of the dwelling units.

(c) Prior to the expenditure of any grant funds, a State policy advisory council shall be established by a State, or by the Regional Representative if a State does not participate in the program, which—

(1) Has special qualifications and sensitivity with respect to solving the problems of low-income persons, including the weatherization and energy conservation problems of these persons;

(2) Is broadly representative of organizations and agencies, including consumer groups, that represent low-income persons, particularly elderly and handicapped low-income persons and low-income Native Americans, in the State or geographical area in question; and

(3) Has responsibility for advising the appropriate official or agency administering the allocation of financial assistance in the State or area with respect to the development and implementation of a weatherization assistance program.

[(d) Recipients of DOE financial assistance awards which are provided under DOE Federal Assistance programs shall comply with Part 1040, Chapter X, Title 10 of the Code of Federal Regulations "Nondiscrimination in Federally assisted Programs" (proposed rule) (10 CFR Part 1040) as published in the Federal Register Volume 43, Number 222, Thursday, November 16, 1978 (pages 53658 through 53676) and when published, as a final rule, 10 CFR Part 1040 provides that no person shall on the ground of race, color, national origin, sex, handicap, or age be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment, where the main purpose of the program or activity is to provide employment or when the delivery of program services is affected by the recipient's employment practices, in connection with any program or activity receiving Federal assistance from the DOE.][12]

§ ►420.316◄[440.16] Allowable expenditures.

(a) To the maximum extent practicable, the grant funds provided under this ►sub◄ part shall be used for the purchase of weatherization materials and related matter described in subparagraph (1). Allowable expenditures under this ►sub◄ part include only—

(1) A maximum of $1,000 for any dwelling unit, except as provided in paragraph (d) of this section, for—

(i) The cost of purchase and delivery of weatherization materials;

(ii) The amount per dwelling unit, determined by a grantee and approved by the Regional Representative, for the cost of program support and labor consisting of—

[12] § 440.15(d) redesignated as § 420.19.

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(A) Transportation of weatherization materials, tools, equipment, and work crews to a storage site and to the site of weatherization work;

(B) Maintenance, operation, and insurance of vehicles used to transport weatherization materials;

(C) Maintenance of tools and equipment;

(D) Purchase or annual lease of tools, equipment, and vehicles, except that any purchase of vehicles shall be referred to DOE for prior approval in every instance;

(E) Employment of on-site supervisory personnel;

(F) Labor costs, in accordance with §►420.317◄ [440.17]; and

(G) Storage of weatherization materials;

(iii) The cost, not to exceed $100 per dwelling unit, of incidental repairs, including repair materials and repairs to the heating source necessary to make the installation of weatherization materials effective;

(2) The cost of liability insurance for weatherization projects for personal injury and for property damage;

(3) Allowable administrative expenses under paragraph (b) of this section; and

(4) The cost of carrying out low cost/no cost weatherization activities in accordance with §►420.318◄ [440.18].

(b) Not more than 5 percent of each grant made pursuant to this ►sub◄ part may be used for the administrative expenses of the grantee, and not more than 5 percent of each amount allocated to a sub-grantee under this ►sub◄ part may be used for administrative expenses of the sub-grantee. Allowable administrative expenses shall include any labor costs other than labor costs in accordance with subparagraphs (a)(1)(ii)(E) and (F) of this section.

(c) No grant funds awarded under this ►sub◄ part shall be used for any of the following purposes—

(1) To install or otherwise provide weatherization materials for a dwelling unit weatherized previously with grant funds under subparagraph (a)(1) of this section unless such dwelling unit has been damaged by fire, flood, or act of God and repair of the damage to weatherization materials is not paid for by insurance; or

(2) To weatherize a dwelling unit which is designated for acquisition or clearance by a Federal, State, or local program within twelve months from the date weatherization of the dwelling unit would be scheduled to be completed.

(d) The limitation of $1,000 described in paragraph (a) of this section—

(1) Shall not apply if the State policy advisory council requests a greater amount be provided for specific categories of units or materials in the State, and the Regional Representative approves the requests; and

(2) Shall be deemed to have been requested and approved under §415(c)(2) of the ►Weatherization◄ Act, unless the State policy advisory council notifies the Regional Representative to the contrary in writing within 30 days of submission of the annual State application.

►(e) Tools and equipment acquired with grant funds provided under this subpart shall be the property of the grantee, as more particularly provided for by § 420.18(a)(2).◄

§►420.317◄[440.17] Labor.

(a) Payments for labor costs under §►420.316(a)(1)(ii)(F)◄[440.16(a)(1)(ii)(F)] shall consist of—

(1) Payments permitted by the Department of Labor to supplement wages paid to training participants and public service employment workers pursuant to CETA; and

(2) Payments to employ labor (particularly persons eligible for training under CETA) or engage a contractor (particularly a non-profit organization or a business owned by disadvantaged individuals which performs weatherization services), to install weatherization materials, provided a grantee has determined an adequate number of volunteers and training participants and public service employment workers, assisted pursuant to CETA, are not available to weatherize dwellings units for a sub-grantee under the supervision of qualified supervisors.

(b) The Regional Representative may increase the limitation of $1,000 per dwelling unit described in §►420.316(a)◄[440.16(a)] to not more than $1,600 per dwelling unit to cover costs referred to in paragraph (a) of this section in an area where the Regional Representative, based upon satisfactory documentation, determines that there are an insufficient number of volunteers and training participants and public service employment workers, assisted pursuant to CETA, available to weatherize dwelling units for a sub-grantee under the supervision of qualified supervisors.

§►420.318◄[440.18] Low cost/no cost weatherization activities.

(a) An eligible dwelling unit may be weatherized without regard to the limitations contained in §►420.316(c)(1)◄[440.16(c)(1)]or §►420.319(b)◄[440.19(b)] from funds designated by the grantee for carrying out low cost/no cost weatherization activities, provided—

(1) Inexpensive weatherization materials are used such as water flow controllers or items which are primarily directed towards reducing infiltration, including weatherstripping, caulking, glass patching and insulation for plugging; an

(2) No labor paid with funds provided under this ►sub◄ part is used to install weatherization materials referred to in paragraph (a)(1) of this section.

(b) A maximum of 10 percent of the amount allocated to a sub-grantee and not to exceed $50 per dwelling unit may be expended to carry out low cost/no cost weatherization activities, unless the Regional Representative approves a higher expenditure per dwelling unit.

§►420.319◄[440.19] Standards and techniques for weatherization.

(a) Only weatherization materials which meet or exceed standards prescribed in Appendix A shall be purchased with funds provided under this ►sub◄ part.

(b) A weatherization project shall utilize the approaches to weatherization contained in Project Retro-Tech, Conservation Paper Number 28, as revised July 1979, including the energy conservation techniques therein.

§►420.320◄[440.20] Eligible dwelling units.

No dwelling unit shall be eligible for weatherization assistance under this ►sub◄ part unless it will be occupied in accordance with the provisions of §►420.315(b)(2)(ii)◄[440.15(b)(2)(ii)] or is occupied by a family unit—

(a) Whose income is at or below 125 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget, or

(b) Which contains a member who has received cash assistance payments under Title IV or XVI of the Social Security Act or applicable State or local law during the 12-month period preceding the determination of eligibility for weatherization assistance.

§►420.321◄[440.21] Oversight, training, and technical assistance.

(a) The Secretary and the appropriate Regional Representative, in coordination with the Director, shall monitor and evaluate the operation of projects carried out by CAA's receiving financial assistance under this ►sub◄ part through on-site inspections, or through other means, in order to insure the effective provision of weatherization assistance for the dwelling units of low-income persons.

(b) DOE shall also carry out periodic evaluations of a program and weatherization projects that are not

carried out by a CAA, and that are receiving financial assistance under this ►sub◄ part.

(c) The Secretary and the appropriate Regional Representative, the Comptroller General of the United States, and for a weatherization project carried out by a CAA, the Director or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, information, and records of any weatherization project receiving financial assistance under the ►Weatherization◄ Act.

(d) Each grantee shall conduct, on an annual basis, an audit of the pertinent records of any sub-grantee receiving financial assistance under this ►sub◄ part.

(e) The Secretary may reserve from the funds appropriated for any fiscal year an amount, not to exceed 10 percent, to provide, directly or indirectly training and technical assistance to any grantee or sub-grantee.

[§ 440.22 Recordkeeping.

Each grantee or sub-grantee receiving Federal financial assistance under this part shall keep such records as DOE shall require, including records which fully disclose the amount and disposition by each grantee and sub-grantee of the funds received, the total cost of a weatherization project of the total expenditure to implement the State plan for which such assistance was given or used, the source and amount of funds for such project or program not supplied by DOE and such other records as DOE deems necessary for an effective audit and performance evaluation. Such recordkeeping shall be in accordance with Federal Management Circular 74–7 and any further requirements of this regulation or which DOE may otherwise establish under the terms and conditions of a grant.] [13]

[§ 440.23 Reports.

DOE may require any recipient of financial assistance under this part to provide, in such form as may be prescribed, such reports or answers in writing to specific questions, surveys or questionnaires as DOE determines to be necessary to carry out its responsibilities or the responsibilities of the Director under this part.][14]

[§ 440.39 Administrative review.

(a) If a timely application submitted by a State fails to meet the requirements of this part and the Regional Representative intends to deny the application, the Regional Representative shall return the application to the State together with a written statement of reasons therefore.

(b) The State will have a reasonable period, as determined by the Regional Representative, to amend its application and to resubmit it by a specified date for reconsideration.

(c) The Regional Representative shall give notice to the applicant in the event that the Regional Representative determines that—

(1) Any application resubmitted by a State in accordance with paragraph (b) of this section fails to comply with this regulation;

(2) Any application returned to a State pursuant to paragraph (a) of this section is not timely resubmitted as provided in paragraph (b); or

(3) The Regional Representative intends to deny the application of a local applicant.

(d) The Regional Representative shall give notice to a grantee in the event the Regional Representative finds there is a failure by the grantee to comply substantially with the provisions of the Act or this part.

(e) The Regional Representative shall issue such notice in the form of written notice mailed by registered mail, return receipt requested, to the State, local applicant grantee and other interested parties, including—

(1) A statement of reasons for a determination referred to in paragraph (c) or (d) of this section which the Regional Representative intends to make including an explanation whether any amendments or other actions would result in compliance with the regulation;

(2) The date, place, and time of public hearing to be held by the Regional Representative one subject of which shall be the proposed determination, which hearing shall in no event be later than 15 working days after the receipt of such notice; and

(3) The manner in which views may be presented.

(f) A party which has received notice under paragraph (e) of this section—

(1) May make a written submission of its views with supporting data and arguments to the Regional Representative on or prior to the date of the public hearing; and

(2) Shall be afforded an opportunity to make an oral presentation at the public hearing.

(g) The Regional Representative shall consider all relevant views and data including arguments and other submissions made at the public hearing. The Regional Representative shall make, not later than 5 working days after the public hearing, a final determination in writing stating the reasons for the determination.

(h) A State or local applicant or grantee may appeal in writing from an adverse final determination made by the Regional Representative under paragraph (g) of this section to the Secretary not later than 10 working days after receipt of the Regional Representative's determination. The Secretary shall have 21 working days to consider the appeal and take any action with respect thereto which he deems appropriate. Any action taken by the Secretary shall be the final determination of DOE.

If no action has been taken by the Secretary after the expiration of the 21-working-day period, the Secretary shall be deemed to have approved the determination of the Regional Representative.

(i) Anything herein to the contrary notwithstanding, the public hearing referred to in subparagraph (e)(2) of this section may be combined, at the discretion of the Regional Representative, with any other public hearing in the State conducted pursuant to this part.

(j) Upon issuance of the notice provided in paragraph (d), the Regional Representative may suspend payments to any grantee pending a final determination. If the Regional Representative makes a final determination of failure to comply, the grantee will be ineligible to participate in the program under this part unless and until the Regional Representative is satisfied that there is no longer a failure to comply.][15]

[13] See footnote 2.

[14] See footnote 3.

[15] See footnote 4.

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Appendix A.—Standards for Weatherization Materials

Material or product	Standards
Insulation—Mineral fiber:	
Blanket/batt	Conformance to F.S.[1] HH-I-521E and ASTM C665-70.
Board	Conformance to F.S. HH-I-526C and ASTM C612-70 or C726-72.
Duct material	Conformance to F.S. HH-I-558B.
Loose fill	Conformance to F.S. HH-I-1030A and ASTM C764-73.
Insulation—Mineral cellular:	
Aggregate board	Conformance to F.S. HH-I-529B.
Cellular glass	Conformance to F.S. HH-I-551E and ASTM C552-73.
Perlite	Conformance to F.S. HH-I-574A and ASTM C549-73.
Vermiculite	Conformance to F.S. HH-I-585B and ASTM C516-67.
Insulation—Organic fiber:	
Cellulose—Type I	Conformance to F.S. HH-I-515C and ASTM C739-73 (loose fill).
Cellulose—Type II	Conformance to ASTM C739-73 (loose fill) and fire safety requirements.[2]
Vegetable	Conformance to F.S. HH-I-526B and fire safety requirements.
Board and block	Conformance to F.S. LLL-I-535A and ASTM C208-72 and fire safety requirements.
Insulation—Organic cellular:	
Polystyrene board	Conformance to F.S. HH-I-524B and ASTM C578-69 and fire safety requirements.
Urethane board	Conformance to F.S. HH-I-530A and ASTM C591-69 and fire safety requirements.
Flexible unicellular	Conformance to F.S. HH-I-573B and ASTM C534-70 and fire safety requirements.
Insulation—Air spaces: Reflective	Conformance to F.S. HH-I-1252A.
Storm windows:	
Aluminum frame	Equivalent to ANSI A134.3-1972.
Wood frame	Conformance to Sec. 3 of NWMA Industry Standard I.S.2-73.
Rigid vinyl frame	Conformance to NBS Product Standard PS26-70 and performance guarantee.
Frameless plastic glazing	Required minimum thickness 6 mil (0.006 in).
Storm doors:	
Aluminum	Equivalent to ANSI A134.4-1972.
Wood:	
Pine	Conformance to Sec. 3 of NWMA I.S.5-73.
Fir, hemlock, spruce	Conformance to Sec. 3 of FHDA/5-75.
Hardwood veneered	Conformance to Sec. 3 of NWMA I.S.1-73.
Rigid vinyl	Conformance to NBS Product Standard PS26-70 and performance guarantee.
Caulks and sealants	Commercial availability.
Weatherstripping	Commercial availability.
Vapor barriers	Commercial availability.
Clock thermostats	Commercial availability.
Skirting	Commercial availability.
Items to improve attic ventilation	Commercial availability.
Materials used as a patch to reduce infiltration through the building envelope.	Commercial availability.
Water flow controller	Commercial availability, but not to exceed $5.00.
Replacement oil burners	UL 296/ANSI Z 96.2—1974 "Oil Burners" and ANSI Z 91.2—1976, entitled "Performance Requirements for Automatic Pressure Oil Burners of the Mechanical-Draft Type."

NOTES

[1] F.S. means Federal specifications as cited, copies of which may be obtained from Specifications Sales, Building 197, Washington Naval Yard, General Services Administration, Washington, D.C. 20407.

[2] For fire safety requirements, see Sec. 2.1.3.1 of NBSIR 75-795 which may be obtained from DOE.

Subpart E—Emergency Energy Conservation Program

Sec.

420.400 Purpose and scope.
420.401 Definitions.
420.410 Financial assistance and allocation of financial assistance.
420.411 Financial assistance applications.

§ 420.400 Purpose and scope.

This subpart establishes procedures to enable a State to obtain financial assistance to develop, modify or implement the State's emergency conservation plan in accordance with 10 CFR Part 477.

§ 420.401 Definitions.

For purposes of this subpart—

"EECA Act" means the Emergency Energy Conservation Act of 1979, Pub. L. 96-102, 93 Stat. 749, 42 U.S.C. 8501 *et. seq.*

"State emergency conservation plan" means a plan containing emergency energy conservation measures (whether mandatory or voluntary) that is submitted by a State to the Secretary of Energy for approval in accordance with Subpart B of 10 CFR Part 477.

"Target" means the monthly emergency energy conservation target for a State for an energy source or sources established by the President pursuant to § 211 of the EECA Act.

§ 420.410 Financial assistance and allocation of financial assistance.

(a) The Regional Representative shall provide financial assistance under this subpart to States for developing or modifying emergency conservation plans in accordance with 10 CFR 477.13 or for implementing such a plan. The Regional Representative shall provide financial assistance for this program from funds made available for this purpose for any fiscal year. To receive financial assistance under this subpart, a State must have an approved annual coordinated State grant application in accordance with § 420.411.

(b) Financial assistance under this subpart shall be allocated among the States either for the development and modification or for the implementation of a State emergency conservation plan, or both, from funds made available for any fiscal year, using the formula prescribed in § 420.110(c).

(c) A State receiving financial assistance under this subpart shall provide matching funds from non-Federal sources in an amount prescribed by DOE which shall be not less than 20 percent of the amount awarded under this subpart. DOE may prescribe individual cost sharing requirements by emergency energy conservation measure.

(d) DOE may reallocate financial assistance from a State which is unable to meet the cost sharing percentage prescribed for it by the Regional Representative to those States which can meet their cost sharing percentages.

§ 420.411 Financial assistance applications.

(a) To receive financial assistance under this subpart to develop or modify a State emergency conservation plan—

(1) Before the President establishes emergency energy conservation targets under § 211 of the EECA Act, a State shall submit a coordinated State grant application in accordance with § 420.12, and shall include with the application a proposal for the development or modification of a State emergency conservation plan in accordance with § 477.13; or

(2) After the President establishes emergency energy conservation targets under § 211 of the EECA Act, a State shall submit an amendment to its coordinated State grant application within 15 days after receipt of the notice from the Regional Representative of the availability of financial assistance. This amendment shall include a proposal for the development or modification of a State emergency conservation plan in accordance with § 477.13;

(b) Financial assistance under this subpart for implementation of State emergency conservation plans shall be available only after such time as the President has established emergency energy conservation targets pursuant to § 211 of the EECA Act, and while such targets are in effect. To receive financial assistance under this subpart to implement a State emergency conservation plan, a State shall submit an amendment to its coordinated State grant application within 15 days after receipt of the notice from the Regional Representative of the availability of financial assistance or within 15 days after approval of its State emergency conservation plan in accordance with § 477.14, whichever is later. The amendment shall include a copy of the approved State emergency conservation plan and a proposal for implementation of such plan.

(c) The Regional Representative shall review each timely State application for financial assistance under paragraphs (a) and (b) of this section and, if the submission otherwise complies with the applicable provisions of Subpart A and this subpart, provide financial assistance.

PART 440 [DELETED]

2. Part 440 is deleted.

PART 455—GRANT PROGRAMS FOR SCHOOLS AND HOSPITALS AND FOR BUILDINGS OWNED BY UNITS OF LOCAL GOVERNMENT AND PUBLIC CARE INSTITUTIONS

3. Part 455, Grant Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions, of Chapter II of Title 10, Code of Federal Regulations, is amended as follows:

a. Section 455.2 is amended by revising the definition for "Grantee" and by adding, in the appropriate alphabetical order, definitions for "Coordinated State grant application" and "Regional Representative." These three definitions read as follows:

§ 455.2 Definitions.

* * * * *

"Coordinated State grant application" means an application for financial assistance submitted by a State in accordance with 10 CFR Part 420.12.

* * * * *

"Grantee" means a State or other entity named in the Notification of Grant Award as the recipient of financial assistance provided under this part.

* * * * *

"Regional Representative" means the Regional Representative of the Department of Energy.

* * * * *

b. Section 455.3(a) is amended by deleting subparagraphs (1), (5), (6) and (7); by redesignating subparagraphs (2), (3), (4) and (8) as subparagraphs (1), (2), (3) and (7) and by adding new subparagraps (4), (5) and (6) to read as follows:

§ 455.3 Administration of grants.

* * * * *

(4) Office of Management and Budget Circular A-95, entitled "Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects";

(5) Treasury Circular 1075, entitled "Treasury and Fiscal Requirements Manual";

(6) DOE Assistance Regulations (10 CFR Part 600); and

* * * * *

c. Section 455.5 is amended by deleting the last sentence, reading "Suspension and termination procedures shall be as set forth in OMB Circulars A-102 and A-110 as applicable," and adding the following sentence in its place:

§ 455.5 Suspension and termination of grants.

* * * * *

A grant to a State made pursant to § 455.62 and § 455.83 shall be accorded the procedures prescribed in 10 CFR 420.15 regarding termination and suspension.

* * * * *

d. Section 455.62 is amended by revising the title and paragraphs (a) and (b) to read as follows:

§ 455.62 Coordinated State grant applications for State administrative expenses.

(a) A State desiring to receive grants to help defray State administrative expenses in accordance with § 455.83 shall file a coordinated State grant application in accordance with the provisions of this section and § 420.12. A State may apply for an amount not exceeding 5 percent of its total allocation for technical assistance and energy conservation measures, and not exceeding 50 percent of its total projected administrative expenses for a grant program cycle. DOE shall, pursuant to § 455.83, award each State an initial grant for 2 percent of its total allocation for technical assistance and energy conservation measures. Each State after it makes the submittal to DOE required under § 455.72 may submit an amendment to its coordinated State grant application to receive a further grant for an amount not exceeding 5 percent of the total of all grant awards for technical assistance and energy conservation measures within that State in that grant program cycle, less any amounts previously awarded the State for administrative expenses in the same grant program cycle, and not exceeding 50 percent of its total projected administrative expenses for that grant program cycle.

(b) A coordinated State grant application for financial assistance to defray State administrative expenses shall include—

(1) As part of the budget, an identification of the intended use of all Federal and non-Federal funds, for only those State administrative expenses listed in § 455.83(c), and a list of the sources and amounts of the required matching non-Federal funds, including in-kind contributions (limited to the goods and services described in OMB Circular A-102, "Uniform Requirements for Grants-in-aid to State and Local Governments", which are directly related to the project and do not include funds derived from revenue sharing or other Federal sources), to be used to meet the cost-sharing requirements described in Subpart G of this part; and

(2) Any other information as required by DOE.

* * * * *

e. Section 455.63 is amended by revising paragraph (b) to read as follows:

§ 455.63 Grantee records and reports.

* * * * *

(b) Each grantee shall, until the grantee's program has been concluded, submit a quarterly report to the State which shall detail and discuss—

(1) Milestones accomplished, those not accomplished, status of in-progress activities, problems encountered, and remedial action, if any, planned; and

(2) Financial status reports completed in accordance with the documents listed in § 455.3. Financial status reports must be submitted simultaneously to both the State and the Secretary.

* * * * *

f. Section 455.73 is amended by revising paragraphs (b) and (c) to read as follows:

§ 455.73 State duties.

* * * * *

(b) Each State shall submit a quarterly report to the Secretary, following State Plan approval for the duration of the grant program, providing—

(1) A narrative of the program, including objectives accomplished, problems encountered and recommended solutions;

(2) A detailed report on program related financial expenditures by all grantees and by the State;

(3) A summary of the most recent reports received by the State pursuant to § 455.63.

(4) Such other information as the Secretary may, from time to time, request.

(c) Each State shall include in the second quarterly report required by paragraph (b) of this section, an estimate of annual energy use reductions in the State, by energy source, attributable to implementation

of energy conservation maintenance and operating procedures and installation of energy conservation measures under this program. Such estimates shall be based upon a sampling of institutions participating in the technical assistance phase of this program and upon the reports submitted to the State pursuant to § 455.63(f).

* * * * *

g. Section 455.83 is amended by revising paragraph (a); by redesignating paragraph (b) as paragraph (c); and by adding a new paragraph (b). Paragraphs (a) and (b) read as follows:

§ 455.83 Grant awards for State administrative expenses.

(a) For the purpose of defraying State expenses in the administration of technical assistance programs and energy conservation measures, the Regional Representative may make grant awards to a State—

(1) Immediately following public notice of the amounts allocated to a State for a grant program cycle, and upon approval of the coordinated State for a grant program cycle, and upon approval of the coordinated State grant application submitted in accordance with § 455.62. in an amount not exceeding 2 percent of that State's total allocation for a given grant program cycle for technical assistance and energy conservation measures. Grants under this section may be made for no more than 50 percent of a State's projected administrative expenses, for each grant program cycle, which have been approved by the Regional Representative; and

(2) Concurrently with grant awards for approved applications for technical assistance or energy conservation measures for institutions in that State, and upon approval of a coordinated State grant application modified in accordance with § 455.62(a) for an amount not exceeding 5 percent of the total of all grant awards for technical assistance and energy conservation measures within that State in that grant program cycle, less any amounts previously awarded the State for administrative expenses in the same grant program cycle. Grants under this section may be made for not more than 50 percent of a State's projected administrative expenses, for each grant program cycle, which have been approved by the Regional Representative. The total of all grants for State administrative costs, technial assistance programs and energy conservation mesures in that State shall not exceed the total amount allocated for that State for any grant program cycle.

(b) The Regional Representative shall review each timely annual State coordinated grant application regarding State administrative expenses in accordance with the procedures prescribed by 10 CFR 420.14, and when appropriate provide administrative review in accordance with 10 CFR 420.15.

PART 465 [DELETED]

4. Part 465 is deleted.

PART 477—STANDBY FEDERAL EMERGENCY ENERGY CONSERVATION PLAN

(5) Part 477, Standby Federal Emergency Energy Conservation Plan, of Chapter II of Title 10, Code of Federal Regulations, is amended by adding a new § 477.15 to read as follows:

§ § 477.15 Financial assistance.

Financial assistance made available for the purpose of enabling a State to develop, modify or implement the State Plan may be obtained in accordance with the procedures set forth in 10 CFR Part 420, Subpart E.

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federal register

Tuesday
October 28, 1980

Part IV

Environmental Protection Agency

Standards of Performance for New Stationary Sources: Graphic Arts Industry; Publication Rotogravure Printing; Proposed Rule and Notice of Public Hearing

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[1579-1]

Standards of Performance for New Stationary Sources; Graphic Arts Industry: Publication Rotogravure Printing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: Standards of performance are proposed to limit emissions of volatile organic compounds (VOC) from new, modified, and reconstructed publication rotogravure printing presses. Emissions would be limited to 16 percent of the total VOC solvent volume used at the press. Reference Method 29 is also proposed for determination of the VOC volume content of solvent-borne inks and related coatings.

The proposed standards implement Section 111 of the Clean Air Act and are based on the Administrator's determination that the graphic arts industry contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The intent is to insure that new, modified, and reconstructed publication rotogravure printing facilities use the best demonstrated system of continuous emission reduction, considering costs, nonair quality health and evnironmental impacts, and energy requirements.

A public hearing will be held to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed standards.

DATES: *Comments.* Comments must be received on or before December 29, 1980.

Public Heoring. A public hearing will be held on November 25 (about 30 days after proposal) beginning at 9:00 a.m.

Request to Speak at Heoring. Persons wishing to present oral testimony must contact EPA by November 18 (1 week before hearing).

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (A-130), Attention: Docket Number A-79-50, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Public Heoring. The public hearing will be held at Environmental Research Center Auditorium RTP, NC. Persons wishing to present oral testimony should notify Ms. Deanna Tilley, Standards Development Branch (MD-13) U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5477.

Background Information Document. The Background Information Document (BID) for the proposed standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Publication Rotogravure Printing—Background Information for Proposed Standards," EPA-450/3-80-031a.

Docket. Docket No. OAQPS-79-50, containing supporting information used in developing the proposed standards, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Gene W. Smith, Section Chief, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5421.

SUPPLEMENTARY INFORMATION:

Proposed Standards

The proposed standards would apply to new publication rotogravure production presses. Existing presses would not be subject to the proposed standards unless they undergo a modification or a reconstruction as defined in 40 CFR 60.14 and 40 CFR 60.15, respectively. The smaller four-unit proof presses, used only to check the quality of the image formation of newly etched or engraved printing cylinders, would not be affected by the proposed standards. Emissions of volatile organic compounds (VOC) from publication rotogravure presses would be limited to 16 percent of the total VOC solvent volume used at the press. Total VOC solvent used would include all VOC solvent in the purchased raw inks and related coatings used at the press, all VOC solvent added to the inks and coatings, and all VOC solvent used as a cleaning agent at the press. For compliance purposes, the emission percentage could be reported as rounded-off to the nearest whole number.

The proposed standards are based on the use of solvent-borne ink systems, with a solvent vapor cpture system and a fixed-bed carbon adsorption/solvent recovery system for VOC emission control. For the use of waterborne ink systems, the proposed emission limit is expressed as a maximum allowed VOC volume to solids volume ratio of 0.64 in the purchased raw inks and related coatings, with only water addition allowed for dilution. Emission control equipment and metering devices would be required with waterborne ink systems only if the specified waterborne conditions are not met.

Initial compliance with the proposed emission limit would have to be demonstrated in a long-term performance test. This initial test would cover normal operations over 30 calendar days instead of an average of three runs as prescribed under 40 CFR 60.8. Actual press emissions and the average control system performance over the 30 days would be determined by an overall VOC solvent volume balance. The total volume amount of recovered solvent would be compared to the total volume amount of solvent used at the press. The amount of recovered solvent would include all VOC solvent recovered by the emission control system, all waste VOC solvent, and all waste inks removed from the affected facility. VOC volume analyses of raw solvent-borne inks and related coatings, as purchased, would be obtained from the ink manufacturer or determined by the proposed Reference Method 29. VOC analyses of air streams from the facility or the control system, and any waste water streams would not be required.

Once the initial performance test is completed, the affected facility would be required to monitor and calculate the amount of VOC emissions as a percentage of the VOC solvent volume used each month at the press. Emissions would be determined using the same procedures used in the initial performance test. These monthly test records of emissions would serve to determine compliance on a continuing basis, but would be reported only for the months during which non-compliance is determined. Compliance with the proposed standards would thus be determined for 12 periods each year from monthly performance test records. As an alternative, four-week performance test averaging periods could be chosen in order to coincide with the plant's normal accounting procedures. This alternative would require 13 compliance periods per year.

Affected facilities using waterborne ink systems would also be subject to continual compliance after completion of the initial performance test. Determination of compliance procedures would be the same as previously described, except that the VOC volume analyses of raw waterborne inks and related coatings, as purchased, would be from only the ink manufacturer's data. A reference test method for verification of the VOC content of waterborne ink systems is not being proposed.

The proposed emission limits can also be met through the use of solvent destruction (i.e. oxidation) control systems. However, specific procedures for determination of compliance with solvent destruction are not being proposed since this control technique is not expected to be used on any new, modified, or reconstructed press. The Administrator will welcome comments on whether this expectation and the exclusion of compliance provisions for solvent destruction devices are reasonable.

Summary of Environmental, Energy, and Economic Impacts

The environmental, energy, and economic impacts of the proposed standards are expressed as incremental differences relative to a baseline level. A 75 percent overall VOC reduction efficiency, or 25 percent emission level, was chosen as the baseline for the impact analyses. This baseline level corresponds to the recommendation in EPA's control techniques guideline (CTG) document, "Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VIII: Graphic Arts—Rotogravure and Flexography" (EPA-450/2-78-033 [CTG]). The states are expected to use this document in developing their revised State Implementation Plans (SIP) for existing publication rotogravure printing facilities. The impact analyses are based on the use of fixed-bed carbon adsorption/solvent recovery systems for control of VOC emissions from both existing and affected facilities. All existing facilities installed before the year 1980 are assumed to be controlled at the 75 percent baseline level.

The projected impacts are based on the expectation that, most of the time, only 15 percent (85 percent overall control) of the total VOC solvent used at affected facilities would be emitted. Emissions are expected to increase to the 16 percent level (84 percent overall control) during only one or two months per year.

Compared to the baseline control level, the proposed standards would further reduce VOC air pollutant emissions from typical affected facilities by 40 percent. A typical sized new plant in this industry would have four production presses, each consisting of eight printing units, and would have the capacity for a total annual solvent usage of about 6,400 megagrams. The potential reduction in VOC emissions from a typical sized plant controlled under the proposed standards would be about 700 megagrams per year more than that for control at the baseline level. The proposed standards would reduce the industrywide VOC emissions from both affected and existing facilities by about 7,900 megagrams per year in the year 1985, the fifth year after the appliable date of the standards. This would represent about 13 percent less industry emissions than with control of affected facilities at the baseline level. This projection is based on the expectation of 7 percent annual real growth rate in this industry.

Potential water pollution from a facility controlled under the proposed standards would be 3 percent greater than that from one controlled at the baseline level. The incremental potential wastewater discharges from a typical four-press plant would be about 2.6 million liters per year more than for baseline control. Dissolved organic compounds in this effluent would amount to an incremental increase of about 0.5 megagram per year. Projected national discharges for 1985 would be increased by about 32 million liters above that for control at the baseline level. In the year 1985, dissolved organic solvents in the nationwide effluent would potentially amount to about 6 megagrams per year more than for control at the baseline level. This would represent about a five percent incremental increase. The dissolved solvent content could be virtually eliminated on-site by demonstrated, inexpensive removal systems. The resultant solvent-free water could be recycled as make-up feed water to the plant steam boiler. Alternatively, the waste water could be discharged to a conventional biological waste treatment system.

The solid waste impact resulting from the proposed standards would increase proportionally over those for baseline control because of additional amounts of spent carbon, carbon fines, and used solvent laden air (SLA) filters. In 1985, the amount of nationwide waste carbon would be increased by about 85 megagrams above that for control at the baseline level. An estimate of the incremental bulk quantity of waste filters was not attempted, but should be a very small impact.

The only significant source of noise would be from the large SLA fans. However, these are normally installed in an enclosed housing, and should not affect the surrounding environment.

In the Administrator's opinion, the proposed standards' environmental impacts as just described are reasonable.

The energy impact of the proposed standards is not unreasonable on an industry basis and is entirely favorable when viewed from a national perspective. The direct energy consumption by a facility controlled under the proposed standards would be about 18 percent higher than if controlled at the baseline level. The direct annual energy consumption for a typical four-press plant would be increased by about the equivalent of 2,200 barrels of fuel oil. The industry's total direct energy consumption for the year 1985 would be about 40,200 barrels of fuel oil above that required for baseline control. This would represent an energy consumption increase of about 9 percent more than with control of affected facilities at the baseline level.

The national energy impact of the proposed standards would result in net national energy savings when the fuel energy value of the recovered solvent is considered. Under the proposed standards, nationwide energy consumption for the year 1985 would be actually decreased by about the equivalent of 21,800 barrels of fuel oil from that required for baseline control. The Administrator believes that the direct energy impact on the industry is reasonable, particularly in view of the net national energy savings which would result from decreased solvent demand.

The proposed standards would increase the required total plant capital investment and annualized operating costs over that for emission control at the baseline level. However, the high cost value of the recovered solvent would enable the installation of solvent recovery control systems to provide a net profit (negative annualized costs) and positive return on investments for emission controls under the proposed standards. The capital investment for a typical four-press plant would be increased by about $650,000, or about two percent more than for control at the baseline level. Industry's cumulative five-year capital investments, through the year 1985, would be increased by about $17 million. For the typical plant, the annualized control cost with solvent recovery credit would be about −$345,000 at baseline level and −$271,000 under the proposed standards, for an incremental cost increase of about $74,000. In the year 1985, the industrywide total annualized control cost with solvent recovery credit would be an estimated −$4.2 million at baseline control level and −$1.7 million

under the proposed standards, for an incremental cost increase of about $2.5 million.

The increase in capital requirements and annualized control cost under the proposed standards would have a negligible impact on industry growth, profitability, and product prices. First, the two percent incremental increase in initial capital costs is not large enough to reduce capital availability and, therefore, would not restrict industry growth. Secondly, the industry's average pre-tax profit of eight percent at the baseline control level would not be reduced below 7.8 percent under the proposed standards. Finally, there would be no significant price increases for publication gravure products. The Administrator, therefore, believes that the economic impacts of the proposed standards are reasonable.

Rationale—Selection of Source

The publication rotogravure printing industry is a significant source of volatile organic compound (VOC) emissions. The EPA has ranked the graphic arts industry, of which publication rotogravure is a part, sixth out of 59 on the "Priority List and Additions to the List of Categories of Stationary Sources". This list for New Source Performance Standards was promulgated at 44 FR 49222 on August 21, 1979. This priority list ranks the emission sources on a nationwide basis in terms of quantities of air pollutant emissions from the source category, the mobility and competitive nature of each source category, and the extent to which each pollutant endangers public health and welfare.

The publication rotogravure printing industry is a rapidly growing segment of the graphic arts industry, and a rapidly increasing source of potential VOC air pollutants. In the year 1977, the entire graphic arts industry was responsible for about 380,000 megagrams of organic solvent vapor emissions in the United States. Although in sales, publication rotogravure constituted only about five percent of the graphic arts industry, it was responsible for almost 15 percent of the total graphic arts VOC emissions in 1977. Growth projections show that the publication rotogravure industry will experience about a seven percent annual real growth rate through the year 1985. Potential uncontrolled emissions from a typical four-press plant amount to about 6,400 megagrams per year. In the year 1985, the cumulative potential uncontrolled VOC emissions from this industry are projected to be about 236,000 megagrams.

Selection of Pollutants and Affected Facilities

Volatile organic compounds (VOC) are the only air pollutants emitted from publication rotogravure printing facilities. The sources of the VOC emissions are the solvent components in the inks and related coatings used at the printing presses, as well as solvent added for printing and cleaning. The gravure printing method usually involves only four colors of inks—yellow, red, blue, and black. The related coatings are usually referred to as extenders or varnishes. There are two general types of solvents used by the publication rotogravure industry. In a few cases only toluene is used, but the more common solvent is a toluene-xylene-lactol spirits (naphtha) mixture. The various solvent components exhibit a range of moderate to high photochemical reactivity. VOC along with nitrogen oxides are precursors to the formation of ozone and other oxidants. Photochemical oxidants result in a variety of adverse impacts on health and welfare, including impaired respiratory function, eye irritation, necrosis of plant tissue, and deterioration of selected sysnthetic materials, such as rubber. Further information on these effects can be found in the U.S. Environmental Protection Agency (EPA) document entitled "Air Quality Criteria for Ozone and Other Photochemical Oxidants" (EPA–600/8–78–004).

At present, this industry uses only solvent-borne ink systems. The proposed standards would also allow the use of waterborne inks, but none have been successfully developed yet for the rotogravure printing method. Current research is being directed toward development of low-VOC, waterborne inks so that the proposed emission limit could be met without the use of emission control systems. The industry expects to develop waterborne inks in the next five to ten years.

All new web-fed (roll-fed) rotogravure presses used to print salable products, described under SIC Code numbers 27541 and 27543, would be the "affected facilities." These presses typically consist of 8 to 12 printing units. They are used to print magazines, catalogs, newspaper supplements, and advertising products, as well as other products. Existing rotogravure production presses in this industry which are determined to have been modified or reconstructed in accordance with 40 CFR.14 or 40 CFR.15 would also be subject to the proposed standards. There are expected to be very few, if any, such facilities. Installation of the higher speed, more efficient, and better electronically controlled newer presses will be more attractive than upgrading existing presses because of the highly competitive and fast growing nature of this industry. In addition, it would be easier to control VOC emissions from newer pressses than from older presses because modern presses are designed, for economic reasons, to minimize fugitive solvent vapor losses.

VOC emissions from ink and solvent storage and transfer facilities, as well as emissions from other printing operations would not be affected by the proposed standards. The emissions from storage and transfer facilities should normally be negligible compared to the printing press emissions. Additional presses that print other gravure products and different types of printing processes are sometimes housed within the same plant. The other sectors of gravure printing are slightly smaller and are not growing as rapidly as the publication sector. In addition, each gravure printing sector and other printing processes have different operating and emissions control characteristics. An attempt to cover entire printing plants would have, therefore, dramatically increased the complexity of the proposed standards. Air pollutant emissions from these other gravure presses and other printing processes may be regulated under future standards.

The smaller four-unit proof presses, used only to check the quality of the image formation of newly engraved or etched printing cylinders, would not be affected. These proof presses are operated intermittently and at much slower speeds compared to the production presses. The inks and solvents used at the proof presses are normally not metered, but are handled out of drums. The total solvent usage by proof presses in this industry is estimated to be about only one percent of the usage by production presses.

Selection of the Basis of the Proposed Standards

VOC emissions from publication rotogravure printing facilities could be controlled by either emission control systems, or by using low-VOC, waterborne ink systems. Emission control devices in this industry presently involve only solvent recovery, although solvent destruction (i.e. oxidation) could be used. The overall performance of control devices can be enhanced by installation of well-designed fugitive VOC vapor capture systems.

Control Technologies

The complete emission control system in a modern publication rotogravure printing plant consists of two sections: the capture system and the emission control device system. The capture system is designed to gather the VOC vapors emitted from the presses. The captured vapors are then directed to a control device where they are either recovered or destroyed.

Most of the solvent used in the rotogravure printing process is driven off in the drying operation after the ink has been applied to the paper web. All new and existing presses have dryer enclosures and ductwork to capture and convey dryer exhaust vapors away from the press (e.g., to a control device). Vapors that are not captured by the dryers are called fugitive emissions. Of the total amount of solvent used at the press, 80 to 90 percent is captured by the dryers and the rest is fugitive. Fugitive emission capture systems can be designed to capture part of all of the fugitive vapors in the pressroom.

The capture efficiency of the dryers is limited by their temperature and the operating speed of the newer presses. Dryer temperatures range from ambient to about 120°C (250°F). The higher temperatures in this range can only be used on the units printing with black ink. Higher temperatures impair product quality and increase the frequency of web breaks. The increasing operating speeds of modern presses of over 10 m/s (2,000 fpm) limit the web's residence time in the dryers. Thus, significant amounts of fugitive vapors are emitted from the presses because of the limited dryer capture efficiency.

Facilities that capture only the dryer exhausts must install some type of ventilation to remove the fugitive solvent vapors from the pressroom. The solvent vapor concentration in the pressroom air must be kept below the level of OHSA regulations (29 CFR 1910.1000). The present OSHA time-weighted average (TWA), 8-hour exposure limit for toluene vapors is 200 ppmv. The allowable vapor concentration limits for the components of the naphtha-based mixed solvents range from 100 ppmv up to 500 ppmv. OSHA has a proration formula for determining compliance with vapor component mixtures.

A highly efficient capture system is necessary to achieve high overall emission reduction efficiencies. Fugitive solvent vapors, as well as the concentrated dryer exhausts must be captured. Some of the fugitive solvent vapors result from evaporated solvent in the ink fountains, from the exposed part of the gravure printing cylinder, and from exposed portions of the paper web before entering the dryers. Enclosed ink fountains and extended enclosed dryer designs of newer presses help to minimize the escape of fugitive vapors from these locations during press operation. However, these areas must be uncovered to obtain access to the press during shutdowns for web breaks, cylinder changes, or maintenance items. The major source of fugitive vapors from newer presses during operation is the paper web after exiting the dryers. Fugitive vapors are emitted from this source even during press shutdowns. In addition, the final printed product retains some of the solvent used at the press, and continues to be a source of fugitive vapors from the cutting and folding areas after leaving the press.

All of the products printed in this industry retain a small amount of solvent. The amount of retained solvent appears to vary from about one to seven percent of the total solvent used at the press, depending on the finished product. Product solvent retention is apparently influenced by the ink coverage, the use of varnish and other coatings, and the type of paper and inks used. The ultimate efficiency of any capture system is, therefore, limited by the amount of solvent retained in the printed product.

Three types of capture systems were evaluated. The first type, demonstrated at the facilities of Texas Color Printers, Inc., captured only dryer exhaust vapors while pressroom ventilation air was discharged to the atmosphere. Naphtha-based mixed solvents were used at these tested facilities. Test data for this capture system showed that the amount of ventilation air required represented about 30 percent of the total dryer exhaust and ventilation air removed from the pressroom. In addition, the solvent vapor content in the ventilation air accounted for about eight percent of the total solvent volume used at the press. The test results showed that the dryers alone captured as must as 85 to 89 percent of the total solvents used at the press. Calculated addition of the discharged fugitive solvent vapors to the dryer exhausts showed potential total capture effciencies of 93 to 97 percent. The remaining 3 to 7 percent represents solvent retained in the product.

A second type capture system was demonstrated at the newest facilities of Meredith/Burda, Inc. Cabin enclosures were installed over the top portion of the printing presses. Fugitive solvent vapors (toluene only at these tested facilities) from the paper web and from around the printing presses were pulled up through the cabin enclosures and then directed along with the dryer exhausts to a carbon adsorption system. Pressroom ventilation fans were not installed at these facilities. Test data showed capture efficiencies ranging from 94 to 97 percent. Solvent retained in the printed product thus represented the remaining 3 to 6 percent of the solvent used at the presses.

Application of the demonstrated Meredith/Burda cabin enclosure design may, however, present difficulties in meeting some OSHA regulations. Toluene vapor concentrations inside the enclosures were measured to be as high as 200 to 300 ppmv, during press shutdowns. These vapor concentration levels are within the ceiling limits of OSHA regulations; however, repeated exposure to these high concentrations, combined with pressroom ambient vapor concentration levels, measured at 40 to 200 ppmv, may cause some press operators to be exposed in excess of the 8-hour TWA limit. In addition, Meredith/Burda handles larger volume print orders than some printers in this industry. Some of the shorter-run products not handled by Meredith/Burda may cause more frequent web breaks and press shutdowns. The printing of these more troublesome products could require the press operators to enter a cabin enclosure more often than required at Meredith/Burda, thereby increasing their potential for exposure to solvent vapors. Press operating data supporting this reasoning were obtained for two types of products printed during tests conducted at both the Merdith/Burda and Texas Color facilities. The test results showed a wide range of actual press printing times of about 62 to 86 percent of the total test time, with shutdown frequencies averaging about 10 to 12 press shutdowns per equivalent 24 hour period. The magazine product printed at Meredith/Burda caused twice as many press shutdowns and a lower percentage printing time than the advertising product. At Texas Color, the advertising product caused more press shutdowns, but resulted in a slightly higher percentage printing time than the magazine product. Press shutdown data for other products printed in this industry were not available; however, these test results were consistent with general information provided by industry on typical operations.

The Administrator believes that for most facilities in this industry cabin enclosures could be designed to very effectively capture fugitive solvent vapors without violating OSHA regulations. As explained in Chapter 4 of the BID (Section 4.2.1), the Meredith/Burda capture system design could be improved to easily meet OSHA regulations by (1) modifications of the

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cabin enclosure design, (2) modification of the pressroom air handling system, and (3) increasing the ventilation air flow rate through the cabin. The required increase in air flow rate would cause a decrease of less than 0.5 percent in the carbon adsorber efficiency. In addition, the use of naphtha-based mixed solvents rather than toluene would pose fewer problems in meeting OSHA regulations because of the higher allowable vapor concentration limits. On the other hand, the Administrator acknowledges that printing of some products handled by this industry might cause more press down time than other products, and thus a cabin enclosure design may not be a suitable capture system for some facilities.

A third type control system which captures all the pressroom air was demonstrated at the facilities of Standard Gravure, Inc. Naphtha-based mixed solvents are used at these facilities. This capture system is similar to what the potential Texas Color capture system would be with the fugitive ventilation air directed to the control device system. In addition, ventilation air from the cutting, folding, and product storage areas are captured at this plant and sent to a carbon adsorption system. EPA testing was not conducted at this plant because its control system was assumed to be less cost effective than the other systems just described. The amount of captured air needed to be treated with this design is much greater than for the other systems, causing it to be less economical. Plant data was obtained from Standard Gravure, however, and the Administrator believes these are of sufficient accuracy to be used in support of the proposed standards.

There are three alternative emission control devices which can effectively reduce the VOC emissions from a publication rotogravure press: solvent destruction (i.e. oxidation), fixed-bed carbon adsorption, and fluidized-bed carbon adsorption. Any of these systems can control 95–99 percent of the vapors they receive, but fixed-bed carbon adsorption is currently used almost exclusively in this industry.

Some modern solvent destruction devices could possibly be economical in certain cases. Conventional thermal oxidation would require large amounts of supplemental fuel. The operating costs could be reduced somewhat by utilizing waste heat recovery designs. Catalytic oxidation permits lower oxidation reaction temperatures, and therefore, requires about 50 percent less energy than thermal oxidation. A third technique involves regenerative thermal combustion. This method would probably be the most energy efficient, and thus most economical solvent destruction device. However, as the solvents used in this industry are refined from crude oil, they are expected to become increasingly expensive in the future. Recovery rather than destruction of captured solvent vapors is, therefore, expected to be the only economically justifiable control alterative for new publication rotogravure printing presses.

Fixed-bed carbon adsorption has undergone considerable research, development, and modification in recent years. Most of the corrosion problems of the past have been solved. Energy requirements, and thus operating costs for the fixed-bed system are greater than that of a fluidized-bed carbon adsorber system, but capital costs are less. Problems associated with the use of a fluidized-bed carbon adsorption system to control VOC emissions from publication rotogravure presses cannot be adequately assessed because available data is very limited.

The average operating efficiencies of fixed-bed carbon adsorption systems were determined during the two plant tests. The newest Meredith/Burda adsorbers operated at 97 to 98+ percent efficiency. The Texas Color plant adsorbers operated at 94 to 96 percent efficiency. The difference in performance results from higher inlet SLA vapor concentrations, lower outlet vapor concentrations, and better instrumentation controls at Meredith/Burda. The total VOC vapor concentrations at Meredith/Burda ranged from about 300 to 1,800 ppmv at the adsorber inlet and about only 10 to 30 ppmv at the outlet. The vapor concentrations at Texas Color ranged from about 70 to 1,000 ppmv at the inlet and about 20 to 300 ppmv at the adsorber outlet.

The average operating efficiency of the better designed carbon adsorption systems available to this industry should remain at or above the 97 percent level, when printing most products. Several carbon adsorption systems installed in this industry provide evidence that the carbon bed maintains the design "activity" for more than five years. Bed blockages from high molecular weight reaction products have not occurred with existing adsorption systems and solvent blends used in the publication rotogravure printing industry. Routine maintenance requires periodic filtering out of carbon fines, addition of makeup carbon, and repairing valve leaks. However, the capture system design affects the air handling requirements, as previously mentioned, and thus could result in lower adsorber efficiencies. Moreover, adsorber efficiencies may be somewhat lower when more troublesome, shorter run products are printed.

In summary, the standards as proposed are based on the use of fixed-bed carbon adsorption with a solvent vapor capture system. As previously explained, the facilities at both tested plant sites demonstrated that at least a 90 percent average capture efficiency can be expected when fugitive solvent vapors are captured along with the dryer exhausts from new presses. This conservative average efficiency allows for printing of products that retain larger amounts of solvent or that cause more fluctuations in the printing operations than were experienced during the two short-term plant tests. If only dryer exhausts are directed to the control device, then the average capture efficiency can be expected to be only about 85 percent, as demonstrated during tests at Texas Color. Older facilities treating only the dryer exhausts can be expected to achieve an average capture efficiency of about 84 percent. This lowest capture efficiency reflects an estimate of slightly more fugitive solvent vapor losses from the more exposed areas of older press designs. Modern carbon adsorber/solvent recovery control devices can be expected to achieve a long-term average performance of about 95 percent efficiency. Short-term efficiencies of the best demonstrated adsorbers may be higher at times, but this average efficiency accounts for the wide fluctuations of vapor concentrations in the solvent laden air (SLA) inlet to the adsorber. In comparison, older adsorber systems were designed to perform at about only a 90 percent average efficiency.

As an alternative emission control technique, this industry is researching the possibilities of using low-VOC, waterborne ink systems to reduce their VOC emissions. At present, waterborne inks have not been developed for publication rotogravure printing. In order not to discourage future development of waterborne inks, the proposed standards would allow printing of publication rotogravure products without air pollution control equipment if waterborne inks containing sufficiently low amounts of VOC are used. To qualify for this allowance, the VOC content would be limited to not more than 16 volume percent of the total volatile portion of the waterborne ink mixture as applied to the gravure printing cylinder.

Regulatory Alternatives

The overall reduction efficiency for VOC emission control systems is equal to the capture system efficiency times the control device efficiency. The expected average efficiencies for capture systems and control devices applicable to this industry were combined to develop three regulatory alternatives. The alternatives considered call for an overall VOC reduction at 75, 80, and 85 percent levels. Fixed-bed carbon adsorption systems were assumed as the control devices for all alternatives. Alternatives were not developed to represent VOC reduction by low-VOC, waterborne ink system usage without emission controls since waterborne inks have not been developed yet for this industry.

The first regulatory alternative is a 75 percent overall control level that represents capturing the dryer exhausts from older presses—baseline level. This corresponds to the CTG recommendation for existing facilities. This control level is achievable by capturing about 84 percent of the potential solvent vapors from the press, with a 90 percent adsorber efficiency.

The second regulatory alternative is an 80 percent overall control level that represents capturing the dryer exhausts from new, well-designed presses. In this case 85 percent capture would be required with a 95 percent efficient adsorber. This corresponds to a typical, modern facility. Overall emission reduction in the 80 to 84 percent range were determined from short-term test data and five months of plant data at Texas Color Printers. In addition, over four months of plant data from World Color Press showed four-week average overall control efficiencies ranging from 78 to 84 percent.

The third regulatory alternative is an 85 percent overall control level that represents capturing the dryer exhausts from newer presses, as well as some of the fugitive solvent vapors. This is intended to correspond to a 90 percent efficient capture system with a 95 percent efficient adsorber. This alternative represents application of the best demonstrated control technology. The fugitive vapors would be captured by—

- A partial enclosure fugitive vapor capture system that is vented to the control device; or
- A system of multiple fugitive vapor capture vents that are located around the press and collectively ducted to the control device; or
- Total pressroom ventilation air that is directed to the control device.

Overall control efficiency data for the three best demonstrated VOC emission reduction systems support the long-term average achievability of an 85 percent regulatory level. Four-week average overall control efficiencies reported by Standard Gravure range from 85 to 90 percent for over a year of typical operations. Corrected overall control efficiencies of 89 to 92 percent were demonstrated in short-term tests at the Meredith-Burda plant. In addition, data were obtained from this plant for normal operations over ten separate months indicating corrected overall control efficiencies ranging from 84 to 91 percent. Calculations using short-term test data combined with five months of plant data indicated that the Texas Color facilities might potentially achieve about 88 percent overall recovery by directing their existing floor sweep vents to the adsorber system, rather than to the atmosphere. these data show that considerable variation occurs in the long-term control performance; however, an average 85 percent overall control level is achievable, with performance dropping to a low point of about 84 percent for one or two months a year.

Environmental, Energy, and Economic Impacts

The incremental potential environmental, energy, and economic impacts of the two higher regulatory alternatives relative to the baseline alternative were determined through development of model plants, representing new facilities. Projections of these impacts were based on analyses of two model plant sizes, resulting in a total of six model plant cases. The small model plant consisted to two eight-unit presses; the large model plant consisted to four eight-unit presses. Only one press width of 1.83 meters (72 inches) with an operating speed of 10.16 m/s (2,000 fpm) was considered. There are some smaller and some larger existing presses; however, the press size chosen is the most common. Most modern rotogravure presses are designed to operate at about the speed chosen for study, although older presses operate at only about half that speed.

The control of VOC emissions from each model plant was based on solvent vapor capture systems combined with fixed-bed carbon adsorption/solvent recovery devices. Model plants were not developed for emission control by any other solvent recovery devices, such as fluidized-bed carbon adsorption, because sufficient operating information for use in this industry was not available. Also, model plants were not developed for analysis of VOC emissions control by solvent destruction devices (i.e., oxidation) since these devices are not presently used and not expected to be employed in the future by this industry. Furthermore, model plants representing the use of low-VOC, waterborne ink systems without emission control systems were not analyzed since waterborne inks are not expected to be developed for this industry for another five to 10 years. Since modified and reconstructed existing facilities are also subject to standards proposed under Section III of the Clean Air Act, model plants representing these affected existing facilities are typically developed. However, model plants representing these affected facilities were not developed because neither modification nor reconstruction is expected in this industry, as explained in a later section. The environmental, energy, and economic impacts on modified and reconstructed facilities to comply with the proposed standards would be essentially equivalent to those impacts on new facilities.

The seven percent annual real growth rate projected for this industry corresponds to about 75 new presses to be installed by the year 1985. Most of these new facilities will provide expansion capabilities; however, some of these new presses will simply replace old, worn-out existing presses, with no production expansion intended. Also, since modern presses operate at higher speeds with increased efficiency compared to older presses, the required utilization of new presses would be less than that for older presses to meet customer demands. No modifications or reconstructions are expected during this period. the annual total solvent usage in this industry will increase to about 236,000 megagrams by 1985. New Source Performance Standards (NSPS) set at the 80 percent control level would further reduce 1985 nationwide VOC emissions by about 4,000 megagrams per year over control at the 75 percent baseline level. An 85 percent regulatory control level would result in an additional reduction of 1985 VOC emissions by about 7,900 megagrams per year over that for baseline control.

Emissions of air pollutants from two secondary sources result form the energy required for operation of the carbon adsorption/solvent recovery control systems. First, required electrical power was assumed to be generated by coal/fired utilities (worst cast). Fuel combustion emissions from these power generation facilities are regulated under MSPS promulgated at 44 FR 33580 on June 11, 1979. Secondly, required steam

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production or regeneration of the carbon beds results in fuel combustion emissions from the uncontrolled plant steam boilers. Total resultant secondary flue gas emissions from these two sources was estimated to represent about 0.5 percent of the corresponding VOC emission reduction from the publication rotogravure presses. Control ov VOC emissions from a typical four-press printing plant at the 80 and 85 percent levels would result in total secondary emissions of about two and five megagrams per year more than for control at the baseline level, respectively. In 1985, the nationwide total secondary emissions for control at the 80 and 85 percent levels would be about 25 and 100 megagrams more than for control at the baseline level, respectively. Corresponding incremental VOC reductions would be 4,000 and 7,900 megagrams for the 80 and 85 percent levels. Therefore, the resulting total air pollutants emitted from secondary sources only slightly offset the primary impact of reducing VOC emissions.

There are three potential sources of water pollution associated with carbon adsorption/solvent recovery systems. The largest source would be the dissolved solvent in the condensate discharged from the decanter section of the adsorber system. This condensate typically contains from 130 to 200 ppm solvent, but can be as high as 1.900 ppm solvent, depending on the solvent used and the temperature. Control of VOC emissions at the 80 and 85 percent levels would result in increased potential wastewater discharges of about seven and thirteen percent over that for baseline control, respectively. The VOC content in the condensate respresents less than 0.1 percent of the respective VOC emission reductions from the presses. Also, this potential water pollution source could be virtually elimiated by air-stripping the condensate and recycling the resultant solvent-free water as make-up feed water to the plant steam boiler. The solvent laden air from the stripping tower could be recycled to the adsorption beds. Alternatively, the condensate could be discharged to a conventional biological waste treatment system. A small amount of the dissolved VOC solvent would naturally evaporate out of the waste water during biological treatment, but these vapor emissions would be part of the 16 percent emission limit allowed under the proposed standards, and would not constitute any additional primary VOC emissions or any secondary air pollutant emissions. Dissolved organics and solids in the plant cooling tower and steam boiler blowdowns represent two minor sources of water pollution. The cooling tower water and steam usages increase in direct proportion to the amount of solvent recovered. The respective blowdown rates would thus increase correspondingly. All three waste water sources are subject to State and local effluent regulations for five-day biochemical oxygen demand (BOD_5), chemical oxygen demand (COD), and some specific compound contents.

There are two potential sources of solid waste material resulting from VOC emissions control by carbon adsorption/solvent recovery systems. Activated carbon used in the absorbers should last at least five years for service in this industry before replacement is required. The total amount of activated carbon used for control at the 80 to 85 percent overall recovery levels would be larger by about seven and thirteen percent over that for baseline control, respectively. In 1985, the amount of nationwide waste carbon for control at the 80 and 85 percent levels would be, respectively, about 42 and 85 megagrams more than for control at the baseline level. The second source of solid waste is the SLA filters, which are usually made of fiberglass material. Usage of the filters increases proportionately to the SLA flow rate. The amount of waste filters for control at the 80 to 85 percent levels would, thus, increase by about nine and 40 percent over that for baseline control, respectively. Some of the spent carbon can be regenerated and recycled. Likewise, some of the air filters can be cleaned and reused. The solid waste impact from emissions control at any of the three regulatory levels is not expected to cause any significant handling problems.

In the Administrator's opinion, these incremental environmental impacts for the two higher regulatory alternatives are reasonable.

There would be direct energy consumption increases for plants with affected facilities controlled at either of the alternative regulatory levels above 75 percent baseline control. Control of VOC emissions at the 80 percent level would require about seven percent more direct energy than at the 75 percent level. Similarly, control at the 85 percent level would increase energy consumption by about 18 percent over that for baseline control.

On the national level, there would be net energy savings for VOC emissions control at all of the regulatory alternative levels considered when the fuel energy value of the recovered solvent is included. Fuels and organic solvents can both be derived from a common source of crude oil. A decrease in the demand for solvents will thus increase the potential for fuel availability. The net energy savings in the year 1985, compared with baseline control, would be increased by about the equivalent of 15,600 and 21,800 barrels of fuel oil per year for controlling new press emissions at the 80 and 85 percent levels, respectively.

The Administrator believes that the direct incremental energy impacts on the industry for the 80 and 85 percent control levels are reasonable, particularly in view of the net national energy savings which would result from decreased solvent demand.

The economic impacts of the regulatory alternatives were analyzed in terms of capital investment requirements, total annualized costs, and affects on product price and profitability. VOC emissions control equipment would represent a significant fraction of total plant capital investment at any level of control, although the incremental capital costs required for either plant size to attain higher levels of control would be very small compared to control at the baseline level. The installed capital investment for a baseline level VOC emissions control system for a four-press plant would represent about 5.5 percent of the controlled plant's total cost; VOC controls for a two-press plant would represent about seven percent of the total costs. The total plant installed capital cost for control at the 80 and 85 percent levels, relative to the cost for baseline control, would increase by about 0.5 and two percent, respectively.

The capital investment in the model plant carbon adsorption systems were mainly influenced by the air flow handling requirements. Model plant characteristics, representing current practice in this industry, included usage of naphtha-based solvents with dryer exhaust vapor concentrations at the 19 to 20 percent of the Lower Explosive Limit (LEL) level. The LEL is the lowest vapor concentration in air, expressed as volume percent, at which the mixture could support a flame or explosion at temperatures below 121°C (250°F). Insurance safety regulations require normal operation at less than about 25 percent of the LEL. Operation up to 50 to 60 percent of the LEL is permitted when continuous vapor monitoring systems are employed to control the vapor concentration in the air.

The cost value of the recovered solvent would provide for annualized cost savings and positive return on investments (ROI) for emissions control for all six model plant cases studies.

Annualized cost savings and ROI for the emission controls increase in going from 75 to 80 percent overall control as a result of the additional solvent recovered from dryer exhausts. However, the savings and positive ROI decrease in going from 80 to 85 percent control because of the added costs of capturing and treating fugitive vapors. A profit-maximizing operation would therefore practice about 80 percent overall control. ROI for emission controls with the large model plant is about ten percentage points higher at all three control levels than that for the small plant. These analyses are based on the cost value of recovered solvent at the early 1979 market price of $0.17 per liter ($0.65/gallon). The increment in cost savings are much more favorable for both the 80 and 85 percent control levels when projected late 1979 conditions are assumed (i.e. solvent cost value at $0.24 per liter ($0.90/gallon) with 10 percent increased operating and capital costs). The late 1979 conditions reflect inflationary price increases in the cost of solvent and yield more favorable economic impacts for solvent recovery.

An 85 percent solvent recovery requirement would not pose any problems of capital availability and thus, would not restrict industry growth. The average pre-tax profit for this industry with baseline controls is about eight percent of the total sales. For control at the 85 percent level, small sized plants' profitability would only decrease by about 0.2 percentage points at both the early and late 1979 economic conditions; profitability for larger sized plants would decrease by an estimated 0.1 percentage point. No measurable price increases for gravure products would occur with VOC control at any of the three regulatory alternatives considered. The Administrator believes that the incremental economic impacts for the 80 and 85 percent regulatory alternatives are reasonable.

In summary, the model plant analyses show that the impacts associated with 85 percent overall control are the most reasonable of the three regulatory alternatives considered. The environmental impacts of the 85 percent alternative would not pose any major wastewater or solid waste problems, while providing a significant increase in the primary benefit of VOC reduction. National energy consumption would decrease compared with that for baseline control because of the fuel energy value of the extra recovered solvent. Finally, the cost value of the recovered solvent would provide for annualized control cost savings for the 85 percent alternative. While this cost savings is less than the savings that could be achieved at the 75 to 80 percent regulatory levels, the economic impact would not adversely affect profit margin and thus industry growth. Moreover, publication gravure product prices are not expected to increase noticeably.

Selection of Format for Proposed Standards

Three formats were considered for the proposed standard: (1) a mass emission rate related to unit production, (2) a concentration limitation and (3) a percentage overall reduction or emission limit.

A fixed emission percentage limit format, or overall percentage reduction, is selected because it provides the only adequate measure of actual VOC emissions control. A variable emission percentage limit corresponding to a fixed VOC emission rate allowance per unit of applied solids is not necessary for this industry. A characteristic of rotogravure printing is that the solvent to solids ratio of the applied ink mixture can only vary within a narrow range and still have the correct fluid properties for high quality printing. For solvent recovery control systems, the average emission percentage can be determined over long-term periods by simple comparison of the total liquid volume amount of recovered solvent to the total liquid volume amount of solvent used at the facility. This format allows for determination of compliance without the necessity for monitoring of any gas streams, and inherently indicates whether or not VOC vapors are being adequately captured. Also, the VOC retained by the printed product is accounted for with this format. Finally, an emission limit format is simple to use and insensitive to the many process fluctuations, upsets, variations in product types, and variations in the captured SLA VOC vapor concentration.

An allowable VOC vapor concentration in the gas streams vented to the atmosphere would appear to be the easiest format for standards enforcement. However, a typical printing facility may have numerous direct atmospheric vents, as well as, the exhaust stream out of the control device. Short-term monitoring of all the vents may be feasible, but continuous on-line monitoring of all vents would be very expensive. Moreover, monitoring of just the control device exhaust stream would not provide for sufficient indication of effective capture of VOC vapors emitted from the facility. In addition, the amount of VOC retained by the printed products can not be determined by monitoring just the VOC vapor concentration of the gas stream vents. Furthermore, concentration limitation formats are susceptible to dilution problems, which can cause poor indication of true emission rates. Thus, a concentration limitation would not be a suitable standards format for this industry.

The printing of rotogravure products is characterized by the variable amounts of solvent usage and ink coverage on the paper web. There is no fixed relationship between the amount of solvent used, or VOC emitted, and the bulk quantity of printed products. Therefore, a mass emission rate per unit of product format is inappropriate for this industry.

For solvent recovery control systems, an overall solvent volume balance around the affected facility is selected to be used with the emission percentage limit format. Most new rotogravure printing plants install liquid volume meters for process monitoring and control, and for customer billing purposes. Meters are used to measure the amount of ink and related coatings, and solvent used for printing and cleaning at the facilities. A meter also measures the amount of liquid solvent recovered by the adsorption system. The total amount of solvent used would be determined by the liquid meter readings combined with the VOC content analyses of the purchased raw inks and related coatings. The total amount of recovered solvent would be determined by the liquid meter readings combined with miscellaneous liquid volume amounts of unmetered waste solvent and waste inks from the affected facility. Subtracting the total amount of solvent recovered from the total amount of solvent used and then dividing that result by the total amount of solvent used would complete an overall solvent balance, and determine the VOC emissions percentage for the affected facility.

The same overall solvent volume balance and emission percentage limit format would be used when more than one affected facility is controlled by a common solvent recovery system. For these cases, the total amount of solvent used would be the collective volume amounts for all associated affected facilities.

The VOC emissions from some existing and affected facilities could be controlled in common by the same solvent recovery system. Some existing control systems were originally oversized in order to handle future press installations. In addition, new carbon adsorption systems could be installed to control emissions from affected presses, as well as some uncontrolled existing presses. For these combination cases, the same overall solvent volume balance

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and emission percentage limit format would be used. The proposed standards would still apply to only the affected facilities. Determination of compliance for the affected facilities in these combination cases is explained in the Compliance Provisions section.

Some plants may decide to capture and recover the relative small amount of solvent vapors from existing or new proof presses. Captured VOC vapors from either of these operations could be sent to the emissions control systems for affected facilities; however, the proposed standards would still apply to only the affected facilities. The ink and solvent usage at the proof press would not have to be accounted for in determining compliance with the proposed standards.

In principle, the same emission percentage format could be used with solvent destruction emission control devices. Procedures for determination of the emission percentage with these control devices are not being proposed, however, because these control devices are not presently employed by this industry, and are not expected to be used in the future. The Administrator will welcome comments on whether this expectation is a reasonable assumption.

The emission percentage format would also be used for affected facilities using low-VOC, waterborne ink systems without emission controls. The actual emission percentage would not be determined for these cases, however. Instead, the affected facility would be determined to be in compliance with the proposed emission percentage limit if the VOC content is not more than 16 volume percent of the total volatile portion of the waterborne ink mixture as applied to the gravure printing cylinder. Since there are no waterborne inks presently used in this industry, a suitable analysis method could not be developed for determination of the VOC content in the ink mixture as applied. Therefore, in the absence of test data a allowable VOC to solids volume ratio for purchased inks and coatings was developed on a theoretical basis to correspond to the proposed 16 percent emission limit. A general material balance for typical solvent-borne ink systems usage showed that the ink mixture as applied contains an average of 20 volume percent solids and 80 volume percent VOC. An allowable 16 percent emission of the VOC content shows that an equivalent waterborne ink mixture would have to have a VOC to solids volume ratio of less than or equal to 0.64. Thus, if only water were added to dilute the raw inks and related coatings, the ink manufacturer's analysis data on the purchased inks and coatings could be used to determine compliance with the proposed emission limit.

Liquid metering devices would not be required with waterborne ink systems provided that only water is added for ink dilution. If VOC solvent were added for ink dilution, liquid meters would be required to facilitate calculation of the VOC content in the applied ink mixture. The Administrator believes that the stipulation for water dilution only is reasonable for two reasons: (1) Not having to install liquid meters should provide an extra incentive for using waterborne ink systems, and (2) If ink formulation technology advances far enough to develop useable low-VOC, waterborne inks, there should be no need nor desire to dilute the ink with VOC solvent.

Selection of Numerical Emission Limits

The proposed 16 percent emission limit, or 84 percent overall reduction, is the maximum control level judged by the Administrator to be achievable on a continual basis by the best demonstrated system of emission reduction. The most stringent regulatory alternative considered, requiring 85 percent overall control or a 15 percent emission limit, is achievable most of the time and has, in the Administrator's judgment, acceptable environmental, energy, and economic impacts. However, long-term plant data showed that a 15 percent emission limit might not be achievable during one or two months over a year's operation. Therefore, the emission limit has been set at 16 percent to accommodate this expected variation in overall control efficiency. As noted previously in the control technologies and regulatory alternatives sections, the proposed overall emission control level of 85 percent has been demonstrated by existing facilities employing VOC vapor capture systems of greater than 90 percent efficiency combined with solvent recovery devices of greater than 95 percent efficiency. These efficiencies were first of all achieved during tests at the newest Meredith/Burda facilities. Secondly, tests conducted at Texas Color Printers showed that those facilities could potentially achieve the 85 percent overall control level. Thirdly, more than a year of data reflecting normal operation at Standard Gravure showed long-term achievement of the 85 percent level. Finally, evaluation of more data from Meredith/Burda covering ten months of normal plant operation caused the Administrator to select 84 instead of 85 percent overall control as the correct basis for the proposed emission limit.

The newest facilities at Meredith/Burda were tested after observation revealed that these modern facilities employed the best continuous fugitive VOC vapor capture system combined with a thoroughly instrumented, modern carbon adsorption/solvent recovery system. The two presses involved in the tests consisted of eight printing units each and were printing a magazine and an advertising product at average press speeds of 4.6 to 9.6 m/s (900 to 1,900 f/m), while using toluene as solvent. Overall liquid solvent volume balances were conducted during three separate nine-hour runs, and over 50 hours of normal printing operations. The normal operations involved numerous press shutdowns and startups for web breaks and other typical problems. Liquid meter readings and manufacturers data on the VOC content of the purchased raw inks and related coatings were used as first calculations of the overall solvent volume material balances. As explained in Chapter 4 of the BID (Section 4.1.2), the apparent overall VOC control efficiency results were then reduced by five percent to compensate for two unique characteristics at these facilities. A two percent factor was required for the density variation of the higher metered temperature of the recovered solvent over the assumed metered temperature of the raw inks and toluene used at the presses. An additional three percent factor was required for infiltration of toluene vapors from neighboring pressrooms. The results of supplemental measurements showed that some air containing 60 to 70 ppmv toluene vapors was drawn into the newest pressroom from other pressrooms and plant areas. The final adjusted tests results showed overall solvent recovery efficiencies ranging from about 89 to 92 percent. In addition to the short-term test results, ten individual months of plant material balance data were compensated for the temperature and infiltration factors resulting in adjusted overall VOC control efficiencies ranging from about 84 to 91 percent.

The test results and reported plant data on the overall VOC control efficiency by liquid meter readings are believed to be based on the most accurate measurements that continuous modern instrumentation can provide. The meters were not calibrated before testing, however the tests were conducted within six months after the new meters were installed and should still have been within the original factory calibrations. Also, the meter readings were not cross-checked with storage tank level readings, but the Administrator believes that the liquid meters should be more accurate than solvent inventory by tank level readings.

The capture system demonstrated at Meredith/Burda consisted of dryer exhaust collection combined with fugitive vapor cabin enclosures around the top portion of each press. The cabin enclosures represent the most effective VOC vapor capture system, requiring the least amount of SLA handling to capture essentially all fugitive vapors from the presses. However, as explained in the "Control Technologies" section, application of this type enclosure may require some modifications to alleviate potential OSHA violations.

The product mix handled at Meredith/Burda is somewhat specialized and is therefore not fully representative of the entire publication rotogravure printing industry. Meredith/Burda handles special long run products, while most other plants print shorter run products. The shorter run products cause more frequent web breaks and press shutdowns during printing, as well as more press downtime between job runs. In addition, some of the industry's products may retain more solvent than the products printed at Meredith/Burda, although there is no known satisfactory method for this determination. Therefore, the high VOC vapor capture efficiencies demonstrated at Meredith/Burda may not be representative of that achievable by the rest of the industry.

It was realized that the Meredith/Burda facilities had several unique features so facilities at a second plant site were tested. The two Texas Color Printers facilities were tested because they were modern printing facilities which use the more common mixed, naphtha-based solvent. Unfortunately, the facilities did not employ a fugitive vapor capture system and the solvent recovery system was not as well instrumented as that at Meredith/Burda. The tested presses consisted of eight and twelve printing units each and were printing a magazine and advertising products at average press speeds of 4.6 to 9.1 m/s (900 to 1,800 f/m). Overall liquid solvent volume balances and gas phase monitoring of pressroom ventilation air streams were conducted during three four and one-half hour runs. In addition, a solvent volume balance was conducted over a 27 hour period of normal operation. The test results from direct liquid meter readings, ink manufacturers data, and the gas phase monitoring showed that overall solvent recovery efficiencies ranging from about 91 to 93 percent could potentially be achieved if the pressroom ventilation air streams were directed to the control device rather than to the atmosphere. However, combination of the test data with five months of plant data indicated potential overall solvent recovery efficiencies of only about 88 to 90 percent. The lowest calculated potential efficiency, in each case, was based on a one percent decrease in adsorber efficiency which would result from the 30 percent increase in the captured SLA flowrate. The highest calculated potential efficiencies would correspond to increased adsorber efficiencies from modification and better instrument controls comparable with those at Meredith/Burda.

A third data source considered in setting the proposed emission limit level consists of over a year of plant data from Standard Gravure. This plant is regarded as having the most thorough capture system; however, the average adsorber efficiency is probably lower than Meredith/Burda's because of the lower solvent vapor concentration in the inlet SLA. At this plant, the VOC emission control system performance is determined by overall liquid solvent mass balances, instead of volume balances. Converted recovered solvent meter readings are compared to total amount of solvent used, determined from converted solvent addition meter readings plus tank truck weighings of purchased raw inks combined with ink manufacturers VOC analysis data. Six rotogravure production presses, consisting of eight to 16 printing units each, are used to print only newspaper supplements at average press speeds of 6.6 to 7.6 m/s (1300 to 1500 fpm). The mixed, naphtha-based type solvents are used at these printing facilities. The long-term plant data showed individual four-week averaged overall recovery efficiencies ranging from 85 to 90 percent. The plant suggested that the inlet SLA vapor concentration, and thus the adsorber efficiency, is lower during periods of less solvent usage because the SLA capture system has no turndown or valve diverting mechanisms. The overall recovery versus solvent usage data, however, does not show any definite correlation.

The Administrator believes that the Standard Gravure plant data should be included as part of the data base for setting the proposed emission limit level, even though EPA testing was not conducted at this plant. These plant data serve as additional sources of long-term performance data, which have been shown to be more realistic than short-term tests for evaluating the achievable overall emission control performance. The Standard Gravure plant data show overall efficiencies continually above the proposed standard 84 percent level (16 percent emission limit). The normal plant procedure for determining the emission control system performance does not follow the exact format for the proposed standards, but the Administrator believes that the method used should provide sufficient accuracy for supporting the proposed emission limit.

The variations in press widths, press operating speeds, and number of printing units per press can significantly affect the overall efficiency of a carbon adsorption/solvent recovery system. Operating conditions such as a narrow web being printed on a wide press, decreased ink coverage, and technological advancements allowing press speeds of over 10.2 m/s (2,000 fpm) could cause decreased capture efficiency and excessive dryer exhaust SLA dilution. These effects were shown during the two plant tests while printing both narrow and full width webs with several different products and ink coverages.

The Administrator acknowledges these potential effects and believes that they can be minimized by careful design of new presses and the SLA capture system. A VOC vapor monitor could be installed in the dryer exhausts streams to control the amount of internal air recirculation; this would maximize the VOC vapor concentration in the SLA stream treated by the control device. Adjustable width openings for the dryer inlets and outlets could be designed to help minimize the amount of dilution air drawn into the dryer. These adjustments could be made when the printing cylinders are changed between job runs. More thorough dryer designs will need to be utilized to handle the higher press speeds. In addition, fugitive vapor capture-air systems incorporating valve-diverting or turndown mechanisms could be installed for periods of low production and press shutdowns. The Administrator believes that the proposed standards allow for these effects, since the emission limit is based on long-term, typical operations while printing various types of products at three different plants.

In conclusion, the Administrator selected the proposed 16 percent emission limit after a thorough evaluation of the data base and a careful consideration of factors which influence control system performance. The data base consists of short-term test data and long-term plant data for facilities at the Meredith/Burda and Texas Color plant sites, along with long-

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term plant data from Standard Gravure. The data base shows that 90 percent overall control is achievable under some conditions; however, the Administrator realized that 90 percent control is not representative of all conditions for the entire affected industry. The Administrator believes that the proposed 16 percent emission limit (84 percent overall control) is reasonable and is continually achievable. The proposed emission limit level allows for control efficiency variations resulting from such factors as low solvent usage, solvent retention in the product, and printing products that cause frequent production delays.

Selection of Compliance Provisions

Performance Averaging and Reporting

After the required initial performance test is completed, continual compliance with the proposed standards would be determined on a calendar month averaging basis. Each calendar month would be considered a performance test. The results of the monthly compliance determinations would have to be reported within ten calendar days following the end of any calendar month for which non-compliance is determined. Reporting of performance test results showing compliance with the standards would not be required. As an alternative, four-week averaging compliance periods may be chosen by an owner or operator in order to coincide with the plant's normal accounting procedures. Affected facilities would be subject to potential enforcement action for any compliance period in which a violation of the proposed standards is determined.

The variability of rotogravure printing requires a long-term averaging period to adequately assess the true performance of fixed-bed carbon adsorption/solvent recovery systems. Several different types of publication and advertising products are printed with a wide range of coverage of ink and related coatings. Operating parameters such as press speed, web width, production run length (number of printed copies), press shutdown frequency, product solvent retention, liquid hold-up volume of printing unit ink fountains, and solvent hold-up volume in carbon adsorbers vary substantially within this industry on a daily basis. The combination of these factors influences the amount of solvent vapors generated and the performance of the emission control system. The Administrator believes that calendar monthly or four-week period averaging would allow enough time for printing operation fluctuations to average out.

The necessity for longer-term averaging periods, such as over several months, was considered. The emission limit increase from 15 to 16 percent on a calendar month averaging basis was selected for proposal instead of an option for allowing performance averaging over several months with the 15 percent emission limit alternative. The long-term adjusted Meredith/Burda data showed that a minimum averaging time of four calendar months would have been required on a rolling calendar month basis to meet continual achievability of the 85 percent regulatory alternative.

Initial Performance Test

For affected facilities controlled by solvent recovery systems, the initial performance test would cover 30 consecutive calendar days. The long-term test period was chosen to allow sufficient time for averaging of process variations. A certain number of test days is specified rather than a calendar month so that the initial test could begin as soon as the facility is ready without having to wait until the first day of a month. Determination of compliance during the initial performance tests during the succeeding months or four-week periods, as described in the FORMAT section.

The apparent overall solvent volume balance calculation would have to be density corrected to a base temperature to compensate for the temperature differences between the recovered solvent and the ink/solvent used at the press. This requirement is necessary because of the volumetric expansion of liquid solvent with temperature. Temperature indicators would have to be installed by each meter for the inks, coatings, and solvent used at the press. An automatic temperature compensator would have to be installed for the recovered solvent meter. The temperature of the metered liquids used at the press would probably represent a constant and uniform base temperature at about 20°C (69°F) since the liquids should be at ambient temperature and the meters would be located inside the pressroom. The temperature of the metered recovered solvent can vary from ambient to over 40°C (104°F), depending on the condenser and cooler designs and performance. Since automatic temperature compensators are employed, only direct meter readings would be required.

For affected facilities controlled in common with existing facilities by the same solvent recovery system, the initial performance test would also cover 30 consecutive calendar days. The existing facilities involved would have to install liquid meters and temperature monitoring devices just as required of affected facilities. Raw ink and related costing supplies used at the subject existing facilities would have to be analyzed for VOC content just as for affected facilities. The initial performance test would be performed with both affected and existing facilities simultaneously connected to the solvent recovery system, although only the affected facility would be subject to the proposed standards. For these combination cases, one of two options may be chosen for the initial determination of compliance for the affected facilities.

The first compliance determination option would require a separated initial emission test for the controlled existing facilities involved before the initial performance test is conducted. To determine the true control performance for the affected facilities involved, the amount of VOC emissions from the existing facilities would first need to be subtracted from the total emissions for the combined facilities controlled in common. The separate emission test would determine the average operating emission percentage for the controlled existing facilities by using the overall solvent volume balance procedures developed for affected facilities. The emission test would be performed on the controlled existing facilities without the affected facilities being connected to the emission control system. The emission test would cover 30 consecutive calendar days. Only on existing facilities sharing control systems with affected facilities would emission testing be required. Initial compliance of the affected facilities would then be determined by the initial performance test after being connected to the emission control system with the existing facilities. The existing facilities' tested average emission percentage would then be multiplied by the 30-day total volume of solvent used at only the existing facilities during the initial performance test to determine the amount of VOC emissions from only the existing facilities. The performance of the affected facilities would finally be determined by subtracting the VOC emissions of the existing facilities from the total solvent volume balance for the combined affected and existing controlled facilities.

The second compliance determination option for the combination cases would not require separate testing of existing facilities, but would require more thorough control of emissions from existing facilities.The combined performance of the affected and existing

controlled facilities would have to show compliance with the proposed 16 percent emission limit. Fugitive emissions would have to be captured at the existing facilities to meet the emission limit. From an environmental impact view, this option would be the more favorable choice.

Initial performance test compliance provisions for affected facilities controlled by solvent destruction devices (i.e. oxidation) are not being proposed. These control devices are not presently used by this industry and are not expected to be employed in the future.

For affected facilities using low-VOC, waterborne ink systems without emission control systems, the initial performance test would cover 30 calendar days. Determination of compliance during the initial test would be by VOC analysis data of the purchased raw inks and related coatings used at the affected facility. The affected facility would be in compliance with the proposed 16 percent emission limit provided that the VOC to solids volume ratio is less than or equal to 0.64 for each shipment of all purchased raw inks and related coatings, and only water addition is used as dilution.

Subsequent Performance Tests

For solvent recovery controlled facilities, the second performance test would start with the first day of the next calendar month following completion of the initial performance test or the following Monday for facilities using the four-week averaging period. The period between completion of the initial performance test and the start of the second performance test would not constitute a performance test.

Determination of compliance with solvent recovery systems would be by liquid meters and analysis of all solvent-borne inks and related coatings used at the press. Non-resettable totalizer meters would have to be permanently installed to determine the volume quantities of solvent addition and inks and related coatings used at the press. In addition, a non-resettalbe totalizer meter would be required for the recovered solvent stream from the solvent recovery decanter. Meter readings would have to be taken and recorded during each day of press operation. Daily meter readings would also serve to detect meter malfunctions, and account for the times when the totalizer's reading turns over to zero. Volumetric quantities of any waste inks and waste solvent from the tested facility would be determined using any suitable means approved by the Administrator and recorded as they occur. The VOC volume content analysis of each shipment of ink and related coatings could be obtained from the ink manufacturers. Alternatively, a routine weekly average VOC content could be determined by analysis of the liquid mixtures in the respective storage tanks.

The overall solvent volume balance format, previously described, would then be applied at the end of each performance test averaging period to determine the actual averaged emission percentage and compliance. The total volume amount of solvent in the inks and related coatings would be determined from a summation of several calculated quantities. The VOC volume fraction of each purchased liquid mixture would be multiplied by the respective volume amount of liquid used. This proration is required to compensate for liquid mixture analyses which may change somewhat with each shipment. Alternatively, a weekly average VOC volume fraction for each liquid used could be multiplied by the volume amount of the respective liquid mixture used that week. In either case, the volume amounts of each liquid mixture used at the press would be determined directly from meter readings. The amount of solvent added for printing and cleaning at the press, and metered recovered solvent would be determined directly from meter readings. The quantities of waste inks and waste solvent would be included directly as recovered solvent. Analyses of these two sources of solvent would not be required since they should normally represent relatively insignificant quantities.

The proposed standards would require that the liquid meters necessary for determining compliance be calibrated at least every six months. This requirement is in accordance with maintenance recommendations by most meter manufacturers. This calibration would be done onsite, or the meter could be removed for calibration while a calibrated spare meter is used in its place. The confidence limits of each calibration must be determined and kept on record. Manufacturer's data on some of the liquid meters currently installed in this industry were used to set meter accuracy requirements. Meters used for the inks and related coatings would have to show an accuracy of within ±1.5 percent. Meters used for solvent added at the press and recovered solvent would have to show an accuracy of within ±0.5 percent, since solvent doesn't contain any solids and is an easier metering service.

For affected facilities controlled in common with existing facilities by the same solvent recovery system, the subsequent performance tests would follow the same procedures used during the initial performance test. If prior to the initial performance test the option to test the existing facilities separately was chosen, the averaged performance of the affected facility during each month or four-week performance averaging period would be calculated considering the existing facilities' tested emission percentage. Each existing facility's tested emission percentage would be assumed to remain constant for each performance average period until the Administrator requests another emission test for that existing facility. If the option to not test the existing facilities prior to the initial performance test was chosen, the combined performance of the affected and existing controlled facilities would have to show compliance with the proposed 16 percent emission limit during each month or four-week averaging period.

Procedures for determination of compliance with solvent destruction devices are not being proposed, as previously explained.

The affected facility must be in compliance with the proposed emission limit during all periods of normal operations. Non-compliance would be allowed during periods of startups, shutdowns, and malfunctions of the emission control system as provided for under 40 CFR 60.8(c). However, the startups and shutdowns caused by web breaks and other typical operations upsets would be considered normal operation of printing presses.

Determination of compliance for affected facilities using waterborne ink systems, without emission controls, would be by VOC analysis data from the ink manufacturer, as explained for the initial performance test. Liquid meters would not be required, provided that only water is added for ink dilution.

Selection of Performance Test Methods

Reference methods, equivalent methods, alternative methods, or procedures specified in a regulation must be used for performance tests. This section describes the methods and procedures proposed for this standard.

The proposed Reference Method 29, "Determination of Volatile Matter Content and Density of Printing Inks and Related Coatings", would be employed to determine the VOC volume content of all solvent-borne inks and related coatings used at presses controlled by solvent recovery systems. As an alternative, an owner or operator may obtain analysis data on the VOC

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content of the purchased inks used from the ink manufacturer. Reference Method 29 could be used for verification of the ink manufacturer's data, if needed. Reference Method 29 would be applicable for analysis of only solvent-borne inks and related coatings. The proposed method could not be used for verification of ink manufacturer's data on the VOC content of waterborne inks.

The proposed Reference Method 29 determines the total amount of volatile matter content in solvent-borne inks and related coatings. Employment of this method for determination of VOC content requires that the volatile portion of the solvent-borne coating must be assumed to consist of essentially all organic compounds. That is, as proposed, the method does not provide procedures for determination of any water content (e.g. by Karl Fischer titration) and subsequent correction for the actual VOC content. It is the Administrator's understanding that all present and future solvent-borne inks and related coatings will usually contain much less than one percent water in the volatile portion, but, at most, up to about five weight percent water. The Administrator will welcome comments on the proposed Reference Method, especially regarding (1) the assumed range of water content in solvent-borne inks and related coatings, (2) the necessity for correcting the Reference Method analysis for water content, and (3) any recommended analytical procedures for accurately determining the water content.

The VOC content data supplied by the ink manufacturer for the purchased raw inks and related coatings should be based on the best method available to the manufacturer. Calculated compositions from liquid meter readings or weigh-tank outages used for measuring the amounts of the individual components that go into making up the product ink mixture may be considered. An analysis method similar to the proposed Reference Method 29 may be used. In general, however, formulation guidelines data are not regarded as the most reliable method since the actual composition of the ink mixture shipment can vary somewhat from the formulation recipe.

For affected facilities using low-VOC, waterborne ink systems without air pollution control equipment, no Reference Methods would be applicable. The owner or operator could determine the VOC content analysis of the purchased inks and coatings by any method acceptable to the Administrator. A reference method for verification of waterborne ink analysis is not being proposed.

Modification/Reconstruction Considerations

Any number of printing units is considered a single press if all the units are capable of printing simultaneously on the same continuous substrate. Since additional units could be added to an existing press to increase its versatility, it is highly unlikely that other units of the same press would be shutdown. Each unit is potentially an equal source of emissions; therefore, the addition of units would cause an incremental increase in emissions and would be considered a modification as defined in 40 CFR 60.14.

A major renovation in which substantial portions of an existing press are replaced is considered a reconstruction according to the provisions under 40 CFR 60.15. If the capital cost of the new components exceeds 50 percent of the total replacement capital cost of a new printing press, the existing press would be considered reconstructed and subject to the proposed standards. This could be achieved by replacement of more than half the units of a press. It is unlikely that only a portion of the units of a press would be replaced, since all the units receive the same use and care. If extensive replacement is indicated, it is more likely that all units will be replaced at once.

As previously mentioned, model plants representing modified and reconstructed existing facilities were not developed because these cases are not expected in this industry. Advanced technological designs of modern printing presses and associated equipment makes the installation of newer presses much more attractive over attempts to upgrade older presses. However, the Administrator believes that both modified and reconstructed existing facilities could achieve the proposed emission limit with reasonable environmental, energy, and economic impacts. These impacts would be essentially equivalent to those impacts for new facilities. Installation of a fugitive vapor capture system would be necessary for each subject facility or for the entire associated pressroom, if fugitive vapors are not already captured. In addition, improvements or modernization of older emission control devices and associated instrumentation may be necessary. Alternatively, low-VOC, waterborne ink systems could be employed to comply with the proposed standards.

Impacts of Reporting Requirements

The "Reports Impact Analysis of New Source Performance Standards for the Publication Rotogravure Printing Industry" is located in Docket No. A-79-50, category 77/8-II-A-11. The results of the analysis are summarized in this section.

The authority for the reporting requirements necessitated by the proposed standards is provided in Section 114 of the Clean Air Act. Several types of reports would be required. The industry would be required to submit notifications of the following: construction, anticipated start-up, actual initial startup, physical or operational changes, and initial performance tests. A report of the initial performance test results would be required. Monthly non-compliance reports would be required; the industry would not be required to submit monthly performance test results when compliance with the standards is determined. Records of startups, shutdowns, and malfunctions of the air pollution control systems, and monthly performance test results would have to be maintained for two years. The industry would also be required to maintain records of daily meter readings, ink analyses, and liquid meter calibrations.

The reporting requirements would necessitate the industry to hire about five additional personnel to cover about 22 person-years over the five years of applicability of the standard. There are presently 17 parent companies in this industry. Thus, less than one-third of an extra person's time would be required per company. This estimate was based on the projection of 7 percent annual real growth in the publication rotogravure industry. Seventy-five new presses would be affected over the five-year period, for an average of 15 presses per year.

Public Hearing

A public hearing will be held to discuss the proposed standards in accordance with Section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the ADDRESSES section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the Addresses section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, D.C. (see Addresses section of this preamble).

Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered in the development of this proposed rulemaking. The principal purposes of the docket are (1) to allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review.

Miscellaneous

As prescribed by Section 111, establishment of standards of performance for publication of rotogravure printing presses in the graphic arts industry was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979), that the graphic arts industry contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. In accordance with Section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed regulation, including economic and technological issues, and on the proposed test methods. Comments are especially welcomed concerning the exclusion of compliance procedures for solvent destruction devices.

It should be noted that standards of performance for new sources established under Section 111 of the Clean Air Act reflect:

> . . . application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emissions reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [Section 111(a)(1)].

Although there may be emission control technology available that can reduce emissions below those levels required to comply with standards of performance, this technology might not be selected as the basis of standards of performance due to costs associated with its use. Accordingly, standards of performance should not be viewed as the ultimate in achievable emission control. In fact, the Act required (or has the potential for requiring) the imposition of a more stringent emission standard in several situations.

For example, applicable costs do not necessarily play as prominent a role in determining the "lowest achievable emission rate" for new or modified sources locating in nonattainment areas, i.e., those areas where statutorily-mandated health and welfare standards are being violated. In this respect, Section 173 of the Act requires that new or modified sources constructed in an area where ambient pollutant concentrations exceed the National Ambient Air Quality Standard (NAAQS) must reduce emissions to the level that reflects the "lowest achievable emission rate" (LAER), as defined in Section 171(3) for such category of source. The statute defines LAER as that rate of emissions based on the following, whichever is more stringent:

> (A) the most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or
>
> (B) the most stringent emission limitation which is achieved in practice by such class or category of source.

In no event can the emission rate exceed any applicable new source performance standard [Section 171(3)].

A similar situation may arise under the prevention of significant deterioration of air quality provisions of the Act (Part C). These provisions require that certain sources [referred to in Section 169(1)] employ "best available control technology" (BACT) as defined in Section 169(3) for all pollutants regulated under the Act. Best available control technology must be determined on a case-by-case basis, taking energy, environmental and economic impacts and other costs into account. In no event may the application of BACT result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to Section 111 (or 112) of the Act.

In all events, State Implementation Plans (SIP's) approved or promulgated under Section 110 of the Act must provide for the attainment and maintenance of NAAQS designed to protect public health and welfare. For this purpose, SIP's must in some cases require greater emission reduction than those required by standards of performance for new sources.

Finally, States are free under Section 116 of the Act to establish even more stringent emission limits than those established under Section 111 or those necessary to attain or maintain the NAAQPS under Section 1110. Accordingly, new sources may in some cases by subject to limitations more stringent than standards of performance under Section 111, and prospective owners and operators of new sources should be aware of this possibility in planning for such facilities.

This regulation will be reviewed four years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements. The reporting requirements in this regulation will be reviewed as required under EPA's sunset policy for reporting requirements in regulations.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under Section 111(b) of the Act. An economic impact assessment was prepared for the proposed regulations and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the proposed standards to insure that the proposed standards would represent the best system of emission reduction considering costs. The economic impact assessment is included in the Background Information Document.

Dated: October 16, 1980.

Douglas M. Costle,

Administrator.

It is proposed that 40 CFR Part 60 be amended as follows:

1. A new Subpart QQ is added as follows:

Subpart QQ—Standards of Performance for the Graphic Arts Industry: Publication Rotogravure Printing

Sec.

60.430 Applicability and designation of affected facility.
60.431 Definition and notations.
60.432 Standards for volatile organic compounds.
60.433 Compliance provisions.
60.434 Performance test procedures.
60.435 Emission monitoring and recordkeeping.
60.436 Reporting requirements.
60.437 Test methods and procedures.

Authority: Sec. 111 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7601(a)), and additional authority as noted below.

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Subpart QQ—Standards of Performance for the Graphic Arts Industry: Publication Rotogravure Printing

§ 60.430 Applicability and designation of affected facility.

(a) The affected facility to which the provisions of this subpart apply is each publication rotogravure printing press.

(b) Any facility under paragraph (a) of this section which commences construction, modification, or reconstruction after [date of publication in the **Federal Register**] is subject to the requirements of this subpart.

§ 60.431 Definitions and notations.

(a) All terms used in this subpart that are not defined below have the meaning given to them in the Act and in Subpart A of this part.

"Automatic temperature compensator" means a device which continuously senses the temperature of the fluid flowing through a metering device and automatically adjusts the registration of the measured volume amount to the corrected equivalent volume amount at a base temperature.

"Base temperature" means the average temperature of the total amount of VOC solvent as metered at a publication rotogravure printing press.

"Density" means the mass of a unit volume of liquid, expressed as the weight in grams per cubic centimeter, at a specified temperature.

"Gravure cylinder" means a plated cylinder with a printing image consisting of minute cells or indentations, specially engraved or etched into the cylinder's surface to hold ink when continuously revolved through a fountain of ink.

"Performance averaging period" means 30 calendar days, one calendar month, or four consecutive weeks as specified in the sections of this subpart.

"Publication rotogravure printing press" means any number of publication rotogravure printing units used to print saleable products described under SIC code numbers 27541 and 27543, and capable of printing simultaneously on the same continuous web or substrate, which is fed from a continuous roll, but does not include proof presses which are used to check the quality of the image formation of newly engraved or etched gravure cylinders.

"Publication rotogravure printing unit" means any device designed to print one color ink on one side of a continuous web or substrate using the intaglio printing process with a gravure cylinder.

"Raw ink" means all purchased ink.

"Related coatings" means all non-ink purchased liquids and liquid-solid mixtures containing VOC solvent, usually referred to as extenders or varnishes, that are used at publication rotogravure printing presses.

"Solvent-borne ink systems" means raw ink and related coatings whose volatile portion consists essentially of VOC solvent with not more than five weight percent water.

"Solvent recovery system" means an air pollution control system by which VOC solvent vapors in air are captured and directed through a control device containing beds of activated carbon or other adsorbents. The vapors are adsorbed, then desorbed by steam or other media, and finally condensed and recovered.

"Total amount of VOC solvent used" means all VOC solvent added to the ink used at the subject facility, all VOC solvent included by the ink manufacturers in the inks and related coatings used at the facility, and all VOC solvent used as a cleaning agent at the facility.

"VOC" means volatile organic compound as defined in § 60.2(dd).

"VOC solvent" means an organic liquid mixture consisting of VOC components.

"Waterborne ink systems" means raw ink and related coatings whose volatile portion consists of a mixture of VOC solvent and more than five weight percent water.

(b) Symbols used in this subpart are defined as follows:

B_c = the average metered temperature of each respective color or raw ink and each related coating used at the subject facility (or facilities).

B_d = the average temperature of the metered VOC solvent added to dilute the ink used at the subject facility (or facilities) over one performance averaging period.

B_g = the average temperature of the metered VOC solvent used as a cleaning agent at the subject facility (or facilities) over one performance averaging period.

B_t = the calculated base temperature for the subject facility (or facilities) over one performance averaging period.

L_c = the liquid volume amount of each respective color of raw ink and each related coating used at the facility of a corresponding VOC content, V_o.

L_d = the total liquid volume amount of VOC solvent added to dilute the ink used at the subject facility (or facilities) over one performance averaging period.

L_g = the total liquid volume amount of VOC solvent used as a cleaning agent at the subject facility (or facilities) over one performance averaging period.

L_m = the liquid volume amount of recovered VOC solvent registered by meter devices from the subject facility (or facilities) over one performance averaging period.

L_o = the total liquid volume amount of VOC solvent contained in the raw inks and related coatings used at the subject facility over one performance averging period.

L_r = the total liquid volume amount of VOC solvent recovered from the subject facility (or facilities) over one performance averging period.

L_t = the total liquid volume amount of VOC solvent used at the subject facility (or facilities) over one performance averaging perod.

L_u = the liquid volume amount of miscellaneous unmetered recovered VOC solvent from the subject facility (or facilities) over one performance averaging period.

P = the average VOC emission percentage for the subject facility (or facilities) over one performance averaging period.

V_o = the liquid VOC content, expressed as a volume fraction, of such respective color of raw ink and each related coating stream used at the facility.

(c) The following subscripts are used in this subpart with the above symbols to denote the applicable facility:

a = affected facility

b = both affected and existing facilities controlled in common by the same air pollution control equipment.

e = existing facility.

§ 60.432 Standards for volatile organic compounds.

(a) Over the period of the initial performance test required to be conducted by § 60.8 and on and after the first day of the next performance averaging period following completion of the initial test, no owner or operator subject to the provisions of this subpart and using solvent-borne ink systems shall cause to be discharged into the atmosphere from any affected facility more than 16 percent of the total amount of VOC solvent volume used at that facility over any one performance averaging period. The averaging period for the initial performance test is 30 calendar days. The averaging period for subsequent performance tests is a calendar month or four consecutive weeks, at the option of the owner or operator.

(b) No owner or operator subject to the provisions of this subpart and using waterborne ink systems shall use a raw ink or related coating with a ratio of VOC volume content to solids volume content which is greater than 0.64, nor shall that raw ink or related coating be diluted with anything other than water addition.

§ 60.433 Compliance provisions.

(a) The owner or operator subject to the provisions of this subpart shall show compliance with the standards set forth in § 60.432 at all times, except as provided under § 60.8(c) and paragraph (b) of this section. The startup, shutdown, and malfunction provisions in § 60.8(c) apply only to the air pollution control equipment and not to the process equipment.

(b) After the initial performance test required for all affected facilities under § 60.8, compliance with the VOC emission limitation under § 60.432 is based on the emissions for one calendar month or one four-week averaging period. A separate performance test is completed at the end of each calendar month or each four-week averaging period after completion of the initial performance test. A new calendar month or a four-week averaging period VOC emission percentage is then calculated to show compliance with § 60.432(a) or new VOC volume to solids volume ratios for waterborne ink systems are calculated to show compliance with § 60.432(b).

(c) The owner or operator of an effected facility controlled by a solvent recovery system shall use the following procedures to determine compliance with the emission limit in § 60.432(a) for each performance averaging period:

(1) the total liquid volume amount of VOC solvent in all the raw inks and related coating used at the effected facility is determined by the following equation:

$$(L_o)_a = \sum_{i=1}^{k} (V_{oi})_a (L_{ci})_a$$

The indexing subscript, i, designates the "ith" coating for the number of coatings with different VOC contents ranging from 1 to k. V_o is determined in accordance with § 60.437(a). L_c is determined from direct readings of the metering devices required under § 60.435(a)(2).

(2) The total liquid volume amount of VOC solvent used at the affected facility is determined by the following equation:

$(L_t)_a = (L_o)_a + (L_d)_a + (L_g)_a$

L_d and L_g are determined from direct readings of the respective metering devices required under § 60.435(a)(1) and § 60.435(a)(3).

(3) The total liquid volume amount of VOC solvent recovered from the affected facility is determined by the following equation:

$(L_r)_a = (L_m)_a + (L_u)_a$

L_u is determined as stipulated in § 60.435(j). L_m is determined from direct readings of the metering devices required under § 60.435(a)(4).

(4) The average VOC emission percentage for the affected facility is determined by the following equation:

$$P_a = \left[\frac{(L_t)_a - (L_r)_a}{(L_t)_a}\right] \times 100$$

(d) The owner or operator of two or more affected facilities that are controlled by same solvent recovery system shall use the procedures specified in paragraph (c) of this section to determine compliance, except that $(L_t)_a$ and $(L_r)_a$ are the collective VOC solvent amounts corresponding to all the affected facilities controlled by that solvent recovery system. The average VOC emission percentage for each of the affected facilities controlled by that same solvent recovery system is assumed to be equivalent.

(e) The owner or operator of an existing facility (or facilities) and an affected facility (or facilities) that are controlled in common by the same solvent recovery system shall use one of the following procedures to determine compliance with § 60.432(a):

(1) The owner or operator shall determine compliance for the affected facility (or facilities) by first conducting an emission test on only the controlled existing facility (or facilities) and then conducting a performance test on the combined controlled facilities as follows:

(i) The average VOC emission percentage for the existing facility (or facilities) is first determined separately by using the following equation in accordance with the conditions stipulated in § 60.434(c):

$$P_e = \left[\frac{(L_t)_e - (L_r)_e}{(L_t)_e}\right] \times 100$$

$(L_t)_e$ and $(L_r)_e$ are determined by the procedures specified in articles (c)(1), (2), and (3) of this section for one facility or by paragraph (d) of this section for more than one facility, except that the VOC solvent amounts pertain only to the existing facility (or facilities).

(ii) The average VOC emission percentage for the affected facility (or facilities) is then determined by using the following equation with both existing and affected facilities connected to the solvent recovery system:

$$P_a = \left[\frac{(L_t)_b - (L_r)_b - (L_t)_e\left(\frac{P_e}{100}\right)}{(L_t)_a}\right] \times 100$$

$(L_t)_b$ and $(L_r)_b$ are determined by the procedures specified in articles (c)(1), (2), and (3) of this section, except that the VOC solvent amounts pertain to all the facilities controlled in common by the solvent recovery system over one performance averaging period. $(L_t)_e$ and $(L_r)_e$ pertain to the VOC solvent amounts used at the affected facility (or facilities) and the existing facility (or facilities), respectively, over one performance averaging period, as determined by the procedures specified in articles (c)(1), (2), and (3) of this section. P_e is assumed to be constant during each performance averaging period and is equivalent to the VOC emission percentage determined in the latest emission test in accordance with article (1)(i) of this paragraph.

(2) The owner or operator shall show compliance of the combined performance of existing and affected

facilities controlled in common. A separate emission test for existing facilities is not required. The average VOC emission percentage for the combined facilities with both existing and affected facilities connected to the solvent recovery system is determined by the procedures specified in paragraph (c) of this section with the following equation:

$$P_b = \left[\frac{(L_t)_b - (L_r)_b}{(L_t)_b}\right] \times 100$$

(f) The owner or operator of an affected facility using waterborne ink systems shall install air pollution control equipment to comply with the emission limit in § 60.432(a) if the standard in § 60.432(b) cannot be met. Compliance with the standard in § 60.432(b) for each performance averaging period is determined by—

(1) Obtaining from the ink manufacturer analyses of the VOC volume and solids volume contents of each purchased shipment of all color raw inks and all related coatings used at the affected facility (or facilities); and

(2) Calculating the ratio of VOC volume content to solids volume content from the ink manufacturer's analsyses data for each shipment of raw ink and related coatings used at the affected facility during each performance averaging period.

§ 60.434 Performance test procedures.

(a) Before start of the initial performance test required under § 60.8, the owner or operator subject to the provisions of this subpart shall notify the Administrator in writing as to whether a calendar month or a four-week averaging period basis will be used for determination of compliance with the standards under § 60.432.

(b) The owner or operator of an affected facility (or facilities) controlled by a solvent recovery system shall conduct an initial performance test to determine compliance with § 60.432(a) as follows:

(1) The initial performance test required under § 60.8 is based on 30 consecutive calendar days and not on an average of three runs as prescribed under § 60.8(f).

(2) The average VOC emission percentage for the affected facility (or facilities) over the 30 day test period is determined as specified in § 60.433(c), (d), or (e), whichever applies.

(c) If the procedures in § 60.433 (e)(1) are used to determine compliance of an affected facility (or facilities) controlled by a solvent recovery system which handles VOC emissions from both affected and existing facilities, the owner or operator shall conduct a separate emission test on the existing facility (or facilities) as follows:

(1) The emission test is based on 30 consecutive calendar days.

(2) The emission test is to be conducted without connection of the affected facility (or facilities) to the air pollution system.

(3) The emission test is to be conducted before both the affected and existing facilities are initially connected to the same control system, and at any other time as requested by the Administrator.

(4) § 60.435(h) applies to the existing facility (or facilities) during the emission test.

(5) The average VOC emission percentage for the existing facility (or facilities) over the 30 day test period is determined as described in § 60.433(e)(1)(i).

(6) The emission test is to be conducted under conditions that the Administrator will specify to the plant operator.

(7) The owner or operator of the existing facility (or facilities) shall provide the Administrator 30 days prior notice of the emission test to afford the Administrator the opportunity to have an observer present.

(8) The owner or operator of the existing facility (or facilities) shall furnish the Administrator a written report of the results of the emission test.

(9) After completion of this separate emission test on the existing facility (or facilities), the affected facility (or facilities) is then connected to the air pollution control system with the existing facility (or facilities). During emission tests on the existing facilities, the affected facilities are still subject to the standards stipulated in § 60.432—neither the owner nor operator shall operate affected facilities uncontrolled.

(d) The owner or operator of an affected facility (or facilities) using waterborne ink systems shall conduct an initial performance test to determine compliance with § 60.432(b) as follows:

(1) The initial performance test required under § 60.8 is based on 30 consecutive calendar days and not on an average of three runs as prescribed under § 60.8(f).

(2) The VOC volume to solids volume ratio for each shipment of raw inks and related coatings used at the affected facility (or facilities) over the 30 day test period is determined as specified in § 60.433(f).

(e) After the initial performance test, the owner or operator shall conduct successive performance tests during each calendar month or four-week averaging period as described in § 60.433(b).

§ 60.435 Emission monitoring and recordkeeping.

(a) The owner or operator of any affected facility controlled by a solvent recovery system shall install, calibrate, maintain, and continuously operate—

(1) One or more non-resettable totalizer metering device(s), accurate to within ±0.5 percent, for continuously indicating the cumulative liquid volume amount of VOC solvent added to the ink used at the affected facility;

(2) One or more non-resettable totalizer metering device(s), accurate to within±1.5 percent, for continuously indicating the cumulative liquid volume amount of each color or raw ink and each related coating used at the affected facility;

(3) One or more non-resettable totalizer metering device(s), accurate to within ±0.5 percent, for continuously indicating the cumulative liquid volume amount of VOC solvent used as a cleaning agent at the affected facility, if the cleaning solvent used is not registered by the metering devices required in article (a)(1);

(4) One or more non-resettable totalizer metering device(s), accurate to within ±0.5 percent, for continuously indicating the cumulative liquid volume amount of VOC solvent recovered by the solvent recovery system which serves the affected facility; and

(5) an automatic temperature compensator, calibrated in accordance with paragraph (i) of this section, to adjust the totalizer volume readings of each recovered solvent metering device required by article (4) of this paragraph.

(b) The owner or operator shall install all metering devices described in articles (a)(1), (2), (3) and (4) of this section with no taps upstream and no unmetered bypasses.

(c) The owner or operator shall install, maintain, and continuously operate an air eliminator and strainer upstream of each metering device required in paragaph (a) of this section in accordance with the meter manufacturer's recommendations to maintain meter calibration accuracy.

(d) The owner or operator shall install and maintain a monitoring device,

accurate to within ±2° C (±4° F), for continuously indicating the temperature of the fluid metered by each device required in articles (a)(1), (2), and (3) of this section.

(e) The metering devices described in articles (a)(1), (2) and (3) of this section shall not serve an affected facility and any existing facilities simultaneously.

(f) The owner or operator shall recalibrate all metering devices at least semi-annually, and at other times as the Administrator may require in accordance with the procedures under § 60.13(b)(3). The requirements of articles (a)(1), (2), (3), and (4) must be met before the metering device can be returned to service. The owner or operator shall record the actual calibrated accuracy of each metering device and shall maintain these records for two years.

(g) When the facility is in operation, the owner or operator shall take daily readings of each temperature monitoring device and of the totalizer of each metering device specified in this section, shall record the readings for each performance averaging period, and shall maintain these records for two years.

(h) The owner or operator of an affected facility controlled by a solvent recovery system shall record the VOC volume content analyses as determined under § 60.437(a) for all color raw inks and all related coatings used at the affected facility, and shall maintain these records for two years.

(i) The owner or operator shall calibrate annually the automatic temperature compensators required by article (a)(5) of this section and shall adjust the base temperature setting after each performance averaging period, if needed, according to the following procedures:

(1) The density variation with temperature of the metered recovered VOC solvent is determined by the methods stipulated in § 60.437(d). The recovered VOC solvent density is determined in temperature increments of 10° C, from 15° C to 45° C, or the maximum expected recovered VOC solvent metered temperature.

(2) Calibration is then carried out in accordance with the manufacturer's recommended procedures using the density-temperature profile determined in article (1).

(3) The base temperature for each performance averaging period is derived by the following equation on a weighted average, by volume, basis:

$$B_t = \left[\frac{(B_d)(L_d) + (B_g)(L_g) + \sum_{i=1}^{k} (B_{ci})(V_{oi})(L_{ci})}{L_t}\right]$$

The indexing subscripts, i and k, are defined under § 60.433(c)(1).

(4) If the base temperature calculated by article (3) deviates by more than 5° C (9° F) from the base temperature setting of the associated automatic temperature compensator, that base temperature setting is then adjusted to the newly calculated value.

(5) The base temperature calculated by article (3) and the corresponding base temperature setting of each automatic temperature compensator is recorded for each performance averaging period and the records maintained for two years.

(j) The owner or operator of an affected facility controlled by a solvent recovery system shall determine, using any suitable means approved by the Administrator, the liquid volume amounts of all unmetered solvent-borne waste inks and waste VOC solvents recovered from the facility. The owner or operator shall record these unmetered volume amounts for each performance averaging period and shall maintain these records for two years.

(k) If the air pollution control device which serves the affected facility (or facilities) also serves an existing facility (or facilities), the exisiting as well as the affected facility are subject to the requirements of paragraph (a) through (j) of this section.

(l) Affected facilities using waterborne ink systems and in compliance with § 60.432(b) are not subject to the requirements of paragraphs (a) through (k) of this section.

(m) The owner or operator of an affected facility using waterborne ink systems which comply with § 60.432(b) shall record for each performance averaging period the ink manufacturer's analysis data for—

(1) Each purchased shipment of raw inks;

(2) Each purchased shipment of related coatings; and

(3) The corresponding calculated ratios required in § 60.433(f). The owner or operator shall maintain these records for two years.

[Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414)]

§ 60.436 Reporting requirements.

(a) The owner or operator of any affected facility shall prepare a written non-compliance report for each calendar month or each four-week averaging period in which non-compliance with § 60,432 is determined. Each report shall state—

(1) The identification of whether continual compliance is determined based on calendar month or four-week averaging periods;

(2) The identification of the calendar month or four-week averaging period covered by the report;

(3) The type of air pollution control system used;

(4) The average VOC emission percentage calculated in accordance with § 60.433(c), (d), or (e), whichever applies, for the calendar month or four-week averaging period;

(5) Which procedure and equation from § 60.433 was used to calculate the emission percentage;

(6) The total liquid volume amounts of VOC solvent used and recovered at the equivalent base temperature for the affected facility during the performance averaging period;

(7) How many and which affected facilities are served together by the same air pollution control device;

(8) What existing facilities are served by an air pollution control system in common with an affected facility;

(9) The measured average VOC emission percentage for the existing facility (or facilities) when § 60.433(e)(1) is used to determine compliance for the affected facility;

(10) The date and time identifying any periods during which the required metering devices described under § 60.435(a) were inoperative and the nature of the system repairs or adjustments;

(11) Specific identification of each period of excess emissions resulting from the startup, shutdown, or malfunction of the air pollution control equipment;

(12) The nature and causes of any malfunctions of the air pollution control equipment (if known) and the corrective action taken or preventative measures adopted;

(13) For affected facilities using waterborne ink systems without air pollution control equipment, a copy of the record of ink manufacturer's data and calculated ratios required by § 60.435(m); and

(14) Affected facilities using waterborne ink systems which comply with § 60.432(b) are not subject to the requirements of articles (4) through (12) of this paragraph.

(b) The owner or operator of any affected facility shall submit to the Administrator the non-compliance reports required under paragraph (a) of

this section postmarked by the 10th calendar day following the end of—

(1) The calendar month when compliance with the standards in § 60.432 is determined for each calendar month; or

(2) The four-week period when compliance with the standards in § 60.432 is determined for each four-week period.

[Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414)]

§ 60.437 Test methods and procedures.

(a) The owner or operator of an affected facility (or facilities) controlled by a solvent recovery system shall determine the VOC volume content of raw solvent-borne inks and related coatings used at the affected facility through one of the following procedures:

(1) Routine weekly samples of raw ink and related coatings in each respective storage tank are analyzed using Reference Method 29.

(2) Samples of each shipment of all purchased raw inks and related coatings are analyzed using Reference Method 29, or analysis of each shipment of all purchased raw inks and related coatings may be obtained from the ink manufacturer.

(3) The results of verification analyses by Reference Method 29 is used for determination of compliance when discrepancies with ink manufacturer's analysis data occur.

(b) The owner or operator of an affected facility (or facilities) controlled by a solvent recovery system in common with any existing facilities shall determine the VOC volume content of raw solvent-borne inks and related coatings used at the existing facility (or facilities) by following one of the procedures specified in paragraph (a) of this section.

(c) The owner or operator of any affected facility using water borne ink systems shall determine, using any suitable method approved by the Administrator, the VOC volume content of raw inks and related coatings used at the affected facility.

(d) The owner or operator of an affected facility (or facilities) controlled by a solvent recovery system shall determine the density of liquid solvents according to—

(1) The procedure outlined in ASTM D 1475–60 by making a total of three determinations for each solvent sample at a specified temperature, and recording the density as the arithmetic average of the three determinations; or

(2) Other values acceptable to the Administrator.

[Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414)].

2. Method 29 is added to Appendix A as follows:

Appendix A—Reference Methods

* * * * *

Method 29—Determination of Volatile Matter Content and Density of Printing Inks and Related Coatings

1. Applicability and Principle

1.1 Applicability. This method applies to the determination of the volatile organic compound (VOC) content and density of solvent-borne (solvent reducible) printing inks or related coatings as defined in § 60.431.

1.2 Principle. Separate procedures are used to determine the VOC weight fraction and density of the coating and the density of the solvent in the coating. The BOC weight fraction is determined by measuring the weight loss of a known sample quantity which has been heated for a specified length of time at a specified temperature. The density of both the coating and solvent are measured by a standard procedure. From this information, the VOC volume fraction is calculated.

2. Procedure

2.1 Weight Fraction VOC.

2.1.1 Apparatus.

2.1.1.1 Weighing Dishes. Aluminum foil, 58 mm in diameter by 18 mm high, with a flat bottom. There must be at least three weighing dishes per sample.

2.1.1.2 Disposable syringe, 5 ml.

2.1.1.3 Analytical Balance. To measure to within 0.1 mg.

2.1.1.4 Oven. Vacuum oven capable of maintaining a temperature of 120 ±2°C and an obsolute pressure of 510 ±51 mm Hg for 4 hours. Alternatively, a forced draft oven capable of maintaining a temperature of 120 ±2°C for 24 hours.

2.1.1.5 Analysis. Shake or mix the sample thoroughly to assure that all the solids are completely suspended. Label and weigh to the nearest 0.1 mg a weighing dish and record this weight (M_{x1}).

Using a 5-ml syringe without a needle remove a sample of the coating. Weigh the syringe and sample to the nearest 0.1 mg and record this weight (M_{cy1}). Transfer 1 to 3 g of the sample to the tared weighing dish. Reweigh the syringe and sample to the nearest 0.1 mg and record this weight (M_{cy2}). Heat the weighing dish and sample in a vacuum oven at an absolute pressure of 510 ±51 mm Hg and a temperature of 120±2°C for 4 hours. Alternatively, heat the weighing dish and sample in a forced draft oven at a temperature of 120 ±2° C for 24 hours. After the weighing dish has cooled, reweigh it to the nearest 0.1 mg and record the weight (M_{x2}). Repeat this procedure for a total of three determinations for each sample.

2.2 Coating Density. Determine the density of the ink or related coating according to the procedure outlined in ASTM D 1475–60. Make a total of three determinations for each coating. Report the density D_c as the arithmetic average of the three determinations.

2.3 Solvent Density. Determine the density of the solvent according to the procedure outlined in ASTM D 1475–60. Make a total of three determinations for each coating. Report the density D_v as the arithmetic average of the three determinations.

3. Calculations

3.1 Weight Fraction VOC. Calculate the weight fraction volatile organic content W_o using the following equation:

$$W_o = \left[\frac{M_{x1} + M_{cy1} - M_{cy2} - M_{x2}}{M_{cy1} - M_{cy2}}\right] \quad \text{Eq. 29-1}$$

Report the weight fraction VOC W_o as the arithmetic average of the three determinations.

3.2 Volume Fraction VOC. Calculate the volume fraction volatile organic content V_o using the following equation:

$$V_o = \frac{W_o D_c}{D_v} \quad \text{Eq. 29-2}$$

4. Bibliography

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Part V

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DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 205

[Docket No. ERA-R-80-03]

Electric Power System Permits and Reports; Applications; Administrative Procedures and Sanctions

AGENCY: Economic Regulatory Administration.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby issues rules (Subpart W to Part 205) to implement the provisions of Section 202(e) of the Federal Power Act and Executive Order 10485, as amended. Section 202(e) of the Federal Power Act specifies that the export of electric energy shall be authorized provided that the proposed transmission will not impair the sufficiency of electric supply within the United States or impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the DOE. Executive Order 10485, as amended by Executive Order 12038, establishes the procedures and standards for issuance of a Presidential Permit authorizing the construction, connection, operation and maintenance of electrical transmission facilities at international boundaries.

DATES: Effective: November 1, 1980.

Applications received by the ERA on or before 5:00 p.m. EST October 31, 1980, can be filed in accordance with the current rules in 18 CFR 32.20 *et seq.*, and 32.50 *et seq.*

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

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I. Background

On April 15, 1980, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) issued proposed regulations relating to applications for authorization to transmit electric energy to a foreign country and regulations relating to applications for construction, connection, operation, or maintenance of facilities for the transmission of electric energy at an international boundary (45 FR 25780).

The authority to regulate exports of electricity was transferred from the Federal Power Commission (FPC) and vested in the Secretary of Energy (Secretary) pursuant to Sections 301 and 402(f) of the DOE Organization Act. The authority to license the construction, connection, operation, and maintenance of international electric transmission facilities was transferred from the Chairman of the Federal Power Commission to the Secretary by Executive Order 12038 which amended Executive Order 10485. Responsibility for the review and consideration of such applications to export electricity and of Presidential Permits has been delegated by the Secretary to the Administrator of the Economic Regulatory Administration by DOE Delegation Order No. 0204-4 (42 FR 60726).

A public hearing on the proposed regulations was held in Washington, D.C., on April 29, 1980. The DOE received four written comments on the proposed regulations. The commenting parties made several suggestions, resulting in some changes in the regulations issued today.

II. Discussion of Comments and DOE Response

The following is a discussion of comments received and the DOE's response to the comments. This discussion is organized according to the sections of the regulations.

A. Application for Authorization to Transmit Electric Energy

1. Who Shall Apply § 205.300.

The DOE received a comment requesting clarification of how an exchange transaction "import" was to be handled. Section 202(e) of the Federal Power Act specifies that an export shall be authorized provided that the proposed transmission will not impair the sufficiency of electric supply within the U.S. or impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the DOE. Thus, the DOE exercises direct jurisdiction only over the export portion of an electricity exchange. However, the import may be considered as a factor in the overall adequacy of supply and/or coordination review.

2. Time of Filing § 205.301.

Some comments were received requesting the DOE to review the requirement that an application be filed at least six months in advance of initiation of a proposed electricity export and to provide for a waiver of the limit for good cause shown. The DOE is persuaded by these comments and the final rule is changed to provide for such waivers.

3. Contents of the Application § 205.302.

A comment was received on paragraph (g) suggesting that the ERA, and not the applicant, should bear the burden of proof that the export will not impair the sufficiency of the electric supply.

Section 202(e) of the Federal Power Act requires the ERA to determine whether a proposed export would impair or tend to impair the electric supply or the coordination of utility planning within the U.S. The ERA recognizes its responsibility under Section 202(e) but the proponent of the proposed transfer has access to system data which is unique to that system. Therefore, the ERA believes the applicant should explain why the proposed transfer will not impair or tend to impair the adequacy of its system. The ERA's role is to perform a technical evaluation of the power system data received and then to make the necessary determinations.

Another comment on this section stated that the National Electric Reliability Council (NERC) already analyzes in great detail the effect of proposed transfers of electricity. The comment further stated that the ERA review may raise problems of overlapping technical reviews. As stated previously, the ERA has a statutory responsibility under Section 202(e) of the Federal Power Act to make such reviews. The Department of Energy Organization Act specifies that authority to approve exports of electric energy shall reside with the DOE. Furthermore, the ERA is not aware of any NERC program to review specific electricity exports.

Finally, a commenter suggested that the applicant be required to submit information regarding only its own service area, and not for the appropriate Fuel Use Electric Region. The DOE is persuaded by this comment, and this final rule will only require information for the applicant's system.

4. Required Exhibits § 205.303.

The ERA received a comment on Exhibit A stating that while international agreements are being negotiated, it may not be in the best interest of any of the parties to submit these agreements, supplemental memoranda, or drafts of agreements to the ERA as public documents.

The ERA does not intend this Exhibit to include working memoranda or supplemental memoranda, but only documents which are intrinsic to the agreement itself. The Exhibit A requirement is changed to permit the applicant to request that this information be treated as proprietary by the ERA.

A comment concerning Exhibit C questioned whether a Presidential Permit number would be assigned before a Presidential Permit is issued, and how an applicant could identify the border crossing by Presidential Permit number on the key map. The ERA docket number will become the Presidential Permit number, if it is issued. Thereby, an applicant can use the docket number which will be assigned at the time a filing is accepted.

The ERA received a number of comments on Exhibit F. One of the comments suggested that economy transfers be exempted from the regulations, along with diversity exchanges and emergency situations. The reasons cited by the commentors are the time restraints and the random nature of such transfers. The ERA recognizes that there can be significant benefits from international electricity exchanges, and has provided the applicant with a means to obtain waiver of the time requirement where good cause is shown (§ 205.301). A number of comments were received on the requirement that the applicant explain the methodology employed to inform other U.S. electric utilities of the available capacity and energy which may be in excess of the applicant's requirements. The purpose of this requirement is to ensure that the electric energy or capacity proposed for export is made available to other U.S. domestic utilities before it is exported, so that electric supply within the United States is adequate. The information filed shall be in sufficient detail to explain the applicant's proposed procedures. Its complexity will be dependent upon the applicant's existing communication links with neighboring utilities. However, the establishment of a formal operating procedure which requires that the dispatch centers of neighboring utilities be formally contacted prior to initiating economy or other non-firm exports normally will be satisfactory.

5. Other Information § 205.304.

A comment was received on the exemption of less than 1 million kWh annual usage. The comment stated that it is less than the peak usage of four or five residences and implied that a higher limit should be established. The ERA disagrees. The average U.S. residential customer uses 8,000 kWh annually. The ERA did not change the limit.

6. Filing Schedule and Annual Reports § 205.308.

One party commented that the requirements in Section 205.308 are also required by the Federal Energy Regulatory Commission in FPC Form 12, Schedule 11. The ERA recognizes this fact and the final rule provides for accepting this data in its existing format.

7. Filing Procedures and Fees § 205.309.

A comment was received requesting the ERA to reconsider charging a $500 fee for filing an export application and to state the cost support for this fee. The statutory authority and direction for the ERA to assess fees for utility applications is the Independent Offices Appropriation Act of 1952, Public Law No. 82-137, 31 U.S.C. Section 483a. The work performed by the ERA in processing these applications is considered for the present to be consistent with the proposed $500 filing fee applying the criteria of this Act. Therefore, pending further review of the work performed in light of these criteria, the filing fee will be the same as originally established by the Federal Power Commission.

B. Application for a Presidential Permit.

1. Contents of Application § 205.321 (in Proposed Rules). The ERA received a comment on the fact that a Presidential Permit application does not specify when such application should be filed. Pursuant to DOE's responsibilities under the National Environmental Policy Act (NEPA), the DOE must make an environmental determination of the proposed action. If, as a result of this determination, an environmental impact statement is required, a minimum 18-24 month permit processing time is necessary. If no environmental impact statement is required, then a processing time of six months normally would be sufficient. A new § 205.321, Time of Filing, was added to the final rules in response to this comment and the remaining sections were renumbered accordingly.

A comment on the originally proposed § 205.321, was received by the ERA requesting that the power flow plots be submitted in the format customarily used by the applicant. The ERA agrees with this comment but will require a detailed legend to be included with the power flow plots.

III. The Final Regulations.

A. Application for Authorization to Transmit Electric Energy.

The Economic Regulatory Administration of the Department of Energy hereby gives notice of the issuance of regulations implementing the provisions of Section 202(e) of the Federal Power Act. Section 202(e) of the Federal Power Act specifies that the export of electric energy shall be authorized provided that the proposed transmission will not impair the sufficiency of electric supply within the United States or impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Department of Energy. Section 202(e) further provides the authority to impose such terms and conditions on the export authorization as may be appropriate.

B. Application for a Presidential Permit.

The Economic Regulatory Administration of the Department of Energy hereby gives notice of the issuance of regulations implementing the provisions of Executive Order 10485, as amended by Executive Order 12038.

These Executive Orders establish the procedures and standards for issuance of a Presidential Permit authorizing the construction, connection, operation and maintenance of electrical transmission facilities at an international boundary and further provide that the ERA may impose such terms and conditions on the Presidential Permit as may be appropriate.

C. General.

The regulations are adopted as originally proposed except for the modifications described above, and other minor clarifying and conforming modifications.

IV. Other Matters.

The DOE has determined that this rulemaking is nonsignificant as that term is used in Executive Order 12044 and DOE Order 2030. The rule is not considered likely to have a major impact as defined by Executive Order 12044, and as amplified in DOE Order 2030. Accordingly, no regulatory analysis has been performed.

Section 404 of the Department of Energy Organization Act (DOE Act) requires that the Federal Energy Regulatory Commission (FERC) be notified whenever the Secretary proposes to prescribe rules, regulations and statements of policy of general applicability in the exercise of functions transferred to him under sections 301 and 306 of the DOE Act. The FERC was

notified and requested to make the necessary determination regarding impact on any function within its jurisdiction under Sections 402(a)(1), (b) and (c)(1) of the DOE Act. FERC notified ERA on October 17, 1980, that it would not take referral of these regulations; however, the FERC suggested informally that copies of applications under these regulations should also be furnished to the FERC and the appropriate state regulatory agencies. We concur and have modified §§ 205.309 and 205.326 to incorporate this suggestion.

In consideration of the foregoing, Chapter II of Title 10, Code of Federal Regulations, is amended by establishing §§ 205.300–.309 and 205.320.–327 as set forth below.

Issued in Washington, D.C., on October 21, 1980.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

PART 205—ADMINISTRATIVE PROCEDURES AND SANCTIONS

Subpart W—Electric Power System Permits and Reports; Applications; Administrative Procedures and Sanctions

Application for Authorization to Transmit Electric Energy to a Foreign Country.

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Application for Presidential Permit Authorizing the Construction, Connection, Operation, and Maintenance of Facilities for Transmission of Electric Energy at International Boundaries.

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205.320 Who shall apply.
205.321 Time of filing.
205.322 Contents of application.
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205.236 Filing procedures and fees.
205.327 Other information.

Authority: Department of Energy Organization Act, Pub. L. No. 95–91, 91 Stat. 565 (42 U.S.C. Section 7101). Federal Power Act, Pub. L. 66–280, 41 Stat. 1063 (16 U.S.C. Section 792) *et seq.*, Department of Energy Delegation Order No. 0204–4 (42 FR 60726). E.O. 10485, 18 FR 5397, 3 CFR, 1949–1953, Comp., p. 970 as amended by E.O. 12038, 43 FR 4957, 3 CFR 1978 Comp., p. 136.

Subpart W—Electric Power System Permits and Reports; Applications; Administrative Procedures and Sanctions

Application for Authorization to Transmit Electric Energy to a Foreign Country.

§ 205.300 Who shall apply.

(a) An electric utility or other entity subject to DOE jurisdiction under Part II of the Federal Power Act who proposes to transmit any electricity from the United States to a foreign country must submit an application or be a party to an application submitted by another entity. The application shall be submitted to the Office of Utility Systems of the Economic Regulatory Administration (EPA).

(b) In connection with an application under §§ 205.300 through 205.309, attention is directed to the provisions of §§ 205.320 through 205.327, below, concerning applications for Presidential Permits for the construction, connection, operation, or maintenance, at the borders of the United States, of facilities for the transmission of electric energy between the United States and a foreign country in compliance with Executive Order 10485, as amended by Executive Order 12038.

§ 205.301 Time of filing.

Each application should be made at least six months in advance of the initiation of the proposed electricity export, except when otherwise permitted by the ERA to resolve an emergency situation.

§ 205.302 Contents of application.

Every application shall contain the following information set forth in the order indicated below:

(a) The exact legal name of the applicant.

(b) The exact legal name of all partners.

(c) The name, title, post office address, and telephone number of the person to whom correspondence in regard to the application shall be addressed.

(d) The state or territory under the laws of which the applicant is organized or incorporated, or authorized to operate. If the applicant is authorized to operate in more than one state, all pertinent facts shall be included.

(e) The name and address of any known Federal, State or local government agency which may have any jurisdiction over the action to be taken in this application and a brief description of that authority.

(f) A description of the transmission facilities through which the electric energy will be delivered to the foreign country, including the name of the owners and the location of any remote facilities.

(g) A technical discussion of the proposed electricity export's reliability, fuel use and system stability impact on the applicant's present and prospective electric power supply system. Applicant must explain why the proposed electricity export will not impair the sufficiency of electric supply on its system and why the export will not impede or tend to impede the regional coordination of electric utility planning or operation.

(h) The original application shall be signed and verified under oath by an officer of the applicant having knowledge of the matters set forth therein.

§ 205.303 Required exhibits.

There shall be filed with the application and as a part thereof the following exhibits:

(a) *Exhibit A.* A copy of the agreement or proposed agreement under which the electricity is to be transmitted including a listing of the terms and conditions. If this agreement contains proprietary information that should not be released to the general public, the applicant must identify such data and include a statement explaining why proprietary treatment is appropriate.

(b) *Exhibit B.* A showing, including a signed opinion of counsel, that the proposed export of electricity is within the corporate power of the applicant, and that the applicant has complied or will comply with all pertinent Federal and State laws.

(c) *Exhibit C.* A general map showing the applicant's overall electric system and a detailed map highlighting the location of the facilities or the proposed facilities to be used for the generation and transmission of the electric energy to be exported. The detailed map shall identify the location of the proposed border crossing point(s) or power transfer point(s) by Presidential Permit number whenever possible.

(d) *Exhibit D.* If an applicant resides or has its principal office outside the United States, such applicant shall designate, by irrevocable power of attorney, an agent residing within the United States. A verified copy of such power of attorney shall be furnished with the application.

(e) *Exhibit E.* A statement of any corporate relationship or existing contract between the applicant and any other person, corporation, or foreign government, which in any way relates to the control or fixing of rates for the purchase, sale or transmission of electric energy.

(f) *Exhibit F.* An explanation of the methodology (Operating Procedures) to inform neighboring electric utilities in the United States of the available capacity and energy which may be in excess of the applicant's requirements before delivery of such capacity to the foreign purchaser. Approved firm export, diversity exchange and emergency exports are exempted from this requirement. Those materials required by this section which have been filed previously with the ERA may be incorporated by reference.

§ 205.304 Other information.

Where the application is for authority to export less than 1,000,000 kilowatt hours annually, applicants need not furnish the information called for in §§205.302(g) and 205.303 (Exhibit C). Applicants, regardless of the amount of electric energy to be exported, may be required to furnish such supplemental information as the ERA may deem pertinent.

§ 205.305 Transferability.

(a) An authorization to transmit electric energy from the United States to a foreign country granted by order of the ERA under Section 202(e) of the Federal Power Act shall not be transferable or assignable. Provided written notice is given to the ERA within 30 days, the authorization may continue in effect temporarily in the event of the involuntary transfer of this authority by operation of law (including transfers to receivers, trustees, or purchasers under foreclosure or judicial sale). This continuance is contingent on the filing of an application for permanent authorization and may be effective until a decision is made thereon.

(b) In the event of a proposed voluntary transfer of this authority to export electricity, the transferee and the transferor shall file jointly an application pursuant to this subsection, setting forth such information as required by §§ 205.300 through .304, together with a statement of reasons for the transfer.

(c) The ERA may at any time subsequent to the original order of authorization, after opportunity for hearing, issue such supplemental orders as it may find necessary or appropriate.

§ 205.306 Authorization not exclusive.

No authorization granted pursuant to Section 202(e) of the Act shall be deemed to prevent an authorization from being granted to any other person or entity to export electric energy or to prevent any other person or entity from making application for an export authorization.

§ 207.307 Form and style; number of copies

An original and two conformed copies of an application containing the information required under Sections 205.300 through 205.309 must be filed.

§ 205.308 Filing schedule and annual reports.

(a) Persons authorized to transmit electric energy from the United States shall promptly file all supplements, notices of succession in ownership or operation, notices of cancellation, and certificates of concurrence. In general, these documents should be filed at least 30 days prior to the effective date of any change.

(b) A change in the tariff arrangement does not require an amendment to the authorization. However, any entity with an authorization to export electric energy shall file with the ERA, and the appropriate state regulatory agency, a certified copy of any changed rate schedule and terms. Such changes may take effect upon the date of filing of informational data with the ERA.

(c) Persons receiving authorization to transmit electric energy from the United States shall submit to the ERA, by February 15 each year, a report covering each month of the preceding calendar year detailing the gross amount of kilowatt-hours of energy, by authorized category, received or delivered, and the cost and revenue associated with each category.

§ 205.309 Filing procedures and fees.

Applications shall be addressed to the Office of Utility Systems of the Economic Regulatory Administration. Every application shall be accompanied by a fee of $500.00. Fee payment shall be by check, draft, or money order payable to the Treasurer of the United States. Copies of applications and notifications of rate changes shall be furnished to the Federal Energy Regulatory Commission and all affected State public utility regulatory agencies.

Application for Presidential Permit Authorizing the Construction, Connection, Operation, and Maintenance of Facilities for Transmission of Electric Energy at International Boundaries.

§ 205.320 Who shall apply.

(a) Any person, firm, co-operative, corporation or other entity who operates an electric power transmission or distribution facility crossing the border of the United States, for the transmission of electric energy between the United States and a foreign country, shall have a Presidential Permit, in compliance with Executive Order 10485, as amended by Executive Order 12038. Such applications should be filed with the Office of Utility Systems of the Economic Regulatory Administration.

Note.—Executive Order 12038, dated February 3, 1978, amended Executive Order 10485, dated September 3, 1953, to delete the words "Federal Power Commission" and "Commission" and substitute for each "Secretary of Energy." Executive Order 10485 revoked and superseded Executive Order 8202, dated July 13, 1939.

(b) In connection with applications hereunder, attention is directed to the provisions of §§ 205.300 to 205.309, above, concerning applications for authorization to transmit electric energy from the United States to a foreign country pursuant to Section 202(e) of the Federal Power Act.

§ 205.321 Time of filing.

Pursuant to the DOE's responsibility under the National Environmental Policy Act, the DOE must make an environmental determination of the proposed action. If, as a result of this determination, an environmental impact statement (EIS) must be prepared, the permit processing time normally will be 18–24 months. If no environmental impact statement is required, then a six-month processing time normally would be sufficient.

§ 205.322 Contents of application.

Every application shall be accompanied by a fee prescribed in § 205.326 of this subpart and shall provide, in the order indicated, the following:

(a) *Information regarding the applicant.*

(1) The legal name of the applicant;

(2) The legal name of all partners;

(3) The name, title, post office address, and telephone number of the person to whom correspondence in regard to the application shall be addressed;

(4) Whether the applicant or its transmission lines are owned wholly or in part by a foreign government or directly or indirectly assisted by a foreign government or instrumentality thereof; or whether the applicant has any agreement pertaining to such ownership by or assistance from any foreign government or instrumentality thereof.

(5) List all existing contracts that the applicant has with any foreign government, or any foreign private concerns, relating to any purchase, sale or delivery of electric energy.

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(6) A showing, including a signed opinion of counsel, that the construction, connection, operation, or maintenance of the proposed facility is within the corporate power of the applicant, and that the applicant has complied with or will comply with all pertinent Federal and State laws;

(b) *Information regarding the transmission lines to be covered by the Presidential Permit.* (1)(i) A technical description providing the following information: (A) number of circuits, with identification as to whether the circuit is overhead or underground; (B) the operating voltage and frequency; and (C) conductor size, type and number of conductors per phase. (ii) If the proposed interconnection is an overhead line the following additional information must also be provided: (A) the wind and ice loading design parameters; (B) a full description and drawing of a typical supporting structure including strength specifications; (C) structure spacing with typical ruling and maximum spans; (D) conductor (phase) spacing; and (E) the designed line to ground and conductor side clearances. (iii) If an underground or underwater interconnection is proposed, the following additional information must also be provided: (A) burial depth; (B) type of cable and a description of any required supporting equipment, such as insulation medium pressurizing or forced cooling; and (C) cathodic protection scheme. Technical diagrams which provide clarification of any of the above items should be included.

(2) A general area map with a scale not greater than 1 inch=40 kilometers (1 inch=25 miles) showing the overall system, and a detailed map at a scale of 1 inch=8 kilometers (1 inch=5 miles) showing the physical location, longitude and latitude of the facility on the international border. The map shall indicate ownership of the facilities at or on each side of the border between the United States and the foreign country. The maps, plans, and description of the facilities shall distinguish the facilities or parts thereof already constructed from those to be constructed.

(3) Applications for the bulk power supply facility which is proposed to be operated at 138 kilovolts or higher shall contain the following bulk power system information:

(i) Data regarding the expected power transfer capability, using normal and short time emergency conductor ratings;

(ii) System power flow plots for the applicant's service area for heavy summer and light spring load periods, with and without the proposed international interconnection, for the year the line is scheduled to be placed in service and for the fifth year thereafter. The power flow plots submitted can be in the format customarily used by the utility, but the ERA requires a detailed legend to be included with the power flow plots;

(iii) Data on the line design features for minimizing television and/or radio interference caused by operation of the subject transmission facilities;

(iv) A description of the relay protection scheme, including equipment and proposed functional devices;

(v) After receipt of the system power flow plots, the ERA may require the applicant to furnish system stability analysis for the applicant's system.

(c) Information regarding the environmental impacts shall be provided as follows for each routing alternative:

(1) Statement of the environmental impacts of the proposed facilities including a list of each flood plain, wetland, critical wildlife habitat, navigable waterway crossing, Indian land, or historic site which may be impacted by the proposed facility with a description of proposed activities therein.

(2) A list of any known Historic Places, as specified in 36 CFR, Part 800, which may be eligible for the National Register of Historic Places.

(3) Details regarding the minimum right-of-way width for construction, operation and maintenance of the transmission lines and the rationale for selecting that right-of-way width.

(4) A list of threatened or endangered wildlife or plant life which may be located in the proposed alternative.

(d) A brief description of all practical alternatives to the proposed facility and a discussion of the general environmental impacts of each alternative.

(e) The original of each application shall be signed and verified under oath by an officer of the applicant, having knowledge of the matters therein set forth.

§ 205.323 Transferability.

(a) Neither a permit issued by the ERA pursuant to Executive Order 10485, as amended, nor the facility shall be transferable or assignable. Provided written notice is given to the ERA within 30 days, the authorization may continue in effect temporarily in the event of the involuntary transfer of the facility by operation of law (including transfers to receivers, trustees, or purchases under foreclosure or judicial sale). This continuance is contingent on the filing of an application for a new permit and may be effective until a decision is made thereon.

(b) In the event of a proposed voluntary transfer of the facility, the permittee and the party to whom the transfer would be made shall file a joint application with the ERA pursuant to this paragraph, setting forth information as required by § 205.320 *et seq.*, together with a statement of reasons for the transfer. The application shall be accompanied by a filing fee pursuant to § 205.326.

(c) No substantial change shall be made in any facility authorized by permit or in the operation thereof unless or until such change has been approved by the ERA.

(d) Permits may be modified or revoked without notice by the President of the United States, or by the Administrator of the ERA after public notice.

§ 205.324 Form and style; number of copies.

All applicants shall file an original and two conformed copies of the application and all accompanying documents required under §§ 205.320 through 205.327.

§ 205.325 Annual report.

Persons receiving permits to construct, connect, operate or maintain electric transmission facilities at international boundaries shall submit to the ERA, by February 15 each year, a report covering each month of the preceding calendar year, detailing by category the gross amount of kilowatt-hours of energy received or delivered and the cost and revenue associated with each category.

§ 205.326 Filing procedures and fees.

Applications shall be forwarded to the Office of Utility Systems of the Economic Regulatory Administration and shall be accompanied by a filing fee of $150. The application fee will be charged irrespective of the ERA's disposition of the application. Fee payment shall be by check, draft, or money order payable to the Treasurer of the United States. Copies of applications shall be furnished to the Federal Energy Regulatory Commission and all affected State public utility regulatory agencies.

§ 205.327 Other information.

The applicant may be required after filing the application to furnish such supplemental information as the ERA may deem pertinent. Such requests shall be written and a prompt response will be expected. Protest regarding the supplying of such information should be directed to the Administrator of the ERA.

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
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DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

INTERIOR DEPARTMENT

Land Management Bureau—

64179 9–29–80 / Arizona; Transfer of jurisdiction of reserved land

63851 9–26–80 / California, restoration of certain lands in The Chocolate Mountain Gunnery Range (Riverside and Imperial Counties) to public land laws

64178 9–29–80 / Oregon; Revocation of stock driveway withdrawal

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last Listing October 24, 1980

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2½ hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between Federal Register and the Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them, as part of the General Services Administration's efforts to encourage public participation in Government actions. There will be no discussion of specific agency regulations.

WHEN: December 5 and 19, January 16 and 30; at 9 a.m. (identical sessions).

WHERE: Office of the Federal Register, Room 9409, 1100 L Street NW., Washington, D.C.

RESERVATIONS: Call King Banks, Workshop, Workshop Coordinator, 202–523–5235.

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federal register

Wednesday
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Highlights

Seminar on Principles of Regulations Writing—For details on seminar in **Washington, D.C.**, see announcement in the **Reader Aids** section at the end of this issue.

71565 **Education-Scholarships** HHS/PHS publishes criteria for determining allowable increases in tuition and other educational costs which the Secretary of HHS will be responsible for payment under scholarship programs; effective 10–29–80

71714 **Recreation** Interior/HCRS finalizes the administration of grant-in-aid program under the Urban Park and Recreation Recovery Program; effective 11–28–80 (Part II of this issue)

71746 **Energy** Energy/Solar proposes providing price support loans to assist municipal waste energy projects; comments by 1–5–81 (Part IV of this issue)

71569 **Nuclear Power Plants** NRC amends regulations temporarily suspending completion schedules for certain fire protection features in operating nuclear plants; effective 10–29–80

71728 **Water Resources** WRC publishes notice regarding synthetic fuel development for the Upper Missouri River Basin Water assessment; comments by 1–27–80 (Part III of this issue)

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 204 and 282

[Docket No. RM79-14]

Regulations Implementing the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978; Errata Notice; Technical Amendments to Order No. 49-A

October 17, 1980.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Errata notice to final rule.

SUMMARY: This notice contains corrections to technical amendments to Order No. 49-A issued January 18, 1980, (45 FR 5677, January 24, 1980). The technical amendments implemented modifications to the accounting regulations previously adopted in the regulations implementing the incremental pricing provisions of the Natural Gas Policy Act of 1978. The amendments added below were omitted in error.

EFFECTIVE DATE: January 18, 1980.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Secretary, Telephone (202) 357-8400.

SUPPLEMENTARY INFORMATION: The following amendments to 18 CFR Parts 204 and 282 were omitted from the January 18th order.

PART 204—[AMENDED]

3. Part 204, account 191 is amended in paragraph A to read as follows:

191. Unrecovered Purchased Gas Costs

A. This account shall include purchased gas costs related to Commission approved purchased gas adjustment clauses when such costs are not included in the utility's rate schedule on file with the Commission. This account shall also include such other costs as authorized by the Commission. Incremental costs of purchased gas as defined in the incremental pricing regulations of the Commission shall be excluded from this account and included in Account 192.1, Unrecovered Incremental Gas Costs, until such costs are determined not subject to incremental pricing surcharge passthrough because of alternative fuel price ceilings. Once such determination is made those costs which are related to Commission approved purchased gas adjustment clauses shall be included in this account to the extent not yet recovered.

* * * * *

§ 282.602 [Amended]

4. Section 282.602 is amended in paragraph (d)(2)(ii)(c) by deleting the words "account 191" and inserting in lieu thereof "account 805.2".

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-33579 Filed 10-28-80; 8:45 am]
BILLING CODE 6450-85-M

18 CFR Part 271

[Docket No. RM79-76; Order No. 99-A]

High-Cost Natural Gas Produced for Tight Formations; Order Denying Rehearing and Clarifying Order No. 99

Issued October 21, 1980.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: On August 15, 1980, the Federal Energy Regulatory Commission issued Order No. 99 in Docket No. RM79-76 (45 FR 56034, August 22, 1980). In Order No. 99, the Commission established an incentive price under section 107 of the Natural Gas Policy Act of 1978 for gas produced from designated tight formations and set forth the procedure for designation of tight formations and for well category determinations.

This order denies applications for rehearing of Order No. 99 and amends the applicability section and the definition of tight formation gas to clarify that a producer is not required to have a negotiated contract in order to apply for or receive a well category determination. In addition, technical amendments have been made to the definition of negotiated contract price.

EFFECTIVE DATE: October 21, 1980.

FOR FURTHER INFORMATION CONTACT:
Colette Bohatch, Federal Energy Regulatory Commission, Room 8100-B, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357-8033
or
June Perin, Federal Energy Regulatory Commission, Room 8000, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357-8473.

On August 15, 1980, the Federal Energy Regulatory Commission (Commission) issued Order No. 99 in Docket No. RM79-76 (45 FR 56034, August 22, 1980). Applications for rehearing of Order No. 99 were filed by Pennzoil Company, *et al.*[1] (Pennzoil Group) and Kentucky West Virginia Gas Company (Kentucky-West Virginia).

In Order No. 99, the Commission established an incentive price under section 107 of the Natural Gas Policy Act of 1978 (NGPA) for gas produced from designated tight formations and set forth the procedure for designation of tight formations and for well category determinations.

I. Application of the Pennzoil Group

The Pennzoil Group argues that Order No. 99 will delay producers' efforts to bring increased supplies of gas into the domestic market. The following reasons given by the Pennzoil Group to support its application do not warrant a rehearing. All of the issues presented by the Pennzoil Group and discussed below have been fully considered by the Commission during this rulemaking process.

A. *Designation of tight formations.*— The Pennzoil Group argues that the Order No. 99 procedures for nominating and approving tight formations could be streamlined by substituting the procedures of section 503 of the NGPA.

The Commission has the discretion to qualify tight formations under either section 503 or by rulemaking. For the reasons enunciated in the preamble to

[1] This application for rehearing was filed jointly by Pennzoil Company, Pennzoil Producing Company, Pennzoil Oil and Gas, Inc., Pogo Producing Company, Great American Oil Company of Texas, Texas Gulf, Inc., and Ashland Exploration, Inc.

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the final rule, the Commission will continue to designate tight formations by rule in accordance with the provisions of § 271.703.

B. *Order No. 99 pricing provision.*—The Pennzoil Group also raises a question regarding the pricing provision of Order No. 99. In Order No. 99, the Commission established a ceiling price for gas produced from designated tight formations. That ceiling price as set forth in § 271.703(a) is 200 percent of the maximum lawful price under section 103 of the NGPA or the negotiated contract price, whichever is less. The term "negotiated contract price" as defined in § 270.702(a)(1) means:

> Any price established by a contract which either specifically references the incentive pricing authority of the Commission under section 107 of the NGPA or contains a fixed rate or a fixed escalator clause.[2]

On this point, the Pennzoil Group argues in its rehearing application that:

> Section 101(b)(9) of the NGPA and the *Mobile-Sierra* doctrine provide a rule of construction that the private contractual rights of producers and pipelines are preserved inviolate *as long as their exercise of those rights does not result in the collection of a price which is in excess of the maximum lawful price.* As such, the Commission has no jurisdiction to abrogate or interfere with the exercise of private contractual rights by producers and pipelines. By requiring certain words to be used in a contract, and especially by imposing this requirement retroactively, the Commission has violated section 101(b)(9) of the NGPA and the *Mobile-Sierra* doctrine. [Emphasis added.]

This argument begs the question. Under Order No. 99, no incentive maximum lawful price is applicable unless the contract covering the sale of the tight formation gas contains a clause which specifically references the Commission's section 107(c) incentive pricing authority or which is a fixed rate or a fixed escalator clause. The Commission adopted this pricing provision to assure that a price collected under a contract is necessary to increase gas production.[3] The Commission emphasizes that parties are not barred from renegotiating their contracts to qualify for the Order No. 99 ceiling price.[4]

The Pennzoil Group also argues that section 105(b)(3)(D) [5] and section 313(a) [6] mandate that "broadly drafted indefinite price escalator clauses" provide contractual authority for collection of a section 107(c) price.

We disagree. Both sections are couched in the negative. Sections 105(b)(3) and 313(a) impose limitations on the operation of indefinite price escalator clauses. They do not mandate collection of a section 107(c) price where such clauses exist.

C. *Other issues.*—The Pennzoil Group raises other issues regarding the sufficiency of the price and certain requirements for well category determinations and for designation of tight formations. The Commission rejects the arguments raised by the Pennzoil Group on the respective provisions of Order No. 99 for the reasons stated in Order No. 99.

II. Application of Kentucky-West Virgina

Kentucky-West Virginia submits that the Commission unlawfully excluded certain sales of pipeline production from the final rule by failing to include, explicitly, sales of such production within the definition of first sale.

Incentive prices established by the Commission under section 107 like all other maximum lawful prices under Title I of the NGPA are applicable to first sales of natural gas. In Order No. 58, the Commission addressed the issue of first sale treatment of sales made by pipelines, distributors, and their affiliates.[7] All issues raised by Kentucky-West Virginia regarding Order No. 99 relate to the Commission's definition of a first sale in Order No. 58. Therefore, they are outside the scope of this rulemaking and the application for rehearing must be denied.

III. Clarification of Order No. 99

Three clarifying amendments have been made to the final rule. The applicability provision of § 271.701 has been amended to delete the reference to a jurisdictional agency determination. The purpose of this amendment is to clarify that a producer is not required to have a negotiated contract price in order to apply for or receive a well category determination from a jurisdictional agency. A corresponding clarifying amendment has been made to the definition of tight formation gas in § 271.703(b)(1). Finally, certain clarifying amendments have been made to the definition of negotiated contract price in § 271.702(a)(1).

Because these amendments effect no substantive change in the rule but are necessary for proper implementation of the rule, the Commission finds that public notice and comment is unnecessary. For the same reasons, the amendments are being made effective immediately. (5 U.S.C. 553)

The Commission orders:

(1) The applications for rehearing of Order No. 99 filed jointly by the Pennzoil Company, Pennzoil Producing Company, Pennzoil Oil and Gas, Inc., Pogo Producing Company, Great American Oil Company of Texas, TexasGulf, Inc., and Ashland Exploration, Inc. and Kentucky-West Virginia Gas Company are denied.

(2) Order No. 99 is clarified by amending §§ 271.701, 271.702(a)(1) and 271.703(b)(1) of the Commission's regulations as set forth above, effective October 21, 1980.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301, *et seq.*; Department of Energy Organization Act, 42 U.S.C. § 7107, *et seq.*; Executive Order No. 12009, 42 FR 46267, Natural Gas Act, as amended, 15 U.S.C. 717, *et seq.*)

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Title 18, Code of Federal Regulations is amended as set forth below, effective October 21, 1980.

By the Commission.

Kenneth F. Plumb,

Secretary.

§ 271.701 [Amended]

1. Section 271.701 is amended in the first sentence by deleting the words "a jurisdictional agency determines" following "which".

2. Subparagraph (1) of § 271.702(a) is amended to read as follows:

[2] Certain clarifying amendments to this definition are now being adopted by the Commission.

[3] As stated in the preamble to Order No. 99:

> The Commission reaffirms the position taken in the interim rule that it must limit the availability of the incentive price ceiling to those contracts which specifically refer to it (or to the extent permitted under a fixed rate or fixed escalator clause) because its pricing authority is limited to setting incentive prices "necessary" to encourage additional production. (Mimeo, at p. 37.)

[4] The negotiated contract price requirement appears in the production enhancement rulemaking as a qualification for gas. Similar arguments questioning the Commission's role have been raised in the production enhancement rulemaking and will be addressed there.

[5] Section 105(b)(3) imposes certain limitations on the effect of indefinite price escalator clauses. Section 105(b)(3)(D) establishes an exclusion for certain categories of gas from such limitations.

[6] Section 313(a) provides:

> *High-Cost Natural Gas.*—No price paid in any first sale of high-cost natural gas (as defined in section 107(c)) may be taken into account in applying any indefinite price escalator clause (as defined in section 105(b)(3)(B)) with respect to any first sale of any natural gas other than high-cost natural gas (as defined in section 107(c)).

[7] Section 270.203 promulgated in Order No. 58, provides that a sale by a pipeline or distributor is not a first sale unless the sale is comprised exclusively of production by the pipelines or distributors or the sale is a mixed volume sale the price of which is not regulated pursuant to the Natural Gas Act (15 U.S.C. §§ 717–717w) or by a state agency empowered by statute to establish, modify, or set aside the rate for such sale.

§ 271.702 General rules.

(a) *Definitions.* * * *

(1) "Negotiated contract price" means any price established by a contract provision that specifically references the incentive pricing authority of the Commission under section 107 of the NGPA, by a contract provision that prescribes a specific fixed rate, or by the operation of a fixed escalator clause.

* * * * *

§ 271.703 [Amended]

3. Subparagraph (1) of § 271.703(b) is amended by inserting the words "natural gas that a jurisdictional agency has determined in accordance with Parts 274 and 275 to be" following the word "means".

[FR Doc. 80-33578 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL 1645-8]

Approval and Promulgation of Implementation Plans; Tennessee: 1979 Plan Revisions; Correction

AGENCY: Environmental Protection Agency.

ACTION: Correction in final rule.

SUMMARY: In FR Doc. 80-24425 appearing at pages 53809–53818 in the **Federal Register** of August 13, 1980, make the following correction. Under the Nashville (CO), discussion on page 53812, replace the last sentence of the first full paragraph of the third column with the following sentence: This schedule indicates that a centralized operated I/M program will be instituted, and calls for the mandatory I/M program to begin in September 1982.

EFFECTIVE DATE: October 29, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Gregory, Air Programs Branch, EPA Region IV, Atlanta, Georgia 30365, 404/881-3286 or FTS 257-3286.

(Secs. 110, 172, Clean Air Act [42 U.S.C. 7410, 7502])

Dated: October 8, 1980.

John A. Little,

Acting Regional Administrator.

[FR Doc.-80-33679 Filed 10-28-80; 8:45 am]

BILLING CODE 6560-38-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-26

[FPMR Amendment E-243]

Procurement Sources and Programs; FEDSTRIP Activity Address Codes

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation specifies that an activity address code is required to requisition items through the FEDSTRIP system, provides that each civilian executive agency should establish a central contact point for matters involving activity address codes, and updates the address of the GSA contact for assistance in ordering through the FEDSTRIP system. The inquiries received from agencies regarding the FEDSTRIP system indicate that FPMR 101-26.2 should include guidance to agencies on obtaining and exercising controls over FEDSTRIP activity address codes. This regulation provides for implementation of the necessary controls over the assignment and use of activity address codes.

EFFECTIVE DATE: October 29, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. James Jeremiah, Director, Office of Requisition Processing and Control (703-557-1823).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this regulation will not impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purposes of Executive Order 12044.

1. The table of contents for Part 101-26 is amended by adding the following entry:

* * * * * *

101-26.203 Activity address codes.

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Subpart 101-26.2—Federal Requisitioning System

2. Section 101-26.203 is added to read as follows:

§ 101-26.203 Activity address codes.

To obtain items through the FEDSTRIP system, each ordering activity is required to have an activity address code. The FEDSTRIP Operating Guide (FPMR 101-26.2) contains instructions to civilian agencies on requesting activity address codes. Once assigned, an activity address code allows an activity to order supplies under the FEDSTRIP system. Because there is a potential for abuse in the use of these codes, agencies shall establish stringent internal controls to ensure that the codes are used only by authorized personnel. It is imperative that all requests for activity address codes or deletions or address changes flow through a central contact point in the agency headquarters or regions where the need, purpose, and validity of the request can be verified. Agencies should send GSA the addresses of the contact points (mailing address: General Services Administration (FSR), Washington, DC 20406). GSA will only honor requests from the established points within the agency. GSA will periodically send a listing of current activity address codes and addresses to contact points for review.

3. Section 101-26.206 is revised to read as follows:

§ 101-26.206 GSA assistance.

Agency field activities should direct their questions regarding FEDSTRIP to the Federal Supply Service at each GSA regional office. The addresses of GSA regional offices are listed in each of the volumes of the GSA Supply Catalog. Agency headquarters activities requiring assistance may contact General Services Administration (FSR), Washington, DC 20406.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: October 20, 1980.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 80-33639 Filed 10-28-80; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Payment for Tuition and Other Educational Costs

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: These regulations set forth criteria for determining allowable increases in tuition and other educational costs for which the Secretary of Health and Human Services will be responsible for payment under the scholarship programs authorized by Title VII of the Public Health Service Act.

EFFECTIVE DATE: These regulations are effective upon publication, October 29, 1980.

FOR FURTHER INFORMATION CONTACT: Donald C. Parks, Deputy Director, Office of Program Support, Bureau of Health

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Professions, Health Resources Administration, Center Building, Room 4–22, 3700 East-West Highway, Hyattsville, Maryland 20782 (Telephone: 301–436–6560).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 27, 1978, the Assistant Secretary for Health, with the approval of the Secretary of Health, Education, and Welfare, proposed to add a new Subpart GG, "Payment for Tuition and Other Educational Costs," to Part 57 of Title 42 of the Code of Federal Regulations. The new Subpart GG was proposed under section 711 of the PHS Act (the Act), which requires the Secretary to establish criteria for determining allowable increases in tuition and other educational costs for which the Secretary will be responsible for payment under Title VII of the Public Health Service Act. The regulations were proposed to apply to three programs in Title VII in which the Secretary commits the Federal Government to pay the costs of the tuition and other educational expenses of participating students and only to institutions having students participating in these programs. The programs are section 751 of the Act, establishing the National Health Service Corps Scholarship Program; section 757 of the Act, establishing an Indian Health Scholarship Program; and section 758 of the Act, establishing a program for Scholarships for First Year Students of Exceptional Financial Need.

Interested persons were invited to submit written comments on the proposed regulations not later than 45 days after publication in the **Federal Register.** Following the close of the comment period, the regulations were to be revised as warranted by the public comments received. Twenty persons responded within the period. The comments, the Department's response to the comments, and the revisions made in the regulations are indicated below. For clarity, the comments and responses have been arranged, whenever appropriate, according to the section numbers and titles of the proposed regulations to which they pertain.

§ 57.3201 To which programs do these regulations apply?

Section 57.3201 stipulates that the regulations apply to increases in tuition and other educational costs occurring after the school year immediately before October 1, 1978.

Several respondents were concerned with this proposed effective date. They suggested that the regulations be effective for all changes in tuition and other educational costs which occur on or after the date of publication of the final regulations, or that the effective date be altered "to the school year beginning immediately after October 1, 1979." The respondents argued that tuition increases are planned one year in advance and that the proposed rules should not apply to tuition increases which have already been planned.

The Secretary is cognizant of the fact that tuitions are planned one year in advance and that tuition levels for the school year corresponding to the effective date of the regulation have already been established. Furthermore, the Secretary has determined that one full year of monitoring tuition charges across schools will be required to establish a baseline set of data from which subsequent tuition increases can be evaluated. Therefore, tuition increases for the purposes of determining allowable increases will be based upon the increase that occurs between those established for the school year beginning immediately before October 1, 1981, and those which were charged to students in the previous baseline year. No decisions regarding the appropriateness of increases in tuition and other educational costs will be forthcoming until the Secretary has cost analysis data comparing the 1981 school year costs to the 1980 school year baseline data.

§ 57.3202 How will allowable increases be determined?

§ 57.3202 (a)—Paragraph (a) of this section delineates certain categories of allowable cost increases that are either uncontrollable or are attributable to maintaining and improving the quality of the health professions education provided by the institution.

Several respondents expressed concern over these categories of allowable costs and the specific examples used to exemplify these categories. The comments not only stated a concern with the comprehensiveness of the list but also a concern with the vagueness of the criteria listed. They recommended the expenses associated with implementation of new or recent federal programs such as section 504 of the Rehabilitation Act of 1973, the Occupational Safety and Health Act, the Age Discrimination in Employment Act, Title IX of the Civil Rights Act, the Family Education Rights and Privacy Act of 1974, and the proposed regulations pertaining to the activities of institutional review boards in the protection of human subjects (43 FR 56174, November 30, 1978), be added as allowable cost categories. Costs related to additional patient care conducted solely as a learning experience for students, components of research programs which involve students as assistants or observers in a learning role, and wages, salaries, and benefits required as a result of new union contract agreements were also suggested as categories of allowable costs.

Another major area of concern regarding the examples of allowable costs cited in the regulations was that the examples should, but did not, address the need to increase tuition and other educational costs in response to the loss of revenues incurred when income from other sources, such as States, private philanthropies, or other federal programs, is reduced or discontinued. The primary example cited by the respondents was revenue provided by the Health Professions Capitation Grant Program. It was generally recommended that a third category of allowable costs be included to define the types of revenue losses that would constitute acceptable justification for tuition increases.

The Secretary agrees that the examples given under clauses (1) and (2) of § 57.3202(a) of the proposed regulations are not all inclusive. The final regulations indicate that the examples within each category are merely illustrative.

The Secretary also agrees that increases in tuition and other educational costs directly attributable to loss of revenues from other sources which were used for the maintenance and improvement of the educational system should be allowed.

The final regulations have been amended to include this category under § 57.3202(c)(3). However, tuition increases due to loss of other sources of revenue are justified only if those sources of revenue were previously used to maintain and improve the educational system and not used to provide patient care or conduct research unrelated to educational purposes.

Two comments reflected concern that the regulations do not explicitly state that the Secretary *will* assume responsibility for that portion of tutition and other educational costs charged to students in the scholarship programs that is determined to be appropriate and that the Secretary is *not* authorized to establish tuition or other educational costs for an institution. Two respondents held the opposite view, that the Secretary should establish a standardized national tutition and education costs limitation for determining federal scholarship awards.

With respect to the comments noting a lack of an explicit statement of the

Secretary's responsibility in regard to payment of tuition and other educational costs, the Department has revised the regulations to state that the Secretary *will* be responsible for that portion of increases in tuition and other educational costs determined to be allowable.

With respect to the Secretary being involved in the establishment of tuitions, either directly or indirectly, the Secretary has no authority to set tuition levels. The Secretary concludes this area is strictly the domain of the institution. The law does provide the Secretary with the authority to determine, of those increases in tuition and other educational costs imposed by the institution, the amount of such increases for which he or she will be responsible for payment under those Title VII programs in which the Secretary commits the Federal Government to pay such costs.

Some respondents asserted that the Consumer Price Index is not an appropriate instrument to be applied as benchmark for acceptable increases in tuition. The basis for this position is that tuition is not a "price" (because it is less than cost), and in fact represents only a portion of educational financing. Tuition remains, for many schools, the most viable means of responding to increases in uncontrollable costs or decreases in other sources of funding and should not be tied to any fixed standard based on average increases in consumer products and services.

The Secretary agrees that tuition is usually based on the costs of operation that remain after other sources of revenue are applied to defray these costs and, therefore, does not represent a "price" for an equivalent product from year to year. However, since the Consumer Price Index is linked directly to fluctuations in the economy and since it is only to be used as an indicator and not as a price-fixing mechanism, the Secretary believes that this index is an appropriate device to identify unusual changes in tuition and other educational costs. Therefore, the Secretary has made no substantive change in this regulation in this regard.

Several respondents expressed concern that the burden that would be placed upon the institutions if another reporting system were required by the regulations would be excessive. Two respondents suggested using the data furnished to the American Association of Medical Colleges, which currently conducts an annual tuition survey.

The Secretary agrees that additional reporting requirements on the part of the institutions should be avoided. Therefore, the Secretary has decided that all data for the baseline year and subsequent years will be drawn and compiled from records now being sent to the Department in response to requirements of the scholarship programs mentioned in § 57.3201. Institutions must submit a justification for an increase only if the Secretary requests this information. Accordingly, § 57.3202 has been modified to reflect this change.

§ 57.3202(c)—Paragraph (c) of § 57.3202 states that the Secretary is responsible for increases in tuition and other educational costs for students under Title VII only if the same increase is charged to all students without regard to whether they are receiving support under the scholarship programs.

Several respondents stated that this criterion requiring equal charges to all categories of students be the only criterion used by the Department to determine allowable increases in tuition and other educational costs. The argument is advanced that further assessment of allowable tuition and educational costs is not necessary since schools are bound by circumstances to keep tuition and other expenses down to minimal levels. Repondents assert that non-scholarship students cannot bear the entire burden of the costs of a health professions education and, at most institutions, their share is currently near the maximum they can be expected to pay. Other respondents concluded that the criterion of equal charges to all similar students be accepted as the sole criterion for determining allowable charges since there would be too many inequities inherent in a system that looks at the way revenue from tuition and other student fees are expended. Since tuition income is a non-directed source of funds, institutions can apply these funds to costs more easily than funds from many other sources. The respondents contended that while student tuition and fee income might be expended in a category the Secretary denies as being unallowable, funds from sources other than the Federal Government expended in support of these students more than make up for such unallowable expenditures.

The Secretary agrees that the criterion of equal charges, equal rebates, and equal discounts to scholarship and non-scholarship students should be the absolute requirement to effect the intent of the law in those schools that do not enroll sufficient scholarship students so as to be influenced to increase tuition costs to obtain readily available federal funds. On the other hand, if scholarship student enrollment is of such a significant size that a school might increase tuition and educational costs for all students in order to obtain greater federal funding, the Secretary feels obligated to determine, on the basis of the criteria contained in § 57.3202(c), whether such costs are allowable increases in tuition and other educational costs for which he or she will be responsible.

Therefore, paragraph (a) of § 57.3202 will apply to all institutions that enroll scholarship students for which the Secretary is responsible for tuition and other educational costs, or a portion thereof. Paragraphs (b), (c), and (d) apply only to those schools where 25 percent or more of the students enrolled participate in Title VII scholarship programs. This level was selected because it applies only to those schools in which the significant amount of federal support may influence tuition levels, while exempting the majority of schools from additional reporting requirements. Only in those instances where the Secretary finds that increases in tuition and other educational costs exceed the current year's increases in the Consumer Price Index must the institutions that enroll greater than 25 percent scholarship students provide justification for such increases.

Section 57.3202 has been rewritten and reconstructed to reflect the above changes.

§ 57.3202(d)—There was a major concern that the Department did not institute a mechanism to allow the institutions to appeal an adverse decision of the Secretary. Any appeal mechanism would be inappropriate, since Congress gave the responsibility for making determinations under section 711 to the Secretary.

General and specific comments not directly addressed to the content of the regulations.—Several respondents felt that any disallowance in tuition or other educational costs would place an undue burden on the students. The students would be placed into a situation of either paying the costs differential between actual and allowable tuition and other educational costs or to discontinue their studies. The respondents contend that disagreements between the institutions and the Government regarding such matters should not directly affect the student.

To establish a disincentive for participation by the scholarship students is a grave concern of the Secretary. The previously mentioned changes and modifications of the existing regulations are largely a result of this concern. While these changes substantially reduce the number of students possibly involved to only those in institutions with more than 25 percent

scholarship student enrollment, the Secretary cannot deny these institutions their right to assess the student directly for those costs deemed by the Secretary to be inappropriate for payment. In regard to this specific point, one respondent contended that the "inevitable 'time lag' that will exist between a statement of the tuition increase by a particular institution and the ruling by the Secretary as to the reasonableness of such an increase will result in the inability of the student to determine if the educational expenses for a particular year will be met in sufficient time (for the student) to try to arrange alternative financial support * * *" In response to this concern, the Secretary will make every effort to work with those few schools that will enroll 25 percent or more of scholarship students far enough in advance of registration to insure that any differences of opinion between the Government and an affected institution will be resolved in time for the student to arrange for alternative financial support, if necessary.

Several respondents suggested the regulations be entirely withdrawn. This suggestion cannot be accepted, since the Secretary is required by section 711 to "* * * by regulation establish criteria for determining allowable increases in tuition and other educational costs for which he shall be responsible for payment. . . ."

Finally, in addition to changes made as a result of the comments received, several changes of an editorial or technical nature have been made to further clarify the regulations.

Accordingly, the new Subpart GG of 42 CFR Part 57 is added as set forth below.

Dated: July 8, 1980.

Julius B. Richmond,

Assistant Secretary for Health.

Approved: October 21, 1980.

Patricia Roberts Harris,

Secretary.

Subpart GG—Payment for Tuition and Other Educational Costs

Sec.

57.3201 To which program do these regulations apply?

57.3202 How will allowable increases be determined?

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended by 63 Stat. 35 (42 U.S.C. 216); sec. 711, Public Health Service Act, 90 Stat. 2253 (42 U.S.C. 292k).

Subpart GG—Payment for Tuition and Other Educational Costs

§ 57.3201 To which programs do these regulations apply?

The regulations in this subpart establish the criteria to be used in determining allowable increases in tuition and other educational costs for which the Secretary is responsible for payment under the following sections of the Public Health Service Act: The National Health Service Corps Scholarship Program (sec. 751) (42 U.S.C. 294t), the Indian Health Scholarship Program (sec. 757) (42 U.S.C. 294y–1), and Scholarships for First-Year Students of Exceptional Financial Need (sec. 758) (42 U.S.C. 294z). These programs are referred to herein as the "scholarship programs." The regulations apply to increases in tuition and other educational costs occurring after the school year beginning immediately before October 1, 1981.

§ 57.3202 How will allowable increases be determined?

(a) The Secretary is responsible for increases in tuition and other educational costs only if the same increase is charged to all students in the same category (for example, the same class year or place of residence) and without regard to whether the student is receiving support under the scholarship programs. A student participating in the scholarship programs may not be denied eligibility because of this participation for any discounts or rebates in tuition or other educational costs given to all other students in the same category at the institution.

(b) Institutions whose enrollment contains 25 percent or more students participating in the scholarship programs, and whose percentage increase in tuition and other educational costs in any school year exceeds the previous calendar year's average inflation rate as indicated by the *Consumer Price Index for All Urban Areas,* may be requested to provide the Secretary with detailed cost breakdowns justifying the increase.

(c) In the case of a school which is requested to provide the Secretary with cost increase justification under paragraph (b) of this section, the Secretary will be responsible for increases in tuition and other educational costs charged to students participating in the scholarship programs over the amount charged for the school year immediately preceding the increase only to the extent that they are: (1) attributable to uncontrollable costs, such as fuel costs, mandated cost-of-living increases in wages, salaries and fringe benefits, (2) attributable to costs of maintaining and improving the quality of the health professions education provided by the institution, such as hiring additional faculty to improve the faculty-student ratio, costs incurred in off-site training of students, and necessary improvements in teaching equipment. Increases in patient care and research costs are allowable as part of an increase in tuition and other educational costs only to the extent that they can be documented as clearly necessary to maintain and improve the quality of the education being supported; or (3) attributable to loss of revenue from other sources which was used solely for the maintenance and improvement of the educational system. These three categories of valid escalators of tuition and other educational costs are exclusive. However, the examples *within* each category are merely illustrative and not meant to be inclusive.

(d) If the Secretary, after reviewing all available data, information, and justifications submitted by an institution, determines that an increase in tuition and other educational costs is not allowable under the criteria described in paragraph (a) or (c) of this section, the Secretary will provide the affected institution a detailed written explanation of the basis of that determination. The Secretary will be responsible for that portion of tuition and other educational costs the Secretary determines to be allowable.

[FR Doc. 80-33546 Filed 10-28-80; 8:45 am]

BILLING CODE 4110-83-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

Transferring Authority for Common Carrier Matters Involving Public Coast Stations to the Private Radio Bureau; Correction

AGENCY: Federal Communications Commission.

ACTION: Correction to final rule.

SUMMARY: In the rule concerning the transfer of authority for common carrier matters involving public coast radio stations to the Private Radio Bureau, published in the **Federal Register** on April 15, 1980, at 45 FR 25398 there is an error in the amendment to 47 CFR 0.91. The error failed to include text adopted in the immediately preceding amendment to this section published on March 13, 1980, 45 FR 16191. This correction supersedes the correction published on October 1, 1980, 45 FR 64949. The corrected § 0.91 is published below.

EFFECTIVE DATE: April 18, 1980.

FOR FURTHER INFORMATION CONTACT: Robert P. De Young, Private Radio Bureau, (202) 632–7175.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

SUPPLEMENTARY INFORMATION:

In the Matter of amendment of Part 0 to transfer authority for common carrier matters involving public coast stations to the Private Radio Bureau.

Released: August 19, 1980.

1. In the Order in the above-captioned matter, FCC 80–179 released April 7, 1980, Section 0.91 of the rules was amended to reflect a transfer of function from the Common Carrier Bureau to the Private Radio Bureau (45 FR 25399, April 15, 1980).

2. Section 0.91 of the rules was also amended by Order, FCC 79–882, released March 7, 1980, to reflect the reorganization of the Common Carrier Bureau. Through inadvertence, our Order of April 7, amended the language of the rule prior to its having been amended by our Order of March 7, 1980 (45 FR 16191, March 13, 1980).

3. To correct this situation, Section 0.91 is amended as set forth in the attached appendix, to amend the currently effective language of the rule.

Federal Communications Commission.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303).

William J. Tricarico,

Secretary.

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

In § 0.91 the introductory text is revised to read as follows:

§ 0.91 Functions of the Bureau.

The Common Carrier Bureau develops, recommends and administers policies and programs for the regulation of services, facilities, rates and practices of entities (excluding public coast stations in the maritime mobile service) which furnish interstate or foreign communications service for hire—whether by wire, radio, cable or satellite facilities—and of ancillary operations related to the provisions or use of such services. The Bureau also regulates the rates, terms, and conditions for cable television and pole attachments, where such attachments are not regulated by a state and not provided by railroads or governmentally—or cooperatively owned utilities. The Bureau also performs the following specific functions:

* * * * *

[FR Doc. 80-33778 Filed 10-28-80; 8:45 am]

BILLING CODE 6712-01-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Fire Protection Schedules for Operating Nuclear Power Plants

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to temporarily suspend completion schedules for certain fire protection features in operating nuclear plants pending completion of its ongoing comprehensive fire protection rulemaking. This suspension is necessary because some NRC licensees are unable to meet fire protection implementation deadlines contained in licensed conditions. The Commission has found that fire protection measures already implemented give reasonable assurance of safety, and that no health and safety interest would be served by forcing certain licensees to shut down during the brief period between the license condition deadlines and the effectiveness of the final fire protection rule.

EFFECTIVE DATE: October 29, 1980.

FOR FURTHER INFORMATION CONTACT: William Shields, Office of Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, phone 301–492–8696.

SUPPLEMENTARY INFORMATION: On May 29, 1980, the Commission published in the **Federal Register** (45 FR 36082) a Notice of Proposed Rulemaking entitled "Fire Protection Program for Nuclear Plants Operating Prior to January 1, 1979." The proposed rule provided that all fire protection modifications except alternate or dedicated shutdown capability would be required to be implemented by November 1, 1980, unless the Commission approve an extension for good cause. This deadline was also stated in the Commission's May 27, 1980 Memorandum and Order on the Union of Concerned Scientists Petition for Emergency and Remedial Action. 11 NRC 707, 719.

Many of the commenters on the proposed rule contended that the November 1 deadline was unachievable. Moreover, much more time than was earlier anticipated has been required to prepare a final rule on fire protection. Although the final rule is near completion, and will incorporate an implementation schedule different from that in the proposed rule, it has not yet been published and in any event would not be effective until 90 days after publication.

Certain NRC licensees, however, are at present operating under license conditions or technical specifications thereto which include the November 1 deadline or other dates which will precede the effective date of the final rule. To the extent that these licensees have been unable to complete all of the fire protection measures to which these deadlines apply, continued operation would violate the license conditions. The violation would extend only until the final rule becomes effective, since the implementation schedule contained in the final rule will supersede inconsistent license conditions.

The Commission has determined, based upon a review of the entire record in this rulemaking, that relief from these license conditions is appropriate pending promulgation of the final rule on fire protection applicable to all NRC licensees. Extensive fire protection measures have already been implemented at all operating plants. The implementation schedule of the final rule will be uniform and comprehensive, and will apply to all operating plants including those with different schedules contained in license conditions. No public health and safety interest would be served by forcing only those licensees unable to meet deadlines preceding the effectiveness of the final rule to shut down for the brief interim. To the contrary, the fire protection measures already implemented give reasonable assurance that all operating nuclear plants may continue to operate safely even though the final rule will require additional fire protection measures at many plants.

The Administrative Procedure Act provides that a rule may be effective upon publication when that rule "grants or recognizes an exception or relieves a restriction." 5 U.S.C. 553(d)(1). This rule relieves certain NRC licensees from license conditions or technical specifications thereto in regard to fire protection implementation deadlines, and will therefore be effective upon the date of publication in the **Federal Register.** Furthermore, as noted above, the proposed rule stated that extensions from the November 1, deadline would be considered for good cause. Extensive public comment was received to the effect that the deadline was unrealistic

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and should be revised. Under these circumstances the Commission believes that there is good cause for an extension of the license condition schedules pending effectiveness of the final rule on fire protection.

The rule provides that all compliance dates contained in license conditions or technical specifications for required fire protection measures are suspended pending further action by the Commission. As is clear from the above discussion, that further action will be promulgation of the final rule on fire protection. The Commission intends that licensees affected by this rule should use best efforts to complete all required measures as soon as possible despite the suspension of the deadlines for this brief period.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and Sections 552 and 553 of Title 5 of the United States Code, notice is hereby given that the following amendment to Title 10, Chapter I, Code of Federal Regulations, Part 50, is published as a document subject to codification.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. A new Section 50.48 is added to read as follows:

§ 50.48 Fire protection schedules.

To the extent that any facility's license conditions or technical specifications incorporate compliance dates for modifications necessary to provide fire protection features proposed by a licensee and accepted by the NRC staff as satisfying the provisions of Appendix A to Branch Technical Position BTP/APCSB 9.5–1 and reflected in NRC staff Fire Protection Safety Evaluation Reports issued prior to the effective date of this rule, those dates are hereby suspended pending further action by the Commission.

(Sec. 161b, Pub. Law 83–703, 68 Stat. 948; Sec. 201, Pub. Law 93–438, 88 Stat. 1242 (42 U.S.C. 2201(b), 5841))

Dated at Washington, D.C. this 27th day of October 1980

For the Nuclear Regulatory Commission.

Samuel C. Chilk,

Secretary of the Commission.

[FR Doc. 80-33844 Filed 10-28-80; 10:14 am]

BILLING CODE 7590-01-M

Proposed Rules

Federal Register
Vol. 45, No. 211
Wednesday, October 29, 1980

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

Cherries Grown in Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland; Proposed Revision of Interest Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice invites comments on a proposal that would change the interest rate charged on delinquent assessments from one percent to one and one-half percent per month. The proposed action is designed to bring the interest rate more into line with current comparable rates.

DATES: Comments must be received not later than November 13, 1980.

ADDRESSES: Send two copies of comments to: Hearing Clerk, United States Department of Agriculture, Room 1077–South Building, Washington, D.C. 20250, where they will be made available for public inspection during business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975. The Draft Impact Analysis relative to this proposed action is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and is classified "not significant." The proposal is being published with less than a 60-day comment period because there is insufficient time between the date when the information upon which it is based became available and the effective date necessary to effectuate the declared policy of the act.

This proposal was unanimously recommended by the Cherry Administrative Board under § 930.41(b) of marketing Order No. 930 (7 CFR Part 930). The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The Board is the agency established under the order to administer its terms and conditions. Under the marketing order, the Board may charge interest on assessments not paid by handlers within a prescribed time after billing. The current interest charge of one percent per month on the unpaid balance has been in effect since 1972. This proposal would revise the charge to one and one-half percent per month to reflect a rate more in line with current comparable rates.

The proposal is to revise § 930.107(b) to read as follows:

§ 930.107 [Amended]

* * * * *

(b) Each handler shall pay interest of one and one-half percent per month on any unpaid balance beginning 30 days after date of billing.

Dated: October 24, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-33807 Filed 10-28-80; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 9

[Docket No. 80–16]

Fiduciary Powers of National Banks and Collective Investment Funds

AGENCY: Office of the Comptroller of the Currency, U.S. Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency ("Office") is proposing the amendment of its regulation covering the exercise of fiduciary powers and the management of collective investment funds by national banks (12 CFR Part 9) in order to clarify and modify certain provisions. Specifically, the Office proposes to amend provisions relating to the retention of fiduciary records, temporary investment of funds awaiting investment or distribution, collective investment of funds held by national banks as fiduciaries, brokerage placement practices, and revocations of trust powers. Comment is also requested on any unnecessary regulatory burdens created by the provisions of Part 9, and ways in which that regulation might otherwise be improved. The Office proposes to set specific 4-year retention periods for records required by this regulation, except in cases where Federal or state law establish longer periods.

As they relate to collective investment funds, the proposed amendments are intended to accomplish three goals. First, they will clarify the basis on which assets of such funds are to be valued. Second, by lowering the common trust funds' marketability requirements to a level determined to be more reasonable, they will remove an artifical impediment to the creation of real estate common trust funds and other special purpose funds for the investment of personal trust accounts, without significantly affecting the safety of the funds. Finally, the amendments would incorporate into the regulation current formal interpretations authorizing the valuation of assets of certain short-term investment funds on a cost basis, rather than market value, and lowering the liquidity requirements of these funds.

The remaining proposals would further amend Part 9 to (1) implement the new statutory authority of the Office to revoke national banks' fiduciary powers in instances of improper use or non-use of such powers; (2) require national banks to disclose their policies and practices concerning commissions paid for effecting securities transactions; (3) establish express time frames for the designation of and investment in time or savings deposits in the fiduciary bank of funds awaiting investment or distribution, and (4) eliminate the definition of "equity security" and clarify that of "trust department".

DATES: Written comments must be received on or before December 31, 1980.

ADDRESS: Comments should be sent to Docket No. 80–16, Communications Division, 3rd Floor, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, S.W., Washington, D.C. 20219, Attention: Marie Giblin. Telephone: (202) 447–1800. Comments will be available for inspection and photocopying.

FOR FURTHER INFORMATION CONTACT:
Dean E. Miller, Deputy Comptroller for Specialized Examinations, Office of the Comptroller of the Currency, 490 L'Enfant Plaza SW., Washington, D.C. Telephone: (202) 447-1731.

SUPPLEMENTARY INFORMATION: The principal author of this document is Dean E. Miller, Deputy Comptroller for Specialized Examinations, Office of the Comptroller of the Currency. [12 U.S.C. 92a; 15 U.S.C. 78bb(e)(2).]

Part 9 of the Comptroller's regulations (12 CFR Part 9) establishes the mechanism for acquisition and exercise of trust powers by national banks. In addition, Part 9 provides rules for the management of collective investment funds held by national banks. The following outlines the specifics of the proposed amendments:

Revocation of National Bank Fiduciary Powers

Under Title VII of the recently enacted Depository Institutions Deregulation and Monetary Control Act of 1980 (Pub. L. 96-221) the Comptroller is authorized to revoke the fiduiciary powers of a national bank in instances of their unlawful or unsound exercise or failure of the bank to exercise such powers for five consecutive years. The Office proposes to amend 12 CFR 9.17 to reflect this new authority.

Retention of Fiduciary Records

This Office proposes to amend 12 CFR 9.8 to require that the records required by that section be retained by the bank for a period of 4 years following the closing of an account, or as to records of pending litigation, the termination of that litigation, unless a longer period is established by applicable Federal or State law. The regulation presently does not specify the maximum period of time records must be kept.

Valuation of Collective Investment Funds Assets

The Office proposes to amend 12 CFR 9.18(b)(1) to designate market value as the basis on which all assets of national bank collective investment funds are to be valued. Since all assets of a collective investment fund currently must be valued at market value or fair value as determined in good faith by the fund trustee, this amendment merely would recognize existing practice. A further amendment to Section 9.18, discussed below, would create an exception to this valuation method for certain short-term investment funds.

Marketability Requirements of Common Trust Funds

In order to remove unnecessary impediments to the creation of real estate common trust funds and other special funds for the investment of personal trust accounts, the Office proposes to amend 12 CFR 9.18(b)(9)(iii). Under the existing regulation 40 percent of common trust fund assets must consist of cash or readily marketable investments after any admissions to, or withdrawals from, the funds are made. Since real estate is not a readily marketable investment, the current 40 percent requirement effectively precludes the establishment of a common trust fund consisting principally of real estate investment. The reduction of the requirement to 20 percent, as proposed by the Office, is expected to result in greater flexibility and responsiveness to the needs of national banks for innovative concepts in trust account collective funding while maintaining adequate fund liquidity.

Valuation of Short-term Investment Funds

In proposing an additional amendment to 12 CFR 9.18, the Office would permit a national bank to create short-term investment funds whose assets would be valued on the basis of cost, rather than market value. The amendment would codify a current opinion of the Office which confers this power under the discretionary authority of 12 CFR 9.18(c)(5).

In response to numberous requests from bankers and other interested parties, the Office also proposes to lower the liquidity requirement of short-term investment funds from 40 percent to 20 percent and, thus, to increase their yield. Experience indicates that a 20 percent liquidity factor would both produce a higher fund yield and adequately provide for fund withdrawals without necessitating the sale of fund assets before they mature.

The proposed amendment contains four basic requirements for establishing and maintaining a short-term investment fund valuing assets on a cost basis. First, except for 20% of the fund's value, investments must be limited to evidence of indebtedness payable on demand or which mature not more than 91 days from the date of purchase. Second, the difference between cost and anticipated principal receipt on maturity must be accrued on a straight-line basis. Third, assets of the fund must be held until maturity under usual circumstances. Finally, no entries or withdrawals from the fund can be made if they will reduce below 20 percent the value of the fund consisting of cash, demand obligations, and assets maturing on the fund's next business day.

Disclosure of Policies and Practices for Commissions Paid for Effecting Securities Transactions

Section 28(e) of the Securities Exchange Act of 1934 ("1934 Act"), 15 U.S.C. 78bb(e), was enacted as part of the Securities Acts Amendments of 1975, Pub. L. 94-29. Section 28(e)(1) relieves persons having investment discretion of liabilities they might otherwise incur if they cause an account they manage to pay brokerage commissions in excess of the commission another broker would have charged, if such persons determine in good faith that the amount of commission paid was reasonable in relation to the value of the brokerage or research services provided by the broker. Section (e)(2) empowers the Office to prescribe rules for national banks exercising investment discretion in customer accounts, requiring them to make such disclosure of their policies and practices for commissions paid to effect securities transactions as may be deemed necessary or appropriate in the public interest or for the protection of investors.

The Office proposes to add a new Section 9.5 to 12 CFR Part 9 to require a national bank to prepare and make available a disclosure statement for each account in which it excercises "investment discretion", as that term is defined in Section 3(a)(35) of the 1934 Act, 15 U.S.C. 78c(a)(35). The proposed format of the disclosure statement closely parallels requirements being considered by the Board of Governors of the Federal Reserve System for State-chartered banks which are members of the Federal Reserve System.

Specifically, the disclosure statement, as proposed, would (1) identify the general types of products and services, other than execution, for which a higher commission rate was paid than that which a competing broker may have charged for a similar transaction; (2) indicate the aggregate commission dollars allocated in payment of these services (including execution) during the previous calendar year stated both in dollars and as a percentage of total commission dollars paid during the previous calendar year; (3) indicate the extent to which any such soft dollar arrangements permit the trust institution to recapture commissions paid on a transaction basis in lieu of purchasing certain goods and services; and (4) describe the use to which these services are put and indicate generally how they benefit the managment of customers' accounts.

This Office believes that the brokerage placement services of national banks could influence the decision of many persons in selecting a particular bank to act in their behalf or their designated beneficiaries in effecting securities transactions. Accordingly, it appears that the public interest might be better served by requiring national banks which exercise investment discretion for the accounts of customers to prepare and make available to customers and other interested parties a disclosure statement setting forth the above information. To insure that interested persons are aware of the existence of the disclosure statement, the proposed amendment would require a notice of the right to receive the statement to be furnished to each prospective customer prior to the creation of an account relationship, and to existing customers and other interested parties on an annual basis. In order to minimize the cost burden associated with furnishing the notice for existing accounts, a national bank could provide the notice as part of or appended to the periodic statement of account transactions which it regularly furnishes to customers and other interested parties.

As an alternative to the proposed notice of availability, the regulation could require a disclosure statement to be furnished automatically to a person creating an account relationship and to other interested parties. However, any public benefit to be derived from a mass dissemination of the statement would have to be weighed against the associated cost burden. Moreover, because the types of accounts administered by banks vary widely in terms of customer objectives and the degree of investment management orientation, the office believes it would be inappropriate to assume that all customers would have an interest in this type of information.

Funds Awaiting Investment or Distribution

12 CFR 9.10(a) requires that funds held in a fiduciary capacity by a national bank shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the account. 12 CFR 9.10(b) provides that funds held in trust which are awaiting investment or distribution may, unless prohibited by the instrument creating the trust or local law, be deposited in the commercial or savings or other department of the bank, provided certain securities are pledged by the bank as collateral.

It is proposed to amend those provisions so as to permit such self deposits in excess of 60 days only if (1) specifically authorized in advance by the instrument creating the relationship, or by prior court order or local law; (2) prior consent is obtained from the party having power to terminate the account or if there is no such party, all parties holding vested beneficial interests in the account after full disclosure of all relevant facts, including the availability and rate of return of alternative investments outside the bank; or (3) the bank includes in the file of each account so invested a written justification, updated at least once every 30 days, specifying in detail why the subject funds are properly designated as awaiting investment or distribution and are not invested in alternative investments outside the bank.

In addition, the proposed amendment would require that after 365 days, fiduciary funds could only remain deposited in the bank pursuant to qualification (1) or (2), above.

It is recognized that this proposal touches upon subjects which are involved in a case pending in the Superior Court of the State of California for the County of Los Angeles, styled *Van de Kamp* v. *Bank of America*. By publishing this proposal for comment the Comptroller should not be viewed as expressing any opinion as to the facts of that case or the merits of the legal arguments being advanced. Rather, this proposal constitutes no more than a request for comment as to whether it involves a desirable rule for national banks.

Amendments to Definitional Section of 12 CFR Part 9

The definition of "equity security" in 12 CFR 9.1(b) is being deleted because that term no longer appears in Part 9. The proposal also would amend the definition of "trust department" in 12 CFR 9.1(k) to make clear that a national bank will be subject to the provisions of Part 9 even if it assigns the performance of its fiduciary responsibilities to persons or organizations that are not otherwise affiliated with the bank.

Requests for Comments on Additional Amendments to Part 9

The Office requests comments on all proposals discussed, as well as other provisions of 12 CFR Part 9 generally. Comments are particularly solicited as to cost of matters proposed.

Comments are particularly invited on two additional amendments. The first relates to real estate funds for Employees Benefit Accounts currently authorized by Office opinion under 12 CFR 9.18(c)(5). At present, if the real estate fund requires over 90 days prior notice for withdrawals, not more than 10 percent of the assets of the Employee Benefit Plan may be invested in the fund. The Office is considering the formal codification of this opinion and is exploring whether the 10 percent limitation should be increased in any such regulation.

The second relates to the notice of availability of the disclosures made in accordance with proposed Section 9.5. In proposing the requirement that a notice be furnished to prospective customers before creation of an account relationship, the office recognizes that, in the case of estates and testimentary trusts, the account relationship does not come into existence until after death of the customer and that often the bank may not be aware, prior to the death of the custmer, that it has been named to serve in a fiduciary capacity. Accordingly, an exemption for such accounts is being considered. By the same token, there is some question whether any useful purpose is served by requiring such notice where the account is created by court order, such as in the case of guardianship accounts for minors or incompetents.

Proposed Amendments

It is proposed to amend 12 CFR Part 9 as follows:

1. The authority citation for Part 9 reads as follows:

Authority: 12 U.S.C. 92a; 15 U.S.C. 78bb(e)(2).

2. 12 CFR 9.1 would be amended by revoking and reserving paragraph (b) and revising paragraph (k), and would read as follows:

§ 9.1 Definitions.

* * * * *

(b) (Reserved)

* * * * *

(k) "Trust department" means the person or persons to whom are assigned the performance of fiduciary undertaking of the bank, regardless of whether such person or persons are officers or employees of the bank, affiliates of the bank, or organizations which are not affiliated with the bank.

3. 12 CFR 9.5 would be added, to read as follows:

§ 9.5 Disclosure statement of policies and practices with respect to commissions paid for effecting securities transactions.

(a) Each national bank exercising investment discretion, as defined in 12 CFR 12.2(c), for the accounts of customers, shall prepare a written disclosure statement setting forth the information contained in paragraph (c) below and shall revise such statement at any time that there is a material change

in the information required to be contained therein.

(b) Notice of the right to obtain the disclosure statement upon request and without charge, indicating the date on which the disclosure statement was prepared or last revised, shall be furnished with respect to any account as to which the bank exercises investment discretion:

(1) To each person creating the account relationship not later than the time of the creation of the account relationship; and

(2) At least annually, to any person to whom a statement of transactions in the account is required to be furnished by terms of the account contract or by local law.

(c) The disclosure statement shall contain the following information: (1) The general types of products and services, other than execution, for which a higher commission rate was paid than that which a competing broker may have charged for a similar transaction;

(2) The aggregate commission dollars allocated in payment of these services or products (including execution) during the previous calendar year stated both in dollars and as a percentage of total commission dollars paid during the previous calendar year;

(3) The extent to which any such soft dollar arrangements permit the trust institution to recapture commissions paid on a transaction basis in lieu of purchasing certain goods and services; and

(4) The use to which these services are put and generally how they benefit the management of customers' accounts.

4. It is proposed to amend 12 CFR 9.8 by adding a new paragraph (c), which would read as follows:

§ 9.8 Books and accounts.

* * * * *

(c) A national bank is not required to retain the records prescribed by this section for a period in excess of 4 years from the termination of the account relationship or litigation, respectively, unless applicable Federal or state law specifically prescribes a longer period.

5. It is proposed to amend 12 CFR 9.10 by adding new paragraphs (c), (d) and (e), which would read as follows:

§ 9.10 Funds deposited or invested in fiduciary bank.

* * * * *

(c) Funds held as fiduciary which a national bank designates as "awaiting investment or distribution" may, unless prohibited by local law, court order or the instrument creating the relationship, be deposited in the bank at a rate of return comparable to that available through investment in other trust quality short-term investment media in accordance with 9.10(b) for 60 days without regard to subsection (d) of this section.

(d) After 60 days, funds held as fiduciary may remain deposited in the bank only if:

(1) specifically authorized in advance by the instrument creating the relationship, or by prior court order or local law; or

(2) prior consent is obtained from the party having the power to terminate the account, or if there is no such party, the holders of all vested beneficial interests in the account after full disclosure of all relevant facts, including the availability and approximate rate of return of investments outside the bank; or

(3) the bank includes in the file of each such account a written justification, updated at least once every 30 days, specifying in detail why the subject funds are properly designated as "awaiting investment or distribution."

(e) After 365 days, funds held as fiduciary may remain deposited in the bank only if conditions (1) or (2) of the previous subsection are met.

6. 12 CFR 9.17 would be amended to read as follows:

§ 9.17 Surrender or revocation of fiduciary powers.

(a) Any national bank which has been granted the right to exercise fiduciary powers and which desires to surrender such rights shall file with the Comptroller of the Currency a certified copy of the resolution of its board of directors signifying such desire. Upon receipt of such resolution, the Comptroller shall make an investigation and if satisfied that the bank has been discharged from all fiduciary duties which it has undertaken, shall issue a certificate to such bank certifying that it is no longer authorized to exercise fiduciary powers.

(b) If, in the opinion of the Comptroller, a national bank is unlawfully or unsoundly exercising, or has unlawfully or unsoundly exercised, or has failed for a period of five consecutive years to exercise its fiduciary powers, or otherwise fails or has failed to comply with the requirements set forth in 12 U.S.C. § 92a, the Comptroller may, in accordance with the provisions of that section, revoke the fiduciary powers granted to the bank.

7. In 12 CFR § 9.18, paragraph (b)(1) would be amended by inserting the phrase "at market value" between the words "valuing" and "assets" and would read as follows:

§ 9.18 Collective investment.

* * * * *

(b) * * *

(1) Each collective investment fund shall be established and maintained in accordance with a written plan (referred to herein as the Plan) which shall be approved by a resolution of the bank's board of directors and filed with the Comptroller of the Currency. The Plan shall contain appropriate provisions not inconsistent with the rules and regulations of the Comptroller of the Currency as to the manner in which the fund is to be operated, including provisions relating to the investment powers and a general statement of the investment policy of the bank with respect to the fund; the allocation of income, profits and losses; the terms and conditions governing the admission or withdrawal of participations in the fund; the auditing of accounts of the bank with respect to the fund; the basis and method of valuing at market value assets in the fund, setting forth specific criteria for each type of asset; the minimum frequency for valuation of assets of the fund; the period following each such valuation date during which the valuation may be made (which period in usual circumstances should not exceed 10 business days); the basis upon which the fund may be terminated; and such other matters as may be necessary to define clearly the rights of participants in the fund. A copy of the Plan shall be available at the principal office of the bank for inspection during all banking hours, and upon request a copy of the Plan shall be furnished to any person.

8. In 12 CFR § 9.18, paragraph (b)(9)(iii) would be amended by changing the number "40" to "20", and would read as follows:

§ 9.18 Collective investment.

* * * * *

(b) * * *

(9) * * *

(iii) Any bank administering a collective investment fund shall have the responsiblity of maintaining in cash and readily marketable investments such part of the assets of the fund as shall be deemed to be necessary to provide adequately for the needs of participants and to prevent inequities between such participants, and if prior to any admissions to or withdrawals from a fund the bank shall determine that, after effecting the admissions and withdrawals which are to be made, less than 20 percent of the value of the remaining assets of the collective fund would be composed of cash and readily marketable investments, no admissions to or withdrawals from the fund shall be permitted as of the valuation date upon which such determination is made: *Provided*, that ratable distribution upon all participations shall not be so prohibited in any case.

9. 12 CFR § 9.18(b) would be amended by adding a new subparagraph (15), reading as follows:

§ 9.18 Collective investment.

* * * * *

(b) * * *

(15) Short-term investment funds established under paragraph (a) of this section may be operated on a cost, rather than market value, basis for purposes of admissions and withdrawals, if the plan of operation provides:

(i) Investments must be limited to bonds, notes or other evidences of indebtedness which are payable on demand (including variable amount notes) or which have a maturity date not exceeding 91 days from date of purchase. However, 20 percent of the value of the fund may be invested in longer term obligations;

(ii) The difference between the cost and anticipated principal receipt on maturity must be accrued on a straight-line basis;

(iii) Assets of the fund must be held until maturity under usual circumstances; and

(iv) After effecting the admissions and withdrawals, not less than 20 percent of the value of the remaining assets of the fund must be composed of cash, demand obligations and assets that will mature on the fund's next business day.

Dated: October 22, 1980.

John G. Heimann,

Comptroller of the Currency.

Marie T. Giblin,

Office of The Comptroller of the Currency, Communicotions Division.

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FEDERAL RESERVE SYSTEM

12 CFR Part 206

[Reg. F; Docket No. R-0327]

Securities of Member State Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: Pursuant to its authority under section 12(i) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78(i)) ("Act"), the Board proposes to amend its Regulation F (12 CFR Part 206) in order that it will be substantially similar to comparable rules and regulations issued by the Securities and Exchange Commission. This proposal is intended to comply with section 12(i) of the Act, which requires that the Board either conform its Regulation F to any changes made by the Commission in its relevant rules and regulations, or publish reasons why the Board has determined that such changes are not necessary or appropriate. The proposed changes, which in all major respects are consistent with recent amendments to the rules of the Commission, concern: (A) Safe Harbor from Liability for Projections, (B) Corporate Governance, (C) Dividend Reinvestment Plans, (D) Tender Offers, (E) Issuer Tender Offers, and (F) Going Private Transactions.

DATES: Comments must be received by December 10, 1980.

ADDRESS: Interested persons are invited to submit written data, views or arguments regarding the proposed regulation to the Office of the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. All material submitted should include the docket number R-0327. All written comments will be made available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Richard M. Whiting, Senior Attorney, Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202/452-3779).

SUPPLEMENTARY INFORMATION: The Federal Reserve Board would make the following changes:

A. Safe Harbor From Liability for Projections

On June 25, 1979, the Commission adopted a safe harbor rule for projections. SEC Releases No. 33-6084 and 34-15944, 44 FR (July 2, 1979). The rule provides a safe harbor from applicable liability of the Federal securities laws for statements that contain or relate to projections made in filings with the Commission or in annual reports to shareholders. The rule was adopted to further the Commission's goal of encouraging the voluntary disclosure of projections and forward-looking information both in Commission filings and in general. The Commission's adoption of the rule is reflected in additions and deletions to Parts 230, 240, 250 and 260 of Title 17 of the Code of Federal Regulations.

The Commission's rule applies to forward-looking statements that are made in a document filed with the Commission or in an annual report to shareholders and to certain statements relating to such forward-looking statements that are made prior to or subsequent to the date that the document was filed or the annual report was made publicly available.

The Commission's definition of forward-looking statement is limited to the following four types of statements: (1) A statement containing a projection of revenues, income (loss), earnings (loss) per share, capital expenditures, dividends, capital structure or other financial items; (2) a statement of management's plans and objectives for future operations; (3) a statement of future economic performance contained in management's discussion and analysis of the summary of earnings; and (4) disclosed statements of the assumptions underlying or relating to any of the statements described in (1), (2), or (3) above.

Under the Commission's rule, any such forward-looking statements made by or on behalf of an issuer or by an outside reviewer retained by the issuer shall be deemed not to be false or misleading under the Federal securities laws unless it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith. The burden of proof in establishing that such a forward-looking statement is false or misleading falls upon the party making such a claim; unless proven otherwise, it is presumed that such statements are not false or misleading. However, the Commission has indicated that, depending upon the circumstances, there is a duty to make full and prompt disclosure of material facts, both favorable and unfavorable, where management knows or has reason to know that its earlier statements no longer have a reasonable basis. This duty to correct exists whether the incorrect facts or assumptions are found to be false or misleading from the outset or become so by reason of events occurring subsequent to the statement.

The protection afforded by the Commission's safe harbor rule is available only to reporting companies, with the exception of nonreporting companies including forward-looking statements in registration statements filed under the Securities Act, such as first-time registrants. Only reporting companies that have filed their most recent annual reports (Form 10-K) with the Commission are eligible for safe harbor protection. The Commission's rule does not apply to statements made by or on behalf of investment companies registered under the Investment Company Act of 1940.

Finally, in a related action, the Commission withdrew from its rules the reference to prediction of dividends as a

possible example of a false or misleading statement.

The Board believes it appropriate to adopt a similar rule for the reasons set out in SEC Releases No. 33–6084 and 34–15944 and, therefore, proposes to amend §§ 206.3 and 206.5 of Regulation F as set forth below.

B. Corporate Governance

On November 21, 1979, the Commission adopted rule and schedule amendments to its Regulation 14A (17 CFR 240.14e–1 *et seq.*) and Schedule 14A (17 CFR 240.14a–101) which concern shareholder communications, shareholder participation in the corporate electoral process, and corporate governance generally. The amendments are intended to provide greater opportunities for shareholders to exercise their right of suffrage and to obtain information and advice with respect to matters on which they vote. SEC Release 34–16356, 44 FR 68764, (November 21, 1979).

These amendments require that shareholders be provided with a form of proxy that (a) indicates whether the proxy is solicited on behalf of the issuer's board of directors, (b) permits shareholders to withhold authority to vote for each nominee for election as a director, and (c) provides a means by which shareholders are afforded an opportunity to abstain from matters referred to in the proxy card as to which shareholders have an opportunity to vote, other than elections to office. The Commission also adopted a rule requiring that shareholders be provided, under certain circumstances, with information concerning the votes cast for and withheld from incumbent directors. Additionally, the Commission adopted a rule that requires disclosure of the date by which shareholder proposals must be received in order to be included in the issuer's proxy statement. Finally, the Commission adopted rule amendments that exempt from the informational and filing requirements of the proxy rules the furnishing of proxy voting advice by financial advisors.

The Board proposes to adopt these changes in substantially the same form and to incorporate them in § 206.5 of its Regulation F (12 CFR 206.5) and in its Form F–5 (12 CFR 206.51).

C. Dividend Reinvestment Plans

On May 14, 1980 the Commission adopted a new rule that exempts from the reporting and liability provisions of Section 16 of the Securities Exchange Act of 1934 the acquisition pursuant to dividend reinvestment plans by officers, directors and ten per cent beneficial shareholders of equity securities registered under the Act. SEC Release No. 34–16806, 45 FR 33957 (May 21, 1980). The purpose of this rule is to enable officers, directors and ten per cent beneficial shareholders to participate in such dividend reinvestment plans on the same basis as other shareholders. Without this rule, such officers, directors and shareholders participating in most dividend reinvestment plans would be unable to sell any equity securities of their bank without incurring liability for imputed trading profits under section 16(b) of the Act. Accordingly, the Board has determined to alleviate this encumbrance by adding a substantially similar exemption as paragraph (j) to § 206.6 and renumbering the subsequent paragraphs of § 206.6 of Regulation F.

D. Tender Offers

The Commission adopted rules and regulations pertaining to tender offers. SEC Release No. 34–16806, 44 FR 70326 (December 6, 1979). Certain of the rules regarding specific filing, delivery and disclosure requirements, optional dissemination provisions and substantive provisions relate ot tender offers subject to section 14(d)(1) of the Securities Exchange Act of 1934. Other of the rules concerning certain anti-fraud provisions are applicable to all tender offers. The Commission stated that these amendments were necessary to insure a balance between the interests of the person making a tender offer (the "bidder") and the management of the companies whose securities are sought (the "issuer") while providing protection to shareholders making investment decisions.

The rules concerning the bidder relate to filing requirements, dissemination requirements, disclosure requirements and substantial provisions. The operation of these rules is triggered by the date of commencement of the tender offer, which is a defined term. The bidder will hand deliver its initial filing and any amendments to the issuer and any competing bidder and a competing bidder is similarly required to hand deliver its enclosed filing to any previous bidder whose tender offer has not expired. The rules authorize an alternative means of dissemination, long-form or summary publication on the use of shareholder lists. The tender offer must remain open for a minimum of 20 business days and 10 business days after an increase in the consideration offered. The time for exercising withdrawal rights were increased to an initial period of 15 business days, with an additional period of 10 business days, to run concurrently in the case of a competing tender offer.

The issue must disclose its position with respect to a tender offer within 10 days of its commencement and file a schedule with the Commission. Additionally, if the bidder has determined to use the company's stockholder list, the issuer must mail the materials or provide a copy of the list to the bidder.

The Board has determined to adopt regulations subsequently similar to those of the Commission. Accordingly, a new section 206.8 would be added and §§ 206.4 and 206.53 of Regulation F would be amended.

E. Issuer Tender Offers

On August 16, 1979, the Commission adopted a new rule and schedule (17 CFR 240.13e–4 and 240.13e–101) relating to tender and exchange offers by certain publicly held issuers (and affiliates) for their own securities ("issuer tender offers"). The rule defines certain fraudulent, deceptive and manipulative acts or practices in connection with such offers, and prescribes filing, disclosure, dissemination and other requirements as means reasonably designed to prevent such acts and practices. SEC Re. No. 34–16112, 44 FR 49406 (August 22, 1979.)

The Board is not proposing to amend Regulation F to conform it to the Commission's "issuer tender offer" regulation at this time. The Board must approve any reduction in the amount, or the retirement of any part of a member bank's common or preferred capital stock pursuant to section 9 of the Federal Reserve Board Act. 12 U.S.C. 324(i) (1970). The Board also notes that issuer tender offers are very rare among member banks. Therefore, instead of adopting substantially similar regulations to Rule 13e–4 and Schedule 13E–101, the Board will withhold its approval to the reduction in the amount or the retirement of any part of a member bank's equity securities registered under Section 12 of the Act unless the requirements of rules 13e–4 and 13e–101 are met in all material respects.

While this policy is effective immediately, the Board specifically invites comments on whether this approach is preferable to adopting a new regulation and scheduled as a means of protecting investors from fraudulent, deceptive, or manipulative acts or practices in connection with "issuer tender offers."

F. Going Private Transactions

On August 2, 1979, the SEC adopted a new rule and schedule (17 CFR 240.13e–3 and 240.13e–100) relating to "going private" transactions by public companies and their affiliates. The rule and schedule prohibit fraudulent, deceptive and manipulative acts or practices in connection with "going private" transactions and prescribe new filing, disclosure and dissemination requirements as a means reasonably designed to prevent such acts and practices. SEC Rel. No. 34–16075, 44 FR 46736 (August 8, 1979). A "going private" transaction is defined by Rule 13e–3.

The Board is not proposing to amend Regulation F to conform it to the Commission's "going private" regulations at this time. The Board notes that its supervisory powers under the Federal Reserve Act make those member bank issuers with classes of equity securities registered pursuant to Section 12 subject to more extensive regulatory oversight than most issuers subject to Commission's jurisdiction. Pursuant to Section 9 of the Federal Reserve Act, the Board must approve substantially all of the corporate transactions involving member banks subject to Rule 13e–3. Instead of adopting the Commission's "going private" regulations the Board will withhold its approval to any Rule 13e–3 type corporate transaction unless the requirements of rules 13e–3 and 13e–100 are met in all material respects.

Although this policy is effective immediately, the Board specifically invites comments on whether this approach is preferable to adopting a new regulation and schedule as a means of protecting investors from fraudulent, deceptive or manipulative acts or practices in connection with "going private" transactions.

Proposed Amendments

(1) Section 206.3 of Regulation F would be amended by revising the title of the section and by adding paragraph (d) to read as follows:

§ 206.3 Inspection and publication of information filed under the act and safe harbor from liability for forward-looking statements.

* * * * *

(d) *Safe Harbor from Liability for Forward-Looking Statements.* (1) A statement within the coverage of paragraph (d)(2) of this section which is made by or on behalf of a bank filing any statement, report, or document under the Act or by an outside reviewer retained by the bank shall be deemed not to be a fraudulent statement (as defined in paragraph (d)(4) of this section), unless it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith.

(2) Paragraph (d)(1) of this section applies to (i) a forward-looking statement (as defined in paragraph (d)(3) of this section) made in a document filed with the Board or in an annual report to shareholders meeting the requirements of § 206.5(c) of Regulation F (12 CFR 206.5(c)); (ii) a statement reaffirming the forward-looking statement referred to in paragraph (d)(2)(i) of this section subsequent to the date the document was filed or the annual report was made publicly available; or (iii) a forward-looking statement made prior to the date the document was filed or the date the annual report was made publicly available if such forward-looking statement is affirmed in a filed document or annual report made publicly available within a reasonable time after the making of such forward-looking statement.

(3) For the purpose of this subsection, the term "forward-looking statement" shall mean and shall be limited to:

(i) A statement containing a projection of revenues, income (loss), earnings (loss) per share, capital expenditures, dividends, capital structure or other financial items;

(ii) A statement of management's plans and objectives for future operations;

(iii) A statement of future economic performance contained in management's discussion and analysis of the summary of earnings as called for by general instructions (g) and (h) to the Quarterly Report on Form F–4; and

(iv) Disclosed statements of the assumptions underlying or relating to any of the statements described in paragraph (d)(3) (i), (ii), or (iii) of this section.

(4) For the purpose of this regulation the term "fraudulent statement" shall mean a statement which is an untrue statement of a material fact, a statement false or misleading with respect to any material fact, an omission to state a material fact necessary to make a statement not misleading or which constitutes the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business, or an artifice to defraud, as those terms are used in the Securities Act of 1934 or the regulations promulgated thereunder.

(5) Notwithstanding any of the provisions of paragraphs (d)(1) through (4) of this section, this rule shall apply only to forward-looking statements made by or on behalf of a bank, if, at the time such statements are made or reaffirmed, the bank is subject to the reporting requirements of the Securities Exchange Act of 1934 and has filed its most recent annual report with the Board on Form F–2.

(2) In § 206.5, paragraph (b)(5) and (e)(6) are added, and paragraph (d)(1) and (2) are revised to read as follows:

§ 206.5 Proxy statements and other solicitations under Section 14 of the Act.

* * * * *

(b) *Exceptions.* The requirements of this § 206.5 shall not apply to the following:

* * * * *

(5) The furnishing of proxy voting advice by any person (the "advisor") to any other person with whom the advisor has a business relationship, if:

(i) The advisor renders financial advice in the ordinary course of his business;

(ii) The advisor discloses to the recipient of the advice any significant relationship with the bank or any of its affiliates, or a shareholder proponent of the matter on which advice is given, as well as any material interest of the advisor in such matter;

(iii) The advisor receives no special commission or remuneration for furnishing the proxy voting advice from any person other than a recipient of the advice and other persons who receive similar advice under this subsection; and

(iv) The proxy voting advice is not furnished on behalf of any person soliciting proxies or on behalf of a participant in an election subject to the provisions of § 206.5(i).

Note.—The solicitations excepted by paragraphs (b)(1) and (b)(5) remain subject to the prohibitions against false and misleading statements in § 206.5(h).

* * * * *

(d) *Requirements as to proxy.* (1) the form of proxy (i) shall indicate in bold-face type whether or not the proxy is solicited on behalf of the bank's board of directors or, if provided other than by a majority of the board of directors, shall indicate in bold-face type the identity of the persons on whose behalf the solicitation is made, (ii) shall provide a specifically designated blank space for dating the proxy, and (iii) shall identify clearly and impartially each matter or group of related matters intended to be acted upon whether proposed by the bank or by security holders. No reference need be made, however, to matters as to which discretionary authority is conferred under paragraph (d)(3) of this section.

(2)(i) Means shall be provided in the form of proxy whereby the person solicited is afforded an opportunity to specify by boxes a choice between approval or disapproval of, or

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abstention with respect to, each matter or group of related matters referred to therein as intended to be acted upon, other than elections to office. A proxy may confer discretionary authority with respect to matters as to which a choice is not so specified by the security holder if the form of proxy states in bold-faced type how the shares represented by the proxy are intended to be voted in each such case.

(ii) A form of proxy which provides for the election of directors shall set forth the names of persons nominated for election as directors. Such form of proxy shall clearly provide any of the following means for secruity holders to withhold authority to vote for each nominee:

(A) A box opposite the name of each nominee which may be marked to indicate that authority to vote for such nominee is withheld; or

(B) An instruction in bold-face type which indicates that the security holder may withhold authority to vote for any nominee by lining through or otherwise striking out the name of any nominee; or

(C) Designated blank spaces in which the shareholder may enter the names of nominees with respect to whom the shareholder chooses to withhold authority to vote; or

(D) Any other similar means, provided that clear instructions are furnished indicating how the shareholder may withhold authority to vote for any nominee.

(iii) Such form of proxy also may provide a means for the security holder to grant authority to vote for the nominees set forth, as a group: *Provided,* That there is a similar means for the security holder to withhold authority to vote for such group of nominees. Any such form of proxy which is executed by the security holder in such manner as not to withhold authority to vote for the election of any nominee shall be deemed to grant such authority: *Provided,* That the form of proxy so states in bold-face type.

Instructions. 1. Paragraph (ii) does not apply in the case of a merger, consolidation or other plan if the election of directors is an integral part of the plan.

2. If applicable State law gives legal effect to votes cast against a nominee, then in lieu of, or in addition to, providing a means for security holders or withhold authority to vote, the bank should provide a similar means for security holders to vote against each nominee.

(e) * * *

(6) All proxy statements shall disclose, under an appropriate caption, the date by which proposals of security holders intended to be presented at the next annual meeting must be received by the bank for inclusion in the bank's proxy statement and form of proxy relating to that meeting, such date to be calculated in accordance with the provisions of § 206.5(k)(iii)(A). If the date of the next annual meeting is subsequently advanced by more than 30 calendar days or delayed by more than 90 calendar days from the date of the annual meeting to which the proxy statement relates, the bank shall, in a timely manner, inform security holders of such change, and the date by which proposals of security holders must be received, by any means reasonably calculated to so inform them.

* * * * *

(3) Section 206.5(h)(1) of Regulation F would be amended by deleting the reference to predictions of future earnings and dividends as possible examples of false and misleading statements.

(4) In § 206.5 paragraphs (l) and (m) would be deleted and those paragraph designations would be reserved.

(5) In § 206.6, a new paragraph (j) would be added as follows and present paragraphs (j) through (u) are redesignated as paragraphs (k) through (v).

§ 206.6 "Insiders" securities transaction and reports under section 16 of the Act.

* * * * *

(j) *Exemption for acquisitions under dividend reinvestment plans.* Any acquisition of securities resulting from reinvestment of dividends or interest shall be exempt from section 16 if it is made pursuant to a plan providing for the regular reinvestment in such securities of dividends payable thereon or of dividends or interest payable on other securities of the same bank: *Provided,* That the plan is made available on the same terms to all holders of securities of the class on which the reinvested dividends or interest are being paid.

(l)–(m) [Reserved]

(6) A new section, §206.6, would be added to Part 206 to read as follows:

§ 206.8 Tender Offers.

(a) *Scope of and definitions applicable to this section.*—(1) *Scope.* (i) No person, directly or indirectly by use of the mails or any means or instrumentality of interstate commerce or any facility of a national securities exchange or otherwise, shall make a tender offer for, or a request or invitation for tenders of, any class of equity security which is registered pursuant to Section 12 of the Act, of a State member bank if, after consummation thereof, such person would, directly or indirectly, be the beneficial owner of more than 5 per cent of such class, unless on the date of the commencement of the tender offer such person has complied with the requirements of paragraph (c)(1) of this section. The definition of beneficial owner set forth in § 206.4(h)(5)(i) for the purposes of Section 13(d)(1) of the Act shall apply also for purposes of Section 14(d)(1) of the Act.

(2) *Definitions.* Unless the context otherwise requires, all terms used in this section have the same meaning as in the Act and in § 206.2 promulgated thereunder. In addition, for purposes of sections 14(d) and 14(e) of the Act and this section the following definitions apply:

(i) The term "bidder" means any person who makes a tender offer or on whose behalf a tender offer is made;

(ii) The term "subject bank" means any State member bank which is the issuer of securities which are sought by a bidder pursuant to a tender offer;

(iii) The term "security holders" means holders of record and beneficial owners of securities which are the subject of a tender offer;

(iv) The term "beneficial owner" shall have the same meaning as that set forth in § 206.4(h)(5)(i): *Provided, however,* That, except with respect to paragraphs (c) and (i)(4) of this section and Item 6 of Form F–13, the term shall not include a person who does not have or share investment power or who may be deemed to be a beneficial owner by virtue of his right to acquire beneficial ownership as set forth in § 206.4(h)(5)(i).

(v) The term "tender offer material" means:

(A) The bidder's formal offer, including all the material terms and conditions of the tender offer and all amendments thereto;

(B) The related transmittal letter (whereby securities of the subject bank which are sought in the tender offer may be transmitted to the bidder or its depository) and all amendments thereto; and

(C) Press releases, advertisements, letters and other documents published by the bidder or sent or given by the bidder to security holders which, directly or indirectly, solicit,invite or request tenders of the securities being sought in the tender offer;

(vi) The term "business day" means any day, other than Saturday, Sunday or a Federal holiday, and shall consist of the time period from 12:01 a.m. through 12:00 midnight Eastern time. In computing any time period under section 14(d)(5) or section 14(d)(6) of the Act or under 12 CFR Part 206 the date of the event which begins the running of such time period shall be included *except that* if such event occurs in other than a business day such period shall begin to run on an shall include the first business day thereafter; and

(vii) The term "security position listing" means, with respect to securities of any issuer held by a registered clearing agency in the name of the clearing agency or its nominee, a list of those participants in the clearing agency on whose behalf the clearing agency holds the bank's securities and of the participants' respective positions in such securities as of a specified date.

(b) *Date of commencement of a tender offer.—(1) Commencement.* A tender offer shall commence for the purposes of section 14(d) of the Act and the rules promulgated thereunder at 12:01 a.m. on the date when the first of the following events occurs:

(i) The long-form publication of the tender offer is first published by the bidder pursuant to paragraph (d)(1)(i) of this section.

(ii) The summary advertisement of the tender offer is first published by the bidder pursuant to paragraph (d)(1)(i) of this section.

(iii) The summary advertisement or the long-form publication of the tender offer is first published by the bidder pursuant to paragraph (d)(1)(i) of this section.

(iv) Definitive copies of a tender offer, in which the consideration offered by the bidder consists of securities registered pursuant to the Securities Act of 1933, are first published or sent or given by the bidder to security holders; or

(v) The tender offer is first published or sent or given to security holders by the bidder by any means not otherwise referred to in subparagraphs (1)(i) through (1)(iv) of this paragraph.

(2) *Public announcement.* A public announcement by a bidder through a press release, newspaper advertisement or public statement which includes the information at subparagraph (3) of this paragraph with respect to a tender offer in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 shall be deemed to constitute the commencement of a tender offer under subparagraph (1)(v) of this paragraph *except that* such tender offer shall not be deemed to be first published or sent or given to security holders by the bidder under subparagraph (1)(v) or this paragraph on the date of such public announcement if within five business days of such public announcement, the bidder *either:*

(i) Makes a subsequent public announcement stating that the bidder has determined not to continue with such tender offer, in which event subparagraph (1)(v) of this paragraph shall not apply to the initial public announcement; or

(ii) Complies with paragraph (c)(1) of this section and contemporaneously disseminates the disclosure required by paragraph (f) of this section to secruity holders pursuant to paragraph (d) of this section or otherwise in which event:

(A) The date of commencement of such tender offer under subparagraph (1) of this paragraph will be determined by the date the information required by paragraph (f) of this section is first published or sent or given to security holders pursuant to paragraph (d) of this section or otherwise; and

(B) Notwithstanding subparagraph (2)(ii)(A) of this paragraph, section 14(d)(7) of the Act shall be deemed to apply to such tender offer from the date of such public announcement.

(3) *Information.* The information referred to in subparagraph (2) of this paragraph is as follows:

(i) The identity of the bidder;

(ii) The identity of the subject company; and

(iii) The amount and class of securities being sought and the price or range of prices being offered therefor.

(4) *Announcements not resulting in commencement.* A public announcement by a bidder through a press release, newspaper advertisement or public statement which only discloses the information in subparagraphs (4)(i) through (4)(iii) of this paragraph concerning a tender offer in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 shall not be deemed to constitute the commencement of a tender offer under subparagraph (1)(v) of this paragraph.

(i) The identity of the bidder;

(ii) The identity of the subject company; and

(iii) A statement that the bidder intends to make a tender offer in the future for a class of equity securities of the subject bank which statement does not specify the amount of securities of such class to be sought or the consideration to be offered therefor.

(5) *Public Announcement.* A public announcement concerning a tender offer by a bidder through a press release, newspaper advertisement or public statement which states that the offering will be made only by means of a prospectus and discloses the name of the bank and the title of the securities to be surrendered in exchange for the securities to be offered and the basis upon which the exchange may be made where the consideration consists solely or in part of securities to be registered under the Securities Act of 1933 shall not be deemed to constitute the commencement of a tender offer under subparagraph (1)(v) of this paragraph: *Provided,* That such bidder files a registration statement with respect to such securities promptly after such public annoncement.

(c) *Filing and transmission of tender offer statement.*—(1) *Filing and transmittal.* No bidder shall make a tender offer if, after consummation thereof, such bidder would be the beneficial owner of more than 5 percent of the class of the subject bank securities for which the tender offer is made, unless as soon as practicable on the date of the commencement of the tender offer such bidder:

(i) Files with the Board six copies of a Tender Offer Statement on Form F–13 (12 CFR 206.82) including all exhibits thereto;

(ii) Hand delivers a copy of such Form F–13, including all exhibits thereto:

(A) To the subject bank at its principal executive office; and

(B) To any other bidder, which has filed a Form F–13 with the Board relating to a tender offer that has not yet terminated for the same class of securities of the subject bank, at such bidder's principal executive office or at the address of the person authorized to receive notices and communications (which is disclosed on the cover sheet of such other bidder's Form F–13);

(iii) Gives telephonic notice of the information required by paragraphs (f)(5)(ii) (A) and (B) of this section and mails by means of first class mail a copy of such Form F–13, including all exhibits thereto:

(A) To each national securities exchange where such class of the subject bank's securities is registered and listed for trading (which may be based upon information contained in the subject bank's most recent Annual Report on Form F–2 (12 CFR 206.42) filed with the Board unless the bidder has reason to believe that such information is not current) which telephonic notice shall be made when practicable prior to the opening of each such exchange; and

(B) To the National Association of Securities Dealers, Inc. ("NASD") if such class of the subject bank's securities are authorized for quotation in the NASDAQ interdealer quotation system.

(2) *Additional materials.* The bidder shall file with the Board six copies of any additional tender offer materials as an exhibit to the Form F–13 required by this section, and if a material change occurs in the information set forth in such Form F–13, six copies of an amendment to Form F–13 each of which shall include all exhibits other than

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those required by Item 11(a) of form F–13 disclosing such change and shall send a copy of such additional tender offer material or such amendment to the subject bank and to any exchange and/or the NASD, as required by subparagraph (1) of this paragraph, promptly but not later than the date such additional tender offer material or such change is first published, sent or given to security holders.

(3) *Certain announcements.* Notwithstanding the provisions of subparagraph (2) of this paragraph, if the additional tender offer material or an amendment to Form F–13 discloses only the number of shares deposited to date, and/or announces an extension of the time during which shares may be tendered, then the bidder may file such tender offer material or amendment and send a copy of such tender offer material or amendment to the subject bank, any exchange and/or the NASD, as required by subparagraph (1) of this paragraph, promptly after the date such tender offer material is first published or sent or given to security holders.

(d) *Dissemination of certain tender offers—(1) Materials deemed published or sent or given.* A tender offer in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 shall be deemed "published or sent or given to security holders" within the meaning of section 14(d)(1) of the Act if the bidder complies with all of the requirements of any one of the following subparagraphs: *Provided, however,* That any such tender offers may be published or sent or given to security holders by other methods, but with respect to summary publication, and the use of stockholder lists and security position listings pursuant to paragraph (e), paragraphs (d)(1)(ii) and (iii) are exclusive.

(i) *Long-form publication.* The bidder makes adequate publication in a newspaper of long-form publication of the tender offer.

(ii) *Summary publication.* (A) The bidder makes adequate publication in a newspaper or newspapers of a summary advertisement of the tender offer; and

(B) Mails by first class mail or otherwise furnishes with reasonable promptness the bidder's tender offer materials to any security holder who requests such tender offer materials pursuant to the summary advertisement or otherwise.

(iii) *Use of stockholder lists and security position listings.* Any bidder using stockholder lists and security position listings pursuant to paragraph (e) of this section shall comply with subparagraphs (1)(i) or (1)(ii) of this paragraph on or prior to the date of the bidder's request for such lists or listing pursuant to paragraph (e)(1) of this section.

(2) *Adequate publication.* Depending on the facts and circumstances involved, adequate publication of a tender offer pursuant to this section may require publication in a newspaper with a national circulation or may only require publication in a newspaper with metropolitan or regional circulation or may require publication in a combination thereof: *Provided, however,* That publication in all editions of a daily newspaper with a national circulation shall be deemed to constitute adequate publication.

(3) *Publication of changes.* If a tender offer had been published or sent or given to security holders by one or more of the methods enumerated in subparagraph (1) of this paragraph a material change in the information published, sent or given to security holders shall be promptly disseminated to security holders in a manner reasonably designed to inform security holders of such change: *Provided, however,* That if the bidder has elected pursuant to paragraph (e)(6)(i) of this section to require the subject company to disseminate amendments disclosing material changes to the tender offer materials pursuant to paragraph (e) of this section the bidder shall disseminate material changes in the information published or sent or given to security holders at least pursuant to paragraph (e) of this section.

(e) *Dissemination of certain tender offers by the use of stockholder lists.—(1) Obligations of the subject bank.* Upon receipt by a subject bank at its principal executive offices of a bidder's written request, meeting the requirements of paragraph (e)(5) of this section, the subject shall comply with the following:

(i) The subject bank shall notify promptly transfer agents and any other person who will assist the subject in complying with the requirements of this paragraph of the receipt by the subject bank of a request by a bidder pursuant to this paragraph.

(ii) The subject bank shall promptly ascertain whether the most recently prepared stockholder list, written or otherwise, within the access of the subject bank was prepared as of a date earlier than ten business days before the date of the bidder's request and, if so, the subject bank shall promptly prepare or cause to be prepared a stockholder list as of the most recent practicable date which shall not be more than ten business days before the date of the bidder's request.

(iii) The subject bank shall make an election to comply and shall comply with all of the provisions of either subparagraph (2) or subparagraph (3) of this paragraph. The subject's bank's election, once made, shall not be modified or revoked during the bidder's tender offer and extensions thereof.

(iv) No later than the second business day after the date of the bidder's request, the subject bank shall orally notify the bidder, which notification shall be confirmed in writing, of the subject bank's election made pursuant to subparagraph (1)(iii) of this paragraph. Such notification shall indicate (A) the approximate number of security holders of the class of securities being sought by the bidder and, (B) if the subject bank elects to comply with subparagraph (2) of this paragraph, appropriate information concerning the location for delivery of the bidder's tender offer materials and the approximate direct costs incidental to the mailing to security holders of the bidder's tender offer materials computed in accordance with subparagraph (7)(ii) of this paragraph.

(2) *Mailing of tender offer materials by the subject bank.* A subject bank which elects pursuant to subparagraph (1)(iii) of this paragraph to comply with the provisions of this paragraph shall perform the acts prescribed by the following subparagraphs.

(i) The subject bank shall promptly contact each participant named on the most recent security position listing of any clearing agency within the access of the subject bank and make inquiry of each such participant as to the approximate number of beneficial owners of the subject bank securities being sought in the tender offer held by each such participant.

(ii) No later than the third business day after delivery of the bidder's tender offer materials pursuant to subparagraph (7)(i) of this paragraph, the subject bank shall begin to mail or cause to be mailed by means of first class mail a copy of the bidder's tender offer materials to each person whose name appears as a record holder of the class of securities for which the offer is made on the most recent stockholder list referred to in subparagraph (1)(ii) of this paragraph. The subject bank shall use its best efforts to complete the mailing in a timely manner but in no event shall such mailings be completed in a substantially greater period of time than the subject bank would complete a mailing to security holders of its own materials relating to the tender offer.

(iii) No later than the third business day after the delivery of the bidder's tender offer materials pursuant to subparagraph (7)(i) of this paragraph, the subject bank shall begin to transmit or cause to be transmitted a sufficient number of sets of the bidder's tender offer materials to the participants named on the security position listings described in subparagraph (2)(i) of this paragraph. The subject bank shall use its best efforts to complete the transmittal in a timely manner but in no event shall such transmittal be completed in a substantially greater period of time than the subject bank would complete a transmittal to such participants pursuant to security position listings or clearing agencies of its own material relating to the tender offer.

(iv) The subject bank shall promptly give oral notification to the bidder, which notification shall be confirmed in writing, of the commencement of the mailing pursuant to subparagraph (2)(ii) of this paragraph and of the transmittal pursuant to subparagraph (2)(iii) of this paragraph.

(v) During the tender offer and any extension thereof the subject bank shall use reasonable efforts to update the stockholder list and shall mail or cause to be mailed promptly following each update a copy of the bidder's tender offer materials (to the extent sufficient sets of such materials have been furnished by the bidder) to each person who has become a record holder since the later of (A) the date of preparation of the most recent stockholder list referred to in subparagraph (e)(1)(ii) of this section or (B) the last preceding update.

(vi) If the bidder has elected pursuant to subparagraph (6)(i) of this paragraph to require the subject bank to disseminate amendments disclosing material changes to the tender offer materials pursuant to this paragraph, the subject bank, promptly following delivery of each such amendment, shall mail or cause to be mailed a copy of each such amendment to each record holder whose name appears on the shareholder list described in subparagraphs (1)(ii) and (2)(v) of this paragraph and shall transmit or cause to be transmitted sufficient copies of such amendment to each participant named on security position listings who received sets of the bidder's tender offer materials pursuant to subparagraph (2)(iii) of this paragraph.

(vii) The subject bank shall not include any communication other than the bidder's tender offer materials or amendments thereto in the envelopes or other containers furnished by the bidder.

(viii) Promptly following the termination of the tender offer, the subject bank shall reimburse the bidder the excess, if any, of the amounts advanced pursuant to subparagraph (6)(iii)(C) over the direct costs incidental to compliance by the subject bank and its agents in performing the acts required by this paragraph computed in accordance with subparagraph (7)(ii) of this paragraph.

(3) *Delivery of stockholder lists and security position listings.* A subject bank which elects pursuant to subparagraph (1)(iii) of this paragraph to comply with the provisions of this paragraph shall perform the acts prescribed by the following:

(i) No later than the third business day after the date of the bidder's request, the subject bank shall furnish to the bidder at the subject bank's principal executive office a copy of the names and addresses of the record holders on the most recent stockholder list referred to in subparagraph (1)(ii) of this paragraph and a copy of the names and addresses of participants identified on the most recent security position listing of any clearing agency which is within the access of the subject bank.

(ii) If the bidder has elected pursuant to subparagraph (6)(i) of this paragraph to require the subject bank to disseminate amendments disclosing material changes to the tender offer materials, the subject bank shall update the stockholder list by furnishing the bidder with the name and address of each record holder named on the stockholder list, and not previously furnished to the bidder, promptly after such information becomes available to the subject bank during the tender offer and any extensions thereof.

(4) *Liability of subject bank and others.* Neither the subject bank nor any affiliate or agent of the subject bank nor any clearing agency shall be:

(i) Deemed to have made a solicitation or recommendation respecting the tender offer within the meaning of section 14(d)(4) based solely upon the compliance or noncompliance by the subject bank or any affiliate or agent of the subject bank with one or more requirements of this section;

(ii) Liable under any provision of the Federal securities laws to the bidder or to any security holder based solely upon the inaccuracy of the current names or addresses on the stockholder list or security position listing, unless such inaccuracy results from a lack of reasonable care on the part of the subject bank or any affiliate or agent of the subject bank.

(iii) Deemed to be an "underwriter" within the meaning of section (2)(11) of the Securities Act of 1933 for any purpose of that Act or any rule or regulation promulgated thereunder based solely upon the compliance or noncompliance by the subject bank or any affiliate or agent of the subject bank with one or more of the requirements of this paragraph;

(iv) Liable under any provision of the federal securities laws for the disclosure in the bidder's tender offer materials, including any amendment thereto, based solely upon the compliance or noncompliance by the subject bank or any affiliate or agent of the subject bank with one or more of the requirements of this paragraph.

(5) *Content of the bidder's request.* The bidder's written request referred to in subparagraph (1) of this paragraph shall include the following:

(i) The identity of the bidder;

(ii) The title of the class of securities which is the subject of the bidder's tender offer;

(iii) A statement that the bidder is making a request to the subject bank pursuant to subparagraph (1) of this paragraph for the use of the stockholder list and security position listings for the purpose of disseminating a tender offer to security holders;

(iv) A statement that the bidder is aware of and will comply with the provisions of subparagraph (6) of this paragraph;

(v) A statement as to whether or not it has elected pursuant to subparagraph (6)(i) of this paragraph to disseminate amendments disclosing material changes to the tender offer materials pursuant to this paragraph; and

(vi) The name, address and telephone number of the person whom the subject bank shall contact pursuant to subparagraph (1)(iv) of this paragraph.

(6) *Obligations of the bidder.* Any bidder who requires that a subject bank comply with the provisions of subparagraph (1) of this paragraph, shall comply with the following:

(i) The bidder shall make an election whether or not to require the subject bank to disseminate amendments disclosing material changes to the tender offer materials pursuant to this paragraph, which election shall be included in the request referred to in subparagraph (1) of this paragraph and shall not be revocable by the bidder during the tender offer and extensions thereof.

(ii) With respect to a tender offer subject to section 14(d)(1) of the Act in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933, the bidder shall comply with the requirements of paragraph (d)(1)(iii) of this section.

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(iii) If the subject bank elects to comply with subparagraph (2) of this paragraph,

(A) The bidder shall promptly deliver the tender offer materials after receipt of the notification from the subject bank, as provided in subparagraph (1)(iv) of this paragraph;

(B) The bidder shall promptly notify the subject bank of any amendment to the bidder's tender offer materials requiring compliance by the subject bank with subparagraph (2)(vi) of this paragraph and shall promptly deliver such amendment to the subject bank pursuant to subparagraph (7)(i) of this paragraph;

(C) The bidder shall advance to the subject bank an amount equal to the approximate cost of conducting mailings to security holders computed in accordance with subparagraph (7)(ii) of this paragraph;

(D) The bidder shall promptly reimburse the subject bank for the direct costs incidental to compliance by the subject bank and its agents in performing the act required by this section computed in accordance with subparagraph (7)(ii) of this paragraph which are in excess of the amount advanced pursuant to subparagraph (6)(iii)(C) of this paragraph, and

(E) The bidder shall mail by means of first class mail or otherwise furnish with reasonable promptness the tender offer materials to any security holder who requests such materials.

(iv) If the subject bank elects to comply with subparagraph (3) of this paragraph:

(A) The subject bank shall use the stockholder and security position listings furnished to the bidder pursuant to subparagraph (3) of this paragraph exclusively in the dissemination of tender offer materials to security holders in connection with the bidder's tender offer and extensions thereof;

(B) The bidder shall return the stockholder lists and security position listings furnished to the bidder pursuant to subparagraph (3) of this paragraph promptly after the termination of the bidder's tender offer;

(C) The bidder shall accept, handle and return the stockholder lists and security position listings furnished to the bidder pursuant to subparagraph (3) of this paragraph to the subject bank on a confidential basis;

(D) The bidder shall not retain any stockholder list or security position listing furnished by the subject bank pursuant to subparagraph (3) of this paragraph, or any copy thereof, nor retain any information derived from any such list or listing or copy thereof after the termination of the bidder's tender offer;

(E) The bidder shall mail by means of first class mail, at its own expense, a copy of its tender offer materials to each person whose identity appears on the stockholder list as furnished and updated by the subject bank pursuant to subparagraphs (3)(i) and (3)(ii) of this paragraph;

(F) The bidder shall contact the participants named on the security position listing of any clearing agency, make inquiry of each participant as to the appropriate number of sets of tender offer materials required by each such participant, and furnish, at its own expense, sufficient sets of tender offer materials and any amendment thereto to each such participant for subsequent transmission to the beneficial owners of the securities being sought by the bidder;

(G) The bidder shall mail by means of first class mail or otherwise furnish with reasonable promptness the tender offer materials to any security holder who requests such materials; and

(H) The bidder shall promptly reimburse the subject bank for direct costs incidental to compliance by the subject bank and its agents in performing the acts required by this section computed in accordance with subparagraph (7)(ii) of this paragraph.

(7) *Delivery of materials, computation of direct costs.* (i) Whenever the bidder is required to deliver tender offer materials or amendments to tender offer materials, the bidder shall deliver to the subject bank at the location specified by the subject bank in its notice given pursuant to subparagraph (1)(iv) of this paragraph a number of sets of the materials or of the amendment, as the case may be, at least equal to the approximate number of security holders specified by the subject bank in such notice, together with appropriate envelopes or other containers therefor: *Provided, however,* That such delivery shall be deemed not to have been made unless the bidder has complied with subparagraph (6)(iii)(C) of this paragraph at the time the materials or amendments, as the case may be, are delivered.

(ii) The approximate direct cost of mailing the bidder's tender offer materials shall be computed by adding (A) the direct cost incidental to the mailing of the subject bank's last annual report to shareholders (excluding employee time), less the costs of preparation and printing of the report, and postage, plus (B) the amount of first class postage required to mail the bidder's tender offer materials. The approximate direct costs incidental to the mailing of the amendments to the bidder's tender offer materials shall be computed by adding (C) the estimated direct costs of preparing mailing labels, or updating shareholder lists and of third party handling charges plus (D) the amount of first class postage required to mail the bidder's amendment. Direct costs incidental to the mailing of the bidder's tender offer materials thereto when finally computed may include all reasonable charges paid by the subject bank to third parties for supplies or services, including costs attendant to preparing shareholder lists, mailing labels, handling the bidder's materials, contacting participants named on security position listings and for postage, but shall exclude indirect costs, such as employee time which is devoted to either contesting or supporting the tender offer on behalf of the subject bank. The final billing for direct costs shall be accompanied by an appropriate accounting in reasonable detail.

(f) *Disclosure requirements with respect to tender offers*—(1) *Information required on date of commencement*—(i) *Long-form publicotion.* If a tender offer is published, sent or given to security holders on the date of commencement by means or long-form publication pursuant to paragraph (d)(1)(i) of this section such long-form publication shall include the information required by subparagraph (5)(i) of this paragraph.

(ii) *Summary publication.* If a tender offer is published, sent or given to security holders on the date of commencement by means of summary publication pursuant to paragraph (d)(1)(ii) of this section:

(A) The summary advertisement shall contain and shall be limited to, the information required by subparagraph (5)(ii) of this paragraph; and

(B) The tender offer materials furnished by the bidder upon the request of any security holder shall include the information required by subparagraph (5)(i) of this paragraph.

(iii) *Use of stockholder lists and security position listings.* If a tender offer is published or sent or given to security holders on the date of commencement by the use of stockholder lists and security position listings pursuant to paragraph (d)(1)(iii).

(A) Either (*1*) the summary advertisement shall contain, and shall be limited to the information required by subparagraph (5)(ii) of this paragraph, or (*2*) if long-form publication of the tender offer is made, such long-form publication shall include the information required by subparagraph (5)(i) of this paragraph, and

(B) The tender offer materials transmitted to security holders pursuant to such lists and security position listings and furnished by the bidder upon the request of any security holder shall include the information required by subparagraph (5)(i) of this paragraph.

(iv) *Other tender offers.* If a tender offer is published or sent or given to security holders other than pursuant to paragraph (d)(1) of this section the tender offer materials that are published or sent or given to security holders on the date of commencement of such offer shall include the information required by subparagraph (5)(i) of this paragraph.

(2) *Information required in summary advertisement made after commencement.* A summary advertisement published subsequent to the date of commencement of the tender offer shall include at least the information specified in subparagraphs (5)(i)(A)–(D) and (5)(ii)(D) of this paragraph.

(3) *Information required in other tender offer materials published after commencement.* Except for summary advertisements described in subparagraph (2) of this paragraph and tender offer materials described in subparagraphs (1)(ii)(B) and (1)(iii)(B) of this paragraph, additional tender offer materials published, sent or given to security holders subsequent to the date of commencement shall include the information required by subparagraphs (5)(i) of this paragraph and may omit any of the information required by subparagraphs (5)(i)(E–H) of this paragraph which has been previously furnished by the bidder in connection with the tender offer.

(4) *Material changes.* A material change in the information published or sent or given to security holders shall be promptly disclosed to security holders in additional tender offer materials.

(5) *Information to be included*—(i) *Long-form publication and tender offer materials.* The information required to be disclosed by subparagraphs (1)(i), (1)(ii)(B), (1)(iii)(A)(b) and (1)(iv) of this paragraph shall include the following:

(A) The identity of the holder;

(B) The identity of the subject bank;

(C) The amount of class of securities being sought and the type and amount of consideration being offered therefor;

(D) The scheduled expiration date of the tender offer, whether the tender offer may be extended and, if so, the procedures for extension of the tender offer;

(E) The exact dates prior to which, and after which, security holders who deposit their securities will have the right to withdraw their securities pursuant to section 14(d)(5) of the Act and paragraph (g) of this section and the manner in which shares will be accepted for payment and in which withdrawal may be effected;

(F) If the tender offer is for less than all the outstanding securities of a class of equity securities and the bidder is not obligated to purchase all of the securities tendered, the period or periods, and in the case of the period from the commencement of the offer, the date of the expiration of such period during which the securities will be taken up pro rata pursuant to Section 14(d)(6) of the Act or paragraph (h) and the present intention or plan of the bidder with respect to the tender offer in the event of an oversubscription by security holders;

(G) The disclosure required by Items 1(c); 2 (with respect to persons other than the bidder, excluding sub-items (b) and (d)); 3; 4; 5; 6; 7; 8; and 10 of Form F–13 (12 CFR 206.82) or a fair and adequate summary thereof; *Provided, however,* That negative responses to any such item or sub-item of Form F–13 need not be included; and

(H) The disclosure required by Item 9 of Form F–13 or a fair and adequate summary thereof. If the information required by Item 9 is summarized, appropriate instructions shall be included stating how complete financial information can be obtained.

(ii) *Summary publication.* The information required to be disclosed by subparagraphs (1)(ii)(A) and (1)(iii)(A)(a) of this paragraph in a summary advertisement is as follows:

(A) The information required by subparagraph (5)(i)(A) through (F) of this paragraph;

(B) If the tender offer is for less than all the outstanding securities of a class of equity securities, a statement as to whether the purpose or one of the purposes of the tender offer is to acquire or influence control of the business of the subject bank;

(C) A statement that the information required by subparagraph (5)(i)(G) of this paragraph is incorporated by reference into the summary advertisement;

(D) Appropriate instructions as to how security holders may obtain promptly, at the bidder's expense, the bidder's tender offer materials; and

(E) In a tender offer published or sent or given to security holders by the use of stockholder lists and security position listings pursuant to paragraph (d)(1)(iii) of this section a statement that a request is being made for such lists and listings and that tender offer materials will be mailed to record holders and will be furnished to brokers, banks and similar persons whose name appears or whose nominee appears on the list of stockholders or, if applicable, who are listed as participants in a clearing agency's security position listing for subsequent transmittal to beneficial owners of such securities.

(iii) *No transmittal letter.* Neither the initial summary advertisement nor any subsequent summary advertisement shall include a transmittal letter (whereby securities of the subject bank which are sought in the tender offer may be transmitted to the bidder or its depository) or any amendment thereto.

(g) *Additionol withdrawal rights*—(1) *Rights.* In addition to the provisions of section 14(d)(5) of the Act, any person who has deposited securities pursuant to a tender offer has the right to withdraw any such securities during the following periods:

(i) At any time until the expiration of fifteen business days from the date of commencement of such tender offer; and

(ii) On the date and until the expiration of ten business days following the date of commencement of another bidder's tender offer other than pursuant to paragraph (b)(2) of this section for securities of the same class: *Provided,* That the bidder has received notice or otherwise has knowledge of the commencement of such other tender offer: *And, provided further,* That withdrawal may only be effected with respect to securities which have not been accepted for payment in the manner set forth in the bidder's tender offer prior to the date such other tender offer is first published, sent or given to security holders.

(2) *Computation of time periods.* The time periods for withdrawal rights pursuant to this section shall be computed on a concurrent, as opposed to a consecutive, basis.

(3) *Knowledge of competing offer.* For the purposes of this section, a bidder shall be presumed to have knowledge of another tender offer, as described in subparagraph (1)(ii) of this paragraph, on the date such bidder receives a copy of the Form F–13 (12 CFR 206.82) pursuant to paragraph (c) of this section from such other bidder.

(4) *Notice of withdrawal.* Notice of withdrawal pursuant to this paragraph shall be deemed to be timely upon the receipt by the bidder's depository of a written notice of withdrawal specifying the name(s) of the tendering stockholder(s), the number or amount of the securities to be withdrawn and the name(s) in which the certificate(s) is (are) registered, if different from that of the tendering security holder(s). A bidder may impose other reasonable requirements, including certificate numbers and a signed request for withdrawal accompanied by a signature guarantee, as conditions precedent to

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the physical release of withdrawn securities.

(h) *Exemption from statutory pro rata requirements.* The limited pro rata provisions of section 14(d)(6) of the Act shall not apply to any tender offer for less than all the outstanding securities of the class for which the tender offer is made to the extent that the bidder provides in the tender offer materials disseminated to security holders on the date of commencement of the tender offer that in the event more securities are deposited during the period(s) described in subparagraphs (1) and/or (2) of this paragraph than the bidder is bound or willing to accept for payment, all securities deposited during such period(s) will be accepted for payment as nearly as practicable on a pro rata basis, disregarding fractions, according to the number of securities deposited by each depositor.

(1) Any period which exceeds ten days from the date of commencement of the tender offer.

(2) Any period which exceeds ten days from the date that notice of an increase in the consideration offered is first published, sent or given to security holders.

(i) *Solicitotion/recommendations statements with respect to certain tender offers*—(1) *Filing and transmittal of recommendation statement.* No solicitation or recommendation to security holders shall be made by recommendation to security holders shall be made by any person described in subparagraph (4) of this paragraph with respect to a tender offer for such securities unless as soon as practicable on the earliest date such solicitation or recommendation is first published or sent or given to security holders such person complies with the following subparagraphs.

(i) Such person shall file with the Board six copies of a Tender Offer Solicitation/Recommendation Statement on Form F–12 (12 CFR 206.81) including all exhibits thereto; and

(ii) If such person is either the subject bank or an affiliate of the subject bank,

(A) Such person shall deliver a copy of the Form F–12 to the bidder at its principal office or at the address of the person authorized to receive notices and communications (which is set forth on the cover sheet of the bidder's Form F–13 (12 CFR 206.82) filed with the Commission; and

(B) Such person shall give telephonic notice (which notice to the extent possible shall be given prior to the opening of the market) of the information required by Items 2 and 4(a) of Form F–12 and shall mail a copy of the Form to each national securities exchange where the class of securities is registered and listed for trading and, if the class is authorized for quotation in the NASDAQ interdealer quotation system, to the National Association of Securities Dealers, Inc. ("NASD").

(iii) If such person is neither the subject bank nor an affiliate of the subject bank,

(A) Such person shall mail a copy of the schedule to the bidder at its principal office or at the address of the person authorized to recieve notices and communications (which is set forth on the cover sheet of the bidder's Form F–13 filed with the Board), and

(B) Such person shall mail a copy of the Form to the subject bank at its principal office.

(2) *Amendments.* If any material change occurs in the information set forth in the Form F–12 required by this section, the person who filed such Form F–12 shall:

(i) File with the Board six copies of an amendment on Form F–12 disclosing such change promptly, but not later than the date such material is first published, sent or given to security holders; and

(ii) Promptly deliver copies and give notice of the amendment in the same manner as that specified in subparagraph (1)(ii) or subparagraph (1)(iii) of this paragraph, whichever is applicable; and

(iii) Promptly disclose and disseminate such change in a manner reasonably designed to inform security holders of such change.

(3) *Information required in solicitation or recommendation.* Any solicitation or recommendation to holders of a class of securities referred to in section 14(d)(1) of the Act with respect to a tender offer for such securities shall include the name of the person making such solicitation or recommendation and the information required by Items 1, 2, 3(b), 4, 6, 7 and 8 of Form F–12 or a fair and adequate summary thereof: *Provided, however,* That such solicitation or recommendation may omit any such information previously furnished to security holders of such class of securities by such person with respect to such tender offer.

(4) *Applicability.* (i) Except as is provided in subparagraphs (4)(ii) and (5) of this paragraph, paragraph (i) shall only apply to the following persons:

(A) The subject bank, any director, officer, employee, affiliate or subsidiary of the subject bank;

(B) Any record holder or beneficial owner of any security issued by the subject bank, by the bidder, or by any affiliate of either the subject bank or the bidder; and

(C) Any person who makes a solicitation or recommendation to security holders on behalf of any of the foregoing or on behalf of the bidder other than by means of a solicitation or recommendation to security holders which has been filed with the board pursuant to this paragraph or paragraph (c) of this section.

(ii) Notwithstanding paragraph (4)(i) of this paragraph, paragraph (i) shall not apply to the following persons:

(A) A bidder who has filed a Form F–13 pursuant to paragraph (c) of this section;

(B) Attorneys, banks, brokers, fiduciaries or investment advisers who are not participating in a tender offer in more than a ministerial capacity and who furnish information and/or advice regarding such tender offer to their customers or clients on the unsolicited request and such customers or clients or solely pursuant to a contract or a relationship providing for advice to the customer or client to whom the information and/or advice is given.

(5) *Stop-look-and-listen communication.* Paragraph (i) shall not apply to the subject bank with respect to a communication by the subject bank to its security holders which only;

(i) Identifies the tender offer by the bidder;

(ii) States that such tender offer is under consideration by the subject bank's board of directors and/or management;

(iii) States that on or before a specified date (which shall be no later than 10 business days from the date of commencement of such tender offer) the subject bank will advise such security holders of (A) whether the subject bank recommends acceptance or rejection of such tender offer; expresses no opinion and remains neutral toward such tender offer; or is unable to take a position with respect to such tender offer and (B) the reason(s) for the position taken by the subject bank with respect to the tender offer (including the inability to take a position); and

(iv) Requests such security holders to deter making a determination whether to accept or reject such tender offer until they have been advised of the subject bank's position with respect thereto pursuant to subparagraph (5)(iii) of this paragraph.

(6) *Statement of management's position.* A statement by the subject bank of its position with respect to a tender offer which is required to be published or sent or given to security holders pursuant to paragraph (m) of this section shall be deemed to constitute a solicitation or recommendation within the meaning of this section and section 14(d)(4) of the Act.

(j)–(l) [Reserved

(m) *Unlowful tender offer practices.* No person who makes a tender offer shall:

(1) Hold such tender offer open for less than twenty business days from the date such offer is first published or sent or given to security holders.

(2) Increase the offered consideration or the dealer's soliciting fee to be given in tender offer unless such tender offer remains open for at least ten business days from the date that notice of such increase is first published, sent or given ot security holders.

(3) Fail to pay the consideration offered or return the securities deposited by or on behalf of security holders promptly after the termination or withdrawal of a tender offer.

(4) Extend the length of a tender offer without issuing a notice of such extension by press release or other public announcement, which notice shall include disclosure of the approximate number of securities deposited to date and shall be issued no later than the earlier of (i) 9:00 a.m. Eastern time, on the next business day after the scheduled expiration date of the offer or (ii), if the class of securities which is the subject of the tender offer is registered on one or more national securities exchanges, the first opening of any one of such exchanges on the next business day after the scheduled expiration date of the offer.

(5) *Position of subject bank.* As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices within the meaning of section 14(e) of the Act, the subject bank, no later than 10 business days from the date the tender offer is first published or sent or given, shall publish, send or give to security holders a statement disclosing that the subject bank:

(i) Recommends acceptance or rejection of the bidder's tender offer;

(ii) Expresses no opinion and is remaining neutral toward the bidder's tender offer; or

(iii) Is unable to take a position with respect to the bidder's tender offer. Such statement shall also include the reason(s) for the position (including the inability to take a position) disclosed therein.

(6) *Material change.* If any material change occurs in the disclosure required by this section, the subject bank shall promptly publish, send or give a statement disclosing such material change to security holders.

(n) *Material Change.* If any material change occurs in the facts set forth in the statement required by paragraph (c)(1) of this section, the person who filed such statement shall promptly file with the Board an amendment disclosing such change.

(o) *Restrictions on Control Persons:* when a person makes a tender offer for, or a request or invitation for tenders of, any class of equity securities of a bank registered pursuant to section 12 of the Act, and such person has filed a statement with the Board pursuant to this section, any other person controlling, or controlled by or under common control with ("control person"), the issuing bank shall not thereafter, during the period such tender offer, request or invitation continues, purchase any class of equity securities of the issuing bank unless:

(1) The control person has filed with the Board a statement containing the information specified below with respect to any proposed purchases:

(i) The title and amount of equity securities to be purchased, the names of the persons or classes or persons from whom, and the market in which, the securities are to be purchased, including the name of any exchange on which the purchase is to be made;

(ii) The purpose for which the purchase is to be made and any plan or proposal for the disposition of such securities; and

(iii) The source and amount of funds or other consideration used or to be used in making the purchases, and if any part of the purchase price or proposed purchase price is represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading the securities, a description of the transaction and the names of the parties thereto.

(2) The control person has at any time within the past 6 months sent or given to the equity security holders of the issuing bank the substance of the information contained in the statement required by paragraph (o)(1) of this section and a copy has been filed with the Board.

(7) Section 206.51 would be amended by revising the title of the section and the Form F–5; paragraph (C) of item 5 and paragraph (i) of item 6 is redesignated as paragraph (j) and a new paragraph (i) of item 6 is added, all to read as follows:

§ 2106.51 Form for proxy statement or statement where the bank does not solicit proxies (Form F–5).

Board of Governors of the Federal Reserve System

Form F–5.—Proxy Statement or Statement Where Management Does Not Solicit Proxies

* * * * *

Item 5. * * *

(C) If action is to be taken with respect to the election of directors and if the persons solicited have cumulative voting rights, (1) make a statement that they have such rights, (2) briefly describe such rights, (3) state briefly the conditions precedent to the exercise thereof, and (4) if discretionary authority to cumulate votes is solicited, so indicate.

* * * * *

Item 6. Directors and Principal Officers.

* * * * *

(i) *Shares voted at last meeting.* With respect to those classes of voting stock which participated in the election of directors at the most recent meeting at which directors were elected:

(1) State in an introductory paragraph the percentage of shares present at the meeting and voting or withholding authority to vote in the election of directors; and (2) disclose in tabular format, following such introductory paragraph, the percentage of total shares cast for and withold from the vote for or, where applicable, cast against, each nominee, which respectively, were voted for and withheld from the vote for, or voted against, such nominee. When groups of classes or series of classes vote together in the election of a director of directors, they shall be treated as a single class for the purpose of the preceding sentence.

Instructions. 1. Calculate the percentage of shares present at the meeting and voting or withholding authority to vote in the election of directors, referred to in paragraph g(1), by dividing the total shares cast for and withheld from the vote for or, where applicable, voted against, the director in respect of whom the highest aggregate number of shares was cast by the total number of shares outstanding which were eligible to vote as of the record date for the meeting.

(2) No information need be given in response to Item 6(g) unless, with respect to any class of voting stock (or group of classes which voted together), 5 percent or more of the total shares cast for and withheld from the vote for or, where applicable, cast against any nominee were withheld from the vote for or case against such nominee.

(3) If a bank elects less than the entire board of directors annually, disclosure is required as to all directors if 5 percent or more of the total shares cast for and withheld from, the vote for, or where applicable, cast against any incumbent director were withheld from, or cast against the vote for such director at the meeting at which he was most recently elected.

(4) No information need be given in response to Item 6(g) if the bank has previously furnished to its security holders a report of the results of the most recent

meeting of security holders at which directors were elected which includes: (1) A description of each matter voted upon at the meeting and a statement of the percentage of the shares voting which were voted for and against each such matter; and (2) the information which would be called for by this Item 6(g). If a bank has previously furnished such results to its security holders, this fact should be set forth in the bank's cover letter accompanying the filing of preliminary proxy materials with the Board.

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§ 206.53 [Redesignated as § 206.81 and Revised]

(8) Section 206.53 (Form F–12) would be redesignated as § 206.81 (Form F–12) and would be revised as follows:

§ 206.81 Form for statement to be filed pursuant to Section 13(d)(4) of the Securities and Exchange Act of 1934 (Form F–12)

Board of Governors of the Federal Reserve System

Form F–12.—Solicitation/Recommendation Statement Pursuant to Section 14(d)(4) of the Securities Exchange Act of 1934

(Amendment No.)

(Name of Subject Bank)

(Name of Person(s) Filing Statement)

(Title of Class of Securities)

(CUSIP Number of Class of Securities)

(Name, address and telephone number of person authorized to receive notice and communications on behalf of the person(s) filing statement)

Instructions: Six copies of this statement, including all exhibits, should be filed with the Board.

General Instructions: A. The items numbers and captions of the items shall be included but the text of the items is to be omitted. The answers to the items shall be so prepared as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative so state.

(B) Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item or sub-item of the statement unless it would render such answer misleading, incomplete, unclear or confusing. Material incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement where the information is required. A copy of any information or a copy of the pertinent pages of a document containing such information which is incorporated by reference shall be submitted with this statement as an exhibit and shall be deemed to be filed with the Board for all purposes of the Act.

Item 1. Security and Subject Company

State the title of the class of equity securities to which this statement relates and the name and the address of the principal executive offices of the subject bank.

Item 2. Tender Offer of the Bidder

Identify the tender offer to which this statement relates, the name of the bidder and the address of its principal executive offices or, if the bidder is a natural person, the bidder's residence or business address (which may be based on the bidder's Form F–13 (12 CFR 206.82) filed with the Board).

Item 3. Identity and Background

(a) State the name and business address of the person filing this statement.

(b) If material, describe any contract, agreement, arrangement or understanding and any actual or potential conflict of interest between the person filing this statement or its affiliates and: (1) The subject bank, its executive officers, directors or affiliates; or (2) the bidder, its executive officers, directors or affiliates.

Instruction: If the person filing this statement is the subject bank and if the materiality requirement of Item 3(b) if applicable to any contract, agreement, arrangement or understanding between the subject bank or any affiliate of the subject bank and any executive officer or director of the subject bank, it shall not be necessary to include a description thereof in this statement, or in any solicitation or recommendation published, sent or given to security holders if such information, or information which does not differ materially from such information, has been disclosed in any proxy statement, report or other communication sent within one year of the filing date of this statement by the subject bank to the then holders of the securities and has been filed with the Board: *Provided,* That this statement and the solicitation or recommendation published, sent or given to security holders shall contain specific reference to such proxy statement, report or other communication and that a copy of the pertinent portion(s) thereof is filed as an exhibit to this statement.

Item 4. The Solicitation or Recommendation

(a) State the nature of the solicitation or the recommendation. If this statement relates to a recommendation, state whether the person filing this statement is advising security holders of the securities being sought by the bidder to accept or reject the tender offer or to take other action with respect to the tender offer and, if so, furnish a description of such other action being recommended. If the person filing this statement is the subject bank and a recommendation is not being made, state whether the subject bank is either expressing no opinion and is remaining neutral toward the tender offer or is unable to take a position with respect to the tender offer.

(b) State the reason(s) for the position (including the inability to take a position) stated in (a) of this Item.

Instruction: Conclusory statements such as "The tender offer is in the best interest of shareholders," will not be considered sufficient disclosure in response to Item 4(b).

Item 5. Persons Retained, Employed or To Be Compensated

Identify any person or class of persons employed, retained or to be compensated by the person filing this statement or by any person on its behalf, to make solicitations or recommendations to security holders and describe briefly the terms of such employment, retainer or arrangement for compensation.

Item 6. Recant Transactions and Intent With Respect To Securities

(a) Describe any transaction in the securities referred to in Item 1 which was affected during the past 60 days by the person(s) named in response to Item 3(a) and by any executive officer, director, affiliate or subsidiary of such person(s).

(b) To the extent known by the person filing this statement, state whether the persons referred to in Item 6(a) presently intend to tender to the bidder, sell or hold securities of the class of securities being sought by the bidder which are held of record or beneficially owned by such person.

Item 7. Certain Negotiations and Transactions by the Subject Bank

(a) If the person filing this statement is the subject bank, state whether or not any negotiation is being undertaken or is underway by the subject bank in response to the tender offer which relates to or would result in:

(1) An extraordinary transaction such as a merger or reorganization, involving the subject bank, or any subsidiary of the subject bank;

(2) A purchase, sale or transfer of a material amount of assets by the subject bank or any subsidiary of the subject bank;

(3) A tender offer for or other acquisition of securities by or of the subject bank; or

(4) Any material change in the present capitalization or dividend policy of the subject bank.

Instruction. If no agreement in principle has yet been reached, the possible terms of any transaction or the parties thereto need not be disclosed if in the opinion of the Board of Directors of the subject bank such disclosure would jeopardize continuation of such negotiations. In such event, disclosure that negotiations are being undertaken or are underway and are in the preliminary stages will be sufficient.

(b) Describe any transaction, board resolution, agreement in principle, or a signed contract in response to the tender offer, other than one described pursuant to Item 3(b) of this statement, which relates to or would result in one or more of the matters referred to in Item 7(a) (1), (2), (3) or (4).

Item 8. Additional Information To Be Furnished

Furnish such additional information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not materially misleading.

Item 9. Material To Be Filed as Exhibits

Furnish a copy of:

(a) Any written solicitation or recommendation which is published or sent

or given to security holders in connection with the solicitation or recommendation referred to in Item 4.

(b) If any oral solicitation or recommendation to security holders is to be made by or on behalf of the person filing this statement, any written instruction, or other material which is furnished to the persons making the actual oral solicitation or recommendation for their use, directly or indirectly, in connection with the solicitation or recommendation.

(c) Any contract, agreement, arrangement or understanding described in Item 3(b) or the pertinent portion(s) of any proxy statement, report or other communication referred to in Item 3(b).

Signature. After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Date)

(Signature)

(Name and Title)

Instruction. The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative (other than an executive officer of a corporation or bank or a general partner of a partnership), evidence of the representative's authority to sign on behalf of such person shall be filed with the statement. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

§ 206.54 [Redesignated as § 206.82 and Amended]

(9) Section 206.54 (Form F–13) would be redesignated § 206.82 and the title, General Instructions B and C and Instruction No. 2 of Item 6 would be revised as follows:

§ 206.82 Statement to be filed pursuant to Section 14(d)(1) of the Securities Exchange Act of 1934 (Form F–13).

* * * * *

General Instructions. A.

* * * * *

B. Information in exhibits to the statement may be incorporated by reference in answer or partial answer to any item or sub-item of the statement unless it would render such answer misleading, incomplete, unclear or confusing. Material incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement where the information is required. A copy of any information or a copy of the pertinent pages of a document containing such information which is incorporated by reference shall be submitted with this statement as an exhibit and shall be deemed to be filed with the Comptroller for all purposes of the Act.

C. If the statement is filed by a partnership, limited partnership, syndicate or other group, the information called for by Items 2–7, inclusive, shall be given with respect to: (i) Each partner of such partnership; (ii) each partner who is denominated as a general partner or who functions as a general partner of such limited partnership; (iii) each member of such syndicate or group; and (iv) each person controlling such partner or member. If the statement is filed by a bank or corporation, or if a person referred to in (i), (ii), (iii) or (iv) of this Instruction is a bank or corporation, the information called for by the above mentioned items shall be given with respect to: (a) Each executive officer and director of such bank or corporation; (b) each person controlling such bank or corporation; and (c) each executive officer and director of any bank or corporation ultimately in control of such bank or corporation. A response to an item in the statement is required with respect to the bidder and to all other persons referred to in this instruction unless such item specifies to the contrary.

* * * * *

Item 6. Interest in securities of the subject bank.

* * * * *

Instructions. 1. * * *

2. If the information required by Item 6(b) of this Form is available to the bidder at the time this statement is initially filed with the Board pursuant to paragraph (d)(1)(i) of this section, such information should be included in such initial filing. However, if such information is not available to the bidder at the time of such initial filing, it shall be filed with the Board promptly but in no event later than two business days after the date of such filing and, if material, shall be disclosed in a manner reasonably designed to inform security holders. The procedure specified by this instruction is provided for the purpose of maintaining the confidentiality of the tender offer in order to avoid possible misuse of inside information.

* * * * *

Board of Governors of the Federal Reserve System, October 9, 1980.

Theodore E. Allison,

Secretary of the Board.

FR Doc. 80–33713 Filed 10–28–80; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM 79–76 (Texas–3)]

Ceiling Prices; High-Cost Gas Produced From Tight Formations

October 24, 1980.

AGENCY: Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions that present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas subject to an incentive price (18 CFR 271.703). The rule establishes procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of proposed rulemaking contains the recommendation of the Texas Railroad Commission that the Cisco Sandstone formation be designated as a tight formation under § 271.703(d).

DATES: Comment date: Comments on the proposed rule are due on November 24, 1980.

PUBLIC HEARING: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on November 10, 1980.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8299 or William Bushey, (202) 357–8590.

I. Background

On October 14, 1980, the Railroad Commission of Texas (Texas) submitted to the Commission a recommendation in accordance with § 271.703 of the Commission's final regulations (45 FR 56034, August 22, 1980), that the Cisco Sandstone Formation located in the western part of the state of Texas be designated as a tight formation in the Commission's regulations. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Texas' recommendation that the Cisco Sandstone Formation be designated a tight formation should be adopted. Texas' recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

Texas recommends that the Cisco Sandstone Formation encountered in Section 72 in Reagan County, T. & P. R. Co. Block 2 Survey, Abstract 146, be designated as a tight formation. Reagan County is a part of Railroad Commission District No. 7C. The boundaries of Section 72 are as follows. The northern boundary of Section 72 is approximately 1.5 miles south of the Glasscock County line and the southern boundary is

approximately 35.42 miles north of the Crockett County line. To the east, the boundary of Section 72 lies approximately 1.29 miles west of the Sterling County line and to the west, the boundary is approximately 27.8 miles east of the Upton County line. The Cisco Sandstone is located below the Wichita Formation and above the Canyon Formation. Currently, only one well is producing within the recommended formation. The well log shows the top of the Cisco Sandstone at an approximate depth of 8,260 feet and the base located at approximately 8,288 feet, giving the formation a thickness of 28 feet.

III. Discussion of the Recommendation

Texas claims in its submission that evidence gathered through information and testimony presented at a public hearing convened by Texas on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Texas further asserts that existing state and federal regulations assure that development of this formation will not adversely affect any fresh water aquifers that are or are expected to be used as a domestic or agricultural water supply.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued August 1, 1980 in docket No. RM80–68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Texas that the Cisco Sandstone Formation, as described and delineated in Texas' recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N. E., Washington, D. C. 20426, on or before November 24, 1980. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76 (Texas–3), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be placed in the Commission's public files and will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise praticipate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than Novermber 10, 1980.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3342)

Accordingly, the Commission proposes to amend the regulations in Part 271, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Texas' recommendation is adopted.

Kenneth A. Williams

Director, Office of Pipeline and Producer Regulation.

1. Section 271.703(d) is amended by adding new subparagraphs (1) and (2) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

(1) The following formations are designated as tight formations:

(i) through (xiii) [Reserved]

(xiv) *Cisco Sandstone Formation.*

(A) *Delineation of formotion.* The Cisco Sandstone Formation is found in Reagan County, Texas.

(B) *Depth.* The top of the Cisco Sandstone Formation is located at an approximate depth of 8,260 feet with an approximate thickness of 28 feet.

(2) A more detailed description of the geographical extent and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79–76, and is also located in the official files of the jurisdictional agency which submitted the recommendation.

[FR Doc. 80–33721 Filed 10–28–80; 8:45 am]

BILLING CODE 6450–85–M

18 CFR Part 271

[Docket No. RM 79–76 (Texas–4)]

Ceiling Prices; High-Cost Gas Produced From Tight Formations

October 24, 1980.

AGENCY: Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions that present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas subject to an incentive price (18 CFR 271.703). The rule establishes procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of proposed rulemaking contains the recommendation of the Texas Railroad Commission that the Vicksburg U–V Formation be designated as a tight formation under § 271.703(d).

DATES: Comment date: Comments on the proposed rule are due on November 24, 1980.

PUBLIC HEARING: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on November 10, 1980.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8299 or William Bushey, (202) 357–8590.

I. Background

On October 14, 1980, the Railroad Commission of Texas (Texas) submitted to the Commission a recommendation in accordance with § 271.703 of the Commission's final regulations (45 FR 56034, August 22, 1980) that the Vicksburg U-V Formation located in the southern part of the state of Texas be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Texas' recommendation that the Vicksburg U-V Formation be designated a tight formation should be adopted. Texas' recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of the Recommendation

Texas recommends that the Vicksburg U-V Formation encountered in Hidalgo County, Santa Anita Survey, Abstract 63, McAllen Ranch (Vicksburg U-V, SE) Field, be designated as a tight formation. Hidalgo County is a part of Railroad District No. 4. The northern boundary line of the formation is approximately 10.42 miles south of the Brooks County line and the southern boundary lies approximately 14.92 miles south of the Brooks County line. The western and eastern boundaries of the recommended area are approximately 6.135 and 10.575 miles respectively, east of the Starr County line.

The Vicksburg U-V Formation is located below all other Vicksburg Sands except the Vicksburg Y, and the Vicksburg Group is located below the Frio Formation and above the Jackson Shale Formation. A typical induction log of the area shows the top of the Vicksburg U-V at an approximate depth of 12,305 feet, and extends to the Vicksburg Y. The base of the U-V Formation is at an approximate depth of 13,460 feet, resulting in an approximate thickness of 1,155 feet.

III. Discussion of the Recommendation

Texas claims in its submission that evidence gathered through information and testimony presented at a public hearing convened by Texas on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Texas further asserts that existing state and federal regulations assure that development of this formation will not adversely affect any fresh water aquifers that are or are expected to be used as a domestic or agricultural water supply.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80–68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Texas that the Vicksburg U-V Formation, as described and delineated in Texas' recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before November 24, 1980. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76 (Texas—4), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed.

An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than November 10, 1980.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3342)

Accordingly, the Commission proposes to amend the regulations in Part 271, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Texas' recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

1. Section 271.703(d) is amended by adding new subparagraphs (1) and (2) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

(1) The following formations are designated as tight formations:

(i) through (xiv) [Reserved]

(xv) *Vicksburg U–V Formotion in Texas.*

(A) *Delineotion of formotion.* The Vicksburg Y Formation is found in Hidalgo County, Texas.

(B) *Depth.* The top of the Vicksburg U–V Formation in the McAllen Ranch Field is located at an approximate depth of 12,305 feet with an approximate thickness of 1,155 feet.

(2) A more detailed description of the geographical extent and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79–76, and is also located in the official files of the jurisidictional agency which submitted the recommendation.

[FR Doc. 80–33722 Filed 10–28–80; 8:45 am]

BILLING CODE 6450–85–M

18 CFR Part 271

[Docket RM 79–76 (Texas–5)]

Ceiling Prices; High-Cost Gas Produced From Tight Formations

October 24, 1980.

AGENCY: Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions that present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas subject to an incentive price (18 CFR 271.703). The rule establishes procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of proposed rulemaking contains the recommendation of the Texas Railroad Commission that the Vicksburg Y Formation be designated as a tight formation under § 271.703(d).

DATES: Comment date: Comments on the proposed rule are due on November 24, 1980.

PUBLIC HEARING: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on November 10, 1980.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8299 or William Bushey, (202) 357–8590.

I. Background

On October 14, 1980, the Railroad Commission of Texas (Texas) submitted to the Commission a recommendation in accordance with § 271.703 of the Commission's final regulations (45 FR 56034, August 22, 1980) that the Vicksburg Y Formation located in the southern part of the state of Texas be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Texas' recommendation that the Vicksburg Y Formation be designated a tight formation should be adopted. Texas' recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

Texas recommends that the Vicksburg Y Formation encountered in Hidalgo County, Santa Anita Survey, Abstract 63, McAllen Ranch (Vicksburg Y) Field, be designated as a tight formation. Hidalgo County is a part of Railrad District No. 4. The northern boundary line of the recommended formation is approximately 10.42 miles south of the Brooks County line and the southern boundary is approximately 14.92 miles south of the Brooks County line. The western and eastern boundaries of the recommended area are approximately 6.135 and 10.575 miles respectively, east of the Starr County line.

The Vicksburg Y Formation is located below all other Vicksburg Sands and the Vicksburg Group is located below the Frio Formation and above the Jackson Shale. A typical induction log of the area shows the top of the Vicksburg Y at an approximate depth of 13,595 feet in the north to 13,244 feet in the south, and the base is located at approximately 15,550 feet in the north to 14,961 feet in the south, giving the formation a thickness of 1,955 feet in the north and 1,717 feet in the south.

III. Discussion of Recommendation

Texas claims in its submission that evidence gathered through information and testimony presented at a public hearing convened by Texas on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Texas further assets that existing state and Federal regulations assure that development of this formation will not adversely affect any fresh water aquifers that are or are expected to be used as a domestic or agricultural water supply.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80-68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Texas that the Vicksburg Y Formation, as described and delineated in Texas' recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before November 24, 1980. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76 (Texas—5), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed.
An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than November 10, 1980.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3342)

Accordingly, the Commission proposes to amend the regulations in Part 271, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Texas' recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

1. Section 271.703(d) is amended by adding new subparagraphs (1) and (2) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

(1) The following formations are designated as tight formations:

(i) through (xv) [Reserved]

(xvi) *Vicksburg Y Formation in Texas.*

(A) *Delineation of formation.* The Vicksburg Y Formation is found in Hidalgo County, Texas.

(B) *Depth.* The top of the Vicksburg Y Formation in the McAllen Ranch Field is located at an approximate depth of 13,595 feet with an approximate thickness of 13,244 feet in the south and ranges in thickness from approximately 1,955 feet in the north to 1,717 feet in the south.

(2) A more detailed description of the geographical extent and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79-76, and is also located in the official files of the jurisdictional agency which submitted the recommendation.

[FR Doc. 80-33723 Filed 10-28-80; 8:45 am]
BILLING CODE 6450-85-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Comments Submitted on Kentucky's Permanent Surface Mining Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Discussion of comments.

SUMMARY: This notice summarizes significant issues raised in comments submitted to OSM and the Secretary of the Interior on Kentucky's permanent program submission, and explains the Secretary's resolution of those issues. These comments were all considered by the Secretary in his decision to approve, in part, the Kentucky program submission. That decision was published October 22, 1980 at 45 FR 69964.

FOR FURTHER INFORMATION CONTACT: Mr. Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining, 1951 Constitution Avenue NW., Washington, DC 20240, (202) 343-4225.

SUPPLEMENTARY INFORMATION: On October 22, 1980, the Secretary of the Interior published his decision to approve, in part, and disapprove, in part, the Kentucky State permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). An explanation of that decision is found in 45 FR 69964 (the decision announcement notice). The decision announcement notice contains information necessary for a full understanding of this notice. A copy of the manuscript of the decision announcement notice was released to officials of Kentucky and to the public on October 13, 1980, as soon as it was completed and shortly before it was delivered to the Office of the Federal Register for publication.

As explained in the decision announcement notice, the Secretary considered all comments submitted to him in making his determination on Kentucky's program. However, when the manuscript of the decision announcement notice was released October 13, 1980, the resolution of the issues in the comments was in the final stages of proof-reading, typing, and minor editorial revision, and the Secretary was unable to include it in the manuscript.

As he did with the decision announcement notice, the Secretary released the manuscript of this notice as soon as it was completed. Copies were delivered to officials of the Kentucky Department of Natural Resources and Environmental Protection for use in preparation of Kentucky's resubmission.

Accordingly, set forth below is a summary of significant issues raised by public commenters and governmental agencies in their comments delivered to the Secretary and OSM, as well as a discussion of the Secretary's resolution of those issues. The discussions below often refer the reader to discussions in the October 22, 1980, notice, including discussions in the sections entitled "General Background on the State Program Approval Process," "Secretary's Decision," and "Secretary's Findings."

Disposition of Public and Federal Agency Comments

Comments have been accepted and considered on Kentucky's initial program submission of February 29, 1980 (Administrative Record No. KY-61A), the State's revised submission of June 12, 1980 (Administrative Record No. KY-163) and information provided by Kentucky in connection with a reopened comment period. (See 45 FR 41977-41979.) The periods during which comments were accepted are described in the decision announcement under "Background on the Kentucky Program Submission." All comments received were considered in evaluating the Kentucky program for the Secretary's initial decision. The Secretary's responses to the comments are included immediately below the summary of each issue raised by a commenter. The comments are organized into three groups as follows: Public, Federal Agencies Outside Interior, and Federal Agencies Within Interior.

Public Comment

A. Messrs. Mark Morgan and Tom Fitzgerald, representing the Appalachian Research and Defense Fund of Kentucky (ARDFK), provided the following comments:

1. Comment: The February 29, 1980, Kentucky submission does not include the required public participation procedures set forth in 43 CFR Part 4. Specifically, Kentucky's program lacks regulations which set forth discovery rights in administrative proceedings, intervention rights which are nondiscretionary for persons who have a statutory right to initiate an action or whose interest is or may be adversely affected, eligibility to practice before administrative tribunals and opportunity for award of costs and expenses.

Response: The Secretary agrees. See Findings 27.6, 27.10, 27.11, 27.12 and 27.14.

2. Comment: Kentucky's February 29, 1980, proposed rules do not include the extraction of coal from coal refuse piles in the definition of surface coal mining operations.

Response: Kentucky has subsequently revised its definition of "surface coal mining activities" to include the extraction of coal from refuse piles (Administrative Record No. KY-163). The term "surface coal mining activities" is included within the meaning of "surface coal mining operations," as now defined in 405 KAR 7:020E Section 1 (129). Therefore, Kentucky's definition is as stringent as the Federal counterpart.

3. Comment: Kentucky's February 29, 1980, proposed regulation 405 KAR 12:020 Section 7(1) is less stringent than the Federal counterpart. The Federal regulation requires that cessation orders be issued immediately upon finding an imminent hazard. Kentucky's proposed regulations, on the other hand, would only require issuance of cessation orders "after investigation" and when it appears that it will be prejudicial to the interest of the people of the State to delay cessation of operations until an opportunity for a hearing can be provided. Thus, under Kentucky's proposed rules, operations causing imminent damage or danger could continue until the case is heard and a decision rendered.

Response: The Secretary agrees that Kentucky's regulation is inconsistent with the Federal requirement. See Finding 20.1.

4. Comment: Kentucky's February 29, 1980, regulation 405 KAR 12:020 Section 2(2)(b) allows for the discretionary issuance of remedial action steps. Such discretion is inconsistent with the Federal law, where mandatory issuance of remedial steps is set forth.

Response: The Federal regulation, 30 CFR 843.12(b)(2), specifies that the remedial action "may" include interim steps. Use of the word "may" in the Federal requirement permits the responsible authority to use remedial action steps where needed; therefore, Kentucky's proposed regulation is consistent with the Federal counterpart.

5. Comment: The State's February 29, 1980, submission does not provide a mandatory minimum suspension period. This is inconsistent with the Federal requirement of 43 CFR 4.1194(b), which mandates a minimum three working days suspension, unless the suspension would result in manifest injustice and not further the purposes of SMCRA.

Response: A mandatory suspension period is not required of the State. State programs must only comply with 43 CFR Part 4 in the area of public participation as specified in 30 CFR 840.13 and 840.15. The Secretary does not consider the minimum suspension period to be a public participation requirement.

6. Comment: Kentucky's February 29, 1980, regulation 405 KAR 12:010 Section 3(2) does not specify that inspections will be made without prior notice. Instead, the Kentucky regulation merely indicates that "the department shall have no obligation to give prior notice." This language provides discretionary authority not envisioned by the Federal counterpart.

Response: The commenter's concern is valid and its disposition is included in Finding 17.2.

7. Comment: Kentucky's implementing legislation is deficient in several areas. First, Kentucky's law, KRS 350.250(1), requires persons bringing an action to take an oath; Federal law 30 U.S.C. 1270(a)(2), does not contain an oath requirement. Second, KRS 350.250 allows only "any citizen of this Commonwealth" to initiate an action; there is no Federal limitation in this regard and non-citizens must be given the right to institute these suits. Third,

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KRS 350.250 requires that a person bringing an action have knowledge of non-enforcement; Federal standards permit "any person having an interest which is or may be adversely affected" to initiate action. Fourth, KRS 350.250(3) attempts to afford citizens rights to commence a civil action against a government instrumentality to compel compliance with the Act; Kentucky's definition of "person," however, does not include the Kentucky DNREP. Therefore, it places the DNREP in a position of trying to define "person" as being broad enough to include the DNREP. Such right to create new causes is reserved for the General Assembly and cannot be delegated to the DNREP. Fifth, KRS 350.250 does not contain a counterpart to 30 U.S.C. 1270(e) which preserves the rights of any person to seek enforcement of the Act and regulations or to seek any other relief. This "savings clause" cannot be created by the DNREP by regulation or otherwise. Finally, 30 U.S.C. 1270(f) creates an action for damages which is not paralleled in KRS 350.250.

Response: With regard to the comment on the oath requirement, the Secretary does not believe that an oath imposes a significant burden on a citizen bringing a civil action. Therefore, this provision of Kentucky's legislation is not inconsistent with Section 520 of SMCRA. The comments relative to KRS 350.250 have merit and similar concerns are expressed in Finding 1.2.

8. Comment: The definition of "cemetery" at 405 KAR 7:020 of the February 29, 1980, submission should be revised to include "any area where human bodies are interred."

Response: The June 12, 1980, revised program submission includes the revision suggested by the commenter which can be found in 405 KAR 7:020E Section 1(17).

9. Comment: Kentucky's February 29, 1980 definition of "person having an interest which is or may be adversely affected or person having a valid legal interest" would exclude persons who may be adversely affected by a "related action of the department." This is inconsistent with 30 CFR 700.5 and restricts the ability of the public to protect themselves from decisions that will affect their rights and interests in the future.

Response: The definition now found in 405 KAR 7:020E Section 1(90)(a) and (b) is found deficient by the Secretary and the State program must be revised so that "persons with an interest" will include those affected by any related action of the department. See Finding 12.2.

10. Comment: The department's proposal in 7:090E Section 3(1)(e) to issue a show cause notice to remind an operator of his right to contest (after expiration of the thirty day period the operator in violation has to contest the violation) is inconsistent with 30 CFR 843.16 and 845.19. This is thought to clog the administrative process and allow for an indefinite delay in finalizing violation notice related actions.

Response: Kentucky's June 12, 1980, revised program does not include the "show cause" provision, thus eliminating the basis for the commenter's concern.

11. Comment: The February 29, 1980, Kentucky program (405 KAR 7:090 Section 11(2)(b)) is inconsistent with Federal requirements, because it provides that an operator can get temporary relief from his abatement responsibility from a hearing officer by showing irreparable loss. In a related matter, Kentucky's proposed program does not provide procedures comparable to 30 CFR 787.11 under which a citizen or a permit applicant can apply for temporary relief from a departmental decision granting or denying a permit, a revewal, a transfer, or a coal exploration permit. This omission would result in less stringent State requirements.

Response: With regard to the question of temporary relief from an operator's abatement responsibility, 30 CFR 845.15(b) provides for temporary relief under similar circumstances. Kentucky's regulations are, therefore, consistent with the Federal requirement in this regard. However, the Secretary agrees that the Kentucky regulation does not provide administrative review procedures comparable to those in 30 CFR 787.11 as discussed in Findings 27.1 and 27.2.

12. Comment: Kentucky's February 29, 1980, submission is too restrictive regarding public participation in inspection and enforcement; 405 KAR 12:030 limits citizens' requests to any person having an interest which is or may be adversely affected. Such language is inconsistent with the phrase "any person" used in 30 CFR 842.12 and referenced by 30 CFR 842.15. Kentucky's February 29, 1980, submission lacks provisions parallel to 30 CFR 842.14, which provides that "any person who is or may be adversely affected" may notify the Regional Director when the Office fails in its obligations to make Federal inspections. Finally, 405 KAR 12:030 Section 2 is deficient in that it omits the term "appropriate" preceding the words "enforcement action." This omission is crucial to the effective regulation of surface mining.

Response: The first two points (citizen participation and administrative review) of this comment have merit and are addressed in Findings 17.5 and 17.6. In regard to the third point, the omission of the term "appropriate" preceding the words "enforcement action" in 405 KAR 12:030E Section 2 is not critical. Kentucky's regulation would not prohibit a citizen from filing an objection for lack of appropriate enforcement, nor would it restrict the reviewing authority's responsibility to judge the appropriateness of the enforcement action taken.

13. Comment: The commenter notes several problems with 405 KAR 12:030 Section 1 of the February 29, 1980, submission. In particular, this section does not provide a counterpart to 30 CFR 842.12, which requires, in part, that the inspector notify a citizen as far in advance as practicable of when a citizen-requested inspection will occur and of the citizen's right to accompany the inspector. Also, the Kentucky regulation contains a disclaimer of any duty of care on the part of the inspector for the citizen accompanying the inspector. This is unduly restrictive and inconsistent with Federal language. Finally, the State language is also too restrictive in its statement that "any person desiring to participate in an inspection as provided in this section shall provide his own transportation and other necessaries." This language needs clarification so that the requirements of transportation and necessaries are not defined to restrict citizen access to the mine site.

Response: Kentucky's regulations satisfy Federal requirements for notifying citizens of mine inspections and citizen access to the mine site. 405 KAR 12:030E Section 3(3) authorizes reasonable discretion by the department in establishing the time and manner for mine site access. The Secretary feels that this language assures reasonable advance notice to the citizen of the inspection trip. Further, the Federal regulation does not require the State to assume liability for citizens accompanying inspectors, provided reasonable care and precaution are exercised by the inspector while carrying out his responsibilities on the permit area. The responsibility for reasonable care does not need to be specified in regulations since it is subject to ordinary principles of tort law. With regard to citizens providing their own transportation and necessaries, Kentucky has clarified the requirements of 405 KAR 12:030E Section 3(4) in the June 12, 1980, revised program. The revised language deletes

reference to "other necessaries" and limits citizen responsibility for providing transportation to the mine site only, which the Secretary believes is reasonable.

14. Comment: 30 CFR 843.15 requires that notice of a hearing regarding a cessation order be sent to a person who reports information which leads to the issuance of a cessation order. 405 KAR 12:020 Section 7 and 7:090 Section 5 lack this provision.

Response: The Secretary agrees that the provision for notice of hearings under 405 KAR 7:090E is unclear, and this concern is included in Finding 27.15.

15. Comment: The citizen task force suggested that information submitted to the department be made available on request as soon as it becomes available to the department or the secretary. DNREP has revised the language to read "readily available," a change which reflects the concern that citizen access to information is not considered a priority.

Response: Although the commenter did not specify the previse section of the program where the presence of the above language causes concern, the Secretary agrees that there are several places in the Kentucky program which indicate that citizens may not have immediate access to information or adequate notice of upcoming actions. See Finding 22.2.

B. The following comments were provided by (1) Council of the Southern Mountains, Inc., Appalachian Coalition and Environmental Policy Institute and (2) Citizens of the Commonwealth of Kentucky:

1. Comment: Kentucky's definition of "best technology currently available," as provided in 405 KAR 7:020E Section 1(14) of the June 12, 1980, program submission, contains an unrestrictive discretionary clause which could potentially subvert the "technology forcing" intent of the Act. The last sentence of the definition should, therefore, be deleted.

Response: The language provided in Kentucky's proposed program is consistent with the definition in 30 CFR 701.5 because it restricts discretion to the same extent as provided for in the Federal regulation.

2. Comment: Kentucky's June 12, 1980, proposed program fails to include "areas where mining may cause flooding" in its definition of "fragile lands" (405 KAR 7:020E Section 1(47)).

Response: In the Federal regulation, "area where mining may cause flooding" is cited as an example of fragile lands and is not a necessary part of the definition. The Kentucky definition itself is consistent with the Federal definition since the absence of the quoted phrase does not mean such lands are not "fragile." Therefore, no revision is required.

3. Comment: The definition of "hydrologic balance" should be revised to include "It encompasses the dynamic relationship among precipitation, runoff, evaporation and changes in ground and surface water storage."

Response: The suggested change is included in the June 12, 1980, revised submission on 405 KAR 7:020E Section 1(59).

4. Comment: The definition of "natural hazard lands" should be revised to include "frequent flooding."

Response: The June 12, 1980, revised submission includes the suggested language in 405 KAR 7:020E Section 1(71).

5. Comment: Kentucky's proposed program of June 12, 1980, (405 KAR 7:020E Section 1(90)) should be revised. The definition of "person having an interest which is or may be adversely affected" is too narrow. It should also include persons affected by related actions of the department.

Response: See response to comment A.9 above from Appalachian Research and Defense Fund of Kentucky.

6. Comment: Kentucky's June 12, 1980, definition of "public road" (405 KAR 7:020E Section 1(101) should be revised to assure that surface mining would be conducted in a fashion which would not deny a person ingress or egress to his or her residence. The commenter, therefore, suggests adding the language "including prescriptive easements or where a throroughfare is the only means of vehicular ingress and egress to a dwelling house," following the word "vehicle in the definition.

Response: The definition of "public road," as provided in 30 CFR 761.5, was suspended (44 FR 67942). The Office will publish a revised definition through the rulemaking process. When final, Kentucky will be required to develop and publish a definition of "public road" to be consistent with Federal counterpart. In the meantime, there is nothing in the Kentucky definition which is inconsistent with SMCRA or which would enable a coal operator to deny a resident access to his or her property without consent.

7. Comment: The definition of "recurrence interval," 405 KAR 7:020E Section 1(106), should be revised to read "means the interval of time, *usually in years*, in which *a precipitation or flood event of some specific duration and intensity can be* expected to occur once, on the average." (emphasized language added) The revised language is self-explanatory.

Response: The Secretary finds Kentucky's definition of "recurrence interval" consistent with 30 CFR 701.5. See Finding 12.2(j).

8. Comment: The June 12, 1980. definition of "reference area," as provided by kentucky, should be revised to include "aspect" because some plant species are sensitive to the aspect of an area.

Response: The "aspect" of an area is an important factor affecting species composition, growth, and diversity. Adding the suggested language, however, is not necessary because Kentucky's definition (which is identical to the Federal counterpart) specifies that the "Reference areas must be representative of . . . vegetation in the permit area." The inclusion of "vegetation" in this requirement necessarily reflects aspect, particularly for those plant species which are sensitive to exposure.

9. Comment: Kentucky's June 12, 1980, definition of "surface coal mining operations," 405 KAR 7:020 Section 1(129), should include the extraction of coal from coal refuse piles.

Response: Kentucky's revised definition of "surface coal mining activities," which is included within Kentucky's definition of "surface coal mining operations," is as stringent as the Federal requirements and includes extraction from refuse piles. See Finding 12.2 and comment A.2, above, from Appalachian Research and Defense Fund of Kentucky, for further discussion.

10. Comment: 45 KAR 8:010E Section 8(8) of Kentucky's June 12, 1980, revised program should be rewritten to clarify (1) where in the county courthouse the permit is to be filed and (2) when the operator must file the copy of the permit. The commenter proposes that the permit application be filed in the county clerk's office of the county courthouse rather than the court clerk's office and that the operator file a copy of the permit no later than the first publication of the notice of intent to mine.

Response: Federal regulation 30 CFR 786.11(d) requires filing a copy of the permit application "with the recorder at the courthouse . . . or if approved by the regulatory authority, at another equivalent public office, if it is determined . . . more accessible to local residents. . . ." The Kentucky program, however, does not require filing in the courthouse. The program states that the filing will be made in the "appropriate regional office of the department where the mining is proposed to occur." Filing the application at the regional office of the department, as proposed, has several advantages over filing at a courthouse. For example, regional office

personnel would be readily available to answer questions concerning the application and better control of the documents would provide greater assurance that all applications and parts of applications are in order and up-to-date. Further, the regional offices are in the coal mining area. For these reasons, the Secretary finds Kentucky's filing location to be an acceptable alternative which is consistent with Federal requirements. Kentucky's regulations are deficient, however, with regard to when the operator must file a copy of the permit. Federal regulation 30 CFR 786.11(d)(2) requires the filing by the first date of a newspaper advertisement of the application so that the public and other government agencies will have a reasonable time to review it. See Finding 14.27.

11. Comment: The commenter proposes that the State change the word "propose" in 405 KAR 10:010E Section 2(2)(b) to "identify" in relation to the initial and successive incremental areas for bonding.

Response: Kentucky has substituted the word "propose" for "identify" as used in 30 CFR 800.11(b)(2). This change does not materially alter the intent of the Federal section and therefore is acceptable.

12. Comment: The commenter proposes that 405 KAR 10:010E Section 2(2)(b) be amended to require that the periods for incremental bonds be limited to one year and that mining without bond coverage on an increment shall be the equivalent of mining without a permit.

Response: The Secretary believes that the one-year limitation would unduly restrict the ability of the State to approve an incremental bonding plan which would meet all the minimum requirements of the Federal regulations. The State regulations are consistent with the Federal regulations and an operator would be deemed to be mining without a permit when he or she mines on an area not included in a bonded increment.

13. Comment: The State does not include the provision of 30 CFR 805.11(a) for considering the factors of cost changes during the preceding 5 years in the bond determination.

Response: The omission of this requirement is discussed in Finding 18.2.

14. Comment: The use of the word "substantially" in front of "augmented seeding" in 405 KAR 10:020E Section 3 should be narrowly defined and controlled to allow good husbandry practices, without preempting the intent of the liability period.

Response: The Secretary agrees that use of the word "substantially" makes Kentucky's rule less stringent than 30 CFR 805.13 when used without the clarification similar to 30 CFR 805.13(b) as revised August 6, 1980 (45 FR 52306–52324). This is discussed in Finding 18.5.

15. Comment: In 405 KAR 10:020E Section 4 the word "substantially" should be deleted as it is inconsistent with 30 CFR 805.14(a).

Response: The Secretary agrees with the commenter's concern and requires an amendment to the program or other information to assure that the Kentucky rule is implemented in a manner which is consistent with 30 CFR 805.14(a). See Finding 18.6.

16. Comment: 405 10:050 Section 3 is inconsistent with 30 CFR 808.13 in that it provides no mandatory criteria for bond forfeiture.

Response: Kentucky's regulation is deficient as noted. Consequently, program revision is required before the Secretary can approve this provision. See Finding 18.17.

17. Comment: The use of 1.5 inspections per day in determining inspector needs is unrealistically high as is the assumption of 22 working days per month. Using a figure of 8,126 inspectable units, 1.5 days for a complete inspection, 1.5 partial inspections per day and 210 working days per annum, the commenter estimated that 436 inspectors would be required, which is 252 more than Kentucky predicts.

Response: As discussed in Finding 30, the Secretary finds that the Kentucky program does not contain sufficient information to demonstrate that the State will have adequate staffing. The Director, Office of Surface Mining (OSM), will advise the State by letter of the specific areas where the program did not demonstrate adequate staffing which will include inspector staffing. The commenter should note, however, that the number of estimated inspectable units in the revised State program is 6,264, not 8,126.

18. Comment: The program does not contain sufficient information regarding hearings, e.g., number of cases, projected time required per hearing, etc. The commenter recommends that OSM request more information regarding the interplay between the enforcement and adjudicatory branches within the department and ensure a strict adherence to the concept of an independent hearing officer.

Response: In his letter on staffing, the Director will request Kentucky to submit clarification of hearing officers' responsibilities to enable the Secretary to evaluate the adequacy of the program's staffing. See comment B.17, above.

19. Comment: OSM should closely scrutinize the Office of the General Counsel because the number of available attorneys may be limited.

Response: See response to comment B.17, above.

20. Comment: The language of 30 CFR 840.11(d)(2) mandates that the State program include a provision requiring prohibition of prior notice to a permittee of an inspection. The State provision, 405 KAR 12:010 Section 3(2), does not explicitly provide for such prohibition.

Response: The Secretary agrees. See Finding 17.2.

21. Comment: Kentucky regulation, 405 KAR 12:010 Section 3(4), has omitted the requirement regarding collection of evidence found in 30 CFR 830.11 (a), (b), and (c) (*Sic:* It is clear that the commenter meant to cite 30 CFR 840.11 (a), (b), and (c)) regarding the collection of evidence.

Response: The comment is valid and the issue is discussed in Finding 17.1.

22. Comment: Kentucky's June 12, 1980, regulation 405 KAR 12:020E Section 2(2)(b), concerning remedial action steps, is drafted in unnecessarily discretionary language. The terms "if any" and "if appropriate" should be deleted.

Response: The Secretary finds the Kentucky regulation consistent with the Federal requirements. The reader is referred to the response to comment No. A.4. of the Appalachian Research and Defense Fund of Kentucky for further explanation.

23. Comment: Section 405 KAR 12:020E Section 3(3) of Kentucky's June 12, 1980, revised program is vague. The phrase "or until other appropriate relief is granted by the department" is confusing and seemingly implies that actions other than complying with the regulation and order will relieve affirmative obligations imposed by a cessation order. This language should be revised to read "or until vacated, modified or terminated in writing by an authorized representative of the department."

Response: The Secretary agrees that Kentucky's regulation regarding "affirmative obligation to comply" needs to be revised. See Finding 20.3.

24. Comment: Kentucky's regulation 405 KAR 12:020 Section 7(1) allows for cessation orders to be issued "after investigation." This language is confusing and allows for delay in issuance of cessation orders that could prove prejudicial to all parties involved and contrary to the best interests of the Commonwealth.

Response: The Secretary agrees. See Finding 20.1.

25. Comment: The title of 405 KAR 12:020 Section 7 should be changed to "Cessation Orders" to avoid any confusion over nomenclature in Federal/State enforcement activities.

Response: The use of uniform nomenclature would be desirable; however, the suggested change is not necessary to assure the effective implementation and administration of the surface mining program, provided that Kentucky includes a definition of the term "order to abate and alleviate" in its program. See Finding 27.13.

26. Comment: Kentucky's June 12, 1980, regulation 405 KAR 12:020E Section 7(l) should be revised. As written, this section could mean that either the secretary of DNREP or an authorized representative, but not both, has the authority to issue cessation orders. This is inconsistent with 30 CFR 843.11(a) which provides for delegation of such authority by the Secretary to an authorized representative or the secretary. Additionally, this section utilizes a standard for issuance of a cessation order which differs from Federal law through omission of the key terms "imminent" and "significant" from the phrases "danger to the health or safety of the public" and "imminent environmental harm to land, air, or water resources."

Response: The Secretary does not believe that Kentucky's regulation relating to delegation of authority is confusing or inconsistent with the Federal requirements. Kentucky has, however, omitted key terms, as noted by the commenter. Therefore, 405 KAR 12:020E Section 7(1) must be revised accordingly. See Finding 20.1.

27. Comment: Kentucky should delete the final statement of 405 KAR 12:020 Section 7(1) which reads "the secretary or his authorized representative should act pursuant to this section only when it appears that it will be prejudicial to the state to delay action until an opportunity for a hearing can be provided."

Response: The Secretary agrees that the referenced statement could limit the inspector's ability to issue cessation orders in imminent danger or harmful situations and that the State regulation is inconsistent with Federal requirements. See Finding 20.1.

28. Comment: 405 KAR 12:020E Section 7(8)(b) of Kentucky's June 12, 1980, proposed program should include provisions for notifying the person who filed a report or registered a complaint which led to the issuance of a cessation order of any hearings scheduled as a result of a request by a permittee or operator.

Response: The complainant and the public must be notified of such hearings and Kentucky must assure this will occur before its program can be unconditionally approved. See Finding 27.15.

29. Comment: 405 KAR 12:030 Section 2(2) of Kentucky's proposed program provides for review of an inspector's decision not to inspect or enforce. This section should more clearly designate the official responsible for reviewing an inspector's decision not to inspect or enforce. There should also be provisions to guarantee confidentiality of the complainant.

Response: The Secretary believes Kentucky has adequately defined the review process and that the confidentiality of the complainant is adequately guaranteed under 405 KAR 12:030E Section 1(2). Although the Federal regulations specify that the Regional Director will conduct the review, this duty can be assigned to his designee(s) for convenience. It is reasonable to expect the State procedure to be similar, and it is not necessary that the identity of the reviewer be specified in a regulation.

30. Comment: 405 KAR 12:030 Section 3(3) includes a disclaimer regarding any "duty of care" on the department for persons accompanying inspectors on the minesite. This is not consistent with the requirement that citizens remain "under the control, direction, and supervision of the inspector" and is contrary to Federal law.

Response: The reader is referred to the response to Appalachian Research and Defense Fund of Kentucky, comment No. A.13, for discussion of this issue.

31. Comment: Kentucky's revised 405 KAR 12:030E Section 1 is too restrictive because it provides that "any person having an interest which is or may be adversely affected . . . may request that the department conduct an inspection." This language is consistent with Federal requirements at 30 CFR 842.12 which permits "any person" to request an inspection.

Response: The Secretary agrees. See Finding 17.5.

32. Comment: 405 KAR 12:030E Section 3 of Kentucky's revised program does not require that the inspector notify the citizen as far in advance as practicable when the inspection is to occur and that the citizen shall be allowed to accompany the inspector.

Response: The reader is referred to the response to Appalachian Research and Defense Fund of Kentucky, comment No. A.13.

33. Comment: A State counterpart to 30 CFR 840.15, public participation, is not included in the revised program submission. While the department has included the right of review of a decision not to inspect or enforce, it has not included this provision for reviewing the adequacy and completeness of inspections in 405 KAR 12:030.

Response: States need not contain a counterpart to 30 CFR 840.15. The Secretary has found, however, that the State lacks a provision comparable to 30 CFR 842.14, giving citizens the right to an informal review of decisions not to inspect. See Finding 17.6.

34. Comment: 30 CFR 842.15(a) allows for review of the decision not to inspect or to take appropriate enforcement action. The word "appropriate" is not included in Kentucky's regulation 405 KAR 12:030E Section 2. This omission is crucial to effective regulation.

Response: The reader is referred to the response to Appalachian Research and Defense Fund of Kentucky, comment No. A.10.

35. Comment: The commenter suggests adding language to 405 KAR 16:120 Section 2(3) which would ensure, in the absence of any safeguards regarding the qualifications of those responsible for pre-blasting surveys or otherwise, that serious deficiencies in the reports of surveys will be corrected before blasting begins, where the survey was requested beforehand and where the disagreement was promptly communicated.

Response: Such additional language is not expressly required by the Federal regulations and the Secretary does not require Kentucky to adopt it. The comment, however, has merit and may be considered by the State at its discretion.

36. Comment: After the word "resident" in the last sentence of 405 KAR 16:120 Section 3(1)(b), the sentence should read "of his or her rights under the previous section and how to request a pre-blasting or blasting survey, and of the citizens rights under 405 KAR 12:030 to write letters of complaint and obtain an inspection of the site."

Response: Kentucky's regulation is identical to 30 CFR 816.64(a)(2). Therefore, the suggested revision is not needed to satisfy Federal requirements.

37. Comment: The concept of "pacing" recognizes that certain watersheds do not qualify for designation as absolutely unsuitable for mining, even though these watersheds can sustain only a limited number of mines at any one time. Therefore, the department should provide persons with the right to designate pacing within a watershed, i.e., only a limited number of acres to be mined may be permitted at any one time in the watershed.

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Response: The suggested language is not required by the Federal regulations. 30 CFR 762.12(a) provides that the State may establish additional criteria for determining unsuitability. Kentucky did not elect to exercise this option. The suggested procedure, however, has merit and may be considered by the State at is discretion.

38. Comment: The language "and is aggrieved" should be deleted from the criteria for a person having a right to petition under 405 KAR 24:020 Section 2.

Response: The State's June 12, 1980, revised submission make this deletion.

39. Comment: The language in 405 KAR 24:030 Section 2(a) and (b) concerning "substantial financial and legal commitments" parallels the Federal requirement. It is, however, very vague and should be defined more precisely in the regulations.

Response: 405 KAR 24:030E Section 2 is substantially the same as 30 CFR 762.13 and the definition of "substantial legal and financial commitments in a surface coal mining operation" in 30 CFR 762.5. The Federal regulations do not require any additional elaboration of these requirements in State regulations. Kentucky's method of determining "substantial legal and financial commitments" is consistent with the Federal requirements. Therefore, the suggested revision is not necessary.

40. Comment: Kentucky's revised program of June 12, 1980, 405 KAR 24:030E Section 6(2) requires the department to make petition-related information available to the public pursuant to KRS 61.870 *et seq.* The commenter suggests revising this section to ensure that such data is available for public inspection and copying at a central location of the county or multi-county area in which the petitioned land is located.

Response: 405 KAR 24:030E Section 6(2) is inconsistent with the Federal counterpart in that KRS 61.870 *et seq.* does not require public availability of the petition and related documents as required by 30 CFR 764.15(d). Kentucky will be required to revise its program accordingly. See Finding 21.6.

41. Comment: 405 KAR 24:040E Section 4(a) of Kentucky's revised program conflicts with 30 CFR 761.5(d); Kentucky's regulation contains, in the context of determining valid existing rights, the language "or has made a good faith effort" (to obtain permits) while the Federal counterpart does not.

Response: The district court opinion in *In re: Permanent Surface Mining Regulation Litigation* of Febraury 26, 1980, (p. 20) remanded the Federal regulation. Kentucky's revised requirement is consistent with SMCRA and the court opinion, which explicitly approved the language Kentucky has added. For additional discussion of remanded regulations, the reader is referred to the "General Background on the State Program Approval Process."

42. Comment: The language "the Wild and Scenic Rivers Systems" and "or any place on or eligible for listing" should be included in Kentucky's revised regulation 405 KAR 24:040E Section 2(1) and (4).

Response: Kentucky will be required to include the Wild and Scenic Rivers System as an area designated unsuitable for mining under SMCRA Section 522(e) before its program can be approved. See Finding 21.1. The Federal requirement (30 CFR 761.11(c)) relating to "places eligible for listing on the National Register" was suspended (44 FR 67942). Kentucky's proposed program of June 12, 1980, is consistent with the Federal rules currently in effect. For additional discussion of suspended Federal regulations, the reader is referred to "General Background on the State Program Approval Process."

43. Comment: Kentucky's revised program 405 KAR 24:030E Section 6(2)(c) uses the language "mining operations *would* result" while the Federal requirement in 30 CFR 762.11(b)(3) specifies "mining operations *could* result." This inconsistency should be resolved in favor of the Federal requirement.

Response: The Secretary agrees. See Finding 21.7.

44. Comment: Kentucky's June 12, 1980, regulation 405 KAR 24:040E Section 2(6)(b) is inconsistent with the Federal requirement because it does not include the required notice of a public hearing at least two weeks before the public hearing.

Response: The Secretary agrees. The State will be required to revise the proposed program to include a provision consistent with the time requirement noted by the commenter. See Finding 21.2.

45. Comment: 405 KAR 24:040E Section 3 of Kentucky's June 12, 1980, proposed program, concerning requests to other agencies for determinations of whether proposed operations are located in areas where mining is prohibited under 405 KAR 24:040E Section 2, provides that, if an agency does not respond within 30 days, the department will presume that mining operations will not affect other agency lands in question. This regulation creates a presumption in favor of mining on lands the Federal regulations seek to protect, simply on the basis of a bureaucratic oversight in not responding within 30 days.

Response: The language added by Kentucky is consistent with the Federal requirement and merely reinforces the 30-day response period required by 30 CFR 761.12(b)(2). The Secretary assumes that, if information were submitted or became available after the 30-day period, the State would be required to use such information in the processing of a permit application. Otherwise, permit issuance by the State could result in violation of Section 522(e) of SMCRA which prohibits mining in certain areas and which is incorporated in 30 CFR Chapter VII, KRS 350.065, and 405 KAR Chapter 24.

46. Comment: 405 KAR 24:020 Section 3 fails to set forth that no party shall bear any burden of proof once the petition content requirements are met. This in inconsistent with 30 CFR 764.15(3).

Response: Kentucky's regulation 405 KAR 24:030E Section 3(4) is consistent with 30 CFR 764.15(3). Omission of the language "once the requirements . . . are met, no party shall bear any burden of proof, but each accepted petition shall be considered and acted upon by the regulatory authority pursuant to the procedures . . ." is not significant. Kentucky's procedures, as described in 405 KAR Chapter 24 and the narrative in State Program Section 731.14(g)(11) do not impose any burden of proof on the petitioner because 405 KAR 24:030E Section 7 provides that the hearing shall be legislative in nature which by definition means that it will not be adjudicatory in nature and no burden of proof shall apply.

C. Mr. Jai P. Prasad of Prasad Engineering, Inc., provided the following comments:

1. Comment: The term "complete reduction of highwall" should be revised to permit greater flexibility in accommodating local conditions and needs. The commenter did not make reference to a specific section of Kentucky's rules.

Response: The Federal law and regulations require complete elimination of the highwall. See 30 U.S.C. 1265(b)(3) and 1291(2). To conserve soil moisture, ensure stability, and control erosion, however, cut and fill terraces may be allowed on the reconstructed slope.

2. Comment: Kentucky's implementing legislation, KRS 350.070 Section 7, needs to be revised to specifically exempt permit revision requests which do not involve increasing permit acreage from the full array of application requirements.

Response: Kentucky's language is explicit in limiting reapplication to those permits which would increase the permit acreage. A negative declaration is, therefore, not necessary to achieve the commenter's goal.

3. Comment: Kentucky should revise KRS 350.080 Section 5(7) to extend the deadline for filing the permit application until such time as hydrologic information on the general area is available. Filing within two months of State primacy, contends Mr. Prasad, may be unreasonable.

Response: Section 502(d) of SMCRA requires each operator who expects to be mining eight months after the State achieves primacy to have filed an application within two months after State program approval. See 30 CFR 771.21. In this regard, Kentucky cannot revise its legislation, as recommended, because it would provide requirements inconsistent with the Federal counterpart. Section 507(b)(11) of SMCRA shows that Congress explicitly addressed the problem of applications covering areas for which hydrologic data might not be available and prohibited permit issuance until such time as it is available. Operators should be making advance plans to fulfill the requirements for hydrologic information, to the extent possible, so that complete permit applications can be filed within the prescribed time limits. Small operators, in particular, are encouraged to request assistance from the State for acquiring and evaluating hydrologic data for their permit applications.

D. Mr. Charles Barnhart, representing a committee of scientists at the Kentucky Agricultural Experiment Station, Provided the following comments:

1. Comment: Kentucky's February 29, 1980, program (405 KAR 16:070 Section 2) should include a "catastrophic event" exemption to match the Federal interim exemption until a new provision for 30 CFR 816.42(b) is promulgated.

Response: Kentucky's resubmission of June 12, 1980, includes provisions for the "catastrophic event" exemption in 405 KAR 16:070E Section 2. Nevertheless, Kentucky's provision is inadequate. See Finding 13.3.

2. Comment: The Kentucky Cooperative Extension Service (Regulatory Services) should be the certifying agency for laboratories which will be designated to conduct soil testing, water testing, and overburden analysis, Further, the Kentucky DNREP should develop a memorandum of agreement (MOA) with the University of Kentucky, Colleges of Agriculture and Engineering, to participate in the development of experimental practices.

Response: Kentucky's approach to approving laboratories involves a review of laboratory personnel, facilities, financial status and equipment. This meets the Federal requirements in 30 CFR 795.17. That Federal requirement specifies that the laboratory demonstrate that it has the financial status, space, and staff capable of collecting necessary field data and making appropriate engineering determinations through the use of standard methods while meeting appropriate standards of the Occupational Safety and Health Administration. Although a MOA between DNREP and the Colleges of Agriculture and Engineering may benefit the effective implementation of surface mining laws and regulations in Kentucky, such a MOA is discretionary with the interested parties.

3. Comment: The U.S. Geological Survey should designate, in 405 KAR 6:040 Seciton 14 of Kentucky's February 29, 1980, submission, those areas where ground water is not a significant source of water supply and is, therefore, exempt from Section 14.

Response: The proposal suggested by the commenter exceeds the Federal requirements. The State may, at its discretion, use information from the U.S. Geological Survey in making determinations relating to water supply.

4. Comment: The review committee suggests that the requirements specified in 405 KAR 8:040 Section 15 of Kentucky's February 29, 1980, submission cannot be performed.

Response: This comment is too general for the Secretary to be responsive to the statement "the requirements cannot be performed." No alternatives or recommendations were provided. In reviewing the provisions of the section in question, the Secretary finds that the data required can be used to quantitatively and qualitatively evaluate the potential effects of surface coal mining activities on the surface and subsurface hydrologic regimes. Kentucky's regulation is consistent with the Federal requirements. Therefore, no changes are warranted for Kentucky's provision to be eligible for program approval.

5. Comment: The ground water recharge, as specified in 405 KAR 16:060 Section 4 of Kentucky's February 29, 1980, submission, cannot be determined.

Response: The Secretary assumes the commenter intended to address 405 KAR 16:060E Section 6 which concerns protection of ground water recharge capacity instead of Section 4 which concerns acid-forming and toxic-forming spoil. Section 6 is identical to 30 CFR 816.51 which does not require additional language in a State regulation to satisfy the Federal requirement; therefore, no change in Section 6 is required for program approval. The commenter appears to be saying that it is not possible to determine the ground water recharge capacity, but does not present any supporting evidence or explanation. Restoration of recharge capacity is specifically required by Section 515(b)(10)(D) of SMCRA. Further discussion of this regulation can be found in the preamble to the Federal rules at 44 FR 15171–15172 (1979).

6. Comment: The commenter suggests adding the language " unless such practice is commonly used on unmined land" at the end of the first sentence in 405 KAR 16:200 Section 6(2)(b) which states that the period of extended bond liability begins the last year of ". . . augmented seeding, fertilizing, irrigation or other work necessary to ensure successful vegetation . . . ." Such language is justified to determined the productivity of the revegetated land. Otherwise, there would be no real standard for comparison.

Response: The Secretary has asked that Kentucky clarify the husbandry practices which will be allowed without affecting the performance bond liability period. See Finding 18.5.

7. Comment: The review committee suggests that the Federal and State laws and the regulations should provide increased flexibility in the bonding requirements. Such flexibility is particularly necessary to encourage and promote research.

Response: The reader is referred to the response to a similar comment provided by the Soil Conservation Service (comment No. D.1 below, under comments from "Federal Agencies Outside Interior").

8. Comment: The duties of the Reclamation Materials Section under the narrative descriptions in State Program Section 731.14(e) are not well defined, and it is hoped that this office will do more than maintain a library.

Response: It is assumed that the commenter is referring to the technical services branch of the Division of Standards and Specifications. The Secretary finds that the duties of that branch, when considered with the remainder of the information on the Division of Standards and Specifications, are adequately defined.

E. IMC Coal Development Corporation raised the following six issues which are answered below in one response:

Comments

1. In narrow, steep-sided, steep gradient valleys where it is impossible to obtain the storage volume for both sediment and runoff adequate for the 10-year 24-hour precipitation event without building a dam so large that it will cut off and inundate roads, stockpile areas

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and mine portals, can a variance be granted? If so, what criteria will be used in assessing the variance and what additional conditions will be imposed on the use of smaller dams.

2. Will an existing railroad coal loading siding located almost entirely on the railroad company's property and four miles by public road from the nearest mine operation have to be permitted? If so, how can details such as sediment control structures be handled when such a siding is a small part of a complex of six or seven other sidings owned by different companies plus a large amount of track owned by the railroad? Will a common permit have to be taken out by all companies concerned if a permit is required?

3. The regulations imply that huge amounts of information pertaining to ground water in the mine plan area must be obtained. In a typical area that we wish to permit, there are no houses, no wells, and all mines that are or have been in operation are either dry or have a natural water flow no greater than a few tens or hundreds of gallons per day. In such a case, are we really expected to drill and test numerous holes in a search of aquifers that do not exist?

4. In a case where a permit is taken out for a strip and auger mine, and an area of this is designated as the portal site for an underground mine that may not start operation for a period of several years after the strip mine passes by, can this individual area be the subject of an underground mining permit and be left unbackfilled and ready for mining operations? The future operator of the underground mine would bond and permit the area to be used for this mine at the time the strip miner completed all but the backfilling work.

5. How detailed must this information be in the case of underground mine surface disturbance permits? If possible, give some examples.

6. Is the permittee expected to return existing highwalls to the original contour at mine portal sites where the spoil from the original excavation has long since been lost?

Combined Response: IMC's questions do not specifically address the Kentucky proposed program. To the extent that these questions address basic requirements of SMCRA and the implementing Federal regulations, review of the proposed Kentucky program is not the appropriate forum for discussing these issues. Therefore, a response was sent directly to IMC Coal Development Corporation by the OSM Regional Office in Knoxville. (See Administrative Record No. KY–306.)

F. The University of Kentucky, Cooperative Extension Service, commented as follows:

1. Comment: Why has the requirement to have topsoil variances certified by a soil scientist been deleted from 405 KAR 16:210 and other pertinent regulations? This is divergent from OSM regulation 816.113 (*sic*). Why should such decisions be left only to engineers in the Kentucky regulations?

Response: The Secretary believes the commenter intended to cite 30 CFR 816.133 instead of 816.113. Neither Kentucky's February 29, 1980, submission nor the revised submission of June 12, 1980, require "certification of topsoil variances by a soils scientist." Likewise, the comparable Federal regulation, 30 CFR 816.133, does not require such certification. It should also be noted that 30 CFR 816.22(e) and its counterpart 405 KAR 16:050E Section 2(5) authorize the use of topsoil substitutes and supplements. Such "variances" are based on the results of independent laboratory analyses.

2. Comment: Why have only registered professional engineers been designated responsibility for vegetative cover in 405 KAR 16:210 and other related sections? This specification diverges from OSM regulations 816.113 (*sic*) and other regulations in that they at least specify "other appropriate professionals."

Response: The Secretary believes the commenter intended to cite 30 CFR 816.133 instead of 816.113. Kentucky's June 12, 1980, revised program relating to the design of postmining land use (405 KAR 16:210E Section 4(5)) is consistent with 30 CFR 816.133(c)(5). Kentucky's regulation would restrict design of the plan to the general supervision of a registered professional engineer. Federal requirements, on the other hand, would also permit design under the general direction of an "appropriate professional."

Further, both the Federal and State regulations require only design of the plan under the general supervision of the specified professionals. This does not prohibit or restrict the development and approval of individual plan components (e.g., soil replacement, revegetation, wildlife program, etc.) by experts in those disciplines. Overall responsibility for the plan would, however, be the responsibility of the registered engineer.

3. Comment: Another problem that appears to exist concerns experimental practices. It seems that the regulations will require a research agency to advertise any experimental practice the same as it would a permit application or land use change and have hearings for anyone who wished to discuss such practices. This would seem to be a deterrent to furthering research efforts in the future.

Reponse: 30 CFR 785.13 does not authorize procedures which "shortcut" the public participation requirements intended under SMCRA. Therefore, the Secretary believes that Kentucky's June 12, 1980, revised program, as it relates to experimental mining practices, is consistent with Federal requirements, to the extent the Kentucky proposal parallels the public participation provisions of 30 CFR 786.11. The Secretary does not believe that public participation is a deterrent to viable, well-planned experimental research efforts.

G. The following comments were provided on July 23, 1980, by Mr. Bill Caylor representing the Kentucky Coal Association:

1. Comment: Mr. Caylor commented that relative to an OSM meeting in Knoxville, Tennessee, on July 18, 1980, involving representatives of several environmental and/or anti-coal groups to discuss proposed State programs, it seemed special ground rules had been made for favored groups. The commenter also alleged there was no proper notice of this meeting.

Response: The July 18, 1980, meeting involved participants from a diversity of interests including coal industry, State regulatory authority, a State legislator, environmental groups and a public information organization. A complete list of attendees is available from minutes of the meeting contained in Kentucky Administrative Record No. KY–237. OSM Guidelines for Post-submission Contacts between the Department of the Interior, the State, and the public fully provide that "upon request, the Department will meet with any public representatives—citizens, environmental groups, industry—through the end of the public comment period. Notice of scheduled meetings shall be posted in a public place. The meetings will be open." Notice of the meeting was posted in the administrative record room. The Secretary believes that the Knoxville July 18, 1980, meeting was conducted in full compliance with the aforementioned guidelines

2. Comment: The commenter stated that relative to Kentucky's revised program submission of June 12, 1980, the DNREP fails to follow the directives of the December 21, 1979, February 26, 1980, and May 16, 1980, U.S. District Court decisions which ordered the Secretary of the Interior to affirmatively disapprove those sections of a State program that incorporate suspended or

remanded regulations. The commenter also notes that the July 10, 1980, U.S. Court of Appeals decision concluding that the Secretary lacks power to demand that States require more permit application information than Sections 507 and 508 of P.L. 95–87 should necessitate DNREP to withdraw and repromulgate all 40 KAR Chapter 8 permit related regulations.

Response: Kentucky's program revision of June 12, 1980, contains several sections which have been interpreted to incorporate inconsistencies with the aforementioned court decisions. Accordingly, the Secretary has affirmatively disapproved the portions of Kentucky's regulations identified in the Secretary's decision. The July 10, 1980, U.S. Court of Appeals decision was vacated, when the full court voted to rehear the case, by order entered August 25, 1980.

3. Comment: The commenter states that the Kentucky DNREP had acted responsibility in enacting primacy legislation and that the enacted legislation has all the statutory authority required to implement a permanent program.

Response: The Secretary concurs that the Kentucky DNREP has acted responsibly in assisting the State legislature in enacting primacy legislation. However, as reflected in Findings 1, 2 and 4, statutory authority in some key areas is still lacking to fully implement the provisions of SMCRA.

Mr. Bill Caylor submitted into the record a 260-page set of comments from the Kentucky Coal Production Industry Advisory Group (Administrative Record No. 261). This document represented the testimony of one of three advisory groups to DNREP during formulation of the initial State program proposal. The references to the Kentucky rules in these comments are not to the June 12, 1980, rules but to earlier versions. Accordingly, the citations are not always current. These comments are addressed by the following numbers 4 through 39.

4. Comment: It is recommended that the Department suspend all of those regulations from the permanent program which were suspended in the Tuesday, November 27, 1979, **Federal Register** Vol. 44, No. 229, p. 67942, *et seq.;* and the Monday, December 31, 1979 **Federal Register** Vol. 44, No. 251, p. 77448, *et seq.*

Response: The Kentucky revised submission of June 12, 1980, does not contain the suspended requirements. Also see comment No. G.2 above to Mr. Caylor.

5. Comment: The advisory group recommends that the Chapter 7:020 definitions be changed to read identical to those definitions in the Federal permanent regulations. Even though many of these definitions are similar in intent, a very serious problem could arise if certain Federal definitions were overturned by the courts or suspended by OSM. A Federal change might require litigation on the State level initially just to determine that Kentucky's definitions were in fact similar in intent before the regulations could be revised reflect the Federal changes.

Response: Finding 12.2 addresses State regulations that are inconsistent with definitions in 30 CFR Chapter VII. It should be noted, however, that OSM will promulgate new definitions for those suspended and remanded. After final promulgation, the State will be provided a reasonable time to amend its program to include definitions consistent with the new Federal definitions. As to Kentucky's other definitions, the Secretary does not require a State to copy the Federal rules and believes that Kentucky has fully complied with the intent of SMCRA and the Federal regulations in using its own language, where it deemed appropriate, except for certain of the definitions discussed in Finding 12.2.

6. Comment: In 405 KAR 7:020 the definition of "affected area" should be changed as follows: "Affected area" means any land or water upon which surface coal mining and reclamation operations are conducted or located, and land or water which is located *within the surface disturbed areas of* underground mines.

Response: The suggested revision would be inconsistent with 30 CFR Chapter VII which specifically includes all areas overlying underground mines. The definition found in 405 KAR 7:020E Section 1(5) in the June 12, 1980, submission is consistent with the definition of 30 CFR 701.5.

7. Comment: In 405 KAR 7:020 the definition of "fragile lands" is more stringent than the minimum Federal requirements. The advisory group recommends deleting the reference to "wetlands" in this definition and substituting the words "areas where mining may cause flooding."

Response: The State definition (405 KAR 7:020E Section 1(47) of the June 12, 1980, submission) is acceptable and is not more stringent than Federal regulations. "Wetlands" is an example of the type of land which would be covered by both the Federal and State definition. The suggested change would make the Kentucky language mirror exactly the phrase in the Federal definition of "fragile lands" found in 30 CFR 762.5; however, the secretary does not find this necessary for program approval.

8. Comment: The definition of "unwarranted failure to comply" does not conform to P.L. 95–87 Section 701(29). The commenter recommends deleting subsection (b) in its entirety and substituting the following: "the failure to abate any violation of the permit or of KRS 350."

Response: The Secretary believes the suggested revision is not necessary because the Kentucky definition in 405 KAR 7:020E Section 1(141) is not inconsistent with SMCRA. Kentucky's standard of complying with any notices or orders is essentially the same as and subsumes the language and intent of SMCRA, i.e., "failure to abate any violation."

9. Comment: The advisory group recommends deleting the words "or any notice or order of the department" from the definition of "willful violation." This change would bring this definition into conformity with the definition of "willful violation" contained in the 30 CFR 786.5. There are circumstances which might result in the DNREP issuing a notice or order which is "directory" in nature and not a result of a violation of a permit condition or a violation of KRS 350. In such a case, the refusal of an operator to comply with such notice or order should not be classified as a "willful violation."

Response: The Secretary disagrees. As used throughout the Kentucky program, "notice" and "order" have been associated with formal written documents based on specific violations of KRS 350, 405 KAR Chapters 7 through 24, or permit conditions. The Secretary believes this is also the intent of the terms as they are used in the definition of "willful violation."

10. Comment: The definition of "best technology currently available" should be changed to substitute "practicable" for "possible" in the third line and the phrase "but in no event . . . Kentucky or Federal laws" should be deleted.

Response: The Secretary believes that there is no substantive difference between "practicable" and "possible" in this context, and will require no change. The second recommended change would make the State definition inconsistent with 30 CFR Chapter VII and with the explicit language of Section 515(b)(10)(B)(i) of SMCRA which says that in no case should contributions of suspended solids "be in excess of requirements set by applicable State or Federal law." The Secretary finds the Kentucky definition in 405 KAR 7:020E Section 1(14) consistent with the Federal requirements.

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11. Comment: Under 405 KAR 7:020(19), "coal exploration," subsection (14)(b) should be deleted in its entirety.

Response: Kentucky defines "coal exploration" in 405 KAR 7:020E Section 1(19) of its June 12, 1980, submission. The recommended change would eliminate field gathering of environmental data from the definition and would therefore be inconsistent with 30 CFR 701.5 which includes this type of field activity as coal exploration.

12. Comment: 405 KAR 7:020(15), "coal processing plant," should be changed by substituting "and" for "or" to read as follows: "Coal processing plant means a collection of facilities where run-of-the-mine coal is subjected to chemical *and* physical processing and separated from its impurities."

Response: The suggested change would make the State definition, now found in 405 KAR 7:020E Section 1(20), inconsistent with the Federal definition in 30 CFR 701.5 since plants which only physically process coal (by crushing, for example) would be excluded from the special regulations applicable to preparation plants.

13. Comment: 405 KAR 7:020(16), "coal processing waste," should be deleted in its entirety and the following definition should be substituted: "Coal processing waste means those high volume, low hazard earth materials which are combustible, physically unstable, or acid-forming or toxic-forming, which are wasted or otherwise separated from product coal, and slurried or otherwise transported from coal preparation plants, after physical or chemical processing, cleaning, or concentrating of coal."

Response: The Kentucky definition, now found in 405 KAR 7:020E Section 1(21), is consistent with the Federal definition. The proposed change could lead to too narrow of an interpretation because of the phrase "those high volume, low hazard," which does not appear in the Federal definition, and which might exempt highly toxic materials or those produced in moderate volume during processing.

14. Comment: Under 405 KAR 7:020(18), "combustible material," the advisory group recommends adding "organic" before the word "material" and deleting the words "either by fire or" from this definition.

Response: The addition of the word "organic" would not make the definition inconsistent with the Federal rule nor would deletion of the words "either by fire or" so long as the criterion that burning be accompanied by evolution of heat remains in the State definition. The Secretary finds the State's definition in 405 KAR 7:020E Section 1(23) acceptable, and the suggested change would be at the State's discretion.

15. Comment: 405 KAR 7:020, "downslope," should be changed to read as follows: "Downslope means the land surface below the projected outcrop of the lowest coal bed *to be mined.*"

Response: The State definition (405 KAR 7:020E Section 1(37)), which says "being mined" instead of "to be mined," uses the same words as 30 CFR 701.5 and no change is required.

16. Comment: Under 405 KAR 7:020 (405 KAR 7:020E Section 1(38) of the June 12, 1980, submission), "embankment," the advisory group recommends changing the words "artificial deposit of material" to "man-made deposit of material."

Response: The recommended change would have no substantive effect on the definition and is not required.

17. Comment: Under 405 KAR 7:020(36), "fragile lands," the advisory group recommends deleting the words "ground water discharge areas" and "and important unique or highly productive soils or mineral resources." Ground water discharge areas" would include any piece of land and "highly productive mineral resources" could include coal. The Kentucky Coal Association also recommends this change in 405 KAR 24:010 Section 1(2).

Response: "Ground water discharge areas" was deleted in the June 12, 1980, revised submission. The second suggestion has merit, but since the language is in the category of items that "may" be determined as fragile lands (405 KAR 7:020E Section 1(47)), the Secretary does not consider a change necessary.

18. Comment: Under 405 KAR 7:020, "historic lands," the commenter recommends deleting the words "or eligible for listing on" from this definition to be consistent with the suspension of the Federal language in the Tuesday, November 27, 1979, **Federal Register.** The Kentucky Coal Association also suggests this deletion from 405 KAR Kentucky Coal Association also suggests this deletion from 405 KAR 24:010 Section 1(3).

Response: The suggested change would make the State definition (which now appears in 405 KAR 7:020E Section 1(57)) inconsistent with 30 CFR 762.5. The language "or eligible for listing on" was suspended only from 30 CFR 761.11(c) and 12(f)(1) because these sections related to the designation of lands unsuitable under Section 522(e) of SMCRA. The term "eligible for listing on" is still relevant in defining historic lands for purposes of considering petitions under Section 522(a) and (c) of SMCRA.

19. Comment: Under 405 KAR 7:020(47), "historically used for cropland," the commenter recommends deleting this definition in its entirety or using the Federal definition of "cropland" as contained in 30 CFR 701.5.

Response: The recommended deletion would be inconsistent with 30 CFR 701.5 where the term is defined in order to specify which prime farmlands are subject to special performance standards, through the definition of prime farmland in SMCRA Section 701(20). (The Kentucky definition is now found in 405 KAR 7:020E Section 1(58).)

20. Comment: Under 405 KAR 7:020(63), "notice of violation," the advisory group recommends changing this definition to read as follows: "Notice of violation means any written notification from a *duly authorized representative of the department* of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication." This change would clarify the intent of this definition and avoid any possible abuse, such as a "speeding ticket" being considered a notice of violation.

Response: The State definition in 405 KAR 7:020E Section 1(75) uses the words "governmental entity," instead of those italicized above, which are the same words as those of the corresponding Federal definition in 30 CFR 770.5. The suggested change would make the State rule less stringent than the Federal requirements, since operators would not have to reveal, on their permit applications, notices issued in other States or by other agencies, such as the Environmental Protection Agency, as required under 30 CFR 778.14(c).

21. Comment: The advisory group recommends deleting the definition of "prime farmland" from 405 KAR 7:020 and substituting the definition of "prime farmland" contained in P.L. 95–87 Section 701(20). The commenter feels that the Federal regulations have exceeded the intent of the Federal law and that the Kentucky DNREP should not reflect this same ineptitude.

Response: The Kentucky program is consistent with 30 CFR 701.5 and no change is required by the Secretary.

22. Comment: The advisory group recommends deleting "probable hydrologic consequence" from the definitions in 405 KAR 7:020. This is a new definition and the commenter feels that the State has no justification for defining it.

Response: 30 CFR 795.5, small operator assistance program, includes this definition and the State regulations contain a definition consistent with this

requirement in 405 KAR 7:020 Section 1(96).

23. Comment: The advisory group recommends changing the definition of "public road" in 405 KAR 7:020 to reflect the suspension of the Federal definition in the November 27, 1979, **Federal Register,** p. 67942.

Response: This State definition reflects the intent of the suspension and is consistent with Section 522(e)(4) of SMCRA. Therefore, no change is required by the Secretary.

24. Comment: In 405 KAR 7:040 Section 3, disposal of materials, the commenter recommends adding the word, "a" before the word "permit" so that offsite spoil disposal in another permitted area would be allowed.

Response: This change is not required by 30 CFR Chapter VII. Adoption of this revision is left to the State's discretion. Either version would be consistent with the Federal rules.

25. Comment: 405 KAR 7:040 Section 5(2)(c)(1) should be considered acceptable as it provides for a variance from the 6 month time period for modifying an existing structure. There are certain operations which could not comply with the absolute 6 month deadline. An example might be the effort to bring a coal waste pile into compliance by the addition of extra coal waste for support, when such extra coal waste is available only over, say, a one year period.

Response: The variance allowed by the State section is inconsistent with 30 CFR 786.21. See Finding 14.30.

26. Comment: 405 KAR 7:040 Section 6, hazard classifications for impoundments, should be deleted in its entirety. This language is not contained in the Federal law or regulations; therefore, it should be deleted in order that it be no more stringent than the Federal requirements. The commenter recognizes that this language comes from the Water Resources Division but deletion will not affect the proper application by that division. Section 9 requires compliance with these regulations regardless.

Response: The Secretary does not believe that incorporation of other State regulations affecting coal operations affects the stringency of the State program so long as they are consistent with the requirements found in SMCRA and 30 CFR Chapter VII. Accordingly, the Secretary will not require modification of Kentucky's program based on this comment.

27. Comment: Under 405 KAR 7:040, general obligations of operators and permittees, Section 10 should be revised to add exemptions for preexisiting face-up areas for underground mines where such material does not exist.

Response: The suggested exemption may be found in 405 KAR Section 16:090E Section 2.

28. Comment: The advisory group recommends establishing a new section under 7:090, hearings, to provide for an informal settlement conference which would be an informal review hearing process whereby the parties would know, in advance of the informal settlement conference, the penalty amount and can possibly settle any violation short of following formal hearing procedures.

Response: The June 12, 1980, program revision includes provisions for an informal conference.

29. Comment: In 405 KAR 7:090 Section 3(3)(d), "seven (7) days" should be changed to "thirty (30) days."

Response: The June 12, 1980, revised submission includes this change.

30. Comment: In order to expedite review of a closure situation, the commenter recommends changing 405 KAR 7:090 Section 6 to read as follows: "Orders to abate and alleviate. Whenever . . . the department shall conduct a hearing *immediately but in no event later than five (5) days* after such an order and give . . . ."

Response: The existing State language is not inconsistent with Federal requirements, and no change is necessary for the Secretary to approve this provision. The State regulation provides that a hearing may be conducted at any time prior to the expiration of 10 days, upon request, and is thus consistent with Section 525(c) of SMCRA and 43 CFR Section 4.1260 *et seq.* Moreover, 405 KAR 7:090E Section 6(4)(b) provides for the granting of temporary relief within 5 days of such request.

31. Comment: 405 KAR 7:090 Section 6(2)(*sic*), which specifies who may request a mine site hearing, should be changed to include "or operator" immediately after "party."

Response: The June 12, 1980, revision includes the suggested revision in 405 KAR 7:090E Section 7(2).

32. Coment: The advisory group recommends deleting the last sentence of 405 KAR 7:090 Section 9(1) relating to the assessment of a civil penalty for each day of violation.

Response: The Secretary disagrees with this suggestion. SMCRA Section 518(a) permits each day of a continuing violation to be deemed a separate violation for purposes of penalty assessments. 405 KAR 7:090 Section 9(1) is consistent with that requirement.

33. Comment: 405 KAR 7:090 Section 8(2) should be revised to include a new sentence as follows: "The hearing officer shall include justification for the penalty assessed in his final written report."

Response: The revised program submission of June 12, 1980, includes similar language, which is consistent with the Federal requirements.

34. Comment: The State regulation provides that hearing officers may "require in an order, agreed settlement order, consent order, or stipulation" a person or permittee to "abate, repair, alleviate and prevent" violations of KRS Chapter 350, Title 405 Chapters 7 through 24, and any permit condition found to exist. The commenter asserts that the language "and prevent" places an arbitrary and undue burden on the operation by subjecting the operator to two different penalties for the same occurrence.

Response: The Secretary disagrees. Prevention of violations of KRS Chapter 350, regulations promulgated thereunder and permit conditions can hardly be an arbitrary and undue burden on an operator particularly where, for example, adherence to the admonition avoids the issuance of notices of violation and/or cessation orders to the operator. Moreover, the Secretary disagrees that the operator is subjected to two different penalties. A violation of the hearing officer's admonition to "prevent" violations of KRS Chapter 350, the regulations thereunder or permit conditions could only result in appropriate enforcement action by DNREP field inspectors under KRS 350.130 and 405 KAR 12:020E in any event. All appropriate penalties, for all violations, must be assessed pursuant to KRS 350.990 and 405 KAR 7:090E. Further, the Secretary disagrees that there are "two different penalties for the same occurrence" because hearing officers do not have authority to impose penalties independent of, or in addition to, KRS 350.990 and 405 KAR 7:090E.

35. Comment: The commenter makes several suggestions relative to the penalty point system under 405 KAR 7:090 Sections 9 and 10 as presented in the February 29, 1980, submission.

Response: Since the June 12, 1980, revised submission does not include a penalty point system, these comments are no longer relevant.

36. Comment: 405 KAR 7:090 Section 11(1) and 11(2)(a) should be changed as follows: "(1) Any person . . . shall be assessed a civil penalty of not less than one hundred dollars ($100) nor more than five thousand ($5000) for said violation" and "(2)(a) Whenever a violation . . . an additional civil penalty of not less than *$100* nor more than $1000 shall be assessed."

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Response: The recommended changes would not be consistent with SMCRA Section 518 which allows each day of violation to be considered separately for the purposes of penalty assessment and established $750 as the minimum penalty for each day that a failure to abate exceeds the ordered abatement period.

37. Comment: 405 KAR 7:090 Section 11(2)(b), penalties, the advisory group recommends adding the Federal language contained in 30 CFR 845.15(b)(2) stating that a daily penalty shall not be assessed before entry of a final order by the court when the obligations to abate are suspended by the court.

Response: The Secretary believes that the omission of this language does not render the State regulation inconsistent with SMCRA or the Federal rules. Adoption of such a change is left to the State's discretion.

38. Comment: The advisory group recommends adding a new section to expedite review of non-compliance orders upon the operator's request. This new section would read similar to 405 KAR 7:090E Section 5 and be for the purposes of challenging unreasonable abatement periods and remedial actions issued by the department.

Response: The recommended change is not inconsistent with the Federal requirements nor is the Kentucky program, without such provisions, and the State will not be required by the Secretary to make the change.

39. Comment: The Kentucky Coal Association (KCA) states that Sections 8:030 and 8:040 should be withdrawn. These sections are based on 30 CFR Parts, 778, 779, 780, 782, 783 and 784 which have been remanded by the court. Regulations adjudicated by the court as being invalid should, therefore, not be given approval.

Response: The Secretary assumes that commenter is referring to the July 10, 1980, U.S. Court of Appeals decision. That decision was vacated on August 25, 1980, and the Court of Appeals for the District of Columbia is rehearing the case. Unitl such time as the court renders a decision, the Secretary will require State programs to include all Federal permit requirements in effect.

40. Comment: The KCA recommends that 405 KAR Chapter 8 reflect the U.S. District Court order of February 26, 1980, in regard to "mine plan area."

Response: The Secretary believes the Kentucky revised program correctly reflects the court decision by eliminating use of this term.

41. Comment: All references to engineers in 405 KAR 8:010 should be made consistent throughout. This would eliminate the discrepancies caused by alluding to the engineer as "qualified registered professional engineer," "a professional engineer," etc.

Response: Consistency in terminology is desirable; however, the Secretary believes that the suggested change is not necessary to the effective implementation and administration of surface mining laws and regulations in Kentucky.

42. Comment: The KCA believes that the second sentence of 405 KAR 8:010 Section 3(2)(c) should be changed to read "The department shall . . . in the process of the review, *but not to exceed 60 days.*" This change will shorten the process and keep it reasonable.

Response: The Secretary believes the time limits set by Kentucky's proposed program are reasonable. As noted in 405 KAR 8:010 Section 20(3)(a), minor revisions must be processed within 15 working days. Major revisions, under most circumstances, will have to be processed within 65 working days (405 KAR 8:010 Section 16(1)(b)).

43. Comment: The KCA recommends either deleting the words "U.S. Geological Survey 7½ minute" *or* adding "or equivalent" after these words in 405 KAR 8:010 Section 8(5)(b)(3), which relates to the name of maps required in newspaper notices of permit application filings. In most cases an enlarged map will be more appropriate. Additionally, many Geological Survey topographical maps are inaccurate. P.L. 95–87 does not require *only* a 7½ minute topographical map.

Response: Increased flexibility in determining the type and scale of maps to be submitted with the permit application has merit and should be considered by the State. However, Kentucky's provision is not inconsistent with the Federal requirement found in 30 CFR 786.11(a)(2)(iii) and thus change is not required for approval of the provision.

44. Comment: The KCA recommends shortening the 21-day waiting period for an on-site investigation of the proposed permit area to a 10-day period. The 21-day time period, currently specified in 405 KAR 8:010 Section 4, is only an additional delay between the initiation of a permit and its final approval. Since, in this situation, the State needs to do little to prepare to "walk a permit," the KCA feels that 21 days are not justified.

Response: There are no Federal requirements relative to a time period before an on-site investigation. Therefore, the 21-day provision may be retained at the State's discretion.

45. Comment: 405 KAR 8:010 Sections 5(3)(a), (b), (c) should be revised to indicate that "All technical date submitted in the application shall be supported by records maintained by the operator which includes." This change is justified, asserts the KCA, because it is not required under Federal law or regulations. Also, as a practical matter, this is excessive, needless, and unreasonable.

Response: Kentucky's regulation is identical to and consistent with 30 CFR 771.23(c)(1), (2), and (3). The suggested change would make the regulation less stringent than the Federal counterpart because it would not require information that is relevant to the validity of information in the permit application to be submitted as part of the application and consideration by the DNREP and the public.

46. Comment: 405 KAR 8:010 Section 5(4) should be deleted in its entirety. This provision relates to the identity of outside experts consulted by the permit applicant. This requirement is excessive and has no legitimate bearing on the proper evaluation of a permit application.

Response: This section of Kentucky's regulations is required by 30 CFR 771.32(d). The suggested deletion from the Kentucky program would result in less stringent requirements than the Act and Federal regulations.

47. Comment: The KCA recommends deleting the 15-day requirement for submitting the affidavit from the newpaper, as stated in 405 KAR 8:010 Section 8(3). There are many instances where a 15-day period might not be sufficient.

Response: Kentucky's regulation, as it relates to the 15-day period, is not inconsistent with the Federal counterpart, 30 CFR 778.21. The suggested change may be adopted at the State's discretion.

48. Comment: 405 KAR 8:010 Section 8(6) should be revised to require the department to issue written notification of an applicant's intent to surface mine within 5 days. This change would ensure timely written notification.

Response: Kentucky's regulation is consistent with 30 CFR 786.11(b) which, like the Kentucky rule, stipulates no specific time limit. The use of a specified period for written notification is not required for program approval but would not be inconsistent with the Federal requirement.

49. Comment: The KCA recommends deleting the requirement for an "affidavit from the publishing newspaper" that the notice of application filing was published and substituting "copy" in 405 KAR 8:010 Section 8(3).

Response: This provision of Kentucky's regulations is not inconsistent with the Federal requirement that a copy of the notice and a proof of publication be submitted. Therefore, use of the suggested language is left to the discretion of the State.

50. Comment: 405 KAR 8:010 Section 8(5) should be deleted in its entirety due to the specificity of Pub. L. 95–87 Section 507(b)(6) as to the contents of the advertisement regarding the filing of permit applications. Kentucky's requirement exceeds the intent of the law.

Response: The proposed deletion would result in an inconsistency with SMCRA Section 507(b)(6) and with 30 CFR 786.11(a) since the State program would not specify any requirements for information to be placed in the advertisement. 30 CFR 786.11(a) specifies the minimum data the State must ensure is in the advertisement. Any further requirements are at the option of the DNREP.

51. Comment: 405 KAR 8:010 Section 8(8)(a) should be revised to include language which would protect the confidentiality of certain materials submitted with the complete permit application.

Response: Confidentiality of information contained in the permit application is protected under Kentucky's regulation 405 KAR 8:010E Section 12. Therefore, the suggested revision is not necessary.

52. Comment: To clarify the intent of 405 KAR 8:010 Section 9(2) concerning comments on a permit application, the KCA recommends adding a sentence which reads: "Comments received after this 30-day period will not be reviewed by the department."

Response: The suggested language would not be inconsistent with 30 CFR 786.12(b). Whether or not to make such revision is left to the State's discretion because Kentucky's regulation is as stringent as the Federal requirement.

53. Comment: The KCA indicates that 405 KAR 8:010 Section 11(2) should be revised to include a 30-day time limit for scheduling an informal conference, unless additional time is justified. Additionally, language should be added to the effect that "the objector shall have the burden of proof." These changes would avoid unjustified delays brought about by frivolous complaints. As with all proceedings before an administrative body, definite time constraints should be applied to eliminate abuse of discretion and to add as many explicit constraints to procedural matters as possible. As such, the 30-day period sets a reasonable procedural time frame, and the language "unless additional time can be justified by the applicant" provides any needed flexibility under unusual circumstances. The KCA further feels that the burden of proof must be placed on a complainant so that the hearing officer may know which party must go forward at the hearing to establish a basis for his decision.

Response: The Secretary finds that Kentucky's regulation is consistent with Federal requirements found in 30 CFR 786.14. Inclusion of a specified time period, as suggested by the commenter, is, therefore, left to the discretion of the State. However, placing the burden of proof on the complainant would be inconsistent with the public involvement requirements of SMCRA and the Federal regulations. SMCRA requires that permittees establish their eligibility for a permit. This burden of proof cannot be shifted merely because an interested citizen requests an informal conference on the operator's application.

54. Comment: The KCA recommends deleting the words "and copying" from 405 KAR 8:010 Section 12(1).

Response: Kentucky's regulation is consistent with 30 CFR 786.15(a), which requires that applications be available "for public inspection *and copying*." Therefore, the suggested change is unnecessary.

55. Comment: 405 KAR 8:010 Section 13(1)(a) should be revised to limit the period for the initial completeness determination to "ten (10) days" in lieu of "twenty-one (21) days." This change should provide adequate time for the DNREP.

Response: The separate, initial completeness determination is not a Federal requirement but is not inconsistent with SMCRA and the Federal regulations. Under 30 CFR 786.19(a), the determination of completeness may be made any time before the permit is issued. Therefore, the suggested change can be made at the discretion of the State.

56. Comment: 405 KAR 8:010 Section 13(1)(b)(2) should be revised by inserting the word "immediately" preceding the word "notify" in the first sentence. This provision relates to DNREP notifying applicants of deficiencies in permit applications. Past experience, asserts the KC, has shown excessive delays in this notification.

Response: The suggested change is not required. Kentucky's regulation is consistent with Federal requirements. Furthermore, Kentucky's regulation explicitly states that DNREP will "notify the applicant . . . promptly upon discovery." This would indicate that Kentucky is required to provide expeditious notification of any deficiencies in the permit application.

57. Comment: The KCA believes that 405 8:010 Section 13(3) should be deleted in its entiretly because this information will already have been furnished under 405 KAR 8:030 Section 3(3) and constitutes duplication of effort.

Response: Kentucky's regulation is consistent with the Federal counterpart, 30 CFR 786.17(c)(1). 405 KAR 8:010E Section 13(3) itself references 405 KAR 8:030E Section 3(3) and states what *further* information must be submitted by the applicant if the list submitted under 405 KAR 8:030E Section 3(3) shows that there are current violations outstanding.

58. Comment: 405 KAR 8:010 Section 14(3) should be amended by deleting the word "general" and inserting in its place "applicant's mine plan." This provision relates to DNREP's assessment of the cumulative impacts of all mining in the general area, prior to issuing a permit. This change would make the determination easier on the State and clarify intent. Additionally, any operator cannot be reasonably expected to forecast what other mining companies in the area can be expected to do.

Response: Kentucky's regulation is consistent with 30 CFR 786.19(c). Further, the intent of this regulation is to provide for an evaluation of cumulative impacts of all anticipated mining operations in the area. The language proposed by the commenter would focus on the applicant's mine plan area which would provide only a very narrow assessment of probable impacts. This would be in direct conflict with the requirements for a broader assessment found in Sections 507(b)(11) and 510(b)(3) of SMCRA.

59. Comment: The KCA recommends adding the language "Provided such required information or assessment by the department is not available to the department, then such lack of information shall not be grounds for denying the permit" to the end of 405 KAR 8:010 Section 14(3). This clarifies the intent of this section and of H.B. 566 Section 5(8). The change would result in not delaying issuance of permits where hydrologic data was not available for the general area.

Response: The suggested language would contradict SMCRA and the Federal regulations. The lack of information should not automatically be considered a justifiable reason or grounds for issuing a permit. One of the principal purposes of SMCRA is to protect the hydrologic balance. Therefore, the regulatory authority must be reasonably sure that the information on hydrologic resources is adequate before a permit is issued. Section 507(b)(11) of SMCRA explicitly provides

that "the permit shall not be approved until such information is available and is incorporated into the application."

60. Comment: The KCA recommends deleting the words "and this need is confirmed, in writing, by the applicant's proposed source for the financing" from the end of 405 KAR 8:010 Section 17(1)(b). This is not required by P.L. 95–87 Section 506(a).

Response: This provision relates to evidence to be presented to DNREP to support the applicant's contention that a permit term longer than five years is necessary to finance the mine. Kentucky's regulation is consistent with 30 CFR 786.25(a)(2), which explicitly requires this written confirmation. The Secretary believes that confirmation in writing is appropriate to demonstrate that a longer, fixed term is needed, as required by Section 506(b) of SMCRA.

61. Comment: The KCA requests clarification of who constitutes the "department" as used in 405 KAR 8:010 Section 19, Department Review of Outstanding Permits.

Response: 405 KAR 7:020E Section 1(33) defines the term "department" as the Department of Natural Resources and Environmental Protection.

62. Comment: 405 KAR 8:010 Section 20(3) should be revised by adding the language "as set forth in section 13" to the end of the sentence. This change would clarify any vagueness.

Response: Kentucky's proposed program of June 12, 1980, revised this section. The revision is consistent with Federal requirements.

63. Comment: The KCA recommends that major revisions be reviewed within 30 working days instead of 65 working days, as specified in 405 KAR 8:010 Section 20(3)(b). Permit revisions are normally requested during the course of operations and may be mandated by an inspector as a remedy for a violation. As such, the need for reviewing is greater for revisions than for original permits. It only follows that a shorter review time (30 working days) should be allowed for a major revision.

Response: Kentucky's regulation is consistent with 30 CFR 778.12, which requires decisions on revisions to be made "within a reasonable time." Therefore, any change in the time for review of a permit revision is left to the State's discretion.

64. Comment: 405 KAR 8:010 Section 20(4) needs to include a new section on incidental boundary changes. Many surface disturbances of underground mines are insignificant, such as ventilation shafts, boreholes, etc. That being the case, if the operator wants to add a small haul road or sink a new ventilation shaft, does this "extension of his permit area" qualify as incidental? The commenter also states that H.B. 566 Section 5(15), page 24, requires that the department only permit those areas overlaying the underground workings affected by the operation. The underground miner should be allowed to add a haul road or other "extension" when this extension is proportionally quite large in respect to his permitted area.

Response: The Federal regulations do not define the term "incidental boundary revisions." Thus, the State could, at its discretion and subject to the Secretary's approval, include a definition of the term or provide other regulatory guidance, as suggested, for determining the limits of "incidental boundary revisions" in guidelines. However, the Secretary is inclined to believe that most new haul roads, in previously unpermitted areas, would not be merely "incidental," especially if they were proportionally quite large in respect to the permitted area. The Secretary believes all surface disturbances must be permitted and bounded. See Findings 14.5 and 12.1.

65. Comment: 405 KAR 8:010 Section 20(4) should be revised by inserting the language "not to exceed 10 percent" following the word "extension." This change would expedite field changes without going through the permit application process. Some land acquisitions may be made during the five years, or more, following issuance of the permit. This change would also allow for the maximum utilization of coal reserves, without burdening the operator with excessive "red tape." Further, the type of field changes contemplated by the operator may not necessarily be considered "incidental" by the department. Even though this might represent a small change to a total permit, if the department considers this to be major, then it could quite possibly not be economically justified if one has to go through the entire permitting process. A percentage of the total area would be compatible with the relative permit size while restraining unlimited extensions. Finally, if the term "incidental boundary revisions" is retained, then a definition should be added indicating that it is intended to be "incidental" to the overall permit area and operations on that permit, and not to the limited area of the permit to which it is adjacent.

Response: Kentucky's regulation is consistent with 30 CFR 788.12(d) and Section 511(a)(3) of SMCRA. Inserting the language suggested by the commenter would render Kentucky's rule less stringent than the Federal requirement since a significant environmental or safety effect could result from the addition of less than 10 percent to the permit area. For example, if a significantly enlarged waste dam is to be constructed, utilizing mostly areas in the existing full permit area, but adding a few more acres, the full permit application procedures might be appropriate. In the end, DNREP and not the operator must determine what is "incidental." Further, the term "incidental boundary revisions," is not explicitly defined in the Federal rule, and Kentucky will not be required to define it to obtain approval of its program.

66. Comment: A new section, 405 KAR 8:010 Section 20(5), notes the KCA, should be added to read: "(5) When insignificant alterations are made in the operations, the operator may amend the permit by submitting supplemental information to the department describing the changes in operation." This change is designed to allow the operator to make any insignificant change a part of his original permit application.

Response: Section 511 of SMCRA would prohibit a permittee from revising his or her original permit merely by submitting information to the regulatory authority, regardless of the significance of the alteration. Therefore, the suggested revision to Kentucky's program would not be in accordance with SMCRA.

67. Comment: The KCA believes that 405 KAR 8:010 Section 21 should specify the fees, if any, involved in a permit renewal.

Response: Inclusion of the fees for permit renewals under 405 KAR 8:010E Section 21 is not required. Kentucky has, however, described the process and amounts of fees under State Section 731.14(g)(2) of its program narrative.

68. Comment: A new section, 405 KAR 8:010 Section 21(2)(b)(3), should be added to read: "(3) Within 10 days of receipt of the application the department shall provide written notification to the applicant as to the completeness of the application." The change would make this section compatible with section 13 and would be fair to the operator by speeding the processing of such applications.

Response: The June 12, 1980, revised program submission includes a 10-day period for the completeness determination in 405 KAR 8:010E Section 21(2)(b)(1) which is similar to that suggested by the commenter. There are no Federal requirements regarding a completeness determination.

69. Comment: The KCA recommends deleting the word "prior" from the language of 405 KAR 8:010 Section 22(1) which says that no transfer, assignment, or sale of rights granted under any permit should be made without "the prior written approval of the department." P.L. 95–87 Section 511(3)(b) does not contain the word "prior." This insertion could affect the private negotiations for the sale of a particular operation.

Response: The language used by Kentucky is identical to 30 CFR 788.17 and the intent of SMCRA Section 511(b). Although SMCRA does not use the word "prior," it is clear that SMCRA Section 511(b) which states "No transfer assignment or sale of the rights granted under any permit issued pursuant to this Act shall be made without written approval of the regulatory authority" does not intend that this decision by the regulatory authority come after the sale.

70. Comment: The KCA suggests that 405 KAR 8:030, General Requirements for Underground Mining, should incorporate changes similar to those it recommended to be made to 405 KAR 8:010, General Requirements for Surface Mining.

Response: The reader is referred to the responses to KCA comments 40 through 69 above.

71. Comment: 405 KAR 8:030 Section 2(3)(c) should be revised to delete the term "United States" and add "Kentucky" in its place. this change is necessary to clarify intent and eliminate needless "red tape" information.

Response: Kentucky's regulation is consistent with 30 CFR 778.13(b)(4) and Section 507(b)(3) of SMCRA which expressly require that the applicant identify operations "within the United States" not just the State in which the application is filed. Substituting terminology would, therefore, make Kentucky's regulation less stringent than the Federal requirement.

72. Comment: The KCA recommends revising 405 KAR 8:030 Section 2(4) by numbering paragraph (4) as (4)(a) and substituting "Kentucky" for "United States." A new paragraph (b) would be added to read: "Each application shall contain a statement of each State in which the applicant has any current or previous coal mining permits and the corporate name or company name under which such operation has operated or is operating." As written, the requirement for a company to amass data on permits for every State would place an excessive burden on both the operator and on the reviewers of the permit application. If the operator lists the State that he has or had worked in, this information should suffice. Further, the suggested revisions to Sections 3 (1) and (2) will provide adequate information to the department concerning serious violations throughout the United States.

Response: Kentucky's regulation is consistent with 30 CFR 778.13(d) and SMCRA Section 507(b)(3) which expressly require that the applicant list current or previous mining permits in the United States not just the State in which the application was filed. Adoption of the suggested revision would result in a less stringent State regulation and is, therefore, inappropriate.

73. Comment: The KCA recommends deleting 405 KAR 8:030 Section 2(6) in its entirety. Many times the operator will not have this Mine Safety and Health Administration (MSHA) number; MSHA usually asigns this number after the permit has been approved. Further, this requirement is not contained in the Act.

Response: The permit applicant will have to request and receive an MSHA identification number for a proposed mine to file a complete permit application. This information is needed for coordinating the permit review with MSHA. Kentucky's regulation is consistent with 30 CFR 78.13(f) and no change is necessary.

74. Comment: 405 KAR 8:030 Section 3(3) should be changed by deleting "the application date" and inserting the language "submittal of the original permit application" in the sentence requiring submission of information on all violations for which the operator was cited during the three years preceding the application date. It is unreasonable to require an operator to update his permit after it has been submitted. There needs to be a cut-off date to eliminate confusion to both the operator and the department. This change should also clarify the intent of this subsection.

Response: Kentucky's regulation is consistent with the Federal counterpart which use the same language. Further, neither the Federal nor the State regulation would require an "update" of violations occurring after submission of the permit application. Permit revisions or renewals, however, would require that the permittee update information on violations which occurred between permit issuance and the request for renewal or revision.

75. Comment: 405 KAR 8:030 Section 8 should be deleted. This section requires information on other permits the operator will need to conduct mining. This is excessive and not pertinent to the approval of the permit application. The department has no jurisdiction over these other agencies, but both sets of rules required coordination of the review of permits with other agencies. This requested information should have no bearing on whether a permit is granted or denied.

Response: Requirements similar to those of 405 KAR 8:010E Section 8 are established in 30 CFR 778.19. Kentucky's regulation is consistent with the Federal requirement. Neither the Kentucky rule nor the Federal rule grant the regulatory authority any jurisdiction over other agencies, but both sets of rules require coordination of the review of permits with other agencies. Therefore, changes are not necessary.

76. Comment: The KCA recommends deleting the 15-day requirement under 405 KAR 8:030 Section 10 for submitting proof of publication in a newspaper. This 15-day limit might not be sufficient in some cases.

Response: Kentucky's requirement is consistent with 30 CFR 778.21 which allows 4 weeks for proof of publication. The suggested change can be made at the State's discretion.

77. Comment: The KCA supports the department's inclusion of the term "probably" in 405 KAR 8:030 Section 14(1)(a) regarding the determination of the horizontal extent of the water table and aquifers.

Response: Although the Federal analog, 30 CFR 779.15, to 405 KAR 8:030 Section 14 does not specifically use the term "probable," the Secretary finds that its use does not change the intent of the Federal requirements. It would be impossible to determine the parameters of the water table and aquifers exactly without extensive test borings. Extrapolation of data is to determine probable horizontal extent of the water table and aquifer.

78. Comment: 405 KAR 8:030 Section 15(1) should be revised to require only "the location of all significant surface water." This section identifies the information to be shown in a permit application on surface water.

Response: Kentucky's requirement is consistent with 30 CFR 779.16(a) which does not use the word "signficant." As noted by the commenter, however, the preamble to the permanent regulations (44 FR 15034) uses the term "significant." Therefore, adoption of the suggested revision would not make Kentucky's regulation inconsistent with the Federal regulation, so long as "significance" is interpreted broadly, but would be at the State's discretion.

79. Comment: 405 KAR 8:030 Section 24(2)(a) should be revised to require operators to provide "A narrative description of the *anticipated* type and method of coal mining and the *anticipated* major equipment to be used." This information, asserts the commenter, *cannot* be predicted.

Response: Kentucky's regulation is consistent with 30 CFR 780.11(a) which does not include the words suggested by

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the KCA. The Secretary believes that the provision, as written and reasonably interpreted, implies that the required descriptions are based on the best information currently available. Therefore, inclusion of the terms suggested by the commenter is not necessary.

80. Comment: The term "detailed" should be deleted from 405 KAR 8:030 Section 24(4)(b) because the KCA questions the ability to make an accurate "detailed" estimate of the cost of reclamation.

Response: Kentucky's regulation is consistent with the Federal requirement which uses the same words. Additionally, the "detailed" estimate would indicate that the department is requiring an itemized, estimated cost of reclamation in lieu of a single-line entry.

81. Comment: The KCA recommends deleting 405 KAR 8:030 Section 24(4)(i) which requires information on steps to comply with the Clean Air Act, the Clean Water Act, and other applicable environmental and health and safety laws. The information required is properly contained in the permits issued under the Clean Air and Clean Water Acts and should not be reiterated here. The information required by this subsection is an attempt to administer separate statutes under the strip mining law. Each law should stand on its own and any attempt to incorporate other laws and their requirements by such a reference is not within the intended purpose and scope of the surface mining law and should not be attempted by regulation.

Response: The Kentucky regulation is consistent with the requirements of 30 CFR 780.18(b)(9) which contains the same language. The suggested change is, therefore, not appropriate. SMCRA Section 702 provides that other applicable laws are not to be superseded or modified by SMCRA's requirements, and it is important that DNREP assure that the requirements of the other laws will be met.

82. Comment: 405 KAR 8:030 Section 26(2)(b) should be revised by substituting the word "examples" for the word "description" in the requirement that the applicant's blasting plan include a description of procedures and plans for recording and retention of blasting information. This change clarifies intent.

Response: The terminology used in Kentucky's rule is the same as that in 30 CFR 780.13(b). Further, the suggested change would change the rule in a manner inconsistent with the Federal rule because the intent is to describe all procedures and plans for recording and retaining blasting information.

83. Comment: The KCA believes that 405 KAR 8:040 should provide clarification of, or a definition of, the permit area for an underground mine. This clarification should reflect the distinct differences between surface and underground mining in determining the need for most environmental resource information, such as soil resources, vegetation, fish and wildlife, etc. Also, the KCA believes that such information should be limited to surface areas actually affected by underground mining.

Response: Kentucky's definition of "permit area" is the same as the definition in 30 CFR 701.5. Further, the requirements for information on specific resources do not include unnecessary data. The permit application must include information to enable the regulatory authority to determine the potential effects of mining on the environment and health and safety, including possible effects of mine subsidence and acid drainage.

84. Comment: The KCA recommends that reference areas not be required for underground surface facilities of 50 acres or less. An underground mine site may consist of 70 acres of small sites such as boreholes, vent shafts, etc., which should not be subject to the requirements for reference areas for practicable purposes.

Response: Neither 30 CFR 817.116 nor 405 KAR 8:200 Section 6(1) mandates the use of reference areas. Other methods for determining revegetation success may be used when approved by the regulatory authority.

85. Comment: The KCA recommends deleting 405 KAR 8:040 Section 3(3)(a), (b), (c) and (e) because the provisions have no basis in law and put undue burden on large operators.

Response: This provision requires operators to inform DNREP of the current status of all recent notices of violations. Kentucy's requirements for compliance information are consistent with 30 CFR 782.14 and are required by Section 510(c) of the SMCRA.

86. Comment: The KCA believes that 405 KAR 8:040 Section 11 should include a new subsection (3) to read, "The detail of the environmental resources information required by 405 KAR 8:040 shall be consistent with the postmining land use." Environmental resource information on climate, vegetation, fish and wildlife resources, and soil resources should not be required when the disturbed area will be utilized for residential or for industrial/commercial areas. Further, detailed groundwater information required should be consistent with existing or potential land users. For example, a residential user could not bear the cost to drill wells into many aquifers that could be impacted by underground mining. Further, they may not be economically used by public, commercial or industrial users. Therefore, why provide detailed information for academic purposes?

Response: 30 CFR 783.11 requires environmental resource information on the area. The purpose of such information is to permit the regulatory authority to determine the impacts that a proposed mining operation would have on the pre-mining environmental resources of the entire area and to help evaluate the feasibility and desirability of the proposed postmining land use.

87. Comment: The KCA recommends changing the first sentence of 405 KAR 8:040 Section 11(1) to read "resources within the proposed permit area and adjacent areas *of surface land* which may be affected." This change eliminates ambiguity so that it is clearly understood that where the surface is not affected the regulation does not apply.

Response: The Secretary believes that the suggested revision would change the meaning in a manner which would make the Kentucky rule inconsistent with the Federal rule. As written, the rule limits the information requirements to the permit area and adjacement areas which may be affected. Use of the phrase "which may be affected" imparts discretion and would exclude information requirements for surface or subsurface resources where they would not be affected by mining operations. However, effects on adjacent subsurface resources, such as aquifers, must be included, since they relate to the mining's impact on the hydrologic balance or other resources to be protected under SMCRA.

88. Comment: 405 KAR 8:040 Section 12(1) should be revised to reflect the changes OSM made in the **Federal Register** on Monday, December 31, 1979 (44 FR 77448 *et seq*).

Response: Kentucky's revision of June 12, 1980, reflects the changes.

89. Comment: 405 KAR 8:040 Sections 22 and 37 should be changed to comply with changes OSM made in the **Federal Register** on Monday, December 31, 1979 (44 FR 77448 *et seq.*). Underground permit and mine plan data on postmining land use will be amended to allow data submission toward the end of life of an underground mine either by permit revision or renewal.

Response: Following the December 31, 1979, notice that an interpretive rule would be forthcoming, OSM published the interpretive rule on October 1, 1980 (45 FR 64908). Kentucky will not be required to revise its program to reflect the Federal requirement since the interpretation applies equally to Kentucky's language as it does to the Federal rules, and there is no reason to believe Kentucky will interpret its rules differently.

90. Comment: The KCA recommends that the extensive reporting requirements of 404 KAR 8:040 Sections 18 through 22 be applicable to the surface area to be disturbed rather than the entire mine plan area, with the exception of waterways, highways, and powerlines. Otherwise, they are burdensome, arbitrary and not justified.

Response: The sections commented upon relate to soil resource information, fish and wildlife data, vegetation information, prime farmlands, and land use information for underground mine operations. In light of the district court's ruling discussed under "General Background on the State Program Approval Process," Kentucky need not require some of this information at all and the rest of it need not be collected on the entire mine plan area, only for the permit area. Kentucky's requirements are virtually identical to 30 CFR Part 783, which contains the minimum information requirements the Secretary will approve. The Secretary believes these requirements do not require gathering and submitting irrelevant data.

91. Comment: The KCA recommends confining to surface disturbed areas only the requirements of 405 KAR 8:040 Section 23(1) (e) and (k), which relate to ownership and location of improvements. These items are of importance only where the surface is disturbed. To require this submittal would be burdensome, unnecessary and arbitrary for underground mining.

Response: The Secretary believes that a comprehensive description and mapping of information is necessary to permit the regulatory authority to adequately identify and assess the impacts to all features in the permit and adjacent areas. The fact that no surface disturbance will occur does not necessarily mean that other resources in the area would not be adversely affected by mining operations. In any event, the possibility of mine subsidence means that areas overlying the mine may be significantly affected by the operation, even in areas of no intentional disturbance.

92. Comment: 405 KAR 8:040 Section 23(1)(i) should be revised by inserting the word "occupied" immediately preceding the word "buildings." This change clarifies intent.

Response: The suggested change would be inconsistent with 30 CFR 783.24(d). The intent of the regulation is to identify all buildings, occupied or otherwise, which, because they are within 1,000 feet of the mine, could be affected by mining operations. The revision suggested by the commenter would limit consideration to a portion of the buildings in the permit and adjacent area. The Secretary notes that the regulation also requires a statement of the current use of each building so that DNREP will know which vacant buildings are abandoned, which have seasonal use, and the like.

93. Comment: The KCA recommends revising 405 KAR 8:040 Sections 23(2) (a) and (i) to require identification of "Elevations and locations of test borings and core sampling *within the surface disturbed area,*" and "Sufficient slope measurements . . . measured and recorded *within the surface disturbed area*" respectively. These items are of importance only where the surface is disturbed. To require this submittal for the entire permit area would be burdensome, unnecessary and arbitrary.

Response: Kentucky's regulation is the same as 30 CFR 783.25 (a) and (k). The required information must come from the entire permit area, since borings and samplings for deep mines are often taken from points overlying the mine workings, and since slope measurements from such areas may be useful in analyzing potential subsidence.

94. Comment: The KCA recommends adding the word "surface" before the word "land" in 405 KAR 8:040 Section 24 (3)(a), (3)(b) (2) and (3).

Response: The Secretary does not believe the suggested language is consistent with 30 CFR 784.23. For Section 24(3)(a) and 3(b)(2), the required information is for a description of all lands to be affected, and a description of subsurface areas is necessary to evaluate potential subsidence and effects on hydrologic values. For Section 24(b)(3), the information relates to land to be bonded, and it may be that a bond's liability will run to an aquifer located underground.

95. Comment: 405 KAR 8:040 Section 24(3)(b)(12) should be revised to state: "Location of each water and any *required* subsidence monitoring point." Not every deep mine operation leads to subsidence.

Response: Kentucky's regulation is consistent with 30 CFR 784.23(b)(12). Further, subsidence monitoring points are not always necessary or required under 405 KAR 8:040E Section 26. If subsidence monitoring points were not planned, none would have to be shown on the maps or plans. However, if the operator intends to use monitoring points beyond those required by DNREP, the plan should show them to facilitate analysis of compliance with permit terms, and to enable the DNREP to determine if any of the monitoring plans pose a threat of harm to the environment or safety.

96. Comment: The KCA recommends deleting 405 KAR 8:040 Section 26(2) because it duplicates Section 26(3).

Response: Kentucky's regulation is the same as 30 CFR 784.20. 405 KAR 8:040E Section 26(2), which excuses the applicant from further requirements on subsidence information if the surety shown no possibility of damage, does not duplicate Section 26(3) which requires detailed information if agreed to by the regulatory authority.

97. Comment: The KCA recommends deleting the words "and if the department agrees with such conclusion" from 405 KAR 8:040 Section 26(2) which excuses the operator from further requirements on collecting subsidence information if the department agrees with the operator that there is no possibility of subsidence.

Response: Deletion of the suggested language would make Kentucky's regulation less stringent than 30 CFR 784.20 which requires regulatory authority agreement. The DNREP must make the final determination of whether or not subsidence will cause impacts, based on review of the permit application by DNREP and the public.

98. Comment: The KCA recommends deleting the word "determines" and substituting the words "can show" in 405 KAR 8:040 Section 26(3), which requires additional permit information if DNREP "determines" subsidence could cause material damage or diminution of value of resources. The department's decision needs to be based on standard engineering principles rather than on opinion.

Response: The Secretary finds the Kentucky rule and the use of the term "determines" consistent with 30 CFR 784.20 which also uses the term. Further, the Secretary has no reason to believe that the "determination" will be mere opinion, rather than a decision properly supported by an analysis of the pertinent facts. If the operator feels the determination is arbitrary, the decision can be challenged through the Kentucky appeals procedures.

99. Comment: 405 KAR 8:040 Section 27 should be revised by renumbering the subsections, with a new subsection (1) to read: "If and when an operator decides to use an underground disposal method in abandoned underground workings, a plan must be submitted to the department." This change will clarify the intent of the OSM permanent regulations at 30 CFR 784.25.

Response: The Secretary does not believe the additional paragraph

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suggested by the commenter is necessary because 405 KAR 8:040E Section 27 (Federal analog 30 CFR 784.25(a)) would be applicable only when disposal is proposed.

100. Comment: The KCA believes that 405 KAR 8:040 Section 35 should be revised to read, "Mining and reclamation plan: air pollution control. The applicant shall provide a Department of Natural Resources Air Resources Permit Number or application number," or delete all references to air quality standards except to the extent they are attendant to erosion (May 16, 1980, order by Judge Flannery). This change will avoid duplicate enforcement by State agencies.

Response: The Secretary believes that Kentucky's regulation is consistent with 30 CFR 784.26 and that the suggested revision is unnecessary. Kentucky has described a system for coordinating the issuance of permits with other State, Federal and local agencies in State Section 731.14(g)(9). This coordination should avoid the duplication suggested by the commenter.

101. Comment: 405 KAR 8:040 Section 37(3) needs to be revised to read that approval of one postmining land use will not preclude later approval of a "revised postmining land use plan *or permit renewal* in accordance with the applicable requirements of this Title." This language will meet the provision of the December 31, 1979, revision to OSM regulations, as published at 30 CFR 784.15, 44 FR 77448, *et seq.*

Response: The Secretary believes Kentucky's wording is consistent with the Federal requirements and no change is necessary. The suggested change, however, would emphasize the authorization in Kentucky's rule to approve renewal permits based on new postmining land uses and may be made at the discretion of the State.

102. Comment: The KCA suggests that a new regulation be drafted which would give the operator an informal review by the district or regional office within 24 hours of a field inspector's action which the operator feels is unwarranted, unduly expensive, or harassing.

Response: The suggested change is not required under Sections 518, 525, and 526 of SMCRA or the Federal rules, which provide for administrative and judicial review including hearings and conferences. Without further information, the Secretary cannot determine that KCA's suggestion would be consistent with the Federal requirements, because it might reduce the independence of the inspectors and exclude citizen participation in administrative review.

103. Comment: Inspectors should be required to present credentials before any inspection is conducted. While warrantless inspections have been consistently upheld in the mining industry, presentation of credentials should be required for several reasons: (a) warrantless inspections should not mean secret inspections, (b) inspectors should not be mistaken for trespassers, and (c) operators should be given the opportunity to accompany inspectors in order to gather comparison evidence.

Response: The Secretary agrees that an inspector should carry and present credentials when necessary (see 30 CFR 842.13(a)), but inspectors need not be precluded from making an inspection because the operator is not available at the time, nor can the inspector be required to notify the operator in advance of the inspection. The Secretary will not require a change in 405 KAR 12:010 in response to this comment, since the Kentucky rules allow inspectors to show their credentials whenever possible prior to inspection. Section 517(b)(3) of SMCRA requires that, upon presentation of credentials, inspectors have right of entry to the operation.

104. Comment: The KCA recommends placing some type of qualified maximum limitation upon the number of inspections allowed during a specific time period to prevent harrassment.

Response: The Secretary believes that the recommendation is inconsistent with Sections 517(c) and 521(a)(1), (a)(2) and (a)(7) of SMCRA and 30 CFR 840.11, which require a minimum number of regular inspections as well as such additional inspections as may be justified by citizen complaints or follow-up visits after violation notices have been served.

105. Comment: 405 KAR 12:010 Section 8 (review of discretionary authority) which allows a permittee the right to an expedited review by a supervisor of an inspector's decision not related to a notice of violation should be considered acceptable. Such review would help resolve some problems informally at an early stage.

Response: The Secretary finds the intent of 405 KAR 12:010E Section 8 unclear and has requested further information. See Finding 17.13.

106. Comment: The last sentence of 405 KAR 12:020 Section 2(4) should be changed to read as follows: "The total time for remedial action under such notice, including all extensions, shall not exceed ninety (90) days from the date of issuance of the notice, *except when delays are the result of inclement weather, strikes, lockouts, acts of God or other forces outside the control of the permittee.*"

Response: The Secretary believes that the recommended change is inconsistent with Section 521(a)(3) of SMCRA, which sets an absolute maximum period of ninety days initially, including all extensions for remedial action.

107. Comment: In 405 KAR 12:020 Section 3, subsequent order for cessation and immediate compliance, the KCA recommends providing a legal mechanism whereby the accumulation of a per day penalty could be stayed pending formal administrative review.

Response: The Secretary believes the recommended mechanism is inconsistent with the requirements of Section 518 of SMCRA and the Federal regulations, which require that penalties continue to accrue, with any reduction to occur only when the results of the administrative review are announced.

108. Comment: In order to eliminate redundant language, 405 KAR 12:020 Section 3(5)(a) should be changed to read as follows: "The person to whom a subsequent order for cessation and immediate compliance is issued, may request, or the department may on its own motion provide, a minesite review pursuant to Section 6 for the purpose of reviewing the subsequent order for cessation and immediate compliance."

Response: This comment would limit minesite review to those circumstances where the operator or the DNREP requests it. KCA makes the incorrect assumption that there are no other persons who might have an interest which could be adversely affected by a DNREP decision on the order. The Kentucky language gives any interested party, including surety companies and nearby residents, the right to request minesite review, and the Secretary believes that Kentucky's rule is consistent with Federal requirements for broad public involvement in regulatory authority actions.

109. Comment: The KCA recommends adding a new subsection (d) to 405 KAR 12:020 Section 3(5), Informal Public Hearing, to read as follows: "Such minesite review shall be held within twenty-four (24) hours of the request."

Response: The June 12, 1980, revised program submission includes a provision to expedite the hearing upon request. However, the time limit of 24 hours suggested by the commenter would, in most cases, not allow sufficient time for public notice required by 30 CFR 843.15.

110. Comment: 405 KAR 12:020 Section 4(1) should be changed to read as follows: "Notices of noncompliance and orders for remedial measures, subsequent orders for cessation and immediate compliance, notices of compliance, and other orders of the department shall be served to the person to whom it is issued, in person or by certified mail, return receipt requested, or by registered mail, and by hand to the designated agent *or the certified foreman of the permittee.* If no such individual can be located at the site, *service shall be made by certified mail, return receipt requested only.*" Service, whether by hand or by mail, shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept. Service by mail shall be addressed to the permanent address shown on the permit application: or if no address is shown on the application, to such other address known to the department. If no person is present at the site of the operation, service by mail shall by itself be sufficient notice.

Response: The Secretary finds that the recommended change would be inconsistent with 30 CFR 843.14 which authorizes service upon the person who, based upon reasonable inquiry, appears to be in charge of the operation. Enforcement actions might be unnecessarily delayed, or overtuned on a technicality, if an inspector had to either send all notices by certified mail or ascertain beyond a doubt that the person being personally served the notice was the designated agent or certified foreman.

111. Comment: The KCA suggests that 405 KAR 12:020 Section 5(3) be changed, by adding the emphasized words, to read as follows: "The department may determine that a pattern of violations exists or has existed, based on two (2) or more inspections of the permit area *within any twelve (12) month period,* after considering the circumstances."

Response: The recommended change is found in the June 12, 1980, revised submission and is consistent with 30 CFR 843.13.

112. Comment: 405 KAR 12:020 Section 5(4) should be deleted or at least revised to limit the period for determining a pattern of violations to 12 months.

Response: The June 12, 1980, revised submission includes a 12 month limitation consistent with 30 CFR 843.13.

113. Comment: 405 KAR 12:020 Section 7(4), which would allow DNREP to revoke a permit with an order to abate and alleviate, should be deleted as there must be a hearing before revocation.

Response: The June 12, 1980, revised submission has been reworded to allow for "show cause" proceedings.

114. Comment: 405 KAR 12:020 Section 7(8)(a) should be changed to read as follows: "Within twenty-four (24) hours after the issuance of an order pursuant to this section, the secretary shall provide the person to whom the order was issued an opportunity to be heard and present proof of any issue of fact or law relevant to the order or conditions or activities giving rise to the order."

Response: The June 12, 1980, revised submission includes new language requiring that the opportunity to be heard be provided within 10 days after issuance of an order to abate and alleviate, but as soon as practicable after a request for such opportunity. The regulation is considered consistent with Federal requirements.

115. Comment: Under 405 KAR 12:030, Public Participation in Inspection and Enforcement, Section 1, Citizen requests for inspection, the KCA recommends that information on a potential violation which is provided by a citizen be subject to perjury penalties when such a citizen knowingly provides false information.

Response: The Secretary believes the suggested change is unnecessary. Kentucky law (KRS 350.990) does provide that any person who knowingly makes any false statement in any report filed with DNREP is subject to a one year prison term or $10,000 fine, or both.

116. Comment: 405 KAR 12:030 Section 1(2), should be revised to include provisions for a copy of a written citizen's complaint to be given to the permittee.

Response: The Secretary believes that this additional administrative burden is not required by the Federal laws or rules and therefore will not require Kentucky to adopt it.

117. Comment: Under 405 KAR 12:030 Section 3 (1) and (2), citizen requests for mine site access, the KCA recommends that a citizen not be allowed to accompany an inspector or inspectors other than on those inspections where the citizen has made a specific complaint about a specific violation and is accompanying the inspector relative to that specific violation only.

Response: While the general principle suggested in the comment would be consistent with SMCRA and the Federal rules, the precise language of the suggested change cannot be deemed consistent with 30 CFR 842.12, because it adds a requirement for specificity in the citizen complaint which goes beyond the requirements and intent of the Federal Act and rules, which do not discourage citizens from making complaints based on general information.

118. Comment: 405 KAR 16:000 and 405 KAR 18:000 should incorporate a new definition for "transported" which would allow a bulldozer to move spoil, etc. The department should specify results instead of methods.

Response: The use of the term "transported" by Kentucky is consistent with the Federal requirements and was specifically selected to prevent poorly engineered fills. The intent of transporting materials to fill areas is to provide for layering of deposited materials in a horizontal manner to increase fill stability. Although the same results could be achieved using bulldozers, it also becomes more likely that fill materials will be "drifted" onto a slope thus creating layering along the slope. Such fills are more susceptible to seepage and mass movement when the planes between the layers become lubricated with water.

119. Comment: Any signs and markers destroyed by vandalism should not lead to violations of 405 KAR 18:030.

Response: Although not specifically addressed in Federal or State requirements, the Secretary believes that sufficient flexibility exists for recognizing and resolving "violations" which are not entirely under the control of the permittee. It should also be noted that such violations could be abated quickly through replacement of the sign or marker. Operators, not inspectors, are responsible for assuring that all required signs remain in place.

120. Comment: 405 KAR 16:060 Section 4(1) and 405 KAR 18:060 Section 4(1) should be revised by deleting the phrase "or other appropriate information" and inserting the language "or on chemical test." This change would prohibit arbitrary actions of a field inspector to request the "burying" or "treating" of spoil which, in fact, was not detrimental to vegetation, etc.

Response: This section of Kentucky's revised program is consistent with 30 CFR 816.48 because the Federal regulation does not require a chemical test to determine whether to bury or treat spoil. Rather, the judgment of the regulatory authority based on review of the permit application is all that is required to make such a determination.

121. Comment: The commenter recommends that 405 KAR 16:070 and 405 KAR 18:070, concerning water quality standards and effluent limits, be held in abeyance until such time as Environmental Protection Agency (EPA) and OSM standards have been finally adopted and approved. This recommendation is consistent with recent court decisions (U.S. Court of Appeals, May 2, 1980: Flannery, May 16, 1980: U.S. Court of Appeals, July 10, 1980).

Response: The Secretary believes that the Kentucky regulations are based on a

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misinterpretation of the court order. This is discussed in Finding 13.3.

122. Comment: The word "and" should read "or" in 405 KAR 16:070 Section 1(1)(c)(1) because only paragraphs (1) and (2) should be controlling, instead of both. Paragraph (1) exempts small areas from the requirements for sedimentations ponds and paragraph (2) exempts areas where the effluent limitations can be met without sedimentation ponds. The primary concern should be prevention instead of treatment.

Response: The Secretary agrees that the primary concern should be preventative. However, the suggested language change would not meet that intent. The Secretary believes it is necessary that the area be described as "small" before serious consideration could be given to a demonstration that the effluent limits would be met without sedimentation ponds.

123. Comment: 405 KAR 16:070 Section 1(1)(f) and 405 KAR 18:070 Section 1(1)(f) should be changed so that when drainage from undisturbed areas is comingled with that from the disturbed area, the operator could be allowed "credits" for background water quality reflective of conditions prior to mining. (See U.S. Circuit Court of Appeals decision of May 2, 1980, on the "net/gross" discussion.) The operator should not be held responsible for pre-existing conditions. Further, the operator should not be required to improve nature.

Response: Kentucky's regulation is consistent with 30 CFR 816.42(a)(6) because both the State and Federal rules require sedimentation ponds which receive drainage both from disturbed and undisturbed areas to meet the same effluent limitations. (See also 44 FR 15149–15150 for discussion of effluent standards as they relate to "mixed" drainages.)

124. Comment: The KCA recommends changing 405 KAR 16:070 Section 1(1)(h) and 405 KAR 18:070 Section 1(1)(h) to read: "The effluent limitations of Appendix A of this regulation shall not apply to discharge of water which occurs as a result of the 10 year 24 hour precipitation event." The five day limitation, as specified, would not always allow the operator sufficient time to repair and restore facilities to meet the effluent limitations.

Response: The Federal analog to the State regulations, 30 CFR 816.42(b)(1) and (2), has been suspended. For additional discussion of this issue, see "General Background on the State Program Approval Process."

125. Comment: The KCA recommends deleting 405 KAR 16:070 Section 1(2) and 405 KAR 18:070 Section 1(2) and delaying implementing regulations addressing this part pending the revision of the catastrophic rainfall exemption language now under consideration by EPA for the coal mining point source category. (See 44 FR 76788, December 28, 1979, and the U.S. Court of Appeals decision of May 2, 1980, which states that OSM cannot supersede EPA's authority under the Clean Water Act.) Or, in lieu of present language, the KCA would recommend adopting EPA's present catastrophic rainfall exemption language as provided in the coal mining point source category (42 FR 21380, April 26, 1977).

Response: The Secretary agrees that the Kentucky regulations must provide for the rainfall exemption. However, the Secretary has requested additional information on 405 KAR 16:070E Section 1(1)(h) and 18:070E Section 1(1)(h) to assure that they are consistent with the EPA rules. See Finding 13.3.

126. Comment: The word "sediment" should be deleted at both places where it appears in 405 KAR 16:090 Section 2 or the entire regulation should be deleted pending EPA's revision of the coal mining point source category standards (44 FR 76788, December 28, 1979).

Response: Although the Federal analogs to the State regulations, 30 CFR 816.46(b) and (c), relating to sediment storage design volume have been remanded, the Secretary believes the proposed suggestion would make the State section inconsistent with the remaining Federal requirement in 30 CFR 816.46(a) to use a sedimentation pond. In the June 12, 1980, revised submission, Kentucky rules 405 KAR 16:090E Section 2 and 18:090E Section 2 contain revised language which the Secretary finds consistent with the court order and SMCRA.

127. Comment: 405 KAR 16:090 Section 5(4) and 405 KAR 18:090 Section 5(4) should be deleted pending EPA's revision of the coal mining point source category standards (44 FR 76788, December 28, 1979).

Response: 30 CFR 816.46(h) the Federal analog to the Kentucky rule concerning sediment removal, has been remanded; however, the State included revised language in the June 12, 1980, submission. The Secretary finds the State regulations, 405 KAR 16:090E Section 5(d) and 18:090E Section 5(4), inconsistent with the Federal requirement in 30 CFR 816.46(a) to use a sedimentation pond. This issue is discussed in Finding 13.10.

128. Comment: The KCA suggests the addition of new sections, 405 KAR 16:090 Section 5(18) and 405 KAR 18:090 Section 5(18) to read: "Nothing in this regulation shall prevent the use of properly designed and constructed rock dams as approved by the department." This will clarify intent.

Response: The Secretary does not believe the suggested language is necessary. As written, sedimentation ponds must be constructed to specified performance standards and standard engineering principles. If rock dams can be constructed to meet those minimum standards, the regulatory authority has the discretion to approve such structures.

129. Comment: 405 KAR 16:110 Section 1(2) and 405 KAR 18:110 Section 1(2) should be changed to read: "Monitoring shall include measurements from a sufficient number of wells, *springs or other ground water discharges*. . . . Springs or other groundwater discharges can be as good as wells for monitoring ground water flow and quality.

Response: Kentucky's revised proposed regulations, dated June 12, 1980, reflect that "springs" may also be used for monitoring.

30. Comment: 405 KAR 16:120 and 405 KAR 18:120 concerning the use of explosives should be changed to reflect the May 2, 1980, U.S. Court of Appeals decision.

Response: The Secretary believes 405 KAR 16:120E as presented in the June 12, 1980 revised submission reflects applicable requirements for the permanent program. The May 2, 1980 decision cited by the commenter remanded certain rules in the interim program (30 CFR Parts 715 and 717). The decision did not affect requirements in the permanent program. 405 KAR 16:120, as submitted June 12, 1980 does reflect remands and suspensions in the permanent program. See discussion under "General Background on the State Program Approval Process."

131. Comment: The KCA recommends changing 405 KAR 16:120 Section 2(1) to read: "On the request to the department by a resident or owner of a dwelling or structure that is located within one-half mile of any part of the area *where blasting operations are to be conducted*, the permittee shall promptly conduct a pre-blasting survey of the dwelling or structure." Otherwise, the regulation could require a pre-blast survey for owners two or three miles from a blasting operation.

Response: The Secretary finds that Kentucky's requirement is consistent with 30 CFR 816.62 and Section 515(b)(15)(E) of SMCRA, which require such a pre-blasting survey for any dwelling or structure which is within one-half mile of any part of the permit area. Therefore, the language suggested by the commenter would not be

consistent with the Federal requirements.

132. Comment: The commenter recommends that 405 KAR 16:120 Sections 2 (1) and (2) and 405 KAR 18:120 Sections 2 (1) and (2) concerning the pre-blasting survey be revised by deleting the word "structure" in paragraph (1), and substituting the word "facilities" in subsection (2) for "structure." The revised language would exclude barns and outbuildings from the requirement to conduct pre-blasting surveys and clarify intent. Lower-grade outbuildings should not be protected so stringently.

Response: The Secretary believes that the intent of the Federal regulation at 30 CFR 816.62 is to protect property from damage without value judgment on the quality of the property. The suggested revision would render the Kentucky rules inconsistent with the Federal rules.

133. Comment: 405 KAR 16:120 Section 2(3) and 405 KAR 18:120 Section 2(3) should be revised to require that the names of the owner or owner's representative accompanying the surveyor be included in the written report. This protects the operator.

Response: The suggested change has been included in the Kentucky revised program and is considered acceptable by the Secretary.

134. Comment: In 405 KAR 16:120 Section 3(1)(a), the KCA recommends changing 20 days to 30 days. A 30-day blasting period before having to republish in a newspaper is more realistic and practical.

Response: The 30-day period suggested by the commenter has been incorporated into the June 12, 1980, revised program submission and the Secretary finds it consistent with Federal requirements.

135. Comment: 405 KAR 16:120 Section 4(1)(b)(3) and 405 KAR 18:120 Section 3(17)(b)(3) should be revised by allowing three working days to file a report after blasting at night. This change makes this requirement for filing a report after night blasting more practical.

Response: Kentucky's revised program of June 12, 1980, excludes weekends and legal holidays, thus reflecting the suggested revisions.

136. Comment: 405 KAR 16:120 Section 4(5)(d) and 405 KAR 18:120 Section 3(5)(d) should be revised by adding "upon a written finding by the department that such tests are necessary and reasonable," to the requirement for an airblast measurement.

Response: Kentucky's regulation is the same as 30 CFR 816.65(e)(4), which makes airblast measurement discretionary with the regulatory authority. Therefore, the intent of the suggested change is included in the Kentucky rule.

137. Comment: The KCA suggests changing the minimum distance from 1000 to 300 feet within which blasting shall not be conducted near any building used as a dwelling, school, church, hospital or nursing home in 405 KAR 16:120 Section 4(6)(a) to be consistent with the May 2, 1980, U.S. Court of Appeals decision.

Response: Kentucky's revised regulation, dated June 12, 1980, reflects the suggested change.

138. Comment: 405 KAR 16:120 Section 4(9) and 405 KAR 18:120 Section 3(9) should be revised to allow measurement of the maximum peak particle velocity as the vector sum of the three measurements taken in three mutually perpendicular directions. The commenter also suggests inserting language to allow the department to reduce the maximum peak particle velocity allowed, if it "makes a determination based on pertinent data" that a lower standard is required. Vector sum monitors presently in use give a more accurate reading of total vibration of all three plains without reducing the maximum of any one level.

Response: Kentucky's regulation allows use of the vector sum, but the Secretary finds this inconsistent with Federal requirements at 30 CFR 816.65(i). See Finding 13.15.

139. Comment: The KCA recommends deleting the last sentence of 405 KAR 16:120 Section 5(2) and 405 KAR 18:120 Section 4(2). As written this sentence voids the whole meaning of this subsection and does not allow for variations.

Response: The Secretary does not agree that the last sentence would void the subsection or eliminate variations in use of other equations for determining peak particle velocity. The sentence properly indicates that the final result, regardless of equation, must comply with the performance standard.

140. Comment: 405 KAR 16:120 Section 5(3) and 405 KAR 18:120 Section 4(3) should be revised to read, "The department *based on pertinent data* may require a seismograph record of any or all blasts. . . ." This change would allow the operator to know why a record is required.

Response: Kentucky's regulation is consistent with 30 CFR 816.67(c) which allows regulatory authority discretion in determining when seismographic measurements are needed. The DNREP would be determining why a record is needed at the time that he or she evaluates the application and determines when the record is needed. The need for the record would be based on site-specific consideration in applying the performance standards for blasting.

141. Comment: 405 KAR 16:120 Section 6(1) and 405 KAR 18:120 Section 5(1) should be revised to require in records of blasting the name of the "permittee, operator or" person conducting the blasting operation. This suggested language would conform to Federal regulation 30 CFR 817.68(a).

Response: Federal requirements at 30 CFR 816.68(a) and 817.68(a) use the term "operator." The Secretary does not believe that the term "person," as used by Kentucky, is a significant departure from the Federal language.

142. Comment: 405 KAR 16:130 and 405 KAR 18:130 should contain a definition of "rock." The KCA suggestes using the highway department's definition.

Response: The Secretary does not believe the definition is necessary for program approval because "rock" is not defined in a legislative rule in the Federal regulatory program. The State may, at its discretion, develop a definition of "rock."

143. Comment: The department should consider and incorporate the "zoned concerpt method" for disposal of excess spoil. This method is described in the Marh, 1980, *Coal Age* magazine (pp. 83–89).

Response: The method in question is not required under any Federal rule and the Secretary will not require Kentucky to adopt it.

144. Comments: A new sentence should be added at the end of 405 KAR 16:130 Section 1(6) and 405 KAR 18:130 Section 1(6) to read: "The department may approve a long-term static safety factor of 1.3 under the following conditions: (a) The structure has a class A hazard classification and (b) the volume of the fill is less than 250,000 cubic yards." The 1.5 long term static safety factor was not completely justified originally and some flexibility should be allowed where there is a smaller fill which would present a smaller risk if there is failure. Additionally, 1.3 is used on the bench for approximate original contour.

Response: The suggested change has been added to the June 12, 1980, revised program submission, but the Secretary has determined the Kentucky rules to be inconsistent with 30 CFR 816.71(f). See Finding 13.18. The rationale for the 1.5 static factor versus the 1.3 static factor is discussed extensively in the preamble to the Federal rules at 44 FR 15205 (1979).

145. Comment: The words "horizontal lifts" should be deleted in the first

sentence of 405 KAR 16:130 Section 1(6) which requires that spoil be transported and placed in horizontal lifts. Horizontal lifts are not essential to prevent mass movement and to ensure a long-term statics safety factor of 1.5. In addition, this would interfere with drainage during placement of the fill.

Response: Kentucky's use of the term "horizontal lifts" is consistent with 30 CFR 816.71(f). Placement in horizontal lifts reduces the possibility of mass wasting by preventing "layering" parallel to a slope with subsequent lubrication of the "layer" interfaces which would increase the potential for seepage and mass wasting.

146. Comment: New sections in 405 KAR 16:130 Section 1(15) and in 405 KAR 18:130 should be added to read: "Excess spoil or topsoil may be disposed off a permitted area upon the approval of the department only in those situations where offsite disposal is feasible and consistent with P.L. 95–87." This change would allow excess spoil or topsoil to be transported off the permitted area to building sites.

Response: Under the Federal rules at 30 CFR 816.71(a), all activities associated with the mining operation must be within a permit area to assure that the disposal areas are covered by the performance standards and bonding requirements of SMCRA. Therefore, the suggested change would not be consistent with the Federal requirements. (See Section 515(b) (2) of SMCRA.) Any offsite disposal not considered in an original permit application would require a permit revision.

147. Comment: The KCA recommends changing 405 KAR 16:130 Section 2(3) and 405 KAR 18:130 Section 2(3) concerning the disposal of excess spoil in valley fills by deleting the phrase "less if required" and substituting the phrase "as otherwise approved." This change would allow for placement of spoil in lifts greater than four feet. As long as the engineer can justify stability, etc., larger lifts should be allowed.

Response: Kentucky's revised program of June 12, 1980, reflects conditions under which lifts of greater than four feet can be used. However, the Secretary finds this to be inconsistent with the Federal requirements. See Finding 13.23. The Secretary, in promulgating the Federal rules, determined that lifts no greater than 4 feet were required to achieve densities necessary to assure stability, prevent mass movement, avoid contaimination of fill drainage systems, or avoid the creation of voids. (See preamble to the Federal rules at 44 FR 15206.)

148. Comment: The reference to "100-year, twenty-four (24) hour precipitation event" in 405 KAR 16:130 Section 2(4) and 405 KAR 18:130 Section 2(4), which sets the standard for the diversion channels to ensure that they are designed to safely pass surface water runoff, should be deleted and "ten (10) year" inserted instead. This revised language is consistent with 405 KAR 16:080 Section 1(2) which allows for only a 10-year recurrence interval.

Response: Kentucky's use of the "100-year, twenty-four (24) hour" language is consistent with 30 CFR 816.72(d). Further, 405 KAR 16:080E Section 1(2) provides the department with discretion to specify a precipitation event larger than a 10-year recurrence interval.

149. Comment: Clarification of 405 KAR 16:150 and 18:150 concerning non-coal wastes is needed. Provisions should be made for other means of disposal off the permit area such as by use of trash haulers or septic tank cleaners.

Response: The requirements for waste disposal found in the Kentucky program are consistent with 30 CFR 816.89 which requires non-coal wastes to be disposed of within the permit area. Thus, it is not necessary to request that the 405 KAR 16:150E and 18:150E be clarified.

150. Comment: The commenter states that established roads which are used by the public and which cannot be controlled by the operator to restrict public use should be exempt from 405 KAR 16:170 relating to air quality.

Response: Kentucky's regulation is an analog to 30 CFR 816.95 relating to air quality which has been remanded. Therefore, the Kentucky section is being affirmatively disapproved. See discussion under "General Background on State Program Approval Process" for discussion of effect of this disapproval.

151. Comment: All of subsections (2), (3), (9), (15) and (19) of 45 KAR 16:170 Section 2 concerning control measures to protect air resources should be deleted because they appear to be tailored more to western United States operations. Also these are extraordinary measures not usually used for state-of-the-art air pollution control. Finally, Section 3 gives the department sufficient discretion and authority to require these measures when deemed necessary.

Response: As discussed in comment 151 above, the existing State requirements are based on 30 CFR 816.95 which has been remanded. Therefore, the State section is being affirmatively disapproved.

152. Comment: 405KAR 16:1709 Section 3 should be revised by deleting the words "department determines" and substituting the words "secretary, based upon applicable regional studies, finds" in the sentence providing authority for requiring additional measures for protecting air resources. Regional studies now required by the department under the Clean Air Act will show whether the practices now used in the industry will be adequate to meet applicable ambient air quality standards. These extraordinary measures should be applied only in those cases where the secretary determines that nonattainment exists and that use of these measures will result in attainment.

Response: The State requirement is based on a remanded Federal regulation, 30 CFR 816.95, and therefore is affirmatively disapproved. See discussion in comment 151 above.

153. Comment: 405 KAR 16:180 Section 1(3) should be changed to read: *"Only in those cases where a finding is made as provided in subsection (2), the deportment may require that* a permittee shall ensure that the design and construction of electric power lines and other transmission facilities used for or incidental to the surface mining activities on the permit area are in accordance with the guidelines set forth in 'Environmental Criteria for Electric Transmission System'. * * *" These guidelines for construction of transmission lines should apply in those cases where some tangible benefit can be derived. These guidelines were originally intended for application in the western coal fields (see the permanent Federal regulations).

Response: Although these guidelines may have more frequent application in the West, the Secretary believes the protection of eagles and other large birds has national importance. Therefore, the guidelines have applicability in the East and Kentucky's revised program regulations accurately reflect 30 CFR 816.97(c) in this respect.

154. Comment: The last sentence of 405 KAR 16:190 Section 2(2)(c) concerning backfilling and grading requirements should be deleted. That sentence states that "In no case may highwalls be left as part of terraces."

Response: The quoted language is the same as that in 30 CFR 816.102(b)(3) and Section 515(b)(3) of SMCRA and is, therefore, acceptable. The Secretary believes that it was Congress' intent that no highwalls be left as part of terraces.

155. Comment: The first sentence of 405 KAR 16:190 Section 6 and 405 KAR Section 18:190 Section 4 should be revised to require filling, grading or other stabilizing when a significant number of rills or gullies deeper than 9 inches form in areas that have been regarded and topsoiled. Without some quantity control, regrading could be ordered for one rill.

Response: Kentucky's requirement is the same as 30 CFR 816.106. Addition of the suggested language would render the Kentucky regulation less stringent than the Federal requirement. The intent of both the State and Federal regulations is to prohibit erosion and sedimentation regardless of the number of rills or gullies. Latitude for flexibility in stabilizing singular rills without regrading is afforded by the wording, "the rills and gullies shall be filled, graded, *or otherwise stabilized.*"

156. Comment: 405 KAR 16:200 Section 2 and 405 KAR 18:200 Section 2, concerning use of introduced species for revegetation, should be changed by deleting the words "if approved by the department." If the permittee meets the conditions specified, then the department should not be allowed to act arbitrarily in disapproving an introduced species.

Response: The suggested language was incorporated in 405 KAR 18:200E Section 2 in the Kentucky revised progam of June 12, 1980. The Secretary finds this revision inconsistent with 30 CFR 817.112. (See Finding 13.30.) The primary objective of allowing the use of introduced species is to obtain a quick, temporary and stabilizing ground cover. Use of such species is intended to reflect special needs, not normal procedure. The regulatory authority must determine if the proposed practice satisfies all identified conditions including the special needs required by 30 CFR 817.112(b).

157. Comment: Relative to 405 KAR 16:200 Section 3 and 405 KAR 18:200 Section 3, the KCA suggests the following to eliminate mandated seeding during unfavorable conditions: In the last sentence, delete the words "as contemporaneously as practicable with" and substitute "during the first normal period for favorable planting conditions after.

Response: The June 12, 1980, revised Kentucky program incorporated the suggested language in 405 KAR 18:200E. This language is considered acceptable by the Secretary.

158. Comment: Relative to Section 4(3) of 405 KAR 18:200 and 405 KAR 16:200, the KCA recommends deleting the words "The department determines that" to prevent arbitrary actions by the department in requiring annual grasses and grains alone, as in situ mulch, or in conjunction with another mulch.

Response: The Kentucky regulations are the same as 30 CFR 816.114(c). The regulatory authority must have authority to determine if the aforementioned practice is appropriate to a particular situation.

159. Comment: 405 KAR 16:200 Section 4(2) and 405 KAR 18:200 Section 4(2) should be deleted and be replaced with the following: "Whenever the method of mulching and soil stabilizing practices as approved in the permit application does not achieve the purposes set out in paragraph (1) above, the department may require mulches to be mechanically or chemically anchored to the soil surface to assure effective protection of the soil and vegetation." This change would give the operator freedom to use the most effective, economical, and agronomically sound practices available to him for achieving stabilization.

Response: Kentucky's language is consistent with 30 CFR 816.114. Further, the Secretary believes the regulations relating to mulching and soil stabilization provide sufficient flexibility to satisfy a variety of conditions and circumstances.

160. Comment: Section 405 KAR 16:210 Section 2 should be revised to read: "lands *which have not been mined ond* has received . . . basis of *its potential utility.*" The regulation should not require the reestablishment of a postmining land use which will be impossible to attain if native resources have already been depleted (irreversible damage has occurred).

Response: Kentucky's revised program of June 12, 1980, incorporates provisions for consideration of premining land use. However, the State provisions have been found to be less stringent then 30 CFR 816.133(b). See Finding 13.35.

161. Comment: The KCA recommends that 405 KAR 16:210 Section 4(4) be revised by adding: "In the context of this subparagraph, 'if appropriate' allows the operator to sign this letter of commitment if the operator is going to do both the mining and the development of the postmining land use." This addition clarifies the intent of the regulations and is consistent with the preamble to the permanent Federal regulatory program (44 FR 15244).

Response: Kentucky's rule is consistent with 30 CFR 816.133(c)(4). Further, the Secretary believes the letter of commitment must be signed by the applicant who will be responsible for ensuring that all terms and conditions of the permit will be carried out.

162. Comment: 405 KAR 16:210 Section 4(9)(a) should be deleted because the Federal counterpart was remanded by court opinion on February 26, 1980.

Response: The Secretary believes the Kentucky regulation in the June 12, 1980, revised submission appropriately deletes the suspended language in 30 CFR 816.133(c) which required an operator to include a letter of commitment for the postmining land use.

163. Comment: One of the biggest problem areas with Kentucky's permanent regulatory program is that dealing with roads. The KCA contends that the design criteria has no substantial relationship to the environmental performance standards. Therefore, the department should reevaluate the regulations concerning roads and use the "State window" provision to address Kentucky's problems.

Response: The court opinion of May 16, 1980, remanded the Federal regulations concerning roads at 30 CFR 816.150–816.176. The Kentucky regulations have been reviewed against SMCRA and found to be acceptable. See discussion of remanded regulations under "General Background on State Program Approval Process."

164. Comment: 405 KAR 18:010 Section 2 concerning maximization of coal recovery should be deleted because of the distinct difference between surface and underground mining.

Response: Kentucky's regulation is consistent with 30 CFR 817.59. The Secretary believes that the requirement is appropriate to minimize the need for subsequent surface mining operations.

165. Comment: 405 KAR 18:040 Section 1 should be revised by deleting the language "exploration hole, other drill hole or" and adding the phrase "of a permanent nature" following the words "underground opening." Lining and casing all drill holes including exploration holes is totally unwarranted and impractical.

Response: Kentucky's requirement is consistent with 30 CFR 817.13. The Kentucky regulation does not mandate casing and linings but provides the regulatory authority with flexibility to require management of such facilities as necessary to prevent acid drainage or other toxic drainage from entering ground and surface waters.

166. Comment: 405 KAR 18:050 Section 2(4) should be changed to begin with the phrase "where prime farmlands are encountered." This change will clarify intent.

Response: Kentucky's requirement is consistent with 30 CFR 817.22. The suggested change would not correctly clarify intent because the regulation pertains to all soils, not just those associated with prime farmlands.

167. Comment: 405 KAR 18:050 Section 3(2) should be revised to read, "*In those coses where topsoil will not be immediately used ond redistribution will toke place within six (6) months,* stockpiled materials shall." This revision would clarify intent of the

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distinct difference between surface coal mining and underground coal mining.

Response: The Secretary believes the suggested change would not provide adequate protection for stored topsoil. Potential for environmental degradation of stored topsoil is not necessarily related to time or the type of mining operation, but rather to whether the stored materials are subject to wind and water erosion, compaction, etc., immediately upon storage. Therefore, action must be taken to protect the topsoil resources.

168. Comment: 405 KAR 18:050 Section 4(1) should be deleted in its entirety. This would clarify intent of the distinct difference between surface coal mining and underground coal mining.

Response: Kentucky's regulation is consistent with 30 CFR 817.24. The Secretary believes these requirements are necessary to protect topsoil removed and replaced incident to underground mining operations. Therefore, the suggested change is not appropriate.

169. Comment: 405 KAR 18:050 Section 6 should be revised to read: "This regulation . . . supporting vegetation *as provided in Section 3(2) of this regulation.* Where . . . within the permit area *or outside the permit areo as approved by the department.*" This change will clarify intent of the distinct difference between surface coal mining and underground coal mining.

Response: Kentucky's regulation is consistent with the Federal requirement. The commenter's suggested reference to Section 3(2), however, has merit and may clarify this regulation. Acceptance of the suggestion is at the discretion of the State. The second suggestion, use of topsoil outside the permit area, is inconsistent with Federal requirements because all such activities must be part of the approved permit and within the permit area in order to assure compliance with the performance standards.

170. Comment: The KCA believes that 405 KAR 18:060 Section 5(1) should be revised by inserting the words "where necessary" following the word "prevent." Prevention of the gravity discharge of water from some mines is unwarranted if it can be shown that the discharge will meet water quality standards.

Response: Kentucky's regulation is consistent with 30 CFR 817.50(a). Further, paragraph (2) of Section 5 provides exceptions to the general requirements of paragraph (1). The Secretary, therefore, believes the commenter's concerns are adequately considered in the program.

171. Comment: 405 KAR 18:060 Section 7 concerning replacement of water rights should be revised to read: "*Unless otherwise compensated as agreed to by the landowners and the permittee, as approved by the department,* the permittee . . . ." This recommendation is justified because it has been agreed to by an environmentalist group and is a reasonable change.

Response: Kentucky has omitted requirements for water rights and replacement due to underground mining comparable to 30 CFR 817.54 from its June 12, 1980, revised program. This omission is acceptable since the corresponding Federal section has been remanded.

172. Comment: The size of sedimentation ponds should be based on .125 acre feet per acre disturbed for total pond volume. West Virginia has received commitments from OSM to allow it to include its current sedimentation pond design requirements (which follows this formula) in its State program and feels that Kentucky should follow the same lead.

Response: The revised Kentucky program of June 12, 1980, includes the recommended change in 405 KAR 18:090E Section 2. The Federal counterpart, 30 CFR 817.46(b), has been suspended. See discussion of suspended and remanded regulations in the "General Background on State Program Approval Process."

173. Comment: The KCA recommends deleting 405 KAR 18:090 Section 3 because EPA is revising the coal mining point source category standards as per 44 FR 76788, December 28, 1979.

Response: The Secretary believes the June 12, 1980, revised program at 405 KAR 18:090E Section 3 deletes the portion of 30 CFR 816.46(d) that was remanded. The commenter's suggestion, however, would make the State program inconsistent with the remaining language in 30 CFR 816.46(d) and the EPA regulations currently in effect. The State will have an opportunity to amend its program after the new OSM and EPA regulations have been promulgated.

174. Comment: The KCA suggests addition of "the department shall allow a reasonable time for discovery of non-existing dwellings which were not indicated upon the original permit" to 405 KAR 18:120E Section 3(6)(a). This change will prevent unreasonable closures of the blasting operations for newly discovered dwellings (usually house trailers of which the operators are unaware).

Response: The suggested change has merit but is not required for program approval. Since 405 KAR 18:120E Section 3(6)(a) prohibits blasting within 300 feet of any building used as a dwelling, school, church, hospital or nursing facility, it seems reasonable that the operator would be willing to survey areas near the borders of the permit area prior to blasting to identify whether new structures have been placed in the protected area rather than to risk violation of a performance standard, especially one that would be readily susceptible to citizen complaints.

175. Comment: The KCA suggests deleting Section 2 of 405 KAR 18:210 which requires public distribution of mining schedules for underground mining to minimize subsidence. The KCA contends that there is no provision in SMCRA that requires this rule, it would be unduly alarming to residents, and it would be impossible to predict six months ahead in most cases, especially for small operators.

Response: 405 KAR 18:210E Section 2 has been found less stringent than 30 CFR 817.122 because it does not require that a full six month notice be given to property owners when underground mining will occur beneath their residences. (See Finding 13.50.) The intent of 30 CFR 817.122 is to inform property owners of potential subsidence effects and measures to to prevent subsidence effects which would likely cause less alarm than damage due to subsidence that was not expected. If future underground operations are shown to have no adverse effects on property owners' residences as a result of the required planning, public concern will be eliminated. Section 516(a) of SMCRA requires the Secretary to promulgate regulations directed toward the surface effects of underground mining operations and Section 516(b) requires each underground mining operator to adopt measures consistent with known technology in order to prevent subsidence causing material damage and to maintain the value and foreseeable use of surface lands.

176. Comment: 405 KAR 18:210 Section 4(1), which prohibits underground mining activities beneath or adjacent to perennial streams unless certain conditions are met, should be changed to read as follows: "(1) Underground . . . beneath any perennial . . . department *in conjunction with the Mine Safety and Health Administration (MSHA) and the Kentucky Department of Mines and Minerals* . . . information *provided to MSHA and the Kentucky Department of Mines and Minerals,* determines . . . ."

Response: Kentucky regulation 18:210E as revised on June 12, 1980, incorporates the consultation portion of the commenter's suggestion which the Secretary finds acceptable, but does not remove the words "or adjacent to" which precede "any perennial" stream. The suggested wording would result in a State regulation less stringent than 30 CFR 817.126(a) since it could allow mining up to the edge of a stream. As discussed in the preamble to the Federal rules at 44 FR 15276, the term "adjacent to" is intended to prohibit subsidence that might jeopardize the functioning of the streams.

177. Comment: The KCA suggested that 405 KAR 18:210 Section 4(3) be changed to read as follows:
"Underground mining activities shall not be conducted beneath any public buildings" instead of "beneath or in close proximity to any." The wording "or in close proximity to" was not in P.L. 95–87.

Response: Implementation of this suggestion would result in 405 KAR 18:210E being less stringent than 30 CFR 817.126(c). Authority for 30 CFR 817.126(c) is provided for by Section 516(a) of SMCRA. The intent of the Federal regulation is to prevent material damage to the structures and material damage could result from mining in close proximity. Kentucky's revised program of June 12, 1980, in 405 KAR 18:210E Section 4(3) replaced the wording "or in close proximity to" with "adjacent to." The Secretary finds this acceptable.

178. Comment: 405 KAR 18:220 concerning postmining land use capability should take into account the distinct differences between surface and underground mining and any Federal regulation changes.

Response: The comment is not clear on the specific differences that should be considered. The postmining land use provisions of 30 CFR 817.133(b)(1) for underground mining were remanded and 405 KAR 18:220E of the June 12, 1980, revised submission reflects the court order. However, the same language has been remanded from the provisions for surface mining in 30 CFR 816.133(b)(1). The Secretary is not expecting any changes in postmining land use rules for underground mining except for those regulations that were remanded.

179. Comment: The promulgation of 405 KAR 18:230 regarding roads should be delayed pending OSM's revisions to comply with Judge Flannery's decision of May 16, 1980.

Response: The June 12, 1980, submission contains road regulations that are not based on the remanded Federal rules and which are not inconsistent with SMCRA. See discussion of remanded regulations under "General Background on State Program Approval Process" and response to KCA comment 164 above.

180. Comment: The Federal definition of "natural hazard lands" should be substituted for Kentucky's proposed definition at 405 KAR 24:010 Section 1(4). The definition, as now written, is more stringent than Federal requirements.

Response: The Kentucky program as submitted to the Secretary has never contained a 405 KAR 24:010. However, the Kentucky definition of "natural hazard lands" at 405 KAR 7:020E Section 1(71) is consistent with the Federal definition at 30 CFR 762.5.

181. Comment: Sections 405 KAR 24:010 Section 1 (5) and (7) should be revised by subsititing the word "structure" for "building" in the first definition and striking the word "structure" in the second definition. These changes would clarify the intent of the regulations.

Response: The Kentucky program as submitted to the Secretary has never contained a 405 KAR 24:010. The Secretary is therefore unable to address this comment.

182. Comment: The definition of "Public park" at 405 KAR 24:010 Section 1(8) should be revised to read "Public park means . . . or local agency for *general* public recreational use . . . It includes any land leased *and* reserved to the public . . . " This change would clarify intent. Also, public parks should be reserved for use of the general public and not "held open" for specific individuals. "Held open" could include any and all public lands that are not meant to be public parks.

Response: Kentucky's definition of "public park" at 405 KAR 7:020E Section 1(100) of the June 12, 1980, revised submission is consistent with 30 CFR 761.5. As discussed in the preamble to the Federal rules at 44 FR 14991, the Federal definition has been developed to include all parks that are used by the public, which could mean parks that are not necessarily dedicated as public parks. The Secretary finds the State definition consistent with the Federal definition.

183. Comment: The KCA recommends deleting the words "and economically" from 405 KAR 24:020 Sections 3(6)(a) and 4(6)(a) and from 405 KAR 24:030 Section 8(1) which establish when an area must be designated unsuitable for mining upon petition. The department cannot fairly administer such a subjective term. Economics are different for different operators. This change should also be made consistently throughout the regulations.

Response: Section 522(a)(2) of SMCRA specifically requires that an area shall be designated unsuitable for mining if reclamation is not technologically and economically feasible. Deleting the word "economically" would, therefore, render Kentucky's proposed regulation less stringent than the Federal requirements.

184. Comment: The words "on the basis of a long-term coal contract" in determining what constitutes "substantial legal and financial commitments" should be deleted from the first sentence of 405 KAR 24:030 Section 2(2) because this is more stringent than the Federal regulations. Further, it discriminates against operators who wish to sell on the open market.

Response: The Secretary finds that Kentucky's regulation is consistent with the Federal requirements at 30 CFR 762.5 since the Federal definition includes that phrase.

185. Comment: 405 KAR 24:030 Section 5(3)(d), notes the KCA, should be changed to read: "The economy of Kentucky *and specific local mining regions.*" The economy of the specific local mining region should be considered in designating lands unsuitable for mining. The local mining region, in most cases, will have the most obvious economic impact. This change is also consistent with Section 8(3).

Response: The Secretary believes the revised language in Kentucky's regulation 405 KAR 24:030E Section 5(3)(d) of June 12, 1980, adequately addresses the issue raised by the commenter. Although Kentucky uses the phrase "and its coal mining regions" in lieu of the the language suggested by the commenter, the results will be similar.

186. Comment: 405 KAR 24:030 Section 8(2), concerning when an area may be designated unsuitable for mining upon petition, should be revised by deleting the word "the" preceding the term "surface coal mining" and the word "operation" immediately following that phrase. These deletions would make the regulations applicable to the surface coal mining region in general rather than a specific operator's coal mining operation.

Response: The suggested revision would not be consistent with the Federal requirements. Kentucky's language is identical to the language in Section 522(a)(3) of SMCRA and 30 CFR 762.11(b).

187. Comment: The KCA recommends deleting the word "plans" from 405 KAR 24:030 Section 8(2)(a) because the term is subjective and easily abused.

Response: The suggested change would be inconsistent with the Federal requirements. Section 522 (a)(3)(A) of SMCRA and 30 CFR 762.11(b)(1) specifically require that, upon petition, the area be designated unsuitable for mining if it is determined to be incompatible with existing State, area

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wide or local land use policies, *plans*, and programs.

188. Comment: The KCA recommends changing 405 KAR 24:030 Section 8(2)(b) concerning criteria for lands unsuitable for mining to read, "Affect fragile . . . important historic, cultural, scientific, *and* aesthetic and natural systems." This change would make this regulation consistent with Section 522(a)(3)(B) of P.L. 95–87.

Response: Kentucky's June 12, 1980, revised program reflects the suggested change.

189. Comment: According to the KCA, 405 KAR 24:040 Section 2(4), concerning areas designated unsuitable for mining under Section 522(e) of SMCRA, should be revised to read, "Lands which will . . . . National Register of Historic Places unless approved jointly by the regulatory authority and the Federal, State or local agency with jurisdiction over the park or the historic site." The added language is taken from Section 522(e)(3) of P.L. 95–87 and makes this Federal requirement complete. Without this addition, Section 2(4) is more stringent than the Federal law.

Response: Kentucky's June 12, 1980, revised program reflects the suggested revision which deleted protection under Section 522(e)(3) for properties eligible for the National Register of Historic Places.

190. Comment: The KCA recommends adding the following sentence to the end of 405 KAR 24:030 Section 9 which requires the State to maintain a map of all areas designated unsuitable for mining: "A supply of such maps shall be readily available at each agency for distribution to the public without charge." This would ensure that copies are available to the public upon request.

Response: Kentucky's regulation is consistent with Federal requirements. Adoption of the suggestion is discretionary with the State.

191. Comment: 405 KAR 24:050 Section 4(5)(a), (b), and (c) should be deleted. These requirements are too subjective, are covered by other regulations on lands unsuitable for mining and are more stringent than the requirements of Section 522 of P.L. 95–87.

Response: The Secretary is unable to address the issue raised because of an apparent reference error.

192. Comment: The phrase "progressively or otherwise" should be inserted between "shall" and "be removed" in Section 1(3) of 405 KAR 18:130 which requires that all vegetative and organic materials *shall be* removed from a disposal area for underground development wastes and excess spoil.

Response: Revisions received June 12, 1980, include the phrase, "progressively or in a single operation" which is similar to the suggested change and is acceptable.

193. Comment: Section 3 of 405 KAR 18:140 concerning water control measures in waste banks should be modified so that the inclusion of subdrains is discretionary.

Response: Section 3 of 405 KAR 18:130E of the June 12, 1980, revised submission contains provisions for rock core chimney drains instead of subdrains. The Secretary believes that this will provide for flexibility and finds it consistent with the Federal requirements.

194. Comment: Section 4(4)(c) of 405 KAR 18:130 and 16:130 concerning the requirement for a drain and filter system in a fill should be deleted in its entirety on the grounds that the design of a durable rock fill is such that the whole fill is a drain.

Response: The suggested change would make 405 KAR 16:130E inconsistent with 30 CFR 816.74(c)(3) and 30 CFR 817.74(c)(3) and Section 515(b)(22)(C) of SMCRA which require appropriate internal drainage systems in all excess spoil fills. Fill material does not always remain "free draining" over very long periods due to weathering of shale materials and subsequent downward movement of the fine grained particles into the voids between larger particles at the bottom of the fills. Such actions can block drainways creating reservoirs (pockets) of impounded water that can create phreatic surfaces in the fill and further speed weathering of shale materials in the fill. A separate drain system, with a properly designed protective filter, will remain free draining and effectively prevent formations of water pockets in a properly designed rock fill. This issue is also discussed in Findings 13.20 and 13.24.

195. Comment: Section 2 of 405 KAR 18:190 should not require returning the permit area of an underground mine to approximate original contour (AOC).

Response: The Federal requirements (30 CFR 817.101(b)(1) and 817.102) for returning the permit area for an underground mine to AOC have been remanded to the extent that they did not provide flexibility for stabilized fills. The Kentucky regulations in the June 12, 1980, revised submission provide for flexibility and are consistent with the Federal requirements that remain in effect and the court decision.

196. Comment: The last sentence of 405 KAR 18:230 Section 4(3) concerning culverts and bridges be modified by changing, "100-year twenty-four (24)" to "10-year twenty-four (24)." The 100-year design was greater than required by the Kentucky Department of Highways.

Response: 405 KAR 18:230E Section 4(3) of the State's February 29, 1980, initial submission was deleted from the June 12, 1980, revised submission since the Federal counterpart, 30 CFR 816.153(c), was remanded. See discussion of remanded regulations under "General Background on State Program Approval Process."

197. Comment: Section 2(2) of 405 KAR 18:110 concerning surface and ground water monitoring should be deleted in its entirety because of the May 2, 1980, U.S. Court of Appeals decision.

Response: The May 2, 1980, Court of Appeals decision concerns the interim program and does not affect ground water monitoring requirements of the permanent program. Therefore, the suggestion is not appropriate.

198. Comment: The following sentence should be added to 405 KAR 18:230 Section 1(4)(a) concerning approval of alternate specifications for Class I roads: "Performance shall be determined by the effect that the proposed alternate design has on the environment."

Response: Kentucky replaced 405 KAR 18:230 Section 1(4)(a) with 405 KAR 18:230E Section 1(3) in July 12, 1980, program revision, but chose not to incorporate the commenter's suggestion. The Federal regulations for roads (30 CFR 817.150–817.176) have been remanded. The Secretary finds Kentucky's road regulations consistent with SMCRA. See discussion on remanded regulations under "General Background on State Program Approval Process."

199. Comment: The KCA suggested that Section 3(3)(a) of 405 KAR 20:010 which places limits on the use of coal exploration roads be changed to read as follows: "Vehicular . . . exploration. Travel . . . periods when *irreparable* damage to vegetation or the land surface could result." The rationale behind the suggestion is that there will be cases where construction of roads during exploration may lead to more environmental damage than if the area were left as is. The suggested changes will add more flexibility to the department's discretionary authority.

Response: 405 KAR 20:010E Section 3(3)(9) has been found consistent with 30 CFR 815.15(c)(1). If the suggested modification were included, the State regulation would be less stringent than the Federal regulation which is intended to prevent unacceptable damage, even in the short-term, to vegetation and the land surface.

200. Comment: The requirement of 405 KAR 20:010 Section 3(3)(b) concerning the length of time a coal exploration road may be in place, should be deleted in its entirety and substituting a set of requirements that take into account the brevity of the use of such exploration roads. It is economically unfeasible to construct a road and then tear it down after only a week to six months of use.

Response: Federal regulations at 30 CFR 816.150–816.176 have been remanded. See discussion under "General Background on State Program Approval Process" for effect of the remand on the Secretary's decision. The Secretary finds that the Kentucky road regulations at 405 KAR 20:010E Section 3(3)(b) are consistent with SMCRA.

201. Comment: The KCA suggests that 405 KAR 20:030 Section 1(1)(a) concerning the minimum width of undisturbed area to be left between auger mining be revised to read: "any point *where a future underground opening is anticipated* between each group." Also, paragraph 1(1)(b) should be deleted. Under Section 1(1)(a), underground openings need to be preplanned by trained engineers and not be arbitrarily situated in conjunction with an augering operation. Additionally, this amounts to unjustifiable confiscation of mineral properties and obviates optimal selection of a deep mine openings, which should be determined by extraneous engineering and economic criteria.

Response: The suggested change would not be consistent with the Federal requirements, and the Secretary believes that Kentucky's requirements are consistent with 30 CFR 819.11(a)(1) and (2). The limitations were established in the Federal regulations to insure maximum coal recovery as required by SMCRA Section 515(b)(1) by assuring that acceptable undisturbed areas are left for safe underground openings at a later time. The defined distances will allow for planning the underground opening when underground mining is expected. This is discussed extensively in the preamble to the Federal rules at 44 FR 15280

202. Comment: 405 KAR 20:060 Section 2(6) should be revised by deleting the language "shall not" and substitution with the word "may." Also, the word "not" should be omitted. The only reason for prohibiting woody materials in backfill is the creation of unstable conditions in the backfill which in fact such materials do not. So long as material is placed near the highwall on the solid flat pit floor, unstable conditions will not exist.

Response: The suggested change would allow the burying of woody material in the backfill area which is not consistent with the Federal requirement. Kentucky's regulation is consistent with 30 CFR 826.12(e). Burying of woody materials in fill material may result in mass wasting or sliding as the woody materials decompose. Placement of such materials near the highwall may, in some cases, reduce the potential for mass wasting or seepage. It will not, however, prevent possible subsequent exposure of the highwall.

H. Terry Lombardo, representing the Island Creek Company, submitted the following comments:

1. Comment: The provisions of 405 KAR Chapter 24 (Areas unsuitable for Mining), 405 KAR 20:040 (Prime Farmland), 405 KAR 18:220 and 16:210 (Postmining Land Use), and 405 KAR 18:050 and 16:050 (Topsoil) should be deleted as a result of the decision by the U.S. District Court of the Southern District of Indiana which invalidated and declared unconstitutional several portions of the Surface Mining Act and OSM regulations concerning these subjects.

Response: The Indiana court decision has been appealed to the Supreme Court and a "stay" decision has been issued. Until a final decision is issued, the provisions of the permanent regulatory program, except for those requirements suspended or remanded by the District Court of the District of Columbia or its Court of Appeals, will remain in effect.

2. Comment: 405 KAR 18:210 Section 3(2) concerning protection of surface owners from subsidence should be revised by placing the word "or" at the end of subsection (2)(b), after the semicolon. As written, the regulation implies that the operator must do (a) restore the property and (b) purchase the property or, in the alternative, (c) compensate the owner. The proposed rule should require the operator to take one of three alternative actions in the event of material damage.

Response: The June 12, 1980, revised submission includes the recommended change.

3. Comment: 405 KAR 18:210 Section 4(4) should be deleted because the term "imminent danger" in the context used in this provision is vague, ambiguous and subject to overly broad discretion by the department in its interpretation. Furthermore, this provision seemingly is concerned with the safety of persons, rather than the environment, and that area is already regulated by the Kentucky Department of Mines and the Mine Safety and Health Administration. Finally, and most importantly, this provision constitutes a "taking without just compensation" against the mine operator and coal owner.

Response: Section 516(c) of SMCRA and 30 CFR 817.126(d) require the regulatory authority to suspend underground mining operations which pose imminent danger to inhabitants of urbanized areas, cities, towns, and communities. Kentucky's regulation is consistent with those requirements and, therefore, the suggested change is not necessary.

4. Comment: Section 1(1)(a) of 405 KAR 16:070, and 18:070, as written, applies to all surface drainage from disturbed areas, including reclaimed areas. This is too broad and should be revised to exclude those areas not being actively mined to conform with the Environmental Protection Agency (EPA) regulations and the decision in *NCA* v. *Andrus*, U.S. Circuit Court of Appeals for the District of Columbia.

Response: While 405 KAR 16:070E Section 1(1)(a) and 18:070E Section 1(1)(a), as contained in the June 12, 1980, revised submission were modified in light of the court decision, the Secretary does not believe that the modified language clearly reflects the court decision. Therefore, the Secretary has affirmatively disapproved those rules. See discussion under "General Background on the State Program Approval Process" and under "Secretary's Decision."

5. Comment: Section 1(1)(b) of 405 KAR 16:070 and 18:070 should be revised because it is too encompassing, as noted in the comment above.

Response: 405 KAR 16:070E Section 1(1)(b) and 18:070E Section 1(1)(b), as contained in the June 12, 1980, revised submission were modified by the State in light of the court decision. The revised language, however, does not require that treatment facilities be retained until applicable State and Federal water quality requirements for the receiving streams are met. This is discussed in Finding 13.3.

6. Comment: Use of the term "small" in Section 1(1)(c) of 405 KAR 16:070 and 18:070 is vague and ambiguous terminology and leaves total discretion with the agency in its application. This may result in the lack of uniform application of the regulation which is contrary to the purpose of the Act.

Response: The use of the term "small" is consistent with 30 CFR 816.42(a)(3)(A) and 817.42(a)(3)(A). The applicant initiates the exemption request based on the belief that the total disturbed area is small and that sedimentation ponds, etc., are not necessary. Based on this information, the regulatory authority will evaluate the applicant's information and other available information to

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determine the validity of the request. Such procedures should provide for uniform application of the requirements.

7. Comment: The requirement to construct ponds before any surface mining activities are begun is inappropriate because various activities which would be defined as surface mining activities could be conducted on the site without causing any perceptible change in water quality or discharge.

Response: Kentucky's definition of "surface mining activities," 405 KAR 7:020E Section 1(128), pertains only to operations for removal of the overburden and the coal. It does not include such activities as surveying, road construction, etc. SMCRA Section 515(b)(10) requires protection of the hydrologic balance both during and after "surface mining operations" which is defined in SMCRA Section 702(27) to include "activities conducted on the surface of the lands in connection with a surface coal mine or surface impacts incident to an underground mine." Therefore, the construction of sediment ponds in advance of "surface mining activities," as required by Kentucky's rule, 405 KAR 18:90E Section 1(1), is appropriate and found consistent with the Federal requirements.

8. Comment: The requirements to meet effluent limits for mixed drainage in total is contrary to *NCA* v. *Andrus* and EPA regulations. Section 1(1)(f) of 405 KAR 16:070 and 18:070 should be revised to provide for a "net/gross" test per the NCA decision.

Response: Federal regulation 30 CFR 816.42(a)(1) has been remanded. Therefore, in accordance with the court order, the Secretary has disapproved the analogous Kentucky regulations as set forth in the "General Background on State Program Approval Process" and the "Secretary's Decision."

9. Comment: EPA and OSM regulations as revised on December 28, 1979, and December 31, 1979, both provide that the rainfall variance applies for a 10-year 24-hour precipitation event or for any precipitation event when the pond design criteria to contain or treat such a rainfall are met by the operator. Kentucky's regulation should reflect these requirements.

Response: The Secretary agrees that the Kentucky regulations in 405 KAR 16:070E Section 1(1)(h) and 18:070E Section 1(1)(h) are not consistent with the Federal requirements. The Secretary has requested additional information in Finding 13.4.

10. (a) Comment: The terms "formal conference" and "informal conference" are used in 405 KAR 7:090 Section 3 without any distinction between the two.

Response: The Secretary agrees with this comment and has included it in Finding 27.5.

(b) Comment: There is an apparent conflict between 405 KAR 7:090 Section 3(1) (b) and (e) concerning prepayment of penalty for a violation.

Response: The Secretary agrees. See response to comment A.10 from the Appalachian Research and Defense Fund of Kentucky for further discussion.

(c) Comment: The phrase "and that a final order should be issued" is vague in 405 KAR 7:090 Section 3.

Response: The Secretary does not agree that this language is vague. Failure to request a hearing within the time limits established constitutes a waiver of the right to the hearing. The language "and that a final order should be issued" gives finality to the DNREP decision that hearing rights have been waived and is in accordance with both 405 KAR 7:090E Section 3(5)(i), KRS 350.032(2) and KRS 224.085 which provide for appeals of "final" orders.

(d) Comment: The word "default" used in 405 KAR 7:090 Section 3 needs to be defined.

Response: The Secretary does not believe that use of the term default is unclear. The term "default," as used in 405 KAR 7:090E Section 3, concerning requests for formal hearings, means that failure to appear without good cause or failure to comply with any pre-hearing or interlocutory order will constitute grounds for dismissal of the administrative action by the hearing officer and would apply to actions of the petitioner or the respondent, as appropriate. Therefore, the Secretary does not believe that a definition is required. However, the State may, at its discretion, develop a definition of "default" but the Secretary will not require it for program approval.

(e) Comment: 405 KAR 7:090 Section 3(2) provides the department with unusual discretionary authority as it relates to the department's authority to bring show cause proceedings regarding permit suspension or revocation.

Response: The Secretary has determined that KRS 350.465(3)(f) relative to permit suspension or revocation is consistent with Section 521 of SMCRA. The Secretary believes that discretionary authority provided in 405 KAR 7:090E Section 3(2) is acceptable when used in connection with 405 KAR 12-020E Section 5 for permit issuance or denial hearings.

(f) Comment: The term "affirmative case" needs to be defined.

Response: The Secretary assumes that the term "affirmative case" as used in 405 KAR 7:090E Section 9 can be interpreted to mean "prima facie case" consistent with 43 CFR Part 4. Therefore, the Secretary will not require a definition in order for the program to be approved. The State may develop the definition at its discretion.

(g) Comment: The terms "minor" and "serious" need clarification in 405 KAR 7:090 Section 10.

Response: Section 518(a) of SMCRA provides that a civil penalty "may" be assessed for the violation of any permit condition or any other provision of Title V of SMCRA, except that if such violation leads to the issuance of a cessation order, a civil penalty "shall" be assessed. 405 KAR7:090E section 10, which establishes what the hearing officer shall consider in determining the seriousness of a violation, is consistent with Section 518(a) of SMCRA. The terms "minor" and "serious" are not inconsistent with Section 518(a) of SMCRA inasmuch as the use of these terms does not adversely affect the mandatory civil penalties for all cessation orders. While the Secretary will not require the definitions for program approval, the State may develop the definitions at its discretion.

(h) Comment: 405 KAR 7090 Section 11 seems to contradict Section 10 which allows that a penalty might not be assessed at all in a minor violation.

Response: The Secretary agrees with the commenter. See Finding 19.4.

(i) Comment: 405 KAR 7:090 Section 12 nees to define conditions for awarding costs and expenses.

Response: The Secretary agrees with the comment to the extent set forth in Finding 27.12. It is, however, unclear how the commenter uses the term "define conditions." The Secretary's evaluation of consistency of the State regulation is based on a comparison with 43 CFR Part 4. If the State regulation met that test, the Secretary would have been able to find it consistent with the Final requirements.

11. The commenter also submitted comments from the Kentucky Coal Association which duplicated those submitted by Mr. Bill Caylor representing the Kentucky Coal Association. These are all discussed in response to Mr. Caylor's comments under paragraph G above.

I. Comment: Peabody Coal Company (PCC) submitted the legislative summary regulations. Also included was a list of Kentucky regulations which PCC maintains are "similar to the remanded Federal regulations" and which PCC apparently feels should be affirmatively disapproved in their entirety. (See Administrative Record No. KY-242.)

Response: The Secretary has considered the submitted list in making his determination on which Kentucky regulations are based on suspended or remanded Federal regulations. The Secretary's final list is included under "Secretary's Decision."

J. The following additional comments were submitted by the Council of the Southern Mountains, Inc., Applachian Coalition and Environmental Policy Institute and Citizens of the Commonwealth of Kentucky:

1. Comment: Following are several differences between Kentucky's law and SMCRA. First, the Kentucky statute is more restrictive in its standing requirements than the Federal statute. It requires that a citizen bringing an action for failure to enforce be "any citizen of this Commonwealth having knowledge." This language differs from "all persons having an interest which is or may be adversely affected."

Response: The Secretary agrees with this comment and has included it in Finding 1.2(a).

2. Comment: Kentucky demands an oath requirement for persons bringing a mandamus-type action under KRS 350.250. This will have a chilling effect on the initiation of such actions and will limit citizen access to the courts.

Response: The Secretary does not believe that an oath requirement imposed a significant burden on a citizen bringing a suit and does not find the requirement inconsistent with SMCRA.

3. Comment: The scope of the Kentucky citizen suit provisions is not as broad as the Federal provisions, in that KRS 350.250(3) provides for suit against "any person" for violations rather than the "State or any other person." The Kentucky statutory provisions defining "person" does not include the State or agencies and instrumentalities of the State.

Response: The Secretary agrees with this comment and has included it in Finding 1.2(c).

4. Comment: KRS 350.250 does not contain the savings clause found at Section 520(e) of the Federal Act. This is necessary to insure that the citizen suit provision provides an additional, rather than an exclusive, cause of action.

Response: The Secretary agrees with this comment and has included it in Finding 1.2(e).

5. Comment: KRS 350.250 does not provide for damage actions comparable to those under Section 520(f) of SMCRA. The proposed statutory revision is confusing and ambiguous in its effect and clearly fails to spell out a damages action such as that envisioned by SMCRA.

Response: The Secretary agrees with this comment and has included it in Finding 1.2(c).

6. Comment: With respect to the award of costs and expenses, Kentucky must demonstrate that awards are "appropriate" unless exceptional circumstances would render an award unjust.

Response: The comment is unclear as to the specific State section which the commenter considers objectionable. KRS 350.250(2) is considered equivalent to SMCRA Section 520(d) with respect to award of costs and expenses.

7. Comment: The Kentucky statute and regulations are totally inadequate with regard to imminent hazard orders. The fundamental problem is that the imminent hazard provisions are effective only where findings are made and authority exercised under another Kentucky statute, KRS 224.071. This statute requires the making of undefined findings which, on their face, appear more restrictive than the findings required for imminent hazard sanctions. The language mandates issuance of an order only where a condition "presents a danger to the health or welfare of the people of the State or results in or is likely to result in damage to natural resources" and where it is "prejudicial to the interests of the people of the State to delay action until an opportunity for a hearing can be provided." These appear to be far more narrow than "imminent danger to the health or safety of the public" and "significant, imminent environmental harm."

Response: The Secretary disagrees with the comment. KRS Chapter 224 provides general authority for the DNREP to carry out its mandate through several divisions, e.g., Divisions of Solid Waste, Air and Water, Bureau of Surface Mining, etc. KRS Chapter 350 provides even more particular or specific mandates to the DNREP to be carried out by the Bureau of Surface Mining. With regard to imminent danger cessation orders, KRS 350.130(4) provides that when the DNREP determines that a condition in an operation creates an "imminent danger to the health or safety of the public" or is causing or can reasonably be expected to cause "significant, imminent environmental harm" a cessation order will immediately be issued. While the standards for taking summary enforcement action in other divisions within the DNREP may be more restrictive than the standards for the Bureau of Surface Mining, the Secretary is not persuaded that the general reference to KRS 224.071 contained in KRS 350.130(4) somehow renders KRS 350.130(4) less effective.

The Secretary does not perceive the language "presents a danger to the health or welfare of the people of the State or results in or is likely to result in damage to natural resources" (as contained in KRS 224.071) to be in conflict with the "imminent danger to the health and safety of the public" language contained in both KRS 350.130(4) and SMCRA.

Likewise, the Secretary is not persuaded that the language "prejudicial to the interests of the people of the State to delay action until an opportunity for a hearing can be provided" (contained in KRS 224.071) is somehow inconsistent with the mandate in both KRS 350.130(4) and SMCRA to issue summary cessation orders when necessary. The general authority provided by KRS 224 for all bureaus does not limit the mandate in KRS 350.130(4) in regard to coal mining.

8. Comment: KRS 350.130(4) refers to "condition or operation" causing harm "in violation of this chapter or the regulations," rather than conditions, practices, or violations causing or likely to cause an imminent hazard. An imminent hazard may result from a condition, practice *or* a violation. Kentucky law does not reflect this.

Response: The Secretary disagrees with the comment. The KRS 350.130(4) term "condition or operation" is perceived to be as broad as the term "condition, practice or violation" as found in Section 521 of SMCRA. Further, it should noted that the definition of "imminent danger to the health and safety of the public" found in KRS 350.130(4) contains the term "condition or practice, or any violation of a permit or other requirement of this Act."

9. Comment: The proposed Kentucky counterparts to both Sections 518 (e) and (f) of SMCRA involve refusal to comply with "final" agency action. Under these provisions, for example, refusal to comply with an imminent hazard order under review would not give rise to civil and criminal penalties. These provisions are not in accordance with those of Section 518 of the Act.

Response: The Secretary disagrees with the comment. The Secretary does not perceive that there is any material difference between the term "final order' as used in KRS 350.990 and "order" as used in Section 518 of SMCRA. The Secretary does not contemplate that, for example, a cessation order, once issued, can be violated (even if it is presently under administrative or judicial appeal) without the provisions of Section 518 of SMCRA becoming operative.

10. Comment: There are several deficiencies with respect to citizen participation in rulemaking proceedings.

Kentucky proposes that participation in rulemaking be covered under KRS 13.085. However, under that section, a public hearing on a proposed rule is granted only upon request by a person "having an interest in the subject matter." A public hearing should be automatic and notice must be published. Secondly, the standard for requesting a hearing is unclear. If it has meaning, then it is an impermissible limitation on access. There does not appear to be a guarantee of a 30-day minimum period in which to submit written comments, as required under Section 501 of SMCRA. Finally, there is no indication that there is judicial review provided to review rulemaking, as required under Section 526 of SMCRA.

Response: Although KRS 13.085 may not require a hearing on proposed rules, it is common practice for such a hearing to be held. States are not required to meet the terms of SMCRA Sections 501 and 526 exactly as long as they have adequate public participation. Finding 22 explains how the Secretary determined that Kentucky's public participation in development of the program is adequate. Since future rule changes must be submitted to OSM as State program amendments, it is believed public participation will be assured in the future.

11. Comment: All citizen access to information appears to be governed by the Kentucky Open Records Act. Its provisions cannot restrict such access to any greater extent than 30 CFR 840.14 and 842.16 or the Freedom of Information Act (5 USC 552). The commenter believes that an attorney general's opinion is necessary to ensure this construction of the Open Records Act insofar as it relates to the surface mining program.

Response: The Kentucky Open Records Act, KRS 61, was submitted with the Kentucky program resubmission of June 12, 1980, and reviewed as part of that package. The Secretary sees no basis to find that the Open Records Act might be considered inconsistent with 30 CFR 840.14 and 842.16. In addition, regulations in 405 KAR 8:010E Section 12, 8:020E Section 3, and 24:030E Section 6 are consistent with the Federal requirements and will not require a legal opinion.

12. Comment: Kentucky's June 12, 1980, revised program fails to fully include the public participation procedures set forth in 43 CFR Part 4. Specifically, the regulations are ambiguous regarding discovery rights in administrative proceedings; intervention rights are not as broad as those guaranteed for persons with an interest which is or may be adversely affected; eligibility to practice before the DNREP in administrative proceedings is too stringent regarding lay representation of corporations or unincorporated associations; and costs and expenses, while provided, are a morass of conflicting concepts and not in accordance with 43 CFR Part 4. To correct these deficiencies, the commenter provided specific language for inclusion in 405 KAR 7:090 Section 3(5)(2), 405 KAR 7:090 Section 8, 405 KAR 7:090 Section 12 and 405 KAR 7:090 Section 3(4) and language concerning provisions for eligibility to practice before the DNREP in administrative hearings. That language can be reviewed in Administrative Record Document No. KY-222.

Response: The Secretary agrees that Kentucky's regulations do not adequately address the public participation procedures set forth in 43 CFR Part 4. See Findings 27.6, 27.10, 27.11, 27.12, and 27.14. The Secretary also believes that the revisions suggested by the commenter appear to include provisions consistent with the Federal requirements. Kentucky should, therefore, carefully evaluate and consider these comments in preparing its resubmission.

13. Comment: 405 KAR 7:090 Section 11(2)(b) concerning extensions of the abatement period is without any basis in the Federal Act and regulations and allows an operator to bypass the requirements of 405 KAR 7:090 Sections 3(4) (a) and (b) (formal hearing requirements) in achieving relief from an abatement period set out in a notice of violation. Section 3(4)(a) is sufficient to provide temporary relief from notices and cessation orders, only upon the finding by a hearing officer that all conditions therein are met and all interests sufficiently protected. Section 11(2)(b) allows for an end-run of those requirements, as well as an indefinite extension of the 90-day limit on abatement periods. Notwithstanding the department's attempt to cure the section by appearing to limit its application, it must be deleted.

Response: The reader is referred to the response to Appalachian Research and Defense Fund of Kentucky, comment No. A.11.

14. Comment: 405 KAR 7:090 Section 3(5)(i) should be revised to read, "any person aggrieved by a final order of the department may have recourse to the courts as set forth in KRS 22.085 and 350.032(2). Upon receipt by the department of notice of the filing of an appeal, if no transcript has been previously prepared shall, as a part of the record, cause a copy of the testimony taken before the department to be transcribed. The transcript shall be prepared at department expense, and shall be prepared as soon as is practicable." The proposed addition makes clear that the department will bear the expense of the transcript preparation and that preparation will be undertaken as quickly as possible.

Response: Although the suggested revision may clarify who will bear the burden of expense and transcript preparation, the Secretary does not believe that the change is necessary for a program to be approved. Adoption of the suggestion is, therefore, discretionary with the State.

15. Comment: 405 KAR 7:090 Section 3(5)(c) should be amended with the insertion of a new fourth sentence between "transcribed" and "when certified" to read: "If the hearing officer determines that the issues presented in a hearing are substantial or complex or for other similar circumstances, the hearing officer shall determine if it is necessary for a full and fair determination that a transcript be prepared at department expense to accompany the hearing officer report to the Secretary, and shall so order if it is found to be."

Response: The suggested language may clarify 405 KAR 7:090E Section 3(5)(c). The Secretary believes, however, that the existing language permits the hearing officer to consider such facts in reaching a decision on the need for a transcript. Therefore, the suggested change is not essential to determining the adequacy of the program.

16. Comment: 405 KAR 7:090 Section 3(5)(d) should be amended to include a new sixth sentence to be inserted between "order" and "There shall" and to read: "An additional seven (7) days shall be allowed for the filing of a response to exceptions taken by a party." The eighth sentence would then read: "The Secretary shall consider . . . and responses to exceptions." The ninth sentence would read: "The Secretary . . . exceptions *and responses to exceptions thereto.*"

Response: The Secretary does not find that such a change is essential to adequately satisfy Federal requirements because the right to file exceptions is granted to all parties and not limited to the non-prevailing party(ies), all rights to respond to the report and recommended order of the hearing officer are preserved.

K. Comment: Mr. and Mrs. J. Duane Owens, Ms. Rebecca Simpson, Mr. Stephen E. Ball, Lydia Surgner, Ransom Hensley, Hazel King, Sarah Lynn Cunningham, Don Huesman, Ethel Gabbard, Angie Debord, Everett Akers, Martin Newell, Jenny Davis, and

Ashland Howard asserted that Kentucky should not receive primacy because of a history of poor performance.

Response: The Secretary cannot consider past performance in evaluating a program submission. Section 503 of SMCRA specifically requires that the States "demonstrate only the capability to carry out the Act." As discussed in the preamble to 30 CFR Chapter VII (44 FR 14946-14947) a State's past history of administration is not considered a fair indicator of its future abilities under the Federal legislation, and past performance would have to be judged on factors which may not necessarily relate to a State's future intentions or capabilities (44 FR 14961).

L. Comment: Steven R. Young of Donan Engineering, Inc., commented that the Kentucky regulations deleted any phrase of its law and regulations that would require a professional geologist in favor of a professional engineer and requested OSM to require a correction.

Response: The Secretary believes that this is an area of State discretion and will not require change for program approval.

M. Jackie Swigart, Secretary, Department for Natural Resources and Environmental Protection, spoke at the Kentucky, July 22, 1980, public hearing and entered several documents into the record. (See Administrative Record No. KY-262.) These comments and documents dealt with the following issues:

1. Comment: Ms. Swigart discussed the DNREP response to OSM's June 6, 1980, comments on legislation (Administrative Record No. KY-157). Ms. Swigart pointed out that several of the issues were cleared up by the July 16, 1980, DNREP letter which forwarded a synthesis of the legislation and discussed the State's position on OSM's concerns (Administrative Record No. KY-252).

Response: This document was considered a modification to the State program and was discussed in a meeting between OSM and the State on July 22, 1980 (Administrative Record No. KY-253). The results of the meeting are reflected in the Secretary's findings.

2. Comment: A synopsis of the changes DNREP made to the submission's narrative sections was entered into the record. (See Administrative Record No. KY-262.)

Response: The synopsis did not contain new material for the program submission, and it has been considered by OSM as a summary of State actions on the narrative changes made in the June 12, 1980, revised submission.

3. Comment: Ms. Swigart made several comments relative to OSM's review process. The comments were based on a resolution passed by the Kentucky Legislative Research Commission (Administrative Record No. KY-262) recommending that OSM (a) work from the assumption that the Commonwealth will act in good faith, (b) read the statute, regulations and program plan documents together, (c) not comment beyond its authority, (d) recognize Kentucky's unique expertise, (e) not require definitive answers to questions that OSM has not yet itself answered, (f) recognize the rights of a State under the tenth amendment of the U.S. Constitution, (g) recognize that the requirement for primacy is "consistency" with Federal requirements and that the concept implies a certain degree of flexibility, (h) recognize that the statutory deadline for approved State programs will precede the resolution of remanded regulations and fine tuning of details can be accomplished after primacy is approved in full, (i) must more effectively and positively assist the States in their efforts to achieve primacy, and (j) recognize the individuality and unique conditions of each State.

Response: The Secretary has utilized these suggestions in the review of State programs. This is demonstrated throughout the Secretary's findings, where appropriate. The Secretary believes he has treated Kentucky fairly in the State program review process, while fulfilling all his duties under SMCRA.

N. The Environmental Policy Institute and the Council of Southern Mountains provided the following comments on letters provided by the State and for which the comment period was reopened on September 18, 1980 (45 FR 62157-62158):

1. (a) Comment: In addressing the August 18, 1980, DNREP letter, the commenter asserts that KRS 350.028(3) conflicts with KRS 350.130 (1) and (4) thus adversely affecting the mandatory field enforcement provisions of KRS 350.130 (1) and (4).

Response: The Secretary believes that the legal opinion as contained in the August 18, 1980, DNREP letter together with 405 KAR 12:020E and KRS 350.130 provide for the mandatory enforcement required by Section 521 of SMCRA. The authority and power granted to DNREP through KRS 350.028(3) relates to actions taken by the DNREP where prior hearings are appropriate, for example, show cause hearings for permit suspension or revocation. The language of KRS 350.130, applying particularly and singularly to the extraordinary administrative action of summary cessation of surface coal mining operations, should not, under the Kentucky case law cited in the August 16, 1980, DNREP letter, be adversely affected by the more general language of KRS 350.028(3). Moreover, KRS 350.130 (1) and (4) were enacted subsequent to KRS 350.028(3). A well-settled tenet of judicial construction is that the most recent expression of the legislature should prevail where construction of related statutory language is in issue.

(b) Comment: The commenter suggests that the concerns noted by OSM in its June 6, 1980, letter to DNREP (Administrative Record No. KY-157) with respect to KRS 350.090(1) and KRS 350.113(3) be resolved by DNREP policy statement.

The Secretary agrees. See Findings 1.1 and 4.1.

2. Comment: The commenter states that KRS 350.250 limits citizen suits to "any citizen of the Commonwealth" and is thus less stringent than Section 520 of SMCRA which provides for suits by "any person."

Response: The Secretary agrees. See Finding 1.2(a).

3. Comment: The commenter states that KRS 350.990(1) is deficient in that the statute on its face does not apply to cessation orders.

Response: The Secretary agrees. See Finding 2.5.

4. Comment: The commenter states that it is not clear that citizens have the right to go to the mine site during the bond release process as required by Judge Flannery's ruling in the permanent program regulation litigation.

Response: The Secretary agrees. See Finding 18.13.

5. Comment: The commenter suggests that the DNREP relative to scope of mandamus as set forth in the August 19, 1980, DNREP letter be made a condition of program approval.

Response: The Secretary believes that the DNREP letter of August 19, 1980, as an opinion from the chief legal counsel of DNREP, adequately addressed OSM's concerns by demonstrating that KRS 350.250 has language broad enough to encompass mandamus for performance of nondiscretionary duties.

O. The Appalachian Research and Defense Fund of Kentucky also provided comments on the letters provided by the State and for which the comment period was opened on September 18, 1980 (45 FR 62157-62158):

1. Comment: The commenter states that it is satisfied that the language of KRS 350.250 approximates the intent and scope of Section 520(a)(2) of SMCRA.

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Response: The Secretary agrees. See the Secretary's response to comment No. N. 1, above, from the Environmental Policy Institute.

2. Comment: The commenter states that it is concerned that KRS 350.990(1) fails to provide for a $750 per day minimum penalty for failure to abate the Kentucky equivalent of cessation orders.

Response: The Secretary agrees in part. See Finding 2.5. While the Secretary does not believe that a $750 per day minimum penalty is provided immediately for the Kentucky equivalent to an imminent danger cessation order, he does believe that the language of KRS 350.990(1) provides for a $750 per day minimum for the Kentucky equivalent to a failure to abate cessation order. This is consistent with the Federal laws and rules which only require the $750 minimum after failure to abate following a previous order or notice.

3. Comment: The commenter states that it is concerned that KRS 350.250 does not, by the use of the language "any citizen of the Commonwealth," extend standing to bring a citizen suit as broadly as does Section 520 of SMCRA through its language "any person having an interest."

Response: The Secretary agrees. See Finding 1.2(a) and the Secretary's response to comment No. N. 2, above, from the Environmental Policy Institute.

4. Comment: The commenter states that it is concerned that KRS 350.028(3) conflicts with KRS 350.130(1) and (4), thus adversely affecting the mandatory enforcement provisions. The commenter further states that the legal opinion of the General Counsel of DNREP of August 18, 1980, is unconvincing.

Response: The Secretary disagrees. See Finding 2.3 and the Secretary's response to comment No. N. 1, above, from the Environmental Policy Institute. Essentially, the Secretary believes that the legal opinion of the General Counsel of the DNREP together with KRS 350.130 and 405 KAR 12:020E provide for the mandatory enforcement required by Section 521 of SMCRA because the authority and power granted to the DNREP in KRS 350.028(3) relates to actions taken by the DNREP where prior hearings are appropriate, for example, show cause hearings for permit suspension or revocation. The language of KRS 350.130, applying particularly and singularly to the extraordinary administrative action of summary cessation of surface coal mining operations, should not, under the Kentucky case law cited in the General Counsel's letter of August 18, 1980, be adversely affected by the more general language of KRS 350.028(3). Moreover, KRS 350.130(1) and (4) were enacted subsequent to KRS 350.028(3). A well-settled tenet of judicial construction is that the most recent expression of the legislature should prevail where construction of related statutory language is in issue.

Federal Agencies Outside Interior

A. Mine Safety and Health Administration (MSHA) submitted the following comments:

1. Comment: MSHA requires an abandonment plan prior to removing an impoundment. Also a plan for extinguishing coal processing waste fires must be approved before the fire can be extinguished.

Response: The Secretary believes that MSHA's comments are adequately addressed by Kentucky's proposed regulations. 405 KAR 16:090E Section 5(13)(d) addresses the abandonment plan requirement by incorporating the provisions of 30 CFR 77.216. Specifically, paragraphs 77.216–2 (a)-(k) of these rules require an impoundment plan which must include general provisions for abandonment. With regard to approval of a plan for extinguishing coal processing waste fires, 405 KAR 16:140E Section 5 specifically notes that the DNREP and MSHA must jointly approve a plan for extinguishing burning coal waste.

2. Comment: 405 KAR 16:160 Section 1 and 405 KAR 18:160 Section 1, design requirements for diverting drainage from the upstream area of an impoundment, are less stringent than MSHA guidelines. Kentucky's February 29, 1980, proposed rules require design standards to accommodate peak runoff from a 100 year 24 hour precipitation event. MSHA guidelines, on the other hand, call for a 100 year 6 hour precipitation event.

Response: The State regulation is consistent with 30 CFR 816.93 which requires design standards to carry the peak runoff from a 100 year 24 hour precipitation event. The Secretary of Labor concurred in the Federal regulations, as required by Section 516(a) of SMCRA, on February 21, 1980. (See preamble to the Federal rules at 44 FR 14909.)

B. Tennessee Valley Authority (TVA) commented as follows:

1. Comment: The hydrologic information required by various parts of Kentucky's February 29, 1980, proposed regulations will often be difficult and expensive to obtain. The data gathered is to be used to determine the probable hydrologic consequences (PHC) of the proposed mining operation; however, Kentucky's proposed submission does not elaborate on how the required hydrologic data might be utilized in the PHC determination.

Response: The hydrologic data required by Kentucky's regulations will be used by the permit applicant to identify, evaluate, and describe the probable hydrologic consequences. This same data will be available to the regulatory authority for use in evaluating and reaching a decision on the permit application. Kentucky's submission satisfies the basic requirements of the Federal counterparts for protecting the hydrologic balance in 30 CFR 816.41–816.57 and 817.41–817.57.

2. Comment: 405 KAR 16:180 Section 1(4)(i) of Kentucky's June 12, 1980, resubmission, concerning selection of plant species, should be expanded to include the criteria: "their proven ability to survive and grow on surface mine spoil" and "their ability to quickly provide quality food and cover (5 to 8 years) for fish and wildlife." Also, Section 1(4)(i) should include a statement stressing the need to permanently retain safely-constructed sediment ponds for the benefit of fish and wildlife needs.

Response: The Secretary does not believe the addition of the criteria suggested is necessary for program approval since the State's provisions are consistent with their Federal counterparts. The revegetation requirements in 405 KAR 16:200E are designed to provide suitable ground cover, depending upon the approved postmining land use. This includes the use of vegetative species which will survive and grow on the reclaimed land and which will meet vegetative productivity requirements. Further, adding language in this section regarding retention of sediment ponds would be redundant. 405 KAR 16:090E permits retention of sedimentation ponds, provided they are part of the postmining land use and meet certain standards specified in 405 KAR 16:100E.

3. Comment: Although 405 KAR 16:110 Section 1 of Kentucky's June 12, 1980, resubmission follows the Federal counterpart, the requirements for measuring infiltration and subsurface flow should be deleted because they are meaningless in decisionmaking. In the humid East measurement of infiltration is almost meaningless because it can be so variable. Also, subsurface flow measurement is best done with a ground water model and cannot be "monitored" per se unless the flow is into an underground mine. Issues related to preserving the recharge capacity of ground water are better dealt with in the determination of probable hydrologic consequences.

Response: The determination of probable hydrologic consequences is a premining phase whereby baseline information is gathered and use to predict the impacts to the hydrologic regime. Kentucky's regulation 405 KAR 16:110E requires surface and groundwater monitoring to determine the quality and quantity of water during the mining operation. Furthermore, Kentucky's proposed program must include provisions for monitoring infiltration rates and subsurface flows to be consistent with Federal requirements. The Federal regulations (as mirrored by Kentucky's rules), however, provide that the manner of monitoring be approved by the regulatory authority. Such discretion, the Secretary believes, permits the regulatory authority considerable flexibility in determining what measurements need to be monitored at a specific site and how such monitoring shall be conducted.

4. Comment: The words "adjacent to and on the blast side of" should be substituted for the word "at" in line 3 of 405 KAR 16:120 Section 4(9) of the June 12, 1980, Kentucky resubmission.

Response: Incorporation of the suggested language would make Kentucky's regulation less stringent than 30 CFR 816.65(i), which establishes the minimum peak particle velocity for blasting. The use of the phrase "adjacent to and on the blast side of" would tend to narrow protection to a specific area around a dwelling. The Federal requirements, as mirrored in part by Kentucky, provide a broader area of protection. For additional discussion of Kentucky's blasting regulations, see Findings 13.10 through 13.16.

C. The Department of Energy (DOE) commented as follows:

1. Comment: Kentucky's February 29, 1980, submission did not include the Federal requirements of 30 CFR 731.14(c). This section requires a legal opinion from the appropriate State legal counsel and an explanation of the differences between the Kentucky proposed program and the Federal program.

Response: The Secretary agrees with this comment. See Finding 12.

2. Comment: The narrative description in State Section 731.14(g)(2) should describe how the cost of reviewing the applications has been estimated. Further, it would be helpful to mine operators if this section also addressed whether the fee is partially or wholly refundable under any set of circumstances.

Response: The Secretary does not believe that it is necessary for the Kentucky program to describe how costs of reviewing applications are estimated as a condition for program approval. Kentucky has elected to charge a standard fee of $250 per application plus $50 per permit acre. Such nominal charges will not exceed the cost of reviewing, administering, and enforcing the permit, in accordance with Section 7(a) of SMCRA and the regulations promulgated thereunder.

Additionally, Kentucky's regulations fully satisfy the requirements of 30 CFR 771.25 which does not require that a State program address whether permit fees are partially or wholly refundable. The Secretary agrees that information on whether permit fees are refundable would be useful to operators; however, establishment of such a policy is discretionary with the State.

3. Comment: The narrative description in State Section 731.14(g)(3) should be revised to incude the numerical values for each feature of the bond computation format.

Response: The Secretary believes that Kentucky's description for implementing, administering, and enforcing a system of performance bonds and liability insurance needs extensive revision. In particular, the "scoring" system and computation formula, as noted by DOE, needs further explanation and discussion. Additional comment regarding Kentucky's proposed bonding requirements may be found in Finding 18.

4. Comment: The narrative description in State Section 731.14(g)(12) of the program submission should provide a more thorough discussion of the specific civil and criminal penalties to which persons with a conflict of financial interest will be subject. This section should also discuss how these restrictions will be enforced.

Response: The Secretary agrees. See Finding 23.

5. Comment: The staffing description in State Section 731.14(i) of the proposed program should include an ecologist as part of the proposed staffing.

Response: Kentucky has included environmental specialists, agronomists, wildlife biologists, foresters, soil scientists, and environmental engineers in its proposed staffing. The Secretary has asked for additional information on the State's proposed staffing, and the Director of OSM will provide the State with specific comments, including additional information for staff for the biological sciences.

D. The U.S. Forest Service and Glen Murray, State Conservationist, State of Kentucky, provided the following comments:

1. Comment: Increased flexibility is needed in the Federal and State bonding requirements to encourage a more innovative and viable mining research and demonstration program. Specifically, bonding requirements should recognize opportunities for State and Federal agencies and research-oriented organizations to assume reclamation liability for research and demonstration projects involving active mining operations. State Conservationist, Glen Murray, provided suggested language for amending P.L. 95–87 and 30 CFR 780.28, which can be reviewed in Administrative Record Document No. KY–161.

Response: Subsequent to the receipt of the above comments, the Department of Agriculture's Committee on Reclamation of Lands Affected by Mining (RECLAM) petitioned the Director of OSM to amend 30 CFR 780.28. The petition contains language nearly identical to that submitted by Glen Murray with his comments on the Kentucky proposed program. RECLAM's petition was published for public comment in the June 18, 1980 **Federal Register** (45 FR 41167). Based on comments received, the Director will issue a written decision either granting or denying the petition. If the petition is granted, the Director will initiate a rulemaking proceeding. For additional discussion of comments received by OSM on bonding exceptions for research and demonstration projects, the reader is referred to 45 FR 43437, August 6, 1980.

2. Comment: The Forest Service would like to be involved in the preliminary on-site investigation of the proposed mine area, as provided by 405 KAR 8:010 Section 4 of Kentucky's regulations. Further, the Forest Service would like to incude, in a memorandum of understanding with the State, cooperative procedures for Forest Service-administered lands having severed mineral rights.

Response: Cooperative procedures such as those suggested by the comment would appear to benefit the effective and efficient administration of the State's surface mining program but are not required for State program approval. Lands administered by the Forest Service are regulated through the Federal lands program in 30 CFR Subchapter D. 30 CFR 741.20 of Subchapter D requires the Regional Director of OSM, not the State, to forward a permit application involving Federal lands (as defined in 30 CFR 701.5) within the boundaries of national forest lands, to the Forest Service for review and consent. Thus, the Forest Service will have an opportunity to review and consent to mining operations

involving Federal minerals, Federal surface, or both.

3. Comment: The Forest Service suggested revising Kentucky's February 29, 1980, regulation 405 KAR 8:020 Section 2(2)(f) to specify that the surface owner be notified in writing when an applicant contemplates exploration operations.

Response: Kentucky's regulation regarding the right to enter and explore is consistent with Federal requirements. The Forest Service also will be made aware of possible exploration operations through applicant contact for consent to enter Forest Service lands. Additional cooperation between the State and the Forest Service, however, would be beneficial in effectively carrying out the purpose and intent of the State's surface mining requirements.

4. Comment: The Forest Service suggested that Kentucky reword 405 KAR 24:020 Section 2(7) of the February 29, 1980, submission to provide for a 100-foot buffer area adjacent to the boundaries of any national forest. The Forest Service believes a buffer zone is necessary to provide adequate protection of surface resources and watershed adjacent to the boundaries of national forest land.

Response: The Federal regulations do not require a buffer zone. Kentucky's regulation 405 KAR 8:010E Section 4 provides for early review and coordination with appropriate local, State, or Federal agencies. During this preliminary review, Forest Service representatives would have the opportunity to recommend "set-back" distances to protect Forest Service-administered resources. The establishment of buffer zones or "set back" distances, however, would be dependent on negotiations between the Forest Service and the regulatory authority.

5. Comment: The Forest Service recommended revising Kentucky's February 29, 1980, regulation 405 KAR 24:040 Section 3 to include areas adjacent to the boundaries of any national forest and to provide that the Forest Service be allowed any input it considers relevant to the proposed coal mining operation and to the protection of Forest Service-administered lands.

Response: The suggested language is not required by the Federal regulations for program approval. Kentucky's regulation, which establishes a procedure for obtaining assistance in determining if a proposed operation is located within the boundaries of an area designated unsuitable for mining, is consistent with the Federal procedures in 30 CFR 761.12. Other coordination efforts (e.g. 405 KAR 8:010E Section 4) and public participation requirements included in Kentucky's proposed program provide sufficient opportunity and flexibility for the Forest Service to provide comment to protect its resources.

E. The Soil Conservation Service (SCS), commenting on behalf of USDA's Committee on Reclamation of Lands Affected by Mining (RECLAM), commented as follows:

1. Comment: The SCS representative indicated that prime farmland could be lost if Kentucky's February 29, 1980, definition of "historically used for cropland" is misinterpreted. The Kentucky definition is worded differently than the Federal counterpart in that it is not specific with regard to the meaning of the term "acquisition."

Response: The Secretary agrees with the comment as indicated in Finding 12.2(d).

2. Comment: The SCS suggested that the words "cotton," "grain," "sorghum," and "oats" be deleted from 405 KAR 20:040 Section 5(2) and elsewhere in Kentucky's proposed program submission of February 29, 1980, wherever similar language occurs.

Response: The Secretary does not believe the suggested changes are required. The language used in Kentucky's submission is consistent with 30 CFR 823.15(b) which includes those crops in the list of crops which must be grown on prime farmlands during the reclamation phase.

F. The Appalachian Regional Commission provided the following comments:

1. Comment: Some parts of Kentucky's resubmission of June 12, 1980, such as the bonding program and regulatory enforcement program, are somewhat vague with regard to how the State intends to carry them out.

Response: It is recognized that certain descriptions of the systems or methodologies for the bonding and enforcement programs, as required by 30 CFR 731.14(g), lack sufficient information to adequately evaluate them. The State of Kentucky will be asked to revise the appropriate descriptions. For additional discussion of Kentucky's "systems," the reader is referred to Finding 17, 18, 19, and 20.

G. The Department of Agriculture, Science and Education Administration, provided the following comments:

1. Comment: The commenter was concerned about the long-term impacts of regulatory imposed management practices and asked if the return to approximate original contour requirements should apply in Appalachia if there is to be multiple use for these surface mined areas.

Response: The Federal regulations at 30 CFR 816.102 and 817.102 and Section 515(b)(3) of SMCRA require that the land be returned to approximate original contour. Kentucky's proposed program cannot contain requirements less stringent than those Federal requirements.

2. Comment: To achieve the desired stabilization, revegetation, or productivity level, a fertility standard related to the undisturbed natural soil is needed to support the soil amendment needs.

Response: 405 KAR 16:050E Section 5 of Kentucky's June 12, 1980, revised submission provides that nutrients and soil amendments in the amounts determined by soil tests shall be applied and that all soil tests shall be performed by a qualified laboratory. These requirements of Kentucky's program are consistent with 30 CFR 816.25. The system provided in both the Federal and State requirements will permit the achievement of the desired long-term postmining stabilization, vegetation, and productivity goals.

H. The U.S. Army Corps of Engineers submitted a letter stating that it had no comments.

Federal Agencies Within Interior

A. The U.S. Fish and Wildlife Service (FWS) commented as follows:

1. Comment: Kentucky's regulations were submitted specifically for the purpose of meeting the federally imposed deadline for program submission and represent an "automatic self-destruct" set of regulations effective for only 120 days and subject to future modifications, the nature of which is not clear. Such procedure makes Kentucky's revised program of June 12, 1980, difficult to interpret and evaluate.

Response: The rules in Kentucky's revised program submission of June 12, 1980, which were enacted under the Governor's emergency rulemaking procedures, have been evaluated against the Federal requirements the same as permanent regulations, since the Federal requirement in 30 CFR 732.12 is only that the regulations be fully enacted. Approval of the Kentucky regulations, however, is conditioned on the full enactment of permanent regulations essentially the same as the approved regulations.

2. Comment: FWS pointed out that the modifications of June 12, 1980, are not compared with the Federal act and regulations as specified in 30 CFR 731.14(c).

Response: Kentucky's revised submission did not contain the side-by-side comparison required by 30 CFR 731.14(c). This is discussed in Finding 12.

3. Comment: The February 26, 1980, decision by the U.S. District Court results in several uncertainties with regard to the requirements of 30 CFR 779.20 and 780.16. FWS believes that Kentucky's modifications made in response to the remanding of these regulations are unsatisfactory. Due to the present uncertainties regarding 30 CFR 779.20 and 780.16, the FWS would support the deletion of these sections from the program until a final legal decision is reached with the understanding that OSM will promulgate revised Federal regulations which will, subsequently, be included in Kentucky's program.

Response: Kentucky regulation 405 KAR 8:030E Section 20 of June 12, 1980, has been modified in accordance with the court order, and the Secretary finds this regulation consistent with SMCRA. However, 405 KAR 8:030E Section 36 is being affirmatively disapproved in accordance with the court order. After OSM promulgates new Federal regulations, the State will be provided a specified period of time to amend its program pursuant to 30 CFR 732.17. Also see discussion under "General Background on the State Program Approval Process."

4. Comment: The FWS made several comments relative to fish and wildlife information in the permitting regulations and process and suggested incorporation of the "mine Permit Application Compliance Guidelines for Fish and Wildlife Resource Information and Reclamation Plans in Kentucky" (MPA Guidelines).

Response: These recommendations relate directly to the Federal requirements for fish and wildlife studies that were remanded, as discussed in comment No. 3 above.

5. Comment: Kentucky's definition of "best technology currently available" should be revised to include the phrase "within the constraints of the permanent program" and include a reference to P.L. 95–87.

Response: Omission of the phrase "within the constraints," which appears in 30 CFR 701.5, does not significantly alter the meaning of the State's definition. The reference to the State law rather than P.L. 95–87 is correct.

6. Comment: 405 KAR 7:080E Section 4 does not include any requirement for fish and wildlife information.

Response: The commenter misunderstands the purposes of this regulation. 405 KAR 7:080E relates to the small operator assistance program (30 CFR 795) which is limited to hydrologic information under P.L. 95–87.

7. Comment: 405 KAR 24:030E Section 5(4) should be rewritten to include relevant information from the Kentucky Department of Fish and Wildlife Resources, in addition to the information from FWS.

Response: The State regulation is consistent with the requirements of 30 CFR 764.21. The Secretary believes that the Kentucky Department of Fish and Wildlife Resources likely would have information useful for the State's data base and inventory system. Sources of information are at the State's discretion, however, and need not be identified in the regulation.

8. Comment: The reference to Section 9 in 405 KAR 24:030 Section 5(2) of the February 29, 1980, submission is unclear as it appears in the section-by-section comparison of the State regulations to the Federal regulations.

Response: This reference error is corrected in the regulations submitted on June 12, 1980, but a corrected section-by-section comparison was not provided with the revised submission. This is discussed in Finding 12.

9. Comment: The FWS made several comments relative to the State narrative description of its systems for consultation, coordination, and use of outside expertise under State Program Sections 731.14 (e), (f), (g)(9)–(10), and (k). Basically, the State has not properly (1) recognized the Kentucky Department of Fish and Wildlife Resources as having duties under the program, (2) developed memoranda of agreement with agencies which must be consulted or provide for compensation to those agencies, and (3) documented the consultation and coordination processes including lines of authority.

Response: The Secretary finds the State processes as described in the program acceptable. The program provides for appropriate notification to all agencies and allows agency input into the State actions. It is at the State's discretion whether or not to delegate duties under the program to other agencies or to pay for these services. While memoranda of agreement would be beneficial, they are not required unless the regulatory authority is delegating actual responsibilities. However, the Secretary is requesting that DNREP further explain how its proposed staff will be adequate. In a separate letter, the Director of OSM will request additional information on staff for the biological sciences.

10. Comment: There are errors in usage of the proper name and address of the Kentucky Department of Fish and Wildlife Resources and the U.S. Fish and Wildlife Service.

Response: The errors can be corrected in practice and do not affect the substance of the program.

11. Comment: 405 KAR 7:070 has no comparable Federal counterpart and may allow negation of other program requirements.

Response: The revised Kentucky program of June 12, 1980, deleted this section which provided special variances for postmining land use.

12. Comment: The FWS recommends that the methodology for the protection of threatened and endangered species and notification of exploration be incorporated into Kentucky regulation 405 KAR 8:020.

Response: 405 KAR 8:020E is consistent with 30 CFR 776.12, concerning information on any endangered or threatened species. The methodology need not be included in the regulation.

13. Comment: 405 KAR 8:030 Section 11 is less stringent than 30 CFR 779.11 in that the State regulation requires environmental resource information when specifically requested while the comparable Federal regulation requires this information on all applications.

Response: Although the Federal regulations do not contain a statement equivalent to the Kentucky statement that only information required by the regulation must be submitted, the intent is the same. This is particularly evident when one considers that the Federal regulations do not require the applicant to submit certain information that is available to the regulatory authority in satisfactory form elsewhere.

14. Comment: 405 KAR 8:030E Section 12 is less stringent than 30 CFR 779.13(b)(3) in that the State did not address that subsection of the Federal regulations which states that a permit cannot be approved until geology and hydrology information is made available.

Response: Although the State language in 405 KAR 8:030E Section 12 appears to be deficient, 405 KAR 8:010E Section 14 (1) and (3) requires that the information be made available. The Secretary finds this acceptable.

15. Comment: 405 KAR 8:030E Section 13 should be reworded to conform to 30 CFR 779.14(b)(3) to the extent that a waiver for geologic information may be granted only when equivalent information is available.

Response: The Secretary finds this regulation to be less stringent than the Federal counterpart and has requested the State to revise 405 KAR 8:030E Section 13. See Finding 14.5.

16. Comment: 405 KAR 8:030E Section 18 is less stringent than 30 CFR 779.21 in that the State would require soil resources information as required by the regulatory authority and not require this

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information on all permits as required by 30 CFR 779.21.

Response: 30 CFR 779.21 has been remanded by the court to the extent that the permit application must contain a soil survey only for those lands which a reconnaissance survey suggests may be prime farmland. The Kentucky regulation is consistent with the court decision.

7. Comment: 405 KAR 8:030E Section 19 should include a provision for acquiring vegetation information as per the MPA Guideline because the guideline would provide specific vegetation information.

Response: The comparable Federal regulation, 30 CFR 779.19(a) leaves the requirement of vegetation information to the RA's discretion. The suggested revision is, therefore, not required for program approval. Use of the guideline would be at the State's discretion.

18. Comment: The FWS recommends that the State incorporate the mine plan application guideline (MPA), which would require additional mapping, into 405 KAR 8:030E Section 23. The comparable Federal regulations 30 CFR 779.24 and 779.25 specifically outline the type of mapping information required.

Response: 405 KAR 8:030E Section 23 is consistent with the mapping requirements of 30 CFR 779.24 and 779.25. Additional mapping requirements are not necessary for program approval.

19. Comment: 405 KAR 10:040 of Kentucky's February 29, 1980, submission offers no apparent avenue for direct notification of the FWS and Kentucky Department of Fish and Wildlife Resources (KDFWR) when a bond release application is being processed. Both agencies should be notified of an application and should be invited to participate in any field inspections and to comment on the application.

Response: 30 CFR Part 807 does not require the type of notification suggested by the commenter. To the extent that the applicant has made general notification of a request for bond release under 405 KAR 10:040 Section 1, Kentucky's regulations are consistent with the Federal counterparts.

20. Comment: 405 KAR 16:060 Section 11 is less stringent than 30 CFR 816.57(a) concerning stream buffer zones in that the State regulation states that the original stream channel will be restored in a manner satisfactory to the regulatory authority while the Federal regulation requires that the stream channel be completely restored.

Response: The Secretary finds the State regulation inconsistent with the Federal requirements. See Finding 13.8.

21. Comment: 405 KAR 20:010 Section 4 is less stringent than 30 CFR 815.17 in that the State regulation does not require a permit for coal exploration if coal will be extracted for commercial sale, unless that sale is for coal testing purposes and a permit application is to be submitted at a later time.

Response: Kentucky's revised program of June 12, 1980, corrected this language that was included in the February 29, 1980, regulations. The Secretary finds 405 KAR 20:010E Section 4 acceptable.

22. Comment: Although FWS recognizes that 405 KAR 24.030 Section 2(b) of the February 29, 1980, submission is consistent with 30 CFR 764.15(7), regarding petitions to designate lands unsuitable for mining received after the comment period on a permit application, the FWS would like to know the disposition of petitions received after the deadline (i.e., would a petition be rejected even if protected species were involved)?

Response: The concern identified in this comment is resolved in the permitting process. As required by 30 CFR 764.15(7) and the State's analog, 405 KAR 24:030E Section 3(6) of the June 12, 1980, revised submission, the DNREP would have discretion to issue a permit when a petition has been submitted after the close of the public comment period on a permit application. The DNREP, however, would still have to comply with 405 KAR 8:010E Section 14(15) to assure that the mining activities would not affect the continued existence of threatened or endangered species or result in the destruction or adverse modification of their critical habitats. For this reason, threatened and endangered species would be protected and no violation of the Endangered Species Act would occur.

23. Comment: Regarding the discussion of "Mandatory Criteria" for designating lands unsuitable in State Program Section 731.14(g)(11), page 7.1180 of Kentucky's February 29, 1980, submission, FWS points out that the evaluation of technological and economic feasibility should be made in the context of cumulative impact analysis and related costs and technological ability for providing recommended environmental performance standards and mitigation measures. Thus, a thorough evaluation of a petitioned extensive area should consider more than factors restricted to one or more spot-checked areas as proposed.

Response: It is agreed that a decision on a petition should recognize the cumulative impacts and costs that mining would have on a petitioned area. The Secretary believes that Kentucky's "lands unsuitable" program provides for an acceptably detailed and comprehensive evaluation of the environmental resources in a petitioned area and the potential impacts of mining incident thereto.

24. Comment: FWS stated that Kentucky's February 29, 1980, regulation 405 KAR 24:040 does not contain a counterpart to 30 CFR 761.11(b).

Response: The Secretary finds 405 KAR 24:010E Section 2(7) consistent with 30 CFR 761.11(b). The requirements of paragraph (b)(2) of the Federal regulation, however, is not necessary because it applies only to national forest lands west of the 100th meridian and, therefore, is not applicable to the Kentucky program.

25. Comment: Kentucky's February 29, 1980, proposed submission (State Program Section 731.14(g)(1)) should include all permit application forms, worksheets, checklists and other approved forms to be used by the DNREP.

Response: Section 731.14(g)(1) in Kentucky's revised program of June 12, 1980, includes copies of sufficient forms to be used in the program. The Secretary finds Kentucky's proposed permitting system acceptable.

26. Comment: The FWS recommends that the narrative description in State Section 731.14(g)(1) include, for coal exploration of less than 250 tons, a methodology approved by the KDFWS, the FWS, and the DNREP for protecting endangered or threatened species and their critical habitats from the adverse impacts of exploration activities.

Response: The suggested methodology is not required by the Federal rules for program approval. Only the requirements of 30 CFR 776.11, which describe the general requirements for exploration of less than 250 tons, are required.

27. Comment: The narrative description in State Section 731.14(g)(1) should include, for coal exploration of less than 250 tons, procedures to notify the FWS and the KDFWR that an exploration activity will be occurring.

Response: The Federal regulations do not require the notification suggested. Cooperative procedures among the interested parties for such notification, however, could benefit the effective and efficient administration of the surface mining provisions.

28. Comment: The FWS recommended that the narrative description in State Section 731.14(g)(1), for coal exploration of more than 250 tons, provide the methodology used by the technical reviewers to determine if exploration activities will affect threatened or endangered species or any other species

protected by law and that this methodology be reviewed and approved by both the KDFWR and the FWS.

Response: The suggested methodology is not required for State program approval. The program need only contain provisions consistent with 30 CFR 776.13(b)(2), which requires that the regulatory authority find in writing that the applicant for approval to conduct coal exploration activities has demonstrated that the activities will not threaten the continued existence of threatened or endangered species or adversely affect their critical habitats.

29. Comment: The FWS requested that the narrative description in State Section 731.14(g)(1) include a process for notifying the FWS and KDFWR that an application for more than 250 tons has been received and for requesting their review and comments.

Response: This request goes beyond the requirement of the Federal rules and is left to the State's discretion.

30. Comment: The FWS recommends that the narrative description in State Section 731.14(g)(1), concerning the mining permit application review, should reverse the order of the permit application review process by requiring the preliminary date availability study in advance of the reconnaissance walk.

Response: This comment has merit and has been forwarded to the State for consideration at its discretion.

31. Comment: The FWS recommends that the date base utilized in the preliminary data availability study (PDAS) include information on endangered and threatened species and migratory birds.

Response: The narrative description for State Section 731.14(g)(1) indicates that the PDAS will nclude fish and wildlife information. It is anticipated that this will include the recommended information.

32. Comment: The FWS provided detailed questions that it believed should be included in the preliminary review worksheet discussed in the narrative description in State Section 731.14(g)(1) of Kentucky's February 29, 1980, submission. Those questions can be reviewed in Administrative Record Document No. KY–217.

Response: This commenter requests more detail than the Secretary requires in the program description. Preliminary review worksheets are not required in the program, and the State has deleted the preliminary review worksheet from its June 12, 1980, revised program. Kentucky's revised 731.14(g)(1) narrative description is adequate for the detail intended by 30 CFR 731.14(g). The suggested criteria have been forwarded to the State for consideration at its discretion.

33. Comment: The FWS asserts that the State program does not appear to define an avenue for notifying the KDFWR or the FWS on the final decision of the DNREP in regard to approval or disapproval of the mining application. The final program should include this notification.

Response: The Secretary finds that 405 8:010E Section 16 of the Kentucky revised program of June 12, 1980, adequately addresses the procedures for notification of interested parties, including government agencies.

34. Comment: FWS states that, when exploration is proposed on lands designated as unsuitable for mining, the decision on the compatability of the exploration activity with the reason for the designation should not be made until the FWS, KDFWR, the originator of the petition and other interested parties have been notified and given an opportunity to comment.

Response: Kentucky's program describes a process by which the petition review stasff is notified to perform a review for compatability whenever an exploration notice is filed. (See State Section 731.14(g)(11).) This interstaff coordination provides a mechanism for ensuring that the department can make an informed decision on a complete application. The Federal regulations do not require the consultations suggested by the FWS.

35. Comment: The narrative description in State Section 731.14(g)(3) of Kentucky's February 29, 1980, submission does not appear to offer a notification to the KDFWR or the FWS of an application for the release of a performance bond. This section should be modified to provide for such notification and to permit FWS and KDFWR to participate in any field investigations of mine sites where previously identified fish and wildlife issues are involved.

Response: The Federal rules do not require this notification procedure. See comment No. 19 above.

36. Comment: Several blocks in the flow charts in the narrative description in State Section 731.14(g)(11) of Kentucky's Februjary 29, 1980, submission do not seem to be supported by a narrative description (such as "Right to Petition"). These blocks should be fully explained in the final program submission.

Response: Kentucky's narrative adequately explains the petition process. In particular, the narrative at II.3 (page 7.11.11) notes that petitions are reviewed for standing ("Right to Petition"), frivolousness, the existence of coal, etc. These criteria are subparts of the "Initial Petition Review," denoted as block 3 in Figure 2 of the proposed program submission. The reader is encouraged to review the "systems" section of Kentucky's submission along with the corresponding regulations in 405 KAR 24:010E through 24:040E for a complete description of the requirements, procedures, and processes of Kentucky's program for designating lands unsuitable for mining.

37. Comment: FWS suggests expanding the paragraph concerning Kentucky's coordination responsibilities (page 7.11.75) to include the FWS area office in Asheville, North Carolina, and the field office in Cookeville, Tennessee.

Response: The revision suggested is not required for program approval. Kentucky has elected to make the FWS Regional Office in Atlanta the principal point of contact on matters related to designation or termination petitions. The FWS and the State may wish to develop additional procedures relative to interagency points of communications on fish and wildlife matters at their discretion.

38. Comment: The data bases noted in Tables 2 and 3 (pages 7.11.98 through 7.11.105) of the February 29, 1980, submission do not appear to be designed to input and retrieve information on fish and wildlife, especially endangered and threatened species, migratory birds, and hawks and eagles. The data system should include this information.

Response: As an interim step for effectively responding to petitions to designate lands unsuitable for mining, Kentucky proposes to develop a data processing system which will serve as a short-term information system until a more comprehensive and efficient automated geographic information system can be implemented. The input for the individual modules was derived through interviews with over 25 Federal and State agencies, including the FWS.

As noted in the FWS comments, the FWS has been working for several years to develop computerized procedures for describing fish and wildlife. This system is being extensively reviewed and tested and, apparently, is not available to the State of Kentucky for integration into the Kentucky information system. Until such a system becomes available and until Kentrucky can develop a more comprehensive and sophisticated automated data processing system, information on fish and wildlife must be processed manually.

b. The Heritage Conservation and Recreation Service and the Bureau of Land Management submitted letters stating that they had no comments.

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Dated: October 22, 1980.

Joan M. Davenport,

Assistant Secretary, Energy and Minerals.

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GENERAL SERVICES ADMINISTRATION

41 CFR Subparts 1-4.11 and 101-35.2

Government-wide Automatic Data Processing Management and Procurement Regulations

AGENCY: General Services Administration.

ACTION: Closing of comment period.

SUMMARY: On May 28, 1980, the General Services Administration distributed to all Federal agencies and other interested parties proposed revisions of Subpart 1-4.11 of the Federal Procurement Regulations and Subpart 101-35.2 of the Federal property Management Regulations. Review and comments on these proposals were requested to be submitted within 60 days.

The significant changes included in the proposed revisions involve (1) clarification of scope, applicability and definitions, (2) the management process for determining the Federal agency ADP need as the foundation for efficient and economical competitive procurement, (3) higher thresholds for blanket delegations of procurement authority from GSA to Federal agencies, and (4) new policies and procedures regarding planning and evaluation of conversion costs.

GSA plans to issue the revised subparts as final rules prior to the end of 1980.

DATES: The closing date for comments is hereby established as November 14, 1980.

ADDRESSES: GSA (CSEP) Washington, D.C. 20405.

FOR FURTHER INFORMATION CONTACT: Roger W. Walker, procurement Policy and Regulations Branch, Office of Policy and Planning, ADTS, 202-566-0194.

Dated: October 22, 1980.

Frank J. Carr,

Commissioner, Automated Data and Telecommunications Service.

[FR Doc. 80-33563 Filed 10-28-80; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 80-634; FCC 80-588]

Changes in the Corporate Structure and Operations of the Communications Satellite Corporation

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking initiates a proceeding to consider the need for any changes in the corporate structure and operations of the Communications Satellite Corporation (Comsat) as a result of the Commission's Comsat Study. The Comsat Study was undertaken pursuant to a legislative mandate that the Commission determine whether any changes are required in Comsat's corprate structure and operating activities to ensure that the corporation is able to fulfill effectively its obligations and carry out its functions under the 1962 Satellite Act and 1934 Communications Act. In its final report to Congress, the Commission identified a number of problems with Comsat's corporate structure which it viewed as adversely impacting Comsat's ability to carry out effectively its statutory missions. The Commission concluded that changes are required in Comsat's corporate structure and operations in view of these problems and made certain tentative proposals to effect these changes. This notice provides interested parties the opportunity to comment on the Commission's tentative proposals, as well as suggest alternative approaches and demonstrate how such approaches may deal more effectively with the problems identified in the Comsat Study.

DATES: Interested parties may file comments on or before December 12, 1980, and reply comments on or before January 9, 1981.

ADDRESSES: Comments in response to this notice should be submitted to: The Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: James L. Ball, International Facilities Planning Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554 (202) 632-3214.

SUPPLEMENTARY INFORMATION:

Adopted: October 9, 1980.

Released: October 29, 1980.

In the matter of changes in the corporate structure and operations of the Communications Satellite Corporation.

By the Commission: Commissioner Quello concurring in the result; Commissioner Jones absent.

1. Notice is given pursuant to Section 553(b) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(1970), and § 1.412 of the Commission's Rules and Regulations of a proposed rulemaking on the above-captioned matter. The purpose of this notice is to provide interested parties an opportunity to comment on the tentative proposals we made in the Comsat Study for changes in the corporate structure and operations of the Communications Satellite Corporation (Comsat). *Communications Satellite Corporation*, 77 FCC 2d 564 (1980).

2. This notice also provides interested parties with an opportunity to suggest alternative approaches to our tentative proposals and to demonstrate how such approaches may deal more effectively with the problems we identified in the Comsat Study regarding Comsat's structure and operations.[1] In particular, we intend to give careful consideration to organizational changes that Comsat has already made in response to the final report of the Comsat Study.

A. Background

(1) Comsat Study

3. On May 1, 1980, we transmitted to Congress the final report of a study of the corporate structure and operational activities of Comsat. The study was undertaken pursuant to section 505 of the International Maritime Satellite Telecommunications Act, 47 U.S.C. 751(1979) which directed the Commission to determine whether any changes are required in Comsat's structure or operations to ensure that the corporation is able to fulfill effectively its obligations and carry out its functions under the Communications Satellite Act of 1962, as amended, 47 U.S.C. 701 (1976), and the Communications Act of 1934, as amended, 47 U.S.C. 151 (1976).

4. In the final report, we identified a number of problems which we viewed as adversely impacting Comsat's continued ability to carry out effectively its statutory missions and fulfill the obligations and responsibilities associated with those missions. We concluded that changes are required in

[1] We will issue a Further Notice of Proposed Rulemaking regarding changes in Comsat's accounting system and in the reporting requirements imposed on Comsat by the Commission's rules.

Comsat's corporate structure and operations in view of these problems and made certain proposals to effect such changes. We then indicated that we were not making a final commitment to those proposals, but considered them subject to change after consideration of public comments submitted in response to a rulemaking proceeding. This proceeding provides an opportunity for such public comment.

(2) Related Proceedings

5. This proceeding is interrelated with ongoing proceedings looking toward achieving a more competitive environment in international communications. We recently initiated two proceedings looking toward restructuring the U.S. international communications market to achieve this end. The first reviews our Authorized User Policy to determine whether Comsat should be permitted to directly provide end-user services. The second seeks to determine the feasibility of removing current tariff restrictions on the resale and shared use of services and facilities provided by U.S. international service carriers.

6. Our Authorized User Policy defines Comsat's role in the provision of international satellite services as primarily that of a "carrier's carrier" leasing satellite circuits to U.S. overseas carriers. *Authorized User Decision*, 4 FCC 2d 421 (1966). It provides that under ordinary circumstances end-users of INTELSAT satellite facilities would be served by U.S. international service carriers. Comsat would be authorized to provide services directly to noncarrier users only in "unique and exceptional circumstances", and such authorization would be dependent upon "the nature of the service, *i.e.*, unique and exceptional, rather than the identity of the user."

7. In our Notice of Proposed Rulemaking in Docket No. 80-170, we proposed to modify our Authorized User Policy by removing constraints on Comsat to provide INTELSAT services directly to endusers. *Aeronautical Radio, Inc.*, 77 FCC 2d 535 (1980). Under our proposal, Comsat would offer INTELSAT services to all prospective purchasers, including its subsidiary, under equal terms and conditions and at tariff rates subject to regulation by the Commission. Comsat could provide transmission capacity directly to large customers such as ARINC and the Department of Defense (DOD).[2] Also, it could provide "full" through service offerings by means of separate subsidiaries organized under the terms and conditions proposed in the Comsat Study.[3]

8. The value of removing restrictions on Comsat's entry into the end-user market may go beyond any benefits that maybe gained from the addition of another carrier to the market. We indicated in our Authorized User NPRM that permitting Comsat to provide end-user services may allow us to introduce intermodal competition for some services and to move away from such artificial regulatory practices as prescribed use formulas and composite rates in favor of reliance on competitive forces to dictate the efficient utilization of satellite and cable technologies. We will explore in Docket No. 80-170 the potential for moving away from these practices as a result of Comsat's entry into the end-user market.[4]

9. In our Notice of Proposed Rulemaking in Docket No. 80-176, we proposed to eliminate current tariff restrictions of the U.S. overseas carriers on resale and shared use of the services they provide. *International Telecommunicotions Competition*, 77 FCC 2d 831 (1980). The purpose of eliminating current tariff restrictions is to encourage competitive entry into the U.S. end of the international market on a resale basis. We believe that market entry on a resale basis may enhance competition and innovation and cause downward pressure on prices for services and facilities now provided by existing carriers. Docket No. 80-176 concerns both MTS and record services. It is intended to be complementary to the actions we are taking today as well as to our review of the Authorized User Policy in Docket No. 80-170. In addition, it will serve as an adjunct to the ongoing proceeding in Docket No. 80-54 looking to elimination of similar restrictions on domestic public switched network services.[5]

10. Finally, we will soon initiate a proceeding to review our policy relating to the ownership and operation of U.S. earth stations that access the INTELSAT global system. We will consider various options to our current earth station policy. In particular, we will consider the feasibility of earth station ownership by U.S. carriers outside of the present ESOC arrangements, and the benefits if any, of unbundling Comsat's charges for space segment capacity and earth station services.

11. The changes in Comsat's corporate structure that we tentatively proposed in the Comsat Study are designed to complement our pro-competitive policy initiatives in the international market by creating a structural framework that would guard against Comsat using its monopoly INTELSAT/INMARSAT privileges to engage in unfair practices in competitive markets. The changes that we proposed would separate Comsat's INTELSAT/INMARSAT services from its other lines of business in competitive markets. Comsat would be restructured into two distinct corporate elements: One to handle only INTELSAT/INMARSAT functions; the other to handle all present and future non-INTELSAT/INMARSAT lines of business. In this proceeding, we will consider the terms and conditions of separation between these two corporate elements.

12. While we expect each proceeding described above to result in a decision that stands on its own merits, when taken into context they will represent a coordinated examination of various issues concerning the U.S. international communications market and an integrated approach to their resolution. We intend that the decisions we ultimately reach will result in an improved international communications system which offers consumers more choices in services and lower rates for those services.

13. In this NPRM, we first review the basic findings and conclusions of the Comsat Study. We will then outline the tentative proposals that we made in the Comsat study for changes in Comsat's corporate structure and operations. Thereafter, we will describe the recent changes that Comsat has made in its corporate structure in response to the Comsat Study. Finally, we will invite public comment on our proposals and Comsat's recent changes, as well as any alternative approaches that interested parties believe are appropriate.

[2] Such customers would be responsible for making the necessary arrangements to complete the circuits on the foreign end as well as acquiring domestic connecting facilities.

[3] "Full" through service offerings would be comparable to services now provided by U.S. international service carriers and include both foreign and domestic connecting arrangements.

[4] Another issue raised by parties commenting in Docket No. 80-170 is whether U.S. international service carriers should be granted some form of "equitable access" to the INTELSAT system if Comsat is permitted to directly serve end-users. Suggested schemes include granting IRU's or some other type of capital investment privileges. We recognized in the Comsat Study that "equitable access" issues would be ripe for discussion if Comsat is permitted to enter the end-user market. The Commission's staff is now studying these issues and the possibility of initiating a proceeding to consider them.

[5] *Resale and Shared Use of Common Carrier Domestic Public Switched Network Services*, CC Docket 80-54, FCC 80-58, released February 25, 1980.

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B. Overview of Comsat Study

(1) Findings and Conclusions

14. In the final report of the Comsat Study, we reviewed the circumstances surrounding U.S. communications policy development up to enactment of the 1962 Satellite Act and the changes that have taken place in satellite communications since then. We described comsat's pervasive role in the establishment and early operation of the global communications satellite system envisaged by the 1962 Act. We also described how that role has changed as INTELSAT, the owner and operator of the system, has become a successful, self-supporting international organization with a world-wide membership.

15. Comsat's role in INTELSAT has changed from that of providing INTELSAT comprehensive system planning, operation and management services to that of providing research and development and technical and planning support services on a contractual basis. As a result, Comsat is seeking new opportunities for application of the corporate technology and expertise that it developed as INTELSAT system manager. Comsat's intention is to pursue such opportunities through diversification of its activities into non-INTELSAT/INMARSAT lines of business. Comsat's goal is to increase the value of the corporation and opportunities for profit by expanding its business horizons. This is to be achieved by applying its technology to new activities which either (1) relate to the corporation's basic business, or (2) have satellite communications as an integral part.

16. We noted in the final report that the rapid development of satellite communications since 1962 provides Comsat with significant opportunities for commercial exploitation of its corporate technology and expertise. Satellite communications technology is now being directed to a variety of commercial, military, specialized and experimental applications through domestic, regional and specialized systems as well as through the INTELSAT global system. As a result, opportunities for diversification by Comsat into new lines of business appear to exist in providing (1) specialized user-oriented satellite services, (2) satellite system planning and consultative services, and (3) high technology equipment and components.

17. We found that, as a matter of policy, Comsat should not be foreclosed from applying its corporate technology and expertise to the development of new lines of business which will result in public benefit. We indicated that Comsat's involvement in diversified satellite-related lines of business would likely contribute to the overall development of satellite communications technology, and therefore be in the public interest.

18. However, notwithstanding such public benefits, we also indicated that Comsat's involvement in diversified lines of business raises significant public policy problems involving its continued ability to carry out its statutory missions and fulfill the obligations and responsibilities associated with these missions. We view these problems as being reflected in four areas of concern: (1) the scope of Comsat's authority as it relates to non-INTELSAT/INMARSAT lines of business; (2) conflict of interest and other related problems resulting from involvement in such activities; (3) competitive advantages in non-INTELSAT/INMARSAT markets flowing from Comsat's unique status as the U.S. Signatory in INTELSAT and INMARSAT: and (4) cross-subsidization and related problem resulting from the misallocation of costs.

19. First as to Comsat's scope of authority, we concluded that Comsat is permitted under the 1962 Satellite Act to engage in activities not inconsistent with its statutory mission. However, we also stated that Comsat's scope of authority likely will remain controversial. Therefore, we recommended that the 1962 Act be amended to clearly define the extent to which Comsat may engage in non-INTELSAT/INMARSAT activities.

20. Second, we found that Comsat's involvement in certain non-INTELSAT/INMARSAT lines of business poses conflict of interest problems with respect to its statutory duties and obligations. We stated that these problems will occur whenever the outcome of a matter before INTELSAT or INMARSAT will have a direct or indirect financial effect on a non-INTELSAT/INMARSAT activity or interest in which Comsat or one of its subsidiaries has undertaken or plans to become involved. Under such circumstances, Comsat is in a position to weigh its outside corporate interests to determine overall profitability to the firm in determining the position it will take as the U.S. representative. Such situations may or may not result in undesirable consequences to the public. However, we emphasized that they should not be permitted to exist absent adequate safeguards to protect the public interest.

21. Third, we found that Comsat's unique INTELSAT/INMARSAT roles provide it with opportunities to gain advantages over U.S. competitors in the markets in which it seeks to participate. As the U.S. Signatory in INTELSAT, Comsat both learns from and contributes to INTELSAT/INMARSAT thinking and can exploit this relationship to the commercial benefit of its other lines of business. The competitive advantages it can enjoy flow from two practices: (1) intra-corporate transfer of INTELSAT-provided technology information to support other lines of business; and (2) integration of INTELSAT/INMARSAT system planning and technology development functions with its other lines of business. We stated that these competitive advantages may be inconsistent with the mandate of the 1962 Act that "maximum competition will be maintained in the provision of equipment and services utilized by the system," 47 U.S.C. 701(c).

22. Fourth, we found that Comsat's involvement in non-INTELSAT/INMARSAT lines of business will increasingly provide it with opportunities to evade rate regulation by shifting costs incurred in the unregulated sector to the regulated sector. We concluded that this practice will be particularly acute with respect to Comsat's ratepayer-funded "corporate R & D" program which provides a technology base for a number of products to be offered through Comsat's competitive lines of business. The overall result will be that Comsat's INTELSAT ratepayers will bear a disproportionate share of research and development costs common to both its regulated and unregulated lines of business.

23. Finally, we found that current statutory, structural, and government oversight safeguards are inadequate to protect the public interest from the problems we foresee as resulting from Comsat's changing role. We said that current safeguards will be insufficient to prevent either the conflict of interest and cross-subsidization problems that may result from Comsat's expanded involvement in non-INTELSAT/INMARSAT lines of business. Also, we said such safeguards will not prevent Comsat from utilizing its status as the sole U.S. representative in INTELSAT and INMARSAT to gain unfair competitive advantage in technology development markets.

(2) Proposed Structural Changes

24. In view of the problems we described in the final report as resulting from Comsat's changing role, we proposed certain changes in Comsat's corporate structure and operations. As noted above, we proposed that Comsat be separated into two distinct corporate elements (called COMSAT Global and COMSAT National for purposes of discussion, the former being the parent corporation and the latter being the subsidiary). COMSAT Global would be limited to only INTELSAT/INMARSAT functions—(a) investment in INTELSAT and INMARSAT; (b) representation of the United States on the INTELSAT Board of Governors and the INMARSAT Council; and (c) provision of INTELSAT services and INMARSAT services. COMSAT National would handle all present and future non-INTELSAT/INMARSAT lines of business.

25. Under our proposal, COMSAT Global and COMSAT National would be required to be organizationally separate entities, although interlocking directors would be permitted.[6] The COMSAT Global board would have final decisional authority over all corporate lines of business, including control over budgets and expenditures. However, the two entities would have separate officers, facilities, advertising and marketing, records and books of accounts, procurement, and operating personnel. We believe that such restrictions would permit us to separate and more easily identify costs of non-INTELSAT/INMARSAT lines of business which Comsat might otherwise treat as common costs with its INTELSAT/INMARSAT activities.[7]

26. Our proposal would permit a degree of functional integration of high technology facilities and professional personnel. Comsat Labs and the STS division would be located in COMSAT National. COMSAT National would utilize these facilities both to (1) support its various non-INTELSAT/INMARSAT lines of business, and (2) assist COMSAT Global in carrying out its role as the U.S. Signatory in INTELSAT and INMARSAT. COMSAT National would support its non-INTELSAT/INMARSAT lines of business through the system design and engineering services provided by the STS division, and through task-oriented research and development services provided by the Labs. It would assist COMSAT Global in carrying out its INTELSAT/INMARSAT roles by handling all present and future INTELSAT/INMARSAT—awarded technical services contracts for design and development of succeeding generations of the global system and laboratory services contracts for research and development support services. It would also assist COMSAT Global by providing such in-house basic research and development as COMSAT Global may deem necessary in order to reflect the benefits of satellite technology through the global systems.

27. In the final report, we indicated a number of advantages which we believe would accrue from restructuring Comsat in the manner we proposed. First, this arrangement would focus Commission regulation of Comsat's monopoly services on one defined segment of the corporation and provide a framework for clearly identifying rate base elements and relevant costs. Second, it would permit Comsat to engage in central planning and controll of all of its lines of business and preserve the desirable benefits of its current integrated structure with respect to the utilization of high technology facilities and professional resources. Third, we believe that permitting Comsat to maintain an integrated structure with respect to its high technology facilities and professional resources would provide for the most effective utilization of those facilities and resources in pursuit of both INTELSAT/INMARSAT functions and other lines of business. Diseconomies that otherwise would accompany duplication or division of Comsat Labs would be avoided. Ratepayer funding of a COMSAT Global sponsored research and development program would assure that basic satellite communications research in support of INTELSAT and INMARSAT would be continued. Existing synergistic advantages in Comsat's integrated structure which benefit overall satellite technology research would be maintained.

(3) Proposed Non-Structural Controls

28. We emphasized in the final report the need for controls on Comsat's ability to utilize the Labs and the STS division to functionally integrate and coordinate technology and system development done on behalf of the global systems with its other lines of business. We indicated a twofold concern: (1) that misallocations of research and development costs could occur as a result of COMSAT Global continuing to use monopoly derived revenues to fund research and development through the Labs; and (2) that COMSAT National's access to technology and information generated from INTELSAT and ratepayer-funded research done by the Labs would enable it to continue to enjoy the type of advantages in competitive markets that we have described in the final report. The purpose of controls on functional integration and coordination of research and development would be to minimize Comsat's opportunity to evade rate regulation through misallocation of costs and to discourage it from using its unique INTELSAT/INMARSAT roles to maintain exclusive access over technology and information in order to improve its position in competitive markets.

29. The final report outlined three possible controls—one dealing with the conditions under which COMSAT Global and COMSAT National transact business with one another, and two others dealing with the circumstances under which technology transfer and information flow is permitted between them. First, all dealings between COMSAT Gobal and COMSAT National in connection with research and development and other technology support services would have to be on an arms length basis in terms of service prices and conditions. This would normally be accomplished by requiring COMSAT Gobal to procure all such services under competitive bidding procedures. Contracts let under this process, as well as other bids submitted in response to an RFP, would be required to be filed with the Commission where they would be made available for public inspection. In addition, any transaction between COMSAT Global and COMSAT National as a result of a contract awarded to COMSAT National, which involves the transfer of money or resources (such as making available technology information or a prototye developed by another contractor) or detail of personnel (in order to assist the Labs carrying out the contract), must be reduced to writing, specifying all operative terms of the transaction. This information also would be filed with the Commission and made available for public inspection.

30. While competitive bidding would be the normal procedure, we recognize that there may be a need for COMSAT

[6] Our proposal would not require Comsat to organize its non-INTELSAT/INMARSAT lines of business under a single entity. Such lines of business may be organized in several different corporate entities, as long as those entities are separated from Comsat's INTELSAT/INMARSAT lines of business in the manner that would adequately guard against misallocation of costs and minimize opportunity to gain unfair advantages in competitive markets.

[7] In the final report, we determined that Comsat's cost accounting system would not itself prevent misallocation of costs between Comsat's INTELSAT/INMARSAT activities and other lines of business, even though allocation of costs is done in accordance with standard operating practices for the assignment of operating and project costs. We pointed out that Comsat's standard operating practices are the product of prior judgments by its management concerning the appropriate assignment of costs. As a result, Comsat's cost accounting system only records cost allocation as it is done pursuant to established corporate policy and therefore cannot prevent any misallocation of costs that occur as a result of such policy.

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Global to procure research and development from Comsat Labs on a sole-source basis. In the final report, we indicated that we would expect that the criteria for determining need for such a sole-source arrangement would be similar to that of INTELSAT in awarding the sole-source laboratory service contract to Comsat Labs—that the Labs has a unique combination of diversified and professional skills not available from other potential suppliers; that the research to be done involves a continuity work in progress at the Labs or transition from past work requiring the accumulated know-how encompassed in the Labs; or that there are no other suppliers qualified to provide the research and development needed. Arrangements for sole-source research between COMSAT Global would be embodied in a contract filed with this Commission and containing the same type of information as described above with respect to competitive awards made by COMSAT Global.

31. Second, COMSAT Global would not be allowed to treat as proprietary or confidential any technology and information to which it has access by virtue of its unique INTELSAT/INMARSAT roles and which it makes available to COMSAT National. The purpose of this requirement would be to treat a problem not addressed by competitive bidding—the advantages Comsat can gain over competitors through intra-corporate transfer of INTELSAT-supplied technology and information. The general rule would be that any such technology and information made available to COMSAT National would have to be made available, immediately and fully, to the public. Two categories of technology and information would fall within this requirement:

(1) *Signatory-derived information.* INTELSAT receives technical reports, studies and memoranda from a variety of sources through its Signatories and, in turn, passes this informatin on to the other Signatories. Comsat does not normally make these documents fully available to U.S. industry in general, or its competitors, in particular.

(2) *Technology and information generated by INTELSAT-sponsored research and development.* This category includes the interim and final technical reports prepared by INTELSAT contractors (including Comsat) which are made available to Signatories. It also includes the INTELSAT status reports of its research and development program which are regularly made available to Signatories. Comsat does not now generally make these documents available to U.S. industry.

32. In the final report, we emphasized that intra-corporate transfer of INTELSAT-provided technology and information, and integration of system planning and research and development, would continue under our proposed restructuring since Comsat would be able to utilize the Labs and the STS division to support both its INTELSAT/INMARSAT functions and its other lines of business. COMSAT National would have access to technology and information generated both by the INTELSAT research and development program or by COMSAT Global's ratepayer-funded program and, as a result, would have the opportunity to utilize such knowledge in the development of services and products in competitive markets. This opportunity would provide Comsat with advantages over its competitors. However, our proposals that COMSAT Global disseminate INTELSAT/INMARSAT-generated technology and information to its competitors would minimize any advantages by granting to those competitors the same access to INTELSAT/INMARSAT technology and information that COMSAT National would enjoy. In essence, COMSAT Global would act as a clearinghouse for the dissemination of such information to U.S. industry, which would have the same opportunity as COMSAT National to exploit it for commercial purposes.

33. The third non-structural control proposed in the final report would involve technology and information generated through ratepayer-funded research and development. Where COMSAT Global enters into a sole-source arrangement with Comsat Labs for research and development, the primary rights (title) to inventions and data generated by such research must reside with COMSAT Global. If COMSAT Global grants COMSAT National license rights to such inventions and data, it must make license rights available to COMSAT National's competitors at the same time and under the same conditions (fair, reasonable and nondiscriminatory). We would not require mandatory licensing with respect to inventions and data generated by ratepayer-funded research done pursuant to competitive bidding. In such cases, COMSAT Global would be free to specify in the RFP where title to inventions and data would reside. Thus, for inventions and data generated by ratepayer-funded research done by other contractors, COMSAT Global could follow normal practices which would place primary rights (title) to inventions and data with the contractor. This would insure that Comsat RFP's would receive the broadest possible interest from suppliers.

34. We stated in the final report that mandatory licensing of invention and data generated by sole-source contracts with Comsat Labs is particularly appropriate in view of the unique role Comsat plays as the U.S. "chosen instrument" is INTELSAT and INMARSAT. Comsat's involvement in research and development in support of its INTESAT/INMARSAT roles should reflect the special status of those roles. As noted, we believe that Comsat should not be foreclosed from applying its corporate technology and expertise to the competitive development of products and services for which there may be a positive marketplace response. However, Comsat should be foreclosed from utilizing its unique role to maintain exclusive access to technology and information in order to gain the type of competitive advantages described in the final report.

(4) Other measures

35. We stated in the final report that the proposals described above should provide a balanced solution to some of the problems we identified with respect to Comsat's current corporate structure, while permitting Comsat to continue to make effective use of its high technology facilities and professional resources. We concluded that our proposals would: (1) minimize any advantages Comsat may have in competitive markets by virtue of its special INTELSAT/INMARSAT roles; and (2) discourage Comsat from burdening its monopoly ratepayers with costs of research and development done under the guise of its INTELSAT/INMARSAT roles, but primarily intended to benefit development of product lines or service offerings in competitive lines of business.

36. However, we also concluded that our proposals would not provide a solution to the conflict of interest problems that we identified in the final report, since common ownership between Comsat's INTELSAT/INMARSAT functions and its other lines of business would continue. We pointed out that the opportunity for Comsat to coordinate all corporate actions in a manner benefiting the entire cooporation flowed from common ownership. As a result, incentives to weigh the interests of its other lines of business when involved in INTELSAT/INMARSAT matters would continue to exist. Therefore, we recommended that Congress consider amending the 1962 Satellite Act to achieve more effective

governmental oversight of Comsat's involvement in INTELSAT and INMARSAT. In addition, we recommended that Congress explore amending the Act to provide for authorization of U.S. governmental representation on Comsat's delegations to INTELSAT and INMARSAT. These issues are not part of this proceeding. We look forward to the opportunity to provide individual views in testimony before Congress should it consider them.

C. Recent Organizational Changes by Comsat

37. Comsat has recently made changes in its corporate structure in response to our final report in the Comsat Study. In a September 25, 1980 letter to the Chief, Common Carrier Bureau, Comsat outlined those changes.[8] Comsat believes that the changes it has made will strengthen its ability to carry out its basic jurisdictional responsibilities while at the same time reduce or eliminate concerns expressed by the Commission in the Comsat Study regarding potential conflicts between its jurisdictional non-jurisdictional activities.

38. Comsat has created a World Systems Division which will be part of the parent corporation (COMSAT Global) and responsible for Comsat's jurisdictional activities in connection with the provision of global telecommunications services through the INTELSAT system and global maritime services through the INMARSAT system. Comsat stated that consolidation of its jurisdictional activities into one division "will permit Commission regulation of these services in one defined segment of the corporation and provide for clear identification of all relevant costs".

39. The World Systems Division will consist of three elements: (1) International Communications Services; (2) INTELSAT Technical Services; and (3) Comsat Laboratories. According to Comsat, this arrangement is intended to separate its jurisdictional activities from its competitive activities. Comsat stated that it has transferred the "major elements" of the STS division to COMSAT General, except for "INTELSAT functions" which have been assigned to the INTELSAT Technical Services element of the new division. Comsat further stated that Comsat Labs would be dedicated to the corporation's primary mission of ensuring United States leadership in satellite communications technology through our roles in INTELSAT and INMARSAT". Also, Comsat indicated that the Labs "will perform, under appropriate reimbursement and information flow arrangements, research and development in areas related to our overall mission for other elements of the Corporation, as well as for other entities". However, Comsat did not specify what these "appropriate reimbusement and information flow arrangements would be. Comsat concluded that these major organizational changes will permit it to better focus on its "unique responsibilities in developing and improving world telecommunications via satellite."

D. Request for Comments

40. We invite comments from interested parties on the structural changes and controls that we tentatively proposed in the Comsat Study. We encourage parties filing comments to consider the proposals in view of our findings in the Comsat Study of the problems we foresee as a result of Comsat's expansion into new lines of business.

41. We invite suggestions for alternative approaches to our proposals for changes in Comsat's corporate structure and controls on its operations. We expect that interested parties submitting such suggestions will show how their alternative approaches will deal more effectively with the problems we found with Comsat's corporate structure and operations. In this respect, we request comments on the structural changes Comsat has already undertaken in response to our final report in the Comsat Study.

42. The changes that Comsat has already made appear to be consistent with the basic intent of our Comsat Study proposals—that Comsat be separated into distinct corporate elements: one to handle only its INTELSAT/INMARSAT functions; and the other to handle all present and future non-INTELSAT/INMARSAT lines of business. It appears, that under Comsat's reorganization, the only lines of business handled by the parent company would be INTELSAT and INMARSAT services through the World Systems Division. All other lines of business would be through separate subsidiaries. For purposes of establishing a complete record in this proceeding, we request Comsat to submit a schematic drawing with its comments that will show the organizational structure of the entire corporation and clearly identify each line of business within that structure.

43. Although Comsat's recent organizational changes appear to be consistent with the basic intent of our Comsat Study proposals, there remains a number of important issues which these changes do not clearly resolve. These issues essentially concern the degree of separation between the parent company and its subsidiaries. Their resolution is required in order to deal effectively with the problems we identified in the Comsat Study with respect to: (1) conflicts of interest and related problems resulting from Comsat's involvement in non-INTELSAT activities; (2) competitive advantages in non-INTELSAT/INMARSAT markets flowing from Comsat's monopoly status as the U.S. Signatory in INTELSAT and INMARSAT: and (3) cross-subsidization and related problems resulting from the misallocation of costs. The unresolved issues generally fall within two categories—allocation of costs between monopoly and competitive services, and treatment of technology and information flow.

44. The issues concerning allocation of costs involve (1) those costs for administrative and central support services which Comsat proposes to be shared between its INTELSAT/INMARSAT functions and other lines of business, and (2) the costs for research and technology development which will ultimately benefit both Comsat's INTELSAT/INMARSAT functions and its other lines of business. We request Comsat to specifically identify in its comments those administrative and central support services which it foresees as being shared by its monopoly and other lines of business, *i.e.*, personnel, procurement, marketing and advertising, general services, legal and auditing services, shareholder matters, etc. We further request Comsat to indicate how these costs will be allocated within its cost accounting system. In particular, we are interested whether (1) costs shared between Comsat and its subsidiaries would be billed in a manner as if it were being billed to an outside entity (additionally, would the bill be itemized by amount for each allocation expense grouping in the billing company's cost accounting system?); and (2) the amount of charges would be kept identifiable in the benefitting entity's general ledger.

45. As for research and technology development costs, we note that Comsat Labs will remain within the parent company under Comsat's recent reorganization, and the costs of Comsat's "corporate R&D" program apparently will continue to be treated as jurisdictional expenses.[9] These

[8] Comsat's letter will be made a part of the record of this proceeding.

[9] Comsat's "corporate R&D" program takes approximately forty percent of the Labs budget.

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expenses will be fully passed on to Comsat's INTELSAT ratepayers, notwithstanding our tentative determination in the Comsat Study that INTELSAT ratepayers should not bear the full costs of Comsat's "corporate R&D" program.[10] In the Comsat Study, we found that much of Comsat's corporate-funded research and development is very basic and can lead to multiple benefits and applications other than for INTELSAT. We found that the technology that is developed as a result of Comsat's program is either of general purpose, applicable to all satellite communications needs, or can be intentionally designed for adaptability to diverse satellite communications needs.

46. In view of Comsat's position that the Labs remain in the parent company we request comments from interested parties on how to treat the problem of allocation of common research and development costs between Comsat's monopoly activities and other lines of business. Also, should the Labs remain in the parent company, we request comments on how to treat the technology and information flow problems that we identified in the Comsat Study as resulting from Comsat's ability to use the Labs and the STS division to engage in: (1) intra-corporate transfer of INTELSAT-provided technology information to support other lines of business; and (2) integration of INTELSAT/INMARSAT system planning and technology development functions with its other lines of business. We indicated in the Comsat Study that these practices can give Comsat advantages in competitive markets which can take the form of advance, and sometimes exclusive, access to INTELSAT technology development information and the "lead time" opportunities in marketing that could accrue from such access. We therefore specifically request comments on alternatives to the non-structural controls that we tentatively proposed in the Comsat Study, *i.e.,* competitive bidding for research and development; conditions on proprietary treatment of INTELSAT generated technology and information; and mandatory licensing of inventions and data generated by ratepayer-funded research and development. We request comments on whether other existing remedies such as the Commission's complaint process under the 1934 Communications Act or the anti-trust laws adequately guard against the problems that we identified. In particular, we request Comsat to identify and describe the "appropriate reimbursement and information flow arrangements" under which it would provide research and development services in support of its non-INTELSAT/INMARSAT lines of business.

[10] The costs of the "corporate R&D" program does not include costs associated with specific task-oriented projects specifically done on behalf of Comsat's subsidiaries.

E. Procedural Schedule

47. We will attempt to resolve the issues in this proceeding in concert with any action we take in Docket No. 80-170. We instruct the Chief, Common Carrier Bureau to supplement the record by obtaining any information necessary for the conduct of this proceeding.

48. For purposes of this non-restricted informal rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time of issuance of a notice of proposed rulemaking until the time a draft order proposing a substantive disposition of such proceeding is placed on the Commission's Sunshine Agenda. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceedings. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any written comments previously filed in the proceeding must prepare a written summary of that presentation. On the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation discussed avove must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, Section 1.1231 of the Commission's rules, 47 C.F.R. § 1.1231.

49. Accordingly, it is ordered, That, pursuant to sections 4(i), 4(j) 201-205, 214, 215, 218, 220, 303, 309, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201-205, 214, 215, 218, 220, 303, 309, and 403 (1976), sections 102(c), 201(c), and 401 of the Communications Satellite Act of 1962, as amended, 47 U.S.C. 701(c), 721(c) and 741 (1976), and section 553(b) of the Administrative Procedure Act, 5 U.S.C. 553(b) (1970), a Notice of Proposed Rulemaking on the above-captioned matter is instituted.

50. It is further ordered, That, interested parties may file comments on matters raised herein on or before December 12, 1980 and reply comments on or before January 9, 1981.

51. It is further ordered, That, in accordance with the provisions of Section 1.419 of the Commission's Rules and Regulations, all participants in the proceeding ordered herein shall file with the Commission an original and five (5) copies of all comments and reply comments. In reaching this decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order. Copies of comments and reply comments filed in this proceeding shall be available for public inspection during regular business hours in the Commission's reference room at its headquarters at 1919 M Street, N.W., Washington, D.C.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 80-33402 Filed 10-28-80; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 76

[CT Docket No. 78-233; FCC 80-571]

Amendment of Part 76 of the Commission's Rules and Regulations Concerning the Network Nonduplication Rules

AGENCY: Federal Communications Commission.

ACTION: Report and order in CT docket No. 78-233.

SUMMARY: The Commission does not adopt a proposed amendment to the cable television network nonduplication rules, which would have exempted network programs of less than 30 minutes duration from application of the rules. The Commission finds that the problem has not been shown to be of sufficient significance to warrant the change. Cable television operators have not shown the existence of an undue burden in complying with the rules nor that the public is in danger of losing programming because of the rules.

EFFECTIVE DATE: Non-Applicable.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: William H. Johnson or Deborah L. Stuehrmann, Cable Television Bureau, (202) 632-6468.

Adopted: October 3, 1980.
Released: October 16, 1980.

In the matter of amendment of Part 76 of the Commission's rules and regulations concerning the network nonduplication rules.

By the Commission: Commissioner Jones concurring in the result.

1. Under the Commission's rules, cable television systems carrying both local and distant television broadcast stations are, in situations specifically defined in the rules (47 C.F.R. Subpart F), required to delete network programs from distant stations that simultaneously duplicate those of local stations. In its *Notice of Proposed Rulemaking* in this proceeding (FCC 78-544, 69 FCC 2d 714, 43 FR 48667), the Commission proposed to end application of the network nonduplication rules to network programming lasting less than 30 minutes such as, for example, short "newsbreak" programs. The *Notice* suggested that the fragmentation of audiences that the nonduplication rules are intended to prevent would not be substantial should the protection be eliminated for network programming of such short duration. The costs and burdens to cable systems in having to either purchase automatic switching equipment or utilize manual switching was believed to outweight any possible benefits to local stations from strict adherence to the rules.

2. The *Notice* specifically sought:

. . . information relating to the frequency with which nonduplication problems of this type occur including an identification of particular cable operators who have encountered the problem, the cost and difficulty of complying with nonduplication protection requests of this type, and the impact failure to provide such protection would have on local broadcasters.

3. Comments in support of the proposed amendment were filed jointly by 70 CATV Companies and by the National Cable Television Association (NCTA).

4. Comments in opposition to the proposal were filed by the Klix Corporation, Meredith Corporation, National Association of Broadcasters, Television Licensees (joint comments), and American Broadcasting Companies, Inc.

5. After reviewing the comments and reconsidering the assumptions made in the *Notice*, we now believe that no general exceptions should be made for network programming of short (less than thirty minutes) duration.

6. Although the cable industry comments assert that the problem of network non-duplication for programs of short duration involves burdensome costs to the industry and incidental loss of non-network programming, there is very little evidence to suggest that this is the case. The *Notice* sought comments providing factual information supporting the allegation of burdensome costs and inconvenience but little if any conclusive or reliable data was provided. Moreover, both cable and broadcast commenters appear to concede that the "problem" occurs very infrequently because most short-duration programs are scheduled between other network programs, which are subject to protection.

7. This proceeding was commenced in part in response to the matters raised in a special relief petition considered in *Teleprompter of Florido, Inc.*, FCC 78-250, *68* FCC 2d *554,* 42 R R 2d 1389 (1978). In that proceeding, waiver of the nonduplication rules was sought by a cable system being requested to provide protection for a program of five minutes duration. We denied the waiver on the grounds that the petitioner had failed to show that the cost of switching would be unduly burdensome or that subscribers were losing any programming. This rulemaking proceeding was commenced to determine if the issue was one of more general concern. We now conclude that it is not. Cable operators are capable of providing the protection required, either by manual or automatic switching. The burden is not insurmountable, nor has harm to distant stations (some of whose non-network programming might inadvertently be deleted) been shown. The Commission recognizes that this situation may result in local stations receiving more protection than is technically required. However, absent data indicating that the problem is at all significant in scope, we see no reason to amend the rules at this time. We sought comment in our *Notice* on the question of "whether *ad hoc* relief granted in particular circumstances would be a desirable alternative to a change in the rules." We now believe that if the rules in their present form are applied in a reasonable manner there ought to be very few cases in which problems arise and that it is not appropriate to attempt to resolve those few problems that may arise by general rule changes which would likely create new problems of interpretation and implementation. If relief is to be granted at all, it now appears more appropriate to do so through *ad hoc* procedures rather than general rule changes.

In view of the foregoing, the Commission finds that the proposed rule change should not be adopted.

Accordingly, it is ordered, That this proceeding is terminated.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc.-80-33533 Filed 10-28-80; 8:45 am]
BILLING CODE 6712-01-M

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Notices

Federal Register
Vol. 45, No. 211
Wednesday, October 29, 1980

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Gallatin Forest Plan; Gallatin National Forest, Madison, Carbon, Park, Sweetgrass, Broadwater, and Meagher Counties, Mont.; Intent To Prepare an Environmental Impact Statement

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement for the development of the Gallatin National Forest Plan. Possible management alternatives will consider a range of Forest outputs which are responsive to public issues and management concerns at the local level, and also address the goals and objectives established by the Regional Forester. Alternatives will be based on the assessed capabilities and suitabilities of the lands comprising the Gallatin National Forest.

In December 1980 the public and other individuals, agencies, and organizations who may be interested in or affected by the Forest Plan will be invited to participate in the "scoping" process. This process will include identification of issues to be addressed and the issues to be analyzed in depth.

The Forest Supervisor plans to send an information brochure to the public in November asking for comments on potential issues. Public scoping meetings will be held on the following dates and at the following locations:

Date and Locotion

December 10, West Yellowstone Convention Center, West Yellowstone, MT
December 11, City-County Complex, Livingston, MT
December 15, Big Timber High School, Big Timber, MT
December 16, Bozeman High School Cafeteria, Bozeman, MT
December 17, Gardiner High School, Multi Purpose Room, Gardiner, MT.

All meetings are scheduled to start at 7:30 p.m. These meetings will further define the issues.

The established dates for filing the Draft Environmental Impact Statement is the summer of 1981 and the Final Environmental Impact Statement is July 1982.

The responsible official is the Regional Forester, Tom Coston. For further information, contact John Drake, Forest Supervisor, Gallatin National Forest, Box 130, Bozeman, Montana, 59715.

Dated: October 20, 1980.

James E. Reid,
Acting Regional Forester.

[FR Doc. 80-33681 Filed 10-28-80; 8:45 am]
BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Arizona Advisory Committee; Amended Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights that a meeting of the Arizona Advisory Committee to the Commission originally scheduled for November 1, 1980, at Phoenix, Arizona (FR Doc. 80-31311 on page 66827, October 8, 1980), has been cancelled.

Dated at Washington, D.C., October 24, 1980.

Thomas L. Neumann,
Advisory Committee Management Officer.

[FR Doc. 80-33725 Filed 10-28-80; 8:45 am]
BILLING CODE 6335-01-M

Miami Hearing—the State of Civil Rights

Notice is hereby given pursuant to the provisions of the Civil Rights Act of 1957, 71 Stat. 634, as amended, that public hearings of the U.S. Commission on Civil Rights will begin on December 8, 1980 in the Gulfstream Room of the Bayfront Auditorium at 499 Biscayne Boulevard, Miami, Florida. An executive session not open to the public may be convened at any appropriate time before or during the hearings.

The purpose of the hearings is to collect information within the jurisdiction of the Commission, particularly concerning the state of civil rights in Miami.

The Commission is an independent bipartisan factfinding agency authorized to study, collect, and disseminate information and to appraise the laws and policies of the Federal Government with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice.

Dated at Washington, D.C., October 20, 1980.

Arthur S. Flemming,
Chairman.

[FR Doc. 80-33638 Filed 10-28-80; 8:45 am]
BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Office of the Secretary

National Laboratory Accreditation Criteria Committee for Freshly Mixed Field Concrete; Meeting

AGENCY: Assistant Secretary for Productivity, Technology and Innovation, Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Laboratroy Accreditation Criteria Committee for Freshly Mixed Field Concrete. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: November 25, 1980, 9:00 a.m. to 5:00 p.m.

ADDRESS: Main Commerce Building, Room B-841, U.S. Department of Commerce, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Dr. Howard I. Forman, Deputy Assistant Secretary for Product Standards Policy, Room 3876, U.S. Department of Commerce, Washington, D.C. 20230 (202) 377-3221.

SUPPLEMENTARY INFORMATION: The National Laboratory Accreditation Criteria Committee for Freshly Mixed Field Concrete was established on December 31, 1978 under the provisions of the National Voluntary Laboratory Accreditation Program (NVLAP) procedures (15 CFR Parts 7a, 7b and 7c) to develop and recommend to the Secretary of Commerce general and specific criteria for accrediting laboratories that test freshly mixed field concrete. The Committee consists of 23 members; 11 of whom represent specifiers, producers, users/contractors, testing laboratories and general interests in the private sector; 7 of whom represent the Federal agency interests; and 4 of whom represent state and local government interests. The Committee is chaired by Dr. Howard I. Forman, Deputy Assistant Secretary for Product Standards Policy for the Department of Commerce.

The meeting will be open to public observation. The public may submit written statements or inquiries to the Chairman before or after the meeting. A limited number of seats will be available to the public and to the press on a first-come, first-served basis.

Although the charter for the National Laboratory Accreditation Criteria Committee for Thermal Insulation Materials has been fulfilled, former members of that committee will also be specifically invited to attend as members of the public along with representatives of the NVLAP accredited laboratories because many of the issues to be discussed are pertinent to their interests.

Copies of the minutes and material distributed will be made available for reproduction, following certification by the Chairman in accordance with the Federal Advisory Committee Act, at Room 3876, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230.

NOTICE: The National Laboratory Accreditation Criteria Committee for Freshly Mixed Field Concrete will hold its sixth meeting on November 25, 1980 in the Main Commerce Building, 14th Street and Constitution Avenue NW., Washington, D.C. 20230 (public entrance to the building is on 14th Street between Constitution and Pennsylvania Avenues NW.). The Committee will meet from 9:00 a.m. to 5:00 p.m. in Room B-841.

Proposed Agenda Items Include

(1) Status of NVLAP—accreditation of laboratories and the evaluation process;

(2) Possible revision to NVLAP procedures;

(3) Significant issues including proficiency testing program, strict conformance to standard test methods, and addition of new test methods; and

(4) Summary of international laboratory accreditation activities including work of the International Laboratory Accreditation Conference (ILAC) on guidelines for comparing laboratory accreditation criteria.

Dated: October 24, 1980.

Jordan J. Baruch,
Assistant Secretary for Productivity, Technology, and Innovation.

[FR Doc. 80-33685 Filed 10-28-80; 8:45 am]
BILLING CODE 3510-13-M

Bureau of the Census

Census Advisory Committee of the American Marketing Association; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that the Census Advisory Committee of the American Marketing Association will convene on November 25, 1980, at 9:15 a.m. The Committee will meet in Room 2424, Federal Building 3 at the Bureau of the Census in Suitland, Maryland.

The Census Advisory Committee of the American Marketing Association was established in 1946 to advise the Director, Bureau of the Census, regarding the statistics that will help in marketing the Nation's products and services and on ways to make the statistics the most useful to users.

The Committee is composed of 15 members appointed by the President of the American Marketing Association.

The agenda for the meeting, which is scheduled to adjourn at 4:00 p.m., is: (1) Introductory remarks by the Director, Bureau of the Census, including staff changes and Bureau organization, major budget program developments, and other topics of current interest; (2) issue of the 1980 census undercount adjustment; (3) statistical standards and user needs in presenting Census Bureau data; (4) disclosure control in the 1977 economic census, and future directions; (5) general discussion and Committee recommendations; and (6) plans and date for the next meeting.

The meeting will be open to the public and a brief period will be set aside for public comment and questions. Extensive questions or statements must be submitted in writing to the Committee Control Officer at least 3 days prior to the meeting.

Persons planning to attend and wishing additional information concerning this meeting or who wish to submit written statements may contact Mr. Tyler R. Sturdevant, Chief, Business Division, Bureau of the Census, Room 2633, Federal Building 3, Suitland, Maryland. (Mail address: Washington, D.C. 20233). Telephone (301) 763-7564.

Dated: October 24, 1980.

Vincent P. Barabba,
Director, Bureau of the Census.

[FR Doc. 80-33609 Filed 10-28-80; 8:45 am]
BILLING CODE 3510-07-M

Economic Development Administration

Petitions by Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing from the following firms: (1) Snowdon Inc., 216 South Main, Osceola, Iowa 50213, producer of women's underwear and sleepwear (accepted October 1, 1980); (2) Pitts Industries, Inc., P.O. Box 344649, Dallas, Texas 75234, producer of automotive air conditioner clutches (accepted October 1, 1980); (3) Irving J. Dorfman Company, Inc., 6612 Broadway, West New York, New Jersey 07093, producer of embroideries and laces (accepted October 2, 1980); (4) K Industries Corporation, P.O. Box 430, Mineral Wells, Texas 76067, producer of bases for quartz crystals (accepted October 2, 1980); (5) Shamrock Knitting Mills, Inc., 670 South Cobb Drive, Marietta, Georgia 30061, producer of hosiery and knit headwear (accepted October 2, 1980); (6) Archer Rubber Company, P.O. Box 280, Milford, Massachusetts 01757, producer of rubberized sheeting, rainwear, pads and fabric (accepted October 3, 1980); (7) Self-Powered Lighting, Inc., 8 Westchester Plaza, Elmsford, New York 10523, producer of light sources for watches, military equipment, signs and markers (accepted October 3, 1980); (8) La Crosse Rubber Mills Company, 1407 St. Andrew Street, La Crosse, Wisconsin, 54601, producer of footwear for men, women & children (accepted October 3, 1980); (9) Coast Range Plywood, Inc., P.O. Box 538, McMinnville, Oregon 97205, producer of softwood plywood & hardwood veneer (accepted October 3, 1980); (10) Enterprise Machine and Development Corporation, P.O. Box 707, Manor Branch, New Castle, Delaware 19720, producer of textile machinery (accepted October 6, 1980); (11) Lloyd's Electronics, Inc., 180 Raritan Center Parkway, Edison, New Jersey 08817, producer of audio products, including radios, tape players and recorders (accepted October 6, 1980); (12) Sunrise Fashions, Inc., 7100 West Side Avenue, New Bergen, New Jersey 07047, producer of women's coats (accepted October 6, 1980); (13) Beede Electrical Instrument Company, Inc., Main Street, Penacook, New Hampshire 03303, producer of

industrial instrumentation meters and relays (accepted October 7, 1980); (14) Manchester Manufacturing, Inc., P.O. Box 107, Colebrook, New Hampshire 03576, producer of girls' coats and jackets (accepted October 7, 1980); (15) S. G. D'or Industries, Ltd., 38–14 30th Street, Long Island City, New York 11101, producer of shoe and hair accessories, belts, jewelry and metal castings (accepted October 9, 1980); (16) Barnhardt Farms, Inc., Box 579, Urbanna, Virginia 23175, producer of ducks, feathers and other by-products (accepted October 9, 1980); (17) Shellil, Inc., 1506 Paloma Street, Los Angeles, California 90021, producer of women's blouses and dresses (accepted October 10, 1980); (18) Daigle Aqua (U.S.A.), Inc., P.O. Box 894, Plattsburgh, New York 12901, producer of water valve curb boxes, waterworks parts, tools and accessories (accepted October 14, 1980); (19) Master Products, Inc., 129 North Main Street, Yale, Michigan 48097, producer of automotive stampings (accepted October 14, 1980); (20) Fosbrink Machine Company, Inc., P.O. Box 645, Connellsville, Pennsylvania 15425, producer of wire (accepted October 16, 1980); (21) Narricot Industries, Inc., 1131 E. Venango Street, Philadelphia, Pennsylvania 19124, producer of fabric webbing & tape (accepted October 16, 1980); (22) Beta Handbag & Luggage Corporation, 750 West 18th Street, Hialeah, Florida 33010, producer of handbags and luggage (accepted October 16, 1980); and (23) Mida Manufacturing, Inc., 917–21 Arch Street, Philadelphia, Pennsylvania 19107, producer of jewelry (accepted October 16, 1980).

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93–618) and § 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315).

Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of November 8, 1980.

The Catalogue of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. Inasfar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A–95 regarding review by clearinghouses do not apply.

Jack W. Osburn, Jr.,

Chief, Trade Act Certification Division, Office of Eligibility and Industry Studies.

[FR Doc. 80–33566 Filed 10–28–80; 8:45 am]

BILLING CODE 3510–24–M

Foreign-Trade Zones Board

[Order No. 166]

Resolution and Order Approving the Application of the Brownsville Navigation District for a Foreign-Trade Zone in Cameron County, Tex., Within the Brownsville Customs Port of Entry

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zone Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Brownsville Navigation District, a Texas public corporation, filed with the Foreign-Trade Zones Board (the Board) on October 31, 1979, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Cameron County, Texas, within the Brownsville Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal, with the exception of proposed Sites 3 and 4, is in the public interest, approves the application, except for those sites.

As the proposal includes industrial park space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation not described in the application. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant To Establish, Operate, and Maintain a Foreign-Trade Zone in Cameron County, Tex., Within the Brownsville Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Brownsville Navigation District (the Grantee) has made application (filed October 31, 1979) in due and proper form to the Board, requesting the establishment, operation and maintenance of a foreign-trade zone in Cameron County, Texas, within the Brownsville Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's Regulations (15 CFR Part 400) are satisfied;

Now, Therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 62 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, with the exception of proposed Sites 3 and 4, said grant being subject to the provisions, conditions, and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 20th day of October 1980, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Homer E. Moyer, Jr.,

Acting Chairman and Executive Officer.

Attest:

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 80–33621 Filed 10–28–80; 8:45 am]

BILLING CODE 3510–25–M

[Order No. 167]

Resolution and Order Approving the Applications of Prince Georges County, State of Maryland, for a Foreign-Trade Zone in Prince Georges County, Adjacent to the Washington, D.C., Customs Port of Entry

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of Prince Georges County, filed with the Foreign-Trade Zones Board (the Board) on May 27, 1980, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Prince Georges County, Maryland, adjacent to the Washington, D.C. Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open spaces on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant To Establish, Operate, and Mintain a Foreign-Trade Zone in Prince Georges County, Md., Adjacent to the Washington, D.C., Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u)(the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisidiction of the United States;

Whereas, Prince Georges County, Maryland (the Grantee) has made application (filed May 27, 1980) in due and proper form to the Board, requesting the establishment, operation and maintenance of a foreign-trade zone in Prince Georges County, adjacent to the Washington, D.C. Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's Regulations (15 CFR Part 400) are satisfied;

Now, Therefore, the Board hereby granted to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 63 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, said grant being subject to the provisions, conditions, and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone sites in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 20th day of October 1980, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Homer E. Moyer, Jr.,

Acting Chairman and Executive Officer.

Attest:

John J. DaPonte,

Executive Secretary.

[FR Doc. 80–33622 Filed 10–28–80; 8:45 am]

BILLING CODE 3510–25–M

National Oceanic and Atmospheric Administration

Approval of the American Samoa, Connecticut, Mississippi, New Jersey, Northern Marianas, and Pennsylvania Coastal Zone Management Programs

Pursuant to the authority contained in Section 306(a) of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1445(a)), notice is hereby given that the Assistant Administrator for Coastal Zone Management (on befalf of the Secretary of Commerce) on September 23, 1980, approved the coastal zone management program of the Northern Marianas and on September 29, 1980, approved the coastal zone management programs of American Samoa, Connecticut, Mississippi, New Jersey, and Pennsylvania.

Approval activates Federal agency responsibility for being consistent with these programs pursuant to the Federal consistency provisions of the Coastal Zone Management Act as of the date of approval. Further information on the responsibilities of affected Federal agencies in this regard may be found in 15 CFR Part 930, published in the **Federal Register**, at page 37142, on June 25, 1979.

A copy of the findings made by the Assistant Administrator in determining that these programs meet the requirements of the Coastal Zone Management Act may be obtained upon request from the Office of Coastal Zone Management. Inquiries regarding the Programs should be addressed to: William Matuszeski, Deputy Assistant Administrator (Acting), Office of Coastal Zone Management, 3300 Whitehaven Street, NW., Washington, D.C. 20235, (202) 634–1672.

Dated: October 20, 1980.

Michael Glazer,

Assistant Administrator for Coastal Zone Management.

[FR Doc. 80–33561 Filed 10–28–80; 8:45 am]

BILLING CODE 3510–08–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Additional Import Controls on Certain Cotton and Man-Made Fiber Textile Products From the Republic of Korea

October 22, 1980.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Controlling cotton and man-made fiber textile products in Group I (Categories 300, 301, 310–320, 330, 360–363, 369, 600–605, 610–614, 625–627, 630, 665, 666 and 669), produced or manufactured in the Republic of Korea and exported during the agreement year which began on January 1, 1980 at the adjusted group level of 166,958,768 square yards equivalent

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers and factors for converting category units into equivalent square yards was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463) and August 12, 1980 (45 FR 53506)).

SUMMARY: Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea, the United States Government has decided to control imports in Group I (Categories 300, 301, 310–320, 330, 360–363, 369, 600–605, 610–614, 625–627, 630, 665, 666 and 669), at the adjusted level of restraint established for the group to include carryover in the amount of 14,575,765 SYE and swing of 19,876,044 SYE applied during the agreement year which began on January 1, 1980.

EFFECTIVE DATE: November 3, 1980.

FOR FURTHER INFORMATION CONTACT: William Boyd, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–5423).

SUPPLEMENTARY INFORMATION: On December 27, 1979, there was published in the **Federal Register** (44 FR 76573) a letter dated December 20, 1979 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which established levels of restraint for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Korea, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1980 and extends through December 31, 1980. In accordance with the terms of the bilateral agreement, as amended, the United States Government has also decided to control imports of textile products in Group I (Categories 300, 301, 310–320, 330, 360–363, 369, 600–605, 610–614, 625–627, 630, 665, 666 and 669), produced or manufactured in the Republic of Korea and exported during the twelve-month period which began on January 1, 1980. Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry for consumption, and withdrawal from warehouse for consumption, of textile products in Group I (Categories 300, 301, 310–320, 330, 360–363, 369, 600–605, 610–614, 625–627, 630, 665, 666 and 669) in excess of the designated level of restraint. The level of restraint has not been adjusted to account for imports after December 31, 1979. Imports during the period which began on January 1, 1980 and extending to the effective date of this action will be charged.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 20, 1979 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Korea.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1972, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed, effective on November 3, 1980 and for the twelve-month period beginning on January 1, 1980 and extending through December 31, 1980, to prohibit entry into the United States for consumption, and withdrawal from warehouse for consumption, of cotton and man-made fiber textile products in Categories 300, 301, 310–320, 330, 360–363, 369, 600–605, 610–614, 625–627, 630, 665, 666 and 669, as a group, produced or manufactured in the Republic of Korea, in excess of the following adjusted level of restraint:[1]

Category	Adjusted 12-mo level of restraint [2] (yd [2] equivalent)
300, 301, 310–320, 330, 360–363, 369, 600–605, 610–614, 625–627, 630, 665, 666, and 669	166,958,768

[2] The level of restraint has not been adjusted to reflect any imports after December 31, 1979.

Textile products in the foregoing group of Categories (300, 301, 310–318, 320, 330, 360–363, 369, 600–603, 605, 610–614, 625–627, 630, 665, 666, and 669) which have been exported to the United States prior to January 1, 1980 shall not be subject to this directive.

Textile products in the foregoing group of categories which have been released from the custody of the U.S Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484 (a) (1) (A) prior to the effective date of this directive shall not be denied entry under this directive.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers and factors for converting category units into equivalent square yards was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463) and August 12, 1980 (45 53506).

In carrying out the above directions, entry into the United States for consumption shall be construed by the Commissioner of Customs to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Republic of Korea and with respect to imports of cotton, wool and man-made fiber textile products from the Republic of Korea have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register**.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80–33644 Filed 10–28–80; 8:45 am]

BILLING CODE 3510–25–M

[1] The term "adjusted level" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1977 as amended, between the Governments of the United States and the Republic of Korea which provide, in part, that: (1) Within the aggregate and applicable group limits, specific levels of restraint may be exceeded by designated percentages: (2) these same levels may be increased for carryover and carryforward up to 11 percent of the applicable category limit; (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. 79–1]

National Association of Broadcasters Application for a Stay Pending Appeal Docket No. 79–1

October 24, 1980.

The National Association of Broadcasters has filed a motion with the Copyright Royalty Tribunal (Tribunal) requesting a stay pending appeal of the Tribunal's final determination in Docket No. 79–1, distribution to copyright owners of royalty fees for secondary transmissions by cable systems during 1978.

17 U.S.C. 809 directs the Tribunal to "distribute any royalty fees not subject to an appeal filed pursuant to section 810." The Tribunal finds that pursuant to the appeals of the Tribunal's final determination in Docket No. 79–1 which have been filed, all royalty fees for 1978 secondary transmissions by cable systems are the subject of an appeal, and that no distribution of such royalty fees shall be made by the Tribunal pending the final determination of the pending appeals.

Mary Lou Burg,

Chairman, Copyright Royalty Tribunal.

[FR Doc. 80–33619 Filed 10–28–80; 8:45 am]

BILLING CODE 1410–01–M

[Docket No. 80–4]

Possible Declaration of Controversy Concerning Distribution of 1979 Cable Royalty Fees

October 24, 1980.

In accordance with 17 USC 111(d)(5)(B), the Copyright Royalty Tribunal directs that claimants to royalty fees paid by cable operators for secondary transmissions during 1979 shall submit not later than November 15, 1980 any comments concerning whether a controversy exists concerning the distribution of the 1979 royalty fees. Comments shall be addressed to the Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW, Washington, DC 20036.

Mary Lou Burg,

Chairman, Copyright Royalty Tribunal.

[FR Doc. 80–33620 Filed 10–28–80; 8:45 am]

BILLING CODE 1410–01–M

COUNCIL ON WAGE AND PRICE STABILITY

Pay Advisory Committee; Meeting

AUTHORITY OF COMMITTEE: The Pay Advisory Committee was established by the Council on Wage and Price Stability pursuant to Executive Order 12161 (44 FR 56663).

TIME AND PLACE OF MEETING: The next meeting of the Pay Advisory Committee has been scheduled for November 17, 1980, at 2:00 p.m. in the Board Room of the Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552. Persons interested in attending the meeting should contact Cheryl Bailey at 456–6210 by 3:00 p.m. on Friday, November 14, 1980, in order to be assured admission to the building on the meeting day.

PURPOSE OF THE MEETING: The purpose of the meeting is to receive a report on pay developments since the last meeting, to respond to outstanding requests for recommendations (e.g., ESOPs), to discuss the current and foreseeable economic environment and the type of standards program appropriate for that environment.

PUBLIC PARTICIPATION: The meeting of the Pay Advisory Committee will be open to the public. Public attendance will, however, be limited by available space; persons will be seated on a first-come, first-served basis. Persons attending the meeting will not be permitted to speak or participate in the Committee's deliberations. Interested person will be permitted to file written statements with the Committee by mail or personal delivery to the Office of General Counsel, Council on Wage and Price Stability, 600 17th Street, N.W., Washington, D.C. 20506.

ADDITIONAL INFORMATION: For additional information, please telephone the Office of Public Affairs at (202) 456–6756.

Dated: October 24, 1980.

Sally Katzen,

Advisory Committee Management Officer.

[FR Doc. 80–33712 Filed 10–27–80; 8:45 am]

BILLING CODE 3175–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Medical Reimbursement Rates for Fiscal Year 1981; Inpatient and Outpatient Medical Care

Notice is hereby given that the Assistant Secretary of Defense (Comptroller) on October 10, 1980, issued the following memorandum to the Assistant Secretaries of the Army (IL&FM), Navy (FM), and Air Force (FM):

"Reimbursement rates for inpatient and outpatient medical care are hereby established for Fiscal Year 1981 as follows:

	IMET [1]	Interagency [2]	Others
Per inpatient day:			
Burn Center, Brooke Army Hospital	$481	$853	$1,010
Panama, general medical and dental care	299	344	397
Mental Health Center, Corazol, Panama	119	125	141
All other general medical and dental care	153	285	336
Per outpatient visit:			
Panama area	33	38	44
All other areas	15	28	33

	IMET [1]	Inter-agency [2]	Others
Per FAA Air Traffic Controller Examination		61	

[1] International Military Education and Training Students.
[2] Other Federal Agency sponsored patients and Government civilian employees and their dependents overseas.

"The charge for inpatient medical and dental care given to dependents of military personnel shall be $5.50 per day effective October 1, 1980.

"The Office of Management of Budget published separate tortiously liable third party rates in 45 FR 24293, April 9, 1980."

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

October 23, 1980.

[FR Doc. 80-33615 Filed 10-28-80; 8:45 am]

BILLING CODE 3810-70-M

DELAWARE RIVER BASIN COMMISSION

Notice of Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, November 5, 1980 commencing at 1:30 p.m. The hearing will be a part of the Commission's regular November business meeting which is open to the public. Both the hearing and the meeting will be held in the New Ark Room, Radisson Wilmington Hotel, 700 King Street, Customs House Plaza, Wilmington, Delaware. The hearing will be held on the following subjects:

I. Current Expense Budget

A proposed current expense budget for the fiscal year beginning July 1, 1981, in the aggregate amount of $1,942,500, and a capital budget for the same period in the amount of $27,000. The following amounts would be apportioned among the signatory parties, along with the additional appropriations by the Commission, to balance the current expense budget: Delaware $138,400; New Jersey $367,700; New York $270,000; Pennsylvania $424,600: and the Federal Government $285,400. Copies of the current expense and capital budget are available from the Commission on request.

II. Project Review Applications

Applications for approval of the following projects are pending before the Commission as amendments to the Comprehensive Plan and/or as project approvals pursuant to Section 3.8 of the Compact:

1. *Washington Township Municipal Utilities Authority (D–80–13 CP).* A well water supply project to augment public water supplies in Washington Township, Morris County, N.J. Designated as Well No. 8, the new facility has a capacity of 180,000 gallons per day and is expected to yield 90,000 gallons per day.

2. *Hunt-Wesson Foods, Inc. (D–78–32).* An industrial waste treatment project at the company's tomato processing plant in the City of Bridgeton, Cumberland County, N.J. During the canning season, approximately 1.1 million gallons per day of wastewater will be screened to remove solids and then pumped to a nearby spray irrigation field in Fairfield Township.

3. *Atlantic Richfield Company (D–80–38).* A bulkhead repair project at the company's facility in Philadelphia, Pa. Approximately 1530' of bulkhead on the east bank of the Schuylkill River, south of Passyunk Avenue, will be repaired and the area behind the bulkhead will be filled.

III. Water Quality Standards—Oil and Grease

The Comprehensive Plan for the Delaware River Basin includes water quality standards. These standards are also contained in the Commission's *Basin Regulations—Water Quality.* Article 3 of these regulations are the Comprehensive Plan's water quality standards. Article 4 of these regulations concerns the application of the standards and includes, among other things, effluent quality requirements. Limitations on the discharge of oil and grease have not heretofore been included among the Commission's effluent quality requirements but are reflected in Interpretive Guideline No. 1, adopted in January 1972 (Resolution No. 72–1). The Commission is now considering an amendment of its Comprehensive Plan and *Basin Regulations—Water Quality* that would include an effluent quality requirement applying to the discharge of oil and grease. A public hearing on this subject was held by the Commission on July 29, 1980, in West Trenton, N.J. Upon review of testimony received, and further consultation with technical staffs, the Commission is now considering a revised amendment substantially different from that advertised as the subject of the first public hearing in July. Accordingly, a second public hearing will be held by the Commission pursuant to this Notice on the following proposed amendments:

I. Amend the Comprehensive Plan and Section 3.10.4.D.1 of the *Basin Regulations—Water Quality* by the addition thereto of a new subsection b. to read as follows:

"b. Oil and Grease

1. All existing permitted discharges shall meet the oil and grease limitations in accordance with the DRBC Docket, their NPDES permit or other state permit. In no case shall the oil and grease concentrations exceed 15 mg/l as an average for samples taken during any 30-day period, nor exceed 30 mg/l in any single sample.

2. All new permitted discharges shall meet the following oil and grease limitations:

(i) Not to exhibit readily visible oil;

(ii) Not to exceed 10 mg/l as an average for samples taken during any 30-day period;

(iii) Not to exceed 15 mg/l in any single sample.

3. Discharges which result mainly from the collection of storm water runoff shall meet the following for any 5-year precipitation event.

(i) *Existing permitted discharges:* Shall meet the existing limitations for oil and grease specified in their DRBC Docket, NPDES permit, or other state permit, but in no case shall the oil and grease effluent concentration exceed 30 mg/l in any single sample.

(ii) *New permitted discharges:* Shall meet the following oil and grease concentration in their effluent during any 5-year precipitation event: 15 mg/l in any single sample."

II. Amend Section 4.30.5 of *Basin Regulations—Water Quality* by the addition thereto of a new subsection E. to read as follows:

"E. Oil and Grease

1. All existing permitted discharges shall meet the oil and grease limitations in accordance with the DRBC Docket, their NPDES permit or other state permit. In no case shall the oil and grease concentrations exceed 15 mg/l as an average for samples taken during any 30-day period, nor exceed 30 mg/l in any single sample.

2. All new permitted discharges shall meet the following oil and grease limitations:

(i) Not to exhibit readily visible oil;

(ii) Not to exceed 10 mg/l as an average for samples taken during any 30-day period;

(iii) Not to exceed 15 mg/l in any single sample.

3. Discharges which result mainly from the collection of storm water runoff shall meet the following for any 5-year precipitation event.

(i) *Existing permitted discharges:* Shall meet the existing limitations for oil and grease specified in their DRBC Docket, NPDES permit, or other state permit, but in no case shall the oil and grease effluent concentration exceed 30 mg/l in any single sample.

(ii) *New permitted discharges:* Shall meet the following oil and grease concentration in their effluent during any 5-year precipitation event: 15 mg/l in any single sample.

4. Samples shall be collected in such manner and at such location as to be representative of the actual discharge, and shall be analyzed in accordance with the method referenced in 40 CFR Part 136."

Persons wishing to testify on any of the subjects referenced above are requested to notify the Secretary to the Commission prior to the hearing.

W. Brinton Whithall,

Secretary.

October 22, 1980.

[FR Doc. 80-33678 Filed 10-28-80; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF EDUCATION

National Advisory Committee on Black Higher Education and Black Colleges and Universities; Meeting

AGENCY: National Advisory Committee on Higher Education and Black Colleges and Universities.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and proposed agenda of the quarterly meeting of the National Advisory Committee on Black Higher Education and Black Colleges and Universities. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix 1). This document is intended to notify the general public of their opportunity to attend.

DATE: November 24–25, 1980, 9:00 am to 5:00 pm.

ADDRESS: The National Aeronautics and Space Administration Auditorium (NASA), Room 6104, FOB–6, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Ms. Carol J. Smith, Program Delegate, National Advisory Committee on Black Higher Education and Black Colleges and Universities, Suite 702–6, 1100, 17th Street, N.W., Washington, D.C. 20036, AC 202 653–7558.

The National Advisory Committee on Black Higher Education and Black Colleges and Universities is governed by the provisions of Part D of the General Education Provisions Act (Pub. L. 90–247 as amended; 20 U.S.C. 1233 *et seq.*) and the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix 1) which set forth standards for the formation and use of advisory committees.

This Committee was established to examine all approaches to the higher education of Black Americans as well as enhancement of the historically Black colleges and universities and then to make recommendations to the Secretary of Education in the identification of several courses of action to raise substantially the participation of Black Americans in all sectors and at all levels of higher education. Recommendations are to be made regarding development of a research base, stimulation of more scholarship and research by Blacks on questions of public policy relating to the education needs of Blacks, and the development of system supports to achieve the recommendations.

The proposed agenda will include discussion of a number of background papers developed by Committee staff on topics such as: Black faculty, desegregation, *Adams* States, non-resident alien enrollment, Federal involvement in Black higher education, testing and equity.

The Committee members will also entertain discussion on several issue papers focusing on such topics as: articulation between the historically Black colleges and secondary schools, Title III of the Higher Education Act, student financial aid, foundation and corporate sector involvement in Black higher education, grantsmanship, historically Black college (HBC) funding, management of HBC's and monitoring of Federal funds. Discussion of these issues may lead to immediate recommendations to the Secretary on ways to advance Black higher education and enhance the historically Black colleges or result in recommendations for additional research.

The meeting on November 24–25, 1980, will be open to the public beginning at 9:00 a.m. each day. It will be held in the National Aeronautics and Space Administration Auditorium (NASA), Room 6104, FOB–6, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

Records are kept of all Committee proceedings and are available for public inspection at the office of the National Advisory Committee on Black Higher Education and Black Colleges and Universities located at 1100 17th Street, N.W., Suite 702–6, Washington, D.C. 20036.

Signed at Washington, D.C., on October 24, 1980.

Albert H. Bowker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 80-33632 Filed 10-28-80; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Council on Continuing Education; Meetings

AGENCY: National Advisory Council on Continuing Education.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of meetings of the National Advisory Council on Continuing Education and three ad hoc committees of the Council. It also describes the functions of the Council. Notice of meetings is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: November 19, 1980—Meeting of Ad Hoc Committees. November 19–21, 1980—Meeting of the National Advisory Council on Continuing Education.

ADDRESS: Bay Harbor Inn, Courtney Campbell Causeway, P.O. Box 24283, Tampa, Florida 33623.

FOR FURTHER INFORMATION CONTACT: William G. Shannon, Executive Director, National Advisory Council on Continuing Education, 425 Thirteenth Street, NW, Suite 529, Washington, D.C. 20004. Telephone: (202) 376–8888.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Continuing Education is established under Section 117 of the Higher Education Act (20 U.S.C. 1009), as amended. The Council is established to advise the Congress, the President, and the Secretary of the Department of Education in the preparation of general regulations and with respect to policy matters arising in the administration of Title I of the Higher Education Act, including policies to eliminate duplication and effectuate the coordination of programs under this title and other programs offering continuing education activities and services.

The meetings of the Council are open to the public. However, because of limited space, those interested in attending either of these meetings are asked to call the Council's office beforehand.

Ad Hoc Committee Meetings (Committee on Title I; Committee on the Media in Continuing Education; and Committee on International Dimensions of Continuing Education) will be held on

November 19, 1980 from 2:00 P.M. until 4:00 P.M. to review activities of the past year and recommendations for Council follow-up action.

The meeting of the full Council will begin at 8:30 P.M. on November 19, 1980, and will conclude at 12:00 Noon on November 21, 1980. The proposed agenda includes:

—Swearing-in of new members
—Comments from new Chairperson
—Executive Director's Report
—Committee Reports
—Legislative update and analysis of HEA
—Council's mandate and background for projected Council work
—Committee assignments and general planning
—Council meeting schedule
—Executive Committee elections

The swearing-in of new members will be conducted in ceremony on November 19, 1980 from 5:00–6:30 P.M.

Records are kept of all council proceedings, and are available for public inspection at the office of the National Advisory Council on Continuing Education, 425 Thirteenth Street, Suite 529, Washington, D.C.

Signed at Washington, D.C. on October 24, 1980.

William G. Shannon,

Executive Director.

[FR Doc. 80-33696 Filed 10-28-80; 8 45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs

Proposed Subsequent Arrangements

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended, the Agreement for Cooperation Between the Government of the United States of America and the Government of Korea Concerning Civil Uses of Atomic Energy, as amended, the Agreement for Cooperation Between the Government of the United States of America and the Government of the Republic of the Philippines Concerning Civil Uses of Atomic Energy, the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Sweden Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above mentioned agreements involve the approval of contractual arrangements under which the U.S. Department of Energy, if requested, would consent to the assignments of portions of various uranium enrichment services contracts held by U.S. and foreign utilities. The table that follows specifies the foreign nuclear power projects that will receive the new assignments and the approximate quantities of separative work that will be assigned:

Country	Facility	Separative work units
Japan	Senadi-2	300,000
Japan	Tokyo No. 9	500,000
Japan	Tokyo No. 11	500,000
Korea	KECO No. 9	150,000
Korea	KECO No. 10	120,000
Philippines	PNPP-1	50,000

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, is has been determined that entering into these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: October 23, 1980.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 80-33573 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement Between Government of the United States of America and the European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Sweden Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval of the retransfer of 11.16 kilograms of uranium containing 516.7 grams of U–235 (4.63% enrichment) and 73.8 grams of plutonium from Belgium to Sweden for post-irradiation examination. After completion of this work in Sweden, it is planned to return the material to Belgium.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the approval of this retransfer, designated as RTD/SW (EU)–114 will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than November 13, 1980.

Dated: October 24, 1980.

For the Department of Energy.

Harold D. Bengelsdorf

Director for Nucleor Affairs, International Nuclear and Technical Programs.

[FR Doc. 80-33698 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Marion Corp.; Modification of Proposed Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of modification of proposed consent order and opportunity for comment.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces the modification of a Proposed Consent Order and provides an opportunity for public comment on the modified Proposed Consent Order.

DATE: Comments to be Submitted by (30 days from publication)

ADDRESS: Send comments to: Stanley S. Mills, Program Manager for Entitlements, Office of Enforcement, Economic Regulatory Administration, U.S. Department of Energy, 2000 M Street, NW., Room 5114, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT: Stanley S. Mills, Program Manager for Entitlements, Office of Enforcement, Economic Regulatory Administration, U.S. Department of Energy, 2000 M Street, NW., Room 5114, Washington, D.C. 20461 (202/653–3548).

SUPPLEMENTARY INFORMATION:

I. Background
II. Comments Received
III. Proposed Distribution of Refunded Overcharges
IV. Submission of Comments

I. Background

On July 18, 1979, the Office of Enforcement of the ERA published notification in the **Federal Register** that it had executed a proposed Consent Order with Marion Corporation (Marion) of Mobile, Alabama, on June 26, 1979, and invited interested persons to submit comments concerning the terms and conditions of the Consent Order pursuant to 10 CFR 205.199J(c). A press release was issued simultaneously pursuant to 10 CFR 205.199J(c).

The proposed Consent Order was modified on November 12, 1979, to reflect some of the commentors' concerns.[1] The DOE is therefore publishing notice of the modified Consent Order and inviting interested persons to submit comments on the terms and conditions of the Consent Order pursuant to 10 CFR 205.199J(c) and (d).

II. Comments Received

The DOE received six comments on the Consent Order.[2] Several comments suggested that the Consent Order should require Marion to file amended forms with the DOE to report the crude oil receipts for the period covered by the Consent Order pursuant to 10 CFR 211.67(j). Commentors also suggesterd that the Consent Order should require the DOE to adjust Marion's future entitlements by the amount of the entitlements issued to and sold by Marion as a result of incorrect reporting of crude oil receipts.

In addition, all commentors objected to the provision in the Consent Order requiring payment by Marion into the U.S. Treasury. Several of the commentors asserted that all other refiners and eligible firms subject to the Entitlements Program were affected by incorrect reporting of crude oil receipts. Accordingly, they argued that there was no legal basis for Marion's payment of the refund amount to the U.S. Treasury. They contended that DOE should adjust for Marion's reporting errors through the regulatory procedures contained in the Entitlements Program. It was also noted that the provision for payment into the U.S. Treasury would not give protection to Marion from lawsuits by third parties claiming injury.

After consideration of the above comments and further review of the matter, DOE has agreed to an amendment of the proposed Consent Order. The modified Consent Order does not provide that Marion make a direct payment to the U.S. Treasury. DOE's action, however, should not be deemed to connote agreement with commentors' contentions that the remedy of payment into the U.S. Treasury is unlawful or otherwise improper.

At the same time it has not been determined whether an adjustment to the Entitlements Program would be an effective remedy in this case. We note that the Entitlements Program was designed to achieve a specific measure of equalization of crude oil costs, and, for price-controlled products, potentially resulted in passthrough to customers of a firm's lowered costs. Thus, it is uncertain whether other participants in the Entitlements Program have sustained actual financial injury as a result of misreporting by Marion because the participants were permitted to pass through or "bank" any increased costs attributable to the entitlements. Moreover, since the inception of the Entitlements Program in late 1974, price controls have terminated with respect to many refined products which were controlled at the time Marion improperly reported its crude oil receipts. Thus, an adjustment to Marion's future entitlements might not reach many customers of these products that might have been injured by Marion's actions and could instead result in unwarranted benefits for other refiners and eligible firms.

Accordingly, as an interim measure, the funds instead will be deposited in a suitable account pending the determination of their proper disposition.

III. Proposed Disposition of Refunded Overcharges

In the modified Consent Order, Marion agrees to refund in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified above, the sum of $703,571 in six successive monthly installments commencing December 1, 1979. Refunded overcharges will be in the form of a certified check made payable to the United Stated Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

IV. Submission of Comments

The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments to Stanley S. Mills, Program Manager for Entitlements, Office of Enforcement, Economic Regulatory Administration, U.S. Departent of Energy, 2000 M Street, N.W., Room 5114, Washington, D.C. 20461. You may obtain a free copy of this Consent Order by writing to the same address or by calling (202) 653–3548.

You should identify your comments on the outside of your envelope and on the documents you submit with the designation, "Comments on Marion Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on November 28, 1980. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Washington on the 23rd day of October, 1980.

Robert D. Gerring,

Director, Program Operations Division, Office of Enforcement, Economic Regulatory Administration.

[FR Doc. 80-33699 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-01-M

Action Taken on Consent Orders

AGENCY: Economic Regulatory Administration.

ACTION: Notice of action taken on consent orders.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice that Consent Orders were entered into between the Office of Enforcement, ERA, and the firm listed below during the month of September 1980. The Consent Orders represent Resolutions of outstanding compliance investigations or proceedings by the DOE and the firms which involve a sum of less than $500,000 in the aggregate, excluding penalties and interest. These Consent Orders are concerned exclusively with payment of the refunded amounts to injured parties for alleged overcharges made by the specified companies during the time periods indicated below through direct refunds or rollbacks of prices.

For further information regarding these Consent Orders, please contact Mr. Edward F. Momorella, District Manager of Enforcement, 1421 Cherry Street, Philadelphia, Pennsylvania 19102, telephone number (215) 597–2662.

[1] In adition, the language of several paragraphs was changed for clarity and to reflect current ERA procedures. These changes, however, do not significantly alter the terms or the impact of the original order.

[2] One commentor included an objection previously filed with the DOE attacking the special procedures for distribution of refunds adopted by the DOE now contained in 10 CFR Part 205, Subpart V. These objections were previously responded to in the Preamble to the Final Rule of Subpart V, 44 FR 8562–8586 (February 9, 1979).

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Firm name and Address	Refund amount	Product	Period covered	Recipients of refund
Capable Utilities, 147 Peconic Ave., Westbury, N.Y. 11590	$28,115	Motor gasoline	Apr. 1, 1979 to Aug. 31, 1979	End-user customers.
Long Island Reliable, 880 East Hoffman Ave., Lindenhurst, N.Y. 11757.	75,000	No. 2 oil	Nov. 1, 1973 to Apr. 30, 1974	Governmental customers and end-user customers.

Issued on the 14st day of October, 1980, in Philadelphia, Pa.

Edward F. Momorella,

District Manager.

[FR Doc. 80-33575 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-01-M

[ERA Case No. 50643-6025-04-82, 50643-6025-05-82]

Commonwealth Edison Co., Intention to Proceed With Prohibition Order Proceedings

The Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of its intention to proceed with the pending prohibition order proceedings relating to two powerplants, Collins 4 and 5, owned by Commonwealth Edison Company (Commonwealth) and located at Morris, Illinois.

Pursuant to Sections 301(b) and 701(b) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), 42 U.S.C. 8301 *et seq.*, proposed prohibition orders for Collins 4 and 5 were issued by ERA on December 21, 1979, and published in the Federal Register on January 2, 1980 (45 FR 65).

Description of Prohibition Order Proceedings

In accordance with 10 CFR 501.51 publication of the proposed prohibition orders commenced an initial public comment period, during which period Commonwealth was given an opportunity to challenge ERA's initial finding that Collins 4 and 5 had the technical capability to burn alternate fuel (coal) as a primary energy source. During this period the utility was required to furnish ERA with evidence bearing upon the other statutory findings which ERA must make prior to the issuance of any final prohibition order. The utility must also identify, during this period, any exemptions for which the powerplants may qualify, but the recipient of a proposed order need not, during this period, submit evidence attempting to demonstrate entitlement to an exemption.

The publication of this notice of intention to proceed commences a second three-month period during which Commonwealth may present evidence to demonstrate that the powerplants would qualify for an exemption, which would constitute a defense to the issuance of a final prohibition order.

Subsequent to the end of the second three-month period ERA will, if it intends to issue a final prohibition order, prepare and publish a Notice of Availability of a Tentative Staff Analysis concerning the findings ERA must make prior to issuance of a final prohibition order. Those findings, which are required by Section 301(b) of FUA, are (1) that the powerplant has the technical capability to use coal or another alternate fuel as a primary energy source, or it could have such capability without (A) substantial physical modification of the powerplant or (B) substantial reduction in the rated capacity of the powerplant; and (2) that it is financially feasible for the powerplant to use coal or another alternate fuel as its primary energy source. The provisions of Section 701(d) of FUA and 10 CFR 501.33 afford any interested person an opportunity to request a public hearing on a proposed prohibition order and Tentative Staff Analysis. Interested persons wishing a hearing must make their request, in writing, no later than 45 days after publication of the Notice of Availability of the Tentative Staff Analysis. If a hearing is requested, the hearing will be held in accordance with Subpart C of 10 CFR Part 501. Interested persons may also submit written comments during this 45 day period.

After the hearing and comment period closes, ERA shall determine whether a final prohibition order will be issued, based upon ERA's review of the entire administrative record. Any final prohibition order, together with a summary of the basis therefor, will be published in the Federal Register. Such order shall not take effect earlier than 60 days after publication.

Comments and Written Submissions Received on Proposed Prohibition Orders

During the initial comment period, comments on the proposed prohibition orders to Collins 4 and 5 were received from Commonwealth, the League of Women Voters of Illinois, Citizens for a Better Environment and United Mine Workers of America, District 12. None of the commentors proposed that the units remain on oil instead of converting to coal. All of these comments will be fully addressed at such time as ERA issues a Tentative Staff Analysis.

Commonwealth submitted comments which generally support the proposed orders. However, Commonwealth questioned the finding of technical capability to use coal without substantial physical modification or substantial derating of the units. Commonwealth would consider addition of fuel gas desulfurization equipment to be a substantial physical modification. Commonwealth maintains that conversion of Collins 4 and 5 can be accomplished in an environmentally acceptable and an economically feasible manner with the use of low sulfur western coal.

During this comment period, neither Commonwealth nor any other interested person submitted any information contrary to ERA's initial finding that Collins 4 and 5 had the technical capability to burn an alternate fuel (coal) as a primary energy source. Commonwealth did, however, question "the finding, that the units have the capability to burn coal . . . simply because of the units' boiler configuration." The boilers were designed with coal capability, although no coal burners or ash and coal handling facilities are currently located at the Collins generating station.

In accordance with 10 CFR 501.51, Commonwealth also submitted evidence relating to the other findings that ERA is required to make under Section 301(b) of FUA, and identified those exemptions for which Collins 4 and 5 may qualify. Commonwealth asserted that it may be qualified for a temporary public interest exemption as authorized by Section 311(e) of FUA on the grounds that an exemption from the coal conversion would be in the public interest, although the company provided no specific reason why burning oil in Collins 4 and 5 would be in the public interest. In addition, Commonwealth identified the following permanent exemptions for which Collins units 4 and 5 may qualify as authorized by Section 312 of FUA: (1) lack of alternate fuel supply; (2) site limitations; (3) inability to comply with applicable environmental requirements; and (4) State or local law requirements.

For further information contact:
William L. Webb, Office of Public Information, Economic Regulatory Administration, Department of Energy, 2000 M Street NW., Room B-110, Washington, D.C. 20461, (202) 653-4055.
Elmer Lee, Existing Powerplants Branch, Office of Fuels Conversion, Economic Regulatory Administration, Department of Energy, 2000 M Street NW., Room 3308, Washington, D.C. 20461, (202) 653-4201.
Edward Lublin, Office of General Counsel, Department of Energy, Forrestal Building, Room 6G-087, Washington, D.C. 20585, (202) 252-2967.

Issued in Washington, D.C., October 22, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-33571 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 80-18-LNG]

Gas Service Inc., et al.; Application To Amend Natural Gas Import Authorization To Permit Purchase Price Increase

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of application to amend natural gas import authorization to permit purchase price increase.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt of the joint application of Gas Service, Inc. (GSI) and Manchester Gas Company (Manchester) to amend their import authorization, granted by ERA on November 9, 1979 by DOE/ERA Opinion and Order No. 10 in Docket No. 78-006-LNG, in order to permit petitioners to import into the United States volumes of liquefied natural gas (LNG) from Canada at an increased purchase price of $5.9357 per MMBtu F.O.B. Montreal. The currently authorized price is $4.80 per MMBtu F.O.B. Montreal.

The application is filed with ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-54. Protests or petitions to intervene are invited.

DATES: Protests or petitions to intervene are to be filed on or before November 13, 1980.

FOR FURTHER INFORMATION CONTACT:
Marie E. Lanciotti (Division of Natural Gas), Economic Regulatory Administration, 2000 M St. NW., Room 7108, Washington, D.C. 20461, Telephone (202) 653-3220
James K. White (Acting Assistant General Counsel for Natural Gas and Mineral Leasing), 1000 Independence Ave. SW., Forrestal Bldg., Room 5E064, Washington, D.C. 20585, Telephone (202) 252-2900.

SUPPLEMENTARY INFORMATION: GSI and Manchester are local natural gas distribution companies operating within the State of New Hampshire. In order to meet winter heating season peak day requirements of their respective markets, which consist primarily of high priority residential and small commercial customers, the applicants contracted individually with Gaz Metropolitan, Inc., (Gaz Metro) of Montreal to purchase LNG for a ten-year period commencing November 1, 1978, and ending October 31, 1988. The applicants state that without this LNG they would need to supplement available pipeline gas with a propane air mixture, which may provide unsatisfactory operation of customer appliances when used extensively.

DOE/ERA Opinion and Order No. 10, issued on November 9, 1979, authorized GSI and Manchester to import from Canada up to 30,879 MMBtu's 41,172 MMBtu's of LNG, respectively, for each contract year. The applicants are currently authorized to purchase LNG from Gaz Metro at a price of $4.80 per MMBtu F.O.B. Montreal. This price consists of the then current Canadian export border price of $3.45 per MMBtu in effect at the time the ERA authorization was granted and a $1.35 per MMBtu charge based on the cost of service for the LNG processing facilities.

On January 28, 1980 the Canadian government increased the border price for gas exported to the United States to $4.47 per MMBtu. In addition, since the issuance of DOE/ERA Opinion and Order No. 10 the cost of service charge for the LNG processing facilities allegedly has risen to $1.4657 per MMBtu. Petitioners therefore request authorization to import the LNG at the higher price of $5.9357 per MMBtu F.O.B. Montreal.

OTHER INFORMATION: The ERA invites protests or petitions for intervention in the proceeding. Such protests or petitions are to be filed with the Economic Regulatory Administration, Room 7100B, RG-55, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with the requirements of the applicable rules of practice and procedure (18 CFR 1.8 and 1.10). Protests or petitions for intervention will be accepted for consideration if filed no later than 4:30 p.m., on November 13, 1980.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene. Protests filed with ERA will be considered in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

A hearing will not be held unless a motion for a hearing is made by any party and is granted by ERA, or if the ERA on its own motion believes that a hearing is required. A party filing a motion for hearing must demonstrate how a hearing will advance the proceeding. If a hearing is ordered, due notice will be given to the parties.

A copy of the joint application by GSI and Manchester is available for public inspection and copying in Room 7108, 2000 M Street, N.W., Washington, D.C. 20461 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on October 22, 1980.

F. Scott Bush,

Assistant Administrator, Office of Regulatory Policy, Economic Regulatory Administration.

[FR Doc. 80-33576 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-01-M

Technical Subcommittee of the Committee on Emergency Preparedness of the National Petroleum Council; Meeting

AGENCY: Department of Energy, Economic Regulatory Administrations.

ACTION: Notice of change in location and time of meeting.

SUMMARY: In the Federal Register on September 10, 1980, (45 FR 59615), it was announced the Technical Subcommittee of the Committee on Emergency Preparedness would hold a meeting for the purpose of preparing a proposal for the scope, organization and timetable of an analysis undertaken by the NPC's Committee on Emergency Preparedness of issues bearing on emergency preparedness and the ability of the refining industry to respond to energy emergencies. As a result of the unexpectedly large volume of requests to address this issue, the time and location of the meeting has been adjusted to accommodate the increased space requirements.

DATE AND LOCATION: The Technical Subcommittee of the NPC's Committee on Emergency Preparedness will meet on Friday, October 31, 1980, at 9:00 a.m., in the Chandelier Room of the Sheraton-Carlton Hotel, 16th and K Street, N.W., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT:
Mr. Finn K. Neilsen, Acting Deputy

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Assistant Administrator, Office of Energy Contingency Planning, 2000 M Street, NW., Washington, D.C. 20461, Room 7302, Telephone (202) 653–3205. Ms. Joan Walsh Cassedy, National Petroleum Council, 1625 K Street, NW., Washington, D.C. 20006, Telephone (202) 393–6100.

Issued in Washington, D.C., on October 21, 1980.

Barton R. House,

Deputy Administrator for Operations and Emergency Management, Economic Regulatory Administration.

[FR Doc. 80-33577 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA–FC–80–013; OFC Case No. 55041-0731-01-12]

Tentative Staff Analysis

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of availability of tentative staff analysis.

SUMMARY: On March 13, 1980, Brunswick Pulp and Paper Company (Brunswick) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) seeking permanent exemptions for a new major fuel burning installation (MFBI) from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.).* The Act prohibits the use of petroleum or natural gas as a primary energy source in certain new MFBI's. Brunswick filed its petition for exemptions under ERA's interim rule implementing the Fuel Use Act. The interim rule has subsequently been superseded by a final rule published on June 6, 1980 (45 FR 38276 and 45 FR 38320), which became effective August 5, 1980.

Brunswick requested (1) a permanent fuels mixture exemption to use a fuels mixture of hydrogen gas and not more than 25 percent petroleum (No. 6 oil) under § 505.28, (2) an emergency purposes exemption under § 505.29 and (3) a scheduled equipment outage exemption under § 505.31 of the interim rule. On August 5, 1980, §§ 505.28, 505.29 and 505.31 of the interim rule were superseded by Sections 503.38, 503.39 and 503.43 of the final rule, respectively.

The MFBI for which the petition was filed is a package boiler to be constructed at Brunwick's plant facilities in Brunswick, Georgia. The boiler will have a design heat input rate of 198 million Btu's per hour, a steam generating capacity of 150,000 pounds per hour and will be capable of burning hydrogen gas or petroleum or a mixture of both.

ERA accepted Brunswick's petition on May 24, 1980, and published a notice of acceptance, together with a statement of the reasons set forth in the petition for requesting the exemption, in the **Federal Register** on June 4, 1980 (45 FR 37722). Publication of the notice of acceptance commenced a 45 day public comment period pursuant to Section 701 of FUA. During this period, interested persons were also afforded an opportunity to request a public hearing. The period expired on July 21, 1980. No comments were submitted, nor was a hearing requested.

Based upon ERA's review and analysis of the information presently contained in the record of this proceeding, a Tentative Staff Analysis recommends that ERA issue an order granting the requested permanent exemption to use a mixture of hydrogen and petroleum (No. 6 oil) in which the amount of petroleum used in the unit will not exceed 25 percent of the total annual Btu heat input of the primary energy sources of the unit. ERA's staff also recommends that Brunswick's petition requesting permanent exemptions on the basis of (1) emergency purposes and (2) scheduled equipment outages be denied. By petitioning for a fuels mixture exemption, Brunswick had demonstrated that the use of a mixture is economically and technically feasible in the proposed new unit. Brunswick cannot, therefore, meet the evidentiary requirement for an emergency purposes exemption or a scheduled equipment outages exemption, both of which require that a petitioner demonstrate that the use of a mixture is not economically or technically feasible, (§§ 503.39(c)(2) and 503.43(b)(4)).

ERA will issue a final order granting or denying the petition for a permanent exemption from the prohibitions of the Act within six months, unless extended by ERA, after the public comment period provided for in this notice has expired. Notice of, and a statement of reasons for, any extension will be published in the **Federal Register.**

DATES: Written comments and requests for a hearing on the Tentative Staff Analysis are due on or before November 12, 1980.

ADDRESSES: Fifteen copies of written comments, and any request for a public hearing on the Tentative Staff Analysis shall be submitted to: Economic Regulatory Administration, Case Control Unit (Fuel Use Act), Box 4629, Room 3214, 2000 M Street NW., Washington, DC 20461.

Docket Number ERA–FC–80–013 should be printed clearly on the outside of the envelope and on the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Constance L. Buckley, Chief, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street NW., Room 3128, Washington, DC 20461, Phone (202) 653–4226

Anthony M. Vaitekunas, Case Manager, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street NW., Room 3126B, Washington, DC 20461, Phone (202) 653–4237

James Renjilian, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6G–087, 1000 Independence Ave., SW., Washington, DC 20585, Phone (202) 252–2967.

The public file containing a copy of the Tentative Staff Analysis and other documents and supporting materials relating to this proceeding is available for inspection upon request at: ERA, Room B–110, 2000 M Street, NW, Washington, DC, Monday through Friday, 8:00 am–4:30 pm.

SUPPLEMENTARY INFORMATION: The Economic Regulatory Administration (ERA) published interim rules on May 15 and 17, 1979 (10 CFR, Parts 500 *et seq.)* (44 FR 28530 and 44 FR 28950), to implement provisions of Title II of FUA. ERA has also published a final rule relating to new facilities on June 6, 1980 (45 FR 38276 and 45 FR 38302), which become effective August 5, 1980. Title II of FUA prohibits the use of natural gas or petroleum in certain new MFBI's unless an exemption for such use has been granted.

Brunswick Pulp & Paper Company (Brunswick) is planning to install at its manufacturing plant facilities in Brunswick, Georgia, a package boiler which will have a design heat input rate of 198 million Btu's per hour, a steam generating capacity of 150,000 pounds per hour and will be capable of burning hydrogen in a mixture with petroleum.

On March 13, 1980, Brunswick filed a petition with ERA requesting (1) a permanent fuels mixture exemption to burn a mixture of hydrogen gas and petroleum (No. 6 oil) pursuant to § 505.28, (2) an emergency purposes exemption pursuant to § 505.29, and (3) a scheduled equipment outages exemption pursuant to § 505.31 of the interim rule.

With respect to the latter two exemptions, Brunswick failed to make in each case the required demonstration under the regulations that the use of a mixture is not economically or technically feasible. By petitioning concurrently for a permanent fuels mixture exemption Brunswick has, in effect, represented that the use of a mixture is economically and technically feasible in the planned boiler. Accordingly, ERA's staff recommends denying the requested permanent exemptions for emergency purposes and scheduled equipment outages.

In support of its request for a fuels mixture exemption, Brunswick submitted design specifications for the package boiler and an engineering assessment of the gas/oil proportions needed to maintain operational reliability and a reasonable level of fuel efficiency. Brunswick proposes to burn as a primary energy source: (a) hydrogen gas at the regular operational level of the boiler and (b) oil or a mixture of hydrogen gas/oil (82 percent hydrogen and 18 percent oil) when the boiler is operated at higher capacities. Brunswick has certified that the total amount of oil that is proposed to be used in the package boiler will not exceed 25 percent of the total annual Btu heat input of the primary energy sources used in the unit.

ERA's staff has reviewed the information contained in the record of this proceeding to date. Based upon that review, a Tentative Staff Analysis has been made which recommends that an order be issued granting a permanent fuel mixture exemption for the boiler to use a fuels mixture of hydrogen and petroleum in that unit, provided that the amount of oil used does not exceed 25 percent of the total annual Btu heat input of the primary energy sources used.

This Tentative Staff Analysis also takes into account the purposes for which the minimum percentage of petroleum provided by a fuels mixture exemption is to be used, i.e., to maintain reliability of operation, consistent with maintaining a reasonable level of fuel efficiency. Therefore, should this exemption be granted, ERA will not exclude from the definition of primary energy source any fuel used for unit ignition, start-up, testing, flame stabilization, and control uses.

This recommendation is based upon Brunswick's certification that the amount of petroleum to be used in the mixture will not exceed 25 percent of the annual Btu heat input of the primary energy sources used by the unit.

Based upon information provided by Brunswick, ERA conducted an environmental analysis which has been reviewed by DOE's Office of Environment, with consultation from the Office of the General Counsel, and DOE has concluded that the granting of this exemption is not a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act of 1969. Accordingly, neither an environmental impact statement nor an environmental assessment is required.

Recommended terms and conditions: ERA's staff also has tentatively determined and recommends that any order which would grant the requested fuels mixture exemption to Brunswick should, pursuant to Section 214 of the Act, be subject to the following terms and conditions:

1. The amount of petroleum used in the package boiler shall not exceed 25 percent of the total annual Btu heat input of the primary energy sources used in that unit.

2. In accordance with the reporting requirement in Section 503.38(g) of the final rule, Brunswick will submit an annual report to the Economic Regulatory Administration (ERA), Case Control Unit (Fuel Use Act), Box 4629, Room 3214, 2000 M Street, NW., Washington, DC 20461, each year on the anniversary of the effective date of the exemption, containing the following:

A certified statement indicating the percentage of petroleum used in the boiler, including the actual quantities of hydrogen (in MCF) and petroleum (in Bbls) used, as well as the higher heating value (in Btu's per lb., Btu's per MCF, or Btu's per gallon) of those fuels. The following format should be used for the unit:

Fuel type	Amounts used (tons) (mcf) (bbls)	Btu equivalent	Percent of total annual Btu heat input

3. The quality of any petroleum to be burned in the unit will be the lowest grade available, which is technically feasible, and capable of being burned consistent with applicable environmental requirements.

4. All steam pipes must be insulated and all steam traps properly maintained.

5. Brunswick must comply with any terms and conditions which may be imposed pursuant to the environmental requirements of § 503.15(b) of the final rule.

This Tentative Staff Analysis does not constitute a decision by ERA to grant the requested exemption. Such a decision shall, in accordance with § 501.68(c) of the final rule, be based on the entire record of this proceeding, including any comments received on the Tentative Staff Analysis.

Issued in Washington, DC, on October 16, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-33572 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER81-32-000]

Central Maine Power Co.; Proposed Tariff Change

October 21, 1980.

The filing Company submits the following:

Take notice that Central Maine Power Company (Central Maine) on October 16, 1980 tendered for filing as a supplement to existing FERC Electric Tariff, 3rd Revised Volume No. 1, Tariff Schedule W–3 as a noncontract rate for Madison Electric Works (MEW).

Central Maine states that Tariff Schedule W–4 is filed to allow MEW a fixed base for purchasing capacity and energy while allowing MEW to purchase their excess capacity and energy from other sources. The charges for fixed capacity and energy purchases are at the same rate as Tariff Schedule W–1 accepted by the Commission in Docket No. ER79–539. There is no increase to MEW in the cost of electric service for the same capacity and energy levels that they experienced in the past year. Tariff Schedule W–3 establishes excess capacity and energy charges based on the cost of capacity and energy at Central Maine's William F. Wyman Unit No. 4, plus wheeling charges from Unit No. 4 to the MEW system.

Central Maine requests an effective date of December 15, 1980 under statutory procedure.

Central Maine states that acceptance of Tariff Schedule W–3 and granting of the waiver will have no effect on any purchases by any other wholesale customer of Central Maine.

Central Maine further states that copies of the filing were served upon the Chairman and Superintendent of Madison Electric Works.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, N.E., Washington, D.C. 20426, in accordance with Section 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 10, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33580 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3279]

City of Kent, Ohio; Application for Preliminary Permit

October 7, 1980.

Take notice that the City of Kent (Applicant) filed on July 31, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3279 to be known as the Kent Dam Project located on the Cuyahoga River in Portage County, Ohio. Correspondence with the Applicant should be directed to: Mr. Roy P. Stype, City Manager, City of Kent, 319 South Water Street, Kent, Ohio 44240.

Project Description—The proposed project would consist of existing project works including: (1) Kent Dam, a sandstone structure 125 feet long and 18 feet high at spillway crest elevation 1,030 feet m.s.l.; (2) a reservoir of negligible storage capacity (about 80 acre-feet); (3) a 12-foot wide lock structure at the east (left) abutment containing two 5-foot by 3.5-foot gates; and new project works to include (4) a penstock; (5) a powerhouse with an installed capacity of 500 kW; (6) a discharge conduit or channel; and (7) other appurtenances. Applicant estimates annual generation would average 2.5 million kWh.

Purpose of Project—Project energy would be partially utilized by the City of Kent for municipal purposes with the balance of the energy being sold to local industries and to the local utility company.

Proposed Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time it would accomplish hydrological, engineering, environmental, and economic feasibility studies to determine the optimum design for hydroelectric development of the project site. If feasible, Applicant would prepare an FERC license application. Applicant estimates the cost of the studies under a preliminary permit would not exceed $40,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before November 17, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than January 16, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), (as amended, 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR, 4.33 (a) and (d), (as amended, 44 FR 61328, October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before November 17, 1980. The Commission's address is: 825 North Capitol Street NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33581 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP78-111]

Columbia Gulf Transmission Co.; Petition To Amend

October 21, 1980.

Take notice that on September 30, 1980, Columbia Gulf Transmission Company (Petitioner), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP78-111 a petition to amend the order issued May 30, 1978, in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize the conversion of natural gas measurement from a volume basis to a heat content basis, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that by order issued May 30, 1978, it was authorized to transport up to 2,000 Mcf of natural gas per day to Amoco Gas Production Company at a rate of 2.5 cents per Mcf for delivery in St. Landry Parish, Louisiana.

Petitioner proposes herein to transport gas on a more equitable thermally equivalent basis instead of on a volume basis, it is stated. It is asserted that the transportation service authorized previously would otherwise remain unchanged.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 6, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33582 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-582]

Columbia Gulf Transmission Co.; Application

October 21, 1980.

Take notice that on September 30, 1980, Columbia Gulf Transmission Company (Applicant), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP80-582 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Amoco Production Company (Amoco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport for Amoco up to 7,000 Mcf of natural gas per day produced in St. Charles Parish, Louisiana. It is stated that Applicant would receive the gas at the tailgate of Texaco Inc.'s Paradis Plant and transport such gas for Amoco through its east lateral and main line systems and redeliver a thermally equivalent quantity of gas less gas used as compressor fuel to Amoco through existing measuring facilities connecting the pipelines of Applicant and Florida Gas Transmission Company (Florida) in St. Landry Parish, Louisiana.

Applicant states that Amoco would pay Applicant a rate of 2.50 cents per Mcf for the transportation service provided. It is asserted that the transportation service would commence upon initial deliveries and would terminate on June 10, 1988. Amoco has advised that the gas would be delivered to Florida in partial satisfaction of its warrenty obligation.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 6, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10) All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33583 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ES81-4-000]

El Paso Electric Co.; Application

October 21, 1980.

Take notice that on October 8, 1980, El Paso Electric Company (Applicant) filed a request with the Commission, pursuant to Section 204 of the Federal Power Act, for authority to negotiate for the placement of up to $18 million of five-year unsecured notes. The Applicant is a Texas Corporation, with its principal office at El Paso, Texas and is engaged in the electric utility business in Texas and New Mexico.

Any person desiring to be heard or to make any protest with reference to the application should on or before November 7, 1980, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, petitions or protests in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33584 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-31-000]

Green Mountain Power Corp.; Proposed Tariff Change

October 21, 1980,

The filing Company submits the following:

Take notice that Green Mountain Power Corporation (GMPC) on October 14, 1980 tendered for filing proposed changes in its Transmission and Metering rate schedule under contracts filed with the Federal Energy Regulatory Commission, as contained in Docket Nos. ER78-33, ER78-187 and ER80-458. The proposed changes would increase revenues from jurisdictional sales and service by $50,525.76 based on the 12 month period ending April 30, 1981.

Copies of the filing were served upon the Village Light Departments of Stowe, Hardwick, Morrisville, Northfield, Jacksonville and Readsboro, Vermont, and on Washington Electric Cooperative of East Montpelier, Vermont, and upon the State of Vermont Public Service Board.

Any person wishing to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before November 10, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33585 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-565]

Midwestern Gas Transmission Co.; Application

October 21, 1980.

Take notice that on September 19, 1980, Midwestern Gas Transmission Company (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP80-565 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to implement the terms of gas exchange agreement between Applicant, Northern and Michigan Wisconsin Pipe Line Company (Mich Wis) dated August 15, 1980, wherein Applicant has agreed to transport and deliver on a best-efforts basis to Northern at the North Branch, Minnesota, delivery point the quantities of natural gas requested by Mich Wis to be reduced from deliveries to Mich Wis at the Marshfield, Wisconsin, delivery point. Deliveries by Applicant to

V 45 OCT 29 80 UMI

Northern by virtue of the exchange arrangement would be deemed to be deliveries by Applicant for the account of Mich Wis pursuant to the gas purchase contract between the parties dated July 17, 1967, it is asserted.

Applicant submits that the proposed transportation and delivery of natural gas are needed by Northern at the North Branch Delivery Point to enable Northern to meet winter-time requirements on the north end of its system. Northern, it is asserted, would redeliver an equivalent quantity to Mich Wis at a point on Northern's system at Janesville, Wisconsin. No additional facilities would be required to implement the provisions of the stated agreement, it is asserted.

Applicant asserts that it would transport 50,000 Mcf of gas per day on a best-efforts basis and at its option such additional volumes as tendered by Mich Wis with such service to be performed during the period of October 1, 1980, through April 30, 1981, and October 1, 1981, through April 30, 1982. Applicant further asserts that the quantity of gas transported and delivered to Northern at the North Branch delivery point would be equivalent to the volume of gas delivered by Northern to Mich Wis at the Janesville point.

Applicant states that Northern would pay 4.06 cents for each Mcf transported.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 6, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33586 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TC80-94]

Mississippi River Transmission Corp.; Tariff Sheet Filings

October 7, 1980.

Take notice that on September 26, 1980, Mississippi River Transmission Corporation (Mississippi River), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. TC80-94 revised tariff sheets pursuant to Part 281 of the Commission's Regulations under the Natural Gas Policy Act of 1978 to become effective November 1, 1980.

Mississippi River has filed as part of its FERC Gas Tariff, first Revised Volume No. 1, the following rivised tariff sheets:

Second Revised Sheet No. 35.

Third Revised Sheet No. 36.

Second Revised Sheet No. 38.

Third Revised Sheet No. 39.

The revised tariff sheets set forth above are filed to reflect changes in the Index of Protected Essential Agricultural Use (Step 10) Entitlements and in the Index of High Priority (Step 11) Entitlements to be effective during the period November 1, 1980, through April 14, 1981, pursuant to paragraph 8.2(a)(i) of Mississippi's curtailment plan.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filings should on or before October 23, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33587 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-546]

Monongahela Power Co., et al.; Order Accepting for Filing and Suspending Proposed Rates in Part, Granting Waiver of Notice Requirements, Consolidating Proceedings, and Establishing Procedures

Issued October 17, 1980.

On July 23, 1980, as completed on August 18, 1980,[1] Allegheny Power Service Corporation (APS) filed on behalf of Monongahela Power Company, Potomac Edison Power Company, and West Penn Power Company—the electric utilities making up the Allegheny Power System—Amendment No. 8 to an Operating Agreement dated January 1, 1973, which provides for interchange services between the Allegheny Power System Companies and the Virginia Electric and Power Company (VEPCO).[2]

Amendment No. 8 provides for an increase in the demand charge for short-term power from $0.70/Kw-week to $0.85/Kw/week and an increase in the demand charge for limited-term power from $3.75/Kw/month to $4.50/Kw/month. Related short-term and limited-term third party transmission charges would be increased from $0.175/Kw-week and $0.74/Kw-month to $0.24/Kw/week and $0.00/Kw/month, respectively. The existing 10% adder to the purchase cost of energy and the 15% adder to the purchase cost of energy supplied by third parties would be limited to 2.0 mills/Kwh and 1.0 mills/Kwh, respectively.

APS has requested the Commission to waive the notice requirements of section 35.3 of the regulations to permit Amendment No. 8 to become effective August 1, 1980.

Notice of the filing was issued on August 4, 1980, with responses due on or before August 22, 1980. No comments, protests, or petitions to intervene were filed.

Discussion

APS's proposed short-term and limited-term demand charges, third party transmission charges, and

[1] The Commission's filing requirements were satisfied when Virginia Electric and Power Company submitted its certificate of concurrence and cost support for the revised interchange rates.

[2] *See* Attachment for rate schedule designations.

chapped percentage adders are identical to rates and charges previously accepted by the Commission.[3] Similarly, VEPCO's third party transmission charges and capped percentage adders have also been accepted by the Commission.[4] The Commission permitted the previously submitted rates to become effective on August 1, 1980, and we believe that a concurrent effective date for the instant charges will facilitate implementation of the various service schedules among the parties with which APS is interconnected. Thus, we find that good cause exists to grant waiver of the notice requirements and we shall accept the portions of the instant submittal identified above for filing to become effective August 1, 1980, without suspension.

Our analysis indicates, however, that the short-term and limited-term demand charges proposed by VEPCO suffer from the same inadequacies as the rates recently submitted by VEPCO in Docket No. ER80-485. The company has provided identical cost data in support of the identical short-term demand charge; the proposed limited-term demand charge is based directly on the short-term demand charge (expressed as a per month charge and adjusted to reflect 20% reserves). As in the prior proceeding, we find that these proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful. Accordingly, we shall accept VEPCO's proposed short-term and limited-term demand charges for filing and suspend them as ordered below.

In a number of suspension orders,[5] we have addressed the considerations underlying the Commission's policy regarding rate suspensions. For the reasons given there, we have concluded that rate filings should generally be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust and unreasonable or that it may run afoul of other statutory standards. We have acknowledged, however, that shorter suspensions may be warranted in circumstances where suspensions for the maximum period may lead to harsh and inequitable results. Such circumstances have been presented here. The Commission notes that with respect to the same short-term demand charge as that currently proposed by VEPCO, the Commission ordered a one-day suspension in Docket Nos. ER80-484 and ER80-485. We indicated that potentially excess revenues could be offset, in part, by the use of fixed adders, and that the services in question lend themselves to a nominal suspension. Consistent with the suspension period ordered in Docket Nos. ER80-484 and ER80-485, we shall exercise our discretion to suspend VEPCO's short-term and limited-term demand charges for one day permitting that portion of the instant submittal to take effect subject to refund thereafter on August 2, 1980. Moreover, because this docket presents questions of law and fact common to those being considered in Docket Nos. ER80-484 and ER80-485, we shall consolidate this proceeding with the proceedings in Docket Nos. ER80-484 and ER80-485.[6]

In addition, our analysis in Docket Nos. ER80-484 and ER80-485 indicated that VEPCO's use of average system production investment in support of interchange service demand charges was improper because such average system pricing does not track the demand related costs of the marginal units assigned to interchange service. Our order establishing the hearing in those dockets on the proposed demand charge limited the scope of the proceedings to the proper development of the production component of VEPCO's interchange service demand charges. Accordingly, we shall similarly limit the scope of this proceeding to the proper development of the production component of VEPCO's proposed demand charges for short-term and limited-term power.

The Commission Orders

(A) Waiver of the notice requirements of section 35.3 of the Commission's regulations is hereby granted.

(B) APS's proposed short-term, limited-term, and related third party transmission rates (including the associated capped adders) and VEPCO's proposed third party transmission rates (including all of VEPCO's proposed capped adders) are hereby accepted for filing, to become effective August 1, 1980, without suspension.

(C) The short-term and limited-term demand charges proposed by VEPCO in this proceeding are hereby accepted for filing and suspended for one day, to become effective on August 2, 1980, subject to refund pending hearing and decision thereon.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the DOE Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act [18 CFR, Chapter I (1980)], a public hearing shall be held concerning the justness and reasonableness of the short-term and limited-term demand charges proposed by VEPCO in this proceeding. The investigation shall be confined to the limited issue of the proper development of the production component of VEPCO's proposed demand charges for short-term and limited-term power.

(E) This proceeding is hereby consolidated with Docket Nos. ER80-484 and ER80-485 for purposes of hearing and decision thereon.

(F) The administrative law judge previously designated to preside in Docket Nos. ER80-484 and ER80-485 shall convene a conference in this consolidated proceeding at the earliest convenience of the parties in order to establish a procedural schedule that will accommodate consolidation of Docket No. ER80-546 with the pending proceeding.

(G) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment A

Allegheny Power Service Corp., Rate Schedule Designations, Docket No. ER80-546

Designation and Description

Monogahela Power Co.

(1) Supplement No. 6 to Rate Schedule FPC No. 32—Short Term Power
(2) Supplement No. 7 to Rate Schedule FPC No. 32—Limited Term Power

The Potomac Edison Co.

(3) Supplement No. 6 to Rate Schedule FPC No. 33—Short Term Power
(4) Supplement No. 7 to Rate Schedule FPC No. 33—Limited Term Power

West Penn Power Co.

(5) Supplement No. 6 to Rate Schedule FPC No. 31—Short Term Power
(6) Supplement No. 7 to Rate Schedule FPC No. 31—Limited Term Power

[3] *Pennsylvania-New Jersey-Morylond Interconnection, et al.*, Docket Nos. ER80-427, *et al.* (order issued July 31, 1980).

[4] *Pennsylvania-New Jersey-Maryland Interconnection, and Virginia Electric & Power Co.*, Docket Nos. ER80-484 and ER80-485 (order issued August 21, 1980).

[5] *E.g., Boston Edison Co.*, Docket No. ER80-508 (August 29, 1980) (five month suspension); *Alabama Power Co.*, Docket Nos. ER80-506, *et al.* (August 29, 1980) (one day suspension); *Cleveland Electric Illuminating Co.*, Docket No. ER80-488 (August 22, 1980) (one day suspension).

[6] A prehearing conference was held in Docket Nos. ER80-484 and Er80-485 on September 4, 1980, and a procedural schedule has been adopted.

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Virginia Electric Power Co.

(7) Supplement No. 6 to Rate Schedule FPC No. 99 (Concurs in (1)–(6) above)—Certificate of Concurrence

[FR Doc. 80-33588 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-3-000]

Natural Gas Pipeline Co. of America; Application

October 21, 1980.

Take notice that on October 1, 1980, Natural Gas Pipeline Company of America (Applicant), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP81-3-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of lateral pipeline and other facilities (High Plains "C" Project) to attach new gas supplies to its system, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes under its High Plains "C" Project to construct and operate lateral pipeline consisting of approximately 92 miles of 4, 6, 10 and 12-inch pipeline, approximately 4,000 horsepower of compression, and other appurtenant facilities in Garden, Devel, Cheyenne and Morrill Counties, Nebraska. Also, it is proposed that Applicant would install communication facilities. Applicant states that the pipeline and facilities would deliver up to 40,000 Mcf of gas per day from its area of interest to a point of connection on Trailblazer Pipeline Company's proposed pipeline located in Sedgwick County, Colorado.

Applicant states that the construction is necessary because the new and developing gas fields offer some of the best and most economical sources of long-term gas reserves.

Applicant would purchase gas found in the shallow Miabrara Chalk formation and from any other zones producing under contracted acreage available to it. Applicant projects that 103,600,000 Mcf of combined proved reserves and potential gas supply are contained in the Miabrara Chalk formation within the evaluated area.

It is stated that the total estimated cost of the High Plains "C" Project of $16,650,000 would be financed initially with funds on hand, borrowings under Applicant's revolving credit arrangements or short-term financing.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 6, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33589 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-558]

Northern Natural Gas Co., a Division of InterNorth, Inc.; Application

October 21, 1980.

Take notice that on September 17, 1980, Northern Natural Gas Company, a Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP80-558 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to sell for resale volumes in excess of its firm entitlement to West Texas Gas, Inc. (West Texas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it is currently authorized to sell and deliver up to 350,000 Mcf of gas per month and 2,294,219 Mcf of gas annually to West Texas for resale to Applicant's pipeline right-of-way grantors and other customers for residential, irrigation fuel, and other high priority uses in rural areas of West Texas and that such sales are made pursuant to Applicant's Rate Schedule X-40.

Applicant proposes herein to implement the terms of a contract between it and West Texas dated August 27, 1980, which provides for the sale of authorized overrun volumes in excess of firm entitlement and stipulates that the availability of overrun volumes would be determined at the sole discretion of Applicant and would be subject to advance operating arrangements, it is said. Applicant asserts that no overrun service would be offered on any day when curtailment below firm entitlement is required anywhere on its system and that during any period when overrun volumes are authorized, Applicant may curtail or completely interrupt such service by giving West Texas reasonable advance notice. It is further asserted that total volumes delivered to West Texas on any day would not exceed that volume which Applicant would be capable of delivering with then existing facilities and under then existing operating conditions on its pipeline system. It is submitted that the rate to be paid by West Texas to Applicant for each Mcf of authorized overrun gas delivered would be that as set forth on the then effective Sheet No. 1c of Applicant's FERC Gas Tariff, Original Volume No. 2, for Rate Schedule X-40.

It is asserted that the proposed overrun service has been requested by West Texas to offer them the opportunity to serve requirements on their system in excess of their firm entitlement.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 6, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 of 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33590 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-19-000]

Tapoco, Inc.; Filing

October 21, 1980.

Take notice that Tapoco, Inc. on October 9, 1980, tendered for filing, under protest, pursuant to Section 35.12 of the Commission's Regulations, a copy of its 1971 Apportionment Agreement with Nantahala Power and Light Company. Tapoco indicates that this agreement is an adjunct to the New Fontana Agreement, on file as Tapoco's Rate Schedule No. 3, which provides for an energy-for-energy swap by Tapoco and Nantahala with the Tennessee Valley Authority. Tapoco indicates that the Apportionment Agreement defines the quantities of energy delivered by TVA to Tapoco in return for the output of the Tapoco generating plants and will terminate at the same time as the New Fontana Agreement, December 1982.

Any person desiring to be heard or to protest this filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 10, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33595 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP75-119-002]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Petition To Amend

October 21, 1980.

Take notice that on October 1, 1980, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Petitioner), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP75-119-002 a petition to amend the order issued March 20, 1978, as amended, in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize the establishment of new points of receipt for gas received from Shell Oil Company (Shell) and to extend the term of the transportation service for Shell, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Applicant states that it presently receives from Shell specified volumes of natural gas at specified receipt points and is authorized to transport such gas to an interconnection with Creole Gas Pipeline Company (Creole) at Yscloskey, Louisiana, for delivery to Creole for sale by Creole to Air Products and Chemicals Inc. Applicant proposes herein to add new receipt points from Shell and to extend the term of the transportation service to July 1, 1990.

Applicant proposes to establish two new points of receipt from Shell located at Applicant's Valve No. 526A-213 on its Louisiana Coastal Extension—Main Pass Block 35 Line No. 526A-200, Plaquemines Parish, Louisiana, and near mile post 520A-301 plus 6.95 Miles on its Louisiana Coastal Halter Island Line in Terrebonne Parish, Louisiana.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 6, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33591 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP76-261]

Texas Eastern Transmission Corp.; Petition To Amend

October 21, 1980.

Take notice that on September 18, 1980, Texas Eastern Transmission Corporation (Petitioner), P.O. Box 2521, Houston Texas 77001, filed in Docket No. CP76-261 a petition to amend the order issued in the instant docket on October 27, 1976,[1] pursuant to Section 7(c) of the Natural Gas Act so as to authorize the addition of two points of exchange between Petitioner and Arkansas Louisiana Gas Company (Arkla), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that by order of October 27, 1976, it was authorized to exchange natural gas on a gas for gas basis at points where Arkla's transmission lines cross petitioner's transmission lines in Shelby and Marion Counties, Texas, and Caddo Parish, Louisiana, pursuant to July 12, 1976, agreement between the parties.

Petitioner requests amendment of the October 27, 1976, order pursuant to an amendment agreement dated March 16, 1980, so as to include the following two additional points of exchange with Arkla:

(1) Arkla's Line AT-7, J. H. Ridgeway A-604 Survey, Harrison County, Texas.
(2) Arkla's Line A-150, T. Naramore A-522 Survey, Harrison County, Texas.

Petitioner states that it has been purchasing gas from Insearch Exploration, Inc. (Insearch) pursuant to two gas purchase contracts dated October 27, 1974, from the Whelan Field, Harrison County, Texas. It is asserted that Insearch has gas available from the W. T. Cook Unit and the Williams Unit, both in the Whelan Field, for sale to Petitioner under the above contracts. It is further asserted that Arkla has

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

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existing facilities connecting the wells into its system and is willing to receive at the two Harrison County, Texas, points natural gas for Petitioner's account and redeliver equivalent volumes of gas to Petitioner at the existing exchange point between the two systems at Arkla's Waskom Products Extraction Plant in East Texas.

It is submitted that implementation of the proposed exchange would enable Petitioner to receive gas into its interstate system from properties which could not other wise be feasibly connected directly to its system. It is further submitted that Arkla has ample capacity on its system to render the service contemplated herein and its obligations under the exchange agreement would have no significant effect on the operation of its system.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 6, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in the determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33592 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-575]

Texas Eastern Transmission Corp. Application

October 21, 1980.

Take notice that on September 25, 1980, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77001, filed in Docket No. CP80-575 an applicant pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the expansion of two meter stations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to expand its Meter and Regulatory Station Nos. 070 and 519 in Lancaster and Dauphin Counties, Pennsylvania. The proposed expansion would increase the station delivery rates from approximately 562 dekatherms (dt) equivalent per hour to 2,035 dt equivalent per hour at Lancaster and 1,639 dt equivalent to 3,155 dt equivalent per hour at Dauphin, it is asserted. Applicant states that the proposed expansions are necessary in order to meet the peak demand market requirements of Applicant's existing customer, Columbia Gas Transmission Corporation (Columbia).

It is stated that the estimated cost of the expansion would be a total of $204,500 ($133,800 at Lancaster and $70,700 at Dauphin) for which cost Applicant would be reimbursed by Columbia.

Applicant further states that the proposed increases in station delivery rates would not result in an increase in total daily deliveries to Columbia or in contract quanitites nor would it necessitate a change in Applicant's service agreements with Columbia.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 6, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33593 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-585]

Texas Gas Transmission Corp.; Application

October 21, 1980.

Take notice that on September 30, 1980, Texas Gas Transmission Corporation (Applicant) P.O. Box 1160, Owensboro, Kentucky 42301, filed in Docket No. CP80-585 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a metering station in Madison County, Tennessee, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate a metering station to supplement the current service provided to Jackson Utility Division, Jackson, Tennessee, (Jackson) by a single 8-inch pipeline in Jackson, Tennessee. Applicant states that the station would be located at approximately milepost 5+2721 on Applicant's Humbolt 6-inch pipeline in Madison County, Tennessee. It is asserted that the estimated cost of $144,600 would be borne by Jackson.

Applicant contends that the proposed operations would augment Jackson's customer service ability and allow it to add a secondary feed to its present system. It is stated that such activity would not increase Jackson's existing contract demand or quantity entitlement.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 6, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33594 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-1-000]

United Gas Pipe Line Co.; Application

October 21, 1980.

Take notice that on October 1, 1980, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP81-1-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities for the rearrangment of its existing Monroe Field Compressor Station and authorizing the operation of said station in interstate commerce, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to rearrange certain piping within its Monroe Field Compressor Station No. 1, Ouachita Parish, Louisiana, consisting of three 330 horsepower units, so that gas from Applicant's Monroe Field low pressure gathering system can be delivered into an existing pipeline of Applicant where it would no longer be confined within the state of Louisiana. It is stated that the low pressure system was constructed so that the gas could not leave the state and was used for deliveries of natural gas to the Sterlington Plant of Louisiana Power and Light Company (LP&L). Applicant states that the LP&L has so reduced its purchases that the gas projected to be available from the low pressure system exceeds the anticipated deliveries to LP&L's plant. It is stated that it is necessary, therefore, to rearrange certain piping within the Monroe Field Compressor Station No. 1 in order to make the gas available to Applicant's system generally. This would, it is stated, allow the gas to be delivered outside Ouachita Parish and outside Louisiana.

It is stated that the total cost of the proposal would be $15,000 most of the necessary facilities being already in existence. Applicant states that no new financing would be required.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 6, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33596 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-578]

United Gas Pipe Line Co., Transcontinental Gas Pipe Corp.; Application

October 21, 1980.

Take notice that on September 29, 1980, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, and Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP80-578 a joint application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the exchange of natural gas between United and Transco, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that by order issued August 9, 1974, in Docket No. CP74-175 United and Transco were authorized to exchange up to 3,000 Mcf of natural gas per day under the gas exchange agreement between them dated November 9, 1973. It is stated that Transco acquired a right to purchase an interest in production from the L. E. Martinez No. 1 well located in Lafourche Parish, Louisiana, attributable to the interest of Goldking Production Company (Goldking).

Applicants state that Goldking has informed Transco that said well has been plugged and abandoned. Furthermore, it is stated, Goldking has filed to abandon said sale of natural gas to Transco. Applicants state that they have agreed to cancel their 1973 gas exchange agreement and to abandon the exchange of natural gas.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 6, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the juristiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas

Act and the Commission's Rules of Practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33597 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3424]

Water Power Development Corp.; Application for Preliminary Permit

October 17, 1980.

Take notice that Water Power Development Corporation (Applicant) filed on September 2, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3424 to be known as West Thompson Project located on the Quinebaug River in Windham County, Connecticut. Correspondence with the Applicant should be directed to: Kenneth E. Mayo, P.E., President, Water Power Development Corporation, 23 Temple Street, Nashua, New Hampshire 03060.

Project Description—The proposed project would utilize the existing U.S. Army Corps of Engineers' West Thompson Lake Dam and would consist of: (1) a penstock utilizing outlet works which are near the right abutment; (2) a new powerhouse which will contain generating units having a total rated capacity of 2,260 KW; (3) a tailrace 400 feet long; (4) a transmission line; and (5) appurtenant facilities. Applicant estimates the annual generation would average about 7,920,000 KWH.

Purpose of Project—Project energy might be sold to the Connecticut Light and Power Company, but alternative purchasers consist of nearby public institutions, a rural electric cooperative, a municipal utility, or industrial users.

Proposed Scope and Cost of Studies Under Permit—Applicant seeks issuance of a preliminary permit for a period of three years, during which time it would prepare studies of the hydraulic, construction, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $50,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before January 5, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 6, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (as amended, 44 FR 61328, October 25, 1979). A competing application must conform with the requirments of 18 CFR 4.33 (a) and (d) (as amended, 44 FR 61328, October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before January 5, 1981. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33283 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-583]

Western Gas Interstate Co.; Application

October 21, 1980.

Take notice that on September 30, 1980, Western Gas Interstate Company (Applicant), 1800 First International Building, Dallas, Texas 75270, filed in Docket No. CP80-583 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, the transportation of natural gas on an exchange basis with Colorado Interstate Gas Company (CIG), and the sale of natural gas to CIG at proposed points of delivery, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to exchange natural gas with CIG on a gas for gas basis and to sell to CIG 25 percent of those volumes delivered for exchange pursuant to a gas transportation, exchange and sales agreement dated July 18, 1980, effective for a primary term of five years. Applicant states that it would charge CIG a cost-of-service rate equal to 30.52 cents per Mcf plus Applicant's monthly average purchase price per Mcf, weighted according to volumes, for gas produced from Grounds No. 1 Well, the Rollins No. 1 Well, and, the Paul Mendenhall No. 1 Well. It is stated that Applicant would deliver gas to CIG at a rate not to exceed 5,000 Mcf per day. Applicant states that any imbalance in the exchange rate would be corrected by delivery adjustments rather than by payments. Applicant states that it would initially pay a transportation rate of 22.12 cents per Mcf to CIG.

Furthermore, it is stated that Applicant proposes to construct and operate a 100 horsepower compressor and appurtenant facilities in Texas County, Oklahoma, in order to effectuate the proposed transportation, exchange and sales agreement with CIG.

It is stated that the total estimated cost of the facilities would be $110,265.00. Applicant implies that said cost would be financed from funds on hand.

Applicant identifies only one delivery point to CIG in Texas County, Oklahoma, but requests authorization to add additional points of delivery and receipt in the Texas and Oklahoma panhandles as may be agreed upon by Applicant and CIG. CIG would deliver exchange gas to Applicant at various points in Beaver and Cimarron Counties, Oklahoma, and Sherman County, Texas.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 6, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33598 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. CS80-193, etc.]

Robert W. Rea, Jr., et al.; Application for "Small Producer" Certificates[1]

October 22, 1980.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before November 3, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No.	Date filed	Applicant
CS80-193	8/12/80	Robert W. Rea, Jr., P.O. Box 7574, Monroe, Louisiana 71203.
CS80-194	8/7/80	James G. Myhre, 1910 LTV Tower, Dallas, Texas 75201.
CS80-195	8/8/80	Eldon Walker, 1100 Milam Building, Suite 580, Houston, Texas 77002.
CS80-196	8/20/80	C. David Long, P.O. Box 378, Guymon, Oklahoma 73942.
CS80-197	8/26/80	C. W. Dunnam, 2502 Country Club Drive, Midland, Texas 79701.
CS80-198	8/26/80	Colorado Gas Gathering Company, Inc., Post Office Box 16366, Houston, Texas 77022.
CS80-199	6/27/80	H. E. Karges, P.O. Box 1635, Jackson, MS 39205.
CS80-200	8/29/80	Energy Management Corporation and its affiliate EMC Management Company, 3500 Anaconda Tower, Denver, CO 80202.
CS80-201	9/2/80	Merrill Natural Resources, Inc., Rt. 1, Box 36, Fulks Run, VA.
CS80-202	9/2/80	Platte Valley Petro Energy Inc., 2480 W. 26th Ave., Suite 180B, Denver, CO 80211.
CS80-203	9/5/80	Red Leaf Oil Ltd., 212 N. Third Street, Olean, New York 14760.
CS80-204	9/8/80	Tyler Oil & Gas, Inc., 120 South College, Tyler, Texas 75702
CS80-205	9/11/80	Jalmer Berg, 1100 Milam Building, Suite 580, Houston, Texas 77002
CS80-206	9/11/80	Dr. William H. Rosenblatt, 515 St. Dominic Medical Office, Jackson, MS 39216.
CS80-207	9/11/80	Harris Energy Corporation, 1670 Broadway, Suite 3350, Denver, CO 80202.
CS80-208	9/15/80	Robert D. Charlebois, US Rte. 20 East, Cazenovia, NY.
CS80-209	9/18/80	Stillwater Drilling Program, 1028 First Federal Plaza, Rochester, New York 14614
CS80-210	9/18/80	Sugar Grove Drilling Program, 1028 First Federal Plaza, Rochester, New York 14614.
CS80-211	9/18/80	Catline Drilling Program, 1028 First Federal Plaza, Rochester, New York 14614.
CS80-212	9/18/80	Warren Frilling Program, 1028 First Federal Plaza, Rochester, New York 14614.
CS80-213	9/18/80	Clinton Drilling Program, 1028 First Federal Plaza, Rochester, New York 14614.
CS80-215	9/18/80	Bounty Oil & Gas, Inc., 409 Fenton Bldg., 2E. 2nd St., Jamestown, NY 14701.
CS80-216	9/19/80	Courier Oil Corporation, 610 Marshall, #630, Shreveport, LA.
CS80-217	9/22/80	Flint Oil & Gas, Inc., 421 Franklin Street, Buffalo, New York 14202.
CS80-218	9/22/80	Lucie C. Majoros, 2719 Felton Drive, East Point, Georgia 30344.
CS80-219	9/24/80	The Colorado National Bank of Denver, P.O. Box 5168 T.A., Denver, Colorado 80217.
CS80-220	9/22/80	Bennett Petroleum Corporation, 1580 Lincoln Street, Suite 630, Denver, Colorado 80203.
CS80-221	9/17/80	Belmont Resources, Inc., 239 W, One Bala Cynwyd Plaza, Bala Cynwyd, Penna. 19004.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

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Docket No.	Date filed	Applicant
CS80-223	9/23/80	Estate of Clara B. Guthrie, 2604 Beloit Street, Monroe, La. 71201.
CS80-224	9/23/80	Alliance Exploration Corporation, 1717 Houston Club Building, Houston, Texas 77002.
CS80-225	9/25/80	Roger C. Hamel, Jr., P.O. Box 1698, Victoria, Texas 77901.
CS80-226	9/25/80	Jack E. Bright, P.O. Box 3157 Victoria, Texas 77901.
CS80-227	9/25/80	L. E. Lewis, 3609 Parader, Dallas, Texas 75226.
CS80-228	9/25/80	Weeks Exploration Company, One Sylvan Road North, Westport CT 06880.
CS80-229	9/26/80	Envirogas Inc., 69 Delaware Ave., Suite 900, Buffalo, NY 14202.
CS80-230	9/29/80	The Home-Stake Oil & Gas Company, 507 Philtower Bldg, Tulsa, OK 74103.
CS80-231	9/29/80	O. Strother Simpson, 507 Philtower Bldg., Tulsa, OK 74103.
CS80-232	9/29/80	Robert C. Simpson, 507 Philtower Bldg., Tulsa, OK 74103.
CS80-233	9/29/80	Patricia A. Russell, 2703 S. Norwood, Tulsa, OK 74103.
CS80-234	9/29/80	Willam G. Seal, 4662 S. Troost, Tulsa, OK 74105.
CS80-235	9/29/80	Gary W. Fisher, 407 S. Independence, Sapulpa, OK 74066.
CS80-236	9/29/80	Harry V. Tucei, 3749 S. Erie, Tulsa, Ok 74135.
CS80-237	9/29/80	The Home-Stake Royalty Corporation, 507 Philtower Bldg., Tulsa, OK 74103.
CS80-238	9/30/80	Mark F. Thompson, 1700 Broadway, Suite 1219, Denver, Colorado 80290.
CS80-239	9/30/80	Diane Thompson, 1700 Broadway, Suite 1219, Denver, Colorado 80290.
CS80-240	9/30/80	Teresa T. Bou-Matar, 1700 Broadway, Suite 1219, Denver, Colorado 80290.
CS80-241	9/30/80	Ruth L. Bozman, 1700 Broadway, Suite 1219, Denver, Colorado, 80290.
CS81-1-000	10/2/80	Estate of John E. McKeen c/o DeForest & Duer, 20 Exchange Place, N.Y., N.Y. 10005.

[FR Doc. 80-33663 Filed 10-28-80; 8:45 am]
BILLING CODE 6450-85-M

[Docket No. RA81-7-000]

Ron Cromwell Chevron; Filing of Petition for Review

October 22, 1980.

Take notice that Ron Cromwell Chevron on October 14, 1980, filed a Petition for Review under 42 U.S.C. 7194(b) (1977) Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the Petition for Review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before November 6, 1980, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before November 6, 1980, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., NE., Washington, D.C. 20426.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-33664 Filed 10-28-80; 8:45 am]
BILLING CODE 6450-85-M

[Docket No. RA81-6-000]

Self-Serve Chevron; Filing of Petition for Review

October 22, 1980.

Take notice that Self-Serve Chevron on October 14, 1980, filed a Petition for Review under 42 U.S.C. 7194(b) (1977 Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before November 6, 1980, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before November 6, 1980, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue SW., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol Street NE., Washington, D.C. 20426.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-33665 Filed 10-28-80; 8:45 am]
BILLING CODE 6450-85-M

[Docket Nos. G-17647-000, etc.]

Shell Oil Co., et al.; Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates[1]

October 22, 1980.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before October 31, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft.[3]	Pressure base
G-17647-000, D, 10/9/80	Shell Oil Company, One Shell Plaza, P.O. Box 2463, Houston, Tex. 77001.	Transcontinental Gas Pipe Line Corporation, Big Foot Field, Frio and Atascosa Counties, Tex.	(1)	
G-18054, D, 9/22/80	General American Oil Company of Texas, Meadows Building, Dallas, Tex. 75206.	Southern Natural Gas Company, Dexter Field, Walthall County, Miss.	(2)	
CI66-890, 9/8/80[3]	Conoco Inc., P.O. Box 2197, Houston Tex. 77001.	Texas Eastern Transmission Corporation, Rayne Field, Acadia Parish, LA.	(4)	15.025
CI66-1042, D, 9/23/80	Phillips Petroleum Company, 5 C4 Phillips Building, Bartlesville, Okla. 74004.	Valley Gas Transmission, Inc., Chatham Field, Jackson Parish, La.	(5)	
CI72-555-002, C, 10/14/80.	Texas Pacific Oil Company, Inc., 1700 One Main Place, Dallas, Tex. 75250.	Panhandle Eastern Pipe Line Company, Reydon Area, Roger Mills County, Okla., and Hemphill County, Tex.	(6)	14.65
CI76-730, C, 9/22/80	Mobil Oil Exploration & Producing Southeast Inc., Nine Greenway Plaza, Suite 2700, Houston Tex. 77046.	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., and Columbia Gas Transmission Corporation, South Timbalier Blocks 29 and 37, Federal Offshore Louisiana.	(7)	14.73
CI77-50-001, C, 10/8/80	Florida Exploration Company, P.O. Box 44, Winter Park, Fla. 32790.	Florida Gas Transmission Company, Vermilion Block 21, Offshore Louisiana.	(8)	15.025
CI77-453, D, 9/22/80	General American Oil Company of Texas.	El Paso Natural Gas Company, S.E. Parsell Field, Hemphill County, Tex.	(2)	
CI77-737-000,-O, 10/6/80	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Tex. 75221.	Transwestern Pipeline Company, Grayburg-Morrow Field, Eddy County, N. Mex.	(9)	
CI78-391, C, 9/22/80	Tenneco Oil Company, P.O. Box 2511, Houston Tex. 77001.	El Paso Natural Gas Company, E/2 of Sec. 29-T32N-R11W, San Juan County, N. Mex. (Limited to the Dakota Formation).	(10)	15.025
CI78-816, C, 9/19/80	Exxon Corporation, P.O. Box 2180, Houston Tex. 77001.	Columbia Gas Transmission Corporation, Eugene Island Blcok 251 Field, Offshore Louisiana.	(11)	15.025
CI80-49, C, 7/21/80	Mobil Oil Exploration & Producing Southeast Inc., Nine Greenway Plaza, Suite 2700, Houston Tex. 77046.	Trunkline Gas Company, South Timbalier Block 156 Field, Offshore Louisiana.	(12)	15.025
CI80-180, C, 9/29/80	MCOR Oil and Gas Corporation (Formerly: McCulloch Oil and Gas Corporation), 10880 Wilshire Boulevard, Los Angeles, Calif. 90024.	El Paso Natural Gas Company, Stout No. 1-25 Well, Section 26-T10N-R20W, Washita County, Okla.	(13)	14.65
CI80-464, A, 8/5/80	Texasgulf, Inc., 1100 Milam Building, Houston Tex. 77002.	Northern Natural Gas Company, Block 104, East Cameron Area, Offshore Louisiana.	(14)	15.025
CI81-7-000, A, 10/6/80	ARCO Oil and Gas Company, Division of Atlantic Richfield Company (Operator), P.O. Box 2819, Dallas, Tex. 75221.	Tennessee Gas Pipeline Company, Vermilion Block 104 Area, Offshore Louisiana.	(15)	15.025
CI81-8-000, A, 10/6/80	Exxon Corporation, P.O. Box 2180, Houston Tex. 77001.	United Gas Pipe Line Company, Gabrysch Field, Jackson County, Tex.	(11)	14.65
CI9-000-, B, 10/6/80	Burdette Oil & Gas Co., Inc., P.O. Box 10167, Station "C", Charleston, W. Va. 25312.	Columbia Gas Transmission Corporation, Ravenswood Field, Jackson County, W. Va.	(16)	
CI81-10-000 (G-18118), B, 10/9/80.	Appalachian Exploration & Developmet, Inc., One Houston Center, Suite 1000, Houston Tex. 77002.	Gas Transport, Inc., Jackson-Wirt Field, Wood and Jackson Counties, W. Va.	(17)	

Docket No and date filed	Applicant	Purchaser and location	Price per 1,000 ft.³	Pressure base
CI81-11-000, B, 10/6/80	Hanagan Petroleum Corporation, P.O. Box 1737, Roswell, N. Mex. 88201.	Transwestern Pipeline Company, West One-Half of Section 34-23S-25E, Eddy County, N. Mex.	(1[9])	.....
CI81-12-000, A, 10/9/80	Union Oil Company of California, Union Oil Center, Room 901, P.O. Box 7600, Los Angeles, Calif. 90051.	United Gas Pipe Line Company, Block A-469, High Island Area, Offshore Texas.	(1[9])	14.65

[1] Due to lessor demand, Shell released approximately 192 acres all lying outside the Big Foot Olmos "B" Unit. There are no current producing wells on acreage. Also, our geological interpretation indicates there are no potential zones for development between the surface to 4000 feet underlying those lands.

[2] Final determination under Section 103 of the NGPA of 1978.

[3] To shut down the Rayne LaGlona Plant because the gas reserves have been depleted to the extent that it is no longer considered profitable by the plant operator to operate the plant and it is the desire of Conoco, and Texas Eastern to establish a new delivery point which will be at the outlet of a gas processing plant in Acadia Parish, Louisiana, known as the Conoco Acadia Plant.

[4] Conoco and Texas Eastern have agreed, by Agreement dated 7-18-80 to the new delivery point.

[5] Release of acreage due to plugging and abandoning of the J SU C Tremont F No. 1 and the J SU H Tremont B No. 1, both located in Chatham Field, Jackson Parish, Louisiana.

[6] Applicant is filing under Gas Purchase and Sales Agreement dated 3-2-72, amended by Amendment dated 8-1-80.

[7] Applicant is filing under Gas Sales Contract, as amended, dated 8-3-76, and further amended by Amendment dated 8-11-80.

[8] Applicant is filing under Gas Sales and Purchase Contract dated 8-10-76, amended by Amendment dated 7-1-80.

[9] Pressure of casinghead gas involved is too low for gas to enter Purchaser's system. It is uneconomical for either party to compress.

[10] Applicant is filing under Gas Sales Contract dated 1-3-78, amended by Supplemental Gas Purchase Agreement dated 7-20-79.

[11] Applicant is willing to accept a permanent Certificate of Public Convenience and Necessity covering the subject sale conditioned in accordance with the NGPA of 1978 and the Commission's Regulations under said Act.

[12] Applicant is filing to amend its Contract under Amendment dated 4-15-80 and FERC GRS No. 93.

[13] Applicant is filing under Gas Purchase Agreement dated 1-1-80, amended by Amendment dated 1-2-80.

[14] Applicant is filing under Contract dated 7-30-80.

[15] Applicant is filing under Gas Purchase and Sales Contract dated 9-3-80.

[16] Two wells have not been in production since November, 1974, due to natural depletion and pressure decline.

[17] All gas reserves have been depleted to the extent that the continuance of gas service is unwarranted. The only remaining well was plugged and abandoned on 8-15-69.

[18] Well depleted and last sales made in April, 1980, well was plugged and abandoned by the Operator on 4-26-80 and well was the only well committed to Gas Purchase Contract and said contract expired on its own terms on 6-9-80. No further gas production is anticipated from this lease.

[19] Applicant is willing to accept a certificate at an initial rate of the maximum lawful price as prescribed in subsection 104(b) of the NGPA of 1978.

Filing code: A—Initial service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total succession. F—Partial succession.

[FR Doc. 80-33666 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. EC81-1-100]

South Carolina Electric & Gas Co.; Application

October 22, 1980.

The filing company submits the following:

Take notice that on October 10, 1980, South Carolina Electric & Gas Company (Applicant) filed an application seeking an order pursuant to Section 203 of the Federal Power Act authorizing it to purchase certain electric transmission facilities from Duke Power Company.

Applicant is incorporated under the laws of the State of South Carolina, with its principal office in Columbia, South Carolina, and is duly authorized to do business in the State of South Carolina and is engaged in the electric utility business in twenty-four of the forty-six counties in South Carolina.

The Applicant proposes, subject to regulatory approval, to perform its agreement of February 29, 1980, with Duke Power Company to purchase approximately 20.96 miles of 115 kv transmission line located near Newberry and the Saluda Hydroelectric Station. Applicant will pay $912,440.00 in exchange for said property.

Any person desiring to be heard or to make any protest with reference to said application should, on or before November 4, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it is determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file Rules. The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33667 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-4-000]

Texas Eastern Transmission Corp.; Application

October 21, 1980.

Take notice that on October 1, 1980, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77001, filed in Docket No. CP81-4-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to provide a firm storage withdrawal service for certain of its Rate Schedule SS-II customers and to construct and operate additional pipeline facilities required to render such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes herein to

1. Provide a firm storage withdrawal service for the following Rate Schedule SS-II customers at the following firm daily withdrawal quantities:

	Dekatherm equipment per day[1]
The Brooklyn Union Gas Company	12,500
Elizabethtown Gas Company	11,672
New Jersey Natural Gas Company	25,000
Public Service Electric and Gas Company	40,000
Total	89,172

[1] Firm daily withdrawal quantity dekatherm equivalent per day.

2. To construct and operate the following facilities required to render such service:

(a) 28.75 miles of 30-inch pipeline looping Applicant's existing 24-inch Line No. 12 and 30-inch Line No. 19 (Penn-Jersey System) at six locations between Delmont and Bechtelsville compressor stations in Pennsylvania;

(b) 2.0 miles of 36-inch pipeline looping Applicant's existing 24-inch Line No. 12 and 30-inch Line No. 19 between Bechtelsville and Lambertville (No. 26) compressor stations in Pennsylvania;

(c) A compressor addition not to exceed 20,000 horsepower and appurtenant facilities at Applicant's Delmont compressor station in Pennsylvania; and

(d) Expansion of three measuring and regulation stations in New Jersey.

Applicant states that by order issued June 16, 1980, in Docket No. CP80-170 it received authorization to render a long term storage service under its Rate Schedule SS-II for twelve of its existing resale customers and that to render such service, it obtained storage capacity from Consolidated Gas Supply Corporation (Consolidated) which was authorized by Docket No. CP80-220 to provide a firm long term storage service to Applicant under its Rate Schedule GSS.

With recent increases in the availability of gas supplies to the interstate market and Applicant's improved gas supply plus the increased withdrawal quantities offered by the SS-II Service, Applicant submits that its SS-II customers cannot continue to depend upon the availability of pipeline capacity to receive uninterrupted storage withdrawals.

In response to requests from the four SS-II customers scheduled above and after inquiry of all SS-II customers, Applicant has determined that it was economically feasible to render the firm withdrawal service by means of the facilities proposed herein and precedent agreements have been executed with the four SS-II customers which have requested firm daily withdrawal quantities, it is said.

Applicant states that as provided by its Rate Schedule SS-II, the annual costs associated with all facilities which must be added to Applicant's system to render the firm withdrawal deliveries would be borne only by the SS-II customers which requested such service by means of a firm demand charge. Based upon the annual cost of service for the facilities proposed herein Applicant estimates a firm demand charge of $8.44 per dt equivalent of firm daily withdrawal quantity per month for their additional capacity increment.

The estimated total capital cost of the facilities proposed herein is $43,070,000 which cost Applicant would initially finance from funds on hand and/or from borrowings under its revolving credit agreement which may later be replaced with long-term financing, it is said.

Applicant asserts that installation of the proposed facilities on its Penn-Jersey system downstream of the Consolidated delivery point at Oakford would provide 87,620 Mcf per day of increased capacity. Applicant further asserts that the value of its SS-II storage service to its customers in meeting their winter season demand would be further enhanced by the proposal herein and that the increased capacity on its Penn-Jersey system would assure uninterrupted deliveries of the firm withdrawal quantities thus enabling Applicant's SS-II customers to schedule their winter withdrawals with absolute certainty as to the elected firm quantities.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 12, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33668 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-11-000]

Texas Eastern Transmission Corp.; Application

October 22, 1980.

Take notice that on October 9, 1980, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77001, filed in Docket No. CP81-11-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Mid Louisiana Gas Company (Mid Louisiana), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a gas transportation agreement dated May 19, 1980, Applicant proposes to transport up to 10,000 Mcf of natural gas per day which Mid Louisiana has purchased in West Cameron Block 281, offshore Louisiana, for redelivery, less 1.5 percent fuel and losses, to Transcontinental Gas Pipe Line Corporation onshore at Ragley, Beauregard Parish, Louisiana, for further transportation to Mid Louisiana.

Applicant would receive the subject gas from Michigan Wisconsin Pipe Line Company at an interconnection on Applicant's offshore pipeline system in West Cameron Block 280, it is asserted.

Applicant would be paid $24,568 monthly by Mid Louisiana for the proposed firm service of 10,000 Mcf per day and 8.2 cents per Mcf in excess of 10,000 Mcf per day.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 13, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33669 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-12-000]

Texas Eastern Transmission Corp.; Application

October 22, 1980.

Take notice that on October 10, 1980, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77001, filed in Docket No. CP81-12-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Public Service Electric and Gas Company (Public Service), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport for Public Service up to 15,363 dekatherms (dt) equivalent of natural gas per day pursuant to the temporary transportation agreement dated October 9, 1980. It is stated that Public Service has arranged to purchase natural gas from Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) to displace oil for electric generation. Applicant proposes to receive by displacement for Alabama-Tennessee's account the Stated quantities of natural gas at the existing point of interconnection between Applicant and North Alabama Gas District located in Colbert County, Alabama, or other mutually agreeable points and to transport and redeliver equal quantities to Public Service at the existing point of interconnection with Applicant located in Union County, New Jersey, or other mutually agreeable points for a term ending October 31, 1980.

Applicant proposes to charge Public Service a rate of 20.97 cents per dt equivalent except that if the quantities delivered by applicant added to deliveries under Appplicant's Rate Schedules TS-1 and SS-II and other transportation agreements exceed the combined total curtailment of gas sales to Public Service under all of Applicant's firm sales rate schedules, the rate would be 24.03 cents per dt equivalent.

Applicant states that no new facilities would be necessary and that the proposed transportation would neither adversely affect Applicant's customers nor interfere with services or sales to high priority users.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 13, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determing the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33670 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-6-000]

Texas Gas Transmission Corp.; Application

October 22, 1980.

Take notice that on October 1, 1980, Texas Gas Transmission Corporation (Applicant), P.O. box 1160, Owensboro, Kentucky 42301, filed in Docket No. CP81-6-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the rendering of a storage service for Alabama-Tennessee Natural Gas Company (Alabama), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to render a storage service for Alabama of up to 1,500,000 Mcf of natural gas during the period October 1, 1980, through March 31, 1981, pursuant to an agreement between Applicant and Alabama dated September 25, 1980. It is stated that Alabama would deliver natural gas to Applicant for injection into storage through Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) at the existing interconnection of the facilities of Applicant and Tennessee near Egan, Louisiana, during the period October 1, 1980, through October 31, 1980. Applicant states that the stored gas would be redelivered to Alabama during the period November 1, 1980, through March 31, 1981, through Tennessee at the facilities near Egan, Louisiana, or at other mutually agreeable existing interconnections between Applicant and Tennessee. It is asserted that the daily redelivery rate of natural gas would not exceed the amount of the actual volumes of natural gas delivered to Applicant for storage divided by 60. It is stated, however, that Applicant might when necessary to meet its firm requirements reduce or interrupt its daily deliveries to Tennessee for Alabama.

Applicant states that Alabama would pay Applicant 64.5 cents per Mcf for natural gas stored for Alabama. It is asserted that this agreement between Applicant and Alabama would allow Alabama to make a portion of its summer supply of natural gas available for use during the winter period, November 1, 1980, through March 31, 1980.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 13, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33671 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. GP81-3-000]

Texas Gas Transmission Corp.; Application for Relief

October 22, 1980.

On October 1, 1980, Texas Gas Transmission Corporation (Texas Gas) filed with the Commission an application for relief under section 315(b) of the Natural Gas Policy Act of 1978 (NGPA). The application was filed pursuant to § 277.208 of the Commission's regulations, which authorizes original purchasers of natural gas which was removed from Natural Gas Act jurisdiction prior to September 1, 1980, through the operation of section 601(a)(1)(B) of the NGPA, to apply for such relief as may be deemed appropriate due to the fact that the rules requiring bona fide offers and the right of first refusal were not then in effect and available to the original purchaser.

Texas Gas states in its application that it is a natural gas company as defined in section 1(b) of the Natural Gas Act and is also an original purchaser under section 315(b) of the NGPA, as defined in § 277.203(i) of the Commission's regulations. Texas Gas further asserts that it is a purchaser under contracts to which the rights granted by section 315(b) apply, and that certain of these contracts have expired prior to September 1, 1980. The contracts and their respective wells which are the subject of Texas Gas' application for relief are as follow:

1. Texas Gas Contract No. 529

Two wells under this contract have received determinations which would trigger section 315(b). Texas Gas purchased, from Union Oil Company of California, gas produced from the Williams Inc. K No. 5 Well, which has received a determination of eligibility under section 103 of the NGPA. Also under this contract, Texas Gas purchased gas from Transco Exploration Company, Inc., which gas has received an eligibility determination under section 102(c) of the NGPA.

2. Texas Gas Contact No. 367

Under this contract, Texas Gas purchased gas produced from the Lucy Viator Lopez No. 1 Well from the Energy Reserves Group. The gas produced from this well has received a final determination of eligibility under section 102(c) of the NGPA.

3. Texas Gas Contract No. 398

Perry R. Bass, Inc. *et al.* sold gas to Texas Gas under this contract from various fields in Louisiana, including gas produced from the Lucy Viator Lopez No. 1 Well, which was finally determined to be section 102(c) natural gas.

In its prayer for relief, Texas Gas requests that the Commission require that Transco Exploration Company, Energy Reserves Group, Inc., and Perry R. Bass, Inc. *et al.*, submit to Texas Gas a bona fide offer as defined in § 277.203(c) of the Commission's regulations, and grant to Texas Gas the right of first refusal, as defined in § 277.206, and give any other relief as the Commission may deem necessary to safeguard Texas Gas' rights under section 315(b) of the NGPA, with respect to the gas produced from the wells named above.

Any person desiring to be heard or to protest this request for relief shall file a petition to intervene or protest in accordance with the provisions of § 1.8 or § 1.10 of the Commission's Rules of Practice and Procedure. All petitions to intervene or protest shall be filed with the Secretary of the Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, and must be filed on or before November 13, 1980. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make the protestant a party to the proceeding. Any person desiring to become a party must file a petition to intervene. Copies of the application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33672 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-577]

Transcontinental Gas Pipe Line Corp.; Application

October 22, 1980.

Take notice that on September 26, 1980, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP80-577 an application pursuant to Section 7(c) of The Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas supply facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate facilities that would consist of approximately 5 miles of 10-inch pipeline with a metering and regulating station and would extend from the producer platforms in Vermilion Block 57 to an underwater tap value in Vermilion Block 46, offshore Louisiana. Applicant expects that at least two wells would be drilled in Vermilion Block 57 which would produce an estimated 10,000 Mcf per day each. The proposed facilities would be jointly owned by Applicant and Columbia Gulf Transmission Company (Columbia Gulf) with each company owning 50 percent. Columbia Gulf would construct the facilities pursuant to authorization granted in Docket No. CP80-281.

Applicant states that these facilities are necessary to attach new gas supplies to its system from Block 57, Vermilion Area, offshore Louisiana.

It is stated that the estimated cost of the proposal would be $1,331,400 which cost would be initially financed through short-term loans and available cash. Permanent financing would be undertaken as a part of an overall long-term financing program at a later date, it is asserted.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 13, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act

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(18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33673 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-5-000]

United Gas Pipe Line Co.; Application

October 22, 1980.

Take notice that on October 1, 1980, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP81-5-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Amoco Production Company (Amoco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a gas transportation agreement with Amoco dated August 20, 1980, Applicant proposes to transport and deliver Amoco's uncommitted gas produced from Ship Shoal Block 84, offshore Louisiana, to Transcontinental Gas Pipe Line Corporation's (Transco) facilities in Ship Shoal Blocks 72 and 70. It is stated that Transco would redeliver the subject gas at the interconnection between Transco's and Florida Gas Transmission Company's (Florida) facilities in Vermilion Parish, Louisiana, or other mutually agreeable points onshore in southern Louisiana.

Applicant further states that pursuant to a gas purchase contract dated August 20, 1980, Applicant and Southern Natural Gas Company (Southern) would be allowed by Amoco to receive and transport certain quantities of natural gas located in Ship Shoal Block 84 which would be escalated during any party's peak requirement month. It is asserted that in return Applicant and Southern would transport additional quantities for Amoco during such months as Amoco requires more gas to meet its warranty obligations with Florida and/or Florida Power and Light Company.

Applicant states that it would substitute delivery to Amoco whenever Southern would be unable to perform.

Amoco would pay 2.0 cents per Mcf of natural gas transported, it is stated, and would reimburse Applicant for any excess transportation costs incurred. Additionally, Applicant would be reimbursed by Amoco for any delivery charges made by Transco.

Applicant asserts that it would proportionately reduce Amoco's uncommitted gas transported should Applicant's own capacity entitlement be reduced.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 12, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33674 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-584]

Western Gas Interstate Co.; Application

October 22, 1980.

Take notice that on September 30, 1980, Western Gas Interstate Company (Applicant), 1800 First International Building, Dallas, Texas 75270, filed in Docket No. CP80-584 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity so as to authorize the construction and operation of three additional taps on Applicant's East Line to facilitate the sale of natural gas to Southern Union Gas Company (Southern Union), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate three new taps on its East Line and to sell gas to Southern Union for resale to three new customers. Each proposed tap would be located in Beaver County, Oklahoma.

Applicant states that the proposed taps would serve the following three customers:

Customer	Location
(1) Mr. Phillip Penner	Section 29, Township 5 North, Range 21 East, Beaver County, Oklahoma
(2) Mr. Earl Semmer	Section 28, Township 5 North, Range 22 East, Beaver County, Oklahoma
(3) Mr. Charlie E. Bond	Section 7, Township 4 North, Range 24 East, Beaver County, Oklahoma

Two of the three customers would use the gas purchased from Southern Union for irrigation and incidental farm uses at a peak day rate of 36 Mcf with the third customer having a peak day rate of 1 Mcf of natural gas, it is stated.

Applicant estimates the total cost of the proposed taps to be $1,035 which would be financed by means of internally generated funds.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 13, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33675 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-580]

Zenith Natural Gas Co.; Application

October 21, 1980.

Take notice that on September 29, 1980, Zenith Natural Gas Company (Applicant), 321 North Main Street, South Hutchinson, Kansas 67505, filed in Docket No. CP80-580 an application pursuant to Section 7 of the Natural Gas Act for permission and approval to abandon service to Oklahoma Natural Gas Company (ONG) and for a certificate of public convenience and necessity authorizing the sale and transportation of natural gas to and on behalf of Panhandle Eastern Pipe Line Company (Panhandle), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is asserted that until August 25, 1980, Applicant was a wholly owned subsidiary of ONG but on that day ONG sold all of its interest in Applicant to Koskocil Sausage Company.

Applicant states that it initiated service to ONG in 1965. It is submitted that since ONG has developed adequate gas reserves and facilities within the State of Oklahoma to assure continued service to its Oklahoma markets which heretofore have been dependent in small part upon purchases of gas from Applicant, ONG no longer needs gas from Applicant. Applicant, therefore, proposes herein to abandon the sale of natural gas to ONG. In order to accomplish this abandonment of service, Applicant proposes to valve-off permanently its facilities at the existing delivery point to ONG in Woods County, Oklahoma.

In addition, Applicant states that it would abandon receipt of deliveries at existing points of interconnection between Cities Service Gas Company and ONG but that no facilities would be abandoned. Applicant asserts that its facilities would be maintained in the anticipation that gas reserves which may be developed near those facilities would be acquired by Applicant for service to its markets. Applicant further asserts that since ONG has indicated that it has adequate Oklahoma gas supplies to maintain service to its customers, there would be no impact on ONG or its customers resulting from the termination of service hereunder.

Applicant further proposes that upon termination of the sale to ONG it would deliver and sell to Panhandle gas which may become available from time to time in excess of the volumes of natural gas required by Applicant's other existing customers up to a maximum of 5,000 Mcf per day. Applicant would also transport such natural gas as Panhandle may have available for delivery to Applicant from production in the area, it is stated.

Applicant asserts that the price it charges for the gas sold to Panhandle would be Applicant's system weighted average acquisition cost per million Btu during the month in which deliveries of such gas are made plus a transportation charge of 75.0 cents per Mcf. It is further asserted that for Panhandle's gas for which Applicant performs only a transportation service the transportation charge would be 75.0 cents per Mcf for all volumes of gas delivered less fuel gas and losses.

Applicant proposes to sell and transport the gas pursuant to a cost of service arrangement similar to that in its existing rate schedules; thus its rate for service to Panhandle would be based upon a monthly cost of service not to exceed a transportation component of 75.0 cents per Mcf. Applicant anticipates that sales to Panhandle would approximate 450,000 Mcf per year.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 6, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.70). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33676 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-586]

Cities Service Gas Co.; Application

October 22, 1980.

Take notice that on September 30, 1980, Cities Service Gas Company (Applicant), P.O. Box 25128, Oklahoma

City, Oklahoma 73125, filed in Docket No. CP80-586 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction of certain pipeline taps and appurtenant facilities to enable Applicant to render natural gas service to six rural domestic customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate taps necessary to provide natural gas service to the following right-of-way grantors:

1. Tap Applicant's McLouth 20-inch storage pipeline, Leavenworth County, Kansas, and construct measuring, regulating and appurtenant facilities for delivery of natural gas to Lorin Brunsvold.
2. Tap Applicant's Jane 20-inch transmission pipeline, Newton County, Missouri, an construct measuring, regulating and appurtenant facilities for delivery of natural gas to Raymond Chavez.
3. Tap Applicant's Atchinson 12-inch transmission pipeline, Atchinson County, Kansas, and construct measuring, regulating and appurtenant facilities for delivery of natural gas to Geneva M. Dunster.
4. Tap Applicant's Wichita-Haysville 20-inch transmission pipeline, Sedgwick County, Kansas, and construct measuring, regulating and appurtenant facilities for delivery of natural gas to Jimmy Farina.
5. Tap Applicant's Renner Road 26-inch transmission pipeline, Johnson County, Kansas, and construct measuring, regulating and appurtenant facilities for delivery of natural gas to William C. Helming.
6. Tap Applicant's Soldiers Home 8-inch transmission pipeline, Leavenworth County, Kansas, and construct measuring, regulating and appurtenant facilities for delivery of natural gas to Thomas M. Scanton.

Applicant states that the sale of gas for Geneva M. Dunster would be made to Kansas Power & Light Company and the other five customers would be served from sales to The Gas Service Company.

It is stated that the total estimated cost of the proposed facilities would be approximately $4,259 which cost Applicant would finance from treasury funds on hand. Applicant estimates that each customer would require approximately 250 Mcf of gas per year.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 13, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protests in accordance with the requirements of the Commission's Rules of Practice and procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commisison will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given

Under the Procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-33653 Filed 10-28-80; 8:45 am]
BILLING CODE 6450-85-M

[Docket No. CP72-300]

Consolidated Gas Supply Corp. and Columbia Gas Transmission Corp. Petition To Amend

October 22, 1980.

Take notice that on September 24, 1980, Consolidated Gas Supply Corporation (Consolidated), 445 West Main Street, Clarksburg, West Virginia 26301, and Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325, filed in docket No. CP72-300 a joint petition to amend the order issued October 24, 1972, [1] as amended, in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize an additional point of exchange and an increase in the daily exchange quantities of gas at an existing point, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By order issued October 24, 1972, as amended, Petitioners were authorized to exchange natural gas and to construct and operate the facilities necessary therefor.

Petitioners propose herein to add a delivery point on Columbia's Line S-53 in Kanawha County, West Virginia, where Consolidated would deliver up to 500 Mcf of natural gas per day to Columbia pursuant to a gas exchange agreement between the parties dated August 1, 1980. Petitioners state that the agreement also provides that any inbalance in the exchange quantities would be corrected on a quarterly basis.

In establishing the additional delivery point, it is stated that Consolidated proposes to construct and operate the facilities necessary to connect its gas supply under its budget authorization.

Petitioners further proposed an increase by Columbia of its deliveries of natural gas to Consolidated at an existing exchange point in Wirt County, West Virginia, up to 2,000 Mcf per day.

Petitioners assert that the subject proposals are required so that they may move newly developed local gas supplies to their respective interstate systems.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 13, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-33654 Filed 10-28-80; 8:45 am]
BILLING CODE 6450-85-M

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

[Volume 303]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: October 22, 1980.

Other Purchasers

8100896 Northwest P. L. Corp.
8100897 Northwest P. L. Corp.
8100903 Northwest P. L. Corp.
8100941 Jicarilla Apache Tribe
8100969 El Paso Natural Gas Co.
8100990 Northwest Pipeline Corp.
8100991 Northwest Pipeline Corp.
8100998 Northwest Pipeline Corp.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspections, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before November 13, 1980.

Please reference the FERC Control Number (JD No) in all correspondence related to these determinations.

Kenneth F. Plumb,
Secretary.

BILLING CODE 6450-85-M

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JC NO	JA DKT	API NO	SEC D WELL NAME	FIELD NAME	PROD	PURCHASER
****						
ARKANSAS OIL & GAS COMMISSION						
****						
-BI-STATE ENERGY INC			RECEIVED: 10/07/80 JA: AR			
8101028		0314310025	108 ARLIN HUGHES NO 1	BRENTWOOD FIELD	16.0	ARKANSAS LOUISIANA G
8101030		0314310021	108 C R HALEY NO 1	BRENTWOOD FIELD	5.0	ARKANSAS LOUISIANA G
8101025		0314310033	108 E G BRADBERRY NO 1	BRENTWOOD FIELD	6.0	ARKANSAS LOUISIANA G
8101026		0314310034	108 E G BRADBERRY NO 2	BRENTWOOD FIELD	16.0	ARKANSAS LOUISIANA G
8101019		0314310035	108 E G BRADBERRY NO 3	BRENTWOOD FIELD	10.0	ARKANSAS LOUISIANA G
8101027		0314310004	108 J F STARR NO 1	BRENTWOOD FIELD	18.0	ARKANSAS LOUISIANA G
8101020		0314310007	108 J F STARR NO 2	BRENTWOOD FIELD	16.0	ARKANSAS LOUISIANA G
8101022		0314310001	108 JOSEPH MAYO NO 1	BRENTWOOD FIELD	6.0	ARKANSAS LOUISIANA G
8101023		0314310013	108 JOSEPH MAYO NO 2	BRENTWOOD FIELD	6.0	ARKANSAS LOUISIANA G
8101024		0314310019	108 MARION RAMEY NO 1	BRENTWOOD FIELD	12.0	ARKANSAS LOUISIANA G
8101021		0314310011	108 P M RAMEY NO 1	BRENTWOOD FIELD	15.0	ARKANSAS LOUISIANA G
8101029		0314310014	108 P M RAMEY NO 2	BRENTWOOD FIELD	14.0	ARKANSAS LOUISIANA G
8101031		0314310012	108 WALTER MOELLER NO 1	BRENTWOOD FIELD	5.0	ARKANSAS LOUISIANA G
-DIAMOND SHAMROCK CORPORATION			RECEIVED: 10/07/80 JA: AR			
8101047		0313110152	103 C-BAR RANCH INC NO 1	EWING	574.0	
8101012		0307110196	103 J R PUPE B NO 1	KNOXVILLE	68.0	ARKANSAS LOUISIANA G
8101044		0308310056	103 MARY L KNIGHT NO 1	PRAIRIE VIEW	47.0	
-EDWIN L COX			RECEIVED: 10/07/80 JA: AR			
8101032		0308310028	102 PATES NO 1	SPADRA	0.0	ARKANSAS LOUISIANA G
-HADSON PETROLEUM CORP			RECEIVED: 10/07/80 JA: AR			
8101015		0303310055	103 GOINES #1-14	HOLLIS LAKE FIELD	159.0	ARKANSAS LOUISIANA G
-JOHN C OXLEY			RECEIVED: 10/07/80 JA: AR			
8101016		0313110131	103 BAKER NO 1-C	EWING	730.0	ARKANSAS OKLAHOMA GA
8101038		0313110131	103 BAKER NO 1-T	EWING	730.0	ARKANSAS OKLAHOMA GA
-SAMSON RESOURCES COMPANY			RECEIVED: 10/07/80 JA: AR			
8101010		0307110175	102 NORA DOUTHITT NO 2-DUNN A	UNION CITY	75.0	ARKANSAS LOUISIANA G
8101010		0307110175	103 NORA DOUTHITT NO 2-DUNN A	UNION CITY	75.0	ARKANSAS LOUISIANA G
8101011		0307110175	103 NORA DOUTHITT NO 2-ORR	UNION CITY	75.0	ARKANSAS LOUISIANA G
-SANTA FE ENERGY COMPANY			RECEIVED: 10/07/80 JA: AR			
8101014		0308310053	103 MIDLAND OIL CORP #1	WILDCAT	182.5	
-STEPHENS PRODUCTION COMPANY			RECEIVED: 10/07/80 JA: AR			
8101034		0313110140	103 CONDREN #1-C	BONANZA	117.0	ARKANSAS OKLAHOMA GA
8101033		0313110140	103 CONDREN #1-T	BONANZA	117.0	ARKANSAS OKLAHOMA GA
8101036		0313110143	103 M L JOHNSON #1	BONANZA	115.0	ARKANSAS OKLAHOMA GA
8101035		0313110145	103 KAY RODGERS #2-5	MASSARD	75.0	ARKANSAS OKLAHOMA GA
8101041		0304710101	103 MYRTLE ROSS #3	VESTA	165.0	ARKANSAS OKLAHOMA GA
8101037		0313110149	103 M L SKINNER #1	GREENWOOD	35.0	ARKANSAS OKLAHOMA GA
-TEXAS OIL & GAS CORP			RECEIVED: 10/07/80 JA: AR			
8101018		0304710112	102 BUND B-#1	AETNA	350.0	ARKANSAS LOUISIANA G
8101040		0304710132	102 CARTY-DAVIS #1-T	CECIL	50.0	

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JC NO	JA DKT	API NO	SEC D WELL NAME	FIELD NAME	PROD	PURCHASER
8101017		0311510079	103 HOGINS #1	DOVER	40.0	
8101046		0308310048	103 PARKS C #1-C	PARIS	0.0	
8101045		0308310048	103 PARKS C #1-T	PARIS	0.0	
8101039		0304710125	103 WILLIAMS K #1-C	CECIL	150.0	
-WALSH AND WATTS INC			RECEIVED: 10/07/80 JA: AR			
8101042		0302900000	108 MILLIS #1 15645	JERUSALEM	3.0	ARKANSAS LOUISIANA G
8101013		0302900000	108 MORGAN #1 14153	JERUSALEM	8.0	ARKANSAS LOUISIANA G
8101043		0302900000	108 SPEARS #1 15431	JERUSALEM	9.0	ARKANSAS LOUISIANA G
****						
NORTH DAKOTA GEOLOGICAL SURVEY						
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-AL-AQUITAINE EXPLORATION LTD			RECEIVED: 10/06/80 JA: ND			
8101053	282	3300700381	102 BN 1-27	WHISKEY JOE	30.0	
8101050	285	3300700387	102 STATE 1-16	W/C	20.0	
8101049	286	3300700272	102 STATE 1-24	TR	0.0	
8101052	283	3300700438	102 STATE 4-24	TR	0.0	
8101051	284	3300700354	102 THOMPSON 1-30	W/C	36.0	
-ALPAR RESOURCES INC			RECEIVED: 10/06/80 JA: ND			
8101048	287	3305300921	102 MAHRE #1-14	CHERRY CREEK	182.0	MONTANA-DAKOTA UTILI
-WILLIAM HERBERT HUNT TRUST ESTATE			RECEIVED: 10/06/80 JA: ND			
8101054	281	3300700447	102 A USADOMUK #3	TREETOP	8.0	KOCH HYDROCARBON CO
****						
OKLAHOMA CORPORATION COMMISSION						
****						
-ANDOVER OIL COMPANY			RECEIVED: 10/06/80 JA: OK			
8101056	05506	3501700000	103 KOLAR #18-1	WILDCAT	185.0	DELHI GAS PIPELINE C
-APACHE CORPORATION			RECEIVED: 10/06/80 JA: OK			
8101069	05621	3512920413	102 MERRICK #3-1		108.5	MICHIGAN-WISCONSIN P
-BONANZA PETROLEUM INC			RECEIVED: 10/06/80 JA: OK			
8101067	05627	3515121009	103 WHIPPLE NO 1 (UNE)		144.0	DELHI GAS PIPELINE C
-CABOT CORPORATION			RECEIVED: 10/06/80 JA: OK			
8101060	04674	3500736115	108 LEON ALLEN #5	LAVERNE CHESTER	16.0	NORTHERN NATURAL GAS
-CHAMPLIN PETROLEUM COMPANY			RECEIVED: 10/06/80 JA: OK			
8101057	04858	3504721789	103 JACOB A VOTH NO 2 (047-21728)	ENID MISSISSIPPI FIELD	5.6	CHAMPLIN PETROLEUM C
-COLORADO INTERSTATE GAS CO			RECEIVED: 10/06/80 JA: OK			
8101065	05013	3502500000	108 MCCOY #1	KEYES	13.0	COLORADO INTERSTATE
-DALCO PETROLEUM INC			RECEIVED: 10/06/80 JA: OK			
8101058	04857	3509321596	103 BERGDALL #1	SOUNER TREND	72.0	PIONEER GAS PRODUCTS
8101059	04852	3507322176	103 THUMSEN NO 1	SOUNER TREND	73.0	CITIES SERVICE GAS C
-DAVIS OIL COMPANY			RECEIVED: 10/06/80 JA: OK			
8101070	05618	3501500000	103 HELDERMON NO 1	HINTON	600.0	OKLAHOMA NATURAL GAS
8101064	05278	3501721321	103 PUPE NO 1	YUKON NORTHWEST	150.0	DELHI GAS PIPELINE C
-ENERGY RESERVES GROUP INC			RECEIVED: 10/06/80 JA: OK			
8101055	05504	3509321738	103 KLIEWER A #1	RINGWOOD	366.0	AMINOIL USA INC
-GEORGE RUDMAN INC			RECEIVED: 10/06/80 JA: OK			
8101073	05613	3517321934	103 JACK 11 NO 1	SOUNER TREND	2.9	PHILLIPS PETROLEUM C
-NORTHWESTERN PRODUCTION INC			RECEIVED: 10/06/80 JA: OK			
8101063	05357	3507322096	103 PATTI CRUMER 1 NO 1	SOUNER TREND	10.0	CITIES SERVICE GAS C
-P-T III LTD			RECEIVED: 10/06/80 JA: OK			
8101066	04910	3504721913	103 ANDERSON #12-1	SOUNER TREND	274.0	WELLHEAD ENTERPRISES
-PERRY OIL CO			RECEIVED: 10/06/80 JA: OK			
8101062	04894	3504721377	103 CLARENCE #1	SOUNER TREND	18.0	PHILLIPS PETROLEUM C

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JOB NO	JOB AT	API NO	SEC T RGE	WELL NAME	FIELD NAME	PROD	PURCHASER
*PHOENIX RESOURCES COMPANY				RECEIVED: 10/08/80 JA: OK			
8101061	04860	3507300000	103	NELSON #2	MENNESSEY WEST	0,0	CONOCO INC
*PUBLISHERS PETROLEUM				RECEIVED: 10/08/80 JA: OK			
8101072	05614	3508120909	103	THOMPSON NO 1	WILDCAT	18,0	COLORADO GAS COMPRES
*RICKS EXPLORATION CO				RECEIVED: 10/08/80 JA: OK			
8101074	05595	3515120992	103	FRED SMITH 9-C	NE TRYON	240,0	DELMI GAS PIPELINE C
*SOUTHWESTERN EXPLOR CONSULTANTS INC				RECEIVED: 10/08/80 JA: OK			
8101068	05622	3510320922	103	CINNAMON #2	POLO	0,0	ARCO OIL & GAS CO
*TENNECO OIL COMPANY				RECEIVED: 10/08/80 JA: OK			
8101079	05634	3505920750	103	HOWARD 5-12	LOVEDALE NW	5,4	DELMI GAS PIPELINE C
8101075	05372	3509321869	103	KIRKENDALL 2-19	CHESTER WEST	42,0	PHILLIPS PETROLEUM C
*TRANSIERRA EXPLORATION CORP				RECEIVED: 10/08/80 JA: OK			
8101081	05630	3510320944	103	MYRNA STUUPS NO 1	TRANSIERRA-CINNAMON FIEL	9,0	AMINOIL USA INC
8101080	05633	3508120958	103	PASCHALL PROPERTIES INC NO 1	SOUTHWEST PRAIRIE GEM FI	34,0	SUN OIL CO
8101076	05632	3510320936	103	VERL MENTGES NO 1	TRANSIERRA-CINNAMON FIEL	11,0	AMINOIL USA INC
8101077	05631	3510320952	103	VERL MENTGES NO 2	TRANSIERRA-CINNAMON FIEL	10,0	AMINOIL USA INC
*UNION TEXAS PETROLEUM				RECEIVED: 10/08/80 JA: OK			
8101078	05635	3507322428	103	NAKVINDA NO 2	CASHION SEC 13 T15N-R5W	457,0	CHAMPLIN PETROLEUM C
*WILLIAM H DAVIS				RECEIVED: 10/08/80 JA: OK			
8101071	05617	3508321195	103	SETH PRITCHETT #1	NORTH RUSSELL	36,0	EASON OIL CO
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** U.S. GEOLOGICAL SURVEY - ALBUQUERQUE,NM							
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*ARCO OIL AND GAS COMPANY				RECEIVED: 10/06/80 JA: CO 4			
8100957	COA-842-80A	0506706303	103	SOUTHERN UTE 2-4 32-9 (MV)	IGNACIO BLANCO	278,0	NORTHWEST PIPELINE C
8100958	COA-842-80B	0506706303	103	SOUTHERN UTE 2-4 32-9 (PC)	IGNACIO BLANCO	402,0	NORTHWEST PIPELINE C
8100931	CUA-791-80B	0506706183	103	SOUTHERN UTE 21-1 32-9 (DAKOTA)	IGNACIO BLANCO (DAKOTA)	484,0	WESTERN SLOPE GAS CO
8100930	CUA-791-80A	0506706183	103	SOUTHERN UTE 21-1 32-9 (MV)	IGNACIO BLANCO (MESA VER	265,0	WESTERN SLOPE GAS CO
*AAA OPERATING CO INC				RECEIVED: 10/06/80 JA: NM 4			
8100939	NM-0757-80	3004523462	103	FEDERAL E NO 6	LARGO CHACRA	75,0	EL PASO NATURAL GAS
8100938	NM-0756-80	3004523460	103	FEUERAL J NO 2	LARGO CHACRA	75,0	EL PASO NATURAL GAS
*ALPHA TWENTY-ONE PRODUCTION CO				RECEIVED: 10/06/80 JA: NM 4			
8100889	NM-0794-80	3002526888	103	EL PASO JUSTIS A FED #2	LANGLIE-MATTIX	146,0	EL PASO NATURAL GAS
*AMERADA HESS CORPORATION				RECEIVED: 10/06/80 JA: NM 4			
8100888	NM-0793-80	3003905139	108	J APACHE I #2	OTERO	13,1	EL PASO NATURAL GAS
*AMUCO PRODUCTION CO				RECEIVED: 10/06/80 JA: NM 4			
8100886	NM-0780-80	3004520345	108	A L ELLIOTT D #5	BLANCO-PICTURED CLIFFS	20,0	EL PASO NATURAL GAS
8100887	NM-0781-80	3004509446	108	E E ELLIOTT A #2	BLANCO-PICTURED CLIFFS	19,0	EL PASO NATURAL GAS
8100913	NM-0782-80	3004509188	108	E E ELLIOTT B #6	BLANCO-PICTURED CLIFFS	21,0	EL PASO NATURAL GAS
8100945	NM-0776-80	3003906094	108	FRED PHILLIPS E #1 (2ND FILING)	TAPACITO-PICTURED CLIFFS	21,0	NORTHWEST PIPELINE C
8100885	NM-0779-80	3004507126	108	J C DAVIDSON C #1	FULCHER KUTZ-PICTURED CL	18,0	SOUTHERN UNION GATHE
8100942	NM-0773-80	3003906152	108	JICARILLA CONTRACT 146 #6 (2ND F)	SOUTH BLANCO-PICTURED CL	18,0	NORTHWEST PIPELINE C
8100898	NM-896-80	3003982337	108	JICARILLA CONTRACT 148 #14 (2ND F)	OTERO-CHACRA	21,0	EL PASO NATURAL GAS
8100899	NM-0897-80	3003920967	108	JICARILLA CONTRACT 77 #1	BASIN-DAKOTA	20,0	GAS CO OF NEW MEXICO
8100959	NM-0778-80	3004520914	108	NAVAJO TRIBAL N #12	TOCITO DOME - PENN D	11,0	EL PASO NATURAL GAS
8100943	NM-0774-80	3004521350	108	NAVAJO TRIBAL U #15	TOCITO DOME-PENNSYLVANIA	5,0	EL PASO NATURAL GAS
8100944	NM-0775-80	3004521497	108	NAVAJO TRIBAL U #26	TOCITO DOME-PENNSYLVANIA	18,0	EL PASO NATURAL GAS
8100946	NM-0777-80	3003921469	108	VALENCIA CANYON UNIT #13	CHUZA MESA-PICTURED CLIF	17,0	EL PASO NATURAL GAS
*ARCO OIL AND GAS COMPANY				RECEIVED: 10/06/80 JA: NM 4			
8100961	NM-0938-80	3003922257	103	JICARILLA M 115	N LINDRITH	20,0	EL PASO NATURAL GAS
*BILLY J KNUTT				RECEIVED: 10/06/80 JA: NM 4			
8100978	NM-0949-80	3004523987	103	JK #1	NAM FRUITLAND	21,0	EL PASO NATURAL GAS

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JOB NO	JA DAT	API NO	SEC T RGE	WELL NAME	FIELD NAME	PROD	PURCHASER
*C E LARUE AND B N MUNCY JR				RECEIVED: 10/06/80 JA: NM 4			
8100907	NM-4528-79	3004560369	108	LILLIE FEDERAL #2	SAMS RANCH GRAYBURG	20,0	EL PASO NATURAL GAS
*CHACE OIL COMPANY INC				RECEIVED: 10/06/80 JA: NM 4			
8100973	NM-0918-80	3004320276	103	GULF NAVAJO NO 2	RUSTY CHACRA	48,0	EL PASO NATURAL GAS
*CITIES SERVICE COMPANY				RECEIVED: 10/06/80 JA: NM 4			
8100962	NM 942-80	3001522999	103	GOVERNMENT S #2	WINCHESTER MORROW	730,0	EL PASO NATURAL GAS
*CONOCO INC				RECEIVED: 10/06/80 JA: NM 4			
8100906	NM 1910-79	3003900000	108	AXI APACHE N #3	SOUTH BLANCO PICTURED CL	17,4	GAS CO OF NEW MEXICO
8101001	NM-0879-80	3002526586	103	BURGER B-20 NO 3	NEW MEXICO FEDERAL UNIT	2,0	WARREN PETROLEUM CO
8100904	NM-0877-80	3002526641	103	SEMU DRINKARD NO 115	NEW MEXICO FEDERAL UNIT	4,0	PHILLIPS PETROLEUM C
8100960	NM-0936-80	3002526672	103	SEMU EUMONT NO 116	NEW MEXICO FEDERAL UNIT	114,0	WARREN PETROLEUM CO
8100908	NM-0881-80-B	3002526205	103	WARREN UNIT #63 (WARREN TUBB OIL)	NEW MEXICO FEDERAL UNIT	97,0	WARREN PETROLEUM CO
8101003	NM-0881-80-A	3002526205	103	WARREN UNIT NO 63 (BLINEBRY)	NEW MEXICO FEDERAL UNIT	28,0	WARREN PETROLEUM CO
8101000	NM-0878-80	3002526632	103	WARREN UNIT NO 79	NEW MEXICO FEDERAL UNIT	38,0	WARREN PETROLEUM CO
8101002	NM-0880-80	3002526642	103	WARREN UNIT NO 80	NEW MEXICO FEDERAL UNIT	69,0	WARREN PETROLEUM CO
*COTTON PETROLEUM CORPORATION				RECEIVED: 10/06/80 JA: NM 4			
8100938	NM-0898-80	3003921886	103	APACHE #123	LINDRITH GALLUP-DAKOTA W	20,0	NORTHWEST PIPELINE C
8100984	NM-0899-80	3003921887	103	APACHE #124	LINDRITH GALLUP-DAKOTA W	20,0	NORTHWEST PIPELINE C
*DAVE M THOMAS JR				RECEIVED: 10/06/80 JA: NM 4			
8100955	NM-0807-80	3003922150	103	CHACON JICARILLA APACHE D-10	CHACON DAKOTA	247,5	EL PASO NATURAL GAS
8100905	NM-0885-80	3004320430	103	CHACON JICARILLA APACHE D 9	CHACON DAKOTA	49,5	EL PASO NATURAL GAS
8100937	NM-0884-80	3004320431	103	CHACON JICARILLA APACHE D-108	CHACON DAKOTA	74,3	EL PASO NATURAL GAS
*DUGAN PRODUCTION CORP				RECEIVED: 10/06/80 JA: NM 4			
8101009	NM0005-80-ER	3004512245	108	D RACHEL #2	NAM FRUITLAND PC	14,0	EL PASO NATURAL GAS
*E B GERMANY & SONS				RECEIVED: 10/06/80 JA: NM 4			
8100915	NM-0316-80	3003905406	108	CUTLER NO 1	BALLARD P C	5,0	EL PASO NATURAL GAS
8100916	NM-0317-80	3003905510	108	CUTLER NO 2	BALLARD P C	5,0	EL PASO NATURAL GAS
8100917	NM-0318-80	3003905559	108	CUTLER NO 5	BALLARD P C	5,0	EL PASO NATURAL GAS
8100918	NM-0319-80	3003905365	108	CUTLER NO 7	BALLARD P C	5,0	EL PASO NATUREA GAS
*EL PASO NATURAL GAS COMPANY				RECEIVED: 10/06/80 JA: NM 4			
8100999	NM-0872-80	3004507049	108	BLANCO NO 12	BLANCO MESAVERDE	18,0	EL PASO NATURAL GAS
*8100998	NM-0871-80	3003920408	108	CANYON LARGO UNIT #164	OTERO-CHACRA GAS	21,0	EL PASO NATURAL GAS
8100950	NM-0893-80-A	3004523851	103	HARDIE D #1A (MV)	BLANCO MESAVERDE	180,0	EL PASO NATURAL GAS
8100951	NM-0893-80-B	3004523851	103	HARDIE D #1A (PC)	BLANCO SOUTH PICTURED CL	85,0	EL PASO NATURAL GAS
8100949	NM-0892-80	3004523925	103	HARDIE D #2A	BLANCO MESAVERDE	180,0	EL PASO NATURAL GAS
*8100990	NM-0857-80	3004520632	108	HUERFANO UNIT #204	BASIN-DAKOTA	20,0	EL PASO NATURAL GAS
8100932	NM-692-80	3003920234	108	JICARILLA 67 #12	OTERO-CHACRA GAS	22,0	EL PASO NATURAL GAS
8101005	NM-0871-80	3004506280	108	LUDEWICK #10	BASIN-DAKOTA	20,0	EL PASO NATURAL GAS
8100997	NM-0870-80	3004509205	108	LUDWICK #1	AZTEC - PICTURED CLIFFS	21,6	EL PASO NATURAL GAS
8101006	NM-0855-80	3004513113	108	LUDWICK #20	BASIN - DAKOTA	18,0	EL PASO NATURAL GAS
8100920	NM-0011-80	3004500000	108	MURRIS A #3	UNDESIGNATED-FRUITLAND G	4,0	EL PASO NATURAL GAS
8100993	NM-0866-80	3004509060	108	MURPHY E #2	AZTEC PICTURED CLIFFS	20,0	EL PASO NATURAL GAS
8100994	NM-0853-80	3004512078	108	RUSSELL #6 PC	BLANCO SOUTH-PIC CLIFFS	19,0	EL PASO NATURAL GAS
8100986	NM-0932-80-A	3003920985	103	SAN JUAN 27-4 UNIT #13A (MV)	BLANCO MESAVERDE	200,0	EL PASO NATURAL GAS
8100987	NM-0932-80-B	3003920985	103	SAN JUAN 27-4 UNIT #13A (PC)	TAPACITO PICTURED CLIFFS	70,0	EL PASO NATURAL GAS
8100992	NM-0861-80	3003920134	108	SAN JUAN 27-4 UNIT #43	BASIN DAKOTA	16,0	EL PASO NATURAL GAS
8100923	NM-0599-80	3003920885	108	SAN JUAN 27-4 UNIT #67	TAPACITO-PICTURED CLIFFS	21,0	EL PASO NATURAL GAS
8100911	NM-0873-80	3003920827	108	SAN JUAN 27-4 UNIT #88	TAPACITO-PICTURED CLIFFS	19,0	EL PASO NATURAL GAS
*8100905	NM-0876-80	3003906929	108	SAN JUAN 27-5 UNIT #4 MV & PC	BLANCO-MV & TAPACITO PC	21,0	EL PASO NATURAL GAS
*8100896	NM-0895-80-A	3003921858	103	SAN JUAN 27-5 UNIT #60A (MV)	BLANCO MESAVERDE	200,0	EL PASO NATURAL GAS
*8100897	NM-0895-80-B	3003921858	103	SAN JUAN 27-5 UNIT #60A (PC)	TAPACITO PICTURED CLIFFS	40,0	EL PASO NATURAL GAS
8100985	NM-0951-80	3003907359	108	SAN JUAN 28-4 UNIT #27	BLANCO MESAVERDE	16,0	EL PASO NATURAL GAS

JD NO	JA SAT	API NO	SEL	WELL NAME
8100924	NM-0502-80	3003920063	108	SAN JUAN 28-5 UNIT #45
8100996	NM-0869-80	3003920472	108	SAN JUAN 28-5 UNIT #89
8100989	NM-0856-80	3003907298	108	SAN JUAN 28-5 UNIT NP #3
*8100991	NM-0859-80	3003920038	108	SAN JUAN 28-6 UNIT #136
8100925	NM-0533-80	3003920601	108	SAN JUAN 28-6 UNIT #173
8100964	NM-0930-80	3003922251	103	SAN JUAN 28-6 UNIT #65A
8100965	NM-0931-80	3003922234	103	SAN JUAN 28-6 UNIT #71A
8100902	NM 5115-79	3003907073	108	SAN JUAN 28-6 UNIT #82 PC & MV
8100912	NM-0874-80	3003907355	108	SAN JUAN 28-7 UNIT #25
8100922	NM-0109-80	3003920404	108	SAN JUAN 28-7 UNIT NP #151
8100995	NM-0867-80	3003920404	108	SAN JUAN 28-7 UNIT NP #151
8101007	NM-0391-80	3004520853	108	SUNRAY E #4
8100948	NM-0891-80	3004523700	103	TAPP #1A
8100977	NM 894-80	3004523695	103	TAPP #3A
8100914	NM-0864-80	3004512098	108	TAPP #5
-FRANKS PETROLEUM INC				RECEIVED: 10/06/80 JA: NM 4
8101004	NM 0929-80	3002526427	103	MAT MESA NO 1
-GEORGE E COLEMAN				RECEIVED: 10/06/80 JA: NM 4
8100947	NM-887-80	3004523665	103	DRY CREEK #2
-GETTY OIL COMPANY				RECEIVED: 10/06/80 JA: NM 4
8100956	NM-0830-80	3002511731	108	A B COATES C NO 19
-GULF OIL CORPORATION				RECEIVED: 10/06/80 JA: NM 4
8100987	NM-0903-80	3004523922	103	NAVAJO LB NO 1
-M L BROWN JR				RECEIVED: 10/06/80 JA: NM 4
8100988	NM-0904-80	3001523098	103	FEDERAL B NO 1 NM 38458
-J GREGORY MERRION&ROBERT L BAYLESS				RECEIVED: 10/06/80 JA: NM 4
8100926	NM-0823-80	3004506019	108	CHARTIER #1
-JACK A COLE				RECEIVED: 10/06/80 JA: NM 4
8100974	NM-0917-80	3003921907	108	APACHE MILLS NO 6
8100933	NM-0746-80	3004320489	103	CHACON AMIGOS NO 1
-JEROME P MCHUGH				RECEIVED: 10/06/80 JA: NM 4
8100895	NM-0804-80	3004524273	103	ERIN #1E
-LADD PETROLEUM CORPORATION				RECEIVED: 10/06/80 JA: NM 4
8100934	NM-0749-80	3004524090	103	AZTEC #2-E
8100921	NM-0150-80	3004522955	103	AZTEC S-35
8100976	NM-0927-80	3004524309	103	KUTZ 1-E
-MESA PETROLEUM				RECEIVED: 10/06/80 JA: NM 4
8100972	NM-0912-80	3001522958	103	MANALO FEDERAL COM #1
8100971	NM-0910-80	3001523008	103	PETERSON FEDERAL COM #1
-ME#BOURNE OIL COMPANY				RECEIVED: 10/06/80 JA: NM 4
8100890	NM-0795-80	3002525894	103	FEDERAL G #1
-MOBIL PROD TEXAS & NEW MEXICO INC				RECEIVED: 10/06/80 JA: NM 4
8100929	NM-0783-80	3003922197	103	JILLSON FEDERAL NO 5
8100940	NM-0760-80	3003922278	103	LINDRITH B UNIT NO 3
8100935	NM-0751-80	3003922279	103	LINDRITH B UNIT NO 4
-NORTHWEST PIPELINE CORPORATION				RECEIVED: 10/06/80 JA: NM 4
*8100941	NM-0771-80	3003921134	108	JICARILLA 93 #5
8100970	NM-0908-80	3003920712	108	SAN JUAN 29-5 #68
*8100969	NM-0906-80	3003907792	108	SAN JUAN 30-5 #27 MV & DK
8100919	NM-5135-79	3003907908	108	SAN JUAN 31-6 #17
8100901	NM-4592-79	3004522962	103	SAN JUAN 32-7 UNIT #47
8100928	NM-4590-79	3004522983	103	SAN JUAN 32-7 UNIT #48

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FIELD NAME	PROD	PURCHASER
BASIN-DAKOTA GAS	21,2	EL PASO NATURAL GAS
BASIN-DAKOTA GAS	17,5	EL PASO NATURAL GAS
BLANCO MESAVERDE	20,0	EL PASO NATURAL GAS
BASIN - DAKOTA	20,0	EL PASO NATURAL GAS
SOUTH BLANCO-PICTURED CL	21,2	EL PASO NATURAL GAS
BLANCO MESAVERDE	200,0	EL PASO NATURAL GAS
BLANCO MESAVERDE	200,0	EL PASO NATURAL GAS
BLANCO SOUTH-PICTURED CL	20,0	EL PASO NATURAL GAS
BLANCO MESAVERDE	16,0	EL PASO NATURAL GAS
BASIN-DAKOTA GAS	20,0	EL PASO NATURAL GAS
BASIN DAKOTA GAS	20,0	EL PASO NATURAL GAS
BLANCO-PICTURED CLIFFS G	21,0	EL PASO NATURAL GAS
BLANCO MESAVERDE	180,0	EL PASO NATURAL GAS
BLANCO MESAVERDE	180,0	EL PASO NATURAL GAS
SOUTH BLANCO-PICTURED CL	22,0	EL PASO NATURAL GAS
	209,0	NATURAL GAS PIPELINE
BISTI GALLUP	100,0	EL PASO NATURAL GAS
JUSTIS TUBB DRINKARD	8,0	EL PASO NATURAL GAS
WAW FRUITLAND PIC CLIFFS	0,0	EL PASO NATURAL GAS
BURTON FLAT (MORROW)	145,0	LLANO INC
GALLEGUS GALLUP	7,0	EL PASO NATURAL GAS
BALLARD PICTURED CLIFFS	0,0	EL PASO NATURAL GAS
CHACON DAKOTA ASSOCIATED	70,0	EL PASO NATURAL GAS
BASIN DAKOTA	0,0	NORTHWEST PIPELINE C
BASIN DAKOTA	291,0	EL PASO NATURAL GAS
HARPER HILL-FRUITLAND-PC	29,5	EL PASO NATURAL GAS
BASIN DAKOTA	105,1	SOUTHERN UNION GATHE
UNDESIGNATED/ATOKA	225,0	NORTHERN NATURAL GAS
UNDESIGNATED MORROW	503,0	NORTHERN NATURAL GAS
QUERECHO PLAINS-BONE SPR	110,0	PHILLIPS PETROLEUM C
WEST LINDRITH GALLUP-DAK	31,0	NORTHWEST PIPELINE C
CHACON-DAKOTA ASSOCIATED	98,6	EL PASO NATURAL GAS
CHACON DAKOTA ASSOCIATED	54,8	EL PASO NATURAL GAS
GAVILAN PICTURED CLIFFS	23,5	NORTHWEST PIPELINE C
BASIN DAKOTA	19,0	EL PASO NATURAL GAS
BASIN MESAVERDE & DAKOTA	18,0	NORTHWEST PIPELINE C
BLANCO MV	0,0	EL PASO NATURAL GAS
UNDESIGNATED PICTURED CL	212,0	NORTHWEST PIPELINE C
UNDESIGNATED PICTURED CL	40,0	NORTHWEST PIPELINE C

JD NO	JA SAT	API NO	SEL	WELL NAME
8100927	NM-4589-79	3004522984	103	SAN JUAN 32-7 UNIT #49
8100900	NM-4591-79	3004522981	103	SAN JUAN 32-7 UNIT #50
-ODESSA NATURAL CORPORATION				RECEIVED: 10/06/80 JA: NM 4
8100985	NM-0901-80	3004320447	103	CHACON JICARILLA D NO 20
8100980	NM-0843-80	3003922154	103	JICARILLA J V KD NO 9
8100986	NM-0902-80	3003922153	103	JICARILLA J V KD NO 8
8100981	NM-0844-80	3003922151	103	JICARILLA JV KD NO 10
PERRY R BASS				RECEIVED: 10/06/80 JA: NM 4
8100894	NM-0803-80	3001522945	103	BIG EDDY UNIT #77
8101008	NM 0352-80	3001522966	102	BIG EDDY UT #76
-SOUTHLAND ROYALTY CO				RECEIVED: 10/06/80 JA: NM 4
8100909	NM-0883-80-A	3004523972	103	CAIN #11E (CHACRA)
8100910	NM-0883-80-B	3004523972	103	CAIN #11E (DAKOTA)
8100979	NM941-80-A	3004524107	103	MCCLANAHAN #19E (DAKOTA)
-SUN OIL COMPANY (DELAWARE)				RECEIVED: 10/06/80 JA: NM 4
8100968	NM 937-80	3001500000	108	EDDY FOSTER NO 2
-TENNECO OIL COMPANY				RECEIVED: 10/06/80 JA: NM 4
8100893	NM-0801-80	3004524132	103	CONNELL A 1-E
8100954	NM-0806-80-B	3004524151	103	FLORANCE #123 (DAKOTA)
8100953	NM-0806-80-A	3004524151	103	FLORANCE #123 (PC)
8100952	NM-0805-80	3004524153	103	GARTNER #3
8100963	NM-0948-80	3004523957	103	MUDGE COM B #1
8100982	NM-0845-80	3004524040	103	MUDGE COM B #2
-YATES PETROLEUM CORPORATION				RECEIVED: 10/06/80 JA: NM 4
8100975	NM 922-80	3000560845	102	IMANUNSKI NM FEDERAL NO 1
8100892	NM-0800-80	3001523150	103	RIO PECOS NM FED #1
8100891	NM-0799-80	3001522116	103	YATES FEDERAL NO 3

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FIELD NAME	PROD	PURCHASER
UNDESIGNATED PICTURED CL	42,0	NORTHWEST PIPELINE C
UNDESIGNATED PICTURED CL	220,0	NORTHWEST PIPELINE C
CHACON DAKOTA ASSOC	0,0	EL PASO NATURAL GAS
CHACON DAKOTA	0,0	EL PASO NATURAL GAS
CHACON DAKOTA ASSOC	0,0	EL PASO NATURAL GAS
CHACON DAKOTA	0,0	EL PASO NATURAL GAS
WILDCAT MORROW	500,0	NATURAL GAS PIPELINE
MORROW	0,0	NATURAL GAS PL CO OF
UNDESIGNATED CHACRA	75,0	SOUTHERN UNION GATHE
BASIN DAKOTA	85,0	SOUTHERN UNION GATHE
BASIN DAKOTA	65,0	SOUTHERN UNION GATHE
GRAYBURG JACKSON SR Q K	1,0	CONOCO INC
BASIN DAKOTA	500,0	EL PASO NATURAL GAS
BASIN DAKOTA	500,0	EL PASO NATURAL GAS
BLANCO PICTURED CLIFFS	250,0	EL PASO NATURAL GAS
BLANCO PICTURED CLIFFS	250,0	EL PASO NATURAL GAS
BASIN DAKOTA	500,0	EL PASO NATURAL GAS
BASIN DAKOTA	500,0	EL PASO NATURAL GAS
UNDESIGNATED WILDCAT ABO	0,0	TRANSWESTERN PIPELIN
UNDESIGNATED MORROW	0,0	TRANSWESTERN PIPELIN
PENASCO DRAW YESO SA	0,0	TRANSWESTERN PIPELIN

BILLING CODE 6450-85-C

[Docket No. CP80-574]

El Paso Natural Gas Co.; Application

October 22, 1980.

Take notice that on September 24, 1980, El Paso Natural Gas Company (Applicant), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP80-574 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the operation of certain existing pipeline and appurtenant facilities and the transportation, delivery and sale of natural gas to the City of Mesa, Arizona (Mesa), for resale to customers situated in Pinal County, Arizona, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Magma currently provides natural gas service to its customers situated in rural areas in Pinal County, Arizona, which gas is purchased from Applicant.

Applicant states that on December 31, 1979, Magma Natural Gas Company (Magma) and Mesa, both existing distributor customers of Applicant, entered into an agreement providing for the sale by Magma and purchase by Mesa of the gas distribution system owned and utilized by Magma in its natural gas operations.

Applicant asserts that it currently sells and delivers up to 3,641 Mcf of natual gas per day for resale to Magma at the existing Clausen No. 1 meter station located in Pinal County pursuant to the terms and conditions of a currently effective service agreement dated January 7, 1977, between the parties and that in accordance with the terms and conditions of the December 31, 1979, agreement Magma has assigned said service agreement to Mesa.

In order to accommodate Mesa's succession to Magma's gas operations, Applicant proposes to implement the terms of a June 1, 1980, service agreement between it and Mesa which provides for the delivery and sale by Applicant to Mesa of the Natural gas currently being sold to Magma. It is submitted that the term and quantity of natural gas to be provided for Mesa under the new service agreement are identical to the term and combined total volumes of natural gas heretofore provided to Mesa and Magma. Such volumes, it is asserted, would be delivered to Mesa at the presently existing point of delivery on Applicant's mainline transmission system. It is further submitted that no new or additional facilities would be required by Applicant to implement the delivery and sale of natural gas to Mesa.

Upon effectiveness of the proposed acquisition by Mesa, the volumes of natural gas which Magma is entitled to receive would be transferred to the account of Mesa and reflected on the Index of Base Volumes and Index of Priority Limitations contained in Applicant's FERC Gas Tariff, Original Volume No. 1, it is stated.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 13, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33655 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA81-5-000]

First Chance Chevron; Filing of Petition for Review Under 42 U.S.C. 7194

October 22, 1980.

Take notice that First Chance Chevron on October 14, 1980, filed a Petition for Review under 42 U.S.C. 7194(b) (1977) (Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before November 6, 1980, with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before November 6, 1980, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue SW., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33656 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA80-124]

Go-Clean, Inc.; Filing of Petition For Review

October 22, 1980.

Take notice that Go-Clean, Inc. on September 23, 1980, filed a Petition for Review under 42 U.S.C. 7194(b) (1977) (Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before November 6, 1980, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before November 6, 1980, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W. Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33657 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Dockets Nos. CP66-110-015, et al., CP79-141-001, et al., CP79-144-001, et al.]

Great Lakes Gas Transmission Co.; Petition To Amend

October 22, 1980.

Take notice that on October 1, 1980, Great Lakes Gas Transmission Company (Petitioner), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket Nos. CP66-110-015, *et al.*, CP79-141-001, *et al.*, and CP79-144-001, *et al.* a petition to amend the order issued June 20, 1976,[1] pursuant to Section 7(c) of the Natural Gas Act so as to authorize adjustment of delivery rates to Michigan Consolidated Gas Company (Michigan Consolidated), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that under the above orders it was authorized to deliver gas to Michigan Consolidated at twenty delivery points on Petitioner's pipeline system. Pursuant to a service agreement dated December 20, 1978, Petitioner sells to Michigan Consolidated up to 59,758 Mcf of gas per day. It is stated that the sum total of the maximum daily delivery obligation for all such points far exceeds the contractual obligation but that Petitioner is not obligated to deliver daily more than the contract demand. The maximum daily delivery obligations of Petitioner at two of the delivery points are 10,000 Mcf at Petitioner's Crystal Falls Measuring Station, Iron County, Michigan, and 20,000 Mcf at Petitioner's Rapid River Measuring Station, Iron City, Michigan.

It is stated that Michigan Consolidated has requested Petitioner to increase the maximum daily delivery obligation of Petitioner from 20,000 to 30,000 Mcf per day at Rapid River with a corresponding reduction of 10,000 Mcf per day at the Crystal Falls delivery points resulting in elimination of all delivery obligations at such point. Petitioner states that Michigan Consolidated asked that the Crystal Falls delivery point be maintained as an emergency delivery point only. It is stated that this adjustment is necessary due to the increased requirements at the Rapid River delivery point. The change, it is stated, would give Michigan Consolidated additional flexibility in meeting market demands.

Petitioner states that it has no objection to the changes and agreed with Michigan Consolidated in a letter dated September 16, 1980.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 13, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33658 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[1] This proceeding was commenced before the FPC. By joint regulsion of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

[Docket No. ES81-3-000]

Iowa Electric Light & Power Co.; Application

October 22, 1980.

Take notice that on October 9, 1980, the Iowa Electric Light and Power Company (the "Applicant") filed an application pursuant to Section 204 of the Federal Power Act with the Federal Energy Regulatory Commission seeking authority to issue and sell up to $6,000,000 principal amount of series U, First Mortgage Bonds.

Any person desiring to be heard or to make protest with reference to this Application should on or before October 31, 1980, filed with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The Application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33659 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ES80-80]

Kansas City Power & Light Co.; Renotice of Application

October 22, 1980.

Take notice that on September 22, 1980, Kansas City Power & Light Company (Applicant) filed an application seeking authority pursuant to Section 204 of the Federal Power Act to issue up to $150,000,000 principal amount of short-term debt to be issed from time to time with maturities not later than June 30, 1982.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 6, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to

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intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33660 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-576]

Northern Natural Gas Co., Division of InterNorth, Inc.; Application

October 22, 1980.

Take notice that on September 25, 1980, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP80-576 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a new measurement station near Waterloo, Iowa, and the delivery of natural gas to Iowa Public Service Company (IPS), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes herein to construct and operate a measuring station which would consist of two separate meters and related appurtenant facilities, to be located in Black Hawk County, Iowa. Applicant would deliver approximately 3,121,000 Mcf of natural gas per year on an interruptible basis to IPS for use in its Electrifarm Turbine Generator Plant to replace middle distillate oil.

Applicant further requests authorization to deliver to IPS on a firm basis up to 41,950 Mcf of natural gas per year for use in serving future residential and commercial customers in a proposed subsidivision development outside of Waterloo, Iowa. It is asserted this firm load would require no increase in IPS' firm entitlements.

Applicant states that the proposed facilities for the new delivery point would cost approximately $231,300 to be borne by IPS.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 13, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33662 Filed 10-28-80; 8:45 am]

BILLING CODE 6450-85-M

ENVIRONMENTAL PROTECTION AGENCY

[PH/FRL 1646-5; OPP-C30191]

Abbott Laboratories; Application to Conditionally Register Pesticide Product Containing a New Active Ingredient

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Abbott Laboratories has submitted an application to conditionally register a pesticide product MYCAR Mycoacaricide Wettable Powder, which contains the active ingredient 3.6×10^8 Colony Forming Unit (CFUs) of *Hirsutello thompsonii* per pound which has not been included in any previously registered pesticide product.

DATE: Comments must be received on or before November 28, 1980, and should bear a notation indicating the EPA registration number.

ADDRESS: Written comments to: Franklin D. R. Gee, Product Manager (PM) 17, Rm. E-341, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460 (202-755-1150).

SUPPLEMENTARY INFORMATION: Abbott Laboratories, Chemical and Agricultural Products Division, N. Chicago, IL 60064, has submitted an application to register the pesticide product MYCAR Mycoacaricide Wettable Powder (EPA Registration No. 272-GI) containing a 3.6×10^8 CFUs of *Hirsutella thompsonni* per pound. The application proposes that the product be conditionally registered for use as a miticide on citrus, blueberries, and turf. The proposed classification is for general use.

This application is made pursuant to the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (92 Stat. 819; 7 U.S.C. 136) and the regulations thereunder (40 CFR 162.6). Notice of receipt of this application does not indicate a decision by the Agency on the application. Interested persons are invited to submit written comments on the application referred to in this notice.

Notice of approval or denial of this application will be announced in the **Federal Register**. Except for such material protected by section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (92 Stat. 819; 7 U.S.C. 136) and the regulations thereunder (40 CFR 162.6), the test data and other scientific information deemed relevant to the registration decision may be made available after approval under the provisions of the Freedom of Information Act. The procedure for requesting such data will be given in the Federal Register if an application is approved.

(Sec. 3(c) 86 Stat. 972; (7 U.S.C. 136a))

Dated: October 22, 1980.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-33645 Filed 10-28-80; 8:45 am]

BILLING CODE 6560-32-M

PF-204; (PH-FRL 1647-3)

Certain Pesticide Chemicals; Filing of Pesticide and Food Additive Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that certain companies have filed requests with the EPA to establish tolerances and food additive regulations for certain pesticide chemicals.

ADDRESS: Written comments and inquiries should be directed to: Designated Product Manager (PM), Registration Division, (TS-767), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Written comments may be submitted while a petition is pending before the agency. The comments are to be identified by document control number "[PF-204]" and the specific petition number. All written comments filed pursuant to this notice will be available for public inspection in the Product Manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The designated product manager at the telephone number given in each petition.

SUPPLEMENTARY INFORMATION: EPA gives notice that the following pesticide petitions have been submitted to the agency to establish tolerances and regulations for certain pesticide chemicals on certain raw agricultural commodities and food items in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each specific petition.

PP OF2404. Dow Chemical Co., PO Box 1706, Midland, MI 48640. Proposes amending 40 CFR 180.350 by establishing tolerances for the combined residues of the soil microbiocide nitrapyrin [2-chloro-6-(trichloromethyl)pyridine] and its metabolite, 6-chloropicolinic acid in or on the raw agricultural commodity rice grain at 0.05 part per million (ppm). The proposed analytical method for determining residues is gas chromatography using electron capture detection. (PM-23, Richard F. Mountfort, Rm. E-351, 202-755-1397).

PP OE2414. Rhone-Poulenc Inc., PO Box 125, Monmouth Junction, NJ 08852. Proposes amending 40 CFR Part 180 by establishing a tolerance for the fugicide iprodione [(3-3,5-dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidine-carboxamide and its metabolites (3-(1-methylethyl-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidine carboxamide and 3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidine carboxamide in or on the raw agricultural commodity kiwifruit at 7 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 21, Eugene Wilson, Rm. E-349, 202-755-1066).

PP OF2416. Ciba-Geigy Corp., PO Box 11422, Greensboro, NC 27409. Proposes amending 40 CFR 180.368 by establishing a tolerance for the combined residues of the herbicide metolachlor [2-chloro-*N*-2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylethyl) acetamide] in or on the agricultural commodity sunflowers at 0.3 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 23, Richard F. Mountfort, Rm. E-351, 202-755-1397).

PP OF2417. Ciba-Geigy Corp., PO Box 11422, Greensboro, NC 27409. Proposes amending 40 CFR 180.368 by establishing a tolerance for the combined residues of the herbicide metolachlor [2-chloro-*N*-2-ethyl-6-methylphenyl)-*N*-(2-methoxy-l-methylethyl)]acetamide] in or on the raw agricultural commodity flax seed at 0.2 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 23, Richard F. Mountfort, Rm. E-351, 202-755-1397).

PP OF2405. Diamond Shamrock Corp., 1100 Superior Ave., Cleveland, OH 44114. Proposes amending 40 CFR 180.275 by establishing tolerances for the residues of the fungicide chlorothalonil (2,4,5,6-tetrachloroisophthalonitrile) and its metabolite (4-hydroxy-2,5,6-trichloroisophthalonitrile) in or on the raw agricultural commodities oranges and grapefruit at 0.1 ppm. The proposed analytical method for determining residues is gas chromatography with a linear ^{63}Ni electron capture detector. (PM 21, Eugene Wilson, Rm. E-349, 202-755-1806).

FAP OH5272. Diamond Shamrock Corp., 1100 Superior Ave., Cleveland, OH 44114. Proposes amending 21 CFR 193 by establishing a regulation permitting the residues of the fungicide chlorothalonil (2,4,5,6-tetrachloroisophthalonitrile) and its metabolite (4-hydroxy-2,5,6-trichloroisophthalonitrile) in the commodity citrus oil at 10 ppm. (PM 21, Eugene Wilson, Rm. E-349, 202-755-1806).

PP OF2422. Monsanto Co., 1101 17th St., NW., Washington, D.C. 20036. Proposes amending 40 CFR 180.364 by establishing tolerances for the combined residues of the herbicide glyphosate [*N*-(phosphonomethyl)glycine] and its metabolite, aminomethylphosphonic acid in or on the following raw agricultural commodities:

Commodities	Parts per million
Forage grasses	0.4
Forage legumes	0.2

The proposed analytical method for determining residues is gas chromatography using a phosphonorous specific flame detector. (PM 25, Robert J. Taylor, Rm. E-359, 202-755-2196).

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 135); 409(b)(5), 72 Stat. 1786, (21 U.S.C. 348))

Dated: October 22, 1980.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-33651 Filed 10-28-80; 8:45 am]

BILLING CODE 6560-32-M

[PH-FRL 1646-6; OPP-30183A]

Conrel; Receipt of Application to Conditionally Register a Pesticide Product Containing New Active Ingredients; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction.

SUMMARY: This notice corrects a document that published in the **Federal Register** of May 5, 1980 (FR Doc. 80-1367). The names of the new active ingredients were listed incorrectly.

FOR FURTHER INFORMATION CONTACT: Franklin D. R. Gee, Product Manager (PM) 17, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-341, 401 M St., SW., Washington, D.C. 20460, (202-755-1150).

SUPPLEMENTARY INFORMATION: EPA issued a notice that publised in the **Federal Register** of May 5, 1980 (45 FR 29632), that Conrel, 110 A St., Needham Heights, MA 02194 had submitted applications to conditionally register pesticide products containing new active ingredients. The ingredients appeared as: "(E)-9-dodecen-1-01-acetate (2.2%) and "Z-9-dodecen-1-01-acetate (9.1%)". Change the 23rd and 24th lines in the first column to read: "(E)-9-dodecenyl acetate (2.2%) and (Z)-9-dodecenyl acetate (9.1%)." (40 CFR 162.5 and 162.6).

Dated: October 22, 1980.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-33648 Filed 10-28-80; 8:45 am]

BILLING CODE 6560-32-M

[PH-FRL 1647-2; OPP-180520]

New York; Issuance of Specific Exemption for Use of Mesurol on Grapes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted a specific exemption to the New York Department of Environmental Protection (hereafter referred to as the "Applicant") to use Mesurol to control depredating birds on 5,600 aces of grapes in New York. The specific exemption is issued under the Federal Insecticide, Fungicide, and Rodenticide Act.

DATE: The specific exemption expies on November 1, 1980.

FOR FURTHER INFORMATION CONTACT: Donald R. Stubbs, Registration Division (TS-767), Office of Pesticide Programs,

Environmental Protection Agency, Rm. E–124, 401 M St. SW., Washington, D.C. 20460, (202–426–0233).

SUPPLEMENTARY INFORMATION: According to the Applicant, birds can seriously reduce the crop of marketable grapes. The 80P–875 amount of injury varies from year to year, reflecting bird populations and availability of alternative food sources. Grapes are generally harvested after other berry crops and this can become a major food source for birds. Grapes are subject to feeding at all times after the fruit has begun to ripen. Bird species observed in grape fields include robins, finches, starlings, sparrows, mourning doves, orioles, cedar waxwings, and blackbirds.

There are currently no pesticides registered for bird control in grapes. These are two types of alternative control available: (a) Scare devices, and (b) exclusion devices. Accordingly to the Applicant, scare devices do not prevent, but only reduce, feeding injury; some birds quickly adapt to these devices. The Applicant claims that exclusion devices are prohibitively expensive. Mesurol is currently registered as a bird repellent on cherries.

The Applicant proposed to apply 2.67 pounds of Mesurol, which contains the active ingredient (a.i.) 3,5-dimethly-4-(methylthio) phenyl methylcarbamate, per acre with up to three applications. The Applicant anticipates that grape growers in New York could lose $175,000 if Mesurol is not available.

EPA has determined that residues of the a.i. and its cholinesterase-inhibiting metabolites would not exceed 10 parts per million (ppm) in or on grapes, 20 ppm in or on raisins, and 50 ppm in or on grape pomace and raisin waste, from the proposed use. These residue levels have been judged adequate by EPA to protect the public health. EPA has also determined that the proposed use should not present an undue hazard to the environment.

After reviewing the application and other available information, EPA has determined that the criteria for an exemption have been met. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until November 1, 1980, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The product Mesurol 75% WP insecticide-bird repellent, EPA Reg. No. 3125–288, may be used.

2. Mesurol may be applied by ground equipment at a rate of 2.67 pounds (2.0 pounds a.i.) per acre. No more than three applications may be made per season.

3. Application of Mesurol is restricted to those grape fields where damage from bird depredation will cause significant economic losses, as determined by Cooperative Extensive or authorized State personnel.

4. Application is to begin at the first sign of major bird damage. A one-day pre-harvest interval is imposed.

5. A total of 33,600 pounds a.i. are authorized to treat up to 5,600 acres.

6. Mesurol is toxic to fish and other aquatic organisms. Precautions must be taken to avoid or minimize spray drift to aquatic areas.

7. Mesurol is highly toxic to bees exposed to direct treatment or residues on crops or blooming weeds. It may not be applied or allowed to drift to crops or weeds when bees are actively visiting the area.

8. All applicable precautions, restrictions, and directions on the registered label must be followed.

9. Residues of the a.i. and its cholinesterase-inhibiting metabolites not exceeding the following levels may enter into interstate commerce: Grapes—10 ppm; raisins—20 ppm; raisin waste—50 ppm; grape pomace—50 ppm. The Food and Drug Administration, U.S. Department of Health and Human Services, has been advised of this section.

10. The Applicant is responsible for assuring that all of the provisions of this specific exemption are met and must submit a final report summarizing the results of this program by February 28, 1981.

(Sec. 18 as amended 92 Stat. 819; (7 U.S.C. 136))

Dated: October 22, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80–33647 Filed 10–28–80; 8:45 am]

BILLING CODE 6560–32–M

[PH–FRL 1646–8; OPP–180513]

North Carolina Department of Agriculture; Issuance of Specific Exemption To Use Acephate To Control European Corn Borer on Non-Bell Peppers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted a specific exemption to the North Carolina Department of Agriculture (hereafter referred to as the "Applicant") to use acephate to control the European corn borer on a maximum of 1,200 acres of non-bell peppers in North Carolina. The specific exemption is issued under the Federal Insecticide, Fungicide, and Rodenticide Act.

DATE: The specific exemption expires on October 31, 1980.

FOR FURTHER INFORMATION CONTACT: Jack E. Housenger, Registration Division (TS–767), Rm. E–107, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, (202–426–0223).

SUPPLEMENTARY INFORMATION: According to the Applicant, the European corn borer *(Ostrinia nubilalis)* is a serious threat to non-bell pepper production in North Carolina. Larvae hatch from eggs, which are laid during the time that the pepper fruits are on the plant, and burrow under the stem cap or into the side of the fruit. Since the non-bell pepper processors cannot sort borer-infested peppers from clean peppers, any shipment received with one percent or greater borer infestation is rejected in total. Shipments of non-bell peppers which cannot be sold to the processors are generally considered a total loss. According to the Applicant, the chemicals registered for use on non-bell peppers do not give a high enough degree of efficacy to be acceptable. The Applicant claims that currently registered alternatives give 70 percent control while acephate is expected to give 90 percent control.

The Applicant proposed to make four applications of acephate at a rate of 1.0 pound active ingredient per acre at 7-to 10-day intervals until 21 days prior to harvest. A maximum of 2 additional applications at a rate of 0.5 pound active ingredient per acre would be made. No application will be made within seven days of harvest.

Acephate is currently registered for use on bell peppers, and permanent tolerances have been established for combined residues of acephate and its metabolite (methamidophos) at 4 parts per million (ppm) in or on bell peppers (of which no more than 1 ppm is the metabolite). EPA has determined that available residue data indicate that the proposed use pattern should not result in residues of acephate in excess of this level in or on non-bell peppers provided a 7-day pre-harvest interval is observed. This level has been judged adequate to protect the public health. No unreasonable adverse effects to man or the environment are expected to result from the proposed use.

After reviewing the application and other available information, EPA has determined that the criteria for an exemption have been met. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until October 31, 1980, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The product Orthene 75S Soluble Powder, EPA Reg. No. 239–2416, will be used. If an registered label is used it must contain the identical applicable precautions and restrictions which appear on the registered label.

2. Orthene 75S will be applied at a rate of 1.0 pound active ingredient per acre at 7-to 10-day intervals. A maximum of 4 applications may be made at this rate until 21 days of harvest. A maximum of 2 additional applications may be made at a rate of 0.5 pound active ingredient per acre.

3. No applications will be made within 7 days of harvest.

4. Applications may be made with ground equipment using a minimum of 25 gallons and a maximum of 150 gallons of water per acre.

5. A maximum of 1,200 acres may be treated.

6. All applicable directions, restrictions, and precautions on the EPA-registered product label must be followed.

7. Peppers treated in accordance with the above conditions should not exceed combined residue levels of 4 ppm of acephate and methamidophos (of which no more than 1 ppm is methamidophos). Peppers with residues that do not exceed this level may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health and Human Services, has been advised of this action.

8. The Applicant is responsible for assuring that all of the provisions of this specific exemption are met and must submit a report summarizing the results of this program by March 1, 1981. The level of control achieved and resulting yield on the treated acreage should be included in this report or as soon as available.

9. The EPA shall be immediately informed of any adverse effects resulting from the use of acephate in connection with this exemption.

(Sec. 18, as amended 92 Stat. 819; (7 U.S.C. 136))

Dated: October 22, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80–33648 Filed 10–28–80; 8:45 am]

BILLING CODE 6560–32–M

[PH–FRL 1647; OPP–180510]

Texas; Crisis Exemption for Fenvalerate on Cabbage

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA gives notice that the Texas Department of Agriculture (hereafter referred to as "Texas") has availed itself of a crisis exemption for the use of Pydrin (fenvalerate) to control loopers and *Heliothis* species on approximately 2,500 acres of cabbage in Texas. Because the treatment is expected to continue for more than 15 days, Texas has submitted a request for a specific exemption for a continuation of this program.

DATE: Texas anticipates that the need will continue until harvest.

FOR FURTHER INFORMATION CONTACT: Jack E. Housenger, Registration Division (TS–767), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–107, 401 M St., SW., Washington, D.C. 20460, (202–426–0223).

SUPPLEMENTARY INFORMATION: Texas notified EPA on September 3, 1980, that it was initiating a crisis exemption for the use of Pydrin on approximately 2,500 acres of cabbage to control loopers and *Heliothis* species. According to Texas, of the registered alternatives, methamidophos, methomyl, and acephate are the most effective; however, maximum rates of these pesticides provide only 65 to 80 percent control. Texas states that this level of control is not sufficient to prevent damage and provide a marketable product. Texas reports that the crisis will continue until the crop is harvested.

All applications are being made by, or under the direct supervision of, a State-certified applicator when infestations reach economic threshold levels. A maximum of 8 treatments will be made at a rate of 0.1 pound active ingredient (a.i.) per acre for looper control and 0.2 pound a.i. per acre for *Heliothis* species control. Residues of fenvalerate in or on cabbage are not expected to exceed 2 parts per million from this program. A 7-day pre-harvest interval is to be observed. Wrapper leaves are to remain in the field and are not to be used for feed. Texas will make observations for any adverse effects to the environment.

Texas has requested a specific exemption for the continuation of this program.

(Sec. 18 as amended 92 Stat. 819; (7 U.S.C. 136))

Dated: October 22, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80–33649 Filed 10–28–80; 8:45 am]

BILLING CODE 6560–32–M

[PH–FRL 1646–7; OPP–30190]

Union Carbide Corp.; Applications To Register Pesticide Products Containing a New Active Ingredient

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Union Carbide Corp. has submitted an application to register the pesticide products Thiodicarb Insecticide 75% WP and 500 Thiodicarb Insecticide, which contain the active ingredient thiodicarb [dimethyl N,N'-[thiobis [(methylimino)carbonyloxy]]bis[ethanimidothioate] which has not been included in any previously registered pesticide product. This application is made pursuant to the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (92 Stat. 819; 7 U.S.C. 136) and the regulations thereunder [40 CFR 162.6). Notice of receipt of this application does not indicate a decision by the agency on the application. Interested persons are invited to submit written comments on the application referred to in this notice.

DATE: Comments may be submitted on or before November 28, 1980, and should bear a notation indicating the EPA Registration Number.

ADDRESS: Written comments to: Jay S. Ellenberger, Product Manager (TS–767), Room E–303, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Jay S. Ellenberger (202–426–2635).

SUPPLEMENTARY INFORMATION: Union Carbide Corp., 7825 Baymeadows, Jacksonville, FL 32216, has submitted to EPA an application to register the pesticide products Thiodicarb Insecticide 75% WP and 500 Thiodicarb Insecticide (EPA Registration Numbers 264–GUR and 264–GUE, respectively) containing [dimethyl N,N'-[(thiobis[(methylimino)carbonyloxy]] bis[ethanimidothioate] at 75% and 44% respectively. The application proposes that the pesticide be classified for general use on cottonseed and soybeans by ground or aerial application.

Notice of approval or denial of this application will be announced in the **Federal Register.** Except for such

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material protected by section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (92 Stat. 819; 7 U.S.C. 136) and the regulations thereunder (40 CFR 162.8), the test data and other scientific information deemed relevant to the registration decision may be made available after approval under the provisions of the Freedom of Information Act. The procedure for requesting such data will be given in the **Federal Register** if an application is approved.

(Sec. 3(c)(4), 86 Stat. 972 (7 U.S.C. 136a))

Dated: October 22, 1980.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-33650 Filed 10-28-80; 8:45 am]

BILLING CODE 6560-32-M

[OPP-00131; PH-FRL-1646-4]

State FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces a meeting of the State FIFRA Issues Research and Evaluation Group (SFIREG). The meeting will be open to the public.

DATES: Wednesday and Thursday, December 10 and 11, 1980, beginning at 8:30 a.m. both days and ending at noon on December 11.

ADDRESS: The meeting will be held at: Environmental Protection Agency Headquarters, Room M-3906-3908, 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: P. H. Gray, Jr., Office of Pesticide Programs, Environmental Protection Agency, Room TS-770-M 401 M St. SW., Washington, DC 20460, (202-472-9400).

SUPPLEMENTARY INFORMATION: This meeting is the seventh meeting of the full Group. The tentative agenda includes the following topics:

1. Action items from the July, 1980 meeting of SFIREG,
2. Regional reports,
3. Working Committee reports,
4. Other topics which may arise.

Dated: October 22, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 80-33682 Filed 10-28-80; 8:45 am]

BILLING CODE 6560-32-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. B-15]

TV Broadcast Applications Accepted for Filing and Notification of Cut-Off Date

Released: October 30, 1980.

Cut-Off Date: December 12, 1980.

Notice is hereby given that the applications listed in the attached appendix are accepted for filing. Because the applications listed in the attached appendix are in conflict with applications which were accepted for filing and listed previously as subject to a cut-off date for conflicting applications, no application which would be in conflict with any application listed in the attached appendix will be accepted for filing.

Petitions to deny the applications listed in the attached appendix and minor amendments thereto must be on file with the Commission not later than the close of business on December 12, 1980. Any application previously accepted for filing and in conflict with any application listed in the attached appendix may also be amended as a matter of right not later than the close of business on December 12, 1980. Amendments filed pursuant to this notice are subject to the provisions of § 73.3572(b) of the Commission's Rules.

Federal Communications Commission.

William J. Tricarico,

Secretary.

BPCT-800806KE (new), Norfolk, Virginia, Tidewater Community Broadcasting, Inc. Channel 49. ERP: Vis. 2796 kW; HAAT: 1005 feet.

BPCT-800806KF (new), Norfolk, Virginia, Focus Broadcasting of Norfolk, Inc. Channel 49. ERP: Vis. 2062 kW; HAAT: 1002 feet.

BPCT-800718KJ (new Major Amendment), Albany, New York, G & M Broadcasting Corporation. Channel 45. ERP: Vis. 1321 kW; HAAT: 1010 feet.

BPCT-800721KJ (new), Schenectady, New York, Union Street Video, Inc. Channel 45. ERP: Vis. 5000 kW; HAAT: 875 feet.

[FR Doc. 80-33677 Filed 10-28-80; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 80-77]

Failure of Vessel Operating Common Carriers Operating in the Foreign Commerce of the United States To Comply With the Certification Filing Requirements of Section 21(b) of the Shipping Act, 1916; Order To Show Cause

Section 21(b) of the Shipping Act, 1916, (46 U.S.C. § 820) requiries the filing of a periodic, written certification by the chief executive officer of every vessel operating common carrier (VOCC) attesting to:

"(1) a policy prohibiting the payment, solicitation, or receipt of any rebate which is unlawful under the provisions of this Act;

"(2) the fact that such policy has been promulgated recently to each owner, officer, employee, and agent thereof;

"(3) the details of the efforts made, within the company or otherwise, to prevent or correct illegal rebating; and

"(4) full cooperation with the Commission in its investigation of illegal rebating or refunds in United States foreign trades, and in its efforts to end such illegal practices. Failure to file the required certification subjects the delinquent carrier to "a civil penalty of not more than $5,000 for each day such violation continues".

Commission General Order 43 (46 CFR Part 552), which implements section 21(b), requires the written certification mandated by that section to be filed with the Commission by May 15 of each year.

The carriers named in the appendix have published rates in tariffs on file with the Federal Maritime Commission for the carriage of goods in the foreign commerce of the United States and have not filed the cerfication required by May 15 of this year. These carriers are therefore being required to show cause why they should not be found in violation of the certification filing requirements.

If any of the carriers named in the appendix have not filed their certification because they are not actively carrying cargo between ports named in their published tariffs then these carriers would no longer appear to be common carriers by water within the meaning of Section 18(b) of the Shipping Act, 1916 (46 U.S.C. 817(b). Because only *bona fide* common carriers by water are permitted to maintain tariffs with the Commission, those tariffs which pertain to inactive carrier services are subject to cancellation. *Inoctive Tariffs of Vessel Operating Carrier*, 20 F.M.C. 433 (1978).

Now, therefore, it is ordered, That pursuant to sections 21(b) and 22 of the Spipping Act, 1916, (46 U.S.C. §§ 820, 821) those vessel operating common carriers by water operating in the foreign commerce of the United States listed in the appendix are named repondents in this proceeding and ordered to show cause why they should not be found in violation of section 21(b) and 46 CFR Part 552 for failure to file with the Commission a written certification attesting to company policies and effects to combat rebating in the foreign commerce of the United States; and

It is Further Ordered, That pursuant to sections 18(b) and 22 of the Shipping Act, 1916, (46 U.S.C. §§ 817, 821) those respondents which are not offering an active common carrier service in any of the trades covered by their published tariffs are further ordered to show cause why those tariffs should not be cancelled; and

It is further ordered, That this proceeding shall be limited to the submission of affidavits of fact and memoranda of law and replies thereto. Oral argument may also be scheduled if deemed necessary by the Commission. Should any party believe that an evidentiary hearing is required, that party must accompany any request for such hearing with a statement setting forth in detail the facts to be proven, their relevance to the issues in this proceeding and why such proof cannot be submitted through affidavit. Affidavits of fact and memoranda of law shall be file by respondents and served upon all nonrespondent parties of record no later than close of business on December 8, 1980. Reply affidavits and memoranda shall be filed by the Commission's Bureau of Hearing Counsel no later than close of business on January 8, 1981. Intervenors shall file as their interests shall appear. Requests for hearing or for oral argument shall be filed on or before January 15, 1981; and

It is further ordered, That any person having an interest and desiring to participate in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR § 502.72); and

It is further ordered, That, all documents submitted by any part of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's Rules of Practice and Procedure (46 CFR § 502.118). Pursuant to Rule 10, the requirement of Rule 117 that such documents be served on all parties of record is waived for purposes of this proceeding, in regard to respondent's affidavits of fact and memoranda of law.

By the Commission.

Francis C. Hurney,

Secretary.

Appendix.— *Active VOCC's—No Certification*

Acadian Ocean Freight Ltd.
Achille Lauro
Agromar Line
Alaf Line Ltd.
Alianca Line
American Industrial carriers, Inc.
American Shipping Company Inc. S.A.
Americas Shipping Lines, Inc., The
Anglo European Container Line
Armada Lines
Armasal Line
Arrow Line
Asia America Line
Atlantic Caribe Ltd.
Atlantic Transport Co. Ltd.
B.F.I. West Africa Lines, Ltd.
Bahama Adventure Shipping Ltd.
Barbara Line
Belfranline
Bifrost, Ltd.
Booth-Lamport (J/S)
Bridge Line (BLL), Ltd.
C R Line
Cacena Line Ltd.
California International Freight Corp.
Cargo Dispatch, Inc.
Carib Transport, Inc.
Caribbean Express Line
Caribbean Line
Caribbean Steamship Corp.
Caribe Line, Ltd.
Carigulf Lines
Caribbean Lines Corporation
Cartainer Line
Char Ching Marine Company Ltd.
China Ocean Shipping Company
Christensen Canadian African Lines
Clemwood Shipping Company
Coates, Peterson Steamship Co.
Cobelfret Lines
Commonwealth Maritime Company
Compagnie Tahitienne Maritime
Compagnie Maritime Belge
Consorcia Panameno De Navegacion
Crusader Swire Container Service, Ltd.
Cunard-Brocklebank, Ltd.
Cylanco, S.A.
Dafra Lines
Devonia Lines
Divi-Divi Line, Ltd.
Donaca Line
Edward Shipping & Mercantile, S.A.
Empacadora Del Norte, S.A.
Empresa Maritima Del Estado
Euro-Freight Lines, Ltd.
Eurobridge Lines
Eurohold Line
Europe Canada Lakes Line
Fairplay Caribe Limited
Flonac Line
Freight & Chartering Co., Ltd.
French American Service Transport Line
Frota Amazonica, S.A.
Furness Withy (Chartering) Ltd.
Galleon Shipping Corporation
Georgia-Aztex Lines (J/S)
Gulf West Africa Line
Haiga Bridge Shipping S.A.
Hong Kong Guam Carrier S.A.
Hyundai International, Inc.
Iceland Steamship Co.
Inca Lines
Incan Superior, Ltd.
Intercoastel Shipping Agency
Intercontinental Maritima, S.A.
Iraqi State Enterprise for Maritime Transport
Islander Freight & Supply, Ltd.
Japan Shipping Co., Ltd.
Johnson Line
Kingston Shipping S.A.
Koctug Line
L & W Line
Lago Line S.A.
Libra Shipping and Trading Corporation, Ltd.
Linea Islena Ltd.
Lineas Maritimas De Guatemala, S.A.
LTL International Limited
Majestic Lines Inc.
Mammoth Bulk Carriers, Ltd.
Maple Leaf Shipping Co. Ltd.
Mar Azul Motorships, Inc.
Mar Shipping Line, Inc.
Marca Line
Marcella Shipping Company, Ltd.
Marine Agency, Inc.
Marine Autocrusiers of Panama, Inc.
Marine Bulk Carriers
Marine Express Line, S.A.
Maritimas Del Caribe, Co. S. DE R.L.
Maritima San Andres Ltda
Maritime Americas Ltd.
Marsh Harbour Shipping Co. Ltd.
Mazoa Line Corp. S.A.
Mercandia Rederierne
Mexico Express Line
Miami-Caicos Shipping Limited
Mid-Ocean Lines, Inc.
Nauru Pacific Shipping Lines
Nautilius Chartering Inc. S.A.
Naviera Buques Centro Americano, S.A.
Naviera Central, C.A.
Naviera Marfrigo, S.A.
Navieras Caribe, Ltd.
Navimerca Line
Nervion Lines
Nigerian Star Line
Nosac Line
Ocean Transport Agency Inc.
Oceania Line, Inc.
Olympic Steamship, Inc.
Omega De Navegacion, S.A.
Pacific Forum Line
Pacific Navigation of Tonga, Ltd.
Pacific Rim Container Service Inc.
Phoenix Shipping Company, Inc.
Portuguese Line
R.C.D. Shipping Services (J/S)
Rainbow Line
Regent Line
Relia Steamship Co.
Rutland Maritime Management Corp.
Saguenay Shipping Co.
Saimaa Pacific Line
Saipan Shipping Co.
Salsola Shipping Lines SA
San Andres Shipping Line Ltd
Sause Bros Ocean Towing Co., Inc.
Scandinavian Continental Line AB
Sealark Shipping Company S.A.
Seaspan International Ltd.
Seaspeed Services
Seastar Shipping Co., Ltd.
Seatraders, Ltd.
Servicios Maritimos Del Ecuador, S.A.
Siboney Shipping Co. S.A.
Sidruss Shipping Co., Ltd.
Societe Ivoirienne De Transports Maritimes
Societe Nationale Maritime
Springbok Line
Springbok Shipping Co., Ltd.
Straum Steamship Co. Ltd.
Sun Coast Lines Inc.
T. Tainers Systems
Target Navigation and Transportation
Taylor Corporation, Ltd.
TEC Lines Ltd.
Timber Line Ltd.
TMT Line
Tokyo Shipping Co.
Traghetti Mediterraneo S.P.A.
Tranati Lines
Trans Air Marine S.A.
Trans-Caribbean Lines
Transoceanic Navigation Corp.
Transytur Line
Uiterwyk Lines (Far East)
Uiterwyk Lines (Mexico)
Uni-Pacific Container Lines, Ltd.
Union Steamship Co. of N.Z. Ltd.
United Reefer Lines, Inc.
Universal Alco Ltd.
Vaasa Line, O/Y
Valmar De Navegacion, S.A.
Venebuques, S.A.
Victoria Line
Warner Pacific Line
West Indies Shipping Corp.
Wesifal-Larsen Line
White Pass Trans Ltd.
Yulsan Shipping Co., Ltd.

[FR Doc. 80-33683 Filed 10-28-80; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 1065]

Federal Freight Forwarding, Inc.; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.9 of Federal Maritime Commission General Order 4 further provides that a license will be automatically revoked or suspended for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Federal Freight Forwarding, Inc., 1130 U.S. Highway, #1, Elizabeth, NJ 07201, FMC No. 1065, was cancelled effective October 22, 1980.

By letter dated September 23, 1980, Federal Freight Forwarding, Inc. was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 1065 would be automatically revoked or suspended unless a valid surety bond was filed with the Commission.

Federal Freight Forwarding, Inc. has failed to furnish a valid surety bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission

Order No. 201.1 (Revised), section 5.01(d) dated August 8, 1977;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 1065 be and is hereby revoked effective October 22, 1980.

It is ordered, that Independent Ocean Freight Forwarder License No. 1065, issued to Federal Freight Forwarding, Inc. be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Federal Freight Forwarding, Inc.

Daniel J. Connors,

Director, Bureau of Certification and Licensing.

[FR Doc. 80-33694 Filed 10-28-80; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 80-76]

Heidelberg Eastern, Inc. and Container Overseas Services, Inc. and Container Overseas Agency, Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Heidelberg Eastern, Inc. against Container Overseas Services, Inc. and Container Overseas Agency, Inc. was served October 23, 1980. Complainant alleges that it has been subjected to payment of rates for transportation in violation of section 18(a) et seq. and 18(b)(3) of the Shipping Act, 1916.

This proceeding has been assigned to Chief Administrative Law Judge John E. Cograve. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,

Secretary.

[FR Doc. 80-33691 Filed 10-28-80; 8:45 am]

BILLING CODE 6730-01-M

Independent Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

Edward Brown, 734 15th St., N.W., Suite 409, Washington, D.C. 20005

Aero Marine Expediters, Inc., 65 Roosevelt Avenue, Valley Stream, NY 11581. Officers: Robert P. Weinrib, President, Thomas G. Coscette, Vice President, Jay C. McQuillen, Vice President

Leonard Bros. International, LTD., 7060 West Fort Street, Detroit, MI 48209. Officers: Jerry F. Leonard, Sr., Chairman of the Board, Jerry F. Leonard, Jr., President, David W. Leonard, Vice President/Secretary/Treasurer, Richard W. Foerster, Vice President

Diosdad C. Roque d.b.a. D.C. Rogue Customs Broker, 2987 Mission Street, #202, San Francisco, CA 94110

Overseas Project Transport, Inc., 3300 S. Gessner, Houston, TX 77063. Officers: Wolfgang Anderson, Vice President, Rolf Krings, President, Klaus Maassen, Vice President

Selax Transport Corporation d.b.a. International Freight Forwarders & Co., 20780 Leapwood Avenue, Carson, CA 90746. Officers: Scott S.W. Lee, President, George Kim, Vice President, Felix C. Duguel, Vice President, Dan Kang, Director, Aeri Chung, Treasurer/Secretary.

By the Federal Maritime Commission.

Dated: October 24, 1980.

Francis C. Hurney,

Secretary.

[FR Doc. 80-33692 Filed 10-28-80; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Chadwick Bancshares, Inc.; Formation of Bank Holding Company

Chadwick Bancshares, Inc., Chadwick, Illinois, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 95 percent or more of the voting shares of Farmers' State Bank of Chadwick, Chadwick, Illinois. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 21, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System. October 22, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 33705 Filed 10-28-80; 8:45 am]

BILLING CODE 6210-01-M

Elm Bancshares, Inc.; Formation of Bank Holding Company

Elm Bancshares, Inc., Elmhurst, Illinois, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 per cent or more of the voting shares of Elmhurst National Bank, Elmhurst, Illinois. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 21, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 22, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33706 Filed 10-28-80; 8:45 am]

BILLING CODE 6210-01-M

Western Bancshares, Inc.; Formation of Bank Holding Company

Western Bancshares, Inc., Milwaukee, Wisconsin, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of Milwaukee Western Bank, Milwaukee, Wisconsin. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 21, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 21, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33605 Filed 10-28-80; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and section 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and, except as noted, received by the appropriate Federal Reserve Bank not later than November 21, 1980.

A. *Federal Reserve Bank of San Francisco* (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. BankAmerica Corporation, San Francisco, California (insurance activities; Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, West Virginia and Wyoming): To engage, through its direct subsidiary, BA Insurance Company, Inc., a California corporation, in the activity as underwriter (initially as reinsurer) to the extent permitted by relevant state law for credit life insurance and credit accident and health insurance which is directly related to extensions of credit by BankAmerica Corporation and its nonbank subsidiaries.

Such activities will be conducted from an existing office in San Francisco serving the states of Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, West Virginia and Wyoming. Comments on the application must be received by November 13, 1980.

2. U.S. BANCORP, Portland, Oregon (insurance activities; Colorado, Oregon, and Utah): To engage through a *de novo* subsidiary, Mt. Hood Life Insurance, Inc., in reinsurance for credit life and credit accident and health insurance written through Applicant and its subsidiaries. The office of record of the new corporation will be in Phoenix, Arizona, its operations will be conducted from an office in Portland, Oregon, and it will serve Applicant and its subsidiaries located in Colorado, Oregon, and Utah.

B. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, October 22, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33601 Filed 10-28-80; 8:45 am]

BILLING CODE 6210-01-M

Crocker Bank International (New York); Establishment of U.S. Branch of a Corporation Organized Under Section 25(a) of the Federal Reserve Act

Crocker Bank International (New York), New York, New York, a corporation organized under section 25(a) of the Federal Reserve Act, has applied for the Board's approval under section 211.4(c)(1) of the Board's Regulation K (12 CFR 211.4(c)(1)), to establish a branch in Chicago, Illinois. Crocker Bank International (New York) operates as a subsidiary of Crocker National Bank, San Francisco, California.

The factors that are to be considered in acting on this application are set forth in section 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than November 21, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 21, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33602 Filed 10-28-80; 8:45 am]

BILLING CODE 6210-01-M

Irene Bancorporation, Inc.; Formation of Bank Holding Company

Irene Bancorporation, Inc., Irene, South Dakota, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Farmers State Bank, Irene, South Dakota. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 21, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 21, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33603 Filed 10-28-80; 8:45 am]

BILLING CODE 6210-01-M

SBT Corp.; Acquisition of Bank

SBT Corporation, Savannah, Georgia, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(3)) to acquire 90 per cent or more of the voting shares of the successor by merger to The First National Bank of Valdosta, Valdosta, Georgia. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than November 21, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 21, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33604 Filed 10-28-80; 8:45 am]

BILLING CODE 6210-01-M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on October 20, 1980. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the **Federal Register** is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed ICC request are invested from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before November 17, 1980, and should be addressed to Mr. John M. Lovelady, Senior Group Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street NW., Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

Interstate Commerce Commission

The ICC requests clearance of revision of Form C-1, Annual Report, required to be filed by some 166 Private Car and Refrigerator Car Line Companies, pursuant to section 11145 of the Interstate Commerce Act. Data collected by Form C-1 are used for economic regulatory purposes. By Final Rule No. 37346, effective for the reporting year beginning January 1, 1980, and due to be filed by March 31 of the year following the reporting year, ICC eliminated the filing of Form B-1, Refrigerator Car Lines Owned or Controlled by Railroad Companies. Now all Refrigerator Car Lines will be required to file the revised version of Annual Report, Form C-1, along with Private Car Line Companies. The ICC states that the revised Form C-1 will reduce the carriers' reporting burden and will provide an adequate source of information. The ICC estimates that reporting burden will average two hours per report.

Norman F. Heyl,

Regulatory Reports, Review Officer.

[FR Doc. 80-33709 Filed 10-28-80; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF THE INTERIOR
Geological Survey

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G 4082, Block 18, Sabine Pass Area, offshore Texas.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: October 21, 1980.

E. A. Marsh,

Staff Assistant for Operations Gulf of Mexico OCS Region.

[FR Doc. 80-33635 Filed 10-28-80; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a Development and

Production Plan describing the activities it proposes to conduct on Leases OCS-G 3584 and 4231, Blocks 170 and 181, Ship Shoal Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: October 21, 1980.

E. A. Marsh,

Staff Assistant for Operations, Gulf of Mexico OCS Region.

[FR Doc. 80-33652 Filed 10-28-80; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Land Management

California Desert Conservation Area Advisory Committee: Meeting

Notice is hereby given in accordance with Pub. L. 92-468 and 94-579 that the California Desert Conservation Area Advisory Committee will meet November 20 and 21, 1980, on the public lands with the California Desert Conservation Area near Baker, California.This meeting will be a committee workshop to review the Proposed Plan and Final Environmental Impact Statement for the California Desert Conservation Area, and to prepare their advice to the Secretary of the Interior for the final Plan. The meeting will begin at 8:00 a.m., Thursday, November 20, and Friday, November 21, at the Desert Studies Center at Soda Spings, nine miles southwest of Baker, California. The meeting is open to the public.

Further information may be obtained from Mr. Clayton A. Record, Jr., Chairman, California Desert Conservation Area Advisory Committee, c/o California Desert District Office, 1695 Spruce Street, Riverside, California 92507.

Dated: October 21,1980.

James B. Ruch,

State Director.

[FR Doc. 80-33625 Filed 10-28-80; 8:45 am]

BILLING CODE 4310-84-M

Prineville Advisory Council Meeting

Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR Part 1780 that a meeting of the Prineville District Advisory Council will be held on November 19, 1980.

The Council will meet in the District conference room at 8:30 a.m. at 185 E. 4th Street, Prineville, OR 97754.

The agenda includes:

1. A field tour of points in the Brothers Environmental Statement area representative of major activities germane to the land use plan and environmental statement to be written for the area.

2. A brief pre-tour meeting to acquaint members with the land use plan requirements and time schedules.

3. A post-tour discussion to consider involvement role of Advisory Council in planning procedures.

4. Subsequent meeting arrangements.

The public and news media is welcome to attend any segment of the Council meeting. Tour participants are expected to provide their own transportation and lunch.

Persons wishing to address the Council either orally or in writing are requested to contact the District Manager at the above address by November 17, 1980.

Summary minutes of the meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within thirty days following the meeting.

Reinard B. Okeson,

Acting District Manager.

October 17, 1980.

[FR Doc. 80-33624 Filed 10-28-80; 8:45 am]

BILLING CODE 4310-84-M

[INT FEIS 80-47]

Proposed Geothermal Leasing Within the Coso Known Geothermal Study Area, Inyo County, Bakersfield District, Calif.; Availability of Final Environmental Impact Statement

Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a Final Environmental Impact Statement discussing anticipated impacts of a proposed geothermal leasing program for an area within the Coso Known Geothermal Resource Area, in the Bakersfield District, Inyo County, California. The proposal involves competitive and non-competitive geothermal leasing of the Federal lands in a 72,640 acre area centered on the Coso Known Geothermal Study Area.

A 30-day public review period for the Final EIS will commence from date of this publication.

Copies of the Final Environmental Impact Statement are available upon request from the following offices:

California State Office (911), Bureau of Land Management, 2800 Cottage Way, Rm. E-2841, Sacramento, California 95825, Telephone (916) 484-4541.

Bakersfield District Office, Bureau of Land Management, 800 Trustun Avenue, Room 311, Bakersfield, California 93301, Telephone (805) 861-4191.

Copies of the Final Environmental Impact Statement are available for public reading and review at the two above locations plus the following:

Office of Information, Bureau of Land Management, Interior Building, 18th and C Streets, N.W., Washington, D.C. 20240, Telephone (202) 343-5717.

Kern County Beale Memorial Library, 1415 Trustun Avenue, Bakersfield, California 93301.

Dated: October 21, 1980.

James B. Ruch,

State Director.

[FR Doc. 80-33688 Filed 10-28-80; 8:45 am]

BILLING CODE 4310-47-M

[ES 11592]

Arkansas; Notice of Opportunity for Public Hearing and Republication of Notice of Proposed Withdrawal

The National Park Service, Department of the Interior, has filed application ES 11592 for the withdrawal from all forms of appropriation of the following described land:

Fifth Principal Meridan, Arkansas

T. 15 N., R. 17 W.,
Sec. 3, NE¼NE¼.
T. 15 N., R. 18 W.,
Sec. 8, NW¼NW¼;
Sec. 10, NW¼NE¼.
T. 18 N., R. 19 W.,
Sec. 25, SW¼SE¼.
T. 16 N., R. 22 W.,
Sec. 1, S½SW¼, SW¼SE¼, NE¼SE¼;
Sec. 2, S½SE¼;
Sec. 7, SE¼NW¼, SW¼NE¼;
Sec. 12, NE¼NW¼, SW¼SE¼;

Sec. 17, NW¼SE¼.
T. 17 N., R. 14 W.,
Sec. 2, S½N½SW¼.
T 17 N., R. 21 W.,
Sec. 29, SW¼SW¼.
T. 18 N., R. 14 W.,
Sec. 34, SE¼SE¼.

These lands aggregate approximately 723.05 acres in Marion, Searcy and Newton Counties, Arkansas. The National Park Service desires to use the land as an integral part of the Buffalo National River Area. A notice of the proposed withdrawal was previously published as F.R. Document No. 76–6633 in 41 F.R. 10114 on March 9, 1976.

Pursuant to Section 204(h) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2754, notice is hereby given than an opportunity for a public hearing is afforded in connection with the pending withdrawal application.

All interested persons who desire to be heard on the proposed withdrawal must file a written request for a hearing with the Director, Eastern States, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, on or before November 28, 1980. Notice of the public hearing will be published in the **Federal Register**, giving the time and place of such hearing. The hearing will be scheduled and conducted in accordance with Bureau of Land Management Manual Sec. 2351.16B. All previous comments submitted in connection with the withdrawal application are included in the record and will be considered in making a final determination on the application.

In lieu of or in addition to attendance at a schedules public hearing, written comments or objections to the pending withdrawal application may be filed with the undersigned authorized officer of the Bureau of Land Management on or before November 28, 1980.

The above described lands are temporarily segregated from the operation of the public land laws, including the mining laws, to the extent that the withdrawal applied for, if and when effected; would prevent any form of disposal or appropriation under such laws. Current administrative jurisdiction over the segregated lands will not be affected by temporary segregation. In accordance with section 204(g) of the Federal Land Policy and Management Act of 1976, the segregative effect of the pending withdrawal application will terminate on October 20, 1991, unless sooner terminated by action of the Secretary of the Interior.

All communications in connection with the pending withdrawal application should be addressed to the Eastern States Director, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304.

Roger Hildebeidel,
Eastern States Director.

[FR Doc. 80-33680 Filed 10-28-80; 8:45 am]
BILLING CODE 4310-84-M

Ely District, Nevada—Grazing Advisory Board Meeting

Notice is hereby given, in accordance with Public Law 94–579, that a meeting of the Ely District Grazing Advisory Board will be held Wednesday, December 3, 1980.

The meeting will convene at 10:00 a.m. (PST) at the conference room of the White Pine County Library, Courthouse Plaza, in Ely, Nevada. The Agenda for the meeting will include: (1) minutes of the previous meeting, (2) Schell and Egan grazing EIS progress report, (3) cooperative resource management, (4) public comment period, (5) wild horse report, (6) range improvement maintenance, (7) M–X missile impact on the district, and (8) advisory board recommendations.

The meeting is open to the public. Interested persons may make oral statements to the board at approximately 3:00 p.m. (PST), December 3, 1980. Written statements must be submitted to the Ely BLM office by COB December 2, 1980. Depending on the number of persons wishing to make oral statements, a time limit per person may be established by the Ely District Manager.

A summary of the minutes of the Advisory Board meeting will be on file at the Ely District office and will be available for public inspection and reproduction during regular office hours for 30 days following the meeting.

Dated: October 20, 1980.

Neil B. McClury,
District Manager.

[FR Doc. 80-33641 Filed 10-28-80; 8:45 am]
BILLING CODE 4310-84-M

National Park Service

Intention To Negotiate Concession Contract

Pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that ninety (90) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service proposes to negotiate a concession contract authorizing the operation of a marina and related facilities for the public at Fort McNair Yacht Basin, in Washington, D.C.

An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major Federal action having a significant impact on the environment under the National Environmental Policy Act of 1969. The environmental assessment may be reviewed in the office of the Superintendent, National Capital Parks-East, 1900 Anacostia Drive SW., Washington, D.C. 20020.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal must be postmarked or hand delivered on or before the ninetieth (90th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Superintendent, National Capital Parks-East, 1900 Anacostia Drive, P.O. Box 38104, Washington, D.C. 20020, for information as to the requirements of the proposed contract.

Dated: October 23, 1980.

Manus J. Fish, Jr.
Regional Director, National Capital Region.

[FR Doc. 80-33686 Filed 10-28-80; 8:45 am]
BILLING CODE 4310-70-M

San Antonio Missions Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the San Antonio Missions Advisory Commission will be held at 6:30 p.m., Tuesday, November 18, 1980, Bexar County Commissioners Court, 1st Floor, Bexar County Court, San Antonio, Texas.

The San Antonio Missions Advisory Commission was established pursuant to Public Law 95–629, Title II, November 10, 1978. The purpose of the commission is to advise the Secretary of the Interior or his designee on matters relating to the park and with respect to carrying out the provisions of the statute establishing the San Antonio Missions National Historical Park.

Matters to be discussed at this meeting include:

—General Management Plan Status Report
—Land Acquisition Plan
—Boundary Map Report
—Park Protection Zone Status
—Subcommittee Reports

The meeting will be opened to the public, however, facilities and space for accommodating members of the public will be limited and persons will be accommodated on a first come, first serve basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, San Antonio Missions National Historical Park.

Persons wishing further information regarding this meeting or who wish to submit written statement may contact Jose A. Cisneros, Superintendent, 727 E. Durango, Room A612, San Antonio, Texas 78206; telephone (512) 229–6009).

Minutes of the meeting will be available for public review four weeks after the meeting at the office of the San Antonio Missions National Historical Park.

Dated: October 21, 1980.

Ben L. Moffett,
Acting Regional Director, Southwest Region.

[FR Doc. 80-33667 Filed 10-28-80; 8:45 am]
BILLING CODE 4310-70-M

[INT FES 80–46]

General Management Plan, Yosemite National Park, Calif.; Availability of Final Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service, U.S. Department of the Interior, has prepared a final environmental impact statement for the proposed General Management Plan for Yosemite National Park. The proposal, under which most operational facilities would be relocated from Yosemite Valley to El Portal, will guide overall park management and development including specific development concept plans for all developed areas, proposed additions to the park wilderness recommendation, and minor boundary adjustments. Overnight accommodation units will decrease by 10% and will serve 12% fewer people. Camping will increase 9%; and day parking will decrease 16%, significantly reducing overcrowding and automobile traffic in Yosemite Valley. Six alternatives considered are: (1) Provide resource-related activities and moderate amount of commercial services; (2) Emphasize backcountry experiences and provide only mimimal commercial services; (3) Provide large range of recreational and social activities supported by substantial commercial activities in a natural park setting; (4) No action; (5) Provide resource-related activities and reduce accommodations and commercial services; (6) Relocate most operational facilities from Yosemite Valley to El Portal and Wawona.

The final environmental impact statement (EIS) includes and incorporates by reference the August 1978 draft EIS, for its analyses of alternatives and discussion of the affected area. A limited number of copies are available upon request to: Superintendent, Yosemite National Park, P.O. Box 577, Yosemite National Park, CA 95389, Telephone: (209) 372–4461.

Public reading copies will be available for review at the following locations:

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets, N.W., Washington, D.C. 20240, Telephone (202) 343–6843.
Office of Public Affairs, National Park Service, Western Regional Office, 450 Golden Gate Avenue, San Francisco, CA 94102, Telephone (415) 556–5186.
Superintendent, Yosemite National Park, CA 95389, Telephone (209) 372–4461.

Dated: October 23, 1980.

James H. Rathlesberger,
Special Assistant to Assistant Secretary of the Interior.

[FR Doc. 80-33564 Filed 10-28-80; 8:45 am]
BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-79]

Certain Cathode Sputter Coated Class Transparencies; Termination

AGENCY: U.S. International Trade Commission.
ACTION: Termination of investigation No. 337–TA–79, *Certain Cathode Sputter Coated Class Transparencies.*

SUMMARY: The parties to this investigation have filed a joint motion to terminate based upon a settlement agreement. After reviewing the record, including comments from interested Federal agencies and private parties, the Commission has terminated this investigation.

SUPPLEMENTARY INFORMATION: In connection with the Commission's investigation under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) of alleged unfair methods of competition and unfair acts in the importation or sale of certain cathode sputter coated glass transparencies in the United States, the complainant, the respondents, and the Commission investigative attorney filed a motion on April 25, 1980 (motion No. 79–2) to terminate this investigation on the basis of a settlement agreement.

On May 28, 1980, the Administrative Law Judge filed her recommendation that the motion be granted. Notice of the pendency of the motion to terminate and the general nature of the settlement agreement were published in the **Federal Register** on July 21, 1980 (45 CFR 48751).

RECONSIDERATION: Any party wishing to petition for reconsideration of the Commission's action must do so within 14 days of service of the Commission Action and Order. Such petitions must be in accord with Commission Rule 210.56 (19 CFR 210.56).

PUBLIC ACCESS TO RECORD: Copies of the Commission's Action and Order, and any other public document in this investigation are available to the public during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Scott Daniels, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0480.

By order of the Commiesion.

Issued: October 22, 1980.

Kenneth R. Mason,
Secretary.

[FR Doc. 80-33702 Filed 10-28-80; 8:45 am]
BILLING CODE 7020-02-M

[Investigaiton No. 337-TA-81]

Certain Hollow Fiber Artifical Kidneys; Motion 81-23 Granted

On October 6, 1980, the Commisison voted to grant Motion 81–23 and extend the time for completion of the hearing before the presiding officer until December 2. 1980.

Copies of the Commission's Action and Order and any other public documents in this investigation are available to the public during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone (202) 523–0161.

By order of the Commission.

Issued: October 20, 1980.

Kenneth R. Mason,
Secretary

[FR Doc. 80-33704 Filed 10-28-80; 8:45 am]
BILLING CODE 7020-02-M

V 45 OC 29 80 O UMI

[701-TA-65, 66, 67, and 68 (Preliminary)]

Leather Wearing Apparel From Brazil, Korea, Taiwan and Uruguay; Institution of Preliminary Countervailing Duty Investigations and Scheduling of Conference

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing duty investigations to determine whether there is a resonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry is materially retarded, by reason of allegedly subsidized imports from Brazil, Korea, Taiwan, and Uruguay of leather wearing apparel, provided for in item 791.78 of the Tariff Schedules of the United States (TSUS).

EFFECTIVE DATE: October 15, 1980.

FOR FURTHER INFORMATION CONTACT: Vera Libeau, Senior Investigator (202-523-0368).

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted following receipt of a petition on October 15, 1980, filed by Ralph Edwards Sportswear, Inc., on behalf of domestic producers of leather wearing apparel. The petition requested the imposition of additional duties in an amount equal to the net amounts of the alleged bounties or grants.

Authority

Section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) requires the Commission to make a determination of whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of the alleged subsidized imports. Such a determination must be made within 45 days after the date on which a petition if filed under section 702(b) or on which notice is received from the Department of Commerce of an investigation commenced under section 702(a). Accordingly, the Commission, on October 21, 1980, instituted preliminary countervailing duty investigations Nos. 701-TA-65, 66, 67, and 68. These investigations will be subject to the provisions of part 207 of the Commission's Rules of Practice and Procedure (19 CFR 207, 44 F.R. 76457) and particularly, subpart B thereof.

Written Submissions

Any person may submit to the Commission on or before November 17, 1980, a written statement of information pertinent to the subject matter of these investigations. A signed original and nineteen copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business data, will be available for public inspection.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 10 a.m., e.s.t., on November 12, 1980, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. Parties wishing to participate in the conference should contact the senior investigator for these investigations, Ms. Vera Libeau (202-523-0368). It is anticipated that parties in support of the petition for countervailing duties and parties opposed to such petition will each be collectively allocated one hour within which to make an oral presentation at the conference. Further details concerning the conduct of the conference will be provided by the senior investigator.

Inspection of Petition

The petition filed in these cases is available for public inspection at the Office of the Secretary, U.S. International Trade Commission.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 80-33703 Filed 10-28-80; 8:45 am]
BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Bureau of Justice Statistics

Modification of Programs in Criminal Justice Statistics, JS-1 through JS-6

These six programs were announced on pages 37914 through 37916 of the **Federal Register** on June 5, 1980. As a result of limited availability of funds and a reevaluation of the programs by the Bureau of Justice Statistics, relative priorities for funding are established as follows:

Highest Priority: Program JS-1, Grant and Cooperative Agreement Program to Establish State-Level Capability for Statistical Analysis in Criminal Justice, and Program JS-2, Cooperative Agreement Program to Provide State and Local Governments with Access to Federal Informational Resources in Criminal Justice.

Second Priority: Program JS-3, Cooperative Agreement Program to Collect State-Level Offender Based Transaction Statistics (OBTS) Data, and Program JS-4, Cooperative Agreement Program to Collect Statewide Data on Adult Probation.

Third Priority: Program JS-5, Competitive Cooperative Agreement Program to Develop Statistical Techniques and Methods for the Analysis of Specific Topics in Criminal Justice, and Program JS-6, Competitive Cooperative Agreement Program to Investigate Issues in Criminal Justice for Future Multi-State Statistical Programs.

In addition, Program JS-3 is modified by deletion of the following sentence: "Where no appropriate state-level program exists or is under development, the Bureau of Justice Statistics will entertain applications from metropolitan areas or combinations of metropolitan areas which account for a substantial percentage of the serious offenses committed in the state." Eligibility will be limited to appropriate state-level agencies.

Extensions of the application deadlines for Programs JS-5 and JS-6 were announced on page 60504 of the **Federal Register** on September 12, 1980. Those deadlines (November 30, 1980 for JS-5 and December 31, 1980 for JS-6) remain in effect. However, decisions on funding for these two programs may be deferred, and it is anticipated that only a small number of awards will be made.

Dated: October 24, 1980.

Harry A. Scarr,
Director, Bureau of Justice Statistics.

[FR Doc. 80-33617 Filed 10-28-80; 8:45 am]
BILLING CODE 4410-18-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Babcock & Wilcox Water Reactors; Meeting Postponed

The October 30, 1980 meeting of the ACRS Subcommittee on Babcock and Wilcox Water Reactors has been postponed indefinitely. Notice of this meeting was published October 24, 1980.

Dated: October 24, 1980.

John C. Hoyle,
Advisory Committee Management Officer

[FR Doc. 80-33629 Filed 10-28-80; 8:45 am]
BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Fluid Dynamics; Meeting

The ACRS Subcommittee on fluid Dynamics will hold a meeting on November 13, 1980 at the Amfac Hotel, 1380 Old Bayshore Highway, Burlingame, CA. to review NucleDyne's Passive Containment System and the status of NRC Programs on Mark II Containments and Asymetric Loads. Notice of this meeting was published Oct. 24, 1980.

In accordance with the procedures outlined in the **Federal Register** on October 7, 1980. (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows: *Thursday, November 13, 1980, 8:30 a.m. until the conclusion of business.*

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information about topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Dr. Andrew L. Bates (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., Eastern Time.

Dated: October 22, 1980.

John C. Hoyle,
Advisory Committee Management Officer.

[FR Doc. 80-33628 Filed 10-28-80; 8:45 am]
BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Waste Management; Meeting

The ACRS Subcommittee on Waste Management will hold a meeting on November 13-14, 1980, in Room 1046, 1717 H St., NW, Washington, DC. The Subcommittee will continue to obtain information to aid the full Committee in preparing a response to the NRC Commissioners' request for comments on proposed rulemaking on the storage and disposal of nuclear waste and the adequacy of the record (Waste Confidence Rulemaking PR-50-51), and to obtain information to aid in the preparation of the ACRS Annual Report to Congress on the NRC Reactor Safety Research efforts. Notice of this meeting was published October 24.

In accordance with the procedures outlined in the **Federal Register** on October 7, 1980 (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions during which the Subcommittee finds it necessary to discuss the ACRS Annual Report to Congress on the NRC Reactor Safety Research Program and Budget. One or more closed sessions may be necessary to discuss such information. (SUNSHINE ACT EXEMPTION (9)(B)). To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows: *Thursday, November 13 and Friday. November 14, 1980, 8:30 a.m. until the conclusion of business each day.*

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NCR Staff, their consultants, and other interested persons.

Further information about topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. John C. McKinley (telephone 202/634-3265) between 8:15 a.m. and 5:00 p.m., Eastern Time.

The ACRS is required by Section 5 of the 1978 NRC Authorization Act to review the NRC Reactor Safety Research Program and Budget and to report the results of the review to Congress. In order to perform this review, the ACRS must be able to engage in frank discussions with members of the NRC Staff and such discussions would not be possible if held in public sessions. I have determined, therefore, in accordance with Subsection 10(d) of the Federal Advisory Committee Act (Public Law 92-463), that, should such sessions be required, it is necessary to close portions of this meeting to prevent frustration of the above stated aspect of the ACRS' statutory responsibilities. The authority for such closure is 5 U.S.C. 552b(c)(9)(B).

Dated: October 23, 1980.

John C. Hoyle,
Advisory Committee Management Officer.

[FR Doc. 80-33630 Filed 10-28-80; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-285]

Omaha Public Power District; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 52 to Facility Operating License No. DPR-40 issued to Omaha Public Power District (the licensee), which revised the Technical Specifications for operation of the Fort Calhoun Station, Unit No. 1, located in Washington County, Nebraska. The amendment is effective as of its date of issuance.

This amendment changes the Technical Specifications to revise the charcoal filter flow rates and clarify the term operable.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the

Commission's rules and regulations. The Commission has made appropriate findings as required by the Act, and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

For further details with respect to this action, see (1) the licensee's submittals dated March 14, 1978 (as supplemented May 1, 26, 1978, March 6 and May 24, 1979), and August 5, 1980, (2) Amendment No. 52 to License No. DPR-40, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 14th day of October 1980.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 80-33626 Filed 10-28-80; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-443 and 50-444]

Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), et al.; Request for Action Under 10 CFR 2.206

On August 22, 1980, the Commission declined to review a February 11, 1980, decision of the Director of the Office of Nuclear Reactor Regulation (NRR) concerning the Public Service Company of New Hampshire's (PSNH) Seabrook Station. The Director's February 11th decision denied a petition under 10 CFR 2.206 filed by the Seacoast Anti-Pollution League (SAPL). *See* DD-80-6, 11 NRC 371 (1980). While the Commission was considering whether to review the Director's decision, counsel for SAPL wrote the Commission on June 30, 1980, to inquire as to the status of the Commission's deliberations on the Director's decision and to provide additional information which SAPL alleged would support issuance of an Order to Show Cause to PSNH.

Although the Commission declined to review the Director's decision, the Commission has referred SAPL's June 30th letter to the Director for consideration under 10 CFR 2.206. SAPL's letter raises issues concerning the adequacy of emergency planning and the need for measures to mitigate the consequences of severe accidents. As provided in 10 CFR 2.206, appropriate action will be taken on SAPL's letter within a reasonable time.

Copies of SAPL's letter are available for inspection in the Commission's Public Document Room at 1717 H Street N.W., Washington, D.C. 20555, and in the local public document room at the Exeter Public Library, Front Street, Exeter, New Hampshire 03883.

Dated at Bethesda, Maryland this 21st day of October 1980.

For the Nuclear Regulatory Commission.

Edson G. Case,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 80-33627 Filed 10-28-80; 8:45 am]

BILLING CODE 7590-01-M

Three Mile Island Unit 2 Advisory Panel; Establishment

The Nuclear Regulatory Commission has determined that establishment of an Advisory Panel is necessary and in the public interest in order to obtain advice and consultation on the major activities required to decontaminate and safely clean-up the Three Mile Island, Unit 2 nuclear power facility near Harrisburg, Pennsylvania.

The Commission believes that such an advisory panel should be convened for the purpose of obtaining input and views from the residents of the Three Mile Island area and affording Pennsylvania government officials an opportunity to participate in the Commission's decisional process regarding clean-up plans for the facility. The panel will consider the comments expressed by the local residents, and make recommendations to the Commission. These recommendations are expected to aid the NRC in developing the Programmatic Environmental Impact Statement related to clean-up and disposal of radioactive wastes.

The panel will consist of twelve members as follows:

(1) Three members shall be appointed from among persons representing agencies of the State of Pennsylvania;

(2) Three member shall be appointed from among persons representing agencies of the State of Pennsylvania;

(3) Three members shall be appinted from among persons representing the scientific community; and

(4) Three members shall be appointed from among persons having their principal place of residence in the viciinty of the Three Mile Island nuclear reactor.

Dated in Washington, D.C. this 24th day of October 1980.

John C. Hoyle,

Advisory Committee, Management Officer.

[FR Doc. 80-33701 Filed 10-28-80; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Performance Review Board; Notice of the Names of the Members

AGENCY: U.S. Railroad Retirement Board.

SUMMARY: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

DATE: October 29, 1980.

FOR FURTHER INFORMATION CONTACT: James J. Costello, Bureau of Personnel, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611 (312-968-0932).

SUPPLEMENTARY INFORMATION: Sec. 4314 (c) (1) through (5) of title 5, U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

The members of the Performance Review Board are:

1. Maynard I. Kagen, Director of Research
2. Ralph A. Vicari, Director of Data Processing and Accounts
3. George A. DeLaney, Director of Unemployment and Sickness Insurance
4. Kenneth J. Nolan, Deputy Executive Officer (Alternate).

By Authority of the Board.

R. F. Butler,

Secretory of the Board.

[FR Doc. 80-33562 Filed 10-28-80; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 21758; 70-6512]

Central Power & Light Co.; Proposed Issuance and Sale of First Mortgage Bonds at Competitive Bidding

October 22, 1980.

Notice is hereby given that Central Power & Light Company ("CP&L"), 120 North Chaparral Street, Corpus Christi, Texas 78401, an electric utility subsidiary company of Central and South West Corporation, a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(b) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

CP&L proposes to issue and sell at competitive bidding up to $100,000,000 principal amount of its First Mortgage Bonds, Series R, Due December 1, 2010. The interest rate of the bonds and the price to be paid to CP&L (which will not be less than 99% nor more than 102.75% of the principal amount thereof) will be determined by competitive bidding. The bonds will have refunding protection until December 1, 1985, and will be subject to a 1% sinking fund beginning in 1982. The bonds will be issued under and secured by CP&L's Indenture, dated November 1, 1943, between it and The First National Bank of Chicago, Trustee, as previously amended and as to be further amended by a Supplemental Indenture to be dated December 1, 1980.

The net proceeds from the issuance and sale of the bonds will be used to repay short-term borrowings which were incurred or expected to be incurred to finance construction expenditures and to finance future construction expenditures. Approximately $75,000,000 of short-term borrowings are expected to be outstanding as of December 23, 1980, the planned date of issuance of the bonds. No funds generated from the bonds nor any of the borrowings retired thereby have been or will be utilized to pay the cost of facilities which would not be needed to provide service to customers of CP&L if it were not part of the Central and South West System. No expenditures will be made by the company for the construction or acquisition of any facility not so needed prior to the time all funds covered by the declaration have been expended. For the purposes of the foregoing representation, it is assumed that none of the facilities, construction or acquisition of which would be part of any proposal forming the subject of the proceedings in *Central and South West Corporation, et al.* (Admin. Proc. File No. 3-4951), would be needed to provide service to customers of CP&L if it were not part of the *Central and South West System.*

CP&L's estimated construction and fuel exploration and development expenditures for the years 1980 through 1981 are estimated at $198,000,000, $198,000,000, and $278,000,000, respectively. Approximately $168,000,000 of the 1980 estimated total had been expended as of August 31, 1980.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $120,000, including accountants' fees of $7,500 and legal fees of $18,500. The fee of counsel for the purchasers of the bonds is estimated at $19,500 and is to be paid by the successful bidders. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than November 18, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretory.

[FR Doc. 80-33607 Filed 10-28-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11409; 812-4697]

Cyprus Corp. et al.; Filing of Application for an Order of the Act Exempting Certain Proposed Transactions and Permitting Certain Proposed Transactions

October 22, 1980.

In the matter of The Cyprus Corporation, The RET Income Fund Incorporated, GPM REIT Managers, Inc., Gardner and Preston Moss, Inc., John L. Gardner, Robert F. Birch, One Winthrop Square, Boston, Massuchusetts 02110; and J. B. Fuqua, J. B. Fuqua Foundation, Inc., 3800 First National Bank Tower, Atlanta, Georgia 30383.

Notice is hereby given that The Cyprus Corporation ("Cyprus"), The RET Income Fund Incorporated ("RET"), GPM REIT Managers, Inc. (the "RET Adviser"), Gardner and Preston Moss, Inc. ("Gardner"), John L. Gardner ("Mr. Gardner"), Robert F. Birch ("Mr. Birch"), J. B. Fuqua ("Mr. Fuqua"), and J. B. Fuqua Foundation, Inc. (the "foundation") (collectively, "Applicants"), filed an aplication on June 26, 1980, and amendments thereto on September 18, 1980 and October 17, 1980, for an order: (1) Pursuant to Section 17(b) of the Investment Company Act of 1940 ("Act"), exempting from the provisions of Section 17(a) of the Act, in connection with the proposed merger of RET with and into Cyprus, the issuance of Cyprus to Mr. Fuqua and the Foundation of shares of its common stock in exchange for shares of common stock of RET owned by each of them, and the issuance by Cyprus to Gardner, Mr. Gardner and Mr. Birch of shares of its common stock and preferred stock in exchange for shares of common stock and preferred stock of RET; and (2) pursuant to Section 17(d) of the Act and Rule 17d-1 thereunder, permitting Gardner to sell, and Mr. Fuqua to purchase, 88 percent of the stock of the RET Adviser; permitting Mr. Fuqua to contribute to Cyprus at no cost to Cyprus, and Cyprus to accept, the assets of the RET Adviser; permitting the RET Adviser to serve as investment adviser to RET during the period between the closing date of the merger and the effective date of the merger; and permitting Gardner to serve as investment adviser to Cyprus following approval of an investment advisory

agreement between Gardner and Cyprus. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants

According to the application, Cyprus and RET are each registered under the Act as closed-end, diversified, management companies. Applicants represent that, as of September 5, 1980, Cyprus had total net assets of approximately $13.8 million, beneficially owned by approximately 4,300 shareholders of record, and RET had total net assets of approximately $44.2 million, beneficially owned by approximately 6,600 shareholders of record. Applicants represent that Cyprus has outstanding shares of common stock ("Old Cyprus Common") and $1.70 Cumulative Preference shares ("Old Cyprus Preferred"), and that RET has outstanding shares of common stock ("RET Common") and $4.38 Cumulative Preference Shares ("RET Preferred"). Applicants state that the RET Adviser is owned of record 500 shares of RET Common and 100 shares of RET Preferred. Applicants represent that the RET Adviser is an 88-percent-owned subsidiary of Gardner, which is a Massachusetts corporation engaged in business as an investment adviser furnishing investment advice (together with its subsidiaries) to clients, including RET and other investment companies, with combined portfolios of approximately $1 billion. Applicants also state that Gardner is a party to the investment advisory agreement between the RET Adviser and RET (the "Existing RET Advisory Agreement") and may be deemed to be co-adviser of RET for purposes of the Act. In addition, Applicants represent that Audit Investment Research, Inc. ("Audit") is employed by the RET Adviser as a sub-adviser.

Applicants state that Mr. Gardner is the chairman of the board of RET, the RET Adviser and Gardner, and that his principal business is the business of Gardner. Applicants represent that, as of September 5, 1980, Mr. Gardner was the record or beneficial owner of 45.5 percent of the outstanding voting securities and 26.1 percent of the outstanding nonvoting securities of Gardner and the beneficial owner of 10,500 shares of RET Common and 150 shares of RET Preferred. In addition, Applicants state that Mr. Birch is president and a director of RET; president, treasurer, and a director of the RET Adviser; and president and a director of Gardner. Applicants represent that, as of September 5, 1980. Mr. Birch was the record or beneficial owner of 36.4 percent of the outstanding voting securities and 24.9 percent of the outstanding nonvoting securities of Gardner and the beneficial owner of 2,000 shares of RET common and 154 shares of RET Preferred.

Applicants state that Mr. Fuqua is the president and chairman of the board of Cyprus and the beneficial owner of 605,000 shares, or 37.2 percent, of Old Cyprus Common which amounts to 26.5 percent of the outstanding voting stock of Cyprus. Of this stock, Applicants state that 600,000 shares are owned in the name of Fuqua Investment Company ("FIC"), a Georgia corporation all of the stock of which is owned by Mr. Fuqua, and 5,000 shares are owned in the name of the Foundation. In addition, Applicants state that Mr. Fuqua may be deemed to be the beneficial owner of 630,600 shares, or 16.6 percent, of the outstanding shares of RET Common, which amounts to 14.4 percent of the outstanding voting stock of RET. Of this stock, Applicants state that 480,600 shares are owned in Mr. Fuqua's name and 150,000 shares are owned by the Foundation. Applicants respresent that neither Mr. Fuqua, FIC nor the Foundation owns Old Cyprus Preferred or RET Preferred.

Applicants represent that the Foundation, a Georgia nonprofit corporation, was organized by Mr. Fuqua, who is the chief contributor to the Foundation and serves as its president and one of its three directors. Applicants also represent that the Foundation is a charitable organization exempt from federal income taxation. Applicants state that the Foundation is the record owner of 3.9 percent (150,000) shares of the outstanding shares of RET Common and 0.3 percent (5,000 shares) of the outstanding shares of Old Cyprus Common.

Proposed Transactions

The transaction which gives rise to most of the matters discussed in the application is the merger of RET with and into Cyprus (the "Merger"). Applicants represent that the Merger and certain related transactions are governed by the "Amended and Restated Plan of Recapitalization of The Cyprus Corporation and Agreement and Plan of Merger by and between The Cyprus Corporation and The RET Income Fund Incorporated" dated as of September 9, 1980 (the "Merger Agreement"). Applicants represent that the Merger Agreement will be submitted for approval of (1) the holders of a majority of the outstanding shares of Old Cyprus Common and Old Cyprus Preferred, each voting as a separate class, (2) the holders of a majority of each class of Cyprus capital stock, other than those shares owned by Mr. Fuqua or his affiliates or associates, and (3) the holders of two-thirds of the outstanding shares of RET Common and RET Preferred, each voting as a separate class. Applicants state that, subject to the satisfaction of certain conditions, the closing of the Merger will take place on the next business day following the last to adjourn of the shareholders' meetings of RET and Cyprus called for the purpose of approving the Merger Agreement, or on such later date as may be mutually agreed upon by RET and Cyprus (the "Closing Date"), and that the Merger will be consummated on the tenth business day following the Closing Date (the "Effective Date").

Applicants state that immediately prior to the Merger Cyprus will effect a recapitalization by means of a reverse split whereby each three shares of Old Cyprus Common will be converted to one $.30 par value common share ("New Cyprus Common") and that Cyprus will establish a new class of preferred stock to be denominated Cyprus $1.80 Cumulative Preferred Shares ("New Cyprus Preferred"). Applicants represent that provisions of New Cyprus Preferred are: (a) a cumulative preference dividend of $1.80 per share payable quarterly; (b) a liquidation preference at the Effective Date of approximately $15.40 per share (which is calculated by determining the total liquidation preference of Old Cyprus Preferred and RET Preferred immediately prior to the Merger, and dividing that number by the total number of shares of New Cyprus Preferred to be issued in the Merger), which will increase at the rate of $.35 per share annually, commencing November 1, 1981 and each November 1 thereafter through November 1, 1991, at which time the liquidation preference will increase to the extent required to total $20; (c) the right to convert such shares at any time at the then current liquidation preference, into up to two shares of New Cyprus Common with New Cyprus Common valued at its then net asset value so long as Cyprus is registered under the Act; and (d) New Cyprus Preferred may be called for redemption at an initial price of $23 per share, which will decrease by $.25 per share annually, commencing October 30, 1981 and each October 31 thereafter through October 31, 1992, at which time the redemption price will be $20 per share (all outstanding shares of New Cyprus Preferred must be retired on October 31, 1992 at a price of $20 per share). Applicants state that one share of New Cyprus Preferred will be exchanged for each outstanding share of Old Cyprus Preferred.

Applicants state that in the Merger each share of RET Common will be converted into that number of shares of New Cyprus Common which will have a net asset value equal to the net asset value of a share of RET Common as of the close of business on the business day immediately preceding the Closing Date and that three shares of New Cyprus Preferred will be issued in exchange for each share of RET Preferred. Applicants state that the Merger Agreement provides that upon the consummation of the Merger Cyprus, as the surviving corporation (the "Surviving Corporation"), will be authorized to operate as a non-diversified company as defined in the Act. Following the Merger, Applicants represent that the Surviving Corporation intends to meet the requirements of Subchapter M of the Internal Revenue Code of 1954, as amended, and would be able to invest up to 25 percent of its assets in the stock of each of two companies which are in different industries. Thus, Applicants maintain, the Surviving Corporation will have investment objectives substantially similar to those of Cyprus and RET—primarily to obtain current income sufficient to pay dividends on outstanding preferred stock and, secondarily, to enhance the value of outstanding common stock. Applicants represent that to the extent consistent with its primary objective, the Surviving Corporation will have as its long-term objective the acquisition of a significant investment interest in one or more companies for the purpose of changing from an investment company to an operating or holding company, although, in view of its primary investment objective, Applicants anticipate that the Surviving Corporation will continue to conduct a significant investment business following such change.

Applicants state that, at the time of the closing under the Merger, Mr. Fuqua, under the terms of a purchase agreement dated as of March 28, 1980, will purchase all of the outstanding stock of the RET Adviser from its shareholders for an aggregate cash purchase price of $500,000 plus accrued management fees (the "Share Purchase Transaction"). Applicants represent it is planned that the RET Adviser will continue to serve as investment adviser of RET between the Closing Date and the Effective Date, and that immediately following the Effective Date Mr. Fuqua will contribute all of the assets of the RET Adviser, except cash, cash-equivalent items and securities, to Cyprus. Applicants state that the purchase by Mr. Fuqua of the stock of the RET Adviser will result in an assignment as defined in the Act and, consequently, automatic termination of the Existing RET Advisory Agreement. Applicants represent that since it is planned that the RET Adviser will continue to act as investment adviser to RET between the Closing Date and the Effective Date, the shareholders of RET will be asked to approve for this period an investment advisory agreement (the "New RET Advisory Agreement"), which will be identical to the Existing RET Advisory Agreement except that the RET adviser will not be authorized to enter into a sub-advisory agreement with Audit.

According to the application, Cyprus was internally managed from June 15, 1979 to August 24, 1980 and, accordingly, did not rely principally on a separate investment adviser for investment advice with respect to its investment policies and decisions. Applicants state that since August 25, 1980 Gardner has acted as investment adviser to Cyprus, without compensation, pursuant to an investment advisory agreement dated as of August 25, 1980 (the "GPM Advisory Agreement"). Applicants represent that the GPM Investment Advisory Agreement will be submitted to the shareholders of Cyprus for approval by a majority of the outstanding voting securities of Cyprus and that such approval is a condition to the consummation of the Merger. Applicants state that, if approved, the GPM Advisory Agreement will remain in effect, subject to its termination provisions, for two years from and after the date of its execution, irrespective of whether the Merger is consummated, and thereafter upon requisite annual approval as required by the Act. Applicants state that under the GPM Advisory Agreement Gardner has agreed (1) to manage, subject to the supervision of the board of directors of Cyprus, the investment and reinvestment of the assets of Cyprus, (2) to furnish Cyprus, at Gardner's own expense, with office space and facilities, equipment and personnel for managing investments of Cyprus and to provide, if desired by Cyprus, members of Gardner's organization to serve as officers or agents of Cyprus, and (3) to assist in administering the affairs of Cyprus, subject to the supervision of the Cyprus board of directors by furnishing to Cyprus all necessary office facilities, equipment and personnel, in order to perform such administrative services and arranging, if desired by Cyprus, for members of its organization to serve without salary from Cyprus as officers or agents of Cyprus to perform such services. Applicants state that under the GPM Advisory Agreement Gardner assumes and shall pay or reimburse Cyprus for the compensation, if any, of the officers of Cyprus who are employees of Gardner, and the charges and expenses incurred by Gardner for Cyprus for such office space. Applicants also represent that the GPM Advisory Agreement provides that Cyprus will assume and pay all expenses other than those specifically required to be paid by Gardner. Applicants state that as compensation for its services under the GPM Advisory Agreement Gardner will be paid by Cyprus as follows: (a) for all services during the period commencing with the date of the GPM Advisory Agreement and terminating upon the date of approval of the GPM Advisory Agreement by the shareholders of Cyprus, no compensation will be paid by Cyprus to Gardner; (b) for all investment advisory services rendered after the date of approval of the GPM Advisory Agreement by the shareholders of Cyprus, Gardner will be paid a fee, payable monthly and computed at the rate of .5 percent per year of the average of the weekly aggregate net assets of Cyprus up to $20,00,000, zero percent per year of the average of the weekly aggregate net assets in excess of $20,000,000 and up to the combined net assets of Cyprus and RET as of the Effective Date (as defined in the Merger Agreement) (the "Effective Date Assets") and .25 percent of the average of the weekly aggregate net assets in excess of the Effective Date Assets; and (c) for all administrative services rendered by Gardner ("Covered Administrative Services") after approval of the GPM Advisory Agreement by the Cyprus shareholders, Gardner will be paid by Cyprus an annual fee of $20,000.

Sections 17(a) and 17(b)

Section 17(a) of the Act provides, in part, that it shall be unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, knowingly to sell any security or other property to such registered company, or knowingly to purchase from such registered investment company, any security. Section 17(b) of the Act provides, however, that the Commission upon application may exempt a transaction from the provisions of Section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned,

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and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Mr. Fuqua is an affiliated person of Cyprus and the Foundation is an affiliated person of Mr. Fuqua. In addition, Applicants state that in the Merger Mr. Fuqua and the Foundation will be selling shares of RET Common to Cyprus in exchange for shares of New Cyprus Common. Applicants also state that Messrs. Gardner and Birch are affiliated persons of Gardner and affiliated persons of an affiliated person of Cyprus and that, in the Merger, they will be selling shares of RET Common and RET Preferred in exchange for shares of New Cyprus Common and New Cyprus Preferred, respectively. Accordingly, Applicants request an order, pursuant to Section 17(b) of the Act, exempting from the provisions of Section 17(a) of the Act in connection with the Merger: (1) The issuance of shares of New Cyprus Common in the Merger to Mr. Fuqua and the Foundation in exchange for shares of RET Common owned by each of them; and (2) the issuance of shares of New Cyprus Common and New Cyprus Preferred in the Merger to Gardner and Messers. Gardner and Birch in exchange for shares of RET Common and RET Preferred owned by each of them.

In support of this request, Applicants represent that Mr. Fuqua, the Foundation, Gardner and Messrs. Gardner and Birch will receive New Cyprus Common in exchange for the RET Common owned by them in precisely the same manner as all other holders of RET Common, and that Gardner and Messrs. Gardner and Birch will receive New Cyprus Preferred in exchange for the RET Preferred owned by each of them in precisely the same manner as all other holders of RET Preferred. Applicants maintain that the transactions with respect to RET Common will be on the basis of the net asset values of New Cyprus Common and RET Common and are consistent with the policies of Cyprus and RET and with the provisions of the Act. Applicants submit the one-for-three reverse split with respect to Old Cyprus Common is merely an administrative action designed to enhance the market value of New Cyprus Common without changing the proportionate ownership of New Cyprus Common and that the issuance of New Cyprus Common in the Merger in exchange for RET Common will be determined solely on the basis of relative net asset values of such common stock. Applicants argue that, with respect to the issuance of the New Cyprus Preferred in exchange for both Old Cyprus Preferred and RET Preferred, the boards of directors of Cyprus and RET weighed the perceived advantages of the Merger to the holders of their respective preferred shares against the fact that the consummation of the Merger would, in effect, extend the redemption date of the preferred shares of each corporation. Applicants represent that each board separately concluded that the advantages of the Merger to the holders of its preferred shares outweigh any disadvantages from the extention of redemption dates. In addition, Applicants argue that the change in diversification limitations and the improved asset base resulting from the Merger will better enable the Surviving Corporation to achieve the basic investment objective of earning the dividends for the New Cyprus Preferred and obtaining increases in net asset value for the benefit of the New Cyprus Common and to pursue an investment and business strategy designed to take advantage of the current undervaluation of equity securities of operating companies.

Section 17(d) and Rule 17d–1

Section 17(d) of the Act and Rule 17d–1 thereunder provide that it shall be unlawful for an affiliated person, or an affiliated person of an affiliated person, or a registered investment company, acting as principal, to participate in or effect any transaction in connection with any joint enterprise or arrangement in which any such registered investment company, or company controlled by such registered investment company, is a participant, unless an application concerning such arrangement has been granted by the Commission. In passing upon such application, the Commission will consider whether the participation of such registered investment company is on a basis different from, or less advantageous than, that of the other participants.

Applicants state that the Share Purchase Transaction, the continuation of the RET Adviser as investment adviser to RET between the Closing Date and the Effective Date, and the services of Gardner under the GPM Advisory Agreement as investment adviser to Cyprus following approval of the GPM Advisory Agreement (and, if the Merger is consummated, to the Surviving Corporation following the Merger) are transactions which may be deemed to constitute joint enterprises or other joint arrangements. Accordingly, Applicants request an order, pursuant to Section 17(d) of the Act and Rule 17d–1 thereunder: (1) Permitting the Share Purchase Transaction, (2) permitting Mr. Fuqua to contribute to Cyprus and Cyprus to accept the assets of the RET Adviser following the Share Purchase Transaction, (3) permitting the RET Adviser to serve as investment adviser to RET during the period between the Closing Date and the Effective Date; and (4) permitting Gardner to serve as investment adviser to Cyprus following the approval of the GPM Advisory Agreement.

In support of the Share Purchase Transaction, Applicants represent that the assets of the RET Adviser consist of cash and cash-equivalent items, investment records, investment memoranda, research material, and computer software programs and printouts concerning sercurities and investment matters, but that the cash and cash-equivalent items (including securities) will be distributed to the shareholders of the RET Adviser prior to the Share Purchase Transaction. According to Applicants, Mr. Fuqua perceived that the Share Purchase Transaction would give Cyprus an additional element of bargaining power in negotiating an agreement with an external investment adviser and that, in the event that the Surviving Corporation determined to resume internal management, the assets of the RET Adviser would benefit management at that time. Accordingly, Applicants submit that the Share Purchase Transaction is consistent with the provisions, policies and purposes of the Act and that, to the extent that the participation of the Surviving Corporation in the Share Purchase Transaction is different from that of any other participant, it is at least equally advantageous, since the Surviving Corporation will benefit from the transactions at no cost to it.

In support of the New RET Advisory Agreement, Applicants state that the directors of Cyprus and RET concluded, in approving the Merger Agreement, that it was appropriate to provide an adequate amount of time between the Closing Date and the Effective Date in order to confirm the relative net asset values of the common stocks of Cyprus and RET and to complete other transitional matters required in connection with the Merger. Applicants submit that it is necessary for RET to continue to receive investment advisory services during this period and, consequently, that the New RET Advisory Agreement is necessary and in the best interests of RET. In addition to providing investment advice during this period, Applicants state that the RET Adviser will provide substantial services in connection with transitional matters involved in the Merger. Applicants state that the New RET Advisory Agreement is identical to the Existing RET Advisory Agreement, except that the RET Adviser will not be authorized to enter into a sub-advisory agreement with Audit, and, accordingly, RET will be receiving substantially the same level of investment advisory services from substantially the same personnel drawing on substantially the same advisory resources for the same rate of compensation during this period as has been the case in the past. Applicants submit that the New RET Advisory Agreement is in the best interests of RET, that such Agreement is consistent with the provisions, policies and purposes of the Act, and the participation of RET in the New RET Advisory Agreement is not on a basis different from or less advantageous than that of any other participant in the transaction.

In support of the GPM Advisory Agreement, Applicants state that the directors of Cyprus unanimously approved the GPM Advisory Agreement after considering the following factors: (1) During the period from August 30, 1979 to August 25, 1980 the investment performance of Cyprus, on an internally-managed basis, had been disappointing; (2) during the same period the overall investment performance of RET, under the management of the RET Adviser, was significantly better than that of Cyprus; and (3) RET and Cyprus are extremely similar investment companies since each was established with the same basic investment objectives and policies and the subsequent experience of each has been similar. In addition, Applicants represent that the board of directors of Cyprus has determined that the proposed fee under the GPM Advisory Agreement, based upon the size of Cyprus' portfolio, is substantially less than the costs which Cyprus would incur for investment management and Covered Administrative Services on an internally-managed basis, and appears to be less than the fee which would normally be charged by other external investment advisers for rendering similar services. Further, Applicants state that Cyprus' directors were advised that, if the Merger were consummated, the resulting fee under the GPM Advisory Agreement for an investment company with approximately $55,000,000 in net assets (which, based upon the size of the Cyprus and RET portfolios as of August 21, 1980, approximates the combined net assets of the Surviving Corporation upon consummation of the Merger) would be less than Cyprus' board of directors anticipated incurring for investment management and Covered Administrative Services on an internally-managed basis. In addition, Applicants represent that the amount of the fee under the GPM Advisory Agreement appeared to the board to be less than the amount which would normally be charged by other external investment advisers for rendering similar advisory and administrative services. In summary, Applicants maintain that the costs proposed under the GPM Advisory Agreement are more economical to Cyprus and that, based upon either the existing net assets of Cyprus or the anticipated combined net assets of RET and Cyprus upon consummation of the Merger, the resulting fee can be expected to be less than the amount which Cyprus had been expending when internally managed and less than the fees charged by other external advisers for providing similar services. Consequently, Applicants submit that the GPM Advisory Agreement is in the best interests of Cyprus and is consistent with the provisions, policies and purposes of the Act, and that participation of Cyprus in the GPM Advisory Agreement is not on a basis different from or less advantageous than that of any other participant in the transaction.

Notice is further given than any interested person may, not later than November 17, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-33606 Filed 10-28-80; 8:45 am]

BILLING CODE 8010-01-M

Philadelphia Stock Exchange, Inc.; Application for Unlisted Trading Privileges and of Opportunity for Hearing

October 22, 1980.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the common stock of:

Patrick Petroleum Co., Common Stock, $0.10 Par Value (File No. 7–5768)

This security is listed and registered on one or more other national securities exchanges and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 13, 1980 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-33606 Filed 10-28-80; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1920; Amendment No. 1]

Indiana; Declaration of Disaster Loan Area

The above declaration (see 45 FR 65100) is hereby amended by adding the following counties and adjacent counties within the State of Indiana which constitute a disaster area as the

result of physical damage caused by natural disasters as indicated:

County	Natural disaster	Date
Benton	Drought and high temperature.	6/20–7/30/80
Carroll	Heavy rains	6/1–2, 7/80
	Drought	6/20–7/31/80
Clinton	Drought	6/20–7/31/80
Lake	Drought	6/20–8/7/80
La Porte	Drought and high temperature.	7/1–7/31/80
Marshall	Drought and high temperature.	7/1–8/2/80
Pulaski	Drought	6/20–7/31/80
St. Joseph	Drought	6/20–7/31/80
Starke	Drought	6/19–7/31/80
Vermillion	Drought	6/20–7/31/80

All other information remains the same, i.e. the termination date for filing applications for physical damage is until the close of business on March 16, 1981, and for economic injury until the close of business on June 16, 1981.

Dated: October 16, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-33696 Filed 10-28-80; 8:45 am]

BILLING CODE 4000-01-M

[License No. 09/09-5267]

Solid Capital Corp.; Issuance of a License To Operate as a Small Business Investment Company

On August 12, 1980, a notice was published in the **Federal Register** (45 FR 53629), stating that Solid Capital Corporation, located at 652 Kearney Street, Suite 1 & 2, San Francisco, California 94108, has filed an application with the Small Business Administration pursuant to 13 CFR 107.102 (1980), for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended.

Interested parties were given until the close of business August 27, 1980, to submit their comments to SBA. No comments were received.

Notice is hereby given that having considered the application and other pertinent information, SBA has issued License No. 09/09-5267 to Solid Capital Corporation, on October 10, 1980.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 22, 1980.

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 80-33690 Filed 10-28-80; 8:45 am]

BILLING CODE 8025-01-M

Sunshine Act Meetings

Federal Register
Vol 45, No. 211
Wednesday, October 29, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11:00 AM Friday, November 7, 1980.

PLACE: 2033 K Street, N.W., Washington, D.C., 8th floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Briefing.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-1981-80 Filed 10-27-80; 12:56 pm]

BILLING CODE 6351-01-M

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FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, November 3, 1980, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors pursuant to sections 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Application for Consent to Consolidate and Establish two Branches:

Manufacturers Bank of Saline, Saline, Michigan, an insured State nonmember bank, for consent to consolidate under its charter and title with State Savings Bank of Clinton, Clinton, Michigan, also an insured State nonmember bank, and to establish the two offices of State Savings Bank of Clinton as branches of the resultant bank.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 44,496-L—The Hamilton National Bank of Chattanooga, Chattanooga, Tennessee.

Case No. 44,508-L—The Drovers' National Bank of Chicago, Chicago, Illinois.

Case No. 44,514-NR—United States National Bank, San Diego, California.

Case No. 44,537-L—The Hamilton National Bank of Chattanooga, Chattanooga, Tennessee.

Appeal, pursuant to the Freedom of Information Act, from the Corporation's earlier partial denial of a request for records.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents, or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: October 27, 1980.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Assistant Executive Secretary.

S-1984-80 Filed 10-27-80 3:08 pm]

BILLING CODE 6714-01-M

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FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, November 3, 1980, to consider the following matters:

Disposition of minutes of previous meetings.

Request by the Comptroller of the Currency for a report on the competitive factors involved in a proposed merger of The Huntington National Bank, Columbus, Ohio, and The First National Bank of Burton, Burton, Ohio.

Request by the Comptroller of the Currency for a report on the competitive factors involved in a proposed consolidation of Fidelity National Bank of Pa., Williamsport, Pennsylvania, and Commonwealth Bank and Trust Company, Muncy, Pennsylvania.

Recommendation with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:

Bronson, Bronson & McKinnon, San Francisco, California, in connection with the receivership of United States National Bank, San Diego, California.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 44,524-SR—Village Bank, Pueblo West, Colorado.

Reports of committees and officers:

Minutes of the actions approved by the Committee on Liquidations, Loans and Purchases of Assets pursuant to authority delegated by the Board of Directors.

Reports of the Director of the Division of Bank Supervision with respect to applications or requests approved by him and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Report of the Controller regarding the Corporation's securities portfolio inventory as of September 30, 1980.

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The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street NW., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: October 27, 1980.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Assistant Executive Secretary.

[S–1985–80 Filed 10–27–80; 3:08 pm]

BILLING CODE 6714–01–M

4

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

October 24, 1980.

Amendment to Previous Notice.

TIME AND DATE: 10:00 a.m., Wednesday, October 29, 1980.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will also consider and act upon the following:

4. Quarto Mining Company, North American Coal Corporation, etc., Docket Nos. LAKE 79–119, etc.; Petition for Discretionary Review.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, 202–653–5632.

[S–1982–80 Filed 10–27–80; 2:00 pm]

BILLING CODE 6820–12–M

5

FEDERAL RESERVE SYSTEM (Board of Governors).

TIME AND DATE: 10:00 a.m., Monday, November 3, 1980.

PLACE: 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452–3204.

Dated: October 24, 1980.

Griffith L. Garwood,

Deputy Secretary of the Board.

[S–1972–80 Filed 10–24–80; 4:23 pm]

BILLING CODE 6210–01–M

6

FEDERAL TRADE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: F.R. 45, October 20, 1980, Page No. 69341.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2:00 p.m., Friday, October 24, 1980.

CHANGES IN THE AGENDA: The meeting has been cancelled.

[S–1983–80 Filed 10–27–80; 2:39 pm]

BILLING CODE 6750–01–M

7

INTER-AMERICAN FOUNDATION.

TIME AND DATE: 1:30 to 5:30 p.m., November 10, 1980.

PLACE: Board Room, Inter-American Foundation, 1515 Wilson Boulevard, Arlington, VA 22209.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Swearing-in of New Board Members.
2. Election of Retiring Board Members to Advisory Council.
3. Chairman's Report.
4. President's Report.
5. Minutes of the September 16, 1980, Meeting.
6. Report on the Foundation's Program in Mexico and Central America.
7. Review of the Foundation's Fellowship Program.
8. Discussion of the Foundation's Relations with Congress.
9. Overview of Project Histories in Ecuador.
10. Discussion of Board Meeting in Mexico, January, 1981.

CONTACT PERSON FOR MORE INFORMATION: Lawrence E. Bruce, Jr., (703) 841–3812.

[S–1978–80 Filed 10–24–80; 4:32 pm]

BILLING CODE 7025–01–M

8

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 10:00 a.m. on November 6, 1980.

PLACE: Room 1101, 1825 K Street, N.W., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Ms. Patricia Bausell (202) 634–4015.

Dated: October 27, 1980.

[S–1986–80 Filed 10–27–80; 3:42 pm]

BILLING CODE 7600–01–M

9

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 1:00 p.m. on November 13, 1980.

PLACE: Room 1101, 1825 K Street, N.W., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Ms. Patricia Bausell (202) 634–4015.

Dated: October 27, 1980.

[S–1987–80 Filed 10–27–80; 3:43 pm]

BILLING CODE 7600–01–M

10

POSTAL SERVICE (Board of Governors).

Notice of meeting.

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. 7.5) and the Government in the Sunshine Act (5 U.S.C. § 552b), hereby gives notice that it intends to hold a meeting at 9:00 A.M. on Thursday, November 6, 1980, in the Benjamin Franklin Room, 11th Floor, Postal Service Headquarters, 475 L'Enfant Plaza SW., Washington, D.C. The meeting is open to the public. The Board expects to discuss the matters stated in the Agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245–4632.

Agenda

1. Minutes of the meeting of October 6, 1980.
2. Remarks of the Postmaster General. (In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the members of miscellaneous current developments concerning the Postal Service. He might report, for example, the appointment or assignment of a key official, or the effect on postal operations or a major strike in the transportation industry. Nothing that requires a decision by the Board is brought up under this item.)
3. 1981 Meeting Dates. (The Board will consider a schedule of dates for Board meetings during 1981.)
4. Quarterly Report on Financial Performance. (Mr. Finch, Senior Assistant Postmaster General, Finance Group, will present the Quarterly Summary of Financial Performance.)
5. Quarterly Report on Service Performance. (Mr. Jellison, Senior Assistant Postmaster General, Operations Group, will present the Quarterly Summary of Service Performance.)
6. Report on Employee and Labor Relations. (Senior Assistant Postmaster General Ulseker and members of the Employee and Labor Relations Group staff will report to the Board on developments in the E&LR area.)
7. Automated System for the expanded Zip Code Program. (The Board will consider a proposed capital investment for the procurement of optical character reader channel sorters and related mechanization for the expanded Zip Code letter mail processing system.)

W. Allen Sanders,

Assistant Secretary.

[S–1979–80 Filed 10–24–80; 4:33 pm]

BILLING CODE 7710–12–M

11

RAILROAD RETIREMENT BOARD.

TIME AND DATE: 9:00 a.m., November 6, 1980.

PLACE: Board's meeting room on the 8th floor of its headquarters building at 844 Rush Street, Chicago, Illinois, 60611.

STATUS: Part of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion Open to the Public

(1) Consulting/Technical Assistance Project for the Board, May–June 1979.
(2) Registration requirements for unemployment benefits.
(3) President's Reorganization Project—Report on Strengthening Federal Cash Management.
(4) Procedure for handling of routine correspondence.
(5) Progress report on relocation of the Board.
(6) Appeal of nonwaiver of overpayment, Bennie Williams.
(7) Appeal of nonwaiver of overpayment, Ernest Jones.
(8) Appeal of nonwaiver of overpayment, Auriel L. Kern.
(9) Geraldine C. Stinson appeal (unemployment insurance benefits as social insurance).

Portion Closed to the Public

(A) Appeal from referee's denial of disability annuity, Mario Compomizzi.
(B) Appeal from referee's denial of disability annuity, Ronald J. Atkins.
(C) Appeal from referee's denial of disability annuity, Harold Hoffer.
(D) Appeal from referee's denial of disability annuity, Clinton B. Hundley.
(E) Appeal from referee's denial of disability annuity, Betty L. Voerg.
(F) Appeal from referee's denial of disabled widow's insurance annuity, Elvira Biscaind.
(G) Appeal from referee's denial of disability annuity, William E. Deramus.
(H) Appeal from referee's denial of disability annuity, Edward R. Yun.
(I) Appeal from referee's denial of disability annuity, Alfred L. Jacques.

CONTACT PERSON FOR MORE INFORMATION:
R. F. Butler, Secretary of the Board, Com. No. 312–751–492C, FTS No. 387–4920.

[S–1980–80 Filed 10–27–80; 9:54 am]

BILLING CODE 7905–01–M

12

TENNESSEE VALLEY AUTHORITY (Meeting No. 1255).

TIME AND DATE: 10:15 a.m., EST, Monday, November 3, 1980.

PLACE: Conference Room B–32, West Tower, 400 Commerce Avenue, Knoxville, Tennessee.

STATUS: Open.

Discussion Item

1. Proposed policy for dispersed power production.

Action Items

A—Project Authorization

1. No. 3530—Install additional chemical treatment ponds at Colbert, Johnsonville, and Widows Creek Steam Plants.
2. No. 3534—Replacement of superheater and reheater pressure parts assemblies in Gallatin Steam Plant Units 3 and 4.

B—Purchase Awards

1. Req. No. 824655 (Reissue)—Air Distribution Components for Hartsville and Phipps Bend Nuclear Plants.
2. Req. No. 827934—Computer Center Building for TVA's Chattanooga Office Complex.
3. Req. No 826618—Erection of turbine generator, main feed pumps and feed pump turbines, for Yellow Creek Nuclear Plant, Unit 1.
4. Req. No. 177450—Replacement pressure parts assemblies for Gallatin Units 3 and 4.

C—Power Items

1. Adoption of supplemenal resolution authorizing 1980 Series E Power Bonds.
2. Resolution authorizing the Chairman and other Executive Officers to take further action relating to issuance and sale of 1980 Series E Power Bonds.
3. Deed conveying to Central Electric Power Association, Carthage, Mississippi, the remaining 1.59-acre portion of TVA's Kosciusko Substation site located in Attala County, Mississippi.
4. Bill of sale and quitclaim deed covering conveyance of a 6.5-mile section of TVA's deenergized Lewisburg-Columbia District >No. 1 46–kV Line to the Duck River Electric Membership Corporation.
5. Lease agreement with the city of Okolona, Mississippi, covering lease of a section of TVA's Okolona-Amory 46–kV Line.
6. Letter agreement with Middle Tennessee Electric Membership Corporation covering arrangements for lease of an additional portion of TVA's Smyrna 161-kV Substation site.

D—Personnel Items

* 1. Change of status for John R. Paulk from Manager, Resource Programs, to Director of Land and Forest Resources, Office of Natural Resources, Norris, Tennessee.
* 2. Temporary change of status for E. David Daugherty, Jr., from Assistant to the Director to Assistant Director, Division of Energy Demonstrations and Technology; Office of Power, Chattanooga, Tennessee.
3. Consulting contract with Selox, Inc., Chattanooga, Tennessee, for advice and assistance in connection with TVA's planned coal gasification facility, requested by the Office of Coal Gasification.
4. Consulting contract with E. L. Clark, Chevy Chase, Maryland, for advice and assistance in connection with TVA's planned coal gasification facility, requested by the Office of Coal Gasification.

E—Real Property Transactions

* 1. Conveyance of highway easement to State of South Dakota over certain of TVA's unpatented mining claims in Fall River County, South Dakota.
, Filing of condemnation suits.

F—Unclassified

* 1. Prepayment of costs for transporting 5,000 tons of Eastern United States coal to a commercial-scale coal gasification plant in Greece for testing purposes.
* 2. Settleement of dispute under contract with Continental Oil Company (Conoco) concerning 1977 and 1978 deliveries of uranium concentrates.
3. Request of Vincent J. Van Pelt, a TVA employee, for permission to file application for patent on a protection device for mechanical equipment.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

Dated: October 27, 1980.

[S–1988–80 Filed 10–27–80; 3:52 pm]

BILLING CODE 8120–01–M

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* Approved by individual Board members. This would give formal ratification to the Board's action.

V 45 OC 29 80 UMI

federal register

Wednesday
October 29, 1980

Part II

Department of the Interior

Heritage Conservation and Recreation Service

Urban Park and Recreation Recovery Program

V 4 5 OCT 29 1980 UMI

DEPARTMENT OF THE INTERIOR

Heritage Conservation and Recreation Service

36 CFR Part 1228

Urban Park and Recreation Recovery Program

AGENCY: Heritage Conservation and Recreation Service, U.S. Department of the Interior.

ACTION: Final rule.

SUMMARY: This Rule is published to finalize the administration of the grant-in-aid program under the Urban Park and Recreation Recovery Program (Title X of the National Parks and Recreation Act of 1978, Pub. L. 95–625) and to report on comments received on the interim regulations published in the August 9, 1979, **Federal Register** (44 FR 47018). The Program Information section has also been revised in response to general requests for clarification.

EFFECTIVE DATE: November 28, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Powell Allen, Ms. Carol Jacobson, or Ms. Runore Wycoff, Division of Urban Programs, Heritage Conservation and Recreation Service, 440 G Street NW., Room 310, Washington, D.C. 20243 (202) 343–5971.

SUPPLEMENTARY INFORMATION: In the National Urban Policy Report of March 27, 1978, a new Federal Grant Program was proposed for urban communities to compete for funds to revive and rebuild parks and recreation facilities. On October 13, 1978, the National Parks and Recreation Act of 1978, Pub. L. 95–625, was passed by the Congress; and on November 10, 1978, the President signed the bill into law. Title X, the Urban Park and Recreation Recovery (UPARR) Act of 1978, authorized the Secretary of the Interior to establish a five year program to provide Federal grants to economically hard-pressed communities, specifically for the rehabilitation of critically needed recreation areas and facilities, and the development of improved recreation programs. The Secretary of the Interior has delegated the responsibility for developing the Urban Park and Recreation Recovery Program to the Director, Heritage Conservation and Recreation Service. The Heritage Conservation and Recreation Service provides technical and supervisory grant assistance to applicants.

On August 9, 1979, the Heritage Conservation and Recreation Service published as an Interim Rule in the **Federal Register** (44 FR 47018) Subparts A, C and D of the UPARR Regulations. Subpart B, Uniform Criteria for Preparation of Local Recovery Action Programs, was published as a Final Rule on March 10, 1980 (45 FR 15456). Appendixes A and B, Program Eligibility Provisions, were published as a Final Rule on October 9, 1979 (44 FR 58088).

It is necessary to publish these Grant Procedures as a Final Rule to respond to comments received on the Interim Rule, and complete the timetable for UPARR Program administration. Therefore, in accordance with the Departmental regulations on rulemaking in 43 CFR 14, these Grant Procedure requirements are published as a final rule effective (30 days after date of publication). Comments on the Interim rules published August 9, 1979, (44 FR 47018) are incorporated into these final rules as described in the Public Comments section. The public was given a 60 day comment period on the Interim rules which was effective from August 9 to October 9, 1979. Other major changes between the interim and final regulations are discussed in the Revisions section following Public Comments.

A Final Regulatory Analysis has been submitted to the Department of the Interior based upon the determination of significance for these Grant Procedure regulations. Copies of the Final Regulatory Analysis may be obtained from the Heritage Conservation and Recreation Service, Division of Urban Programs, 440 G Street, N.W., Room 310, Washington, DC 20243. Applicability of OMB Circular A–95 regarding State and local clearinghouse review of Federal and Federally-assisted programs and projects is explained in § 1228.51 of these regulations. The Urban Park and Recreation Recovery Program is listed as No. 15.417 in the Catalog of Federal Domestic Assistance.

Program Information

The objectives of the Urban Park and Recreation Recovery (UPARR) Program are to assist physically and economically distressed urban jurisdictions to revitalize their recreation systems, and to enhance overall recreation opportunities through the use of existing and potential recreation resources. The program is targeted to distressed jurisdictions based upon criteria established by the Secretary, and published in the **Federal Register**, Tuesday, October 9, 1979, (44 FR 58088), as Appendices A and B of this Part.

The intent of the UPARR Program is to stimulate ongoing local commitments to system revitalization and operation, in line with overall urban revitalization objectives of the National Urban Policy. The program aims to develop linkages between cities and States, between urban recreation, physical resource and human services programs, between the Federal Government and the States, and between the Department of the Interior and other Federal agencies, that will help ensure the long-term success of overall urban revitalization efforts.

To meet the objectives of this program, there are three types of grants available which are discussed in Subparts C & D of this Part.

(a) Recovery Action Program Grants.—Section 1007(c) of the Act allows the provision of up to 50 percent matching grants to eligible local applicants, as listed in Appendix B to this Part, or to those discretionary applicants within Standard Metropolitan Statistical Areas (SMSAs), for the development of Recovery Action Programs, as described in Subpart B, March 10, 1980 (45 FR 15456).

(b) Rehabilitation and Innovation Grants.—Subject to appropriate requirements as established by OMB Circulars A–102 and A–95, Federal Management Circular 74–4, Executive Orders, and regulations mandated by law, financial assistance is available to eligible general purpose local governments (**Federal Register**, October 9, 1979, [44 FR 58088]) for the purpose of rehabilitating and revitalizing recreation systems. These grants are competitive, and targeted to aid in the rehabilitation of urban recreation facilities which have fallen into disuse or disrepair; to encourage innovations in the delivery of urban recreation services; to stimulate and support local commitments to recreation system recovery and maintenance; and to improve the management and delivery of recreation service to urban residents. The targeting of UPARR assistance will focus on persons and places most in need.

Public Comments

A 60 day required comment period on the Interim Rule for these regulations ended on October 9, 1979. A total of 18 letters were received. Of these, nine were general information requests. The nine remaining letters specifically addressed the regulations, and contained 17 substantial comments.

Public Comment Summary Chart

Subject of comment		Number of comments
§ 1228.32	Funding and matching share	3
§ 1228.33	Timing and duration of projects	2
§ 1228.36	Land ownership and control	2
§ 1228.37	Pass-through funding	3
§ 1228.44	Fundable elements	2
§ 1228.50	Grant selection criteria	3
§ 1228.56	Historic preservation compliance	2
Total comments received		17

§ 1228.32 Funding and matching share.

1. One question asked whether the in-kind contributions, services or cash used as a matching share for the UPARR Program, could also be used as a match for other programs. They may not be used for other federal program matches per OMB Circular A–102, Attachment F, 3. (b)(2) which states:

(b) All contributions, both cash and in-kind, shall be accepted as part of the grantee's matching share when such contributions meet all of the following criteria:

(2) Are not included as contributions for any other federally-assisted program;

As a result of this comment, a sentence has been added to clarify Section 1228.32 (a) and (c)(2); "In-kind contributions for the UPARR Program may not be used as the matching share for other federally-assisted programs."

2. A clarification was requested on the local use of State or private matching contributions. The use of State or private contributions is entirely dependent upon agreements made between the State or private contributor and the local applicant. If no specific type or element of a proposal has been earmarked for the contributions, the local applicant may use the funds in any way consistent with the intent of that proposal.

3. The use of in-kind donations for the 50% match for preparation of a Recovery Action Program was questioned because of the wording in § 1228.32(a) "Local in-kind donations—may be used as *part of* the 50% local match." This section has been corrected to state that *all or part* of the 50% match may be comprised of in-kind donations.

§ 1228.33 Timing and duration of projects.

1. A comment on this section regarded confusion with the wording, and requested explanation of the rationale behind the one year initiation limit for Innovation proposals. The one year limit on initiating Innovation proposals is based on a legislative requirement that successful Innovation proposals be used in annual reports to evaluate their national demonstration possibilities and effectiveness. Therefore, it was determined that once an Innovation grant is approved, one year was a reasonable time within which the project should begin to produce some desired results. Innovation proposals are primarily service-oriented rather than construction-oriented. For this reason, they should not incur long construction delays, or require more seasonable conditions for getting a project started. It was determined, therefore, that it would not be unreasonable to require evidence, at the end of one year, that an Innovation project could be successful enough to provide recreation opportunities and allow nationwide exposure to the idea. Also, after only one year, with the achievements and/or problems still fresh in the minds of those implementing the project, sharing the idea with other communities could begin, while there was still time in the UPARR Program budget to provide coordination and good technical assistance.

Rehabilitation proposals must be initiated during the first full construction season following grant approval. For both Rehabilitation and Innovation projects, three construction seasons or three years, has been established as a reasonable time frame in which to complete all physical rehabilitation work.

2. With regard to staged projects, the question was asked as to whether two approaches would be permitted in applications. The language was clear in this section, and has been clarified to state that both approaches are permissible. An applicant jurisdiction may submit a single proposal application which includes stages for various projects or services. Such a proposal must request the entire amount of funding necessary to complete each stage. An applicant jurisdiction may also submit a proposal which is only one stage of a much larger project. In such applications, the single stage of a larger project must stand on its own merit in the program competition, and provide direct recreation opportunities. Each stage must increase the recreation utility of a site or facility, independent of subsequent stages. Funding of one stage in no way implies that subsequent stages will also be funded.

§ 1228.36 Land ownership, control and conversion.

1. The question was asked as to what constitutes "adequate" tenure and control of the land or facilities. "Adequate" in this case means ownership by the applicant jurisdiction or sub-grantee. If the land is not owned, then a non-revocable lease of at least 25 years, or a non-revocable lease providing ample time to amortize the total costs of the proposed activity, must be in effect at the time of grant approval. After a property is improved or developed with UPARR funds, it may not be converted to other than public recreation use without approval of the Director, HCRS.

2. One comment suggested the possibility of funding projects for nursing homes. It must be emphasized that this program applies only to public or non-profit areas and facilities which provide recreation opportunities to the general public. Institutions such as hospitals or nursing homes, whether in private or public ownership, would normally not qualify for UPARR recreation improvements because they usually serve only the residents of those institutions. There are exceptions, however, and those would be considered. The UPARR Program is targeted to close-to-home neighborhood recreation which must be open to the public and serve all population groups.

§ 1228.37 Pass-through funding.

1. One comment requested the addition of more detailed information on how a non-profit or special purpose agency actually receives pass-through funds, and who is responsible for awarding these funds. This information has been added to the regulations. Grant funds are always awarded to the local applicant jurisdiction who is the grantee. The applicant jurisdiction may, or may not choose to pass-through funds, as stated in the legislation, Section 1006 (a)(1), "At the discretion of such applicants—." A potential pass-through recipient, must work with its local government applicant jurisdiction. The recipient must also comply with priorities identified in the local five year Recovery Action Program. This process is intended to fulfill the UPARR Program priority criteria for participation by neighborhood non-profit groups, create new partnerships between the public and private sectors, and provide assurances that pass-through projects will help revitalize the entire community recreation system.

2. Two comments concerned the fact that some applicant jurisdictions may have difficulty assuming responsibility for pass-through recipients. The legislation for the UPARR program is intended to assist local governments in their systemwide revitalization process, and requires them to make long-term commitments to continuing operations and maintenance. If grants were awarded directly to independent special districts or non-profit groups, there could be no reasonable assurance that public recreation projects were being

coordinated with a local Recovery Action Program, or that projects or services could be maintained beyond the grant funding period. The UPARR Program is based upon the National Urban Policy to make Federal programs more responsive to urban needs, and to give aid to cities with critical problems. Improving partnerships between Federal, State, local officials, private individuals and groups is also a goal of the UPARR Program. Therefore, local commitments of long-term planning and maintenance are necessary to conserve those urban resources in which substantial investments have been made in past years.

§ 1228.44 Fundable elements.

1. One comment suggested that costs associated with work on the grant application, and other costs incurred prior to grant approval should be reimbursable.

(a) With regard to administrative costs incurred for the preparation of application forms and narrative statements, the UPARR Program must take an approach based upon the legislative nature of the program. Assistance from UPARR is awarded on a national competitive basis. Therefore, because there can be no guarantee that a community will receive grants, all competitors are expected to assume responsibility for application preparation. This Federal program is also supportive of a minimum of paperwork. We believe that those communities which have the greatest need for grants, will be able to provide sufficient information in their applications without excess research or complicated analysis costing them more than is necessary. Because this program is targeted to distressed communities, it is realized that many community applications will be brief and to the point. Another program objective is to stimulate local planning, partnerships and initiative, and therefore, fees to consultants to prepare applications are not reimbursable under the UPARR Program.

(b) Costs prior to grant approval. Reasonable architectural and engineering fees essential for preparation of the cost component of a proposal incurred within a period 9 months prior to preapplication submission to HCRS are reimbursable. Other costs incurred prior to approval of a Rehabilitation, Innovation or Recovery Action Program grant are not reimbursable.

2. The second comment on this section asked whether cost increases, after final grant approval, will be considered. No cost increases will be considered after a final grant agreement has been signed. However, shifts of monies within a proposal before approval of the grant, which do not result in a change in competitiveness of the proposal will be considered, but must have prior approval of HCRS. Those respective proposals or parts of projects which require cost increases will have to be resubmitted as new proposals under another grant competition, as stated in § 1228.62.

§ 1228.50 Selection criteria.

1. One comment expressed concerned with the Rehabilitation criteria dealing with the Federal UPARR investment per capita, stating that larger urban areas have more competitive advantage over smaller cities. In response to this comment, the UPARR Program has a Congressional legislative mandate which gives priority to large cities. It is recognized that all communities have specific needs and can use assistance, however, the UPARR legislation specifically states that the program be targeted to large urban jurisdictions experiencing difficulties. Section 1002 (c) and (d) of the Act states:

The Congress finds that—(c) the greatest recreational deficiencies with respect to land and facilities and programs are found in many large cities, especially at the neighborhood level; (d) inadequate financing of urban recreation programs due to fiscal difficulties in many large cities has led to the deterioration of facilities, nonavailability of recreation services, and an inability to adapt recreational programs to changing circumstances.

This legislation provides the direction to fund projects which have a clear impact on local park and recreation systems. A project's anticipated impact in meeting recreation recovery needs, and its effectiveness in terms of dollars spend for benefits gained, are primary considerations. Therefore, the Rehabilitation selection criteria include a per capita quantification to indicate the relationship of grant size to population. However, this criterion is only one of 10, which means that a proposal may rank high in the overall competition, even if it does not score high on this one factor.

2. One comment suggested that the State participation selection criteria be eliminated because some States may not be able provide funding assistance. The legislative intent of the UPARR Act is to encourage States to participate. A State does not have to provide funding assistance for a jurisdiction to receive credit under this criterion. Credit is given if the State provides technical assistance to local governments in recreation planning, proposal design, implementation or operation and maintenance of rehabilitated sites or facilities; or if the State is responsive to urban needs in other State recreation programs.

3. One comment suggested a clarification of Innovation criterion #9 on the transfer of role. This does not necessarily mean a transfer of funding responsibility. Transfer of role can refer to a change in service, management or operation responsibility. For example, if a neighborhood group manages a park with city funds, there is a transfer of the role of management, which may relieve city personnel or equipment to concentrate efforts in other parks. It is not the intent of the Act to substitute Federal money for adequate local funding of recreation programs. As stated in Section 1007(a)(4) of the Act regarding commitments, all applicants must demonstrate: "intention to maintain total local public outlays for park and recreation purposes at levels at least equal to those in the year preceding that in which grant assistance is sought beginning in fiscal year 1980 except in any case where a reduction in park and recreation outlays is proportionate to a reduction in overall spending by the applicant." The intent of this criterion is to promote involvement of quasi-public and private interests in community revitalization. Local governments should continue to provide adequate funding for recreation facilities and programs. However, the burden of operation and maintenance could be eased if community groups and the private sector supplement and enhance recreation opportunities, in concert with local public efforts.

§ 1228.56 Grant program compliance requirements.

Two comments with regard to historic preservation compliance recommended the inclusion of a definition of historic property in § 1228.3 and a reference to the provisions of 36 CFR 800, "Protection of Historic and Cultural Properties". These additions have been made to the regulations.

Minor Revisions to Interim Regulations

The following minor revisions to the interim regulations have been made to clarify the language on administrative policy since the completion of the first three UPARR grant competitions.

1. Most of the Program Information from the interim regulations has been incorporated into the final regulations because of its clarity in explaining the primary intent of the program and the basic requirements which must be met by grant applicants.

2. § 1228.36—Added (c) on assistance for properties developed with the LWCF, which explains the legislative statement in the Act that UPARR grants should complement and enhance the efforts of both programs.

3. § 1228.37—Pass-through, requirements are expanded and explained with more detail for clarification.

4. § 1228.40 Historic Properties. Formerly a [Reserved] section.

5. § 1228.41—(c) did not relate to demolition and replacement, and was transferred to § 1228.36 as (d).

6. § 1228.42—Entire section rewritten for detail and clarity.

7. Two [Reserved] Sections § 1228.43 and § 1228.45 have been used to separate Fundable Elements for each type of grant.

8. § 1288.44 (a)—Added clarification on architectural and engineering costs incurred 9 months prior to grant approval, and other cost elements for reimbursement.

9. § 1228.50—(a) was deleted because it was restated in, and has more relevance to, § 1228.52 (a).

10. § 1228.53—(b) was split into two paragraphs, and the numbered paragraphs after (b) were rearranged in chronological order respective to the preapplication process.

11. § 1228.60—(a) The PARTS outline of Circular A–102 attachments, along with (b) and (c) were deleted because they are restatements of A–102 standard requirements. (f) was incorporated into § 1228.44 (a) because it relates to limits on fundable elements.

Who Is Eligible

(a) *Eligible Cities and Counties.* Eligible applicants for the UPARR program include those designated cities and counties listed in Appendix B, October 9, 1979 (44 FR 58092), and as amended. The insular areas are eligible under separate authorized funds (16 U.S.C. 2512).

(b) *Discretionary Eligibility and General Requirements.* Section 1005(b) of the Act states that at the Secretary's (Director's) discretion, up to 15 percent of the program funds appropriated annually may be granted to general purpose local governments which are located in Standard Metropolitan Statistical Areas (SMSAs), provided that these grants are in accordance with the intent of the program. Those governments in SMSAs may compete for grants under the program at the Secretary's discretion regardless of whether or not they are included on the list of eligible jurisdictions.

(1) Applicants interested in discretionary funding must comply with the same requirements as the listed eligible jurisdictions. An approved Recovery Action Program must be on file with the respective HCRS Regional Office prior to consideration of a grant for funding. Grants to discretionary applicants are competitive; and proposals which meet the intent and criteria of the program will be judged with other proposals on a nationwide competitive basis.

(2) For the Director's review, discretionary applicants must also submit a narrative statement, signed by the community's chief executive, which explains and quantifies the state of physical and economic distress of the applicant's jurisdiction. Statistics and discussion on distress must relate, but are not limited to, the same criteria used to select the listed eligible jurisdictions (Appendix B of this Part). Discretionary applicants should provide as much up-to-date information on their distress in order to show need for UPARR assistance. No determination of discretionary eligibility will be made until a certified grant preapplication is sent to Washington, and these will be made on a case-by-case basis.

(3) Rehabilitation, Innovation and Recovery Action Program proposals from discretionary applicants must comply with the respective selection criteria for each type of grant (Subpart D of this Part).

(c) *Pass-Through Eligibility.* Section 1006(a)(1) of the Act states that, at the discretion of the eligible general purpose local governments, and if consistent with an approved application, Rehabilitation and Innovation grants may be transferred in whole or in part to independent special purpose local governments, private non-profit agencies (including incorporated community or neighborhood groups), or county or regional park authorities; provided that they offer recreation opportunity to the general public within the jurisdictional boundaries of an applicant. Recovery Action Program grants are for the use of an applicant jurisdiction and, therefore, are not subject to pass-through provisions (Subpart B of this Part).

Authorization of Funding

(a) *Funding.* A total of $730 million is authorized for five years: $151 million for FY 1979 through 1982 and $126 million for 1983. Grants for all projects in any one State shall not exceed 15 percent of the total funds authorized to be appropriated in any fiscal year.

(1) Insular areas are each authorized the sum of $250,000 for each of the fiscal years 1979 through 1983. These sums will not be subject to the matching provisions of the other grants, and may only be subject to such conditions, reports, plans and agreements, if any, as determined by the Director.

(2) Up to 10 percent of the total funds authorized in any fiscal year may be used for Innovation grants, and up to 3 percent of the total funds authorized in any fiscal year may be used for Recovery Action Program grants.

(3) If no funds are used for Innovation and Recovery Action Program grants within any fiscal year, then the total funds authorized in any fiscal year may be used for Rehabilitation grants.

(4) Grants to discretionary applicants must not exceed, in the aggregate, 15 percent of the funds appropriated in any fiscal year for Rehabilitation, Innovation and Recovery Action Program grants.

(b) *Matching and State Incentive.* As an incentive for State involvement in the recovery of urban recreation systems, the Federal government will match, dollar for dollar, State contributions to the local share of an Innovation or Rehabilitation grants; up to 15 percent of the approved grant. The Federal share will not exceed 85 percent of the approved grant.

(1) The Director shall also encourage States and private interests (businesses, non-profit associations and industries) to contribute to the non-Federal share of project costs. State and local government shares may be derived from any State or local government source of revenue.

(2) No money from the Land and Water Conservation Fund (LWCF) or any other Federal grant program, other than general revenue sharing and the Community Development Block Grant (CDBG) program, may be used to match grants under this program. The legislative intent of the UPARR Program is to complement LWCF funding. LWCF is for acquisition and development of outdoor recreation areas and facilities. UPARR is targeted to distressed urban areas, to help revitalize indoor as well as outdoor recreation facilities. UPARR is not intended to discourage States from continuing to allocate LWCF funds to the cities. As stated in the legislation, Section 1003; "This short-term program is intended to complement existing Federal programs such as the Land and Water Conservation Fund and Community Development Grant Programs—."

Delegation of Secretarial Authority

The Director, Heritage Conservation and Recreation Service, has been delegated the program authority by the Secretary of the Interior to develop and implement the Urban Park and Recreation Recovery Program (Part 248

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Departmental Manual 1 and 2, June 8, 1979, and limitations therein, as established by Secretarial Order 3017, January 25, 1978).

Statement of Significance

The Department of the Interior has determined that this document is a significant rule and requires a regulatory analysis under Executive Order 12044 and 43 CFR Part 14; and further, that it is not a major Federal action significantly affecting the quality of the human environment which would require preparation of an Environmental Impact Statement.

A Final Regulatory Analysis has been submitted to the Department based upon the determination of significance for these Grant Procedure regulations. Copies of the Final Regulatory Analysis may be obtained from the Heritage Conservation and Recreation Service, 440 G Street NW., Room 310, Washington, DC 20243. A Grant Manual detailing program guidelines and policies for the administration of the Urban Park and Recreation Recovery Program will be available at a later date.

Authorship Statement

The primary authors of these regulations were Mr. Powell Allen, Ms. Carol Jacobson and Ms. Runore Wycoff of the Heritage Conservation and Recreation Service, 202/343–5971.

Dated: October 22, 1980.

Robert L. Herbst,

Assistant Secretary for Fish and Wildlife and Parks.

In consideration of the foregoing, new Subparts A, C and D, and Reserved Sections of Subpart B are added to 36 CFR Chapter XII Part 1228 to read as follows:

PART 1228—URBAN PARK AND RECREATION RECOVERY ACT OF 1978

Subpart A—General

Sec.

1228.1 Purpose of regulations.
1228.2 Legislative authority.
1228.3 Definitions.
1228.4–1228.9 [Reserved]

Subpart B—Local Recovery Action Programs

* * * * *

1228.18–1228.29 [Reserved]

Subpart C—Grants for Recovery Action Program Development, Rehabilitation and Innovation

1228.30 General requirements.
1228.31 [Reserved]
1228.32 Funding and matching share.
1228.33 Timing and duration of projects.
1228.34–1228.35 [Reserved]
1228.36 Land ownership, control and conversion.
1228.37 Pass-through funding.
1228.38–1228.39 [Reserved]
1228.40 Historic properties.
1228.41 Demolition and replacement of existing recreation properties.
1228.42 Expansion and new development.
1228.43 Fundable elements: Recovery action program grants.
1228.44 Fundable elements: Rehabilitation and innovation grant common elements.
1228.45 Fundable elements: Innovation grants.
1228.46 Citizen participation requirements.
1228.47 [Reserved]
1228.48 Federal coordination.
1228.49 [Reserved]

Subpart D—Grant Selection, Approval and Administration

1228.50 Grant selection criteria.
1228.51 A–95 clearinghouse requirements.
1228.52 Recovery action program grant applications.
1228.53 Preapplication process for rehabilitation and innovation grants.
1228.54 Rehabilitation and innovation grants—full application process.
1228.55 [Reserved]
1228.56 Grant program compliance requirements.
1228.57–1228.59 [Reserved]
1228.60 Grant administrative procedures.
1228.61 [Reserved]
1228.62 Amendments to approved grants.
1228.63 Grant payments.
1228.64 [Reserved]
1228.65 Other requirements.
1228.66 [Reserved]
Appendix A—Criteria for eligibility (44 FR 58088).
Appendix B—List of eligible jurisdictions (44 FR 58088).

Authority: Title X, National Parks and Recreation Act of 1978, Pub. L. 95–625, 16 U.S.C. 2501–2514.

PART 1228—URBAN PARK AND RECREATION RECOVERY ACT OF 1978

Subpart A—General

§ 1228.1 Purpose of regulations.

The purpose of this rule is to set forth guidelines for awarding and administering the three types of grants available through the UPARR program. The three types of grants available are: Rehabilitation, Innovation and Recovery Action Program. The objectives of this rule are to: (1) explain the policies to be followed for awarding grants; (2) list the requirements and criteria to be met for each type of grant and discretionary eligibility; (3) discuss fundable uses and limitations; (4) explain how proposals will be selected and funded; and (5) describe the application process and administrative procedures for awarding grants.

§ 1228.2 Legislative authority.

The policies and procedures of this rule are created to implement the Urban Park and Recreation Recovery Act of 1978, Title X of the National Parks and Recreation Act of 1978, Public Law 95–625, 16 U.S.C. 2501–2514. The Act provides Federal grants to economically hard-pressed communities specifically for the rehabilitation of critically needed recreation areas and facilities, and for the development of improved recreation services this program is authorized for a period of five years.

§ 1228.3 Definitions.

As used in this Part:

Applicant Jurisdiction: The general purpose local government making the actual funding request or in receipt of UPARR funding assistance. This term applies whether the unit is an eligible or discretionary applicant.

Appropriation: The yearly funding level made available by Congress to implement the UPARR Act.

Assistance: Funds made available by the Service to a grantee in support of a public recreation project.

Direct Expenditures or Direct Costs: Those expenditures or costs that can be associated with a specific project.

Director: The Director of the Heritage Conservation and Recreation Service or any other officer or employee of the Service to whom is delegated the authority involved.

Discretionary Applicants: General purpose local governments in Standard Metropolitan Statistical Areas as defined by the Census but not included in the list of eligible applicants developed and published in accord with Sec. 1005 of the UPARR Act.

Federal Management Circular 74–4 (FMC 74–4): FMC 74–4 establishes principles and standards for determining (administrative) costs applicable to grants and contracts with State and local governments.

General Purpose Local Government: Any city, county, town, township, parish, village, or other general purpose political subdivision of a State, including the District of Columbia, and insular areas.

Grant: The act of providing a specific sum of money for the development of a specific project, consistent with the terms of a signed agreement; also the amount of money requested or awarded.

Grantee: The general purpose local government receiving a UPARR grant for its given use, or for authorized pass-through to another appropriate public or private non-profit agency.

HCRS: Heritage Conservation and Recreation Service.

Historic Property: Such a property is one listed in, or determined eligible to be listed in the National Register of Historic Places.

In-kind Contributions: In-kind contributions represent the value of non-cash contributions provided by: (1) the grantee, (2) other public agencies and institutions, and (3) private organizations and individuals. In-kind contributions may consist of the value of donated or loaned equipment or supplies, or contributed services directly benefiting and specifically identifiable to the project, and can be used as part of the grantee's non-Federal matching share.

Innovation Grants: Matching grants to local governments to cover costs of personnel, facilities, equipment, supplies, or services designed to demonstrate innovative, and cost-effective or service-effective ways to augment park and recreation opportunities at the neighborhood level; and to address common problems related to facility operations and improved delivery of recreation service, excluding routine operation and maintenance activities.

Insular Areas: Guam, the Virgin Islands, American Samoa and the Northern Mariana Islands.

Maintenance: All commonly accepted practices necessary to keep recreation areas and facilities operating in a state of good repair, and to protect them from deterioration resulting from normal wear and tear.

OMB Circular A–95 (A–95): Establishes procedures for the evaluation, review and coordination of Federal and federally assisted programs and projects. This circular defines project notification and review procedures governing Federal grant agencies, State, metropolitan and areawide clearinghouses.

OMB Circular A–102 (A–102): Circular A–102 provides the standard for establishing consistency and uniformity among Federal agencies in the administration of grants to States, localities and federally recognized Indian tribes.

Participant: The grantee, or other agency or organization requesting and/or receiving assistance.

Pass-through: The transfer of funds at the discretion of the applicant jurisdiction, to independent, general or special purpose local governments, private non-profit agencies (including incorporated community or neighborhood groups), or county or regional park authorities, who offer recreation opportunities to the general population within the jurisdictional boundaries of the applicant jurisdiction.

Pass-through recipient: Synonymous with subgrantee.

Private Non-profit Agency: A reputable community-based, non-profit organization, corporation, or association organized for purposes of providing recreation, conservation, education or other community services directly to urban residents; on a neighborhood or communitywide basis, through voluntary donations, voluntary labor, or public or private grants.

Project: A single site-specific area or service-specific program proposed or approved for funding.

Project Costs: All necessary charges made by a grantee in accomplishing the objectives of a project, during the grant period.

Property: Site and/or facility.

Proposal: An application for UPARR assistance which may contain one or more projects.

Recovery Action Program: A local park and recreation Recovery Action Program (plan) required under Sec. 1007 of the UPARR Act, which contains expressions of continuing local commitment to objectives, priorities and implementation strategies for overall park and recreation system planning, rehabilitation, service, operation and maintenance.

Recreation Areas and Facilities: Parks, buildings, sites, or other indoor or outdoor facilities which are dedicated to recreation purposes and administered by public or private non-profit agencies to serve the recreation needs of community residents. These facilities must be open to the public and readily accessible to residential neighborhoods. They may include multiple-use community centers which have recreation as one of their primary purposes, but major sports areas, exhibition areas, and conference halls used primarily for commercial sports, spectator, or display activities are excluded from UPARR assistance.

Rehabilitation Grants: Matching capital grants to local governments for the purpose of rebuilding, remodeling, expanding, or developing existing outdoor or indoor recreation areas and facilities; including improvements in park landscapes, buildings, and support facilities; excluding routine maintenance and upkeep activities.

Secretary: The Secretary of the Interior.

SMSA: Standard Metropolitan Statistical Area as defined by the Bureau of the Census.

Special Purpose Local Government: Any local or regional special district, public-purpose corporation or other limited political subdivision of a State: including but not limited to, park authorities; park, conservation, water or sanitary districts; and school districts.

Sponsor: See Participant.

State: Any State of the United States, or any instrumentality of a State approved by the Governor; the Commonwealth of Puerto Rico, and insular areas.

Statewide Comprehensive Outdoor Recreation Plan (SCORP): A State recreation plan required by the Land and Water Conservation Fund Act.

Subgrantee: A general or special purpose local government, private non-profit agency, county or regional park authority requesting or in receipt of UPARR funding under an applicant jurisdiction.

UPARR: Urban Park and Recreation Recovery Act of 1978 or Program.

§§ 1228.4—1228.9 [Reserved]

Subpart B—Local Recovery Action Programs

* * * * *

§§ 1228.18—1228.29 [Reserved]

Subpart C—Grants for Recovery Action Program Development, Rehabilitation and Innovation

§ 1228.30 General requirements.

Applicants must have an approved Recovery Action Program on file with the appropriate HCRS Regional Office prior to applying for Rehabilitation or Innovation grants. Rehabilitation and Innovation proposals must be based on prioritites identified in the applicant jurisdiction's Recovery Action Program. Once HCRS has indicated that a Rehabilitation or Innovation proposal is fundable, the applicant must meet all documentation requirements imposed by OMB Circulars A–102, A–95 and FMC 74–4. Regional offices of HCRS will provide technical assistance to grantees in complying with these requirements.

§ 1228.31 [Reserved]

§ 1228.32 Funding and matching share.

(a) *Recovery Action Program Grant Matching.* Up to 50 percent matching grants are authorized for the preparation of Recovery Action Programs (RAP). State, local and private in-kind donations of assistance (salaries, supplies, printing, etc.) for the preparation of a RAP may be used as all or part of the 50 percent local match. Such in-kind contributions for the UPARR Program may not be used as the matching share for other federally-assisted programs. In addition, Section 1009 of the Act provides that reasonable local costs of Recovery Action Program development may be used as part of a

local match for Innovation or Rehabilitation grants only when the applicant has not recieved a Recovery Action Program grant. Reasonable costs means costs for supplies, salaries, etc., which are not excessive in relation to the normal market value within a geographic area. These costs must be well documented and included in the preapplication for the proposal in which they are to be used as a match. The match can only be used once, and allowed only after the RAP Has been approved by the respective HCRS Regional Office.

(b) *Rehabilitation and Innovation grant matching.* The program provides for a 70 percent Federal match for rehabilitating existing recreation facilities and areas. Seventy percent matching funds are also authorized to local governments for innovation grants which will address systemwide coordination, management and community resource problems through innovative and cost-effective approaches.

(c) *Sources of Matching Share.*

(1) *State Incentive.* As an incentive for State involvement in the recovery or urban recreation systems, the Federal government will match, dollar for dollar, State contributions to the local share of an Innovation or Rehabilitation grant; up to 15 percent of the approved grant. The Federal share will not exceed 85 percent of the approved grant. The Director shall also encourage States and private interests to contribute to the non-Federal share of project costs. State and local government shares may be derived from any State or local government source of revenue.

(2) *Cash.* State, local and private funds may be used as the non-Federal share of project costs. In addition, two types of Federal funds may be used as part of a local match: General Revenue Sharing (Treasury Department) and Community Development Block Grant (CDBG) program funds (Department of Housing and Urban Development) [See also § 1228.56(b)]. Section 1009 of the UPARR Act prohibits use of any other type of Federal grant to match UPARR grants.

(3) *Non-Cash.*

(i) *Material goods.* HCRS encourages in-kind contributions including real property, buildings or building materials, and equipment to applicants by the State, other public agencies, private organizations or individuals. The value of the contributions may be used as all or part of the matching share of project costs, but must be appraised and approved by the Service prior to grant approval. Details regarding these types of donations are covered in OMB Circular A–102. In-kind contributions for the UPARR Program may not be used as the matching share for other Federally-assisted programs.

(ii) *Services.* Any type of service or assistance which relates directly to a grant and the provision of a recreation opportunity, can be used as a matching share; e.g., technical and planning services, construction labor, playground supervision or management services.

§ 1228.33 Timing and duration of projects.

(a) Construction components of projects must be initiated during the first full construction season following grant approval. The time for completing construction components of either Rehabilitation or Innovation proposals will be limited to three years or three construction seasons, whichever is greater. Any component of an Innovation proposal which is to provide services or programs, must be started within one year from grant approval. The grant project term and expiration date for Rehabilitation and Innovation proposals will be established by HCRS at the time of grant approval.

(b) When an applicant wishes to complete a project in a number of stages, the applicant may request UPARR assistance for all the stages in a single application or proposal. In such cases, the three year limit on construction still applies. If an applicant wishes to request funding for only a single stage at time, each stage must be structured in such a manner that it will increase the recreation utility of the property, or provide direct recreation opportunities, independent of subsequent stages. Funding of one stage of a multi-staged proposal in no way implies that subsequent stages will also be funded.

§§ 1228.34–1228.35 [Reserved]

§ 1228.36 Land ownership, control and coversion.

Section 1010 of the Act provides that no property improved or developed with assistance through the program shall, without the approval of the Director, be converted to other than public recreation use. Therefore, any applicant or sub-grantee must demonstrate, at the time of grant approval, that it has adequate tenure and control of the land or facilities for which UPARR assistance is proposed, either through outright ownership or lease.

(a) Lands or facilities that are not under adequate tenure or control will not be considered for UPARR assistance. If the land is not owned by the applicant or sub-grantee, then a non-revocable lease of at least 25 years, or a non-revocable lease providing ample time to amortize the total costs of the proposed activity, must be in effect at the time of grant approval. The lease cannot be revocable at will be the lessor. The costs of acquisition or leasing of land or facilities are not eligible for assistance under the provisions of the Act, Section 1014.

(b) The conversion or replacement of properties assisted through UPARR to non-recreation use must be in accord with the current local Recovery Action Program, and approved by the Director. Requests for permission to convert UPARR-assisted properties must be submitted to the Director in writing. The replacement property must assure the provision of adequate recreation properties and opportunities of reasonable equivalent location and recreation usefulness. For leased property which is developed or improved with UPARR funds, the grantee, as a condition of the receipt of these funds, must specify in a manner agreed to by the Director, in advance of the conversion, how the converted property will be replaced once the lease expires.

(c)UPARR Program funds may be used to rehabilitate facilties built or develop with LWCF assistance only after a determination is made by HCRS that the facility has been maintained in accordance with the LWCF Program.

(d) Applicants must certify that any property acquired after January 2, 1971, and to be improved or enhanced by UPARR assistance, was acquired in conformance with P.L. 91–646, the Uniform Relocation and Land Acquisition Policies Act (See 41 CFR Parts 114–50).

§ 1228.37 Pass-through funding.

Section 1006(a)(1) of the Act states that at the discretion of the applicant jurisdiction, and if consistent with an approved application, Rehabilitation and Innovation grants may be transferred in whole or in part to independent special purpose local governments, private non-profit agencies (including incorporated community or neighborhood groups) or city, county, or regional park authorities, provided that assisted recreation areas owned or managed by them offer recreation opportunities to the general public within the boundaries of the applicant's jurisdiction. No UPARR funds may be passed through for Recovery Action Program grants. The decision on whether or not to pass money through to non-profit organizations or governmental units is made by the applicant jurisdiction which is responsible for the grant; not

HCRS. Organizations, agencies or governmental units seeking funding assistance on a pass-through basis must work with an applicant jurisdiction in the preparation of the UPARR application, and the applicant jurisdiction will be responsible for the submission of the application. The applicant jurisdiction has full responsibility and liability for funds passed through to subgrantees. In the event of default by the pass-through recipient, the applicant jurisdiction must assume responsibility for ensuring that all provisions of the grant agreement are carried out, including the continued delivery of recreation services resulting from the grant. The pass-through of funds may constitute the entire grant proposal submitted by an applicant jurisdiction, or may be only a portion of it.

(a) *Applicant responsibilities.* The applicant jurisdiction possesses full responsibility and liability for funds passed-through to subgrantees. It should take precautions to ensure that pass-through agencies can reasonably be expected to comply with grant requirements.

(1) *Application requirements.* The applicant jurisdiction is responsible for actual preparation and submission of both the pre- and final grant applications. Organizations, agencies or governmental units seeking funding assistance on a pass-through basis must work with the applicant jurisdiction. The applicant jurisdiction may request any or all of the necessay documentation from the subgrantee. It is essential that applicants take precautions to pass-through grants only to reliable and capable agencies or organizations that can reasonably be expected to comply with grant and project requirements.

(2) *Recommended pass-through recipient standards.* Because the grantee has full responsibility for the pass-through grant, the grantee should ensure that subgrantees meet the following minimum standards.

(i) Demonstrate a history of providing recreation services to the distressed community. The history of providing recreation services must be commensurate with the amount of UPARR assistance requested. A pass-through subgrantee may be a non-profit or neighborhood organization which has provided other social services to the community, or a newly formed, but reliable and capable group which can reasonably be expected to comply with grant and project requirements.

(ii) Take responsibility for the same application, administration and compliance responsibilities as that of the applicant jurisdiction.

(iii) Certify that property improved or developed with UPARR funds will remain dedicated to public recreation use.

(iv) Work through and with the applicant jurisdiction.

(v) Demonstrate that the existing, or soon to be developed, recreation property which it owns or operates is accessible to residents of targeted distressed areas.

(vi) Demonstrate adequate tenure and control of the property to be rehabilitated or used for innovation, through lease or ownership.

(vii) Establish a contractual agreement with the applicant juisdiction which is binding and enforceable to assure that the applicant jurisdiction can adequately meet its contractual obligations under the grant.

(viii) Be empowered to contract or otherwise conduct the activities to be supported as a result of the grant.

(ix) Not discriminate on the basis of residence except in reasonable fee differentials.

(x) Be generally recognized as a provider of service to urban residents.

(xi) Have adequate financial resources, the necessary experience, organization, technical qualifications and facilities; or a firm commitment, arrangement, or ability to obtain such.

(xii) Have an adequate financial management system which provides efficient and effective accountability and control of all property, funds, and assets sufficient to meet grantee needs and grantee audit requirements.

(xiii) Private non-profit agencies or corporations should also be properly incorporated as a non-profit organization with an elected and autonomous board which meets regularly.

(b) *Pass-through property and fee limitations.* Rehabilitation or Innovation assistance on property not in public ownership, operated by a private non-profit organization through a pass-through grant, will be limited to that portion of the property which directly provides recreation services. Such recreation services must be available to the public on a non-membership, non-fee, or reasonable fee basis, and during reasonable prime time. If a fee is charged or is required for the services resulting through the Rehabilitation or Innovation grant, the fee should be comparable to prevailing local rates for similiar services. Charges for recreation services will only be permitted if they do not unfairly jeopardize participation in the recreation service by the disadvantaged population.

§§ 1228.38–1228.39 [Reserved]

§ 1228.40 Historic properties.

Properties listed in or determined eligible for listing in the National Register of Historic Places must be treated in accordance with the Advisory Council on Historic Preservation procedures described in 36 CFR 800, "Protection of Historic and Cultural Properties." Applicants must identify such properties in the preapplication if they are situated at a UPARR grant site.

§ 1228.41 Demolition and replacement of existing recreation properties.

Demolition will only be supported when rehabilitation is not feasible or prudent. In the case of demolition, the demolition costs should not exceed 75% of the proposed cost for replacement. The applicant must present a cost analysis (well documented case) for demolition and replacement versus rehabilitation. When assistance for demolition is requested, the applicant must also indicate how the replacement will increase the site's recreation utility, and how the useable life of the property will be increased.

§ 1228.42 Expansion and new development.

(a) *Expansion.* Because the UPARR Program is targeted to distressed areas, every assurance should be made that if any expansion takes place, existing recreation facilities are up to building standards and the following general requirements are met.

(1) The general category of sites/facilities or programs involved must be an identified priority in the jurisdiction's Recovery Action Program.

(2) The results of the expansion must not substantially increase the personnel or maintenance costs of the applicant jurisdiction's overall recreation system unless expansion of the system has been addressed as a priority in the jurisdiction's Recovery Action Program, and the RAP strategies specifying how the funds for increased personnel or maintenance costs associated with the expansion will be obtained. The preapplication narrative must describe the extent of increased personnel and maintenance for the project(s) included in the proposal, if any, and methods of financing them.

(3) The expansion must increase the extent, volume, scope, or quality of recreation opportunities to residents of distressed neighborhoods.

(b) *New development.* For purposes of this program, new development is defined as the developing for changing of relatively unimproved property which has not previously been developed for

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recreation. This includes the creation of new parks and facilites.

(1) *Rehabilitation.* New development will not be assisted under a rehabilitation grant.

(2) *Innovation.* New development may be allowed under an Innovation grant when it is directly related to a specific innovative idea or technique, increases the utility of a property and/or service program, and increases recreation opportunites for users in the target area.

§ 1228.43 Fundable elements: Recovery Action Program grants.

Reasonable and documented costs necessary for preparing a Recovery Action Program may be reimbursed by UPARR funds from a 50 percent matching grant. These costs may include expenses for professional services; local public meetings; data collection and analysis; preparation, editing and printing of appropriate reports, plans, maps, charts and other documents forming a part of the plan; and supporting costs, supplies and other approved costs. Costs incurred prior to the approval of a Recovery Action Program grant will not be eligible for reimbursement or cost sharing.

§ 1228.44 Fundable elements: Rehabilitation and Innovation grant common elements.

(a) All Rehabilitation and Innovation proposals must be based on priorities identified in the applicant jurisdiction's local Recovery Action Program. An applicant may apply for UPARR assistance only in an amount which, together with other available public and private resources, is adequate to complete the work approved by the grant agreement. The applicant must document the availability and source of these resources at the time of preapplication for UPARR assistance. Fundable elements in both Rehabilitation and Innovation proposals may include: materials and labor, site planning, architectural and engineering fees, and other costs for activities necessary to complete the approved project. Reasonable architectural and engineering fees essential to the preparation of a proposal application, incurred within a period 9 months prior to preapplication submission to HCRS, are reimbursable. Architectural and engineering fees prior to the 9 month period will not be eligible for reimbursement or cost sharing. Other costs incurred prior to approval of any UPARR grant, and fees to consultants for preparation of UPARR grant applications are not reimbursable. No more than 5 percent of the total grant cost may be used by the grantee or pass-through sub-grantee for grant administrative costs. The remaining funds must be made available for projects. Any costs incurred for travel outside the local applicant jurisdiction will not be reimbursable without prior approval from HCRS.

(1) *Local intent.* Rehabilitation and Innovation proposals which provide recreation to residents within a distressed local neighborhood area will be given higher priority. Proposals which have a primary intent to attract or to provide recreation for visitors from outside the applicant jurisdiction, or proposals whose primary objective is the enhancement of the area's economy through the attraction of visitors to the jurisdiction, will not be considered. Innovation proposals which transport residents from distressed neighborhoods to recreation opportunities outside the local jurisdiction, may be considered eligible for funding.

(2) *Conservation and energy.* Proposals which foster the conservation of energy and natural resources are encouraged; e.g. improvements in accessibility which reduce the need of automobile transportation, efficient use of electrical or other power sources, and water conservation.

(3) *Multiple site requests.* Rehabilitation and Innovation proposals may request funding for neighborhood-oriented recreation facilities or services which affect the entire recreation system of the applicant jurisdiction, several specific sites or areas, or a single site or area. Innovation proposals which affect multiple facilities or services must be oriented to a single purpose, or one basic innovative category or approach.

(4) *Support facilities.* The rehabilitation of support facilities for any grant project will be eligible for funding only when such facilities are well defined, are included as part of an overall rehabilitation effort, and provide direct recreation opportunities and benefits to the population being served. Rehabilitation grants may cover costs of remodeling, expanding or developing (see § 1228.42) existing outdoor or indoor recreation areas and facilities, including improvements in park landscapes and buildings. Assistance for the rehabilitation of multi-service facilities must be prorated to those elements within the proposal necessary for the provision of recreation opportunities.

(5) *Elements excluded from funding.* The Act excludes UPARR assistance for major sport arenas, exhibition areas and conference halls used primarily for commercial sports, spectator, or display activities; routine maintenance and upkeep supplies or activities; and for the acquisition of land or interests in land.

(b) [Reserved.]

§ 1228.45 Fundable elements: Innovation grants.

(a) Innovation grants may cover costs related to improved delivery of recreation services (including personnel, training, facilities, recreation equipment and supplies), except those which pertain to routine operation and maintenance not directly related to the provision of recreation opportunities. All equipment and supply requests in Innovation proposals will be reviewed to assure that they will substantially contribute to the recreation services intended under the specific grant. The intent of Innovation grants is to test new ideas, concepts and approaches aimed at improving facility design, operations or progamming in the delivery of neighborhood recreation services. They should also contribute to a systems approach to recreation by linking recreation services with other critical community programs; such as transportation, housing, and health programs. The UPARR Program will competitively choose the best quality Innovation proposals with nationwide demonstration potential, and which serve people who most need the new recreation services. An innovative community recreation project may be a service, a process, an organizational arrangement or a technique. The innovation should demonstrate a concept that is untried, unique, and/or advances the state of the art for recreation. Ideas from successful Innovation proposals will be disseminated nationwide through annual progress reports to Congress, as required in Section 1015(b) of th Act, and through the ongoing technical assistance efforts of HCRS. Information seminars, workshops and other techniques may also be used to provide the greatest possible exposure of these ideas for use in other communities. Because the legislation limits the yearly funds available for Innovation grants (not more than 10% of funds authorized), the majority of Innovation grants should ideally be monetarily smaller awards aimed at leveraging public and private community support and providing activities with high demonstration value, rather than large-scale development or expansion projects. The long-range intent of funding innovative proposals is to support and demonstrate a great variety of ideas during the five year implementation of the UPARR Program. For this reason, only one or two proposals having a similar emphasis or approach will be funded. Proposed Innovation projects which have been demonstrated before or are currently being operated in other cities, may be considered for UPARR assistance if the application identifies and addresses the question of the special nature or circumstances surrounding the new project.

(1) *Program services.* Innovation grant costs may include those costs which relate to: demonstrations of the improved multiple-use of public buildings e.g., schools, community centers, libraries; unique program expansions or increases in services; purchase of recreation services on a contractual basis; increased access to recreation areas; and cost-effective management techniques.

(2) *Adoptive reuse.* In addition to providing services for areas or facilities already in recreation use, Innovation grants may provide funding for the adaptive reuse of areas or facilities not currently in recreation use, or those where mixed community use occurs. Physical rehabilitation of facilities not currently in recreation use (whether public or private) may be funded as part of an Innovation proposal, and would be classified as adaptive reuse. An example would be conversion of an abandoned building to a unique community recreation center. When only a portion of the area or facility will be used for recreation, only that portion will be eligible for UPARR funding.

(3) *Supplies.* Funds may be used to purchase expendable supplies and equipment which relate directly to an Innovation proposal, such as sports equipment, arts and crafts supplies, chairs and tables if needed for an activity, and essential emergency or safety equipment. General office supplies and furniture not used exclusively to provide recreation services as a part of the proposal, or not an inherent component of the proposal, will not be reimbursable.

(4) *Coordination.* Local costs incurred for coordinating any grant proposal activities and programs with other public, non-profit or private community services may be reimbursable.

(5) *Personnel.* Eligible personnel costs for Innovation proposals will be limited to salaries and benefits of those employees directly engaged in the provision of recreation services or formulation of new techniques. Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Each hour of committed volunteer service may be counted toward the local matching share of funds, if the service provided is an integral part of an approved proposal.

(6) *Speciol populations.* A proposal which will provide recreation opportunities primarily for a specific demographic group, such as the elderly, youth or handicapped, may be funded. However, the recreation provided must be open to the public, incorporate some activities for the general population, and address needs as identified in the local Recovery Action Program. Services for special populations, such as transportation to recreation facilities, may also be funded.

(b) *Basic types of Innovation proposals.* Types of Innovation proposals which can be funded are suggested by, but not limited to, the following types:

(1) The unique integration of recreation with other community services; such as transportation, public housing and public safety; either to expand or update current services, or to link programs within the social service structure of a neighborhood, or between neighborhoods.

(2) New management and cost-saving or service-efficient approaches for improving the delivery of recreation services should be fundamental to all Innovation and Rehabilitation proposals, and may also be the prime focus of an Innovation proposal. Extending hours of operation, increasing the variety of recreation programs, contracting with commercial or private non-profit agencies to supply specific recreation services, or assisting citizens in designing and operating their own programs, are examples of management approaches.

(3) New approaches to facility design which emphasize user needs and preferences and promote efficient operation and energy conservation.

(4) New fiscal techniques to generate revenue for continuing operation and maintenance, such as tax credits.

(5) Techniques for improving transportation and access to recreation opportunities.

(6) Techniques to facilitate private, non-profit, and community involvement in providing recreation opportunities.

(7) Improved use of land resources; such as utilizing abandoned railroads and highway rights-of-way, waterfronts, street spaces, or derelict land for recreation.

(8) Adaptive reuse or multiple use of public or private facilities and areas. (Private areas or facilities utilized must be opened to the public.)

(9) Techniques to prevent or reduce crime, abuse and vandalism; such as better design, non-destructible building materials, or use of community volunteers to supervise areas.

(10) Communications and public awareness of recreation opportunities, including education in leisure services; but excluding research.

§ 1228.46 Citizen participation requirements.

(a) *Recovery Action Program Grants.* Citizen participation is required for developing and implementing a Recovery Action Program (§ 1228, Subpart B), but is not required in the process of preparing a local Recovery Action Program grant application.

(b) *Rehabilitation and Innovation grant.* The applicant shall provide citizens with an adequate opportunity to participate in the development of a Rehabilitation and/or Innovation proposal and in implementation, monitoring and evaluation of the activities supported through the grants. The applicant shall also encourage the submission of views and proposals, particularly by residents of blighted neighborhoods and citizens with low and moderate incomes. The applicant is encouraged to utilize a variety of approaches to ensure public involvement. Nothing in these requirements, however, shall be construed to restrict the legal responsibility and authority of the applicant for the execution of its Recovery Action Program, and the development of its UPARR applications.

§ 1228.47 [Reserved]

§ 1228.48 Federal coordination.

Applicants requesting UPARR assistance under one of the three grant categories shall investigate the possibilities of administrative and/or funding coordination with other Federal programs. Higher priority is given to proposals which relate to a comprehensive neighborhood revitalization strategy, including, but not limited to programs such as the Department of Housing and Urban Development (HUD) Neighborhood Self-Help program.

§ 1228.49 [Reserved]

Subpart D—Grant Selection, Approval and Administration

§ 1228.50 Grant selection criteria.

(a) *Recovery Action Program grant selection criterio.* The following criteria will be used in evaluating Recovery Action Program grant applications and in deciding priorities for funding:

(1) Degree of need for funds to develop a Recovery Action Program and an ongoing planning process, including the size and complexity of the community's problems, deficiencies in

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existing planning, and in the capability of the community to initiate and sustain continuing planning efforts.

(2) Degree of the community's commitment to systematic planning, including financial, personnel and time resources already devoted to planning or committed for the future.

(3) Extent to which current park and recreation planning is integrated with overall community planning or would be better integrated as a result of the grant, including use of other Federal or State funds for related planning purposes.

(4) Appropriateness and efficiency of the planning program's work elements (scope, timing, methodology, staffing and costs) in relation to the basic requirements for Recovery Action Programs contained in Subpart B, § 1228.10–.18 (45 FR 15456).

(b) *Rehabilitation Grant Selection Criteria.* The following criteria will be used to evaluate and rank Rehabilitation proposals:

(1) The Federal UPARR investment per person served by the entire system; relationship between the size of the community and the amount of grant funds requested. Highest priority will be given to proposals with lower per capita costs in relation to recreation benefits provided.

(2) Providing neighborhood recreation needs. Higher priority will be given to proposals serving close-to-home recreation needs, lower priority to those serving area or jurisdiction-wide needs.

(3) Condition of existing recreation properties to be rehabilitated, including the urgency of rehabilitation and the need to maintain existing services.

(4) Improvement in the quality and quantity of recreation services as a result of rehabilitation, including improvements at specific sites and overall enhancement of the recreation system.

(5) Improvement of recreation service to minority and low to moderate income residents, special populations, and distressed neighborhoods.

(8) Proposal's consistency with local government objectives and priorities for overall community revitalization.

(7) Neighborhood employment opportunities created.

(8) State participation in the proposal, including financial and technical assistance.

(9) Private participation by both the non-profit and for-profit sectors in the proposal, including contributions of financial assistance.

(10) Jurisdiction's commitment to implementing its overall Recovery Action Program.

(c) *Innovation Grant Selection Criteria.* The following criteria will be used to evaluate and rank Innovation proposals:

(1) Degree to which the proposal provides a new, unique or more effective means of delivering a recreation service that can serve as a model for other communities.

(2) Degree of citizen involvement in proposal conceptualization and implementation.

(3) Degree to which the proposal may lead to a positive, systemic change in how park and recreation services are provided. Extent to which the proposal creates opportunities for new partnerships between the people affected, private interests within the community, and public agencies (e.g., Mayor's Office, Recreation Department, Board of Education, Planning Department, social service agencies).

(4) Degree of commitment of community and proposal participants to continue the long term program objectives, including commitments to continue funding after the requested Federal grant money is no longer available. Extent of private resources committed to providing funds or in-kind services for continuing operation and maintenance of projects.

(5) Degree to which proposal managers use the Federal funds to leverage greater public or private investments (in the form of services and materials, as well as dollars).

(8) Degree to which the proposal provides potential coordination with other community, State and Federal programs of community development and those providing recreation to the target population (e.g., public and private non-profit, education programs, CETA for employment, HUD programs).

(7) Extent of improvement in the quality and quantity of recreation services as a result of the Innovation project.

(8) Degree to which the proposal ties in with goals, priorities and implementation strategies expressed in the local park and recreation Recovery Action Program.

(9) Degree to which the proposal leads to a transfer of a recreation role traditionally performed by a public entity, to quasi-public or private non-profit interests. This degree means the degree to which the private sector can take full responsibility, supplement, or fill the gaps in public recreation services, management or operation; either through a transfer of funding responsibility, or an exchange of technique or method approaches which may prove to be more effective under the private sector. This should in no way alter the public sector responsibility to continue to provide and/or monitor good quality recreation facilities and services.

(10) Degree to which a proposal benefits disadvantaged community populations and/or those areas within a distressed community which have the greatest recreation deficiencies.

Note.—Innovation proposals for the adaptive reuse of non-recreation areas or structures, through rehabilitation for recreation should also address rehabilitation selection criteria, particularly the criteria covering Federal investment per person served and the degree to which the proposal would serve close to home recreation needs.

§ 1228.51 A–95 clearinghouse requirements.

Notice of intent to submit any application for UPARR funding must be forwarded by the applicant, no later than 60 days prior to submission of a grant application, to the State clearinghouse and appropriate metropolitan or areawide clearinghouses, in accordance with OMB Circular A–95 and Interior Department Manual Part 511. If a jurisdiction wishes to compress the A–95 timetable, it must receive approval of the clearinghouse. Appropriate A–95 notifications must be submitted for all three types of UPARR grants at both preapplication and full application stages. Standard Form 424 is to be used for these notices unless otherwise specified by the clearinghouse. Comments from clearinghouses, if available, must be included with the preapplication. All A–95 comments will become part of the required application and proposal file which will be retained by HCRS. A–95 requirements for Recovery Action Programs and grants are discussed in § 1228.52.

§ 1228.52 Recovery Action Program grant applications.

The application procedure for Recovery Action Program grants differs from the procedure for Rehabilitation and Innovation grants. Ranking and selection for funding of Recovery Action Program grants will be initiated on the basis of a full application, preparation of which will be assisted through meetings with HCRS regional staff.

(a) *Preapplication Conference.* In the preparation of a Recovery Action Program grant application, applicants are encouraged to discuss with HCRS regional personnel, or State personnel, when an agreement between HCRS and the State covers such action, the adequacy of the proposal in meeting the requirements for a Recovery Action Program. Prior to formal submission, the Recovery Action Program grant application should be reviewed with the appropriate HCRS Regional Office.

(b) *Submission of Applications.* In addition to Standard Form 424 on Federal Assistance notification, applicants for Recovery Action Program grants shall submit the following documents and required attachments to HCRS Regional Offices:

(1) OMB Form 80–RO190, completed as prescribed by OMB Circular A–102. (Application for Federal assistance, for non-construction programs)

(2) Grant agreement form.

(3) Narrative statements which will be used in evaluating grant applications in relationship to the selection criteria as defined in § 1228.50(a), including:

(i) The need for the planning grant.

(ii) The jurisdiction's existing or proposed commitments to developing a full Recovery Action Program and an ongoing planning process.

(iii) The relationship of the planning program to overall community plans and programs.

(iv) Appropriateness of the proposed planning program's scope, timing and methodology in relation to UPARR planning requirements and the community's identified planning needs.

(v) Dollars and work years to be devoted to development of each element in the proposed Recovery Action Program, including some indications of the qualifications of staff members who will work on the program.

(vi) If appropriate, a discussion of work elements to be contracted out to other government agencies, private consultants or private non-profit agencies, including the reasons for contracting work elements instead of doing the work within the community's own planning agencies.

(4) Applications for RAP grants need a full 60 day A–95 clearinghouse review. Clearinghouse comments for RAP grants must then be submitted to HCRS. Final RAP's also must be submitted to clearinghouses, in accordance with OMB Circular A–95.

§ 1228.53 Preapplication process for Rehabilitation and Innovation grants.

To reduce the amount of time and documentation needed for a full application, and to foster the competitive aspects of the UPARR program, a preapplication procedure is used.

(a) The preapplication must provide information adequate to guide proposal selection. Grants will be awarded in accordance with the availability of funds. Funding for an approved grant will not be increased from subsequent yearly appropriations.

(b) Applicants are encouraged to discuss their proposals with their HCRS Regional Office to determine basic fundability and competitiveness prior to submitting a preapplication.

(c) If a State is assisting the applicant in preapplication preparation, providing a source of matching share, or giving technical assistance, the State may assist in submission of the preapplication to the appropriate HCRS Regional Office with the applicant's prior approval. The amount, source and assurance of State assistance for a matching share must be specified in the preapplication.

(d) The following procedural guidelines shall apply to submission and approval of Rehabilitation and Innovation proposals.

(1) Preapplications shall be submitted to the appropriate HCRS Regional Office by the chief executive officer of the applicant jurisdiction. The preapplication must include those items as set forth in the *Preapplication Handbook,* available from any HCRS Regional Office. In addition to the narrative on selection criteria, all preapplications for Rehabilitation proposals must include a short description stating; (i) the problem addressed by the proposal, including existing conditions, (ii) the reason for the problem or why the condition exists, and (iii) the proposed solution to the problem and what corrective measures will be used.

(2) An applicant may have no more than one Innovation and one Rehabilitation proposal under consideration in any one funding cycle.

(3) Any existing and/or proposed fees or charges for recreation opportunities or services provided through a UPARR grant, whether for public, private or non-profit activities, must be identified in the preapplication.

(4) Discretionary applicants must submit a narrative statement, signed by the chief executive of the applicant jurisdiction, which explains and quantifies the degree of physical and economic distress in the community. Statistics and discussion on distress shall address, but need not be limited to, the criteria used to select eligible jurisdictions contained in Appendix A of this Part. A discretionary narrative statement must be included in each preapplication.

(5) All submitted grant preapplications will be reviewed by HCRS Regional Offices to assure that they meet all minimum legal and technical standards before being certified as eligible for competition. Proposals not meeting minimum standards will be returned to the applicant. Periodically, all certified proposals will be evaluated in the Regional Offices before being submitted to Washington, where they will be judged by national panels whose member are knowledgeable in recreation and urban revitalization. Innovation and Rehabilitation proposals will be judged by separate panels.

(8) Following review and ranking by the panels, the Director will approve tentative grant offers for those proposals which may be funded. Successful applicants will be notified by the HCRS Regional Offices, and completion of the formal application process will take place. The formal application process must be completed within 120 days of notification of the tentative grant offer, or the tentative grant offer may be withdrawn. Final approval of a grant and obligation of funds will occur when all application requirements have been met and the appropriate documents are on file. No costs may be incurred or reimbursed, except incurred architectural and engineering fees indicated in § 1228.44, until HCRS approval of the grant agreement.

(7) Unfunded proposals may require modifications to improve their competitiveness. Applicants with such proposals will be advised by HCRS of suggested modifications, if any, to increase their chances for funding in future grant rounds.

(8) If an applicant wishes a proposal to remains in competition, it may be considered for two additonal funding cycles, with or without minor modifications, before it is returned to the applicant. Major modifications of scope and/or total funding request will require complete resubmission of a proposal as a new preapplication. Applicants who wish to change the scope and/or total funds requested for a proposal which is already in competition, must submit a written request for withdrawal of the previous proposal before submitting a new proposal in the same competition.

(9) The Director reserves the right to withdraw a grant offer if it is determined that any preapplication contains misstatements or misrepresentations of fact, or problems identified which cannot be resolved.

§ 1228.54 Rehabilitation and Innovation grants—full application process.

Once a Rehabilitation or Innovation proposal has received a tentative grant offer, applicants will be responsible for compliance with all applicable Federal laws and regulations listed in OMB Circular A–102, including those specific Acts and Executive Orders listed in § 1228.56 of these regulations. The applicant must also complete all documentation and other requirements specified by OMB circulars A–102, and

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A–95 within 120 days. Regional Offices of HCRS will provide technical assistance to grantees in complying with these requirements. A grant will not be approved until the applicant is in compliance with the above requirements.

§ 1228.55 [Reserved].

§ 1228.56 Grant program compliance requirements.

(a) Once a proposal has received a grant offer, applicants will be responsible for compliance with all applicable Federal laws and regulations, including, but not limited to:

Architectural Barriers Act of 1968 (P.L. 90–480)
Clean Air Act and Federal Water Pollution Control Act
Copeland Anti-kickback Act
Endangered Species Act of 1973 (Pub. L. 93–205)
Executive Order 11246, Equal Employment Opportunity
Executive Order 11593, Protection and Enhancement of the Cultural Environment
Executive Order 11625, Arrangements for Developing and Coordinating a National Program for Minority Business Enterprise
Executive Order 11988, Floodplains Management
Executive Order 11990, Protection of Wetlands
Executive Order 12088, Federal compliance with Pollution Control Standards
Executive Order 12185, Conservation of Petroleum and Natural Gas
Flood Disaster Protection Act of 1973 (Pub. L. 93–234)
Historical and Archeological Data Preservation Act of 1974 (Pub. L. 93–291) 36 CFR 66
National Environmental Policy Act of 1969 (Pub. L. 91–190)
National Historic Preservation Act (Pub. L. 89–665)
Nondiscrimination Section 109 of the Housing and Community Development Act of 1974 (42 USC 5301) as amended.
Section 504 of the Rehabilitation Action Act of 1973
Title VI of the Civil Rights Act of 1964, Executive Order 11764
Title VIII of the Civil Rights Act of 1968 (42 USC 3601) as amended, Executive Order 11063 (27 FR 11527)
Uniform Relocation Assistance & Land Acquisition Policies Act of 1970 (Pub. L. 91–646)

(b) Applicants using General Revenue Sharing or Community Development Block Grant monies as a matching share must check with the responsible federal agencies, i.e. Treasury or HUD to determine if the Davis-Bacon Act is applicable. (HUD regulations 24 CFR Part 570 [CDBG]. Treasury regulations 31 CFR Part 51, State and Local Fiscal Assistance Amendments of 1976 [P.L. 94–488], General Revenue Sharing program.) Questions concerning other CDBG requirements should be addressed to the HUD Area Office serving the UPARR applicant jurisdiction.

§§ 1228.57–1228.59 [Reserved]

§ 1228.60 Grant administrative procedures.

(a) *Admininstrative Requirements for Recipients of UPARR Assistance.* For all grants under this Program, the administrative requirements are the attachments listed in the Office of Management and Budget (OMB) Circular A–102 (as revised).

(b) *Accounts, Audit, Inspection.* Adequate financial records must be maintained by the applicant to support all expenditures or costs covered by a Recovery Action Program, Rehabilitation or Innovation project, as specified in Federal Management Circular (FMC) 74–4 and OMB Circular A–102.

(c) *Additional conditions.* The Director may, with respect to any grant, impose additional conditions prior to, or at the time of grant approval, when in his or her judgement these conditions are necessary to assure or protect advancement of the grant purposes, the interests of public health or safety, or the conservation of grant funds. Extra requirements may be imposed on high-risk grantees who have records of default on prior federal grants.

(d) *Remedies for Noncompliance.* In appropriate circumstances, the Director may suspend or recoup the financial assistance provided under UPARR, upon the formal finding that the Grantee is in violation of the terms of the grant or the provisions of these regulations.

§ 1228.61 [Reserved]

§ 1228.62 Amendments to approved grants.

Changes which alter the scope of any approved UPARR competitive grant must be submitted to and approved by HCRS. Once a grant offer is made, based upon the preapplication, no increases in the amount of UPARR funding specified in the original proposal will be considered. Such changes should be the basis of a new proposal or application.

§ 1228.63 Grant payments.

The Director shall make payments to a grantee of all, or a portion of any grant award, either in advance or by way of reimbursement. Advance payments on approved Rehabilitation or Innovation grants will be in an amount not to exceed 20% of the total grant cost [Section 1006(2) of the Act].

§ 1228.64 [Reserved]

§ 1228.65 Other requirements.

(a) *Requirements for Operation and Maintenance.* Grantees are required to keep all UPARR assisted properties in reasonable repair to prevent undue deterioration, and to encourage public use during reasonable hours and times of tne year, according to the type of facility and intended uses.

(b) *Non-discrimination.* There shall be no discrimination for UPARR assisted programs or services on the basis of residence, except in reasonable fee differentials.

(c) *Sunset Reports.* In compliance with the sunset and reporting provision of the Act, Section 1015(b), an annual report will be prepared on the achievements of the Innovation grant program, with emphasis on the nationwide implications of successful innovation projects. A final report on the overall impact of the UPARR Program will be prepared within 90 days of the expiration of the authority. Additional project information may be requested from applicants to facilitate the preparation of such reports.

§ 1229.66 [Reserved]

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federal register

Wednesday
October 29, 1980

Part III

Water Resources Council

Synthetic Fuel Development for the Upper Missouri River Basin; Water Assessment

WATER RESOURCES COUNCIL

Synthetic Fuel Development for the Upper Missouri River Basin; Water Assessment

AGENCY: United States Water Resources Council.

ACTION: Notice of water assessment report for public review and comment.

SUMMARY: This notice incorporates the Water Assessment Report prepared by the Water Resources Council staff under provisions of Section 13(a) of the Federal Nonnuclear Energy Research and Development Act of 1974, as amended.

DATE: Comments on this report are due on or before January 27, 1981.

ADDRESS: Send comments to: Gerald D. Seinwill, Acting Director, U.S. Water Resources Council, 2120 L Street, NW., Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: Ronald L. Scullin, Staff Specialist, U.S. Water Resources Council, 2120 L Street, N.W., Washington, D.C. 20037. Phone: 202/254–6352.

Dated: October 24, 1980.

Gerald D. Seinwill,

Acting Director.

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Preface

The U.S. Water Resources Council (WRC) staff has prepared this report under the provisions of paragraph (a) of Section 13 of the Federal Nonnuclear Energy Research and Development Act of 1974, as amended. This report summarizes the results of an assessment of water requirements, water supply availability, and other water implications of synthetic fuel development in the Upper Missouri River Basin. Under a memorandum of agreement with WRC, the Missouri River Basin Commission conducted the regional assessment and published a regional report entitled "Upper Missouri River Basin: Water Availability Asssessment for Coal Technology Requirements," which serves as the principal basis for this report. Publication of this report in the **Federal Register** is mandated under the provisions of Section 13 to enable public review and comment during a 90-day period.

This summary highlights important aspects of the Upper Missouri regional assessment. Individuals or organizations that want to comment on the water and energy regional assessment should examine the *full technical report* entitles: Section 13(a) Water Assessment Report—Synthetic Fuel Development for the Upper Missouri River Basin.

Copies of the full report can be obtained from: Wanda Phelan, U.S. Water Resources Council, 2120 L Street, N.W., Washington, D.C. 20037, (202) 254–8290.

After the 90-day review period, the WRC staff will analyze the comments received and revise the report as appropriate. WRC will forward the comments, the WRC analysis, and the final water assessment report to the Secretary of Energy.

National Energy Concerns

On July 15, 1979, President Carter addressed the Nation regarding one of the most important problems confronting us—the energy crisis. Calling the "erosion of our confidence in the future" a "fundamental threat to American democracy," the President urged us to tackle the specific problem of energy as part of an effort to regain our national assurance. To give us "energy security," the President outlined various initiatives in his strategy to reduce our imports of foreign oil. A cornerstone of his energy policy was the commitment to develop alternative sources of fuel from American resources, especially our vast coal reserves. The President proposed a major program to accelerate development of technologies for synthetic fuels from coal, oil shale, and biomass. The program would produce the equivalent of 2 million barrels per day of substitutes for imported oil by the early 1990's. On June 30, 1980, the President signed the Energy Security Act, legislation designed to achieve this production goal.

Among the emerging technologies that could be used to exploit the Nation's coal resources are coal gasification (coal converted to gaseous products) and coal liquefaction (coal converted to liquid products). Judicious selection of research and development projects, pilot plants, and demonstration and commercial efforts will develop useful information on a variety of options to derive synthetic fuels from coal. The successful implementation of the emerging technologies ultimately will require the solution of complex technical, economic, social, and environmental issues. One important factor that will influence our ability to develop a basic level of synthetic fuels production is water.

Water Resources Council's Water and Energy Program

The Federal Nonnuclear Energy Research and Development Act of 1974 (P.L. 93–577, as amended) authorizes an extensive and accelerated program for research and development of nonnuclear energy technologies that will lead to full-scale commercialization. Within the Act, Congress expressed a strong concern about the water resources implications of new energy technologies. The Governing Principles of the Act state: "Any program for the development of a technology which may require significant consumptive use of water after the technology has reached the stage of commercial application shall include thorough consideration of the impacts of such technology and use on water resources . . . ." Subsection (a) of Section 13, the authorization for this report, provides that the U.S. Water Resources Council shall conduct water assessments of such nonnuclear energy technologies.

Water and energy assessments will help advance water resources planning and management strategies that ensure that water will be available for energy technology development and other beneficial uses. Section 13(a) assessments which are currently being conducted as part of the Water Resources Council's water and energy program include the water resources regions of Upper Colorado, Ohio, Pacific Northwest, Great Basin, California, Lower Colorado, Rio Grande and Texas-Gulf.

Purpose of the Assessment

The Upper Missouri River Basin, which comprises most of the Northern Great Plains, contains large deposits of coal that have been estimated at 165 billion tons (see Figure 1). Extraction of this resource has increased in recent years. With the continuing national problems of energy supplies and the current national emphasis on coal utilization, coal development is expected to increase rapidly in the area. Because expanded development and conversion of coal resources in the Great Plains seems imminent, especially in light of the President's goals and the fact that the first full-scale commerical coal gasification plant soon will be constructed in Mercer County, N.D., the Water Resources Council conducted a regional water and energy assessment of the Upper Missouri Basin.

The purpose of the Upper Missouri assessment was to determine the availability of water to support certain hypothetical levels of synfuel development for three types of coal conversion technologies and to identify the effects that synfuel development could have on the water resources of the region. The three coal conversion technologies examined were:

- *High Btu Gasification*—The chemical and physical conversion of solid coal to methane gas. Methane has sufficient heat content (near 1,000 Btu/cubic foot) to be a pipeline quality substitute for natural gas.
- *Low Btu Gasification*—The chemical and physical conversion of solid coal to gas with heat value of 100–500 Btu per cubic foot. Low Btu gas is used for industrial purposes, including electric power generation.
- *Liquefaction*—The chemical and physical conversion of solid coal to produce liquid hydrocarbons. Synthetic crude oil is generally an intermediate if not the final product of the process.

Hypothetical unit size coal conversion plants were sited in reasonable locations in the assessment area. Actual synthetic fuel development may consist of partial, single, or multiple unit size conversion plants. For any of the conversion technologies, a unit size plant produces a synthetic fuel that has the energy equivalent of 250×10^9 Btu per day.

The assessment was not designed to address site-specific questions. Therefore, users of this report are cautioned not to interpret information as applicable to a specific site.

Conduct of the Assessment

The Missouri River Basin Commission (MRBC) staff provided study management for this assessment. The assessment was conducted by representatives from the States of Montana, Wyoming, North Dakota, and South Dakota and from Federal agencies using existing published and unpublished data and information. During early phases of the assessment, the Department of Energy (DOE) provided the MRBC with a technical report on coal technologies and their potential for development in the Upper Missouri Basin. The MRBC study manager was responsible for implementing the scope of work, coordinating the work effort among participants, reviewing hydrologic and engineering data, and preparing the draft and final regional report. Guidance was provided to the study manager by WRC and the MRBC Water and Energy Committee. The participating States were represented on this committee.

Contractual assistance on specific elements of the assessment was provided by the U.S. Bureau of Reclamation (now Water and Power Resources Service), U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, U.S. Geological Survey, participating States, and consultants.

Major Assumptions and Projections

Figure 2 illustrates the Upper Missouri assessment area and its eight assessment subareas. The subarea boundaries represent a combination of political and hydrologic delineations.

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Fig. 1—Distribution of Coal Reserves

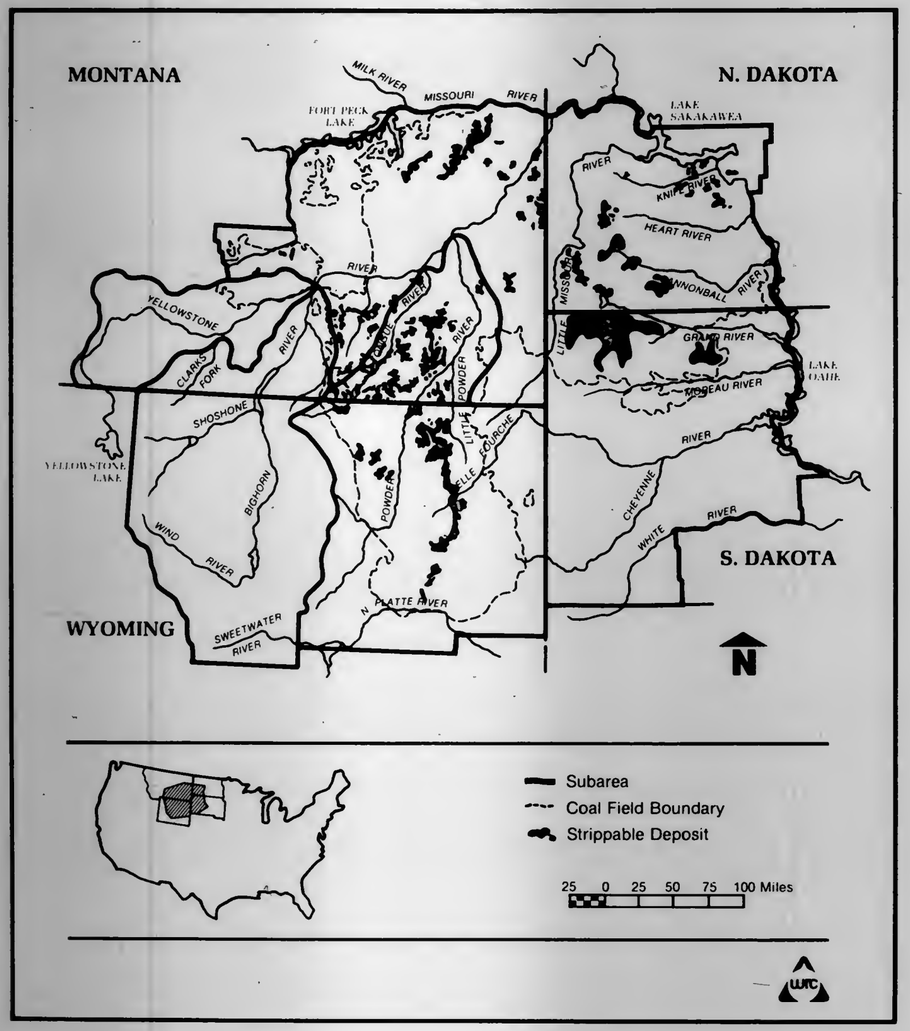
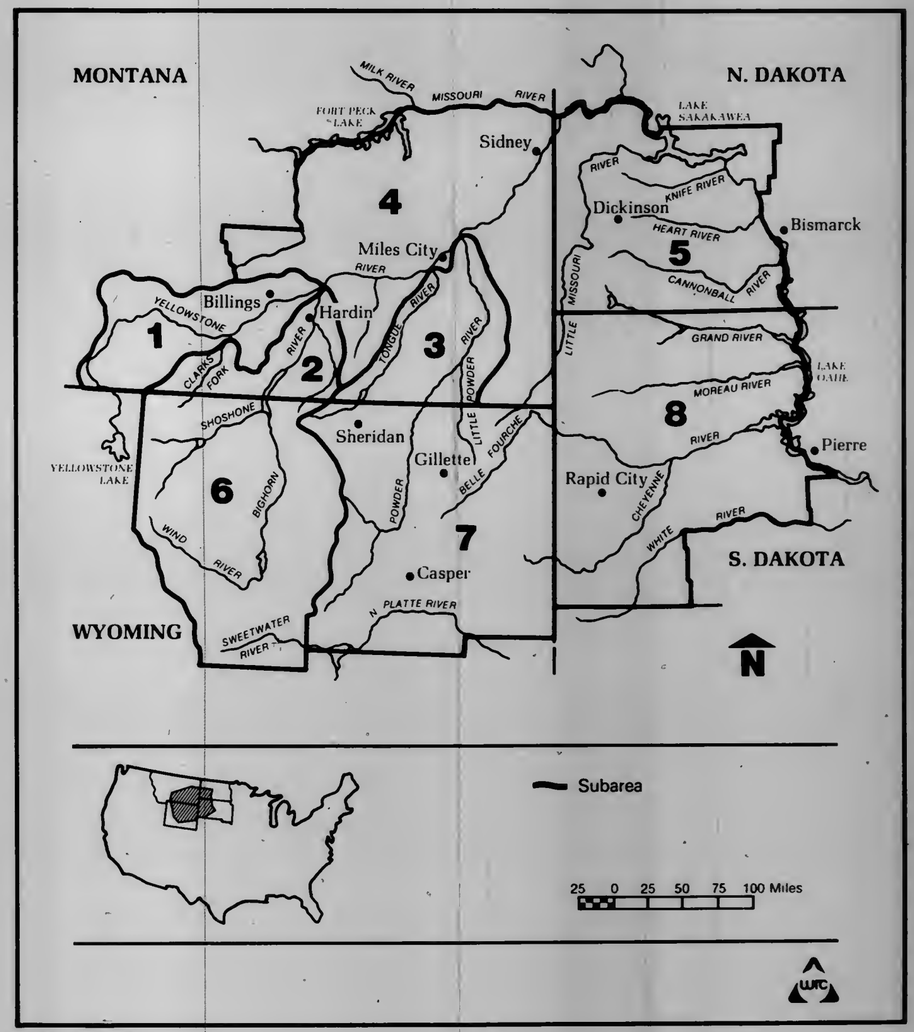


Fig. 2—Assessment Area with Subareas



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Water Baseline.—Current and projected levels of water uses, water requirements, water availability, and economic activity (including coal mining) were taken from the *Yellowstone River Basin and Adjacent Coal Area Level B Study* which was published by the Missouri River Basin Commission in 1978. This information forms the water resources baseline for 1975, 1985, and 2000 against which water supply availability for synthetic fuel development and associated effects were determined.

The recommended plan and the other recommendations in the Yellowstone Level B report are used as a guide to water and related land resources conservation and management in the Yellowstone River Basin and the adjacent coal areas. This study is updated through the MRBC's comprehensive, coordinated, joint planning process and the member States' ongoing water planning programs. The Upper Missouri assessment area is the same as that examined in the Level B study except for the addition of the area in western South Dakota.

An engineering consulting firm conducted water quality analysis for the Upper Missouri assessment. The potential effects of hypothetical levels of coal conversion development were studied to forecast possible water quality conditions for 1985 and 2000.

For the Upper Missouri assessment, total dissolved solids (TDS) was examined to indicate effects of synfuel development on water quality. Sulfates and acid mine drainage were not considered because the area's coal deposits contain a low concentration of sulfur.

Energy Supply.—Two hypothetical levels of synfuel development potential, the Base Case and the Accelerated Case, were assessed for the Upper Missouri River Basin for the years 1985 and 2000. The U.S. Department of Energy developed both cases to translate DOE's national energy demand and supply projections to the potential development in the assessment area. Estimates of annual energy generation from coal conversion technologies were also defined for the assessment area by DOE.

Both the Base and the Accelerated Cases were based on national consumption of 98 quads (quadrillion Btu) in 1985 and 143 quads in 2000. However, more recent DOE supply and demand studies suggest these levels of energy consumption may be high and that a level of 125 quads or less in 2000 is more likely.

The national demand projections are the same for both cases. However, the energy supply cases are predicated on different assumptions about synfuel development. The Accelerated Case assumes a more significant role for synfuel development in meeting the national energy needs than does the Base Case. For example, in comparison with the Base Case, the Accelerated Case assumes that synfuels would substitute for a greater portion of foreign imports and that they would be more likely to reduce extraction of domestic natural oil and gas resources. These assumptions are based on the relative success of synthetic fuels research and development programs, the degree of Federal assistance, and the speed of market penetration. The Accelerated Case also assumes an optimistic degree of success as measured by production costs and early market penetration of synthetic fuels. Further, the Accelerated Case assumes that market penetration would be stimulated by Federal loan guarantees and other economic incentives. Both cases were developed to show possible national energy supply and demand balances under hypothesized conditions that encompassed a reasonable range of synfuel development potential. Neither the Base nor the Accelerated Case is intended to predict a "most likely" or "intended" future.

Energy Development Patterns.—The DOE did not select the location of any individual synfuel plants or the mines that would supply them. Neither was there an attempt to select any particular process for a coal conversion technology as this was beyond the scope of this regional assessment. Rather, the Missouri River Basin Commission had the flexibility to hypothesize:

1. Candidate locations for energy plants, coal mines, and transmission systems, demographic development, and other support mechanisms in accordance with regional preferences and with consideration of available water, location of resources, demographic and transport/transmission patterns, existing plants, and similar factors.

2. The number and size of plants (including any preferred technology and process mix) best suited to meeting the regional energy supply projections and consistent with projected water resource conditions.

3. Location of the plants and estimates of total water requirements and availability of the preferred plant mix.

4. Required wastewater treatments for the preferred plant mix in order to meet applicable local, State and Federal water quality standards.

Using this flexibility, the MRBC selected reasonable development patterns for synfuel plants. Each hypothetical unit size coal conversion facility (i.e., one plant producing synthetic fuel with energy equivalent of 250×10^9 Btu per day) was sited with general regard to coal resources, water supplies, transportation, water quality, air pollution control, and land use. Site locations were approximated without the aid of detailed locational analysis. Table 1 shows how the hypothetical plants were distributed among the eight assessment subareas under Base Case development levels. In 1985, no synfuel plants were hypothesized for the Base Case. Table 2 shows how the hypothetical plants were distributed under the Accelerated Case.

The development patterns are not intended to represent proposed regional or State synthetic fuel development plans. Instead, they reflect one reasonable distribution of facilities in the area, based on existing information, for a hypothesized total level of development derived from a national analysis of energy supply and demand.

Water Requirements for Synfuel Technologies.—Estimated water requirements (i.e., consumption) for the three coal conversion technologies were based on theoretical calculations, small-scale experimental facilities, and other related information. As more process data and field experience are obtained from future operations of demonstration and full-scale commercial facilities, more accurate estimates can be prepared. The estimates assume recycling of water at the plant and no water discharged to receiving streams (i.e., zero discharge). Treated plant water would be recycled to supplement water supplies for conversion process water, wet cooling, and related activities.

Table 1.—*Synthetic Fuel Development Patterns: Base Case—1985 and 2000*

[Number of unit size plants]

Subarea and river basin/State	1985	2000			
		High Btu gasification	Low Btu gasification	Liquefaction	Total
1 Upper Yellowstone River in Montana	0	0	0	1	1
2 Bighorn River in Montana	0	0	0	0	0
3 Powder and Tongue Rivers in Montana	0	0	0	1	1
4 Lower Yellowstone River in Montana	0	2	0	2	4
5 Missouri River and tributaries in North Dakota	0	9	0	2	11
6 Bighorn River in Wyoming	0	0	0	0	0
7 Powder and Tongue Rivers in Wyoming	0	4	0	0	4
8 Missouri River and tributaries in South Dakota	0	0	0	0	0
Total	0	15	0	6	21

Table 2.—*Synthetic Fuel Development Patterns: Accelerated Case—1985 and 2000*

[Number of unit size plants]

Subarea and river basin/State	1985	2000			
	High Btu gasification	High Btu gasification	Low Btu gasification	Liquefaction	Total
1 Upper Yellowstone River in Montana	0	0	1	1	2
2 Bighorn River in Montana	0	0	0	0	0
3 Powder and Tongue Rivers in Montana	1	4	0	3	7
4 Lower Yellowstone River in Montana	0	1	0	1	2
5 Missouri River and tributaries in North Dakota	6	8	0	4	12
6 Bighorn River in Wyoming	0	0	0	0	0
7 Powder and Tongue Rivers in Wyoming	0	9	0	0	9
8 Missouri River and tributaries in South Dakota	0	0	1	0	1
Total	7	22	2	9	33

For this assessment, water requirements for coal conversion include water for conversion processes, wet cooling, and related facility operation. The estimated water requirements are wide ranging because of differences among individual process technologies, relationships to the type of coal used, varying efficiencies in cooling equipment, air and water pollution control, and facility design options.

The estimated ranges of water requirements for the three technologies assessed are presented in Table 3. These estimates represent the water to operate a unit size coal conversion plant at 90 percent capacity.

Table 3.—*Water Requirements for a Unit Size Plant for the Synfuel Technologies*

Technology	Water requirements (acre-feet per year)
High Btu gasification	5,960–14,030
Low Btu gasification	6,550
Liquefaction	4,700–7,800

The annual water requirement for synfuel development in the Base and Accelerated Cases are given in Table 4.

Overall, the Base Case would require an estimated 194,000 acre-feet of water per year by 2000. The Accelerated Case would require about 78,000 acre-feet per year by 1985 and about 276,000 acre-feet per year by 2000.

Table 4.—*Water Requirements by Synfuel Case—1985 and 2000*

[Acre-feet per year]

Subarea and river basin/State	Base Case		Accelerated case	
	1985	2000	1985	2000
1 Upper Yellowstone River in Montana	0	6,630	0	14,350
2 Bighorn River in Montana	0	0	0	0
3 Powder and Tongue Rivers in Montana	0	7,800	8,700	66,550
4 Lower Yellowstone River in Montana	0	33,160	0	16,580
5 Missouri River and tributaries in North Dakota	0	115,250	69,000	110,800
6 Bighorn River in Wyoming	0	0	0	0
7 Powder and Tongue Rivers in Wyoming	0	30,840	0	60,640
8 Missouri River and tributaries in South Dakota	0	0	0	6,550
Total [1]	0	194,000	78,000	276,000

[1] Rounded to nearest thousand acre-feet per year.

In addition to these water requirements, synfuel development would stimulate related water uses, referred to here as secondary water requirements. In this assessment, the secondary water uses examined were:

- water for coal mining and related land reclamation (coal for synfuel production)
- water for offsite thermal electric power generation (electricity to operate synfuel technologies)
- water for increased municipal water supplies (increased supplies to support population growth attendant with synfuel development)

Table 5 summarizes major water requirements associated with synfuel development. Water requirements for coal conversion are about 4 times secondary water requirements.

Table 5.—*Cumulative Water Requirements by Synfuel Case—1985 and 2000*

[Acre-feet per year]

Type of water use	Base case 2000	Accelerated case 1985	Accelerated case 2000
Coal conversion	194,000	78,000	276,000
Secondary	53,000	20,000	74,000
Total	247,000	98,000	350,000

Major Findings

The following determinations were based on information gathered during the assessment.

- Water Requirements

For the year 2000, Base Case synfuels development at 1.1 million barrels per day oil equivalent would consume approximately 250,000 acre-feet of water annually while Accelerated Case synfuels development at 1.7 million barrels per day would consume approximately 350,000 acre-feet. Of these totals, about 200,000 and 276,000 acre-feet of water, respectively, would be consumed by the coal conversion technologies. The remaining 50,000 and 74,000 acre-feet would be consumed by supporting activities, such as goal mining and land reclamation, thermal electric power generation for plant operations, and municipal water supply associated with synfuel population growth.

- Water Supply Availability

Water supplies for synthetic fuels development will be controlled by a number of factors, including surface and groundwater resource conditions, the extent to which these resources have

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been institutionally committed or allocated, and the extent to which instream uses would be affected by additional depletions. These factors were analyzed to estimate the present and future water resources baseline against which water availability for synfuels development and possible effects of synfuels development were measured. Except as otherwise noted, the Accelerated Case—2000 is the basis for the analysis that follows below. For this summary report, the assessment subarea findings are aggregated to the State level. The projected surface water flows have been adjusted for streamflow depletion by irrigation, electric generation, municipal and domestic water supplies, livestock, etc.

Wyoming—Projected surface flows of the Bighorn River will average about 2 million acre-feet annually in 2000. Typical low-flow conditions (7-day, 10-year flow) include the augmenting effects of Boysen and Buffalo Bill Reservoirs. Boysen Reservoir has Federal water available for contract pending completion of an Environmental Impact Statement and water availability studies by the U.S. Water and Power Resources Service. The legal availability of water in the Big Horn River may be influenced by future quantification of Federal Reserved and Indian water rights.

In the northeast section of Wyoming, the Powder and Tongue River Basins contain some of the richest coal reserves in the Upper Missouri assessment area. Surface water flows in the Powder and Tongue Rivers are projected to average about 500,000 acre-feet annually in 2000. Because existing low-flow conditions are near zero, use of available surface flows would require reservoir storage for both the Base and Accelerated Cases. Water requirements for the Accelerated Case would exceed the average annual flow by 10 percent and the dry year flow (80 percent exceedence level) by nearly 25 percent.

Groundwater is available in northeast Wyoming, but present information is insufficient to determine its full potential as a major water source. The availability of surface water in this area may be constrained by institutional provisions of the Belle Fourche River and Yellowstone River Compacts. The Accelerated Case could deplete streamflows to the maximum level for all projected uses allowed by provisions of the compacts. Quantification of Federal Reserved rights may further affect future availability of water.

Montana–Projected surface flows in the Upper Yellowstone River in 2000 will average over 5 million acre-feet annually. Typical low-flow conditions (7-day, 10-year) will exceed 0.5 million acre-feet per year. Synfuel development patterns by 2000 would deplete the Upper Yelowstone River by less than 1 percent of the average annual flow or about 2 percent of the low-flow condition. Conflicts with other offstream or instream uses would be minimal.

In the Lower Bighorn River, projected surface water flows will average over 2.4 million acre-feet annually in 2000. Low-flow conditions are generally enhanced to exceed 700,000 acre-feet per year by regulated releases at Yellowtail Reservior. The Yellowtail Reservoir has Federal water available for contract pending completion of an Environmental Impact Statement and water availability studies by the U.S. Water and Power Resources Service. The legal availability of water may be influenced by quantification of Federal Reserved and Indian water rights on the Bighorn River in both Montana and Wyoming.

Flows in the coal-rich Lower Powder and Tongue River Basins in Montana are affected by upstream depletions in Wyoming. Projected downstream surface water flows will average nearly 600,000 acre-feet annualy in 2000. Water requirements for the Accelerated case would exceed the average annual flow by 10 percent and the dry year flow by nearly 15 percent. In combination with the upstream synfuel water requirements in Wyoming, over 20 percent of the projected average annual downstream flow of the Powder and Tongue Rivers would be depleted. Over 25 percent of the dry year flow would be depleted for the same level of development. Because low-flow conditions are near zero, use of further surface water supplies for both the Base and Accelerated Case would require reservoir storage in Montana and Wyoming. Groundwater is also available in this area but information is insufficient to determine its full potential as a major source of water supply. Institutional considerations that may influence water availability include the Yellowstone River Compact and future quantification of Federal Reserved and Indian water rights.

The flows of the Lower Yellowstone River in Montana are also affected by aggregated upstream depletions for synfuel development. Projected surface flows in the Lower Yellowstone will average about 7.8 million acre-feet annually in 2000. Synthetic fuel development would deplete the lower basin average annual and dry year flows by less than 1 percent and less than 2 percent under low-flow conditions. In the entire Upper and Lower Yellowstone River Basin, the aggregated requirements of synfuel development under the Accelerated Case would be about 2 percent of the projected average annual downstream flow in 2000, nearly 3 percent of the dry year flow, or about 15 percent of low-flow conditions. Conflicts between instream uses and synthetic fuel development could arise under low-flow conditions. The legal status of available water supplies may be affected by quantification of Federal Reserved and Indian water rights. The recent reservation of over 6 million acre-feet per year of water by the State of Montana may also influence synfuel development potential in the Lower Yellowstone.

North and South Dakota.—By the year 2000, projected surface flows in the Upper Missouri River and tributaries will average about 15.8 million acre-feet annually in North Dakota and about 16.7 million acre-feet annually in South Dakota. Total water requirements for synthetic fuel development in both States would be less than 1 percent of average annual surface flows.

By 2000, the aggregated water depletions for synthetic fuel development for the Accelerated Case in the entire assessment area would be less than 2 percent of the average flow of the Missouri River in South Dakota.

Tributaries to the Missouri River in North and South Dakota will supply over 2 million acre-feed annually to the river. Some of these tributary waters could be developed for synthetic fuel supply. However, because of low-flow conditions in these tributaries, reservoir storage would be required.

- Water Supply Options

Existing single- and multiple-purpose water supply systems in the Upper Missouri River Basin would require major modification and expansion to provide water for regional synthetic fuel development and production.

In North and South Dakota, water for the hypothetical coal conversion development levels could be provided by diversions from the Missouri River. Water for coal conversion in North Dakota could be conveyed by an aqueduct system originating at Lake Sakakawea. In South Dakota, an aqueduct system could divert water from Lake Oahe.

For the Tongue and Powder River Basins, the assessment evaluated three hypothetical options for expanded surface water supplies to meet the demands of the two synfuel development cases. These three options were chosen because there was sufficient information to examine them at a broad conceptual level and to estimate the order of magnitude of their costs and potential effects on the water resources. In addition to these three illustrations, however, there are other regional water supply options, including: development of groundwater supplies, conjunctive use of groundwater and surface water, conveyance of water from Lake Oahe to the Tongue and Powder River Basins, and water conservation. The assessment did not address groundwater as a regional supply alternative (either sole source or conjunctive use) because of data limitations. The conveyance of Lake Oahe water to the Tongue and Powder Basins as a single-purpose aqueduct serving only synfuel needs was deemed too expensive, and a multipurpose aqueduct from Lake Oahe was not assessed. Water conservation has been indirectly reflected in the water availability projections.

The three water supply options to supply surface water for synfuel development along the water-short Tongue and Powder River Basins of Montana and Wyoming are described briefly in the following sections. Their possible effects on water quantity, water quality, and environmental components and their estimated costs are listed as well. (Annual costs for the three options are based on construction, operation, and maintenance of aqueducts, pumping stations, terminal reservoirs and related appurtenances. Land costs are included also. Overall construction costs for the regional surface water supply systems could range from ½ to 1 billion dollars.) All three options assume that the recommendations for the Tongue and Moorhead Reservoirs (subarea 3) set forth in the Yellowstone Level B report will be implemented. The Water Resources Council does not recommend or support any of these water supply options; they are presented only to indicate possible implications of using various water sources for synfuel development. Actual selection of water sources must be based on more detailed studies.

Option 1.—Option 1 involves the development of streamflows near coal conversion plants with limited development of aqueducts, reservoirs, pumping stations, etc. (see Figure 3). The water provided under option 1 would use approximately 15,000 acre-feet per year of water that, according to the Yellowstone Level B Study, would already be committed for future irrigation. The rest of the water would come from uncommitted supplies. The estimated annual cost for option 1 would be $31 million for the Base Case and $38 million for the Accelerated Case.

The greatest streamflow depletion under water supply option 1 would be in the Powder River (see Table 6). By 2000, the average annual streamflow in the upper reach of the Powder River in Wyoming would be depleted by 12 percent for the Base Case and 27 percent for the Accelerated Case. In the lower reach of the Powder River in Montana, the streamflow would be depleted by 8 percent and 20 percent for the respective synfuel cases. Because low-flow conditions are already near zero, use of further surface water would require reservoir storage under both synfuel cases. Other streams in the assessment area would be depleted by an estimated 3 percent or less for the synfuel cases in 2000.

Surface water quality degradation from synfuel development could occur from runoff from the coal conversion facilities and from coal mining areas. Synfuel-related streamflow depletion may also contribute to downstream water quality degradation by reducing the volume of water available to dilute and assimilate wastes from other beneficial uses.

The TDS loading rates expected from runoff from synfuel facilities and associated mining and land reclamation areas were estimated to determine the effects on water quality. With the exception of the Knife and Cannonball Rivers in North Dakota, which already have high levels of TDS (about 1,000 mg/1 or more during average annual flows), the effects from assessed runoff would be negligible (increases less than 2 mg/1) under both Cases in 2000. However, the Accelerated Case in 2000 will increase TDS in the Knife River by 41 mg/1 and in the Cannonball River by 14 mg/1.

The Tongue, which presently has relatively low TDS in the upstream reaches, could be measurably affected (an increase of 14 mg/1) downstream by the year 2000 under the Accelerated Case.

There was not enough information to further assess degradation of water quality caused conjunctively by streamflow depletions from synfuels development and wastewater discharges by beneficial users. Option 1 suggests a measureable flow depletion of the Powder River and implicity the Tongue and suggests corresponding increases in TDS in these rivers in line with the depletions. Because other water uses are already projected to increase TDS in the Powder and the Tongue, any synfuel-related increases are important because of their compounding effect.

The U.S. Fish and Wildlife Service evaluated six selected stream reaches in Montana to assess what effect streamflow depletion from synfuel development could have on life stages of certain "target" fish. The stream reaches were evaluated for the three water supply options in the year 2000. The potential effects were measured by how much synfuel-related streamflow depletion would change a predetermined "weighted useable area" (i.e., an optimum relationship of stream depth to stream velocity for fish life cycles in a given stream reach).

Under option 1, the reaches of the Powder, Tongue, and Bighorn Rivers would sustain some habitat changes, but the overall quality ratings for fish habitat conditions would not significantly reduced by synfuel development.

Disturbances to land area and ecosystems were also estimated. For the Accelerated Case, construction of major water works considered under option 1 would disturb about 33,000 acres of land principally in grassland and cropland ecosystems. For the Base Case, option 1 would disturb about 11,000 acres.

Option 2.—Option 2 considers a major aqueduct to use water released from the Yellowtail Reservoir but diverted downstream on the Bighorn River in Montana (see Figure 4). The aqueduct system would extend to the Gillette, Wyoming, area. Water would also be released from this aqueduct to the Powder and Tongue Rivers to support coal conversion development along these river basins. Option 2 would use no committed water. The estimated annual cost for option 2 would be $38 million for the Base Case and $51 million for the Accelerated Case.

The greatest average annual streamflow depletion under water supply option 2 would be in the Bighorn River in Montana (see Table 7). Here the streamflow by 2000 would be depleted by approximately 2 percent for the Base Case and 5 percent for the Accelerated Case. Other streams would be depleted by about 3 percent or less for both synfuel cases.

Under water supply option 2, water quality degradation from increased TDS concentrations would be similar to that under option 1. Major rivers would be modestly depleted under the Base Case and Accelerated Case; therefore, TDS concentrations probably would not be increased substantially under this option.

Aquatic habitat affected by water supply option 2 generally would be limited to the Bighorn downstream from the Little Bighorn River confluence. Channel catfish would lose a small

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percentage of their optimum spawning area, but the spawning area was estimated to be comparatively small even without synfuel development.

Water works constructed under option 2 for the Accelerated Case level of development would disturb about 34,000 acres of land primarily grassland and cropland. About 14,000 acres of land would be disturbed under the Base Case.

Option 3. —Option 3 considers a major aqueduct system to use water released from the Yellowtail Reservoir but diverted from the lower reach of the Yellowstone River in Montana (see Figure 5). This aqueduct system would also extend to the Gillette, Wyoming, area. Water would be released from this aqueduct to support synfuel development in the Powder and Tongue River Basins. Option 3 would use no committed water. The estimated annual cost for option 3 would be $42 million for the Base Case and $63 million for the Accelerated Case.

The greatest streamflow depletion under option 3 would be in the Cannonball River in North Dakota (see Table 8). For the Accelerated Case, the streamflow would be depleted by an estimated 3 percent. Other streams would be depleted an estimated 2 percent or less. Depletion would be 1 percent or less under the Base Case.

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Fig. 3—Surface Water Development—Option 1

(Base and Accelerated Cases - 2000)

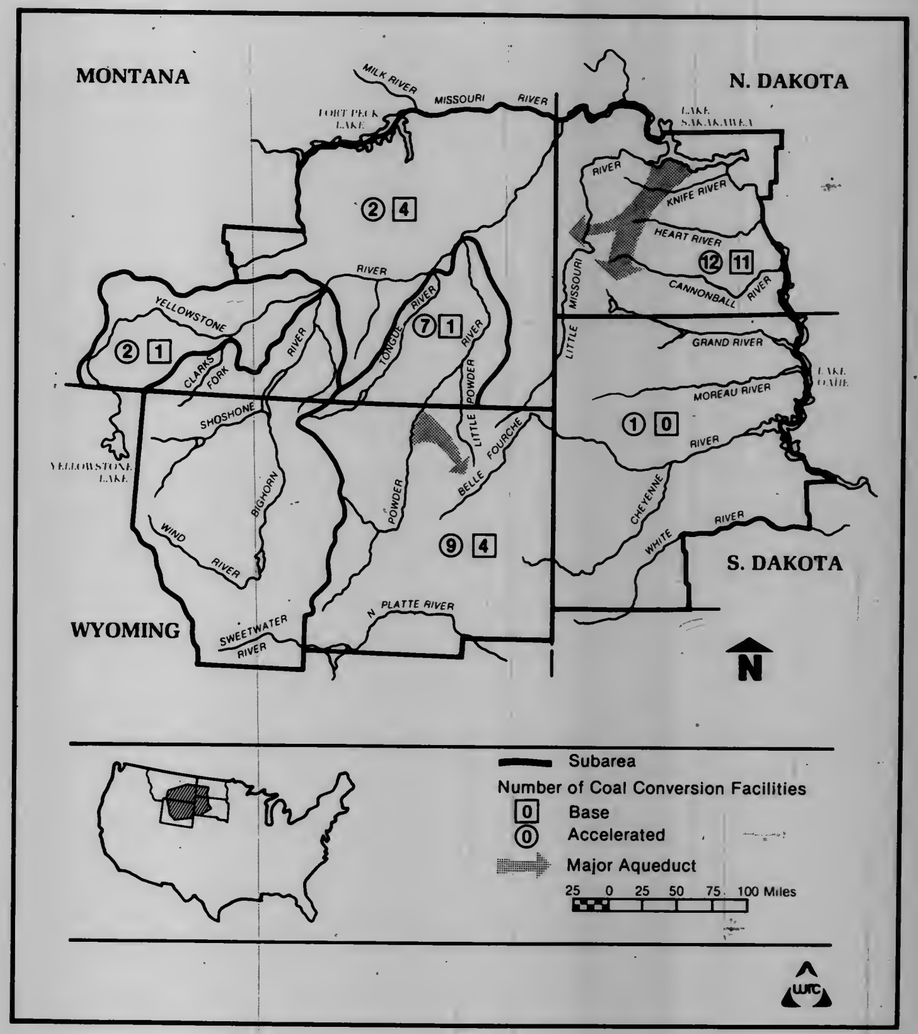


Table 6: Streamflows, Water Supply Option 1

Subarea	Stream and Location	Average Annual Streamflow (1000 ac-ft/yr) 1985	2000	Base Case Adjusted Streamflow (1000 ac-ft/yr) 2000	Base Case Percent a/ Reduction 2000	Accelerated Case Adjusted Streamflow (1000 ac-ft/yr) 1985	Accelerated Case Percent a/ Reduction 2000	Accelerated Case Adjusted Streamflow (1000 ac-ft/yr) 2000	Accelerated Case Percent a/ Reduction 2000
1	Yellowstone River at Huntley, MT	5,531	5,456	5,449	0.1	5,531	0	5,442	0.3
2	Bighorn River at Bighorn, MT	2,597	2,431	2,407	1.0	2,588	0.3	2,377	2.2
3	Powder River at Locate, MT	393	343	315	8.2	393	0	276	19.5
4	Missouri River near Culbertson, MT	7,774	7,774	7,755	0.2	7,774	0	7,755	0.2
	Yellowstone River near Sidney, MT	8,429	7,840	7,781	0.8	8,420	0.1	7,697	1.8
5	Cannonball River at Breien, ND	181	180	180	0	181	0	174	3.3
	Missouri River near Schmidt, ND	15,872	15,772	15,561	1.3	15,784	0.6	15,472	1.9
7	Powder River at Arvada, WY	169	166	146	12.0	169	0	122	26.5
8	Missouri River at Pierre, SD	17,042	16,662	16,451	1.3	16,954	0.5	16,362	1.8

a/ Percent reduction = $\frac{\text{average annual streamflow - adjusted streamflow}}{\text{average annual streamflow}} \times 100$

Fig. 4—Surface Water Development—Option 2

(Base and Accelerated Cases - 2000)

Table 7: Streamflows, Water Supply Option 2

Subarea	Stream and Location	Average Annual Streamflow (1000 ac-ft/yr) 1985	2000	Base Case Adjusted Streamflow (1000 ac-ft/yr) 2000	Base Case Percent[a/] Reduction	Accelerated Case Adjusted Streamflow (1000 ac-ft/yr) 1985	Accelerated Case Percent[a/] Reduction	Accelerated Case Adjusted Streamflow (1000 ac-ft/yr) 2000	Accelerated Case Percent[a/] Reduction
1	Yellowstone River at Huntley, MT	5,531	5,456	5,449	0.1	5,531	0	5,442	0.3
2	Bighorn River at Bighorn, MT	2,597	2,431	2,379	2.1	2,588	0.3	2,310	5.0
3	Powder River at Locate, MT	393	343	343	0	393	0	343	0
4	Missouri River near Culbertson, MT	7,774	7,774	7,755	0.2	7,774	0	7,755	0.2
	Yellowstone River near Sidney, MT	8,429	7,840	7,781	0.8	8,420	0.1	7,697	1.8
5	Cannonball River at Breien, ND	181	180	180	0	181	0	174	3.3
	Missouri River near Schmidt, ND	15,872	15,772	15,561	1.3	15,784	0.6	15,472	1.9
7	Powder River at Arvada, WY	169	166	166	0	169	0	166	0
8	Missouri River at Pierre, SD	17,042	16,662	16,451	1.3	16,954	0.5	16,362	1.8

a/ Percent reduction = $\frac{\text{average annual streamflow - adjusted streamflow}}{\text{average annual streamflow}} \times 100$

Fig. 5—Surface Water Development—Option 3
(Base and Accelerated Cases - 2000)

Table 8: Streamflows, Water Supply Option 3

Subarea	Stream and Location	Average Annual Streamflow (1000 ac-ft/yr) 1985	2000	Base Case Adjusted Streamflow (1000 ac-ft/yr) 1985	Percent[a/] Reduction 1985	Accelerated Case Adjusted Streamflow (1000 ac-ft/yr) 2000	Percent[a/] Reduction 2000
1	Yellowstone River at Huntley, MT	5,531	5,456	5,531	0	5,442	0.3
2	Bighorn River at Bighorn, MT	2,597	2,431	2,588	0.3	2,430	0.1
3	Powder River at Locate, MT	393	343	393	0	343	0
4	Missouri River near Culbertson, MT	7,774	7,774	7,774	0	7,755	0.2
	Yellowstone River near Sidney, MT	8,429	7,840	8,420	0.1	7,697	1.8
5	Cannonball River at Breien, ND	181	180	181	0	174	3.3
	Missouri River near Schmidt, ND	15,872	15,772	15,784	0.6	15,472	1.9
7	Powder River at Arvada, WY	169	166	169	0	166	0
8	Missouri River at Pierre, SD	17,042	16,662	16,954	0.5	16,362	1.8

a/ Percent reduction = $\frac{\text{average annual streamflow - adjusted streamflow}}{\text{average annual streamflow}} \times 100$

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Under option 3, water quality degradation from increased TDS concentrations would be similar to that under option 1. Major rivers would be modestly depleted under the Base Case and Accelerated Case; therefore, TDS concentrations probably would not be increased substantially by this option.

The Bighorn River would be the major stream reach in which aquatic life would be affected by option 3. Under the Accelerated Case, channel catfish would lose 40 percent of the optimum area for the adult stage.

For the Accelerated Case, option 3 would disturb about 37,000 acres of land area, principally cropland and grassland. For the Base Case, construction of option 3 would disturb about 16,000 acres.

The three illustrations of water supply options described above represent possible choices for developing additional water for synfuel facilities. Actually securing water supplies for synfuels development will require careful planning to ensure that offstream and instream requirements are satisfied. Water use conflicts will probably arise in the coal-rich Tongue and Powder River Basins. Key institutional considerations in planning include existing State water rights, the Yellowstone River Compact, the Belle Fourche River Compact, the North Platte Decree, instream flow needs, Missouri main stem reservoir operations, Indian water rights, and other Federal reserved water rights.

Other Findings

Groundwater. —Groundwater is abundant in parts of the assessment area, but it has not been extensively developed. The hydrologic characteristics of most aquifers are not presently well understood. The Fort Union Group, the principal aquifer underlying coal resources in much of the study area, would appear most susceptible to degradation (e.g., percolation of dissolved solids from coal mining). On a regionwide basis, the effect on groundwater quality should not be serious through the year 2000 because coal mining would disturb less than 0.2 percent of the Fort Union Group land area. Groundwater in local areas, on the other hand, could be more seriously affected.

Runoff and Process Water. —At each coal conversion facility, runoff from coal yards and wastewater from coal conversion processes and cooling water blowdown will require treatment.

Estimated construction costs (1979) for runoff treatment and disposal for a unit size facility would range from $4 to $6 million. Annual operating cost is estimated at $100,000.

For unit size facilities, high Btu coal gasification would have the highest estimated costs (1979) for treatment facility construction ($20 million) and for operation and maintenance ($4 million). Treatment facilities for low Btu gasification and liquefaction would have similar, although lower, costs—$15 million for construction and $2–3 million for operation and maintenance.

Treated wastewater from coal conversion processes and cooling water blowdown would not be discharged to streams (i.e., "zero discharge"). Water would be recycled within a closed system.

Hydroelectric Power Generation.— Streamflow depletion caused by coal conversion development in the assessment area would reduce future hydroelectric power generation by less than 1 percent. Hydroelectric power generated upstream at the Boysen and Yellowtail Reservoirs would not be affected. Siting of concentrated, water-depleting developments in the upper reaches of the Missouri River and its tributaries would affect regional hydroelectric power generation more significantly than siting similar developments nearer the downstream reaches.

Navigation.—There is no major commercial navigation in the assessment area. Assessed coal conversion developments would have negligible effects on streamflows for barge tow traffic downstream of Sioux City, Iowa, where commercial navigation begins on the Missouri River.

Community Infrastructure.—Because of the strongly rural character of the assessment area, rapid population growth attendant on synfuel development could significantly impact the infrastructure of communities. By 2000, the hypothetical levels of synfuel development could increase population in the assessment area between 100,000 and 160,000 persons. Advanced planning by State, county, and local governments in conjunction with the synfuel industries could mitigate some of the socioeconomic demands. Projected tax revenues from the hypothetical synthetic fuel development and coal mining in Montana, Wyoming, and North Dakota would appear to be adequate for coping with the attendant increase in social costs.

Conclusion

Surface water is generally available in the Upper Missouri River Basin to support coal conversion development. Regional availability of groundwater can only be assessed by further field studies.

Approximately 700,000 acre-feet of surface water are available annually in the Boysen and Yellowtail Reservoirs on the Bighorn River, pending completion of environmental impact statement and water availability studies by the U.S. Water and Power Resources Service. Not all synfuel development would be located near this water supply, however.

Existing single- and multiple-purpose water supply systems in the Upper Missouri would require major modification and expansion to enable the use of available water supplies for regional coal conversion development. Possible considerations to provide water at desired plant locations include new storage, interbasin transfers, changes in present water use, and groundwater development. The operations of some reservoirs in the Yellowstone River Basin may need to be altered to assure sufficient flows for energy needs during dry years.

The time lag between planning and implementing water supply systems may be 20 years or more. Critical subbasins, such as the Tongue and Powder River, will require further detailed studies to determine what water management alternatives best serve the needs of instream and offstream users. Inherent in these studies will be an emphasis on existing State water rights, River Compacts, Court Decrees, instream flow reservations, Missouri River main stem reservoir operations, Indian water rights, and other Federal reserved water rights.

There is a need now for a unified commitment by Federal, State, local, and private entities to advance water resources planning management strategies that will ensure that water will be available for energy technology development and other beneficial uses in the Upper Missouri River Basin.

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federal register

Wednesday
October 29, 1980

Part IV

Department of Energy

Office of Conservation and Solar Energy

Price Support Loans for Municipal Waste Energy Projects

V 45 OC 29 80 UMI

DEPARTMENT OF ENERGY

Office of Conservation and Solar Energy

10 CFR Part 485

[Docket No. CAS-RM-80-121]

Price Support Loans for Municipal Waste Energy Projects

AGENCY: Department of Energy.

ACTION: Proposed rule and request for voluntary applications.

SUMMARY: On June 30, 1980, the President signed the Biomass Energy and Alcohol Fuels Act of 1980 (the "Act") which is Title II, of the Energy Security Act ("ESA"), Pub. L. 96-294. The Act, among other things, authorizes the Department of Energy ("DOE") to provide various forms of financial assistance to municipal waste energy projects to reduce the dependence of the United States on imported petroleum and natural gas. Today's notice sets forth as a proposal the rules under which DOE will provide price support loans to assist municipal waste energy projects, requests public comments on the proposed rule, and establishes dates for public hearings on the proposed rule. This notice also requests persons to file voluntary applications for price support loans prior to promulgation of the final rule. On September 25, 1980 (45 FR 63822) DOE published proposed rules to establish the components for determining the maximum amount of price support loans. These components are the "standard support price" and the manner of determining the fuel displaced . . . and the price of the fuel displaced." That rule, when finalized, will become "Subpart B" of the rulemaking being proposed today.

DATES: Written comments must be received by January 5, 1981, 4:30 p.m., e.s.t.

Public hearing: December 11, 1980. Requests to speak at the public hearing must be received by November 28, 1980. DOE will notify by December 5, 1980, persons requesting to speak.

ADDRESSES: Written comments and requests to speak should be addressed to Carol Snipes, Department of Energy, Hearings and Dockets, Mail Stop 6B-025, Room 1F-085, 1000 Independence Avenue, SW., Washington, D.C. 20585. Telephone: (202) 252-9319. Public hearing location: Room 3000A; 9:30 a.m., 12th & Pennsylvania Ave., NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Donald K. Walter, Acting Director, Office of Energy from Municipal Waste, Room 1E-276, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-9397.

Lawrence R. Oliver, Office of General Counsel, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-1202.

Carol A. Snipes, Office of Conservation and Solar Energy, 1000 Independence Avenue, S.W., Room 1F-085, Washington, D.C. 20585, (202) 252-9319.

FOR THE SUBMISSION OF VOLUNTARY APPLICATIONS: See the address specified herein.

SUPPLEMENTARY INFORMATION:

I. Background
- A. General Description of Price Support Loans
- B. Availability of Funds
- C. Formula for Determining the Maximum Loan Amount

II. Requests for Voluntary Applications
III. Discussion of the Proposed Rule
IV. Items not Included in Proposed Rule
V. National Environmental Policy Act Review
VI Regulatory Analysis
VII. Period for Public Comment
VIII. Comment and Hearing Procedures
- A. Written Comments
- B. Request Procedures
- C. Conduct of Hearings

I. Background

The Act provides the framework for a national effort to stimulate the production of energy from alcohol fuels, biomass and municipal waste projects to reduce dependence on imported petroleum and natural gas. DOE is authorized by Subtitle B of the Act to provide construction loans, loan guarantees, price guarantees and price support loans for municipal waste evergy projects. DOE is implementing the Act by issuing separate rules relating to each form of financial assistance (i.e., loan guarantees, price guarantees, construction loans and price support loans) rather than to each type of project.

The Final Rule loan guarantees was published on October 8, 1980 (10 FR 67022).

DOE today continues the rulemaking process to implement the Municipal Waste Energy Price Support Loan Program under Subtitle B of the Act. Today's notice deals with the rules required under Section 236 of the Act to establish procedures for implementing the price support loan program provided by Section 234 of the Act.

The Municipal Waste Energy Price Support Loan Program is separate from the municipal waste reprocessing demonstration program under section 237 of the Act and Section 20 of the Federal Nonnuclear Energy Research and Development Act of 1974 (Nonnuclear Act), as amended, Pub. L. 93-577. Section 20 of the Nonnuclear Act and Section 237 of the Act authorize price supports for projects which have not been demonstrated at a commercial scale, to obtain technical, economic, and other information about innovative or under-utilized technologies. Section 234 of the Act supports waste-to-energy projects with can be operated at a commercial scale, and is intended to accelerate displacement of conventional fossil fuels.

The scope of the program covered by this proposed rule is governed in part by the definition of "municipal waste" in Section 203(14) of the Act which excludes "hazardous waste", as determined by the Secretary, but includes industrial or commercial waste. In amplifying the definition of "municipal waste" in proposed Section 485.02, DOE is proposing to exclude, as hazardous, the hazardous wastes specifically listed by the Environmental Protection Agency in 40 CFR, Part 261 under the Resource Conservation and Recovery Act of 1976 (Pub. L. 94-580), as well as other waste deemed hazardous by DOE on a case-by-case basis.

A. *General Description of Price Support Loans.* A price support loan is a lending device which enables a "municipal waste energy project" to borrow against revenue increases anticipated in future years. The loan payments can be used to offset annual operating costs including debt service and operation and maintenance. By improving the early year project economics, price support loans encourage projects which increase production and sales of waste derived energy over current levels. Inasmuch as the amount of the loan is based on the amount of waste derived energy produced and sold, and the type and cost of fuel displaced, the price support loan is a device which rewards displacement of fossil fuels.

Under Section 234 of the Act, loan funds are disbursed on an annual basis for a maximum term of five consecutive years for "existing Municipal waste energy projects" an for a maximum term of seven consecutive years for "new municipal waste energy projects. Repayment commences a year after receipt of the last price support loan payment.

B. *Availability of Funds.* Section 204(a) of the Act provides the Secretary of Energy with an authorization for appropriations for Subtitle B of $250,000,000 for carrying out the activities of Subtitle B which contains all the provisions of the Act relating to financial assistance for municipal waste energy projects.

Section 204(c) of the Act provides that for purposes of determining the availability of appropriations, loans shall be counted at their initial face value. DOE has interpreted this section to apply to price support loans.

The Supplemental Appropriations and Recission Act, 1980 (Pub. L. 96-304), which was enacted on July 8, 1980, appropriated $220,000,000 to DOE for purposes of carrying out municipal waste energy projects under Subtitle B. These funds are available for all the activities authorized by Subtitle B, including price support loans. DOE has not yet determined what portion of appropriations will be made available for price support loans. DOE gives no assurance that it will, in fact, issue or conditionally commit to issue price support loans in any specified amounts since such decision can only be made after review and selection of applications in accordance with the provisions of this rule.

C. *Formula for Determining the Maximum Loan Amount.* Subpart B of the rule being proposed today, "Formula for Determining the Maximum Loan Amount", has been "reserved" until the rule proposed on September 25, 1980, (45 FR 63822) has been published in its final form. The earlier proposed rule complied with the statutory requirements that specific rules be promulgated within 90 days of enactment of the Act. The earlier proposed rule established the necessary components for determining the maximum amount of price support loans. These components are the "standard support price" and "the manner of determining the fuel displaced . . . and the price of the fuel displaced". When that rule is published in final form, it will become Subpart B of this rule.

The maximum amount of the loan payment in the first year under the proposed rule is based on the amount of waste derived energy produced and sold or used by a project as measured in millions of British Thermal Units (MMBtu's). This amount of energy is multiplied by the value of the price support per MMBtu, i.e., unit value of support. A particular unit value of support is set for each project and is calculated as the difference between the standard support price, established pursuant to Section 234(a)(3)(A)(1) the maximum unit value of support may not exceed $2.00 per MMBtu's. After the first year, the maximum amount of loan payment declines in each succeeding year. Each successive year the amount of the loan is calculated by multiplying the product of the unit value of support times the amount of fuel displaced by a fraction whose denominator is the number of years in the loan term, and the numerator is the number of years in the loan term minus the number of years which have elapsed since the date of the first year's payment.

Where No. 6 fuel oil or a higher grade of petroleum is displaced by biomass energy, the maximum amount of the price support payment attributable to the displaced oil will be increased by 25 percent. The adjustment will be based on the proportion of oil in the fuel mix that is displaced by biomass energy.

II. Requests for Voluntary Applications

Section 236 of the Act provides that the Secretary of Energy may use procedures not specified in the Act to the extent the Secretary finds that such procedures are necessary to carry out the Comprehensive Plan pursuant to Section 231. Based on this expression of Congressional intent, together with the need for a fast start program, DOE has determined that it will not initially issue a separate solicitation announcement for its first competition cycle for selecting proposals for award of price support loans, but will permit the immediate filing of applications for price support loans in an initial competition cycle which will remain open until at least January 15, 1981, or 15 days after this rule is finalized (whichever is later in time) as discussed below. In this context, the provisions of this paragraph constitute the equivalent of a solicitation announcement as required in 485.30(c) of the proposed rule. Therefore, DOE requests interested persons to submit their applications for price support loans so that evaluations of such applications may commence at once. A response to this request before the proposed rule becomes final is voluntary and involves some risks to early applicants. If the final rule differs from the proposed rule, it may be necessary for initial applicants to amend their applications to come into conformity with the final rule. Since few proposed rules become final without any changes, it is likely that such amendments will be necessary.

DOE anticipates, and the rule so reflects, that the final rule will be effective on its publication rather than 30 days thereafter as normally required and that no applications received after the fifteenth day of the date of the publishing of the final rule will be considered during the initial competition cycle. The competitive cycle will not end, in any event, before January 15, 1981. Thereafter, additional competition cycles may occur, subject to the availability of appropriations. Although evaluation of voluntary applications will begin immediately upon receipt, final selection from the applications received in this initial competitive cycle will occur as quickly as practicable but not before 15 days after final publication. Applications for this first competition cycle should be filed with:

Donald K. Walter, Acting Director, Office of Energy from Municipal Waste, Mail Stop 1E-276, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-9397.

III. Discussion of the Proposed Rule

This proposal which sets forth the guidelines and procedures to be used for the municipal waste energy price support loan program and consists of six subparts. This discussion identifies those sections upon which DOE particularly desires the views of the public.

Subpart A of the proposed rule contains ten sections dealing with a range of preliminary items normally contained in a financial incentive regulation.

Section 485.2 set forth the definitions to be used throughout the regulation. Many of these definitions come directly from the Act while other terms are defined in accordance with their normal meaning, with specific language, where required, to make them applicable to price support loans under this regulation. A number of these definitions are discussed below. DOE has defined applicant in the broadest sense, by using the word "person" as defined in the Act. This will allow any legal form of business entity and any State, local, or special purpose governmental unit to be eligible to file applications for price support loans. DOE has included a definition of "contracting officer" to make it clear that such official is the only representative legally authorized to contractually obligate DOE and enter into agreements that are binding upon DOE. Parties dealing with DOE regarding activities covered by this rule, should inquire as to the representative's authority as a contracting officer. Finally, it should be noted that the definition of "municipal waste," in accordance with the provisions of the Act, includes, among other things industrial or commercial waste, but excludes any hazardous waste. With respect to hazardous waste, DOE is proposing a definition of "municipal waste" which excludes any hazardous waste listed by the Environmental Protection Agency in 40 CFR Part 261 pursuant to the Resource Conservation

and Recovery Act of 1976, Pub. L. 94–580, as well as any other waste determined by the Secretary to be hazardous on a case by case basis. The proposed rule specifically makes projects found by the Secretary to involve hazardous waste ineligible to receive a price support loan.

Subpart B is reserved as explained in Section I.

Subpart C, which is entitled "Solicitation, Evaluation, and Approval of Applications," is a particularly important section of the regulation for the public to review because it describes the general policies and procedures which will be utilized by DOE in receiving, evaluating, and approving applications which become eligibile for the issuance of a price support loan. DOE intends the process specified to provide for competition between price support loan applicants for the amount of price support loans that are available in each competition cycle.

The selection of applications after a competitive evaluation does not, however, necessarily mean those applications selected will receive price support loans. The Application Approving Official will identify the conditions under which DOE will execute a price support loan agreement for a particular application. Thereafter negotiation will be undertaken with the applicant to determine if the application will result in a transaction which meets DOE's conditions and complies with the provisions of the regulation. While DOE is optimistic that successful negotiations will occur in every case, it is realistic to assume that some selected applicants may ultimately fail to receive a price support loan.

After the first solicitation, the procedure by which DOE intends to notify the public of the availability of price support loans is through the publishing of a Solicitation Announcement in the **Federal Register** and the *Commerce Business Daily*. Parties interested in submitting applications, but who are unable to determine if in fact applications are being solicited, should make inquiries to the office listed above. Applications should be submitted to the Office of Energy from Municipal Waste listed above.

Applications timely received by DOE, will be comparatively evaluated with other applications received during the same competition cycle. The panel evaluating the applications will rank the applications and make recommendations to the Applications Approving Official for possible loan awards. The Application Approving Official may direct the panel to undertake competitive negotiations with one or more of the applicants prior to making a selection when the Application Approving Official determines competitive negotiations to be necessary. These negotiations will further identify for the Application Approving Official those projects most capable of achieving the objectives specified by the Secretary. The Application Approving Official shall then designate those applicants to which conditional commitments should be issued. The purpose of the conditional commitments is to identify those terms and conditions upon which DOE will issue a price support loan to the applicant. Officials of DOE will then undertake negotiations in an effort to satisfy the conditions of the conditional commitment and bring the transaction to a closing. Interested parties are specifically requested to provide comments to DOE regarding the procedures for the evaluation and selection of competing proposals.

Subpart D, entitled "Project Administration," generally deal with the mechanical administration of a price support loan project. In accordance with Section 235(6)(b)(D) of the Act, DOE will limit financial assistance to an amount which is no greater than necessary to support a particular project. DOE, therefore, particularly seeks comment on proposed paragraph 485.40(c) which provides DOE with a mechanism by which DOE can prevent a windfall in those instances where the amount of the price support loan payment exceeds what was projected to have been needed when the price support loan agreement was entered into. For instance, when the price of energy from the project increases faster than was projected it may be necessary to reduce the amount of or withdraw the price support loan subsidy. DOE will, in most cases, insert appropriate provisions in the price support loan agreement which will permit it to review, on an annual basis, the financial needs of a project (window provision).

IV. Items Not Included

When evaluating an application for a price support loan it may be useful for DOE to review and consider the amount of total governmental subsidies, including specific Federal, State and local tax provisions that an applicant may take advantage of. Usually the special Federal, State and local special tax provisions are in the form of tax credits for a range of business and energy related activities. DOE did not include tax incentives in section 485.33, entitled "Evaluation criteria and priorities", but public comments are encouraged as to whether or not the inclusion of tax subsidies would be useful in reviewing and comparing applications.

Section 235(a)(b)(c) of the Act provides that the Secretarial shall not provide price support loan assistance for any municipal waste energy project unless the Secretary determines that assurances are provided that the project will not use in substantial quantitives "waste paper which would otherwise be recycled for a use other than as a fuel and will not substantially compete with facilities in existence on the date of the financial assistance which are engaged in the separation or recovery of reuseable materials from municipal waste." Because DOE is concerned about the impact of the Municipal waste price support loan program on the recycling industry it has been suggested that "municipal waste" as used in this proposed rule contain language which would "exclude materials such as waste paper, metals and glass that are *pre-separated to be recycled* as a raw materials and not destined for disposal." DOE has elected not to include those provisions in the rule being proposed today. DOE does, however, encourage public comment on this issue.

V. National Environmental Policy Act Review

DOE published a notice of availability of an environmental assessment (EA) (DOE/CS–0095) and negative declaration in the **Federal Register** on July 18, 1979 (44 FR 42110) stating DOE's overall urban waste program (covering municipal waste other than industrial waste) would not constitute a "major Federal action significantly affecting the quality of the human environment" within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*

Industrial waste, which is included in the Act's definition of municipal waste, is not covered by the urban waste EA. On October 8, 1980, the Department published in the **Federal Register** (45 FR 67022) a notice of availability of an Environmental Assessment of Financial Assistance for Energy Recovery from Industrial Waste: Wood, Paper, and Food Processing (DOE/EA-0124), and a finding of no significant impact for certain types of industrial waste. Consequently, in the near term, price support loans will be available only for those types of project covered by the finding, as reflected in § 485.4(b). Following completion of a programmatic environmental impact statement (EIS) for industrial waste to energy projects, DOE may amend the rule to permit issuance of price support loans for additional technologies covered in the EIS.

Since there could be site-specific environmental impacts of concern, site-specific environmental information will be required from the applicant, and the preparation of formal site-specific environmental assessments or environmental impact statements may be required, where appropriate. DOE will determine the nature and extent of any additional environmental review required by NEPA for individual applicants prior to issuing a price support loan for a municipal waste energy project. In addition to the environmental analyses referred to above, DOE will, or course, evaluate the environmental aspects of each proposal.

VI. Regulatory Analysis

Today's proposal was reviewed under Executive Order 12044 43 FR 12661, implementing DOE directives thereunder and OMB Circular A–116. DOE has determined that the rule will be "significant" because of its widespread impact. However, DOE has concluded that it will not be "major" because it will not have the kind or degree of effects which, under Executive Order 12044, necessitate a regulatory analysis. For the same reason, an urban and community impact analysis under OMB Circular A–116 is not necessary.

VII. Period for Public Comment

A 60 day comment period is being provided for public review and comment on this proposed rulemaking.

VIII. Comment and Hearings Procedures

A. *Written Comments.* Interested persons are invited to participate in this rulemaking by submitting data, views or arguments with respect to today's proposed rule. Comments should be submitted by January 5, 1981, to the address indicated in the beginning of this preamble. Comments should be identified on the outside of the envelope and on documents submitted to DOE with the designation—Price Support Loan Proposed Rule (Docket No. CAS–RM–80–121). Fifteen copies should be submitted. All comments received will be available for public inspection in the DOE Reading Room, Room 5F–180, Forrestal Building, 1000 Independence Avenue, S.W., between 8:00 a.m. and 4:00 p.m., Monday through Friday.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy, and fifteen copies from which information claimed to be confidential has been deleted. In accordance with the procedures established in 10 CFR 1004.11, DOE shall make its own determination with regard to any claim that information submitted by exempt from public disclosure.

B. *Request Procedures.* The time and place of the public hearings are indicated in the dates and addresses section of this preamble. DOE invites any person who has an interest in the proposed rulemaking issued today, or who is representative of a group or class of persons that has an interest in today's proposed rulemaking, to make a written request for an opportunity to make oral presentation. Such a request should be directed to the address indicated in the addresses section of this preamble, must be received before November 28, 1980 and may be hand-delivered to such address, between the hours of 9:00 a.m. and 4:30 p.m.

The person making the request should briefly describe the interest concerned; if appropriate, state why she or he is a proper representative of a group or class of persons that has such an interest; and give a concise summary of the proposed oral presentation and a telephone number where she or he may be contacted during the day.

DOE will notify each person selected to appear at the hearings before December 5, 1980. Each person selected to be heard should bring 15 copies of his or her statement to the hearing location.

C. *Conduct of Hearings.* DOE reserves the right to select the persons to be heard at the hearings, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearings. The length of each presentation may be limited, based on the number of persons requesting to be heard.

A DOE official will be designated to preside at the hearings. This will not be a judicial or evidentiary-type hearing. Questions may be asked only those conducting the hearing, and there will be no cross-examination. At the conclusion of all initial oral statements, each person who has made an oral statement will, if time permits, be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any person who wishes to have a question asked at the hearing may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be asked.

Any further procedural rules needed for the proper conduct of the hearings will be announced by the presiding officer.

A transcript of the hearings will be made, and the entire record of the hearings, including the transcripts, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

(Energy Security Act, Pub. L. 96–294; Department of Energy Organization Act, Pub. L. 95–91.)

In consideration of the foregoing, DOE hereby proposes to add Part 485, Chapter II of Title 10, Code of Federal Regulations, as set forth below.

Issued in Washington, D.C., October 24, 1980.

Worth Bateman,

Acting Under Secretary.

PART 485—MUNICIPAL WASTE ENERGY PRICE SUPPORT LOAN PROGRAM

Subpart A—General Provisions

Sec.
485.1 Purpose.
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Subpart B—Formula for Determining the Maximum Loan Amount[1]

485.20–29 [Reserved]

Subpart C—Solicitation, Evaluation, and Selection of Applications

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Subpart D—Project Administration

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Subpart E—Reporting and Monitoring

485.50 Reports.
485.51 Project monitoring.
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485.53 Survival of agreement.

[1] See Subpart B, 45 FR 63827, September 25, 1980.

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Subpart F—Default

Sec.

485.60 Default, demand, payment, and collateral security and surety liquidation.

485.61 Preservation of collateral security.

Authority: Energy Security Act, Pub. L. 96–294, 94 Stat. 611 (42 U.S.C. 8831–8840); and Department of Energy Organization Act, Pub. L. 95–91.

Subpart A—General Provisions

§ 485.1 Purpose.

The purpose of this regulation is to set forth policies and procedures under which the Department of Energy (DOE) will issue price support loan agreements for municipal waste energy projects producing and selling biomass energy in an environmentally acceptable manner.

§ 485.2 Definitions.

Terms defined in the Act are used as so defined. For the purposes of this regulation:

(a) "Act" means Title II of the Energy Security Act, also cited as the Biomass Energy and Alcohol Fuels Act of 1980, Pub. L. 96–294.

(b) "Applicant" means any person who has filed an application for a price support loan pursuant to this regulation, and who has the authority to enter into a loan agreement under this regulation.

(c) "Application Approving Official" means the Secretary or person designated by the Secretary who is authorized to approve an application for a price support loan under this regulation, and to authorize the negotiation and award of agreements or commitments for price support loans and other contractual documents.

(d) "Application Evaluation Panel" (also referred to as "the Panel") means a team of Federal employees appointed by the Application approving Official to evaluate price support loan applications, and make approval or disapproval recommendations regarding such applications.

(e) "Base period" means any consecutive 12 months during the 18 month period that precedes a commitment to make a price support loan for a new municipal waste energy project, and the 12 consecutive month period between July 1, 1979 and June 30, 1980 for an existing municipal waste energy project.

(f) "Biomass" means any organic matter which is available on a renewable basis, including agriculture crops and agricultural wastes and residues, wood and wood wastes and residues, animal wastes, municipal waste, and aquatic plants.

(g) "Biomass energy" means biomass fuel; or energy or steam derived from the direct combustion of biomass for the generation of electricity, mechanical power, or industrial process heat.

(h) "Biomass energy project" means any facility (or portion of a facility) located in the United States which is primarily for the production of biomass fuel (and byproducts); or the combustion of biomass for the purpose of generating industrial process heat, mechanical power, or electricity (including cogeneration).

(i) "Biomass fuel" means any gaseous, liquid, or solid fuel produced by conversion of biomass.

(j) "Borrower" means a person that has entered into a price support loan agreement with the Secretary.

(k) "Btu" means British thermal unit.

(l) "Cogeneration" means the combined generation by any facility of electrical or mechanical power, and steam or forms of useful energy (such as heat) which are used for industrial commercial heating or cooling purposes.

(m) "Competition cycle" means the period of time in which applications will be received for evaluation.

(n) "Construction" means the construction or acquisition of any municipal waste energy project, the conversion of any facility to a municipal waste energy project, or the expansion or improvement of any municipal waste energy project which increases the capacity or efficiency of that facility to produce biomass energy. Such term includes the acquisition of equipment and machinery for use in or at the site of a municipal waste energy project, and the acquisition of land and improvements thereon for the construction, expansion, or improvement of such a project, or the conversion of a facility to such a project including the capital costs necessary to meet environmental standards. Such term does not include the acquisition of any facility which was operated as a municipal waste energy project before the acquisition.

(o) "Contracting officer" means the DOE official warranted and authorized to contractually obligate DOE, and excute written agreements that are binding on DOE.

(p) "Cost of the fuel displaced" means the cost of the fuel (per million Btu's) which the purchaser of biomass energy would have purchased if the biomass energy had not been available for sale to that purchaser. Any biomass energy produced by a municipal waste energy project which may be retained for use by the owner or operator of such project will be considered to be sold at such price as the Secretary determines.

(q) "Default" means the failure of a borrower to make payments of principal or interest on a price support loan issued under this regulation within the time period specified in the loan agreement, or the failure of the borrower to comply with other material terms or conditions specified as default conditions in the loan agreement or related documents.

(r) "DOE" means the United States Department of Energy.

(s) "Enthalpy" means the internal energy of a system plus the product of the volume and pressure exerted on the system by its surroundings.

(t) "Existing municipal waste energy project" means any municipal waste energy project which is not a new municipal waste project.

(u) "Fuel displaced" means a conventional fossil fuel (i.e., oil, natural 6gas, or coal) which the purchaser or user of waste derived energy would have otherwise purchased or used to supply energy requirements which are or will be supplied by biomass energy.

(v) "Higher heating value" means the heat content of a fuel when all water vapor in combustion-produced gases is condensed.

(w) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(x) "MMBtu" abreviates million British thermal units.

(y) "Municipal waste" means any organic matter, including sewage, sewage sludge, and industrial or commercial waste, and mixtures of such matter and inorganic refuse from any publicly or privately operated municipal waste collection or similar disposal system, or from similar waste flows (other than such flows which constitute agricultural wastes or residues, or wood wastes or residues from wood harvesting activities or production of forest products). Such term does not include any hazardous waste specifically listed in 40 CFR Part 261, or which, when utilized in any municipal waste energy project would, in the opinion of DOE, endanger the public health or negatively impact the environment in a significant way.

(z) "Municipal waste energy project" means any facility (or portion of a facility) located in the United States which is primarily for the production of biomass fuel (and byproducts) from municipal waste; or the combustion of municipal waste for the purpose of generating steam or forms of useful

energy including industrial process heat, mechanical power, or electricity (including cogeneration). Such term includes any necessary transportation, preparation, and disposal equipment and machinery for use in or at the site of the facility involved.

(aa) "New municipal waste energy project" means any municipal waste energy project which is initially placed in service after June 30, 1980; or, if initially placed in service before June 30, 1980, has an increased capacity by reason of additional construction, and as such is placed in service after such date.

(bb) "Placed in service" means operated at more than 50 percent of the estimated operational capacity.

(cc) "Person" means any individual, company, cooperative, partnership, corporation, association, consortium, unincorporated organization, trust, estate, or any entity organized for a common business purpose, any State or local government (including any special purpose district or similar governmental unit) or any agency or instrumentality thereof, or any Indian tribe or tribal organization.

(dd) "Program office" means the DOE Office of Energy from Municipal Waste established under Section 239 of the Act.

(ee) "Refuse-fired boiler" means a boiler in which greater than 50 percent of the heat content of the fuel used is supplied by the direct combustion of waste or waste-derived fuel.

(ff) "Secretary" means the Secretary of Energy, or designee.

(gg) "Standard support price" means the average price (per million Btu's) for No. 6 fuel oil imported into the United States on June 30, 1980, which was determined to be $5.37 per MMBtu under Subpart B of this regulation.

(hh) "State" means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

§ 485.3 Program management.

(a) Program management responsibility is vested in the Director of the Office of Energy from Municipal Waste, U.S. Department of Energy. These responsibilities include all normal actions necessary to plan, organize, direct, and control the programmatic assignments. Specific questions regarding this regulation or municipal waste conversion technology should be directed to this office.

(b) EPA will retain responsibility for assuring that these projects are consistent with Section 1008 of the Resource Conservation and Recovery Act of 1976, Pub. L. 94–580, as amended, and any applicable State or regional solid waste management plan.

§ 485.4 Eligibility.

(a) The Secretary may commit to make, or make price support loans for municipal waste energy projects that produce biomass energy according to the following provisions:

(1) Price support loans will be limited to biomass energy which is either sold, or retained for productive use;

(2) With respect to municipal waste projects producing biomass energy other than biomass fuel, price support loans under the provisions of this regulation will be available only if the Secretary finds that the project does not use petroleum or natural gas except for flame stabilization or start-up. Projects which utilize fossil fuels for standby are eligible for price support loans, but only for energy produced from municipal waste;

(3) With respect to municipal waste projects producing biomass fuel, price support loans will be available to such project only if the Secretary finds that the Btu content of the biomass fuel produced substantially exceeds the Btu content of any petroleum or natural gas used in the project to produce the biomass fuel;

(4) Financial assistance may not be provided under this regulation unless the Secretary finds that necessary municipal waste feedstocks are available and it is reasonable to expect they will continue to be available for the expected economic life of the project;

(5) The project is located in a State of the United States;

(6) The project must utilize municipal waste as the primary feedstock; and

(7) The project does not interfere substantially with materials recovery systems.

(b) Price support loans for municipal waste energy projects involving industrial waste shall be available only for wood processing waste, paper processing waste, and waste from food processing (including waste from fruit and vegetable processing, nut packing, grain milling, sugar refining, and similar materials, but excluding waste from meat processing and dairy products industries) which do not constitute the wastes or residues of agricultural activities, wood harvesting activities of production of forest products.

§ 485.5 Applicability of other laws and regulations.

(a) Nothing in this regulation may be construed as affecting the obligations of any party to comply with Federal, State, local and tribal environmental, land use, water, and health and safety, and antitrust laws and regulations, or to obtain applicable Federal, State, local and tribal permits, licenses, and certificates.

(b) The project will at a minimum, comply with applicable Federal, State, and local environmental laws and regulations. The issuance of a price support loan agreement under this regulation is subject to, among others, the provisions of the National Environmental Policy Act of 1969 (NEPA), as amended, (42 U.S.C. Section 4321 *et seq.*; Pub. L. 91–190), and applicable CEQ regulations and DOE guidelines implementing NEPA.

(c) Office of Management and Budget (OMB) Circular No. A–95 Revised, "Evaluation, Review, and Coordination of Federal and Federally Assisted Programs and Projects," requires that any agency of a State of local government or any organization or individual applying for a price support loan under this program notify the State and areawide planning and development clearinghouses in the jurisdiction of which the project is to be located. Applicants are encouraged to contact State and areawide clearinghouses at an early stage for possible assistance in developing applications.

§ 485.6 Other Federal assistance.

(a) The authorities in this regulation are in addition to and do not modify (except to the extent expressly provided for in this regulation) authorities and programs established under other provisions of law.

(b) Nothing in this regulation may be interpreted to deny or limit an applicant's or recipient's right to seek and obtain other Federal financial assistance (e.g., grants, loan guarantees, or cooperative agreements) for a municipal waste energy project.

§ 485.7 Deviations and contract modifications.

(a) To the extent that such requirements are not specified by the Act, relevant appropriations acts, or in other applicable statutes, the Secretary may deviate on an individual application basis from the requirements of this regulation upon a finding that a deviation is necessary and warranted in the individual case to the accomplishment of program objectives and unique circumstances in the application make a deviation clearly in the best interests of the Government.

(b) The Application Approving Official may approve, subject to

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approval by other necessary parties, modifications or amendments to the terms and conditions in a price support loan agreement, collateral agreements, or other documents pertaining to the project, provided that such modifications will not deviate from provisions in this regulation.

§ 485.8 Appeals.

The price support loan agreement will include a provision which specifies that any dispute concerning a question of fact arising under the loan agreement will be decided in writing by the Contracting Officer. The borrower may request the Contracting Officer to reconsider any such decision. If not satisfied with the Contracting Officer's final decision, the borrower, upon receipt of such written decision, may appeal the decision within 30 days, in writing, to the Chairman, Financial Assistance Appeal Board (FAAB) Department of Energy, Washington, D.C. 20585. The FAAB will proceed in accordance with DOE's rules and regulations for such purpose. The decision of the FAAB with respect to such appeals will be the final decision of the Secretary.

§ 485.9 Nondiscrimination in projects receiving Federal assistance.

All applicants receiving Federal assistance under this regulation will agree:

(a) Not to discriminate against any person on the grounds of race, color, national origin, sex, handicap, or age in the carrying out or completion of any project where Federal assistance is issued under this regulation, and to comply with the DOE "Nondiscrimination in Federally Assisted Programs" regulations implementing the Civil Rights Requirements of Title VI of the Civil Rights Act of 1964; Section 16 of the Federal Energy Administration Act of 1974; Section 401 of the Energy Reorganization Act of 1974; Title IX of the Higher Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; and the Civil Rights Requirements administered pursuant to the DOE Organization Act;

(b) To take positive efforts to maximize the utilization of small and disadvantaged business concerns, and Indian tribes in connection with the assistance received.

§ 485.10 Other information.

(a) All amounts received by the Secretary as fees, interest, repayment of principal, and any other moneys received by the Secretary from operations will be deposited in the general fund of the Treasury of the United States as miscellaneous receipts.

(b) All contracts and instruments of the Secretary to provide, or providing, for financial assistance will be general obligations of the United States backed by its full faith and credit.

(c) Subject to the conditions of any price support loan agreement, such agreement will be incontestable, except as to fraud or material misrepresentation on the part of the borrower.

(d) No price support loan agreement may be committed to or made under this regulation after September 30, 1984. This section shall not be construed to affect the authority of the Secretary to spend funds after such date pursuant to any price support loan agreement made on or before that date.

Subpart B—Formula for Determining the Maximum Loan Amount

§ 485.20–29 [Reserved]

Subpart C—Solicitation, Evaluation, and Selection of Applications

§ 485.30 General information.

(a) *Competition.* It is DOE policy to solicit and evaluate applications on a competitive basis, as provided herein. Each application received in accordance with the provisions of this regulation will be considered within the competition cycle in which it is received.

(b) *Application process.* The Application Process will consist of the following:

(1) The continuing solicitation of applications during the competition cycle, or otherwise, as provided in paragraph (c) of this section;

(2) Submission of an application which complies with § 485.31 of this regulation;

(3) Preliminary review and screening of applications;

(4) Comparative evaluation;

(5) Selection of applications, to the extent that appropriations are available and OMB Circular A–95 has been complied with, by the Application Approving Official for a conditional commitment to loan, subject to appropriate terms and conditions as determined by the Application Approving Official in his or her sole discretion;

(6) Issuance of a conditional commitment to selected applicants;

(7) Negotiation of unresolved terms and conditions; and

(8) Execution of a price support loan agreement upon satisfaction of the conditional commitment.

(c) *Solicitation Announcement.*

(1) The Secretary will, after the beginning of each competition cycle, issue a Solicitation Announcement, which will at a minimum, be published in the **Federal Register** and the Commerce Business Daily. A Solicitation Announcement will indicate some or all of the following:

(i) A brief description of the types of projects for which applications are solicited;

(ii) Identification of the issuing office;

(iii) Identification of statutory authority and relevant regulation;

(iv) Any special requirements not contained in the regulation;

(v) Application receipt deadline, and location to which application must be delivered if different from that specified in the regulation;

(vi) The extent to which appropriations are currently available for price support loans; and

(vii) Date of presubmission conference, if any, open to all interested parties.

(2) Prospective applicants may request in writing that the Application Evaluation Panel clarify any provision of this rule or any solicitation issued pursuant to this rule at any time prior to the close of the competition cycle.

(d) *Receipt and handling of applications.*

(1) Applications for price support loans will be filed at the address specified in this regulation, or the Solicitation Announcement, as appropriate. Applicants will be notified of DOE's determination within the time specified in the solicitation.

(2) An application received after 4:30 p.m. at the location of filing on the last day of the competition cycle will not be considered in that competition cycle unless:

(i) It was sent by registered or certified mail not later than the fifth claendar day prior to the date specified for receipt of the application; or

(ii) It was sent by mail and is determined by the contracting officer that the late receipt was due solely to mishandling by the Department of Energy; or

(iii) The Application Evaluation Panel determines that the application offers significant advantages to the Government if it is considered immediately as part of the most recent group of applications under evaluation.

(3) Late applications, unless excepted in paragraph (d)(2) of this section, will be considered in the next competition cycle, if any.

(4) Subject to requirements of law and applicable regulations, information of a privileged or confidential nature that an applicant submits to DOE pursuant to obtaining a price support loan under this regulation may not be publicly disclosed without prior written consent of the applicant. Information asserted by the applicant to be privileged or confidential will be appropriately identified.

(e) *Evaluation and ranking of applications.*

(1) Evaluation and ranking of applications will be accomplished by an appointed Application Evaluation Panel or other appropriate officials designated by the Application Approving Official for the purpose of determining eligibility of applications and identifying those best suited for selection to accomplish the purpose of the Act. The application evaluation process is intended to provide the Application Approving Official sufficient information to permit an optimal selection from among competing applications. The Panel will be appointed by the Appplication Approving Official. The Panel is responsible for preliminary review and screening, comparative evaluations, and presentation of its findings and recommendations to the Application Approving Offical.

(2) Applicants will not be permitted to modify applications after the close of the competition cycle, except as provided herein.

(3) Preliminary review and screening of all applications received will be conducted to determine which applications should be considered in comparative evaluations. The Panel will review that applications to determine whether each application:

(i) Complies with statutory requirements for project eligibility;

(ii) Complies with programmatic eligibility requirements stated in this regulation and the Solicitation Announcement, if any;

(iii) Contains sufficient information to enable the Panel to perform a comparative evaluation; and

(iv) Is signed by an authorized official of the applicant's organization.

(4) The Panel will consider the following in comparatively ranking applications in accordance with § 485.33:

(i) Commercial viability and technical project feasibility and likelihood of success;

(ii) Market potential and economic feasibility;

(iii) Financial considerations:

(A) Reasonableness of cost estimates;

(B) Extent of capitalization, cash flow projections, working capital allowances, reasonableness of revenue and expense estimates, etc.; and

(C) Financial condition of the applicant and other principals to the project;

(iv) Financing structure:

(A) Financial commitment of the applicant and other principals to the project;

(B) The overall debt financing plan; and

(C) Other factors which are relevant to a full description of the particular financing structure of the proposed project;

(v) Management plan:

(A) Corporate and personnel experience;

(B) Management organization and interrelationships; and

(C) Key personnel and associated responsibilities;

(vi) Environmental, health, safety, and socio-economic impacts of the proposed project;

(vii) Probability that the system will become operational; and

(viii) Ability of applicant to comply with requirements of this regulation.

(5) In developing its recommendations, the Panel will also utilize the policy considerations specified in § 485.32 and the policy considerations specified in the solicitation, if any.

(6) The Panel may request clarifying, or additional information of the applicant that may be necessary to complete its evaluation. Upon such a request, the applicant may be afforded the opportunity to revise its application to incorporate any clarifying, or additional information.

(7) The Panel will present to the application approving official its ranking of the applications together with its findings and recommendations in a comprehensive report, which represents internal evaluations and judgements prior to final decision making.

(f) Selection of Applications.

(1) The Application Approving Official may, in his or her sole discretion, select any number of the competing applications, subject to the requirement that appropriations be available for the total loan amount of the applications selected.

(2) Prior to making a decision, the Application Approving Official may determine that additional project specific information is required. Such additional information requirements will be communicated in writing directly to all applicants still competing.

(3) The Application Approving Official will consider the report of the Panel and such other information as the Application Approving Official determines to be relevant pursuant to the provisions of this regulation in selecting applications for conditional commitments or competitive negotiations, as appropriate.

(4) When the Application Approving Official determines that competitive negotiations are appropriate, the Panel will negotiate with all or a subset of competing applicants identified for the purpose of clearly defining the degree and extent of the competitive issues related to the applications prior to the selection of applications for conditional commitments. The Panel will revise its report to the Application Approving Official to reflect the results of negotiations.

(5) Upon, or, in some cases, subject to, the satisfactory completion of the requirements contained in this section, the Application Approving Official may authorize a contracting officer to issue a conditional commitment to provide the loan proposed by the application. The conditional commitment will identify the terms and conditions under which the loan would be issued, and any additional requirements to be placed upon the applicant as a condition of the loan.

(6) Decisions by the Application Approving Official will be made as specified in the Solicitation Announcement. For the purpose of beginning this 120 day period, all applications received during a competition cycle will be considered as received on the last day of the competition cycle. Those applications not approved for issuance of a conditional commitment will receive an immediate notification of such disapproval and reasons therefor from the contracting officer.

(g) *Post selection negotiation and closing.*

(1) Subsequent to execution of a conditional commitment, the Application Approving Official will designate an appropriate DOE official to ensure that the conditions of the conditional commitment are met, and negotiate such terms and conditions of the loan agreement and related documents as may be required to comply with the Act and this regulation.

(2) In performing the functions under paragraph (g)(1) of this section, the Application Approving Official, or designated DOE official, may request necessary additional information from any relevant party.

(3) If, within a reasonable period of time, the Application Approving Official is unable to negotiate satisfactory terms and conditions, or conditions of the conditional commitment cannot be met, on a timely basis, the Application Approving Official will determine whether to continue negotiations, authorize modification of the commitment, or take other appropriate action. A condition of the conditional

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commitment will be unsatisfied unless the Contracting Officer certifies in writing that the condition has been met, or, in the alternative, the loan agreement is executed.

(4) If the Application Approving Official can negotiate satisfactory terms and conditions in the instruments to be used in the closing of the loan, and the conditions of the conditional commitment are met, a closing will be scheduled, subsequent to obtaining the approval of the Application Approving Official, for the purpose of signing the price support loan agreement. The date, time and place for closing will be fixed by agreement with the applicant and DOE. Nothing contained in the conditional commitment will in any way constrain or restrict the ability of the Application Approving Official to require additional documentation, or the insertion of additional terms and conditions which, in his or her sole discretion, are reasonable and necessary for the protection of the interests of the United States. Issuance of the loan will be conclusive evidence that the loan and related agreements comply with the Act and this regulation, and that the loan has been approved by the Secretary.

(h) *Unsolicited applications.* Because applications will be evaluated on a competitive basis, unsolicited applications for a price support loan under the Act will not be considered. Applications not submitted pursuant to a specific solicitation announcement will be returned to the applicant with a recommendation to refile in accordance with the current Solicitation Announcement.

(i) *Discussion with unsuccessful applicants.* Upon the written request by an applicant whose application did not result in a price support loan, representatives of the Application Approving Official will explain in detail why the application was disapproved.

(j) *Non-written representations.* No representation will be binding on DOE unless written and duly signed by a Contracting Officer, and all instruments and modifications thereof may not be considered as approved by DOE unless signed by a Contracting Officer.

§ 485.31 Applications.

(a) The applicant will be asked to provide information in support of the application in the form and with the content prescribed in the Solicitation Announcement. The type of information requested will generally be similar to that required by an investment banking, or other financial, institution which might consider the project for financing. The application must contain the most current data available, and be adequate for DOE to properly evaluate the project. The following items are an example of the type of information that may be requested by the Solicitation Announcement. This information, as available and as appropriate to either a new or existing project, should be submitted in a brief but precise manner:

(1) Any preapplication information considered appropriate by the Secretary;

(2) A description or the scope, nature, extent, and location of the proposed project, including specification of the technology and site;

(3) Estimates of income relating to that project (including the sale of any byproducts from that project);

(4) A description of prior operating experience with the technology;

(5) Mass and energy balances for the project, to include energy data on the projected imputs and outputs from the plant;

(6) Project construction costs, operating and maintenance costs, and annual debt service requirements;

(7) An analysis of the market for the product(s) to be produced, and the relevant economics justifying the analysis;

(8) Construction and operation schedules, including major milestones;

(9) An analysis of the project's technical and economic feasibility, including the feasibility and effect of source separation techniques, if applicable;

(10) A description of the applicant's management concept and plan of operation to be employed in carrying out the project;

(11) Amount of loan or commitment requested, including preliminary cash flow projections;

(12) Identification of other sources of capital, and proposed risk allocation among project participants;

(13) A written affirmation from the applicant supporting the need for a price support loan;

(14) Proposed terms and conditions of the loan, as appropriate;

(15) Other data, such as social, employment, and economic factors;

(16) An environmental report containing a detailed analysis of the potential environmental, health, safety and socio-economic (EHSS) impacts of the project and any necessary or proposed mitigation measures and other relevant data that may be available to the applicant to enable DOE to assess the probable EHSS impacts and provide DOE with information for any documents required by the National Environmental Policy Act.

(17) The past financial history of the applicant, financial statements and projections as to the applicant's future financial status;

(18) Details of escrow account, sinking fund account or other provisions to limit the need for, or to pay, the price support loan;

(19) Assurance that waste resource will be available.

(20) If the waste required for commercial operation of the system is generated from within more than one municipality, a description of the cooperative agreements, or other contractual arrangements, assuring control and disposal of each municipality's waste at the project site will be documented and their legality established;

(21) If a State or regional solid waste management plan exists, then documentation will be required which will stipulate that the municipal waste energy project is compatible with that plan;

(22) A discription, and certification, if requested, of other Federal financial assistance available (e.g., construction loans, loan agreements, price agreements, etc.), or expected to be made available in connection with the project;

(23) A comparison of the break-even product cost with the existing prices for the biomass energy marketed. The level of waste disposal costs and estimated delivered energy prices for each product will also be calculated and compared;

(24) The agreements, arrangements, or contracts which must be made in order to properly market the biomass energy derived from the waste. There should be evidence of long term contractual commitments of an energy buyer who is suitably located and whose energy requirements can be technically satisfied at an economically attractive price, and evidence of processing a technology which can reliably produce a product to the buyer's specification and reduce the volume of waste for ultimate landfilling to stipulated levels;

(25) A list of all permit applications filed or to be filed, and permit approvals issued or to be issued by Federal, state, and local government agencies for all required permits and authorizations to undertake construction and begin operations associated with the project. If these approvals have not been obtained, or applications not filed, the estimated date of such filings and approvals should be provided. Explain any past, present or anticipated problems in obtaining any approvals;

(26) A copy of the third party engineering report to support the financing package; and

(b) Any additional information requested by the Secretary.

§ 485.32 Policy considerations.

In evaluating applications for price support loans the Application Evaluation Official shall consider the following policy objectives:

(a) The acceleration of the production of energy from municipal waste, and bringing biomass energy production technologies on stream as soon as practicable to displace conventional fossil fuels, and, to the extent practicable, aid in municipal solid waste management;

(b) To diversify energy capability by assisting energy recovery projects to convert municipal waste into biomass energy, thereby conserving diminishing supplies of fossil fuels and reducing oil imports;

(c) The acceleration of the commercialization of municipal waste as a source of biomass energy;

(d) The conservation of energy through the commercialization of new, improved, or underutilized reprocessing technologies that will permit the economical recovery of energy from municipal waste in an environmentally acceptable manner;

(e) The encouragement of private capital investment and activities in the development of facilities to convert municipal waste into biomass energy and to recover materials which by their use will conserve significant quantities of energy derived from scarce fossil fuels; and

(f) The minimization of adverse interference with, and encouragement of the recycling of energy intensive materials.

§ 485.33 Evaluation criteria and priorities.

(a) Unless solicitations issued under § 485.30(c) specify otherwise, the following critiera will be used as the basis for evaluation of applications (The order of listing is no indication or reflection of priorities):

(1) Commercial viability of the project.

(2) The net energy that can be recovered or conserved by the project, per dollar of Federal financial exposure, taking into account relative energy effciencies, the extent of the economic and energy conservation potential of alternative uses of source separated components of the municipal waste feedstock, the utility of the energy form to the area, and the net amount and type of fossil fuels displaced.

(3) Potential applicability of the project to other parties or other geographic areas. This includes the extent to which the technology is adaptable to or repeatable in, other locations, or the extent to which the project deomonstrates how institutional barriers can be overcome.

(4) Adequancy of the management plan for the project, and qualifications and experience of key personnel with all aspects of similar operations.

(5) Technical probability of success and advances in the state-of-the-art. This includes the extent to which there are performance agreements on the technology.

(6) Potential environmental, and health and safety impacts, as well as socioeconomic and competitive impacts. This includes the regional labor market impact, the marketability of all the desirable forms of energy produced or conserved, the degree of need that a proposed project would have in relation to the present system in use, the level of support of the community, and the degree to which the project assists in attaining the goals of other Federal programs in the area. This also includes the extent of coordination with local or regional planning activities, and the extent to which the project minimizes unnecessary disruption of existing municipal waste collection and disposal services.

(7) The arrangements for and extent to which risk will be shared by the parties to the project other than the United States. This includes equity invested, extent to which the equity reflects sunk costs, and types of collateral security and surety that would be pledged.

(b) Priority for price support loans under the provisions of this regulation and the most favorable financial terms available, will be provided for any municipal waste energy project that will produce a liquid fuel from municipal waste; or will displace petroleum or natural gas as a fuel.

(c) In determining the amount of financial assistance for any municipal waste energy project which will yield byproducts in addition to biomass energy, the Secretary will consider the value of such byproducts and the costs attributable to their production.

§ 485.34 Required findings and determinations.

(a) In addition to meeting the requirements set forth in other applicable sections of this regulation, a price support loan will be issued only after the Secretary is satisfied, in the sole discretion of the Secretary, that the following requirements have been met:

(1) The project is technically feasible and economically viable;

(2) The financial assistance provided encourages and supplements, but does not compete with nor supplant, any private capital investment which otherwise would be available to the municipal waste energy project on reasonable terms and conditions which would permit such project to be undertaken;

(3) Assurances are provided that the project will not use, in any substantial quantities, waste paper which would otherwise be recycled for a use other than as a fuel and will not substantially compete with facilities in existence on the date of the financial assistance which are engaged in the separation or recovery of reusable materials from municipal waste;

(4) The amount of financial assistance provided for the project is not greater than is necessary to achieve the purposes of this program;

(5) The terms, conditions, maturity, security, schedule and amounts of repayments are reasonable and consistent with the standards set forth in this regulation, and are sufficient to protect the interests of the United States;

(6) The person receiving the financial assistance will bear a reasonable degree of risk with respect to the project;

(7) The necessary municipal waste feedstocks are available for the expected economic life of the project;

(8) With respect to projects producing biomass energy other than biomass fuel, the project does not use petroleum or natural gas except for flame stabilization or start-up;

(9) With respect to projects producing biomass fuel, the Btu content of the biomass fuel exceeds the Btu content of any petroleum and natural gas used in the project to produce the biomass fuel; and

(10) The project will be in conformance with established environmental statutes, regulations, and Executive Orders, which will include, but are not limited to, the following: Completing any environmental analysis required pursuant to the National Environmental Policy Actof 1969 (NEPA) (42 U.S.C. 4321 et seq., Pub. L. 91–190); conformance with Executive Order 11988—Floodplain Management, and Executive Order 11990—Protection of Wetlands, and DOE regulations thereunder (10 CFR Part 1022); and receiving, or anticipated receipt of, all necessary environmental permits and approvals;

(b) The Secretary, in evaluating applications will also be required to determine:

(1) The extent of energy that can be recovered or conserved economically by the project including, but not limited to, energy savings resulting from recycling of source separated and otherwise recovered material and from displacement of petroleum or natural gas.

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(2) The extent of the economic and energy conservation potential of alternative uses of source separated components of the municipal waste feedstock.

(3) The extent to which there are performance guarantees on the technology;

(4) The extent of coordination with local or regional planning activities; and

(5) The extent to which the project minimizes unnecessary disruption of existing municipal waste collection and disposal services.

Subpart D—Project Administration

§ 485.40 Price support loan agreements.

(a) The price support loan agreement will include detailed terms and conditions necessary to assure that no material change in ownership or operation of the facility may occur without the prior written approval of the Secretary;

(b) Disbursements to the recipient may be made up to an amount calculated pursuant to Subpart B of this regulation.

(c) Pursuant to Section 235(a)(6)(D) of the Act, the Secretary may limit the amount of financial assistance necessary to support a project to an amount less than the maximum amount calculated pursuant to Subpart B. Accordingly, the Secretary may require, on a case by case basis, that the price support loan agreement contain provisions specifying that the price support loan payment may not exceed project requirements in those instances where the energy revenues from the project increase faster than was projected at the time of the entering into of a price support loan agreement. The price support loan agreement will contain terms and conditions reflecting the formula to be used in determining when price support disbursements are no longer needed for a project.

§ 485.41 Interest rate.

Commenting at the end of the last loan disbursement, the loan will bear interest at a rate determined by the Secretary (taking into consideration the current average market yield on outstanding marketable obligations of the United States with remining periods to maturity comparable to the average maturities of such loans) plus not to exceed one per cent, as determined by the Secretary, and adjusted to the nearest one-eighth of one per cent. The interest rate will normally be determined at the end of the last disbursement period. Such rate will reasonably reflect the cost of borrowing over the disbursement period.

§ 485.42 Repayments.

(a) The terms of the price support loan agreement between the Secretary and the recipient will require full repayment of the cumulative total, including interest, of the amounts disbursed by the Secretary. The price support loan agreement will provide for a repayment schedule as mutually agreed upon by the Secretary and the recipient taking into amount of annual repayment on the financial and economic stability of the project, and the integrity of project financing agreements.

(b) Repayment of the loan will be secured by such assets and other collateral security or surety that the Secretary, pursuant to consultation with the borrower, considers necessary and appropriate, after taking into consideration how such security or surety arrangements will affect private capital investment and participation in a project, and existing security and surety interests of other parties. All pledged security or surety will be specifically listed in in agreement or related documents, as will any other recourse of the Government.

(c) The agreement will include acceptable provisions for prepayment and acceleration of the loan, after appropriate negotiation with the recipient.

(d) With respect to any agreement issued pursuant to this regulation, the Secretary may modify or adjust the loan repayment schedule, thereby allowing the recipient to defer, in part or in full, the principal or interest charges, or both, that become due and payable on the unpaid balance of the loan, if the Secretary finds that:

(1) The recipient is unable to meet principal, or interest payments, or both;

(2) It is in the public interest to permit the operator to continue to pursue the purposes of the project;

(3) The probable net benefit to the Federal Government in deferring such principal or interest will be greater than that which would result in the event of a default for the nonpayment of principal or interest;

(4) The recipient agrees to make the deferred payments (including interest on such deferred payments) to the Secretary on such terms and conditions which are satisfactory to the Secretary, and executes all written contracts required by the Secretary for such purpose;

(5) The recipient has agreed to such other terms and conditions as the Secretary determines to be necessary.

Subpart E—Reporting and Monitoring

§ 485.50 Reports.

(a) The recipient will be required to submit to the Secretary periodic reports on the status and condition of each project receiving financial assistance under this program. The Secretary will prescribe the frequency, format, and content of these reports. However, a report on each project must, as a minimum, be submitted to the Secretary annually.

(b) Information requested for the report may include, but is not limited to:

(1) A discussion of the status of the project and related facilities, including the expected and actual production from each project and associated byproduct production, and the distribution of these products and byproducts;

(2) A statement of the financial condition of each project facility;

(3) Data concerning the environmental, community, and health and safety impacts of each project, and the actions taken or planned to prevent or mitigate these impacts; and

(4) Other current data that may be helpful in keeping the Sercretary and the public fully informed about the project.

§ 485.51 Project monitoring.

(a) The agreement may provide that authorized employees and representatives of DOE and EPA will, with the Secretary's approval, have access to the project site at all reasonable times. The borrower and project operator will be required to keep and, to extent lawful and within their control, assure availability of information related to the project that is necessary to permit the Secretary to determine technical progress, soundness of financial condition, management stability, compliance with environmental protection requirements, and other matters pertinent to the agreement and to the project.

(b) Recordkeeping will be in accordance with generally accepted accounting principles and practices, consistently applied, or that system required by law, and further requirements which may be established by DOE and stipulated in the agreement. The information required includes, but is not limited to, records which fully disclose the disposition of the products of the project, the cost of these products, and the revenues received from their sale, and those other records the Secretary may require to facilitate an effective audit.

(c) The recipient will be required to submit to the Secretary, when appropriate or with such frequency as the Secretary prescribes, a detailed written statement in support of a loan disbursement that is supported by documentation that the Secretary may require. That statement will be signed by a person authorized to order the expenditure of the recipient's funds.

§ 485.52 Termination of agreement.

(a) DOE may reserve the right to terminate any price support loan agreement, in whole or in part, at any time before the date of completion, whenever it is determined by DOE that the recipient has failed to comply with any of the material terms and conditions of the agreement. DOE will promptly notify the recipient in writing of the determination, and the reasons for the termination, together with the effective date. Loan disbursements made to recipients under agreements terminated for cause will be repaid in accordance with the terms and conditions stated in the agreement.

(b) DOE and the recipient may terminate any price support loan agreement, in whole or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. In accordance with DOE policy, the two parties will agree upon the termination conditions, including the effective date.

§ 485.53 Survival of agreement.

The agreement will be binding upon the parties, including the Secretary, and upon their successors and assignees. No delay or failure of the Secretary in the exercise of any right or remedy, and no single or partial exercise of any right or remedy, will preclude any further exercise, and no action taken or omitted by the Secretary may be considered a waiver of any right or remedy.

Subpart F—Default

§ 486.60 Default, demand, payment, and collateral security and surety liquidation.

(a) In the event that the borrower has defaulted in the making of required payments of principal or interest on any portion of a loan disbursed in accordance with this regulation, and such default has not been cured within the period of grace provided in the loan agreement, or other collateral security or surety agreement, the borrower will be in default and the Secretary will have the right, at the Secretary's option, to accelerate the indebtedness and demand full payment of all amounts outstanding, both principal and interest, under the loan;

(b) In the event that the borrower is in default as a result of a breach of one or more of the terms and conditions of the agreement, or other contractual obligation related to the debt transaction, other than the borrower's obligation to pay principal or interest, as provided in subsection (a) of this Section, default may not be declared unless the agreement provides that such default is a material breach entitling the Secretary to make demand, or unless the Secretary determines that such default has materially affected the rights of the Federal government.

(c) In the event that the failure on the part of the borrower to perform the terms and conditions of the agreement, or related document, does not constitute an intentional act, but is brought about as a result of circumstances largely beyond their control, the Secretary may elect, at the Secretary's option, to waive such failure, or restructure the repayment required by the agreement in any manner the Secretary determines;

(d) No failure on the part of the Secretary to make demand at any time will constitute a waiver of the rights held by the Secretary;

(e) Upon demand by the Secretary, the borrower will have a period of not more than 30 days from the date of receipt of the Secretary's demand to make payment in full;

(f) Should the borrower fail to pay after demand, the Secretary will institute foreclosure proceedings on the collateral security pledged and take such other legal action as necessary for the protection of the Government.

(g) If the Secretary is awarded title and rights to collateral security pledged pursuant to foreclosure proceedings, the Secretary may take action to complete, maintain, operate, or lease the project facilities, or take any other necessary action which the Secretary deems appropriate in order that the original goals and objectives of the project will, to the extent possible, be realized.

(h) In addition to foreclosure and sale of collateral security the Secretary will take appropriate action in accordance with rights contained in the agreement to recover losses and expenses incurred by the Government as a result of the default. Any recovery so received by the U.S. Attorney General on behalf of the Government will be applied in the following manner: first, to the expenses incurred by DOE in effecting such recovery; second, to reimbursement of any amounts paid by DOE; and third, to any other lawful claims held by the Government on such proceeds. Any sums remaining after full payment of the above will be available for the benefit of other parties lawfully entitled to claim them.

(i) No action taken in the liquidation of any collateral security pledged will affect the rights of any party, including the Secretary, having an interest in the loan to pursue, jointly or severally, to the extent provided in the loan agreement, legal action against the borrower, or other liable parties, for any deficiencies owing on the debt after application of the proceeds received upon liquidation.

§ 486.61 Preservation of collateral security.

(a) Upon default, the holder of pledged collateral security will take those actions that the Secretary may reasonably require to provide for the care, preservation, protection, and maintenance of the collateral security so as to enable the United States to achieve maximum recovery upon default of the loan. The Secretary may reimburse the holder of collateral security for reasonable and appropriate expenses incurred in taking actions required by the Secretary.

(b) No party may waive or relinquish, without the consent of the Secretary, right to any pledged collateral security for the price support loan.

(c) In the event of a default, the Secretary may enter into contracts as required to preserve the collateral security for the price support loan.

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

TRANSPORTATION DEPARTMENT

Coast Guard—

64185 9–29–80 / Suspension and revocation proceedings

TREASURY DEPARTMENT

Customs Service—

64172 9–29–80 / Discrepancies in manifests of vehicles and certain vessels arriving from Canada or Mexico

WATER RESOURCES COUNCIL

64402 9–29–80 / Environmental quality evaluation procedures for Level C water resources planning

64448 9–29–80 / Procedures for evaluation of National Economic Development (NED) benefits and costs and other Social Effects (SOE) in water resources planning Level C

64366 9–29–80 / Principles and standards for water and related land resources planning—Level C

Deadlines for Comments On Proposed Rules for the Week of November 2 through November 8, 1980

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

68998 10–17–80 / Draft recommendations on intragovermental communications in informal rulemaking proceedings; comments by 11–5–80

68949 10–17–80 / Draft recommendation on separation of functions in agency proceedings; comments by 11–5–80

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—

68951 10–17–80 / Oranges and grapefruit grown in lower Rio Grande Valley, Tex.; import regulations and proposed grade and size requirements; comments by 11–3–80

Farmers Home Administration—

58557 9–4–80 / Implementation of Interagency Agreement regarding employment of Comprehensive Employment and Training Act (CETA) eligible persons in jobs created by certain FmHA programs; comments by 11–3–80

Food Safety and Quality Service—

53002 8–8–80 / Net weight labeling of meat and poultry products; comments by 11–6–80

44317 7–1–80 / Prohibition of PCB containing equipment or machinery and liquid polychlorinated biphenyls (PCB's) in Federally inspected meat establishments, poultry product establishments, and egg product plants; comments by 11–4–80

[*See also* 45 FR 30980–30983, 5–9–80]

CIVIL AERONAUTICS BOARD

66474 10–7–80 / Service mail rates for nonsubsidized carriers; flight equipment depreciation; statement of general policy; comments by 11–6–80

COMMERCE DEPARTMENT

International Trade Administration—

58562 9–4–80 / Effects of foreign policy export controls; comments by 11–3–80

National Oceanic and Atmospheric Administration—

65264 10–2–80 / Fishermen's Contingency Fund provisions; comments by 11–3–80

DEFENSE DEPARTMENT

Army Department—

66476 10–7–80 / Visitors rules for the Arlington National Cemetery; comments by 11–6–80

EDUCATION DEPARTMENT

61950 9–17–80 / Asbestos detection and control; Asbestos detection and State Plan: State Educational Agencies; comments by 11–3–80

ENERGY DEPARTMENT

Economic Regulatory Administration—

58871 9–5–80 / Mandatory Petroleum Price Regulations; retroactive amendments to "V" factor of refiner cost allocation formulae; comments by 11–4–80

53368 8–11–80 / Power plant and Industrial Fuel Use Act of 1978; cogeneration exemption; comments by 11–7–80

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Federal Energy Regulatory Commission—
65170 10–1–80 / Authority delegation to Director, Office of Pipeline and Producer Regulation, to grant exemptions to incremental pricing regulations; comments by 11–3–80

ENVIRONMENTAL PROTECTION AGENCY
65628 10–3–80 / Air quality implementation plan, Maryland; revision; comments by 11–3–80
65631 10–3–80 / Air quality; ozone; California and Nevada attainment status designations; comments by 11–3–80
59177 9–8–80 / Approval and promulgation of implementation plans; Nevada; comments by 11–7–80
64219 9–29–80 / Benzene emissions from maleic anhydride plants; National emissions standards for hazardous air pollutants; comments by 11–6–80
66484 10–7–80 / Carbaryl; proposed tolerance; comments by 11–6–80
61966 9–17–80 / Friable asbestos-containing materials in schools; comments by 11–3–80
63888 9–26–80 / Hazardous waste management; North Carolina's application for Phase I interim authorization; comments by 11–4–80
62506 9–9–80 / Kentucky air quality implementation plans; federal assistance limitation; comments by 11–3–80
52628 8–7–80 / Pesticide programs; registration denial or cancellation and change of use classification; issuance and hearing procedures; comments by 11–5–80
[Corrected at 45 FR 57461, 8–28–80]
62170 9–18–80 / Policy and guidance on implementation of Clean Air Act requirement for meeting "basic transportation needs"; comments by 11–3–80
47168 7–14–80 / Proposed restrictions on use of PCB's at agricultural pesticide and fertilizer facilities; comments by 11–5–80
[*See also* 45 FR 30989, 5–9–80]
66816 10–8–80 / Standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities; comments by 11–7–80

FEDERAL COMMUNICATIONS COMMISSION
47445 7–15–80 / Cable television systems and postponement of divestiture requirement relative to prohibited cross ownership in existence on or before July 1, 1970; reply comments by 11–5–80
58611 9–4–80 / FM Broadcast Station in Hampton, Ark.; Proposed Changes in Table of Assignments; reply comments by 11–6–80
63302 9–24–80 / FM Broadcast Station in Hudson, Mich.; proposed changes in table of assignments; comments by 11–7–80
58621 9–4–80 / FM Broadcast Station in Irmo, S.C.; Proposed Changes in Table of Assignments; reply comments by 11–6–80
58618 9–4–80 / FM Broadcast Station in North Mankato, Minn.; Proposed Changes in Table of Assignments; reply comments by 11–6–80
58612 9–4–80 / FM Broadcast Station in Oildale, Calif.; Proposed Changes in Table of Assignments; reply comments by 11–6–80
58619 9–4–80 / FM Broadcast Station in Olivia, Minn.; Proposed Changes in Table of Assignments; reply comments by 11–6–80
62517 9–19–80 / FM Broadcast Station in Roy and Clearfield, Utah; Proposed Changes in Table of Assignments; comments by 11–7–80
58616 9–4–80 / FM Broadcast Station in Smith Center, Kans.; Proposed Changes in Table of Assignments; reply comments by 11–6–80
58613 9–4–80 / FM Broadcast Station in South Lake Tahoe, Calif.; Proposed Changes in Table of Assignments; reply comments by 11–6–80
58622 9–4–80 / FM Broadcast Station in Tremonton, Utah; Proposed Changes in Table of Assignments; reply comments by 11–6–80
58610 9–4–80 / FM Broadcast Stations in Tucson and Nogales, Arizona; Proposed Changes in Table of Assignments; reply comments by 11–6–80
58150 9–2–80 / 9 kHz channel separation for AM broadcasting; comments by 11–3–80
47444 7–15–80 / Revision of applications for renewal of license of commercial and noncommercial AM, FM and television licensees; reply comments by 11–3–80
58608 9–4–80 / TV Broadcast Station in Fort Walton Beach, Florida; Proposed Changes in Table of Assignments; reply comments by 11–6–80
55244 8–19–80 / TV Broadcast Stations in Jacksonville, Lumberton, Roanoke Rapids and Rockingham, N.C.; Farmville and Kenbridge, Va.; Table of Assignments; comments by 11–3–80
58627 9–4–80 / TV Broadcast Stations in Sanger, Clovis, Visalia, and Fresno, Calif.; Proposed Changes in Table of Assignments; reply comments by 11–6–80
55246 8–19–80 / Use of digital voice modulation in the Power Radio Service; reply comments by 11–7–80
69504 10–21–80 / Use of 12.5 kHz offset assignments in the 450–470 MHz band in the private land mobile radio services; comments by 11–5–80

FEDERAL DEPOSIT INSURANCE CORPORATION
58876 9–5–80 / Employee responsibilities and conduct; comments by 11–4–80

FEDERAL MARITIME COMMISSION
66485 10–7–80 / Enlargement of time for filing and commenting on certain agreements; comments by 11–3–80
[*See also* 45 FR 58923, 9–5–80]
58385 9–3–80 / Temporary tariff filing regulations applicable to carriers and conferences of such carriers in the foreign commerce of the United States; consideration of petitions by several conferences; comments by 11–3–80

FEDERAL RESERVE SYSTEM
66348 10–6–80 / Electronic fund transfers; exemptions; comments by 11–5–80

FEDERAL TRADE COMMISSION
68399 10–15–80 / Possible rescission of the Guides against deceptive advertising of guarantees; comments period extended to 11–6–80
[*See also* 45 FR 51838, 8–5–80]
66810 10–8–80 / Sale of used motor vehicles; disclosure and other regulation; comments by 11–7–80

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52821 8–8–80 / Blood and blood components; error and accident reports; comments by 11–6–80
58880 9–5–80 / Exemptions from food labeling requirements for food labeling experiments; comments by 11–4–80
53023 8–8–80 / Food labeling; net weight labeling requirements; comments by 11–6–80
44325 7–1–80 / Polychlorinated biphenyls (PCB's) in sealed electrical transformers and capacitors used or stored in or around food, feed, and food- and feed-packaging materials manufacturing and storage facilities; comments by 11–4–80
[*See also* 45 FR 30984, 5–9–80]
Health Care Financing Administration—
58123 9–2–80 / Medicare; extension of time periods for end stage renal disease facilities to achieve conditional and unconditional status; comments by 11–3–80

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59132 9–5–80 / Grants to health systems agencies, discretionary funding; comments by 11–4–80
Social Security Administration—
58563 9–4–80 / Supplemental security income for the aged, blind, and disabled; eligibility, amount of benefits, residence, and citizenship provision; comments by 11–3–80

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Federal Housing Commissioner—Office of the Assistant Secretary for Housing—
58374 9–3–80 / Polyethylene (PE), Acrylonitrile—butadiene—Styrene (ABS), Poly (Vinyl Chloride) (PVC) and Polybutylene (PB) plastic piping for cold water; comments by 11–3–80
59147 9–8–80 / Mortgage insurance and interest reduction payment for rental projects; comments by 11–7–80
59145 9–8–80 / Rent supplement payments; redefinition of "income"; comments by 11–7–80
Office of the Secretary—
59149 9–8–80 / Low-income housing; additional assistance program for projects with HUD-insured or HUD-held mortgages; comments by 11–7–80

INTERIOR DEPARTMENT
Fish and Wildlife Service—
58168 9–2–80 / *Phacelia formosulae;* proposed endangered species status; comments by 11–3–80
58166 9–2–80 / Proposed endangered status for 'Ewa Plains 'akoko (Euphorbia skottsbergii var. kalaeloana); comments by 11–3–80
Surface Mining and Reclamation Office—
65626 10–3–80 / Abandoned mine lands reclamation program; comments by 11–3–80
58377 9–3–80 / Surface coal mining and reclamation operations on Federal lands under permanent program State-Federal Cooperative Agreements; Montana; comments by 11–3–80
64971 10–1–80 / Surafce coal mining and reclamation operations on Federal lands under the Permanent Program; Wyoming cooperative agreement; comments by 11–7–80
[Originally published at 45 FR 45927, 7–6–80]

LABOR DEPARTMENT
Occupational Safety and Health Administration—
66475 10–7–80 / Proposed supplement to Conn. State Plan for public employees only; comments by 11–6–80

NUCLEAR REGULATORY COMMISSION
65466 10–2–80 / Domestic licensing of production and utilization facilities; interim requirements related to hydrogren control and certain degraded core considerations; comments by 11–3–80

SMALL BUSINESS ADMINISTRATION
66807 10–8–80 / Pollution control guarantee program; interest rate at which small concerns repay SBA; comments by 11–7–80

TRANSPORTATION DEPARTMENT
Federal Aviation Administration—
59256 9–8–80 / Non-federal navigation facilities; microwave landing system; comments by 11–7–80
Federal Highway Administration—
51720 8–4–80 / Design and construction criteria for bikeway construction; comments by 11–3–80
Office of the Secretary—
62170 9–18–80 / Policy and guidance on implementation of Clean Air Act requirement for meeting "basic transportation needs"; comments by 11–3–80

TREASURY DEPARTMENT
Internal Revenue Service—
64603 9–30–80 / Qualified disclaimers of property conferred by gift or inheritance; comments by 11–4–80

VETERANS ADMINISTRATION
66185 10–8–80 / Exclusions from countable income under Improved Pension Program; comments by 11–7–80

WAGE AND PRICE STABILITY COUNCIL
65502 10–3–80 / Anti-inflationary price standards; procedural rules and data requests; comments by 11–3–80
65995 10–6–80 / Anti-inflationary pay and price standards; questions and answers on the pay standard; comments by 11–3–80

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AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service—
67669 10–14–80 / Harry S. Truman Import Center, Procedures to be used for the allotment of quarantine space for cattle to be imported; comments by 11–13–80
60402 9–12–80 / Plant pests; Mediterranean fruit fly expansion of regulated area in Calif; comments by 11–12–80
Federal Grain Inspection Service—
60407 9–12–80 / Barley standards inquiry to determine effectiveness and responsiveness to current marketing needs; comments by 11–12–80
60448 9–12–80 / Humane handling of livestock, witholding of water from animals for not more than 24 hours; comments by 11–12–80
[Republished with corrections at 45 FR 62477, 9–19–80]

COMMERCE DEPARTMENT
International Trade Administration—
59302 9–9–80 / Short supply controls; extension of deadline for applications to participate in the allocation of the export quota for unprocessed Western Red Cedar for FY 1981 and thereafter; comments by 11–10–80
National Oceanic and Atmospheric Administration—
68412 10–15–80 / Atlantic tuna fisheries; conservation recommendations; comments by 11–14–80

COMMODITY FUTURES TRADING COMMISSION
69248 10–20–80 / Commodity pool operator and trading advisor regulations; comment period extended to 11–14–80
[*See also* 45 FR 51600 8–4–80 and 45 FR 65257, 10–2–80]

COMMUNITY SERVICES ADMINISTRATION
60954 9–15–80 / Civil Rights Program Requirements of CSA grantees; civil rights regulations; comments by 11–14–80

EDUCATION DEPARTMENT
59349 9–9–80 / Education Division General Administrative Regulations (EDGAR); Grant programs without specific regulations; comments by 11–10–80

ENERGY DEPARTMENT
Economic Regulatory Administration—
59818 9–10–80 / Modification of the entitlement benefit accorded naphtha imported into Puerto Rico and used as a petrochemical feedstock; comments by 11–10–80
61268 9–15–80 / Treatment of Alaska North Slope Crude Oil under the entitlement program; comments by 11–12–80
[*See also* 45 FR 46752, 7–10–80 and 45 FR 31682, 5–13–80]
Federal Energy Regulatory Commission—
69929 10–22–80 / Ceiling prices; high-cost gas produced from tight formations; comments by 11–10–80

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69930 10–22–80 / Ceiling prices; high-cost gas produced from tight formations; comments by 11–14–80

68389 10–15–80 / Incremental pricing; revised alternative fuel price ceilings for Rhode Island (interim rule); comments by 11–10–80

ENVIRONMENTAL PROTECTION AGENCY

68406 10–15–80 / Administrative Order to VEPCO's Chesterfield Generating Station requiring its Unit 4 Chesterfield Co., Va., to achieve compliance with air pollution requirements under Virginia State Implementation Plan by 6–1–82; comments by 11–14–80

67683 10–14–80 / Approval and Promulgation of Indiana State Implementation Plan; comments by 11–13–80

67397 10–10–80 / Arkansas Air Quality Implementation Plan; malfunctions upsets and continuous emission monitoring; comments by 11–10–80

65263 10–2–80 / Availability of Kentucky application for phase I interim authorization; comments by 11–10–80

68979 10–17–80 / Availability for review of Utah's application for interim authorization, phase I, hazardous waste management program; comments by 11–14–80

68980 10–17–80 / Availability for review of North Dakota's application for interim authorization, plan I, hazardous waste management program; comments by 11–14–80

60941 9–15–80 / Designation of areas for air quality planning purposes; Section 107 attainment status designations; comments by 11–14–80

65632 10–3–80 / Hazardous waste management; Mississippi application for interim authorization; comments by 11–11–80

67396 10–10–80 / Historical and cultural resources implementation of procedures for identification, protection and maintenance; comments by 11–10–80

67397 10–10–80 / Massachusetts Air Quality Implementation Plan; increase in sulfur-in-fuel content; comments by 11–10–80

64876 9–30–80 / Noise emission standards for transportation equipment interstate rail carriers; comments by 11–14–80

67686 10–14–80 / Oregon, Implementation Plan; comments by 11–13–80

67399 10–10–80 / Pesticide chemicals; malathion, proposed tolerance on flax seed and flax straw; comments by 11–10–80

60942 9–15–80 / Proposed removal of bis(chloromethyl) ether (BCME) from the Toxic Pollutant List; comments by 11–14–80

55066 8–18–80 / Proposed revisions to the National Ambient Air quality standards for carbon monoxide; comments by 11–10–80

55083 8–18–80 / Proposed revision of the National Ambient Air quality standards for carbon monoxide, comments by 11–10–80

68405 10–15–80 / Revision to the New York State Implementation Plan; comment period extended to 11–14–80

[*See also* 45 FR 54372; 8–15–80]

60930 9–15–80 / Submittal to satisfy condition on approval of the New York State implementation plans; comments by 11–14–80

FEDERAL COMMUNICATIONS COMMISSION

54786 8–18–80 / Amendment of Form 324, Annual Financial Report of Broadcast Stations; reply comments period extended to 11–14–80

35370 5–27–80 / FCC Form 324 Annual Financial Report of Broadcast Stations; reply comments by 11–14–80

58620 9–4–84 / FM Broadcast Stations in Columbia and Monroe City, Mo.; proposed changes in table of assignments; reply comments by 11–10–80

59908 9–11–80 / FM Broadcast Stations in Kennewick and Richland, Wash.; changes in table of assignments; reply comments by 11–13–80

58617 9–4–84 / FM Broadcast Station in Owingsville, Ky.; proposed changes in table of assignments; reply comments by 11–10–80

58626 9–4–80 / FM Broadcast Station in Orem, Utah; proposed changes in table of assignments; reply comments by 11–10–80

58615 9–4–80 / FM Broadcast Station in Rifle, Colo.; proposed changes in table of assignments; reply comments by 11–10–80

59361 9–9–80 / FM Broadcast Station in Walker, Minn.; table of assignments; reply comments by 11–13–80

55491 8–20–80 / FM quadraphonic broadcasting; comments by 11–10–80

54778 8–16–80 / Inquiring relating to radio operator licensing program; comments by 11–14–80

[*See also* 41 FR 22981, June 7, 1976; 42 FR 40939, Aug. 4, 1977]

64981 10–1–80 / TV Broadcast Station in Santa Barbara, Calif.; changes in table of assignments; comments by 11–14–80

69504 10–21–80 / Use of 12.5 kHz offset assignments in the 450–470 mHz band in the private land mobile radio services; reply comments by 11–15–80

FEDERAL MARITIME COMMISSION

67711 10–14–80 / Status of Bulk Commodities; comments by 11–13–80

FEDERAL RESERVE SYSTEM

66349 10–6–80 / Electronic fund transfers; proposed Official Staff Commentary; comments by 11–14–80

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration—

67320 10–10–80 / Food additives; emulsifiers and/or surface active agents; objections by 11–10–80

60449 9–12–80 / Public hearings before advisory committees; annual report requirements; comments by 11–12–80

Health Care Financing Administration—

59734 9–10–80 / Prospective payment method for Medicare and Medicaid reimbursement of independent rural health clinics; comments by 11–10–80

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Community Planning and Development, Office of the Assistant Secretary—

59496 9–9–80 / Community development block grants; Innovative grants programs; clarification of program objectives and requirements for unsolicited proposals, solicited preapplications; interim rule; comments by 11–10–80

59306 9–9–80 / Community Development Block Grants and Urban Development Action Grants; comments by 11–10–80

Federal Housing Commission—Office of Assistant Secretary for Housing and Office of Assistant Secretary for Policy Development and Research—

60390 9–11–80 / Condominium ownership mortgage insurance—existing multifamily housing demonstration; interim rule; comments by 11–10–80

59561 9–10–80 / Mutual mortgage insurance and insured home improvement loans; delivery of one-to-four family properties occupied by tenants or former mortgagors; revised criteria; interim rule; comments by 11–10–80

59589 9–10–80 / Prohibition of prepayment of mortgage which are assisted by way of Housing Asssistance Payments Contracts during the term of the mortgage without the prior consent of the Commissioner; comments by 11–10–80

59502 9–9–80 / PHA-owned projects; uniform standards and procedures for determining the amounts of utility allowances and surcharges applicable to tenants of dwellings owned; interim rule; comments by 11–10–80

59309 9–9–80 / Section 8 Housing Assistance Payments Program, computation of gross family contribution; comments by 11–10–80

INTERIOR DEPARTMENT

Fish and Wildlife Service—

59909 9–11–80 / Endangered and threatened wildlife and plants; proprosal to determine "isotria medeoloides" (small whorled pogonia) to be an endangered species; comments by 11–10–80

54682 8–15–80 / Determining hedeoma apicalatum (McKittrick pennyroyal) to be a threatened species with critical habitat; comments by 11–13–80

54685 8–15–80 / Review of 18 species of foreign reptiles for proposed listing as endangered or threatened; comments by 11–13–80

Indian Affairs Bureau—

60923 9–15–80 / Heritage preservation; comments by 11–14–80

JUSTICE DEPARTMENT

Parole Commission—

60427 9–12–80 / Federal prisoners, parole supervision termination guidelines; comments by 11–14–80

SMALL BUSINESS ADMINISTRATION

68399 10–15–80 / Economic opportunity loans; interest rate; comments by 11–14–80

68398 10–15–80 / Handicapped assistance loans; interest rate; comments by 11–14–80

TRANSPORTATION DEPARTMENT

Coast Guard—

54095 8–14–80 / Great Lakes Bulk Dry Cargo Vessels, damage stability standards; comments by 11–12–80

Federal Aviation Administration—

59897 9–11–80 / Petitions for rulemaking; National and Dulles International Airports; solicitation and leafletting procedures; comments by 11–10–80

Federal Railroad Administration—

64191 9–29–80 / National Railroad Passenger Corporation (Amtrak); Informal rules of practice for passenger service; comments by 11–13–80

TREASURY DEPARTMENT

Internal Revenue Service—

60450 9–12–80 / Income taxes; nonresident aliens; election to be treated as a resident and U.S. income tax treaties; comments by 11–11–80

Office of the Secretary—

68686 10–16–80 / Regulations governing practice before the Internal Revenue Service to set standards for providing of opinions used in promotion of tax shelters; comment period extended to 11–14–80

[*See also* 45 FR 58594, 9–4–80]

VETERANS ADMINISTRATION

68403 10–15–80 / Disaffirmation of election of improved pension by certain medicaid recipients; comments by 11–14–80

WAGE AND PRICE STABILITY COUNCIL

69207 10–20–80 / Anti-inflationary pay standards; questions and answers on extrapolation of the second-year standard; comments by 11–10–80

Next Week's Meetings

ARTS AND HUMANITIES, NATIONAL FOUNDATION

69317 10–20–80 / Arts and Artifacts Indemnity Panel Advisory Committee, Washington, D.C. (closed), 11–5–80

68812 10–16–80 / Humanities Panel, Wash., D.C. (closed), 11–3, 11–6 and 11–7–80

69602 10–21–80 / Music Panel (Chorus Section), Washington, D.C. (partially open), 11–5 through 11–8–80

CIVIL RIGHTS COMMISSION

70036 10–22–80 / California Advisory Committee, San Francisco, Calif. (open), 11–8–80

70036 10–22–80 / Indiana Advisory Committee, Gary, Ind. (open), 11–6–80

70036 10–22–80 / Minnesota Advisory Committee, Duluth, Minn. (open), 11–7–80

67712 10–14–80 / Nebraska Advisory Committee, Omaha, Nebr. (open), 11–6 and 11–7–80

67713 10–14–80 / New York Advisory Committee, New York, N.Y. (open), 11–6–80

67118 10–9–80 / North Carolina Advisory Committee, Greensboro, North Carolina, (open), 11–5–80

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration—

68994 10–17–80 / Coastal Zone Management Advisory Committee, New York, N.Y. (open), 11–6 and 11–7–80

66489 10–7–80 / Gulf of Mexico Fishery Management Council, Scientific and Statistical Committee, Tampa, Fla. (open), 11–5–80

[Relocated at 45 FR 69277, 10–20–80]

69277 10–20–80 / Mid-Atlantic Fishery Management Council, Scientific and Statistical Committee, Philadelphia, Penn. (open), 11–5–80

65646 10–3–80 / Western Pacific Fishery Management Council, Advisory Panel and Scientific and Statistical Committee, Honolulu, Hawaii (open), 11–5 through 11–7–80

DEFENSE DEPARTMENT

Air Force Department—

68703 10–16–80 / Scientific Advisory Board, Hawthorne, Calif. (closed), 11–5 and 11–6–80

Army Department—

68703 10–16–80 / Army Medical Research and Development Advisory Panel Ad Hoc Study Group on Surgery, San Francisco, Calif. (partially open), 11–3–80

Navy Department—

69001 10–17–80 / Chief of Naval Operations Executive Panel Advisory Committee, Camp Smith, Hawaii (closed), 11–3 and 11–4–80

Office of the Secretary—

62177 9–16–80 / DOD Wage Committee, Washington, D.C. (closed), 11–4–80

EDUCATION DEPARTMENT

69540 10–21–80 / Bilingual Education National Advisory Council, Brownsville, Tex. (open), 11–8 through 11–10–80

70305 10–23–80 / Career Education, National Advisory Council, Washington, D.C. (open), 11–6 and 11–7–80

66495 10–7–80 / Commission on the Review of the Federal Impact Aid Program, Washington, D.C. (open), 11–6 and 11–7–80

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67406 10–10–80 / Education Statistics Advisory Council, Hyattsville, Md. (open), 11–5 and 11–6–80

69541 10–21–80 / Financing Elementary and Secondary Education Advisory Panel, Washington, D.C. (open), 11–6 through 11–8–80

70040 10–22–80 / Fund for the Improvement of Postsecondary Education, Washington, D.C. (open), 11–7 and 11–8–80

ENERGY DEPARTMENT

70077 10–22–80 / Advisory Committee on Revision of Rules of Practice and Procedure, Subcommittee on Review of Hearing Procedures, Washington, D.C. (open), 11–6–80

70041 10–22–80 / Land Use Task Group of Committee on Environmental Conservation, National Petroleum Council, Washington, D.C. (open), 11–5–80

69542 10–21–80 / National Petroleum Council, Environmental Conservation Committee, Coordinating Subcommittee, Washington, D.C. (open), 11–6–80

69288 10–20–80 / National Petroleum Council, Refinery Flexibility Subcommittee, New York, N.Y. (open), 11–5–80

Economic Regulatory Administration—

68421 10–15–80 / Fuel Oil Marketing Advisory Committee, Boston, Mass. (open), 11–6 and 11–7–80

67355 10–10–80 / Motor gasoline; retailer price rule and fixed cents per gallon markups, San Francisco, Calif., 11–6–80

Energy Research Office—

69286 10–20–80 / Energy Research Advisory Board, Washington, D.C. (open), 11–6 and 11–7–80

Federal Energy Regulatory Commission—

67276 10–9–80 / Agricultural uses exemption; comments by 11–7–80

ENVIRONMENTAL PROTECTION AGENCY

67453 10–10–80 / National Drinking Water Advisory Council, Santa Fe, N. Mex. (open), 11–7–80

69294 10–20–80 / Science Advisory Board, Ecology Committee, Marine Eco-System Task Group, Washington, D.C. (open), 11–6 and 11–7–80

67458 10–10–80 / Science Advisory Board, Technology Assessment and Pollution Control Committee, Washington, D.C. (open), 11–7 and 11–8–80

66506 10–7–80 / Toxic Substances Control Act Interagency Testing Committee; chemicals to be reviewed, Washington, D.C. (open), 11–6–80

ETHICAL PROBLEMS IN MEDICINE AND BIOMEDICAL AND BEHAVIORAL RESEARCH, PRESIDENT'S COMMISSION FOR THE STUDY OF

69610 10–21–80 / Fifth meeting, Washington, D.C. (open), 11–7–80

FINE ARTS COMMISSION

64863 11–8–79 / Meeting, Washington, D.C. (open) 11–4–80

HEALTH AND HUMAN SERVICES DEPARTMENT

Alcohol, Drug Abuse, and Mental Health Administration—

68760 10–16–80 / Manpower and Training Work Group of the Interagency Committee on Federal Activities for Alcohol Abuse and Alcoholism, Rockville, Md. (open), 11–6–80

67156 10–9–80 / Basic Sociocultural Research Review Committee, Chevy Chase, Md. (partially open), 11–6 and 11–7–80

67156 10–9–80 / Cognition, Emotion, and Personality Research Review Committee, Washington, D.C. (partially open), 11–7–80

67156 10–9–80 / Epidemiologic and Services Research Review Committee, Washington, D.C. (partially open), 11–3 through 11–6–80

67156 10–9–80 / Life Course Review Committee, Chevy Chase, Md. (partially open), 11–5 through 11–7–80

Food and Drug Administration—

63929 9–26–80 / Institutional Review Board's compliance activity workshop, Washington, D.C. (open), 11–7–80

69556 10–21–80 / Miscellaneous External Drug Products Panel, Bethesda, Md. (open), 11–7–80

69556 10–21–80 / Oncologic Drugs Advisory Committee, Rockville, Md. (open), 11–7–80

69556 10–21–80 / Psychopharmacologic Drugs Advisory Committee, Rockville, Md. (open), 11–6–80

Health Care Financing Administration—

69045 10–17–80 / National Professional Standards Review Council, Washington, D.C. (open), 11–3 and 11–4–80

National Institutes of Health—

58206 9–2–80 / Allergy and Clinical Immunology Research Committee, Bethesda, Md. (partially open), 11–6 and 11–7–80

59205 9–8–80 / Bio-Psychology Study Section, Annapolis, Md. (partially open), 11–2 through 11–5–80

68464 10–15–80 / Bladder and Prostatic Cancer Review Committee, Atlanta, Ga. (partially open) 11–6–80

61371 9–16–80 / Board of Scientific Counselors, National Institute of Neurological and Communicative Disorders and Stroke, Bethesda, Md., (partially open), 11–6 and 11–7–80

63146 9–23–80 / Cancer Special Program Advisory Committee, Bethesda, Md. (partially open), 11–6 and 11–7–80

64270 9–29–80 / Clinical Applications and Prevention Advisory Committee, Bethesda, Md. (partially open), 11–6 and 11–7–80

62561 9–19–80 / Clinical Cancer Education Committee, Bethesda, Md. (partially open) 11–5–80, (closed) 11–6–80

62561 9–19–80 / Clinical Cancer Education Committee, Bethesda, Md. (partially open) 11–5–80, (closed) 11–6–80

68465 10–15–80 / Clinical Trials Review Committee, Bethesda, Md. (open), 11–7–80

65317 10–2–80 / Diet, Nutrition and Cancer Forum, Washington, D.C. (open), 11–6–80

59205 9–8–80 / Epidemiology and Disease Control Study Section, Washington, D.C. (partially open), 11–6 through 11–8–80

59205 9–8–80 / Human Development Study Section, Washington, D.C. (partially open), 11–6 through 11–8–80

59205 9–8–80 / Immunobiology Study Section, Silver Spring, Md. (partially open), 11–5 through 11–7–80

63146 9–23–80 / Large Bowel and Pancreatic Cancer Review Committee (Pancreatic Cancer Review Subcommittee), Chicago, Ill. (partially open), 11–5–80

59205 9–8–80 / Metabolism Study Section, Bethesda, Md. (partially open) 11–6 through 11–8–80

62562 9–19–80 / National Institute of Dental Research Programs Advisory Committee, Dental Caries Subcommittee, Bethesda, Md. (partially open) 11–6 and 11–7–80

64271 9–29–80 / Neurological Disorders Program—Project Review B Committee, Cincinnati, Ohio (partially open), 11–7 through 11–9–80

59205 9–8–80 / Radiation Study Section, Chevy Chase, Md. (partially open), 11–3 through 11–5–80

59205 9–8–80 / Tropical Medicine and Parasitology, Washington, D.C. (partially open), 11–2 through 11–4–80

Public Health Service—

67156 10–6–80 / Health Care Technology, National Council, New York, N.Y. (open), 11–7–80

65046 10–1–80 / Health Care Technology National Council, Grants and Contracts Subcommittee, New York, N.Y. (closed), 11–6–80

HISTORIC PRESERVATION ADVISORY COUNCIL

70033 10–22–80 / Meeting, Washington, D.C. (open), 11–5 and 11–6–80

INTERIOR DEPARTMENT

Land Management Bureau—

69052 10–17–80 / Burns District Advisory Council, Burns, Oreg. (open), 11–6–80

65322 10–2–80 / Colorado Craig District Advisory Committee, Craig, Colo. (open), 11–6–80

65682 10–3–80 / Idaho Falls District Advisory Council, Idaho Falls, Idaho (open), 11–7–80

67472 10–10–80 / Kingman Resource Area (Phoenix District) Grazing Advisory Board, Kingman, Ariz. (open), 11–5–80

68761 10–16–80 / Montana and Wyoming Powder River Regional Coal Team, Billings, Mont. (open), 11–6 and 11–7–80

65323 10–2–80 / Shoshone District Grazing Advisory Board, Shoshone, Idaho (open), 11–6–80

68761 10–16–80 / Susanville District Advisory Council, Cedarville, Calif. (open), 11–6–80

62216 9–18–80 / Ukiah District Advisory Council, Ukiah, Calif. (open), 11–6 and 11–7–80

Fish and Wildlife Service—

70031 10–22–80 / Hardrock and placer mining on units of National Wildlife System, scoping meeting, Washington, D.C. (open), 11–5–80

Office of the Secretary—

66879 10–8–80 / Geographic Names Board, Domestic Names Committee, Salt Lake City, Utah (open), 11–5–80

LABOR DEPARTMENT

Occupational Safety and Health Administration—

63883 9–26–80 / Health and safety standards, general and construction industries; machines and equipment, locking out and tagging; requirements, standards, and procedures; New Orleans, La. (open), 11–5 through 11–7–80

Office of the Secretary—

70161 10–22–80 / Tripartite Advisory Panel on International Labor Standards, Washington, D.C. (closed), 11–6–80

MANAGEMENT AND BUDGET OFFICE

67808 10–14–80 / President's Commission for a National Agenda for the Eighties, Washington, D.C. (open), 11–7–80

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

67803 10–14–80 / NASA Advisory Council, Space Systems and Technology Advisory Committee, Greenbelt, Md. (open), 11–6 and 11–7–80

NATIONAL SCIENCE FOUNDATION

68486 10–15–80 / Advisory Committee for Chemistry, Washington, D.C. (open and closed), 11–06 and 11–7–80

68487 10–15–80 / Advisory Committee for Earth Sciences, Geology, Geophysics, Geochemistry and Petrology Subcommittees, Washington, D.C. (closed), 11–6 and 11–7–80

63400 9–24–80 / DOE/NSF Nuclear Science Advisory Committee, Germantown, Md. (open), 11–6–80

68813 10–16–80 / Engineering and Applied Science Advisory Committee, Washington, D.C. (open), 11–3–80

67490 10–10–80 / Engineering and Applied Science Advisory Committee, Electrical Computer, and Systems Engineering Subcommittee, Washington, D.C. (open), 11–2–80

63399 9–24–80 / NSF Advisory Council, Washington, D.C. (open), 11–6 and 11–7–80

61052 9–15–80 / Physiology, Cellular and Molecular Biology Advisory Committee, Cellular Physiology Subcommittee, Washington, D.C. (closed), 11–3 through 11–5–80

63401 9–24–80 / Social and Economic Science Advisory Committee, Subcommittee on History and Philosophy of Science, Washington, D.C. (closed), 11–6 through 11–8–80

65706 10–3–80 / Social Sciences Advisory Committee, Economics Subcommittee, Washington, D.C. (closed), 11–7 and 11–8–80

63399 9–24–80 / Special Research Equipment Advisory Committee, Biology Subcommittee, Washington, D.C. (closed), 11–3 and 11–4–80

NUCLEAR REGULATORY COMMISSION

69320 10–20–80 / Reactor Safeguards Advisory Committee, General Electric Test Reactor Subcommittee, Washington, D.C. (open), 11–4–80

[*See also* 45 FR 82237, 9–18–80]

69607 10–21–80 / Reactor Safeguards Advisory Committee, Procedures and Administration Subcommittee, Washington D.C. (open), 11–5–80

69608 10–21–80 / Reactor Safeguards Advisory Committee, Regulatory Activities Subcommittee, Washington, D.C. (open), 11–5–80

SMALL BUSINESS ADMINISTRATION

65101 10–1–80 / Region III Advisory Council, Philadelphia, Pa. (open), 11–6–80

66938 10–8–80 / Region VI Advisory Council, Houston, Tex. (open), 11–3–80

65378 10–2–80 / Region VI Advisory Council, Tulsa, Okla. (open), 11–7–80

STATE DEPARTMENT

59469 9–9–80 / Shipping Coordinating Committee, Safety of Life at Sea Subcommittee, Washington, D.C., (open), 11–5–80

69621 10–21–80 / Shipping Coordinating Committee, Safety of Life at Sea Subcommittee, Washington, D.C. (open), 11–6–80

VETERANS ADMINISTRATION

68823 10–16–80 / Health-Related Effects of Herbicides Advisory Committee, Washington, D.C. (open), 11–6–80

61845 9–17–80 / Medical Research Service Merit Review Board, Chicago, Ill. (partially open), 11–5–80

Next Week's Public Hearings

AGRICULTURE DEPARTMENT

Agricultural Stabilization and Conservation Service—

64504 9–30–80 / Conservation and environmental programs, Washington, D.C., 11–5–80

Forest Service—

56850 8–26–80 / Mount Henry, Taylor-Hilgard, and West Pioneer Wilderness Study Areas; Beaverhead, Gallatin, and Kootenai National Forests, Beaverhead, Gallatin, Madison, and Lincoln Counties, Mont.; Dillion and Helena, Mont., 11–5 and 11–6–80

CIVIL AERONAUTICS BOARD

66824 10–8–80 / Competitive marketing of air transportation, Washington, D.C., 11–4–80

[Originally scheduled for October 14, 1980. *See* 45 FR 51865, 8–5–80]

DEFENSE DEPARTMENT

Navy Department—

41691 6–20–80 / Naval Discharge Review Board, Dallas, Tex., Kansas City, Mo., and Memphis, Tenn., 10–27 through 11–7–80

DELAWARE RIVER BASIN COMMISSION

69001 10–17–80 / Consideration of proposed amendment to Commission's ground water management policy, West Trenton, N.J., 11–3–80

ENERGY DEPARTMENT

Conservation and Solar Energy Office—

66632 10–7–80 / Federal Energy Management and Planning Programs: Methodology and Procedures for Life Cycle Cost Analyses (Average Fuel Costs), Washington, D.C., 11–6–80

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Western Area Power Administration—
69289 10–20–80 / Public Utility Regulatory Policies Act, compliance with Title I standards, Denver, Colo., 11–6–80

ENVIRONMENTAL PROTECTION AGENCY
65632 10–3–80 / Hazardous Waste Management; Mississippi, application for interim authorization, Jackson, Miss., 11–5–80
62851 9–22–80 / Importation of motor vehicles and motor vehicles engines, Washington, D.C., 11–3–80
68514 10–15–80 / National Emission Standards for Hazardous Air Pollutants; test methods; revisions and addition; Triangle Park, N.C., 11–6–80

EXECUTIVE, LEGISLATIVE, AND JUDICIAL SALARIES COMMISSION
70038 10–22–80 / Public Hearing, Washington, D.C., 11–6 and 11–7–80

INTERNATIONAL TRADE COMMISSION
66924 10–8–80 / Airtight cast-iron stoves, Washington, D.C., 11–3–80

LABOR DEPARTMENT
Occupational Safety and Health Administration—
63476 9–24–80 / Lead exposure; reopening of rulemaking record, Washington, D.C., 11–5 through 11–7–80

TRADE REPRESENTATIVE, OFFICE OF UNITED STATES
57636 8–28–80 / Generalized System of Preferences; articles considered in trade negotiations or eligible for duty-free treatment; Washington, D.C., 11–5 through 11–7–80
68497 10–15–80 / Trade Policy Staff Committee; additional articles being considered for possible duty modification, Washington, D.C., 11–5–80

TREASURY DEPARTMENT
Internal Revenue Service—
57744 8–29–80 / Generation—Skipping transfer tax regulations under the Tax Reform Act of 1976, return requirements, Washington, D.C., 11–5–80
63296 9–24–80 / Withholding of tax under Chapter 3 of the Internal Revenue Code of 1954 with respect to Virgin Islands inhabitants, Washington, D.C., 11–7–80

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last Listing October 24, 1980

Documents Relating to Federal Grant Programs From the Week of October 20 through October 24, 1980

This is a list of documents relating to Federal grant programs which were published in the Federal Register during the previous week.

RULES GOING INTO EFFECT
69244 10–20–80 / CSA—Cost principles, grantee financial management; effective 10–31–80; corrections
[*See also* 45 FR 64940, 10–1–80, and 45 FR 65233, 10–2–80]
69437 10–21–80 / State/Sec'y—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance; effective 11–20–80

DEADLINES FOR COMMENTS ON PROPOSED RULES
70282 10–23–80 / DOT/NHTSA—Highway safety innovative project grants program; comments by 12–1–80
70412 10–23–80 / DOT/UMTA—Urban initiatives program; comments by 12–8–80
69382–69384 10–20–80 / ED—Education of the handicapped; assessment; nonverbal communication; and technology utilization research projects; comments by 1–9–81 (3 documents)
69378 10–20–80 / ED—Research in Education of the Handicapped; comments by 12–19–80
70313 10–23–80 / EPA—Clean Air Act program grant to the State of Oregon; comments by 11–24–80

APPLICATIONS DEADLINES
69386 10–20–80 / ED—Education of the handicapped; Handicapped Children's Model Program, continuation projects; apply by 3–12–81
69385 10–20–80 / ED—Education of the handicapped; field initiated research projects; apply by 2–6–81
69384 10–20–80 / ED—Education of the handicapped; youth employment, and minority educational problems research projects; apply by 1–23–81 (2 documents)
69381 10–20–80 / ED—Education of the handicapped; Handicapped Children's Model Program demonstration projects; apply by 1–5–81
69380 10–20–80 / ED—Education of the handicapped; school based research and research integration projects; apply by 12–19–80 (2 documents)
70352 10–23–80 / Justice/NIC—Training and consulting project (resolicitation); apply by 11–21–80

MEETINGS
69540 10–21–80 / ED—Bilingual Education National Advisory Council, Brownsville, Tex. (open), 11–8–80
69541 10–21–80 / ED—Elementary and Secondary Education, Advisory Panel on Financing, Washington, D.C. (partially open), 11–6 through 11–8–80
70040 10–22–80 / ED—Fund for the Improvement of Postsecondary Education, Washington, D.C., 11–7 and 11–8–80
70040 10–22–80 / ED—Women's Educational Programs, National Advisory Council, Washington, D.C. (open), 11–10 through 11–12–80
70313 10–23–80 / EPA—Clean Air Act program grant to the State of Oregon, Portland, Oreg., 11–24–80
69611 10–21–80 / Ethical Problems in Medicine and Biomedical and Behavioral Research, President's Commission for the Study of—Fifth meeting, Washington, D.C. (open), 11–7–80
70319 10–23–80 / HHS/ADAMHA—Alcohol Abuse Prevention Review Committee, Rockville, Md. (partially open), 10–27–80
[*See* also 62550, 9–19–80]
70133 10–22–80 / HHS/CDC—Safety and Occupational Health Study Section (partially open), Rockville, Md. 11–12 through 11–14–80
70584 10–20–80 / HHS/HRA—National Advisory Council on Health Professions Education, Washington, D.C. (partially open), 11–17 and 11–18–80
69317 10–20–80 / NFAH—Arts and Artifacts Indemnity Panel, Washington, D.C. (closed), 11–5–80
69602 10–21–80 / NFAH—Museum Panel, San Francisco, Calif. (partially open), 11–2 and 11–3–80
69602 10–21–80 / NFAH—Music Panel (Chorus Section), Washington, D.C. (partially open), 11–5 through 11–8–80
69602 10–21–80 / NFAH—Music Panel (Orchestra Section), Washington, D.C. (closed), 11–17 through 11–19–80
69318 10–20–80 / NSF—Mathematical and Computer Sciences Advisory Committee, Mathematical Sciences Subcommittee, Washington, D.C. (open), 11–14 and 11–15–80
70354 10–23–80 / NSF—Ocean Sciences Advisory Committee, Executive Committee, Washington, D.C. (open), 11–13 and 11–14–80

OTHER ITEMS OF INTEREST
70040 10–22–80 / ED Renewal of Board of Advisors to Fund for Improvement of Postsecondary Education
70597 10–24–80 / Labor/ETA—List of organizations applying to Secretary of Agriculture for grants, loans or loan guarantees to establish or improve certain agricultural facilities

PRINCIPLES OF REGULATIONS WRITING SEMINAR

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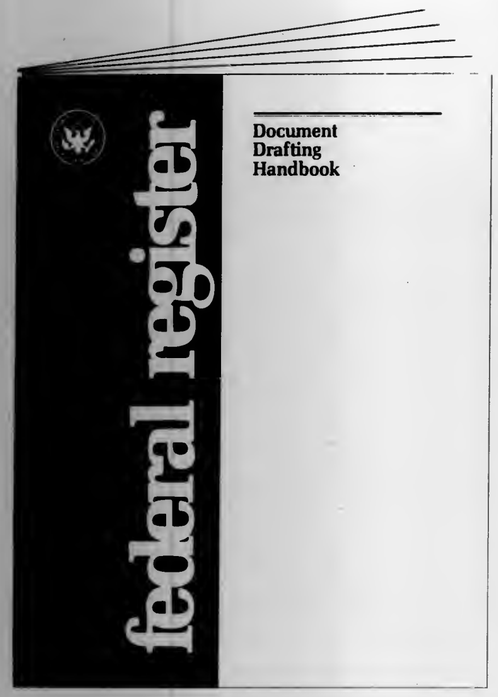
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10-30-80
Vol. 45 No. 212
Pages 71759-72080

federal register

Thursday
October 30, 1980

Highlights

Briefings on How To Use the Federal Register—For details on briefings in Washington, D.C., see announcement in the Reader Aids section at the end of this issue

72044 **Loan Program—Biomass Energy and Alcohol Fuels** USDA/FmHA publishes regulations containing guidelines for implementing the program which the Biomass Energy and Alcohol Fuels Act requires to be established to enable applications for financial assistance; effective 10–30–80 (Part XII of this issue)

72024 **Hazardous Waste** EPA modifies regulations regarding hazardous waste management system; for various effective dates and comment periods see documents (Part XI of this issue) (6 documents)

71792 **Supplemental Security Income** HHS/SSA reorganized and simplified regulations on family relationships under the Supplemental Security Income program; effective 10–30–80

71807 **Nuclear Materials** NRC proposes to clarify regulations regarding jurisdiction over persons using byproduct, source and special nuclear material in offshore waters beyond agreement States' territorial waters; comments by 12–29–80

CONTINUED INSIDE

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Highlights

71816 **Surface Mining** Interior/SMO proposes to establish final actions of the Secretary of the Interior regarding State or Federal programs governing surface mining and reclamation operations; comments by 12–1–80

71787 **Natural Gas** DOE/FERC exempts mechanical cogeneration facilities from the incremental pricing of natural gas under Title II of the Natural Gas Policy Act; effective 30 days after transmittal to Congress

71938 **Transportation** DOT/Sec'y gives notice of final policy and proposed guidelines on citizen participation in local transportation planning; effective 10–30–80; comments by 12–29–80 (Part IV of this issue)

71766 **Loan Programs—Housing** USDA/FmHA revises regulation on loan servicing to provide a computer input form for FmHA loan servicing offices to update Finance Office accounting records; effective 10–30–80

71791 **Old-age, Survivors and Disability Insurance** HHS/SSA publishes interim regulation regarding payment for medical evidence of record; effective 12–1–80, comments by 12–29–80

71800 **Flood Control Projects** DOD/Army revises regulations providing policy guidance and procedures to alleviate existing and future flood damage problems; effective 10–31–80

71781 **Natural Gas** DOE/FERC publishes regulations regarding State-wide exemptions from incremental pricing; effective 10–21–80

71764 **Petroleum** DOE/ERA conforms amendments regarding crude oil acquired for the strategic petroleum reserve; effective 9–24–80

71885 **Sunshine Act Meetings**

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

COUNCIL ON WAGE AND PRICE STABILITY

6 CFR Part 705

Final Anti-Inflationary Price Standards; Amendment of Modified 2-Year Price Change for Gold and Silver Passthrough

AGENCY: Council on Wage and Price Stability.

ACTION: Amendment of the final price standards for the second program year.

SUMMARY: The Council is amending the Modified Two-Year Price Change for Gold and Silver Passthrough (6 CFR 705.79) for the second program year to provide the average prices for gold and silver for the eighth program quarter and the dollar values for gold and silver [$P_s(8)$ and $P_s(8)$] that may be passed through in the eighth program quarter.

EFFECTIVE DATE: October 24, 1980.

FOR FURTHER INFORMATION CONTACT: Eugene P. Roberts, Office of Price Monitoring—(202) 456–7784 or Richard Rossier, Office of General Counsel—(202) 456–6286.

(Council on Wage and Price Stability Act, Pub. L. 93–387, as amended (12 U.S.C. 1904, Note); E.O. 12092 (November 1, 1976); E.O. 12161 (September 28, 1979))

Issued in Washington, D.C., October 24, 1980.

R. Robert Russell,
Director, Council on Wage and Price Stability.

The Council is amending the last paragraph of § 705.79, Modified Two-Year Price Change for Gold and Silver Passthrough, for the second program year to read as follows:

§ 705.79 Modified two-year price change for gold and silver passthrough.

* * * * *

Gold (silver) prices are calculated by taking the simple arithmetic averages of the closing prices on the COMEX in the base quarter. Thus, the base-quarter gold price is $203.030 per troy ounce ($5.472 per troy ounce for silver) and the prices for the 5th, 6th, 7th, and 8th program quarters are $413.117, $630.094, $544.179, and $648.517 ($18.561, $32.512, $14.318, and $17.438).

Thus,

$P_s(5) = \$413.117 - [\$203.030 \times (1.0 + .0854)] = \$192.78$,
$P_s(6) = \$630.094 - [\$203.030 \times (1.0 + .1025)] = \$406.253$,
$P_s(7) = \$544.179 - [\$203.030 \times (1.0 + .1206)] = \$316.664$,
$P_s(8) = \$648.517 - [\$203.030 \times (1.0 + .1390)] = \$417.266$,
$P_s(5) = \$18.51 - [\$5.472 \times (1.0 + .0777)] = \$12.664$,
$P_s(6) = \$32.512 - [\$5.472 \times (1.0 + .0939)] = \$26.526$,
$P_s(7) = \$14.318 - [\$5.472 \times (1.0 + .1104)] = \$8.242$,
$P_s(8) = \$17.438 - [\$5.472 \times (1.0 + .1271)] = \$11.271$

[FR Doc. 80–33711 Filed 10–29–80; 8:45 am]

BILLING CODE 3175–01–M

6 CFR Part 705

Anti-Inflationary Pay Standard: Correction in Numbering of Questions and Answers

AGENCY: Council on Wage and Price Stability.

ACTION: Correction in numbering of pay standard questions and answers.

SUMMARY: The Questions and Answers on the Pay Standard issued on March 28, 1980, June 3, 1980, June 25, 1980, October 6, 1980, and October 20, 1980, are being renumbered to correct an error in numbering.

EFFECTIVE DATE: October 30, 1980.

FOR FURTHER INFORMATION CONTACT: Hugh Breslin (202/456–6210).

SUPPLEMENTARY INFORMATION: On March 28, 1980, June 3, 1980, June 25, 1980, October 6, 1980, and October 20, 1980, the Council published Questions and Answers on the Pay Standard (45 FR 20453, 45 FR 37397, 45 FR 42589, 45 FR 65995, and 45 FR 69209). These Pay Standard Questions and Answers were generally identified by roman numeral II., the same roman numeral earlier used to identify the Questions and Answers on "Modified Price Standards for Selected Industries," published by the Council on November 21, 1979 (44 FR 67065). To correct this misnumbering, the Questions and Answers on the Pay Standard issued on March 28, 1980, June 3, 1980, June 25, 1980, October 6, 1980, and October 20, 1980, are now identified by roman numeral IV.

(Council on Wage and Price Stability Act, as amended (12 U.S.C. 1904, note); E.O. 12092 (November 1, 1978); E.O. 12161 (September 28, 1979))

Issued in Washington, D.C. October 24, 1980.

R. Robert Russell,
Director.

Accordingly, the Second-Year Pay Standard Questions and Answers published by the Council at 45 FR 20453, 45 FR 37397, 45 FR 42589, 45 FR 65995, and 45 FR 69209 are now identified by roman numeral IV.

[FR Doc. 80–33710 Filed 10–29–80; 8:45 am]

BILLING CODE 3175–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

Spearmint Oil Produced in the Far West; Establishment of Subpart—Administrative Rules and Regulations: Changing Date for Transfer of Excess Oil

ACTION: Agricultural Marketing Service, USDA.

ACTION: Emergency final rule.

SUMMARY: This rule extends the time spearmint oil producers have for transferring excess oil to other producers in order to fill deficiencies in those producers' annual allotments. Section 985.56(a) of the marketing order permits changing the date from October 15, to such other date as the Committee, with approval of the Secretary, may establish. The Committee has recommended that the date be changed to November 1 because, in some years, harvesting continues later into the season and October 15 is too early to effectively administer the provisions of that paragraph.

EFFECTIVE DATES: November 1, 1980.

FOR FURTHER INFORMATION CONTACT: J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS,

USDA, Washington, D.C. 20250 (202) 447–5053.

SUPPLEMENTARY INFORMATION: This emergency final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "non-significant." Mr. Miller determined that an emergency situation exists which warrants publication without opportunity for a public comment period on this emergency final action because the October 15th deadline has already passed and changing the date to November 1, does not permit enough time for response. Moreover, this adjustment of the time period for exchanging excess oil does not impose any hardship on either producers or handlers.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this emergency final action are impracticable and contrary to the public interest; and good cause if found for making this emergency final action effective less than 30 days after publication of this document in the **Federal Register.**

Changing the date for allowing producers to transfer excess oil from October 15 to November 1 is pursuant to Marketing Order No. 985, regulating the handling of spearmint oil produced in the Far West. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

Currently § 985.56(a) required that producers transfer excess spearmint oil to fill other producers' deficiencies in their annual allotments before October 15. Section 985.56(a) also provides that the Committee, with the approval of the Secretary, may establish such other date as it deems necessary to administer this program. The Committee found that the October 15 date is too early, because harvesting and distilling oil can occur after October 15. Thus, the Committee unanimously recommended that that date be changed to November 1.

After consideration of all relevant matter presented including the information and recommendation submitted by the Committee, and other information, it is further found that changing the date for allowing producers to transfer excess oil to fill other producers' deficiencies, as hereinafter set forth, would tend to effectuate the declared policy of the act.

Therefore, a new subpart is added to Part 985 to read as follows:

Administrative Rules and Regulations

§ 985.156 Transfer of excess oil by producers.

Before November 1 a producer, following notification of the Committee, may transfer excess oil to another producer to enable that producer to fill a deficiency in that producer's annual allotment.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: October 24, 1980, to become effective November 1, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 80-33803 Filed 10-29-80; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 991

Hops of Domestic Production; Revision of Salable Quantity and Allotment Percentage for the 1980–81 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Emergency final rule.

SUMMARY: This emergency final rule increases the quantity of hops that may be freely marketed from the 1980 crop. This action is taken under the marketing order for domestic hops to promote orderly marketing conditions.

EFFECTIVE DATE: Fully effective for the 1980–81 marketing year, which began August 1, 1980.

FOR FURTHER INFORMATION CONTACT: J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C., (202) 447–5053. Actions of this kind were anticipated under the provisions of 7 CFR 991.36 and are specifically considered in the Final Impact Statement prepared for that action. Thus, the Final Impact Statement describing the options considered in developing this emergency final rule and the impact of implementing each option is available on request from Mr. Miller.

SUPPLEMENTARY INFORMATION: This emergency final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has not been classified "significant". Mr. Miller determined that an emergency situation exists which warrants publication without opportunity for a public comment period on this emergency final action. This action would increase the salable quantity and allotment percentage for the 1980–81 marketing year, which began August 1, 1980. It relieves restrictions on handlers. Since handlers currently are receiving hops from producers in volume, this action must be taken promptly so that they know what regulation will be in effect for the current marketing year.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect to this emergency final action are impractical and contrary to the public interest; and good cause is found for making this emergency final action effective less than 30 days after publication of this document in the **Federal Register.**

Notice was published in the March 11, 1980, issue of the **Federal Register** (45 FR 15555) of a proposal to establish for the 1980–81 marketing year, beginning August 1, 1980, a salable quantity of 69,200,000 pounds, and an allotment percentage of 115 percent. This action was based on the recommendation of the Hop Administrative Committee in accordance with provisions of Marketing Order No. 991, as amended (7 CFR 991), regulating the handling of hops of domestic production. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The final rule on this matter was issued April 4, 1980, and published in the April 10, 1980, issue of the **Federal Register** (45 FR 24441).

The revised salable quantity for the current marketing year is based upon a recommendation of the Committee made at its meeting October 14, 1980, and the following estimates for the marketing year beginning August 1, 1980.

(1) Total domestic consumption of 45,000,000 pounds of hops;

(2) Minus imports of 15,000,000 pounds of hops to result in domestic consumption of U.S. hops of 30,000,000 pounds;

(3) Plus total exports of 40,000,000 pounds of hops to equal 70,000,000 pounds total usage of U.S. hops;

(4) Plus 1,500,000 pounds to adjust for weight loss of hops processed into pellets and extract;

(5) Plus 4,100,000 pounds as an inventory adjustment; and

(6) Plus an adjustment of 500,000 pounds to provide for adequate supplies should some producer allotments not be fully produced.

Therefore, the salable quantity for the 1980–81 marketing year will be 76,100,000 pounds.

The salable percentage of 127 percent is computed by subtracting from this salable quantity 1,000,000 pounds for additional allotment bases for hops of the Fuggle variety pursuant to § 991.38(b) and § 991.138(c) and dividing the remainder by 59,270,000 pounds, the total of all allotment bases less the 1,000,000 pounds additional allotment bases for Fuggle variety hops.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee; and other available information, it is found that to establish a salable quantity and allotment percentage as hereinafter set forth will tend to effectuate the declared policy of the act.

Therefore, the salable quantity and allotment percentage to be applicable to the 1980–81 marketing year (August 1, 1980–July 31, 1981) are established as follows:

§ 991.218 Allotment percentage and salable quantity for hops during the marketing year beginning August 1, 1980.

The allotment percentage during the marketing year beginning August 1, 1980, shall be 127 percent, and the salable quantity shall be 76,100,000 pounds.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: October 24, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division.

[FR Doc.–80–33804 Filed 10–29–80; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1872

Real Estate Security; Servicing and Liquidation of Real Estate Security for Loans to Individuals and Certain Note-Only Cases

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is revising its regulation on loan servicing to provide a computer input form for FmHA loan servicing offices to use to update the FmHA Finance Office accounting records. The use of this form will result in a faster and more accurate update of accounts. The use of the form will have no impact on the public or FmHA borrowers.

EFFECTIVE DATE: October 30, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. L. A. Isenberg, Systems Accountant, Financial Support Division, Room 4118, South Agriculture Building, 14th and Independence Avenue, Washington, DC 20250, (202) 447–4871.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been determined to be exempt from those requirements. L. A. Isenberg, Systems Accountant, made this determination because this item involves agency management and does not place any requirements on the public or FmHA borrowers. This instruction does not directly affect any programs or projects which are subject to A–95 clearinghouse review. FmHA is revising Subpart A of Part 1872, Chapter XVIII, Title 7, Code of Federal Regulations. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action however, is not published for proposed rulemaking since the purpose of the change is administrative in nature and publication for comment is unnecessary. Therefore, Part 1872, Subpart A, is amended as follows:

§ 1872.18 [Amended]

1. In § 1872.18(g)(2)(iii) add the following entry to the listing of forms following the reference to Form FmHA 451–25, "Status of Account."

1960–6 Assumption Agreement (Information) 2(9)—1–C—

2. In § 1872.18(g)(2)(iii), in the listing of footnotes, add a new footnote (9) following Footnote (8) to read:

(9) Original to Finance Office.

Note.—This document has been reviewed in accordance with FmHA Instruction 1901–G, "Environmental Impact Statements." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Authority: 7 U.S.C. 1989; 42 U.S.C. 1180; 42 U.S.C. 2942; 5 U.S.C. 301; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary of Rural Development, 7 CFR 2.70; delegation of authority by the Director, Office of Equal Opportunity, 29 FR 14764, 33 FR 9850.

(FCDA No. 10.407—Farm Ownership Loans; FCDA No. 10.410—Low to Moderate Income Housing Loans)

Dated: October 9, 1980.

James E. Thornton,

Associate Administrator, Farmers Home Administration.

[FR Doc. 80-33842 Filed 10-29-80; 8:45 am]

BILLING CODE 3410-07-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

Standards for Protection Against Radiation; Burial of Small Quantities of Radionuclides

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to require NRC licensees to obtain specific approval to bury small quantities of radionuclides. Current NRC regulations provide that licensees may bury certain small quantities of radionuclides without prior approval. The amendments will provide greater assurance that buried radioactive material will not present a health hazard.

EFFECTIVE DATE: January 28, 1981.

Note.—The Nuclear Regulatory Commission has submitted this rule to the Comptroller General for such review as may be appropriate under the Federal Reports Act, as amended, 44 U.S.C. 3512. The date on which the reporting requirement of this rule becomes effective, unless advised to the contrary, reflects inclusion of the 45-day period which that statute allows for such review (44 U.S.C. 3512(c)(2)).

FOR FURTHER INFORMATION CONTACT: Mr. John W. N. Hickey, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (phone: 301–443–5966).

SUPPLEMENTARY INFORMATION: On December 4, 1978, the Nuclear Regulatory Commission (NRC or Commission) proposed to delete § 20.304 of 10 CFR Part 20, "Standards for Protection Against Radiation" (43 FR 56677). Section 20.304 allows licensees to bury certain small quantities of radionuclides without prior NRC approval.

As discussed in the notice of proposed rulemaking, several State representatives have suggested that the risk from burials of radioactive waste allowed by § 20.304 may be unacceptable. The quantities of radionuclides allowed to be buried pursuant to § 20.304 are 1,000 times greater than exempt quantities. Such quantities pose a small risk if they are properly buried and left undisturbed, particularly if they are dispersed through a large volume of waste material. However, § 20.304 imposes no concentration limits, and the quantities as concentrated "point sources" are potentially large enough to cause excessive radiation exposures if the radioactive material is mishandled.

improperly buried, or disturbed after burial. For example, § 20.304 allows burial of up to one millicurie of cobalt-60. As a point source this quantity delivers a dose rate of over 100 millirems per hour at a distance of 10 centimeters. If a burial site were disturbed, and a person came into contact with one millicurie of cobalt-60 for an extended period, an overexposure could occur.

The Commission has concluded that it is inappropriate to continue generic authorization of burials pursuant to § 20.304 without regard to such factors as location of burial, concentrations of radioactive material, form of packaging, and notification of NRC. Therefore, the Commission will require that licensees obtain prior approval for new burials of the type currently allowed by § 20.304, and accordingly § 20.304 is being deleted from NRC regulations. Prior review of proposed burials will result in improved records regarding amounts and locations of future burials of radioactive material, and provide greater assurance that buried material will not present a health hazard at a later date. Thus, the risk of exposure of individuals accidentally disturbing buried radioactive waste would be reduced.

The Commission staff estimates that fewer than 100 licensees (out of about 20,000 NRC and Agreement State licensees) are performing burials allowed by § 20.304. NRC licensees will have 90 days to halt burials and apply for specific approval to resume burials pursuant to 10 CFR 20.302, or use alternative disposal methods such as transfer of waste to licensed commercial burial grounds. The NRC staff will provide information to licensees as appropriate related to obtaining approval for burials. Deletion of 10 CFR 20.304 will not affect material already buried, generally licensed and exempt material, or licensees who have already obtained specific approval to perform burials pursuant to 10 CFR 20.302.

Agreement State licensees will not be directly affected by the final rule, because they are subject to individual State regulations rather than NRC regulations. However, Agreement State officials have consistently supported deletion of § 20.304, and the Commission anticipates that those States which have not already done so will make changes in their regulations compatible with deletion of § 20.304.

As discussed in the notice of proposed rulemaking, the Commission has determined that an environmental impact statement need not be prepared because deletion of 10 CFR 20.304 will not significantly affect the quality of the human environment.

Public Comments

In reaching the decision to delete § 20.304, the Commission considered public comments received on the proposed rule change. These comments and the impact of deletion of § 20.304 are discussed in the value-impact assessment, which is available for inspection or copying for a fee at the NRC Public Document Room, 1717 H Street, Washington, D.C. 20555. The major public comments received are discussed below.

Thirty-eight sets of public comments were received on the proposed deletion of § 20.304. Seventeen commenters favored deletion, fourteen opposed deletion, and seven took no clear position. The major comments opposing deletion are: (1) Burials pursuant to § 20.304 do not represent a public health problem, (2) disposal of wastes at commercial burial grounds is not a good alternative because it is too expensive, it carriers its own risks, and the commercial sites are overburdened, and (3) NRC has not adequately outlined requirements for obtaining specific approvals for burials.

1. *Public health risk.* Several comments from institutions performing burials pursuant to § 20.304 provided information on their operations, indicating that their burial sites are safe because they are owned by the licensee, fenced and marked, located in areas of low risk of ground water contamination, or contain short-lived radionuclides in waste with low specific activity. Nevertheless, as discussed previously, the radionuclide quantities involved are potentially large enough to cause significant radiation exposures, if they are concentrated point sources, and the Commission has decided that case-by-case review of proposed burials is appropriate.

2. *Commercial burial grounds.* Many commenters incorrectly interpreted the proposed rule to mean that local burial would be prohibited, and that all waste would have to be shipped to commercial burial grounds. The Commission is not requiring that all radioactive waste affected by deletion of § 20.304 be shipped to commercial burial grounds. Licensee proposals for waste disposal will be reviewed on a case-by-case basis, including consideration of risk and economic costs. This is consistent with § 20.1(c) which provides that licensees should make every reasonable effort to maintain radiation exposures as low as is reasonably achievable, where "as low as is reasonably achievable" includes taking into account economics of improvement in relation to benefits to the public health and safety.

Several licensees performing burials pursuant to § 20.304 commented that it would be too expensive to ship wastes to commercial burial sites, and that in any case the sites are already overburdened. Estimates of the extra costs and volumes of waste involved ranged from $400 to $21,000 and 70 to 2000 cubic feet per year. It should be noted that: (1) The staff estimates that fewer than 100 licensees are performing burials pursuant to § 20.304, (2) until recently about 3,000,000 cubic feet of radioactive waste were being shipped annually to commercial sites, and (3) many institutions similar to those using § 20.304 are using commercial disposal sites. Therefore, while certain licensees may wish to dispose of high-volume, slightly contaminated waste by local burial for justifiable economic reasons, in many cases licensees could ship low-volume waste to commercial sites at reasonable cost without adding significantly to the total volume accepted at the sites.

The Commission recognizes problems associated with closures or reduced capacity of commercial burial grounds. This issue affects all licensees disposing of low-level radioactive waste, not just burials pursuant to § 20.304. The Commission staff will, of course, take into account the status of commercial burial sites in making any licensing decisions regarding disposal of radioactive waste.

3. *Criteria for disposal.* As discussed in the notice of proposed rulemaking, the Commission is reviewing existing policy on disposal of low-level radioactive waste and developing new regulations. These will be published in separate notices of proposed rulemaking. Until new regulations are developed, applications for waste disposal will be reviewed according to § 20.302, which requires licensees to submit information describing the waste material, the levels of radioactivity involved, the proposed conditions of disposal, the environment of the disposal site, and procedures to be observed to minimize the risk of unexpected or hazardous exposures.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of title 5 of the United States Code, the following amendments to Title 10, Chapter I, Code of Federal Regulations, Part 20, are published as a document subject to codification.

§ 20.304 [Removed]

1. Section 20.304, Disposal by burial in soil, is deleted.

2. In § 20.301, paragraph (c) is revised to read as follows:

§ 20.301 General requirement.

* * * * *

(c) As provided in § 20.303, applicable to the disposal of licensed material by release into sanitary sewerage systems, or in § 20.106 (Radioactivity in effluents to unrestricted areas).

3. In § 20.401, paragraphs (b) and (c)(3) are revised to read as follows:

§ 20.401 Records of surveys, radiation monitoring, and disposal.

* * * * *

(b) Each licensee shall maintain records in the same units used in this part, showing the results of surveys required by § 20.301(b), monitoring required by §§ 20.205(b) and 20.205(c), and disposals made under §§ 20.302, 20.303, and deleted § 20.304.[1]

(c) * * *

* * * * *

(3) Records of disposal of licensed material made pursuant to §§ 20.302, 20.303, and deleted § 20.304[1] are to be maintained until the Commission authorizes their disposition.

[1] Section 20.304 provided for burial of small quantities of licensed materials in soil. Notice of its deletion appears in the **Federal Register** of October 30, 1980 (45 FR ——).

4. The note following Appendix C of 10 CFR Part 20 is amended to read as follows:

Appendix C

* * * * *

Note.—For purposes of § 20.303, where there is involved a combination of isotopes in known amounts, the limit for the combination should be derived as follows: Determine, for each isotope in the combination, the ratio between the quantity present in the combination and the limit otherwise established for the specific isotope when not in combination. The sum of such ratios for all the isotopes in the combination may not exceed "1" (i.e., "unity").

* * * * *

(Sec. 161, b. and i., Pub. L. 83–703, 68 Stat. 948; sec. 201, Pub. L. 93–438, 88 Stat. 1243 (42 U.S.C. 2201, 5841))

Dated at Washington, DC this 24th day of October 1980.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 80-33823 Filed 10-29-80; 8:45 am]

BILLING CODE 7590-01-M

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10 CFR Part 25

Access Authorization for Licensee Personnel

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its regulation "Access Authorization for Licensee Personnel" to comply with a Commission policy easing security forms requirements for those individuals already possessing a security clearance granted by another Federal agency.

EFFECTIVE DATE: October 30, 1980.

FOR FURTHER INFORMATION CONTACT: Duane G. Kidd, Chief, Security Policy Branch, Division of Security, Office of Administration, United States Nuclear Regulatory Commission, Washington, D.C. 20555 (301) 427–4415.

SUPPLEMENTARY INFORMATION: 10 CFR Part 25, "Access Authorization for Licensee Personnel," was published in the **Federal Register** on March 5, 1980 (45 FR 14476) with an effective date of May 19, 1980. The effective date was changed to October 1, 1980 in a Federal Register Notice dated July 3, 1980 (45 FR 45256) to provide the Nuclear Regulatory Commission (NRC) additional time to furnish necessary administration guidance and for licensees to be able to achieve compliance with the regulations. The existing provisions of § 25.17 require that a complete set of NRC personnel security forms be completed as part of an application for a security clearance with NRC. This requirement was based on existing procedures and the necessity for the NRC Division of Security to review these forms and then seek copies of existing reports of investigations or initiate requests for new investigations. Realizing that many individuals already possess a security clearance or access authorization granted by another Federal agency and realizing that these security clearances were based on the same or very similar criteria and procedures, NRC sought to eliminate or substantially reduce the burden on licensees and their employees in obtaining an NRC security clearance. In this regard, the Commission, on July 17, 1980, approved a policy change in NRC's personnel security program that permits the NRC Division of Security to accept the certification of an individual's existing security clearance granted by another Federal agency and also eliminates the requirement to review reports of investigations. Based on this decision, the NRC Division of Security will not require new investigations for those individuals who had or were in processing for another Federal security clearance on October 1, 1980. This action may expedite the security clearance processing of individuals affected by this Part and may reduce the cost to licensees since new investigations will not be initiated. Additionally, the NRC Division of Security has decided to waive the forms requirements of § 25.17 for those individuals who possessed or who were in processing for another Federal security clearance on October 1, 1980. These amendments to 10 CFR Part 25 modify § 25.17 to permit individuals and licensees affected by this Part to submit applications in accordance with these revised procedures. Applications received after October 1, 1980 will be processed in accordance with the provisions of Part 25 and guidance supplied to licensees by the NRC Division of Security.

These revisions will substantially reduce the public burden by cutting the cost and reporting time required of licensees seeking NRC security clearances for their employees. These revisions will also reduce the burden on NRC by cutting the time and cost in processing applications for clearance. Furthermore, these revisions reflect public comments made during extensive discussions at public meetings held in Silver Spring, MD in April and May 1980. Therefore, the Commission for good cause finds that, in accordance with 5 U.S.C. 553(b) and (d), public comment procedures are not required, and these revisions become effective October 30, 1980.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and §§ 552 and 553 of Title 5 of the United States Code, the following amendments to 10 CFR Part 25 are published as a document subject to codification:

1. In § 25.17, paragraph (c)(6) is amended and paragraph (e) is revised to read as follows:

§ 25.17 Approval for processing applicants for access authorization.

* * * * *

(c) * * *

(6) Related forms where specified in accompanying instructions (NRC–254 and NRC–254A).

Forms identified in paragraphs (c) (1) and (2) of this section must be typed. Only a Security Acknowledgment (NRC Form 176) need be completed by any person possessing an active access authorization or in processing for an access authorization prior to the effective date of this rule. The access authorizations must be at an equivalent level to those required by NRC and granted or processed by another Federal agency.

* * * * *

(e) Applications for access authorization processing must be accompanied by a check or money

V 45 OC30 80 UMI

order, payable to the United States Nuclear Regulatory Commission, representing the current cost for the processing of each "Q" and "L" access authorization request. Access authorization fees will be published in December of each year and will be applicable to each access authorization request received during the following calendar year. Applications from individuals having current Federal access authorizations may be processed expeditiously at less cost, since the Commission may accept the certification of access authorizations and investigative data from other Federal Government agencies which grant personnel access authorizations.

(Sec. 161i, Pub. L. 83–703, 68 Stat. Pub. L. 93–377, 88 Stat. 475; Sec. 201, Pub. L. 93–438, 88 Stat. 1242–2143, Pub. L. 94–79, 89 Stat. 413 (43 U.S.C. 2201, 5841))

Dated at Washington, D.C. this 23rd day of October 1980.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 33638 Filed 10–29–80; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Parts 211 and 212

[Docket No. ERA–R–80–37]

Conforming Amendments Regarding Crude Oil Acquired for the Strategic Petroleum Reserve

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is deleting 10 CFR 212.95, which currently sets forth the special pricing rule for crude oil acquired by the Federal Government for the Strategic Petroleum Reserve (SPR). Consequently, transactions involving crude oil sales for the SPR generally will be subject to the same rules as any other transaction. Certain technical provisions currently in § 212.95 concerning certifications and first sales in U.S. commerce will be retained as amendments to other sections of our regulations. In addition, we are clarifying the treatment of exchanges of crude oil for the SPR.

DATE: Effective September 24, 1980.

FOR FURTHER INFORMATION CONTACT:
Cynthia Ford (Comment Procedures), Economic Regulatory Administration, Room B–210, 2000 M Street, NW., Washington, D.C. 20461, (202) 653–3971.
William Webb (Office of Public Information), Economic Regulatory Administration, Room B–110, 2000 M Street NW., Washington, D.C. 20461, (202) 653–4055.
Scott Buch (Office of Regulatory Development), Economic Regulatory Administration, Room 7219, 2000 M Street NW., Washington, D.C. 20461, (202) 653–3166.
Harry A. Jones (Strategic Petroleum Reserve Office), Room 3G–024 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252–4410.
Ben McRae (Office of General Counsel), Department of Energy, Room 6A–127, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252–6739.

SUPPLEMENTARY INFORMATION:

I. Background
II. Amendments Adopted
III. Procedural Requirements

I. Background

On June 30, 1980, the President signed the Energy Security Act ("ESA", Pub. L. 96–294). Section 801(a) of the ESA requires the President to undertake and continue crude oil acquisition for the SPR, at a level sufficient to assure that storage of crude oil in the SPR will be increased at an average rate of at least 100,000 barrels per day (B/D) for each fiscal year beginning after September 30, 1980. Section 805(a)(1) of the ESA directed the President to amend the Entitlements Program no later than August 29, 1980, so as to achieve the same effect as if lower tier crude oil were directly allocated to the Federal Government for storage in the SPR.

On August 21, 1980, in accordance with the ESA requirements, we issued a final rule that amended those sections of the Entitlements Program regulations dealing with the acquisition of crude oil for the SPR (45 FR 56788, August 25, 1980). Formerly, a supplier of imported crude oil to the SPR received entitlements as if the imported crude oil had been processed in a domestic refinery. The effect of these provisions was to reduce the Government's cost of imported crude oil for the SPR to approximately the national average cost of crude oil for all refiners. Under the new provisions, however, suppliers of crude oil for the SPR will not receive any entitlements for such crude oil. Rather, the Government will receive entitlement benefits for each barrel of crude oil, other than lower tier crude oil, that it acquires for the SPR. These benefits will be sufficient to lower the actual cost of crude oil for the SPR to approximately the lower tier ceiling price.

We have begun to acquire crude oil for the SPR by using the Federal share of Naval Petroleum Reserves (NPR) production at Elk Hills. Since inadequate transportation facilities prevent the direct placement of most of the NPR crude oil in the SPR, NPR crude oil will be exchanged for more accessible crude oil. On August 11, 1980, the Defense Fuel Supply Center (DFSC), the purchasing agent for DOE, issued a solicitation for competitive bids for crude oil to be exchanged for NPR crude oil. Some contracts have already been executed. In addition, we have proposed a mechanism for requiring exchanges of crude oil for NPR crude oil if this solicitation for competitive bids does not result in acceptable offers (45 FR 54662, August 15, 1980).

Under the DFSC solicitation, exchanges of NPR crude oil are to be accomplished by means of matching purchase and sale transactions. That is, each party would purchase the same volume of crude oil from the other party for the same price. One party could pay the other party a premium to reflect the greater value of the crude oil that it receives due to quality, location or other factors. Under the new entitlements rule noted above, the supplier of crude oil to the SPR will be deemed to retain the crude oil given up.

In anticipation of such transactions, we reviewed the special pricing rules for purchases of crude oil for the SPR at 10 CFR 212.95, which were adopted in June 1977 (42 FR 27908, June 1, 1977). We have determined that most of these provisions are unnecessary in light of changes to other regulations that have been made since § 212.95 was adopted.

II. Amendments Adopted

We are deleting 10 CFR 212.95 from the pricing regulations. While we are retaining certain parts of the former § 212.95 as amendments to other sections of our regulations, two of the primary provisions of § 212.95 are being completely eliminated. These provisions involve the "net return to seller" rule and the "separate inventory for SPR sales" rule.

The "net return to seller" rule was designed to ensure that the value of entitlements received by sellers of crude oil for the SPR would be taken into account in determining the price paid by the Government for such crude oil. Since the seller of crude oil for the SPR now does not receive any benefit under the Entitlement Program, the "net return to seller" rule is no longer relevant.

The "separate inventory for SPR sales" rule was designed to facilitate sales to the SPR by allowing resellers to segregate such sales from their ordinary transactions. This segregation of sales enabled a reseller to comply more easily with the provisions of Subpart F of Part 212, which governed crude oil resellers at the time § 212.95 was adopted. Currently, crude oil resellers are governed by the provisions of Subpart L of Part 212. These provisions make the "separate inventory for SPR sales" rule unnecessary.

Section 212.95 also contains special provisions concerning "first sales into U.S. commerce" and certifications by offerors and sellers of crude oil for the SPR. We are retaining these provisions with certain modifications discussed below and are placing them in the appropriate sections of the regulations.

The "first sales into U.S. commerce" rule in § 212.95 currently treats all sales of imported crude oil to the Government for the SPR as the first sale of such crude oil into U.S. commerce and thus, exempted by § 212.53(b) [1] from the pricing regulations. We adopted this rule because of uncertainty concerning the treatment of foreign crude oil acquired specifically for sale to the SPR. This objective can be achieved by a less expansive rule that only applies to sales of volumes of crude oil that have not already entered into the U.S. customs territory. Accordingly, we are modifying the rule to cover only these sales and are moving it to § 212.53(b).

The certification provision in § 212.95 generally provides that when a firm offers to sell or delivers crude oil to the Government for the SPR, it must certify the regulatory classification and ceiling price, if any, of the volumes of crude oil involved. The certification provisions are being set forth without any substantial change in a new § 212.133 of Subpart I of Part 212.[2]

In order to facilitate negotiations concerning exchanges of crude oil for the SPR, we are revising § 211.67(a)(7)(ii).[3] Specifically, we are clarifying the pricing of crude oil acquired for the SPR by means of a matching purchase and sale transaction. As explained in the recent rule on SPR entitlements, each party to such a matching purchase and sale transaction is deemed to retain the crude oil given up by it for the purposes of the entitlements program. Where the oil acquired for the SPR is domestic price-controlled crude oil, such a transaction can be economically practicable only if both parties are able to charge and receive market level prices for the crude oils involved in the matching purchase and sale. Of course, the selling refiner would still have to purchase entitlements for such price-controlled oil given up. Such a matching purchase and sale then becomes the economic equivalent of a crude oil exchange. Since the Government may engage in matching purchases and sales transactions, as well as exchanges, involving price-controlled oil, we are amending 10 CFR 211.67(a)(7)(ii) to clarify that in such matching purchases and sales the Government may pay, and the seller may receive, market level prices for the crude oil involved.

Another potential difficulty in negotiating exchanges of crude oil for the SPR is the valuation of a refiner's position in the Entitlements Program after such an exchange is completed. Section 211.67(a)(7)(ii) currently provides that crude oil deemed to be retained by a refiner shall be included in that refiner's crude oil receipts under the provisions of § 211.67(g)(2). Since § 211.67(g)(2) includes crude oil deemed to be retained in an exchange at the time that the crude oil acquired in an exchange would constitute a crude oil receipt, a refiner potentially might not incur a crude oil receipt until several months after the crude oil is transferred to the SPR. Calculation of the economic effect of this potential delay in the inclusion of a crude oil receipt involves many variables and, thus, could slow negotiations concerning exchanges for the SPR. Accordingly, in order to expedite negotiations involving exchanges for the SPR, we are amending § 211.67(a)(7)(ii) to provide that the crude oil deemed to be retained by a refiner shall be included as a crude oil receipt in the month that the SPR receives such crude oil.

[1] Section 212.53(b) provides that the prices charged for the first sale of imports into U.S. commerce are exempt from the pricing provisions of 10 CFR Part 212.

[2] Subpart I of Part 212 sets forth several reporting requirements for those firms subject to the pricing regulations.

[3] Section 211.67(a)(7)(ii) is the section added by the recent SPR entitlements rule to deal with exchanges and matching purchases and sales for the SPR.

III. Procedural Requirements

A. Section 404 of the DOE Act

Pursuant to the requirements of Section 404(a) of the Department of Energy Organization Act (DOE Act, 42 U.S.C. 7101 et seq., Pub. L. 95–91, as amended), we have referred this rule to the Federal Energy Regulatory Commission for a determination as to whether it would significantly affect any matter within the Commission's jurisdiction. Following an opportunity to review this rule, the Commission has declined to determine that it may signficantly affect any of its functions.

B. Section 7 of the FEA Act

Under section 7(a) of the Federal Energy Administration Act of 1974 (15 U.S.C. 787 et seq., Pub. L. 93–275, as amended) the requirements of which remain in effect under section 501(a) of the DOE Act, the delegate of the Secretary of Energy shall, before promulgating proposed rules, regulations, or policies affecting the quality of the environment, provide a period of not less than five working days during which the Administrator of the Environmental Protection Agency (EPA) may provide written comments concerning the impact of such rules, regulations, or policies on the quality of the environment. Such comments shall be published together with publication of notice of the proposed action.

A copy of this notice was sent to the EPA Administrator. The EPA Administrator has informed the ERA that he does not foresee today's amendments as having unfavorable impacts on the quality of the environment as related to the duties and responsibilities of the EPA. The EPA Administrator made this comment in light of our assurance that the original assumptions underlying the Environmental Impact Statement for SPR remain valid. However, the EPA Administrator noted that if at any future time DOE contemplates more frequent use of SPR, then further review of the program under the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 et seq.) would be indicated.

C. National Environmental Policy Act

On October 20, 1980, the Assistant Secretary for Environment determined after consultation with the Office of General Counsel that today's amendments will not significantly affect the quality of the human environment within the meaning of NEPA.

D. Section 501 of the DOE Act

Under section 501(c) of the DOE Act we are not bound by the prior notice and hearing requirements of subsections (b)–(d) with respect to a rule upon our determination that no substantial issue of fact or law exists and that the rule is unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses. Where no such substantial issue or impact is foreseen, the proposed rule may be promulgated in accordance with section 553 of Title 5, U.S.C.

For reasons discussed below, we believe that none of the amendments raise substantial issues of law or fact or have a substantial impact on the Nation's economy or large numbers of

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individuals or businesses. Specifically, the amendments deleting the provisions involving the "net return to seller" rule and the "separate inventory for SPR sales" rule and the amendments moving the provisions concerning "first sales into U.S. commerce" and certification requirements only conform the pricing regulations for crude oil acquired for the SPR to changes in our regulations after the adoption of § 212.95. The amendment concerning pricing in matching purchase and sale transactions for crude oil acquired for the SPR only clarifies the regulations. The amendment concerning the time at which crude oil deemed to be retained should be included as a crude receipt represents a technical change in the timing of crude oil receipts with respect to oil delivered to the SPR. This change raises no substantial issue of law or fact and will not have a substantial impact on the Nation's economy or large numbers of individuals or businesses. Therefore, these amendments shall be promulgated in accordance with section 553 of Title 5 U.S.C., pursuant to section 501(c) of the DOE Act.

E. Section 553 of the Administrative Procedure Act

Section 553(b) of the Administrative Procedure Act (APA) requires that general notice of a proposed rulemaking be published in the **Federal Register**, except in regard to interpretative or procedural rules, or when the agency for good cause finds that notice and public procedure thereon is impracticable, unnecessary, or contrary to the public interest.

As noted previously, the amendments concerning provisions currently set forth in § 212.95 affect those provisions only to the extent necessary to conform with prior changes in our regulations. The amendment concerning treatment of matching purchase and sale transactions and the amendment concerning the time at which crude oil deemed to be retained should be included as a crude oil receipt are necessary immediately to prevent any delay in current negotiations of voluntary exchange agreements to acquire crude oil for the SPR. The prompt arrangement of such exchanges is important to our national security. Moreover, given the minimal impact of the rule on the economy and most businesses, the interests in and the benefits to be derived from prior notice and comment are less than ordinarily is the case. We, therefore, find that the advance notice and public procedures of section 553(b) are impracticable, unnecessary, and contrary to the public interest.

Subsection (d) of section 553 provides that the required publication of a rule be made at least 30 days before the effective date of the rule, unless it either relieves a restriction or is an interpretative rule, or the agency otherwise finds good cause to make a rule effective immediately. As noted previously, certain of these amendments merely bring the pricing provisions for SPR crude oil into conformity with more recent amendments to the Entitlements Program regulations and the price regulations. The other amendments are necessary immediately to facilitate current negotiations concerning exchanges for the SPR. Therefore, we find good cause to make the rule effective on September 24, 1980, so that there will be no question as to the price rules in effect with regard to contracts for oil purchased for the SPR and so that negotiations concerning exchanges of crude oil for the SPR may be concluded promptly.

F. Executive Order 12044

Executive Order 12044 "Improving Government Regulations" (43 FR 12661, March 24, 1978) requires agencies subject to it to publish all proposed "significant" regulations for public comment for a minimum of 60 days. In accordance with the criteria listed in paragraph 6 of DOE Order 2030.1 (44 FR 1032, January 3, 1979), which implements Executive Order 12044, we have determined that the proposed regulation is not "significant". Order 2030 gives as an example of a nonsignificant rule/a rule not subject to the public notice requirements of the APA.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*, Pub. L. 93–159, as amended, Pub. L. 93–511, Pub. L. 94–99, Pub. L. 94–133, Pub. L. 94–163, and Pub. L. 94–385; Federal Energy Administration Act of 1974, 15 U.S.C. § 787 *et seq.*, Pub. L. 93–275, as amended, Pub. L. 94–332, Pub. L. 94–385, Pub. L. 95–70, and Pub. L. 95–91; Energy Policy and Conservation Act, 42 U.S.C. § 6201 *et seq.*, Pub. L. 94–163, as amended, Pub. L. 94–385, Pub. L. 95–70, Pub. L. 95–619, and Pub. L. 96–30; Department of Energy Organization Act, 42 U.S.C. § 7101 *et seq.*, Pub. L. 95–91, Pub. L. 95–509, Pub. L. 95–619, Pub. L. 95–620, and Pub. L. 95–621; E.O. 11790, 39 FR 23185; E.O. 12009, FR 46267)

In consideration of the foregoing, Parts 211 and 212 of Chapter II, Title 10 of the Code of Federal Regulations, are amended as set forth below.

Issued in Washington, D.C., October 23, 1980.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS

1. 10 CFR 211.67(a)(7)(ii) is revised to read as follows:

§ 211.67 Allocation of domestic crude oil.

(a) * * *

(7) * * *

(ii) In any case where the United States Government acquires from a refiner or other firm crude oil for storage in the Strategic Petroleum Reserve pursuant to an exchange or matching purchase and sale transaction, no domestic crude oil shall be deemed to have been transferred by that refiner or other firm in that exchange or transaction and such volume of domestic crude oil deemed to have been retained shall be included in a refiner's crude oil receipts in the month in which such domestic crude oil is delivered to and accepted for delivery to the Strategic Petroleum Reserve, and the United States Government shall be issued entitlements for the month prior to the month in which such domestic crude oil is delivered to and accepted for delivery to the Strategic Petroleum Reserve. The number of entitlements issued shall be calculated in accordance with the provisions of subparagraphs (iii) through (vi) of this paragraph (a)(7) on the basis of the volume of crude oil given up by the Government in any such exchange or transaction. Notwithstanding anything to the contrary in 10 CFR Part 212, in any matching purchase and sale transaction subject to this subparagraph, the United States Government may pay and the seller may receive any price for the crude oil purchased by the United States Government for the Strategic Petroleum Reserve.

* * * * *

PART 212—MANDATORY PETROLEUM PRICE REGULATIONS

2. 10 CFR 212.53(b) is revised to read as follows:

§ 211.53 Exports and imports.

* * * * *

(b) The prices charged for imports, but only the first sale into U.S. commerce, are exempt. For purposes of this subparagraph, any sale of imported crude oil, not already entered into the United States customs territory, to the Government for storage in the Strategic Petroleum Reserve will be deemed a first sale into U.S. commerce.

* * * * *

§ 212.95 [Deleted]

3. 10 CFR 212.95 is deleted.

4. A new section 10 CFR 212.133 is added to read as follows:

§ 212.133 Certification of SPR Crude Oil.

When proposals are submitted and when crude oil is delivered to the Government for storage in the Strategic Petroleum Reserve, offerors and sellers shall certify what volumes of crude oil are lower tier, upper tier, or imported or domestic uncontrolled crude oil and shall certify the ceiling or other maximum lawful price, if any, applicable to the volumes so classified.

[FR Doc. 80-33849 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 80-EA-49; Amdt. 39-3961]

DeHavilland DHC-7; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment issues a new airworthiness directive applicable to DeHavilland DHC-7 type airplanes. It requires repetitive inspections for cracks and eventual alteration of the rear spar wing attachment to the fuselage frame, and the wing and board nacelle joint. Both areas of possible cracks, if uninspected, could cause structural failure due to fatigue from undetected cracks.

EFFECTIVE DATE: October 31, 1980. Compliance is required as set forth in the AD.

ADDRESSES: DeHavilland Service Bulletins may be acquired from the manufacturer at Downsview, Ontario, Canada M3K 145.

FOR FURTHER INFORMATION CONTACT: C. Birkenholz, Airframe Section, AEA-212, Engineering and Manufacturing Branch, Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Tel. 212-995-2875.

SUPPLEMENTARY INFORMATION: The manufacturer reported that during fatigue testing, it determined that improved fatigue strength was required of the lower wing outboard nacelle joint and fuselage longeron at the rear spar frame to meet the present approved type design. Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendement

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations, 14 CFR 39.13 is amended, by adding the following new Airworthiness Directive:

DeHavilland: Applies to DHC-7 model airplanes, certificated in all categories.

(a) To prevent structural fatigue failure of the fuselage longeron at the rear spar frame, accomplish the following:

(1) For aircraft serial numbers 1 thru 14, with 2975 hours in service: Within the next 25 hours in service, after the effective date of this AD, unless previously accomplished within the last 975 hours in service, perform a radiographic inspection for cracks at the rear spar wing attachment to the fuselage frame in accordance with the instructions given in Figure 1 and 2 of DeHavilland Service Bulletin 7-53-9 or an approved equivalent. Repeat inspection at intervals not to exceed 1000 hours in service from the last inspection.

(2) If cracks are found, prior to next flight, repair in accordance with an FAA approved repair scheme supplied by DeHavilland and incorporate DeHavilland Modification No. 7/1622, in accordance with the above Bulletin's accomplishment instructions or approved equivalent.

(b) To prevent structural fatigue failure of the lower wing/outboard nacelle joint, accomplish the following:

(1) For aircraft serial number 1 thru 14 and 17, with 4975 hours in service: Within the next 25 hours in service, after the effective date of this AD, unless previously accomplished within the last 975 hours in service, perform a radiographic inspection for cracks at the wing/outboard nacelle joint in accordance with the instructions given in Figure 1 of DeHavilland Service Bulletin 7-57-4 or an approved equivalent. Repeat inspection at intervals not to exceed 1000 hours in service from the last inspection.

(2) If cracks are found, prior to next flight, repair in accordance with an FAA approved repair scheme supplied by DeHavilland and incorporate DeHavilland Modification No. 7/1645 in accordance with the above Bulletin's accomplishment instructions or an approved equivalent.

(c) Inspections in (a)(1) may be discontinued when Modification No. 7/1622 or an approved equivalent is accomplished. Inspections in (b)(1) may be discontinued when Modification No. 7/1645, or an approved equivalent is accomplished.

(d) Equivalent inspections repairs or alterations must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

(e) Compliance times may be increased by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region, upon receipt of substantiating data submitted through an FAA maintenance inspector.

Effective Date: This amendment is effective October 31, 1980.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, 49 U.S.C. 1354(a), 1421, 1423, and 1431(b); Sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c) and 14 CFR 11.89).

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044 as implemented by the Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

Issued in Jamaica, New York, on October 17, 1980.

Lonnie D. Parrish,

Acting Director, Eastern Region.

[FR Doc. 80-33472 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 80-WE-46-AD; Amdt. 39-3958]

McDonnell Douglas Model DC-6 Series Airplanes; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes a currently effective Airworthiness Directive (AD) which requires inspection and rework if necessary on nose gear upper torque link on McDonnell Douglas Model DC-6 and DC-7 series airplanes. This amendment deletes DC-7 applicability and provides additional rework detail. This superseding AD is required because of torque linked failures which have occurred subsequent to the issuance of the previous AD.

DATES: Effective November 3, 1980. Compliance schedule—As prescribed in the body of the AD.

ADDRESSES: The applicable service information may be obtained from: McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training C1-750 (54-60).

Also, a copy of the service information may be reviewed at, or a copy obtained from:

Rules Docket in Room 916, FAA, 800 Independence Avenue, SW., Washington, D.C. 20591, or

Rules Docket in Room 6W14, FAA Western Region, 15000 Aviation Boulevard, Hawthorne, California 90261.

FOR FURTHER INFORMATION CONTACT: Robert T. Razzeto, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536-6351.

SUPPLEMENTARY INFORMATION: AD 54-23-02 requires inspection and rework, if necessary, of nose gear upper torque link on McDonnell Douglas Model DC-6 and DC-7 airplanes. After issuing AD 54-23-02 the FAA has determined due to service experience that compliance with AD 54-23-02 has, in two cases which resulted in accidents, not provided the requisite minimum level of safety. The FAA has further determined that the McDonnell Douglas Model DC-7 incorporates a different design nose gear torque link for which no adverse service history exists.

Therefore, the AD is being superseded by a new AD which deletes DC-7 applicability and provides additional inspections land rework detail.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by adding the following new Airworthiness Directive:

McDonnell Douglas: Applies to Model DC-6, DC-6A, DC-6B airplanes certificated in all categories including military models R6D and C-118 eligible for civil certification, incorporating nose landing gear upper torque link assembly P/N 8488A-46.

Compliance is required as indicated unless already accomplished.

To prevent failure of the nose landing grear upper torque link which could result in nose gear collapse accomplish the following:

(a) Within 100 hours' time in service from the effective date of this AD unless already accomplished in the last 200 hours' time in service and thereafter at intervals not to exceed 300 hours' time in service since the last such inspection: inspect the nose landing gear upper torque link P/N 8488A-46-1 for cracks at the shoulder recess corner radius, by dye penetrant methods after removing paint per standard shop practice. Do not use a wood (or other) wedge to preload the lugs.

(b) If cracks are found:

(1) The cracked part may be replaced with a like serviceable part of the same part number provided that the replacement part is dye penetrant inspected for cracks within 300 hours' time in service from installation and thereafter at intervals not to exceed 300 hours' additional time in service since the last such inspection, or

(2) The cracked part may be replaced with a like serviceable part of the same part number, reworked as shown on Figures 2 and 3 of Douglas Aircraft Company Service Bulletin No. 641 dated October 16, 1955, and the repetitive inspection requirements of paragraph (a) of this AD are applicable, or

(3) The cracked part may be replaced by like serviceable P/N 8488A-46A-1 of improved design in which case no additional inspections are required by this AD.

(c) If no cracks are found:

(1) Return P/N 8488A-46-1 part to service provided that it is inspected per paragraph (a) of this AD at intervals not to exceed 300 hours' time in service since the last such inspection.

(2) Return P/N 8488A-46-1 part reworked per Figure 5 or Figure 2 of Douglas Aircraft Service Bulletin No. 461 dated October 13, 1955 to service provided that it is inspected per paragraph (a) of this AD at intervals not to exceed 300 hours' time in service since the last such inspection.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections required by this AD.

(e) Alternative inspections, modifications or other actions which provide an equivalent level of safety may be used when approved by the Chief, Aircraft Engineering Division, FAA Western Region.

This supersedes AD 54-23-02.

This amendment becomes effective November 3, 1980.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89)

Note.—The FAA has determined that this document involves a final regulation which is not considered to be significant under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Los Angeles, California, on October 15, 1980.

H. C. McClure,

Acting Director, FAA Western Region.

[FR Doc. 80-33530 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 80-EA-46; Amdt. 39-3960]

Piper Model PA 38-112; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment issues a new airworthiness directive, applicable to Piper PA 38-112 type airplanes. The AD requires an inspection for cracks of the rudder upper hinge and eventual replacement of the aluminum hinge with a steel hinge. This will prolong the life of the hinge which had been the subject of reported failures.

EFFECTIVE DATE: October 31, 1980. Compliance is required as set forth in the AD.

ADDRESS: Piper Service Bulletins may be acquired from the manufactuer at Piper Aircraft Corporation, 820 East Bald Eagle Street, Lock Haven, Pennsylvania 17745.

FOR FURTHER INFORMATION CONTACT: J. Maher, Airframe Section, AEA-212, Engineering and Manufacturing Branch, Federal Building J.F.K. International Airport, Jamaica, New York 11430; Tel. 212-995-2875.

SUPPLEMENTARY INFORMATION: There had been reports of failure of the aluminum upper hinges of the subject aircraft. As a result, an emergency airmail AD dated May 16, 1980, was distributed which established the same requirements as this rule except for the requirement of permanently replacing the aluminum hinge which is required under this rule. The replaced steel hinge will have a life limit of 5000 hours in service. In view of the issuance of the emergency AD, a situation still exists that requires the immediate adoption of this regulation, and, therefore, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations, 14 CFR 39.13 is amended, by adding the following new Airworthiness Directive:

Piper: Applies to model PA-38-112 airplanes, Serial Nos. 38-78A0001 thru 38-80A0099, 38-80A0113, 38-80A0120 and 38-80A0123 thru 38-80A0165, certificated in all categories.

To avoid possible hazards in flight associated with a crack in the rudder upper hinge P/N 77610-02, accomplish the following:

a. Within the next five hours in service, unless previously accomplished and thereafter at intervals not to exceed 50 hours in service from the last inspection, remove the rudder upper hinge pin and carefully displace the rudder from the fin aft to expose the surfaces of the rudder upper hinge P/N 77610-02. The rudder upper hinge consists of two brackets, P/N 77610-02. Inspect all the hinge surfaces in the area of the hinge pin hole to the forward edge of the hinge for cracks using a dye check inspection method or an equivalent. Upper hinge bolt is to be installed with a torque of 50 to 70 in. lb.; do not exceed the maximum value.

b. If a cracked fitting is found, before further flight, replace with a part of the same part number or an equivalent, which have been inspect in accordance with (a).

c. Within the next 100 hours in service replace brackets, P/N 77610-02, with two steel rudder hinge brackets, Piper P/N 77610-03 or equivalent in accordance with the instruction section of Piper Service Bulletin No. 686 dated May 23, 1980, or equivalent. Upon compliance with this paragraph, the inspections required in paragraph (a) may be discontinued.

d. The steel upper rudder hinge P/N 77610-03 or equivalent must be replaced within 5000 hours time in service.

e. Upon submission of substantiating data by an owner or operator through an FAA Maintenance Inspector, the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region may adjust the compliance times specified in this AD.

f. Equivalent parts, instructions and inspections must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

g. Report findings of cracked parts to the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region, within five days of the inspection: include the time on the part, and aircraft serial No. (Reporting approved by the Office of Management and Budget under OMB No. 04-RO174).

Effective Date: This amendment is effective October 31, 1980.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, 49 U.S.C. 1354(a), 1421, 1423, and 1431(b); Sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c) and 14 CFR 11.89)

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044 as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

Issued in Jamaica, New York, on October 17, 1980.

Lonnie D. Parrish,

Acting Director, Eastern Region.

[FR Doc. 80-33473 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 80-EA-52; Amdt. 39-3963]

Bendix S-20, S-1200 and D-2000 Series Magnetos; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment issues an amendment to AD 78-09-07 applicable to Bendix S-20, S-1200 and D-2000 series magnetos. AD 78-09-07 requires an inspection every 1,000 hours of the impulse coupling cam assembly for wear. Subsequent to publishing AD 78-09-07, a review of reports from the field established cam failures below 1,000 hours in service. Failure of the cam can result in engine failure. This rule lowers the inspection time to 500 hours in service.

EFFECTIVE DATE: November 3, 1980. Compliance is required as set forth in the AD.

ADDRESS: Bendix Service Bulletins may be acquired from the manufacturer at the Electrical Components Division, Sidney, New York 13838.

FOR FURTHER INFORMATION CONTACT: A. T. Farrar, Propulsion Section, AEA-214, Engineering and Manufacturing Branch, Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Tel. 212-995-2894.

SUPPLEMENTARY INFORMATION: Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations, 14 CFR 39.13 is amended, by amending AD 78-09-07 as follows:

1. In paragraphs a. and b., delete 975 and 1,000 hours where they appear and insert 475 and 500 hours respectively.

2. In paragraph c., delete Bulletin Number 599 and insert Bulletin Number 599A.

Effective date: This amendment is effective November 3, 1980.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, 49 U.S.C. 1354(a), 1421, 1423, and 1431(b); Sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c) and 14 CFR 11.89)

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044 as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

Issued in Jamaica, New York, on October 20, 1980.

Lonnie D. Parrish,

Acting Director, Eastern Region.

[FR Doc. 80-33806 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 80-EA-35; Amdt. 39-3962]

Piper Models PA-11 Through PA-22, J3 Through J5, L-4, L-14, L-18, AE-1, and HE-1; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment issues a new airworthiness directive (AD) applicable to Piper PA-11 through PA-22, J3 through J5, L-4, L-14, L-18, AE-1 and HE-1 type airplanes, and requires an inspection for cracks and replacement where necessary of the wing lift fork fitting attaching the wing strut to the fuselage. There have been reports of cracked and broken forks which can and have resulted in accidents.

EFFECTIVE DATE: November 3, 1980. Compliance is required as set forth in the AD.

ADDRESS: Piper Service Bulletins may be acquired from the manufacturer at Piper Aircraft Corporation, 820 East Bald Eagle Street, Lock Haven, Pennsylvania 17745.

FOR FURTHER INFORMATION CONTACT: C. Kallis, Airframe Section, AEA-212, Engineering and Manufacturing Branch, Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Tel. 212-995-2875.

SUPPLEMENTARY INFORMATION: AD 58-10-02 was issued in 1958 for the purpose of inspecting for cracks the wing lift strut fork fittings used on the subject airplanes.

However, some airplane operator/owners switched forks from one airplane to another making field records questionable. We have had about eight reports of cracked and broken forks since July 1972. An NTSB investigation disclosed that in two accidents the failed forks had machined (cut) threads, and failed in fatigue over about 90-95% of the cross sectional area through the threads. The reports reflect service times which were under the 2,000-hour replacement time for landplanes.

To avoid reliance upon questionable records and with a relatively short repetitive inspection interval to maintain the airworthiness of the lift strut forks with machined (cut) threads, an emergency airmail AD was issued April 17, 1980, amended on April 25, 1980, which revoked AD 58-10-02 and required, within five hours, an inspection of all forks, using magnetic means and replacement of forks with machined (cut) thread with forks with rolled threads.

Because some fleet operators encountered difficulty in meeting the compliance time for the magnetic inspection, a revised emergency AD was issued April 25, 1980, which allowed the use a dye-penetrant method of inspection to be performed within five hours or 25 days from receipt of the AD, with 20-hour repetitive inspections until the magnetic inspection can be accomplished, but not to exceed 50 hours or 180 days.

The AD now proposed differs slightly from the emergency AD in the applicability statement which has been expanded to include all the present models. It has other small clarifying changes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations, 14 CFR 39.13 is amended, by adding the following new Airworthiness Directive:

Applies to the following Piper series aircraft certificated in all categories: PA-22, PA-20, PA-19, PA-18, PA-17, PA-16, PA-15, PA-14, PA-12, PA-11, J5, J4, J3, L-21, L-18, L-14, L-4, AE-1, and HE-1.

(a) For Models PA-12, PA-14, PA-16, PA-18, PA-19, PA-20, PA-22, J5, J4, L-14, L-18, L-21, AE-1 and HE-1.

1. Within the next 50 hours in service or 180 days, whichever occurs first, replace lift strut forks manufactured with machined (cut) threads, with parts of the same part number manufactured with rolled threads, or approved equivalent parts, both of which must be inspected in accordance with (a)(3) and (a)(4).

2. Except as indicated in (a)(4) unless already accomplished, within the next five hours in service or 25 days, whichever occurs first, and thereafter at intervals not to exceed 20 hours in service, remove lift strut forks, clean, strip the paint and inspect for cracks by a dye penetrant method.

3. Except as indicated in (a)(4) within the next 50 hours in service or 180 days, whichever occurs first, unless already accomplished, the inspection in (a)(2) must be accomplished by "magnetic" means or approved equivalent. When accomplished, the inspection in (a)(2) is no longer required except that the "magnetic" inspection must be repeated at intervals not to exceed 500 hours in service.

4. Airplanes with lift strut forks which were obtained from Piper or an FAA approved manufacturer, and which have less than 195 hours in service and have been on the airplane less than three years, must comply with the inspections of (a)(2) and (a)(3) before the accumulation of 200 hours in service, or three years, whichever occurs first. Forks obtained from Piper or an FAA approved manufacturer which have zero hours in service must be inspected by magnetic means or approved equivalent at intervals not to exceed 500 hours in service. Verify that the FAA approved manufacturer produces the forks with rolled threads and inspects each fork by magnetic means or approved equivalent.

5. Replace lift strut forks manufactured with rolled threads prior to the accumulation of 1000 hours in service if used at any time on float equipped aircraft, and prior to the accumulation of 2000 hours in service if used on landplanes. Replacement parts must be parts with the same part number manufactured with rolled threads or approved equivalent, both of which must be inspected in accordance with (a)(3) and (a)(4).

(b) For Models J3, L4, PA-11, PA-15, and PA-17 airplanes, inspect wing lift strut forks in accordance with (a)(3) and (a)(4).

(c) For all Models in paragraphs (a) and (b), unless already accomplished, within the next 50 hours in service inscribe the statement NO STEP in 1" minimum high letters, in a color which contrasts with the airplane color, on each wing lift strut 6" from the bottom of the struts, and in such direction so that the NO STEP caution can be read when looking in a forward direction with respect to the airplane.

(d) Replace cracked parts before further flight with lift strut forks of the same part number, or approved equivalent, both of which meet the requirements of this AD.

(e) Upon submission of substantiating data by an owner or operator through an FAA Maintenance Inspector, the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region may adjust the compliance times specified in this AD.

(f) Equivalent parts and inspections must be approved by the Chief, Engineering and Manufacturing Branch, FAA Eastern Region.

(g) Airplanes may be ferried to a base in accordance with FAR 21.197 where the AD can be accomplished.

(h) Report findings of cracked parts to the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region, within five days of the inspection: include the time on the part, aircraft model and Serial No. it was used on, float equipped or landplane, machined (cut) or rolled threads, and location of crack. (Reporting approved by the Office of Management and Budget under OMB No. 04-RO174.)

Note (1).—Cracked parts should be given to the local FAA district office for shipment to Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

Note (2).—The following parts are acceptable for use on the airplanes as indicated:

P/N 13770—J3, L-4, PA-11
P/N 11431—J4
P/N 11281—PA-15, PA-17
P/N 14481—PA-12, PA-14, PA-16, PA-18, PA-19, PA-20, PA-22, J5, L-14, L-18, L-21, AE-1, HE-1

This AD revokes AD 58-10-2.

Effective date: This amendment is effective November 3, 1980.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, 49 U.S.C. 1354(a), 1421, 1423, and 1431(b); Sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c) and 14 CFR 11.89)

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044 as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

Issued in Jamaica, New York, on October 20, 1980.

Norbert A. Owens,
Acting Director, Eastern Region.

[FR Doc. 80-33807 Filed 10-29-80; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 79-WE-41-AD; Amdt. 39-3964]

Lockheed-California Co. Model L-1011-385 Series Airplanes; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) applicable to Lockheed-California Company Model L-1011-385 series airplanes by providing alternate means of compliance involving landing gear inspections, including terminating action. This amendment is needed to provide additional safety information which will provide relief for operators affected by the original AD.

DATES: Effective November 6, 1980. Compliance schedule—as prescribed in the body of the AD.

ADDRESSES: The applicable service information may be obtained from: Lockheed-California Company, P.O. Box 551, Burbank, California 91520. Attention: Commercial Support Contracts Department 63-11 U33, B-1.

Also, a copy of the service information may be reviewed at, or a copy obtained from:

Rules Docket in Room 916, FAA, 800 Independence Avenue, SW., Washington, D.C. 20591, or
Rules Docket in Room 6W14, FAA Western Region, 15000 Aviation Boulevard, Hawthorne, California 90261.

FOR FURTHER INFORMATION CONTACT: Jerry Presba, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536-6351.

SUPPLEMENTARY INFORMATION: Amendment 39-3661 (45 FR 2648), AD 80-02-03, requires visual checks and inspections of the main landing gear forward and aft trunnion pins and replacement of the pins, if necessary, on the main landing gear assemblies of Lockheed-California Company Model L-1011-385 series airplanes. After issuing Amendment 39-3661, the FAA has evaluated additional service instructions prepared by the manufacturer and has determined that these procedures are adequate to provide alternate means of compliance with the inspection requirements of the original AD, including actions which permit termination of the repetitive inspection requirements of the original AD. Therefore, the FAA is amending Amendment 39-3661 to specify inspection and installation of retainers per Service Bulletin 093-32-167, and final inspection per Service Bulletin 093-32-169.

Since this amendment provides an alternative means of compliance and imposes no aditional burden on any person, notice and public procedure hereon are unnecessary and the amendment may be made effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by amending Amendment 39-3661 (45 FR 2648), AD 80-02-03, by revising paragraphs (a), (b), and (c) to read as follows:

* * * * *

(a) Within the next 48 calendar days after January 17, 1980, unless already accomplished:

(1) Visually inspect the main landing gear forward and aft trunnion pins in accordance with the accomplishment instructions of paragraph 2B of Lockheed-California Company Alert Service Bulletin 093-32-A167, Revision 1, March 6, 1980. If a crack(s) or fracture is found, replace the trunnion pin(s) prior to further aircraft operation, or;

(2) Visually inspect the main landing gear forward and aft trunnion pins with retainers removed in accordance with paragraph 2A of Lockheed-California Company Service Bulletin 093-32-167, Revision 1, dated September 18, 1980 and install MLG forward and aft trunnion pin retainers per paragraphs 2B and 2C of Lockheed-California Service Bulletin 093-32-167, Revision 1, dated September 18, 1980. If a crack(s) or fracture is found, replace the trunnion pin(s) prior to further aircraft operation, or;

(3) Remove the MLG forward and aft trunnion pins and retainers, if installed and inspect by visual and magnetic particle methods, and reidentify per paragraphs 2A, 2B, 2C, and 2D of Lockheed-California Service Bulletin 093-32-169, Revision 1 dated September 18, 1980. If a crack(s) or fracture is found, replace the trunnion pin(s) prior to further flight. Defects in chrome plating only may be repaired per paragraphs 2E and 2F of Lockheed-California Service Bulletin 093-32-169, Revision 1, dated September 18, 1980.

Note 1.—The repetitive inspection requirements of paragraph (b) of this AD are not applicable to trunnion pins inspected per paragraph (a)(3).

(b) Repeat the visual inspections of paragraph (a) of this AD as specified:

(1) Within 50 hours' time in service since the last inspection conducted per paragraph (a)(1) of this AD and thereafter at intervals not to exceed 50 hours' additional time in service, repeat the visual inspections required by paragraph (a)(1) of this AD.

(2) Within 1500 hours' time in service since the inspection and retainer installation accomplished per paragraph (a)(2) of this AD and thereafter at intervals not to exceed 1500 hours' additional time in service, repeat the visual inspections required by paragraph (a)(2) of this AD.

(c) Once per each day in which the aircraft is operated following the accomplishment of the inspections of paragraph (a)(1) above, and excluding the days on which the inspection of paragraph (b), above, is accomplished, conduct visual check of the main landing gear forward and aft trunnion pins in accordance with the accomplishment instructions of paragraph 2A of Lockheed-California Company Alert Service Bulletin 093-32-A167, Revision 1. If an obvious migration of either or both of the pins exists relative to the normal installation configuration, perform the visual inspections of paragraph (a), above. If a crack(s) or fracture is found, replace the pin(s) prior to further aircraft operation.

Note 2.—The daily check requirements are not applicable if paragraph (a)(2) or (a)(3) of this AD is accomplished.

* * * * *

Note 3.—The FAA has determined that this document involves a final regulation which is not considered to be significant under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Amendment 39-3661 became effective January 17, 1980.

This amendment becomes effective November 6, 1980.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89)

Issued in Los Angeles, California on October 20, 1980.

John D. Mattson,
Director, FAA Western Region.

[FR Doc.-80-33818 Filed 10-29-80; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-AWE-14]

Alteration of Control Zone; Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of the San Clemente Island, Calif., Control Zone by raising the ceiling from 5,000 feet MSL to 6,000 feet MSL and adding an extension to the control zone. This amendment enhances air safety by providing controlled airspace from Control Area 1177 to the San Clemente Island terminal area.

EFFECTIVE DATE: December 25, 1980.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION: On September 16, 1980, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to raise the ceiling of the San Clemente Island, Calif., Control Zone from its current ceiling of 5,000 feet MSL to 6,000 feet MSL and alter the control zone by adding an extension northward to the boundary of Control Area 1177 (45 FR 62091). Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.171 of Part 71 was republished in the **Federal Register** on January 2, 1980, (45 FR 356).

The Rule

This amendment to Subpart F of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends the description of the San Clemente Island, Calif., Control Zone by raising the ceiling from 5,000 feet MSL to 6,000 feet MSL and adds an extension northward to the boundary of Control Area 1177. This action permits aircraft operations at the Naval Auxiliary Landing Field, San Clemente Island to remain under continuous Instrument Flight Rules (IFR).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 356) is amended, effective 0901 GMT, December 25, 1980, as follows:

Under § 71.171

San Clemente Island, Calif., is amended to read as follows:

Within a 5-mile radius of NALF San Clemente (Lat. 33°01'20"N., Long. 118°35'15"W.) extending upward from the surface to and including 6,000 feet MSL and within 3 miles on either side of the San Clemente 334° radial extending from the 5-mile radius to Control Area 1177. The control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time thereafater will be continuously published in the Airport/Facility Directory.

(Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510, Executive Order 10854 (24 FR 9565); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.— The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on October 23, 1980.

B Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-33605 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-ANW-6

Establishment of the Newport, Oreg., Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes a control zone at Newport, Oreg., to provide controlled airspace to protect aircraft executing the instrument approaches to Newport Municipal Airport. Weather observation and reporting is now available at Newport Airport and complete the criteria needed for control zone establishment.

EFFECTIVE DATE: December 25, 1980.

FOR FURTHER INFORMATION CONTACT:

L. Jack Overman, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION:

History

On August 14, 1980, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a part-time control zone at Newport, Oreg., (45 FR 54073). Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. Three comments were received, two which objected to the proposal. One commenter objected due to the control zone interference with VFR flight. However, VFR pilots are not denied use of controlled airspace. The other objection stated that more controllers would be needed for additional IFR traffic. However, the control zone is being established to accommodate the present traffic which is already being handled by Seattle Air Route Traffic Control Center, which will continue to control this area. This is the same amendment as that proposed in the notice. Section 71.171 of Part 71 was republished in the Federal Register on January 2, 1980, (45 FR 356).

The Rule

This amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) establishes a part-time control zone at Newport, Oreg. This airspace is to protect aircraft executing instrument approach and departure procedures established for Newport Municipal Airport. The action designates an area within a 5-mile radius of the Newport Municipal Airport (Lat. 44°34'48"N., Long. 124°03'25"W.) and within 4 miles each side of the Newport VORTAC 357° radial extending from the 5-mile radius to 9 miles northwest of the VORTAC. The effective time is from 0900 to 1700 local time.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 356) is amended, effective 0901 GMT, December 25, 1980, by adding a control zone at Newport, Oreg., to read as follows:

Newport, Oreg.

Within a 5-mile radius of the Newport Municipal Airport, (Lat. 44°34'48"N., Long. 124°03'25"W.); within 4 miles each side of the Newport VORTAC 357°radial extending from the 5-mile radius to 9 miles northwest of the VORTAC. This control zone is effective from 0900 to 1700 hours, local time daily.

(Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510; Executive Order 10854 (24 FR 9565); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on October 23, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-33819 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-ASW-35]

Alteration of Transition Area: West Woodward, Oklahoma; Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of the action being taken is to alter the transition area at West Woodward, Oklahoma. The intended effect of the proposed action is to provide controlled airspace for aircraft executing instrument procedures to the West Woodward Airport. The circumstances which created the need for the action are the realignment of the nondirectional radio beacon (NDB) approach to the West Woodward Airport and renaming the West Woodward transition area to Woodward, Oklahoma.

EFFECTIVE DATE: December 25, 1980.

FOR FURTHER INFORMATION CONTACT:

Kenneth L. Stephenson, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101; telephone: (817) 624-4911, extension 302.

History

On August 21, 1980, a notice of proposed rule making was published in the Federal Register (45 FR 55757) stating that the Federal Aviation Administration proposed to alter the West Woodward, Oklahoma, transition area. Interested persons were invited to participate in this rule making proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received without objections. Except for editorial changes this amendment is that proposed in the notice.

The Rule

This amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR 71) alters the West Woodward, Oklahoma, transition area. This action provides controlled airspace from 700 feet above the ground for the protection of aircraft executing instrument approach procedures to the West Woodward Airport.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 445) is amended, effective 0901 GMT, December 25, 1980, as follows.

In Subpart G, 71.181 (45 FR 445), the following transition area is altered:

Woodward, Oklahoma

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the West Woodward Airport (latitude 36°26'10"N.; longitude 99°31'35"W.); within 3 miles each side of the NDB facility (latitude 36°26'03"N.; longitude 99°31'25"W.) 008° bearing, extending from the 7-mile radius to 8.5 miles north of the NDB, and within 5 miles either side of the Gage VORTAC 072° radial, extending from the 7-mile radius southwest of Gage VORTAC; excluding the Gage, Oklahoma, control zone and transition area.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a); and Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Forth Worth, Tex., on October 16, 1980.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 80-33470 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-AWA-11]

Amendment to Victor Airways, Patuxent River, Md.; Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action facilitates simultaneous use of federal airways and adjacent restricted areas in the vicinity of Patuxent River, Md., by excluding those portions of the airways which overlap into the restricted airspace and will result in more efficient utilization of the affected airspace.

DATES: Effective date: December 25, 1980.

Comments must be received by December 25, 1980.

ADDRESSES: Send comments on the rule in triplicate to: Director, FAA Eastern Region, Attention: Chief, Air Traffic Division, Docket No. 80-AWA-11, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, N.Y. 11430.

The official docket may be examined at the following location: FAA Office of the Chief Counsel, Rules Docket (AGC-204), Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

George O. Hussey, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION:

Request For Comments

The purpose of this amendment is to make technically correct the description of federal airways by excluding those portions of V-1, V-16, V-20, V-33, V-157 and V-213 from Restricted Areas R-4005, R-4006, and R-4007A, Patuxent River, Md. The orginal design of the airways and restricted areas using the then existing technology for determining geographic locations provided for adjacent borders which did not overlap, however, more advanced technology now available reveals border overlaps of 1/10 to 3/10 miles. Historically, there is no record of incidents in the affected airspace that would indicate simultaneous operations along the airways and military activity within the restricted areas cannot be safely continued, therefore realignment of the airways and/or restricted areas in lieu of this action is not considered justified or necessary. Because this action is a mere technicality and does not impose additional burden on the public, I find that notice and public procedure are unnecessary, however, comments are invited on the rule. When the comment period ends, the FAA will use the comments received and any other available information to review the regulation.

The Rule

This amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) excludes Federal Airways (1) V-1 from Restricted Area R-4006; (2) V-16 from Restricted Areas R-4005 and R-4006; (3) V-20 and V-33 from Restricted Area R-4007A; and (4) V-157 and V-213 from Restricted Area R-4005 and R-4006. Section 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) was republished in the Federal Register on January 2, 1980 (45 FR 307).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.123 of Part 73 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 307) is amended, effective 0901 GMT, December 25, 1980, as follows:

In § 71.123:

1. Under V-1, the following is added: "The airspace within R-4006 is excluded."
2. Under V-16, the following is added: "The airspace within R-4005 and R-4006 is excluded."
3. Under V-20, the following is added: "The airspace within R-4007A is excluded."
4. Under V-33, the following is added: "The airspace within R-4007A is excluded."
5. Under V-157, the following is added: "The airspace within R-4007A is excluded."
6. Under V-213, the following is added: "The airspace within R-4005 and R-4006 is excluded."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.)

Note.—The FAA has determined that this document involves a regulation which is not

significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on October 22, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-33612 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-AGL-29]

Extension of VOR Federal Airway; Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of VOR Federal Airway V-58 by extending the airway 77 miles west to EARED Intersection, thence via Clarion, Pa., to GRACE, Pa., Intersection. This amendment provides a shorter route for aircraft arriving at the greater Pittsburgh, Pa., Metro area.

EFFECTIVE DATE: December 25, 1980.

FOR FURTHER INFORMATION CONTACT: Lewis Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION:

History

On August 14, 1980, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter VOR Federal Airway V-58 by extending the airway westward 77 miles to EARED Intersection, thence to GRACE Intersection, (45 FR 54075). This extension provides a direct route to the Greater Pittsburgh Airport terminal area. Also, the direct and shorter route saves a significant amount of fuel. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.123 of Part 71 was republished in the Federal Register on January 2, 1980, (45 FR 307).

The Rule

This amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends the description of V-58 by extending the airway 77 miles west to EARED Intersection, thence via Clarion, Pa., 228°M radial to GRACE, Pa., Intersection. This amendment improves traffic flow in the Pittsburgh, Pa., terminal area and saves a significant amount of fuel.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 307) is amended, effective 0901 GMT, December 25, 1980, as follows:

Under V-58, "From Philipsburg, Pa.;" is deleted and "From INT Franklin, Pa., 175° and Clarion, Pa., 222° radials, via INT Clarion 222° and Philipsburg, Pa., 272° radials; Philipsburg;" is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on October 22, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-33611 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 79-AEA-10]

Alteration of Airways and Jet Routes; Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points and Establishment of Jet Routes and Area High Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These actions realign six airways and five jet routes as a result of the requirement to relocate Front Royal VORTAC. The Front Royal VORTAC is renamed Shawnee. The relocation is caused by the inability of the FAA to renew the land lease.

EFFECTIVE DATE: December 25, 1980.

FOR FURTHER INFORMATION CONTACT: Charles R. Horne, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION:

History

On July 19, 1979, the FAA proposed to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to realign six airways and five jet routes and to change the name of Front Royal VORTAC to Shawnee (44 FR 42227). These actions are necessary because the FAA was unable to renew the land lease at the site of the Front Royal VORTAC. Interested persons were invited to participate in the rulemaking proceeding by submitting comments on the proposal to the FAA. The only comments received expressed no objections. Section 71.123, 71.203, 71.207 of Part 71 and § 75.100 of Part 75 were republished in the Federal Register on January 2, 1980 (45 FR 307, 645, 653, 732).

The Rule

These amendments to Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) realign V-3, V-4, V-39, V-92, V-143, V-174, Airways and J-6, J-30 and J-109 Jet Routes via the direct radials of Shawnee rather than Front Royal. It also realigns J-134 from Falmouth, Ky., via Henderson, W. Va; INT of the Henderson 083° and Shawnee, Va. 282° radials (to overlie Elkins, W. Va.), then to Shawnee; and to use the Shawnee 281° radial in the description of J-162 so that it will continue to overlie the GRAFF INT southeast of Bellaire, Ohio. Restricted Area R-6705 at Juan de Fuca, Wash., has been revoked. For this reason, there is no longer a requirement to exclude it from the description of V-4 Airway.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.123, § 71.203, and § 71.207 of Part 71 and § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as republished (45 FR 307, 645, 653, 732) and amended (45 FR 41912, 50724) are further amended, effective 0901 GMT, December 25, 1980, as follows:

Under § 71.123

In V-3 "Front Royal" is deleted and "Shawnee" is substituted therefor.

In V-4 "Front Royal" is deleted and "Shawnee" is substituted therefor.

Also all after "Armel, Va." is deleted.

In V-39 "Front Royal" is deleted and "Shawnee" is substituted therefor.

In V-92 "Front Royal" is deleted and "Shawnee" is substituted therefor.

In V-143 "Front Royal" is deleted and "Shawnee" is substituted therefor.

In V-174 "Front Royal" is deleted and "Shawnee" is substituted therefor.

Under § 71.203 "Front Royal, Va." is deleted and "Shawnee, Va." is added.

Under § 71.207 "Front Royal, Va." is deleted and "Shawnee, Va." is added.

Under § 75.100

In Jet Route No. 6 "Front Royal" is deleted and "Shawnee" is substituted therefor.

In Jet Route No. 30 "Front Royal" is deleted and "Shawnee" is substituted therefor.

In Jet Route No. 109 "Front Royal" is deleted and "Shawnee" is substituted therefor.

In Jet Route No. 134 all after "Falmouth, Ky.;" is deleted and "Henderson W. Va.; INT Henderson 083° and Shawnee, Va., 262° radials; to Shawnee." is substituted therefor.

In Jet Route No. 162 all after "Bellaire 142°" is deleted and "Shawnee, Va., 281° radials; to Shawnee." is substituted therefor.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C. on October 23, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-33820 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 80-ACE-20]

Establishment of Jet Routes and Area High Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes new Jet Route J-182 between Goodland, Kans., and Razorback, Ark., via Wichita, Kans. J-182 improves Air Traffic Control (ATC) efficiency by providing better traffic flow in the Wichita, Kans., area. There will be a fuel savings due to the shortened route.

EFFECTIVE DATE: December 25, 1980.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION: On August 25, 1980, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to establish new Jet Route J-182, from Goodland, Kans., via Wichita, Kans., to Razorback, Ark., (45 FR 56354). All comments received were favorable except for the U.S. Air Force which suggested a minor change in route alignment between Wichita and Razorback to bypass Air Traffic Control Assigned Airspace (ATCAA) used by the military. The new jet route improves departures/arrivals at Wichita, Kans., and permits additional flexibility for maneuvering traffic in the area. Also, a significant savings in fuel consumption would be realized due to the shortened route. This amendment is the same as that proposed in the notice except for a minor change in alignment. Section 75.100 of Part 75 was republished in the Federal Register on January 2, 1980 (45 FR 732).

The Rule

This amendment to § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) establishes new Jet Route J-182 between Goodland, Kans., and Razorback, Ark., via Wichita, Kans. This action improves traffic flow in the Wichita terminal area and saves a significant amount of fuel due to the shortened route.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as republished (45 FR 732) is amended, effective 0901 GMT, December 25, 1980, as follows:

"Jet Route No. 182 from Goodland, Kans., via Wichita, Kans., INT Wichita 115° and Razorback 285° radials; Razorback" is added.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69.)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Washington, D.C., on October 23, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-33614 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33-6250]

Fixed Dollar Limitation on Amount of Securities Sold Pursuant to Exemption

AGENCY: Securities and Exchange Commission.

ACTION: Technical rule amendments.

SUMMARY: The Commission is amending Rule 242 promulgated under Section 3(b) of the Securities Act of 1933 to specify a fixed dollar limitation on the amount of securities that can be sold thereunder. Rule 242 provides an exemption from registration for sales of Securities to an unlimited number of "accredited persons" as defined in the Rule, and to 35 additional purchasers. The amendment maintains the present limit of $2,000,000 less the aggregate gross proceeds from all securities sold pursuant to any Section 3(b) exemption, on the aggregate offering price of an issue of securities that can be sold in reliance on the Rule, and is necessitated by recent legislative changes made in that Section.

EFFECTIVE DATE: October 23, 1980.

FOR FURTHER INFORMATION CONTACT: Paula L. Chester, (202) 272-2644, Office of Small Business Policy, Division of

Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: In Securities Act Release No. 6180 (January 17, 1980) (45 FR 6362) the Commission announced that it was adopting Rule 242, a small issue exemptive rule under Section 3(b) of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. 77c(b), which allows certain corporate issuers to offer and sell up to $2,000,000 of their securities in a six-month period to an unlimited number of "accredited investors" as defined in the Rule, and to 35 other purchasers. As adopted, the Rule limits the amount of each issue of securities sold pursuant to the Rule to the amount specified in Section 3(b), which at the time of the adoption was $2,000,000.

The Commission notes, however, that the recently enacted Small Business Investment Incentive Act of 1980, among other things, increases from $2,000,000 to $5,000,000 the ceiling on the Commission's authority under Section 3(b) of the Securities Act.[1] Consequently, absent appropriate amendments to the Rule, an issuer could sell up to $5,000,000 in a six-month period. However, the Commission, in adopting Rule 242, intended that offers and sales in reliance on the Rule be limited to $2,000,000 in any six-month period, the maximum amount allowed under Section 3(b) at that time.[2] In addition, the legislative history of the new statute clearly reflects the Commission's position that it intended to carefully evaluate the ceilings on all of the exemptions promulgated pursuant to Section 3(b), before increasing any limits to the new statutory amount. Thus, the Commission is today amending paragraph (c) of the Rule to specify the dollar amount originally intended in order to maintain the *status qúo* pending further review of its experience under Rule 242.

The Commission intends to reconsider the limitation on the amount of securities that can be sold under Rule 242 and other ceiling limitations set forth in the exemptive rules promulgated under Section 3(b) in the near future, particularly in light of recent Congressional action in raising the Section 3(b) ceiling. The action today, however, is intended to maintain the Rule 242 limitations as originally intended until such time as the Commission has had reasonable opportunity to evaluate the effectiveness of the Rule and prescribe appropriate limits under the new statutory ceiling.

Procedural Matters

For the reasons stated above, the Commission believes that it is appropriate to adopt these technical amendments to Rule 242 effective immediately to retain the fixed dollar limitations originally intended to apply under that Rule. Accordingly, the Commission, pursuant to Section 553(b) of the Administrative Procedures Act ("APA"), 5 U.S.C. 553(d), finds good cause to adopt the foregoing technical amendments to Rule 242 effective immediately to maintain previously established dollar limits under that Rule.

Text of Amendment

Part 230 of Chapter II of Title 17 of the Code of Federal Regulations is amended by amending paragraph (c) of § 230.242 to read as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

§ 230.242 Exemption of limited offers and sales by qualified issuers.

* * * * *

(c) *Limitation on aggregate offering price of each issue.* The aggregate offering price of an issue of securities of the issuer by a qualified issuer shall not exceed $2,000,000, less the aggregate gross proceeds from all securities sold pursuant to any section 3(b) exemption (other than securities of the issuer sold pursuant to an exemption from registration provided by Regulation A pursuant to any employee plan as defined in paragraph (d)(1) of Rule 16b–3 under the Securities Exchange Act of 1934 which meets the conditions of paragraphs (a) through (c) of that rule) six months prior to the commencement and during the offering of the issue of securities pursuant to this rule.

* * * * *

(Secs. 3(b) and 19(a) of the Securities Act of 1933, Secs. 3(b), 19(a), 48 Stat. 75, 85; sec. 209, 48 Stat. 908; 59 Stat. 167; 84 Stat. 1480; sec. 308(a) (1), (2), (3), 90 Stat. 58, 57; sec. 18, 92 Stat. 275; sec. 2, 92 Stat. 962; 15 U.S.C. 77c(b), 77s(a))

By the Commission.

George A. Fitzsimmons,
Secretary.

October 23, 1980.

[FR Doc. 80-33848 Filed 10-29-80; 8:45 am]

BILLING CODE 8010-01-M

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17 CFR Part 260

[Release Nos. 33–6249; 39–594; File No. S7–859]

Adoption of Interim Rules Under the Trust Indenture Act of 1939

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of interim rules.

SUMMARY: The Commission adopting, on an interim basis, rules under Sections 304(a)(8) and 304(a)(9) of the Trust Indenture Act of 1939 to establish ceiling limitations on the amount of debt securities that can be partially or totally exempt from that Act at $2,000,000 and $5,000,000 respectively. The rules adopted today are in response to recent legislative amendments, the substance of which was submitted to Congress by the Commission. The Commission is also soliciting public comment on whether, and in what form, the interim rules should be adopted as final rules.

EFFECTIVE DATE: October 23, 1980. Comments on the interim rules must be received on or before November 30, 1980.

ADDRESSES: All communications on the matters discussed in the release should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol St., Washington, D.C. 20549. Comments should refer to File No. S7–859 and will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Paula Chester (202/272–2644), Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol St., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced that it is adopting interim rules effective until December 31, 1981, under Sections 304(a)(8) and 304(a)(9) of the Trust Indenture Act of 1939 (the "Trust Indenture Act") [15 U.S.C. 77ddd et seq.] to establish the ceiling limitations at $2,000,000 and $5,000,000 respectively. Sections 304(a)(8) and 304(a)(9) are the small offering exemptions under the Trust Indenture Act. Presently, offerings of less than $250,000 are completely exempt from the Trust Indenture Act pursuant to Section 304(a)(8) of that Act. In general, offerings greater than $250,000 but less than $1,000,000 are required to utilize an identure; however, an offering of this size is exempt from the qualification provisions of the Trust Identure Act pursuant to Section 304(a)(9) of that Act. The rules adopted today are in response to recent legislative amendments the substance of which was submitted to Congress by the Commission.

Section 302 of the Small Business Investment Incentive Act of 1980 (the "Act") (October 21, 1980) amends Sections 304(a)(8) and 304(a)(9) of the Trust Indenture Act. These amendments affect three distinct areas. First, the $250,000 exemption ceiling included in Section 304(a)(8) has been replaced by a reference to the amount that can be exempted from registration under Section 3(b) of the Securities Act of 1933 [1] [the "Securities Act") [15 U.S.C. 77a et seq.]. Second, the Section 304(a)(9) ceiling of $1,000,000 has been increased to $10,000,000. Third, the Commission is given informal rulemaking authority to establish, from time to time, appropriate amounts beneath the respective ceiling amounts that can be partially or totally exempt from the Trust Indenture Act pursuant to Sections 304(a)(8) and 304(a)(9).

In its legislative proposal to Congress recommending the amendments,[2] the Commission indicated that compliance with the Trust Indenture Act has become a significant burden to small issuers. The Commission noted that, although the burdens under the Trust Indenture Act are generally not as great in those instances where a qualified indenture is not required, the cost of a non-qualified indenture is still significant due to the fixed costs of preparing such a complex document. The Commission further noted that the definitions, exemptions, requirements and procedures for qualification of indentures and trustees under the Trust Indenture Act are closely integrated with the provisions of the Securities Act. However, the alignment of the two Acts has been substantially disrupted as a result of certain amendments to the Securities Act and revisions to the rules and regulations promulgated thereunder, because either a corresponding amendment to the Trust Indenture Act was not considered or the Commission had no rulemaking authority to resolve the problem. Finally, the Commission noted that the Trust Indenture Act small offering exemptions have remained unchanged since 1939 and, thus, do not represent present day purchasing power.

In adopting the proposals submitted by the Commission, Congress has accomplished three important objectives. First, the increase in the Trust Indenture Act small offering exemptions alleviates the lack of coordination between the two Acts by, in effect, updating the Trust Indenture Act. Second, in order to add a degree of flexibility to the administration of the Trust Indenture Act, especially with a view to limiting the regulatory burden on small businesses, rulemaking authority is granted to the Commission to establish, from time to time, appropriate amounts of securities that may be exempted from the Trust Indenture Act in a manner consistent with the protection of investors. Third, by increasing the dollar amounts of debt securities that may be totally or partially exempt from the Trust Indenture Act the amendments reduce the costs normally associated with debt offerings which have traditionally represented an additional impediment to the capital raising process.[3]

In connection with its proposal, the Commission indicated to Congress that, if the amendments were adopted, it believed that appropriate initial ceiling amounts for Sections 304(a)(8) and 304(a)(9) would be $2,000,000 and $5,000,000 respectively. In this regard, the Commission stated that while one of the primary purposes of recommending the amendments was to allow the Section 304(a)(8) exemption to move in tandem with the Securities Act Section 3(b) exemption to prevent future discrepancies between the two Acts, the rulemaking authority granted to the Commission is also designed to add a degree of flexibility to the administration of the Trust Indenture Act by providing for the possibility of a gradual increase in the ceiling.[4]

Accordingly, the Commission is adopting interim rules, effective immediately, pursuant to Sections 304(a)(8) and 304(a)(9). These rules will establish the ceilings under Sections 304(a)(8) and 304(a)(9) at $2,000,000 and $5,000,000 respectively.

The Commission is also soliciting comment on the ceilings established herein before it adopts any final rules. The Commission also intends to evaluate the ceiling limitations set forth in the exemptive rules promulgated under Section 3(b) of the Securities Act, particularly in light of the recent legislative action in raising the Section 3(b) ceiling, [5] and believes that the ceilings established under Sections 304(a)(8) and 304(a)(9) of the Trust Indenture Act should be similarly evaluated. Accordingly, the Commission has adopted Rules 4a–1 and 4a–2 as interim rules to expire on December 31, 1981, absent further action by the Commission. The Commission invites comment on the $2,000,000 and $5,000,000 ceilings under the Trust Indenture Act. Commentators are asked to focus on the prescribed limits established herein as they relate to the exemptive rules promulgated under Section 3(b) of the Securities Act and Form S–18, the simplified registration and reporting form for first time issuers.[6]

Procedural Matters

For the reasons stated above, the Commission believes that it is appropriate to adopt interim Rules 4a–1 and 4a–2, effective until December 31, 1981, in view of the enactment of the Small Business Investment Incentive Act of 1980. Accordingly, the Commission, pursuant to Section 553(b) of the Administrative Procedure Act ("APA"), 5 U.S.C. 553(b), for good cause finds that prior notice and comment are not required, and that to provide for prior notice and comment is impracticable, unnecessary, and contrary to the public interest. In addition, the Commission, pursuant to Section 553(d) of the APA, 5 U.S.C. 553(d), finds good cause to adopt the foregoing interim rules, effective immediately, in view of the recent enactment of the Small Business Investment Incentive Act, and the necessity of providing the Commission with an opportunity to coordinate the levels of exemptions available under the Trust Indenture Act with those available under the Securities Act.

Text of Rules

Part 260 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding §§ 260.4a–1 and 260.4a–2 to read as follows:

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[1] Small Business Incentive Investment Act, section 301 (October 21, 1980).

[2] In the release adopting the Rule, the Commission noted that the purpose of a certain provision in the proposed version of the Rule was to ensure that the combined use of Rule 242 and other Section 3(b) exemptions would not exceed $2,000,000 in any six-month period. The Commission further noted that, "consistent with (that) intent, a revision in the final Rule requires that the issuer must also subtract from the aggregate dollar price ceiling all Section 3(b) sales of securities of the issuer made during the issue, unless effected pursuant to an employee plan under the Regulation A exemption." *See* Securities Act Release No. 6180 (January 17, 1980) (45 FR 6362).

[1] As amended by Section 302 of the Act, the ceiling amount of Section 3(b) of the Securities Act is increased to $5,000,000.

[2] Hearings on S. 1533, S. 1940, and S. 2699 Before the Subcommittee on Securities of the Senate Committee on Banking, Housing, and Urban Affairs; 96th Cong., 2d Sess., 521 (1980).

[3] S. Rep. No. 958, 96th Cong., 2d Sess., 13 (1980).

[4] As the Senate Committee report indicates, "By allowing the Commission to set amounts within the prescribed ceiling, an aspect of flexibility that will be added to the Trust Indenture Act, Congress can be assured that its intent will be consistent with its approach to exempting smaller offerings under Section 3(b) of the Securities Act." *Id.* at 13.

[5] Small Business Investment Incentive Act of 1980, § 301 (October 21, 1980).

[6] 17 CFR 239.28.

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

§ 260.4a-1 Exempted securities under section 304(a)(8).

The provisions of the Trust Indenture Act of 1939 shall not apply to any security which has been or is to be issued otherwise than under an indenture, but this exemption shall not be applied within a period of twelve consecutive months to more than $2,000,000 aggregate principal amount of any securities of the same issuer.

§ 260.4a-2 Exempted securities under section 304(a)(9).

The provisions of the Trust Indenture Act of 1939 shall not apply to any security which has been or is to be issued under an indenture which limits the aggregate principal amount of securities at any time outstanding thereunder to $5,000,000 or less, but this exemption shall not be applied within a period of thirty-six consecutive months to more than $5,000,000 aggregate principal amount of securities of the same issuer.

(Sections 304(a)(8) and 304(a)(9) of the Trust Indenture Act of 1939, [Sec. 302, Pub. L. 96-477; Secs. 304(a)(8), 304(a)(9), 53 Stat. 1153; 15 U.S.C. 77ddd(a)(8), 77ddd(a)(9)])

By the Commission.

George A. Fitzsimmons,

Secretary.

October 23, 1980.

[FR Doc. 80-33847 Filed 10-29-80; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76 (Texas-1); Order No. 105]

High-Cost Gas Produced From Tight Formations

October 24, 1980.

AGENCY: The Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions that present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high cost gas subject to an incentive price (18 CFR 271.703). The rule establishes procedures for jurisdictional agencies to submit to the Commission recommendations for designating areas as tight formations. This final order adopts the recommendation of the Texas Railroad Commission that the Cotton Valley Sandstone, the Bossier Shale, and the Cotton Valley Lime Formations be designated as tight formations.

EFFECTIVE DATE: October 24, 1980.

FOR FURTHER INFORMATION CONTACT:

Leslie Lawner, Federal Energy Regulatory Commission, Room 4308B, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8299, or

William Bushey, Federal Energy Regulatory Commission, Room 6106, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8590.

I. Background

On July 11, 1980, the Texas Railroad Commission (Texas) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations, that the Cotton Valley Sandstone Formation, the Bossier Shale Formation, and the Cotton Valley Lime Formation (known collectively as the Cotton Valley Group) be designated as tight formations in the Commission's regulations. On August 15, 1980, a Notice of Proposed Rulemaking was issued by the Director of the Office of Pipeline and Producer Regulation (OPPR) in Docket RM79-76 (Texas-1) (45 FR 56072, August 22, 1980), to determine if Texas' recommendation that the Cotton Valley Group be designated as tight formations should be adopted. The Director of OPPR issued the notice pursuant to the authority delegated to him by Order No. 97, Docket No. RM80-68, issued on August 1, 1980 (45 FR 53456, August 12, 1980).

Interested persons were given until September 29, 1980, to submit written comments and information concerning Texas' recommendation. No party requested a hearing in this matter, and no hearing was held.

II. Discussion

The Commission, on February 20, 1980, issued an Interim Rule in Docket No. RM79-76 establishing a procedure for designating tight formations and for qualifying gas wells completed in those formations for section 107 high cost gas incentive prices. The recommendation filed by Texas was submitted under the Interim Rule. The procedures and requirements delineated in the Interim Rule were not significantly changed in the Final Rule issued by the Commission on August 15, 1980 (Order No. 99). In this rule the Commission delegated the initial responsibility for identifying potentially qualifying tight formations to each jurisdictional agency. The rule requires jurisdictional agencies to establish procedures and conduct their own investigations to identify tight formations within their own jurisdictions that meet the guidelines established by the Commission. The jurisdictional agencies will then submit written recommendations to the Commission that particular formations or portions thereof be designated as tight formations.

On May 20, 1980, Texas held a public hearing in Austin for the purpose of receiving nominations and supporting data regarding formations that might be considered tight formations. At that time ten formations were suggested by participants as meeting the requirements for tight formations. After study of the data submitted at the hearing and collection of additional data, on July 15, 1980, Texas recommended to the Commission that the Cotton Valley Sandstone, the Bossier Shale and the Cotton Valley Lime Formations, comprising the Cotton Valley Group, be designated as tight formations.

A. Summary of the Texas Recommendation

The formations in the Cotton Valley Group are located in the northeastern part of the state of Texas, underlying 48 counties in Railroad Commission Districts 1, 3, 5 and 6.

Northern limits of the recommended formations lie immediately south of the Texas-Oklahoma border through Fannin, Lamar, and Red River Counties and the eastern limit extends to the borders of Arkansas and Louisiana. The southern boundary is determined by the Angelina-Caldwell flexture from Sabin through San Augustine, Angelina, and Trinity Counties. The western boundary is determined by the Mexia-Talco fault zone through Limestone, Navarro and Kaufman Counties.

Within the Cotton Valley Group, the Cotton Valley Sandstone lies above the Bossier Shale with the Cotton Valley Lime immediately below the Bossier Shale. The average depth of the Cotton Valley Sandstone is approximately 7,000' to the north, 8,000' to the east, between 10,000' and 11,000' to the south, and 5,000' to the west. The Cotton Valley Sandstone reaches a maximum thickness of 1,600'. The top of the Bossier Shale is located at depths of approximately 7,700' to the north, 10,720' to the east, 12,600' to the south and 5,340' to the west. The Bossier Shale ranges from 110' to 580' in thickness and contains laminated sand bodies up to 90' thick. The Cotton Valley Lime can be found at depths of approximately 8,000' to the north, 11,400' to the east, 13,200' to the south, and 5,500' to the west.

Texas' geologic description of the formation in question includes discussions on depositional history, structure, stratigraphy and detailed lithologies. Included in the submission were core samples of the Cotton Valley Sand and the Cotton Valley Lime. Texas enclosed a list of 1,896 wells thought to be deep enough to have penetrated the Cotton Valley Group. These wells are located on county base maps. Additionally, Texas has submitted a list of 900 wells, located in Districts 5 and 6, which have been completed as gas producers in the Cotton Valley Group and indicates that at least 36 of these wells were completed after July 16, 1979, and would thus be eligible for the tight formation gas incentive prices.

Texas briefly describes those federal and state regulations which serve to assure that the development of these formations will not adversely affect the quality of fresh water aquifers. Texas also points out that most Cotton Valley Group wells are completed at a depth of 8,000 feet or greater while the deepest fresh water aquifer in Districts 5 and 6 is approximately 500 feet. This well depth difference of about 7,500 feet helps to protect the integrity of the fresh water aquifers.

B. Comments

Comments on the proposed rule were received from ten parties. All parties expressed support for the recommendation. Exxon also supported the recommendation and requested additional time in which to file additional data on 43 wells which have been drilled in the Cotton Valley Lime. An extension was granted until October 8, 1980.

C. Guidelines for Designotion

In § 271.703(c)(2)(i) of the regulations, the Commission has established guidelines which a formation must meet to be designated as a tight formation. These are:

(1) The average *in situ* gas permeability throughout the pay section is expected to be 0.1 millidarcy or less;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production in the formation, without stimulation, is not expected to exceed production rates delineated in the table in § 271.703(c)(2)(i)(B) of the regulations;

(3) No well drilled into the recommended formation is expected to produce, without stimulation, more than five barrels of crude oil per day.

(4) Any formation or portion thereof which has been authorized to be developed by infill drilling prior to the date of recommendation must be excluded from the recommendation, if the jurisdictional agency has information which in its judgment indicates that such formation or portion thereof can be developed absent the incentive price for tight formations.

A summary of the data submitted by Texas confirming that wells completed in the Cotton Valley Group are expected to meet the guidelines is given below. Average permeabilities, average flow rates for oil and gas before stimulation and average depths for the three formations, are given below:

Formation	Number of data wells	Average permeability	Average depth	Average gas rate	Average oil rate
Cotton Valley Sandstone	126	0.042 md.	10,187'	289Mcf/d	O BPD
Bossier Shale	2	.0368 md.	12,291'	586Mcf/d	O BPD
Cotton Valley Lime	73	.0321 md.	12,406'	495Mcf/d	O BPD

The majority of permeability and flow rate data is derived from Harrison, Panola, and Rusk Counties for the Cotton Valley Sandstone. Data for the Bossier Shale and Cotton Valley Lime Formations comes primarily from Freestone and Limestone counties. However, data from areas where information is limited appears to be closely parallel to data determined in counties where the information is more plentiful.

1. *Permeability.* Data provided by Texas describes four methods of determining *in situ* permeability. These are: (1) Pressure build up (PBU) analysis; (2) Side-wall core (SWC) analysis, under atmospheric conditions and at reservoir conditions; (3) Drawdown test data and radial flow equations; and (4) Pressure build up models.

Using PBU analysis, Texas determined that the average permeability in the Cotton Valley Sandstone was 0.0231 md. In side-wall core tests, Texas determined that the core permeability, with overburden pressure applied, was 0.0053 for the Cotton Valley Sandstone. Calculations using the radial flow equations indicated average *in situ* permeabilities of 0.042 md. for the Cotton Valley Sandstone, 0.0368 md. for the Bossier Shale and 0.0514 md. for the Cotton Valley Lime. An average *in situ* permeability of 0.0125 md. for the Cotton Valley Sandstone was calculated using the mathematical model. The above results and the supporting evidence demonstrate that, under several methods used for determining permeability, the vast majority of wells drilled into the Cotton Valley Group have *in situ* permeabilities below 0.1 md.

2. *Stabilized production rates.* Stabilized production rates were calculated from absolute open flow calculations using a ratio of flow equations. Average pre-stimulation flow rates for each formation are as follows: Cotton Valley Sandstone—289/Mdf/D at an average depth of 10,187'; Bossier Shale—586 Mcf/D at an average depth of 12,291; and Cotton Valley Lime—495 Mcf/D at an average depth of 12,406'. Tests results show that 96 percent of all Cotton Valley Sandstone wells for which prestimulation data was available have rated below the maximum permissible rates. Similarly, 95 per cent of the Cotton Valley Lime wells were below the maximum permissible rates. None of the wells completed in the Bossier Shale exceeded the established guidelines.

3. *Oil Production.* Only 30 of the 930 wells completed in the Cotton Valley Group produce oil. According to testimony supplied by Texas, it is apparently accepted by the industry that wells drilled into the Cotton Valley Group will be gas producers with little or no oil. The majority of liquids produced from Cotton Valley Group wells have been shown to be condensate that is in the gaseous phase within the reservoir. Thus, there is little chance that a well completed on the Cotton Valley Group will produce in excess of 5 barrels of oil per day prior to stimulation.

4. *Infill Drilling.* In accordance with § 271.703(c)(2)(i)(D), Texas reports in its recommendation that the Dirgin Field in Rusk County had been drilled consistent with field rules and that a subsequent amendment to the field rules reduced the unit size in this field. Texas states that the request for the reduction in unit size was received subsequent to

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publication of the Notice of Proposed Rulemaking for the tight formation incentive price. Texas also states that it has no information that infill drilling would occur in this portion of the recommended formations absent the expectation of the tight formation incentive price.

D. Conclusion

The Commission has reviewed Texas' recommendation and the comments received in support thereof, and finds that the recommendation complies with the requirements of § 271.703(c)(3) of the regulations concerning the contents of the recommendation. The Commission concurs with Texas' assertion, based on the consideration of the record which Texas submitted, that the Cotton Valley Group meets all the requirements for designation as a tight formation set forth in § 271.703(c)(2)(i).

III. Effective Date

The Commission hereby makes this amendment to its regulations effective upon the date of issuance of this order. The Commission has found that the public interest dictates that new natural gas supplies be developed on an expedited basis and, therefore, incentive prices for this gas should be made available as soon as possible. Therefore, good cause exists to waive the thirty day notice period preceding the effective date of the rule.

(Department of Energy Organization Act, (42 U.S.C. 7101 *et seq.*); Natural Gas Policy Act of 1978, (15 U.S.C. 3101–3432))

For the reasons stated herein, Part 271 of Subchapter I, Title 18, Code of Federal Regulations, is amended as set forth below, effective immediately.

By the Commission

Kenneth F. Plumb,

Secretary.

I. Section 271.703(d) is revised to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* The following formations are designated as tight formations. A more detailed description of the geographical extent and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79–76, subindexed as indicated, and is also located in the official files of the jurisdictional agency that submitted the recommendation.

(1) *The Cotton Valley Group in Texas.* The Cotton Valley Group consists of the Cotton Valley Sandstone, the Bossier Shale and the Cotton Valley Lime Formations. RM79–76 (Texas–1).

(i) *Delineation of formations.* The northern boundary of the Cotton Valley Group is the Texas-Oklahoma border extending through Fannin, Lamar, and Red River Counties; the eastern boundary is formed by the Texas-Arkansas and Texas-Louisiana borders; the southern boundary is along the Angelina-Caldwell flexture running through Sabine, San Augustine, Angelina and Trinity Counties; the western boundary is set by the Mexia-Talco fault zone through Limestone, Navarro, and Kaufman Counties.

(ii) *Depth.* Cotton Valley Sandstone is encountered at an average depth of approximately 7,000' to the north, 8,000' to the east, between 10,000' and 11,000' to the south, and 5,000' to the west; Bossier Shale is encountered at 7,700' to the north, 10,720' to the east, 12,600' to the south, and 5,340' to the west; Cotton Valley Lime is encountered at 8,000' to the north, 11,400' to the east, 13,200' to the south, and 5,500' to the west.

(2) [Reserved]

[FR Doc. 80–33834 Filed 10–29–80; 8:45 am]
BILLING CODE 6450–85–M

18 CFR Part 282

[Docket No. RM80–10]

Natural Gas; Incremental Pricing; Order Denying Rehearing on Revocation of Amendments in Order No. 80

Issued October 2, 1980.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order denying rehearing.

SUMMARY: On August 1, 1980, the Federal Energy Regulatory Commission issued "Order Denying Rehearing And Revoking Amendments Made By Order No. 80", Docket No RM80–10 (45 FR 54741 (August 18, 1980)). Order No. 80 would have expanded the scope of incremental pricing of natural gas from its present coverage of industrial boiler fuel facilities to include all industrial users of natural gas except those specifically exempted. On September 2, 1980, the Federal Energy Regulatory Commission received a petition for rehearing of that order. The Federal Energy Regulatory Commission hereby denies rehearing of its August 1, 1980 order revoking amendments made by Order No. 80.

EFFECTIVE DATE: October 2, 1980.

FOR FURTHER INFORMATION CONTACT:

Thomas P. Gross, Office of the General Counsel, 825 North Capitol Street, N.E., Washington, D.C. 20426 (202) 357–8077.

Stephen R. Melton, Office of the General Counsel, 825 North Capitol Street, N.E., Washington, D.C. 20426 (202) 357–8427.

On August 1, 1980, the Commission denied a petition for rehearing of Order No. 80 which was filed by the Consumer Energy Council of America, *et al.* ("CECA"). In that order the Commission refused to assume that the legislative review mechanism of section 202(c) of the NGPA was invalid as CECA has urged and, thus, denied rehearing. The order necessarily recognized that the regulations promulgated by Order No. 80 were invalid in light of the specific terms of section 202(c).

In addition, the order went further and addressed CECA's assumption that the specific regulations promulgated in Order No. 80 should, or would, be effective in the event that the legislative review mechanism should prove constitutionally invalid.

The order indicated that the Commission had not independently evaluated a number of major social and economic issues, believing that this evaluation was the responsibility of the Congress. It concluded that the Order No. 80 regulations should not become effective without the benefit of such a reasoned decisionmaking. It was for this reason that the Order No. 80 regulations were revoked.[1]

CECA now, by a petition for rehearing filed September 2, 1980, urges that the revocation of the regulations cannot be accomplished in this manner. While CECA concedes that the Commission has discretion over the form that the Phase II rules should take (Petition at 2), it claims that the decision has been exercised and is final because section 202 requires regulation by a date certain.

As its second argument, CECA claims that the attempted revocation is invalid for failure to comply with the notice and comment procedure of 5 U.S.C. 553.

Discussion

We do not concede that section 202 required the implementation of Phase II regulations is the absence of the validity of section 202(c). We do agree, however, that at least "the Commission has * * * discretion * * * as to the form which such rules should take." (Petition at 2). We have done no more than exercise that discretion by indicating that the Order No. 80 regulations should not become effective without a Commission evaluation of the major social and economic issues raised therein.

[1] As we indicated in the August 1, 1980 order, this revocation is only necessary if section 202(c) is invalid.

As it stands now, Congress and not the Commission, has made an evaluation of the social and economic goals of incremental pricing under section 202(c). If it is ultimately determined that the Congressional review is invalid, the Commission must be the one to evaluate those goals, and the Order No. 80 regulations should not have any operative effect until the Commission makes its own independent evaluation. In the absence of such an evaluation, the Order No. 80 regulations cannot become effective. Simply stated, if Congressional review is impermissible, then reasoned decision-making on our part requires revocation of the Phase II regulations.

CECA's argument that we have no authority to revoke the Order No. 80 regulations overlooks our amendatory authority under sections 201 and 202. In section 201(a), Congress specifically authorized the Commission to "make effective (and * * * from time to time amend) a rule * * *." In section 202(a)(2), Congress indicated that the power extends to "facilities to which the [section 202] amendment applies." The only constraint on this amendatory authority is section 202(c), which CECA argues is invalid. However, CECA cannot be allowed to have it both ways. It should not be heard to argue that the legislative veto in section 202(a) is invalid, yet at the same time, argue that section 202(c) somehow still restrains the Commission's authority to amend the Phase II rule. If section 202(c) is invalid, there is no statutory impediment to the Commission's exercising its amendatory authority. The August 1, 1980, order denying rehearing and revoking Order No. 80 exercised this authority.

Nor do we believe that the notice and comment procedures of 5 U.S.C. § 553 require another result. Because the Commission provided full notice and opportunity to comment prior to issuing Order No. 80, further comment is unnecessary. Notice of Proposed Rulemaking, 44 FR 67170 (November 23, 1979). However, to the extent that 5 U.S.C. 553 would otherwise require it, we find here that for good cause, further notice and public procedure are "unnecessary" in accordance with 5 U.S.C. 553(b).

Further, regardless of the application of those procedures to regulations which become operative, they cannot be required where regulations are revoked because they have not been fully considered.

The Commission orders: The petition for rehearing is denied.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80–33851 Filed 10–29–80; 8:45 am]
BILLING CODE 6450–85–M

18 CFR Part 282

[Docket No. RM79–47; Order No. 103]

State-Wide Exemptions From Incremental Pricing; Final Rule

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations under Title II of the Natural Gas Policy Act of 1978 (18 CFR Part 282) by adding new §§ 282.104 and 282.208 relating to State or local incremental pricing plans and alternative plans and by revising § 282.504. With respect to State or local incremental pricing plans, new § 282.104 makes clear that nothing in the Commission's incremental pricing regulations precludes a State or local government, or agency thereof, from implementing a State or local incremental pricing plan. Revisions to § 282.504 (e)(2) and (3) relieve some natural gas suppliers from the reporting requirements set forth in those sections. With respect to State or local alternative plans, new § 202.208 establishes procedures for approval of such plans.

EFFECTIVE DATE: October 21, 1980.

FOR FURTHER INFORMATION CONTACT:

Barbara K. Christin, Office of the General Counsel, (202) 357–8428.

SUPPLEMENTARY INFORMATION: Final rule.

Issued: October 21, 1980.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations under Title II of the Natural Gas Policy Act of 1978 (18 CFR Part 282) by adding new §§ 282.104 and 282.208 relating to State or local incremental pricing plans and alternative plans and by revising § 282.504. With respect to State or local incremental pricing plans, new § 282.104 makes clear that nothing in the Commission's incremental pricing regulations precludes a State or local government, or agency thereof, from implementing a State or local incremental pricing plan. Revisions to §§282.504(e)(2) and (3) relieve natural gas suppliers subject to a State or local incremental pricing plans from the reporting requirements set forth in those sections. With respect to State or local alternative plans, new § 282.208 establishes procedures for approval of such plans.

Under section 201 of the Natural Gas Policy Act of 1978 (NGPA) (15 U.S.C. 3301–3432), the Commission is required, within certain guidelines, to institute and administer a federal incremental pricing program. The program is designed to pass through, by surcharge, to certain industrial boiler fuel users of natural gas, a portion of the increases in the wellhead prices of natural gas allowed under title I of the NGPA. On September 28, 1979, the Commission issued final regulations implementing section 201 (Dockets Nos. RM79–14 and RM79–21, 44 FR 57726, October 5, 1979).

In the course of developing rules implementing Title II of the NGPA, the Commission identified two types of State ratemaking action that appeared to have some effect on the Commission's incremental pricing program: State incremental pricing plans and State alternative ratemaking plans. On July 3, 1979, the Commission issued a notice in this docket (44 FR 40898, July 13, 1979) requesting comments on whether a rulemaking proceeding should be initiated with respect to the relationship between the Commission's incremental pricing program and these two types of State ratemaking action. In response to the comments, the Commission issued a Notice of Proposed Rulemaking (Notice) in this docket on December 21, 1979 (45 FR 1081, January 4, 1980). On February 5, 1980, the Commission conducted an informal hearing for the presentation of oral comments on the Notice. Written comments in response to the Notice were filed by, among others, State public utility commissions, interstate natural gas companies, local distribution companies, and exempt and non-exempt users of natural gas.

II. Discussion of Issues and Comments

A. *State Incremental Pricing Plans.* Title II of the NGPA states that the surcharge imposed on an industrial facility under the incremental pricing program may not raise the facility's cost of non-exempt volumes of natural gas above the alternative fuel price ceiling set by the Commission. The Commission's regulations refer to this limit as the maximum surcharge absorption capability (MSAC) of the user. The MSAC is generally the difference between the user's alternative fuel price ceiling and the lower, State-established retail rate for natural gas paid by the user.

A State incremental pricing plan is a plan under which a State establishes its retail rate structure so that the retail

price of natural gas to non-exempt users is maintained at, or above, the applicable alternative fuel price ceiling established by the Commission. The effect of such a rate plan is to eliminate any surchage that would otherwise be imposed on those users under the Commission's incremental pricing program. The MSAC within a State would thus become zero.

Validity of State incremental pricing plans. In the Notice, the Commission considered whether the elimination of the federal surcharge resulting from implementation of a State incremental pricing plan is consistent with Title II of the NGPA and the Commission's incremental pricing program. The Commission expressed the preliminary view that State incremental pricing plans are fundamentally consistent with both the NGPA and the Commission's program, and that, as a matter of law, the Commission could not prevent States from raising retail rates for non-exempt users to, or above, the alternative fuel price ceilings. Thus, States would not have to seek either Commission approval or Congressional approval under section 206(d) to implement their own incremental pricing plans.

Although most of the commenters addressing this issue agreed with the Commission's preliminary view, various arguments were raised by the remaining commenters contending that State incremental pricing plans are invalid. Some commenters argued that the elimination of the federal surcharge violates section 205 of the NGPA. Section 205(d) prohibits a State from preventing the passthrough of any portion of the surcharge to a non-exempt user. Section 205(b) prohibits a State from changing the rates charged by a local distribution company to a non-exempt industrial facility, if the change has the effect of creating an offset for any portion of the federal incremental pricing surcharge paid by the local distribution company.

The Commission does not believe that State incremental pricing plans violate section 205. Although section 205 precludes State ratemaking bodies from reducing the impact, or preventing the imposition, of a surcharge on incrementally-priced gas users, that section does not speak to the amount of such surcharge. Section 204(c)(3) governs the amount of the surcharge and generally provides that the amount of the surcharge must not cause the total price for natural gas paid by a non-exempt user to exceed the user's alternative fuel cost. Part of that total price paid by the non-exempt user is the retail rate set by the State ratemaking authority, on which the NGPA sets no limit. In fact, the Statement of Managers stated that:

> The conference agreement does not preclude State regulatory agencies from exercising their authority under State law to regulate local distribution companies. A State regulatory agency could for example, raise prices to be paid by incrementally priced industrial facilities to levels higher than the levels required by this Title. The conferees have not mandated such a practice; nor has it been precluded. State law is not preempted in this case and States may wish to place more of the costs of service onto a particular class of industrial users. The conferees make no judgment as to the advisability of this action. S. Rep. No. 1126, 95th Cong., 2d Sess. 100–101 (1978).

This statement is a clear expression of Congressional intent not to preempt States from raising rates for their industrial gas users to, or above, their alternative fuel costs. Indeed, at one point in the Statement of Managers, the conferees recognized and did not object to the fact that some States may have already taken such action. (*See* S. Rep. No. 1126, quoted at p. 8 *infra.*)

Commenters also argued that State incremental pricing plans are invalid because they frustrate the objectives of incremental pricing. One of the purposes of the incremental pricing program "market ordering," is to prepare the natural gas market for deregulation in 1985. Congress anticipated that, by initially raising the price of gas delivered to large, price-sensitive industrial customers to a level at which further increases would threaten to cause loss of industrial load, pipelines, whose revenues depend upon volumetric throughput, would attempt to minimize further increases in the cost of gas that might occur upon deregulation, for fear that industrial demand would decline. (*See* Order No. 80, Docket No. RM80–10, issued May 7, 1980, pp. 8–9). The commenters contended that State incremental pricing plans frustrate the market ordering purpose of Title II, because non-exempt users in a State with a State incremental pricing plan pay a price for natural gas that is at least as high as the alternative fuel price ceiling, which prevents those users from feeling the impact of the higher gas prices allowed by Title I of the NGPA and paid by their interstate pipeline suppliers. Moreover, the federal surcharge paid by non-exempt users in a State without a State incremental pricing plan generally will bring the users' cost of gas up to the applicable alternative fuel price ceiling, because with a smaller class of non-exempt users to absorb the federal surcharges, it is improbable that the surcharge imposed will be less than the maximum.

Other commenters contended that State incremental pricing plans blunt the other purpose of Title II of the NGPA, the sheltering of residential and other high priority customers from rising gas prices allowed by Title I of the NGPA. They argued that, because a State plan eliminates the MSACs within the State, there remain more incremental gas acquisition costs, determined under section 203 of the NGPA, to be borne ultimately by residential and high priority gas users.

Related to this argument was the suggestion that the Commission modify its incremental pricing plan to prevent a State from improperly eliminating the federal surcharges within its borders. Under the Commission's program, the amount of the surcharges is tied to retail rates established at the State level. The commenters proposed that the surcharge be tied to something other than State retail rates, suggesting, for example, that they be tied to benchmark rates based on the historic relationship between the rates of industrial and high priority users. The Commission does not adopt this proposal, because it would result in some non-exempt users paying an ultimate price for natural gas higher than the alternative fuel price ceiling. This result would violate section 204 of the NGPA.

In addition to the reasons discussed above, the Commission is convinced that any doubt as to the legality of State incremental pricing plans under Title II, due to their effect either on the Commission's program or on the objectives of incremental pricing, is allayed by the clear indications of Congressional intent contained in the Statement of Managers. The Congress anticipated, and did not disapprove, the effect on incremental pricing surcharges of State action to raise industrial retail rates to, or above, alternative fuel price ceilings. In the Statement of Managers, the conferees stated that:

> The Commission is accorded flexibility by the conference agreement to make necessary adjustments in the calculation of the surcharge to be passed through. For examples [sic], in some instances State regulations may already provide some form of incremental pricing which has resulted in the fuel price paid by industrial facilities (which will qualify as incrementally priced industrial facilities under this Title) already equalling the Btu-equivalent price of alternative fuel. The conferees do not intend the operation of [section 201] to require the surcharge to be passed through to such facilities. S. Rep. No. 1126, 95th Cong., 2d Sess. 96 (1978).

Accordingly, the Commission concludes that it cannot legally preclude States from implementing their own incremental pricing plans and that such plans are consistent with Title II of the NGPA pursuant to which the Commission's incremental pricing rules were issued. This Commission has attempted to implement the incremental pricing program with minimal interference with the States' ratemaking authority, recognizing that the States' implementation of their own incremental pricing programs is a proper exercise of the States' authority to set retail rates.

The final argument with respect to the validity of State plans is that State incremental pricing plans violate section 4(b) of the Natural Gas Act (NGA), 15 U.S.C. 717 *et seq.* That section prohibits an interstate natural gas pipeline from maintaining any unreasonable difference in rates between localities or between classes of service. If States implement their own incremental pricing plans, natural gas users (both exempt and non-exempt) will experience differing impacts from incremental pricing depending upon the State in which they are located, due to varying State incremental pricing plans and the differing composition of gas users from State to State,[1] as well as differences between the various State plans and the Commission's plan.

The Commission does not agree that State incremental pricing plans violate section 4(b) of the NGA. Section 4(b) forbids only "unreasonable" differences in prices. Differences that arise from the lawful actions of state regulators pursuant to their authority to set rates within their individual States are not unreasonable and therefore do not violate the NGA. Furthermore, the statutory scheme embodied in Title II of the NGPA does not restrict States in the exercise of their ratemaking powers, except in the narrow area where State section is taken to offset or to prevent the passthrough of, a surcharge, as previously discussed.

Moreover, even if the Commission had the authority to intervene, the public interest is better served by minimal federal intervention in the traditional State function of setting retail rates. Each State's retail gas rates reflect that State's response to the unique set of circumstances present within its boundaries. The regulatory scheme of the NGPA contemplates such decision-making by States, and Title II of the NGPA builds upon State ratemaking and does not supplant it. Were the Commission to undertake a State-by-State balancing and an elimination of differences among State plans, the result would be federal involvement in the determination of local retail rates. Such an involvement would have costs and negative impacts far outweighing any potential benefits. A further extension of federal regulation should be based on a clear showing of need and public interest which has not been made here.

Allocation of additional revenues from State plans. The Commission's regulations do not require States to allocate to their residential and other high priority users the additional revenues collected from their non-exempt users whose rates are raised to, or above, the alternative fuel cost ceiling.

Several State commissions argued that the additional revenues must be reallocated so as to lower the rates of residential and other high priority users, because one of the purposes of Title II of the NGPA is to shield those users.

Although the Commission anticipates, as discussed in the Notice, that States with their own incremental pricing plans will endeavor to shield residential and other high priority users from higher gas prices to the extent possible under State law, the Commission cannot legally require States to channel the additional revenues to those high priority users. The incremental pricing program under Title II of the NGPA does not apply to residential and other high priority users of natural gas. Consequently, the traditional State retail ratemaking authority as to those users is undisturbed and the State may establish rates for those users in any manner consistent with State law. The Commission has no authority to require a State to channel to residential and other high priority users any increased revenues collected as a result of that State's implementation of its own incremental pricing plan.

One commenter suggested that any additional revenues reflecting the portion of non-exempt user rates exceeding the alternative fuel price level may be allocated at the discretion of the State regulatory body. The Commission rejects this suggestion insofar as it may imply that such allocation would result in retail rates for some non-exempt users which are lower than the alternative fuel price ceiling. By definition, these State incremental pricing plans establish rates for all non-exempt users at, or above, the user's alternative fuel price ceiling. If the rate charged any non-exempt user falls below the alternative fuel price ceiling, then that user has the ability, and is required, to absorb a surcharge imposed under the Commission's incremental pricing plan, regardless of the makeup of the State plan. Thus, a State plan is not in conformance with Title II of the NGPA and the Commission's incremental pricing regulations if such plan channels to some non-exempt users certain revenues collected from other non-exempt users and in the process causes some non-exempt user rates to fall below the applicable alternative fuel price ceilings.

Users exempted by section 206 of the NGPA. Section 206 of the NGPA exempts from the federal incremental pricing program several categories of gas users, such as small industrial facilities, agricultural users, schools, and hospitals. Related to the preceding discussion of the Commission's lack of authority to require States to channel increased revenues to residential and other high priority users is the issue of whether States with their own incremental pricing plans must preserve the exempt status of those gas users protected under the Commission's plan pursuant to section 206 of the NGPA. For example, may agricultural users of natural gas, who are exempt under section 206(b), be priced at, or above, the alternative fuel price ceiling under a State incremental pricing plan? Many end-users maintained that the exempt status of users under the Commission's plan must be preserved at the State level because to do otherwise is contrary to the mandate of section 206.

As previously discussed, Title II of the NGPA does not preempt State ratemaking authority with respect to exempt users. Specifically, regardless of whether the States implement their own incremental pricing plans or remain under the Commission's plan, there is no requirement in Title II that States must set lower rates for users who are exempt under the Commission's plan. Accordingly, the Commission does not view action by States to raise the rates to users exempt from the Commission's program by section 206 as a circumvention of Title II; rather, the Commission views such action as a valid exercise by the States of their traditional retail ratemaking authority.

"No greater harm" provision. Several commenters recommended that a "no greater harm" provision be included in the final regulations governing State incremental pricing plans. A "no greater harm" provision would allow States under their own incremental pricing plans to set their rates for non-exempt

[1] As comments pointed out, depending on the particulars of a State incremental pricing plan, imbalances may even be from one local distribution company to another within the State. This result may occur because the pertinent ratemaking agency may not have the authority to shift the benefits of its incremental pricing plan from an area served by one local distribution company to an area served by another company.

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users below the applicable alternative fuel price ceilings, if the lower rates would have been allowed under the Commission's plan. This situation would arise when the total MSAC on a pipeline's system becomes greater than the amount in the pipeline's incremental gas cost account. Such a provision would allegedly protect non-exempt users from paying more under State incremental pricing plans than what they would pay under the Commission's plan.

The Commission declines to include a "no greater harm" provision in its regulations for several reasons. There is no administratively feasible method for accurately determining the amount of the monthly surcharge a non-exempt user would have paid had such a user been under the Commission's incremental pricing plan instead of a State plan. Moreover, to monitor the rates set by the States, as would be required by such a provision, would result in an additional administrative burden that would far outweigh any overall benefit that may be gained. Finally, a situation to which such a provision would apply would rarely, if ever, occur due, in part, to a recent development in the incremental pricing program. Pursuant to section 202 of the NGPA, the Commission issued a rule (Phase II rule) on May 6, 1980,[2] which, if not disapproved by either House of Congress, would have expanded the application of the incremental pricing program to other industrial uses of natural gas in addition to boiler fuel use. Because the Phase II rule was disapproved by Congress, the scope of the incremental pricing program is limited to natural gas used as boiler fuel.[3] Since the number of users absorbing the surcharges is small, it is highly unlikely that the federal incremental pricing surcharge would ever result in a non-exempt user's rate being lower than the applicable alternative fuel price ceiling.

Benefit of reduced PGA. A major concern raised in the comments arises when an interstate pipeline serves users in a State with a State incremental pricing plan as well as users in a State without such a plan. The pipeline's purchased gas cost account (PGA) is reduced by the amount of the federal incremental pricing surcharges imposed on non-exempt users served by the pipeline in the State without a State incremental pricing plan. All exempt users served by the pipeline, regardless of the State in which they are located, receive the benefit of the pipeline's reduced PGA. Several commenters suggested that the benefit of the reduced PGA be denied to exempt users in States having their own plans, because those users may already receive the benefits of the State plan. They also pointed out that the non-exempt users in States with their own plans pay no federal surcharge and, thus, do not contribute to reducing the PGA.

The Commission does not adopt this suggestion, because such a proposal is administratively infeasible. Elimination of the reduced PGA benefit to exempt users in States having their own incremental pricing plans would require interstate pipelines to maintain separate incremental pricing accounts for each State. The burden that would be placed on pipelines and local distribution companies, in establishing the separate rates resulting from the separate accounts, and on the Commission, in monitoring such rates, would be prohibitive.

B. *State Alternatives to Incremental Pricing.* The second type of State action that appeared to have an effect on the Commission's incremental pricing program is an innovative State ratemaking plan proposed as an alternative to federal incremental pricing in that State. For instance, a State might propose to depart from the manner and method in which the surcharge under the Commission's incremental pricing plan is apportioned among the non-exempt users within the State.

Section 206(d) of the NGPA provides that the Commission may issue a rule, subject to Congressional review, which exempts from incremental pricing any appropriate category of facilities for which there is no specific statutory exemption. In the Notice in this document, the Commission preliminarily concluded that, since, by definition, such a plan would depart from the incremental pricing program mandated by Title II of the NGPA, Commission action approving such a plan would be truly exemptive in nature, and thus would be subject to Congressional review and possible disapproval under section 206(d). The Commission expressed the desire to grant States broad flexibility in seeking exemptions through alternative plans. However, it also indicated that the more an alternative plan departed from the statutory requirements of incremental pricing, the greater the scrutiny that would be applied by the Commission on review. The Notice provided that the standard for Commission approval of an alternative plan would be whether the plan advances the underlying purposes of Title II of the NGPA as well as, or better than, the Commission's incremental pricing program. The Commission proposed to consider these plans on a State-by-State basis.

All but one of the comments which addressed State alternative plans generally supported the Commission's proposal. The comment opposing the proposal argued that the proposed process for obtaining an exemption was burdensome and would result in confusing and inconsistent State proposals and Commission rulemakings.

The Commission does not find this argument persuasive. It believes that States should be given the opportunity to submit innovative ratemaking proposals to the Commission for approval as a basis for obtaining State-wide exemptions from federal incremental pricing. The Commission notes that the Statement of Managers referred to the ability of States "to provide for some form of inverted rate schedules or other ratemaking technique" designed to achieve the purposes of Title II. (S. Rep. No. 1126, 95th Cong. 2d Sess. 101 (1978)). To implement Congressional intent, State ratemaking authorities should be given as much flexibility as possible, within the mandates of Title II, to initiate innovative forms of retail ratemaking as a means to achieve the goals of incremental pricing.

By definition, an alternative plan would be inconsistent with some of the incremental pricing requirements set forth in Title II of the NGPA. For example, an inverted rate design proposal might mean that the actual average delivered price of gas to some non-exempt users at certain times would be below their alternative fuel price ceiling. This result appears to violate section 204(e) of the NGPA, at least in those cases where the surcharge imposed under the Commission's plan would raise non-exempt user rates to the alternative fuel price ceiling. Similarly, a commenter suggested that the determination of whether the price of gas to non-exempt users remained at, or above, their alternative fuel price ceiling be made on the basis of annual average rates charged to the non-exempt users. This proposal appears to violate section 204(a)(3)(A), which requires that the surcharge calculation be related to the calendar period involved, defined by the Commission to be a monthly period. (18 CFR 282.501). As another example, a commenter proposed that State regulatory agencies be allowed to establish their own alternative fuel price ceilings. This proposal appears to run contrary to section 204(e), which requires the Commission to establish these ceilings.

These proposed alternatives to incremental pricing ostensibly are inconsistent with the requirements of Title II; yet, in fact, they may further the purposes of incremental pricing as well as, or better than, the method prescribed in the Commission's regulations. At this time, the Commission takes no position as to the merits of the proposals used here as examples, but mentions them to emphasize that any State-wide exemption from federal incremental pricing based on an alternative plan would stem from the Commission's authority under section 206(d) of the NGPA.

The final rule provides that, if the Commission finds that the State alternative plan is in the public interest and achieves the underlying purposes of incremental pricing as well as, or better than, the Commission's incremental pricing program, the Commission shall issue a rule under section 206(d) of the NGPA approving the State alternative plan and specifying the extent to which natural gas used as boiler fuel by non-exempt industrial facilities subject to the alternative plan is exempt from incremental pricing. The Commission's rule approving the plan will become effective only if it is not disapproved by Congress.

Several commenters suggested that the Commission establish generic guidelines for approving alternative plans instead of considering such plans on a State-by-State basis. The Commission declines to adopt this suggestion, because the State-by-State approach gives States broader flexibility in designing alternative plans. Any submission by the Commission to the Congress under section 206(d) of the NGPA seeking broad authority to grant exemptions based on State alternative plans would have to include specific guidelines that the Commission would apply in granting exemptions under such plans. Specific guidelines can be expected to narrow the types of alternative plans presented to, and approved by, the Commission, thus reducing the desired flexibility.

Several comments advocated that the Commission limit participation in the proceeding relating to Commission consideration of an alternative plan to those persons with a direct interest in the plan. The Commission does not adopt this proposal because the alternative plan will be considered in a rulemaking proceeding in which all persons are invited to participate. Further, comments made by persons without a direct interest in a specific plan may be useful to the Commission due to the persons' experience with similar plans in other areas of the country.

C. *Miscellaneous. Rate plans of local ratemaking authorities.* One commenter pointed out that the Commission's proposal in the Notice does not provide for the situation in which retail rates are set by local municipalities rather than by the State. The commenter asserted that there is no rational or legal basis for discriminating between State and local ratemaking authorities.

The Commission agrees. Although the discussion in this rulemaking has focused on State ratemaking bodies and their authority over retail rates under Title II of the NGPA, the discussion applies equally to local retail ratemaking authorities.[4] By setting rates for non-exempt users at, or above, the alternative fuel price ceiling levels or by designing innovative rate plans as alternatives to federal incremental pricing, political subdivisions achieve the same results as State ratemaking bodies. Thus, the final regulations treat rate plans of political subdivisions, such as local municipalities, in the same manner as State rate plans.

Relation of State rate plans to Phase II rule. One commenter contended that, unless the comment period in this docket remained open until such time as the Phase II rule was issued and the outcome of the Congressional review process was known, there could be no meaningful comment on the Commission's proposals with respect to State incremental pricing plans and alternative plans. The Commission does not agree. Although the outcome of Phase II was not known prior to the February deadline for the submission of written comments, the comments nevertheless provided the Commission with meaningful guidance in promulgating this rule. In fact, most commenters assumed that a Phase II rule would not go into effect. Furthermore, insofar as the issues discussed in this order relate to the continuing legal authority of State and political subdivisions in the area of retail ratemaking in light of Title II, they are independent of the outcome of the Phase II proposal.

III. Summary of Final Regulations

The Commission's incremental pricing regulations, set forth in Part 282 of Title 18 of the Code of Federal Regulations, are amended by adding new §§ 282.104 and 282.208 and by amending § 282.504(e) (2) and (3).

New § 282.104 recognizes a State's or local municipality's authority to set retail rates and charges for natural gas to non-exempt users at, or above, the Commission's alternative fuel price ceilings. That section provides that nothing in Part 282 of the Commission's regulations precludes such action by a State or local political subdivision, or agency thereof, having authority to establish retail rates and charges for natural gas service in that State or local political subdivision.

Subparagraphs (2) and (3) of § 282.504(e) are amended to relieve natural gas suppliers of certain reporting requirements set forth in those subparagraphs. Subparagraph (2)(i) requires that a natural gas supplier respond each month to the requests of interstate pipelines, made under subparagraph (1), for the supplier's MSAC. Clause (ii) relieves the supplier of the monthly reporting requirement in clause (i), if: (1) the supplier's total monthly MSAC is zero, due to the supplier being subject to a State or local incremental pricing plan or plans; and (2) the supplier has notified the requesting interstate pipelines that the supplier is subject to such plan or plans. The purpose of the requirement that the supplier's total monthly MSAC is zero is to make clear that each of the non-exempt users served by the supplier is also subject to a State or local incremental pricing plan. If a portion of a supplier's service area is located in a jurisdiction not covered by a State or local plan, then the supplier's total MSAC would not be zero. In that case, the supplier would be required to respond under subparagraph (2)(i). In addition, the requirement that the supplier's total monthly MSAC is zero emphasizes that the supplier is relieved of the monthly reporting requirement only as long as its total monthly MSAC remains zero.

Subparagraph (3) of § 282.504(e) is amended to provide that a natural gas supplier must report the monthly surcharge only to those customers who are required to report under subparagraph (2)(i).

New § 282.208 establishes procedures for approval of an innovative State or local ratemaking plan proposed as an alternative to the Commission's incremental pricing program.

[2] *Rule Required Under Section 202 of the Natural Gas Policy Act of 1978*, Docket No. RM80-10, Order No. 80, issued May 6, 1980, 45 FR 31622 (May 13, 1980).

[3] *Order Denying Rehearing and Revoking Amendments Made by Order No. 80*, Docket No. RM80-10, issued August 1, 1980, 45 FR 54741 (August 18, 1980).

[4] The Commission notes that NGPA section 205(e), which defines "State Commission," refers to political subdivisions.

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Paragraph (a) of § 282.208 provides that natural gas used as boiler fuel by a non-exempt industrial boiler fuel facility subject to an approved State or local alternative plan shall be exempt, to the extent specified in paragraph (d), from the incremental pricing rule set forth in Part 282.

Paragraph (b) contains definitions applicable to new § 282.208. The paragraph defines the terms "State or local alternative plan," "approved State or local alternative plan," and "purposes of Title II of the NGPA."

Paragraph (c) sets forth the procedures for approval of an alternative plan. Subparagraph (1) establishes the filing requirements and provides that four copies of a request for approval and of the State or local alternative plan must be filed with the Secretary of the Commission.

Clause (i) of § 282.208(c)(2) provides that, upon receipt of the request for approval and the State or local alternative plan, the Commission shall institute a rulemaking proceeding to consider the plan. Clause (ii) states that, if the Commission determines that the alternative plan is in the public interest and carries out the purposes of Title II of the NGPA as well as, or better than, the Commission's incremental pricing program, the Commission shall issue a final rule listing the alternative plan in paragraph (d) and specifying, in paragraph (d), the extent to which natural gas used as boiler fuel by a non-exempt industrial facility subject to the alternative plan is exempt from incremental pricing.

Subparagraph (3) of § 282.208(c) provides that a final rule issued under subparagraph (2) shall be transmitted to Congress for review pursuant to section 206(d)(2) of the NGPA, and will not become effective if either House of Congress passes a Resolution of Disapproval of the rule within the thirty day review period.

Paragraph (d) contains the list of approved State or local alternative plans which is the list of State or local alternative plans approved by Commission rule and not disapproved by Congress, in accordance with paragraph (c). Paragraph (d) also specifies the extent to which facilities subject to the approved plan are exempt from the federal incremental pricing program.

IV. Effective Date

The final rule is effective October 21, 1980, in accordance with 5 U.S.C. 553(d)(1), because it establishes exemptions, and procedures for obtaining exemptions, from the Commission's incremental pricing regulations.

(Natural Gas Policy Act of 1978, Pub. L. No. 95-621, 92 Stat. 3350, 15 U.S.C. §§ 3301, *et seq.*)

In consideration of the foregoing, Part 282 of Subchapter I, Chapter I, Title 18, Code of Federal Regulations, is amended, effective October 21, 1980, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

1. The table of contents of Part 282 is amended by adding in the appropriate numerical order the following section numbers and headings:

282.104 State or local incremental pricing plans.
282.208 State or local alternative plans.

2. Part 282 is amended by adding new § 282.104 to read as follows:

§ 282.104 State or local incremental pricing plans.

(a) *General rule.* Nothing in this part precludes a State or local government, or agency thereof, from implementing a State or local incremental pricing plan.

(b) *Definition.* For purposes of this section, a "State or local incremental pricing plan" means a rate plan of a State or local political subdivision, or agency thereof, having authority to establish retail rates for natural gas service in that State or local political subdivision, which rate plan is in effect and requires that retail rates charged by a natural gas supplier for all natural gas used as boiler fuel by nonexempt industrial boiler fuel facilities (subject to the retail ratemaking authority of the State or local political subdivision, or agency thereof) be at, or above, the applicable alternative fuel price ceilings established by the Commission under Subpart D of this part.

3. Part 282 is amended by adding new § 282.208 to read as follows:

§ 282.208 State or local alternative plans.

(a) *General rule.* Natural gas used as boiler fuel by a non-exempt industrial boiler fuel facility subject to an approved State or local alternative plan is exempt from the incremental pricing regulations of this part to the extent specified in paragraph (d) of this section.

(b) *Definitions.* For purposes of this section, the following definitions apply.

(1) "State or local alternative plan" means a rate plan of a State or local political subdivision, or agency thereof, having authority to establish retail rates and charges for natural gas service in that State or local political subdivision, which rate plan is designed to be an alternative to the application, in whole or in part, of this part.

(2) "Approved State or local alternative plan" means a State or local alternative plan which has been approved in accordance with paragraph (c) of this section and which is listed in paragraph (d) of this section.

(3) "Purposes of Title II of NGPA" means:

(i) shielding residential and high priority gas users from increased wellhead prices for natural gas allowed under Title I of the NGPA; and

(ii) preparing the natural gas acquisition market for an orderly transition from extensive federal regulation to deregulation.

(c) *Procedures for approval.* —(1) *Filing requirements.* A State or local political subdivision, or agency thereof, requesting approval for a State or local alternative plan, must file with the Secretary of the Commission four copies of:

(i) A request for approval of the State or local alternative plan; and

(ii) The State or local alternative plan.

(2) *Commission consideration.* (i) Upon receipt of the request for approval and the State or local alternative plan, in accordance with subparagraph (1) of this paragraph, the Commission shall institute a rulemaking proceeding to consider the State or local alternative plan.

(ii) If the Commission determines that the State or local alternative plan is in the public interest and carries out the purposes of Title II of the NGPA as well as, or better than, the incremental pricing regulations set forth in this part, the Commission shall issue a final rule:

(A) listing the State or local alternative plan as an approved State or local alternative plan in paragraph (d) of this section; and

(B) specifying, in paragraph (d) of this section, the extent to which natural gas used as boiler fuel by a non-exempt industrial boiler fuel facility subject to the State or local alternative plan is exempt from the incremental pricing regulations of this part.

(3) *Congressional review.* A final rule issued by the Commission under subparagraph (2) of this paragraph shall be transmitted to Congress for review pursuant to section 206(d)(2) of the NGPA. The final rule is not effective if either House of Congress passes a Resolution of Disapproval of the rule within the 30-day Congressional review period, determined in accordance with section 507(b) of the NGPA.

(d) *Approved State or local alternative plans.* [Reserved]

4. Section 282.504(e)(2) is revised to read as follows:

§ 282.504 Incremental pricing surcharge.

* * * * *

(e) *Reporting.*

* * * * *

(2) *Pipeline customers to respond.* (i) Except as provided in clause (ii) of this subparagraph, each month each natural gas supplier shall respond to the requests of interstate pipelines for its MSAC.

(ii) A natural gas supplier subject to a State or local incremental pricing plan or plans, as defined in § 282.104, is not required to respond under clause (i) of this subparagraph if:

(A) the supplier's total monthly MSAC is zero; and

(B) the supplier has notified the interstate pipelines making requests under subparagraph (1) of this paragraph that the supplier is subject to a State or local incremental pricing plan or plans.

5. Section 282.504(e)(3) is amended by inserting the phrase, "who are required to report under subparagraph (2)(i) of this paragraph," after the words "sale-for-resale customers".

[FR Doc. 80-33801 Filed 10-29-80; 8:45 am]
BILLING CODE 6450-01-M

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18 CFR Part 292

[Docket No. RM80-62; Order No. 104]

Section 206(d) Exemption for Mechanical Cogeneration Facilities From the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978

Issued: October 23, 1980.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission hereby adopts regulations that implement section 206(d) of the Natural Gas Policy Act of 1978 (NGPA). These rules exempt mechanical cogeneration facilities from the incremental pricing of natural gas under Title II of the NGPA. Prior to taking effect, this rule must be submitted to the Congress for review.

EFFECTIVE DATE: Thirty days after transmittal to Congress, provided that neither House of Congress passes a Resolution of Disapproval, in accordance with section 507(b) of the NGPA.

FOR FURTHER INFORMATION CONTACT:
James Liles, Office of Regulatory Analysis, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357-8158
or
Adam Wenner, Office of the General Counsel, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION: On May 30, 1980, the Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking Exempting Mechanical Cogeneration Facilities from all Incremental Pricing Provisions of the Natural Gas Policy Act of 1978 (15 U.S.C. 3301 *et seq.* (NGPA).[1] This rule is intended to make available to mechanical cogeneration facilities the same exemption from incremental pricing of natural gas under Title II of the NGPA that is provided to electric cogeneration facilities.

Background

Title II of the NGPA requires that the natural gas used in certain industrial facilities be subject to incremental pricing by means of surcharges. Section 206 of the NGPA establishes certain exemptions from these incremental pricing surcharges. Section 206(c)(3) provides that incremental pricing shall not apply

* * * to the extent provided by the Commission by rule [to] any qualifying cogenerator [as defined in section 3(18)(B) of the Federal Power Act, as amended by the Public Utility Regulatory Policies Act of 1978) [PURPA].

On September 18, 1979, the Commission issued rules implementing Title II of the NGPA and establishing a mechanism for the incremental pricing program. One provision of these rules implemented section 206(c)(3) of the NGPA for purposes of the incremental pricing program.[2] This provision exempted from the incremental pricing program all gas used for cogeneration by qualifying cogeneration facilities are defined in section 3(18)(B) of the Federal Power Act. However, at that time the Commission had not promulgated rules establishing the criteria for "qualifying cogeneration facilities" under section 3(18)(B) of the Federal Power Act. In order to facilitate the operation of the incremental pricing rules the Commission, on November 9, 1979, issued an interim rule for qualification of gas-fired cogeneration facilities for purposes of the incremental pricing program.[3] This interim rule established an exemption from incremental pricing for certain cogeneration facilities which were in existence and used natural gas as an energy input on or prior to November 1, 1979.[4]

On March 13, 1980, the Commission issued a final rule under section 201 of PURPA establishing requirements for a determination of qualifying status for small power production and cogeneration facilities.[5] This rule maintained the criteria for the exemption from incremental pricing established in the interim rule, and also established additional criteria for other facilities not previously eligible [6] for the exemptions from incremental pricing set forth in 18 CFR 282.202(e).

The application of these exemptions, however, is limited by section 3(18)(B) of the Federal Power Act to cogeneration facilities which produce *electric* energy, and other forms of useful energy. Cogeneration facilities which produce *mechanical* energy and other forms of useful energy are not eligible under the final rule in Docket No. RM79-54 for these exemptions from incremental pricing.

Mechanical cogeneration facilities can produce the same fuel efficiencies as can cogeneration facilities producing electric energy. The proposed rules reflected the Commission's belief that cogeneration facilities which produce mechanical energy should be afforded the same exemption from incremental pricing surcharges as is available to cogeneration facilities which generate electricity. Section 206(d) of the NGPA authorizes the Commission to exempt from incremental pricing "any other industrial facility or category thereof." The proposed rule represented an attempt to utilize this authority to place mechanical and electrical cogeneration on an equal footing vis-a-vis the exemption from incremental pricing. Any rule providing for an exemption by the Commission under section 206(d) is subject to Congressional review before it can become effective.

The Basis for a Section 206(d) Exemption

Cogeneration involves the production of both useful heat and power through the sequential use of energy. Shaft power, compressed air and hydraulic power are all variations of the high-grade energy form known as mechanical power or energy. Production of any of these mechanical energy forms, with

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[1] 45 FR 36080 (June 6, 1980).

[2] 18 CFR 282.202(e), 44 FR 37726 (October 5, 1979).

[3] Docket No. RM79-54, issued November 9, 1979, 44 FR 65744 (November 15, 1979).

[4] 18 CFR 292.501-292.503, 44 FR 65744 (November 15, 1979).

[5] Order No. 70, issued March 13, 1980 in Docket No. RM79-54, "Final Rule Establishing Requirements and Procedures for a Determination of Qualifying Status for Small Power Production and Cogeneration Facilities." 45 FR 17959 (March 20, 1980).

[6] 18 CFR 292.205(c).

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utilization of the reject heat from a facility, represents energy-efficient cogeneration with an energy conservation potential similar to that available from cogeneration involving the production of electricity.

The incentive provided through the exemption of cogeneration from incremental pricing is intended to promote the efficient use of energy by cogeneration facilities. However, as noted, under the existing rules, only those cogeneration facilities which generate electricity are eligible for the exemption; those producing only mechanical power are excluded. Not only is this distinction inequitable, since energy resources may be conserved absent electrical generation, but it may create a significant incentive for needless capital investment. An industrial company with a need for mechanical power which could be obtained through cogeneration might have an economic incentive through lower natural gas prices to cogenerate electrical instead of mechanical power. This electricity would, in turn, be used to power electric motors, which would be used to drive the machinery. Thus, several intermediate steps would be taken to obtain mechanical power.

The expense of installing the generators and motors would be needlessly incurred, since the cogeneration prime mover could directly supply the required mechanical power. Moreover, the intermediate conversion to electricity would result in energy losses since motors and generators are always less than perfectly efficient. By making mechanical cogeneration facilities eligible for the exemption from incremental pricing, this rule would remove this incentive to install unneeded equipment.

In the proposed rule, the Commission emphasized that this rule will not affect any of the provisions of Order Nos. 69 or 70 which pertain to electrical cogeneration.[7] The final rule does, however, adopt certain terms and criteria similar to those used in Order No. 70 for qualifying electrical cogeneration facilities. In order to ensure that mechanical and electrical cogeneration facilities are afforded similar treatment under the incremental pricing provisions of the NGPA, the efficiency standards adopted are similar to those prescribed for electrical cogeneration facilities in Order No. 70.

[7] Order No. 69, 45 FR 12214 (February 25, 1980), and Order No. 70, 45 FR 17959 (March 20, 1980).

Summary of Comments

The Commission received thirteen comments to the proposed rule.[8] A public hearing, scheduled for July 1, 1980, was cancelled due to lack of public response. All of the thirteen comments expressed general support for the proposed rule; eight comments offered specific recommendations for revisions.

Measurement of Mechanical Power and Related Issues

The proposed rule provided that the useful mechanical power output of a cogeneration facility could be determined at the output of the prime mover—or at some further stage of energy conversion, at the discretion of the cogenerator. Comments were requested as to whether the term "output of the prime mover" is appropriate, and whether the determination of mechanical power output should be permissive in regard to the point of measurement. Comments were also requested on the feasibility of measuring mechanical power output.

Seven commenters addressed the related issue of mechanical power measurement.[9] To varying degrees, these commenters suggested that ongoing measurement of the mechanical power output of an engine is generally infeasible. The commenters requested that the proposed requirement for measurement of mechanical power be replaced with a requirement that mechanical power be estimated. The Commission believes that these requests have merit, and adopts this recommendation.

Since a calculation which is appropriate for one cogeneration facility may be unsuitable for another, the rules do not specify a specific mechanical estimation technique. Rather, calculations are to be based on standard engineering methods, and must reflect the calendar year period specified for the operating and efficiency standards. The location of the estimate is within the discretion of the cogenerator. Calculations may be based on the design characteristics of the prime mover, the equipment driven by the prime mover, or on actual measurements.

[8] American Cyanamid Company, American Paper Institute (API), Chemical Manufacturers Association (CMA), The Dow Chemical Company, Glass Packaging Institute (GPI), Masonite Corporation (Masonite), Monsanto Company, Northern Illinois Gas Company (NI-Gas), Potlatch Corporation (Potlatch), Republic Steel Corporation, The Standard Oil Company (SOHIO), Stauffer Chemical Company, and Sun Petroleum Products Company (Sun Petroleum).

[9] API, CMA, Masonite, NI-Gas, Potlatch, SOHIO, and Sun Petroleum.

NI-Gas requested a more specific definition of the term "prime mover." This commenter believed that the proposed rule was unclear as to whether, for example, a steam turbine or the boiler supplying steam to the turbine is the prime mover. A prime mover is a device which converts other forms of energy (such as thermal energy or chemical energy) into mechanical energy. The Commission is mindful, however, that any simple definition of such a fundamental concept may work to exclude some novel technology or innovation. The Commission has, therefore, decided not to add a definition of "prime mover" to the rules. Instead, the phrase "* * * at the output of the prime mover * * *" has been modified to read "* * * at the output of the steam turbine, combustion turbine, or other prime mover * * *" This change will serve to clarify the intent without running the risk of an overly narrow definition. Thus, in the NI-Gas example, the prime mover is the steam turbine.

Revised Language

Several commenters requested clarification of certain portions of the proposed rules, and offered alternative language. The American Paper Institute [APA] suggested that the statement of the operating and efficiency standards in § 282.211(c) be combined. With regard to rules on electrical cogeneration facilities, an operating standard was adopted for topping-cycle systems to ensure that *bona fide* cogeneration situation exists. Efficiency standards were adopted for topping-cycle systems using oil or gas to ensure efficient use of these scarce fuels. Exemption from incremental pricing is available to electrical cogeneration facilities only if both operating and efficiency standards are met. Since the Commission's sole concern with mechanical cogeneration facilities in this docket is exemption from incremental pricing—and the Commission has decided to afford the exemption to mechanical facilities on the same basis as electrical facilities—both operating and efficiency standards must be met in order for a mechanical cogeneration facility to qualify for an exemption. Since both standards are applicable in all cases, the Commission will accept API's recommendation and simplify the statement of the standards.

Technical Definitions

NI-Gas commented on the definition of mechanical cogeneration facility. The definition in the proposed rule limited the term "useful thermal energy" to energy "used for industrial or commercial heating or cooling purposes * * *" The definition of cogeneration facility in Order No. 70 is less restrictive. In that definition, the useful thermal energy must be "used for industrial, commercial, heating, or cooling purposes * * *" Each term—industrial, commercial, heating, and cooling—stands alone. Under this definition, the useful thermal energy may be used in an industrial (or commercial) process other than heating or cooling. Process steam, for example, may be used directly in a chemical reaction. Heating or cooling purposes which are neither industrial nor commercial are also permitted under the definition in Order No. 70. Residential heating uses, for example, would be included. NI-Gas recommends that the less restrictive language found in Order No. 70 be used to define a mechanical cogeneration facility. The Commission has adopted this recommendation.

NI-Gas also recommended that the definitions of mechanical cogeneration facility and supplementary firing be modified to indicate that only facilities covered by Phase I of incremental pricing are included. As mandated under Title II of the NGPA, the Commission is required to implement the incremental pricing program in two phases. The Phase I rules apply only to the use of natural gas by large industrial boiler fuel facilities. On May 7, 1980, the Commission issued Phase II rules in Docket No. RM80–10 expanding the scope of the incremental pricing program to other industrial uses of natural gas. This Phase II rule was submitted to Congress for a mandatory review prior to taking effect. On May 20, 1980, the House of Representatives passed a Resolution of Disapproval, and the Commission has since vacated its Phase II Order.[10] Therefore, only natural gas used as boiler fuel by large industrial facilities is now subject to incremental pricing. Both of NI-Gas's recommended modifications would explicitly restrict the definitions of mechanical cogeneration facility and supplementary firing to boiler fuel use of gas which is not otherwise exempt from incremental pricing. NI-Gas proposes these changes as an effort to "avoid needless confusion."

The Commission has decided not to adopt the recommended changes. The Commission believes that these recommendations would be likely to cause confusion at the end-user level. On the one hand, the definitions of basic terms would become strikingly different when applied to electrical or mechanical cogeneration facilities. Many end-users have both types of cogeneration in the same plant. On the other hand, the recommendations would make the definitions contingent upon the status of other exemptions, such as the agricultural use exemption.

Since other exemptions are themselves contingent upon various circumstances (alternative fuel tests or monthly gas consumption, for example) confusion would likely arise concerning the timing for filing for an exemption, and the time when such exemption would become effective. Moreover, future consideration of a second Phase II rule would likely require that the definitions of mechanical cogeneration facility and supplementary firing be substantially modified and expanded. On balance, the Commission does not believe that end-users who are not presently subject to incremental pricing will be confused by promulgation of an exemption in broad inclusive language.

The Glass Packaging Institute (GPI) recommends an expansion of the definition of cogeneration to include facilities in which no mechanical or electrical energy is produced. Certain energy conversion systems, while not producing electrical or mechanical energy, may displace the need for such energy. The example cited by GPI is a system in which reject thermal energy from an industrial process is used in an adsorption refrigeration unit rather than a bottoming-cycle mechanical drive. GPI claims that the absorption system displaces a requirement for electrical or mechanical power and, therefore, the entire system should be considered the functional equivalent of a cogeneration facility.

The Commission recognizes that a facility such as that described by GPI could be highly energy efficient. However, GPI's proposal would be difficult if not impossible to administer. The efficiency of a non-mechanical "cogeneration facility" would have to be determined on the basis of a hypothetical displaced system. Any such evaluation of *what might have been* rather than *what is* leaves room for serious differences of opinion. GPI mentions the possibility that a cogeneration use might be claimed where thermal output from a "bottoming-cycle" is used simply for space heating. GPI states that this situation could be expressly excluded by not allowing the displacement of electric resistance heating. But the owner of such a system could reasonably claim that an electric heat pump was displaced—much the same as GPI's example facility displaces an electric air conditioning unit. There would be no straighforward way to resolve such a dispute. For these reasons, the Commission has decided not to adopt GPI's recommendation. However, it notes that the facility described by GPI would not be subject to incremental pricing under the Phase I rule since it does not use natural gas as boiler fuel.

[10] Order Denying Rehearing and Revoking Amendments made by Order No. 80, issued August 1, 1980, in Docket No. RM80–10, 45 FR ——— (August ——, 1980).

Efficiency Standards

The Masonite Corporation (Masonite) recommends that lower efficiency standards be used for qualification of mechanical power facilities than were used for electrical cogeneration facilities. Masonite suggests that the proposed 42.5 percent test set forth in § 282.209(b) (§ 282.211(c) in the proposed rule) be reduced to 38.5 percent. No recommendation is made concerning the 45 percent efficiency requirement for cogeneration facilities with less than 15 percent of total energy output in the form of thermal energy.

Masonite states that the Commission is "essentially ignoring the losses which occur between the electrical generator source and the end user." An example is given of two equivalent pump systems, one mechanical and the other driven by an electric motor receiving its power from an electrical cogeneration facility. Masonite explains that the electrical cogeneration facility would have to be sized larger than the mechanical system to account for "electrical transformation and transmission line losses * * * as well as power losses in the electrical motor." In order to adjust for such power losses, lower efficiency standards are recommended for the mechanical system.

Masonite is correct in recognizing that the Commission's rules ignore losses which occur between a generator and ultimate user of electricity. In this regard, in the preamble to the proposed rule, the Commission stated:

> The proposed rule does not require theoretical conversion of mechanical energy to an electrical energy equivalent. A cogenerator developing only mechanical power most probably desires this form of energy for use in his facility. It is appropriate to relate this mechanical energy to an equivalent efficiency standard, rather than to attempt a determination of what quantity of electricity could reasonable be generated from the cogenerator's mechanical power.[11]

The converse is equally true. The rule does not attempt to require determination of the quantity of electricity that would be necessary to serve a mechanical load. A cogenerator is presumed to produce energy in the form desired. The fact that other,

[11] 45 FR 38081 (June 6, 1980).

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hypothetical systems may be less efficient should not affect the qualification of an actual system. As a matter of policy, the Commission believes that cogeneration facilities producing either electrical or mechanical power output should be measured against a common standard of efficiency.

Multiple Steam Turbines

Two commenters, Masonite and SOHIO, made similar recommendations concerning the aggregation of cogeneration units at the same site. Masonite points out that turbines used for producing mechanical energy "are quite often smaller and more numerous in use at a site than those turbines driving electrical generators * * *" Both commenters suggest that aggregation of multiple mechanical power turbines at a single site be allowed for purposes of qualifying under the rules. SOHIO recommends that a plant with four or more prime movers or heating loads be permitted to qualify based on an overall plant steam balance.

SOHIO argues that a plant with many individual pieces of equipment "would not have the instrumentation required to measure power production, or the total hearing load." The question of how mechanical energy may be measured has been addressed elsewhere. Meters and gauges are not required. A plant with many small turbines should not incur any extra cost of instrumentation.

Under the Commission's definition of "mechanical cogeneration facility" [12] a group of turbines may be considered as a single unit for purposes of the rule if each draws steam from, and exhausts steam to, common steam headers. In this situation, all of the turbines occupy the same position in the "cascade" of energy through a sequential process.

However, the Commission chooses not to adopt a rule which would allow an entire industrial plant to qualify for exemption on the basis of an overall steam balance. The purpose of this rule is to afford an exemption from incremental pricing to gas-fired cogeneration. The rule is not intended to exempt an entire industrial boiler fuel facility from incremental pricing on the grounds that the plant contains certain cogeneration applications. Only the cogeneration applications are eligible for exemption under this rule.

[12] Section 282.209(a)(1) [§ 282.211(a)(1) in the proposed rule) defines a "mechanical cogeneration facility" as equipment used to produce mechanical energy and forms of useful thermal energy (such as heat or steam), used for industrial, commercial, heating, or cooling purposes, through the sequential use of energy. . . .

In the comments, SOHIO provided a diagram of an industrial facility containing a variety of backpressure and extraction steam turbines. This facility also contained an unspecified block of "heating and non-heating loads" served directly from the boiler and not part of any sequential use of energy. Such steam loads were considered by the Commission previously in promulgating rules under section 201 of PURPA.[13] In the preamble to those rules, the Commission stated:

> * * * many industries commonly route steam directly from their boilers to processes without expansion in a turbine. This practice is simply the raising of process steam; it is not cogeneration. The fact that some other steam from the same boiler is routed to cogeneration equipment does not mean that all steam from the boiler is used for cogeneration. The coincident raising of process steam relates to the cogeneration rules in two ways. First, any energy expended in raising such steam should not be entered into any efficiency calculations. Secondly, natural gas used for raising process steam is not rendered exempt from incremental pricing solely because the boiler may also supply steam for cogeneration.

The Commission further wishes to amplify that condensing mechanical drive turbines served directly from a boiler do not comprise cogeneration since there is no sequential use of energy.

Moreover, any topping-cycle mechanical cogeneration facility must meet the five percent useful thermal output standard under § 282.209(b) in order to qualify for exemption from incremental pricing. The standard requires that no less than five percent of the total energy output, during any calendar year period, be in the form of useful thermal energy. Thus a plant containing only mechanical drive and other non-thermal use of steam does not meet the requirement. This holding is analogous to the Commission's treatment of combined-cycle electric generation facilities under Order No. 70.[14]

Congressional Review and Effective Date

The rule set forth below is issued pursuant to section 206(d) of the NGPA. That section requires that such rule be submitted to the Congress for review prior to taking effect. After submission to each House of Congress, the rule may take effect following 30 days of continuous session of Congress (as set forth in subsection 507(b) of the NGPA) unless either House adopts a resolution of disapproval within that 30 day period.

[13] Docket No. RM79-54, Order No. 70, 45 FR 17961.
[14] 45 FR 17959, 17961 (March 20, 1980).

Accordingly, this rule will be effective on the day following expiration of the 30-day period for Congressional review.

In consideration of the foregoing, if neither House of Congress passes a Resolution of Disapproval of the regulations transmitted to them in this rulemaking within 30 days of Congressional review, as determined in accordance with section 507(b) of the NGPA, Part 282 of Subchapter I, Chapter 1, Title 18, Code of Federal Regulations, is amended as set forth below, effective on the day following expiration of the 30-day Congressional review period.

(Natural Gas Policy Act of 1978, Pub. L. No. 95-621, 92 Stat. 3350, 15 U.S.C. §§ 3301-3434)

By the Commission.

Kenneth F. Plumb,

Secretary.

1. Section 282.203 is amended by deleting the introductory paragraph, and by adding a new paragraph (c) to read as follows:

§ 282.203 Exempt end-uses:

* * * * *

(c) *Exemption for mechanical cogeneration facilities under section 206(d).* Natural gas used in a mechanical cogeneration facility shall be exempt from incremental pricing according to the provisions set forth in § 282.209.

2. The Table of Contents for Sections for Part 282 is amended to add a new § 282.209 entitled *"Exemption for mechanical cogeneration facilities under NGPA section 206(d)."*

3. Part 282 is amended by adding a new § 282.209 to read as follows:

§ 282.209 Exemption for mechanical cogeneration facilities under NGPA section 206(d).

(a) *Definitions and general rules.* For purposes of this section:

(1) "Mechanical cogeneration facility" means equipment used to produce mechanical energy and forms of useful thermal energy (such as heat or steam), used for industrial, commercial, heating, or cooling purposes, through the sequential use of energy.

(2) "Topping-cycle mechanical cogeneration facility" means a cogeneration facility in which the energy input to the facility is first used to produce useful mechanical power output, and the reject heat from such power production is then used to provide useful thermal energy.

(3) "Bottoming-cycle mechanical cogeneration facility" means a cogeneration facility in which the energy input to the facility is first applied to a useful thermal energy process, and the reject heat emerging from the process is then used to produce mechanical power output;

(4) "Supplementary firing" means an energy input to the mechanical cogeneration facility used only in the thermal process of a topping-cycle mechanical cogeneration facility, or only in the mechanical power production process of a bottoming-cycle mechanical cogeneration facility.

(5) "Useful mechanical power output" of a mechanical cogeneration facility means the total mechanical energy made available for use, exclusive of any such energy used in the mechanical energy production process;

(6) "Useful thermal energy output" of a topping-cycle mechanical cogeneration facility means the thermal energy made available for use in any industrial or commercial process, or used in any heating or cooling application;

(7) "Total energy output" of a topping-cycle mechanical cogeneration facility is the sum of the useful mechanical power output and useful thermal energy output;

(8) "Total energy input" means the total energy of all forms supplied from external sources;

(9) "Natural gas" means either natural gas unmixed, or any mixture of natural gas and artificial gas;

(10) "Oil" means crude oil, residual fuel oil, natural gas liquids, or any refined petroleum products;

(11) Energy input in the case of energy in the form of natural gas or oil is to be measured by the lower heating value of natural gas or oil; and

(12) Useful mechanical power output may be estimated at the output of the steam turbine, combustion turbine, or other prime mover or at a subsequent energy conversion point.

(b) *Exemption from incremental pricing for topping-cycle facilities.* Natural gas used in any topping-cycle cogeneration facility, other than gas used for supplementary firing, is eligible for an exemption from incremental pricing under Title II of the Natural Gas Policy Act of 1978 (NGPA) and Part 282 of the Commission's rules if the useful thermal energy output of the facility, during any calendar year period, is 5 percent or more of the total energy output;

(1) for facilities in which the useful thermal energy output is less than 15 percent of total energy output, the useful mechanical energy output of the facility plus one-half the useful thermal energy output, during any calendar year period, is equal to or greater than 45 percent of the total energy input of natural gas and oil to the facility; or

(2) for facilities in which the useful thermal output is 15 percent or more of the total energy output, the useful mechanical energy output of the facility plus one-half the useful thermal energy output, during any calendar year period, is equal to or greater than 42.5 percent of the total energy input of natural gas and oil to the facility.

(c) *Exemption from incremental pricing for bottoming-cycle facilities.*

(1) *General Rule.* Natural gas used in any bottoming-cycle mechanical cogeneration facility, other than gas used for supplementary firing, is eligible for an exemption under Title II of the NGPA and Part 282 of the Commission's rules to the extent that reject heat emerging from the useful thermal energy process is made available for use in mechanical power production.

(2) *Efficiency standard.* For any bottoming-cycle mechanical cogeneration facility using natural gas or oil for supplementary firing, the useful mechanical power output of the facility, during any calendar year period, must be 45 percent or more of the energy input of natural gas and oil for supplementary firing.

(d) *Supplementary firing.* Natural gas used for supplementary firing in any mechanical cogeneration facility is not eligible under this section for exemption from incremental pricing.

(e) *Waiver.* The Commission may waive any of the requirements of paragraphs (b) or (c) of this section upon a showing that the facility will produce significant energy savings.

[FR Doc. 80-33720 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-85-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulation No. 4]

Federal Old-Age, Survivors, and Disability Insurance Benefits; Payment for Medical Evidence of Record

AGENCY: Social Security Administration, HHS.

ACTION: Interim regulations.

SUMMARY: These interim regulations provide that any non-Federal hospital, clinic, laboratory, or other provider of medical services, or physician who is not employed by the Federal government, and who supplies medical evidence that we ask for and need for making determinations of disability shall be entitled to payment for the reasonable cost of providing the evidence.

DATES: Effective date: These regulations are effective on an interim basis beginning on December 1, 1980.

COMMENT DATE: Before adopting final regulations, we will consider any comments we receive by December 29, 1980.

ADDRESSES: Send your written comments to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203. You may see copies of all comments we receive at the Washington Inquiries Section, Office of Governmental Affairs, Social Security Administration, Department of Health and Human Services, Room 1212, Switzer Building, 330 C Street, S.W., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: William J. Ziegler, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301-594-7415.

SUPPLEMENTARY INFORMATION: Section 309 of Pub. L. 96-265 amends section 223(d)(5) of the Social Security Act to permit us to pay for certain medical evidence which we need to make title II disability determinations. As a result of this change in the law, we will now pay the reasonable cost for existing medical evidence which we ask for and need. However, we will pay only a non-Federal hospital, clinic, laboratory, or other provider of medical service, or a physician who is not employed by the Federal government. This law authorizes us to pay only for evidence which we ask for after November 30, 1980. The date of the request will be the first date that we ask for a medical report and not the date of a later request.

Until December 1, 1980 the claimant is primarily responsible for paying for existing medical evidence submitted to us for making a title II disability determination. The title II law does not allow us to routinely purchase existing medical evidence.

On the other hand, we have always paid for existing medical evidence which we ourselves needed for making disability and blindness determinations under the title XVI Supplemental Security Income Program. Under the title XVI program, a claimant must always have limited income and resources in order to get payments based upon disability or blindness.

To reflect this change in the law, we are amending § 404.1514.

Although the law provides that we pay for existing medical evidence which we require and request, we may in some unusual situations pay for evidence of record which we did not require or which we did not request. From our past experience in paying for medical evidence under the title XVI

Supplemental Security Income Program, we have found that medical evidence of record which we need is sometimes given to us before we request it. As in the title XVI program, we may pay for such evidence in the title II program (under the authority we have in section 205(a) of the Act to efficiently carry out the purposes of that title) if we believe the evidence helps us to assure the correctness of our payments.

We will generally consider as existing medical evidence any medical report prepared on the basis of a prior medical examination, test, or laboratory study. We will pay a reasonable fee to cover any expenses for processing our request for the evidence, including expenses for preparing, copying, and mailing the report. We will not pay for the cost of the actual medical examination, test, or laboratory study unless we schedule it. Therefore, we are also amending § 404.1517 to make it clear that we will not pay for any medical examination arranged by a claimant or his or her representative without our advance approval. This is the same rule which we are already following under the title XVI Supplemental Security Income Program.

The Social Security Administration finds that publication of a Notice of Proposed Rulemaking (NPRM) is "unnecessary" under the Administrative Procedure Act (5 U.S.C. 553(b)(B)). Since these interim regulations only update existing regulations to reflect the Social Security Disability Amendments of 1980 (Section 309 of Pub. L. 96–265), and the policy stated is mandated and not discretionary, an NPRM would serve no useful purpose.

These interim regulations are issued under the authority contained in section 205, 223, and 1102 of the Social Security Act, as amended; 53 Stat. 1368, as amended; 70 Stat. 815, as amended; 49 Stat. 647, as amended; 42 U.S.C. 405, 423, and 1302.

(Catalog of Federal Domestic Assistance Program No. 13.802, Disability Insurance)

Dated: September 30, 1980.

William J. Driver,

Commissioner of Social Security.

Approved: October 23, 1980.

Patricia Roberts Harris,

Secretary of Health and Human Services.

Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. Section 404.1514 is revised to read as follows:

§ 404.1514 When we will purchase existing evidence.

We need specific medical evidence to determine whether you are disabled or blind. You are responsible for providing that evidence. However, we will pay physicians not employed by the Federal government and other non-Federal providers of medical services for the reasonable cost of providing us with existing medical evidence that we need and ask for after November 30, 1980.

2. Paragraph (a) of § 404.1517 is revised to read as follows:

§ 404.1517 Consultative examination at our expense.

(a) *Notice of the examination.* If your medical sources cannot give us sufficient medical evidence about your impairment for us to determine whether you are disabled or blind, we may ask you to have one or more physical or mental examinations or tests. We will pay for these examinations. However, we will not pay for any medical examination arranged by you or your representative without our advance approval. If we arrange for the examination or test, we will give you reasonable notice of the date, time, and place the examination or test will be given, and the name of the person who will do it. We will also give the examiner any necessary background information about your condition when your own physician will not be doing the examination or test.

* * * * *

[FR Doc. 80-33812 Filed 10-29-80; 8:45 am]

BILLING CODE 4110-07-M

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20 CFR Part 416

[Reg. No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Family Relationships

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: We have reorganized and simplified our rules on family relationships under the Supplemental Security Income (SSI) program. These regulations explain who is a spouse, a child, and a parent for SSI purposes. The regulations also states when a person must give us evidence about family relationships and what kinds of evidence we need. These regulations are important because determinations on family relationship questions must be made in order to know:

(1) What limits on income and resources to use in order to determine eligibility,

(2) What income to count in order to determine the benefit amount, and

(3) What benefit amount applies.

The Notice of Proposed Rule Making (NPRM) was published in the Federal Register on March 11, 1980 (45 FR 15566) with a 60-day comment period.

DATES: These amendments are effective October 30, 1980.

FOR FURTHER INFORMATION CONTACT: Cliff Terry, Legal Assistant, Room 4234, West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–7519.

SUPPLEMENTARY INFORMATION: We have revised and reorganized these rules as part of Operation Common Sense, which is a Department-wide effort to review, simplify, and improve HHS's regulations.

Changes from Prior Regulations

We have summarized below the main changes we have made in revising Subpart J.

1. *Organization of subpart.* The main change we have made in the overall organization of Subpart J is to group the various sections of the subpart into three categories: Who is considered someone's spouse, who is considered a child, and who is considered someone's parent. These categories are necessary because the rules on eligibility and benefit amounts vary depending on the person's situation in each of these areas. Previously, the categories were mixed together and therefore were more likely to cause a person to confuse the rules.

2. *Definitions.* We have deleted several definitions from this subpart. Where possible, we avoid using terms that need to be defined. We define some terms in § 416.1001(c) and some other terms in the sections where we use them.

3. *Evidence of marriage.* In § 416.1026(a) we make it clear that we generally accept a person's statement that he or she is not married when he or she is applying for SSI. In the prior regulations this general rule was only implied.

4. *Effect of separation.* In § 416.1030(a)(1) we make it clear that if the members of an eligible couple stop living together, we will normally continue treating them as a couple through the sixth calendar month after the month in which they stopped living together. The prior regulations might have been confusing on this point.

5. *End of marriage.* In § 416.1032 we clarify our policy on when we consider that a marriage ends. We consider a marriage ended when either spouse dies or a divorce or annulment becomes final. The rule we have added, in § 416.1032(c),is that if a marriage exists because a person is a spouse for purposes of husband's or wife's social security insurance benefits, that marriage could also end if we decide that either person is no longer the spouse of the other for purposes of husband's or wife's social security insurance benefits.

In § 416.1035(b) we explain that we generally accept a person's statement about the end of his or her marriage after the person becomes eligible for SSI if the marriage ends by death, but if the marriage ends by divorce or annulment we must see evidence. If marriage ends for some other reason, we will consider all relevant information to decide if and when the marriage ended. The prior regulation said only that the applicant or beneficiary must give us evidence that the marriage has ended if we ask for it.

6. *Definition of student.* In § 416.1061(c)(1) we clarify our existing policy that we consider a person to be a student regularly attending school, college, or training even when classes are out if the person tells us that he or she intends to resume attending regularly when school opens again, even if he or she does not actually resume attending.

7. *Living in the same household.* We have deleted § 416.1070, which explained when we will consider a child to be living in the same household with his or her parent or stepparent. We have deleted this explanation from Subpart J because it is now in Subpart K (§ 416.1167).

8. *Proof of child's age.* We have deleted § 416.1078, which explained what proof of a child's age is required, because Subpart H explains all requirements for proof of age.

Change in Law Reflected in These Regulations

Section 203 of the Social Security Disability Amendments of 1980, Pub. L. 96–265, enacted June 9, 1980, requires a change in § 416.1051(c) of these regulations. Section 416.1051(c) provides that if a child lives with his or her parent or stepparent who is not eligible for SSI benefits, we will count part of the parent's or stepparent's income and resources as the child's, if the child is under age 21. Section 203 of Pub. L. 96–265 changes that age from 21 to 18, effective October 1980. We have not made that change in § 416.1051(c) because we will publish a separate NPRM on that subject, as soon as possible.

Discussion of Public Comments

We received 8 comments on the NPRM. Six were from legal services or advocacy organizations, one from a State department of health and social services, and one from the U.S. Department of Justice.

Changes in Response to Public Comments

In response to the following comments, we have made revisions in the final regulations.

1. *Information we need when a couple stops living together.* A comment said that proposed § 416.1031(c) should tell why it is important to give us the information described there when a couple stops living together.

We have added an explanation in § 416.1035(a) of the final regulations that the information helps us determine whether there has been a change in either person's living arrangements or income that affects eligibility or amount of benefits.

Another comment said we should make clear that we will not stop a person's benefit just because he or she is unable to answer every question in proposed § 416.1031(c), such as where the other person is living.

We have changed the paragraph (§ 416.1035(a) in the final regulations) to make clear that if the person cannot answer our questions, he or she must only tell us why not and give us whatever information he or she can.

2. *Training to prepare for a paying job.* A commenter said we should revise § 416.1061 (b) and (c) to make it clear, as § 416.1061(a)(3) does, that attending a course of training does not make a person a student for SSI purposes unless the training is to prepare the person for a paying job.

We have clarified this in § 416.1061 (b), (c), and (d).

3. *Evidence that a person is a student.* A comment said that proposed § 416.1061(f) gives the impression that we will always contact a student's school, college, or training agency for information. The commenter reasoned that this is unnecessary if the student shows us good evidence that he or she is a student there, such as a student identification card or tuition receipt. The commenter reasoned further that our unnecessary contact with the school, college, or agency may embarrass the student.

We agree and have changed § 416.1061(f) to make it clear that we will contact the school, college, or training agency only if we need information or evidence the student cannot give us.

Changes We Did Not Make in Response to Public Comments

For the reasons stated below, we did not agree that the final regulations should be revised to include other changes suggested by public comments, and we did not adopt the following suggestions.

1. *Marriage based on people's living together and leading others to believe they are married.* A comment said that proposed § 416.1006(c), which provides that we will consider two people married if they are unrelated, of opposite sexes, living together, and leading people to believe they are husband and wife, is illegal. The commenter reasoned that whether two people are married or not depends entirely on State laws.

This provision is not illegal. In fact, it is specifically required by section 1614(d) of the Social Security Act (the Act). We recognize that State laws govern the matter of whether people are legally married or not. The Act and § 416.1006 do not give rules for deciding whether people are legally married, but give rules only for whether we are to treat them as married for SSI purposes.

2. *Effect of SSI relationship regulations on social security widow's or widower's insurance benefits.* A comment said we should clarify whether proposed §§ 416.1006 and 416.1011 would cause termination of the social security widow's or widower's insurance benefits of someone who, after becoming widowed, married an SSI beneficiary.

As § 416.1006 states, its rules are for SSI purposes; they do not affect social security insurance benefits. The conditions that cause termination of social security widow's and widower's insurance benefits are in 20 CFR 404.337(b). Remarriage may cause termination of those benefits.

3. *Same-sex family units.* A comment said that if two unrelated people of the same sex live together and lead people to believe they are a family unit, we should consider them spouses. The commenter believed that by not doing so we are denying these households SSI benefits.

Our rules in § 416.1006 for deciding whom to treat as husband and wife are governed by the Act. The Act provides that "if a man and woman are found to be holding themselves out to the community in which they reside as husband and wife, they shall be so considered" for SSI purposes. Therefore, we cannot change our rules unless Congress changes the law. However, being married is not a requirement for SSI benefits.

4. *Person's age as a factor in whether we require proof that the person is married or is no longer married.* A comment said a person's age should make no difference in whether we need evidence that the person is married or in

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whether we need evidence that the person's marriage has ended. The comment referred to proposed §§ 416.1021(b) and 416.1026(b).

Section 416.1021(b) provides that a person who is applying for or receiving SSI and says he or she is married must show us evidence of marriage if he or she is under age 21 and living with a parent(s) or a stepparent. In this case a person might have reason to tell us he or she is married when it is not true, in order to avoid the application of our deeming rules. We deem some of the parent's or stepparent's income and resources as belonging to the person who is under age 21 and living with the parent or stepparent. We apply the deeming rules, however, only if we consider the person applying to be a child. We do not consider a person who is married to be a child. (As mentioned above, the Social Security Disability Amendments of 1980 change the age in this rule about counting income from 21 to 18, effective October 1980, and we plan to change § 416.1051(c) to agree with the law. We also plan to change the age in § 416.1021(b) from 21 to 18.)

Section 416.1026(b) provides that a person who applies for SSI and says he or she is no longer married must show us evidence of the ending of the marriage if he or she is under age 22. This is because the person might have reason to tell us he or she is not married when it is not true, in order to have us consider him or her a child. In some cases being considered a child can keep us from subtracting some income from his or her SSI benefits, as § 416.1051 (a) and (b) explain.

5. *Different names as evidence that two people do not lead others to believe they are married.* A comment said we should revise proposed § 416.1026(c) to provide that use of different last names is not evidence that two people do not lead others to believe they are married. The commenter reasoned that women now frequently keep their maiden names after marriage.

Since this fact is generally known, and since we have revised § 416.1025(c)(2) to make it clear that no single question in § 416.1026(c)(1) is decisive by itself, we think readers of the section will allow for the possibility that two people lead others to believe they are married even though they use different last names.

6. *Ending of eligible couple status by ceasing to lead others to believe they are married.* Two comments said that if we consider two people married under § 416.1006(c) because they live together and lead others to believe they are married, we should stop considering them an eligible couple as soon as they stop leading others to believe they are married, especially if they separate.

We do not recognize that a marriage under § 416.1006(c) has ended just because a couple separates, unless they separate for 6 full months. We adopted this rule because it is difficult to confirm when a couple has stopped leading others to believe they are married. A 6 months' separation seems to be a reasonable way of demonstrating that change in status.

7. *Proof of divorce after a person becomes eligible for SSI.* A comment said that proposed § 416.1036(c)(2) is unreasonable in calling for a divorced person to show us the decree of divorce to prove that he or she is no longer married. The commenter pointed out that someone can be divorced by his or her spouse without even knowing it.

We recognize that a divorced person may be unable to show us the divorce decree. However, the present wording of the regulation makes it clear that the requirement to do so is by no means absolute, and that a person who cannot show us a decree may give us whatever evidence he or she can. Therefore we have not revised this paragraph.

8. *Ending of eligible couple status by various court actions other than final divorce or annulment.* A comment said we should consider eligible couple status ended by any of various court actions in connection with separation, such as a separate support order, and by starting of divorce or annulment proceedings.

We have not adopted this comment because the court actions mentioned do not end a marriage under State law. The Act requires us to continue considering two people who are legally married to be an eligible couple as long as they remain married under State law unless they have been separated for 6 full months. The only exception we make to this rule is where one of them becomes someone else's spouse for SSI purposes.

9. *Counting stepparent's income and resources as child's.* A comment said we should not count part of an ineligible stepparent's income and resources as belonging to a child under age 21 who lives with the stepparent unless the income and resources are actually available to the child. The commenter said we should make this change in proposed § 416.1051(c) to conform to most States' laws and Federal case law.

The Act, in section 1614(f), specifically requires us to count part of the stepparent's income and resources as the child's regardless of whether they are actually available to the child. (As mentioned above, under a change in the law the age limit for this is age 18 instead of 21, effective October 1980.)

Other Changes We Made

In addition to the changes we made as a result of the public comments, we made other changes in the final regulations for clarity. The more important changes we made are as follows.

1. *Deciding whether people living together lead others to believe they are married.* We have tried to make it clearer that we will not necessarily consider two unrelated people of opposite sexes who are living together to be leading others to believe they are married just because one piece of information indicates they do. We changed § 416.1026(c)(2) to say we base our decision on all the information we have.

2. *Information about marriage before and after becoming eligible.* We have revised the headings of §§ 416.1016 and 416.1026 to clarify that these sections deal with information and evidence about whether a person is married that we need when the person applies for SSI benefits. The new §§ 416.1030, 416.1032, and 416.1035 deal with separation or ending of a marriage after one or both spouses become eligible for benefits.

3. *Separation or end of marriage after becoming eligible.* We have reorganized proposed §§ 416.1031(a) and 416.1036 (a)(1) and (b) into §§ 416.1030 and 416.1032 of the final regulations to make it clear that we will not consider two people an eligible couple after whichever of the events listed there happens first. We have deleted the paragraphs of the proposed regulations which explained the effect of the separation or the end of the marriage of an eligible individual and an ineligible spouse, because §§ 416.1002(d) and 416.1167(a) already explain this. We combined proposed §§ 416.1031(c) and 416.1036(c) into § 416.1035.

4. *Definition of student.* Proposed § 416.1061 provided that if a person is enrolled for one or more courses of study and attends class in a high school for at least 12 hours a week, he or she is a student. To be more specific, we have changed "high school" to "grades 7–12."

The proposed regulations with changes as noted above are adopted as set forth below.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income)

Dated: October 7, 1980.

William J. Driver,

Commissioner of Social Security.

Approved: October 23, 1980.

Patricia Roberts Harris,

Secretary of Health and Human Services.

Subpart J of Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is revised to read as follows:

Subpart J—Family Relationships

Sec.

416.1001 Introduction.

Who Is Considered Your Spouse

416.1002 Effects of marriage on eligibility and amount of benefits.
416.1006 Whether your are married and who is your spouse.
416.1011 If more than one person could be considered your spouse.
416.1016 Information we need concerning marriage when you apply for SSI.
416.1021 Showing that you are married.
416.1026 Showing that your are not married when you apply for SSI.
416.1030 When we stop considering you and your spouse an eligible couple.
416.1032 When we consider your marriage ended.
416.1035 Information we need about separation or end of marriage after you become eligible for SSI.

Who Is Considered a Child

416.1051 Effects of being considered a child.
416.1056 Who is considered a child.
416.1061 Deciding whether your are a child: Are you a student?
416.1066 Deciding whether you are a child: Are you the head of a household?

Who Is Considered Your Parent

416.1076 Effects a parent (or parents) can have on the child's benefits.
416.1081 Deciding whether someone is your parent or stepparent.

Authority: Secs. 1102, 1614 (b), (c), and (d), and 1631(d)(1) of the Social Security Act; 49 Stat. 647 as amended, 86 Stat. 1473 and 1476; 42 U.S.C. 1302, 1382c (b), (c), and (d), and 1383(d)(1).

Supart J—Family Relationships

§ 416.1001 Introduction.

(a) *What is in this subpart.* This subpart contains the basic rules for deciding for SSI purposes whether a person is considered married and, if so, to whom; whether a person is considered a child; and whether a person is considered another person's parent. It tells what information and evidence we need to decide these facts.

(b) *Related subparts.* Subpart D discusses how to determine the amount of a person's benefits; Subpart G discusses what changes in a person's situation he or she must report to us; Subpart K discusses how we count income; and Subpart L discusses how we count resources (money and property). The questions of whether a person is married, to whom a person is married, whether a person is a child, and who is a person's parent must be answered in order to know which rules in Subparts D, G, K, and L apply.

(c) *Definitions.* In this subpart—

"Eligible spouse" means a person—

(1) Who is eligible for SSI,

(2) Whom we consider the spouse of another person who is eligible for SSI, and

(3) Who has lived with that other person as husband and wife within the past 6 months.

"Spouse" means a person's husband or wife under the rules of §§ 416.1006 and 416.1011.

"We" and "us" mean the Social Security Administration.

"You" means a person who has applied for or has been receiving SSI benefits, or a person for whom someone else has applied for or has been receiving SSI benefits.

Who Is Considered Your Spouse

§ 416.1002 Effects of marriage on eligibility and amount of benefits.

(a) *If you have an ineligible spouse—*(1) *Counting income.* If you apply for or receive SSI benefits, and your are married to someone who is not eligible for SSI benefits and are living in the same household as that person, we may count part of that person's income as yours. Counting part of that person's income as yours may reduce the amount of your benefits or even make you ineligible. Section 416.410 discusses the amount of benefits and § 416.1163 explains how we count income for an individual with an ineligible spouse.

(2) *Counting resources.* If you are married to someone who is not eligible for SSI benefits and are living in the same household as that person, we will count the value of that person's resources (money and property), minus certain exclusions, as yours when we determine your eligibility. Section 416.1202(a) gives a more detailed statement of how we count resources and § 416.1205(a) gives the limit of resources allowed for eligibility of a person with an ineligible spouse.

(b) *If you have an eligible spouse.* (1) *Counting income.* If you apply for or receive SSI benefits, and you are married to someone who is eligible for SSI benefits and have lived in the same household as that person as husband and wife within the last six months, we will count your combined income and calculate the benefit amount for you as a couple. Section 416.412 gives a more detailed statement of the amount of benefits and Subpart K of this part explains how we count income for an eligible couple.

(2) *Counting resources.* If you are married to someone who is eligible for SSI benefits and have lived in the same household as that person as husband and wife within the past six months, we will count the value of your combined resources (money and property), minus certain exclusions, and use a combined resource limit on that amount when we determine your eligibility. Section 416.1205(b) gives a more detailed statement of the resource limit for an eligible couple.

(c) *If your are married, we do not consider you a child.* The rules for counting income and resources are different for children than for adults. (Section 416.1051 discusses the effects of being considered a child on eligibility and amount of benefits.) Regardless of your age, if your are married we do not consider you to be a child.

(d) *Benefits depend on whether you are married or not married at the beginning of each month.* If you get married, even on the first day of a month, we will treat you as single until the next month. If your marriage ends, even on the first day of a month, we will treat you as married until the next month.

§ 416.1006 Whether you are married and who is your spouse.

We will consider someone to be your spouse (and therefore consider you to be married) for SSI purposes if—

(a) You are legally married under the laws of the State where your and his or her permanent home is (or was when you lived together);

(b) We have decided that either of you is entitled to husband's or wife's social security insurance benefits as the spouse of the other (this decision will not affect your SSI benefits for any month before it is made); or

(c) You and an unrelated person of the opposite sex are living together in the same household at or after the time you apply for SSI benefits, and you both lead people to believe that you are husband and wife.

§ 416.1011 If more than one person could be considered your spouse.

If the rules in § 416.1006 would mean that you have more than one husband or wife for SSI purposes, we will use the following rules to decide which one to consider your spouse:

(a) We will consider the person you are presently living with to be your spouse.

(b) If you are not presently living with any person who could be considered your spouse, but you intend to resume living with a person (within six months after the time you stopped living with

that person) who could be considered your spouse under the rules in § 416.1006, we will consider that person to be your spouse.

(c) If neither paragraph (a) nor (b) of this section applies to you, we will consider the person with whom you lived most recently to be your spouse if you have been separated from that person for less than six months.

(d) If within the past six months you have not been living with any person who could be considered your spouse under the rules of § 416.1006, we will treat you as a single eligible individual in determining your eligibility and benefit amount.

§ 416.1016 Information we need concerning marriage when you apply for SSI.

When you apply for SSI benefits, we will ask whether you are married. If you are married, we will ask whether you are living with your spouse. If you are unmarried or you are married but not living with your spouse, we will ask whether you are living in the same household with anyone of the opposite sex who is not related to you. If you are, we will ask whether you and that person lead other people to believe that you are husband and wife.

§ 416.1021 Showing that you are married.

(a) *If you are at least age 21 or not living with a parent.* (1) Unless we have information to the contrary, we will consider you to be married if you say you are married and you are age 21 or older or are not living with your parent(s) or stepparent. If we have information that you are not married, you must show us your marriage certificate or other evidence described in paragraph (c) of this section.

(2) We will also consider you married, on the basis of your statement, if you say you are living with an unrelated person of the opposite sex and you both lead people to believe that you are married. If we have information contrary to your statement, we will ask you to support your statement with evidence.

(b) *If you are under 21 and living with a parent.* If you are under age 21 and living with your parent(s) or stepparent, you must show us your marriage certificate or other evidence described in paragraph (c) of this section.

(c) *Evidence of marriage.* If paragraph (a) or (b) of this section indicates that you must show us evidence that you are married, you must show us your marriage certificate (which can be the original certificate, a certified copy of the public record of marriage, or a certified copy of the church record) if you can. If you cannot, you must tell us why not and give us whatever evidence you can.

§ 416.1026 Showing that you are not married when you apply for SSI.

(a) *General rule: Proof is unnecessary.* If you do not live with an unrelated person of the opposite sex and you say that you are not married, we will generally accept your statement unless we have information to the contrary.

(b) *Exception: If you are under age 22 and have been married.* If you are under age 22 and have been married, to prove that your marriage has ended you must show us the decree of divorce or annulment or the death certificate if you can. If you cannot, you must tell us why not and give us whatever evidence you can.

(c) *Exception: If you are living with an unrelated person of the opposite sex.* (1) If you are living with an unrelated person of the opposite sex, you and the person you are living with must explain to us what your relationship is and answer questions such as the following:

(i) What names are the two of you known by?

(ii) Do you introduce yourselves as husband and wife? If not, how are you introduced?

(iii) What names are used on mail for each of you?

(iv) Who owns or rents the place where you live?

(v) Do any deeds, leases, time payment papers, tax papers, or any other papers show you as husband and wife?

(2) We will consider you married to the person you live with unless the information we have, including the answers to the questions in paragraph (c)(1) of this section, all considered together, shows that the two of you do not lead people to believe that you are each other's husband and wife.

§ 416.1030 When we stop considering you and your spouse an eligible couple.

We will stop considering you and your spouse an eligible couple, even if you both remain eligible, at the beginning of whichever of these months comes first—

(a) If you stop living with your eligible spouse—

(1) The seventh calendar month after the month you stopped living together; or

(2) The calendar month after the month in which either person can be considered to be the spouse of someone else for SSI purposes; or

(b) The calendar month after the month in which your marriage ends.

§ 416.1032 When we consider your marriage ended.

We consider your marriage ended when—

(a) Your spouse dies;

(b) Your divorce or annulment becomes final;

(c) We decide that either of you is not a spouse of the other for purposes of husband's or wife's social security insurance benefits, if we considered you married only because of § 416.1006(b); or

(d) You and your spouse have been living apart for six full months, if we considered you married only because of § 416.1006(c).

§ 416.1035 Information we need about separation or end of marriage after you become eligible for SSI.

(a) *If you and your spouse stop living together.* If you and your spouse stop living together, you must promptly report that fact to us, so that we can decide whether there has been a change that affects either person's benefits. You must also answer questions such as the following. If you cannot answer our questions you must tell us why not and give us whatever information you can.

(1) When did you stop living together?

(2) Do you expect to live together again?

(3) If so, when?

(4) Where is your husband or wife living?

(5) Is either of you living with someone else as husband and wife?

(b) *Evidence of end of marriage.*—(1) *Death.* We will accept your statement that your husband or wife died unless we have information to the contrary. If we have contrary information, you must show us the death certificate if you can. If you cannot, you must tell us why not and give us whatever evidence you can.

(2) *Divorce or annulment.* If your marriage ends by divorce or annulment, you must show us the decree of divorce or annulment if you can. If you cannot, you must tell us why not and give us whatever evidence you can.

(3) *Other reason.* If your marriage ends for reasons other than death, divorce, or annulment, you must give us any information we ask you to give us about the end of the marriage. If you cannot, you must explain why you cannot. We will consider all of the relevant information to decide if and when your marriage ends.

Who is Considered a Child

§ 416.1051 Effects of being considered a child.

If we consider you to be a child for SSI purposes, the rules in this section apply when we determine your eligibility for SSI and the amount of your SSI benefits.

(a) If we consider you to be a student, we will not count all of your earned income when we determine your SSI eligibility and benefit amount. Section 416.1110 tells what we mean by earned income. Section 416.1112(c)(2) tells how much of your earned income we will not count.

(b) If you have a parent who does not live with you but who pays money to help support you, we will not count one-third of that money when we count your income. Section 416.1124(c)(9) discusses this rule.

(c) If you are under age 21 and you live with your parent or stepparent who is not eligible for SSI benefits, we will count part of his or her income and resources (money and property) as yours. Sections 416.1165 and 416.1202 discuss these rules.

§ 416.1056 Who is considered a child.

We consider you to be a child if—

(a)(1) You are under 18 years old; or

(2) You are under 22 years old and you are a student regularly attending school or college or training that is designed to prepare you for a paying job;

(b) You are not married; and

(c) You are not the head of a household.

§ 416.1061 Deciding whether you are a child: Are you a student?

(a) *Are you a student?* You are a student regularly attending school or college or training that is designed to prepare you for a paying job if you are enrolled for one or more courses of study and you attend class—

(1) In a college or university for at least 8 hours a week under a semester or quarter system;

(2) In grades 7–12 for at least 12 hours a week;

(3) In a course of training to prepare you for a paying job, and you are attending that training for at least 15 hours a week if the training involves shop practice or 12 hours a week if it does not involve shop practice (this kind of training includes anti-poverty programs, such as the Job Corps, and government-supported courses in self-improvement); or

(4) Less than the amount of time given in paragraph (a) (1), (2), or (3) of this section for reasons you cannot control, such as illness, if the circumstances justify your reduced credit load or attendance.

(b) *If you have to stay home.* You may be a student regularly attending school, college, or training to prepare you for a paying job if—

(1) You have to stay home because of your disability;

(2) You are studying at home a course or courses given by a school (grades 7–12), college, university, or government agency; and

(3) A home visitor or tutor directs your study or training.

(c) *When you are not in school*—(1) *When school is out.* We will consider you to be a student regularly attending school, college, or training to prepare you for a paying job even when classes are out if you actually attend regularly just before the time classes are out and you—

(i) Tell us that you intend to resume attending regularly when school opens again; or

(ii) Actually do resume attending regularly when school opens again.

(2) *Other times.* Your counselor or teacher may believe you need to stay out of class for a short time during the course or between courses to enable you to continue your study or training. That will not stop us from considering you to be a student regularly attending school, college, or training to prepare you for a paying job if you are in—

(i) A course designed to prepare disabled people for work; or

(ii) A course to prepare you for a job that is specially set up for people who cannot work at ordinary jobs.

(d) *Last month of school.* We will consider you to be a student regularly attending school, college, or training to prepare you for a paying job for the month in which you complete or stop your course of study or training.

(e) *When we need evidence that you are a student.* We need evidence that you are a student if—

(1) You are 18 years old or older but under age 22, because we will not consider you to be a child unless we consider you to be a student; or

(2) We consider you to be a child and you expect to earn over $195 in any 3-month period, because we will not count all of your earned income if we consider you to be a student.

(f) *What evidence we need.* If we need evidence that you are a student, you must—

(1) Show us any paper you have that shows you are a student in a school, college, or training program, such as a student identification card or tuition receipt; and

(2) Tell us—

(i) What courses you are taking;

(ii) How many hours a week you spend in classes;

(iii) The name and address of the school or college you attend or the agency training you; and

(iv) The name and telephone number of someone at the school, college, or agency who can tell us more about your courses, in case we need information you cannot give us.

§ 416.1066 Deciding whether you are a child: Are you the head of a household?

(a) *Meaning of head of household.* You are the head of a household if you have left your parental home on a permanent basis and you are responsible for the day-to-day decisions on the operation of your own household. If you live with your parent(s) or stepparents, we will ordinarily assume you are not the head of a household. However, we will consider you to be the head of a household if for some reason (such as your parent's illness) you are the one who makes the day-to-day decisions. You need not have someone living with you to be the head of a household.

(b) *If you share decision-making equally.* If you live with one or more people and everyone has an equal voice in the decision-making (for example, a group of students who share off-campus housing), that group is not a household. Each person who has left the parental home on a permanent basis is the head of his or her own household.

Who Is Considered Your Parent

§ 416.1076 Effects a parent (or parents) can have on the child's benefits.

Section 416.1051 (b) and (c) tells what effects a parent's income and resources can have on his or her child's benefits.

§ 416.1081 Deciding whether someone is your parent or stepparent.

(a) We consider your parent to be—

(1) Your natural mother or father; or

(2) A person who legally adopted you.

(b) We consider your stepparent to be the present husband or wife of your natural or adoptive parent. A person is not your stepparent if your natural or adoptive parent, to whom your stepparent was married, has died, or if your parent and stepparent have been divorced or their marriage has been annulled.

(c) *Necessary evidence.* We will accept your statement on whether or not someone is your parent or stepparent unless we have information to the contrary. If we have contrary information, you must show us, if you can, one or more of the following kinds of evidence that would help to prove whether or not the person is your parent or stepparent: Certificate of birth, baptism, marriage, or death, or decree of adoption, divorce, or annulment. If you cannot, you must tell us why not and show us any other evidence that would

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help to show whether or not the person is your parent or stepparent.

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INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 201

[A.I.D. Reg. 1]

Rules and Procedures Applicable to Commodity Transactions Financed by AID; Miscellaneous Amendments

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The Agency for International Development (AID) is amending its regulations relating to commodity transactions financed by the Agency. Provisions concerning the financing of transportation costs, AID marking requirements, and price provisions are being amended, an explanation of the interest rate charged on claims by AID is being added, and several editorial corrections are being made.

EFFECTIVE DATE: October 30, 1980.

FOR FURTHER INFORMATION CONTACT: Kathleen O'Hara, Office of Commodity Management (SER/COM), Agency for International Development, International Development Cooperation Agency, Washington, D.C. 20523, telephone 703-235-2173.

SUPPLEMENTARY INFORMATION: A change in AID regulations regarding eligible transportation costs was published on June 16, 1978 in the Federal Register (43 FR 25997). The language unintentionally restricted AID financing of land transportation costs. This amendment makes it clear that AID normally will finance rail, truck or other land transportation costs to the point of entry in the cooperating country.

Another change to the transportation regulations provides that if Code 941 (Selected Free World) has been authorized for procurement of commodities, AID may authorize use of vessels under flag registry of any country included in Code 941 to obtain broadened competition for shipment of bulk commodities.

Southern Rhodesia is deleted from the list of countries excluded from AID Geographic Code 941 (Selected Free World). AID has determined that Zimbabwe, as Southern Rhodesia is now known, is an eligible source country under Code 941.

AID marking regulations are amended to delete the requirement to use the Alliance for Progress (flaming torch) emblem and to delete the requirement that AID emblems be displayed while loading and unloading vessels whose cargoes consist entirely of AID-financed goods. In addition, this revision shows that the authority for waiving marking requirements has been transferred from the Office of Small Business to the Regional Assistant Administrators.

The price provisions are amended to delete references and definitions relating to a method of commission payment which is no longer used.

A provision concerning interest on AID refund claims is added to explain that interest will be charged from the date of payment to the supplier at the rate established by the Secretary of the Treasury under the Internal Revenue Code, 26 U.S.C. 6621(b).

Other editorial changes have also been made.

Subpart A—Definitions and Scope of this Part

§ 201.01 [Amended]

1. Section 201.01 is amended by deleting the last sentence of paragraph (s).

§ 201.11 [Amended]

2. In § 201.11, paragraph (b)(4), the summary of AID Geographic Code 941 is amended by deleting "Southern Rhodesia".

Subpart B—Conditions Governing the Eligibility of Procurement Transactions for AID Financing

3. Section 201.13, paragraph (b)(1) is revised to read as follows:

§ 201.13 Eligibility of delivery services.

* * * * *

(b) *Conditions and limitations*—(1) *Transportation costs* (i) Unless otherwise authorized, AID will finance air and ocean transportation costs only when such costs meet the requirements of this paragraph (b)(1)(i).

(*a*) When Geographic Code 000 is authorized for the procurement of commodities, AID will finance air and ocean transportation costs only when such costs are incurred on aircraft or ocean vessels of U.S. flag registry.

(*b*) When Geographic Code 941 is authorized for the procurement of commodities, AID will finance air and ocean transportation costs only when such costs are incurred on aircraft or ocean vessels under flag registry of the U.S. or the cooperating country, except as provided in (b)(1)(i)(*c*) of this section.

(*c*) When Geographic Code is 941 authorized for the procurement of commodities, AID may specifically authorize in an implementing document the financing of air and ocean transportation costs incurred on aircraft or ocean vessels under flag registry of the cooperating country or any country included in Geographic Code 941 when there is a general unavailability of U.S. or cooperating country flag aircraft or ocean vessels or broadened competition is required to achieve economical transportation of bulk commodities.

(*d*) AID will finance costs incurred on aircraft or ocean vessels under flag registry of a free world country not authorized in accordance with paragraphs (b)(1)(i)(*a*) through (*c*) of this section if the costs are part of the total cost on a through bill of lading paid to a carrier under flag registry of a country which is so authorized. (ii) Notwithstanding paragraph (b)(1)(i) of this section, unless otherwise authorized, AID will not finance any transportation costs (*a*) For shipment beyond the point of entry in the cooperating country except when intermodal transportation service covering the carriage of cargo from point of origin to destination is used and the point of destination, as stated in the carrier's through bill of lading, is established in the carrier's tariff; or

(*b*) On a transportation medium owned, operated or under the control of any country not included within AID Geographic Code 935; or

(*c*) On any vessel designated by AID as ineligible to carry AID-financed cargo; or

(*d*) Under any ocean or air charter covering full or part cargo (whether for a single voyage, consecutive voyages, or a time period) which has not received prior approval by AID/W (Office of Commodity Management); or

(*e*) Which are attributable to brokerage commissions which exceed the limitations specified in § 201.65(1) or to address commissions, dead freight, or demurrage.

* * * * *

§ 201.13 [Amended]

4. Also in Section 201.13, paragraph (b)(3)(ii) is amended by deleting "Office of the Controller" and inserting "Office of Commodity Management" in its place.

§ 201.15 [Amended]

5. Section 201.15 is amended by deleting "(July 1–June 30)" from paragraph (b) and inserting "(October 1–September 30)" in its place, and by deleting "(Resources Transportation Division)" from the first sentence of paragraph (c) and inserting "(Office of Commodity Management)" in its place.

Subpart D—Responsibilities of Suppliers

6. In Section 201.31, paragraph (d)(1) is revised as follows:

§ 201.31 Suppliers of commodities.

* * * * *

(d) *Marking of shipping containers and commodities*—(1) *Affixing emblems and identification numbers.* The supplier of commodities shall be responsible for assuring that all export containers, whether shipped from the United States or from any other source country, carry the official AID (clasped hands) emblem. Additionally, except as AID may otherwise prescribe, when the supplier is given notice by the importer that the importer is the government of a cooperating country or any of its subdivisions or instrumentalities, the supplier shall also be responsible for assuring that all commodities carry the AID emblem. The last five digits of the AID financing document number shall be marked on each export shipping container in characters at least equal in height to the shippers marks.

(i) * * *

(ii) * * *

(iii) *Design and color of emblems.* Emblems shall conform in design and color to samples available from AID/W (Office of Commodity Management) and from the USAID.

* * * * *

§ 201.31 [Amended]

7. Section 201.31, paragraph (d)(3) is amended by deleting "(Office of Small Business)" and inserting "(Regional Assistant Administrator or his/her designee)" in its place.

8. Also in § 201.31, paragraph (d)(4) is deleted.

9. Section 201.31, paragraph (g) is amended by deleting "Office of the Controller" and inserting "Office of Financial Management" in its place.

§ 201.32 [Amended]

10. In § 201.32, paragraph (b) is deleted and reserved.

11. Section 201.32 is also amended by deleting "Controller" from paragraph (c) and inserting "Office of Financial Management" in its place and by deleting "Office of the Controller" from paragraph (d) and inserting "Office of Commodity Management" in its place.

Subpart F—Payment and Reimbursement

§ 201.51 [Amended]

12. In § 201.51, paragraph (d)(4) is amended by deleting "(Office of the Controller)" and inserting "(Office of Financial Management)" in its place.

Subpart G—Price Provisions

§ 201.61 [Amended]

13. In § 201.61, paragraphs (p), (s), (u), and (y) are deleted and reserved.

14. In § 201.65, paragraph (i) is revised to read as follows:

§ 201.65 Commissions, service payments, and discounts.

* * * * *

(i) *Commissions and other payments or benefits attributable to AID financing.* Every commission or other payment, credit, allowance, or benefit of any kind paid, made or given in connection with the sale of commodities financed under this part to any person described in paragraphs (h)(1), (2), or (3) of this § 201.65 shall be presumed conclusively to have been paid from AID funds and shall thereby be subject to the requirements of this Part 201.

* * * * *

§ 201.67 [Amended]

15. In § 201.67, paragraph (a)(5)(ii) is amended by deleting the word "Controller" and inserting "Office of Financial Management" in its place.

Subpart H—Rights and Responsibilities of Banks

16. In § 201.72, paragraph (b)(4) is revised to read as follows:

§ 201.72 Making payments.

* * * * *

(b) * * *

(4) *Description.* The documents shall describe and identify the commodities or services in a manner which, according to good commercial practice, is not inconsistent with the description contained in the letter of credit or payment instructions issued under a letter of commitment or a request for the opening of a special letter of credit. The bank shall not be required to determine whether the supplier's invoice meets the detailed requirements of § 201.52(a)(2)(i).

* * * * *

Subpart I—Rights and Remedies of AID, and Waiver Authority

17. Section 201.82 is revised as follows:

§ 201.82 Rights of AID against suppliers

Without limiting the responsibility of the borrower/grantee or other parties, AID may require an appropriate refund to it by a supplier under any transaction which violates the requirements of this part, whenever in AID's opinion the failure of the supplier to comply with the rules and other requirements of this part has contributed to such violation. Any refund requested will include interest from the time of payment to the supplier. Interest will be charged at the rate established by the Secretary of the Treasury in accordance with the Internal Revenue Code, 26 U.S.C. 6621(b).

This amendment is issued pursuant to the authority of Section 621 of the Foreign Assistance Act of 1961, as amended, 75 Stat. 4214; 22 U.S.C. 2381 and 22 CFR 201.65.

Dated: October 17, 1980.

Donald G. MacDonald,

Assistant Administrator for Program and Management Services.

[FR Doc. 80-33735 Filed 10-29-80; 8:45 am]
BILLING CODE 4710-02-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1690

Coordination of Federal Equal Employment Opportunity Programs

Correction

In FR Doc. 80-31930, appearing at pages 68358-68364 in the Tuesday, October 14, 1980 issue of the Federal Register, make the following changes:

1. In § 1690.107—Definitions, in the third line of paragraph (h), delete "to".

2. In the heading for § 1690.305, delete the "or", and insert "of" in its place.

3. In § 1690.307, paragraph (b), the five line should have a period immediately following the word "review" such that the line reads as follows:

"subject to review. EEOC reserves the * * *"

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 164

[CGD 79-148]

Electronic Relative Motion Analyzer; Corrections

AGENCY: Coast Guard, DOT.

ACTION: Correction of final rule.

SUMMARY: On August 14, 1980, at 45 FR 54037, the Coast Guard published a final rule regarding carriage requirements for an electronic relative motion analyzer (ERMA). Three portions of Appendix A to the final rule were unintentionally omitted. This correction document inserts the omitted paragraphs. Additionally, Appendix A, as published, was based on a draft resolution of the Intergovernmental Maritime Consultative Organization (IMCO). The final resolution (IMCO Res. A.422(XI)) contained some non-substantive amendments to the draft wording which are incorporated herein. Finally, an error in the title of the IMCO performance standard is corrected by this document. The final rule also invited interested parties to comment on the inclusion of rigidly intergrated tug-barge combinations in the applicability of the rule. No comments were received, so the applicability will remain as stated in the final rule.

EFFECTIVE DATE: This correction is effective October 30, 1980. The effective date of the final rule remains July 1, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Schwer, Project Manager Office of Marine Environment and Systems (G–WWM–2/11), Room 1608, Department of Transportation. U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593, (202) 426–4958.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking (NPRM) regarding this topic was published on February 21, 1980, at 45 FR 11790. The final rule was published on August 14, 1980, at 45 FR 54037. The Coast Guard intended to make no change to Appendix A as it appeared in the NPRM. However, the following paragraphs were unintentionally omitted from the final rule: 3.6.1.1, 3.6.1.2., 3.8.2 (table), and 3.8.3 (table). These omissions are corrected by this document. Since this correction is necessary in any case, the document is also being used to correct two minor typographical errors and to amend some of the wording in Appendix A to parallel the final IMCO phraseology. Finally, paragraph (b)(2)(ii) of §164.38 referred to the IMCO standard as "Operational Standards for automatic Radar Plotting Devices." The correct title of this standard should read "Performance Standards for Automatic Radar Plotting Aids (ARPA)." In consideration of the foregoing the final rule which was published on August 14, 1980 at 45 FR 54037 is corrected as follows:

1. On page 54039, paragraph 164.38(b)(3)(ii), correct the title of the IMCO document to read "Performance Standards for Automatic Radar Plotting Aids (ARPA)".

2. On page 54039, paragraph 1.1 delete the words. . ."required by Regulation 12, Chapter V, of the 1974 SOLAS Convention, as amended. . ." and the asterisked footnote thereto. The reference is not necessary and has been deleted from the final version of the IMCO resolution.

3. On page 54039, Appendix A, paragraph 1.2, change the bracketed words to read "(IMCO Res. A.281(VII))". This change is made simply for ease of reference.

4. On page 54040, Appendix A, change paragraph 3.4.2 to read:

13.4.2 The design should be such that any malfunction of ARPA parts producing information additional to information to be produced by the radar as required by the performance standards for navigational equipment adopted by IMCO should not affect the integrity of the basic radar presentation. This too is a change in the wording of the final IMCO resolution. It provides a more precise description of the requirement and does not affect the substance of the paragraph.

5. On page 54040, Appendix A, change paragraph 3.4.3 to read:

3.4.3 The display on which ARPA information is presented should have an effective diameter of at least 340 mm. Again, the final resolution was reworded for clarity.

6. On page 54040, Appendix A, paragraph 3.6.1, after the words ". . . in regard to any tracked target," add the following:

1. present range to the target;
2. present bearing of the target;.

7. On page 54040, Appendix A, at the end of paragraph 3.8.2 add the following table:

Scenario/data	Relative course (degrees)	Relative speed (Knots)	CPA (n.m.)
1	11	2.6	1.6
2	7	0.6	
3	14	2.2	1.8
4	15	1.5	2.0

8. On page 54040, Appendix A, at the end of paragraph 3.8.3, add the following table:

Senario/data	Relative course (degrees)	Relative speed (knots)	C.P.A. (n.m.)	TCPA (mins)	True course (degrees)	True speed (knots)
1	3.0	0.8	0.5	1.0	7.5	1.2
2	2.3	.3			2.9	.8
3	4.4	.9	.7	1.0	3.3	1.0
4	4.6	.8	.7	1.0	2.6	1.2

9. On page 54041, ANNEX 2 to Appendix A, change the title to "—Operational Scenarios" to correct a spelling error.

(92 Stat. 1471 (46 U.S.C. 391a as amended))

W. E. Caldwell,
Rear Admiral, U.S. Coost Guard, Chief, Office of Marine Environment and Systems.
October 22, 1980.

[FR Doc. 80-33468 Filed 10-29-80; 8:45 am]
BILLING CODE 4910-14-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 238

[ER 1165-2-21]

Water Resources Policies and Authorities: Flood Damage Reduction Measures in Urban Areas

AGENCY: U.S. Army Corps of Engineers.

ACTION: Final rule.

SUMMARY: The Chief of Engineers is promulgating a revised regulation for Civil Works elements of the U.S. Army Corps of Engineers to follow in participating in urban flood control projects. This revised regulation provides current policy guidance and procedures when participating with local interests to alleviate existing and future flood damage problems. It establishes criteria to distinguish between flood damage reduction measures and storm sewer systems in urban areas. Provision of urban drainage systems is customarily regarded as storm drainage which, with all appurtenances, is considered a local responsibility. This policy guidance seeks to provide an economically efficient degree of flood protection consistent with safety of life and property and wise land use in urban and urbanizing areas. It further encourages

long range planning for flood damage reduction measures and storm systems in these areas.

EFFECTIVE DATE: October 31, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Howard J. Prante, Office of Policy, Directorate of Civil Works (DAEN–CWR–R) Washington, D.C. 20314, (202) 272–0123.

SUPPLEMENTARY INFORMATION: This regulation was originally published as a final regulation on 8 May 1978 (43 FR 19804). The earlier regulation contained criteria to distinguish between flood damage reduction measures and storm sewer systems in urban areas. As a result of our experiences in utilizing these criteria, it has become apparent that in some circumstances certain exceptions to these criteria are justified. Accordingly, these special cases are now identified and procedures specified for granting justified exceptions. These criteria changes are contained in paragraph 238.7(a). The remainder of the regulation is unchanged from the 8 May 1978 version. This is an interpretive rule providing agency guidance concerning Corps of Engineers participation in urban flood control projects. It is exempt from the Notice of Proposed Rulemaking requirements in 5 U.S.C. 553(6)(3)(A).

Note.—The Corps of Engineers has determined that these regulation revisions do not contain a major proposal requiring the preparation of a regulatory analysis under E.O. 12044, Improving Government Regulations (43 FR 12661, March 24, 1978).

Dated: October 24, 1980.

Approved:

Forrest T. Gay III,
Colonel, Corps of Engineers, Executive Director, Engineer Staff.

Part 238 of Title 33 is hereby revised to read as follows:

PART 238—WATER RESOURCES POLICIES AND AUTHORITIES: FLOOD DAMAGE REDUCTION MEASURES IN URBAN AREAS

Sec.
238.1 Purpose.
238.2 Applicability.
238.3 References.
238.4 Definitions.
238.5 Comprehensive planning.
238.6 General policy.
238.7 Decision criteria for participation.
238.8 Other participation.
238.9 Local cooperation.
238.10 Coordination with other federal agencies.

Authority: Pub. L. 738, 74th Congress, 33 U.S.C. 701a.

§ 238.1 Purpose.

This regulation provides policies and guidance for Corps of Engineers participation in urban flood damage reduction projects and establishes criteria to distinguish between improvements to be accomplished by the Corps under its flood control authorities and storm sewer systems to be accomplished by local interests.

§ 238.2 Applicability.

This regulation is applicable to all OCE elements and all field operating acitivities having Civil Works responsibilities.

§ 238.3 References.

(a) Executive Order 11988—Floodplain Management, dated 24 May 1977
(b) U.S. Water Resources Council, Floodplain Management Guidelines. (43FR6030), to February 1978
(c) ER 1105–2–811
(d) ER 1140–2–302
(e) ER 1140–2–303
(f) EP 1165–2–2

§ 238.4 Definitions.

For purposes of this regulation the following definitions apply:

(a) "Urban areas" are cities, towns, or other incorporated or unincorporated political subdivisions of States that:

(1) Provide general local government for specific population concentrations, and,

(2) Occupy an essentially continuous area of developed land, containing such structures as residences, public and commercial buildings, and industrial sites.

(b) "Flood damage reduction works in urban areas" are the adjustments in land use and the facilities (structural and non-structural) designed to reduce flood damages in urban areas from overflow or backwater due to major storms and snowmelt. They include structural and other engineering modifications to natural streams or to previously modified natural waterways. Flood damage reduction works are designed to modify flood behavior typified by temporary conditions of inundation of normally dry land from the overflow of rivers and streams or from abnormally high coastal waters due to sever storms.

(c) "Storm sewer systems" are the facilities in urban areas designed to collect and convey runoff from rainfall or snowmelt in the urban area to natural water courses or to previously modified natural waterways. They include storm drains, inlets, manholes, pipes, culverts, conduits, sewers and sewer appurtenances, on-site storage and detention basins, curbs and gutters, and other small drainageways that remove or help to manage runoff in urban areas. Storm sewer systems are designed to solve storm drainage problems, which are typified by excessive accumulation of runoff in depressions; overland sheet flow resulting from rapid snowmelt or rainfall; and excessive accumulation of water at the facilities listed in this paragraph because of their limited capacity.

§ 238.5 Comprehensive planning.

Coordinated comprehensive planning at the regional or river basin level, or for an urban or metropolitan area, can help to achieve solutions to flood problems that adequately reflect future changes in watershed conditions, and help to avoid short-sighted plans serving only localized situations. This planning is particularly important in areas where significant portions of a watershed are expected to be urbanized in the future. Changes in land use may result in major alterations of the runoff characteristics of the watershed. Hydrologic changes must be projected for the period of analysis. In this effort, responsible local planning organizations should provide information and assist the Corps in development of projected land uses and expected practices for collection and conveyance of runoff over the period of analysis. Conversely, the Corps may be able to provide non-Federal interests with valuable information about water related consequences of alternative land uses and drainage practices.

§ 238.6 General policy.

(a) Satisfactory resolution of water damage problems in urban areas often involves cooperation between local non-Federal interests and the Federal flood control agencies. In urban or urbanizing areas, provision of a basic drainage system to collect and convey the local runoff to a stream is a non-Federal responsibility. This regulation should not be interpreted to extend the flood damage reduction program into a system of pipes traditionally recognized as a storm drainage system. Flood damage reduction works generally address discharges that represent a serious threat to life and property. The decision criteria outlined below therefore exclude from consideration under flood control authorities small streams and ditches with carrying capacities typical of storm sewer pipes. Location of political boundaries will not be used as a basis for specifying project responsibility. Project responsibilities can be specified as follows:

(1) Flood damage reduction works, as defined in this regulation, may be accomplished by the Corps of Engineers.

(2) Construction of storm sewer systems and components thereof will be a non-Federal responsibility. Non-

Federal interests have a responsibility to design storm sewer systems so that residual damages are reduced to an acceptable level.

(b) Consideration will be given to the objectives and requirements of Executive Order 11988 (reference § 238.3(a)) and the general guidelines therefor by the U.S. Water Resources Council (reference § 238.3(b)).

§ 238.7 Decision criteria for participation.

(a) *Urban Flood Control.* (1) Urban water damage problems associated with a natural stream or modified natural waterway may be addressed under the flood control authorities downstream from the point where the flood discharge of such a stream or waterway within an urban area is greater than 800 cubic feet per second for the 10-percent flood (one chance in ten of being equalled or exceeded in any given year) under conditions expected to prevail during the period of analysis. Those drainage areas which lie entirely within the urban area (as established on the basis of future projections, in accordance with § 238.5 above), and which are less than 1.5 square miles in area, shall be assumed to lack adequate discharge to meet the above hydrologic criteria. Those urban streams and waterways which receive runoff from land outside the urban area shall not be evaluated using this 1.5 square mile drainage area criterion.

(2) A number of conditions within a drainage area may limit discharges for the 10-percent flood, without proportionately reducing discharges for larger floods, such as the one-percent flood. Examples include the presence of extremely pervious soils, natural storage (wetlands) or detention basins or diversions with limited capacity. Other conditions could result in a hydrological disparity between the 10- and one-percent flood events.

(3) Division Engineers, except for NED and POD, are authorized to grant exceptions to the 800 cfs, 10-percent flood discharge criterion specified in § 238.7(a)(1) above whenever both of the following criteria are met:

(i) The discharge for the one-percent flood exceeds 1800 cfs; and

(ii) The reason that the 10-percent flood discharge is less than 800 cfs is attributable to a hydrologic disparity similar to those described in § 238.7(a)(2) above.

Requests for exceptions to the hydrologic criterion contained in § 238.7(a)(1) from NED and POD should be submitted to HQDA (DAEN–CWP) WASH DC 20314.

(4) Flood damage reduction works must conform to the definition in § 238.4(b) and must be justified based on Corps of Engineers evaluation procedures in use at the time the evaluation is made. Flood reduction measures, such as dams or diversions, may be located upstream of the particular point where the hydrologic criteria (and area criterion, if appropriate) are met, if economically justified by benefits derived within the stream reach which does qualify for flood control improvement. Similarly, the need to terminate flood control improvements in a safe and economical manner may justify the extension of some portions of the improvements, such as levee tiebacks, into areas upstream of the precise point where Federal flood control authorities become applicable.

(b) *Storm sewer system.* Water damage problems in urban areas not consistent with the above criteria for flood control will be considered to be a part of local storm drainage to be addressed as part of the consideration of an adequate storm sewer system. The purpose of this system is to collect and convey to a natural stream or modified natural waterway the runoff from rainfall or snowmelt in the urbanized area.

(c) *Man-mode conveyance structures.* (1) Man-made conveyance structures will be assumed to be a part of storm sewer systems except when: (i) A natural stream has been or is to be conveyed in the man-made structure; or (ii) The man-made structure is a cost-effective alternative to improvement of a natural stream for flood damage reduction purposes or is an environmentally preferable and economically justified alternative. Water damage associated with inadequate carrying capacity of man-made structures should be designated as a flood problem or a local drainage problem in a manner consistent with the structure's classification as flood damage reduction works or a part of a storm sewer system.

(2) Man-made structures that convey sanitary sewage or storm runoff, or a combination of sanitary and storm sewage, to a treatment facility will not be classified as flood damage reduction works. Flows discharged into a natural or previously modified natural waterway for the purpose of conveying the water away from the urbanized area will be assumed to be a part of the flow thereof regardless of quality characteristics.

(d) *Joint Projects.* Certain conditions may exist whereby the Corps of Engineers and the Department of Housing and Urban Development (HUD), or another Federal agency, could jointly undertake a project that would be impractical if one agency were to undertake it alone. The Corps may, for example, under provisions of Section 219 of the Flood Control Act of 1965, design or construct a project that is part of a larger HUD plan for an urban area (see ER 1140–2–302). Such efforts should be undertaken only when requirements cannot be handled better by one agency acting alone. If a joint effort is preferable, then the Corps may participate as required.

(e) *Disagreements.* If a disagreement arises between the Corps and another Federal agency that cannot be resolved at the field level, the matter will be forwarded to HQDA (DAEN–CWR) WASH DC 20314 for guidance.

§ 238.8 Other participation.

In addition to providing flood damage reduction works in urban areas, the Corps may provide related services to State and local governments on a reimbursable basis. Under Title III of the Inter-governmental Cooperation Act of 1968, specialized or technical services for which the Corps has specific expertise may be furnished only when such services cannot be procured reasonably and expeditiously from private firms (see ER 1140–2–303).

§ 238.9 Local cooperation.

(a) Cost sharing and other provisions of local cooperation shall be in conformity with applicable regulations for structural and non-structural flood damage reduction measures.

(b) Responsible non-Federal entities will be required to provide satisfactory assurances that they will adopt, enforce, and adhere to a sound, comprehensive plan for flood plain management for overflow areas of communities involved. To this end, District Engineers will inform HUD, and other concerned Federal and non-Federal planning and governing agencies, of flood plain management services available under Section 206 of the Flood Control Act of 1960, as amended (33 USC 709a).

§ 238.10 Coordination with other Federal agencies.

In conducting flood damage reduction studies, reporting officers shall comply with the 1965 Agreement between the Soil Conservation Service and the Corps (contained in EP 1165–2–2) in determining the responsible Federal agency. Corps personnel should also keep abreast of the public works programs administered by other Federal agencies, such as the Environmental Protection Agency, the Department of Housing and Urban Development, Farmers Home Administration and the Department of Commerce, in order to coordinate flood control improvements with storm sewer system improvements and to avoid program overlap. Coordination of planning activities with A–95 clearinghouses will help to achieve this objective (see ER 1105–2–811).

[FR Doc. 80-33833 Filed 10-29-80; 8:45 am]
BILLING CODE 3710-92-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA 5942]

Identification and Mapping of Special Hazard Areas; Corrections

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule; Corrections.

SUMMARY: In the **Federal Register**, Docket No. FEMA 5909 appearing at **pages 66016 thru 66167**, in the issue of Monday, October 6, 1980, please make the following corrections as indicated below.

Add the latest effective revision dates for the communities listed.

On page 66020: Town of Falmouth, Barnstable Co., MA (Comm. No. 255211), 9–30–77.

On page 66057: City of Northport, Tuscalosa Co., AL (Comm. No. 010202) 3–18–80.

City of Mobile, Mobile Co., AL (Comm. No. 015007) 4–15–80.

On page 66062: City of East Point, Fulton County, GA (Comm. No. 130087) 3–15–77.

City of Garden City, Chatham County, GA (Comm. No. 135161) 3–19–76.

On page 66067: Delete Gilford County, North Carolina from this list, the community is listed correctly as Guilford County, NC.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or toll free line 800–424–8872, Room 5150, 451 Seventh Street SW., Washington, DC 20410.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963).

Issued: October 20, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-33793 Filed 10-29-80; 8:45 am]
BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket 1–16; Notice 18]

Federal Motor Vehicle Safety Standards; Control and Displays

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Interpretative Amendment.

SUMMARY: Standard No. 101–80, *Controls and Displays*, requires various safety-related controls to be identified by specific symbols. The standard requires identification of the turn signal control unless it is the only control on the left hand side of the steering column. In addition to the turn signal control, some vehicles have additional controls, such as a lever to adjust the position of a tilting steering wheel, on the left hand side of the column. This notice clarifies the identification requirement to provide that a turn signal control does not have to be identified if it is the topmost control on the left side of the steering column the traditional position for such controls (i.e., the closest control to the steering wheel).

EFFECTIVE DATE: October 30, 1980.

FOR FURTHER INFORMATION CONTACT: John Carson, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202–426–2715).

SUPPLEMENTARY INFORMATION: On June 26, 1978, the agency published a final rule establishing Standard No. 101–80, *Controls and Displays* (43 FR 27541). The standard, which went into effect on September 1, 1980, established new identification and illumination requirements for controls and displays in passenger cars, multipurpose passenger vehicles, trucks and buses.

One provision of the standard requires the turn signal control to be identified by a specific symbol, two horizontal arrowheads, placed on or adjacent to the control. American Motors Corporation (AMC) filed a petition for reconsideration arguing that the turn signal identification requirement was unnecessary. AMC said that the location and operation of column-mounted turn signal control levers has been standarized by industry practice and is well known to drivers. In response to the AMC petition, NHTSA amended the standard to delete the identification requirement for vehicles in which the turn signal control is the only lever mounted on the left side of the steering column. The agency explained that it was taking this action because the turn signal control has become standardized at that location and there have been no reported crashes caused by the driver's unfamiliarity with the position and use of the turn signal control (Sept. 27, 1979, 44 FR 55580).

Subsequent to the publication of the response to the AMC petition for reconsideration, General Motors (GM) wrote the agency concerning an interpretation of the modified requirements. GM said that on its vehicles equipped with tilt steering columns, there is a tilt mechanism release lever located on the same side of the steering column as the turn signal control lever. GM said that the tilt release lever is "shorter and significantly farther from the steering wheel than the turn signal lever and consequently is out of the immediate finger tip reach of a hand remaining on the steering wheel." GM said that the tilt wheel mechanism is a customer convenience, not a safety feeture.

GM argued that its understanding of the agency's interpretation of the modified identification requirement was that the turn signal control only had to be identified "if it is not located and operated in what has become to be considered the standarized manner or if another functional control lever related to vehicle safety could be easily confused with it." GM said that based on that interpretation, it believed that "the presence or absence of a tilt column release lever does not determine whether the turn signal control must be identified." To assist all interested parties in interpreting the requirement, GM requested the agency to consider revising the language of the standard to clarify the agency's intent.

The purpose of this notice is to make an interpretative amendment to Standard No. 101–80 to clarify the circumstances under which the turn signal control must be identified. As an interpretative amendment, there is no need for notice and comment.

The purpose of the identification requirement is to make it easier for the driver to quickly and correctly locate various safety-related vehicle controls. One of the controls that has been standarized in its location and operation for a number of years is the turn signal control. In every car, that control is mounted on the left hand side of the steering column, is located so that it is the control closest to the rim of the steering wheel, and is operated in a standarized manner, up for right, down for left. Since the turn signal control has been standardized for such a long time,

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it is not necessary for the control to include an identifying symbol.

As long as the turn signal control is in its standardized location, it will be instantly recognized by drivers even if there are other controls mounted on the same side of the column, farther away from the rim of the steering wheel. Thus, to clarify the identification requirements, the agency is amending the standard. The amendment provides that if the turn signal control is mounted on the left side of the steering column, in a plane essentially parallel to the steering wheel, it need not be identified if it is the control mounted closest to the rim of the steering wheel.

In consideration of the foregoing, Standard No. 101–80 (49) CRF 571.101–80) is revised to read as follows:

1. Section S5.2.1 is revised to read as follows:

S5.2.1 Vehicle controls shall be identified as follows:

(a) Except as specified in S5.2.1(b), any hand-operated control listed in column 1 of Table 1 that has a symbol designated in column 3 shall be identified by that symbol. Such a control may, in addition, be identified by the word or abbreviation shown in column 2. Any such control for which no symbol is shown in Table 1 shall be identified by the word or abbreviation shown in column 2. Additional words or symbols may be used at the manufacturer's discretion for the purpose of clarity. The identification shall be placed on or adjacent to the control. The identification shall, under the conditions of S6, be visible to the driver and, except as provided in S5.2.1.1 and S5.2.1.2, appear to the driver perceptually upright.

(b) S5.2.1(a) does not apply to a turn signal control which is operated in a plane essentially parallel to the face plane of the steering wheel in its normal driving position and which is located on the left side of the steering column so that it is the control on that side of the column nearest to the steering wheel face plane.

(Secs. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50)

Issued on October 22, 1980.

Frank Berndt,

Acting Administrotor.

[FR Doc. 80-33556 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 45, No. 212
Thursday, October 30, 1980

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 965

[Docket No. AO–307–A1]

Tomatoes Grown in South Texas; Decision on Proposed Amendment to Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision proposes an amendment of Marketing Order No. 965 regulating the handling of tomatoes grown in South Texas.

The proposal would add a public member to the administrative committee; establish the production area as a single district; authorize a penalty for late assessment payments; and allow the committee to finance production research projects and marketing promotion including paid advertising. The primary intent of the proposal is to improve the program's administration and usefulness.

DATES: Referendum Period November 11–25, 1980.

FOR FURTHER INFORMATION CONTACT: Charles W. Porter, Chief, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250 (202) 447–2615. The Impact Statement relative to this proposed rule is available on request from Mr. Porter.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant."

Prior documents in this proceeding: Notice of Hearing—Issued July 9, 1980, and published July 14, 1980 (45 FR 47155). Notice of Recommended Decision—Issued September 19, 1980, and published September 24, 1980 (45 FR 63288).

This proposed amendment was formulated on the record of a public hearing held at McAllen, Texas, July 30, 1980. Notice of the hearing was published in the July 14, 1980, issue of the **Federal Register** (45 FR 47155). The notice set forth a proposed amendment submitted by the Texas Valley Tomato Committee on behalf of tomato producers and handlers in the production area.

On the basis of the evidence introduced at the hearing and placed in the record, on September 19, 1980, the Deputy Administrator filed a recommended decision with the U.S. Department of Agriculture Hearing Clerk. Notice of such recommended decision was published in the September 24, 1980, issue of the **Federal Register** (45 FR 63288). In the recommended decision notice was given of the opportunity to file comments by October 9, 1980. None was filed.

The material issues, findings and conclusions, rulings and general findings of the recommended decision are hereby incorporated by reference and made part of this decision, subject to the following corrections:

On page 63288, first column, fourth paragraph, line 6, change "propoosed" to "proposed"; line 7, change "form" to "from."

On page 63291, first column, § 965.22. paragraph 2, change "producer's" to "producers'"; second column, § 965.22. first line, change "of" to "or."

Marketing order. Annexed and made a part of this decision is a document entitled "Order Amending the Order, Regulating the Handling of Tomatoes Grown in South Texas," which has been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, that this entire decision be published in the **Federal Register.**

Referendum order. It is herby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400 *et seq.*), to determine whether the issuance of the annexed order amending the order regulating the handling of tomatoes grown in South Texas is approved or favored by producers, as defined under the terms of the order, who during the representative period were engaged in the production of the regulated commodity for market.

The representative period for the conduct of such referendum is hereby determined to be October 1, 1979, through September 30, 1980.

The agents of the Secretary to conduct such referendum are hereby designated to be David B. Fitz and Anne M. Dec.

Copies of this Decision are being mailed to known interested persons. Others may obtain copies from Mr. Charles W. Porter, Chief, Vegetable Branch, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250, Phone (202) 447–2615, or from David B. Fitz, Marketing Field Office, Fruit and Vegetable Division, 320 North Main, Room A–103, McAllen, Texas 78501, Phone (512) 682–2833.

Signed at Washington, D.C., on October 24, 1980.

Jerry Hill,

Deputy Assistant Secretary for Marketing Services.

Order [1] Amending the Order Regulating the Handling of Tomatoes Grown in South Texas

Findings and determinations. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon proposed amendment of Marketing Order No. 965 (7 CFR Part 965), regulating the handling of tomatoes grown in South Texas.

Upon the basis of the record, it is found that:

(1) The order, as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met

(2) The order, as hereby amended, regulates the handling of tomatoes grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing order upon which hearings have been held;

(3) The order, as hereby amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) The order, as hereby amended, prescribes, so far as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the diffferences in the production and marketing of tomatoes grown in the production area; and

(5) All handling of tomatoes grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of tomatoes grown in South Texas shall be in conformity to and in compliance with the terms and conditions of the said order, as hereby amended, as follows:

The provisions of the proposed marketing order, amending the order, contained in the recommended decision issued by the Deputy Administrator on September 19, 1980, and published in the **Federal Register** on September 24, 1980 (45 FR 63288), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

1. Revise paragraphs (a) and (b) of § 965.22 to read:

§ 965.22 Establishment and membership.

(a) The Texas Valley Tomato Committee is hereby established, consisting of 10 members, including six producers, three handlers, and one public member. Each shall have an alternate who shall have the same qualifications as the member.

(b) Each committee member and alternate shall be a resident of the production area. Industry members shall be producers or handlers, or officers or employees of a producer or handler or of a producers' cooperative marketing organization, in the district for which selected. Those representing a producers' marketing cooperative shall be eligible to serve as a handler member or alternate. The public member shall be a person who has no financial interest in the commercial production or marketing of tomatoes except as a consumer, and shall not be a director, officer or employee of any firm so engaged.

2. Revise § 966.24 to read:

§ 965.24 Districts.

For the purpose of determining the basis for selecting committee members and alternates, the entire production area shall be considered a single district. However, the area may be redistricted pursuant to § 965.25.

3. Revise § 965.26 to read:

§ 965.26 Selection.

The Secretary shall select the committee members and alternates to reflect existing representation established pursuant to § § 965.24 or 965.25.

4. Revise paragraphs (a), (c), and (d) of § 965.27 and add new paragraph (f) to read:

§ 965.27 Nomination.

(a) A meeting or meetings of producers and handlers shall be held in each district to nominate members and alternates on the committee. The committee shall hold such meetings or cause them to be held prior to June 15 of each year, or by such other date as may be specified by the Secretary.

* * * * *

(c) Nominations for committee members and alternates shall be supplied to the Secretary in such manner and form as he may prescribe, not later than July 15 of each year, or by such other date as may be specified by the Secretary.

(d) Only producers may participate in designating producer nominees, and only handlers may participate in naming handler nominees. In the event a person is engaged in producing tomatoes in more than one district, such person shall elect the district within which to participate in designating nominees.

* * * * *

(f) The public member and alternate shall be nominated by the commmittee. The committee shall prescribe such additional qualifications, administrative rules and producers for selection and voting for each candidate as it deems necessary and as the Secretary approves.

5. Revise § 965.31 to read:

§ 965.31 Alternate members.

An alternate member of the committee shall act in the place and stead of the member during such member's absence or when designated to do so. In the event both a member of the committee and that member's respective alternate are unable to attend a committee meeting, the member, alternate, or the committee, in that order, may designate another alternate from the same group (producer or handler) to serve in such member's stead. In the event of the death, removal, resignation, or disqualification of a member, the alternate shall act for the member until a successor for such member is selected and has qualified. The committee may request the attendance of alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members.

6. Revise § 965.32 to read:

§ 965.32 Procedure.

(a) At assembled meetings six members of the committee shall constitute a quorum and six concurring votes shall be required to approve any committee action. Such votes shall be cast in person.

(b) The committee may meet by telephone, telegraph, or other means of communication. The agendas of such meetings shall be limited to nonregulatory provisions and any vote cast shall be promptly confirmed in writing. On such occasions seven concurring votes shall be required to approve any action.

§ 965.35 [Amended]

7. Amend § 965.35(a) by inserting: * * * "or alternates" * * * after "subcommittees of committee members" Add a new paragraph (n) to § 965.35 to read:

* * * * *

(n) To recommend nominees for the public member and alternate.

§ 965.42 [Amended]

8. Amend § 965.42(a) by adding the following sentence to it:

(a) * * * If a handler does not pay the assessment within the time prescribed by the committee, the assessment may be increased by a late payment charge or an interest charge, or both.

Amend the first sentence of § 965.42(b) to read:

(b) Assessments, late payment charges and interest charges shall be levied upon handlers at rates established by the Secretary. * * *

§ 965.43 [Amended]

9. Amend § 965.43(a)(2) by revising the proviso in the first sentence to read as follows:

(a) * * *

(2) * * * *Provided*, That funds already in the reserve do not exceed approximately two fiscal periods' budgeted expenses. * * *

10. Add a new § 965.44 to read:

§ 965.44 Contributions.

The committee may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 965.48. Furthermore, such contributions shall be free from any encumbrances by the donor and the committee shall retain complete control of their use.

11. Revise § 965.48 to read:

§ 965.48 Research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research and development projects, and marketing promotion including paid advertising designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of tomatoes. The expenses of such projects shall be paid from funds collected pursuant to § 965.42 or § 965.44.

12. Revise § 965.60(e) to read:

§ 965.60 Inspection and certification.

* * * * *

(e) The committee may recommend and the Secretary may require that no handler shall transport or cause the transportation of tomatoes by motor vehicle or by other means unless shipment is accompanied by a copy of the inspection certificate issued thereon, or such other documents as may be required by the committee. Such certificates or documents shall be surrendered to proper authorities at such times and in such manner as may be designated by the committee, with the approval of the Secretary.

[FR Doc. 80-33799 Filed 10-29-80; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 31 and 150

NRC's Jurisdiction Over Persons Using Byproduct, Source and Special Nuclear Material in Offshore Waters Beyond Agreement States' Territorial Waters

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is considering amending its regulations (1) to clarify that it has jurisdiction vis-a-vis Agreement States over persons using byproduct, source, and special nuclear materials in offshore waters beyond Agreement States' territorial waters and within the area of the Outer Continental Shelf and (2) to recognize Agreement State specific licenses in an NRC general license covering activities in these waters.

DATES: Comment period expires December 29, 1980. Comments received after December 29, 1980 will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed on or before December 29, 1980.

ADDRESSES: Interested persons are invited to submit written comments and suggestions on the proposed amendments or the supporting value-impact analysis, or both, to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Single copies of the value-impact analysis may be obtained on request from the Office of Executive Legal Director. Copies of the value-impact analysis and of the comments received by the Commission may be examined in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Thomas F. Dorian, Esq., Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (Telephone: 301-492-8690).

SUPPLEMENTARY INFORMATION: Several recent incidents in the Gulf of Mexico involving actual or potential overexposures to radiographers disclose the need to clarify NRC's jurisdiction vis-a-vis that of coastal Agreement States [1] over offshore radiographic, well-logging, and other operations using byproduct, source, or special nuclear materials. The following discussion addresses the issue of jurisdiction including several concerns raised by Louisiana and Texas with respect to this issue.

Licensing, regulatory, and enforcement problems have arisen because it has been unclear whether a person with a specific license from an Agreement State or from NRC, operating in offshore waters beyond a coastal Agreement State's territorial waters (that is, outside State boundaries which normally extend three miles or three marine leagues from the coastline but within the ares of the Outer Continental Shelf), should be licensed and regulated by the Agreement State or by the Commission.

After examining the issue of jurisdiction, the Commission has concluded that NRC retains jurisdiction vis-a-vis coastal Agreement States over persons using byproduct, source, and special nuclear materials when these materials are used in offshore waters beyond these States' territorial waters. NRC's jurisdiction over persons using these materials begins outside these States' territorial waters off the U.S. Outer Continental Shelf, continues past the Shelf onto the high seas, and, in most instances, stops at waters under another country's jurisdiction. This conclusion is based on several considerations.

The Commission's jurisdiction over persons using byproduct, source, or special nuclear materials is found in sections 81 and 82 (byproduct material), 62, 63, and 64 (source material), and 53, 54, and 57 (special nuclear material) of the Atomic Energy Act, as amended. These sections grant NRC *in personam* jurisdiction, that is, jurisdiction over a person (when stating, "No person may * * *").

Until the tidelands and submerged lands dispute about the Outer Continental Shelf arose between the Federal Government and certain States, the Atomic Energy Commission (AEC) followed a personal, as opposed to a territorial, approach to offshore jurisdiction. This allowed Agreement States, with AEC's acquiescence, to regulate their own citizens' offshore uses of materials within the purview of an agreement under section 274b. of the Atomic Energy Act (discussed in the footnote); in 1967, in light of the submerged lands controversy, this practice was changed in part because the Federal Government argued that things, such as oil drilling rigs, attached to the Outer Continental Shelf were subject to its exclusive jurisdiction; for the AEC, this meant than an Agreement State did not have jurisdiction to regulate possession and use of byproduct, source or special nuclear

[1] An Agreement State is a State with which NRC has an agreement under section 274 of the Atomic Energy Act. Section 274 of the Atomic Energy Act was enacted in 1959, to recognize the States' interest in atomic energy activities, to clarify the respective responsibilities of the States and the Commission under the Act, and to provide a statutory means by which the Commission can discontinue certain of its regulatory responsibilities with respect to byproduct, source, and special nuclear materials and by which the States can assume these responsibilities. An Agreement made pursuant to section 274b. carries out the basic Congressional intent that either the State or the Commission—but not both—should regulate a given atomic energy activity from the point of view of radiation protection. One of the evils that Congress sought to avoid was "dual regulation." This means that, insofar as regulation of these materials by the State and Commission is concerned, the activities discontinued under the agreement will be regulated only by the State, and that the activities reserved by the Commission will be regulated only by the Commission.

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materials on such things as oil rigs outside an Agreement State's territorial waters.

At the time of the submerged lands controversy, the AEC was negotiating a standard agreement with Louisiana pursuant to section 274b. of the Atomic Energy Act. So as not to compromise the pending litigation between the Federal Government and Louisiana, the AEC and Louisiana also entered into a Memorandum of Understanding and an agreement under section 274i. of the Atomic Energy Act. The Memorandum of Understanding, which is still in effect between NRC and Louisiana, states, in essence, that AEC (now NRC) retains regulatory authority over the disputed area in the Gulf of Mexico and that the agreement made pursuant to section 247b. of the Atomic Energy Act shall not prejudice the position of either the United States or Louisiana in the pending litigation. The agreement under section 274i. of the Act, which is also still in effect, invokes the authority granted to the Commission under section 274i. of the Act to enter into agreements with States "to perform inspections or other functions on a cooperative basis as the Commission deems appropriate." The agreement authorizes Louisiana to perform certain inspections and other functions for and on behalf of the Commission. The proposed rule is not intended to affect either the Memorandum of Understanding or the agreement made under section 274i. of the Act.

The Supreme Court in a series of cases has settled in the Federal Government's favor the Federal-State dispute over the Outer Continental Shelf in the Gulf of Mexico. *United States* v. *Louisiana*, 389 U.S. 155 (1967), 394 U.S. 1 (1969) (cited as the Texas Boundary Case), 394 U.S. 11 (1969) (cited as the Louisiana Boundary Case), and 404 U.S. 388 (1971) (also cited as the Louisiana Boundary Case).

It is now clear that the Outer Continental Shelf Lands Act has made the Outer Continental Shelf part of the United States (43 U.S.C. 1332(a)) under exclusive Federal jurisdiction (43 U.S.C. 1333(a)(1)), extending the laws of the United States to the subsoil and seabed of the Shelf and to all artificial islands and fixed structures erected thereon (43 U.S.C. 1333(a)(1)). It should be noted, however, that for some purposes State law is adopted as a surrogate for Federal law under the Act to the extent that such State law is "applicable and not inconsistent with * * * other Federal laws." 43 U.S.C. 1333(a)(2); *Rodriguez* v. *Aetna Casualty Co.*, 395 U.S. 352, 365 (1969); *Union Oil Company* v. *Oppen*, 501 F.2d 558, 561 (1974); *Oppen* v. *Aetna Insurance Co.* 485 F.2d 252, 255, (1973). It should also be noted that the Act does not apply to the sea above the subsoil and seabed. 43 U.S.C. 1332(b).

It is clear as regards oil drilling rigs, for example, that NRC has jurisdiction over persons in offshore waters beyond an Agreement State's territorial waters using byproduct, source, or special nuclear materials on these rigs, for these rigs are attached to the Outer Continental Shelf.

It is also clear that NRC has jurisdiction over persons in offshore waters beyond an Agreement state's territorial waters and within the area of the Outer Continental Shelf using byproduct, source, or special nuclear materials on free-floating objects, such as lay barges or other vessels, or in offshore diving activities. This view is based on the *in personam* jurisdiction argument described before and supported by another argument.

Sections 274b. and 274d. of the Atomic Energy Act, under which NRC may either retain or discontinue certain parts of its regulatory authority, do not provide for discontinuance of the Commission's regulatory authority over byproduct, source, or special nuclear materials not "within a State". Thus, the Commission retains jurisdiction over persons specifically licensed by the Commission or Agreement States using these materials when these persons are not within an Agreement State. This jurisdiction extends to the high seas but normally stops when it would conflict with another country's jurisdiction in its own waters.

Since the present problem is limited to incidents in offshore waters, and because the Commission has jurisdiction in these waters, it proposes to extend its general licensing scheme to activities of specific licensees of Agreement States in these waters. It would do so by (1) recognizing Agreement State specific licenses in an NRC general license covering activities in these waters, and (2) extending a reporting requirement to these licensees already used by NRC to monitor their activities. NRC specific licensees currently authorized to operate in these offshore waters, of course, would not need to request a license amendment in order to continue to do so.

The Commission believes that the proposed regulation change would remove present ambiguities and provide uniform regulation. It therefore proposes to broaden the scope of Parts 31 and 150 to provide for Commission regulatory authority in the form of general licensing over persons in offshore waters beyond Agreement States' territorial waters and within the area of the Outer Continental Shelf. As presently drafted, §§ 31.6 and 150.20 grant a general license to a person with a specific license from an Agreement State to conduct the licensed activity within non-Agreement States. In addition, § 150.20 authorizes a person to engage in activities in non-Agreement States under NRC's general license for no more than 180 days in any calendar year. At the end of this period, the general license expires and the person would need a specific license from the Commission to continue to engage in these activities in non-Agreement States. The reason for obtaining such a license is the same as that described *In the Matter of Chem-Nuclear Systems, Inc.*, 10 NRC 865 (1979), namely, that long-term field operations should be controlled through specific licensing.

It should be noted that the proposed rule defines "offshore waters" as "those waters beyond Agreement States' territorial waters and within the area of the U.S. Outer Continental Shelf" without specifying for each Agreement State the exact boundaries of these waters and the land area of the Shelf. The definition of offshore waters is designed to keep the proposed rule simple. Aside from the fact that it is not feasible to draw cartographic lines in any regulation, it is unnecessary to do so. The Supreme Court has decided in the Federal Government's favor the Federal-State dispute over the land areas of the Outer Continental Shelf and, as a matter of law, defined the necessary boundary lines. In addition, in the cases of Texas and Louisiana cited before, the Supreme Court defined the necessary boundary lines as a matter of fact. Thus, in the case of Louisiana, for example, its jurisdiction over the seabed of the Shelf extends about three miles from its coast, and, in the case of Texas, for example, as a technical legal matter having to do with its admission as a State of the Union, its jurisdiction over the seabed of the Shelf extends about ten miles from its coast. The definition of territorial waters above the seabed of the Shelf is also clear, coinciding with the U.S. three-mile territorial limit extending from the U.S. coastline. In sum, the definition in the proposed rule is intended to cover, in an understandable and simple fashion, the Commission's jurisdiction over persons using byproduct, source, or special nuclear materials on things, such as oil rigs, attached to the seabed of the Outer Continental Shelf as well as the Commission's jurisdiction over persons using these materials in diving activities or on free-floating objects, such as lay barges and other vessels, in the waters above the seabed.

Finally, it should be noted that the proposed rule is focused on the Outer Continental Shelf area and not on the high seas. Thus, with respect to the high seas, NRC would continue, as has been the case historically, its licensing authority over certain kinds of persons, such as the Navy using nuclear material on naval vessels, while Agreement States would retain their authority over other kinds of persons, such as, for example, those using nuclear materials on State-chartered research vessels. In other words, the Commission acknowledges its present practice of regarding possession and use of agreement materials on the high seas by the citizens of littoral States, which have entered into agreements with the Commission pursuant to section 274b. of the Atomic Energy Act, as subject to the regulatory authority assumed by such States pursuant to such agreements. However, the Commission reserves the right to alter or amend such practice at any time.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and Section 553 of Title 5 of the United States Code, notice is given hereby that the adoption of the following amendments to 10 CFR Parts 31 and 150 is contemplated.

PART 31—GENERAL DOMESTIC LICENSES FOR BY PRODUCT MATERIAL

1. Section 31.6 is amended to read:

§ 31.6 General license to install devices generally licensed in § 31.5.

Any person who holds a general license issued by an Agreement State authorizing the holder to manufacture, install, or service a device described in § 31.5 within such Agreement State is hereby granted a general license to install and service such device in any non-Agreement State or in offshore waters beyond Agreement States' territorial waters and within the area of the U.S. Outer Continental Shelf; Provided, That:

* * * * *

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

2. The title of 10 CFR Part 150 is changed to read, "Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters Under Section 274".

3. Section 150.1 is amended to read:

§ 150.1 Purpose.

The regulations in this part provide certain exemptions to persons in Agreement States from the licensing requirements contained in Chapters 6, 7, and 8 of the Act and from the regulations of the Commission imposing requirements upon persons who receive, possess, use or transfer byproduct material, source or special nuclear material in quantities not sufficient to form a critical mass; and to define activities in Agreement States and in offshore waters over which the regulatory authority of the Commission continues. The provisions of the Act, and regulations of the Commission apply to all persons in Agreement States and in offshore waters engaging in activities over which the regulatory authority of the Commission continues.

4. In § 150.3, a new paragraph (f) is added as follows and former paragraph (f) and subsequent paragraphs are relettered:

§ 150.3 Definitions.

As used in this part: * * *

* * * * *

(f) "Offshore waters" means those waters beyond Agreement States' territorial waters and within the area of the U.S. Outer Continental Shelf.

§ 150.5 [Amended]

5. A new heading is added after § 150.5, to read as follows:

Continued Commission Regulatory Authority in Offshore Waters

6. A new § 150.7 is added before the heading "EXEMPTIONS IN AGREEMENT STATES," to read as follows:

§ 150.7 Persons in offshore waters not exempt.

Persons in offshore waters are not exempt from the Commission's licensing and regulatory requirements with respect to byproduct, source, and special nuclear materials.

7. Section 150.20(a) is amended to read:

§ 150.20 Recognition of Agreement State licenses.

(a) Subject to the provisions of paragraph (b) of this section, any person who holds a specific license from an Agreement State where the licensee maintains an office for directing the licensed activity, and at which radiation safety records are normally maintained, is hereby granted a general license to conduct the same activity in non-Agreement States or in offshore waters: Provided, That the specific license does not limit the activity authorized by the license to specified installations or locations.

§ 150.20 [Amended]

8. The first paragraph of § 150.20(b) is amended to read:

* * * * *

(b) Notwithstanding any provision to the contrary in any specific license issued by an Agreement State to a person who engages in activities in a non-Agreement State or in offshore waters under a general license provided in this section, the general license provided in this section is subject to the provisions of §§ 30.14(d), 30.34, 30.41, and 30.51 to 30.63, inclusive, of Part 30 of this chapter; §§ 40.41, 40.51, 40.61 to 40.63 inclusive, 40.71, and 40.81 of Part 40 of this chapter; and §§ 70.32, 70.42, 70.51 to 70.56 inclusive, 70.61, 70.62, and 70.71 of Part 70 of this chapter; and to the provisions of Parts 19, 20, and 71 and Subpart B of Part 34 of this chapter. In addition any person who engages in activities in non-Agreement States or in offshore waters under a general license provided in this section:

* * * * *

§ 150.20 [Amended]

9. In § 150.20(b)(1), the title of Form NRC-241 (revised) is changed to read, "Report of Proposed Activities in Non-Agreement States or in Offshore Waters".

* * * * *

§ 150.20 [Amended]

10. Section 150.20(b)(2) is amended to read:

(b) * * *

(2) Shall not, in any non-Agreement State or in offshore waters, transfer or dispose of radioactive material possessed or used under the general license provided in this section except by transfer to a person (i) specifically licensed by the Commission to receive such material, or (ii) exempt from the requirements for a license for such material under § 30.14 of this chapter;

* * * * *

(Secs. 51, 53, 57, 62, 63, 81, 161o., 222, 223, 274, Pub. L. 83–703, as amended, Pub. L. 91–161, Pub. L. 90–190, 68 Stat. 929, 930, 932, 933, 935, 948, 83 Stat. 444, 81 Stat. 575, 73 Stat. 688 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2111, 2201o., 2272, 2273, 2021); sec. 201, Pub. L. 93–438, 88 Stat. 1242 (42 U.S.C. 5841).)

Dated at Washington, D.C., this 24th day of October, 1980.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 80-33657 Filed 10-29-80; 8:45 am]

BILLING CODE 7590-01-M

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 80-ARM-10]

Establishment of a Federal Airway Between Akron and Denver, Colo.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a low altitude Federal Airway V-383 between Akron, Colo., and Denver, Colo., via Byers intersection. This action would provide a designated airway for pilot navigation to the Denver terminal arrival area, reduce radar vectoring required, and provide more efficient service to the users.

DATES: Comments must be received on or before December 1, 1980.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Rocky Mountain Region, Attention: Chief, Air Traffic Division, Docket No. 80-ARM-10, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colo. 80010.

The official docket may be examined at the following location: FAA Office of the Chief Counsel, Rules Docket (AGC-204), Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: L. Jack Overman, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Rocky Mountain region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 10455 25th Avenue, Aurora, Colo. 80010. All communications received on or before December 1, 1980, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that would add an additional airway between Akron, Colo., and Denver, Colo. This airway would be designated via the Akron VORTAC 242°T (229°M) and the Denver 094°T (082°M). The action would provide more efficient service to the users by designating a route from Akron into the Denver terminal arrival area. Section 71.123 of Part 71 was republished in the Federal Register on January 2, 1980 (45 FR 307).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 307), by adding a new Federal Airway V-383 to read:

V-383 From Akron, Colo.; INT Akron 242°T and Denver 094°T radials; Denver, Colo.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65.)

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Washington, D.C. on October 22, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-33613 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-ASW-48]

Proposed Alteration of Transition Area: Elk City, Okla.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rule Making.

SUMMARY: The nature of the action being taken is to propose alteration of the transition area at Elk City, Oklahoma. The intended effect of the proposed action is to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Elk City Municipal Airport. The circumstance which created the need for the action is the proposed Area Navigation (RNAV) approach to Runway 17.

DATES: Comments must be received on or before December 1, 1980.

ADDRESSES: Send comments on the proposal to: Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, Texas 76101.

The official docket may be examined at the following location: Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas.

An informal docket may be examined at the Office of the Chief. Airspace and Procedures Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101; telephone: (817) 624-4911, extension 302.

SUPPLEMENTARY INFORMATION: Subpart G 71.181 (45 FR 445) of FAR Part 71 contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft conducting Instrument Flight Rules (IFR) activity. Alteration of the transition area at Elk City, Oklahoma, will necessitate an amendment to this subpart.

Comments Invited

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. All communications received on or before December 1, 1980, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rule making (NPRM) by submitting a request to the Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, or by calling (817) 624-4911, extension 302. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should contact the office listed above.

The Proposal

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area at Elk City, Oklahoma. The FAA believes this action will enhance IFR operations at the Elk City Municipal Airport by providing controlled airspace for aircraft executing a proposed instrument approach procedure, RNAV, to runway 17. Subpart G of Part 71 was republished in the Federal Register on January 2, 1980 (45 FR 445).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 445) by deleting the present description and substituting the following:

Elk City, Oklahoma

That airspace extending upward from 700 feet above the surface within as 8.5-mile radius of the Elk City Municipal Airport (latitude 35°25'30"N, longitude 99°23'35"W).

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); and Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Fort Worth, Tex., on October 16, 1980.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 80-33474 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 239

[Release No. 33-6251; File No. S7-860]

Report of Sales of Securities

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is publishing for comment proposed amendments to Rule 463 and related Form SR under the Securities Act of 1933. The proposals, if adopted, would extend the requirement to file Form SR (Report of the Sales of Securities and Use of Proceeds Therefrom) to issuers of securities which will be sold by a direct distribution or by a best efforts underwriting and would reduce the number of reports which must be filed regarding a given offering. The proposals would also change Form SR to a standardized short-answer format, requiring issuers to provide additional identifying information and a more detailed accounting of offering expenses and the use of proceeds. These proposals are intended to provide the Commission and investors with more meaningful information concerning first-time offerings, direct distributions and best efforts underwritings.

DATE: Comments should be submitted on or before December 5, 1980.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-860. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Elizabeth Norsworthy (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, or Jeffry L. Davis (202) 272-2850, Directorate of Economic and Policy Analysis, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to Rule 463 of Regulation C [17 CFR 230.463] under the Securities Act of 1933 (the "Act") [15 U.S.C. 77a et seq.] and to related Form SR [17 CFR 239.61] pursuant to Section 19(a) of the Act. Rule 463 applies to the first effective registration statement filed under the Act by an issuer and requires such first-time registrants to file reports on Form SR disclosing the progress of the offering and the use of proceeds. Forms SR are required to be filed within ten days after the initial three months of the effective date of the registration statement and at six-month intervals thereafter until the completion or termination of the offering, following which a final report is filed.

As discussed in more detail below, proposed Rule 463 is designed to establish a simplified and standardized reporting framework to provide more meaningful information to the Commission and investors. While the number of issuers required to file Form SR would be increased by including issuers of direct distributions or best-efforts underwritings as well as first-time issuers, the proposal would decrease the number of Forms SR which are currently required to be filed by an issuer subject to the filing requirement.

Form SR currently requires the issuer to report in a narrative format upon the progress of the offering and the use of proceeds. The proposed revision would require issuers to furnish information in a short-answer format so that the data can be easily digested by a data processing system. The proposed Form would also be expanded to require issuers to furnish certain information relating to the offering and the securities registered and to provide a more detailed accounting of the offering expenses and the use of net proceeds.

In order to facilitate the comment process, this release contains background information, a discussion of the purposes for the proposed amendments and a synopsis. While the

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synopsis is intended to assist in a better understanding of the proposals, attention is directed to the text of the proposals for a more complete understanding.

A. Background

Rule 463 and Form SR, requiring reports by first-time registrants of sales of registered securities and the use of proceeds therefrom, were adopted nine years ago[1] to enable investors and the Commission to obtain follow-up information about first-time offerings. At that time, the Commission indicated that the following concerns had prompted the requirement for such reports:

(1) In the case of issuers which are not required to file periodic reports,[2] the Commission did not know when an offering had commenced and terminated and consequently was unable to enforce adequately the prospectus delivery and updating requirements of Section 4(3)[3] and Section 10(a)(3) of the Act.[4]

(2) If the Commission and investors were not given follow-up information concerning the actual use of proceeds from the offering, neither the Commission nor investors would be in a position to know whether or not the prospectus adequately and accurately disclosed the intended use of proceeds.[5]

Rule 463 has been amended once since 1971—in 1979, at the time of the adoption of Form S–18 [17 CFR 239.28], a simplified registration statement form for small issuers.[6] At that time, in order to correspond to General Instruction B in Form S–18 permitting filing at a regional office or at the Commission's main office, Rule 463 was amended to provide that Form SR should be filed at the office where the registration statement was filed.

The proposed amendments to Rule 463 and Form SR are intended to facilitate the determination of whether an issuer of a direct distribution or a best efforts underwriting which is not a first-time offering is complying with the prospectus delivery and updating requirements of Sections 4(3)[7] and 10(a)(3) of the Act. Even in the case of issuers which are required to file periodic reports pursuant to Sections 12 or 15(d) of the Exchange Act, information with respect to the progress of the offering may be difficult to obtain in an efficient and timely manner from the financial statements contained in quarterly and annual reports.

The proposals are also intended to provide the Commission and investors with a more understandable and detailed accounting of an issuer's actual use of proceeds in order to better evaluate the manner in which the intended use of proceeds was disclosed in the prospectus.

If adopted, the proposals will also have two tangential effects. They will permit the Commission to: (1) Assemble a data base relating to first-time offerings, direct distributions and best efforts offerings with respect to the cost of such offerings and the manner in which they are conducted in order to determine more accurately the impact of alternative regulatory actions affecting the issuers of such offerings; and (2) provide more complete information with respect to such offerings in the Commission's annual report.

B. Synopsis of Proposals

1. Applicability

Rule 463 currently applies only to first-time issuers. To enable the Commission to monitor compliance with prospectus delivery and updating requirements in direct distributions and best efforts offerings, the proposed amendments would extend the filing requirement to the issuers of such offerings. It should be noted that the Rule would also be revised to make clear that a successor issuer would succeed to the reporting obligation of the prior issuer.

Rule 463 currently excepts registered investment companies, public utility companies filing reports with any State or Federal authority and issuers of American depository receipts for foreign securities. While the proposal would continue to except registered investment companies and issuers of American depository receipts from the filing requirement, public utility companies which are required to file reports with State or Federal authorities would no longer be excepted.

In addition, proposed Rule 463 would exempt from the filing requirement issuers which directly distribute securities in certain specialized offerings, including securities issued in connection with a business combination as defined in Rule 145(a) [17 CFR 230.145(a)]; pursuant to an employee benefit plan; or pursuant to a dividend reinvestment plan.

2. Filing Procedures

Form SR is presently required to be filed within ten days after the end of the first three-month period following the effective date of the registration statement and within ten days after the end of each six-month period following such three-month period. A final report is required to be filed within ten days after completion or termination of the offering.

To minimize possible burdens on issuers and still provide timely and meaningful information to investors and the Commission, proposed Rule 463 would require an issuer to file only an initial report if the offering extends beyond six months after the effective date of the registration statement, a second report after the termination of the offering and a third report if substantially all of the proceeds have not been applied at the time of the termination of the offering. Under the proposed Rule, if an offering terminates within six months after the effective date of the registration statement and substantially all of the offering proceeds are applied prior to or promptly after the termination of the offering, only one report would be required. To permit issuers adequate time to prepare the required information, proposed Rule 463 allows an issuer thirty days to file these reports.

Rule 463 presently refers to the "termination" and "completion" of the offering without defining those terms. In order to clarify the time at which an issuer is required to file the second report, the proposals refer only to "termination" and define that term as the date on which the securities cease to be offered for sale. In order to make clear that the third report should

[1] *See* Securities Act Release No. 5141 (April 19, 1971) [36 FR 7896].

[2] This pertains to issuers which are not subject to the reporting requirements of Sections 12 or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq.].

[3] Section 4(3) provides that dealers effecting transactions in a security registered for the first time under the Act must deliver a prospectus to prospective customers during the ninety-day period following the commencement of the offering.

[4] Section 10(a)(3) provides that if a prospectus is used more than nine months after the effective date of the registration statement, the information contained therein must be no more than sixteen months old.

[5] *See* Securities Act Release No. 5130 (February 8, 1971) [36 FR 3429].

[6] *See* Securities Act Release No. 6049 (April 3, 1979) [44 FR 21562].

[7] Section 4(3) provides that dealers effecting transactions in a previously registered security must deliver a prospectus to prospective customers during a forty-day period following the commencement of the offering.

disclose the final application of the offering proceeds, paragraph (c)(2) provides that the term "application of substantially all the proceeds of the offering" shall not include the temporary investment of proceeds pending final application.

If adopted proposed Rule 463 would no longer follow the automatic reporting framework of the present Rule. Specific comment is requested on whether the timing of the filing requirement should be predicated upon the passage of six-month intervals until the termination of the offering, as currently required by the Rule.

3. *Disclosure Requirements.* In order to provide more meaningful information to investors and the Commission with respect to public offerings by issuers subject to proposed Rule 463, proposed Form SR has been substantially revised both in terms of the format and the information required. Rather than the current narrative format, the proposed Form would establish a short-answer framework. With respect to disclosure, the proposed Form would require: certain identifying and trading market data;[8] information concerning the progress of the offering; and disclosure with respect to the use of proceeds.

Form SR currently requires the issuer to state the date the offering commenced; if the offering did not commence, the reasons why; the date the offering was completed; if the offering was terminated, the reasons why; the total amount of securities registered, sold and still being offered; and the total amount received from the public. In addition to this information, the proposed Form requires the issuer to report (i) the aggregate offering price of the units registered and the aggregate offering price of the units sold; (ii) the total amount of securities sold, but not delivered, as of the most recent practicable date; and (iii) the date on which substantially all of the offering proceeds were applied.

Form SR currently requires the issuer to provide "a reasonably itemized statement" of the use of proceeds (noting in the instructions that expenses paid for underwriting discounts and commissions, finders' fees, and expenses paid to or for the underwriters should be stated separately) and whether the expenses were paid by the issuer or by "others" (i.e., selling shareholders). In order to provide a complete accounting, the revised Form asks the issuer to report the expenses paid by the issuer to certain affiliates [9] and to others in all of the expense categories required to be disclosed in Part II of the registration statement forms.

The present Form requires the reporting of every purpose for which significant amounts—determined by the lesser of $50,000 or 5% of the total proceeds—were used (noting in the instructions that payments to certain affiliates of the issuer should be shown separately), as well as any temporary investments. In order to provide more precise and detailed information concerning the use of proceeds, the revised Form would require that the use of proceeds be stated separately for several categories, e.g., construction, research, and development. These categories reflect the uses of proceeds which are most often disclosed in prospectuses. As in the current Form, the issuer would be required to report, with respect to each category, payments to certain affiliates [10] and to others.

Finally, the present Form asks the issuer to report and explain any deviation in the use of proceeds as set forth in the prospectus. In order to reduce reporting obligations, the revised Form would require the issuer to report only material changes in the use of proceeds described in the prospectus.

Request for Comment

Any interested persons wishing to submit written comments on the proposed amendments, as well as on other matters which might have an impact on the proposals contained herein, are requested to do so. Moreover, commentators are urged to address any alternatives or modifications which may assist the Commission in achieving the objectives set forth in this release.

Text of Proposals

17 CFR Chapter II is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. By revising § 230.463 to read as follows:

§ 230.463 Report of sales of securities and use of proceeds therefrom.

(a) With respect to any effective registration statement that is the first effective registration statement of the issuer or successor issuer or discloses that the securities will be distributed by the issuer or discloses that the securities will be distributed on a best efforts basis, the issuer or successor issuer shall file at the same office of the Commission where the registration statement was filed five copies of a report on Form SR (§ 239.61 of this chapter) promptly, but not later than thirty days:

(1) After the date which is six months after the effective date of such registration statement unless the offering has terminated prior to the end of such six month period;

(2) After the termination of the offering; and

(3) After the application of substantially all the proceeds from the offering unless such application has been disclosed in a report filed pursuant to paragraph (a)(2) of this section.

(b) Paragraph (a) of this section shall not apply to any effective registration statement for securities to be issued in connection with a business combination as described in Rule 145(a) (§ 230.145(a) of this chapter); pursuant to an employee benefit plan; pursuant to a divided reinvestment plan; as American depository receipts for foreign securities; or by any investment company

[8] Form SR currently requires that the following identifying data be given: the name of the registrant and the name of the managing underwriter, if any.

The proposed Form would require the following additional information:

(a) CUSIP number of the issuer (proposed Item 2);

(b) Standard Industrial Classification (SIC) of the issuer (proposed Item 3);

(c) the effective date of the registration statement (proposed Item 4(a));

(d) the SEC file number assigned to the registration statement (proposed Item 4(b));

(e) whether or not the registration statement is the first effective registration statement of the issuer (proposed Item 4(c));

(f) whether or not the issuer is required to file periodic reports (proposed Item 5(a));

(g) if the issuer is required to file periodic reports, the SEC file number assigned to such reports (proposed Item 5(b));

(h) the method of distribution of the securities (i.e., direct, best efforts, or firm commitment underwriting) (proposed Item 9);

(i) the trading market(s), if any, for the securities (i.e., exchange or over the counter) (proposed Item 10); and

(j) the type of securities (i.e., debt, equity, convertible, limited partnership or other) (proposed Item 12).

[9] These persons include officers, directors or general partners of the issuer or their associates, as well as persons owning 10% or more of any class of equity securities of the issuer and affiliates of the issuer. With the exception of general partners, the persons specified in the proposal are the same as under the current Form.

[10] *Id.*

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registered under the Investment Company Act of 1940.

(c) For the purposes of this section:

(1) The term "termination of the offering" shall mean the date on which the securities cease to be offered for sale; and

(2) The term "application of substantially all the proceeds of the offering" shall not include the temporary investment of proceeds pending final application.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

2. By revising § 239.61 to read as follows:

§ 239.61 Form SR, report of sales of securities and use of proceeds therefrom.

SEC Use Only
Filing Date
Day —— Mo ——— Year ——

U.S. Securities and Exchange Commission

Washington, D.C. 20549

Report of Sales of Securities and the use of Proceeds Therefrom

First ☐ Second ☐ Third ☐
For Period From Day —— Mo ———
Year ——— to Day —— Mo ———
Year ———

General Instructions

A. Answer every item by entering the information requested in the boxes or blanks provided. If an item is inapplicable or the answer is in the negative, so state. If additional space is required, continue the answer on the attached sheet. Where the number of boxes provided for an answer exceed the number of digits contained in that answer, zero(es) should be entered in the left-most box(es). For example, if two boxes are provided for entering the month of the year and the 6th month is to be entered, the entry should appear as 0/6.

B. No fee is required to be paid to the Commission in connection with the filing of this report.

C. If the report is filed by a successor issuer, the items should be answered with respect to that successor issuer. For example, in response to Item 3, the SIC code of the successor, not the predecessor, issuer should be given.

1. (a) Name of issuer ———

(b) Name of successor issuer, if any ———

2. (a) Has the issuer been assigned a CUSIP number? Yes ☐ No ☐

(b) If yes, specify the first six (6) digits. ☐☐☐☐☐☐

3. Indicate the issuer's Standard Industrial Classification (SIC) at the 3 digit level. ☐☐☐

4. (a) What was the effective date of the registration statement for which this report is filed? Day —— Mo ——— Year ——

(b) Indicate the SEC file number assigned to that registration statement. 2-☐☐☐☐☐

(c) Was that registration statement the first effective registration statement of the issuer or successor issuer? Yes ☐ No ☐

5. (a) Has the issuer filed any periodic reports pursuant to Section 12 or 15(d) of the Securities Exchange Act of 1934? Yes ☐ No ☐

(b) If yes, indicate the SEC file number assigned to such periodic reports. ☐-☐☐☐☐

6. (a) Date offering commenced. Day —— Mo ——— Year ———

(b) Date offering terminated. Day —— Mo ——— Year ———

(c) Date substantially all of the offering proceeds were applied. Day —— Mo ——— Year ———

7. (a) Did the offering terminate prior to the sale of any securities? Yes ☐ No ☐

(b) If yes, explain briefly ———

Note.—If the offering terminated prior to the sale of any securities, the registration statement should be withdrawn pursuant to Rule 477, and Items 8 through 19 need not be answered.

Items 8 through 19 need not be answered.

8. (a) Did the offering terminate prior to the sale of all of the securities registered? Yes ☐ No ☐

(b) If yes, explain briefly ———

9. Indicate the method of distribution of the securities registered. Directly by Issuer ☐ Best Efforts Underwriting ☐ Firm Commitment Underwriting ☐

10. Name of managing underwriters, if any.

11. (a) Indicate the trading market(s) (if any) for the securities registered: National Securities Exchange ☐ Over-the-Counter ☐ Other ☐

(b) If traded over-the-counter, are the registered securities listed on NASDAQ? Yes ☐ No ☐

(c) If "other" is indicated in response to (a), explain briefly ———

12. (a) Indicate the type of securities registered. Debt ☐ Equity ☐ Convertible ☐ Limited Partnership ☐ Other (e.g. investment contract) ☐

(b) If "convertible" or "other," describe briefly ———

13. Indicate below the number and aggregate offering price of units of securities registered and sold:

	Number of units registered	Aggregate offering price of units registered	Number of units sold	Aggregate offering price of units sold
Debt		$		$
Equity				
Limited Partnership				
Convertible				
Other				
Total				

14. Total amount of securities sold, but not delivered, as of the most recent practicable date: $———

15. Total amount received from the sale of the securities registered (excluding amount received for the accounts of selling security holders): $———

16. Indicate below the amount of expenses incurred for the account of the issuer for each of the following purposes:

	Direct or indirect payments to officers, directors, general partners of the issuer or their associates; to persons owning 10 percent or more of any class of equity securities of the issuer; and to affiliates of the issuer (A)	Payments to others (B)
a. Underwriting Discounts and Commissions	$	$
b. Finders' Fees		
c. Expenses Paid to or for the Underwriters		
d. Registration Fees		
a. State Taxes and Fees, including Blue Sky Fees		
f. Trustees' and Transfer Agents' Fees		
g. Printing and Engraving Costs		
h. Legal Fees		
I. Accounting Fees		
j. Engineering Fees		
k. Premium (or increase in premium) paid for liability insurance		
l. Other Expenses (identify)		
m		
n		
Total Expenses		

17. Net proceeds to the issuer after above expenses:

18. Indicate below the amount of the net proceeds to the issuer used or to be used for each of the following:

	Direct or indirect payments to officers, directors, general partners of the issuer or their associates; to persons owning 10 percent or more of any class of equity securities of the issuer; and to affiliates of the issuer (A)	Payments to others (B)
a. Construction of plant, building and facilities	$	$
b. Purchase and installation of machiner and equipment		
c. Purchase of real estate		
d. Acquisition of other businesses		
e. Repayment of indebtedness		
f. Salaries and fees		
g. Research and development		
h. Raw materials, inventory and supplies		
I. Exploration		
j. Selling, advertising and other sales promotion		
k. Temporary investment—specify:		
l. Organization expenses		
m. Other—specify		
Total	$	$
Balance of cash proceeds on hand		

19. (a) Do the above disbursements represent a material change in the use(s) of proceeds described in the prospectus? Yes☐ No☐

(b) If yes, explain briefly ———

Signature After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Date) ———
(Signature) ———

The original report shall be signed by an executive officer or general partner of the issuer or his/her authorized representative. If the report is signed on behalf of a person by his/her authorized representative, evidence of the representative's authority to sign on behalf of such person shall be filed with the report. The name and any title of the person who signs the report shall be typed or printed beneath his/her signature.

Attention: Intentional misstatements or omissions of facts constitute Federal criminal violations (*See* 18 U.S.C. 1001).

Form SR Continuation Sheet

Item of Form

Identify	Answer
* * * * *	

(Sec. 19(a), 48 Stat. 85; Sec. 209, 48 Stat. 908; 15 U.S.C. 77s (a)

These amendments are being proposed pursuant to Section 19(a) of the Securities Act of 1933.

By the Commission.

George A. Fitzsimmons,
Secretary.

October 23, 1980.

[FR Doc. 33846 Filed 10-29-80; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Chapter VII

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Performance Bonding, Subchapter J

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of intent.

SUMMARY: OSM has determined that self-bonding as issued in 30 CFR 806.14 requires amendment and seeks public comments in the evaluation and study of self-bonds. OSM, in the preamble to amended rules issued August 6, 1980 (45 FR 52306), explains that both the self-bonding rules issued March 13, 1979 (44 FR 14901) and those amendments proposed January 24, 1980 (45 FR 6028) were found to be unacceptable and recommends that the subject be studied for further amendment. This notice initiates action in undertaking the study by informing the public of OSM's intent and seeking public participation in resolving the difficulties of self-bonding. This plan of action proposes to reevaluate the basic criteria of self-bonds, analyze financial parameters and develop rules governing self-bonding for proposal. The purpose of this notice is to solicit comments for interpretation of the basic statutory provisions.

DATES: Comments will be accepted through December 15, 1980, or until OSM issues a notice to commence rulemaking and requests comments on specific provisions.

ADDRESSES: Comments and recommendations may be sent to the Administrative Record, Room 153, Department of the Interior, South Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Russell Price, Division of Technical Services, Office of Surface Mining, Department of the Interior, Washington, D.C. 20240; 202-343-4023.

SUPPLEMENTARY INFORMATION: Section 509 of the Surface Mining Control and Reclamation Act of 1977 (the "Act") requires that before a permit to conduct surface coal mining and reclamation is issued the applicant must file a performance bond which is satisfactory to the regulatory authority. Section 509(c) provides that the regulatory authority may accept a bond of the applicant without separate surety. This is commonly referred to as a "self-bond".

On March 13, 1979, OSM published final rules (44 FR 14901 *et seq.*) implementing the permanent regulatory program of Title V of the Act. These rules contained provisions for posting sufficient performance bond coverage with the regulatory authority to assure that reclamation operations would be performed satisfactorily by the operator or upon forfeiture of the bond, to enable the regulatory authority to contract for completion of reclamation operations.

Included within the rules is a provision implementing Section 509(c) of the Act authorizing a regulatory authority to accept a bond from a coal mine operator without the bond of a conventional surety company. The acceptance of the "self-bond", is conditioned upon designation of a suitable agent to receive service of process, a history of financial solvency and continuous operation, as well as, meeting the standards required of other bonds in providing a degree of financial security adequate to provide sufficient funds to perform the required reclamation under conditions of bond forfeiture.

Standards of the rules governing self-bonding issued March 13, 1979 are as follows:

(1) Designation of a suitable agent to receive service of process in the state where surface coal mine is located.

(2) An indemnity agreement for the amount of the bond.

(3) Net worth to bond amount ratio of (6).

(4) Continuous operation for 10 years.

(5) Security interest in real or personal property collateral in support of the indemnity agreement.

(6) Liability under the indemnity agreement extending to all who execute, with the requirement that personal or business interest having 10 percent ownership interest are required to sign.

(7) Financial statements demonstrating that the operator is and

has been financially solvent for 10 years, and a method of analyse that data presented.

The self-bonding rules are published March 13, 1979, have been criticized by many including the coal industry and the surety industry. Both groups are affected by self-bonding in different ways, but nonetheless find problems in implementation of the rules. Most coal operators allege the self-bonding rules require excessive documentation for financial data, and qualification criteria and personal liability requirements beyond those acceptable to corporate officials.

In the amendments to rules proposed January 24, 1980 self-bonding was proposed as an unsecured security agreement, supported only by financial records, 10 years of continuous operation, and business and personal liability. Surety commenters stressed the need for stringency in self-bonding criteria so that the surety market could serve all operators, not only those not qualifying for self-bonds. Environmental groups and state regulators were concerned that an unsecured self-bond would not provide adequate funds under conditions of forfeiture.

Due to the numerous comments raised on the proposed amendment for self-bonding, OSM has determined that a formal study of the issue is necessary to fully implement self-bonding. The study will examine financial parameters for self-bonding requirements and the risk to the regulatory authority associated with self-bonding. OSM proposes to evaluate the findings of the study, develop qualifying standards for self-bonding and publish the proposed rules for public comment and acceptance.

The study would evaluate financial parameters and develop qualification criteria based on the risk and cash value of an indemnity agreement issued as a self-bond. The study would also determine the degree and quality of collateral or financial support necessary to assure an appropriate cash value to the regulatory authority if the bond is forfeited. OSM in reviewing the criteria stated in the Act for accepting self-bond believes the following three criteria are most essential:

(1) There must be sufficient financial assurance for a third party to complete the reclamation plan if bond is forfeited;

(2) A suitable agent must be designated to receive service of process; and

(3) The applicant for self-bonding must show a history of financial solvency and continuous operation.

OSM invites comments and recommendations regarding provisions of the Act and specific contents of a study for the development of standards and rules for self-bonding which would be useful in accepting credentials to meet these criteria.

Issues of particular interest in this analysis are:

—provisions of an indemnity agreement;
—acceptable financial credentials;
—criteria for continuous operation;
—collateral support of a self-bond;
—extent of business and personal liability under the indemnity agreement;
—ability to perform reclamation;
—economic incentives necessary to comply with reclamation standards;
—administration and implementation of self-bonding.

Public Comments

OSM invites comments and recommendations concerning the proposed study and implementing concepts and procedures for acceptance of self-bonds.

Those comments which would be most helpful should contain a detailed explanation of rationale and supporting justification for use in study scope requirements and in the development of rules.

Dated: October 8, 1980.

Walter N. Heine,

Director, Office of Surface Mining.

[FR Doc. 80-33777 Filed 10-29-80; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 900

Surface Coal Mining Reclamation Operations; State or Federal Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining is proposing to establish a new Subchapter T which will contain the final actions of the Secretary of the Interior regarding State of Federal Programs governing surface mining and reclamation operations. This document provides an introductory Part (Part 900) to Subchapter T. This part explains the purpose of Suchapter T and identifies the information that will be published in Parts 901–950 of this title.

DATE: Comments are due December 1, 1980.

ADDRESS: Comments should be submitted to: Boyd Lewis, Program, Assistant, Room 122, Department of the Interior, Office of Surface Mining, 1951 Constitution Avenue, NW., Washington, D.C. 20240

FOR FURTHER INFORMATION CONTACT: R. Bruce Carroll, Department of the Interior, Office of Surface Mining, 1951 Constitution Avenue, NW., Washington, D.C. 20240 (202) 343–5351.

SUPPLEMENTARY INFORMATION: Title V or the Surface Mining control and Reclamation Act of 1977 (SMCRA) requires the implementation of permanent programs to regulate coal exploration and surface coal mining and reclamation operations in each State. The Office of Surface Mining and Enforcement (OSM) promulgated national permanent program regulation in 30 CFR Chapter VII which establish the minimum standards for the regulatory programs is each State.

Under Sections 501–503 of the Act and 30 CFR Part 731, the States were provided the opportunity to submit programs for approval by the Secretary and thus achieve primary responsibility for regulating coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands. A deadline of August 3, 1979, was established by 30 CFR 731.12 for submittal of State programs. The deadline for submissions was extended to March 3, 1980, by an opinion on August 22, 1979, of the District Court for the District of Columbia (see *In Re: Permanent Surface Mining Reclamation Litigation*, 13 ERC 1586). By March 3, 1980, 24 of the States with known coal reserves had submitted programs to obtain primary regulatory responsibility.

Under Section 504 of SMCRA and 30 CFR 736.11, OSM must promulgate and implement a Federal program in each State that did not submit a program by March 3, 1980, and in which the Director reasonably expects coal exploration or surface coal mining and reclamation operations to exist on non-Federal and non-Indian lands at any time before June, 1985.

Each State and each Federal program will be codified under Subchapter T, Parts 901–950. For each State program, OSM proposes that the complete text not appear. Rather, a notification of approval of a State program is proposed to be codified as well as the addresses where the State program may be inspected and reviewed. This alternative was chosen because of the burdensome cost that would be imposed on the Federal government to publish the full text of each State program, estimated for all programs to be around $1,500,000. Incorporating the program by reference was not recommended by the **Federal Register** as problems had arisen when other agencies incorporated by reference their State program approvals. However, OSM is still investigating its chosen alternative, in light of the possibility that Federal enforcement of the provisions of a State program may be facilitated by incorporation by reference of the program's provisions in the Code of Federal Regulations. OSM requests comments on this alternative from the public and on information it feels may be useful to codify.

For Federal programs, the complete text of the Federal regulations for each program will be codified.

This regulation will not have significant effect on the human environment and an environmental impact statement will therefore not be prepared.

The Director of the Office of Surface Mining has determined that this regulation does not constitute a significant rule set forth in 40 CFR Part 14. The regulation will not impose any recordkeeping and reporting requirements nor will it cause any economic impacts on the nationwide economy or the coal industry in particular.

Dated: October 23, 1980.

Joan M. Davenport,

Assistant Secretary for Energy and Minerals.

A new Subchapter T—Programs For the Conduct of Surface Mining Operations Within Each State, is proposed to be added to Chapter VII of Title 30 of the Code of Federal Regulations, consisting at this time of Part 900, to read as follows:

Subchapter T—Programs for the Conduct of Surface Mining Operations Within Each State

PART 900—INTRODUCTION

Sec.
900.1 Scope.
900.2 Objectives.
900.4 Responsibilities.
900.11 Organization of the subchapter.
900.12 State programs.
900.13 Federal programs.
900.14 Abandoned mine land programs.
900.15 Federal lands program cooperative agreements.

Authority: Secs. 102, 201, 405, 503, 504, and 523 of Pub. L. 95–87 (30 U.S.C. 1202, 1211, 1235, 1253, 1254, and 1273).

§ 900.1 Scope.

This part sets forth the purpose and organization of Parts 901–950 of this subchapter.

§ 900.2 Objectives.

The objective of this part is to provide an introduction to the synopsis of the approved State programs, the Abandoned Mined Lands Reclamation programs, and the full texts of the Federal programs and State and Federal cooperative agreements for regulation of mining on Federal lands. The introduction is to explain the content and authority of the permanent regulatory programs.

§ 900.4 Responsibilities.

(a) Each State that has surface coal mining and reclamation operations or coal exploration activities must have either an approved State program or a promulgated Federal program as required by Title V of the Act and 30 CFR Chapter VII, Subchapter C. Approval of a State program and promulgation of a Federal program are described in the paragraphs below.

(b) Under Section 503 of the Act and 30 CFR Part 731 a State in which there are coal exploration activities and surface mining and reclamation operations must submit a State program to the Secretary for approval if it wishes to assume exclusive regulatory jurisdiction on non-Federal and non-Indian lands. The State programs must meet the requirements of the Act and 30 CFR Chapter VII, Subchapter C.

(c) Pursuant to Section 504 of SMCRA and 30 CFR 736.11, OSM must promulgate and implement a Federal program in each State in which the Director reasonably expects coal exploration or surface coal mining and reclamation operations to exist on non-Federal and non-Indian lands at any time before June, 1985, and either (1) the State does not submit a State program, (2) the Secretary of the Interior finally disapproves the program submitted by the State, or (3) the Secretary of the Interior withdraws approval of the State program.

(d) States with approved program may enter into a cooperative agreement with OSM for the regulation of coal mining on Federal lands, in accordance with 30 CFR Chapter VII, Subchapter D.

§ 900.11 Organization of subchapter.

Parts 901–950 are reserved for each State alphabetically. A part is reserved for each State regardless of whether it is likely there will be surface coal mining and reclamation operations or coal exploration activities in that State. The programs applicable solely within each State will be codified in the applicable Part for that State under this subchapter.

§ 900.12 State programs.

Upon approval of a State program the Secretary will publish a final rule to be codified under the applicable part number assigned to the State. The full text will not appear below. Notification of the approval of the program and the dates on which any amendments were submitted will appear. In addition, the addresses where copies of the approved program are available will appear.

§ 900.13 Federal programs.

The full text of the final rules for each Federal program is codified below under the assigned Part for the particular State.

§ 900.14 Abandoned mine land program.

Programs for reclamation of abandoned mine lands are codified under the applicable part for the State. The date of submittance and approval and the addresses at which copies of the program are available appear in the applicable part for each State below.

§ 900.15 Federal lands program.

The full text of any State and Federal cooperative agreement for the regulation of coal exploration and mining on Federal lands is published below under the applicable part. In addition, these requirements of a State program which are applicable on Federal lands in the State shall be specified.

[FR Doc. 80-33792 Filed 10-29-80; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

[SW-4-FRL 1648-8]

Kentucky's Application for Interim Authorization, Phase I, Hazardous Waste Management Program; Cancellation of Public Hearing and Comment Period

AGENCY: Environmental Protection Agency, Region IV.

ACTION: Cancellation of Public Hearing and Public Comment Period.

SUMMARY: On October 2, 1980, (45 FR 65263) a Notice of Public Hearing was published in the **Federal Register** concerning a public hearing to be held on Kentucky's Application for Interim Authorization, Phase I, under the Resource Conservation and Recovery Act. That notice also announced the availability of the State's application for public review and invited public comment on the application.

EPA has determined that Kentucky's application is incomplete because some of the regulations referenced in the application are still subject to change under Kentucky's rulemaking procedures. EPA regulations implementing RCRA at 40 CFR 123.123 (b) provide that the formal review period cannot begin until all the necessary information for a complete application is received by EPA.

Consequently, the public hearing that was originally scheduled for November 3, 1980 at 7:00 p.m. in Frankfort, Kentucky, will not be held.

When additional information is submitted and EPA determines that the State program submission is complete another public hearing will be scheduled and the formal review process and public comment period will begin.

FOR FURTHER INFORMATION CONTACT: Betty C. Willis, Hazardous Waste Section, Residuals Management Branch, Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365. Telephone: 404/881-3016.

Dated: October 22, 1980.

Rebecca W. Hanmer,

Regional Administrator.

[FR Doc. 80-33933 Filed 10-29-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 256

[SWH-FRL 1619-4]

Guidelines for Development and Implementation of State Solid Waste Management Plans

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing modifications to its guidelines for the development and implementation of State solid waste management plans. The proposed modifications would expand public participation opportunities in the planning process and would provide for expedited approval of certain portions of the State plans. These modifications are being proposed as part of a settlement agreement reached with industrial groups which have challenged the guidelines in Federal Court.

DATE: EPA will accept public comments on the proposed modifications until December 1, 1980.

ADDRESSES: Comments should be addressed to John Skinner, Director, State Programs and Resource Recovery Division, Office of Solid Waste [WH-563], U.S. Environmental Protection Agency, Washington, D.C. 20460. Communications should identify the regulatory docket number "Section 4002."

The public docket for this proposed rulemaking is located in Room 2711, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Susan Absher, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755-9145.

SUPPLEMENTARY INFORMATION: On July 31, 1979, EPA published the Guidelines for Development and Implementation of State Solid Waste Management Plans (44 FR 45066) under Section 4002(b) of the Resource Conservation and Recovery Act of 1976, as amended (RCRA or Act), 42 U.S.C. 6942(b). These guidelines contain requirements and recommendations for State planning programs that will be approved and funded under Sections 4007 and 4008 of RCRA. The State plans are to address a range of solid waste management activities, including resource recovery, resource conservation and solid waste disposal.

Among other things, the State plan must provide for the closing or upgrading of existing open dumps. On September 13, 1979, EPA issued Criteria for Classification of Solid Waste Disposal Facilities and Practices (44 FR 53438) under Section 4004(a) of RCRA which, among other things, provide a general definition of "open dump" for purposes of RCRA. As part of the planning process, the States will use these criteria to determine which facilities within their borders are "open dumps." EPA will publish the results of these State determinations in an open dump inventory as required by Section 4005(b) of the Act. The States will use this list in setting planning priorities.

The Chemical Manufacturers Association and certain of its member companies, the American Paper Institute and the National Forest Products Association, the U.S. Chamber of Commerce and the American Mining Congress and certain of its member companies have all sought judicial review of EPA's Section 4002 guidelines. Their concerns focus upon the preparation of and meaning to be given the inventory of open dumps required by Section 4005(b) of the Act.

All of the industry petitioners have argued that EPA has not met alleged legal obligations to ensure that States give owners and operators of such facilities notice and an opportunity for comment before their facilities are classified as open dumps under the State planning program. The petitioners assert that such an opportunity is required by the Constitution, which protects individuals from deprivation of property without due process of law, and Section 7004 of RCRA, which provides for public participation in RCRA programs. In addition, they have expressed concern about the timing of the inventory publication in relation to the issuance of compliance schedules which protect entities from suits for open dumping under Section 4005(c). They have indicated that a time "window" exists because the listing of a facility on the open dump inventory could take place prior to approval of a State plan for the State in which the facility is located. Since they believe that such a listing could subject a facility's owner or operator to a substantial risk of citizen suit for open dumping, they have argued that the opportunity to receive a State-issued compliance schedule as contemplated by Section 4005(c) should be available at the time the inventory is published.

The issues raised by petitioners were, for the most part, carefully considered in the rulemaking proceeding that led to the adoption of the Section 4002 guidelines. The notice and comment issue was given special scrutiny in response to a petition by the National Solid Waste Management Association (NSWMA). The Agency published NSWMA's petition in the Federal Register and received comments on the issues involved (44 FR 28344, May 15, 1979). The NSWMA's petition and the comments submitted on the petition were extensively discussed in the preamble to EPA's final regulations containing the Section 4002 guidelines. (See 44 FR 45066, 45071-75).

I. EPA's Position

Subtitle D of RCRA creates two principal mechanisms for addressing the problems of solid waste management. First, Sections 4002-4008 establish a State planning program which is to address a wide range of management activities. While EPA establishes general guidelines and provides financial assistance for the program, the States are responsible for developing and implementing the solid waste plans under State law. The inventory of open dumps is an adjunct to this State planning program.

Second, Section 4005 prohibits, as a matter of Federal law, any practice which constitutes the open dumping of solid or hazardous waste. Under Section 1008(a)(3) EPA issues criteria to define open dumping. Section 7002 provides an opportunity for citizen suits to enforce requirements of RCRA. These provisions, read together, provide a cause of action in Federal court for citizens who seek to enjoin acts of open dumping, wherever they may occur.

Section 4005(c) does, however, provide a mechanism for insulating from citizen suits those parties who are taking steps to comply with the open dumping prohibition. Under an approved

plan the State may issue to "any entity" a compliance schedule leading to compliance with the open dumping prohibition. To obtain this compliance schedule, a party must demonstrate that he has "considered other public or private alternatives for solid waste management" and "is unable to utilize such alternatives" as a means for compliance. Parties who have received such compliance schedules and are meeting the terms of their schedules are not in violation of the open dumping prohibition.

The inventory, which is part of the State planning program, does not implement the open dumping prohibition. For the reasons set forth in the preamble to the final Section 4002 guidelines, EPA views the inventory as a purely "informational tool." Its publication by the Federal government does not represent a determination that disposal of waste in a facility listed in the inventory constitutes "open dumping." See 44 FR 45071-72. EPA has stressed, *id.*, that a finding by a State that a particular waste disposal facility is an "open dump" does not constitute a determination that a particular individual or firm has engaged in "open dumping." The ultimate issue of whether particular parties have engaged in "open dumping" is, EPA believes, subject to *de novo* review by courts in each case.

The trade associations challenging the Section 4002 regulations have raised the issue whether a determination by a court that a given party was disposing of waste in a facility that had been included on the "open dump" inventory would suffice to support a finding of "open dumping." No such presumption exists under the Act. Open dumping may occur at locations not properly characterized as solid waste management facilities for purposes of the inventory. For example, the spilling of solid waste along a highway may be open dumping, yet the highway is not properly characterized as a solid waste management facility to be evaluated for purposes of the open dump inventory. Likewise the placement of waste into a facility classified as an open dump does not necessarily entail open dumping. For example, a facility may be classified as an open dump because it contains putrescible wastes that present a bird hazard to aircraft. At the same time, a party who places non-putrescible waste into that facility may not be open dumping because such a practice may not violate the criteria.

A determination for purposes of the open dump inventory need not precede an open dumping suit. However, before the results of the inventory may be used to support a legal determination that open dumping has occurred, the court would have to determine that the classification was a correct application of the criteria and that the defendant was responsible for actions violating the criteria. The court would be obliged to review the sufficiency of the State's classification of a facility and not simply defer to the State's decision. EPA intends to make these points clear at the time of publication of any open dump inventory.

Since the inventory is only an informational tool and does not reflect a determination that Federal law has been violated, EPA does not believe that the Constitution requires a formal notice and opportunity for comment for owner and operators of facilities listed in the inventory. EPA also believes that the goals of Section 7004 may be achieved through full public participation in the development of the State plan, the annual State work program, the State regulatory development and facility permits as currently required under the guidelines.

In response to industry concern that there may be a time gap between the publication of the inventory and the development of compliance schedules by the State, EPA is willing to take steps to reduce that possibility as long as the requirements of Section 4005(c) are met. EPA does not believe, however, that a delay in the publication of the inventory is the proper means for addressing that problem. The date for publication of the inventory is not linked to the availability of such compliance schedules under the statute. Moreover, it is inconsistent with EPA's obligation to publish the inventory to delay publication until the States adopt procedures for issuing compliance schedules.

II. The Proposed Modifications

This proposal would make two basic changes to the guidelines. First, the public participation requirements would be expanded to assure that the owner or operator of a facility classified as an open dump would have an opportunity to participate in the State planning process. Second, EPA would expedite the approval process for that portion of the State plan that would provide for schedules leading to compliance with the open dumping prohibition.

In expanding the public participation requirements to specifically include the owner or operator of a facility classified as an open dump, EPA is not suggesting that those parties will necessarily be legally liable for any violations occurring at the facility or that owners or operators have a legal right to receive notice and to comment on the inventory. Instead EPA is merely recognizing that the present owner or operator of a facility will probably be able to provide valuable information about the facility (e.g. the type of waste in the facility) and that the cooperation of the owner or operator will be essential to any effort to close or upgrade a facility. EPA, therefore, proposes to include such owners or operators on the mailing list of parties affected by or interested in the State plan, which the State must maintain under § 256.60(a)(1) of the existing guidelines. Under § 256.60(b) of the existing guidelines, the State must send key pieces of information concerning the plan to all on the mailing list.

The proposed modifications would assure that some minimum public participation precedes the State's submission of any classifications of facilities as open dumps to the Federal government. EPA believes that most States are already planning to extend some opportunity for participation in the inventory process to the regulated community. EPA encourages this effort and does not intend to prescribe rigid procedures for how public participation should be structured. The proposed modifications, therefore, present one mechanism for allowing adequate public participation but allow each State to use any other set of State administrative procedures that provide equivalent public participation. A State may satisfy this requirement with procedures (e.g. public hearings, public meetings) that are more extensive than those provided in the proposed regulation.

The proposed minimum procedure for public participation would require written notice of the availability of inventory results to all parties identified on the mailing list required by § 256.60(a)(1). It is theoretically possible that a party on that list who is an owner or operator of a facility classified as an open dump may not otherwise be aware of the State planning program or of the fact that his facility has been evaluated for purposes of the inventory. Therefore, the notice given to either the owner or operator of a facility classified as an open dump must indicate that his facility has been so classified.

The form of the notice would be a matter of State discretion. EPA expects that the notice would indicate that the information supporting the classifications is generally available and allow any interested parties to make specific inquiries about particular facilities. EPA does not anticipate, however, that the State would actually be distributing a list of facilities

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tentatively determined to be open dumps in this initial notice.

In addition, EPA does not anticipate that the State would wait until all facilities are evaluated to provide a single round of notices. The State may, at its discretion, time the notice so as to coordinate with its plan for submitting names of facilities to the Federal government. The only requirement is that the notice be sent out at least thirty days before a list of facilities is submitted to the Federal government. This provides an opportunity for the owner or operator of a potentially affected facility, and any other interested party, to go to one of the depositories of public information on the plan or to the responsible State office and determine the basis for the preliminary State list of open dumps. These parties could then provide comment to State authorities, through written submissions or otherwise, on the classifications.

The petitioners challenging the guidelines have expressed concern that the 30-day time frame may not suffice to allow all parties a reasonable opportunity to comment on the State's classifications. In this regard, it is useful to describe the procedures that EPA intends to follow in preparation of the open dump inventory. States will submit their classifications to the United States Bureau of Census approximately 90 days before the date for publication of the inventory in the **Federal Register**. The Census Bureau will code the information and return a printout to each State after approximately 60 days. The State will then review this data for completeness and accuracy during the approximately 30 days remaining before the publication date. Thus, all parties will be able to discuss with the State the validity of the classification during this entire period of time. EPA believes that this 90–120 day period should provide an ample opportunity for an interested party to demonstrate that the facility should or should not be classified as an "open dump."

In proposing this basic public participation provision, EPA does not intend to invoke State administrative procedures that would require formal, quasi-judicial procedures under State law. Some State officials have expressed concern that any notice requirement in the guidelines might require them to use formal notice and comment procedures under State law. Certainly EPA does not intent that result. The inventory is a planning tool, and EPA believes that any public participation associated with it (including notice to interested parties) need not include the formal procedures used for other forms of agency action. The Agency would like to have public comment on this issue and would be particularly interested in the comments from appropriate State offices (i.e., attorney general office, agency legal departments) about this concern.

The Agency is proposing to eliminate § 256.64(c) of the guidelines. This recommendation suggested that the State inform all affected parties when a facility is classified as an open dump. Since the proposed modifications include requirements concerning this issue, the recommendation is unnecessary.

In response to the petitioners' concern about the so-called "window" problem, EPA is willing to take reasonable steps to attempt to limit the time between publication of an inventory of facilities classified as "open dumps" and the approval of State plans that will enable facility owners or operators to obtain State-issued compliance schedules leading to compliance with the open dumping prohibition. This responds to the petitioners' concern in that limiting this time period, or "window," will minimize the chances of a facility's owner or operator being subject to a citizen suit for "open dumping" before there is available the statutorily recognized defense of a State compliance schedule.

EPA will attempt to accomplish this objective by expedited approvals of portions of State plans that provide for the issuance of compliance schedules as contemplated by Section 4005(c). States are encouraged to seek such expedited partial approvals as a method of ensuring full and orderly implementation of Subtitle D program, including the establishment of appropriate compliance schedules.

A number of States may already have the general statutory or common law authority to issue the kind of compliance schedules anticipated under Section 4005(c). In these States it may be possible and it is desirable to make such compliance schedules available at the time a facility is classified as an open dump. For a State to seek and receive expedited partial approval of a State plan, it need not have in place detailed regulations and administrative systems for the issuance and enforcement of compliance deadlines. Failure of a State, however, to establish such regulations within a reasonable period of time could be a basis for later withdrawal of Federal approval for all or a portion of a State plan. See 44 FR 45066, 45070 (July 31, 1979). EPA may require an opinion of a State's attorney general regarding the State's general statutory or common law authority to issue compliance schedules leading to compliance with the Criteria before issuing partial plan approvals.

The proposed modifications would require the Administrator to approve the portion of the plan relating to compliance schedules procedures if he made three findings. First, the State compliance schedule procedures must satisfy the requirements of § 256.26, the portion of the guidelines that set forth statutorily-required components of such schedules. Second, the State must have general authority (statutory or common law) to issue and enforce compliance schedules. Third, the State must be developing the other portions of the plan in conformity with the guidelines.

EPA recommends that States, to the maximum degree possible, integrate the inventory and compliance planning processes. EPA urges States, at the time they classify a facility as an "open dump," to make a decision regarding an appropriate timetable or schedule to bring responsible parties into compliance with the open dumping prohibition. In doing so the State should take into account public and private alternatives for solid waste management available to the owner or operator of such a facility. Even States that do not, at the time of conduct of the inventory, have the requisite legal authority to establish and enforce such compliance schedules, are encouraged to make planning judgments regarding appropriate schedules on a facility-by-facility basis when preparing the inventory. These planning judgments could readily be converted to enforceable conditions when the requisite legal authority is put in place and the State's plan receives approval.

In proposing these modifications, EPA is not changing its position that the proper role of the Federal government with respect to the inventory should be limited to publication of information developed by State authorities pursuant to Federal guidelines and criteria. Likewise EPA maintains its position that neither RCRA, the Administrative Procedure Act nor the Constitution requires that a formal notice and opportunity for comment accompany the preparation of a planning tool such as the inventory. EPA has decided, however, that it is in the best interests of the Subtitle D program to consider making certain modifications to the guidelines which will accommodate the concerns of the industry petitioners who have challenged the regulations, without compromising the basic structure of the program.

These modifications are being proposed as part of a settlement agreement with those petitioners. While EPA anticipates that the finalization of these proposed modifications will provide a basis for settlement of the litigation affecting these guidelines, EPA will consider carefully all public comments on this proposal before making its final decision.

EPA is considering these proposed modifications in order to make the Subtitle D program more effective in its stated purposes. Certainly, in removing the prospect of protracted litigation over the guidelines, these modifications would conserve Agency resources and eliminate uncertainty about the program for the States. In addition these changes should reassure the regulated community that the States and EPA intend to implement the program in a responsible manner, which will foster public support for the program. Such a goal is consistent with Section 4001 of the Act which states that Subtitle D guidelines should be designed to foster "cooperation among Federal, State and local governments and private industry," and it will assist States in obtaining data regarding such facilities.

At the same time EPA recognizes that the goals of the Subtitle D program would not be advanced by procedures which place an undue administrative burden on the States. Complicated procedural requirements may impede the State planning process and delay development and publication of the inventory. In order to alleviate that concern, the proposed modifications have been integrated with the components of the public participation program that are already part of the guidelines. The modifications employ, for example, the depositories of information and the mailing list required under § 256.60(a) of the existing guidelines.

EPA has provided for 30 days of comment on this proposed rule, a period of time which is necessary under these circumstances. The States have been and will be conducting the inventory in the next few months. They will be sending the names of facilities to EPA this fall. It is, therefore, important to quickly resolve the issues surrounding this proposal in order to clarify State responsibilities in the conduct of the inventory. Since the proposed changes are few, and procedural in nature, EPA does not expect that commenters will need substantial time to develop and present technical data. The 30-day time period should be adequate.

Dated: September 24, 1980.

Douglas M. Costle,

Administrator.

Accordingly it is proposed to amend Title 40 CFR as follows:

§ 256.03 [Amended]

1. Section 256.03 is amended by adding paragraph (f) as follows:

* * * * *

(f) States which are developing a complete State plan may submit the portion of the plan designed to satisfy the requirements of § 256.26 prior to submission of the complete plan.

§ 256.04 [Amended]

2. Section 256.04 is amended by adding paragraph (f) as follows:

* * * * *

(f) If a State submits to EPA the portion of the plan by which entities may, pursuant to § 256.26, obtain timetables or schedules of compliance for complying with the open dumping prohibition, the Administrator shall approve such portion of the plan if he determines that:

(1) The portion submitted satisfies the requirements of § 256.26;

(2) The State has the general legal authority to issue and enforce compliance schedules; and

(3) The remainder of the plan is being developed in conformity with these guidelines.

§ 256.60 [Amended]

3. Revise § 256.60(a)(1) as follows:

(a) * * *

(1) Maintain a current list of agencies, organizations, and individuals affected by or interested in the plan, which shall include any parties that request to be on the list, the owner or operator of each facility classified as an open dump and any other parties which the State determines to be affected by or interested in the plan;

§ 256.24 [Amended]

4. Section 256.24 is amended by adding paragraph (d) as follows:

* * * * *

(d) At the time of classification of existing solid waste disposal facilities pursuant to § 256.23, the State should consider developing appropriate timetables or schedules by which any responsible party can be brought into compliance with the open dumping prohibition pursuant to §§256.26 and 256.27.

§ 256.64 [Amended]

5. Delete § 256.64(c).

6. Part 256 is amended by adding § 256.65 as follows:

§ 256.65 Requirements for public participation in the open dump inventory.

(a) The State shall provide an opportunity for public participation prior to submission of any classifications of facilities as open dumps to the Federal government. The State shall accomplish this by providing notice as specified in paragraph (b) of this section or by using other State administrative procedures which provide equivalent public participation.

(b) The State may satisfy the requirement of paragraph (a) of this section by providing written notice of the availability of the results of its classifications to all parties on the list required under § 256.60(a)(1) at least 30 days before initial submission of these classifications to the Federal government. For those parties on the list required under §256.60(a)(1) who are owners or operators of facilities classified as open dumps, such notice shall indicate that the facility has been so classified.

[FR Doc. 80-33860 Filed 10-29-80; 8:45 am]

BILLING CODE 6560-30-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 435 and 436

Medicaid Program; Deeming of Income Between Spouses

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposal would revise current Medicaid rules for determining financial eligibility and the level of Medicaid payments for institutional care for aged, blind, and disabled individuals, when one spouse is institutionalized and the other spouse is not. The change would affect those States that, as permitted by statute, use more restrictive eligibility criteria than those applied nationally under the Supplemental Security Income (SSI) program. It would also apply in Puerto Rico, Guam, and the Virgin Islands.

The proposal would change the regulations permitting these jurisdictions to consider a portion of the income of a spouse living in the community as available to meet the medical expenses of his or her aged, blind, or disabled institutionalized spouse. This practice is known as "deeming" of income. The change would mandate the use of the same time periods for which income can be deemed available as those used under the SSI program.

This proposed regulation is required by and would implement an order of the United States Court of Appeals for the District of Columbia. That order vacated the existing regulations governing deeming of income in these States. The

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Court reasoned that, in adopting those regulations, the Secretary did not sufficiently take into account "relevant factors" bearing on the appropriateness of deeming. The Court ordered the Secretary to issue new regulations after considering these relevant factors.

DATES: To assure consideration, comments should be received by December 1, 1980.

ADDRESSES: Address comments in writing to: Administrator, Department of Health and Human Services, Health Care Financing Administration, P.O. Box 17076, Baltimore, Maryland 21235.

If you prefer, you may deliver your comments to Room 309–G Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington D.C., or to Room 789, East High Rise Building, 6401 Security Boulevard, Baltimore, Maryland.

When commenting, please refer to BPP–102–P. Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection, beginning approximately two weeks after publication, in Room 309–G of the Department's office at 200 Independence Ave. S.W., Washington, D.C., 20201 on Monday through Friday of each week from 8:30 to 5:00 p.m. (202–245–7890).

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and will respond to them in the preamble to that rule.

FOR FURTHER INFORMATION CONTACT: Dennis McNown, (301) 594–8221.

SUPPLEMENTARY INFORMATION: On October 8, 1980, Judge Charles Richey in the case of *Gray Panthers* v. *Secretary, Department of Health, Education, and Welfare, et al.*, Civil Action No. 78–0661, in effectuation of the mandate of the Court of Appeals in the case, ordered the Secretary to publish a Notice of Proposed Rule Making concerning the extent to which deeming of income would be permitted under Medicaid, after considering all the factors the Secretary believed relevant to the issue. The NPRM is in response to that court order.

It is proposed that 42 CFR Chapter IV, Subchapter C, be amended as set forth below:

PART 435—ELIGIBILITY IN THE STATES AND THE DISTRICT OF COLUMBIA

A. Part 435 is amended as follows:

1. Section 435.602 is revised to read as follows:

§ 435.602 Limitation on the financial responsibility of relatives.

(a) Except for a spouse of an individual or a parent for a child who is under age 21 or blind or disabled, the agency must not—

(1) Consider income and resources of any relative available to an individual; nor

(2) Collect reimbursement from any relative for amounts paid by the agency for services provided to an individual.

(b) The income and resources of spouses and parents must be considered in determining financial eligibility as provided for the categorically needy in subpart H and the medically needy in subpart I.

2. Section 435.734 is revised to read as follows:

§ 435.734 Financial responsibility of spouses and parents.

(a) Except as provided in paragraph (b) of this section, in determining Medicaid eligibility of an aged, blind, or disabled individual under requirements more restrictive than those used under SSI, the agency must consider the income and resources of spouses and parents as available to the individual in the manner specified in §§ 435.723 and 435.724 or in a more extensive manner, but not more extensive than the requirements in effect under the Medicaid plan on January 1, 1972.

(b) When either an individual or his or her spouse is institutionalized, the agency must consider income of a spouse as available to the individual only for the following time periods:

(1) If both spouses apply or are eligible as aged, blind, or disabled, the agency must consider their income as available to each other for the first 6 months after the month they cease to live together. After this 6-month period, the agency must consider only the income that is actually contributed by one spouse to the other.

(2) If only one spouse in a couple applies or is eligible, the agency must consider only the income of the ineligible spouse that is actually contributed to the eligible spouse after the month in which they cease to live together.

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

B. Part 436 is amended as set forth below:

1. Section 436.602 is revised to read as follows:

§ 436.602 Limitation on the financial responsibility of relatives.

(a) Except for a spouse of an individual or a parent for a child who is under 21 or blind or disabled, the agency must not—

(1) Consider income and resources of any relative available to an individual; nor

(2) Collect reimbursement from any relative for amounts paid by the agency for services provided to an individual.

(b) The income and resources of spouses and parents must be considered in determining financial eligibility as provided for the categorically needy in subpart H and the medically needy in subpart I.

2. Section 436.711 is revised to read as follows:

§ 436.711 Determination of financial eligibility.

In determining eligibility of individuals specified in subparts B and C of this part who are not recipients of cash assistance, the agency must apply the financial eligibility requirements of the State plan for OAA, AFDC, AB, APTD, or AABD that would be used if the individual were applying for cash assistance. This includes requirements on financial responsibility of spouses and parents, except that—(a) In determining eligibility of families and children, the agency must consider parental income and resources as available to a child who is living with the parents until he becomes 21, even if State law confers adult statues below age 21; and

(b) When either an individual or his or her spouse is institutionalized, the agency must consider income of a spouse as available to the individual only for the following time periods:

(1) If both spouses apply or are eligible as aged, blind, or disabled, the agency must consider their income as available to each other for the first 6 months after the month they cease to live together. After this 6-month period, the agency must consider only the income that is actually contributed by one spouse to the other.

(2) If only one spouse in a couple applies or is eligible, the agency must consider only the income of the ineligible spouse that is actually contributed to the eligible spouse after the month in which they cease to live together.

3. Section 436.821 is revised to read as follows:

§ 436.821 Financial responsibility of spouses and parents.

In determining eligibility of medically needy individuals, the agency must use the rules for determining whether the income of a spouse or parent is available to the individual that would be used if he were applying for OAA, AFDC, AB, APTD or AABD. However—(a) For families and children, the agency must consider parental income and resources available to a child who is living with the parent until he becomes 21, even if State law confers adult status below age 21; and

(b) When either an individual or his or her spouse is institutionalized, the agency must consider income of a spouse as available to the individual only for the following time periods:

(1) If both spouses apply or are eligible as aged, blind, or disabled, the agency must consider their income as available to each other for the first 6 months after the month they cease to live together. After this 6-month period, the agency must consider only the income that is actually contributed by one spouse to the other.

(2) If only one spouse in a couple applies or is eligible, the agency must consider only the income of the ineligible spouse that is actually contributed to the eligible spouse after the month in which they cease to live together.

(Sec. 1102 of the Social Security Act (42 U.S.C. 1302))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: October 28, 1980.

Howard Newman,

Administrator, Health Care Financing Administration.

Approved: October 28, 1980.

Patricia Roberts Harris,

Secretary.

[FR Doc. 80–34029 Filed 10–28–80; 4:36 pm]

BILLING CODE 4110–35–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–5895]

National Flood Insurance Program, Proposed Flood Elevation Determinations; Correction

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Brillion, Calumet County, Wisconsin, previously published at 45 FR 60952 on September 15, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872 (in Alaska and Hawaii call Toll Free Line (800) 424–9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Brillion, Calumet County, Wisconsin, previously published at 45 FR 60952 on September 15, 1980, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)).

Under the Source of Flooding of Unnamed Ditch, the elevation described as, "Just upstream of downstream corporate limit," and the corresponding elevation 814 feet has been changed. The location should read, "About 1,600 feet downstream from confluence of Ariens Ditch." The corresponding elevation should be 813 feet.

Under the Source of Flooding of Black Creek the location described as, "About 1.25 miles upstream of State Highway 114" with a corresponding elevation of 824 feet should be added as the last entry.

The Flood Insurance Study (profile) and Flood Insurance Rate Map were correct as printed. The listing appears correctly as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Wisconsin	(C), Brillion, Calumet County	Unnamed Ditch	About 1,600 feet downstream from confluence of Ariens Ditch	*813
		Black Creek	About 1.25 miles upstream of State Highway 114	*824

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: October 10, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80–33800 Fkiled 10–29–80; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

[Docket No. FEMA–5873]

Revision of Proposed Flood Elevation Determinations for City of Tukwila, King County, Wash., Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Tukwila, Washington.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in 45 FR 52422 on August 7, 1980 and in *The Record Chronicle*, published on or about July 31, 1980, and August 7, 1980, and hence supersedes those previously published rules.

DATE: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the

flood-prone areas and the proposed flood elevations are available for review at City Hall, 6200 Southcenter Boulevard, Tukwila, Washington.

Send comments to: Honorable Frank Todd, 6200 Southcenter Boulevard, Tukwila, Washington 98188.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872, In Alaska or Hawaii, call Toll Free Line (800) 424–9080, Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the City of Tukwila, Washington, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations are:

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)
Green River	100 feet upstream from intersection of river and Interstate Highway 5.	*14
	100 feet upstream from intersection of river and Strander Boulevard.	*25
Springbrook Creek.	Center of South 158th Street approximately 150 feet north of its intersection with the Chicago, Milwaukee, St. Paul and Pacific railroad.	*16
Black River	50 feet upstream of intersection of Chicago, Milwaukee, St. Paul and Pacific Railroad with Black River.	*19

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963)

Issued: October 10, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-33781 Filed 10-29-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5930]

National Flood Insurance Program; Proposed Base Flood Elevations, Zone Designations and Corporate Limits for the City of Satsuma, Ala.

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations, zone designations and corporate limits described below.

The proposed base flood elevations, zone designations and corporate limits will be the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Map and other information showing the detailed oulines of the floodprone areas and the proposed elevations, zone designations and corporate limits are available for review at the Mayor's Office, City Hall, Satsuma, Alabama.

Send comments to: The Honorable William A. Winters, Mayor, City of Satsuma, P.O. Box 517, Satsuma, Alabama 36592.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation and Engineering Office, National Flood Insurance Program, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755–6570 or toll free line (800) 424–8872 or (800) 424–8873.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed base flood elevations (100-year flood) zone designations and corporate limits for the City of Satsuma, Alabama in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4 (a) (presently appearing at its former Section, 24 CFR 1917.4 (a)).

The base flood elevations, zone designations and corporate limits together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. The proposed elevations, zone designations, and corporate limits will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed 100-year flood elevations and zone designations for selected locations are:

Source of flooding	Location	Elevation (feet)	Zone
Gunnison Creek	Within Corporate limits, east of Vaughn Drive East	11 (NGVD)	A10
Gunnison Creek	Along Northeasternmost Corporate Limits	11 (NGVD)	A10
Hell's Creek	Between Interstate Highway 65 and Westernmost Corporate Limits.		A
Spat Creek	Within corporate limits, between confluence with Steele Creek and Catherine Drive.	11 (NGVD)	A10
Steele Creek	Between U.S. Highway 43 and Easternmost Corporate Limits.	11 (NGVD)	A10
Steele Creek	Upstream of U.S. Highway 43	11 (NGVD)	A10
Tributary to Spat Creek	Within Corporate Limits in vicinity of Tajaucha Drive South and Tajaucha East.	11 (NGVD)	A10

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: October 3, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-33791 Filed 10-29-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA 5938]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newpaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program (202) 426–1460 or Toll Free Line (800) 424–8872 (In Alaska and Hawaii call Toll Free Line (800) 424–9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67.4(a).

These elevations, together with the flood plain management measures required by section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or Regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Proposed Base (100-Year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
California	Fountain Valley (City), Orange County.	Santa Ana River	Intersection of San Diego Freeway and Brookhurst Street	#2
			Palm Street	#3
			Azalea Avenue	#3
	Maps available for inspection at City Hall, Fountain Valley, California.			
	Send comments to Honorable Al Hollinden, 10200 Slater Avenue, Fountain Valley, California 92708.			
California	Huntington Beach (City) Orange County.	Santa Ana River	Intersection of Padua Drive and Misty Lane	*1
			Intersection of Heil Avenue and Rhone Lane	#3
			Intersection of Atlanta Avenue and Magnolia Street	*11
			Intersection of Holburn Lane and Ramsgate Lane	*14
	Maps available for inspection at City Hall, Huntington Beach, California.			
	Send comments to Honorable Ruth Bailey, 2000 Main Street, Huntington Beach, California 92648.			
California	Westminster (City), Orange County.	Santa Ana River	Carnation Drive	#3
			Parkview Avenue	#3
			Carnegie Avenue	#3
	Maps available for inspection at City Hall, Westminster, California.			
	Send comments to Honorable Elden F. Gillespie, 8200 Westminster, Westminster, California 92683.			
Louisiana	Unincorporated Areas of Lafourche Parish.	Bayou Folse	Just upstream of Louisiana State Highway 648	*8
			Just upstream of Southern Pacific Railroad Bridge	*7
		Shallow Flooding	At Mathews Pumps 200' north of State Highway 654 and 4,000' East of State Highway 308.	*6
			At 1,000' east of Gheens Church Cemetery	*5
			On State Road 20' 1,000' northeast of its intersection with State Highway 307.	*3
		Gulf of Mexico	At Surgoey Cemetery (southeast of Golden Meadow City)	*10
			At Cheramie Cemetery in Gallano	*9

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Northeast corner of intersection of State Highway 308 and an Unnamed Road leading to Tidelands Country Club.	*8
			At the intersection of Hospital Bayon and State Highway 24	*7
			On State Highway 857, 3,000' north east from its intersection with State Highway 308.	*7
			At Southern Pacific Station at Valentine	*6
			On State Highway 1 2,000' northwest from bridge over Company Canal (at Lockport Heights).	*5
	Maps available at Old Courthouse Building, 2nd Flood, Green and West 3rd Streets, Thibodaux, Louisiana 70301.			
	Send comments to Mr. Robert Simmons, Public Works Director, Old Courthouse Building, 2nd Floor, Green and West 3rd Streets, Thibodaux, Louisiana 70301.			
Louisiana	Town of Welsh, Jefferson Davis Parish.	East Bayou Lacassine	Just upstream of U.S. Highway 90 (West Russell Avenue)	*18
			Just downstream of Interstate Highway 10	*18
		Lateral L-1	Just upstream of East South Street	*16
	Maps available for inspection at City Hall, 200 Elm Street, Welsh Louisiana 70591.			
	Send comments to Mayor Brown or Mrs. Carrie Ardoin, City Clerk, City Hall, P.O. Box 786, Welsh, Louisiana 70591.			
Massachusetts	Ashland, Town, Middlesex County	Sudbury River	Downstream Corporate Limits	*175
			Upstream of Conrail (Downstream crossing)	*180
			Upstream of Front Street	*187
	Upstream of Former Lombard Governor Dam			*193
			Upstream of Cordaville Road	*202
			Upstream of Howe Street	*210
			Approximately 800' upstream of Conrail (Upstream crossing)	*218
			Upstream Corporate Limits	*236
		Cold Spring Brook	Confluence with Sudbury River	*181
			Ashland State Park Boundary	*181
			Just Upstream of Spring Street	*221
			Approximately 650' Upstream of Spring Street	*234
			Upstream Corporate Limits	*238
		Tributary to Cold Spring Brook	Confluence with Cold Spring Brook	*181
			Approximately 900' Upstream of Metropolitan Avenue	*189
			Approximately 1,200' Upstream of Metropolitan Avenue	*200
			Approximately 1,750' Upstream of Metropolitan Avenue	*212
			Approximately 2,400' Downstream of Englewood Drive	*225
			Approximately 1,600' Downstream of Englewood Drive	*233
		Beaverdam Brook	Downstream Corporate Limits	*158
			Downstream of Dirt Road	*159
		Tributary to Waushakum Pond	Downstream Corporate Limits	*160
			Upstream of Greenwood Street	*164
			Approximately 400' upstream of Wenzell Road (extended)	*164
	Maps available at the Town Clerk's Office, Ashland, Massachusetts.			
	Send comments to Honorable Dante DeFazio, Chairman of the Ashland Board of Selectmen, Town Offices, Main Street, Ashland, Massachusetts 01721.			
New Hampshire	Epping, Town, Rockingham County.	Lamprey River	Downstream Corporate Limits	*95
			Upstream side of State Route 87	*103
			Upstream side of State Route 125	*110
			Upstream side of Main Street	*112
			Downstream side of Blake Road	*134
			Upstream side of Blake Road	*138
			Upstream side of Bunker Pond Dam	*148
			Downstream side of State Route 101	*155
			Upstream Corporate Limits	*164
	Maps available at the Town Office, Epping, New Hampshire.			
	Send comments to Honorable Agapit H. Jeane, Jr., Chairman of the Epping Board of Selectmen, Town Office, Epping, New Hampshire 03042.			
New York	Greene, Town, Chenango County.	Chenango River	400' upstream from State Route 79	*900
			400' upstream from Conrail	*904
			Confluence of Geneganslet Creek	*905
			Jackson Hill Road (Extended)	911
			200' upstream from Hogsback Road	*917
			Confluence on Wheeler Brook	*920
			Cohocon Road (extended)	*924
			400' upstream from Brisben Crossover	*928
			Upstream Corporate Limits	*929
	Maps available at Town Hall, 51 Genesee Street, Greene, New York.			
	Send comments to Honorable Emerson Barton, Supervisor, Town Hall, 51 Genessee Street, New York 13778.			
North Carolina	Edgecomb County (Unincorporated Areas).	Tar River	Intersection of river and center of State Highway 42	*38
			100 feet upstream from center of Seaboard Coastline Railroad	*46
		Town Creek	100 feet upstream from center of U.S. Highway 258	*49
		Bynum Mill Creek	100 feet upstream from center of Secondary Road 1120	*63
		Bynum Mill Run	100 feet upstream from center of State Highway 124	*74
		Cokey Swamp	100 feet upstream from center of State Highway 43	*82
			100 feet upstream from center of Secondary Road 1002	*109
		Cokey Swamp Tributary	100 feet upstream from center of Secondary Road 1144	*94
		Fishing Creek	100 feet upstream from center of State Highway 97	*58
		Deep Creek	100 feet upstream from center of Secondary Road 1505	*54
		Swift Creek	150 feet upstream from center of Secondary Road 1253	*53
			100 feet upstream from center of Secondary Road 1409	*71
		White Oak Swamp	3,200 feet downstream from Porter Street (within Whitakers)	*118

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
	Maps available for inspection at Edgecomb County Courthouse, Tarboro, North Carolina.			
	Send comments to Honorable Hassell Phigten, Edgecombe County Courthouse, Tarboro, North Carolina 27886.			
Oklahoma	Town of Sperry, Tulsa and Osage Counties.	Bird Creek	Approximately 800 feet upstream of Hominey Creek	*614
		Delaware Creek	Just downstream of The Cincinnati Avenue Bridge	*615
	Maps available for inspection at City Hall, 116 South Cincinnati, Sperry, Oklahoma 74073.			
	Send comments to Mayor Orton, City Hall, P.O. Box 579, Sperry, Oklahoma 74073.			
Texas	City of Brookshire, Waller County.	West Fork of Brookshire Creek	Approximately 200 feet downstream of Eleventh Street	*158
		Tributary to Kellener Creek	Just downstream of F.M. 362 and 559 (Baines Street)	*164
		Brookshire Creek	Just downstream of U.S. Highway 90	157
			Just downstream of Steller Road	*162
		Brookshire Creek Drainage Ditch	Just upstream of the downstream most crossing of Hereford Drive	*156
	Maps available for inspection at City Hall, 814 Velasco Street, Brookshire, Texas 77423.			
	Send comments to Mayor Lloyd Woods, or Ms. Helen Fishbech, City Secretary, City Hall, P.O. Box 356, Brookshire, Texas 77423.			
Texas	City of Driscoll, Nueces County	Shallow Flooding	Intersection of Main Avenue and 1st Street	*64.5
	Maps available for inspection at City Secretary's Office, City Hall, Main Street Driscoll, Texas 78351.			
	Send comments to Mayor Ainsworth or Mr. Dan Cateheart, City Secretary, P.O. Box 178, Driscoll, Texas 78351.			
Utah	West Bountiful (City), Davis County.	Barton Creek	130 feet upstream from center of 1100 West	*4218
			200 feet upstream from center of northbound land of Interstate 15	*4,279
			200 feet southeast from intersection of 1600 North and Denver and Rio Grande Western Railroad.	#1
		Mill Creek	400 feet upstream from center of 1100 West	*4,240
			Intersection of 500 South and entry ramp to northbound lane of Interstate 15.	#1
		Stone Creek	200 feet downstream from center of Pages Lane	4,254
			400 feet upstream from center of Pages Lane	#3
		Duel Creek	100 feet east from intersection of 520 West and 2125 North	#2
	Maps available for inspection at City Hall, West Bountiful, Utah 84087			
	Send comments to Honorable Grant Secrist, 550 N. 8th West, West Bountiful, Utah 84087.			

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: October 15, 1980.

Gloria M. Jimanez,

Federal Insurance Administrator.

[FR Doc. 80-33782 Filed 10-29-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5932]

National Flood Insurance Program; Proposed Special Flood Hazard Area Determinations for San Bernardino County, Calif.

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Techical information or comments are solicited on the proposed Special Flood Hazard Areas as described below.

The proposed Special Flood Hazard Areas are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed Special Flood Hazard Areas are available for review at the San Bernardino Planning Department, 111 East Mill Street, Building 1, San Bernardino, California. Send comments to: Mr. James L. Mayfield, Chairman, Board of Supervisors, 175 West Fifth Street, San Bernardino, California 92415.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation & Engineering Office, National Flood Insurance Program, 451 Seventh Street, S.W., Washington, DC 20410 (202) 755–6570 or toll free line (800) 424–8872 (in Alaska and Hawaii call toll free (800) 424–9080).

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed Special Flood Hazard Areas for San Bernardino County, California, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Public Law 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Public Law 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These Special Flood Hazard Areas, together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed Special Flood Hazard Areas will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed Special Flood Hazard Areas, identified as Zone A, for the

annexed areas are located on Panels 8685 and 8705 of 9375 as follows:

Source of flooding	Location
Santa Ana River	Area from Waterman Avenue to the confluence with The Mission Zanja.
	Area south of Hope Street.
	Area approximately 800 feet north of Riverside Street.
San Timoteo Wash	Area downstream from Waterman Avenue for approximately 1,800 feet.
The Mission Zanja	Area south of the Atchison Topeka and Santa Fe Railroad between Tippecanoe Avenue and Interstate 10.
Warm Creek	Area approximately 350 feet west of Washington Avenue.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: October 20, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-33789 Filed 10-29-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5931]

National Flood Insurance Program; Proposed Zone and Base Flood Elevation Determinations for the City of Fillmore, Ventura County, Calif.

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed zone and base flood elevations as described below.

The proposed zone and base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed zone and base flood elevations are available for review at the Office of the City Clerk, Fillmore City Hall, 524 Sespe Avenue, Fillmore, California.

Send comments to: The Honorable Ernest Morales, Mayor, City of Fillmore, 524 Sespe Avenue, P.O. Box 487, Fillmore, California 93015.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation and Engineering Office, National Flood Insurance Program, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755–6570 or toll free line (800) 424–8872, (in Alaska and Hawaii call toll free (800) 424–9080).

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed zone and base flood elevations for the City of Fillmore, California, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These zone and base flood elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed zone and base flood elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation (national geodetic vertical datum)
Sespe Creek	Intersection of Ventura Street with C Street.	412
	Intersection of Sespe Avenue with C Street.	420
	Southwest of Telegraph Road.	432
	Blaine Avenue	440
	Fourth Street	444
	Just south of Sixth Street	456

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: September 19, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-33790 Filed 10-29-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5933]

National Flood Insurance Program; Proposed Zone and Base Flood Elevation Determinations for the City of Sedgwick, Harvey and Sedgwick Counties, Kans.

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed zones and base flood elevations as described below.

The proposed zones and base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed zones and base flood elevations are available for review at the Office of the City Clerk, City Hall, 316 Washington Avenue, Sedgwick, Kansas.

Send comments to: The Honorable Donald K. Dehaven, Mayor, City of Sedgwick, City Hall, 316 Washington Avenue, P.O. Box 131, Sedgwick, Kansas 67135.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation and Engineering Office, National Flood Insurance Program, 451 Seventh Street, S.W., Washington, DC 20410, (202) 755–6570 or toll free line (800) 424–8872 (in Alaska and Hawaii call toll free (800) 424–9080).

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed zones and base flood elevations for the City of Sedgwick, Kansas, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Public Law 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Public Law 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These zones and base flood elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed zones and base flood elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation (national geodetic vertical datum)
Little Arkansas River	Just north of the southernmost corporate limits.	1376
	Just south of First Street	1377
	Just south of Sixth Street	1378
	Just south of the northwest emmost corporate limits.	1379
Sedgwick Ditch	First Street	1377
	Just north of Fourth Street	1378

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: September 19, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-33788 Filed 10-29-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA 5935]

National Flood Insurance Program; Proposed Base Flood Elevation for the Village of Lindenhurst, N.Y.

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevation described below.

The proposed base flood elevation will be the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Map and other information showing the detailed outlines of the floodprone areas and the proposed base flood elevation are available for review at the Mayor's Office, Village Office, Lindenhurst, New York.

Send comments to: The Honorable Thomas Kost, Mayor, Village of Lindenhurst, Village Office, 430 South Wells Street, Lindenhurst, New York 11757.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation and Engineering Office, National Flood Insurance Program, 451 Seventh Street SW., Washington, D.C. 20410, (202) 755–6570 or toll free line, (800) 424–8872 or (800) 424–8873.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed base flood elevation (100-year flood) for the Village of Lindenhurst, New York, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a) (presently appearing at its former Section, 24 CFR 1917.4(a)).

The base flood elevation, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. The proposed base flood elevation will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed 100-year flood elevation for selected locations are:

Source of flooding	Location	Elevation in feet
Great South Bay	South of West Montauk Street.	6 (MSL)

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: September 29, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-33786 Filed 10-29-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA 5934]

National Flood Insurance Program; Proposed Flood Insurance Zone Designation for the Town of Islip, N.Y.

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed zone designation described below.

The proposed zone designation will be the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Map and other information showing the detailed outlines of the floodprone areas and the proposed zone designation are available for review at the Supervisor's Office, Town Hall, Islip, New York.

Send comments to: Mr. Michael A. LoGrande, Supervisor, Town of Islip, town Hall, 655 Main Street, Islip, New York 11751.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation and Engineering Office, National Flood Insurance Program, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755–6570 or toll free line, (800) 424–8872 or (800) 424–8873.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed zone designation

for the Town of Islip, New York, in accordance with Section 110 of the Flood Disaster Protection act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a) (presently appearing at its former Section, 24 CFR 1917.4(a)).

The zone designation, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. The proposed zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed zone designation for selected locations are:

Source of flooding	Location	Zone
Sampawams Creek.	Along westernmost Corporate Limit, North of the Long Island Railroad.	A

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: September 19, 1980.

Gloria M. Jimenez

Federal Insurance Administrator.

[FR Doc. 80–33787 Filed 10–29–80; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

[Docket No. FEMA–5936]

National Flood Insurance Program; Proposed Base Flood Elevations and Zone Designations for the City of Raleigh, N.C.

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations described below.

The proposed elevations and zone designations will be the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the floodprone areas and the proposed elevations and zone designations are available for review at the Mayor's Office, City Hall, Raleigh, North Carolina.

Send comments to: The Honorable G. Smeedes York, Mayor, City of Raleigh, P.O. Box 590, Raleigh, North Carolina 27602.

FOR FURTHER INFORMATION CONTACT:
Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation and Engineering Office, National Flood Insurance Program, 451 Seventh Street SW., Washington, D.C. 20410, (202) 755–6570 or toll free line (800) 424–8872 or (800) 424–8873.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed base flood elevations (100-year flood) and zone designations for the City of Raleigh, North Carolina, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4 (a) (presently appearing at its former Section, 24 CFR 1917.4(a)).

The proposed elevations and zone designations together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. The proposed elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed 100-year flood elevations and zone designations for selected locations are:

Source of flooding	Location	Elevation (feet)	Zone
Perry Creek	Dam 150 feet Upstream of Hunting Ridge Road	298 (NGVD)	A3
Perry Creek	Aurora Drive	299 (NGVD)	A3
Perry Creek	Dam, Approximately 3,200 feet Upstream of Aurora Drive	356 (NGVD)	A3
Tributary to East Fork of Mine Brook.	Wood Bend Drive	342 (NGVD)	
Tributary to East Fork of Mine Brook.	Corporate Limits	345 (NGVD)	
Richland Creek	Flood Control Dam Approximately 9,875 Feet Upstream of Confluence with Crabtree Creek.	324 (NGVD)	A19
Richland Creek	Between Flood Control Dam and Confluence with Crabtree Creek.		A6
Marsh Creek	Stonybrook Road	210 (NGVD)	
Marsh Creek	Northern Boulevard, U.S. Route 1, 401	216 (NGVD)	
Marsh Creek	Ingram Drive	229 (NGVD)	
Marsh Creek	Millbrook Road	255 (NGVD)	
Millbrook Tributary to Marsh Creek	Brockton Road Dam	252 (NGVD)	
Millbrook Tributary to Marsh Creek	Millbrook Road	268 (NGVD)	

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: October 3, 1980

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80–33785 Filed 10–29–80; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

[Docket No. FEMA–5937]

National Flood Insurance Program; Proposed Zone Designations for the City of Philadelphia, Philadelphia County, Pa.

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed zone designations described below.

The proposed zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed zone designations are available for review at Room 1620, Municipal Service Building, 15th and Arch Street, Philadelphia, Pennsylvania.

Send comments to: Mr. Wilson Goode, City Managing Director, Room 1620, Municipal Service Building, 15th and Arch Street, Philadelphia, Pennsylvania 19107.

FOR FURTHER INFORMATION CONTACT:
Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation and Engineering Office, National Flood Insurance Program, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755–6570 or toll free line (800) 424–8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed zone designations for the City of Philadelphia, Pennsylvania, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

Zone designations and base (100-year) flood elevations, together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed zone designations are:

Within the area bounded on the north by the Benjamin Franklin Parkway, on the east by 20th Street, on the south by Market Street, and on the west by 23rd Street; portions of the Zone A14 change to Zone B and portions of the Zone B change to Zone A14 and Zone C.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator.

Issued: September 19, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80–33784 Filed 10–29–80; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

[Docket No. FEMA 5938]

National Flood Insurance Program; Proposed Base Flood Elevations and Zone Designations for the City of Brentwood, Tenn.

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations described below.

The proposed base flood elevations and zone designations will be the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Map and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and zone designations are available for review at the Mayor's Office, City Hall, Brentwood, Tennessee.

Send comments to: The Honorable Thomas H. Bain, Mayor, City of Brentwood, City Hall, Post Office Box 244, Brentwood, Tennessee 37027.

FOR FURTHER INFORMATION CONTACT:
Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation and Engineering Office, National Flood Insurance Program, 451 Seventh Street, S.W., (202) 755–6570 or toll free line, (800) 424–8872 or (800) 424–8873.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed base flood elevations (100-year flood) and zone designations for the City of Brentwood, Tennessee, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4 (a) (presently appearing at its former Section, 24 CFR 1917.4 (a)).

The base flood elevation and zone designation, together with the floodplain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. The proposed elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed 100-year flood elevations and zone designations for selected locations are:

Source of flooding	Location	Elevation (feet)	Zone
Little Harpeth River	Northwesternmost Corporate Limit	625 (NGVD)	A5
	Granny White Pike	636 (NGVD)	A5
	Franklin Pike (U.S. Highway 31)	656 (NGVD)	A5
	L & N Railroad	666 (NGVD)	A5
	Interstate Route 65	668 (NGVD)	A5

Source of flooding	Location	Elevation (feet)	Zone
	Concord Road	678 (NGVD)	A5
	Santa Anna Drive	702 (NGVD)	A5
	Upstream of Moore's Lane		A

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: September 29, 1980.

Gloria M. Jiminez,

Federal Insurance Administrator.

[FR Doc. 80-33783 Filed 10-29-80; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 1–18; Notice 17]

Federal Motor Vehicle Safety Standards; Controls and Displays

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Grant of petition and notice of proposed rulemaking.

SUMMARY: In June 1978, NHTSA issued Standard No. 101–80, *Controls and Displays*, which establishes new requirements for the identification and illumination of vehicle controls and displays. The standard, which is scheduled to go into effect on September 1, 1980, requires the light indicating the actuation of the headlamp high beam to be blue or blue-green. In response to a petition for rulemaking from Volkswagen, the agency is proposing to allow the use of the color green as an alternative to blue or blue-green. The purpose of this proposed change is to allow the use of light emitting diode technology, which at present time cannot produce the color blue or blue-green.

DATE: Comments must be submitted by December 15, 1980. Proposed effective date is the date of publication of a final rule in the **Federal Register.**

ADDRESS: Comments should refer to the docket and notice number and be submitted to: Docket Section, Room 5108, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Docket hours 8 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. John Carson, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202–426–2670).

SUPPLEMENTARY INFORMATION: On June 26, 1978, the agency published in the **Federal Register** a notice establishing Safety Standard No. 101–80, *Controls and Displays* (43 FR 27541). The standard specifies new requirements for the identification and illumination of controls and displays in passenger cars, multipurpose passenger vehicles, trucks and buses. The standard is scheduled to go into effect on September 1, 1980, although manufacturers have the option of complying with this new standard prior to the effective date in lieu of complying with current Standard No. 101, *Control Location, Identification and Illumination.*

Among its requirements, Standard No. 101–80 specifies colors for various vehicle displays. In the case of the headlamp high beam tell-tale (i.e., the light indicating that the high beams of the headlamps have been activated), the standard specifies the color blue or blue-green. The primary reason for selecting that color was to promote the international harmonization of standards regulating vehicle controls and displays.

The agency's high beam tell-tale color requirement is the same as that adopted by the International Standards Organization, the Economic Commission for Europe and the European Economic Community.

Volkswagen (VW) has recently filed a petition for rulemaking with the agency seeking to allow the use of the color green for the high beam tell-tale as an alternative to blue or blue-green. VW stated that its testing has demonstrated that light emitting diodes (LED's) are more reliable that incandescent bulbs when used as high beam tell-tales and are, thus, very desirable. At present, however, LED's are not produced in either blue or white (which could be used with a filter to produce blue). VW said that its LED, which is green, is "the only color akin to blue-green, which LED technology is capable of producing."

In order to obtain public comments on all aspects of VW's argument as quickly as possible, the VW petition is set out verbatim as an appendix to this notice. The agency has placed the technical paper appended to the Volkswagen petition in the docket for public review. The agency emphasizes that the arguments in the VW petition are not necessarily shared by the agency. They are being set forth in full merely to facilitate and expedite the comment process. The agency will continue to investigate the desirability of the petition during the comment period and make a final decision following an analysis of all comments and other available information. To expedite the rulemaking process, the agency is also establishing a 30 day comment period.

To assist in the evaluation of the proposed change, the agency is interested in obtaining answers to the following questions:.

1. What is the current status of efforts to develop blue or white light emitting diodes? Although such LED's are apparently not commercially available at the present time, what is the time frame needed to develop such LED's?

2. If the agency decides to permit the use of green as an alternative color, should such green be permitted indefinitely or only for an interim period until blue or white LED's are commercially available?

3. Are there safety or other considerations that make it inadvisable to permit the use of green as an alternative color for high-beam indicators, even for a limited time period?

The agency has assessed the economic and other impacts of the proposed change to the high beam tell-tale requirement and determined that they are not significant within the meaning of Executive Order 12044 and the Department of Transportation's policies and procedures for implementing that order. Based on that assessment, the agency concludes also that the economic and other consequences of this proposal are so minimal as not to require preparation of a regulatory evaluation. The impact is minimal since the amendment does not impose new requirements and does not affect compliance costs. Instead, it permits manufacturers to use an alternative color for the high beam tell-tale.

If on the basis of the agency's evaluation of the petition for rulemaking and the comments received on this notice, the agency decides to adopt VW's proposed change, Column 2 of Table 2 of Standard No. 101–80 (49 CFR 571.101–80) would be revised to add the color green to the permitted tell-tale colors for the high beam tell-tale.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. Any claim of confidentiality must be supported by a statement demonstrating that the information falls within 5 U.S.C. section 552(b)(4), and that disclosure of the information is likely to result in substantial competitive damage; specifically the period during which the information must be withheld to avoid that damage; and showing that earlier disclosure would result in that damage. In addition, the commenter or, in the case of a corporation, a responsible corporate official authorized to speak for the corporation must certify in writing that each item for which confidential treatment is requested is in fact confidential within the meaning of section 552(b) (4) and that a diligent search has been conducted by the commenter or its employees to assure that none of the specified items has previously been disclosed or otherwise become available to the public.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

(Secs. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on October 17, 1980.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

Appendix A—Petition for Rulemaking Concerning FMVSS 101–80, Controls and Displays

In response to recommendtions made by the National Highway Traffic Safety Administration ("NHTSA"), Volkswagenwerk AG, Audi NSU Auto Union AG, and Volkswagen of America ("Volkswagen") hereby petition the NHTSA to amend the requirements of S5.3.2 of FMVSS 101–80 Controls and Displays, 49 CFR 571.101–80, effective September 1, 1980, to expressly permit the color green produced by LED technology for use as the high beam indicator.

Although Volkswagen believes that its LED high beam telltale complies with S5.3.2, it has now been informed by the NHTSA that the term "blue-green" referred to in Table 2 of FMVSS 101–80 is not broad enought to encompass the only color akin to blue-green, which LED technology is capable of producing.

On October 21, 1976, the NHTSA published a notice of proposed rulemaking in 41 FR 46460 et seq. announcing that it intended to update the then existing Control and Display standard by consolidating all existing requirements into one standard and by proposing certain new requirements. The notice of proposal specified that the high beam indicator light must display the color blue. The final rule published by the NHTSA in 43 FR 27542 of June 26, 1978, added the term "blue-green" to the originally proposed requirement for the color blue. The NHTSA's rationale for adding the additional terminology led Volkswagen to believe that use of LED technology would henceforth be permissible. The preamble of Notice 13, in relevant part, states the following:

> Several commenters mentioned that *because of the technology of light emitting diodes, telltales are technologically feasible only in yellow, green or red.* One commenter noted that neon gas discharge displays emit a characteristic neon red-orange light, rather than red. *These displays rate high in intensity, durability, and reliability and are low in cost. Because of these factors, the final rule has been amended so that a designation of* the color red can be either red or red-orange and *the color blue may be either blue or "blue-green."* (Emphasis added).

Because the NHTSA's conclusion to the effect that "the color blue may be either blue or blue-green" obviously flows from the preposition that LED telltales are "technologically feasible only in yellow, green or red," we fail to understand why LED units are not allowable under FMVSS 101–80 as currently constituted.

On September 13, 1979, Volkswagen met with representatives of the NHTSA and presented a display sample of a prototype LED unit as well as data sheets and graphs. These materials show that the LED color displayed in high bean indicator position was the closest commercially available to the color blue-green. These facts are more specifically set forth in Volkswagen's submission to the NHTSA's Office of Chief Counsel dated September 6, 1979. Subsequent telephone calls placed with representatives of the NHTSA resulted in a favorable response and the promise of a written communication affirming the permissibility of the use of the color green produced by Volkswagen's LED unit at least on an interim basis. With a critical tooling release deadline of November 1, 1979, and acting in good faith, major tooling commitments were made by Volkswagen. Manufacture of most model year 1981 Rabbit Convertible, Jetta, Scirocco, Dasher and Vanagon vehicles is scheduled to commence during the first or second week of August, 1980.

We believe that the cost impact combined with the physical inability for Volkswagen to revert to an incandescent lamp prior to introduction of 1981 models makes it impossible for us to consider extending use of incandescent lamps. We further believe that any delay in introduction of 1981 models is not likely to be offset by any measurable safety benefit. To achieve the transition to diodes, 30 months of design, development, testing, tooling and preproduction have been expended by suppliers and subsuppliers. Two suppliers of instrument clusters each have invested approximately $1.2 million in this endeavor, and alteration of the instrument cluster to accommodate a bulb for a blue high beam indacator is impractical at this time.

Volkswagen has been committed to LED technology since obtaining test results in 1975. The production of the pilot model Dasher, which since August 1977 is equipped with red LED in compliance with S4.5.2 of FMVSS 108, 49 CFR 571.108, showed a failure rate in the

field of less than 0.01 percent, while bulbs have about a 10 percent failure rate in filaments and contacts. We believe that these test results warrant favorable consideration and ought not to be ignored simply because 20 years ago, for reasons no longer evident, preference was given to the color blue.

Volkswagen is continuing its efforts within the International Standards Organization (ISO), as well as within the European Economic Commission (EEC) and the Economic Council of Europe of the United Nations Organization (ECE), to the effect a change in the high beam indicator color. Members of the appropriate committees and working groups have been provided with supportive data for their study and evaluation. Volkswagen will continue within this frame work to aggressively pursue the adoption of one color internationally which will not exclude LED technology. Volkswagen is hopeful that its efforts will be rewarded with favorable action on the part of ISO, EEC and ECE.

At a recent Society of Automotive Engineers ("SAE") Vehicle Lighting Committee meeting, held at the NHTSA headquarters, it was disclosed that the National Bureau of Standards ("NBS") and the General Services Administration ("GSA") no longer recognize the color blue as an acceptable class 1 warning signal, the SAE Lighting Committee supported the NBS and GSA positions on the color blue and subsequently approved removal of the color from the warning lamp standards, since they agreed that this color is not considered an effective color as a warning device. (See NBS Publication Supplement 95). This position is also supported by the "Expertise" of Dr. Behrens, an internationally recognized expert on lighting devices, who is a member of WP 29–GRE. In 1977, Dr. Behrens conducted tests at the German Vehicle Lighting Equipment Test Laboratory at the university of Karlsruhe, which is authorized by all EEC and ECE member countries. That test report was attached to Volkswagen's petition to the NHTSA filed in 1978 and is, for convenient reference, again attached hereto.

The clarification sought by this petition will allow Volkswagen and others utilizing LED technology to continue in the progression of this technology. An unfavorable response to the petition would create for Volkswagen extreme cost delay in scheduled introduction of 1981 models.

[FR Doc. 80-33557 Filed 10-29-80; 8:45 am]
BILLING CODE 4910-59-M

49 CFR Part 571

[Docket No. 80-16; Notice 1]

Federal Motor Vehicle Safety Standards; Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes several minor changes to Federal Motor Vehicle Safety Standard 120, *Tire selection and rims for motor vehicles other than passenger cars.* This proposal would require that the tire and rim selection information appearing on a placard in the vehicle be of certain specified dimensions and be written in the English language; narrow the provision permitting the purchaser of a new motor vehicle other than a passenger car to have the vehicle manufacturer install the purchaser's used tires on the vehicle and also permit the purchaser to specify the use of retreaded tires on the vehicle; change one of the rim labeling examples listed in the Standard; and correct the names of two standardization organizations listed in the Standard.

DATES:

Comment closing date: December 15, 1980.

Proposed effective date: 180 days after publication of a final rule in the Federal Register.

ADDRESS: Comments on this notice should refer to Docket No. 80–16 and be submitted to Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street, S.W., Washington, D.C. 20590. Docket hours are 8 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Arturo Casanova, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, Washington, D.C. 20590 (202–426–1714).

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard 120, *Tire selection and rims for motor vehicles other than passenger cars.* (49 CFR 571.120), specifies tire and rims selection requirements and rim marking requirements for motor vehicles such as trucks, buses, and motorcycles. This standard was initially published at 41 FR 3478; January 23, 1976. In the course of reviewing the requirements of the standard, the National Highway Traffic Safety Administration (NHTSA) noted some minor errors in the standard, as well as some portions of the standard which need clarification. This notice proposes to correct those errors and make those clarifications.

The current labeling requirements for tire and loading information are set forth in section S5.3 of Standard 120. The provisions of that section specify that the information may be incorporated in the vehicle certification label required by 49 CFR Part 567, or may be placed on a separate label affixed to the vehicle in the same manner, form and location as the certification label is. However, the information required to appear on the certification labels by Part 567 must be of certain specified dimensions and must be written in the English language. There are no similar requirements applicable to the information required to be included on the label by Standard 120. For the sake of clarity and consistency in conveying information to the user of the vehicle, this notice proposes that the dimensional requirements and the English language requirements used in Part 567 be applied to the tire and loading information required by Standard 120.

In establishing Standard 120, NHTSA included a provision permitting continuation of the practice under which a new vehicle purchaser who owns or leases used tires instructs the vehicle manufactuer to equip its new vehicles with these tires. This type of arrangement is called a "mileage contract purchase" and is most commonly used by bus companies and large tractor-trailer fleet owners. To allow mileage contract purchases to continue, section S5.1.3 of Standard 120 permits new motor vehicles to be equipped with used tires owned or leased by the vehicle purchaser if the maximum load ratings labeled on the used tires is sufficient to carry the load of the axles on which the tires are installed.

However, the language set forth in S5.1.3 of the rule does not limit the provisions permitting the use of used tires to miliage contract purchasers. Since a mileage contract purchaser buys or leases tires on a per mile basis, the tire company providing those tires has a contractual obligation to ensure that the tires mounted on the vehicles are safe for use on the vehicles. This safeguard would not exist in the case of any vehicle purchaser desiring to save the cost of purchasing new tires since the purchaser could send the vehicle manufacturer palpably unsafe tires (e.g., bald tires or poorly repaired cut tires) and request that these be mounted on the new vehicle. Accordingly, NHTSA proposes to amend the standard to specify that only mileage contract purchasers may have tires which do not meet the requirements of either Standard 109 or 119 installed on new vehicles.

Further, S5.1.3 as presently written does not permit the use of retreaded tires on new vehicles by mileage contract purchasers. This result was not intended by the agency. Since there are not any safety considerations suggesting that used tires are safer than retreaded tires, this notice would amend this section to permit the use of retreaded tires or used tires by mileage contract purchasers.

The rim labeling example shown in S5.2(b) of Standard 120 has caused some confusion. The example shows the following as a permissible rim marking: "N 20 x 5.50 or N 20 x 5.5." The confusion has resulted because S5.2(a) of the Standard uses the letter "N" to show the source for a rim's dimensions. Hence, several rim manufacturers have asked whether it is necessary to mark the letter showing the source of a rim's dimensions twice on the rim, once in response to the specific requirement in S5.2(a) and again before the rim size required in S5.2(b). To make clear that these letters need only appear once on the rim, this notice proposes to delete the letter "N" from the rim example in S5.2(b).

The final correction to Standdard 120 proposed in this notice is to list the changed names for the Japanese and German standardization organizations listed in S5.2(a). Under this proposal, "J" would be changed to refer to Japan Automobile Tire Manufacturers Association and "D" would refer to the Deutsches Institut fur Normung.

In consideration of the foregoing, 49 CFR 571.120 is proposed to be amended as follows:

§ 571.120 Standard No. 120; Tire selection and rims for motor vehicles other than passenger cars.

1. Section S4 is amended by adding the following definition:

S4. *Definitions.* All terms defined in the Act and the rules and standards issued under its authority are used as defined therein.

"Mileage contract purchaser" means a purchaser whose vehicle is equipped with tires purchased or leased from a tire supplier on a cost per mile basis.

* * * * *

2. Section S5.1.3 is amended to read as follows:

S5.1.3 In place of tires that meet the requirements of Standard No. 119, a truck, bus, or trailer may at the request of a mileage contract purchaser be equipped at the place of manufacture of the vehicle with retreaded or used tires owned or leased by the mileage contract purchaser, if the sum of the maximum load ratings meets the requirements of S5.1.2. Retreaded or used tires employed under this provision must have been originally manufactured to comply with Standard No. 119, as evidenced by the DOT symbol.

3. Section S5.2 is revised to read as follows:

S5.2 *Rim Marking.*

* * * * *

(a) A designation which indicates the source of the rim's published nominal dimensions, as follows:

(1) * * *

(2) * * *

(3) "J" indicates Japan Automobile Tire Manufacturers Association.

(4) "D" indicates Deutsches Institut fur Normung.

* * * * *

(b) The rim size designation, and, in case of multipiece rims, the rim type designation. For example: 20 x 5.50, or 20 x 5.5.

* * * * *

4. Section S5.3 is revised to read as follows:

S5.3 *Label information.*

S5.3.1 *Vehicles manufactured before September 1, 1982.* Each vehicle manufactured before September 1, 1982 shall show the information specified in S5.3.3 through S5.3.5 in the format set forth following this section. The information shall appear either—

(a) After each GAWR listed on the certification label required by § 567.4 or § 567.5 of this chapter; or, at the option of the manufacturer,

(b) On a tire information label affixed to the vehicle in the manner, location, and form described in § 567.4 (b) through (f) of this chapter, as appropriate for each GVWR–GAWR combination listed on the certification label.

S5.3.2 *Vehicles manufactured on and after September 1, 1982.* Each vehicle manufactured on and after September 1, 1982, shall show the information specified in S5.3.3 through S5.3.5 in the English language, lettered in block capitals and numerals not less than three thirty-seconds of an inch high and in the format set forth following this section. This information shall appear either—

(a) After each GAWR listed on the certification label required by § 567.4 or § 567.5 of this chapter; or, at the option of the manufacturer,

(b) On a tire information label affixed to the vehicle in the manner, location, and form described in § 567.4 (b) through (f) of this chapter, as appropriate for each GVWR–GAWR combination listed on the certification label.

S5.3.3 The size designation of tires (not necessarily those on the vehicle) appropriate (as specified in S5.1.2) for the GAWR.

S5.3.4 The size designation and, if applicable, the type designation of rims (not necessarily those on the vehicle) appropriate for those tires.

S5.3.5 Cold inflation pressure for those tires.

* * * * *

Interested persons are invited to submit comments on this proposal. Comments must be limited so as not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a succinct and concise fashion. Those commenters desiring to be notified of the receipt of their comments in the docket section should enclose a stamped, self-addressed postcard in the envelope with their comments. When the comments are received, the docket supervisor will return the postcard by mail.

All comments received before the close of business on the comment closing date indicated at the beginning of this proposal will be considered in formulating a final rule, and will be available for public inspection in the docket before and after the comment closing date.

Comments received too late to be considered in formulating this final rule will be treated as suggestions for future rulemaking. The agency will continue to file relevant material in the docket as it becomes available after the comment closing date, and it is recommended that interested persons continue to examine the docket for new material.

The agency has reviewed the impacts of this proposal, and concluded that the costs associated with these clarifying amendments are either nonexistent or minimal. The agency has determined that this proposal is not a significant regulation within the meaning of Executive Order 12221 and that preparation of a regulatory evaluation is not required.

The program official and attorney principally responsible for the development of this proposed regulation are Arturo Casanova and Stephen Kratzke, respectively.

(Secs. 103 and 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392 and 1407); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on October 21, 1980.

Michael Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 80-33558 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 680 and 611

Precious Corals Fishery; Fishery Management Plan; Extension of Comment Period

AGENCY: National Oceanic and Atmospheric Administration (NOAA)/ Commerce.

ACTION: Extension of comment period.

SUMMARY: Proposed regulations on the fishery management plan (FMP) for the precious corals fishery were published on September 15, 1980 (45 FR 60957), for public comment. Comments were to be received for a period of 45 days, until October 31, 1980. That comment period is hereby extended for an additional 15 days, until November 15, 1980.

DATE: Comments on the FMP and regulations are invited until November 15, 1980.

ADDRESS: Comments should be addressed to: Assistant Administrator for Fisheries, NOAA, National Marine Fisheries Service, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Mr. Alan W. Ford, Regional Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, California 90731, Telephone: 213-548-2575; or Mr. Doyle E. Gates, Administrator, Western Pacific Program Office, Southwest Region, P.O. Box 3830, 2570 Dole Street, Honolulu, Hawaii 96812, telephone: 808-946-2181.

Signed this 24th day of October, 1980.

(16 U.S.C. 1801 *et seq.*)

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80-33845 Filed 10-29-80; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 45, No. 212

Thursday, October 30, 1980

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

CIVIL AERONAUTICS BOARD

Application for an All-Cargo Air Service Certificate

October 23, 1980

In accordance with Part 291 (14 CFR Part 291) of the Board's Economic Regulations (effective November 8, 1978), notice is hereby given that the Civil Aeronautics Board has received an application, Docket 38814, from Sedalia-Marshall-Boonville Stage Line, Inc., 1060 E. Northwest Highway, Grapevine, Texas 76051, for an all-cargo air service certificate to provide domestic cargo transportation.

Under the provisions of section 291.12(c) of Part 291, interested persons may file an answer in opposition to this application by November 20, 1980. An executed original and six copies of such answer shall be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. It shall set forth in detail the reasons for the position taken and must relate to the fitness, willingness, or ability of the applicant to provide all-cargo air service or to comply with the Act or the Board's orders and regulations. The answer shall be served upon the applicant and state the date of such service.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-33852 Filed 10-29-80; 8:45 am]

BILLING CODE 6320-01-M

[Docket 38866]

Air International Fitness Investigation; Assignment of Proceeding

This proceeding is hereby assigned to Administrative Law Judge William A. Pope, II. Future communications should be addressed to him.

Dated at Washington, D.C., October 24, 1980.

Joseph J. Saunders,

Chief Administrative Law Judge.

[FR Doc. 80-33854 Filed 10-29-80; 8:45 am]

BILLING CODE 6320-01-M

[Docket 38865]

Sun Pacific Airlines Fitness Investigation; Assignment of Proceeding

This proceeding is hereby assigned to Chief Administrative Law Judge Joseph J. Saunders.

Dated at Washington, D.C., October 24, 1980.

Joseph J. Saunders,

Chief Administrative Law Judge.

[FR Doc. 80-33853 Filed 10-29-80; 8:45 am]

BILLING CODE 6320-01-M

[Docket 38011; Order 80-10-148]

Establishment of Subsidy Mail Rates; Petition of Alaska Airlines, Inc.; Order Fixing Temporary Subsidy Rate

Issued under delegated authority October 24, 1980.

By Order 80-9-153, adopted September 24, 1980, the Board directed Alaska Airlines, Inc. to show cause why the Board should not adopt the temporary subsidy mail rate set forth in that order as the fair and reasonable final temporary rate to be paid Alaska for the transportation of mail over its subsidy-eligible system effective April 9, 1980.

The time designated for filing a notice of objection has elapsed, and no notice of objection or answer to the order has been filed by any party.[1] All parties have therefore waived the right to a hearing and all other procedural steps short of a final decision fixing the temporary rate.

The Board, upon consideration of the record, hereby reaffirms and makes final all of the findings and conclusions set forth in Order 80-9-153, except as modified herein.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, and particularly Sections 102, 204, and 406 thereof, and the regulations promulgated in 14 CFR 302,

It is ordered that: 1. The fair and reasonable temporary rate of compensation to be paid Alaska Airlines, Inc. for the transportation of mail by aircraft between the points between which the carrier has been, is presently, or hereafter may be authorized to transport mail on a subsidy-eligible basis by its certificate of public convenience and necessity, shall be the sum of (1) the service mail pay as heretofore and hereafter established by the Board, [2] and (2) subsidy as follows: For each calendar month on and after April 9, 1980, in which subsidy-eligible routes authorized for the carriage of mail are flown, an amount determined by multiplying the appropriate rate stated below by the scheduled miles flown during the month in non-stop mainline service to and from the points Cordova, Yakutat, Petersburg, Wrangell, and Gustavus:

Period of Operation	Rate per mile	Daily subsidy rate ceiling
April 1980	$5.946643	$7,938.77
May-October 1980	3.243749	5,206.22
November 1980-March 1981	5.946643	7,938.77
For service effective April 1, 1981:		
November-April[3]	8.645047	11,541.14
May-October[3]	4.715668	7,568.65

[3] And succeeding annual periods.

The total cumulative subsidy otherwise due and payable to Alaska during any semiannual rate period pursuant to the table above shall be subject to the condition and limitation that, it shall not exceed the daily rate as set forth above times the number of days in the semiannual rate period to date.

Provided, that the number of days in the month shall be based on the number of days in the calendar month exclusive of days on which operations are completely suspended due to a strike or other work stoppage; provided, further, that any days of partial reduction of

[1] Although it has not filed a formal notice of objection, Alaska has informally notified us that the payback provision in Order 80-9-153 is inconsistent with the provision in Order 78-6-151. The correct annual payback should be $1,086,716. The rate formula contained in this order reflects the corrected payback provision, and will provide a net annual temporary rate of $2,394,881 through March 31, 1981. Effective April 1, 1981, the net rate will increase to $3,481,577 to reflect elimination of the payback provision.

[2] This order is not intended to disturb the service mail rates established pursuant to other orders of the Board.

operations due to strikes or other work stoppages, when departures flown by the carrier are less than 90 percent of the departures scheduled to be flown on such days, shall be counted as a reduced number of days to be arrived at by multiplying the number of such days by the ratio of (a) the departures flown on such days divided by (b) the product of the departures scheduled to be flown on such days[1] times the system average performance factor of the carrier during the corresponding month of the prior year.

The scheduled revenue aircraft miles flown shall be computed on the direct airport-to-airport mileage between the points actually served on each revenue trip operated over Alaska's subsidy-eligible routes pursuant to its flight schedules filed with the Board including all revenue trips operated as extra sections thereto.

The compensation proposed herein shall be in lieu of, and not in addition to, the compensation heretofore received by Alaska for the actual transportation of mail, or for the provision of its facilities and services to transport mail, on and after April 9, 1980.

2. This order shall be effective the date of service.

3. This order shall be served upon Alaska Airlines, Inc., and the Postmaster General.

This order will be published in the **Federal Register.**

By Director, Bureau of Domestic Aviation.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-33855 Filed 10-29-80; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

National Bureau of Standards

Federal Standard COBOL (FIPS PUB 21-1); Proposed Interpretation

Correction

In FR Doc. 80-33184, appearing on page 70535 in the issue of Friday, October 24, 1980, make the following correction.

On page 70536, first column, the last line of the first complete paragraph reading "January 22, 1980.", should have read "January 22, 1981.".

BILLING CODE 1505-01

[1] Based on the carrier's official schedules on file with the Board on or as of the last day prior to the work stoppage.

Changes Pertaining to the Interface Standards Exclusion List

In a notice published in the **Federal Register** on August 11, 1980 (45 FR 53193), the National Bureau of Standards announced proposed changes to the exclusion list pertaining to Federal Information Processing Standards Publication 60, I/O Channel Interface; Federal Information Processing Standards Publication 61, Channel Level Power Control Interface; Federal Information Processing Standards Publication 62, Operational Specifications for Magnetic Tape Subsystems; and Federal Information Processing Standards Publication 63, Operational Specifications for Rotating Mass Storage Subsystems. Interested parties were allowed until September 25, 1980, to submit written comments regarding the proposed changes to the exclusion list.

As a result of a review and analysis of comments received, NBS has made a determination that the following changes will be made to the exclusion list:

Manufacturer and Model

Additions:
CDC, Cyber 18 System
Honeywell, Series 60 Level 64 DPS 330
ICL, Inc., ME 29/35
Sperry Univac, System 80 Model 3
Sperry Univac, System 80 Model 5
CDC, Cyber 18-10 (now included in Cyber 18 System being added)
CDC, Cyber 18-20 (now included in Cyber 18 System being added)
CDC, Cyber 18-30 (now included in Cyber 18 System being added)

Interested parties are invited to submit written comments or recommendations regarding the exclusion list to the Director, Institute for Computer Sciences and Technology, Attention: Interface Standards Exclusion List, National Bureau of Standards, Washington, D.C. 20234. Comments specifically identifying candidate systems which should be added or removed from the exclusion list are especially encouraged. Comments should also include information supporting any proposed additions (or removals) to that list according to the criteria described in the **Federal Register** notice of March 19, 1979 (44 FR 16466), which announced the availability of a proposed initial exclusion list. Any comments submitted which are deemed by the sender to contain confidential or proprietary information should be appropriately designated and marked.

NBS is maintaining a mailing list of vendors, Federal agencies, and other interested parties to whom copies of the current exclusion list are sent on a regular basis. Parties on the mailing list will also be sent copies of proposed changes and the announcement of the determination on proposed changes. Those who wish to be included on the mailing list should send a written request to the address noted above for submission of comments or recommendations regarding the exclusion list.

The exclusion list will be used in conjunction with the applicability provisions of the Federal I/O channel level interface standards. This list and the exclusion criteria are not a part of the standards themselves, but are provided for in the standards.

Dated: October 27, 1980.

Ernest Ambler,

Director.

[FR Doc. 80-33768 Filed 10-29-80; 8:45 am]

BILLING CODE 3510-13-M

Proposed Changes Pertaining to the Interface Standards Exclusion List; Correction

In FR Doc. 80-32060 appearing at page 68417 in the **Federal Register** of Wednesday, October 15, 1980, the list entitled Manufacturer and Model is corrected to read as follows:

Manufacturer and Model

Burroughs, B90 Series
Burroughs, CP9000 Series
Burroughs, B1900 Series
CADO Systems Corp., C.A.T.
CADO Systems Corp., 20/20
Computer Talk, 427 Distributed Processing Terminal
E&L Instruments, MMD-2
E&L Instruments, MD-X
Hewlett-Packard, 2100A*
Hewlett-Packard, 21005*
Hewlett-Packard, 2114A/B*
Hewlett-Packard, 2115A*
Hewlett-Packard, 2116A/B/C*
Pertec, MITS/ALTAIR 8800B*
Prime, 150
Prime, 250
Qantel, 200 Series
Qantel, 300 Series
Wang, PCS III
Wang, SVP
Wang, LVP
Wang, VS-B
Wang, VS-F
Wang, VS-50
Wang, OIS

Dated: October 24, 1980.

Ernest Ambler,

Director.

[FR Doc. 80-33769 Filed 10-29-80; 8:45 am]

BILLING CODE 3510-13-M

* No longer manufactured.

National Oceanic and Atmospheric Administration

New England Fishery Management Council's Scientific and Statistical Committee; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The New England Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), has established a Scientific and Statistical Committee, which will meet to discuss minutes of the previous meeting; third discussion of the value of reducing variability and abundance of catch as an objective; old and new business, as well as the following reports: Council meeting; groundfish oversight committee meeting; lobster—final report of economic subcommittee on market survey and economic data needs; biological subcommittee's discussion with the oversight committee; meeting with the executive committee regarding Charles River Associates, and report of the Executive Director.

DATES: The meeting, which is open to the public, will convene on Tuesday, November 18, 1980, at approximately 10 a.m., and will adjourn at approximately 5 p.m. The meeting may be lengthened or shortened, or agenda items rearranged, depending upon progress on the agenda.

ADDRESS: The meeting will take place at the Council offices, Suntaug Office Park, Five Broadway (Route One), Saugus, Massachusetts.

FOR FURTHER INFORMATION CONTACT: New England Fishery Management Council, Suntaug Office Building, Five Broadway (Route One), Saugus, Massachusetts 01906, telephone: (617) 231-0422.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

Dated: October 27, 1980.

[FR Doc. 80-33850 Filed 10-29-80; 8:45 am]

BILLING CODE 3510-22-M

COUNCIL ON WAGE AND PRICE STABILITY

Price Advisory Committee—Change of Meeting Location

Authority of Committee: The Price Advisory Committee was established by the Council on Wage and Price Stability pursuant to Executive Order 12161 (44 FR 56663).

Time and Place of Meeting: On October 24, 1980, the Council announced in Vol. 45 of the **Federal Register**, at page 70538 (FR Doc. 80-33370), that the next meeting of its Price Advisory Committee would be Wednesday, November 12, 1980, at 10:00 a.m. in Room 2010 of the New Executive Office Building. The location of this meeting has now been changed to the Board Room of the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20550. Persons interested in attending the meeting should contact Cheryl Bailey at 456-6210 by 3:00 p.m. on November 10, 1980 in order to be assured admission to the building on the meeting day. Other details of the meeting remain unchanged.

Additional Information: For additional information, please telephone the Office of Public Affairs at (202) 456-6756.

Dated: October 28, 1980.

Sally Katzen,

Advisory Committee Management Officer.

[FR Doc. 80-33941 Filed 10-29-80; 8:45 am]

BILLING CODE 3175-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Boards for the Correction of Military Records; Form of Index to the Decisions of the Boards for the Correction of Military Records (Nondischarge Cases)

AGENCY: Department of the Army, DOD.

ACTION: Notice of public comment period.

SUMMARY: The Department of Defense, acting through the Director of the Department of the Army Military Review Boards Agency, is considering changes in the subject/category listing for the index to the decisions in nondischarge cases of the Boards for the Correction of Military and Naval Records. The purpose of this public comment period is to allow users of the index and other interested members of the public to suggest to the Department of Defense any specific changes to the subject/category listings of the present index used for nondischarge cases that they believe would increase its convenience to users. The Department of Defense will evaluate all suggestions received during this comment period to determine if any change to the subject/category listings of the present index is desirable, and, if warranted, subsequently will prepare a proposed revision of the subject/category listings for the index and republish them in the **Federal Register** for further public comment.

DATE: Comments received on or before December 29, 1980, will be considered.

ADDRESS COMMENTS TO: Director, Department of the Army, Military Review Boards Agency, HQDA, Washington, D.C. 20310.

FOR FURTHER INFORMATION CONTACT: Mr. Francis X. Plant, Director, Department of the Army, Military Review Boards Agency, Washington, D.C. 20310, (Phone (703) 697-9641).

SUPPLEMENTARY INFORMATION: Boards For the Correction of Military and Naval Records have been established by the Secretaries of each of the Military Departments pursuant to 10 U.S.C. 1552 (1976). Procedures and standards for such boards are set out at 32 CFR 581.3, 32 CFR 723.1 *et seq.* and 32 CFR 865.1 *et seq.* Beginning on April 1, 1977, pursuant to the Stipulation of Dismissal in *Urban Law Institute of Antioch College, Inc. v. Secretary of Defense* (No. 76-530 D.D.C. January 31, 1977), each of the boards has indexed and made available for public inspection, statements of findings, conclusions, recommendations, and the record of the votes of board members made on final determinations of applications by the board or the Secretary concerned. The subject/category listings of the index for discharge cases of the Boards for Correction and Military and Naval Records is the same as that used by the Discharge Review Boards, and is set out in the **Federal Register** of October 13, 1978 (43 FR 47237). Due to its revision in 1978 and a lack of complaints by users since this revision, the subject/category listings of the discharge portion of the index used by the Boards for Correction of Military and Naval Records are not a subject of this public comment period. The subject/category listings of the index adopted for nondischarge cases were the same as those used internally by the Army Board of Correction for Military Records for a long number of years. Notice of the index's present subject/category listings for nondischarge cases was first published in the **Federal Register** of February 17, 1977 (42 FR 9699). Notice of an amendment to the index's subject/category listings was published in the **Federal Register** of June 21, 1977 (42 FR 31480). No unfavorable public comments concerning the index's subject/category listings for nondischarge cases were submitted following publication of these notices nor have any such comments been submitted to the Department of Defense or the Department of the Army Military Review Boards Agency since then until July 21, 1980. At that time, plaintiffs' attorneys in *Urban Law Institute of Antioch College, Inc. v.*

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Secretary of Defense, supra, pointed out in a letter to the Department of Defense General Counsel, three areas they perceived as shortcomings in the subject/category listings of the index. these three areas are: (1) The lack of sufficient index subject categories that are specific (e.g. Courts-Martial category should be broken down into categories of offenses); (2) the lack of an index subject category that relates to whether boards waived the normal three year statute of limitation contained in 10 U.S.C. 1552 in a particular case, and (3) failure to subdivide subject categories to indicate whether the issue described by a particular category was resolved in favor of or against the applicant. Although the Department of Defense does not consider these three areas of the present index to be inadequate, the Department is interested in making the form of index used for future decisional documents of the boards as convenient as possible for its users. Accordingly, the Department invites comments and suggestions for possible revision of the subject/category listings of the present index for nondischarge cases of the Boards for Correction of Military and Naval Records. The subject/category listings of the present index for nondischarge cases are set out below:

Correction Boards Index—Non-Discharge Cases

A

100.00 Administrative Matters
- 100.01 Change of Name/Sex
- 100.02 Change of Date/Place of Birth
- 100.03 Change of Reenlistment Code
- 100.04 Presumption of Death
- 100.05 Change of MOS/Designation

101.00 Archive Cases
- 101.01 Civil War
- 101.02 Desertion
- 101.03 Spanish-American War
- 101.04 Establish Service
- 101.05 Revolutionary War

102.00 Appointments
- 102.01 Effective Date
- 102.02 Grade
- 102.03 Component
- 102.04 Reason for Disqualification
- 102.05 Inter-Service Transfer
- 102.06 Termination
- 102.07 Date of Rank
- 102.08 Constructive Service for Officers

B

103.00

C

104.00 CADETS USMA/USNA/USAFA
- 104.01 Restoration of Status
- 104.02 Graduation/Appointments

105.00 Courts-Martial
- 105.01 Sentence (Including Dismissal/Discharge)
- 105.02 Mental Incompetency/Capacity
- 105.03 Lack of Opportunity for Restoration
- 105.04 Conscientious Objection
- 105.05 Impeachment of Testimony
- 105.06 Use or Possession of Drugs

106.00 Clemency Discharge/Pardon

D

107.00 Decorations and Awards

108.00 Disability Separation/Retirement
- 108.01 Diagnosis
- 108.02 Percentage of Disability
- 108.03 Line of Duty Determination
- 108.04 Permanent
- 108.05 Temporary
- 108.06 Termination
- 108.07 Combat Incurred
- 108.08 Instrumentality of War
- 108.09 Grade
- 108.10 Effective Date

109.00 Discharge From Draft (WWI)

110.00 Discharge/Separation Documents
- 110.01 Change in Date
- 110.02 Reason and Authority

E

111.00 Efficiency/Effectiveness Reports
- 111.01 Officers and Warrant Officers
- 111.02 Enlisted Personnel
- 111.03 Bias/Prejudice—Rater/Indorser
- 111.04 Administrative/SRB Review

112.00 Enlistment/Reenlistment Contract
- 112.01 Home of Record
- 112.02 Grade/Date of Rank
- 112.03 Term of Enlistment
- 112.04 Broken Enlistment Commitment
- 112.05 Date of Enlistment
- 112.06 Void
- 112.07 Constructive Service
- 112.08 Continuous Service
- 112.09 Base Pay Entry Date

113.00 Establishment of Service
- 113.01 Reserve Components
- 113.02 SATC
- 113.03 Furlough
- 113.04 Civilian Conservation Corps
- 113.05 WWI Railway Battalions

F

114.00 Fitness Reports (Navy/Marine Corps)
- 114.01 Removal of Officer Reports
- 114.02 Revised Reports
- 114.03 Enlisted Performance Evaluation—Removal/Modify

115.00 Flying Status
- 115.01 Effective Date
- 115.02 Removal From
- 115.03 Qualifying Service
- 115.04 Aeronautical Ratings

116.00

G

117.00

H

118.00

I

J

119.00 Jurisdiction of Board

119.01 Philippine Guerrilla Cases

120.00

K

L

121.00 Leave Adjustments
- 121.01 Type of Leave
- 121.02 Lump Sum Leave Settlement

122.00 Line of duty Status
- 122.01 Injury
- 122.02 Disease/EPTS
- 122.03 Mental Responsibility

123.00 Lost Time
- 123.01 Absence Without Leave/Desertion
- 123.02 Mental Incompetency
- 123.03 Injury or Illness on Leave
- 123.04 Error or Technicality
- 123.05 Port Call
- 123.06 Confinement
- 123.07 Removal

M

124.00 Medical Records
- 124.01 Change in Diagnosis
- 124.02 Dates of Treatment
- 124.03 Establishment of Record of Treatment

N

125.00 National Guard
- 125.01 Status
- 125.02 Federal Recognition

126.00 Nonjudicial Punishment
- 126.01 Improperly Filed
- 126.02 Excessive Punishment
- 126.03 Removal of Reprimands
- 126.04 Expunge Record

127.00

O

P

128.00 Pay and Allowances
- 128.01 Family Separation Allowances
- 128.02 Travel Pay
- 128.03 Disclocation Allowance
- 128.04 Flying/Incentive Pay (including Submarine, Flight Deck, Experimental Stress duty, etc.)
- 128.05 Enlistment/Reenlistment Bonuses
- 128.06 Variable Incentive Pay/Continual/Medical/Dental, etc.
- 128.07 Proficiency Pay
- 128.08 Severance Pay
- 128.09 Readjustment Pay
- 128.10 Remission/Cancellation of Indebtedness
- 128.11 Mustering-Out Pay
- 128.12 BAQ/Subsistence Allowance
- 128.13 Uniform/Clothing Allowance
- 128.14 Other types Pay

129.00 Pay Grade
- 129.01 Service Credit
- 129.02 Revocation of Orders
- 129.03 Authority
- 129.04 Highest Grade Satisfactorily Held for Pay Purposes

145.00 Physical Disability
- 145.01 Incurred while on unauthorized absence
- 145.02 Existed prior to entry/aggravated
- 145.03 Existed prior to entry/not aggravated
- 145.04 Incurred while not in receipt of basic pay
- 145.05 Disciplinary action pending; handling of
- 145.06 Administrative discharge proceedings pending; handling of

130.00 Prisoner of War

131.00 Promotion
- 131.01 Selection Boards
- 131.02 Removal From Recommended List
- 131.03 Failure to be Considered
- 131.04 Effective Date
- 131.05 Date of Rank
- 131.06 Prisoner of War
- 131.07 Casualty Status
- 131.08 Terminal Leave Promotion
- 131.09 Advancement in Grade
- 131.10 Passover—failure of selection

132.00

Q

R

133.00 Reduction in Grade/Rank
- 133.01 Misconduct
- 133.02 Inefficiency
- 133.03 Void/Remove From Record
- 133.04 Technical Defect

134.00 Removal/Deletion of Records
- 134.01 Letters of Reprimand/Admonition
- 134.02 Derogatory Material
- 134.03 Remark of Desertion

135.00 Reserve Service Credit
- 135.01 Transfer Between Components
- 135.02 Retirement Point Credits
- 135.03 Change of Status
- 135.04 War/National Emergency Service
- 135.05 Date of Retirement

136.00 Retirement/Separation (Other Than Disability)
- 136.01 Effective Date

137.00 Survivors Benefit Plan and RSFPP
- 137.01 Eligibility
- 137.02 Effective Date of Participation
- 137.03 Termination of Participation
- 137.04 Change in Election

T

138.00

U

139.00

V

140.00

W

141.00

X

142.00

Y

143.00

Z

144.00

Z

(10 U.S.C. 1552)

Dated: October 17, 1980.

Francis X. Plant,

Deputy Assistant Secretary (DA Review Boards and Personnel Security).

[FR Doc. 33779 Filed 10-29-80; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C., App. I), notice is hereby given that the Science and Technology Sub-Panel of the Chief of Naval Operations (CNO) Executive Panel Advisory Committee will meet on November 12 and 13, 1980, from 8:00 a.m. to 5:00 p.m. each day, at Mark Center VI, 2000 N. Beauregard Street, Alexandria, Virginia. All sessions will be closed to the public.

The entire agenda for the meeting will consist of discussions of the U.S. particle beam technology program. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in Section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact: Lieutenant Commander Catherine Z. Becker, U.S. Navy, Executive Secretary, Chief of Naval Operations, Executive Panel Advisory Committee, 2000 N. Beauregard Street, Room 392, Alexandria, Virginia 22311, Telephone (703) 756–1205.

Dated: October 28, 1980.

P. B. Walker,

Captain, JAGC, U.S. Navy Alternate Federal Register Liaison Officer.

[FR Doc. 80-34030 Filed 10-29-80; 8:45 am]

BILLING CODE 3810-71-M

DEPARTMENT OF EDUCATION

Education Appeal Board; Board Proceedings Scheduled for November

AGENCY: Department of Education.

ACTION: Notice of Education Appeal Board proceedings scheduled for November 1980.

SUMMARY: This notice advises readers that the Education Appeal Board has scheduled a prehearing conference in the *Appeal of the State of New Mexico,* Docket No. 5–(35)–77, for November 6, 1980; in the *Appeal of the State of Texas,* Docket No. 7–(43)–78, for November 13, 1980; and in the *Appeal of the State of California,* Docket No. 2–(57)–80, for November 21, 1980. This notice also advises readers that interested third parties may apply to intervene in the appeal proceedings.

FOR FURTHER INFORMATION CONTACT: Dr. David S. Pollen, Chairman, Education Appeal Board, 400 Maryland Avenue, S.W. (Room 2141, FOB–6), Washington, D.C. 20202. Telephone (202) 245–7835.

SUPPLEMENTARY INFORMATION: Under the Education Amendments of 1978 (20 U.S.C. 1234), the Education Appeal Board has authority to conduct (1) audit appeal proceedings, (2) withholding, termination, and cease and desist proceedings initiated by the Secretary of Education, and (3) other proceedings designated by the Secretary as being within the jurisdiction of the Board. For information concerning the Board and its procedures, see the Board's final regulations as published in the **Federal Register** on April 3, 1980 (45 FR 22634).

Prehearing Conferences

The Education Appeal Board has scheduled prehearing conferences in three audit appeals for the month of November 1980:

(1) *Appeal of the State of New Mexico,* Docket No. 5–(35)–77. The prehearing conference is scheduled for November 6, 1980, in Room 3000, 400 Maryland Avenue, S.W., Washington, D.C., and will begin at 10:30 a.m. The prehearing conference originally was scheduled for July 22, 1980, and was postponed at the request of the Assistant Secretary for Elementary and Secondary Education to allow the parties time to recompute the damages at issue in the appeal.

In its appeal, New Mexico is contesting final audit determinations made by the Deputy Commissioner for Elementary and Secondary Education (now the Assistant Secretary). The Deputy Commissioner found that during fiscal year 1973, the Las Cruces public school district spent funds under Title I of the Elementary and Secondary Education Act of 1965 at two schools that were ineligible to receive Title I funds; that in fiscal year 1973, the Santa Fe and Las Cruces school districts failed to meet minimum comparability requirements under Title I by failing to provide services from State and local funds at Title I participating schools that were comparable to services provided at all other public schools; and that in fiscal year 1972, the State educational agency used Title I funds for expenditures that were not directly related to or reasonably necessary for the administration of Title I. The Deputy Commissioner requested a refund of $639,042.00 from New Mexico.

(2) *Appeal of the State of Texas,* Docket No. 7–(43)–78. The prehearing conference is scheduled for November 13, 1980, in Room 3000, 400 Maryland Avenue, S.W., Washington, D.C. The conference will begin at 10:30 a.m.

In its appeal, Texas is contesting final audit determinations made by the Deputy Commissioner for Elementary and Secondary Education (now the

Assistant Secretary). The Deputy Commissioner found that in fiscal year 1974, the San Antonio, Edgewood, and McAllen school districts failed to meet comparability requirements under Title I of the Elementary and Secondary Education Act of 1965 by failing to provide services with State and local funds in Title I project schools that were comparable to services provided with such funds in non-project schools. The Deputy Commissioner requested a refund of $350,151.00 from Texas.

(3) *Appeal of the State of California*, Docket No. 2–(57)–80. A second prehearing conference in the appeal is scheduled for November 21, 1980, in Room 3000, 400 Maryland Avenue, S.W., Washington, D.C., and will begin at 10:30 a.m. At the initial prehearing conference in the appeal held on June 27, 1980, the Panel members and parties agreed to hold a second prehearing conference on November 21, 1980.

In its appeal, California is contesting final audit determinations made by the Deputy Commissioner for Elementary and Secondary Education (now the Assistant Secretary). The Deputy Commissioner found that between July 1, 1974, and June 30, 1978, 62 local educational agencies used Federal funds provided under Title I of the Elementary and Secondary Education Act of 1965 to supplant State funds available to Title I project schools under the State's Educationally Disadvantaged Youth Act. The Deputy Commissioner requested a refund of $28,682,142.00 from California.

Intervention

Section 100d.43 of the final regulations establishing procedures for the Education Appeal Board provides that an interested person, group, or agency may, upon application to the Board Chairperson, intervene in appeals before the Education Appeal Board, including the three appeals listed above.

An application to intervene must indicate to the satisfaction of the Board Chairperson or, as appropriate, the Panel Chairperson, that the potential intervenor has an interest in and information relevant to the specific issues raised in the appeal. If an application to intervene is approved, the intervenor becomes a party to the proceedings.

All such applications or questions should be addressed to Dr. David S. Pollen, Chairman, Education Appeal Board, 400 Maryland Avenue, S.W. (Room 2141, FOB–6), Washington, D.C. 20202, telephone (202) 245–7835.

(20 U.S.C. 1234)

(Catalog of Federal Domestic Assistance Number not applicable)

Dated: October 24, 1980.

Shirley M. Hufstedler,

Secretary of Education.

[FR Doc. 80–33719 Filed 10–29–80; 8:45 am]

BILLING CODE 4000–01–M

National Advisory Council on Women's Educational Programs; Amended Meeting

AGENCY: National Advisory Council on Women's Educational Programs.

ACTION: Amendment to notice of meeting.

SUMMARY: This document amends the notice of the November 10–12, 1980 meeting of the Advisory Council as published in the **Federal Register** on October 22, 1980. The Executive Committee meeting which was scheduled for 7:30 p.m. to 9:30 p.m. on November 10, 1980, the Federal Policies, Practices, and Programs and the Civil Rights Committee meetings scheduled for November 11, 1980 from 8:30 a.m. to 3:00 p.m. and the full Council meetings scheduled for November 11 from 3:30 p.m. to 5:00 p.m. and November 12, 1980 from 8:30 a.m. to 5:00 p.m. have been cancelled. An orientation session for newly appointed members will be held on November 10 from 1:00 p.m. to 5:00 p.m. and November 11, 1980 from 9:00 a.m. to 12:00 p.m. The WEEA Program Committee of the Advisory Council will meet on November 11, 1980 as planned; however, the meeting has been shortened and will be held from 1:00 p.m. to 3:00 p.m.

FOR FURTHER INFORMATION CONTACT: Kathleen Dauito, Administrative Assistant, National Advisory Council on Women's Educational Programs, 1832 M Street, NW., Suite 821, Washington, D.C. 20036, (202) 653–5846.

Signed at Washington, D.C., on October 27, 1980.

Joy R. Simonson,

Executive Director.

[FR Doc. 80–33828 Filed 10–29–80; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Dickey-Lincoln School Lakes Transmission Project Public Meetings; Change in Meeting Location

In the document appearing in the October 22, 1980 (45 FR 70043), the location of the public meeting has changed.

The public meeting to provide information and receive comments on a draft Environmental Impact Statement (EIS) describing electrical transmission facilities between the Comerford and Moore Dams and Franklin, New Hampshire, area in Littleton, New Hampshire, on Wednesday, November 12—7:30 p.m. at the Littleton Town Hall in Littleton, New Hampshire, has been changed to be held at the Congregational Church at 198 Main Street in Littleton, New Hampshire. The location of the public meeting in Plymouth, New Hampshire, on November 13, has not changed.

Dated at Washington, D.C., this 23d day of October 1980.

George E. Bell,

Assistant Administrator.

[FR Doc. 80–33744 Filed 10–29–80; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RA80–83]

Robert F. Badders; Filing of Petition for Review

October 24, 1980.

Take notice that Robert F. Badders on July 22, 1980, filed a Petition for Review under 42 U.S.C. 7194(b) (1977) Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before November 12, 1980, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior preceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before November 10, 1980, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H–025, 1000 Independence Avenue, SW. Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80–33757 Filed 10–29–80; 8:45 am]

BILLING CODE 6450–85–M

[Project No. 3298]

City of Hyrum, Utah; Application for Preliminary Permit

October 24, 1980.

Take notice that the City of Hyrum (Applicant) filed on August 6, 1980, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for proposed Project No. 3298 to be known as the Blacksmith Fork Project located on the Blacksmith Fork River in Cache County, Utah. Correspondence with the Applicant should be directed to: Mr. Reece Nielsen, 90 West Main Street, Hyrum, Utah and Mr. Clifford R. Foresgren, P. E., James M. Montgomery Consulting Engineers, 1301 Vista Avenue, Boise, Idaho 83705.

Project Description—The proposed project would consist of existing project works including: (1) An earthfill dam, about 40 feet high and 500 feet long; (2) a reservoir with a surface area of 12 acres and storage capacity of less than 1,000 acre-feet at surface elevation 4992 feet m.s.l.; (3) an abandoned powerhouse; (4) a 12 KV transmission line; and new project works to include (5) a penstock; (6) a new powerhouse with installed capacity of between 700 and 1900 KW depending upon the location of the structure; (7) a 12 KV transmission line, 1.5 to 3.5 miles long depending upon the powerhouse location; (8) a discharge channel; and (9) other appurtenances. Applicant would consider possible reconstruction of the existing powerhouse which option, if feasible, would require no new transmission line. Applicant estimates annual generation would average between 4.3 and 8.3 million KWH depending upon final configuration of the project.

Purpose of Project—Project energy would be utilized within the City of Hyrum's own electric utility system for sale to customers in its service area.

Proposed Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for a period of 36 months. During the term of the permit the Applicant would accomplish engineering, economic, and environmental feasibility studies, and, if feasible, prepare an FERC application for license. Applicant estimates the cost of studies under a preliminary permit and preparation of an FERC license application would be $35,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 24, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 23, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), (*as amended* 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d), (*as amended*, 44 FR 61328, October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 24, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80–33758 Filed 10–29–80; 8:45 am]

BILLING CODE 6450–85–M

[Dockets Nos. RP75–106, RP76–94, and RP78–20, etc.]

Columbia Gas Transmission Corp., et al.; Order Granting in Part and Denying in Part Motion, and Establishing Date Certain for Making Refunds

October 23, 1980.

On September 19, 1980, Columbia Gas Transmission Corporation (Columbia) filed a motion with the Commission requesting a modification of tariff filing requirements contained in ordering paragraph (A) of the Commission's Opinion No. 74–A,[1] and further requesting that the Commission establish October 13, 1980, as the date by which refunds are to be made pursuant to that opinion.[2]

Columbia has asked the Commission, in its motion, to modify Ordering Paragraph (A) in Opinion No. 74–A to the extent that it requires Columbia to file prospective tariff reductions and refunds applicable to the period beginning June 1, 1980. The opinion specified that the reduction and refunds were to be made in accordance with the provisions of approved settlement agreements.[3] Columbia states that the cost of service data which it filed with the Commission contemporaneously with its motion shows that its existing rates are deficient on an annual basis by approximately $24 million. Columbia argues that as a consequence there is no justification for the prospective tariff

[1] Issued August 7, 1980.

[2] Columbia perceived ambiguity, as to the due date for refunds, such that some refunds might be due by September 22, 1980.

[3] The settlement agreements referred to were those in Docket Nos. RP75–106, *et al.*; RP76–94, *et al.*; and RP68–19, *et al.*

reductions and refunds, inasmuch as they would only serve to increase the claimed deficit.

On review of Columbia's request for modification of the Opinion No. 74–A tariff requirements, we see no reason not to accord the terms of the pertinent settlements agreements full weight. If Columbia is correct that its existing rates are deficient, it may file for a rate increase.[1] We therefore will deny Columbia's motion in this regard.

We construe Columbia's request for the establishment of a date certain as a request for an extension of time. We find such a request reasonable, and we will grant it.

The Commission orders. (A) The date by which refunds are to be made pursuant to Opinion No. 74–A, issued August 7, 1980, is established as no later than November 21, 1980.

(B) Columbia's motion for modification of tariff filing requirements set forth in Opinion No. 74–A is denied.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80–33745 Filed 10–29–80; 8:45 am]

BILLING CODE 6450–85–M

[Docket No. ER81–34–000]

Florida Power Corp.; Filing

October 24, 1980.

The filing Company submits the following:

Take notice that on October 20, 1980, Florida Power Corporation (Florida Power) tendered for filing an executed transmission service agreement with the City of Homestead, Florida. Florida Power states that the form of service agreement was provided in its transmission tariff on file with the Federal Energy Regulatory Commission. Florida Power requests that the sixty (60) day notice requirement be waived so that the agreement may be permitted to become effective on October 9, 1980, the day on which it was executed by the City of Homestead, Florida. Florida Power states that copies of the filing have been served on the City of Homestead, Florida and the Florida Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 17, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80–33759 Filed 10–29–80; 8:45 am]

BILLING CODE 6450–85–M

[Project No. 3454]

Franklin Electric Light & Power Co.; Application for Preliminary Permit

October 24, 1980.

Take notice that the Franklin Electric Light and Power Company, Inc., (Applicant) filed on September 10, 1980, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)) for proposed Project No. 3454 to be known as the Stevens Mill Dam Project, located on the Winnipesaukee River in Merrimack County, New Hampshire.

Correspondence with the Applicant should be directed to: The Franklin Electric Light and Power Company, Inc., 100 Memorial Street, Franklin, New Hampshire 03235.

Project Description—The proposed project would consist of the following existing works: (1) A concrete gravity dam having an overall length of 133 feet and a maximum height of 18 feet. The spillway is an overflow gravity structure approximately 65 feet in length equipped with flashboards ponding the headwater to an elevation of approximately 315 feet m.s.l. (2) two intakes on each side of the dam leading to eight-foot diameter riveted steel penstocks approximately one hundred feet in length; (3) two powerhouses having a total installed capacity of 492 kW; and (4) appurtenant works.

The applicant proposes to refurbish the existing facilities and replace the existing generating equipment with two new 400 kW units having an annual net generation of 4,500,000 kilowatt-hours.

Purpose of Project—Project power would be sold to a local public utility.

Proposed Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for a period of three years, during which time Applicant would study existing construction plans, topographical surveys, hydrologic studies and operating history of the development. The environmental impacts involved with the activation of the site will also be studied during the permit period.

Depending upon the outcome of the studies, the Applicant would prepare an application for FERC license. Applicant estimated the cost of studies under the permit would be between $10,000 and $15,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described applications for preliminary permit. (A copy of the applications may be obtained directly from the Applicants.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 29, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 27, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), *as amended*, 44 FR 61328 (October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d), *as amended*, 44 FR 61328 (October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard to make any protests about these applications should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for

[1] We note that Columbia has made such a filing.

protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 29, 1980. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80–33760 Filed 10–29–80; 8:45 am]

BILLING CODE 6450–85–M

[Docket No. ER81–37–000]

Gulf Power Co; Filing

October 24, 1980.

The filing Company submits the following:

Take notice that on October 20, 1980, Gulf Power Company (Gulf) filed herein Amendment to its FERC Electric Tariffs providing for service by Gulf to Escambia River Electric Cooperative, Inc., at Century (Escambia County), Florida. This tariff amendment is proposed to be effective for service commencing on October 1, 1980 and Gulf therefore requests waiver of the Commission's notice requirements to allow such effective dates.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 17, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80–33761 Filed 10–29–80; 8:45 am]

BILLING CODE 6450–85–M

[Docket No. ER80–57]

Gulf States Utilities Co.; Filing

October 24, 1980.

The filing company submits the following:

Take notice that on October 6, 1980, Gulf States Utilities Company submitted for filing a supplemental report of compliance. Said report is being submitted pursuant to the request of the Commission.

A copy of this filing has been sent to Cajun Electric Power Cooperative, Inc., Louisiana Public Service Commission, Public Utility Commission of Texas, and the Cities of Lafayette and Plaquemine, Louisiana.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such protests should be filed on or before November 10, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80–33762 Filed 10–29–80; 8:45 am]

BILLING CODE 6450–85–M

[Projects Nos. 3274, 3276, 3277, and 3278]

Kansas Electric Power Cooperative, Inc.; Applications for Preliminary Permits

October 24, 1980.

Take notice that Kansas Electric Power Cooperative, Inc. (Applicant) filed on July 30, 1980, four applications for preliminary permits [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for the projects described below. Correspondence with the Applicant on these projects should be addressed to: Mr. Charles Ross, Executive Vice President, Kansas Electric Power Cooperative, Inc., 5709 West 21st Street, P.O. Box 4267, Gage Center Station, Topeka, Kansas 66604.

The proposed projects are located as follows:

(i) Tuttle Creek Waterpower Project No. 3274 would be located at the U.S. Army Corps of Engineers' Tuttle Creek Dam and Lake, a flood control project on the Big Blue River near Manhattan, in Riley County, Kansas.

(ii) Perry Waterpower Project No. 3276 would be located at the U.S. Army Corps of Engineers' Perry Dam and Lake, a flood control project on the Delaware River near Topeka, in Jefferson County, Kansas.

(iii) Glen Elder Waterpower Project No. 3277 would be located at the Water and Power Resources Service's (formerly U.S. Bureau of Reclamation) Glen Elder Dam and Reservoir, a flood control project on the Solomon River near Glen Elder, in Mitchell County, Kansas.

(iv) Milford Waterpower Project No. 3278 would be located at the U.S. Army Corps of Engineers' Milford Dam and Lake, a flood control project on the Republican River near Junction City, in Geary County, Kansas.

Purpose of Project—Energy produced at the above described Applicant's projects would be utilized primarily within KEPCO's system to displace power which would otherwise be purchased from other member cooperatives.

Project Description—The four proposed projects would utilize either an existing U.S. Army Corps of Engineers' (Corps) or Water and Power Resources Service's dam and reservoir.

Project No. 3274 would consist of: (1) A new powerhouse, about 75 feet long and 60 feet wide, adjacent to and on the south side of an existing stilling basin, containing three generating units with a total installed capacity of 14,750 kW; (2) a 34.5 kV transmission line approximately 1 mile long; and (3) appurtenant facilities. Applicant estimates the annual generation would average about 56,690 MWh.

Project No. 3276 would consist of: (1) A new powerhouse, adjacent to and on the southwest side of an existing stilling basin, with an installed capacity of 5,800 kW; (2) a transmission line approximately 4.5 miles long; and (3) appurtenant facilities. Applicant estimates the annual generation would average about 15,300 MWh.

Project No. 3277 would consist of: (1) A new powerhouse, located on the north side of an existing stilling basin, with an installed capacity of 3,500 kW; (2) a transmission line approximately 2 miles long; and (3) appurtenant facilities. Applicant estimates the annual generation would average about 8,900 MWh.

Project No. 3278 would consist of: (1) A new powerhouse, located adjacent to and on the south side of an existing stilling basin, with an installed capacity of 14,600 kW; (2) a transmission line approximately 4 miles long; and (3) appurtenant facilities. Applicant estimates the annual generation would average about 38,300 MWh.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 29, 1980, either the competing application itself or a notice of intent to file a competing application. Submission the competing application no later than March 2, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), *os amended* 44 FR 61328 (October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d), *as amended*, 44 FR 61328 (October 25, 1979).

Comments, Protests, or Petitions To Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 29, 1980. The Commission's address is: 825 North Capitol Street NE., Washington, D.C. 20428. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33763 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3104]

Idaho Power Co.; Application for Transmission Line License

October 24, 1980.

Take notice that on March 26, 1980, Idaho Power Company filed an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] to construct, operate, and maintain a transmission line to be known as the Lucky Peak 138–kV Tie Line (FERC Project No. 3104). The proposed project would be located entirely in Ada County, Idaho, partially on lands administered by the Bureau of Land Management and the Corps of Engineers, Department of the Army. Correspondence with the Applicant on this matter should be addressed to: Mr. Lee S. Sherline, Leighton and Sherline, Suite 406, 1701 K Street NW., Washington, D.C. 20006, with copies to: Paul L. Jauregui, General Counsel, Idaho Power Company; P.O. Box 70, Boise, Idaho 83707.

Project Description—The proposed project would consist of a 4.47-mile long, 138–kV overhead transmission line extending from the proposed Lucky Peak Power Plant Project No. 2832 to the Applicant's existing Lower Malad—Boise Bench 138–kV transmission line which is part of the Idaho Power Company's interconnected system. The proposed line would be supported on 2-pole, wood H-frame structures with associated conductors and electrical hardware.

Purpose of Project—The proposed transmission line would transmit power from the proposed Lucky Peak Power Plant Project to the Applicant's transmission line.

Estimated Cost—The cost of the project is estimated, by the Applicant, to be about $600,000.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 24, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 24, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 24, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33764 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ES81-5-000]

Idaho Power Co.; Application

October 24, 1980.

Take notice that on October 17, 1980, Idaho Power Company (Applicant) filed an application seeking authority, pursuant to Section 204 of the Federal Power Act, to issue up to $120,000,000 of unsecured promissory notes, commercial paper and other evidence of indebtedness to be issued from time to time with maturities not later than December 31, 1982.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 17, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petition to intervene in accordance with the Commission's Rules. The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33765 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-33-000]

Minnesota Power & Light Co. and Superior Water, Light & Power Co.; Filing

October 24, 1980.

The filing Company submits the following:

Take notice that on October 17, 1980, Minnesota Power & Light Company and Superior Water, Light and Power Company (Applicants) filed pursuant to the Federal Power Act a Transmission Agreement (Agreement) between Lake Superior District Power, Superior Water, Light & Power and Minnesota Power & Light. Applicants and LSDP proposes an effective date of November 13, 1980. Lake Superior District Power will make an annual payment to Minnesota Power & Light and Superior Water, Light and Power for benefits supplied by a new interconnection facility among the parties until such time as Lake Superior District Power adds sufficient interconnection capacity to provide for its transmission needs.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8, 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 14, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33748 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3346]

Seiden & Sons, Inc.; Application for Preliminary Permit

October 24, 1980.

Take notice that Seiden & Sons, Inc. (Applicant) filed on August 21, 1980, and supplemented on September 3, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 3346 to be known as the Valatie Hydro Project located on the Valatie Kill in the Village of Valatie, the Town of Kinderhook, Columbia County, New York. Correspondence with the Applicant should be directed to: Mr. Paul A. Seiden, 163 Delaware Avenue, Delmar, New York 12054.

Project Description—The proposed project would redevelop the existing but inoperative Valatie Mill Hydroelectric Plant and would consist of: (1) A 15-foot high and 80-foot long concrete and masonry dam; (2) a reservoir, known as Wild's Pond, with a surface area of about 35 acres at spillway crest elevation 244.9 feet m.s.l.; (3) a gated intake through the dam's right (west) abutment; (4) a 54-inch diameter and 450-foot long steel penstock; (5) a powerhouse containing a turbine connected to a new generator having a rated capacity of 250 kW; (6) a new 300-foot long tailrace to Kinderhook Creek; and (7) appurtenant facilities. Applicant estimates the annual generation would average about 1,500,000 kWh.

Purpose of Project—Project energy would be sold to New York State Electric and Gas Corporation or would be sold to the senior citizen residents of the adjacent rehabilitated Mill building containing approximately 80 1-bedroom senior citizen apartments.

Proposed Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for a period of three years, during which time it would complete a feasibility study and perform the steps necessary to prepare an application for an FERC license. Applicant estimates the cost of the work under the permit would be $36,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 29, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 2, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), as amended, 44 FR 61328 (October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d), as amended, 44 FR 61328 (October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR, 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a

party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 29, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33749 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. RP78-36, etc.]

Southern Natural Gas Co., et al.; Filing of Pipeline Refund Reports and Refund Plans

October 24, 1980.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, on or before November 7, 1980. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

Appendix

Filing date	Company	Docket No.	Type filing
10/6/80.....	Southern Natural Gas Company.	RP78-36.....	Report.
10/10/80.....	Midwestern Gas Transmission Company	RP76-114...	Report.
10/14/80.....	Cities Service Gas Company.	RP72-142, *et al.*	Plan.

[FR Doc. 80-33750 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. GP80-21]

Texas Eastern Transmission Corp.; Third-Party Protests[1]

October 24, 1980.

Take notice that in accordance with the procedures established by the Federal Energy Regulatory Commission (Commission) in Order No. 23-B,[2] and "Order on Rehearing of Order No. 23-B,"[3] The Associated Gas Distributors (ADG) filed on August 15, 1980 a Supplemental Third-party Protest to their protest of October 15, 1979. AGD protests that Texas Eastern contracts listed below do not constitute contractual authority for the producer to increase prices to the applicable maximum lawful price set forth in the Natural Gas Policy Act of 1978, 15 U.S.C. 3301 *et seq.*

Seller	Rate schedule number	Contract date
Continental Oil Company.....	318	1/29/80
Sun Gas Company.....	209	1/29/80
General Crude Oil Company.....	10	1/29/80

Any person, other than the pipeline and the seller, desiring to be heard or to make any response with respect to this protest should file with the Commission on or before November 10, 1980, a petition to intervene in accordance with 18 CFR 1.8. The seller need not file for intervention because under 18 CFR 154.94(j)(4)(ii), the seller in the first sale is automatically joined as a party.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33751 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. GP80-21]

Texas Eastern Transmission Corp.; Third-Party Protests[1]

October 24, 1980.

Take notice that in accordance with the procedures established by the Federal Energy Regulatory Commission (Commission) in Order No. 23-B,[2] and "Order on Rehearing of Order No. 23-B,"[3] The public Service Commission of the State of New York (New York) filed on August 12, 1980, a Supplemental Third Party Protest to their protest of October 15, 1979. New York protests Texas Eastern's contractual authority allegedly contained in the "Stipulation and Agreement Regarding Producer Issues" in *Texas Eastern Transmission Corp.*, Docket No. G-12448 *et al.* (Rayne Field Settlement) to increase prices to the applicable maximum lawful price set forth in the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301 *et. seq.* The rate schedules are as follows:

Seller	Rate schedule number
Continental Oil Company.....	318
Sun Gas Company.....	209
General Crude Oil Company.....	10

New York states that the Rayne Field settlement agreement does not provide contractual authority to collect any NGPA price increases, including the section 104 price.

Any person, other than the pipeline and the seller, desiring to be heard or to make any response with respect to this protest, should file with the Commission on or before November 10, 1980, a petition to intervene in accordance with 18 CFR 1.8. The seller need not file for intervention because under 18 CFR 154.94(j)(4)(ii), the seller in the first sale is automatically joined as a party.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33752 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. GP80-21]

Texas Eastern Transmission Corp.; Third-Party Protests[1]

October 24, 1980.

Take notice that in accordance with procedures established by the Federal Energy Regulatory Commission (Commission) in Order No. 23-B,[2] and "Order on Rehearing of Order No. 23-B,"[3] The Associated Gas Distributors (AGD) filed on September 22, 1980 a Supplemental Third-Party Protest to their protest of October 15, 1979. AGD protests that Texas Eastern contracts listed below do not constitute contractual authority for the producer to increase prices to the applicable maximum lawful price set forth in the Natural Gas Policy Act of 1978, 15 U.S.C. 3301, *et seq.*

[1] The term "third-party protests" refers to a protest filed by a party who is not a party to the contract which is protested.

[2] "Order Adopting Final Regulations and Establishing Protest Procedure," Docket No. RM79-22, issued June 21, 1979.

[3] Docket No. RM79-22, issued August 6, 1979.

Seller	Rate schedule number	Contract date
Atlantic Richfield Co.....	359	1/7/79
Atlantic Richfield Co.....	360	1/10/80
Amoco Production Co.....	283	6/2/80
Getty Oil Co	269	6/3/80
Union Oil Co. of Calif	152	7/13/79
Texaco, Inc.....	416	5/12/80
Kerr-McGee Corp.....	172	2/1/80

Any person, other than the pipeline and the seller, desiring to be heard or to make any response with respect to this protest should file with the Commission on or before November 10, 1980, a petition to intervene in accordance with 18 CFR 1.8. The seller need not file for intervention because under 18 CFR 154.94(j)(4)(ii), the seller in the first sale is automatically joined as a party.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33753 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RP77-138]

United Gas Pipe Line Co.; Supplement to Petition for Advance Approval for Accounting and Rate Treatment of Project Year Two Research, Development and Demonstration Expenditures, and Petition for Approval for Accounting and Rate Treatment of Project Years Three, Four and Five Research, Development and Demonstration Expenditures

October 24, 1980.

Take notice that on October 14, 1980, purusuant to § 154.38 (d)(5)(i) of the Regulations of the Federal Energy Regulatory Commission (Commission) United Gas Pipe Line Company (United) filed a petition in Docket No. RP77-138 for approval for accounting and rate treatment of research, development and demonstration (RD&D) expenditures incurred during the second through fifth years of United's RD&D project known as Project SNG-Biomass. Project SNG-Biomass involves the conversion of an untested combination of selected renweable carbonaceous materials into synthetic natural gas of pipeline quality by a unique integrated process combining the anaerobic digestion of biomass and waste feedstocks with the production of terrestrial and aquatic biomass feedstocks. United's petition describes the research tasks undertaken, the estimated or actual costs (as available) associated with such tasks and the integration of United's Project SNG-Biomass into a biomass research program being conducted by the Gas Research Institute.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 7, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33754 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CI78-968]

United Gas Pipe Line Co.; Informal Conference

October 24, 1980.

This proceeding involves a petition by United Gas Pipe Line Company (United) for a declaratory order requesting that the Commission remove uncertainty as to whether and/or to what extent an interest in certain natural gas and producing acreage in the Ridge Field, Lafayette Parish, Louisiana, owned by Exchange Oil and Gas Corporation (Exchange) is dedicated to United. Both United and Exchange have submitted statements of facts, and both parties request an informal conference to be attended by all parties and Staff Counsel to discuss the facts, conclusions, and law involved in this proceeding to see if a determination can be reached on the issues.

Accordingly, an informal conference will be held at the Offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on November 18, 1980, at 9:00 A.M., in Room 8402, for the purpose above-stated. All interested parties are invited to attend.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33755 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. GP81-4-000]

United States Geological Survey (New Mexico) Section 108 NGPA Determination, El Paso Natural Gas Co., Huerfanito Unit No. 75 Well; Preliminary Finding

October 23, 1980.

On May 28, 1980, the United States Geological Survey at New Mexico (USGS) notified the Commission of its determination that El Paso Natural Gas Company's Huerfanito Unit No. 75 Well, JD80-36472 USGS Docket No. NM4274-79 qualified as a stripper well under section 108 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301 *et seq.* The Commission published notice of the determination in the Federal Register on June 25, 1980.

Section 108(b) of the NGPA provides that in order to qualify as a stripper well, a well must, among other things, produce no more than 60 Mcf per production day at its maximum efficient rate of flow (MER) during the 90-day production period upon which the application is based. Section 271.804(d) of the Commission's interim regulations[1] stipulates the methods by which a jurisdictional agency may find that a well produced at its MER during the 90-day production period. One such method is reviewing average production over the 12-month period ending concurrently with the 90-day production period.

In this case, the USGS found that the subject well had produced an average of 40 Mcf for 50 producing days during the 90-day production period upon which the determination was based (February-April, 1979). However, the agency was initially unable to find that the well had produced at its MER, since no production capability tests were submitted by the applicant and average production over the 12-month period ending concurrently with the 90-day production period was 96 Mcf per production day.[2] Thus, the agency deferred making the determination in accordance with § 271.804(d)(3)(ii) of the Commission's interim regulations.

On March 24, 1980, the applicant submitted additional production information for May 1979 through January 1980 and sought to base its MER qualification on the 12-month period

[1] The deferral procedure of § 271.804[d][3][ii] of the interim regulations applies to all NGPA Section 108 applications filed before September 21, 1979. Order No. 44-A, Docket No. RM79-73 issued November 9, 1979, mimeo. at 7. The instant application was filed with USGS in July 1979. This procedure allows the jurisidictional agency to defer a preliminary well category determination when there has been no showing that the well produced at its MER.

[2] The average is apparently based on 319 production days.

from February 1979 through January 1980. For the first five months of this period records indicate that the well was intermittently shut in either for maintenance, repair, to build up pressure in the well, or to obtain reservoir data. The entire production amounted to 1,990 Mcf on a total of 68 production days during the 12-month period.[3] For the final seven months of the period, the well was continuously shut in. No attempts were made to reopen it to the line. Thus, the production average for the entire 12-month period, February 1979—January 1980, was 39 Mcf per production day. On that basis the USGS made and MER finding and submitted to the Commission a determination that the subject well qualifies as a stripper well.

On July 11, 1980, the Commission's Office of Pipeline and Producer Regulations (OPPR) sent a tolling letter to USGS requesting an explanation for the basis of its affirmative determination because the record did not reflect the establishment of a production pattern over a 12-month period during which the well was actually in production. A production pattern is necessary to establish the MER presumption required under § 271.804(d) of the interim regulations. Section 271.804(d)(2) provides that an MER presumption may be established: "if during the [deferred] 12-month period * * * such well produced non-associated natural gas at a rate which did not exceed an average of 60 Mcf per production day."

The Commission believes that in order to establish the MER presumption where a well has ceased production on its own before being shut in, it must be periodically opened to the line during the 12-month production period in conjunction with an attempt to return the well to production.

The subject well did cease production on its own prior to being shut-in. However, El Paso did not reopen the well to the line at any time during the final seven months of the 12-month production period. The Commission believes that an MER presumption cannot be made under these facts.

Accordingly, the Commission finds that there is a lack of substantial evidence that the subject well produced at its maximum efficient rate of flow during the qualifying 90-day production period.

The Commission Finds: On the basis of the record submitted with this determination, the Commission hereby makes a preliminary finding, pursuant to 18 CFR 275.202(a)(1)(i), that the determination submitted by USGS, that the Huerfanito Unit No. 75 well qualified as a section 108 stripper well, is not supported by substantial evidence in the record on which the determination was made.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33746 Filed 10-29-80; 8:45 am]

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[3] The 68 production days include 50 days during the original 90-day production period plus 18 days in May and June of 1979.

[Docket No. ER81-35-000]

West Penn Power Co.; Proposed Tariff Change

October 24, 1980.

The filing Company submits the following: Take notice that West Penn Power Company, on October 20, 1980, tendered for filing a Supplement to its FERC Electric Service Tariff, Volume No. 2 consisting of an Electric Service Agreement with the Borough of Chambersburg, Pennsylvania, and three appendices thereto. The Agreement supersedes a pervious Agreement between West Penn Power Company and the Borough. West Penn Power Company has requested that the Agreement be deemed effective as of September 30, 1980, in order that the date of the Agreement and its applicability coincide. The proposed changes will have no effect upon purchases under other rate schedules and no change in rates is proposed in Agreement.

The reasons for the porposed changes are to update the format and language of the Agreement, to include special provisions applicable only to the Borough, and to provide for an increase in the capacity which West Penn will provide to the Borough.

A copy of the filing has been served upon the Borough of Chambersburg and upon the Pennsylvania Public Utility Commission by West Penn Power Company.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 17, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33756 Filed 10-29-80; 8:45 am]

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Office Hearings and Appeals

Issuance of Decisions and Orders; Week of August 25 Through August 29, 1980

During the week of August 25 through August 29, 1980, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Blum & Nash, Washington, D.C., BFA-0434, Freedom of Information

The law firm of Blum & Nash filed an Appeal from a partial denial by the Deputy Assistant Administrator, Regulations and Emergency Planning, Economic Regulatory Administration of a request for information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE concluded that portions of a memorandum discussing options for the regulatory treatment of crude oil-for-product exchange transactions and the draft of a Federal Register notice on that subject had been properly withheld under Exemption 5. The DOE also found, however, that there existed a distinct possibility that there were additional documents in the possession of the Division of Petroleum Price Regulations which were responsive to the Blum & Nash request, and a further search was therefore ordered.

William A. Dobrovir, Washington, D.C., BFA-0405, freedom of information

William A. Dobrovir filed an Appeal from a partial denial by the Deputy General Counsel for Regulation of a request for information which he had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that one document which was originally withheld under Exemption 5 should be released since the document's diaclosure would not be contrary to the public interest. In addition, the DOE remanded several documents to the Deputy General Counsel with instructions either to release those documents in their entirety or to provide an adequate description of those documents and an adequate justification for their nondisclosure.

Marathon Oil Company, Findlay, Ohio, BEA-0135, motor gasoline

Marathon Oil Company filed an Appeal from a Redirection of Product Order which was issued to it by the Economic Regulatory Administration, Region IV on December 7, 1979. The Order directed Marathon to supply Farm Stores, Inc. with 93,273 gallons of motor gaosline during the month of November 1979. In considering the Appeal, the DOE found that contrary to Marathon's contentions, the Redirection of Product Order satisfied the criteria governing the issuance of such Orders. The DOE also rejected Marathon's contention that it was inappropriately selected as a supplier to Farm Stores due to its high gasoline prices. However, the DOE noted that the ERA failed to consider comments submitted by Marathon on a timely basis in opposition to its selection as a supplier. Therefore the DOE granted Marathon's Appeal and directed ERA Region IV to review the comments and determine whether the Redirection of Product Order should be reissued, modified or rescinded. The DOE also declined to require restitution of product before ERA Region IV reaches a final determination in this matter.

Mustang Fuel Corporation, Washington, D.C., BFA-0438, Freedom of information

Mustang Fuel Corporation filed an Appeal from a denial by the District Manager for Enforcement for the Southwest District of the Economic Regulatory Administration of a request for information which the firm has submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that two paragraphs which were initially withheld under Exemption 5 should be released because they contained only factual information. The remainder of the document was found to have been properly withheld because it was exempt from mandatory disclosure pursuant to Exemption 5 and because its release would be contrary to the public interest.

Shell Oil Company, Houston, Texas, BEA-0204;
Gulf Oil Corporation, Houston, Texas, BEA-0277;
Mobil Oil Corporation, Washington, D.C., BEA-0250;
Texaco, Inc., White Plains, New York, BEA-0302;
Cities Service Company, Tulsa, Oklahoma, BEA-0217, crude oil

Shell Oil Co. *et. al.*, filed Appeals seeking the rescission of a Decision and Order issued to Commonwealth Oil Refining Company (Corco) by the Economic Regulatory Administration (ERA) on February 5, 1980. In their submissions, the Appellants contended that the February 5 Order which granted Corco an emergency allocation of crude oil under the Buy/Sell Program, 10 C.F.R. § 211.65 is erroneous in fact and law, and is arbitrary and capricious. In considering the Appeals, the DOE determined that the ERA's methodology for determining range of prices for most crude oil on the world market was proper and that the ERA correctly concluded that Corco had met the criteria for an emergency allocation of crude oil under the Buy/Sell Program. Accordingly, the Appeals were denied.

Remedial Orders

Union Shell, BRO—1256;
Tom's Shell, BRO-1257;
Olympic Shell, BRO—1258;
Robbins Shell, BRO-1259;
North Oak Shell, BRO—1260;
Ken's No. 2 Shell, BRO-1261;
Ventura Shell, Los Angeles, California, BRO-1262, motor gosoline

Mr. Fazlollah Bazarganan, the owner and operator of the above-listed retail outlets, filed a submission which the Office of Hearings and Appeals deemed to be a Notice and Statement of Objections to a May 19, 1980 Proposed Remedial Order which was issued to him by the Western District of Enforcement of the Department of Energy. In the May 19 Proposed Remedial Order, the Western District Office found that during the period August 1, 1979 through February 29, 1980 the seven firms charged prices for motor gasoline which exceeded the maximum prices that they were permitted to charge under the provisions of 10 C.F.R. Part 212. On the basis of this finding, the Western District Office determined that each of the seven firms should rollback its prices by 2.0 cents per gallon until a specified quantity of gasoline has been sold at the reduced price. Mr. Bazarganan's submission failed to comply with several requirements of the DOE procedural regulations. Accordingly, he was informed by letter and by mailgram of the nature of the deficiencies and notified that the PRO would be issued as a final order unless the firm made a further submission. Since Mr. Bazarganan never responded to these communications or otherwise corrected the procedural deficiencies in his submission, the PRO was issued as a final order of the Department of Energy.

Requests for Exception

Automatic Comfort Corporation, Hartford, Connecticut, BEE-0294, gosohol

Automatic Comfort Corporation filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period allocation of unleaded motor gasoline for the purpose of blending and selling additional volumes of gasohol. In considering the request, the DOE found that exception relief was necessary because the firm's inability to obtain additional volumes of unleaded gasoline as a result of the DOE allocation regulations was frustrating the national objective of developing alternative energy sources. The DOE also found that the firm was in a position to continue to expand its gasohol program. Accordingly, the request for exception relief was granted.

Bennett's Ashland, Burgin, Kentucky, BEO-0208, motor gasoline

Bennett's Ashland filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increased base period allocation of motor gasoline. In considering the request, the DOE found that the firm had failed to demonstrate that it was suffering a serious financial hardship as a result of DOE regulations. Accordingly, exception relief was denied.

Broadway Truck Service, Spokane, Washington, BEE-0519, gasohol

Broadway Truck Service filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increased allocation of unleaded motor gasoline with which to produce gasohol. In considering the request, the DOE found that exception relief was necessary to enable the firm to establish a viable gasohol marketing program which would meet the demand for gasohol in its area. Accordingly, exception relief was granted.

Chevron U.S.A., Inc., BEE-0614; Cities Service Company, BEE-0735; Derby Refining/Coastal Corporation, BEE-1130; Diamond Shamrock Corporation, BEE-0774; Farmland Industries, BEE-0899; Getty Refining & Marketing Company, BEE-0492; Gulf Oil Corporation, BEE-0527; Kerr-McGee Corporation, BEE-1010; Pacific Resources, Inc., BEE-0589; Pester Refining Company, BEE-0656; Phillips Petraleum Company, BEE-0693; Standard Oil Company of Indiana, BEE-0702; Standard Oil Company of Ohio, BEE-0974; Sun Oil Company of Pennsylvania, BEE-1159; Texaco, Inc., BEE-0769; Time Oil Company, BEE-0703; Total Petraleum Company, BEE-0985; United Refining Company, BEE-0738; Vickers Petroleum Corporation, San Francisco, California, BEE-0557, gasohol

Nineteen refiners filed Applications for Exception from the provisions of 10 CFR Part 211 in which the firms sought permission to treat gasohol as a separate category and grade of motor gasoline for cost passthrough purposes. In considering the request, the DOE found that exception relief was necessary to prevent the application of the DOE Mandatory Allocation and Price Regulations from frustrating an important policy object. Accordingly, exception relief was granted.

Edgington Oil Company, Inc., Long Beach, California, BEE-0215, gasohol

Edgington Oil Company, Inc., filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an allocation of unleaded gasoline so that it could blend and market gasohol. In considering the request, the DOE found that the firm had failed to demonstrate that the DOE regulations were preventing it from obtaining sufficient supplies of unleaded gasoline to institute its gasohol programs. Accordingly, exception relief was denied. An important issue discussed in the Decision and Order is the appropriateness of diverting unleaded gasoline from a refiner which has made the improvements necessary to produce unleaded gasoline to a refiner which has not yet completed the improvements necessary to produce unleaded gasoline.

Green Springs Chevron, Homewood, Alabama, BEO-0135, motor gasoline

Green Springs Chevron filed an Application for Exception from the provisions of 10 CFR § 211.102 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that Green Springs failed to submit any additional information in support of its Application for Exception, despite explicit findings in a Proposed Decision and Order regarding the particular deficiencies in the firm's submission. Accordingly, exception relief was denied.

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Jack Halbert, Dallas, Texas, DEE–7932, crude oil

Jack Halbert filed an Application for Exception from the provisions of 10 CFR Part 212 in which the firm sought relief from its obligation to refund revenues allegedly attained by charging prices for crude oil and gas condensate in excess of the maximum levels permitted by Sections 212.73 and 212.74. In considering the request, the DOE found that the manner in which Halbert is required to refund the overcharges should be adjusted in order to avoid irreparable injury to Halbert. Accordingly, exception relief was granted in part.

Highway 259 Service Station and Garage, Leitchfield, Kentucky, BEO–0750, motor gasoline

Highway 259 Service Station and Garage filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increased base period allocation of motor gasoline. In considering the request, the DOE found that the base period allocation of a retail outlet the firm had acquired was apparently misrepresented by the outlet's former owner. The DOE further found that Highway 259 Service Station and Garage could not operate the outlet profitably or realize any of the intended benefits of investments made in the outlet with its existing base period allocation of motor gasoline. Accordingly, exception relief was granted.

Laurence & Sons Oil Company, Inc., Panama City, Florida, BEE–0237, gasohol

On October 26, 1979, Laurence & Sons Oil Company, Inc. (LOCO) filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought a separate allocation of unleaded motor gasoline for the purpose of blending and marketing gasohol. In considering the request, the DOE found that exception relief was necessary to prevent a gross inequity under applicable DOE allocation regulations. Accordingly, American Petrofina, Inc., the base period supplier of LOCO, was selected to furnish LOCO with an additional 108,000 gallons per month of unleaded motor gasoline for the purpose of blending gasohol for the twelve month period beginning the effective date of this Decision.

Lunday-Thagard Oil Company, Washington, D.C., DXE–3717, crude oil

The Lunday-Thagard Oil Company filed an Application for Exception from the provisions of 10 CFR 211.67. The exception relief, if granted, would relieve Lunday-Thagard of its entitlement obligations for the period June through September 1979. In considering the Lunday-Thagard request, the DOE determined that the firm should be granted exception relief under the *Delta* standards as modified by the "NOOSR ceiling" in the amount of $65.585 per month for the June through November 1979 period.

Randy Jones Car Wash, Escondido, California, BEO–0400, motor gasoline

Randy Jones Car Wash #2 filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm had not demonstrated that it would be adversely affected to a significant degree in the absence of exception relief. The DOE also determined that an increase in traffic flow around the applicant's outlet due to completion of a highway bypass did not by itself justify relief. Accordingly, exception relief was denied.

Reserve Oil Inc., Denver, Colorado, BEE–0325, crude oil

Reserve Oil, Inc. (Reserve) filed an Application for Exception from the provisions of 10 C.F.R., Part 212, Subpart D. Exception relief was granted to permit Reserve to sell 48.09 and 74.82 percent of the crude oil produced from the SL–071595A Lease and the SL–069551 Lease, respectively, during the period November 14, 1979 through February 29, 1980; and 100 percent of the crude oil produced from those two leases during the period March 1, 1980 through July 31, 1980, at market price levels.

River Road Exxon, Richmond, Virginia, BEO–0370, motor gasoline

River Road Exxon filed an Application for Exception from the provisions of 10 C.F.R. Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm was not experiencing a serious hardship, gross inequity or unfair distribution of burdens as a result of the DOE allocation regulations. Accordingly, exception relief was denied.

Requests for Temporary Exception

Benson-Montin-Greer Drilling Corporation, Farmington, New Mexico, BEL–1118, crude oil

Benson-Montin-Greer Drilling Corporation (Greer) filed an Application for Temporary Exception from the provisions of 10 C.F.R. § 212.75 in which the firm sought permission to establish the base production control level (BPCL) in accordance with the provisions of 10 C.F.R. § 212.72 in conjunction with the formation of a single unit from a number of preexisting properties in order to improve extraction operations in the East Puerto Chiquito Mancos Pool in Rio Arriba County, New Mexico. In considering the request, the DOE concluded that the application to the firm of the provisions of the DOE regulations governing unitized properties resulted in a gross inequity which warranted exception relief. Accordingly, temporary exception relief was granted to permit Greer to establish the BPCL of the East Puerto Chiquito Mancos Unit by combining the BPCL's of all the properties comprising the Unit in the month that unitization takes effect.

Charter Oil Company, Jacksonville, Florida, BEL–1062, gasohol

The Charter Oil Company filed an Application for Temporary Exception from the provisions of 10 C.F.R. § 212.83 in which the firm sought to treat gasohol as a separate category and grade of gasoline for cost passthrough purposes. In considering the request, the DOE found that exception relief was necessary to encourage the firm to begin producing and marketing gasohol. Accordingly, exception relief was granted.

Motions for Discovery

Coastal States Gas Corporation, Houston, Texas, DRD–0113;
New England Power Company, Houston, Texas DRD–0015;
Southern California Edison Company, Los Angeles, California, DRH–0013; City of Los Angeles, Los Angeles, California, DRH–0037, DRD–0017;
Department of Water and Power, Houston, Texas, DRD–0018, DRD–0019;
Pacific Gas and Electric Company, Los Angeles, California, BRJ–0103, crude oil

Coastal States Gas Corporation, New England Power Company, Southern California Edison Company, City of Los Angeles, Department of Water and Power, Pacific Gas and Electric Company, and the DOE Office of Special Counsel for Compliance filed various Motions for Discovery and Evidentiary hearing in connection with several Statements of Objection filed by various parties concerning a Proposed Remedial Order issued to Coastal on September 6, 1978. In considering the request, the DOE found that several of the Motions were no longer necessary and accordingly dismissed them. In addition, the DOE found that Coastal's request for access to communications between members of Congress and employees of the Office of Hearings and Appeals should be denied as a discovery request but granted under the Freedom of Information Act. Finally, the DOE determined that a Protective order submitted by the parties should be issued as a final Order of the Department of Energy.

Interim Orders

Eagle's Chevron Service, West Yellowstone, Montana, BEN–0053, motor gasoline

On August 15, 1980, the Federal Energy Regulatory Commission issued an Order to Eagle's Chevron Service in which it determined that the firm had demonstrated that there was some likelihood of the firm prevailing on the merits of its Petition for Review and that in the absence of interim relief the firm would experience irreparable harm. In accordance with that Order, the Office of Hearings and Appeals increased Eagle's base period allocation of motor gasoline for the month of August 1980 from 18,000 gallons of motor gasoline to 24,000 gallons of motor gasoline.

Energy Cooperation, Inc., Central Point, Oregon, BEN–0952, gasohol

The Office of Hearings and Appeals issued an Interim Decision and Order to Energy Cooperation, Inc. which implemented immediately the exception relief tentatively approved for the firm in a Proposed Decision and Order issued July 15, 1980. In granting Interim relief, the DOE found that public interest considerations and the national policy of encouraging use of gasohol strongly favored interim exception relief. Accordingly, the exception tentatively approved in the Proposed Decision and Order was granted on an interim basis pending the resolution of the firm's Application for Exception.

Interim Orders

The following firms were granted Interim Exception relief which implements the relief which the DOE proposed to grant in an order issued on the same date as the Interim Order:

Company Name, Case No., and Location

American Natural Gas Production Company, BEN–0052; Washington, DC
J. T. Collier & Sons Oil Company, BEN–0566; Jessup, GA

Protective Orders

The following firms filed Applications for Protective Orders. The applications, if granted, would result in the issuance by the DOE of the proposed Protective Order submitted by the firm. The DOE granted the following applications and issued the requested Protective Order as an Order of the Department of Energy:

Company Name, Case No., and Location

White Petroleum, Inc., Rock Island Refining Corporation, BEJ–0123; Washington, DC
White Petroleum, Inc., Standard Oil of Ohio, BEJ–0124; Washington, DC, Cleveland, OH

Petitions Involving the Motor Gasoline Allocation Regulations

The following firms filed Applications for Exception, Temporary Exception, Stay, and/or Temporary Stay from the provisions of the Motor Gasoline Allocation Regulations. The requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued Decisions and Orders which determined that the requests be denied.

Company Name, Case No., and Location

Bonura Exxon, BEO–0392; Cypress, CA
Cotten Service Station & Rentals, DEE–6464; Dallas, TX
Detroit Car Care Center, BEO–0726; Detroit, MI
Dick's Texaco Service, DEE–7438; Glendale, CA
John Fluck's Mini-Market, DEE–5877; Lansdale, PA
Milt Sears, BEE–0860
Don Cooper, BEE–0854
Reeder Service Center, BEE–0849
Jim Cole, BEE–0859
Will McConnell, BEE–0857
John Walker, BEE–0865
Clark Jones, BEE–0853
Bill Cooper, BEE–0861
Bob Jones, BEE–0863
Jim Still, BEE–0856
Virgil's Interstate Texaco, BEE–0802
Paul Clayton, BEE–0864
Jim Deer, BEE–0851
Harold's Texaco Service, BEE–0799
Chapel Hill Texaco, BEE–0797
Larry Reber, BEE–0852
Bob Grinter, BEE–0862
Arnoldo Barg, BEE–0855
Bill Satterfield, BEE–0858
Guy Goodine, BEE–0866
Charley's Texaco, BEE–0798

Petitions Involving the Motor Gasoline Allocation Regulations

The following firm filed an Application for Exception, Temporary Exception, Stay, and/or Temporary Stay from the provisions of the Motor Gasoline Allocation Regulations. The request, if granted, would result in an increase in the firm's base period allocation of motor gasoline. The DOE issued a Decision and Order which determined that the request be dismissed without prejudice to a refiling at a later date.

Company Name, Case No., and Location

Coastal Center "66" Service Station, BEO–0041; Ladson, SC

Dismissals

The following submissions were dismissed without prejudice to refiling at a later date:

Company Name and Case No.

American Natural Gas Production Company, BEL–0057
Corona Mall Chevron, DRO–0781
Greene Oil Company, DEE–2040
Harrell Petroleum Company, DEE–3198; DES–3198; DST–3198
Mid-States Petroleum Inc., BEE–0847
Randall Memorial Texaco, Inc., DEE–7691
Texaco, Inc., BEE–1230; DEE–2160
Tosco Corporation, BEA–0408

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B–120, 2000 M Street, N.W. Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., e.d.t., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Acting Director, Office of Hearings and Appeals.

October 24, 1980.

[FR Doc. 80–33829 Filed 10–29–80; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders; Week of July 28 Through August 1, 1980

During the week of July 28 through August 1, 1980, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Ashland Oil, Inc., Ashland, Kentucky, BEA–0070; Conoco, Inc., Houston, Texas, BMR–0020; Getty Refining & Marketing Company, Tulsa, Oklahoma, BEA–0062; Kerr-McGee Refining Company, Oklahoma City, Oklahoma, BEA–0063; La Gloria Oil & Gas Company, Houston, Texas, BEA–0056; Mobil Oil Corporation, Washington, D.C., BEA–0057; BEA–0075; Phillips Petroleum Company, Bartlesville, Oklahoma, BES–0069; BST–0069; Sinclair Marketing, Inc., Washington, D.C., BEA–0059; BEA–0071; BEA–0041; BST–0041; BES–0042; BST–0042; Sun Oil Company of Pennsylvania, Washington, D.C., BMR–0017; BEH–0071; Texaco Inc., Washington, D.C., BEA–0052; Vickers Petroleum Corporation, Wichita, Kansas, BEA–0055 motor gasoline

The firms listed above filed Appeals, Applications for Stay and Temporary Stay, and a Motion for Evidentiary Proceeding to obtain relief from supply obigations imposed by the ERA Region VII Office of Petroleum Operations on October 11, 1979. Each of the firms was directed to supply specified amounts of motor gasoline to American Agri-Fuels Corporation (AAF) in order to implement an August 28, 1979 Decision and Order issued by the Office of Hearings and Appeals in which AAF was granted exception relief to promote the production of gasohol. Several firms also filed Motions for Reconsideration in which they asked the Office of Hearings and Appeals to modify or rescind the August 28 Decision and Order.

In the present Decision, the DOE considered all of the arguments which had been raised in connection with the October 11 Orders and the underlying August 28 Decision and Order. First, the DOE considered Sun's Motion for Evidentiary Proceeding and determined that the firm had failed to satisfy the criteria set forth in 10 CFR 205.84(c). Sun's Motion was therefore denied.

Next, the DOE examined various procedural claims advanced by the firms. In considering the firms' claims that their rights to due process had been violated, the DOE found that the firms had had an adequate opportunity to comment on both their assignment as suppliers and the underlying exception application. The DOE therefore concluded that the firms' due process rights had not been violated.

The DOE then discussed the firms' contention that the Office of Hearings and Appeals is without authority to grant exception relief to AAF. The DOE noted that a United States District Court recently upheld the authority of the Office of Hearings and Appeals to grant exception relief to AAF and therefore rejected this argument.

The DOE next considered Sun's contentions that the DOE was required to comply with the National Environmental Policy Act (NEPA). The DOE determined that NEPA's requirements were inapplicable to an adjudicatory proceeding such as the AAF Application for Exception. The DOE also rejected the firms' contention that AAF's sale of blended gasohol is an illegal "tying arrangement" prohibited by U.S. antitrust laws.

After concluding that all of the firms' legal arguments were without merit, the DOE considered their arguments for modification or rescission of the August 28 exception decision. The DOE rejected the argument that AAF should be allocated gasoline only to the extent necessary to enable it to produce anhydrous alcohol. The DOE also concluded that although it is uncertain whether the use of gasohol results in a net energy gain, the relevant issue is whether gasohol replaces a product made from imported crude oil with a partially renewable energy source of domestic origin. In addition, the DOE found that the firms' claim that the exception relief granted to AAF would result in a diversion of

unleaded gasoline supplies from other parts of the country to AAF's market area was largely without foundation. Finally, the DOE agreed that the August 28 Order should be modified to require AAF to offer 50 percent, rather than 25 percent, of its products on a first refusal basis to base period customers of its suppliers.

In the final part of the Decision, the DOE considered each firm's arguments concerning the appropriateness of its selection as a supplier. The DOE found that La Gloria and Sinclair had demonstrated that their customers would be burdened to a greater extent than the customers of the other assigned suppliers. Consequently, the Appeals of La Gloria and Sinclair were granted. The DOE concluded that the other firms were appropriate choices of suppliers for AAF. The Appeals of Vickers, Ashland, Getty, Kerr-McGee, Mobil, Phillips, Sun, and Texaco were therefore denied.

Cities Service Company, Tulsa, Oklahoma, BEA–0038; BEA–0081; BEA–0129; BEA–0157; BEA–0269; crude oil

Cities Service Company filed Appeals of each of the DOE Entitlements Notices issued during the period July 1979 through November 1979. In its Appeals, Cities claimed that the Entitlements Notices for those five months were not calculated in accordance with the definition of the national domestic crude oil supply ratio found at 10 C.F.R. § 211.62. In considering the request, the DOE found that an inadvertent error had been made when the definition at 10 C.F.R. § 211.62 was republished. Accordingly, the Appeals were denied.

Energy Cooperative, Inc., BEA–0309; Ashland Oil Company; BEA–0311; Crown Central Petroleum Corporation, BEA–0332; International Processors, BEA–0333; Energy Cooperative, Inc., BEA–0334; Ashland Oil Company, BEA–0335; Texas City Refining, Inc., BEA–0374; Tosco Corporation, BEA–0375; Ashland Oil Company, BEA–0376; Energy Cooperative Inc., BEA–0377; International Processors, BEA–0378; Crown Central Petroleum Corporation, BEA–0379; Seaview Petroleum Company, BEA–0380; United Refining Company, BEA–0381; Clark Oil & Refining Corporation, BEA–0382; Texas City Refining, Inc., BEA–0396; Seaview Petroleum Company, BEA–0402; International Processors, BEA–0403; Crown Central Petroleum Corporation, BEA–0404; United Refining Company, BEA–0409; Energy Cooperative, Inc., BEA–0410; Ashland Oil Company, BEA–0411; Clark Oil & Refining Corporation, BEA–0412; Murphy Oil Corporation, Washington, D.C. BEA–0413, crude oil

The petitioners in this proceeding filed Appeals from various Entitlements Notices issued by the ERA in which they challenged the treatment of Alaska North Slope crude oil under the Entitlements Program prior to the Program's amendment on July 3, 1980. The DOE held that the Entitlements Notices and the ERA's regulatory treatment of Alaska North Slope crude oil were lawful. Accordingly, the Appeals were denied.

Exxon Company, U.S.A., Washington, D.C. BEA–0150; BEA–0211; BEA–0263; BEA–0264; BEA–0266; BEA–0315; motor gasoline

Exxon Company, U.S.A. filed Appeals of six Orders for the Redirection of Product issued by the Region IV Office of Petroleum Operations in January, February, and March 1980. The Redirection Orders required Exxon to supply specified volumes of motor gasoline to four small wholesale purchaser-resellers in the Southeastern United States. In considering Exxon's appeals, the DOE determined that the six Redirection Orders contained adequate factual and legal bases. The DOE concluded that the Region IV Office of Petroleum Operations had not erred in choosing Exxon to supply the four firms. Accordingly, Exxon's Appeals were denied.

Exxon Company, U.S.A., Washington, D.C., BEA–0279;
Sun Oil Company of Pennsylvania, Philadelphia; Pennsylvania, BEA–0285;
Atlantic Richfield Company, Los Angeles, California, BEA–0303;
Cities Service Company, Tulsa, Oklahoma, BEA–0304;
Mobil Oil Corporation, New York, New York, BEA–0306;
Texaco Inc., White Plains, New York, BEA–0307;
Standard Oil Company (Indiana) Chicago, Illinois, BEA–0365, motor gasoline

Exxon Company, U.S.A., Sun Oil Company of Pennsylvania, Atlantic Richfield Company, Cities Service Company, Mobil Oil Corporation, Texaco Inc., and Standard Oil Company of Indiana filed Appeals from Revised Assignment Orders issued to the firms by the ERA Region V Office of Petroleum Operations. The Revised Assignment Orders directed each of the firms to supply U.S. Oil Company with approximately 3.8 million gallons of motor gasoline annually on a permanent basis. In considering the consolidated Appeals, the DOE determined that the Revised Assignment Orders provide reasoned bases for their issuance and adequate responses to the comments submitted by the appellants in opposition to their selection as suppliers. Accordingly, the Appeals were denied.

Giant Industries, Inc., Los Angeles, Californio, BFA–0388, Freedom of Information

Giant Industries, Inc. filed an Appeal from a denial by the Office of Special Counsel of a Request for Information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that release of the documents which were initially withheld under Exemption 7(A) would interfere with ongoing enforcement proceedings and concluded that the documents therefore should not be released to the public.

Howrey & Simon, Washington, D.C., BFA–0417, Freedom of information

The law firm of Howrey & Simon filed an Appeal from a denial by the ERA Region V Regional Counsel of a Request for Information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE determined that release of the withheld documents was not compelled by the United States Court of Appeals' recent decision in *Coastal States Gas Corp.* v. *DOE.* Accordingly, Howrey & Simon's Appeal was denied.

Industrial Fuel and Asphalt of Indiana, Inc., Hammond, Indiana, BEA–0369 crude oil

Industrial Fuel and Asphalt of Indiana, Inc. (IFAI) filed an Appeal of a Decision and Order issued by the ERA on April 23, 1980. In considering the Appeal, the DOE noted that it had previously rejected all the contentions raised by IFAI. Accordingly, the present Appeal was denied.

Western Organization of Resource Councils, Washington, D.C., BFA–0416, freedom of information

Western Organization of Resource Councils filed an Appeal from a denial by the DOE Office of Procurement Operations of a Request for Information which the firm had submitted under the Freedom of Information Act. The appellant sought copies of proposals which had been submitted in response to DOE solicitations. In considering the Appeal, the DOE fund that all of the proposals had been properly withheld under Exemption 4, since no final contracts or grants had yet been awarded.

Remedial Orders

Atwood Gulf, Pampa, Texas, BRO–0947, motor gasoline

Atwood Gulf filed a Notice of Objection to a Proposed Remedial Order which the Southwest Enforcement District of the ERA issued to the firm on November 13, 1979. In the Proposed Remedial Order, the Southwest District found that from September 21, 1979 to October 23, 1979 Atwood charged prices for motor gasoline which exceeded the maximum lawful prices which the firm was permitted to charge under the provisions of 10 C.F.R. § 212.93. Atwood failed to file a Statement of Objections to the Proposed Remedial Order. Accordingly, the DOE concluded that the Proposed Remedial Order should be issued as a final Order.

Golden Eagle Oil Company, Inc., Mount Kisco, New York, DRO–0286; DRD–0286; DRH–0286, residual fuel oil

Golden Eagle Oil Company, Inc. objected to a Proposed Remedial Order which the ERA issued to the firm on June 20, 1979. In the Proposed Remedial Order, the ERA found that Golden Eagle did not qualify as an "eligible firm" for purposes of receiving entitlements for the residual fuel oil which it imported and resold to certain utilities. In considering Golden Eagle's Statement of Objections, the DOE determined that the term "eligible firm" was ambiguous as applied to Golden Eagle. The DOE therefore concluded that the Proposed Remedial Order should be remanded. In addition, the DOE concluded that Golden Eagle's Motions for Discovery and Evidentiary Hearing should be denied, because Golden Eagle was seeking to establish facts which were already in the record.

Texinia Corporation, Oklahoma City, Oklahoma, DRO–0076; DRH–0076, crude oil

Texinia Corporation objected to a Proposed Remedial Order which the Office of Enforcement issued to the firm on June 20, 1978. In the Proposed Remedial Order, the Office of Enforcement found that Texinia had erroneously certfied "gas well condensate" from two wells as "stripper well lease" crude oil and had charged more than the maximum allowable selling price for the liquid hydrocarbon. In considering the firm's objections, the DOE found that the Office of Enforcement had not met its burden of proving that the production was not from an associated reservoir. The DOE therefore concluded that the Proposed Remedial Order should be rescinded. Texinia's Motion for Evidentiary Hearing was dismissed as moot.

Requests for Modification and or Rescission

Commonwealth Oil Refining Company, Inc., The Charter Company, Washington, D.C., Jacksonville, Florida, BMR–0045, nophtha; motor gasoline

Commonwealth Oil Refining Company, Inc. (Corco) and Charter Company filed a joint Application for Modification in which they requested that exception relief previously granted to Corco be continued after the merger of the two companies. In considering the request, the DOE found that the proposed merger would not substantially alter the bases for the earlier approvals of exception relief but that certain minor modifications of the prior determinations were appropriate in light of the merger. Accordingly, the modification request was granted in part.

Marathon Oil Company, Washington, D.C., BMR–0042; BEA–0347, motor gasoline

Marathon Oil Company filed a Request for Modification or Recission of a Decision and Order which the DOE Office of Hearings and Appeals issued to Delta Petroleum Corporation on March 6, 1980. Marathon also filed an Appeal of an Amended Assignment Order issued by the ERA Region IV Office of Petroleum Operations on April 2, 1980 to effectuate the relief granted to Delta in the March 6 Decision and Order. In its submissions, Marathon argued that the circumstances under which Delta had been granted exception relief had substantially changed and that exception relief was no longer warranted. In considering these submissions, the DOE found that Delta had improperly upward certified increased motor gasoline supply obligations to Marathon. Accordingly, the DOE rescinded Delta's exception relief for the period August 1980 through October 1980, as well as the Assignment Order implementing that relief.

Requests for Exception

Arnie's ARCO Mini-Market, Junior, Boulder City, Nevada, DEE–3003, motor gasoline

Arnie's ARCO Mini-Market, Junior filed an Application for Exception from the provisions of 10 C.F.R. Part 211 in which it requested an increase in its base period allocation of motor gasoline. In considering the exception request, the DOE found that the firm was not suffering any hardship or inequity as a result of the Mandatory Petroleum Allocation Regulations. Accordingly, exception relief was denied.

Burns Service Center, Acton, Massachusetts, DEE–4430, motor gasoline

Burns Service Center filed an Application for Exception from the provisions of 10 C.F.R. § 211.102 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm was able to maintain a profitable operation at its current allocation level. Accordingly, exception relief was denied.

Cambrian School District, San Jose, California, BEO–0534, motor gasoline

The Cambrian School District filed an Application for Exception from the provisions of 10 C.F.R. § 211.102 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the School District had not shown that it would be unable to obtain sufficient motor gasoline for its operations. Accordingly, exception relief was denied.

Charles Fenley Enterprises, Modesto, California, BEO–1130, motor gasoline

Charles Fenley Enterprises filed an Application for Exception from the provisions of 10 C.F.R. Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. Fenley's request was tentatively granted in part in a Proposed Decision and Order issued by the Western Regional Center of the Office of Hearings and Appeals. The firm filed a Statement of Objections to the Proposed Decision and Order in which it requested additional increases in its base period allocation. In considering the request, the DOE found that the firm had failed to demonstrate that the relief granted in the Proposed Decision and Order was inappropriate or that the firm would suffer a serious hardship or gross inequity in the absence of additional relief. Accordingly, Fenley's Statement of Objections was denied, and the Proposed Decision and Order was issued in final form.

Chevron U.S.A., Inc., San Francisco, California, DEE–7939, crude oil

Chevron U.S.A., Inc., filed an Application for Exception from the provisions of 10 C.F.R. Part 212, Subpart D. Exception relief was granted to permit Chevron to sell at market prices not to exceed $15.10 per barrel 71.52 percent of the crude oil produced from the KCL–63, Stevens Pool Lease.

R. H. Engelke, San Antonio, Texas, BXE–0896, crude oil

R. H. Engelke filed an Application for Exception from the provisions of 10 C.F.R. Part 212, Subpart D. Exception relief was granted to permit Engelke to sell at market prices 64.49 percent of the crude oil produced from the Bertha Copsey Lease.

Furr's Texaco, Annandale, Virginia, BEO–1116, motor gasoline

Furr's Texaco filed an Application for Exception from the provisions of 10 C.F.R. Part 211 in which the firm sought an increased base period allocation of motor gasoline. In considering the request, the DOE found that the firm had failed to demonstrate that it was suffering a serious financial hardship as a result of DOE regulations. Accordingly, exception relief was denied.

Guam Oil & Refining Company, Inc., Dallas, Texas, FEE–4105, crude oil

Guam Oil & Refining Company, Inc., (Gorco) filed an Application for Exception from the provisions of 10 C.F.R. § 211.67 in which it requested retroactive exception relief to earn entitlements on unfinished oils utilized in its refinery during the period November 1974 through February 1977. In considering the request, the DOE found (1) that approximately $20 million of the $25 million in entitlements benefits which the firm had incorrectly earned on unfinished oils had been passed through to the firm's customers, (2) that Gorco might well experience severe and irreparable injury in the absence of relief, and (3) that the denial of relief would adversely affect the economy of the Island of Guam. Accordingly, exception relief was granted which relieved Gorco of any liability for the portion of the entitlements benefits which the firm had passed through to its customers.

Import Dealers Service Corporation, Long Beach, California, DEE–4484, motor gasoline

Import Dealers Service Corporation filed an Application for Exception from the provisions of 10 CFR Part 211, in which the firm requested an increase in its base period allocation of motor gasoline. In considering the request, the DOE determined that exception relief was inappropriate, since there was not a significant discrepancy between the firms's base period entitlement of motor gasoline and its current business requirements. Accordingly, exception relief was denied.

James Tidwell Chevron, Nipomo, California, BXE–0699, motor gasoline

James Tidwell Chevron filed an Application for Exception from the provisions of 10 CFR § 211.102 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm had failed to demonstrate that the community of Nipomo was experiencing a gross inequity or an unfair distribution of burdens under the motor gasoline allocation regulations. Accordingly, exception relief was denied.

Kleen King, Inc., Seattle, Washington, BEO–0064, motor gasoline

Kleen King, Inc. filed an Application for Exception from the provisions of 10 CFR Part 211. In considering the request, the DOE found that the applicant had no reasonable expectation of receiving an increase in the base period allocation of motor gasoline for the retail outlet which it purchased subsequent to the updating of the base period. The DOE also found that the residents of the community in which the applicant is located are not experiencing an unfair distribution of burdens. Accordingly, exception relief was denied.

L. S. Riggins Oil Company; Atlantic Richfield Company, Millville, New Jersey; Los Angeles, California, DEE–3603; DST–3603, motor gasoline

L. S. Riggins Oil Company filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought a lower-priced supplier of motor gasoline. In a Proposed Decision and Order, the DOE tentatively granted Riggins' exception request

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and assigned the Atlantic Richfield Company (Arco) to supply a portion of Riggins' allocation for June and July 1979. The DOE also issued an Interim Decision and Order which immediately implemented this relief. Arco subsequently filed an Application for Temporary Stay of the Interim Decision and Order and a Statement of Objections to the Proposed Decision and Order. In considering Arco's Statement of Objections, the DOE determined that the Proposed Decision and Order incorrectly found that Arco would be a willing supplier of Riggins. However, the DOE affirmed the designation of Arco as a supplier of Riggins. Accordingly, the DOE granted Riggins' Application for Exception and dismissed Arco's temporary stay request.

Paradee Oil Company, Dover, Delaware, DEE–7527, Gasohol

The Paradee Oil Company filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increased allocation of unleaded gasoline for the purpose of blending gasohol. In considering the request, the DOE found that exception relief was necessary in order to further the national policy objective of increasing gasohol production. Accordingly, exception relief was granted.

Pearce Community Mart, Kinston, North Carolina, BEO–1120, motor gasoline

Pearce Community Mart filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm's operations were profitable at its current allocation level. Accordingly, exception relief was denied.

Pennant Petroleum Company, Tulsa, Oklahoma, DEE–3931, motor gasoline

Pennant Petroleum Company filed an Application for Exception from the provisions of 10 CFR Part 211.102, in which the firm sought an increase in its base period allocation of motor gasoline. In considering the firm's request, the DOE found that the reduction in Pennant's profits was not caused by the DOE's motor gasoline allocation regulations but by bad debts and by sales of petroleum products other than gasoline. Accordingly, exception relief was denied.

Rainbow Oils of San Angelo, Inc., San Angelo, Texas, DEE–5501, motor gasoline

Rainbow Oils of San Angelo, Inc. filed an Application for Exception from the provisions of 10 CFR Part 211.104 in which the firm sought an increased based period allocation of motor gasoline for three of its customers, each of which is a tire testing firm. In considering the request, the DOE found that exception relief was necessary in order to allow the tire testing firms sufficient supplies of motor gasoline to enable them to test passenger tires for compliance with federal grading requirements. Accordingly, exception relief was granted.

Standard Oil Company (Indiana), Chicago, Illinois, DEE–6160, propane

Standard Oil Company (Indiana) filed an Application for Exception from the provisions of 10 CFR Part 211, Subpart D, in which it requested an increase in its base period volumes of propane for use as petrochemical feedstock at its petrochemical complex in Chocolate Bayou, Texas. In considering the request, the DOE noted that the propane allocation regulations had been amended to permit a firm to file a request with the Economic Regulatory Administration for an adjustment in its propane allocation. Accordingly, the DOE dismissed the firm's exception request.

Wally's Arco, Arlington Heights, Illinois, BEO–0022, motor gasoline

Wally's Arco filed an Application for Exception from the provisions of 10 C.F.R. Part 211, in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE determined that exception relief was inappropriate since the applicant had acquired the retail sales outlet in question after the updating of the base period for motor gasoline allocation. Accordingly, exception relief was denied.

Requests for Temporary Exception

Pacific Refining Company, Houston, Texas, BEL–1267, naphtha

Pacific Refining Company filed an Application for Temporary Exception from the provisions of 10 C.F.R. Part 211, Subpart C. In its Application, Pacific sought to include all of its refinery feedstock, including the portion consisting of imported naphtha, in determining the number of entitlements that its parent company, Coastal Corporation, is permitted to sell to other refiners. In considering the request, the DOE found that Pacific had not demonstrated that its transportation fuel customers would experience economic and competitive harm in the absence of the requested relief. The DOE also determined that the firm had not demonstrated that it was likely to succeed on the merits of its underlying Application for Exception. Accordingly, Pacific's Application for Temporary Exception was denied.

Pennzoil Company, Houston, Texas, BEL–1186, crude oil

Pennzoil Company filed an Application for Temporary Exception from the provisions of 10 C.F.R. § 211.67 in which the firm sought an increase in the number of entitlements issued to it under the DOE Entitlements Program. In considering the request, the DOE determined that the firm had failed to demonstrate that it was suffering an irreparable injury as a result of the Entitlements Program or that there was a strong likelihood that it would succeed on the merits of its underlying exception application. Accordingly, temporary exception relief was denied.

Quaker State Oil Refining Corporation, Oil City, Pennsylvania, BEL–0795, crude oil

Quaker State Oil Corporation filed an Application for Temporary Exception from the provisions of 10 C.F.R. § 211.67 in which the firm sought an increase in the number of entitlements issued to it under the DOE Entitlements Program. In considering the request, the DOE determined that the firm had failed to satisfy the regulatory criteria for the approval of temporary exception relief. In particular, the DOE found that the firm had failed to demonstrate that it was suffering an irreparable injury as a result of the closing of its Emlenton, Pennsylvania, refinery. Accordingly, temporary exception relief was denied.

Tenneco Oil Company, Houston, Texas, BEL–1238, gasohol

Tenneco Oil Company filed an Application for Temporary Exception from the provisions of 10 C.F.R. Part 211 and 10 C.F.R. § 212.83 in which the firm sought to sell motor gasoline in the form of gasohol to designated retail outlets in excess of the outlets' base period allocations and to market gasohol as a separate category and grade of gasoline. In considering the request, the DOE found that temporary relief was warranted, since the removal of regulatory disincentives to the production of gasohol would help to diminish the nation's reliance on imported crude oil. In addition, the DOE found that the firm was likely to succeed on the merits of its underlying Application for Exception. Accordingly, temporary exception relief was granted.

Request for Stay

Dollar-Wise, Ltd., Afton, Iowa, BES–1212, test procedures

Dollar-Wise, Ltd. filed an Application for Stay of the energy efficiency test procedures prescribed in 10 C.F.R. Part 430, Appendix N, which are applicable to a water heater-assisted, forced air furnace recently developed by the firm. In considering the stay request, the DOE found that the test procedures could not be applied to the Dollar-Wise furnace and that in the absence of immediate relief the firm would be prevented from marketing the furnace. Accordingly, stay relief was granted pending a final determination on the firm's Application for Exception

Request for Temporary Stay

Little America, Refining Company, Inc., Washington, DC., BST–0085, Crude oil

Little America Refining Company, Inc. (Larco) filed an Application for Stay and temporary Stay in which the firm sought to be relieved of its obligation to purchase entitlements under 10 C.F.R. § 211.67. In considering Larco's request, the DOE determined that some temporary stay relief was necessary to prevent Larco from suffering irreparable injury. However, the DOE also determined that granting the entire amount of relief requested by Larco would harm several firms by preventing them from selling entitlements. Accordingly, the DOE stayed for ten working days approximately one-half of Larco's entitlements purchase obligations.

Motions for Discovery

Gulf Oil Corporation, Houston, Texas, BED–0062, BEJ–0092, Motor gasoline

Gulf Oil Corporation filed a Motion for Discovery and a Motion for Protective Order relating to the firm's Statement of Objections to a Proposed Decision and Order issued to Cia. Petrolera Del Caribe, Inc. on April 29, 1980. Both of Gulf's Motions request that the firm be provided with information designated as confidential in Petrolera's original Application for Exception. In considering Gulf's requests, the DOE determined that Gulf should be provided with all of the information contained in the Petrolera Application for Exception, in order to enable the firm fully and fairly to present its objections to the proposed grant of exception relief. Accordingly, Gulf's Motions were granted, and Petrolera was ordered to execute a protective order with Gulf prior to providing the firm with the withheld information.

Marathon Oil Company, Findlay, Ohio, DED–6387, motor gasoline

Marathon Oil Company filed a Motion for Discovery and Protective Order in connection with its Statement of Objections to a Proposed Decision and Order which the DOE tentatively granted to U.S. Oil Company. In its Motion, Marathon requests that the DOE direct U.S. Oil to disclose to Marathon certain financial and operating data which U.S. Oil submitted to the DOE. In considering Marathon's Motion, the DOE found that with a single exception, the data rquested by Marathon was both relevant and material to the firm's objections to the Proposed Decision and Order. Accordingly, Marathon's Motion for Discovery and Protective Order was granted in part.

Missouri Terminol Oil Company, St. Louis, Missouri, BED–0048, motor gasoline

Missouri Terminal Oil Company (MoTer) filed a Motion for Discovery in connection with its Statement of Objections to a Proposed Decision and Order which was issued to the Onyx Corporation. In its discovery request, MoTer asks the DOE to direct Onyx to supply MoTer with certain financial information relating to Onyx's petroleum-related business operations. In considering the request, the DOE concluded that MoTer could not respond to Onyx's claim of financial hardship unless it could review data possessed by Onyx concering the extent of the firm's alleged injury. Accordingly, MoTer's discovery request was granted in part.

Wyoming Refining Company, Washington, D.C., BED—1064, crude oil

Wyoming Refining Company filed a Motion for Discovery in which it sought access to confidential information submitted to the DOE by Little America Refining Company, Inc., (Larco) in connection with the firm's Application for Exception. In considering Wyoming's request, the DOE found that although a Proposed Decision and Order has not yet been issued in response to Larco's Application for Exception, discovery was necessary in view of the adversarial nature of the exception proceeding and Wyoming's showing that it had been harmed in the past by exception relief granted to Larco. Accordingly, Wyoming's Motion was granted in part, and Larco was directed to enter into a protective order under which independent counsel for Wyoming would be allowed access to Larco's data.

Supplemental Orders

Belcher Oil Company, Washington, D.C., BRX—0076, residual fuel oil

Belcher Oil Company filed a "Motion to Compel and to Strike Responses to Certain Requests for Admission" in connection with a Statement of Objections to a Proposed Remedial Order which was issued to the firm by the DOE Office of Special Counsel. In considering the Motion, the DOE determined that the Florida Power and Light Company's responses to Belcher's requests for admission were adequate but that the OSC should be requred to file supplemental responses with respect to three of Belcher's requests. Accordingly, Belcher's Motion was granted in part.

Edgewoter Standard Service, Orlando, Florida, BEX–0061, motor gasoline

In this proceeding, the DOE reconsidered its decision to dismiss an Application for Exception filed by Edgewater Standard Service. The dismissal of the firm's exception request had been based upon a finding that the firm was entitled to receive additional supplies of motor gasoline under the provisions of 10 C.F.R. § 211.106(c)(1). In reconsidering that finding, the DOE determined that Edgewater could not automatically receive additional volumes of gasoline under Section 211.106(c)(1). In considering the firm's original Application for Exception, the DOE determined that the agency's interpretation of Section 211.106(c)(2)(i) set forth in Ruling 1974–13 results in a gross inequity to Edgewater. Accordingly, the firm's exception request was granted.

Young Refining Corporation, Washington, D.C., BEX–0081, crude oil

On July 29, 1980, the DOE issued a Decision and Order to Young Refining Company staying that firm's obligation to purchase entitlements as required by 10 C.F.R. § 211.67 to the extent specified in a Proposed Decision and Order which was issued to the firm on the same day.

Protective Order

The following firms filed an Application for Protective Order. The application, if granted, would result in the issuance by the DOE of the proposed Protective Order submitted by the firms. The DOE granted the following application and issued the requesting Protective Order as an Order of the Department of Energy:

Company Nome, Location, and Case No.

Atlantic Richfield Company; Chevron U.S.A. Inc., Los Angeles, CA, BEJ–0111

Interim Order

The following firm was granted Interim Exception Relief which implements the relief which the DOE proposed to grant in an order issued on the same date as the Interim Order:

Company Nome, Location, and Case No.

Wherrell Oil Company, Okeechobee, FL; BEN–0042

Petitions Involving the Motor Gasoline Allocation Regulations

The following firms filed Applications for Exception, Temporary Exception, Stay, and/or Temporary Stay from the provisions of the Motor Gasoline Allocation Regulations. The requests, if granted, would result in an increase in the firms' base period allocations of motor gasoline. The DOE issued Decisions and Orders which determined that the requests be denied.

Company Name, Location, and Case No.

Auberry general Store, Auberry, CA; DEE–4386
Automatic Gas Distributors, Inc., Denver, CO; DEE–5103; DEE–5104; DEE–5106 through DEE–5109
Bullard Plaza Union, Fresno, CA; DEE–5207
Bullock's Exxon, Mason, OH; DEE–7541
Daniel Kobasa, Lansdale, PA; BEO–1103
Jim's Standard Station, McLain, MS; BEO–0254
Jim's Quick Stop Shopper, Parker, PA; BEO–0511
Lemoine Petroleum Products, Mansura, LA; DEE–6663
Marty's Amoco, Burtonsville, MD; DEE–7354
Mel's 66 Truck Stop, Spooner, WI; BEO–1090
Melrose Park Shell, Ft. Lauderdale, FL; BEO–0023
Phil's Gulf & Service, Blue Hill, ME; DEE–5806
The Country Store, Paupack, PA; BEO–0468
Tom's Mobil, Lebanon, PA; BEO–1047

Company Name and Case No.

Amerada Hess Corp., DEE–1098
Bale Oil Company, DEE–3422
Bale Tire Store, DEE–6890
Budget Rent-A-Car of Oakland, DEE–6666
Carriage Square Mobil Service, DEE–6647
Dunston Enterprises, Inc., DEE–7236
E. C. Feagan, Inc., DEE–5598
Eagle Oil Company, Inc., DEE–3393
Embry Hills Chevron, DEE–3240
Empire Oil Company, Inc., DEE–6750
Homestead Plaza Exxon, DEE–6654
Kern's Thrift, DEE–6886
L. M. Petroleum Company, BEE–0374
Live Oak Texaco, DEE–4925
Louk Oil Company, DEE–3514
M–59 Pontiac Lake Shell, DEE–6863
McDonald Lumber Company, Inc., DEE–3279
McSpadden Petroleum, Inc., DEE–5779
Meridian Oil Company, BEE–0933
Mid Coast Oil Sales, DEE–7778
Montclair Service Station, DEE–3965
Montgomery Oil Company, DEE–4299
Omer's Shell Service, DEE–5892
RPN, Inc., DEE–4083
Seaway ARCO, DEE–8100
Seitz, Norman, DEE–4097
Summer Avenue 66 Service, DEE–6976
Super Truck Rental Corporation, DEE–6800
Town Line Service, DEE–7116
Tuloil Inc, DEE–2996
Walters Distributing Company, DEE–3582
Walters Distributing Company, DEE–6713
WESCO Fuels, Inc., DEE–2584
Whitie's Alliance Service, DEE–3754

Dismissals

The following submissions were dismissed without prejudice to refiling at a later date:

Company Name and Case No.

Bell Fuels, Bell Fuels, Inc., R. W. Troch Oil Co., Robert W. Troch, Jr., BSG–0028
Federation of American Scientists, BFA–0436
Homes Oil Company, Inc., DEE–6894
John E. Jones Oil Company, Inc., BEO–0627
Keystops, Inc., DEE–6475
The Country Store, BEN–0012

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Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B–120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Acting Director, Office of Hearings and Appeals.

October 24, 1980.

[FR Doc. 80–33830 Filed 10–29–80; 8:45 am]

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Issuance of Decisions and Orders; Week of August 11 Through August 15, 1980

During the week of August 11 through August 15, 1980, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B–120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Acting Director, Office of Hearings and Appeals.

October 24, 1980.

Appeals

Deuterium Corporation, New Rochelle, New York, BFA–0419, Freedom of Information

Deuterium Corporation filed an Appeal from a partial denial by the Assistant Manager for Administration, DOE San Francisco Operations Office, of a Request for Information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that portions of a Proposal submitted in response to an Office Request for Proposal which were initially withheld under Exemption 4 are confidential and therefore should not be released to the public.

Giant Industries, Incorporated, Washington, D.C., BEA–0182, crude oil

Giant Industries, Inc. (Giant) filed an Appeal of an Order issued to the firm by the Economic Regulatory Administration (ERA). The ERA Order grants the firm an allocation of crude oil, under 10 CFR 211.65(a)(1)(iii), for 3,200 B/D of "newly constructed refinery capacity." In its Appeal, Giant requests that the level of this allocation be increased. In considering the Appeal, the DOE found that, as of August 24, 1977, the Giant planned capacity expansion was at a level of 7,900 B/D of "newly constructed refinery capacity." The DOE therefore granted the Giant Appeal and ordered that crude oil allocations to the firm be based on 7,900 B/D, rather than 3,200 B/D, of "newly constructed refinery capacity."

U-Haul Corp. of Central Virginia, Washington, D.C., BEA–0158, motor gasoline

U-Haul Corporation of Central Virginia filed an Appeal of a determination issued by the Region III Director of Petroleum Operations dismissing the Application for Assignment of a supplier and base period supply volumes filed by U-Haul. In considering the Appeal, the DOE found that U-Haul had a base period supplier and allocation of motor gasoline since the firm had purchased gasoline during the November 1977–October 1978 base period. The DOE also found that U-Haul had not made a *prima facie* showing that it was entitled to exception relief. Accordingly, the U-Haul Appeal was denied.

Remedial Orders

Texaco, Inc., White Plains, New York, DRO–0166, DRD–0166, DRH–0166, motor gasoline

Texaco, Inc. objected to a Proposed Remedial Order (PRO) which the DOE Office of Special Counsel issued to the firm on December 28, 1978. In the PRO, the Office of Special Counsel found that Texaco reduced the price differential between its retail and distributor prices of motor gasoline in PADD V by implementing unequal price increases in January 1977. In considering the firm's objections, the DOE found that Texaco was correct in stating that it has not violated the DOE Mandatory Price and Allocation Regulations as alleged in the PRO. The DOE therefore concluded that the PRO should be dismissed with prejudice and the accompanying motions dismissed as moot. Important issues discussed in the Decision and Order include (i) whether price differentials may be considered as normal business practices and (ii) whether an unequal price increase circumvents supplier/purchaser relationships or discriminates or retaliates against distributors.

In the following case involving a Proposed Remedial Order and/or Interim Remedial Order for Immediate Compliance, no Statement of Objections was filed. The DOE therefore issued the order in final form.

Company Name, Case No., and Location

Earl's Downtown Standard, BRW–0050; St. Louis, MO

Requests for Exception

Baxter's Marathon Services, Indianapolis, Indiana, BEO–0014, motor gasoline

Baxter's Marathon Services filed an Application for Exception from the provisions of 10 C.F.R., Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that exception relief was necessary to prevent the firm from experiencing a serious hardship. Accordingly, exception relief was granted.

Combie Plaza, Auburn, California, BEO–0492, motor gasoline

Combie Plaza filed an Application for Exception from the provisions of 10 C.F.R. 211.102 in which the firm sought an increased allocation of motor gasoline. In considering the request, the DOE found that the firm has failed to demonstrate that its adjusted base period allocation was insufficient to meet the needs for motor gasoline of the residents of Auburn, California. Accordingly, exception relief was denied.

Ewing Oil Company, Hagerstown, Maryland, BEE–0459, gasohol

Ewing Oil Company, Inc. filed an Application for Exception from the provisions of 10 C.F.R. Part 211 in which the firm sought an increased allocation of unleaded motor gasoline for the purpose of producing gasohol. In considering the request, the DOE found that exception relief was necessary to provide the firm sufficient resources and incentive to enable it to establish a viable gasohol marketing program. Accordingly, exception relief was granted.

Flower Exxon Service Center, Takoma Park, Maryland, DEE–5537, motor gasoline

Flower Exxon Service Center filed an Application for Exception from the provisions of 10 C.F.R., Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm was not experiencing a serious hardship, gross inequity or unfair distribution of burdens as a result of the DOE allocation regulations. Accordingly, exception relief was denied.

General Dynamics, Pomona, California, BEO–1181, motor gasoline

General Dynamics filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that exception relief was necessary to enable the firm to maintain its inter-facility van service and its fleet car shared ride service. Accordingly, exception relief was granted. The significant issue discussed in the Decision and Order is the importance of assisting firms to promote the important national policy of conserving motor gasoline.

Hawaii Automotive and Retail Gasoline Dealers Assn., Honolulu, Hawaii, DEE–8070, motor gasoline

The Hawaii Automotive and Retail Gasoline Dealers Association (H.A.R.G.D.) filed an Application for Exception on behalf of all retail gasoline service stations in the State of Hawaii. In its Application, H.A.R.G.D. sought an increase in the maximum price which retailers are permitted to charge under the provisions of 10 CFR 212.93(a). In considering the request, the DOE found that there was no basis for determining that retailers in Hawaii would experience a serious hardship, gross inequity or unfair distribution of burdens in the absence of exception relief permitting them to apply a higher profit margin on their gasoline sales. Accordingly, exception relief was denied. The factors upon which the Decision was based are (i) a majority of the retail stations in Hawaii were not selling gasoline at or near the maximum permissible price; (ii) living costs in Hawaii do not appreciably exceed those in several populous American cities; and (iii) labor costs incurred by retailers in Hawaii are not inordinately high.

Lake Wright Texaco, Virginia Beach, Virginia, DEE–2685, motor gasoline

Lake Wright Texaco filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm was not experiencing a serious hardship, gross inequity or unfair distribution of burdens as a result of the DOE allocation regulations. Accordingly, exception relief was denied.

Illinois Ayers Oil Company, Quincy, Illinois, BEE–0562, gasohol

Illinois Ayers Oil Company filed an Application for Exception from the provisions of 10 CFR Part 211. In its Application, the firm sought an increase in its base period allocation of unleaded gasoline in order to maintain and expand its gasohol production and marketing activities. In considering the request, the DOE found that exception relief was necessary to enable the firm to expand its gasohol marketing operations. Accordingly, exception relief was granted increasing Illinois Ayers' base period allocation of unleaded gasoline by 100,000 gallons per month.

Keller Oil Company, Inc., Effingham, Illinois, BEE–0711, gasohol

The Keller Oil Company, Inc. filed an Application for Exception from the provisions of 10 CFR § 211.102 in which the firm sought an increased allocation of unleaded motor gasoline for the express purpose of producing gasohol. In considering the request, the DOE found that the firm had not made a significant commitment to the production and marketing of gasohol. Accordingly, exception relief was denied.

L. H. Smith Oil Corporation, Indianapolis, Indiana, BEE–0913, motor gasoline

L. H. Smith Oil Corporation filed an Application for Exception from the provisions of 10 C.F.R. Part 211 in which the firm sought to be established as the base period supplier of motor gasoline at several federal installations. In considering the request, the DOE found that exception relief was necessary to permit the firm to participate in the Small Business Administration's Section 8(A) program. Accordingly, exception relief was granted.

Laketon Asphalt Refining, Inc., Evansville, Indiana, DXE–2113, crude oil

Laketon Asphalt Refining, Inc. filed an Application for Exception from the provisions of 10 C.F.R. 211.67 in which the firm sought relief from its obligation to purchase entitlements during the period January through June 1979. In considering Laketon's request, the DOE found that the entitlement purchase obligation would prevent the firm from attaining either its historical profit margin or its historical return on invested capital. The DOE granted Laketon exception relief amounting to $238,910 per month for five months from January through May 1979 and $1,463,251 for June 1979.

Lohr Petroleum Company, Columbus, Nebraska, BEE–0432, gasohol

Lohr Petroleum Company filed an Application for Exception in which it sought an increase in its base period allocation of unleaded motor gasoline for the purpose of enabling the firm to produce and market gasohol. The DOE granted the firm's request and assigned Phillips Petroleum Company, Lohr's base period supplier, to supply Lohr with 9,000 gallons of additional unleaded motor gasoline per month.

Mauritz & Carroll, White Plains, New York, BEE–0737, gasohol

Mauritz & Carroll filed an Application for Exception from the provisions of 10 C.F.R. Part 211 in which the firm sought an increase in its base period allocation of unleaded motor gasoline for the purpose of producing gasohol. In considering the request, the DOE found that exception relief was necessary to provide the firm with an adequate economic incentive to increase its production of gasohol. Accordingly, exception relief was granted.

Mercy Peninsula Ambulance Service, Dale City, California, BEO–0811, motor gasoline

Mercy Peninsula Ambulance Service filed an Application for Exception from the provisions of 10 C.F.R. Part 211 in which the firm sought an increased base period allocation of motor gasoline. In considering the request, the DOE found that exception relief was necessary to enable the firm to provide efficient emergency service to the San Mateo, California area. Accordingly, exception relief was granted.

Petro-Wash, Inc., Atlanta, Georgia, DEE–2318, motor gasoline

Petro-Wash, Inc. filed an Application for Exception which, if granted, would increase the firm's base period allocation of motor gasoline. Petro-Wash claimed that it would experience a serious financial hardship if exception relief were not approved. In considering the firm's request, the DOE found that any reduction in profits which Petro-Wash is experiencing results from its own discretionary business decisions rather than the DOE allocation regulations. The DOE concluded that exception relief was therefore inappropriate in this case and denied the Petro-Wash exception request.

Priest Explorations, Inc., Oklahoma City, Oklahoma, BXE–0817, Crude oil

Priest Explorations, Inc. (Priest) filed an Application for Exception from the provisions of 10 C.F.R., Part 212, Subpart D. Exception relief was granted to permit Priest to sell at market prices 30.25 percent of the crude oil produced from the Barnes Well 2A.

Surfco Branded Service Station, Tulsa, Oklahoma, BEO–1075, motor gasoline

Getty Refining and Marketing Company (GRMC) filed an Application for Exception from the provisions of 10 C.F.R. Part 211 in which the firm sought an increase in the motor gasoline allocation of one of its Surfco branded service stations. In considering the request, the DOE found that exception relief was necessary to enable the Surfco outlet to sell sufficient volumes of motor gasoline to meet its operating expenses. Accordingly, exception relief was granted. The important issues discussed in the Decision and Order are (i) the gross inequity which GRMC would incur in view of its investment in the outlet subsequent to the updated base period and prior to the implementation of Standby Regulation Activation Order No. 1; (ii) that the Surfco remain competitive; and (iii) that the increased volumes for the Surfco outlet should come from other GRMC-operated service stations.

T.W. Brown Oil Company, Ventura, California, BEE–0520, gasohol

T.W. Brown Oil Company filed an Application for Exception from the provisions of 10 C.F.R. Part 211 in which the firm sought an increase in its allocation of unleaded motor gasoline to be used to blend and sell gasohol. In considering the request, the DOE found that the DOE regulations were not preventing the firm from obtaining sufficient supplies of unleaded gasoline to initiate its gasohol program. Accordingly, exception relief was denied.

Motion for Evidentiary Hearing

Buck's Butane & Propane Service, Incorporated, San Jose, California, BEH–0016, propane

Buck's Butane & Propane Service, Inc. filed a Motion for Evidentiary Proceeding in which it sought to determine whether the record in a related exception proceeding (Case No. DEE–5546) contained certain documents. In dismissing the Buck's Motion, the DOE stated that the approval of a Motion for Evidentiary Proceeding is not appropriate for determining the scope of the administrative record in a particular proceeding, and that Buck's could submit any documents in support of its exception request.

Supplemental Orders

Commonwealth Oil Refining Company, Inc., San Antonio, Texas, BEX–0071, crude oil

On February 25, 1980, the Commonwealth Oil Refining Company, Inc. filed a "Request for Supplementary Order or for Modification" in which the firm requested the DOE to adjust the price charged by Chevron U.S.A. on certain sales of crude oil to Corco. These sales were made pursuant to the terms of a prior DOE Decision and Order approving temporary exception relief for Corco. In considering the request, the DOE first found that Chevron had set its price to Corco in a manner which complied with the prior Decision and Order. In reaching this conclusion, the DOE determined that (i) the prior Decision and Order permitted Chevron to charge Corco the maximum price that it could have charged if the crude oil had been furnished pursuant to the provisions of the Buy/Sell Program, (ii) a requirement that Chevron impose "reasonable delivery terms" did not alter the Buy/Sell Program's provisions relating to the inclusion of transportation costs in the price charged for

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crude oil, (iii) delivery of the crude oil to Corco on January 2, 1980 did not violate the requirement that crude oil be furnished for a period ending on December 31, 1979, and (iv) Chevron was justified in setting its price at the maximum level allowed by the Buy/Sell Program for crude oil sold in January 1980, the month in which title passed from Chevron to Corco. The DOE further determined that the possibility of modifying the pricing provisions of the temporary exception granted to Corco could more appropriately be addressed in the context of the review of a Proposed Decision and Order which tentatively grants Corco the same relief approved in the temporary exception order.

Little Americo Refining Company, Inc., Casper, Wyoming, BEX-0086, crude oil

In a Supplemental Order issued August 15, 1980, the DOE extended and modified the temporary stay relief granted to the firm on August 1, 1980. Relief was extended for an additional five business days and the list of firms from whom Larco was obligated to purchase entitlements was altered to correct for technical difficulties.

Newhall Refining Company, Inc., Newhall, California, DEX-0011, crude oil

In accordance with Decisions and Orders issued to Newhall Refining Company, Inc. which granted the firm exception relief from the provisions of 10 C.F.R. 211.67 (the Entitlements Programs) the firm submitted actual financial data for its 1977 fiscal year ended March 31, 1977. Upon reviewing the level of exception relief granted to Newhall under the applicable standards, the DOE determined that Newhall received the correct amount of entitlements for its 1977 fiscal year.

Protective Orders

The following firms filed Applications for Protective Orders. The applications, if granted, would result in the issuance by the DOE of the proposed Protective Order submitted by the firm. The DOE granted the following applications and issued the requested Protective Order as an Order of the Department of Energy:

Name, Case No., and Location

Dow Chemical USA, Cities Service Co., BEJ-0118, Wash., DC
Energy Coop., Inc., Chevron USA, Inc., BEJ-0121, Wash., DC

Petitions Involving the Motor Gasoline Allocation Regulations

The following firms filed Applications for Exception, Temporary Exception, Stay, and/or Temporary Stay from the provisions of the Motor Gasoline Allocation Regulations. The requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued Decisions and Orders which determined that the requests be denied.

Company name, Case No., and Location

Beard Oil Co., Inc., DEE-6281; Camden, SC
Brazos Electric Power Coop., Inc., BEO-0715; Waco, TX
Don's Mobil Service, DEE-7063; St. Paul, MN
Grace Standard Serv., BEO-0335; Lawrence, KS
Heath Oil & Distributing Co., DEE-2337; Mena, AR
Jesse Davis, BEO-1065; Okla. City, OK

Dismissals

The following submissions were dismissed without prejudice to refiling at a later date:

Name and Case No.

Alco Energy Inc., BEE-1034
Edward Applegate, Esq., DEA-0594
Elmwood Car Wash, Inc., DRO-0277
Farmers Coop. Oil Co., BEE-1119
Farmers Union Central Exchange, BEE-0549; BSG-0011; BEJ-0056
Gas Del Oro, Inc., FIA-1429
IU International Corporation, DEE-6871
Toney Petroleum, Inc., BEE-0754
Willowbrook Service Station, DEE-8125
Wind Energy Report, BFA-0420
Zip-N-Go Food Stores, BEE-0955

[FR Doc. 80-33831 Filed 10-29-80; 8:45 am]
BILLING CODE 6450-85-M

Western Area Power Administration

Eastern Division, Pick-Sloan Missouri Basin Program Final Post-1985 Marketing Plan

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Announcement of the final post-1985 marketing plan for the Eastern Division, Pick-Sloan Missouri Basin Program.

Background

The Eastern Division, Pick-Sloan Missouri Basin Program, operates an integrated power system located in Montana (east of the Continental Divide), North Dakota, South Dakota, western Minnesota, western Iowa, and eastern Nebraska. The power system consists of over 7,300 circuit miles of high-voltage transmission line and 90 substations. In the Eastern Division, Western Area Power Administration (Western) markets power to 230 preference customers from eight Federal powerplants on the Missouri River and the Big Horn River. Two powerplants, Yellowtail and Canyon Ferry in Montana, are operated by the Water and Power Resources Service (formerly the Bureau of Reclamation). The other powerplants are operated by the U.S. Army Corps of Engineers, namely: Fort Peck in Montana; Garrison in North Dakota; and Big Bend, Oahe, Fort Randall, and Gavins Point in South Dakota. The total installed capacity of the eight powerplants is 2,398 megawatts. The Eastern Division power system is administered by Western's Billings Area Office.

Present commitments of commercial firm power (excluding project pumping) in the Eastern Division total 1,982 megawatts in the summer and 1,967 megawatts in the winter. Contractual commitments terminate during the period 1985–1990, with most commitments terminating on December 31, 1985.

In January 1979, Western announced it would start planning for marketing Eastern Division hydropower for the period after 1985. Preliminary meetings were held with customers and other interested parties in March 1979 in Sioux Falls, South Dakota, and Billings, Montana. Western representatives described the planning information needed and basic options open to Western. Comments and suggestions were requested.

During the balance of 1979, new depletion studies for the Missouri River were completed by the Upper Missouri Region of the Water and Power Resources Service (Service). These new depletion studies were used by the U.S. Army Corps of Engineers (USCE), Missouri River Division, in new generation studies for main-stem Missouri River powerplants. New resource data were made available to Western in March and April 1980.

Informal public information forums were held in Fargo, North Dakota; Sioux Falls, South Dakota; and Billings, Montana in May 1980. Western representatives presented a 73-page report which contained considerable detail on resources available and refined options for marketing actions. Comments were requested.

Formal public information forums were held in Sioux Falls, South Dakota; Fargo, North Dakota; and Billings, Montana, in late June 1980. Western representatives presented a 46-page report which contained Western's proposals for post-1985 marketing of Eastern Division power. All comments received following the informal public information forums held in early May were considered in the preparation of the proposed marketing plan. Comments were again requested.

Public Comment Forums were held in Billings, Montana; Bismarck, North Dakota; Moorhead, Minnesota; Sioux City, Iowa; Lincoln, Nebraska; and Mitchell, South Dakota, in late August 1980. These forums gave customers and other interested parties an opportunity to present oral and/or written comments on the marketing plan proposed in June 1980. The comment period closed on September 12, 1980. All comments received since March 1979 were carefully considered in preparing the final marketing plan.

Post-1985 Marketing Plan

Major elements of the final post-1985 marketing plan are listed below:

1. Power and energy from existing Eastern Division resources will be marketed in the existing Eastern Division marketing area. This marketing area was established in 1953 and includes Montana (east of the Continental Divide), North Dakota, South Dakota, and specific areas in western Iowa, western Minnesota, and eastern Nebraska.

2. Existing commitments to existing customers will be extended through December 31, 1990. These commitments total 1982 MW in the summer season and 1967 MW in the winter season. Customers receiving an extension will be required to adopt an approved conservation program by July 1982 as described in Public Information Forums held in June 1980.

3. New commitments will be made to preference entities within the existing marketing area which meet the criteria for new customers set forth in the June 1980 report. Such commitments will total 34 MW in the winter season. Assignments of power to new customers will be based on actual loads experienced in the 1979 summer and the 1979–80 winter, except that no such new customer will receive more than 5,000 kilowatts. New customers will be required to adopt an approved conservation program by July 1982.

4. Western will reserve the right to reduce commitments made to existing and new customers through 1990 by up to 1.6461 percent of such commitments in the summer season only. Such reductions would be made only if required because of new depletions or new project pumping requirements. Also, reductions would be made only after giving 5 years notice to customers, and existing customers would receive no reductions prior to the date their existing contract would have terminated.

5. Western will market firm power at system load factors for as long as possible. However, Western will reserve the right to limit energy deliveries to energy associated with a monthly load factor of 75 percent through 1990. Such limitations of energy deliveries will be made only after giving 3 years notice to customers.

6. Western will continue to market firm peaking power in the same manner as presently in force in firm peaking power contracts.

7. Western will commit power to customers for the period 1991 through 2000. Such commitments will total 1984 MW in the summer season and 2000 MW in the winter season. New commitments in 1991 will be 1.6361 percent less than 1990 commitments in the summer season and 0.34878 percent less than 1990 commitments in the winter season. This represents a total reduction in commitments for the 1991–2000 period of 33 MW in the summer and 7 MW in the winter. Existing customers which have annual contract commitments at this time will be required to accept seasonal commitments as of January 1991. Seasonal commitments will be based on 1976–1979 load patterns.

8. Western will reserve the right to reduce commitments made to customers for the 1991–2000 period by up to 7.3589 percent in summer seasons only (a total of 146 MW). Such reductions would be made only if required because of new depletions or new project pumping requirements. Also, reductions would be made only after giving 5 years notice to customers.

9. Western will continue to market firm power at as near to system load factors as possible, but Western will reserve the right to limit monthly load factors to 70 percent if necessary in the 1991–2000 period. A 3-year notice would be given prior to requiring such limitation.

10. Western will study each new resource available to the Eastern Division at the time it is authorized and will determine the best method of marketing new power available through a public involvement process with existing and potential new customers.

Western will market new resources from new facilities to the existing marketing area and to potential customers in an expanded marketing area on a case by case basis. The expanded marketing area would include all or parts of the Missouri Basin States of Montana, North Dakota, South Dakota, Minnesota, Iowa, Nebraska, and Kansas.

Comments

A total of 202 comments were received from customers and other interested parties. Most comments were very favorable.

A majority of those commenting agreed with elements 1–9 of the marketing plan as described above. Many elements were agreed to by a large majority of entities commenting. For example, 95 percent agreed with marketing existing resources within the existing marketing area. A large majority of comments suggested that new resources from new facilities be marketed to the existing marketing area or that customers within the existing marketing area be given priority or a right of first refusal before such resources are marketed to an expanded marketing area. Western believes that new resources at new facilities, when and if authorized, may be such that it will be desirable to market a portion of them to an expanded marketing area on a case by case basis. This does not necessarily mean that all new resources at new facilities would be marketed to an expanded area. However, Western believes the flexibility to take such action would be desirable.

ADDRESS: Inquiries regarding this final marketing plan should be directed to: Mr. James D. Davies, Area Manager, Billings Area Office, U.S. Department of Energy, Western Area Power Administration, P.O. Box EGY, Billings, MT 59101, Telephone: (406) 657–6532.

SUPPLEMENTARY INFORMATION: Transcripts were made of the June 1980 public information forums and the August 1980 public comment forums. Comments on the marketing plan have been received from March 1979 through September 1980. Transcripts and all comments received and Western's responses are on file at Western's Billings Area Office in the Federal Building at North 26th Street and 3rd Avenue North in Billings, Montana, and at Western's Headquarters Office at 1536 Cole Boulevard in Golden, Colorado. Interested parties may examine transcripts and comment files at those locations. In addition, a copy of all comments received and Western's responses may be obtained for the cost of reproduction by request to the Billings Area Office.

Issued at Golden, Colorado, October 24, 1980.

Robert L. McPhail,
Administrator.

[FR Doc. 80-33835 Filed 10-29-80; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FNL 1620-8; OPTS-51144]

Ethene-Alkene-Vinyl Carbonyl Amine Polymer; Premanufacture Notice

Correction

On page 65030 in the issue of Wednesday, October 1, 1980, the document on Ethene-Alkene-Vinyl carried a misprinted Federal Register document number. At the bottom of the third column of page 65031, "FR Doc. 80-3037" should have read "FR Doc. 80-30371".

BILLING CODE: 1505-01-M

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[SA-FRL 1648-3]

Science Advisory Board, Toxic Substances Subcommittee; Postponement of Meeting

Under Pub. L. 92-463, notice if hereby given that the meeting of the Toxic Substances Subcommittee of the Science Advisory Board scheduled for November 5, 1980 and announced in the October 16, 1980 issue of the **Federal Register** (45 FR 68755) has been postponed and will be rescheduled. The new date and further information regarding the meeting will be announced in the **Federal Register**. Any member of the public wishing further information regarding this postponement or regarding the next meeting of the Subcommittee should contact the Secretaries, Science Advisory Board (A-101), U.S. Environmental Protection Agency, Washington, D.C. 20460. Please ask for Ms. Bernadine Davis or Mr. Ernst Linde. The telephone number is (202) 472-9444.

Dated: October 24, 1980.

Richard M. Dowd,

Staff Director, Science Advisory Board.

[FR Doc. 80-33884 Filed 10-29-80; 8:45 am]

BILLING CODE 6560-34-M

[OPTS 41004A; FRL 1648-1]

Chemicals To Be Reviewed by the TSCA Interagency Testing Committee; Public Meeting: Correction

AGENCY: Toxic Substances Control Act (TSCA) Interagency Testing Committee.

ACTION: Correction.

SUMMARY: The previously announced location for a public meeting of the Toxic Substances Control Act (TSCA) Interagency Testing Committee was announced in the Federal Register of October 7, 1980 (45 FR 66506). The meeting place has been changed.

DATE: The meeting will be held on Thursday, November 6, 1980, 9:00 a.m.

ADDRESS: The meeting place has been changed to: Department of Health and Human Services, North Building Auditorium (Main Floor), 330 Independence Avenue, SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Martin Greif, Executive Secretary, TSCA Interagency Testing Committee, Environmental Protection Agency (TS-792), 401 M Street, SW., Washington, D.C. 20460 (202-472-3316).

SUPPLEMENTARY INFORMATION: A notice appeared in the Federal Register of October 7, 1980 (45 FR 66506) announcing the time and place of a public meeting of the TSCA Interagency Testing Committee and the subject matter to be covered at the meeting. The location of the meeting has been changed to a new address, as set forth in the front of this notice. The time and date of the meeting are unchanged.

The purpose of this meeting, as originally announced in the **Federal Register**, is to receive comments on a new list of chemicals selected for review by the TSCA Interagency Testing Committee.

Dated: October 23, 1980.

Vera Hudson, *Chairperson, TSCA Interagency Testing Committee.*

[FR Doc. 80-33885 Filed 10-29-80; 8:45 am]

BILLING CODE 6560-31-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-3083-EM]

New Jersey; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of an emergency for the State of New Jersey (FEMA-3083-EM), dated October 19, 1980, and related determinations.

DATED: October 19, 1980.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Response and Recovery, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 634-7848.

NOTICE: Pursuant to the authority vested in the Disaster of the Federal Emergency Management Agency by the President under Executive Order 12148 effective July 15, 1979, and delegated to me by the Director under Federal Emergency Management Agency Delegation of Authority, and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143); notice is hereby given that, in a letter of October 19, 1980, the President declared an emergency as follows:

I have determined that the impact of a water shortage in the State of New Jersey is of sufficient severity and magnitude to warrant a declaration of an emergency under Pub. L. 93-288. I therefore declare that such an emergency exists in the State of New Jersey.

Federal aid is supplemental in nature and should be limited to that which is necessary to provide potable water on an emergency basis as may be required to save lives and protect public health and safety.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, the Federal Government will provide 75 percent of all eligible assistance under Pub. L. 93-288 in designated areas.

Notice is hereby given that pursuant to the authority vested in the Director of Federal Emergency Management Agency under Executive Order 12148, and delegated to me by the Director under Federal Emergency Management Agency Delegation of Authority, I hereby appoint Ms. Rita Meyninger of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

(Catalog of Federal Domestic Assistance No. 83.300, Disaster Assistance. Billing Code 6718-02)

William H. Wilcox,

Associate Director, Disaster Response and Recovery, Federal Emergency Management Agency.

[FR Doc. 80-33741 Filed 10-29-80; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL RESERVE SYSTEM

Vic Sather & Associates, Inc.; Proposed Retention of General Insurance Agency Activities

Vic Sather & Associates, Inc., Bloomington, Minnesota, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to retain its general insurance agency activities. These activities are performed from offices of Applicant in Franklin, Minnesota, and the geographic area to be served is the geographical area within a 10 mile circle around Franklin, Minnesota. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than November 24, 1980.

Board of Governors of the Federal Reserve System, October 23, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33743 Filed 10-29-80; 8:45 am]

BILLING CODE 6210-01-M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposals

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on October 21, 1980. See 44 U.S.C. 3512(c) and (d). The purpose of publishing this notice in the **Federal Register** is to inform the public of such receipts.

The notice includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed CAB, ICC, and NRC requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before November 17, 1980, and should be addressed to Mr. John M. Lovelady, Senior Group Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

Civil Aeronautics Board

The CAB requests clearance of a regulation which incorporates the Passenger Origin-Destination Survey Report, Form 2787, into the reporting requirements of Part 241 of the Board's Economic Regulations—Uniform System of Accounts and Reports for Certificated Air Carriers. Therefore, the filing of Form 2787 will change from voluntary to a mandatory requirement under section 407 of the Federal Aviation Act of 1958, as amended, for all U.S. certificated air carriers operating scheduled passenger service, except helicopter and intra-Alaska carriers. The CAB estimates respondents will number approximately 45 and that reporting burden will average 540 hours per quarterly report for each carrier. The mandatory requirement to file Form 2787 will become effective January 1, 1981.

Interstate Commerce Commission

The ICC requests an extension-without-change clearance of Form QCS, Quarterly Report of Freight Commodity Statistics, required to be filed by some 41 Class I line-haul railroads, pursuant to Section 11145 of the Interstate Commerce Act. Data collected by Form QCS are used for economic regulatory purposes. No change is made in the data requirements ICC states. Reports are mandatory and available for use by the public, except that traffic of less than 3 shippers of a single commodity may be excluded and filed in a supplemental report not open to public inspection. The ICC estimates that reporting burden for carriers is expected to average 217 hours per quarterly report.

Nuclear Regulatory Commission

The NRC requests an extension-without-change clearance of the application, recordkeeping and reporting requirements contained in 10 CFR Part 32, Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material. ICC states that there are no substantive changes in the requirements since the previous clearance in 1977. The specific sections containing the requirements are 32.11, 32.12, 32.14, 32.16, 32.17, 32.18, 32.20, 32.22, 32.25(c), 32.26, 32.29(c), 32.51, 32.52, 32.53, 32.56, 32.57, 32.61, 32.71, 32.72, 32.73 and 32.74(a). The NRC estimates reporting burden for sections 32.12, 32.16, 32.20, 32.25(c) and 32.29(c) to average one hour for each report filed under these sections; reporting burden for § 32.52 will average 10 minutes for each transfer to be placed in the quarterly report; reporting burden for 32.56 will average 10 minutes for each transfer to be placed in the annual report required for this section; and time to prepare applications under §§ 32.11, 32.14, 32.17, 32.18, 32.20, 32.22, 32.26, 32.51, 32.57, 32.61, 32.71, 32.72, 32.73 and 32.74 will average 8 hours each application.

Norman F. Heyl,

Regulatory Reports, Review Officer.

[FR Doc. 80-33822 Filed 10-29-80; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cooperative Agreements for Nutrition Surveillance Systems

AGENCY: Centers for Disease Control, Public Health Service, HHS.

ACTION: Notice of extension of deadline for submission of initial applications.

SUMMARY: A notice of availability of funds for cooperative agreements for Nutrition Surveillance Systems was published in the **Federal Register** (45 FR 49165) on July 23, 1980. A correction in the agency heading was published in the **Federal Register** (45 FR 51921) on August 5, 1980.

The deadline for submission of applications reflected in the notice was on or before October 31 and May 31 of each calendar year, the cut off dates for the two annual review cycles for applications. Because of a delay in implementing this program, the October 31, 1980, deadline for submission of the initial applications has been extended to January 5, 1981.

Dated: October 17, 1980.

William H. Foege,

Director, Centers for Disease Control.

[FR Doc. 80-33810 Filed 10-29-80; 8:45 am]

BILLING CODE 4110-86-M

National Institutes of Health

Board of Scientific Counselors Subcommittee, Division of Cancer Resources, Centers, and Community Activities (DRCCA); Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Subcommittee of the Board of Scientific Counselors, DRCCA, November 7, 1980, Building 31C, Conference Room 9, National Cancer Institute, National Institutes of Health, Bethesda, Maryland 20205.

The entire meeting will be open to the public from 9:00 a.m. to adjournment. Agenda items will include consideration of proposed revisions for Cancer Center Support (Core) Grants. Attendance by the public will be limited to space available.

The Committee Management Officer, National Cancer Institute, Building 31,

Room 4B43, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Donald M. Pitcairn, Executive Secretary, National Cancer Institute Blair Building, Room 714, National Institutes of Health, Bethesda, Maryland 20205 (301/427–8663) will furnish substantive program information.

Dated: October 23, 1980.

Suzanne L. Fremeau,

Committee Management Officer, National Institutes of Health.

[FR Doc. 80-33732 Filed 10-29-80; 8:45 am]

BILLING CODE 410-08-M

National Institute of Dental Research Programs Advisory Committee, Subcommittee on Periodontal Diseases; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Subcommittee on Periodontal Diseases, National Institute of Dental Research Programs Advisory Committee, on December 8–9, 1980, in Conference Room 8, Building 31–C, National Institutes of Health, Bethesda, Maryland.

The entire meeting will be open to the public from 9:00 a.m. to 5:00 p.m. on December 8, and from 9:00 a.m. to adjournment on December 9, to discuss research progress and ongoing plans and programs of the Periodontal Diseases Program Branch. Attendance by the public will be limited to space available.

Dr. Paul F. Parakkal, Executive Secretary, Subcommittee on Periodontal Diseases, National Institute of Dental Research, National Institutes of Health, Westwood Building, Room 519, Bethesda, MD 20205 (phone 301–496–7784), will furnish rosters of committee members, a summary of the meeting, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13,841—Periodontal Diseases Research, National Institutes of Health)

Note.—NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in section 8(b) (4) and (5) of the Circular.

Dated: October 23, 1980.

Suzanne L. Fremeau,

Committee Management Officer, National Institutes of Health.

[FR Doc. 80-33734 Filed 10-29-80; 8:45 am]

BILLING CODE 4110-08-M

Sickle Cell Disease Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, National Heart, Lung, and Blood Institute, November 14, 1980. The meeting will be held on the NIH Campus, Building 31, Conference Room 7, C–Wing. The entire meeting will be open to the public from 9:00 a.m. to 5:00 p.m., to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Mr. York Onnen, Chief, Public Inquiries and Reports Branch, NHLBI, NIH, Building 31, Room 4A21, (301) 496–4236, will provide summaries of the meeting and roster of the Committee members.

Clarice D. Reid, M.D., Chief, Sickle Cell Disease Branch, DBDR, NHLBI, NIH, Federal Building, Room 504, (301) 496–6931, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Note.—NIH programs are not covered by OMB Circular A–95 because they fit the description of "programs not considered appropriate" in Section 8(b)(4) and (5) of that Circular.

Dated: October 23, 1980.

Suzanne L. Fremeau,

Committee Management Officer, National Institutes of Health.

[FR Doc. 80-33733 Filed 10-29-80; 8:45 am]

BILLING CODE 4110-08-M

Public Health Service

September List of Qualified Maintenance Organizations

AGENCY: Public Health Service, HHS.

ACTION: Notice, September list of qualified health maintenance organizations.

SUMMARY: This notice sets forth the names, addresses, service areas, and dates of qualification of entities determined by the Secretary to be qualified health maintenance organizations (HMOs). In addition, a service area revision of a previously qualified HMO is reported at the end of the list.

FOR FURTHER INFORMATION CONTACT: Howard R. Veit, Director, Office of Health Maintenance Organizations, Park Building, Third Floor, 12420 Parklawn Drive, Rockville, Maryland 20857, 301/443–4106.

SUPPLEMENTARY INFORMATION: Regulations issued under Title XIII of the Public Health Service Act, as amended, (42 CFR 110.605(b)) require that a list and description of all newly qualified HMOs be published on a monthly basis in the Federal Register. The following entities have been determined to be qualified HMOs under Section 1310(d) of the Public Health Service Act (42 U.S.C. 300e–9(d)):

Qualified Health Maintenance Organizations

Name, Address, Service Area, and Date of Qualification

(Operational Qualified Health Maintenance Organizations: 42 CFR 110.603(a))

1. Medical West Community Health Plan, Inc., (Staff Model, see section 1310(b)(1) of the Public Health Service Act), 444 Montgomery Street, Chicopee, Massachusetts 01020. Service area: Cities and towns in Massachusetts as follows:

Agawam	Montgomery
Belchertown	Palmer
Chicopee	Russell
Easthampton	Southampton
East Longmeadow	South Hadley
Granby	Southwick
Hampden	Springfield
Holyoke	Westfield
Longmeadow	West Springfield
Ludlow	Wilbraham
Monson	

Date of qualification: September 12, 1980.

2. PimaCare, Inc., (Medical Group Model, see section 1310(b)(1) of the Public Health Service Act), 255 East Adams, Tucson, Arizona 85716. Service area: Zip codes in Pima County, Arizona as follows:

85230	85614
85641	85710–6
85730	85619
85238	85718–9
85701	85629
85246	85721
85704–8	

Date of qualification: September 24, 1980.

3. American Health Plan, Inc., (Medical Group Model, see section 1310(b)(1) of the Public Health Service Act), 560 N.W. 165th Street Road, Suite 105, Miami, Florida 53169. Service area: Dade and Broward Counties, Florida. Date of qualification: August 1, 1980. (Transitionally qualified: July 29, 1977.)

Service Area Revision

1. Capital Area Community Health Plan, 1201 Troy-Schenectady Road, Latham, New York 12110. Service area: Add the following to the information contained in the cumulative list of qualified HMO's published on March 3, 1980, in the Federal Register, 45 FR 13894: Greene County, New York. Effective date: September 8, 1980.

Files containing detailed information regarding qualified HMOs will be available for public inspection between the hours of 8:30 a.m. and 5:00 p.m. on Tuesdays and Thursdays, except for Federal holidays, in the Office of Health Maintenance Organizations, Office of the Assistant Secretary for Health, Department of Health and Human Services, Park Building, 3rd Floor, 12420 Parklawn Drive, Rockville, Maryland 20857.

Questions about the qualification review process or requests for informtion about qualified HMOs should be sent to the same office.

Dated: October 22, 1980.

Howard R. Veit,

Director, Office of Health Maintenance Organizations.

[FR Doc. 80-33737 Filed 10-29-80; 8:45 am]

BILLING CODE 4110-85-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Arizona; Lower Gila North Planning Area: Preparation of Management Framework Plan

The Phoenix District Office is in the process of preparing a Management Framework (land-use) Plan for the Lower Gila North Planning Area in Northeast Yuma, Southwest Yavapai, and Northwest Maricopa counties, Arizona. The area extends from the Bill Williams River on the north to the Harquahala Plain on the south, and from the Hassayampa River on the east to the Bouse Hills and Little Harquahala Mountain on the west.

The following resource disciplines will be represented on the interdisciplinary planning team: Botany, Range Management, Geology, Wildlife Biology, Hydrology, Archaeology, Outdoor Recreation Planning, Land-use Planning, Economics, and Sociology.

The Planning effort began in May 1979 with an announcement in the Phoenix District's Newsletter. Additional information was published in the newsletters of September 1979 and February 1980.

Announcements were also made at public meetings/open houses relating to the previous Hualapai/Aquarius planning effort in Prescott, Phoenix and Kingman during June 1980.

Natural resource inventories and socio-economic studies were initiated in October 1979 to be used as base-line data in subsequent environmental analyses and land-use proposals. Resource data is currently being analyzed in an effort to describe each resource, its condition, and its potential uses.

Public workshop groups will be organized to provide commment and input to the analysis. Eight workshop groups will be established representing Land Use/Transportation/Utilities; Minerals/Energy Develpment; Livestock Grazing; Wild Burros; Wildlife Habitat/T&E Plants; Wilderness; Off-Road Vehicles/General Recreation; and Cultural Resources. These same Workshop Groups will also assist in development of resource use objectives and conflict analysis between proposed competing resource uses.

Public meetings will be held during April 1981 to obtain public comment on the resource use proposals. These meetings will be held in Wickenburg, Tonopah and Phoenix. Further specific information (times, dates and locations) concerning open house and public meetings will be provided at a later date.

Information generated by the above process will be considered as the "Scoping" effort for subsequent Environmental Statements as presented in 40 CFR 1501.7.

For further information about the planning or environmental statement process contact: Frank Splendoria, Phoenix District Office, BLM, 2929 West Clarendon Avenue, Phoenix, Arizona 85017; (602) 241–2501.

Planning and environmental documents eventually developed will be available at the above address.

Dated: October 22, 1980.

W. K. Barker,

District Manager.

[FR Doc. 80-33739 Filed 10-29-80; 8:45 am]

BILLING CODE 4310-84-M

[Serial Nos. I-1639, I-2834]

Idaho; Partial Termination of Classification for Multiple-Use Management; Correction

In FR Doc. 80–22931, filed July 30, 1980, and appearing on page 50940 of the issue for July 31, 1980, the following correction should be made:

The sixth through the twelfth lines of paragraph one which reads: Classification Orders dated November 15, 1967 and September 15, 1970 (Serial Nos. I–1639 and I–2834) published in the Federal Register November 9, 1967, 32 FR 15767 and September 24, 1970, 35 FR 14853, insofar as they affect the lands described below, should read: Classification Orders dated November 9, 1967, and December 4, 1970 (Serial Nos. I–1639 and I–2834), published in the Federal Register November 16, 1967, 32 FR 15767 and December 11, 1970, 35 FR 18883, insofar as they affect the lands described below.

Eugene E. Babin,

Acting Chief, Branch of L&M Operations.

[FR Doc. 80-33729 Filed 10-29-80; 8:45 am]

BILLING CODE 4310-84-M

Lakeview District Office, Oreg.; Designation of Public Lands for Off Road Vehicle Use

Notice is hereby given that use of motorized vehicles on specified public lands in the Black Hills of Lake County, Oregon, is closed in accordance with the provisions of 43 CFR Part 8340. This closure does not apply to emergency, law enforcement, and Federal, or other Government vehicles while being used for official or emergency purposes, or vehicles authorized by permit or contract.

The areas affected by this designation and restriction notice are located approximately four miles south of Christmas Valley, Oregon. The legal description of the closed lands is:

Township 28 South, Range 17 East, Willamette Meridian

Sec. 2, W ½, E ½ lying west of existing BLM road.*
Sec. 3, all.*
Sec. 4, E ½ E ½, lying east of BLM vehicle trail.
Sec. 10, E ½ NW ¼ and NE ¼ lying north of natural drainage.
Sec. 11, N ½ lying north of natural drainage.
Approximate Total Acres 1,740.

Closure of this area is necessary to protect Cusick's buckwheat (*Eriogonum cusickii*), and its habitat. The status of this threatened plant species is being reviewed by the U.S. Fish and Wildlife Service in compliance with the Endangered Species Act of 1973 (Pub. L. 93–205).

This closure is effective immediately and shall remain in effect until revised, revoked, or amended by the Authorized Officer. Maps showing the areas described above are available at the Bureau of Land Management, Lakeview District Office, 1000 South 9th Street, (P.O. Box 151), Lakeview, Oregon 97630, telephone (503) 947–2177.

Richard A. Gerity,

District Manager.

October 16, 1980.

[FR Doc. 80-33736 Filed 10-29-80; 8:45 am]

BILLING CODE 4310-84-M

Proposed Livestock Grazing Management in the Salt Wells and Pilot Butte Areas, Southwest Wyo., Rock Springs District, Wyo.; Intent To Prepare Environmental Impact Statement

The Bureau of Land Management, Rock Springs District Office, will be preparing an environmental impact statement on proposed livestock grazing

*Except existing BLM roads providing access to interior of area. The areas and access corridors will be posted by signs on the boundaries and at common points of vehicular access.

management for the Salt Wells Resource Area and the Pilot Butte portion of the Big Sandy Resource Area located in southwest Wyoming. The statement is being prepared in compliance with a court decisions and subsequent agreement that the Bureau would prepare site-specific livestock grazing environmental impact statements.

The proposed action to be analyzed in the statement is the implementation of a program of allocating vegetation to domestic livestock, wildlife, and wild horses, and of establishing management practices necessary to accomplish the objectives of the proposed action on approximately 1.9 million acres of public lands administered by the Bureau of Land Management (BLM). The proposed action will identify the kinds and number of animals for which vegetation allocation is made, the periods of use of the range resource, and the range improvements (e.g., fencing, water developments, etc.) to be established.

Alternatives to the proposed actions will be analyzed in the environmental impact statement. The alternatives will be based on alternative levels of vegetation allocations and intensities of management for livestock, wildlife, and wild horses. Any viable alternative identified during the scoping or environmental analysis processes will be analyzed.

A public meeting on the scope of the Salt Wells-Pilot Butte livestock grazing management program and other elements of the Bureau planning system for the areas will be held at Western Wyoming College, Rock Springs, Wyoming, on December 11, 1980, beginning at 7:00 p.m. The purpose of the meeting will be: (1) To present multiple use planning recommendations for the Salt Wells and Big Sandy Resource Areas to the public; (2) to inform the public of the elements that BLM proposes to analyze in the livestock grazing statement (proposed action and tentative alternatives based on existing data and knowledge of the area); (3) gather resource information from the public; and (4) consider concerns, problems, and issues important to the public for inclusion into the environmental impact statement analysis amd planning system decisions. Federal actions concerning the use of public lands in this area are of high public interest because two major Southwest Wyoming population centers are located within the area to be assessed by the livestock grazing environmental impact statement.

All concerns or issues presented at the public meeting or received in writing at the Rock Springs District Office will be considered in the preparation of the environmental impact statement and resultant planning decision. All informational inquiries and written comments or issues on the environmental impact statement should be directed to Charles E. Reed, Grazing EIS Team Leader, P.O. Box 1869, Rock Springs, Wyoming 82901, phone (307) 382-5350. Planning information or the multiple use planning recommendations are available from Bob Bierer, Salt Wells Area Manager, and Clint Hanson, Big Sandy Area Manager. Don Dutcher, Rock Springs District Planning Coordinator is also available to provide information on the planning system. All are available at the above address and telephone number.

A new release regarding the start of the environmental impact statement process will be issued by the Rock Springs District following publication of this notice. Organizations, agencies, and individuals identified as having an interest in the area will be contacted by letter.

Dated: October 21, 1980.

Maxwell, T. Lieurance,

State Director, Wyoming.

[FR Doc. 80-33740 Filed 10-29-80; 8:45 am]

BILLING CODE 4310-84-M

Wyoming and Montana: Intent To Prepare a Regional Environmental Impact Statement (EIS) for the Proposed Leasing of Federal Coal in the Powder River Coal Region

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an EIS.

Notice is hereby given in accordance with the National Environmental Policy Act and the Council on Environmental Quality regulations (43 CFR 1508.22) that the Bureau of Land Management (BLM) will prepare an EIS to address potential affects of new competitive coal leasing in the Powder River Region of Wyoming and Montana.

This proposed leasing is needed to meet a Department of the Interior Federal coal leasing target and a Department of Energy regional coal production goal, in accordance with the Federal Coal Management Program as announced by the Secretary of the Interior on June 4, 1979 (43 CFR Part 3400).

Potential lease tracts are being delineated by the U.S. Geological Survey from land found acceptable for further consideration for coal development during BLM land-use planning. The Casper District of BLM identified acceptable areas for Wyoming in a supplement and amendment to the Eastern Powder River Basin Management Framework Plan for the Highlight and Gillette review areas in Campbell County. The Miles City District BLM identified acceptable areas in Montana in updates of the Decker-Birney, South Rosebud and Coalwood Management Framework Plans covering parts of Custer, Powder River, Big Horn and Rosebud counties.

Preparation of the EIS is scheduled to begin in January 1981. A draft EIS should be available for public review and comment in June 1981. A final EIS is to be filed with the Environmental Protection Agency in November 1981. The Secretary of the Interior is tentatively scheduled to make the leasing decision in January 1982. A lease sale is scheduled for April 1982.

The proposed action is the leasing of a combination of tracts within the Powder River Region to meet a regional leasing target. Alternatives to the proposed action include leasing different combinations of tracts and no additional Federal coal leasing (no action). Prior to the preparation of the EIS, the tracts identified in accordance with the Federal coal management regulations (43 CFR 3420.4) will be ranked, selected and scheduled by the Powder River Regional Coal Team.

Public involvement is invited to determine the scope and significant issues to be analyzed in the EIS. Public participation will be sought by direct contact and mailings to interested and affected parties, announcements in local media, and review of the EIS and decision documents.

Public meetings will be held in areas that would be directly affected. These meetings are a part of the overall scoping process and it is anticipated that they will be held in November/December 1980, in Ashland and Colstrip, Montana, and in Sheridan, Gillette, and Douglas, Wyoming. Notices of exact date, time and location will be published in local newspapers, and by direct mailing to interested and affected parties.

Any individual, company, group, or agency who wishes to be included in the mailing list for notifications, to submit information that would be useful in preparing the EIS, or to provide comments and suggestions should contact the BLM District Manager, Casper District Office, 951 Rancho Road, Casper, Wyoming 82601. Telephone inquiries should be directed to Charles F. Wilkie, EIS Team Leader at the following numbers: (307) 265-5550, ext. 5101 (commercial phone) or 328-5101 (Federal Telecommunications System).

Dated: October 22, 1980.

Maxwell T. Lieurance,

State Director, Wyoming.

[FR Doc. 80-33738 Filed 10-29-80; 8:45 am]

BILLING CODE 4310-84-M

Idaho Falls District Advisory Council Meeting

Notice is hereby given, in accordance with Pub. L. 94-579 and 43 CFR Part 1780, that the meeting of the Idaho Falls District Advisory Council scheduled Friday, November 7, 1980, at 9:00 a.m. at the Bureau of Land Management office, 940 Lincoln Road, Idaho Falls, Idaho 83401 as notified by Federal Register/Vol. 45 No. 194/Friday October 3, 1980 is canceled.

Dated: October 24, 1980.

Harold E. Isaacson,

Acting District Manager.

[FR Doc. 80-33806 Filed 10-29-80; 8:45 am]

BILLING CODE 4310-84-M

Geological Survey

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed supplemental development and production plan.

SUMMARY: Notice is hereby given that Marathon Oil Company has submitted a Supplemental Development and Production Plan describing the activities it proposes to conduct on Leases OCS-G 2934 and 4243, Block 86, portion, West Delta Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 228.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: October 23, 1980.

E. A. Marsh,

Staff Assistant for Operations, Acting Conservation Manager, Gulf of Mexico OCS Region.

[FR Doc. 80-33802 Filed 10-29-80; 8:45 am]

BILLING CODE 4310-31-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

[Redelegation of Authority No. 99.1.83, Amend. No. 2]

Mission Director, USAID/Egypt; Redelegation of Authority Regarding Contracting Functions

Pursuant to the authority delegated to me under Redelegation of Authority No. 99.1 (38 FR 12836) from the Assistant Administrator for Program and Management Services of the Agency for International Development, I hereby amend Redelegation of Authority No. 99.1.83 dated January 26, 1977 (38 FR 27628) as follows:

1. The first paragraph is hereby amended to reflect the following changes:

a. Subhead (1) is revised to read as follows:

"(1) U.S. Government contracts including contracts with individuals for services of the individual alone, grants other than those with PVO's, and amendments thereto provided that the aggregate amount of each individual contract or grant does not exceed $300,000 or local currency equivalent."

b. Subhead (2) is deleted in its entirety and the following is substituted in lieu thereof:

"(20) With respect to these contracts and grants referred to above; to make findings and determinations with respect to advance payments including those financed by Federal Reserve Letters of Credit and to approve the contract provisions relating to such advance payments. This authority is limited to advance payments on non-profit contracts with non-profit educational or research institutions, including international organizations.

2. The second paragraph is hereby amended by deletion of subhead (2) in its entirety, and the following is substituted in lieu thereof:

"(2) Authority up to the maximum level of this redelegation may be redelegated with the prior concurrence of the Director, Office of Contract Management (except that such prior concurrence is not required in the cases of a redelegation to the Mission Director's principal deputy)."

Except as provided herein, the Redelegation of Authority remains unchanged and continues in full force and effect.

This amendment is effective on the date of signature.

Dated: July 22, 1980.

Hugh L. Dwelley,

Director, Office of Contract Management.

[FR Doc. 80-33730 Filed 10-29-80; 8:45 am]

BILLING CODE 4710-02-M

[Redelegation of Authority No. 99.1.96; Amend. No. 1]

Principal Aid Officers Africa; Redelegation of Authority Regarding Operational Program Grants

Pursuant to the authority delegated to me under Redelegation of Authority No. 99.1 (38 FR 12836), as amended, from the Assistant Administrator for Program and Management Services of the Agency for International Development, I hereby further amend Redelegation of Authority No. 99.1.96, dated October 31, 1978, to change the post of concurrence in executing operational program grants for the Gambia and Guinea from Director, USAID/Dakar to Director REDSO/WA.

Except as provided herein, the Redelegation of Authority remains unchanged and continued in full force and effect.

This amendment is effective on the date of signature below.

Dated: September 3, 1980.

Hugh L. Dwelley,

Director, Office of Contract Management.

[FR Doc. 80-33731 Filed 10-29-80; 8:45 am]

BILLING CODE 4710-02-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (80-73)]

Space Science Steering Committee, Physical Science Spacelab and LDEF Ad Hoc Advisory Subcommittee; Renewal

Pursuant to Section 14(b)(1) of the Federal Advisory Committee Act (Pub. L. 92-463), and after consultation with the Committee Management Secretariat, General Services Administration, NASA has determined that the renewal of the Physical Science Spacelab and LDEF Ad Hoc Advisory Subcommittee for the evaluation of proposals for Physics,

Astronomy, and Planetary Science Spacelab and Long Duration Exposure Facility (LDEF) payloads, is in the public interest, in connection with the performance of duties imposed upon NASA by law. The Space Science Steering Committee, under which the Subcommittee operates, is a NASA internal committee, composed wholly of Government employees.

The function of this Subcommittee is to obtain the advice of the scientific community on proposals in the specialized areas identified by the name of the Subcommittee.

Gerald D. Griffin,

Acting Associate Administrator for External Relations.

October 24, 1980.

[FR Doc. 80-33742 Filed 10-29-80; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Museum Panel (General Services to the Field, Museum Training) Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Museum Panel (General Services to the Field, Museum Training) to the National Council on the Arts will be held November 14, 1980 from 9:00 a.m. to 5:30 p.m. in room 1422 Columbia Plaza Office Complex, 2401 E St., N.W., Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

Dated: October 15, 1980.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 80-33815 Filed 10-29-80; 8:45 am]

BILLING CODE 7537-01-M

Music Panel (Recording Section) Meeting

Pursuant to Section 10 (a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Panel (Recording Section) to the National Council on the Arts will be held November 13, 1980 from 9:00 a.m. to 5:30 p.m. and November 14, 1980 from 9:00 a.m. to 5:30 p.m., in room 1426 Columbia Plaza Office Complex, 2401 E St., N.W., Washington, D.C.

A portion of this meeting will be open to the public on November 14, 1980, from 3:30 p.m. to 5:30 p.m. for the discussion of guidelines.

The remaining sessions of this meeting on November 13, 1980, from 9:00 a.m. to 5:30 p.m. and November 14, 1980, from 9:00 a.m. to 3:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

Dated: October 15, 1980.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 80-33814 Filed 10-29-80; 8:45 am]

BILLING CODE 7537-01-M

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at 806 15th Street, N.W., Washington, D.C. 20506.

Date: November 17, 1980.
Time: 9:00 a.m. to 5:30 p.m.
Room: 1134.
Program: This meeting will review applications submitted for the Research Materials Program, Translations: Classics Languages projects, Division of Research Programs, for the projects beginning after March 1, 1981.

Date: November 20-21, 1980.
Time: 9:00 a.m. to 5:30 p.m.
Room: 807.
Program: This meeting will review applications submitted for the Research Resources Program: American Studies projects, Division of Research Programs, for projects beginning after March 1, 1981.

Date: November 21, 1980.
Time: 9:00 a.m. to 5:30 p.m.
Room: 1134.
Program: This meeting will review applications submitted for the Research Materials Program, Translations: Indic Languages projects, Division of Research Programs, for projects beginning after March 1, 1981.

Date: November 24, 1980.
Time: 9:00 a.m. to 5:30 p.m.
Room: 1134.
Program: This meeting will review applications submitted for the Research Materials Program, Translations: Germanic Languages projects, Division of Research Programs, for projects beginning after March 1, 1981.

The proposed meetings is for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose,

(1) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and

(3) information the disclosure of which would significantly frustrate implementation of proposed agency action;

pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities. Washington, D.C. 20506, or call (202) 724-0367.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 80-33840 Filed 10-29-80; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

[N-AR 80-44]

Recommendations and Responses; Availability

Highway Safety Recommendation Letters

The National Transportation Safety Board announces the issuance on October 21 of three letters, containing six recommendations developed as a result of Board investigation of a two-vehicle collision. The accident occurred on June 6, 1980, about 11 p.m., in the westbound lane of the south frontage road to U.S. 40 in Clayton, Missouri.

Investigation indicated that the driver of an eastbound vehicle was passing two other eastbound vehicles, which were traveling at driver-estimated speeds of 50-55 mph, near a hill crest when he saw a westbound vehicle approaching in the lane. He braked and steered his vehicle to the left toward a clear, grass-covered area, but the westbound vehicle struck the right passenger door. A passenger in the eastbound vehicle and all four persons in the westbound vehicle were killed; the driver of the eastbound vehicle sustained minor injuries.

The board notes that U.S. 40 at this location is a four-lane, divided, east-west highway with a two-lane frontage road on either side. The accident occurred on the south frontage road which consists of two 10-foot-wide traffic lanes for two-way traffic, with 3-foot-wide gravel shoulders. Traffic control consists of a dashed yellow centerline and a solid white edgeline on both edges. The road in this area has on off-peak 85th percentile speed of 54.5 mph and has a posted speed limit of 55 mph. The average daily traffic flow on the south frontage road near the accident site is 5,855. Road alignment is straight over rolling terrain. The accident occurred at the crest of a hill with a 2.65 percent descending grade to the west and 3.02 percent descending grade to the east. According to plan and profile sheets provided by the Missouri Highway and Transportation Commission, beginning at a point 850 feet west until a point 190 feet west of the point of impact, the passing sight distance is less than 900 feet. There were no "no-passing zones" marked.

A Safety Board review has found that at least five States (Missouri, Iowa, Nebraska, Washington, and Oregon) do not conform with the U.S. Department of Transportation's Manual on Uniform Traffic Control Devices (MUTCD) pavement marking policy on no-passing zones and that the Federal Highway Administration has allowed these States to continue to use these nonconforming pavement marking policies on Federal-aid projects. This is contrary to the requirements of 23 U.S.C. 109(d). The MUTCD states that where centerlines are installed and a curve warrants a no-passing zone, it should be so marked where the sight distance is equal to or less than that listed below for the prevailing off-peak 85th percentile speed:

85th percentile speed (miles per hour)	Minimum passing sight distance (feet)
30	500
40	600
50	800
60	1,000
70	1,200

The Board notes that section 3B-3 of the MUTCD makes the installation of no-passing zone markings mandatory when centerlines are installed. Thus, the MUTCD requires a passing sight distance of 900 feet at the location where the accident occurred. Since this 900 feet was not available, no-passing zone markings should have been in place at this accident location. Thus, in this particular incident, the State of Missouri was not in compliance with the MUTCD. The Missouri Highway and Transportation Commission's policy as furnished by letter from its chief engineer states:

No Passing Zones are placed on main line routes with an Average Daily Traffic of 1,000 or more. Local collector roads such as outer roadways, service roads, etc., are considered on an individual basis as to need, considering the type of traffic, speed of traffic, access points, terrain, and other factors for all types of stripings.

Since it is considered necessary to have uniform markings and signing on the highway for safety purposes, the Board finds it is also necessary to have uniform laws and ordinances increase the likelihood that drivers will respond similarly and expectedly to the same conditions in any jurisdiction, thereby increasing the safety of the driving public. That is the purpose of the Uniform Vehicle Code (UVC) published by the National Committee on Uniform Traffic Laws and Ordinances. The National Highway Traffic Safety Administration's Highway Safety Program No. 6, Codes and Laws requires that each of the States have a program to achieve uniformity of traffic codes and laws that have the comparable provisions of the rules of road section of the UVC.

UVC Section 11-307(b) states that "Where signs or markings are in place to define a no-passing zone—no driver shall at any time drive on the left side of the roadway within such no-passing zone or on the left side of any pavement striping designed to mark such no-passing zone throughout its length." The "Rules of Road Rated, Volume 9, Traffic Laws Commentary No. 1" rates compliance of the States to the rules of the road found in the UVC for the year 1976. In this rating, Missouri was 51st out of the 52 U.S. jurisdictions and had the greatest number of regulations that were substantially different from the UVC.

Although the Safety Board could not determine if the lack of no-passing zone markings or laws directly contributed to this accident, the Board believes that marked no-passing zones and uniform markings and laws may have reduced the accident potential.

In view of these findings, the Safety Board has issued the following recommendations:

H-80-58 to the Federal Highway Administration

Review the pavement markings policies in each State to evaluate compliance with the MUTCD, and require the State to revise any policies which are found to be substantially not in compliance. (Class II, Priority Action) (H-80-58)

H-80-59 through -62 to the Governor of Missouri

Enact legislation to establish a regulation prohibiting driving on the left side of the roadway within marked no-passing zones and insure that the regulation conforms with section 11-307 of the Uniform Vehicle Code as published by the National Committee on Uniform Traffic Laws and Ordinances as required by Highway Safety Standard No. 6, Codes and Laws. (Class I, Urgent Action) (H-80-59)

Develop and implement a continuing program to bring all of the State's laws, particularly the rules of the road, into substantial conformity with the Uniform Vehicle Code as published by the National Committee on Uniform Traffic Laws and Ordinances. (Class II, Priority Action) (H-80-60)

Revise the State's pavement marking policy, particularly the provisions for making no-passing zones, to be consistent with the U.S. Department of Transportation's Manual on Uniform Traffic Control Devices for Streets and Highways. (Class I, Urgent Action) (H-80-61)

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Re-mark all of the streets and highways within the State's jurisdiction so that the pavement markings, in particular the no-passing zone markings, comply with the U.S. Department of Transportation's Manual on Uniform Traffic Control Devices for Streets and Highways. (Class I, Urgent Action) (H-80-62)

H-80-63 to the National Highway Traffic Safety Administration

Review State laws for conformity to the Uniform Vehicle Code rules of section 11-307 and require States with nonconforming laws to implement a program to achieve uniformity. (Class II, Priority Action) (H-80-63)

Intermodal Safety Recommendation Letters

Also on October 21, the Safety Board forwarded three more recommendation letters, these relating to the derailment last November 8 of cars 25 through 49 of Conrail freight train IHEN-8 one mile east of Inwood, Indiana. The train consisted of three locomotives, 89 cars (76 loaded and 13 empty), and a caboose. Twenty-four of the 25 derailed cars were transporting hazardous materials, and six derailed cars were involved in product spills.

Tank car GATX 26024, containing vinyl chloride, came to rest completely overturned with the man-way dome and associated valves buried so that they could not be examined. A severe dent, caused by a similar car striking the tank, was evident from the center to one end. The dent volume was estimated at 1,000 gallons, or approximately 4 percent of the car's volume. The only information available from the freight waybill was the weight of the product which was loaded in the car and the volume of the tank car shell.

After GATX 26024 was set upright, the internal pressure was 27 psi. After it was unloaded at the derailment site, GATX 26024 was moved to a tank car repair facility and pressure tested until it failed. The failure pressure was 205 psi. Metallurgical data and dent geometry data were also obtained from the tank car. From the data made available by the tests performed on GATX 26024, the Safety Board believes that testing of damaged tank cars could result in sufficient information for the development of safe handling guidelines on damaged tank cars.

Further, the Board notes that no cracks or gouges were found in the magnaflux and dye penetrant tests. However, during the pressure test, a fracture occurred in the heat-affected zone of a fillet weld between the left side of the saddle plate and the tank.

As a result of its investigation, the Safety Board has issued the following "Class II, Priority Action" recommendations

I-80-1 to the Research and Special Programs Administration, U.S. Department of Transportation

Amend 49 CFR 174.25 to include a requirement that the volume, in gallons, and the temperature at which the pressurized liquefied gases were loaded in tank cars be entered on bills of lading, way-bills, and shipping orders. (I-80-1)

I-80-2 to the Federal Railroad Administration

Develop guidelines for handling tank cars containing pressurized liquefied gases at accident sites based on research and tests of a representative sample of damaged tank cars. (I-80-2)

I-80-3 to the Association of Amercia Railroads

Examine ruptured tank cars to determine what effect current design and welding practices for welded tank attachments may have on the structural integrity of tank cars loaded with pressurized liquefied gases in the derailment environment and report the resultant findings. (I-80-3)

Responses to Safety Recommendations:

Aviation

A-77-43 and -44, from the Federal Aviation Administration, October 14, 1980.—Letter is in response to the Safety Board's July 28 request for an updated status report and supplements FAA's response of January 31, 1979 (44 FR 11625, March 1, 1979). These recommendations were developed as a result of investigation of several Teledyne Continental Motors (TCM) IO-520 series engine crankshaft failures. On March 9, 1979, the Board noted in reply to FAA's earlier response that FAA has issued Advisory Circular AC No. 20-103 on the subject of "Aircraft Engine Crankshaft Failure," the product improvements made by TCM and the manufacturer's ultrasonic testing of crankshafts. The Board asked to be informed when the field inspection technique is completed and the problem of the IO-520 series crankshaft failures is fully identified and resolved. The Board again, on July 28, 1980, asked to be advised of this information.

FAA in its October 14 letter reports that the situation is essentially the same as described in its January 31, 1979, response. TCM has continued to manufacture and deliver the redesigned crankshafts, which undergo an ultrasonic inspection prior to assembly of the engine. FAA notes that more than 3,200 IO-520 engines having crankshafts of this new design have been delivered since its introduction in June 1978 and no crankshafts have failed. "This record convinces us that the corrective measures adopted by TCM have been successful," FAA states.

However, FAA reports that it has not yet arrived at a satisfactory procedure for inspecting the old design crankshafts in the field. TCM has concluded that the ultrasonic inspection is too sophisticated a process, requiring too much specialized expertise to be used by repair stations. FAA has not accepted the TCM conclusion at this time and has not yet determined a satisfactory alternate procedure for use by repair stations. FAA is reviewing the reported failure rate in order to determine the effect, if any, of the practices recommended in Advisory Circular AC-20-103, and whether further action is necessary.

A-79-21 and -22, from the Federal Aviation Administration, September 29, 1980.—Letter supplements FAA's initial response of July 16, 1979 (44 FR 45497, August 2, 1979) to recommendations related to the malfunction of a magnetic clutch assembly used in the autopilot pitch axis servos of aircraft manufactured by Gates Learjet Corporation. The Safety Board on August 14, 1979, replied to FAA's July 16 response, and indicated that, predicated on FAA's intended actions to implement the recommendations as noted in that response, the recommendations would be held in "Open—Acceptable Action" status.

Recommendation A-79-21 called on FAA to initiate a program immediately to expedite the determination of cause for the clutch malfunction in JET Electronic part No. 2380066, servo drive unit, devise a means to detect potential problems, and define corrective action. FAA's September 29 response refers to FAA's initial response, which indicated that the Gates Learjet Corporation was testing an improved magnetic clutch in preparation for a retrofit program. In letters directed to its Service Centers and to Owners and Operators during November 1979, Gates Learjet urged compliance with Airplane Modification Kit No. AMK 79-4, "Replacement of Clutch Assemblies in the Autopilot Pitch Axis Servo." FAA states that this kit provides for replacement with an improved magnetic clutch assembly for in-service Model 23, 24 and 25 airplanes having the autopilot servo actuator with the older magnetic clutches. AMK 79-4 called for compliance within the next 75 flight hours. This kit does not remove the 600-hour overhaul compliance of the pitch servo.

Further, FAA reports that on January 8, 1980, Gates Learjet advised FAA's Central Region that there were sufficient numbers of the DC torquer/capstan used on later production airplanes to make them available as replacements for the magnetic clutch assemblies. Gates Learjet subsequently issued its Airplane Modification Kit No. AMK 80-3, "Replacement of Pitch Servo Actuator and Capstan." FAA notes that installation of either of these Airplane Modification Kits is voluntary on the part of the operator since the possibility of FAA Airworthiness Directive action was ruled out earlier in the investigation related to recommendation A-79-21. The investigation showed that on Gates Learjet airplanes the stall warning stick pusher system is preflight tested prior to each flight, which verifies the integrity of the magnetic clutches. In addition, FAA states, should the magnetic clutch "freeze" and lock the continuously running autopilot/stick pusher servo motor to the elevator cable drum, a mechanical slip clutch is provided in the cable drum to permit the pilot to override the malfunction.
Power can then be removed from the servo motor by turning off the autopilot and stall warning systems. The Airplane Flight Manual provides emergency procedures for operation of the airplane with the stall warning systems off.
Based on the above, FAA says it could not identify any unsafe condition that would result from a magnetic clutch becoming frozen and, therefore, could not justify mandatory corrective action under the requirements of 14 CFR Part 39 "Airworthiness Directives." (FAA provided copies of the above referenced documents.)

With respect to recommendation A-79-22, which called on FAA to restrict the operation of all Learjet aircraft equipped with this servo drive unit if defining and implementing the corrective action described in recommendation A-79-21 will require prolonged effort, FAA notes that its initial report indicated that it was not considered necessary to restrict operations in this case and that a Temporary Airplane Flight Manual Supplement had been issued, specifying emergency procedures in the event of autopilot pitch axis malfunction or complete stall warning failures. FAA states that these identified temporary revisions are being incorporated into permanent revisions as they are made to the various flight manuals.

A-80-56 through -58, from the Federal Aviation Administration, October 14, 1980.—Response is to recommendations issued July 16 following the Safety Board's special investigation of inadvertent landing gear retraction accidents between 1975 and 1978. Recommendation A-80-56 asked FAA to require after a specified date that all newly manufactured Beechcraft Baron and Bonanza models conform to 14 CFR 23.777 with respect to landing gear and flap control locations and that they have an adequate latch or guard to minimize inadvertent landing gear retraction. Recommendation A-80-57 called for requiring that, after a specified date, previously manufactured Beechcraft Baron and Bonanza aircraft which do conform to the landing gear and flap control arrangements outlined in 14 CFR 23.777 be equipped with an adequate guard or latch mechanism to prevent inadvertent actuation of the landing gear controls. Recommendation A-80-58 asked FAA to require that after a specified date, the landing gear control switch on the pre-1963 model Beechcraft Bonanzas be modified to incorporate a wheel-shaped knob as outlined in 14 CFR 23.781. (See 45 FR 49410, July 24, 1980.)

FAA's response indicates that a review has been made of the Board's special investigation report, "Design-Induced Landing Gear Retraction Accidents in Beechcraft Baron, Bonanza and Other Light Aircraft." FAA agrees that, where appropriate, cockpit control configurations should be standardized. However, these recommendations introduce a number of questions and will require further study before a sound conclusion can be reached. For example, FAA cites, the landing gear operating switches in current production on Bonanzas and Barons have center lock detents which require two separate motions to actuate the switch in either direction. This is in effect a latch. FAA is concerned that more complex latching arrangements could interfere with emergency procedures and perhaps create a more serious accident potential than now exists.

In regard to recommendation A-80-58, FAA states that Beech Bonanza models up to the D35 (1953) used a secondary latch requiring a separate action to retract the landing gear, and shape-coded switches were used on the D35 and later models. Although the pre-1963 controls were not shape-coded, the majority of these airplanes are in the hands of private owners who are familiar with the controls which were originally installed. FAA says it currently has no information which indicates that these older airplanes have significant inadvertent gear retraction problems.

FAA says it intends to examine this entire subject in depth to determine what alternatives are available to deal with these less serious (non-fatal or minor injury) accidents. As part of the effort, FAA may consider the use of procedures which will help alert aircraft owners, and potential purchasers, of accident statistics which are higher than normal for specific aircraft models.

Highway

H-79-46 and -47, from the Ohio Department of Transportation, October 6, 1980.—Letter is in response to the Safety Board's inquiry of September 10, 1980, concerning disposition of these recommendations, developed following investigation of the cross-median collision of a van with two passenger automobiles on State Route 2 near Cleveland, Ohio, on May 6, 1979. The recommendations, issued September 26, 1979, concerned installation of median barriers on State Route 2 near the accident site. The Board's September 10 letter acknowledged receipt of Ohio DOT's October 19, 1979, response (44 FR 62974, November 1, 1979) which indicated that careful review was being given to the Board's investigation findings and recommendations. The Board also noted that on October 9, 1979, the City of East Lake, Lake County, Ohio, passed a resolution recognizing the need for protection against median crossover accidents. A copy of the resolution was forwarded to Ohio DOT.

In response, Ohio DOT reports that its District Planning and Design office is currently preparing plans for a safety upgrading project (PF 701, LAK-2-0.00) on State Route 2 from Interstate 90 easterly to the City of Painesville. The plans propose construction of parallel concrete median barriers, located 10 feet off the inside edges of both directional pavements, from Interstate 90 easterly to a point approximately 4,000 feet east of Lost Nation Road when the median widens from 36 feet to 60 feet. The change in median width occurs at the Willoughby-Mentor corporation line; therefore, the proposed design "will provide protection from cross-median accidents through Wickliffe, Willowick, Eastlake, *and Willoughby,*" Ohio DOT states.

Ohio DOT notes that the Board's recommendations refer to two cross-median accidents in the last 3 years having occurred in the segment of State Route 2 *"within Willoughby where the median width is 60 feet."* Ohio DOT says this is obviously in error since the median through Willoughby is 36 feet wide. Ohio DOT further states that accident data for State Route 2 provided by the Mentor Police Department shows no cross-median accidents occurring within Mentor during the past 5 years. A 5-year history of accidents within Painesville Township provided by the State Highway Patrol also shows no cross-median accidents. The median

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through both areas is 60 feet wide; consequently, Ohio DOT has concluded that median barriers are not warranted within the segment of State Route 2 with the median width of 60 feet.

H–80–9 through –11, from the Federal Highway Administration, October 8, 1980.—Response is to recommendations issued last February 11, calling on FHWA to take certain actions to improve work zone safety. (See 45 FR 11630, February 21, 1980.)

With respect to recommendation H–80–9, which asked FHWA to expand the emergency final rule, 23 CFR 630.1010 to apply to all construction and maintenance zones on divided Federal-aid roads, FHWA says it does not agree that it is appropriate to take this action, since this was a revision to previously adopted regulations concerning traffic safety in highway and street work zones and is intended to apply only to Federal-aid projects. An alternative approach has already been initiated by FHWA. An advance notice of proposed rulemaking was published in the **Federal Register** on January 3, 1980, announcing proposed changes to the Manual on Uniform Traffic Control Devices (MUTCD). One of the proposals (Request VI–14) is to include provisions similar to the emergency rule as part of the MUTCD. This will make the provisions applicable to all roadway work zones, Federal-aid as well as non-Federal-aid. The comment period closed on July 1.

FHWA concurs in recommendation H–80–10 which called for development and dissemination of a manual which will compile past operational experience and current research findings related to channelizing traffic which is rerouted in work areas. FHWA reports the recent publication of a guidance handbook, "Work Zone Traffic Control—Standards and Guidelines" which includes Part VI of MUTCD and guidelines for implementing Part VI. This handbook has developed and published in recognition of a special need for "why" and "how to" information in handling traffic through work zones. The first part of the two-part handbook is a reprint of Part VI, Traffic Controls for Street and Highway Construction and Maintenance Operations of MUTCD. It sets forth basic principles and prescribes standards for the design, application, and maintenance of the various types of traffic control devices. Included are requirements for color, size, shape, location, and need for the devices. The second part contains guidelines that supplement the standards. It was prepared to meet the special need for additional operational and application guidance on handling traffic through work zones. The guidelines explain how to apply the standards to various work zone situations. It also has numerous illustrations and various examples of traffic control and common conditions and problems encountered.

In addition to internal FHWA use, 60 handbooks have been sent to each State highway agency and 4,000 copies reserved for training courses conducted by FHWA's National Highway Institute. Beginning this summer, informal training will introduce FHWA field engineers to the new handbook. FHWA notes that the U.S. Government Printing Office will also have the handbook for sale.

Recommendation H–80–11 asked FHWA to promote the development of a traffic control device to fill the gap between shaped concrete barrier and traffic cones to serve as a continuous visual barrier to separate traffic in work zones. In response, FHWA, states, "It is very difficult to promote a device which has not been clearly identified and possibly not invented." FHWA says it continues to identify needs and develop solutions to improve work zone safety, citing as an example report FHWA–TS–78–222, "Construction Zone Delineation (Raised Pavement Markers)," published in 1978. The report was based on a study of a series of construction projects in which raised pavement markers were used to guide traffic through the work sites. The general conclusion of the nine-State study was "that raised reflective markers provide excellent nighttime temporary delineation, particularly when the road is wet, at a low cost with little or no maintenance." Two of the projects reported a reduction in the number of accidents with the use of raised pavement markers. The delineation included pavement markings as well as signs, barricades, and other appropriate traffic control devices. About 4,500 copies of the report have been distributed.

Further, FHWA reports that current research is aimed at improving devices and methods. "Development of Safer Barriers for Construction Sites" is intended to develop proposals for guidelines for the use and delineation of temporary traffic barriers in highway work zones. This work is scheduled for completion in late 1980. A future research study titled "Geometric Design Requirements for Highway Work Zones," which is in the procurement process now, will look into ways to improve the safety of two-lane, two-way detour operations and is expected to identify ways to improve work zone safety.

Marine

M–79–34 and –36, from the United States Coast Guard, September 29, 1980.—Letter is in response to the Safety Board's comments of June 26 concerning Coast Guard's response of last April 29 (45 FR 34479, May 22, 1980). The recommendations were developed following investigation of the M/V *George Prince* collision with the SS *Frosta* in the Mississippi River above New Orleans, La., October 26, 1976.

With respect to recommendation M–79–34, the Board's June 26 letter restates the belief expressed in the Board's letter of last February 6; namely, that the application of the Navigation Safety Regulations (33 CFR 164.15) may achieve the results desired from the recommendation. The Board asked to be notified of action taken concerning the four possible solutions to the problems surrounding the definition of "confined or congested waters." Coast Guard's September 29 response reports that the project is in staff discussion and review process. The Board will be notified when the necessary internal Coast Guard clearances have been obtained to allow the project to advance to the notice of proposed rulemaking stage.

As indicated in the Board's June 26 letter, the Board believes that the Coast Guard may have misinterpreted the intent of recommendation M–79–36 and its February 6, 1980, letter. The Board did not suggest that modifications be made to accepted chart symbols. The concern is that the dashed line used to portray ferry crossings is too light and that the word "ferry" is lost in the chart's land coloring. The Board is searching for greater emphasis on the current symbol and label used to designate ferry crossings on nautical charts. Also, the Board notes that a firm emphasis is placed on the illustration and lettering associated with items such as roads, railroads, etc., which are not navigational hazards and have relatively little importance to vessel navigation. It is agreed that pilots should be aware of ferry crossings and that they should take appropriate precautions at such crossings; however, the Board is firm in its conviction that a vessel's navigation bridge watch should use local charts to verify a pilot's actions to insure that all necessary precautions are taken to avoid mishap. If extraneous non-nautical features were eliminated or played down on the navigation charts, there would be a more suitable opportunity for a greater emphasis on ferry crossing symbols and lettering. The Board suggested in its June 6 letter that Coast Guard and the National Oceanic and Atmospheric Administration critically review current nautical charts to determine the most necessary and important information related to the safe navigation of vessels.

Coast Guard reports in its September 29 response that it has conveyed to NOAA the concern expressed by the Safety Board that the particular "ferry" chart symbol is not conspicuous enough on NOAA chart 11370. NOAA has stated that it will attempt to make the ferry crossing more obvious while using the internationally accepted symbol. Regarding review of nautical charts, Coast Guard believes the Safety Board should be aware that Coast Guard passes on information to NOAA and offers suggestions. NOAA, in turn, keeps the Coast Guard informed of any proposed or actual changes in cartography pertaining to navigational safety.

M–80–42, from the United States Coast Guard, September 25, 1980.—Response is to a recommendation issued June 20 as a result of investigation of the collision of the Spanish Freighter M/V *Pola de Lena* with two Mississippi River ferry boats and the Gretna Ferry Landing, New Orleans, La., February 3, 1979. The recommendation asked Coast Guard to require each self-propelled vessel of 1,600 gross tons or greater navigating in confined or congested waters of the United States to have operating instructions and a block diagram that clearly and simply explain the changeover procedures for the remote steering gear control systems and steering gear power units on the vessel; the instructions and block diagram should be permanently displayed both on the navigation bridge and in the steering engineroom. (See 45 FR 45421, July 3, 1980.)

Coast Guard states that the discussion contained in its letter of August 28, 1980, regarding recommendation M–78–81 is response to M–80–42, and believes that the provisions of regulatory project Docket No. 79–038B will satisfy the intent of recommendation M–80–42. Recommendation M–78–81 resulted from investigation of the SS *Sitala* collision with a number of moored vessels in the Mississippi River in New Orleans, La., July 28, 1977. (Coast Guard's response of August 28 was reported at 45 FR 65370, October 2, 1980.)

M–80–9 through –13, from the United States Coast Guard, September 29, 1980.—Response is to recommendations issued March 20 as a result of investigation of the collision of Greek bulk carrier M/V *Irene S. Lemos* and Panamanian bulk carrier M/V *Maritime Justice* on the Mississippi River, November 9, 1978. (See 45 FR 22311, April 3, 1980.)

With respect to recommendation M–80–9, which asked Coast Guard to determine which bends on the lower Mississippi River present difficult navigational problems and should be limited to one-way traffic during conditions of reduced visibility, and promulgate appropriate restrictions, Coast Guard notes that the recommendation addresses the area of investigation in the Lower Mississippi River Safety Study which was mandated by Congress and funded by Coast Guard through the National Oceanographic and Atmospheric Administration. Louisiana State University, through the Sea Grant Program, will do the study, which will develop recommendations concerning the manner in which applicable techniques such as communications, electronic surveillance, aids-to-navigation, and traffic management can best contribute toward enhancing marine transportation safety, protection of the environment and effectiveness of the New Orleans Vessel Traffic Service. Coast Guard states that this recommendation, along with M–80–13, below, will be considered after the results of the study have been evaluated and full consideration given to the study recommendations. The study is scheduled for completion by March 1981.

Coast Guard concurs with recommendation M–80–10, which asked that New Orleans Vessel Traffic Center be required to inform participating vessels routinely of important weather information, such as dense fog, and that current instructions requiring vessels to request such information specifically be withdrawn. Coast Guard notes that special and/or significant weather information covering a specific area will be passed on to vessels automatically.

Coast Guard does not concur with recommendation M–80–11, which called for accelerated rulemaking (Docket No. 75–112) to make participation in the New Orleans Vessel Traffic Service mandatory. The Commandant, U.S. Coast Guard, has chosen to delay any decision to proposed mandatory participation in VTS New Orleans until after the results of the Lower Mississippi River Safety Study have been evaluated and full consideration given to the safety recommendations. This decision was made after consultation with representatives of the maritime industry. As a result, Docket No. 75–112 was closed and the proposal withdrawn.

Recommendation M–80–12 called on Coast Guard to develop and implement a plan of action for the Captain of the Port of New Orleans and the New Orleans Vessel Center that will insure prompt action to control traffic movements in the Lower Mississippi River during conditions of limited visibility. Coast Guard states that the discussion in M–80–9, above, is responsive to this recommendation, as it is to recommendation M–80–13. Recommendation M–80–13 asked Coast Guard to reevaluate the proposed level of vessel traffic service on the Lower Mississippi River, and determine if an external surveillance system is needed to overcome the severe limitations of the present VTS to provide useful, accurate information to participants.

Railroad

R–76–34 and R–79–59, from the National Railroad Passenger Corporation (Amtrak), October 6, 1980.—Letter is in response to the Safety Board's inquiry of September 17, 1980, as to implementation of these recommendations, since no response had been received by the Board as of September 17.

Recommendation R–76–34 resulted from investigation of the collision of two Penn Central passenger trains near Wilmington, Dela., October 17, 1975; the Board recommended that the Southeastern Pennsylvania Transportation Authority and Amtrak include in their agreements with Consolidated Rail Corporation requirements that will provide for the safe transportation of passengers as well as for their protection and care in the event of an accident. (See 41 FR 32794, August 5, 1976.) Recommendation R–79–59 was issued following investigation of the derailment of Amtrak train No. 6, the Empire Builder, operating on Burlington Northern track, at Lohman, Mont., March 28, 1978. The Board recommended that the Burlington Northern and Amtrak establish quality control over standards for the servicing of rolling stock maintained by contractual agreements or by Amtrak's own facilities, and correct any existing discrepancies. (See 44 FR 48003, August 16, 1979.)

In response, Amtrak feels that it now complies with recommendation R–76–34. Amtrak's existing contract with Conrail, Section 3.2., states in part ". . . shall give due regard to Railroads speed, weight and similar operating restrictions and rules and safety standards." This section further states that "recognition shall be given to the importance of fast and convenient schedules and passenger comfort and convenience."

Amtrak notes that at the time of the accident, the Penn Central owned the tracks, signals *and entire Northeast Corridor.* Also, Amtrak's forces reviewed Penn Central's Operating

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Rules and all other aspects pertinent to a safe operation. Amtrak accepted all facets until April 1, 1978, when Amtrak took over the Corridor. Amtrak developed its own Operating Rules, Work Timetables, Special Instructions, Electrical Operating Instructions, Brake and Train Air Signal Instructions, Safety Rules, and a special Manual of Instructions for Conductors and Trainmen in Amtrak Service. These are all designed for the safe transportation of passengers. The special manual is designed specifically to instruct conductors and trainmen as to their responsibilities. This includes the care and handling of passengers. Amtrak says that another relevant item is the fact that On-Board Service employees are now given classes in first aid, which, again, is for the benefit of passengers.

Amtrak's October 6 letter notes that a reply to recommendation R-79-59 was submitted to the Safety Board on September 23, 1980 (see below).

R-79-59 and R-80-30, from Amtrak, September 23, 1980.—Response notes that Amtrak actively pursues, as standard equipment maintenance policy Safety Board recommendations R-80-30 and R-79-59 (see above). Recommendation R-80-30 resulted from investigation of the derailment of Amtrak train No. 7, the Empire Builder, which occurred while the train was moving through a curve on the Burlington Northern track at Glacier Park, Mont., last March 14. The recommendation, issued August 15, asked Amtrak to prohibit the use in revenue service trains of passenger train cars with defective conditions that may affect their safe operation. (See 45 FR 57606, August 28, 1980.)

Amtrak's September 23 response further notes that, similarly, established standards for equipment maintenance conform with Federal Railroad Administation, Association of American Railroads, and equipment builders' requirements and recommendations. Compliance with these standards is required of Amtrak and contractual railroad facilities. Amtrak says it regularly performs quality control inspections of these important functions to ensure compliance. This enables Amtrak to recognize and correct any discrepancies in servicing procedures below set standards which could contribute to unsafe conditions. For example, a complete systemwide inspection, including intermediate points, was completed in April. Variances from standard policy were handled with facilities and contract railroads for correction. A similar inspection is currently under way. In addition, in July 1980, Amtrak initiated a baggage car heavy overhaul program at its Beech Grove, Ind., shop. This program is producing six to eight overhauled cars per month, which will enable Amtrak to maintain its baggage car fleet in top operating condition. Amtrak said it will continue to monitor these functions and increase efforts to improve the safety and reliability of passenger service.

Note.—Copies of the Safety Board's recommendation letters, as well as responses and related correspondence, are provided free of charge. All requests for copies must be in writing, identified by recommendation number. Address requests to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

(49 U.S.C. 1903(a)(2), 1906)

Margaret L. Fisher,

Federal Register Liaison Officer.

October 27, 1980.

[FR Doc. 80-33836 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-58-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee for Screening of Licensing Board Candidates; Meeting

Notice is hereby given in accordance with Section 10 of the Federal Advisory Committee Act that the NRC's Advisory Committee for Technical Members will hold a meeting on November 13 and 14, 1980. The meeting will begin at 9:00 a.m. and will be held at East-West Towers, 4350 East West Highway, Room 415, Bethesda, Maryland 20014.

The Committee will meet in closed session in order to interview and consider the qualifications of candidates to part-time positions as technical members of the Atomic Safety and Licensing Board Panel.

I have determined in accordance with Subsection 10(d) of Pub. L. 92-463 that it is necessary to close these meetings in order to protect information, the release of which would represent an unwarranted invasion of personal privacy under 5 U.S.C. 552b(c)(6). Any discussion not involving personal privacy will be inextricably intertwined with discussion of Exemption 6 matters. For further information, contact Charles J. Fitti, Assistant Executive Secretary, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (telephone 301/492-7814).

Dated this 24th day of October 1980, Washington, DC.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 80-33772 Filed 10-29-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-364]

Alabama Power Co.; Issuance of License No. NPF-8

Notice is hereby given that the Nuclear Regulatory Commission (the Commission) has issued License No. NPF-8 to Alabama Power Company authorizing fuel loading and low power testing of the Joseph M. Farley Nuclear Plant, Unit 2. Joseph M. Farley Nuclear Plant, Unit 2, is a pressurized water reactor located in Houston County, Alabama. Prior public notice of the overall action involving the proposed issuance of a license for fuel loading and low power testing was issued in the **Federal Register** on November 29, 1973 (38 FR 29907).

The application complies with the standards and requirements of the Act and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license.

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement sipce the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

The license is effective as of its date of issuance and shall expire on year after the date, unless extended for good cause shown, or upon earlier issuance or denial of a subsequent licensing action.

A copy of (1) License No. NPF-8, complete with Technical Specifications (NUREG-0697) and Environmental Protection Plan; (2) the report of the Advisory Committee on Reactor Safeguards dated June 12, 1979; (3) the Office of Nuclear Reactor Regulation's Safety Evaluation Report (NUREG-75/034) dated May 1975, Supplement 1 dated October 1975, Supplement 2 dated October 1976, Supplement 3 dated June 1977 and Supplement 4 dated September 1980 (supplements are NUREG-0117); (4) and Final Safety Analysis Report and amendments thereto; (5) the applicant's Environmental Report and supplements thereto; (6) the Draft Environmental Statement dated July 1974; (7) The Final Environmental Statement dated December 1974, the Environmental Assessment dated April 1977, and the Addendum dated September 1980 (NUREG-0727); and (8) the NRC Flood Plain Review of the Joseph M. Farley Nuclear Plant site dated September 17, 1980, are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and the G. S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

A copy of the license may be obtained upon request addressed to the United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Copies of the Safety Evaluation Report and Supplements, and the Final Environmental Statement and addendums may be purchased at current rates, from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, and through the NRC GPO sales program by writing the U.S. Nuclear Regulatory Commission, Attention: Sales Manager, Washington, D.C. 20555. GPO deposit holders can call 301-492-9530.

Dated at Bethesda, Md., this 23rd day of October 1980.

For the Nuclear Regulatory Commission.

B. J. Youngblood,

Chief, Licensing Branch No. 1, Division of Licensing.

[FR Doc. 80-33776 Filed 10-29-80; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. STN 50-528-OL, STN 50-529-OL, STN 50-530-OL]

Arizona Public Service Co., et al. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3); Order Scheduling Prehearing Conference

October 23, 1980.

On July 25, 1980, the U.S. Nuclear Regulatory Commission published in the **Federal Register** a notice of receipt of an application for facility operating licenses for Palo Verde Nuclear Generating Station Units 1, 2 and 3 and notice of opportunity for hearing (45 FR 49732).* Such licenses would authorize Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, Southern California Edison Company, El Paso Electric Company, and Public Service Company of New Mexico (Joint Applicants) to possess, use and operate Palo Verde Nuclear Generating Station, Units 1, 2 and 3, three pressurized water nuclear reactors (the facilities) located on the Joint Applicants' site in Maricopa County, Arizona, approximately 36 miles west of the City of Phoenix.

The notice of opportunity for hearing provided that any person whose interest may be affected by this proceeding may file a petition for leave to intervene in accordance with the Commission's Rules of Practice (10 CFR 2.714). In response to this notice, on August 11, 1980, Patricia Lee Hourihan (Petitioner) submitted a timely petition for leave to intervene and a request for hearing for herself as well as on behalf of two other persons, Kevin Dahl and Christopher Shuey.

Please take notice that this Atomic Safety and Licensing Board has scheduled a prehearing conference in this proceeding at 9:30 a.m. Tuesday, December 2, 1980, at the following location:

Grand Jury Hearing Room, 5th Floor, Federal Building, 230 North First Avenue, Phoenix, AR 85025

The purpose of the prehearing conference is to consider the petition for leave to intervene filed by the Petitioner and to permit identification of the issues in this proceeding.

On or before November 14, 1980, Petitioner shall file a supplement to her petition for leave to intervene which must include a list of the contentions which are sought to be litigated in this proceeding and the bases for each contention set forth with reasonable specificity. In order to advance the purposes of the prehearing conference, Joint Applicants and the NRC Staff are directed to file their responses to Petitioner's supplemental petition on or before November 24, 1980.

Dated at Bethesda, Md., this 23rd day of October 1980.

It is so ordered.

For the Atomic Safety and Licensing Board.

Robert M. Lazo,

Chairman.

[FR Doc. 80-33775 Filed 10-29-80; 8:45 am]

BILLING CODE 7590-01-M

*The July 25, 1980, notice is a clarification of an earlier notice published in the **Federal Register** (45 FR 46941-43) on July 11, 1980.

[NUREG-0487 Supplement 1]

Mark II Containment Lead Plant Program Load Evaluation and Acceptance Criteria; Issuance and Availability

The Nuclear Regulatory Commission (NRC) staff and our consultants have prepared a report entitled "Mark II Containment Lead Plant Program Load Evaluation and Acceptance Criteria" (NUREG-0487 Supplement 1), dated September 1980. The Report provides the staff's partial resolution of the NRC's Generic Technical Activities A-8, "Mark II Containment Pool Dynamic Loads" and A-39, "Determination of Safety-Relief Valve (SRV) Pool Dynamic Loads and Temperature Limits for BWR Containment." These are "Unresolved Safety Issues" pursuant to Section 210 of the Energy Reorganization Act of 1974.

The suppression pool hydrodynamic loads associated with a postulated loss-of-coolant accident (LOCA) were first identified during large scale testing of the Mark III containment system design in the period 1972 through 1974. These newly identified loads, that had not been explicitly considered in the original design of the Mark II containment, result from the dynamic effects of drywell air and steam being rapidly forced into the suppression pool, during a postulated LOCA. In addition, recent experience at operating plants demonstrates that the dynamic effects of safety/relief valve (SRV) discharges to the suppression pool can be substantial.

As a result of these concerns, the Mark II owners formed a group to develop a program consisting of both analytical and experimental tasks to support their pool dynamic loads application methods. In May 1977, Mark II owners divided the overall program into two parts: A Lead Plant Program (LPP) and a Long Term Program (LTP). The LPP was developed to establish a conservative design basis appropriate for the anticipated 40 year life of each Mark II BWR facility.

The United States Nuclear Regulatory Commission reviewed the LPP and issued the Mark II Containment Lead Plant Program Load Evaluation and Acceptance Criteria Report (NUREG-0487) in October 1978. That report included an evaluation of the Mark II Owners' proposed methodology for establishing pool dynamic loads for the lead Mark II plants and a description of the bases for load methodologies that we find acceptable for use in the individual plant unique assessments. Since that report was issued, the Mark II owners submitted additional reports in which they proposed alternative load methodologies for use in the evaulation of Mark II plants. We have completed our evaluation of these alternative load specifications. The staff's evaluation of these alternative loads is presented in this Supplement 1 to NUREG-0487.

In implementing the criteria described in NUREG-0487 and Supplement 1, all applicants are required to document conformance with staff's criteria, deviations from the criteria and bases for the deviations in their Design Assessment Report during the FSAR review.

Additional refinement of selected Mark II loads recently proposed by the

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Mark II owners is under review by the staff and will be documented in a future NRC report. There are no operating BWR plants with Mark II containments in the United States.

Copies of the report will be available after September 1980. Copies will be sent directly to utilities, utility industry groups and associations and environmental and public interest groups. Other copies will be available for review at the NRC Public Document Room, 1717 H Street, NW, Washington, D.C.; and the Commission's local public document rooms located in the vicinity of existing nuclear power plants. Addresses of these local public document rooms can be obtained by contacting the Chief, Local Public Document Rooms Branch, Mail Stop 309, Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 492-7536. A single copy of NUREG-0588 will be provided free of charge, while the supply lasts, upon written request of a full participant in an ongoing NRC proceeding. This request must identify the requester as a participant and should be addressed to Director, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Bethesda, Md., the 3d day of September 1980.

For the Nuclear Regulatory Commission.

Frank Schroeder,

Acting Director, Division of Sofety Technology, Office of Nuclear Reactor Regulotion.

[FR Doc. 80-33774 Filed 10-29-80; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guide; Withdrawal

The Nuclear Regulatory Commission has withdrawn Regulatory Guide 3.23, "Stabilization of Uranium-Thorium Milling Waste Retention Systems," that was issued in November 1974 to describe the principal stabilization, maintenance, and long-term control criteria that should be considered in connection with the construction and use of tailings retention systems at uranium and thorium mills containing radioactive materials in concentrations exceeding those specified in Appendix B of 10 CFR Part 20.

In amendments to 10 CFR Parts 30, 40, 70, and 150 that were published in the Federal Register on October 3, 1980 (45 FR 65521), the Commission has upgraded its requirements for uranium and thorium milling activities, including its requirements concerning tailings and wastes generated from these activities. These amendments take into account the requirements mandated in the Uranium Mill Tailings Radiation Control Act of 1978, as amended, as well as other recent information on these milling activities. The guidance provided in Regulatory Guide 3.23 does not reflect these new requirements.

Regulatory guides are developed to describe and make available to the public methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems. Guides may be withdrawn when they are superseded by the Commission's regulations, when equivalent recommendations have been incorporated in applicable approved codes and standards, or when changes in methods and techniques or in the need for specific guidance have made them obsolete.

(5 U.S.C. 552(a))

Dated at Rockville, Md. this 22nd day of October 1980.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Standards Development.

[FR Doc. 80-33773 Filed 10-29-80; 8:45 am]

BILLING CODE 7590-01-M

Advisory Panel for the Decontamination of Three Mile Island, Unit 2

An Advisory Panel for the Decontamination of Three Mile Island, Unit 2, was established by the Nuclear Regulatory Commission of consult with and provide advice to the Commission on major activities required to accomplish expeditious and safe cleanup of the TMI-2 facility.

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel will hold its first meeting on November 12, 1980, from 7:00 p.m.-10:00 p.m. at The Forum—Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania. The meeting will be open for public observation.

At this meeting the Panel will hold preliminary discussions to establish communications and to clarify the role of the panel and the scope of its activities.

Further information on the meeting may be obtained from Dr. William Travers, Three Mile Island Program Office, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone 301/492-7811.

Dated: October 28, 1980.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 80-33982 Filed 10-29-80; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Agency Forms Under Review

October 27, 1980.

Background

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Federal Reports Act (44 USC, Chapter 35). Departments and agencies use a number of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibility under the Act also considers comments on the forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

Every Monday and Thursday OMB publishes a list of the agency forms received for review since the last was published. The list has all the entries for one agency together and grouped into new forms, revisions, extensions, or reinstatements. Some forms listed as revisions may only have a change in the number of respondents or a reestimate of the time needed to fill them out rather than any change to the content of the form. The agency clearance officer can tell you the nature of any particular revision you are interested in. Each entry contains the following information:

The name and telephone number of the agency clearance officer (from whom a copy of the form and supporting documents is available);
The office of the agency issuing this form;
The title of the form;
The agency form number, if applicable;
How often the form must be filled out;
Who will be required or asked to report;
An estimate of the number of forms that will be filled out;
An Estimate of the total number of hours needed to fill out the form; and
The name and telephone number of the person or office responsible for OMB review.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. Our usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the **Federal Register** but occasionally the public interest requires more rapid action.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review. If you experience difficulty in obtaining the information you need in reasonable time, please advise the OMB reviewer to whom the report is assigned. Comments and questions about the items on this list should be directed to the OMB reviewer or office listed at the end of each entry.

If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer of your intent as early as possible.

The timing and format of this notice have been changed to make the publication of the notice predictable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Jim J. Tozzi, Assistant Director for Regulatory and Information Policy, Office of Management and Budget, 726 Jackson Place, Northwest, Washington, D.C. 20503.

DEPARTMENT OF DEFENSE

Agency Clearance Officer—John V. Wenderoth—697-1195

Extensions

- Department and other Report of Inventions and Subcontracts, DD 882
on occasion
Department of Defense Contractors, 2,000 Reponses; 1,000 hours, Kenneth B. Allen, 395-3785
- Departmental and Other Industrial Plant Equipment Replacement Analysis Work Sheet, DD 1106
on occasion
Industrial Plant Equipment Replacement Analysis Worksht, 47 Responses, 1,880 hours, Kenneth B. Allen 395-3785

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Clearance Officer—Joseph J. Strand—245-7488

New Forms

- Alcohol, Drug Abuse and Mental Health Administration
Survey of Discharges From Non-Federal General Hospital Psychiatric Impatient Units
Adm 186-8
Single time
Non-Federal General Hosp. Prov. Psych. Impat. Serv., 300 responses; 1,750 hours
Eisinger, Richard, 395-6880
- Health Services Administration
Supplemental Information Collection Requirements for Black Lung Clinics Program
Annually
Public and private nonprofit entities, 100 responses; 1,000 hours
Eisinger, Richard, 395-6880
- Office of Human Development
National Survey of Spousal Abuse
Single time
Women presently married or living with a male, 5,000 responses, 2,500 hours
Barbara F. Young, 395-6880

Revisions

- Health Care Financing Administration (Departmental)
End-Stage Renal Disease Medical Information System
HCFA-2742 thru HCFA-2746
On occasion
Fac. certified to prov. ESRD serv., 411,340 responses; 26,137 hours
Eisinger, Richard, 395-6880
- National Institutes of Health
Hanes Inepidemiologic Followup: Tracing Items
Single time
Neighbors, family mbrs. phys. other knowl. of respd. loca., 27,000 responses, 3,602 hours
Off. of Federal Statistical Policy and Standard, 673-7974
- National Institutes of Health
Breast Self-Examination Questionnaire
Other (see SF-83)
Female students and their mothers, 3,473 responses; 2,449 hours
Off. of Federal Statistical Policy and Standard, 673-7974

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Agency Clearance Officer—Robert G. Masarsky—755-5184

Revisions

- Housing Management
Loan Management Report
HUD-4370A/ 4370-PFL
On occasion
Municipalities and other spec. units of loc. govt., 1,500 responses; 750 hours
Richard Sheppard, 395-6880

DEPARTMENT OF LABOR

Agency Clearance Officer—Paul E. Larson—523-6341

New Forms

- Employment and Training Administration
Survey of Employment Services to Disabled Veterans
MT-312
Single time
Young disabled veterans, 10,000 responses; 2,500 hours
Arnold Strasser, 395-6880

ACTION

Agency Clearance Officer—Dana Rodgers, Acting—254-8501

New Forms

- Refugee Resettlement Program Process and Outcomes
Evaluation
Single time
Volunteer service providers, MAA's local councils, 165 responses; 159 hours
Arnold Strasser, 395-6880
- Youth Employment Support Attitude and Process Documentation
Evaluation
Single time
Youth partic., comp. grp yth, volu, etc. and non-prof. orgs., 1,775 responses; 1,443 hours
Arnold Strasser, 395-6880

ENVIRONMENTAL PROTECTION AGENCY

Agency Clearance Officer—Mr. Mel Kollander—287-0747

Revisions

- Information Required From Stationary Air Sources for Noncompliance Penalties
Single time
Major violators of the Clean Air Act, 174 responses, 5,568 hours
Edward H. Clarke, 395-7340

OFFICE OF PERSONNEL MANAGEMENT

Agency Clearance Officer—John P. Weld—632-7737

Revisions

- Mid-Level Data Sheet
CSC-1056A and CSC-1056B
On occasion
Applicants for Federal Employment, 14,000 responses; 7,000 hours

Veeder, Robert N., 395–4814

C. Louis Kincannon,

Acting Deputy Assistant Director For Reports Management.

[FR Doc. 80–33837 Filed 10–29–80; 8:45 am]

BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

Boston Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

October 24, 1980.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

Metro-Goldwyn-Mayer Film Co.
Common Stock, No Par Value (File No. 7–5771)

Sunshine Mining Company (Del.)
Capital Stock, $.50 Par Value (File No. 7–5772)

These securities are listed and registered on one or more other national securities exchanges and are reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 17, 1980 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80–33825 Filed 10–29–80; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 17244; SR–CBOE–80–24]

Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

October 24, 1980.

In the matter of Chicago Board Options Exchange Incorporated, LaSalle at Jackson, Chicago, Illinois 60604 (SR–CBOE–80–24).

On September 8, 1980, the Chicago Board Options Exchange Incorporated filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b–4 thereunder, copies of a proposed rule change which eliminates the requirement that members submit monthly reports of certain uncovered short positions, and requires instead that such reports be submitted only if requested by the CBOE.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 17143, September 12, 1980) and by publication in the **Federal Register** (45 FR 62598, September 19, 1980). No written statements with respect to the proposed rule change were filed with the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80–33826 Filed 10–29–80; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 17245; SR–PSE–80–14]

Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change

October 24, 1980.

In the matter of Pacific Stock Exchange, Incorporated, 301 Pine Street, San Francisco, California 94104 (SR–PSE–80–14).

On September 4, 1980, the Pacific Stock Exchange, Incorporated ("PSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which establishes procedures for the execution of cross transactions on the options floor of the PSE.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 17144, September 12, 1980) and by publication in the **Federal Register** (45 FR 62241, September 18, 1980). No written statements with respect to the proposed rule change were filed with the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80–33827 Filed 10–29–80; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–17242; File No. SR–NYSE–80–36]

New York Stock Exchange, Inc.; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s (b)(1), as amended by Pub. L. No. 94–29, 16 (June 4, 1975), notice is hereby given on September 25, 1980, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Exchange's Statement of Terms of Substance of the Proposed Rule Change

The proposed rule change requires Exchange approval of member and member organization bank loan agreements which are given capital value for otherwise non-allowable fixed assets and securities with no ready market value.

Purpose of Proposed Rule Change

SEC Rule 15c3–1 allows certain fixed assets and limited liquidity securities which would not ordinarily qualify for capital purposes to be given capital value when money is actually loaned by banks on these assets as collateral. However, Rule 15c3–1 does not require approval of these loan documents. Present Exchange Rule 328 does require approval of some such loans, but does not cover all possible types. Exchange administrative practice has been to have member organizations obtain Exchange approval before entering into any such agreement where value is to be allowed for capital purposes. The proposed amendment to Rule 328 reinforces this practice by incorporating it into a Rule. The Exchange will not require approval of agreements where the member or member organization does not seek to be allowed value for capital purposes.

The proposed amendment to Rule 325 is a cross-reference to Rule 328.

Basis Under the Act

The basis under the Act for this proposed Rule change is Section 6(b)(5) to insure adequacy of member and member organization net capital, thus protecting investors and the public interest.

Comments Received From Members, Participants or Others

No comments were solicited or received with respect to the subject rule change.

Burden on Competition

The Exchange does not believe the proposed rule change imposes any burden on competition.

Until December 4, 1980, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted by November 20, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

October 23, 1980.

[FR Doc. 80–33824 Filed 10–29–80; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 06/06–5240]

Southern Orient Capital Corp., Application for a License as a Small Business Investment Company

Correction

In FR Doc. 80–33110 appearing on page 70365 in the issue of Thursday, October 23, 1980, the heading should have read as set forth above.

BILLING CODE 1505–01

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intent To Prepare Environmental Impact Statement; Fulton-DeKalb Counties, Ga.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Fulton-DeKalb Counties, Georgia.

FOR FURTHER INFORMATION CONTACT: David H. Densmore, Development Engineer, Federal Highway Administration, Suite 700, 1422 West Peachtree Street, N.E., Atlanta, Georgia 30309, telephone (404) 881–4758, or Peter Malphurs, State Environmental Analysis Engineer, Georgia Department of Transportation, Office of Environmental Analysis, 65 Aviation Circle, Atlanta, Georgia 30336, telephone (404) 696–4634.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Georgia Department of Transportation (Georgia DOT) will prepare an environmental impact statement (EIS) on a proposal to extend the Lakewood Freeway in the City of Atlanta from near Interstate 75 in Fulton County to Interstate 20 KeKalb County. Included in the proposal is a connection between this facility and Interstate 675. The proposed project is identified as I–420–1(68) and represents the construction of a limited-access highway facility for a distance of approximately five (5) miles. Extension of this freeway is considered necessary to provide for the existing and projected traffic demand.

Alternatives under consideration include: (1) taking no action; and (2) the study of three general corridor locations extending easterly to and including a corridor positioned in a north-south direction between Interstate 285 and Interstate 20.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. A series of public meetings will be held in Atlanta and DeKalb County in the latter part of 1980, and in the Spring and Summer of 1981, for input on the local level. A formal scoping meeting will also be held within this time period to receive input from interested State and Federal agencies. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. No additional scoping meetings are planned at this time.

To ensure that the full range of issues related to this proposed project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

The Catalog of Federal Domestic Assistance Program Number is 20.205, *Highway Research, Planning and Construction.* The provisions of OMB Circular No. A–95 regarding State and local clearinghouse review of Federal and Federally assisted programs and projects apply to this program.

Issued on: October 23, 1980.

David H. Densmore,

Development Engineer, Atlanta, Ga.

[FR Doc. 80–33816 Filed 10–29–80; 8:45 am]

BILLING CODE 4910–22–M

Intent To Prepare Environmental Impact Statement; Stewart, Webster, Sumter, Terrell, Lee and Dougherty Counties, Ga.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project

in Stewart, Webster, Sumter, Terrell, Lee and Dougherty Counties, Georgia.

FOR FURTHER INFORMATION CONTACT: David H. Densmore, Development Engineer, Federal Highway Administration, Suite 700, 1422 West Peachtree Street, N.E., Atlanta, Georgia 30309, telephone (404) 881–4758, or Peter Malphurs, State Environmental Analysis Engineer, Georgia Department of Transportation, Office of Environmental Analysis, 65 Aviation Circle, Atlanta, Georgia 30336, telephone (404) 696–4634.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Georgia Department of Transportation (Georgia DOT) will prepare an environmental impact statement (EIS) on a proposal to widen existing portions of S.R. 50 and S.R. 55 or alternate parallel routes from two lanes to four lanes separated by a grassed median, between Richland, Georgia, and Albany, Georgia, a distance of about 51 miles. The project, known as Corridor "Z", will include urban bypasses on new location in some areas and certain sections will be constructed as four lane with a flush median to reduce required right-of-way.

Alternatives under consideration include two major alternate routing locations and the no-build alternative. The alternate locations have common termini but follow different existing roads between them and are separated by as much as 15 miles. Additional minor location alternatives will be considered in some areas where short new location bypasses around small cities are deemed appropriate.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. Formal scoping meetings are not anticipated, since the probable environmental impacts are not great and all interested parties have been given ample opportunity for preliminary input. Should a need for such meetings arise, appropriate notice will be given. Several public meetings have been held in the area already to obtain citizen comments. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing.

To ensure that the full range of issues related to this proposed project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

The Catalog of Federal Domestic Assistance Program Number is 20.205, *Highway Research, Planning and Construction.* The provisions of OMB Circular No. A–95 regarding State and local clearinghouse review of Federal and Federally assisted programs and projects apply to this program.

Issued on: October 23, 1980.

David H. Densmore,

Development Engineer, Atlanta, Georgia.

[FR Doc. 80-33617 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

Consolidated Rail Corporation (Amtrak); Hearing

The Consolidated Rail Corporation (Conrail) has filed an application with the Federal Railroad Administration (FRA) under section 406 of the Rail Passenger Service Act, 45 U.S.C. 566, for approval to dispose of certain railroad facilities between Miami, Indiana and Indianapolis. Section 406 provides that a railroad may not downgrade or dispose of any facilities that were in use in connection with the operation of rail passenger services by Amtrak on February 1, 1979 without obtaining the approval of the Secretary of Transportation. Because Amtrak has filed an objection to this application, the Federal Railroad Administrator, through delegation from the Secretary, is required to make a determination of the costs Conrail could avoid if it were not required to retain the facilities. If Amtrak does not agree to pay such avoidable costs, the Administrator is required to approve Conrail's application.

Pursuant to 49 CFR 200.9, the Administrator has appointed a panel to make the avoidable cost determination. The panel has decided to hold a public, fact-finding hearing before making that determination, and, accordingly, a public hearing is hereby set for 10 a.m. on November 6, 1980 in Room 8240 of the Nassif Building located at 400 7th Street, S.W., Washington, D.C. 20590.

The hearing will be informal and will be conducted in accordance with the provisions of section 200.9 of the Federal Railroad Administration Informal Rules of Practice for Passenger Service (49 CFR Part 200). The chairman of the panel will conduct this hearing, and the issues will by limited to the quantification of the avoidable costs. The panel expressly waives the thirty day advance receipt of written direct evidence, but continues to require that copies of such evidence be furnished to all parties concurrently with the submission to the Docket Clerk.

The hearing will permit oral presentations but will not be an adversary proceeding, and, therefore, except for the panel, no cross-examination of persons presenting statements will be permitted. The chairman of the panel will make an opening statement outlining the scope of the hearing and will provide interested persons with an opportunity to make statements or rebuttal statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the start of the hearing.

This notice is issued under authority of section 406 of the Rail Passenger Service Act, 45 U.S.C. 566, and section 1.49(1) of the regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(1).

Issued in Washington, D.C., on October 24, 1980.

Robert S. Vermut,

Chairman, 406 Panel.

[FR Doc. 80-33856 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

National Accident Sampling System Advisory Committee; Public Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. I), notice is hereby given of meetings of the National Accident Sampling System (NASS) Advisory Committee to be held on November 17 and 18, 1980. The meetings will be held at the DOT Headquarters Building, 400 Seventh Street, S.W., Washington, D.C., in room 2230. The meetings will start at 9:00 a.m. on both days and the agenda will consist of NHTSA staff briefings on the NASS Program status on the first morning, followed by special interest subcommittee meetings thereafter.

Attendance is open to the interested public, but limited to the space available. With the approval of the Chairperson, members of the public may present a written statement to the Committee at any time.

This meeting is subject to the approval of the appropriate DOT officials. Additional information may be obtained from the NHTSA Executive Secretary, Room 5221, 400 Seventh Street, S.W., Washington, D.C. 20590, telephone 202–426–2872.

Issued in Washington, D.C., on October 24, 1980.

Wm. H. Marsh,

Executive Secretary.

[FR Doc. 80-33857 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-59-M

Office of the Secretary

[Notice No. 80–19]

Construction of Interstate 69 Between Lansing and Charlotte, Mich.; Public Hearing

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of public hearing.

SUMMARY: The purpose of this Notice is to announce a public hearing to be held on November 24, to consider the proposed route for Interstate 69 between Lansing and Charlotte, Michigan.

DATE: November 24, 1980.

FOR FURTHER INFORMATION CONTACT: Mrs. Camille Cleveland, (202) 426–4396, Office of Environment and Safety, Department of Transportation, Room 9422, 400 7th Street SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: The Department of Transportation has approved two environmental impact statements and authorized right-of-way acquisition for construction of I–69 between Charlotte and Lansing, Michigan. Section 327 of Pub. L. 96–400, "The Department of Transportation and Related Agencies Appropriations Act, 1981", states that no funds shall be available for Interstate 69 between Charlotte and Lansing for 90 days after enactment of that statute (October 9, 1980). The legislative history indicates that it was anticipated that during this 90-day period, the Department would review the matter and conduct a public hearing with respect to the highway location. The legislative history also recognizes that the final decision on project location must be made by the Michigan Department of Transportation.

In order to fulfill the Department's responsibilities under section 327, the Department of Transportation has established a task force to review the proposed highway and its effects, as well as alternative locations, and to conduct a public hearing. The task force will consist of Douglas Wright, Associate Deputy Secretary, Leon Larson, Director, Office of Environmental Policy, Federal Highway Administration, and Roberta Gabel, Office of the General Counsel.

The public hearing will be held on Monday, November 24, 1980, at a location in the project vicinity to be announced shortly in notices in local media. The afternoon session of the hearing is tentatively scheduled to begin at 2:00 p.m. and an evening session will begin at 7:00 p.m. (Eastern Standard Time).

Interested citizens, representatives of civic organizations and public officials are invited to present their views. Participants are encourged to limit each presentation to 10 minutes. Written copies of presentations will be helpful but are not required. Additionally, written presentations by any interested persons may be submitted directly to the Office of Environment and Safety (P–20), Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590, and indicate "I–69 Presentation" on the envelope. Such written presentations should be received no later than December 2, 1980.

Individuals wishing to testify at the hearing may sign up to do so at the beginning of either the afternoon or evening session or may be scheduled in advance by writing to the above address ("I–69 Hearing" on the envelope) to be received by November 20, or by phoning 202–426–4396 by that date. It would be helpful if persons wishing to speak provided the following information:

1. Name
2. Address
3. Phone number during normal working hours
4. Capacity in which presentation will be made (i.e. private individual, public official or civic, public interest or industry group representative, with name of group represented)
5. Time desired for presentation
6. Session (afternoon or evening) desired for presentation

The public and the press are invited to the hearing.

Copies of the approved final environmental impact statements for I–69 are available for public inspection at the following locations:

Michigan Department of Transportation, Public Involvement Section, Transportation Building, 425 West Ottawa, Lansing, Michigan
Grand Ledge City Clerk's Office, 200 East Jefferson Street, Grand Ledge, Michigan
Potterville City Clerk's Office, 223 West Main Street, Potterville, Michigan
Eaton County Clerk's Office, County Court House, 1045 Independence Boulevard, Charlotte, Michigan

Issued in Washington, D.C., on October 27, 1980.

Mark G. Aron,

Deputy General Counsel.

[FR Doc. 80-33882 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-62-M

Research and Special Programs Administration

State of Rhode Island Rules and Regulations Governing the Transportation of Liquified Natural Gas and Liquefied Propane Gas Intended To Be Used by A Public Utility, Inconsistency Ruling (IR–2); Notice of Decision on Appeal

I. Introduction

On December 1, 1976, the State of Rhode Island, Division of Public Utilities and Carriers applied for an administrative ruling on whether the State's "Rules and Regulations Governing the Transportation of Liquefied Natural Gas and Liquefied Propane Gas Intended to be Used by Public Utility"(Rules and Regulations) were inconsistent with the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. 1801 *et seg.*) or regulations issued thereunder. The ruling was sought pursuant to procedures at 49 Code of Federal Regulations (CFR) 107.201 to 107.211.

Notice of the Rhode Island application was published in the **Federal Register** on March 12, 1979 (44 FR 13617). On December 13, 1979, the Associate Director for Operations and Enforcement, Materials, Transportation Bureau (MTB) issued his ruling (IR–2) (44 FR 75566; December 20, 1979). In that ruling, the Associate Director determined that certain of the Rhode Island requirements were inconsistent with Federal requirements under the HMTA and thus were preempted.

Specifically, sections II, III, V, part of VI, VII and IX of the Rhode Island Rules and Regulations were found to be inconsistent with the HMTA or regulations issued thereunder. These sections would impose the following requirements: 1) the obtaining of a permit prior to the performance of subject transportation (§§ II and III); 2) a limitation on permissible hours of travel (§ V); 3) the filing of a written notice after "any accident, mishap, or any safety irregularities" (part of § VI); 4) a rear bumper sign (§ VII): and 5) a frangible shank-type lock on trailers (§ IX). The remaining Rhode Island requirements were determined to be not inconsistent and therefore not preempted.

II. The Rhode Island Appeal

A. *Scope of the appeal.* The procedural regulations at 49 CFR 107.211 provide for an administrative appeal of the Associate Director's decision to the Director of the MTB. On January 21, 1980, the Division of Public Utilities and Carriers (Division) submitted a notice indicating that the Division was appealing the Associate Director's decision as to all of the Rhode Island requirements found inconsistent, with the exception of the requirement of a frangible lock on trailers. On June 24, 1980, the Division perfected its appeal. In this final filing, the Division abandoned its appeal with regard to rear bumper signs. The remaining Rhode Island requirements found inconsistent in IR–2, the permit system, hours of travel restrictions and notice of accidents (sections II, III, IV, and part VI), are the subject of this decision on appeal.

B. *Contentions on appeal.* The HMTA at § 112(a) (49 U.S.C. 1811(a)) preempts those State or local requirements that are inconsistent with Federal requirements. The administrative procedures, under which the original ruling and this appeal were sought, set forth at 49 CFR 107.209(c) the criteria for determining inconsistency:

(1) Whether compliance with both the State political subdivision requirement and the HMTA or the regulations issued under the HMTA is possible; and

(2) The extent to which the State or political subdivision requirement is an obstacle to the accomplishment and execution of the HMTA and the regulations issued under the HMTA.

The criteria in the regulations are based on case law criteria developed by the U.S. Supreme Court for determining the existence of conflicts.

The ruling by the Associate Director found that sections II and III of the Rhode Island Rules, involving application for and the obtaining of a permit prior to subject transportation, and section IV which would prohibit subject transportation between 7:00–9:00 a.m. and 4:00–6:00 p.m. Monday through Friday would result in delays in transportation that he deemed to be unnecessary, and therefore inconsistent with 49 CFR 177.853.

Section VI, to the extent that it requires written notice to two Rhode Island agencies within twenty-four hours of "any accident, mishap, or any safety irregularities" was found to be inconsistent in light of the Federal incident reporting requirement at 49 CFR 171.16.

On appeal, the Division of Public Utilities and carriers argues that the Associate Director in IR–2 incorrectly applied the criteria at 49 CFR 107.209(c) to the Rhode Island requirements in question. Specifically, the Division contends that MTB's interpretation of the permit requirements was incorrect in that permits are valid for up to two weeks no matter how many trips are made and that the permit application and issuance process does not result in delays in transportation. With regard to the curfew provision, the Division states that the delays assumed by MTB were only conjectural and that the prohibition on transport during certain hours lessens the possibility of accidents and, to the extent that accidents do occur, reduces impacts that might be associated with rush hour traffic. Finally, the Division urges that their written accident report serves purposes that MTB's report does not and that the information provided by the report is needed to determine which vehicles to reinspect.

III. Decision on Appeal

A. *Inconsistency Ruling versus Nonpreemption Determination.* It is essential that the distinction between an inconsistency ruling, which is the procedure involved here, and a nonpreemption determination be understood. The inconsistency ruling is tied to § 112(a) of the HMTA and involves a decision as to whether or not a State or local requirement is inconsistent with and therefore preempted by a Federal requirement. The opinion in IR–2 noted that such decisions have traditionally been made by the courts, but went on, at 44 FR 75567, to point out the reasons for MTB's administrative procedure:

> An inconsistency ruling provides an alternative to litigation for a determination of the relationship of Federal and State or local requirements. If a State or political subdivision requirement is found to be inconsistent, such a finding provides the basis for a determination, which can only be made by the Secretary of Transportation or his delegate, as to whether there is to be a waiver of preemption pursuant to § 112(b) of the HMTA.

Section 112(b) (49 U.S.C. 1811(b)) provides that an otherwise inconsistent and thus preempted State or local requirement is "nonpreempted" if it is determined by the Department of Transportation that the State or local requirement provides an equal or greater level of safety as that afforded by the Federal requirements and does not unreasonably burden commerce. Procedures for implementing § 112(b) are at 49 CFR 107.215 to 107.225. The distinction between § 112(a) and § 112(b) is important because at several points the Division argues the level of safety provided by their requirements. Level of safety is one of the criteria for nonpreemption set out in the HMTA. The fact that equal or greater level of safety is provided is a prerequisite for a determination of nonpreemption to be made. The level of safety, however, is not conclusive nor even necessarily relevant in the initial preemption decision.

B. *Application of the Rhode Island requirements.* A major thrust of the Division's appeal was that the permit and travel time limitations did not *in actual practice* result in the unnecessary delays that IR–2 found would occur. In the processing of this appeal, I have had two occasions to communicate with the Division in writing regarding the scope of the issues to be addressed in its appeal. In a letter dated May 19, 1980, to Mr. Edward F. Burke, Administrator of the Division of Public Utilities and Carriers, I stated *inter alia,* the following:

> In responding to your concerns about the procedures for issuing inconsistency rulings, I must reiterate to you that such a ruling is an advisory opinion of the Department of Transportation. As is evident from our procedures, it is not the product of formal adjudication under the Administrative Procedure Act, or any other type of adversary proceeding. An inconsistency ruling generally turns on legal issued. The process was not designed for the resolution of factual disputes, but rather to indicate to affected parties, including concerned State and local jurisdictions, the Department's view as to the propriety of specific State of local hazardous materials transportation requirements under the Federal statute and regulatory scheme.
>
> You contend, for example, that "no delay, at any time, has resulted or will result in the future, from the permit requirement or the application thereof." To the extent that this can be shown by legal arguments concerning the plain meaning or interpretation attributed to the Division's rules and regulations in IR–2, I would welcome your addressing this in your appeal. However, the processing of an inconsistency ruling does not turn on how a precisely worded State or local requirement may differ from the intent of its drafters or the manner in which it is administered.
>
> I would like to elaborate and provide a specific example of what I was referring to in my letter. Our procedures for inconsistency rulings make it difficult for factual disputes between commenters to be raised, much less aired and resolved. This is not a flaw, however. The value in our procedure goes beyond the resolution of an individual controversy. At a time when hazardous materials transportation is receiving a great deal of public attention, the forum provides MTB an opportunity to express its views on the proper role of State and local vis-a-vis Federal regulatory activity in this area.

Any benefit is greatly eroded to the extent that the ruling depends on the facts of a subject requirement's administration rather than the specific written requirements themselves. The extreme example would be the nonimplementation or nonenforcement of a directly conflicting State or local requirement. Obviously, it makes no sense for MTB to say that since there is no enforcement there is no conflict. By the same token, it is illogical and inappropriate for MTB to look at the actual administration of a requirement, rather than the requirement itself, when determining whether or not there is an inconsistency.

The Rhode Island Rules and Regulations at section II list what must be included in a permit application. Two of the requirements, at paragraphs 10 and 11, involve separate certifications from the shipper and the carrier "that the load *is* in compliance with the applicable regulations * * *" (emphasis added). In IR–2, it was noted that the information to fulfill these two application requirements, as well as a third, could not be met until after loading was completed. In its appeal, the Division claims that the required certifications are "forward looking expressions" and illustrates this by quoting the requirements. The required carrier certification (called an affirmation by the Division) is:

> I hereby affirm that the above-described cargo *will be* loaded, placarded and transported in full compliance with the applicable motor carrier safety regulations published by the Federal Department of Transportation. (emphasis added).

The change, from the present tense in the Rules and Regulations themselves to the future tense in the Division's application of those rules, cannot be the basis its opinion on the plain meaning of the subject requirement and where that meaning is unclear on the most logical interpretation possible. Strained interpretations are no more acceptable for MTB's purposes than clearly wrong ones.

C. *Permit requirement.* In IR–2, it was noted, at 44 FR 75571, that the Rhode Island Rule regarding the permit application was ambiguous in that the sentence "[t]he application for a permit may be submitted for a period of use of up to two weeks duration prior to utilization of said permit" could be interpreted to allow an application for a permit to be made up to two weeks prior to a given movement or could be interpreted to mean that a single permit would be valid for up to two weeks for either a single movement or multiple movements. The wording is so inarticulate that it admits of no real logical interpretation. However, in IR–2 it was interpreted to mean that a separate permit would be required for each transportation movement. This interpretation was bolstered by the fact, noted previously, that as written certain of the permit application requirements called for information that could only be provided for each movement after the cargo tank was loaded and ready for transportation.

The Division's appeal, however, states that the application and permit provisions have been applied in such a manner as to allow for a permit to be issued for up to two weeks duration durings which any number of separate transportation movements may be made. This interpretation does not account, however, for the movement specific application requirements. Even accepting, for the sake of argument, that the Division's interpretation that a permit may be valid for two full weeks does not dispose of the matter. While the specific language quoted above may be ambiguous, not all the permit requirements have that susceptibility.

As mentioned earlier, a permit application, according to the Rules and Regulations, must include two loading certifications stated in the present tense. The Division, to support its contention of no actual delays in transportation, has quoted its "forward looking" affirmations. These affirmations are not the certifications required by the Rules and Regulations. The fact that the Division has chosen not to implement the Rules and Regulations as written cannot provide the basis for a decision that there is not inconsistency. *As written,* the application requirements themselves require information that is movement specific. The required provision of this information prior to the issuance of a permit would result in delays in transportation that the Associate Director, in IR–2, found to be unnecessary. The record clearly supports this determination.

Another matter raised in IR–2 was the problem of duplicative requirements. Uniformity is the touchstone of an effective program for regulating the interstate transportation of hazardous materials. When individual States and localities impose their own separate requirements, a number of readily envisioned difficulties arise. While there may be benefits to be realized from such additional requirements in certain instances, there are absolutely none to be gained from a system that essentially duplicates a Federal requirement, but requires for compliance that an additional form differing from the Federally-mandated one be carried aboard the transport vehicle.

In IR–2, it was stated that "[n]o matter what the form, any State or local requirement that asks for an additional piece of paper that supplies the same information as is required to be on the DOT shipping paper would be inconsistent with the requirements contained in the Hazardous Materials Regulations." (44 FR 75571). The Division objects to this contention and cites cases for the proposition that highway safety is within the ambit of historic State police powers which are not to be superseded without a clear indication that such was the intent of Congress.

This matter was addressed thoroughly in IR–2, which included the following discussion at 44 FR 75568 (citations omitted):

> There is a longstanding Federal-State relationship in the field of highway transportation safety that recognizes the legitimacy of State action taken to protect persons and property within the State, even where such action impacts upon interstate commerce. However, certain areas of transportation safety demand a strong, predominant Federal role. In the HMTA's Declaration of Policy and in the Senate Committee language reporting out what became § 112 of the HMTA, Congress indicated a desire for uniform national standards in the field of hazardous materials transportation and with the HMTA gave the Department of Transportation the authority to promulgate those standards. Although the HMTA has not totally precluded State or local action in this area, it is the MTB's opinion that to the extent possible Congress intended to make such State or local action unnecessary. The comprehensiveness of the MTB's Hazardous Materials Regulations severely restricts the historical scope of permissible State or local activity. The nature, necessity and number of hazardous materials shipments make uniform standards extremely important.

With regard to the historic Federal-State relationship in the transportation of hazardous materials, the passage of the HMTA clearly altered the historic relationship in favor of a stronger Federal role. The primary purpose of the HMTA's preemption provision, as expressed by its drafters, was "to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." S. Rept. No. 1192, 93d Cong., 2d Sess. 37 (1974). Redundant requirements present the clearest example of the kind of multiplicity that the HMTA was enacted to prevent. As such redundant requirements pose an obstacle to the accomplishment and execution of the HMTA, even if there is

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no direct conflict with an individual Federal requirement.

Striking down redundant information disclosure requirements does not prevent State or local jurisdictions from obtaining and filing the information it seeks, but they must obtain it from the document that meets the Federal requirement, without requiring the truck driver to carry another document with identical information on it.

Certain of the Rhode Island permit application requirements ask for the same information as is contained on the Federally required shipping papers. If such information is required to be carried aboard the vehicle either to obtain a permit further down the road or as part of the information on the permit itself, and the information is the same or very similar to that required by the Federal rules, there exists a redundancy which is inconsistent. In the Rhode Island process, the permit application itself is not a separate document required to be carried aboard the vehicle, and the permit itself presumably does not contain duplicative information. Under these circumstances, I find that the permit application process does not impose redundant requirements.

The fact that there is no redundancy, however, does not alter the fact that the permit provisions of the Rhode Island Rules and Regulations on their face result in delays in transportation that are unnecessary and hence inconsistent with the HMTA and specific Federal requirements, most notably 49 CFR 177.853.

D. *Time of Day Restriction.* Section V of the Rules and Regulations prohibits travel for subject vehicles between the hours of 7:00–9:00 a.m. and 4:00–6:00 p.m., Monday through Friday. In its appeal, the Division maintains that

> [T]he very heart of the travel ban is to lessen the possibility of a mishap occurring within our State during rush hour traffic. Based on information received from the Rhode Island State Police, the probability of an accident occuring during rush hour traffic is greater than during non-peak travel hours. Notwithstanding the greater potential for an accident during these hours there were also two other concerns that played an important role in establishing a travel ban from 7 to 9 AM and 4 to 6 PM. First, the ability of emergency response personnel attempting to reach the scene of the incident could be severely hampered by slow moving or traffic totally stopped. Secondly, should a vehicle transporting LEG [Liquified Energy Cases—be releasing the gas through a leak of some type, the gas would not be dispersed sufficiently into the air if the vehicle is sitting in stopped traffic. Given enough time, the gas surrounding the vehicle could build up enough whereby a small spark from a slowly moving automobile could ignite the gas.

There are several things that need to be pointed out with regard to this line of reasoning. As noted earlier, level of safety is not dispositive of the question of inconsistency. An "equal or greater level of protection to the public than is afforded by the [Federal] requirements" is but one of two criteria at § 112(b) of the HMTA that must be satisfied to obtain a nonpreemption determination. This is not the action being sought here. The difficulty with safety considerations is that there are often untoward aspects that tend to be overlooked. For an extreme example, the greatest possible positive safety impact would be achieved by completely banning the transportation of these materials, but the burdens on commerce and negative safety impacts on neighboring jurisdiction would be enormous. Actions such as the one Rhode Island has taken should be the result of careful study of all the effects of such action, and must be drawn as narrowly as possible to achieve the desired result.

In IR–2, it was stated at 44 FR 75568 that "[t]o the extent that nationwide regulations do not adequately address a particular local safety hazard, State or local governments can regulate narrowly for the purpose of eliminating or reducing the hazard." (Footnote omitted.) I believe this concept is supported by the history and language of the HMTA. The basis for the Associate Director's decision in IR–2 was the fact that Section V of the Rules and Regulations effects a statewide ban which cannot be supported by safety concerns that are essentially local in character. At 44 FR 75569, IR–2 discusses the fact that Rhode Island's relatively high statewide population density does not, of itself, present a unqiue local safety problem.

The broad geographic scope of the Rhode Island requirement means that vehicles are not allowed to move even in areas where rush hour traffic and other safety concerns would not justify such a stoppage. The result of this broad brush approach with no underlying safety analysis is that in a significantly large number of instances, the requirement can produce delays that are unnecessary. Therefore, I agree with the Associate Director that such a requirement is inconsistent with the purposes of the HMTA and the specific provisions of 49 CFR 177.853(a).

E. *Written Accident Reports.* One part of Section VI of the Rules and Regulations requires a written notice to be submitted to two specified State agencies within 24 hours of any "accident, mishap or any safety irregularities." This requirement was found inconsistent in IR–2 with MTB's written incident reporting requirement at 49 CFR 171.16. Another part of Section VI, requiring immediate notice to the State Police was determined to further the State's necessary role in emergency response, and hence was found to be not inconsistent.

Let me begin by correcting a misconception. The Division's appeal states that "[a] carrier covered by the Hazardous Materials Transportation Act must report an incident to the DOT if an incident listed in 49 CFR 171.15(a) occurs. No other incident need be reported." This is not the case. The serious incidents listed under 171.15(a) are those that require immediate notification to DOT. However, 49 CFR 171.16 requires that, in addition to 171.15(a) incidents, *any* unintentional release of a hazardous material be reported to DOT in writing within 15 days.

The Division argues that some of the incidents it requires to be reported are not required to be reported under the Federal regulations. It also maintains that one of the purposes for its requirement, determining which vehicles to reinspect, makes the 15-day filing time for the Federal form too long for the information to be useful to the State.

If the HMTA is to serve its stated purpose and preclude a multiplicity of requirements, its preemptive effect cannot be obviated by a State or locality enacting a similar requirement on the same subject, but with minor variations in purpose or form. The HMTA itself does not preempt the field of hazardous materials transportation regulation. It does, however, authorize MTB to regulate in the area of accident reporting requirements and MTB has so regulated. The narrower field of written accident report requirements directed to hazardous materials carriers has been preempted.

In *National Association of Regulatory Utility Commissioners* v. *Colemon*, 542 F.2d 11 (3d Cir. 1976), the court found that the Federal Railroad Safety Act authorized the issuance of regulations establishing a uniform national accident reporting scheme and specifically preempting States from prescribing accident/incident reporting requirements for rail transportation. I believe that the HMTA provides similar authority in the realm of hazardous materials transportation. Although the MTB requirement does not specifically state its preemptive effect, as did the requirement in *NARUC*, the preemptive effect is clearly stated in the HMTA itself.

The Division believes that the different treatment in IR–2 of the written and immediate notitification requirements is itself inconsistent. I do not agree. Notwithstanding the fact that MTB has an immediate reporting requirement for certain incidents, emergency response to accidents is principally a State and local function. Therefore, there is more room—indeed, more reason—for State and local governments to regulate when emergency response activities are involved.

There are other mechanisms already in place by which the Division could obtain the information it desires. By coordinating with the State Police, the Division can obtain the information submitted as a result of the immediate notification requirements of Section VI. Some of the information may also be available from State accident reports required of all vehicles. Finally, as pointed out in IR–2, the Division can gain access to the DOT incident reporting system.

IV. Conclusion

For the reasons indicated above, I find that the determination by the Associate Director, in IR–2, that the Rhode Island Rules and regulations' requirements regarding permits, limitation on hours of travel and written notification of accidents are inconsistent with the HMTA and regulations issued thereunder is correct. I therefore deny the appeal of the State of Rhode Island, Division of Public Utilities and Carriers, in its entirety.

This decision on appeal constitutes the final administrative action in this proceeding.

(49 U.S.C. 1811(a), 49 CFR 107.211)

Issued in Washington, D.C., on October 17, 1980.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 80-33519 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-60-M

UNITED STATES RAILWAY ASSOCIATION

[Docket 211-26]

Consolidated Rail Corp.; Application for a Loan

Subsection (h) of Section 211 of the Regional Rail Reorganization Act of 1973, as amended (45 U.S.C. 721) (the Act), authorizes the United States Railway Association (Association) to enter into loan agreements with the Consolidated Rail Corporation (Conrail), the National Railroad Passenger Corporation, and any profitable railroad to which rail properties are transferred or conveyed pursuant to Section 303(b)(1) of the Act under conditions and for purposes set forth in this Subsection. Subsection (b) of Section 211 requires that the Association publish notice of the receipt of any application thereunder in the Federal Register and afford interested parties an opportunity to comment thereon.

Conrail submitted a Borrowing Application dated October 17, 1980 requesting new borrowings of $2,931,000.00 Conrail states that it will used the funds to pay the following obligations: (1) Of the Penn Central Transportation Company: Federal Employer's Liability Act (FELA) claims of $2,000,000.00, and wage claims FELA claims of $231,000.00; and (3) of the Erie Lackawanna Railway Company; FELA claims of $500,000.00. The Borrowing Application includes the certification and exhibits required by the Loan Procedures.

Interested parties are invited to submit written comments relevant to this application. Any such submissions must identify by its Docket No., the application to which it relates, and must be filed with the Office of General Counsel, United States Railway Association, 955 L'Enfant Plaza North SW., Washington, D.C. 20595, on or before November 7, 1980, to enable timely consideration by USRA. The docket containing the original application shall be available for public inspection at that address Monday through Friday (holidays excepted) between 8:30 a.m. and 5:00 p.m.

Dated at Washington, D.C., this 27th day of October 1980.

David Kleyps,

Assistant Secretary, United States Railway Association.

[FR Doc. 33838 Filed 10-29-80; 8:45 am]

BILLING CODE 8240-01-M

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Sunshine Act Meetings

Federal Register
Vol. 45, No. 212
Thursday, October 30, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

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United States Railway Association	9

1

[M–298 Amdt. 1; Oct. 27, 1980]

CIVIL AERONAUTICS BOARD.

Notice of addition and closure of an item to the October 29, 1980 meeting.

TIME AND DATE: 9:30 a.m., (after the regularly scheduled Board Meeting), October 29, 1980.

PLACE: Room 1012, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 25. Docket 38608, Application of Aeroservicios Ecuatorianos, C.A. (AECA), for an exemption, from section 402 of the Act to permit it to engage in limited nonscheduled all-cargo service between Miami, Houston and Ecuador. (Memo 021, BIA).

STATUS: Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673–5068.

[S–1997–80 Filed 10–28–80; 3:21 pm]
BILLING CODE 6320–01–M

2

COUNCIL ON ENVIRONMENTAL QUALITY.

October 28, 1980.

TIME AND DATE: 11:30 a.m., November 6, 1980.

PLACE: Conference room, 722 Jackson Place NW., Washington, D.C. 2006.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Old Business.
2. Summary of the Findings of the Institutional Barriers Work Group at the Santa Cruz Summer Workshop on Building Efficiency.

CONTACT PERSON FOR MORE INFORMATION: John F. Shea III (202) 395–4618.

[S–1992–80 Filed 10–28–80; 10:37 am]
BILLING CODE 3125–01–M

3

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of changes in subject matter of agency meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, October 27, 1980, the Corporation's Board of Directors determined, on motion of Chairman Irvine H. Sprague, seconded by Director John G. Heimann (Comptroller of the Currency), concurred in by Director William M. Issac (Appointive), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Memorandum and Letter re: Farmers Bank of the State of Delaware, Dover, Delaware.
Recommendation regarding the initiation of administrative enforcement proceedings against an insured bank and a director of an insured bank.
Memorandum re: Accounting for Sales of Mortgage Loans.
Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:
Case No. 44,516–L—Gateway National Bank of Chicago, Chicago, Illinois.
Case No. 44,519–NR (Amended)—United States National Bank, San Diego, California.
Memorandum and Resolution re: The Drovers National Bank of Chicago, Chicago, Illinois, Drovers' National Bank v. Michigan Avenue National Bank.

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

Dated: October 27, 1980.
Federal Deposit Insurance Corporation.
Alan J. Kaplan,
Assistant Executive Secretary.

[S–1996–80 Filed 10–28–80; 3:20 pm]
BILLING CODE 6714–01–M

4

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 71037, October 27, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., October 29, 1980.

CHANGE IN THE MEETING: The following item has been added:

Item Number, Docket Number, and Company

CAP–9. ER77–485 and ER77–551, Carolina Power & Light Co.

Kenneth F. Plumb,
Secretary.

[S–1989–80 Filed 10–27–80; 4:08 pm]
BILLING CODE 6450–85–M

5

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 71037, October 28, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., October 29, 1980.

CHANGE IN THE MEETING: The following items have been added.

Item Number, Docket Number, and Company

CAM–8. QF80–17, Vermont Marble Co., *et al.*
ER–6. ER80–567, Wisconsin Electric Power Co.
CP–9. TC81–6–000, Southern Natural Gas Co.

Kenneth F. Plumb,
Secretary.

[S–1998–80 Filed 10–28–80; 3:45 pm]
BILLING CODE 6450–85–M

6

NATIONAL MEDIATION BOARD.

TIME AND DATE: 2 p.m., Wednesday, November 5, 1980.

PLACE: Board hearing room, eighth floor, 1425 K Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

(1) Ratification of Board actions taken by notation voting during the month of October, 1980.

(2) Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Secretary's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rowland K. Quinn, Jr., Executive Secretary; Tel: (202) 523–5920.

Dated: October 28, 1980.

[S–1994–80 Filed 10–28–80; 2:08 pm]
BILLING CODE 7550–01–M

7

OVERSEAS PRIVATE INVESTMENT CORPORATION.

Meeting of the Board of Directors.

TIME AND DATE: Meeting of the OPIC Board of Directors: Thursday, November 6, 1980 at 9 a.m. (closed portion); 10 a.m. (open portion).

PLACE: Offices of the Corporation, seventh floor board room; 1129 20th Street NW., Washington, D.C.

STATUS: The first part of the meeting from 9 a.m. to 10 a.m. will be closed to the public. The open portion of the meeting will start at 10 a.m.

MATTERS TO BE CONSIDERED: (Closed to the Public; 9 a.m. to 10 a.m.):

1. Country Concentration; fiscal year 1981 Underwriting and Reporting Procedures.
2. Overseas Investment Reinsurance Group; Terms for Three-year Extension.
3. Insurance Project in Middle East Country.
4. Insurance Project in Mediterranean Country.
5. Claims Report.
6. Information Reports.

FURTHER MATTERS TO BE CONSIDERED: (Open to the public; 10 a.m.):

1. Approval of Minutes of Previous Board Meeting.
2. Confirmation of Scheduled Board Meetings.
3. Proposed Personnel Action.
4. Investors' Communications Program.
5. Financial Statements.
6. Information Reports: Finance.
7. Information Reports: Insurance.
8. Information Reports: General.

CONTACT PERSON FOR INFORMATION: Information with regard to this meeting may be obtained from the Secretary of the Corporation at (202) 632–1839.

October 27, 1980.
Elizabeth A. Burton,
Corporate Secretary.

S–1990–80 Filed 10–27–80; 5:18 pm]
BILLING CODE 3210–01–M

8

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published.

STATUS: Closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Wednesday, October 22, 1980.

CHANGES IN THE MEETING: Additional item. The following additional item will be considered at a closed meeting scheduled for Tuesday, October 28, 1980, at 10 a.m.

Personnel security matter.

Commissioners Loomis, Evans and Friedman determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Paul Lowenstein at (202) 272–2092.

October 27, 1980.

[S–1993–80 Filed 10–28–80; 10:50 am]
BILLING CODE 8010–01–M

9

UNITED STATES RAILWAY ASSOCIATION.

TIME AND DATE: 9 a.m., November 6, 1980.

PLACE: 955 L'Enfant Plaza North, S.W., Board Room, room 2–500, fifth floor, Washington, D.C.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED BY THE BOARD OF DIRECTORS: Portions closed to the public (9 a.m.):

1. Consideration of internal personnel matters.
2. Review of Conrail proprietary and financial information for monitoring and investment purposes.
3. Litigation report.

Portions open to the public (10:30 a.m.):

4. Approval of minutes of the October 2, 1980 Board of Directors meeting.
5. Conrail drawdown request for November.
6. Report on Conrail monitoring.
7. Review of Delaware and Hudson financial information..
8. Consideration of loan application for the 211(h) program.
9. Contract Actions (extensions and approvals).
10. Administrative Committee Pension Plan Modification.

CONTACT PERSON FOR MORE INFORMATION: Alex Bilanow (202) 426–4250.

[S–1995–80 Filed 10–28–80; 2:08 pm]
BILLING CODE 8240–01–M

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federal register

Thursday
October 30, 1980

Part II

Department of Transportation

Federal Aviation Administration

Special Federal Aviation Regulation No. 29-3; Limited IFR Operations of Rotorcraft

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 27, 29 and 91

[Docket No. 14237; SFAR No. 29-3]

Special Federal Aviation Regulation No. 29-3; Limited IFR Operations of Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment extends the effectivity of Special Federal Aviation Regulation No. 29-2 which allows for limited operations under instrument flight rules (IFR) for certain normal and transport category rotorcraft that are limited by their type certificates to operations under visual flight rules (VFR). The extension is necessary to provide time for further study to determine whether the airworthiness requirements should be revised.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Roger E. Riviere, Regulatory Review Branch (AVS-22), Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Ave, S.W., Washington, D.C. 20591, telephone (202) 755-8714.

SUPPLEMENTARY INFORMATION: Under Part 27 or 29 of the Federal Aviation Regulations (FAR) a rotorcraft is certificated for visual fight rules (VFR) operation only, unless it is shown that the rotorcraft fully complies with all of the airworthiness requirements for IFR operations. Certain IFR operations can be safely conducted with rotorcraft that do not meet all of the present flight characteristic requirements. Special Federal Aviation Regulation (SFAR) No. 29 was adopted to allow the Administrator to issue approvals for these operations on an interim basis pending the conclusion of a study to determine whether a "limited" IFR category should be established for these rotorcraft, including flight characteristcs and equipment requirements, operating procedures and limitations, flightcrew requirements, and training requirements. SFAR No. 29, as amended by SFAR No. 29-2 (44 FR 2362), expires December 31, 1980.

The FAA has established a Rotorcraft Regulatory Review Program which involves a comprehensive review and upgrading of rules regarding rotocraft airworthiness standards and operating requirements. This program will consider the development of IFR airworthiness standards for rotorcraft certification in Parts 27 and 29 of the FAR. It is the intent of the FAA to rescind this SFAR upon adoption of the new rotocraft IFR certification standards in Parts 27 and 29 as part of the Rotorcraft Regulatory Review Program. This program will not be concluded by the December 31, 1980, termination date of SFAR No. 29 as amended. If the SFAR expires before the completion of the rulemaking action generated by the program, an undue burden could be placed on certain operators of helicopters meeting the criteria specified in the SFAR because it would prohibit IFR operations with those helicopters which might be allowed when the Rotorcraft Regulatory Review Program is completed. This is consistent with Executive Order 12044 issued by President Carter in that it minimizes compliance costs and burdens on the public. Results have not shown any adverse safety effect during the time that it was in effect and none are expected in the future should this SFAR be extended. Thus, the FAA has determined that it is in the public interest to extend the effectivity of SFAR 29, as amended, pending a determination of whether or not new standards should be developed.

Adoption of the Amendment

Since this amendment temporarily relieves a restriction in connection with operations conducted as part of an FAA study and imposes no additional burden on any person, I find that notice and public procedure are unnecessary.

Accordingly, Special Federal Aviation Regulation No. 29, as amended by SFAR 29-2, is reissued, effective January 1, 1981, to read as follows:

Special Federal Aviation Regulation SFAR No. 29-3

1. Contrary provisions of Parts 21, 27, and 29 of the Federal Aviation Regulations notwithstanding, an operator of a rotorcraft that is not otherwise certificated for IFR operations may conduct an approved limited IFR operation in the rotorcraft when—

(a) FAA approval for the operation has been issued under paragraph 2 of this SFAR;

(b) The operator complies with all conditions and limitations established by this SFAR and the approval; and

(c) A copy of the approval and this SFAR are set forth as a supplement to the rotorcraft flight manual.

2. FAA approval for the operation of a rotorcraft in limited IFR operations may be issued when the following conditions are met:

(a) The operation is approved as part of the FAA study of limited rotorcraft IFR operations.

(b) Specific FAA approval has been obtained for the following:

(i) The rotorcraft (make, model, and serial number).

(ii) The flightcrew.

(iii) The procedures to be followed in the operation of the rotorcraft under IFR and the equipment that must be operable during such operations.

(c) The conditions and limitations necessary for the safe operation of the rotorcraft in limited IFR operations have been established, approved, and incorporated in the operating limitations section of the Rotorcraft Flight Manual.

3. An approval issued under paragraph 2 of this Special Federal Aviation Regulation and the change to the Rotorcraft Flight Manual specified in paragraph 2(c) of this Special Federal Aviation Regulation constitute a supplemental type certificate for each rotorcraft approved under paragraph 2 of this SFAR. Each approval issued under this SFAR terminates on December 31, 1982, unless sooner suspended, rescinded, or otherwise terminated by the Administrator.

4. Notwithstanding § 91.23(a)(3) of the Federal Aviation Regulations, a person may operate a rotorcraft in a limited IFR operation approved under paragraph 2(a) of this Special Federal Aviation Regulation with enough fuel to fly, after reaching the alternate airport, for not less than 30 minutes, when that period of time has been approved.

This Special Federal Aviation Regulation terminates on December 31, 1982, unless sooner superseded or rescinded.

(Sections 313(a), 601(a), and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421(a), and 1423) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).]

Note.—The Federal Aviation Administration has determined that this document is not significant in accordance with the criteria required by Executive Order 12044, as implemented by the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Washington, D.C., on October 21, 1980.

Langhorne Bond,

Administrator.

[FR Doc. 80-33471 Filed 10-29-80; 8:45 am]

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federal register

Thursday
October 30, 1980

Part III

Department of Transportation

Consumer Programs

71922 Coast Guard
71934 Federal Aviation Administration
71925 Federal Highway Administration
71922 Federal Railroad Administration
71931 National Highway Traffic Safety Administration
71931 Office of the Secretary
71934 Research and Special Programs Administration
71922 Saint Lawrence Seaway Development Corporation
71932 Urban Mass Transportation Administration

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 80-062]

Coast Guard Consumer Program

AGENCY: Coast Guard, DOT.

ACTION: Notice of delay in the publication of the Coast Guard's final consumer program.

SUMMARY: The Coast Guard published its draft Consumer Program in the **Federal Register** on June 9, 1980 (45 FR 39192). Interested persons were invited to submit comments on the draft Consumer Program. The comment period closed on August 8, 1980. The draft Consumer Program noted that, after review of the public comments, the Coast Guard would revise the Program as necessary and publish a final Consumer Program in the **Federal Register** by October 31, 1980. The Coast Guard has received 117 public comments on the draft Consumer Program. Due to the relatively large number of comments received and the number of revisions being made in the final Consumer Program, publication of the final Consumer Program will be delayed. The Coast Guard expects to publish the final Consumer Program by December 1, 1980. Persons desiring to have a copy of the Coast Guard final Consumer Program mailed directly to them should contact Commander Neal Mahan at the address or telephone number listed below.

FOR FURTHER INFORMATION CONTACT: Commander Neal Mahan, Office of Boating, Public and Consumer Affairs (G-BA), Room 4224, U.S. Coast Guard Headquarters, 2100 Second St. S.W., Washington, DC 20593. Telephone: (202) 426-1080.

V. W. Driggers,

Captain, U.S. Coast Guard, Acting Chief, Office of Boating, Public and Consumer Affairs.

[FR Doc. 80-33567 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-14-M

Federal Railroad Administration

Consumer Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of delay.

SUMMARY: On June 9, 1980, FRA published in the **Federal Register** (45 FR 39171) its draft consumer program for public review and comment. The June 9 notice indicated that FRA's final consumer program would be published by October 30, 1980. Unfortunately, Agency work burdens have prevented FRA from meeting the October 30 publication date. It is anticipated that the final consumer program will now be published on November 13, 1980.

FOR FURTHER INFORMATION CONTACT: Michael T. Haley, Deputy Chief Counsel, Federal Railroad Administration, Room 8211, 400 7th Street, S.W., Washington, D.C. 20590. Telephone: (202) 472-9042.

SUPPLEMENTARY INFORMATION: FRA's consumer program is being developed to comply with the requirements of Executive Order 12160 directing Federal agencies to develop progams to ensure consumer involvement in agency policy and decision making.

Issued in Washington, D.C. on October 22, 1980.

John M. Sullivan,

Administrator.

[FR Doc. 80-33568 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-06-M

Saint Lawrence Seaway Development Corporation

Final Consumer Program

AGENCY: Saint Lawrence Seaway Development Corporation ("Corporation"), U.S. Department of Transportation (DOT).

ACTION: Adoption of Corporation's Consumer Program as required by Executive Order 12160 and the final DOT consumer program.

SUMMARY: The Corporation's final Consumer Program has been developed in response to Executive Order 12160, addressing the five consumer functions identified in the Order, and in response to the final DOT Consumer Program.

EFFECTIVE DATE: December 1, 1980.

ADDRESS: Office of Communications and Consumer Affairs, Saint Lawrence Seaway Development Corporation, Room 814, 800 Independence Avenue, S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Dennis E. Deuschl, Director, Office of Communications and Consumer Affairs, 202/426-3574. Use the above address and telephone number of inquiries about consumer complaint-handling procedures, technical assistance for consumers, and consumer participation in the decisionmaking process. Consumer informational materials may be ordered by calling 315/764-0271 and asking for the Public Information Officer, or by writing to that person at: Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York 13662.

SUPPLEMENTARY INFORMATION: On June 9, 1980, the Corporation published its draft Consumer Program for public review and comments. The draft program was developed in response to Executive Order 12160 and the final DOT Consumer Program which requires Federal agencies and DOT operating administrations to be responsible for five consumer functions: representing the consumers' perspective in the development of rules, policies, programs and legislation; providing for consumer participation; developing consumer information materials; educating and training agency staff about consumer policy; and establishing systematic procedures for complaint handling. In addition, each agency and DOT operating administration must provide oversight for its consumer programs.

The Corporation's draft Consumer Program was widely publicized through mailings, telephone notifications, announcements at meetings of Great Lakes maritime groups, and through Corporation news releases to those newspapers and periodicals most frequently read by those affected by the Seaway. A total of 34 individuals and organizations requested copies of the draft but no public comments were received.

Although no public comments were received during the comment period, the following minor changes have been made as a result of administrative review within the Corporation:

- Section III 1(c) has been rewritten to more clearly identify the role of the Corporation's Advisory Board as set forth in the statutory language which established it. (33 U.S.C. 982)
- Section III 2(b)(2) has been rewritten to prevent the possible interpretation that Seaway tolls might be established at levels calculated to produce for the Corporation revenues in excess of those authorized by legislation.
- Section IV 2(c) has been rewritten to reflect that "Seaway Regulations," rather than being a separate special publication, is part of the contents of "The Seaway Handbook."
- A new Section IV 3 has been inserted to indicate an additional report produced annually for consumers by the Corporation for which a fee charged by the National Technical Information Service. That report is entitled "U.S. Great Lakes Ports Statistics for Overseas and Canadian Waterborne Commerce."
- Sections I, II, III and IV have been combined into this Supplementary Information Section so that the numbering in the balance of this program coincides more closely with that of the DOT program.

Objectives of the Corporation's program are to further integrate consumer concerns into Corporation decisionmaking, to encourage effective consumer participation in the Corporation's decisionmaking processes, and to make the program responsible to the needs of St. Lawrence Seaway consumers insofar as it is consistent with the financial and operational responsibilities of the Corporation established by the Congress. These objectives are actively pursued by the Corporation in the U.S., recognizing that many Seaway rules, policies and programs must be agreed to jointly by the Corporation and its counterpart, the St. Lawrence Seaway Authority, a Canadian Crown corporation.

Directives applicable to the Corporation's Consumer Program are:

- Executive Order 12044, "Improving Government Regulations," March 23, 1978.
- Executive Order 12160, "Providing for Enhancement and Coordination of Federal Consumer Programs," September 26, 1979.
- White House Memorandum to the Heads of Executive Departments and Agencies, "Guidance Regarding the Development of Consumer Programs Required by Executive Order 12160, October 4, 1979."
- "U.S. Department of Transportation Consumer Program," **Federal Register**, June 9, 1980.

The scope of the Corporation's Consumer Program applies to significant consumer-oriented policies and practices which are under discussion and development other than those activities identified in Section 1-902(b) of Executive Order 12160 as being excepted from agency consumer programs. These activities deal with internal management, personnel and procurement matters of the Corporation, as well as activities which involve foreign affairs or are undertaken in response to an emergency or which must be completed within a short-term deadline imposed by statute or judicial order (Executive Order 12044, Section 6(b) (2), (3), (4) and (6)).

The Corporation is a wholly government-owned, self-sustaining enterprise responsible for the construction, development, operation and maintenance of the St. Lawrence Seaway jointly with the St. Lawrence Seaway Authority of Canada. Together with that Canadian agency, the Corporation operates locks and channels, provides traffic control assistance of vessels transiting between Montreal and Lake Erie, and maintains navigational aids in U.S. waters between Montreal and Lake Ontario. For these services, Seaway users are assessed tolls and other charges under a joint negotiated U.S.-Canadian tariff; the U.S. share being used to pay for the Corporation's operating, maintenance and development expenses, and construction debt.

A Seaway "consumer" is defined as any individual who uses, purchases, acquires, attempts to purchase or acquire, or is offered or furnished any real or personal property, tangible or intangible goods, services or credit for personal, family or household purposes, including individuals who own or operate commercial vessels or pleasure craft in the Seaway, exporters, importers and those who ultimately purchase goods and services shipped via the Seaway.

I. OVERSIGHT FOR CONSUMER AFFAIRS

1. The Corporation has renamed its Office of Communications the "Office of Communications and Consumer Affairs" and a Director has been designated.

2. Consumer affairs duties of the Director include:

a. Under the direction of the Administrator, exercising coordination and oversight of the Corporation's consumer activities.

b. Representing the consumer perspective within the Corporation on the development and review of significant rules, policies, programs and legislation.

c. Advising and informing the Administrator concerning emerging issues bearing on the five consumer functions identified in Executive Order 12160.

d. Serving on the Department of Transportation's Consumer Policy Coordination Council.

e. Supervising the compilation and submission of required Corporation reports on consumer activities to the Director of the DOT Office of Consumer Liaison.

f. Monitoring of liaison of Corporation office heads with Seaway consumers.

II. CONSUMER AFFAIRS PERSPECTIVE

1. The Director of Consumer Affairs reports directly to the Administrator.

2. The Director apprises the Administrator of the potential impact on consumers of particular policy initiatives under development or review within the Corporation, and carries out the duties prescribed in Para I2. above.

3. Office heads have been advised to include the Director in the early stages of the Corporation's internal review procedures for proposed rules, policies, programs and legislation, and assure that any comment by the Director is considered by the Administrator at the time he or she makes the decisions to which the comment is directed.

4. The Director is placed on all Corporation distribution lists to receive and comment on all proposed policies, programs and legislation within the scope of the consumer program.

5. When necessary, the Director is authorized by the Administrator to ask for assistance from the Corporation's Public Information Officer and Public Information Assistant, the Regulations Liaison Officer, the Director of Program Review and other office heads.

III. CONSUMER PARTICIPATION

It is Corporation policy to encourage effective consumer participation early in and throughout its decisionmaking process.

1. Consumer Participation in Rulemaking:

a. Consumer participation in Corporation rulemaking is governed by the Department of Transportation's Regulatory Policies and Procedures, issued in compliance with Executive Order 12044, published in the **Federal Register** February 26, 1979, and effective March 1, 1979.

b. Under these policies and procedures, the Corporation provides the public with advance notice of planned rulemaking activity through the **Federal Register**, mailings to

consumers and interest groups, briefings for members of the Congress and consumers, fact sheets, and press releases to publications most often read by Seaway consumers.

c. The views of Seaway consumers with respect to proposed rulemaking regarding the establishment of rules of measurement for vessels and cargo, and rates of charges or tolls, also are represented through the five members of the Corporation's Advisory Board which meets at least four times a year. They are appointed by the President, by and with the consent of the Senate. The members are prominent private citizens who convey the views of a wide cross-section of Seaway users to the Administrator.

d. The Director of Consumer Affairs has the responsibility for monitoring compliance with requirements for public participation by reviewing and commenting on opportunities for public participation provided for in Corporation Notices and Advance Notices of Proposed Rulemaking.

2. Consumer Participation in Decisionmaking on Policies and Programs:

a. When significant policies or programs are being developed by the Corporation, the Director identifies emerging issues which may have a major impact on Seaway consumers, and which have the potential for becoming matters of policy or leading to the development of a program. The Director then adheres to the Standard Procedure for Consumer Participation described below.

b. In identifying key emerging issues, the following criteria shall be considered:

(1) Does the issue involve a matter of interest or controversy among consumers or otherwise directly affect final users or purchasers of transportation services?

(2) Does the issue have a potential for imposing significant costs or other economic burdens on consumers apart from legislatively mandated tolls?

(3) Does the issue have a significant impact on matters of transportation safety?

c. As soon as practicable after a key emerging issue has been identified, the Director prepares a Plan for Consumer Participation that describes exactly what steps will be taken to:

(1) identify those consumers to be directly affected by the proposed policy or program;

(2) inform those consumers who will be affected that the policy or program is under consideration by the Administrator;

(3) provide opportunities for consumer participation in developing the policy or program under consideration by including at least one of the following substantial outreach techniques:

- polls and surveys
- field trips and interviews
- direct notification by telephone or use of mailing lists
- consultations, briefing sessions, and open conferences
- Advance Notices of Proposed Policy (ANPPs) and Notices of Proposed Policy (NPPs). (Publication of an ANPP or NPP in the **Federal Register** shall, after an adequate period for public comment, be followed by publication of a Notice of Policy, or a Notice of Withdrawal of Proposed Policy, whichever the case may be, and shall include an analysis and summary of comments received along with stated justification and rationales for accepting or rejecting submitted recommendations.)

d. The Director develops a timetable listing probable dates for initiating each substantial consumer participation technique that will be used in the policy or program development process. The timetable assures adequate time for the preparation and submission of consumer views.

e. Summaries and analyses of public comments prepared by Corporation offices are provided to the Director, as well as the Administrator, and adequate consideration is given to these comments in the course of decisionmaking.

f. Seaway consumers are informed of any final decision by the Corporation concerning a particular policy or program.

3. The Corporation shall host a minimum of four meetings/forums which shall be open to Seaway consumers of various levels representing a broad spectrum of Seaway consumer interests. These meetings/forums shall be held at approximately three-month intervals either in Washington, D.C., or in selected locations throughout the Great Lakes/St. Lawrence Seaway region. All such meetings shall be announced in the **Federal Register** at least 15 days in advance. These notices shall offer Seaway consumers the opportunity to present their views on agenda items either in person or in writing to the Corporation's highest level policy advisors. Formats for these meetings/forums shall consist of briefings followed by question-answer periods.

4. The Director of Consumer Affairs shall participate in DOT-sponsored consumer conferences and forums, as appropriate.

5. The Corporation shall continue to maintain a Seaway consumer mailing list of names that are categorized according to individuals' and organizations' primary area(s) of interest.

IV. INFORMATIONAL MATERIALS

1. The Corporation contributes information to the bi-monthly DOT consumer newsletter.

2. Single copies of the following Corporation consumer brochures, reports and special publications are available free, on request, from the Corporation's Public Information Officer by calling 315/764-0271 or writing: Public Information Officer, Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York 13662.

a. Brochures

- "2,342 Miles into the Heart of a Continent—St. Lawrence Seaway." A general information publication that includes historical and tolls data.
- "Sail the Seaway and Save." A publication aimed specifically at Seaway shippers that details economic data about Seaway ports transportation advantages and the new level of toll charges.
- "Welcome to the Seaway." Produced jointly by the Corporation and the St. Lawrence Seaway Authority of Canada. Text in English and French. Diagrams Seaway locks and points out viewing locations for tourists traveling by automobile.
- "Pleasure Craft Guide Book." Produced jointly by the Corporation and the St. Lawrence Seaway Authority of Canada. Text in English and French. Provides pleasure boat owners/operators with information on tolls, required equipment, lock transit procedures and mooring points.

b. Reports

- "Traffic Report on the St. Lawrence Seaway." Annual publication with calendar year statistics on cargoes and vessels using the Seaway facilities on the St. Lawrence River and Canadian Welland Canal.
- "Saint Lawrence Seaway Development Corporation Annual Report." Annual document required by law that details calendar year financial status and operations of the Corporation.

c. "The Seaway Handbook." An operating manual issued jointly by the Corporation and the St. Lawrence Seaway Authority of Canada for use by vessel operators. The handbook includes Seaway regulations, the Tariff of Tolls, other navigational rules and procedures, and diagrams of each segment of the Seaway between Montreal and Lake Erie.

3. Each year, the Corporation publishes "U.S. Great Lakes Ports Statistics for Overseas and Canadian Waterborne Commerce." The report is based on U.S. Census Bureau data and covers the period of March through December of the previous year. It relates import and export data by port; origin and destination countries; trade routes; commodity codes, descriptions and dollar values; volumes; and types of vessel service. Printed or microfiche copies of the report may be obtained for a fee by writing: National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161.

4. Throughout the Seaway navigation season (usually between April and mid-December), the Corporation and the St. Lawrence Seaway Authority of Canada jointly issue "Seaway Notices Affecting Navigation," "Seaway Bulletins," and "Seaway Radio Messages" to vessel operators/owners, and (as appropriate) to shippers and other Great Lakes maritime interests regarding opening dates and closing deadlines, navigation obstructions, special weather conditions, traffic congestion points, slowdowns or delays, etc. Those messages, notices and bulletins having a significant impact on Seaway traffic are supplemented with news releases to publications most often read by Seaway consumers.

5. When a new consumer brochure, report or special publication is issued by the Corporation, news releases introducing the publication are sent to the general media as well as the consumer press. The Director of Consumer Affairs will work with the DOT Consumer Policy Coordinating Council and the Public Affairs Council to assess the effectiveness of existing Corporation consumer publications and audio-visual materials.

6. The Director shall develop an inventory of upcoming consumer meetings/forums, and announce opportunities for consumers to attend these scheduled sessions. Where possible and cost effective, advance agendas and non-technical briefing papers shall be developed and disseminated in advance.

V. EDUCATION AND TRAINING

1. A Corporation directive on the management of its consumer programs shall be prepared to implement the Corporation's final Consumer Program.

2. The Director of Consumer Affairs shall brief Corporation officials on the new DOT Order and Corporation Directive.

3. The Director or his representative shall participate in specialized consumer training courses made available by the DOT Office of Consumer Liaison, and where appropriate and cost effective, DOT-sponsored conferences, work shops and other forums.

4. The Director shall be apprised by Corporation office heads of the availability of technical publications prepared by them.

5. When consumers contact the Corporation with technical, scientific or procedural questions, the Director shall provide assistance or refer the inquiries to the office head with the appropriate expertise in the matter.

VI. COMPLAINT HANDLING

1. The Director shall assure that consumer complaints are considered in Corporation policymaking.

2. The Corporation already is included in the DOT brochure "Finding Your Way in DOT," dated March 1978, which describes complaint handling procedures to heighten public awareness.

3. The Corporation shall update its section in this DOT brochure when it is revised.

4. The preponderance of Seaway consumer complaints or problems are addressed to the Administrator or Associate Administrator. Their respective secretaries log in the written complaints. These complaints are replied to in a timely manner.

5. All office heads, the Executive Assistant to the Associate Administrator and the Special Assistant to the Administrator shall be asked to submit to the Director of Consumer Affairs periodic statistical reports on consumer complaints received, the subjects of each, dates received, dates replies sent, and a brief summary of the reply.

6. The Director shall analyze the nature of complaints received and if they become concentrated on an ongoing concern that is not adequately covered in existing Corporation consumer materials, consideration shall be given to producing a new informational piece.

Issued at Washington, D.C. on October 23, 1980. Saint Lawrence Seaway Development Corporation.

D. W. Oberlin,

Administrator.

[FR Doc. 80-33569 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-61-M

Federal Highway Administration

FHWA Consumer Affairs Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of adoption of FHWA Consumer Program.

SUMMARY: This notice describes the FHWA's Consumer Affairs Program which has been developed to comply with the requirements of Executive Order (E.O.) 12160 directing Federal agencies to develop programs to ensure consumer/citizen involvement in agency policy and decisionmaking. The notice discusses each of the five major components of the Executive Order, describing FHWA consumer-related programs already in operation, as well as those activities planned by FHWA to comply with the Executive Order.

EFFECTIVE DATE: December 1, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Werner Siems, Director, Consumer Affairs Program Staff, 703-557-0556, Federal Highway Administration, 1000 N. Glebe Road, Arlington, Virginia 22201; or Thomas P. Holian, Office of the Chief Counsel, 202-426-0761, Federal Highway Administration, 400 7th Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The FHWA was established to administer the Federal-aid highway program of financial assistance to the States for highway construction and improvement of efficiency in highway and traffic operations. This program has provided for the construction of the 42,500 mile Interstate Highway System and the improvement of other Federal-aid primary, secondary, and urban roads, with most of the Federal share of funding coming from the Highway Trust Fund. The FHWA also administers an emergency program to assist in the repair or reconstruction of Federal-aid highways and Federal roads which have suffered damage as a result of natural disasters. Current emphasis within the FHWA is on a number of special areas, including improving highway systems in urban areas, improving safety design of highways, replacing deficient bridges, facilitating the flow of traffic, highlighting energy consideration in transportation planning, providing relocation assistance to those displaced by highway construction, and preserving along highways the natural

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beauty of the environment. The FHWA also administers a major direct Federal design and construction program for meeting the highway needs of other Federal agencies. Through its Bureau of Motor Carrier Safety (BMCS) FHWA is responsible for regulations governing the operational safety of vehicles (freight and passenger) and their drivers, operating in interstate commerce. These programs affect and should be of interest to most individuals.

In response to E.O. 12160, Providing for Enhancement and Coordination of Federal Consumer Programs, the DOT Consumer Program, and guidelines provided by the Secretary of Transportation, the FHWA has developed a plan to provide for a consumer affairs structure and mechanism to improve the effectiveness of consumer input to FHWA programs. A draft program was published in the **Federal Register** (45 FR 39167) June 9, 1980, for public review and comment.

In July a Consumer Affairs Program Staff (CAPS) was established to complete the task of program development and prepare for implementation. The public comments received were given careful study by CAPS in the preparation of the final program, as discussed below. The program is organized as follows:

1. Consumer Affairs Perspective
2. Oversight for Consumer Affairs
3. Consumer Participation
4. Informational Materials
5. Education and Training
6. Complaint Handling

Appendix—Standard Procedure for Consumer/Citizen Participation

SUMMARY OF PUBLIC COMMENTS

The FHWA received nine written comments: five from State and local government officials, three from individuals, and one from a consumer group. Of the written comments received, two were from county engineers who expressed the opinion that the program would create additional red tape and delay. The remaining seven were generally supportive and offered a number of suggestions and observations.

DISCUSSION

Following is a discussion of the comments received and issues considered in developing FHWA's final consumer program.

1. Consumer Affairs Perspective

One State transportation department believes the proposed program should result in a more effective system of communication with the consumer. Two county engineers believe it would create additional and unnecessary bureaucracy. The FHWA shares this concern for efficiency; it has adopted and is pursuing a policy to minimize red tape in all its programs. The FHWA feels its consumer program is designed to meet the requirements of E.O. 12160 without creating unnecessary delays in the conduct of its programs. The additional review and comment requirements can be carried out concurrently with the usual review procedure.

The Center for Auto Safety expressed concern over the proposed assignment of responsibility for an overall consumer perspective to the Associate Administrator for Administration, assisted by a Consumer Affairs Staff Office (now known as the Consumer Affairs Program Staff). The Center foresaw a potential for conflict between the judgment and perspective of the staff office and the Associate Administrator, and recommended consideration of an independent consumer office. The Center expressed similar concern with respect to responsibilities for overall policy guidance, as described in Section 2, Oversight for Consumer Affairs. The Center also suggested the need for standards by which to judge the adequacy of FHWA's consumer involvement effort.

The FHWA has revised its final program to provide that the Consumer Affairs Program Director will provide the consumer perspective within FHWA and will be responsible for overall policy guidance of the consumer program. A Consumer Affairs Program Staff (CAPS) has been established within the Office of the Associate Administrator for Administration. It will report directly to the Associate Administrator, and the Director will have direct access to the Federal Highway Administrator on significant consumer affairs matters. This arrangement will provide for a separate staff and director devoted exclusively to consumer affairs matters, along the example of the Office of Consumer Liaison (OCL) within the Office of the Assistant Secretary for Governmental Affairs. The adequacy of FHWA's efforts will be subject to oversight by OCL and the DOT Consumer Policy Coordinating Council, by periodic management evaluation within FHWA, and by consumers themselves, since they will have access to the CAPS.

Two other changes have been made in the section on Consumer Affairs Perspective. Paragraph 1a, Current Program has been revised to further describe the existing mechanisms for communication between the consumer and the agency. A new paragraph 1b(4) has been inserted to specifically note the development of procedures to enhance consumer participation in policy and program development.

2. Oversight for Consumer Affairs

Changes in this section relative to the CAPS Director's responsibility for policy guidance were discussed in the preceding section.

Several suggestions from the Center for Auto Safety were incorporated into the final program to expand the CAPS' responsibilities with respect to consumer involvement in the rulemaking process. These provide for review by the CAPS of petitions received from the public for rulemaking actions and of entries prepared for the Semi-Annual Regulations Agenda. The latter review will ensure that the consumer perspective is considered in the description of proposed regulatory actions and in the designation of significant and non-significant actions.

The Center took issue with a provision in the proposed program which calls for CAPS review of "all proposed significant rulemaking actions, policies and programs affecting the consumer * * *" The Center contends that the CAPS' participation should not be limited to "significant" actions. "Significant" is defined in the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) and in E.O. 12044. The FHWA agrees and did not intend to limit the CAPS' review authority. Under paragraph 2c(4), the CAPS is responsible for the review of rulemaking actions significantly affecting the consumer regardless of their designation under E.O. 12044.

Several responsibilities listed in the Oversight section of the draft program have been moved to other sections of the final program. These include:

—The CAPS' responsibilities for consumer publications and program information, which are treated in Section 4, Informational Materials, and Section 5, Education and Training;

—Regional and Division Office responsibilities for consumer liaison, which are treated in Section 3, Consumer Participation; and

—The CAPS' responsibilities for handling consumer inquiries and complaints, which are treated in Section 6, Consumer Complaints.

3. Consumer Participation

A State highway agency supported FHWA's use of mailing lists to supplement the **Federal Register** in presenting information to consumers.

An individual commenter pointed out the FHWA's responsibility to provide a follow-up reply when soliciting public involvement in its decisionmaking. In this regard, rulemaking procedures require that when a DOT office prepares a significant final rule, it must also provide a summary of the public comments received and a response to those comments. A similar summary is included in the **Federal Register** preamble when the next action is taken. Also, in FHWA's Standard Procedure for Consumer/Citizen Participation the CAPS is charged with informing commenters about significant decisions on policies and programs made under this procedure.

—Another individual commented favorably on several aspects of FHWA's consumer program, but warned that it will not be effective until the philosophy behind it is taken seriously by those who carry it out. FHWA has designed its consumer program expressly to increase consumer/citizen input into its decisionmaking process. In monitoring the effectiveness of this program, FHWA welcomes comments from concerned consumers and groups.

Improvement of FHWA briefing sessions on legislative initiatives was discussed in another comment received. The FHWA's program provides for the CAPS to assist other offices in preparing effective meetings and briefings for consumer organizations.

Comments from two local government officials pointed up the importance of establishing confidence and trust in FHWA's Division Office personnel, as representatives of the agency at the State and local level.

Several changes have been made in the Consumer Participation section. A separate subsection on Local Involvement clarifies the opportunities available for citizen participation in planning and project decisions at the State and local level, and identifies the FHWA offices responsible for requirements in these areas. Another subsection treats citizen participation in development of motor carrier safety regulations.

The subsection on the Planned Program has been revised to include opportunities for participation in the rulemaking process as well as in the development of policies and programs.

The subsection on Consumer Forums was revised to permit the CAPS to explore the value and effectiveness of national and regional consumer meetings on a trial basis, and to solicit the suggestions of consumers and consumer groups.

A new subsection on State and Local Consumer Liaison was provided to outline the responsibilities of FHWA's Regional and Division Offices.

4. Informational Materials

The Informational Materials section of the final program was revised to include a reference to the use of news releases to convey information of interest to consumers.

5. Education and Training

The two State highway agencies stressed the importance of well-informed citizens to an effective consumer/citizen participation program. One State agency which offered a planning course for the public reported that the citizens involved made many constructive and knowledgeable contributions. The other State agency said consumer awareness of transportation issues is an essential objective of its organization.

The Education and Training section has been revised to clarify that FHWA's training program on public involvement in highway projects is designed for State and local officials. The FHWA training resources, however, can be used to provide new training for DOT personnel working in consumer affairs programs.

6. Complaint Handling

One comment was received from the Center for Auto Safety suggesting that the CAPS share responsibility with the appropriate FHWA program or staff office for responses to consumer complaints.

A determination on the CAPS role in complaint handling will be made after the completion of a DOT-wide study on the compliant handling process. However, FHWA believes that the consumer interest would be served through the review, within practical limits, by the CAPS of responses to correspondence involving major policy issues or issues with potentially significant consumer impact. Additionally, new procedures should enable the CAPs to advise appropriate officials of consumers' problems and opinions.

The text of the FHWA Consumer Affairs Program follows:

FHWA CONSUMER AFFAIRS PROGRAM

1. CONSUMER AFFAIRS PERSPECTIVE

This section describes how FHWA's Consumer Affairs Program Staff (CAPS) ensures FHWA decisionmakers are provided the consumer viewpoint when rules, policies, programs, and legislation are being developed.

a. Current Program

The FHWA has a responsibility to serve the consumer in the most efficient and effective manner possible. A number of mechanisms are used by the FHWA to facilitate communications between the agency and the consumer and to bring consumer views before the decisionmakers. These include:

(1) Solicitation of public comment on proposed rules.

(2) Use of mailing lists, as well as publication in the **Federal Register**, to inform interested individuals and organizations of proposed actions.

(3) Issuance of pulbications to explain various aspects of the Federal highway program to consumers.

(4) Use of news releases and other public information techniques to inform consumers about program developments.

(5) Responses to correspondence from consumers.

(6) Responses to consumer complaints.

All of these mechanisms will continue to be employed under FHWA's new Consumer Affairs Program.

In addition to these mechanisms, which relate to the administration of programs by FHWA, consumers have other opportunities to influence decisions at the State and local levels, i.e. in regard to the planning of local transportation systems and the development of specific federally aided highway projects. These opportunities are discussed in Section 3a(2), Local Involvement.

b. Planned Program

To provide an overall consumer perspective and to increase the input of the consumer during the development of

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rules, policies, programs and legislation, the FHWA organizational structure has been revised and a management process developed to more fully respond to the needs of the consumer. The revisions include:

(1) Establishing a Consumer Affairs Program Staff (CAPS), headed by a senior level Consumer Affairs Program Director, who reports directly to the Associate Administrator for Administration. The staff will have expertise in FHWA programs and procedures, consumer/citizen participation, and management and editorial skills.

(2) Designating the FHWA Consumer Affairs Program Director to serve as consumer focal point in FHWA and to develop, implement and coordinate the Consumer Affairs Program. (See Section 2, Oversight for Consumer Affairs). In providing the consumer perspective within FHWA, the Director will identify and articulate the consumer interest in appropriate issues that fall within the authroity of FHWA, keep FHWA officials informed of consumers' opinions, concerns and needs, and make recommendations on consumer-related issues to the Administrator. The Director will maintain communications with consumers and consumer organizations on an informal basis as well as through the formal mehanisms identified elsewhere in this program.

(3) Integrating the CAPS into the FHWA regulations review process. This includes providing the CAPS an opportunity to comment on all rulemaking actions which have a significant impact upon the consumer.

(4) Establishing procedures to ensure that the CAPS and consumers have an opportunity to participate in the development of agency policies and programs.

(5) Ensuring that the CAPS' comments on proposed rules, policies, programs and legislation are included in the package which is provided the Administrator/decisionmaker for action.

2. OVERSIGHT FOR CONSUMER AFFAIRS

This section describes the responsibilities and authority of the Consumer Affairs Program Director and Staff.

a. Policy Direction

Policy and procedural guidance for the FHWA Consumer Affairs Program will be provided by the Consumer Affairs Program Director, the senior-level official whose sole responsibility is to oversee FHWA's consumer activties. The Director will head a Consumer Affairs Program Staff established within the Office of the Associate Administrator for Administration, and will report directly to the Associate Administrator for Administration. On matters significantly affecting consumers the Director will, as appropriate, have direct access to the Administrator. The CAPS will be responsible for the development, implementation and coordination of the FHWA Consumer Affairs Program, which incorporates the requirements of E.O. 12160 and the DOT Consumer Program as it relates to FHWA. The Director will serve as the FHWA liaison with the DOT on all consumer-related activities and will serve on the DOT's Consumer Policy Coordinating Council.

b. Resources

While the CAPS has overall responsibility for the FHWA Consumer Affairs Program, other offices in FHWA will be involved in carrying out the different elements of the program. These duties and functions, which are indicated in the other sections of this document, will be assigned in an implementing FHWA directive. The CAPS will provide guidance and assistance to FHWA personnel responsible for various consumer program activities. In general, all FHWA personnel will be expected to be aware of consumer impacts in the development of FHWA policies and procedures and in the overall conduct of agency business.

c. Coordination of Consumer Affairs Program

The CAPS will develop and coordinate a program to ensure that consumers are kept informed of proposed agency actions and that they are given maximum opportunity to become involved in the rulemaking/decisionmaking process. Specifically, the CAPS will:

(1) Prepare, or assist in preparing, and distribute materials to explain the consumer participation process in agency policy and program development and rulemaking;

(2) Review petitions from the public requesting rulemaking actions to identify the consumer interest;

(3) Review and comment during their development on entries for the FHWA Semi-Annual Regulations Agenda, which reports the status of all proposed rulemaking actions, to ensure:

(a) That appropriate opportunities are provided for the consumer to participate in proposed actions;

(b) That descriptions of proposed actions are presented in language understandable to consumers;

(c) The designation of significant and non-significant actions is consistent with the consumer interest;

(4) Review all proposed rulemaking actions, policies, and programs significantly affecting the consumer to ensure they:

(a) Adequately consider the consumer;

(b) Clearly explain the impact of proposed actions;

(c) Clearly advise the consumer of what is required in a response;

(5) Review the distribution of rulemaking actions and proposed policies and programs significantly affecting the consumer to ensure that the mailing/distribution lists utilized reach potentially interested individuals or consumer groups;

(6) Review decision packages developed for rulemaking actions, policies and programs significantly affecting the consumer to ensure the consumer viewpoint is clearly presented.

3. CONSUMER PARTICIPATION

This section describes the procedures and techniques to be used in carrying out the DOT and FHWA policy of encouraging effective citizen participation early in and throughout the agency's decisionmaking processes.

a. Current Program

(1) *Rulemaking.*

Since 1979, the FHWA has been operating in accordance with the DOT Regulatory Policies and Procedures, which establish requirements governing consumer/citizen participation in rulemaking and specifically provide the opportunity to comment on proposed rules.

The FHWA has developed mailing lists to reach a greater number of interested individuals and groups and to provide prompt notification of rulemaking proposals. A brochure, "You and the Rulemaking Process," was distributed to 10,000 individuals and groups inviting them to request inclusion on mailing lists for copies of various subjects of rulemaking actions. After the initial mailing, 2000 responses were received and new mailing lists established. The brochure may be requested from the Office of Public Affairs, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Other mailing lists are maintained to disseminate information on subjects ranging from highway beautification to highway safety.

Another technique which has been employed in the development of policies, programs and legislative initiatives is the briefing session or informal meeting. Public hearings also have been used to obtain comments on significant rulemaking or policy issues.

(2) *Local Involvement.*

Other opportunities for consumer/citizen participation in decisionmaking, while not directly concerned with rulemaking or policy and program development, are provided by the Federal-aid highway program at the State and local level. Under the Federal-aid program, State highway or transportation agencies have primary responsibility for planning transportation systems and developing specific highway projects. To qualify for financial assistance, States must comply with Federal-aid requirements. In the planning process, Federal regulations encourage the use of public involvement techniques. In the project development process, States must consider the social, economic, and environmental impacts, and must conduct public hearings and/or provide other opportunities for consumer/citizen participation. Regulations covering consumer/citizen participation in planning are the responsibility of FHWA's Office of Highway Planning, and those covering consumer/citizen participation in project development are the responsibility of FHWA's Office of Environmental Policy. The CAPS will work with these responsible offices in responding to any issues which may arise regarding consumer participation at the State and local level.

(3) *Motor Carrier Safety.*

Regulations governing the operational safety of trucks and buses in interstate commerce are the responsibility of the FHWA's Bureau of Motor Carrier Safety (BMCS). Consumers have access to the BMCS rulemaking activities under provisions of DOT's Regulatory Policies and Procedures and the Administrative Procedure Act. The BMCS maintains a public docket in Room 3402, 400 Seventh Street SW., Washington, D.C. 20590. Any person may petition the BMCS for rulemaking. The BMCS publishes notices of all rulemaking actions in the **Federal Register**, distributes copies of its notices to impacted groups, and issues news releases to the general media and to motor carrier industry publications. When considering rules of wide public interest, the BMCS holds hearings in the various regions of the country. It has held hearings, for example, on proposed rules to change the hours of service of motor carrier drivers, to permit intercity bus drivers to use citizen band radios, and to ban smoking on intercity buses. The BMCS maintains mailing lists, adding anyone upon request, for three types of publications: annual statistical reports, published accident reports, and technical bulletins.

b. Planned Program

(1) *Rulemaking; Policy and Program Development.*

In the rulemaking process, FHWA will continue to adhere to the DOT Regulatory Policies and Procedures, which are designed to increase public awareness of planned regulatory actions and to enhance opportunities for public participation. To further enhance these opportunities, the CAPS will take the steps described in the preceding Section 2c, Coordination of Consumer Affairs Program. The FHWA Directives System Handbook will be revised to incorporate the CAPS' role in the rulemaking process. The procedures provide advance notice to the public of FHWA's planned rulemaking actions through publication by DOT of a Semi-Annual Regulations Agenda. To be placed on the distribution list for the Regulations Agenda, contact DOT's Office of General Counsel, C–50, 400 Seventh Street SW., Washington, D.C. 20590.

To ensure consumer input into the development of policies and programs, FHWA has developed a Standard Procedure for Consumer/Citizen Participation, which is published in the Appendix to this Notice. Briefly, it requires each Associate Administrator and Staff Office Director to identify key emerging issues which could lead to development of a policy or program of significance to consumers. Each Associate Administrator and Staff Office Director will designate an individual to be responsible, in coordination with the CAPS, for developing a plan which will identify members of the public who may be affected by an issue originating in his/her office and determine how they can be made aware of the issue and become involved in the development of the proposed policy or program. A summary of consumer responses will be included in the decision package for the Administrator.

(2) *Consumer Forums.*

The FHWA believes that opportunities for more effective consumer participation might be realized as a result of meetings of consumers and their representatives with FHWA officials. These include opportunities for consumers to become better informed about FHWA programs and issues, to gain better access to FHWA decisionmakers, to offer suggestions for future actions, and to exchange ideas and views among themselves. For planning purposes, the CAPS will consider holding one national consumer forum in Washington, D.C., and one or more regional forums on a trial basis during the first year of program operations. In its consideration, the CAPS will evaluate the experience of DOT's Office of Consumer Liaison with its consumer meetings. Also, suggestions from consumers and consumer organizations as to possible topics and format will be considered.

(3) *State and Local Consumer Liaison.*

The FHWA field organization consists of Division Offices located in each State (usually in the capital city) and reporting to nine Regional Offices. These offices monitor the administration of the Federal-aid highway program by the State highway agencies. They are involved in the program at the project level, where it has the greatest consumer/citizen impact. Similarly, the Division and Regional Offices provide the most convenient access to FHWA for the affected public. To utilize this resource for more effective consumer participation, each Regional and Division Administrator will designate an individual who will coordinate liaison activities with consumers in his/her office's jurisdiction and report consumer concerns to the CAPS.

4. INFORMATIONAL MATERIALS

a. Current Program

The FHWA publishes informational material to describe its programs in general terms or to explain some of the specific programs or elements. Many are designed primarily for the consumer. These materials are distributed to a wide variety of individuals and groups and are available upon request from the Office of Public Affairs, Federal Highway Administration, Washington, D.C. 20590. Some of the pamphlets and brochures currently available to the consumer include:

(1) "Ridesharing: An Easy Way to Save Gas and Money;"

(2) "Safety Rest Area—The Traveler's Haven;"

(3) "America on the Move—The Story of the Federal-Aid Highway Program;"

(4) "Cost of Owning and Operating an Automobile;"

(5) "Your Guide to the Freedom of Information Act;" and

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(6) "Interstate Transfer Provisions."

FHWA also uses news releases to the mass media, the consumer press, and selected mailing lists to convey information of interest to consumers. Those releases of particular interest, such as those reporting opportunities for public participation, are labeled "Consumer Advisory."

b. Planned Program

The CAPS will coordinate the preparation and maintenance of a list of FHWA consumer-interest publications. The list will be published and distributed periodically.

In cooperation with the DOT Consumer Policy Coordinating Council, the CAPS will prepare an annual consumer publication plan which includes a timetable for the preparation and distribution of new materials. Plans for the preparation, distribution and promotion of consumer publications will be coordinated with the FHWA Public Affairs Office.

The CAPS will assist the DOT Consumer Policy Coordinating Council in maintaining an inventory of all FHWA meetings which are open to the public. To obtain informed consumer participation, the FHWA office conducting a meeting will provide an agenda and background or other supporting materials of interest to attendees. Before the meeting the CAPS will review the material to ensure that it is presented in a non-technical matter and will consult with the initiating office on plans for distribution of the material. Individuals or groups who have not received advance materials may request them from the CAPS or the office conducting the meeting.

5. EDUCATION AND TRAINING

a. Current Program

The FHWA maintains a strong training program to equip its personnel with the skills needed to carry out new and changing responsibilities of the highway program. Recently, for example, the Office of Chief Counsel arranged a training session for FHWA staff on the Federal Register process. Similarly, the Office of Environmental Policy has provided training to State highway employees and FHWA personnel in the citizen participation techniques needed to carry out its project development requirements. The FHWA's training resources will be available to meet the needs of the new consumer affairs program as they are identified.

Assistance to consumers regarding their involvement in the rulemaking process is currently available from the Office of Chief Counsel or the FHWA Regulations Officer.

b. Planned Program

All FHWA personnel will be kept informed by the CAPS of individual responsibilities relating to the agency's consumer affairs program through briefings and the distribution of materials explaining FHWA's consumer-related programs.

The CAPS will cooperate in the DOT Consumer Policy Coordinating Council's training activities, and staff members will attend available interagency training courses.

The CAPS will assist in consumer education by:

(1) Coordinating with FHWA's Office of Public Affairs consumer requests for information and technical assistance on FHWA policies and programs;

(2) Participating with the Office of Chief Counsel in meetings with consumers to discuss the rulemaking process;

(3) Preparing materials necessary to explain the consumer/citizen participation process in agency policy and program development and rulemaking; and

(4) Explaining the consumer/citizen participation process as appropriate at consumer meetings and forums.

6. COMPLAINT HANDLING

a. Current Program

Consumer complaints received by the FHWA are handled under normal correspondence procedures. Correspondence is forwarded by the Executive Secretariat to the appropriate office for response. Responses to complaints involving significant policy or program issues are coordinated among offices with related responsibilities and are prepared for the Administrator's signature. The FHWA believes this procedure works well.

b. Planned Program

The FHWA is awaiting the results of a DOT study on the complaint handling process before revising its current procedures. The DOT study is intended to design a system that will provide helpful and timely answers to consumers' inquiries and complaints, and assure that management officials are informed about consumers' problems and opinions so these can be considered during policy discussions. The FHWA will provide for the review of draft responses to consumer complaints involving major policy issues or significant consumer impact, where practicable, by the CAPS.

APPENDIX—FHWA STANDARD PROCEDURE FOR CONSUMER/CITIZEN PARTICIPATION [1]

Introduction

The FHWA Standard Procedure for Consumer/Citizen Participation is designed to ensure that consumers have meaningful opportunities to participate in the development of major policies and programs which involve decisions by the Administrator, and which are of significance to consumers. To this end, the Consumer Affairs Program Staff is responsible for ensuring that the agency's development of programs and policies are effectively communicated to and coordinated with consumers/citizens and their organizations through the use of Plans for Consumer/Citizen Participation.

Requirements

1. Each Associate Administrator and Staff Office Director is responsible for identifying and notifying the Consumer Affairs Program Director of emerging issues being developed in his/her office having a significant impact on consumers, and which:

a. Involve matters of policy which require a major policy decision or major involvement by the Administrator; or

b. Have the potential for leading to the development of major programs or initiatives within FHWA.

In identifying significant issues, the following criteria will be considered:

(1) Does the issue involve a matter of interest or controversy among consumers or otherwise directly affect final users or purchasers of transportation services?

(2) Does the issue have a potential for imposing significant costs or other economic burdens on consumers?

(3) Does the issue have a significant impact on matters of transportation safety?

2. Each Associate Administrator and Staff Office Director will designate one individual to act as coordinator for all significant consumer matters or issues arising within his or her respective organizational areas. The names of these individuals will be provided to the Consumer Affairs Program Director, who will brief them on their responsibilities and will consider these designees the primary consumer contact point in their respect offices.

3. For each identified emerging issue originating in his/her jurisdiction the coordinator will prepare a Consumer/Citizen Participation Plan. The Plan will include a determination of what members of the public may be affected by the consumer matters or issues, how they can best be made aware of the issues or matters, and how the consumer/citizen can participate in the proposed policy and program development as well as in the decisionmaking process. The Plan will include provisions to clearly and simply explain the impact of proposed policies or programs, clearly advise consumers of what is required in a response, and give consumers sufficient opportunity to respond.

4. The Plan will utilize, as appropriate, one or more of the following techniques to inform citizen/consumers and to obtain their views:

a. Polls and surveys

b. Consultations, field trips and interviews

c. Mailing lists and telephone contact

d. Public meetings (national or regional), briefing sessions and open conferences

e. Notification in the **Federal Register.**

5. The listing of affected individuals or groups, method(s) of consumer notification, and elements of the Plan, including an implementation timetable, will be coordinated with the Consumer Affairs Program Director before any action is taken.

6. An analysis and summary of consumer comments on the proposed policy or program will be prepared by the initiating office, reviewed by the CAPS and included with the final proposal to the Administrator.

7. The initiating office and the Consumer Affairs Program Staff will coordinate efforts to inform commenters on policy and program decisions made at the conclusion of this procedure.

Issued on: October 24, 1980.

R. D. Morgan,

Associate Administrator for Engineering and Traffic Operations.

[FR Doc. 80-33715 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-22-M

[1] This procedure will be incorporated into FHWA's implementing directive.

National Highway Traffic Safety Administration

National Highway Traffic Safety Administration Consumer Program

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Notice of delay in the publication of the NHTSA's final Consumer Program.

SUMMARY: The NHTSA published its draft Consumer Program in the **Federal Register** on June 9, 1980 (45 FR 39192). Interested persons were invited to submit comments on the draft Consumer Program. The comment period closed on August 8, 1980. The draft Consumer Program noted that, after review of the public comments, the NHTSA would revise the Program as necessary and publish a final Consumer Program in the **Federal Register** by October 31, 1980. The NHTSA has received 20 public comments on the draft Consumer Program. Due to the comprehensive nature and length of these comments, and the NHTSA's interest in responding fully to all points raised, publication of the final Consumer Program will be delayed. The NHTSA expects to publish the final Consumer Program by November 30, 1980. Persons desiring to have a copy of the NHTSA final Consumer Program mailed directly to them should contact Ann Mitchell at the address or telephone number listed below:

FOR FURTHER INFORMATION CONTACT: Ann Mitchell, Office of Consumer Participation, Room 5232, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone: (202) 426-0670.

Issued on: October 24, 1980.

Frank Berndt,

Acting Administrator.

[FR Doc. 80-33716 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-59-M

Office of the Secretary

DOT Operating Administrations' Consumer Programs

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice of Publication of DOT Operating Administrations' Final Consumer Programs; Notices of Delay in the Publication of Certain DOT Operating Administrations' Final Consumer Programs.

SUMMARY: On June 9, 1980, the Department of Transportation (DOT) published its final Consumer Program (45 FR 39144). The program, developed in response to Executive Order 12160 ("Providing for Enhancement and Coordination of Federal Consumer Programs"), addresses the five consumer elements identified in the Order. An appendix to this Program contained draft consumer programs of DOT's eight operating administrations: Federal Aviation Administration (FAA); Federal Highway Administration (FHWA); Federal Railroad Administration (FRA); National Highway Traffic Safety Administration (NHTSA); Research and Special Programs Administration (RSPA); St. Lawrence Seaway Development Corporation (SLSDC); United States Coast Guard (USCG); and Urban Mass Transportation Administration (UMTA).

Each of these draft programs was subject to a 60-day public comment period and, as specified in the DOT Consumer Program, final versions of these plans were to appear in today's **Federal Register.** The Office of Consumer Liaison in the Office of the Secretary has played a continuing role in the development of both draft and final consumer programs of each operating administration.

This Part contains the final consumer programs of FHWA, SLSDC, and UMTA. Operating administrations not issuing final consumer programs in today's **Federal Register** have instead issued notices of delay of publication. Final programs for these operating administrations will be published shortly.

For further information on reasons for delay, anticipated publication dates, and contact persons please refer to notice of delay of publication entries in this Part.

EFFECTIVE DATE: Operating administrations' consumer programs appearing in this Part will become effective by December 1, 1980; consumer programs which will be published at a later date will become effective no later than 30 days after publication.

FOR FURTHER INFORMATION CONTACT: Judith L. Stone, Director, Office of Consumer Liaison, U.S. Department of Transportation, 400 Seventh Street, SW, Room 9402, Washington, D.C. 20590, (202) 426-4518; for further

information about specific operating administrations, see contact person listed in each of the following notices.

Issued in Washington, D.C. on October 23, 1980.

William B. Bonvillian,

Deputy Assistant Secretary for Governmental Affairs.

[FR Doc. 80-33717 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-62-M

Urban Mass Transportation Administration

[Docket No. 80-K]

Consumer Program

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Announcement of Final Consumer Program.

SUMMARY: The Urban Mass Transportation Administration (UMTA) is publishing its final Consumer Program. The program has been prepared in response to Executive Order 12160, "Providing for Enhancement and Coordination of Federal Consumer Programs." The Consumer Program will be responsive to the needs and wishes of the public concerning UMTA.

DATES: The Consumer Program is effective on December 1, 1980.

FOR FURTHER INFORMATION CONTACT: Irvin Chor, Consumer Affairs Specialist, Office of Public Affairs, 400 Seventh Street, SW, Washington, D.C. 20590 Rm. 9330. (202) 426-4043.

SUPPLEMENTARY INFORMATION: A draft Consumer Program was published for comment on June 9, 1980 (45 FR 39196). Interested persons were given until August 8, 1980 to submit comments. There were no substantive comments received from the public. Two minor changes in the Program have been made based on comments received from within the Federal Government. As part of the U.S. Department of Transportation, the Urban Mass Transportation Administration (UMTA) administers grant programs to improve public transit service, including grants to assist local governments and other public bodies in financing mass transit facilities, operations and equipment. The Administration's authority, responsibilities and programs are found in the Urban Mass Transportation Act of 1964, as amended.

Executive Order 12160 and the DOT Consumer Program require the DOT operating administrations to review and revise their procedures to ensure that consumer needs and interests are adequately addressed. Following is the UMTA Consumer Program which represents the required review and includes appropriate revisions designed to bring the UMTA Consumer Program into accord with Executive Order 12160 and Department standards. The UMTA Consumer Program will be implemented by an UMTA Order.

The UMTA Consumer Affairs Division represents consumers by participating in the development and review of UMTA policies, rules, programs and legislation which significantly affect consumers. The Consumer Affairs Division is responsible for assuring that citizens have adequate opportunities to participate in the development of UMTA rules, policies, and programs and for encouraging citizen participation in local transit activities. The Consumer Affairs Division shares responsibility with the Public Affairs Office for developing informational materials for consumers and programs that improve the transit industry's ability to work with citizens. Finally, the Consumer Affairs Division is responsible for UMTA Consumer complaint handling.

The Consumer Plan explains how these five program elements are addressed and describes several other functions of the UMTA Consumer Affairs Division that are also among its responsibilities.

CONSUMER AFFAIRS PERSPECTIVE

The UMTA Consumer Affairs Division (CAD) is located within the Office of Public Affairs, and is responsible for working within the public transit industry to improve the relationship between transit operators and the public. The CAD is also responsible for assuring the public access to the policies and programs of the Urban Mass Transportation Administration.

This latter responsibility is performed by implementing the five level Consumer Affairs Specialist. The CAD professional staff will have education, experience and training in transit issues, consumer affairs programs, writing and general administrative procedures.

The CAD participates in the Departmental Consumer Policy Coordinating Council which is responsible for coordinating DOT consumer policies and advising the Secretary on consumer issues.

The CAD is responsible for establishing and maintaining liaison with transit industry community relations professionals and assisting them in improving the relationship between local transit operators and the public. An example of this is the Transit Community Relations Group formed at the initiative of the UMTA CAD. Meeting regularly to discuss problems, solutions, community involvement techniques and experiences, that group has proven to be a valuable resource to the rail transit community. Participating in the activities of the American Public Transit Association Marketing and Community Relations Committees is another method of advancing the interests of transit community relations.

OVERSIGHT FOR CONSUMER AFFAIRS

Although reporting to the Director of Public Affairs, when issues involve significant consumer interest or concern, the Senior Consumer Affairs Specialist has direct access to the UMTA Administrator. The Senior Consumer Affairs Specialist is responsible for carrying out the review and comment functions described in the previous section, as well as monitoring and overseeing the Administration's consumer programs and citizens participation efforts. The Senior Consumer Affairs Specialist is responsible for developing and implementing the Administration's Standard Procedure for Citizen Participation (see Appendix I).

In addition to the functions and responsibilities previously described, the Senior Consumer Affairs Specialist reviews and programs elements described in Executive Order 12160. Additionally, the CAB is authorized to make recommendations to the UMTA Administrator on proposed rules, policies, programs and legislation of significant consumer impact.

The CAD has authority and responsibility for reviewing and commenting on all proposed UMTA regulations having significant consumer impact (as defined in Appendix I). In order to accomplish this task, the CAD is on the UMTA Chief Counsel's distribution list for review and comment on proposed and final regulations. Comments from the CAD receive consideration from the Chief Counsel before a proposed or final rule is published in the **Federal Register.**

The CAD will be notified by the heads of UMTA offices when policies involving significant consumer impact are under consideration. The CAD is responsible for providing opportunities for citizens to participate in the development of those policies (see Standard Procedure for Citizen Participation).

The CAD will be notified by the heads of UMTA offices when a program is under consideration which involves significant consumer impact (see Standard Procedure for Citizen Participation). The CAD participates in Administration work groups, task forces and committees engaged in planning or evaluating programs containing elements of significant consumer impact.

Similarly, the CAD will be on the distribution list and have an opportunity to review and comment on proposed legislation developed by the Administration, when that legislation contains elements of significant consumer interest or concern.

The CAD represents an identifiable, accessible professional staff of consumer personnel, including at least one full time senior evaluates applications (received by the Office of Policy Research) for UMTA university research grants when those applications focus on consumer issues. Also, the CAD proposes consumer subjects for consideration as research topics.

The Senior Consumer Affairs Specialist paticipates in the DOT Consumer Policy Coordinating Committee and the interagency programs and activities of the DOT Office of Consumer Liaison.

CITIZEN PARTICIPATION

In addition to exercising its responsibility to review and comment on proposed regulations, policies, programs and legislation, the CAD is similarly responsible for assuring that citizens have adequate opportunities to participate in the UMTA decisionmaking in these areas.

Citizen participation in UMTA rulemaking is the responsibility of the UMTA Chief Counsel and is governed by EO 12044 and the DOT Order on Improving Government Regulations. This responsibility applies to all proposed regulations.

The CAD is responsible for citizen participation in the development of UMTA programs and policies containing elements of substantial consumer interest. Employing techniques and devices outlined in the Standard Procedure for Citizen Participation, the CAD is responsible for timely public notification about the issues, opportunities to comment and an explanation of the processes to be employed in their development.

In addition to assuring citizen access to UMTA program and policy initiatives of significant consumer interest, the CAD is responsible for holding or participating in public forums on transportation issues. Examples of this involvement include the DOT Consumer Conference and the December, 1978, "Workshop on Consumer-Related Issues in Public Transit," co-sponsored by UMTA and the Transportation Research Board.

The UMTA Regional Offices continue to have responsibility for working with citizen and community groups to assist them in developing public transportation proposals. Meetings of this type occur almost continuously and provide an ongoing opportunity for citizens to learn about the federal transit program from high ranking transit officials located in their regions of the country.

It is intended that addition public forums, meetings or conferences will be held on consumer oriented issues. These will be scheduled in Washington, D.C. and around the country, will involve senior level UMTA staff, but will be called as relevant issues arise, rather than on a regularly scheduled basis. An example of this type of activity is the recent series of local briefings on the rail transit accessibility studies held in twelve cities around the country.

INFORMATIONAL MATERIALS

The CAD is responsible for working with the Office of Public Affairs in providing informational materials for citizens on the federal public transit program. This responsibility includes periodic review of existing materials to insure accuracy as well as proposing additional materials. A list of existing publications is attached (Appendix II). All informational materials can be obtained by writing the UMTA Office of Public Affairs; 400 Seventh Street, S.W., Washington, D.C. 20590. In addition, many general publications can be obtained from the UMTA regional offices and are available at UMTA or DOT sponsored meetings and conferences.

When new publications are introduced, the CAD is responsible for notifying the general media (usually via press release) and for utilizing the DOT consumer mailing list for wider distribution.

In cooperation with the lead offices within the Administration, the CAD is responsible for developing informational materials in advance of public meetings, hearings, briefing, etc., whenever an issue of substantial consumer interest is the subject. The summary document prepared to accompany the detailed studies of rail accessibility cost estimates is an example of this type of material. The CAD, and the DOT Consumer Policy Coordinating Council are responsible for informing the public about open meetings that UMTA holds. When the Administration schedules a series of meetings, the CAD will disseminate the schedule to the public.

EDUCATION AND TRAINING

The CAD is responsible for developing within UMTA and local transit agencies fundamental expertise in citizen participation techniques. In part, this will be accomplished by establishing training programs for UMTA headquarters and regional staff and local transit officials. The CAD will also work with transit industry groups and other UMTA offices in developing educational aids and programs. For example, the APTA Marketing Committee is developing a grade school transit educational kit. The Senior Consumer Affairs Specialist is a member of that Committee. Additionally, the CAD has worked with other UMTA offices, consultants and grantees in developing another information kit currently being used by the California DOT and schools in other jurisdictions.

The CAD will meet with and explain the DOT and UMTA Consumer Programs to UMTA program offices. Training opportunities in consumer affairs and citizen participation techniques will be explored and developed in cooperation with the UMTA Office of Personnel and Training as well as other program offices.

The CAD provides assistance to consumers on scientific or technical questions by referring them to appropriate staff or program specialists.

COMPLAINT HANDLING

Consumer complaints and other consumer correspondence are directed to the CAD for reply were it is either answered or referred to a more appropriate office. Frequently, consumer correspondence concerns a local transit authority rather than an element of the Federal transit program. In these instances, a referral is made to the local authority with a request that any assistance possible be provided to the complainant.

Correspondence related to UMTA projects or transit projects funded by UMTA is routed to the appropriate program office for reply. A majority of this correspondence is

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treated as controlled mail and, therefore, logged in and monitored for timely reply. When correspondence on a specific subject suggests a widespread positive or negative public attitude (for example, 20 or more letters on the same subject), the UMTA office receiving the letters is required to notify the Administrator of that interest.

On issues where public comments are requested or where the likelihood of public comments is great, a public docket is established so that the comments are considered when decisions are made on that issue.

APPENDIX I—URBAN MASS TRANSPORTATION ADMINISTRATION STANDARD PROCEDURE FOR CITIZEN PARTICIPATION

This Standard Procedure for Citizen Participation indicates those actions and communications devices used to inform the public of developing programs and policies in the Administration and to stimulate public comments. The Standard Procedure is utilized whenever an issue of substantial consumer impact is being addressed and as a supplement to existing DOT public notification requirements for rulemaking actions.

Whenever a proposed program or policy contains elements of substantial consumer impact (as below), the head of the UMTA program office considering the proposal and the Office of Chief Counsel are responsible for notifying the CAD. The CAD and the program office will develop an outreach plan for citizen participation. The plan will include appropriate outreach devices such as the following:

a. polls and surveys,
b. field trips and interviews,
c. mailings,
d. briefing,
e. advance notices,
f. press releases to general interest media,
g. direct notification to consumer, environmental and other special interest groups,
h. distribution of issue papers,
i. public meetings.

The program office and the CAD will develop a timetable for implementing the elements of the outreach plan. The plan and timetable will be included with other public information on the proposal. The CAD and the program office are responsible for ensuring that pulbic comments are summarized and analyzed and that this information is utilized in the decisionmaking process.

The CAD will try to provide all commenters with information on developments significant to the policy or program they commented on.

In determining whether an issue contains elements of significant consumer impact, the following criteria should be used:

1. Does the issue involve a matter of interest or controversy among consumers or otherwise directly affect final users or purchasers of transportation services?
2. Does the issue have a potential for imposing significant costs or other economic burdens on consumers?
3. Does the issue have a significant impact on matters of transportation safety?

APPENDIX II—CONSUMER-ORIENTED PUBLICATIONS OF THE URBAN MASS TRANSPORTATION ADMINISTRATION

1. Federal Assistance for Urban Mass Transportation.
2. Innovative Transit Financing.
3. Transportation Programs for the Elderly and Handicapped.
4. This is Light Rail Transit.
5. Center City Environment and Transportation: Local Government Solutions.
6. Elderly and Handicapped Transportation: Local Government Approaches.
7. Transportation System Management—a bibliography.
8. Fact Sheets:

Paratransit,
Minority Business Enterprise,
Cities Are for Living,
Labor Policy,
Buy America,
Non-Discrimination,
Downtown People Mover Demonstration Program.

Dated: October 24, 1980.

Theodore C. Lutz,
Administrator.

[FR Doc. 80-33718 Filed 10-29-80; 8:45 am]
BILLING CODE 4910-57-M

Federal Aviation Administration

Consumer Program

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of delay in the publication of FAA's final Consumer Program.

SUMMARY: On June 9, 1980, FAA published in the **Federal Register** (45 FR 39165) its draft Consumer Program for public review and comment. The DOT final Consumer Program, also published on June 9, 1980 (45 FR 39144), indicated that each DOT operating administration, including FAA, would publish a final Consumer Program by October 30, 1980. Unfortunately, agency work burdens have prevented FAA from meeting the October 30 publication date. FAA expects to publish its final Consumer Program by November 6, 1980. Persons desiring to have a copy of the FAA final Consumer Program should contact Fred Pelzman at the address or telephone number listed below.

FOR MORE INFORMATION CONTACT: Fred Pelzman, Chief, Community and Consumer Liaison Division, APA-400, Room 906-A, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, D.C. 20591, 202/426-1960.

Issued in Washington, D.C., on October 27, 1980..

Jerome H. Doolittle,
Assistant Administrotar Public Affairs.

[FR Doc. 80-33770 Filed 10-29-80; 8:45 am]
BILLING CODE 4910-13-M

Research and Special Programs Administration

Consumer Program

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Notice of delay in the publication of RSPA's final Consumer program.

SUMMARY: On June 9, 1980, RSPA published in the **Federal Register** (45 FR 39186) its draft Consumer Program for public review and comment. The DOT final Consumer Program, also published on June 9, 1980 (45 FR 39144), indicated that each DOT operating administration, including RSPA would publish a final Consumer Program by October 30, 1980.

Unfortunately, Agency work burdens have prevented RSPA from meeting the October 30 publication date. RSPA expects to publish its final Consumer Program by November 10, 1980. Persons desiring to have a copy of the RSPA final Consumer Program should contact Jackie Gillan at the address or telephone number listed below.

FOR FURTHER INFORMATION CONTACT: Jackie Gillan, Director, Office of Public Affairs and Consumer Participation, Research and Special Programs Administration, 400 7th Street, S.W., Room 8414, Washington, D.C. 20590, (202) 426-9676.

Issued in Washington, D.C., on October 23, 1980.

Howard Dugoff,
Administrator, Research and Special Programs Administration.

[FR Doc. 80-33771 Filed 10-29-80; 8:45 am]
BILLING CODE 4910-60-M

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October 30, 1980

Part IV

Department of Transportation

Office of the Secretary

Final Policy and Proposed Guidelines on Citizen Participation in Local Transportation Planning

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice No. 80-17]

Final Policy and Proposed Guidelines on Citizen Participation in Local Transportation Planning

AGENCY: Office of the Secretary, DOT.

ACTIONS: Notice of Final Policy and Request for Public Comment on Proposed Guidelines.

SUMMARY: With this notice, DOT issues a Policy Statement on Citizen Participation in Local Transportation Planning, as well as Proposed Guidelines on that subject. The first three sections of this notice describe events leading up to this document, analyze the public comments received, and summarize the Department's decisions and actions. The final three sections present the Policy Statement and the Proposed Guidelines on Citizen Participation in Local Transportation Planning, as well as Appendixes which list DOT requirements for citizen participation. The Policy Statement clarifies and strengthens DOT's existing position of encouraging citizen participation in transportation planning. The Proposed Guidelines would support and amplify the Policy Statement by identifying and explaining key elements of active citizen participation; all concerned segments of the public are invited and urged to comment on these Proposed Guidelines. The Policy Statement will apply to all DOT requirements for citizen participation in the local transportation planning process. The Proposed Guidelines would also apply to the same requirements. These requirements are listed in the Appendixes. Appendix A lists Federal-aid progams; these are programs whose laws and regulations require State and local agencies using DOT funds to provide for public involvement in transportation planning and project development. Appendix A also includes brief explanations of how Federal-aid programs are administered in various DOT operating administrations. Appendix B lists other DOT requirements for citizen participation.

DATES: The Policy Statement takes effect October 30, 1980. Comments on the Proposed Guidelines should be received on or before December 29, 1980; to the extent possible, comments will be accepted and considered after this deadline.

ADDRESS: U.S. Department of Transportation, Office of Consumer Liaison (I-50), Proposed Guidelines File, Room 9402, 400 Seventh Street, S.W., Washington, D.C. 20590. All comments received on the Proposed Guidelines will be available for public inspection at the above address, from 8:15 a.m. to 5:45 p.m., on Mondays through Fridays. The receipt of each comment received will be acknowledged in writing, and all commenters will be sent the final guidelines after these have been published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Lee L. Gray, Coordinator for Citizen Participation, Office of Consumer Liaison, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590; (202) 426-4520. For specific information about the substance of DOT operating administrations' requirements for citizen participation, refer to the operating administration's contacts listed in Appendix A and Appendix B of this notice.

SUPPLEMENTARY INFORMATION: This notice was preceded by an Advance Notice of Proposed Policy (ANPP) on this subject, published in the **Federal Register** on August 9, 1979 (44 FR 46971). The ANPP announced that DOT planned to develop an overall policy statement on citizen participation in transportation planning, and requested public comment. In addition to circulating the ANPP widely, DOT staff conducted in-depth interviews in various areas of the country. A discussion of written comments and interviews is provided in Section (2) below. Both the Policy Statement and the Proposed Guidelines reflect the experiences, opinions, and concepts expressed in the written comments and the interviews.

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(1) Background

The need to clarify DOT's position on citizen participation in local transportation planning became apparent at a DOT conference on Transportation and the Consumer held in Washington, D.C., in May 1979. During informal discussion sessions, citizen conferees drafted recommendations which centered on requests for DOT to expand and improve opportunities for citizens to participate in local transportation planning. While the Department's position was to encourage effective citizen participation in the planning process, DOT had never issued a comprehensive policy statement which applied to all operating administrations in the Department and addressed specific aspects of how citizens should be involved when communities make transportation decisions. The Department agreed that such a statement was necessary.

In June 1979, the Department set up the DOT Work Group on Citizen Participation, charged with developing recommendations to the Secretary concerning DOT policy on citizen participation in local transportation planning. All appropriate elements within DOT were represented on the Work Group. As a first step, the group developed an Advance Notice of Proposed Policy (ANPP) which was published in the **Federal Register** on August 9, 1979 (44 FR 46971). The public was asked to comment, in particular, on five aspects of citizen involvement in transportation planning:

1. What opportunities do citizens in your area have to become involved in transportation planning? Are they adequate? How can they be improved?
2. How are citizens informed about transportation systems and facilities that are being planned in your area? Is this process adequate? How can it be improved?
3. What resources are provided to facilitate citizen participation in your area? Are they adequate? How can they be improved?
4. What methods are used to recognize and incorporate citizens' views into your area's decisionmaking process? How can these methods be improved?
5. What should be the DOT role in fostering public participation at the State and local levels?

An extensive outreach plan was developed for stimulating comments on the ANPP. Working with the Department's Office of Consumer Liaison, the Work Group identified the affected segments of the public as the following: individual citizens and representatives of national, State, and local citizens' organizations concerned with transportation issues; groups dealing with environmental issues, with needs of the handicapped, and with minorities' concerns; officials and staffs of State transportation agencies, State and local government officials, regional and local planning agencies, transit operators; agencies serving minorities and low-income citizens; and officials and staffs of DOT headquarters and field offices. A total of 18,000 persons in these categories receiving a mailing about the ANPP which was also publicized through a news release, personal phone calls and letters, meetings, conferences, and newsletters of citizens' groups. In addition, the Work Group organized field trips to 20 cities in order to interview people representing the concerned segments of the public already identified; 193 people were interviewed.

After analyzing the 390 written comments received and the 193 interview reports, the Work Group identified the issues of concern to the affected segments of the public; these are described and discussed in Section (2) below. The Work Group examined a broad range of options available to the Department on each issue; draft recommendations for Departmental review were developed and were discussed with officials throughout DOT. During this process of developing and discussing options and recommendations, an emphasis was placed on giving consideration to the concerns and opinions of the various persons who had commented and been interviewed during the ANPP process.

The Work Group's final recommendations to the Secretary represent a comprehensive position on citizen participation in local planning that is accepted by all elements of the Department. This comprehensive position includes a DOT Policy Statement, Proposed DOT Guidelines, and supportive actions by the Department and its operating administrations. These supportive actions are described in Section (3) below.

(2) Summary of Public Comments

DOT received 390 written comments and interviewed 193 people in 20 cities on its Advance Notice of Proposed Policy on Citizen Participation in Local Transportation Planning. These commenters represented 45 States and included a wide range of government and community perspectives. The breakdown of commenters is as follows:

Individuals and citizen group representatives	285
Agencies representing elderly and low income individuals	31
State and local officials	212
Federal officials	32
Miscellaneous (e.g., consultants, professors)	23
Total	583

Commenters described many local situations and programs which are too numerous to summarize here. However, DOT did examine these specific descriptions to determine what implications they might have in terms of a DOT policy on citizen participation. This section summarizes the public comments received; it does not itemize each individual comment. This section is divided into four parts: How Citizens Participate; DOT Role in Transportation Planning; Education, Training, and Outreach; and Funding for Citizen Participation.

How Citizens Participote

As a whole, individuals and citizen group representatives were not satisfied with citizen participation opportunities in their communities or States. Their major problems revolved around not being involved early enough in the process to influence decisions, inadequate information efforts, ineffective use of advisory groups, lack of citizen representation on transportation committees and transit boards, and the perception that their comments were not taken seriously or used in the decisionmaking process.

On the other hand, most State and local transportation officials and metropolitan planning organization representatives stated that their citizen participation processes were adequate. However, a few indicated that their information efforts could be improved. Many government representatives mentioned public apathy and the dominance of special interest citizen groups in local proceedings as problems.

State and local officials described their local citizen participation programs indepth. Because they opposed any effort to establish new citizen participation rules, they offered only general suggestions for reform within the context of existing policies and regulations. However, a few officials suggested the need for a precise definition of citizen participation and a statement of DOT's objectives. (Both are provided in DOT's policy statement and proposed guidelines.)

Individuals and citizen group respondents described specific citizen participation problems and offered numerous suggestions which follow:

Notification

Comments: Citizens mentioned the selective notification of individuals as a problem. They described situations in which only business representatives were invited to participate at public hearings or only people on the primary proposed corridor were notified instead of residents of all alternative corridors under consideration. Citizens believed that there was insufficient use of the media. They did not blame the situation entirely on local officials but placed a portion of the blame on the media itself for not carrying items about transportation issues. Citizens also mentioned problems in the timing of information and participation efforts with some information being disseminated after plans were formulated. Most recommendations in this area concentrated on using the media more effectively, notifying individuals directly, and using available network and distribution channels. A few local officials acknowledged that they must provide for better and wider outreach efforts to notify citizens of pending proposals and actions.

Response: Nearly all of the specific suggestions by respondents are included in DOT's proposed guidelines.

Access

Comments: Several individuals claimed that they lacked access to information necessary for them to form opinions and respond to planning efforts. A few individuals believed that planning documents were too expensive for citizens and should be provided free or at nominal cost. Certain people stated that information on draft environmental impact statements was withheld and that citizens were made to feel guilty about going to highway departments to look at plans. One citizen complained that in her state no technical information is available until it is part of the official record and that is when contracts are advertised for bid—which made it much too late for citizens to impact decisions. A few individuals indicated that many citizens did not know that they had the right to review information in environmental impact statements.

Response: DOT has addressed these problems in its proposed guidelines.

Quality of Information

Comments: Several individuals criticized the clarity of planning information, indicating that it was sometimes written by staff who "do not speak the language of the people". Citizen respondents alleged instances of inaccurate or misleading information.

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with one individual particularly irate when obviously low cost estimates were given in a draft environmental impact statement. One respondent stated that the language on local transportation plans was dull and academic and often seemed unrelated to tangible problems and aspirations of citizens.

Response: DOT's Proposed Guidelines include provisions for readability and accuracy.

Incorporating Public Comment

Comments: The failure to incorporate public comments in transportation planning decisions was perhaps the most significant problem mentioned by citizen respondents. It was mentioned by close to 100 individuals and was even given as one reason for public apathy in transportation issues.

Citizens believed that their comments were not given serious consideration and expressed anger that planning agencies did not explain why citizen suggestions could not be implemented. Phrases like—"they will not listen"; "it's a farce"; "only option is lawsuit"; a "cynical token gesture"; "officials tend to ignore advice of citizens"—illustrated citizen frustrations. A few commentees stated that DOT should require transit authorities to have a complaint handling process.

Response: While DOT recognizes that many local transportation decisions will not please all of the people all of the time, the Department firmly believes that citizens do have a right to expect that their suggestions should receive serious consideration, and they deserve an official government reponse. this commitment is reflected in DOT's proposed guidelines. To DOT's knowledge, all transit authorities already have some mechanisms for handling complaints.

Public Hearings ond Meetings

Comments: Many individuals believed that local officials view a public hearing as a proforma waste of time, a formality to comply with the law. Some individuals observed that public hearings often occur late in the process after basic decisions have been made. Some respondents described biased hearing officers who intimidated citizens or belittled their testimony. Many citizens disliked the formal nature of hearings and wanted officials on hand who would answer questions about transportation plans accurately and not defensively. Some citizens criticized planning agencies for not keeping transcripts of hearings, and others claimed that hearing summaries were sometimes inaccurate. Notification about hearings, lack of information in advance of hearings, transportation to meetings, security arrangements, accessibility of buildings were all seen as problems by citizen respondents. Individuals and citizen group representatives expressed support for informational meetings on a neighborhood basis prior to formal public hearings. One individual recommended that public transit officials demonstrate a greater willingness to meet with citizens and groups at convenient times and places. It was also suggested that the offering of compensatory time or rearranged work schedules for planning staff might make them more amenable to after-hour meetings.

Response: In its proposed guidelines, DOT addresses the problems and suggestions noted by the commenters related to public hearings and meetings. Many DOT programs already require planning agencies to keep records of public hearings, and the proposed guidelines offer further suggestions in this area.

Advisory Groups

Comments: Citizen respondents mentioned a number of problems with advisory groups. Several commenters found advisory groups to be ineffective because local officials generally did not listen to their recommendations; commenters claimed that officials expect advisory groups to rubber stamp planning board decisions. These commenters recommended that planning agencies be required to respond to advisory group suggestions and to explain why they were or were not included in decisions. Those that did believe that their advisory groups were successful had staff support and funding available to them. Both citizen commenters and local government commenters expressed concern that general advisory and citizen advisory groups were sometimes not representative of the public at large. At the crux of the problem seems to be a difference in perception on the role of advisory groups with citizens believing that substantial weight should be given to their recommendations and local officials believing that the advisory group's role is strictly advisory.

One individual recommended that citizen advisory groups be formed at the Federal, State, and local levels. A few individuals recommended that planning agencies be required to form citizen advisory groups and to provide funding and staff assistance for such groups. Others suggested that citizen advisory groups should be required to have representation from specific segments of the community, including minority, low income, and handicapped individuals, and bicyclists. A few commenters recommended that citizen advisory groups be formed on a neighborhood basis; and one commenter recommended that any request for funding to DOT should include the recommendations of the local advisory group. A few commenters recommended that special advisory groups be formed for handicapped and minority individuals.

Response: Citizen participation techniques and programs should be geared to individual communities and the nature of the transportation planning effort. While advisory groups, when used properly, can be an important citizen participation mechanism, DOT does not consider it advisable to require transportation planning agencies to have advisory committees at all times. It also does not favor the establishment of a Federal Transportation Advisory Committee. DOT, however, does believe that when advisory groups are used, they should follow certain basic criteria. As a result, DOT has incorporated many of the suggestions made by commenters in its proposed guidelines.

Representation

Comments: Several individuals believed that transit boards and policy committees of metropolitan planning organizations did not represent citizen interests and called for a voting citizen representative on such boards and committees. A few city officials stated that the public had their chance to be represented at the ballot box, but citizen commenters seemed to anticipate this argument by saying that it is difficult to elect officials on the basis of one issue and it is not always possible to know the opinions of officials on every subject before an election. Some citizen commenters said that the metropolitan planning organizations (MPO) were at times composed of staff or appointed officials because MPOs had difficulty in getting elected officials to attend meetings. In a similar vein, one commenter said that transportation planning bodies are an invisible and unaccountable branch of government; and another person recommended that the composition of MPOs be examined. Two persons suggested that transit decisionmakers be elected, and one suggested that they be elected by district.

Response: Under Federal legislation, governors together with local elected officials have the responsibility for designating metropolitan planning organizations (MPO) [23 U.S.C. 134]. DOT regulations require that local elected officials have adequate representation on MPOs [23 CFR 450.106]. State and local laws and regulations often determine the structure of transit boards. As a result, changes in the make-up of these committees and boards are best addressed at the State and local levels. However, DOT believes that both transit boards and policy committees of MPOs might benefit from grassroots citizen representation, and this idea has been incorporated in DOT's proposed guidelines.

Timing of Citizen Participotion Activities

Comments: Citizen respondents mentioned timing of their participation as a major problem. They indicated that they were involved too late in the process to have any influence on decisions and that often there was not enough time between the announcement of a public hearing and the hearing itself to really study the issues. Transportation agencies mentioned difficulty in generating citizen interest in the initial stages of planning.

Response: DOT's proposed guidelines and policy statement stress the importance of early involvement. The proposed guidelines also encourage planning agencies to describe clearly the implications of potential transportation activities as one way of stimulating early citizen involvement.

Surveys/Referendums

Comments: Some individuals and government officials favored the use of surveys in getting the public's ideas on transportation needs and on specific transportation proposals. A few individuals expressed support for user surveys on public transit needs. Some local officials believed that those who participated in transportation planning are often members of special interest citizen groups and not representative of the public at large. These officials believed that surveys could give them a better idea of how the public at large views specific proposals. A few individuals favored public referendums on controversial transportation issues.

Response: Surveys are one means of gauging public opinion on transportation needs and programs and as such are mentioned as a participation technique in DOT's proposed guidelines. However, to be conducted properly, surveys require more money and expertise than many commenters realize. DOT advises planning agencies to conduct careful investigation and planning before proceeding with surveys and never to rely on surveys as the only means of obtaining public views.

Public referendums can be useful in resolving public controversy on certain large transportation projects and have been used in a few communities. However, as a general matter, referendums are too costly and time-consuming for general use.

DOT Role in Transportotion Planning

The nature and the extent of DOT involvement in local transportation planning was clearly controversial. Recommendations ranged from having U.S. DOT take control of local transportation planning to a call for no Federal involvement.

Rules/Guidelines

Comments: Approximately 75 commenters (mostly individuals and citizen group representatives) favored stronger DOT rules and sanctions governing citizen participation. A number of these commenters suggested that DOT establish effective standards for citizen participation and assure that those standards are met. Some commenters asked DOT to refuse to review, approve, or fund any projects which were planned without ground-level citizen participation; and a few called for a cutoff of DOT funds when a local transportation decision runs counter to the expressed will of the people. Two commenters suggested that DOT take control of the local transportation planning process when a State or local agency does not adequately provide for citizen participation.

While not recommending specific sanctions, another large group of commenters called for more stringent public participation requirements, covering such items as early citizen involvement, regularly scheduled public meetings, public hearings, incorporating public comments into decisions, the use of citizen advisory groups, etc.

Several people believed that citizen participation could be improved through the issuance of DOT guidelines. A few commenters suggested that such guidelines define specific responsibilities of Federal, State, and local transportation agencies.

Several State and local officials believed that existing requirements in citizen participation are sufficient. Many of these officials and a few individuals stressed the need for communities to have flexibility in funding allocations and in citizen participation requirements. Some respondents suggested that different criteria should be established for different types and sizes of communities and programs. Still others stated that communities which already have an active citizen participation program should be exempt from any new citizen participation requirements. One person stated that Federal specifications and rules need to be geared down for rural areas. A few commenters suggested that DOT merely require that a citizen participation process be in place and let local officials develop their own strategies for a given project in consultation with the State and U.S. DOT. One commenter suggested that the most effective rule would be a simple one requiring every planning document to contain a description of public involvement and its effect on the proposals.

A few State and local officials believed that Federal agencies should remove themselves completely from the citizen participation area stating that local officials know best what citizen participation is needed or appropriate for each project.

Response: DOT is determined to strengthen its support for citizen participation and has considered various approaches for improving citizen participation in local transportation planning. The blanket use of the regulatory approach was rejected because of the difficulty in preparing regulations that would be adaptable to all planning situations and the need for flexibility and innovation in citizen participation programs. This does not, however, rule out the strengthening of existing regulations on specific programs, and in fact, DOT's operating administrations in the next several months will be reviewing, and where necessary, revising existing regulations to reflect DOT's policy on citizen participation.

DOT is convinced that the best overall approach is to state clearly DOT's policy on citizen participation and to provide guidelines which will assist planning agencies in meeting the policy goals and objectives.

Comments regarding withholding of funds are treated below.

Comments: One commenter asked DOT to endorse Environmental Protection Agency guidelines on citizen participation in transportation air quality programs.

Response: DOT has published joint guidelines with EPA on transportation planning activities related to air quality [45 FR 42023; 6/23/80].

Monitoring/Complaint Handling

Comments: Several individuals called for stronger monitoring and enforcement of all DOT rules especially citizen participation and environmental rules. A few commenters mentioned problems in the enforcement of State Action Plans required by DOT's Federal Highway Administration, and criticized the enforcement of environmental rules.

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alternative analysis requirements, and conflict of interest provisions. Others called for DOT's regional offices to be more receptive to citizen input and to serve as impartial information receivers on controversial projects with local polarization. A few recommended that regional DOT staff should monitor State and local citizen participation efforts regularly and attend public hearings on a regular basis. One State official recommended that citizen participation activities should be monitored as closely as expenditures and design criteria. He encouraged DOT to look at all citizen participation activities, not just public hearings, and to ask about citizen comments in any project review.

Several individuals and citizen group representatives called for some type of an appeals process through which citizens might report problems to DOT for review and investigation. They stated that if the citizen complaint appears to have merit that U.S. DOT should require an explanation from the State or local planning office. A few people asked that DOT be more responsive to citizen complaints and asked that there be a citizen focal point in each region.

DOT response: All DOT programs do provide for some type of review. For example, the Federal Highway (FHWA) and Urban Mass Transportation (UMTA) administrators periodically review the urban transportation planning process for each urbanized area. Following this review, the FHWA and UMTA administrators jointly determine if a transportation planning process complies with DOT's regulations and whether an urban area should be certified or whether conditions should be placed on the certification (for example, require corrective actions in certain areas and/or certify only specific projects or programs) [CFR 450.122].

In airport planning, the Federal Aviation Administration (FAA) reviews planning study designs before grants are awarded to assure that the designs provide for public participation and coordination. FAA also monitors the implementation of the airport planning studies. Grant recipients receive specific guidance on citizen participation through FAA's Advisory Circular on Citizen Participation [A.C. 150/5050-4].

Under laws administered by the Federal Railroad Administration (FRA), each State must develop a State Rail Plan and update it annually [49 U.S.C. 1654]. The plan must include the procedures and mechanisms used by the State to provide for public participation. FRA's Office of Federal Assistance reviews these plans annually.

DOT obviously has more leverage in those areas which have specific legislative mandates. However, it is often able to persuade local agencies to strenghten citizen participation elements through voluntary means. DOT places its emphasis on achieving voluntary compliance with its rules and guidelines and views the withholding of funds as an extreme measure.

For the most part, the Regional Administrators of DOT's operating administrations have prime responsibility for monitoring and enforcement of all DOT rules. Other DOT field and district offices may also share some monitoring responsibilities. DOT recognizes that additional training of regional staff may be required to enable them to improve their monitoring of the citizen participation elements of State and local transportation plans.

DOT already has procedures to handle complaints which allege violations in its rules or policies. However, it does not have and does not plan to have a formal appeals mechanism which would try to second guess specific transportation decisions made by local officials. Because there was concern over present monitoring and complaint handling procedures, Appendixes A and B list the places where citizens can report a violation in law or procedures and other channels to pursue if initial complaints have not been handled properly. In addition, under its Consumer Program, DOT is now conducting a complaint-handling study to determine if improvements are necessary in this area. After this study is completed and necessary improvements are implemented, DOT will revise its booklet, *Finding Your Way in DOT*, to help citizens identify the appropriate office to file a complaint or seek information.

Specific Programs

Comments: Many individuals expressed concern about environmental processes which are already covered by existing regulations. For example, two people recommended that contractors which prepare environmental impact statements should not be permitted to do a subsequent engineering study if a project is approved.

Response: Environmental procedures of DOT and the Council on Environmental Quality attempt to eliminate such potential conflicts of interest by requiring contractors who will prepare an environmental impact statement to sign a statement specifying that they have no financial or other interest in the outcome of the project [40 CFR 1506.5 and 44 FR 56420; 10/1/79].

Comment: Others stated that there should not be a separate environmental impact process for different segments of a highway when the segments have a tremendous impact as a whole.

Response: Federal Highway Administration (FHWA) regulations require that a project examined in an environmental impact statement have a logical ending point [23 CFR 771.3]. In addition, forthcoming regulations provide that a project considered in an environmental impact statement be a usable and reasonable transportation improvement even if no additional transportation projects are implemented. The intent of these rules is to prevent piece-by-piece consideration of interdependent transportation segments.

Comment: A number of people voiced concern about a pro-highway bias and stated that alternatives or the "no-build" option are not considered.

Response: DOT does have requirements on alternative analysis in many situations particularly for major transportation projects. For example, environmental rules require communities to look at various transportation alternatives, including the "no-build" option [40 CFR 1502.14 and DOT Order 5610.1c, 44 FR 56420; 10/1/79]. FHWA rules governing systems planning require an examination of alternatives including public transit alternatives [23 CFR 450]. And under interstate transfer procedures, urban communities may elect to substitute transit and highway projects for previously planned interstate projects under some situations [23 U.S.C. 103(e)(4), 23 CFR 476].

Comment: Commenters also alleged conflicts of interest at the local level.

Response: Such allegations should be reported to the proper authorities, for example, local enforcement officials or DOT's Inspector General, who is charged with detecting fraud and abuse in all programs administered or financed by DOT.

Comment: One commenter called on DOT to change its administrative requirements and also seek legislative changes to require that public hearings be held on all major reconstruction and renovation of highways especially those which have safety implications. Another commenter recommended specific changes in DOT's Federal Aid Urban Systems Program.

Response: DOT is currently developing legislative options for the Federal Aid Highway Program, and these comments have been forwarded to the Federal Highway Administration for its consideration.

Education, Training, and Outreach

Over 100 commenters addressed the issue of education, training, and outreach efforts to promote better citizen participation. Commenters mentioned the need for training of agency staff and for citizens.

Staff Training

Comments: Individuals and citizen groups cited a lack of sensitivity and objectivity of transportation planning staff. Commenters stated that too often the person responsible for citizen participation was skilled only in public information and not in the other important facets of citizen participation. Commenters recommended training for transportation planning staff at all levels. Government commenters did not mention sensitivity as a problem, but a few did say that they needed more training in specific citizen participation techniques, such as group dynamics and conflict resolution and looked to DOT to provide such assistance in the form of training or through increased financial assistance. State, regional, and local officials recommended that DOT improve its information channels to transportation planning staff at the State, regional, and local levels.

Response: DOT's Federal Highway Administration has for several years conducted intensive training in citizen participation techniques for Federal, State, and local officials; and DOT's Federal Aviation Administration recently developed a citizen participation training program for Federal staff and airport operators. DOT is interested in expanding these activities so that planning officials in every transportation mode and every level of government have the opportunity to participate. In addition, DOT plans to share with State and local officials summaries or case histories of successful citizen participation efforts to promote a greater awareness of citizen participation techniques and their potential for improving local transportation decisions.

Citizen Training

Comments: Individuals and State and local government representatives mentioned several needs in this area. A few people called for DOT to inform people at the grassroots level on transportation issues and to promote an educational program for children particularly in the public transit area. Commenters suggested information booklets and/or training sessions on Federal transportation programs, including the allocation of funds and how the funds may be used; and on the local and regional planning process, including how decisions are made and the limitations and requirements of transportation providers. A few commenters believed that such training should not be conducted by DOT but rather that DOT should provide funds to a coalition of environmental or citizen groups to provide such training. One person suggested that DOT regularly publish issue papers to acquaint citizens with transportation problems and alternatives.

One commenter suggested that DOT expand the mailing list for its consumer newsletter and that DOT's magazine *Transportation USA* be used as a vehicle for informing people about citizen participation programs and for letting people know about proposed regulations and programs.

Responses: DOT believes that citizen education in transportation issues is important and plans to do more work in this area. DOT recently published two documents which may be of interest to citizens—*Agenda for the 80s* and *Profile of the 80s*. For single free copies, write Facilities Management Branch, M-443, DOT, Washington, DC 20590. DOT also plans to develop a general guide to citizen participation in local transportation planning and is investigating the possibility of training sessions for grassroots citizen groups. A few years ago, DOT did publish consumer education materials in public transportation, transportation safety, bicycling, and transportation and the environment for use in the schools. There are still a limited number of copies available for those interested in promoting consumer education in the schools. (For copies write Office of Consumer Liaison, I-50, DOT, Washington, DC 20590. Please specify grade level and subject area.)

DOT is eager to expand the mailing list for its consumer newsletter and has placed increased emphasis on explaining proposed rules and reporting on legislative developments. People wishing to receive the newsletter should write to the Office of Consumer Liaison, I-50, U.S. Department of Transportation, Washington, DC 20590. *Transportation USA* is a quarterly magazine and as such serves a more limited role in advising people of proposed regulations and programs. The magazine, however, does list important new regulations and publications. The magazine has covered both citizen participation and consumer issues in the past and will continue to do so in the future. *Transportation USA* is available for $6.00 a year from the Government Printing Office, Washington, DC 20402.

Outreach and Communication

Comments: Several commenters recommended that U.S. DOT and State and local transportation planning agencies increase their contact with grassroots citizen groups. They asked U.S. DOT to increase its accessibility to citizens, to conduct town meetings, to establish a speakers bureau, to encourage and sponsor regional and national conferences such as the Transportation Consumer Conference, and to provide funding for citizens to attend such conferences. One person recommended that there be a citizen focal point for each region; and another commenter recommended that the regional offices publish a consumer newsletter. One person suggested that DOT and other agencies institute a two-way telephone system for sampling public reaction to proposed actions.

Response: Over the last few years, DOT has held a number of town meetings on various subjects. DOT's Office of Consumer Liaison (OCL), as part of its new Consumer Program, has placed increased stress on identifying and working with local citizen groups. OCL will hold regional meetings in Denver and Philadelphia this fall. Washington-based consumer groups have been invited to briefing sessions on energy conservation in DOT grant programs, the 1981 transportation budget, and the development of highway legislation. DOT also has held consumer briefings in Hartford, Atlanta, and Madison on options for Federal-aid highway legislation. OCL has daily contact with individuals and citizen/consumer groups on a wide variety of issues. DOT recognizes that these activities are only a beginning in building strong working relations with citizen/consumer groups across the nation. Through this building process, OCL hopes to create a climate for better cooperation and understanding which will spread throughout DOT and State and local transportation planning agencies. DOT's regional offices do handle requests for speakers and conduct some outreach efforts, but most regional offices do not have sufficient staff to pubish newsletters on a regular basis.

Funding and Technical Assistance

Over 130 commenters addressed the issue of funding and technical assistance for citizen participation. The majority of these comments came from individuals and citizen group representatives. Most favored some sort of financial and technical assistance, but their recommendations varied on the

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type of funding which should be available.

Reimbursement of Expenses

Comments: Several commenters indicated that individuals should be reimbursed for expenses they incur for participation. The lack of funds for participation was seen as a deterrent to citizen participation, particularly on the part of low and moderate income citizens. Commenters had varying views on the types of expenses which should be reimbursed. Recommendations included: transportation to and from meetings, babysitting expenses; clerical and mailing expenses; any out-of-pocket expenses; scholarships to attend conferences on transportation, and meeting time away from work. Some commenters believed that planning agencies could provide some of these services directly rather than through reimbursement procedures. Only a few commenters opposed reimbursement of out-of-pocket expenses to individuals.

Response: DOT programs have varying requirements and limitations in this area, but many do permit planning agencies to use Federal planning funds to provide such services as babysitting and transportation to and from meetings as an aid to citizen participation. It is DOT's current belief, that, in most cases, providing the services needed for citizen participation is a more satisfactory way of keeping costs down for citizen participants than reimbursing for actual expenses, particularly when there are a large number of participants and reimbursement procedures are apt to be too cumbersome.

DOT and its operating administrations do not have a formal policy on paying citizens for time they spend away from work to participate in local transportation planning. However, porposed guidelines do recommend that meetings be held at times and places convenient to the general public. As a result, most citizen participants should not have to take time from work to attend meetings if DOT's guidelines are followed.

Funding to Citizen Groups

Comments: Seventy-two commenters (including eight State and local officials) supported funding for citizen groups for the hiring of their own technical and/or legal consultants. A few individuals and 20 State and local officials opposed such funding for citizen groups.

Those who favored funding offered the following arguments:

—there should be equal time and money spent for pro and con positions on transportation alteratives;
—citizens need professional advice to assist in the evaluation of specific planning proposals and to develop alternatives;
—citizens need technical and legal assistance to ensure enforcement of the law if Federal and State agencies fail to take the initiative; and
—citizens can help the government get the word out more effectively and with more credibility if they are funded to run information centers and conduct other information efforts.

A number of individuals and citizen group representatives favored direct funding for citizen participation from the Federal or State government rather than funds being channeled through a metropolitan planning organization (MPO). A few expressed the fear that a MPO might select only tractable groups that could be co-opted. Others felt that money could be channeled through the MPO but that choices concerning which groups would receive funding could best be made by an impartial board of community/citizen leaders. A few commenters suggested that DOT require a small matching contribution from citizen groups as a way of insuring that funds would not be misused. The few State and local officials who favored funding for citizen groups believed that such funding should be funneled through the State.

Those who opposed funding to citizen groups did so strenuously with claims that paid citizens lose their credibility and that if the government pays people to participate it might only attract people interested in the money and not the good of the community. Another commenter expressed the fear that money would go only to the most vocal special interest groups.

DOT Response: Providing funds to citizen groups to participate in local transportation planning is an extremely controversial issue among Federal, State, and local officials and even among some individual citizens active in transportation planning. It is also not an easy issue to resolve on a Departmentwide basis given the various legislative limitations on who may receive Federal transportation funds and the purposes for which such funds may be used; and there is some question within the Department as to whether DOT can or should seek to ease these limitations. These and other impediments limit near-term possibilities of DOT providing direct financial assistance to citizen groups to participate in transportation planning activities in specific communities. However, it is possible that citizen groups might receive such assistance indirectly through State governments or local public bodies (e.g., transit authorities, regional planning agencies, cities) and that DOT might fund certain citizen groups on a contractual basis for activities that benefit a number of communities.

DOT's goal is to enhance the quality and public acceptability of local transportation decisions by improving citizen participation in local transportation planning. DOT believes that a variety of mechanisms for such improvement should be explored before the Department could commit itself to specific policies on technical and financial assistance for citizen participation in local planning. While a number of innovative techniques have already been used for citizen participation, there has been little assessment of which methods work well in a variety of situations. As a result, the Secretary has asked each operating administration to establish, within its existing resources, a development project to explore innovative techniques for increasing the effectiveness of citizen participation in local transportation planning. These development projects are discussed in Section 3 of this Notice—DOT Decisions and Actions.

Technical/Staff Assistance

Comments: A few commenters felt that their needs for technical assistance and secretarial help could be met by transportation planning staff at the direction of the citizen group. This idea was most prevalent among members of advisory groups or those who worked cooperatively with the MPO. Nine government respondents supported increased funding for staff and other citizen participation activities within their agencies.

Response: Some local transportation planning agencies now provide technical assistance to citizen advisory groups and, in some cases, to citizen groups on local transportation planning issues. It seems that such support can be effective, and it is anticipated that DOT's development projects might further efforts in this are.

Miscellaneous Suggestions

Comments: Four commenters expressed support for the concept of a paid advocate for citizens. Two mentioned the Rail Public Counsel as an example. Eight people recommended that DOT earmark a specific percentage of its budget or the funds going to planning agencies for public participation.

Response: The idea of a paid advocate for citizens is an interesting one. However, DOT questions whether a national paid advocate could function effectively with the myriad of local transportation planning issues. Any decision regarding State or local advocates would have to be made by State or local jurisidictions. Some jurisdictions now do have ombudsmen to assist citizens.

While DOT does believe that adequate funds and staff time should be devoted to citizen participation, it is not prepared at this time to earmark a specific percentage of its own funds or the funds transmitted to local transportation planning agencies. DOT has suggested a percentage of funds to be used for certain transportation planning activities relating to air quality. However, it does not believe it wise to establish such a goal for all transportation planning activities as the nature of the planning effort and the community should be the key determining factors for effective citizen participation, rather than establishment of a dollar goal that would be identical for the many different planning and project development activities that are implemented under the Federal-aid programs of DOT. At this stage, there is not enough data to make realistic judgments about how dollar goals can affect and be affected by the varying requirements, procedures, and purposes of the varying DOT Federal-aid programs. If planning agencies follow the spirit of DOT's guidelines, they will be meeting DOT's citizen participation goals without a prescriptive burden on expenditures.

(3) DOT Decisions and Actions

As the Summary indicates, four major issues surfaced in the written comments and interivews:

What should be DOT's role vis-a-vis requirements for citizen participation in local transportation planning? Specifically, what action—if any—should DOT take concerning such requirements? Issue new regulations? Issue guidelines? Do nothing?

If DOT does issue guidelines or regulations, what areas of citizen participation in local planning should be covered?

Should DOT provide funding for citizen participation in local transportation planning?

What actions, if any, should DOT take concerning technical assistance, education, training, and outreach programs in support of citizen participation in local transportation planning?

The Department has made the following decisions and is taking the following actions:

The Department is issuing a Policy Statement on Citizen Participation in Local Transportation Planning.

This policy Statement clarifies and strengthens DOT's existing position of encouraging citizen participation in local planning. For the first time, DOT now has a written policy based on a Departmentwide approach that calls for active citizen involvement in all aspects of local transportation planning. In issuing this comprehensive public statement, DOT is putting a single policy umbrella over many varying programs in all elements of the Department.

The Department has made a determined effort to accommodate the viewpoints of State, regional, and local officials; citizens' groups and individual citizens; and all elements in DOT. This policy reflects comments received from these affected segments of the public, all of whom responded to the Department's Advance Notice of Proposed Policy. The policy also points out specific responsibilities of all concerned parties, for DOT is convinced that citizen participation in local planning can be effective only through cooperative and responsible action by all concerned.

Because the Department made an unusually extensive effort to reach all interested segments of the public during the comment period—and because the public response was substantial and came from such a broad spectrum—DOT is issuing this Policy Statement as a final document, rather than as a proposal. In view of the substantial outreach and response, as described in Section (1) above, DOT believes than any benefit that might result from obtaining additional comments would not be worthwhile in view of the delay that would result in issuing this needed document. This Policy Statement thus takes effect on its date of publication.

The Department is issuing Proposed Guidelines on citizen Participation in Local Transportation Planning.

The Proposed Guidelines would support and amplify the Policy Statement by identifying and explaining key elements of active and effective citizen participation in local planning. The Department gave serious consideration to divergent options—the possibility of taking no action beyond the issuance of a policy statement; the possibility of issuing regulations; and the possibility of issuing guidelines. In examining these options, DOT took note of opposing positions that were apparent from the public comments. Citizens in many communities expressed dissatisfaction with a lack of opportunities to participate in local transportation planning decisions; many of these citizens asked for more stringent DOT requirements in the form of regulations. On the other hand, most officials of State, regional, and local transportation planning agencies expressed the conviction that additional regulations would place an undue burden on their agencies. These officials asked for more flexibility in dealing with existing DOT requirements for citizen participation, wishing to accommodate the special characteristics of their own communities. In view of these varying positions, DOT recognized the need to provide clear guidance—within a flexible framework—concerning ways to improve participation opportunities for citizens who wish to be involved in planning. The decision was made that quidelines, rather than regulations, are called for. The Proposed Guidelines now being published by the Department address areas of citizen participation which elicited significant comments: informing and involving the public; planning and holding public hearings; utilizing public advisory groups; and incorporating public comments when decisions are made After a 60-day comment period on the Proposed Guidelines, the Department will analyze the public comment and, as appropriate, revise its proposal and issue final Guidelines on citizen Participation in Local Transportation Planning.

Each operating administration in DOT will be supporting the Policy Statement by: (1) issuing its own guidelines on citizen participation in local planning; (2) revising its existing regulations, as needed to comply with the Policy Statement; and (3) designing and implementing its own development project on ways to provide technical and financial assistance to stimulate citizen participation in local planning.

(1) *Operating Administration's Guidelines:* In developing Departmental Proposed Guidelines, DOT was keenly aware of the need to provide effective guidance that is also flexible enough to apply to the citizen participation requirements in a broad range of programs with varying objectives, mandates, structures, and approaches. Examination of the requirements listed in the Appendixes to this notice will show the extent of this variety. It was agreed, therefore, that once the Department issues final guidelines, each operating administration will issue its own guidelines, consistent with the Department's final guidelines, to provide guidance on citizen participation in local planning which is specific to its own programs.

(2) *Operating Administrations' Regulations:* Publication of the DOT Policy Statement on Citizen.

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Participation in Local Transportation Planning may create the need for operating administrations to revise their existing regulations and internal procedures in order to comply with the Policy Statement. All DOT operating administrations will review their regulations in light of the policy Statement, to determine whether a need for revision exists. If a need exists, the operating administration will draft revised regulations which will be published as proposals, with a request for public comment. The administrations' reviews of their regulations will be completed no later than April 1, 1981; and any needed revised regulations will be published as proposals no later than October 1, 1981.

(3) *Operating Administrations' Development Projects:* The major objective of the development projects is to identify innovative approaches for providing technical assistance and financial assistance for activities that stimulate effective and representative citizen participation at the local level. Each project selected will relate to a program mandated by that particular operating administration's laws and regulations, and will be carried out in cooperation with appropriate planning agencies. The goal of each project will be to explore, test, and evaluate the most effective ways to use the existing resources available for citizen participation in local planning, under each administration's particular programs.

Much discussion and analysis went into this decision to launch development projects. The issue of providing financial assistance for citizen participation in local planning was clearly the most controversial question facing the Department during the development of this policy. The options examined by DOT ran the gamut from the possibility of taking no action to the possibility of setting aside a Departmental fund for a comprehensive program under which the Department would disburse money to citizen's groups qualified to participate in local planning. The latter option was examined because it was specifically proposed to DOT by various citizens' groups. DOT has decided that it would be neither appropriate nor feasible for the Department to provide direct funding to citizens' groups participating in local planning. DOT did, however, examine and discuss other methods whereby financial and technical assistance might be provided to help citizens participate in local planning. Specific and challenging questions arose during these discussions.

A few of these questions: Is participation in local planning noticeably enhanced if a local or regional planning agency reimburses citizens for certain expenses, such as baby-sitting services, transportation to meetings, or clerical costs? Or is participation equally effective if the planning agency provides the needed services, which is usually a less costly approach? Could planning agencies and citizens' groups work together to circulate information to the community, combining the agency's resources for printing, mailing, and so on, with the citizens' access to the residents of the community? Could planning agencies effectively work through neighborhood boards and grassroots activists' groups to stimulate citizen participation in local planning? Would planning agencies be willing to provide services and technical assistance to citizens' groups? Should planning agencies provide direct financial assistance to citizens' groups so that these groups can obtain professional and technical advice on key issues of importance to them? Would direct financial assistance enhance the quality of public participation in local transportation planning? Would direct financial assistance enhance the public acceptability of planning agencies' decisions? Is the effectiveness of a citizens' advisory group markedly increased if the members are provided with such specific resources as advocacy training, staff assistance, and financial assistance?

Since there are no ready answers to these questions, the Department has decided to launch development projects to test innovative approaches and to gather needed data on ways to provide technical and financial assistance to stimulate citizen participation in local planning. The development projects will be lodged in the operating administrations because each administration must work within the limits of its own programs, procedures, mandates, and requirements for citizen participation in local planning. Each operating administration will fund its project through existing resources. In order to avoid costly duplication, coordination among the administrations' development projects will be the responsibility of the Office of Consumer Liaison (OCL), in the Office of the Secretary. Each operating administration's development project will be implemented no later than October 1, 1981.

The Office of the Secretary, through its Office of Consumer Liaison, will be responsible for: (1) overseeing the implementation of the Policy statement and the final guidelines; (2) coordinating the operating administrations' development projects; (3) providing technical assistance and educational materials to affected segments of the public; and (4) coordinating Departmental training programs and outreach efforts for citizen participation.

(1) *Overseeing implementation of the Policy Statement and the final guidelines:* The DOT Work Group on Citizen Participation has successfully completed its charge to develop a comprehensive DOT policy, as well as recommending implementation actions to support the policy. With the group's mission thus accomplished, the Department believes that good management practice requires that this ad hoc committee disband. It will, therefore, be the responsibility of the Office of Consumer Liaison (OCL) in the Office of the Secretary, to oversee implementation of the Policy Statement and the ensuing DOT Guidelines. In discharging this responsibility, OCL will utilize the resources of the ad hoc work group, as needed, to facilitate contacts with various offices having responsibilities for local transportation planning. In dealing with overall Departmental issues bearing on citizen participation, OCL will utilize the permanent mechanism of the DOT Consumer Policy Coordinating Council, established in July 1980 under the DOT Consumer Program, in response to Executive Order 12160.

(2) *Coordinating the operating administrations' development projects:* In order to provide for efficient coordination among the operating administrations' projects, the Office of Consumer Liaison (OCL) will oversee the designs of the development projects and will monitor the progress of these projects. It will be OCL's responsibility to establish criteria assuring that the project designs are valid, that they address pertinent issues on which data are needed, and that they avoid costly duplication.

(3) *Providing technical assistance to affected segments of the public:* The Office of Consumer Liaison will oversee implementation of the Department's responsibility for providing technical assistance to various persons, groups, and agencies affected by the Policy Statement and the ensuing Departmental Guidelines. This responsibility will include such actions as preparing information for State, regional, and local transportation agencies, describing noteworthy examples of citizen participation in local transportation

planning; and also preparing educational materials for citizens, with explanations of DOT's requirements for public involvement opportunities.

(4) *Coordinating Departmental training and outreach programs for citizen participation:* Several DOT operating administrations have already produced training projects to assist their headquarters and field staffs, as well as State and local transportation planners, in better utilization of citizen involvement techniques and outreach efforts. The Office of Consumer Liaison will be responsible for working with the operating administrations to coordinate and enhance these existing programs, with a view to making them available to more people in the Department and the transportation community.

(Department of Transportation Act, 49 U.S.C. 1651 *et seq.*)

In consideration of the foregoing, the following Policy Statement and Proposed Guidelines are issued.

Issued in Washington, D.C. on October 22, 1980.

Neil Goldschmidt,

Secretary of Transportation.

(4) Policy Statement on Citizen Participation in Local Transportation Planning [1]

U.S. Department of Transportation policy actively supports and strongly encourages citizen participation in the development of Federal, State, regional, and local transportation plans and programs.

Citizens' rights to know about public issues and to participate in the decisionmaking process are inherent in our system of government. To ensure that transportation systems and projects are in the best overall public interest, and that all concerns are adequately addressed, citizens' voices should be heard when a community makes its transportation plans.

This DOT policy, therefore, recognizes and reaffirms the right and the need for citizens to take an active part in transportation decisions affecting their lives and their communities.

DOT views citizen participation in local planning as:

- an essential element in the development of transportation programs and decisions;
- a resource that improves decisions by broadening the base of information which is considered by public officials;
- a tool for influencing agency decisions so that they respond to public needs and protect the rights of all to be heard.

Citizen participation is useful and effective when citizens are brought into the planning process during the earliest stages and when planners and officials continue to inform citizens and to ask for ther views during all stages of the planning and development process.

It is through the combined and continuing efforts of officials, citizens, and planners that a community produces rational, workable, and satisfying transportation plans, thus assuring the fullest benefits from the use of public funds.

Goal of This Policy

The goal of this policy is to help communities plan transportation systems that are safe, efficient, cost-effective, energy-efficient, environmentally satisfactory, and responsive to the needs of the broadest range of citizens. DOT firmly believes that the people who use a transportation system, or are affected by it, should have a voice in deciding the "where," the "what," and the "when" of the modes that move in their community.

Roles in the Planning Process

In communities where transportation planning is most effective and satisfactory, active citizen participation is part of the planning process. Active citizen participation exists where officials, citizens, and agency staffs work together, with each group playing its specific role in the planning process.

The Role of Officials Includes:

Assuring that citizens will receive adequate opportunity to participate;

Assuring that information presented to citizens is clear, complete, and timely;

Listening attentively to citizens' views;

Giving full consideration and response to citizens' concerns, comments, and recommendations.

The Role of Citizens Includes:

Devoting time and effort to participate;

Learning about the planning process and the needs of all sectors in the community;

Contributing from their special knowledge of the community:

Identifying problems;

Reviewing plans and proposing alternatives.

The Role of Agency Staffs Includes:

Expending time and effort necessary to work with citizens;

Keeping citizens informed;

Providing adequate technical support;

Involving citizens at all stages throughout the planning process;

Making a conscientious effort to get needed information from citizens.

To achieve active citizen participation in local planning, these roles should be incorporated fully into the planning process by every Federal, State, regional, and local agency that uses DOT funds in providing transportation facilities or services. [Key elements of an active citizen participation effort are identified and explained in the Proposed Guidelines which are being issued with this Policy Statement.]

Implementation of This Policy

In implementing this policy, DOT and its operating administrations will—

Promote an atmosphere within government which encourages citizen participation in local planning by providing training, technical assistance, and technology sharing for officials and staff members of DOT and State, regional, and local transportation agencies;

Assist citizens and their organizations by sponsoring outreach, information/education, technical assistance and, where appropriate, financial assistance to help citizens participate in local planning and project development;

Support this Policy Statement by monitoring the progress of required citizen participation in State and local transportation planning and project development;

Assure full compliance with citizen participation requirements.

[1] DOT operating administrations which do not have mandated Federal-aid programs for local transportation planning have the following interests in this Policy Statement:

For purposes of implementation by the National Highway Traffic Safety Administration and the Research and Special Programs Administration, the phrase "local transportation planning" shall be construed to mean "projects and programs which use Department of Transportation funds and which are planned with the involvement of local governments."

The Coast Guard has no programs that can be described specifically as local transportation planning projects, but does have rulemaking programs concerned with marine navigation and safety, and marine environmental protection, that can affect local communities or local marine transportation. Techniques and procedures to improve citizen participation in these programs will be provided for under the Coast Guard Final Consumer Affairs Plan. The Coast Guard also has ongoing procedures in the areas of recreational boating, aids to navigation, and marine environment where citizen concerns will continue to be addressed consistent with the spirit and intent of this Policy Statement.

In the case of the St. Lawrence Seaway Development Corporation, this Policy Statement shall apply to any proposed major Federal action significantly affecting the environment.

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(5) Proposed Guidelines on Citizen Participation in Local Transportation Planning [1]

Introduction

When examining the best way to implement its policy on citizen participation, DOT balanced two important priorities:

(1) to ensure that citizens in every community have the opportunity to be involved actively in local transportation planning efforts in their area; and

(2) to allow the implementors of this policy—Federal, State, local, and regional transportation planning agencies—sufficient flexibility to tailor citizen participation programs to their communities and to the specific transportation plans being developed.

What evolved are guidelines which identify and describe key elements which should be part of an active citizen participation effort. In the beginning of each major section, DOT describes certain minimum citizen participation principles and later provides suggestions on how these principles might be applied to specific citizen participation techniques.

These guidelines are written to allow transportation planning agencies considerable flexibility, yet at the same time let these agencies know what is expected of them. DOT's operating administrations will issue more specific guidance relating to their own programs. DOT's operating administrations will also be responsible for ensuring that DOT's Policy Statement is followed and the guidelines are implemented to the fullest extent in their program areas.

These guidelines apply to all transportation planning and development programs which involve the use of DOT funds (see Appendixes A and B). The term "lead planning agency" means the Federal, State, local, or regional body which has primary responsibility for transportation planning.

Characteristics of Citizen Participation

Citizen participation is an open process which seeks out and encourages early and continuous public involvement throughout the development of transportation plans and projects. It is not a single event or even a series of events; but part of a coordinated effort to develop a transportation plan which responds to community needs and has a wide degree of public acceptance. Citizen participation is an integral part of the overall transportation planning process, and is most effective during the early planning stages before concepts/directions have been set and while the largest number of alternatives are under consideration. Citizen participation provides the mechanism whereby planning staff and citizen participants can freely exchange information, ideas, and values.

Citizen participation does not eliminate conflict, but it allows conflict to surface early enough in the process that alternatives can be explored in a spirit of cooperation rather than confrontation. A transportation plan which is developed "with" the public is apt to have greater public support than one that is designed "for" the public.

I. Commitment

Agency commitment to the principles of citizen participation is at the heart of any successful citizen involvement program. Such commitment recognizes that a planning agency may not have all the answers, that the public has the right to participate in the planning process, and that the planning agency has the duty to inform and involve the public and to respond to public concerns on transportation planning issues.

Admittedly, commitment is not something which can be regulated because commitment to a large extent involves personal attitudes of planners and decisionmakers. However, commitment does have certain visible measuring sticks such as the openness of the process, the adequacy of information prepared for the public on the planning effort, the degree to which citizen participation is integrated into the overall transportation planning process, the level of staffing and funding devoted to citizen participation, and the extent to which an agency responds to public suggestions.

Developing a Plan for Participation

Just as architects and engineers draw up blueprints and plans for the construction of a subway or roadway, so too should lead planning agencies, working with its community, develop a plan for how and when citizens will be involved in each transportation planning and project development activity. Without such plans, agency citizen participation efforts can become too haphazard and can run the risk of allowing too little time for public understanding of the issues. Citizen and community leaders can be helpful and should participate in developing a plan for citizen involvement and in identifying community transportation goals. A public participation plan should

Clearly define agency transportation goals and objectives;

Be integrated fully into the overall planning process;

Identify legal requirements and constraints which influence the scope of citizen participation;

Identify key issues and decision points and how they relate to citizen participation activities;

Describe citizen participation mechanisms to be used and the timing of such efforts; including efforts to notify the public and informational materials which will be prepared for the public;

Establish procedures for considering public comments and responding to those comments;

Commit adequate resources, including staff, money for printing, meeting rooms, transcripts and minutes, announcements, graphics and technical assistance, where needed;

Provide for periodic evaluation of effectiveness of the citizen participation program in order to identify weaknesses and modify participation efforts when necessary.

Identifying Public Participants

It is important to identify those groups and individuals who may be interested in and/or affected by transportation planning programs or projects. A list of people to be informed about a planning activity should be developed at the beginning of the planning process and expanded regularly during the process as new groups and individuals are identified and new alternatives considered. This list should also include people who have been involved in past transportation planning activities. Depending on the scope of the particular planning effort, the affected community may range from a neighborhood to a large region. Care should be taken to identify a broad range of participants representing different sectors of the community. Certainly, special efforts should be made to notify personally those who might be affected directly by specific transportation alternatives, such as people living in potential transportation corridors.

Depending on the nature of the transportation planning activity, planning agencies might want to consult with the following groups and organizations in identifying public participants:

Other government and public service agencies, including agencies serving the handicapped, elderly, low income, disadvantaged and minority communities;

Civic and neighborhood association;

Consumer and public interest groups;

Environmental groups;

Religious and ethnic groups;

Business groups;

Civil rights organizations;

Labor organizations;

Groups representing handicapped citizens;

Merchants and small business organizations.

Informing the Public

The public can contribute most effectively in the local transportation planning process when they are provided with accurate, understandable, timely, and relevant information on transportation planning issues. Information efforts should be an on-going part of the citizen participation process from the exploration of transportation altenatives through the implementation stage of a project. The lead agency should make sure that the information reaches the public early enough in the process to permit their active participation. The planning agency should make the implications of the various alternatives clear to the public so that they may make informed decisions on whether or not to participate.

Because many information activities take time to prepare and to arrange, lead planning agencies should build the necessary time requirements into the public participation plan. All public information documents or announcements should identify a person to contact for further information.

In addition to providing the public with information on specific planning activities, lead planning agencies might also consider providing the public with an overview of all transportation planning activities on a regular basis, perhaps once a year through an annual report.

Notifying the Public. The public should be notified well in advance of specific planning and citizen participation activities so that they may have enough time to respond to agency questions and proposals. Background information on planning issues should be made available and advertised well in advance of decision points and public participation activities. It is important to make announcements concerning planned activities relevant to the public and to avoid the use of technical jargon wherever possible. Agencies should use a variety of mechanisms for getting the word out to the public; for example:

Direct mailings;

Public service announcements,

Display ads in newspapers;

Announcements on public transit vehicles and at transit stops;

Community bulletin boards;

Radio and TV talk shows;

Agency and community newspapers;

Flyers;

Inserts in local papers.

Keeping the Public Informed. One way to maintain the interest and involvement of the general public is to provide regular updates on planning activities and problems. This is especially important for long-term planning efforts in which the public may lose interest or confidence in the agency if they are not kept apprised on-going activities. Planning agencies can do this with the various mechanism mentioned above.

Types of Informotion. Different public sectors have different information needs. For instance, residents who might be affected by a transportation proposal will want to know what the project will do to their neighborhood, or how it will affect their own transportation. A mere description of the proposal will not necessarily provide them with enough information to form opinions and judgments. Merchants will also have special needs. Those involved in environmental, social, and transportation issues may need more technical data and assistance to help them in exploring and assessing various transportation alternatives.

Agencies might consider a variety of mechanisms to meet these different information needs, such as simple fact sheets for a general audience and more detailed brochures and technical reports for individuals and businesses who might be affected by a proposed transportation alternative.

Background papers on how the planning process works, how the public can participate, a description of specific issues, key decision points and sources to contact for further information can be very helpful to citizen participants. Such papers might describe the social, economic, and environmental implications on each alternative. Any information which an agency produces should be written to solicit public input, not to sell a particular proposal.

Packaging Information. Agencies should be careful to prepare information with the general public in mind. Information should contain as little technical jargon as possible. When technical terms have to be used, they should be defined as clearly as possible. The use of maps and other graphics can aid considerably in public understanding of the alternatives.

Making Effective Use of the Media. Establishing working relationships with people both in print and broadcast media can be invaluable resource for transmitting information to the public. In many ways, the press shares some of the same information needs as the general public. For example, planning agencies should be prepared to explain to editors and broadcasters in clear, concise language what impact certain proposals might have on the community.

Planning agencies can deal more easily with the press by learning their deadlines and procedures and working with them. A press briefing should not be planned for 3:00 when the paper's deadline is 3:30. Also be mindful of the deadlines for weekly and community papers.

Lead planning agencies can provide information to the press in a variety of ways—letters, informal telephone contact, press releases, press briefings. Planning agencies should keep press releases brief (no more than two double-spaced typed pages), but have additional background information available. Planning agencies should be open in their dealings with the press and be careful to avoid misunderstandings. Agencies should also be careful not to overcontact the media with insignificant items, or else the big issues may not receive the attention they deserve. Cover all aspects of the issues when they are controversial or could cause problems. Agencies might also work with editors in developing a calendar of public meetings and hearings.

Radio and TV talk shows can help to air the issues especially if an agency official can respond to questions on the air or to subsequent inquiries in the office. Public television is also opening new opportunities for getting information to the public. Planning agency officials might get involved in structured panels, single presentations, or even some type of polling situation via public TV. Public TV might also be interested in televising public meetings. Whenever possible, let the public know

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In the case of the St. Lawrence Seaway Development Corporation, these Proposed Guidelines shall apply to any proposed major Federal action significantly affecting the environment.

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in advance when agency officials will discuss issues on radio or TV.

Paid Advertisements. Because the public often does not take note of legal notices in the classified section of the newspaper, agencies might consider paying for a display ad on important planning activities. Radio and TV stations sometimes provide public service announcements on planned meetings. Here, again, agencies should keep in mind copy deadlines.

Access. The planning process should be open. This means that citizens should have the opportunity to review appropriate technical documents, including technical memorandums/assumptions on the various alternatives while a project is still under consideration and before decisions have been made. To the extent possible, major documents such as draft environmental impact statements, technical memorandums, narrative reports, position papers, and alternative analysis documents should be open for public viewing at various locations in the community such as public libraries, city halls, neighborhood centers, project site field offices, planning agency offices, etc. Local agencies should make the public feel at ease in reviewing such documents and should provide staff assistance to answer technical questions. Citizens should be made aware of the availability of such materials.

Fees for Copying. Wherever possible, lead planning agencies should make copies of relevant documents available to the public free of charge. If charges must be made, they should be set as low as possible.

Conferences. When the lead planning agency sponsors conferences/activities which impact the general citizenry of the area, it should invite the public and try to make provisions for waiving any conference fee.

Working With the Public

Public information is a means of generating public understanding of the issues and notifying them of participation opportunities. Participation occurs when the agency starts working with the community to explore the issues, exchange views, and select alternatives.

While involvement efforts may include public hearings and advisory groups, they should not be limited to such formal mechanisms. In fact, public hearings, though often required by law, when used alone may not be the most effective means of influencing planning decisions. The agency should use mechanisms tailored to the existing community and which will involve the widest range of the interested public. These efforts may and should take several forms such as using existing community resources (neighborhood councils, meetings of local groups), town meetings, public meetings and workshops, surveys, telephone hotlines, speakers' bureaus, citizen advocates, and ombudsmen. Lead planning agencies should examine existing citizen participation literature to help them decide the best participation mechanisms for their communities.

Any public participation mechanism should be used at times and places convenient to the public. Whenever possible, public meetings should be held generally during non-work hours, such as evenings and weekends, and at locations which are accessible to public transportation before and after the meeting times. Meeting places should be accessible to elderly and handicapped persons; special arrangements should also be made for those with hearing and sight impairments. Agencies should provide appropriate security arrangements and they might consider providing transportation and nursery services to make it easier for citizens to participate.

Effective involvement activities occur early enough in the process to ensure that the public's options are not limited and to permit agency response to the public before decisions are made. The public should be notified well in advance so they have time to study the issues.

Agencies should inform participants about special meeting procedures and tell the public how it intends to respond to public suggestions.

These activities should be conducted in a fashion which promotes the exchange of ideas and should specifically avoid a defensive posture on the part of the agency. Technical staff should be available to answer questions about specific proposals and to explore alternatives suggested by citizens.

When participation activities are announced, notices should identify matters to be discussed, the format of the discussion, what printed information is available, and how to obtain it. When an agency has reached tentative conclusions, they should be stated in the notice. The agency should identify any significant areas in which they are most desirous of public comment.

Advisory Groups

Planning agencies now use a variety of task forces, committees and boards to assist them in making planning decisions. When used effectively, such groups can be an important element of the citizen participation process. While the scope and purposes of these groups may vary, certain basic procedures should be followed. Care should be taken to achieve a balanced membership in terms of socio-economic, racial, sexual and geographic distribution. For permanent or long term committees, appointments to the advisory groups should be made on a staggered basis to provide for continuity. The goals, role, and limitations of such groups should be clearly defined to avoid confusion and frustration. If the life expectancy of the group is short, this should be clearly stated. Planning agencies should provide adequate staff support to enable advisory group members to analyze fully pending issues. Information should be presented to advisory groups early and throughout the process so that the agencies can have the benefit of group views in making decisions. Agencies should not expect advisory groups to appprove automatically or "rubber stamp" agency recommendations; nor should advisory groups expect to make final decisions. However, agencies should seriously consider group recommendations and respond to advisory group suggestions and let members know why certain suggestions were or were not used. Meetings of advisory groups should be held at convenient times and places for group members, and these meetings should be advertised and open to the public.

In selecting advisory group members, lead planning agencies should consult with community leaders and advertise openings on the advisory group. General advisory groups should have a balanced representation including elected officials, business interests, public interest groups, technical advisors, and citizen representatives.

Citizen advisory groups should be composed of representative cross-section of citizens, with a mix of people according to age, race, sex, and geographic distribution. Low-income and handicapped people should be represented on such groups. In addition to advising the planning agency, citizen advisory groups might also be used for community outreach efforts. Planning agencies and transit boards might also consider using advisory groups members to serve as ex-officio members of policy committees and boards. Such formal groups could benefit from having the views of transit users and other representatives citizens.

Considering and Responding to Public Comments

People are apt to have different views on how to meet transportation needs and how to solve specific transportation problems. While a planning agency cannot always mesh conflicting views, it should demonstrate, in its decisions and in its actions, that it has fully understood and considered public concerns. Agencies should establish procedures for collecting, analyzing, considering, and responding to public comment.

Planning agencies receive public comments from various sources—including telephone conversations, letters, public meetings and workshops, informal contacts with citizens, surveys, and public hearings. Data from all these sources should be collated and analyzed so that public suggestions may be considered by transportation planning staff and decisionmakers. Such analysis should identify segments of the community which participated (e.g., affected residents, citizen groups, business, other government agencies), summarize meaningful public comments (both majority and minority points of view), and explain how they relate to the decisions to be made. Such a summary can serve as a valuable tool for decisionmakers in gauging possible public reaction and/or acceptance to pending decisions. Such summaries should be prepared during each major planning phase, and perhaps more often when the process extends over a long period of time. Public comments and the analysis of the comments should be filed in a central location and be available for public inspection on request.

Agencies should also respond to those who participated in planning efforts and indicate how public suggestions were used or why their suggestions could not be accommodated. This can be done by personal letter when there are a small number of participants. However, when there are a large number of participants, agencies may find it easiest to send a summary of comments and responses to all those who participated. The key is letting participants see the results of their involvement. Citizens still may not agree with all planning decisions, but they may understand the decisions better if they know why certain options were or were not chosen. Citizens will also be more apt to participate in future planning activities if they know that their recommendations are given serious consideration. Such summaries may also be helpful to DOT in reviewing transportation planning efforts.

(6) Appendixes: DOT Requirements for Citizens Participating in Local Transportation Planning

Introduction

Part I of Appendix A lists those DOT Federal-aid programs which have statutory and/or regulatory requirements for citizen participation. These programs are listed by DOT operating element and each program is designated by the title and number assigned to it in the "Catalog of Federal Domestic Assistance" (CFDA), a volume which includes all domestic programs involving Federal grants and financial assistance, published by the Office of Management and Budget. Part II of Appendix A gives brief explanations of how Federal-aid programs are administered in various DOT operating administrations.

Appendix B lists those requirements which are not specific to particular Federal-aid programs. This Appendix, however, does not include opportunities for public involvement such as notice and comment and public hearing requirements under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, petitions for the promulgation of a rule, private citizens' suits to compel agency compliance with a statutory requirement, and public representation on Federal advisory committees.

Appendix A.—*Federal-Aid Requirements for Citizen Participation (CP) in Local Transportation Planning*

Part I.—*Office of the Secretary (OST)*

Program, CFDA number, authorization	Statutory CP requirements	Monitoring/evaluation of statutory requirements	Regulatory CP requirements	Monitoring/evaluation of regulatory requirements	Funding
None	None	None	None	None	None.

Part I.—*Federal Aviation Administration (FAA)*

Program, CFDA number, authorization	Statutory CP requirements	Monitoring/evaluation of statutory requirements	Regulatory CP requirements	Monitoring/evaluation of regulatory requirements	Funding
1. Airport Development Aid Program,* No. 20.102, Pub. L. 91-258, as amended, 49 U.S.C. 1701 *et seq.*	Public hearings or an opportunity for public hearings to consider economic, social, and environmental effects of an airport location, an airport runway, or a runway extension. 49 U.S.C. 1716(b)(1).	When requested, project sponsor shall submit a copy of hearing transcript to the Secretary. 49 U.S.C. 1716(d)(2).	a. Before submitting a request for aid, the sponsor must afford an opportunity for a public hearing. 14 CFR 152.117 (45 FR 34789, 5/22/80). See also Airport Environmental Handbook (FAA Order 5050.4, Chapters 2,18, 5,49 (45 FR 56627, 56640, 8/25/80. b. FAA Order 1050.1C, "Policies and Procedures for Considering Environmental Impacts," Appendix 6, incorporates requirements of 49 U.S.C. 1716(d)(1) (45 FR 2269, 1/10/80). Compliance with FAA Order 5050.4 above, assures compliance with FAA Order 1050.1C. (See Appendix B, under section for Federal Aviation Adminstration for a description of FAA Order 1050.1C).	If a hearing is held, sponsor must provide to the Administrator a summary of issues raised, alternatives considered, conclusions reached and stated reasons. Upon request, a verbatim transcript must be furnished to the Administrator. 49 CFR 152.117(e). If a hearing required by 49 U.S.C. 1716(d)(1) is not held the sponsor must certify that notice of opportunity for a hearing was provided but no request for a hearing was received (49 U.S.C. 416(f).	a. No specific provisions. b. No specific provisions.
2. Airport Planning Grant Program,* No. 20.103, Pub. L. 91-258, as amended, 49 U.S.C. 1713.	Project grants to planning agencies to develop airport master plans and systems plans. Citizen participation not mandatory but strongly encouraged.	Citizen participation aspects of the plan are evaluated in the same context as other elements that were funded under the grant: engineering, traffic forecasting, financial planning, etc.			Funding is available as integral part of the planning process if proposed by the sponsor.

*Authorization expired 9/30/80.

Appendix A.—*Federal-Aid Requirements for Citizen Participation (CP) in Local Transportation Planning*

Part I.—*Federal Highway Administration (FHWA)*

Program, CFDA number, authorization	Statutory CP requirements	Monitoring/evaluation of statutory requirements	Regulatory CP requirements	Monitoring/evaluation of regulatory requirements	Funding
Federal-Aid Highway Planning Research and Development Pub. L. 85-767, as amended (Federal-Aid Highway Program), No. 20.205, 23 U.S.C. 101 *et seq.*	a. State highway department submitting plans for certain Federal-aid highway projects shall afford the opportunity for public hearings.	Copy of hearing transcript to be submitted to FHWA. 23 U.S.C. 128(b).	a. Planning process must include provisions to ensure public involvement. 23 CFR 450.120(a)(3); Appendix B, Advisory Information on Planning for Elderly and Handicapped Persons, emphasizes that elderly and handicapped persons are to be included in the planning process.	Each State highway agency has developed an "Action Plan" which outlines procedures and responsibilities for the involvement of other agencies and the public. FHWA reviews and monitors States' implementation of Action Plans at appropriate intervals. In addition, FHWA personnel attend as observers and sometimes participate in the meetings or public hearings..	Funds are authorized by 23 U.S.C. 104 and 303(c) as amended. Administrative limitation on project-related public participation expenses prohibits reimbursement with Federal-aid funds for personal expenses of individuals and groups. 49 CFR 790.
	b. State highway department submitting plans for an interstate system project shall afford the opportunity for hearings for affected rural area residents to object. 23 U.S.C. 128(a).	.....	b. Regulations on Process Guidelines require public participation in the development of State environmental action plans and as part of those plans the establishment of public involvement procedures covering the entire highway development process. 23 CFR 795.10.	Several types of courses and workshops which have been conducted by FHWA throughout the country in order to improve highway agencies' public involvement activities.	
			c. Public notification and, in appropriate instances, opportunity for public participation in the assessment of environmental impacts of highway projects. 23 CFR 771.	Evaluation of citizen participation in the transportation process is made through the annual planning process certification reviews. Citizen participation is currently receiving major emphasis in these reviews..	
			d. Public hearings or an opportunity for public hearings required during the consideration of highway location and design proposals. 49 CFR 790. Corridor public hearings also required. (Applies to highway agencies which have not developed approved Action Plans, pursuant to 49 CFR 795.10).	.....	

Appendix A.—*Federal-Aid Requirements for Citizen Participation (CP) in Local Transportation Planning*

Part I.—*Federal Railroad Administration (FRA)*

1. Local Rail Service Assistance (National Rail Service Continuation Grants), No. 20.308, Pub L. 89-760, as amended, 49 U.S.C. 1654.	a. State is eligible to receive rail service assistance if it has established an adequate plan for rail services as part of an overall planning process for all transportation services. 49 U.S.C. 1654(j)(1).	No direct monitoring/evaluation; each recipient to keep records which disclose amounts spent. 49 U.S.C. 1654(m)(1).	a. State planning process shall provide for an opportunity for participation by persons interested in rail activity in the State and adjacent States, where appropriate. At a minimum, public hearings with adequate notice are required. 49 CFR 266.15(a).	State Rail Plans submitted to FRA for review and approval. 49 CFR 266(a).	Rail planning funds may be used for citizen paticipation.
	b. To be eligible to receive assistance, State must maintain adequate programs of investigation, research, promotion and development with provisions for public participation. 49 U.S.C. 1654(j)(3)(c).	.....	b. Each State rail plan shall describe its planning process which includes participation of the general public. 49 CFR 266.15(c)(10).	.....	
			c. States eligible for rail service continuation assistance under the Regional Rail Reorganization Act of 1973,* Pub. L. 93-236, 45 U.S.C. 701 et seq., are required to afford interested persons, such as users of rail transportation, labor organizations, environmental groups, and the public generally timely opportunity to express their views in the development of the State Rail Plan. 49 CFR 255.9(a).	.....	

Appendix A.—*Federal-Aid Requirements for Citizen Participation (CP) in Local Transportation Planning*

Part I.—*Federal Railroad Administration (FRA)*

Program, CFDA number, authorization	Statutory CP requirements	Monitoring/evaluation of statutory requirements	Regulatory CP requirements	Monitoring/evaluation of regulatory requirements	Funding
2. Railroad Rehabilitation and Improvement:					
a. Guarantee of Obligations, No. 20.309, Pub. L. 94-210, § 511, 45 U.S.C. 821 *et seq.*	.....	.....	Applicants for assistance under § 511 must provide FRA with a discussion of problems and objections raised by other Federal, State, or local agencies, and citizens with respect to the impact of a proposed project on the environment. 49 CFR 258, Appendix, Part II, F.	No specific provision.	No specific provision.
b. Redeemable Preference Shares, No. 20.310, Pub. L. 94-210, § 505, 45 U.S.C. 821 *et seq.*	.....	.....	Applicants for assistance under § 505 must provide FRA with a discussion of problems and objections raised by other Federal, State, or local agencies, and citizens with respect to the impact of a proposed project on the environment. 49 CFR 260, Subpart A, Appendix, Part II, F.	No specific provision.	No specific provision.

*Continued under the 4R Act of 1976, Pub. L. 94-210, Title VIII.

Part I.—*National Highway Traffic Safety Administration (NHTSA)*

Program, CFDA number, authorization	Statutory CP requirements	Monitoring/evaluation of statutory requirements	Regulatory CP requirements	Monitoring/evaluation of regulatory requirements	Funding
None	None	None	None	None	None.

Part I.—*Research and Special Programs Administration (RSPA)*

Program, CFDA number, authorization	Statutory CP requirements	Monitoring/evaluation of statutory requirements	Regulatory CP requirements	Monitoring/evaluation of regulatory requirements	Funding
None	None	None	None	None	None.

Part I.—*St. Lawrence Seaway Development Corporation (SLSDC)*

Program, CFDA number, authorization	Statutory CP requirements	Monitoring/evaluation of statutory requirements	Regulatory CP requirements	Monitoring/evaluation of regulatory requirements	Funding
None	None	None	None	None	None.

Part I.—*U.S. Coast Guard (USCG)

Program, CFDA number, authorization	Statutory CP requirements	Monitoring/evaluation of statutory requirements	Regulatory CP requirements	Monitoring/evaluation of regulatory requirements	Funding
None	None	None	None	None	None.

*No current grant or loan programs involving citizen participation elements exist. The funding authority for Boating Safety Financial Assistance Programs (CFDA No. 20.001) expired at the end of FY-80

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Appendix A.—*Federal-Aid Requirements for Citizen Participation (CP) in Local Transportation Planning*

Part I.—*Urban Mass Transportation Administration (UMTA)*

Program, CFDA number, authorization	Statutory CP requirements	Monitoring/evaluation of statutory requirements	Regulatory CP requirements	Monitoring/evaluation of regulatory requirements	Funding
1. Capital Improvement Grants, No. 20.500, Pub. L. 88-365, § 3, as amended, 49 U.S.C. 1602.	Certification by applicant of adequate public notice and opportunity for public hearings concerning projects which will substantially affect a community or its mass transportation services. 49 U.S.C. § 1602(d).	a. Hearing transcript to be submitted with application.	To receive Federal assistance, ubanized areas must have a transportation planning process which ensures public involvement, 23 CFR 450.120(a)(3), also incorporated in 49 CFR 613.100.	Annual review and evaluation of planning process. 23 CFR 450.122(a).	No specific provisions; administrative limitation requires all funds to be dispensed through duly elected or appointed body.
		b. Administration shall determine that consideration has been given at public hearing to environmental effects of proposed project. 49 U.S.C. 1610 (b) and (c).	.....	.....	
2. Capital Improvement Loans, No. 20.501, Pub. L. 88-365, § 3, as amended, 49 U.S.C. 1602.	See 1, above	See 1, above	See 1, above	See 1, above	See 1, above.
3. Formula Grant Program, No. 20.507, Pub. L. 88-365, § 5, as amended, 49 U.S.C. 1604.	a. Certification by recipient of adequate public notice and opportunity for public hearing and submission of report.	a. A copy of transcript of hearings to be furnished upon Administrator's request.	a. See 1, above	a. See 1, above	See 1, above.
	b. Assurances to be provided to Secretary that any public mass transportation system will not change fares or substantially change any service except after holding a public hearing or providing an opportunity for such a hearing. 49 U.S.C. § 1604(j).	b. UMTA reviews on a case-by-case basis, as needed.	b. Implements statutory requirement that public hearings be held prior to fare change or substantial service change. 49 CFR 635 (45 FR 26301, 4/17/80).	b. UMTA Administrator may impose sanctions for noncompliance. 49 CFR 635.11 (45 FR 26301, 4/17/80).	

Part II.—How Federal-Aid Programs Are Administered in Operating Administrations of the Department of Transportation

Federal Aviation Administration

The objectives of the Federal Aviation Administration's (FAA) Planning Grant Program (PGP) are to improve airport planning, to promote the effective location and development of airports, and to develop an adequate National Airport System Plan (NASP). PGP grants are available to planning agencies and public agencies which act as sponsors for airport system planning and airport master planning studies, respectively.

PGP funds may be used by these sponsors for citizen participation activities in support of their airport planning. These citizen participation activities include public hearings, public information sessions, coordination meetings, and other communication conducted for the purpose of ensuring that the affected public (planning agencies, community organizations, interested individuals, affected local governments, and airport users) is informed about the planning study and have opportunities to be involved in its development. The responsible local FAA Airports field office or regional office will assist sponsors in incorporating appropriate participation activities, such as those described above, into the design of the study. In the event that an individual or community organization should feel that adequate coordination with the public has not been provided and that direct communications with the sponsor have not satisfactorily corrected the situation, the local FAA Airports field office or regional office monitoring the study should be contacted.

For more information, contact Robert B. Hixson, Community Planner, Division of Community and Environmental Needs, Office of Airport Planning and Programming, APP-600, Federal Aviation Administration, Washington, DC 20591; (202) 426-8434.

Federal Highway Administration

Under the Federal-aid highway program, the States and the Federal Government operate in a partnership. State highway agencies initiate, plan, design, build, and operate highway projects. The Federal Highway Administration (FHWA) in turn: provides guidance and financial assistance, and is responsible for approvals at key stages of highway development.

Federal-aid procedures provide for public involvement during the planning and developmend of a project. Federal regulations require each State highway agency to spell out the steps it will follow to involve other agencies and the public in the planning, location, and design of a highway. These procedures are detailed in a State's Action Plan. A copy of a State's Action Plan may be viewed at the State highway agency in the State capitol, or at the FHWA Division Office, generally located in the State capitol (exceptions: Maryland's FHWA division office is in Baltimore; Iowa's FHWA division office is in Ames). Concerns about an alleged failure to provide for public involvement should be directed to the Division Administrator in the appropriate FHWA Division Office.

For further information, contact Stephen J. Kimlicko, Chief, Environmental Process Branch, HEV-12, Room 3232, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590; (202) 426-0303.

Federal Railroad Administration

The Local Rail Service Assistance Program has as its primary goal the strengthening of branchline rail services of importance to State and local economies. As administered by the Federal Railroad Administration's (FRA) Office of Federal Assistance, the program provides grants to State agencies designated by the governors of each State. These grants may be used for State rail planning and rail projects, i.e., branchline operating assistance, acquisition, rehabilitation, rail facility construction, or substitute service.

As a prerequisite for project funding, each State must develop a State Rail Plan, to be updated annually, which includes the procedures and mechanism used by the State to provide for public participation. At a minimum, this information must indicate: (1) the groups involved in the planning process, both at the level of broad goal setting and at community level where the impacts of branchline abandonment are most personally felt; (2) the involvement of these groups in the setting of goals and criteria for project selection, priority setting, and resource allocation; (3) those points in the planning process where the different groups have been involved; and (4) the mechanisms the State uses to involve and inform the public of its rail planning activities.

The public participation mechanism is reviewed annually by the FRA's Office of Federal Assistance, as part of the annual update of the State Rail Plan. Any questions or complaints concerning the public participation mechanism or its implementation should be addressed to the State agency designated by the governor of the State.

To identify the title and location of the State agency, contact the governor's office or write or call Garold Thomas, Acting Director of State Assistance, Federal Railroad Administration, Washington, DC 20590; (202) 426-1567. Mr. Thomas may also be contacted for other information about the program.

Urban Mass Transportation Administration

The objective of the Federal transit program is to improve public transportation by providing financial assistance to local governments for the purchase and operation of transit equipment and facilities and to assure that projects funded with Urban Mass Transportation Administration (UMTA) grants are developed in a manner consistent with national energy, environmental, social, and economic goals.

UMTA grants are available to public, non-profit agencies which meet eligibility criteria stated in the Urban Mass Transportation Act. Citizen participation required by UMTA regulations is monitored by UMTA regional offices at several stages of planning or project development, utilizing hearing transcripts, environmental impact comments, and public complaints and grievances. The enforcement mechanism for non-compliance with UMTA regulations is the withholding of financial assistance.

UMTA grant recipients are encouraged to employ whatever citizen participation activities are necessary and appropriate. Formal complaints about alleged failures to comply with UMTA regulations should be filed with the appropriate UMTA regional office. A complaint charging inadequate opportunity for citizen participation should be addressed to the civil rights officer in the appropriate UMTA regional office.

For further information, contact Irv Chor, Office of Public Affairs, Urban Mass Transportation Administration, Washington, DC 20590; (202) 426-4043.

Appendix B.—*General Requirements for Citizen Participation (CP) in Local Transportation Planning*

Title	CP requirement	Monitoring/evaluation of CP requirement	Funding
	Office of the Secretary (OST)		
1. "Procedures for Considering Environmental Impacts," DOT Order 5610.1C, 44 FR 56420 (10/1/79).	Encourages citizen participation at the earliest practical time and at each appropriate stage of development of the proposed action. Administrations are encouraged to develop lists of interested parties at the national, State, and local levels. DOT Order 5610.1C, Par. 14a, c.	A summary of citizen involvement shall be documented in the EIS. DOT Order 5610.1C, Par. 14.	No specific provision.
2. U.S. Environmental Protection Agency—Department of Transporation Expanded Guidelines on Public Participation in the State Implementation Plan, 45 FR 42023 (6/23/80).	Joint Guidelines cover the essential elements and procedures of an effective public participation program in developing the transportation component of State Implementation Plans (SIP's) funded by EPA with grants authorized by Section 175 of the Clean Air Act in urban areas requiring an extension beyond 1982 for attainment of national ambient air quality standards.	EPA evaluates performance of planning agencies; Applicants for Section 175 funds must submit a work program for public information/involvement. Sections F and H.	EPA "encourages the passthrough of Section 175 (EPA) funds to a broad base of affected constituencies top achieve * * * effective participation in the planning process." Section E.7.
3. "Implementation of the Department of Transportation Title VI Program," DOT Order 1000.12.	a. Requires action to ensure that non-elected boards, advisory councils, or committees which are in integral part of planning the program or activity reasonably reflect the racial/ethnic composition of the affected community. DOT Order 1000.12, Chaper 1-4(b)(2)(a).	Enforced by Civil Rights Offices in DOT operating element; monitored by Departmental Ofice of Civil Rights.	No specific provision.
	b. Where the program or activity requires public hearings, appropriate action should be taken to ensure that notice of such hearings reaches all segments of the affected community. The Title VI program shall also require that direct contact will be made with racial/ethnic community organizations and/or leaders in communities affected by the program or activity. DOT Order 1000.12, Chapter 1-4(b)(2)(a).	.....	
	Federal Aviation Administration (FAA)		
"Policies and Procedures for Considering Environmental Impacts," FAA Order 1050.1C (45 FR 2244, 1/10/80).	e. Sets forth criteria in deciding whether a public hearing is appropriate, although not statutorily mandated, for a broad range of FAA programs and projects. FAA Order 1050.1C, Chapter 2, Section 2.213b.	a. Records of public hearing maintained in the docket of the General Counsel's office. FAA Order 1050.1C, Chapter 2, Section 2.213(g).	No specific provision.
	b. Encourages citizen participation at the earliest practical time and throughout the development of the proposed project. FAA Order 1050.1C, Chapter 2, Section 2.214.	b. A summary of citizen involvement shall be documented where practicable in the EIS or Finding of No Significant Impact (FONSI). FAA Order 1050.1C, Chapter 2, Section 2.214.	
	Federal Highway Administration (FHWA)		
None	None	None	None.

Appendix B.—*General Requirements for Citizen Participation (CP) in Local Transportation Planning*—Continued

Title	CP requirement	Monitoring/evaluation of CP requirement	Funding
Federal Railroad Administration (FRA)			
FRA Procedures for Considering Environmental Impacts, 45 FR 40855 (6/6/80).	Sets forth a policy which encourages citizen involvement at every stage of the environmental assessment of a proposed FRA action and requires appropriate FRA program office to develop, in cooperation with the FRA Public Affairs Office, a list of interested parties including environmental groups, individuals and business, public service, education, labor, and community organizations. The FRA program office, in coordination with the FRA Public Affairs Officer, shall publicize the availability of draft EIS's. FRA Procedures, Section 9 (a), (b)(i), (4), 45 FR 40855 (6/6/80).	No specific provision	No specific provision.
National Highway Traffic Safety Administration (NHTSA)			
NHTSA Procedures for Considering Environmental Impacts, 49 CFR 520.	a. The Office of Public Affairs and Consumer Participation shall maintain a list of interested groups to notify directly of the availability of Draft Environmental Impact Statements (DEIS's). 49 CFR 520.25(b)(iv)(3)(i).	No specific provision	No specific provision.
	b. In deciding whether a public hearing on a proposed or ongoing action covered by a DEIS is appropriate, the responsible official should consider, among other things, the extent to which public involvement has already been achieved through other means, such as earlier public hearings, meetings with citizen representatives, and/or written comments on the proposed action. 49 CFR 520.26(a)(4).		
	c. Final environmental statement shall include a discussion of problems and objections raised by other Federal agencies, State and local entities, and citizens in the review process, and the disposition of the issues involved and the reasons therefore; The draft and final environmental statements should document issues raised through consultations with Federal, State, and local agencies and with citizens, of actions taken in response to comments, public hearings, and other citizens involvement proceedings. 49 CFR 520, Attachment 1, § 3(i).		
Research and Special Programs Administration (RSPA)			
None	None	None	None.
St. Lawrence Seaway Development Corporation (SLSDC)			
SLSDC Procedures for Considering Environmental Impacts (Draft). 45 FR 46601 (7/10/80).	Chief Engineer shall solicit citizen comments where an Environmental Statement is to be prepared by any or all of the following means: conducting hearings; making personal contact with interested parties, issuing press releases, placing notices in newspapers, and publishing a notice of intent in the FEDERAL REGISTER, Chief Engineer shall develop lists of interested parties at the national, State, and local levels. Order SLS 10-5610.1C (Draft), Par. 10, 45 FR 46601 (7/10/80).	Citizen involvement and environmental issues raised in the public commenting process will be documented in the environmental statement.	No specific provision.
U.S. Coast Guard (USCG)*			
1. Ports and Waterways Safety Act, 33 U.S.C. 1221, as amended by Port and Tanker Safety Act of 1978, Pub. L. 95-474, § 2.	e. Statement of Policy. Congressional finding that advance planning is critical in determining proper and adequate protective measures for the Nation's ports and waterways and the marine environment, with continuing consultation with other agencies, affected users, and the general public in the development of such measures. 33 U.S.C. 1221(d).		
	b. In issuing vessel operating requirements, the Coast Guard must consult with representatives of the maritime community, port and harbor associations, environmental groups and others who may be affected by the proposed action. 33 U.S.C. 1224(b).	No specific provision	No specific provision.
2. Tank Vessel Act, 46 U.S.C. 391a, as amended by Port and Tankers Safety Act of 1978, Pub. L. 95-474, § 5.	In exercising regulatory authority under the Act, the Coast Guard shall establish procedures for consulting with agencies, representatives of environmental groups or other interested parties with experience with problems involving vessel safety, port and waterways safety, and protection of the marine environment. 46 U.S.C. 391a(6)(C) (v), (vi).	No specific provision	No specific provision.
3. Bridges	a. Upon a determination that a bridge obstructs navigation, a public hearing must be held. 33 U.S.C. 513; 33 CFR 116.20.	a. District Commander who holds public hearing must submit transcript and report to the Chief, Office of Navigation.	No specific provision.
	b. Public hearing to be held where there are substantial issues relevant to the effect that a proposed bridge will have on the reasonable needs of navigation. 33 CFR 115.60.	b. See 3a, above	No specific provision.

Appendix B.—*General Requirements for Citizen Participation (CP) in Local Transportation Planning*—Continued

Title	CP requirement	Monitoring/evaluation of CP requirement	Funding
Urban Mass Transportation Administration (UMTA)			
1. Accessibility of mass transportation to handicapped and elderly persons.	Agencies shall use "adequate citizen participation mechanisms or procedures." Public hearings with adequate notice to be held. 49 CFR 27.107.	Recipients required to file report on compliance with requirements of handicapped access regulation; Department investigations and enforcement procedures authorized. 49 CFR 27.121-27.129.	No specific provision.
2. Statement of Policy—Major Urban Mass Transportation Investments. 41 FR 41513 (9/22/76).	1. "Alternative analyses" studies shall include development of a "citizen involvement mechanism".	No specific provision	No specific provision.
	2. After completion of a draft EIS, a formal public hearing shall be held, covering both the analysis of alternatives and the draft EIS. (See also 49 U.S.C. 1602(d)).		

*While the United States Coast Guard has no programs that can be described specifically as local transportation efforts, the programs listed in this Appendix concerning marine navigation and safety, and marine environmental protection, can affect local communities or local marine transportation. Techniques and procedures to improve citizen participation in these programs will be provided for under the Coast Guard Final Consumer Affairs Plan.

For information about each DOT operating administration's general requirements for citizen participation in local transportation planning, contact:

Federal Aviation Administration: Robert B. Hixson, Community Planner, Division of Community and Environmental Needs, Office of Airport Planning and Programming, Federal Aviation Administration, Washington, DC 20591; (202) 426-8434.

Federal Highway Administration: Stephen J. Kimlico, Chief, Environmental Process Branch, Federal Highway Administration, Washington, DC 20590; (202) 426-0303.

Federal Railroad Administration: Eric Hanson, Consumer Affairs Officer, Office of Public Affairs, Federal Railroad Administration, Washington, DC 20590; (202) 426-0881.

National Highway Traffic Safety Administration: Ann Mitchell, Office of Consumer Participation, National Highway Traffic Safety Administration, Washington, DC 20590; (202) 426-0670.

Research and Special Programs Administration: Jacqueline S. Gillan, Director, Office of Consumer and Public Affairs, Research and Special Programs Administration, Washington, DC 20590; (202) 426-9676.

St. Lawrence Seaway Development Corporation: Dennis Deuschl, Director, Office of Communications and Consumer Affairs, St. Lawrence Seaway Development Corporation, Washington, DC 20591; (202) 426-3574.

United States Coast Guard: Cdr. Neal Mahan, Chief, Consumer Affairs and Administrative Staff, U.S. Coast Guard, Washington, DC 20593; (202) 426-1080.

Urban Mass Transportation Administration: Irv Chor, Office of Public Affairs, Urban Mass Transportation Administration, Washington, DC 20590; (202) 426-4043.

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Part V

Department of Transportation

Federal Aviation Administration

SFAR 27-4; Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes; Compliance With EPA Smoke Emissions Standard for In-Use JT3D Engines

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11, 21, 45, and 91

[Docket No. 20250; Amendment No. SFAR 27-4]

SFAR 27-4—Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes; Compliance With EPA Smoke Emissions Standard for In-Use JT3D Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment to the FAA airplane emissions rules requires compliance with the aircraft and aircraft engine emissions (smoke) standards for in-use JT3D engines in accordance with the compliance schedule established on October 30, 1979, by the U.S. Environmental Protection Agency (EPA) under 40 CFR Part 87 (44 FR 64266, November 6, 1979). This amendment covers all civil JT3D powered aircraft operated in the United States with a U.S. standard airworthiness certificate (or foreign equivalent). It reflects the EPA's extension of compliance deadlines to be more, though not completely, compatible with the FAA's aircraft operation noise limits rule applicable to certain JT3D-powered aircraft in domestic service (14 CFR Part 91, Subpart E). It requires timely modification by all U.S. and foreign operators of in-use JT3D engines manufactured before January 1, 1978, in accordance with a phased compliance schedule. That schedule prescribes intermediate compliance dates of January 1, 1981, and January 1, 1983; with full compliance beginning January 1, 1985. JT3D engines manufactured on or after January 1, 1978, are already required by EPA to meet those engine emission standards. This FAA rulemaking action is required by Section 232 by the Clean Air Act, as amended in 1970 by Pub. L. 91-604 (42 U.S.C. 1857f-10).

DATES: Effective date December 1, 1980.

Compliance Dates—

January 1, 1981, one-fourth of the operational JT3D engines

January 1, 1983, one-half of the operational JT3D engines

January 1, 1985, all operational JT3D engines.

FOR FURTHER INFORMATION CONTACT:

For information concerning enforcement of SFAR 27 which implements 40 CFR Part 87: Mr. Emanuel M. Ballenzweig, Air Quality Division (AEE-300), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, (202) 755-8933.

For information concerning the substance of 40 CFR Part 87: Mr. George Kittredge, Office of Mobile Source Air Pollution Control, AW455, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 426-2514.

SUPPLEMENTARY INFORMATION:

Regulatory History

On April 14, 1980, the FAA published Notice No. 80-6 (45 FR 25350) proposing to amend SFAR 27, "Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes." That notice proposed amendments to ensure compliance with the EPA emissions standards for in-use JT3D engines. Interested persons were invited to participate in this rulemaking by submitting written comments on the proposed rule. The notice recognized the division of regulatory responsibility between the EPA (under section 231 of the Clean Air Act, as amended, 42 U.S.C. 1857f-9) and the Secretary of Transportation (under section 232 of that Act, 42 U.S.C. 1857f-10). Therefore, comments were not requested concerning the substance or the compliance dates of the already final requirements of the EPA's Part 87 that were incorporated in the FAA proposal. Since such comments would involve EPA's regulatory authority, over which the FAA has no control, they should have been submitted directly to the EPA prior to finalization of the most recent amendment to the EPA standards issued on October 30, 1979. Nevertheless, most comments received addressed those issues over which the FAA has no authority. These were referred to the EPA for consideration. All comments received have been given full consideration in the promulgation of this amendment which, after consultation with the EPA, adopts the proposals in Notice No. 80-6 without substantive change.

Under section 232 of the Clean Air Amendments of 1970, Pub. L. 91-604, the FAA must issue regulations to ensure compliance with all aircraft emissions standards promulgated by the EPA under section 231 of the Act. The EPA regulations are currently prescribed under 40 CFR Part 87 originally published in the Federal Register on July 17, 1973 (38 FR 19088). Accordingly, on December 26, 1973, the FAA issued Special Federal Aviation Regulation (SFAR) 27, (38 FR 35437, December 28, 1973). The purpose of SFAR 27 is to fulfill FAA statutory responsibilities to ensure compliance with aircraft and aircraft engine emissions standards and related test procedures under EPA's (40 CFR) Part 87.

SFAR 27, as originally issued, governed compliance of only those standards and procedures in EPA Part 87 that were effective beginning February 1, 1974. On December 23, 1974, the FAA amended SFAR 27 (Amdt. SFAR 27-1: 39 FR 45008, December 30, 1974) to regulate compliance with the fuel venting standards in EPA Part 87 that became effective January 1, 1975. Amendment SFAR 27-2, effective January 1, 1976 (40 FR 55311, November 28, 1975), governs compliance with smoke emissions standards in EPA's Part 87 applicable to new and in-use aircraft turbofan or turbojet engines with a rated power of 29,000 pounds thrust or greater, that are designed for operation on subsonic airplanes. A third amendment (Amdt. SFAR 27-3; 42 FR 64878, December 29, 1977) regulates compliance of JT3D engines manufactured on and after January 1, 1978, with smoke emissions standards in EPA's Part 87.

Discussion of the Amendment

Overview

This amendment to SFAR-27, pursuant to the Clean Air Amendments of 1970, requires compliance with the EPA's Part 87 exhaust emission (smoke) requirements that apply to "in-use" JT3D engines on EPA's prescribed phased compliance schedule (40 CFR 87.31(c)). It provides that the exhaust emissions of each in-use Class T3 engine, specified under § 87.1(a) as "gas turbine engines of the JT3D Model family," may not exceed a smoke number of 25, when measured in accordance with the related test procedures under EPA's Part 87. To meet these smoke requirements for Class T3 engines requires a retrofit or a replacement of the combustor in JT3D engines manufactured before January 1, 1978. Those manufactured on or after that date must already comply.

That provision of EPA's Part 87 affecting in-use JT3D engines was originally scheduled to take effect January 1, 1978. As a result of a petition from the Air Transport Association of America (ATA), the EPA relaxed the compliance schedule to permit 90 percent compliance by September 1, 1980, with full compliance by September 1, 1981 (41 FR 54861, December 15, 1976). Subsequent to an FAA suggestion, the EPA again amended the compliance schedule (44 FR 64266; November 6, 1979). The new schedule coincides with 14 CFR 91.305, the FAA's phased schedule for noise compliance by U.S. operators of JT3D-powered airplanes operated domestically under FAR Parts 121 and 135 (43 FR 12815, March 24, 1978). It should be noted that the phased compliance schedule in EPA's Part 87 applies to all civil JT3D-powered airplanes that operate in the United States under a U.S. standard airworthiness certificate (or foreign equivalent). Thus, it applies equally to U.S. and foreign operators of those airplanes with JT3D engines. The compliance schedule prescribed under 40 CFR 87.31(c) is as follows:

"(c) Exhaust emissions of smoke from each in-use aircraft gas turbine engine of Class T3 shall not exceed a smoke number of 25. Each operator shall achieve compliance in accordance with the following schedule:

(1) One quarter of its operational Class T3 engines by January 1, 1981.

(2) One half of its operational Class T3 engines by January 1, 1983.

(3) All of its operational Class T3 engines by January 1, 1985.

"This compliance schedule notwithstanding, Class T3 engines which do not meet a smoke number of 25 may continue to be operated if, under an FAA approved plan, replacement engines or replacement airplanes have been ordered and are scheduled for delivery prior to January 1, 1985, but not after the dates specified in the plan. For the purpose of this paragraph, replacement engines are engines of a class different from Class T3 and have been shown to meet the smoke emission standards in this part appropriate to their class."

This amendment to SFAR 27 requires compliance in accordance with 40 CFR 87.31(c) and, thus, the FAA has no discretion in establishing or modifying the rule in areas such as (1) the regulated persons, engines, or airplanes; (2) the emissions standards; or (3) the compliance schedule. Many commenters to the notice opposed the unilateral actions being taken by the United States that they considered to be counter to International Civil Aviation Organization (ICAO) and European Civil Aviation Conference (ECAC) positions which oppose emissions standards that require modification to in-service aircraft engines. The EPA's response to those comments is contained in the preamble of the final rulemaking taken by EPA with regard to JT3D smoke emissions standards (44 FR 64266, November 6, 1979). The EPA rejected those arguments at that time because that rulemaking represented a delay in the effective dates of a standard that had been promulgated in 1973 which antedated any positions taken by ICAO Committees or by the ECAC. Other commenters considered the phased compliance schedule to be burdensome and wanted a rule change, a waiver, or an exemption for particular types of operations such as travel clubs, international operations, etc. The EPA has indicated that they do not plan to change the applicability or the schedule for compliance with the JT3D smoke standards. They have rejected requests for a rule change or exemptions based upon such considerations as (1) limited operations that do not represent a large environmental burden, (2) disparity of emissions and noise compliance schedules for an operator, and (3) economic burden and lack of air quality justification. The EPA's stated position on each respective point may be summarized as follows: (1) the operations of each operator of aircraft powered by JT3D engines may contribute little to environmental degradation, but the total environmental burden, that is composed of many such operations, has to be reduced if the nation's air quality goals are to be achieved; (2) the compliance schedule has been delayed twice and no adequate justification has been shown for further changes in the schedule since a schedule based on category of operators or operations would be discriminatory; and (3) the EPA conducted the required economic and air quality analyses when it established the standards and schedule.

Concerning requests for waivers or exemptions, the EPA has indicated that as a policy it does not grant exemptions from the provisions of Federal emissions standards, except under the most extenuating circumstances. The Clean Air Act makes no mention of exemptions in Section 231 pertaining to aircraft emissions. The only provision of this nature in 40 CFR Part 87 appears in Subpart J, which was added to the basic standards in December 1973, (38 FR 35000) to provide a mechanism for operators to request temporary delays in the compliance dates for the fuel venting and JT8D smoke retrofit standards after several foreign airlines experienced difficulty in acquiring and arranging for installation of the necessary replacement parts. The JT3D smoke retrofit program is not presently covered by Subpart J, because the compliance date that was established (and since extended) was set to allow liberal time for development and certification of the necessary replacement parts, and it was not envisioned that any operators would need special delays to meet the compliance schedule. However, should that be the case, the EPA has indicated that it will consider extending the provisions of Subpart J, "Temporary Exemption from Aircraft Emissions Standards," to include the JT3D smoke retrofit program.

For the information of any interested parties, the provisions of Subpart J which are most relevant to potential applicants for temporary EPA exemptions are as follows:

"§ 87.101 Application for temporary exemption.

(a) The Administrator of the Environmental Protection Agency may grant to any aircraft or aircraft engine temporary exemption from any applicable standard under § 87.11(a) or § 87.31(a), provided that the owner or operator of such aircraft or aircraft engine demonstrates:

(1) All good faith efforts to achieve compliance with such standards,

(2) Inability to comply with such standard due to circumstances beyond his control, and

(3) A plan by which he will achieve such compliance in the shortest time which is feasible.

(b) Applications for temporary exemption from the requirements of § 87.31(a) shall be submitted in duplicate to the Administrator of the Environmental Protection Agency and shall contain the following information:

(1) The name and address of the applicant,

(2) The standard or requirement from which temporary exemption is requested,

(3) The number of aircraft or aircraft engines subject to the requirement for which a temporary exemption is requested,

(4) The efforts made by the applicant to accomplish compliance, including ordering of equipment and scheduling of maintenance work, and the dates of these efforts,

(5) A detailed statement of reasons why the applicant will not be in compliance when the standard or requirement becomes effective,

(6) The name of the equipment supplier and/or the name of the firm retained to perform the maintenance work,

(7) The applicant's proposed timetable for installation of equipment and obtaining necessary approvals for each aircraft or aircraft engine for which temporary exemption is requested, and

(8) The name of the person responsible for accomplishing compliance according to the timetable proposed by the applicant.

(c) Prior to taking action on an application for temporary exemption, the Administrator shall consult with the Secretary of Transportation. A copy of the applicant's request should be

submitted by the applicant to the Secretary of Transportation.

(d) The Administrator shall publish in the **Federal Register** the name of the owner or operator to whom a temporary exemption is granted and the period of such exemption.

(e) No state or political subdivision thereof may attempt to enforce a standard respecting fuel venting or smoke emissions from an aircraft or engine if such aircraft or engine has been granted an exemption from such standard."

December 15, 1976, was the effective date for the EPA rulemaking that first extended the compliance date for smoke standards applicable to JT3D engines. The extension was predicated on EPA's determination that a means of achieving compliance had been developed, was completing service evaluation, and would be available for installation beginning in the spring of 1978. Since those operators contemplating operation of JT3D-powered airplanes after 1980 have been given adequate time to order retrofit kits (and any required tooling) or new combustors, the EPA has indicated that it will not consider favorably requests for temporary delays in compliance that do not demonstrate that a conscientious effort was made to comply with the requirements. Purchasers of noncomplying aircraft subsequent to December 15, 1976, should not expect special considerations by the EPA simply because they were ignorant of the legal emissions requirements.

As provided in § 9 of SFAR 27, should the EPA act through rule or interpretations to modify the compliance requirements, these actions would be reflected in FAA's enforcement activities, as appropriate.

Discussion of Comments and the Rules

The following is a discussion of pertinent portions of the proposal to SFAR 27 (Notice No. 80–6) and any comments related to the subject matter covered.

Local Regulations

Commenters representing international air carriers expressed concern that some U.S. airports might attempt to apply more stringent regulations than those imposed by the Federal Government. That concern is unfounded. Section 233 of the Clean Air Act effectively prohibits such action as it states that no State or political subdivision may adopt or attempt to enforce any standard concerning emission of air pollutants from any aircraft or aircraft engine unless that standard is identical to the Federal standards.

Operational Engines

Though the term "operational engines" is not defined in 40 CFR Part 87, the previous quote from § 87.31(c) indicates that operational Class T3 engines are a subset of the in-use aircraft gas turbine engines of Class T3. (The term "in-use aircraft gas turbine engine" is defined in Part 87 as an aircraft gas turbine engine which is in service.) For purposes of enforcement, "operational Class T3 engines" include only those engines installed on airplanes that operate in the United States. Therefore, spare engines will not be monitored, though they will have to come into compliance at about the same rate as operational engines in order to keep an operator's airplane fleet in compliance when complying operational engines need to be removed. The EPA has indicated that this enforcement approach is consistent with 40 CFR Part 87.

Replacement Airplanes

The EPA has defined the term "replacement engines" in § 87.31(c) where the term "replacement airplane" was introduced, but did not define the latter term because the EPA assumed that an analogous definition was implied. For purposes of enforcement, a "replacement airplane" is an airplane powered by engines, other than Class T3, that meets applicable smoke emission requirements. The EPA has indicated that this approach is consistent with 40 CFR Part 87, as interpreted by the EPA.

Achieving Compliance

Pratt and Whitney (P&W) Service Bulletin No. 4694 describes the methods and parts for modification of in-use JT3D engines to provide a burner configuration that results in smoke density levels consistent with the EPA maximum limit. One commenter noted "unsatisfactory results" from such a burner configuration, but the commenter did not provide any information to support that assertion. The burner retrofit configuration in the referenced Service Bulletin (also described in the FAA-approved Engineering Change 284890) has been installed in a JT3D–7 engine and shown to produce maximum smoke numbers well below the standard of 25 during separate test runs. In addition, the approved modification has undergone several thousand cycles of engine testing, several airline tests, and more than 150,000 hours of service tests. Another comment stated that "the burner modifications necessary to reduce smoke emissions are believed to have been sufficiently service tested for performance and durability." The FAA agrees. Based on these tests, the burner retrofit configuration described in Service Bulletin 4694 is considered to be in conformance with the EPA standards. The EPA, therefore, regards modification of a JT3D engine in accordance with the above Service Bulletin to be satisfactory evidence of compliance with 40 CFR Part 87, if that engine is properly maintained.

Thus, in a fashion similar to that used previously in SFAR 27 to ensure compliance by in-use JT8D engines, this amendment incorporates by reference the P&W Service Bulletin No. 4694 in § 14 of the SFAR. The Service Bulletin is available for examination in the FAA Rules Docket, AGC–204, Room 916, 800 Independence Avenue, S.W., Washington, D.C. 20591, or may be obtained from Pratt and Whitney Aircraft Division of United Technologies Corporation, 400 Main Street, East Hartford, Connecticut 06108. In addition, to ensure that the incorporated materials are reasonably available to interested persons, it will also be available at the locations listed in the new § 10(e). The incorporation by reference has been approved by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR Part 51. It should be noted that those incorporated documents describe merely one acceptable means of compliance for an in-use JT3D engine to achieve the EPA smoke standards. Any other means, consistent with § 11 of the SFAR, that is demonstrated by the prescribed test procedures of EPA's Part 87 to limit engine emissions below smoke number 25 will be accepted as compliance with the provisions of § 87.31(c) that are incorporated in this amendment to SFAR 27.

P&W Service Bulletin 2417, which was incorporated by reference in SFAR 27, has been cancelled by Pratt and Whitney and has been incorporated in parts catalogs. Since retrofit in accordance with P&W Service Bulletin 2531 is sufficient to meet JT8D smoke requirements without reference to Service Bulletin 2417 or Enginering Change 197707 (which provided the details needed for conducting a service evaluation of the smoke reduction chamber configuration for JT8D engines), the incorporation by reference of P&W Service Bulletin 2417 and P&W Engineering Change 197707 is no longer needed, and has been deleted from SFAR 27.

Airplanes and Engines Covered by Replacement Plans

JT3D engines of JT3D-powered airplanes that are scheduled to be replaced with complying engines or airplanes before 1985 may continue to be operated after the 1981 and 1983 interim dates in the phased compliance schedule, if those engines or airplanes are covered by an FAA-approved replacement plan (§ 87.31(c)). Thus, an operator may elect to submit to the FAA for approval a plan under which replacement engines (engines of a class different than Class T3 that have been shown to meet EPA smoke emission requirements) or replacement airplanes (airplanes powered by engines of a class different than Class T3 engines that meet applicable EPA smoke emission requirements) have been ordered and are scheduled for delivery prior to January 1, 1985. If the plan is approved, those engines and airplanes included in the plan do not have to comply with the requirements of the phased compliance schedule for Class T3 engines until January 1, 1985, or an earlier date specified in the plan. Those approved replacement plans may constitute a compliance strategy for smoke emissions even if a replacement plan is not needed for the FAA's operating noise limits rule. The noise rule does not require compliance before 1985 for Part 91 and 123 operations and for airplanes engaged in foreign air commerce in the United States under an approved method of apportionment. Thus, some operators may wish to request approval of a replacement plan for smoke emission compliance purposes only. Replacement plans for noise that are submitted by operators under 14 CFR 91.306 which have FAA approval may, upon request, serve as FAA-approved plans for the EPA smoke emissions standards as well.

Under this amendment, any replacement plan submitted solely for smoke emissions purposes should be submitted to FAA's Office of Environment and Energy and should, at a minimum, include (1) the operator's name and address, (2) the name, title, address and phone number of the person who submitted the plan, (3) the operator's current and projected inventory of JT3D engines (by serial number) and JT3D-powered airplanes (by aircraft registration number and airplane serial number) covered by this SFAR, (5) the verifiable order and schedule for replacement of those engines or airplanes, and (6) certification that the plan is true and complete (under penalty of 18 U.S.C. 1001). If a replacement plan strategy is selected, the plan should be submitted to the FAA by December 1, 1980, to provide sufficient time for the FAA approval process to be completed prior to the first interim compliance date, January 1, 1981. Later submissions might not be approved before compliance is required, and will not be a basis for relief from compliance with the rule without EPA remedial action.

The approval process for replacement plans includes consideration of whether the plan would provide benefits similar to the emissions reduction that would be achieved through a phased retrofit program without replacement. Thus, a plan submitted by an operator with a large JT3D-powered fleet may be unacceptable if it delays replacement of a substantial portion of its fleet until December 1984, and does not provide a compelling reason for such an inordinate delay. In considering approval of specific replacement plans for emissions submitted by those operators required to prepare compliance plans for noise (under 14 CFR 91.308) the approval process of replacement plans for emissions will include a comparison between plans for consistency and differences. While some minor differences might be expected since the objectives are not the same, each operator's fleet projections and compliance strategy should be traceable among any different plans the operator submits. Any unplanned changes in an operator's equipment inventory or plans for replacement of aircraft or engines covered by this SFAR will necessitate an update in the replacement plan.

Several commenters said that even though most operators will be replacing their JT3D-powered aircraft, their filing of replacement plans would place an unnecessary administrative burden on the FAA. These commenters would prefer an exemption or waiver. This option was discussed earlier and it was indicated that FAA has no authority to grant exemptions or waivers from the EPA standards (see § 9(a) of SFAR 27). Since EPA has given operators the option of submitting replacement plans, FAA will provide the necessary review of these plans.

Replacement Credit

"Replacement credit" permits the operator of an airplane (or engine) covered by an FAA-approved replacement plan to continue to operate that airplane (or engine) until 1985 or an earlier date specified in the plan. For compliance purposes, each airplane or engine scheduled for replacement in an FAA-approved plan will be counted as if it were in compliance and any airplane or engine that has been replaced by each interim compliance date will be counted in the fleet count for that date.

Retirement Credit

On December 15, 1976, the EPA announced (43 FR 54861) that compliance with its smoke emissions standards for Class T3 engines was technically achievable. One of the options available to operators at that time was retirement of aircraft on which Class T3 engines were installed (an option still available). The retirement option was not addressed in the preamble to the proposal. Since "retirement credit" is applicable under the FAA's operating noise rule and achieves the air quality goals of EPA, the concept of retirement credit has been accepted by the EPA as a compliance strategy consistent with Part 87. Permitting the use of this concept increases the consistency between compliance with the Part 91 noise requirements and the SFAR emissions requirements. Retirement credit permits the operators of airplanes covered by 40 CFR 87.31(c) to count the associated Class T3 operational engines as complying engines if those airplanes are retired from any future operation in the United States without replacement after December 15, 1976. This is similar to the procedures that operators are allowed to follow in fulfilling the requirements of 14 CFR 91.305, though the earliest date for emissions and noise retirement credit are different (December 15, 1976 vice January 1, 1977). Retirement credits only apply to engines installed on airplanes that are retired; spare engines are not eligible for such credit. The credit is not available until shown to be a true and complete retirement from U.S. service without replacement. If an airplane or engine for which retirement credit has been given is replaced or operated in the United States even by another operator, the credit is, of course, forfeited.

Operators electing to take retirement credit should certify (under penalty of 18 U.S.C. 1001) the following information in writing to the FAA's Director of Environment and Energy before December 1, 1980 for 1981 compliance, and December 1, 1982 for 1983 compliance purposes: (1) the operator's name and address, (2) the name, title, address and phone number of the person submitting the information, (3) the date of the submission, (4) a statement that the operator is eligible for "retirement credit" in meeting compliance on the interim dates, (5) the operator's inventory of JT3D-powered airplanes and engines covered by this SFAR (by aircraft registration number, airplane serial number, and engine serial number) with an indication of those airplanes that have been retired after December 15, 1976, including the date

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when each listed airplane was retired from service in the United States without replacement.

Compliance Schedule (Interim Compliance Dates)

The EPA has indicated that the proportions prescribed by 40 CFR 87.31(c) for interim compliance dates apply to the operational engines and not the individual JT3D-powered airplanes. Specifically, unless an operator has FAA approval for a replacement plan or has elected to use retirement credit before the dates specified in the previous discussion, the proportions apply to the total number of operational engines owned or controlled by each operator on, and after, each interim compliance date. If replacement or retirement credit is selected by an operator, these factors are considered in calculating the proportions on the interim compliance date.

In general, each proportion is the quotient of the number of "complying operational engines" divided by the "total number of operational engines" in the operator's fleet. The number of "complying operational engines" is (the sum of) the number of any operational Class T3 engines that meet the EPA smoke emissions standard, plus the number of any Class T3 engines installed on aircraft that were retired completely from U.S. service without replacement between December 15, 1976 and the interim date, plus the number of any operational engines of Class T3 covered by an FAA-approved replacement plan. The "total number of operational engines" in the fleet is (the sum of) the number of all operational engines owned or controlled on the interim compliance date, plus the number of any Class T3 engines installed on aircraft retired completely from U.S. service without replacement between December 15, 1976 and the interim date, plus the number of any engines of Class T3 covered by an FAA-approved replacement plan that have been replaced by the interim date.

Comments were received from operators which have no interim noise compliance dates and object to interim compliance dates for smoke emissions. One aspect of their objection was the likelihood that aircraft would be retired or replaced by 1985 to meet the FAA noise rule, making engine modifications for earlier emissions compliance dates an uneconomic alternative. The EPA has considered that argument and, as indicated earlier, considers it discriminatory to establish a different set of compliance dates for different classes of operators. Another aspect of that concern is summarized in the comment from the International Air Transport Association which said:

> "There are significant real difficulties which are equally applicable to the intermediate partial compliance requirements of 40 CFR 87. We understand that, in computing the numbers of engines required to be modified, reference would probably be made by the FAA to the Operations Specfications of the airline in question. In deciding which aircraft to list in its Operations Specifications the airline could list the registration numbers of just the number of aircraft of the type(s) it operates in U.S. service theoretically needed to support these services. This would minimize the number of engines required to be modified but could restrict the ability of the airline to obtain maximum utilization of the whole fleet of the type(s) concerned. Alternatively, the airline could reduce this constraint by listing the registration numbers of more than this theoretical minimum number of aircraft (up to the whole of its fleet of the type(s) concerned), but clearly this would increase the number of engines required to be modified. Moreover, it would be unreasonable to expect an airline to modify more engines than required for service to the U.S. when no other country requires a similar modification."

The above comment correctly assumes that aircraft listed on an operations specification will be considered to represent those aircraft that a foreign operator has determined to be those operating in the United States (without regard to the frequency of operations). Whether the operator chooses to minimize the number of airplanes operated into the United States or to increase operational flexibility by designating more airplanes for U.S. operations is a matter best reserved to the operator. Balancing these factors should be a prerogative of the operator and should not be dictated by the rule. Those who have listed more than the minimum number of aircraft (which is a typical approach) may be eligible for retirement credit for those aircraft removed without replacement from any future U.S. service.

As indicated in SFAR 27 § 9(a), and as discussed earlier, the FAA cannot grant variances from the prescribed schedule established by the EPA. All comments on that schedule have been referred to the EPA for consideration. Operators are reminded that they should take the necessary actions to meet the phased compliance schedule. Several comments mentioned lack of availability of retrofit kits, lack of tooling, and lack of personnel to perform the modifications. EPA has indicated that such conditions might be the basis for a request to the EPA for a temporary delay in compliance, if the operator can demonstrate that good faith attempts have been made since December 15, 1976, to order retrofit kits and tooling and to obtain maintenance personnel (or a maintenance organization) to perform the retrofitting of engines and that such attempts have been unsuccessful. (See 40 CFR 87.101).

Pratt and Whitney Aircraft indicated on July 3, 1980, that it originally planned to produce sets of retrofit parts sufficient for 1000 engines. However, they decided to limit their production run to 100 sets due to a lack of orders. As of that date they had orders for 93 sets (mostly from one operator) with seven sets still available. The lead time for additional sets of parts is sixteen months. They have had no orders for tooling and did not believe that any operator or maintenance shop has developed the tooling capability. The lead time for tooling from P&W is about one year, although maintenance shops can fabricate their own tooling sooner. From those indications, no serious attempt has been made by any operator to achieve compliance through the retrofit option.

Some comments indicated that it will be extremely difficult, if not impossible, for the FAA to determine the degree of compliance, particularly by foreign operators. The FAA does not agree. Its monitoring program will include field examinations and review of documentation such as operations specifications, airplane flight manuals, noise compliance plans, etc. The noise compliance plan is the only document that is not applicable to foreign operators. The FAA program should be sufficient for the purposes of ensuring that operators meet the compliance schedule. If, based on experience, additional means are found to be necessary, the FAA will move promptly to develop and implement additional mechanisms to ensure compliance.

Certification and Engine Approval Actions

Sections 15, 17, 19, and 21 of SFAR 27 have been revised to reflect the EPA requirements applicable to in-use JT3D engines. Those revisions are unchanged from the proposed amendment. No commenter addressed the issues presented.

Since the EPA amendment to § 87.31(c) concerning in-use JT3D engines affects the continued operation of airplanes powered by JT3D engines, it raised questions concerning the need and the appropriateness of including references to in-use JT3D engines in the certificate actions covered by §§ 15, 17, and 21 and the approval actions in § 19. After reviewing these current provisions in light of the EPA amendment, it would be misleading to issue certificates or make approvals after the final compliance date for engines that cannot legally be operated in the United States. This amendment is consistent with the treatment given Class T2 and T4 engines and T3 engines manufactured on and after January 1, 1978. However, operation of non-complying, in-use JT3D engines manufactured before January 1, 1978, is not completely prohibited until January 1, 1985. The EPA's 1981 and 1983 interim compliance dates for in-use JT3D engines do not apply to certificate and approval actions for JT3D engines manufactured before January 1, 1978. Thus, if the FAA set any cutoff date for certifications and approvals prior to January 1, 1985 (the final compliance date in EPA's Part 87 that applies to all JT3D engines) would be more stringent than the EPA rule. This amendment uses that date as the cutoff date for further certificate and approval action, regardless of the date of application.

As each Class T3 engine is modified to meet the smoke emissions standards, the model designator on the engine identification plate must be modified in accordance with P&W Service Bulletin 4694 in order to comply with § 19(b) of SFAR 27.

Operation

Section 25 has been amended to reflect EPA's Part 87 phased compliance schedule for in-use JT3D-powered airplanes operated in the United States. Comments recommending that FAA delete the interim compliance dates cannot be acted upon. As discussed earlier, such a change is outside the scope of FAA's authority.

Codification

The proposal indicated that consideration is being given to codifying permanently the FAA airplane emissions regulations (SFAR 27) under Title 14 of the Code of Federal Regulations (CFR). There are several options being considered, including (1) redistributing the provisions of SFAR 27 among the various parts of the code as appropriate, e.g., Part 21, Part 33, Part 45, Part 91, etc., and (2) continuing to provide a single code unit for engine emissions by establishing a new Part in Title 14, e.g., Part 34, with references to other affected parts. Three commenters supported the desirability of permanent codification and none opposed such action. One commenter suggested that Part 33 "Airworthiness Standards: aircraft engines" be amended to include the provisions of SFAR 27. The other commenters suggested permanent codification in a single separate unit. (One suggested numbering it Part 34.) The FAA is continuing its review of the issues before taking action to modify the form (not the substance) of the regulation.

Adoption of the Amendment

Accordingly, 14 CFR Chapter I, Special Federal Aviation Regulation (SFAR) 27 is amended, effective December 1, 1980, as follows:

1. By adding a new § 10 to read as follows:

§ 10 Incorporation by reference.

(a) *General.* This SFAR prescribes certain standards and procedures which are not set forth in full text in the rule. Those standards and procedures are hereby incorporated and are approved for incorporation by reference by the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR Part 51.

(b) *Changes to incorporated matter.* Incorporated matter which is subject to subsequent change is incorporated by reference according to the specific reference and to the identification statement. Adoption of any subsequent change in incorporated matter that impacts compliance with standards and procedures is made under of 14 CFR Part 11 and 1 CFR Part 51.

(c) *Identification statement.* The complete title or description which identifies each published matter incorporated by reference in this SFAR is as follows:

(1) Pratt and Whitney Service Bulletin 2531, Revision No. 10, dated December 28, 1972: containing instructions on incorporation of a combustion chamber assembly configuration for JT8D engines which reduces visible smoke emissions.

(2) Pratt and Whitney Service Bulletin 4694, Revision No. 2, dated May 22, 1979: containing instructions, parts list, and manpower requirements for providing a burner configuration for JT3D engines that reduces smoke density levels to meet EPA standards, and containing new model designations for complying engines.

(d) *Availability for distribution.* Operators affected by portions of this SFAR concerning in-use Class T3 and Class T4 engines normally receive the referenced documents from the manufacturer, Pratt and Whitney Aircraft, when issued. Copies of Service Bulletins may be obtained (without cost) upon request to Pratt and Whitney Aircraft, Division United Technologies Corporation, 400 Main Street, East Hartford, Connecticut 06108.

(e) *Availability for inspection.* A copy of each publication incorporated by reference in this SFAR is available for public inspection at the following locations:

(1) FAA Office of the Chief Counsel, Rules Docket, Room 916, Federal Aviation Administration Headquarters Building, 800 Independence Avenue, SW., Washington, D.C.

(2) Department of Transportation, Branch Library, Room 930, Federal Aviation Administration Headquarters Building, 800 Independence Avenue, SW., Washington, D.C.

(3) The respective offices of the Federal Aviation Administration as follows:

(i) New England Regional Office, 12 New England Executive Park, Burlington, Massachusetts.

(ii) Eastern Regional Office, Federal Building John F. Kennedy (JFK) International Airport, Jamaica, New York.

(iii) Southern Regional Office, 3400 Whipple Street, East Point, Georgia.

(iv) Great Lakes Regional Office, 2300 East Devon, Des Plaines, Illinois.

(v) Central Regional Office, 601 East Twelfth Street, Kansas City, Missouri.

(vi) Southwest Regional Office, 4400 Blue Mound Road, Fort Worth, Texas.

(vii) Rocky Mountain Regional Office, 10255 East 25th Avenue, Aurora, Colorado.

(viii) Northwest Regional Office, FAA Building, 9010 East Marginal Way South, King County International Airport (Boeing Field), Seattle, Washington.

(ix) Western Regional Office, 15000 Aviation Boulevard, Hawthorne, California.

(x) Alaskan Regional Office, 632 Sixth Avenue, Anchorage, Alaska.

(xi) Pacific-Asia Regional Office, 1833 Kolakoua Avenue, Honolulu, Hawaii.

(xii) Europe, Africa and Middle East Office, 15 Rue de la Loi, 1030 Brussels, Belgium.

(xiii) FAA Representative. U.S. Embassy, Corner Avenidas Inca Garcillaso de la Vega & Espana, Lima, Peru.

(xiv) FAA Representative, Office of U.S. Consulate General, Avenida Presidente Wilson, 147 Rio De Janeiro, Brazil.

(4) The Office of the Federal Register, Room 8401, 1100 "L" Street, NW., Washington, D.C.

2. By amending § 14 as follows:

a. By amending paragraph (b) to read as follows:

§ 14 Compliance.

* * * * * *

(b) Compliance with the exhaust emissions requirements of this SFAR that apply to Class T4 engines beginning on February 1, 1974, is shown if the engine is a JT8D–11, JT8D–15, JT8D–17, or subsequent civil JT8D engine; or if the engine is a JT8D–1, JT8D–7 or JT8D–9

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engine that was modified in accordance with Pratt and Whitney Service Bulletin 2531 which is incorporated by reference under § 10 of this SFAR.

* * * * *

b. By redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively, and amending the redesignated paragraph (d) by deleting the words "and January 1, 1978," and substituting for them the words "January 1, 1978; January 1, 1981; January 1, 1983; and January 1, 1985,".

c. By adding a new paragraph (c) to read as follows:

* * * * *

(c) Compliance with the exhaust emissions requirements of this SFAR that apply to Class T3 engines beginning on January 1, 1978; January 1, 1981; January 1, 1983; and January 1, 1985, is shown if the engine is a JT3D–12 engine or if the engine has been redesignated as a JT3D–1A, JT3D–1A–MC6, JT3D–1A–MC7, JT3D–3C or a JT3D–7A engine after being modified in accordance with Pratt and Whitney Service Bulletin 4694, which is incorporated by reference under § 10 of this SFAR.

* * * * *

3. By amending § 15 as follows:

a. By amending paragraph (a)(5) to read as follows:

§ 15 Type certificates.

(a) * * *

(5) For airplanes powered by engines of Class T3—

(i) Each manufactured on or after January 1, 1978, complies with the exhaust emissions requirements and related test procedures of 40 CFR Part 87 that apply beginning January 1, 1978; and

(ii) Each engine manufactured before January 1, 1978, complies with the exhaust emissions requirements and related test procedures of 40 CFR Part 87 that apply beginning January 1, 1985.

* * * * *

b. By amending paragraph (a)(4) by deleting the words "date specified in subparagraph (a)(4)" and substituting for them the words "dates specified in subparagraphs (a)(2), (a)(4) and (a)(5)."

4. By amending § 17 as follows:

a. By amending paragraph (a)(5) to read as follows:

§ 17 Supplemental and amended type certificates.

(a) * * *

(5) For airplanes powered by engines of Class T3—

(i) Each engine manufactured on or after January 1, 1978, complies with the exhaust emissions requirements and related test procedures of 40 CFR Part 87 that apply beginning January 1, 1978; and

(ii) Each engine manufactured before January 1, 1978, complies with the exhaust emissions requirements and related test procedures of 40 CFR Part 87 that apply beginning January 1, 1985.

* * * * *

b. By amending paragraph (b) by deleting the words "subparagraphs (a)(2) and (a)(4) of this section" and substituting for them the words "subparagraphs (a)(2), (a)(4), and (a)(5) of this section."

5. By amending § 19(a)(3) to read as follows:

§ 19 Engine approvals.

(a) * * *

(3) For an engine of Class T3, unless—

(i) Each engine manufactured on or after January 1, 1978, complies with the exhaust emissions requirements and related test procedures of 40 CFR Part 87 that apply beginning January 1, 1978; and

(ii) Each engine manufactured before 1978, complies with the exhaust emissions requirements and related test procedures of 40 CFR Part 87 that apply beginning January 1, 1985.

* * * * *

6. By amending § 21(e) to read as follows:

§ 21 Standard airworthiness certificates.

* * * * *

(e) For airplanes powered by engines of Class T3—

(1) Each engine manufactured on or after January 1, 1978, complies with the exhaust emissions requirements and related test procedures of 40 CFR Part 87 that apply beginning January 1, 1978; and

(2) Each engine manufactured before January 1, 1978, complies with the exhaust emissions requirements and related test procedures of 40 CFR Part 87 that apply beginning January 1, 1985.

7. By amending § 25 as follows:

a. By amending the introductory clause by deleting the words "paragraphs (a) through (d)" and substituting for them the words "paragraphs (a) through (e)."

b. By amending paragraph (e) to read as follows:

§ 25 Operations.

* * * * *

(e) For airplanes powered by engines of Class T3—

(i) Each engine manufactured on or after January 1, 1978, complies with the exhaust emissions requirements and related test procedures of 40 CFR Part 87 that apply beginning January 1, 1978; and

(ii) In addition, regardless of date of manufacture, each engine complies with the exhaust emissions requirements according to the following schedule:

(A) One quarter of the operational Class T3 engines by January 1, 1981.

(B) One half of the operational Class T3 engines by January 1, 1983.

(C) All operational Class T3 engines by January 1, 1985.

This compliance schedule notwithstanding, Class T3 engines which do not meet a smoke number of 25 may continue to be operated if, under an FAA approved plan, replacement engines or replacement airplanes have been ordered and are scheduled for delivery before January 1, 1985, but not after the date specified in the plan. For purposes of this paragraph, replacement engines are engines of a class other than Class T3 engines that have been shown to meet the smoke emission requirements and related test procedures of 40 CFR Part 87 appropriate to their class.

(Sec. 232, Clean Air Act, as amended December 31, 1970, Pub. L. 91–604 [42 U.S.C. § 1875f–10) as delegated (36 FR 3733); 40 CFR Part 87; Secs. 307(c), 313(a), 601, and 603, Federal Aviation Act of 1958 (49 U.S.C. 1348(c), 1345(a), 1421, and 1423); Sec. 6c, Department of Transportation Act (49 U.S.C. § 1655(c))

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the first person identified above under the caption "For Further Information Contact."

Issued in Washington, D.C., on October 23, 1980.

Langhorne Bond,

Administrator.

Note.—The incorporations by reference contained in this amendment were approved by the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR Part 51 on August 18, 1980.

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Thursday
October 30, 1980

Part VI

Department of Transportation

Federal Highway Administration and Urban Mass Transportation Administration

Environmental Impact and Related Procedures; Final Rule and Revised Policy on Major Urban Mass Transportation Investments and Policy Toward Rail Transit

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Urban Mass Transportation Administration

23 CFR Part 771

49 CFR Part 622

Environmental Impact and Related Procedures

AGENCIES: Federal Highway Administration (FHWA) and Urban Mass Transportation Administration (UMTA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FHWA and UMTA are issuing a joint final regulation for the preparation of environmental impact statements and other related documents and procedures. This regulation incorporates the requirements of DOT Order 5610.1C, "Procedures for Considering Environmental Impacts," 44 FR 56420 (October 1, 1979), and sets forth procedures for complying with other environmental laws, principally section 4(f) of the Department of Transportation Act, 49 U.S.C. 1653(f) and 23 U.S.C. 138.

EFFECTIVE DATES: This regulation becomes effective on December 29, 1980. The documents and actions to which this regulation applies are described more fully in § 771.109 of the regulation.

ADDRESSES: Copies of comments received, together with the regulatory evaluation and work plan required by DOT Policies and Procedures implementing Executive Order 12044, are available for public inspection in the public docket room of the Federal Highway Administration, Room 4205, HCC–10, 400 Seventh Street, S.W., Washington, D.C. 20590, between the hours of 7:45 a.m. and 4:15 p.m., EST, Monday through Friday. These materials are filed under FHWA Docket No. 79–26. Additional comments on this final rule may be submitted to this address.

FOR FURTHER INFORMATION CONTACT:
(1) For FHWA: Mr. Robert Gatz, Office of Environmental Policy (HEV–10), telephone (202) 426–0106, or Mr. Edward Kussy, Office of the Chief Counsel (HCC–40), telephone, (202) 426–0791, Federal Highway Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, between the hours of 7:45 a.m. and 4:15 p.m., EST, Monday through Friday.

(2) For UMTA: Mr. Edward Fleischman, Office of Transit Assistance (UTA–30), telephone (202) 472–2435, or Mr. John Collins, Office of the Chief Counsel (UCC–10), telephone (202) 426–1906, Urban Mass Transportation Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, between the hours of 8:00 a.m. and 6:00 p.m., EST, Monday through Thursday.

SUPPLEMENTARY INFORMATION: The FHWA and UMTA have determined that this final rule is a significant regulation according to the criteria established by the Department of Transportation pursuant to Executive Order 12044. A regulatory evaluation is available for public inspection in the public docket room of the FHWA. Copies may be obtained by contacting Mr. Robert Gatz or Mr. Edward Fleischman. The addresses of the FHWA docket room and these individuals are set forth above. The regulation being issued today applies to both FHWA and UMTA actions. Thus, it will be published as Part 771 of Title 23 of the Code of Federal Regulations (CFR) with a cross reference in Part 622 of Title 49 of the CFR.

Introduction

The Council on Environmental Quality (CEQ) issued a final regulation for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. 4321 et seq., on November 29, 1978 (43 FR 55978). The CEQ regulation applies to all agencies of the Federal Government and is codified at 40 CFR Parts 1500–1508.

In response to the CEQ regulation, DOT issued DOT Order 5610.1C, Procedures for Considering Environmental Impacts, on October 1, 1979 (44 FR 56420). The DOT Order establishes general procedures and requirements for the consideration of environmental impacts by agencies within DOT. Both the CEQ regulation and the DOT Order require agencies such as the FHWA and UMTA to develop supplementary implementing procedures. This is especially the case where agency specific procedures are required to fully integrate the agency's programs with the CEQ regulation and the DOT Order. For this reason, both FHWA and UMTA determined that procedures applying directly to the two administrations were required. Thus, this regulation amends the existing FHWA regulation, 23 CFR Part 771, and adds a new Part 622 to Title 49 of the CFR for programs administered by UMTA.

This regulation establishes the specific NEPA requirements that must be followed by FHWA and UMTA, and by applicants for grants, permits and other actions from those two agencies. It also contains the policies and procedures which will guide the FHWA and UMTA activities under section 4(f) of the DOT Act, 49 U.S.C. 1653(f) and 23 U.S.C. 138, which relates to the preservation of certain park and recreation areas wildlife and waterfowl refuges, and historic sites.

The CEQ regulation is an integral part of FHWA's and UMTA's environmental requirements. In accordance with § 1507.3 of the CEQ regulation, the regulation published here does not paraphrase the CEQ provisions. However, in order to reduce the burden on grant applicants, this regulation incorporates the procedural provisions of DOT Order 5610.1C. Grant applicants should not find it necessary to refer to the DOT Order in the course of normal project development. FHWA and UMTA have required compliance with the CEQ regulation and DOT Order since their effective dates.

This regulation was published in proposed form for public comment on October 15, 1979 (44 FR 59438). Comments were also requested directly from potential grant applicants. The closing date for comments was extended once (44 FR 66213; November 19, 1979), and the docket officially closed on December 3, 1979.

A total of 196 comments were received from Federal, State and local units of government, public interest groups, and private citizens in the period prior to or immediately after the closing date. These comments were given full consideration. A small number of comments were received very late in the development of this regulation, well after the close of the comment period, and were entered in the docket for public information.

Comments were reviewed jointly by FHWA and UMTA. Both agencies established task forces to review comments received and make recommendations. The views of the field offices of both agencies were actively solicited in the course of this process. The final regulation has been developed and coordinated jointly by FHWA and UMTA with considerable input from DOT and CEQ.

The remainder of this preamble is divided into three sections as follows:

General Comments—a discussion of the general comments received on the proposed regulation and of the overall objectives in preparing the final rule.

Section-by-Section Analysis—a summary of each section of the final regulation, including a discussion of major comments received on and changes made to each section.

Related Actions—a brief review of other actions being taken by FHWA and UMTA in the environmental area.

General Comments

Federal agencies responding to the notice of proposed rulemaking included CEQ, the Environmental Protection Agency, and the Department of the Interior. Responses were received from 29 State transportation agencies and a wide range of local governments, transit authorities, private citizens and interest groups such as the National Wildlife Federation, Natural Resources Defense Council, Highway Users Federation, National Association of Counties and National Conference of State Historic Preservation Officers.

The major change in this regulation from the proposed rule is the complete integration of the UMTA and FHWA requirements. This is responsive to a number of comments which suggested consolidation of UMTA's and FHWA's procedures. In the proposed rule, the two agencies had issued a joint introductory part and similar detailed procedures. A close review of those detailed procedures indicated considerable simplification could be achieved by a complete merging of the procedures.

There are a number of significant advantages to this approach: UMTA's grant applicants and FHWA's grant applicants may be the same agencies. If they are not, they are agencies which must work very closely together at the State and local levels. Also, DOT requirements apply equally to both agencies. Thus, there is considerable procedural similarity between the two programs, which makes the issuance of joint procedures compelling. Furthermore, the environmental analysis required for compliance with NEPA frequently requires close interaction between UMTA and FHWA. This is especially the case in urban areas where environmental analyses can be particularly complex. Thus, combined procedures facilitate this process at the Federal level.

Another important advantage to a combined regulation is the emphasis that this places on the necessity to closely integrate highway and transit project development. Minor procedural differences in the highway and transit laws should not be allowed to predominate over a full and complete evaluation of all possible transportation solutions to a given problem.

There are, of course, fundamental differences in the major programs administered by UMTA and FHWA. These include (1) the statutory basis of the agencies grant programs (most significant FHWA programs are formula based and funded from a trust fund while UMTA administers a large discretionary grant program funded from general revenues), (2) the type of applicants (FHWA deals mainly with State highway agencies that are given special status under NEPA while UMTA usually does not deal with statewide agencies), (3) the degree of agency decentralization (FHWA has offices in each State while UMTA's field organization consists of 10 regional offices), and (4) the number of parallel regulations (FHWA has a number of related environmental regulations, e.g., process guidelines for environmental action plans (23 CFR Part 795), while UMTA has no other such regulations).

These differences led to the initial decision to publish parallel, but separate procedures. However, our subsequent analysis made clear that insofar as compliance with NEPA and other environmental procedures was concerned, these differences largely result in internal administrative differences and make little or no difference as to what NEPA documentation is actually required. Both UMTA and FHWA will be issuing non-regulatory guidance that will further assist applicants in complying with this regulation. This will be more fully explained below in the discussion of "Related Actions". In those relatively infrequent instances where statutory differences require different procedures in this regulation, they are specifically addressed in the section involved.

Comments received on the length of the regulation and the interpretation of the NEPA process reflected a wide range of views. We have attempted to strike a reasonable balance in both areas. As previously discussed, the regulation does not repeat the provisions of the CEQ regulation, but does include the procedural provisions of the DOT Order. The policies and procedures in the regulation are designed to streamline and shorten the environmental review process wherever possible, in keeping with the President's and DOT's policies on the reduction of red tape. In this regard, unnecessary requirements have been eliminated, lengthy or excessively detailed instructions have been curtailed, and flexibility and discretion have been provided to grant applicants wherever possible. The CEQ regulation and DOT Order set the overall policies and procedures, while this regulation tailors those policies and procedures to fit the unique aspects of the programs administered by FHWA and UMTA. Provisions in the draft regulation that related solely to internal procedures have been eliminated to streamline the regulation.

Several comments expressed concern regarding the degree of pubic involvement. Both FHWA and UMTA heavily emphasize public involvement throughout their programs. This involvement is an essential part of the planning and project development processes. The joint planning regulation of the two agencies requires public participation (23 CFR 450.20(a)(3) and 49 CFR 613.120(a)(3)). The importance of public involvement and early coordination in project development is also emphasized in this regulation in §§ 771.105(c) and 771.111. The FHWA further emphasizes public involvement through its action plan process (23 CFR Part 795) and its public hearing requirements (23 CFR Part 790). Both of these processes form an integral part of the procedures set forth in this regulation.

Numerous comments addressed the ability of local government units to act as joint lead agencies in conjunction with State and Federal agencies in preparing environmental documents and carrying out other lead agency functions under the NEPA regulations. State agencies of statewide jurisdiction, such as State highway departments, are specifically allowed to prepare environmental impact statements (EIS's) under a 1975 amendment to section 102(2) of NEPA, (42 U.S.C. 4332(2)(D)). This section also requires guidance and participation by the responsible Federal official.

The legislative history makes clear that this amendment resulted from conflicting judicial decisions on the issue of State preparation of environmental documents. The question of whether other government units, not having statewide jurisdiction, could prepare these documents was recognized by Congress. The Conference Report on H.R. 3130 (Senate Report No. 94–331) raised the question of whether the amendment could be interpreted by the courts as a statement of congressional intent to either deny or affirm the validity of delegating EIS preparation responsibilities to agencies of less than statewide jurisdiction. This concern was addressed by including the last sentence of section 102(2)(D), which states that the amendment does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction. Thus, the amendment does not in any way declare illegal the preparation of EIS's by other governmental units.

The CEQ regulation addresses this question in §§ 1501.5 and 1506.2. Section

1501.5(b) states that Federal, State, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an EIS. Section 1506.2 allows a local agency to be a joint lead agency. Section 6 of DOT Order 5610.1C allows a local agency to serve as a joint lead agency if the proposed action is subject to State requirements comparable to NEPA. The mechanism by which a State imposes all applicable Federal and State requirements, including NEPA requirements, on those localities should be sufficient, in the absence of NEPA-type legislation, to allow a locality to become a joint lead agency in preparing environmental documents. In any case, DOT Order 5610.1C was not intended to be any stricter than the CEQ regulation on this point. The CEQ regulation encourages States and local agencies with requirements comparable to NEPA to become joint lead agencies in order to avoid duplication. However, nothing in the CEQ regulation discourages a locality from becoming a joint lead agency with the State and Federal governments in the absence of such comparable State or local requirements. Of course, while a local agency may be a joint lead agency with the State and Federal governments, the responsible Federal official must insure that environmental documents accurately reflect all environmental concerns and Federal requirements.

A number of comments were received which either criticized or suggested changes in procedures which are required by the CEQ regulation (e.g., notice of intent, record of decision, content of environmental documents). It was not possible to revise the regulation in response to those concerns since the CEQ regulation is binding on all Federal agencies.

Numerous editorial revisions have been made in order to improve the clarity and style of the final regulation.

Section-by-Section Analysis

§ 771.101 Purpose.

Section 771.101 describes the general purpose of the final regulation. It has been revised to reflect the fact that the FHWA/UMTA procedures are being issued in a single part of the Code of Federal Regulations.

§ 771.103 Authority and reloted statutes and orders.

At the request of several commenters, several additional related statutes and orders were added. The list in this section is intended to emphasize that compliance with the procedures of this regulation is the means to comply with these other Federal requirements.

§ 771.105 Policy.

Section 771.105 contains the basic policies of the FHWA and UMTA with respect to compliance with NEPA and related environmental statutes, regulations and orders. In keeping with the policy set forth in § 1500.2(c) of the CEQ regulation, this section of the regulation encourages Federal, State and local agencies to coordinate compliance with all applicable environmental requirements as part of the NEPA process. Several commenters asked that the factors which would be considered in deciding whether or not to mitigate an adverse impact be included. Paragraphs (b) and (d) have been redrafted to describe these factors and specifically include energy conservation benefits of the proposed expenditure. In response to a comment received, paragraph (e) indicates that the cost of preparing environmental documents specifically required by the Administration is eligible for Federal assistance in accordance with the contractual agreements between the applicant and the Administration.

§ 771.107 Definitions.

Section 771.107 contains definitions for basic terms that are used throughout the regulation which are not defined in the basic statutory authority for the two programs or defined by the CEQ regulation. All of the CEQ definitions can be found in 40 CFR Part 1508. For highway projects administered directly by FHWA, such as some Forest Highway projects, the term "Administration" means the Director, Office of Federal Highway Projects, Regions 8 or 10, or Regional Engineer, Region 15. Some of the provisions contained in the definitions section of the draft regulations have been moved to other sections to streamline the regulation. No substantive changes have been made to those provisions.

§ 771.109 Applicability and responsibilities.

Seciton 771.109 has been drafted by FHWA and UMTA to clarify when this regulation applies and what responsibility the applicant has in the environmental process. Activities that were proposed in the draft regulations as non-major Federal actions are described in the final regulation as categorical exclusions and listed in § 771.115(b). The Administration cautions applicants about undertaking activities with their own funds which might tend to limit the consideration of environmental alternatives in subsequent proposals for Federal assistance. The Administration will not permit the consideration of alternatives to be biased by such undertakings. For projects administered by UMTA, if an applicant wishes confirmation from UMTA that it can proceed with a project using its own funds without prejudicing a future application, UMTA will process this "no prejudice" request using the procedures of this regulation. This section also makes it clear that the provisions of this regulation do not apply to, affect, or alter any decisions, approvals, authorizations, or other actions made or taken prior to the regulation's effective date. Paragraphs (a)(4) and (a)(5) of this section describe how the regulation applies to environmental documents in various stages of development.

As indicated in the applicability discussion in § 771.109(a) and the definition of "Action", this regulation applies to proposals for a variety of actions over which the Administration exercises the requisite degree of control and responsibility. The vast majority of the Administration's NEPA activities have traditionally been concentrated in the construction area. Accordingly, prior environmental regulations have been designed primarily for application to highway and transit projects. This regulation follows in that tradition by emphasizing the requirements and information relevant to construction grant applicants. However, an effort has been made to draft this regulation so that its provisions can be applied, as appropriate, to all transportation projects in which the Administration is involved. Specific provisions for non-project related actions (e.g., proposals for legislation) have not been included in this regulation. However, the general policies contained in the regulation, together with the procedures in the CEQ regulation and DOT Order, adequately provide for such actions.

A new paragraph (b) has been added to the regulation to ensure compliance with CEQ's requirement that appropriate mitigation measures will be carried out if the proposed project receives funds from the Administration. (40 CFR 1505.3). The Administrations will adapt existing mechanisms to ensure that mitigation committed to in the environmental documents is actually done.

Section 771.109(c) explains an important concept that was originally presented in the definitions section of the UMTA draft regulation. The phrase "the Administration in cooperation with the applicant" is used throughout the final regulation to describe who has

responsibility for a particular activity. The meaning of the phrase will vary from project to project, depending on what agencies are involved. "Administration" means FHWA or UMTA, depending on which is the lead agency. "Applicant" means the entity—public or private—that is applying for Federal assistance. The basic statutory legislation in titles 23 and 49 of the United States Code defines who can be an eligible applicant. The phrase "in cooperation with" means that different applicants can have different levels of responsibility in the environmental process depending on the CEQ regulation. The greatest level of responsibility (authorized by 40 CFR 1506.2(a) of the CEQ regulation) is for public agencies that have statewide jurisdiction. All State DOT's and State highway and statewide transit agencies are statewide agencies and can prepare the EIS and other environmental documents themselves with the Administration participating in accordance with section 102(2)(D) of NEPA. All FHWA applicants fall within this type of responsibility.

The next greatest level of responsibility is for public agencies which are subject to state and local requirements comparable to NEPA. These "Joint Lead Agencies" may prepare the EIS and environmental documents jointly with the Federal agency (see 40 CFR 1501.5(b)). The Administration maintains its responsibility for the content.

Less responsibility is permitted for public agencies that do not fall within the above two types. A public agency which has special expertise in the proposed project may be a "Cooperating Agency" and have the responsibilities described in 40 CFR 1501.6(b). A local applicant for UMTA section 3 and 5 funds is presumed to be a cooperating agency and is involved, under UMTA leadership, in an active consultation process. The applicant may be directed to carry out UMTA's decisions.

Entities that do not fit within the above types (e.g., private institutions) are limited to providing environmental studies and commenting on environmental documents.

§ 771.111 Early coordination and project development.

Paragraphs (a) through (e) have been added to better define the sequence of formal and informal actions that occur during the early stages of project development and to emphasize the need for early coordination. An explicit link has been made between the planning and programming of projects and the decision on probable class of action of the proposed project.

No EIS, environmental assessment (EA) or finding of no significant impact (FONSI) is required at the systems planning stage. However, the Administration in cooperation with the applicant will use the information developed during the systems planning stage to identify the probable class of action of a project that may be proposed for funding at some future time. This early notification is designed to enhance consideration of environmental, social, economic, and energy effects.

It is recognized that an applicant may commit substantial resources (e.g., conduct planning studies) in advance of Federal project approval. Since the Administration must fully evaluate environmental impacts and alternatives in its decision making process and cannot bias its evaluation based on such prior actions, applicants are strongly encouraged to begin coordination with the Administration early in the project development phase.

Paragraph (f) requires that proposed projects be evaluated between logical termini. Although the comparable provision in the old FHWA regulation has been substantially revised and shortened, the new provision does not represent any change in policy with regard to the scope of the project which should be addressed in an EIS or FONSI.

Paragraph (g) has been added in response to a comment received concerning "tiering". This paragraph clarifies that complex transportation proposals may be best analyzed using first a broad program EIS and later a site-specific EIS. One commenter expressed concern over this section in the UMTA draft regulation that the first tier EIS (that is, a broad overview analysis which focuses on alternative transportation modes and corridors) would not consider cultural resources which might influence the location of the project. If tiering is used, the Administrations will consider the potential impact on cultural resources in the first tier EIS. At this stage of analysis, the Administration, in cooperation with the applicant, would consult state and local inventories of historic properties and the National Register, and would use available information on archeological resources if project alternatives could potentially affect these resources. This question is addressed more fully in § 771.135, dealing with section 4(f) of the DOT Act, to the extent that section is applicable.

Paragraph (h) has been included, in response to comments received, to provide contacts for individuals seeking information on environmental procedures. We hope that this will provide another means to facilitate citizen involvement in agency decision making.

§ 771.113 Timing of administration actions.

This section identifies and limits the types of project activities that are permitted prior to approval of the final EIS and the record of decision (ROD). Any Federal resources expended to gather data, to comply with other environmental laws, or for advance land acquisition will not bias the Administration's eventual decision on the project.

A number of comments were received asking that time limits be imposed for all major steps in the NEPA process. In response to these comments, and to be consistent with 40 CFR 1501.8(a) of the CEQ regulation, time limits will be established on a case-by-case basis when requested.

A number of comments expressed the view that highway agencies should be allowed to proceed with final design activities once the final EIS has been forwarded from the FHWA Division Office to the FHWA Regional Office. One of the arguments advanced for this concept was the contention that there were very few changes made in the project design once the final EIS has been accepted by the Division Office.

It is recognized that in some instances individual project costs may increase because of the time required to process the final EIS. This does not usually result in a cost increase to the program as a whole, since the funds that were scheduled to be utilized on a specific project are made available and shifted to another project within that State; thus, that second project may be constructed ahead of its original anticipated schedule and is, therefore, constructed at a lower cost. The FHWA has carefully considered this recommendation, but does not believe that it would be desirable to implement such a change. It would not be a wise expenditure of Federal funds to permit a State agency to proceed with the final design of a recommended alternative prior to a decision on that project by either the Regional Administrator or by the Washington Headquarters, as may be appropriate.

The UMTA has special statutory authority to issue a "Letter of Intent" for projects that it proposes to fund in the future. Section 771.113(c) clarifies that when UMTA indicates an intention to obligate future funds for a multi-year capital transit project (such as a new rail system), the breadth of the EIS must

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consider, at least, the entire project covered by the Letter of Intent.

§ 771.115 Classes of actions.

Section 771.115, pursuant to the CEQ regulation, establishes three classes of actions. Class 1 contains those actions that are presumed to require draft and final EIS's. Class 2 contains those actions that are presumed not to have a significant impact on the environment and therefore need no additional environmental analysis. These projects qualify as categorical exclusions (CE's) in accordance with the CEQ regulation. Class 3 contains all other actions since the significance of their environmental impacts is unknown. An EA must be prepared for Class 3 actions. If no significant environmental impact is found, a FONSI is prepared. Otherwise a draft and final EIS are required. The later sections describe how the presumptions can be overcome. The list of Class 1 projects contained in the regulation addresses both FHWA and UMTA actions. The transit class 1 projects were described in the proposed UMTA rule in § 622.203(a). A change was made in the fourth class 1 project to expand the class to encompass both highway and transit related major development projects. This classification will also consider the availability of commercial and residential replacement facilities. The highway class 1 projects were proposed in § 771.213(e) and have been revised to encompass those projects which are presumed to require an EIS.

One commenter requested that any action that has more than a minimal impact on land protected under section 4(f) (sec § 771.135) always be considered a Class 1 action. However, in the Administrations' experience, section 4(f) can encompass projects where 4(f) land is involved and yet there is no significant impact on the environment. For this reason, projects involving 4(f) lands will be treated on a case-by-case basis rather than creating an additional Class 1 project. Of course, any project that involves 4(f) property and has a significant effect on the environment will require as EIS.

Section 771.115(b) identifies a national list of activities that are classified as Class 2 or CE's. The CE's are authorized by CEQ in § 1508.4 of its regulation. The FHWA draft regulation contained a list of examples of CE's that would be utilized and approved in a manner similar to FHWA's previous procedures for non-major actions. A number of comments were received requesting the regulation be revised to indentify certain CE's on a national basis rather than presenting "examples" to be approved by the FHWA Division Administrator. This recommendation was similar to the approach proposed by UMTA. It was adopted and should substantially reduce paperwork requirements by eliminating the need for each of the 50 States to justify and submit for FHWA approval each of the items included on the national list.

The final regulation combines CE's proposed separately by FHWA and UMTA in the draft regulations. The new, identical language will enhance coordination between FHWA and UMTA when an action classified as a CE is jointly funded by the two agencies.

A great many comments were received on the types of actions proposed in § 622.203 for Class 2 (CE) projects.

CE #1 addresses planning and technical studies. This CE is limited to those studies which do not fund the construction of facilities or the acquisition of capital equipment to ensure that physical commitments are not made to a particular course of action.

CE #2 is identical to the CE proposed in § 622.203.

CE #3 is based on language that was included in proposed § 771.109(a). Approval of a unified planning work program and planning certification are actions that do not themselves require environmental documentation.

CE #4 encompasses programming approvals. Environmental concerns at this stage of development are addressed using the procedures of § 771.111.

CE #5 concerns concept approvals for interstate substitution projects and is also addressing using the procedures of § 771.111.

One commenter asked that the regulations be revised to permit preliminary engineering to be undertaken during the period of time when environmental documentation is being prepared. We agree that preliminary engineering may be a necessary step to analyze alternatives. For this reason, we have included in CE #6 engineering to define project elements, costs, and impacts and in CE #1 planning and technical studies. This is consistent with 40 CFR 1506.1(d) of the CEQ regulations. We recognize that it is sometimes necessary to spend money to understand the impacts of a project and that it does not make sense to require an environmental impact analysis to decide whether or not to prepare an environmental analysis. However, we do not want these Federal and local expenditures for studies and data to foreclose alternatives. We emphasize that these financial expenditures are not to bias the environmental process.

CE #7 covers classes of highways under 23 U.S.C. 103. It does not involve physical impacts and is identical in substance to the provision described in the Appendix to the FHWA proposed regulation.

CE #8 is identical to the CE that FHWA proposed.

In response to a comment received, the proposed CE for bridge replacement (#9) has been revised to be identical to the CE contained in the final NEPA regulation of the Coast Guard (45 FR 32818, May 19, 1980) so that different agencies of DOT will be consistent.

CE #10 addresses bikeway projects that typically are not major Federal actions significantly affecting the environment.

CE #11 is substantively the same as the CE for safety work programs contained in the Appendix to FHWA's proposed rule.

CE #12 addresses the transfer of Federal lands under the statutory requirements of 32 U.S.C. 317 when the subsequent action is not an FHWA action.

CE #13 is the CE for highway modernization. It has been revised from the proposed language to limit the CE to minor amounts of land acquisition.

CE #14 is for highway safety and traffic operations and was proposed in the FHWA Appendix. It has been revised to limit the CE to those projects which require only minor amounts of land.

CE #15 and #17 are identical to the CE's proposed by FHWA.

CE #16 covers ridesharing and fringe parking facilities that typically are not major Federal actions significantly affecting the environment.

CE #18 is a CE for administrative costs of the transit rural programs.

CE #19 is substantively identical to the CE proposed by UMTA for operating assistance for transit systems.

The FHWA also received a number of comments which suggested that "new rural two-lane highways," which previously had been considered as a non-major action, should be included as a CE. The FHWA believes that the definition of "new rural two-lane highway" is too broad to permit these projects to be classified as CE's. This issue has been discussed with the CEQ, which concurs that it would not be appropriate to consider the "new rural two-lane highway" as a CE.

One commenter asked if the CE that permits purchases of vehicles of the same mode could be revised to permit the purchase of dual-mode buses (i.e., buses that are powered both by electric and diesel motors). The proposed CE recognized that the purchase of the same mode vehicles (diesel bus for diesel bus or electric railcar for electric railcar) merely maintains the environmental status quo and has been retained as CE #20. Since dual-mode buses represent a new technology, UMTA lacks experience in assessing the environmental effects of such buses. For this reason UMTA would treat the purchase of dual-mode buses as a Class 3 action at least until more experience is gained with this technology.

CE's #21, #22, #23 and #24 are identical in substance to the CE's proposed by UMTA.

Several commenters requested that new rail yards be treated similarly to new bus storage yards, i.e., that they be considered a CE when located in appropriately zoned areas. In UMTA's experience, the construction of rail yards could involve significant impacts in the surrounding community. For this reason, rail yards for new rail systems would be part of the EIS for the Class 1 project and rail yards for existing systems would be evaluated as Class 3 actions. The CE for new bus storage yards (#25) was modified in response to a comment to reflect that bus storage and maintenance facilities that will be located in industrial or transportation areas permitted under existing zoning are eligible for a CE if the street system can handle the anticipated traffic from the facility.

In response to comments received, a number of additional clarifications were added to the CE for land purchases (#26). With respect to applicants for UMTA funding, it is anticipated that land would be purchased in advance under the loan provisions of section 3(b) of the Urban Mass Transportation Act. This provision creates a narrow statutory mechanism to maintain current land use and to preserve alternatives for future consideration. By statute, no construction can begin on such property without triggering repayment of the loan. The statute creates a mechanism to preserve the status quo and any environmental impacts associated with future construction projects would be evaluated as part of the environmental documentation for that future project. The regulation has been revised to reflect the concept that, while advance land acquisition preserves an option, the scope of alternatives for a capital project in the future will not be prejudiced by the advance acquisition of land. If the land is not needed, the statute provides that the land will be sold and the value recaptured. For all other types of projects, this CE is limited to minor amounts of land.

In response to a comment from CEQ, the CE for regulations and directives proposed by UMTA and FHWA has been limited to those regulations that are not major, significant regulations under the terms of Executive Order 12044 (see CE #27). This Executive Order governs the preparation of regulations.

CE #28 and #29 are substantively identical to the CE's proposed by FHWA.

Some commenters proposed additional criteria for various Class 2 actions such as controversy, noise impact, or location in an area that has air pollution problems. Rather than including these factors and excluding other possible factors, we intend to rely on the early notification and citizen involvement procedures of §771.111 and the specific procedures in § 771.117(c) to determine whether a proposed action is properly classified as a Class 2 action.

UMTA's proposal and FHWA's draft Appendix categorically excluded the promulgation of all regulations and directives from the requirements for either an EA or EIS. UMTA and FHWA believe that certain proposed regulations and directives may have such an impact that environmental study should be undertaken. Such proposals would generally be considered "major" under the criteria established in Section 3 of Executive Order 12044 and would require the preparation of a regulatory analysis. It would be appropriate for environmental impacts to be studied at the same time as economic impacts are being analyzed. Therefore, paragraph (c) of the regulation requires that an EA be prepared for proposed major rules, regulations, and directives and permits the EA to be contained in the regulatory analysis.

§ 771.117 Categorical exclusions.

This section describes the procedures that are used to ensure that actions are properly classified as Class 2 actions. Provisions have been included so that applicants may identify and recommend additional categories of projects for classification as CE's. Further, the regulation provides for the preparation of an EA, FONSI or EIS for types of projects on the list where special circumstances exist.

§ 771.119 Environmental assessments.

Section 771.119 contains the requirements that apply to EA's prepared for Class 3 actions. Several comments were received concerning the "scoping" process for EA's outlined by UMTA in its draft regulation. While scoping is not required by CEQ for EA's, the preamble to the CEQ regulation encouraged such scoping (see 43 FR 55982). In preparing EA's, both Administrations will use a process by which significant issues, impacts, and alternatives can be identified for inclusion in the EA. The FHWA and the State highway agencies will rely on the State action plans (23 CFR Part 795) and other early coordination activities to define the scope of the EA. The UMTA and its applicants will rely on a scoping process to achieve the specific objectives in § 771.119(b). The UMTA recognizes that an applicant may take the lead responsibility in preparing an EA. As one means to ensure that the applicant undertakes an EA of the proper scope, UMTA has decided to adopt this streamlined scoping process and require that it be employed by the applicant in consultation with UMTA at the earliest appropriate time.

The UMTA's draft regulation contained a provision applying to EA's whereby UMTA could, as a result of the scoping process, require an applicant to hold a public hearing on the environmental impacts of the proposed project. This provision has been dropped. Since a public hearing is already required as part of the application for all capital (as well as operating) assistance grants, it was felt that a duplicative hearing requirement could be eliminated by specifying in § 771.119(e) that the applicant's EA be prepared and made available prior to the grant application public hearing. The requirements for public hearings and other public involvement procedures with respect to EA's for FHWA projects are contained in approved State Action Plans and, where applicable, 23 CFR Part 790. Where there is no requirement for a public hearing, this regulation establishes a 30-day period for receiving any comments on the EA.

The draft regulation indicated an EA was appropriate in those situations where an EIS was not required and the proposed project was not classified as a CE. The final regulation also provides that an EA is appropriate in those situations where it would assist in determing the need for an EIS. This change was made in response to a number of comments received and is considered to be consistent with the purpose of the EA as identified in the CEQ regulation.

§ 771.121 Findings of no significant impact.

Section 771.121 describes the procedures that the Administration will follow when it determines that a Class 3

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action will not significantly affect the environment. In this joint regulation, several changes have been made from the FHWA and UMTA draft regulations. A substantive change is the addition of paragraph (c) which deals with the situation where a FONSI has been prepared and approved by another Federal agency for a project that includes partial FHWA or UMTA funding. Although FHWA and UMTA cannot adopt another agency's FONSI, we can incorporate it into our own finding, thus eliminating any duplication of work. The UMTA and FHWA draft provisions establishing a 30-day review period for projects normally requiring an EIS but for which EA's are written have been relocated to § 771.119(h). In addition, this section now specifies the means by which an Administration's FONSI is made available to agencies and the public.

§ 771.123 Draft environmental impact statements.

This section discusses the procedures applying to draft EIS's, the relationship between the project applicant and the Administration, and their respective responsibilites during the development of the draft EIS. It further discusses the circulation of the draft document and establishes a time period for the return of comments on the draft. This section is similar to the section in the FHWA draft regulation; however, the following differences should be noted.

The scoping process used to identify the significant issues to be addressed in the EIS has been given greater prominence. Whereas most FHWA applicants have established procedures by which coordination among interested agencies takes place and the scope of the EIS is determined, UMTA and its applicants do not have such procedures. The regulation, in § 771.123(b), notes several ways to carry out scoping for an EIS, including holding a scoping meeting. Two commenters requrested that a scoping meeting not be required for every draft EIS, as was stipulated in the UMTA draft regulation. UMTA believes, however, that the scoping meeting is an important means to identify and discuss potential environmental issues and can lead to less delay later on. Thus, the final regulation states that normally UMTA will require a scoping meeting. If experience shows that this step has become counterproductive, this section will be revised. The role of the Metropolitan Planning Organization (MPO) has been clarified in the development of draft and final environmental impact statements (EIS's) in this section and § 771.125. The role of the MPO's in the overall planning process is also being proposed for further discussion in a forthcoming notice of proposed rulemaking that will consider revisions to the joint planning regulations (23 CFR Part 450).

There has also been a substantive change in this section and in the final EIS section on the way UMTA develops EIS's for major urban mass transportation investments. UMTA has reassessed its major investment related procedures in response to comments asking for clarification of the relationship among the alternatives analysis (prescribed by UMTA's Policy on Major Urban Mass Transportation Investments), preliminary engineering, and the EIS process. The commenters expressed concern about the time required to undertake this work and reservations about the timing of UMTA's decisions. The commenters called for streamlined procedures, so that alternatives analysis and preliminary engineering could be accomplished more expeditiously, and the preparation of the EIS could be properly timed in relation to the decision process.

Based on this reassessment, UMTA has decided that a procedural change could mitigate these problems. The procedural change will permit UMTA to explore alternatives more rigorously in the draft EIS and give a preliminary engineering grant consistent with 40 CFR 1506.1(d) to refine environmental impacts and costs for inclusion in the final EIS. Revised procedures applying to UMTA major urban mass transportation investments are being published as a separate notice in today's **Federal Register**. Revised major investment and rail policies will be incorporated in revisions to the FHWA/UMTA joint planning regulation currently being developed.

Section 771.123(e) acknowledges a difference in how a consultant is selected to prepare an EIS depending on whether the applicant is a State Agency with statewide jurisdiction or an agency with less authority in the NEPA process.

The FHWA and UMTA draft regulations differed with respect to the need for public hearings during the EIS commenting period. The FHWA relied on State requirements, while UMTA specified a public hearing for all draft EIS's. The final requirement is contained in § 771.123(h). Those actions proposing to use UMTA section 3 or 5 funds normally require a public hearing as part of the grant application process. Where possible, the public hearing for the draft EIS may be combined with the hearing required for the grant application. It should be noted that if it is not possible to prepare the EIS in advance of the grant application public hearing, UMTA will require a separate public hearing for the purpose of receiving comments on the draft EIS.

§ 771.125 Final environmental impact statements.

Section 771.125 of the regulation deals with the preparation and processing of the final EIS. It emphasizes the need to comply, to the extent possible, with all applicable environmental laws and Executive Orders in accordance with the "one step" environmental document philosophy in both the CEQ regulation (40 CFR 1502.25) and the DOT Order. This section also identifies those categories of projects which must be submitted for prior concurrence based on the DOT Order. This provision was in the FHWA draft regulation but not in the UMTA draft regulation. The list now includes categories of projects with which UMTA is involved (new construction or extension of fixed guideway systems and major transportation-related development projects) and which will require the prior concurrence of the Office of the Secretary of Transportation before the final EIS can be circulated. Provision is also made for waiving the prior concurrence requirement in certain instances.

The wording of this section is similar to the FHWA draft regulation but includes the following important additions: Paragraph (a) includes a provision which reflects revisions to the UMTA policy on major urban mass transportation investments. The paragraph notes that a final EIS for a major urban mass transportation investment may be developed in conjunction with preliminary engineering so that the final EIS can present more detailed information on costs, impacts, and mitigation measures. This paragraph also includes a statement that final EIS's for projects in urbanized areas must show the views of the MPO on the preferred alternative.

Paragraph (f) recognizes that a difference exists in the effect of an UMTA approval of a final EIS as compared to an FHWA approval of a final EIS. The FHWA's approval of a final EIS typically means location approval for the preferred alternative. In UMTA's large discretionary capital assistance program, EIS approval is a separate and distinct action from approval of the project. There are factors unrelated to the EIS, having to do principally with the availability of funds, which determine which major transit projects will be approved. Thus, completion of the EIS does not mean automatic approval of the UMTA capital grant.

In response to a comment received, a further revision to this section provides that a preliminary record of decision will accompany the proposed final EIS during the internal DOT review process.

§ 771.127 Record of decision.

Section 771.127 contains the procedures that govern the Administrations' preparation of a ROD for a proposed action. The ROD will be developed based on consultation with the applicant, but the basic funding decision is the responsibility of the Administration. In response to a comment, this section in the final regulation now provides that a preliminary ROD is prepared. This preliminary ROD will accompany the proposed final EIS during the internal review process. Wording has been added in this section to allow certain administrative actions to be taken in connection with a proposed action during the time between the completion of the final EIS circulation period and the signing of the ROD. Such actions would usually concern steps taken to fulfill grant application requirements and would be consistent with the limitations on actions stipulated in the CEQ regulation.

One commenter suggested that we establish a page limit for ROD's to decrease the burden on applicants. The CEQ regulation specifies that the ROD be a concise document and it is the Administrations' intention to keep these documents as brief as possible. The ROD will summarize and rely on the more detailed information in the final EIS on the factors involved in selecting the preferred alternative and any mitigation measures that have been adopted. However, we recognize that the ROD will vary in length depending on the complexity of the proposed action or the degree of controversy surrounding it and therefore we decline to establish a page limit for this document.

Another commenter wanted copies of the ROD automatically sent to anyone who commented on the draft or final EIS. This document is already available to the public for inspection. The Administrations decline to establish an additional administrative burden that is not required under the CEQ or DOT procedures. Another commenter asked that some environmental findings be removed from the final EIS and placed instead in the ROD. We have not adopted this change because we believe that the final EIS should continue to be the primary means for documenting compliance with environmental laws when there are significant impacts.

A new paragraph (b) has been added to clarify the procedures which will be followed if changes to the ROD are necessary.

§ 771.129 Reevaluation.

This section is a combination of the sections in the draft FHWA and UMTA regulations dealing with supplemental statements and assessments. The FHWA language on supplemental EIS's has been retained. One commenter asked for clarification concerning the preparation and review of supplemental EIS's. The adopted language clarifies that either draft or final EIS's may be supplemented. A new or supplemental draft EIS is almost always required if a new alternative is considered after the original final EIS has been filed. However, a supplemental or new EIS will not be necessary if the Administration decides to fund an alternative that was adequately described in the final EIS but was not identified as the proposed action. Scoping is not required at the reevaluation stage since this information was obtained earlier.

The section in the UMTA draft regulation on tiered EIS's has been dropped since tiered EIS's do not involve a reevaluation or reconsideration of earlier decisions but rather a phased, progressively more detailed approach to assessing an action's environmental impacts.

In response to a comment, paragraphs (c)(1) through (4) were included which track the language in the DOT Order on the lengths of time that draft and final EIS's are considered valid. After these time periods, EIS's must be reassessed to determine if they are still current and accurate.

The paragraph in the UMTA draft regulation on supplemental EA's has been revised. Rather than require an EA, with its investigation of alternatives, in all cases, we have specified that environmental studies may be appropriate to assess the change. If significant impacts are found, a supplemental draft or final EIS is required. If the impact from the change is not significant or if it is similar to the impact of an action that was considered, this will be indicated in the project file. To avoid confusion the reference to the term FONSI has been deleted from this paragraph.

§ 771.131 Emergency action procedures.

This section remains the same as the FHWA draft version.

§ 771.133 Compliance with other requirements.

This section underscores the policy expressed in § 771.105 that all environmental protection requirements should be undertaken and completed as part of the NEPA process and evidence of necessary coordination and compliance should be contained in the environmental document required by NEPA.

§ 771.135 Section 4(f) of the Department of Transportation Act.

Section 771.135 contains the procedures relative to section 4(f) of the DOT Act (49 U.S.C. 1653(f)) and the companion provision in 23 U.S.C. 138.

In the preamble to the draft regulation, comments were specifically invited on a proposal to limit the application of section 4(f), insofar as that section applies to historic sites, to sites listed on the National Register of Historic Places or determined to be eligible for listing by the Secretary of the Interior pursuant to the National Historic Preservation Act, 16 U.S.C. 470, et seq.

This proposal was made for two reasons. First, in contrast to other 4(f) properties, historic sites need not be publicly owned. Thus, it is often difficult to identify the "official" with jurisdiction over the site. In order to maximize the protective reach of section 4(f), we require 4(f) treatment in the absence of a determination of non-significance. In the case of historic sites, this assumption of significance has often resulted in 4(f) treatment of sites which were so insignificant that no governmental body had established any jurisdictional interest over the site. Second, the criteria for determining eligibility for listing in the National Register provide a convenient basis for determining whether a site is one of national, State, or local historic significance. Anyone can request a determination of eligibility from the Department of the Interior, and FHWA and UMTA have an affirmative duty to seek such determinations on potentially eligible sites as part of the project development process.

Comments were received both in favor of and against this proposal, including several favorable comments from State historic preservation agencies. After due consideration, we have determined to adopt the provision in the proposed regulation with the additional provision that the Administration may determine that section 4(f) applies even to properties not eligible for inclusion in the National Register. The final regulation extends full protection to historic sites in

accordance with section 4(f) while addressing what has become a significant administrative problem.

Several comments suggested that for historic sites section 4(f) compliance could be achieved by relying entirely on the consultation provision of section 106 of the National Historic Preservation Act. We believe that the use of the National Register criteria to identify properties of national, State, or local historic significance will provide enhanced coordination between section 106 and section 4(f) and reduce red tape. Because of differences in the substantive protective provisions of section 106 and section 4(f), it is not possible to completely combine the procedures for compliance with the two sections. Nevertheless, analysis of alternatives, consideration of appropriate mitigation, and coordination with other agencies should be accomplished concurrently to the extent that this is feasible.

A related problem has arisen with respect to archeological sites which are treated as historic sites under both section 4(f) and the National Historic Preservation Act. Frequently, the consultation required by section 106 results in a determination that data recovery is the appropriate form of mitigation for the archeological site. Such determinations are typically made when the recovery of the material contained in or on the site renders more valuable information than leaving such material at the specific location. Applying section 4(f) to archeological sites where data recovery is appropriate would impose the section 4(f) test to sites for which all interested agencies have agreed that removal of the archeological material is in the best public interest. This regulation incorporates current DOT policy by applying section 106 and section 4(f) to archeological sites sequentially. If data recovery under section 106 is appropriate, then section 4(f) would not apply, since recovery results in the removal of materials which make the site significant for purposes of section 4(f). It should be noted that section 4(f) continues to apply to archeological sites on or eligible for the National Register where the site has significance for reasons other than the materials contained. The regulation also clarifies the existing policy that section 4(f) applies to the late discovery of such sites where data recovery is not appropriate under section 106. The consultation under section 4(f) process may be expedited in such cases.

Many comments raised a concern that section 4(f) was frequently applied to lands determined not to be significant because the land to be used was part of a larger body of land which included areas of significance. Most commonly, such areas are designated "multiple use" areas, i.e., areas which have a number of functions, only some of which may be protected by section 4(f). Multiple use lands are dealt with in § 771.135(e). This section applies only to large parcels of land which are administered for a variety of purposes. The various purposes must be conducted in geographically distinct parcels. Under paragraph (e), a determination is required by the official having jurisdiction over the land as to the nature of the use. Section 4(f) applies only to those parcels which are used for one of the purposes enumerated in section 4(f). Typical examples of multiple use lands are national forests, State forests, game preserves, etc. The precise name of the facility is unimportant. The determining factor is that the area is used for a variety of discrete functions which are administered as a single entity. In the case of lands administered as multiple use lands under general statutory authority, it would be expected that an existing plan, clearly designating multiple uses, would be available. Lands would not qualify where many uses are mixed throughout the area, rather than in geographically separate parcels. Further, section 4(f) continues to apply to insignificant uses of otherwise significant areas.

Section 771.135(g) provides that section 4(f) need not apply to areas designated late in the project development process if the property was acquired for transportation purposes prior to the designation or change in the determination of significance. This provision does not apply to areas which are significant but were not recognized as such because an inadequate effort was made to identify their significance in a timely fashion.

Section 771.125(j) permits the section 4(f) approval to be in the final EIS or in the ROD. If the final EIS contains the section 4(f) approval, the ROD must summarize the basis of the Administration's approval action. Appropriate cross referencing to environmental documents is encouraged in the interest of brevity. These alternative approaches are provided to accommodate UMTA procedures which may result in a project being finally approved some time after the completion of the final EIS. Where the ROD is approved a relatively short time after the completion of the final EIS, as with most FHWA projects, the section 4(f) approval should be made part of the ROD. This section also outlines procedures for those actions which do not require a ROD.

Another new provision, § 771.135(m), deals with tiered section 4(f) statements. Frequently, at early stages of project development, such as is often the case with first-tier EIS's, the degree of design detail required to fully develop "all possible planning to minimize harm" is not available. In some cases, even alternative choices relating to the use of section 4(f) lands cannot be made. This provision applies section 4(f) to an extent consistent with the information available, but does not distort the tiered environmental impact analysis encouraged by the CEQ regulation.

§ 771.137 International actions.

This section discusses the application of this regulation to international actions and was added to identify the NEPA requirements for the Administrations' foreign project activities. At this time, only FHWA activities are involved. This section was incorporated directly from DOT Order 5610.1C.

Related Actions

The provisions of this regulation are also being issued as Volume 7, Chapter 7, Section 2, of the Federal-Aid Highway Program Manual (FHPM 7-7-2). The Manual contains the policies, procedures, requirements and guidelines which apply to the Federal-aid highway program. It is provided directly to all State highway agencies and is available for inspection and copying under 49 CFR Part 7, Appendix D.

Based on experience under the previous procedures, and in view of the direct applicability of the provisions of the CEQ regulation to their activities, the FHWA and UMTA have determined that certain requirements can be dropped from the regulation and issued as explanatory guidance. Specifically, the detailed requirements concerning the format and content of environmental documents prepared for proposed actions have been deleted from the regulation and will be issued as explanatory guidance. Certain administrative housekeeping procedures, such as detailed distribution instructions for copies of environmental documents, will also be issued separately.

These explanatory materials will be issued separately by UMTA and FHWA. The FHWA will issue its explanatory guidance in the form of an appendix to FHPM 7-7-2 and will publish this in the general notice section of the **Federal Register**. Comments received on the draft appendices, as well as on the material moved from the draft regulation to the explanatory guidance documents, will be discussed in the preamble to the notice. The UMTA will be revising Circular 5620.1, "Guidelines for Preparing Environmental Assessments", and will be issuing other explanatory guidance on the environmental process. The UMTA guidance provides detail on assessing impacts from transit projects and covers applicable environmental laws, regulations, and related requirements, such as energy conservation, which are normally complied with during preparation of the environmental document.

As indicate earlier in the preamble, it is the intent of this regulation to combine the requirements of UMTA and FHWA with Departmental NEPA requirements contained in DOT Order 5610.1C. The Department plans to issue guidance on the content of environmental impact statements in the form of a revision to attachment 2 of DOT Order 5610.1C in the near future. That attachment will indicate the documentation needed for other environmental and related requirements, such as those dealing with energy conservation, wetlands, floodplains, and section 4(f).

The UMTA draft regulation contained a provision on the development of EISs for proposed major urban mass transportation investments. In response to comments asking for clarification of the decision-making process for major mass transportation investments and the relationship to the EIS process, UMTA has revised its procedures on major mass transportation investments and is publishing them as a separate notice in today's **Federal Register**.

The revised procedures allow for more detailed studies of promising alternatives to be undertaken during alternatives analysis. Further, instead of preparing the final EIS at the completion of alternatives analysis, the procedures permit the final EIS to be prepared during preliminary engineering. These changes should result in more reliable cost estimates and a more accurate definition of environmental impacts and required mitigation measures in the final EIS.

Over the past several years, the FHWA has presented courses on the preparation of environmental documents to some 40 State transportation agencies and FHWA field offices, often with representatives from other Federal and State agencies in attendance. As a result of the issuance of the CEQ regulations, DOT Order 5610.1C, and this regulation, the course materials will be updated and a new series of courses presented. At this time, it is anticipated that the first of these courses will be presented beginning in mid-1981. State transportation agencies desiring further details may contact Mr. Robert Gatz at the address provided above.

A similar series of courses on the preparation and review of environmental assessments is planned by UMTA for its regional offices. Interested grant applicants will be permitted to participate as well. These courses are planned to start at the end of this year. Contact Mr. Edward Fleischman at the address provided for further information.

(Catalog of Federal Domestic Assistance Program Numbers: 20.205, Highway Research, Planning and Construction; 20.500, Urban Mass Transportation Capital Grants; 20.501, Urban Mass Transportation Capital Improvement Loans; 20.502, Urban Mass Transportation Grants for University Research and Training; 20.503, Urban Mass Transportation Managerial Training Grants; 20.504, Urban Mass Transportation Technology; 20.505, Urban Mass Transportation Technical Studies Grants; 20.506, Urban Mass Transportation Demonstration Grants; 20.507, Urban Mass Transportation Capital and Operating Assistance Formula Grants; 20.509, Public Transportation for Rural and Small Urban Areas; 20.510, Urban Mass Transportation Planning Methods, Research and Development; 23.003, Appalachian Development Highway Systems; 23.008, Appalachian Local Access Roads. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to these programs)

In consideration of the foregoing, Chapter VI of Title 49 and Chapter I of Title 23, Code of Federal Regulations, are amended by revising Part 622 by adding Subpart A and revising Part 771, respectively, as set forth below.

Issued on October 24, 1980.

John S. Hassell, Jr.,
Federal Highway Administrator.

Theodore C. Lutz,
Urban Mass Transportation Administrator.

Title 49—Transportation

CHAPTER VI—URBAN MASS TRANSPORTATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 622—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

Subpart A—Environmental Procedures

Sec.
622.101 Cross-reference to procedures.

Authority: 42 U.S.C. 4321 *et seq.*; 49 U.S.C. 1601 *et seq.*; 49 CFR 1.51.

Subpart A—Environmental Procedures

§ 622.101 Cross-reference to procedures.

The procedures for complying with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and related statutes, regulations, and orders are set forth in Part 771 of Title 23 of the Code of Federal Regulations.

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER H—RIGHT-OF-WAY AND ENVIRONMENT

PART 771—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

Sec.
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Authority: 42 U.S.C. 4321 *et seq.*; 23 U.S.C. 138; 49 U.S.C. 1653(f); 23 U.S.C. 315; 49 CFR 1.48(b).

§ 771.101 Purpose.

This regulation prescribes the policies and procedures of the Federal Highway Administration (FHWA) and the Urban Mass Transportation Administration (UMTA) for implementing the National Environmental Policy Act of 1969 (NEPA) and the regulations of the Council on Environmental Quality (CEQ). This regulation sets forth all FHWA, UMTA, and Department of Transportation (DOT) requirements under NEPA for the processing of transportation projects, including the applicable operating procedures and implementing instructions contained in DOT Order 5610.1C, dated Sept. 18, 1979.

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§ 771.103 Authority and related statutes and orders.

(a) *Authority.* (1) 42 U.S.C. 4321 *et seq.*, National Environmental Policy Act of 1969, as amended;

(2) 23 U.S.C. 138 and 49 U.S.C. 1653(f), Section 4(f) of the Department of Transportation Act of 1966;

(3) 23 U.S.C. 109, Standards;

(4) 23 U.S.C. 315, Rules, Regulations and Recommendations;

(5) 40 CFR 1500, *et seq.*, CEQ Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act;

(6) 49 CFR 1.51, DOT Delegations of Authority to UMTA;

(7) 49 CFR 1.48(b), DOT Delegations of Authority to FHWA;

(8) DOT Order 5610.1C, Procedures for Considering Environmental Impacts; dated September 18, 1979.

(b) *Related statutes and orders.*[1] The following is a list of major statutes and orders relating to the preparation of environmental documents:

(1) 16 U.S.C. 461, *et seq.*, Archeological and Historic Preservation Act; and 23 U.S.C. 305;

(2) 16 U.S.C. 470f, Section 106 of the National Historic Preservation Act of 1966;

(3) 16 U.S.C. 662, Section 2 of the Fish and Wildlife Coordination Act;

(4) 16 U.S.C. 1452, 1456, Sections 303 and 307 of the Coastal Zone Management Act of 1972;

(5) 16 U.S.C. 1536, Section 7 of the Endangered Species Act of 1973;

(6) 33 U.S.C. 1251, *et seq.*, Clean Water Act of 1977;

(7) 42 U.S.C. 300(f) *et seq.*, Safe Drinking Water Act;

(8) 42 U.S.C. 4371 *et seq.*, Environmental Quality Improvement Act of 1970;

(9) 42 U.S.C. 4601, *et seq.*, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(10) 42 U.S.C. 4901 *et seq.*, Noise Control Act of 1972;

(11) 42 U.S.C. 7401 *et seq.*, Clean Air Act;

(12) 42 U.S.C. 200d–d4, Title VI of the Civil Rights Act of 1964;

(13) Executive Order 11514, Protection and Enhancement of Environmental Quality, as amended by Executive Order 11991, dated May 24, 1977;

(14) Executive Order 11593, Protection and Enhancement of the Cultural Environment dated May 13, 1971, implemented by DOT Order 5650.1, dated Nov. 20, 1972;

(15) Executive Order 11988, Floodplain Management, dated May 24, 1977, implemented by DOT Order 5650.2, dated April 23, 1979;

(16) Executive Order 11990, Protection of Wetlands, dated May 24, 1977, implemented by DOT Order 5660.1A, dated August 24, 1978;

(17) Section 3(d), 5(h) and 5(i) of the Urban Mass Transportation Act of 1964 (49 U.S.C. 1601, *et seq.*);

(18) Section 14 of the Urban Mass Transportation Act of 1964 (49 U.S.C. 1610);

(19) UMTA Circular 5620.1, Guidelines for Preparing Environmental Assessments.

§ 771.105 Policy.

It is the policy of the Administration that:

(a) To the fullest extent possible, all environmental investigations, reviews, and consultations be coordinated into a single process, and compliance with all applicable environmental requirements be reflected in the appropriate environmental document required by this regulation;

(b) Alternative courses of action be evaluated and decisions be made in the best overall public interest based upon a balanced consideration of the need for safe and efficient transportation and of national, State, and local environmental goals including protection and enhancement of the environment, energy conservation and urban revitalization;

(c) Public involvement and a systematic interdisciplinary approach be essential parts of the development process for proposed actions;

(d) Measures necessary to mitigate adverse impacts be incorporated into the proposed action. Measures necessary to mitigate adverse impacts are eligible for Federal funding when it is determined that:

(1) The impacts for which the mitigation is proposed actually result from the Administration action;

(2) The proposed mitigation represents a reasonable public expenditure when considered in light of the severity of impacts of the action and the social, economic, energy, and environmental benefits of the proposed mitigation measures; and

(3) The proposed measures would assist in complying with a statute, Executive Order, or Administration regulation or policy.

(e) Costs incurred by the applicant which are directly related to the preparation of environmental documents requested by the Administration will be eligible for Federal assistance in accordance with Administration procedures.

(f) No person, because of handicap, age, race, color, sex, or national origin, be excluded from participating in, or denied benefits of, or be subject to discrimination under any Administration program or procedural activity required by or developed pursuant to this regulation.

§ 771.107 Definitions.

The definitions contained in the CEQ regulation and in titles 23 and 49 of the United States Code are applicable to this regulation. In addition, the following definitions apply to this regulation:

(a) Environmental studies—the investigations of potential environmental impacts made to determine the appropriate environmental process to be followed and subsequent investigations that assist in the preparation of the appropriate environmental document.

(b) Action—the approval of construction of highway and transit projects with funds administered by FHWA under title 23 of the United States Code and by UMTA under title 49 of the United States Code and related statutes. It also includes approval of activities such as joint and multiple use permits, changes in access control, etc., which may or may not involve a commitment of Federal funds.

(c) Administration—the FHWA or UMTA, whichever is the designated lead agency for the proposed action.

§ 771.109 Applicability and responsibilities.

(a)(1) The provisions of this regulation and the CEQ regulation apply to proposals for Administration action over which the Administration exercises sufficient control and responsibility to alter the development or action being proposed. Actions taken by the applicant which do not require Federal approvals, such as preparation of a regional transportation plan, are not Administration actions.

(2) The provisions of this regulation do not apply to, affect, or alter decisions, approvals, authorizations, or other actions made by the Administration prior to the effective date of this regulation.

(3) Except as provided in paragraph (a)(4) of this section, draft environmental impact statements (DEIS's) final environmental impact statements (FEIS's), environmental assessments (EA's), findings of no significant impact (FONSI) and categorical exclusions (CE's) accepted or prepared by the Administration after the effective date of this regulation will be developed in accordance with this regulation.

(4) FEIS's accepted by the Administration prior to July 30, 1981, whose drafts were filed with the Environmental Protection Agency (EPA) prior to July 30, 1979 (for FHWA, November 30, 1979), may be developed in accordance with the regulations in effect at the time the draft document was filed.

(5) All FEIS's accepted by the Administration after July 30, 1981, whose drafts were filed with EPA prior to July 30, 1979 (for FHWA November 30, 1979), will be developed in accordance with § 771.125 except that the requirements of § 771.127 (Record of decision) are not applicable.

(b) It shall be the responsibility of the applicant, in cooperation with the Administration, to implement those mitigation measures stated as commitments in the environmental documents prepared pursuant to this regulation. The FHWA will assure that this is accomplished through reviews and approvals of designs, plans, specifications and estimates (P.S. and E.) and construction inspections. The UMTA will assure implementation of committed mitigation measures through incorporation by reference in the grant agreement.

(c) The Administration in cooperation with the applicant has the responsibility to manage the preparation of the appropriate environmental document. The role of the applicant is determined by the Administration in accordance with the CEQ regulation as described below. If the applicant qualifies for more than one role, the Administration will determine which role the applicant will assume. Regardless of the role the applicant is permitted to assume, the Administration is responsible for the decisions made on the scope and content of the appropriate environmental document.

(1) *Statewide agency.* If the applicant is a public agency that has statewide jurisdiction (for example, a State highway agency or a State department of transportation) or is a local unit of government acting through a State agency and meets the requirements of Section 102(2)(D) of NEPA, the applicant may prepare the EIS and other environmental documents with the Administration furnishing guidance, participating in the preparation, and independently evaluating the document in accordance with Section 102(2)(D) of NEPA. All applicants in this group qualify as joint lead agencies with the Administration (all FHWA applicants qualify under this paragraph).

(2) *Joint lead agency.* If the applicant is a public agency and is subject to State or local requirements comparable to NEPA, then the Administration and the applicant may prepare the EIS and other environmental documents as joint lead agencies. The applicant will initially develop substantive portions of the environmental document although the Administration will be responsible for its scope and content.

(3) *Cooperating agency.* If the applicant is a local public agency that has special expertise in the proposed action, the applicant may be a cooperating agency. A local applicant for Sections 3 and 5 assistance under the Urban Mass Transportation Act (UMT Act) of 1964, as amended, is presumed to be a cooperating agency. During the environmental process, the Administration will discuss the scope and content of the appropriate environmental document with the applicant before decisions are made on the scope and depth of the environmental analysis. The applicant may be directed to carry out these decisions.

(4) *Other.* In all other cases the role of the applicant is limited to providing environmental studies and commenting on environmental documents. All private institutions or firms are limited to this role.

§ 771.111 Early coordination and project development.

(a) Early coordination involves the input from and exchanges of information with the public and public agencies from the inception of proposals for actions to the preparation of the appropriate environmental document. Applicants intending to apply for funds should notify the Administration at the time that a particular project concept is identified. When requested, the Administration will advise the applicant, insofar as possible, of the probable class of action and related environmental laws and requirements which would apply to the proposed action and of the need for specific studies and findings which would normally be developed concurrently with the environmental document.

(b) Any requested identification of the probable class of action will be made at the Transportation Improvement Program (TIP) approval stage, or at an earlier stage, if sufficient information is available to identify the probable impacts of the proposed action. (23 CFR Part 450, Subpart C)

(c) When the FHWA and UMTA are involved in the development of multimodal projects, the agencies will be joint lead agencies or one agency will be designated as the lead agency. When the FHWA or UMTA acts as a joint lead agency with another Federal agency, mutually acceptable procedures for the preparation and processing of environmental documents will be established on a case-by-case basis consistent with the purpose and policy of this regulation.

(d) During the early coordination process, the Administration in cooperation with the applicant may request other appropriate agencies to become cooperating agencies. Agencies with jurisdiction by law must be requested to become cooperating agencies.

(e) Early notification to and solicitation of views from other States and Federal land management entities significantly affected by the proposed action shall be accomplished by the applicant in cooperation with the Administration. The notification and solicitation of views from other States should be mailed to the A–95 clearinghouses for those States unless the Governor has designated an agency other than the clearinghouse for this purpose. The Administration will prepare a written evaluation of any issues identified which indicate a significant disagreement with respect to the impact of the proposed action or any of the alternatives. This evaluation will be furnished to the applicant for incorporation into the EA or DEIS.

(f) In order to ensure meaningful evaluation of alternatives and to avoid commitments to transportation improvements before they are evaluated, each EIS or FONSI prepared for a proposed action shall evaluate a project which:

(1) Connects logical termini and is of sufficient length to address environmental matters on a broad scope;

(2) Has independent utility or independent significance, i.e., is useable and a reasonable expenditure even if no additional transportation improvements in the area are accomplished; and

(3) Will not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

(g) The tiering of EIS's, as discussed in the CEQ Regulation (40 CFR 1502.20), is encouraged when it will improve or simplify the environmental processing of complex actions. The first tier EIS would focus on broad issues such as mode choice, general location and areawide air quality and land-use implications of the alternate transportation improvements. A second tier, site specific EIS would focus on more

[1] The FHWA prepared a notice entitled "Summary of Selected Environmental Legislation" which provides details on pertinent environmental requirements. Copies are available as prescribed in 49 CFR Part 7, App. D and G, from UMTA and FHWA headquarters and field offices.

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detailed project impacts and detailed mitigation measures.

(h) Interested citizens may obtain information on the UMTA environmental process and the status of EIS's issued by UMTA from: Director, Office of Program Analysis, Urban Mass Transportation Administration, Washington, D.C. 20590. Questions on the status of DEIS's combined with alternatives analyses as required by the policy on major urban mass transportation investments should be directed to: Director, Office of Planning Assistance, Urban Mass Transportation Administration, Washington, D.C. 20590. Information on the FHWA environmental process may be obtained from: Director, Office of Environmental Policy, Federal Highway Administration, Washington, D.C. 20590.

§ 771.113 Timing of administration actions.

(a) The Administration in cooperation with the applicant will complete all work, including any necessary design work, required to make those engineering and environmental decisions necessary to complete a FONSI or an EIS and to comply with other related laws and regulations which, to the maximum extent possible, must be accomplished coincident with the NEPA process. However, other design activities, property acqulsition (other than hardship or protective buying pursuant to 23 CFR 712.204(d)), or construction shall not proceed until the following actions have been completed:

(1)(i) The action has been classified as a categorical exclusion, or (ii) a FONSI has been adopted or (iii) a FEIS has been approved and available for the prescribed period of time, and a record of decision, when required, has been prepared and signed; and

(2) For FHWA actions, the FHWA Division Administrator has received and accepted the public hearing transcripts, reports and certifications required by 23 U.S.C. 128.

(b) For FHWA actions, the completion of the requirements set forth in paragraph (a) of this section is considered acceptance of the general location of the proposed action unless otherwise specified by the appropriate FHWA official. For those categorical exclusions which require location approval, this approval will be made by the FHWA after consultation with the applicant.

(c) Letters of Intent issued under the authority of Section 3(a)(4) of the UMT Act are used by UMTA to indicate an intention to obligate future funds for multiyear capital transit projects. The scope of the environmental document must address the entire project covered by the proposed Letter of Intent. Letters of Intent will not be issued by UMTA until the NEPA process is completed.

§ 771.115 Classes of actions.

There are three classes of actions which prescribe the level of documentation required in the NEPA process.

(a) *Class I (EIS's).* Actions that may significantly affect the environment require an EIS. (40 CFR 1508.27) Examples of these actions are:

(1) Any new controlled access freeway.

(2) Any highway project of 4 or more lanes on a new location.

(3) New construction or extension of fixed guideway systems (e.g., rapid rail, light rail, commuter rail, automated guideway transit, and exclusive busway). These projects would be expected to cause major shifts in travel patterns and land use.

(4) Major transportation related development whose construction involves a large amount of demolition, displacement of a large number of individuals or businesses, or substantial disruption to local traffic patterns. This classification will take account of the condition of the buildings and availability of comparable replacement facilities for displaced residences or businesses.

(b) *Class II (Categorical exclusions).* Actions that do not individually or cumulatively have a significant effect on the environment do not require an environmental impact statement or environmental assessment. The following actions are categorical exclusions:

(1) Planning and technical studies which do not fund the construction of facilities or acquisition of capital equipment.

(2) Grants for training and research programs which do not involve construction.

(3) Approval of a unified planning work program and certification of a State or local planning process. 23 CFR Part 450.

(4) Approval of Transportation Improvement Programs under 23 CFR Part 450, Subpart C and statewide programs under 23 CFR Part 630, Subpart A.

(5) Approval of project concepts under 23 CFR Part 476.

(6) Engineering when undertaken to define the elements of a proposal or alternatives sufficiently so that environmental effects can be assessed.

(7) Federal-aid highways system revisions under 23 U.S.C. 103, which establishes classes of highways on the Federal-aid highway system.

(8) Approval of utility installations along or across a transportation facility.

(9) Reconstruction or modification of an existing bridge structure on essentially the same alignment or location (e.g., widening less than a single travel lane, adding shoulders or safety lanes, walkways, bikeways, or pipelines) except bridges on or eligible for inclusion on the National Register or bridges providing access to barrier islands. Recontruction or modification of an existing one lane bridge structure, presently serviced by a two lane road and used for two lane traffic, to a two lane bridge on essentially the same alignment or location, except bridges on or eligible for inclusion on the National Register or bridges providing access to barrier islands.

(10) Construction of bicycle and pedestrian lanes, paths, and facilities.

(11) Activity included in the State's "highway safety plan" under 23 U.S.C. 402.

(12) Transfer of Federal lands pursuant to 23 U.S.C. 317 when the subsequent action is not an FHWA action.

(13) Modernization of an existing highway by resurfacing, restoration, rehabilitation, widening less than a single lane width, adding shoulders, adding auxiliary lanes for localized purposes (e.g., weaving, turning, climbing), and correcting substandard curves and intersections. This classification is not applicable when the proposed project requires acquisition of more than minor amounts of right-of-way or substantial changes in access control.

(14) Highway safety or traffic operations improvement projects including the correction or improvement of high hazard locations; elimination of roadside obstacles; highway signing; pavement markings; traffic control devices; railroad warning devices; and lighting. This classification is not applicable when the proposed action requires acquisition of more than minor amounts of right-of-way or substantial changes in access control.

(15) Alterations to existing building to provide for noise reduction and the installation of noise barriers.

(16) Ridesharing activities and transportation corridor fringe parking facilities.

(17) Landscaping.

(18) Program administration and technical assistance activities by the applicant to administer Section 18 funds. (Rural public transportation program)

(19) Project administration and operating assistance to transit authorities to continue existing service or increase service to meet demand.

(20) Purchase of vehicles of the same type (same mode) either as replacements or to increase the size of the fleet where such increase can be accommodated by existing facilities or by new facilities which themselves are within a categorical exclusion.

(21) Track and rail bed maintenance and improvements when carried out within the existing right-of-way.

(22) Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where no additional land is required and there is no substantial increase in the number of users.

(23) Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant physical impacts off the site.

(24) Installation of signs, small passenger and bus shelters, and traffic signs where no substantial land acquisition or traffic disruption will occur.

(25) Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.

(26) Acquisition of land in which the property will not be modified, the land use will not be changed, and displacements will not occur. For projects other than UMTA advance land loans, this categorical exclusion is limited to the acquisition of minor amounts of land. This is undertaken for the purpose of maintaining the current land use and preserving alternatives to be considered in the environmental process. Advance land acquisition shall not limit the evaluation of alternatives, including shifts in alignment for a construction project, which may be required in the NEPA process.

(27) Promulgation of rules, regulations, and directives for which a regulatory analysis is not required by Section 3 of Executive Order 12044.

(28) Research activities as defined in 23 U.S.C. 307.

(29) Emergency repairs under 23 U.S.C. 125 which do not substantially change the design and are commenced during or immediately after the occurrence of a natural disaster or catastrophic failure.

(c) *Class III (EA's).* Actions in which the significance of the impact on the environment is not clearly established. All actions that are not Class I or II are Class III. All actions in this class require the preparation of an EA to determine the appropriate environmental document required, unless it can be initially determined that an EIS should be prepared. In the case of rules, regulations, or directives for which a regulatory analysis is required by Section 3 of Executive Order 12044, the EA may be contained in the regulatory analysis and need not be a separate document.

§ 771.117 Categorical exclusions.

(a) Categorical exclusions are categories of actions which do not involve significant environmental impacts or substantial planning, time or resources. These actions will not induce significant foreseeable alterations in land use, planned growth, development patterns, or natural or cultural resources. The categorical exclusions are listed in § 771.115(b).

(b) Any recommendation by an applicant that a proposed action is a categorical exclusion as identified in § 771.115(a) must be approved by the Administration. The Administration may require sufficient information to determine if the proposal meets the criteria for a categorical exclusion. Proposals meeting the criteria for categorical exclusions do not require additional environmental documentation.

(c) The Administration may determine that any action proposed as a categorical exclusion may, because of extraordinary circumstances, require appropriate environmental studies to establish the need for an EIS. Extraordinary circumstances includes situations that are likely to involve:

(1) Significant impacts on the environment;

(2) Substantial controversy on environmental grounds;

(3) Significant impacts on properties protected by Section 4(f) of the DOT Act and Section 106 of the National Historic Preservation Act; or

(4) Inconsistencies with any Federal, State, or local law or administrative determination relating to the environment.

(d) An applicant may propose that additional categories of actions be added to the list of categorical exclusions in § 771.115(b). Such proposals shall be submitted to the Administration headquarters office for approval and will be processed in accordance with 40 CFR 1507.3.

§ 771.119 Environmental assessments.

(a) The EA shall be prepared by the applicant in consultation with the Administration for each action that is not a categorical exclusion and does not clearly require the preparation of an EIS or where, in the opinion of the Administration, the EA would assist in determining the need for an EIS.

(b) For actions that require an EA, the applicant in consultation with the Administration will, at the earliest appropriate time, begin consultation with interested agencies and others to achieve the following objectives: Define the scope of the project; identify alternatives to the proposed action; determine which aspects of the proposed action have potential for environmental impact; identify measures and alternatives which might mitigate adverse environmental impacts; and identify other environmental review and consultation requirements which should be prepared concurrently with the EA. The applicant will accomplish this through an early coordination process approved by the Administration (e.g., State Action Plan) or through a scoping process. A summary of the contacts made and comments received will be included in the EA.

(c) The EA is subject to Administration approval before it is made available to the public as an Administration document. If the EA is made available prior to Administration approval, it must be labeled as the applicant's document.

(d) The EA need not be circulated for comment but the document must be made available for public inspection at the applicant's office and at the appropriate Administration field offices in accordance with paragraphs (e) and (f) of this section. Notice of the availability of the EA shall be sent by the applicant to the State and areawide clearinghouses.

(e) When a public hearing is required, the EA will be prepared in advance of the notice of the public hearing. The notice of the public hearing in local newspapers will announce the availability of the applicant's EA and where it may be obtained or reviewed. The FHWA public hearing requirements are contained in approved State Action Plans. UMTA has a public hearing requirement in all applications for capital and operating assistance.

(f) When a public hearing is not required, the applicant shall place a notice in a newspaper(s) similar to a public hearing notice and at a similar stage of development of the action advising the public of the availability of the EA and where information concerning the action may be obtained. The notice shall invite comments from all interested parties including those who believe that the action involves a significant impact on the human

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environment or that the analysis of social, economic, and environmental impacts presented in the EA is inadequate to assess their significance. Comments shall be sumbitted in writing to the applicant or the Administration within 30 days of the publication of the notice unless the Administration determines a shorter period is warranted.

(g) If no significant impacts are identified, the applicant will furnish the Administration a copy of the EA, revised as appropriate, the public hearing transcript when a public hearing was held, and a summary of any comments received and responses thereto and recommend a FONSI.

(h) If, at any point in the EA process, the Administration determines that the proposed action may have a significant impact on the environment, the preparation of an EIS will be required. Actions in § 771.115(a) will normally require preparation of an EIS. If an action in these categories is processed with an EA, copies of the EA will be made available for pubic review (including State and areawide clearinghouses) for 30 days before the Administration makes its final decision. (See 40 CFR 1501.4(e)(2)) This public availability will be announced by a notice similar to a public hearing notice at least 30 days before any decision on the EA is made. The EA will be provided to the Administration Washington Headquarters at the same time it is made available to the public.

§ 771.121 Findings of no significant impact.

(a) The Administration, after review of the EA and any public hearing comments or other comments received regarding the EA, and if in agreement with the applicant's recommendations, will make a separate written finding of no significant impact (FONSI) incorporating the EA and any other appropriate environmental documents.

(b) After a FONSI had been made by the Administration, a notice of the availability of the FONSI shall be sent by the applicant to State and areawide clearinghouses and the document will be available from the applicant or the Administration upon request by the public.

(c) If another Federal agency has issued a FONSI on an action which includes an element proposed for Administration funding, the Adminstration will evaluate the FONSI, and if it is determined that the proposed Administration-funded action and its environmental impacts are adequately indentified and assessed, the Administration will issue its own FONSI incorporating the other agency's FONSI.

§ 771.123 Draft environmental impact statements.

(a) A DEIS will be prepared when the Administration determines initially that the action may cause significant impacts on the environment, when the environmental studies and early coordination for the action indicate significant impacts, or when the review of the EA in light of comments received indicates the impacts expected to result from the action may be significant. when the decision has been made by the Administration that an EIS will be prepared, the Administration will issue a notice of intent for publication in the **Federal Register.** Applicants are encouraged to announce the intent to prepare an EIS by appropriate means at the local level.

(b) After publication of the notice of intent, the Administration in cooperation with the applicant will begin a scoping process. The scoping process will be used to indentify the range of alternatives and impacts and the significant issues to be addressed in the EIS and to achieve the other objectives of 40 CFR 1501.7. For FHWA, scoping is normally achieved through procedures developed in accordance with State Action Plans (32 CFR Part 795) and through other early coordination activities. For UMTA, a scoping meeting will normally be required. If a scoping meeting is to be held, it will be announced in the Administration's notice of intent and by appropriate means at the local level.

(c) The DEIS shall be prepared by the Administration in cooperation with the applicant. The DEIS shall discuss all reasonable alternatives to the proposed action and summarize the studies, reviews, consultations, and coordination required by environmental laws and Executive Orders to the extent appropriate at this stage in the environmental process. The DEIS for actions in an urbanized area shall reflect the involvement of the metroplitan planning organization (MPO) and alternatives to be considered in the DEIS shall be developed in consultation with the MPO.

(d) For major urban transportation investments the DEIS documents the results of an analysis of transportation alternatives.

(e) An applicant which is a "joint lead" or "cooperating" agency may select a consultant to assist in the preparation of an EIS subject to the concurrence of the Administration to assure compliance with 40 CFR 1506.5(c). (See § 771.109(c) for definitions of these terms.) A "statewide" agency may select a consultant in accordance with applicable procedures. The Administration will select any such consultant for "other" applicants.

(f) The Administration, when satisfied that the DEIS complies with NEPA requirements, will approve the DEIS for circulation by signing and dating the title page.

(g) A lead, joint lead, or a cooperating agency shall be responsible for printing the EIS. The initial printing of the DEIS shall be in sufficient quantity to meet requirements for copies which can reasonably be expected from agencies, organizations, and individuals. Normally, copies will be furnished free of charge. However, with Administration concurrence, the party requesting the DEIS may be charged a fee which is not more than the actual cost of reproducing the copy or may be directed to the nearest location where the statement can be reviewed.

(h) The DEIS shall be circulated for comment by the applicant on behalf of the Administration. The UMTA requires a public hearing during the circulation period of all DEIS's. The FHWA public hearing requirements are contained in approved State Action Plans or, if applicable, 23 CFR Part 790. If a public hearing is required, the DEIS shall be available for a minimum of 30 days in advance of the public hearing. The availability of the DEIS shall be included in any public hearing notice and mentioned at any public hearing presentation with a request for public comments. If a public hearing is not required, a notice shall be placed in a newspaper similar to a public hearing notice advising where the DEIS is available for review, how copies may be obtained, and where the comments should be sent.

(i) The DEIS shall be circulated to:

(1) Public officials, private interest groups, and members of the public having the potential to be directly affected or expressing an interest in the proposed action or the DEIS. Comments should be obtained directly from appropriate State and local agencies, except where review is secured by agreement through the A–95 clearinghouse.

(2) Government agenices expected to have jurisdiction or responsibility over, or interest or expertise in the proposed action.

(j) The **Federal Register** public availability notice shall establish a period of not less than 45 days for the return of comments on the DEIS. The notice and the DEIS transmittal letter

shall identify where comments are to be sent.

(k) The applicant shall furnish copies of the DEIS to those States and Federal land management entities which may be significantly affected by the proposed action or any of the alternatives. These copies shall be accompanied by a request that such State or entity advise the Administration in writing of any disagreement with the evaluation of impacts in the statement. Copies of the DEIS are to be furnished to the A–95 clearinghouses of other impacted States unless the Governor has designated an agency other than the clearinghouse for this purpose. The Administration will furnish the comments received to the applicant along with a written assessment of any disagreements for incorporation into the FEIS.

§ 771.125 Final environmental impact statements.

(a)(1) After circulation of a DEIS and consideration of comments received, a FEIS shall be prepared by the Administration in cooperation with the applicant or, where permitted by law, by the applicant with appropriate guidance and participation by the Administration. The FEIS shall identify the preferred alternative, discuss substantive comments received on the DEIS and all reasonable alternatives considered, summarize citizen involvement, and include when appropriate a description of the procedures to be followed to assure that all environmental mitigation measures are implemented. The FEIS for actions in urbanized areas shall include the views of the MPO regarding the preferred alternative. The FEIS should also document compliance, to the extent possible, with all applicable environmental laws and Executive Orders or provide reasonable assurance that their requirements can be met.

(2) For UMTA-funded major urban mass transportation investments (new construction or extension of a fixed guideway), the applicant shall prepare a report Identifying a locally preferred alternative. Approval may be given to begin preliminary engineering on the principal alternatives currently under consideration. During the course of such preliminary engineering, the applicant will refine project costs, effectiveness, and impact information with particular attention to alternative designs, operations, detailed location decisions and appropriate mitigation measures. These studies will be used to prepare the FEIS.

(b) Every reasonable effort shall be made to resolve interagency disagreements on proposed actions before processing the FEIS. If significant issues remain unresolved, the FEIS shall identify those issues and the consultations and other efforts made to resolve them.

(c) A preliminary record of decision (ROD) shall accompany the proposed FEIS during the internal review process. (See § 771.127)

(d) The FEIS shall be reviewed for legal sufficiency by the Administration's Chief Counsel or designee.

(e) The Administration will indicate approval of the FEIS for an action by signing and dating the title page. However, FEIS's prepared for actions in one or more of the following categories shall be subject to prior concurrence by the Administration Washington Headquarters and the Office of the Secretary of Transportation.

(1) Any highway project on a new location in an urbanized area of over 100,000 population or bypassing such area.

(2) Any new controlled access freeway.

(3) New construction or extension of a fixed guideway transit system.

(4) Any major transportation related development whose construction requires the preparation of an EIS (see § 771.115(a)(4)) if the proposed Administration grant assistance exceeds $5 million or if the proposed total cost of publicly and privately funded construction is expected to exceed $50 million.

(5) Any action to which a Federal, State or local government has indicated opposition on environmental grounds (which has not been resolved to the written satisfaction of the objecting agency).

(6) Any action for which the Administration or the Office of the Secretary of Transportation requests that the FEIS be reviewed at the Washington Headquarters office.

(f) The signature of the UMTA approving official on the title page constitutes UMTA authorization to circulate the FEIS; compliance with Section 14 of the UMT Act and fulfillment of the grant application requirements of Section 3(d)(1) and (2) and Section 5(h) and 5(i) of the UMT Act. The approval of the FEIS does not commit UMTA to approval of any grant request for future funding of the preferred alternative.

(g)(1) After review of a DEIS on an action in one or more of the categories in paragraph (e) of this section, the Administration with the concurrence of the Office of the Secretary of Transportation may determine that the FEIS may be processed without prior concurrence of the Administration Headquarters Office. This determination will include consideration of:

(i) Adequacy of early coordination with other Federal, State, and local government agencies; and

(ii) Adequacy of the DEIS in identifying environmental impacts of, and reasonable alternatives to, the proposed action.

(2) Any determination under this paragraph is subject to review and withdrawal at any time prior to approval of the FEIS.

(h) The initial printing of the FEIS shall be in sufficient quantity to meet the request for copies which can be reasonably expected from agencies, organizations, and individuals. Normally, copies will be furnished free of charge. However, with Administration concurrence, the party requesting the FEIS may be charged a fee which is not more than the actual cost of reproducing the copy or may be directed to the nearest location where the statement can be reviewed.

(i) At the time the FEIS is distributed and filed with EPA, the applicant is responsible for making the FEIS available through State and areawide clearinghouses pursuant to OMB Circular A–95, publication of a notice of availability in local newspapers, and for furnishing the document to any person(s), organizations, or agencies that made substantive comments on the DEIS or requested a copy. At this time the FEIS shall be available for public review at the applicant's offices and at appropriate Administration offices. A copy should also be made available for public review at public institutions such as local government offices, public libraries, and schools, as appropriate.

(j) The Administration shall not make any project approvals for any action requiring an EIS until the approval of a ROD, in accordance with § 771.127.

§ 771.127 Record of decision.

(a) The Administration shall complete and sign a ROD (40 CFR 1505.2) no sooner than 30 days after publication of the FEIS notice in the **Federal Register** or 90 days after publication of a notice for the DEIS, whichever is later. The ROD should document any required Section 4(f) approval in accordance with § 771.135(k). A preliminary ROD is to be prepared by the Administration in consultation with the applicant. The proposed action shall not be advanced except for administrative actions taken to secure further project funding and other actions consistent with 40 CFR 1506.1 until any required ROD has been signed. A ROD is not required for those EIS's where the DEIS was filed with

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EPA prior to July 30, 1979 (For FHWA November 30, 1979).

(b) If the Administration subsequently wishes to take an action which was not identified as the proposed action in the final EIS, or proposes to make substantial changes to the mitigation measures or findings discussed in the record of decision, a revised preliminary record of decision shall be processed internally by the same offices that acted on the original EIS.

§ 771.129 Reevaluation.

(a) The applicant shall consult with the Administration to assure that the proposed action or environmental conditions have not significantly changed prior to proceeding with major project approvals or authorizations.

(b) The DEIS or FEIS may be supplemented at any time. Supplements will be necessary when there have been significant changes in the proposed action, the affected environment, the anticipated impacts, or the proposed mitigation measures. However, a supplemental EIS will not be necessary if the Administration decides to fund an alternative adequately covered in the Final EIS but not identified as the proposed action. The decision to prepare a supplement to the FEIS shall not require withdrawal of the previous approvals for those aspects of the proposed action not directly affected by the changed condition or new information. A supplement is to be developed in the same manner (except that scoping is not required) as a new EIS (draft and final, with a ROD).

(c)(1) The DEIS is considered valid for a period of 3 years. If an acceptable FEIS is not submitted to the Administration within 3 years from the date of the DEIS circulation, a written evaluation of the DEIS shall be prepared by the Administration in cooperation with the applicant prior to submission of the FEIS. This evaluation must demonstrate that there have not been significant changes in the proposed action, the affected environment, the anticipated impacts or the proposed mitigation measures. If there have been changes in these factors which would be significant in the consideration of the proposed action, a supplement to the DEIS or a new DEIS shall be prepared.

(2) If major steps to advance the action (e.g., authority to acquire a substantial portion of the right-of-way, or approval of the plans, specifications and estimates) have not occurred within 3 years from the date the FEIS or FEIS supplement was approved, the Administration in cooperation with the applicant shall prepare a written evaluation of the FEIS before further approvals may be granted. If there have been significant changes in the proposed action, the affected environment, the anticipated impacts, or proposed mitigation measures, a new or supplemental EIS shall be prepared and circulated.

(3) If major steps to advance the action have not occurred within 5 years from the date the FEIS or FEIS supplement was approved, or within the time frame identified in the FEIS, the written evaluation required in paragraph (c)(2) of this section will be prepared and forwarded for review and action to the same offices that took approval action on the original FEIS.

(4) The requirements for a written evaluation as described in paragraphs (c)(2) and (c)(3) of this section apply only to requests for Administration approvals after July 30, 1982.

(d) If any changes are made to the proposed action and it is uncertain if a supplemental EIS is required, the applicant will develop appropriate environmental studies or, if necessary, an EA to assess the impacts of such changes. If it is determined that the changes result in significant environmental impacts which could not be identified from reviewing the initial EIS, a supplemental EIS will be prepared. If no supplemental EIS is required after the studies or EA required by this subsection have been made, the Administration shall so indicate in the project file.

§ 771.131 Emergency action procedures.

Requests for deviations from the procedures in this regulation because of emergency situations shall be referred to the Administration's Washington Headquarters for evaluation and decision after consultation with CEQ, through DOT, in accordance with 40 CFR 1506.11 for evaluation and decision.

§ 771.133 Compliance with other requirements.

(a) The FEIS or FONSI should document compliance with requirements of all applicable environmental laws, Executive Orders, and other related requirements. If full compliance is not possible by the time the FEIS or FONSI is prepared, the FEIS or FONSI should reflect consultation with the appropriate agencies and provide reasonable assurance that the requirements will be met. Approval of the environmental document by the Administration constitutes approval or any required findings and determinations that are contained therein.

(b)(1) Sections 3(d) and 5(i) of the UMT Act require applicants for Sections 3 and 5 grants to make several certifications regarding the local decisionmaking process. The report requirement of Section 5(i) will be satisfied by a FONSI, FEIS, or an identification of the project as meeting the criteria for categorical exclusions.

(2) Section 5(h)(2) of the UMT Act requires the Secretary of Transportation to consider the environmental effects of any proposed Section 5 project and make decisions based on the public interest. The provisions of this regulation satisfy the statutory provisions of Section 5(h)(2).

§ 771.135 Section 4(f) of the Department of Transportation Act.

(a)(1) No Administration action will use land from a significant publicly owned park, recreation area, or wildlife and waterfowl refuge or any significant historic site unless a determination is made that:

(i) There is no feasible and prudent alternative to the use of land from the property; and

(ii) The proposed action includes all possible planning to minimize harm to the property resulting from such use.

(2) Supporting information must demonstrate that there are unique problems or unusual factors involved in the use of alternatives and that the cost, environmental impacts, or community disruption resulting from such alternatives reaches extraordinary magnitudes.

(b) The Administration will determine the application of section 4(f). Any use of lands from a section 4(f) property shall be evaluated early in the development of the action when alternatives to the proposed action are under study.

(c) Consideration under section 4(f) is not required when the Federal, State, or local official having jurisdiction over a park, recreation area, or refuge determines that it is not significant. The Administration will review the official's determination, to assure its reasonableness. In the absence of a satisfactory determination, the section 4(f) land will be considered to be significant.

(d) In determining the application of section 4(f) to historic sites, the Administration in cooperation with the applicant will consult with the State Historic Preservation Officer and local officials and will identify properties on or eligible for the National Register of Historic Places. For purposes of section 4(f), a historic site is significant only if it is on or eligible for the National Register, unless the Administration determines that the application of section 4(f) is otherwise appropriate.

(e) Where Federal lands or other large public land holdings (e.g. State forests) are administered under statutes permitting management for multiple uses, and in fact are managed for multiple uses, section 4(f) applies only to portions of such lands which are in fact being used for or are designated in the plans of the administering agency as being for park, recreation, wildlife or waterfowl refuge, or historic purposes. The determination of significance shall be made by the official having jurisdiction over the lands. The Administration will review the agency's land use determination to assure its reasonableness.

(f)(1) Section 4(f) applies to all archeological sites on or eligible for inclusion on the National Register, including those discovered during construction, unless the Administration, after consultation with the State Historic Preservation Officer and the Advisory Council on Historic Preservation, determines that the archeological resource is important chiefly for the information it contains and has minimal value for preservation in place. Such archeological resources which do not warrant preservation in place may be recovered in accordance with a resource recovery plan developed in compliance with 36 CFR Part 800.

(2) For sites discovered during construction, where preservation of the resource in place is warranted, the section 4(f) process will be expedited. In such cases, the evaluation of feasible and prudent alternatives will take account of the level of investment already made and the review process, including the consultation with other agencies, will be shortened as appropriate.

(g) Designations of park and recreation lands, wildlife and waterfowl refuges, and historic sites are sometimes made and determinations of significance changed late in the development of a proposed action. With the exception of the treatment of archeological resources in paragraph (f) of this section, an action may proceed without consideration under section 4(f) if the property interest in the section 4(f) type lands was acquired for transportation purposes prior to the designation or change in the determination of significance and if an adequate effort was made to identify properties protected by section 4(f) prior to project approval.

(h) The evaluations of alternatives to avoid the use of section 4(f) land and of possible measures to minimize harm to such lands shall be presented in the DEIS or EA or, for those projects classified as categorical exclusions, in a separate document. The document containing the section 4(f) evaluation shall be provided for coordination and comment to the official having jurisdiction over the section 4(f) property and to the Department of the Interior and, as appropriate, to the Department of Agriculture and the Department of Housing and Urban Development. A time limit of 45 days shall be established by the Administration for receipt of comments.

(i) The discussion in the FEIS, FONSI, or separate section 4(f) evaluation shall specifically address:

(1) The reasons why alternatives to avoid a section 4(f) property are not feasible and purdent; and

(2) All measures which will be taken to minimize harm to the section 4(f) property.

(j) The final section 4(f) evaluation will be reviewed for legal sufficiency by the Administration Chief Counsel or designee.

(k) The Administration will document and make the section 4(f) approval either in its approval of the FEIS or in the ROD for actions processed with EIS's. In those cases where the section 4(f) approval is documented in the FEIS, the Administration will summarize the basis for its section 4(f) approval in the ROD. Actions requiring the use of section 4(f) property and proposed to be processed with a FONSI or classified as a categorical exclusion shall not proceed until notified by the Administration of section 4(f) approval. For those actions processed with a FONSI or classified as a categorical exclusion, any required section 4(f) approval will be documented separately.

(l) Circulation of a separate section 4(f) evaluation will be required when:

(1) A modification of the alignment or design requires the use of section 4(f) property after the categorical exclusion, FONSI, or FEIS has been processed;

(2) A modification of the alignment or design which significantly increases the use of section 4(f) land is found to be necessary after the original section 4(f) approval; or

(3) Another agency is the lead agency for the NEPA process, unless another DOT element is preparing the section 4(f) statement.

(m) An analysis required by section 4(f) may involve different levels of detail where the section 4(f) involvement is addressed in a tiered EIS.

(1) When the first tier broad-scale EIS is prepared, the detailed information necessary to complete the section 4(f) evaluation may not be available at that stage in the development of the action. In such cases, an evaluation may be made on the potential impacts that a proposed action will have on section 4(f) land and whether those impacts could have a bearing on the decision to be made. A preliminary determination may be made at this time as to whether there are feasible and prudent locations or alternatives for the action to avoid the use of section 4(f) land. This preliminary determination shall consider all possible planning to minimize harm to the extent that the level of detail available at the first tier EIS stage allows. It is recognized that such planning at this stage will normally be limited to ensuring that opportunities to minimize harm at subsequent stages in the development process have not been precluded by decisions made at the first tier EIS stage. This preliminary determination is then incorporated into the first tier EIS.

(2) A section 4(f) approval made when additional design details are available shall include a determination that:

(i) The preliminary section 4(f) determination made pursuant to paragraph (m)(1) of this section is still valid,

(ii) There are no feasible and prudent design alternatives to the use of such section 4(f) land,

(iii) The proposed action includes all possible planning to minimize harm.

§ 771.137 International actions.

(a) The requirements of this regulation apply to:

(1) Administration actions significantly affecting the environment of the global commons outside the jurisdiction of any nation (e.g., the oceans and Antarctica).

(2) Administration actions significantly affecting the environment of a foreign nation not participating in the action or not otherwise involved in the action.

(3) Administration actions which significantly affect the environment of a foreign nation and which provide a product or action producing a toxic emission or effluent that is prohibited or strictly regulated in the United States by Federal law.

(4) Administration actions outside the U.S., its territories, and possessions which significantly affect natural resources of global importance designated for protection by the President or by international agreement.

(b) If communication with a foreign government concerning environmental studies or documentation is anticipated, the Administration shall coordinate such communication with the Department of State through the Office of the Secretary of Transportation.

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DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

Policy on Major Urban Mass Transportation Investments and Policy Toward Rail Transit

AGENCY: Urban Mass Transportation Administration (UMTA).

ACTION: Notice of Revised UMTA Policy.

SUMMARY: This notice is being published to announce two revisions to the UMTA Policy on Major Urban Mass Transportation Investments and Policy Toward Rail Transit. Changes that have been made to the FHWA/UMTA environmental impact procedures published elsewhere in the Federal Register have necessitated these policy statement revisions. These revised procedures establish that UMTA may fund conceptual design studies leading to a greater level of detail on the alternatives presented in the alternatives analysis/draft environmental impact statement (EIS). The revised procedures further establish that UMTA may fund preliminary engineering following the circulation of the alternatives analysis/draft EIS. Preliminary engineering on the locally preferred alternative as well as other promising alternatives evaluated in the draft EIS will provide more accurate information on costs and environmental impacts for the final EIS.

Previously, alternatives were developed in less detail in the alternatives analysis/draft EIS and preliminary engineering was undertaken following the circulation of the final EIS. These changes will integrate a progressively more detailed study of alternatives into the EIS process to ensure that the preferred alternative in the final EIS is more carefully defined in terms of environmental impacts and costs. This notice will clarify UMTA procedures governing the EIS process for major urban mass transportation investments.

FOR FURTHER INFORMATION CONTACT: Mr. John Barber, Office of Transit Assistance (UTA–32), telephone (202) 472–7100, or Mr. Joel Ettinger, Office of Planning assistance (UPM–12), telephone (202) 426–2360, Urban Mass Transportation Administration, 400 Seventh Street, SW., Washington, D.C. 20590, between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: The Urban Mass Transportation Administration (UMTA) published its Policy on Major Urban Mass Transportation Investments on September 22, 1976 (41 FR 41512) and Policy Toward Rail Transit on March 7, 1978 (43 FR 9428). The procedures set forth in the major investment policy established the requirement for a rigorous, objective evaluation of alternatives where a major investment was being considered. The procedures specified that the alternatives analysis is combined with a draft environmental impact statement (EIS) and that the final EIS is prepared at the same level of detail as the draft EIS.

During the commenting period on UMTA's proposed regulation on environmental impact and related procedures (44 FR 59445; October 15, 1979), UMTA applicants asked for clarification of the relationship of the alternatives analysis and the EIS process. Further, suggestions were made to integrate preliminary engineering into the EIS process because of what was perceived as duplicative and confusing agency review requirements for each.

UMTA's experience in developing EIS's under the procedures in its major investment and rail transit policies has shown the need for a greater level of detail on environmental impacts and more accurate cost estimates of the project proposals emerging from alternatives analysis before the final EIS can be prepared.

For these reasons, UMTA is implementing the following changes in the procedures of the major investment and rail transit policies. UMTA may allow, where appropriate, conceptual design studies during the preparation of the alternatives analysis/draft EIS. These studies would be undertaken at a sufficient level of detail to identify a locally preferred alternative in terms of mode and general alignment. Upon completion of the alternatives analysis/draft EIS, UMTA may approve funds to support preliminary engineering for one or more promising alternatives. By authorizing preliminary engineering after the draft EIS and the applicant's preferred alternative report have been completed, UMTA will be integrating a progressively more detailed study of promising alternatives into the EIS process to ensure that the preferred alternative in the final EIS is more carefully defined in terms of environmental impacts and costs. This procedure should also aid applicants by clarifying the sequence of UMTA decisions with respect to the evaluation of fixed guideway alternatives.

Comments are invited on these procedures. Moreover, since a forthcoming Notice of Proposed Rulemaking (NPRM) will also provide an opportunity for comment on the entire set of policies and procedures governing major urban transportation investments, there will be additional opportunities for public involvement. That NPRM is being published in the **Federal Register** with several proposed revisions to the FHWA/UMTA joint planning regulations. Among the revisions is a set of proposed joint FHWA and UMTA procedures covering all planning activities leading to the preparation of a draft EIS for major urban transportation investments. A change in nomenclature will be proposed in the NPRM whereby the term "alternatives analysis" will be replaced with "corridor refinement studies".

Procedures for Major Urban Mass Transportation Investments

This section outlines the procedures which UMTA will normally follow in reviewing alternatives analysis studies, in implementing the enironmental impact statement requirements of the National Environmental Policy Act, and in making funding commitments.

1. After obtaining UMTA's concurrence, the applicant may proceed with an alternatives analysis, and UMTA in cooperation with the applicant will prepare a draft EIS. The draft EIS shall be combined in a single document with the results of the alternatives analysis. The alternatives analysis will investigate the most promising alternatives identified in system planning at a sufficient level of detail to identify a locally preferred alternative in terms of mode and general alignment. This investigation may include conceptual design of the alternatives to provide a sufficiently confident level of cost, ridership demand, and environmental impact information to allow a decision on a locally preferred alternative. UMTA will ensure that the alternatives analysis and preparation of the draft EIS have been performed in accordance with UMTA policy and procedures.

2. After the end of the circulation period for the draft EIS, the applicant should designate, in a separate document, the locally preferred alternative and state a rationale for the choice. This document should clearly state that any recommendation is solely that of the applicant and that UMTA's judgement is reserved until the environmental process is completed.

3. Upon review of the locally preferred alternative report and the comments received on the draft EIS, UMTA will decide whether the alternatives analysis requirements have been satisfied and a preliminary engineering grant should be given to develop data for the final EIS. This decision will be based upon an appraisal of the cost-effectiveness of the locally preferred alternative compared to the other alternatives examined in the analysis. The grant may be for preliminary engineering of the locally preferred alternative as well as other promising alternatives evaluated in the draft EIS. Preliminary engineering will be undertaken as necessary to insure that all alternatives in the final EIS are presented at a comparable level of detail. Preliminary engineering should develop system cost, effectiveness, and impact information with particular attention to alternative designs, operations, detailed location decisions and appropriate mitigation measures.

4. The final EIS is developed during preliminary engineering. No action may be taken which would limit the choice of reasonable alternatives studied in the draft EIS until completion of the circulation of the final EIS.

5. UMTA may admit projects into preliminary engineering whose combined cost exceeds available Federal authorization levels. This will be done in anticipation of any of several possibilities: the withdrawal of projects as a result of changing local priorities; a local decision to use non-Federal resources to finance more than 20 percent of total cost; enactment of additional authorizations; or changing conditions such as the availability of detailed cost estimates which might lead to a later decision that a particular project should not be federally financed.

6. During the execution of preliminary engineering, the applicant will complete all the steps which must precede a Federal indication of intent to fund the project. These steps include providing evidence of firm commitment of the non-Federal capital share; providing evidence of State and/or local consensus regarding the financing of operating deficits; and planning for and gaining financial commitment to necessary supportive actions to promote effective utilization of the proposed fixed guideway system. A letter of intent may be issued for construction in a specific dollar amount only upon completion of the circulation of the final EIS and review of the capital grant application, the transcript of the public hearing, and the detailed cost estimates emerging from preliminary engineering. The decision to issue such a letter will be based upon a comparison of projects then pending.

7. If UMTA determines that the project warrants Federal support, UMTA will also develop with the locality a full funding agreement which will: (1) Fix the total amount of the Federal contributions, subject to a defined method of adjusting for inflation; (2) include a mutually agreeable schedule for anticipating Federal contributions during the life of the project; and (3) require the locality to complete construction of the project as defined, and to absorb any additional cost incurred, except under certain specific "extraordinary" circumstances.

8. Specific annual contributions under the letter of intent and full funding agreement will be subject to the availability of appropriations and the ability of the grant recipient to use the funds effectively. UMTA will limit the sum total of letters of intent to the sum of future Section 3 authorizations, less an amount which is necessary for those portions of the Section 3 program which are not covered by letters of intent.

Dated: October 24, 1980.

Theodore C. Lutz,

Administrator.

[FR Doc. 80-33695 Filed 10-29-80; 8:45 am]

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federal register

Thursday
October 30, 1980

Part VII

Department of Transportation

Federal Highway Administration and Urban Mass Transportation Administration

Urban Transportation Planning; Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Urban Mass Transportation Administration

23 CFR Parts 450, 630

49 CFR Part 613

[FHWA Docket Nos. 78-21 and 80-24]

Urban Transportation Planning

AGENCIES: Federal Highway Administration (FHWA) and Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Withdrawal of proposed rulemaking; addition of new notice of proposed rulemaking.

SUMMARY: The purpose of this document is to propose amendments to existing regulations governing urban transportation planning under FHWA and UMTA programs. The proposed changes are intended to (1) integrate the FHWA/UMTA policy for decisions on major urban transportation investments with the ongoing urban planning process; (2) reflect changes in the planning process necessitated by recent environmental requirements and agreements between the Department of Transportation (DOT) and the Environmental Protection Agency (EPA) relative to air quality; (3) emphasize the importance of Transportation System Management (TSM) in conserving energy and improving the efficiency of our transportation resources; and (4) simplify the administration of the planning process, particularly for areas under 200,000 population. A previous FHWA/UMTA notice of proposed rulemaking which was limited to major urban transportation investments (43 FR 57478, December 7, 1978) is withdrawn.

DATE: Written comments are due on or before December 29, 1980.

ADDRESS: Submit written comments to FHWA Docket No. 80-24, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: FHWA: Sam W. P. Rea, Jr., Urban Planning Division, (202) 426-2961, or Gary Maring, Public Transportation Management Division, (202) 426-0210, or Stanley Abramson, Office of the Chief Counsel, (202) 426-0762; or UMTA: Robert Kirkland, Office of Planning Assistance, (202) 426-4991, or Joel Ettinger, Office of Planning Assistance, (202) 426-2360, or Anthony Anderson, Office of Chief Counsel, (202) 426-1906, all located at 400 Seventh Street, SW., Washington, D.C. 20590. FHWA office hours are from 7:45 a.m. to 4:15 p.m. ET; UMTA office hours are from 8:30 a.m. to 5 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: This notice of proposed rulemaking (NPRM) requests comments on proposed revisions to the FHWA/UMTA requirements for urban transportation planning (23 CFR Part 450 and 49 CFR Part 613) and the FHWA requirements for Federal-aid program approval and project authorization (23 CFR Part 630, Subpart A). Although current regulations are being implemented effectively, the proposed revisions are intended to promote consistency between national and local objectives and to implement various transportation-related legislative requirements, such as air quality, energy conservation and the DOT policy on major urban transportation investments. In many cases, these modifications simply make formal what has already taken place on an informal basis.

The proposed changes are discussed under three major headings: Major Urban Transportation Investments, Air Quality, and Transportation System Management. Under a fourth heading, Other Changes, proposals are discussed which would simplify or eliminate requirements particularly in smaller urbanized areas (under 200,000 population), and emphasize citizen participation and urban goods movement.

This proposal is considered to be significant under the criteria established by the Department of Transportation pursuant to Executive Order 12044 because it involves important Departmental policy and major urban investments by FHWA and UMTA. A draft regulatory evaluation is available for inspection in the public docket (No. 80-24, Room 4205). Copies of the evaluation may be obtained by contacting Mr. Sam W. P. Rea, Jr., at the address provided above.

Major Urban Transportation Investments

On September 17, 1975, FHWA and UMTA jointly issued final regulations on the urban transportation planning process (40 FR 42976). These regulations made the planning of both highway and transit projects subject to the same continuing, comprehensive and cooperative process. Further unification was achieved by requiring that all projects be included in a region's Transporation Improvement Program (TIP) as a condition for Federal approval. However, while the joint regulations established a common planning process, the projects emerging from the process remained subject to different FHWA and UMTA policies and procedures.

Recognizing that improved decisionmaking would result from further coordination of the planning and project development process for major urban transportation investments, the FHWA and UMTA published an NPRM titled "Major Urban Transportation Investment Policy and Procedures," (43 FR 57478, December 7, 1978). The proposed rule specified a consistent policy and procedure for the evaluation of major highway and transit projects. The proposal included a requirement that all major projects be developed in a process that considered the costs and effectiveness of an appropriate range of investment alternatives. The previoius NPRM is being withdrawn in favor of the new NPRM issued today.

Ninety-three comments were submitted to the public docket (No. 78-21) in response to the NPRM. Fifty-two comments supported the proposed rule as a step toward a more balanced approach to urban transportation. Support came from metropolitan planning groups, transit authorities, cities, other Federal agencies, and environmental groups. Most of the negative comments stressed possible duplication of effort with the ongoing urban planning process, delay of projects and added "red tape." A number of comments posed questions requesting clarification or further definition of specific points or made remarks of a general nature.

In response to these comments, FHWA and UMTA are proposing to include an explicit treatment of planning for major investments within the joint planning regulations. The proposed integration of the key elements of the proposed major investment policy into the joint planning regulations directly addresses concerns on duplication of effort and additional redtape. The proposed regulations specify a single set of requirements for the technical process as well as the funding, documentation, and administration of major investment planning.

The major change to the existing regulations would be the addition of a new § 450.122 that would establish uniform requirements for the analysis of major investments within the transportation planning process. The

costs and effectiveness of major investment alternatives would be considered as the alternatives are advanced through the areawide and corridor planning efforts. Definitions of major urban transportation investments and cost effectiveness would be provided in § 450.104.

In the past, projects proposed for funding by FHWA have been developed through the areawide planning effort, followed by highway location studies and preparation of environmental impact statements (EIS's). The location studies have in some instances been conducted by State highway agencies with only secondary involvement of local officials, usually acting through the Metropolitan Planning Organization (MPO). Projects proposed for UMTA funding have been assessed in the areawide analysis and then studied in more detail in corridor level alternatives analysis, documented in a draft EIS. Alternatives analyses have typically been conducted by the local transit operator, again in some instances without full MPO involvement.

The separate corridor level analyses by the implementing agencies have tended to constrain full consideration of modal tradeoffs (i.e., comparison of various transportation modes). To address this problem, the proposed requirements for the analysis of major investments would be included within the cooperative planning process established in § 450.112. Section 450.112 currently defines responsibility for urban transportation planning as a cooperative effort among the MPO, the State, and local public transit operators. This section would be modified by the proposed rule so as to include within a fully cooperative process all planning activities for major investments leading to the development of the draft EIS. The intent is to ensure cooperation without prescribing specific responsibilities or degrees of involvement for each agency. This flexibility permits local and State officials to decide the specific institutional arrangements and procedures to be used in the consideration of transportation alternatives. These procedures would be tailored to the range of alternatives being considered, their stage of advancement in the process, and other local considerations. It is anticipated that the degree of responsibility and involvement of the various agencies will also vary with the status of development of implementation proposals. For example, the responsibility of MPOs would be heaviest at the system planning level, with appropriate input from implementing agencies. As proposals become more definitive, implementing agency responsibility would increase and become predominant as the project nears implementation.

Requirements for major investment planning set forth in proposed § 450.122 would rely upon planning activities already required by the regulations. While past planning efforts have included considerations of cost and effectiveness, the proposed rule would ensure that a consistent approach will be employed in all analyses of major investments. Section 450.122 would require that the costs and effectivenss of major new transportation facilities be explicitly considered in the areawide assessment of transportation needs. This assessment would be used to narrow the range of options to a number of reasonable and potentially cost-effective alternatives. The range of the remaining alternatives may be quite narrow or very broad. For example, a narrow range of alternatives would be expected if the investments only involved increasing the capacity of existing facilities. Where major widening of an existing freeway is proposed, the capital intensive alternatives might differ only in the number of lanes to be added and the possible restriction of these lanes to high-occupancy vehicles. Similarly, where additional parallel tracks are proposed for an existing rail facility, the major capital alternatives might differ only in the number of miles of facility to which tracks are added. In other cases, however, the range of alternatives might be quite broad and could include such varied projects as a new freeway, a busway, a light rail line, and a heavy rail line.

Section 450.122 also would require that the narrowed range of alternatives be further evaluated in corridor refinement studies. The studies would ensure that the selection of an alternative is based on more reliable cost and effectiveness information developed for all remaining alternatives in the corridor. For any freeway or busway project included within the range of alternatives, corridor refinement studies would assess their location, degree of grade separation and access control, approximate right-of-way requirements, interchange locations, number of lanes, and general operating characteristics. For any heavy rail, light rail, or automated guideway projects among the alternatives, the corridor studies would examine the transit technology, degree of grade separation, station locations, operating characteristics, and general alignment of the facility. The same level of detail would be employed for all alternatives, regardless of their nature. Corridor refinement studies are analogous to highway location studies. Corridor refinement studies are also analogous to transit alternatives analyses, with greater detail used in the specification and assessment of the alternatives. The greater level of detail would yield more reliable estimates of costs and effectiveness than have been developed in past alternative analyses. This would provide greater confidence in the selection of an alternative with which to proceed into preliminary engineering.

Section 450.122 would make it clear that the draft EIS is the document in which the results of corridor refinement studies are to be presented. This procedure is consistent with current environmental requirements and with the joint environmental regulation published by FHWA and UMTA in this same edition of the **Federal Register**. Section 450.122 would also identify the FHWA and UMTA funds that may be used for corridor refinement studies. In the past, highway location studies have been funded by FHWA construction funds while transit alternatives analyses have used UMTA Section 8 funds. In order to support the more detailed analysis undertaken in a corridor refinement study, UMTA recognizes that additional funding may be required. Consequently, this section would implement the provision of the Surface Transportation Assistance Act of 1978 that UMTA Section 3 funds may be used to support detailed alternatives analyses. Specific funding arrangements would be established on a case-by-case basis by Federal, State, and local officials.

The proposed rule would amend § 450.114 to require that the Unified Planning Work Program (UPWP) describe corridor planning activities, regardless of funding source and implementation responsibility. In the past, the UPWP has usually described areawide planning activities, as well as UMTA Section 8 funded alternatives analyses. Highway location studies proposed for FHWA funding were included in the Transportation Improvement Program (TIP) but were not described in the UPWP. Conversely, alternatives analyses proposed for UMTA Section 8 funding were described in the UPWP but not included in the TIP. To ensure full coordination of all planning and project development activities, the FHWA and UMTA propose to require UPWP documentation of all activities leading to preparation of a draft EIS for major

urban transportation investments, regardless of funding sources.

No changes are proposed in § 450.124 on certification of the planning process (except as noted under the heading, "Other Changes"). However, it is important to note that the certification review required by this section encompasses all activities included in Subpart A of the regulations (23 CFR Part 450). Therefore, planning for major investments is explicitly subject to the certification review process, and the review is expected to assess the soundness of all activities leading to preparation of a draft EIS for major investments.

A new appendix has been prepared to provide advisory informaiton on FHWA and UMTA procedures in administration of corridor refinement studies. In the past, major investments have been subject to separate UMTA and FHWA administrative procedures. To support the uniform major investment planning revisions proposed in this dicument, FHWA and UMTA have developed a single set of procedures that are identified in proposed Appendix C to 23 CFR Part 450, Subpart A.

In view of the propsoed changes to the joint planning regulations, UMTA has reevaluated its existing policy statements on major urban investments. Every effort has been made to streamline the relevant policy and procedure statements to minimize duplication with the proposed revisions to the joint planning regulations. As a result, the 1976 Major Urban Mass Transportation Investment Policy (41 FR 41512, September 22, 1976) and the 1978 Policy Toward Rail Transit (43 FR 9428, March 7, 1978) would be superseded. Elements of these policies and procedures that are unique UMTA requirements would be placed in 49 CFR Part 613 as an appendix. The procedural elements are fully compatible with the procedures outlined in the joint FHWA/UMTA environmental regulation. These elements include, for example, the incremental development of propsed new rail transit systems. During the period of this rulemaking, the revised policies and procedures in the proposed appendix will be used as guides.

The 1978 NPRM on Major Urban Transportaiton Investments proposed that Federal support be available only for major urban transportation investments that meet local, State, and national goals and objective in a cost-effective manner. This proposed requirement has been retained in this NPRM by proposed inclusion in 23 CFR 630.106(b) and 49 CFR 613.204.

Finally, FHWA and UMTA wish to ensure a smooth transition to these propsed canges in the ongoing planning and project development efforts. Consequently, those corridors for which a draft EIS has been filed with EPA or will be filed within 90 days of the effective date of the final rule, will not be affected by the revisions proposed in this document. Once issued in final form, the revised regulations will apply, however, to corridors where the draft EIS is supplemented under the FHWA/UMTA environmental process, unless the Administrator of FHWA and/or UMTA determines that it is not necessary. In corridors where a draft EIS is under preparation, FHWA and/or UMTA will work with State and local officials to identify any appropriate actions on a case-by-case basis.

Air Quality

Sections 104, 106, 108, 112, 114, 120, and 122 in Subpart A of Part 450 and sections 304, 312, 316, and 320 in Subpart C of Part 450 contain proposed revisins related to the transportation/air quality planning and programming roles and responsibilities of the MPO. The proposed changes reflect modifications required by the Clean Air Act Amendments of 1977 (Pub. L. 95–95) and a series of agreements reached between the DOT and the EPA as they relate to the urban transportation planning process and Federal review and approval responsibilities. The purpose of these proposed revisions is to identify those actions necessary for the enhanced coordination of the air quality and transportation planning processes.

In a separate actions, FHWA and UMTA are undertaking a major revision to 23 CFR Part 770, Subpart B Air Quality Guidelines. This revision will provide the FHWA/UMTA detailed operating procedures necessary to implement the priority and conformity requirements (Section 176 (c) and (d)) of the Clean Air Act. In anticipation of this change, the revised urban transportation planning regulations would incorporate these requirements by reference in the appropriate sections of Part 450 which are listed above.

In addition, the September 19, 1980, Federal Register invited public comment on the meaning of "basic transportation needs" in the context of Clean Air Act requirements. Proposed federal policy would permit local definition of "basic transportation needs" through existing planning and programing processes.

Transportation System Management

The promulgation of the joint planning regulations in 1975 introduced the concept of transportation system management (TSM) to the urban transportation planning process. (See 23 CFR Part 450, Subpart A, Appendix A.) The TSM concept is generally recognized as a major contributor to satisfying such national goals as energy conservation, air quality, and more efficient use of existing facilities. However, a number of questions and issues have arisen about TSM. Thus, a number of changes are proposed to clarify the intent and scope of TSM and to provide better guidance on how localities might address the requirements. In general, the changes proposed do not affect the substance of the regulations, but rather are intended to provide clarification or to reflect the evolution of the process. Program expectations, however, are more explicitly stated. This proposed change particularly recognizes the national concern for energy conservation in response to Executive Order 12185 on energy conservation (44 FR 75093, December 19, 1979).

Since the original joint regulations were published, a number of questions have arisen regarding the definition of TSM and the distinction between the TSM element and the long range element. To help eliminate this confusion regarding the definition and scope of TSM we propose reverting to the more conventional terms for elements of the plan, i.e., short and long range elements. Comments are invited on whether the proposed changes provide sufficient clarification. It should be noted that these proposals would in no way diminish the importance of TSM; in fact, § 450.116(a) would be revised to include TSM as a key component of the transportation plan. In addition, since TSM pervades the whole process TSM would be included as the first element required in § 450.120(a).

Section 450.116 would also be revised to clarify the purpose of TSM as primarily addressing operational and service issues both short and long range. Changes to paragraph (b) emphasize the synergistic effect possible with systematic applications of TSM actions and highlight the applicability of a problem area-oriented approach to TSM. The phrase "or strategies" would be added to paragraph (c) in order to emphasize that the long-range planning process should be just as sensitive to potential major regulatory policy changes or, in fact, long-term operational measures as is the short range element. This change would also make this paragraph consistent with § 450.120(a)(8) which was recently changed in a similar manner in a rulemaking (45 FR 58022, August 29, 1980) connected with Executive Order 12165 on Energy Conservation. A new

element in § 450.120 is proposed to ensure participation of the many public and private sector agencies critical to successful TSM programs.

Another change proposed at this time regarding TSM is the substitution of Appendix A to 23 CFR Part 450, Subpart A. Appendix A was originally included to provide guidance on the then new regulatory requirements for TSM. While Appendix A does appear to have been successful in conveying the intent and scope of TSM in general, the experience since 1975 has demonstrated that certain changes are needed.

The proposed new Appendix A is intended to replace the current version completely. Therefore, it is designed to stand alone as guidance on the intent, goals, scope and requirements of TSM. The proposed appendix is organized into seven sections covering the goals of FHWA and UMTA in requiring TSM the scope of what TSM includes, roles and responsibilities in addressing TSM requirements, necessary technical activities, documentation requirements, programing, and funding.

The section on goals is intended to lay out clearly the rationale for TSM and its emphasis on system operations and services. New issues facing the planning process and the need for an approach recognizing these new issues are provided.

The scope of TSM is then discussed. The range of tactics available is described. This listing is arranged in a fairly general way and would replace the list in the original appendix. That list has been misinterpreted as a checklist of tactics which every area must assess, one-by-one, and accept or discard based on local conditions.

The proposed list is intended merely to illustrate the kinds of actions which fall into the service and operational improvement categories represented in general by TSM. Also discussed are some issues regarding the definition of TSM, particularly the relationship of short-term/long-term and high-cost/low-cost distinctions to the intent of TSM. The concept of different operating environments (or problem areas) is also introduced.

The section of the proposed appendix on roles and responsibilities recognizes that the MPO has lead responsibility for coordinating all TSM activities. However, the need to include a broad range of actors in the planning process would now be made explicit. This is needed to reflect the range of public and private operating agencies and authorities responsible for implementing TSM actions and programs.

Technical activities to be included in the Unified Planning Work Programs would be described much more explicitly than in the past. However, the list provided is again intended to be illustrative, not a mandatory checklist.

The requirements for documentation of area TSM planning would be clarified in the next section of the appendix. No new documentation would be required for TSM, rather TSM is to be documented in the normal products of the planning process. Much discretion would be left to localities to decide how best to report on TSM activities.

Finally, a section on programing would be added to better describe the kinds of results of TSM planning which would be expected. This section should help localities understand the types of projects which will be emphasized in reviewing implementation efforts in TSM.

Other Changes

On August 9, 1979, the Department requested, through the Federal Register, public comment on citizen participation in transportation planning and an overall Departmental policy (44 FR 46971). A response to these comments has been prepared for publication in the Federal Register, along with a Departmental Policy Statement and Proposed DOT Guidelines on Citizen Participation in Local Transportation Planning. The Federal Register notice will also announce Departmental actions to be taken in support of the Policy Statement. These include: (1) Issuance of guidelines on citizen participation in local planning, by each operating administration, after final Departmental guidelines are issued; (2) revision by operating administrations of their existing regulations, as needed to comply with the Departmental Policy Statement on Citizen Participation in Local Transportation Planning; and (3) implementation by each operating administration of a development project to explore innovative approaches for providing technical and financial assistance to stimulate citizen participation in local planning. It is clear from the comments that there is a need to stress the importance of citizen participation by clarifying the existing provision in § 450.120(a)(3). Further, this existing provision must comply with the new Departmental Policy Statement. Consequently, § 450.120(a)(3) would be modified to emphasize the continuing and meaningful participation of the public, especially minorities and women and other interested persons in the 3C planning process. It should be noted, therefore, that the certification review process is expected to assess citizen participation in the planning process in light of this increased emphasis on continuing and meaningful public participation.

Section 450.106 would be revised to conform to the legislative revision contained in Section 305(b) of the Surface Transportation Assistance Act of 1978. Section 305(b) specifies that after November 7, 1979, designation of MPO's shall be by agreement among the units of general purpose local government and the Governor. This is not intended to mandate new or reaffirmed designation action on the part of local governments or the Governor.

As part of a joint FHWA/UMTA effort to reduce redtape and simplify administrative and technical requirements in small metropolitan areas, FHWA and UMTA issued guidance on August 1, 1980, relating to meeting the minimum requirements of the joint planning and programming regulations for urbanized areas of less than 200,000 population.[1]

The simplification of Federal program requirements has been given a high priority by the Administrators of FHTWA and UMTA and by the Office of the Secretary. The objective in developing the guidance was to: (1) Reduce the burden of Federal planning requirements in all urbanized areas under 200,000 population; (2) reduce the administrative burden on FHWA and UMTA staffs, and (3) aid newly designated urbanized areas in developing a planning process which is adequate to address their unique needs while avoiding excessive detail and wasteful expenditures. Other administrative actions, also not requiring regulatory changes, were outlined in the August 1 guidance memorandum. This guidance will be included as an appendix to the joint planning regulations when they are issued in revised form.

In concert with other administrative efforts to reduce redtape, several sections of the existing regulations would either be modified or eliminated. The requirement for an annual review and evaluation of the transportation planning process in all areas regardless of size and complexity of their programs contained in existing §450.122(a) would be modified. Instead, the review and evaluation would be required at the discretion of the Federal Highway and Urban Mass Transportation

[1] Copies of the relevant document are available from the individuals and offices listed under "For Further Information Contact." This document was also published in the Federal Register on October 23, 1980.

Administrators. It is anticipated that this review and evaluation would be undertaken more frequently in the larger urbanized areas, perhaps annually, than in the smaller urbanized areas, where it may only be done on a 2- to 3-year cycle. Also the level of detail of the review and evaluation would be at the discretion of the Administrators.

Also, the requirement for a prospectus would be eliminated. This change is being proposed to reduce paperwork requirements. Section 450.114 would be modified to require the Unified Planning Work Program (UPWP) to contain a summary of the planning program including a description of the important transportation issues facing the area.

Section 450.108, relating to agreements would be modified to allow the parties to the agreements specified in this section to document their responsibilities and procedures in the UPWP in lieu of a formal agreement. This option would be allowed only if the parties mutually decide that a formal agreement is not necessary. If one of the parties requested a formal agreement, the option would not be applicable. Section 450.108 would also be modified to require copies of the formal agreements to be sent to the FHWA Division Administrator (through the State) and to the UMTA Regional Administrator.

The current joint planning regulations do not specifically address urban goods movement issues, although many sections of 23 CFR Part 450 may be interpreted as allowing urban goods movement planning activities. The FHWA and UMTA issued joint guidance in January 1980 stressing the importance of goods movement considerations in the planning process, and a number of MPO-conducted studies involving these issues have been identified.[2]

Recent technical assistance developed by FHWA consists of two publications: "Urban Transportation for Goods and Services: A Reference Guide," and "Urban Goods Movement," a booklist for local officials.[3] Also, TSM and air quality planning efforts have investigated truck movements within urbanized areas. Because it is clear that these issued directly affect the quality of transportation services in urban areas, the joint planning regulations should specifically address urban goods movement issues. This proposed modification consists of an additional technical activity item under § 450.120(a)(8). This item would provide the framework for urban goods movement planning, emphasizing a problem identification, site-specific approach. The modification would also specifically recognize the need for involvement of the private sector in goods movement planning activities.

In addition to the specific modification to § 450.120(a)(8), the revised "TSM Appendix" would present the movement of goods as an integral part of the planning process. Also, the phrase "persons and goods" is proposed to be used in the description of the short-range and long-range elements of the planning process.

Section 450.120(a)(8) would be modified to give added emphasis to analyzing the economic impacts on existing commercial centers during the systems planning phase of the 3C planning process. This change is in concert with the President's National Urban Policy.

As part of the Department's rulemaking on Section 504 of the Rehabilitation Act (44 FR 31454) several changes were made to these regulations. In 49 CFR Part 613, Subpart B, the section (49 CFR 613.204) describing programing requirements of the transportation for elderly and handicapped persons and an advisory appendix were superseded by the new DOT regulations. Also, it was indicated in that rulemaking that Appendix B to 23 CFR Part 450, Subpart A on transportation for elderly and handicapped persons was to be revised. That revision will be published at a later date.

The provisions of 23 CFR Part 450, Subpart C included in this rulemaking document have been revised to reflect recent amendments to that subpart which were issued in connection with amendments to the Interstate substitution and withdrawal regulations (23 CFR Part 476, Subpart D). These amendments were published by FHWA and UMTA on October 20, 1980 (45 FR 69390).

(Catalog of Federal Domestic Assistance program Numbers 20.205, Highway Research, Planning and Construction: 20.500, Urban Mass Transportation Capital Grants; 20.501, Urban Mass Transportation Capital Improvement Loans; and 20.507, Urban Mass Transportation Capital and Operating Assistance Formula Grants. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to these programs)

Issued on: October 23, 1980.

John S. Hassell, Jr.,
Federal Highway Administrator.

Theodore C. Lutz,
Urban Mass Transportation Administrator.

In consideration of the foregoing, the FHWA and UMTA propose to amend Chapter I of Title 23, Code of Federal Regulations, and Chapter VI of Title 49, Code of Federal Regulations, as set forth below.

1. Part 450, Subpart A of 23 CFR is amended to read as follows:

Title 23—Highways

PART 450—PLANNING ASSISTANCE AND STANDARDS

Subpart A—Urban Transportation Planning

Sec.

450.100 Purpose.
450.102 Applicability.
450.104 Definitions.
450.106 Metropolitan planning organization: Designations.
450.108 Metropolitan planning organization: Agreements.
450.110 Metropolitan planning organization: Geographic scope.
450.112 Metropolitan planning organization: Responsibilities.
450.114 Urban transportation planning process: Planning work programs.
450.116 Urban transportation planning process: Transportation plan.
450.118 Urban transportation planning process: Transportation improvement program.
450.120 Urban transportation planning process: Elements.
450.122 Urban transportation planning process: Major urban transportation investments.
450.124 Urban transportation planning process: Certification.
Appendix A—Advisory information on transportation system management.
Appendix B—Advisory information on planning for elderly and handicapped persons under UMTA and FHWA joint regulations. 23 CFR Part 450, Subparts A and C, 49 CFR Part 613, Subparts A and B.
Appendix C—Procedures for the administration of corridor refinement studies.

Authority: 23 U.S.C. 104(f)(3), 134, and 315; secs. 3, 5, 8 of the Urban Mass Transportation Act of 1964, as amended, (UMT Act) (49 U.S.C. 1602, 1604, and 1607); secs. 110, 172, 174, 176 of the Clean Air Act; and 49 CFR 1.48(b) and 1.151.

Subpart A—Urban Transportation Planning

§ 450.100 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 134, and Sections 5(1) and 8 (a) and (c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1604(1) and 1607 (a) and (c)), which require that each urbanized area, as a condition to the receipt of Federal capital or operating assistance, have a continuing, cooperative, and comprehensive transportation planning process that results in plans and programs consistent with the comprehensively planned development of the urbanized area.

§ 450.102 Applicability.

The provisions of this subpart are applicable to the transportation planning process in urbanized areas. Certification under this subpart shall be a prerequisite for program approvals in urbanized areas pursuant to 23 U.S.C. 105(d) and 134(a), Section 8(a) of the UMT Act (49 U.S.C. 1607(a)), and Subpart C of this part.

§ 450.104 Definitions.

(a) Except as otherwise provided, terms defined in 23 U.S.C. 101(a) are used in this subpart as so defined.

(b) As used in this subpart:

"Cost-effectiveness analysis" of major urban transportation investments means an analysis of the costs of several alternatives and their effectiveness in meeting local, State, and national goals and objectives. In the analysis: (1) Costs are capital, operating, and maintenance expenditures estimated with sufficient detail to distinguish between alternatives; and (2) effectiveness measures assess the degree of attainment of local, State and national transportation, social, economic, and environmental goals. These include, but are not restricted to, mobility, safety, environment, energy, goals related to central city viability, neighborhood preservation, employment, housing and accessibility for minority, elderly and lower income residents, and land use and development.

"Governor" means the Governor of any one of the fifty States, or Puerto Rico, and includes the Mayor of the District of Columbia.

"Major urban transportation investment" means a project that involves new construction or extension of a freeway segment, busway, or fixed guideway transit facility; adding lanes to a freeway segment or busway; or adding tracks to a fixed guideway transit facility. It does not include: (1) Lesser localized improvements to existing freeway, busway, or fixed guideway transportation facilities; (2) safety improvements or resurfacing, restoration, or rehabilitiation of existing facilities; (3) added lanes to short freeway and busway segments (normally less than 1 mile) to alleviate specific, localized traffic flow problems; (4) added segments to fixed guideway transit facilities to provide specific localized improvements to system operations; (5) projects that are part of a demonstration program; and (6) the emergency replacement of facilities damaged or destroyed as a result of a natural disaster or catastrophic failure.

"Metropolitan planning organization (MPO)" means organization designated as being responsible, together with the State, for carrying out the provisions of 23 U.S.C. 134, as provided in 23 U.S.C. 104(f)(3), and capable of meeting the requirements of Sections 3(e)(1), 5(1), and 8(a) and (c) of the UMT Act (49 U.S.C. 1602(e)(1), 1604(1), and 1607(a) and (c)). This organization is the forum for cooperative decisionmaking by principal elected officials of general purpose local government.

"Nonattainment area" means a region as defined in Section 171 of the Clean Air Act.

"State implementation plan (SIP)" means a plan approved or promulgated under Section 110 of the Clean Air Act.

§ 450.106 Metropolitan planning organization: Designations.

(a) Designations of metropolitan planning organizations (MPO's) made after November 7, 1979, shall be made by agreement among the units of a general purpose local government and the Governor. To the extent possible, only one MPO shall be designated for each urbanized area or group of contiguous urbanized areas.

(b) Funds authorized by 23 U.S.C. 104(f) shall be made available by the State to the MPO, as required by 23 U.S.C. 104(f)(3). To the extent possible, the MPO shall be eligible to receive planning funds authorized by Section 8 of the UMT Act of 1964, as amended (49 U.S.C. 1607a).

(c) To the extent possible, the MPO designated shall be established under specific State legislation, State enabling legislation, or by Interstate compact, with authority to carry out metropolitan transportation planning, and should perform the functions required by the Office of Management and Budget (OMB) Circular A-95 "Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects" (41 FR 2052, Jan. 13, 1976).

(d) Principal elected officials of general purpose local government within the jurisdiction of the MPO shall have adequate representation on the MPO.

(e) Nothing herein shall be deemed to prohibit the MPO from utilizing, through contractual agreements, the staff resources of other local agencies to carry out selected elements of the planning process.

(f) An MPO designated under the provisions of this section shall remain designated until another MPO is designated under the provisions of this section.

(g) In nonattainment areas where transportation controls are required, where feasible, the organization designated under Section 174(a) of the Clean Air Act as responsible for the transportation related portion of the SIP shall be the MPO.

§ 450.108 Metropolitan planning organization: Agreements.

(a) The responsibilities for cooperatively carrying out transportation planning and programming shall be clearly identified in an agreement or memorandum of understanding between the State and the MPO.

(b) Where the MPO is different from the A-95 agency, there shall be an agreement between the two organizations which prescribes the means by which their activities will be coordinated, as required by Part IV of OMB Circular A-95. This agreement shall specify how transportation planning and programming will be part of the comprehensively planned development of the urbanized area.

(c) There shall be an agreement between the MPO and publicly owned operators of mass transportation services which specifies cooperative procedures for carrying out transportation planning and programming as required by this subpart.

(d) If the MPO is not designated for air quality planning under Section 174 of the Clean Air Act, there shall be an agreement between the MPO and the designated agency describing their respective roles and responsibilities for air quality related transportation planning.

(e) To the extent possible, there shall be one cooperative agreement containing the understandings required by this section among the State, MPO, publicly owned operators of mass transportation services and, where necessary, the A-95 agency and the agency responsible for air quality planning.

(f) Where parties involved agree, the requirement for an agreement specified in paragraphs (a), (c) and (d) of this section may be satisfied by including the responsibilities and procedures for carrying out a cooperative process in the unified planning work program.

(g) Copies of the agreements specified in paragraphs (a) through (d) of this section shall be sent to FHWA, through the State, and to UMTA.

[2] Copies of the relevant documents are available from the individuals and offices listed under "For Further Information Contact."

[3] Copies of the relevant document are available from the individuals and offices listed under "For Further Information Contact."

§ 450.110 Metropolitan planning organization: Geographic scope.

The transportation planning process shall, as a minimum, cover the urbanized area and the area likely to be urbanized in the period covered by the long-range element of the transportation plan described in § 450.116.

§ 450.112 Metropolitan planning organization: Responsibilities.

(a) The MPO in cooperation with the State, and in cooperation with publicly owned operators of mass transportation services, shall be responsible for carrying out the urban transportation planning process specified in § 450.120 and § 450.122 and shall develop the planning work programs, transportation plan, and transportation improvement program specified in §§ 450.114 through 450.118. The MPO shall be the forum for cooperative decisionmaking by principal elected officials of general purpose local government.

(b) The MPO shall develop or assist in developing the transportation control measures of the SIP in nonattainment areas which require transportation control measures.

(c) The MPO shall annually endorse the plans and programs required by §§ 450.114 through 450.118.

(d) In nonattainment areas which require transportation control measures the MPO shall not endorse any project, program, or plan which does not conform with the SIP.

§ 450.114 Urban transportation planning process: Planning work programs.

The urban transportation planning process shall include the development of a unified planning work program which:

(a) Summarizes the planning program including a discussion of the important transportation issues facing the area;

(b) Describes all urban transportation and transportation-related planning activities, including the corridor refinement activities discussed in § 450.122, anticipated within the area during the next 1- or 2-year period regardless of funding sources;

(c) Describes the transportation-related air quality planning activities anticipated, regardless of funding sources or agencies conducting such activities; and

(d) Documents work to be performed with planning assistance provided under Section 8 of the UMT Act (49 U.S.C. 1607(a)) and 23 U.S.C. 104(f) and 307(c).

§ 450.116 Urban transportation planning process: Transportation plan.

(a) The urban transportation planning process shall include the development of a transportation plan consisting of a short-range element and a long-range element. Transportation system management (TSM), as described in Appendix A to this subpart, shall be a key component of these elements. The transportation plan shall be reviewed annually to confirm its validity and its consistency with current transportation and land use conditions.

(b) The short-range element of the transportation plan shall:

(1) Provide for the transportation needs of persons and goods in the urbanized area by making more efficient use of existing or new facilities and services;

(2) Identify TSM actions such as traffic engineering, ridesharing, pedestrian and bicycle facilities, alternative work schedules, goods movement, high occupancy vehicle treatments, and public transportation improvements (including regulatory, pricing, management, and operational options), that present a systematic approach in addressing problem areas; and

(3) Be reflected in the transportation improvement program.

(c) The long-range element of the transportation plan shall:

(1) Provide for the transportation needs of persons and goods in the urbanized area through capital investments, strategies and policy changes;

(2) Identify new transportation policies, strategies, or facilities or major changes in existing facilities and may be in sufficient detail to identify location and mode to be implemented; and

(3) Fully explore TSM as a policy and investment strategy for the long-range transportation and development plans for the area.

(d) The transportation plan shall be consistent with the area's comprehensive long-range land use plan and urban development objectives, with local, State, and national goals and objectives, and with the area's overall social, civil rights, economic, environmental, system performance, and energy conservation goals and objectives.

§ 450.118 Urban transportation plan process: Transportation improvement program.

(a) The urban transportation planning process shall include development of a transportation improvement program (TIP) including an annual element as prescribed in Subpart C of this part.

(b) The program shall be a staged multiyear program of transportation improvement projects consistent with the transportation plan developed under § 450.116.

§ 450.120 Urban transportation planning process: Elements.

(a) The urban transportation planning process shall:

(1) Provide for the consideration of TSM strategies or actions in all phases of the planning process;

(2) Provide for the consideration of social, economic, and environmental effects, with appropriate emphasis on consideration of transportation-related air quality problems and in support of the requirements of 23 U.S.C. 109(h), and Sections 5(h)(2) and 14 of the UMT Act (49 U.S.C. 1604(h)(2) and 1610), and Section 174(b) of the Clean Air Act;

(3) Include provisions to ensure early and continuing involvement of the public, as actively supported and strongly encouraged by the Departmental Policy Statement on Citizen Participation in Local Transportation Planning. Individuals and groups should have full access to all relevant information. Citizens should be provided such assistance as appropriate to assure meaningful participation in the process. Minorities, women and other interested persons should have an adequate opportunity for full participation in the process and representation on advisory committees;

(4) Be consistent with Title VI of the Civil Rights Act of 1964 and the Title VI assurance executed by each State under 23 U.S.C. 324 and 29 U.S.C. 794, which ensure that no person shall on the grounds of race, color, sex, national origin, or physical handicap be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under any program receiving Federal assistance from the Department of Transportation;

(5) Include special efforts to plan public mass transportation facilities and services that can effectively be utilized by elderly and handicapped persons pursuant to Section 16 of the UMT Act (49 U.S.C. 1612), Section 165(b) of the Federal-Aid Highway Act of 1973, as amended, and 49 CFR Part 27;

(6) Provide for the consideration of energy conservation goals, objectives, and where established, energy conservation targets;

(7) Provide for the involvement of the traffic, ridesharing, parking, and enforcement agencies; airport and port authorities; and appropriate private transportation providers;

(8) Include the following activities as necessary and to the degree appropriate for the size of the metropolitan area and the complexity of its transportation problems:

(i) An analysis of existing conditions of travel, tranportation facilities, vehicle fuel consumption, and systems management;

(ii) An evaluation of alternative TSM improvements and the development of the short-range element of the transportation plan to:

(A) Make more efficient use of existing transportation resources;

(B) Assist in improving air quality;

(C) Reduce energy consumption for transportation overall; and

(D) Respond to short-term disruptions in the energy supply;

(iii) Projections of urban area economic, demographic, and land use activities consistent with urban development goals, and projections of potential transportation demands based on these levels of activity;

(iv) Estimation of the distribution of costs and impacts of transportation alternatives on various segments of the population;

(v) Analysis of alternative transportation investments or strategies to meet areawide needs for transportation facilities and to aid in the development of the long-range element of the transportation plan, such analysis to include estimates of the air quality impacts, impacts on the economic vitality of existing commerical centers and the energy consumption of each alternative;

(vi) Refinement of the transportation plan through the conduct of corridor, transit technology, and staging studies; and sub-area, feasibility, location, legislative, fiscal, functional classification, institutional, air quality impact and energy impact studies;

(vii) Monitoring and reporting of urban development, transportation, and energy consumption indicators and a regular program of reappraisal of the transportation plan implementing programs;

(viii) Implementation programming which merges the results of plan refinement of the long-range element and the improvements recommended in the short-range element of the transportation plan to produce a TIP as specified in Subpart C of this part; and

(ix) An analysis of goods and services movement problem areas, as determined in cooperation with appropriate private sector involvement, including but not limited to port access and traffic impacts of urban goods and services operations.

(b) The urban transportation planning process shall include preparation of technical reports to assure documentation of the development, refinement, and reappraisal of the transportation plan.

§ 450.122 Urban transportation planning process: Major urban transportation investments.

(a) The analysis of alternatives for transportation investments to meet areawide needs for new transportation facilities described by § 450.120(a)(8)(v) shall consider the cost and effectiveness of proposed major urban investments in attaining local, State, and national goals and objectives.

(b) In corridors where a major urban transportation investment is proposed in the long-range element of the urban transportation plan, the corridor studies described in § 450.120(a)(8)(vi) shall further refine the analysis of alternatives at the corridor scale. These studies shall include an evaluation of the cost-effectiveness, the location (i.e., general alignment), the degree of grade separation, and the operating characteristics of the alternatives under consideration. Studies involving transit alternatives shall also include an evaluation technology.

(c) Corridor refinement studies shall serve as the basis for the draft environmental impact statement.

(d) Corridor refinement studies are eligible to receive funds authorized under Sections 3 and 8 of the UMT Act of 1964, as amended, and planning and construction funds apportioned under 23 U.S.C., as appropriate.

§ 450.124 Urban transportation planning process: Certification.

(a) The Federal Highway and Urban Mass Transportation Administrators jointly will review and evaluate as appropriate the transportation planning process in each urbanized area to determine if the process meets the requirements of this subpart.

(b) In nonattainment areas requiring transportation control measures, the FHWA and UMTA Administrators will review and evaluate the transportation planning process to assure conformance with the SIP in accordance with procedures contained in 23 CFR Part 770.

(c) If, upon the review and evaluation conducted under paragraphs (a) and (b) of this section, the FHWA and UMTA Administrators jointly determine that the transportation planning process in an urbanized area meets or substantially meets the requirements of this subpart, they may take one of the following actions, as appropriate:

(1) Certify the transportation planning process; or

(2) Certify the transportation planning process subject to one of the following conditions:

(i) That certain specified corrective actions be taken; or

(ii) That the process is a basis for approval of only those categories of programs or projects that the Administrators may jointly determine and that certain specified corrective actions be taken.

(d) The State and the MPO shall be notified of the actions taken under paragraph (b) of this section.

(e) A certification under paragraph (b) of this section will remain in effect until a new certification determination is made.

Appendix A.—Advisory Information on Transportation System Management Under UMTA and FHWA Joint Regulations, 23 CFR Part 450, Subparts A and C, and 49 CFR Part 613, Subparts A and B

1. *Purpose.* To implement the updated urbanized area planning requirements contained in Title 23 of the United States Code and the Urban Mass Transportation Act of 1964, as amended, UMTA and FHWA have jointly issued revised regulations (23 CFR Part 450 and 49 CFR Part 613). These regulations require that the transportation planning process in each urbanized area develop (1) a plan addressing Transportation System Management (TSM) in both the long and short-range elements and (2) a Transportation Improvement Program (TIP).

This appendix provides additional guidance on the intent and scope of the requirement for Transportation System Management. Criteria that the U.S. Department of Transportation will use in reviewing the adequacy of the TSM activities in planning and programing are also included.

2. *Goals.* Transportation plans and programs are, to an increasing extent, being called upon to address a host of issues, such as energy conservation, air quality, environmental problems and urban revitalization. At the same time, increasing costs of transportation facilities and decreasing fiscal resources make major new investments extremely difficult. These factors have made it increasingly important that transportation resources—facilities, equipment and services—be operated in the most efficient manner possible. It is this need that led to the concept of TSM and its inclusion as a required feature of transportation plans for urbanized areas.

When originally introduced, the TSM concept represented a significant change in the direction of transportation planning and programing. TSM requires the planning process to expand its focus to include assessments of improved *service and operations*, as well as *facilities*, as a potential means to maximize mobility. TSM also requires the process to address both *supply* and *demand*. The TSM concept requires viewing the transporation system as a whole with all modes receiving attention. The philosophy calls for addressing the transportation of people and goods, not merely movement of vehicles.

TSM accounts for more explicitly new factors in transportation decision-making such as energy, environment, air quality, and fiscal limitations. The constraints on mobility must be dealt with if it is to be maintained or

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expanded. In addition, opportunities to enhance mobility exist in urban revitalization efforts that the process should be capable of stimulating.

TSM should be tied to planning required by the Clean Air Act and planning specified by a variety of other statutes covering energy conservation. Consistency in plans undertaken to meet these goals is best developed at the local level.

3. *Scope.* Transportation System Management is a philosophy about planning, programing, implementation and operations that calls for improving the efficiency and effectiveness of the transportation system by improving the operations and/or services provided. TSM aspects of the Transportation Plan address services and operations of the system and identify management and operational changes needed to improve efficiency and effectiveness.

A range of tactics (actions) is available to meet the goals outlined. Examples are:

- Traffic operations improvements
- Ridesharing
- Incentives to use of high occupancy vehicles (such as buses, carpools and vanpools), including preferential parking, reserved lanes, exclusive ramps, etc.
- Pedestrian and bicycle provisions
- Parking management programs, including enforcement, pricing, supply management, zoning changes, permit systems etc.
- Work schedule changes, including flexitime, staggered hours, compressed work weeks
- Goods movement measures
- Pricing actions
- Paratransit services
- Transit route and schedule changes
- Transit management improvements
- Innovative transit services types

In every case, these tactics address the operations or services provided by the transportation system. In addition, some of these tactics can affect transportation demand, as opposed to only supply.

Transportation System Management is applicable to number of operating environments and with a wide range of agencies and groups participating. For example, the central business district (CBD) is a likely site for high occupancy vehicles parking preferences, bus lanes, pedestrian facilities, auto restrictions, etc., while neighborhoods are appropriate for parking permit programs and traffic operational actions discouraging through travel. Further, a radial corridor is an appropriate place for high occupancy vehicle lanes, express bus services and park and ride lots. Each of these actions need the support and coordination of a broad range of agencies and interest groups.

Transportation System Management measures often have synergistic effects. In other words, several tactics applied together may often be more effective as a group than individual actions taken in an uncoordinated manner. Therefore, there should be a systematic approach to TSM planning rather than a piecemeal approach. For example, a package of measures to improve the efficiency of a corridor as a whole should be developed as opposed to only looking at individual problem areas in the corridor in an isolated manner.

Since Transportation System Management actions involve operations and services on existing facilities rather than development of major new facilities, they are generally *low cost*. Certain actions such as high occupancy vehicle incentives or development of transit mall, may involve substantial sums, however.

TSM involves both short and long-term actions. Service and operation changes generally can be implemented more quickly than construction of new facilities and thus can have a short-range focus. However, TSM strategies may also involve *long-term* facility improvements (e.g., dedication of a new facility to high occupancy vehicle use) and have long-term impacts.

4. *Roles and Responsibilities.* A wide range of agencies is likely to participate in addressing TSM considerations in the planning process. While the MPO is primarily responsible for TSM coordination, other agencies, including State DOTs, city traffic departments, public transit operators and enforcement agencies, as well as the private sector, should also be involved. These agencies generally have better knowledge of the operations of specific system elements under their control and can be called on to implement improvements. Private sector involvement in programs such as ridesharing, work schedule changes, goods movement, auto restricted zones, etc., is vital to their success.

The metropolitan planning organization (MPO) has lead responsibility for the coordination of the TSM activities called for by the joint planning regulations. This does not mean, however, that the MPO must conduct all TSM work itself. Rather, local agencies, such as city traffic departments, the State DOT and area public transit operators, should be involved. The decision on which agency should conduct needed analyses should be made locally and should be based on the scale and level of the particular project or problem under study. For example, it is probably most appropriate that operators conduct route and schedule studies and other similar transit management analyses and that local traffic departments undertake signalization studies. In order to support these efforts, MPOs are encouraged to pass Federal planning assistance funds through to such agencies.

Private sector involvement is also important. Employers should be involved in ridesharing or transit-use promotions or in work rescheduling to spread peaks. Also, private providers of mass transit services should be considered for new services, such as paratransit or special user operations. Studies of goods movement management issues, such as truck routes, port access, downtown delivery, etc., should involve the private sector and port authorities.

Ensuring that all likely participants have an appropriate role can be critical to the success of a specific strategy. For example, a downtown parking management program would require participation of a variety of city agencies such as planning and zoning, traffic, and administration. Police involvement early in the planning process would ensure that enforcement is given adequate attention. Downtown businessmen, whose operations might be affected, should be involved. Support from such a group could be critical. The transit operator could suggest key bottlenecks where parking changes could be beneficial. Finally, the MPO can analyze regional impacts and serve to coordinate the overall effort.

5. *Technical Activities.* To adequately address the goals of the requirement for TSM, a number of key technical activities should be undertaken in each urbanized area as part of the continuing planning process.

Each area's Unified Planning Work Program (UPWP) should reflect, to the extent appropriate, the following critical activities:

- System monitoring and data collection, including traffic and auto occupancy counts and transit ridership monitoring and surveys;
- Regional scale problem identification, allowing for selection of areas for detailed study of person and goods movement problems;
- Transit service planning, including reviews of service area, route, schedules, etc., on a continuing basis;
- Transit management analyses, covering maintenance practices, organization, personnel policies, financial planning, training, labor relations, etc.;
- Ridesharing and high occupancy vehicle analyses for HOV lanes, parking management, alternative work schedules, etc.;
- Analysis of signal timing optimization and other traffic engineering measures;
- Coordination of local agency activities to ensure that these will result in a plan that is internally consistent;
- Selective post-project evaluations to determine the effectiveness of implemented projects and areas for modification;
- Energy contingency planning.

UMTA and FHWA will review each area's UPWP closely to ensure that sufficient attention is given to these critical activities.

6. *Documentation.* No new documentation products are required to address TSM. The plans and programing implications of TSM will be documented in the normal products of the urbanized area planning process.

The United Planning Work Program (UPWP) should also include a discussion of goals and objectives; a general description of the process for developing, evaluating, and implementing alternative strategies, including TSM alternatives; and a description of the functional responsibilities of the participants in the process. The UPWP should describe TSM planning to be undertaken during the period it covers, including treatment of the critical technical areas outlined above.

Individual technical reports, such as short-range transit plans or traffic engineering studies, should document the procedures that were used to develop, refine or reappraise TSM aspects of the plan; the evaluation of alternative strategies; and the strategies recommended for implementation.

The transportation plan report(s) should describe TSM aspects, including a brief description of system problem areas and recommend TSM improvements. This documentation should provide local officials with a clear understanding of what is being recommended, e.g., type of improvements, locations, financial aspects, etc.

The Transportation Improvement Program/Annual Element (TIP/AE) should identify implementation costs and schedules, funding sources, and agency responsibilities for TSM projects to be implemented.

The manner in which TSM is documented should not be confused with the need for project justification. Technical information that may be needed for justifying certain types of transit projects should be provided in technical reports on those projects and is not required in the document(s) describing TSM aspects of the transportation plan.

The joint planning regulations require that the plan be reviewed and endorsed periodically. Certification reviews will ensure that TSM is adequately addressed in the plan and that it is updated and endorsed properly.

7. *Programing.* Effective planning for Transportation System Management should result in the programing and implementation of TSM type projects. One measure of the adequacy of the TSM planning effort conducted in an urbanized area is the level of TSM activity found in the area's Transportation improvement program (other measures include past progress in TSM implementation, and most importantly, the overall efficiency of existing system service and operations). While FHWA and UMTA will not prescribe the number of types of projects that must appear in an area's TIP, an adequate level of effort in TSM planning will usually result in programs and projects in the following areas, regardless of the source of funds:

- Ridesharing
- Traffic control signalization
- High occupancy vehicle incentives
- Pedestrian and bicycle facilities

In addition, an adequate level of effort in TSM planning focused on the efficiency of existing services will generally result in the existence, on an ongoing basis, of programs covering transit service monitoring and assessment, transit service adjustments, transit maintenance programing, financial management programs and management and organizational improvement programs. Progress in these activities will receive close attention from UMTA and FHWA.

8. *Funding.* A variety of funding sources are available to support planning and implementation for TSM. UMTA places priority on use of Section 8 technical studies funds for TSM planning as does FHWA on use of PL and HP&R funds. Implementation funds are available from UMTA through the Section 3 discretionary capital grant program and the Section 5 urban mass transportation formula grant program. Federal-aid highway funds may also be used to implement a wide range of TSM-type projects in accordance with normal Federal-aid eligibility requirements. Traffic control signalization projects may be funded at the 100 percent Federal share level.

Appendix B.—Advisory Information on Planning for Elderly and Handicapped Persons Under UMTA and FHWA Joint Regulations, 23 CFR 450, Subparts A and C, and 49 CFR 613, Subparts A and B

1. *Background.* Section 16(a) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1612), declares the national policy that elderly and handicapped persons have the same right as other persons to utilize mass transportation facilities and services; directs that special efforts be made in the planning and design of mass transportation facilities and services so that the availability of mass transportation which elderly and handicapped persons can effectively utilize will be assured; and directs that all federal programs offering assistance in the field of mass transportation contain provisions implementing this policy. Section 165(b) of the Federal-Aid Highway Act of 1973, as amended, contains a similar provision applicable to title 23 mass transportation assistance.

Pursuant to the planning requirements established for urbanized areas in title 23 and the Urban Mass Transportation Act of 1964, as amended, UMTA and FHWA have jointly issued regulations (23 CFR Part 450 and 49 CFR Part 613) that require the urban transportation planning process to include special efforts to plan public mass transportation facilities and services that can effectively be utilized by elderly and handicapped persons. The purpose of this supplementary statement is to provide additional guidance on the special efforts requirement.

2. *General.* Elderly persons and the ambulatory handicapped constitute a significant fraction of present transit ridership. General improvement to transit service can thus be expected to improve conditions for these groups. UMTA's equipment design requirements are meant to ensure that transit equipment is made comfortable and attractive for these users.

Particular care should be directed toward serving the travel needs generated by concentrations of the elderly. The service provided to areas with a high proportion of elderly residents is required to be shown in applications to UMTA for capital or operating assistance.

The focus of this guidance is on service to persons who, because of age or disability, are unable to utilize present transit service and facilities effectively, particularly those who use wheelchairs or other mobility aids which are not accommodated by current bus design. In many communities, persons who use wheelchairs or who otherwise have considerable difficulty negotiating steps find public transportation impossible to use for physical reasons, and private transportation-for-hire (e.g., special taxicab service, medicab, etc.) prohibitively expensive. Specific planning for this group is central to meeting the special efforts requirement.

3. *Consumer representation.* Section 450.120 of the joint planning regulations requires that the planning process include provisions to ensure involvement of the public. Elderly and handicapped persons, including wheelchair users and semiambulatory persons, are a part of the public and should be appropriately involved in the planning process to meet the special efforts requirement. The MPO must describe in what ways such persons, including wheelchair users and semiambulatory persons, were involved in the planning and programming process. Further, it is presumed to be unlikely that effective project development to meet the needs of these users can occur without the assistance and cooperation of such persons, including wheelchair users and semiambulatory persons, and of public and private health and welfare agencies and handicapped consumer groups.

4. *Special efforts, urban transportation planning process.* The urban transportation planning process must include special efforts to plan public mass transportation facilities and service that can effectively be utilized by elderly and handicapped persons. As used in this guidance, the term "special efforts" refers both to service for elderly and handicapped persons in general and specifically to service for wheelchair users and semiambulatory persons. With regard to transportation for wheelchair users and others who cannot negotiate steps, "special efforts" in planning means genuine, good-faith progress in planning service for wheelchair users and semiambulatory handicapped persons that is reasonable by comparison with the service provided to the general public and that meets a significant fraction of the actual transportation needs of such persons within a reasonable time period. Particular attention should be given to those handicapped persons who are employed or for whom the lack of adequate transportation constitutes the major barrier to employment or job training.

In order to fulfill the special efforts requirement in planning it will be necessary to identify the location and transportation needs of wheelchair users and semiambulatory handicapped persons within the urbanized area. To the extent possible this information should be derived from existing and secondary sources. Primary considerations should be given to self-identification techniques, i.e., asking the handicapped to identify themselves and report their transportation needs to the planning body, as opposed to elaborate search techniques.

In carrying out planning for wheelchair users and semiambulatory persons, a range of alternative service improvements should be evaluated as to coverage, cost, and benefit. Maximum feasible opportunity should be given to private carriers, whether or not they are presently providing mass transportation

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services, to provide some or all of the services selected.

Considerable short-term benefit can be derived from the coordination and rationalization of existing resources and services to meet the needs of the elderly and handicapped, including wheelchair users and semiambulatory handicapped persons. Governmental health and welfare agencies and private nonprofit organizations spend substantial sums each year to provide or purchase transportation for their clients, and these resources as well as any reduced fare local taxi service should be considered for inclusion in a local coordinated plan.

Finally, the planning process should produce a discussion of the process under which the alternatives were evaluated and the rationale for selection of the service improvement or improvements.

Appendix C.—Procedures for the Administration of Corridor Refinement Studies

The following procedures will normally apply in FHWA and UMTA administration of corridor refinement studies:

1. When an applicant requests approval for a corridor refinement study, the request will be supported by:

(a) An identification of the corridor(s) in which major transportation investments may be warranted;

(b) A description of a number of reasonable alternative major investments for the corridor(s); and

(c) Evidence that demonstrates that further study of major transportation investments is warranted.

2. As part of the scoping process and as early as possible, FHWA and/or UMTA will reach agreement with the applicant on the following aspects of the study:

(a) A range of reasonable alternatives to be studied including, at a minimum, a no action and TSM alternative;

(b) Procedures to be used to estimate the cost and effectiveness of each alternative;

(c) The evaluation methodology;

(d) The process for citizen involvement; and

(e) The administrative arrangements among the MPO, the State, and the public transit operator(s) for conduct of the study.

3. Federal administrative responsibility for the corridor refinement studies depends primarily upon the range of alternatives to be considered. The administration of the study may involve both FHWA and UMTA as joint lead agencies. A joint lead agency agreement will normally result where:

(a) The range of alternatives include a mix of highways and mass transportation investments;

(b) It is uncertain whether FHWA and UMTA will be requested to fund the investment; or

(c) The FHWA and UMTA Administrators decide to establish joint lead agency agreements.

4. During the joint corridor refinement study, FHWA and UMTA will review and monitor the progress of the study and provide guidance as necessary. FHWA and UMTA will participate in the development of the draft EIS to ensure its compliance with Federal requirements. FHWA and UMTA will process the draft EIS in conformance with FHWA/UMTA environmental regulations.

2. Part 450, Subpart C of 23 CFR is amended to read as follows:

PART 450—PLANNING ASSISTANCE AND STANDARDS

Subpart C—Transportation Improvement Program

Sec.

450.300 Purpose.
450.302 Applicability.
450.304 Definitions.
450.306 Transportation improvement program: General.
450.308 Transportation improvement program: Content.
450.310 Annual element: Project initiation.
450.312 Annual element: Content.
450.314 Annual element: Modification.
450.316 Action required by the metropolitan planning organization.
450.318 Selection of projects for implementation.
450.320 Program approval.

Authority: 23 U.S.C. 105, 134(a), 135(b); secs. 3, 5, 8(c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602, 1604, and 1607(c)); secs. 110, 172, 174, and 176 of the Clean Air Act; and 49 CFR 1.48(b) and 1.51.

Subpart C—Transportation Improvement Program

§ 450.300 Purpose.

The purpose of this subpart is to establish guidelines for the development, content, and processing of a cooperatively developed transportation improvement program in urbanized areas and to prescribe guidelines for the selection by implementing agencies of annual programs of projects to be advanced in urbanized areas.

§ 450.302 Applicability.

(a) This subpart applies to projects in or serving urbanized areas with funds made available under:

(1) 23 U.S.C. 104(b)(6) (urban systems projects);

(2) 23 U.S.C. 104(e)(4) (Interstate substitution projects);

(3) Sections 3 and 5 of the Urban Mass Transportation Act of 1964, as amended (UMT Act) (49 U.S.C. 1602 and 1604—UMTA capital and operating assistance projects);

(4) 23 U.S.C. 104(b)(1) (projects on extensions of primary systems in urbanized areas), except as provided in this subpart;

(5) 23 U.S.C. 104(b)(5) (projects on the Interstate System), except as provided in this subpart.

(b) Projects under paragraphs (a) (4) and (5) of this section, which are included in the highway safety improvement program, may be excluded from the transportation improvement program at the option of the State.

§ 450.304 Definitions.

(a) Except as otherwise provided, terms, defined in 23 U.S.C. 101(a) are used in this subpart as so defined.

(b) As used herein:

"Annual element" means a list of transportation improvement projects proposed for implementation during the first program year.

"Governor" means the Governor of any one of the fifty States, or Puerto Rico, and includes the Mayor of the District of Columbia.

"Highway safety improvement program" means a program prepared by the State pursuant to 23 CFR Part 924.

"Interstate substitution projects" means projects funded under 23 U.S.C. 103(e)(4) (Withdrawal of Interstate segments and substitution of either nonhighway public mass transit projects or highway projects, or both).

"Interstate System projects" means projects funded under 23 U.S.C. 104(b)(5).

"Metropolitan planning organization (MPO)" means that organization designated as being responsible, together with the State, for carrying out the provisions of 23 U.S.C. 134, as provided in 23 U.S.C. 104(f)(3), and capable of meeting the requirements of Sections 3(e)(1), 5(1), and 8(a) and (c) of the UMT Act (49 U.S.C. 1602(e)(1), 1604(1), and 1607(a) and (c)). This organization is the forum for cooperative decision-making by principal elected officials of general purpose local government.

"Nonattainment area" means a region as defined in Section 171 of the Clean Air Act.

"State implementation plan (SIP)" means a plan approved or promulgated under Section 110 of the Clean Air Act.

"Transportation improvement program (TIP)" means a staged multiyear program of transportation improvements including an annual element.

§ 450.306 Transportation improvement program: General.

(a) The transportation improvement program (TIP) shall be developed and updated annually under the direction of the metropolitan planning organization (MPO) in cooperation with:

(1) State and local officials;

(2) Regional and local transit operators;

(3) Recipients authorized under Section 5(b) (2) or (3) of the UMT Act (49 U.S.C. 1604(b) (2) or (3)); and

(4) Other affected transportation and regional planning and implementing agencies.

(b) The TIP shall consist of improvements recommended from the short-range and long-range elements of the transportation plan developed under § 450.116.

(c) The TIP shall cover a period of not less than 3 years, but may at local discretion cover up to 5 or more years.

§ 450.308 Transportation improvement program: Content.

The TIP shall:

(a) Identify transportation improvements recommended for advancement during the program period;

(b) Indicate the area's priorities;

(c) Group improvements of similar urgency and anticipated staging into appropriate staging periods;

(d) Include realistic estimates of total costs and revenues for the program period.

§ 450.310 Annual element: Project initiation.

Federally funded projects shall be initiated for inclusion in the annual element at all stages in the development of the transportation improvement for which program action is proposed. These projects shall be initiated as follows:

(a) Proposed urban system highway projects shall be initiated by local officials in whose jurisdiction the project is located.

(b) Proposed urban system nonhighway public mass transit projects and Interstate substitution nonhighway public mass transit projects shall be initiated by principal elected officials of general purpose local governments in consultation with local operating officials or by local transit operating officials.

(c) Proposed UMTA Section 3 projects (49 U.S.C. 1602) shall be initiated by recipients authorized under Section 5(b)(2) or (3) of the UMT Act (49 U.S.C. 1604(b)(2) or (3)), by local transit operating officials, or by principal elected officials of general purpose local governments in cooperation with local transit operating officials.

(d) Proposed UMTA Section 5 projects (49 U.S.C. 1604) shall be initiated by recipients authorized under Section 5(b)(2) or (3) of the UMT Act (49 U.S.C. 1604(b) (2) or (3)). Nothing in this paragraph is intended to prohibit or discourage the initiation by such recipients of projects recommended by local transit operating officials or by principal elected officials of general purpose local governments in cooperation with local transit operating officials.

(e) Proposed urban extension and Interstate System projects shall be initiated by the State highway agency.

(f) Proposed Interstate substitution highway projects shall be initiated according to the provisions of this section for the Federal-aid system of which they will be a part.

§ 450.312 Annual element: Content.

(a) Except as provided in § 450.302(b), the annual element shall contain:

(1) Projects initiated under § 450.310 and endorsed under § 450.316; and

(2) For informational purposes, all nonfederally funded projects recommended from the transportation systems management element.

(b) With respect to each project under paragraph (a) of this section the annual element shall include:

(1) Sufficient descriptive material (i.e., type of work, termini, length, etc.) to identify the project;

(2) Estimated total cost and the amount of Federal funds proposed to be obligated during the program year;

(3) Proposed source of Federal and non-Federal funds; and

(4) Identification of the recipient and State and local agencies responsible for carrying out the project.

(c) Projects proposed for Federal support that are not considered by the State and MPO to be of appropriate scale for individual inclusion in the annual element may be grouped by functional classification, geographic area, and work type.

(d) The annual element shall be reasonably consistent with the amount of Federal funds expected to be available to the area. Federal funds that have been allocated to the area pursuant to 23 U.S.C. 150 shall be identified.

(e) The total Federal share of projects included in the annual element and proposed for funding under Section 5 of the UMT Act (49 U.S.C. 1604) may not exceed apportioned Section 5 funds available to the urbanized area during the program year.

(f) In nonattainment areas which require transportation control measures, the annual element shall give priority to projects identified in the transportation control portion of the SIP in accordance with procedures contained in 23 CFR Part 770.

§ 450.314 Annual element: Modification.

The annual element may be modified at any time consistent with the procedures established in this subpart for its development.

§ 450.316 Action required by the metropolitan planning organization.

(a) The TIP, including the annual element, shall be endorsed annually by the MPO.

(b) In nonattainment areas which require transportation control measures, the MPO shall not endorse any project or program which does not conform to the SIP.

(c) The MPO shall submit the TIP including the annual element:

(1) To the Governor and the Urban Mass Transportation Administrator, and

(2) Through the State to the Federal Highway Administrator.

§ 450.318 Selection of projects for implementation.

(a) The projects proposed to be implemented with Federal assistance under Sections 3 and 5 of the UMT Act (49 U.S.C. 1602 and 1604) and nonhighway public mass transit projects under 23 U.S.C. 103(e)(4) shall by those contained in the annual element of TIP submitted by the MPO to the Urban Mass Transportation Administrator.

(b) Upon receipt of the TIP, the State shall include in the statewide program of projects required under 23 U.S.C. 105:

(1) Those projects drawn from the annual element and proposed to be implemented with Federal assistance under 23 U.S.C. 104(b)(6) (Federal-aid urban system) in which it concurs: *Provided, however,* That in any case where the State does not coucur in a nonhighway public mass transit project, a statement describing the reasons for the nonconcurrence shall accompany the statewide program of projects; and

(2) Those projects drawn from the annual element and proposed to be implemented with Federal assistance under 23 U.S.C. 104(b)(1) (Federal-aid primary system projects in urbanized areas) and 23 U.S.C. 104(b)(5) (Interstate System projects in urbanized areas); and

(3) Those projects not drawn from the annual element that are proposed to be implemented with Federal assistance under 23 U.S.C. 104(b)(1) (Federal-aid primary system projects in urbanized areas) and 23 U.S.C. 104(b)(5) (projects on the Interstate System): *Provided,* That:

(i) Such project or projects were initiated pursuant to § 450.310(e); and

(ii) Such project or projects are for highway transportation improvements for which there has been a Federal authorization to acquire right-of-way Federal approval of physical construction or implementation where right-of-way acquisition was not previously federally funded.

(c) For each project under paragraph (b)(3) of this section a statement shall

accompany the statewide program of projects which shall:

(1) Include the views of the MPO; and

(2) Indicate how the requirements of 23 U.S.C. 134(a) have been met.

(d) The preparation and endorsement of the TIP and the selection of projects in accordance with this subpart will meet the requirements of 23 U.S.C. 105(d), 23 U.S.C. 134(a), and Section 8(a) of the UMT Act (49 U.S.C. 1607(a)).

(e) The State shall notify the MPO of actions taken under paragraph (b) of this section.

§ 450.320 Program approval.

(a) Upon the determination by the Federal Highway Administrator and the Urban Mass Transportation Administrator that the TIP or portion thereof is in conformance with this subpart and that the area is under planning certification, programs of projects selected for implementation under § 450.318 of this subpart will be considered for approval as follows:

(1) Federal-aid urban system projects included in the statewide program of projects under 23 U.S.C. 105 will be approved by:

(i) The Federal Highway Administrator with respect to highway projects;

(ii) The Urban Mass Transportation Administrator with respect to nonhighway public mass transit projects; and

(iii) The Federal Highway Administrator and the Urban Mass Transportation Administrator jointly in any case where the statewide program of projects submitted pursuant to 23 U.S.C. 105 does not include all Federal-aid urban system nonhighway public mass transit projects contained in the annual element.

(2) Interstate substitution nonhighway public mass transit projects included in the annual element of the TIP will be approved by the Urban Mass Transportation Administrator.

(3) Projects proposed to be implemented under Sections 3 and 5 of the UMT Act (49 U.S.C. 1602 and 1604) included in the annual element of the TIP will be approved by the Urban Mass Transportation Administrator after considering any comments received from the Governor within 30 days of the submittal required by § 450.316(b)(1).

(4) Federal-aid urban extension and Interstate projects included in the statewide program of projects under 23 U.S.C. 105 will be approved by the Federal Highway Administrator.

(b) Approvals by the Federal Highway Administrator or joint approvals by the Federal Highway Administrator and Urban Mass Transportation Administrator will be in accordance with the provisions of this subpart and with 23 CFR Part 630, Subpart A. Approvals granted under this section will constitute:

(1) The approval required under 23 U.S.C. 105; and

(2) A finding that the program is based on a continuing, comprehensive transportation planning process carried on cooperatively by the States and local communities in accordance with the provisions of 23 U.S.C. 134.

(3) In nonattainment areas which require transportation control measures, a finding that the program conforms with the SIP and that a priority has been given to transportation control measures contained in the SIP in accordance with procedures contained in 23 CFR Part 770.

(c) Approvals by the Urban Mass Transportation Administrator will be in accordance with the provisions of this subpart and with other applicable provisions of 49 CFR Part 613, Subpart B. These approvals will constitute:

(1) The approval required under Section 8(a) of the UMT Act (49 U.S.C. 1607(a));

(2) A finding that the projects are based on a continuing, cooperative and comprehensive transportation planning process carried on in accordance with the provisions of Section 8 of the UMT Act (49 U.S.C. 1607), as applicable;

(3) A finding that the projects are needed to carry out a program for a unified or officially coordinated urban transportation system in accordance with the provisions of Sections 5(1) or 8(c) of the UMT Act (49 U.S.C. 1604(1) or 1607(c)), as applicable; and

(4) In nonattainment areas which require transportation control measures, a finding that the program conforms with the SIP and that a priority has been given to transportation control measures contained in the SIP in accordance with procedures in 23 CFR Part 770.

3. In Part 630, Subpart A, 630.106 is amended by redesignating paragraphs (b) and (c) and (c) and (d) respectively, and adding a new paragraph (b) to read as follows:

§ 630.106 Policy.

* * * * *

(b) Federal support is available only for those major urban transportation investment alternatives that meet local, State, and national goals and objectives in a cost-effective manner.

* * * * *

Title 49—Transportation

PART 613—PLANNING ASSISTANCE AND STANDARDS

4. Part 613, Subpart A of 49 CFR is amended by revising the authority statement to read as follows:

Authority: 23 U.S.C. 104(f)(3), 134, and 315; Sections 3, 5, and 8(c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602, 1604, and 1607(c)); secs. 110, 172, 174, and 176 of the Clean Air Act; and 49 CFR 1.48(b) and 1.51.

5. Part 613, Subpart B of 49 CFR is amended to read as follows:

Subpart B—Transportation Improvement Program

Sec.

613.200 Transportation improvement program.
613.202 Additional criteria for Urban Mass Transportation Administrator's approvals under 23 CFR 450.320.
613.204 Additional criteria for Urban Mass Transportation Administrator's approvals under 23 CFR 450.320.
Appendix—Policy and procedures for major urban mass transportation investments.

Authority: 23 U.S.C. 105, 134(a), and 135(b); secs. 3, 5, and 8(c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602, 1604, and 1607(c)); secs. 110, 172, 174, and 176 of the Clean Air Act; and 49 CFR 1.48(b) and 1.51.

Subpart B—Transportation Improvement Program

§ 613.200 Transportation improvement program.

The transportation improvement program regulations establishing guidelines for the development, content, and processing of a cooperatively developed transportation improvement program in urbanized areas and also prescribing guidelines for the selection, by implementing agencies, of annual programs of projects to be advanced in urbanized areas which are set forth in 23 CFR Part 450, Subpart C, are incorporated into this subpart.

§ 613.202 Additional criteria for Urban Mass Transportation Administrator's approvals under 23 CFR 450.320.

(a) This section establishes certain additional criteria to be considered by the Urban Mass Transportation Administrator in his/her program approval pursuant to 23 CFR 450.320(a)(3) for all projects proposed for implementation with Federal assistance under Sections 3 and 5 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602 and 1604), in urbanized areas having a population of 200,000 or more.

(b) The Urban Mass Transportation Administrator will grant program approval for projects under paragraph (a) of this section only after he/she has determined that:

(1) The transportation plan developed pursuant to 23 CFR 450.116 contains TSM strategies and actions which are reflected in the annual element of the transportation improvement program; and

(2) Reasonable progress has been demonstrated in implementing previously programed projects.

§ 613.204 Additional criteria for Urban Mass Transportation Administrator's approvals under 23 CFR 450.320.

The Urban Mass Transportation Administrator will grant project approvals for major urban investments pursuant to 23 CFR 450.320(a)(3) only if he/she determines that the projects meet local, State, and national goals and objectives in a cost-effective manner.

Appendix.—Policy and Procedures for Major Urban Mass Transportation Investments

Since the beginning of the 1970's, the Federal Government has provided an increasing share of the Nation's capital investment in urban mass transportation. In the years ahead, as more and more communities seek Federal Financial aid to improve and expand their mass transportation systems, it is more essential than ever that Federal funds be effectively and efficiently utilized.

Since each metropolitan area has differing characteristics, Federal mass transportation assistance cannot be based on standardized prescriptions. Rather, Federal support should be flexible, relying heavily on local ability to assess present and anticipated transportation needs, identify and evaluate alternative opportunities for improvement, and initiate needed actions.

The Federal Government does, however, have a strong interest in ensuring that Federal funds available for mass transportation investments be used prudently and with maximum effectiveness. While there are no simple or standard procedures that will guarantee this outcome, a careful and systematic evaluation of the implications of alternative courses of action in advance of a Federal commitment should improve the quality of decisions. To this end, a completed corridor refinement study will be required as a conditon of eligibility for Federal assistance for a major mass transportation investment.

A major mass transportation investment is any project which involves new construction or extension of a fixed guideway system (rapid rail, light rail, commuter rail, automated guideway transit) or a busway, except where such projects are part of a demonstration program. Rehabilitation and modernization projects are not included in the scope of this definition.

Rail transit means all forms of rail passenger transportation serving metropolitan areas. It includes "rail rapid transit", "light rail" and "commuter (or regional) rail" technology operating on surface, elevated or sub-surface rights-of-way. The definition excludes busways and "people movers" or other types of automated guideway technology (AGT), although similar rigorous standards are also applicable to those investments.

"Rail Lines" means both extensions to existing metropolitan rail systems and initial segments of new urban or metropolitan rail systems.

I. Increasing the effectiveness of Rail Transit Investments

The Federal Government has a strong obligation to ensure that the Federal assistance dollars are spent prudently and with maximum effectiveness. To this end, UMTA will adhere to the following set of policies which will apply to all rail transit proposals:

1. Any approval for preliminary engineering of a rail transit proposal must be preceded by a federally approved corridor refinement study which considers a full range of modal alternatives such as rapid transit, light rail, busway, people mover and transportation system management (TSM) options, and service and alignment alternatives, as well as a no action alternative. Applicants will be required to show clearly and convincingly the need for partially or fully grade-separated transit service and to demonstrate that the proposed transit solution is, on balance, superior to other options, considering such factors as ridership, capital and operating expenses, transportation service, and social environmental, urban revitalization, and energy conservation objectives.

2. Urban areas will have to demonstrate a compelling need for high-performance transit service in order to obtain Federal assistance for rail rapid transit. The use of partially or fully on surface rights-of-way, may offer a substantially less costly, less disruptive, and more flexible rail transit option, and should be seriously considered, especially in places where extensive underground or elevated construction would otherwise be required.

3. Where the long range element of an areawide plan calls for the construction of an area-wide network or rail lines, UMTA will require that the system be analyzed, approved and built in stages. Initial segments of the system should be proposed in corridors which can justify the need for fixed guideway service within 15 years of the date of the analysis. Each segment should be capable of justification on its own merits. This incremental approach to construction of urban rail transit, is aimed at insuring that the burden of financing the system is spread out in time, that high volume corridors receive priority attention, that benefits of the public investment begin to accrue as soon as possible, that an appropriate balance is maintained between long and short range needs for transportation improvements, and that maximum flexibility is preserved to modify the system in response to advances in technology, changes in growth patterns, and other unforeseen circumstances.

This policy encourages the construction of the most effective segments first and discourages localities from relying on a continued flow of Federal funding to complete unworthy or marginally justified segments of a system.

Each successive segment will normally be subject to a corridor refinement study. Corridors which cannot justify fixed guideway transit service within 15 years of the analysis should be provided with levels and types of service appropriate to their needs, with the level of service being progressively upgraded as demand develops.

4. UMTA will give preference to initial rail segments serving densely populated central portions of metropolitan areas including central cities and close-in suburbs. This policy is designed to target Federal transit investment in areas with the greatest potential payoff, in terms of ridership, relief of congestion, help to transit dependents, energy conservation and air quality improvements.

5. Localities proposing to build rail transit with Federal assistance will be required to commit themselves to the development and implementation of a program of local supportive policies and actions designed to enhance the proposed system's cost-effectiveness, patronage and prospect for economic viability. The Department will require evidence of reasonable progress in carrying out this program of supportive policies as a condition of initial and subsequent construction funding approvals.

The supportive actions shall include the following:

—Zoning policies and development incentives to stimulate high density private real estate development around selected transit stations;
—Land use plans that support or reinforce the developmental impact and shaping influence of the rail transit system;
—Station area improvements in the form of plazas, malls, walkways, open spaces and other pedestrian amenities that might help reverse the physical deterioration of the central business district or revitalize declining residential neighborhoods;
—Coordinated bus and/or paratransit feeder services to the rail system especially in low density surburban areas;
—Adequate parking and other mode transfer facilities at suburban transit stations;
—Pricing, regulatory or traffic control measures aimed at managing the peak-period use of automobiles within rail corridors (e.g., traffic metering, tolls, higher parking fees, elimination of employer-subsidized parking).

6. UMTA will require localities to develop realistic estimates of future operating expenses and to identify and reach a local consensus on the specific means of funding these expenses. In particular, UMTA will require, as a condition of Federal capital assistance, the development of a stable and reliable source of local revenue to cover operating deficits.

7. Full funding contracts will be negotiated with a fixed ceiling on the Federal contribution, subject to a defined method of adjustment for inflation. Localities will be required to complete the project as defined and absorb any additional costs incurred, except under certain specific extraordinary circumstances.

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8. UMTA will strengthen its role in monitoring projects in order to prevent over-design, the introduction of unnecessary embellishments, and the use of untested technologies, subsystems, and components which might adversely affect system performance and future operating and maintenance costs.

II. Procedures for Major Urban Mass Transportation Investments

This section outlines the procedures which UMTA will normally follow in reviewing corridor refinement studies, in implementing the Environmental Impact Statement (EIS) requirement of the National Environmental Policy Act of 1969, and in making funding commitments.

1. The procedures set forth in Appendix C of 23 CFR Part 450, Subpart A are used in the development of alternative major urban mass transportation investments in areawide and corridor refinement studies. They are supplemented by the following procedures.

2. After the end of the circulation period for the draft EIS, the applicant should designate, in a separate document, the locally preferred alternative and state a rationale for the choice. This document should clearly state that any recommendation is solely that of the applicant and that UMTA's judgment is reserved until the environmental process is complete.

3. Upon review of the locally preferred alternative report and the comments received on the draft EIS, UMTA will decide whether the corridor refinement study requirements have been satisfied and whether the locally preferred alternative warrants funds for preliminary engineering. This decision will be based upon an appraisal of the cost-effectiveness of the locally preferred alternative to the other alternatives examined in the analysis. The grant may be for preliminary engineering of the locally preferred alternative as well as other promising alternatives evaluated in the draft EIS.

Preliminary engineering should develop system cost, effectiveness and impact information, with particular attention to alternative designs, operations, detailed locaton decisions and appropriate mitigation measures. The final EIS should be developed during preliminary engineering. No action should be taken which would limit the choice of reasonable alternatives studied in the draft EIS until completion of the circulation of the final EIS.

UMTA may admit projects into preliminary engineering whose combined cost exceeds available Federal authorization levels. This will be done in anticipation of any of several possibilities: The withdrawal of projects as a result of changing local priorities; a local decision to use non-Federal resources to finance more than 20 percent of total cost; enactment of additional authorizations; or changing conditions such as the availability of detailed cost estimates which might lead to a later decision that a particular project should not be federally financed.

4. During the execution of preliminary engineering, the applicant will complete all the steps which must precede a Federal indication of intent to fund the project. These steps include providing evidence of firm commitment of the non-Federal capital share, providing evidence of State and/or local consensus regarding the financing of operating deficits, and planning for and gaining financing of operating deficits, and planning for and gaining financial commitment to necessary supportive actions to promote effective utilization of the proposed fixed guideway system.

A letter of intent may be issued for construction in a specific dollar amount only upon completion of the circulation of the final EIS and review of the capital grant application, the transcript of the public hearing, and the detailed cost estimates emerging from preliminary engineering. The decision to issue such a letter will be based upon a comparison of projects then pending.

5. If UMTA determines that the project warrants Federal support, UMTA will also develop with the locality a full funding contract which will (1) fix the total amount of the Federal contributions, subject to a defined method of adjusting for inflation; (2) include a mutually agreeable schedule for anticipating Federal contributions during the life of the project; and (3) require the locality to complete construction of the project as defined, and to absorb an additional cost incurred, except under certain specific "extraordinary" circumstances.

6. Specific annual contributions under the letter of intent and full funding contract will be subject to the availability of appropriations and the ability of the grant recipient to use the funds effectively. UMTA will limit the sum total of letters of intent to the sum of future Section 3 authorizations, less an amount which is necessary for those portions of the Section 3 program which are not covered by letters of intent.

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Part VIII

Water Resources Council

State Water Management Planning Program; Final Guidelines for Program

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WATER RESOURCES COUNCIL

18 CFR Part 703 and 740

State Water Management Planning Program; Final Guidelines for Program

AGENCY: U.S. Water Resources Council.

ACTION: Final guidelines by rule.

SUMMARY: These guidelines amend rules published July 29, 1970, and amendments thereto published September 3, 1970, and November 29, 1974, 18 CFR 703.1–13. The Code of Federal Regulations is hereby amended by deleting all of part 703 and inserting in lieu thereof a new part 740. These guidelines set forth the requirements for implementing the State Water Management Planning Program (Program). The Program provides for financial assistance for comprehensive water and related land resources management planning to all States, including the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the Virgin Islands. The guidelines are published under the authority of Title III of the Water Resources Planning Act of 1965 (as amended), Pub. L. 89–80 (42 U.S.C. 1962(c)).

EFFECTIVE DATE: These guidelines are effective on October 30, 1980.

FOR FURTHER INFORMATION CONTACT: Denzel L. Fisher, Acting Director, State Programs Division, U.S. Water Resources Council, 2120 L Street, NW., Washington, DC 20037, (202) 254–6446.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 21, 1980, the Acting Director of the U.S. Water Resources Council, Mr. Gerald D. Seinwill, published proposed amendments to the existing rules implementing the State Water Management Planning Program. These rules implemented Title III of the Water Resources Planning Act of 1965 (as amended), Pub. L. 89–80 (42 U.S.C. 1962(c)).

Public hearings were scheduled in San Francisco, CA for August 22, 1980, in Kansas City, MO for August 26, 1980, and in Washington, DC for August 28, 1980. Interested parties were invited to present oral comments at the scheduled hearings or submit written comments to the Water Resources Council no later than 4:30 p.m. EDST, September 5, 1980.

Two States indicated an interest in presenting oral comments at the San Francisco hearings, two States indicated an interest in an oral presentation at the Kansas City hearing, and three States indicated an interest in an oral presentation at the Washington, DC hearing. Considering the interest exhibited in oral presentations and for budgetary purposes, the Council chose to cancel the scheduled hearings for San Francisco and Kansas City in the interest of the Government and the general public. The hearing in Washington, DC was held as scheduled, at which three individuals presented comments on the proposed guidelines.

In addition to the oral presentations, 39 comments were submitted in writing to the Council. The comments, the Council's response to the comments, and the revisions made in the guidelines are indicated below. For clarity, the comments and responses have been arranged according to the section numbers and titles of the proposed and final guidelines to which they pertain.

Section 740.1 Purpose and scope

There were 13 comments received on this section. The major concern expressed in the comments was the inclusion of stated "national objectives" in subsections (c)(2) through (c)(6). While most of these major areas of national concern are acceptable to many States, some comments indicated that it was inappropriate to address these specific areas since they had not been approved by the Congress. Some States also indicated that some of these areas may not have a high priority with respect to their current needs in water resources planning and management. The extent to which States must "address" these areas is further clarified in § 740.4.

In response to the comments received, the purpose of the Act is to provide for the optimum development of the Nation's natural resources through the coordinated planning of water and related land resources. One means of achieving this through the Act is the provision of financial assistance to States to increase their participation in such planning.

Section 2 of the Act declared it to be the policy of the Congress to encourage the conservation, development, and utilization of water and related land resources of the United States on a comprehensive and coordinated basis by the Federal Government, States, localities, and private enterprise with the cooperation of all affected Federal agencies, States, local governments, individuals, corporations, business enterprises, and others concerned.

Further, the President emphasized the role of the States as the focal point for water resources planning and management in his Water Policy Message of June 6, 1978. In that message he proposed to strengthen that role by increasing assistance available to States for the purpose of developing comprehensive water management programs. He further encouraged the development of programs which would emphasize the areas of national concern listed in subsections (c)(2) through (c)(6). Increased State capability in water resources planning and management, coupled with improved cooperation and coordination with Federal, State and local governments should provide the mechanism for States to establish priorities and procedures for implementing water resources programs that will impact regional, interstate and national priorities.

With respect to the above, the key provisions of § 740.1 are considered to be within the scope and intent of Pub. L. 89–80 and the declared policy of the Congress. The scope of the program specifies that State water resources management planning programs address pertinent State goals and objectives as well as specified areas of national concern. This approach allows the flexibility for any State to focus upon critical issues and establish priorities which reflect individual State goals and objectives.

Section 740.2 Definitions

There were 13 comments received in regard to the definitions. The one definition that received most attention was "water conservation." Most comments emphasized that a definition of water conservation should include storage. The current definition, in its broadest sense, does not preclude those activities which would lead to a management decision to develop projects to store water or to develop alternatives which may delay or postpone the need for a storage project. Either course of action may be perceived to be within the traditional interpretation of water conservation.

The given definition of water conservation in the proposed guidelines of July 21, 1980, is considered to be adequately flexible particularly in light of the second part of the definition which states that water conservation means activities designed to "* * * (2) improve efficiency in use and reduce losses and waste of water * * *"

Similarly, the definition of water conservation activities designed to "(1) reduce demand for water * * *" is not all inclusive. It is one aspect of water conservation which may be useful in many circumstances. It is recognized that in some circumstances, this practice may not be appropriate. It remains, however, as a means to conserve water, and is a legitimate and beneficial approach to water conservation.

The third part of the definition, to "(3) improve land management practices to conserve water" was considered by some to be confusing and a weak definition. The use of land and the resultant impact on the use of water is considered to be a significant factor in water resources in most areas of the United States, particularly in light of one State's comments on the qualitative as well as quantitative aspects of water conservation. The emphasis on water conservation in its broadest sense as meaning the most beneficial use of the resource in the most efficient manner is considered to be a logical approach to water conservation and is endorsed by the Council. Again, this part of the definition is not all inclusive and is considered to be a legitimate and beneficial approach to water conservation. The definition as written in the proposed guidelines is considered to encompass these concepts and remains unchanged.

The definition of "State water management planning" was considered by some to be too restrictive with respect to enforcement of regulations, laws or ordinances. Under the existing authority of Title III, the Act specifies that the program is for planning purposes. These guidelines, while adhering to the principle of planning, recognize the need to include management planning in this concept. In regard to this concept, the definition included the development of regulatory and enforcement programs. It does not include the implementation of such programs, however. This is considered to be outside the authority of the Act and has not been included. Therefore, the definition has not been changed. Under pending legislation in Congress to establish a comprehensive State water management program, the enforcement of laws, regulations and ordinances would be considered as eligible.

Other comments received on this section are reflected in minor modifications to the wording of several definitions.

Section 740.3 State Applications

Eight comments were received on State applications. Most were directed toward the requirements that the work plan be developed on the basis of three month intervals. The Council has made the decision to change the requirements to annual reports. Therefore, the requirement to develop the work plan on a quarterly basis has been modified to reflect this change. The work plan, however, may be developed with activities charted on a more frequent basis, even monthly, if a State desires to do so, but the requirement in this section will correspond to the reporting requirement.

One comment requested a clarification of establishing priorities for program elements to be carried out if additional funds become available for redistribution. This subsection has been changed to request that activities, in order of priority, be described for use of additional funds, if available. The activities are to be described in the same manner as those in the scheduled work plan. These activities need not be independent but may supplement or complement those activities described in the proposed work plan.

Some comments suggested that the public involvement section should not require public participation in the development of the application, but only in the planning process. In subsection (c)(6), the Council requests information on the manner in which the general public is involved in the development and modification of the program, i.e., the *process* used by the State in public participation. In development of the application, States are currently required to coordinate through the A–95 process. The Council strongly encourages participation of the general public in *all* phases of the State water management planning process, to the extent practicable.

It was suggested in one comment that the Council provide an estimate of funds to be made available under the program with the application package. Subsection (c)(4) provides for inclusion of any information pertinent to the application and such estimates of funds available to each State will be provided in the application package.

Section 740.4 State Water Management Planning Program

There were 12 comments received on this section. Many comments pointed out the similarity between subsections (a) and (a)(1). The Council agrees with these comments and subsection (a)(1) has been deleted from the final guidelines and the successive subsections numbered accordingly.

Many of the same concerns expressed in reference to section 740.1 were also expressed in reference to subsection (a)(4) and (a)(5), renumbered as (a)(3). Since water conservation was considered as one of five areas of national concern in section 740.1, it has been combined in (a)(3) and is renumbered as section 740.4(a)(3)(v). As expressed previously, these provisions are considered to be within the scope and intent of the Act.

There were several comments which expressed concern over the meaning of the term "address" used in the proposed guidelines. By "address" the Council means that each State must describe existing, ongoing or proposed programs and/or efforts directed toward these major areas of national concern. This does not necessarily mean that each State must include this as a fundable part of the grant program or must be involved in these areas in a "comprehensive" manner as interpreted by the Council. It does mean that the description should include some recognition of the issues at the State level, the relative importance of the issues to the States water resources policy, and the manner in which these issues are being considered by the State.

Other comments were directed toward the meaning of pass-through. Generally, States may pass-through funds to local governments, special districts, regional commissions or other entities in the form of grants for a specific purpose. For example, a State may set aside $50,000 for grants to municipalities, on a competitive basis, to study rehabilitation needs in urban water systems.

Other transfers of funds, such as an interagency agreement with another State agency or a contract with a university to perform specific services would not be considered "pass-through," but usually is considered as a "contractual" or "cooperative agreement" arrangement. These transfers of funds are all considered as acceptable practices in the program, but are not defined as pass-through arrangements.

Section 740.4(a)(5) requests information on the *process* for providing pass-through funds since it is unlikely specific recipients will not be known at the time the application is submitted.

Section 740.5 Review and Approval of State Applications and Programs

Six comments were received, most of which were directed toward the requirements for Council approval of significant revisions to the work plan. This has been changed in the final guidelines to clarify a significant change as an addition or deletion of major activities submitted in the work plan.

It is recognized that the Council should not be concerned with every minor change in State program, and States should have the discretion to revise programs to respond to unforeseen developments. Since budget estimates in the application correspond to major activities, adding or deleting these major activities constitute a "significant change" and requires Council approval.

One comment reflected that the Council should have a deadline for

awarding grants, such as 30 days after the deadline for filing State applications. While the Council agrees that Federal agencies should be prompt in awarding grants, specifying a specific number of days for awarding grants may not guarantee such a deadline can be met. Consideration of applications may sometimes be completed well in advance of the availability of funds. The appropriations for any one fiscal year may not be available until a much later time. Therefore, some flexibility must be maintained in this regard. However, the Council will process requests for financial assistance in the most expeditious manner possible.

Section 740.6 Financial Assistance

There were 15 comments received on this section. Some suggested that the proportional adjustment to the base share be incorporated into the guidelines. The Council agrees and has changed the language to specify that the amount to be allocated on an equal share basis shall not exceed 10 percent of the funds available for grants for any fiscal year.

Some comments suggested that the reciprocal of personal income is not an equitable means of determining need for financial assistance. After examining suggested alternatives in regard to availability of consistently reliable data for both the States and the territories and studying the potential advantages and deficiencies, it was determined that the reciprocal of personal income is an equitable means of measuring "financial need" and has been retained in the final guidelines. The Council will continue to examine alternative means of determining the equitability of all factors in the funding formula and propose changes when considered appropriate.

Section 740.7 Administration of Financial Assistance

Twelve comments were received regarding this section. Most were directed at the proposed requirements to comply with the provisions of Executive Orders 11988 (Floodplain Management), and 11990 (Protection of Wetlands). Most comments questioned the authority of the Council to apply the provisions of a Federal Executive Order to State actions.

The Council recognizes that the Orders' provisions apply only to *Federal* actions. Conducting Federal activities and programs affecting land use, which includes providing grants to State, regional and other entities for water and related land resources planning, is defined as a Federal action subject to these Orders' provisions at Section 1(3) of E.O. 11988, and Section 1(a)(3) of E.O. 11990. This means that the Council must qualify the circumstances under which such assistance can be provided to applicants. It can only approve a grant if the recipient assures the Council that the planning concepts of the Orders are integrated into the planning process supported or assisted by WRC Title III program funds. Since many States are recognized as leaders in national efforts at planning for sound floodplain and wetlands management, the integration of planning concepts such as examination of alternatives and public notification is not considered to place a significant additional burden on the States. These concepts have been included in the assurances section of the application package and have been added as a new § 740.7(b).

Other comments suggested that the requirement for obligating program funds within the grant period may place a restrictive burden on the States, particularly since grant funds are not available at the beginning of the fiscal year. "Grant period" is defined as a 12-month period specified in the grant agreement and does not necessarily begin on October 1 of each year. The starting date is specified in the agreement between the State and the Council and the end of the grant period will be 12 months from that date. The grant period must start during the fiscal year beginning October 1, and will continue for a full 12 months following that date. For example, if a State chooses to begin the grant period on February 1, the grant period will end on January 31 of the following year. The program funds must be obligated within that period and reporting will follow the period specified in the agreement. This allows a full 12 months within which to obligate all program funds.

Some comments stated objections to prohibiting contributions to organizations for the purpose of dues or assessments. Federal Managment Circular 74–4, "Cost Principles Applicable to Grants and Contracts with State and Local Governments" specifies certain costs which are not allowable under grant programs. One such provision is payments to organizations which spend a substantial amount of their time in lobbying efforts. Additionally, contributions, dues or assessments to interstate compacts or commissions paid by grant funds is considered to detract from the State commitment to participate and is not allowed under this section. Special projects by these organizations, specifically outlined in the application and of direct benefit to the applicant, may be funded through the grant program if such payments are over and above the amount contributed as dues or assessments. Under these provisions, this part has remained unchanged.

Several comments reflected the omission of the provision to allow the use of program funds to meet the minimum participation requirements for Level B studies. The final guidelines reflect a recent decision which allows the use of program funds as contributions for Level B studies beginning with FY 1981. Participation in regional water resources planning, such as Level B studies, is recognized as an authorized use of program funds, provided that it is supplemental to minimum required contributions in support of river basin commissions' operating budgets. Accordingly, non-Federal participation can be provided through Title III matched funds or through non-Federal appropriations. Federal funds other than those provided through WRC's regional studies and Title III programs, and non-Federal resources designated to meet cost sharing requirements for other Federal programs may not be used to meet the minimum participation requirement in Level B studies unless specifically authorized by law.

One comment suggested that Federal funds or property should be allowed to be used to match the grant unless it is specifically disallowed by Federal law. The Office of Management and Budget Circular A–102 specifies matching provisions of grant-in-aid programs and is the source of the prohibition against double matching of program funds. However, some Federal laws do include waivers for matching requirements or sources of matching funds in some circumstances. The Federal laws specifying such waivers are the only sources the Council will use. Therefore, the only change in subsection (d) is to clarify the language as suggested by one comment.

Three comments suggested that the non-substitution provisions of subsection (g) would be unenforceable and would not prevent State legislatures from reducing appropriations to State agencies. The Council recognizes the difficulty in enforcing such a provision and that under certain economic conditions or policy changes, budget reductions or reduced appropriations are necessary. However, the purpose of the State water management planning program is to provide program and financial assistance to support the establishment, development or enhancement of comprehensive water management planning programs. Simply

replacing State funds with Federal funds does nothing to enhance existing efforts.

The Council, through its normal monitoring and auditing procedures, will consider such substitutions, when evident, as a demonstration of relative need in water resources management in the determination of available grant funds in subsequent years.

Section 740.8 Reporting

There were 27 comments received on the reporting requirements in this section. Most considered the requirements as excessive in relation to the size of this program. The reports were designed by the Council as a quick reference point on the program status within each State. It is considered as a periodic indicator of accomplishments and/or needs for adjustments.

The Council, however, has carefully considered the comments regarding these requirements and has amended the guidelines to require reports annually. The annual report will include a program status report and a financial status report, which will be due 15 months from the starting date.

In accordance with Treasury Circular 1075, which governs the use of letters of credit, the Council cannot waive the requirements for the Report of Federal Cash Transactions on a quarterly basis. This report consists of Standard Form 272 and will be required 30 working days after the end of each quarter of the grant period, as indicated in the grant agreement. For example, if a State and the Council agree that the grant period begins on April 1, the first quarter of the grant period ends on June 30. The Report of Federal Cash Transactions for the first quarter will be due by July 30. All forms and detailed instructions will be provided by the Council.

Section 740.9 Recordkeeping

One comment indicated that State recordkeeping requirements and procedures should be accepted by the Council. The Office of Management and Budget Circular A–102 prescribes recordkeeping requirements for grants-in-aid to State and local governments. This circular also points out that grantee records and procedures are acceptable if they include the minimum requirements provided in the circular. The Council, therefore, considers this section to be within the scope of OMB Circular A–102 and has not changed the language in the final guidelines.

Section 740.10 Program Review and Assistance

One comment suggested that the annual review should be carried out with flexible evaluation criteria; that each State be reviewed individually; and that the value of onsite visits "as frequently as practicable" is questionable. Another comment indicated that the burden placed on the relatively small Council staff may cause an increase in staff and hoped this would not be the case.

The Council fully intends to maintain flexible criteria for reviewing programs, and will review each State's program on an individual basis. Comparative analyses of programs are useful in some circumstances but will not be the sole criteria for reviewing programs. The need for flexibility has been demonstrated throughout the history of this program and will be maintained.

The site visits in this program will be undertaken as needed and as the resources permit. The Council will carry out its duties and responsibilities in administering this program in the most effective and efficient manner possible and within acceptable staffing and resources levels.

Section 740.11 Federal/State Coordination

Nine comments were received in regard to subsection (b). The comments either questioned the Council's authority to enforce this provision or requested a clarification of "compatible."

The intention of the Council in this section is to encourage the consideration of all related programs within a State. States should consider the impact of Federal programs when implementing State programs and Federal agencies should consider State programs when implementing Federal programs. The Council agrees that the authority does not exist to enforce the provision under the proposed subsection (b) and has deleted that from the final guidelines. The Council, however, encourages such consideration in development of programs at both the State and Federal level and includes that as an objective of the Council's coordination responsibilities under subsection (a).

Section 740.12 Amendments

Three comments were received on procedures for amendments to the program. Two mentioned that State water management agencies should be considered as "appropriate advisory groups" and one suggested that proposed changes should not be placed in effect until the following program year. Amendments to these guidelines will be accomplished through publication of proposed rules in the Federal Register.

To the extent possible, the Council will consult with all States prior to publication. However, the Council relies on smaller groups to provide a rapid response to proposed program changes. The publication of proposed changes in the Federal Register will include an adequate response time prior to final publication. By simultaneously providing proposed changes to all State agencies, response time will be increased.

Under most circumstances, amendments would not be effective until the following grant period. However, there may be instances where the benefits resulting from an amendment necessitate immediate implementation. Specifying the following grant period as the effective date may mean unnecessary delays in program development. Again, the States will have an adequate response time for proposed amendments.

Section 740.13 Supplemental Instructions

Two comments were received in reference to supplemental instructions and both were concerned with the Council issuing substantial changes in the program requirements without the opportunity for prior review by the States.

The Council's use of supplemental instruction are designed to provide clarification of specific administrative requirements, or to deliver additional information pertinent to the final guidelines. The Council will provide prior notification of impending instructions to the extent possible. However, any instructions from the Council may be subject to change should conditions warrant.

Significant changes that are required in the guidelines must go through the proposed rulemaking process and appropriate consultation with advisory groups and review of such proposed changes will be conducted in accordance with section § 740.12.

In accordance with the Council's obligations under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the Council has determined that these guidelines will not constitute a major Federal action having a significant effect on the quality of the human environment, and that an environmental impact statement or assessment is not required. However, in the development and implementation of water resources management programs, States are encouraged to give appropriate consideration to the environmental effects of their proposed actions and to incorporate suitable environmental considerations, to the extent permitted by State law.

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In accordance with Executive Order 12044, entitled "Improving Government Regulations," the Director has determined that these proposed guidelines for the State Water Management Planning Program are significant since it is expected to affect State programs substantially. The Acting Director has further determined that a regulatory analysis is not required for the proposed regulations. The program is not likely to impose gross economic costs of $100 million or more a year; nor is it likely to cause a major increase in costs or prices for individual industries, levels of government, geographic regions or demographic groups. Services under the program will be supportive of the overall objectives of the State Water Management Planning Program as they relate to water resources management planning.

Accordingly, the existing Part 703, Chapter VI of Title 18 of the Code of Federal Regulations is amended as set forth below.

Dated: October 24, 1980.

Gerald D. Seinwill,

Acting Director, U.S. Water Resources Council.

Chapter VI of Title 18, Code of Federal Regulations is amended by deleting all of Part 703 and inserting in lieu thereof a new Part 740 as follows:

PART 703—[Removed]

PART 740—STATE WATER MANAGEMENT PLANNING PROGRAM

Sec.

740.1 Purpose and scope.
740.2 Definitions.
740.3 State applications.
740.4 State water management planning program.
740.5 Review and approval of State applications and programs.
740.6 Financial assistance.
740.7 Administration of financial assistance.
740.8 Reporting.
740.9 Recordkeeping.
740.10 Program review and assistance.
740.11 Federal/State coordination.
740.12 Amendments.
740.13 Supplemental instructions.

Authority: Water Resources Planning Act of 1965 (as amended), Pub. L. 89–80, 79 Stat. 244, 42 U.S.C. 1962c; Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224, 92 Stat. 3, 41 U.S.C. 501 *et seq.*; E.O. 12044, 43 FR 12660.

§ 740.1 Purpose and scope.

(a) In recognition of the role of the States as the focal point for the management of water and related land resources, this part establishes guidelines for financial and program assistance to States for water management planning programs which address each State's particular needs, which are based on established State goals and objectives, and which take into consideration national goals and objectives.

(b) The purpose of the State Water Management Planning Program (Program) is to provide financial and program assistance to participating States to support the development and modification of comprehensive water management planning programs.

(c) Funds made available under this part shall be used to establish, develop or enhance existing or proposed State water resources management and planning programs that are designed to address pertinent State and national goals and objectives, as well as the goals and objectives of Title III of the Water Resources Planning Act (Act), Pub. L. 89–80, as amended, by addressing in the Program the following—

(1) Coordination of the program authorized by the Act and those related programs of other Federal agencies;

(2) Integration of water conservation with State water management planning;

(3) Integration of water quantity and water quality planning;

(4) Integration of ground and surface water planning;

(5) Planning for protection and management of groundwater supplies;

(6) Planning for protection and management of instream values; and

(7) Enhanced cooperation and coordination between Federal, regional State and local governmental entities involved in water and related land resources planning and management.

§ 740.2 Definitions.

"Act" means the Water Resources Planning Act (as amended), Pub. L. 89–80, 42 U.S.C. 1962 *et seq.*

"Activities" means a series of actions and operations which address the water management problems of the State and have a specific purpose or objective. Activities are further characterized by one or more major tasks and milestones.

"Affected interests" means public and private organizations, local, tribal, State and Federal goverarments that may be potentially affected by the State water management planning program.

"Application" means a document submitted by a Governor or designee for consideration by the Council for a grant.

"Council" means the Water Resources Council established by Section 101 of the Act.

"Designated agency" means an entity of a State designated by the Governor to act as the grant recipient and to act as liaison with the Council for this Program.

"Fiscal year" means a 12-month period ending on September 30, unless otherwise specified.

"Governor" means the chief executive officer of a State, including the Mayor of the District of Columbia.

"Grant agreement" means a document executed by the authorized official of the Water Resources Council and by the authorized representative of the State agency designated as the grant recipient containing the agreed terms and conditions of the approved grant offer and award.

"Grant period" means a 12-month period specified in the grant agreement, which shall begin during the fiscal year as defined above, during which program funds are authorized to be expended, obligated, or firmly committed by the grantee for the purposes specified in the Act, in the grant agreement and in these guidelines.

"Land area of a State" means the land and inland water area of a State as defined and set forth in the publication "Boundaries of the United States and the Several States" Geological Survey Professional Paper 909, U.S. Government Printing Office, Washington, DC issued in 1976, or revisions thereof.

"Local government" means a local unit of government including a county municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments, sponsor group representative organization (as defined in 7 CFR 620.2, 40 FR 12472, March 19, 1975) and other regional or interstate government entity; or any agency or instrumentality of a local government exclusive of institutions of higher education and hospitals.

"Milestones" mean key events in the activity implementation schedule. Milestones indicate important dates for design implementation and monitoring tasks. Examples of milestones include but are not limited to hiring of key staff, publication dates, workshop dates, or the completion of specific phases of the implementation schedule.

"Obligation" means orders placed, contracts awarded, grants issued, services received and similar transactions during a given period that require the disbursement of money.

"Per capita income of a State" means the most recent year of official U.S. Department of Commerce per capita income figures for the State.

"Program period" means the period beginning on October 1, 1980, and extending through the authorized life of the Program.

"Program funds" means grant funds provided under the Act, non-Federal funds and the value of in-kind contributions used for matching purposes.

"Population of a State" means the latest official resident population estimate by the U.S. Department of Commerce available on or before January 1, of the year preceding the fiscal year for which funds under this part are appropriated.

"Related land resources" means any land affected by present or projected management practices causing significant effects on the quantity or quality of the water resource.

"State" means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or the Commonwealth of the Northern Mariana Islands.

"State water management planning" means those activities necessary to effect coordinated decisions for the use of water and related resources within a State or interstate region; which provide for the correction or prevention, respectively, of present and future water and related land resources problems; which consider the potential for water and related land resources use from the standpoint of present and future needs; and which provide for involvement of affected interests. Water management planning activities may include, but are not limited to, planning, data collection and analysis, studies and investigations, program design and coordination, development of regulation and enforcement programs, information dissemination, public meetings, and the coordination of the program with other related programs.

"Task" means a specific action or operation which comprises a part of the implementation effort for an activity.

"Water conservation" means activities designed to (1) reduce the demand for water, (2) improve efficiency in use and reduce losses and waste of water, or (3) improve land management practices to conserve water.

"Water management planning need" is defined as the basis for establishing criteria for assessing each State's need for assistance under the Program.

"Work Plan" means a document listing the major program elements to be performed under the program during each grant period which presents, in chronological order, the major activities and tasks in the program element; which targets major milestones or proposed accomplishments by activity, cost and date; and which will be used in preparing reports to reflect accomplishment of goals and objectives under the participating State's comprehensive program.

§ 740.3 State applications.

(a) The Council shall invite the Governor of each State to submit a State application.

(b) To be eligible for financial assistance under this part, a State shall submit to the Council an original and two copies of a State application executed by the Governor or designee. The State application shall be submitted not later than 90 days from the date of the Council's invitation.

(c) The program application package shall consist of—

(1) The forms and instructions for completing the application;

(2) The criteria to be used by the Council in assessing need for water management planning funds;

(3) Information on the applicable Federal requirements for administering the program; and

(4) Other information pertinent to the application.

(d) A State application shall contain—

(1) The name and address of the designated State agency;

(2) A description of the comprehensive State water management planning program, or modifications thereto, as required by § 740.4(a);

(3) A work plan of the major program activities of the State water management planning program which targets milestones on a semi-annual basis;

(4) A budget and corresponding narrative in accordance with the forms and instructions provided by the Council;

(5) A notice of concurrence by the State clearinghouse in accordance with the Office of Management and Budget (OMB) Circular A–95;

(6) The manner in which the general public is involved in the development and modification of the State program; and

(7) A brief description of activities, in order of priority, which would be carried out if additional funds were made available during the grant period under the provisions of § 740.6(e). This may include supplementing or complementing ongoing activities described in (d)(3) above.

(e) The Governor or designee may request an extension to the submission date by submitting a written request to the Council not less than 30 days prior to the date referred to in paragraph (b) of this section. The extension shall be granted only if, in the Council's judgment, acceptable and substantial justification is shown and the extension would further the objectives of the Act. An extension shall not be granted for more than 30 days.

§ 740.4 State water management planning program.

(a) A State shall submit a description of its proposed State program with the State application, which shall—

(1) Describe water and related land resources problems, needs and opportunities, and the priorities proposed for their resolution;

(2) Specify the goals and objectives which reflect the water resources policy of the State and which address the major problems which are of concern to the State;

(3) Describe the major elements of the State water management program, which should address but not be limited to—

(i) The integration of water quantity and water quality planning and management;

(ii) The protection and management of instream values;

(iii) The protection and management of groundwater supplies;

(iv) The integration of ground and surface water planning and management; and

(v) Water conservation.

(4) Identify Federal, State, or local government, or public or private organizations that will participate and a general description of how they are involved in the managment planning process;

(5) If provisions are made for pass-through of funds, describe the *process* by which recipients will be selected, and the purpose of the pass-through; and

(6) List existing or proposed administrative, legal and/or institutional arrangements to be used in coordinating intrastate, interstate and regional water resources planning activities involving State, local and/or the Federal Government with the proposed water management planning program of the State to assure that all such activities are considered in program implementation.

§ 740.5 Review and approval of State applications and programs.

(a) The Council shall review and approve each State application for financial assistance if it is determined that—

(1) The State water management planning program meets the objectives of the Act;

(2) The State application and the State water management planning program meet the requirements of this part; and

(3) Progress on the previous grant period's work plan is satisfactory, based on the requirements set forth by the Council.

(b) Based on the review of the application, the Council shall determine

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the amount of funds to be made available pursuant to § 740.6 and shall notify the designated agency in each participating State of the grant award as soon as possible after funds are apportioned for Council use.

(c) If an application is not approved by the Council, it shall be returned by registered mail with a full explanation of the reasons for that determination. The State shall then be allowed the opportunity to submit a revised application within 30 days after receipt by the State of such notification. Should the State determine that further review is required by the State clearinghouse under OMB Circular A–95, an additional 30 days will be allowed.

(d) If the grant amount requested by a State differs from the grant amount offered by the Council, the Council will request the designated State agency to submit a revised budget and work plan with the acceptance of the grant offer.

(e) The State, upon acceptance of the terms and conditions of the notice of grant award, as presented by the Council, will be granted financial assistance in the amount of the approved final budget.

(f) The work plan for the State water management planning program may be revised at any time by submitting revisions to the work plan and budget to the Council for approval in connection with any proposed significant change (an addition or deletion of major activities specified in the approved work plan) with appropriate provision for A–95 State clearinghouse review. The Council will review the proposed revision and notify the State of its decision no later than 30 days from the date of receipt of the request.

§ 740.6 Financial assistance.

(a) The Council shall provide financial assistance from funds available for each fiscal year to each State having an approved application pursuant to § 740.5.

(b) Within the provisions prescribed by paragraphs (c) and (d) of this section, the Council may grant up to 50 percent of the cost for a State program.

(c) The funds appropriated pursuant to the Act for the fiscal year shall be allocated among the participating States as follows, except that under paragraphs (d)(2) through (d)(4) no State shall be granted a greater or lesser sum of funds which shall be based upon a procedure in which each of the factors of population, land area, and the reciprocal of per capital income, are adjusted such that—

(1) Those States having observations two standard deviations below the mean of each respective factor are equated to the mean-minus-two standard deviations, and

(2) Those States having observations two standard deviations above the mean of each respective factor are equated to the mean-plus-two standard deviations.

(d) Financial assistance for the Program shall be allocated among the participating States from funds available for any fiscal year based on the following formula—

(1) An equal share not to exceed $100,000, the total of which shares shall not exceed 10 percent of the funds available for any fiscal year;

(2) One-third of the remaining balance of the funds after accounting for (1) above in the ratio that the population of each State bears to the population of all States;

(3) One-third of the remaining balance of the funds after accounting for (1) and (2) above in the ratio that the land area of each State bears to the land area of all the States;

(4) One-third of the remaining balance of funds after accounting for (1), (2), and (3) above in the ratio that the reciprocal of all per capital income of a State bears to the sum of the reciprocals for all States; and

(5) The remainder of the funds according to the need for water management planning in each State as expressed by the State and assessed by the Council. In assessing need for water management, the Council shall utilize established criteria, the proposed program, and information made available during program review.

(e) Redistribution of grant funds may occur—

(1) If a State fails to apply for a grant within the period specified in § 740.3, or is unable to match the total allocation reserved under § 740.6(d) for that State, that portion of the reserved allocation will be withdrawn by the Council;

(2) If a State fails to obligate Federal funds within the grant period of the approved or amended grant agreement as prescribed in § 740.7(c), such funds shall be returned to the Council not later than 30 days after submission of the Financial Statement for the grant period unless the Council, based on written request, grants an exception or extension to this time limitation;

(3) Funds available under paragraph (l) of this section shall be available for redistribution to those States requesting additional funds pursuant to § 740.3(d)(7). These funds shall be distributed on the basis of proposals in the application, and the relationship of the State's original allocation to the original allocation of other States requesting redistribution funds; and

(4) Funds available under paragraph (l)(2) of this section shall be added to funds available for distribution for the next fiscal year, if the appropriation legislation for the current year allows such action.

§ 740.7 Administration of financial assistance.

(a) Grants under this part shall comply with the requirements of—

(1) Office of Management and Budget (OMB) Circular A–102, Revised, (34 CFR Part 256), entitled "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments;"

(2) Federal Management Circular (FMC) 74–4 (34 CFR Part 255), entitled "Cost Principles Applicable to Grants and Contracts with State and Local Governments;"

(3) OMB Circular A–73 (34 CFR Part 251), entitled "Audit of Federal Operations and Programs;"

(4) OMB Circular A–95, entitled "Evaluation, Review and Coordination of Federal and Federally assisted Programs and Projects;"

(5) Treasury Circular (TC) 1075, entitled "Regulations Governing Withdrawals of Cash from the Treasury for Advances under Federal Grants and other Programs;"

(6) TC 1082, entitled, "Notification to States of Grants-in-Aid Information"; and

(7) Other procedures which the Council may from time to time prescribe for the administration of financial assistance.

(b) The planning process as required by these guidelines and assisted by WRC Title III program funds shall reflect the concepts of the Council's 1979 publication, *A Unified National Program for Floodplain Management*, and the concepts of floodplain and wetlands identification, avoidance and mitigation as described in the Council's *Floodplain Management Guidelines* (43 FR 6030). In the application for financial assistance, the State shall assure the Council that the following planning concepts have been or will be integrated into the planning process:

(1) Determination of whether proposed activities would be located in floodplains or wetlands, or, even if located outside of them, would have the potential to affect floodplains or wetlands;

(2) Avoidance of performing activities within floodplains or wetlands wherever there is a practicable alternative;

(3) Where avoidance of floodplains cannot be achieved, minimization of adverse impacts and support of floodplain development, and preservation and restoration of natural and beneficial floodplain values; and

(4) Where avoidance of wetlands cannot be achieved, minimization of adverse impacts and support of new construction in wetlands, and preservation and enhancement of natural and beneficial wetlands values.

(c) Program funds must be obligated within the grant period unless the Council, based on written request, grants an exception or extension to this time limitation. The repeated occurrence of unobligated program funds at the end of the grant period will be considered in determining the need for assistance in subsequent years pursuant to § 740.6(d)(5).

(d) The procurement standards, practices, rules and policies of the State as customarily applied, if in accordance with Attachment O of OMB Circular A–102, shall govern for procurement costs incurred in an approved program.

(e) For all matching funds the sources of a State's cost share shall have no bearing on whether or not such costs can be matched by Federal funds except that—

(1) Other Federal funds or property cannot be used for matching purposes unless specifically permitted by Federal law;

(2) Program funds shall not be used to match Federal funds under any other federally aided program;

(3) Non-Federal funds used to match other federally aided programs shall not be used to match funds provided under the Act; and

(4) Federal funds provided through this program, if duly matched through the requirements of this part, may be used as non-Federal contributions for Level B studies beginning in Fiscal Year 1981.

(f) Any cost incurred for water management planning may be employed for matching a grant awarded under the Act except as specified in this section. Such expenditures must be reasonable, documentable, and directly applicable to the approved program.

(g) Program funds may not be used for—

(1) Items whose costs are not allowable under the provision of FMC 74–4;

(2) Contributions, dues or assessments to support headquarters offices of interstate commissions, compacts, councils, interagency committees, or other similar organizations;

(3) Scholarly or scientific investigations for purposes other than addressing water management problems, needs, concerns or interests specifically identified and explained in the approved program as a priority consideration;

(4) Construction, payment of subsidies, or purchase of land or easements;

(5) Purchase of equipment with a unit cost of $1,500 or more without prior approval of the Council; and

(6) Purchase of equipment with a unit cost of less than $1,500 when the cumulative cost of such equipment in any one grant period exceeds 1 percent of the grant award, without prior approval of the Council.

(h) Federal funds may not be used to substitute for State and local funds that would have been made available for water management planning programs in the absence of the grant funds provided under this part. Federal funds may be used to supplement and complement existing water management planning programs. It does not prevent drawing matching shares from individual programs or from existing agency appropriations, budgets, or resources so long as expenditures are not substituted by Federal funds for the purposes of the Act.

(i) Payments shall be made in accordance with Attachment J of OMB Circular A–102 and TC 1075. Grant funds shall be requested only on an as needed basis.

(j) Financial management procedures shall comply with Attachment G of OMB Circular A–102 and with TC 1075. The applicable Federal requirements shall apply to the State and to local governments or non-governmental entities that receive funds as a sub-grantee for the purposes of the Act.

§ 740.8 Reporting.

(a) The designated agency shall submit program status reports and financial statements in accordance with procedures established by the Council. Instructions and a description of the content of these reports and the appropriate forms will be provided by the Council and will be in accordance with Attachments H, I and K of OMB Circular A–102 and TC 1075.

(b) The annual program report shall be due 90 days after the end of the grant period, as specified in the grant agreement, and shall contain—

(1) A summary description of the major accomplishments and results of the water management planning activities for the year, and an explanation of any work proposed in the work plan that has not been completed;

(2) An updated activity milestone chart, for each major activity in the work plan, showing the completion dates of major tasks;

(3) For those States implementing an evaluation system, a summary of the results of the evaluation efforts on the overall program effectiveness and key water management activities;

(4) A list of publications, public information materials, and other documents prepared in whole or in part with program funds which must duly note the use of Council grant funds in the printing of these documents;

(5) Other pertinent information, including any specific need for assistance; and

(6) An annual Financial Status Report.

(c) The Report of Federal Cash Transactions, as required under the provisions of Treasury Circular 1075, is due 30 days after the end of each quarter of the grant period, as specified in the grant agreement.

§ 740.9 Recordkeeping.

Each State or other entity within a State receiving financial assistance under this part shall make and retain records required by the Council, including records which fully disclose the amount and disposition of financial assistance received; the cost of administration; the total cost of all activities for which assistance is given or used; and any data and information which the Council determines are necessary to protect the interests of the United States and to facilitate an effective financial audit and performance evaluation. The Council and the Comptroller General of the United States shall have access to any books, documents, records or receipts which the Council determines are relevant or pertinent, either directly or indirectly, to any financial assistance provided under this part. Such records shall be retained for a period of three years, which starts from the date of the submission of the annual financial status report for the grant period.

§ 740.10 Program review and assistance.

(a) Each State's program will be reviewed annually by the Council to evaluate program management and accomplishments relative to the approved work plan. The Council shall—

(1) Review progam information including the application, annual reports, and other relevant information; and

(2) Make onsite visits as frequently as practicable to review the State program to—

(i) Provide assistance in the administration of the program, and at the request of the State, specific technical assistance in water resources management;

(ii) Determine whether Council policies, procedures or guidelines need revision to more effectively administer the grant; and

(iii) Gather information on practical or innovative techniques, methodologies, or other relevant information on the program.

(b) Based on the Council's annual review of each State program, the following may occur—

(1) If the program conforms to the requirements of the Act, the State will be advised of its continued eligibility for a grant;

(2) If it appears that the program does not comply with the requirements of the Act in either design or administration, the Council shall ascertain all the relevant facts. The State shall be notified immediately of the apparent inadequacies of the program with citation of specific requirements of the Act, this part, or other relevant instructions which apparently have not been met. The State shall be given timely opportunity to be heard through the filing of written statements and personal presentations in support of their position. If the Council is satisfied that sufficient adjustments have been made in the design and operation of the program, payments to the State will be continued; and

(3) If the Council determines on the basis of all the facts that the program still does not meet the requirements of the Act, the Governor shall be notified of the decision and the reasons therefore, and that no further payments shall be made until the noted inadequacies are satisfactorily resolved.

§ 740.11 Federal/State coordination.

The Council will coordinate the program under this part with similar or related programs of other Federal agencies in an effort to achieve consistency and compatibility in the administration of Federal programs.

§ 740.12 Amendments.

The Council may amend all or portions of these guidelines in accordance with established procedures. If it does, it will—

(a) Consult with appropriate advisory groups;

(b) Publish such proposed rulemaking in the **Federal Register**; and

(c) Simultaneously provide a copy of such proposed changes to each designated agency.

§ 740.13 Supplemental instructions.

As deemed appropriate, the Council may amplify the guidelines in this part by means of supplemental instructions, and may clarify program or administrative requirements set forth in these guidelines by the means of policy bulletins.

[FR Doc. 80-33707 Filed 10-29-80; 8:45 am]

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federal register

Thursday
October 30, 1980

Part IX

Department of Transportation

Federal Aviation Administration

FAA Access to Flight Data Recorder and Cockpit Voice Recorder Tapes; Extension of Comment Period

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 20661; Notice No. 80-14A]

FAA Access to Flight Data Recorder and Cockpit Voice Recorder Tapes; Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of extension of comment period.

SUMMARY: This notice extends the period for submission of public comments relating to Notice 80-14 (45 FR 57694; August 28, 1980) until November 26, 1980. Notice 80-14 contains proposals which will allow the Administrator to obtain flight data recorder information and cockpit voice recorder information at any time and at any place. This notice is based on a petition for extension from the Aerospace Industries Association of America, Inc. (AIA). The FAA has determined that it is in the public interest to extend the comment period to encourage submitters to undertake a thorough review of these proposals.

DATES: Comments must be received on or before November 26, 1980.

ADDRESS: Comments on Notice 80-14 may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 20661, 800 Independence Avenue, SW., Washington, D.C. 20591. All comments must be marked "Docket No. 20661." Comments may be inspected at Room 916 between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Norman C. Miller, Regulatory Projects Branch (AVS-24); Safety Regulations Staff, Associate Administrator for Aviation standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 755-8716.

SUPPLEMENTARY INFORMATION: Notice 80-14 was issued on August 25, 1980, and published in the **Federal Register** on August 28, 1980 (45 FR 57694). The notice proposes to allow the Administrator to obtain flight data recorder and cockpit voice recorder information at any time and at any place. This information will be used to study the human factor element associated with aircraft operation and design to determine what, if any, regulatory changes should be made to enhance aviation safety. The proposals contained in the notice will not in any way change the Administrator's policy regarding use of information derived from flight data recorders and cockpit voice recorders in enforcement proceedings. The present comment period closes October 27, 1980. The AIA requested a 60-day extension of the comment period to allow their Human Factors Group to develop comments and proposals. The FAA recognizes the importance of human factors requirements in aircraft operation and design. In view of the 60-day comment period provided for in the original notice and the fact that the AIA study group was formed prior to October 10, 1980, the FAA believes an extension of 30 days is adequate. Accordingly, the comment period for Notice 80-14 is extended until November 26, 1980.

The FAA would also like to take this opportunity to clarify the question of cost burden on the air carriers. It is the agency's intention to assume the costs reasonably related to this program if it is undertaken. The details of this effort will be detailed in an agency order should this proposal become final.

(Secs. 313(a), 601, and 604, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1424); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR Part 11)

Issued in Washington, D.C., on October 24, 1980.

Langhorne Bond,

Administrator.

[FR Doc. 80-33841 Filed 10-29-80; 8:45 am]

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federal register

Thursday
October 30, 1980

Part X

Department of Transportation

Federal Aviation Administration

Airworthiness Standards; Aircraft and Products Design and Procedural Standards for Type Certificates, Type Certificate Amendments, and Supplemental Type Certificates; Public Hearing and Extension of Comment Period

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 39, and 91

[Docket No. 20660; Notice 80-13A]

Airworthiness Standards; Aircraft and Products Design and Procedural Standards for Type Certificates, Type Certificate Amendments, and Supplemental Type Certificates; Public Hearing and Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public hearing and extension of comment period.

SUMMARY: This notice announces a public hearing for the purpose of affording interested persons the opportunity to present their positions relating to Notice of Proposed Rulemaking (NPRM) No. 80-13 (45 FR 57688; August 28, 1980), which would amend certain certification procedures regulations applicable to the type design approval of aircraft, aircraft engines, and propellers. As a result of numerous requests for extension of the comment period, as well as for a public hearing, the comment deadline is extended and a public hearing is scheduled.

DATES: Public Hearing: Wednesday, November 12, 1980, 1:00 p.m. to 4:30 p.m.; Thursday, November 13, 1980, 10:00 a.m. to 4:30 p.m.; and Friday, November 14, 1980, 10:00 a.m. to 4:30 p.m. Comment period closes November 26, 1980.

ADDRESS: The hearing will be held at: Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591, Auditorium, 3rd Floor.

Requests to make an oral presentation at the public hearing should identify Docket No. 20660, indicate the subject matter of the presentation and time required, and be sent to: Ms. Ida M. Cronauer, Safety Regulations Staff, AVS-20, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; Telephone: (202) 755-8714.

Comments on Notice 80-13 or this notice may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 20660, 800 Independence Avenue SW., Washington, D.C. 20591, or delivered in duplicate to Room 916 at the same address. All comments must be marked "Docket No. 20660." Comments may be inspected at Room 916 between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Marvin J. Walker, Regulatory Review Branch (AVS-22), Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; Telephone: (202) 755-8714.

SUPPLEMENTARY INFORMATION:

Availability of Additional Copies of Notices

Any person may obtain a copy of Notice 80-13 or this notice by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of the NPRM. Persons interested in being placed on a mailing list for future NPRMs should request a copy of Advisory Circular No. 11-2 which describes the application procedures.

Background

NPRM No. 80-13, which was published in the **Federal Register** on Thursday, August 28, 1980, proposed amendments to the certification procedures regulations applicable to the type design approval of aircraft, aircraft engines, and propellers, including major changes, to: (1) Provide a mechanism by which the FAA may act more systematically to ensure that aircraft in service satisfy up-to-date level-of-safety expectations; (2) Ensure that the certification procedures regulations of Part 21 are consistent for the issuance of type certificates, type certificate amendments, or supplemental type certificates in order to ensure the same level of effort by applicants and by the FAA for affected products, irrespective of the type design approval procedure used; and (3) Make other necessary amendments to Part 21 consistent with longstanding administrative practice in the issuance of type certificates, type certificate amendments, and supplemental type certificates. Amendments to Parts 39 and 91 were also proposed to facilitate retroactive application of type design change requirements to aircraft, aircraft engines, and propellers in service when necessary.

Published as part of the notice was an extensive background discussion of factors leading to promulgation of the new rules, as well as a statement of the policy changes envisioned by the FAA which would be implemented by adoption of the proposed amendments. A detailed explanation of each proposed regulatory change was provided. In addition to inviting comments on the substance of the proposals, the notice solicited specific information from the public regarding anticipated economic and other impacts. The comment period was initially 60 days from publication date of the notice, or until October 27, 1980.

Need for Public Hearing

At this writing, the FAA has received 9 written requests for public hearing and 15 written requests to extend the comment period for Notice 80-13 an additional 30 to 120 days beyond the October 27, 1980 deadline. Most of the requests were from aircraft product manufacturers and modifiers, and from aviation trade associations on behalf of their members.

The concerns expressed in the letters dealt with two main topics: (1) the wide ramifications visualized by the aircraft industry due to the proposed policy requiring periodic reevaluation of type certificates and type certificate bases; and, (2) the effect of the proposed upgrading of the level of type design approval procedures upon the aircraft modification industries, and those segments which benefit from it, particularly with respect to supplemental type certificates as set forth in proposed § 21.117(a).

Objections to the latter arise from reading the proposed rule to mean that an applicant for an STC for an aircraft or product must, in all cases, have access to type certification data from the original manufacturer or type certificate holder. The intent, however, as stated in Notice 80-13, is to apply the same procedural regulations to the issuance of STC's as are now applied to type certificates and type certificate amendments with regard to the technical capability of the applicant's engineering staff and the availability of basic engineering data. The proposal allows various ways of approaching this objective. For example, in many cases, a competent applicant can more than adequately demonstrate a substantial basis for design change to a product by the application of sound "reverse" engineering. Basic data also may be developed by test or analysis where appropriate.

In essence, this rule change is a restatement of the need for sound engineering practice. Over the years, the FAA has received many STC applications from companies or individuals who have neither the necessary engineering data or the engineering capability for the task. A heavy burden is thereby placed on the FAA, which is not staffed for this extra function, to do the applicant's engineering work. In such cases the result has been rejection of the STC application after considerable wasted effort by all parties.

The proposal was, therefore, generated in part by the realization that, in the future, the FAA must insure, before expending significant resources on an STC application, that the STC applicant demonstrates the technical capability, and availability of adequate data, commensurate with the complexity of the task.

Because of these expressed concerns, the FAA has determined that both a public hearing and an extension of the comment period are in the public interest.

Hearing Procedures

Persons who plan to attend the hearing should be aware of the following procedures, which will be followed to facilitate the workings of the hearing:

(a) The hearing will be informal in nature and will be conducted by the designated representative of the Administrator under 14 CFR 11.33. Each participant will be given an opportunity to make a presentation.

(b) The hearing will begin at 1:00 p.m. on November 12, 1980 at the Federal Aviation Administration, 800 Independence Avenue, SW., Auditorium, 3rd Floor. There will be no admission fee or other charge to attend and participate. All hearing sessions will be open to all persons on a space available basis. The presiding officer may accelerate the hearing agenda to enable early adjournment if the progress of the hearing is more expeditious than planned.

(c) All hearing sessions will be recorded by a court reporter. Anyone interested in purchasing the transcript should contact the court reporter directly. A copy of the court reporter's transcript will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the hearing may be accepted at the discretion of the presiding officer. Participants submitting handout materials must present an original and two copies to the presiding officer for approval before distribution. If approved by the presiding officer, there should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by FAA participants at the hearing should not be taken as expressing a final FAA position.

Request To Make a Presentation

Interested persons are invited to attend the hearing and to participate by making oral or written statements. Written statements should be submitted in duplicate and will be made a part of the rules docket. Persons wishing to make oral statements at the hearing must notify the FAA on or before November 7, 1980, and indicate the amount of time requested for their initial statements. Presentations will be scheduled on a first-come first-served basis as time may permit within the hearing schedule. Request to make a presentation should indicate the subject matter and the time required and be sent to the same address as requests to be heard indicated above.

Public Hearing Schedule

The schedule for the hearing is as follows:

November 12, 1980

Time and Topic

1:00 to 1:30—Presentation of Hearing Procedures.
1:30 to 4:30—Public Presentation and Discussion.

November 13, 1980

10:00 to 12:00—Public Presentation and Discussion.
1:30 to 4:30—Public Presentation and Discussion.

November 14, 1980

10:00 to 12:00—Public Presentation and Discussion.
1:30 to 4:30—Public Presentation and Discussion.

Comment Period Extended

Since participants in this public hearing, as well as other persons unable to attend, may wish to submit further written comments, and since numerous correspondents have expressed a need for more time to prepare their response, the comment period for Notice 80-13 is being extended. The comment period closes on November 26, 1980.

While written comments will be accepted for filing in the rules docket, it must be emphasized that the FAA expects that the most beneficial aspect of this hearing will be the give and take among participants in discussing, in specific detail, the various aspects of this problem.

Written comments should be submitted in duplicate to the address for comments indicated above.

Persons wishing the FAA to acknowledge receipt of comments submitted in response to this notice should submit a self-addressed, stamped postcard with the following statement: Comments to Docket No. 20660. The postcard will be date and time stamped and returned to the commenter.

A report summarizing each FAA/public contact dealing with the substance of this rulemaking action will be filed in the rules docket.

(Secs. 313, 314 and 601 through 610 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1355, and 1421 through 1430); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—The FAA has determined that this document involves proposed regulations which are not in themselves considered to be significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and that a regulatory evaluation is not required.

Issued in Washington, D.C., on October 24, 1980.

Langhorne Bond,

Administrator.

[FR Doc. 80-33821 Filed 10-29-80; 8:45 am]

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federal register

Thursday
October 30, 1980

Part XI

Environmental Protection Agency

Hazardous Waste Management System: Identification and Listing of Hazardous Waste, and Interim Status Standards for Owners and Operators of Treatment, Storage, and Disposal Facilities; Final, Interim, and Proposed Regulations

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260 and 261

[SW FRL 1642-4]

Hazardous Waste Management System; General and Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Interim final amendment to rule and request for comments.

SUMMARY: This regulation amends 40 CFR 261.4 to provide that a hazardous waste that is generated in a product or raw material storage tank, transport vehicle or vessel or in a manufacturing process unit is not subject to regulation under 40 CFR Parts 262 through 265 or Parts 122 through 124 or the requirements of Section 3010 of the Resource Conservation and Recovery Act (RCRA) until it is removed from the unit in which it was generated, unless the unit in which it is generated is a surface impoundment or unless the hazardous waste remains in the unit for more than 90 days after the unit ceases to be operated for the purpose of storing or transporting product or raw materials or manufacturing. This regulation also amends 40 CFR 260.10 to modify the definition of "generator" so that it clearly covers persons who remove hazardous wastes from product or raw material storage tanks, transport vehicles or vessels, or manufacturing process units in which the hazardous waste is generated. Finally, this regulation amends 40 CFR 260.10 to add definitions for "transport vehicle" and "vessel." The purpose of this requirement is to allow persons handling hazardous wastes sufficient lead time to prepare to comply with major new regulatory requirements. The effect of these amendments is to reduce the overall costs, economic impact and reporting and recordkeeping impacts of EPA's hazardous waste management regulations.

DATES: Effective Date: For the amendment to 40 CFR 261.4 and the definitions of "transport vehicle" and "vessel," in 40 CFR 260.10, November 19, 1980.

For the amendment to the definition of "generator," in 40 CFR 260.10, April 30, 1981.

Comment Date: This amendment is promulgated as an interim final rule. The Agency will accept comments on it until December 29, 1980.

ADDRESSES: Comments on the emendment should be sent to Docket Clerk [Docket No. 3001], Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

For general information, contact Alfred W. Lindsey, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 755-9185. For information on implementation, contact:

Region I, Dennis Huebner, Chief, Radiation, Waste Management Branch, John F. Kennedy Building, Boston, Massachusetts 02203, (617) 223-5777

Region II, Dr. Ernest Regna, Chief, Solid Waste Branch, 26 Federal Plaza, New York, New York 10007, (212) 264-0504/5

Region III, Robert L. Allen, Chief, Hazardous Materials Branch, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, (215) 597-0860

Region IV, James Scarbrough, Chief, Residuals Management Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365, (404) 881-3016

Region V, Karl J. Klepitsch, Jr., Chief, Waste Management Branch, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6148

Region VI, R. Stan Jorgensen, Acting Chief, Solid Waste Branch, 1201 Elm Street, First International Building, Dallas, Texas 75270, (214) 787-2645

Region VII, Robert L. Morby, Chief, Hazardous Materials Branch, 324 E. 11th Street, Kansas City, Missouri 64106, (816) 374-3307

Region VIII, Lawrence P. Gazda, Chief, Waste Management Branch, 1860 Lincoln Street, Denver, Colorado 80203, (303) 837-2221

Region IX, Arnold R. Den, Chief, Hazardous Materials Branch, 215 Fremont Street, San Francisco, California 94105, (415) 556-4606

Region X, Kenneth D. Feigner, Chief, Waste Management Branch, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 442-1260.

SUPPLEMENTARY INFORMATION:

I. Amendment to 40 CFR 261.4

On February 26 and May 19, 1980, EPA promulgated hazardous waste regulations in 40 CFR Parts 260 through 265 (45 FR 12721 et seq. and 45 FR 33066 et seq.) and on May 19, 1980, promulgated consolidated permit regulations in 40 CFR Parts 122 through 124 (45 FR 33289 et seq.). Section 261.2 of these regulations provides that a solid waste is any garbage, refuse or sludge; or any other waste material which is (1) discarded or is being accumulated, stored or physically, chemically or biologically treated prior to being discarded; or (2) has served its original intended use and sometimes is discarded; or (3) is a manufacturing or mining by-product and sometimes is discarded. Section 261.3 provides that a solid waste becomes a hazardous waste when (1) it first meets any of the listing descriptions set forth in Part 261, Subpart D; or (2) it first becomes a mixture containing a hazardous waste listed in Part 261, Subpart D; or (3) it first exhibits one or more of the characteristics of hazardous waste identified in Part 261, Subpart C. Section 261.1 provides that hazardous wastes identified in Part 261 are subject to regulation under Parts 262 through 265 and Parts 122 through 124. The effect of these provisions, particularly § 261.3(b), is to make hazardous wastes subject to regulation at the point where they are generated. The point of generation, however, may be a product or raw material storage tank, transport vehicle or vessel, or a manufacturing process unit. A literal application of the Part 261 regulations would mean that such units are hazardous waste storage facilities, and that their owners and operators must comply with the notification requirements of Section 3010 of RCRA, submit applications for and obtain permits under Part 122 and comply with the Interim Status Standards of Part 265 until a permit is issued or denied. An exception to these requirements is provided in § 262.34 which states that hazardous waste may be accumulated on the site of its generation without a permit for 90 days or less before it is removed and transported off-site for treatment, storage or disposal. For such accumulation, the owner and operator of the unit must notify under Section 3010 and comply with § 262.34, including requirements for containerization, labelling, marking, inspection and personnel training.

Many members of the regulated community have questioned the Agency's intent and wisdom in regulating those units in which hazardous wastes are first generated. These people claim that such units only incidentally hold or treat hazardous wastes and thus should not be subject to the regulations. They contend that such hazardous wastes do not pose a hazard to human health or the environment while they remain in these units.

Commenters on this issue provided several examples of units in which hazardous wastes are generated which currently appear to be, perhaps unnecessarily, subject to the regulations.

The bulk storage of crude oil and even refined petroleum products, such as gasoline, frequently produces a sludge or sediment that periodically must be removed. These sludges and sediments are solid wastes under § 261.2 and frequently may be hazardous wastes either because they are listed (see EPA Hazardous Waste Number K052 in § 261.32) or because they exhibit one or more of the characteristics of hazardous wastes identified in Part 261, Subpart C. The generation of sludges and residues that are hazardous wastes also can occur in the storage of other products and raw materials.

Similarly, sludges and residues are frequently produced in tank trucks, rail tank cars and the tanks or holds of ships and barges that have carried products or raw materials (which are not hazardous wastes). These sludges and residues are periodically removed through washing of the tanks of these transport vehicles and vessels. They are solid wastes and occasionally are hazardous wastes for the same reasons stated above. Where these sludges and residues are hazardous wastes, these vehicles and vessels technically are hazardous waste storage facilities subject to regulation prior to the removal of the hazardous waste.

Other examples occur in a great many manufacturing processes, where hazardous wastes are generated in process units, such as distillation columns, flotation units, and discharge trays of screens and in associated non-waste-treatment process units such as cooling towers. Many of these hazardous wastes are listed in §§ 261.31 and 261.32 (*e.g.*, EPA Hazardous Waste Numbers K009 and K010 in § 261.32). Others are hazardous wastes because they exhibit one or more characteristics of hazardous wastes (*see* 40 CFR Part 261, Subpart C). These hazardous wastes reside in these process units for some period of time—sometimes only minutes, other times for hours or days—and technically cause these units to be hazardous waste storage facilities subject to regulation.

Except for surface impoundments, and non-operating units, EPA did not intend to regulate product and raw material storage tanks, transport vehicles and vessels or manufacturing process units in which hazardous wastes are generated. As represented by the above examples, most of these units are tanks or tank-like units (*e.g.*, distillation units) which are designed and operated to hold valuable products or raw materials in storage or transportation or during manufacturing. Because of their design and operation, these units are capable of holding, and are typically operated to hold, the hazardous wastes which are generated in them, until the wastes are purposefully removed. Thus, these hazardous wastes are contained against release into the environment (except, of course, when abnormal circumstances such as fire or explosion occur) and the risks they pose to human health or the environment are very low and are only incidental to the risks posed by the valuable product or raw material with which they are associated. Based on these conclusions, EPA believes it is not necessary, except as noted below, to require owners and operators of these units to obtain permits for these units or to comply with the requirements of § 262.34 or Parts 264 or 265 with respect to these units.

Except where the unit is a surface impoundment or is not operating, as discussed below, the Agency believes that the hazardous waste generated in such a unit should only be subject to regulation when it is removed from the unit. In most cases, it is only after the removal of hazardous wastes from these units that the wastes have the potential for releasing hazardous constituents into the environment and posing a substantial hazard to human health or the environment.

As one exception to the foregoing, EPA does not believe that surface impoundments in which hazardous wastes are generated should be exempted from the regulations. These units, by definition (see 40 CFR 260.10), are formed in or constructed of earthen materials and often may not be lined with impermeable materials capable of preventing leaching. Any hazardous wastes generated and accumulated or stored in these units will have a much greater potential to leach, leak or otherwise escape from these units into the environment than those hazardous wastes generated and contained in the tanks and tank-like units discussed above. Because of this greater potential for release into the environment, the Agency believes that the hazardous wastes generated in surface impoundments may pose a substantial hazard to human health or the environment and therefore warrant regulation even while they remain in the impoundment. Such regulation will ensure that the impoundment is properly constructed, lined, inspected and operated, and that groundwater monitoring is performed.

As a second exception to the foregoing, EPA does not believe that hazardous wastes generated in manufacturing process units, or product or raw material storage tanks, transport vehicles or vessels should be exempted from regulation when these wastes remain in the units after they have ceased to be operated for the primary purpose of manufacturing or product or raw materials storage or transportation. EPA believes that when operation ceases, the incentive to maintain the integrity of the unit to prevent leaks or other unintended release of products, raw materials or manufacturing intermediates into the environment is substantially reduced. Consequently, the incentive to maintain the unit to prevent leaks or release of hazardous wastes which may remain in the unit after cessation of operation would also be substantially reduced. As stated above, the rationale for exempting hazardous waste from regulation while it remains in the unit in which it was generated is that the unit will have structural integrity against releases and will be operated to prevent such releases. The Agency believes that this rationale does not hold after cessation of operation.

EPA recognizes that manufacturing units and product and raw material storage tanks, transport vehicles and vessels are occasionally taken out of operation for temporary periods that may range from days, to months, and sometimes years, because of temporary declines in business or other business reasons. Units may also be taken out of operation for maintenance or repair. During these temporary shutdowns, hazardous wastes may remain in these units. The Agency also recognizes that these units may be permanently taken out of operation and hazardous wastes may remain in them for some period of time after shutdown. For both temporary and permanent shutdowns, the Agency will allow a reasonable time to remove any hazardous wastes that remain in the unit after operation ceases. Given the presumption that the unit has integrity before cessation of operation, the Agency believes that a reasonable time is 90 days. This time also is consistent with the 90-day accumulation period allowed under § 262.34. If hazardous wastes remain in these units more than 90 days after cessation of operation, EPA believes that these wastes should be fully regulated and that the units should be regulated as hazardous waste storage facilities. Thus, at that point, the owner and operator of the Unit would have to have interim status and comply with the Interim Status Standards of Part 265 or have a permit under Part 122 and comply with permit conditions.

Based on the foregoing assessment, EPA, in this rulemaking action, is amending the regulations by adding an exclusion provision to § 261.4 which

provides that a hazardous waste which is generated in a manufacturing process unit or an associated non-waste treatment unit, or in a product or raw material storage tank, transport vehicle or vessel is not subject to regulation under Parts 262 through 265 or Parts 122 through 124 or the notification requirements of Section 3010 of RCRA until it is removed from the unit in which it is generated, unless the unit is a surface impoundment or unless the hazardous waste remains in the unit for more than 90 days after the unit ceases to be operated for the purpose of manufacturing, or storing or transporting product or raw materials.

II. Definition of Transport Vehicle and Vessel

As indicated in the above discussion, this amendment deals with hazardous wastes that are generated in product or raw material transport vehicles and vessels, as well as those generated in manufacturing units and product or raw material storage tanks. Because the terms "transport vehicle" and "vessel" are not currently defined in § 260.10, definitions of these terms are included in this amendment. These definitions are the same as those in the Department of Transportation regulations governing the transportation of hazardous materials (see 49 CFR 171.8).

III. Generator Responsibilities and Amendment to 40 CFR 260.10

Many members of the regulated community also have asked the question: Who is the generator of hazardous wastes that are generated in manufacturing process units or in product or raw material storage tanks, transport vehicles or vessels? These persons point out that, with respect to stationary product and raw material storage tanks, it is quite common for one person to own and operate the storage tank, a second person to own the product or raw material being stored, and a third person (usually under contract to either the first or second person) to remove and dispose of sludges, sediments and residues that may have been formed in the tank. It also is common for the owner and operator of the tank to also own the stored product or raw material, but to hire another person to remove and dispose of sediments and residues formed in the tanks. There are situations, of course, where the three parties are one person, or where more than three parties are involved.

The same scenarios occur with respect to tank trucks, rail cars, and ships and barges. However, these scenarios are commonly complicated by two additional practices. Oftentimes these transport vehicles or vessels are taken to a central facility for removal of sediment and residues and attendant tank washing or cleaning. Frequently, this central facility is owned or operated by a person other than the owner or operator of the vehicle or vessel and, even more frequently, other than the owner of the product or raw material that produced the sediment or residue. Secondly, the residue or sediment cleaned and removed from a vehicle or vessel may have been produced by two or more products, thus bringing into the picture additional parties—the owners of two or more products. This situation can also occur, but is less common, with stationary storage tanks.

With respect to manufacturing units, the situation typically is not complicated. Usually, the same person owns and operates the unit, owns the manufacturing materials that may generate a hazardous waste and removes any hazardous wastes generated in the unit. However, there are situations where two or more parties are involved. One such situation is where a second party is periodically retained to clean a unit. Another situation is where the hazardous waste is produced by the processing of materials that are owned by two or more persons. This occurs in the reclaiming of spent solvents and spent catalysts where the reclaimer custom-processes batches of spent material without taking ownership of the material.

The definition of "generator" in § 260.10 is "any person, by site, whose act or process produces hazardous waste identified or listed in Part 261 * * *." This definition suggests that the operator of a manufacturing process unit or a product or raw material storage tank, transport vehicle or vessel is a generator of a hazardous waste because it is his "act" of storage or transportation or his "process" of manufacturing that produces the hazardous waste. In the case of storage or transportation, the act of holding the product or raw material enables settling of heavy fractions of material to create hazardous waste sludges or sediments and enables hazardous waste residues to adhere to the tank. In the case of manufacturing processes, the process of manufacturing produces the hazardous wastes.

The owner of the product or raw material being stored or transported and the owner of the materials being manufactured also fit the definition of "generator" of the hazardous waste because their "acts" cause the product or material to be stored, transported or manufactured which leads to the generation of the hazardous wastes. Additionally, it is constituents in their product or material that "produce" a hazardous waste.

The definition of generator, particularly when read in conjunction with the amendment discussed above, also fits the person removing the hazardous waste from a manufacturing process unit or a product or raw material storage tank, transport vehicle or vessel. Although often it is not his "act or process" that produces the hazardous waste, it is his act that causes the hazardous waste to become subject to regulation (except where it is generated in a surface impoundment or remains in a non-operating unit for more than 90 days after cessation of operation).

The definition of generator, depending on the particular factual situation, can include all of the parties discussed above. Both the operator of a manufacturing process unit, or a product or raw material storage tank, transport vehicle or vessel, and the owner of the product or raw material act jointly to produce the hazardous waste generated therein, and the person who removes the hazardous waste from a tank, vehicle, vessel or manufacturing process unit subjects it to regulation. All three parties are involved and EPA believes that all three (and any others who fit the definition of "generator") have the responsibilities of a generator.

Because all three parties contribute to the generation of a hazardous waste and because none of the parties stands out in all cases as the predominant contributor, the Agency has concluded that the three parties should be jointly and severally liable as generators. The Agency will, of course, be satisfied if one of the three parties assumes and performs the duties of the generator on behalf of all of the parties. In fact, the Agency prefers and encourages such action and recommends that, where two or more parties are involved, they should mutually agree to have one party perform the generator duties. Where this is done, the Agency will look to that designated party to perform the generator responsibilities. Nevertheless, EPA reserves the right to enforce against any and all persons who fit the definition of "generator" in a particular case if the requirements of Part 262 are not adequately met, providing such enforcement is equitable and in the public interest.

Given this conclusion, the Agency believes it has an obligation to give guidance to the regulated community on who it prefers to assume the generator responsibilities and to whom it will initially look to perform the generator duties where more than one party is involved and where EPA does not know which party, by mutual agreement, is appointed to carry out the generator duties, or where no party has been so designated. In the case of hazardous wastes generated in a stationary product or raw material storage tank, EPA will initially look to the operator of the tank to perform the generator responsibilities. EPA believes that this party is in the best position to perform the generator responsibilities. The operator typically is on-site and can determine when a tank contains sludges or residues that may be hazardous wastes. He certainly knows or ought to know when these sludges and residues are being removed and, therefore, when they become subject to regulation, if they are a hazardous waste. Because he is typically on-site, he is in a good position to carry out those duties of a generator which practically must be performed on-site. These include determining whether a hazardous waste exists (§ 262.11), initiating a manifest for off-site shipment (Part 262, Subpart B) and performing the pre-transportation requirements of packaging, labeling and marking (Part 262, Subpart C).

For hazardous wastes generated in a manufacturing process unit, EPA will initially look to the operator of the unit to fulfill the generator duties for the same reasons described above.

For hazardous wastes generated in a product or raw material transport vehicle or vessel which are removed at a central facility which is operated to remove sediments and residues from such vehicles or vessels, the Agency will initially look to the operator of the central facility to perform the generator duties. Following the reasoning outlined above, the Agency believes that the operator of a central facility is the party best able to perform the generator duties. Where hazardous wastes generated in product or raw material transport vehicles or vessels are not removed at a central facility, the Agency will look to the operator of the vehicle or vessel to perform the generator duties.

As discussed above, the person who removes hazardous waste from a manufacturing process unit or a product or raw materials storage tank, transport vehicle or vessel will be jointly and severally liable, along with the owner and operator of the tank, vehicle, vessel or unit and the owner of the product or raw material, as a generator. To clarify that such persons are included in the definition of generator, the Agency, in this rulemaking action, is amending the definition of "generator" in § 260.10 by adding a final clause so that the definition reads "* * * any person, by site, whose act or process produces a hazardous waste identified or listed in Part 261 of this Chapter or whose act first causes a hazardous waste to become subject to regulation."

IV. Accumulation of Hazardous Wastes

A number of questions have been asked about whether the hazardous wastes removed from product or raw material storage tanks, transport vehicles or vessels or manufacturing process units can be accumulated on-site without a permit for up to 90 days after removal and prior to off-site transport in accordance with § 262.34. Because today's amendment to §261.4 subjects such hazardous wastes to regulation only after they are removed from such tanks, vehicles, vessels or units and because there often will be a need to accumulate the removed wastes until a sufficient quantity can be obtained for off-site transport, the Agency believes that the 90-day accumulation provisions of §262.34 should be available to the generators of these hazardous wastes, except where these wastes are generated in a surface impoundment or the wastes remain in the unit more than 90 days following cessation of operation of the unit.

This allowance of 90-day accumulation without a permit is available to any of the persons who are generators, even though the party accumulating the waste on-site may not own or operate the site. This allowance only applies where the accumulation occurs on the site where the removal of hazardous waste from the tank, vehicle, vessel or unit takes place; all of the other conditions and requirements of § 262.34 must, of course, be met. The 90-day accumulation period starts when the hazardous waste is removed from the tank, vehicle, vessel or unit, except in the case where a tank, vehicle, vessel or unit ceases to be operated for its primary purpose, in which case the period starts when operation ceases.

V. Notification and EPA Identification Number Requirements

A number of questions have been asked about how the notification requirements of Section 3010 of RCRA and the EPA Identification Number requirements of §262.12 apply to generators of hazardous wastes generated in manufacturing process units or product or raw material storage tanks, transport vehicles or vessels. Today's amendment to §261.4 provides that such wastes (not including those generated in surface impoundments or retained for more than 90 days in non-operating units) are not subject to regulation, including section 3010 notification, until they exit the units in which they are generated. Thus, only those wastes that are removed during a future notification period are subject to notification.

Section 262.12, though, requires that a generator must not treat, store, dispose of, transport or offer for transportation a hazardous waste without having an EPA Identification Number. Section 260.10 defines a "generator" to be a person "by site" who generates wastes. Therefore a generator must have a separate EPA Identification Number for each site at which he generates hazardous wastes. Where two or more persons are generators, as discussed above, the person who performs the duties of a generator must have and use an EPA Identification Number for the site at which hazardous wastes are removed from a tank, vehicle, vessel or unit. Thus, if the operator of the tank, vehicle, vessel or unit performs the generator duties, he must have an EPA Identification Number for the facility and can use that number with respect to the management of all of his hazardous waste generated at that facility. If the owner of the product or raw material performs the duties of the generator, he must have and use an EPA Identification Number for the site at which the hazardous waste is generated; if he owns products being stored or processed at several sites, he must have and use a separate EPA Identification Number for each site. If the person who removes hazardous wastes from tanks or units performs the generator duties, he must have a separate EPA Identification Number for each site at which he performs these duties.

VI. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto take effect six months after their promulgation. The purpose of this requirement is to allow persons handling hazardous wastes sufficient lead time to prepare to comply with major new regulatory requirements. For the amendment to § 261.4 promulgated today, however, the Agency believes, that an effective date six months after promulgation would cause substantial and unnecessary disruption in the implementation of the regulations and would be counterproductive for the regulated community and the public. The regulatory provisions that these amendments modify take effect on November 19, 1980. In the absence of the effectuation of these amendments,

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operators of a large number of product and raw material storage tanks, transport vehicles and vessels, and manufacturing process units in which hazardous wastes are generated would have to prepare to operate these facilities as hazardous waste storage facilities on and after November 19, 1980. This would involve preparation and submission of a Part A permit application, preparation of a contingency plan and implementation of a number of administrative and operational practices required by Part 265 for hazardous waste storage facilities. The Agency believes it makes little sense to allow these requirements promulgated on May 19 to become effective on November 19, 1980, and then have them substantially modified on a subsequent date, i.e., the six-month effective date for these amendments.

The amendment to § 261.4 in effect suspends regulation of certain facilities by clarifying when certain hazardous wastes are first subject to the hazardous waste regulations. This lessening of regulatory requirements surely is not the type of revision to regulations that Congress had in mind when it provided a six-month delay between the promulgation and the effective date of revisions to regulations. Consequently, the Agency is setting an effective date of November 19, 1980, for the amendment to § 261.4 promulgated in this rulemaking action.

The definitions of "transport vehicle" and "vessel" are necessary for an understanding of the amendment to § 261.4 and consequently they too have an effective date of November 19, 1980.

EPA is making the amendment to the definition of "generator" effective six months after promulgation, as provided in Section 3010(b) of RCRA. Although many persons who remove hazardous wastes from manufacturing units or from product or raw material storage tanks, vehicles or vessels, recognized that in certain situations they fell within the May 19, 1980, definition of generators, the amendment to the definition will probably make some additional persons generators. These people undoubtedly deserve the six month lead time that Congress provided in Section 3010(b). All persons who fit the May 19 definition of "generator" must comply with all applicable generator requirements on November 19, 1980. Only those persons who are made generators by today's amendment to the definition have an additional six months before they must comply with Part 262 requirements.

VII. Regulatory Impacts

The effect of these amendments is to reduce the overall costs, economic impact and reporting and recordkeeping impacts of EPA's hazardous waste management regulations. This is achieved by removing from regulation as storage facilities product and raw materials storage tanks, transport vehicles and vessels, and manufacturing process units that generate hazardous waste. The Agency is unable to estimate these cost and impact reductions because it does not have an estimate of the number of such tanks and units that otherwise would be regulated. For the reasons already discussed, notwithstanding these cost and impact reductions, the Agency believes that human health and environmental protection will not be reduced by this action.

VIII. Request for Comments

The Agency invites comments on all aspects of these amendments and on all of the issues discussed in this preamble, including the interpretation of "generator," the allowance of 90-day accumulation to all generators, and the notification and EPA Identification Number requirements. EPA is providing a 60-day comment period.

The Agency also invites comments on whether the amendment should also apply to hazardous wastes generated in product or raw material containers other than transportation vehicles and vessels (see § 260.10 for definition of the term "containers"). The Agency has not applied this amendment to such hazardous wastes because it is not aware that significant amounts of hazardous wastes are generated in product or raw material containers (exclusive of transportation vehicles or vessels).

The Agency recognizes that a wide variety of situations exist in the real world, and it is anxious to make its regulations and regulatory interpretations reasonable, understandable, and capable of implementation. The Agency can only do this by learning of situations where the regulations do not work well.

Dated: October 24, 1980.

Douglas M. Costle,

Administrator.

Title 40 of the Code of Federal Regulations is amended as follows:

1. Add the following paragraph (c) to § 261.4:

§ 261.4 Exclusions.

* * * * *

(c) Hazardous wastes which are exempted from certain regulations. A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, or in a manufacturing process unit or an associated non-waste-treatment manufacturing unit, is not subject to regulation under Parts 262 through 265 and Parts 122 through 124 of this chapter or to the notification requirements of Section 3010 of RCRA until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation or product or raw materials.

§ 260.10 [Amended]

2. Amend the definition of "Generator" in § 260.10 to read as follows:

* * * * *

Generator means any person, by site, whose act or process produces hazardous waste identified or listed in Part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation.

* * * * *

3. Add the following definitions to § 260.10:

* * * * *

"Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle. "Vessel" includes every description of watercraft, used or capable of being used as a means of transportation on the water.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW FRL 1639-1a]

Hazardous Waste Management System: Identification and Listing of Hazardous Wastes

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Pursuant to Section 3001 of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), the Environmental Protection Agency is proposing to amend the characteristic of Extraction Procedure (EP) toxicity (40 CFR 261.24, 45 FR 33122) to apply to hexavalent chromium instead of total chromium. The effect of amending the EP toxicity characteristic will be to narrow the scope of the EP characteristic, making it applicable to a more limited category of chromium-containing wastes. These wastes will then be subject to the management standards issued by EPA under Sections 3002 through 3006 and 3010 of RCRA (Parts 262 through 265, 122 through 124 of this Chapter and 45 FR 12746). As part of this proposal, the Agency is proposing a new analytical method for use in analyzing waste extracts for the presence of hexavalent chromium.

DATES: EPA will accept public comments on the proposed amendment until December 30, 1980. Any person may request a hearing on this proposal by filing a request with John P. Lehman, whose address appears below, by November 20, 1980. The request must contain the information prescribed in § 260.20(d) of this chapter.

ADDRESSES: Comments should be addressed to Docket Clerk, Office of Solid Waste [WH-562], U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Requests for hearing should be addressed to John P. Lehman, Director, Hazardous and Industrial Waste Division, Office of Solid Waste [WH-565], U.S. Environmental Protection Agency, Washington, D.C. 20460. Communications should identify the regulatory docket number "Section 3001 chromium standard."

The public docket for this proposed rulemaking is located in Room 2711, U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460 and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Matthew A. Straus, Office of Solid Waste [WH-565], U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, (202) 755-9187.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency is proposing today to amend the characteristic of EP toxicity (40 CFR 261.24, 45 FR 33122) to apply to hexavalent chromium instead of total chromium. This preamble describes the reasons for this proposed amendment, the precise standard being proposed, and a proposed new analytical method for distinguishing between tri- and hexavalent chromium.

I. Basis For a Distinction in the Hazardous Waste Management Regulations Between The Different Valence States of Chromium

On May 19 and July 16, 1980, EPA published its initial regulations implementing Section 3001 of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended (see 45 FR 33084 and 47832). These regulations define the scope of a comprehensive Federal and State program to effectively control the management of hazardous wastes.

Under these regulations, a solid waste becomes subject to the hazardous waste management system in either of two ways: the specific waste is listed in Part 261 Subpart D (45 FR 33122–33124), or exhibits any of the characteristics of hazardous waste identified in Subpart C (45 FR 33121–122). The criteria for listing hazardous wastes and the characteristic of EP toxicity are based upon the total chromium present in the waste and in the waste extract respectively, without differentiating the *type* of chromium present. These regulations thus specify "chromium and compounds, N.O.S." as hazardous constituents for purposes of listing hazardous wastes (*see* Appendix VIII to Part 261, 45 FR at 33132), and specify a maximum concentration level for "chromium" when identifying wastes by means of the EP toxicity characteristic. (*See* § 261.24, 45 FR at 33122.) A number of wastes listed in the May and July regulations contain chromium as a constituent of concern (specifically EPA Hazardous Waste Nos. F006, K002–008, K048–051, K053–058, K061–063, K069, K074, K078–082, K086, and K090–092). Additional wastes are expected to be identified as hazardous because they fail the EP toxicity characteristic for chromium.

Chromium, however, occurs in a number of valence states, of which the trivalent (Cr (III)) and the hexavalent (Cr (VI)) are environmentally significant.[1] The Agency has received many comments arguing that trivalent chromium is sharply distinguishable from hexavalent chrome in its potential to cause significant human health and environmental harm under normally-occurring solid waste management conditions. These commenters' ultimate point is that solid wastes containing exclusively, or virtually exclusively, trivalent chromium are not hazardous due to chromium concentrations, and should not be regulated as if they contain hexavalent chromium.

The Agency has reviewed these comments carefully, and has conducted its own investigation of this question in promulgating the regulations and in response to the comments. We believe that the toxicity and environmental fate of trivalent chromium merits further study, and we intend to investigate these questions further. It is our conclusion, however, that at the present time the hazardous waste management regulations should be amended to reflect a distinction between trivalent and hexavalent chromium. The principal points of distinction between the two types of chromium which we believe justify this regulatory amendment are the differing toxicities and the differing potentials for migration and mobility of chromium (III) and chromium (VI), and the apparent low likelihood that trivalent chromium will oxidize to hexavalent chromium under most plausibly-occurring types of improper waste management. These distinctions are discussed in more detail below.

A. Distinctions in the Environmental Hazards Posed by Trivalent and Hexavalent Chromium

It is generally agreed among the scientific community that the available data show that trivalent chromium is less toxic than the hexavalent form. The carcinogenicity of various hexavalent chromium compounds in human and animal models has been well documented (NAS, 1974; NIOSH, 1975; U.S. EPA, 1978). EPA's Carcinogen Assessment Group (CAG) has determined that there is substantial evidence that hexavalent chromium compounds are carcinogenic in man. Data on the carcinogenicity of trivalent chromium are inadequate. There have been no epidemiological studies on workers using trivalent chromium compounds; rats showed a weak carcinogenic response to chromium (III)

[1] Chromium valence states of −2 to +6 have been reported, but most of these are too unstable to be of significance in biological and environmental processes. *See generally*, U.S. EPA, *Water-Related Environmental Fate of 129 Priority Pollutants*, Vol. I, EPA-440/4-79-029a (1979).

acetate. (Hueper and Payne, 1962; Maltoni, 1974).

It is further agreed that only hexavalent chromium presently is known to pose a serious threat of mutagenicity. Chromuim compounds induce chromosomal abberrations in human and animal leukocytes, and mutations in bacteria and yeasts (EPA, 1978; Petrilli and deFlora, 1977, 1978; Nakumoro, 1978). In these studies, trivalent chromium compounds have a weak response, while hexavalent compounds show significantly higher activity.

Acute and chronic toxicity problems associated with exposure to hexavalent chromium include penetrating skin ulcers, perforation of the nasal septum, inflammation of the larynx, as well as damage to kidneys and lungs. (Casarett and Doull, 1979; NAS, 1974; NIOSH, 1975; Bovett et al., 1977.) These effects do not occur upon exposure to chromium (III). The only well-documented adverse consequence of exposure to trivalent chrome is allergic dermatitis (also a property of Hexavalent chromium compounds) (Casarett and Doull, 1979)[2]

Various direct applications of trivalent chromium to humans are actually considered to be desirable. Trivalent chromium is required for proper metabolic functioning. It serves as a cofactor for the action of insulin, and is necessary for normal glucose utilization (Toepfer, et al., 1977). The Food and Drug Administration also has approved the use of trivalent chromium-containing pigments in cosmetics. (21 CFR 73.2326 and 73.2327.) No such applications of hexavalent chrome have been approved, nor are they considered to be beneficial.

Thus, at the present time, there are well-recognized distinctions between the human health and environmental hazards posed by tri- and hexavalent chromium.

B. Migratory Potentials of Trivalent and Hexavalent Chromium

Trivalent chromium appears to have significantly lower migratory potential than hexavalent chromium, and to have significantly less mobility should it migrate from a waste matrix. Most trivalent chromium salts are virtually insoluble. Trivalent chromium, moreover, is strongly adsorbed by clays and by organic soil materials (U.S. EPA, 1978, Bartlett, 1976; and Griffin, 1979), decreasing the possibility of exposure via a groundwater exposure pathway even if migration occurs. In contrast, hexavalent chromium salts are very soluble and therefore have high migratory potential.

Groundwater and leachate monitoring data submitted by various leather tanners appear to confirm the relative immobility of trivalent chromium under normally-occurring waste disposal conditions. (*See, e.g.,* Comments of Tanners' Council of America, August 18, 1980, pp. 7–13; Comments of Dr. Robert M. Lollar, Technical Director of Tanners' Council, August 12, 1980, pp. 6–7.) In addition, the Agency has obtained groundwater and leachate monitoring data from sites accepting large quantities of tannery waste (which wastes contain high concentrations of trivalent chrome), in some cases for long periods of time (from 20 to 86 years). These sites show no evidence of chromium contamination of groundwater. (Comments of Berwick Sewer District, June 30, 1980; Comments of Irving Tanning Co., July 15, 1980.) Groundwater contamination did not occur even in cases of prolonged worst-case management of trivalent chromium-containing wastes (*see* Comments of Wolverine World Wide, Inc., August 15, 1980, Attachment 1, pp. 2, 9–13 (improperly sited landfill with high water table and permeable soil co-disposing tannery wastes with other industrial wastes without any particular precautions still does not show evidence of trivalent chromium groundwater contamination)).

C. Potential of Trivalent Chromium to Oxidize to Hexavalent Chromium

In developing the present regulatory regime based upon total chromium, the Agency was aware of the differing potentials for hazard of tri- and hexavent chromium, and also of their differing migratory potentials. Our concern was that trivalent chromium, under waste management conditions, could oxidize to the hexavalent form, which would render it highly mobile and toxic. (*See, e.g.,* U.S. EPA, Listing Background Document for Leather Tanning and Finishing Industry, pp. 733–34, May 2, 1980.) Further analysis indicates, however, that such oxidation is not likely to occur under most waste management practices. Although the oxidation of trivalent chromium can occur on a theoretical basis (Carlin, 1965; U.S. EPA, 1977), oxidation is unlikely to occur in normal land disposal situations. Thus, oxidation does not take place except under alkaline and aerobic conditions (Robertson, 1975). Even then, the rate of oxidation is very slow unless manganese dioxide is present (Schroeder and Lee, 1975). These conditions are not ordinarily found in landfill or impoundment disposal situations, since these are typically anaerobic environments. (Ham, 1979.) Monitoring data submitted in comments likewise supports the conclusion that oxidation of trivalent chromium is unlikely when these wastes are land disposed. (*See* Comments of Alley, Young & Baumgartner, Inc., July 11, 1980; Comments of Salz Leathers, Inc., July 14, 1980, exh. B.)[3]

Given the relatively low toxicity of trivalent chromium, its low migratory potential, and the lack of indication of potential for oxidation under usual land disposal conditions, the Agency does not believe that land disposal of trivalent chromium-containing wastes in common landfill or impoundment situations poses a present or potential hazard to human health or the environment via soil migration to groundwater. We therefore believe it necessary to recognize a distinction between tri- and hexavalent chromium-containing wastes when land disposed.

Our research indicates, however, that trivalent chromium oxidizes to the hexavalent form when materials containing chromium (III) are incinerated or similarly treated by a destructive oxidation process. The incineration ash will certainly be contaminated with chromium (VI) (Comments of Tanners' Council of America, *supra,* p. 6), and we expect that hexavalent chromium will be present in incinerator emissions as well (U.S. Dept. of the Interior, 1979). As a result, we believe that chromium-bearing wastes (*i.e.,* wastes containing both valence types) continue to require Subtitle C regulation when managed by incineration or similar processes. Our contemplated regulatory approach for these wastes is described in Part II. C below.

D. Impact of the Proposed Distinction On Other Regulatory Programs

We note, at this point, that certain other of the Agency's regulatory programs regulate on the basis of total chromium. Our porposed action involves only the hazardous waste management program, and is based on a perceived distinction in the substantiality of hazard posed by tri- and hexavalent chromium-containing wastes when disposed on land.

Different considerations underly the Agency's other programs. For example,

[2] Various aquatic species likewise are more susceptible to the hexavalent form of chromium.

[3] Ultraviolet light-sensitized oxidation of trivalent chromium has been demonstrated under laboratory conditions (Stephens, 1977). This oxidation did not take place, however, when lake water was tested. In any case, we do not believe that these experimental conditions reflect those normally occurring in a waste disposal environment.

the National Interim Primary Drinking Water standards are for total chromium. This is because pre-treatment of drinking water by chlorination may result in oxidation of trivalent chromium. (Guidelines for Canadian Water Quality, 1978; Sorg, 1979; U.S. EPA, 1976.) Total chromium is thus the appropriate parameter. (U.S. EPA, 1976.)

All chromium compounds also are regulated as toxic under the Clean Water Act (CWA). In part, this reflects the Congressional determination to list all chromium compounds as toxic pollutants under CWA Section 307(a)(1). In addition, the Administrator has a great deal of flexibility in making listing (or delisting) determinations under CWA Section 307. He is to consider a series of enumerated factors, to assign appropriate weight to each, and to arrive at a final determination by balancing the different elements. The identification process under RCRA is much less flexible and is to some extent more stringent, in light of the significantly more impactive consequences of a RCRA hazardous waste determination. Thus, wastes are not to be identified as hazardous unless they are capable of posing a "substantial" hazard to human health or the environment. In light of these differing statutory schemes, regulatory action affecting chromium-containing wastes has no direct bearing on the status of chromium as a toxic pollutant under CWA Section 307(a).

II. Regulatory Action

A. Proposal To Amend the Charocteristic of EP Toxicity

In order to reflect the differing environmental hazards posed by trivalent and hexavalent chromium-containing wastes when disposed on land, the Agency is proposing to amend the extraction procedure to apply to hexavalent chrome instead of to total chromium. We are not, however, proposing to change the maximum concentration level of hexavalent chromium in the EP extract, which would consequently remain at 5.0 mg/l. This level is based on the National Interim Primary Drinking Water Standard, which was established to reflect the known toxicity of the hexavalent form.[4] (Sorg, 1979; U.S. EPA, 1976.) [5] Other countries and organizations also have adopted this level for chromium in drinking water, and have indicated explicitly that the standard is for hexavalent chromium. (WHO, 1970; NAS, 1977; Sorg, 1979 (describing Japan's drinking water standard for hexavalent chromium).) Since the underlying drinking water standard in fact reflects human health and environmental dangers of hexavalent chromium, we feel justified in retaining this standard when regulating solely on the basis of hexavalent chrome.

We stress that under our proposal, all wastes are to be tested for the characteristic of EP toxicity based on hexavalent chromium when the amended characteristic is finalized. We wish particularly to clarify this point because of other regulatory action taken today delisting certain chromium-bearing wastes and granting temporary exclusions from hazardous waste status for other such wastes (published elsewhere in Part XI of this issue).

All of these wastes will be subject to the amended EP toxicity characteristic and generators of these wastes consequently will have to test their waste extracts for the presence of hexavalent chromium.

B. Proposed Analytical Method Distinguishing Between Tri- and Hexavalent Chromium

The proposal to amend the EP toxicity characteristic to apply only to hexavalent chromium requires that there be an analytical method which distinguishes between these two valence states. EPA's Office of Research and Development has developed such a procedure. The method (fully described in Appendix A to this preamble) is based on the separation of hexavalent chromium from solution by the coprecipitation of lead chromate with lead sulfate at a pH of 3.5. The precipitate is resolubilized in nitric acid and quantified by atomic absorption spectroscopy. Since trivalent chromium does not precipitate under such conditions, the method offers a means of determining the presence and concentration of the hexavalent state in admixture with the trivalent form. Comments are solicited on the application of this method to EP extracts.

This method has been evaluated using effluents containing high concentrations of organic material, samples where matrix interferences have been encountered with the more usual chelation/extraction procedures. Further evaluation presently is being conducted with a wide variety of industrial wastes and EP extracts. The procedure will be finally promulgated after review of comments and after an adequate supportive data base is available.

C. Incineration of Chromium-Containing Wastes

The Agency contemplates regulating wastes which contain both tri- and hexavalent chromium in one circumstance,[6] namely when a chromium-bearing waste is incinerated or destructively oxidized by a similar process. Such control is necessary because trivalent chromium oxidizes to hexavalent chromium during incineration. (U.S. Dept. of Interior, 1979). Incinerated wastes containing trivalent chromium thus should be regulated as if they contain hexavalent chromium. The Agency intends in the near future to adopt appropriate regulations under Parts 261 and 266 regulating these types of chromium-bearing wastes. Regulatory action is being deferred at the present time, however, due to the need to implement other parts of the hazardous waste management program, and also because incineration of trivalent chromium-containing wastes does not appear to be widespread,[7] limiting the possibility of environmental insult during this interim period. Furthermore, the Agency needs more time to develop regulatory standards to apply to facilities incinerating trivalent chromium-containing wastes. For these reasons, we are not proposing any standards for incineration of trivalent chromium-containing wastes at this time.

EPA is, however, anxious to obtain comments on this contemplated approach. We specifically solicit comments to the following questions:

1. When incineration of chromium-containing wastes causes oxidation of

[4] The maximum concentration level of the EP toxicity characteristic, of course, is established at two orders of magnitude above the Drinking Water Standard.

[5] As noted above, the standard also establishes a margin of safety in light of oxidation of chromium as a result of drinking water treatment (Sorg, 1979).

[6] There also is one other situation where wastes might be regulated based on total chromium. The Agency still has some concern that trivalent chromium from waste disposal sites could migrate to public water systems where it would be oxidized during chlorination to the hexavalent state. We believe the likelihood of this occurring to be remote in light of the low migratory potential of trivalent chromium. However, should migration of trivalent chromium from improper waste disposal occur in concentrations sufficient to interfere substantially with treatment of public water systems, or otherwise cause public health concerns, we view our imminent hazard authority under Section 7003 of RCRA as sufficient to enjoin further contamination. We are also prepared in this circumstance to exercise our listing authority under Subtitle C to address the particular site creating the problem.

[7] For example, the tanning industry, a principal generator of trivalent chromium-bearing wastes, does not presently incinerate any of its wastes, although a few individual tanneries and the Tanners' Council in collaboration with the U.S. Bureau of Mines are investigating the feasibility of waste incineration. (U.S. Dept. of Interior, 1979.) Several POTW's do, however, use the Zimpro process to incinerate tannery sludges.

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trivalent chromium to hexavalent chromium, will this oxidized hexavalent chromium be emitted to the air as a result of incineration or will it remain in the incinerator ash? How effective are available stack scrubbing devices in removing any chromium from the off-gases?

2. If chromium-bearing wastes are to be regulated as hazardous when incinerated or when subjected to similar destructive oxidation processes, what concentration of chromium should be present in the waste to trigger regulatory controls? What is the correlation between concentrations of total chromium in a waste, and concentrations of hexavalent chromium in incinerator emissions? Do conditions of incineration or pyrolysis affect this ratio?

3. What management standards should be applied to facilities incinerating chromimum-bearing wastes during the interim status period? Are subparts A, B, C, D, E, G, H, and O of the Part 265 interim status standards appropriate?

Dated: October 27, 1980.

Douglas M. Costle,

Administrator.

It is proposed to amend Title 40 CFR Part 261 as follows:

§ 261.24 [Amended]

1. In § 261.24, *Characteristic of EP Toxicity*, amend by revising the entry for EPA Hazardous Waste Number D007 Table 1 as follows:

EPA hazardous waste number	Contaminant	Maximum concentration (milligrams per liter)
D007	Chromium (VI)	5.0

2. In Appendix II to Part 261 EP Toxicity Test Procedure, revise *Analytical Procedures for analyzing Extract Contaminants* as follows: [1]

Analytical Procedures For Analysing Extract Contaminants

The test methods for analyzing the extract are as follows:

(1) For arsenic, barium, cadmium, lead, mercury, selenium, silver, endrin, lindane, methoxychlor, toxaphene, 2, 4-D [2, 4-dichlorophenoxyacetic acid], or 2, 4, 5-TP [2, 4, 5-trichlorophenoxypropionic acid]: "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods." Solid Wate Information, U.S. Environmental Protection Agency, 26 W St. Clair Street, Cincinnati, Ohio 45268 [SW-846, 1980].

(2) For chromium (VI): Method 8.545 in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods." Solid Waste Information, U.S. Environmental Protection Agency, 26 W. St. Clair Street, Cincinnati, Ohio 45268.

[1] Note: See FR Doc. 80-33871 published at the end of this Part IX of the **Federal Register**.

Appendix A—Method of Analysis for Hexavalent Chromium

Method 8.545 Hexavalent Chromium by Coprecipitation With Lead Sulfate

1. Scope and Application

1.1 This method covers the determination of dissolved hexavalent chromium Cr(VI) in Extraction Procedure EP) extracts.

1.2 The method may be used to analyze samples containing more than 5 μg of Cr(VI) per liter. In many cases, dilution of the extract will be necessary to achieve an optimal concentration range for Furnace Atomic Absorption spectrometry. The dilution of the sample extract is desirable since it will reduce the likelihood of interferences from sulfate and chloride ions (see 4.1) which are present in many extracts and to increase the reproducibility of the method.

2. Summary of the Method

2.1 The method is based on the separation of Cr(VI) from solution by coprecipitation of lead chromate with lead sulfate in a solution of acetic acid. After separation the supernate (containing Cr(III)) is drawn off, the precipitate is resolubilized in nitric acid as trivalent chromium Cr(III) and quantified by furnace atomic absorption spectrometry.

3. Sample Handling and Preservation

3.1 For guidance on sample handling and glassware cleaning procedures see Section 8.49.

3.2 The sample to be evaluated for the Extraction Procedure characteristic should not be acidified, but instead transported and stored at 4°C until analysis.

3.3 Since stability of Cr(VI) is not completely understood at this time, the analysis should be carried out as soon as possible.

4. Interferences

4.1 Samples containing either sulfate or chloride in concentrations above 1000 mg/liter should be diluted before proceeding to step 9.1.

5. Instrument Parameters (Furnance Atomic Absorption Spectrometry)

5.1 Drying Time and Temperature: 30 sec at 125°C.

5.2 Ashing Time and Temperature: 30 sec at 1000°C.

5.3 Atomizing Time and Temperature: 10 sec at 2700°C.

5.4 Purge Gas Atmosphere: Argon

5.5 Wavelength: 357.9 nm

5.6 Other operating parameters should be set as specified by the particular instrument manufacturer.

6. Special Apparatus

6.1 Glassware

6.1.1 Filtering flask, heavy wall, 1 liter capacity

6.1.2 Centrifuge tubes, heavy duty, conical, graduated, glass stoppered, 10 ml capacity

6.1.3 Pasteur pipets, borosilicate glass, 6.8 cm

6.2 Centrifuge: any centrifuge capable of reaching 2000 rpm and accepting the centrifuge tubes described in 6.1.2. may be used.

6.3 pH Meter: a wide variety of instruments are commerically available and suitable for this work.

6.4 Test Tube Mixer: any mixer capable of thorough vortex is acceptable.

7. Reagents

7.1 Lead Nitrate Solution: Dissolve 33.1 grams of lead nitrate, $Pb(NO_3)_2$ (analytical reagent grade), in deionized distilled water and dilute to 100 ml.

7.2 Ammonium Sulfate Solution: Dissolve 2.7 grams of ammonium sulfate, $(NH_4)_2SO_4$ (analytical reagent grade) in deionized distilled water and dilute to 100 ml.

7.3. Calcium Nitrate Solution: Dissolve 11.8 grams of calcium nitrate, $Ca(NO_3)_2 \cdot 4H_2O$ (analytical reagent grade) in deionized distilled water and dilute to 100 ml. 1 ml=20 mg Ca.

7.4 Nitric Acid, Concentrated, distilled reagent grade or spectrograde quality.

7.5 Acetic Acid, Glacial: ACS reagent grade 7.5.1 Acetic Acid, 10% (v/v): Dilute 10 ml glacial acetic acid to 100 ml with deionized distilled water.

7.6 Ammonium Hydroxide, 10% (v/v): Dilute 10 ml concentrated ammonium hydroxide, NH_4OH (analytical reagent grade), to 100 ml with deionized distilled water.

7.7 Hydrogen Peroxide, 30%: ACS reagent grade.

7.8 Potassium Dichromate Standard Solution: Dissolve 2.8285 grams of dried potassium dichromate, $K_2Cr_2O_7$ (analytical reagent grade), in deionized distilled water and dilute to 1 liter. 1 ml=1 mg Cr (1000 mg/1).

7.9 Trivalent Chromium Working Stock Solution: To 50 ml of the potassium dichromate standard solutioo (7.8) add 1 ml of 30% H_2O_2 (7.7) and 1 ml concentrated HNO_3 (7.4) and dilute to 100 ml with deionized distilled water. 1 ml=0.5 mg Cr(III). Prepare fresh monthly or as needed.

8. Calibration

8.1 At the time of anlaysis, prepare a blank and a series of at least four calibration standards from the Cr(III) working stock (7.9) that will adequately bracket the sample and cover a concentration range of 5 to 100 ug Cr/1. Add to the blank and each standard, before diluting to final volume, 1 ml 30% H_2O_2 (7.7), 5 ml concentrated HNO_3 (7.4), and 1 ml calcium nitrate solution (7.3) for each 100 ml of prepared solution. These calibration standards should be prepared fresh weekly, or as needed.

8.2 The listed instrument condition (5) and calibration concentration range are for a Perkin-Elmer HGA-2100 based on the use of a 20 ul injection, continuous flow purge gas and non-pyrolytic graphite. The use of simultaneous background correction is required for both calibration and sample analysis.

9. Procedure

9.1 Transfer a 50 ml portion of the filtered sample to a 100 ml Griffin beaker and adjust to a pH of 3.5±0.3 by adding dropwise volumes of 10% acetic acid. Note: Care must be exercised not to take the pH below 3. If the pH is inadvertently lowered to <3, 10% NH_4OH (7.6) should be used to readjust the pH to 3.5 ±0.3.

9.2 Pipet a 10 ml aliquot of the adjusted sample into a centrifuge tube (8.1.2). Add 100 ul of the lead nitrate solution (7.1), stopper the tube, mix the sample and allow to stand for 3 minutes.

9.3 After the formation of lead chromate, to help retain Cr(III) complex in solution, add 0.5 ml glacial acetic acid (7.5), stopper and mix.

9.4 To provide adequate lead sulfate for coprecipitation add 100 ul of ammonium sulfate solution (7.2), stopper and mix.

9.5 Place the stoppered centrifuge tube in the centrifuge, making sure that the tube is properly counterbalanced. Start the centrifuge and slowly increase the speed to 2000 rpm in small increments over a period of 5 minutes.

Note.—The speed of the centrifuge must be increased slowly to insure complete coprecipitation.

9.6 After centrifuging remove the tube and withdraw and discard the supernate using the apparatus detailed in Figure 1. As the pasteur pipet is lowered into the tube the supernate is sucked over into the filtering flask. With care the supernate can be withdrawn to within approximately 0.1 ml above the precipitate.

9.7 To the remaining precipitate add 0.5 ml concentrated HNO_3 (7.4), 100μl 30% H_2O_2 (7.7) and 100μl calcium nitrate solution (7.3). Stopper the tube and mix using a vortex mixer to disrupt the precipitate and solubilize the lead chromate. Dilute to 10ml, mix and analyze in the same manner as the calibration standard (8.2).

10. Verification

10.1 For every sample matrix analyzed verification is necessary to determine that neither a reducing condition nor chemical interference affecting precipitation is present. This must be accomplished by analyzing a second 10 ml aliquot of the pH-adjusted filtrate that has been spiked with Cr(VI) (7.7). The amount of spike added should double the concentration found in the original aliquot. Under no circumstance should the increase be of less than 30μg Cr(VI)/1. To verify the absence of an interference the spike recovery should be between 85% and 115%.

10.2 if the addition of the spike extends the concentration beyond the calibration curve the analysis solution should be diluted with blank solution, and the calculated results adjusted accordingly.

10.3 If the result of verification indicates a suppressive interference, the sample should be diluted and reanalyzed.

11. Analytical Notes

11.1 Nitrogen should not be used as a purge gas because of possible CN band interference.

11.2 The use of pyrolytic graphite should be avoided when possible, since in some situations an enhancement effect has been reported.

11.3 Pipet tips have been reported to be a possible source of contamination.

11.4 The method of standard addition should be used in accordance with the general methods given in the manual "Test Methods for Evaluating Solid Waste," SW-846.

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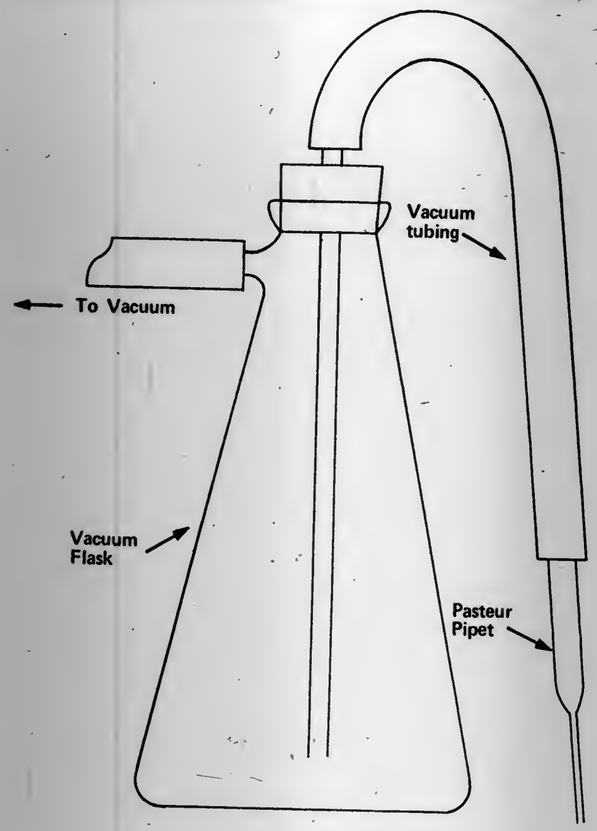


FIGURE 1

[FR Doc. 80-33867 Filed 10-29-80; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW FRL 1639-1b]

Hazardous Waste Management System: Identification and Listing of Hazardous Wastes

AGENCY: Environmental Protection Agency.

ACTION: Interim Final Rule and Request for Comments.

SUMMARY: This rule amends § 261.4 of the Resource Conservation and Recovery Act (RCRA) hazardous waste management regulations by temporarily excluding from hazardous waste status wastes which presently are deemed hazardous solely due to the presence of chromium, but contain trivalent chromium exclusively (or nearly exclusively), are generated from processes which use trivalent chromium exclusively (or nearly exclusively), and are typically and frequently managed in non-oxidizing environments. Specific wastes excluded under this standard are tannery wastes listed as hazardous in § 261.32 (EPA Hazardous Waste Nos. K053 to K058); waste leather scrap from the leather tanning industry, the shoe manufacturing industry and other leather product manufacturing industries; and wastewater treatment sludges from the production of TiO_2 pigment using chromium-bearing ores by the chloride process listed as hazardous in § 261.32 (EPA Hazardous Waste No. K074).

Other wastes also may be temporarily excluded if they meet the standard set out above. To be eligible for a temporary exclusion, a waste generator or group of generators must petition the Agency to grant their waste a temporary exclusion and show why their waste meets the temporary exclusive standard. Petitions will be processed under the procedures set forth in § 260.20 of the hazardous waste regulations. Generators of wastes already determined to be within the temporary exclusion need not file petitions.

This amendment is taken in conjunction with two other regulatory actions. The first is a proposal to amend the characteristic of EP toxicity to apply only to hexavalent chromium. These temporary exclusions will remain in effect only until that proposed amendment is acted upon finally. The second regulatory action is a final delisting of certain chromium-bearing waste streams. The termporary exclusion provision is necessary to allow these delistings to have their intended effect, and therefore is being adopted as an interim final regulation.

DATES: Effective Date: This amendment, in the form published today, is interim final Agency action. It becomes effective on November 19, 1980.

EPA will accept public comments on this interim final regulation until December 30, 1980. Any person may request a hearing on this interim final rule by filing a request with John P. Lehman, whose address appears below, by November 20, 1980. The request must contain the information prescribed in § 260.20(d) of this chapter.

ADDRESSES: Comments should be sent to Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Requests for hearing should be addressed to John P. Lehman, Director, Hazardous and Industrial Waste Division, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, Washington, D.C. 20460. Communications should identify the regulatory docket number "Section 3001/Temporary Exclusion."

The public docket for this interim final rule is located in Room 2711, U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460 and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Matthew A. Straus, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C., (202) 755-9187.

SUPPLEMENTARY INFORMATION:

I. Temporary Exclusion From Subtitle C Regulation for Certain Chromium-Bearing Wastes

The Agency today has proposed to amend the characteristic of EP toxicity in 40 CFR 261.24 to apply to hexavalent rather than to total chromium (published elsewhere in Part XI of this issue of the **Federal Register**). The Agency also has taken final regulatory action today with respect to a number of hazardous waste listings (published elsewhere in Part XI of this issue), including the delisting of certain trivalent chromium-bearing waste streams. The present action is necessary to allow these other actions to have their intended effect. Thus, until the characteristic of EP toxicity is amended finally, all wastes remain subject to the existing standard based upon total chromium. We are concerned that the characteristic as it now stands identifies as hazardous certain trivalent chromium-bearing wastes which are unlikely to create a substantial present or potential hazard to human health or the environment when mismanaged, imposing significant regulatory burden without achieving any statutory purpose. A temporary exclusion for this limited class of wastes is needed to prevent this result.

We consequently will exclude temporarily from hazardous waste status certain chromium-bearing wastes. It must be emphasized that this exclusion will apply only insofar as the wastes would be hazardous because they fail the EP toxicity characteristic for chromium or because they are listed solely because of their chromium content. If they are hazardous for any other reason (*i.e.*, they fail the EP characteristic for any constituent but chromium, fail any other characteristic, or are listed for any other reason) they remain in the RCRA control system. The factors which must be present for a chromium-bearing waste to qualify for this temporary exclusion are:

—The waste contains trivalent chromium exclusively (or nearly exclusively);
—The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively), which process does not generate hexavalent chromium; and
—The waste is typically and frequently managed in non-oxidizing environments.

If a generator or an industry-wide group of generators can demonstrate that its (or their) wastes satisfy these prerequisites, the Agency will grant the waste a temporary exclusion and the waste will not require subtitle C management during an interim period. When the amended EP toxicity characteristic becomes final, this temporary exclusion will no longer be in effect, and waste generators will have to analyze their EP extracts for the presence of hexavalent chromium.

Our basis for selecting these factors and our views as to how these factors will be applied are as follows. In light of our decision to distinguish between tri- and hexavalent chromium for purposes of subtitle C regulation, wastes containing exclusively or nearly exclusively trivalent chromium may well not be hazardous. There is, however, a problem in demonstrating the absence of hexavalent chromium, due to the present lack of an analytical method which distinguishes between trivalent and hexavalent chromium at low ppm concentrations in waste extracts. (The Agency today proposed adoption of such a method, but is undertaking further study of the method before final promulgation.) In evaluating requests for temporary exclusions, we therefore will regard waste and waste extract

analytical data for chromium (VI) as highly relevant, but not as determinative. We also contemplate that generators will demonstrate the absence of hexavalent chromium by using process chemistry information, *i.e.*, showing that the industrial process generating the waste does not generate hexavalent chromium, so that hexavalent chromium will not be found in the wastes or will be present only in minimal concentrations.[1] In addition to process information, leachate and groundwater monitoring data and EP extract analyses are highly probative, since if chromium is shown to be present in substantially immobile form, the likelihood is that it is present in the trivalent state.

We also believe that at present there is no adequate assurance that chromium-bearing wastes do not contain potentially harmful concentrations of hexavalent chromium unless the industrial process itself is trivalent chromium-based. Although we are aware that the standard method of treatment of hexavalent chromium-containing wastewaters is to reduce the chromium and to precipitate it as chromium (III) hydroxide, we believe that this process is often incomplete, absent a strong economic incentive to fully reduce all chromium present. Certainly, we believe it would be highly imprudent to exclude from regulation these wastes, even temporarily, absent much greater assurance that they do not contain potentially dangerous amounts of hexavalent chromium.

Finally, to assure that any trivalent chromium which migrates from the waste will not oxidize to the hexavalent state, we will require that the wastes be managed typically and frequently in non-oxidizing environments. A non-oxidizing environment is one in which there is either a relative lack of oxygen or one which contains reducing agents sufficiently strong to cause reduction of the contaminant in question. These conditions ordinarily are present in landfills and surface impoundments. (Ham, R. A., et al., 1978, Background Study on the Development of a Standard Leaching Test.)

The Agency believes that site monitoring data is particularly important in demonstrating that chromium-bearing wastes are being managed in non-oxidizing environments. Thus, a demonstration by means of leachate and groundwater monitoring data that chromium remains essentially immobile in its actual management environment indicates that chromium remains in the insoluble and strongly adsorbed trivalent state, and therefore is not being oxidized (*see e.g.*, Comments of Berwick Sewer District, July 16, 1980; Comments of Alley, Young & Baumgartner, July 11, 1980 where appropriate leachate and groundwater monitoring data is presented).

[1] Hexavalent chromium concentrations below 5 mg/l certainly will be considered minimal. This level is based on the maximum concentration level for hexavalent chromium to be contained in the amended characteristic of EP toxicity.

II. Wastes Meeting the Temporary Exclusion Factors

We are presently aware of three groups of wastes meeting the temporary exclusion factors. The first group are the tannery wastes listed as hazardous in § 261.32 (EPA Hazardous Waste Nos. K053–058), and any other waste scrap leather generated by the leather tanning industry. As shown in the comments of many individual tanners and the comments of the Tanners' Council of America, these wastes contain nearly exclusively trivalent chromium. The industrial process generating the waste likewise utilizes trivalent chromium. Hides, in fact, cannot be tanned successfully with hexavalent chromium. Tanners thus either use trivalent chromium as a tanning agent, or, should trivalent chromium be unavailable, use hexavalent chromium and reduce it so that the tanning process can be completed. In either case, there appears to be an overwhelming commercial incentive to keep hexavalent chromium out of the process and hence out of the process wastes.

These wastes furthermore ordinarily are managed in non-oxidizing landfill environments. We therefore believe that an adequate showing has been made to justify the temporary exclusion of these wastes due to their chromium content.[2]

The second group of wastes within the temporary exclusion is waste leather scrap from the shoe manufacturing and other leather product manufacturing industries.[3] These wastes are substantively identical to tannery wastes (being composed of the same trivalent chromium-tanned hides involved in the tanning process), and so contain trivalent chromium exclusively or nearly exclusively. These wastes also are ordinarily managed in landfills, and so are unlikely to be oxidized.

The third group of wastes within the temporary exclusion are wastewater treatment sludges from the production of TiO_2 (titanium dioxide) pigment using chromium bearing ores by the chloride process (EPA Hazardous Waste No. K074). The chromium in the process effluent is trivalent, arising directly from the entirely trivalent component of the rutile or ilmenite ores used as a raw material. At no stage of the manufacturing process is there an opportunity for oxidation of the trivalent chromium. The resultant sludges thus are expected to contain only trivalent chromium. (*See* Commments of E.I. du Pont de Nemours & Co., September 15, 1980, pp. 8–10 describing the TiO_2 manufacturing process, and showing that only chromium (III) is present; leachate data submitted in these comments likewise tends to show that only trivalent chromium is present.) These wastes are usually disposed of in landfills or by ocean dumping. One plant uses a lined lagoon and one uses deep-well injection. (U.S. EPA Hazardous Waste Listing Background Document, July 7, 1980, pp. 87–89.) These disposal situations do not offer opportunity for the oxidation of the chromium component. (Ham, 1979; Fukai, R., 1967, Valency State of Chromium in Sea Water, *Nature* 213: 901).

[2] Since these wastes were listed for reasons in addition to their chromium concentrations, the temporary exclusion for chromium does not by itself remove them from the hazardous waste management system. We are, however, delisting tannery wastes for these additional factors in an action taken elsewhere in today's **Federal Register**. The net result of these actions will be that these tannery wastes will no longer be listed, will not be considered hazardous if they fail the EP toxicity characteristic for total chromium, but will be hazardous if they fail the EP toxicity characteristic for any other constituent, or fail any other characteristic.

[3] These wastes were not listed, but some may fail the test for the characteristic of EP toxicity for chromium.

III. Procedures for Obtaining a Temporary Exclusion

The temporary exclusion is not limited to the wastes discussed specifically in Part II above. Other wastes also may meet the temporary exclusion factors and will be excluded if a proper showing is made to the Agency. Eligibility for a temporary exclusion may be requested by filing a petition for rulemaking under § 260.20(a). Petitions may be filed by individual generators, or on an industry-wide basis. Each petition must demonstrate why the wastes in question meet the temporary exclusion standards. Petitions then will be processed by the Agency in accord with the procedures set forth in § 260.20 (c)-(e). It should be noted that generators of the wastes which already have been determined to be within the temporary exclusion (*i.e.*, the wastes discussed in II. above) are not required to petition the Agency.

IV. Interim Final Promulgation

The temporary exclusion for this limited class of chromium-bearing wastes is being promulgated in interim final form. Thus, the three types of

wastes now within the temporary exclusion are no longer subject to the hazardous waste regulations based on their chromium content. The provision also is final for purposes of the 90-day petition deadline under Section 7006. The public will, however, have an additional opportunity to comment on the provision before it is published as a "final final" regulation.

The Agency does not take this procedural course lightly, but believes that unusual circumstances justify our action. First, many affected persons effectively have had the opportunity to comment on the substance of the provision by virtue of their comments on the interim final portions of the May 19 and July 16 regulations, principally the hazardous waste listings in § 261.32. Thus, much of the data supporting today's action was supplied in comments submitted by the tanning industry and (to a lesser extent) the titanium dioxide production industry. We therefore believe that the policy underlying the prior notice and comment requirement has been substantially satisfied here.

Second, as already noted, immediate action is necessary to give effect to final regulatory action taken today delisting waste streams from the tanning and TiO_2 production industries. These delisting actions present no prior notice and comment issues because the listings themselves were not yet promulgated in final form. However, certain of the delisted wastes might still fail the EP for total chromium, and would consequently remain in the system until the EP toxicity characteristic is amended finally. Immediate promulgation of the temporary exclusion consequently is necessary to allow the delistings to have their intended consequence.

Finally, we believe that use of advance notice and comment procedures would be impracticable and contrary to the public interest, and therefore that good cause exists for adopting these regulations in interim final form (*see* 5 U.S.C. 553(b)(B)). Although the "good cause" exception is narrow, courts have emphasized that "(i)t is an important safety value to be used where delay would do real harm." *U.S. Steel Corp.* v. *EPA*, 595 F.2d 207, 214 (5th Cir., 1979). We believe delay in promulgating the temporary exclusion could cause significant harm to the regulated community, particularly to the tanning industry. The tanners have indicated that there is a severe shortage of hazardous waste landfill capacity, especially in New England where many tanneries are located, so that disposal costs will increase very substantially even if hazardous waste management is required for only a short period. (*See, e.g.*, Comments of A. C. Lawrence Leather Co., July 10, 1980.) Courts have approved immediate promulgation of rules in like circumstances where failure to implement regulations would cause severe market dislocations. *See De Rieux* v. *Five Smiths, Inc.*, 499 F.2d 1321, 1332 (TECA), *cert. denied* 419 U.S. 896 (1974) (promulgation of government price controls); *Reeves* v. *Simon*, 509 F.2d 455, 458–59 (TECA 1974), *cert. denied*, 420 U.S. 991 (1975) (gasoline station fuel allocation regulations). The same principle applies here.

Dated: October 27, 1980.

Douglas M. Costle,

Administrator.

Title 40 CFR Part 261 is revised as follows:

1. In § 261.4, Exclusions, paragraph (b)(6) is added to read as follows:

§ 261.4 Exclusions.

* * * * *

(b) * * *

(6) (i) Wastes which fail the test for the characteristic of EP toxicity because chromium is present or are listed in Subpart D due to the presence of chromium, which do not fail the test for the characteristic of EP toxicity for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

(A) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

(B) The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

(C) The waste is typically and frequently managed in non-oxidizing environments.

(ii) Specific wastes which meet the standard in (i)(A), (B) and (C) (so long as they do not fail the test for the characteristic of EP toxicity, and do not fail the test for any other characteristic) are

(A) Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/ wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(B) Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(C) Buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chorme tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

(D) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(E) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(F) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

(G) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

(H) Wastewater treatment sludges from the production of TiO_2 pigment using chromium-bearing ores by the chloride process.

[FR Doc. 80-33868 Filed 10-29-80; 8:45 am]

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40 CFR Part 261

[SW FRL 1639–1c]

Hazardous Waste Management System; Identification and Listing of Hazardous Wastes

AGENCY: Environmental Protection Agency.

ACTION: Final action amending interim final regulation.

SUMMARY: This regulation removes from the list of regulated hazardous wastes the wastes from the leather tanning industry and the titanium dioxide production industry which were listed as hazardous in interim final form in the Federal Register on May 19, 1980 (45 FR 33124) and July 16, 1980 (45 FR 47834). The preamble also discusses why other listed waste streams containing chromium will still be listed due to the presence of chromium. This action is

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being taken as a result of other regulatory action taken concerning the regulation of chromium-bearing wastes under the hazardous waste managment program in documents published elsewhere in this Part XI of this Federal Register.

EFFECTIVE DATES: This action is effective on publication.

ADDRESSES: The public docket for this regulation is located in Room 2711, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Matthew A. Straus, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460, (202) 755-9187.

SUPPLEMENTARY INFORMATION:

I. Decision To Delist Wastes From TiO_2 Production and From the Leather Tanning and Finishing Industry

In other regulatory action taken today, the Agency has indicated that its principal regulatory concern in regulating chromium-bearing wastes under the hazardous waste management program is hexavalent rather than total chromium. The Agency consequently has reviewed all of the interim final and proposed waste listings in 40 CFR Part 261, Subpart D which listed chromium as a waste constituent of concern, and reevaluated these wastes to determine if they should continue to be listed due to the presence of chromium. We have decided that two groups of wastes, those from titanium dioxide production by the chloride process, and those from leather tanning and finishing, no longer should be listed due to chromium. We have further determined that leather tanning and finishing industry wastes also should not be listed for any other basis at the present time. We consequently are delisting both groups of wastes.[1]

We also reviewed all of our other listings of chromium-bearing wastes (except for those wastes for which the comment period has been extended). We believe that all of these other wastes are likely to contain significant concentrations of hexavalent chromium, and therefore we are not amending our initial listings. We note further that many of these wastes are listed for constituents other than chromium, and our actions today do not in any way affect these additional bases for listing.[2]

[1] We also are removing any reference to these wastes from Appendix VII to Part 261.

[2] We also note that the Agency may choose not to finalize the listing of certain of these waste streams for independent reasons when finalizing the May 19 interim final list of hazardous wastes.

A. Wastes Generated From TiO_2 Production

On July 16, 1980, the Agency adopted as an interim final listing, under 40 CFR § 261.32 wastewater treatment sludges from TiO_2 production via the chloride process (*see* 45 *FR* at 47834). On reevaluation, we have decided not to list this waste stream because it is derived from a trivalent chromium-based process and contains trivalent chromium exclusively or virtually exclusively. The titanium dioxide production process results in a waste stream which contains chromium (III) chloride. The presence of this compound results from the fact that the rutile and ilmenite ores used as raw materials can contain as much as 45% chromium (III) oxide. The chromium-bearing waste stream from this process thus contains chromium only in the trivalent form, and the resulting wastewater sludges therefore are not expected to contain any hexavalent chromium.

B. Wastes Generated by the Leather Tanning and Finishing Industry

The Agency's May 19 interim final waste listings included seven waste streams generated by the leather tanning and finishing industry (EPA Hazardous Waste Numbers KO53–059). These wastes were listed for the presence of chromium, chromium and lead, and (in the case of the wastewater treatment sludges generated by plants in certain subcategories) chromium and reactivity. With respect to chromium, the Agency has determined that these wastes contain exclusively or virtually exclusively trivalent chrome and therefore do not warrant listing on this basis. The leather tanning process depends on the chemical reaction of trivalent chromium with the free amine and hydroxyl groups on the hides' protein chains. This reaction will not occur if hexavalent chromium is used, so that there is a very strong commercial justification for the absence of hexavalent chromium in these wastes. Although it is true that if the trivalent tanning agent is not readily or economically available, tanneries use hexavalent chrome as a starting material, the chromium is then reduced to the trivalent state either before use in the tanning process or *in situ* during the tanning process (a "two bath" process now largely obsolete). Both economics and the recognized dangers inherent in the unnecessary risk in handling hexavalent chromium serve to assure the conversion to the trivalent form.[3]

[3] Thus, in one tanning facility visited by the Agency, when trivalent chromium is not available, a twenty percent excess of reductant is added to the hexavalent chromium to ensure that reduction will go to completion.

The wastes resulting from the tanning process, therefore, are overwhelmingly in the trivalent state. In addition, leachate and groundwater monitoring data submitted by individual tanners indicate that the chromium contained in these wastes has low migratory potential under most waste management conditions, and also that it has very limited mobility should migration occur, confirming that these wastes contain chrome (III), rather than the highly mobile hexavalent chromium.

Certain tanning wastes were listed because of the presence of lead. Substantial data submitted by industry indicate convincingly, however, that lead is not typically used in the tanning process, nor is it found in process wastes, in regulatorily significant amounts or concentrations. We consequently believe continued listing on this basis is inappropriate. Furthermore, these wastes remain subject to the EP toxicity characteristic, so that those wastes containing excessive concentrations of lead will still be brought into the hazardous waste management system.

Two wastewater treatment sludges were listed as hazardous due to reactivity, more specifically because of the possibility of release of harmful concentrations of hydrogen sulfide gas under usual waste management conditions. Historical waste management data submitted by industry indicates, however, that harmful release of hydrogen sulfide does not occur typically and frequently in waste management practice. Rather, this problem is more likely to occur during the tanning process, prior to waste generation. (Comments of Robert M. Lollar, Technical Director, Tanners' Council of America, August 12, 1980.)

We have determined to delist these sludges for reactivity. We again note, however, that the wastes remain subject to the reactivity characteristic, so that these wastes should be deemed hazardous if harmful hydrogen sulfide generation occurs, or has occurred, during waste management. For example, if a generator is aware of prior dangerous release of hydrogen sulfide in managing these sludges, for example from storing these sludges in enclosed tanks, EPA must be notified that the wastes are reactive, and the wastes must be managed pursuant to Subtitle C regulatory controls. We also note that the Agency is working to quantify the present provision in the reactivity characteristic governing hydrogen sulfide and hydrogen cyanide-generating wastes (§ 261.23(a)(5)), and that these sludges will be subject to the revised characteristic when promulgated.

EPA is also investigating the possibility that these tannery wastes may be hazardous for reasons other than those for which they were listed originally. A possible source of waste contamination is use of hexavalent chromium-containing chrome pigments, and of benzidine and benzidine congener dyes in the finishing process. For example, dyes derived from the chemicals benzidine, 3,3'-dimethylbenzidine, and 3,3'-dimethoxybenzidine comprise approximately one fourth of the 3.1 kkg of dyes used by the tanning industry (MRI, 1979, "A Preliminary Materials Balance for Dyes and Pigments from Benzidine and Three Benzidine Derivatives." EPA Contract No. 68-01-3896, Draft Final Report, August 31, 1979), and may be present in these wastes. We are concerned about the potential carcinogenicity of the dyes themselves, and about the possible reduction of the dyes in the waste streams by heat, light, and chemical reducing agents, or their metabolism *in vivo* to the carcinogenic parent compounds benzidine, 3,3'-dimethylbenzidine and 3,3'-dimethoxybenzidine. In addition, certain biocides (notably phenolic derivatives) are used in the tanning process, and may contaminate process wastes. The Agency solicits information as to these practices, as to concentrations of these materials and their breakdown products in process wastes, and as to whether the wastes thereby should be considered to be hazardous.

II. Retention of Chromium as a Waste Constituent of Concern in Other Hazardous Waste Listings

Certain of the other May 19 and July 16 interim final and proposed waste listings are of wastes containing chromium as a waste constituent of concern. (*See* 45 FR 33123–124, 33137; and 45 FR 47833–834, 47836). We have reevaluated these listings to determine if the wastes should continue to be listed due to the presence of chromium.[4] It is our conclusion that all of these chromium-bearing waste streams should continue to be listed as hazardous due to chromium content because all derive from processes which use or produce a waste stream which contains hexavalent chromium. The basis for our conclusion is set out below.

[4] This discussion does not apply to chromium-containing waste streams for which the comment period has been extended. Industrial painting wastes, paint manufacturing wastes, and wastes from ferroalloys production are in this category.

The chromium-containing waste streams we have listed in interim final form or have proposed for listing are generated in the manufacture of inorganic pigments (EPA Hazardous Waste Nos. K002–008), in petroleum refining (EPA Hazardous Waste Nos. K048–051), in the manufacture of iron and steel (EPA Hazarous Waste Nos. K061–063), in secondary lead smelting (EPA Hazardous Waste No. K069), in electroplating (EPA Hazardous Waste No. F006), and in ink formulation (EPA Hazardous Waste No. K086). The chrome pigment process wastes are believed to contain hexavalent chromium because the production process requires the use of chromates, which are necessarily hexavalent chromium-containing compounds. Electroplating industry wastes likewise derive from processes using chromates, and so also are expected to contain hexavalent chromium. Chromate (Cr (VI)) pigments are constituents of the listed ink formulations, so that process wastes also should contain hexavalent chromium.

The various listed petroleum refining wastes likewise use chromates, in this case as corrosion inhibitors in cooling towers. The listed wastes from this industry are all derived from cooling tower wastewater streams, and thus are expected to contain hexavalent chromium.

The iron and steel industry and secondary lead industries generate chromium-containing emission control dusts and sludges. These production processes involve oxidative processes occurring at elevated temperatures, conditions known to cause oxidation of chromium (III) to chromium (VI). Spent pickle liquor, another listed waste from the steel industry, likewise is generated in oxidizing conditions (the pickling operation itself), and so will contain chrome (VI).

We are aware that treatment of chromium-containing wastewaters most often consists of the reduction of hexavalent chromium to the trivalent state and the subsequent precipitation of chromium (III) hydroxide. If the reduction is not carried out to completion, however, the hexavalent chromium may be entrained in the chromium (III) hydroxide precipitate. Further, in light of the large concentrations of chromium present in these wastewater streams, and the very small concentrations of the carcinogen hexavalent chromium needed to make a treatment sludge hazardous, we do not believe that the chromium in these wastewater streams will be fully reduced, so that these wastes remain capable of causing substantial harm if mismanaged.

Dated: October 27, 1980.

Douglas M. Costle,

Administrator.

Title 40 CFR, Part 261 is amended by deleting from the lists of hazardous wastes contained in § 261.32 the following waste streams:

§ 261.32 [Amended]

K053—Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

K054—Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

K055—Buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

K056—Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

K057—Wastewater treatment sludge generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

K058—Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

K059—Wastewater treatment sludges generated by the following subcategory of the leather tanning and finishing industry: hair save/non-chrome tan/retan/wet finish.

K074—Wastewater treatment sludges from the production of TiO_2 pigment using chromium-bearing ores by the chloride process.

[FR Doc. 80-33809 Filed 10-29-80; 8:45 am]

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40 CFR Part 265

[SW FRL 1623-7]

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Revisions to final rule and interim final rule.

SUMMARY: The Resource Conservation and Recovery Act (RCRA) hazardous waste regulations, as promulgated May 19, 1980, in §§ 265.112(a) and 265.142(a) require owners or operators of all hazardous waste facilities to have closure plans, as well as cost estimates based on these plans, on the effective date of the regulations. At the same time, owners or operators of hazardous waste disposal facilities are also required in §§ 265.118(a) and 265.144(a) to have post-closure plans and associated cost estimates.

The Agency is amending these regulations to allow the owners or operators of all hazardous waste facilities to have up to six months *after* the effective date of these regulations to prepare a written closure plan, post-closure plan (if applicable), and cost estimates for closure and post-closure (if applicable).

The Agency is extending the period for preparing closure and post-closure plans for disposal facilities because planning for closure and post-closure at these facilities is an extremely important activity. Because these plans are so important, the Agency believes that it should provide owners or operators more time to prepare them so that they will be well thought out.

EFFECTIVE DATE: November 19, 1980.

FOR FURTHER INFORMATION CONTACT: Lawrence G. Buc, Office of Solid Waste (WH–565), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755–9190.

SUPPLEMENTARY INFORMATION:

I. Authority

This amendment is issued under the authority of Sections 1006, 2002(a), and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6905, 6912(a), and 6924.

II. Background

The RCRA hazardous waste regulations, as promulgated May 19, 1980, 45 FR 33064 *et seq.* in Sections 265.112(a) and 265.142(a) require owners or operators of all hazardous waste facilities to have closure plans, as well as cost estimates based on these plans, on the effective date of the regulations (November 19, 1980). At the same time, owners or operators of hazardous waste disposal facilities are also required in §§ 265.118(a) and 265.144(a) to have post-closure plans and associated cost estimates. The amendments to the regulations EPA is promulgating today modify these requirements.

The amended regulations allow the owner or operator of a hazardous waste facility up to May 19, 1981 (six months after the effective date of these regulations) to prepare a written closure plan, post-closure plan for a disposal facility, and cost estimates for closure and post-closure for a disposal facility. An owner or operator of a facility who decides to close his facility within this six-month period must nevertheless submit a closure plan and post-closure plan for a disposal facility at least 180 days before the date he expects to begin closure as required in 40 CFR Part 265, Subpart G, §§ 265.112(c) and 265.118(c).

The Agency is extending the period for preparing closure and post-closure plans for disposal facilities because planning for closure and post-closure at these facilities is an extremely important activity. Because these plans are so important, the Agency believes that it should provide owners or operators more time to prepare them so that they will be well thought out.

As a necessary consequence of extending the time for preparing closure and post-closure plans for facilities, EPA is extending the time for preparing closure and post-closure cost estimates for facilities. Cost estimates must be based on the closure and post-closure plans, so they cannot be prepared until the plans have been prepared.

The Office of Management and Budget recently approved EPA's Part 264 and 265 reporting requirements under the Federal Reports Act on the condition that EPA extend until May 19, 1981, the deadline by which disposal facilities (landfills, land treatment facilities, and surface impoundments which intend to close as landfills) must prepare closure and post-closure monitoring and maintenance plans. The Agency is convinced that owners or operators of *all* facilities, given an additional six months, will be able to prepare better plans and more accurate cost estimates. For this reason, and to avoid confusion as to when these plans are required, EPA is granting the time extension to all facilities.

Dated: October 27, 1980.

Douglas M. Costle,

Administrator.

For the reasons described above, Title 40 of the Code of Federal Regulations is amended as follows:

§ 265.112 [Amended]

1. In § 265.112(a), in the first sentence, replace the phrase "On the effective date of these regulations" with the phrase: "On May 19, 1981."

§ 265.118 [Amended]

2. In § 265.118(a), in the first sentence, replace the phrase "On the effective date of these regulations" with the phrase: "On May 19, 1981."

§ 265.142 [Amended]

3. In § 265.142(a), in the first sentence, replace the phrase "On the effective date of these regulations" with the phrase: "On May 19, 1981."

§ 265.144 [Amended]

4. In § 265.144(a), in the first sentence, replace the phrase "On the effective date of these regulations" with the phrase: "On May 19, 1981."

[FR Doc. 80-33870 Filed 10-29-80; 8:45 am]

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40 CFR Part 261

[WH-FRL 1648-4]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical amendment; final rule.

SUMMARY: In its regulations on the identification and listing of hazardous waste, the Environmental Protection Agency (EPA) is amending the section "Analytical Procedures for Analyzing Extract Contaminants" in Appendix II of Part 261. This amendment merely clarifies confusing references to two sets of analytical methods, each of which delineates the same methods insofar as the applicability of the subject section of Appendix II. Therefore, this amendment does not change the substance of Appendix II.

EFFECTIVE DATE: This action is effective immediately.

FOR FURTHER INFORMATION CONTACT: David Friedman, Office of Solid Waste (WH–565), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755–9187.

SUPPLEMENTARY INFORMATION: The section on "Analytical Procedures for Analyzing Extract Contaminants" in Appendix II of Part 261 promulgated on May 19, 1980 (45 FR at 33128) referenced certain water and wastewater analytical methods and implied that these methods should be used in analyzing EP Toxicity Procedure extracts. That section also referenced "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" and implied that these methods should be used to analyze these same extracts. These

references to two sets of references have confused the regulated community and have generated many inquiries to the Agency for clarification. Because the latter reference incorporates and clarifies for use in analyzing EP extracts the methods described in the former references, EPA is today promulgating the following technical amendment to change the subject section of Appendix II so that only the latter reference is used.

Dated: October 24, 1980.

Douglas M. Costle,

Administrator.

Title 40 of the Code of Federal Regulations is amended by deleting the existing language under the section of Appendix II of Part 261 titled "*Analytical Procedures for Analyzing Extract Contaminants*" and substituting the following language:

The test methods for analyzing the extract are as follows:

(1) For arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver, endrin, lindane, methoxychlor, toxaphene, 2,4-D[2,4-dichlorophenoxyacetic acid] or 2,4,5-TP [2,4,5-trichlorophenoxypropionic acid]: "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," [SW–846], U.S. Environmental Protection Agency, Office of Solid Waste, Washington, D.C. 20460.

(2) [Reserved]

For all analyses, the methods of standard addition shall be used for quantification of species concentration.

[FR Doc. 80-33871 Filed 10-29-80; 8:45 am]

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federal register

Thursday
October 30, 1980

Part XII

Department of Agriculture

Farmers Home Administration

Biomass Energy and Alcohol Fuels Loans and Loan Guarantees; Final Rule

V 45 OC30 80 UMI

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1990

Biomass Energy and Alcohol Fuels Loans and Loan Guarantees

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Energy Security Act (Pub. L. 96–294) enacted June 30, 1980, contains, as its Title II, the Biomass Energy and Alcohol Fuels Act of 1980. Under Subtitle A of Title II, the Secretary of Agriculture is authorized and directed to carry out a financial assistance program for biomass energy. This rule making contains the guidelines for implementing the program which the Act requires to be established to enable applications for financial assistance to be solicited.

EFFECTIVE DATE: This Final Rule will become effective October 30, 1980.

FOR FURTHER INFORMATION CONTACT: Weldon Barton, Director, Office of Renewable Resources, FmHA, Room 5175, South Building, Washington, D.C. 20250. Telephone 202–447–7195. The Final Impact Statement describing the options considered in developing this Final Rule and the impact of implementing each option is available on request from Earle Gavett, USDA, Room 116–A, Administration Building, Washington, D.C. 20250.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedure established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "significant." This regulation does not directly affect any FmHA programs or projects which are subject to A–95 Clearinghouse review.

Brief Description of the Program: On June 30, 1980, the Energy Security Act (Pub. L. 96–294) was enacted. Title II of the Energy Security Act is composed of the Biomass Energy and Alcohol Fuels Act of 1980. Under Subtitle A of Title II, the Secretary of Agriculture is authorized and directed to carry out a financial assistance program for biomass energy, and the Secretary of Agriculture has designated the Farmers Home Administration as the USDA Agency primarily responsible for the implementation of this program. This Final Rule contains FmHA's regulations for implementing financial assistance under this program in the form of loans and loan guarantees.

1. Introduction

Proposed regulations (the "August Proposal") were published on August 5, 1980, (45 FR 51818) to implement Subtitle A of the Biomass Energy and Alcohol Fuels Act of 1980 (the "Act"). Substantial written comments (72 responses) and testimony (82 witnesses at public hearings in Macon, Georgia; Des Moines, Iowa; and Lubbock, Texas) were received pursuant to publication of the August Proposal. The comments, especially those which addressed the six areas highlighted in the August Proposal for particular attention, have been generally constructive and helpful, containing many detailed suggestions, some of which have been incorporated in this Final Rule. FmHA thanks all commentors for the assistance they have given and hopes the Final Rule has benefitted from the comments and the additional FmHA consideration which the comments have directed to the various aspects of the August Proposal.

2. Solicitation of New Applications; Existing Applications Under Other FmHA Programs

The FmHA begins to solicit applications for both insured and guaranteed loans under this program immediately upon publication of this Final Rule.

In the case of new or pending applications for loans or loan guarantees under the Farm Ownership or other existing Farmer Program loan programs of FmHA, where the application involves a biomass energy or fuel alcohol project which is financially or technically integrated with the farming operation as a whole, FmHA will continue to receive and process such applications under such existing programs. Applicants with this type of project may, however, apply or reapply under the program implemented by this Final Rule, if reasonable assurance of repayment of the insured loan from the project's income can be ascertained as described below in this preface and in the Final Rule, and if the project is otherwise eligible under this Final Rule.

3. Price Guarantees and Purchase Agreement Authorities, Continuance Assistance

Approximately 10 percent of the written comments received suggested that, in addition to the loan and loan guarantee authorities, implementation at this time of the price guarantee and purchase agreement authorities of the Act (§§ 215 and 216) is necessary. FmHA has considered the arguments advanced by the commentors and others, but is not convinced the purposes of the Act will be served by such implementation at this time. Subtitle A is essentially a commercialization, rather than a technology development and piloting program. Therefore projects involving inadequately developed and pilot stage technologies will be directed to other existing programs that are designed for such purposes. The loan and loan guarantee financial assistance proposed here should prove to be adequate and workable for purposes of the Subtitle A commercialization program. The insured or guaranteed loans provided in this regulation can be combined with other existing incentives to comprise an attractive package for investors and lenders. This program, therefore, should be viable without the additional incentives that might be afforded by price guarantees and purchase agreements.

The continuance assistance provisions in § 1990.215 of the August Proposal have been omitted from the Final Rule because development of implementing procedures (which are unlike existing FmHA procedures) would unduly delay the issuance. It is expected that such procedures can be developed if the program experience shows a need.

4. Priority Based on Type of Primary Fuel

The August Proposal (§ 1990.5(a)(1)(i)), carrying out § 217(a)(1)(A) of the Act, provided that priority should be given to projects that use a fuel other than natural gas or petroleum as the primary fuel for biomass projects. The August Proposal also required that all projects use the most cost-effective primary fuel system, based upon established DOE procedures for life cycle cost analysis.

A number of witnesses at the hearings and written comments pointed out that coal boilers and related equipment are much more expensive than natural gas, and, in addition to adding substantially to the initial cost of projects, the emphasis on coal or biomass fuels rather than oil or gas, may be inconsistent with the requirement in Appendix A of the August Proposal that the most cost-effective fuel system be used.

The Act, itself, recognizes the priority is not to be absolute and § 217(a)(1) expressly provides that it shall not be construed to exclude financial assistance for any project which does not use "a primary fuel other than petroleum or natural gas". Moreover, the Conference Report (S. Rep. No. 96–824), page 252, gives, as examples of petroleum or natural gas use as primary fuel which would not violate the priority provision, the use of such fuel for "flame stabilization" or where such fuel is "commercially unmarketable."

Pursuant to the primary objective of this program to reduce the dependence of the United States on imported petroleum and natural gas by financing increased production and use of biomass energy resources, FmHA will provide financial assistance to projects using fuel other than petroleum and natural gas to the maximum extent possible. FmHA is particularly interested in receiving applications that will use coal, biomass materials, and such fuels other than petroleum and natural gas, and the regulations provide that priority will be given to such applications in funding decisions. The regulations also require that all projects use the most cost-effective primary fuel system, based upon established procedures for life cycle cost analysis (See Appendix A). Particularly with respect to small scale projects, FmHA encourages combination projects which make it feasible to use fuel other than petroleum or natural gas—such as a combination methane digester and alcohol distillery whereby the methane produced from animal residue is used as the primary fuel for the alcohol distillery.

While the statute does not exclude financial assistance for projects using petroleum or natural gas, based upon the above priority and related provisions, it should be clear to applicants that the avoidance of petroleum or natural gas as the primary fuel for the project will be a fundamental consideration in project selection.

FmHA has concluded that the application of this statutory priority relating to use of primary fuels requires careful exercise of discretion in the administration of the priority rather than any revision in the statement of the priority in the Final Rule. To assure such attention to proper administration, any project proposing to use petroleum or natural gas as primary fuel will be reviewed by, and require the specific concurrence of, FmHA's National Office in this respect. In addition, the requirement in Appendix A relative to the most cost-effective fuel system has been revised to permit greater flexibility of application and remove inconsistency in the August Proposal in this regard.

5. Priority Based on Innovative Technology.

In addition to use of primary fuel other than petroleum or natural gas, as discussed above, the August Proposal (§ 1990.5 (a)(1)(ii)), carrying out § 217 (a)(1)(B) of the Act, states that priority for financial assistance under Subtitle A of Title II, and the most favorable financial terms available, shall be provided to project proposals which apply improved or new technologies.

Approximately 10 percent of the written comments opposed the treatment of this priority on the grounds that it was inconsistent with the Act's objective of reducing petroleum imports, or that it conflicted with the primary fuel priority discussed in the preceding subdivision, or that it violated the cost-effectiveness requirements of Appendix A.

As in the case of the primary fuel priority discussed in the preceding subdivision, the Act recognizes that the priority is not absolute and expressly provides (§ 217 (a)(1)) that noninnovative projects are not excluded. The Conference Report, moreover, states (page 253) that while assistance to duplicative technologies is to be minimized in the designing of the overall program, this bias against duplicative technology projects was not intended to apply to "the production of liquid biomass fuels." FmHA has, therefore, concluded that the Final Rule should retain the language of the August Proposal in this respect.

With respect to liquid biomass fuels projects, therefore, the Farmers Home Administration will be interested in receiving proposals which evidence the resources, including management capability, necessary for successful operation and the use of newer technologies. Priority will be given to non-scarce fuels and new technology. FmHA will welcome proposals involving the colocation of alcohol plants with corn milling plants, grain handling facilities, cattle feedlots, electrical generating plants, or other such combinations that can improve the economics of the project and provide experienced management resources. FmHA also will welcome projects involving the acquisition for retrofit or conversion of existing plant or equipment to alcohol production, where it is demonstrated that this will meet priorities for other than scarce fuels and will contribute to the economic viability of the enterprise and the speed with which it can be brought on production line.

An effort will be made to encourage different types of fermentable feedstocks so that the financial assistance program as a whole reflects a variety of feedstock materials that can be converted with available technology. Also, since in the case of small-scale projects a variety of technologies is not generally available, assistance to small-scale non-alcohol projects (such as methane) will be provided without regard to the duplication of technologies.

The statute authorizes financial assistance for projects both that convert biomass materials into a refined liquid, gaseous or solid fuel and that convert equipment so that such equipment can directly combust wood or other unrefined biomass into energy for industrial purposes. Examples of projects eligible for financial assistance that would produce non-liquid fuels include projects to convert animal residues into methane gas and to densify wood into pellets or other compact forms.

This area presents a special problem of implementation concerning the proper scope of financial assistance in terms of project type. Although the Conference Report provides that the duplication of similar technologies in the non-liquid fuels area should be minimized in the overall design of the financial assistance program, many of the newer gasification and liquefaction technologies in this area are not yet ready for commercial scale application. FmHA wishes to accommodate to the extent practicable emerging technologies as they become ready for adoption on a commercial scale.

6. Application Solicitation for Intermediate-Scale Projects

The August Proposal (§ 1990.205(b)(2)(i)) provided that intermediate-scale project applications would be received on a "simultaneous" solicitation basis rather than by the "continuous" solicitation process that was proposed for small-scale projects. Approximately 30 percent of the written comments addressed this issue and approximately 80 percent of these commentors were opposed to the "simultaneous" solicitation as provided in the August Proposal.

While the "simultaneous" solicitation procedure is described in the Act (§ 212(b)(1)), it is not mandated by the Act. The Conference Report (page 247) points out that § 212(b)(2) of the Act authorizes the Secretary to adopt other procedures "which will result in more expeditious processing."

The Conference Report states: "The Conferees encourage the Department of Agriculture to use existing Farmers Home Administration procedures which provide for a single ongoing solicitation with projects reviewed on a sequential basis for purposes of expediting administration of this title."

The concerns most frequently expressed in the written comments were that the "simultaneous" solicitation

would overwhelm FmHA staff resources, favor larger organization applicants, and result in less expeditious processing than could be expected from the continuous solicitation method currently used in existing FmHA programs with which staff and applicants are familiar.

For purposes of the Final Rule, FmHA has decided, for the most part, to receive and process applications on a continuous basis. However, FmHA reserves the right in the future to employ the "simultaneous" solicitation method to achieve purposes under the Act that may not be fully satisfied through the "continuous" process.

The continuous solicitation procedure for intermediate scale biomass energy projects is effective immediately and the FmHA hereby solicits the submission of applications as of this date. Applications may be submitted to any office of the FmHA during regular business hours.

The following are specific dates on which applications will be officially received by FmHA, for purposes of implementing the statutory requirement that a decision be made on each individual application within 120 days of its receipt. The first such date is November 17, 1980. The second such date is December 17, 1980. Subsequent dates will be February 16, 1981, April 16, 1981, and the 16th day of alternate months thereafter, (provided that if the 16th day of any such month falls on Saturday or Sunday, the date will be the following Monday). The number of successive two-month intervals for receipt of applications will be subject to the availability of funding authority and in no event will commitments be made after September 30, 1984.

The State Director will date stamp the application with the relevant official receipt date regardless of when submitted, and official evaluation will not begin until that date.

Applicants are encouraged to participate in discussions and conferences with the FmHA prior to the submission of an application. The official application receipt dates are intended to allow time prior to such dates for discussions and conferences between FmHA and applicants to occur.

If an applicant fails to meet a particular official receipt date, he or she may submit at any subsequent time and need not await the next official receipt date although the 120 days for a decision on the application will not begin to run until the next official receipt date.

Applications may be submitted personally or by mail; if an application is submitted by mail, it must be received in an FmHA office prior to the close of business on the relevant official receipt date in order for the 120 days for a decision to begin to run on that date.

FmHA will evaluate such applications on a comparative basis to the extent necessary to achieve the purposes of the Act, including effectively to implement the priorities of the Act and these regulations.

7. Application Solicitation for Small-Scale Projects

The August Proposal (§ 1990.105 (b)) provided for continuous solicitation of small-scale project applications. Commentors were substantially in agreement that this was the preferable method for small-scale projects, and this Final Rule retains such a procedure.

Approximately 15 percent of all written comments further suggested that small-scale projects procedures should be simplified and technical, financial and other requirements should be relaxed, particularly for very small, on-farm projects. The August Proposal, in accordance with Congressional intent as reflected in the Conference Report, sought to incorporate existing FmHA procedures to the fullest possible extent consistent with the relevant statutory provisions and objectives. Thus, multi-million dollar loan guarantees of intermediate and large-scale projects under the Act were considered analogous (for purposes of the scope, kind and amount of detailed regulations which would be appropriate) to similar size business and industrial loans under other FmHA programs. Even the small-scale biomass energy project loans may be up to $1 million, an amount far in excess of the loan limits of FmHA's Farm Ownership program, from which some commentors proposed adopting regulations for simplification purposes.

FmHA has included certain changes in the Final Rule that are designed to make it easier for applicants proposing on-farm projects to participate. Where the project is located on a farm and whether or not the project products will be used on the farm, a lien need not be taken on the entire farm when it is not needed to secure a loan. Interim construction financing from a commercial lender will not be required where it is clearly demonstrated that such financing is not available at competitive terms, and will never be required for projects involving less than $100,000 of funding. In determining the income from a farm project for purpose of ascertaining whether there is reasonable assurance of repayment of the insured loan from the project's income, the appropriate financial credits will be attributed to a project's income for biomass fuel used on the farm rather than sold commercially. Such credits will be computed based upon the prevailing commercial price of the fuel displaced.

The Biomass Energy and Alcohol Fuels Act of 1980, Title II, is basically one which seeks the commercialization of biomass energy production to reduce the Nation's dependence on petroleum imports. Commercial type projects that demonstrate financial feasibility are the concern of the Act. If there are on-farm projects that cannot demonstrate the capability for repayment of the insured loan from the project's income, (including byproduct credits, credits for fuel used on the farm rather than sold commercially, and available tax credits and other government incentives), but nevertheless are desired by applicants for fuel dependability or other reasons related to the whole farm operation, it is possible they may qualify under the FmHA Farm Ownership loan program which will remain available to applicants.

8. Relationship to Existing FmHA Regulations

(a) *Personal Liability.* The Preamble to the August Proposal stressed the FmHA intention to "adhere to the maximum extent practicable to the existing FmHA regulations, procedures and forms applicable to other programs administered by it", recognizing, of course, statutory differences and differing program objectives. The August Proposal itself, however, was intended to include only those FmHA "other program" regulations which it specifically identified as applicable to the Biomass energy programs. Accordingly, some commentors expressed opposition to "other program" FmHA regulations which were not part of the August Proposal. An example is § 1980.443 (b) of the FmHA Business and Industry Program requiring, "usually", personal liability of certain stockholders and owners for repayment of FmHA guaranteed loans (opposed in at least five written comments). The August Proposal (§ 1990.213 (b)) did not incorporate this provision but it did use § 1980.443 (a) from the Business and Industry Program, which deals more generally with security requirements to provide reasonable assurance of repayment of the loan. Thus, the matter of stockholder and owner liability in the biomass energy program will depend on the circumstances as to what FmHA needs in order to have reasonable assurance of repayment. The Final Rule will follow the August Proposal in this respect.

(b) *Borrower-Lender Conflict of Interest.* Approximately 5 percent of the written comments on the August Proposal sought permission for lenders to hold stock or be directors of the borrower or otherwise engage in relationships which in FmHA's other programs are prohibited because of the potential risk of conflict of interest. Commentors urged that the conflict of interest bar would discourage investors and unduly restrict the program. FmHA has concluded there is insufficient reason to revise the August Proposal to expressly reject existing FmHA practice, particularly in the light of the Conference Report expressions favoring use of FmHA procedures as much as possible.

(c) *Conditional Commitment to Guarantee Until "Substantial Completion."* Approximately 10 percent of the written comments and several witnesses at the hearings objected to the application of a procedure for this program, which FmHA has used in other programs involving construction of projects, whereby interim financing is used during construction and the guarantee of the loan is not finalized until substantial completion. A number of commentors objected, particularly to their perceived stringency of the test applied to determine when a project is substantially completed for this purpose.

The Final Rule continues the basic procedure that a conditional commitment will be made prior to substantial completion of construction, because this procedure helps importantly to assure that construction will adhere to plans and specifications and will result in a plant which performs successfully. The technical guidelines in Appendix A describe that, to the extent possible, FmHA will determine successful completion on the basis of the inspection engineer's certification and a start-up and continuous operation period of at least 72 hours or four consecutive batch runs, as appropriate, to demonstrate sustainable performance. In the case of an insured loan, interim construction financing prior to final closing of the FmHA loan will be required except for very small projects involving a loan of less than $100,000 and in other situations where interim financing is clearly demonstrated to be unavailable at reasonable rates and terms. This approach, adopted in the Final Rule, should provide the basis for a viable program and, at the same time, provide needed safeguards to achieve projects designed and constructed for successful and efficient operation.

(d) *Other Technical Requirements.* Approximately 12 percent of the commentors on the August Proposal objected to their perceived stringency of other aspects of the technical guidelines, including the requirement for qualified engineers who have designed similar facilities and the provisions for performance bonding and warranties on construction materials. A number of comments also called for simplified technical review and requirements for very small facilities.

The Final Rule recasts the technical requirements in important respects to make the guidelines practical and functional. FmHA recognizes that the technical guidelines must be sufficiently flexible to be applied to different project development situations, including turnkey projects, those projects involving separate design and construction firms, package plants, and others. The technical guidelines in Appendix A of the Final Rule for planning, bidding, performance of development, and related activities are based upon FmHA's experience in administering lending programs for rural water systems, waste treatment systems, and other projects involving construction of physical facilities and chemical processes. The Final Rule is designed in this regard basically to apply normal business practices and contracting requirements in order to achieve successful project development at financial charges commensurate with the services performed.

The Final Rule does not adopt generally-simplified technical procedures for very small projects, because at this stage of technology development such projects are particularly risky from a combined technical and financial perspective. One reason for retaining eligibility under the FmHA Farm Ownership loan program for small on-farm projects that are integrated financially and technically with the farming operation as a whole, is the recognition that fuel alcohol projects, for example, may need to attain a "community" size in order to operate continuously and in a manner that can reasonably assure repayment of the loan from project (including by-product) income. FmHA also recognizes the urgency to develop certifiable package units for small-scale production of alcohol and other biomass fuels which can assist in handling technical considerations, and FmHA is actively supporting such developments.

(e) *Elaboration of Certain Other Elements.* Several commentors on the August Proposal recommended that, for purposes of clarity and easier reference, those parts of existing FmHA program regulations that were incorporated by reference in the August Proposal should be spelled out verbatim in this regulation. This has been done for the most part in the Final Rule, except where a provision element is particularly lengthy, has already been published and is readily available to the public, and if included verbatim in this regulation would have rendered the Final Rule unjustifiably cumbersome.

Additionally, the Final Rule provides substantially more elaboration, based upon existing FmHA regulations for other lending programs, of equity and security requirements, transfers and assumptions, and other elements that were treated by reference and more summarily in the August Proposal.

9. Equity Requirements

(a) *Priority for Equity Beyond Minimum Requirements.* Approximately 7 percent of the written comments objected to the priority consideration provided in the August Proposal for applications showing equity in excess of the minimum required under the regulations (§§ 1990.5(a)(1)(iii), 1990.103(c) and 1990.203(b)). The commentors felt that otherwise meritorious applications might suffer because of the proposed priority for borrowers who have more available assets. The Final Rule includes only the minimum 20 percent equity for guaranteed loans and only the minimum 10 percent equity for insured loans, and does not include the priority for additional equity that was in the August Proposal, since other Final Rule provisions will sufficiently assure the financial soundness of the applications and will satisfy the statutory requirements (§ 217(a)(4) (B) and (C)) that "the person receiving such financial assistance will bear a reasonable degree of risk" and that "the amount of financial assistance provided for a project is not greater than is necessary to achieve the purposes of the Act." FmHA judgments as to economic feasibility, adequacy of security offered and other matters affecting assurance of loan repayment may, of course, be made in light of the amount of equity proposed, but greater flexibility in making such judgments will be possible by this change from the August Proposal.

(b) *Minimum Equity Requirements; Loan Limitations.* The public comment on equity requirements and loan limitations was multifaceted, and there was a great deal of confusion regarding the precise impact of the equity requirements and loan limits. About 12 percent of the commentors favored an equity requirement lower than 20 percent for projects involving guaranteed loans. Other commentors,

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however, emphasized the basic importance of the equity contribution (including fully adequate equity for initial operating capital) as crucial to the success of the projects, and they recommended that FmHA retain all equity requirements contained in the August Proposal.

The Final Rule retains the minimum equity requirements of 10 percent for insured loans and 20 percent for guaranteed loans that were included in the August proposal. However, FmHA in all cases will require sufficient equity in the project itself to provide reasonable assurance of a viable project which can repay the loan out of the project's income.

With regard to loan limitations, the Final Rule provides that an insured loan cannot exceed 90 percent of the total estimated construction cost for the project. A guaranteed loan cannot exceed 90 percent of the total estimated construction cost of the project, and the amount of the guarantee cannot exceed 90 percent of the principal and interest of the loan. The Final Rule includes examples of permissible loan purposes; working capital is the primary, major cost item that cannot be deemed "construction" and therefore cannot be financed with a guaranteed loan.

For a 5 million gallon plant, therefore, the following example indicates roughly the financial arrangements that might be applicable:

Estimated total project cost=$10.5 million
Working capital and other non-construction costs=$1.5 million
Construction costs=$9.0 million
Guaranteed loan=$8.1 million (90% of $9 million)
Maximum portion of loan guaranteed=$7,290,000 (90% of $8.1 million)

In this illustration, the minimum equity requirement for the project could be met at least partially by the non-construction costs and the 10 percent of construction not financed by the guaranteed loan, to the extent that such project costs are met with capital contributions that are considered equity under this Final Rule. The example above is, of course, simplified compared to any actual project situation, and is intended only to illustrate the basic way that the equity, loan limitation, and loan guarantee limitation provisions interrelate.

10. Guarantee Fee

Approximately 3 percent of the written comments opposed the guarantee fee requirement (§ 1990.212) that was stated in the August Proposal on the grounds that it was an impediment to full participation in the program. FmHA has concluded that the provision should be changed because of general government budget pressures, the value of the guarantee to the participants, and the congressional intent to have existing FmHA practices generally followed.

11. Geographical Dispersion and Size Variation of Projects

In carrying out the insured loan and loan guarantee program in this Final Rule, FmHA will seek to provide for wide geographical dispersion and size variation of biomass energy and alcohol fuels projects to the extent consistent with the selection of those projects which otherwise conform to the requirements of the Final Rule. In view of the fact that FmHA has already assisted with loan guarantees a number of projects in excess of 7.5 million gallons under its regular Business and Industry Program, the Agency hopes for and encourages applications for projects below 7.5 million gallons which will contribute to the wide geographical dispersion of projects. Geographical and size variation in projects will assist in achieving a wide variation in feedstocks and technologies which is also an objective of the program. The establishment of Biomass Energy Loan Review Committees within FmHA State Offices will enable FmHA to emphasize project selection on a wide geographical basis.

12. Editorial and Other Clarification Revisions.

Suggestions relating to style and for clarity made by some commentors have been adopted in the Final Rule.

(a) As noted above, cross-references to specific other FmHA program regulations in several cases have been replaced by setting out the substance of the other program regulation in full in the Final Rule. Where such replacement, however, would have involved extensive repetition of a lengthy regulation, the cross-reference was retained.

(b) Additional definitions suggested by the comments have been included in § 1990.3.

(c) To improve the clarity of the Final Rule, § 1990.5(b), relating to certain statutory eligibility requirements, was moved to and becomes § 1990.10, to be juxtaposed with other eligibility provisions of the Final Rule.

(d) Certain additional provisions common to the insured and guaranteed program have been moved to Subpart A from Subparts B and C. Thus, a new § 1990.9 *Loan Purposes* was created in Subpart A for the list of examples of permitted loan construction costs formerly in Subparts B and C. Similarly, "Organization and Administrative" provisions were moved into Subpart A (§ 1990.4(a)) from the two former locations in Subparts B and C.

(e) Section 1990.25 now relates to Planning and Performing Development in accordance with Appendix A, replacing the "Trade Secrets" provision. The Trade Secrets subject is covered by applicable law generally so as to make the original provision unnecessary.

13. FmHA Forms.

The basic application forms to be used for the insured loan and loan guarantee parts of this program are published as Exhibit A to this regulation. Form FmHA 1990-2, "Application for FmHA Biomass Energy Insured Loan Assistance," will be used for insured loan applications; Form FmHA 1990-1, "Application for FmHA Biomass Energy Loan Guarantee Assistance," will be used for loan guarantee applications; Appendix A, "Biomass Energy Project Technical Information," will accompany the applications for both insured and guaranteed loans.

The provision of application forms specifically adopted for this program from existing FmHA forms is intended to clarify to the extent possible the basic application requirements for lending assistance under this program. In addition, since applicants may apply for guaranteed loans regardless of size of project, including for small-scale projects below one million annual gallons, FmHA has attempted to make the basic application for guaranteed and insured loans as similar as possible consistent with the difference in substantive requirements, in order to make it easier for applicants to consider the alternative of insured or guaranteed loan financing for small-scale projects.

Certain other existing FmHA forms, as described in the Final Rule and in the basic forms, must accompany the basic forms to make up a complete application package. Copies of all forms that are applicable may be obtained from any FmHA office.

14. *Other Significant Changes.* The final rule prohibits combining insured and guaranteed loans. This prohibition was not in the proposed rule, but FmHA determined that it would not be practical to merge the two types of loans. FmHA determined that the guaranteed loan appeals procedure should be the same as for all of its other guaranteed programs for consistency of administration. This was a change from the proposed rule. Since the projects should be commercially feasible and quality projects are desired, FmHA in the final rule does not permit deferral of interest and prohibits deferral of principal beyond the second year. The Act authorizes the Secretary to require adequate security. FmHA determined that a pledge of revenues from projects was significant and should be specifically set forth in the regulation. FmHA determined that the total insured loans, initial and subsequent, should not exceed $1 million for a project. This was clarification of the proposed rule.

15. USDA-DOE Consultation and Project Review Procedures.

The Memorandum of Understanding and related documents, which describe consultation and project review and concurrence procedures, will be published subsequently in the Federal Register. The categories of projects exempted from such review are published as Exhibit B to this Final Rule.

16. Bureau of Alcohol, Tobacco, and Firearms Permit.

The Final Rule includes a clarification of the requirements regarding ATF permitting and loan or loan guarantee applications under this Regulation. Applications are advised to consult with the nearest ATF office regarding specific permitting requirements applicable to their operations. Evidence of filing the application for a permit with AFT, and acknowledgement by ATF of such application, must be submitted with the loan application. This procedure is designed to assure that the applicant is taking the full steps necessary to secure a permit, even though such an applicant may not be able to give final assurance that permitting will occur in cases where an insured loan is considered for approval prior to construction.

Note.—This document has been reviewed in accordance with FmHA Instruction 1901-C, "Environmental Impact Statement." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-191, an Environmental Impact Statement is not required.

(Sec. 212(e)(2) of the Biomass Energy and Alcohol Fuels Act of 1980; 7 CFR 2.23; 7 CFR 2.70)

Dated: October 27, 1980.

Thomas L. Burgum,

Deputy Assistant Secretary for Rural Development.

A new Part 1990 is added to Title 7 of the Code of Regulations to read as follows:

PART 1990—BIOMASS ENERGY AND ALCOHOL FUELS LOANS AND GUARANTEES

Subpart A—General Provisions

Sec.
1990.1 Introduction.
1990.2 Program objectives.
1990.3 Definitions.
1990.4 Organization and administration; case and identification numbers.
1990.5 Receiving and processing applications.
1990.6—1990.8 [Reserved]
1990.9 Loan purposes.
1990.10 Ineligible projects.
1990.11 Positive energy balance.
1990.12 Protein use.
1990.13 Availability of feedstocks.
1990.14 Amount of necessity for financial assistance.
1990.15 Risk.
1990.16 Competition.
1990.17 Byproduct values.
1990.18—[Reserved]
1990.19 Legal capacity.
1990.20—[Reserved]
1990.21 Department of energy review or concurrence.
1990.22 Security, maturity, repayment schedules and other terms.
1990.23 Compliance with statutes and regulations.
1990.24 Patents and proprietary rights.
1990.25 Planning and performance of development.
1990.26—1990.27—[Reserved]
1990.28 Access to records.
1990.29 Full faith and credit; incontestability.
1990.30 Guarantee termination.
1990.31 Fees.
1990.32 Loan servicing, default and liquidation.
1990.33 Assistance period.

Subpart B—Biomass Energy Project Insured Loans

Sec.
1990.101 Eligibility.
1990.102 Loan purposes.
1990.103 Loan amount limitations; equity and working capital.
1990.104 Subsequent loans.
1990.105 Receiving and processing applications.
1990.106 Evaluation criteria.
1990.107—1990.109—[Reserved]
1990.110 Maturity and repayment schedules.
1990.111 Interest rate.
1990.112 Security.
1990.113 Loan closing.
1990.114 Default.
1990.115 Loan servicing and liquidation.

Subpart C—Biomass Energy Project Loan Guarantees

Sec.
1990.201 Eligibility.
1990.202 Loan purposes.
1990.203 Loan guarantee amount limitations and equity requirements.
1990.204 Subsequent loan guarantees.
1990.205 Receiving and processing applications.
1990.206 Evaluation criteria.
1990.207—1990.209—[Reserved]
1990.210 Maturity and repayment schedules.
1990.211 Interest rates.
1990.212 Guarantee fee and lender fees and charges.
1990.213 Security.
1990.214 Loan closing and servicing.
1990.215 Continuous assistance.
1990.216 Default.
1990.217 Liquidation and settlement.
1990.218 Protective advances.
1990.219 Transfer and assumption.
1990.220 FmHA Forms incorporated in Subpart C.

Appendix A.—Planning, Performing Development, and Technological Feasibility Requirements for Biomass Energy Projects.
Exhibit A-1—Application for FmHA Biomass Energy Loan Guarantee Assistance. Form FmHA 1990-1.
Exhibit A-2—Application for FmHA Biomass Energy Insured Loan Assistance. Form FmHA 1990-2.
Exhibit B—Determination of Exempt Categories.

Authority.—Sec. 212(e)(2) of the Biomass Energy and Alcohol Fuels Act of 1980, Pub. L. 96-294, 94 Stat. 687, (42 U.S.C. 8812).

Subpart A—General Provisions

§ 1990.1 Introduction.

This Subpart A contains the general regulations and prescribed forms which are applicable to the Farmers Home Administration program for financial assistance to biomass energy and alcohol fuels projects pursuant to the Biomass Energy and Alcohol Fuels Act of 1980 (Pub. L. 96-294, Title II). Additional regulations for the program are found in the various subparts of Part 1990. These regulations apply to lenders, holders, borrowers and other parties involved in making, insuring, guaranteeing, holding, servicing or liquidating loans. "Financial Assistance" for purpose of this regulation shall mean the forms of financial assistance described in Subpart B (Insured Loans) and Subpart C (Guaranteed loans).

§ 1990.2 Program objectives.

The objectives of the financial assistance program in Part 1990 are to reduce the dependence of the United States on imported petroleum and natural gas by financing increased production and use of biomass energy resources. Such increased production and use will be on an economically and environmentally feasible basis that does not impair the nation's ability to produce food and fiber.

§ 1990.3 Definitions.

(a) For purposes of this Part, the following general definitions apply. Additional definitions may be found in

the Subparts relating to the particular type of financial assistance involved.

(1) The "Act" means the Biomass Energy and Alcohol Fuels Act of 1980 (Pub. L. 96-294, Title II).

(2) "Alcohol" means methanol, ethanol and any other alcohol which is produced from biomass which is suitable for use by itself or in combination with other substances as a substitute for petroleum or petrochemical feedstocks. The term does not include alcohol for beverage purposes.

(3) "Applicant" means any person who has filed an application for financial assistance under this Part with the appropriate FmHA representative designated in this Part.

(4) "Application" means a proposal for financial assistance in the form and containing the information required by this Part.

(5) "Assignment Guarantee Agreement" (Form FmHA 449-36) means the signed agreement among FmHA, the lender, and the holder, setting forth (specifically or by reference) the terms and conditions of an assignment of a guaranteed portion of a loan or any part thereof.

(6) "Biomass" means any organic matter which is available on a renewable basis, including agricultural crops and agricultural wastes and residues, wood and wood wastes and residues and animal waste; but not municipal wastes or aquatic plants.

(7) "Biomass energy" means biomass fuel which consists of any gaseous, liquid, or solid fuel produced by conversion of biomass; or energy or steam derived from the direct combustion of biomass for the generation of electricity, mechanical power, or industrial process heat.

(8) "Biomass energy project" or "project" means any facility (or portion of a facility) located in the United States which is primarily for the production of biomass fuel and byproducts; or the combustion of biomass for the purpose of generating industrial process heat, mechanical power, or electricity (including cogeneration).

(9) "Borrower" means an applicant who has a loan made or guaranteed under this Part.

(10) "Cogeneration" means the combined generation by any facility of electricity or mechanical power and steam or other forms of useful energy (such as heat) which are used for industrial, commercial, heating (including direct heating), or cooling purposes.

(11) "Conditional Commitment for Guarantee" (Form FmHA 449-14) means FmHA's advice to the lender that the material it has submitted is approved subject to the completion of the conditions and requirements set forth in "Conditional Commitment for Guarantee."

(12) "Construction" means (i) the construction or acquisition of any biomass energy project; (ii) the conversion of any facility to a biomass energy project; or (iii) the expansion or improvement of any biomass energy project which increases the capacity or efficiency of that facility to produce biomass energy. The term "construction" includes the acquisition of necessary equipment and machinery; the acquisition of necessary land and its improvements; and, capital costs necessary to meet environmental standards. Such term does not include the acquisition of any facility which was operated as a biomass energy project before the acquisition.

(13) "Continuous solicitation" means the method of receiving, evaluating, and processing applications for financial assistance under this Part by which applicants may file their applications at any time after the effective date of this Part.

(14) "Cooperative" means any agricultural association, as that term is defined in section 15(a) of the Act of June 15, 1929, as amended (46 Stat. 16; 12 U.S.C. 1141j), commonly known as the Agricultural Marketing Act.

(i) As used in Section 15(a) of that Act, the term "farmers" means producers of agricultural commodities and other agricultural products, including among others, ranchers, dairy men, planters and nut and fruit growers.

(ii) "Farm" means a tract of land, improvements and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock.

(15) "Federal agency" means any Executive agency, as defined in Section 105 of title 5, United States Code.

(16) "Finance Office" means the office which maintains the FmHA financial records. It is located at 1250 Market Street, St. Louis, Missouri 63103, (Phone 314-622-4400).

(17) "FmHA" means the United States of America, acting through the Farmers Home Administration, an Agency of the United States Department of Agriculture. References to the National Office, Finance Office, State Office, State Director, District Director, or other FmHA office or official should be read as prefaced by "FmHA."

(18) "Guaranteed Loan" means a loan made and serviced by a lender for which FmHA has entered into a Form FmHA 449-35, "Lender's Agreement," and for which FmHA has issued a Form FmHA 449-34, "Loan Note Guarantee."

(19) "Holder" means that person (other than the lender) lawfully owning all or any part of the guaranteed portion of the loan with no servicing responsibility.

(20) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(21) "Insured loan" means a loan directly made and serviced by FmHA as lender.

(22) "Intermediate scale biomass energy project" means a biomass energy project with an anticipated annual production capacity of more than 1 million gallons of anhydrous ethanol per year (or its energy equivalent of other forms of biomass energy) but less than 15 million gallons of anhydrous ethanol per year (or its energy equivalent of other forms of biomass energy). Energy equivalent is defined in greater detail in a Notice which appeared in 45 F.R. 52911 (August 8, 1980).

(23) "Lender" means the person or organization making and servicing the loan which is guaranteed under Subpart C. The lender is also the party requesting a loan guarantee. The provisions of § 1980.13 shall govern eligibility of lenders.

(24) "Lender's Agreement" (Form FmHA 449-35) means the signed agreement between FmHA and the lender setting forth (specifically or by reference) the lender's loan responsibilities when the Loan Note Guarantee is issued.

(25) "Letter of Conditions" means a letter issued by FmHA to an applicant setting forth the conditions under which FmHA will make an insured loan under the Act.

(26) "Note" means an evidence of the debt. In those instances where FmHA makes an insured loan or guarantees a bond issue, "note" shall also be construed to include "Bond" or other evidence of indebtedness where appropriate.

(27) "Person" means any individual, company, cooperative (as defined in paragraph (a)(14) or otherwise) partnership, corporation, association, consortium, unincorporated organization, trust, estate, or any entity organized for a common business purpose, any State or local government (including any special purpose district or similar governmental unit) or any agency or instrumentality thereof, or any Indian tribe or tribal organization. "Entity" means any person other than an individual.

(28) A "primary fuel" is the predominant fuel used by the biomass energy project.

(29) "Simultaneous solicitation" means the method of receiving, evaluating, and processing applications for financial assistance under this Part by which applicants may file their applications only on or before a fixed date in accordance with a **Federal Register** notice, at which time all applications so received will be evaluated and processed together on a comparative basis and decisions will be made thereon simultaneously.

(30) "Small scale biomass energy project" means a biomass energy project with an anticipated annual production capacity of not more than 1,000,000 gallons of anhydrous ethanol per year or its energy equivalent of other forms of biomass energy.

(31) "Solar energy resources" for this purpose includes wood, bagasse, corn stover and other biomass, among others.

(32) "State" means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(33) "Transfer and Assumption" means the conveyance by a debtor to an assuming party of the assets, collateral, and liabilities of the loan in return for the assuming party's binding promise to pay the debt outstanding. In relation to transfer and assumption cases, where appropriate, "liquidation" and "loan" shall be construed to mean "transfer and assumption," "promissory note" shall be construed to mean "assumption agreement," and "borrower" shall be construed to mean "assuming party" or "transferee."

(34) "Principal Owner" means an owner (member, stockholder, partner, or person in an entity) who owns or controls a 20 percent interest in the applicant. If no owner owns or controls at least a 20 percent interest, all owners will be considered to be principal owners, except when the applicant is a corporation listed on a major stock exchange and for those so listed if required by FmHA.

§ 1990.4 Organization and administration; case and identification numbers.

(a) *Organization and administration of program.* (1) The biomass energy project insured loan and guarantee program is administered by the FmHA Administrator through a State Director serving each State, and such State Director is the focal point for the program and the local contact person for processing and servicing activities, subject to his or her delegation of specific responsibilities to others.

(2) Administrative arrangements established by FmHA in relation to this program include the establishment of: (i) An Office of Renewable Resources which will assist the Administrator with, among other things, the administration of this program; (ii) a Biomass Energy Loan Division in the National Office; (iii) Biomass Energy Loan Review Committee in the National Office of FmHA; and (iv) Biomass Energy Loan Review Committees in State Offices of FmHA.

(3) *Office of the General Counsel (OGC).* In performing the FmHA functions with respect to Biomass Energy and Alcohol Fuel Loans, the advice and assistance of OGC may be sought. In loanmaking, it is the responsibility of the lender to ascertain that all requirements for making, securing, and servicing the loan are duly met. If FmHA Has any questions concerning the lender's resolution of these matters, it should consult with OGC.

(4) *Delegation of Authority.* The State Director may delegate his or her duties and responsibilities stipulated in this Regulation, other than loan approval authority.

(b) Applications will be assigned a case number for identification in accordance with the provisions of § 1980.12.

§ 1990.5 Receiving and processing applications.

(a) *Priority.* (1) In all cases, priority in the selection of applications for funding shall be given to a biomass energy project that:

(i) uses a primary fuel other than petroleum or natural gas in the production of biomass fuel, such as geothermal energy resources, solar energy resources, waste heat, or coal, (primary fuel does not include incidental use of petroleum or natural gas, for example, for flame stabilization. Fuels which are not commercially marketable by reason of quality, quantity or distance from existing transportation system would not be considered as petroleum or natural gas for this purpose); or

(ii) applies new technologies which expand the possible feedstocks, produces new forms of biomass energy, or produces biomass fuel using improved or new technologies.

(2) A project which does not use a priority-qualifying fuel or technology may, nevertheless, be considered for financial assistance under this Part without priority.

(b) *Continuous or Simultaneous Solicitation.* FmHA procedures permit alternative methods for receiving and processing applications for biomass energy project financial assistance. The respective Subparts will specify such applicable procedures, including whether applications will be received and processed continuously (continuous solicitation) or will be received by one designated date pursuant to **Federal Register** Notice of Solicitation, and considered and acted on together (simultaneous solicitation).

(c) *Evaluation Criteria.* Applications which meet eligibility requirements will be evaluated in accordance with criteria stated in applicable Subparts of this Part.

(d) *Application and Procedures.* (1) Financial assistance will be considered for any biomass energy project only on the basis of an application submitted by the applicant, in such form and under such procedures as are prescribed in the respective Subparts of this Part.

(2) The application shall include information regarding the construction costs of the biomass energy project and estimates of operating costs and income, including the sale of any by-products.

(3) Each applicant shall provide access at reasonable times to such other information and such assurances as FmHA may require.

(4) As a condition precedent to receiving financial assistance, applicants must consent to such examinations and reports regarding the biomass energy project as FmHA may require.

(5) With respect to each biomass energy project for which financial assistance is provided, the applicant will furnish such reports and records relating to the project as FmHA determines to be necessary.

(e) *Notice of Denial with Reasons.* (1) If any application for financial assistance for a biomass energy project is denied, the applicant will be provided written notice thereof with the reasons for the disapproval.

(2) Applicants (both borrower and lender, if guaranteed loan) may resubmit applications following such denial, provided all exceptions noted by FmHA are addressed and the application is substantially modified to reflect such changes. Such a resubmittal shall be considered as a new application.

(f) *Appeals.* Procedures in §§ 900.51-53 for insured loans and 1980.80 for guaranteed loans shall apply to review

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of FmHA actions or determinations under this Part.

§§ 1990.6–1990.8 [Reserved]

§ 1990.9 Loan purposes.

(a) A loan which may be made and insured or guaranteed under this Part 1990 shall be used only for the construction of a biomass energy project.

(b) Construction as defined in § 1990.3(a) includes acquisition, conversion and expansion of existing facilities but not the acquisition of facilities operated as a biomass energy project before the acquisition.

(c) Construction costs for a facility which produces biomass energy other than biomass fuel includes only costs related to constructing or converting boilers, on-site machinery and handling equipment which are necessary for the use of biomass as a fuel.

(d) With respect to projects producing biomass fuel and byproducts, construction costs may include portions of such facility related to the production of such byproducts.

(e) Other examples of permissible construction loan purposes include:

(1) Costs of acquisition of real property, including engineering fees, surveys, title insurance, recording fees, surveys, real estate commissions, and legal fees incurred in connection with land acquisition, site improvements, site restoration, access roads and fencing;

(2) Reasonable fees and charges only if specifically listed and disclosed on Form FmHA 1990–1, "Application for Biomass Energy Loan Guarantee Assistance," or 1990–2, "Application for Biomass Energy Insured Loan Assistance." Authorized fees include professional fees to prepare environmental reports and those necessary services rendered by professionals, such as engineers, architects, lawyers, accountants, and appraisers. The amount of the fee will be what is reasonable and customary in the community or region where the project is located. Any fees for professional or expert services are to be fully documented and justified on the Form FmHA 1990–1 or 1990–2, and are subject to FmHA review and approval. Only approved fees and charges may be funded out of loan proceeds.

(3) Equipment purchase, placement and testing costs;

(4) Materials, labor, and utility services during construction;

(5) Costs to provide safety and environmental protection equipment, facilities;

(6) Interest costs until closing of permanent financing or completion of construction, whichever is later;

(7) Necessary and appropriate insurance and bonds of all types related to the construction of the project;

(8) A reasonable contingency reserve;

(9) Guarantee fee; and

(10) Other necessary and reasonable costs, as approved by the FmHA.

(f) Costs that are not considered as allowable construction costs include the following:

(1) Working capital;

(2) Interest except as provided in paragraph (e)(6) of this section;

(3) Fees and commissions charged to the borrower, including finder fees for obtaining the Federal guarantee, packaging fees, commitment fees and other similar fees or charges;

(4) General and administrative expenses, including company organizational expenses; and operating expenses;

(5) Goodwill, franchise, trade, or brand name costs;

(6) Dividends and profit sharing to stockholders, employees, and officers;

(7) Expenses not paid or incurred by the applicant;

(8) Costs that are excessive or are not directly required to construct the project, as determined by FmHA.

§ 1990.10 Ineligible projects.

(a) Projects which use aquatic plants or municipal waste as feedstock are ineligible for financial assistance under this Part.

(b) Biomass energy projects which will have an anticipated annual production capacity of 15 million gallons or more of anhydrous ethanol (or the energy equivalent of other forms of biomass energy) are ineligible for financial assistance under this Part except that, with the concurrence of the Department of Energy in accordance with § 1990.21, they may be considered for financial assistance under this Part if they will use wood or wood wastes or residues or are owned and operated by a cooperative as defined in § 1990.3(a)(14).

(c) Biomass energy projects which propose to produce any amount of beverage alcohol will be ineligible for financial assistance under this Part.

(d) No loan shall be guaranteed if the interest on such loan is excludable from gross income for purposes of Chapter 1 of the Internal Revenue Code of 1954.

§ 1990.11 Positive energy balance.

(a) The Btu content of motor fuels to be used in the facility involved to produce the biomass energy must not exceed the Btu content of the biomass fuel to be produced in the facility (positive energy balance).

(b) In determining the existence of a Positive Energy Balance, account will be taken of any displacement of motor fuel or other petroleum products which the applicant has demonstrated would result from the use of the biomass fuel produced in the facility involved. The applicant has the burden of proving such displacement.

(c) Displacement for this purpose would include displacement occurring after the fuel is produced as a result of marketing operations or manner of use of biomass fuel as through octane enhancement. This would allow consideration of decreased consumption of fuel by a refinery because ethanol blending reduces the severity of reforming to provide gasoline with sufficient octane level for marketing.

(d) The term "motor fuel" means gasoline, kerosene, and middle distillates (including diesel fuel).

(e) The Positive Energy Balance shall be determined by considering only the project for which financial assistance is requested.

§ 1990.12 Protein use.

Financial assistance will not be provided for a biomass energy project if the process used by the project will not extract the protein content of the feedstock for utilization as food or feed for readily available markets in any case in which to do so would be technically and economically practicable.

§ 1990.13 Availability of feedstock.

(a) Financial assistance will not be provided for a biomass energy project unless necessary feedstocks are available and may reasonably be expected to continue to be available in the future.

(b) For biomass energy projects using wood, or wood wastes or residues from the National Forest System, the determination of feedstock availability shall take into account current levels of use by then existing facilities.

§ 1990.14 Amount necessary for financial assistance.

(a) The amount of financial assistance provided for a biomass energy project will not be greater than is necessary to achieve the purposes of the Act, including maximizing the production of biomass energy.

(b) In making this determination, other types of financial assistance requested and awarded for the project shall be taken into account.

§ 1990.15 Risk.

(a) Any person receiving financial assistance for a biomass energy project must bear a reasonable degree of risk in the construction and operation of the project.

(b) The respective Subparts of this Part and the prescribed loan documents and other agreement forms will specify the manner in which such reasonable degree of risk shall be borne.

§ 1990.16 Competition.

Following evaluation of the markets involved, due consideration will be given to promoting competition, in providing financial assistance for biomass energy projects.

§ 1990.17 Byproduct values.

In determining the amount of financial assistance to be provided to a biomass energy project, the potential value of byproducts, if any, and the costs attributable to their production, will be considered.

§ 1990.18 [Reserved]

§ 1990.19 Legal Capacity.

An applicant must possess the legal capacity to contract for the loan and construct, maintain and operate the project.

§ 1990.20 [Reserved]

§ 1990.21 Department of Energy review or concurrence.

Section 212 of the Act requires review by the Department of Energy before certain applications for biomass energy project financial assistance may be approved and, in addition, for certain other such applications the concurrence of the Department of Energy. Prior to committing to issue or issuing a loan or loan guarantee, FmHA shall, to the extent and in the manner required by the Act, consult with and, where applicable, obtain the concurrence of DOE. A Memorandum of Understanding between USDA and DOE which describes consultation and project review and concurrence procedures will be published subsequently in the Federal Register. The categories of projects exempted from such review are published as Exhibit B to this Regulation.

§ 1990.22 Security, maturity, repayment schedules and other terms.

Applicable Subparts of this Part contain the regulations for security, maturity, repayment schedules and other terms of biomass energy project loans, which the Act requires to be reasonable and meet standards sufficient to protect the financial interests of the United States.

§ 1990.23 Compliance with statutes and regulations.

(a) *Environmental Impact Assessments and Statements.* Procedures for FmHA compliance with the National Environmental Policy Act of 1969 stated in § 1980.40 and Subpart G of Part 1901 will apply to this Part.

(b) *Equal Opportunity and Non-discrimination Requirements.* Procedures for compliance with the Equal Credit Opportunity Act of 1974, as stated in §§ 1910.2 and 1980.41, and with Executive Order 11246, Title VI of the Civil Rights Act of 1964 and other civil rights laws, as stated in Subpart E of Part 1901, will apply to this Part.

(c) *Floodplain or Mudslide Hazard Area: Wetlands.* For projects subject to floodplain or mudslide hazards or located in wetlands, procedures stated in § 1980.42 and § 1943.23(a) and in Executive Orders 11988 and 11990 will apply to this Part.

(d) *Clean Air Act and Water Pollution Control Act Requirements.* Procedures for compliance with the Clean Air Act (42 U.S.C. 1857) and the Federal Water Pollution Control Act (33 U.S.C. 1318) stated in § 1980.43 will apply to this Part.

(e) *National Historic Preservation Act.* Procedures for compliance with the National Historic Preservation Act of 1966 stated in 1980.44 and Subpart F of Part 1901 will apply to this Part.

(f) *Bureau of Alcohol, Tobacco, and Firearms Permit.* Applicants requesting loans for the production of alcohol fuel should be advised to consult with the nearest Bureau of Alcohol, Tobacco and Firearms (ATF) regional regulatory administrator concerning the specific requirements applicable to their operations. Evidence of filing the application for a permit with ATF, and acknowledgement by ATF of such application, must be submitted with the loan application.

(g) *Truth in Lending, Real Estate Settlement Procedures Act.* Procedures for compliance with the Truth in Lending Act stated in § 1901.401 and with the Real Estate Settlement Procedures Act stated in § 1901.406 will apply to this Part.

(h) *Privacy Act of 1974; Right to Financial Privacy Act of 1978.* Procedure for compliance with the Privacy Act of 1974 stated in § 1910.3(a) (3) and (4) and § 1980.451(i)(18) and with the Right to Financial Privacy Act of 1978 stated in § 1980.48 will apply to this Part.

(i) *Other Federal, State and local requirements.* In addition to the specific requirements of this regulation, proposals for facilities financed in whole or in part with an FmHA loan or guarantee will be coordinated with all appropriate Federal, State and local agencies in accordance with the following:

(1) Compliance with special laws and regulations. Applicants and/or lenders will be required to comply with any Federal, State or local laws, regulatory commission rules, ordinances, and regulations which are presently in existence or may be later adopted which affect the project including, but not limited to:

(i) Organization and authority to design, construct, develop, operate and/or maintain the proposed facilities;

(ii) Borrowing money, giving security therefor, and raising revenues for the repayment thereof;

(iii) Land use zoning;

(iv) Health, safety, and sanitation standards;

(v) Protection of the environment and consumer affairs.

(j) In compliance. The applicant and/or lender will be in compliance with this section effective with the date of loan closing for insured loans and issuance of the Loan Note Guarantee for guaranteed loans.

§ 1990.24 Patents and proprietary rights.

Patents and other proprietary rights accruing to the borrower and resulting from the project will remain with the borrower, except that such rights shall be, in the case of default, treated as project assets in accordance with terms and conditions in the loan agreement.

§ 1990.25 Planning and performance of development.

Planning and performance of development shall be in accordance with Appendix A.

§§ 1990.26–1990.27 [Reserved]

§ 1990.28 Access to records.

FmHA representatives shall have access (including the right to make copies) at reasonable times to all records relating to biomass energy projects. To the maximum extent practicable, records, and information required for regulatory and other purposes will be used also for purposes of this Part.

§ 1990.29 Full faith and credit and incontestability.

The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the lender or holder has actual knowledge at the time it becomes such lender or holder or which lender or holder participates in or condones. The guarantee and right to require purchase will be directly

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enforceable by holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the Loan Note Guarantee by the lender. The Loan Note Guarantee will be unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, use of loan funds for unauthorized purposes, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. As used in this paragraph and in any Loan Note Guarantee (including those now outstanding) in which the phrase appears, "use of loan funds for unauthorized purposes" refers to the situation in which the lender in fact agrees with the borrower that loan funds are to be so used and the phrase "unauthorized purpose" means any purpose not listed by the lender in the completed application as approved by FmHA.

§ 1990.30 Guarantee termiantion.

Any loan guarantee under this Part shall not be terminated, canceled or otherwise revoked, except in accordance with its terms and shall be conclusive evidence that such guarantee complies fully with the Act and of the approval and legality of the principal amount, interest rate and all other terms of the securities, obligations, or loans of the guarantee.

§1990.31 Fees.

(a) Fees, if any, charged for financial assistance provided under this Part shall be as stated in the applicable Subparts of this Part.

(b) All fees and charges must be specifically documented and justified on the application. Allowable fees will be those reasonable and customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to FmHA review and approval.

(c) Packaging fees include services rendered by the lender or others in connection with preparation of the application and seeing the application through to final decision. These services may or may not be performed by an investment banker. If an investment banker provides needed assistance in addition to the packaging of the loan, additional charges may be added to the packaging fees. The maximum allowable packaging fees are two percent of the total principal amount of the loan up to $1 million and on all amounts over $1 million an additional one-forth percent up to a total maximum fee of $50,000. Packaging fee, investment banker fees, and any other fees and charges, not specifically provided for in this section, are permitted subject to FmHA review and approval. Packaging fees, investment banker fees, and any other similar fees or charges shall not be paid from loan proceeds.

§ 1990.32 Loan servicing, default, and liquidation.

Loan servicing, default and liquidation regulations relating to financial assistance provided under this Part are stated in the applicable Subparts of this Part.

§ 1990.33 Assistance period.

No financial assistance under this Part may be committed or entered into after September 30, 1984, but contracts in existence on that date shall remain in effect for the period specified therein.

Subpart B—Biomass Energy Project Insured Loans

§ 1990.101 Eligibility.

In addition to the eligibility requirements stated in Subpart A applicable generally to all financial assistance under this Part, applications for biomass energy project insured loans must meet the requirements in this Subpart.

(a) *Credit Elsewhere.* (1) The loan applicant shall certify and FmHA shall determine that the applicant is unable, without such loan, to obtain sufficient credit elsewhere at reasonable rates and terms, taking into consideration prevailing rates and terms for loans for similar purposes and periods of time, to finance the construction of the biomass energy project for which such loan is sought.

(2) The procedure for determining and documenting the unavailability of credit elsewhere is as follows:

(i) When, based on FmHA's knowledge of other lenders programs, the review of the application indicates there is no possibility for the applicant to obtain the credit needed from other lender(s), this conclusion and the basis for it will be recorded in the running record and further verification or checks will not be necessary.

(ii) If FmHA questions whether or not the applicant is able to obtain the credit needed from other lenders, such lenders will be contacted and the findings recorded in the running record.

(iii) If FmHA receives letters or other written evidence from a lender(s) indicating that the applicant is unable to obtain satisfactory credit, these will be included in the loan docket.

(iv) Property and interest in property owned and income received by an individual applicant and by principal owners of an entity will be considered and used by an applicant in obtaining credit from other sources.

(b) *Small-scale Biomass Energy Projects.* Only small scale biomass energy projects, as defined in § 1990.3(a)(30), are eligible for insured loans under this Subpart B.

§ 1990.102 Loan purposes.

(a) An insured loan may be made for the construction of small-scale biomass energy projects. Examples of permissible construction costs are listed in § 1990.9.

(b) An insured loan may not be combined with a guaranteed loan under this Part 1990.

§ 1990.103 Loan amount limitations; equity and working capital.

(a) No insured loan under this Subpart B (with any overrun costs added by subsequent loans included) may exceed $1 million for a project.

(b) No insured loan under this Subpart B may exceed 90 percent of the total estimated cost of construction of the project as concurred in by FmHA.

(c) The applicant will be required to contribute sufficient tangible assets to provide reasonable assurance of a successful project. A minimum of 10 percent equity on the applicant's balance sheet and assurance of adequate working capital will be required at the time of loan closing for insured loans.

§ 1990.104 Subsequent loans.

If the total estimated costs of construction of a small-scale biomass energy project after an insured loan is made exceed the total estimated costs of construction as concurred in by FmHA, an additional insured loan may, upon application, be made for such additional estimated total cost of the project as does not exceed 10 percent of the total costs of construction initially estimated.

§ 1990.105 Receiving and processing applications.

(a) *Continuous Solicitation of Applicotions.* Applications for small-scale biomass energy project insured loans will be received and processed on a first-come, first-served basis, unless a simultaneous solicitation is announced by Federal Register publication of notice.

(b) *Preapplication.* (1) Applicants may file preapplications described in paragraph (b)(3) of this section if they desire an expression of FmHA's preliminary views and advice prior to assembling the complete application or they may present the complete application in one package, including the material required in paragraphs

(b)(3) and (c)(1) of this section, and, in the case of an entity, the following:

(i) A complete list of owners showing the address and the percentage of ownership in the entity by each;

(ii) A current (within 60 days of filing) personal financial statement from each of the principal owners. Any other owner whose financial statement, in the judgment of the loan approval official, would be pertinent to a consideration of the financial strength of the entity will also be required to provide personal financial statements.

(iii) A current (within 60 days of filing) financial statement from the entity.

(iv) A copy of the cooperative's or corporation's charter, or any partnership agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (good standing) and a resolution(s) adopted by the Board of Directors or members or stockholders authorizing specified officers of the cooperative, corporation, or partnership to apply for and obtain the loan and execute required debt, security and other instruments and agreements.

(2) A preapplication will be in the form of a letter and will not commence the running of the 120 days statutory period for processing applications.

(3) Preapplication letters should include:

(i) Applicant's name and address, telephone number and contact person;

(ii) Amount of loan request;

(iii) Brief description of the project and process;

(iv) Amount of applicant's equity;

(v) Anticipated loan maturity;

(vi) Type and availability of feedstocks;

(vii) Record of any pending or final regulatory or legal (civil or criminal) action against the applicant, principal owners, officers and directors, or partners;

(viii) A current (within 90 days of filing) balance sheet and latest profit and loss statement, and financial statements of existing businesses for the last 3 years, including in the case of farmers information on crop and livestock production;

(ix) A detailed projection of gross revenue, net earnings, and cash flow statements for 3 years including assumptions upon which such forecasts are based;

(x) Sales projections indicating the percent of the local market the project expects to obtain including assumptions upon which such projections are based.

(4) If preapplication information indicates the project will not meet FmHA's minimum credit standards for a sound loan, is ineligible, or that funds or loan authority are not available for the project, FmHA will so inform the applicant. The applicant will be notified in writing with reasons for the decision indicated. If it appears that the project meets basic eligibility requirements and credit standards, and loan authority is available, FmHA will inform the applicant in writing and request completion of the application.

(c) *Applications.* (1) A complete application may be filed with any FmHA office and will consist of at least the following:

(i) Form FmHA 1990–2 "Application for Biomass Energy Insured Loan Assistance";

(ii) For entities, the information required by paragraph (b)(1) of this section;

(iii) Form FmHA 449–10 "Applicant's Environmental Impact Evaluation";

(iv) Architectural or engineering plans, if applicable;

(v) Independent (or FmHA) appraisal reports of all property which will serve as collateral or fulfill equity requirements;

(vi) For existing businesses, a pro forma balance sheet at start-up and for at least 3 additional projected years indicating the necessary start-up capital, operating capital and short-term credit based on financial statements for the last 3 years, or more (if available); and projected cash flow and earning statements for at least 3 years supported by a list of assumptions showing the basis for the projections;

(vii) For new businesses, a pro forma balance sheet at start-up and for the next 3 years, projected cash flow (monthly first year, quarterly for 2 additional years) and projected earnings statements for 3 years supported by a list of assumptions showing the basis for the projections;

(viii) Any credit reports obtained by FmHA;

(ix) Form FmHA 400–1, if construction costing more than $10,000 is involved;

(x) Copies of building permits, if applicable, and any necessary certifications and recommendations of appropriate regulatory or other agency having jurisdiction over the project including any pollution control agency;

(xi) Acknowledgement of receipt of permit application by Bureau of Alcohol, Tobacco and Firearms, Department of Treasury;

(xii) Feasibility studies of the technical and economic aspects of the project in form and substance conforming to Appendix A;

(xiii) Any additional information required by FmHA.

(d) *FmHA Evaluation of Application.* (1) FmHA will evaluate the application. FmHA will make a determination whether the borrower is eligible, the proposed project is feasible, the loan is for an eligible purpose, and there is reasonable assurance of repayment ability, sufficient collateral, and sufficient equity. If FmHA determines it is unable to make the loan, the applicant will be informed in writing within 120 days after receipt of the application. Such notification will include the reasons for denial.

(2) If FmHA determines it is able to make the loan, the loan approval official will prepare a letter of conditions listing all requirements which the applicant must agree to meet within a specified time before the application will receive further consideration for approval. All letters of condition will be addressed to the applicant, signed by the State Director and mailed or handed to the appropriate applicant representatives by FmHA.

Requirements listed in the letter will include those relative to:

(i) Maximum amount of loan which may be considered.

(ii) Repayment schedule.

(iii) Contributions required of applicant users or members.

(iv) Security requirements.

(v) Title to property.

(vi) Organization.

(vii) Business operations.

(viii) Insurance and bonding.

(ix) Construction contract documents and bidding.

(x) Accounts, records and audit reports required.

(xi) Other requirements which must be met, including submission of evidence of compliance with applicable statutes and regulations.

(e) *Loan Processing.* Dockets for insured loans for small-scale biomass energy projects will be processed as follows:

(1) The State Director will prepare and sign the letter of conditions and forward it to the applicant.

(2) National Office concurrence is required if the project will use natural gas or oil as the primary fuel source or involves non-standard technology. The State Director will forward to the National Office the relevant material from the docket as required by the National Office. On receipt of National Office concurrent to approve, the State Director will proceed as in paragraph (e)(3) of this section.

(3) The State Director will sign and discuss the requirements of the letter of conditions with the applicant and afford an opportunity to execute Form FmHA 442–46. If the applicant declines to execute Form FmHA 442–46, the State Director will document the reasons for

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such declination. If the applicant executes Form FmHA 442–46, the State Director will proceed with loan processing.

(4) When approving the loan, which shall be within 120 days after receipt of the application, the loan approval official will indicate on all copies of Form FmHA 1940–1, "Request for Obligation of Funds," the approval is subject to the Letter of Conditions. The loan approval official will sign an original and one copy of Form FmHA 1940–1. One copy of the form will be sent to the Finance Office; a signed copy of the form will be sent to the applicant on the date of loan approval.

(f) *Interim Financing.* For insured loans of $100,000 or more, if it is possible for the applicant to borrow funds at reasonable rates and terms on an interim basis during construction period from commercial sources, such interim financing will be obtained so as to preclude the necessity for multiple advances of FmHA funds. Procedures for multiple advances and interim financing under § 1942.17(n)(92) and Part 1902 Subpart A will apply.

§ 1990.106 Evaluation criteria.

(a) In addition to the criteria and eligibility requirements stated in Subpart A (including § 1990.5(c) and §§ 1990.10–17) and in other sections of this Subpart B including §§ 1990.101–103, insured loans for small-scale biomass energy projects may be made only if:

(1) There is reasonable assurance of repayment of the insured loan from the project's income (including by-product income) received by the borrower. For this purpose, "income" includes, in the case of on-farm projects, appropriate financial credit for biomass fuel used on the farm and not sold commercially, such credit to be computed at the prevailing commercial market value of the displaced purchased fuel.

(2) The project is technically feasible and there is acceptable evidence that the applicant will initiate and complete the project in a timely and efficient manner.

§ 1990.107–1990.109 [Reserved]

§ 1990.110 Maturity and repayment schedules.

(a) Repayment Period. Each loan will be scheduled for repayment over a period not to exceed the lesser of (1) 30 years from the date of the note, or (2) the expected average useful life of the major physical assets essential to the project.

(b) Repayment schedules will be in accordance with projected operations. Amortized installments, either monthly, quarterly or semi-annually, will be required and may include deferred payments. All collections will be applied to interest until such interest has been paid. Also, when a full installment is not paid when due, the payment made will be applied first to accrued interest.

(c) Deferred payments. Principal payments may be deferred in whole or in part for a period not to exceed the end of the second full calendar year after the estimated date of loan closing.

§ 1990.111 Interest rate.

Insured loans for small-scale biomass energy projects shall bear interest at rates determined by FmHA, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, plus not to exceed one per centum, as determined by FmHA, and adjusted to the nearest one-eighth of one per centum. The rate will be announced periodically and will be the rate in effect at the time the loan is approved or at the time the loan is closed, whichever rate is lower.

§ 1990.112 Security.

(a) All insured loans for small-scale biomass energy projects will be secured in a manner which will adequately protect the interest of the Government until the loan is repaid. Security may be a combination of real estate, chattels, and other security. Such security will include assignment of revenues from the project.

(b) A lien will be taken on the interest of the applicant in all land, easements, rights-of-way, water rights, and similar property rights used or to be used, in connection with the project whether owned at the time the loan is approved or acquired with loan funds. Additional security may be required by FmHA. In unusual circumstances where it is not feasible to obtain a lien on such land rights (such as land rights obtained from Federal or local governmental agencies and from railroads), and the State Director determines that the interest of the FmHA otherwise is adequately secured, the lien requirement may be omitted as to such land rights. In those instances where such property rights have not been legally perfected, it will be the responsibility of the applicant to obtain and record such releases, consents, subordinations to such property rights from holders of outstanding liens, or other instruments, as it determines, with the advice of its attorney, are necessary for the construction, operation, and maintenance of the facility. When easements only are obtainable on sites for structures, releases, consents, or subordinations may be required by the FmHA. Provision will be made for the applicant to pay from its own funds for any excess installation costs resulting from a failure to obtain adequate land, rights-of-way, or subordination.

(1) In those cases where a lien on the leasehold interest of the borrower in a leasehold from a private party will represent the principal security for the loan, unless prior written approval from the National Office for a different arrangement is obtained, the lease must provide for:

(i) An unexpired term at least 50 percent longer than the repayment period of the loan.

(ii) The borrower's interest will not be subject to summary forfeiture or cancellation.

(iii) The right of FmHA to foreclose its security; to bid at foreclosure sales; to accept voluntary conveyance of the security in lieu of foreclosure; and should the leasehold be acquired by FmHA through foreclosure, voluntary conveyance, abandonment, or othewise, to occupy the property, sublet it, or to sell it for cash or credit.

(iv) The right of the borrower to sell or otherwise transfer the leasehold.

(v) Sufficient advance notice (at least 60 days) to FmHA of the lessor's intentions to cancel, terminate, or foreclose upon the lease, so as to permit FmHA to take appropriate action.

(c) Where the project is located on a farm and whether or not the project products will be used on the farm, a lien need not be taken on the entire farm when it is not needed to secure the loan. When the security is so located that a legal right-of-way to the property is not available, an easement or agreement will be obtained providing for right of ingress and egress.

(d) The borrower will provide evidence of title to security property satisfactory to FmHA. Whenever real estate other than easements, right-of-way, or similar interest will be taken as security, the applicant should furnish the FmHA with a copy of its deed or purchase contract and any mortgage or other lien on the property offered as security. If water stock is being offered as security for the loan, the applicant should furnish the stock certificate. The other title evidence furnished will be one of the following:

(1) An opinion of title prepared by the applicant's attorney. This opinion may be on Forms FmHA 427–9, "Preliminary Title Opinion," and FmHA 447–10, "Final Title Opinion." The opinion will be based upon an examination of the public records or a current abstract of title, or a combination thereof, in accordance with the practice in the community. If based on an abstract of title, the abstract and abstractor's certificates are limited in any way, they must be supplemented by the attorney's own examination of records or other competent evidence of title. The opinion of title will set forth the ownership and condition of the title to the land, the manner in which title was acquired, and will list all unreleased mortgages, judgments, unpaid taxes, liens or other encumbrances pending suits, reservations, exceptions, leases, easements, and any other outstanding interest. The title search must cover such period as the examining attorney determines necessary to issue his opinion as to whether the title is good and marketable according to title examination standards prevailing in the area, except that title examination need not go back beyond Farm Ownership, Rural Housing, or individual Soil and Water (not Water Facilities) security instruments. If the examining attorney finds an FmHA security instrument in the chain of title and is not certain that it is one of the types mentioned in the preceding sentence, the attorney may consult the State Director.

(2) A policy of title insurance obtained from a title insurance company approved by FmHA.

(3) Chattel security will be obtained and kept effective as provided in FmHA Regulations 1941–B and 1962–A.

(e) For public bodies, security will be taken in accordance with § 1942.17(g).

(f) When processing a loan utilizing joint financing, FmHA will obtain at least a parity position with other lenders.

§ 1990.113 Loan closing.

(a) Small-scale biomass energy project insured loans will be closed in accordance with the following:

(1) State Directors may, on an individual loan basis, authorize loans to be closed without OGC closing instructions prepared for that specific loan when:

(i) Such loans are secured only by a first lien on real estate and an assignment of revenue, or by a first lien on chattels and an assignment of revenue.

(ii) The applicant is providing, where real estate is to serve as security, an acceptable mortgagee title insurance policy issued by a company approved in accordance with Part 1807 of this Chapter (FmHA Instruction 427.1) or an opinion of title and final title opinion prepared by the applicant's attorney using Forms FmHA 427–9 and FmHA 427–10.

(iii) Evidence of organization such as articles of incorporation or other evidence meets FmHA requirements.

(iv) For an existing corporation, the applicant is in good standing as evidenced by a "Certificate of Good Standing," or similar statement from appropriate State officials or there is other acceptable evidence of good standing.

(v) The applicant's operating rules and regulations such as bylaws or other forms of rules and regulations or partnership agreements meet FmHA requirements.

(vi) The loan will be closed with the assistance of the entity's attorney.

(vii) Instructions issued by the State Office pertaining to loan closing have been found acceptable by the Regional Attorney and approved by the National Office.

(viii) There is nothing significantly unusual about the loan which would indicate that it should be reviewed by OGC.

(2) Loans which cannot be closed in accordance with paragraph (a)(1) of this section will be closed on the basis of instructions issued by OGC. State Directors will, when requesting closing instructions from OGC, also request advice as to whether OGC feels it necessary to return evidence of closing for its review and final opinion.

§ 1990.114 Default.

When the borrower fails to make payment of principal or interest in accordance with the terms of the note or other instrument evidencing the small-scale biomass energy project insured loan or otherwise fails to perform its obligations under the loan agreement, the State Director shall take such action to enforce the rights and protect the interests of the Government as may be appropriate and available under the loan agreement and security instruments, including foreclosure. Foreclosure shall be initiated only after consultation with OGC.

§ 1990.115 Loan servicing and liquidation.

The State Director will service and liquidate, if necessary, the loans in accordance with such provisions of Part 1955, Part 1962, Subpart F of Part 1861 (FmHA Instruction 451.5), and Subpart A of Part 1827 (FmHA Instruction 465.1) of this Chapter as the State Director determines to be appropriate for the type of borrower concerned.

(a) Small-scale biomass energy project insured loans will be serviced in a manner to accomplish the loan objectives and protect the Government's financial interest. To accomplish these purposes, the security will be serviced in accordance with the security instruments and related agreements, including any authorized modifications, provided the borrower has reasonable prospects of accomplishing the loan objectives, properly maintains and accounts for the security, and otherwise meets the loan obligation, including loan repayment, in a satisfactory manner. When the above conditions are not satisfied, or it is determined that the loans must be liquidated for other reasons, and sufficient legal grounds for liquidation exist, prompt action will be taken to liquidate the security to protect the Government's financial interest.

(b) Each borrower is responsible for repaying principal and interest on a timely basis pursuant to the loan documents, paying real estate taxes, providing adequate property insurance, maintaining, protecting, and accounting to the FmHA for all security, and complying with other loan requirements.

(c) The State Director, subject to other delegation, is responsible for informing each borrower of responsibilities in connection with the loan, seeing that the security is being properly maintained and accounted for, and for servicing the security in accordance with this Subpart.

When a borrower fails to maintain, protect, and account for the security as required by the loan documents, or makes unauthorized disposition or use of any security, prompt action will be instituted to protect the FmHA's interest. The State Director will obtain any legal advice he or she needs from the Office of the General Counsel (OGC). In cases that have been referred to the OGC for legal action, no further action will be taken by FmHA personnel without prior clearance with the OGC. If the case has been referred to the U.S. Attorney, clearance with the U.S. Attorney will be obtained through the OGC.

(d) Where the State Director determines that liquidation of an insured loan under this Subpart is necessary because of one or more defaults or third party actions that the borrower cannot or will not cure or correct within a reasonable period of time, the State Director will proceed to liquidate the issued loan in accordance with Subpart A of Part 1872 of this Chapter (FmHA Instruction 465.1) except without County Committee involvement.

Subpart C—Biomass Energy Project Loan Guarantees

§ 1990.201 Eligibility.

In addition to the eligibility requirements stated in Subpart A applicable generally to all financial

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assistance under this Part, applications for biomass energy project loan guarantees must meet the requirements in this Subpart.

(a) *Lender Unwilling Without Guarantee.* A loan may not be guaranteed under this Subpart unless FmHA is satisfied that the lender is not willing, without the guarantee, to extend credit to the applicant at reasonable rates and terms, taking into consideration prevailing rates and terms for loans for similar purposes and periods of time, to finance the construction of the biomass energy project for which the loan is sought.

(b) *Lender Risk.* The Act requires assurance that the lender bear a reasonable degree of risk in the financing of the biomass energy project, which shall be in accordance with the Lender's Agreement, Form FmHA 449–35.

§ 1990.202 Loan purposes.

A loan which may be guaranteed under this Subpart C shall be used only for the construction of a biomass energy project:

(a) Which will have an annual production capacity of less than 15 million gallons of anhydrous ethanol (or the energy equivalent of other forms of biomass energy) and which will use feedstocks other than aquatic plants or municipal wastes; or

(b) Which will have an annual production capacity of 15 million or more gallons of anhydrous ethanol (or the energy equivalent of other forms of biomass energy) and

(1) Which will use wood or wood wastes or residues, or

(2) Which is owned and operated by a cooperative and will use feedstocks other than aquatic plants or municipal wastes.

§ 1990.203 Loan guarantee amount limitations and equity requirements.

(a) A guaranteed loan cannot exceed 90 percent of the total estimated construction cost of the project, and the amount of the guarantee cannot exceed 90 percent of the principal and interest of the loan. No interest will be included in any loan except as provided in section 1990.9(e)(6). The maximum loss covered by the Form FmHA 449–34, "Loan Note Guarantee," can never exceed the lesser of: (1) 90 percent of the principal and interest indebtedness as evidenced by said note(s) or by assumption agreement(s), and 90 percent of principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with FmHA's authorization; or (2) 90 percent of the principal advanced to or assumed by the borrower under said note(s) or assumption agreement(s) and any interest due. Lenders and applicant will propose the percentage of guarantee. The lender and applicant will be informed in writing on Form FmHA 449–14 by FmHA of any percentage of guarantee less than proposed by the lender and applicant, and the reasons therefor.

(b) *Applicant equity requirement.* A minimum of 20 percent tangible balance sheet equity will be required at the time the Loan Note Guarantee is issued for guaranteed loans. As a minimum, FmHA will require the applicant to contribute one-half of the equity requirement in the form of either cash or tangible earning assets injected into the business and reflected on the balance sheet. In those instances where there is appraisal surplus supported by an appraisal report, even though it may not be consistent with generally accepted accounting principles, FmHA may allow such appraisal surplus in the computation of equity provided it is based on land and/or buildings and machinery and equipment provided such appraisal surplus does not constitute more than one-half of the equity contribution. However, further consideration toward the equity contribution may be given by FmHA when there has been a rapid writedown of the earning assets, and the writedown is not consistent with the useful life of the asset. FmHA may consider subordinate debt as equity provided such debt does not constitute more than one-half of the equity contribution required by FmHA and principal payments are deferred during the life of the FmHA loan or until such time as the lender with FmHA concurrence determines to release such restriction on principal payments to the subordinated debt holders. Subordinate debt arising from deferred or accrued salaries and/or wages will not be considered by FmHA as equity contribution.

§ 1990.204 Subsequent loan guarantees.

If the total estimated costs of construction of a biomass energy project guaranteed under this Subpart will exceed the total estimated construction costs of construction concurred in by FmHA, an additional loan, up to 60 percent of the difference between the construction costs then estimated and the construction costs initially estimated, upon application, may be guaranteed against loss as provided in this Subpart.

§ 1990.205 Receiving and processing applications.

(a) *Methods of solicitation of applications.* (1) Small-scale biomass energy projects. Applications for loan guarantees for small-scale biomass energy projects will be received and processed on a continuous solicitation basis as defined in section 1990.3(a)(13).

(2) *Intermediate-scale biomass energy projects.* Applications for intermediate-scale biomass energy projects will be received and processed initially on a continuous solicitation basis in accordance with paragraph (c)(2) of this section. Upon announcement in the **Federal Register**, simultaneous solicitation may be used in accordance with paragraph (c)(1) of this section.

(3) *Large scale biomass energy projects.* Applications for loan guarantees for biomass energy projects with an annual production capacity of 15 million or more gallons of anhydrous ethanol (or the energy equivalent of other forms of biomass energy) which will use wood or wood wastes or residue or which is owned and operated by a cooperative and uses feedstocks other than aquatic plants or municipal wastes (large-scale biomass energy project) will be received on a continuous solicitation basis as defined in section 1990.3(a)(13).

(b) *Preliminary discussion and application assistance.* (1) Applicants prior to submission of applications (whether for continuous or simultaneous solicitation) should conduct preliminary discussions with FmHA regarding eligibility, priorities, requirements and conditions, and compliance with this Subpart. For simultaneous solicitations, such preliminary discussions shall be in accordance with provisions of any notice of solicitation which will be published in the **Federal Register.**

(2) FmHA may provide assistance in the form of data, information, studies or other material in accordance with provisions of the notice of solicitation which may be published in the **Federal Register.**

(c) *Applications.* (1) Applications for loan guarantees of biomass energy projects in response to a simultaneous solicitation shall be in such form and contain such supporting information as the notice of solicitation, as published in the **Federal Register**, requires.

(2) The continuous solicitation procedure for intermediate scale biomass energy projects is effective immediately and the FmHA hereby solicits submission of applications. Applications may be submitted to any office of the FmHA during regular business hours. The following are specific dates on which applications will be officially received by FmHA, for purposes of implementing the statutory requirement that a decision be made on each individual application within 120 days of its receipt. The first such date is November 17, 1980. The second such date is December 17, 1980. Subsequent dates will be February 16, 1981, April 16, 1981, and the 16th day of alternate months thereafter, (provided that if the 16th day of any such month falls on Saturday or Sunday, the date will be the following Monday). The number of successive two-month intervals for receipt of applications will be subject to the availability of funding authority and in no event will commitments be made after September 30, 1984. The State Director will date stamp the application with the relevant official receipt date regardless of when submitted, and official evaluation will not begin until that date. Applicants are encouraged to participate in discussions and conferences with the FmHA prior to the submission of an application. The official application receipt dates are intended to allow time prior to such dates for discussion and conferences between FmHA and applicants to occur. If an applicant fails to meet a particular official receipt date, he or she may submit at any subsequent time and need not await the next official receipt date although the 120 days for a decision on the application will not begin to run until the next official receipt date. Applications may be submitted personally or by mail; if an application is submitted by mail, it must be received in an FmHA office prior to the close of business on the relevant official receipt date in order for the 120 days for a decision to begin to run on that date. FmHA will evaluate such applications on a comparative basis to the extent necessary to achieve the purposes of the Act, including effectively to implement the priorities of the Act and these regulations.

(3) Applications for loan guarantees for biomass energy project submitted on a continuous solicitation shall consist of at least the following:

(i) Form FmHA 1990–1, "Application for Biomass Energy Loan Guarantee Assistance," and attachments.

(ii) Form FmHA 449–2 "Statement of Collateral."

(iii) Form FmHA 449–10 "Applicant's Environmental Impact Evaluation."

(iv) Architectural or engineering plans, if applicable.

(v) Independent appraisal reports of all property that will serve as collateral or fulfill the equity requirements.

(vi) For existing businesses, a pro forma balance sheet at start-up and for at least 3 additional projected years indicating the necessary start-up capital, operating capital and short-term credit based on financial statements for the last 3 years, or more (if available); and projected cash flow and earning statements for at least 3 years supported by a list of assumptions showing the basis for the projections.

(vii) For new buisnesses, a pro forma balance sheet at start-up and for the next 3 years, projected cash flow (monthly first year, quarterly for 2 additional years) and projected earnings statements for 3 years supported by a list of assumptions showing the basis for the projections.

(viii) Any credit reports obtained by FmHA.

(ix) Form FmHA 400–1, "Equal Opportunity Agreement," if construction costing more than $10,000 is involved.

(x) Copies of building permits, if applicable, and any necessary certifications and recommendations of appropriate regulatory or other agency having jurisdiction over the project including any pollution control agency.

(xi) Acknowledgement of receipt of permit application to Bureau of Alcohol, Tobacco and Firearms, Department of Treasury.

(xii) Feasibility studies of technical and economic aspects of the project in form and substance conforming to Appendix A.

(xiii) Personal and corporate financial statements of guarantors for the project if determined necessary by FmHA to assure adequate security.

(xiv) Proposed loan agreement. (See paragraph VIII of Form FmHA 449–35). Proposed loan agreements between the borrower and Lender will be requied. Such agreements must include the following:

(A) Requirements for accounting and record keeping.

(B) Provisions for periodic financial reporting.

(C) Provisions for an annual audited financial statement from the borrower prepared by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970, by a regulatory authority of a State or other political subdivision of the United States.

(D) Other requirements may include, but are not limited to:

(*1*) Prohibitions against assuming liabilities or obligations of others.

(*2*) Restrictions on dividend payments.

(*3*) Limitation on purchase or sale of equipment and/or fixed assets.

(*4*) Limitation on compensation of officers and/or owners.

(*5*) Minimum working capital requirements.

(*6*) Minimum debt to net worth ratio.

(*7*) Restrictions concerning consolidation, mergers or other circumstances.

(*8*) Limitations on selling the business without concurrence of the lender and FmHA.

(*9*) Repayment and amortization of the loan.

(*10*) List of collateral for the loan.

(*11*) List of persons and/or corporations guaranteeing the loan.

(xv) Documented evidence of compliance with requirements set forth in FmHA Instruction § 1990.23.

(xvi) Record of any pending or final regulatory or legal (civil or criminal) action against the applicant, principal owners, officers and directors.

(xvii) A current (within 90 days of filing) balance sheet and latest profit and loss statement, and financial statements of existing businesses for the last 3 years, including, in the case of farmers, information on crop and livestock production.

(xvi) Any additional information required by FmHA.

(d) *FmHA evaluation and approval of application.* (1) If and when a simultaneous solicitation procedure is used, FmHA will evaluate applications for loan guarantees of biomass energy projects received in accordance with the standards of paragraph (d)(2) of this section and the provisions of the notice of solicitation, as published in the **Federal Register.**

(2) FmHA will evaluate applications for loan guarantees of biomass energy projects received on a continuous solicitation basis and make a determination whether the borrower is eligible, the proposed loan is for an eligible purpose, the project is feasible, and there is reasonable assurance of repayment ability, sufficient collateral, and sufficient equity. Priority will be given, in the evaluation of projects otherwise eligible for loan guarantee assistance, to projects which utilize primary fuels other than petroleum or natural gas. National Office concurrence is required for projects using petroleum of natural gas as the primary fuel source and for projects involving non-standard technologies. If FmHA determines it is unable to guarantee the loan, the lender will be informed in writing by Form FmHA 449–13, "Denial Letter," within 120 days after receipt of the application. Such notification will include the reasons for denial.

(3) If FmHA determines it is able to guarantee the loan conditionally, it will provide the lender and the applicant with Form FmHA 449–14, listing all requirements for such guarantees. The Conditional Commitment for Loan

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Guarantee evidences approval of the application and will be issued within 120 days after receipt of the application (which in the case of a simultaneous solicitation will be not earlier than the date fixed in the simultaneous solicitation notice for receipt of applications, and in the case of continuous solicitations of intermediate scale projects will be not earlier than the official receipt date of the applicable two-month period).

(4) All small-scale projects will be reviewed by the State Biomass Energy Loan Review Committee. Upon affirmative recommendation of such Committee, the State Director may indicate his or her approval by executing the Form FmHA 449–14. National Office concurrence is required if the project will use natural gas or oil as the primary fuel source or involves non-standard technology. The State Director will forward to the National Office the relevant material from the docket as required by the National Office for concurrence consideration.

(5) For all intermediate and large-scale projects, the State Biomass Energy Loan Review Committee will review and evaluate the applications and set forth recommendations in a memorandum which will be forwarded with the application by the State Director to the National Office for further consideration. The National Office will independently review each such application and submit it to the National Office Biomass Energy Loan Review Committee for a decision. The National Office will advise the State Director by memorandum of the Committee's decision. If the application is approved, the Chairman of the Committee will indicate approval by signing Form FmHA 1940–1, "Request for Obligation of Funds," and forward such form together with a memorandum of conditions to the State Director. The State Director will prepare the Form FmHA 449–14, including the National Office requirements, and forward such form together with a signed Form FmHA 1940–1 to the lender and applicant. If the application is disapproved, the Committee will forward to the State Director a memorandum indicating the reasons for disapproval. The State Director will notify the applicant and the lender by issuance of Form FmHA 449–13, "Denial Letter."

(6) *Review of requirements.* (i) Immediately after reviewing the conditions and requirements in Form FmHA 449–14, and the options listed on the back of the form, the Lender and applicant should complete and sign the "Acceptance or Rejection of Conditions," and return a copy to the FmHA State Director. If certain conditions cannot be met, the Lender and borrower may proposed alternate conditions to FmHA.

(ii) If the Lender indicates in the "Acceptance or Rejection of Conditions," that it desires to obtain a Loan Note Guarantee and subsequently decides at any time after receiving a conditional commitment that it no longer wants a Loan Note Guarantee, the lender shall immediately advise the FmHA State Director.

(7) When an application is disapproved, the applicant, within 120 days after receipt of the application, will be given written notice of the reasons and the applicant may resubmit an application that is modified to address concerns raised by FmHA, or by the Department of Energy as a result of consultation pursuant to § 1990.21. Review of the modified application shall be limited to those specific concerns specified in the notice of disapproval and to any issues raised by changed circumstances.

(e) *Issuance of the Guorantee.* Procedure for issuance of Loan Note Guarantee, Lender's Agreement and Asisgnment Guarantee Agreement shall be in accordance with §§ 1980.60, 1980.61, and 1980.454(c).

§ 1990.206 Evaluation criteria.

In addition to the priority criteria and eligibility requirements stated in Subpart A (including §§ 1990.5–1990.17 and in other sections of this Subpart C (including §§ 1990.201–203), conditional commitments may be issued only if:

(a) There is reasonable assurance of repayment of the guaranteed loan from the project's income (including byproduct income) received by the borrower.

(b) The project is technically feasible and there is reasonable assurance that the applicant will initiate and complete the project in accordance with the plans and specifications and time schedules approved by FmHA.

(c) The economic and technical feasibility required by the preceding paragraphs (a) and (b) are demonstrable by reference to analyses in accordance with Appendix A.

(d) In simultaneous solicitation evaluations, criteria for preferential consideration will include the evaluation criteria specified in the notice of solicitation as published in the Federal Register.

§§ 1990.207–1990.209 [Reserved].

§ 1990.210 Maturity and repayment schedules.

(a) *Repayment Period.* Each loan guaranteed under this Subpart will be scheduled for repayment over a period not to exceed the lesser of (1) 30 years from the date of the note, (2) the expected average useful life of the project, or (3) a period agreed to by the lender and the borrower and approved by FmHA.

(b) *Repayment Schedules.* Principal and interest on the loan will be due and payable as provided in the promissory note. The Lender will structure repayments as established in the loan agreement between the Lender and borrower, as concurred in by FmHA. Ordinarily, such installments will be scheduled for payment as agreed upon by the lender and applicant but on terms that reasonably assure repayment of the loan. However, the first installment to include a repayment of principal may be scheduled for payment after the project is operable and has begun to generate income, but such installment will be due and payable within 1 year from the date of the promissory note and at least annually thereafter. Interest shall be due at least annually from the date of the note. Monthly, quarterly or semi-annual payments will be expected.

§ 1990.211 Interest rates.

Interest rates for guaranteed loans under this Subpart will be negotiated between the lender and the borrower. They will be reviewed by FmHA for acceptability and, if legally permissible, they may be either fixed or variable, but fixed and variable interest rates may not be used for the same loan.

(a) A variable interest rate must be a rate that is tied to a base rate published in a financial publication specifically agreed to by the lender and borrower. It must rise and fall with the selected base rate and changes can be made no more than quarterly. There will be no floor or ceiling on variable interest rates.

(b) Under a Memorandum of Understanding between FmHA and the Farm Credit Administration dated March 22, 1979 (FmHA Instruction 2000–R Exhibit A, which is available in any FmHA office), the interest rate on loans made by the Bank for Cooperatives, Federal Land Banks and Production Credit Associations may be a variable rate based on their administrative and borrowing costs, and may be adjusted as frequently as the Board of Directors has determined.

(c) Any change in the interest rate between the date of issuance of the Form FmHA 449–14 and before the issuance of the Loan Note Guarantee must be approved by the State Director. Approval of such change will be shown on an amendment to Form FmHA 449–14.

(d) It is permissible to have one interest rate on the guaranteed portion of the loan and another interest rate on the unguaranteed portion of the loan, provided the Lender and borrower agree and:

(1) The rate on the unguaranteed portion does not exceed that currently being charged on loans of similar size and purpose for borrowers under similar circumstances.

(2) The rate on the guaranteed portion of the loan will not exceed the rate on the unguaranteed portion.

(e) When multi-rates are used the Lender will provide FmHA with the overall effective interest rate yield for the entire loan.

§ 1990.212 Guarantee fee and lender fees and charges.

(a) A guarantee fee of one percent of principal loan amount multiplied by the percent of guarantee will be required, and such fee will be paid one time only at the time the Loan Note Guarantee is issued. The fee will be paid to FmHA by the lender and is nonrefundable. The fee may be passed on to the borrower.

(b) Late payment charges. Late payment charges will not be covered by the Loan Note Guarantee. Such charges may not be added to the principal and interest due under any guaranteed note. Late payment charges may be made only if:

(1) Routine. They are routinely made by the lender in all types of loan transactions.

(2) Payments received. Payment has not been received within the customary time frame allowed by the lender. The term "payment received" means that the payment in cash or by check, money order, or similar medium has been received by the lender at its main office, branch office, or other designated place of payment.

§ 1990.213 Security.

(a) All loans guaranteed under this Subpart will be secured in a manner which will adequately protect the interest of FmHA until the loan is repaid.

(b) The borrower and lender will comply with § 1980.443 (a) and (c), and § 1980.444 with respect to security.

(c) Where the project is located on a farm, § 1990.112(c) shall apply.

(d) The borrower will provide evidence of title to security property satisfactory to FmHA and the lender.

§ 1990.214 Loan closing and servicing.

(a) When a date for a loan closing has been scheduled, the lender will contact FmHA for a preclosing review of all conditions and requirements. When the loan closing plans are acceptable to FmHA, the lender will notify the FmHA so that an FmHA representative may attend the loan closing.

(b) The lender shall service the loan guaranteed under this Subpart and shall exercise such care and diligence in the disbursement, servicing and collection of the loan as would be exercised by a reasonable and prudent lender dealing with a loan without a guarantee.

(c) Loans guaranteed under this Subpart will be serviced in accordance with § 1980.469.

§ 1990.215 [Reserved]

§ 1990.216 Default.

(a) When the borrower has defaulted in making required payments of principal and interest (or other obligation materially affecting the rights of the parties) on any portion of a loan guaranteed under this Subpart and such default has not been remedied within the period of grace provided in the loan agreement, FmHA will proceed in accordance with § 1980.63, following written demand of the holder for payment on the guarantee, except that the State Director will act in lieu of the County Supervisor, unless otherwise determined by FmHA.

(b) Upon payment by FmHA to the lender or holder of the guaranteed debt, FmHA will be subrogated to the rights of the recipient of the payment, and such subrogation will be expressly set forth in the Loan Note Guarantee or related agreements.

§ 1990.217 Liquidation and settlement.

(a) *Liquidation.* If either the lender or FmHA concludes that liquidation of a loan guaranteed under this Subpart is necessary because of defaults or third party actions that the borrower cannot or will not cure or eliminate within a reasonable period of time, it will notify the other party and the matter will be handled in accordance with § 1980.64.

(b) *Settlement option.* If a lender acquires title to property either through voluntary conveyance or foreclosure proceedings, FmHA may elect to permit the lender the option to calculate the final loss settlement using the net proceeds received at the time of ultimate disposition of such property. The lender must submit its written request for this option to FmHA, and FmHA must agree, prior to the lender submitting any request for estimated loss payment.

§ 1990.218 Protective advances.

Paragraph XIII of Form FmHA 449–35 shall apply to protective advances.

§ 1990.219 Transfer and assumption; termination.

(a) All transfers and assumptions will be approved in writing in advance by FmHA. Such transfers and assumptions will be to an eligible applicant, as determined by FmHA.

(b) Available transfer and assumption options to eligible applicants include the following:

(1) The total indebtedness may be transferred to another borrower on the same terms.

(2) The total indebtedness may be transferred to another borrower on different terms not to exceed those terms for which an initial loan can be made.

(3) A part of the total indebtedness may be transferred to another borrower on the same terms.

(4) A part of the total indebtedness may be transferred to another borrower on different terms.

(c) In any transfer and assumption case, the transferor, including any guarantor(s), may be released from liability by the lender with FmHA written concurrence only when the value of the collateral being transferred is at least equal to the amount of the loan or part of the loan being assumed. If the transfer is for less than the entire debt, FmHA must determine that the transferor has no reasonable debt-paying ability considering his or her assets and income at the time of transfer.

(d) Any proceeds received from the sale of secured property before a transfer and assumption will be credited on the transferor's guaranteed loan debt is inverse order of maturity before the transfer and assumption transactions is closed.

(e) When the transferee makes any cash downpayment in connection with the transfer and assumption:

(1) The Lender will employ an independent appraiser, subject to concurrence of both the transferor and transferee, to make an appraisal to determine the fair market value of all the collateral securing the loan. Such appraisal report fee and any other costs related thereto will be paid by the transferor and the transferee as they mutually agree.

(2) The market value of the secured property being acquired by the transferee, plus any additional security the transferee proposes to give to secure the debt, will be adequate to secure the balance of the total guarantee loan owed, plus any prior liens. If any cash

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downpayment is made, it may be paid directly to the transferor as payment for his equity in the project provided:

(i) The Lender recommends and FmHA approves the cash downpayment be released to the transferor. The Lender and FmHA may require that an amount be retained for an established period of time in escrow as a reserve account as security for use against any future default on the loan. Any interest accruing on such an escrow account may be paid periodically to the transferor.

(ii) Any payments that are to be made by the transferee to the transferor in respect to the downpayment do not suspend the transferee's obligation to continue to meet the guaranteed loan payments as they come due under the terms of the assumption.

(iii) The transferor will agree not to take any action against the transferee in connection with such transfer in the future without first obtaining the approval of FmHA and the lender.

(iv) The Lender determines that there is repayment ability for the guaranteed debt assumed and any other indebtedness of the transferee.

(f) The Lender will make, in all cases, a complete credit analysis to determine viability of the project, subject to FmHA review and approval, including any requirements for deposits in an escrow account as security to meet its determined equity requirements for the project.

(g) The Lender will issue a statement to FmHA that the transaction can be properly transferred and the conveyance instruments will be filed, registered, or recorded, as appropriate, and legally permissible.

(h) FmHA will not guarantee any additional loans to provide equity funds for a transfer and assumption.

(i) The assumption will be made on the Lender's form of assumption agreement.

(j) The assumption agreement will contain the FmHA case number of the transferor and transferee.

(k) Loan terms cannot be changed by the Assumption Agreement unless previously approved in writing by FmHA, with the concurrence of any Holder(s) and concurrence of the transferor (including guarantors) if they have not been released from personal liability. Any new loan terms cannot exceed those authorized in this subpart. The Lender's request will be supported by:

(1) An explanation of the reasons for the proposed change in the loan terms.

(2) Certification that the lien position securing the guaranteed loan be maintained or improved, proper hazard insurance will continue in effect, and all applicable Truth in Lending requirements will be met.

(l) In the case of a transfer and assumption, it is the Lender's responsibility to see that all such transfer and assumptions will be noted on all originals of the Loan Note Guarantee(s). The Lender will provide FmHA a copy of the transfer and assumption agreement. Notice must be given by the Lender to FmHA before any borrower or guarantor is released from liability.

(m) The Holder(s), if any, need not be consulted on a transfer and assumption case unless there is a change in loan terms.

§ 1990.220 FmHA Forms Incorporated in Subpart C.

(a) Forms FmHA 449–34, "Loan Note Guarantee," FmHA 449–35, "Lender's Agreement," and FmHA 449–36, "Assignment Guarantee Agreement," are incorporated in this Subpart C, made a part hereof. These forms as modified for use in connection with loans guaranteed under this part are as set forth below. The forms as they are published in Part 1980 shall continue to be effective as published therein for loans guaranteed under Part 1980. Copies of the forms may be obtained from any FmHA office.

Type of Loan: _____
Applicable 7 C.F.R. Part 1990 Subparts A and C

Loan Note Guarantee

Borrower _____
Lender _____
Lender's Address _____
State _____
County _____
Date of Note _____
FmHA Loan Identification Number _____
Lender's IRS ID Tax No. _____
Principal Amount of Loan $ _____

The guaranteed portion of the loan is $ _____ which is _____ (——%) percent of loan principal. The principal amount of loan is evidenced by _____ note(s) (includes bonds as appropriate) described below. The guaranteed portion of each note is indicated below. This instrument is attached to note _____ in the face amount of $_____ and is number _____ of _____.

Lenders Identifying Number _____
Face Amount $ _____
Percent of Face Amount (Percent) _____
Amount Guaranteed $ _____
Total _____
$ _____
100% _____
$ _____

In consideration of the making of the subject loan by the above named Lender, the United States of America, acting through the Farmers Home Administration of the United States Department of Agriculture (herein called "FmHA"), pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.), the Emergency Livestock Credit Act of 1974 (7 U.S.C. note preceding 1961, Pub. L. 93–357 as amended), the Emergency Agricultural Credit Adjustment Act of 1978 (7 U.S.C. note preceding 1971, Pub. L. 95–334), or Title V of the Housing Act of 1949 (42 U.S.C. 1471 et seq.), Biomass Energy and Alcohol Fuels Act of 1980 (Pub. L. 96–294, Title II) does hereby agree that in accordance with and subject to the conditions and requirements herein, it will pay to:

A. Any Holder 100 percent of any loss sustained by such Holder on the guaranteed portion and on interest due (including any loan subsidy) on such portion.

B. The Lender the lesser of 1. or 2. below:

1. Any loss sustained by such Lender on the guaranteed portion including:

a. Principal and interest indebtedness as evidenced by said note(s) or by assumption agreement(s), and

b. Any loan subsidy due and owing, and

c. Principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with FmHA's authorization, including but not limited to, advances for taxes, annual assessments, any ground rents, and hazard or flood insurance premiums affecting the collateral, or

2. The guaranteed principal advanced to or assumed by the Borrower under said note(s) or assumption agreement(s) and any interest due (including any loan subsidy) thereon.

If FmHA conducts the liquidation of the loan, loss occasioned to a Lender by accruing interest (including any loan subsidy) after the date FmHA accepts responsibility for liquidation will not be covered by this Loan Note Guarantee. If Lender conducts the liquidation of the loan, accruing interest (including any loan subsidy) shall be covered by this Loan Note Guarantee to date of final settlement when the Lender conducts the liquidation expeditiously in accordance with the liquidation plan approved by FmHA.

Definition of Holder

The Holder is the person or organization other than the Lender who holds all or part of the guaranteed portion of the loan with no servicing responsibilities. When the Lender assigns a part(s) of the guaranteed loan to an assignee, the assignee becomes a Holder only when he uses Form FmHA 449–36 "Assignment Guarantee Agreement."

Definition of Lender

The Lender is the person or organization making and servicing the loan which is guaranteed under the provisions of the applicable Subpart 7 CFR of Part 1990. The Lender is also the party requesting a loan guarantee.

Conditions of Guarantee

1. *Loan Servicing.*

Lender will be responsible for servicing the entire loan, and Lender will remain mortgagee and/or secured party of record notwithstanding the fact that another party may hold a portion of the loan. When multiple notes are used to evidence a loan, Lender will structure repayments as provided in the loan agreement.

2. *Priorities.*

The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion.

3. *Full Faith and Credit.*

The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which Lender or any Holder has actual knowledge at the time it became such Lender or Holder or which Lender or any Holder participates in or condones. In addition, the Loan Note Guarantee will be unenforceable by Lender to the extent any loss is occasioned by the violation of usury laws, use of loan funds for unauthorized purposes, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. As used herein, the phrase "use of loan funds for unauthorized purposes" refers to the situation in which the Lender in fact agrees with the Borrower that loan funds are to be so used and the phrase "unauthorized purpose" means any purpose not listed by the Lender in the completed application as approved by FmHA.

4. *Rights and Liabilities.*

The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentation by Lender or any unenforceability of this Loan Note Guarantee by Lender. Nothing contained herein will constitute any waiver by FmHA of any rights it possesses against the Lender. Lender will be liable for and will promptly pay to FmHA any payment made by FmHA to Holder which if such Lender had held the guaranteed portion of the loan, FmHA would not be required to make.

5. *Payments.*

Lender will receive all payments of principal, or interest, and any loan subsidy on account of the entire loan and will promptly remit to Holder(s) its pro rata share thereof determined according to its respective interest in the loan, less only Lender's servicing fee.

6. *Protective Advances.*

Protective advances made by Lender pursuant to the regulations will be guaranteed against a percentage of loss to the same extent as provided in this Loan Note Guarantee notwithstanding the guaranteed portion of the loan is held by another.

7. *Repurchase by Lender.*

The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the borrower is in default not less than 60 days on principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest (including any loan subsidy) less the Lender's servicing fee. Holder(s) will concurrently send a copy of demand to FmHA. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision.

8. *FmHA Purchase.*

If Lender does not repurchase as provided by paragraph 7 hereof, FmHA will purchase from Holder the unpaid principal balance of the guaranteed portion together with accrued interest (including any loan subsidy) to date of repurchase, less Lender's servicing fee, within thirty (30) days after written demand from Holder. Such demand will include a copy of the written demand made upon the Lender. The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to FmHA or the original of the Assignment Guarantee Agreement properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest (including any loan subsidy) subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by FmHA, such proposed payment will not be later than 30 days from the date of demand.

The FmHA County Supervisor will promptly notify the Lender of his receipt of the Holder(s)'s demand for payment. The Lender will promptly provide the FmHA County Supervisor with the information necessary for FmHA's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment by FmHA will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, FmHA County Supervisor will review the demand and submit it to the State Director for verification. After reviewing the demand the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the County Supervisor and State Director and remit the check(s) to the Holder(s).

9. *Lender's Obligations.*

Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by Borrowers on the loan and the amount including any loan subsidy then owed to any Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee nor does it waive any of FmHA's rights against Lender, and that FmHA will have the right to set-off against Lender all rights inuring to FmHA as the Holder of this instrument against FmHA's obligation to Lender under the Loan Note Guarantee.

10. *Repurchase by Lender for Servicing.*

If, in the opinion of the Lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the Holder will sell the portion of the loan to the Lender for an amount equal to the unpaid principal and interest (including any loan

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subsidy) on such portion less Lender's servicing fee.

a. The Lender will not repurchase from the Holder(s) for arbitrage purposes or other purposes to further its own financial gain.

b. Any repurchase will only be made after the Lender obtains FmHA written approval.

c. If the Lender does not repurchase the portion from the Holder(s), FmHA at its option may purchase such guaranteed portions for servicing purposes.

11. *Custody of Unguaranteed Portion.*

The Lender may retain, or sell the unguaranteed portion of the loan only through participation. Participation, as used in this instrument, means the sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

12. *When Guarantee Terminates.*

This Loan Note Guarantee will terminate automatically (a) upon full payment of the guaranteed loan; or (b) upon full payment of any loss obligation hereunder; or (c) upon written notice from the Lender to FmHA that the guarantee will terminate 30 days after the date of notice, provided the Lender holds all of the guaranteed portion and the Loan Note Guarantee(s) are returned to be cancelled by FmHA.

13. *Settlement.*

The amount due under this instrument will be determined and paid as provided in the applicable Subpart of Part 1990 of Title 7 CFR in effect on the date of this instrument. Upon payment of any estimated or final loss to the lender, FmHA shall be subrogated to all rights of the lender against the borrower and guarantors.

14. *Loan Subsidy.*

*In addition to the interest rate of the note attached hereto, FmHA will pay a loan subsidy of _____ percent per year. Payments will be made annually.

15. *Notices.*

All notices and actions will be initiated through the FmHA County Supervisor for _____ (County) _____ (State) with mailing address at the date of this instrument:

_____

_____

United States of America

Farmers Home Administration

Date _____

By: _____

Title _____

Assumption Agreement by _____ dated _____ 19—

Assumption Agreement by _____ dated _____ 19—

*If not applicable delete paragraph prior to execution of this instrument.

USDA–FmHA
Form FmHA 449–35
(Rev. 10–6–80)

FORM APPROVED OMB No. 40–R3873

FmHA Loan Ident. No. _____

Position 5

Lender's Agreement

Type of Loan: _____

Applicable 7 C.F.R. Part 1990 Subparts A and C

_____ (Lender) of _____ has made a loan(s) to _____ (Borrower) _____ in the principal amount of $ _____ as evidenced by _____ note(s) (include Bond as appropriate) described as follows: _____

_____

The United States of America, acting through Farmers Home Administration (FmHA) has entered into a "Loan Note Guarantee" (Form FmHA 449–34) or has issued a "Conditional Commitment for Guarantee" (Form FmHA 449–14) to enter into a Loan Note Guarantee with the Lender applicable to such loan to participate in a percentage of any loss on the loan not to exceed _____ % of the amount of the principal advance and any interest (including any loan subsidy) thereon. The terms of the Loan Note Guarantee are controlling. In order to facilitate the marketability of the guaranteed portion of the loan and as a condition for obtaining a guarantee of the loan(s), the Lender enters into this agreement.

The parties agree:

I. The maximum loss covered under the Loan Note Guarantee will not exceed _____ percent of the principal and accrued interest including any loan subsidy on the above indebtedness.

II. *Full Faith and Credit.*

The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones.

The Loan Note Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, use of loan funds for unauthorized purposes, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. As used herein, the phase "use of loan funds for unauthorized purposes" refers to the situation in which the Lender in fact agrees with the borrower that loan funds are to be so used and the phase "unauthorized purpose" means any purpose not listed by the Lender in the completed application as approved by FmHA.

III. *Lender's Sale or Assignment of Guaranteed Loan.*

A. The Lender may retain all of the guaranteed loan. The Lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portion(s) of the loan(s) to the applicant or borrower or members of their immediate families, its officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to market all or part of the guaranteed portion of the loan, the Lender may proceed under the following options:

1. *Assignment.*

Assign all or part of the guaranteed portion of the loan to one or more Holders by using Form FmHA 449–36, "Assignment Guarantee Agreement." Holder(s), upon written notice to Lender and FmHA, may reassign the unpaid guaranteed portion of the loan sold thereunder. Upon such notification the assignee shall succeed to all rights and obligations of the Holder(s) thereunder. If this option is selected, the Lender may not at a later date cause to be issued any additional notes.

No further monies or other benefits may be paid out under this program unless this agreement is completed and filed as required by exising law and regulations (7 CFR, Part 1980–A).

This form sets forth the overall agreements between the lender and FmHA concerning the guaranteed loan.

Number of copies required: Original and 1 copy.

Time required to complete: 1 Hour.

2. *Multi-Note System.*

When this option is selected by the Lender, upon disposition the Holder will receive one of the Borrower's executed notes and Form FmHA 449–34, "Loan Note Guarantee" attached to the Borrower's note. However, all rights under the security instruments (including personal and/or corporate guarantees) will remain with the Lender and in all cases inure to its and the Government's benefit notwithstanding any contrary provisions of state law.

a. *At Loan Closing:*

Provide for no more than 10 notes, unless the Borrower and FmHA agree otherwise, for the guaranteed portion and one note for the unguaranteed portion. When this option is selected, FmHA will provide the Lender with a Form FmHA 449–34, for each of the notes.

b. *After Loan Closing:*

(1) Upon written approval by FmHA, the Lender may cause to be issued a series of new notes, not to exceed the total provided in 2a above, as replacement for previously issued guaranteed note(s) provided:

(a) The borrower agrees and executes the new notes.

(b) The interest rate does not exceed the interest rate in effect when the loan was closed.

(c) The maturity of the loan is not changed.

(d) FmHA will not bear any expenses that may be incurred in reference to such re-issue of notes.

(e) There is adequate collateral securing the note(s).

(f) No intervening liens have arisen or have been perfected and the secured lien priority remains the same.

(2) FmHA will issue the appropriate Loan Note Guarantees to be attached to each of the notes then extant in exchange for the original Loan Note Guarantee which will be cancelled by FmHA.

3. *Participations.*

a. The Lender may obtain participation in its loan under its normal operating procedures. Participation means a sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

b. The Lender is required to hold in its own portfolio or retain a minimum of 10% for Farmer Program loans and 5% for Business and Industry Program loans of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another. The Lender may sell the remaining amount of the unguaranteed portion of the loan, except for Farmer Program loans, only through participation. However, the Lender will always retain the responsibility for loan servicing and liquidation.

B. When a guaranteed portion of a loan is sold by the Lender to a Holder(s), the Holder(s) shall thereupon succeed to all rights of Lender under the Loan Note Guarantee to the extent of the portion of the loan purchased. Lender will remain bound to all the obligations under the Loan Note Guarantee, and this agreement, and the FmHA program regulations found in the applicable Subpart of Title 7 CFR Part 1990, and to future FmHA program regulations not inconsistent with the express provisions hereof.

C. The Holder(s) upon written notice to the Lender may resell the unpaid guaranteed portion of the loan sold under provision III A.

IV. The Lender agrees loan funds will be used for the purposes authorized in the applicable Subpart of Title 7 CFR Part 1990 and in accordance with the terms of Form FmHA 449–14.

V. The Lender certifies that it is a citizen of the United States of America, or, if an organization, that the ownership of at least 51 percent of any outstanding interests of the Lender is owned by citizens of the United States. Further, such Lender certifies that any guarantees received shall be only on loans made by it, operating for itself and not on behalf of foreign citizens or organizations.

VI. The Lender certifies that none of its officers or directors, stockholders or other owners has a substantial financial interest in the borrower. The Lender certifies that neither the borrower nor its officers or directors, stockholders or other owners has a substantial financial interest in the Lender.

VII. The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower, his business, or any parent, subsidiaries, or affiliates since it requested a Loan Note Guarantee.

VIII. Lender certifies that a loan agreement and/or loan instruments concurred in by FmHA has been or will be signed with the Borrower.

IX. Lender certifies it has paid the required guarantee fee.

X. *Servicing.*

A. The Lender will service the entire loan and will remain mortgagee and/or secured party of record, notwithstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan.

B. Disposition of the guaranteed portion of a loan may be made prior to full disbursement, completion of construction and acquisitions only with the prior written approval of FmHA. Subsequent to full disbursement, completion of construction, and acquisition, the guaranteed portion of the loan may be disposed of as provided herein.

It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that FmHA's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements. None of the aforesaid instruments will be altered without FmHA's prior written concurrence.

2. Receiving all payments on principal and interest (including any loan subsidy) on the loan as they fall due and promptly remitting and accounting to any Holder(s) for their pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be reamortized or renewed only with agreement of the Lender and Holder(s) of the guaranteed portion of the loan and only with FmHA concurrence.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.

5. Assuring that: taxes, assessment or ground rents against or affecting collateral are paid; the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation; insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA; proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature in value up to $_____ without written concurrence of FmHA; the Borrower complies with all laws and ordinances applicable to the loan, the collateral and or operation of the farm, business or industry.

6. Assuring that if personal or corporate guarantees are part of the collateral, current financial statements from such loan guarantors will be obtained and copies provided to FmHA at such time and frequency as required

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by the loan agreement or Conditional Commitment for Guarantee. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.

8. Assuring that the borrower obtains title marketable in fact to the colleteral.

9. Assuring that the Borrower (any party liable) is not released from liability for all or any part of the loan, except in accordance with FmHA regulations.

10. Providing FmHA Finance Office with loan status reports seminannually as of June 30 and December 31 on Form FmHA 1980–41, "Guaranteed Loan Status Report."

11. Obtaining from the borrower periodic financial statements under the following schedule:

Lender is responsible for analyzing the financial statements, taking any servicing actions needed, and providing copies of statements and record of actions to the County Supervisor.

XI. *Defaults by Borrower.*

A. The Lender will notify FmHA when a Borrower is thirty (30) days past due on a repayment and is unlikely to bring its account current within sixty (60) days, or if the Borrower has not met its responsibilities of providing the required financial statments to the Lender or is otherwise in default. The Lender will notify FmHA of the status of a Borrower's default on Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged by the Lender with the Borrower and FmHA to resolve the problem. Actions taken by the Lender with concurrence of FmHA may include but are not limited to the following or any combination thereof:

1. Deferment of principal payments (subject to rights of any Holder(s)).

2. An additional temporary loan by the Lender to bring the account current.

3. Reamortization of or rescheduling the payments on the loan (subject to rights of any Holder(s)).

4. Transfer and assumption of the loan in accordance with the applicable Subpart of Title 7 CFR Part 1990.

5. Reorganization.

6. Liquidation.

B. The Lender will negotiate in good faith in an attempt to resolve any problem and to permit the Borrower to cure a default, where reasonable.

C. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the borrower is in default not less than 60 days in payment of principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest less the Lender's servicing fee. Holder(s) will concurrently send a copy of demand to FmHA. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision.

D. If Lender does not repurchase as provided by paragraph C, FmHA will purchase from Holder(s) the unpaid principal balance of the guaranteed portion herein together with accrued interest (including any loan subsidy) to date of repurchase, within 30 days after written demand to FmHA from the Holder(s). Such demand will include a copy of the written demand made upon the Lender.

The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to FmHA or the original of the Assignment Guarantee Agreement properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy to date of demand) and interest subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by FmHA, such proposed payment will not be later than 30 days from the date of demand.

The FmHA County Supervisor will promptly notify the Lender of his receipt of the Holder(s)'s demand for payment. The Lender will promptly provide the FmHA County Supervisor with the information necessary for FmHA's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment by FmHA will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, the FmHA County Supervisor will review the demand and submit it to the State Director for verification. After reviewing the demand, the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the County Supervisor and State Director and remit the check(s) to the Holder(s).

E. Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by the Borrower on the loan and the amount due the Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee, nor does such purchase waive any of FmHA's rights against Lender, and FmHA will have the right to set-off against Lender all rights inuring to FmHA from the Holder against FmHA's obligation to Lender under the Loan Note Guarantee. To the extent FmHA holds a portion of a loan, loan subsidy will not be paid the lender.

F. If the Lender was charging the Holder(s) a service fee, the Lender agrees that the service fee will terminate upon the date of the Holder(s) demand for purchase to FmHA.

G. Lender may also repurchase the guaranteed portion of the loan consistent with paragraph 10 of the Loan Note Guarantee.

XII. *Liquidation.* If the Lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. When FmHA concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA, at its option, decides to carry out liquidation.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provisions in the Loan Note Guarantee or the Assignment Guarantee Agreement.

If the Lender does not purchase the guaranteed portion of the loan, FmHA will be notified immediately in writing. FmHA will then purchase the guaranteed portion of the loan from the Holder(s). If FmHA holds any of the guaranteed portion, FmHA will be paid first its pro rata share of the proceeds from liquidation of the collateral.

A. *Lender's proposed method of liquidation.* Within 30 days after the decision to liquidate is made, the Lender will advise FmHA of its proposed method of liquidation and will provide FmHA with:

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed loan promissory note(s) and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. If the outstanding principal B&I loan balance including accrued interest is less than $200,000, the Lender will obtain an estimate of the market and potential liquidated value of the collateral. On B&I loan balances in excess of $200,000, and all other loans, the Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the lender and FmHA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA and the Lender.

B. *FmHA's response to Lender's liquidation proposal.* FmHA will inform the Lender whether it concurs in the Lender's proposed method of liquidation within 30 days after receipt of such notification from the Lender. If FmHA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA and the Lender not agree on the Lender's liquidation proposal, FmHA will proceed with the liquidation as follows:

1. The Lender will transfer to FmHA all its rights and interests necessary to allow FmHA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.

2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. *Acceleration.* The Lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the Lender, as the case may be.

D. *Liquidotion: Accounting ond Reports.* When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodlc reports on the progress of liquidation, disposition of collateral, resulting costs, and additional procedures necessary for successful completion of liquidation. The Lender will transmit to FmHA any payments received from the Borrower and/or pro-rata share of liquidation or other proceeds, etc. when FmHA is the holder of a portion of the guaranteed loan using Form FmHA 1980–43, "Lender's Guaranteed Loan Payment to FmHA." When FmHA liquidates, the Lender will be provided with similar reports on request.

E. *Determination of Loss and Payment.* In all liquidation cases, a final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses paid under the guarantee from any party liable.

1. Form FmHA 449–30 Loan Note Guarantee "Report of Loss," will be used for calculations of all estimated and final loss determinations.,

2. When the Lender is conducting the liquidation, and owns any of the guaranteed portion of the loan, he may request a tentative loss estimate by submitting to FmHA an estimate of the loss that will occur in connection with liquidation of the loan. Such estimate will be prepared on Form FmHA 449–30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral.

After the Report of Loss estimate has been approved by FmHA, and within 30 days, thereafter, FmHA will send the original Report of Loss estimate to FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449–30 by the Lender to FmHA.

3. After the Lender has completed liquidation, FmHA upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender has conducted liquidation and after the final Report of Loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, FmHA will send the original of the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owned by FmHA to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimbuse FmHA for the overpayment plus interest at the note rate from date of payment.

5. If FmHA has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee.

6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA when the final Report of Loss is approved.

F. *Maximum amount of interest loss payment.* Notwithstanding any other provisions of this agreement, the amount payable by FmHA to the Lender cannot exceed the limits set forth in the Loan Note Guarantee. If FmHA conducts the liquidation, loss occasioned by accruing interest (including any loan subsidy) will be covered by the guarantee only to the date FmHA accepts this responsibility. Loss occasioned by accruing interest (including any loan subsidy) will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA. The balance of accrued interest (including any loan subsidy) payable to

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the Lender, if any, will be calculated on the final Report of Loss form.

G. *Application of FmHA loss payment.* The total amount of the loss payment remitted by FmHA will be applied by the Lender on the guaranteed loan debt. At time of final loss settlement the Lender will notify the Borrower that the loss payment has been so applied.

H. *Income from collateral.* Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. *Liquidation costs.* Certain liquidation costs will be allowed during the liquidation process. Such costs will be deducted from gross proceeds from the disposition of collateral. The amount allowed will be the amount agreed upon by FmHA and the Lender as being reasonable under the circumstances and should be determined prior to liquidation.

J. *Foreclosure.* The parties owning the guaranteed portion and unguaranteed portions of the loan will join to institute foreclosure action or, in lieu of foreclosure, to take a deed of conveyance to such parties. When the conveyance is received and liquidated, net proceeds will be applied to the guaranteed loan debt.

K. *Payment.* Such loss will be paid by FmHA within 60 days after the Lender has submitted the final Report of Loss form.

XIII. *Protective advances.* Protective advances must constitute an indebtedness of the borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of $500. Protective advances include, but are not limited to, advances made for taxes, annual assessments, ground rent, hazard of flood insurance premiums effecting the collateral, and other expenses necessary to preserve or protect the security.

XIV. *Additional Loans or Advances.* The Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA even though such expenditures or loans will not be guaranteed.

XV. *Future Recovery.* After a loan has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the lender, will be pro-rated between FmHA and the Lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the lender will retain such amounts in proportion to the percentage of the unguaranteed portion of the loan.

XVI. *Transfer and Assumption Cases.* Refer to the applicable Subpart of Title 7 of CFR Part 1990.

XVII. *Other Requirements.* This agreement is subject to all the requirements of the applicable Subpart of Title 7 CFR Part 1990, and any future amendments of these regulations not inconsistent with this agreement. Interested parties may agree to abide by future FmHA regulations not inconsistent with this agreement.

XVIII. *Execution of Agreements.* If this agreement is executed prior to the execution of the Loan Note Guarantee, this agreement does not impose any obligation upon FmHA with respect to execution of such contract. FmHA in no way warrants that such a contract has been or will be executed.

XIX. *Notices.* All notices and actions will be initiated through the FmHA County Supervisor for

_____ (County)
_____ (State) with
mailing address at the date of this instrument: _____

Dated this _____ day of _____ 19 ___.

Lender:
Attest: _____
By _____
Title _____
UNITED STATES OF AMERICA
Farmers Home Administration
By _____
Title _____
USDA–FmHA
Form FmHA 449–36
(Rev. 11–23–76)

Position 5

Assignment Guarantee Agreement

Type of Loan: _____
Applicable 7 CFR Part 1990 Subparts A and C
FmHA Loan Identification Number _____

_____ of _____ (Lender) has made a loan to _____ in the principal amount of $ _____ as evidenced by a note(s) dated _____. The United States of America, acting through Farmers Home Administration (FmHA) entered into a Loan Note Guarantee (Form FmHA 449–34) with the Lender applicable to such loan to guarantee the loan not to exceed _____% of the amount of the principal advanced and any interest (including any loan subsidy) due thereon as provided therein.

_____ of _____ (Holder) desires to purchase from Lender _____% of the guaranteed portion of such loan. Copies of Borrower's note(s) and the Loan Note Guarantee are attached hereto as a part hereof.

Now, therefore, the parties agree:

1. The principal amount of the loan now outstanding is $_____. Lender hereby assigns to Holder _____% of the guaranteed portion of the loan representing $_____ of such loan now outstanding in accordance with all of the terms and conditions hereinafter set forth. The Lender and FmHA certify to the Holder that the Lender has paid and FmHA has received the Guarantee Fee in exchange for the issuance of the Loan Note Guarantee.

2. *Loan Servicing.*

The Lender will be responsible for servicing the entire loan and will remain mortgagee and/or secured party of record. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan.

The Lender will receive all payments on account of principal of, or interest (including any loan subsidy) on, the entire loan and shall promptly remit to the Holder its pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee.

3. *Servicing Fee.*

Holder agrees that Lender will retain a servicing fee of _____ percent per annum of the unpaid balance of the guaranteed portion of the loan assigned hereunder.

4. *Purchase by Holder.*

The guaranteed portion purchased by the Holder will always be a portion of the loan which is guaranteed. The Holder will hereby succeed to all rights of the Lender under the Loan Note Guarantee to the extent of the assigned portion of the loan. The Lender, however, will remain bound by all the obligations under the Loan Note Guarantee and the program regulations found in the applicable Subpart of 7 C.F.R. Part 1980 now in effect and future FmHA program regulations not inconsistent with the provisions hereof.

5. *Full Faith and Credit.*

The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Holder has actual knowledge at the time of this assignment, or which it participates in or condones.

6. *Rights and Liabilities.*

The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentations by Lender or any unenforceability of the Loan Note Guarantee by Lender. Nothing contained herein shall constitute any waiver by FmHA of any rights it possesses against the Lender, and the Lender agrees that Lender will be liable and will promptly reimburse FmHA for any payment made by FmHA to Holder which, if such Lender had held the guaranteed portion of the loan, FmHA would not be required to make.

7. *Repurchase by the Lender (Defaults).*

The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the borrower is in default not less than 60 days on principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest (including any loan subsidy), less the Lender's servicing fee. Holder(s) will concurrently send a copy of demand to FmHA. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision.

8. *Purchase by FmHA.*

If Lender does not repurchase as provided by paragraph 7, FmHA will purchase from Holder the unpaid principal balance of the guaranteed portion together with accrued interest (including any loan subsidy) to date of repurchase, less Lender's sevicing fee, within 30 days after written demand from the Holder. Such demand will include a copy of the written demand made upon the Lender. The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to FmHA or the original of the Assignment Guarantee Agreement properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest (including any loan subsidy) subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by FmHA, such proposed payment will not be later than 30 days from the date of demand.

The FmHA County Supervisor will promptly notify the Lender of his receipt of the Holder(s)'s demand for payment. The Lender will promptly provide the FmHA County Supervisor with the information necessary for FmHA's determination of the appropriate amount due the Holder(s). Any descrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment by FmHA will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, FmHA County Supervisor will review the demand and submit it to the State Director for verification. After reviewing the demand the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the County Supervisor and State Director and remit the check(s) to the Holder(s).

9. *Lender's Obligations.*

Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by Borrowers on the loan and the amount then owed to any Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee nor does it waive any of FmHA's right against Lender, and that FmHA shall have the right to set-off against Lender all rights inuring to FmHA as the Holder of this instrument against FmHA's obligation to Lender under the Loan Note Guarantee.

10. *Repurchase by Lender for Servicing.*

If, in the opinion of the Lender, repurchase of the assigned portion of the loan is necessary to adequately service the loan, the Holder will sell the assigned portion of the loan to the Lender for an amount equal to the unpaid principal and interest (including any loan subsidy) on such portion less Lender's servicing fee.

a. The Lender will not repurchase from the Holder(s) for arbitrage purpose or other purposes to further its own financial gain.

b. Any repurchase will only be made after the Lender obtains FmHA written approval.

c. If the Lender does not repurchase the portion from the Holder(s), FmHA at its option may purchase such guaranteed portions for servicing purposes.

11. *Foreclosure.*

The parties owning the guaranteed portions and unguaranteed portion of the loan will join to institute foreclosure action or, in liew of foreclosure, take a deed of conveyance to such parties.

12. *Reassignment.*

Holder upon written notice to Lender and FmHA may reassign the unpaid guaranteed portion of the loan sold hereunder. Upon such notification, the assignee will succeed to all rights and obligations of the Holder hereunder.

13. *Notices.*

All notices and actions will be initiated through the FmHA County Supervisor for _____ (County) _____ (State) with mailing address at the date of this instrument: _____

Dated this _____ Day of _____, 19—.

Lender:
Address:
Attest:
(Seal) _____
By _____
Title _____
Holder:
Address:
Attest:
(Seal) _____
By _____
Title _____

United States of America

Farmers Home Administration

Address _____
By _____
Title _____

(b) Form FmHA 1990–1 and Form FmHA 1990–2 are incorporated as parts of this Regulation. These forms are attached as 1990–B, Exhibit A and 1990–C, Exhibit A.

Appendix A—Planning, Performing Development, and Technical Feasibility Requirements for Biomass Energy Projects.

(a) General.

(1) Applications for financial assistance will be accompanied by reports with respect to technical, economic, financial, marketing and managerial feasibility of the project. Applicants will comply with FmHA Regulation 1980.442, "Feasibility Studies."

(2) This Appendix also describes the specific requirements for planning, technicai documentation and performance of development for all projects. In addition to the requirements of this Appendix, insured loans must comply with the applicable requirements of FmHA regulation 1942.18 (g) and subsequent subsections.

(3) FmHA reviews, including construction inspections, are solely for the benefit of the FmHA and are not intended to relieve the

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lender/borrower of corresponding obligations to conduct similar reviews and inspections. FmHA acceptance or concurrence in feasibility studies, preliminary engineering reports, final plans and specifications shall not be construed as a representation of the adequacy of same, reliability of cost estimates or quality of construction.

(b) *Design Policy.* All facilities shall be designed utilizing accepted engineering practice and shall conform to applicable Federal, State and local codes and requirements.

(c) *Equipment and Processes.*

(1) Equipment and processess shall be considered "proven" if they have:

(i) demonstrated successful operation in pilot facilities, or

(ii) been successfully employed in other commercial facilities where the unit operations are similar in nature to the unit operations proposed for the biomass energy production facility.

(2) Proven equipment and processes shall be employed in all facilities related to the proposed development unless an exception is granted by the State Director in accordance with paragraph (c)(3).

The applicant's engineer must certify that only proven equipment and processes will be utilized in the proposed development. FmHA may request evidence of successful operation.

The performance of packaged alcohol production units must be verified by an independent testing entity unless the manufacturer or supplier guarantees the performance of the unit for a period of one year after plant start-up, and provides a bond for an amount to adequately cover the cost of the unit and reasonable damages. The testing procedures and operating parameters must be sufficient to reasonably indicate performance under active operating conditions. A copy of the test procedures, operating parameters, test results and the qualifications of the testing entity shall be submitted to FmHA for review.

(3) Innovative equipment or processes which have demonstrated successful laboratory scale operation but have not yet been tried in pilot or commercial operations may be utilized in the facility if:

(i) Reasonable provision is made in the facility for conversion to proven equipment or processes;

(ii) The plans for the applicable facilities are reviewed and accepted by the National Office Environmental and Technology Staff. FmHA reserves the right to require the use of proven processes and equipment if the proposed processes or equipment are not suitably developed to assure reliable and successful operation of the facility; and

(iii) The borrower agrees to convert to proven equipment or processes if conversion is necessary to protect the interest of the Government in the project. A loan agreement or the mortgage may be used to evidence this commitment. A reserve account for this conversion may be required. This account will not be an eligible loan purpose.

(4) All equipment, including packaged units, must be guaranteed by the manufacturer to be free from defects in workmanship and materials for a period of one year after start up of equipment. Equipment purchased by the construction contractor or design builder for incorporation into the facility shall be further warranted by the contractor or the design builder for a period of one year after substantial completion of the contract. Applicable provisions to this effect shall be included in all equipment purchase orders or construction contracts.

(5) Contract documents shall stipulate that the project engineer or qualified individuals representing the manufacturers of principal equipment (or the designer/builder if the contractor has designed the plant) will visit the plant site at reasonable intervals for a period of one year after substantial completion of the project. Ordinarily, these visits will be made at two month intervals. Such personnel shall be experienced in the proper operation and maintenance of applicable plant components. A report shall be presented to the Owner within two weeks of each site visit advising the Owner of operation and maintenance deficiencies. One copy of each report shall be forwarded to FmHA by the Owner.

(6) Performance bonds shall remain in full force and effect through the warranty period.

(7) Used equipment or existing facilities to be incorporated into the project must be inspected by a qualified engineer of the applicant. The engineer shall prepare a report which describes the proposed facilities or equipment and the report will comment on their suitability for use in the project. The report will also identify the modifications or repairs to existing facilities or used equipment that will be necessary for their successful integration into the project. A cost estimate shall also be included comparing new equipment and facilities to the proposed existing facilities or used equipment. Consideration shall be given to the relative energy requirements of used and new facilities and their relative operation and maintenance costs.

(d) *Energy Efficiency.* Facility and equipment design shall incorporate state-of-the-art primary fuel systems, energy recovery systems and conservation measures to the maximum extent that can be demonstrated to be cost effective in accordance with the U.S. Department of Energy, "Methodology and Procedure for Live Cycle Analysis," 10 CFR Part 436. The discount rate shall be 7 percent in real terms. Investments in primary fuel systems, energy recovery systems and energy conservation measures in excess of the cost effective limits of this methodology shall be permitted whenever these measures will reduce the utilization of natural gas or petroleum fuel.

(e) *Project Environmental and Technical Review.* (1) Feasibility studies, preliminary engineering reports, and final plans and specifications must be reviewed by the FmHA.

(2) Each application shall contain a Preliminary Engineering Report as described in Attachment 1 of this Appendix. This report shall be prepared by a person who is qualified in the analysis of all features of the proposed project which might affect its technical feasibility.

(3) The need for an environmental impact statement will be determined by FmHA in accordance with Subpart G of Part 1901 of this Chapter (FmHA Instruction 1901–G). The applicant will provide any information required.

(4) Modifications of final plans and specifications after review and concurrence in these documents by FmHA shall not be made without the written authorization of the engineers responsible for the design of the affected portions of the project and the concurrence of any lender and FmHA.

(f) *Technical Services.* (1) Full engineering services for design and construction inspection must be obtained for all facilities constructed under the project. Resident inspection by qualified persons shall be required unless an exception is granted by FmHA.

(2) The applicant is responsible for selecting engineering consultants with suitable experience, training and professional competence in the design and construction of the proposed facilities to assure that the completed project will operate at the prescribed levels of performance.

(3) Agreements for engineering or design/build services shall describe the proposed facilities in terms of the parameters critical to the successful operation of the project. The parameters shall include input quantities, process efficiency, rate of production and fuel consumption under normal operating conditions. The design parameters will be mutually agreed upon by the applicant, any lender, FmHA and project engineer prior to commencement of final design and may not be modified without the written concurrence of each of these parties.

(4) The agreements for engineering or design/build services must be reviewed and concurred in by any lender and FmHA. Agreements which limit the liability of the engineer for design errors and omissions will not be accepted by FmHA.

(g) *Substantial Completion.* (1) A project is substantially complete when construction has been completed in accordance with plans and specifications and operation has been sustained for an appropriate period to indicate that all defects, equipment malfunctions and material failures have been satisfactorily corrected. Testing procedures for individual plant components and materials shall be described in the plans and specifications.

(2) FmHA must concur in the determination of substantial completion of projects. The following documents shall be submitted to FmHA:

(i) A certificate from the engineer in responsible charge of the project stating that all facilities are substantially complete. Engineer(s) who design specialized equipment or processes must also certify that construction/fabrication is acceptable and in accordance with plans and specifications previously approved by them.

These certification must be based upon a plant start up procedure where the complete plant operates continuously to reach steady-state operating conditions. During this period contractors and engineers will identify and correct problems in operations, malfunctions in equipment, failure and materials and defects in workmanship. After this pre-start up, the engineers shall monitor plant

operations for a continuous period of at least 72 hours or 4 consecutive batch runs as appropriate to assure that all equipment is operating satisfactorily at rated capacity and efficiency.

(ii) Copies of test results for equipment and materials that have been incorporated into the project.

(iii) Copies of system operation and performance data obtained during plant start up.

(iv) Exceptions to subtantial completion and a list of non-substantial items which must be completed prior to release of contractors retainage.

(3) Projects which are designed by applicant or projects in which the engineer has participated in construction must be certified to be substantially complete by an independent engineer. The agreement for this engineering service must be reviewed and concurred in by any lender and approved by FmHA prior to the start of construction.

(h) *Commencement of Construction.* Construction shall not commence prior to the following:

(1) Applicants have made adequate provisions for compliance with measures established by FmHA to mitigate adverse historical and environmental impacts.

(2) FmHA concurrence in engineering, design/build, construction management or inspection services agreements.

(3) FmHA concurrence in applicable final plans, specifications and contract documents.

(4) Project engineer prepares a final cost estimate for all facilities. This estimate must indicate that the approved project can be completed with the funds available.

(5) Borrower's obtaining of applicable construction permits and approvals of Federal, State and local authorities.

(i) *Operations, Maintenance and Training.* (1) Borrower shall establish a training program for plant operation personnel prior to plant start up. This program shall be submitted to FmHA for approval prior to loan closing.

(2) The design engineers shall prepare as built drawing of all facilities. One copy shall be submitted to FmHA. This requirement shall be included in the engineering agreement or construction contract.

(3) Borrower shall prepare or contract for the preparation of an operation and maintenance manual. This manual should describe the specific operation and maintenance procedures which must be performed by the owner for the plant to operate at its rated capacity and efficiency and outline product testing, quality controls, plant safety and emergency shut down procedures.

Appendix A, Attachment 1—Technical Feasibility Documentation

(1) The Preliminary Engineering Report is based on verifiable information with sufficient detailed computations and supporting documentation to show that the proposed plant is cost-effective and energy efficient and that the plant will operate at the planned efficiency and output. The Report contains the information and data necessary for an objective appraisal of the project's technical feasibility.

(2) The Report compares the costs and effectiveness of alternative development schemes and processes and justifies the selection of the proposed project. The Report shows that the recommended plant size and location are best suited for the applicant considering needs and objectives, market constraints, availability of feedstocks and existence of other fuel production facilities in the area.

(3) The following outline will be used as a guide to determine the completeness of this Report:

Outline of Preliminary Engineering Report for Biomass-Energy Projects

I. General

A. Description of the Project

1. Needs and objectives of the owner(s)
2. Existing related on-site facilities and equipment
3. Other fuel production facilities in the area

B. General Design Criteria

1. Plant Sizing Criteria
2. Equipment Performance Criteria
3. Plant Efficiency/Performance Criteria

C. Alternatives

1. Processes
2. Equipment
3. Configuration
4. Capacities
5. Plant Location
6. Primary Fuel Source
7. Extraction of Protein

D. Comparison of Alternatives

E. Cost Effectiveness Comparison of Primary Fuel Systems

II. Selected Project

A. Description of Equipment (General)

B. Description of Process (Narrative-Diagram)

C. Potential for Future Expansion

D. Process Efficiency/Performance for Various Feedstocks

E. Permits/Licenses/Easements (Federal, State, Local, Commercial)

1. Royalties, Taxes, Fees
2. Application Procedure (General)
3. Specific Requirements (Outline)
4. Application Processing Time

F. Insurance

1. Type/amount
2. Availability
3. Limitations
4. Related Requirements

G. Applicable Design Codes/Safety Standards/Physical Security of Plant

H. Environmental Impacts (Form FmHA 449–10 and supporting or descriptive material)

III. Management

A. Experience of Owner in Operation of Similar Facilities

B. Personnel

1. Training Requirements/Proposals
2. Administrative and Operation Staff Requirement (by Category/Number)
3. Shift Work Force (by Category/Hours)

IV. Raw Materials

A. Type

1. Feedstock(s)
2. Chemicals/Enzymes

B. Sources

1. Reliability of supply
2. Transportation Considerations
3. Prices

C. Quantity

D. Quality Considerations

V. Process Fuels

A. Type

B. Source

1. Reliability of Supply
2. Transportation Considerations
3. Prices

C. Quantity

VI. Products

A. Type

B. Market Area/On Farm Use

C. Quantity

D. Prices

E. Utilization

F. Distribution

1. Transportation Facilities
2. Storage Requirements
3. Problems

G. Quality

1. Additional Processing Requirements
2. Moisture Content
3. Proof/Energy Content
4. Nutritional Value of Non fuel by-products

VII. Material Balance

A. Input/Output Flow Diagram

1. Flow Rates
2. Accumulated Products/Wastes

B. Water Supply Requirements

C. Waste Disposal/Recycling

D. Detailed Computations

VIII. Energy Consideration

A. Energy Input Overall Plant Operation (all Facilities)

1. Fuel type
2. Quantity

B. Process Heat Balance
C. Energy Content of Fuel Products

D. Energy Expended in Transportation of Raw Materials and Distribution of Primary and Secondary Plant Products

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E. Plant Efficiency

F. Detailed Computation

IX. Facilities and Equipment

A. Maintenance

1. Routine Maintenance Requirements
2. Anticipate Replacement of Equipment (20 year period)
3. Availability of Replacement Parts
4. Corrosion Control

B. Operations

1. Process Parameters
a. Temperatures
b. Pressure
c. Hydraulics
d. Power Requirements
e. Detailed Computations
2. Process and Quality Control
a. Automatic Operations
b. Monitoring Requirements
c. Narrative
3. Seasonal Constraints
a. Feedstocks and other Inputs
b. Process
c. Products

C. Equipment Manufacturer/Supplier (Packaged Plants/Patented Processes)

1. Previous Installations
2. Certified Performances
3. Special Guaranties

D. Plot Plan (Show relationship of all buildings, water supply, waste disposal, transportation facilities, power supply, etc.)

E. Plant Layout (Equipment and Support Facilities)

X. Construction

A. Cost Estimate

1. Equipment/Supplies (not included in construction contract)
2. Construction
3. Lands, Structures, Rights-of-Way
4. Permits
5. Legal/Accounting Fees
6. Engineering
7. Interim Construction Interest
8. Training Expense
9. Initial Operation and Maintenance Expenses
10. Operation and Maintenance Manual
11. Contingency

B. Unusual Construction Problems

C. Estimoted Construction Period

D. Anticipated Useful Life of Facilities

The information herein covered by the Federal Reports Act has been approved by OMB. The Clearance Number is 40R5033.

Exhibit A–1.—Application for Biomass Energy Loan Guarantee Assistance, Form FmHA 1990–1

General Information: This application is to provide information needed for the analysis and loan guarantee determination process for Biomass Energy assistance.

Part A and Attachment A is to be completed by the proposed borrower. The original and two copies with attachments will be submitted to the proposed lenders.

Part B is to be completed by the lender. Upon completion, the original and one copy and attachments of Part A. Attachment A and Part B will be filed with FmHA.

For complete guidance, see FmHA Regulation 1990–A and –C, 1990 Appendix A and related FmHA forms.

Part A

Instructions: Complete all items. Submit original and two copies of this application and Attachment A and all supporting documents to the lender. If additional space is required, attachment sheets are authorized. Additional information may be obtained at any FmHA office.

1. Name:
(Show the official name of the person, partnership, or corporation submitting the application. Do not use abbreviations, unless they are parts of the official name of the applicant. For proprietor, show name(s) followed by "doing business as" and trade name used, if any. If a partnership, attach a copy of the partnership agreement. If a franchise, provide a copy of the franchise agreement.)
Address:
City:
County:
State:
ZIP Code:
Telephone Number:

2. Project location:
City:
County:
State:

3. Provide a brief description of the project for which assistance is requested:

4. Business history: (Provide a brief summary of the applicant's business and/or occupational history):

5. Federal, State or local government financing: List assistance received, or any pending applications. (Include direct, participation, insured, or guaranteed loans and grants from any Government agency.)

6. Litigation: (List details of any pending or final disciplinary or legal—civil or criminal—action against the applicant, guarantors, partners, principal owners and directors).

7. Attorneys, accountants, and other parties: (List the names of all attorneys, accountants, engineers, consultants, appraisers, packagers, agents, and all other similar parties, whether individuals, partnerships, or associations, engaged by or on behalf of the applicant whether on a salary, retainer or fee basis and regardless of the amount of compensation, for the purpose of rendering professional or other services of any nature whatever to applicant, in connection with the preparation or presentation of this application to a lender. List all fees or other charges or compensations *paid or to be paid* for any purpose in connection with this application or disbursement of the loan whether in money or other property of any kind whatever, by or for the account of the applicant, together with a description of such services rendered or to be rendered, with justification for such purposes. Note: all fees and charges are subject to FmHA review and approval. Attach justification.

Name and address (include Zip code)	Description of services rendered or to be rendered	Total compensation agreed to be paid	Compensation already paid

Enter specific dollar amounts or hourly rates. "Unknown," "Undetermined," or other imprecise terms are not sufficient.

8. Subsidiaries and affiliates:
(a) List the name and addresses of all concerns that are subsidiaries, parent organizations, or affiliates of the applicant, including concerns in which the applicant holds a controlling (but not necessarily a majority) interest:

(b) List all other concerns that are in any way affiliated, by stock ownership, management contracts, or otherwise, with the applicant. The applicant should comment briefly regarding the trade relationship between the applicant and such subsidiaries or affiliates and if the applicant has no subsidiary or affiliate, a statement to this effect should be made. Signed and dated balance sheets, operating statements and reconcilement of net worth must be submitted for all subsidiaries, parent organizations, and affiliates in the same manner as required of applicant.

9. Purchase and sales relations with others: Does applicant currently or in the future expect to buy from, sell to or use the services of, any concern in which an officer, director, principal owner, partner, or proprietor of the applicant has a substantial interest? ☐ Yes ☐ No If "Yes" give names of such officer, director, owner, and partners, name of such concerns and explain the nature of the transaction(s).

10. Receivership—Bankruptcy: Has applicant, any officer, partner, principal owner, director of the applicant, affiliates or any other concern with which such person has been connected ever been in receivership or adjudicated bankrupt. ☐ Yes ☐ No If "Yes" give names, dates and details.

11. Disclosure of Special Information Regarding Principals: (a) List below the names of any FmHA employees or employees of the proposed lender, who are related by blood, marriage, or adoption, or who have any present or have had any past, direct or indirect financial interest in or association

with, the proposed borrower, or any of its partners, officers, directors or principal owners including such interest in other enterprise; (b) when the proprietor, or any partner, officer, director, principal owner, or their spouse, is an employee of the U.S. Government, including members of the armed forces, detailed information shall be submitted with his application. Check box(s) if (a) or (b) is not applicable. ☐ (a) ☐ (b)

Names and addressed (include ZIP Codes)	Details of relationship or interest

12. Management: Enter names of (a) all partners, key officers, directors, or stockholders and their annual compensation, including salaries, fees, withdrawals, etc., (b) hired manager, and (c) all owners having 20 percent or more interest in the proposed borrower. Elected officials and managers on applications for loans from public bodies are excluded, and the information requested above is only for the project covering the financial assistance application. Attach in the case of any offering a personal guarantee, current financial statements not over 60 days old at time of filing and for any corporate guarantee, current financial statements not over 90 days old at time of filing and certified by an officer of the corporation.

(a) Name	(b) Position or title	(c) Annual compensation	(d) Percent ownership	(e) Outside net worth	(f) Personal guarantee *offered (yes or no)	(g) Life insurance carried for benefit of applicant
		$		$		$

13. Regulatory Agencies: List all regulatory agencies (National, State, or local) from which approvals, permits, licenses or clearances are necessary for the project.

Name of regulatory agency	Approval, permit, license or clearance required	Current status of application

14. Instruction to applicant: Attach to this application the following supporting documents, which are not all inclusive of the Regulations requirements (see the Regulations for additional requirements).
(a) Forms FmHA 449–4, "Statements of Personal History," if requested by FmHA.
(b) Financial data for new or existing businesses as required in accordance with FmHA Regulation.
(c) Aging of accounts receivable and payable. (Use 30, 60, 90 days with individual account explanation of items over 90 days old.)
(d) Provide supporting documentation for your projections, including economic factors, markets, management, etc.
(e) Final plans and specifications must be submitted to the lender and to FmHA for approval prior to the commencement of construction. Architectural or engineering plans, if applicable, need to be attached.
(f) If construction is involved, provide applicable equal opportunity and nondiscrimination forms.
(g) Form FmHA 499–10, "Applicants Environmental Impact Evaluation."
(h) Evidence as to whether the project is located in a flood plain or mudslide hazard area.
(i) Provide a written statement of effect project would have on Historic Places, if any.
(j) If loan guarantee is in excess of $100,000, provide certification and notices as required for the Clean Air Act and Water Pollution Control Act.
(k) Document utilities availability with letter of commitment from utilities, energy, water, sewer, fire and police protection.
(l) For all persons listed under MANAGEMENT, item 13, provide a brief description of education, technical training, employment and business experience (resumes may be used).
(m) Provide a detailed debt schedule correlated to the latest balance sheet reflecting the names of creditors, loan purposes, original loan amounts and loan balances, dates of loans, interest rates, maturity dates, monthly or annual payments, payments status and collateral that secures such loans. FmHA Form 449–29 may be used.
(n) Engineering agreement.
(o) Preliminary engineering report.

15. Policy and regulations concerning representatives and their fees:
(a) An applicant for a loan may obtain the assistance of any attorney, engineer, appraiser, or other representative to aid it in the preparation of its application, but, such representation is not mandatory. In the event a loan is approved, the services of an attorney may be necessary to assist in the preparation of closing documents, title examinations, etc.
(b) There are no "authorized representatives" of FmHA, other than our regular salaried employees. Payment of any fee or gratuity to FmHA employees is illegal and may subject the parties involved to prosecution.
(c) FmHA will not approve placement or finder's fees for the use or attempted use of influence in obtaining or trying to obtain a loan.
(d) Fees will be approved as provided in the regulations.
(e) It is the responsibility of the applicant to set forth in Section 8 of this application the names of all persons or firms engaged by or on behalf of the applicant. Applicants are also required to advise FmHA in writing of the names and fees of any representatives engaged by the applicant subsequent to the filing of the application. Failure to so notify FmHA may be considered "misrepresentation" and may void FmHA's guarantee if lender had knowledge of this omission.
(f) Any applicant having any question concerning the payment of fees, or the reasonableness of fees, should communicate with FmHA before the application is filed for a loan guarantee.

16. Agreement of nonemployment of FmHA personnel: In consideration of FmHA guaranteeing any part of the loan applied for in this application, the applicant hereby agrees with FmHA that applicant will not, for a period of two years after date of guarantee of any part of the loan, employ or tender any office or employment to, or retain for professional services, any person who, on the date of such disbursement, or within one year prior to said date, (a) shall have served as an employee of FmHA and engaged in activities which FmHA shall have determined, or may determine, involved discretion with respect to the granting of assistance under the Biomass Energy and Alcohol Fuels Act of 1980 and other Acts administered by FmHA from time to time.

17. *Certification—The applicant hereby certifies that:*
(a) The Applicant has read FmHA Policy and Regulations concerning representatives and their fees and has not paid or incurred any obligation to pay, directly or indirectly, any fee or other compensation for obtaining the loan hereby applied for, other than for services and expenses set out in pursuant to paragraph 16 above.
(b) The applicant has not paid or incurred any obligation to pay to any Government employee or special Government employee any fee, gratuity or anything of value for obtaining the assistance hereby applied for. If such fee, gratuity, etc. is or has been solicited by any such employee the applicant agrees to report such information to the Office of Inspector General, USDA, Washington, D.C. 20250.
(c) Information contained above and in Attachment A and exhibits hereto is true and complete to the best knowledge and belief of the applicant and is submitted for the purpose of requesting FmHA to guarantee a loan by a lender to the applicant.
(d) The applicant hereby covenants, promises and agrees to provide the lender and FmHA timely periodic financial

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statements including the annual audit financial statements required in FmHA Regulation, and failure to provide such reports will be considered as a default under the loan guarantee.

(c) The applicant agrees that if financial assistance is rendered by FmHA that it is subject to all the applicable Subparts of Title 7 CFR 1990, and any future amendments of the Regulations not in inconsistent with this application.

Notice: In accordance with 5 U.S.C. 552a, the Privacy Act of 1974, any individual should be provided a copy of Form FmHA 410-9, "Statement Required by the Privacy Act," at the time this application is completed.

Warning: Section 1001 of Title 18, United States Code provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both."

Misrepresentation of material facts may also be the basis for denial of financial assistance by the Farmers Home Administration.

(1) Type	Amount	Term (years)	Interest [1] (percent)	Monthly payments
Real estate				$
Machinery and equipment				
Other (specify in attachment)				
Total				

[1] If a variable rate, follow by a "V" and identify base rate used and what interest differential is added to base rate. If multi-rates are used provide overall effective interest rate for the entire loan: ——%

NOTE.—Total can not exceed 90% of total construction cost of project

20. Collateral and lien position: (Describe collateral, to be required and obtained as security whether now owned or to be acquired. List net book value, any existing liens against such collateral.)

21. Planned disbursements: (plans for disbursing the loan.)

22. Personal and/or corporate guarantees recommended:

23. Insurance: Insurance to be required by the borrower.

24. Loan agreement: Attach proposed lender and borrower loan agreement.

25. Lender's experience with FmHA:
(a) Have you made any loans guaranteed by FmHA? ☐ Yes ☐ No
If yes, check program area:
☐ Farmer Programs ☐ Rural Housing
☐ Business and Industry ☐ Biomass Energy.
(b) If applicant has or had a loan(s) with you, has such loan(s) appeared in regulatory examination report?
☐ Yes ☐ No If yes, explain.

26. Verify and Comment on Applicant's Debts: (Attach schedule).

27. Plans for constituting the loan:
(a) Will retain entire loan ☐ Yes ☐ No
(b) Will utilized secondary market for guaranteed portion (indicated by check).
Assignment—— Multi-note——
(c) Participation of unguaranteed portion
☐ Yes ☐ No

Note.—Lenders are required to hold 5% of loan amount out of the unguaranteed portion of the loan. The borrower must have the right to pre-pay their loan(s). Prepayment penalties are permitted, if reasonable and provided FmHA approves them.

28. Certifications: The Lender hereby certifies that it is not willing to extend credit to the applicant at reasonable rates and terms, taking into consideration prevailing rates and terms for loans for similar purposes

*(Individual, general partner, trade name, or corporation name).

Applicant Name:* ——
[Corporate Seal]
By ——
Title ——
Attest: ——
Date Signed: ——, 19—.
(Title) ——
(Title) ——
Applicant's Contact Person:
Name ——
Address ——
Telephone ——

Part B

Instruction: Lender completes items 18 through 28 and submits the original and one copy of this application and Attachment A and all supporting documents to FmHA.

18. Request for Guarantee:
(For use only by lender)
Lender tax identification:
No. ——

We propose to make and agree to service a loan to the applicant named on page 1 of this Application. We have verified the information set forth in Part A and Attachment A. We request an FmHA loan Guarantee subject to the provision of the applicable FmHA Regulations Part 1990 A and C and Appendix A.

19. Terms and Conditions of Loans: Percent of Guarantee Requested ——%.

and periods of time, and to finance the construction of the biomass energy project for which the loan is sought, without a guarantee.

Opinion: In our opinion, the loan appears feasible and all FmHA requirements will be met.

Warning: Section 1001 of Title 18, United States Code provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up a material fact, or make any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both.

Misrepresentation of material facts may also be the basis for FmHA not issuing a Loan Note Guarantee or voiding any Loan Note Guarantee that may be issued.

Lender:
Contact Person——
Telephone Number ——
Date——, 19—
Name and Address of Lender (Include ZIP) —
——
——
By: (Authorized Officer)——
Title ——

Attachment A—Biomass Energy Project Technical Information

The regulations for this program require that any project eligible for assistance be technically and economically feasible and that reasonable assurance be provided that the assistance can be repaid from the project's income, including income from by-products. The basic data describing this project and establishing its technical and economic feasibility are provided by this Attachment and by applicable documentation required under item 15 of Part A and the Regulations.

Instruction: This Attachment provides the basic technical description of the project. It is to be completed by *all* applicants. The original and two copies with any supporting attachments should be submitted to the proposed lender, in the case of loan guarantee applications, or to FmHA in the case of insured loan applications.

1. Type of Project: (Check as appropriate: more than one item may be applicable)
—— Small Scale/On Farm
—— Small Scale/Off Farm
(Small scale is defined as not more than 1 million gallons annual anhydrous ethanol capacity or its equivalent in other biomass energy forms)
—— Intermediate Scale/On Farm
—— Intermediate Scale/Urban
(Intermediate scale is defined as 1 million to less than 15 million gallons annual anhydrous ethanol capacity or its biomass energy equivalent)
—— Intermediate Scale/Rural Off Farm
—— Large Scale Project
(Large scale is defined as more than 15 million or more gallons annual anhydrous

ethanol capacity or its biomass energy equivalent, which is owned and operated by a cooperative or which uses wood or wood residues as feedstocks)

2. Principal Product:
—— Anhydrous Ethanol
—— Non-anhydrous Ethanol
—— Methanol
—— Methane
—— Wood Pellets (or other processed wood energy form)
—— Other (specify):

3. Secondary Product(s):
—— Wet Stillage
—— Dried Distillers Grains
—— Carbon Dioxide
—— Other (specify)

4. Annual Capacity of Project:
—— Gallons annual ethanol production, anhydrous basis
(*Note:* Other biomass energy forms should be converted to anhydrous ethanol, which is established to have 84,400 BTU per gallon. Applicant should indicate here basis for his capacity specification: i.e., three shift operation 330 days per year or other)

5. Feedstock(s) to be Used: (Use "1" for principal feedstock and "2", "3", etc., for secondary feedstocks in order of planned importance)
—— Corn
—— Milo
—— Wheat
—— Other Grain (specify)
—— Mixed grains
—— Sugar beets
—— Saw dust
—— Manure
—— Potatoes
—— Molasses
—— Whey
—— Bagasse
—— Wood/Forest residues
—— Crop residues
—— Other (specify)

6. Technology to be Employed: (Give trade name if technology is identified with specific firm or inventor. If continuous fermentation or if project has any other unique technical features, so indicate. Otherwise, describe as "conventional".) ——
Name of prime design engineer:

7. Primary Fuel to be Used:
—— Coal
—— Natural gas
—— Fuel Oil (petroleum)
—— Propane
—— Crop residues
—— Methane
—— Solar energy
—— Wood or forest products and residues
—— Co-generated steam
—— Other (specify):
(*Note:* In the event that more than one primary fuel source is to be used, other than general purpose electricity, indicate in each applicable blank the approximate percentage of total primary fuel requirements to be supplied from that energy source)

8. Planned Disposition of Principal Products: (Marketing) (Rank 1, 2, 3, as appropriate in order of relative importance)
—— On farm use
—— On farm use plus sale (indicates planned percentages: e.g., 50/50)
—— Sale to gasohol blender/distributor
—— Sale to gasohol refinery
—— Sale to U.S. Government, State Government, Local Government (check and underline as appropriate)
—— Retail sale
—— Other (specify; e.g., non-farm in-plant use)

9. Project Milestones:
Planned date to initiate construction (if applicable): ——
Planned date to complete construction: ——
Planned start-up date: ——

10. Proposed Sources and Uses of Funds:

Construction	Guaranteed or insured loan funds	Other funds
Real Estate	$——	$——
Machinery and Equipment*	——	——
Installation	——	——
Engineers Fees	——	——
Other Fees	——	——
Construction Interest	——	——
Other Construction (Specify):		
(a)——	——	——
(b)——	——	——
(c)——	——	——
Total Construction (a) ——		(b) ——
Other Uses of Funds:		
Working Capital	x	——
Other (specify):		
(a) ——	x	——
(b) ——	x	——
(c) ——	x	——
Total Non-construction Costs:	x (c)	——
Total Project Cost: (= (a) + (b) + (c) above)	——	——

*If used equipment or plant is involved, attach an engineer's appraisal of value in use.

11. Other Funding:
Indicate the provisions that have been made for working capital. (Attach commitment and identify source of funding.)

12. Comment on Water Supply Availability:
Approximately how much will be required:
Per gallon (or other unit) of production: ——
Per year (assuming full capacity operations) ——
Availability: ——

13. Comment on Transportation Availability:
For assembly of feedstocks: ——
For shipping of principal product(s): ——
For shipping of by-products: ——

14. Comment on Planned Storage Facilities:
Feedstocks: ——
Principal Product(s): ——
By-Products: ——

15. Explain Market Commitments for Sale of Product (if applicable): (Provide supporting documents)

16. Planned Disposition of Products and By-Products (Annual Basis)
(a) *Primary Product:* ——
Planned Annual Output: —— (gals/tons)
Disposition:
Internal Use: —— %
Sale: —— %
(b) By-Product (I): ——
Planned Annual Production: —— (gals/tons)
Disposition:
Internal Use: —— %
Sale: —— %
Waste: —— %
(c) By-Product (II): ——
Planned Annual Production: —— (gals/tons)
Disposition:
Internal Use: —— %
Sale: —— %
Waste: —— %

17. Credit for Internal Consumption of Biomass Energy Produced: (If it is planned that some or all of the biomass energy to be produced will be used on farm or in-plant to displace purchase fuels, a credit may be taken against the cost of production based on the projected purchase price of the fuel displaced. Indicate the amount and method of calculation here. A credit may also be taken for on farm use of by-products such as wet stillage. Again, provide amount and method of calculation.)

18. Estimated new *Direct* Full-Time Employment the Project Will Employ at Planned Level of Operations: (assume 40-hour workweek):

Misrepresentation of material facts in this application may be the basis for denial of financial assistance by the Farmers Home Administration.
Corporate Seal
Attest: ——
(Title)
Applicant Name*
——
——
——
By ——
Title ——
Date Signed ——

Exhibit A-2—Application for FmHA Biomass Energy Insured Loan Assistance, Form FmHA 1990-2

General Information: All applicants for FmHA insured loan assistance for biomass energy projects will complete this form and submit it (original and two copies), together with attachments to FmHA.

This application package consists of two documents:

Part A: Background, legal and feasibility information essential to the processing of the application.

Attachment A: Technical information required both for evaluation of the application and overall FmHA program management.

For complete guidance, see FmHA Regulation 1990-A and B, 1990 Appendix A and related FmHA Forms.

Port A

If additional space is required to answer any of the following questions, attachment sheets are authorized. Additional information may be obtained at any FmHA office.
Name: ——
(Show the official name of the person, partnership, or corporation submitting the application. Do not use abbreviations unless

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they are parts of the official name of the applicant. For proprietor, show name(s) followed by "doing business as" and trade name used, if any. If a partnership, attach a copy of the partnership agreement. If a franchise, provide a copy of the franchise agreement.)
Address: _____
City: _____
County: _____
State: _____
Zip Code: _____
Telephone: _____

2. Project location:
City: _____
County: _____
State: _____

3. Provide a brief description of the project for which assistance is requested:

4. Business history: (provide a brief summary of the applicant's business and/or occupational history):

5. Federal, State, or local government financing: (list assistance received or any pending applications. Include direct, participation, insured, or guaranteed loans and grants from any Government agency.)

6. Litigation: (list details of any pending or final disciplinary or legal—civil or criminal—action against the applicant, guarantors, partners, principal owners and directors).

7. Attorneys, accountants, and other parties: list the names of all attorneys, accountants, engineers, consultants, appraisers, packagers, agents, and all other similar parties whether individuals, partnerships, or associations, engaged by or on behalf of the applicant, whether on a salary, retainer or fee basis and regardless of the amount of compensation, for the purpose of rendering professional or other services of any nature whatever to applicant in connection with the preparation or presentation of this application. List all fees or other charges or compensations *paid or to be paid* for any purpose in connection with this application or disbursement of the loan whether in money or other property of any kind whatever, by or for the account of the applicant, together with a description of such services rendered or to be rendered, with justification for such purposes. Note: all fees and charges are subject to FmHA review and approval. Attach justification.

Name and address (include Zip code)	Description of services rendered or to be rendered	Total compensation agreed to be paid	Compensation already paid

Enter specific dollar amounts of hourly rates. "Unknown," "Undetermined," or other imprecise terms are insufficient.

8. Subsidiaries and affiliates:
(a) List the names and addresses of all concerns that are subsidiaries, parent organizations, or affiliates of the applicant, including concerns in which the applicant holds a controlling (but not necessarily a majority) interest:

(b) List all other concerns that are in any way affiliated, by stock ownership, management contracts, or otherwise, with the applicant. The applicant should comment briefly regarding the relationship between the applicant and such subsidiaries or affiliates and if the applicant has no subsidiary or affiliate, a statement to this effect should be made. Signed and dated balance sheets, operating statements and reconciliations of net worth must be submitted for all subsidiaries, parent organizations, and affiliates in the same manner as is required of the applicant.

9. Purchase and sales relation with others: Does applicant currently or in the future expect to buy from, sell to or use the services of any concern in which an officer, director, principal owner, partner, or proprietor of the applicant has a substantial interest? ☐ Yes ☐ No If "Yes" give names of such officer, director, owner, and partners, names of such concerns and explain the nature of the transaction(s).

10. Receivership-bankruptcy: Has applicant, any officer, partner, principal owner, director of the applicant, affiliate or any other concern with which such person has been connected ever been in receivership or adjudicated bankrupt? ☐ Yes ☐ No If "Yes" give names, dates and details.

11. Disclosure of special information regarding principals:

(a) List below the names of any FmHA employees who are related by blood, marriage, or adoption, or who have any present or have had any past direct or indirect financial interest in or association with the proposed borrower or any of its partners, officers, directors or principal owners, including such interest in other enterprises;

(b) when the proprietor, or any partner, officer, director, principal owner, or their spouse(s) is an employee of the U.S. Government, including members of the armed forces, detailed information shall be submitted with this application. Check box(s) if (a) or (b) is not applicable: ☐ (a) ☐ (b)

Names and addresses (include Zip code)	Details of relationship or interest

12. Management: Enter the names of (a) all partners, key officers, directors or stockholders and their annual compensation, including salaries, fees, withdrawals, etc., (b) hired manager, and (c) all owners having 20 percent or more interest in the proposed borrower. Elected officials and managers on applications for loans from public bodies are excluded, and the information requested above is only for the project covered by the financial assistance application. Attach in the case of any offering of personal guarantee current financial statements not over 60 days old at the time of filing; and for any corporate guarantee, current financial statements not over 90 days old at the time of filing and certified by an officer of the corporation.

(a) Name	(b) Position or title	(c) Annual compensation	(d) Percent ownership	(e) Outside net worth	(f) Personal guarantee offered (Yes or No)	(g) Life insurance carried for benefit of applicant

13. Regulatory Agencies: List all regulatory agencies (National, State and Local) from which any approvals, permits, licenses or clearances are necessary for the project.

Name of regulatory agency	Approval, permit, license or clearance required	Current status of application

14. Instruction To Applicant: Attach to this application the following supporting documents, which are not all inclusive of the Regulations requirements (see the Regulations for additional requirements):
(a) Form FmHA 449–4, "Statements of Personal History," if requested by FmHA.
(b) Financial data for new or existing businesses as required in accordance with FmHA regulation.
(c) Aging of accounts receivable and payable. (Use 30, 60, 90 days with individual account explanation of items over 90 days old).
(d) Provide supporting documentation for project projections, including economic factors, markets, management, etc.
(e) Final plans and specifications must be submitted to FmHA for approval prior to the commencement of construction. Architectural or engineering plans, if applicable, need to be attached.
(f) If construction is involved, provide applicable equal opportunity and non-discrimination forms.
(g) Form FmHA 449–10, "Applicant's Environmental Impact Evaluation."

(h) Evidence as to whether the project is located in a flood plain or mudslide hazard area.
(i) Provide a statement of the effect the project would have on Historic Places, if any.
(j) If loan is in excess of $100,000, provide certification and notices for the Clean Air Act and the Federal Water Pollution Control Act.
(k) Document utilities availability with letter of commitment from utilities, energy, water, sewer, fire and police protection.
(l) For all persons listed under MANAGEMENT, item 13, provide brief description of education, technical training, employment and business experience (résumé may be used).
(m) Provide a detailed debt schedule correlated to the latest balance sheet reflecting the name of creditors, loan purpose, original loan amount and loan balance, date of loan, interest rate, maturity date, monthly or annual payments, payment status and collateral that secures such loans. (Form FmHA 449–29 may be used.)
(n) Engineering agreement.
(o) Preliminary engineering report (See FmHA Regulation 1990.300).
(p) For on-farm projects, FmHA Form 410–1, "Application for FmHA Services."

15. Policy and Regulations Concerning Representatives and Their Fees:
(a) An applicant for a loan may obtain the assistance of any attorney, engineer, appraiser, or other representative to aid it in the preparation of its application, but such representation is not mandatory. In the event a loan is approved, the services of an attorney may be necessary to assist in the preparation of closing documents, title examinations, etc.
(b) There are no "authorized representatives" of FmHA, other than our regular salaried employees. Payment of any fee or gratuity to FmHA employees is illegal and may subject the parties involved to prosecution.
(c) FmHA will not approve placement or finder's fees for the use of attempted use of influence in obtaining or trying to obtain a loan.
(d) Fees and charges are subject to review and approval as provided in the Regulations.
(e) It is the responsibility of the applicant to set forth in Section 8 of this application the names of all persons or firms engaged by or on behalf of the applicant. Applicants are also required to advise FmHA in writing of the names and fees of any representatives engaged by the applicant subsequent to the filing of the application. Failure to so notify FmHA may be considered "misrepresentation" and may void FmHA's guarantee if lender had knowledge of this omission.
(f) Any applicant having any question concerning the payment of fees, or the reasonableness of fees, should communicate with FmHA before the application is filed for a loan.

16. Agreement of Nonemployment of FmHA Personnel: In consideration of FmHA guaranteeing any part of the loan applied for in this application, the applicant hereby agrees with FmHA that applicant will not, for a period of two years after date of guarantee of any part of the loan, employ or tender any office or employment to, or retain for professional services, any person who, on the date of such disbursement, or within one year prior to said date, (a) shall have served as an employee of FmHA and (b) as such, shall have occupied a position or engaged in activities which FmHA shall have determined, or may determine, involved discretion with respect to the granting of assistance under the Biomass Energy and Alcohol Fuels Act of 1980 and other Acts administered by FmHA.

17. *Certification—The applicant hereby certifies that:*
(a) The Applicant has read FmHA Policy and Regulations concerning representatives and their fees and has not paid or incurred any obligation to pay, directly or indirectly, any fee or other compensation for obtaining the loan herby applied for, other than for services and expenses set out in paragraph 16 above.
(b) The applicant has not paid or incurred any obligation to pay to any Government employee or special Government employee any fee, gratuity or anything of value for obtaining the assistance hereby applied for. If such fee, gratuity, etc. is or has been solicited by any such employee the applicant agrees to report such information to the Office of Inspector General, USDA, Washington, D.C. 20250.
(c) Information contained above and in Attachment A and exhibits hereto is true and complete to the best knowledge and belief of the applicant and is submitted for the purpose of requesting FmHA to award a loan to the applicant.
(d) The applicant hereby covenants, promises and agrees to provide the lender and FmHA timely periodic financial statements including the annual audit financial statements required in FmHA Regulations.
(e) The applicant agrees that if financial assistance is rendered by FmHA that it is subject to all the applicable Subparts of Title 7 CFR 1990, and any future amendments of these Regulations not inconsistent with this application.

Notice: In accordance with 5 U.S.C. 552a, the Privacy Act of 1974, any individual should be provided a copy of Form FmHA 410–9, "Statement Required by the Privacy Act," at the time this application is completed.

Warning: Section 1001 of Title 18, United States Code provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both."

Misrepresentation of material facts may also be the basis for denial of financial assistance by the Farmers Home Administration.

*Applicant Name: _____

Corporate Seal
By _____
Title _____
Attest: _____
Date Signed: _____ 19__
(Title) _____
(Title) _____

Applicant's Contact Person:
Name _____
Address _____
Telephone _____

*(Individual, general partner, trade name, or corporation name).

Attachment A—Biomass Energy Project Technical Information

The regulations for this program require that any project eligible for assistance be technically and economically feasible and that reasonable assurance be provided that the assistance can be repaid from the project's income, including income from by-products. The basic data describing this project and establishing its technical and economic feasibility are provided by this Attachment and by applicable documentation required under item 15 of Part A and the Regulations.

Instruction: This Attachment provides the basic technical description of the project. It is to be completed by *all* applicants. The original and two copies with any supporting attachments should be submitted to the proposed lender, in the case of loan guarantee applications, or to FmHA in the case of insured loan applications.

1. Type of Project: (Check as appropriate; more than one item may be applicable)
—— Small Scale/On Farm
—— Small Scale/Off Farm
(Small scale is defined as not more than 1 million gallons annual anhydrous ethanol capacity or its equivalent in other biomass energy forms)
—— Intermediate Scale/On Farm
—— Intermediate Scale/Urban
(Intermediate scale is defined as 1 million to less than 15 million gallons annual anhydrous ethanol capacity or its biomass energy equivalent)
—— Intermediate Scale/Rural Off Farm
—— Large Scale Project
(Large scale is defined as more than 15 million or more gallons annual anhydrous ethanol capacity or its biomass energy equivalent, which is owned and operated by a cooperative or which uses wood or wood residues as feedstocks)

2. Principal Product:
—— Anhydrous Ethanol
—— Non-anhydrous Ethanol
—— Methanol
—— Methane
—— Wood Pellets (or other processed wood energy form)
—— Other (specify):

3. Secondary Product(s):
——Wet Stillage
——Dried Distillers Grains
——Carbon Dioxide
——Other (specify)

4. Annual Capacity of Project:
——Gallons annual ethanol production, anhydrous basis
(*Note:* Other biomass energy forms should be converted to anhydrous ethanol, which is established to have 84,400 BTU per gallon. Applicant should indicate here basis for his capacity specification: i.e., three shift operation 330 days per year or other)

V 45 OC 30 80 O UMI

5. Feedstock(s) to be used: (Use "1" for principal feedstock and "2", "3", etc., for secondary feedstocks in order of planned importance)
——Corn
——Milo
——Wheat
——Other Grain (specify)
——Mixed grains
——Sugar beets
——Saw dust
——Manure
——Potatoes
——Molasses
——Whey
——Bagasse
——Wood/Forest residues
——Crop Residues
——Other (specify)

6. Technology to be Employed: (Give trade name if technology is identified with specific firm or inventor. If continuous fermentation or if project has any other unique technical features, so indicate. Otherwise, describe as "conventional".)———
Name of prime design engineer: ———

7. Primary Fuel to be Used:
——Coal
——Natural Gas
——Fuel Oil (petroleum)
——Propane
——Crop residues
——Methane
——Solar energy
——Wood or forest products and residues
——Co-generated steam
——Other (specify):
(*Note:* In the event that more than one primary fuel source is to be used, other than general purpose electricity, indicate in each applicable blank the approximate percentage of total primary fuel requirements to be supplied from that energy source)

8. Planned Disposition of Principal Products: (Marketing) (Rank 1, 2, 3, as appropriate in order of relative importance)
——On farm use
——On farm use plus sale (indicate planned percentages: e.g., 50/50)
——Sale to gasohol blender/distributor
——Sale to gasohol refinery
——Sale to U.S. Government, State Government, Local Government (check and underline as appropriate)
——Retail sale
——Other (Specify; e.g., non-farm in-plant use)

9. Project Milestones:
Planned date to initiate construction (if applicable): ———
Planned date to complete construction: ———
Planned start-up date: ———

10. Proposed Sources and Uses of Funds:

Construction	Guaranteed or insured loan funds	Other funds
Real estate	$———	$———
Machinery and equipment*	———	———
Installation	———	———
Engineers fees	———	———
Other fees	———	———
Construction interest	———	———
Other construction (specify):		
(a)	———	———
(b)	———	———
(c)	———	———
Total construction:	———(a)	———(b)
Other uses of funds:		
Working capital	x	———
Other (specify):		
(a)	x	———
(b)	x	———
(c)	x	———
Total Non-construction Costs	x	———(c)
Total project cost: (=(a)+(b)+(c) above)	———	

*If used equipment or plant is involved, attach an engineer's appraisal of value in use.

11. Other Funding:
Indicate the provisions that have been made for working capital. (Attach commitment and identify source of funding.)

12. Comment on Water Supply Availability:
Approximately how much will be required:
Per gallon (or other unit) of production: ———
Per year (assuming full capacity operations)

Availability: ———

13. Comment on Transportation Availability:
For assembly of feedstocks: ———
For shipping of principal product(s): ———
For shipping of by-products: ———

14. Comment on Planned Storage Facilities:
Feedstocks: ———
Principal Product(s): ———
By-Products: ———

15. Explain Market Commitments for Sale of Product (if applicable): (Provide supporting documents)

16. Planned Disposition of Products and By-Products (Annual Basis)
(a) *Primary Product:* ———
Planned Annual Output: ——— (gals/tons)
Disposition: ———
Internal Use: ———%
Sale: ———%
(b) By-Product (I): ———
Planned Annual Production: ——— (gals/tons)
Disposition: ———
Internal Use: ———%
Sale: ———%
Waste: ———%
(c) By-Product (II): ———
Planned Annual Production: ——— (gals/tons)
Disposition: ———
Internal Use: ———%
Sale: ———%
Waste: ———%

17. Credit for Internal Consumption of Biomass Energy Produced: (If it is planned that some or all of the biomass energy to be produced will be used on farm or in-plant to displace purchase fuels, a credit may be taken against the cost of production based on the projected purchase price of the fuel displaced. Indicate the amount and method of calculation here. A credit may also be taken for on farm use of by-products such as wet stillage. Again, provide amount and method of calculation.)

18. Estimated New Direct Full-Time Employment the Project Will Employ at Planned Level of Operations: (assume 40-hour workweek):

Misrepresentation of material facts in this application may be the basis for denial of financial assistance by the Farmers Home Administration.

* Applicant Name ———

Corporate Seal
By ———
Title ———
Date Signed: ———19— ———
Attest: ———
(Title) ———

Exhibit B—Determination of Exempt Categories

AGENCY: Department of Energy and Department of Agriculture.

ACTION: Notice.

SUMMARY: The Departments of Energy and Agriculture are identifying the potential categories of projects to which the requirement for coordination between the two Departments does not apply. This action is required by Title II of the Energy Security Act.

EFFECTIVE DATE: This notice is effective immediately.

FOR FURTHER INFORMATION CONTACT: Ted D. Tarr, Office of Alcohol Fuels, Department of Energy, Room 6A–211, 1000 Independence Avenue, S.W., Washington D.C. 20585; (202) 252–9487.

Earle Gavett, Office of Budget, Planning and Evaluation, Department of Agriculture, Room 116–A; 14th and Independence Avenue, S.W., Washington, D.C. 20250; (202) 447–2634.

SUPPLEMENTARY INFORMATION: Title II of the Energy Security Act, Pub. L. 96–294, which was enacted June 30, 1980 ("ESA"), authorizes the Department of Energy and the Department of Agriculture to provide financial assistance to biomass and alcohol fuels projects. Section 212 divides the authorities and responsiblilities of the two departments.

Section 212(c)(1) requires that the Secretary of Agriculture and the Secretary of Energy, after evaluation of an application and before awarding financial assistance based upon the application, shall provide the other Secretary with a copy of the application and appropriate supporting material, for a review period of not less than 15 days. Section 212(c)(2) further provides that if the reviewing Secretary provides a written notice specifying any issues subject to such Secretaries review prior to the end of the 15 days, then the Secretary concerned shall defer final decision on the application for an additional 30 days for both Secretary to resolve the issues. At the end of such 30-day period, the Secretary concerned may make a final decision on the application.

Section 212(c)(3) specifies the type of review to be conductd by each Secretary. The Secretary of Agriculture shall review projects for the purpose of considering the national, regional and local agriculutural policy impacts of a project on agricultural supply, production and use. The Secretary of Energy shall review projects for the purpose of considering national energy policy impacts and the technical feasibility of the project.

Section 212(c)(4) requires that within 90 days of enactment of the ESA, the Secretaries of Energy and Agriculture shall initially determine categories of projects to which the review and comment procedures shall not apply. This notice established those categories for which review by the other Secretary is not required.

The Secretary of Energy and the Secretary of Agriculture have jointly identified the categories of projects exempted from the requirements for review and comment by such Secretary before the other can award any financial assistance within his area of responsibility as determined by the Act. The exempted categories are:

1. All small-scale plants (i.e., plants having annual production capacity of not more than 1 million gallons of ethanol or its BTU energy equivalent of other forms of biomass energy);

2. All intermediate-scale projects (i.e., plants having annual production capacity of 1 to 15 million gallons of ethanol or its BTU energy equivalent of other forms of biomass energy) using standard conversion technology as described in the DOE–SERI/SP report 451–518, *Fuel From Forms—A Guide to Small Scale Ethanol Production*, February 1980, and the USDA report, *Small-Scale Fuel Alcohol Production*, March 1980.

There are no exempted categories above the 15 million gallons per year size plant. § 212(a)(2)(c) requires concurrence by both agencies before either can fund a plant of this size which uses wood or woodwaste as a feedstock or which is owned by a cooperative and used feedstocks other than aquatic plants. However, both the Department of Agriculture and the Department of Energy have agreed to the need for expeditious review and processing of application; and, upon the request of either Department, the reviewing Department shall endeavor to complete its review in a shorter period of time than the 15 days allowed under the ESA.

The Departments have agreed to provide to each other certain technical data on each project, to be specified in a memorandum of understanding, that will permit the Department of Energy to consider national energy policy impacts of all projects and permit the Department of Agriculture to consider the national, regional and local agricultural impacts of all projects on agricultural supply, production and use. Analysis of such data may provide the basis for modification of this initial determination of exempt categories of projects.

Dated: October 18, 1980.

———,
Secretary of Agriculture.

———,
Secretary of Energy.

[FR Doc. 80–34059 Filed 10–29–80; 10:39 am]
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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

DEPOSITORY INSTITUTIONS DEREGULATION COMMITTEE

68640 10–16–80 / Ceiling rate of interest on 14-to-90-day time deposits of under $100,000

FEDERAL EMERGENCY MANAGEMENT AGENCY

64584 9–30–80 / Disaster assistance; public assistance (Subpart E) amendment

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration—

64568 9-30-80 / Sterile Chloramphenicol Sodium Succinate, and Chloroamphenicol Injection; Deletion of histamine test

Public Health Service—

60431 9–12–80 / Emergency medical services training program grants

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last Listing October 24, 1980

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

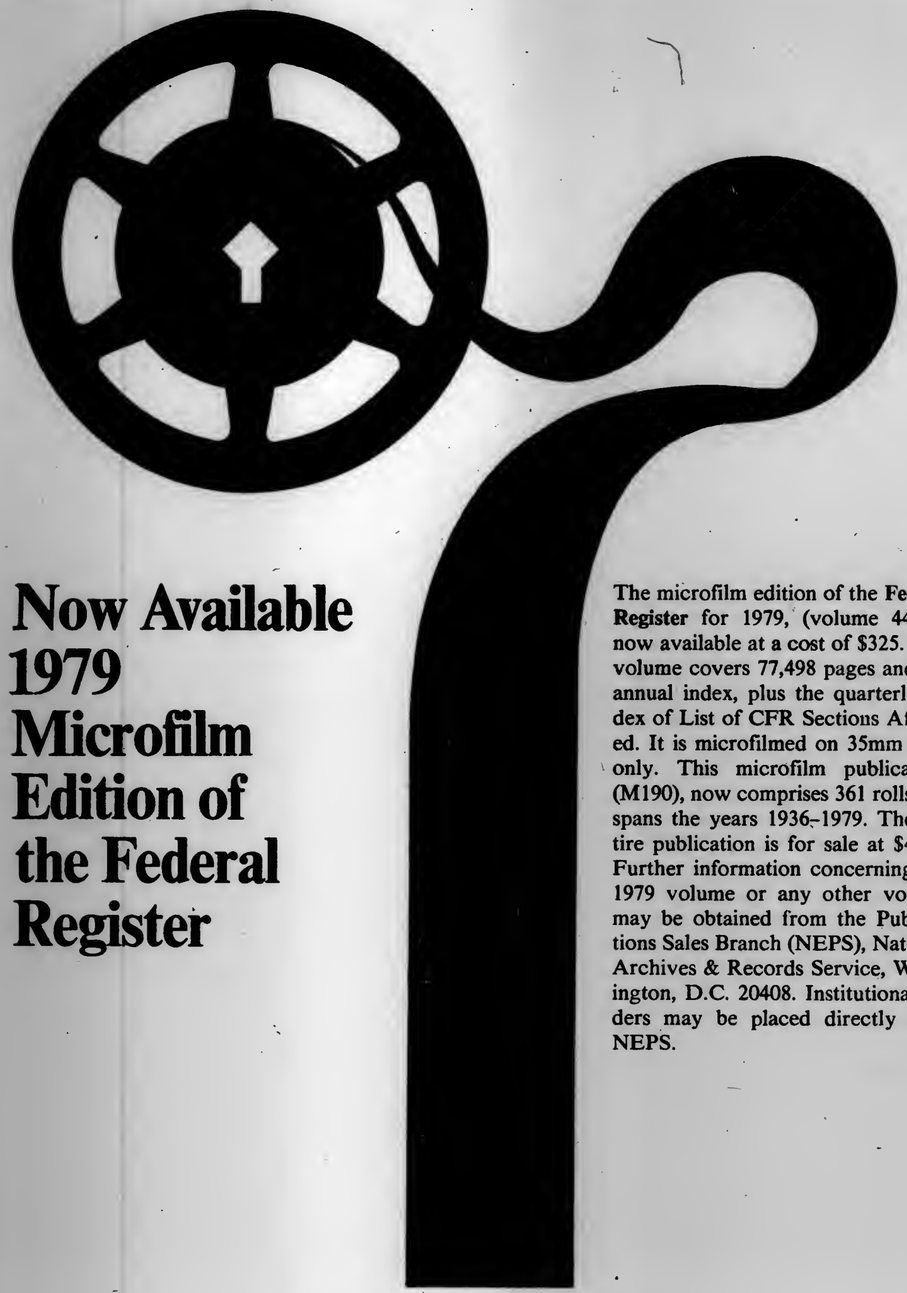
FOR: Any person who uses the Federal Register and Code of Federal Regulations.
WHO: The Office of the Federal Register.
WHAT: Free public briefings (approximately 2½ hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between Federal Register and the Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them, as part of the General Services Administration's efforts to encourage public participation in Government actions. There will be no discussion of specific agency regulations.
WHEN: December 5 and 19, January 16 and 30; at 9 a.m. (identical sessions).
WHERE: Office of the Federal Register, Room 9409, 1100 L Street NW., Washington, D.C.
RESERVATIONS: Call King Banks, Workshop Coordinator, 202–523–5235.

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Now Available 1979 Microfilm Edition of the Federal Register

The microfilm edition of the **Federal Register** for 1979, (volume 44), is now available at a cost of $325. This volume covers 77,498 pages and the annual index, plus the quarterly index of List of CFR Sections Affected. It is microfilmed on 35mm rolls only. This microfilm publication, (M190), now comprises 361 rolls and spans the years 1936-1979. The entire publication is for sale at $4693. Further information concerning the 1979 volume or any other volume may be obtained from the Publications Sales Branch (NEPS), National Archives & Records Service, Washington, D.C. 20408. Institutional orders may be placed directly with NEPS.

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10-31-80
Vol. 45—No. 213
BOOK 1:
Pages
72081-72400

BOOK 2:
Pages
72401-72616

federal register

Book 1 of 2 Books
Friday, October 31, 1980

Highlights

72448 **Grant Programs—Energy** CSA decides to fund ten (10) conduit migrant and seasonal farmworker Emergency Energy Assistance Programs; effective 10–31–80

72552 **Petroleum Allocation** DOE/ERA proposes to modify the treatment of domestic crude oil under the entitlements program; comments by 12–30–80; hearings 11–18 and 12–3–80 (Part X of this issue)

72374 **Energy** United States Synthetic Fuels Corporation directs its first solicitation for proposals from concerns interested in construction or operation of synthetic fuel projects; comments by 11–14–80

72508 **1981 Action Program** Interior/HCRS seeks comments by 12–1–80, on possible recreation problems and concerns (Part VI of this issue)

72112–72117 **Hair Coloring** HHS/FDA lists lead acetate for use as a color additive in cosmetics that color the hair on the scalp and postpones effective date to 12–31–80; objections by 12–1–80 (2 documents)

72404, 72416, 72422 **Biologics** HHS/FDA proposes altering the biologics regulations by changing the proper names for certain products, by revising the labeling requirements for blood and blood components and addressing additional standards for human blood and blood products; comments by 12–30–80 (3 documents) (Part II of this issue)

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Highlights

72524 **Health Maintenance Organizations** HHS/PHS publishes requirements for the organization and operation of federally qualified health maintenance organizations; effective 12–1–80 (Part VIII of this issue)

72582 **Prescription Drugs** HHS/FDA announces the availability of the Approved Prescription Drug Products List; effective 12–1–80 (Part XI of this issue)

72180 **Grant Programs—Health** HHS/PHS revises regulations governing grant programs for black lung clinics; effective 10–31–80

72082 **Public Assistance Programs** USDA/FNS publishes change to final administrative funding formula which distributes administrative monies to State agencies participating in the Special Supplemental Food Program for Women, Infants and Children; effective 10–1–80

72081 **School Breakfast and Lunch Programs** USDA announces a time schedule for amending categories of foods of minimal nutritional value; effective 10–31–80

72610 **Civil Rights** EEOC revises guidelines on discrimination because of religion; effective 11–1–80 (Part XII of this issue)

72312 **Grant Programs** Justice/OJARS publishes new financial and administrative guide for grants

72464 **Incorporation by Reference** OFR announces final approvals, further extensions and corrections (Part IV of this issue)

72232, 72233 **Water Pollution Control** EPA makes available additional analytical data on wastewater samples; comments by 12–1–80 (2 documents)

72308 **Privacy Act Document** Justice

72376 **Sunshine Act Meetings**

Separate Parts of This Issue

72404 **Part II, HHS/FDA**
72430 **Part III, Labor/ESA**
72464 **Part IV, OFR**
72468 **Part V, Interior/SMRO**
72508 **Part VI, Interior/HCRS**
72512 **Part VII, HHS/PHS**
72524 **Part VIII, HHS/PHS**
72538 **Part IX, HHS, HCFA**
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Rules and Regulations

Federal Register
Vol. 45, No. 213
Friday, October 31, 1980

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 220

National School Lunch Program and School Breakfast Program; Competitive Foods

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule: Amendment and correction.

SUMMARY: The Food and Nutrition Service announces a time schedule for amending Appendix B—Categories of Foods of Minimal Nutritional Value, of Part 210, National School Lunch Program, and Part 220, School Breakfast Program, to exempt an individual food from a category of foods of minimal nutritional value as listed in Appendix B or to add a particular category of foods to Appendix B as a category of foods of minimal nutritional value. The public may petition FNS to request that an exception or an addition be made to the food categories as listed in Appendix B. This final rule furnishes a schedule to petitioners regarding submission deadlines. This document also corrects a technical error in the final rule (45 FR 6758) that established Appendix B originally.

EFFECTIVE DATE: October 31, 1980.

FOR FURTHER INFORMATION CONTACT: Cynthia Ford, Branch Chief, (202) 447–9067, Technical Assistance Branch, Nutrition and Technical Services Division, USDA, FNS, Washington, D.C. 20250.

SUPPLEMENTARY INFORMATION:

Administrative Procedures

This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has not been classified as significant. A copy of the final impact statement can be obtained from Stanley Garnett, Branch Chief, Policy and Program Development Branch, School Programs Division, USDA, FNS, Washington, D.C. 20250, (202) 447–9069.

Sections 210.15b and 220.12 of Title VII, CFR establish procedures for amending Appendix B—Categories of Foods of Minimal Nutritional Value of Parts 210 and 220 under which public notice of any amendments resulting from such petitions will be published by May 1 and November 1 of each year. Robert Greenstein, Administrator, FNS, has determined that this final rule warrants publication without opportunity for a public comment period because a schedule for the submission and consideration of such petitions must be established immediately to permit publication of any amendments by May 1, 1981.

Background

The Food and Nutrition Service published in the **Federal Register** (45 FR 6759) on January 29, 1980 a final rule amending regulations for Part 210, National School Lunch Program, and Part 220, School Breakfast Program, to implement the amendment of Section 10 of the Child Nutrition Act of 1966 by Section 17 of Pub. L. 95–166 to restrict the sale of categories of foods of minimal nutritional value from the beginning of the school day until after the end of the last lunch period in schools participating in the National School Lunch and/or School Breakfast Programs (including Commodity Only Schools). In the final rule, provisions §§ 210.15b(b)(3), and 220.12(b)(3)) were made for amending Appendix B, Categories of Foods of Minimal Nutritional Value, to exclude those individual foods identified under §§ 210.15b(b)(1) and § 220.12(b)(1) and/or to include those categories of foods identified under § 210.15b(b)(2) and 220.12(b)(2). Any person may submit a petition to FNS requesting that an exception or an addition be made to the food categories as listed in Appendix B. Specific requirements for such petitions are noted in the final rule published in the **Federal Register** on January 29, 1980.

Petitioning Timeframes

In order to meet the publication dates of May 1 and November 1 §§ 210.15b(b)(3) and 220.12(b)(3)) for amending Appendix B, the following time schedule must be adhered to:

	May publication	November publication
Deadline for receipt of petitions by USDA.	Nov. 15	May 15.
USDA to notify petitioners of results of Departmental review and publish proposed rule (if applicable).	Feb. 1	Aug. 1.
60 day Comment Period	Feb. 1 through Apr 1.	Aug. 1 through Oct. 1.
Public Notice of Amendment of Appendix B by.	May 1	Nov. 1.

Written petitions should be sent to the above contact person on or before November 15 or May 15 of each year. Petitions must include all information specified in § 210.15b(b)(1) or (2), and § 220.12(b)(1) or (2), as appropriate. To date the Department has not received any petitions to change Appendix B as it appeared in the **Federal Register** along with the final competitive foods rule on January 29, 1980. The earliest possible date that the foods in Appendix B could be changed would be May 1, 1981. Anyone planning to submit a petition must do so by November 15, 1980 to meet the May 1, 1981 publication date.

1. The following technical correction is made to the document originally establishing Appendix B—Categories of Foods of Minimal Nutritional Value (45 FR 6758, January 29, 1980). A new instruction paragraph addressing both Parts 210 and 220 should be inserted on page 6772 immediately following the text of § 220.12 to read as follows:

Part 210—National School Lunch Program and Part 220—School Breakfast Program

Part 210 and 220 are amended by adding the following Appendix B—Categories of Foods of Minimal Nutritional Value to the end of each part.

2. Accordingly, Part 210, National School Lunch Program, and Part 220, School Breakfast Program, are amended as follows. Appendix B is amended by adding the following schedule as a new paragraph after paragraph (4)(g):

Schedule for Amending Appendix B

Actions for publication	Publication	
	May	November
Deadline for receipt of petitions by USOA.	Nov. 15	May 15.
USDA to notify petitioners of results of Departmental review and publish proposed rule (if applicable).	Feb. 1	Aug. 1.
60 Day Comment Period	Feb. 1 through Apr. 1.	Aug. 1 through Oct. 1
Public Notice of Amendment of Appendix B by.	May 1	Nov. 1

Written petitions should be sent to the Chief, Technical Assistance Branch, Nutrition and Technical Services Division, FNS, USDA, Washington, D.C., 20250 on or before November 15 or May 15 of each year. Petitions must include all information specified in § 210.15b(b) (1) or (2), and § 220.12(b) (1) or (2) as appropriate.

(Sec. 17, Pub. L. 95–166, 91 Stat. 1345 (42 U.S.C. 1779))

(Catalog of Federal Domestic Assistance Programs Nos. 10.553 and 10.555)

Dated: October 23, 1980.

Sydney J. Butler,

Acting Assistant Secretary for Foods and Consumer Services.

[FR Doc. 80-33932 Filed 10-30-80; 8:45 am]

BILLING CODE 3410-30-M

7 CFR Part 246

Special Supplemental Food Program for Women, Infants, and Children; Administrative Funding Formula

AGENCY: Food and Nutrition Service, USDA.

ACTION: Administrative Funding Formula, notice of amendment.

SUMMARY: The Department is publishing an amendment to the final administrative funding formula which distributes administrative monies to State agencies participating in the Special Supplemental Food Program for Women, Infants and Children. The amendment allows the Department to negotiate increases in administrative funds to State agencies experiencing excessive administrative costs.

EFFECTIVE DATE: October 1, 1980.

FOR FURTHER INFORMATION CONTACT: Darrel E. Gray, Acting Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, Room 4405, Auditors Building, 14th and Independence Avenue SW., Washington, D.C. 20250, (202) 447–8206.

SUPPLEMENTARY INFORMATION: On March 28, 1980, the Department published at 45 FR 20458 an interim amendment to the final administrative funding formula. The 90-day comment period ended June 28, 1980.

This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant."

I. Discussion of the Comments

A total of 15 comment letters were received on the administrative funding notice amendment during the official comment period. The commenters included 12 State agencies, 1 public interest group and 2 Regional Offices.

Six of the 13 letters which supported the negotiation process specifically stated that FNS must clearly delineate the conditions under which negotiations can occur. Three of the 13 letters stated there should be some type of limit set on the amount of money used for negotiation. A considerable number of comments supported the negotiation process simply because it provided flexibility in meeting unique individual needs. Two commenters opposed the negotiation process because it reduced the already limited funding available for all State agencies. From comment letters received, the Department has developed the following guidelines for the negotiation process.

A number of commenters felt that in order to be eligible for additional funding, the State must be in "unusual need." After a review of the comments, "unusual need" is defined as: (1) Substantial warehousing expenses, such as incurred in the direct distribution system used by Mississippi; (2) unusually high salary costs in relation to caseload size as demonstrated by Alaska and several Indian State agencies; or (3) extremely high travel costs due to the geography of the State. The Department chose warehousing expenses as a factor because these expense are borne indirectly in retail purchase system as a food cost. However, in a direct distribution system, warehousing costs must be paid with administrative funds.

High salaries were chosen as a factor because of the experience of a few small State agencies. For example, Indian State agencies experience great difficulties in attracting qualified nutritionists and other professional staff to the reservation area. Although a nutritionist position is often needed only on a part-time basis, a full-time nutritionist must be hired as there are no other organizations to employ the nutritionist for non-WIC services. This results in extremely high salary costs. Alaska, due to its high cost of living, has substantially higher salaries for professional staff than the mean maximum salary of the United States. These higher salaries in relation to caseload size create a disproportionate administrative dollar per participant ratio. When high salary costs are used as a criteria, these costs must be reasonable when compared to other employee salaries of the same State agency, State, or same type of State agencies. In addition, the salaries will be compared to those contained in the current publication of the "State Salary Survey" which is compiled by the U.S. Office of Personnel Management to determine reasonableness.

Finally, travel costs were selected as a factor because remoteness, low density and sparsity among clinic sites on Indian reservations and in the State of Alaska result in extremely high travel costs. In Alaska, conventional means of travel cannot be utilized. All travel is either by water, which is extremely slow, or by air, which is extremely expensive. Where travel costs are higher due to the geographic layout of the State, trips must be limited and involve only essential Program activities and be comparable to costs experienced by other State agencies with similar geographic layouts. One or more of the criteria mentioned above must be met and documented in order to receive additional funds through the administrative negotiation process.

Some commenters suggested that 1/10 of 1 percent of the WIC administrative appropriation be the figure used to limit the funds available to State agencies determined to be in need of additional funds. FNS felt that the 1/10 of 1 percent mentioned in the comment letters would be inadequate and that maximum of 1/10 of 1 percent would be more reasonable. Preliminary reviews of expenditure reports from Alaska and Mississippi provided an estimate of the amount of additional administrative funds they would need. To allow for other State and Indian agencies which may also need additional administrative funds, 1/10 of 1 percent was determined as the total amount of administrative funds to be set aside for the negotiation fund. Therefore, FNS believes that the 1/10 of 1 percent is small enough not to create a financial hardship for the State agencies which would not participate in the negotiation process and yet help those State agencies experiencing excessive administrative costs.

Several commenters suggested that the cap for the minimum grant a State agency can receive be raised from $30,000 per year to $45,000 per year to cover basic operating expenses. If the Department were to raise the cap, other State agencies may, in essence, forfeit more money than they would if FNS were to use the maximum figure of 1/10 of 1 percent for negotiation. Further, not all Indian State agencies (which are the only State agencies receiving a minimum grant) need more than $30,000. Currently, some State agencies are spending less. Therefore, the Department feels that negotiations for additional administrative funds should be done on an individual basis for extreme circumstances only.

One of the comment letters suggested that the Regional Offices do a management review of State agencies which request additional administrative funds. The review would examine the efficiency and economy of the State agency's WIC operations and determine how the State agency can reduce costs. The Regional Offices should not allow State agencies to negotiate for additional funds unless the review verifies that the State agency is running the Program efficiently and economically, but still needs additional funds. The Department fully supports this recommendation.

The availability of funds is also a very important determining factor. Each year, the Regional Offices will need to submit requests and justifications for additional funds by September 1. However, for Fiscal Year 1981, due to the publication date of this notice, Regional Offices have been alerted that they will have until December 1, 1980, to submit requests and justifications for additional funds. If a State agency feels it will be facing a difficult financial situation the next fiscal year, FNS will need a current detailed line item administrative budget, so that it may compare it to the administrative grant to be received by the State in the next fiscal year. If the State is in need of money, once the conditions are met, FNS will provide additional funds, if they are available. There is no guarantee that a State which request additional funds will receive any portion of the amount requested.

II. Description of Administrative Funding Formula

By September 1 of each year, the Regional Offices will submit to FNS requests for additional adminstrative funds, substantiated by a review of the State agency which confirms the State agency is operating the Program efficiently and economically, but that operations are seriously threatened without additional administrative funds. These requests must contain a current detailed line item administrative budget submitted on OMB A–102, Attachment M budget forms. However, for Fiscal Year 1981, the Regional Offices will have 30 days from the date of this publication to submit request and justifications.

A maximum of 1/10 of 1 percent of the total administrative appropriation will provide the amount of funds available for negotiation to State agencies eligible for additional administrative funds. The Department will thoroughly review and analyze each request received to determine the condition under which the request is made (i.e., high salary costs, high travel costs, or high warehousing costs), and will compare the detailed line item budget to the administrative grant to be received by the State agency to determine if funds in excess of the grant amount are needed. There is no guarantee that a State agency will receive any portion of the amount of additional funds requested. This negotiated procedure will become a permanent part of the formula process, so that in the future, any State agency with severe circumstances can be offered assistance if the funds are available.

Signed in Washington, D.C., on October 17, 1980.

Robert Greenstein,

Administrator, Food and Nutrition Service.

[FR Doc. 80-33724 Filed 10-30-80; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 276, Amdt. 1; Lemon Reg. 277]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period November 2–8, 1980, and increases the quantity of such lemons that may be so shipped during the period October 26–November 1. Such action is needed to provide for orderly marketing of fresh lemons for the period specified due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective November 2, 1980, and the amendment is effective for the period October 26–November 1, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation and amendment are issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1980–81 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on July 8, 1980. A final impact analysis on the marketing policy is available from Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again publicly on October 28, 1980, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons is easier.

It is further found that there is insufficient time between the date when information became available upon which this regulation and amendment are based and when the actions must be taken to warrant a 60 day comment period as recommended in E.O. 12044, and that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective times.

1. Section 910.577 is added as follows:

§ 910.577 Lemon regulation 277.

(a) The quantity of lemons grown in California and Arizona which may be handled during the period November 2, 1980, through November 8, 1980, is established at 205,000 cartons.

(b) As used in this section, "handled" and "cartons" mean the same as defined in the marketing order.

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2. Paragraph (a) of § 910.576 Lemon Regulation 276 (45 FR 70427) is amended to read as follows:

§ 910.576 Lemon Regulation 276.

(a) The quantity of lemons grown in California and Arizona which may be handled during the period October 26, 1980, through November 1, 1980, is established at 215,000 cartons.

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

Dated: October 29, 1980.

Malvin E. McGaha,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

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Commodity Credit Corporation

7 CFR Part 1421

[CCC Grain Price Support Regulations, 1980—Crop Wheat Supplement]

Grains and Similarly Handled Commodities; 1980—Crop Wheat Loan and Purchase Program

Correction

In FR Doc. 80–32780, published at page 69415, in the issue of Tuesday, October 21, 1980, please make the following corrections to the table in § 1421.490:

1. On page 69418, second column, the 8th entry under Missouri, now reading "Benton ..... 3.99" should read "Benton ..... 2.99".

2. On page 69421 (continuing the entries for Texas), the 41st entry in the first column, now reading "Callam * * *" should read "Dallam * * *".

BILLING CODE 1505-01

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7 CFR Part 1421

[CCC Grain Price Support Reg., 1980-Crop Oats Supplement]

Grains and Similarly Handled Commodities; 1980-Crop Oats Loan and Purchase Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to set forth the (1) final loan and purchase availability dates, (2) maturity dates, and (3) loan and purchase rates and premiums and discounts under which Commodity Credit Corporation (CCC) will extend price support on 1980-crop oats. This rule will enable eligible oats producers to obtain loans and purchases on their eligible 1980-crop oats.

EFFECTIVE DATE: October 30, 1980.

ADDRESS: Price Support and Loan Division, ASCS, USDA, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: W. W. Beesley, ASCS, (202) 447–7923.

With respect to the availability of an impact analysis, the increases in the basic county loan and purchase rates announced by this final rule were considered under the provisions of the "Notice of Determinations of the 1980 Crop Normal Crop Acreages (NCA), Established 'Target Prices', Loan and Purchase Rates for Feed Grains, Soybeans, Wheat, and Rice, and Loan Rates for Upland and ELS Cotton" published in the **Federal Register** (45 FR 53501), on August 12, 1980, and specifically considered in the Final Impact Statement prepared for that action. Thus, the Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from Bruce R. Weber, Agricultural Program Specialist, Production Adjustment Division, ASCS–USDA, P.O. Box 2415, Washington, D.C. 20013, (202) 447–6688.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant." Also for "Improving USDA Regulations" (43 FR 50988), initiation of review of the regulations contained in 7 CFR 1421.270–.274 for need, accuracy, clarity, and effectiveness will be made within the next five years. The next review will take into consideration problems, issues, etc., which are experienced in program administration during the intervening period.

A "Notice of Determinations of 1980-Crop Normal Crop Acreages (NCA) Established 'Target' Prices, Loan and Purchase Rates for Feed Grains, Soybeans, Wheat, and Rice, and Loan Rates for Upland and Extra Long Staple (ELS) Cotton" was published in the **Federal Register** on August 12, 1980 (45 FR 53501), effective August 7, 1980. The notice included the Secretary's determination that the 1980 loan and purchase rate for oats was being increased to $1.16 per bushel in accordance with Section 105A of the Agricultural Act of 1949, as amended (7 U.S.C. 1444c). The announcement of this action by the Secretary had to be made immediately so that farmers could indicate their 1980 program participation. Therefore, it was and remains impractical and contrary to the public interest to comply with the public rulemaking requirements of 5 U.S.C. 553 and Executive Order 12044. Thus, this final rule shall become effective October 30, 1980.

This rule announces the individual basic county loan and purchase rates to conform with the increased national average loan and purchase rate of $1.16 per bushel for the 1980 crop of oats.

Producers who wish to secure loans can do so by contacting their local ASCS county office or Agricultural Service Center.

The program title and number from the "Catalog of Federal Domestic Assistance" is Commodity Loan and Purchases, 10.051. This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A–95 was not used to assure that units of local government are informed of this action.

Final Rule

The General Regulations Governing Price Support for 1978 and Subsequent Crops and any amendments thereto, and the 1978 and Subsequent Crops Oats Loan and Purchase Regulations and any amendments thereto in this Part 1421 are further supplemented for the 1980 crop of oats. Accordingly, the regulations in 7 CFR 1421.270 through 1421.274 and the title of the subpart are revised to read as provided below effective as to the 1980 crop of oats. The material previously appearing in these sections shall remain in full force and effect as to the crops to which it is applicable.

PART 1421—GRAINS AND OTHER SIMILARLY HANDLED COMMODITIES

Subpart—1980-Crop Oats Loan and Purchase Program

Sec.

1421.270 Purpose.
1421.271 Availability.
1421.272 Maturity of loans.
1421.273 Warehouse charges.
1421.274 Loan and purchase rates and premiums and discounts.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); Secs. 105 A, 401, 63 Stat. 1051, as amended (7 U.S.C. 1444c, 1421).

Subpart—1980-Crop Oats Loan and Purchase Program

§ 1421.270 Purpose.

This supplement contains additional program provisions which together with the provisions of the General Regulations Governing Price Support for the 1978 and Subsequent Crops, the 1978 and Subsequent Crop Oats Loan and Purchase Program regulations and any amendments thereto, apply to loans on and purchases of the 1980 crop of oats.

§ 1421.271 Availability.

(a) *Loans.* Producers desiring to participate in the program through loans must request a loan on their 1980 crop of eligible oats on or before March 31, 1981.

(b) *Purchases.* A producer desiring to offer eligible 1980-crop oats not under loan for purchase must execute and deliver to the county ASCS office on or before March 31, 1981, a Purchase Agreement (Form CCC–614) indicating the approximate quantity of 1980-crop oats the producer will sell to CCC.

§ 1421.272 Maturity of loans.

Loans mature on demand but not later than the last day of the ninth calendar month following the month the loan is disbursed.

§ 1421.273 Warehouse charges.

If storage is not provided for through loan maturity, the county ASCS office shall deduct storage charges at the daily storage rate for the storing warehouse times the number of days from the date the commodity was received or date through which storage has been provided for to the maturity date.

§ 1421.274 Loan and purchase rates, premiums and discounts.

(a) Basis loan and purchase rates (counties). Basic rates per bushel for loan and settlement purposes for oats are established for oats grading U.S. No. 3 and containing not in excess of 14 percent moisture are as follows:

1980—Crop Oats Loan Purchase Rates

County	Rate per bushel
Alabama	
All Counties	$1.29
Alaska*	
Delta	1.01
Fairbanks	1.00
Glenallen	1.07
Homer	1.04
Kenai-Soldotna	1.09
Palmer	1.13
Talkeetna	1.13
Wght. State avg.	1.07
Arizona	
All counties	1.35
Arkansas	
All counties	1.26
California	
All counties	1.35
Colorado	
All counties	1.25
Connecticut	
All counties	1.28
Delaware	
All counties	1.28
Florida	
All counties	1.32

1980—Crop Oats Loan Purchase Rates—Continued

County	Rate per bushel
Georgia	
All counties	$1.29
Idaho	
All counties	1.25
Illinois	
Adams	1.19
Alexander	1.22
Bond	1.20
Boone	1.19
Brown	1.19
Bureau	1.19
Calhoun	1.20
Carroll	1.19
Cass	1.19
Champaign	1.20
Christian	1.19
Clark	1.22
Clay	1.21
Clinton	1.21
Coles	1.20
Cook	1.23
Crawford	1.23
Cumberland	1.21
De Kalb	1.19
De Witt	1.19
Douglas	1.20
Du Page	1.20
Edgar	1.21
Edwards	1.24
Effingham	1.21
Fayette	1.20
Ford	1.20
Franklin	1.22
Fulton	1.19
Gallatin	1.24
Greene	1.20
Grundy	1.19
Hamilton	1.23
Hancock	1.19
Hardin	1.23
Henderson	1.19
Henry	1.19
Iroquois	1.21
Jackson	1.22
Jasper	1.22
Jefferson	1.22
Jersey	1.20
Jo Daviess	1.19
Johnson	1.22
Kane	1.19
Kankakee	1.21
Kendall	1.19
Knox	1.19
Lake	1.21
La Salle	1.19
Lawrence	1.24
Lee	1.19
Livingston	1.19
Logan	1.19
McDonough	1.19
McHenry	1.19
McLean	1.19
Macon	1.19
Macoupin	1.20
Madison	1.21
Marion	1.21
Marshall	1.19
Mason	1.19
Massac	1.22
Menard	1.19
Mercer	1.19
Monroe	1.22
Montgomery	1.20
Morgan	1.19
Moultrie	1.19
Ogle	1.19
Peoria	1.19
Perry	1.22
Piatt	1.19
Pike	1.19
Pope	1.23
Pulaski	1.22
Putnam	1.19
Randolph	1.22
Richland	1.22
Rock Island	1.19
St. Clair	1.22
Saline	1.23
Sangamon	1.19

1980—Crop Oats Loan Purchase Rates—Continued

County	Rate per bushel
Schuyler	$1.19
Scott	1.19
Shelby	1.19
Stark	1.19
Stephenson	1.19
Tazewell	1.19
Union	1.22
Vermilion	1.21
Wabash	1.24
Warren	1.19
Washington	1.22
Wayne	1.23
White	1.24
Whiteside	1.19
Will	1.22
Williamson	1.22
Winnebago	1.19
Woodford	1.19
Wght. State avg.	1.19
Indiana	
Adams	1.28
Allen	1.28
Bartholomew	1.28
Benton	1.25
Blackford	1.27
Boone	1.26
Brown	1.28
Carroll	1.26
Cass	1.26
Clark	1.29
Clay	1.26
Clinton	1.26
Crawford	1.28
Daviess	1.28
Dearborn	1.30
Decatur	1.28
De Kalb	1.28
Delaware	1.27
Dubois	1.28
Elkhart	1.27
Fayette	1.28
Floyd	1.28
Fountain	1.25
Franklin	1.29
Fulton	1.27
Gibson	1.28
Grant	1.27
Greene	1.28
Hamilton	1.27
Hancock	1.27
Harrison	1.28
Hendricks	1.26
Henry	1.27
Howard	1.27
Huntington	1.27
Jackson	1.28
Jasper	1.25
Jay	1.28
Jefferson	1.30
Jennings	1.29
Johnson	1.26
Knox	1.26
Koscinusko	1.27
Lagrange	1.28
Lake	1.26
La Porte	1.27
Lawrence	1.28
Madison	1.27
Marion	1.26
Marshall	1.27
Martin	1.28
Miami	1.27
Monroe	1.28
Montgomery	1.26
Morgan	1.26
Newton	1.25
Noble	1.27
Ohio	1.30
Orange	1.28
Owen	1.26
Parke	1.25
Perry	1.28
Pike	1.28
Porter	1.26
Posey	1.28
Pulaski	1.26
Putnam	1.26
Randolph	1.28
Ripley	1.30

1980—Crop Oats Loan Purchase Rates—Continued

County	Rate per bushel
Rush	$1.27
St. Joseph	1.27
Scott	1.29
Shelby	1.27
Spencer	1.28
Starke	1.26
Steuben	1.28
Sullivan	1.27
Switzerland	1.30
Tippecanoe	1.26
Tipton	1.27
Union	1.28
Vanderburgh	1.28
Vermillion	1.25
Vigo	1.26
Wabash	1.27
Warren	1.25
Warrick	1.28
Washington	1.28
Wayne	1.28
Wells	1.27
White	1.26
Whitley	1.27
Wgt. State avg.	1.27
Iowa	
Adair	1.17
Adams	1.17
Allamakee	1.14
Appanoose	1.17
Audubon	1.15
Benton	1.17
Black Hawk	1.16
Boone	1.15
Bremer	1.15
Buchanan	1.16
Buena Vista	1.15
Butler	1.15
Calhoun	1.15
Carroll	1.15
Cass	1.17
Cedar	1.17
Cerro Gordo	1.14
Cherokee	1.15
Chickasaw	1.15
Clarke	1.17
Clay	1.14
Clayton	1.15
Clinton	1.17
Crawford	1.14
Dallas	1.15
Davis	1.18
Decatur	1.17
Delaware	1.16
Des Moines	1.17
Dickinson	1.13
Dubuque	1.16
Emmet	1.13
Fayette	1.15
Floyd	1.14
Franklin	1.15
Fremont	1.17
Greene	1.15
Grundy	1.15
Guthrie	1.15
Hamilton	1.15
Hancock	1.14
Hardin	1.15
Harrison	1.15
Henry	1.17
Howard	1.14
Humboldt	1.15
Ida	1.14
Iowa	1.17
Jackson	1.17
Jasper	1.15
Jefferson	1.17
Johnson	1.17
Jones	1.17
Keokuk	1.17
Kossuth	1.13
Lee	1.17
Linn	1.17
Louisa	1.17
Lucas	1.17
Lyon	1.12
Madison	1.17
Mahaska	1.17
Marion	1.17
Marshall	1.15

1980—Crop Oats Loan Purchase Rates—Continued

County	Rate per bushel
Mills	$1.17
Mitchell	1.13
Monona	1.14
Monroe	1.17
Montgomery	1.17
Muscatine	1.17
O'Brien	1.14
Osceola	1.12
Paga	1.17
Palo Alto	1.15
Plymouth	1.13
Pocahontas	1.15
Polk	1.15
Pottawattamie	1.18
Poweshiek	1.15
Ringgold	1.17
Sac	1.15
Scott	1.17
Shelby	1.15
Sioux	1.13
Story	1.15
Tama	1.15
Taylor	1.17
Union	1.17
Van Buren	1.17
Wapello	1.17
Warren	1.17
Washington	1.17
Wayne	1.17
Webster	1.15
Winnebago	1.13
Winneshiek	1.14
Woodbury	1.13
Worth	1.13
Wright	1.15
Wght. State avg.	1.15
Kansas	
All counties	1.21
Kentucky	
All counties	1.29
Louisiana	
All counties	1.29
Maine	
All counties	1.28
Maryland	
All counties	1.29
Massachusetts	
All counties	1.28
Michigan	
Alcona	1.23
Alger	1.24
Allegan	1.25
Alpena	1.23
Antrim	1.24
Arenac	1.23
Baraga	1.23
Barry	1.25
Bay	1.23
Benzie	1.24
Berrien	1.26
Branch	1.26
Calhoun	1.25
Cass	1.26
Charlevoix	1.24
Cheboygan	1.24
Chippewa	1.24
Clare	1.24
Clinton	1.24
Crawford	1.23
Delta	1.23
Dickinson	1.23
Eaton	1.24
Emmet	1.24
Genesee	1.23
Gladwin	1.23
Gogebic	1.23
Grand Traverse	1.24
Gratiot	1.24
Hillsdale	1.26
Houghton	1.23
Huron	1.23
Ingham	1.24
Ionia	1.24
Iosco	1.23
Iron	1.23
Isabella	1.24
Jackson	1.25

1980—Crop Oats Loan Purchase Rates—Continued

County	Rate per bushel
Kalamazoo	$1.25
Kalkaska	1.24
Kent	1.25
Keweenaw	1.23
Lake	1.25
Lapeer	1.23
Leelanau	1.24
Lenawee	1.26
Livingston	1.24
Luce	1.24
Mackinac	1.24
Macomb	1.24
Manistee	1.25
Marquette	1.23
Mason	1.25
Mecosta	1.24
Menominee	1.23
Midland	1.23
Missaukee	1.24
Monroe	1.26
Montcalm	1.24
Montmorency	1.23
Muskegon	1.25
Newaygo	1.25
Oakland	1.24
Oceana	1.25
Ogemaw	1.23
Ontonagon	1.23
Osceola	1.24
Oscoda	1.23
Otsego	1.24
Ottawa	1.25
Presque Isle	1.23
Roscommon	1.23
Saginaw	1.23
St. Clair	1.24
St. Joseph	1.26
Sanilac	1.23
Schoolcraft	1.24
Shiawassee	1.23
Tuscola	1.23
Van Buren	1.25
Washtenaw	1.25
Wayne	1.25
Wexford	1.25
Wght. State avg	1.24
Minnesota	
Aitkin	1.12
Anoka	1.14
Becker	1.08
Beltrami	1.08
Benton	1.12
Big Stone	1.09
Blue Earth	1.12
Brown	1.11
Carlton	1.14
Carver	1.13
Cass	1 10
Chippewa	1 10
Chisago	1 14
Clay	1.07
Clearwater	1.08
Cook	1 14
Cottonwood	1 11
Crow Wing	1 11
Dakota	1 13
Dodge	1.12
Douglas	1 10
Faribault	1.12
Fillmore	1 13
Freeborn	1.13
Goodhue	1.12
Grant	1.09
Hennepin	1 14
Houston	1 13
Hubbard	1.09
Isanti	1 13
Itasca	1.12
Jackson	1 11
Kanabec	1.13
Kandiyohi	1 11
Kittson	1.05
Koochiching	1.09
Lac Qui Parle	1 10
Lake	1.14
Lake of the Woods	1.07
Le Sueur	1 12
Lincoln	1 10
Lyon	1 10

1980—Crop Oats Loan Purchase Rates—Continued

County	Rate per bushel
McLeod	$1.12
Mahnomen	1.07
Marshall	1.06
Martin	1.11
Meeker	1.12
Mille Lacs	1.12
Morrison	1.11
Mower	1.12
Murray	1.10
Nicollet	1.12
Nobles	1.10
Norman	1.06
Olmsted	1.12
Otter Tail	1.09
Pennington	1.06
Pine	1.13
Pipestone	1.10
Polk	1.06
Pope	1.10
Ramsey	1.14
Red Lake	1.06
Redwood	1.11
Renville	1.11
Rice	1.12
Rock	1.10
Roseau	1.06
St. Louis	1.14
Scott	1.13
Sherburne	1.13
Sibley	1.12
Stearns	1.11
Steele	1.12
Stevens	1.09
Swift	1.10
Todd	1.10
Traverse	1.08
Wabasha	1.12
Wadena	1.10
Waseca	1.12
Washington	1.14
Watowan	1.11
Wilkin	1.08
Winona	1.13
Wright	1.13
Yellow Medicine	1.10
Wght. State avg	1.10
Mississippi	
All counties	1.29
Missouri	
All counties	1.22
Montana	
Beaverhead	1.21
Big Horn	1.14
Blaine	1.11
Broadwater	1.17
Carbon	1.16
Carter	1.09
Cascade	1.16
Choputeau	1.13
Custer	1.10
Daniels	1.07
Dawson	1.06
Deer Lodge	1.19
Fallon	1.07
Fergus	1.13
Flathead	1.19
Gallatin	1.18
Garfield	1.09
Glacier	1.16
Golden Valley	1.15
Granite	1.20
Hill	1.12
Jefferson	1.18
Judith Basin	1.14
Lake	1.20
Lewis and Clark	1.18
Liberty	1.13
Lincoln	1.21
McCone	1.07
Madison	1.19
Meagher	1.16
Mineral	1.21
Missoula	1.20
Musselshell	1.14
Park	1.18
Metroleum	1.11
Phillips	1.10
Pondera	1.15

1980—Crop Oats Loan Purchase Rates—Continued

County	Rate per bushel
Powder River	$1.11
Powell	1.19
Prairie	1.08
Ravalli	1.20
Richland	1.06
Roosevelt	1.06
Rosebud	1.12
Sanders	1.21
Sheridan	1.06
Silver Bow	1.19
Stillwater	1.16
Sweet Grass	1.17
Teton	1.15
Toole	1.14
Treasure	1.13
Valley	1.09
Wheatland	1.16
Wilbaux	1.06
Yellowstone	1.15
Wght. State avg.	1.12
Nebraska	
Adams	1.17
Antelope	1.14
Arthur	1.15
Banner	1.15
Blaine	1.14
Boone	1.15
Box Butte	1.14
Boyd	1.12
Brown	1.13
Buffalo	1.16
Burt	1.16
Butler	1.17
Cass	1.18
Cedar	1.14
Chase	1.18
Cherry	1.13
Cheyenne	1.16
Clay	1.17
Clofax	1.16
Cuming	1.16
Custer	1.15
Dakota	1.16
Dawes	1.14
Dawson	1.16
Deuel	1.16
Dixon	1.15
Dodge	1.17
Douglas	1.18
Dundy	1.19
Fillmore	1.17
Franklin	1.18
Frontier	1.17
Furnas	1.18
Gage	1.19
Garden	1.15
Garfield	1.14
Gosper	1.17
Grant	1.14
Greeley	1.15
Hall	1.16
Hamilton	1.16
Harlan	1.18
Hayes	1.18
Hitchcock	1.19
Holt	1.13
Hooker	1.14
Howard	1.15
Jefferson	1.18
Johnson	1.19
Kearney	1.17
Keith	1.16
Keya Paha	1.12
Kimball	1.16
Knox	1.13
Lancaster	1.18
Lincoln	1.16
Logan	1.15
Loup	1.14
McPherson	1.15
Madison	1.15
Merrick	1.15
Morrill	1.15
Nance	1.15
Nemaha	1.19
Nuckolls	1.18
Otoe	1.18
Pawnee	1.19
Perkins	1.17

1980—Crop Oats Loan Purchase Rates—Continued

County	Rate per bushel
Phelps	$1.17
Pierce	1.14
Platte	1.15
Polk	1.16
Red Willow	1.18
Richardson	1.19
Rock	1.13
Saline	1.18
Sarpy	1.18
Saunders	1.18
Scotts Bluff	1.15
Seward	1.17
Sheridan	1.14
Sherman	1.15
Sioux	1.14
Stanton	1.15
Thayer	1.18
Thomas	1.14
Thurston	1.16
Valley	1.15
Washington	1.17
Wayne	1.15
Webster	1.18
Wheeler	1.14
York	1.16
Wght. State avg.	1.15
Nevada	
All counites	1.35
New Hampshire	
All counties	1.28
New Jersey	
All counties	1.29
New Mexico	
All counties	1 33
New York	
All counties	1.34
North Carolina	
All counties	1.29
North Dakota	
Adams	1.03
Barnes	1.04
Benson	1.02
Billings	1.01
Bottineau	1.00
Bowman	1.05
Burke	1.01
Burleigh	1.02
Cass	1.05
Cavalier	1.03
Dickey	1.04
Divide	1.03
Dunn	1.01
Eddy	1 03
Emmons	1.03
Foster	1.03
Golden Valley	1.03
Grand Forks	1.04
Grant	1 02
Griggs	1 03
Hettinger	1 02
Kidder	1.03
La Moure	1.04
Logan	1 03
McHenry	1 00
McIntosh	1.03
McKenzie	1.03
McLean	1.00
Mercer	1 00
Morton	1.01
Mountrail	1.01
Nelson	1 03
Oliver	1.01
Pembina	1.04
Pierce	1.01
Ramsey	1.03
Ransom	1.05
Renville	1 00
Richland	1.06
Rolette	1.01
Sargent	1.05
Sheridan	1.01
Sioux	1.02
Slope	1.04
Stark	1.00
Steele	1.04
Stutsman	1.04
Towner	1.02

V 45 O C 31 80 UMI

1980—Crop Oats Loan Purchase Rates—Continued

County	Rate per bushel
Traill	$ 1.04
Walsh	1.04
Ward	1.00
Wells	1.02
Williams	1.03
Wght State avg	1.03
Ohio	
Adams	1.30
Allen	1.28
Ashland	1.29
Ashtabula	1.31
Athens	1.31
Auglaize	1.28
Belmont	1.32
Brown	1.30
Butler	1.28
Carroll	1.31
Champaign	1.29
Clark	1.29
Clermont	1.30
Clinton	1.30
Columbiana	1.31
Coshocton	1.30
Crawford	1.29
Cuyahoga	1.30
Darke	1.27
Defiance	1.27
Delaware	1.29
Erie	1.29
Fairfield	1.29
Fayette	1.29
Franklin	1.29
Fulton	1.28
Gallia	1.31
Geauga	1.30
Greene	1.29
Guernsey	1.31
Hamilton	1.29
Hancock	1.28
Hardin	1.28
Harrison	1.31
Henry	1.28
Highland	1.30
Hocking	1.30
Holmes	1.30
Huron	1.29
Jackson	1.30
Jefferson	1.32
Knox	1.29
Lake	1.30
Lawrence	1.30
Licking	1.29
Logan	1.29
Lorain	1.30
Lucas	1.28
Madison	1.29
Mahoning	1.31
Marion	1.29
Medina	1.30
Meigs	1.31
Mercer	1.26
Miami	1.28
Monroe	1.32
Montgomery	1.28
Morgan	1.31
Morrow	1.29
Muskingum	1.30
Noble	1.31
Ottawa	1.29
Paulding	1.27
Perry	1.30
Pickaway	1.29
Pike	1.30
Portage	1.30
Preble	1.27
Putnam	1.28
Richland	1.29
Ross	1.30
Sandusky	1.29
Scioto	1.30
Seneca	1.29
Shelby	1.28
Stark	1.30
Summit	1.30
Trumbull	1.31
Tuscarawas	1.30
Union	1.29
Van Wert	1.27
Vinton	1.30
Warren	1.29
Washington	1.32
Wayne	1.30
Williams	1.28
Wood	1.29
Wyandot	1.29
Wght. State avg	1.29
Oklahoma	
All counties	1.28
Oregon	
All counties	1.31
Pennsylvania	
All counties	1.34
Rhode Island	
All counties	1.28
South Carolina	
All counties	1.29
South Dakota	
Aurora	1.07
Beadle	1.07
Bennett	1.08
Bon Homme	1.10
Brookings	1.08
Brown	1.05
Brule	1.07
Buffalo	1.07
Butte	1.06
Campbell	1.04
Charles Mix	1.08
Clark	1.08
Clay	1.12
Codington	1.07
Corson	1.04
Custer	1.09
Davison	1.07
Day	1.06
Deuel	1.08
Dewey	1.06
Douglas	1.08
Edmunds	1.05
Fall River	1.09
Faulk	1.08
Grant	1.08
Gregory	1.08
Haakon	1.07
Hamlin	1.07
Hand	1.07
Hanson	1.07
Harding	1.05
Hughes	1.07
Hutchinson	1.09
Hyde	1.07
Jackson	1.07
Jerauld	1.07
Jones	1.07
Kingsbury	1.07
Lake	1.07
Lawrence	1.06
Lincoln	1.10
Lyman	1.07
McCook	1.08
McPherson	1.04
Marshall	1.05
Meade	1.06
Mellette	1.08
Miner	1.07
Minnehaha	1.09
Moody	1.08
Pennington	1.07
Perkins	1.03
Potter	1.06
Roberts	1.06
Sanborn	1.07
Shannon	1.09
Spink	1.06
Stanley	1.07
Sully	1.07
Todd	1.08
Tripp	1.08
Turner	1.10
Union	1.12
Walworth	1.06
Yankton	1.11
Ziebach	1.06
Wght. State avg	1.08
Tennessee	
All counties	$ 1.29
Texas	
All counties	1.31
Utah	
All counties	1.33
Vermont	
All counties	1.28
Virginia	
All counties	1.29
Washington	
All counties	1.27
West Virginia	
All counties	1.31
Wisconsin	
Adams	1.17
Ashland	1.17
Barron	1.15
Bayfield	1.16
Brown	1.16
Buffalo	1.14
Burnett	1.14
Calumeni	1.16
Chippewa	1.16
Clark	1.16
Columbia	1.16
Crawford	1.17
Dane	1.18
Dodge	1.17
Door	1.16
Douglas	1.14
Dunn	1.15
Eau Claire	1.15
Florence	1.18
Fond du Lac	1.16
Forest	1.18
Grant	1.17
Green	1.18
Green Lake	1.17
Iowa	1.18
Iron	1.18
Jackson	1.16
Jefferson	1.18
Juneau	1.17
Kenosha	1.19
Kewaunee	1.16
La Crosse	1.15
Lafayette	1.18
Landiade	1.17
Lincoln	1.17
Manitowoc	1.16
Marathon	1.17
Marinette	1.18
Marquette	1.17
Menominee	1.17
Milwaukee	1.19
Monroe	1.16
Oconto	1.17
Oneida	1.18
Outagamie	1.16
Ozaukee	1.18
Pepin	1.14
Pierce	1.14
Polk	1.14
Portage	1.17
Price	1.17
Racine	1.19
Richland	1.16
Rock	1.18
Rusk	1.16
St. Croix	1.14
Sauk	1.18
Sawyer	1.16
Shawano	1.17
Sheboygan	1.17
Taylor	1.17
Trempealeau	1.15
Vernon	1.15
Vilas	1.18
Walworth	1.18
Washburn	1.15
Washington	1.18
Waukesha	1.19
Waupaca	1.17

1980—Crop Oats Loan Purchase Rates—Continued

County	Rate per bushel
Wisconsin	
Wauahara	$1.17
Winnebago	1.16
Wood	1.17
Wght. State avg	1.16
Wyoming	
All counties	1.23

* In Alaska, loan rates are for Marketing Area.

(b) 1980—Crop Oats Schedule of Premiums and Discounts:

1. *Premiums:* [1]

Grade U.S. No. 1, cents per bushel: +2; Grade U.S. No. 2, cents per bushel: +1.
Test Weight: Heavy, cents per bushel: +1; Extra Heavy, cents per bushel: +2.

2. *Discounts:*

Grade U.S. No. 4 on the factor of test weight only but otherwise U.S. No. 3 or better, cents per bushel: —3; Slightly weathered [2], cents per bushel: —5; Materially weathered and badly stained, cents per bushel: —10; Garlicky, cents per bushel: —3; Weed control discount (where required by § 1421.24), cents per bushel: —10.

3. *Other.* Oats with quality factors exceeding limits shown in foregoing schedule or oats that (1) contains in excess of 14 percent moisture. (2) is weevily, (3) is musty, or (4) is sour, shall not be eligible for loan. In the event quantities of oats exceeding limits shown are delivered in satisfaction of loan obligations, such quantities will be discounted on the basis of the schedule of discounts as provided by the Kansas City Commodity Office for settlement purposes. Such discounts will be established not later than the time delivery of oats to CCC begins and will thereafter be adjusted from time to time as CCC determines appropriate to reflect changes in market conditions. Producers may obtain schedule of such factors and discounts at county ASCS offices approximately one month prior to the loan maturity date.

Signed at Washington, D.C., on October 24, 1980.

Ray Fitzgerald,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 80-33798 Filed 10-30-80; 8:45 am]

BILLING CODE 3410-05-M

[1] Premiums shall not applicable to badly stained or materially weathered oats.

[2] No discount if oats are otherwise U.S. No. 2.

7 CFR Part 1421

[CCC Grain Price Support Regulations, 1979-Crop Corn Supp. Amdt. 1]

1979—Crop Corn Loan and Purchase Program; Correction

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: This document corrects the regulation relating to the 1979 Crop Corn Loan and Purchase Program published at 45 FR 55144, August 19, 1980.

FOR FURTHER INFORMATION CONTACT: Thomas Fink, ASCS, telephone (202) 447-7923.

SUPPLEMENTARY INFORMATION: FR Doc. 80-25141 appearing at pages 55144-55149 in the **Federal Register** issue of Tuesday, August 19, 1980, was corrected by FR DOC 80-29131 at page 62788 in the issue of September 22, 1980, to add a basic county loan and purchase rate of "$1.79" for Sanborn, South Dakota. That figure should have read "$1.97". Therefore at 45 FR 55148, third column under South Dakota, insert in alphabetical order "Sanborn—1.97".

Signed at Washington, D.C., on October 24, 1980.

Ray Fitzgerald,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 80-33906 Filed 10-30-80; 8:45 am]

BILLING CODE 3410-05-M

Food Safety and Quality Service

7 CFR Part 2851

United States Standards for Grades of Florida Grapefruit, Tangerines, Oranges, and Tangelos

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the U.S. grade standards for Florida grapefruit, tangerines, oranges and tangelos. These standards are being revised at the request of the Florida Citrus Packers (FCP), a nonprofit cooperative association representing nearly all of the Florida citrus growers and packers, with the support of the Florida Citrus Commission (FCC), the State-supported body which administers the Florida Citrus Marketing program. This action will provide the Florida citrus industry with standards that are in line with current cultural and marketing practices.

EFFECTIVE DATE: December 1, 1980.

FOR FURTHER INFORMATION CONTACT:

Donald T. Paradis, Fresh Products Branch, Fruit and Vegetable Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-2188. The Final Impact Analysis describing the options considered in developing this final rule and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION:

Significance

This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant".

Background

The last major revision of the U.S. standards for grades of Florida grapefruit, tangerines, oranges and tangelos became effective October 15, 1967, with subsequent amendment adopted on February 13, 1968, and January 31, 1973. Since these grade standards were issued, serveral changes in cultural and marketing practices have occurred. Certain cultural practices have caused the elongation of many fruit. This elongation of the fruit has made it virtually impossible for industry, with its present sizing equipment, to size fruit in accordance with the minimum or minimum and maximum diameter requirements of the current U.S. grade standards. Also, as a result of the extensive use of automated equipment in packaging fruit, as opposed to hand packing, the pack requirements of the current standards are difficult, if not impossible, to apply.

The U.S. standards for grades of Florida citrus are used as a basis for Florida's Federal Marketing Order which establishes the quality and size of fresh fruit permitted to be shipped in interstate commerce. Representatives of industry (FCP) requested that the standards be revised to accommodate recent changes in industry cultural and marketing practices.

The Department believes that this action will provide the Florida citrus industry with standards that will accommodate the recent changes in cultural and marketing practices. Also, it will fulfill USDA's responsibility to provide the industry with applicable voluntary standards that are useful in the promotion of efficient, uniform industry marketing practices as required by the Agricultural Marketing Act of 1946.

This final rule:

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(1) Replaces the "Standard Pack" section with a "Size and Pack" section in each of the grade standards;

(2) Places emphasis on uniformity of size by instituting ranges in diameter for each pack size for grapefruit, tangerines, oranges and tangelos;

(3) Provides for lot variances compatible with the method of packing by establishing tolerances for containers that fail to meet the requirements of size and pack.

(4) Removes subjective description of scorable scars;

(5) Defines "Discoloration" to include smooth and fairly smooth superficial scars;

(6) Allows grapefruit to have sprouted seeds if the sprouts are not of green color; and,

(7) Adds metric equivalents to specific measurements in terms of liquid, inches, or fractions of inches in each of the standards.

The Proposal

On February 8, 1980, a proposal to amend the U.S. standards for grades of Florida grapefruit, tangerines, oranges, and tangelos was published in the Federal Register (45 FR 8637–8654). The Department received 13 comments in response to the proposal. A number of comments received stressed the need for citrus standards that are compatible and in line with current cultural and marketing practices. The principal comment was submitted by the Florida Citrus Packers (FCP), a cooperative association, representing 90 percent of Florida's fresh citrus growers and packers, requesting the following additions to the proposed revisions:

(a) Tangerines whose diameter is larger than "100 size" be assigned pack arrangements as well as a range in diameter;

(b) Expand size range for tangelos only; and,

(c) Increase the lot variance for "volume-filled" packages that fail to meet size and pack requirements.

The remaining comments supported the proposal with some specifically endorsing the FCP comments. The additions suggested by FCP were evaluated and considered to be reasonable and appropriate. Therefore, the following suggested additions are included in this action:

(a) Tangerines whose diameter is larger than 100 size (not provided for in present standards) are assigned pack arrangements as well as a range in diameter in inches. During the 1978–1979 season, a total of 200,000 4/5 bushel cartons (10% of total tangerines packed) larger than 100 size were certified for shipment. This amount justifies the establishment of pack arrangements and diameter range to ensure a reasonable degree of uniformity and control. The range in diameter for tangerine sizes 64, 66 and 80 shall be 8/16 of an inch, consistent with the present range in diameter for sizes 100 and 120. Appropriate pack arrangements for these three sizes are also incorporated in this action.

(b) Expand size range for tangelos only. Although all tangelos and K-Early citrus fruits are covered by the U.S. Standards for Grades of Oranges and Tangelos, the different varietal shapes of tangelos make sizing under the orange size ranges very difficult, if not impossible. In order to facilitate sizing without sacrificing reasonable consistency, providing that the pack arrangements and fill requirements are adhered to, the range in diameter for tangelos only is expanded as follows: For sizes 120 or 125 and smaller, by 2/16 of an inch, and for sizes larger than 120 to 125, by 1/16 of an inch in diameter.

(c) Increase from 5 to 10 percent the lot variance only for "volume-filled" packages that fail to meet size and pack requirements. The current trend is toward increased automation in the preparatory marketing phases of fruit sorting and packaging. However, automation has increased the incidence of container-to-container variation from established "place-packed" requirements. As this factor can only be regulated up to a point, industry has justifiably requested that the lot tolerance for variation for "volume-fill" containers, i.e., those mechanically filled as opposed to hand-packed (place-packed), be increased from the present 5 percent to 10 percent.

Copies of the proposed rule were mailed to 40 supermarket chains representing 23,000 retail outlets. No comments were received from those sources. Several industry newsletters referenced the proposed rule for Florida grapefruit, tangerines, oranges, and tangelos. Also several press releases and other supplemental materials were developed for consumer organizations and their representatives. No consumer comments were received by the Department from these sources.

Options Considered

Two options were considered in developing this final rule.

Option I—Revise the U.S. Standards for Grades of Florida Grapefruit, Tangerines, Oranges and Tangelos. The usefulness of voluntary grade standards depends, in large measure, upon whether or not quality, size, or related requirements are compatible with biological and technological developments in the industry. This option would provide the Florida citrus industry with standards that are in line with current cultural and marketing practices.

Option II—Continue the currently effective U.S. Standards for Grades of Florida Grapefruit, Tangerines, Oranges and Tangelos. Due to the citrus industry's changing cultural and sizing practices, the size requirements are no longer practical to apply. To continue to apply the current U.S. grade standards, the Department would not fulfill its responsibility to provide the industry with standards which encourage uniformity and consistency in commercial marketing practices.

Option I was selected as it will reduce the number of rules now required under the marketing order. Also, it will facilitate the use of a single basis for size and quality requirements under the marketing order, and will not impose any change in the quality or size of the citrus fruit currently being packed and marketed. The Florida citrus industry would be the principal recipient of any savings from the application of Option I, although potential savings from program cost reductions would likely benefit consumers. Option I is in line with current grading procedures and will promote uniformity in grade interpretations and application by industry and grading service personnel.

After consideration of all data, and since no unfavorable information was submitted, the United States Standards for Grades of Florida Grapefruit (7 CFR 2851.750–2851.784), United States Standards for Grades of Florida Tangerines (7 CFR 2851.1810–2851.1835), and United States Standards for Grades of Florida Oranges and Tangelos (7 CFR 2851.1140–2851.1179) are revised and the Table of Contents amended to read as follows:

PART 2851—FRESH FRUITS, VEGETABLES AND OTHER[1,2] PRODUCTS (INSPECTION, CERTIFICATION, AND STANDARDS)

* * * * *

Subpart—United States Standards for Grades of Florida Grapefruit

Grades

Sec.
2851.750 U.S. Fancy.
2851.751 U.S. No. 1.
2851.752 U.S. No. 1 Bright.
2851.753 U.S. No. 1 Golden.
2851.754 U.S. No. 1 Bronze.
2851.755 U.S. No. 1 Russet.
2851.758 U.S. No. 2.
2851.757 U.S. No. 2 Bright.
2851.758 U.S. No. 2 Russet.
2851.759 U.S. No. 3.

Unclassified

2851.760 Unclassified.

Tolerances

2851.761 Tolerances.

Size and Pack

2851.762 Size and pack.

Definitions

2851.763 Similar varietal characteristics.
2851.764 Well colored.
2851.765 Firm.
2851.766 Well formed.
2851.767 Mature.
2851.768 Smooth texture.
2851.769 Injury.
2851.770 Discoloration.
2851.771 Fairly well colored.
2851.772 Fairly smooth texture.
2851.773 Damage.
2851.774 Fairly firm.
2851.775 Slightly misshapen.
2851.776 Slightly rough texture.
2851.777 Serious damage.
2851.778 Slightly colored.
2851.779 Misshapen.
2851.780 Slightly spongy.
2851.781 Very serious damage.
2851.782 Diameter.
2851.783 Classification of defects.

Visual Aid

2851.784 Visual aid.

* * * * *

Subpart—United States Standards for Grades of Florida Oranges and Tangelos

General

2851.1140 General.

Grades

2851.1141 U.S. Fancy.
2851.1142 U.S. No. 1 Bright.
2851.1143 U.S. No. 1.
2851.1144 U.S. No. 1 Golden.
2851.1145 U.S. No. 1 Bronze.
2851.1146 U.S. No. 1 Russet.
2851.1147 U.S. No. 2 Bright.
2851.1148 U.S. No. 2.
2851.1149 U.S. No. 2 Russet.
2851.1150 U.S. No. 3.

Unclassified

2851.1151 Unclassified.

Tolerances

2851.1152 Tolerances.

Size and Pack

2851.1153 Size and pack.

Definitions

2851.1154 Similar varietal characteristics.
2851.1155 Well colored.
2851.1156 Firm.
2851.1157 Well formed.
2851.1158 Mature.
2851.1159 Smooth texture.
2851.1160 Injury.
2851.1161 Discoloration.
2851.1162 Fairly smooth texture.
2851.1163 Damage.
2851.1164 Fairly well colored.
2851.1165 Reasonably well colored.
2851.1166 Fairly firm.
2851.1167 Slightly misshapen.
2851.1168 Slightly rough texture.
2851.1169 Serious damage.
2851.1170 Misshapen.
2851.1171 Slightly spongy.
2851.1172 Very serious damage.
2851.1173 Diameter.
2851.1174 Classification of defects.

Standards for Internal Quality of Common Sweet Oranges (Citrus Sinensis (L) Osbeck)

2851.1175 U.S. Grade AA Juice (Double A).
2851.1176 U.S. Grade A Juice.
2851.1177 Maximum anhydrous citric acid permissible for corresponding total soluble solids.
2851.1178 Methods of juice extraction.

Visual Aid

2851.1179 Visual aid.

* * * * *

Subpart—United States Standards for Grades of Florida Tangerines

Grades

2851.1810 U.S. Fancy.
2851.1811 U.S. No. 1.
2851.1812 U.S. No. 1 Bronze.
2851.1813 U.S. No. 1 Russet.
2851.1814 U.S. No. 2.
2851.1815 U.S. No. 2 Russet.
2851.1816 U.S. No. 3.

Unclassified

2851.1817 Unclassified.

Tolerances

2851.1818 Tolerances.

Size and Pack

2851.1819 Size and pack.

Definitions

2851.1820 Mature.
2851.1821 Firm.
2851.1822 Well formed.
2851.1823 Damage.
2851.1824 Highly colored.
2851.1825 Discoloration.
2851.1826 Well colored.
2851.1827 Fairly well colored.
2851.1828 Fairly firm.
2851.1829 Fairly well formed.
2851.1830 Serious damage.
2851.1831 Reasonably well colored.
2851.1832 Very serious damage.
2851.1833 Diameter.
2851.1834 Classification of defects.

Visual Aid

2851.1835 Visual aid.

[1] Among such other products are the following: Raw nuts, Christmas trees and evergreens; flowers and flower bulbs; and onion sets.

[2] None of the requirements in the regulations of this part shall excuse failure to comply with any Federal, State, county, or municipal laws applicable to products covered in the regulations in this part.

Subpart—United States Standards for Grades of Florida Grapefruit[1]

Grades

§ 2851.750 U.S. Fancy.

"U.S. Fancy" consists of grapefruit which meet the following requirements:

(a) Basic requirements:

(1) Discoloration;

(i) Not more than one-tenth of the surface, in the aggregate, may be affected by discoloration. (See § 2851.770.)

(2) Firm;

(3) Mature;

(4) Similar varietal characteristics;

(5) Smooth texture;

(6) Well colored; and,

(7) Well formed.

(b) Free from:

(1) Ammoniation;

(2) Bruises;

(3) Buckskin;

(4) Caked melanose;

(5) Cuts not healed;

(6) Decay;

(7) Growth cracks;

(8) Scab;

(9) Sprayburn; and,

(10) Wormy fruit.

(c) Free from injury caused by:

(1) Green spots;

(2) Oil Spots;

(3) Scale;

(4) Scars;

(5) Skin breakdown; and,

(6) Thorn scratches.

(d) Free from damage caused by:

(1) Dirt or other foreign material;

(2) Disease;

(3) Dryness or mushy condition;

(4) Hail;

(5) Insects;

(6) Sprouting;

(7) Sunburn; and,

(8) Other means.

(e) For tolerances see § 2851.761.

§ 2851.751 U.S. No. 1

"U.S. No. 1" consists of grapefruit which meet the following requirements:

(a) Basic requirements:

(1) Discoloration;

(i) Not more than one-third of the surface, in the aggregate, may be affected by discoloration. (See § 2851.770.)

(2) Fairly smooth texture;

(3) Fairly well colored;

(4) Firm;

(5) Mature;

(6) Similar varietal characteristics; and,

[1] Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug and Cosmetic Act, or with applicable State laws and regulations.

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(7) Well formed.
(b) Free from:
(1) Bruises;
(2) Cuts not healed;
(3) Decay;
(4) Growth crack; and,
(5) Wormy fruit.
(c) Free from damage caused by:
(1) Ammoniation;
(2) Buckskin;
(3) Caked melanose;
(4) Dirt or other foreign material;
(5) Disease;
(6) Dryness or mushy condition;
(7) Green spots;
(8) Hail;
(9) Insects;
(10) Oil spots;
(11) Scab;
(12) Scale;
(13) Scars;
(14) Skin breakdown;
(15) Sprayburn;
(16) Sprouting;
(17) Sunburn;
(18) Thorn scratches; and,
(19) Other means.
(d) For tolerances see § 2851.761.

§ 2851.752 U.S. No. 1 Bright.

The requirements for this grade are the same as for U.S. No. 1 except that no fruit may have more than one-fifth of its surface, in the aggregate, affected by discoloration.
(a) For tolerances see § 2851.761.

§ 2851.753 U.S. No. 1 Golden.

The requirements for this grade are the same as for U.S. No. 1 except that not more than the number of fruits permitted in § 2851.761, Tables I and II, shall have more than one-third of their surface, in the aggregate, affected by discoloration.
(a) For tolerances see § 2851.761.

§ 2851.754 U.S. No. 1 Bronze.

The requirements for this grade are the same as for U.S. No. 1 except that all fruit must show some discoloration. Not less than the number of fruits required in § 2851.761, Tables I and II, shall have more than one-third of their surface, in the aggregate, affected by discoloration. The predominating discoloration on these fruits shall be of rust mite type.
(a) For tolerances see § 2851.761.

§ 2851.755 U.S. No. 1 Russet.

The requirements for this grade are the same as for U.S. No. 1 except that not less than the number of fruits required in § 2851.761, Tables I and II, shall have more than one-third of their surface, in the aggregate, affected by any type of discoloration.
(a) For tolerances see § 2851.761.

§ 2851.756 U.S. No. 2

"U.S. No. 2" consists of grapefruit which meet the following requirements:
(a) Basic requirements:
(1) Discoloration;
(i) Not more than one-half of the surface, in the aggregate, may be affected by discoloration. (See § 2851.770.)
(2) Fairly firm;
(3) Mature;
(4) Similar varietal characteristics;
(5) Slightly colored;
(6) Not more than slightly misshapen; and,
(7) Not more than slightly rough texture.
(b) Free from:
(1) Bruises;
(2) Cuts not healed;
(3) Decay;
(4) Growth cracks; and,
(5) Wormy fruit.
(c) Free from serious damage caused by:
(1) Ammoniation;
(2) Buckskin;
(3) Caked melanose;
(4) Dirt or other foreign material;
(5) Disease;
(6) Dryness or mushy condition;
(7) Green spots;
(8) Hail;
(9) Insects;
(10) Oil spots;
(11) Scab;
(12) Scale;
(13) Scars;
(14) Skin breakdown;
(15) Sprayburn;
(16) Sprouting;
(17) Sunburn;
(18) Thorn scratches; and,
(19) Other means.
(d) For tolerances see § 2851.761.

§ 2851.757 U.S. No. 2 Bright.

The requirements for this grade are the same as for U.S. No. 2 except that no fruit may have more than one-fifth of its surface, in the aggregate, affected by discoloration.
(a) For tolerances see § 2851.761.

§ 2851.758 U.S. No. 2 Russet.

The requirements for this grade are the same as for U.S. No. 2 except that not less than the number of fruits required in § 2851.761, Tables I and II, shall have more than one-half of their surface, in the aggregate, affected by discoloration.
(a) For tolerances see § 2851.761.

§ 2851.759 U.S. No. 3.

"U.S. No. 3" consists of grapefruit which meet the following requirements:
(a) Basic requirements:
(1) Mature;
(2) Misshapen;
(3) Poorly colored;
(i) Not more than 25 percent of the surface may be of a solid dark green color.
(4) Rough texture, not seriously bumpy;
(5) Similar varietal characteristics; and
(6) Slightly spongy.
(b) Free from:
(1) Cuts not healed;
(2) Decay; and,
(3) Wormy fruit.
(c) Free from very serious damage caused by:
(1) Ammoniation;
(2) Bruises;
(3) Buckskin;
(4) Caked melanose;
(5) Disease;
(6) Dryness or mushy condition;
(7) Growth cracks;
(8) Hail;
(9) Insects;
(10) Scab;
(11) Scale;
(12) Scars;
(13) Skin breakdown;
(14) Sprayburn;
(15) Sprouting;
(16) Sunburn; and,
(17) Other means.
(d) For tolerances see § 2851.761.

Unclassified

§ 2851.760 Unclassified.

"Unclassified" consists of grapefruit which have not been classified in accordance with any of the foregoing grades. The term "unclassified" is not a grade within the meaning of these standards but is provided as a designation to show that no grade has been applied to the lot.

Tolerances

§ 2851.761 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, based on sample inspection, the number of defective or off-size specimens in the individual sample, and the number of defective or off-size specimens in the lot shall be within the limitations specified in Tables I and II.

Table I.—*Shipping Point [1] for 1 Through 40 Samples*

Factor	Grades	AL [3]	Number of 33-count samples [2] (Florida grapefruit)																			
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
			Acceptance Numbers [4] (Maximum permitted)																			
Decay	U.S. fancy																					
	U.S. No. 1		1	0	0	0	1	[5]1	1	2	2	2	[5]2	2	2	3	3	3	[5]3	3	4	4	4
	U.S. No. 2																					
	U.S. No. 3		1	0	1	[5]1	1	2	[5]2	2	3	3	[5]3	3	4	4	4	[5]4	5	5	5	[5]5	5
Wormy fruit	All		1	0	0	0	1	[5]1	1	2	2	2	[5]2	2	2	3	3	3	[5]3	3	4	4	4
Very serious damage including decay and wormy fruit.	U.S. fancy																					
	U.S. No. 1		4	3	5	7	8	10	11	13	14	16	17	18	20	21	23	24	25	27	28	30	31
	U.S. No. 2																					
Total defects including decay, wormy fruit, and very serious damage.	All		5	5	9	12	16	19	22	25	28	31	34	37	40	44	46	49	52	55	58	61	64
Off-size			7	5	9	12	16	19	22	25	28	31	34	37	40	44	46	49	52	55	58	61	64
Discoloration	U.S. No. 1																					
	U.S. No. 1 bright																					
	U.S. No. 2		7	5	9	12	16	19	22	25	28	31	34	37	40	44	46	49	52	55	58	61	64
	U.S. No. 2 bright																					
	U.S. No. 1 golden		16	13	23	34	44	54	63	73	83	92	102	112	122	131	140	150	159	169	178	188	197
			Acceptance Numbers [4] (Minimum required)																			
	U.S. No. 1 bronze		6	9	20	32	44	56	68	81	93	105	118	130	142	155	168	180	193	206	218	231	244
	U.S. No. 1 russet																					
	U.S. No. 2 russet		0	2	4	8	11	14	18	21	25	28	32	36	39	43	47	50	53	57	61	64	68
			Acceptance Numbers [4] (Maximum permitted)																			
Decay	U.S. fancy																					
	U.S. No. 1		1	4	4	[5]4	4	4	5	5	5	5	5	[5]5	5	5	6	6	6	6	6	[5]6	6
	U.S. No. 2																						
	U.S. No. 3		1	5	6	6	6	[5]6	6	7	7	7	[5]7	7	8	8	8	[5]8	8	9	9	9	9
Wormy fruit	All		1	4	4	[5]4	4	4	5	5	5	5	5	[5]5	5	5	6	[5]6	6	6	6	[5]6	6
Very serious damage including decay and wormy fruit.	U.S. fancy																					
	U.S. No. 1		4	32	34	35	36	38	39	40	42	43	44	45	47	48	49	51	52	53	54	56	57
	U.S. No. 2																						
Total defects including decay, wormy fruit, and very serious damage.	All		5	67	70	73	76	79	82	84	87	90	93	96	99	102	105	107	110	113	116	119	122
Off-size			7	67	70	73	76	79	82	84	87	90	93	96	99	102	105	107	110	113	116	119	122
Discoloration	U.S. No. 1																						
	U.S. No. 1 bright																						
	U.S. No. 2		7	67	70	73	76	79	82	84	87	90	93	96	99	102	105	107	110	113	116	119	122
	U.S. No. 2 bright																						
	U.S. No. 1 golden		16	206	216	225	234	247	253	264	274	281	290	300	309	318	327	337	346	355	364	374	383
			Acceptance Numbers [4] (Minimum required)																			
	U.S. No. 1 bronze		6	256	269	282	294	307	320	333	345	358	371	383	396	409	422	435	447	460	473	486	499
	U.S. No. 1 russet																						
	U.S. No. 2 russet		0	72	76	80	84	88	92	96	99	103	107	110	114	118	122	126	130	134	137	141	145

[1] Shipping point, as used in these standards, means the point of origin of the shipment in the production area or at port of loading for ship stores or overseas shipments, or in the case of shipments from outside the continental United States, the port of entry into the United States.
[2] AL—Absolute limit permitted in individual 33-count sample.
[3] Sample size—33 count.
[4] Acceptance number—Maximum or minimum number of defective or off-size fruit permitted.
[5] Preferred number of samples for this acceptance number.

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Table II.—*En Route or at Destination*

Factor	Grades	AL [1]	Number of 33-count samples [2] (Florida grapefruit)																			
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
			Acceptance Numbers [4] (Maximum permitted)																			
Decay	All	3	2	3	4	5	6	7	8	9	10	11	12	13	[4]13	14	15	16	17	18	[4]18	19
Wormy fruit	All	1	0	0	0	1	[4]1	1	2	2	2	[4]2	2	2	3	3	3	[4]3	3	4	4	4
Very serious damage other than decay and wormy fruit.	U.S. fancy																					
	U.S. No. 1	4	3	5	7	8	10	11	13	14	16	17	18	20	21	23	24	25	27	28	30	31
	U.S. No. 2																					
Total defects including very serious damage other than decay and wormy fruit.	All	5	5	9	12	16	19	22	25	28	31	34	37	40	44	46	49	52	55	58	61	64
Off-size		7	5	9	12	16	19	22	25	28	31	34	37	40	44	46	49	52	55	58	61	64
Discoloration	U.S. No. 1																					
	U.S. No. 1 bright																					
	U.S. No. 2	7	5	9	12	16	19	22	25	28	31	34	37	40	44	46	49	52	55	58	61	64
	U.S. No. 2 bright																					
	U.S. No. 1 golden	18	13	23	34	44	54	63	73	83	92	102	112	122	131	140	150	159	169	178	188	197
			Acceptance Numbers [3] (Minimum required)																			
	U.S. No. 1 bronze	6	9	20	32	44	56	68	81	93	105	118	130	142	155	168	180	193	206	218	231	244
	U.S. No. 1 russet																					
	U.S. No. 2 russet	0	2	4	8	11	14	18	21	25	28	32	36	39	43	47	50	53	57	61	64	68

[1] AL—Absolute limit permitted in individual 33-count sample.
[2] Sample size—33 count.
[3] Acceptance number—Maximum or minimum number of defective or off-size fruit permitted.
[4] Preferred number of samples for this acceptance number.

Size and Pack

§ 2851.762 Size and pack.

(a) When grapefruit is place-packed in approved ⅘ bushel containers,[2] the size and count, pack and diameter range of the fruit shall be as follows:

Table III

Size and Count	Pack	Rows	Layers	Diameter range in inches
14 [1]	2 x 1	3	3	9/16
18	2 x 2	3	3	9/16
23	3 x 2	3	3	9/16
27	3 x 3	3	3	9/16
32	4 x 3	3	3	9/16
36	4 x 4	3	3	9/16
40	4 x 5	3	3	9/16
48	3 x 3	4	4	7/16
56	4 x 3	4	4	7/16
64	4 x 4	4	4	7/16

[1] Size 14 may be packed in a layer pack with 6 fruit in the bottom layer, 2 fruit in the second layer, and 6 fruit in the top layer.

(b) The actual count and pack shall not deviate from that shown in the above table for each respective size except when a protective tray or similar device which displaces one or more fruit is placed in the container. In this event, both the size and actual count shall be shown on the container.

[2] Approved ⅘ bushel containers are those containers currently defined in section 20-39.03(1) of the Official Rules Affecting The Florida Citrus Industry, Pursuant to Chapter 601, Florida Statutes, or as the definition of such containers may hereafter be amended.

(c) When grapefruit is not place-packed, the sizes and respective diameter ranges shown in paragraph (a) of this section shall apply; and the fruit in each respective size shall, when place-packed in approved ⅘ bushel containers,[2] meet the respective pack arrangements and at point of origin meet the requirements of "Well filled" as set forth in paragraph (d) of this section.

(d) At point of origin all containers in which fruit is place-packed shall be "Well filled." [3]

(e) Not more than the number of fruits permitted in § 2851.761, Tables I and II, may fail to meet the diameter range requirements as specified in paragraph (a) or (c) of this section.

(f) In order to allow for variations incident to proper packing, not more than 5 percent of the containers, if "place-packed," or not more than 10 percent of the containers, if "volume-filled," in any lot may fail to meet the count or pack arrangements, or at point of origin the requirements of "Well filled." [3]

Definitions

§ 2851.763 Similar varietal characteristics.

"Similar varietal characteristics" means that the fruits in any container are similar in color and shape.

[3] "Well filled" shall have the same meaning currently assigned that term in section 20-39.11(2) of Official Rules Affecting The Florida Citrus Industry, Pursuant to Chapter 601, Florida Statutes, or as the definition of such term may hereafter be amended.

§ 2851.764 Well colored.

"Well colored" means that the fruit is yellow in color with practically no trace of green color.

§ 2851.765 Firm.

"Firm" means that the fruit is not soft, or noticeably wilted or flaby, and the skin is not spongy or puffy.

§ 2851.766 Well formed.

"Well formed" means that the fruit has the shape characteristic of the variety.

§ 2851.767 Mature.

"Mature" shall have the same meaning currently assigned that term in sections 601.16, 601.17, and 601.18 of the Florida Citrus Code of 1949, as amended (Chs. 28090 and 29760, Laws of Florida, 1953 and 1955), or as the definition of such term may hereafter be amended.

§ 2851.768 Smooth texture.

"Smooth texture" means that the skin is thin and smooth for the variety and size of the fruit.

§ 2851.769 Injury.

"Injury" means any specific defect described in § 2851.783, Table IV; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which slightly detracts from the appearance, or the edible or marketing quality of the fruit.

§ 2851.770 Discoloration.

"Discoloration" means russeting of a light shade of golden brown caused by rust mite or other means. Lighter shades of discoloration caused by smooth or fairly smooth superficial scars or other means may be allowed on a greater area, or darker shades may be allowed on a lesser area, provided no discoloration caused by speck-type melanose or other means may detract from the appearance of the fruit to a greater extent than the shade and amount of discoloration allowed in the grade.

§ 2851.771 Fairly well colored.

"Fairly well colored" means that, except for an aggregate area of green color which does not exceed the area of a circle 1 inch (25.4 mm) in diameter, the yellow or orange color predominates over the green color.

§ 2851.772 Fairly smooth texture.

"Fairly smooth texture" means that the skin is fairly thin and not coarse for the variety and size of the fruit.

§ 2851.773 Damage.

"Damage" means any specific defect described in § 2851.783, Table IV; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance, or the edible or marketing quality of the fruit.

§ 2851.774 Fairly firm.

"Fairly firm" means that the fruit may be slightly soft, but not bruised, and the skin is not spongy, or puffy.

§ 2851.775 Slightly misshapen.

"Slightly misshapen" means that the fruit has fairly good shape characteristic of the variety and is not more than slightly elongated or pointed or otherwise deformed.

§ 2851.776 Slightly rough texture.

"Slightly rough texture" means that the skin may be slightly thick but not excessively thick, materially ridged or grooved.

§ 2851.777 Serious damage.

"Serious damage" means any specific defect described in § 2851.783, Table IV; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance, or the edible or marketing quality of the fruit.

§ 2851.778 Slightly colored.

"Slightly colored" means that except for an aggregate area of green color which does not exceed the area of a circle 2 inches (50.8 mm) in diameter, the fruit surface shows some yellow color.

§ 2851.779 Misshapen.

"Misshapen" means that the fruit is decidedly elongated, pointed, or flatsided.

§ 2851.780 Slightly spongy.

"Slightly spongy" means that the fruit is puffy or slightly wilted but not flabby.

§ 2851.781 Very serious damage.

"Very serious damage" means any specific defect described in § 2851.783, Table IV; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which very seriously detracts from the appearance, or the edible or marketing quality of the fruit.

§ 2851.782 Diameter.

"Diameter" means the greatest dimension measured at right angles to a line from stem to blossom end.

§ 2851.783 Classification of defects.

Table IV

Factor	Injury	Damage	Serious damage	Very serious damage
Ammoniation		Not occurring as light speck type	Scars are cracked or dark and aggregating more than a circle 1 inch (25.4 mm) in diameter.	Aggregating more than 25 percent of the surface.
Buckskin		Aggregating more than a circle 1¼ inches (31.8 mm) in diameter.	Aggregating more than 25 percent of the surface.	Aggregating more than 50 percent of the surface.
Caked melanose		Aggregating more than a circle ¾ inch (19.1 mm) in diameter.	Aggregating more than a circle 1 inch (25.4 mm) in diameter.	Aggregating more than 25 percent of the surface.
Dryness or mushy condition		Affecting all segments more than ¼ inch (6.4 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	Affecting all segments more than ½ inch (12.7 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	Affecting all segments more than ¾ inch (19.1 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.
Green Spots	More than slightly affecting appearance	More than 10 spots caused by scale, each spot equivalent to the area of a circle ⅛ inch (3.2 mm) in diameter.	More than 25 spots caused by scale, each spot equivalent to the area of a circle ⅛ inch (3.2 mm) in diameter.	
Hail	Not well healed, or aggregating more than a circle ⅜ inch (9.5 mm) in diameter.	Not well healed, or aggregating more than a circle ½ inch (12.7 mm) in diameter.	Not well healed, or aggregating more than a circle ⅝ inch (15.9 mm) in diameter.	Not well healed, or aggregating more than a circle 1 inch (25.4 mm) in diameter.
Oil Spots	More than slightly affecting appearance	More than 5 spots, or aggregating more than a circle ¾ inch (19.1 mm) in diameter.	More than 10 spots, or aggregating more than a circle 1 inch (25.4 mm) in diameter.	
Scab		Materially detracts from the shape or texture, or aggregating more than a circle ¾ inch (19.1 mm) in diameter.	Seriously detracts from the shape or texture, or aggregating more than a circle ⅞ inch (22.2 mm) in diameter.	Aggregating more than 25 percent of the surface.
Scale	More than a few adjacent to the "button" at the stem end, or more than 6 scattered on other portions of the fruit.	Blotch aggregating more than a circle ¾ inch (19.1 mm) in diameter, or occurring as a ring more than a circle 1¼ inches (31.8 mm) in diameter.	Blotch aggregating more than a circle 1 inch (25.4 mm) in diameter, or occurring as a ring more than a circle 1½ inches (38.1 mm) in diameter.	Aggregating more than 25 percent of the surface.
Scars	Depressed, not smooth, or detracts from appearance more than the amount of discoloration permitted in the grade.	Very deep or very rough aggregating more than a circle ½ inch (12.7 mm) in diameter; deep or tough aggregating more than a circle 1 inch (25.4 mm) in diameter; slightly rough or of slight depth aggregating more than 10 percent of fruit surface..	Very deep or very rough aggregating more than a circle 1 inch (25.4 mm) in diameter; deep or rough aggregating more than 5 percent of fruit surface; slight depth or slightly rough aggregating more than 15 percent of fruit surface.	Very deep or very rough or unsightly that appearance is very seriously effected.

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Table IV—Continued

Factor	Injury	Damage	Serious damage	Very serious damage
Skin breakdown		Aggregating more than a circle ⅜ inch (9.5 mm) in diameter.	Aggregating more than a circle ⅝ inch (15.9 mm) in diameter.	Aggregating more than 25 percent of the surface.
Sprayburn		Aggregating more than a circle ¾ inch (19.1 mm) in diameter.	Hard and aggregating more than a circle 1½ inches (38.1 mm) in diameter.	Aggregating more than 25 percent of the surface.
Sprouting		More than 6 seeds have green sprouts, or more than 1 green sprout is more than ¼ inch (6.4 mm) in length.	More than 6 seeds have green sprouts, or more than 1 green sprout is more than ½ inch (12.7 mm) in length.	More than 6 seeds have green sprouts, or more than 1 green sprout is more than ¾ inch (19.1 mm) in length.
Sunburn		Skin is flattened, dry, darkened, or hard and the affected area exceeds 25 percent of the surface.	Skin is hard and affects more than one-third of the surface.	Aggregating more than 50 percent of the surface.
Thorn scratches	Not well healed, or more unsightly than discoloration permitted in the grade.	Not well healed, or hard concentrated thorn injury aggregating more than a circle ¾ inch (19.1 mm) in diameter.	Not well healed, or hard concentrated thorn injury aggregating more than a circle ⅞ inch (22.2 mm) in diameter.	Aggregating more than 25 percent of the surface.

NOTE.—References to area or aggregate area, or length are based on a 36 size grapefruit.

Visual Aid

§ 2851.784 Visual Aid.

(a) USDA Visual Aid CIT-(FL)-L-1, consists of a booklet containing color reproductions of Florida grapefruit illustrating certain grade requirements, namely color, shape, varietal characteristics, discoloration, and other defects as set forth in these standards. This visual aid may be examined in the Fruit and Vegetable Quality Division, FSQS, U.S. Department of Agriculture, South Building, Washington, D.C. 20250; in any field office of the Fresh Fruit and Vegetable Inspection Service; or upon request of any authorized inspector of such service. Duplicates of this visual aid may be purchased from the John Henry Co., Post Office box 17099, Lansing, MI 48901.

Subpart—United States Standards for Grades of Florida Oranges and Tangelos [1]

General

§ 2851.1140 General.

The standards contained in this subpart apply only to the common or sweet orange group and varieties and hybrids of varieties belonging to the Mandarin group, except tangerines, and to the citrus fruit commonly known as "tangelo"—a hybrid between tangerine or mandarin orange (citrus reticulata) with either the grapefruit or pomelo (C. paradisi and C. grandis). Separate U.S. Standards apply to tangerines. The standards for internal quality contained in §§ 2851.1175 through 2851.1178 apply only to common sweet oranges (citrus sinensis (L) Osbeck).

[1] Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug and Cosmetic Act, or with applicable State laws and regulations.

Grades

§ 2851.1141 U.S. Fancy.

"U.S. Fancy" consists of oranges which meet the following requirements:
(a) Basic requirements:
(1) Discoloration;
(i) Not more than one-tenth of the surface, in the aggregate, may be affected by discoloration. (See § 2851.1161.)
(2) Firm;
(3) Mature;
(4) Similar varietal characteristics;
(5) Smooth texture;
(6) Well colored; and,
(7) Well formed.
(b) Free from:
(1) Ammoniation;
(2) Bruises;
(3) Buckskin;
(4) Caked melanose;
(5) Creasing;
(6) Cuts not healed;
(7) Decay;
(8) Growth cracks;
(9) Scab;
(10) Split navels;
(11) Sprayburn;
(12) Undeveloped segments; and,
(13) Wormy fruit.
(c) Free from injury caused by:
(1) Green spots;
(2) Oil spots;
(3) Rough, wide or protruding navels;
(4) Scale;
(5) Scars;
(6) Skin breakdown; and,
(7) Thorn scratches.
(d) Free from damage caused by:
(1) Dirt or other foreign material;
(2) Disease;
(3) Dryness on mushy condition;
(4) Hail;
(5) Insects;
(6) Riciness or woodiness;
(7) Sunburn; and,
(8) Other means.
(e) For tolerances see § 2851.1152.
(f) Internal quality:
(1) Lots meeting the internal requirements for "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" may be so specified in connection with the grade. (See §§ 2851.1175–2851.1178.)

§ 2851.1142 U.S. No. 1 Bright.

The requirements for this grade are the same as for U.S. No. 1 except that no fruit may have more than one-fifth of its surface, in the aggregate, affected by discoloration.
(a) For tolerances see § 2851.1152.
(b) Internal quality:
(1) Lots meeting the internal requirements for "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" may be so specified in connection with the grade. (See §§ 2851.1175–2851.1178.)

§ 2851.1143 U.S. No. 1.

"U.S. No. 1" consists of oranges which meet the following requirements:
(a) Basic requirements:
(1) Color;
(i) Early and midseason varieties shall be fairly well colored.
(ii) For Valencia and other late varieties, not less than 50 percent, by count, shall be fairly well colored and the remainder reasonably well colored.
(2) Discoloration:
(i) Not more than one-third of the surface, in the aggregate, may be affected by discoloration. (See § 2851.1161.)
(3) Fairly smooth texture;
(4) Firm;
(5) Mature;
(6) Similar varietal characteristics; and,
(7) Well formed.
(b) Free from:
(1) Cuts not healed;
(2) Bruises;
(3) Decay;
(4) Growth cracks; and,
(5) Wormy fruit.
(c) Free from damage caused by:
(1) Ammoniation;
(2) Buckskin;
(3) Caked melanose;
(4) Creasing;
(5) Dirt or other foreign material;
(6) Disease;
(7) Dryness or mushy condition;
(8) Green spots;
(9) Hail;
(10) Insects;
(11) Oil spots;
(12) Riciness or woodiness;
(13) Scab;
(14) Scale;
(15) Scars;
(16) Skin breakdown;
(17) Split, rough or protruding navels;
(18) Sprayburn;
(19) Sunburn;
(20) Thorn scratches; and,
(21) Other means.
(d) For tolerances see § 2851.1152.
(e) Internal quality:
(1) Lots meeting the internal requirements for "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" may be so specified in connection with the grade. (See §§ 2851.1175–2851.1178.)

§ 2851.1144 U.S. No. 1 Golden.

The requirements for this grade are the same as for U.S. No. 1 except that not more than the number of fruits permitted in § 2851.1152, Tables I and II, shall have more than one-third of their surface, in the aggregate, affected by discoloration.
(a) For tolerances see § 2851.1152.
(b) Internal quality:
(1) Lots meeting the internal requirements for "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" may be so specified in connection with the grade. (See §§ 2851.1175–2851.1178.)

§ 2851.1145 U.S. No. 1 Bronze.

The requirements for this grade are the same as for U.S. No. 1 except that all fruit must show some discoloration. Not less than the number of fruits required in § 2851.1152, Tables I and II, shall have more than one-third of their surface, in the aggregate, affected by discoloration. The predominating discoloration on these fruits shall be of rust mite type.
(a) For tolerances see § 2851.1152.
(b) Internal quality:
(1) Lots meeting the internal requirements for "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" may be so specified in connection with the grade. (See §§ 2851.1175–2851.1178.)

§ 2851.1146 U.S. No. 1 Russet.

The requirements for this grade are the same as for U.S. No. 1 except that not less than the number of fruits required in § 2851.1152, Tables I and II, shall have more than one-third of their surface, in the aggregate, affected by any type of discoloration.
(a) For tolerances see § 2851.1152.
(b) Internal quality:
(1) Lots meeting the internal requirements for "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" may be so specified in connection with the grade. (See §§ 2851.1175–2851.1178.)

§ 2851.1147 U.S. No. 2 Bright.

The requirements for this grade are the same as for U.S. No. 2 except that no fruit may have more than one-fifth of its surface, in the aggregate, affected by discoloration.
(a) For tolerances see § 2851.1152.
(b) Internal quality:
(1) Lots meeting the internal requirements for "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" may be so specified in connection with the grade. (See §§ 2851.1175–2851.1178.)

§ 2851.1148 U.S. No. 2.

"U.S. No. 2" consists of oranges which meet the following requirements:
(a) Basic requirements:
(1) Discoloration;
(i) Not more than one-half of the surface, in the aggregate, may be affected by discoloration. (See § 2851.1161.)
(2) Fairly firm;
(3) Mature;
(4) Reasonably well colored;
(5) Similar varietal characteristics;
(6) Not more than slightly misshapen; and,
(7) Not more than slightly rough texture.
(b) Free from:
(1) Bruises;
(2) Cuts not healed;
(3) Decay;
(4) Growth cracks; and,
(5) Wormy fruit.
(c) Free from serious damage caused by:
(1) Ammoniation;
(2) Buckskin;
(3) Caked melanose;
(4) Creasing;
(5) Dirt or other foreign material;
(6) Disease;
(7) Dryness or mushy condition;
(8) Green spots;
(9) Hail;
(10) Insects;
(11) Oil spots;
(12) Riciness or woodiness;
(13) Scab;
(14) Scale;
(15) Scars;
(16) Skin breakdown;
(17) Split, rough or protruding navels;
(18) Sprayburn;
(19) Sunburn;
(20) Thorn scratches; and,
(21) Other means.
(d) For tolerances see § 2851.1152.
(e) Internal quality:
(1) Lots meeting the internal requirements for "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" may be so specified in connection with the grade. (See §§ 2851.1175–2851.1178.)

§ 2851.1149 U.S. No. 2 Russet.

The requirements for this grade are the same as for U.S. No. 2 except that not less than the number of fruits required in § 2851.1152, Tables I and II, shall have more than one-half of their surface, in the aggregate, affected by discoloration.
(a) For tolerances see § 2851.1152.
(b) Internal quality:
(1) Lots meeting the internal requirements for "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" may be so specified in connection with the grade. (See §§ 2851.1175–2851.1178.)

§ 2851.1150 U.S. No. 3.

"U.S. No. 3" consists of oranges which meet the following requirements:
(a) Basic requirements:
(1) Mature;
(2) Misshapen;
(3) Poorly colored;
(i) Not more than 25 percent of the surface may be of a solid dark green color.
(4) Rough texture, not seriously lumpy;
(5) Similar varietal characteristics; and,
(6) Slightly spongy.
(b) Free from:
(1) Cuts not healed;
(2) Decay; and,
(3) Wormy fruit.
(c) Free from very serious damage caused by:
(1) Ammoniation;
(2) Bruises;
(3) Buckskin;
(4) Caked melanose;
(5) Creasing;
(6) Disease;
(7) Dryness or mushy condition;
(8) Growth cracks;
(9) Hail;
(10) Insects;
(11) Riciness or woodiness;
(12) Scab;
(13) Scale;
(14) Scars;
(15) Skin breakdown;
(16) Split navels;
(17) Sprayburn;
(18) Sunburn; and,
(19) Other means.
(d) For tolerances see § 2851.1152.
(e) Internal quality:
(1) Lots meeting the internal requirements for "U.S. Grade AA Juice (Double A)" or "U.S. Grade A Juice" may be so specified in connection with the grade. (See §§ 2851.1175–2851.1178.)

Unclassified

§ 2851.1151 Unclassified.

"Unclassified" consists of oranges or tangelos which have not been classified in accordance with any of the foregoing grades. The term "unclassified" is not a grade within the meaning of these standards but is provided as a designation to show that no grade has been applied to the lot.

Tolerances

§ 2851.1152 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, based on sample inspection, the number of defective or off-size specimens in the individual sample, and the number of defective or off-size specimens in the lot shall be within the limitations specified in Tables I and II.

Table I.—*Shipping Point [1] for 1 Through 40 Samples*

Factor	Grades	AL [2]	Number of 50-count samples [3] (Florida oranges, tangelos)																			
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
			Acceptance Numbers [4] (Maximum Permitted)																			
Decay	U.S. fancy																					
	U.S. No. 1		1	0	1	[5]1	1	2	[5]2	2	3	3	3	[5]3	3	4	4	[5]4	4	5	5	5	5
	U.S. No. 2																					
	U.S. No. 3		2	0	1	2	[5]2	2	[5]3	3	4	4	[5]4	5	5	[5]5	6	6	[5]6	8	7	7	[5]7
Wormy fruit	All		1	0	1	[5]1	1	2	[5]2	2	3	3	3	[5]3	3	4	4	[5]4	4	5	5	5	5
Very serious damage including decay and wormy fruit.	U.S. fancy																					
	U.S. No. 1		6	4	6	8	11	14	16	18	20	22	24	26	28	30	33	35	37	39	41	43	45
	U.S. No. 2																					
Total defects including decay, wormy fruit, and very serious damage.	All		8	7	12	17	22	27	32	36	41	45	50	54	59	63	68	72	76	81	85	90	94
Off-size			10	7	12	17	22	27	32	36	41	45	50	54	59	63	68	72	76	81	85	90	94
Discoloration	U.S. No. 1																					
	U.S. No. 1 bright																					
	U.S. No. 2		10	7	12	17	22	27	32	36	41	45	50	54	59	63	68	72	76	81	85	90	94
	U.S. No. 2 bright																					
	U.S. No. 1 golden		22	18	34	49	64	80	93	109	122	138	151	166	180	194	208	222	237	251	265	279	293
			Acceptance Numbers [4] (Minimum Required)																			
	U.S. No. 1 bronze		11	15	32	51	69	88	106	125	144	162	182	201	220	240	259	278	297	317	336	355	374
	U.S. No. 1 russet																					
	U.S. No. 2 russet		1	3	8	12	18	23	29	34	40	45	51	56	62	68	74	79	85	91	97	102	108
			Acceptance Numbers [4] (Maximum Permitted)																			
Decay	U.S. fancy																					
	U.S. No. 1		1	[5]5	6	6	6	6	[5]6	6	7	7	7	7	[5]7	7	8	8	8	[5]8	8	9	9
	U.S. No. 2																					
	U.S. No. 3		2	8	8	[5]8	8	9	9	[5]9	9	10	10	[5]10	11	11	[5]11	11	12	12	[5]12	12	13
Wormy fruit	All		1	[5]5	6	6	6	6	[5]6	6	7	7	7	7	[5]7	7	8	8	8	[5]8	8	9	9
Very serious damage including decay and wormy fruit.	U.S. fancy																					
	U.S. No. 1		6	47	49	51	53	54	56	58	60	62	64	66	68	70	72	74	76	78	80	81	83
	U.S. No. 2																					
Total defects including decay, wormy fruit, and very serious damage.	All		8	98	103	107	111	116	120	124	129	133	137	141	146	150	154	159	163	167	171	176	180
Off-size			10	98	103	107	111	116	120	124	129	133	137	141	146	150	154	159	163	167	171	176	180
Discoloration	U.S. No. 1																					
	U.S. No. 1 bright																					
	U.S. No. 2		10	98	103	107	111	116	120	124	129	133	137	141	146	150	154	159	163	167	171	176	180
	U.S. No. 2 bright																					
	U.S. No. 1 golden		22	307	321	335	349	363	377	391	405	419	433	447	461	475	489	503	517	531	545	559	573

Table I.—*Shipping Point [1] for 1 Through 40 Samples*—Continued

Factor	Grades	AL [2]	Number of 50-count samples [3] (Florida oranges, tangelos)																			
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
			Acceptance Numbers [4] (Minimum Required)																			
	U.S. No. 1 bronze																					
	U.S. No. 1 russet	11	394	413	433	452	471	491	510	530	549	569	588	608	627	647	666	686	705	725	744	764
	U.S. No. 2 russet	1	114	119	125	131	137	143	149	155	161	166	172	178	184	190	196	202	208	214	220	226

[1] Shipping point, as used in these standards, means the point of origin of the shipment in the production area or at port of loading for ship stores or overseas shipments, or in the case of shipments from outside the continental United States, the port of entry into the United States.
[2] AL—Absolute limit permitted in individual 50-count sample.
[3] Sample size—50 count.
[4] Acceptance number—Maximum or minimum number of defective or off-size fruit permitted.
[5] Preferred number of samples for this acceptance number.

Table II.—*En Route or at Destination*

Factor	Grades	AL [1]	Number of 50-count samples [2] (Florida oranges, tangelos)																			
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
			Acceptance Numbers [3] (Maximum Permitted)																			
Decay	All		4	3	4	6	7	9	10	11	13	14	15	16	18	19	20	21	23	24	25	26	27
Wormy fruit	All		1	0	1	[4]1	1	2	[4]2	2	3	3	3	[4]3	3	4	4	[4]4	4	5	5	5	5
Very serious damage other than decay and wormy fruit.	U.S. fancy																					
	U.S. No. 1		6	4	6	9	11	14	16	18	20	22	24	26	28	30	33	35	37	39	41	43	45
	U.S. No. 2																					
Total defects including very serious damage other than decay and wormy fruit.	All		8	7	12	17	22	27	32	36	41	45	50	54	59	63	68	72	76	81	85	90	94
Off-size			10	7	12	17	22	27	32	36	41	45	50	54	59	63	68	72	76	81	85	90	94
Discoloration	U.S. No. 1																					
	U.S. No. 1 bright																					
	U.S. No. 2		10	7	12	17	22	27	32	36	41	45	50	54	59	63	68	72	76	81	85	90	94
	U.S. No. 2 bright																					
	U.S. No. 1 golden		22	18	34	49	64	80	93	109	122	138	151	166	180	194	208	222	237	251	265	279	293
			Acceptance Numbers [3] (Minimum Required)																			
	U.S. No. 1 bronze																					
	U.S. No. 1 russet		11	15	32	51	69	88	106	125	144	162	182	201	220	240	259	278	297	317	336	355	374
	U.S. No. 2 russet		1	3	8	12	18	23	29	34	40	45	51	56	62	68	74	79	85	91	97	102	108

[1] AL—Absolute limit permitted in individual 50-count sample.
[2] Sample size—50 count.
[3] Acceptance number—Maximum or minimum number of defective or off-size fruit permitted.
[4] Preferred total number of samples for this acceptance number.

Size and Pack

§ 2851.1153 Size and pack.

(a) When oranges, including Temples, Navels and Tangelos, are place-packed in approved ⅘ bushel containers,[2] except container No. 4016,[3] the size, count, pack and diameter range of the fruit shall be as follows:

Table III

Size	Pack	Rows	Layers	Count	Diameter range in inches	
					Oranges	Tangelos
36	4 x 4	3	3	36	5/16	5/16
48	3 x 3	4	4	48	5/16	5/16
56	4 x 3	4	4	56	5/16	5/16
64	4 x 4	4	4	64	5/16	5/16
80	5 x 5	4	4	80	5/16	5/16
	or 4 x 4	4	5	80	5/16	5/16
100	5 x 5	4	5	100	5/16	5/16
	or 4 x 4	5	5	100	5/16	5/16
125	5 x 5	5	5	125	5/16	5/16
163	7 x 6	5	5	163	5/16	5/16
	or 5 x 4	6	6	162	5/16	5/16

[2] Approved ⅘ bushel containers are those containers currently defined in section 20–39.03(1) of the Official Rules Affecting The Florida Citrus Industry, Pursuant to Chapter 601, Florida Statutes, or as the definitions of such containers may hereafter be amended.

[3] Container No. 4016 shall have the same meaning as currently assigned that term in section 20–39.03(b) of the Official Rules Affecting The Florida Citrus Industry, Pursuant to Chapter 601, Florida Statutes, or as the definition of such containers may be hereafter amended.

(b) When Temple oranges, Tangelos and K-Early citrus fruit are place-packed in container No. 4016,[3] the size, count, pack and diameter range of the fruit shall be as follows:

V 4 5 O C 3 1 8 0 UMI

Table IV

Size and count	Pack	Rows	Layers	Diameter range in inches	
				Oranges	Tangelos
54	4 x 5	4	3	7/16	9/16
66	6 x 5	4	3	9/16	7/16
80	4 x 4	5	4	7/16	9/16
100	5 x 5	5	4	9/16	8/16
120	5 x 5	6	4	7/16	9/16
156	7 x 6	6	4	9/16	9/16

(c) When oranges, including Temples, Navels and Tangelos, are not place-packed, the sizes and respective diameter ranges shown in paragraph (a) or (b) of this section shall apply; and the fruit in each respective size shall, when place-packed in approved ⅘ bushel containers,[2] meet the respective pack arrangements, and at point of origin meet the requirements of "Well filled" [4] as set forth in paragraph (d) of this section.

(d) At point of origin all containers in which fruit is place-packed shall be "Well filled." [4]

(e) Not more than the number of fruits permitted in § 2851.1152, Tables I and II, may fail to meet the diameter range requirements as specified in paragraph (a), (b), or (c) of this section.

(f) In order to allow for variations incident to proper packing, not more than 5 percent of the containers, if "place-packed," or not more than 10 percent of the containers, if "volume-filled," in any lot may fail to meet the count or pack arrangements, or at point of origin the requirements of "Well filled."[4]

Definitions

§ 2851.1154 Similar varietal characteristics.

"Similar varietal characteristics" means that the fruits in any container are similar in color and shape.

§ 2851.1155 Well colored.

"Well colored" means that the fruit is yellow or orange in color with practically no trace of green color.

§ 2851.1156 Firm.

"Firm" as applied to common oranges and tangelos means that the fruit is not soft, or noticeably wilted or flabby; as applied to oranges of the Mandarin group (Satsumas, King, Mandarin), "firm" means that the fruit is not extremely puffy, although the skin may be slightly loose.

[4] "Well filled" shall have the same meaning currently assigned that term in section 20-39.11(2) of the Official Rules Affecting The Florida Citrus Industry, Pursuant to Chapter 601, Florida Statutes, or as the definition of such term may hereafter be amended.

§ 2851.1157 Well formed.

"Well formed" means that the fruit has the shape characteristic of the variety.

§ 2851.1158 Mature.

(a) "Mature" for other than Temple oranges shall have the same meaning currently assigned that term in sections 601.19 and 601.20 of the Florida Citrus Code of 1949, as amended (ch. 25149, Laws of Florida, 1949), or as the definition of such term may hereafter be amended;

(b) "Mature" for Temple oranges shall have the same meaning currently assigned that term in sections 601.21 and 601.22 of the Florida Citrus Code of 1949, as amended (ch. 26492, Laws of Florida, 1951), or as the definition of such term may hereafter be amended; and,

(c) "Mature" for Tangelos shall have the same meaning currently assigned that term in sections 601.231 and 601.232 of the Florida Citrus Code of 1949, as amended (ch. 29757, Laws of Florida, 1955), or as the definition of such term may hereafter be amended.

§ 2851.1159 Smooth texture.

"Smooth texture" means that the skin is thin and smooth for the variety and size of the fruit.

§ 2851.1160 Injury.

"Injury" means any specific defect described in § 2851.1174, Table V; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects which slightly detracts from the appearance, or the edible or marketing quality of the fruit.

§ 2851.1161 Discoloration.

"Discoloration" means russeting of a light shade of golden brown caused by rust mite or other means. Lighter shades of discoloration caused by smooth or fairly smooth superficial scars or other means may be allowed on a greater area, or darker shades may be allowed on a lesser area, provided no discoloration caused by speck type melanose or other means may detract from the appearance of the fruit to a greater extent than the shade and amount of discoloration allowed for the grade.

§ 2851.1162 Fairly smooth texture.

"Fairly smooth texture" means that the skin is fairly thin and not coarse for the variety and size of the fruit.

§ 2851.1163 Damage.

"Damage" means any specific defect described in § 2851.1174, Table V; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance, or the edible or marketing quality of the fruit.

§ 2851.1164 Fairly well colored.

"Fairly well colored" means that except for an aggregate area of green color which does not exceed the area of a circle 1 inch (25.4 mm) in diameter, the yellow or orange color predominates over the green color.

§ 2851.1165 Reasonably well colored.

"Reasonably well colored" means that the yellow or orange color predominates over the green color on at least two-thirds of the fruit surface, in the aggregate.

§ 2851.1166 Fairly firm.

"Fairly firm" as applied to common oranges and tangelos, means that the fruit may be slightly soft, but not bruised; as applied to oranges of the Mandarin group (Satsumas, King, Mandarin), means that the skin of the fruit is not extremely puffy or extremely loose.

§ 2851.1167 Slightly misshapen.

"Slightly misshapen" means that the fruit is not of the shape characteristic of the variety but is not appreciably elongated or pointed or otherwise deformed.

§ 2851.1168 Slightly rough texture.

"Slightly rough texture" means that the skin is not of smooth texture but is not materially ridged, grooved, or wrinkled.

§ 2851.1169 Serious damage.

"Serious damage" means any specific defect described in § 2851.1174, Table V; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance, or the edible or marketing quality of the fruit.

§ 2851.1170 Misshapen.

"Misshapen" means that the fruit is decidely elongated, pointed or flatsided.

§ 2851.1171 Slightly spongy.

"Slightly spongy" means that the fruit is puffy or slightly wilted but not flabby.

§ 2851.1172 Very serious damage.

"Very serious damage" means any specific defect described in § 2851.1174, Table V; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which very seriously detracts from the appearance, or the edible or marketing quality of the fruit.

§ 2851.1173 Diameter.

"Diameter" means the greatest dimension measured at right angles to a line from stem to blossom end.

§ 2851.1174 Classification of defects.

Table V

Factor	Injury	Damage	Serious damage	Very serious damage
Ammoniation		Not occurring as light speck type	Scars are cracked or dark and aggregating more than a circle ¾ inch (19.1 MM) in diameter.	Aggregating more than 25 percent of the surface.
Buckskin		Aggregating more than a circle 1 inch (25.4 mm) in diameter.	Aggregating more than 25 percent of the surface.	Aggregating more than 50 percent of the surface.
Caked melanose		Aggregating more than a circle ⅝ inch (15.9 mm) in diameter.	Aggregating more than a circle ¾ inch (19.1 mm) in diameter.	Aggregating more than 25 percent of the surface.
Creasing		Materially weakens the skin, or extends over more than one-third of the surface.	Seriously weakens the skin, or extends over more than one-half of the surface.	Very seriously weakens the skin, or is distributed over practically the entire surface.
Dryness or mushy condition		Affecting all segments more than ¼ inch (6.4 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	Affecting all segments more than ½ inch (12.7 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	Affecting all segments more than ¾ inch (19.1 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.
Green spots	More than slightly affecting appearance	More than 10 spots caused by scale, each spot equivalent to the area of a circle ⅛ inch (3.2 mm) in diameter.	More than 25 spots caused by scale, each spot equivalent to the area of a circle ⅛ inch (3.2 mm) in diameter.	
Hail	Not well healed, or aggregating more than a circle ¼ inch (6.4 mm) in diameter.	Not well healed, or aggregating more than a circle ⅜ inch (9.5 mm) in diameter.	Not well healed, or aggregating more than a circle ½ inch (12.7 mm) in diameter.	Not well healed, or aggregating more than a circle ¾ inch (19.1 mm) in diameter.
Oil spots	More than slightly affecting appearance	More than 5 spots, or aggregating more than a circle ⅜ inch (19.1 mm) in diameter.	More than 10 spots, or aggregating more than a circle 1 inch (25.4 mm) in diameter.	
Scab		Materially detracts from the shape or texture, or aggregating more than a circle ⅝ inch (15.9 mm) in diameter.	Seriously detracts from the shape or texture, or aggregating more than a circle ¾ inch (19.1 mm) in diameter.	Aggregating more than 25 percent of the surface.
Scale	More than a few adjecent to the "button" at the stem end, or more than 6 scattered on other portions of the fruit.	Aggregating more than a circle ⅝ inch (15.9 mm) in diameter.	Aggregating more than a circle ¾ inch (19.1 mm) in diameter.	Aggregating more than 25 percent of the surface.
Scars	Depressed, not smooth, or detracts from appearance more than the amount of discoloration permitted in the grade.	Deep or rough aggregating more than a circle ¼ inch (6.4 mm) in diameter; slightly rough with slight depth aggregating more than a circle ⅞ inch (22.2 mm) in diameter; smooth or fairly smooth with slight depth aggregating more than a circle 1¼ inches (31.8 mm) in diameter.	Deep or rough aggregating more than a circle ½ inch (12.7 mm) in diameter; slightly rough with slight depth aggregating more than a circle 1¼ inches (31.8 mm) in diameter; smooth or fairly smooth with slight depth aggregating more than 10% of fruit surface.	Deep or rough or unsightly that appearance is very seriously affected.
Skin breakdown		Aggregating more than a circle ¼ inch (6.4 mm) in diameter.	Aggregating more than a circle ⅝ inch (15.9 mm) in diameter.	Aggregating more than 25 percent of the surface.
Sprayburn		Aggregating more than a circle ⅝ inch (15.9 mm) in diameter.	Hard and aggregating more than a circle 1½ inches (38.1 mm) in diameter.	Aggregating more than 25 percent of the surface.
Sunburn		Skin is flattened, dry, darkened, or hard and the affected area exceeds 25 percent of the surface.	Skin is hard and affects more than one-third of the surface.	Aggregating more than 50 percent of the surface.
Split, rough, protruding navels	Split is unhealed, or more than ¼ inch (3.2 mm) in length, or navel protrudes beyond the general contour, and opening is so wide, folded and ridged that it detracts from appearance.	Split is unhealed, or more than ¼ inch (6.4 mm) in length, or more than three well healed splits, or navel protrudes beyond the general contour, and opening is so wide, folded and ridged that it detracts from appearance.	Split is unhealed, or more than ½ inch (12.7 mm) in length, or two or more splits aggregate more than 1 inch (25.4 mm) in length, or navel protrudes beyond the general contour, and opening is so wide, folded and ridged that it detracts from appearance.	Split is unhealed or fruit is seriously weakened.
Thorn scratches	Not well healed, or more unsightly than discoloration permitted in the grade.	Not well healed, or hard concentrated thorn injury aggregating more than a circle ⅝ inch (15.9 mm) in diameter.	Not well healed, or hard concentrated thorn injury aggregating more than a circle ¾ inch (19.1 mm) in diameter.	Aggregating more than 25 percent of the surface.

NOTE.—References to area or aggregate area, or length are based on a 100 size orange or tangelo.

Standards For Internal Quality of Common Sweet Oranges (Citrus Sinensis (L) Osbeck)

§ 2851.1175 U.S. Grade AA Juice (Double A).

Any lot of oranges, the juice content of which meets the following requirements, may be designated "U.S. Grade AA Juice (Double A)":

(a) Each lot of fruit shall contain an average of not less than 5 gallons (18.9 liters) of juice per standard packed box of 1⅘ bushels.

(b) The average juice content for any lot of fruit shall have not less than 10 percent total soluble solids, and not less than one-half of 1 percent anhydrous citric acid, or more than the permissible maximum acid specified in Table VI of § 2851.1177.

§ 2851.1176 U.S. Grade A Juice.

Any lot of oranges, the juice content

of which meets the following requirements, may be designated "U.S. Grade A Juice":

(a) Each lot of fruit shall contain an average of not less than 4½ gallons (17.0 liters) of juice per standard packed box of 1⅗ bushels.

(b) The average juice content for any lot of fruit shall have not less than 9 percent total soluble solids, and not less than one-half of 1 percent anhydrous citric acid, or more than the permissible maximum acid specified in Table VI of § 2851.1177.

§ 2851.1177 Maximum anhydrous citric acid permissible for corresponding total soluble solids.

For determining the grade of juice, the maximum permissible anhydrous citric acid content in relation to corresponding total soluble solids in the fruit is set forth in the following Table VI together with the minimum ratio of total soluble solids to anhydrous citric acid:

Table VI

Total soluble solids (average pct)	Maximum anhydrous citric acid (average pct)	Minimum ratio of total soluble solids to anhydrous citric acid
9.0	0.947	9.50–1
9.1	.963	9.45–1
9.2	.979	9.40–1
9.3	.995	9.35–1
9.4	1.011	9.30–1
9.5	1.027	9.25–1
9.6	1.043	9.20–1
9.7	1.060	9.15–1
9.8	1.077	9.10–1
9.9	1.094	9.05–1
10.0	1.111	9.00–1
10.1	1.128	8.95–1
10.2	1.146	8.90–1
10.3	1.164	8.85–1
10.4	1.182	8.80–1
10.5	1.200	8.75–1
10.6	1.218	8.70–1
10.7	1.237	8.65–1
10.8	1.256	8.60–1
10.9	1.275	8.55–1
11.0	1.294	8.50–1
11.1	1.306	8.50–1
11.2	1.318	8.50–1
11.3	1.329	8.50–1
11.4	1.341	8.50–1
11.5	1.353	8.50–1
11.6	1.365	8.50–1
11.7	1.376	8.50–1
11.8	1.388	8.50–1
11.9	1.400	8.50–1
12.0	1.412	8.50–1
12.1	1.424	8.50–1
12.2	1.435	8.50–1
12.3	1.447	8.50–1
12.4	1.459	8.50–1
12.5	1.471	8.50–1
12.6	1.482	8.50–1
12.7	1.494	8.50–1
12.8	1.506	8.50–1
12.9	1.517	8.50–1
13.0	1.530	8.50–1
13.1	1.541	8.50–1
13.2	1.553	8.50–1

Table VI—Continued

Total soluble solids (average pct)	Maximum anhydrous citric acid (average pct)	Minimum ratio of total soluble solids to anhydrous citric acid
13.3	1.565	8.50–1
13.4	1.578	8.50–1
13.5	1.588	8.50–1
13.6	1.600	8.50–1
13.7	1.612	8.50–1
13.8	1.624	8.50–1
13.9	1.835	8.50–1
14.0	1.647	8.50–1
14.1	1.659	8.50–1
14.2	1.671	8.50–1
14.3	1.682	8.50–1
14.4	1.694	8.50–1
14.5	1.705	8.50–1
14.6	1.718	8.50–1
14.7	1.729	8.50–1
14.8	1.741	8.50–1
14.9	1.753	8.50–1
15.0	1.765	8.50–1
15.1	1.776	8.50–1
15.2	1.788	8.50–1
15.3	1.800	8.50–1
15.4	1.812	8.50–1
15.5	1.824	8.50–1
16.6 or more		8.50–1

§ 2851.1178 Method of juice extraction.

The juice used in the determining of solids, acids and juice content shall be extracted from representative samples as thoroughly as possible with a hand reamer or by such mechanical extractor or extractors as may be approved. The juice shall be strained through cheese cloth or other approved straining device of extra fine mesh to prevent passage of juice cells, pulp, or seeds.

Visual Aid

§ 2851.1179 Visual Aid.

(a) USDA Visual Aid CIT–(FL)–L–1, consists of a booklet containing color reproductions of Florida oranges and tangelos illustrating certain grade requirements, namely color, texture, varietal characteristics, shape, discoloration, and other defects as set forth in these standards. This visual aid may be examined in the Fruit and Vegetable Quality Division, FSQS, U.S. Department of Agriculture, South Building, Washington, D.C. 20250; in any field office of the Fresh Fruit and Vegetable Inspection Service; or upon request of any authorized inspector of such service. Duplicates of this visual aid may be purchased from the John Henry Co., Post Office Box 17099, Lansing, MI 48901.

Subpart—United States Standards for Grades of Florida Tangerines[1]

Grades

§ 2851.1810 U.S. Fancy.

"U.S. Fancy" consists of tangerines which meet the following requirements:

(a) Basic requirements: (1) Discoloration; (i) Not more than one-tenth of the surface, in the aggregate, may be affected by discoloration. (See § 2851.1825.) (2) Firm; (3) Highly colored; (4) Mature; and, (5) Well formed.

(b) Free from: (1) Bruises; (2) Caked melanose; (3) Decay; (4) Unhealed skin-breaks; and, (5) Wormy fruit.

(c) Free from damage caused by: (1) Ammoniation; (2) Buckskin; (3) Creasing; (4) Dirt or other foreign material; (5) Dryness or mushy condition; (6) Disease; (7) Green spots; (8) Hail; (9) Insects; (10) Oil spots; (11) Scab; (12) Scale; (13) Scars; (14) Skin breakdown; (15) Sprayburn; (16) Sunburn; (17) Unsightly discoloration; and, (18) Other means.

(d) For tolerances see § 2851.1818.

§ 2851.1811 U.S. No. 1.

"U.S. No. 1" consists of tangerines which meet the following requirements: (a) Basic requirements: (1) Discoloration; (i) Not more than one-third of the surface, in the aggregate, may be affected by discoloration. (See § 2851.1825.) (2) Fairly well colored; (3) Firm; (4) Mature; and, (5) Well formed.

(b) Free from: (1) Bruises; (2) Decay; (3) Unhealed skin-breaks; and, (4) Wormy fruit.

(c) Free from damage caused by: (1) Ammoniation; (2) Buckskin; (3) Caked melanose; (4) Creasing; (5) Dirt or other foreign material; (6) Disease; (7) Dryness or mushy condition; (8) Green spots; (9) Hail; (10) Insects; (11) Oil spots; (12) Scab; (13) Scale; (14) Scars; (15) Skin breakdown; (16) Sprayburn; (17) Sunburn; (18) Unsightly discoloration; and, (19) Other means.

(d) For tolerances see § 2851.1818.

§ 2851.1812 U.S. No. 1 Bronze.

The requirements for this grade are the same as for U.S. No. 1 except that all fruit must show some discoloration. Not less than the number of fruits required in

[1] Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug and Cosmetic Act, or with applicable State laws and regulations.

§ 2851.1818, Tables I and II, shall have more than one-third of their surface, in the aggregate, affected by discoloration. The predominating discoloration on these fruits shall be of rust mite type.

(a) For tolerances see § 2851.1818.

§ 2851.1813 U.S. No. 1 Russet.

The requirements for this grade are the same as for U.S. No. 1 except that not less than the number of fruits required in § 2851.1818, Tables I and II, shall have more than one-third of their surface, in the aggregate, affected by any type of discoloration.

(a) For tolerances see §2851.1818.

§ 2851.1814 U.S. No. 2.

"U.S. No. 2" consists of tangerines which meet the following requirements:

(a) Basic requirements: (1) Discoloration; (i) Not more than one-half of the surface, in the aggregate, may be affected by discoloration. (See § 2851.1825.)(2) Fairly firm; (3) Fairly well formed; (4) Mature; and, (5) Reasonably well colored.

(b) Free from; (1) Bruises; (2) Decay; (3) Unhealed skin-breaks; and, (4) Wormy fruit.

(c) Free from serious damage caused by:(1) Ammoniation; (2) Buckskin; (3) Caked melanose; (4) Creasing; (5) Dirt or other foreign material; (6) Disease; (7) Dryness or mushy condition; (8) Green spots; (9) Hail; (10) Insects; (11) Oil spots; (12) Scab; (13) Scale; (14) Scars; (15) Skin breakdown; (16) Sprayburn; (17) Sunburn; (18) Unsightly discoloration; and, (19) Other means.

(d) For tolerances see § 2851.1818.

§ 2851.1815 U.S. No. 2 Russet.

The requirements for this grade are the same as for U.S. No. 2 except that not less than the number of fruits required in § 2851.1818, Tables I and II, shall have more than one-half of their surface, in the aggregate, affected by discoloration.

(a) For tolerances see § 2851.1818.

§ 2851.1816 U.S. No. 3

"U.S. No. 3" consists of tangerines which meet the following requirements:(a) Basic requirements:(1) Mature; (2) Not flabby; and, (3) Not seriously lumpy.

(b) Free from:(1) Decay; (2) Unhealed skin-breaks; and, (3) Wormy fruit.

(c) Free from very serious damage caused by:(1) Ammoniation; (2) Bruises; (3) Caked melanose; (4) Creasing; (5) Dirt or other foreign material; (6) Disease; (7) Dryness or mushy condition; (8) Green spots; (9) Hail; (10) Insects; (11) Oil spots; (12) Scab; (13) Scale; (14) Scars; (15) Skin breakdown; (16) Sprayburn; (17) Sunburn; (18) Unsightly discoloration; and, (19) Other means.

(d) For tolerances see § 2851.1818.

Unclassified

§ 2851.1817 Unclassified.

"Unclassified" consists of tangerines which have not been classified in accordance with any of the foregoing grades. The term "unclassified" is not a grade within the meaning of these standards but is provided as a designation to show that no grade has been applied to the lot.

Tolerances

§ 2851.1818 Tolerances.

In order to allow for variations incident to proper grading and handling in each of the foregoing grades, based on sample inspection, the number of defective or off-size specimens in the individual sample, and the number of defective or off-size specimens in the lot, shall be within the limitations specified in Tables I and II.

Table I.—*Shipping Point [1] for 1 Through 40 Samples*

Factor	Grades	AL [2]	Number of 50-count samples [3] (Florida tangerines)																			
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
			Acceptance Numbers [1] (Maximum Permitted)																			
Decay	U.S. fancy																					
	U.S. No. 1		1	0	1	[5]1	1	2	[5]2	2	3	3	3	[5]3	3	4	4	[5]4	4	5	5	5	5
	U.S. No. 2																					
	U.S. No. 3		2	0	1	2	[5]2	2	[5]3	3	4	4	[5]4	5	5	[5]5	6	6	[5]6	6	7	7	[5]7
Wormy fruit	All		1	0	1	[5]1	1	2	[5]2	2	3	3	3	[5]3	3	4	4	[5]4	4	5	5	5	5
Very serious damage including decay and wormy fruit.	U.S. fancy																					
	U.S. No. 1		6	4	6	9	11	14	16	18	20	22	24	26	28	30	33	35	37	39	41	43	45
	U.S. No. 2																					
Total defects including decay, wormy fruit, and very serious damage.	All		8	7	12	17	22	27	32	36	41	45	50	54	59	63	68	72	76	81	85	90	94
Off-size			10	7	12	17	22	27	32	36	41	45	50	54	59	63	68	72	76	81	85	90	94
Discoloration	U.S. fancy																					
	U.S. No. 1																					
	U.S. No. 2		10	7	12	17	22	27	32	36	41	45	50	54	59	63	68	72	76	81	85	90	94
	Serious damage by unsightly discoloration.		2	1	2	2	[5]3	4	[5]4	5	[5]5	6	[5]6	7	[5]7	8	[5]8	8	[5]9	9	10	[5]10	11
			Acceptance Numbers [1] (Minimum Required)																			
	U.S. No. 1 bronze		11	15	32	51	69	88	106	125	144	162	182	201	220	240	259	278	297	317	336	355	374
	U.S. No. 1 russet																					
	U.S. No. 2 russet		1	3	8	12	18	23	29	34	40	45	51	56	62	68	74	79	85	91	97	102	108
			Acceptance Numbers [1] (Maximum Permitted)																			
Decay	U.S. fancy																					
	U.S. No. 1		1	[5]5	6	6	6	6	[5]6	6	7	7	7	7	[5]7	7	8	8	8	[5]8	8	9	9
	U.S. No. 2																					
	U.S. No. 3		2	8	8	[5]8	8	9	9	[5]9	9	10	10	[5]10	11	11	[5]11	11	12	12	[5]12	12	13
Wormy fruit	All		1	[5]5	8	6	6	6	[5]6	6	7	7	7	7	[5]7	7	8	8	8	[5]8	8	9	9

Table I.—*Shipping Point* [1] *for 1 Through 40 Samples*—Continued

Factor	Grades	AL [2]	Number of 50-count samples [3] (Florida tangerines)																			
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
			Acceptance Numbers [4] (Maximum Permitted)																			
Very serious damage including decay and wormy fruit.	U.S. fancy																					
	U.S. No. 1	6	47	49	51	53	54	56	58	60	62	64	66	68	70	72	74	76	78	80	81	83
	U.S. No. 2																					
Total defects including decay, wormy fruit, and very serious damage.	All	8	98	103	107	111	116	120	124	129	133	137	141	146	150	154	159	163	167	171	176	180
Off-size		10	98	103	107	111	116	120	124	129	133	137	141	146	150	154	159	163	167	171	176	180
Discoloration	U.S. fancy																					
	U.S. No. 1																					
	U.S. No. 2	10	98	103	107	111	116	120	124	129	133	137	141	146	150	154	159	163	167	171	176	180
	Serious damage by unsightly discoloration.	2	[5]11	12	[5]12	12	13	[5]13	14	[5]14	15	15	[5]15	16	[5]16	17	17	[5]17	18	[5]18	19	19
			Acceptance Numbers [4] (Minimum Required)																			
	U.S. No. 1 bronze	11	394	413	433	452	471	491	510	530	549	569	588	608	627	647	666	686	705	725	744	764
	U.S. No. 1 russet																					
	U.S. No. 2 russet	1	114	119	125	131	137	143	149	155	161	166	172	178	184	190	196	202	208	214	220	226

[1] Shipping point, as used in these standards, means the point of origin of the shipment in the production area or at port of loading for ship stores or overseas shipments, or in the case of shipments from outside the continental United States, the port of entry into the United States.
[2] AL—Absolute limit permitted in individual 50-count sample.
[3] Sample size—50 count.
[4] Acceptance number—Maximum or minimum number of defective or off-size fruit permitted.
[5] Preferred number of samples for this acceptance number.

Table II.—*En Route or at Destination*

Factor	Grades	AL [1]	Number of 50-count samples [2] (Florida tangerines)																			
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
			Acceptance Numbers [3] (Maximum Permitted)																			
Decay	All	4	3	4	6	7	9	10	11	13	14	15	16	18	19	20	21	23	24	25	26	27
Wormy fruit	All	1	0	1	[4]1	1	2	[4]2	2	3	3	3	[4]3	3	4	4	[4]4	4	5	5	5	5
Very serious damage other than decay and wormy fruit.	U.S. fancy																					
	U.S. No. 1	6	4	6	9	11	14	16	18	20	22	24	26	28	30	33	35	37	39	41	43	45
	U.S. No. 2																					
Total defects including very serious damage other than decay and wormy fruit.	All	8	7	12	17	22	27	32	36	41	45	50	54	59	63	68	72	76	81	85	90	94
Off-size		10	7	12	17	22	27	32	36	41	45	50	54	59	63	68	72	76	81	85	90	94
Discoloration	U.S. fancy																					
	U.S. No. 1																					
	U.S. No. 2	10	7	12	17	22	27	32	36	41	45	50	54	59	63	68	72	76	81	85	90	94
	Serious damage by unsightly discoloration.	2	1	2	2	3	4	[4]4	5	[4]5	6	[4]6	7	[4]7	8	[4]8	8	[4]9	9	10	[4]10	11
			Acceptance Numbers [3] (Minimum Required)																			
	U.S. No. 1 bronze	11	15	32	51	69	88	106	125	144	162	182	201	220	240	259	278	297	317	[4]336	355	374
	U.S. No. 1 russet																					
	U.S. No. 2 russet	1	3	8	12	18	23	29	34	40	45	51	56	62	68	74	79	85	91	97	102	108

[1] AL—Absolute limit permitted in individual 50-count sample.
[2] Sample size—50 count.
[3] Acceptance number—Maximum or minimum number of defective or off-size fruit permitted.
[4] Preferred total number of samples for this acceptance number.

Size and Pack

§ 2851.1819 Size and pack.

(a) When tangerines, including Murcott Honey Tangerines, are place-packed in approved ⅘ bushel containers,[2] except container No. 4016,[3] the size, pack, count and diameter range shall be as follows:

Table III

Size	Pack	Rows	Layers	Count	Diameter range in inches
64	4 x 4	4	4	64	2⅝
80	5 x 5	4	4	80	2⅜
80	4 x 4	4	5	80	2⅜
100	5 x 5	4	5	100	2⅛
120	4 x 4	5	6	120	2⅛
150	5 x 5	5	6	150	1⅞
176	6 x 6	5	6	180	1⅞
210	5 x 5	6	7	210	1⅝
246	6 x 6	6	7	252	1⅝
294	7 x 7	6	7	294	1⅝

(b) When tangerines, including Murcott Honey Tangerines, are place-packed in container No. 4016,[3] the size, count, pack and diameter range shall be as follows:

Table IV

Size	Pack	Rows	Layers	Count	Diameter range in inches
66	6 x 5	4	3	66	2⅜
80	4 x 4	4	5	80	2⅛
100	4 x 4	5	5	100	2⅛
	or 5 x 5	5	4	100	2⅛
120	6 x 6	5	4	120	2⅛
150	5 x 5	6	5	150	1⅞
176	6 x 6	5	6	180	1⅞
210	6 x 6	7	5	210	1⅝
246	6 x 6	6	7	252	1⅝

(c) When tangerines, including Murcott Honey Tangerines, are not place-packed, the sizes and respective diameter ranges shown in paragraph (a) or (b) of this section shall apply; and the fruit in each respective size shall, when place-packed in approve ⅘ bushel containers,[2] meet the respective pack arrangements, and at point of origin meet the requirements of "Well filled" [4] as set forth in paragraph (d) of this section.

(d) At point of origin all containers in which fruit is place-packed shall be "Well filled".[4]

(e) Not more than the number of fruits permitted in § 2851.1818, Tables I and II, may fail to meet the diameter range requirements as specified in paragraph (a), (b), or (c) of this section.

(f) In order to allow for variations incident to proper packing, not more than 5 percent of the containers, if "place-packed," or not more than 10 percent of the containers, if "volume-filled," in any lot may fail to meet the count or pack arrangements, or at point of origin the requirements of "Well filled".[4]

[2] Approved ⅘ bushel containers are those containers currently defined in section 20–39.03. (1) of the Official Rules Affecting The Florida Citrus Industry, Pursuant to Chapter 601, Florida Statutes, or as the definitions of such containers may hereafter be amended.

[3] Container No. 4016 shall have the same meaning as currently assigned that term in section 20–39.03(b) of the Official Rules Affecting The Florida Citrus Industry, Pursuant to Chapter 601, Florida Statutes, or as the definition of such container may be hereafter amended.

[4] "Well filled" shall have the same meaning currently assigned that term in section 20–39.11(2) of the Official Rules Affecting The Florida Citrus Industry, Pursuant to Chapter 601, Florida Statutes, or as the definition of such term may hereafter be amended.

Definitions

§ 2851.1820 Mature.

"Mature" shall have the same meaning currently assigned that term in sections 601.21 and 601.22 of the Florida Citrus Code of 1949, as amended (ch. 26492, Laws of Florida, 1951), or as the definition of such term may hereafter be amended.

§ 2851.1821 Firm.

"Firm" means that the flesh is not soft and the fruit is not badly puffy and that the skin has not become materially separated from the flesh of the tangerine.

§ 2851.1822 Well formed.

"Well formed" means that the fruit has the characteristic tangerine shape and is not deformed.

§ 2851.1823 Damage.

"Damage" means any specific defect described in § 2851.1834, Table V; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance, or the edible or marketing quality of the fruit.

§ 2851.1824 Highly colored.

"Highly colored" means that the ground color of each fruit is a deep tangerine color with practically no trace of yellow color.

§ 2851.1825 Discoloration.

"Discoloration" means russeting of a light shade of golden brown caused by rust mite or other means. Lighter shades of discoloration caused by smooth or fairly smooth superficial scars or other means may be allowed on a greater area, or darker shades may be allowed on a lesser area, provided no discoloration caused by speck type melanose or other means may detract from the appearance of the fruit to a greater extent than the shade and amount of discoloration allowed in the grade.

§ 2851.1826 Well colored.

"Well colored" means that a good yellow or better ground color predominates over the green color on the entire fruit surface with no distinct green color present, and that some portion of the surface has a reddish tangerine blush.

§ 2851.1827 Fairly well colored.

"Fairly well colored" means that the surface of the fruit may have green color which does not exceed the aggregate area of a circle 1¼ inches (31.8 mm) in diameter and that the remainder of the surface has a yellow or better ground color with some portion of the surface showing reddish tangerine blush.

§ 2851.1828 Fairly firm.

"Fairly firm" means that the flesh may be slightly soft but is not bruised or badly puffy, and that the skin has not become seriously separated from the flesh of the tangerine.

§ 2851.1829 Fairly well formed.

"Fairly well formed" means that the fruit may not have the shape characteristic of the variety but that it is not badly deformed.

§ 2851.1830 Serious damage.

"Serious damage" means any specific defect described in § 2851.1834, Table V; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance, or the edible or marketing quality of the fruit.

V 4 5 O C 3 1 8 0 UMI

§ 2851.1831 Reasonably well colored.

"Reasonably well colored" means that a good yellow or reddish tangerine color shall predominate over the green color on at least one-half of the fruit surface in the aggretate, and that each fruit shall show practically no lemon color.

§ 2851.1832 Very serious damage.

"Very serious damage" means any specific defect described in § 2851.1834, Table V; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which very seriously detracts from the appearance, or the edible or marketing quality of the fruit.

§ 2851.1833 Diameter.

"Diameter" means the greatest dimension measured at right angles to a line from stem to blossom end.

§ 2851.1834 Classification of defects.

Table V

Factor	Damage	Serious damage	Very serious damage
Ammoniation	Not occuring as light speck type, or detracts more than discoloration permitted in the grade.	Scars are cracked or dark and aggregating more than 5/16 inch (15.9 mm) in diameter.	Aggregating mora than 25 percent of the surface.
Buckskin	Aggregating more than a circle ¾ inch (19.1 mm) in diameter.	Aggregating more than 25 percent of the surface	Aggregating more than 50 percent of the surface.
Caked melanose	Aggregating more than a circle 3/8 inch (9.5 mm) in diameter.	Aggregating more than a circle 3/8 inch (15.9 mm) in diameter.	Aggregating mora than 25 percent of the surface.
Creasing	Materially weakens the skin, or extends over more than one-third of the surface.	Seriously weakens the skin, or extends over more than one-half of the surface.	Very seriously weakens the skin, or is distributed over practically the entire surface.
Dryness or mushy condition	Affecting all segments more than 1/8 inch (3.2 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	Affecting all segments more than ¼ inch (6.4 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	Affecting all segments more than ½ inch (12.7 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.
Green spots	More than 10 spots caused by scale, each spot equivalent to the area of a circle ¼ inch (3.2 mm) in diameter.	More than 25 spots caused by scale, each spot equivalent to the area of a circle 1/8 inch (3.2 mm) in diameter.	
Hail	Not well healed, or aggregating more than a circle ¼ inch (6.4 mm) in diameter.	Not well healed, or aggregating more than a circle 3/8 inch (9.5 mm) in diameter.	Not well healed, or aggregating more than a circle 5/8 inch (15.9 mm) in diameter.
Oil spots	More than 5 spots, or aggregating mora than a circle ½ inch (12.7 mm) in diameter.	Mora than 10 spots, or aggregating more than a circle ¾ inch (19.1 mm) in diameter.	
Scab	Materially detracts from the shape or texture, or aggregating more than a circle 3/8 inch (9.5 mm) in diameter.	Seriously detracts from the shape or texture, or aggregating more than a circle 5/8 inch (15.9 mm) in diameter.	Aggregating more than 25 percent of the surface.
Scale	Aggregating more than a circle ¾ inch (9.5 mm) in diameter.	Aggregating more than a circle 3/8 inch (15.9 mm) in diameter.	Aggregating more than 25 percent of the surface.
Scars	Deep or rough aggregating more than a circle ¼ inch (6.4 mm) in diameter; slightly rough with slight depth aggregating more than a circle ¾ inch (19.1 mm) in diameter; smooth or fairly smooth with slight depth aggregating more than a circle 1⅛ inches (28.6 mm) in diameter.	Deep or rough aggregating more than a circle ½ inch (12.7 mm) in diameter; slightly rough with slight depth aggregating mora than a circle 1⅛ inches (28.6 mm) in diameter; smooth or fairly smooth with slight depth aggregating more than 10% of fruit surface.	Deep or rough or unsightly that appearance is very seriously affected.
Skin breakdown	Aggregating more than a circle ¼ inch (6.4 mm) in diameter.	Aggregating more than a circle 5/8 inch (15.9 mm) in diameter.	Aggregating more than 25 percent of the surface.
Sprayburn	Skin is hard and aggregating more than a circle ¾ inch (19.1 mm) in diameter.	Skin is hard and aggregating more than a circle 1¼ inches (31.8 mm) in diameter.	Aggregating more than 25 percent of the surface.
Sunburn	Skin is flattened, dry, darkened, or hard and the affected area exceeds 25 percent of the surface.	Skin is hard and affected more than one-third of the surface.	Aggregating more than 50 percent of the surface.
Unsightly discoloration	Color and pattern causes an unattractive appearance.	Color and pattern causes a distinctly unattractive appearanca.	Very objectionable appearance caused by any means.

NOTE.—References to area or aggregate area, or length are based on a 176 size tangerine.

Visual Aid

§ 2851.1835 Visual Aid.

(a) USDA Visual Aid CIT–(FL)–L–1, consists of a booklet containing color reproductions of Florida tangerines illustrating certain grade requirements, namely shape, texture, firmness, color, varietal characteristics, and other defects as set forth in these standards. This visual aid may be examined in the Fruit and Vegetable Quality Division, FSQS, U.S. Department of Agriculture, South Building, Washington, D.C. 20250; in any field office of the Fresh Fruit and Vegetable Inspection Service; or upon request of any authorized inspector of such service. Duplicates of the visual aid may be purchased from the John Henry Co., Post Office Box 17099, Lansing, MI 48901.

(Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended; 7 U.S.C. 1622, 1624)

Done at Washington, D.C., on October 27, 1980.

Thomas P. Grumbly,

Acting Administrator, Food Safety and Quality Service.

[FR Doc. 80-33843 Filed 10-30-80; 8:45 am]

BILLING CODE 3410-DM-M

Animal and Plant Health Inspection Service

9 CFR Part 82

Exotic Newcastle Disease; and Psittacosis or Ornithosis in Poultry; Area Quarantined

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to quarantine a portion of Douglas County in Nebraska because of the existence of exotic Newcastle disease. Exotic Newcastle disease was confirmed in such portion of Douglas County, Nebraska, on October 5, 1980. Therefore, in order to prevent the dissemination of exotic Newcastle disease it is necessary to quarantine the affected area.

EFFECTIVE DATE: October 27, 1980.

FOR FURTHER INFORMATION CONTACT:

C. G. Mason, Chief, National Emergency Field Operations, Emergency Programs, Veterinary Services, USDA, 6505 Belcrest Road, Federal Building, Room 751, Hyattsville, MD 20782, 301–436–8073.

SUPPLEMENTARY INFORMATION: This amendment quarantines a portion of Douglas County in Nebraska, because of the existence of exotic Newcastle disease. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement and their carcasses, and parts thereof, and certain other articles, from quarantined areas, as contained in 9 CFR Part 82, as amended, will apply to the quarantined area.

Accordingly, Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respect:

1. In § 82.3 (a)(10)(i), is added to read:

§ 82.3 Areas quarantined.

(a) * * *

* * * * * *

(10) *Nebraska.* (i) The premises of The Bird Cage, 5972 North 30th Street, Omaha, Douglas County.

* * * * * *

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132 [21 U.S.C. 111–113, 115, 117, 120, 123–126, 134b, 134f]; 37 FR 28464, 28477; 38 FR 19141)

This amendment imposes certain restrictions necessary to prevent the interstate spread of exotic Newcastle disease, a communicable disease of poultry, and must be made effective immediately to accomplish its purpose in the public interest. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register.**

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in executive Order 12044 and Secretary's Memorandum 1955. It has been determined by J. C. Jefferies, Acting Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without opportunity for prior public comment or preparation of an impact analysis statement at this time.

This final rule implements the regulations in Part 82. It will be scheduled for review in conjunction with the periodic review of the regulations in that Part required under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 27th day of October 1980.

J. K. Atwell,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 80-33949 Filed 10-30-80; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Part 82

Exotic Newcastle Disease; and Psittacosis or Ornithosis in Poultry; Areas Released From Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of these amendments is to release a portion of Miami County in Florida, a portion of San Francisco County in California, a portion of Jackson and Clay Counties in Missouri, a portion of Summit County in Ohio, and a portion of Sedgewick County in Kansas, from areas quarantined because of exotic Newcastle disease. Surveillance activity indicates that exotic Newcastle disease no longer exists in the areas quarantined.

EFFECTIVE DATE: October 27, 1980.

FOR FURTHER INFORMATION CONTACT:

C. G. Mason, Chief, National Emergency Field Operations, Emergency Programs, Veterinary Services, USDA, 6505 Belcrest Road, Federal Building, Room 751, Hyattsville, MD 20782, 301–436–8073.

SUPPLEMENTARY INFORMATION: These amendments exclude a portion of Miami County in Florida, a portion of San Francisco County in California, a portion of Jackson and Clay Counties in Missouri, a portion of Summit County in Ohio, and a portion of Sedgewick County in Kansas, from the areas quarantined because of exotic Newcastle disease under the regulations in 9 CFR Part 82, as amended. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR Part 82, as amended, will not apply to the excluded areas.

Accordingly, Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respects.

§ 82.3 [Amended]

1. In § 82.3(a)(1), relating to the State of Florida, paragraph (iv) relating to the premises of Animal Kingdom, 11105 N.W. 119th Street, North Miami, Miami County is deleted.

2. In § 82.3(a)(2), relating to the State of California, paragraph (i) relating to the premises of Alex Zambory, 1760 Pacific, Apt. 9, San Francisco, San Francisco County is deleted.

3. In § 82.3(a)(4), relating to the State of Missouri, paragraphs (i) and (ii) relating to the following premises are deleted.

(i) The premises of Midwest Pets, 1527 Grand, Kansas City, Jackson County.

(ii) Fin and Foliage, 6930 N. Oak, Gladstone, Clay County.

* * * * * *

4. In § 82.3(a)(6), relating to the State of Ohio, paragraph (i) relating to the premises of Birds of Paradise, 1718 Adelaide, Akron, Summit County is deleted.

5. In § 82.3(a)(18), relating to the State of Kansas, paragraph (i) relating to the premises of Gupton's Tropical Aquarium, 2815 George Washington Blvd., Wichita, Sedgewick County is deleted.

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; [21 U.S.C. 111–113, 115, 117, 120, 123–126, 134b, 134f]; 37 FR 28464, 28477; 38 FR 19141)

These amendments relieve certain restrictions no longer deemed necessary to prevent the spread of exotic Newcastle disease, and must be made effective immediately to be of maximum benefit to affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register.**

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by J. C. Jefferies, Acting Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without

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opportunity for prior public comment or preparation of an impact analysis statement at this time.

This final rule implements the regulations in Part 82. It will be scheduled for review in conjunction with the periodic review of the regulations in that Part required under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 27th day of October 1980.

J. K. Atwell,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 80-33945 Filed 10-30-80; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

Physical Protection of Plants and Materials Requirements for the Physical Protection of Nuclear Power Plants

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission is extending from November 1, 1980 to December 1, 1980 its current relief from pat-down searches of regular employees at nuclear power reactors in order to allow time for the Commission to consider revisions to its rules in 10 CFR § 73.55 intended to finalize requirements for entry searches at such facilities.

EFFECTIVE DATE: October 31, 1980.

FOR FURTHER INFORMATION CONTACT: L. J. Evans, Jr., Chief, Regulatory Improvements Branch, Division of Safeguards, Office of Nuclear Material Safety and Safegyards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, (301) 427-4181.

SUPPLEMENTARY INFORMATION: On July 31, 1979, the Commission changed the date from August 1, 1979, to November 1, 1979, when pat-down searches of regular employees of nuclear power plant licensees had to be implemented. The rationale for this extension was provided in the **Federal Register** notice on this subject, 44 FR 47758, August 15, 1979. The Commission further extended the implementation date to November 1, 1980. The rationale for that extension is contained in 44 FR 65969.

The Commission is presently considering issuing proposed revisions to 10 CFR § 73.55(d)(1) to finalize requirements for personnel searches at protected area portals of power reactors. The *thirty day* extension of the relief from physical pat-down searches of regular employees contained herein is intended to allow sufficient time for Commission consideration of the proposed revisions. Because this rule delays a requirement, and merely continues a temporary situation for a limited period of time, the Commission finds that notice and public procedure are unnecessary and that the change can be made immediate effective without the customary 30 days period of notice required by 5 U.S.C. 553.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of title 5 of the United States Code, the following Amendment to Title 10 Chapter 1, Code of Federal Regulations, Part 73 is published as a document subject to codification.

1. The unnumbered prefatory paragraph of § 73.55 of 10 CFR Part 73 is amended to read as follows:

§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.

Each licensee who is authorized on February 24, 1977, to operate a nuclear power reactor pursuant to Part 50 of this Chapter shall comply with the requirements of paragraphs (b), (d), (f), (g), and (h) of this section, except for any requirement involving construction and installation of equipment not already in place expressed in paragraphs (d)(1), (d)(7), (d)(8), (f)(3) and (h)(4), by May 25, 1977. The licensee shall submit by May 25, 1977, an amended physical security plan describing how the licensee will comply with all of the requirements of this section including schedules of implementation. The licensee shall implement his plan and comply with all of the provisions of this section as soon as practicable after NRR approval of his plan but no later than February 23, 1979. Each applicant for a license to operate a nuclear power reactor pursuant to Part 50 of this chapter whose application was submitted prior to February 24, 1977 shall submit by May 25, 1977, an amended physical security plan describing how the applicant plans to comply with the requirements of this section including schedules of implementation. If such applicant receives an operating license after February 24, 1977 he shall comply with the requirements of paragraphs (b), (d), (f), (g), and (h) of this section, except for construction and installation not already in place pursuant to paragraphs (d)(1), (d)(7), (d)(8), (f)(3) and (h)(4) of this section by May 25, 1977, or on the date of receipt of the operating license, whichever is later, and implement his plan and comply with all of the requirements of this section by February 23, 1979 or on the date of receipt of the operating license whichever is later. Each applicant for a license to operate a nuclear power reactor pursuant to Part 50 of this Chapter whose application is submitted after February 24, 1977, shall include in the physical security plan required by § 50.34(c) the information identified in paragraphs (a) through (h) of this section and if such applicant receives an operating license, shall comply with the provisions of this section on receipt of the operating license. Except for individuals for whom the licensee has a well-grounded suspicion that such individuals are carrying firearms, explosives, or incendiary devices, a licensee need not implement the physical search requirement of paragraph (d)(1) of this section for individuals who are regular employees of the licensee at the site at which the licensee is authorized to operate a nuclear power reactor pursuant to Part 50 of this Chapter until December 1, 1980, unless the Commission directs otherwise prior to that date. Until that date, the Commission has determined that the search requirement of paragraph (d)(1) of this section, implemented using only equipment capable of detecting firearms, explosives and incendiary devices, satisfies the performance requirements of this section as they apply to searches of regular employees of the licensee at the site entering the protected area of the nuclear power reactor.

* * * * * *

(Sec. 161i, Pub. L. 83-703, 68 Stat. 948, Pub. L. 93-377, 88 Stat. 475; Sec. 201. Pub. L. 93-438, 88 Stat. 1242-1243, (42 U.S.C. 2201, 5841))

Dated At Washington, D.C., this 30th day of October, 1980.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 80-34156 Filed 10-30-80; 11:08 am]

BILLING CODE 7590-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 329

Amendments Relating to the Minimum Maturities on Time Deposits and Minimum Notice Provisions for Savings Deposits

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: The Board of Directors of the Federal Deposit Insurance Corporation ("Board", "FDIC") has adopted a significant final rule redefining the term "time deposit" so that all time deposits will have a minimum maturity of 14 days rather than 30 days as provided under present regulations. The action was taken in the light of recent amendments to Regulation D (Reserve requirements) by the Board of Governors of the Federal Reserve System. These revisions define time deposits as deposits having a maturity of not less than 14 days. The Board of Governors has approved a corresponding revision to Regulation Q governing interest on deposits.

EFFECTIVE DATE: October 30, 1980.

FOR FURTHER INFORMATION CONTACT: F. Douglas Birdzell, Counsel or John F. Breyer, Jr., Attorney, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429 (202-389-4324 or 202-389-4637).

SUPPLEMENTARY INFORMATION: In connection with a revision of Regulation D by the Board of Governors of the Federal Reserve System, the definition of a time deposit, for Reserve requirement purposes, was shortened from a minimum of 30 days to a minimum of 14 days to help improve the ability of domestic depository institutions to compete with banking offices located abroad and with issuers of short-term paper in this country. Incident to its action, the Board of Governors amended Regulation Q relating to interest on deposits to provide for a corresponding 14-day minimum term on time deposits in lieu of the present 30-day minimum. Corresponding action is being taken to amend the provisions of Part 329 of FDIC's regulations governing interest on deposits in order to harmonize FDIC regulations with those of the Board of Governors. (The Federal Home Loan Bank Board may or may not take similar action.) Certain other conforming amendments to FDIC regulations will be made to reduce the minimum 30-day hold period on ordinary savings deposits to 14 days for consistency with the major amendments to the regulation and to modify the definition of time deposit open account. Since the amendment conforms FDIC regulations to those of the Board of Governors, no alternative courses of action were considered. While no economic impact analysis was done in connection with this amendment, it is not expected that the amendment will have any adverse effects on insured state nonmember banks and it is not expected that it will increase their costs. In fact, it should be beneficial in that it will probably enhance their competitive position *vis-a-vis* banking offices located abroad and issuers of short-term paper in this country. No adverse impact on small banks is foreseen. There will be no recordkeeping or reporting requirements incident to this regulation. Normal procedures with respect to notice, comment and deferred effective date were not followed in connection with these amendments because they impose no burden and immediate action is required for consistency with Federal Reserve regulations. 12 CFR Part 329 is amended as follows:

1. Section 329.1(c) and footnote 1a thereto is amended as follows:

§ 329.1 Definitions.

* * * * *

(c) *Time certificates of deposit.* The term "time certificate of deposit" means a deposit evidenced by a negotiable or nonnegotiable instrument which provides on its face that the amount of such deposit is payable:

(1) On a certain date, specified in the instrument, not less than fourteen (14) days after the date of the deposit.

(2) At the expiration of a specified period not less than 14 days after the date of the instrument: or

(3) Upon written notice to be given not less than 14 days before the date of repayment.[1a]

* * * * *

2. Section 329.1(d) and footnotes 2 and 3 thereto are amended as follows:

§ 329.1 Definitions.

* * * * *

(d) *Time deposits, open account.* The term "time deposit, open account" means a deposit other than a "time certificate of deposit," with respect to which there is in force a written contract with the depositor that neither the whole nor any part of such deposit may be withdrawn, by check or otherwise, prior to the date of maturity, which shall be not less than 14 days after the date of the deposit,[2] or prior to the expiration of the period of notice which must be given by the depositor in writing not less than 14 days in advance of withdrawals.[3]

* * * * *

3. Section 329.1(e)(1)(iii) of FDIC's regulations is amended as follows:

§ 329.1 Definitions.

* * * * *

(e) *Savings deposits.* (1) * * *

(i) * * *

(ii) * * *

(iii) In the case of both paragraphs (e)(1)(i) and (e)(1)(ii) of this section, with respect to which the depositor is not required by the deposit contract but may at any time be required to give notice in writing of an intended withdrawal not less than 14 days before such withdrawal is made [5] and which is not payable on a specified date or at the expiration of a specified time after the date of deposit.

* * * * *

4. Section 329.5(c)(2) is amended by revising the third sentence thereof as follows:

§ 329.5 Withdrawal of savings deposits.

* * * * *

(c) *Manner of payment of sovings deposits.*

* * * * *

"(2) * * * In accordance with Section 329.1(e)(iii) of this Part 329, the bank must reserve the right to require the depositor to give notice in writing of an intended withdrawal (transfer) not less than 14 days before such withdrawal (transfer) is made. * * *

* * * * *

5. Section 329.101 is amended by revising the first sentence of footnote 19 thereto as follows:

§ 329.101 Computation and payment of interest on time and savings deposits.

* * * * *

19. Part 329 of the Corporation's regulations prescribes certain maximum interest rates for consumer-type time deposits (*i.e.*, deposits of less than $100,000) with maturity intervals of 14 days or more and 90 days or more. * * *

The provisions of section 553(b) and 553(d) of the Administrative Procedure Act (5 U.S.C. 553(b) and 553(d)) were not followed in connection with the issuance of this regulation because the regulation is essentially non-restrictive, expands rights conferred by prior regulation and the public interest is best served by its immediate issuance with an October 30, 1980 effective date.

[1a] If the certificate of deposit provides merely that the bank reserves the right to require notice of not less than fourteen (14) days before any withdrawal is made, the bank must require such notice before permitting withdrawal.

[2] Deposits, such as Christmas club accounts and vacation club accounts, which are made under written contracts providing that no withdrawal shall be made until a certain number of periodic deposits have been made during a period of not less than 3 months, constitute "time deposits, open account," even though some of the deposits are made within 14 days from the end of such period.

[3] A deposit with respect to which the bank merely reserves the right to require notice of not less than 14 days before any withdrawal is made is not a "time deposit, open account," within the meaning of the above definition.

[5] * * *

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(Secs. 9 and 18, Pub. L. 81-797, 64 Stat. 881, 891, as amended 612 U.S.C. 1819 and 1828)

By order of the Board of Directors, October 27, 1980.

Alan J. Kaplan,

Acting Executive Secretary.

[FR Doc. 80-34039 Filed 10-30-80; 8:45 am]

BILLING CODE 6714-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 399

[PS-98; Docket No. 37982; Amdt. No. 75 to Part 399]

Domestic Passenger Fare Flexibility; Interim Policy Statement; Correction

AGENCY: Civil Aeronautics Board.

ACTION: Correction to preamble of interim policy statement.

SUMMARY: This corrects an error in the preamble to the CAB's policy statement on domestic passenger fare flexibility. The policy statement amended the Board's upward flexibility zones within which airlines may set domestic passenger fares between markets in the 48 contiguous states and the District of Columbia with limited risk of suspension by the agency.

DATES: Adopted: October 21, 1980. Effective: The policy was put into effect September 24, 1980. The amendment of 14 CFR Part 399 is effective October 21, 1980.

FOR FURTHER INFORMATION CONTACT: Julien R. Schrenk, Chief, Domestic Fares and Rates Division, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5298.

SUPPLEMENTARY INFORMATION: A clerical errror was made in transcribing the 2nd sentence, first full paragraph in page 3 of the mimeo copy (2nd sentence, first full paragraph, column 2, 45 FR 70431, 70432, October 24, 1980). The sentence should read: "Our goal, accordingly, has been to develop a means of *correcting* the historical understatement of short-haul costs, *while maintaining* a nonmileage-based fare policy, if practicable."

Dated: October 27, 1980.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-33962 Filed 10-30-80; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Coverage of Employees of State and Local Governments; Interim Regulations

AGENCY: Social Security Administration, HHS.

ACTION: Interim regulations.

SUMMARY: These interim regulations change the rules governing the frequency with which States and interstate instrumentalities (which are treated as States to the extent practicable) must deposit social security contributions on wages and salaries paid to covered employees. This new rule will require States and interstate instrumentalities to deposit contributions within 30 days after the end of each calendar month in which wages are paid. These regulations reflect section 503 of the Social Security Disability Amendments of 1980, enacted on June 9, 1980.

DATES: The amendments made by paragraph No. 1 below become effective July 1, 1980, the same date the statutory change became effective. Amendments made by paragraph No 2. become effective January 1, 1981.

Comments must be received on or before December 30, 1980.

ADDRESSES: Written comments should be submitted to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203.

Copies of all comments received in response to this notice will be available for public inspection and copying during regular business hours at the Washington Inquiries Section, Office of Governmental Affairs, Social Security Administration, Department of Health and Human Services, Room 1212, Switzer Building, 330 C Street, SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Armand Esposito, Legal Assistant, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301-594-7455.

SUPPLEMENTARY INFORMATION: Section 218 of the Social Security Act (the Act) (42 U.S.C. 418) requires the Secretary of Health and Human Services, at a State's request, to enter into an agreement to provide social security coverage of the services of employees of that State and its local government units. All States (and about 54 interstate instrumentalities which are treated as States to the extent practicable) have such agreements. Prior to July 1, 1980 (the effective date of section 503 of the Social Security Disability Amendments of 1980), section 218(e)(1) of the Act gave the Secretary of Health and Human Services discretion to promulgate regulations governing when and how often States and interstate instrumentalities were to pay contributions equivalent to the social security taxes on wages. The regulations in effect prior to July 1, 1980 (20 C.F.R. 404.1255(a)), required payment from the States by deposit in a Federal Reserve Bank, on or before the 15th day of the second month after the calendar quarter in which wages were paid. For an interstate instrumentality, the contribution payments for a calendar quarter were due and payable on or before the last day of the first month of the next calendar quarter. These depository requirements were considerably less restrictive for State and local governmental employers than for private employers and resulted in losses of interest earnings to the Social Security trust funds. Consequently, the Social Security Administration undertook, by regulations, to accelerate the schedule of deposits. These final regulations (20 C.F.R. 404.1255a) were published at 43 F.R. 54083 (November 20, 1978) with a delayed effective date of July 1, 1980. (Section 7 of Pub. L. 94-202 precluded a change in the frequency or due dates for payments and reports until at least 18 months after the change had been published in final form in the **Federal Register.**) These regulations provided that the State pay contributions for wages paid in a month as follows:

(a) For each of the first 2 months in a calendar quarter the payments were to be due on or before the 15th day of the following month; and

(b) For the third month in the calendar quarter, the payments were to be due on or before the 15th day of the second month of the next quarter (For interstate instrumentalities, the payments for the third month were to be due on or before the last day of the following month.).

In addition, because of the cost savings and other advantages of annual wage reporting, which Congress mandated for the private employment sector in 1978, we published final regulations prescribing annual wage reporting for State and local government employers. These regulations were published on June 28, 1979 (44 F.R. 37604), to go into effect on January 1 1981. (The delayed effective date was to comply with Pub. L. 94-202). While these regulations did not make any change in the frequency with which deposits were to be made, we amended the regulations (20 C.F.R. 404.1255a) to require the filing of a contribution return when the contributions are paid.

On June 9, 1980, the Social Security Disability Amendments of 1980, Pub. L. 96-265, became law. Section 503 of that law amends section 218(e) of the Social Security Act to provide that States must pay their social security contributions within 30 days after the end of each calendar month in which wages are paid. That provision became effective July 1, 1980. These regulations (which supersede those on frequency of deposits which were published on November 20, 1978) reflect that statutory change.

Section 503 also ends the previously required 18 months delay in the effective date of these changes to the regulations.

Also, to carry out the clear intent of Congress, these regulations provide that contributions are to be deposited no later than the preceding workday where the last day for paying contributions falls on a Federal nonworkday.

Effect on Wage Reports and Contribution Returns

The changes in the dates contributions are due do not affect the date contribution returns and wage reports are due during the period July 1 through December 31, 1980. They will still be due quarterly rather than monthly.

Effective January 1, 1981, the annual reporting regulations (44 FR 37604, June 28, 1979) change the date contribution returns and wage reports will be due. Wage reports will be due by February 28 of each year. Contribution returns, however, are to be filed on the same date the contribution payment is due (§ 404.1255a(c)(2)(iii)). We are not changing this rule. However, due to the change in the date the contributions must be paid, there is an actual change in the date the contribution returns must be filed.

Justification for Interim Regulations

Since the amendments to the regulations reflect requirements of the statute concerning which the Secretary has no discretion, we find that publication with Notice of Proposed Rule Making is unnecessary (Administrative Procedure Act, 5 U.S.C. 553(b)(B)). Also, the statutory requirements reflected in these regulations are, by law, now in effect and the results of a Notice of Proposed Rule Making could not change the time period nor the effective date. The new rules for deposits of contributions are effective July 1, 1980.

Although we are not publishing this amendment with a Notice of Proposed Rule Making, we are soliciting public comments on this interim regulation.

Accordingly, these rules are adopted as set forth below.

(Catalog of Federal Domestic Assistance Program Nos. 13.802-13.805, Social Security Program.)

Dated: September 22, 1980.

William J. Driver,

Commissioner of Social Security.

Approved: October 23, 1980.

Patricia Roberts Harris,

Secretary of Health and Human Services.

20 CFR Part 404 is amended as follows:

1. Effective July 1, 1980 § 404.1255a, paragraphs (a) and (c)(5) are revised to read as follows:

§ 404.1255a Place and time for filing contribution returns, and wage reports and making deposits of contributions—for months on or after July 1, 1980.

(a) *Deposits.* Contribution payments for wages paid in a month shall be made as prescribed in § 404.1223. Except as provided in paragraph (c)(2) of this section, contribution payments for wages paid in a calendar month are due and payable within the thirty-day period following the last day of that month.

* * * * * *

(c) * * *

(5) *Due date is a Federal nonworkday.* If the due date for paying contributions for the wages paid in a month (as specified in paragraph (a) of this section) falls on a Federal nonworkday, the contributions shall be paid no later than the preceding Federal workday. If the last day for filing any wage report or contribution return falls on a Federal nonworkday, the contribution return or wage report may be filed on the next Federal workday.

* * * * * *

2. Effective January 1, 1981, the heading and paragraphs (c)(2) and (c)(5) of § 404.1255a as published on June 28, 1979, at 44 FR 37608, are revised to read as follows:

§ 404.1255a Place and time for filing contribution returns, wage reports, and making deposits of contributions for months on or after January 1, 1981.

* * * * * *

(c) *Contribution returns and wage reports*—(1) * * *

(2) *When to be filed.* (For the rules in effect during the period July 1, 1980 through December 31, 1980 see 43 FR 54087, November 20, 1978 and (insert FR citation and date this material is published)).

* * * * * *

(5) *Due date is a Federal nonworkday.* If the due date for paying contributions for the wages paid in a month (as specified in paragraph (a) of this section) falls on a Federal nonworkday, the contributions shall be paid, and the contribution return shall be filed, no later than the preceding Federal workday. If the last day for filing any wage report falls on a Federal nonworkday, the wage report may be filed on the next Federal workday.

* * * * * *

(Sec. 205, 218, 1102, Social Security Act; 53 Stat. 1368, as amended, 64 Stat. 514 as amended, and 49 Stat. 647, as amended; (42 U.S.C. 405, 418, 1302.))

[FR Doc. 80-33811 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-02-M

Food and Drug Administration

21 CFR Chapter I

[Docket No. 78N-0158]

Mandatory Uniform Effective Date for Food Labeling Regulations; Notice to Manufacturers, Packers, and Distributors

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is establishing July 1, 1983 as its new uniform effective date for mandatory compliance with all final FDA food labeling regulations that are published in the **Federal Register** after October 31, 1980.

This notice is not intended to change existing requirements. Therefore, all final FDA food labeling regulations previously published in the **Federal Register** that announced July 1, 1981 as their effective date will still go into effect on that date. Final regulations published in the **Federal Register** with effective dates earlier than July 1, 1981 (e.g., July 1, 1979) are also unaffected by this notice.

FDA periodically has announced uniform effective dates for mandatory compliance with new labeling requirements because the economic impact of requiring individual label changes on separate dates would probably be substantial. In addition, industry needs sufficient lead time to make label changes and the current uniform effective date of July 1, 1981 is less than 1 year away. Therefore, the agency has concluded that a new uniform effective date should be established.

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EFFECTIVE DATE: July 1, 1983 for mandatory compliance with food labeling regulations published after October 31, 1980.

FOR FURTHER INFORMATION CONTACT:
Bob Lake, Bureau of Foods (HFF–302), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202–245–1254.

SUPPLEMENTARY INFORMATION: FDA periodically issues various regulations for packaged food. If these labeling changes were individually required on separate dates, the cumulative economic impact on the food industry of frequent changes would probably be substantial. Therefore, the agency periodically has announced uniform effective dates for mandatory compliance with new food labeling requirements (e.g., the Federal Register of September 29, 1978 (43 FR 44830)). Use of a uniform effective date also provides for an orderly and economical industry adjustment to new labeling requirements by allowing sufficient lead time to plan for the use of existing label inventories and the development of new labeling materials. The agency believes that this policy serves consumers' interest as well because the increased cost of multiple short term label revisions that would otherwise occur would likely be passed on to consumers in the form of higher food prices.

The agency has decided that a new uniform effective date of July 1, 1983 should be established for future FDA regulations requiring changes in food labels where special circumstances do not justify a different effective date. Action is appropriate now because the current uniform effective date is less than 1 year away. The agency has selected July 1, 1983 to ensure adequate time for implementation of the food labeling regulations FDA is currently planning to propose and finalize in the next couple of years.

Some of the types of regulatory action that FDA plans to take were described in a notice of intent that FDA published in the Federal Register of December 21, 1979 (44 FR 75990) in conjunction with the U.S. Department of Agriculture's Food Safety and Quality Service and the Federal Trade Commission's Bureau of Consumer Protection. That notice described the three agencies' tentative positions on a number of food labeling issues. As that notice indicates, FDA is committed to regulatory action designed to provide the consumer with information concerning the ingredients and nutritional qualities of packaged food and to present the information in a uniform and understandable manner. The agency may also publish other food labeling regulations during this period.

The agency recognizes that if they become final rules, some of these regulatory initiatives may have broad application and that some food labels may be affected by a number of changes. Therefore, FDA is selecting a new uniform effective date which is sufficiently far in advance to allow ample time for industry to exhaust existing label inventories and obtain new labeling materials fully complying with new requirements no later than the new date.

The agency encourages industry, however, to comply with new labeling regulations earlier than the required date wherever this is feasible. Thus, when industry members voluntarily change their labels, FDA believes that it is appropriate that they incorporate any new requirements which have been published as final regulations up to that time.

The new mandatory uniform effective date will apply only to final FDA food labeling regulations published after October 31, 1980. Those regulations will specifically identify July 1, 1983 as their effective date for compliance. If any food labeling regulation involves special circumstances that justify an effective date other than July 1, 1983, the agency will determine for that regulation an appropriate effective date that will be specified when the regulation is published.

The current mandatory uniform effective date of July 1, 1981 for new final regulations affecting the labeling of food products was announced in the Federal Register of September 29, 1978 (43 FR 44830). Foods initially introduced or initially delivered for introduction into interstate commerce on or after July 1, 1981 are still required to comply with any final FDA regulations that identify July 1, 1981 as their effective date for compliance.

Dated: October 24, 1980.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-33727 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Parts 73, 81

[Docket No. 80N-0447]

Lead Acetate; Listing As a Color Additive in Cosmetics That Color the Hair on the Scalp

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is permanently listing lead acetate for use as a color additive in cosmetics that color the hair on the scalp. FDA concludes that lead acetate is suitable and safe for that use. This rule also deletes the color additive from the provisional list.

DATES: Written objections by December 1, 1980 effective December 1, 1980. All affected products initially introduced or initially delivered for introduction into interstate commerce on or after December 1, 1981 shall fully comply with this regulation.

ADDRESS: Written objections may be sent to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:
Andrew D. Laumbach, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, D.C. 20204, 202–472–5890.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Color Additive Amendments of 1960 (the Amendments) require FDA premarket clearance of any color additive [1] which is intended to be used or which is represented for use in or on food, drugs, devices, or cosmetics [2] (section 706 of the Amendments (21 U.S.C. 376).[3] Under the Amendments a color additive may be approved and listed permanently if there are sufficient data establishing that it is safe for its intended use(s).

Section 203(b) of the Transitional Provisions to the Amendments, 21 U.S.C. 376 note (Transitional Provisions), provides that any color additive in commercial use prior to the enactment date of the Amendments (July 12, 1960) shall be deemed provisionally listed pending completion of scientific investigations necessary to determine the safety of the additive in accordance with the Amendments.

Section 81.1 of the color additive regulations (21 CFR 81.1) identifies those color additives that are provisionally listed along with their respective "closing dates." A closing date is the last day upon which a provisionally listed color can be used legally, absent an approval of a color additive petition and its permanent listing. (See section 203(a)(1) of the Transitional Provisions.)

The color additive lead acetate has been provisionally listed since the enactment of the Amendments. During that time, a series of toxicological and absorption studies has been performed. As discussed below, based upon the evaluation of these and other pertinent data, the agency concludes that lead acetate is safe as a hair dye. FDA is therefore permanently listing lead acetate as a color additive in cosmetics used to color hair on the scalp.

II. The Procedural History of Lead Acetate

Lead acetate is a metallic salt color additive which had been used in cosmetic hair dyes before the enactment of the Amendments. Thus, under the Amendments, lead acetate, like other metallic salt colors, and vegetable-based hair colors, was deemed provisionally listed on July 12, 1960.

In the Federal Register of December 10, 1963 (28 FR 13374), FDA issued a notice in response to industry petitions in which metallic salt and vegetable color manufacturers were advised that their products were not eligible for the coal-tar hair dye exemption to the premarket clearance requirements of the Amendments [4] and that these colorants were color additives subject to all the requirements of the Amendments. In addition, this notice requested the submission of data with respect to individual colors so that the agency could make determinations whether they should be permanently or provisionally listed color additives. The agency advised that no regulatory action would be taken against the metallic salt and vegetable colorants until that determination was made and notice of their status was published in the Federal Register. However, the only data received in response to this notice were submitted in support of a listing petition for the vegetable base color henna, which was thereafter permanently listed for use as a hair color.

A second notice was published in the Federal Register of January 31, 1973 (38 FR 2996) stating that only those metallic salts or vegetable colorants for which petitions had been filed by July 30, 1973, could continue to be marketed. Subsequently, a petition was received by FDA from the Committee of the Progressive Hair Dye Industry requesting the listing of lead acetate as a color additive in cosmetic hair dyes. Notice of filing for this petition appeared in the Federal Register of June 29, 1973 (38 FR 17260). Lead acetate was specifically added to the codified provisional list, effective January 1, 1974, by a regulation published in the Federal Register of March 13, 1974 (39 FR 9657).

The closing date for the provisional listing of lead acetate has been postponed on various occasions pending the performance, completion, and evaluation of toxicological and absorption studies. The Federal Register of March 3, 1978 (43 FR 8790) details each postponement up to that time.

By 1978, it was settled scientifically that lead acetate used as a hair dye would present no risk to the public health from the standpoint of classical lead toxicity (lead poisoning) (43 FR 8791; March 3, 1978). However, it had been established conclusively through animal feeding testing in the 1950's and 1960's that lead acetate was an animal carcinogen in two species, the mouse and the rat, *id.* Yet, because the limited human epidemiological data were considered equivocal, a definitive conclusion whether lead was a human carcinogen could not be reached, *id.*

In addition, the scientific evidence did not establish conclusively whether lead acetate hair dyes would be absorbed through the scalp. While previous percutaneous absorption studies of lead acetate indicated that lead acetate is unlikely to be absorbed under test conditions, the data did not demonstrate adequately whether or not systemic absorption occurred (42 FR 62497; December 13, 1977 and 43 FR 8790; March 3, 1978). If the color additive were not absorbed, the carcinogenicity data could be disregarded as not relevant to human exposure, and the applicable anticancer clause in the Amendments, section 706(b)(5)(B), would not become an issue. The petition to permanently list lead acetate could then be considered solely under the general safety provisions of the Amendments, section 706(b)(5)(A) (i) through (iv). To resolve these issues the agency recognized the need for the performance of a definitive absorption study:

> • • • The Commissioner agrees that present scientific evidence does not provide definitive support for a conclusion that lead is a human carcinogen; however, on the basis of the studies that show lead acetate to be a carcinogen in animals, the possibility that lead acetate may be absorbed perculaneously must be explored carefully (43 FR 8791; March 3, 1978).

Because lead is ubiquitous in the environment, the major problem inherent in determining the likelihood of percutaneous absorption of lead is the variable "background" level tht is always present in humans. Humans are exposed to lead from numerous sources, including lead found unavoidably in the food, the water, and the air. As a result of the variation of lead in these sources, human lead intakes have not been precisely defined. However, estimates based on scientific data indicate that lead intake from food sources for adults can range from 100 to 500 micrograms (μg) per day, with an average of approximately 250 μg. Current Environmental Protection Agency water standards allow a calculation of a maximum intake of approximately 100 μg/day for adults. Estimations of daily human lead intake from air sources vary among geographical locations. In the urban setting, estimations of intake range from 20 μg to 400 μg/day, whereas the nonurban areas have an estimated intake of about 2 μg/day. While it now appears that exposure to these sources of lead may be reducible in some instances, it is not possible to totally eliminate lead intake in man. Therefore, with these estimated values for human exposure to lead, it is possible to determine an average daily level of human lead absorption into the blood of approximately 35 μg with the actual amount possibly being higher. These fluctuating lead values represent the "background" (43 FR 8792; March 3, 1978). The scientific data estimating human lead intake are on file in the Dockets Management Branch under the "Lead in Food" docket, 79N–0200.

The question of percutaneous absorption of lead presented difficulties because it required a determination of what level of increase over the "background" must be detectable to

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[1] The term "color additive" is defined by section 201(t) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(t)) as follows:

(t)(1) The term "color additive" means a material which—

(A) Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source, and

(B) When added or applied to a food, drug, or cosmetic, or to the human body or any part thereof, is capable (alone or through reaction with other substance) of imparting color thereto;

Except that such term does not include any material which the Secretary, by regulation, determines is used (or intended to be used) solely for a purpose or purposes other than coloring.

(2) The term "color" includes black, white, and intermediate grays.

[2] Hair dyes utilizing lead acetate as a colorant meet the statutory definition of "cosmetic" which is defined by section 201(i) of the act (21 U.S.C. 321(i)) as follows:

(i)(1) The term "cosmetic" means (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such articles; except that such term shall not include soap.

[3] All functions of the Secretary of the Department of Health and Human Services in administering the act have been delegated to the Commissioner of Food and Drugs (21 CFR 5.1(a)).

[4] Coal-tar hair dyes labeled with a warning legend advising that their use may cause skin irritation are exempt from the cosmetic adulteration provision of the Act and the premarket clearance requirements of the Amendments. See sections 601(a) and 706(a) of the act (21 U.S.C. 361(a) and 376(a)); *Toilet Goods Association* v. *Finch*, 419 F.2d 21 (2d Cir. 1969).

permit a scientific conclusion that no significant absorption would occur from the use of lead acetate as a hair dye. To determine a level of absorption which, in terms of analytical chemistry methodology, would be considered significant. FDA concluded:

> • • • that any study intended to establish that use of lead acetate as a hair color does not result in significant percutaneous absorption of lead must include a method capable of detecting approximately 1 microgram of absorbed lead above and beyond the normal background (43 FR 8793; March 3, 1978).

Combe, Inc., a member of the Committee of the Progressive Hair Dye Industry, submitted a protocol for a radioactive tracer study as a way of determining absorption of lead in which the problem of the fluctuating "background" could be eliminated. Under this study protocol, the issue of how to determine an increase over normal lead "background" does not arise because there are no endogenous levels of radioactive lead in humans (43 FR 8793; March 3, 1978). The closing date for lead acetate was extended until December 31, 1978, to allow for the completion and evaluation of the radioactive tracer study, *id.*

In the Federal Register of January 2, 1979 (44 FR 45), the closing date was further postponed until March 1, 1979, to provide FDA additional time to complete its evaluation of the radioactive tracer absorption study. In the Federal Register of March 6, 1979 (44 FR 12205), FDA proposed another postponement. In that notice, the agency announced that it had completed its evaluation of the absorption study and found that a miniscule amount, approximately 0.5 μg per application (½ of one millionth of a gram), was shown to penetrate the skin (Ref. 2). But the issue of whether lead, the toxic component in lead acetate, presented a cancer risk to humans remained unresolved. The agency expected that information bearing on this issue would be submitted in response to its planned advance notice of proposed rulemaking (ANPR) on lead in food. FDA therefore postponed the closing date to March 1, 1980 in the Federal Register of August 31, 1979 (44 FR 51233).

The ANPR on lead in food was published in the Federal Register of August 31, 1979 (44 FR 51216). The comment period on the ANPR, originally scheduled to close on November 29, was extended to February 29, 1980 (44 FR 67673; November 27; 1979). Accordingly, the closing date for lead acetate was also postponed for 90 days to June 30, 1980 (45 FR 11799; February 22, 1980). The current closing date of October 31, 1980, was established by a regulation published in the Federal Register of June 24, 1980 (45 FR 42255).

III. The Legal Standards and Their Applicability to Lead Acetate

Under section 706(b)(4) of the Amendments, a color additive cannot be permanently listed unless the evidence establishes that it is "safe." This is referred to as the "general safety clause" for color additives. In addition to passing muster under the general safety clause, a color additive must also pass the test laid down by the color additive anticancer (Delaney) clause in section 706(b)(5)(B) of the Amendments. The general safety clause will first be discussed as it applies to risks other than carcinogenicity. A discussion of carcinogenicity under the anticancer clause and the general safety clause will follow.

The term "safe" is not defined in the general safety clause, nor is it defined elsewhere in the act. However, the legislative history of the Amendments incorporates by reference the same meaning for the word "safe" that is applicable to food additives under the Food Additives Amendment of 1958. (See H.R. Rept. No. 7624, 86th Cong., 2d Sess., p. 776 (1960).) The legislative history of the Food Additives Amendment of 1958 makes clear that the term "safe" was not intended to require absolute proof of safety. The House Report states:

> • • • Safety requires proof of a *reasonable certainty that no harm will result from the proposed use of an additive.* It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance.
>
> This was emphasized particularly by the scientific panel which testified before the subcommittee. The scientists pointed out that it is impossible in the present state of scientific knowledge to establish with complete certainty the absolute harmlessness of any chemical substance. (H.R. Rept. No. 2284, 85th Cong., 2d Sess., pp. 4–5 (1958) [Emphasis added].)

Thus, FDA's regulations provide that a color additive is "safe" if "there is convincing evidence that establishes with reasonable certainty that no harm will result from the intended use of the color additive." (21 CFR 70.3(i).)

The factors to be considered for determining the safety of a color additive are provided in section 706(b)(5)(A) (i) through (iv) of the Amendments; they include the probable consumption of the color additive, the cumulative effect of the color additives, if any, in the diet of man or animals, the application of safety factors, and the availability of any needed practicable methods of analysis for determining the identity, quality, and purity of the color additive.

FDA has fully reviewed all the scientific data submited in support of the lead acetate petition and the comments germane to the petition received in response to the ANPR on lead in food. On the basis of this review the agency reaffirms its conclusion, previously set forth (44 FR 12206; March 6, 1979), that lead acetate is safe from the standpoint of classical lead toxicity (lead poisoning).

This conclusion is based upon the insignificant increase of lead in normal human blood levels from lead acetate hair dyes. The average person has a steady-state blood level of approximately 17μg of lead per 100 milliliters of blood which is retained out of the 35 μg lead that is absorbed and retained per day from the normal human lead intake of 100 to 500μg from all sources. The increase in the amount of human lead absorption from the use of lead acetate hair dyes would have no discernible effect on this steady-state blood level. The Joint FAO/WHO Expert Committee on Food Additives (Rept. No. 505) (Ref. 4) has established a provisional tolerable weekly intake of lead for adults of 3 milligrams per week, or 428 μg/per day. Moreover, the population exposed to lead in hair dyes is limited to adults who, in terms of susceptibility to lead poisoning, are not a high-risk group as compared to children. Exposure to lead from hair dyes would be limited even among adults because the infrequency of their use is an inherent check on the total individual exposure. Hair dyes thus do not present a potential problem of extremely high use by particular individuals. In sum, the lead poisoning evidence, taken as a whole, shows lead acetate in hair dyes to be safe.

Thus, the only issue now before the agency is whether the petition to permanently list lead acetate for use in hair dyes can be approved in light of the evidence that the substance is an animal carcinogen and is absorbed through the skin. As noted, this evidence must be evaluated under both the anticancer clause and the general safety clause. The anticancer clause will be discussed first.

The color additive Delaney [5] anticancer clause consists of two parts: one is applicable to ingested additives, the other to non-ingested additives. The first section (section 706(b)(5)(B)(i) of the Amendments) provides that a color additive:

> • • • shall be deemed unsafe, and shall not be listed, for any use which will or may result in ingestion of all or part of such additive, if the additive is found by the Secretary to induce cancer when ingested by man or animal, or if it is found by the Secretary, after tests which are appropriate for the evaluation of the safety of additives for use in food, to induce cancer in man or animal.

This provision is limited to uses that will or may result in ingestion; it does not, therefore, apply to the use of lead acetate in hair dyes.

The applicable provision is the second section of the color additive Delaney Clause (section 706(b)(5)(B)(ii) of the Amendments), which states that a color additive:

> • • • shall be deemed unsafe, and shall not be listed, for any use which will not result in ingestion of any part of such additive, if, after tests which are appropriate for the evaluation of the safety of additives for such use or after other relevant exposure of man or animal to such additive, it is found by the Secretary to induce cancer in man or animal.

There is a significant difference between these two parts of the color additive Delaney Clause. The first part, the "ingestion clause," like the food additive Delaney Clause, section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A)), makes an animal ingestion study demonstrating carcinogenicity an absolute bar to the approval of a petition for an ingested color additive. A finding of carcinogenicity alone renders the additive "unsafe" as a matter of law.

The second part, the "non-ingestion clause," does not make an animal ingestion study demonstrating carcinogenicity an absolute bar to the approval of a petiton for a non-ingested color additive.[6] Instead, it requires the agency to make one of two additional findings:

1. That the tests relied upon to conclude that the substance is an animal or human carcinogen are "appropriate for the evaluation of the safety of additives" for the particular use under review; or,

2. That other exposure of man or animal "relevant" to the substance shows it to be a carcinogen.

In other words, by requiring an additional finding as to "appropriateness" or "relevance" of data, Congress distinguished the non-ingestion clause from the ingestion clause. Thus, to interpret the non-ingestion color additive Delaney Clause to mean that a positive animal feeding study is a per se bar to the permanent listing of a non-ingested color additive would eliminate the criteria of "appropriateness" and "relevance" from the statute itself. This would render section 706(b)(5)(B)(ii) of the Amendments indistinguishable from section 706(b)(5)(B)(i). Such a result would clearly ignore the plain words Congress chose in drafting this legislation. See *International Brotherhood of Teamsters* v. *Daniel*, 439 U.S. 551, 558 (1979). Additionally, this interpretation would not be supported by the legislative history.

In testimony on the proposed Color Additive Amendments of 1960 before the House Committee on Interstate and Foreign Commerce, Secretary Flemming of the Department of Health, Education, and Welfare, stated that the Delaney Clause applicable to ingested additives was not the same as the Delaney Clause applicable to external colorants:

> The Chairman. • • • [T]hese two bills, the House and Senate bills, are identical, with the exception of page 10 in the House Bill, which has reference to the Delaney Amendment—is that identical with the amendment in the food additive law, except in that respect?
>
> Secretary Flemming. *It is not identical because of colors that are applied to external parts.*
>
> The Chairman. Except as to colors?
>
> Secretary Flemming. This is right—except for the changes that have to be made in order to adapt it to the color situation—except for that, it is identical, so far as the policy issue is concerned. H.R. Rept. No. 7624, 86th Cong., 2d Sess., p. 102 (1960) (Emphasis added).

This is the first instance where the agency must decide the applicability of the Delaney Clause to a non-ingested color additive. Specifically, the agency must decide whether animal feeding studies showing lead to be carcinogenic are "appropriate" or "relevant" for the purpose of applying section 706(b)(5)(B)(ii) to lead acetate hair dyes.

It should be noted that the agency must make an affirmative finding of either "appropriateness" or "relevance" (44 FR 12206; March 6, 1979). In so doing, FDA must make a scientific judgment involving an exercise of discretion not permitted under the more traditional and absolute food additive and ingested color additive Delaney Clauses (see 21 U.S.C. 348(c)(3)(A) and 376(b)(5)(B)(i); 44 FR 12206; March 6, 1979).

As discussed below, after a thorough evaluation of all available scientific evidence relevant to the issue, the agency cannot find that the animal feeding studies are either "appropriate" or "relevant" for making the safety determination for lead acetate hair dyes under section 706(b)(5)(B)(ii) of the Amendments. This conclusion is based upon the unusual combination of scientific facts peculiar to lead acetate in hair dyes, a combination which will rarely, if ever, be presented again in this context.

The required finding of "appropriate" or "relevant" cannot be made here for the following combination of reasons:

1. The Combe, Inc. radioactive tracer skin absorption study (Ref. 2), in attempting to identify whether systemic absorption of lead occurred following the application of the hair dye, demonstrated that on an average only 0.5 μg of lead per application penetrates the skin. Conventional analytical methods could not detect so small an amount of lead. Indeed, the agency believed prior to the performance of the study that absorption would not be considered significant, in an analytical sense, unless found to be greater than 1 μg. On the basis of that study, it is estimated that frequent users of lead acetate hair dyes who might apply the hair dye as often as twice per week, could have an average daily absorption of lead from that source of 0.3 μg (3/10 of one millionth of a gram). As stated in Section II above, this compares to an average human absorption of lead from air, food, and water of approximately 35 μg/per day. Thus, the average user of lead acetate hair dye might increase his or her body lead burden by less than 1 percent. Such an increase of absorbed lead from hair dyes over the normal human "background" levels of lead does not augment the existing risk of acute or chronic lead toxicity, including cancer, in any clearly discernible, much less significant, manner.

2. The scientific data submitted to FDA concerning the issue of whether lead is a human carcinogen are not sufficient for substantiating a direct correlation between lead exposure and human carcinogenicity.[7] However, even

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[5] Like its food additive (section 409(c)(3)(A) of the act) and animal drug (section 512(d)(1)(H) of the act) counterparts, the color additive anticancer clause, is called a "Delaney" clause after its Congressional sponsor, Congressman James J. Delaney.

[6] Analogously, Congress, in enacting the Animal Drug Amendments of 1968, changed the traditional absolute Delaney language in the food additive anticancer clause. Thus, 21 U.S.C. 360(d)(1)(H) requires that any animal drug that has been shown to cause cancer in man or animal be deemed "unsafe" "*except*" where "no residue" of the drug is found in any edible portion of the animal tissue (emphasis supplied.) Like the "appropriate" and "relevant" language in the non-ingestion color additive Delaney Clause, the "no residue" language in the animal drug Delaney Clause eases the absolute prohibition of the food additive Delaney Clause. FDA has reasoned, in proposing to interpret the language of the animal drug Delaney Clause, that where an animal drug is shown to be carcinogenic, "no residue" should be defined in terms of an amount of residue that would pose a "socially accepted level of risk" of one cancer per million lifetimes. (See FDA proposed rule, "Criteria and Procedures for Evaluating Assays for Carcinogenic Residues," (44 FR 17070; March 20, 1979).)

[7] FDA has previously announced that if the issue of whether lead is or is not a human carcinogen could not be resolved, it would apply its standard cancer risk identification policy [i.e., where there exists systemic absorption of a substance and

Footnotes continued on next page

if a direct correlation could be made, the human cancer risk from the use of lead acetate hair dye would be a clearly insignificant one. In the course of the safety evaluation of this petition, FDA considered risk assessments prepared by FDA staff personnel (Ref. 3) and Dr. Richard Wilson of Harvard University on behalf of Combe, Inc., (Ref. 1). These assessments were performed independently; yet they reached very similar conclusions. Using "worst case" risk estimates extrapolated from the animal toxicity data (i.e., assuming carcinogenicity), the agency calculated that the upper limit of lifetime cancer risk from the use of lead acetate in hair dyes was approximately two in ten million lifetimes. Dr. Wilson's risk assessment calculated that the upper limit lifetime cancer risk from lead acetate in hair dyes was about one in eighteen and one half million lifetimes. The disparity in the upper limit lifetime risk derived by these assessments can be attributed to slight differences in the assumptions underlying each assessment. These very conservative risk assessments support a conclusion that any risk likely to result from use of lead acetate hair dye cannot be considered significant in terms of public health protection.

Having considered the trivial amount of lead absorption in relation to the ever present normal lead "background" in humans and recognizing that, even if a human cancer risk exists from the use of lead acetate hair dyes, such an added risk would be minute, FDA concludes that lead acetate, by any reasonable standard, is safe for use in hair dyes. Because FDA regards this use of lead acetate to be safe, the agency is unable to conclude that the studies showing lead acetate to be an animal carcinogen are "appropriate" or "relevant" for the purpose of applying the non-ingested color additive Delaney Clause.

The reasoning that leads FDA to conclude that lead acetate is safe and that the Delaney Clause cannot be invoked also justifies the conclusion that lead acetate hair dyes satisfy the general safety provisions under section 706(b)(5)(A)(i) through (iv) of the Amendments. On this issue, the petitioner has the burden of proof. *Certified Color Manufacturers Association* v. *Mathews*, 543 F. 2d 284 (D.C. Cir. 1976).

As discussed above, Congress did not intend to require that safety be proved to an absolute certainty, recognizing the limits that exist on society's ability to assure itself of a complete absence of risk. In this context and as discussed above, FDA must consider three factors peculiar to lead acetate: the significant human background exposure to lead; the almost infinitesimally low absorption of lead from lead acetate hair dyes,[8] especially when contrasted to the human background exposure; and the very low potential added risk (in a range between one in five million to one in eighteen million) presented. Based on these factors, FDA concludes that lead acetate hair dyes are safe under the "reasonable certainty of no harm" standard established by Congress.

Advances in the ability of analytical chemists to detect infinitesimally small amounts of substances—such as was seen by the Combe, Inc., radioactive absorption study on lead acetate—are forcing FDA to confront for the first time the significance of potential risks on the order of those associated with lead acetate hair dyes. As discussed in footnote 6, FDA has suggested that an increased risk of cancer of one in one million over the lifetime of the population to be "acceptable" and thus safe by the standard of reasonableness established by Congress. The potential risks from lead acetate are substantially lower than one in one million.

FDA understands that there is a Congressional expectation that the agency will be very conservative in determining whether and to what extent additives should be permitted in the Nation's foods, drugs, devices, and cosmetics. The agency recognizes also that Congress indicated that FDA should be reasonable in applying the Delaney Clause to those additives. (See H.R. Rept. No. 7624, 86th Cong., 2d Sess., pp. 214, 790, and 802–803 (1960).) Under the particular facts present here, FDA believes that approval of the color additive petition for lead acetate hair dyes to be consistent with both its mandate to protect the public health and the standard of reasonableness established by Congress.

Increasingly, the courts too are recognizing the discretion inherent even in the most rigorous public health statutes to disregard potential risks that are so trivial as to present no public health or safety concern. Cf. *Industrial Union Department, AFL–CIO* v. *Marshall*, 48 L.W. 5022, 5037 (July 2, 1980); *Volkswagenwerk, A.G.* v. *Federal Maritime Commission*, 390 U.S. 261, 276–277 (1968); *Alabama Power Company* v. *Costle*, —— *F.2d* —— (D.C. Cir. 1979) No. 78–1006, December 14, 1979); *Monsanto* v. *Kennedy*, 613 F.2d 947, 955 (D.C. Cir. 1979); *United Glass and Ceramic Workers of North America, AFL–CIO* v. *Marshall*, 584 F.2d 398, 407–408 (D.C. Cir. 1978); *District of Columbia* v. *Orleans*, 406 F.2d 957, 959 (D.C. Cir. 1968).

Conclusion

For the reasons discussed in this document, FDA finds the color additive lead acetate to be safe for use in cosmetics that color the hair on the scalp and grants the petition to permanently list lead acetate for that use.

References

The following references, and other relevant material, are on public file in the Dockets Management Branch (address above). They may be seen in that office from 9 a.m. to 4 p.m., Monday through Friday.

1. Wilson, R., "The Carcinogenic Risk of Using Hair Dyes Containing Lead Acetate," Report for Combe, Inc., August 1978, report submitted to FDA, September 1978.

2. Goldberg, A. and M. R. Moore, "Lead Absorption Study for Combe, Incorporated, August 1978," report submitted to FDA, September 1978.

3. "Risk Estimation; Hair Dyes," Food and Drug Administration Subgroup on Lead Acetate Carcinogenicity, September 8, 1980.

4. "Evaluation of Certain Food Additives and the Contaminants Mercury, Lead, Cadmium," World Health Organization Technical Report Series No. 505, FAO Nutrition Meeting Report Series No. 51, April 1972.

With permanent listing, the provisional entry for lead acetate in § 81.1(g) (21 CFR 81.1(g)) will become obsolete. That entry is being deleted from the regulation. Elsewhere in this issue of the **Federal Register**, the agency is extending the current provisional listing for lead acetate to December 31, 1980. This extension is necessary to accommodate the 30-day objection period and the evaluation of any objections submitted in response to this rule.

The agency has determined under 21 CFR 25.24(d)(5) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 706(b), (c), and (d), 74 Stat. 399–403 (21 U.S.C. 376(b), (c), and (d))) and the Transitional Provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note)), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Parts 73 and 81 are amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

1. Part 73 is amended in Subpart C by adding new § 73.2396 to read as follows:

§ 73.2396 Lead acetate.

(a) *Identity.* The color additive lead acetate is the trihydrate of lead (2+) salt of acetic acid. The color additive has the chemical formula $Pb(OOCCH_3)_2.3H_2O$.

(b) *Specifications.* Lead acetate shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by good manufacturing practice:

Water-insoluble matter, not more than 0.02 percent.
pH (30 percent solution weight to volume at 25° C), not less than 4.7 and not more than 5.8.
Arsenic (as As), not more than 3 parts per million.
Lead acetate, not less than 99 percent.
Mercury (as Hg), not more than 1 part per million.

(c) *Uses and restrictions.* The color additive lead acetate may be safely used in cosmetics intended for coloring hair on the scalp only, subject to the following restrictions:

(1) The amount of the lead acetate in the cosmetic shall be such that the lead content, calculated as Pb, shall not be in excess of 0.6 percent (weight to volume).

(2) The cosmetic is not to be used for coloring mustaches, eyelashes, eyebrows, or hair on parts of the body other than the scalp.

(d) *Labeling requirements.* (1) The lable of the color additive lead acetate shall conform to the requirements of § 170.25 of this chapter, and bear the following statement or equivalent:

Wash thoroughly if the product comes into contact with the skin.

(2) The lable of the cosmetic containing the color additive lead acetate, in addition to other information required by the act, shall bear the following cautionary statement, conspicuously displayed thereon:

CAUTION: Contains lead acetate. For external use only. Keep this product out of children's reach. Do not use on cut or abraded scalp. If skin irritation develops, discontinue use. Do not use to color mustaches, eyelashes, eyebrows, or hair on parts of the body other than the scalp. Do not get in eyes. Follow instructions carefully and wash hands thoroughly after each use.

(e) *Exemption for certification.* Certification of this color additive for the prescribed use is not necessary for the protection of the public health and therefore batches thereof are exempt from the certification requirements of section 706(c) of the act.

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

§ 81.1 [Amended]

2. Part 81 is amended in § 81.1 *Provisional lists of color additives* in paragraph (g) by deleting the entry "Lead acetate."

Any person who will be adversely affected by the foregoing regulation may at any time on or before December 1, 1980, file with the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the regulation, specify with particularity the provisions of the regulation deemed objectionable, and state the grounds for the objections. Objections shall be filed in accordance with the requirements of 21 CFR 71.30. If a hearing is requested, the objections shall state the issues for the hearing, shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that hearing is held. Four copies of all documents shall be filed and should be identified with the docket number found in brackets in the heading of this regulation. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective December 1, 1980, except as to any provisions that may be stayed by the filing of proper objections. All affected products initially introduced or initially delivered for introduction into interstate commerce on or after December 1, 1981, shall fully comply with this regulation. Notice of the filing of objections or lack thereof will be given by publication in the **Federal Register.**

(Sec. 706(b), (c), (d), 74 Stat. 399–403 (21 U.S.C. 376(b), (c), and (d)); sec. 203, Pub. L. 86–618, 74 Stat. 404–407 (21 U.S.C. 376, note)).

Dated: October 28, 1980.

Jere E. Goyan,

Commissioner of Food and Drugs.

[FR Doc. 80-34056 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 81

[Docket No. 79C–0053]

Postponement of Closing Date for Provisional Listing of Lead Acetate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of lead acetate for use as a color additive in cosmetics that color the hair on the scalp. A new closing date for lead acetate is being established to provide for receipt and evaluation of any objections received in response to the final regulation approving the petition for the permanent listing of lead acetate. The regulation that permanently lists lead acetate is published elsewhere in this issue of the **Federal Register**. The new closing date will be December 31, 1980.

EFFECTIVE DATE: October 31, 1980.

FOR FURTHER INFORMATION CONTACT: Gerald L. McCowin, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5676.

SUPPLEMENTARY INFORMATION: The current closing date of October 31, 1980, for the provisional listing of lead acetate was established by a regulation published in the **Federal Register** of June 24, 1980 (45 FR 42255). The October 31, 1980, closing date for lead acetate was established to provide time for publication of a regulation in the **Federal Register** regarding the final decision on the petition for the permanent listing of lead acetate.

After the review and evaluation of the data relevant to the color additive petition for lead acetate used in hair dyes, the agency concluded that lead acetate is safe and suitable for that use. Therefore, FDA issued a regulation that permanently lists lead acetate. The listing regulation is published elsewhere in this issue of the **Federal Register.**

Footnotes continued from last page

animal feeding studies showing carcinogenic effect, the substance is presumed to present a human cancer risk) and conclude that lead acetate hair dyes present human cancer risk (44 FR 12207; March 6, 1979). However, for all the reasons specified in this document, the agency now concludes the application of that policy to the peculiar scientific facts relative to lead acetate hair dyes is inappropriate.

[8] Absorption of lead acetate can occur in greater amounts through abraded skin. However, hair dyes containing lead acetate are labeled with directions that advise the user that the product should not be used on cut or abraded skin. The agency believes that labeling instructions of this type minimize the likelihood of absorption under actual conditions of use.

V 45 C 31 80 OC UMI

The regulation set forth below will postpone the October 31, 1980, closing date for the provisional listing of that color additive until December 31, 1980. This postponement will provide sufficient time for receipt and the evaluation of comments or objections submitted in response to the permanent listing for lead acetate hair dyes.

Because the current closing date expires on October 31, 1980, FDA has concluded that use of a notice and public procedure on this regulation is impracticable. Moreover, good cause exists for issuing this postponement as a final rule, since the agency has previously concluded that lead acetate is safe for its intended use under the Color Additive Amendments of 1960. This regulation will permit the uninterrupted use of this color additive until December 31, 1980. To prevent any interruption in the provisional listing of lead acetate, and in accordance with 5 U.S.C. 553(d) (1) and (3), this regulation is being made effective on October 31, 1980.

Therefore, under the Transitional Provisions of the Color Additive Amendments of 1960 to the Federal Food, Drug, and Cosmetic Act (Title II, Pub. L. 86-618; sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 81 is amended as follows:

§ 81.1 [Amended]

1. In § 81.1 *Provisional lists of color additives,* by revising the closing date for "Lead acetate" in paragraph (g) to read "December 31, 1980."

§ 81.27 [Amended]

2. In § 81.27 *Conditions of provisional listing of additives,* by revising the closing date for "Lead acetate" in paragraph (b) to read "December 31, 1980."

Effective date. This regulation is effective October 31, 1980.

(Sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note))

Dated: October 28, 1980.

Jere E. Goyan,

Commissioner of Food ond Drugs.

[FR Doc. 80-34054 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 201

[Docket No. 78N-0320]

Requirements for Designating Manufacturer's Name on a Drug Product's Label; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: In the final rule setting forth requirements for designating the manufacturer's name on a drug product label, published in the **Federal Register** of April 15, 1980 (45 FR 25760), the phrase "Manufactured for _____ by _____" was inadvertently omitted as a permissible qualifying identification of a product's distributor and manufacturer. This correction adds this phrase to the list of permissible alternatives.

FOR FURTHER INFORMATION CONTACT: Steven H. Unger, Bureau of Drugs (HFD-30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5220.

SUPPLEMENTARY INFORMATION: In the preamble to the final rule that amended the requirements for identifying the manufacturer, packer, or distributor on drug product labels, FDA stated (45 FR 25768) that distributors should at their option be permitted to adopt the phrase "Manufactured for _____ by _____". While the preamble stated that the rule has been revised to permit this phrase, the rule was not in fact so revised. Section 201.1(h)(5) is corrected to include this phrase as a permissible alternative and reads as follows:

§ 201.1 Drugs; name and place of business of manufacturer, packer, or distributor.

* * * * * *

(h) * * *

* * * * * *

(5) If the distributor is named on the label, the name shall be qualified by one of the following phrases: "Manufactured for _____", "Distributed by _____", "Manufactured by _____ for _____", "Manufactured for _____ by _____", "Distributor: _____", "Marketed by _____". The qualifying phrases may be abbreviated.

* * * * * *

Dated: October 24, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-33947 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 546

Tetracycline Antibiotic Drugs for Animal Use; Chlortetracycline Hydrochloride Tablets; Revocation of Certain Regulations

AGENCY: Food and Drug Administration.

ACTION: Final Rule.

SUMMARY: The agency is revoking those regulations reflecting approval of a new animal drug application (NADA) providing for use of chlortetracycline oblong tablets with vitamins for the prevention and treatment of bacterial scours in calves. The sponsor, American Cyanamid Co., requested the withdrawal of approval.

EFFECTIVE DATE: November 10, 1980.

FOR FURTHER INFORMATION CONTACT: David Scarr, Bureau of Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register,** approval of NADA 55-026 is withdrawn. This document amends the regulations by deleting that portion which reflects approval of this NADA.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.84), Part 546 is amended by revising § 546.110d(c)(5) to read as follows:

§ 546.110d Chlortetracycline hydrochloride tablets.

* * * * * *

(c) * * *

(5) *Conditions of use.* It is used as chlortetracycline in tablets for oral ingestion by calves as follows:

(i) *Amount.* 25 milligrams per tablet.

(ii) *Indications for use.* Aid in reduction of incidence of bacterial scours.

(iii) *Limitations.* 75 milligrams per animal per day.

* * * * * *

Effective date: October 31, 1980.

(Sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e)).)

Dated: October 23, 1980.

Gerald B. Guest,

Acting Director for Veterinary Medicine.

[FR Doc. 80-33950 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1977

Walkaround Pay

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Deletion of regulation.

SUMMARY: The OSHA walkaround pay regulation, 29 CFR 1977.21, requires employers to pay employees for the time during which they accompany OSHA compliance officers during inspections or engage in related activities. That regulation is hereby deleted in light of the decision of the U.S. Court of Appeals for the District of Columbia Circuit in "Chamber of Commerce of the United States of America v. OSHA," in which the court ordered that the regulation be vacated due to the agency's failure in promulgating the regulation to comply with the rule making procedures set forth in the Administrative Procedure Act, 5 U.S.C. 553. The agency is issuing a proposal to require walkaround compensation shortly.

EFFECTIVE DATE: October 23, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Mark J. Lerner, Division of Occupational Safety and Health, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue N.W., Room S-4004, Washington, D.C. 20210 (Telephone No. 202-523-6589).

SUPPLEMENTARY INFORMATION: On September 20, 1977 the Assistant Secretary of Labor for Occupational Safety and Health promulgated "an interpretive rule and general statement of policy," declaring that an employer's failure to compensate employees for time spent participating in a walkaround inspection conducted pursuant to section 8 of the Occupational Safety and Health Act of 1970 (84 Stat. 1590 et seq., 29 U.S.C. 651 et seq.) (hereinafter "the Act") constitutes discrimination under section 11(c) of the Act (29 U.S.C. 660) (42 FR 47344, 47345). Section 8(e) of the Act provides that, subject to the regulations issued by the Secretary of Labor, a representative of the employer and a representative authorized by employees have the right to accompany an Occupational Safety and Health Administration (OSHA) inspector during the physical inspection of any workplace under section 8(e) of the Act. Section 11(c)(1) of the Act proscribes any discriminatory action against an employee because the employee, *inter alia,* has exercised on behalf of himself or others any right afforded by the Act. The regulation, codified at 29 CFR 1977.21, provided that in order to assure the unimpeded flow of information to OSHA inspectors, as well as the statutory right of employees to participate in walkaround inspections, an employer's failure to pay employees for time spent in such inspections was discriminatory under section 11(c).

On October 25, 1977, the Chamber of Commerce of the United States of America ("Chamber") filed an action in the United States District Court for the District of Columbia challenging the validity of the walkaround pay provision. The district court upheld the validity of the regulation and the Chamber appealed. On July 10, 1980, the United States Court of Appeals for the District of Columbia Circuit reversed the judgment of the district court and remanded the case to the district court with instructions to vacate the walkaround pay regulation and to conduct any further proceedings not inconsistent with the opinion that it deemed necessary. "Chamber of Commerce of the United States of America v. OSHA," —— F.2d ——, Docket No. 78-2221 (D.C. Cir. July 10, 1980). The court held that since "the Act neither prohibits nor compels pay for walkaround time * * *" the walkaround pay provision was not an interpretive rule; rather, it was a legislative rule, which may only be promulgated in accordance with the notice-and-comment procedures set forth in the Administrative Procedure Act, 5 U.S.C. 553. Because OSHA failed to comply with those procedures in promulgating the rule, the court concluded that the rule must be vacated. On August 14, 1980, the district court vacated the rule and dismissed the case.

After due consideration of the court of appeals decision in "Chamber," OSHA has decided to delete its walkaround pay regulation at 29 CFR 1977.21 (1977) and will not pursue any enforcement actions based on a *per se* theory of discrimination to require employers to compensate employees for time spent in walkaround inspections unless it has first promulgated a walkaround compensation regulation using the notice-and-comment procedures of 5 U.S.C. 553. The agency is publishing a proposed regulation dealing with the issue of walkaround pay shortly.

I find that the reasons stated above constitute good cause for making this deletion of 29 CFR 1977.21 (1977) effective October 23, 1980. This amendment, therefore, is effective October 23, 1980.

This document was prepared under the direction of Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

§ 1977.21 [Removed]

Accordingly, pursuant to sections 8(e) and 8(g)(2) of the Occupational Safety and Health Act of 1970 (84 Stat. 1600, 29 U.S.C. 657(e) and (g)(2), 5 U.S.C. 553, and Secretary of Labor's Order No. 8-76 (41 FR 25059), Part 1977 of Title 29, Code of Federal Regulations is hereby amended by removing § 1977.21 (1977).

(Secs. 8(e) and (g)(2), 11(c); 84 Stat. 1600 (2900 U.S.C. 657(e) and (g)(2), 660(c)); 5 U.S.C. 553; Secretary of Labor's Order 8-76 (41 FR 25059))

Signed at Washington, D.C. this 23rd day of October, 1980.

Eula Bingham,

Assistant Secretary of Labor.

[FR Doc. 80-34031 Filed 10-30-80; 8:45 am]

BILLING CODE 4510-26-M

SELECTIVE SERVICE SYSTEM

32 CFR Part 1690

Determination of Availability of Members of the Standby Reserve of the Armed Forces for Order to Active Duty; Revocation

AGENCY: Selective Service System.

ACTION: Final rule.

SUMMARY: The Selective Service System amends its regulations by revoking 32 CFR Part 1690. Section 6, Public Law 96-357, approved September 24, 1980, repealed the provision of 10 U.S.C. 672(a) that required the Director of Selective Service to determine the availability of a member of the Standby Reserve of the Armed Forces for active duty. 32 CFR Part 1690 has no legal basis, therefore, Part 1690 Determination of Availability of Members of the Standby Reserve of the Armed Forces for Order to Active Duty is revoked.

EFFECTIVE DATE: October 31, 1980.

FOR FURTHER INFORMATION CONTACT: Henry N. Williams, General Counsel, Selective Service System, 600 E Street, N.W., Washington, D.C. 20435 whose telephone number is (202) 724-0895.

PART 1690 [REVOKED]

32 CFR Part 1690 is revoked.

Bernard Rostker,

Director of Selective Service.

October 27, 1980.

[FR Doc. 80-34042 Filed 10-30-80; 8:45 am]

BILLING CODE 8015-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL 1647-1]

Approval and Promulgation Implementation Plans: Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: The USEPA announces today final rulemaking on revisions to the New Source Review (NSR) portion of the Ohio State Implementation Plan (SIP). A notice of proposed rulemaking on these revisions was published in the August 26, 1980 **Federal Register** (45 FR 56845). In that notice, USEPA proposed to conditionally approve these revisions provided that, within a specified time period, the State correct specific deficiencies. Based on USEPA's review of the State's response, and the public comments received, USEPA is today conditionally approving the NSR SIP revision submitted by Ohio on July 29, 1980.

EFFECTIVE DATE: This final rulemaking becomes effective on October 23, 1980.

ADDRESSES: Copies of the SIP revision, and public comments on the notice of proposed rulemaking are available for inspection at the following addresses:

U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Richard J. Clarizio, Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6035.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962), and on October 5, 1978 (43 FR 45993), pursuant to the requirements of section 107 of the Clean Air Act, USEPA designated certain areas as not meeting the National Ambient Air Quality Standards (NAAQS) for total suspended particulates, sulfur dioxide, carbon monoxide, photochemical oxidants, and nitrogen dioxide. Part D of the Clean Air Act (Act), added in 1977, requires each State to revise its State Implementation Plan (SIP) to meet specific requirements for those areas designated as not meeting the NAAQS.

In order to satisfy the new source review requirements of the Act, the State submitted to USEPA on July 29, 1980, a revision to its SIP. On August 26, 1980, USEPA proposed to conditionally approve this SIP revision.

USEPA's criteria for an approvable Part D SIP are summarized in a **Federal Register** notice published on April 4, 1979 (44 FR 20372). Supplements to the April 4, 1979 notice were published on July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979 (44 FR 53761), and November 23, 1979 (44 FR 67182).

A discussion of conditional approval and its practical effect appears in the July 2, 1979 **Federal Register** (44 FR 38583). A conditional approval requires the State to submit additional materials by the specified deadlines. USEPA will follow the procedures described below when determining if the requirements of conditional approval have been met.

1. When a State submits the required additional documentation, USEPA will publish a notice in the **Federal Register** announcing receipt and availability of the submission and that the conditional approval is continuing pending USEPA's final action on the submission.

2. USEPA will evaluate the State's submission and public comments on the submission to determine if the deficiencies have been fully corrected. After review is complete, a **Federal Register** notice will either fully approve the plan if all conditions have been met, or withdraw the conditional approval and disapprove the plan. If the plan is disapproved, the Section 110(a)(2)(I) restrictions on construction will be in effect.

3. If the State fails to submit the required materials according to the negotiated schedule, USEPA will publish a **Federal Register** notice shortly after the expiration of the time limit for submission. The notice will announce that the conditional approval is withdrawn, the SIP is disapproved, and the Section 110(a)(2)(I) restrictions on growth are in effect.

In the August 26, 1980 **Federal Register** USEPA proposed to approve the NSR SIP revision provided the State submit or commit to submit within a specified time period the following: (1) A description of the interim procedures which it will follow to satisfy the requirements of Section 172(b)(11) of the Act; (2) a commitment which assures that each permit it issues satisfies the requirements of section 173 of the Act; and (3) revised regulations which refine the criteria used by the Director to issue new source permits under section 173 of the Act.

Summarized below are: (1) A discussion of the conditions for approval cited in the August 26, 1980 Notice of Proposed Rulemaking (45 FR 56845) (2) the State's response to these conditions; and (3) USEPA's evaluation of the adequacy of the State's response.

Alternative Analysis Procedures

In the August 25, 1980 **Federal Register**, USEPA indicated that the July 29, 1980 submission did not contain a description of the interim procedures the State will follow to satisfy the requirements of Section 172(b)(11)(A) of the Act. This section requires an analysis of alternate sites, sizes, production processes and environmental control techniques for those hydrocarbon and carbon monoxide sources proposing to locate in an ozone or carbon monoxide nonattainment area which has been granted additional time to demonstrate attainment of either NAAQS.

State Response

For those areas in the State which are required to comply with Section 172(b)(11)(A) of the Act the following procedure will be utilized. The affected proposed major new facility will be required to submit alternative site data for a minimum of two locations to the regional planning agency for comments and to the Ohio EPA for review. In addition to the alternative sites, the facility will provide an analysis of alternative sizes, production processes and control techniques which demonstrates that the benefits of the construction or modification of the facility outweigh the environmental and social costs imposed. The regional planning agency will review the facility's application taking into account air quality considerations. The final decision of the permit will be made by the Ohio EPA after consideration of the complete application and any comments provided by the regional planning agency.

USEPA Evaluation

USEPA has reviewed the procedures which the State will follow to satisfy the requirements of Section 172(b)(11)(A) of the Act. USEPA has determined that they are adequate as long as these procedures are followed for each hydrocarbon and carbon monoxide source proposing to locate in an ozone or carbon monoxide nonattainment area which has been granted additional time to demonstrate attainment of either NAAQS.

Permit Issuance

In the August 26, 1980 **Federal Register**, USEPA requested that the State assure it that each permit which is issued under the authority of the interim procedures satisfies the requirements of Section 173 of the Act.

State Response

In its September 25, 1980 letter, the State committed to comply with applicable law and the requirements of Section 173 of the Act before issuing a permit.

USEPA Evaluation

USEPA has reviewed this commitment and has determined that as long as each permit issued by the State satisfies the requirements of Section 173 of the Act, the State will be meeting the condition noted in the August 26, 1980 **Federal Register**.

Submission of Revised Regulations

In the August 26, 1980 **Federal Register**, USEPA stated that revisions to the State regulations are necessary to specifically define how the NSR program is to be conducted and what is required of the permit applicant and the Director of the Ohio EPA before the permit is issued to a new or modified source wishing to locate within a designated nonattainment area.

In the July 29, 1980 submission, the Governor of Ohio committed to submit such regulations by October 1, 1981. Therefore, USEPA proposed to approve Ohio's NSR SIP revision on the condition that the State submit, after the completion of State rulemaking procedures, but no later than October 1, 1981, revised regulations which refine the criteria used by the Director to issue new source permits under Section 173 of the Clean Air Act.

State Response

In its September 25, 1980 letter, the State reaffirmed this commitment to submit revised regulations by October 1, 1981.

USEPA Evaluation

As stated in the August 25, 1980 **Federal Register**, USEPA believes that this commitment and schedule to submit the revised regulations are acceptable. It should be noted, however, that pursuant to the August 7, 1980 **Federal Register** (45 FR 52676) USEPA must have approved by November 7, 1981, the State's revisions to the NSR regulations, which reflect the changes required by that **Federal Register**. Failure to have such revised regulations by this date will necessitate imposition of the construction ban.

Summarized below are: (1) The significant issues raised by public commentors, (2) USEPA's response to these issues, and (3) USEPA's final rulemaking.

Public Comment

One commentor submitted extensive national comments and requested that the comments be considered part of the record for each State plan.

USEPA Response

Some of the issues are not relevant to provisions in Ohio's submission USEPA notified the public of its response to these comments in the February 21, 1980 **Federal Register** (45 FR 11472).

Public Comment

One commentor, a representative of a public interest group, presented two objections to USEPA's proposed conditional approval of the NSR SIP revision. The commentor first objected to the general use of the conditional approval mechanism and then to the specific use of it in this case.

To support the first objection, the commentor contends that there is no statutory basis for conditionally approving a SIP revision; and that the Administrator only has authority to "approve or disapprove." The commentor further states that conditional approval negates the intent of the growth and funding restrictions of sections 110(a)(2)(I), 176(a) and 316 of the Act.

Not conceding the first objection, the commentor further maintains that even if USEPA has the authority to conditionally approve, the USEPA should not conditionally approve Ohio's NSR SIP revision. The commentor claims that conditional approval is inappropriate since the deficiencies in this SIP revision are not minor. In particular, the commentor states that there are major deficiencies in OAC Section 3745-31 and in the reasonable further progress portion of the NSR SIP revision. The commentor also states that the reasonable further progress portion is deficient because it is not in final form.

USEPA Response

In response to the commentor's first objection, USEPA believes that where a SIP substantially complies with the requirements of Section 172(b), USEPA has inherent authority to approve a SIP on the condition that the State corrects the remaining, relatively minor, deficiencies in a short period of time. The only available alternative would be to disapprove the SIP and thus invoke the construction moratorium. In addition, conditional approval is consistent with Section 110(c)(1)(C). That subsection requires the Administrator to promulgate regulations for a state if "the state fails, within 60 days after notification by the Administrator or such later period as he may prescribe, to revise an implementation plan as required pursuant to a provision of its plan referred to in subsection (a)(2)(H)." When the Administrator grants conditional approval, he is essentially notifying the State that further revisions are required to make the Plan or regulations fully approvable. If the State fails to satisfy the Administrator's conditions, the Administrator will disapprove the plan or regulations and may then promulgate regulations to correct the deficiency. The State is simply offered the option of correcting the inadequacies itself.

Contrary to the commentor's claim, the construction moratorium was designed by Congress to protect air quality when the State lacks a plan that adequately assures attainment and maintenance of the ambient standards. That purpose would not be served when the State plan substantially assures attainment and when the remaining deficiencies will be prompty corrected. Moreover, USEPA is precluded from imposing funding restrictions under Section 176(a) under these circumstances, since the State clearly would have made "reasonable efforts" to submit an approvable Part D SIP.

USEPA responds to the commentor's objection to its conditional approval of the NSR SIP revision in the following manner. The commentor claims that there are major deficiencies in OAC Section 3745-31 and in the reasonable further progress (RFP) portion of the NSR SIP revision. The commentor contends that based on these deficiencies USEPA should change its proposed conditional approval to a disapproval.

OAC Section 3745-31 was submitted as part of the NSR SIP revision. It stipulates that the requirements must be satisfied when the Ohio EPA issues an installation permit to a new or modified source of air pollution. USEPA cannot change its proposed conditional approval to a disapproval without sufficient justification for such a change. The commentor has failed to specify the alleged deficiencies in OAC 3745-31, and therefore has not provided USEPA with adequate justification for the disapproval of this SIP revision.

The commentor also claims that the RFP portion of the NSR SIP revision contains a major deficiency. The commentor claims that it is deficient because it is not in final form. USEPA believes that the RFP portion of the NSR SIP revision is acceptable. The RFP portion of the NSR SIP revision, as submitted by the State on July 29, 1980, contains a description of the program which the State is using, and will continue to use, to ensure that emissions from any proposed source in a designated nonattainment area will not interfere with that area's ability to attain the applicable NAAQS by the date imposed by the Act. This approach as described by Ohio meets USEPA requirements.

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USEPA Final Determination

USEPA has reviewed the comments received on its proposed conditional approval of the NSR SIP revision and has determined that none of the issues raised provide a sufficient justification for USEPA to change its proposed action. Furthermore, USEPA has reviewed the State's response and has determined that the State adequately commits itself to satisfy these three conditions. USEPA, therefore, approves the NSR SIP revision submitted by the State on July 29, 1980, provided that the State submit to USEPA after the completion of the State rulemaking procedures, but in no event later than October 1, 1981, revised regulations which refine the criteria used by the Director to issue new source permits under section 173 of the Clean Air Act.

USEPA has determined that good cause exists for making this final rulemaking immediately effective. By making this final rulemaking immediately effective, some of the restrictions on industrial growth contained in section 110(a)(2)(I) of the Act could be lifted from the State of Ohio if all other requirements are met. These restrictions are imposed for a failure to have a State Implementation Plan which meets the requirements of Part D after the final date for SIP approval specified in the Act. USEPA has determined that major portions of the revisions to the Ohio NSR SIP meet the requirements of Part D. Final action approving these revisions would satisfy many of the requirements of a Part D SIP. Until the State has a fully approved or conditionally approved Part D SIP, it is subject to the new source prohibitions of section 110(a)(2)(I) of the Clean Air Act.

Under Executive Order 12044 (43 FR 12661), USEPA is required to judge whether a regulation is "significant," and therefore subject to certain procedural requirements of the Order, or whether it may follow other specialized development procedures. USEPA labels these other regulations, "specialized." I have reviewed this proposed regulation pursuant to the guidance in USEPA's response to Executive Order 12044, "Improving Environmental Regulations," signed March 29, 1979, by the Administrator and I have determined that it is a specialized regulation not subject to the procedural requirments of Executive Order 12044.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this final action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of the date of publication. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

This Notice of Final Rulemaking is issued under the authority of section 110(a), 172 and 301 of the Clean Air Act, as amended (42 U.S.C. 7410(a), 7502, 7601(a).

Dated: October 23, 1980.

Douglas Costle,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the Federal Register on July 1, 1980.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart KK—Ohio

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended as follows:

(1) Section 52.1870(c) is amended by adding subparagraph (24) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(24) On July 25, 1980 the State of Ohio submitted its Part D revision to the New Source Review portion of the State Implementation Plan. On September 25, 1980 the State submitted a response to the August 26, 1980 Federal Register notice of proposed rulemaking. The response contained information which corrects certain deficiencies and commits to correct by a specified date other deficiencies.

(2) Section 52.1987 is amended by revoking paragraphs (a) and (b) pursuant to section 110(a)(5)(A) of the Clean Air Act (42 U.S.C. 7410), by reserving these paragraphs and by adding paragraph (e) to read as follows:

§ 52.1987 Review of new sources and modifications.

* * * * *

(e) Part D—Conditional Approval—The Ohio New Source Review State Implementation Plan revision for designated nonattainment areas is approved provided that: (1) The State submits by October 1, 1981, revised regulations which have completed State rulemaking procedures and which refine the criteria used by the Director to issue new source permits under section 173 of the Clean Air Act, and (2) each permit issued by the State satisfies the requirements of sections 173 and 172(b)(11) of the Act.

[FR Doc. 80-33874 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-5-FRL 1647-2]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) announces today final rulemaking on revisions to the carbon monoxide and ozone portions of the Ohio State Implementation Plan (SIP). The State submitted these revisions to USEPA to satisfy the requirements of Part D of the Clean Air Act (Act). USEPA published a notice of availability (NOA) in the November 2, 1979 Federal Register (44 FR 63114). A notice of proposed rulemaking (NPR) on these revisions appeared in the March 10, 1980 (45 FR 15192) Federal Register. A notice correcting mistakes in the March 10, 1980 Federal Register was published in the April 4, 1980 Federal Register (45 FR 22987). The March 10, 1980 Federal Register described the nature of the SIP revisions, discussed provisions which in USEPA's judgment did not comply with the requirements of the Clean Air Act (Act) and requested comments from the State and the public. Subsequent to publication of this notice, the State of Ohio submitted additional information for inclusion in the SIP. This information was intended to satisfy the deficiencies identified in the NPRs. Additionally, numerous public comments were received during the public comment period.

Based on its review of the State's response and the public comments, USEPA is today approving, conditionally approving and disapproving specific portions of the Ohio submittal as revisions to the federally approved Ohio State Implementation Plan.

EFFECTIVE DATE: This final rulemaking becomes effective on October 23, 1980.

ADDRESSES: Copies of the SIP revision, public comments on the NPR, and USEPA's evaluation and response to comments are available for inspection at the following addresses:

U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, 401 M Street SW., Washington, D.C. 20460

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, D.C. 20460

The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clarizio, Air Programs Branch, Regulatory Analysis Section, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6035.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962) and on October 5, 1978 (43 FR 45993), pursuant to the requirements of section 107 of the Clean Air Act (Act), as amended in 1977, USEPA designated certain areas in Ohio as nonattainment with respect to the National Ambient Air Quality Standards (NAAQS) for carbon monoxide (CO), and ozone (03).

Part D of the Act, which was added by the 1977 Amendments, requires each State to revise its State Implementation Plan (SIP) to meet specific requirements for areas designated as nonattainment. These SIP revisions must demonstrate attainment of the primary standard as expeditiously as practicable, but not later than December 31, 1982. In certain circumstances an extension is provided to no later than December 31, 1987 for ozone and/or carbon monoxide.

The requirements for an approvable SIP are described in a Federal Register notice published April 4, 1979 (44 FR 20372). Supplements to the April 4, 1979 notice were published on July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979 (44 FR 53761), and November 23, 1979 (44 FR 67182).

An adequate State Implementation Plan for ozone requires sufficient controls on the emission of volatile organic compounds (VOC) from stationary and mobile sources to provide for the attainment of the standard by December 31, 1982. Except for the Steubenville area, the State of Ohio has relied exclusively on mobile source controls to provide for attainment of the carbon monoxide NAAQS. In cases where attainment of either the ozone or carbon monoxide NAAQS cannot be demonstrated by 1982, despite application of all reasonably available control measures, extensions of the attainment date may be granted to December 31, 1987. Pursuant to section 172(b)(11) of the Act, a SIP which provides for attainment of the ozone and/or carbon monoxide standard after December 31, 1982 must contain a specific schedule for the implementation of a vehicle emissions inspection and maintenance program (I/M) and establish a program which requires an analysis of alternative sites and locations prior to the issuance of any permit for construction or modification of a major VOC or carbon monoxide emitting facility in the nonattainment area.

On July 27, 1979 and September 13, 1979 the State of Ohio submitted revisions to its SIP for the pollutants carbon monoxide and ozone. Amendments to the submittals were transmitted by the State in December of 1979 and January of 1980. The July 27, 1979 submittal consisted of transportation control plans, and attainment and reasonable further progress (RFP) demonstrations for each of the following urban carbon monoxide and/or ozone nonattainment areas: Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Steubenville and Toledo. Revisions to the SIP for the Youngstown urban area were submitted separately. Final action on the Youngstown plan and for the rural ozone nonattainment areas is discussed in a separate notice appearing in today's Federal Register.

The transportation control plans (TCP) contain specific measures designed to reduce both carbon monoxide and hydrocarbon emissions from mobile sources. Some of the programs considered for implementation in the TCP are: Traffic flow improvements, transit improvements and vehicle inspection and maintenance (I/M) programs.

Along with the TCP, the State submitted attainment demonstrations for both pollutants (where necessary), for each of the urban areas. These attainment demonstrations contained inventories of the carbon monoxide and/or volatile organic compound (VOC) emissions occurring in the base year. Based on the base year emissions and on anticipated emission reductions due to the implementation of the proposed mobile and stationary source controls, an estimate was made of the effectiveness of the plan and the ability of the area to demonstrate attainment of the NAAQS for ozone and carbon monoxide by December 31, 1982.

For the urban areas of Cincinnati and Cleveland, attainment of the carbon monoxide and ozone NAAQS was not demonstrated by December 31, 1982. Therefore, the State requested an extension, and pursuant to the requirements of section 172 of the Clean Air Act (Act) submitted a vehicle I/M program.

The September 13, 1979 submittal contained revisions to Chapter 3745-21 of the Ohio Administrative Code (Chapter 3745-21). Chapter 3745-21 contains the State's regulations for controlling VOC and carbon monoxide emissions from stationary sources.

USEPA evaluated the transportation control plans and the attainment demonstrations using the requirements for an approvable nonattainment area SIP which appeared in the April 4, 1979 Federal Register (44 FR 20372), the "USEPA-USDOT Guidelines for Air-Quality Transportation Plans" and the Office of Transportation and Land Use Policy "Checklist for Transportation SIPs." USEPA evaluated the vehicle I/M program and the regulations controlling VOC and carbon monoxide emissions from stationary sources using the guidance materials referred to in the General Preamble for Proposed Rulemaking (44 FR 23072) and its supplements.

USEPA in the November 2, 1979 Federal Register (44 FR 63114) published a notice announcing receipt of the Ohio submittal. On March 10, 1980 (45 FR 15192) USEPA published a NPR with a notice of correction (NOC) published on April 4, 1979 (45 FR 22987). The NPR described the nature of the SIP revisions and specified portions of the SIP submittal which in USEPA's judgment did not comply with the requirements of the Act and needed either clarification or correction by the State.

Initially, a thirty day comment period was provided, until April 9, 1980. Upon request, this comment period was extended approximately two weeks until April 24, 1980 (45 FR 27787). Numerous individuals submitted comments on the Ohio submittal and on USEPA's proposed rulemaking action. The State of Ohio submitted comments, commitments and corrective information to USEPA on the following dates: April 7, 1980, April 15, 1980, April 24, 1980, April 28, 1980, May 27, 1980, July 23, 1980 and August 8, 1980. Significant comments and USEPA's response to them are discussed below.

In this Federal Register notice, public comments are addressed in two parts: (1) General comments on the Ohio SIP and on the criteria used by USEPA to evaluate all SIPs and (2) comments on specific portions of the Ohio submittal and/or on USEPA's evaluation of specific portions of the submittal. Comments from the second category will be discussed in one of the following three sections of this notice: (a) Transportation control plans (TCP) and attainment and reasonable further progress (RFP) demonstrations, (b) vehicle inspection and maintenance (I/M); or (c) control of Volatile Organic Compound (VOC) and carbon monoxide emissions from stationary sources. Each of these sections of the notice briefly identifies the deficiencies cited in the

NPR, discusses both the State's response and the response of other commentators, and contain USEPA's response to comments and its final determination on the particular revisions.

USEPA's final determinations take one of three forms: approval, conditional approval, or disapproval. A discussion of conditional approval and its practical effect appears in the July 2, 1979 **Federal Register** (44 FR 38583). A conditional approval requires the State to submit additional materials by the specified deadlines negotiated between the State and the USEPA Regional Office. Schedules submitted by Ohio will be proposed for public comment elsewhere in this **Federal Register**. Although public comment is solicited on the deadlines, and the deadlines may be changed in light of the comments, the State remains bound by its commitment to meet the proposed deadlines, unless they are changed. USEPA will follow the procedures described below when determining if requirements of conditional approval have been met.

1. When the State submits the required additional documentation, USEPA will publish a notice in the **Federal Register** announcing receipt and availability of the submission and that the conditional approval is continuing pending USEPA's final action on the submission.

2. USEPA will evaluate the State's submission and public comment on the submission to determine if noted deficiencies have been fully corrected. After review is complete, a **Federal Register** notice will either fully approve the plan if all conditions have been met, or withdraw the conditional approval and disapprove the plan. If the plan is disapproved the Section 110(a)(2)(I) restrictions on construction will be in effect.

3. If the State fails to submit the required materials according to the negotiated schedule, USEPA will publish a **Federal Register** notice shortly after the expiration of the time limit for submission. The notice will announce that the conditional approval is withdrawn, the SIP is disapproved, and the Section 110(a)(2)(I) restrictions on growth are in effect.

The following chart summarizes the actions taken by USEPA today on the Ohio submittal:

I. Approval

(a) Transportation Control Plan for the following areas:
(i) Akron (ozone component)
(ii) Canton
(iii) Cincinnati*
(iv) Columbus
(v) Dayton
(vi) Steubenville
(vii) Toledo (ozone component)
(viii) Cleveland*
(b) Carbon Monoxide Attainment Demonstrations for the following areas:
(i) Cincinnati*
(ii) Cleveland*
(iii) Columbus
(c) Carbon Monoxide RFP Demonstration for the following areas:
(i) Cincinnati*
(ii) Cleveland*
(iii) Columbus
(d) Ozone Attainment Demonstration for the following areas:
(i) Akron
(ii) Cincinnati*
(iii) Dayton
(iv) Toledo
(e) Ozone RFP Demonstration for the following areas:
(i) Akron
(ii) Canton
(iii) Cincinnati*
(iv) Cleveland*
(v) Columbus
(vi) Dayton
(vii) Toledo
(f) The following portions of Chapter 3745-21 (Control of VOC and carbon monoxide emissions from stationary sources) of the Ohio Administrative Code:
(i) Rule 01—Definitions
(ii) Rule 02—Ambient Air Quality Standards and Guidelines
(iii) Rule 03—Methods of Ambient Air Quality Measurement
(iv) Rule 04—Attainment Dates and Compliance Time Schedules—except for the compliance schedule contained in paragraph (C)(18) as it applies to sources covered by old rule 3745-21-04(C)(1)
(v) Rule 05—Nondegradation Policy
(vi) Rule 06—Classification of Regions
(vii) Rule 07—Control of Emissions of Organic Materials from Stationary Sources
(viii) Rule 08—Control of Carbon Monoxide Emissions from Stationary Sources
(ix) Rule 09—Control of Organic Compounds from Stationary Sources—except for paragraphs (M)(2) and (R).
(x) Rule 10—Compliance Test Methods and Procedures.

2. Conditional Approval

(a) Carbon Monoxide Attainment Demonstration for:
(i) Dayton
(ii) Steubenville
(b) Carbon Monoxide RFP Demonstration for the following areas:
(i) Dayton
(ii) Steubenville
(c) Ozone Attainment Demonstration for the following areas:
(i) Canton
(ii) Cleveland [1]
(iii) Columbus
(d) Paragraph (M)(2) and (R) of rule 09 of Chapter 3745-21 of the Ohio Administrative Code (hereinafter referred to as Chapter 3745-21).

3. Disapproval

(a) Compliance schedule in paragraph (C)(18) of new rule 04 of Chapter 3745-21 as it applies to sources covered by old rule 3745-21-04(C)(1).

4. No Action Token [2]

(a) Carbon Monoxide Attainment and RFP Demonstrations for the following areas:
(i) Akron
(ii) Toledo
(b) Vehicle Inspection and Maintenance (I/M)

5. No Action Required

(a) Carbon Monoxide Attainment Demonstration and RFP Demonstration for:
(i) Canton
(b) Ozone Attainment Demonstration and RFP Demonstration for:
(i) Steubenville

I. National and General Comments on the Ohio SIP and USEPA Response

Comment: One commentator, a local environmental group, stated that USEPA lacked statutory authority to conditionally approve the Ohio SIP. The commentator further argued that conditional approval "negates the punitive weight" of the growth and funding restrictions of sections 110(a)(2)(I), 176(a) and 316 of the Act, 42 U.S.C. 7410 (a)(2)(I), 7506(a), 7616. The commentator also asserted that by alerting the public of its conditional approval policy only on November 23, 1979, USEPA arrived at this policy after the fact and merely as a means of political and administrative convenience.

USEPA Response: USEPA first announced its conditional approval policy on July 2, 1979, 44 FR 38583. On November 23, 1979, 44 FR 67182, USEPA announced the procedures it would follow for conditional approvals. In those publications, USEPA set out its position on conditional approval. In brief, USEPA believes that where a SIP substantially complies with the requirements of Section 172(b), USEPA has inherent authority to approve a SIP on the condition that the State corrects the remaining relatively minor deficiencies in a short period of time. The only available alternative would be to disapprove the SIP and thus invoke the construction moratorium. Contrary to the commentator's claim, the construction moratorium was designed by Congress to protect air quality when the state lacks a plan that adequately assures attainment and maintenance of ambient standards. That purpose would not be served when the State plan substantially assures attainment and when the remaining deficiencies will be promptly corrected. Moreover, USEPA is precluded from imposing funding restrictions under Section 176(a) under these circumstances, since the State clearly would have made "reasonable efforts" to submit an approvable Part D SIP. USEPA therefore interprets the Act to permit a conditional approval under these circumstances. In addition, conditional approval is consistent with Section 110(c)(1)(C). That subsection requires the Administrator to promulgate regulations for a state if "the state fails, within 60 days after notification by the Administrator or such later period as he may prescribe, to revise an implementation plan as required pursuant to a provision of its plan referred to in subsection (a)(2)(H)." When the Administrator grants conditional approval, he is essentially notifying the State that further revisions are required to make the plan or regulations fully approvable. If the State fails to satisfy the Administrator's conditions, the Administrator will disapprove the plan or regulations and may then promulgate regulations to correct the deficiency. The State is simply offered the option of correcting the inadequacies itself.

Finally, the commentator is incorrect in maintaining that USEPA's conditional approval policy contradicts its notices of September 17, 1979 (44 FR 53761) and April 4, 1979 (44 FR 20372). The quoted parts of those notices referred to different issues than those raised by conditional approvals, since they concerned the final approvability of the SIP. Moreover, USEPA clearly stated its conditional approval policy on July 2, 1979 and November 23, 1979, in a manner designated to harmonize with the other **Federal Register** notices setting out USEPA's guidance for approving Part D SIPs.

Comment: The same environmental group submitted comments on the adequacy of the techniques utilized in demonstrating attainment in the urban areas and on the adequacy of the procedures utilized by the State when they adopted their standards.

In reference to the last point, the commentator believes that adoption of SIP elements one at at time, with separate, noncumulative comment period prevented the public's ability to utilize a holistic approach to critique the overall control strategy. In reference to the attainment demonstrations, the commentator contends that the Ohio EPA failed to provide the local planning agencies with updated emissions inventories and failed to submit a current emissions inventory with the July 27, 1979 submittal. Furthermore, the commentator objects to using the 1975 emissions inventory as the base year for formulating the SIP. Finally, the commentator strongly objected to the use of the linear rollback method which was used in certain urban areas, for determining the percent reduction of VOC emissions necessary to achieve the NAAQS.

USEPA Response: USEPA has reviewed these issues and has determined that the State and local agencies have complied with the requirements of the Act. In particular, when adopting the carbon monoxide and ozone SIP elements, the State in every case provided for adequate public notice prior to convening and hearings on all elements of the SIP revisions. USEPA has also determined that the Ohio EPA either directly or indirectly supplied the local planning agencies with an updated emissions inventory. The emissions inventory used for the base year (1975) was consistent with USEPA guidance as outlined in "Requirements for Nonattainment Area Plans," and adequately reflects the emissions corresponding to the air quality data used in the specific attainment demonstrations. Furthermore, these inventories are updated annually thereby satisfying the requirements of Section 172(b)(4) of the Act.

Finally, linear or proportional rollback is one of the four analytical techniques approved by USEPA for use in determining the amount of hydrocarbon reductions necessary to demonstrate attainment of the ozone NAAQS. It was the responsibility of the State and/or local agencies to determine which specific method was to be used. In a number of areas the local agencies utilized the linear rollback approach. USEPA review of each urban area's individual calculation has indicated that they are correct and acceptable.

Comment: One commentator submitted extensive national comments and requested that the comments be considered part of the record for each State plan.

USEPA Response: Although some of the issues are not relevant to provisions in Ohio's submission USEPA notified the public of its response to these comments at 45 FR 11472, 11474 (February 21, 1980).

II. Comments on Specific Portions of the Ohio Submittal and USEPA Response

A. TCP and Attainment and RFP Demonstrations, Akron Urban Area

Summit and Portage Counties, Ohio are designated as nonattainment areas for ozone. Summit County is also a designated carbon monoxide nonattainment area. The control strategy developed for these areas demonstrate attainment of both the ozone and carbon monoxide NAAQS by December 31, 1982.

In the March 10, 1980 **Federal Register** (45 FR 15195) USEPA indicated that the transportation control plan and attainment demonstrations (ozone and carbon monoxide) for the Akron urban area satisfied all of the requirements for an approvable nonattainment area SIP. USEPA did, however, identify one deficiency in both the ozone and carbon monoxide reasonable further progress demonstrations.

On March 21, 1980 the State submitted to USEPA a request to redesignate Summit County as an attainment area for carbon monoxide. This request was made pursuant to section 107 of the Act. The request was based on three years (1977-1979) of monitoring data in Summit County which indicated that during these years there were no violations of the carbon monoxide NAAQS. Under such conditions, providing the State has satisfied USEPA's carbon monoxide monitoring requirements, USEPA may approve the redesignation request. If the request is approved and this area is redesignated

[1] The plans submitted for these areas do not predict attainment of the carbon monoxide and/or ozone NAAQS by 1982. Therefore, to have a fully approvable nonattainment area plan for these areas the State must satisfy the requirements of sections 172(b)(11) (A), (B) and (C).

[2] The Akron, Toledo and I/M portions of this notice contain a discussion of the effects of the growth restrictions imposed by section 110(a)(2)(I) of the Act, as a result of this action.

USEPA has determined that good cause exists for making these revisions immediately effective. By making this final rulemaking immediately effective, the restrictions on industrial growth contained in section 110(a)(2)(I) of the Act could be lifted in some areas of the State of Ohio if all other requirements are met. These restrictions are imposed for a failure to have a State Implementation Plan which meets the requirements of Part D after the final date for SIP approval specified in the Act. USEPA has determined that for several areas in the State, the Ohio carbon monoxide and ozone State implementation Plan revisions meet the requirements of Part D. Therefore, it would be contrary to the public interest to continue for thirty days after the publication of this notice the restrictions on industrial growth for certain sources located within or desiring to locate within these carbon monoxide and/or ozone nonattainment areas.

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as either attainment or unclassifiable, the State would no longer be required to implement the measures proposed on July 27, 1979.

USEPA has evaluated the redesignation request and has proposed rulemaking on it in the October 17, 1980 **Federal Register**. Since there exists the possibility that the measures for carbon monoxide attainment proposed for the Akron urban area in the plan submitted on July 27, 1979 may not be necessary, USEPA is presently postponing final rulemaking action on the carbon monoxide portions of that submittal. Additionally, public comments received in response to the carbon monoxide portion of the plan and to USEPA's proposed action on it, will not be addressed in this notice. Those public comments will be discussed along with any final rulemaking taken in the future on the carbon monoxide component of the plan.

It should be noted that for major stationary sources of carbon monoxide located within, or desiring to locate within, this carbon monoxide nonattainment area, the growth restriction imposed by section 110(a)(2)(I) will remain in effect until either (1) USEPA takes final action to redesignate the area to attainment or unclassifiable or (2) USEPA takes final action on this portion of the plan, if the area is not redesignated.

For Akron, USEPA approves the ozone component of the TCP and the ozone attainment demonstration. Discussed below is the State's response to the deficiency noted in the ozone RFP demonstration.

Ozone RFP Demonstration: The ozone RFP line developed for the Akron area used 1975 VOC emissions data as a starting point for its RFP demonstration but chose a design value based on 1976 air quality. USEPA indicated in the March 10, 1980 **Federal Register** (45 FR 15196) that without documentation supporting the assumption that 1975 VOC emissions were equal to 1976 VOC emissions it would be incorrect to use 1975 VOC emissions with 1976 air quality data. USEPA requested either documentation supporting the emissions assumption or adjustment of the 1975 baseline VOC emissions to coincide with the VOC emission levels in 1976.

State Response: The State responded that prior to 1976, air quality data was not available for the Akron area. Furthermore, the State indicated that the 1976 emission levels were similar to the 1975 baseline emission levels. The State indicated that the 1975 emissions baseline was chosen for the following reasons: (a) The latest VOC point source and area source inventories were for 1975, (b) VOC emissions were nearly equivalent in 1975, 1976 and 1977.

USEPA Response and Final Determination: USEPA has reviewed the information supplied by the State and has determined that the State has adequately demonstrated that the 1976 VOC emission levels were similar to the 1975 baseline emission levels. Therefore, USEPA approves the ozone RFP demonstration originally submitted for the Akron area.

Canton Urban Area

Stark County, Ohio is a designated nonattainment area for ozone. The control strategy developed for the area demonstrates attainment of the ozone NAAQS by December 31, 1982.

In the March 10, 1980 **Federal Register** (45 FR 15195) USEPA indicated that the transportation control plan for the Canton urban area satisfied all of the requirements for an approvable nonattainment area SIP. During the public comment period USEPA did not receive any comments on either the transportation control plan or on USEPA's proposed approval. Therefore, USEPA approves the Canton urban area transportation control plan.

USEPA did, however, identify one deficiency in the ozone attainment and RFP demonstrations. As described below, the State has committed to resolve the deficiencies by a specified date.

Emission Reduction Estimates: In the ozone attainment demonstration a 100% reduction in VOC emissions from the cutback asphalt category was predicted to occur by December 31, 1982. In the March 10, 1980 **Federal Register** USEPA questioned the accuracy of this prediction given the possible continued usage in certain circumstances of cutback asphalt in 1982. Therefore, USEPA requested either technical support for this emission reduction estimate or a re-evaluation of the baseline emissions to account for the possible VOC emissions resulting from this category.

State Response: The State indicated that they will conduct a survey on anticipated usage of cutback asphalt for the April–October period.

In a letter dated April 24, 1980 the State indicated that the results of the survey, along with any needed adjustments for the SIP baseline and/or strategy could be submitted by August 1, 1980. In subsequent conversations with the State it was determined, however, that due to limited staff resources the study and any needed additional time to submit the study and any needed adjustments. On August 6, 1980 the State in a letter from James F. McAvoy committed itself to submit the above mentioned material by August 1, 1981.

USEPA Response and Final Determination: USEPA believes that both the State's commitment and schedule as contained in the August 6, 1980 letter, to provide the results of the survey and any needed adjustments are acceptable. Therefore, USEPA approves the Canton urban area ozone attainment demonstration provided the State submits the above mentioned material by August 1, 1981. A notice soliciting public comment on the acceptability of this date appears elsewhere in today's **Federal Register**.

Demonstration of Ozone RFP: The ozone RFP line developed for the Canton area used 1975 VOC emission data as a starting point for its RFP demonstration but chose a design value based on 1977 air quality. USEPA indicated in the March 10, 1980 **Federal Register** (45 FR 15196) that without documentation supporting the assumption that 1975 VOC emissions were equal to 1977 VOC emissions it would be incorrect to use 1975 VOC emissions with 1977 air quality data. USEPA requested either documentation supporting the emissions assumption or adjustment of the 1975 baseline VOC emissions to coincide with the VOC emission levels in 1977.

State Response: The State responded that, as in the case of Akron: (a) Prior to 1976 air quality data was not available for the Canton area, (b) the latest VOC point source and area source inventories were developed in 1975 and (c) 1975 emission levels were similar to 1977 emission levels.

However, to account for the shorter timeframe (five years from 1977–1982 as opposed to seven years from 1975–1982) for the RFP demonstration and to account for any revisions made in the attainment demonstration due to the cutback asphalt survey the State has committed itself to submitting a revised ozone RFP line by August 1, 1981.

USEPA Response and Final Determination: USEPA believes that both the State's commitment and schedule to submit the revised ozone RFP demonstration line are acceptable. Therefore, USEPA approves the ozone RFP demonstration for the Canton urban area provided that the State submit the revised ozone RFP demonstration line to USEPA by August 1, 1981. A notice soliciting public comment on the acceptability of this date appears elsewhere in today's **Federal Register**.

Cincinnati Urban Area

Butler, Clermont, Hamilton and Warren Counties, Ohio and Boone, Campbell and Kenton Counties, Kentucky are designated as nonattainment areas for ozone. Hamilton County is also designated as a nonattainment area for carbon monoxide. The control strategy developed for the Ohio counties does not predict attainment of either the ozone or carbon monoxide NAAQS by December 31, 1982. Attainment is predicted, however, by 1985 for ozone and 1987 for carbon monoxide.

According to section 172(a)(2) of the Act for those nonattainment areas which cannot demonstrate attainment of either the carbon monoxide and/or ozone NAAQS by December 31, 1982, the State may request an extension to show attainment, as expeditiously as possible, but no later than December 31, 1987. When requesting such an extension, section 172(b)(11) of the Act requires that the plan developed for the area must include the implementation of certain additional measures. The additional measures required are: (1) The development, adoption and implementation of a vehicle I/M program, (2) the establishment of a program for the analysis of alternatives for those sources proposing to locate in the area, and (3) the identification of other measures necessary to provide for attainment of the NAAQS by December 31, 1987.

In the March 10, 1980 **Federal Register** USEPA proposed approval of the transportation control plan, the ozone and carbon monoxide attainment demonstrations and the ozone RFP demonstrations. USEPA also proposed to approve the carbon monoxide RFP demonstration provided that prior to final rulemaking the State correct or commit to correct by an acceptable date the deficiency noted.

At that time USEPA proposed to disapprove the I/M program submitted (a discussion of USEPA's action on the I/M program is contained in a separate section of this notice). USEPA also indicated that rulemaking action on the program for the analysis of alternatives sites for sources proposing to locate in the area was to be published in a separate **Federal Register** since the State was at that time developing the program and intended to submit it as part of their New Source Review (NSR) SIP revision. USEPA's proposed rulemaking on the NSR SIP revision is detailed in the August 26, 1980 **Federal Register**. Final rulemaking on the NSR SIP revision appears in a separate notice published in today's **Federal Register**.

In addition to the State's response to the NPR USEPA received three public comments. Summarized below are the significant issues raised by the commentors, the deficiency noted in the NPR, the State's response to USEPA's proposed action, USEPA's response to the commentors and the State, and USEPA's final rulemaking action.

Demonstration of carbon monoxide RFP: The plan developed for the Cincinnati area did not contain an RFP demonstration line for carbon monoxide.

State Response: The April 24, 1980 correspondence from James F. McAvoy contains an RFP demonstration line which graphically displays the annual incremental reductions in total carbon monoxide emissions for the area. The average reduction demonstrated is approximately 35,000 tons per year (tpy).

It should also be noted that in the April 24, 1980 correspondence the Ohio EPA indicated that the program for the development of the analysis of alternative sites and the identification of additional measures to provide for attainment of the NAAQS in the area by December 31, 1987 would be addressed in a separate communication. USEPA's proposed rulemaking action is discussed in the August 26, 1980 **Federal Register**.

USEPA Response: USEPA has reviewed the carbon monxide RFP demonstration line submitted and has determined that it is consistent with the attainment demonstration and, therefore, approvable.

Public Comment: One commentor indicated that, even though the plan submitted for the Cincinnati area listed the Transportation Control Measures (TCM) implemented during 1975–1978, the plan did not quantify the air quality improvements that were realized as a result of the implementation of these TCM.

USEPA Response: The plan contains a table of the TCM implemented and their associated emission reduction estimates. Some of the TCM listed have no quantifiable emission reduction estimates associated with their implementation. These TCM, however, do have a positive impact on the air quality. The plan does state in the narrative (p. 7–10 of section 7.1.2) adequate justification for the absence of any estimated emission reductions from these TCM.

Public Comment: Another commentor questioned why two deficiencies cited in the Kentucky SIP developed by Ohio-Kentucky-Indiana (OKI) Regional Counsel of Governments for Boone, Campbell and Kenton Counties, Kentucky were not cited as deficient in the Ohio submittal. The commentor noted that "* * * specifically, (1) a commitment from the proper agencies to the implementation of TCM identified in the 1979 Transportation Improvement Program Annual Element (TIP/AE) (as examples, agencies currently uncommitted are Ohio Department of Transportation (DOT) and Southeast Ohio Regional Transit Authority (SORTA), and (2) limiting the TCM submitted to those with long-term as well as short-term air quality benefits."

USEPA Response: The plan developed by OKI for the Ohio portion of the Cincinnati urban area contains a resolution adopted by OKI's Executive Committee on March 8, 1979. The resolution commits the members of the Committee to achieve specific annual emission reduction targets which will ensure attainment of the NAAQS. The concurrence of the Ohio DOT, a member of the Committee, and SORTA, an ex-officio member of the Committee, indicates their commitment to cooperate in the transportation-air quality planning process and to implement the TCM necessary to achieve the annual emission reduction targets which would ensure attainment of the NAAQS.

In response to the second issue raised by this commentor it should be noted that the submittal contains a list (table 7–4) of TCM which have been recommended for implementation during 1980–1983. Some of the measures are expected to achieve specific emission reduction goals and thus to have long-term as well as short-term air quality benefits.

Public Comment: When commenting on the I/M program for the area one commentor also raised an issue in reference to the monitoring conducted for the area. (The I/M comment will be discussed in a separate section of this notice.) The commentor believed that the monitoring data taken from two of the five monitors in the area should not be accepted. The commentor stated that one monitor is located adjacent to a parking area and the other is too close to a widely travelled highway.

USEPA Response: USEPA policy states that carbon monoxide monitors are to be located in areas that are accessible to the public. Additionally, the citing of carbon monxide monitors depends on the area's wind direction, topography and traffic patterns. Under certain circumstances the data received from monitors located near parking areas and heavily travelled roadways yield a more accurate picture of the carbon monoxide levels in the area. USEPA has checked the location of the two monitors mentioned above and has determined that they are appropriately located.

Public Comment: One commentor stated that in the plan developed for the Cincinnati area, the RFP demonstrations do not show annual incremental

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reductions as required by section 172(b)(3).

USEPA Response: In the NPR USEPA noted that the carbon monoxide RFP demonstration was not submitted. As stated earlier, on April 24, 1980 the State submitted an acceptable RFP demonstration to ensure attainment of the carbon monoxide NAAQS. Additionally, in the July 27, 1979 submittal (Appendix 9) the State submitted an acceptable ozone RFP demonstration which showed annual incremental reductions in VOC emissions.

USEPA Final Determination: USEPA has reviewed the State's response to the deficiency previously noted in the Cincinnati plan and has determined that the State has adequately corrected that deficiency. Additionally, USEPA has determined that none of the public comments received has provided an adequate reason for USEPA to change its initial findings. Therefore, USEPA approves the transportation control plan, and the carbon monoxide and ozone attainment and REP demonstrations for the Cincinnati area.

It should be noted, however, that even though USEPA has approved the above cited individual elements of the Cincinnati plan, the State must satisfy the additional requirements of section 172(b)(11) of the Act. Until such time as USEPA approves the State's program to satisfy the section 172(b)(11) requirements, the growth restrictions of section 110(a)(2)(I) of the Act will be in effect in the Cincinnati urban area. Additionally, if the State fails to adequately address the additional 172(b)(11) requirements then the funding restrictions of section 176(a) and 316 of the Act may be imposed.

Cleveland Urban Area

Cuyahoga, Geauga, Lake, Lorain and Medina Counties are designated as nonattainment areas for ozone. Cuyahoga County is also designated as a nonattainment area for carbon monoxide. The control strategy developed for these counties does not predict attainment of either the ozone or carbon monoxide NAAQS by December 31, 1982.

According to section 172(a)(2) of the Act for those nonattainment areas which cannot demonstrate attainment of either the carbon monoxide and/or ozone NAAQS by December 31, 1982, the State may request an extension to show attainment as expeditiously as possible, but no later then December 31, 1987. When requesting such an extension, section 172(b)(11) of the Act requires that the plan developed for the area must include the implementation of certain additional measures. The additional measures required are: (1) The development, adoption, and implementation of a I/M program, (2) the establishment of a program for the analysis of alternatives for those sources proposing to locate in the area, and (3) the identification of other measures necessary to provide for attainment of the NAAQS by December 31, 1987.

In the March 10, 1980 **Federal Register** USEPA proposed approval of the transportation control plan, attainment and RFP demonstrations (ozone and carbon monoxide) developed for the Cleveland area, provided that prior to final rulemaking the State correct or commit to correct by an acceptable date the deficiencies noted. (USEPA noted a total of six deficiencies.) At that time USEPA proposed to disapprove the I/M program submitted (a discussion of USEPA's action of the I/M program is contained in a separate section of this notice.) USEPA also indicated that rulemaking action on the program for the analysis of alternative sites for sources proposing to locate in the area was to be published in a separate **Federal Register** since the State was, at that time, developing the program and intended to submit it as part of their New Source Review (NSR) SIP revision. USEPA's proposed rulemaking on the NSR SIP is detailed in the August 26, 1980 **Federal Register**. Final rulemaking on the NSR SIP revision appears in a separate notice published in today's **Federal Register**.

In addition to the State's response to the NPR, USEPA received two public comments. Summarized below are the significant issues raised by the commentors, the deficiencies noted in the NPR, the State's response to USEPA's proposed action, USEPA's response to commentors and the State, and USEPA's final rulemaking action.

Public Comment: One commentor believed that the plan submitted did not contain a complete travel forecasting methodology. The commentor felt that this work should be completed as soon as possible.

USEPA Response: The air quality-transportation planning process submitted by the Northeast Ohio Areaswide Coordinating Agency (NOACA), the lead local agency responsible for developing the Cleveland plan, contains provisions for the completion of the area's long range transportation plan during fiscal years 1981–83. A crucial precursor element in the development of the long range transportation plan is the development of an accurate travel forecasting methodology. Therefore, it is expected that the revised travel forecasting methodology will be completed by the end of fiscal year 1980 to allow for completion of the long range transportation plan during fiscal year 1981–1983.

Public Comment: In the March 10, 1980 **Federal Register** (45 FR 15198) the State is quoted as saying that "* * * Additional hydrocarbon area source controls (for the Cleveland area) will be evaluated and selected by NOACA." In an April 8, 1980 correspondence NOACA indicated that they had "* * * been given neither the responsibility for dealing with stationary sources, nor the funding to study them * * *. If, however, funds were made available to NOACA from another source for the purpose of studying area source controls, NOACA would be prepared to consider conducting such a study * * *."

USEPA Response: Representatives of USEPA, Ohio EPA and NOACA met on May 3, 1980. The purpose of that meeting was to resolve the issue raised above. As a result of that meeting and subsequent commitments, USEPA has agreed to provide NOACA with additional funds and guidance to initiate and complete the area source study. Accordingly, NOACA has agreed to conduct the study.

Carbon Monoxide RFP Demonstration: The plan submitted for the Cleveland area did not contain a carbon monoxide RFP demonstration line.

State Response: The State submitted on April 24, 1980 a carbon monoxide RFP demonstration. This line shows the annual incremental reductions in carbon monoxide necessary to ensure attainment of the NAAQS for carbon monoxide.

USEPA Response: USEPA has reviewed the carbon monoxide RFP demonstration line submitted by the State for the Cleveland area and has determined that it is acceptable.

Transportation Control Plan—Implementor Commitments: One of the requirements for an acceptable TCP is that it contain a commitment by the regional policy board to meet specific annual emission reduction goals. The Cleveland TCP contains commitments to meet annual VOC emission reduction goals. The TCP, however, does not specify what these annual goals are.

State Response: The State on April 24, 1980 indicated that if attainment of the ozone NAAQS is to be achieved by 1987, it would be necessary for the area to achieve an annual average BOC emission reduction of 9,764 tons per year.

USEPA Response: USEPA has reviewed the emission reduction calculation and has determined that if the area annually achieves that average amount of VOC emission reductions, attainment of the ozone NAAQS will be achieved by December 31, 1987. Therefore, the above noted figure is an acceptable emission reduction commitment.

Transportation Control Plans—Strategies Demonstrating Attainment: The Act requires that the TCP contain representative Transportation Systems Management (TSM)/SIP strategies. The list should include twelve representative strategies for each pollutant in the following categories: Projects to increase vehicle speed, projects to reduce congestion, projects to increase vehicle occupancy, and projects to improve mass transit.

Additionally, for each of these four categories, the submission must indicate the: Project title, description and location, project status, responsible agency, date of implementation, funding amounts and sources, and carbon monoxide and hydrocarbon emission reductions expected. The Cleveland TCP does not contain any of the above mentioned information.

State Response: In a letter dated July 23, 1980 the State submitted a list of representative TSM/SIP strategies.

USEPA Response: One July 23, 1980 USEPA received from the State a list of representative adopted TSM/SIP strategies. USEPA has received these strategies and has determined that the following are acceptable and satisfy the condition specified in the March 10, 1980 **Federal Register** (45 FR 15192).

Strategy	Implementor	Emission reduction
(1) Big Creek Bikeway	Cleveland Metropolitan Park District.	0.1 ton per year (tpy) hydrocarbon (HC) 1.34 tpy carbon monoxide (CO).
(2) Synchronization of traffic signals, Clifton Boulevard Lakewood, Ohio.	Ohio Department of Transportation/City of Lakewood.	31.9 tpy HC 405.66 tpy CO.
(3) New Bus Routes through Cuyahoga County	Greater Cleveland Regional Transit Authority.	292 tpy HC 4811 tpy CO.
(4) Traffic synchronization in North Olmstead and Wickliffe	City of North Olmstead and Wickliffe.	64.7 tpy HC 762.8 tpy CO.
(5) Areawide Car Pool Program	Northeast Ohio Areawide Coordinating Council.	354.7 tpy HC 48.9 tpy CO.

Ozone Attainment Demonstration—VOC Emissions Inventory: The VOC emissions inventory indicated that there were no VOC emissions in Medina County. This assumption was based on the fact that there are no stationary sources for which reasonable available control technologies apply in this county. USEPA noted that even though this assumption may be correct, there is still the possibility of VOC emissions from other sources (i.e., usage of cutback asphalt). Therefore USEPA requested either technical documentation supporting the zero emission assumption or a reevaluation and adjustment of the emissions inventory to include VOC emissions from these other sources. It was also noted that any adjustment in the inventory could possibly require an adjustment in the ozone RFP and attainment demonstrations.

State Response: The State agrees that there are likely to be VOC emissions in the County in 1982 and 1987 from the cutback asphalt and gasoline marketing categories. The State estimates that there will be approximately 307 tons of VOC emissions per year in 1982 and 96 tons of VOC emissions per year in 1987 from the two categories. To account for these increased emissions the State revised their ozone RFP demonstration for the Cleveland area. Additionally, the State indicated that the development and implementation of additional mobile stationary source measures, already committed to by the State, will account for any negative impact which these VOC emissions may have on the ozone attainment demonstration.

USEPA Response: USEPA has reviewed the State's response and concurs with the revised inventory which includes VOC emissions from the cutback asphalt and gasoline marketing categories. Furthermore, the revised RFP demonstration is acceptable.

Ozone Attainment Demonstration—Emission Reduction Estimates: In the ozone attainment demonstration a 100% reduction in VOC emissions from the cutback asphalt category was predicted to occur by December 31, 1982. In the March 10, 1980 **Federal Register** USEPA questioned the accuracy of this prediction given the possible continued usage, in certain circumstances, of cutback asphalt. Therefore, USEPA requested either technical support for this emission reduction estimate or a re-evaluation of the baseline emissions to account for the possible VOC emissions resulting from this category.

State Response: The State indicated that they will conduct a survey on the anticipated usage of cutback asphalt for the April-October period. In a letter dated April 24, 1980 the State indicated that the results of the survey could be submitted to USEPA by August 1, 1980. In subsequent conversations with the State it was determined that due to limited staff resources additional time would be needed. On August 6, 1980 the State, in a letter from James F. McAvoy committed to submit the above mentioned material/information by August 1, 1981.

USEPA Response: USEPA believes that both the State's commitment and schedule, as contained in the August 6, 1980 letter are acceptable.

A notice soliciting public comment on the acceptability of the August 1, 1981 date for submittal of the results of the survey appears elsewhere in today's **Federal Register**.

Ozone Attainment Demonstrations: The plan submitted on July 27, 1979 for the Cleveland Metropolitan Area does not predict that a sufficient reduction in hydrocarbon emissions will occur to ensure attainment of the ozone NAAQS by December 31, 1987. However, in a letter dated December 28, 1979 from Mr. James F. McAvoy to Mr. John McGuire, the Ohio EPA has made a commitment to assure attainment of the ozone standard in Cleveland by 1987. Mr. McAvoy stated in the letter that "In a coordinated effort to assure attainment, additional point source hydrocarbon reductions (VOC) will be developed by Ohio EPA, and additional transportation measures will be implemented through NOACA's transportation planning process. Additional hydrocarbon (VOC) area source controls will be evaluated and selected by NOACA."

USEPA stated in the NPR that it believed that the additional reductions in hydrocarbon emissions necessary to demonstrate attainment of the ozone NAAQS in Cleveland could be achieved by December 31, 1987. Furthermore, USEPA concurred with the approach outlined in the December 28, 1979, McAvoy letter.

USEPA proposed to approve the Cleveland attainment demonstration if the State submitted the following:

a. A list of the additional TSM strategies to be implemented which, in conjunction with the additional point source regulations, will demonstrate attainment of the ozone NAAQS; and

b. A schedule which delineates the dates on which the additional point

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source controls will be developed and implemented.

Alternatively, USEPA proposed to approve the attainment demonstration if the appropriate State official provided USEPA with assurances that the above noted corrective materials would be submitted to USEPA on a negotiated date.

State Response: James F. McAvoy, in his April 24, 1980 letter committed to submitting the above noted list and schedule to USEPA by November 1, 1980.

USEPA Response: USEPA believes that both the State's commitment and date for submittal of the additional information are acceptable. A notice soliciting public comment on the acceptability of the November 1, 1980 date appears elsewhere in today's **Federal Register.**

USEPA Final Determination: USEPA has reviewed the State's response to the deficiencies previously noted in the Cleveland plan, and has determined that the State has adequately corrected and/or committed to correct the deficiencies noted. Additionally, USEPA has reviewed the public comments received and has determined that none of the public comments has provided an adequate reason for USEPA to change its initial findings. Therefore, USEPA approves the ozone and carbon monoxide RFP demonstrations, the carbon monoxide attainment demonstration and the transportation control plan. USEPA approves the ozone attainment demonstration on the condition that the State submit: (1) The revised VOC emission reduction estimates by August 1, 1981 and (2) the list of additional TSM strategies and point source regulations to be implemented along with the schedule for the development of the point source regulations by November 1, 1980. A notice soliciting public comment on the acceptability of these dates appears elsewhere in today's **Federal Register.**

It should be noted, however, that even though USEPA has approved of and/or conditionally approved the above mentioned individual elements of the Cleveland plan, the State must satisfy the additional requirements of section 172(b)(11) of the Act. Until such time as USEPA approves or conditionally approves the State's programs to satisfy the section 172(b)(11) requirements, the growth restrictions of section 110(a)(2)(I) of the Act will be in effect in the Cleveland urban area. Additionally, if the State fails to adequately address the additional 172(b)(11) requirements then the funding restrictions of section 176(a) and 316 of the Act may be imposed.

Columbus Urban Area

Franklin County is a designated nonattainment area for ozone and carbon monoxide. The control strategy developed for the area demonstrates attainment of both the carbon monoxide and ozone NAAQS by December 31, 1982. In the March 10, 1980 **Federal Register** USEPA proposed approval of the transportation control plan, and the carbon monoxide attainment demonstration and the ozone and carbon monoxide RFP demonstrations developed for the Columbus urban area. Additionally, USEPA proposed to approve the ozone attainment demonstration provided that the State prior to final rulemaking correct or commit to correct by an acceptable date the deficiency noted. During the public comment period the only response received was from the State. Summarized below is the deficiency noted in the NPR, the State's response and USEPA's response and final determination.

Ozone Attainment Demonstration—Emission Reduction Estimates: In the ozone attainment demonstration a 100% reduction in VOC emissions from the cutback asphalt category was predicted to occur by December 31, 1982. In the March 10, 1980 **Federal Register** USEPA questioned the accuracy of this prediction given the possible continued usage, in certain circumstances, of cutback asphalt. USEPA requested either technical support for this emission reduction estimate or a re-evaluation of the baseline emissions to account for the VOC emissions resulting from this category.

State Response: The State indicated that they will conduct a survey on anticipated annual usage of cutback asphalt for the April-October period. In a letter dated April 24, 1980, the State indicated that the results of the survey could be submitted to USEPA by August 1, 1980. In subsequent conversations with the State it was determined that due to limited staff resources additional time would be needed. On August 6, 1980 the State, in a letter from James F. McAvoy committed to submit the above mentioned material and information by August 1, 1981.

USEPA Response and Final Determination: USEPA has reviewed the State's response to the deficiency previously noted in the Columbus ozone attainment demonstration, and has determined that the State has adequately committed to correct this deficiency. No public comments were received on the Columbus plan. Therefore, USEPA approves the transportation control plan, the ozone and carbon monoxide RFP demonstrations and the carbon monoxide attainment demonstration. Additionally, USEPA approves the ozone attainment demonstration on the condition that the State submit the information requested to justify the 100% VOC reduction estimate by August 1, 1981. A notice soliciting public comment on the acceptability of the scheduled date appears elsewhere in today's **Federal Register.**

Dayton Urban Area

Montgomery, Greene, Clark, Darke, Miami and Preble Counties are designated as nonattainment areas for ozone. Additionally, Montgomery County is designated as nonattainment for carbon monoxide. The plan developed for these areas demonstrates attainment of the ozone NAAQS by December 31, 1982 and commits to implementing additional measures to ensure attainment of the carbon monoxide NAAQS by December 31, 1982. In the March 10, 1980 **Federal Register** USEPA proposed approval of the transportation control plan and ozone attainment and RFP demonstrations. Additionally, USEPA proposed to approve the carbon monoxide attainment and RFP demonstrations provided that prior to final rulemaking the State corrected or commit to correct by an acceptable date the deficiencies noted. During the public comment period USEPA received comments from the metropolitan lead local planning agency and the State. Summarized below are the significant issues raised by the commentors, the deficiencies noted in the NPR, the State's response to USEPA's proposed action, USEPA's response to commentors, and USEPA's final rulemaking action.

Public Comment: The lead local planning agency stated in a letter its approval and support of the effort being made to ensure attainment of the carbon monoxide NAAQS in Dayton by December 31, 1982. The planning agency, however, expressed concern over the fact that the method being employed focused on reducing carbon monoxide emissions only at monitored "hot spot" locations. The planning agency believed that a better approach would be to model the area for the location of potential carbon monoxide hot spots. To verify the existence of these hot spots monitoring would be conducted of those areas identified in the modeling analysis as potential hot spots. Once these potential hot spots were verified, measures would be developed to eliminate them. The lead planning agency also indicated that certain portions of the table on page 15200 and 15201 of the March 10, 1980 **Federal Register** should be corrected as follows:

Strategy	Potential implementor	Emission reduction
Channelization of traffic	*Affected jurisdictions*	142 tons HC (also will reduce concentrations at various hot spots).
Bicycle paths and exclusive routes to Dayton CBD	Miami Conservancy District *and affected jurisdictions.*	52 tons HC combined with storage facilities.
Conversion of selected streets (Dayton CBD) to exclusive bus use.	City of Dayton	14 tons HC Dayton CBD (*strategy 9-12 combined*), 44 tons HC regional (*strategy 9-12 combined*).
Regulate number and price of public and private parking areas	City of Dayton *and affected jurisdictions.*	Same as above.
Favor short term parking rates over long term parking rates	City of Dayton *and affected jurisdictions.*	Same as above.
Develop parking surcharges and other forms of congestion pricing.	City of Dayton *and affected jurisdictions.*	Same as above.
Provide fringe and corridor parking	MVRTA, City of Dayton	10 tons HC (strategy 13-14).
Provide shuttle transit service from Dayton CBD to fringe parking	MVRTA	Same as above.
Public transit improvements	*Transit operations*	318 tons HC for all transit.

USEPA Response: The approach advocated by the lead planning agency goes beyond USEPA's requirements. USEPA policy for the 1979 SIP revisions requires only that an acceptable carbon monoxide attainment demonstration be based on monitored violations of the carbon monoxide NAAQS. As discussed below the State has adequately committed to remedy the monitored carbon monoxide problems and has, therefore, satisfied USEPA requirements.

In response to the planning agency's identification of errors in the table on pages 15200 and 15201 of the March 10, 1980 **Federal Register,** USEPA agrees with all of the corrections except for the strategy enumeration of the following:

Strategy	Potential implementor	Emission reduction
Conversion of selected streets (Dayton CBD) to exclusive bus use.	City of Dayton	14 tons HC Dayton CBD (strategy 8-11 combined) 144 tons HC regional (strategy *8-11* combined).
Provide fringe and corridor parking	MVRTA, City of Dayton	10 tons HC (strategy *12-13*).

Carbon Monoxide Attainment Demonstration: As stated earlier the original plan submitted on July 27, 1979 for the Dayton area did not predict attainment of the carbon monoxide NAAQS by December 31, 1982. However, in a letter dated January 14, 1980, the Ohio EPA stated that by remedying the carbon monoxide "hot spot" problems in the area, the appropriate reduction in carbon monoxide emissions would be achieved to assure attainment of the carbon monoxide NAAQS by 1982. Furthermore, it was stated in the letter that the Miami Valley Regional Planning Commission (MVRPC), the lead local planning agency would submit to the Ohio EPA (1) a list of the "hot spots" areas, and (2) a schedule for the study, evaluation and implementation of control measures for each "hot spot" to assure attainment of the carbon monoxide NAAQS by December 31, 1982.

The schedules (one for each "hot spot" intersection) were to be forwarded to Ohio EPA by March 1, 1980 and were to include interim milestones toward the implementation of each selected control measure along with commitments from the appropriate implementor(s).

In the March 10, 1980 **Federal Register,** USEPA stated its support of the efforts of the State to attain the carbon monoxide NAAQS as expeditiously as possible (in this case by 1982) and believed that through the implementation of the TSM/SIP strategies already scheduled for implementation and through the implementation of Reasonably Available Control Measures (RACM) for the "hot spot" areas, the carbon monoxide NAAQS could be attained by December 31, 1982. USEPA, however, requested the State to submit the following information:

(a) Technical monitoring and modelling data on all monitored violations.

(b) A list of the "hot spot" intersections in the Dayton area associated with the carbon monoxide nonattainment monitors.

(c) A description of each TSM measure implemented or adopted for implementation between 1979 through 1982 to eliminate the hotspot violations.

(d) A schedule developed for the study evaluation and implementation of control measures for each "hot spot" to assure attainment by 1982. The schedule is to specify the following: Submission of control plan; award of construction grants, initiation of on site construction, and final implementation of control measures (no later than 12/31/82).

(e) Evidence that MGTCC will provide priority funding to accomplish the tasks specified in item #4 above and will support the use of Federal transportation funds, if necessary.

Ohio EPA indicated that the above mentioned schedule and schedule items were to be submitted by MVPRC by July 1, 1980. In the NPR, USEPA stated that the Ohio EPA was to submit this information to USEPA within 30 days after receiving it from MVRPC. USEPA also noted that the control plan submission must include commitments from the appropriate implementor for each transportation control measure.

State Response: In a letter dated April 24, 1980 from Mr. James McAvoy, the State responded in the following manner to the information requested by the USEPA in the NPR:

(a) The modelling (proportional rollback) conducted indicated that a 56.7% reduction in carbon monoxide emission was necessary. The modelling used the design value of 23.1 mg/m/3/ which was obtained from carbon monoxide data obtained from the monitor located at 117 South Main Street.

(b) The "hot spot" intersection associated with the carbon monoxide nonattainment monitor is located at Fourth and Main Streets.

(c) A description of each TSM measure implemented or adopted for implementation between 1977 through 1982 to eliminate the "hot spot" violations are contained in Appendix 7D of Dayton's ozone/carbon monoxide SIP revision. Carbon monoxide reductions predicted through the implementation of these measures are included in the MVRPC FY 80 Transportation Improvement Program (TIP) (Section 2 and Appendix C). Also included in Appendix C of the TIP are the required

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resolutions of commitment from the responsible implementors.

(d) The schedule for the study, evaluation, and implementation of control measures at the identified "hot spot" (Fourth and Main Streets) will be completed by MVRPC and submitted to the Ohio EPA by October 1, 1980 and transmitted to USEPA 30 days later, November 1, 1980.

The State indicated that MVRPC could not be expected to commence work on obtaining the information until after publication of the NPR. The NPR was not published until March (three months after the original estimate was made). Therefore, it became necessary for MVRPC to revise their original estimate by three months. Additionally, the State indicated that the October 1, 1980 date will allow the MVRPC to revise their FY 81 Overall Work Program to address the required additional carbon monoxide hot spot analysis and selection of the appropriate control measures.

(e) The State will submit USEPA by November 1, 1980, evidence of priority funding, if proven to be necessary.

SEPA Response: The State has supplied sufficient information to satisfy points a, b, and c identified in the NPR. Additionally, the commitment by the State to submit the items specified in point "d", and if necessary in point "e", by November 1, 1980 (30 days after receipt from MVRPC) is acceptable. A notice soliciting comment on the acceptability of this date appears elsewhere in today's **Federal Register.**

Carbon Monoxide RFP Demonstration: In the NPR USEPA requested that the State submit an acceptable carbon monoxide RFP demonstration line for the area.

State Response: The State indicated in the April 24, 1980, James F. McAvoy letter that the carbon monoxide RFP demonstration would be a schedule of transportation control measures sufficient to demonstrate attainment by December 31, 1982, and would be submitted to USEPA on November 1, 1980.

USEPA Response: USEPA believes that the schedule of transportation control measures which will be submitted on November 1, 1980, will provide an adequate demonstration of RFP. Furthermore, USEPA finds the State's commitment to submit the information on November 1, 1980 as acceptable. A notice soliciting comment on the acceptability of this date appears elsewhere in today's **Federal Register.**

USEPA Final Determination: USEPA has reviewed the State's response to the deficiencies previously noted in the Dayton carbon monoxide attainment and RFP demonstrations and has determined that the State has adequately corrected and/or committed to correct these deficiencies. USEPA has reviewed the public comments received and has determined that none of the public comments has provided an adequate reason for USEPA to change its initial findings. Therefore, USEPA approves the transportation control plan and ozone attainment and RFP demonstrations.

Additionally, USEPA approves the carbon monoxide attainment and RFP demonstration on the condition that the State submit by November 1, 1980: (a) The schedule for the study, evaluation and implementation of control measures for the "hot spot" area, (b) evidence of priority funding, if proven necessary and (c) a revised carbon monoxide RFP demonstration. A notice soliciting public comment on the acceptability of this date appears elsewhere in today's **Federal Register.**

Steubenville Urban Area

Jefferson County is a designated nonattainment area for both ozone and carbon monoxide. Due to the population of the area (less than 200,000) a specific plan to demonstrate attainment of the ozone NAAQS is not required by USEPA policy. A plan, however, is required to demonstrate attainment of the carbon monoxide NAAQS.

The July 27, 1979 submittal for the Steubenville urban area relied exclusively on mobile source control to achieve attainment of the carbon monoxide NAAQS. This approach to reducing the carbon monoxide levels in the area was predicated on the assumption that the high carbon monoxide violations were the result of transportation related problems. However, a reanalysis by the State of the carbon monoxide data indicated that this assumption was incorrect. Consequently, implementation of only mobile source controls was not sufficient to ensure attainment of the carbon monoxide NAAQS by December 31, 1982.

To demonstrate attainment of the carbon monoxide NAAQS by December 31, 1982 the State of Ohio in a January 8, 1980, letter from James McAvoy, director, Ohio EPA, committed to conduct additional studies of the carbon monoxide violations in the Steubenville area and to determine the specific stationary sources of the carbon monoxide violations. As a result of these studies, the State would develop, if necessary, additional RACT regulations for the control and reduction of carbon monoxide from the stationary sources causing the problem in the area.

In the March 10, 1980 **Federal Register** USEPA proposed to approve the carbon monoxide attainment demonstration for the Steubenville area provided that the State: (1) Submit within one year after final rulemaking action has been taken on this SIP revision, an acceptable attainment demonstration which shows that the Steubenville area will meet the carbon monoxide NAAQS by December 31, 1982; and (2) adheres to the schedule contained in the January 8, 1980, letter from Mr. James McAvoy. The schedule is as follows:

a. January 2 to June 30, 1980 Ohio EPA will conduct a study to determine the cause of the carbon monoxide violations in Steubenville.

b. Regulations will be proposed by August 31, 1980 that require a RACT level of control for carbon monoxide sources that are contributing to the violation and/or other appropriate control strategies will be proposed.

c. December 31, 1980—RACT regulations will be effective.

d. December 31, 1982—Sources will be required to comply with RACT regulations as expeditiously as practicable but no later than December 31, 1982.

State Response: In a letter dated May 27, 1980, Mr. James McAvoy committed to submit within one year after publication of this notice an acceptable carbon monoxide attainment demonstration for the Steubenville area. Additionally, in the same correspondence, Mr. McAvoy repeated the State's January 8, 1980 commitment to have all sources identified as needing additional control in compliance with the new RACT regulations by December 31, 1982. In the May 27, 1980 letter as well as in an April 24, 1980 correspondence Mr. McAvoy indicated that the carbon monoxide study could be completed by November 1, 1980 with the regulations adopted and submitted to USEPA by August 1, 1981. On August 6, 1980 Mr. McAvoy reaffirmed the State's commitment to submit any necessary regulations by August 1, 1981. However, Mr. McAvoy indicated that an additional two months, until January 1, 1981, would be needed for the Ohio EPA to complete the carbon monoxide study. The additional time was needed due to the complexity of the problem, the modelling approach proposed for the area, and limited staff resources.

USEPA Response: USEPA finds acceptable the State's commitment to submit a revised carbon monoxide attainment demonstration for the Steubenville area by August 1, 1981. USEPA, also finds acceptable the State's commitment to have all sources identified as needing additional control in compliance by December 31, 1982. Given the complexity of the problem, USEPA recognizes the need for the State to have additional time to complete the study. Additionally, since the sources are still required to be in compliance by December 31, 1982 and since the additional time allocated to the interim increments of the schedule do not interfere with the compliance date, USEPA finds acceptable the January 1, 1981 date for completion of the carbon monoxide study and the August 1, 1981 date for the submittal of the necessary revised regulations.

Public Comment: One commentor noted some errors in the list on page 15202 of the March 10, 1980 **Federal Register.** This is a list of the areawide representative TSM/SIP strategies for carbon monoxide and hydrocarbon reductions to be implemented from 1979 to 1982. The commentor believes that the list should read as follows:

Improvement project	Implementor	Estimated year of completion	Estimated reduction
McLister Ave., Mingo Junction	ODOT	1975	1,856 gr/day in HC. 33,408 gr/day in CO.
Steubenville	ODOT	1976	16,127 gr/day in HC. 226,974 gr/day in CO.
Wayne Twp. Rd. 166A	*City of Mingo Junction*	1977	24 gr/day in HC. 300 gr/day in CO.
Ohio Route 7 Relocation	ODOT	1977	146,935 gr/day in HC. 1,804,703 gr/day in CO.
2nd St. Bridge, Dillonvale	Jefferson City	1978	15 gr/day in HC. 209 gr/day in CO.
CR 10 Harrison Co. to Adena SCL and Adena NCL to SR 152.	*ODOT*	1979	14,258 gr/day in HC. 160,398 gr/day in CO.
Sinclair Avenue, Steubenville	*Jefferson City*	1979	3,554 gr/day in HC. 45,934 gr/day in CO.
Benita Dr.-West Mingo Junction	Jefferson City	1979	2,551 gr/day in HC. 21,360 gr/day in CO.
Main Street, Toronto	*Jefferson County*	1979	2,557 gr/day in *CO.* 30,359 gr/day in *HC.*
U.S. 22 and SR 43, Wintersville	*ODOT*	1979	866,894 gr/day in *CO.* 71,391 gr/day in *HC.*
TR 181 CR 26 to Camp C. Ent. Road.	*ODOT*	1979	7,459 gr/day in *CO.* 953 gr/day in *HC.*
SR 150 .15 mi. E., TR 111	ODOT	1980	1,141 gr/day in *CO.* 100 gr/day in *HC.*
SR 150 .35 mi. W., CR 14	ODOT	1980	1,369 gr/day in *CO.* 119 gr/day in *HC.*
SR 150 at Rayland, WCL	ODOT	1980	2,578 gr/day in *CO.* 226 gr/day in *HC.*
Lovers Lane, Steubenville	*City of Steubenville*	1980	19,992 gr/day in *CO.* 1,999 gr/day in *HC.*
CR 34, SR 43 to U.S. 22	*Jefferson County*	1981	19,978 gr/day in *CO.* 1,665 gr/day in *HC.*
CR 69 Mingo Jct., NCL to CR 30	*Jefferson County*	1981	3,376 gr/day in *CO.* 253 gr/day in *HC.*
Steubenville, Weirton Bridge	*West Virginia Dept. of Hwys.*	1982	802,433 gr/day in *CO.* 16,644 gr/day in *HC.*
SR 152 .62 mi. S. of TR 241 to .27 mi. S. of SR 213.	*ODOT*	1982	34,088 gr/day in *CO.* 2,556 gr/day in *HC.*
SR 152 .2 mi. S. TR 611 to 1.07 mi. N. CR 56.	*ODOT*	1982	27,584 gr/day in *CO.* 1,971 gr/day in *HC.*

USEPA Response: USEPA has reviewed the revised list submitted by the commentor and concurs with it.

USEPA Final Determination: USEPA has determined that the State has adequately committed to correct the deficiencies noted and that none of the public comments has provided an adequate reason for USEPA to change its initial findings. Therefore, USEPA approves the transportation control plan developed for the area. Additionally, USEPA also approves the carbon monoxide RFP and attainment demonstrations provided that the State: (a) Submits an acceptable carbon monoxide attainment with an acceptable RFP demonstration by August 15, 1981 and (b) submits to USEPA by January 1, 1981 the results of the carbon monoxide study and by August 1, 1981 the necessary revised regulations. A notice soliciting public comment on the acceptability of the committed dates appears elsewhere in today's **Federal Register.**

Toledo Urban Area

Lucas and Wood Counties are designated as nonattainment areas for ozone. Additionally, based on monitored violations of the carbon monoxide NAAQS occurring in 1975, Lucas County was designated as a nonattainment area for carbon monoxide. The plan developed for these areas and submitted to USEPA on July 27, 1979 (with an addendum submitted on January 15, 1980) predicts attainment of the ozone NAAQS by December 31, 1982 and commits to implementing additional measures necessary to ensure attainment of the carbon monoxide NAAQS by December 31, 1982.

In the March 10, 1980 **Federal Register** USEPA proposed approval of the transportation control plan and the ozone attainment and RFP demonstrations. Additionally, USEPA proposed to approve the carbon monoxide attainment demonstration provided that prior to final rulemaking the State correct or commit to correct by an acceptable date the deficiency noted.

On March 21, 1980 the State submitted to USEPA a request to redesignate Lucas County as an attainment area for carbon monoxide. This request was made pursuant to section 107 of the Act. The request was based on three years (1977–1979) of monitoring data in Lucas County which indicated that during these years there were no violations of the carbon monoxide NAAQS. Under such conditions, providing the State has satisfied USEPA's carbon monoxide requirements, USEPA may approve the redesignation request. If the request is approved, and the area is redesignated as either attainment or unclassifiable, the State would no longer be required to implement the measures proposed on July 27, 1979.

USEPA has evaluated the redesignation request and has proposed rulemaking on it in the October 17, 1980 **Federal Register.** Since there exists the possibility that the measures proposed for carbon monoxide attainment in the plan submitted on July 27, 1979 (with an addendum submitted on January 15, 1980) may not be necessary for the Toledo urban area, USEPA is presently postponing final rulemaking action on the carbon monoxide portions of that submittal. Additionally, public comments received in response to the carbon monoxide portion of the plan and to USEPA's proposed action on it, will not be addressed in this notice. Those public comments will be discussed at the time final rulemaking action, if any, is taken on the carbon monoxide component of the plan.

It should be noted that for major stationary sources of carbon monoxide located within, or desiring to locate within, this carbon monoxide nonattainment area, the growth restriction imposed by section 110(a)(2)(I) will remain in effect until either (1) USEPA takes final action to

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redesignate the area to attainment or unclassifiable, or (2) USEPA takes final action on this portion of the plan, if the area is not redesignated.

For Toledo, this notice will only discuss USEPA's final rulemaking on the ozone component of the transportation control plan, the ozone attainment and RFP demonstrations and the public comments which pertain to these portions of the plan.

Public Comment: In response to the transportation control plan developed for the area, one commentor raised the following issues:

(a) The commentor believes that certain strategies (i.e., park and ride and fringe area parking lots) which were preliminarily rejected for study and implementation, should be considered at least for future study due to their possible low cost and high acceptability.

(b) The implementation of strategy 1, Improved Transit, calls for a 100% increase in bus miles to bring about a 50% increase in ridership. The commentor questions whether funding of the magnitude necessary to implement this strategy will be available during the period 1982–87. Furthermore, the commentor questions whether a local commitment of that magnitude could be made for those years, given current economic conditions in Toledo.

USEPA Response: (a) The Toledo plan states (page III–2) that the six strategies currently rejected, will be studied further, prior to July, 1980, as more information about each of them becomes available. Furthermore, it should be noted that the Toledo Metropolitan Area Council of Governments (TMACOG) has committed to study further all eighteen strategies listed in section 106(f)(1)(A) (of which park and ride and fringe area parking lots are included) of the Act. TMACOG has also committed in their FY 1981 Overall Work Program to conduct this project. (b) TMACOG is currently discussing with the local mass transit district the possible alternative methods for obtaining additional local financial resources to ensure that the 100% increase in service could be realized. Some of the options which the regional mass transit service has for raising additional funds to meet the 100% goal are (i) to increase ridership and therefore gross receipts through a more efficient and productive system, (ii) to increase fare price, or (iii) to request an additional tax levy.

Public Comment: As with the Cincinnati plan, one commentor noted that the Toledo plan does not contain RFP demonstrations which show annual incremental reduction in emissions.

USEPA Response: As discussed previously, this notice will only discuss the ozone component of the Toledo plan. Therefore, the carbon monoxide RFP demonstration will not be discussed at this time. For ozone, however, the Toledo plan does contain an acceptable RFP demonstration.

Public Comment: When reviewing the proposed action on the Toledo nonattainment area plan one commentor had a number of questions on the VOC emission reductions and ozone RFP demonstration. These questions were prompted by the March 14, 1980 **Federal Register** (45 FR 16503). In that **Federal Register** USEPA proposed to approve as a SIP revision, the commitment by the Ohio Department of Transportation (DOT) to reduce the use of cutback asphalt in Wood, Sandusky and Ottawa Counties by a sufficient amount to offset the VOC emissions expected from the new Pre-Finished Metals, Inc. metal coating plant located in Lake Township, Ohio. The commentors questions, as they apply to the Toledo urban area plan, are as follows:

(a) Was the application for the permit received prior to July 1, 1979, and was that permit fully completed (i.e., were specific trade-offs identified)?

(b) If the July 1, 1979 date was met and if the completed application was received in the period January 1–June 30, 1979, had the Governor of Ohio adopted and submitted a SIP to USEPA for which he could assess the emissions impact?

(c) Is this Pre-Finished Metals, Inc. proposal taking credit for an action proposed for approval by USEPA on March 10, 1980? Has the projected emissions decrease from the cutback asphalt prohibition been double counted in the SIP?

(d) Is there a demonstration that this action would not interfere with Reasonable Further Progress?

(e) Does the November 6, 1978 commitment for offset to Pre-Finished Metals have any SIP status and did it meet the proper procedural requirements for public comment, etc.?

(f) In April the 1978 "Workshop on Requirements for Nonattainment Area Plans" cutback asphalt was identified as an available RACT for nonattainment areas. Is an emissions offset as proposed allowable after the date that USEPA went on record as requiring RACT for all ozone nonattainment plans?

(g) In summation the commentor states that he believes the proposal for Pre-Finished Metals must be considered as part of the Toledo Urban Area SIP. As such it cannot be approved as a revision to the SIP prior until final approval of the SIP (Toledo Urban Area SIP) proper.

USEPA Response: (a & b) The fully completed permit for Pre-Finished Metals Inc. along with identifiable specific offsets was submitted to the Ohio EPA on November 13, 1978. On May 23, 1979, the Governor of Ohio submitted as a SIP revision the permit for Pre-Finished Metals to USEPA.

On July 27, 1979 (with supplements in September and December of 1979 and January of 1980) the Governor of Ohio submitted an adopted nonattainment area plan for the Toledo urban area. This plan contains an assessment of the total VOC emissions in the area.

(c) The State of Ohio has correctly accounted for the VOC emission reductions that are to occur both as a result of the permit for Pre-Finished Metals Inc. and as a result of the cutback asphalt prohibition. The projected emissions decrease from the cutback asphalt prohibition has not been counted twice nor has the Pre-Finished Metals proposal taken credit for an action proposed for approval by USEPA in the March 10, 1980 **Federal Register**.

(d) At the time of issuance of the permit an RFP demonstration was not required to be submitted. As stated earlier the ozone RFP demonstration submitted with the Toledo nonattainment demonstration shows annual incremental reductions in VOC emissions necessary to ensure attainment of the ozone NAAQS by 1982. Furthermore, since the decrease in VOC emissions anticipated from the Ohio DOT reduction in the usage of cutback asphalt in Wood, Sandusky and Ottawa Counties (165 tons per year) is greater than the anticipated VOC emissions from the new Pre-Finished Metals plant (138 tons per year) it is evident that the permit will not interfere with RFP but will contribute to the expeditious attainment of the ozone NAAQS.

(e) USEPA considers the Governor's submittal as a SIP revision and the November 6, 1978 letter from the Director of ODOT to the Director of OEPA to be a commitment which is sufficient to meet the requirements of Section V of the Interpretative Ruling. Additionally, the November 6, 1978 commitment was part of the overall Pre-Finished Metals permit considered at a public hearing held on March 13, 1979 in Ohio EPA's offices in Bowling Green, Ohio. This hearing was announced in local newspapers of general circulation a full thirty days prior to its occurrence. Therefore, USEPA believes that the State has met the proper procedural requirements for public comment.

(f) The Clean Air Act sets the baseline for emission offset calculations as the SIP requirements at the time of the permit application. Since there were no SIP limitations regarding the VOC emissions from the use of cutback asphalt in Wood, Sandusky and Ottawa Counties on the date that the Pre-Finished Metals application was submitted, all reductions of VOC in the three Counties resulting from the replacement of cutback asphalt with emulsified asphalt for certain applications are available as offsets.

(g) Both the Pre-Finished Metals permit and the nonattainment area plan for the Toledo urban area are revisions to the existing ozone SIP for Ohio. Therefore, even though VOC emissions from the new Pre-Finished Metals plant must be accurately accounted for in the urban nonattainment area plan, approval of the permit as a SIP revision is not contingent on approval of the Toledo nonattainment area plan. Therefore, its approval should not be considered as part of the Toledo urban area SIP revisions.

USEPA Final Determination: USEPA has reviewed the public comments received and has determined that none of the public comments has provided an adequate reason for USEPA to change its initial findings. Therefore, USEPA approves the ozone attainment and RFP demonstrations and the ozone component of the transportation control plan developed for the Toledo urban area.

Vehicle Inspection and Maintenance (I/M)

In the March 10, 1980 **Federal Register** (45 FR 15205) USEPA outlined deficiencies in the I/M program. USEPA noted that for all the States to have a fully approvable I/M SIP the States needed to correct all the deficiencies discussed. On April 24, 1980, the State of Ohio informed USEPA of the progress being made in adopting Senate Bill #240 (S.B. #240). Because of the present status of S.B. #240, USEPA, at this time, is not taking final action on the I/M program submitted by the State. Action on the I/M program will be published in a subsequent **Federal Register**. Until USEPA approves or conditionally approves the State's I/M program, the growth restrictions of section 110(a)(2)(I) of the Act will be in effect in the Cleveland and Cincinnati urban areas. Additionally, if the State fails to adequately address the additional 172(b)(11) requirements then the funding restrictions of section 176(a) and 316 of the Act may be imposed.

Hydrocarbon and Carbon Monoxide Emissions from Stationary Sources

Section 172(b)(2) of the Clean Air Act requires the application of reasonably available control technology to stationary sources of VOC emissions in nonattainment areas. USEPA has developed Control Techniques Guidelines (CTGs) which provide information on available air pollution control equipment and techniques. The CTGs also contain recommendations of what USEPA calls the "presumptive norm" for RACT.

Where state regulations are not supported by the information in the CTGs, the State must provide an adequate demonstration that its regulations represent RACT, or amend the regulations to be consistent with the information in the CTGs. An explanation of CTGs and their practical effect is contained in a September 17, 1979 supplement (44 FR 52761) to the General Preamble.

As noted in the General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas, (44 FR 20376) April 4, 1979, the minimum acceptable level of stationary source control for ozone SIPs, includes RACT requirements for VOC sources covered by the CTGs USEPA issued by January 1978 and schedules to adopt and submit by each future January additional RACT requirements for sources covered by CTGs issued by the previous January. The Ohio submittal includes a commitment from the State to adopt any additional rules representing RACT on stationary sources of VOC for which USEPA issues CTGs. The Administrator approves this commitment by the State as part of the federally approved Ohio State Implementation Plan.

The submittal date for the first set of additional RACT regulations was revised from January 1, 1980 to July 1, 1980 by the **Federal Register** notice of August 28, 1979 (44 FR 50371). Today's approval of the ozone portion of the Ohio plan is contingent on the submittal of the additional RACT regulations which are due by July 1, 1980 for CTGs published between January 1978 and January 1979.

In addition, by each subsequent January beginning January 1, 1981, RACT requirements must be adopted and submitted to USEPA. The above requirements are set forth in the "Approval Status" section of the final rule. If RACT requirements are not adopted and submitted to USEPA according to the time frame set forth in the rule, USEPA will promptly take appropriate remedial action.

Regulations for the control of VOC and carbon monoxide emissions from stationary sources are contained in revised Chapter 3745–21 of the Ohio Administrative Code (hereinafter referred to as Chapter 3745–21). Chapter 3745–21 contains 10 sections with each section containing numerous subsections. In the March 10, 1980 **Federal Register** (45 FR 15205) USEPA noted two areas of Chapter 3745–21 (subsections (M)(2) and (R)(3)(a) of rule 09) which in USEPA's judgment were deficient. USEPA proposed to approve these areas if the State corrected the deficiencies prior to final rulemaking or if the State made a commitment to correct the deficiencies on a date negotiated between the State and the USEPA. Additionally, USEPA proposed to disapprove the compliance schedule in new rule 04(C)(18) of Chapter 3745–21 as it applies to facilities presently covered by the compliance schedule in old rule 04(C)(1) of Chapter 3745–21. Except for the subsections noted above USEPA proposed to approve rules 01 (Definitions), 02 (Ambient Air Quality Standards and Guidelines), 03 (Methods of Ambient Air Quality Measurement), 04 (Attainment Dates and Compliance Time Schedules), 05 (Nondegradation Policy), 06 (Classification of Regions), 07 (Control of Emissions of Organic Materials from Stationary Sources), 08 (Control of Carbon Monoxide Emissions from Stationary Sources), 09 (Control of Organic Compounds from Stationary Sources), and 10 (Compliance Test Methods and Procedures) of Chapter 3745–21.

In the March 10, 1980 **Federal Register** USEPA noted that the Ohio regulations include a provision which exempts methylene chloride and methyl chloroform from control. The State has chosen to retain this provision. This volatile organic compound, while not appreciably affecting ambient ozone levels, is potentially harmful. Methylene chloride has been identified as mutagenic in bacterial and mammalian cell test systems, a circumstance which raises the possibility of human mutagenicity and/or carcinogenicity. As stated in the NPR USEPA will not disapprove the State's SIP submittal based on the inclusion of this exemption. USEPA, however, does not endorse or encourage the increased use of this compound or compliance by substitution. Furthermore, State officials and sources should be advised that there is a strong possibility of future regulatory action to control these compounds. Sources which choose to comply by substitution may well be required to control these compounds as

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a consequence of future regulatory actions.

It also should be noted that certain portions of the regulations allow for the Director of Ohio EPA to approve emission limitations different from the applicable limitation, to exempt certain emissions, or to approve alternate control technologies. As examples of this, rule 09(C)(3) of Chapter 3745–21 (for surface coating of automobiles and light duty trucks) and rule 09(D)(3)(a) of Chapter 3745–21 (for surface coating of cans) allow for the possibility of alternative emission limits and may even allow for a source to "bubble" its emissions. Any scheme designed to allow a source to operate under an alternate emission limitation, to exempt certain emissions or to allow an alternate control technology must be submitted to and approved by the USEPA as a SIP revision in accordance with section 110(a)(3)(A) of the Act and applicable regulations. Additionally, any scheme which allows for a source to bubble its emissions should be consistent with USEPA's bubble policy. The bubble policy is presented in the December 11, 1979 **Federal Register** (44 FR 71780) with a supplementary notice published on January 23, 1980 **Federal Register** (45 FR 5616).

The State must submit each alternate compliance scheme involving control equipment (bubble) to USEPA as a SIP revision. In those bubble situations where the emissions to be used in the bubble calculation are dependent on the capture and control efficiency of a control system, the emissions must be determined through appropriate testing procedures. The resulting overall control efficiency for each specific piece of add-on control equipment employed must be established. Establishing this limit as part of the SIP will simplify procedures required to determine compliance. Additionally, it should be noted that the critical parameters of the control system must be continuously monitored during the testing period so as to allow for the assessment of the continued performance at the established rate.

During the public comment period USEPA received comments from numerous individuals on USEPA's proposed action on specific portions of rules 04, 09 and 10 of Chapter 3745–21. No comments were received on rules 01, 02, 03, 05, 06, 07, or 08 of Chapter 3745–21. Therefore, USEPA approves rules 01, 02, 03, 05, 06, 07 and 08 of Chapter 3745–21.

Summarized below are the State's and interested individuals' response to USEPA's proposed action on rules 04, 09 and 10 of Chapter 3745–21, and USEPA's response and final determination on these rules.

Subsection (M) of Rule 09 of Chapter 3745–21. This subsection is concerned with controlling organic compound emissions from the source category petroleum refinery wastewater separators. In particular, new rule 09(M)(2) requires the owners or operators of forebay sections and any other separator section which recovers 200 gallons or more of organic compounds per day to comply with the schedules contained in new rule 04(C)(13) of Chapter 3745–21. Rule 09(M)(2), however, exempts from compliance those wastewater separators with forebay sections or any other separator section which recovers less than 200 gallons of organic compounds per day. USEPA noted in the March 10, 1980 **Federal Register** (45 FR 15208) that such an exemption was not supported by the CTG's as being RACT. Therefore, USEPA requested the State to submit either (a) technical support justifying the exemption as representing RACT, or (b) documentation proving that the allowable emissions from the State's proposal are within 5 percent of those emissions resulting from the adoption of the USEPA "presumptive norm." If the State was unable to do either a or b then they were requested to commit to extend the applicability of rule 09(M)(2) to cover those separator sections which recover less than 200 gallons of organics per day.

Public Comment: Two industrial representatives have commented on the provisions of this rule and on USEPA's proposed action. The contention of one commentor is that most of the volatile oil will be recovered in the forebay section and that "* * * only an insignificant amount of oil with low volatility and in globule form will be carried along to the main separator section." Further, he states that the forebay sections are easily covered, but the main separator is more difficult and impractical to cover because it is generally equipped with flight scrapers and manually adjusted skimmers which require operator observation and routine maintenance. Therefore, he believes that the intent of the regulation is met by covering only the forebay section and that the 200 gallons per day exemption is reasonable.

The second commentor believes that the need for separator covers should be related to the amount of oil contained in the wastewater flowing to that particular section of the separator. He states that the 200 gallon/day limit of recovered oil for each section is practical and reasonable. Furthermore, he contends that the cost effectiveness of covering those areas of low oil recovery is very low and not justifiable.

USEPA Response: Contrary to the issue that the first commentor raised USEPA believes that the intent of the regulation is clearly stated; namely, that "* * * all forebay sections and any other section which recovers 200 gallons or more per day of organic compounds * * *" must be equipped with covers and seals. USEPA agrees with the second commentor when he states that the need for separator covers should be related to the amount of oil contained in the water flowing to that particular separator section. However, as stated in the March 10, 1980 **Federal Register**, USEPA does not believe that the 200 gallons/day exemption represents RACT. USEPA therefore requested the State to justify either (1) that the proposed regulation is RACT or (2) that the allowable emissions resulting from the proposed regulation differ by no more than 5% from the VOC emissions resulting from the adoption of USEPA's presumptive norm for ACT. This judgment is based on the fact that covers are commercially available for separator sections other than just for the forebay section. These covers are designed to allow for the periodic operator observation and maintenance necessary for the correct operation of the particular separator section. Furthermore, extrapolating from the CTG's to determine the net annualized cost indicates that by installing such control equipment the company would realize a monetary credit, not a cost.

State Response: The State has submitted a study which indicates that the amount of emissions that would result from the regulation for this source category exceeds by more than five percent the VOC emissions resulting from the adoption of USEPA's presumptive norm for RACT. The State responded that they would eliminate the exemption for those wastewater separators which are used for contaminated refinery process wastewater separators but not for refinery wastewater separators which are minor sources (i.e., such as separators which are used only for uncontaminated once-through cooling water or intermittent stormwater run-off).

In a letter dated April 15, 1980 the State indicated that the revised regulation could be submitted to USEPA by January 1, 1981. In subsequent conversations with the State it was determined that due to limited staff resources additional time would be needed. On August 6, 1980 the State, in a letter from James F. McAvoy committed to submit the revised regulations by February 15, 1981.

USEPA Response: USEPA has reviewed and finds acceptable the study submitted by the State and the February 15, 1981 date for the submittal of the revised regulation. It should be noted, however, that even though the State considers it unreasonable to control separators which are used only for uncontaminated once-through cooling water or intermittent stormwater run-off, if the revised regulation contains an exemption for those sources, the State must demonstrate that the resultant emissions differ from the CTG allowable emissions by no more than five percent.

Subsection (R) of Rule 09 of Chapter 3745–21. This subsection is concerned with controlling organic compound emissions from the source category gasoline dispensing facilities. Paragraph 3(a) of this subsection exempts from compliance with the preceding paragraphs of this rule any gasoline dispensing facility which has an annual throughput of less than 240,000 gallons of gasoline. In the March 10, 1980 **Federal Register** (45 FR 15208) USEPA stated that an exemption for facilities with an annual throughput of less than or equal to 120,000 gallons would represent RACT.

Any exemption for those facilities with an annual throughput of greater than 120,000 gallons would have to be either: (a) Technically supported as RACT, or (b) the State would need to demonstrate that the emissions occurring as a result of this exemption would be no more than five percent greater than emissions occurring from a regulation exempting only facilities with an annual throughput of 120,000 gallons or less. If the State was not able to supply the appropriate justification then the State was required to extend the area of applicability of rule 09(R) of Chapter 3745–21 to cover those facilities with an annual throughput of greater than 120,000 gallons.

Public Comment: One commentor, an oil company representative, has expressed concern over USEPA's action with regard to the exemption for gasoline dispensing facilities. The commentor believes that for his company the exemption proposed by the State (less than a 240,000 gallons annual throughput) is economically more feasible than the USEPA technically supported exemption (less than a 120,000 gallon annual throughput). Furthermore, he indicates that for all the stations owned by his company only a small percentage have an annual throughput of less than 240,000 gallons. Therefore, he contends that the amount of vapor controlled (VOC emissions) will not change significantly if the 240,000 gallon exemption is allowed.

USEPA Response: USEPA cannot approve an exemption, which applies universally to all sources covered by a particular source category, without the proper technical data which demonstrates that the regulation with the exemption is RACT, or which demonstrates that the total emissions that would occur as a result of the exemption will not differ by more than five percent from the amount that would occur as a result of the adoption of the USEPA recommended exemption. In the March 10, 1980 **Federal Register** USEPA requested the State to submit such documentation. Summarized below is the State's response.

State Response: The State is currently studying the emissions resulting from the proposed regulation and has committed to submit the results to USEPA by July 1, 1980. If it should be necessary to revise rule 09(R)(3)(a) the State could submit the State adopted revised rule to USEPA by January 1, 1981. In subsequent conversations with the State it was determined that due to limited staff resources the study would not be completed until October 1, 1980 and, consequently, the regulations could not be submitted until February 15, 1981. On August 6, 1980 the State, in a letter from James F. McAvoy committed to submit the study by October 1, 1980 and the revised regulations by February 15, 1981.

USEPA Response: USEPA has reviewed the commitments made by the State for rule 09(R) of Chapter 3745–21 and has determined that the October 1, 1980 date for submittal of the study and the February 15, 1981 date for submittal of the revised regulations are acceptable.

Section G of Rule 09 of Chapter 3745–21. This subsection established an emission limitation of 2.9 lbs. VOC per gallon of coating, excluding water, from a paper coating line.

Public Comment: One industrial representative commented that the emission limitation is technically unachievable and economically infeasible. Specifically, it is believed that the 90% capture goal utilized by Ohio is unrealistic and should be replaced by a 75% capture goal. The commentor believes the USEPA should disapprove the rule based on these facts.

USEPA Response: Section 172(b)(2) of the Clean Air Act requires the implementation of reasonably available control technology (RACT). The State may consider economic and technological feasibility when determining RACT. Additionally, the State may promulgate regulations which are more stringent than RACT. As stated in the March 10, 1980 **Federal Register** (45 FR 15192), USEPA received this regulation and found that at a minimum it represents RACT and is acceptable to USEPA. Therefore, USEPA has no basis for disapproving the emission limitations contained in the Ohio SIP for fabric coating.

Section O of Rule 09 of Chapter 3745–21. This subsection specifies control of VOC emissions from the following three categories of solvent metal cleaning operations; cold cleaners, open top vapor degreasers and conveyorized degreasers. This rule requires the installation of specific air pollution control equipment and the adherence to good operating procedures to achieve a reduction in the VOC emission from the three categories of solvent metal cleaning operations.

Public Comment: Two commentors expressed concern about sections 3(c) and 4(a). These sections detail alternate equipment (i.e., minimum freeboard ratio refrigerated chiller, enclosed design, or carbon adsorption) for controlling VOC emissions from open top degreasers and conveyorized degreasers, respectively. The commentors believe that the requirement that the carbon adsorber exhaust less than 25 parts per million (ppm) averaged over one complete adsorption cycle is too stringent. They feel that the emission limit for the carbon adsorbers is so stringent that the affected sources will not install carbon adsorbers but instead opt for a less efficient means of control (i.e., a refrigerated chiller).

USEPA Response: Under the provisions of the regulation it is possible for a source to choose a control device other than the carbon adsorber. It is true that for most applications a carbon adsorber is the most efficient of the four control alternatives and that a well designed and maintained adsorber will normally capture approximately 95% of the organic input into the bed. A carbon adsorption system for solvent metal cleaning systems, however, will not normally achieve this 95% level of control due to fugitive VOC emissions occurring as a result of such factors as spills, leaks, drag-out on parts and disposal of waste solvents. Therefore, in practice a solvent metal cleaning control system which employs either a carbon adsorber or a refrigerated chiller (one of the options) will be achieving approximately the same emission reduction efficiency. USEPA believes that sources choosing the refrigerated

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chiller are not choosing a less efficient control device.

The 25 ppm emission standard specified for the carbon adsorption system is to ensure that the system is operating efficiently. Due to the nature of the other control mechanisms specified in this regulation emission standards would not be appropriate. The 25 ppm limit for the carbon adsorption is based on the availability of continuous monitoring devices which can detect solvent vapors at this concentration level. The limit ensures that the adsorber is operating correctly and is regenerated in a timely manner. USEPA, therefore, believes that this emission limit is appropriate for the carbon adsorption system.

USEPA Final Determination on Rule 09 of Chapter 3745–21. During the public comment period no comments were received on USEPA's proposed approval of paragraphs A through L, M(1), M(3), N, P, Q and S of Rule 09 of Chapter 3745–21. Therefore, USEPA approves these paragraphs. Additionally, since the comments received on paragraphs G and O do not change USEPA's initial findings, USEPA also approves these two paragraphs. USEPA has reviewed the comments received on paragraphs M(2) and R of Rule 09 and the State's response to USEPA's proposed action on paragraphs M(2) and R of Rule 09. USEPA has determined that the State has adequately committed to correct the minor deficiencies noted in paragraphs M(2) and R of 09 and that none of the public comments has provided an adequate reason for USEPA to change its initial findings. Therefore, USEPA approves paragraphs (M)(2) and (R) of Rule 09 of Chapter 3745–21 on the condition that the State submits the material previously specified on the dates committed. This rule is conditionally approvable in the nonattainment areas. In the attainment areas RACT on major sources is not required. Consequently, in the attainment areas this rule is approvable. A notice soliciting public comment on the acceptability of those dates appears elsewhere in today's **Federal Register.**

3745–21–10

Section E of Rule 10 of Chapter 3745–21. This section specifies the method to be used when determining the level of VOC emissions from bulk gasoline terminals.

Public Comment: An individual expressed concern over the absence of control requirements for VOC leaks from gasoline tank trucks and vapor collection systems.

USEPA Response: In December of 1978 USEPA published a CTG for the control of VOC leaks from gasoline tank trucks and vapor collection systems. As specified in the August 28, 1979 **Federal Register** (44 FR 50371) USEPA requires the State to submit by July 1, 1980 revised regulations for sources covered by these new CTG requirements. The State has committed to submit these revised regulations. The review of these regulations will be addressed in a separate **Federal Register** notice.

Public Comment: Two commentors were concerned about the compliance test requirements for gasoline vapor recovery units presented in section E of Rule 10 of Chapter 3745–21. Specifically, they were concerned with the three eight-hour test repetitions and the annual retest. One of the commentors suggested that the rule should be revised to allow for only one-eight hour test and that the annual retest requirement should be replaced with an alternate compliance method. The second commentor suggests that the regulation should require only one two-hour test conducted during the peak loading period.

USEPA Response: USEPA believes that the three eight-hour tests specified in section E give a good representation of normal operating conditions considering the wide variation of loading conditions (number and frequency of loading), loading days, and types of processing. Therefore, USEPA believes that section E of Rule 10 should remain unchanged. It should be noted that, if at a future date, as a result of further research, information becomes available which indicates that a shorter time interval is appropriate for conducting the test, then the State may revise the regulation as necessary.

USEPA Final Determination on Rule 10 of Chapter 3745–21: USEPA has reviewed the comments submitted on this rule and has determined that none of the public comments has provided an adequate reason for USEPA to change its proposed approval. Therefore, at this time, USEPA approves in its entirety Rule 10 of Chapter 3745–21.

3745–21–04

This rule, as discussed in the March 10, 1980 **Federal Register** (45 FR 15206) is composed of three subsections (A, B, C). Subsection A establishes December 31, 1987 as the latest date for demonstrating attainment of the carbon monoxide and ozone NAAQS. Subsection B requires those sources regulated by rule 3745–21–09 to certify that they are in compliance with the rule by December 1, 1979. Section C establishes the dates for specific source categories to be in compliance with the provisions of rule 09. It also establishes an extension of these compliance dates for certain individual sources.

In the March 10, 1980 **Federal Register** USEPA stated that all the provisions of rule 04 of Chapter 3745–21 were approvable, except for the schedule contained in new rule 04(C)(18) of Chapter 3745–21 as it applies to any loading facility presently covered by the compliance schedule in old rule 04(C)(1) of Chapter 3745–21. New rule 04(C)(18) establishes the final date on which bulk gasoline terminals are to be in compliance with the provisions of new rule 09(Q) of Chapter 3745–21. This date is July 1, 1981. Old rule 04(C)(1) established the final compliance date on which bulk gasoline terminals were to be in compliance with the provisions of old rule 07(E) of Chapter 3745–21. The date, as codified in 40 CFR 52.1875 was to be no later than July, 1975 and in some cases by May 31, 1975.

USEPA noted that new rule 09(Q) and the old rule 07(E) require installation of the same control systems to achieve compliance with their VOC emission limitations. Therefore, certain facilities covered under old rule 07(E) would be granted an additional six years to be in compliance with new rule 09(Q). This extension in the compliance schedule was unacceptable. Therefore, USEPA proposed to disapprove the compliance schedule in revised new rule 04(C)(18) as it applies to facilities presently covered by the compliance schedule in old rule 04(C)(1).

Public Comment: One commentor, a representative of an oil company, believes that the date for certification of compliance (December 1, 1979) contained in new rule 04(B) of Chapter 3745–21 does not allow sufficient time for planning and that the date should be changed to "no later than 90 days after approval or final promulgation of these regulations."

USEPA Response: The date selected by the State is consistent with USEPA policy as outlined in 40 CFR 51.15 and 40 CFR 51.1(q) and therefore is approvable.

Public Comment: One commentor, a representative for numerous oil companies, submitted extensive comments on USEPA's proposed disapproval of the compliance schedule contained in new rule 04(C)(18). The commentor raises three significant issues. A summary of these issues is presented below:

1. The commentor notes that old rule 07(E)(1)(c) allows for the installation of "other equipment or means for purposes of air pollution control as may be acceptable to and approved by the Board." On March 9, 1973, the Director of the Ohio EPA issued a Resolution, pursuant to this rule, which provides that "[b]ottom loading or fully submerged loading is hereby approved as an acceptable means of controlling hydrocarbon emissions under rule 3745–21–04(E)(1)(c)." (The Director of Ohio EPA is the successor to the Ohio Air Pollution Control Board.) Under the authority of this resolution the State has issued Permits to Operate for bulk gasoline loading terminals which use fully submerged or bottom loading systems as a means of internal vapor control.

The commentor notes that for sources which installed this alternate control equipment, as opposed to the equipment specified in 3745–21–07(E)(1)(a) or (b), additional time is needed to meet the requirements of new rule 09(Q) of Chapter 3745–21. He states further that a fuller statement of the policy issues and law involved in this question is set forth in the oil companies' filings in two court cases that are pending in the United States District Court for the Northern District of Ohio, Eastern District. He notes that USEPA should take no action inconsistent with the decision of the court in those two cases.

2. The commentor states that even if USEPA's interpretation of old rule 3745–21–07(E) is correct, additional time would still be needed for those sources which were in compliance with the provisions of the old rule to meet the requirements of new rule 3745–21–09(Q). He contends that the additional time is necessary because these sources would have to install additional equipment to meet the more stringent emission limitations of new rule 09(Q) of Chapter 3745–21.

3. Finally, the commentor states that even if USEPA were correct that the RACT requirements of new rule 09(Q) were identical to the requirements of old rule 07(E), that is not a sufficient basis for disapproving rule 04(C)(18) of Chapter 3745–21, which establishes a compliance schedule with a final date of July 1, 1981. He contends that in the past USEPA has approved SIP revisions or variances extending a final compliance date and that a State can revise its SIP to provide a different compliance date for a particular source or class of sources.

USEPA Response: USEPA's response to each of the above mentioned issues is presented below.

1. It is USEPA's judgment that the March 9, 1973 Resolution (hereinafter referred to as the Resolution), which authorizes the use of bottom fill or submerged loading systems which do not collect or dispose of vapors as alternate control methods, constitutes a revision to the SIP. Section 110 of the Clean Air Act requires the State to submit such revisions to USEPA for review and approval. Until such a revision is approved the existing SIP is the federally enforceable SIP and all sources must adhere to its provisions. In the case under discussion the State of Ohio never officially submitted to USEPA the Resolution as a revision to the SIP. Therefore, old rule 07(E)(1)(a) and (b) of Chapter 3745–21 as approved on April 15, 1974, is the federally enforceable regulation with which the sources must be in compliance.

In response to the commentor's concern that USEPA should not take final rulemaking action prior to the U.S. District Court's decision in two cases currently pending, USEPA would like to point out that final rulemaking cannot be withheld until the court has made a decision in these cases. USEPA is mandated by the Clean Air Act to take final action on revisions to the SIP within a specified timeframe regardless of pending litigation. Using the pendancy of litigation as a basis for not acting on revisions to an SIP would potentially promote frivolous litigation to delay SIP action and jeopardize the attainment and maintenance of standards. Once a court has rendered its decisions in a case, the appropriate steps can be taken, if necessary, to have the SIP reflect the court's decisions.

2. USEPA has reviewed both the old rule and the new rule to determine if the new rule is more stringent. Under old rule 07(E) a vapor collection and disposal system is required. This system is required to process and recover from the equipment being controlled at least 90% by weight of all vapor and gases. The new rule 09(Q) specifies an allowable emission limitation of 0.67 lbs. VOC/1000 gallons of gasoline loaded into the delivery vessel. Under the new rule a vapor collection and control is also specified as the means for controlling the VOC emissions.

Tests conducted by USEPA indicate that it is possible for a vapor collection system achieving less than a ninety percent control efficiency to meet the emission limitation of 0.67 lbs. VOC/1000 gallons of gasoline. In USEPA's judgment, for those sources which met the requirements of old rule 07(E), the emissions limitations specified in new rule 09(Q) are not more stringent. Furthermore, since both old rule 07(E) and new rule 09(Q) require the same control equipment, USEPA does not believe that there is a need for additional time to demonstrate compliance with new rule 09(Q).

3. When rulemaking on regulations which apply to all sources in a particular category (i.e. bulk gasoline terminals) USEPA will not approve the extension of final compliance dates when the substantive requirements of the regulation are the same or less stringent than the requirements of an existing federally approved rule. As stated previously, USEPA believes that the substantive requirements of old rule 07(E) and new rule 09(Q) are essentially the same. Therefore on a categorical basis USEPA does not believe it is appropriate to give a blanket extension to those sources formerly covered by old rule 04(C)(1).

It should be noted however, that on a source specific basis, the State can request an extension based on the fact that the specific source, which met the requirements of old rule 07(E) needs additional time to install additional equipment to meet the requirements of the new rule 09(Q). In such a case the source must demonstrate that it was in compliance with the old regulation and needs extra time to install additional equipment that is needed for the source to comply with new rule 09(Q). Otherwise, to allow sources that were not in compliance with the old regulation, an extension, would negate the impact of section 120 of the Act and the intent of Congress.

State Response: On April 15, 1980, the State submitted objections on USEPA's proposed disapproval of the compliance date in new rule 04(C)(18). The State indicated that it believes that the requirements of new rule 09(Q) are more stringent than the requirements of old rule 07(E). Therefore, the State felt that the compliance time extension was justified. The State based its justification for an extension on the following three premises:

(a) USEPA's Enforcement Division was aware of the March 9, 1973 Resolution allowing the use of either bottom loading or submerged filling as sufficient to comply with the old regulation.

(b) The new rule specifies an emission limitation which is more stringent than the collection efficiency specified in the old rule.

(c) The method of determining compliance with the new regulation is more extensive than the method used for the old regulation (no test method was specified for determining compliance with the old regulation).

USEPA Response: Arguments a and b presented by the State are essentially identical to arguments 1 and 2 presented above by the oil company representative. For USEPA's response to these issues the reader is referred to the discussion presented above. As for the issue presented in point C, USEPA maintains that such a blanket extension is not approvable because the

requirements of new rule 09(Q) of Chapter 3745-21 are essentially the same as, and are not more stringent than the requirements of old rule 07(E) of Chapter 3745-21. USEPA does not believe that the new compliance testing methodology will prevent a source, that was in compliance with the old regulation, from complying with the requirements of new rule 09(Q).

USEPA Final Determination on Rule 3745-21-04

USEPA has reviewed the comments received from the State and private industry and has determined that adequate reasons have not been provided for USEPA to change its original proposal on new rule 04. Therefore, at this time, USEPA approves all portions of rule 04 of Chapter 3745-21 except for the following:

(1) USEPA disapproves the compliance schedule in revised rule 04(C)(18) of Chapter 3745-21 as it applies to facilities formerly covered by the compliance schedule in old rule 04(C)(1) of Chapter 3745-21.

The 1978 edition of 40 CFR Part 52 lists in the subpart for each state the applicable deadlines for the attaining ambient standards (attainment dates) required by section 110(a)(2)(A) of the Act. For each nonattainment area where a revised plan provides for attainment by the deadline required by section 172(a) of the Act, the new deadlines will be substituted on the attainment date charts. The earlier attainment dates under section 110(a)(2)(A) will be referenced in a footnote to the charts. Sources subject to plan requirements and deadlines established under section 110(a)(2)(A) prior to the 1977 Amendments remain obligated to comply with those requirements, as well as with the new section 172 plan requirements.

Congress established new deadlines under section 172(a) to provide additional time for previously regulated sources to comply with new, more stringent requirements and to permit previously uncontrolled sources to comply with newly applicable emission limitations. If these new deadlines were permitted to supersede the deadlines established prior to the 1977 Amendments, sources that failed to comply with pre-1977 plan requirements by the earlier deadlines would improperly receive more time to comply with those requirements. Congress, however, intended that the new deadlines apply only to new, additional control requirements and not to earlier requirements. As stated by Congressman Paul Rogers in discussing the 1977 Amendments:

Section 110(a)(2) of the Act made clear that each source has to meet its emission limits "as expeditiously as practicable" but not later than three years after the approval of a plan. This provision was not changed by the 1977 Amendments. It would be a perversion of clear congressional intent to construe part D to authorize relaxation or delay of emission limits for particular sources. The added time for attainment of the national ambient air quality standards was provided, if necessary, because of the need to tighten emission limits or bring previously uncontrolled sources under control. Delays or relaxation of emission limits were not generally authorized or intended under Part D.

(123 Cong. Rec., H 11958, daily ed. November 1, 1977)

To implement fully Congress' intention that sources remain subject to pre-existing plan requirements, sources cannot be granted variances extending compliance dates beyond attainment dates established prior to the 1977 Amendments. Such variances would impermissibly relax existing requirements beyond the applicable section 110(a)(2)(A) attainment date under the plan. Therefore, for requirements adopted before the 1977 Amendments, USEPA will not approve a compliance date extension beyond pre-existing 110(a)(2)(A) attainment dates, even though a section 172 plan revision with a later attainment date has been approved.

However, in certain exceptional circumstances, extensions beyond a pre-existing attainment date are permitted. For example, if a section 172 plan imposes new, more stringent control requirements that are incompatable with controls required to meet the pre-existing regulations, the pre-existing requirements and deadlines may be revised if a State makes a case-by-case demonstration that a relaxation or revocation is necessary. Any such exemption granted by a State will be reviewed and acted upon by USEPA as a SIP revision. In addition, as discussed in the April 4, 1979 **Federal Register** (44 FR 20373), an extension may be granted if it will not contribute to a violation of an ambient standard or a PSD increment.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit by (within 60 days of today). Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by USEPA to enforce these requirements.

Under Executive Order 12044, USEPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. USEPA labels these other regulations "specialized". I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This Notice of Final Rulemaking is issued under the authority of sections 110(a), 172 and 301 of the Clean Air Act, as amended (42 U.S.C. 7410(a), 7502, 7601(a)).

Dated: October 23, 1980.

Douglas Costle,

Administrator.

Note.—Incorporation by reference of the State implementation Plan for the State of Ohio was approved by the Director of the **Federal Register** on July 1, 1980.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended as follows:

(1) Section 52.1870(c) is amended by adding subparagraphs (14) to (20) to read as follows:

§ 52.1870 Identification of Plan.

* * * * *

(c) * * *

(14) On July 27, 1979 the State submitted its nonattainment area plan for specific areas designated as nonattainment for ozone and carbon monoxide in the March 3, 1978 and October 5, 1978 **Federal Registers** (43 FR 8962 and 43 FR 45993). The submittal contained Ohio's Part D nonattainment plans for the following ozone and carbon monoxide urban nonattainment areas: Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Steubenville and Toledo. The submittal contained transportation control plans and demonstrations of attainment (for carbon monoxide and/or ozone) for each of the above mentioned urban nontattainment areas. Regulations for the control of volatile organic compound emissions were not included with this submittal but were submitted separately on September 13, 1979.

(15) On September 13, 1979, the State submitted regulations for the control of volatile organic compound and carbon monoxide emissions from stationary sources.

(16) On December 28, 1979, the State amended the attainment demonstration submitted on July 27, 1979 for the Cleveland urban area.

(17) On January 8, 1980, the State amended the carbon monoxide attainment demonstration submitted on July 27, 1979 for the Steubenville urban area.

(18) On January 15, 1980, the State amended the attainment demonstrations submitted on July 27, 1979 for the urban areas of Cincinnati, Toledo and Dayton.

(19) On April 7, 1980 the State of Ohio committed to correct the deficiencies presented in the March 10, 1980 Notice of Proposed Rulemaking.

(20) On April 15, 24, 28, May 27, July 23 and August 8, 1980 the State submitted comments on, technical support for, and commitments to correct the deficiencies cited in the March 10, 1980 Notice of Proposed Rulemaking. In addition to this the May 27, 1980 letter also contained a commitment by the State to adopt and submit to USEPA by each subsequent January, reasonable available control technology requirements for sources covered by the control techniques guidelines published by USEPA the preceding January.

§ 52.1871 [Amended]

2. Section 52.1871 is amended by changing the heading "Photochemical Oxidants (hydrocarbons)" to "Ozone".

3. Section 52.1873 is revised to read as follows:

§ 52.1873 Approval Status.

With the exceptions set forth in this subpart the Administrator approves its plan Ohio's plan for the attainment and maintenance of the National Ambient Air Quality Standards under Section 110 of the Clean Air Act. Furthermore, the Administrator finds the plan satisfies all the requirements of Part D, Title 1 of the Clean Air Act as amended in 1977, except as noted below. In addition, continued satisfaction of the requirements of Part D for the ozone portion of the SIP depends on the adoption and submittal of RACT requirements by July 1, 1980 for the sources covered by CTGs between January 1978 and January 1979 and adoption and submittal by each subsequent January of additional RACT requirements for sources covered by CTGs issued by the previous January.

4. Section 52.1875 is amended to delete paragraph (b) and revise paragraph (a) as follows:

§ 52.1875 Attainment Dates for National Standards.

(a) The following table presents the latest date by which the national standards are to be attained. These dates reflect the information presented in Ohio's plan, except where noted.

Air quality control region	Pollutant						
	Particulate matter		Sulfur oxides		Nitrogen dioxide	Carbon-monoxide	Ozone
	Primary	Secondary	Primary	Secondary			
Greater Metropolitan Cleveland Intrastate (AQCR 174):							
a. Primary/secondary nonattainment areas	h	h	*f*	*f*	b	*e*	c
b. Remainder of AQCR	b	b	b	b	b	b	b
Huntington (West Virginia)-Ashland (Kentucky)-Portsmonth-Ironton (Ohio) Intrastate (AQCR 103):							
a. Primary/secondary nonattainment areas	h	h	*f*	*f*	b	b	g
b. Remainder of AQCR	b	b	b	b	b	b	b
Mansfield-Marion-Intrastate (AQCR 175):							
a. Primary/secondary nonattainment areas	h	h	*f*	*f*	b	b	g
b. Remainder of AQCR	b	b	b	b	b	b	b
Metropolitan Cincinnati Interstate (AQCR 079):							
a. Primary/secondary nonattainment areas	h	h	*f*	*f*	b	g	g
b. Remainder of AQCR	b	b	b	b	b	b	b
Metropolitan Columbus Interstate (AQCR 176):							
a. Primary/secondary nonattainment areas	h	h	*f*	*f*	b	d	d
b. Remainder of AQCR	b	b	b	b	b	b	b
Metropolitan Dayton Interstate (AQCR 173):							
a. Primary/secondary nonattainment areas	h	h	*f*	*f*	b	d	d
b. Remainder of AQCR	b	b	b	b	b	b	b
Metropolitan Toledo Interstate (AQCR 124):							
a. Primary/secondary nonattainment areas	h	h	*f*	*f*	b	g	d
b. Remainder of AQCR	b	b	b	b	b	b	b
Northwest Ohio Interstate (AQCR 177):							
a. Primary/secondary nonattainment areas	h	h	*f*	*f*	b	b	g
b. Remainder of AQCR	b	b	b	b	b	b	b
Northwest Pennsylvania Youngstown Interstate (AQCR 178):							
a. Primary/secondary nonattainment areas	h	h	*f*	*f*	b	b	g
b. Remainder of AQCR	b	b	b	b	b	b	b
Parkersburg (West Virginia)-Marietta (Ohio) Interstate:							
a. Primary/secondary nonattainment areas	h	h	*f*	*f*	b	b	b
b. Remainder of AQCR	b	b	b	b	b	b	b
Sundusky Intrastate (AQCR 180):							
a. Primary/secondary nonattainment areas	h	h	*f*	*f*	b	b	g
b. Remainder of AQCR	b	b	b	b	b	b	b
Steubenville-Wierton-Wheeling Interstate (AQCR 181):							
a. Primary/secondary nonattainment areas	h	h	*f*	*f*	b	d	d
b. Remainder of AQCR	b	b	b	b	b	b	b
Wilmington-Chillicothe-Logan Intrastate (AQCR 182):							
a. Primary/secondary nonattainment areas	h	h	b	b	b	b	d
b. Remainder of AQCR	b	b	b	b	b	b	b
Zanesville-Cambridge Intrastate (AQCR 183):							
a. Primary/secondary nonattainment areas	h	h	*f*	*f*	b	b	d
b. Remainder of AQCR	b	b	b	b	b	b	b

NOTE.—Sources subject to the plan requirements and attainment dates established under section 110(a)(2)(A) prior to the 1977 Clean Air Act Amendments remain obligated to comply with these requirements by the earlier deadlines. The earlier attainment dates are set out at 40 CFR 52.1875 published July 1, 1979.

For actual nonattainment designations refer to 40 CFR Part 81.

Dates or footnotes which are italicized are prescribed by the Administrator because the plan did not provide a specific date or the date provided was not acceptable.

a. Air quality levels presently below primary standards or is unclassifiable.

b. Air quality levels presently below secondary standards or is unclassifiable.

c. For Stark, Summit and Portage Counties attainment is to be achieved by December 31, 1982. For the remaining counties the attainment date will be specified in the future.

d. December 31, 1982.

e. For Summit County attainment is to be achieved by December 31, 1982. For Cuyahoga County the attainment date will be specified in the future.

f. August 27, 1979 except for the companies listed in (1) which are subject to an attainment date of June 17, 1980, the Ashland Oil Company in Stark County which is subject to an attainment date of September 14, 1982, the companies in Summit County listed in (2) which are subject to an attainment date of January 4, 1983, and the PPG Industries, Inc. (boilers only) in Summit County, Ohio which is subject to an attainment date of August 25, 1983.

(1) Youngstown Sheet & Tube Co.; PPG Industries, Inc.; Wheeling-Pittsburgh Steel Corp.; Pittsburgh-Canfield Corporation; The Timken Company; The Sun Oil Co.; Sheller-Globe Corp.; The B. F. Goodrich Company; Phillips Petroleum Co.; Shell Oil Co.; Federal Paper Board Co.; The Firestone Tire & Rubber Co.; Republic Steel Corp.; Chase Bag Co.; White-Westinghouse Corp.; U.S. Steel Corp.; Interlake, Inc.; Austin Power Co.; Diamond Crystal Salt Co.; The Goodyear Tire & Rubber Co.; The Gulf Oil Co.; The Standard Oil Co.; Champion International Corp.; Koppers Co., Inc.; General Motors Corp.; E. I. du Pont de Nemours and Co.; Coulton Chemical Corp.; Allied Chemical Corp.; Specialty Chemicals Division; The Hoover Co.; Aluminum Co. of America; Ohio Greenhouse Assoc.; Armco Steel Corp.; Buckeye Power, Inc.; Cincinnati Gas and Electric; Cleveland Electric Illuminating Co.; Columbus and Southern Ohio Electric; Dayton Power and Light Co.; Duquesne Light Co.; Ohio Edison Co.; Ohio Electric Co.; Pennsylvania Power Co.; Toledo Edison Co.; Ohio Edison Co.; RCA Rubber Co.

(2) In Summit County; Diamond Crystal Salt; Firestone Tire & Rubber Co.; General Tire & Rubber; B.F. Goodrich, Co.; Goodyear Aerospace Corp.; Goodyear Tire & Rubber Co.; Chrysler Corp.; PPG Industries, Inc.; Seiberling Tire & Rubber; Terex Division of General Motors Corp.; Midwest Rubber Reclaiming; Kittinger Supply Co.

g. Attainment date will be specified in the future.

h. April 15, 1977.

i. December 31, 1987.

V 45 OC 31 80 UMI

5. Section 52.1885 is revised to read as follows:

§ 52.1885 Control Strategy: Ozone.

(a) Part D—Approval—The following portions of the Ohio plan are approved:

(1) The ozone portions of rules 01, 02, 03, 04 (except the portion disapproved below), 05, 06, 07, 08, 09 (except the portions conditionally approved below) and 10 of Chapter 3745–21 of the Ohio Administrative Code.

(2) The Attainment Demonstrations for the following urban areas: Akron, Cincinnati, Dayton and Toledo.

(3) The Reasonable Further Progress Demonstration for the following areas: Akron, Cincinnati, Cleveland, Columbus, Dayton and Toledo.

(b) Part D—Conditional Approval—The following portions of the Ohio plan are approved provided that the following conditions are satisfied:

(1) For Rule 09(M)(2) of Chapter 3745–21 of the Ohio Administrative Code the State promulgate and submit to USEPA regulations which meet the RACT requirements for waste water separators. If these regulations contain exemptions which are not supported by the CTGs then the State must demonstrate that the resultant emissions differ from the CTG allowable emissions by not more than five percent.

(2) For Rule 09(R) of Chapter 3745–21 of the Ohio Administrative Code the State either demonstrates that allowable emissions resulting from the application of its existing rule with a 240,000 gallon per year throughput exemption for gasoline dispensing facilities are less than five percent greater than the allowable emissions resulting from the application of the CTG presumptive norm or promulgates and submits to USEPA a rule with a 120,000 gallon per year throughput exemption for gasoline dispensing facilities.

(3) The attainment demonstrations for the urban areas of Canton, Cleveland and Columbus provided the deficiencies cited in § 52.1886 are corrected.

(4) The Reasonable Further Progress Demonstration for the urban areas of Canton and Steubenville provided the deficiencies cited in § 52.1886 are corrected.

(c) Disapproval—USEPA disapproves the compliance schedule in revised rule 04(c)(18) of Chapter 3745–21 of the Ohio Administrative Code as it applies to facilities formerly covered by the compliance schedule in old rule 04(c)(1) of Chapter 3745–21. This disapproval in and of itself does not result in the growth restrictions of section 110(a)(2)(I).

(d) Part D—No Action—USEPA at this time takes no action on the vehicle inspection and maintenance (I/M) program required for those non-attainment areas which have requested an extension to demonstrate ozone attainment.

6. Section 52.1886 is revised as follows:

§ 52.1886 Ozone Attainment and Reasonable Further Progress Demonstrations.

(a) Part D—Conditional Approval—The attainment demonstration for the Canton urban area is approved provided that the following conditions are satisfied.

(1) The State submit either technical support for the 100% VOC emission reduction estimate from the cutback asphalt category; or a re-evaluation of the baseline emissions to account for the possible VOC emissions resulting from this category.

(2) The State submit a revised RFP demonstration line to account for any changes made in the attainment demonstrations.

(b) Part D—Conditional Approval—The attainment demonstration for the Cleveland urban area is approved provided the following conditions are satisfied:

(1) The State submits either technical support for the 100% VOC emission reduction estimate from the cutback asphalt category; or a re-evaluation of the baseline emissions to account for the possible VOC emissions resulting from this category.

(2) The State submits a list of the additional Transportation Systems Management Strategies to be implemented with the additional point source regulations will demonstrate attainment of the ozone standard.

(3) The State submits a schedule which delineates the dates on which the additional point source controls will be developed and implemented.

(c) Part D—Conditional Approval—The attainment demonstrations for the Columbus urban area is approved provided the following conditions are satisfied:

(1) The State submits either technical support for the 100% VOC emission reduction estimate from the cutback asphalt category; or a re-evaluation of the baseline emissions to account for the possible VOC emissions resulting from this category.

(d) Part D—Conditional Approval—The reasonable further progress (RFP) demonstrations for the Canton and Steubenville urban areas are approved provided the State submits revised RFP demonstration lines.

7. Section 52.1887 is revised to read as follows:

§ 52.1887 Control Strategy: Carbon Monoxide.

(a) Part D—Approval—The following portions of the Ohio plan are approved:

(1) The carbon monoxide portions of rules 01, 02, 03, 04 (except the portion disapproved in § 52.1877(c)), 05, 06, 07, 08, 09 (except the portions conditionally approved in § 52.1877(b)) and 10 of Chapter 3745–21 of the Ohio Administrative Code.

(2) The transportation control plans for the following urban areas: Akron (ozone component only), Canton, Cincinnati, Columbus, Dayton, Steubenville, Toledo (ozone component only), Cleveland.

(3) The carbon monoxide attainment and reasonable futher progress demonstrations for the following urban areas: Cincinnati, Cleveland and Columbus.

(b) Part D—Conditional Approval—The following portions of the Ohio plan are approved provided the following conditions are met:

(1) For the Dayton urban area carbon monoxide attainment and reasonable further progress demonstrations the State must submit the following:

(i) A schedule for the study, evaluation and implementation of control measures at the identified carbon monoxide hot spot;

(ii) Evidence of priority funding, if proven necessary; and

(iii) A revised carbon monoxide reasonable further progress demonstration.

(2) For the Steubenville urban area carbon monoxide attainment and reasonable further progress demonstrations the State must submit the following:

(i) The results of the carbon monoxide study;

(ii) Submit either regulations or additional TSMs which will provide for attainment of the standard by December 31, 1982; and

(iii) A revised attainment demonstration.

(iv) A revised carbon monoxide reasonable further progress demonstration.

(c) Part D—No Action—USEPA at this time takes no action on the carbon monoxide portions of the plan submitted for the urban areas of Akron and Toledo nor on the vehicle inspection and maintenance (I/M) program required for those nonattainment areas which have requested an extension to demonstrate carbon monoxide attainment.

[FR Doc. 80-33875 Filed 10-30-80; 8:45 am]
BILLING CODE 6560-38-M

40 CFR Part 52

[A-5-FRL 1647-3]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: The USEPA announces today final rulemaking on revisions to the carbon monoxide and ozone portions of the Ohio State Implementation Plan (SIP) for the Youngstown urban area and Ohio's rural ozone nonattainment areas. A notice of proposed rulemaking on these revisions was published in the May 16, 1980 **Federal Register** (45 FR 32333). In that notice, USEPA proposed to approve these revisions provided that the State correct or commit itself to correct specific deficiencies. On June 12, 1980 and August 6, 1980, the State submitted information and commitments to correct the noted deficiencies. Based on USEPA's review of the State's response, USEPA is today approving the SIP for the rural ozone nonattainment areas and conditionally approving the SIP revisions for the Youngstown urban area.

EFFECTIVE DATE: This final rulemaking becomes effective on October 23, 1980. For further information see Supplementary Information.

ADDRESSES: Copies of the SIP revision, public comments on the NPR, and USEPA's evaluation and response to comments are available for inspection at the following addresses:

U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

The Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clarizio, Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6035.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962) and on October 5, 1978 (43 FR 45993), pursuant to the requirements of section 107 of the Clean Air Act (Act), as amended in 1977, USEPA designated certain areas in Ohio as nonattainment with respect to the National Ambient Air Quality Standards (NAAQS) for carbon monoxide (CO) and ozone (O_x).

Part D of the Act, which was added by the 1977 Amendments, requires each State to revise its State Implementation Plan (SIP) to meet specific requirements for areas designated as nonattainment. These SIP revisions must demonstrate attainment of the primary standard as expeditiously as practicable, but not later than December 31, 1982. In certain circumstances an extension is provided to no later than December 31, 1987 to demonstrate attainment of the ozone or carbon monoxide NAAQS.

The requirements for an approvable SIP are described in a **Federal Register** notice published April 4, 1979 (44 FR 20372). Supplements to the April 4, 1979 notice were published on July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979 (44 FR 53761), and November 23, 1979 (44 FR 67182).

The Youngstown urban area plan relies on the control of the emission of volatile organic compounds (VOC) from stationary and mobile sources to provide for the attainment of the ozone standard by December 31, 1982. To provide for attainment of the carbon monoxide NAAQS by December 31, 1982, the Youngstown plan relies on mobile source control measures to reduce carbon monoxide emissions.

USEPA stated in the May 16, 1980 **Federal Register** that the Youngstown urban area plan which was submitted on December 28, 1979 and amended on February 12, 1980, adequately demonstrates attainment of both the carbon monoxide and ozone NAAQS by December 31, 1982. USEPA, however, identified deficiencies in the ozone attainment and reasonable further progress demonstrations and in the transportation control plan. Consequently, USEPA proposed to conditionally approve the Youngstown urban area plan, if, prior to final rulemaking, the State either adequately corrected these deficiencies or committed itself to correct these deficiencies on a negotiated schedule. Additionally, in the May 16, 1980 **Federal Register** USEPA proposed to

approve Ohio's rural area ozone nonattainment SIP.

A discussion of conditional approval and its practical effect appears in the July 2, 1979 **Federal Register** (44 FR 38583). A conditional approval requires the State to submit additional materials by the specified deadlines negotiated between the State and the USEPA Regional Office. Schedules submitted by Ohio for the Youngstown SIP revision will be proposed for public comment elsewhere in today's **Federal Register.** Prior to final rulemaking on the deadlines, the State is bound by its commitment to meet the proposed deadlines. USEPA will follow the procedures described below when determining if requirements of conditional approval have been met.

1. When a State submits the required additional documentation, USEPA will publish a notice in the **Federal Register** announcing receipt and availability of the submission and that the conditional approval is continuing pending USEPA's final action on the submission.

2. USEPA will evaluate the State's submission and public comment on the submission to determine if noted deficiencies have been fully corrected. After review is complete, a **Federal Register** notice will either fully approve the plan if all conditions have been met, or withdraw the conditional approval and disapprove the plan. If the plan is disapproved, the Section 110(a)(2)(I0) restrictions on construction will be in effect.

3. If the State fails to submit the required materials according to the negotiated schedule, USEPA will publish a **Federal Register** notice shortly after the expiration of the time limit for submission. The notice will announce that the conditional approval is withdrawn, the SIP is disapproved, and the Section 110(a)(2)(I) restrictions on growth are in effect.

Only the State submitted comments on the notice of proposed rulemaking. The State submitted additional information on June 12, 1980, and a revised schedule for the submittal of the corrective material on August 6, 1980.

Summarized below are the deficiencies cited in the May 16, 1980 **Federal Register,** the State's response to these deficiencies, USEPA's evaluation of the adequacy of the State's response, and USEPA's final rulemaking on the Youngstown urban area plan and the rural area ozone nonattainment area SIP revision.

Ozone Attainment Demonstration—Emission Reduction Estimates: In the ozone attainment demonstration, a 100% reduction in volatile organic compounds (VOC) emissions from the cutback asphalt category is predicted to occur by December 31, 1982. In the May 16, 1980 **Federal Register,** USEPA questioned the accuracy of this prediction given the possible continued usage of cutback asphalt. USEPA requested either technical support for this emission reduction estimate or a re-evaluation of the baseline emissions to account for the VOC emissions resulting from this category.

State Response: The State indicated that it will conduct a survey on anticipated annual usage of cutback asphalt for the April–October period. In a letter dated June 12, 1980 the State noted that the results of the survey would be submitted to USEPA by November 3, 1980. Subsequently, the State, determined that due to limited staff resources additional time would be needed. On August 6, 1980 the State committed itself to submit the required information by August 1, 1981.

USEPA Response: USEPA believes that both the State's commitment and schedule, as contained in the August 6, 1980 letter are acceptable. A notice soliciting public comment on the acceptability of the August 1, 1981 date for the submittal of the results of the survey appears elsewhere in today's **Federal Register.**

Ozone Attainment Demonstration—VOC Emissions Inventory (Other Solvent Usage Category): When developing the VOC emissions inventory, the State projected that the emissions from the Other Solvent Usage Category would be identical in the years 1975, 1982 and 1987. USEPA noted in the May 16, 1980 **Federal Register** that emissions from this source category are dependent upon the population of the area and generally increase or decrease when the population increases or decreases. Additionally, USEPA indicated that an increase in VOC emissions from this source category should have been predicted, since the plan projects the population would increase in 1982 and 1987. USEPA stated that the State could correct this error either by revising the emissions inventory to account for the increased emissions or by re-examining and revising the population projections.

State Response: On June 12, 1980, the State submitted a revised VOC emissions inventory for the years 1982 and 1987. This revised inventory projected increases in the VOC emissions from the Other Solvent Usage Category due to projected population increases in the area.

USEPA Response: USEPA has reviewed the State's revised emissions inventory and has determined that it is adequate to correct the noted deficiency. Furthermore, USEPA has determined that the predicted increase in emissions from the Other Solvent Usage Category will not interfere with the ability of the area to attain the ozone NAAQS by December 31, 1982.

Transportation Control Plan (TCP)—Implementor Commitments: One of the requirements for an acceptable TCP is that it contains commitments from the Regional Policy Board to meet specific annual emission reduction goals. As noted in the May 16, 1980 **Federal Register,** the Youngstown TCP does not contain such commitments.

State Response: The State said in the June 12, 1980 letter that it would submit the necessary commitments to USEPA by November 3, 1980. The State affirmed its commitment to the November 3, 1980 date in an August 6, 1980 letter.

USEPA Response: USEPA believes that both the State's commitment and schedule, as contained in the August 6, 1980 letter, are acceptable. A notice soliciting public comment on the acceptability of the November 3, 1980 date for the submission of the Implementor Commitments appears elsewhere in today's **Federal Register.**

Demonstration of Reasonable Further Progress (RFP) for Ozone: In the May 16, 1980 **Federal Register,** USEPA pointed out that the original ozone RFP line must be revised to account for the change in the base year from 1975 to 1977 and to account for any change in the emissions inventory due to any revised VOC estimates for the Cutback Asphalt and Other Solvent Usage Categories.

State Response: In its June 12, 1980 letter, the State said that it would revise and submit the ozone RFP demonstration by November 3, 1980. In its August 6, 1980 letter, the State reported that it needed additional time, until August 1, 1981, to submit the revised ozone RFP demonstration. Therefore, the State committed itself to submit the revised ozone RFP demonstration by August 1, 1981.

USEPA Response: USEPA believes that both the State's commitment and schedule as contained in its August 6, 1980 letter are acceptable. A notice soliciting public comment on the acceptability of the August 1, 1981 date for the submission of the revised ozone RFP demonstration appears elsewhere in today's **Federal Register.**

USEPA Final Determination on the Youngstown Urban Area Plan: USEPA believes that the State has adequately corrected the VOC emissions inventory to account for the deficiency in the Other Solvent Usage Category. Furthermore, USEPA believes that the commitments made by the State to correct the deficiencies in the ozone attainment and RFP demonstrations and the transportation control plan are adequate for a conditional approval. Therefore, USEPA conditionally approves these portions of the Youngstown urban area plan. Additionally, since no comments were received questioning USEPA's proposed approval of the carbon monoxide attainment and RFP demonstration portion of the youngstown urban area plan, USEPA finally approves these portions.

Rural Area Ozone Nonattainment Plan: In the May 16, 1980 **Federal Register,** USEPA stated that for the rural ozone nonattainment areas a specific demonstration of attainment and reasonable further progress is not necessary. The April 4, 1979 **Federal Register** specifies that reasonably available control technology (RACT) at major stationary sources of hydrocarbons in rural areas and a demonstration of attainment in all urban areas will assure attainment and reasonable further progress in the rural areas. Since the Ohio carbon monoxide and ozone SIP revisions satisfy these requirements, USEPA proposed to approve the ozone nonattainment area plan for the following rural ozone nonattainment counties: Lawrence, Clinton, Brown, Highland, Fayette, Ross, Pickaway, Hocking, Perry, Fairfield, Madison, Licking, Belmont, Champaign, Shelby, Logan, Union, Ottawa, Fulton, Delaware, Knox, Holmes, Tuscarawas, Harrison, Carroll, Columbiana, Ashtabula, Wayne, Ashland, Richland, Morrow, Marion, Allen, Hancock, Seneca, Huron, Erie, Sandusky, and Henry.

No comments were received during the public comment period on USEPA's proposed approval of the ozone nonattainment area plan for these rural ozone nonattainment counties. Therefore, USEPA approves the ozone nonattainment area plan in these counties.

USEPA has determined that good cause exists for making this final rulemaking immediately effective. By making this final rulemaking immediately effective, the restrictions on industrial growth contained in section 110(a)(2)(I) of the Act could be lifted in some areas of the State of Ohio if all other requirements are met. These restrictions are imposed for a failure to have a State Implementation Plan which meets the requirements of Part D after the final date for SIP approval specified in the Act. The U.S. EPA has determined that for the Youngstown urban area and the rural ozone nonattainment areas, the Ohio carbon monoxide and ozone SIP meets the requirements of Part D. Therefore, it would be contrary to public interest to continue for thirty days after the publication of this notice the restrictions on industrial growth for certain sources located within, or wishing to locate within these areas.

The 1978 edition of 40 CFR Part 52 lists in the subpart for each State, the applicable deadlines for attaining ambient standards (ambient dates) required by section 110(a)(2)(A) of the Act. For each nonattainment area where a revised plan provides attainment by the deadline required by section 172(a) of the Act, the new deadlines will be substituted on the attainment date charts. The earlier attainment dates under section 110(a)(2)(A) will continue to appear in a footnote to the earlier charts. Sources subject to plan requirements and deadlines established under section 110(a)(2)(A) prior to the 1977 Amendments remain obligated to comply with those requirements, as well as with the new section 172 plan requirements.

Congress established new deadlines under section 172(a) to provide additional time for previously regulated sources to comply with new, more stringent requirements and to permit previously uncontrolled sources to comply with newly applicable emission limitations. If these new deadlines were permitted to supersede the deadlines established prior to the 1977 Amendments, sources that failed to comply with pre-1977 plan requirements by the earlier deadlines would improperly receive more time to comply with those requirements. Congress, however, intended that the new deadlines apply only to new, additional control requirements and not to earlier requirements. As stated by Congressman Paul Rogers in discussing the 1977 Amendments:

> Section (a)(2) of the Act made clear that each source has to meet its emission limits "as expeditiously as practicable" but not later than three years after the approval of a plan. This provision was not changed by the 1977 Amendments. It would be a perversion of clear congressional intent to construe part D to authorize relaxation or delay of emission limits for particular sources. The added time for attainment of the national ambient air quality standards was provided, if necessary, because of the need to tighten emission limits or bring previously uncontrolled sources under control. Delays or relaxation of emission limits were not generally authorized or intended under Part D.
> (123 Cong. Rec., H 11958, daily, ed. November 1, 1977)

To comply fully with the intent of Congress that sources remain subject to pre-existing plan requirements, sources cannot be granted variances extending compliance dates beyond attainment dates established prior to the 1977 Amendments. Such variances would impermissibly relax existing requirements beyond the applicable section 110(a)(2)(A) attainment date under the plan. Therefore, for requirements adopted before the 1977 Amendments, USEPA will not approve a compliance date extension beyond pre-existing 110(a)(2)(A) attainment dates, even though a section 172 plan revision with a later attainment date has been approved.

However, in certain exceptional circumstances, extensions beyond a pre-existing attainment date are permitted. For example, if a section 172 plan imposes new, more stringent control requirements that are incompatible with controls required to meet the pre-existing regulations, the pre-existing requirements and deadlines may be revised if a State makes a case-by-case demonstration that a relaxation or revocation is necessary. Any such exemption granted by a State will be reviewed and acted upon by USEPA as a SIP revision. In addition, as discussed in the April 4, 1979 **Federal Register** (44 FR 20373), an extension may be granted if it will not contribute to a violation of an ambient standard or a PSD increment.

Under Section 307(b)(1) of the Clean Air Act, judicial review of (this action) is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit by December 30, 1980. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by USEPA to enforce these requirements.

Under Executive Order 12044, USEPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. USEPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This Notice of Final Rulemaking is issued under the authority of Sections 110(a), 172 and 301 of the Clean Air Act, as amended (42 U.S.C. 7410(a), 7502, 7601(a)).

V 4 5 O C 3 1 8 0 UMI

Dated: October 23, 1980.

Douglas Costle,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the Federal Register on July 1, 1980.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended as follows:

1. Section 52.1870(c) is amended by adding subparagraphs (21) to (22) to read as follows:

§ 52.1870 Identification of Plan.

* * * * *

(c) * * *

(21) On December 28, 1979 the State of Ohio submitted its Part D carbon monoxide and ozone nonattainment area plan for the Youngstown urban area. The submittal contained transportation control plans and demonstrations of attainment (for carbon monoxide and/or ozone). On February 12, 1980 the State amended the ozone attainment demonstration submitted on December 28, 1979.

(22) On June 12, 1980 and August 6, 1980 the State submitted comments on, technical support for, and commitments to correct the deficiencies cited in the May 16, 1980 Notice of Proposed Rulemaking.

§ 52.1871 [Amended]

2. Section 52.1871 is amended by changing the heading "Photochemical Oxidants (hydrocarbons)" to "Ozone".

3. Section 52.1873 is revised to read as follows:

§ 52.1873 Approval Status.

With the exceptions set forth in this subpart the Administrator approves Ohio's plan for the attainment and maintenance of the National Ambient Air Quality Standards under Section 110 of the Clean Air Act. Furthermore, the Administrator finds the plan satisfies all the requirements of Part D, Title 1 of the Clean Air Act as amended in 1977, except as noted below. In addition, continued satisfaction of the requirements of Part D for the ozone portion of the SIP depends on the adoption and submittal of RACT requirements by July 1, 1980 for the sources covered by CTGs between January 1978 and January 1979 and adoption and submittal by each subsequent January of additional RACT requirements for sources covered by CTGs issued by the previous January.

4. Section 52.1875 is amended to delete paragraph (b) and revise paragraph (a) as follows:

§ 52.1875 Attainment Dates for National Standards.

(a) The following table presents the latest date by which the national standards are to be attained. These dates reflect the information presented in Ohio's plan, except where noted.

Air quality control region	Pollutant						
	Particulate matter		Sulfur oxides		Nitrogen dioxide	Carbon monoxide	Ozone
	Primary	Secondary	Primary	Secondary			
Greater Metropolitan Cleveland Intrastate (AQCR 174):							
a. Primary/secondary nonattainment areas	h	h	/	/	b	e	c
b. Remainder of AQCR	b	b	b	b	b	b	b
Huntington (West Virginia)-Ashland (Kentucky)-Portsmouth-Ironton (Ohio) Intrastate (AQCR 103):							
a. Primary/secondary nonattainment areas	h	h	/	/	b	b	d
b. Remainder of AQCR	b	b	b	b	b	b	b
Mansfield-Marion-Intrastate (AQCR 175):							
a. Primary/secondary nonattainment areas	h	h	/	/	b	b	d
b. Remainder of AQCR	b	b	b	b	b	b	b
Metropolitan Cincinnati Interstate (AQCR 079):							
a. Primary/secondary nonattainment areas	h	h	/	/	b	g	g
b. Remainder of AQCR	b	b	b	b	b	b	b
Metropolitan Columbus Intrastate (AQCR 176):							
a. Primary/secondary nonattainment areas	h	h	/	/	b	d	d
b. Remainder of AQCR	b	b	b	b	b	b	b
Metropolitan Dayton Intrastate (AQCR 173):							
a. Primary/secondary nonattainment areas	h	h	/	/	b	d	d
b. Remainder of AQCR	b	b	b	b	b	b	b
Metropolitan Toledo Interstate (AQCR 124):							
a. Primary/secondary nonattainment areas	h	h	/	/	b	g	d
b. Remainder of AQCR	b	b	b	b	b	b	b
Northwest Ohio Intrastate (AQCR 177):							
a. Primary/secondary nonattainment areas	h	h	/	/	b	b	d
b. Remainder of AQCR	b	b	b	b	b	b	b
Northwest Pennsylvania Youngstown Interstate (AQCR 178):							
a. Primary/secondary nonattainment areas	h	h	/	/	b	b	d
b Remainder of AQCR	b	b	b	b	b	b	b

Air quality control region	Pollutant						
	Particulate matter		Sulfur oxides		Nitrogen dioxide	Carbon monoxide	Ozone
	Primary	Secondary	Primary	Secondary			
Parkersburg (West Virginia)-Marietta (Ohio) Interstate:							
a. Primary/secondary nonattainment areas	h	h	/	/	b	b	b
b. Remainder of AQCR	b	b	b	b	b	b	b
Sandusky Intrastate (AQCR 180):							
a. Primary/secondary nonattainment areas	h	h	/	/	b	b	d
b. Remainder of AQCR	b	b	b	b	b	b	b
Steubenville-Wierton-Wheeling Interstate (AQCR 181):							
a. Primary/secondary nonattainment areas	h	h	/	/	b	d	d
b. Remainder of AQCR	b	b	b	b	b	b	b
Wilmington-Chillicothe-Logan Intrastate (AQCR 182):							
a. Primary/secondary nonattainment areas	h	h	b	b	b	b	g
b. Remainder of AQCR	b	b	b	b	b	b	b
Zanesville-Cambridge Intrastate (AQCR 183):							
a. Primary/secondary nonattainment areas	h	h	/	/	b	b	g
b. Remainder of AQCR	b	b	b	b	b	b	b

NOTE.—Sources subject to the plan requirements and attainment dates established under section 110(a)(2)(A) prior to the 1977 Clean Air Act Amendments remain obligated to comply with these requirements by the earlier deadlines. The earlier attainment dates are set out at 40 CFR 52.1875 published July 1, 1979.

For actual nonattainment designations refer to 40 CFR Part 81.

Dates or footnotes which are italicized are prescribed by the Administrator because the plan did not provide a specific date or the date provided was not acceptable.

a. Air quality levels presently below primary standards or is unclassifiable.

b. Air quality levels presently below secondary standards or is unclassifiable.

c. For Stark, Summit and Portage Counties attainment is to be achieved by December 31, 1982. For the remaining counties the attainment date will be specified in the future.

d. December 31, 1982.

e. For Summit County attainment is to be achieved by December 31, 1982. For Cuyahoga County the attainment date will be specified in the future.

f. August 27, 1979 except for the companies listed in (1) which are subject to an attainment date of June 17, 1980, the Ashland Oil Company in Stark County which is subject to an attainment date of September 14, 1982, the companies in Summit County listed in (2) which are subject to an attainment date of January 4, 1983, and the PPG Industries, Inc. (boilers only) in Summit County, Ohio which is subject to an attainment date of August 25, 1983.

(1) Youngstown Sheet & Tube Co.; PPG Industries, Inc.; Wheeling-Pittsburgh Steel Corp.; Pittsburgh-Canfield Corporation; The Timken Company; The Sun Oil Co.; Sheller-Globe Corp.; The B.F. Goodrich Company; Phillips Petroleum Co.; Shell Oil Co.; Federal Paper Board Co.; The Firestone Tire & Rubber Co.; Republic Steel Corp.; Chase Bag Co.; White-Westinghouse Corp.; U.S. Steel Corp.; Interlake, Inc.; Austin Power Co.; Diamond Crystal Salt Co.; The Goodyear Tire & Rubber Co.; The Gulf Oil Co.; The Standard Oil Co.; Champion International Corp.; Koppers Co., Inc.; General Motors Corp.; E. I. du Pont de Nemours and Co.; Coulton Chemical Corp.; Allied Chemical Corp.; Specialty Chemicals Division; The Hoover Co.; Aluminum Co. of America; Ohio Greenhouse Assoc.; Armco Steel Corp.; Buckeye Power, Inc.; Cincinnati Gas and Electric; Cleveland Electric Illuminating Co.; Columbus and Southern Ohio Electric; Dayton Power and Light Co.; Duquesne Light Co.; Ohio Edison Co.; Ohio Electric Co.; Pennsylvania Power Co.; Toledo Edison Co.; Ohio Edison Co.; RCA Rubber Co.

(2) In Summit County: Diamond Crystal Salt; Firestone Tire & Rubber Co.; General Tire & Rubber; B.F. Goodrich Co.; Goodyear Aerospace Corp.; Good<year Tire & Rubber Co.; Chrysler Corp.; PPG Industries, Inc.; Seiberling Tire & Rubber; Terex Division of General Motors Corp.; Midwest Rubber Reclaiming; Kittinger Supply Co.

g. Attainment date will be specified in the future.

h. April 15, 1977.

i. December 31, 1987.

5. Section 52.1885 is amended by adding new paragraphs (a)(4), (b)(3) and (b)(4) to read as follows:

§ 52.1885 Control Strategy: Ozone.

(a) * * *

(4) The ozone nonattainment area plan for the rural nonattainment areas.

(b) * * *

(3) The attainment demonstrations for the urban areas of Canton, Cleveland, Columbus and Youngstown provided the deficiencies cited are corrected.

(4) The Reasonable Further Progress Demonstration for the urban areas of Canton, Steubenville and Youngstown provided the deficiencies cited are corrected.

6. Section 52.1886 is amended by adding a new paragraph (e) to read as follows:

§ 52.1886 Ozone Attainment and Reasonable Further Progress Demonstrations.

* * * * *

(e) Part D—Conditional Approval—The attainment demonstration for the Youngstown urban area is approved provided that the following conditions are satisfied:

(1) The State submit either technical support for the 100% VOC emission reduction estimate from the cutback asphalt category; or a re-evaluation of the baseline emissions to account for the possible VOC emissions resulting from this category.

(2) The State submit a revised RFP demonstration line to account for any changes made in the attainment demonstrations.

7. Section 52.1887 is amended by adding new paragraphs (a)(3) and (b)(4) to read as follows:

§ 52.1887 Control Strategy: Carbon Monoxide.

(a) * * *

(3) The carbon monoxide attainment and reasonable further progress demonstrations for the following urban areas: Cincinnati, Cleveland, Columbus and Youngstown.

(b) * * *

(4) For the Youngstown transportation control plan, the State submits the commitments of the Regional Policy Board to meet specific annual emission reduction goals.

[FR Doc. 80-33876 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-9 FRL 1632-3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision: North Coast Air Basin

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove or take no action on revisions to the North Coast Air Basin portion of the California State Implementation Plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: December 1, 1980.

ADDRESS: A copy of the revisions is located at: The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Louise P. Giersch, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105. Attn: Douglas Grano (415) 556-2938.

SUPPLEMENTARY INFORMATION: On March 20, 1980 [45 FR 18035] EPA published a notice of proposed rulemaking for revisions to the North Coast Air Basin rules and regulations submitted on May 7 and 23, 1979 by the California Air Resources Board (ARB) for inclusion in the California SIP.

The changes contained in those submittals that are being acted upon by this notice include the following:

V 45 OC 31 80 UMI

(A) New rules to regulate equipment breakdown, emergency variances and particulates;

(B) Amended rules for controlling open outdoor fires, including agricultural burning and visible emissions; and

(C) Changes in the annual renewal and hearing board fee schedules.

A list of the affected rules was published as part of the March 20, 1980 notice of proposed rulemaking. As described in that notice, all the rules were evaluated, found to be in conformance with the requirements of 40 CFR Part 51, and proposed to be approved, with the exception of Rule 410(c)(2) which was proposed to be disapproved and Rule 410(b) for which no action was proposed. The notice of proposed rulemakiing provided for a 60 day public comment period. One comment letter was received from the Mendocino County APCD.

Comment: The District noted that they have recently recodified certain agricultural burning rules which EPA had proposed to disapprove and that the revised rules are consistent with the State ARB Agricultural Burning Guidelines. Further the District stated that they assumed EPA had approved these Agricultural Burning Guidelines.

Response: Because the District's recodified rules have not yet been submitted to EPA to replace the rules EPA had proposed to disapprove, EPA is taking final action to disapprove these "old" rules. Upon official submittal of the recodified rules, EPA will consider them for incorporation into the SIP. The State Agricultural Burning Guidelines were officially submitted to the EPA on August 5, 1980. EPA has not yet approved or disapproved these Guidelines.

Thus, it is the purpose of this notice to approve the revisions contained in the May 7 and 23, 1979 submittals, and to incorporate them into the California SIP, with the exception of Rules 410(b) and 410(c)(2) discussed below.

Rules 410(c)(2), *Visible Emissions*, submitted May 7, 1979, allows exceptions to the provisions Rule 410(a), and therefore could result in increased emissions. This rule is being disapproved for Del Norte, Humboldt, Mendocino, Northern Sonoma and Trinity Counties because an adequate control strategy analysis has not been submitted to show that these exceptions would not interfere with attainment or maintenance of the National Ambient Air Quality Standards.

Rule 410(b), submitted May 7, 1979, is applicable only in Mendocino County. However, Rule 410(b) also appears in the submittals for Del Norte, Humboldt, Northern Sonoma and Trinity Counties. Since it pertains only to Mendocino County no action is being taken on this rule with respect to Del Norte, Humboldt, Northern Sonoma and Trinity Counties.

As described in the March 20, 1980 proposed rulemaking notice, Rule 240, *Compliance Verification*, and Appendix D to Regulation I are being approved. Since these rules contain requirements equivalent to those in 40 CFR Part 52, EPA is also rescinding 40 CFR 52.224(a)(2)(xviii), (xix), (xxii), (xxv) and (xxx) and 40 CFR 52.234(e)(5)(ii) and (e)(9) for the respective Counties.

The Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

EPA has determined that this action is "specialized" and therefore, not subject to the procedural requirements of Executive Order 12044.

(Sections 110 and 301(a) of the Clean Air Act as amended (42 U.S.C. §§ 7410 and 7601(a)))

Dated: October 27, 1980.

Douglas M. Costle,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1980.

Subpart F of Part 52 of Chapter I, Title 40, of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220 is amended by adding paragraphs (c)(50) and (51) (iii)–(vi) as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(50) Revised regulations for the following APCD's submitted on May 7, 1979, by the Governor's designee.

(i) Del Norte County APCD.

(A) New or amended Rules 240, 410(a) and (c), and 615.

(ii) Humboldt County APCD.

(A) New or amended rules 240, 410 (a) and (c), 615.

(iii) Mendocino County APCD.

(A) New or amended rules 240, 410, and 615.

(iv) Trinity County APCD.

(A) New or amended rules 240, 410 (a) and (c), and 615.

(v) Northern Sonoma County APCD.

(A) New or amended Rules 240, 300, 310, 320, 410 (a) and (c), 420, 540, 615.

* * * * *

(51) Revised regulations for the following APCD's submitted on May 23, 1979, by the Governor's designee.

* * * * *

(iii) Del Norte County APCD.

(A) New or amended rules 130, 300, 310, 320, 420, 540 and Regulation 1/ Appendix D.

(iv) Humboldt County APCD.

(A) New or amended rules 130, 300, 310, 320, 420, 540 and Regulation 1/ Appendix D.

(v) Mendocino County APCD.

(A) New or amended rules 130, 300, 310, 320, 420, 540 and Regulation 1/ Appendix D.

(vi) Trinity County APCD.

(A) New or amended rules 130, 300, 310, 320, 420, 540 and Regulation 1/ Appendix D.

* * * * *

2. Section 52.224 is amended by adding paragraphs (a)(1)(vi)(C), (D), (E), (F), and (G) and by rescinding and reserving paragraphs (a)(2)(xviii), (xix), (xxii), (xxv), and (xxx) as follows:

§ 52.224 General Requirements.

(a) * * *

(1) * * *

(vi) * * *

(C) Del Norte County APCD

(D) Humboldt County APCD

(E) Mendocino County APCD

(F) Northern Sonoma County APCD

(G) Trinity County APCD

* * * * *

(2) * * *

(xviii) [Reserved]

(xix) [Reserved]

* * * * *

(xxii) [Reserved]

* * * * *

(xxv) [Reserved]

* * * * *

(xxx) [Reserved]

* * * * *

3. Section 52.234 is amended by adding (a)(6)(ii) and revoking and reserving paragraphs (e)(5) (ii) and (e)(9) as follows:

§ 52.234 Source Surveillance.

* * * * *

(a) * * *

(6) * * *

(ii) Northern Sonoma County APCD

* * * * *

(e) * * *

(5) * * *

(ii) [Reserved]

* * * * *

(9) [Reserved]

* * * * *

4. Section 52.273 is amended by adding paragraphs (b)(3)(i)(B), (b)(3)(ii)(B), (b)(3)(iii)(B), (b)(3)(iv)(B), and (b)(7)(i)(B) as follows:

§ 52.273 Open burning.

* * * * *

(b) * * *

(3) * * *

(i) * * *

(B) Rule 410(c)(2), *Visible Emissions*, submitted on May 7, 1979.

* * * * *

(ii) * * *

(B) Rule 410(c)(2), *Visible Emissions*, submitted on May 7, 1979.

* * * * *

(iii) * * *

(B) Rule 410(c)(2), *Visible Emissions*, submitted on May 7, 1979.

* * * * *

(iv) * * *

(B) Rule 410(c)(2), *Visible Emissions*, submitted on May 7, 1979.

* * * * *

(7) * * *

(i) * * *

(B) Rule 410(c)(2), *Visible Emissions*, submitted on May 7, 1979.

* * * * *

[FR Doc. 80-33924 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-26-M

40 CFR Part 52

[A7 FRL 1643-8]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: The St. Louis County Air Pollution Control Appeal Board granted a variance for the Union Electric Company Meramec power plant to allow sufficient time for the company to design, construct and operate new control equipment for emissions of total suspended particulate (TSP) matter. EPA proposed to approve the variance as part of the applicable State Implementation Plan (SIP) in a **Federal Register** notice on July 11, 1980. One commentor responded to that proposal. In this notice, EPA is taking final action to approve this SIP revision.

EFFECTIVE DATE: This rulemaking is effective October 31, 1980.

ADDRESSES: Copies of the state submission, the comment received and the EPA prepared technical evaluation document are available at the following locations:

Air Support Branch, Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106;

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460;

Missouri Department of Natural Resources, 2010 Missouri Boulevard, Jefferson City, Missouri 65102;

St. Louis County Department of Health and Medical Care, Division of Environmental Health Care Services, Air Pollution Control Branch, 801 South Brentwood Boulevard, Clayton, Missouri 63105.

Copies of the state submission and this rulemaking are also available at the following location:

Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Wayne G. Leidwanger at 816–374–3791 (FTS 758–3791).

SUPPLEMENTARY INFORMATION: The Union Electric Company Meramec plant is subject to an SO_2 emission limit of 2.3 pounds per million BTU of heat input in addition to the mass emission rate contained in Rule 10 CSR 10–5.030 and the visible emission limit of Rule 10 CSR 10–5.090. At the time the variance was requested (July 1, 1978), the allowable total suspended particulate matter rate was 0.18 lb. per million BTU and the allowable visible emission limit was 40 percent opacity. The Meramec plant is located in St. Louis County near the Mississippi River approximately 19 kilometers south-southwest of the City of St. Louis.

In order to meet the required sulfur dioxide emission limit of 2.3 lbs. per million BTU of heat input, the Union Electric Company switched to low sulfur western coal. The existing particulate matter control devices used at the Meramec plant have proven to be inadequate to meet the TSP rules.

The Missouri Air Conservation Commission (MACC) amended Rule 10 CSR 10–5.090 to require sources to meet a 20 percent opacity limit at point sources and Rule 10 CSR 10–5.030 which is applicable to indirect heating sources. These rules are applicable only in the St. Louis Air Quality Control Region. Application of amended Rule 10 CSR 10–5.030 to the Union Electric Company Meramec power plant requires an emission limit of 0.12 lb. per million BTU of heat input. EPA approved these rules at 45 FR 24140 on April 9, 1980.

The St. Louis County Air Pollution Control Appeal Board granted a variance for the Meramec plant on November 22, 1978 after a public hearing on October 20, 1978. The variance allows the plant to operate at a mass emission rate of 0.30 lb. per million BTU of heat input and a visible emission limit of 50 percent opacity during the period of the variance. Final compliance for Units 1 and 2 is May 15, 1981, and November 30, 1981, for Units 3 and 4. EPA proposed to approve the variance as part of the applicable SIP on July 11, 1980 (45 FR 46826). A further discussion of the variance is given in that notice.

EPA received one set of comments in response to the proposed rulemaking. The commentor generally concurred with EPA's conclusions and strongly urged prompt approval of the Meramec variance. The commentor disagreed with one aspect of EPA's analysis. The proposed rulemaking stated that the variance did not agree with the 60-day period for submission to EPA required by 40 CFR 51.6(d). The St. Louis County Air Pollution Control Appeal Board adopted the variance on November 22, 1978, and submitted it to the Missouri Department of Natural Resources (MDNR) on February 16, 1979. MDNR submitted it to EPA on April 25, 1979. EPA stated in the proposed rulemaking that it does not believe the delay affects the approvability of the variance submittal.

The commentor agrees that the approvability of the variance is not an issue. However, the commentor believes that the 60-day submittal requirement was met because MDNR concurrence is required and the period for submittal should be computed from the date of MDNR concurrence. The commentor is correct that the variance requires state concurrence before it can become part of the SIP. However, the local agency adopted the variance under authority granted by the MACC at which time the variance became effective and 40 CFR 51.6(d) states that a revision of this type "shall be submitted to the Administrator no later than 60 days after its adoption." If the 60-day submittal requirement were to be computed from the date of the State's concurrence, a local agency could postpone indefinitely the submittal of such actions without violating the rule. EPA disagrees with the commentor but still believes that the approvability of the variance is not affected.

One part of the analysis given in the notice of July 11 requires further explanation. The portion of the county in which the Meramec plant is located is designated attainment for TSP at 40 CFR Part 81. Because the area is attainment, the possibility of consumption of Increment under the Federal regulations for prevention of significant deterioration (PSD) of air quality is a matter for consideration. In the notice of proposed rulemaking, EPA stated that the PSD regulations exempt certain activities from an air quality impact analysis if such activities result in a temporary increase in emissions and

such emissions do not impact any Class I areas or areas where the applicable PSD increment is known to be violated. EPA believed the variance granted the Union Electric Company was similar to such activities and proposed an exemption by analogy to 40 CFR 52.21(k), relating to exemption from impact analysis for temporary emission sources.

On August 7, 1980, EPA published final PSD regulations (45 FR 52676). In that action, EPA decided that the existing policy of exempting temporary emissions from the analysis of the impacts on PSD increments should be extended to those associated with certain SIP relaxations. However, to obtain the exemption from an impact analysis, the Governor must make a specific request. EPA did not receive such a request in this instance, and therefore the analysis in the July 11 proposal is inappropriate.

This activity is, however, exempt from the analysis of impact on PSD increment because the state implementation plan revision approved today would not result in an increased air quality deterioration over any baseline concentration (40 CFR 51.24(a)(2), 45 FR 52729). The baseline date was established on July 17, 1978 and there are test results which indicate that the revision approved today would result in a decrease in TSP emissions over the baseline concentration.

This action is being made effective immediately inasmuch as it provides no additional burden on any affected party.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and, therefore, subject to the procedural requirements of the Order, or whether it may follow other specialized development procedures. EPA labels these other regulations "Specialized". I have reviewed this regulation and determined that it is not subject to the procedural requirements of Executive Order 12044.

This notice of final rulemaking is issued under the authority of Section 110 of the Clean Air Act, as amended.

Dated: October 23, 1980.

Douglas M. Costle,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Missouri was approved by the Director of the Federal Register on July 1, 1980.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart AA—Missouri

1. Section 52.1320 is amended by adding paragraph (c) (22) as follows:

§ 52.1320 Identification of plan

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(22) On April 25, 1979, the Missouri Department of Natural Resources submitted the variance for the Union Electric Company's Meramec power plant.

2. Section 52.1335 is amended by adding the following to the end of the existing list in § 52.1335(a):

§ 52.1335 Compliance schedules.

(a) * * *

Source	Location	Regulation involved	Date adopted	Effective date	Final compliance date
Union Electric Company	St. Louis County.	10 CSR 10-5.030	Nov. 22, 1978.	Immediately	
		10 CSR 10-5.090			
Meramec Power Plant:					
Units 1 and 2	do				May 15, 1981
Units 3 and 4	do				Nov. 30, 1981

[FR Doc. 80-33925 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 52

[A-8-FRL 1645-6]

Approval and Promulgation of State Implementation Plans; Colorado

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: The purpose of this notice is to make minor corrections to final rulemaking actions on plans required in Colorado nonattainment areas published for Colorado on July 16, 1980, (45 FR 47682) August 1, 1980, (45 FR 51199) and August 11, 1980, (45 FR 53147).

EFFECTIVE DATE: The effective date of this rulemaking is October 31, 1980.

ADDRESSES: Copies of the SIP revisions and an EPA evaluation of the revisions will be available at the EPA Offices listed below:

Environmental Protection Agency, Air Programs Branch, Region VIII, Suite 200, 1860 Lincoln Street, Denver, Colorado 80295.

Environmental Protection Agency, Public Information Reference Unit, Room 2922 (EPA Library), Mail Code PM-213, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Eliot Cooper, Technical Advisor, Planning & Operations Section, Region VIII, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295, (303) 837-3711.

SUPPLEMENTARY INFORMATION: In our August 1, 1980, final rulemaking for Colorado, Title 40, Part 52 of the Code of Federal Regulations (CFR) was amended to add in 52.320, paragraph (c)(18). This paragraph is hereby changed to (c)(19) since paragraph (c)(18) had been added previously (45 FR 77682). In our August 11, 1980, final rulemaking, the CFR was amended to add paragraph (c)(19). This paragraph is hereby changed to (c)(20).

In our July 16 and August 1, 1980, final rulemakings, §§ 52.327 and 52.328 were revised incorrectly. These sections are hereby corrected to read as follows:

1. Section 52.327 is revised as follows:

§ 52.327 Control strategy: Ozone.

(a) Part D Conditional Approval—The Denver Plan is approved provided that the following conditions are satisfied:

(1) The plan provides for implementation of reasonably available control technology on existing sources of volatile organic compounds. EPA's conditional approval of Regulation 7 is based upon the State meeting the following schedule:

January 10, 1980—Notice of public hearing and draft regulations submitted to EPA
March 13, 1980—Public Hearing
April 10, 1980—Adopt new regulation and submit to EPA

(2) Regulation 3 is revised by March 1, 1980, so that it is consistent with Section 173 of the Act.

(3) Section 172(b)(11)(A) programs are adopted by March 1, 1980.

(b) [Reserved]

2. Section 52.328 is revised as follows:

§ 52.328 Control strategy: Carbon monoxide.

Part D Conditional Approval—the Denver, Colorado Springs, and Larimer-Weld plans are approved provided that a Section 172(b)(11)(A) program is adopted by March 1, 1980.

This rulemaking action is issued under the authority of Section 110 (42 U.S.C. 7410) of the Clean Air Act as amended.

Dated: October 14, 1980.

Gene A. Lucero,

Acting Regional Administrator.

[FR Doc. 80-33881 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 52

[A-4 FRL 1613-2]

Approval and Promulgation of Implementation Plans; Alabama, Plan Revision

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Alabama has revised its air pollution control regulations by revoking the provisions for the preconstruction review of complex sources—parking facilities, roads, and airports. These are also known as "indirect" sources since they may indirectly increase emissions by causing increased motor vehicle traffic where they are built. EPA today is approving this revision.

DATE: This rule is effective December 1, 1980.

ADDRESSES: The Alabama submittal may be examined during normal business hours at the following EPA Offices:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460

Library, Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365

In addition, the Alabama revisions may be examined at the offices of the Division of Air Pollution Control, Alabama Air Pollution Control Commission, 645 South McDonough Street, Montgomery, Alabama 36104.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Preston, EPA Region IV, Air Programs Branch, 345 Courtland Street, Atlanta, Georgia 30365, 404/881-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION: Pursuant to the decision by the District of Columbia Circuit Court of Appeals in *NRDC v. EPA*, 475 F. 2d 968 (D.C. Cir. 1973), the Agency on June 18, 1973 (38 FR 15834) promulgated changes in 40 CFR 51.18 requiring State Implementation Plans to provide for preconstruction review of indirect sources of air pollution. Alabama was one of the few States to respond within the deadline set by EPA for the submittal of an indirect source plan. The Alabama plan, set forth as Chapter 10 of the State's air pollution control regulations, was approved by the Administrator, except for inadequate provisions for public comments, on February 25, 1974 (39 FR 7270). Also at that time, a Federal regulation was promulgated for States which had failed to submit an acceptable indirect source plan.

These Federal regulations have never been implemented and were suspended indefinitely in 1975. See 40 CFR 52.22 (b)(16)(1978). Consequently, Alabama has never implemented its own indirect source regulations and EPA has not enforced those Alabama regulations. The State believed that these regulations of the Clean Air Act (concerning the State attainment strategy for nonattainment areas) could be met for vehicle related pollutants by more effective and reliable means. Therefore, on November 27, 1978, Alabama revoked its indirect (complex) source regulations, following public notice in conformity with 40 CFR 51.4. This change was submitted to EPA's Region IV office as a proposed implementation plan revision on December 6, 1978.

In the **Federal Register** of March 15, 1979 (44 FR 15741), EPA announced the revision as proposed rulemaking and solicited public comment on it. One comment was received, supporting the Agency's proposal to approve the revision. In the notice of proposed rulemaking, the Agency stated that it proposed to approve the Alabama revision on the grounds that it is authorized by Section 110 (a)(5) of the Clean Air Act; that Alabama is proceeding to revise its SIP to provide for the attainment and maintenance of the National Ambient Air Quality Standards for ozone as required by Part D of Title I of the Act; and that in all other respects the State's ozone plan meets the requirements of Section 110(a) of the Act.

On April 3, 1979, the Alabama Air Pollution Control Commission officially adopted implementation plan revisions designed to assure the attainment of the National Ambient Air Quality Standards for ozone in the five counties officially designated in 40 CFR Part 81 as nonattainment for that pollutant. An advance copy of the revisions was submitted to EPA on April 5, 1979. This contains a control strategy demonstration that the ozone standards will be met by December 1982 through the Federal Motor Vehicle Control Program (FMVCP) and newly adopted regulations representing RACT for stationary sources of volatile organic compounds. There are no nonattainment areas for CO or NO_2 (the other motor vehicle-related pollutants for which there are national ambient standards) in Alabama. Recently, the case of *Manchester Environmental Coalition v. United States Environmental Protection Agency*, 612 F. 2d 56 (2d Cir. 1979), was decided. That case involved EPA approval of a State's request to revoke its indirect source review program which was part of the State Implementation Plan (SIP). The Court held that before deciding whether to approve such a revocation EPA must consider whether revocation would render the SIP inadequate to attain and maintain the national ambient air quality standards.

EPA proposed approval of the Part D plan for attaining the ozone standard in Alabama on July 19, 1979 (44 FR 42242). The strategies for attaining the ozone standard were found to represent reasonable further progress toward attainment and to meet the other requirements under Part D. As mentioned, the only public comment submitted was in favor of EPA's proposed approval and this action was finalized on November 26, 1979 (44 FR 67375).

Since EPA has approved the Part D plan for attainment of the ozone standard, use of a additional strategy of indirect source review is not needed to meet attainment requirements of the Clean Air Act. EPA concludes that revocation would not render the SIP inadequate to attain those standards.

The second inquiry is whether revocation would render the SIP inadequate to maintain air quality standards. At the outset, it must be recognized that indirect source review is no longer one of the requisite elements of SIPs in general, under 40 CFR 51.11 (a) (1978). (See 44 FR 15741 [Mar. 15, 1979] and *Manchester Environmental Coalition*, cited earlier in this notice.) Also, the only public comment submitted was in favor of EPA's proposed approval and this action was finalized on November 26, 1979 (44 FR 67375).

Since EPA has approved the Part D plan for attainment of the ozone standard, use of an additional strategy of indirect source review is not needed to meet attainment requirements of the Clean Air Act. EPA concludes that

revocation would not render the SIP inadequate to attain those standards.

The second inquiry is whether revocation would render the SIP inadequate to maintain air quality standards. At the outset, it must be recognized that indirect source review is no longer one of the requisite elements of SIPs in general, under 40 CFR 51.11(a)(1978). (See 44 FR 15741 [Mar. 15, 1979] and *Manchester Environmental Coalition*, cited earlier in this notice.) Also, the Alabama indirect source review regulations have never been implemented, either by the State or EPA. Therefore, revocation of those regulations cannot adversely affect present maintenance of air quality standards. Moreover, the prevention of significant deterioration (PSD) requirements of Part C of the 1977 Amendments to the Clean Air Act will help maintain air quality standards through review of new direct sources. For the foregoing reasons, EPA concludes that revocation of the indirect source regulations would not render the Alabama SIP inadequate to maintain national ambient air quality standards.

In the **Federal Register** of April 1, 1980 (45 FR 21290), EPA announced the revision as reproposed rulemaking and solicited public comment on it. No additional comments were received. From the previous explanation, EPA concludes that revocation of the indirect source review would not render the Alabama SIP inadequate to attain and maintain national ambient standards. On this basis, EPA approves the revocation.

(Sec. 110(a), Clean Air Act (42 U.S.C. 7410(a))

Dated: October 27, 1980.

Douglas M. Costle,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart B—Alabama

1. In § 52.50, paragraph (c) is amended by adding subparagraph (24) as follows:

§ 52.50 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(24) Revision to the State Implementation Plan to delete the indirect source regulations submitted by the Alabama Air Pollution Control Commission on December 12, 1978.

§ 52.56 [Revoked]

[FR Doc. 80-33989 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 52

[A-2 FRL 1626-2]

Approval and Promulgation of Implementation Plans; Revision to the New Jersey State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On March 11, 1980 (45 FR 15531), the Environmental Protection Agency (EPA) promulgated conditional approval of the New Jersey State Implementation Plan (SIP) with regard to its ability to meet the requirements of Part D of the Clean Air Act, as amended. This conditional approval identified, among other corrective actions necessary, the need to submit to EPA: (1) an acceptable description of the State's transportation planning process highlighting those changes addressing air quality planning concerns and applicable SIP commitments, (2) a summary of the manpower and financial resources at the State, local and regional levels which are being committed to ensure a coordinated effort in transportation-air quality planning, and (3) a description of the comprehensive and systematic program which will be used for the selection of needed transportation control measures.

This notice advises the public that these conditions have been fulfilled through submission of the required documentation under cover of an April 22, 1980 letter from the State. EPA proposed approval of this submission on June 24, 1980 (45 FR 42335) and is now taking action to finalize this proposal. EPA is also incorporating the provisions of the State's submission into the approved SIP, and is revoking the applicable conditions on its approval of the plan. Until all conditions are met conditional approval of the SIP will continue.

EFFECTIVE DATE: This action is made effective October 31, 1980, inasmuch as it provides no additional burden upon any affected party. Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition of review in the United States Court of Appeals for the appropriate circuit on or before December 30, 1980. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESS: Copies of the State's submission are available for inspection at the following addresses:

Environmental Protection Agency, Air Programs Branch, Region II Office, 26 Federal Plaza—Room 1005, New York, New York 10278.

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 20460

The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 26 Federal Plaza—Room 1005, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION:

On March 11, 1980, at 45 FR 15531, the Environmental Protection Agency (EPA) promulgated conditional approval of the New Jersey State Implementation Plan (SIP) with regard to its ability to meet the requirements of Part D of the Clean Air Act, as amended. Today's notice discusses three conditions of EPA's approval of the plan. These required the State to submit to EPA by April 1, 1980:

1. An acceptable description of its transportation planning process which highlights those changes made to the existing process to integrate air quality planning concerns and address applicable SIP commitments.

2. A summary of manpower and financial resources at the State, local and regional levels which are being devoted to ensure a coordinated effort in transportation-air quality planning.

3. A description of the comprehensive and systematic program which will be used for the selection of needed transportation control measures.

In response to these requirements, on April 22, 1980, the Commissioners of the New Jersey Department of Transportation and Environmental Protection jointly submitted to EPA documents entitled, "The Transportation Planning Process in New Jersey," "Summary of Financial Resources For Transportation-Air Quality Planning," and "Program for Selection of Needed Transportation Control Measures, April 1980."

EPA promulgated proposed approval of this submission in the June 24, 1980, **Federal Register** at 45 FR 42335. The reader is referred to this **Federal Register** notice for a detailed discussion of EPA's findings.

During the 60-day comment period following publication of its June 24, 1980,

notice, EPA received one formal comment concerning the State's submission. In an August 18, 1980, letter the Region I Office of the Federal Highway Administration indicated that the criteria ultimately developed for determining consistency and conformity with the SIP should be guided by a June 12, 1980, United States Department of Transportation-EPA agreement entitled, "Procedures for Conformance of Transportation Plans, Programs and Projects with Clean Air Act State Implementation Plans." This agreement states the principles used by the United States Department of Transportation for determining conformance of transportation plans and programs with the SIP. EPA concurs with this comment and will encourage the metropolitan planning organizations in New Jersey to consult the guidelines in their development of consistency and conformity criteria.

Based on its review of the submitted documents, the comment received, and discussions with affected agencies EPA finds that the subject conditions on its approval of the New Jersey SIP have been fully met. Therefore, EPA is incorporating the State's submission into the SIP and revoking the applicable conditions. Furthermore, this action serves to continue EPA's conditional approval since two unfulfilled conditions remain.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Dated: October 23, 1980.

(Sections 110, 172, and 301 of the Clean Air Act, as amended (42 U.S.C. 7410, 7502, and 7601))

Note.—Incorporation by reference of the State Implementation Plan for the State of New Jersey was approved by the Director of the **Federal Register** on July 1, 1980.

Douglas M. Costle,

Administrator, Environmental Protection Agency.

Title 40, Chapter I, Subchapter C, Code of Federal Regulations is amended as follows:

Subpart FF—New Jersey

1. Section 52.1570 is amended by adding a new paragraph (c)(26) as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

(26) A supplementary submittal, dated April 22, 1980, from the New Jersey Department of Environmental Protection and the New Jersey Department of Transportation consisting of three documents entitled "The Transportation Planning Process in New Jersey," "Summary of Financial Resources for Transportation-Air Quality Planning," and "Program for Selection of Needed Transportation Control Measures, April 1980."

§ 52.1581 [Amended]

2. Section 52.1581 is amended by revoking and reserving paragraph (b) in its entirety.

[FR Doc. 8-34032 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 52

[A-4-FRL 1649-2]

Approval and Promulgation of Implementation Plans; Kentucky: Approval of 1979 Sulfur Dioxide Revisions

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today announces its approval of the State Implementation Plan (SIP) revisions which the Kentucky Department for Natural Resources and Environmental Protection submitted pursuant to the requirements of Part D of Title I of the Clean Air Act, as amended in 1977, for sulfur dioxide (SO_2) nonattainment areas. EPA's approval is given on condition that certain deficiencies be corrected by July 1, 1981. If the deficiencies are not corrected by July 1, 1981, EPA will then disapprove the affected portions of the revisions. Other deficiencies in the SIP are removed through EPA disapproval action.

DATE: These actions are effective October 31, 1980.

ADDRESSES: Copies of the materials submitted by Kentucky and comments received in response to the proposal notice of November 15, 1979 (44 FR 65781), may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460;

Library, Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Barry Gilbert, EPA, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404/881-3286 or FTS 257-3286.

SUPPLEMENTAL INFORMATION:

Background

In the March 3, 1978, **Federal Register** (43 FR 8962 at 8997) the areas listed below were designated as not attaining the national primary (P) or secondary (S) ambient air quality standards (NAAQS) for sulfur dioxide. The designation of the Boyd County area was revised on November 2, 1979 (44 FR 63104).

A. That portion of Boyd County south of UTM northing line 4251 km (P).

B. That portion of Daviess Co. in Owensboro (P&S).

C. Greenup County (P&S).

D. That portion of Henderson Co. in Henderson (P).

E. Jefferson County (P&S).

F. McCracken County (P).

G. Muhlenberg County (P&S).

H. Webster County (P&S).

Greenup County was designated nonattainment for the primary and secondary sulfur dioxide NAAQS because of the noncompliance of a sulfuric acid plant belonging to E. I. du Pont de Nemours and Co. On August 31, 1978, the source was certified to be in compliance. The Commonwealth of Kentucky requested that the area be redesignated attainment and this was done on July 18, 1979 (44 FR 41782). Also, the State recently submitted air quality data showing the Owensboro and Henderson areas to be attainment and requested redesignation to attainment; this will be dealt with in a separate **Federal Register** notice.

The Kentucky revisions have been reviewed by EPA in light of the Clean Air Act (CAA), EPA regulations, and additional guidance materials. The criteria utilized in this review were detailed in the **Federal Register** on April 4, 1979 (44 FR 20372), and need not be repeated in detail here. Supplements to the April 4 notice were published on July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 50371), September 17, 1979 (44 FR 53716), and November 23, 1979 (44 FR 67182); these involve, among other things, conditional approval. EPA is conditionally approving the revisions since the deficiencies are minor and the Commonwealth has provided assurance that it will submit corrections by the July 1981 deadline specified.

A discussion of conditional approval and its practical effect appears in

supplements to the General Preamble, 44 FR 38583 (July 2, 1979) and November 23, 1979 (44 FR 67182). The conditional approval requires the Commonwealth to submit additional materials by the deadline specified in today's notice. EPA will follow the procedures described below when determining if the Commonwealth has satisfied the conditions.

1. If the Commonwealth submits the required additional documentation according to schedule, EPA will publish a notice in the **Federal Register** announcing receipt of the material. The notice of receipt will also announce that the conditional approval is continued pending EPA's final action on the submission.

2. EPA will evaluate the Commonwealth's submission to determine if the condition is fully met. After review is complete, a **Federal Register** notice will be published proposing or taking final action either to find the condition has been met and approve the plan, or to find the condition has not been met, withdraw the conditional approval and disapprove the plan. If the plan is disapproved the Section 110(a)(2)(I) restrictions on construction will be in effect.

3. If the Commonwealth fails to submit in a timely manner the required materials needed to meet a condition, EPA will publish a **Federal Register** notice shortly after the expiration of the time limit for submission. The notice will announce that the conditional approval is withdrawn, the SIP is disapproved and Section 110(a)(2)(I) restrictions on growth are in effect.

A conditional approval will mean that the restrictions on new major source construction will not apply unless the Commonwealth fails to submit the necessary SIP revisions by the scheduled dates, or unless the revisions are not approved by EPA.

In addition to the implementation plan revisions for the nonattainment areas required under Part D of Title I of the Clean Air Act (CAA), the Commonwealth's submittal contains changes related to other portions of the CAA, including changes in the New Source Performance Standard (NSPS) regulations, regulations concerning prevention of significant deterioration, and other emission standards. These topics will be dealt with in a separate **Federal Register** notice.

General Discussion

Section 172(b) of the Clean Air Act (CAA) contains the requirements for nonattainment State Implementation Plans. These were listed in the proposal notice together with a discussion of the contents and adequacies of the Kentucky submittals. The reader may consult that notice (44 FR 65781, November 15, 1979) for any details not provided in the present notice as to how the Kentucky submittal satisfies the requirements of Section 172. Also, the notice of January 25, 1980 (45 FR 6092), conditionally approving the Kentucky 1979 ozone plan, approved regulations which apply to all air pollution sources and thus involve the sulfur oxide control strategy as well.

The plan provides for reasonable further progress (RFP) towards attaining and maintaining the NAAQS. RFP for sulfur dioxide nonattainment areas includes reductions in emissions to attain the primary and secondary NAAQS on or before December 31, 1982, except for Jefferson County, which has an attainment date of January 1, 1985 (see the discussion of Sulfur Dioxide-Jefferson County included below).

Sulfur Dioxide

Boyd County: The entire county was originally designated nonattainment for the primary sulfur dioxide NAAQS. Pursuant to the Commonwealth's request, EPA on November 2, 1979 (44 FR 63104), modified the geographic area to include as nonattainment only the area around the Ashland Oil Plant (Boyd County south of UTM Northing Line 4251 km). Recent ambient monitoring indicates the area is also not attaining the secondary NAAQS. The control strategy demonstrates that the short term and annual emission limitations recently adopted for Class VA counties will attain the primary and secondary NAAQS. An ambient and meteorological monitoring study was conducted to evaluate the diffusion model's validity in the complex terrain around the Ashland Oil facility. The contractor's report for the study is the basis of the control strategy demonstration. A major portion of the emission reductions will come from Ashland Oil while the remainder will come from other major sources in southern Boyd County. All sources subject to more stringent or new emission limits shall demonstrate compliance as expeditiously as practicable but in no case later than December 31, 1982.

EPA conditionally approves this portion of the SIP because of the deficiencies listed below:

1. Regulation 401 KAR 61:015, Existing Indirect Heat Exchangers, states in Section 5(4), Standard for Sulfur Dioxide, "In counties classified as VA with respect to sulfur dioxide, for sources having total heat input greater than fifteen hundred million BTU per hour (1500 MMBTU/hr.) as determined by Section 3(1) of this regulation, no owner or operator shall allow the annual average sulfur dioxide emission rate from all existing and new affected facilities combined at the source to exceed 0.60 pounds per million BTU." This regulation (applicable to Ashland Oil) is unenforceable because there is no method specified for continually determining compliance with this annual average emission limit. The usual method of determining compliance by stack test may not be practical since there are over 50 affected emission points at Ashland Oil and since it is an annual, not a short-term, limit. Therefore, the method of determining the compliance status of the oil/gas-fired units must be clearly specified and should address the frequency of oil sample collections and analyses, the locations of sample collection points, the analytical techniques which are acceptable, the acceptable method for monitoring fuel consumption, and the reporting frequency.

The regulation implies that compliance determination will be made on the basis of a single annual averaging period. If the time averaging basis is consecutive blocks of 365-day periods, there is no way of knowing whether the plant is continually in compliance with this annual average limit.

A moving 365 day averaging period which is recalculated each day would enable the plant to demonstrate on a daily basis its compliance status in regard to this annual limit.

2. A legally enforceable compliance schedule with increments of progress must be a part of the SIP (See General Sulfur Dioxide Conclusions).

3. The plan's provisions for ambient monitoring around the Ashland Oil complex must include a starting date, specify the duration of the program and require the use of the Federal equivalent method. EPA considers the monitoring to be an essential feature of the control strategy and thus an enforceable obligation upon the State.

This conditional approval of the Boyd County SO_2 control strategy is in effect a revocation of the disapproval action of May 10, 1976 (41 FR 19105).

City of Owensboro: This nonattainment area is located within Daviess County and is designated nonattainment for the primary and secondary sulfur dioxide NAAQS. The control strategy demonstrates through modeling that the existing emission limitations will assure attainment of the NAAQS. The nonattainment designation is based upon the noncompliance of Owensboro Municipal Utility Elmer Smith power plant. The source was

following Federal Administrative Order #AO-77-235(a) and the plant demonstrated compliance with the applicable SO_2 emission limit on March 1, 1978. Recent air quality data shows attainment, and the Commonwealth has requested redesignation. EPA will propose redesignation to attainment in a separate notice.

City of Henderson: This nonattainment area is located within Henderson County and is designated nonattainment for the primary NAAQS for sulfur dioxide. Measured violations due to noncompliance of Henderson Municipal Power and Light were previously recorded.

Since the plant came into compliance during 1977, the ambient monitor has measured acceptable levels. No revision to the control strategy was necessary. The Commonwealth has requested this area be redesignated attainment and EPA is preparing a separate **Federal Register** proposal notice to address this issue.

Jefferson County: The Louisville area is nonattainment for the primary and secondary sulfur dioxide NAAQS. Ambient monitoring has shown and diffusion modeling predicts violations of the NAAQS due to emissions from power plants and to a lesser degree from area sources. The control strategy demonstration shows that when all sources are in compliance with the present emission limits the NAAQS will be attained.

The three power plants owned by Louisville Gas and Electric Company in Jefferson County are subject to Federal Administrative/Agreed Orders 75-138(a), issued on November 5, 1975, and 76-21(a), issued on February 26, 1976, which specify final compliance for all units prior to December 31, 1982, except for Paddy's Run Unit 5 and Cane Run Units 1, 2, and 3, which must achieve final compliance by July 1, 1983, and January 1, 1985, respectively.

The Clean Air Act specifies December 31, 1982, as the date for attainment of the primary NAAQS. However, Section 113(d)(12) specifically provides that orders of the type issued to Louisville Gas and Electric, remain in effect beyond this date. Since attainment for Jefferson County requires compliance with these orfers by Louisville Gas and Electric attainment will not be reached in Jefferson County until January 1, 1985. EPA has determined that no source other than Louisville Gas and Electric is subject to this provision of Section 113(d)(12). Therefore, there should be no other attainment extensions on this basis. The existence of the Louisville Gas and Electric orders does not extend the required attainment date for all of Jefferson County. All other sources in the County are required to be in compliance with the SIP at the present time and are expected to remain in compliance. The 1985 date relates only to the Section 113(d)(12) orders issued to Louisville Gas and Electric.

McCracken County: This area is designated nonattainment for the primary sulfur dioxide NAAQS. The control strategy demonstrates that the Shawnee TVA power plant caused the recorded ambient violations. The NAAQS will be attained when the source comes into compliance with the existing emission limitation which the control strategy shows to be adequate. Section 8(2)(a) of regulation 401 KAR 61:015 allows the TVA Shawnee power plant until October 1, 1981, to achieve compliance. The source was previously required to be in compliance by July 1, 1977, with the emission limits in the presently approved SIP. Since the source is not being made subject to stricter emission limits, this portion of the regulation is disapproved. This disapproval, in effect, removes Section 8(2)(a) from the SIP, thereby enabling the part of the SIP applicable to McCracken County to be approved. As a result, Section 110(a)(2)(I) of the CAA will not apply. The Commonwealth may correct this deficiency by removing Section 8(2)(a) from regulation 401 KAR 61:015.

Muhlenberg County: This area is designated nonattainment for the primary and secondary sulfur dioxide NAAQS due to noncompliance of two power plants. The control strategy demonstrates by diffusion modeling that the proposed more stringent emission limits for the power plants are adequate to assure attainment of the NAAQS. TVA's Paradise power plant is scheduled to achieve compliance by September 1, 1982. Kentucky Utilities' Green River power plant was also subject to an established compliance schedule for achieving final compliance on March 1, 1980, and is now in compliance. EPA approves the compliance schedules for these two plants, contained in regulation 401 KAR 61:015, Section 8.

Webster County: This area is designated nonattainment for the primary and secondary sulfur dioxide NAAQS. The control strategy demonstrates through modeling that the existing emission limitations (which were not revised) are adequate. The area was designated nonattainment because the Big Rivers Electric Corporation-Reid Station power plant was out of compliance. The source is following Federal Administrative/ Agreed Orders AO 77-251(a) and 77-252(a) and AO 77-1580-003 and 77-4020-0001 which specify final compliance by January 1, 1980. This compliance schedule was not submitted as part of the plan, but is enforceable by EPA. It cannot be approved as part of the SIP since the source is not being made subject to stricter emission limits.

General Sulfur Dioxide Conclusions

EPA disapproves a portion of the plan for all SO_2 nonattainment areas due to the following deficiency. Regulation 401 KAR 61:015, Existing Indirect Heat Exchangers, at paragraph (2)(d) of Section 8, Compliance Timetable, requires sources in nonattainment areas to demonstrate compliance . . . "as expeditiously as practicable but in no case later than December 31, 1982".

However, only sources which are subject to a more stringent emission limit due to this SIP revision may be allowed time to attain compliance. Section 8(2)(d), as now written allows sources which are not subject to more strict emission limits to have additional time to achieve compliance. EPA disapproves this portion of the plan as it relates to compliance schedules for sources in the latter category. This disapproval, in effect, removes that unapprovable portion of Section 8(2)(d) from the SIP, thereby enabling the affected part of the SIP to be approved. As a result, Section 110(a)(2)(I) of the CAA will not apply. The Commonwealth may remove this deficiency by modifying Section 8(2)(d) so that it applies only to sources being made subject to stricter emission limits.

EPA conditionally approves the portion of the SIP relating to regulation 401 KAR 61:015, Section 8(2)(d), as it applies to any SO_2 source in a nonattainment area which is subject to a more stringent emission limit. The approval is conditional since there are no increments of progress in the compliance schedule. The Commonwealth may correct the deficiency by modifying the regulation so that sources being made subject to stricter emission limits have compliance schedules which include increments of progress.

Public Comments

Numerous comments have been received in response to the notice of proposed rulemaking on the Kentucky revisions which appeared in the **Federal Register** on November 15, 1979 (44 FR 65781). EPA responded to comments related to the ozone control strategy in the notice of conditional approval which appeared on January 25, 1980 (45 FR 6092); a response was also given in this

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notice to a number of comments which were applicable to all the 1979 State implementation revisions. Comments on the particulate revisions are being dealt with in a separate notice which is being prepared for the purpose of reproposing action on these portions of the Kentucky Part D submittal; this notice will also respond to a number of comments which apply to the Kentucky revisions generally. Today's notice will respond only to comments which relate solely to the sulfur dioxide revisions.

Comment: A commenter has expressed the opinion that the compliance schedule for meeting the new SO_2 emission limit of 3.1 lbs./10^6 BTU for the Tennessee Valley Authority's Paradise plant is in violation of the previous 5.2 lbs./10^6 BTU limit. In other words, the objection is that Paradise should not be given an extension of the original July 1, 1977 compliance deadline for taking steps necessary to comply with the previous 5.2 lb. limit.

Response: This commenter misconstrues the nature of this agency's approval action for the Paradise SO_2 compliance schedule. This approval of the new Paradise schedule does not supplant the compliance schedule designed to meet the original 5.2 lbs. limit but is rather an appendage to it. It should also be emphasized that the new Paradise SO_2 compliance schedule as submitted by Kentucky reflects the schedule incorporated into a proposed consent decree in a pending civil action in United States District Court in Nashville, Tennessee. This proposed consent decree was negotiated in good faith by EPA, TVA, the Commonwealth of Kentucky and various public interest organizations in order to bring TVA into compliance with the Clean Air Act. The resultant 3.1 lbs. limit was based on a modeling effort conducted during the course of that litigation which demonstrated that the then existing 5.2 lbs. limit was insufficient to protect National Ambient Air Quality Standards. Failure by TVA to adhere to the new compliance schedule designed to meet that new 3.1 lbs. limit would constitute violation of not only the consent decree but also the state implementation plan itself as modified by the new appended compliance schedule.

Comment: Conversely, several commenters have objected to the disapproval of the compliance schedule extending the final compliance date for the extant 1.2 lbs./10^6 BTU SO_2 limit for TVA's Shawnee Steam Plant.

Response: Nothing in the Clean Air Act authorizes the extension of a final compliance date for a source in violation of a previous SIP emission limit except the delayed compliance order provisions of Section 113(d), 42 U.S.C. § 7413(d). Those provisions were not applicable in this case because no such delayed compliance order was ever issued. In this case, the 1.2 lbs. emission limit has been in effect since 1972 and has not been made more stringent by this plan revision. Therefore, there is no legal basis for extending the time for compliance for this unchanged emission limit. Disapproval of the compliance schedule for Shawnee as part of the Kentucky implementation plan in no way detracts from the legal efficacy of that schedule as incorporated into the proposed consent decree now pending in United States District Court in Nashville, Tennessee. Failure to adhere to that compliance schedule would nonetheless constitute violation of that consent decree.

Comment: One commenter objects to the disapproval of the Shawnee SO_2 compliance schedule on the specific ground that it could result in the payment by TVA of large noncompliance penalties under Section 120 of the CAA.

Response: Such penalties could be imposed under the regulations promulgated by the Agency to implement Section 120 (45 FR 50086, July 28, 1980). The Shawnee facility is not being subjected to any new or more stringent SO_2 emission limitations than were contained in the original SIP. The General Preamble of April 4, 1979 makes it clear that existing SIP requirements cannot be set aside by Part D revisions (44 FR 20374, note 12).

Comment: Another commenter has objected to the 3.1 lbs/10^6 BTU SO_2 limit for TVA's Paradise Plant as being more stringent than necessary to protect National Ambient Air Quality Standards.

Response: Section 116 of the Clean Air Act, 42 U.S.C. § 7416, does not permit EPA to disapprove a state-submitted plan revision on the basis of excessive stringency. This was affirmed by the United States Supreme Court in *Union Electric Company* v. *EPA*, 427 U.S. 246 (1976), which held that EPA could not disapprove a state implementation plan as long as the plan was adequate to attain and maintain National Ambient Air Quality Standards.

Comment: That same commenter contended that there should have been notice to the public by the Commonwealth of Kentucky that such limit was overly stringent.

Response: EPA's evaluation of available dispersion modeling indicated that this emission limit is not overly stringent. TVA voluntarily agreed to meet such limit as part of the settlement of the civil enforcement litigation in United States District Court in Nashville, Tennessee. These proceedings were a matter of public record. Irrespective of these facts, nothing in the Clean Air Act requires such a notice.

Comment: Another commenter feels the use of continuous ambient SO_2 monitors is technically impractical.

Response: Since most State and local air pollution control agencies and many existing industries have been using continuous ambient SO_2 monitors for several years, EPA believes a source can practicably and reliably monitor continuously for SO_2.

Comment: The commenter feels that "ambient monitoring is more appropriately a government function, especially where previous monitoring revealed large contributions from other sources and the sites in question are not only in another State but another U.S. EPA Region."

Response: Because of discrepancies between modeled and measured values, and because of uncertainties as to what actual emissions were during the previous monitoring study, ambient monitoring is needed around the Ashland Oil plan to assure that standards are met. EPA considers the monitoring requirement in the control strategy to be an obligaiton enforceable against the State. The requirement for ambient monitoring is based on Section 110(a)(2)(B), (C), and (F) of the Clean Air Act. While it is the State's obligation to ensure that the monitoring program is carried out, the State may require the source to do the monitoring under State regulation 401 KAR 50:050.

Response: EPA's evaluation of available dispersion modeling indicated that this emission limit is not overly stringent. TVA voluntarily agreed to meet such limit as part of the settlement of the civil enforcement litigation in United States District Court in Nashville, Tennessee. These proceedings were a matter of public record. Irrespective of these facts, nothing in the Clean Air Act requires such a notice.

Comment: The commenter also feels the use of continuous ambient SO_2 monitors is technically impractical.

Response: Since most State and local air pollution control agencies, many existing industries, and numerous industries desiring PSD permits have been using continuous SO_2 monitors for several years, EPA believes a source can practicably and reliably monitor continuously for SO_2.

Comment: The commenter feels that "ambient monitoring is more appropriately a government function, especially where previous monitoring revealed large contributions from other sources and the sites in question are not only in another State but another U.S. EPA Region."

Response: The previous monitoring program by the source, as discussed in the SIP control strategy, circled the Ashland Oil refinery with monitors which measured 3 and 24-hour violations due to the refinery. Ambient monitoring is a government function, but can also be a responsibility of the source, as in the case of application for a PSD permit or a bubble revision. Nevertheless, EPA is dropping the requirement for continuous ambient monitoring contained in the November 15, 1979, proposal. It is strongly recommended, however, that such monitoring be done in the vicinity of the Ashland Oil complex.

Comment: The commenter (Ashland Oil) felt that regulation 401 KAR 61:015, Section 5(4) is enforceable and that there are demonstrated methods available for determining emission rates within the refinery.

Response: EPA's position is that this regulation (applicable to Ashland Oil) is unenforceable because there is no method specified for continually determining compliance with this annual average emission limit. The usual method of determining compliance by stack test may not be practical since there are over 50 affected emission sources at Ashland Oil and since it is an annual, not a short-term, limit. Therefore, the method of determining the compliance status of the oil/gas-fired units must be clearly specified and should address the frequency of oil sample collections and analyses, the locations of sample collection points, the analytical techniques which are acceptable, the acceptable method for monitoring fuel consumption, and the reporting frequency.

The regulation implies that compliance determination will be made on the basis of a single annual averaging period. If the time averaging basis is consecutive blocks of 365-day periods, it is not possible to determine whether the plant is continually in compliance with this annual average limit. A moving 365-day averaging period which is recalculated each day would enable the plant to demonstrate on a daily basis its compliance status in regard to this annual limit.

Attainment Dates

For a general discussion of this topic, the reader may consult the notice giving conditional approval to the ozone plan (January 25, 1980, 45 FR 6092). The present notice affects only the attainment dates for SO_2 nonattainment areas; these are adjusted to reflect the actions taken here.

Reference should be made to the 1979 edition of Title 40 of the Code of Federal Regulations (40 CFR 52.926) to determine the applicable deadline for attainment under Section 110(a)(2)(A) of the CAA.

Actions

The Administrator conditionally approves Kentucky's 1979 revision, for sulfur dioxide nonattainment areas on the condition that deficiencies noted be corrected by July 1, 1981. It is EPA's intent to fully approve these revisions when the Commonwealth corrects the deficiencies discussed in this notice. If these corrections are not forthcoming by July 1, 1981, EPA will act to disapprove the related plan revisions. This action is effective immediately. EPA finds good cause to make this conditional approval immediately effective, because the Clean Air Act restricts new construction where plans are not approved after June 30, 1979. Making the conditional approval immediately effective will terminate the restriction as soon as possible; moreover, the revision imposes no requirement that is not already in effect at the State level. EPA disapproves (removes from the plan) compliance schedules for sources which are not being made subject to stricter emission limits. This disapproval, in effect, removes the unapprovable portion from the SIP, thereby enabling the affected part of the SIP to be approved. As a result, Section 110(a)(2)(I) of the CAA will not apply.

Under Section 307(b)(1) of the Clean Air Act, judicial review of these actions is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Secs. 110 and 172 of the Clean Air Act (42 U.S.C. 7410 and 7502))

Dated: October 27, 1980.

Douglas M. Costle,

Administrator.

Note.—Incorporation by reference of the State Implementation Plan for the State of Kentucky was approved by the Director of the Federal Register on July 1, 1980.

Part 52 of Chapter I, Title 40, of the Code of Federal Regulations is amended as follows:

Subpart S—Kentucky

1. Section 52.920 is amended by adding a subparagraph (13) to paragraph (c) as follows:

§ 52.920 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified. * * *

(13) 1979 revisions for Part D requirements for sulfur dioxide nonattainment areas (Boyd, Jefferson, McCracken, Muhlenberg, and Webster Counties), submitted on June 29, 1979, by the Kentucky Department for Natural Resources and Environmental Protection.

2. Section 52.923 is revised to read as follows:

§ 52.923 Approval status.

(a) With the exceptions set forth in this subpart, the Administrator approves Kentucky's plans for the attainment and maintenance of the national standards under § 110 of the Clean Air Act. Furthermore, the Administrator finds the plans satisfy all requirements of Part D, Title I, of the Clean Air Act as amended in 1977, except as noted below. In addition, continued satisfaction of the requirements of Part D for the ozone portion of the SIP depends on the adoption and submittal of RACT requirements by July 1, 1980 for the sources covered by CTGs issued between January 1978 and January 1979 and adoption and submittal by each subsequent January of additional RACT requirements for sources covered by CTGs issued by the previous January.

(b) New Source review permits issued pursuant to Section 173 of the Clean Air Act will not be deemed valid by EPA unless the provisions of Section V of Appendix S of 40 CFR Part 51 are met.

3. Section 52.926 is revised to read as follows:

§ 52.926 Attainment dates for national standards.

The following table presents the latest dates by which the national standards are to be attained. The dates reflect the information presented in Kentucky's plan, except where noted.

V 45 OC 31 80 UMI

Air quality control region	Pollutant						
	Particulate matter		Sulfur oxide		Nitrogen dioxide	Carbon monoxide	Ozone
	Primary	Secondary	Primary	Secondary			
Appalachian Intrastate	c	*c*	b	b	b	b	b
Bluegrass Intrastate:							
a. Fayette Co. [1]	a	*c*	b	b	b	b	*g*
b. Rest of AQCR	a	*c*	b	b	b	b	b
Evansville (Indiana Owensboreo Henderson (Kentucky) Interstate:							
a. Henderson Co. [1]	c	*c*	*e*	*e*	b	b	*g*
b. Webster Co. [1]	c	*c*	*g*	*g*	b	b	b
c. Rest of AQCR	c	*c*	*a*	*e*	b	b	b
Huntington (W. Virginia)-Ashland (Kentucky)-Portsmouth-Ironton (Ohio) Interstate:							
a. Boyd Co. [1]	c	*c*	*g*	*g*	b	b	*g*
b. Rest of AQCR	c	*c*	b	b	b	b	b
Louisville Interstate [1]	c	*c*	*j*	*j*	b	*d*	*h*
Metropolitan Cincinnati Interstate:							
a. Boone Co. [1]	c	*c*	*a*	*d*	b	*d*	*h*
b. Campbell Co. [1]	c	*c*	*a*	*d*	b	*d*	*h*
c. Kenton Co. [1]	c	*c*	*a*	*d*	b	*d*	*h*
d. Rest of AQCR	c	*c*	*a*	*d*	b	*d*	*c*
North Central Kentucky Intrastate	a	*c*	b	b	b	b	b
Paducah (Kentucky)-Cairo (Illinois) Interstate:							
a. McCracken Co. [1]	c	*c*	*g*	*f*	b	b	b
b. Muhlenberg Co. [1]	c	*c*	*g*	*g*	b	b	b
c. Rest of AQCR	c	*c*	*a*	*f*	b	b	b
South Central Kentucky Intrastate	b	b	b	b	b	b	b

[1] See § 81.318 of this chapter to identify the specific nonattainment area.

NOTE.—Dates or footnotes in italics are prescribed by the Administrator because the plan did not provide a specific date or the dates provided were not acceptable. Sources subject to plan requirements and attainment dates established under Section 110(a)(2)(A) prior to the 1977 Clean Air Act Amendments remain obligated to comply with those requirements by the earlier deadlines. The earlier attainment dates are set out at 40 CFR 52.926 (1979 edition).

a. Air quality levels presently below primary standards or area is unclassifiable.
b. Air quality levels presently below secondary standards or area is unclassifiable.
c. April 1975.
d. July 1975.
e. July 1977.
f. July 1978.
g. December 31, 1982.
h. December 31, 1987.
i. To be determined later.
j. January 1, 1985.

4. Section 52.928 is revised to read as follows:

§ 52.928 Control strategy: Sulfur oxides.

(a) Part D—Conditional approval.

(1) Boyd County nonattainment area. The 1979 sulfur dioxide revisions for this area are approved on condition that the following be submitted by July 1, 1981:

(i) An enforceable regulation for continually determining compliance with Kentucky regulation 401 KAR 61:015 Section 5(4).

(ii) A revision of regulation 401 KAR 61:015 providing increments of progress in compliance schedules applicable to sources which are being made subject to more stringent emission limits.

(iii) A commitment, with regard to ambient monitoring around the Ashland Oil complex, that the monitoring will begin by a certain date, will be conducted for a specific length of time, and will be done with a Federal equivalent method.

(2) Jefferson, McCracken, Muhlenberg, and Webster Counties. The 1979 sulfur dioxide revisions for these nonattainment areas are approved on condition that the State submit by July 1, 1981, a revision of regulation 401 KAR 61:015 providing increments of progress in compliance schedules applicable to sources which are being made subject to more stringent emission limits.

5. A new § 52.936 is added as follows:

§ 52.936 Rules and regulations.

(a) Section 8(2)(a) of regulation 401 KAR 61:015 is disapproved in that it allows the Tennessee Valley Authority's Shawnee power plant until October 1, 1981, to achieve compliance with emissions limits which are not made more stringent by the 1979 Part D revisions, and which the source was previously required to meet by July 1, 1977.

(b) Section 8(2)(d) of regulation 401 KAR 61:015 is disapproved in that it allows sources until December 31, 1982, to achieve compliance with emission limits which are not made more stringent by the 1979 Part D revisions, and which the sources were previously required to meet prior to 1979.

[FR Doc. 80-33942 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 81

[A-3-FRL 1649-1]

Approval of Revision to Section 107 Air Quality Designations for the Commonwealth of Pennsylvania

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Commonwealth of Pennsylvania has revised its list of air quality attainment status designations for nine areas within the Southeast Pennsylvania Air Basin, with respect to particulate matter (TSP). In this notice, the Administrator is approving the reclassification of six municipalities adjacent to Lansdale Borough from unclassified to attainment. In addition, the Administrator is approving the reclassification of three other municipalities from attainment to unclassified.

DATE: These revisions become effective on or before December 1, 1980.

ADDRESSES: Copies of the associated support material are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106, Attn: Harold A. Frankford (3AH12)

Pennsylvania Department of Environmental Resources, Bureau of Air Quality and Noise Control, Fulton Building, 18th Floor, 200 North Third Street, Harrisburg, PA 17120, Attn: James Salvaggio

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT:

Mr. Harold A. Frankford (3AH12), U.S. Environmental Protection Agency, Region III, Curtis Building, 10th floor, Philadelphia, PA 19106, Phone: 215/597-8392.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 1978 and August 26, 1979, the Commonwealth of Pennsylvania submitted a request for redesignation of attainment status with respect to total suspended particulates for nine municipalities located in the Southeast Pennsylvania Air Basin (this area corresponds to the Pennsylvania portion of the Metropolitan Philadelphia Interstate Air Quality Control Region). The specific reclassifications are described as follows:

A. Unclassified to Attainment

The Commonwealth has requested reclassification for six municipalities (Montgomery Township, Towamencin Township, Upper Gwynedd Township, Hatfield Township, Hatfield Borough and North Wales Borough) adjacent to Lansdale Borough, which had originally been designated a nonattainment area for secondary TSP standards. Lansdale has since been redesignated as an attainment area for TSP, 45 FR 9262 (1980). The most recently available air quality data provided by the Commonwealth show no violations of TSP standards in this area.

B. Attainment to Unclassified

The Commonwealth has requested reclassification for the municipalities of Doylestown Township, Upper Moreland Township, and Downingtown Borough. During 1977, all three municipalities recorded violations of the secondary TSP standard, whereas prior historical data had not shown an incidence of air quality violations for TSP. During 1979, the monitor in Downingtown was discontinued, and the Doylestown monitor did not record any further TSP violations. The Willow-Grove (Upper Moreland) monitor has recorded violations of the secondary TSP standards, but EPA has judged that the monitor is improperly located such that the violations represent undue localized influences, rather than ambient air. In view of the above, an "unclassified" designation is appropriate for all three municipalities.

Proposed Rulemaking Actions/ Summary of Public Comments

On July 2, 1979, 44 FR 38585, EPA proposed redesignation of the Doylestown, Downingtown, and Upper Moreland areas. Similarly, on November 21, 1979, 44 FR 66850, EPA proposed redesignation of the six municipalities surrounding Lansdale Borough. During the respective comment periods following publication of these notices, no comments were received.

EPA Actions

In view of the above evaluation, the Administrator approves the redesignation of attainment status for the nine municipalities discussed in this notice. In conjunction with the Administrator's approval actions, the charts contained in 40 CFR 81.339 are revised accordingly.

All other Section 107 designations for the Commonwealth of Pennsylvania not discussed in this notice remain intact.

Although this action is being taken as a final rule, EPA will consider comments at any time and make appropriate changes in attainment designations. Comments should be sent to Mr. Robert Blanco, Acting Chief Air Programs Branch, U.S. Environmental Protection Agency, Region III, Curtis Building, 10th floor, 6th & Walnut Streets, Philadelphia, PA 19106.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under Executive Order 12044, EPA is required to judge whether regulation is "significant" and, therefore, subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the requirements of Executive Order 12044.

(Secs. 107(d), 171(2), 301(a), Clean Air Act, as amended (42 U.S.C. 7407(d), 7501(2), 7601(a)))

Dated: October 27, 1980.

Douglas M. Costle,

Administrator.

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended by revising the table entitled "Pennsylvania-TSP" in § 81.339 to read as follows:

Subpart C—Section 107 Attainment Status Designations

§ 81.339 Pennsylvania.

* * * * *

Section 81.339

Pennsylvania—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
I. Metropolitan Philadelphia Interstate AQCR:				
(A) City of Philadelphia:				
Census tracts: 1-12, 125-142, 144-157, 162-177, 190-205, 293, 294, 298-302, 315-321, 323, 325, 326, 329-332.		X		
Census tracts: 13-75, 143, 158-161, 178-189, 295-297, 322, 324, 327.			X	
Balance of City				X
(B) Montgomery County:				
Conshohocken Boro		X		
West Conshohocken Boro			X	
Lower Merion Boro			X	
Narberth Boro			X	
Upper Merion Twp			X	
Bridgeport Boro			X	
Norristown Boro			X	
Plymouth Twp			X	
Whitemarsh Twp			X	
Lansdale Boro				X
Pottstown Boro		X		
West Pottsgrove Twp			X	
Upper Pottsgrove Twp			X	
Lower Pottsgrove Twp			X	
Upper Providence Twp			X	
(C) Chester County:				
South Coatesville Boro		X		
City of Coatesville			X	
Caln Twp			X	
East Fallowfield Twp			X	
Modena Boro			X	
Valley Twp			X	
North Coventry Twp			X	
East Coventry Twp			X	
Pheoenixville Boro		X		
Schuylkill Twp			X	
Downingtown Boro			X	
(D) Bucks County:				
Doylestown Twp			X	
(E) Remaining Pennsylvania Portion of AQCR				X

[FR Doc. 80-33943 Filed 10-30-80; 8:45am]

BILLING CODE 6560-3-M

V 45 OC 31 80 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 55a

Program Grants for Black Lung Clinics

AGENCY: Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: The Public Health Service revises the regulations governing the grants program for black lung clinics established under section 427(a) of the Federal Mine Safety and Health Act of 1977. The new regulations reflect recent changes, both in the way health services are delivered and in specific diagnostic and treatment procedures required in the management of black lung.

EFFECTIVE DATE: October 31, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. William S. Beacham, Director, Regional Commissions Health Programs, Bureau of Community Health Services, Room 7A–55, 5600 Fishers Lane, Rockville, Maryland 20857 (301–443–5033).

SUPPLEMENTARY INFORMATION: On February 12, 1980 the Public Health Service published a Notice of Proposed Rulemaking (NPRM) to revise the regulations (42 CFR Part 55a) governing the Black Lung Clinics Program established by section 427(a) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 927(a)) (45 FR 9298). This program assists public and private nonprofit entities in constructing, purchasing and operating clinical facilities for the analysis, examination, and treatment of respiratory and pulmonary impairments in coal miners. The major functions of these clinics are to provide services to minimize the effects of respiratory and pulmonary impairments in coal miners and to perform examinations in connection with black lung disability benefits claims filed with the Department of Labor.

Representatives of six organizations commented on the proposed rules. The Department's response to these comments and the actions taken are set forth below. The comments and responses have been arranged to correspond to the order of the regulation.

1. Eligibility requirements for Black Lung Clinics Program grants

Four of those commenting were concerned about deletion of the provision limiting entities which may apply for grants to organizations which are designated by State Governors. They each suggested adding a new section to provide that the Governor may retain the authority for designating the agency or agencies to administer a Black Lung Clinics Program in those States having an existing statewide program.

The Department maintains its position that the broadened eligibility criteria will allow existing mechanisms, such as the Health Systems Agencies and State Health Planning and Development Agencies, to play a greater role in coordinating and developing black lung services. This will increase the voice of consumers in the earliest stage of program development and encourage consistency with existing health services delivery programs. There also will be a wider range of prospective applicants. At the same time, Governors will continue to have the flexibility to participate as fully as they wish in the administration of this program within their States. The application procedure established under Office of Management and Budget Circular A–95, which provides Governors an opportunity to participate in program development, is required of all HHS grantees. Nevertheless, the Department is sensitive to State concerns that existing statewide programs be neither fragmented or duplicated. Therefore, the criteria for deciding which applications to fund have been amended to include whether proposed services are complementary to and nonduplicative of existing services (see § 55a.6(a)(5)).

2. Sliding fee schedule

One comment contended that a sliding fee schedule tied to the Community Services Administration *Income Poverty Guidelines* for persons unable to pay the full cost of care would require a means test, and that such a test would pose a barrier to miners who need the services. It was recommended that third-party payments be accepted as full payment for services rendered. The regulation does not require a means test. Most projects have a method for determining what portion of charges a patient should pay which is circumspect and maintains the patient's dignity. It is the intent of the regulation to require grantees to provide services to all, regardless of ability to pay, in a manner that preserves the dignity of patients. Most potential grantees already have arrangements for discounts for all indigent persons, and the Department does not want to disrupt those arrangements insofar as black lung patients are concerned. Therefore, no substantive changes in § 55a.4(b) have been made, but the requirement to provide services without regard for ability to pay for them has been given greater prominence in this section.

3. Role of third-party payors.

One comment favored sending medical treatment plans to third-party payors for comment, if not approval. Third-party payors do have an opportunity to negotiate with the clinics regarding treatment protocols under which individuals would receive treatment paid for by the third-party payors. This is implicit in § 55a.4(b)(3)(iii) which requires clinics to both bill for and make every reasonable effort to obtain payment for services reimbursable by third-party payors. The Department feels that this provides third-party payors an appropriate role in the treatment process without infringing on the confidentiality of individual patient information.

4. Role of the medical specialist in pulmonary diseases.

One comment expressed concern that the requirements for the involvement of a specialist in lung disease were inadequate. No change has been made in the regulations. It is the Department's view that the provision requiring medical services to be performed in consultation with a physician with special training or experience in the diagnosis and treatment of respiratory diseases is sufficient (§ 55a.4(b)(5)). The regulation allows grantees the flexibility to be responsive to the local availability of consultation from specialists in lung disease.

5. The policy board or advisory committee to the policy board.

In response to the comment that representatives of the coal industry should be included in the membership of the policy board or advisory committee, § 55a.4(c) has been revised to note this representation. In addition, the Department has made some technical changes to this provision, some of which are in response to a suggestion that the intended relationship between the grantee's policy board and the required consumer advisory committee may become confused.

6. Outreach.

One comment objected to the requirement for outreach, apparently construing it to be for claimant location. The outreach services required of a black lung clinic (§ 55a.5(a)(3)) are to increase access to clinic services. Under § 55a.7, it is stated that project funds may be used for outreach programs to inform coal miners of clinic services. These provisions have not been altered.

7. Use of grant funds.

In the proposed rule, § 55a.7 listed the specific uses that may be made of project funds (e.g., construction, purchase and operation of clinical facilities). As revised in this final rule, § 55a.7 states that "A grantee shall only spend funds it receives under this part according to the approved application and budget, the authorizing legislation, terms and conditions of the grant award, applicable cost principles specified in Subpart Q of 45 CFR Part 74, and the regulations of this part." Section § 55a.7 has been revised as part of the Department's "Operation Common Sense" to delete duplication of the Department's grant administration regulations (45 CFR Part 74). Subpart Q identifies the principles to be used in determining costs applicable to all Departmental grants and sets standards for allowable costs. Although not specified in the revised § 55a.7, project funds may be used for construction, purchase, and operation of clinical facilities; renovation or modernization of existing space; purchase of medical equipment; salaries of additional personnel; home treatment service; transportation of patients; training of personnel; outreach programs to inform coal miners of the services provided by the clinics; and actual expenses of public participants in program development or oversight; but may not be used for salaries of persons in positions previously supported from other sources.

As noted in the preamble to the proposal, however, capital expenditure authorities will be used only under unusual circumstances. Applicants who request funds to operate a Black Lung Clinic will generally be expected to possess suitable space. Only in cases where no applicant with access to space through current ownership or ability to rent proposes to serve miners needing services will applications for construction, acquisition, or modernization be considered. Such applications will be required to demonstrate that no existing space is adequate and available to serve a particular population of miners. It is expected that the capital spending authority will be only sparingly invoked.

Finally, several additional Department regulations which apply to grants made under this part have been specified in § 55a.8.

Accordingly, Part 55a of Title 42, Code of Federal Regulations, is revised as set forth below.

(Catalog of Federal Domestic Assistance Program No. 13.965 (Coal Miners, Respiratory Impairment Treatment, Clinic and Services (Black Lung Clinic)) The reporting requirements contained in these regulations have been reviewed and approved by the Office of Management and Budget (OMB Approval No. 68R–1734).

Dated: October 22, 1980.

Approved: October 28, 1980.

Julius B. Richmond,

Assistant Secretary for Health.

Patricia Roberts Harris,

Secretary.

PART 55a—PROGRAM GRANTS FOR BLACK LUNG CLINICS

Sec.

55a.1 To whom do these regulations apply?
55a.2 Definitions.
55a.3 Who is eligible to apply for a Black Lung Clinics grant?
55a.4 What must an application for a Black Lung Clinics grant contain?
55a.5 What requirements must a Black Lung Clinic meet?
55a.6 What criteria has HHS established for deciding which grant applications to fund?
55a.7 How may project funds be used?
55a.8 What other HHS regulations apply?
55a.9 What confidentiality requirements must be met?

Authority: Sec. 508, 83 Stat. 803; 30 U.S.C. 937.

§ 55a.1 To whom do these regulations apply?

This part applies to the award of grants pursuant to section 427(a) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 937(a)). These grants support the operation of clinical facilities known as Black Lung Clinics, for analysis, examination and treatment of respiratory and pulmonary impairments in coal miners.

§ 55a.2 Definitions.

Any term not defined here shall have the meaning given it in the Act. As used in this part:

"Act" means the Federal Mine Safety and Health Act of 1977, as amended (30 U.S.C. 801 et seq.).

"Applicant" means any public or nonprofit private agency or institution which files an application for a grant under this part.

"Miner" or "coal miner" means any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction or preparation of coal. The term also includes an individual who works or has worked in coal mine construction or transportation in or around a coal mine, to the extent that the individual was exposed to coal dust as a result of employment.

"Nonprofit," as applied to an agency or institution, means that no part of the net earnings of such agency or institution benefits, or may lawfully benefit, any private shareholder or individual.

"Secretary" means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved may be delegated.

§ 55a.3 Who is eligible to apply for a Black Lung Clinics grant?

(a) Any public or private nonprofit entity may apply for a grant under this part.

(b) Eligible projects: grants pursuant to section 427(a) of the Act and this part may be made to eligible applicants for carrying out area or statewide clinical services for the analysis, examination, and treatment of occupational respiratory and pulmonary impairments in coal miners.

§ 55a.4 What must an application for a Black Lung Clinics grant contain?

An approvable application must contain each of the following:

(a) A plan for the provision of the services required by this part containing at least the following elements:

(1) A description of the target population to whom services are to be provided, including a statement of the need for services;

(2) A description of the area in which the target population resides, including descriptions of geographical barriers to service, availability of transportation, and each of the health service providers in the area which provide any of the services required under this part;

(3) A statement of the goals and objectives of the program, how the program intends to achieve them, and how progress toward their achievement will be measured;

(4) A description of how existing resources in the community will be utilized to maximize the effectiveness and efficiency of the use of grant funds; and

(5) Letters of intent from each entity which is expected to provide any service under the Black Lung Clinics Program, including a statement that, contingent upon a grant award, services will be provided in accordance with the requirements under this part.

(b) An assurance that, should an award be made, the grantee will enter

into binding agreements with each of the listed clinics providing letters of intent which shall include provisions that:

(1) No person will be denied services because of inability to pay;

(2) Services will be made available regardless of how long the miner has lived in the service area or whether anyone referred the miner to the clinic;

(3) Services will be made available in a manner calculated to preserve human dignity and to maximize acceptability and utilization of services;

(4) Charges shall be made for services rendered as follows:

(i) a schedule shall be maintained listing fees or payments for the provision of services, designed to cover reasonable costs of operation;

(ii) a schedule of discounts adjusted on the basis of a patient's ability to pay shall be maintained. The schedule of discounts must provide for a full discount to individuals and families with annual incomes at or below the levels set forth in the most recent Community Services Administration *Income Poverty Guidelines* at 42 CFR 1060.2 (except that nominal fees for service may be collected from individuals and families with annual incomes at or below those levels if imposition of the fees is consistent with project goals). No discounts shall be provided to individuals and families with annual incomes greater than twice those set forth in the Guidelines;

(iii) where third-party payors (including Government agencies) are authorized or under a legal obligation to pay all or a portion of such charges, all services covered by that reimbursement plan will be billed and every reasonable effort will be made to obtain payment; and

(iv) where the cost of care and services furnished under the program is to be reimbursed under Title XIX of the Social Security Act, a written agreement with the Title XIX agency will be obtained by the clinic unless the Title XIX agency refuses to enter into the agreement and the clinic provides evidence of the refusal to the grantee.

(5) Grant funds will be used to supplement and not supplant existing services.

(6) Medical services will be performed in consultation with a physician with special training or experience in the diagnosis and treatment of respiratory diseases.

(c) A description of how each clinic or group of clinics will assure consumer participation in the development of policy applicable to the administration and delivery of black lung clinic services through a policy board or an advisory committee to the policy board. If the policy board consists of a majority of miners or miner-selected representatives, this requirement is satisfied. If this is not the case, an advisory committee to the policy board with a majority of miners or miner-selected representatives, but also including interested parties, such as health care providers, coal industry employers, representatives of third-party payors, and the general public, must be established. Procedures for the functioning of the advisory committee must be adopted which assure continued ability to represent the varied points of view, including that of consumers, and that committee recommendations are promptly referred to the policy board for consideration.

(d) Evidence that a copy of the application was forwarded to each of the affected health systems agencies designated under Title XV of the Public Health Service Act with a request that the agency review and approve the application and forward its comments to the Secretary. Regulations applying to health systems agencies appear in 42 CFR Part 122.

(e) Evidence that the application was sent to the appropriate A–95 Clearinghouse(s) for review and comment, in compliance with Office of Management and Budget Circular No. A–95, Revised.

§ 55a.5 What requirements must a Black Lung Clinic meet?

For inclusion in an applicant's plan, clinics must now, or with grant assistance be able to:

(a) Provide for the following services:

(1) Primary care;

(2) Patient and family education and counseling;

(3) Outreach;

(4) Patient care coordination, including individual patient care plans for all patients;

(5) Antismoking advice; and

(6) Other symptomatic treatments.

(b) Meet all criteria for approval and designation by the Department of Labor under 20 CFR Part 725 to perform disability examinations and provide treatment under the Act.

§ 55a.6 What criteria has HHS established for deciding which grant applications to fund?

(a) Within the limits of funds available for these purposes, the Secretary may award grants to assist in the carrying out of those programs which will in the Secretary's judgment best promote the purposes of section 427(a) of the Act, taking into account:

(1) The number of miners to be served and their needs;

(2) The quality and breadth of services to be provided;

(3) The degree to which other resources are committed to the program;

(4) The applicant's ability to manage the proposed program, including its experience with the delivery of medical services by clinical facilities and its ability to make rapid and effective use of the grant funds; and

(5) Whether proposed services are complementary to and nonduplicative of existing services, particularly in States or Regions where there are existing programs which are determined to be meeting or making satisfactory progress toward meeting identified needs.

(b) The notice of grant award specifies how long the Secretary intends to support the project without requiring the project to recompete for funds. This period, called the project period, will usually be for 3 to 5 years.

(c) Generally the grant initially will be for 1 year and subsequent continuation awards also will be for 1 year at a time. A grantee must submit a separate application to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding level of such awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, continuation awards require a determination by the Secretary that continued funding is in the best interest of the Federal Government.

(d) Neither the approval of any application nor the award of any grant commits or obligates the Federal Government in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

§ 55a.7 How may project funds be used?

A grantee shall only spend funds it receives under this part according to the approved application and budget, the authorizing legislation, terms and conditions of the grant award, applicable cost principles specified in Subpart Q of 45 CFR Part 74, and the regulations of this part.

§ 55a.8 What other HHS regulations apply?

Several other HHS regulations apply to grants under this part. These include, but are not limited to:

42 CFR Part 50—Policies of general applicability

42 CFR Part 122—Health systems agency reviews of certain proposed uses of Federal health funds

45 CFR Part 16—Department grant appeals process

45 CFR Part 19—Limitation on payments or reimbursements for drugs

45 CFR Part 74—Administration of grants

45 CFR Part 75—Informal grant appeals procedures

45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health, Education, and Welfare—Effectuation of Title VI of the Civil Rights Act of 1964

45 CFR Part 81—Practice and procedures for hearings under Part 80 of this title

45 CFR Part 84—Nondiscrimination on the basis of handicap in federally assisted programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 91 [1]—Nondiscrimination on the basis of age in Department programs or activities receiving Federal financial assistance

§ 55a.9 What confidentiality requirements must be met?

All information as to personal facts and circumstances obtained by the grantee's staff about recipients of services shall be held confidential, and shall not be disclosed without the individual's consent except as may be required by law or as may be necessary to provide service to the individual or to provide for medical audits by the Secretary with appropriate safeguards for confidentiality of patient records. Otherwise, information may be disclosed only in summary, statistical, or other form which does not identify particular individuals.

[FR Doc. 80-34040 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-84-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3100

Simultaneous Oil and Gas Leasing System; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule; correction.

SUMMARY: The final rulemaking published in the **Federal Register** of May 23, 1980 (45 FR 35156), contained an error in the amendatory language as it referred to section 3102.2. This notice is being published to correct that error.

EFFECTIVE DATE: October 31, 1980.

[1] When issued.

ADDRESS: Any suggestions or inquiries should be sent to: Director (530), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Robert C. Bruce, 202–343–8735, or Charles E. Weller, 202–343–7753.

On page 35161, the amendatory language in item 6. is corrected to read as follows:

6. Sections 3102.1. 3102.1–1 and 3102.1–2 are deleted and replaced by a revised § 3102.1 as follows:

Daniel P. Beard,

Deputy Assistant Secretary of the Interior.

October 29, 1980.

[FR Doc. 80-34121 Filed 10-30-80; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA 5940]

List of Communities With Special Hazard Areas Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities with areas of special flood, mudslide, or erosion hazards as authorized by the National Flood Insurance Program. The identification of such areas is to provide guidance to communities on the reduction of property losses by the adoption of appropriate flood plain management or other measures to minimize damage. It will enable communities to guide future construction, where practicable, away from locations which are threatened by flood or other hazards.

EFFECTIVE DATES: The effective date shown at the top right of the table or December 1, 1980, whichever is later.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line 800–424–8872, Room 5150, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The Flood Disaster Protection Act of 1973 (Pub. L. 93–234) requires the purchase of flood insurance on and after March 2, 1974, as a condition of receiving any form of Federal or federally related financial assistance for acquisition or construction purposes in an identified flood plain area having special flood hazards that is located within any community participating in the National Flood Insurance program.

One year after the identification of the community as flood prone, the requirement applies to all identified special flood hazard areas within the United States, so that, after that date, no such financial assistance can legally be provided for acquisition and construction in these areas unless the community has entered the program. The prohibition, however, does not apply in respect to conventional mortgage loans by federally regulated, insured, supervised, or approved lending institutions.

This 30 day period does not supersede the statutory requirement that a community, whether or not participating in the program, be given the opportunity for a period of six months to establish that it is not seriously flood prone or that such flood hazards as may have existed have been corrected by floodworks or other flood control methods. The six months period shall be considered to begin on or before December 1, 1980, or the effective date of the Flood Hazard Boundary Map, whichever is later. Similarly, the one year period a community has to enter the program under section 201(d) of the Flood Disaster Protection Act of 1973 shall be considered to begin 30 days after publication in the **Federal Register** or the effective date of the Flood Hazard Boundary Map, whichever is later.

This identification is made in accordance with Part 64 of Title 44 of the Code Federal Regulations as authorized by the National Flood Insurance program (42 U.S.C. 4001–4128).

Section 65.3 is amended by adding in alphabetical sequence a new entry to the table:

BILLING CODE 6718-03-M

UMI 0 8 1 3 C O 5 4 V

§ 65.3 List of communities with special hazard areas (FHBM's in effect).

EFFECTIVE DATE November 4, 1980

1 STATE	2 IDENT. NUMBER	3 COMMUNITY NAME & COUNTY NAME	4 PANELS PRINTED (0 AND SUFFIX)	5 INLAND/ COASTAL	6 HAZARD	7 60.3 CODE	8 PROGRAM STATUS	9 STATUS OF FHBM	9 STATUS OF FIRM	10 PREVIOUS MAP DATES FHBM	10 PREVIOUS MAP DATES FIRM	11 REVISION CODE(S)	12 RESCISSION	13 FLOODWAYS PANELS PRINTED	14 LOCATION OF MAP REPOSITORY
UT	490177	City of St. George (Washington County)	0001C 0002C	I	FL	B	1	3	1	8-16-74 6-11-76 11-22-77	N/A	8 9 10	N/A	N/A	The Honorable James G. Larkin Mayor, City of St. George 237 North 81uff St. George, UT 84770 (801) 673-3593

EFFECTIVE DATE November 7, 1980

1 State	2 Ident. Number	3 Community Name County Name	4 Panels Printed (0 and Suffix)	5 Inland/ Coastal	6 Hazard	7 60.3 Code	8 Program Status	9 Status of FHBM	9 Status of FIRM	10 Previous Map Dates FHBM	10 Previous Map Dates FIRM	11 Revision Code(s)	12 Rescission	13 Floodways Panels Printed	14 Location of Map Repository
IL	171005A	Village of Heinesville (Lake Co.)	Index 01	I	FL	B	4	2	1	N/A	N/A	6	N/A	N/A	George Benjamin, Mayor P.O. Box 271 Grayslake, IL 60030 Phone: (312) 223-7379
PA	421461	Twp. of Burnside (Centre Co.)	Index 0001A 0002A 0003A 0005A	I	FL	B	1	3	1	11/ 8/74	N/A	9 10 16	N/A	N/A	Arthur McCullough, Chairman Twp. Board of Supervisors R.D. Kartheus, PA 16845 Phone: (814) 387-6324
PA	421174	Twp. of Clymer (Tioga Co.)	Index 0001A 0002A 0003A 0004A	I	FL	B	1	3	1	1/17/75	N/A	9 10 16	N/A	N/A	Carl King, Chairman Twp. Board of Supervisors Sabinsville, PA 16943 Phone: (814) 628-2724
PA	421856	Twp. of Hamilton (McKean Co.)	Index 0001A 0002A 0003A 0004A 0005A	I	FL	B	1	3	1	2/14/75	N/A	9 10 16	N/A	N/A	Joseph Kasaback, Chairman Twp. Board of Supervisors Ludlow, PA 16333 Phone: (814) 945-6540
PA	422102	Twp. of Hertley (Union Co.)	Index 0001A 0003A 0004A 0005A	I	FL	B	1	3	1	12/20/74	N/A	9 10 16	N/A	N/A	John Bohn, Chairman Twp. Board of Supervisors Laurelton, PA 17835 Phone: (717) 922-1009

EFFECTIVE DATE November 12, 1980

1 STATE	2 IDENT. NUMBER	3 COMMUNITY NAME & COUNTY NAME	4 PANELS PRINTED (# AND SUFFIX)	5 INLAND/ COASTAL	6 HAZARD	7 60.3 CODE	8 PROGRAM STATUS	9 STATUS OF FHBM	9 STATUS OF FIRM	10 PREVIOUS MAP DATES FHBM	10 PREVIOUS MAP DATES FIRM	11 REVISION CODE(S)	12 RESCISSION	13 FLOODWAYS PANELS PRINTED	14 LOCATION OF MAP REPOSITORY
ND	380264	Township of Normanna (Cass County)	0001A	I	FL	B	1	2	1	N/A	N/A	N/A	N/A	N/A	Mr. Harold Thrane, Chairman Normanna Township Commissioners Kindred, ND 58051 (701) 428-3385
WA	530038	City of East Wenatchee (Douglas County)	0001B	1	FL	B	1	3	1	4-29-77	N/A	8 9	N/A	N/A	The Honorable Forrest Lannoye Mayor, City of East Wenatchee P.O. Box 0159 East Wenatchee, WA 98801 (509) 884-4858

EFFECTIVE DATE November 12, 1980

1 STATE	2 IDENT. NUMBER	3 COMMUNITY NAME & COUNTY NAME	4 PANELS PRINTED (# AND SUFFIX)	5 INLAND/ COASTAL	6 HAZARD	7 60.3 CODE	8 PROGRAM STATUS	9 STATUS OF FHBM	9 STATUS OF FIRM	10 PREVIOUS MAP DATES FHBM	10 PREVIOUS MAP DATES FIRM	11 REVISION CODE(S)	12 RESCISSION	13 FLOODWAYS PANELS PRINTED	14 LOCATION OF MAP REPOSITORY
ID	160213	Idaho County (Unincorporated Areas)	0009A 0010A 0017A 0018A 0024A 0025A 0026A 0027A 0033A 0034A 0035A 0036A 0038A 0043A 0044A 0045A 0046A 0048A 0053A 0054A 0063A 0070A 0071A 0072A 0079A 0086A	I	FL	B	6	2	1	N/A	N/A	N/A	N/A	N/A	Mr. Douglas Higgins County Commissioner Idaho County Courthouse Grangeville, ID 83530 (208) 983-2390

EFFECTIVE DATE 11/14/80

1 State	2 Ident. Number	3 Community Name County Name	4 Panels Printed (0 and Suffix)	5 Inland/ Coastal	6 Hazard	7 60.3 Code	8 Program Status	9 Status of FHBM	9 Status of FIRM	10 Previous Map Dates FHBM	10 Previous Map Dates FIRM	11 Revision Code (8)	12 Rescission	13 Floodways Panels Printed	14 Location of Map Repository
NY	360266	V. Keeseville (Essex & Clinton)	0001A	I	FL	B	4	3	1	5/31/74 5/21/76	N/A	8 10	N/A	N/A	Wilfred Blaise, Mayor Village Office Box 426 Keeseville, NY 12944
TN	470335	C. Dickson (Dickson Co.)	0001A 0002A 0003A	I	FL	B	4	3	1	7/9/76	N/A	8 9 10	N/A	N/A	The Honorable J. Dan Bukner, Mayor 202 South Main Street Dickson, TN 37055
MS	280319	T. Quitman (Clarke Co.)	0005A	I	FL	B	1	2	1	N/A	N/A	N/A	N/A	N/A	Franklin Stay, Mayor P.O. Box 16 Quitman, MS 39355
NJ	340256	Twp. West Windsor (Mercer Co.)	0005B 0010B	I	FL	B	1	3	1	7/19/74 9/24/76	N/A	8 9	N/A	N/A	The Honorable Carol Beske, 4 Berkshire Drive, Princeton Junction, NJ 08550
TN	470169	T. Smyrna (Rutherford Co.)	0005C 0010C	I	FL	B	1	3	1	5/31/74 7/30/76 5/20/77	N/A	8 9 10	N/A	N/A	John Sam Ridley, Mayor P.O. Box 128 Smyrna, TN 37167

EFFECTIVE DATE November 14, 1980

1 State	2 Ident. Number	3 Community Name County Name	4 Panels Printed (0 and Suffix)	5 Inland/ Coastal	6 Hazard	7 60.3 Code	8 Program Status	9 Status of FHBM	9 Status of FIRM	10 Previous Map Dates FHBM	10 Previous Map Dates FIRM	11 Revision Code (8)	12 Rescission	13 Floodways Panels Printed	14 Location of Map Repository
PA	421519	Township of Chest (Clearfield Co.)	Index 0001A 0002A 0003A 0004A	I	FL	B	1	3	1	11/15/74	N/A	9 10 16	N/A	N/A	Irvan Holes, Chairman Twp. Board of Supervisors R.D. 1 La Jose, PA 15753 Phone (814) 277-9929
PA	421885	Township of Chestnut Hill (Monroe Co.)	Index 0001A 0002A 0003A 0004A	I	FL	B	1	3	1	11/15/74	N/A	9 10 16	N/A	N/A	Albert Frantz, Chairman Twp. Board of Supervisors Brodheadsville, PA 18322 Phone: (717) 992-4987
PA	421526	Township of Karthaus (Clearfield Co.)	Index 0002A 0003A 0004A	I	FL	B	1	3	1	11/29/74	N/A	9 10 16	N/A	N/A	Eugene Shadeck, Chairman Twp. Board of Supervisors Karthaus, PA 16845 Phone: (814) 263-4565
PA	421614	Township of Spring Creek (Elk Co.)	Index 0001A 0002A 0003A 0004A 0005A	I	FL	B	1	3	1	12/ 6/74	N/A	9 10 16	N/A	N/A	Ronald Shick, Chairman Twp. Board of Supervisors Portland Mills, PA 15850 Phone: None
PA	421470	Township of Union (Centre Co.)	Index 0002A 0003A 0004A	I	FL	B	1	3	1	11/ 8/74	N/A	9 10 16	N/A	N/A	Ernest Ammerman, Chairman Twp. Board of Supervisors R.D. 1 Julian, PA 16844 Phone: (814) 355-0238

EFFECTIVE DATE November 18, 1980

1 STATE	2 IDENT. NUMBER	3 COMMUNITY NAME & COUNTY NAME	4 PANELS PRINTED (# AND SUFFIX)	5 INLAND/ COASTAL	6 HAZARD	7 60.3 CODE	8 PROGRAM STATUS	9 STATUS OF FHBM	9 STATUS OF FIRM	10 PREVIOUS MAP DATES FHBM	10 PREVIOUS MAP DATES FIRM	11 REVISION CODE(S)	12 RESCISSION	13 FLOODWAYS PANELS PRINTED	14 LOCATION OF MAP REPOSITORY
TX	481565	Fayette County Water Control & Improvement District, Monument Hill (Fayette County)	0001A	I	FL	B	1	2	1	N/A	N/A	N/A	N/A	N/A	Mr. Warren Kubecka President of Water Control Board P.O. Box 793 Lagrange, TX 78945 (713) 968-6461

EFFECTIVE DATE 11/28/80

1 STATE	2 IDENT. NUMBER	3 COMMUNITY NAME & COUNTY NAME	4 PANELS PRINTED (NO. AND SUFFIX)	5 INLAND/ COASTAL	6 HAZARD	7 60.3 CODE	8 PROGRAM STATUS	9 STATUS OF FHBM	9 STATUS OF FIRM	10 PREVIOUS MAP DATES FHBM	10 PREVIOUS MAP DATES FIRM	11 REVISION CODE(S)	12 RESCISSION	13 FLOODWAYS PANELS PRINTED	14 LOCATION OF MAP REPOSITORY
NY	361374	Town of Erin (Chemung Co.)	0005 A 0015 A 0020 A 0025 A 0030 A	I	FL	B	1	3	1	1/10/75	N/A	10	N/A	N/A	Merton Schanbacher, Supervisor Town of Erin Erin, New York 14838 (607) 739-1068
NY	361602	T. of Hartsville (Steuben Co.)	0005 A 0010 A 0015 A 0020 A	I	FL	B	1	2	1	N/A	N/A	N/A	N/A	N/A	Mr. Deyo Mayo, Supervisor 5159 Purdy Creek Road Hornell, New York 14843 (607) 698-4378
KY	210292	Morgan County	0025 A 0050 A 0075 A 0100 A 0125 A 0150 A	I	FL	B	1	2	1	N/A	N/A	N/A	N/A	N/A	Mr. Gene Allen, Co. Judge Executive Morgan Co. Courthouse West Liberty, KY 41472 (606) 743-3026
VT	500004	Town of Goshen (Addison Co.)	0005 B 0010 B	I	FL	B	1	3	1	12/20/75	N/A	9 10	N/A	N/A	J. Douglas Graham, Selectman R.D. 3 Brandon, VT 05733

EFFECTIVE DATE: November 28, 1980

L State	2 Ident. Number	3 Community Name County Name	4 Panels Printed (Left) Suffix	5 Inland/ Coastal	6 Hazard	7 60.3 Code	8 Program Status	9 Status of FHBM	9 Status of FIRM	10 Previous Map Dates FHBM	10 Previous Map Dates FIRM	11 Revision Code(s)	12 Rescission	13 Floodways Panels Printed	14 Location of Map Repository
IL	170508	City of Keithsburg (Mercer Co.)	0001D	I	FL	B	1	3	1	2/15/74 8/01/75 2/13/76 7/27/79	N/A	9 10 16	N/A	N/A	Benjamin Munson Acting Mayor City Hall 4th & Main Street Keithsburg, IL 61442 Phone: 309-374-2369
PA	420826	Boro. of Roseville (Tioga Co.)	0001A	I	FL	B	4	3	1	12/13/74	N/A	9	N/A	N/A	Roland Smith, Mayor R.D.2 Mansfield, PA 16933 Phone: 717-549-4642

BILLING CODE 6718-03-C

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: October 20, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-33794 Filed 10-30-80; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 12

Federal Property Assistance Program; Disposal and Utilization of Surplus Real Property for Public Health Purposes

AGENCY: Office of the Secretary, HHS.

ACTION: Final regulation.

SUMMARY: The Department of Health, Education, and Welfare conveyed Federal surplus real property for educational and public health purposes under the authority of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) (Catalog of Federal Domestic Assistance Program Number 13.676 Surplus Property Utilization.) The Department of Education Organization Act (Pub. L. 96–88, enacted October 17, 1979) establishes the Department of Education and transfers to the new executive Department the authority of the Secretary of Health, Education, and Welfare to dispose of surplus real property for educational purposes. Therefore, this publication deletes from the regulations of the former Department of Health, Education, and Welfare all reference to disposal and utilization of surplus real property for educational purposes and redesignates the Department of Health, Education, and Welfare as the Department of Health and Human Services.

EFFECTIVE DATE: May 4, 1980.

FOR FURTHER INFORMATION CONTACT: C. A. Patterson, Director, Office of Real Property, Department of Health and Human Services, Room 4715, 330 Independence Avenue, S.W., Washington, D.C. 20201. Telephone: (202) 245–1926.

SUPPLEMENTARY INFORMATION: Publication of this rule as a proposal for public comment is unnecessary as it deals only with the removal of reference to education from the regulations published in the **Federal Register**, Vol. 42, No. 225, on November 22, 1977.

Dated: August 20, 1980.

Wilford J. Forbush,

Acting Assistant Secretary for Management and Budget.

Approved: October 23, 1980.

Patricia Roberts Harris,

Secretary of Health and Human Services.

PART 12—DISPOSAL AND UTILIZATION OF SURPLUS REAL PROPERTY FOR PUBLIC HEALTH PURPOSES

Sec.
12.1 Definitions.
12.2 Scope.
12.3 General policies.
12.4 Limitations.
12.5 Awards.
12.6 Notice of available property.
12.7 Applications for surplus real property.
12.8 Assignment of surplus real property.
12.9 General disposal terms and conditions.
12.10 Compliance with the preservation acts.
12.11 Special terms and conditions.
12.12 Utilization.
12.13 Form of conveyance.
12.14 Compliance inspections and reports.
12.15 Reports to Congress.

Authority: The provisions of this part 12 issued under sec. 203, 63 Stat. 385, as amended; 40 U.S.C. 484.

§ 12.1 Definitions.

(a) "Act" means the Federal Property and Administrative Services Act of 1949, 63 Stat. 377 (40 U.S.C. 471 et seq.). Terms defined in the Act and not defined in this section have the meanings given to them in the Act.

(b) "Accredited" means having the approval of a recognized accreditation board or association on a regional, State, or national level, such as a State Board of Health. "Approval" as used above describes the formal process carried out by State Agencies and institutions in determining that health organizations or programs meet minimum acceptance standards.

(c) "Administrator" means the Administrator of General Services.

(d) "Assigned property" means real and related personal property which, in the discretion of the Administrator or his designee, has been made available to the Department for transfer for public health purposes.

(e) "Department" means the U.S. Department of Health and Human Services.

(f) "Disposal agency" means the executive agency of the Government which has authority to assign property to the Department for transfer for public health purposes.

(g) "Excess" means any property under the control of any Federal agency which is not required for its needs and the discharge of its responsibilities, as determined by the head thereof.

(h) "Fair market value" means the highest price which the property will bring by sale in the open market by a willing seller to a willing buyer.

(i) "Holding agency" means the Federal agency which has control over and accountability for the property involved.

(j) "Nonprofit institution" means any institution, organization, or association, whether incorporated or unincorporated, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and which has been held to be tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1954.

(k) "Off-site property" means surplus buildings, utilities and all other removable improvements, including related personal property, to be transferred by the Department for removal and use away from the site for public health purposes.

(l) "On-site" means surplus real property, including related personal property, to be transferred by the Department for use in place for public health purposes.

(m) "Public benefit allowance" means a discount on the sale or lease price of real property transferred for public health purposes, representing any benefit determined by the Secretary which has accrued or may accrue to the United States thereby.

(n) "Related personal property" means any personal property: (1) Which is located on and is (i) an integral part of, or (ii) useful in the operation of real property; or (2) which is determined by the Administrator to be otherwise related to the real property.

(o) "Secretary" means the Secretary of Health and Human Services.

(p) "State" means a State of the United States, and includes the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States.

(q) "Surplus" when used with respect to real property means any excess real property not required for the needs and the discharge of the responsibilities of all Federal agencies as determined by the Administrator.

§ 12.2 Scope.

This part is applicable to surplus real property located within any State which is appropriate for assignment to, or which has been assigned to, the Department for transfer for public health

purposes, as provided for in section 203(k) of the Act.

§ 12.3 General Policies.

(a) It is the policy of the Department to foster and assure maximum utilization of surplus real property for public health purposes, including research.

(b) Transfers may be made only to States, their political subdivisions and instrumentalities, tax-supported public health institutions, and nonprofit public health institutions which have been held tax exempt under section 501(c)(3) of the Internal Revenue Code of 1954.

(c) Real property will be requested for assignment only when the Department has determined that the property is suitable and needed for public health purposes. The amount of real and related personal property to be transferred shall not exceed normal operating requirements of the applicant. Such property will not be requested for assignment unless it is needed at the time of application for public health purposes or will be so needed within the immediate or foreseeable future. Where construction or major renovation is not required or proposed, the property must be placed into use within twelve (12) months from the date of transfer. When construction or major renovation is contemplated at the time of transfer, the property must be placed in use within 36 months from the date of transfer. If the applicable time limitation is not met, the transferee shall either commence payments in cash to the Department for each month thereafter during which the proposed use has not been implemented or take such other action as set forth in § 12.12 as is deemed appropriate by the Department. Such monthly payments shall be computed on the basis of the current fair market value of the property at the time of the first payment by subtracting therefrom any portion of the purchase price paid in cash at the time of transfer, and by dividing the balance by the total number of months in the period of restriction. If the facility has not been placed into use within eight (8) years of the date of the deed, title to the property will be revested in the United States, or, at the discretion of the Department, the restrictions and conditions may be abrogated in accordance with § 12.9

(d) Transfers will be made only after the applicant has certified that the proposed program is not in conflict with State or local zoning restrictions, building codes, or similar limitations.

(e) Organizations which may be eligible include those which provide care and training for the physically and mentally ill, including medical care of the aged and infirm, clinical services, other public health services (including water and sewer), or similar services devoted primarily to the promotion and protection of public health. Services which have as their principal purpose the providing of custodial or domiciliary care are not eligible. The property applied for must be for a purpose which the eligible organization is authorized to carry out.

(f) An applicant's plan of operation will not be approved unless it provides that the applicant will not discriminate because of race, color, sex, handicap, or national origin in the use of the property.

§ 12.4 Limitations.

(a) Surplus property transferred pursuant to this part will be disposed of on an "as is, where is," basis without warranty of any kind.

(b) Unless excepted by the General Services Administrator in his assignment, mineral rights will be conveyed together with the surface rights.

§ 12.5 Awards.

Where there is more than one applicant for the same property, it will be awarded to the applicant having a program of utilization which provides, in the opinion of the Department, the greatest public benefit. Where the property will serve more than one program, it will be apportioned to fit the needs of as many programs as is practicable.

§ 12.6 Notice of available property.

Reasonable publicity will be given to the availability of surplus real property which is suitable for assignment to the Department for transfer for public health uses. The Department will establish procedures reasonably calculated to afford all eligible users having a legitimate interest in acquiring the property for such uses an opportunity to make an application therefor. However, publicity need not be given to the availability of surplus real property which is occupied and being used for eligible public health purposes at the time the property is declared surplus, the occupant expresses interest in the property, and the Department determines that it has a continuing need therefor.

§ 12.7 Applications for surplus real property.

Applications for surplus real property for public health purposes shall be made to the Department through the Regional Office specified in the notice of availability.

§ 12.8 Assignment of surplus real property.

(a) Notice of interest in a specific property for public health purposes will be furnished the General Services Administrator by the Department at the earliest possible date.

(b) Requests to the Administrator for assignment of surplus real property to the Department for transfer for public health purposes will be based on the following conditions:

(1) The Department has an acceptable application for the property.

(2) The applicant is willing, authorized, and in a position to assume immediate care, custody, and maintenance of the property.

(3) The applicant is able, willing and authorized to pay the administrative expenses incident to the transfer.

(4) The applicant has the necessary funds, or the ability to obtain such funds, to carry out the approved program of use of the property.

§ 12.9 General disposal terms and conditions.

(a) Surplus real property transfers under this part will be limited to public health purposes. Transferees shall be entitled to a public benefit allowance in terms of a percentage which will be applied against the value of the property to be conveyed. Such an allowance will be computed on the basis of benefits to the United States from the use of such property for public health purposes. The computation of such public benefit allowances will be in accordance with Exhibit A attached hereto and made a part hereof.

(b) A transfer of surplus real property for public health purposes is subject to the disapproval of the Administrator within 30 days after notice is given to him of the proposed transfer.

(c) Transfers will be on the following terms and conditions:

(1) The transferee will be obligated to utilize the property continuously in accordance with an approved plan of operation.

(2) The transferee will not be permitted to sell, lease or sublease, rent, mortgage, encumber, or otherwise dispose of the property, or any part thereof, without the prior written authorization of the Department.

(3) The transferee will file with the Department such reports covering the utilization of the property as may be required.

(4) In the event the property is sold, leased or subleased, encumbered, disposed of, or is used for purposes other than those set forth in the approved plan without the consent of the Department, all revenues or the reasonable value of other benefits received by the transferee directly or indirectly from such use, as determined by the Department, will be considered to have been received and held in trust by the transferee for the account of the United States and will be subject to the direction and control of the Department. The provisions of this paragraph shall not impair or affect the rights reserved to the United States in paragraph (c)(6) of this section, or the right of the Department to impose conditions to its consent.

(5) Lessees will be required to carry all perils and liability insurance to protect the Government and the Government's residual interest in the property. Transferees will be required to carry such flood insurance as may be required by the Department pursuant to Pub. L. 93–234. Where the transferee elects to carry insurance against damages to or loss of on-site property due to fire or other hazards, and where loss or damage to transferred Federal surplus real property occurs, all proceeds from insurance shall be promptly used by the transferee for the purpose of repairing and restoring the property to its former condition, or replacing it with equivalent or more suitable facilities. If not so used, there shall be paid to the United States that part of the insurance proceeds that is attributable to the Government's residual interest in the property lost, damaged, or destroyed in the case of leases, attributable to the fair market value of the leased facilities.

(6) With respect to on-site property, in the event of noncompliance with any of the conditions of the transfer as determined by the Department, title to the property transferred and the right to immediate possession shall, at the option of the Department, revert to the Government. In the event title is reverted to the United States for noncompliance or voluntarily reconveyed, the transferee shall, at the option of the Department, be required to reimburse the Government for the decrease in value of the property not due to reasonable wear and tear or acts of God or attributable to alterations completed by the transferee to adapt the property to the public health use for which the property was transferred. With respect to leased property, in the event of noncompliance with any of the conditions of the lease, as determined by the Department, the right of occupancy and possession shall, at the option of the Department, be terminated. In the event a leasehold is terminated by the United States for noncompliance or is voluntarily surrendered, the lessee shall be required at the option of the Department to reimburse the Government for the decrease in value of the property not due to reasonable wear and tear or acts of God or attributable to alterations completed by the lessee to adapt the property to the public health use for which the property was leased. With respect to any reverter of title or termination of leasehold resulting from noncompliance, the Government shall, in addition thereto, be reimbursed for such costs as may be incurred in recovering title to or possession of the property.

Any payments of cash made by the transferee against the purchase price of property transferred shall, upon a forfeiture of title to the property for breach of condition, be forfeited.

(7) With respect to off-site property, in the event of noncompliance with any of the terms and conditions of the transfer, the unearned public benefit allowance shall, at the option of the Department, become immediately due and payable or, if the property or any portion thereof is sold, leased, or otherwise disposed of without authorization from the Department, such sale, lease or sublease, or other disposal shall be for the benefit and account of the United States and the United States shall be entitled to the proceeds. In the event the transferee fails to remove the property or any portion thereof within the time specified, then in addition to the rights reserved above, at the option of the Department, all right, title, and interest in and to such unremoved property shall be retransferred to other eligible applicants or shall be forfeited to the United States.

(8) With respect only to on-site property which has been declared excess by the Department of Defense, such declaration having included a statement indicating the property has a known potential for use during a national emergency, the Department shall reserve the right during any period of emergency declared by the President of the United States or by the Congress of the United States to the full and unrestricted use by the Government of the surplus real property, or of any portion thereof, disposed of in accordance with the provisions of this part. Such use may be either exclusive or nonexclusive. Prior to the expiration or termination of the period of restricted use by the transferee, the Government will not be obligated to pay rent or any other fees or charges during the period of emergency, except that the Government will:

(i) Bear the entire cost of maintenance of such portion of the property used by it exclusively or over which it may have exclusive possession or control;

(ii) Pay the fair share, commensurate with the use of the cost of maintenance of such surplus real property as it may use nonexclusively or over which it may have nonexclusive possession or control;

(iii) Pay a fair rental for the use of improvements or additions to the surplus real property made by the purchaser or lessee without Government aid; and

(iv) Be responsible for any damage to the surplus real property caused by its use, reasonable wear and tear, the common enemy and acts of God excepted. Subsequent to the expiration or termination of the period of restricted use, the obligations of the Government will be as set forth in the preceding sentence and, in addition, the Government shall be obligated to pay a fair rental for all or any portion of the conveyed premises which it uses.

(9) The restrictions set forth in subparagraphs (1) through (7) will extend for thirty (30) years for land with or without improvements; and for facilities being acquired separately from land whether they are for use on-site or off-site, the period of limitations on the use of the structures will be equal to their estimated economic life. The restrictions set forth in subparagraphs (1) through (7) will extend for the entire initial lease period and for any renewal periods for property leased from the Department.

(d) Transferees, by obtaining the consent of the Department, may abrogate the restrictions set forth in paragraph (c) for all or any portion of the property upon payment in cash to the Department of an amount equal to the then current fair market value of the property to be released, multiplied by the public benefit allowance granted at the time of conveyance, divided by the total number of months of the period of restriction set forth in the conveyance document and multiplied by the number of months that remain in the period of restriction as determined by the Department. For purposes of abrogation payment computation, the current fair market value shall not include the value of any improvements placed on the property by the transferee.

(e) Related personal property will be transferred or leased as a part of the realty and in accordance with real property procedures. It will be subject to the same public benefit allowance granted for the real property. Where related personal property is involved in an on-site transfer, the related personal property may be transferred by a bill of sale imposing restrictions for a period

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not to exceed five years from the date of transfer, other terms and conditions to be the same as, and made a part of, the real property transaction.

§ 12.10 Compliance with the National Environmental Policy Act of 1969 and other related acts (environmental impact).

(a) The Department will, prior to making a final decision to convey or lease, or to amend, reform, or grant an approval or release with respect to a previous conveyance or lease of, surplus real property for public health purposes, complete an environmental assessment of the proposed transaction in keeping with applicable provisions of the National Environmental Policy Act of 1969, the National Historic Preservation Act of 1966, the National Archeological Data Preservation Act, and other related acts. No permit to use surplus real property shall allow the permittee to make, or cause to be made, any irreversible change in the condition of said property, and no use permit shall be employed for the purpose of delaying or avoiding compliance with the requirements of these Acts.

(b) Applicants shall be required to provide such information as the Department deems necessary to make an assessment of the impact of the proposed Federal action on the human environment. Materials contained in the applicant's official request, responses to a standard questionnaire prescribed by the Director of the Office of Federal Property Assistance, as well as other relevant information, will be used by the Department in making said assessment.

(c) If the assessment reveals (1) That the proposed Federal action involves properties of historical significance which are listed, or eligible for listing, in the National Register of Historic Places, or (2) that a more than insignificant impact on the human environment is reasonably foreseeable as a result of the proposed action, or (3) that the proposed Federal action could result in irreparable loss or destruction of archeologically significant items or data, the Department will, except as provided for in paragraph (d) below, prepare and distribute, or cause to be prepared or distributed, such notices and statements and obtain such approvals as are required by the above cited Acts.

(d) If a proposed action involves other Federal agencies in a sequence of actions, or a group of actions, directly related to each other because of their functional interdependence, the Department may enter into and support a lead agency agreement to designate a single lead agency which will assume primary responsibility for coordinating the assessment of environmental effects of proposed Federal actions, preparing and distributing such notices and statements, or obtaining such approvals, as are required by the above cited Acts. The procedures of the designated lead agency will be utilized in conducting the environmental assessment. In the event of disagreement between the Department and another Federal agency, the Department will reserve the right to abrogate its lead agency agreement with the other Federal Agency.

§ 12.11 Special terms and conditions.

(a) Applicants will be required to pay all external administrative costs which will include, but not be limited to, taxes, surveys, appraisals, inventory costs, legal fees, title search, certificate or abstract expenses, decontamination costs, moving costs, closing fees in connection with the transaction and service charges, if any, made by State Agencies for Federal Property Assistance under the terms of a cooperative agreement with the Department.

(b) In the case of off-site property, applicants will be required to post performance bonds, make performance guarantee deposits, or give such other assurances as may be required by the Department or the holding agency to insure adequate site clearance and to pay service charges, if any, made by State Agencies for Federal Property Assistance under the terms of a cooperative agreement with the Department.

(c) Whenever negotiations are undertaken for disposal to private nonprofit public health organizations of any surplus real property which cost the Government $1 million or more, the Department will give notice to the Attorney General of the United States of the proposed disposal and the terms and conditions thereof. The applicant shall furnish to the Department such information and documents as the Attorney General may determine to be appropriate or necessary to enable him to give the advice as provided for by section 207 of the Act.

(d) Where an applicant proposes to acquire or lease and use in place improvements located on land which the Government does not own, he shall be required, before the transfer is consummated, to obtain a right to use the land commensurate with the duration of the restrictions applicable to the improvements, or the term of the lease. The applicant will be required to assume, or obtain release of, the Government's obligations respecting the land including but not limited to obligations relating to restoration, waste, and rent. At the option of the Department, the applicant may be required to post a bond to indemnify the Government against such obligations.

(e) The Department may require the inclusion in the transfer or lease document of any other provision deemed desirable or necessary.

(f) Where an eligible applicant for an on-site transfer proposes to construct new, or rehabilitate old, facilities, the financing of which must be accomplished through issuance of revenue bonds having terms inconsistent with the terms and conditions of transfer prescribed in § 12.9 (c), (d), and (e) of this chapter, the Department may, in its discretion, impose such alternate terms and conditions of transfer in lieu thereof as may be appropriate to assure utilization of the property for public health purposes.

§ 12.12 Utilization.

(a) Where property or any portion thereof is not being used for the purposes for which transferred, the transferee will be required at the direction of the Department:

(1) To place the property into immediate use for an approved purpose;

(2) To retransfer such property to such other public health user as the Department may direct;

(3) To sell such property for the benefit and account of the United States;

(4) To return title to such property to the United States or to relinquish any leasehold interest therein;

(5) To abrogate the conditions and restrictions of the transfer, as set forth in § 12.9(d) of this chapter, except that, where property has never been placed in use for the purposes for which transferred, abrogation will not be permitted except under extenuating circumstances; or

(6) To make payments as provided for in § 12.3(c) of this chapter.

(b) Where the transferee or lessee desires to place the property in temporary use for a purpose other than that for which the property was transferred or leased, approval from the Department must be obtained, and will be conditioned upon such terms as the Department may impose.

§ 12.13 Form of conveyance.

(a) Transfers or leases of surplus real property will be on forms approved by the Office of General Counsel of the Department and will include such of the disposal or lease terms and conditions set forth in this part and such other terms and conditions as the Office of General Gounsel may deem appropriate or necessary.

(b) Transfers of on-site property will normally be by quitclaim deed without warranty of title.

§ 12.14 Compliance inspections and reports.

The Department will make or have made such compliance inspections as are necessary and will require of the transferee or lessee such compliance reports and actions as are deemed necessary.

§ 12.15 Reports to Congress.

The Secretary will make such reports of real property disposal activities as are required by section 203 of the Act and such other reports as may be required by law.

Exhibit A.—*Public Benefit Allowance for Transfer of Real Property for Health Purposes* [1]

Classification	Percent allowed											
			Organization allowances		Utilization allowances							
					Unmet needs							
	Basic public benefit allowance	Tax support	Accreditation	Hardship	10 to 25%	26 to 50%	51 to 100%	Integrated Research program	Outpatient Services	Public Services	Training Program	Maximum public Benefit allowance
Hospitals	50	20	20	10	10	20	30	10	10	10	10	100
Clinics	50	20	20	10	10	20	30					100
Nursing Homes	50	20	20	10	10	20	30				10	100
Public Health Administration	[2] 100											[2] 100
Public Refuse Disposal and Wates Systems.	[2] 100											[2] 100
Research	[2] 100											[2] 100
Rehabilitation Facility	50	20	20	10	10	20	30	10	10	10	10	100
Special Services	50	20	20	10	10	20	30			10		100

[1] This public benefit allowance applies only to surplus real property being sold for on-site use. When surplus real property is to be moved from the site, a basic public benefit allowance of 100% will be granted.

[2] Applicable when this is the primary use to be made of the property, the public benefit allowance for the overall health program is applicable when such facilities are conveyed as a minor component of other facilities.

[FR Doc. 80-33813 Filed 10-30-80; 8:45 am]

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INTERSTATE COMMERCE COMMISSION

49 CFR Part 1056

[Ex Parte MC 19 (Sub-34)]

Household Goods Transportation (Storage-In-Transit Charges)

AGENCY: Interstate Commerce Commission.

ACTION: Affirmation of final rules.

SUMMARY: By this notice the Commission affirms its jurisdiction to prescribe a rule published at 45 FR 55465, August 20, 1980, requiring that storage-in-transit (SIT) charges for household goods moving in interstate or foreign commerce be assessed in amounts per day or a fraction thereof.

DATE: The rule adopted at 45 FR 55465, 55466 will become effective as scheduled on November 18, 1980.

FOR FURTHER INFORMATION CONTACT: Martin E. Foley, (202) 275-7348.

SUPPLEMENTARY INFORMATION: In our decision of July 17, 1980, (see 45 FR 55465), in this proceeding, we indicated that it was the contention of Household Goods Carriers' Bureau, Inc., (HGCB) that our notice of proposed rule (NPR) in this proceeding (44 FR 30387) and its revision (44 FR 75194) failed to give proper reference to the legal authority under which the rule was proposed. We also indicated that HGCB had submitted that the Commission does not have the legal authority to adopt the rule. HGCB has not provided us with an argument supporting the latter submission.

In our July 17 decision we concluded that it should have been obvious that we were proceeding under 49 U.S.C 10102(23)(B), 10701(a) and 10704(a)(1) in conducting our investigation of the practice of assessing SIT charges in 30-day increments. These sections were not specifically referred to in our NPR or its revision; however, we felt that this failure should not have precluded petitioners from challenging our exercise of jurisdiction. Since the sections had not been previously referred to and out of an abundance of caution we allowed an additional 30-day period for the filing of comments addressed solely to our jurisdiction to prescribe the SIT regulation adopted in this proceeding.

Two comments were filed within the additional comment period which support our position that the Commission does have jurisdiction to prescribe the rule and that adequate notice of the legal authorities under which the rule was proposed was provided. These comments were filed by the Commission's Office of Special Counsel and Miller Brewing Company. No comments were received which argue against our position. Therefore, in the absence of any compelling reason why the adoption of the rule in this proceeding was improper, we conclude that the adopted rule be allowed to become effective as scheduled on November 18, 1980.

Dated: October 17, 1980.

By the Commission: Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-34058 Filed 10-30-80; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

Taking of Marine Mammals Incidental to Commercial Fishing Operations—Permits, etc.

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final decision and final rule.

SUMMARY: This final decision establishes regulations to govern the taking of marine mammals incidental to commercial tuna purse seine fishing in the eastern tropical Pacific Ocean (ETP). The regulations provide for a general permit to be issued allowing the taking of a maximum of 20,500 porpoises, as apportioned into individual species and stock quotas, for each of the five years 1981–1985. The National Marine Fisheries Service (NMFS) will monitor the affected fishery and will take appropriate action to reduce the maximum number of porpoises that may be taken consistent with the economic and technological feasibility of industry compliance with such reductions. The regulations also set requirements for the use of specific equipment and procedures that NOAA believes will continue to reduce the incidental mortality and serious injury of porpoises due to commercial tuna seining in the ETP.

DATES: The decision and revised § 216.24 become effective November 28, 1980. Applications for certificates of inclusion will not be considered until December 8, 1980. The agency anticipates that a general permit will be issued if appropriate on December 1, 1980. A Final Environmental Impact Statement (FEIS) has been filed with the Environmental Protection Agency simultaneously with this decision and can be reviewed by contacting Richard B. Roe at the address below.

ADDRESSES: Administrator, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Richard B. Roe, Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235. Telephone: 202–634–7287. Office Location: Room 410, Page Building 2, 3300 Whitehaven Street, NW., Washington, D.C.

SUPPLEMENTARY INFORMATION: On February 15, 1980, NOAA published proposed amendments to the regulations governing the incidental taking of marine mammals in the ETP yellowfin tuna fishery (45 FR 10556). The proposal and other relevant available information were reviewed in a formal hearing before Administrative law Judge (ALJ) Hugh J. Dolan held in San Diego, California, from March 31 through April 5, 1980, and in Washington, D.C., on April 14, 15, and 18, and May 19, 1980. The following parties participated in the hearing: The Committee for Humane Legislation and Friends of Animals (CHL); The Marine Mammal Commission (MMC); The Environmental Defense Fund representing the Animal Protection Institute, Animal Welfare Institute, Center for Environmental Education, Defenders of Wildlife, Friends of the Earth, Fund for Animals, Humane Society of the United States, Sierra Club, and The Whale Center (EDF); the United States Tuna Foundation and American Tunaboat Association (ATA); the Assistant Administrator for Fisheries of NOAA; and the Commonwealth of Puerto Rico. The recommended decision of the ALJ was issued on July 18, 1980. A notice of availability was published on July 29, 1980 (45 FR 50375), and exceptions to the recommended decision were filed on August 8, 1980. In accordance with Rule 15 of the procedural rules published on February 15, 1980 (45 FR 10562), I am now publishing the final decision and regulations governing the taking of marine mammals incidental to commercial fishing operations.

Decision of the Administrator

Background

This decision is the latest in a series of decisions concerning the interaction of commercial yellowfin tuna fishing and the incidental take of marine mammals in the ETP. Prior to 1960, the most common method of fishing for yellowfin tuna was use of a pole and line. With the introduction of purse seines in the 1960's came an unwanted catch of dolphins that generally were found in close association with the tuna. Mortalities of dolphins increased significantly from 1960 and prompted the Congress to enact the Marine Mammal Protection Act in 1972 (the Act). 16 U.S.C. 1361 et seq.

The Act was based on a concern that certain species of marine mammals were in danger of depletion [1] and the belief that those animals should not be allowed to diminish below their optimum sustainable population. [2] The Act established a moratorium on the taking and importation of marine mammals (16 U.S.C. 1371), which can be waived by the Secretary only if takings would not be to the disadvantage of those species or population stocks. (16 U.S.C. 1373(a)) This determination must be based on the best scientific evidence available and must be consistent with the purposes and policies of the Act. The Act further requires that the Secretary must publish and make available to the public certain information on the stocks and the impact of takings on the OSP of the stocks on which takings are allowed. (16 U.S.C. 1373(d)) These procedural requirements have been complied with (45 FR 10556) and are republished here for clarity (Table I). If takings are allowed, the Act directs that "[i]n any event it shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate" 16 U.S.C. 1371(a)(2). The authority of the Secretary of Commerce to administer the Act and make these determinations has been delegated to me. (D00 25–5A Section 301 V. June 3, 1977)

[1] The term "depletion" or "depleted" means any case in which the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under sub-chapter II of this chapter determines that the number of individuals within a species or population stock—

(A) has declined to a significant degree over a period of years;

(B) has otherwise declined and that if such decline continues, or is likely to resume, such species would be subject to the provisions of the Endangered Species Act of 1973; or

(C) is below the optimum carrying capacity for the species or stock within its environment. Section (3)(1).

[2] The Act defines optimum sustainable population as:

. . . with respect to any population stock, the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the optimum carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element. Section (3)(9).

A working definition of this term was published in 50 C.F.R. Section 216.3 (1977) by the National Marine Fisheries Service.

. . . "Optimum sustainable population" is a population size which falls within a range from the population level of a given species or stock which is the largest supportable within the ecosystem to the population level that results in maximum net productivity. Maximum net productivity is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth losses due to natural mortality.

Table I.—*Impact of quotas for 1981–85 on the Status of Porpoise Stocks*

Species/stock (management unit)	Estimated current population in 1979	Current status of population [1]	Expected status of population at close of 1985 [2]
Spotted dolphin (northern offshore)	3,150,000	0.63	0.72
Spotted dolphin (southern offshore)	638,700	.95	.97
Spotted dolphin (coastal)	193,200	.42	.53
Spinner dolphin (eastern) [3]	418,700	.27	.34
Spinner dolphin (northern whitebelly)	486,600	.78	.83
Spinner dolphin (southern whitebelly)	264,900	.90	.94
Common dolphin (northern tropical) [4]	216,900	.97	.92
Common dolphin (central tropical)	848,400	.89	.92
Common dolphin (southern tropical)	477,100	1.00	.98
Striped dolphin (northern tropical)	50,600	1.00	.97
Striped dolphin (central tropical)	213,300	.99	.99
Striped dolphin (southern tropical)	483,000	1.00	1.00

[1] Proportion of pre-exploited stock size.
[2] Includes assessments for non-U.S. porpoise mortality.
[3] Includes non-target Costa Rican stock.
[4] Includes Baja neritic.

On December 27, 1977, the National Marine Fisheries Service (NMFS) issued a general permit to the American Tunaboat Association (ATA). This general permit is subject to regulations promulgated on December 23, 1977 (42 FR 64548), codified at 50 CFR 216.24. The existing permit and regulations expire at 2400 hours, December 31, 1980, unless amended.

In anticipation of an industry request for a general permit and regulations to be applicable beyond 1980, NMFS announced a scoping-planning meeting and its intent to prepare a draft environmental impact statement on August 9, 1979 (44 FR 46903). At the scoping meeting, the agency also made known its intent to convene a workshop in La Jolla, California, August 27–31, 1979, to consider the current population status of eastern tropical Pacific porpoise stocks. The workshop was intended to be similar to the one held in 1976, the results of which formed the scientific basis for the existing general permit and regulations. The 1979 workshop was expected to form the scientific basis for any general permit and regulations to be proposed for 1981 and beyond.

The 1979 Status of Porpoise Stocks (SOPS) Workshop of scientific experts took place as scheduled. The availability of the report of the workshop (the Report) was announced on November 7, 1979 (44 FR 64480).

The Report contained important new information, some of which suggested that the northern offshore spotted porpoise stock was depleted. Because of its obligation to review new information periodically and modify existing regulations as necessary to carry out the purposes of the Act, NMFS published an Advance Notice of Proposed Rulemaking on November 23, 1979 (44 FR 67194). In the Advance Notice, the agency announced that it intended to hold a formal hearing before an Administrative Law Judge to address the remainder of the 1980 season and the 1981 season. Although the Act does not require a formal hearing to address adjustments for the 1980 season, NMFS determined that this was the best means of reviewing the Report and other relevant information.

On February 15, 1980, proposed regulations were published that included statements required by Section 103(d) of the Act. These proposed regulations would amend the current regulations. Simultaneously a Draft Environmental Impact Statement (DEIS), filed with the Environmental Protection Agency on February 5, 1980, was made available to other Federal agencies and the general public for comment. The February 15, 1980, proposal contemplated the designation of northern offshore spotted porpoise as a depleted stock in addition to eastern spinner porpoises which are currently designated as depleted. In summary the proposed regulations would amend the existing regulatory regime to: (1) authorize the reissuance of a general permit for the remainder of 1980 and 1981; (2) establish a revised allowable take schedule for non-prohibited species only for the remainder of 1980 and 1981; (3) restate the enforcement policy for accidental takings of depleted species/stocks; and, (4) amend gear, fishing procedure, and other requirements.

In accordance with Section 103(d) of the Act and the procedural rules published coincident with the proposal on February 15, 1980, the proposed regulations and all relevant available information were reviewed on the record in a hearing held pursuant to 5 U.S.C. 556 and 557 by an ALJ. The hearing was conducted in San Diego, California, from March 31 through April 5, 1980, and in Washington, D.C. on April 14, 15, and 18, and May 19, 1980.

The hearing focussed on the following issues: (a) estimates of existing levels of the species and population stocks of the marine mammals involved in purse seining yellowfin tuna; (b) the expected impact of the proposed regulations on the optimum sustainable populations of the species or population stocks involved; (c) the economic feasibility of implementing the proposed regulations; (d) the technological feasibility of implementing the proposed regulations; and (e) the impact of implementing the proposed regulations on the tuna stocks.

The ALJ, Hugh J. Dolan, issued his recommended decision on July 18, 1980. The recommended decision addresses all of the issues raised by the parties at the hearing, but does not reach a conclusion as to the status of northern offshore spotted porpoise stock or other stocks in the ETP. Despite the lack of a specific finding regarding depletion of any stock, the findings in the recommended decision strongly suggest a finding of non-depletion for the northern offshore spotted stock with an OSP in the range of 50–70% of the pre-exploitation population. Exceptions to the ALJ's findings were submitted to the Assistant Administrator for Fisheries by EDF, MMC, CHL, and ATA on August 8, 1980.

Summary of the Decision

I find, based on the record of the hearing, the ALJ's recommended decision, the exceptions filed thereto and the Environmental Impact Statement, that the northern offshore spotted porpoise stock is not depleted and that an allowable take of these animals will not be to the disadvantage of the stock or population as a whole. I find that the eastern spinner and the coastal spotted porpoise are depleted and no taking, other than that allowed under the accidental take policy, will be allowed. As to the remainder of the target stocks of porpoise in the ETP, I find that they are not depleted and that allowable takes will not be to the disadvantage of those stocks or populations as a whole. I further find that an annual quota of 20,500 is economically and technologically feasible and should be set for five years (1981 through 1985). I am directing the NMFS to monitor the activities of the tuna industry to determine whether it is technologically feasible to reduce further this quota during the next five years.

The record before me indicates that allowable incidental taking over the next five years will allow growth in

most non-depleted porpoise stocks in the ETP (See Table I). The 20,500 quota is a significant reduction as compared to quotas for the last three years. It is reflective of the industry's continued improvement in release of porpoises and demonstrates the industry's commitment to reduce mortalities. The quota of 20,500 for each of the next five years does not assume that the industry will not reduce mortalities further but rather is based on the record before me which demonstrates that the quotas will not be to the disadvantage of the affected stocks and are currently both technologically and economically feasible.

The record indicates that the northern offshore spotted stock will increase in size even if all of the mortalities in any given year were to be from this stock. Northern offshore spotted is the largest population in the ETP and the maximum replacement yield is over 100,000 animals per year. The maximum replacement yields for other stocks in the ETP for which takings will be allowed are also well in excess of the maximum take allowed for those stocks. There is no evidence which suggests that this growth trend will change. However, in the event that new evidence is discovered or that the continuing refinement of the NMFS resource assessment data suggests that takings may disadvantage any of these stocks, I am prepared to propose further amendments to the regulations, as was done in 1980. To insure that there will be no disadvantage to the stocks I am directing NMFS to continue to monitor and assess the status of all stocks in the ETP and to make a complete assessment of these stocks no later than 1984. If the evidence from that workshop or evidence developed prior to that workshop suggests that the takings of any stock may be to the disadvantage of the animals, NMFS will propose modifications to the regulations further to protect the populations.

In reaching my decision I have only adopted parts of the ALJ's recommended decision. Those parts of the recommended decision adopted are specifically referred to in my decision. Those parts that are not specifically adopted are rejected.

To make the disadvantage determination I have followed the approach used by the 1976 and 1979 workshops which requires an assessment of: (1) present abundance; (2) pre-exploitation stock size; (3) Optimum Sustainable Population (OSP); and (4) projected impact of takings. In summary, I find that the ratio of present population of northern offshore spotted (3.15 million to their pre-exploitation population (5.03 million) is above the lower end of OSP (80%). I find further that an allowable annual take of 20,500 animals in the aggregate will not disadvantage the stocks and is technologically and economically feasible. The application of my findings to other stocks under consideration, results in the eastern spinner and coastal spotted stocks being depleted, and the other ten not being depleted. Each of these parameters and the evidence supporting my conclusions are discussed below.

Detailed Findings

A. *Present Abundance.* There is no dispute that it is proper to calculate the present abundance of each porpoise stock by a computer model that combines the following factors:

(1) the mean size of porpoise schools;

(2) the density of porpoise schools in the inhabited area;

(3) area inhabited by stocks in the ETP;

(4) the proportion of schools that are "target" schools (i.e., spinner or spotted porpoise); and

(5) the proportion of target species within target schools.

All of the factors of the formula to compute present abundance were at issue in the hearing.

The Basic Data

The critical evidence for all of these factors is the data used to make the estimates. The four data sources in the record are—observers, tuna vessel records, aerial surveys, and research vessel surveys.

The observer data are recorded by Federal observers on tuna vessels. Those data are recorded on observer logs, which are sent to the Southwest Fisheries Center (F/SWC) for analysis.

Tuna vessel data are recorded by vessel employees who are required by the existing regulations (50 CFR 216.24(d)(3)(v)) to record the number, location and the size of the schools they encounter. These data are recorded on fishing logs which are forwarded to F/SWC for analysis.

Aerial survey data are collected by NMFS spotters from fixed wing aircraft. Aerial surveys were conducted in 1977 and 1979. Three spotters in each airplane collectively observed all porpoise schools and the size of the schools they encountered on a predetermined flight track. Due to the planes' limited range, only the eastern ETP was surveyed.

The research vessel surveys were conducted by the NOAA vessels *Cromwell* and the *Jordan* in 1977, 1979 and 1980. Porpoise school observations are collected from the bridge of the research vessels and like the aerial survey record, the data reflect the number and size of the schools encountered on a predetermined track line.

All these data are important as indicators of the present population size of the porpoise stocks in the ETP. Their use and the weight to be given to each data set were the subject of considerable controversy at the hearing. Each data set will be discussed in connection with the different elements that comprise the formula to estimate present abundance.

1. *Mean School Size.* The average school size in the population area may be determined by using any or all of the four data sources just described. The mean school size derived from each of these sources varies greatly. As the present population estimate and the pre-exploitation size depend to a great extent on mean school size estimates, their accurate calculation is crucial in determining disadvantage.

Each of the data sets that can be used to estimate mean school size has some bias. However, it is my judgment that the NMFS aerial survey data represents the best available scientific estimate of mean school size. This results in a mean school size of 201 animals. The basis for this judgment is set forth in the following paragraphs.

(a) *Observer Data.* There is record evidence that the observer data are biased, but there is no record evidence to establish how to correct for the bias in that data. Evidence indicates that tuna vessels selectively search for larger porpoise schools and, although observers record the schools accurately, they do not have the opportunity to see as many smaller schools, thereby biasing mean school size estimates upwards. (NOAA 29)[3] The 1979 workshop concluded that observer data were not statistically valid because they result in mean school size estimates that are 2 to 4 times higher than the mean school size derived from the aerial and vessel survey data (419–857); and therefore should not be used to compute mean school size. (NOAA 52) I have concluded on the basis of the record that the 1979 workshop was correct in excluding the observer data in view of its inability to correct for the bias in it.

[3] Citations in this decision are to exhibits introduced at the hearing. Citations to the transcript are made by the location of the hearing (San Diego or Washington) and the page number. Citations to the recommended decision are by findings or page number. Citations to the briefs of the parties are by name of the party and reference to the opening or reply brief.

While I have considered the arguments of the industry, accepted by the ALJ, that the data should be used, I cannot, on the basis of the record before me, quantify the bias, nor can I conclude that giving the average of observer data equal weight with the averages of the data from the aerial and vessel surveys is scientifically supportable.

(b) *Tuna Vessel Employees.* In addition to those biases noted for the observer data, there is substantial evidence that the tuna vessel employees do not record accurately the number of porpoises in the schools that they see. (NOAA 29) In addition, there is evidence suggesting that tuna vessel employees often do not count smaller schools at all. (NOAA 29) The effect of this is to introduce a bias into the data identical to that described in the preceding section on observer data. These data were also rejected by the workshop and in fact were not supported as useable data for school size estimates by any party to the proceeding. I find that these data are not the best scientific information available and therefore should not be used.

(c) *Research Vessel Data.* There were a total of four research vessel surveys which produced school size estimates in the record. In 1977, two cruises by the *Cromwell* and *Jordan* produced estimates of 137 and 186 respectively. The *Cromwell* cruise spent some time in the southern extreme of the ETP which is an area of lower density for porpoises. The *Cromwell* and *Jordan* data for 1979 were collected in the so-called inshore area (the area covered by the aerial survey) and the outside area. The cruises resulted in estimates of mean school size of 115 for the *Jordan* and 151 for the *Cromwell*. Two biases for these data are suggested by the record. The first is that the two vessels have bridges at different heights from the water and therefore the data may not be compatible. I find that there is substantial evidence in the record to show that this bias was accounted for. (SD 446–7, EDF/RB 5–6, NOAA/OB 25, NOAA 29: 37) The second is that the research vessels are slower than the tuna vessels and porpoise, particularly ones that have already been captured, may avoid any vessel. There is no evidence in the record to quantify this bias. These data were not used by the workshop for estimating mean school size, although they reinforce the accuracy of the aerial survey data. The workshop excluded the use of these data because they were not as reliable as the aerial survey data. I find that their exclusion, because of the uncertainty resulting from the speed of the research vessels, is supported by the record and that they are not the best available scientific evidence to estimate school size.

(d) *Aerial Surveys.* As indicated above, I have concluded that these data, which result in an estimate of 201, are the best data to derive mean school size. These data could be biased by adverse weather conditions causing lower estimates, and the inability of the aerial spotters to count submerged porpoises. There is evidence in the record on each of these potential biases.

The 1979 aerial survey was conducted by flying a plane on a predetermined trackline. If a school was seen off the trackline the plane would fly over the school and count the number of animals. Photographs were taken of some of the schools in order to validate aerial observers' ability to count accurately. Photos were taken in a time sequence so that all of the animals would be out of the water in one or more photos. This evidence demonstrates that the aerial observers can accurately count what they and the camera see independently. A second study (the so-called *Gina Anne* cruise in 1980) was conducted to determine if the camera recorded all of the porpoises in the school. (NOAA 76) After taking photos of the school from a helicopter and making visual estimates of school size, the school was set on and captured by the *Gina Anne*. The porpoises were released from the net during an extended backdown procedure and counted. This study demonstrates a high correlation between the photographic evidence and the actual number of porpoises in the school. It is my conclusion that the 1979 aerial survey data has a high degree of accuracy, and is the best available scientific evidence to determine mean school size.

2. *Density of Schools.* Density is the average number of schools found in a grid of 1,000 square nautical miles (nm^2). It is used as a multiplier of mean school size and is of equal importance with it. Even small errors in density can have a significant impact on present population size.

The 1979 workshop divided the ETP into an "inside" and an "outside" area, finding the former to have a density of 12.02 schools/1,000nm^2 and the latter a density of 6.26 schools/1,000nm^2. These densities were derived by calibrating the results of the 1979 aerial survey on the inside area to the results of research vessel surveys of both areas by the vessels *Jordan* and *Cromwell*. (NOAA 60: 13–15; NOAA 52: 17–19; NOAA/OB 11–25; EDF/OB 4–33; EDF/RB 3–8; EDF/EX 3–9) I conclude that the density estimate of the inside area in the 1979 workshop (12.02) is the best scientific evidence in the record. For the outside area, further refinement of an analysis introduced at the hearing results in the outside density estimate of 7.97. This is consistent with the ALJ's finding that the outside density was "underestimated" by NMFS. (Finding 116) As the arguments for the inside and outside densities differ, the remainder of this section will treat each separately.

(a) *Inside.* The inside area is determined by the range of an airplane capable of flying at slow speeds. It has no biological or ecological significance. The basic assumption of the aerial survey is that all large porpoise schools (those of more than 15 porpoises) on the airplane trackline are seen. (NOAA 60: 314, NOAA 29: 57–60, SD 368, 369) This assumption was the focus of most of the testimony on density.

The agency presented scientific opinion to show the correctness of its assumptions that schools do not move in response to the aircraft prior to being spotted and that the aerial sightings are independent events and are not biased by prior sightings. In addition, the agency submitted evidence to show that no biases could be demonstrated that were due to weather (sea state) or sunglare and that sighting conditions were similar in all statistical areas. (NOAA 52: 18–19, NOAA 29: 9–11) Factual and opinion evidence was submitted by Lt. Cmdr. Wayne Perryman to show that all large schools directly on the trackline were spotted. (SD 766–821) To counter this evidence, Gordon Broadhead, the industry expert and a former PBY pilot, argued that schools were missed on the trackline and that this did have a biasing effect and that the inside density should be raised from 12.02 to 23.4 schools/1,000 nm^2. (SD 921–922, ATA 39: 7, 15–16, SD 766–821)

NMFS's witness, Dr. Tim Smith, examined sea states by dividing the inside area into two areas, a "coastal band" and "offshore band." He noted that Beaufort 2, 3, and 4 conditions were more or less evenly distributed within the coastal band. This testimony shows that estimates of density for Beaufort 2, 3, and 4 sea states are approximately equal and, therefore, sea state does not have an effect. I conclude that Dr. Smith's analysis of weather effect is uncontroverted and is the best evidence in the record. (See also NOAA/OB 18–20; EDF/OB 5–15).

With respect to sun position, Dr. Smith analyzed densities for the four sun positions recorded by the observers in the 1979 aerial survey. The estimated densities by sun position do not show a consistent trend as might have been

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expected if sun position had an effect. The ALJ found that sun glare does not have an effect. (Finding 15) His finding is supported by the record.

Finally, it is my judgment that the suggested bias for aerial observer differences is not substantial and that the proferred correction for it will not significantly affect the data.

(b) *Outside.* The outside density was computed by the 1979 workshop using the *Cromwell, Jordan* and the aerial survey data. NMFS showed that the vessel data which were collected in the inside and outside areas indicated a density gradient of approximately 2 to 1, inside to outside. It then applied this gradient to the aerial survey estimate of the inside density to arrive at the outside density.

The industry countered this approach by arguing that a gradient based on a ratio of outside and inside research vessel data tended to bias the outside density downward. The industry argued that the 1979 *Cromwell* cruise spent too much time in areas of known low density around the Equator. It suggested on brief that these data should be excluded as biased, and as a result, the outside density should be increased to 10.60. (ATA/OB 40–45) Its testimony on this point attempted to correct the *Cromwell* data mathematically, resulting in a density of 9.48. (ATA/OB 48)

When Dr. Tim Smith's analysis of "offshore" and "coastal bands" is applied to the inshore/offshore gradient, it changes the 1979 workshop estimate of an approximately 2 to 1 density ratio (inside to outside) to 3 to 2. Both the methodology and the data on which to apply it are in the record, although the actual analysis on research vessel data is not. This methodology represents a significant refinement to the outside density determination and results in an increase in the outside density to 7.97.

Two potential biases remain to be addressed. The ALJ found that a bias resulted in the research vessel surveys because the two vessels were not identical. I find that the evidence in the record indicates that the calibration exercise accounted for this potential bias by keeping data from the two boats separate. As to the remaining potential bias, I find that the industry's argument that in 1979 the *Cromwell* spent too much time along the Equator, which is a low porpoise density area, does not have merit. In order to determine density, the research survey had to take a representative sample of the entire area inhabited.

3. *Area Inhabited.* In the population estimation model that all parties used, the estimate of the total number of porpoise is obtained by multiplying density times the mean school size times the total area inhabited by the stocks. I have concluded that an area of 3.6 million nm^2 is the best available scientific estimate of the area inhabited by all stocks.

In the 1976 workshop, this area was taken to be the known historical range inhabited by each stock and was estimated from plots of locations where schools had been sighted from a variety of platforms. (NOAA 1) The 1979 workshop took the same basic approach, using accumulated sightings from research vessels to eliminate regions where porpoise were suspected but where none was revealed in the survey. (NOAA 60:16) Tuna vessel data from 1977 to 1979 were not used because they had not been analyzed and edited prior to the 1979 workshop. (SD 272–274)

The industry made two arguments: (1) the area of each stock was larger within the ETP and (2) the overall range was larger than recognized by the workshop. The industry introduced evidence of porpoise sightings by research vessels beyond the range used by the 1979 workshop. (ATA 41) the agency countered this argument with the explanation that the gradient theory suggested that if the ETP were further stratified the density of porpoises in the far western range would decrease and hence the impact of these far western sightings would be insignificant.

The industry also argued that the stock ranges within the total range were greater than those used by the 1979 workshop. It argued that the 1977, 1978, and 1979 observer data showed greater ranges of individual stocks. (ATA/OB 22) The agency admitted that these data had not been used by the workshop (NOAA/85:4a), but introduced an analysis of those data at the hearing (NOAA 71, 72 and 73) and argued that the data did not support extended stock ranges.

It is my judgment that the basic assumption that density increases nearshore and decreases offshore is supported by the evidence. As there is an inverse relationship between the western extension of the area inhabited and the number of porpoise schools sighted, far western sightings would only decrease the outside density if they were properly computed. Therefore, the net effect would be an insignificant increase in population size.

4. *Proportions of Stocks.* The three elements just discussed will only provide the number of porpoises in the aggregate. In order to determine the proportion of the aggregate that are attributable to each stock the 1979 workshop employed a two step process: (a) calculation of the proportion of all schools that are target schools (i.e, those that are fished on); (b) apportionment of target shools into component target stocks.

(a) *Proportion of all Schools that are Target Schools.* I conclude that the 1979 workshop approach to the proportion of all schools that are target schools is the best available scientific evidence. The 1979 workshop utilized data from the aerial and the research vessel surveys to determine the proportions of all schools which were target schools. (NOAA 29:48) The industry challenged NMFS' failure to use the observer data in determining the proportions of all schools which were target schools. (SD 929) The agency introuced evidence indicating that this calculation depends on an assumption that vessels from which the data are collected search for all species in a random manner. (SD 460–461) Tuna vessel observer data were not used because NMFS belived that the tuna vessels selectively search for target schools and ignored non-target schools. (NOAA 29, pp. 72–73; SD 460–461) I find this approach is proper.

(b) *Apportionment of Target Schools.* I conclude that the 1979 workshop approach to apportioning stocks within target schools is the best available scientific evidence. To determine the specific stocks in target schools, the 1979 workshop relied on the research vessel data in 1977 and 1979 and the tuna vessel observer data from 1977 to 1979. (NOAA 29) Aerial survey data were not used for the more detailed proportions because of difficulties in identification from the air. (Id.)

The industry did not counter the use of observer data to determine specific stocks and populations in target schools. EDF did not submit evidence but argued that if the observer data biases were correct, the use of such data in determining apportionment of stocks within target schools overestimates the current population of northern offshore spotted porpoise stock. (EDF/OB 43) EDF pointed to the 1979 workshop alternative approach to consider species proportions in target schools and the Inter-American Tropical Tuna Commission (IATTC) calculation of the same parameter, arguing that they are similar and are the best scientific evidence in the record. Despite EDF's contention that two calculation are better than one, the 1979 workshop chose to use observer data in combination with the research vessel data in making its calculation. It did this fully apprised of the deficiencies in the observer data. I have concluded that there is no strong evidence contrary to the workshop's scientific judgment and that it is the best scientific evidence available.

5. *Summary of Present Abundance.* The findings in the preceding section result in a present population for northern offshore spotted porpoise of approximately 3.15 million animals. Though this is somewhat higher than the 1979 workshop estimate of 2.7 million, the findings above are generally consistent with the workshop conclusions, with the exception of the outside density. There are a number of uncertainties in predicting accurately the present abundance of the porpoise populations in the ETP. The model used and the data applied have, for the most part, resolved those uncertainties in favor of the porpoise populations. This inherent conservatism is important in order to ensure that takings will not be to the disadvantage of the stocks as a whole.

B. *Pre-exploitation Abundance.* Once present abundance for each stock is estimated, there must be a "back calculation" in order to determine the abundance of each stock in the first year the stock was exploited to a significant extent. 1959 is the year that the industry began using purse seines on a large scale, and most of the porpoise stocks are assumed to have been at their maximum size (by number and area) in that year. Back calculation involves a theoretical addition to present abundance of all porpoises incidentally killed since 1959 and a subtraction of the number of net recruits added to the stock in the interim years. The addition of historically killed porpoise involved three areas of controversy: number of sets in the early years of the fishery; kill per set; and, the species composition of the porpoises incidentally killed. The subtraction is determined solely by reference to an estimated maximum net reproductive rate for ETP porpoises, known as "Rmax".

1. *Additions.* a. *Number of Sets.* An estimate of the number of sets by the the tuna fleet between 1959 and 1979 is used to establish the total number of fishing mortalities to be added to the present population. This is derived using historical records from IATTC Logbooks.

For the 1971 season and beyond, the 1979 workshop used data that NMFS had collected. These data are for the most part uncontested. The data for 1959–70 from the Inter-American Tropical Tuna Commission show 3 types of sets—on porpoise, not on porpoise, and unknown. (NOAA 27 and NOAA 52) The workshop used a proportion of the number of sets from 1959 to 1970 that were either on porpoise or not on porpoise. It then applied this proportion to the unknown sets. The industry introduced evidence from Dr. Allen of the IATTC to show that this assumption was incorrect and that by using IATTC data, a more accurate estimate of the unknown sets could be made. (ATA 42)

The industry argued that NMFS overestimated the number of sets in the early years by 6500. It based this argument on evidence submitted by Dr. Allen. These data were not available to NMFS prior to the hearing. (ATA 2) In an attempt to resolve the matter, Drs. Smith and Allen and Mr. Alverson convened a scientific working session after the hearing. Their report to the ALJ was inconclusive and reiterated the original positions of the parties. (Letter to Dolan May 16, 1980; See also NOAA 85:7–8; NOAA/0B 37–39; ATA/0B 51–53; EDF/0B 53–58; MMC/0B 21–23)

On the state of the record, Dr. Allen's analysis is a better analysis of the early sets than the methodology applied by the workshop. This analysis is based on historical data not previously available and reflects with greater accuracy than the NMFS estimate the actual fishing effort in the 1960's. From this analysis, I have concluded that the workshop overestimated the additions to the stock by 6500 sets. These data should be further refined in the future but the analysis as it was introduced in the record is superior to the arbitrary apportionment applied by the workshop. In addition, it is based on data, which before the hearing had not been made available to NMFS to assist in its estimation of historic kills. I conclude that it is the best available scientific information.

b. *Number of porpoises killed in each set.* In order to estimate the total number of additions, it is also necessary to determine the number of porpoises killed in each set. Like the estimate of number of sets, good data exist for the 1971–79 period. However, little or no data exist for the 1959–70 period. Three factors are important—the data used to derive the estimate of kill per set; when and to what extent backdown was introduced in the fleet; and the treatment of serious injuries, unobserved injuries and cryptic kill.

i. *Data.* The 1979 workshop used data points from 1972, 1971, 1968, 1966 and 1964 to estimate the kill per set of sets for two vessel sizes, for successful and unsuccessful sets, and for sets with and without backdown. Because the workshop had substantially more data from 1971 and 1972 than from the other years and treated all the data equally, the data are skewed toward the 1971 and 1972 data. During the course of the hearing differences in those data were resolved and presented in a document proposed jointly by NMFS and the industry. (NOAA 87) Therefore, I have concluded that the best available scientific evidence is the kill per set figure in this exhibit.

ii. *Introduction of Backdown.* Since the kill per set estimates have a higher number of mortalities for sets without backdown than with, it is important to assess which sets used backdown and which did not.

The workshop concluded that the fleet used the backdown technique on 80% of the sets in 1964 and that the 80% was achieved linearly over these six fishing years from 1959. (NOAA 27) This conclusion differs from the 1976 workshop which concluded 100% in 3 years. This change was a result of the discovery of one letter (the Lopes letter, ATA 14), which establishes 80% use of backdown by one vessel on 110 sets in 1964. The industry did not present evidence to conclude otherwise but argued that the 1976 workshop was a more reasonable approach.

The 1976 workshop assumed 100% in three years based on interviews with people familiar with the fleet. (NOAA 27: 4–5) The industry presented evidence (Alverson SD 569 Lines 15–23) that the fleet did adopt the backdown procedure between 1959–62 and that the calculation should be amended to take this into consideration.

The issue here requires a factual determination. The competing views are the opinion of the industry's expert, Mr. Alverson, that there was an exponential rather than linear introduction of backdown reaching the 60% mark in 1964, versus the written and oral testimony of an agency scientist that a straight line drawn between two data points, zero in 1959 and 80% in 1964, is reasonable. Neither Mr. Alverson nor the agency witness on this point had any extensive experience on tuna vessels during the period, and the industry did not put a skipper on the stand to argue that there was a rapid introduction of backdown over the period 1959–1964. The existence of the Lopes letter is meager evidence on which to base the agency's assumption. Lopes saw only 110 sets on one vessel. He did not appear at the hearing, but there is no evidence in the record challenging the authenticity of the letter.

The evidence in the record suggests that the industry did go to 80% earlier than the linear approach used by the workshop. Therefore I have concluded that the industry employed backdown in 80% of all sets by 1962 and introduced backdown linearly from 1959 to 1962. Thereafter, it used backdown 80% of the time for 1962, 1963 and 1964.

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iii. *Serious Injury.* In calculating kill, the basic assumption is that some or all of the injured animals die, resulting in an increase in overall mortality. This parameter is of minor significance to the formula, but can be used to accommodate for cryptic kill (i.e., unobserved mortalities resulting from the stress from chase and capture not occurring until after the animals are released from the net).

NMFS argued that the proper assumption was to include as mortalities all seriously injured animals, as this took into account cryptic kills and unobserved injuries. The industry argued that the assumption was incorrect and offered an alternative calculation to show how serious injuries could be taken into account. (ATA 37)

The ALJ found that it was reasonable to assume that not all animals seriously injured died, but was unable to apportion serious injuries as mortalities or survivals. (Finding 65) He went on to find that there was no evidence to quantify cryptic kill. (Finding 66) He concluded that the workshop approach of considering all serious injuries as mortalities was correct, because this took into account cryptic kill and unobserved injury. I adopt the conclusions of the ALJ on this point.

(c) *Apportioning Historic Kill.* Once there is a determination of how many animals were killed, it is still necessary to apportion the kill by species. The 1979 workshop used a species proportion based on the 1971 and 1972 kill figures and applied that proportion to the number of kills in the 1959–70 period. The industry argued that data from 1959–70 should be used to make the apportionment.

The industry submitted an analysis covering the period 1959–70 based on Dr. Allen's data in which there were 6,500 fewer sets on porpoise. (ATA 42, Appendix 4) The industry's witness testified that the fleet had expanded its geographical range to the west from near shore areas throughout the 60's. (ATA 42) It then went on to argue that the species mix inshore and offshore varies and would result in different mortality figures for given stocks depending on the area fished. There was no cross examination of the industry's witness on this point.

The NMFS approach to apportionment is not consistent with the westward progression of the fleet. It assumes that the stocks fished on in 1970 and 1971 were the same as for the prior 10 years. This would be true if the early fishery (1959–69) was in the same area as the 1970 and 1971 fishing areas or if the stocks were evenly distributed in all areas. Neither assumption is consistent with the evidence.

ATA 42 provides an analysis of the western movement of the fleet and the gradually increasing involvement of the northern offshore spotted stock in the fishery. From the charts presented I have concluded that the fleet could not have taken this stock in the numbers derived from the 1970–71 ratio. ATA 42 also provides an alternative estimate of this impact. (ATA 42:83) These data admittedly are not as precise as they could be given further refinements in the calculation, but they are substantially bettter evidence than that used in the 1979 workshop report and are the best available scientific evidence. ATA 42 indicates that 1,348,814 fewer northern offshore spotted porpoises were killed than the 1979 workshop indicates. This is a result of the 6500 set overestimation discussed above and a comparison of the fleet's activity in the early years in relation to the nearshore range of the northern offshore spotted porpoise. The workshop in making its analysis of the spotted data concluded that all spotted were northern offshore spotted porpoise. ATA 42 concludes that the majority were coastal spotted because the fishing effort was in their range and not the range of the northern offshore spotted. The effect of this is that 670,000 coastal spotteds were caught in the early years of the fishery.

These data can only be used for the apportionment of kills of northern offshore and coastal spotted porpoise. Since this information provides a specific number of coastal and northern offshore spotted porpoise killed, it is unnecessary to make findings for those stocks on number of sets and on kills per set. Number of sets and kills per set are only necessary for those stocks that do not have specific evidence. There is no other evidence in the record regarding historical apportionment of kills for the other stocks in the ETP. Therefore the apportionment used by the 1979 workshop is the best evidence in the record to apportion stocks other than coastal and northern offshore spotted.

2. *Subtractions.* Once the number of historic kills is determined, it is necessary to estimate the number of animals added to the population annually. This is computed by determining the maximum rate of reproduction for the stock. This number is subtracted from historic kills to arrive at the overall number to be added to the present population.

(a) *Rmax.* Rmax is the maximum rate of net reproduction by ETP porpoises on an annual basis. Rmax is derived by subtracting natural mortality from the gross annual reproductive rate. As noted above, this figure is used in the back calculation to determine pre-exploitation stock size. In the event a stock is not depleted, Rmax is also used to determine the replacement yield from which the applicable quota is determined. (NOAA 56)

The 1979 workshop determined that every Rmax in the 0–4% range was equally likely. This conclusion is based on the workshop's rejection of the 1976 workshop comparison to dolphin stocks near Japan and adoption of the view that no cetaceans have a known Rmax in excess of 4%. (NOAA 52) The industry pointed out several deficiencies in the data used in the 1979 workshop, specifically the statement with respect to no record of cetacean Rmax's above 4%. (ATA 38)

The industry argued that there was no evidence to suggest a change from the range of 2–6% adopted by the 1976 workshop and that the appropriate level could be as high as 6–10%. (ATA 38) The industry's witness pointed to several data sources to support his conclusion that Rmax's for other cetaceans were higher than the workshop estimate. NMFS countered this by presenting and analyzing life history data for marine mammals. (NOAA 52: 37–43) Other submissions pointed out difficulties in the way industry had relied on data showing higher Rmax estimates for other cetaceans. (MMC/OB)

The ALJ found that the Rmax was 4% and based his finding on the 1976 workshop report (NOAA 1) which concluded that Rmax could be from 2–6%. (Findings 137–143)

The 1979 workshop based its estimate on comparisons to known data for terrestrial mammals and some data for large whales. The lower end of the range, 0%–2%, reflects a concern over the effects of cryptic kill. The workshop took this into account in the serious injury mortality figures and its addition here would be overly conservative. The remaining portion of the range, 2–4%, is a more accurate estimate. The workshop concluded that scientifically any Rmax from 0–4% is equally likely. The ALJ's judgment was that 4% was the correct point estimate because he saw no reason to deviate from the 2–6% in the 1976 workshop. Which level of Rmax is appropriate requires an assessment of the expert opinions of the witnesses at the hearing. I conclude that the ALJ's assessment of the evidence is correct in that the evidence does not convince me that an Rmax of 2% has greater support than the midpoint of the range (4%) used in my 1977 decision. (Findings 136–143) Therefore, I find that an Rmax of 4%, as supported by the scientific conclusion of the workshop, is the best available scientific point estimate.

3. *Summary of pre-exploitation stock size.* A computation of the findings above results in a pre-exploitation stock size for northern offshore spotted porpoise of approximately 5.03 million animals.

C. *OSP.* Optimum Sustainable Population is the standard by which a determination of disadvantage to a porpoise stock is made. The standard has been expressed as a range, which is a measure of the health of the various porpoise stocks relative to their environment. (NOAA 52 and NOAA 56)

When a population is below OSP, it is depleted. The upper end of the range of OSP is a stock size in relation to the original unexploited stock, that is, the maximum number of animals that the ecosystem can support. This is expressed by a percentage of original stock size.

The significant issue at the 1980 hearing involved determining the lower end of OSP. The lower end has been expressed as a range, so that the focus is on a range within a range. The lower end is determined theoretically by estimating what size stock in relation to the original stock size will produce the maximum net increase in population. Every population of animals has a size at which it will increase at a maximum rate. That level, known as the Maximum Net Productivity Level (MNPL), is the lower end of OSP. MNPL is expressed as a range to reflect uncertainties in the data. However, in 1977, the midpoint (60%) of this range (50–70%) was used to determine if the stock was depleted (42 F.R. 64548, Dec. 27, 1977).

At this year's hearing NMFS argued that a range of 65–80% was appropriate based on the 1979 workshop report. The report compares porpoises to other mammals and abandons the 1976 workshop approach of the linear relationship between stock growth and reproductive rates. This more conservative approach is based on the observation that large mammals are longer lived and reproduce later in life and, therefore, require a larger population to achieve MNPL, than smaller animals such as rodents.

The industry argued that the 1976 workshop's theoretical approach to MNPL was correct, and that no new evidence was available to suggest 65–80%, other than the shift in the approach of the workshop. In its cross-examination of the agency's lead witness, the industry pointed out that an MNPL of 60% is used by the International Whaling Commission. (SD 225–6)

The ALJ found that the lower bound of OSP was between 50–70% of original stock size. He found that the 50–70% range was already conservative and that a change to 65–80% range based on a change in population dynamics theory, rather than new data, was unwarranted. (Findings 144–50)

The empirical data for calculating OSP are admittedly scant. The agency put forward a new theoretical approach to OSP (NOAA 15) which results in a more conservative estimate of MNPL. The workshop found that biologically any number between 65–80% was equally likely. The industry testimony (ATA 36) shows that the MNPL levels for seven mammals with a low of 56 (for deer) and a high of 86 (for elephants). The industry's witness, Mr. Fredin, described these as "the best available evidence" on MNPL for seven populations of large mammals. (TR 188) By averaging these data using each point estimate, Mr. Fredin arrived at MNPL of 66.5.

The record reflects that there is dispute as to which concept should be used to find MNPL for porpoises, and that, under either concept, there is a scarcity of data to provide certainty for any MNPL calculation. I have concluded that the theoretical approach used by the 1979 workshop, that is, that there is a curvilinear density dependent relationship, is the best available scientific approach despite its narrow exposure in the scientific community. It seems more than plausible that porpoises, like other large mammals, are relatively long-lived and reproduce late in life.

Despite my agreement with the workshop's theoretical approach, I cannot conclude that the range used by the workshop (65–80%) is the best. There is no direct evidence that porpoise populations fit the theoretical model. Further, while the 1979 workshop concluded that MNPL is ". . . significantly higher than 50%. . . ." (NOAA 52:7), this does not ineluctably lead to a choice of a range of 65–80. The International Whaling Commission uses an MNPL of 60 for populations of longer lived and larger animals than those in question here. Although some persons before the IWC have questioned that level, as the level is being questioned here, the IWC, which includes experts from the world over, has not changed the MNPL for larger marine mammals. In addition, the ALJ was not persuaded by the selection of the range of 65–80. Like the ALJ, I do not believe that a departure from the prior point estimate of MNPL is warranted from the population comparisons used by the workshop. Therefore, I conclude that the best scientific evidence in the record is that 60 is the point where the lower range of OSP should be set.

D. *Impacts of Takings.* There are two issues that must be resolved in the event a species is not depleted. The first is to determine the level of take that will satisfy the Act's immediate goal objective. It is satisfied by establishing quotas that are economically and technologically feasible and that will not be to the disadvantage of the stocks. I have concluded that an aggregate take of 20,500 animals is technologically and economically feasible and will not be to the disadvantage of stocks from which takings are allowed. In this regard I have taken into account the lengthy discussion of the industry and its activities in both the DEIS and the FEIS. In particular, I incorporate by reference in this decision the discussion of the industry at pages 39–43 of the FEIS. The aggregate quota is apportioned as set out in Table II. The second issue is to determine the length of the regulatory regime and permit. I have concluded that the regulations should be in place indefinitely and that a five year permit can be issued.

1. *Quotas.* In the event of a determination of non depletion, the Act reuires a finding that the stocks will not be disadvantaged by allowing any takings. This determination is made by estimating the maximum replacement yield of each stock. (Rmax times present stock size). The replacement yield for each stock is then divided between anticipated foreign and domestic takes.

Once this aggregate number is established, there can be an apportionment of the total quota to obtain allowable takes for each stock. After apportionment it can be determined what take is economically and technologically feasible in order to meet the MMPA's immediate goal test. The application of this test results in the actual quotas.

The kill of porpoises per ton of tuna caught has been used in the past as an indicator of economic and technological feasibility. The DEIS used the period of 1977–79 as representative of the expected tuna catch for future projections. (NOAA 56) The industry argued that the period from 1970–79 was more appropriate. (ATA 43) The average catch in the 1977–79 period was 69,000 tons of tuna, while the average for the 1970–79 period was 98,000 tons of tuna. I have concluded that fishing during the 1970–79 period does not reflect fishing patterns projected for the next five years. There was no regulation of the incidental take of marine mammals for a significant portion of the period. In addition, the ban to be adopted on sundown sets and the previous ban on the take of eastern spinners alter the fishing pattern over this period.

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Table II.—*Quotas for Each Calendar Year 1981–85*

Species/stock (management unit)	Maximum replacement yield	U.S. allowable mortality [1]	Encirclement	Take
Spotted dolphin (northern offshore)	85,335	11,890	5,993,000	9,806,000
Spotted dolphin (southern offshore)	11,395	410	206,000	331,000
Spinner dolphin (northern whitebelly)	10,643	3,075	403,000	695,000
Spinner dolphin (southern whitebelly)	4,670	205	27,000	46,000
Common dolphin (northern tropical) [2]	3,781	1,230	293,000	471,000
Common dolphin (central tropical)	16,225	2,870	298,000	927,000
Common dolphin (southern tropical)	8,091	815	64,000	198,000
Striped dolphin (northern tropical)	858	62	3,000	4,000
Striped dolphin (central tropical)	3,644	103	5,000	7,000
Striped dolphin (southern tropical)	8,190	40	2,000	3,000
Total		20,500		

[1] The U.S. allowable mortality in any of the years 1981–85 shall next exceed 20,500.
[2] Includes Baja neritic dolphin stock.

I am cognizant of the concern that the quota should accommodate for a good fishing year. Therefore, I find that the highest annual catch (93,000) during the 1977–79 period is the best indicator of the projected catch of tuna. In addition, I find that the 1977–79 period is the best period from which to apportion the modified replacement yield to arrive at individual stock quotas. This figure multiplied by a kill/ton rate of .24 results in a quota of 22,320. This quota is further modified by 8.5% to reflect the lost catch due to my adoption of the ban on sundown sets. This results in a quota of 20,500.

2. *Length of the Regulatory Regime and Permit.* The disadvantage test is a continuing obligation of the agency. It requires that the agency must assure itself that takings over the period of the permit will not disadvantage the stocks. Historically, the length of the regulatory regime has coincided with the length of the permit, but this is not required by the Act.

At the hearing, NMFS argued that northern offshore spotted porpoise were depleted and therefore did not address the length of the regulatory regime or permit if they were not depleted. The industry asked for a five year permit. On brief, it argued for a multi year permit because of the costs to the agency and the industry in preparing for the hearing. (ATA OB 105–6)

The length of the regime and permit requires a policy, as well as a scientific judgment. I am concerned that the effort to compile a record in proceedings like this one, places a significant burden on the agency and the parties. However, this burden must be subservient to the Act's requirement that the health of animals be considered prior to the effects of the regulations on the industry. So long as there is an assurance that the populations will not be disadvantaged by the proposed takings, there is no need to adjust the taking regulations except for modifications to the existing quotas to achieve the Act's immediate goal objective. If the stocks are not now depleted (with the exception of the eastern spinner and coastal spotted stocks), the record reflects that most of the stocks should grow. Therefore, I have made a determination that the level of takes allowed in Table II will not disadvantage the stocks in any subsequent years. This finding is made until there is evidence to the contrary. In order to ensure that there is a mechanism in place within which to review the quota, I have concluded that a five year permit is appropriate.

Regulations

NMFS proposed 24 separate regulatory amendments to the existing regulations. The recommended decision of the ALJ in this proceeding contains recommendations pertaining to each of the 24 proposed amendments and, additionally, to the regulations governing this proceeding and to Section 216.24(d)(2)(iv) (numbered 25 and 26 on pages 92 and 93, respectively).

Of the proposed amendments to the regulations, the ALJ recommended adoption of 1, 2, 4, 8, 10, 11, 12, 13, 15, 16, 18, 22, 23, and 24. For the reasons stated by the ALJ, I adopt those amendments.

The ALJ also recommended adoption of the following modified proposed amendments to the regulations: (ALJ Recommended Decision pp. 64–69, 70–71, and 75–79) those numbered 6 and 7, assuming that the northern offshore spotted stock of porpoises is not depleted; that numbered 9 with the retention of the words "threat of"; and that numbered 14 with the provision of some discretion to the Regional Director, Southwest Region, in determining the necessity for an additional trial set(s). I hereby adopt those modifications to the amendments to the regulations.

The ALJ did not recommend adoption of the proposed amendments numbered 3, 20, and 21 because of lack of record support. All of these proposals were included in the notice of proposed regulations and ample opportunity for comment was provided during this proceeding. In the absence of any comments, these proposals are uncontested and I therefore adopt them according to the identical test employed by the ALJ in recommending adoption of the proposed amendments number 11, 16, and 23. Proposed amendment number 21 has been rewritten to reflect that countries of origin that do not have current findings may submit information and request a finding at any time of the year and not be bound to a September 1 deadline for filing. Countries of origin for which there is a finding must submit information for review by September 1, that pertains to the preceding calendar year.

Proposed amendment 17 contained two substantive changes to Section 216.24(d)(2)(vii), marine mammal release requirements. First, the ALJ recommended a modified amendment to the required use of speedboats which I hereby adopt. Secondly, the ALJ recommended adoption of the proposed prohibition on setting at sundown only if there is concurrently adopted a program of observer placement on all purse seining tuna fishing vessels. Such a condition is no more appropriately applied to this particular procedural requirement than it is to other such requirements and is inconsistent with the industry's sustained and successful efforts to reduce porpoise mortalities. I therefore adopt the proposed prohibition on setting at sundown without modification.

Proposed amendment numbered 19 contained the additional requirement for certain non-yellowfin tuna imports to be accompanied by a bill of lading. I have concluded that this additional requirement is unnecessary at this time because it would apply to very few cases and provide information that is available by other means. Therefore, the existing language in Section 216.24(e)(3) will remain, with the following exception. The reference to pilchards from South Africa has become obsolete as this country has sought and been granted an import finding referred to under 50 CFR 216.24(e)(1) for such imports. Reference to pilchards from South Africa is deleted from 50 CFR 216.24(e)(3) and consequently from Section 216.24(e)(2)(i).

It is unnecessary to address ALJ recommendation 25 which dealt with the expedited procedures under which these regulations were developed, since the regulations in Part 216 Appendix terminate with the issuance of this decision.

The recommended amendment to Section 216.24(d)(2)(iv) numbered 26 (page 93 of the ALJ's recommended decision) is not adopted. The methodology for monitoring the incidental mortality of marine mammals referred to in Section 216.24(d)(2)(B) relies on fishing gear and procedural requirements that are standardized for the entire U.S. fleet. To compromise this standardization in any substantial manner would remove the existing basis for extrapolating known incidental porpoise takings reported by observers to those fishing trips that are not assigned an observer.

I have made certain additional editorial amendments to Section 216.24 for purposes of further simplification and clarification. They are non-substantive in nature. Many portions of Section 216.24 have not been amended. However, for ease of understanding, the entire section is republished herein.

In addition to the alternative I have adopted, I have considered those regulatory alternatives contained in the FEIS and the DEIS. I have concluded as a result of the review of all of the alternatives, that the regulatory regime adopted is the environmentally preferred alternative and represents the best approach under the Act. I concur in the analysis of the alternatives at pages 11–14 of the FEIS and incorporate it by reference in this final decision. The evidence simply does not support the first alternative. The quota in the second alternative far exceeds the quota that the fleet can technologically achieve. The third alternative is inconsistent with my finding that the northern offshore spotted stock is not depleted. The fourth alternative is impractical at this time, although efforts to achieve this objective will continue. Lastly, the fifth alternative, like the first, is not supported by the evidence.

Consultation

The Act requires that I consult with the Marine Mammal Commission (MMC) in promulgating regulations. The MMC was consulted prior to publication of the proposal and was a party to the proceedings. The MMC filed briefs with the ALJ and has filed exceptions to the ALJ decision with me.

Dated: October 21, 1980.

Richard A. Frank,

Administrator, NOAA.

50 CFR § 216.24 is revised to read as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations.

(a) (1) No marine mammals may be taken in the course of a commercial fishing operation unless: The taking constitutes an incidential catch as defined in § 216.3, a general permit and certificate(s) of inclusion have been obtained in accordance with these regulations and such taking is not in violation of such permit, certificate(s), and regulations.

(2) A vessel engaged in commercial fishing operation involving the utilization of purse seines to capture yellowfin tuna and which does not operate under a general permit and certificates of inclusion shall not carry more than two speedboats.

(b) *General Permits.*—(1) General permits to allow the taking of marine mammals, except those for which taking is prohibited under the Endangered Species Act of 1973, in connection with commercial fishing operations will be issued to persons using fishing gear in any one of the following categories:

(i) *Category 1: Towed Or Dragged Gear.* Commercial fishing operations utilizing towed or dragged gear such as bottom otter trawls, bottom pair trawls, multi-rig trawls, and dredging gear.

(ii) *Category 2: Encircling Gear, Pursue Seining Involving the Intentional Taking of Marine Mammals.* Commercial fishing operations utilizing purse seines to capture tuna by international encircling marine mammals. Only vessels that meet the fishing gear and equipment requirements contained in § 216.24(d)(2)(iv) of these regulations may be included in this category.

(iii) *Category 3: Encircling Gear, Pursue Seining not Involving the International Taking of Marine Mammals.* Commercial fishing operations utilizing pursue seining, which do not intentionally encircle marine mammals.

(iv) *Category 4: Stationary Gear.* Commercial fishing operations utilizing stationary gear such as traps, pots, weirs, and pound nets; and

(v) *Category 5: Other Gear.* Commercial fishing operations utilizing trolling, gill nets, hooks and line gear, and any gear not classified under paragraph (b)(1)(i), (b)(1)(ii), (b)(1)(iii), or (b)(1)(iv) of this section.

(2) Permits shall be issued as general permits to a class of fishermen using one of the general categories of gear set out above. Any member of such class may apply for a general permit on behalf of any members of the class. Subsequent to the granting of general permit, vessel owners, managing owners, or operators (as required) may make application to be included under the terms of a general permit by obtaining a certificate of inclusion. Applications for a general permit shall contain:

(i) Name, address, and telephone number of the applicant. If the applicant is an organization or corporate entity, a copy of the corporate or organizational charter which sets forth the basis for application on behalf of a group of class of commercial fishermen must be included;

(ii) A description of permit for which application is being made;

(iii) A description of the fishing operations by which marine mammals are taken; and a statement explaining why the applicant cannot avoid taking marine mammals incidentally to commercial fishing operations;

(iv) The date when the general permit is requested to become effective;

(v) A list of the fish sought by persons requesting certificates under the general permit and the general areas of operations of their vessels.

(vi) A statement identifying the marine mammals and numbers of marine mammals which are expected to be taken under the general permit;

(vii) A statement by the applicant demonstrating that the requested taking of marine mammal species or stocks during commercial fishing operations is consistent with the purposes of the act, and the applicable regulations established under Sec. 103 of the act.

(viii) A description of the procedures and techniques that will be utilized in order that takings under the permit will be consistent with the purposes and policies of the act and these regulations; and

(ix) A certification, signed by the applicant, in the following language: I certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a general permit under the Marine Mammal Protection Act of 1972 and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or the penalties provided under the Marine Mammal Protection Act of 1972.

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(3) The original and four copies of the application for general permit shall be submitted to the Assistant Administrator for Fisheries (hereinafter, the Assistant Administrator), National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, D.C. 20235. Applications should be received not less than 180 days prior to the date upon which the permit is to become effective. Assistance may be obtained by writing the Assistant Administrator or by calling the Office of Marine Mammals and Endangered Species, telephone number 202–634–7461.

(4) A general permit shall be valid for the time period indicated on the face of the permit. General permits shall be subject to modification, suspension or revocation and may contain terms and conditions prescribed in accordance with Sec. 104(b) (2) of the act, 16 U.S.C. 1374(b) (2).

(5) The Assistant Administrator shall determine the adequacy and completeness of an application, and if found to be adequate and complete will promptly publish a notice of receipt of such application in the **Federal Register**. Interested parties will have thirty days from the date of publication in which to submit written comments with respect to the granting of such permit.

(6) If within thirty days after the date of publication of the **Federal Register** notice concerning receipt of an application for a general permit, any interested party or parties request a hearing on the application, the Assistant Administrator may within sixty days following the date of publication of the **Federal Register** notice afford such party or parties an opportunity for such a hearing. Any hearing held in connection with an application for a general permit shall be conducted in the same manner as hearings convened in connection with a scientific research or a public display permit application under Sec. 216.33.

(7) There is no fee for filing an application for a general permit.

(c) *Certificates of inclusion.*—(1) *Vessel Certificates of Inclusion.* The owner or managing owner of a vessel that participates in commercial fishing operations for which a general permit is required under this subpart shall be the holder of a valid vessel certificate of inclusion under that general permit. Such certificates shall not be transferable and shall be renewed annually. Provided five (5) days advance written notice is given, a vessel certificate holder may surrender his certificate to the Regional Office from which the certificate was issued. However, once surrendered the certificate shall not be returned nor shall a new certificate be issued before the end of the calendar year. This provision shall not apply when a change of vessel ownership occurs.

(2) *Operator's Certificate of Inclusion.* The person in charge of and actually conducting fishing operations (hereinafter referred to as the operator) on any vessel engaged in commercial fishing operations for which a Category 2 general permit is required under this subpart, shall be the holder of a valid operator's certificate of inclusion. These certificates are not transferable and will be valid only on any purse seine vessel having a valid vessel certificate of inclusion for Category 2. In order to receive a certificate of inclusion, the operator shall have satisfactorily completed required training. An operator's certificate of inclusion shall be renewed annually.

(3) A vessel certificate issued pursuant to paragraph (c)(1) of this section shall be aboard the vessel while it is engaged in fishing operations and the operator's certificate issued pursuant to paragraph (c)(2) of this section shall be in the possession of the operator to whom it was issued. Certificates shall be shown upon request to an enforcement agent or other designated agent of the National Marine Fisheries Service. However, vessels and operators at sea on a fishing trip on the expiration date of their certificate of inclusion, to whom or to which a certificate of inclusion for the next year has been issued, may take marine mammals under the terms of the new certificate.

The vessel owners or operators are obligated to obtain physically or to place the new certificate aboard, as appropriate, when the vessel next returns to port.

(4) Application(s) for certificates of inclusion under paragraph (c)(1) of this section should be addressed as follows:

(i) Category 1, 3, 4, and 5 applications:

(A) Owners or managing owners of vessels registered in Colorado, Idaho, Montana, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, should make application to the Regional Director, Northwest Region, National Marine Fisheries Service, 1700 Westlake Avenue, Seattle, Washington 98102.

(B) Owners or managing owners of vessels registered in Arizona, California, Hawaii, Nevada, and the territories of American Samoa, Guam, and the Trust Territory of the Pacific Islands should make application to the Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

(C) Owners or managing owners of vessels registered in Alaska should make application to the Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

(D) Owners or managing owners of vessels registered in Connecticut, Delaware, District of Columbia, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin should make application to the Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

(E) Owners or managing owners of vessels registered in Alabama, Arkansas, Florida, Georgia, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, New Mexico, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, and Virgin Islands, should make application to the Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Gandy Boulevard North, Duval Building, St. Petersburg, Florida 33702.

(ii) Category 2 applications: Owners or managing owners of purse seine vessels in this category shall make application to the field office, Southwest Region, National Marine Fisheries Service, 1140 North Harbor Drive, Room 7, San Diego, California 92101.

(5) Applications for vessel certificates of inclusion under paragraph (c)(1) of this section shall contain:

(i) The name of the vessel which is to appear on the certificate(s) of inclusion;

(ii) The category of the general permit under which the applicant wishes to be included;

(iii) The species of fish sought and general area of operations;

(iv) The identity of State and local commercial fishing licenses, if applicable, under which vessel operations are conducted, and dates of expiration;

(v) The name of the operator and date of training, if applicable; and

(vi) The name and signature of the applicant, whether owner or managing owner, address, and if applicable, the organization acting on behalf of the vessel.

(6) Fees. (i) Applications for certificates of inclusion under paragraph (c)(1) of this section shall contain a payment for each vessel named in the application in accordance with the following schedule:

(A) Categories 1: Towed Or Dragged Gear; 3: Encircling Gear, Purse Seining not Involving the Intentional Taking of Marine Mammals; 4: Stationary Gear; and 5: Other Gear—$10.00.

(B) Category 2: Encircling Gear, Purse Seining Involving the Intentional Taking of Marine Mammals—$200.00.

(ii) Except as provided herein, vessel owners or managing owners desiring a vessel certificate of inclusion under more than one category of the general permit will not be required to pay a full fee for each certificate. After the initial fee for a certificate is paid for each vessel, additional certificates will be issued for a fee of $.50 (fifty cents) each. However, every application for a vessel certificate under Category 2 shall contain the full fee.

(iii) Notwithstanding the provisions of subparagraph (c)(6)(i) of this section, an applicant whose income is below Federal poverty guidelines may, upon showing in his application that his income is below such guidelines, be issued a certificate under the following schedule of fee payment:

(A) Categories 1: Towed Or Dragged Gear; 3: Encircling Gear, Purse Seining not Involving the Intentional Taking of Marine Mammals; 4: Stationary Gear; and 5: Other Gear—$1.00.

(B) Category 2: Encircling Gear, Purse Seining Involving the Intentional Taking of Marine Mammals—$20.00.

(iv) A fee is not required for an operator's certificate of inclusion.

(v) The Assistant Administrator may change the amount of these required fees at any time he determines a different payment to be reasonable, and said change shall be accomplished by publication in the **Federal Register** of the new fee schedule.

(7) The Regional Office receiving applications for certificates of inclusion from vessel owners, managing owners, or operators shall determine the adequacy and completeness of such applications, and upon its determination that such applications are adequate and complete, it shall approve such applications and issue the certificate(s).

(d) Terms and conditions of certificates under general permits shall include, but are not limited to the following:

(1) *Towed or dragged gear.*—(i) A certificate holder may take marine mammals so long as such taking is an incidental occurrence in the course of normal commercial fishing operations. Marine mammals taken incidental to commercial fishing operations shall be immediately returned to the environment where captured without further injury.

(ii) A certificate holder may take such steps as are necessary to protect his catch, gear, or person from depredation, damage, or personal injury without inflicting death or injury to any marine mammal.

(iii) Only after all means permitted by paragraph (d)(1)(ii) of this section have been taken to deter a marine mammal from depredating the catch, damaging the gear, or causing personal injury, may the certificate holder injure or kill the animal causing the depredation or immediate personal injury; however, in no event shall a certificate holder kill or injure an Atlantic bottlenosed dolphin, *Tursiops truncatus*, under the provisions of this paragraph. A certificate holder shall not injure or kill any animal permitted to be killed or injured under this paragraph unless the infliction of such damage is substantial and immediate and is actually being caused at the time such steps are taken. In all cases, the burden is on the certificate holder to fully report and demonstrate that the animal was causing substantial and immediate damage or about to cause personal injury and that all possible steps to protect against such damage or injury as permitted by paragraph (d)(1)(ii) of this section were taken and that such attempts failed.

(iv) Marine mammals taken in the course of commercial fishing operations shall be subject to the provisions of Section 216.3 with respect to "Incidental catch," and may not be retained except where a specific permit has been obtained authorizing the retention.

(v) All certificate holders shall maintain logs of incidental take of marine mammals in such form as prescribed by the Assistant Administrator. All deaths or injuries to marine mammals occurring in the course of commercial fishing operations under the conditions of a general permit shall be immediately recorded in the log and reported in writing to the Regional Director to whom the certificate application was made, or to an enforcement agent or other designated agent of the National Marine Fisheries Service, at the earliest opportunity, but no later than five days after such occurrence, except that if a vessel at sea returns to port later than five days after such occurrence then it shall be reported within 48 hours after arrival in any port. Reports must include:

(A) The location, time, and date of the death or injury;

(B) The identity and number of marine mammals killed or injured; and

(C) A description of the circumstances which led up to and caused the death or injury.

(vi) Failure to comply with provisions of the general permit or certificate of inclusion including, but not limited to, failure to submit the vessel, including required marine mammals logs and gear, to an inspection upon demand by an authorized Federal enforcement agent, or failure to adhere to the provisions of these regulations will subject the certificate holder to a revocation of his certificate and also subject the certificate holder, vessel, or master to the penalties provided for under the act.

(2) *Encircling gear, purse seining involving the intentional taking of marine mammals.*—(i) *Quotas:*

(A) A certificated vessel may take marine mammals so long as the taking is an incidental occurrence in the course of normal commercial tuna purse seine fishing operations, and the fishing operations are under the immediate direction of a person who is the holder of a valid operator's certificate of inclusion; except that a vessel shall not encircle either:

(*1*) Pure schools of the coastal spotted dolphin (*Stenella attenuata*) stock, the Costa Rican spinner, and the eastern spinner dolphin (*Stenella longirostris*) stocks, or mixed schools including these stocks;

(*2*) Pure schools of any species of dolphin except the offshore spotted dolphin (*Stenella attenuata*) stock, the striped dolphin (*Stenella coeruleoalba*) species, and the common dolphin (*Dephinus delphis*) species; or

(*3*) Any other species or stock of marine mammals that do not have an allowable take as listed below or whose allowable take has been exceeded. The numbers of marine mammals that may be taken during each of the calendar years 1981–1985 by U.S. vessels in the course of commercial fishing operations will be limited as follows:

Quotas for Each Calendar Year 1981–85

Species/stock (management unit)	Take	Encirclement	Mortality [1]
Spotted dolphin (northern offshore)	9,606,000	5,993,000	11,890
Spotted dolphin (southern offshore)	331,000	206,000	410
Spinner dolphin (northern whitebelly)	695,000	403,000	3,075
Spinner dolphin (southern whitebelly)	46,000	27,000	205
Common dolphin (northern tropical) [2]	471,000	293,000	1,230
Common dolphin (central tropical)	927,000	298,000	2,870

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Quotas for Each Calendar Year 1981–85—Continued

Species/stock (management unit)	Take	Encirclement	Mortality [1]
Common dolphin (southern tropical)	198,000	64,000	615
Striped dolphin (northern tropical)	4,000	3,000	62
Striped dolphin (central tropical)	7,000	5,000	103
Striped dolphin (southern tropical)	3,000	2,000	40

[1] The U.S. allowable mortality in any of the years 1981–85 shall not exceed 20,500.
[2] Includes Baja neritic dolphin stock.

(B) The incidental mortality of marine mammals permitted under the general permit for each category will be monitored according to the methodology published in the **Federal Register**. The Assistant Administrator shall determine on the basis of the evidence available to him the date upon which the allowable quotas will be reached or exceeded. Notice of the Assistant Administrator's determination shall be published in the **Federal Register** not less than seven days prior to the effective date.

(C) If at the time the net skiff attached to the net is released from the vessel at the start of a set, and species or stocks that are prohibited from being taken are not reasonably observable, the fact that individuals of that species or stock are subsequently taken will not be cause for issuance of a notice of violation provided that all procedures required by the applicable regulations have been followed.

(D) The general permit will be valid for a period not to exceed five years. The Assistant Administrator may, upon receipt of new information which in his opinion is sufficient to require modification of the general permit or regulations, propose to modify such after consultation with the Marine Mammal Commission. These modifications shall be consistent with and necessary to carry out the purposes of the act. Any modifications proposed by the Assistant Administrator involving changes in the quotas shall include the statements required by section 103(d) of the act. Modifications shall be proposed in the **Federal Register** and a public comment period shall be allowed. At the request of any interested person within 15 days after publication of the proposed modification in the **Federal Register**, the Assistant Administrator may hold a public hearing to receive and evaluate evidence in those circumstances where he has determined it to be consistent with and necessary to carry out the purposes of the act. Such request may be for a formal hearing on the record before an Administrative Law Judge. Within 10 days after receipt of the request for a public hearing, the Assistant Administrator shall provide the requesting party or parties with his decision. If a request is denied the Assistant Administrator shall state the reasons for the denial. Within 10 days after receipt of a decision denying a request for a formal hearing, the requesting person may file a written notice of appeal with the Administrator. Based upon the evidence presented in the notice, the Administrator shall render a decision within 20 days from receipt of the notice.

(ii) *General Conditions:* (A) Marine mammals incidentally taken shall be immediately returned to the environment where captured without further injury. In addition to the specific porpoise rescue requirements established in Sec. 216.24(d)(2), the operators of purse seine vessels shall take every possible precaution to refrain from causing or permitting incidental mortality and serious injury of marine mammals. Operators shall not set on marine mammals when conditions of wind, sea state, visibility, or the number of marine mammals and/or fish prevent the effective use of backdown and other required porpoise rescue procedures.

(B) Operators may take such steps as are necessary to protect their gear or person from damage or threat of personal injury. However, all marine mammals taken in the course of commercial fishing operations shall be subject to the definition of "Incidental catch" in Sec. 216.3 above and may not be retained except where a specific permit has been obtained authorizing the retention.

(C) Operators of all certificated vessels shall maintain daily marine mammal logs provided by the Regional Director, Southwest Region, National Marine Fisheries Service. Such logs shall be subject to inspection at the discretion of the Southwest Regional Director, or his designated personnel. Certified copies of completed marine mammal logs shall be mailed or delivered at the conclusion of each fishing voyage to the field office, Southwest Region, National Marine Fisheries Service, 1140 North Harbor Drive, Room 7, San Diego, California 92101, within 48 hours after arrival in any port. If no sets involving marine mammals were made during a voyage, a marine mammal log stating such shall be submitted.

(D) The vessel certificate holder shall notify the field office, Southwest Region, National Marine Fisheries Service, 1140 North Harbor Drive, Room 7, San Diego, California 92101, telephone 714–293–6540, of any change of vessel operator within at least 48 hours prior to departing on the next scheduled trip.

(iii) *Reporting Requirements:* In accordance with Sec. 216.24(f) of these regulations, the following specific reporting procedures shall be required:

(A) The vessel certificate holder of each certificated vessel, who has been notified via certified letter from the National Marine Fisheries Service that his vessel is required to carry an observer, shall notify the field office, Southwest Region, National Marine Fisheries Service, San Diego, California, telephone 714–293–6540 at least five (5) days in advance of the vessel's departure on a fishing voyage to allow for observer placement. After a fishing voyage is initiated, the vessel is obligated to carry an observer until the vessel returns to port and one of the following conditions is met: (*1*) Unloads more than 400 tons of any species of tuna; or (*2*) unloads any amount of any species of tuna equivalent to one half of the vessel's carrying capacity; or (*3*) unloads its tuna catch after 40 days or more at sea from the date of departure. Further, the Regional Director, Southwest Region, may consider special circumstances for exemptions to this definition, provided written requests clearly describing the circumstances are received at leat ten (10) days prior to the termination or the initiation of a fishing voyage. A response to the written request will be made by the Regional Director within five (5) days after receipt of the request. A vessel whose vessel certificate holder has failed to comply with the provisions of this section may not engage in fishing operations for which a general permit is required.

(B) Masters of all certificated vessels carrying National Marine Fisheries Service observers shall allow observers to report, in coded form, information by radio concerning the accumulated take of marine mammals and other observer collected data at such times as specified by the Regional Director, Southwest Region. Individual vessel names and coded information reported by radio by the National Marine Fisheries Service observers shall remain confidential unless their release is authorized in writing by the operator of the vessel.

(C) The vessel certificate holder of each certificated vessel without an observer onboard, and fishing inside the Inter-American Tropical Tuna Commission's Yellowfin Regulatory Area is required to report within 48 hours prior to departure from port and within 48 hours after arrival in port, of the vessel's actual departure or arrival

date, including any changes in schedules that may occur after the original notification. The report shall include the name of the vessel and the location of the port of the scheduled departure or arrival, and shall be telephoned to 714–233–5511, the Southwest Regional Office's 24-hour answering service.

(D) The Regional Director, Southwest Region, will provide to the public, periodic quota status reports summarizing the estimated incidental porpoise mortality by U.S. vessels of individual species and stock.

(iv) *Vessel Gear and Equipment Requirements:* A vessel certificate issued pursuant to paragraph (c)(i) of this section will be valid only for a vessel equipped with a porpoise safety panel in its purse seine, and which uses the other gear, equipment, and procedures described herein. The vessel certificate holder shall be held responsible for providing and maintaining, in a functional and seaworthy condition, the required porpoise safety panels and all other required gear and equipment used in the course of catching and landing tuna. The requirement for the porpoise safety panel and other gear and equipment are as follows:

(A) Porpoise Safety Panel—Class I and II Vessels: For Class I purse seiners (400 short tons carrying capacity or less) and for Class II purse seiners (greater than 400 short tons carrying capacity, built before 1961), the porpoise safety panel shall be a minimum of 100 fathoms in length (as measured before installation), except that the minimum length of the panel in nets deeper than 10 strips shall be determined at a ratio of 10 fathoms in length for each strip that the net is deep. It shall be installed beginning 75 to 100 fathoms from the bow ortza, and shall extend toward the stern of the net protecting the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline which begins at the outboard end of the last bow bunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point. The porpoise safety panel shall consist of small mesh webbing not to exceed 1¼" stretch mesh, extending from the corkline downward to a minimum depth equivalent to one strip of 100 meshes of 4¼" atretch mesh webbing.

(B) Porpoise Safety Panel—Class III Vessels: For Class III purse seiners (greater than 400 short tons carrying capacity, built after 1960), the porpoise safety panel shall be a minimum of 180 fathoms in length (as measured before installation). It shall be installed beginning 60 to 100 fathoms from the bow ortza and shall extend toward the stern of the net protecting the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline which begins at the outboard end of the last bowbunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point. The porpoise safety panel shall consist of small mesh webbing not to exceed 1¼" stretch mesh extending downward from the corkline and the base of the porpoise apron to a minimum depth equivalent to two strips of 100 meshes of 4¼" stretch mesh webbing.

(C) Porpoise Apron: Each Class III vessel shall have installed in its purse seine net, a triangular-shaped porpoise apron consisteing of small mesh not to exceed 1¼" stretch mesh, 85 to 95 fathoms in length, laced between the corkline and the porpoise safety panel. The bow end of the porpoise apron shall begin approximately 10 to 15 fathoms (depending on the depth of the net) outboard of the end of the third bunchline and extend toward the stern of the net such that the peak of the porpoise apron triangle shall coincide with the apex of the backdown channel in the net. The base of the porpoise apron shall be laced to the upper edge of the porpoise safety panel. The upper edges of the porpoise apron shall be tapered at a 5 mesh, 2 bar rate from each end such that the tapers intersect at the center of the porpoise apron. The depth of the porpoise apron at its center shall be 443 to 463 meshes.

(D) Porpoise Apron Approval: The porpoise apron shall be installed under the supervision of a National Marine Fisheries Service designated representative: A trial set(s) shall be conducted under supervision of a National Marine Fisheries Service designated representative after installation of the porpoise apron to insure proper installation and operation of the apron. During the trial set(s), the stern tiedown point and outboard bow bunchline mark shall be determined and permanently marked so as to be clearly visible from the vessel. Each time a super apron is reinstalled after removal from a net or the net depth is altered, the vessel and gear shall be made available for reinspection by an authorized National Marine Fisheries Service Inspector as specified by the Regional Director, Southwest Region, who may require that another trial set(s) be made for proper apron alignment and adjustment. The vessel certificate holder shall provide at least five (5) days advance notification to the field office, Southwest Region, National Marine Fisheries Service, 1140 North Harbor Drive, Room 7, San Diego, California 92101, telephone 714–293–6540, of the time and place of installation of the porpoise apron system. The certificate of inclusion for any vessel whose certificate holder has failed to notify the National Marine Fisheries Service of the date of installation shall be invalid until completion of the apron inspection and trial set(s).

(E) Porpoise Safety Panel Markers: Each end of the porpoise safety panel and porpoise apron shall be identified with an easily distinguishable marker.

(F) Porpoise Safety Panel Hand Holds: Throughout the length of the corkline under which the porpoise safety panel and porpoise apron are located, hand hold openings are to be secured so that the insertion of a 1⅜" diameter cylindrical-shaped object meets resistance.

(G) Porpoise Safety Panel Corkline Hangings: Throughout the length of the corkline under which the porpoise safety panel and porpoise apron are located, corkline hangings shall be inspected by the vessel operator following each trip. Hangings found to have loosened to the extent that a cylindrical object with a 1⅜" diameter will not meet resistance when inserted between the cork and corkline hangings, must be tightened so that a cylindrical object with a 1⅜" diameter cannot be inserted.

(H) Bunchlines: Bunchlines, other than bow bunchlines, shall be arranged around the perimeter of the net to allow at least three towing points to be established near one-quarter, one-half, and three-quarter net from the bow ortza. A towing point must be established between two adjacent bunchlines; one bunchline reversed or unattached at both ends. Six bunchlines other than bow bunchlines are necessary to establish three towing points. The towing ends of all bunchlines which can be utilized as towing points shall be marked so as to be clearly visible to speedboat drivers. At least a 20-fathom length of corkline shall be free from bunchlines at the apex of the backdown channel.

(I) Speedboats: Certificated vessels engaged in fishing operations involving setting on marine mammals shall carry a minimum of two speedboats in operating condition. All speedboats carried aboard purse seine vessels and in operating condition shall be rigged with towing bridles and towlines. Speedboat hoisting bridles shall not be substituted for towing bridles.

(J) Rubber Raft: An inflatable rubber raft suitable to be used as a porpoise observation-and-rescue platform, shall be carried on all certificated vessels.

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(K) Facemask and Snorkel: At least two facemasks and snorkels shall be carried on all certificated vessels.

(L) Floodlights and Spotlight: All certificated vessels shall be equipped with adequate floodlights suitable for use in darkness to attract fish toward the main vessel and spotlight to intermittently illuminate the backdown channel and apex.

(M) Vessel certificate holders may petition for an exemption from the regulations regarding vessel gear and equipment for the purpose of experimenting with alternate gear or procedures designed to reduce incidental serious injury and mortalities of marine mammals in the course of commercial fishing. The petition shall be made in writing to the Director, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731, and shall include detailed specifications of the proposed gear and procedure modifications. Modifications may be granted upon review and approval, on a trip by trip basis, only if a National Marine Fisheries Service designated representative is available and accompanies the vessel on the approved trip.

(v) *Vessel Inspection:* (A) Annual: At least once during each calendar year, purse seine nets and other gear and equipment required by these regulations shall be made available for inspection by an authorized National Marine Fisheries Service Inspector as specified by the Regional Director, Southwest Region.

(B) Reinspection: Purse seine nets and other gear and equipment required by these regulations shall be made available for reinspection by an authorized National Marine Fisheries Service Inspector as specified by the Regional Director, Southwest Region. The vessel certificate holder shall notify the Fleet Assistance Section, Southwest Region, National Marine Fisheries Service, 1140 N. Harbor Drive, Room 7, San Diego, California 92101, telephone 714–293–6540 of any net modification at least five (5) days prior to departure of the vessel on its next scheduled trip in order to determine whether a reinspection or trial set would be required.

(C) Failure to Pass Inspection: A certificate of inclusion for a vessel with gear which is not in compliance with these regulations or maintained in a functional and seaworthy condition, shall be invalid until such deficiencies in gear or conditions are corrected and approved by an authorized National Marine Fisheries Service Inspector.

(vi) *Operator Training Requirements.* All operators shall maintain proficiency sufficient to perform the procedures required herein, and must attend and satisfactorily complete a formal training session conducted under the auspices of the National Marine Fisheries Service in order to obtain their certificate of inclusion. At the training session an attendee shall be instructed concerning the provisions of the Marine Mammal Protection Act of 1972, the regulations promulgated pursuant to the Act, and the fishing gear and techniques which are required or will contribute to reducing serious injury and mortality of porpoise incidental to purse seining for tuna. Operators who have received a written certificate of satisfactory completion of training and who possess a current or previous calendar year certificate of inclusion will not be required to attend additional formal training sessions unless there are substantial changes in the Act, the regulations, or the required fishing gear and techniques. Additional training may be required for any operator who is found by the Regional Director, Southwest Region, to lack proficiency in the procedures required.

(vii) *Marine Mammal Release Requirements:* All operators shall use the following procedures during all sets involving the incidental taking of marine mammals in association with the capture and landing of tuna.

(A) Use of Speedboats: On every set involving marine mammals, two speedboats equipped for towing shall be immediately available. At least one shall be manned and in the water. The second one, may be manned or unmanned, and may remain either in the water or in the davits. Both shall be ready for use until backdown commences. Speedboats shall tow on bunchlines whenever net collapse begins or on the corkline if canopies of loose webbing form whenever necessary to prevent marine mammal entrapment.

(B) Backdown Procedure: Backdown shall be performed following a purse seine set in which marine mammals are captured in the course of catching and landing tuna, and shall be continued until it is no longer possible to remove live marine mammals from the net by this procedure. Thereafter, other release procedures required shall be continued until all live animals have been released from the net.

(C) Hand Rescue: During backdown, a minimum of two rescuers shall aid with the release of marine mammals. If live marine mammals remain in the net after backdown, a minimum of two rescuers shall hand release them.

(D) Prohibited Use of Sharp or Pointed Instrument: The use of a sharp or pointed instrument to remove any marine mammal from the net is prohibited.

(E) Use of Rubber Raft, Facemask, and Snorkel: A rubber raft suitable as a porpoise observation and rescue platform shall be launched inside the net near the time of tying down for the backdown maneuver. The raft shall be used by a crewman to assist the other rescuer(s) in disentangling and releasing live marine mammals from the net. The crewman in the raft shall use the facemask and snorkel to determine whether all live marine mammals are out of the net and, if they are not, make every effort to remove them before backdown is terminated.

Taking into consideration the safety of all personnel, all live marine mammals that remain in the net after backdown shall be herded to areas where they can be easily released.

(F) Prohibited Brailing of Live Marine Mammals: All release procedures shall continue until all live marine mammals are removed from the net prior to initiating the brailing operation. Brailing live marine mammals from the net is prohibited.

(G) Prohibited Setting at Sundown: On every set involving marine mammals, the net skiff shall be released at least one and one-half hours before sunset; release of the net skiff after this time is prohibited.

(H) Use of Lights: If the backdown maneuver or other required release procedures continue past one-half hour after sunset, lights shall be used to insure that release procedures are properly performed and that all live marine mammals are removed from the net. Floodlights shall be used to attract fish toward the main vessel. A spotlight shall be intermittently used to illuminate the backdown channel and apex until all live marine mammals are removed from the net.

(viii) *Penalties:* Failure to comply with the provisions of the general permit or these regulations, including but not limited to: failure to submit upon demand to vessel, gear, equipment, or proficiency inspection or examination by authorized National Marine Fisheries Service personnel; falsification of any required logs and reports; or failure to satisfy the requirements of any provisions of these regulations will subject vessel owners, managing owners, masters, or operators to revocation of the vessel certificate of inclusion and/or to the right to be included under a general permit, and further subject vessel owners, managing owners, masters, and operators to penalties provided for under the Act, including revoking the right to be an operator as defined in Sec. 216.24(c)(1).

(3) *Encircling Gear, Purse Seining Not Involving the Intentional Taking of Marine Mammals.* (i) A certificate holder may take marine mammals so long as such taking is an incidental occurrence in the course of normal commercial fishing operations. Marine mammals taken incidental to commercial fishing operations shall be immediately returned to the environment where captured without further injury.

(ii) A certificate holder may take such steps as are necessary to protect his catch, gear, or person from depredation, damage or personal injury without inflicting death or injury to any marine mammal.

(iii) Only after all means permitted by paragraph (d)(3)(ii) of this section have been taken to deter a marine mammal from depredating the catch, damaging the gear, or causing personal injury, may the certificate holder injure or kill the animal causing the depredation or immediate damage, or about to cause immediate personal injury; however, in no event shall a certificate holder kill or injure an Atlantic bottlenosed dolphin, *Tursiops truncatus*, under the provisions of this paragraph. A certificate holder shall not injure or kill any animal permitted to be killed or injured under this paragraph unless the infliction of such damage is substantial and immediate and is actually being caused at the time such steps are taken. In all cases, the burden is on the certificate holder to report fully and demonstrate that the animal was causing substantial and immediate damage or about to cause personal injury and that all possible steps to protect against such damage or injury as permitted by paragraph (d)(3)(ii) of this section were taken and that such attempts failed.

(iv) Marine mammals taken in the course of commercial fishing operations shall be subject to the provisions of Sec. 216.3 with respect to "Incidental catch," and may be retained except where a specific permit has been obtained authorizing the retention.

(v) All certificate holders shall maintain logs of incidental take of marine mammals in such form as prescribed by the Assistant Administrator. All deaths or injuries to marine mammals occurring in the course of commercial fishing operations under the conditions of a general permit shall be immediately recorded in the log and reported in writing to the Regional Director, National Marine Fisheries Service, where a certificate application was made, or to an enforcement agent or other designated agent of the National Marine Fisheries Service, at the earliest opportunity but no later than five days after such occurrence, except that if a vessel at sea returns to port later than five days after such occurrence, then it shall be reported within forty-eight hours after arrival in port. Reports must include:

(A) the location, time, and date of the death or injury;

(B) the identity and number of marine mammals killed or injured; and

(C) a description of the circumstances which led up to and caused the death or injury.

(vi) Failure to comply with the provisions of the general permit or certificate of inclusion including, but not limited to, failure to submit to an inspection of the vessel, marine mammal logs and required gear, upon demand by an authorized Federal enforcement agent, or failure to adhere to the provisions of these regulations will subject the certificate holder to a revocation of his certificate and also subject the certificate holder, vessel owner or master to the penalties provided for under the Act.

(4) *Stationary Gear.* (i) A certificate holder may take marine mammals so long as such taking is an incidental occurrence in the course of normal commercial fishing operations. Marine mammals taken incidental to commercial fishing operations shall be immediately returned to the environment where captured without further injury.

(ii) A certificate holder may take such steps as are necessary to protect his catch, gear, or person from depredation, damage or personal injury without inflicting death or injury to any marine mammal.

(iii) Only after all means permitted by paragraph (d)(4)(ii) of this section have been taken to deter a marine mammal from depredating the catch, damaging the gear, or causing personal injury, may the certificate holder injure or kill the animal causing the depredation or immediate damage, or about to cause immediate personal injury; however, in no event shall a certificate holder kill or injure an Atlantic bottlenosed dolphin, *Tursiops truncatus*, under the provisions of this paragraph. A certificate holder shall not injure or kill any animal permitted to be killed or injured under this paragraph unless the infliction of such damage is substantial and immediate and is actually being caused at the time such steps are taken. In all cases, the burden is on the certificate holder to report fully and demonstrate that the animal was causing substantial and immediate damage or about to cause personal injury and that all possible steps to protect against such damage or injury as permitted by paragraph (ii) were taken and that such attempts failed.

(iv) Marine mammals taken in the course of commercial fishing operations shall be subject to the provisions of Sec. 216.3 with respect to "Incidental catch," and may not be retained except where a specific permit has been obtained authorizing the retention.

(v) All certificate holders shall maintain logs of incidental take of marine mammals in such form as prescribed by the Assistant Administrator. All deaths or injuries to marine mammals occurring in the course of commercial fishing operations under the conditions of a general permit shall be immediately recorded in the log and reported in writing to the Regional Director, National Marine Fisheries Service, where a certificate application was made, or to an enforcement agent or other designated agent of the National Marine Fisheries Service, at the earliest opportunity but no later than five days after such occurrence, except that if a vessel at sea returns to port later than five days after such occurrence, then it shall be reported within forty-eight hours after arrival in port. Reports must include:

(A) the location time, and date of the death or injury;

(B) the identity and number of marine mammals killed or injured; and

(C) a description of the circumstances which led up to and caused the death or injury.

(vi) Failure to comply with the provisions of the general permit or certificate of inclusion including, but not limited to, failure to submit to an inspection of the vessel, marine mammal logs and required gear, upon demand by an authorized Federal enforcement agent, or failure to adhere to the provisions of these regulations will subject the certificate holder to a revocation of his certificate and also subject the certificate holder, vessel, owner or master to the penalties provided for under the Act.

(5) *Other Gear.* (i) A certificate holder may take marine mammals so long as such taking is an incidental occurrence in the course of normal commercial fishing operations. Marine mammals taken incidental to commercial fishing operations shall be immediately returned to the environment where captured without further injury.

(ii) A certificate holder may take such steps as are necessary to protect his catch, gear, or person from depredation, damage or personal injury without inflicting death or injury to any marine mammal.

(iii) Only after all means permitted by paragraph (d)(5)(ii) of this section have

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been taken to deter a marine mammal from depredating the catch, damaging the gear, or causing personal injury, may the certificate holder injure or kill the animal causing the depredation or immediate damage, or about to cause immediate personal injury; however, in no event shall a certificate holder kill or injure an Atlantic bottlenosed dolphin, *Tursiops truncatus*, under the provisions of this paragraph. A certificate holder shall not injure or kill any animal permitted to be killed or injured under this paragraph unless the infliction of such damage is substantial and immediate and is actually being caused at the time such steps are taken. In all cases, the burden is on the certificate holder to report fully and demonstrate that the animal was causing substantial and immediate damage or about to cause personal injury and that all possible steps to protect against such damage or injury as permitted by paragraph (d)(5)(ii) of this section were taken and that such attempts failed.

(iv) Marine mammals taken in the course of commercial fishing operations shall be subject to the provisions of Sec. 216.3 with respect to "Incidental catch," and may not be retained except where a specific permit has been obtained authorizing the retention.

(v) All certificate holders shall maintain logs of incidental take of marine mammals in such form as prescribed by the Assistant Administrator. All deaths or injuries to marine mammals occurring in the course of commercial fishing operations under the conditions of a general permit shall be immediately recorded in the log and reported in writing to the Regional Director, National Marine Fisheries Service, where a certificate application was made, or to an enforcement agent, or other designated agent of the National Marine Fisheries Service, at the earliest opportunity but no later than five days after such occurrence, except that if a vessel at sea returns to port later than five days after such occurrence, then it shall be reported within forty-eight hours after arrival in port. Reports must include:

(A) the location, time, and date of the death or injury;

(B) the identity and number of marine mammals killed or injured; and

(C) a description of the circumstances which led up to and caused the death or injury.

(vi) Failure to comply with the provisions of the general permit or certificate of inclusion including, but not limited to, failure to submit to an inspection of the vessel, marine mammal logs and required gear, upon demand by an authorized Federal enforcement agent, or failure to adhere to the provisions of these regulations will subject the certificate holder to a revocation of his certificate and also subject the certificate holder, vessel, or master to the penalties provided for under the Act.

(e) *Importation:* (1) It shall be illegal to import into the United States any fish, whether fresh, frozen or otherwise prepared, if such fish were caught in a manner prohibited by these regulations or in a manner that would not be allowed in circumstances where a person subject to the jurisdiction of the United States would be required to have a certificate of inclusion in a general permit hereunder, whether or not any marine mammals were in fact taken incidental to the catching of the fish, unless the Assistant Administrator makes a finding and publishes such finding in the **Federal Register**, that such fishing, although not in conformity with the specific requirements of these regulations, is accomplished in a manner which does not result in an incidental mortality and serious injury rate in excess of that which results from fishing operations under these regulations.

(2) The following fish and categories of fish, which the Assistant Administrator has determined are involved with commercial fishing operations which cause the death or injury of marine mammals, are subject to the prohibitions and documentation requirements of this seetion:

(i) Salmon and halibut. The following U.S. Tariff Schedule Item Numbers identify these categories of salmon and halibut products which are imported into the United States and are to be covered by the documentation and certification regulations of § 216.24(e)(3):

110.20–25	Halibut, fresh or chilled.
110.20–30	Halibut, frozen.
110.20–45	Salmon, fresh or chilled.
110.10–50	Salmon, frozen.
110.70–40	Halibut, other—except portion controlled steaks.
111.48–00	Salmon, salted.
111.88–00	Salmon, smoked or kippered.
112.18–00	Salmon, preserved, not in oil.

(ii) Yellowfin tuna. The following U.S. Tariff Schedule Item Numbers identify the categories of tuna and tuna products under which yellowfin tuna is imported into the United States, and are subject to the importation restrictions of paragraph (e)(4) of this section after December 31, 1977:

110.10–20	Tuna; yellowfin, whole fish.
110.10–25	Tuna; yellowfin, eviscerated, head on.
110.10–30	Tuna; yellowfin, eviscerated, head off.
110.10–37	Tuna; yellowfin, other.
112.30–40	Tuna; canned, other than white meat, no oil—except cans marked as other than yellowfin tuna in a manner approved in advance by the Assistant Administrator.
112.34–00	Tuna; canned, other, no oil—except cans marked as other than yellowfin tuna in a manner approved in advance by the Assistant Administrator.
112.90–00	Tuna; canned, other, no oil—except cans marked as other than yellowfin tuna in a manner approved in advance by the Assistant Administrator.

(3) Salmon and Halibut. All fish and categories of fish listed in paragraph (e)(2)(i) of this section shall be denied entry into the United States unless accompanied by a separate Fisheries Certificate of Origin (Standard Form 369–1) from each country whose flag vessels caught fish involved in the importation. The Fisheries Certificate of Origin should include the following information:

(i) The country of origin; and

(ii) The identity and quantity of fish; and, either

(iii) After the Assistant Administrator has published the finding referred to in paragraph (e)(1) of this section, a statement from a responsible official of the country of origin that the fishing technology permitted by the country of origin with respect to the species of fish presented for importation into the United States does not result in a rate of serious injury or death to marine mammals in excess of that which results from U.S. commercial fishing operations as prescribed by these regulations. Country of origin for the purposes of this section shall mean the country under whose flag the fish catching vessels are documented and whose fish are a part of any cargo or shipment of fish to be imported into the U.S. regardless of any transshipments; or

(iv) A statement by a responsible official of the country of origin or the master of the vessel which caught the fish that such fish were not caught in a manner prohibited for U.S. fishermen by these regulations. The statement shall identify the species, quantity, and exporter of the fish to which the statement refers; or

(v) Any nation may certify to the Assistant Administrator either (A) that all of its vessels fishing under its flag are fishing in conformance with these regulations; or (B) a list of the vessels, by name and official number, fishing under such nation's flag which are fishing in conformance with these regulations; or (C) that all of the vessels fishing under such nation's flag, with the exception of any vessels specifically listed by name and official number, are fishing in conformance with these regulations. If methods (B) or (C) are used, the shipping documentation must also show the name and official number of the vessel which caught the fish presented for importation. The Assistant Administrator may then make a finding, and publish such finding in the **Federal Register**, that fish imports listed in paragraphs (e)(2)(i) from a nation or from an identified segment of a nation's fishing fleet, are exempted from the documentation provisions of this section.

(4)(i) Yellowfin tuna: All shipments of fish and products listed in paragraph (e)(2)(ii) of this section, from any nation, shall not be entered into the United States for consumption or withdrawn from warehouse for consumption unless a finding has been made pursuant to paragraph (e)(5)(i) of this section, and unless accompanied by the following documentation: (A) A separate Yellowfin Tuna Certificate of Origin (Standard Form 370–1) and (B) a bill of lading from each country whose flag vessels caught yellowfin tuna involved in the importation. (ii) The Yellowfin Tuna Certificate of Origin must include the following information: (A) Country of origin of the fishing vessel(s) involved; (B) Exporter (name and address); (C) Consignee (name and address); (D) Identity and quantity of the yellowfin tuna to be imported, listed by U.S. Tariff Schedule Number; (E) Name of vessel(s) which caught the yellowfin tuna; (F) Fishing method used (i.e., purse seine, longline, pole and line, etc.); (G) Other documentation as may be required by the Assistant Administrator, subsequent to granting a finding in paragraph (e)(5) of this section; (H) Must be signed by either a responsible government official of the country whose flag vessel caught the fish or the vessel master, below the following certification statements:

I certify that the yellowfin tuna described in (D) above was caught by flag vessels of a country either, (1) not required to obtain a finding from the United States Department of Commerce (National Marine Fisheries Service) under 50 CFR 216.24(e)(5), and the fish was not caught in a manner prohibited for United States fishermen by the United States Marine Mammal Regulations 50 CFR 216.24(d)(2), or (2) which has been found by the United States Department of Commerce (National Marine Fisheries Service) to be in conformance with the United States Marine Mammal Regulations 50 CFR 216.24(e)(5).

I certify that the above information is complete, true and correct to the best of my knowledge and belief. I understand that my making a false statement may subject me to the criminal penalties under the Marine Mammal Protection Act of 1972.

(I) Must also be signed by the exporter, under the following declaration:

The undersigned hereby declares that, based on the above statements, the yellowfin tuna herein offered for importation into the United States, was caught by flag vessels of (country) in conformance with the United States Marine Mammal Regulations 50 CFR 216.24.

(5)(i) Any tuna or tuna products in the classifications listed in paragraph (e)(2)(ii) of this section from countries of origin (as documented under (e)(4) above) whose vessels operate in the yellowfin tuna purse seine fishery in the eastern tropical Pacific Ocean, as determined by the Assistant Administrator; shall not be entered into the United States for consumption or subsequently withdrawn from warehouse for consumption unless the Assistant Administrator makes a finding in consultation with the U.S. Department of State, and publishes such finding in the **Federal Register** that fishing operations in the country of origin are conducted in conformance with U.S. regulations and standards as stated in paragraph (d)(2) of this section. The Assistant Administrator may make a finding that, although not in conformity with these regulations, such fishing is accomplished in a manner which does not result in an incidental mortality and serious injury in excess of that which result from U.S. fishing operations under these regulations. Upon such a finding unloading may be allowed. Country of origin for the purposes of this section (Sec. 216.24(e)) shall mean the country under whose flag the fish catching vessels are documented and whose fish are a part of any cargo or shipment of fish to be imported into the U.S. regardless of any transshipments.

(ii) Countries of origin desiring to obtain a finding which will allow the importation of products listed in paragraph (e)(2)(ii) of this section must submit, by appropriate government official, to the Assistant Administrator, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, D.C. 20235, the following information: (A) A statement of the quantity and type (identified by U.S. Tariff Schedule Item Numbers listed in paragraph (e)(2)(i) of this section) of fish or fish products expected to be imported into the U.S.; (B) A detailed description of the fishing technology and procedures utilized in tuna purse seine fishing to protect marine mammals so that a determination of conformance with Sec. 216.24(d)(2) of these regulations can be made, or the effectiveness of any other equivalent technology or procedures can be assessed; (C) A statement of the number of marine mammals killed or seriously injured (by species) incidental to the yellowfin tuna purse seine operations on porpoise for the previous year, and the manner in which the information was obtained (logbooks, observers, interviews, or other procedures); (D) A statement of the number of marine mammals which will be allowed to be killed or seriously injured annually incidental to yellowfin tuna purse seine operations; (E) A statement of the procedures to be required, including quotas and other controls which will meet the U.S. requirements to limit the level of mortality with specific reference to any species or stock designated as depleted; and (F) A list of vessels which may be involved in the taking of marine mammals incidental to yellowfin tuna purse seining.

(iii) The Assistant Administrator will review each nation's findings annually upon receipt of information required under paragraph (e)(5)(ii) which pertains to a preceeding calendar year, and a request of a continuation of a finding by the country of origin. This information should be submitted by September 1 preceding the calendar year for which the exportation is requested. The Assistant Administrator may require verification of statements made in connection with requests to allow importations. The Assistant Administrator will reconsider a finding upon a request from, and the submission of additional information from, the country of origin.

(6) *Fish refused entry.* If fish is denied entry under the provisions of Sec. 216.24(e)(3) or Sec. 216.24(e)(4), the District Director of Customs shall refuse to release the fish for entry into the United States and shall issue a notice of such refusal to the importer or consignee.

(7) *Release under bond. Provided however,* that fish not accompanied or covered by the required documentation or certification when offered for entry may be entered into the United States if the importer or consignee gives a bond on Customs Form 7551, 7553, or 7595 for the production of the required documentation or certification. The bond shall be in the amount required under 19 CFR 25.4(a). Within 90 days after such Customs entry, or such additional period as the District Director of Customs may allow for good cause shown, the importer or consignee shall deliver a copy of the required documentation or certification to the District Director of Customs, and an original of the required documentation or a copy of the certification to the Regional Director of the National

Marine Fisheries Service, unless the District Director of Customs has received notification from the National Marine Fisheries Service that the fish is covered by a certification. If such documentation, certification, or notification is not delivered to the District Director of Customs for the port of entry of such fish within 90 days of the date of Customs entry or such additional period as may have been allowed by the District Director of Customs for good cause shown, the importer or consignee shall redeliver or cause to be redelivered to the District Director of Customs those fish which were released in accordance with this paragraph. In the event that any such fish is not redelivered within 30 days following the date specified in the preceding sentence, liquidated damages shall be assessed in the full amount of bond given on Form 7551. When the transaction has been charged against a bond given on Form 7553 or 7595, liquidated damages shall be assessed in the amount that would have been demanded under the preceding sentence under a bond given on Form 7551. Fish released for entry into the United States through use of the bonding procedure provided in this paragraph shall be subject to the civil and criminal penalties and the forfeiture provisions provided for under the Act if (i) the required documentation or certification is not delivered to the Regional Director of the National Marine Fisheries Service within 90 days of the date of Customs entry, or such additional period as may have been allowed by the District Director of Customs for good cause shown, or (ii), the required certification is not on file in the office of the Assistant Administrator, National Marine Fisheries Service, National Oceanic and Atomspheric Administration, Department of Commerce, Washington, D.C. 20235, within this 90 day period or such additional period as may have been allowed by the District Director of Customs for good cause shown. Fish refused entry into the United States shall also be subject to the civil and criminal penalties and the forfeiture provisions provided for under the Act.

(8) *Disposition of fish refused entry into the United States; redelivered fish.* Fish which is denied entery under Sec. 216.24(e)(3) or Sec. 216.24(e)(4) or which is redelivered in accordance with Sec. 216.24(e)(7) and which is not exported under Customs supervision within 90 days from the date of notice of refusal of admission or date of redelivery shall be disposed of under Customs laws and regulations. *Provided however,* that any disposition shall not result in an introduction into the United States of fish caught in violation of the Marine Mammal Protection Act of 1972.

(f) *Observers.*—(1) The vessel certificate holder of any certificated vessel shall, upon the proper notification by the National Marine Fisheries Service, allow an observer duly authorized by the Secretary to accompany the vessel on any or all regular fishing trips for the purpose of conducting research and observing operations, including collecting information which may be used in civil or criminal penalty proceedings, forfeiture actions, or permit or certificate sanctions.

(2) Research and observation duties shall be carried out in such a manner as to minimize interference with commercial fishing operations. The navigator shall provide true vessel locations by latitude and longitude, accurate to the nearest minute, upon request by the observer. No owner, master, operator, or crew member of a certificated vessel shall impair or in any way interfere with the research or observations being carried out.

(3) Marine mammals killed during fishing operations which are accessible to crewmen and requested from the certificate holder or master by the observer shall be brought aboard the vessel and retained for biological processing, until released by the observer for return to the ocean. Whole marine mammals designated as biological specimens by the observer shall be retained in cold storage aboard the vessel until retrieved by authorized personnel of the National Marine Fisheries Service when the vessel returns to port for unloading.

(4) The Secretary shall provide for the payment of all reasonable costs directly related to the quartering and maintaining of such observers on board such vessels. A vessel certificate holder who has been notified that the vessel is required to carry an observer, via certified letter from the National Marine Fisheries Service, shall notify the office from which the letter was received at least five days in advance of the fishing voyage to facilitate observer placement. A vessel certificate holder who has failed to comply with the provisions of this section may not engage in fishing operations for which a general permit is required.

(5) It is unlawful for any person to forcibly assault, impede, intimidate, interfere with, influence or attempt to influence an observer placed aboard a vessel.

(g) *Penalties and rewards:* Any person or vessel subject to the jurisdiction of the United States shall be subject to the penalties provided for under the Act for the conduct of fishing operations in violation of these regulations. The Secretary shall recommend to the Secretary of the Treasury that an amount equal to one-half of the fine incurred but not to exceed $2,500 be paid to any person who furnishes information which leads to a conviction for a violation of these regulations. Any officer, employee, or designated agent of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

[FR Doc. 80-33529 Filed 10-30-80; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 652

Atlantic Surf Clam and Ocean Quahog Fisheries; Clarification to Regulations

AGENCY: National Oceanic and Atmospheric Administration (NOAA)/ Commerce.

ACTION: Notice of clarification to regulations.

SUMMARY: On January 3, 1980 (45 FR 786), final regulations were published implementing an amendment to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries. In those regulations three Appendices (A, B, and C) were published on pages 794–97. References to those Appendices occurred at three places in § 652.23 on page 793.

Those regulations are being codified in the Code of Federal Regulations (the Code). The three Appendices will not be published in the Code. In addition, the three references to the Appendices which occur on page 793 are deleted.

EFFECTIVE DATE: This clarification is effective on September 30, 1980.

FOR FURTHER INFORMATION CONTACT: Denton R. Moore, Chief, Permits and Regulations Division, National Marine Fisheries Service, Washington, D.C. 20235. Telephone: (202) 634–7432.

(16 U.S.C. 1801 *et seq.*)

Signed at Washington, D.C. this 29th day of October, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80-34178 Filed 10-30-80; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 45, No. 213
Friday, October 31, 1980

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Quality Service

7 CFR Part 2852

U.S. Standards for Grades of Frozen Strawberries

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On April 25, 1980, the Food Safety and Quality Service published in the **Federal Register** a document proposing to amend the U.S. Standards for Grades of Frozen Strawberries. The proposed rule would (1) provide a definition for halves style; (2) convert to statistical sampling; (3) replace dual grade nomenclature with single letter designations; (4) establish standards similar to those of the Food and Drug Administration and the Codex Alimentarius; and (5) assign "A" or "B" grades to all sizes of containers while limiting other quality levels to nonretail size containers over 2.7 kg (6 lbs.). In response to a request for additional time to study the proposal and gather data, the Department is extending the comment period to September 30, 1981.

DATE: Comments must be received by September 30, 1981.

ADDRESS: Written comments to: Regulations Coordination Division, Attn: Annie Johnson, Food Safety and Quality Service, Compliance Program, U.S. Department of Agriculture, Room 2637, South Agriculture Building, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Howard W. Schutz, Processed Products Branch, Fruit and Vegetable Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–6247. The Draft Impact Analysis describing the proposed rule and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION:

Significance

The proposal was reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant".

Background

On April 25, 1980, the Food Safety and Quality Service published a proposed rule (45 FR 27944–27948) to amend the United States grade standards for frozen strawberries which would (1) provide for a definition of halves style of frozen strawberries; (2) follow the USDA policy of replacing a dual grade nomenclature with single grade designations (Grades "A" and "B"); (3) convert to statistical (attributes) sampling for inspection of frozen strawberries; and (4) assign the grades of "A" or "B" to all sizes of containers while limiting the quality level, "Strawberries for Remanufacture", to nonretail size containers over 2.7 kg (6 lbs.). Interested persons were given until October 31, 1980, to comment.

The Department has been requested by the American Frozen Food Institute to extend the period of time within which data, views, or arguments may be submitted to September 30, 1981. The request stated that additional time was needed in order to gather data during the actual frozen strawberry processing season.

Since the Department is interested in receiving meaningful data, the Department has determined that these circumstances are considered sufficient justification for extending the comment period to September 30, 1981.

Done at Washington, D.C. on October 27, 1980.

Thomas P. Grumbly,

Acting Administrator, Food Safety and Quality Service.

[FR Doc. 80-33944 Filed 10-30-80; 8:45 am]

BILLING CODE 3410-DM-M

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9 CFR Parts 317 and 381

Advance Notice of Proposed Rulemaking; Prior Labeling Approval Pilot Program

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food Safety and Quality Service (FSQS) in an effort to streamline regulatory procedures is considering amending the meat and poultry inspection regulations to include the delegation of certain labeling approval authority to Inspectors-in-Charge in the field. To test the feasibility of such delegation, a 120-day pilot program will begin December 1, 1980, in three selected meat and poultry inspection areas. The three selected areas include: Missouri (Southwestern Region), Kentucky (Southeastern Region), and the Hyattsville area which includes Maryland, Delaware, and the District of Columbia (Northeastern Region).

DATES: Pilot program to begin December 1, 1980. Comments must be received on or before December 31, 1980.

ADDRESSES: Written comments to: Regulations Coordination Division, Attn: Annie Johnson, Food Safety and Quality Service, Compliance Program, Room 2637, South Agriculture Building, U.S. Department of Agriculture, Washington, DC 20250. Oral comments to Ms. Joan Moyer Schwing, (202) 447–4293. (For additional information on comments, see Supplementary Information).

FOR FURTHER INFORMATION CONTACT: Ms. Joan Moyer Schwing, Deputy Director, Meat and Poultry Standards and Labeling Division, Compliance Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, DC 20250. The Task Force Report referred to in this Notice is available for review by the public in the regulations Coordination Division.

SUPPLEMENTARY INFORMATION:

Comments

Interested persons are invited to submit comments and information concerning this Notice. Written comments must be sent in duplicate to the Regulations Coordination Division. Comments should bear a reference to the date and page number of this issue of the **Federal Register**. Any person desiring opportunity for oral presentation of views concerning this Notice must make such request to Ms. Schwing so that arrangements may be made for such views to be presented. A transcript shall be made of all views orally presented. All comments submitted pursuant to this Notice will be

made available for public inspection in the Regulations Coordination Division during regular business hours.

Background

Pursuant to the authority contained in the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) and the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), FSQS maintains a prior approval program for labels and other labeling operated exclusively within Agency headquarters in Washington, DC, in order to assure that federally inspected meat and poultry products are properly marked, labeled, and packaged and not misbranded. Under current procedures, the Washington staff reviews approximately 100,000 labeling applications per year, and the approved labels and other labeling are returned to the applicant for use under the supervision of local inspection personnel. For several months, the Agency has been conducting a comprehensive review of these prior labeling approval procedures in an effort to streamline the prior approval process. As a result, the Agency has considered delegating certain labeling approval authority to Agency field offices. While inspection personnel are presently vested with some authority in this regard (see 9 CFR 317.4(c) and (d), 317.5, 381.134, and 381.135), this authority is rather limited, and in many instances, is frequently not exercised.

Recommendations

A joint Compliance/Meat and Poultry Inspection Program (MPI) Task Force was recently established to explore the possibility of field delegation in concert with this overall objective of streamlining the labeling approval process. The Task Force first met on July 1 and 2, 1980, in Washington, DC, to identify and discuss the various options available.

The Task Force considered the following three options:

1. Inspector-in-Charge Proposal
2. Area Office Proposal
3. Combination Inspector-in-Charge/Area Office Proposal

The first two options involved delegating authority to MPI field levels to approve "simple" labels (both sketches and finals) and all final labels that are consistent with sketches previously approved by the Washington label review staff. In the first option, the Inspector-in-Charge would approve the label while in the second option, specialists in the Area offices would approve the labels specified. The third option discussed built upon the Inspector-in-Charge proposal by adding authority for the Area office to approve labels of "medium" complexity. After lengthy discussion of the pros and cons to each option, the Task Force recommended that a pilot program be initiated to test the feasibility and effectiveness of the first and third options prior to any regulatory change. The Task Force's recmmendations are available for review by the public in the Regulations Coordination Division. The Agency is soliciting comments on the Task Force's recommendations and each of the three options considered by the Task Force.

Proposed Regulatory Changes

The Agency as part of this Notice is also seeking public comment on its intent to propose several regulatory changes that would modify its present labeling approval process as contained in 9 CFR 317.4 (for meat food products) and 381.115 (for poultry products).

Briefly, the regulatory changes under consideration would:

1. Allow the Inspector-in-Charge to approve final labeling which is identical to a sketch previously approved by the Washington Office;
2. Separate labeling into two distinct classes—"simple" labeling as described later in this Notice under Pilot Program, and "nonsimple" labeling; and
3. Delegate the labeling approval authority for simple labeling to the Inspector-in-Charge at the field level.

The Agency is particularly interested in learning whether such field delegation will adequately serve industry's needs for prompt review and approval of labeling modifications, and suggestions as to how the labeling approval procedure can otherwise by improved.

Pilot Program

The Administrator has considered the Task Force's recommendations and has decided, while seeking public comment under the prenotice procedure, to test initially the first option through a 120-day pilot program. Three areas have been selected for the pilot program. These areas include: Missouri (Southwestern Region), Kentucky (Southeastern Region), and the Hyattsville area which includes Maryland, Delaware, and the District of Columbia (Northeastern Region). In selecting these areas, the Agency attempted to evaluate the labeling expertise of inspection personnel within the area and also sought a representative cross-section of establishments in order to encompass a full variety of labeling issues. Beginning December 1, 1980, Inspectors-in-Charge in these areas will approve any "simple" labeling (sketches and finals) and any final labeling which have previously had a sketch approved by the Washington label review staff. For the purposes of the pilot study, "simple" labels or other labeling that the Inspectors-in-Charge in these three areas can approve include the following:

1. Previously approved labels or labeling where the modifications fall into one of the following categories:
   a. Those labels and other labeling identified in 9 CFR 317.4(c), 317.4(d), 317.5, 381.134, and 381.135.
   b. Meat and poultry inspection legends.
   c. Meat carcass and meat food product brands.
2. Labels or other labeling not previously approved for products containing a single ingredient and which do not contain information, statements or claims, such as:
   a. Quality claims including but not limited to such things as: Blue Ribbon, Choice, Prime, etc.;
   b. Negative claims;
   c. Geographical claims;
   d. Nutritional claims;
   e. Guarantees; or
   f. Foreign language.

In addition to these "simple" labels or other labeling, the Inspectors-in-Charge in these three areas may approve all final labels or other labeling having a sketch approval by the Washington label review staff when the final labeling exactly matches the approved sketch.

Participation in the pilot program is voluntary. The Agency encourages industry located in these three areas to participate in the pilot program. When a company has determined that the labels or other labeling for which it seeks approval can be approved by the Inspector-in-Charge based on the criteria specified in this Notice, the application may be submitted to the inspector. The Inspector-in-Charge will then review the label or other labeling and determine if action can be taken. If the Inspector-in-Charge determines that the label or other labeling does not meet the criteria specified in this Notice, the label or other labeling will be returned to the company to be transmitted to the Washington label review staff. All appeals of labeling review decisions must still be made to the Washington label review staff. An applicant seeking review of a decision made by the Inspector-in-Charge in this regard should, therefore, transmit the label or other labeling in the usual manner to the Washington office, specifying the basis for the appeal.

The Agency will evaluate the results of the pilot program and the comments received to this Notice prior to deciding whether to make a proposal.

Done at Washington, DC, on: October 24, 1980.

Donald L. Houston,

Administrator, Food Sofety ond Quality Service.

[FR Doc. 80-33839 Filed 10-30-80; 8:45 am]
BILLING CODE 3410-DM-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

High-Cost Gas Produced From Tight Formations

AGENCY: Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions that present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas subject to an incentive price (18 CFR 271.703). The rule establishes procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of proposed rulemaking contains the recommendation of the Colorado Oil and Gas Conservation Commission that the Lower Mesaverde formation (consisting of the Rolling, Cozzette and Corcoran Sandstone members) be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on November 26, 1980.

PUBLIC HEARING: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on November 11, 1980.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357-8299 or Victor Zabel (202) 357-8559.

October 27, 1980.

I. Background

On October 3, 1980, the State of Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's final regulations (45 FR 56034, August 22, 1980) that the Rollins, Cozzette and Corcoran sandstones underlying specified lands in Mesa County, Colorado be designated in the Commission's regulations as tight formations. On October 20, 1980, Colorado submitted a corrected recommendation redefining the recommended formation as the Lower Mesaverde formation (consisting of the Rollins, Cozzette and Corcoran Sandstone members). Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Colorado's recommendation that the Lower Mesaverde formation be designated a tight formation should be adopted. The United States Geological Survey concurs with Colorado's recommendation. Colorado's recommendation and supporting data are on file with the Commission and are available for public inspection.

The recommended formation is located approximately 30 miles east-northeast of Grand Junction, Colorado and lies in the Plateau Creek Field area in Mesa County, Colorado. The average depth to the top of the producing interval is approximately 3,850 feet.

II. Discussion of the Recommendation

Colorado claims in its submission that evidence gathered through information and testimony presented at a public hearing in Cause No. NG-7 convened by Colorado on this matter demonstrates that;

(1) The average *in-situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the Lower Mesaverde formation (as defined), without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of crude oil per day.

Colorado further asserts that the typical casing design of wells drilled in the recommended formation, as required by Colorado's rules and regulations, will protect fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, Issued August 1, 1980, in Docket No. RM80-68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Colorado that the Lower Mesaverde formation (consisting of the Rollins, Cozzette, and Corcoran Sandstone members), as described and delineated in Colorado's recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

III. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before November 26, 1980. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76 (Colorado-5), and should give reasons including any supporting data for any recommendations. Comments should also indicate any supporting data for any recommendations. Comments should also indicate the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426, during business hours.

Any persons wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Commission no later than November 11, 1980.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3342)

Accordingly, the Commission proposes to amend the regulations in Part 271, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Colorado's recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulotion.

Section 271.703(d) is amended by adding a new subparagraph (17) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* The following formations are designatd as tight formations. A more detailed description of the geographical extent

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and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79-76, as subindexed below, and is also located in the official files of the jurisdictional agency that submitted the recommendation.

(1) * * *

(2) through (16) [Reserved]

(17) *The Lower Mesaverde Formation in Colorodo*—(i) *Delineation of formation.* The Lower Mesaverde Formation consisting of the Rollins, Cozzette and Corcoran Sandstone members, is located in the Plateau Creek Field area in Mesa County, Colorado. It is approximately 30 miles east northeast of Grand Junction, Colorado, and lies in the southern part of the Piceance Creek Basin. (Colorado-5).

(ii) *Depth.* The average depth to the Lower Mesaverde Formation is 3,850 feet.

[FR Doc. 80-34049 Filed 10-30-80; 8:45 am]

BILLING CODE 6450-85-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 320

[Docket No. 80N-0315]

Quinidine; Bioequivalence Requirements

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule.

SUMMARY: The Food and Drug Administration (FDA) proposes to establish bioequivalence requirements for certain immediate-release quinidine oral solid dosage form drug products used to treat cardiac arrhythmias. This action is being taken because of evidence that drug products subject to this proposal can present bioequivalence problems and thereby should be the subject of a bioequivalence requirement. The proposed regulation would ensure the bioequivalence of different brands of quinidine drug products and batch-to-batch uniformity of the same drug product by each manufacturer.

DATES: Comments by December 30, 1980. It is proposed that the final regulation based on this proposal be effective 30 days after its date of publication in the **Federal Register.**

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

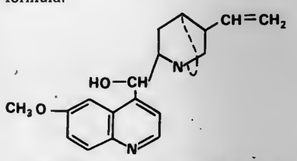
FOR FURTHER INFORMATION CONTACT: Henry J. Malinowski, Bureau of Drugs (HFD-525), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1640.

SUPPLEMENTARY INFORMATION: Under Subpart C of 21 CFR Part 320, the Commissioner of Food and Drugs, on his own initiative or in response to a petition from an interested person, may propose and establish a bioequivalence requirement for drug products containing identical amounts of the same active ingredient and in the same dosage form that are intended to be used interchangeably for the same therapeutic effect if there is a known or potential bioequivalence problem with the drug product. This authority to issue bioequivalence regulations for drug products for human use is delegated to the Director and Deputy Director of the Bureau of Drugs by § 5.79 (21 CFR 5.79).

Data available to FDA show that, based on the criteria in § 320.52 (21 CFR 320.52), there is well-documented evidence that drug products subject to this proposal can present bioequivalence problems and thereby should be the subject of a bioequivalence requirement. Therefore, the Director of the Bureau of Drugs, on his own initiative, tentatively concludes that a bioequivalence requirement involving in vivo testing in humans and in vitro dissolution testing should be established for certain oral quinidine drug products. The evidence on which the Director bases his tentative conclusion and the proposed bioequivalence requirements are discussed below.

Background

Quinidine sulfate, quinidine polygalacturonate, and quinidine gluconate are the sulfate, polygalacturonate, and gluconate salts of 6 methoxy-alpha-(5 vinyl-2-quinuclidinyl-4-quinoline-methanol). The base has the following structural formula:



The commercially available salts of quinidine, the dextrorotatory optical isomers of quinine, are used for treatment of cardiac arrhythmias such as atrial fibrillation, atrial flutter, paroxysmal superventricular and ventricular tachycardia and premature systoles (Ref. 2).

When quinidine is administered on an empty stomach peak plasma levels are reached in 1 to 3 hours (Ref. 2). Its elimination half life varies between 5 to 7 hours with about 10 to 35 percent of the administered dose being excreted unchanged (Refs. 3, 4, and 5). It has a total body clearance of from 4 to 6 mL/min/kg (Refs. 4 and 5).

Although most patients with congestive heart failure and poor renal function have normal, expected elimination half lives, pharmacokinetic parameters in these patients vary with the state of disease (Refs. 6 and 7). Patients with congestive heart failure and renal insufficiency absorb about one half the quinidine dose compared to normal patients (Ref. 8). These patients have lower absorption rates but higher plasma levels because they have a considerably smaller volume of distribution and a concomitant decrease in drug urinary excretion (caused by a decrease in the glomerular filtration rate) (Refs. 8 and 9). Clinical studies have shown that administration of quinidine is associated more frequently with toxic reactions and fatal arrhythmias in patients with congestive heart failure and renal insufficiency (Refs. 10 and 11).

While quinidine is generally administered orally in the form of its salts (sulfate, polygalacturonate or gluconate), the free base is the active species and is absorbed across the gastrointestinal tract. Because quinidine sulfate, quinidine gluconate, and quinidine polygalacturonate are pharmaceutical alternatives which have the same pharmacological effect and which produce identical changes in an electrocardiogram, they are considered together for purposes of establishing a bioequivalence requirement (Refs. 12 and 13).

Evidence To Establish a Bioequivalence Requirement

The Director considered the following criteria as set forth in § 320.52 *Criteria and evidence to establish a bioequivalence requirement* (21 CFR 320.52) in tentatively concluding that a bioequivalence requirement should be established for certain quinidine oral drug products.

1. *Evidence from well-controlled bioequivalence studies that such products are not bioequivalent drug products.* The results of a comparative bioavailability study using four commercially available brands of quinidine sulfate tablets revealed significant differences in the rate of absorption of quinidine sulfate among the different brands of tablets as measured by time to peak concentration (Tmax) (Ref. 14).

2. *Evidence that the drug products exhibit a narrow therapeutic ratio, e.g., there is less than a 2-fold difference in median lethal dose (LD_{50}) and median effective dose (ED_{50}) values, or have less that a 2-fold difference in the minimum toxic concentrations and minimum effective concentrations in the blood, and safe and effective use of the drug products requires careful dosage titration and patient monitoring.* For the double extraction technique of Cramer and Isaksson, a normal therapeutic plasma concentration range for quinidine is between 2.3 and 5.0 micrograms per milliliter (mcg/mL) (Ref. 6). Plasma concentrations of 8 mcg/mL or more result in conduction block in the sinoatrial node, atrioventricular node, and Purkinje system, and ventricular tachycardia or ventricular filibration may occur. Toxic reactions are almost certain to occur at levels above 10 mcg/mL (Ref. 2).

3. *Competent medical determination that a lack of bioequivalence would have a serious adverse effect in the treatment or prevention of a serious disease or condition.* Because of the marked variation in quinidine plasma levels and factors, e.g., absorption rate, first-pass metabolism, and disease state, which alter those levels, the dosage regimen of quinidine administered to each patient must be individualized (Refs. 3, 6, 7, and 14). Failure to achieve a therapeutic effect could result from failure to achieve a therapeutic concentration because a poorly bioavailable product was selected (Ref. 1). On the other hand, quinidine exhibits a narrow therapeutic ratio (Refs. 1 and 2). Substitution of a more bioavailable product that produces levels that exceed the therapeutic range may result in significant toxicity (Ref. 2).

4. *Physicochemical evidence that: The dissolution rate of one or more such products is slow, e.g., less than 50 percent in 30 minutes when tested using either a general method specified in an official compendium or a paddle method at 50 revolutions per minute in 900 milliliters of distilled or deionized water at 37° C, or differs significantly from that of an appropriate reference material such as an identical drug product that is the subject of an approved full new drug application.* FDA studied the dissolution of 200 milligrams (mg) quinidine sulfate products in 1975 by using the FDA paddle method in 900 mL of water at 37° C. and 50 rpm (Ref. 17).

Table 1.—*Quinidine Sulfate Products Percent of Labeled Amount Dissolved*

Product	Time, minutes			
	10	30	60	90
Mfr. A*	0.0	10.7	21.7	29.7
Mfr. A	100	100	100	.....
Mfr. B	8.4	33.9	70.9	91.2
Mfr. C	12.2	34.4	58.3	77.0
Mfr. D	80.3	96.3	100	100
Mfr. E	10.4	36.6	80.4	94.3
Mfr. F	22.9	54.8	73.7	84.4
Mfr. G	13.7	76.2	90.6	93.1

*Capsule formulation, all other products tested were tablets.

The results in Table 1 show a wide variation in the dissolution profile of quinidine sulfate tablets produced by different manufacturers, and even between two products, i.e., tablets and capsules, produced by the same manufacturer.

5. *Pharmacokinetic evidence that: There is rapid metabolism of the therapeutic moiety in the intestinal wall or liver during the process of absorption (first-pass metabolism) so the therapeutic effect and/or toxicity of such drug product is determined by the rate as well as the degree of absorption.* When the absolute bioavailability of quinidine was examined, results showed that only about 70 percent of the drug reaches systemic circulation following oral administration (Refs. 3, 15, and 16). The results indicate that the reduction in quinidine bioavailability is due to first-pass metabolism in the liver (Ref. 3).

The Bioequivalence Requirement

On the basis of this data, the Director tentatively concludes that the evidence meets one or more of the criteria in § 320.52. He therefore proposes to establish a bioequivalence requirement for all oral dosage immediate-release form drug products containing quinidine sulfate, quinidine gluconate, and polygalacturonate.

The proposed bioequivalence requirement would apply to all manufacturers of these drug products. Each manufacturer, except the manufacturer of the reference material or a manufacturer who has previously conducted in vivo bioavailability/bioequivalence studies fulfilling the requirements of this section, would be required to (1) conduct an in vitro dissolution test comparing its drug product to a specified reference material, and (2) conduct an in vivo bioavailability study comparing the same lot of its drug product to a specified reference material.

The Director advises that, whenever possible, the reference material is a drug product subject to an approved full new drug application (NDA) which contains in vivo data demonstrating the bioavailability of the drug product and in vitro dissolution data indicating that the drug product meets the proposed in vitro bioequivalence requirement. In exceptional cases, for example, where no approved full NDA holder has conducted an acceptable bioavailability study, other factors may be considered appropriate by the agency. The selection of a drug product as the reference material does not imply superiority in any way but is intended only to provide a common standard for the determination of bioequivalence. The reference material to be used in conducting the in vivo and in vitro tests of each drug product subject to this proposed section is named in the "Guidelines for In Vivo Bioavailability Studies for Quinidine Drug Products."

Under this proposed requirement, the test drug product and reference material would meet the in vitro portion of the bioequivalence requirement if each capsule/tablet has a dissolution of not less than 85 percent in 30 minutes. The test is to be conducted in 900 mL of 0.1*N* HCl using U.S.P. apparatus 1 with the basket rotating at 100 rpm. The number of dosage units to be tested is to be determined by reference to the official U.S.P. dissolution acceptance table.

This in vitro dissolution test is the same as that required for quinidine sulfate tablets and quinidine sulfate capsules in the official compendium. Currently, there are no monographs for quinidine gluconate and quinidine polygalacturonate tablets or capsules in the official compendium.

Samples of the reference material run in comparison to a test drug product are to be tested in the same manner as the test drug product. If the samples from one lot of the reference material do not meet the applicable dissolution specifications for the product, test additional lots of reference material, up to a total of three lots until a lot of reference material which meets the applicable dissolution specification is tested. If none of the three lots of reference material tested meets the applicable dissolution specification, notify the Director, Division of Biopharmaceutics, Bureau of Drugs, Food and Drug Administration before conducting any in vivo studies. Because of the manner of selecting the reference material, it is not expected that manufacturers would normally have to test more than one lot of the reference material.

The in vivo data for all drug products subject to these requirements must show that the test drug product meets the following conditions:

1. The test drug product and the reference material do not differ by more

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than 20 percent as determined by comparing the mean values for measured parameters, e.g., concentration of the active drug ingredient in the plasma, peak plasma levels (Cmax), area under the plasma concentration-time curves (AUC), rate of absorption (measured by time to obtain peak plasma levels (Tmax) or the absorption constant (Ka)).

2. In at least 75 percent of the subjects the test drug product is at least 75 percent as bioavailable as the reference material, using each subject as his or her own control, that is, administering both the reference material and the test drug product to each subject using a crossover procedure.

In addition, the analytical and statistical techniques used must be sensitive enough to detect differences in rate and extent of absorption that are not attributable to subject variability.

Methodology specifications are set forth both in the text of the proposed bioequivalence requirements that appear later in this document, and in guidelines on file in the office of the Hearing Clerk.

The Director also proposed that a manufacturer of a drug product selected by FDA as the reference material would be required to conduct an in vitro test on one batch of the reference material to demonstrate consistent dissolution performance. In addition, a manufacturer who has not conducted in vivo bioavailability/bioequivalence studies fulfilling the requirements of this section would be required to conduct an in vivo bioavailability study in humans comparing the reference material with an oral solution or oral suspension of an equivalent amount of quinidine contained in the reference material.

A manufacturer of a quinidine drug product subject to this proposed section who has previously conducted in vivo bioavailability/bioequivalence studies, for example, to meet requirements for approval of an ANDA for a drug product covered by a Drug Efficacy Study Implementation notice, may request FDA to evaluate these studies to determine whether they are adequate and conclusive to ensure the bioequivalence of the drug product in light of current scientific knowledge and methodology. If found acceptable, the manufacturer would be required to conduct an in vitro test on one batch of the product.

To correlate in vivo data with in vitro data, where in vivo testing is required, the Director proposes that the same batch of both the test drug product and the reference material that were used in the in vitro tests be used in the in vivo test, unless a manufacturer has conducted in vivo tests in humans to demonstrate bioavailability/bioequivalence before the effective date of these proposed requirements. If more than one batch of the reference material has to be used in the in vitro test because some batches of the reference material did not meet the applicable dissolution specifications, the batch which meets the applicable dissolution specifications must be used in the in vivo test.

General guidelines for in vivo testing are set forth in § 320.25 (21 CFR 320.25). Specific draft guidelines for in vivo testing and for in vitro dissolution testing of quinidine oral drug products are on file in the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and are available on request.

The proposed effective date of the final regulation is 30 days after its date of publication in the **Federal Register**. The Director proposes that the results of the required in vitro dissolution test be submitted to FDA on or before 60 days after the effective date of the final regulation and the results of the required in vivo test be submitted to FDA on or before 180 days after the effective date of the final regulation. The Director believes this will allow sufficient time for a manufacturer to conduct the required tests, evaluate the data, prepare the necessary reports, and submit them to FDA.

The Director advises, however, that for the manufacturer to meet an in vivo bioavailability requirement for some quinidine drug products, FDA may recommend that a manufacturer conduct a pilot study in certain instances, e.g., when an analytical assay method has not been used previously in an in vivo bioavailability/bioequivalence study, or where optimal sampling times have not been determined. The recommendation that a pilot study be conducted will be in the "Guidelines for In Vivo Bioavailability Studies." The Director may grant an extension of up to 180 days upon request from the manufacturer to allow sufficient time to conduct the pilot study and submit the data to FDA. FDA encourages the submission of protocols for conducting in vivo bioavailability studies. If a manufacturer submits a protocol for FDA to evaluate, the Director will grant an extension of time necessary for the initial review of the protocol.

The Director advises that any drug product subject to this proposal is regarded as a new drug as defined in section 201(p) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(p)), requiring either an approved full or abbreviated NDA as a condition to lawfully market the product. Marketing of such a drug product must be in accordance with the requirements of § 320.58 (21 CFR 320.58).

After the effective date of a final regulation establishing a bioequivalence requirement, each manufacturer would be required under § 320.56 (21 CFR 320.56) to conduct the in vitro dissolution test on a sample of each batch of the quinidine drug products to ensure batch-to-batch uniformity. The Director further proposes to require that the dissolution test be incorporated into a manufacturer's stability testing program. A batch of drug product whose dissolution falls below the specifications required by this regulation after entering the marketplace is subject to regulatory action.

References

Copies of all references cited below are on public display in the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen there from 9 a.m. to 4 p.m., Monday through Friday.

1. Skelly, J. P., et al., "Quinidine Bioavailability Monograph," with collaborator P. Coates.

2. Moe, G. K. and J. A. Abildskov, "Antiarrhythmic Drugs," *in* "The Pharmacological Basis of Therapeutics," 5th Ed., Edited by Goodman, L. S. and A. Gilman, The MacMillan Co., New York, pp. 686–694, 1975.

3. Ueda, C. T., B. J. Williamson, and B. S. Dzindzio, "Absolute Quinidine Bioavailability," *Clinical Pharmacology and Therapeutics*, 20:260–265, 1976.

4. Greenblatt, D. J., et al., "Pharmacokinetics of Quinidine in Humans after Intravenous, Intramuscular and Oral Administration," *Journal of Pharmacology and Experimental Therapeutics*, 202:365–378, 1977.

5. Mahon, W. A., M. Mayersohn, and T. Inaba, "Disposition Kinetics of Two Oral Forms of Quinidine," *Clinical Pharmacology and Therapeutics*, 19:566–575, 1976.

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7. Crouthamel, W. G., "Elimination of Quinidine in Congestive Heart Failure," *New England Journal of Medicine*, 290:1379–1380, 1974.

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10. Thomson, G. W., "Quinidine as a Cause of Sudden Death," *Circulation*, 14:757–765, 1956.

11. Wetherbee, D.C., D. Holzman and M. G. Brown, "Ventricular Tachycardia Following Quinidine," *American Heart Journal*, 43:89–96, 1952.

12. Shaftel, N. and A. Halpern, "The Clinical Study of Quinidine Polygalacturonate," *American Journal of Medical Science*, 236:184–202, 1958.

13. Thompson, E. J., R. Marwaha and G. Naik, "Comparative Clinical Evaluation of Two Salts of Quinidine Using 24-hour Holter Monitor Recordings," *Journal of Angiology*, 29:251–259, 1978.

14. Strum, J. D. et al., "Comparative Bioavailability of Four Commercial Quinidine Sulfate Tablets," *Journal of Pharmaceutical Sciences*, 66:539–542, 1977.

15. Riegelman, S., FDA Contract 223–74–3145, Quinidine Bioavailability Studies II and III.

16. Riegelman, S., FDA Contract 223–74–3145, Quinidine Bioavailability Studies IV.

17. Memorandum from Pelsor, F. R. to H. J. Malinowski, "Dissolution Profiles-200 mg Quinidine Sulfate Tablets and Capsules," November 19, 1979.

The agency has carefully considered the potential environmental impact of this proposal and has concluded that the action will not have a significant effect on the human environment and that an environmental impact statement therefore will not be prepared. The agency's finding of no significant impact and the evidence supporting this finding contained in an environmental assessment (pursuant to 21 CFR 25.31, proposed December 11, 1979, 44 FR 71742) may be seen in the office of the Hearing Clerk, Food and Drug Administration.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(p), 502, 505, 701(a), 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055 (21 U.S.C. 321(p), 352, 355, 371(a))) and under authority delegated to the Director of the Bureau of Drugs (21 CFR 5.79), it is proposed that Part 320 be amended in Subpart D by adding § 320.220 to read as follows:

320.220 Certain quinidine oral drug products.

(a) *Applicability.* The requirements of this section apply to all single active ingredient oral dosage form drug products containing the following quinidine products: quinidine sulfate, quinidine gluconate, and quinidine polygalacturonate.

(b) *In vitro test requirements*—(1) *General.* Each manufacturer of a drug product that is subject to this section, except for the manufacturer of the reference material who is subject to paragraph (b)(3) of this section and manufacturers of products previously tested in vivo which are subject to paragraph (b)(4) of this section, shall conduct an in vitro dissolution test by the dissolution procedure set forth in the official U.S.P., comparing samples from a lot of the drug product with samples from a lot of the reference material specified by the Food and Drug Administration. The number of dosage units of test drug product and reference material to be tested is determined by reference to the U.S.P. dissolution acceptance table. If the samples from the lot of the reference material do not meet the applicable dissolution specification for the product, test additional lots of reference material, up to a total of three lots, until a reference lot which meets the applicable dissolution specifications is tested. If none of the three lots of reference material tested meets the applicable dissolution specifications, notify the Director, Division of Biopharmaceutics, Bureau of Drugs, Food and Drug Administration, before any in vivo testing.

(2) *Specific requirements for test drug products.* (i) The test is to be conducted using 900 milliliters of 0.1*N* HCl, U.S.P. apparatus 1, and a basket speed of 100 revolutions per minute.

(ii) The test drug product and reference material meet the in vitro portion of the bioequivalence requirement if each has a dissolution of not less than 85 percent in 30 minutes.

(3) *Specific requirement for manufacturer of reference material.* Each manufacturer of a specified reference material shall conduct an in vitro dissolution test on one batch of the reference material using the U.S.P. dissolution procedure and the U.S.P. dissolution acceptance table in determining the number of samples to be tested. In addition, the requirements of paragraph (b)(2) of this section must be met.

(4) *Specific requirements for products previously tested in vivo to demonstrate bioavailability/bioequivalence.* If a manufacturer of a drug product subject to this section has previously conducted in vivo tests in humans to demonstrate bioavailability/bioequivalence of its drug product and the product has been found acceptable by the Food and Drug Administration under paragraph (d)(5) of this section, the manufacturer shall conduct an in vitro dissolution test on one batch of its drug product. The procedure, specifications to be met, and number of samples to be tested must meet the requirements of paragraph (b)(1) and (2) of this section.

(5) *Submission of test results.* Each manufacturer of a drug product subject to this section shall submit the results of the required in vitro dissolution test to the Food and Drug Administration on or before (60 days after the effective date of this section).

(c) *In vitro testing of each batch.* An in vitro dissolution test must be performed on each batch of drug product subject to this section. The test procedure, specifications to be met, and number of samples to be tested must meet the applicable requirements of paragraph (b)(1) and (2) of this section. It is not necessary, however, to compare samples of the reference material with the batch of drug product being tested.

(d) *In vivo portion of the bioequivalence requirement.* (1) Each manufacturer of a drug product subject to this section, except a manufacturer of the reference material who is subject to paragraph (d)(3) of this section and a manufacturer who has conducted in vivo bioavailability/bioequivalence studies in humans before the effective date of ths section which have been found acceptable under paragraph (d)(5) of this section, shall conduct an in vivo bioavailability study in humans comparing its drug product to the reference material.

(2) The test drug product meets the in vivo portion of the bioequivalence requirement in humans if the following conditions are met:

(i) The test drug product and the reference material do not differ by more than 20 percent as determined by comparing the mean values for measured parameters, for example, concentration of the active drug ingredient in the plasma, peak plasma levels (Cmax), rate of absorption (measured by time to obtain peak plasma level (Tmax), or the absorption constant (Ka)), and area under the plasma concentration-time curves (AUC).

(ii) In at least 75 percent of the subjects, the test drug product is at least 75 percent as bioavailable as the reference material using each subject as his or her own control, that is, administering both the reference material and the test drug product to each subject using a crossover procedure.

(iii) Analytical and statistical techniques used are sensitive enough to detect differences in rate and extent of absorption that are not attributable to subject variability.

(3) Each manufacturer of a drug product subject to this section that is selected by the Food and Drug Administration as the reference material for in vivo studies, who has not conducted in vivo bioavailability/bioequivalence studies fulfilling the requirements of this section before (insert the effective date of the final regulation) shall conduct an in vivo

bioavailability study in humans comparing its product (that is, the reference material) with an oral solution or oral suspension of an equivalent amount of the quinidine contained in the reference material.

(4) Each manufacturer of a drug product subject to this section shall submit the results of the required in vivo testing to the Food and Drug Administration on or before (180 days after the effective date of this section). The Food and Drug Administration may grant an extension of up to 180 days upon request if a manufacturer can document the need for an extension, for example, by submitting a protocol for review or demonstrating that pilot studies are required before starting the tests.

(5) Any manufacturer of a drug product subject to this section who has conducted one or more in vivo bioavailability/bioequivalence studies in humans before the effective date of this section may request an evaluation of these studies to determine whether the studies are adequate and conclusive to ensure the bioavailability/bioequivalence of the drug product in light of current scientific knowledge and methodology. Each request is required to contain the new drug application number, the established (generic) name of the product, the dosage form and strength of the drug product, and the date(s) of submission of the pertinent study information contained in the new drug application.

(6) Each manufacturer requesting this evaluation that holds an approved or pending full new drug application for the drug product shall submit the request for evaluation to the Division of Cardio-Renal Drug Products (HFD–110), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Each manufacturer requesting the evaluation that holds an approved or pending abbreviated new drug application for the drug product shall submit the request for evaluation to the Division of Generic Drug Monographs (HFD–530), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

(e) *Inclusion of bioequivalence data in full or abbreviated new drug application.* Each manufacturer of a drug product subject to this section and currently marketed under a full or abbreviated new drug application shall submit the required in vitro and in vivo data in the form of a supplement to the application. Each manufacturer of a drug product subject to this section that is not marketed on the effective date of the final regulation shall include the required in vitro and in vivo data in the original full or abbreviated new drug application submitted to the Food and Drug Administration.

(f) *Failure to meet bioequivalence requirement.* Any manufacturer unable to meet either the in vitro or in vivo specifications required by this section will be required to reformulate the drug product.

(g) *Reference material and guidelines for testing.*

(1) The reference material to use in the in vivo and in vitro tests is specified in the "Guidelines for In Vivo Bioavailability Studies for Quinidine Drug Products." The same batch of the test drug product and of the reference material used in the in vitro test are to be used in the in vivo test, unless a manufacturer conducted in vivo tests in humans to demonstrate bioavailability/bioequivalence before the effective date of this section. If more than one batch of the reference material has to be used in the in vitro test because some batches of the reference material do not meet the applicable dissolution specifications, the batch that meets the applicable dissolution specifications must be used in the in vivo test.

(2) Guidelines for the conduct of in vivo and in vitro tests or oral solid dosage form quinidine drug products are on file in the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and are available on request to that office.

(h) *Modifications.* Alternative methods or modifications to the bioequivalence requirement for in vitro or in vivo testing as set forth in this section may be used if evidence is submitted demonstrating that the modifications will ensure the bioequivalence of the drug to an extent equal to or greater than the methods set forth in this section. The data should be submitted to, and approved before use by, the Director, Division of Biopharmaceutics (HFD–520), Food and Drug Administration. Any approved modification will be incorporated into the appropriate guidelines for the drug.

Interested persons may, or or before December 30, 1980, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, as amended by Executive Order 12221, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: October 16, 1980.

Jerome A. Halperin,

Acting Director, Bureau of Drugs.

[FR Doc. 80–34028 Filed 10–30–80; 8:45 am]

BILLING CODE 4110–03–M

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21 CFR Part 1020

[Docket No. 76N–0308]

Diagnostic X-Ray Systems and Their Major Components; Amendments to Performance Standard

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) proposes to amend the performance standard for diagnostic x-ray systems and their major components by revising and adding requirements concerning computed tomography (CT) x-ray systems. CT systems are new medical diagnostic tools whose use in the United States has grown significantly in recent years. Because CT systems have many performance features that are unlike conventional x-ray systems, the present x-ray standard is not entirely appropriate for CT systems. The proposed amendments to the standard address the special characteristics of CT systems.

DATES: Comments by December 30, 1980; FDA proposed that the final rule based on these proposed amendments will become effective 1 year after the date of its publication in the Federal Register.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph Wang, Bureau of Radiological Health (HFX–460), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3426.

SUPPLEMENTARY INFORMATION: Under authority of the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (Pub. L. 90–602 (42 U.S.C 263b et seq.)), FDA administers an electronic product radiation control program to

protect the public health and safety. This authority provides for developing and administering radiation safety performance standards for electronic products. A radiation safety performance standard for diagnostic x-ray systems and their major components was published in the **Federal Register** of August 15, 1972 (37 FR 16461) and became effective on August 1, 1974. (The extension of effective date was published in the **Federal Register** of June 12, 1973 (38 FR 15444)). The agency has additional authority to provide for the safety and efficacy of diagnostic x-ray systems under the Medical Device Amendments of 1976 (Pub. L. 94–295), amending the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040 et seq. (21 U.S.C. 301 et seq.)).

Background

When the performance standard for diagnostic x-ray systems and their major components (§§ 1020.30, 1020.31, and 1020.32 (21 CFR 1020.30, 1020.31, and 1020.32)) was being developed, CT systems were only in the developmental stage and were not in routine clinical use in the United States. For this reason, no special provisions were made for CT systems in the diagnostic x-ray equipment standard. The agency has evaluated the standard as it relates to CT systems and concluded that, because of the special characteristics of CT systems, there are a number of areas in which the present diagnostic x-ray equipment standard is inadequate or inappropriate for proper control of these systems. Therefore, the agency believes that it is necessary to amend the standard to address the radiation safety problems unique to CT systems. A notice of intent on this subject was published in the **Federal Register** of September 30, 1976 (41 FR 43180). Two drafts of these amendments were completed and circulated to interested parties for review and comment prior to the publication of this proposal. The agncy discussed the drafts of the proposed rule with the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC). This committee, a statutory advisory committee to the Commissioner of Food and Drugs, must be consulted before the agency issues or amends any standard under the Radiation Control for Health and Safety Act of 1968. Also, to obtain additional comments from the clinical community, as recommended by TEPRSSC, agency staff conducted selected interviews of radiologists concerning the proposed amendments prior to the publication of this proposal.

FDA received a total of 37 comments on the first draft of these amendments (March 1978), of which 17 were from physicists, 16 from manufacturers, and 4 from radiologists. On the second draft (October 1978), a total of 18 comments were received, of which 10 were from manufacturers and 8 from physicists.

The rationale for the proposed amendments and a discussion of the agency response to comments on earlier drafts follow.

Amendments to § 1020.30

Because of the unique characteristics of CT systems, FDA proposes to add a new § 1020.33, *"Computed tomography equipment,"* to the diagnostic x-ray standard specifically for this type of equipment. Because references to this new section must be incorporated into the diagnostic x-ray standard, the first section of this proposal identifies those paragraphs of § 1020.30 that FDA proposes to amend so as to address CT systems.

Addition to the definitions. Current § 1020.30(b)(36) (21 CFR 1020.30(b)(36)) specifies certain conditions of operation as technique factors for all diagnostic x-ray equipment. For a CT system, these currently are the peak tube potential expressed in kilovolts (kV) and either the tube current in milliamperes (mA) and the exposure time in second(s) or the product of tube current and exposure time (mAs).

The use of exposure time as a technique factor for the description of x-ray equipment other than CT has several rationales. First, the relationship of x-ray exposure to the patient as a function of exposure time at given tube current and peak tube potential settings is generally understood by the user community. Second, there is a one-to-one relationship between the exposure time and the amount of time used to produce an image. Thus, the exposure time for a particular diagnostic procedure may be selected to diminish any blurring in the final image that could result from patient motion.

Some models of CT equipment do not have a one-to-one relationship between exposure time and the amount of time needed to complete a scan. The amount of time needed to complete a scan (scan time) can be longer than the exposure time for these types of systems. For many CT systems, scan time, rather than the exposure time, is normally selected by the operator. Because scan time is often the only selection possible and because it is sometimes difficult to determine the exposure time for these CT systems, scan time is a more appropriate technique factor when setting up these CT systems for a diagnostic study.

Thus, the agency proposes to modify the definition of technique factors in § 1020.30(b)(36) to address CT systems. For CT systems, including scan time as a technique factor allows the user to anticipate the probable extent of motion artifacts for selected values of scan time. However, it also provides a technique factor that does not scale directly with dose. Therefore, the agency also proposes to require that manufacturers provide the users with the relationship between scan time and the dose delivered by the system to a standard dosimetry phantom (see § 1020.33(c) (21 CFR 1020.33(c)) discussion later in this preamble).

To clarify computed tomography, scan, and scan time, definitions of these terms are proposed for addition to § 1020.30(b)(58), (59), and (60).

Information to be provided for users. Currently, § 1020.30(h)(3)(vi) (21 CFR 1020.30(h)(3)(vi)) prescribes that, for each x-ray control and associated high voltage generator, the manufacturer shall provide to the user a statement of the maximum deviation from the indication given by labeled control settings and/or meters during any exposure when the equipment is connected to an appropriate electrical supply. The intent is to provide the user with maximum deviation statements concerning technique factor control settings for radiographic as well as fluoroscopic equipment. However, this section needs to be more specific concerning what is required both for traditional and CT equipment. Thus, the agency proposes to amend § 1020.30(h)(3) to express more clearly the intent of this section of the regulation.

In conjunction with the above requirement, § 1020.30(h)(3)(vii) currently requires that the manufacturer of x-ray controls or generators provide a statement defining the measurement bases for any maximum deviation statement provided to the user. The intent of this provision is to allow the manufacturer appropriately to define any technique factor for this equipment. For example, the manufacturer may choose, on traditional equipment, to define the beginning and end points of exposure time with respect to a certain percentage of the voltage waveform. This requirement is not intended to be a means of describing test instrumentation. Therefore, the agency proposes to change the wording of § 1020.30(h)(3) to match more closely the original intent of this regulation and to extend this requirement to CT.

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Exclusion of CT equipment from the present requirements on aluminum equivalence of material between patient and image receptor—§ 1020.30(n). To limit patient exposure while maintaining diagnostic information, § 1020.30(n) (21 CFR 1020.30(n)) limits the attenuation of the beam by certain items between the patient and image receptor by placing upper limits on the aluminum equivalence of these items at prescribed conditions of operation. Currently, these conditions of operation are: a tube potential of 100 kilovolts peak (kVp), with a half-value layer of 2.7 millimeters (mm) of aluminum and the x-ray beam directed perpendicular to the material.

For CT equipment, materials positioned between the patient and the detectors can be divided into two groups: materials fixed with respect to the patient and materials moving with respect to the patient. Materials fixed with respect to the patient include traditional patient restraint and support materials and packing material unique to CT equipment. The packing material is placed around the patient to present the CT system with a nearly cylindrical object for imaging. Materials moving with respect to the patient include beam-shaping and beam-hardening filters used to reduce beam-hardening artifacts and the dynamic range required of the detectors.

It is difficult to transfer the current aluminum equivalency limits directly to CT equipment because the current requirements are based on one specific orientation of the x-ray source with respect to the patient restraint and support materials. For CT diagnostic procedures, the x-ray source does not remain at a specific orientation with respect to the patient. This means that the patient restraint and support materials will be between the x-ray source and the patient only during a portion of the scan.

Because there are no criteria for aluminum equivalence of CT patient restraint and support materials, limits on these materials cannot be specified at this time. Appropriate limits must be based upon specific knowledge of the relationship between CT patient restraint and support materials and the image quality and dose to the patient, knowledge that is not currently available. The same considerations apply to packing material unique to CT equipment and materials moving with respect to the patient. Until such time as appropriate criteria can be determined, the agency proposes to exclude all materials positioned between the patient and detectors used with CT systems from the requirements of § 1020.30(n).

Computed Tomography Equipment—§ 1020.33

Definitions. A new framework of definitions is proposed in § 1020.33(b) as a description of the CT process. Although terms such as "slice" and "slice plane" are currently in common usage, they do not lend themselves to precise definitions, nor do they form a completely adequate framework for constucting mandatory requirements. As an alternative, descriptions using the word "tomogram" in its usual medical sense (a representation of patient anatomy) are more appropriate for these requirements because there is no region of the volume imaged by current CT systems that is conveniently bounded by two planes so that it could properly be referred to as a "slice." Therefore, a conceptual difficulty exists in appropriately defining this term. The actual tissue volume that contributes to the final "tomogram" may be extremely irregular in shape, and the contributions of different portions of this volume may be weighted very differently (according to the sensitivity profile). Thus, the term "tomogram" is more suitable for describing the output of the CT system, and its use would circumvent the difficulties inherent in the use of the term "slice."

Information to be provided for users. Proposed § 1020.33(c) requires that manufacturers of CT systems provide information concerning the absorbed dose delivered by CT systems to a standard dosimetry phantom and the imaging performance corresponding to this dose within the normal range of system conditions of operation. This information would be provided and identified in a separate section of the user's instruction manual or instruction sheets.

CT systems have two characteristics that require users be provided dose information. First, the doses resulting from CT systems are difficult for users to measure; and second, the doses delivered may not scale in a direct manner with technique factors as they do in conventional radiography. This is because the spatial distributions of dose delivered by CT systems are geometrically much more complicated than those of conventional x-ray systems. Therefore, descriptions of these spatial distributions in conventional dose terminology are necessarily lengthly and cumbersome. In addition, the dose distributions can vary significantly depending upon system design and method of operation. To properly characterize the radiologic impact of a CT system, it is, therefore, necessary to provide to the user an adequate description of the dose distributions produced by a particular system and the manner in which they are affected by variations in the system conditions of operation.

If this information is to be useful or meaningful, dose information alone is not sufficient. Because the amount of information contained in the image is dependent upon the dose delivered to the patient, dose information must be accompanied by an indication of the imaging performance when the given dose is delivered. Selection of the system or mode of operation that delivers the lowest dose to the patient would be inappropriate if doing so resulted in images that might not furnish the necessary diagnostic information. Conversely, the mode of operation that results in maximum detail in the resulting image may be unacceptable from a radiation risk standpoint for some patients or procedures. The user must have the proper information to make such judgments.

Dose information. The agency proposes to require in proposed § 1020.33(c)(2) that information concerning the radiation dose resulting from CT systems be provided to purchasers and, upon request, to others. The dose information would be obtained from measurements of the dose delivered to standard dosimetry phantoms for each model of equipment operated under typical conditions selected by the manufacturer. A description of the typical conditions of operation under which the dose was determined shall also be provided along with the dose information. The standard phantoms will be specified in an agency publication, "Standard Computed Tomography Dosimetry Phantoms as Required by 21 CFR 1020.30(c)(2)" (Ref. 1), a draft of which is on file in the office of the Hearing Clerk, FDA. The agency invites comments on this draft publication concurrently with the comment period on this notice.

Most users of CT systems do not have a convenient method of determining or estimating the doses delivered by CT systems. Because of the wide range of doses delivered by CT systems and the direct relationship between dose delivered and the character or quality of the images produced, users of CT systems should give consideration to the dose delivered when selecting system operating parameters and techniques. The required dose information would provide the basic information necessary for such considerations. Although the required dose information is obtained using standard cylindrical dosimetry phantoms, it would be indicative of the doses resulting to patients under similar conditions.

Comments received by the agency on the previous drafts of these proposed amendments indicated a general agreement with the concept of requiring manufacturers to provide dose information. Some comments evidenced a concern that the amount and type of information required should not be too extensive for the needs of a typical user. In addition, comments have suggested that, to be most useful to clinical users of CT systems, the dose information should provide information on, or related to, the dose resulting from complete CT procedures or examinations rather than information on the doses from single scans. The agency, therefore, is modifying the information requirements proposed in earlier drafts of these proposed amendments. It proposes here that the value of the computed tomography dose index (CTDI) be provided by the manufacturer for specified locations in the standard phantoms.

This dose descriptor will permit the convenient estimation of the doses resulting from CT procedures consisting of a number of scans as a function of the distance between scans and the system conditions of operation. The dose descriptor used to describe the doses from CT systems, the CTDI, is defined in proposed § 1020.33(b)(1) as the integral of the dose along a line perpendicular to the tomographic plane (dose profile) divided by the nominal slice thickness. Thus, each point in the tomographic plane has associated with it a value of the CTDI.

The CTDI has been chosen as the dose descriptor for the CT systems because of three useful features. First, the CTDI at at point in the tomographic plane is related to the average dose at the same point of the multiple scan dose profile resulting from a series of scans each separated from the next by a constant distance. In particular, the CTDI is equal to the average dose when each scan in the series is separated by the nominal slice thickness provided the number of scans in the series is large enough so that the first and last scans of the series do not contribute any significant dose over the width of the center scan of the series. The average dose of the multiple scan dose profile is that value obtained by averaging the multiple scan dose profile over a length equal to the distance between consecutive scans with the length centered at the midpoint of the scan series. The CTDI permits the estimation of the dose from multiple scan procedures directly, without the need to generate such information from extensive manipulation of single scan dose profile data. Second, the average dose from multiple scans separated by distances other than the nominal slice thickness may be obtained simply by multiplication of the CTDI by the ratio of the nominal slice thickness to the distance between scans. Third, the CTDI incorporates both the width of the dose profile as well as the magnitude of the dose because it is defined as an integral over distance perpendicular to the tomographic plane.

Thus, the CTDI is a more useful description of the dose than simple statements of the dose at a given location, the maximum dose in a dose profile, or the maximum surface dose, because none of these descriptors provides information on the width or extent of the dose profile. The CTDI, when compared to the maximum dose in the dose profile at that point in the tomographic plane, can provide a measure of the matching in a direction perpendicular to the tomographic plane of the x-ray beam width to the width of the imaged volume as described by the nominal slice thickness. The closer the CTDI value is to the maximum dose in the dose profile, the more closely the x-ray beam width matches the imaged volume width.

To describe the variation in dose as a function of position in the tomographic plane, FDA proposes that the CTDI be provided for five locations in the tomographic plane (at the center and in each quadrant near the edge of the phantom). These locations and the dosimetry phantoms are described in detail in the referenced agency publication (Ref. 1). The dosimetry phantom would be oriented so that one of specified locations coincides with the maximum CTDI at one centimeter (cm) interior to the surface. To describe the variation in dose as a function of system conditions of operation, FDA proposes that CTDI at the center of the dosimetry phantom be provided as a function of system conditions of operation. In addition, the CTDI at 1 cm interior to the surface of the phantom would also be provided as a function of the peak tube potential for the location having the maximum CTDI 1 cm interior to the phantom. The proposed dose information will give users an indication of the magnitude of doses to be expected in patients under the same system operating conditions. These estimates would be appropriate for procedures consisting of about nine or more scans separated by constant interval between scans. From a survey of CT units in the United States, it has been determined that most CT procedures require at least nine or more scans (Ref. 2). The information to be provided will also permit estimation of the changes in dose as a function of changes in system conditions of operation or distance between scans.

The agency also proposes that dose profiles at the center location of the dosimetry phantom be provided along with the sensitivity profiles at the same location as a function of nominal slice thickness. A graphical comparison of the dose profile to the sensitivity profile will provide to the user a description of x-ray collimation efficiency perpendicular to the tomographic plane. Such information would permit selection of slice thicknesses which result in the most efficient use of radiation to perform a given diagnostic task. For example, if the curve of the sensitivity profile closely matches that of the dose profile, then the system only irradiates tissue being imaged. If the width of the dose profile exceeds the sensitivity profile by a significant amount, the contrary would be true. Users of CT systems should be aware of the effect of slice thickness selection on collimation efficiency and would receive such information under this proposal.

Imaging performance information. Proposed § 1020.33(c)(3) requires that the user information state the image noise, sensitivity profile, nominal slice thickness, and modulation transfer function (MTF) for the same CT conditions of operation and all other aspects of data collection as the dose information. The manufacturer would be free to choose the method of measurement for these parameters but would be required to describe fully the measurement techniques used for determining the specifications concerning the CT system to permit the agency or other interested party to verify the data. In addition, the manufacturer would be required to provide the CT user with maximum deviation statements concerning the given specifications.

The required parameters are objective measures of imaging performance. Image noise, the common indicator of precision of CT number estimation, would be defined independent of the CT number scale through the use of the contrast scale. The sensitivity profile gives the imaging capability of the CT system over the direction perpendicular to the tomographic plane, i.e., it indicates the system response to the axial position of a small high-contrast object. The nominal slice thickness,

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obtained from the sensitivity profile, is often used as the indexing distance between scans. The MTF is the system response in the spatial frequency domain.

Quality assurance. Because of the nature and complexity of CT equipment, there are many possible sources of image degradation that may not be immediately obvious on clinical images. These include such items as x-ray beam and detector misalignment and detector malfunction or deterioration. The detection of suboptimum performance can be performed by scanning appropriate quality assurance (QA) test phantoms as a periodic system performance check. Therefore, the agency proposes in § 1020.33(d) that the manufacturer provide with each CT system the necessary phantoms to perform quality assurance tests on the CT equipment.

Comments concerning the QA requirement for CT equipment indicated that additional requirements are needed to help the CT user verify that the image display as well as the CT system is functioning properly. The agency agrees and proposes to require that manufacturers supply representative images obtained with the QA phantom and provide a means for displaying these images on the image-viewing device as a reference for comparison. These representative images would be obtained under the same CT conditions of operation as those for the imaging information required by proposed § 1020.33(c)(3)(i). In addition, the CT system would have the capability to store these representative images in digital form and display them. This would allow the CT user to display these representative images for comparison to verify proper functioning of the CT system itself and the associated image display system. Because the mean CT number for water or other reference material can drift with time, the agency also proposes that the manufacturer be required to state this value and its acceptable limits of variation.

Information in advertisements. In early drafts of the "information to user" section, the agency proposed that only objective imaging parameters be required to be provided by manufacturers to the users. However, sample images and statements of subjective imaging parameters, such as low contrast detectability, are often used in CT advertising. The agency notes that certain images may appear to be much better than those produced under normal conditions of operation if the dose delivered to produce the image is increased from that of normal operation. Therefore, the agency proposes in § 1020.33(e) to require that detailed information accompany or be made available for any performance specifications, including representative images, which the manufacturer chooses to provide in advertisements. This detailed information would provide the method of measurement used by the manufacturer to obtain the specifications or images and would provide dose information under the same conditions of operation. This requirement would permit the manufacturer to provide any additional information concerning the imaging performance of the system which the manufacturer judges to be useful, but would ensure that such information is accurate in sufficient detail to be useful, and that it is accompanied by dose information to permit risk-benefit assessments to be made.

Control and indication of conditions of operation. Section 1020.31(a) (21 CFR 1020.31(a)) currently prescribes certain requirements associated with the control and indication of technique factors. The first requirement (§ 1020.31(a)(1)) pertains to the visual indication of technique factors prior to an exposure. For conventional x-ray systems, such indication is needed to confirm intended exposures to patients and image receptors prior to initiating an exposure. The same considerations apply to CT equipment. For these types of systems, however, there are more conditions of operation that have a significant impact on patient exposure and image quality than the technique factors as defined in § 1020.30(b)(36). For this reason, proposed § 1020.33(f)(1) requires that visual indication of the conditions of operation be provided prior to the initiation of a CT scan or a scan sequence. When applicable, scan time may be indicated by a chart which provides the value of scan time as a function of other conditions of operation, such as traverse speed, scan diameter, and scan arc.

Very early designs of conventional x-ray equipment depended on the operator actually terminating the exposure with a handswitch. However, with the advent of x-ray systems providing shorter exposure times, it became increasingly difficult for the operator to manually deliver the correct dose to the patient. To prevent overexposures due to poor operator performance, § 1020.31(a)(2) currently requires a timer on x-ray systems to terminate the exposure. Because control of a scan is provided through monitoring specific equipment functions, CT equipment does not use timing circuits in the traditional sense. This characteristic could lead to very large localized patient dose in the event of equipment failure. Thus, the agency proposes in § 1020.33(f)(2) that the CT x-ray control terminate a scan automatically in the event of equipment failure whenever the preset value of scan time would be exceeded by 10 percent.

Some CT procedures may involve 10 to 20 consecutive scans and total procedure times greater than 1 minute. This type of process can lead to operator inattentiveness. Thus, the agency proposes in § 1020.33(f)(3) that means be provided to require operator initiation of each individual scan of a series of consecutive scans. This provision is intended to assure that an operator is present during exposure so that an individual scan or series of scans can be terminated in the event of problems with the patient, the equipment, or the data.

An amendment to the present regulations is needed to address the possibility of dose to the patient resulting from (1) adjustment of x-ray tube current to or from operating levels, (2) a traverse of the x-ray beam across the patient without collecting transmission data for image production, and (3) collecting transmission data at a number of orientations of the x-ray source to select technique factors. The first two situations result in dose to the patient even though transmission data are not being used for image production or technique factor selection and give no benefit to the patient as a result of the exposure. FDA believes that the first two situations can be avoided with appropriate design and proposes to limit the dose to the patient to only those circumstances where transmission data are being used for technique factor selection or image production.

Comments on drafts of the proposal concerning the allowance of patient exposure for technique factor selection were mixed. However, the agency has concluded that allowance for patient exposure can be justified if this exposure results in the elimination of retakes due to improper technique factor selection by the operator. Comments the agency received indicated that this is the case for at least one CT system. In addition, allowance for technique factor selection would enable the CT users to use the computer to make the best selection of technique factors. Some comments that supported this requirement have suggested that an upper limit of 10 to 15 percent of the total patient dose be placed on patient exposure during technique factor selection. The agency agrees that this type of exposure needs to be minimized and the concept of an upper limit for technique factor selection needs to be given further consideration. Further comments concerning this concept are invited. Although there is no upper limit in the current proposal for technique factor selection, the agency will continue to monitor carefully the manufacturer's design of CT systems with regard to exposure during technique factor selection.

Section 1020.31(a) currently prescribes that the operator shall be able to terminate the x-ray exposure at any time during an exposure of greater than one-half second. There is a need for a similar abort mechanism on CT equipment. Therefore, the agency proposes in § 1020.33(f)(2)(iv) that means be provided to terminate any scan or series of scans, under CT x-ray systems control, of greater than one-half-second duration. Comments received by the agency indicate that, for CT equipment, the scan data would not be recoverable in the event of an abort. Therefore, the agency also proposes that termination of x-ray exposure would necessitate resetting the CT conditions of operation prior to the initiation of another scan.

Tomographic plane indication and alignment. FDA proposes in § 1020.33(g) that CT systems be equipped with a means to indicate the location on the patient where the tomogram will be obtained. An accurate and reliable means for patient positioning and alignment will prevent unnecessary patient exposure by reducing the number of scans which have to be made to image the anatomical structures of interest.

Proposed § 1020.33(g) specified that a means be provided to indicate the position of the tomogram and imposes a requirement on the accuracy of this indication without specifying the specific means to be used. Most current CT systems employ a light source to indicate on the surface of the patient the position of the section to be imaged.

Proposed § 1020.33(g) addresses both single and multiple tomogram systems and permits the means for alignment to be off-set from the actual position of the x-ray field. For example, the means for indicating the position of the tomogram could be located outside the gantry at a fixed distance from the actual tomographic plane. Following patient positioning using the device, the patient would be moved relative to the CT system prior to initiation of the scan and distance corresponding to the fixed distance between the reference plane and the indicated position.

Because of the small thickness of the section imaged in a CT scan (on the order of a cm or less), it is important that means for indicating the position of this volume be accurate if it is to be useful. FDA proposes a maximum deviation of 5 mm for the accuracy of the means for alignment. This accuracy provides a tolerance larger that those currently claimed by some manufacturers and should permit measurement by a relatively simple test procedure. Based upon the field surveys made to date by the agency, the tolerance of 5 mm appears to be both readily achievable and sufficiently accurate to permit correct patient positioning. The agency particularly invites comment on whether a more stringent requirement is warranted.

Beam-on and shutter status indicators. Section 1020.31(a) currently requires that the x-ray control visually indicate when the high-voltage circuit is energized. This enables the operator to know when x-rays are being produced. A similar requirement is needed for CT equipment. In addition, some CT x-ray systems provide a beam shutter used during calibration and warmup procedures. This type of equipment, in many cases, requires extensive warmup and calibration procedures prior to scanning patients. Thus, the potential for accidental radiation exposure in the gantry area exists absent the appropriate warning signals. For these reasons, the agency proposes in § 1020.33(h)(1) that the x-ray control and housing of the scanning mechanism provide visual indication of x-ray production and shutter status. Another comment had suggested that the requirement by revised by replacing visual with audible indicators. The agency's experience, however, has been that audible indicators are not appropriate for all procedures because the noise can be disturbing to some patients and perhaps interfere with the procedure.

As a result of comments on drafts of these amendments, proposed § 1020.30(h)(2) would set a limit of 100 milliroentgens in 1 hour at any point 5 centimeters outside the external surface of the housing of the scanning mechanism when the shutter is closed for those scanners employing a shutter to control the x-ray beam. Systems have been designed which allow high voltage to be applied to the x-ray tube continuously and which control the emission of x-ray with a shutter attached to the tube-housing assembly. For these systems, there is a possibility that operators or others will be in the vicinity of the housing of the scanning mechanism for extended periods while high voltage is applied to the tube. It is, therefore, important that the shutter and the tube housing assembly limit leakage radiation during periods between scans. Comments and data are invited on the adequacy of the proposed limit for the protection of people in the vicinity of these CT systems.

Scan increment accuracy. If the distance incremented between scans is not accurate, there can be an adverse effect on patient dose and diagnostic information. For example, an actual scan increment greater than the indicated value can result in gaps between tomograms, whereas an actual scan increment less than the indicated value can result in unneeded patient dose and diagnostic information. In addition, those systems using an offset alignment system for positioning the patient rely on accurate incrementation prior to a scan sequence. In response to comments, proposed § 1020.33(i) prescribes performance criteria on scan increment accuracy. The difference between the indicated scan increment and the actual distance traveled by the patient, on the patient support device, would not exceed 1 mm. A description of a compliance measurement method has been incorporated to clarify the meaning of this requirement. The 100-kilogram test object represents the mass of the male American adult between ages 18 to 74, at two standard deviations above the average, according to data taken by the National Center for Health Statistics.

CT number mean and standard deviation. Proposed § 1020.33(j) requires that the manufacturer provide capability to calculate the mean and standard deviation of CT numbers. The ability of the CT system to perform calculations of the mean and standard deviation of the CT numbers from a given area of the image will aid the user in quality assurance testing and may aid in the diagnosis of different pathologies.

Effective Date

FDA intends that these amendments become effective 1 year after date of publication of the final rule in the **Federal Register.**

References

1. Standard Computed Tomography Dosimetry Phantoms as required by 21 CFR 1020.33(c)(2), Food and Drug Administration, Bureau of Radiological Health, Draft, May 30, 1980.

2. Evens, R. G., R. G. Jost, "Economic Analysis of Body Computed Tomography Units Including Data on Utilization." *Radiology* 127:151–157, April 1978.

The agency has determined pursuant to 21 CFR 25.24 (proposed December 11,

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1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 as amended (42 U.S.C. 263f)) and under the Federal Food, Drug, and Cosmetic Act, as amended (secs. 201, 501, 502, and 701, 52 Stat. 1040–1042 as amended, 1049–1051 as amended, 1055–1056 as amended (21 U.S.C. 321, 351, 352, and 371)), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), FDA proposes to amend Part 1020 as follows:

1. In § 1020.30 the introductory text of paragraph (a), (a)(2), introductory text of (b), (b)(48), introductory text of (c), (d)(2), (d)(2)(vi), introductory text of (e), introductory text of (g), (h)(1), and (h)(1)(ii) the words "this section and §§ 1020.31 and 1020.32" are changed to read "this section and §§ 1020.31, 1020.32, and 1020.33"; in the introductory text of paragraph (d), (d)(1)(vii), and (d)(2)(viii) the words "by § 1020.31 or § 1020.32" are changed to read "by § 1020.31, § 1020.32, or § 1020.33";

2. Section 1020.30 is otherwise revised to read as follows:

§ 1020.30 Diagnostic x-ray systems and their major components.

* * * * *

(b) * * *

(36) "Technique factors" means the following conditions or operation:

* * * * *

(iii) For CT equipment rated for pulsed operation, peak tube potential in kV, scan time in seconds, and either tube current in mA, x-ray pulse width in seconds, and the number of x-ray pulses per scan, or the product of tube current, x-ray pulse width, and the number of x-ray pulses in mAs.

(iv) For CT equipment not rated for pulsed operation, peak tube potential in kV, and either tube current in mA and scan time in seconds, or the product of tube current and exposure time in mAs and the scan time when the scan time and exposure time are equivalent.

(v) For all other equipment, peak tube potential in kV, and either tube current in mA and exposure time in seconds, or the product of tube current and exposure time in mAs.

(58) "Computed tomography, (CT)" means the production of a tomogram by the acquisition and computer processing of X-ray transmission data.

(59) "Scan" means the simultaneous collection of one or more sets of X-ray transmission data necessary for the production of one or more tomograms.

(60) "Scan time" means the period of time between the beginning and end of X-ray transmission data accumulation for a single scan.

(61) "Tomogram" means the depiction of the X-ray attenuation properties of a section through a body.

* * * * *

(h) * * *

(3) * * *

(vi) A statement of the maximum deviation from the preindication given by labeled technique factor control settings or indicators during any radiographic or CT exposure where the equipment is connected to a power supply as described in accordance with this paragraph. In the case of fixed technique factors, the maximum deviation from the nominal fixed value of each factor shall be stated;

(vii) A statement of the maximum deviation from the continuous indication of x-ray tube potential and current during any fluoroscopic exposure when the equipment is connected to a power supply as described in accordance with this paragraph; and

(viii) A statement describing the measurement criteria for all technique factors used in paragraph (h)(3)(iii), (vi), and (vii) of this section, for example, the beginning and end points of exposure time measured with respect to a certain percentage of the voltage waveform.

* * * * *

(n) *Aluminum equivalent of material between potient and image receptor.* Except when used in a CT X-ray system, the aluminum equivalent of each of the items listed in Table II, which are used between the patient and image receptor, shall not exceed the indicated limits.

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3. New § 1020.33 is added to read as follows:

§ 1020.33 Computed tomography equipment.

(a) *Applicability.* The provisions of this section are applicable to CT X-ray systems or their components as specified in § 1020.30(a)(1) manufactured (1 year after date of publication of final rule in the **Federal Register**).

(b) *Definitions.* As used in this section, the following definitions apply:

(1) "Computed tomography dose index (CTDI)" means the integral of the dose profile along a line perpendicular to the tomographic plane divided by the nominal slice thickness. This is:

$$CTDI = \frac{1}{T}\int_{-7}^{7} D(z)\,dz \,/\, T$$

where:

z = Position along an axis perpendicular to the tomographic plane.
D(z) = Dose at position z.
T = Nominal slice thickness.

(2) "Contrast scale" means the change in linear attenuation coefficient per CT number relative to water; that is:

$$\text{Contrast scale} = \frac{\mu_x - \mu_w}{(CT)_x - (CT)_w}$$

where:

μ_w = Linear attenuation coefficient of water.
μ_x = Linear attenuation coefficient of reference material.
$(CT)_w$ = CT number of water.
$(CT)_x$ = CT number of reference material.

(3) "CT conditions of operation" means all selectable parameters governing the operation of a CT system including nominal slice thickness, filtration, and the technique factors as defined in § 1020.30(b)(36) of this chapter.

(4) "CT number" means the number used to represent the X-ray attenuation associated with each elemental area of the CT image.

(5) "Dose" means the absorbed dose as defined by the energy imparted by ionizing radiation to a region of matter divided by the mass of the matter in the region.

(6) "Dosimetry phantom" means the device prescribed in HHS Publication (number to be inserted in final rule) for use in measurement and specification of dose from CT systems.

(7) "Dose profile" means the dose as a function of position along a line perpendicular to the tomographic plane.

(8) "Modulation transfer function" means the modulus of the Fourier transform of the impulse response of the system.

(9) "Multiple tomogram system" means a computed tomography system which obtains X-ray transmission data during a single scan to produce more than one tomogram.

(10) "Noise" means the standard deviation of the fluctuations in CT number expressed as a percent of the attentuation coefficient of water. Its estimate (S_n) is calculated using the following expression:

$$S_n = \frac{100 \times CS \times s}{\mu_w}$$

where:

CS = Contrast scale.
μ_w = Linear attenuation coefficient of water.
s = Estimated standard deviation of the CT numbers of picture elements in a specified area of the CT image.

(11) "Nominal slice thickness" means the full-width at half-maximum of the sensitivity profile taken at the center of the cross-sectional volume over which X-ray transmission data are collected.

(12) "Picture element" means an elemental area of a tomogram.

(13) "Scan increment" means the amount of relative displacement of the patient with respect to the CT X-ray system measured along the direction of such displacement.

(14) "Scan sequence" means a preselected set of two or more scans performed consecutively under the same CT conditions of operation.

(15) "Sensitivity profile" means the relative response of the CT system as a function of position along a line perpendicular to the tomographic plane.

(18) "Single tomogram system" means a CT system which obtains X-ray transmission data during a scan to produce a single tomogram.

(17) "Tomographic plane" means that geometric plane which the manufacturer identifies as corresponding to the output tomogram.

(c) *Information to be provided for users.* Each manufacturer of a CT X-ray system shall provide the following technical and safety information, in addition to that required under § 1020.30(h) of this chapter, to purchasers and, upon request, to others at a cost not to exceed the cost of publication and distribution of such information. This information shall be identified and provided in a separate section of the user's instruction manual.

(1) *Conditions of operation.* A statement of the CT conditions of operation used to provide the information required by paragraphs (c)(2) and (3) of this section.

(2) *Dose information.* The following dose information obtained by using the dosimetry phantoms described in HHS Publication (number to be inserted in final rule). For any CT X-ray system designed to image both the head and body, separate dose information shall be provided for each application. All dose measurements shall be performed with the normal patient support and attenuation materials present.

(i) The CT dose index (CTDI) at the specified locations in the dosimetry phantoms. The CT conditions of operation shall correspond to typical values suggested by the manufacturer for CT of the head or body. The dosimetry phantoms shall be oriented such that one of the specified locations coincides with the maximum CTDI at 1 centimeter interior to the surface of the dosimetry phantom. This location shall be specified by the manufacturer with respect to the housing of the scanning mechanism or other readily identifiable feature(s) of the system in such a manner as to permit reproducible placement of the dosimetry phantom in this orientation.

(ii) The CT dose index (CTDI) in the center location of the dosimetry phantom for each selectable CT condition of operation that varies either the rate or duration of X-ray exposure. This CTDI shall be presented as a value that is normalized to the CTDI in the center location of the dosimetry phantom from paragraph (c)(2)(i) of this section, with the CTDI of paragraph (c)(2)(i) of this section, having a value of one. As each individual CT condition of operation is changed, all others shall be maintained at the typical values described in paragraph (c)(2)(i) of this section. These data shall encompass the range of each CT condition of operation stated as appropriate by the manufacturer for head and/or body CT. When more than three selections of a CT condition of operation are available, the information shall be provided at least for the minimum, maximum, and mid-range value for the CT condition of operation.

(iii) The CT dose index (CTDI) at the location coincident with the maximum CTDI at 1 centimeter interior to the surface of the dosimetry phantom for each selectable peak tube potential. The CTDI shall be presented as a value that is normalized to the maximum CTDI located at 1 centimeter interior to the surface of the dosimetry phantom from paragraph (c)(2)(i) of this section, with the CTDI of paragraph (c)(2)(i) of this section having a value of one. These data shall encompass the range of peak tube potential appropriate for head and/or body scanning. When more than three selections of peak tube potential are available, the information shall be provided, at least, for the minimum, maximum, and mid-range value of peak tube potential.

(iv) The dose profile in the center location of the dosimetry phantom for each selectable nominal slice thickness. When more than three selections of nominal slice thicknesses are available, the information shall be provided at least for the minimum, maximum, and mid-range value of nominal slice thickness. The dose profile shall be presented on the same graph and to the same scale as the corresponding sensitivity profile required by paragraph (c)(3)(iv) of this section.

(v) A statement of the maximum deviation from the values given in the information provided according to paragraph (c)(2)(i), (ii), (iii), and (iv) of this section.

(vi) Determination of compliance shall be based on the measurement protocols described in HHS Publication (number to be inserted in final rule).

(3) *Imaging performance information.* For any CT X-ray system designed to image both the head and body, separate imaging performance information for each application. All CT conditions of operation and all other aspects of data collection shall be identical to those specified for the dose information provided according to paragraph (c)(2)(i) of this section. The following imaging performance information shall be required:

(i) A statement of the noise.

(ii) A graphical presentation of the modulation transfer function for the same imaging processing and presentation mode as that used in the statement of the noise.

(iii) A statement of the nominal slice thickness(es).

(iv) A graphical presentation of the sensitivity profile, at the location corresponding to the center location of the dosimetry phantom, for each selectable nominal slice thickness, for which the dose profile is given according to paragraph (c)(2)(iv) of this section.

(v) A description of the phantom or device and test protocol or procedure used to determine the specification, and a statement of the maximum deviation from the specifications provided in accordance with paragraph (c)(3)(i), (ii), (iii), and (iv) of this section.

(d) *Quality assurance.* The manufacturer of any CT X-ray system shall provide the following with each system. All information required by this section shall be provided in a separate section of the users instructional manual.

(1) A phantom(s) capable of providing an indication of contrast scale, noise, and the resolution capability of the system for low and high contrast objects and measuring the mean CT number for water or a reference material.

(2) Instructions on the use of the phantom(s) including a schedule of testing appropriate for the system, allowable variations for the indicated parameters, and a method to store, as records, quality assurance data.

(3) Representative images obtained with the phantom(s) using the same processing mode and CT conditions of

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operation as in paragraph (c)(3) of this section for a properly functioning system of the same model. The representative images shall be of two forms as follows:

(i) Photographic copies of the images obtained from the image display device.

(ii) Images stored in digital form on a storage medium compatible with the CT system. The CT system shall be provided with the means to display these images on the image display device.

(e) *Information in advertisement.* Any claim or statement concerning performance specifications, including representative images, contained in any catalog, specification sheet, and any other descriptive or commercial brochure and literature, including videotape and film pertaining to CT X-ray systems, shall include the following information:

(1) The CT dose index (CTDI) in the center and the location coincident with the maximum CTDI at 1 centimeter interior to the surface of the dosimetry phantom. These data shall be given for the same CT conditions of operation under which the imaging performance specifications are claimed.

(2) A sufficiently detailed description of the CT conditions of operation and any phantom, device, or object imaged and the test protocol or procedure used to determine the imaging performance specifications to permit their verification.

(3) A statement of the uncertainties and sources of error associated with the determination of the imaging performance specification.

(4) Paragraphs (e)(2) and (e)(3) of this section may be satisfied by including in the catalog, specification sheet, and any other descriptive or commercial brochure and literature, including videotape and film pertaining to CT X-ray systems, a reference to a separate document which describes the manufacturer's performance specifications and test procedures. When this is so referenced, the manufacturer shall make copies of this document readily available to interested parties at cost not to exceed the cost of publication and distribution.

(f) *Control and indication of conditions of operation*—(1) *Visual indication.* The CT conditions of operation to be used during a scan or a scan sequence shall be indicated prior to initiation of a scan or a scan sequence. On equipment having all or some of these conditions of operation at fixed values, this requirement may be met by permanent markings. Indication of the CT conditions of operation shall be visible from any position from which scan initiation is possible.

(2) *Timers.* (i) Means shall be provided to terminate the x-ray exposure automatically by either deenergizing the x-ray source or shuttering the x-ray beam in the event of equipment failure affecting data collection. Such termination shall occur within an interval that limits the total scan time to no more than 110 percent of its present value through the use of either a backup timer or devices which monitor equipment function. A visible signal shall indicate when the x-ray exposure has been terminated through these means and manual resetting of the CT conditions of operation shall be required prior to the initiation of another scan.

(ii) Means shall be provided to require operator initiation of each individual scan of a series of consecutive scans.

(iii) Means shall be provided such that the exposure from the system does not exceed the radiation levels specified in § 1020.30(k) except when x-ray transmission data are being collected for use in image production or technique factor selection.

(iv) The operator shall be able to terminate the x-ray exposure at any time during a scan, or series of scans under x-ray system control, of greater than one-half second duration. Termination of the x-ray exposure shall necessitate resetting of the CT conditions of operation prior to the initiation of another scan.

(g) *Tomographic plane indication and alignment.* (1) For any single tomogram system, means shall be provided to permit visual determination of the tomographic plane or a reference plane offset from the tomographic plane.

(2) For any multiple tomogram system, means shall be provided to permit visual determination of the location of a reference plane. The relationship of the reference plane to the planes of the tomograms shall be provided to the user in addition to other information provided according to § 1020.30(h). This reference plane can be offset from the location of the tomographic planes.

(3) The total error in the indicated location of the tomographic plane or reference plane shall not exceed 5 millimeters.

(4) For any offset alignment system, the manufacturer shall provide specific instructions with respect to the use of this system for patient positioning, in addition to other information provided according to § 1020.30(h) of this chapter.

(5) If a light localizer is used to satisfy the requirements of paragraphs (g)(1) and (2) of this section, the localizer shall provide illumination levels sufficient to permit visual determination of the location of the tomographic plane or reference plane under ambient light conditions of up to 500 lux.

(h) *Beam-on and shutter status indicators.* (1) The x-ray control and housing of the scanning mechanism shall provide visual indication whenever x-rays are produced and, if applicable, whether the shutter is open or closed. If the x-ray production period is less than one-half second, the indication of x-ray production shall be actuated for one-half second. Indicators at the housing of the scanning mechanism shall be discernible from any point where insertion of any part of the human body into the primary beam is possible.

(2) The radiation emitted from the tube housing assembly shall not exceed 100 milliroentgens (2.58×10^{-5} coulomb/kilogram) in 1 hour at any point 5 centimeters outside the external surface of the housing of the scanning mechanism when the shutter is closed. Compliance shall be determined by measurements averaged over an area of 100 square centimeters with no linear dimensions greater than 20 centimeters.

(i) *Scan increment accuracy.* The deviation of indicated scan increment from actual scan increment shall not exceed ± 1 millimeter. Compliance shall be measured as follows: The determination of the deviation of indicated versus actual scan increment shall be based on measurements taken with, at most, a 100-kilogram mass on the patient support device. The patient support device shall be incremented from a typical starting position to the maximum incrementation distance or 30 centimeters, whichever is less, and then returned to the starting position. Measurement of actual versus indicated scan increment may be taken anywhere along this travel.

(j) *CT number mean and standard deviation.* (1) A method shall be provided to calculate the mean and standard deviation of CT numbers for an array of picture elements about any location in the image. The number of elements in this array shall be under user control.

(2) The manufacturer shall provide specific instructions concerning the use of the method provided for calculation of CT number mean and standard deviation in addition to other information provided according to § 1020.30(h) of this chapter.

Interested persons may, on or before December 30, 1980, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: October 16, 1980.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 80–33946 Filed 10–30–80; 8:45 am]
BILLING CODE 4110–03–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Ch. XXVI

Proposed Agenda of Priority Regulations Under the Multiemployer Pension Plan Amendments Act of 1980

AGENCY: Pension Benefit Guaranty Corporation

ACTION: Proposed agenda of regulations.

SUMMARY: This document sets forth a list of those regulations that the Pension Benefit Guaranty Corporation proposes to develop initially in order to implement the Multiemployer Pension Plan Amendments Act of 1980. The PBGC is publishing this list in order to obtain the views of the public with respect to which regulations are most urgently needed under the new multiemployer plan insurance program. The UBGC will use the public's comments in establishing its regulatory agenda under the new Multiemployer Law, and this will be included in PBGC's next semiannual agenda of regulations, to be published on December 19, 1980.

DATES: Comments should be received by November 28, 1980.

ADDRESS: Comments should be addressed to the Assistant Executive Director for Policy and Planning, Suite 7100, 2020 K Street, N.W., Washington, D.C. 20006. Written comments will be available for public inspection at the PBGC Public Affairs office, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Terrence M. Deneen, Office of the Executive Director, Policy and Planning, Suite 7100, 2020 K Street, N.W., Washington, D.C. 20006; 202–254–4895.

SUPPLEMENTARY INFORMATION: The Multiemployer Pension Plan Amendments Act of 1980, Pub. L. No. 96–364 (the "Multiemployer Act"), became law on September 26, 1980. Under it, a new insurance program for multiemployer pension plans is created. The Multiemployer Act is lengthy and complex and will require a large number of regulations to implement it fully. The Act either directs or authorizes PBGC to promulgate over 60 different regulations. Obviously, such a large number of regulations cannot be developed simultaneously.

Accordingly, PBGC has begun a review of the multiemployer Act to determine what regulations are most critically needed in order to enable both covered plans and PBGC to function under the new law. The list set forth below represents PBGC's preliminary judgment as to those regulations which should be developed first. In creating this list, PBGC has given consideration to the statutory provisions that require it to promulgate regulations, to the need for providing guidance to plan administrators, sponsors and participants, and to its limited staff resources.

PBGC invites the public to comment on this list and to suggest changes in it; reasons for suggested changes should be provided. After reviewing the public comments, the PBGC will develop a list of the priority regulations to be developed under the Multiemployer Act. That list will be reflected in the PBGC's next semiannual agenda of regulations under development, to be published on December 19, 1980. Because of the publication date for the agenda, it is important that comments on this proposal be received by November 28, 1980.

All citations below are to sections of the Employee Retirement Income Security Act ("ERISA") as amended by the Multiemployer Act.

1. Rules Governing the Arbitration of Disputes Concerning Employer Liability

Description. Section 4221 provides that any dispute between an employer and the sponsor of a multiemployer plan regarding the determination of the employer's withdrawal liability to the plan shall be resolved through arbitration. Section 4221(a)(2) provides that an arbitration proceeding under this section shall be conducted in accordance with fair and equitable procedures prescribed by the PBGC.

Need. This regulation is needed to provide the rules of procedure under which an arbitration proceeding will be conducted.

2. Adoption of Alternative Rules For Allocating Unfunded Vested Benefits

Description. Section 4211 of ERISA provides a presumptive rule, and three alternative rules, that a mutiemployer plan may use to allocate unfunded vested benefits to an employer that withdraws from the plan after April 28, 1980. In addition, section 4211(c)(5)(A) provides that multiemployer plans may develop and adopt by amendment, other methods for allocating unfunded vested benefits to a withdrawn employer. An amendment adopting an allocation method not described in section 4211 is subject to PBGC approval based on a determination that use of the alternative method would not significantly increase the risk of financial loss to plan participants, beneficiaries, or the PBGC. Any such amendment adopted after January 31, 1981 may not be applied to an employer that withdrew before the date the amendment is adopted without the employer's consent.

Need. The use of the allocation methods described in section 4211 may be administratively cumbersome or inequitable for many multiemployer plans. This regulation is needed so that plan sponsors will know what procedures they must follow in adopting alternative allocation methods and in submitting those methods to the PBGC for approval.

3. Rules Prescribing Adjustments in the Allocation of Unfunded Vested Benefits

Description. The rules for allocating unfunded vested benefits set forth in 4211 of ERISA utilize several fractions, the denominators of which are the total amounts contributed under a plan by all employers. Section 4211(c)(5)(D) authorizes PBGC to promulgate rules to "permit adjustments in any denominator * * * where such adjustment would be appropriate to ease administrative burdens of plan sponsors in calculating such denominators".

Need. The use of the denominator prescribed in the statute would be administratively cumbersome and costly for some plans. Accordingly, this regulation is needed to enable those plans to allocate unfunded vested benefits without incurring excessive administrative costs.

4. Rules Governing the Allocation of Unfunded Vested Benefits Following a Termination by Mass Withdrawal

Description. Section 4219(c)(1)(D)(ii) provides that if a multiemployer plan

terminates through the withdrawal of all employers, the total unfunded benefits of the plan shall be fully allocated among the withdrawn employers. This section also requires a redetermination of the liability of employers who withdrew from the plan pursuant to an agreement or arrangement among employers. The allocation, or reallocation, of the plan's unfunded benefits must be done in a manner that is not inconsistent with rules prescribed by the PBGC.

Need. This regulation is needed to provide guidance with respect to how this allocation, or reallocation, must be done.

5. Rules for the Adjustment of Employer Liability for Withdrawals after April 28, 1980

Description. Section 4217(a) of ERISA provides a special rule which prevents certain events which occurred before April 29, 1980, from triggering withdrawals and from increasing the liability for a partial withdrawal after that date. Under this section, for the purpose of determining withdrawal liability for a complete or a partial withdrawal after April 28, 1980, and for the purpose of determining whether a partial withdrawal has occured after that date, the amount of contributions and the number of contribution base units of the affected employer which are properly allocable to (1) work performed under a collective bargaining agreement for which there was a cessation of contributions before April 29, 1980, or (2) work performed at a facility for which there was a cessation of contributions before April 29, 1980, are not to be taken into account. Section 4217(b) authorizes the PBGC to prescribe regulations setting forth the method by which the withdrawal liability of other employers in a plan is to be adjusted where an employer receives the relief provided by this rule. This adjustment is necessary to ensure that substantially all liabilities are allocated to contributing employers.

Need. This regulation is needed to provide for the correct allocation of plan liabilities among employers, and to protect plans and PBGC from risk of financial loss which might occur in those cases where certain employers obtain relief from the special rule.

6. Interest on Withdrawal Liability Payments

Description. Section 4219(c)(6) provides that plans shall charge interest on delinquent withdrawal liability payments and on a defaulted employer's total outstanding withdrawal liability. The interest rate charged under this section is based, in accordance with PBGC regulations, on prevailing market rates for comparable obligations.

Need. This regulation is needed so that employers and plan sponsors will be able to determine the interest charges on withdrawal liability payments.

7. Rules Governing Benefit Reductions in Plans that Terminate by Mass Withdrawal of Employers

8. Rules for Valuing Assets and Liabilities in Plans that Terminate by Mass Withdrawal of Employers

9. Rules Governing the Powers and Duties of Sponsors of Plans that Terminate by Mass Withdrawal

Description. Section 4281 of ERISA contains numerous rules relating to the administration and payment of benefits under plans that have terminated by mass withdrawal. If a plan terminates through mass withdrawal, Section 4281(b)(1) provides that the value of plan assets, together with the value of nonforfeitable benefits under the plan, must be determined in writing in accordance with PBGC regulations. This valuation must be performed for the plan year within which the termination occurred, and every year thereafter.

Section 4281(c) requires the sponsor of a terminated plan to reduce plan benefits to the extent necessary to ensure that plan assets are sufficient, as determined and certified in accordance with PBGC regulations, to discharge when due the plan's obligations with respect to nonforfeitable benefits.

In addition, section 4281(d)(3) provides that the sponsor of an insolvent terminated plan shall have the powers and duties of the plan sponsor of an insolvent plan that is in reorganization. However, the PBGC is directed to prescribe rules governing the sponsor's exercise of those powers. Under certain circumstances, the sponsor of an insolvent terminated plan is required to suspend payment of any benefits that are in excess of those guaranteed under Section 4022A of ERISA. The PBGC is directed to prescribe rules that ensure that plan participants and beneficiaries receive adequate notice of benefit suspensions.

Need. These regulations are needed to provide guidance and direction concerning the administration and payment of benefits under plans that have terminated by mass withdrawal.

10. Rules Governing the Valuation of Outstanding Claims for Withdrawal Liability

Description. When a plan terminates through mass withdrawal, the plan sponsor must value any outstanding claims against employers for withdrawal liability in order to compute the value of plan assets. Under Section 4001(a)(12) of ERISA, the outstanding claims are to be valued in accordance with regulations prescribed by the PBGC.

Need. This regulation is needed so that the plan sponsor of a plan that terminates through mass withdrawal is able to satisfy his or her statutory obligation to value plan assets.

11. Rules Varying the Standards Governing the Sale of Assets

Description. Section 4204 of ERISA provides that an employer will not have partial or complete withdrawal liability solely because covered operations of the employer are transferred to another employer in connection with a sale of the employer's assets, if certain specified conditions are satisfied. This provision applies to any sale occurring after April 28, 1980. Some of the enumerated conditions are: 1) the purchaser provides a bond to the plan, and 2) the contract of sale provides that if the purchaser partially or completely withdraws from the plan during the five plan years following the sale, the seller is secondarily liable for any withdrawal liability. PBGC is authorized to vary these conditions by regulation, "if the variance would more effectively or equitably carry out the purposes of (Title IV)".

Need. This regulation is needed because there are individual transactions or classes of transactions that might be unnecessarily frustrated by a strict application of the statutory rules without variance.

12. Rules for Determining a Year of Service

Description. Section 4022A of ERISA provides for the guarantee of certain nonforfeitable benefits under insolvent multiemployer plans. The value of guaranteed benefits is needed for several purposes under the Multiemployer Act. The amount of the guarantee is derived from a formula based on years of credited service and on an accural rate. In addition, the accrual rate for base benefits is computed by dividing a participant's base benefit by the number of full and fractional years credited to the participant under the plan.

Need. This regulation is needed for plan sponsors to be able to determine the value of guaranteed benefits under their plans.

13. Rules Governing the Election of Plan Status

Description. The Multiemployer Act changed the statutory definition of "Multiemployer plan" in section 3(37) of ERISA and section 414(f) of the Internal Revenue Code of 1954. Because of this change, some plans that were not multiemployer plans under the prior law are multiemployer plans under the Multiemployer Act. Section 4303 of ERISA provides that plan sponsors of certain plans that are affected by this change in the statutory definition may elect within one year after enactment of the Multiemployer Act, pursuant to rules established by the PBGC, to retain their status as non-multiemployer plans.

Need. This regulation is needed to permit sponsors of certain plans to elect, within the time limits imposed by the Act, to have their plans remain non-multiemployer plans.

14. PBGC Actuariol Assumptions For Computing Unfunded Vested Benefits

Description. Section 4213(a) provides that the PBGC may prescribe by regulation actuarial assumptions which plan actuaries may use in their determination of a multiemployer plan's unfunded vested benefits. The value of unfunded benefits is used, in turn, to compute an employer's withdrawal liability.

Need. The regulation is needed to provide standards that may be used for the computation of withdrawal liability.

15. Rules Governing the Notice of Insolvency

Description. Section 4245(e) requires the plan sponsor, when he or she determines that the plan may become insolvent, to give notice of that fact to the PBGC. In addition, the plan sponsor must inform employees and affected employee organizations of the possible insolvency. Section 4245(e)(4) requires that the notice be given in accordance with regulations prescribed by the PBGC.

Need. This regulation is needed so that plan sponsors can comply with this statutory obligation. In addition, this notice is important to PBGC for program and financial planning.

16. Rules Governing the Notice of a Merger or Transfer of Assets Between Multiemployer Plan

Description. Section 4231(b)(1) requires the plan sponsor of a multiemployer plan to notify PBGC, in accordance with regulations prescribed by PBGC, of a merger or transfer of assets or liabilities to another multiemployer plan at least 120 days before the effective date of the merger or transfer.

Need. This regulation is needed so that plan sponsors can comply with this statutory obligation.

17. Rules Defining "Seagoing Industry"

Description. Section 4402(g) (4) of ERISA provides a different effective date for the withdrawal liability provisions of the Multiemployer Act applicable to plans in the West coast "seagoing industry", as defined by the PBGC by regulation.

Need. This regulation is needed to estblish the applicability of the withdrawal liability provisions to West coast maritime plans.

18. Rules Defining "Trucking Industry"

Description. Section 4203(d) of ERISA provides a special withdrawal liability rule applicable to plans maintained by employers primarily engaged in the long and short haul trucking industry, the household goods moving industry or the public warehouse industry. The existence of withdrawal liability under this rule depends, in part, on PBGC's making a determination that the plan has suffered substantial damage to its contribution base as a result of the withdrawals.

Need. Because the statute does not define the terms "trucking industry", "household goods moving industry" and "public warehousing industry", a regulation is needed to describe the scope of this special rule.

19. Rules Defining "Building and Construction Industry"

Description. Section 4203(a) of ERISA defines the circumstances under which an employer withdraws from a multiemployer plan. Section 4203(b) includes a special definition of withdrawal for the building and construction industry. Under the special rule, a withdrawal is considered to take place only if an employer ceases to have an obligation to contribute under the plan, and either (1) continues to perform work of the same type for which contributions were previously required in the jurisdiction of the collective bargaining agreement or (2) resumes work in the jurisdiction within five years.

Need. Because the statute does not define the term "building and construction industry", a regulation is needed to define the scope of this special rule.

Issued in Washington, D.C., this 29th day of October, 1980.

Robert E. Nagle,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 80-34094 Filed 10-30-80; 8:45 am]

BILLING CODE 7708-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[AD-FRL 1647-6; Docket No. OAQPS 79-7]

Proposed Revision of the National Ambient Air Quality Standards for Carbon Monoxide; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: On August 18, 1980, the Environmental Protection Agency proposed in the **Federal Register** (45 FR 55066) revisions to the national ambient air quality standard for carbon monoxide. Public hearings have been held on this proposed standard revision in Washington, DC (October 2, 1980) and in Denver, CO (October 10, 1980). In order to provide an opportunity for full and complete public review of the proposed standard, the comment period is being extended to November 24, 1980.

DATES: Comments are due on or before November 24, 1980.

ADDRESS: Submit comments (duplicate copies are preferred) to: Central Docket Section (A-130), Environmental Protection Agency, Attn: Docket No. OAQPS 79-7, 401 M Street, SW., Washington, D.C. 20460.

Docket No. OAQPS 79-7, containing material relevant to this proposed rulemaking, is located in the Central Docket Section of the U.S. Environmental Protection Agency, West Tower Lobby Gallery I, 401 M Street, SW., Washington, D.C. The docket may be inspected between 8 A.M. and 4 P.M. on weekdays, and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Michael H. Jones (MD-12), Strategies and Air Standards Division, Research Triangle Park, N.C. 27711, telephone 919-541-5231.

Dated: October 24, 1980.

David G. Hawkins,

Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 80-33929 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-26-M

40 CFR Part 52

[A-5-FRL 1647-5]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

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SUMMARY: The United States Environmental Protection Agency (USEPA) announced in today's **Federal Register** final rulemaking on revisions to the carbon monoxide and ozone portions of the Ohio State Implementation Plan (SIP). Ohio submitted these revisions to satisfy the requirements of Part D of the Clean Air Act, as amended in 1977. In the final rulemaking, USEPA conditionally approved certain revisions to the Ohio SIP. A discussion of conditional approval and its practical effect appears in the July 2, 1979 **Federal Register** (44 FR 38583) and the November 23, 1978 **Federal Register** (44 FR 6718). A conditional approval requires the State to remedy identified deficiencies by specified deadlines. This notice solicits public comment on the deadlines by which the State of Ohio has committed itself to remedy conditionally approved portions of its SIP. Although public comment is solicited on the deadlines, the State remains bound by its commitments unless the schedules are disapproved by USEPA in its Final Rulemaking action. A conditional approval means that the restriction on new source construction in designated nonattainment areas will not apply unless the State fails to submit the corrections by the specified date, or unless the corrections are ultimately determined to be inadequate.

DATES: Comments must be received on or before December 1, 1980.

ADDRESSES: Comments should be sent to the following address: Mr. Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

Copies of the materials submitted by the State and by the public during the comment period announced in this notice of proposed rulemaking are available for review during normal business hours at the following addresses:

USEPA Region V, Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

USEPA, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clarizio, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. (312) 866–6035.

SUPPLEMENTARY INFORMATION: In final rulemaking action published in today's **Federal Register**, USEPA identified the actions taken by the State of Ohio to remedy deficiencies in the carbon monoxide and ozone portions of the Ohio SIP submittal. These deficiencies were noted in USEPA's March 10, 1980 Notice of Proposed Rulemaking (45 FR 15192). In today's final rulemaking USEPA also identified the conditions which must be satisfied by the State of Ohio to correct the specified deficiencies in the revisions to the Ohio SIP. The State of Ohio has provided assurances that it will satisfy these conditions on specific schedules.

USEPA proposes to approve the following schedules for the State of Ohio's correction of deficiencies in the carbon monoxide and ozone portions of the Ohio SIP.

Schedules

I. Carbon Monoxide RFP Demonstration

A. For the Dayton area the State has committed to submitting an acceptable RFP demonstration by: November 1, 1980.

B. As part of the revised carbon monoxide attainment demonstration for the Steubenville area the State will submit an RFP demonstration by: August 15, 1981.

II. Carbon Monoxide Attainment Demonstration

A. The State has committed to submit for the Dayton area a schedule for the study, evaluation and implementation of control measures at the identified hotspot and if necessary evidence of priority funding for the carbon monoxide "hot spot" evaluation and implementation. The State has committed to submit the material by: November 1, 1980.

B. The State has committed to submit the following materials for the Steubenville area:

(1) A revised attainment demonstration by: August 15, 1981.

(2) Regulations requiring RACT level of control in the Steubenville area for carbon monoxide sources that are contributing to the violation and/or other appropriate control strategies. The State submitted the following schedule for the development of the RACT regulations:

(a) complete carbon monoxide study by: November 1, 1980.

(b) RACT regulations would be effective by: August 1, 1981.

III. Ozone Attainment Demonstration

A. For the Canton, Cleveland and Columbus areas the State has committed to submit either technical support for the 100% VOC emission reduction estimate from the cutback asphalt category; or a re-evaluation of the baseline emissions to account for the possible VOC emissions resulting from this category. The State has agreed to submit this information by: August 1, 1981.

B. For the Cleveland area the State has agreed to submit the following:

(1) Additional TSM strategies to be implemented which in conjunction with the additional point source regulations will demonstrate attainment of the ozone NAAQS; and

(2) A schedule which delineates the dates on which the additional point source controls will be developed and implemented. These two items will be submitted by: November 1, 1980.

IV. Ozone RFP Demonstration

A. For the Canton urban area the State will submit a revised RFP line by: August 1, 1981.

V. Chapter 3745–21 of the Ohio Administrative Code

A. The State has agreed to:

(1) promulgate and submit to USEPA regulations which meet the RACT requirements for waste water separators. If these regulations contain exemptions which are not supported by the CTGs then the State must demonstrate that the resultant emissions differ from the CTG allowable emissions by no more than five percent. These regulations, and any necessary support are to be submitted by: February 15, 1981.

(2) study the emissions resulting from the proposed regulation 09(R) and to submit the results to USEPA by: October 1, 1980.

If it should be necessary to revise the rule the State has committed to submitting the State adopted revised rule by: February 15, 1981.

Under Executive Order 12044, USEPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. USEPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This notice of proposed rulemaking is issued under authority of Section 110 of the Clean Air Act, as amended.

Dated: September 18, 1980.

John McGuire,

Regional Administrator.

[FR Doc. 80-33877 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 52

(A-5-FRC 1647-4)

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: The United States Environmental Protection Agency (USEPA) announces in today's **Federal Register** final rulemaking on revisions to the carbon monoxide and ozone portions of the Ohio State Implementation Plan (SIP) for the Youngstown urban area. Ohio submitted these revisions to satisfy the requirements of Part D of the Clean Air Act, as amended in 1977. In the final rulemaking, USEPA conditionally approved certain revisions to the Ohio SIP. A discussion of conditional approval and its practical effect appears in the July 2, 1979, **Federal Register** (44 FR 38583) and the November 23, 1979 **Federal Register** (44 FR 6718). A conditional approval requires the State to remedy identified deficiencies by specified deadlines, This notice solicits public comment on the deadlines by which the State of Ohio has committed itself to remedy the conditionally approved portions of its SIP. Prior to final rulemaking on the deadlines, the State is bound by its commitments to meet the proposed deadlines. A conditional approval means that the restriction on new source construction in designated nonattainment areas will not apply unless the State fails to submit the corrections by the specified date, or unless the corrections are ultimately determined to be inadequate.

DATES: Comments must be received on or before December 1, 1980.

ADDRESSES: Comments should be sent to the following addresses: Mr. Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

Copies of the materials submitted by the State are available for review during normal business hours at the following addresses:

USEPA Region V, Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

USEPA, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clarizio, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. (312) 886–6035.

SUPPLEMENTARY INFORMATION: In final rulemaking action published in today's **Federal Register**, USEPA identified the actions taken by the State of Ohio to remedy deficiencies in the carbon monoxide and ozone portions of the Ohio SIP for the Youngstown urban area. These deficiencies were noted in USEPA's May 16, 1980 Notice of Proposed Rulemaking (45 FR 32333).

USEPA proposes to approve the following schedules for the State of Ohio's correction of deficiencies in the Youngstown urban area plan.

I. Ozone Attainment and Reasonable Further Progress (RFP) Demonstration

A. For the Youngstown area the State has committed itself to submit technical support for the 100% VOC emission reduction estimate from the cutback asphalt category or (2) to re-evaluate the baseline emissions to account for the posible VOC emissions resulting from this category. The State has also agreed to submit a revised ozone RFP demonstration. The State has agreed to submit this information by August 1, 1981.

II. Transportation Control Plan

A. The State has agreed to submit by November 3, 1980 the Regional Policy Board's commitment to meet specific annual emission reduction goals. The Regional Policy Board is composed of elected officials from each of the affected local jurisdictions within the Youngstown urban area.

Under Executive Order 12044, USEPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. USEPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This notice of proposed rulemaking is issued under authority of Section 110 of the Clean Air Act, as amended.

DATED: September 25, 1980.

John McGuire,

Regional Administrator,

[FR Doc. 80-33878 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 52

[A-9-FRL 1650-4]

Approval and Promulgation of Implementation Plans; Guam Implementation Plan Revision

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Revisions to the Guam Air Pollution Control Standards and Regulations have been submitted to the Environmental Protection Agency (EPA) by the Governor's designee for the purpose of revising the Guam Implementation Plan. The intended effect of these revisions is to update the rules and regulations and to correct deficiencies in the Implementation Plan. The EPA invites public comment on these rules, especially as to their consistency with the Clean Air Act.

DATES: Comments may be submitted on or before December 30, 1980.

ADDRESSES: Comments may be sent to: Regional Administrator, Attn: Air and Hazardous Materials Division, Air Technical Branch, Regulatory Section (A–4), Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105.

Copies of the proposed revisions and EPA's associated evaluation reports are available for public inspection during normal business hours at the EPA Region IX office at the above address and at the following locations.

Guam Environmental Protection Agency, P.O. Box 2999, Agana, Guam 96910.

Public Information Reference Unit, Room 2404 (EPA Library), 401 "M" Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Douglas Grano, Chief, Regulatory Section, Air Technical Branch, Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94105, (415) 556–2938.

SUPPLEMENTARY INFORMATION: The Governor's designee submitted the following rules and regulations on the indicated dates, as revisions to the Guam Implementation Plan.

October 12, 1979

Chapter 1—Definitions
Rule 3.1—Permits Required
Rule 3.2—Exemptions
Rule 3.3—Applications
Rule 3.4—Standards for Approval, or Denial of Permit Applications
Rule 3.5—Action on Applications
Rule 3.6—Performance Testing
Rule 3.7—Revoking of Permits
Rule 3.8—Transfer of Permits
Rule 3.9—Reporting Information

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Chapter 4—Monitoring, Records and Reporting
Rule 5.3—(Sampling and Testing Methods)
Rule 6.2—(Control of Open Burning)
Rule 7.1—(Control of Particulate Emission)
Rule 7.4—(Control of Particulate Emission)
Rule 7.5—Fuel Burning Installations
Rule 8.3—(Control of Fugitive Dust)
Rule 8.4—Processing, Handling, Transportation, and Storage
Rule 8.5—Construction and Sandblasting Operations
Rule 8.6—Grading and Clearing
Rule 8.7—Roads and Parking Lots
Chapter 10—Control of Visible Emission of Particulates for Stationary Sources
Chapter 12—Air Pollution Emergencies
Rule 13.1—(Control of Sulfur Dioxide Emissions)
Rule 13.2—(Control of Sulfur Dioxide Emissions)
Chapter 14—Motor Vehicle Pollution Control
Chapter 15—Standards of Performance for New Stationary Sources
Chapter 16—National Emission Standards for Hazardous Air Pollutants
Rule 18.1—Appeal
Rule 18.2—Circumvention
Rule 18.3—Severability
Rule 18.4—Effective Date

(Deletions)

Rule 3.12—Conditional Permit
Rule 3.17—Compliance Schedule
Rule 12.3—Declaration of Air Pollution Emergency

April 1, 1980

Addendum to 13.1—Compliance Order for the Guam Power Authority's Power Barge "Inductance"

Under Section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove these regulations as Implementation Plan revisions. All rules submitted have been evaluated and determined to be in accordance with the Clean Air Act, 40 CFR Part 51 and EPA policy, with certain exceptions. Therefore, it is the purpose of this notice to propose to approve all the rule revisions listed above and to incorporate them into the Guam Implementation Plan, with the exception of the rules discussed below.

Nuisance rules are not appropriate for inclusion in the Implementation Plan since they are not specifically directed at the attainment or maintenance of the National Ambient Air Quality Standards (NAAQS). Therefore, no action is being taken on Rule 1.18, "Nuisance", Rule 1.19, "Odor," and Chapter 11, *Control of Odor in Ambient Air.*

New Source performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) rules implement § 111 and § 112 of the Clean Air Act and thus are not appropriate for inclusion in the SIP under § 110 of the Act. Therefore no action is being taken on Chapter 15, Standards of Performance for New Stationary Sources, and Chapter 16, National Emission Standards for Hazardous Air Pollutants, as revisions to the Guam Implementation Plan.

Rule 8.7, *Roads and Parking Lots,* is proposed to be disapproved because it could allow an emissions increase, and a control strategy demonstration has not been submitted showing that any increased emissions would not interfere with the attainment or maintenance of the (NAAQS).

Rule 13.2, (Control of Sulfur Dioxide Emissions), is inconsistent with section 123(a)(2) of the Clean Air Act which requires continuous control strategies. Rule 13.2 contains intermittent control strategies and thus is proposed to be disapproved.

The Regional Administrator hereby issues this notice setting forth these revisions, including rule deletions caused thereby, as proposed rulemaking and advises the public that interested persons may participate by submitting written comments to the Region IX Office. Comments received will be available for public inspection at the EPA Region IX Office and the EPA Public Information Reference Unit.

The Administrator's decision to approve or disapprove the proposed revisions will be based on the comments received and a determination whether the amendments meet the requirements of Section 110(a)(2) of the Clean Air Act, and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

EPA has reviewed the revisions being acted upon in this notice and has determined that they are "specialized" revisions not subject to the procedural requirements of Executive Order 12044.

(Secs. 110, 301(a), Clean Air Act as amended (42 U.S.C. 7410 and 7601(a)))

Dated: October 21, 1980.

Sheila M. Prindiville,

Acting Regional Administrator

[FR Doc. 80-34001 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-7-FRL 1650-2]

Approval and Promulgation of State Implementation Plans; Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of Notice of Availability.

SUMMARY: This notice withdraws a prior **Federal Register** notice announcing the availability of the May 8, 1979, submission of the Omaha carbon monoxide (CO) State Implementation Plan (SIP). This action is being taken because the May 8, 1979, CO plan has been revised substantially since its submittal, and Governor Charles Thone has requested that EPA take no formal action on the original plan. A seperate **Federal Register** notice announces the availability of the revised plan.

DATE: This withdrawal is effective October 31, 1980.

FOR FURTHER INFORMATION CONTACT: Eloise Reed, Air Support Branch, U.S. Environmental Protection Agency, Region VII, 324 East 11th Street, Kansas City, Missouri 64106. Telephone (816) 374-3791, (FTS) 758-3791.

SUPPLEMENTARY INFORMATION: A **Federal Register** notice published at Volume 44, No. 159, FR page 47777, August 15, 1979, announced the availability and solicited public comments on the May 8, 1979, submittal of revisions to the Nebraska SIP for the Omaha carbon monoxide nonattainment area. The plan was sent as required by Section 172 of the Clean Air Act, as amended in 1977, to revise the Nebraska SIP to provide for attainment of the National Ambient Air Quality Standards in areas which have been designated nonattainment. No comments were received as a result of the original notice.

On September 20, 1979, Governor Charles Thone informed EPA that the plan was being revised further and requested that EPA take no formal action. In consideration of the foregoing, the notice published in the **Federal Register,** Volume 44, No. 159 on August 15, 1979, entitled "Approval and Promulgation of State Implementation Plan: Nebraska—Notice of Availability" is hereby withdrawn.

The availability of the revised plan is announced in a seperate **Federal Register** notice.

Dated: October 22, 1980.

Kathleen Cumin,

Regional Administrator.

[FR Doc. 34000 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-7-1650-1]

Approval and Promulgation of Implementation Plans; Nebraska

AGENCY: Environmental Protection Agency.

ACTION: Notice of Receipt of Submittal to Satisfy Proposed Conditions of Plan Approval.

SUMMARY: This notice announces the receipt of corrections to deficiencies noted in Nebraska's State Implementation Plan (SIP) revision for the Lincoln carbon monoxide nonattainment area. The Notice of Proposed Rulemaking which listed the deficiencies to the SIP revision was published on November 13, 1979 (44 FR 65408). The SIP revisions and corrections are submitted to fulfill the requirements of the Clean Air Act Amendments of 1977.

EPA's Notice of Final Rulemaking on the Lincoln CO SIP revision, to be published at a later date, will discuss the adequacy of the corrections to deficiencies noted at 44 FR 65408 and will promulgate final action on the SIP.

The period for receiving comments on the state's submittals and what EPA's final action should be will extend for 30 days beyond today's publication date.

DATES: Comments received before December 1, 1980, will be considered in EPA's final rulemaking or this SIP revision.

ADDRESSES: Comments should be addressed to Eloise Reed, Air Support Branch, Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106.

The Nebraska submittals may be examined during normal business hours at the above address and also at the following locations:

Environmental Protection Agency, Public Information and Reference Unit, Room 2922, 401 M Street, S.W., Washington, D.C. 20460
Nebraska Department of Environmental Control, 301 Centennial Mall, Lincoln, Nebraska 68509
Lincoln-Lancaster County Air Pollution Control Agency, 2200 St. Mary's Avenue, Lincoln, Nebraska 68502
Permits and Inspection Division, Housing and Community Development Department, 1819 Farnam, Room 402, Omaha, Nebraska 68102
Lincoln-Lancaster County Planning Commission, 555 South Tenth Street, Lincoln, Nebraska 68508
Omaha-Council Bluffs Metropolitan Area Planning Agency, 7000 West Center Road, Omaha, Nebraska 68106.

FOR FURTHER INFORMATION CONTACT: Eloise Reed, (816) 374-3791; (FTS 758-3791).

SUPPLEMENTARY INFORMATION: The proposed rulemaking for the Lincoln carbon monoxide nonattainment area SIP revision, as published at 44 FR 65408, noted several deficiencies which must be corrected.

The SIP was evaluated in relation to the plan approval criteria listed in the proposed rulemaking and found to be deficient in that it did not (1) address reasonably available control technology for existing sources, (2) contain an emissions inventory, (3) identify emissions growth from new stationary sources, (4) address or reference a new source review permit program, (5) identify and commit resources, (6) identify compliance necessary for attainment, and (7) contain the necessary schedules for implementation of the computerized signalization program for Lincoln.

The Supplement to the General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas, published July 2, 1979 (44 FR 38583), permits EPA to conditionally approve SIPs containing minor deficiencies when the state provides assurances that it will provide corrections on a specified schedule. The proposed rulemaking for Lincoln CO proposes approval of the state's submittal on the condition that corrections to deficiencies be made within six months from the date of the proposed rulemaking. The official submittal by the Governor was delayed in internal state review and subsequently underwent a second public hearing for a nonsubstantive change on June 27, 1980. Although the official submittal by the Governor was received on September 25, 1980, ten months after the proposed rulemaking, a draft of the submittal was received on January 7, 1980, well within the six month period of the condition. No comments were received on the proposed rulemaking.

EPA is reviewing the corrections to deficiencies to determine if they comply with the requirements of the Clean Air Act. A preliminary review indicates that all deficiencies have been corrected satisfactorily except the deficiency pertaining to new source permits. The SIP revision contains necessary revisions to the new source review regulation, but the regulation must still be revised to make it specifically applicable to CO and to define "adverse effect" in relation to impacts on nonattainment areas. The state is currently working to make these revisions. Because EPA views the absence of an approvable new source review provision as a significant deficiency, no final action will be taken until the state submits its revised new source review regulation.

Dated: October 22, 1980.

Kathleen Cumin,

Regional Administrator.

[FR Doc. 80-34003 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-10-FRC 1649-7]

State of Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The purpose of this Notice is to invite public comment on EPA's proposed removal of § 52.676(b) of Title 40 of the Code of Federal Regulations from the Idaho State Implementation plan (SIP). Section 52.676(b) is an interim regulation for control of sulfur dioxide (SO_2) emissions from the Bunker Hill Company lead and zinc smelter located in Kellogg, Idaho. The removal of this section from the SIP is requisite to issuance of a primary non-ferrous smelter order which will contain the identical provisions of this interim regulation.

DATE: Comments will be accepted on or before December 1, 1980.

ADDRESSES: The relevant material for this action is available for inspection at the following locations during normal business hours:

Central Docket Section, West Tower Lobby, Gallery 1 (#10A-79-4), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460
Air Programs Branch, Environmental Protection Agency, 1200 sixth Avenue, M/S 625, Seattle, Washington 98101.

Comments should be addressed to: Laurie M. Kral, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue, M/S 629, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Lepic, Air Programs Branch, Environmental Proctecion Agency, 1200 Sixth Avenue, M/S 625, Seattle, Washington 98101, Telephone No. (206) 44-1125, FTS: 399-1125.

SUPPLEMENTARY INFORMATION: In January 1972, the State of Idaho submitted a State Implementation Plan (SIP) to EPA in accordance with Section 110 of the Clean Air Act. On May 31, 1972, EPA approved the SIP except for the sulfur dioxide (SO_2) control strategy and compliance schedule sections (37 FR 10842). On October 7, 1974, EPA proposed regulations for the control of SO_2 from the Bunker Hill complex requiring 98 percent permanent control of SO_2 (39 FR 36018). Thereafter, on January 10, 1975, the State of Idaho submitted to EPA, as a proposed revision to the SIP, a regulation (Regulation S) for the control of SO_2 at the Bunker Hill complex. On April 10, 1975, EPA proposed to disapprove the

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Idaho submission on the grounds that it did not meet the requirements of Section 110 of the Clean Air Act and 40 CFR 51.13 On November 19, 1975, EPA approved portions of the State of Idaho's Regulations S including the ultimate emission limitation, disapproved other portions of Regulations S including an interim emission limitation, and promulgated federal regulations to replace the disapproved portions (40 FR 53584). Thereafter, the Bunker Hill Company challenged EPA's final rulemaking action in this matter.

The United State Court of Appeals for the Ninth Circuit issued its opinion on July 5, 1977 and remanded the matter back to EPA for further administrative proceedings.[1] The Court stated that a more extensive administrative record was needed to show that the requirements promulgated by EPA dealing with the interim emission limitation were technologically feasible.

In response to a request by Bunker Hill, EPA promulgated regulations on November 8, 1977 defining requirements pertaining to excess emissions caused by startup, shutdown or malfunction of equipment (42 FR 58171). On November 23, 1977, Bunker Hill challenged EPS's rulemaking on excess emissions and EPA consented to consolidate the November 8, 1977 regulations with the remand of the November 19, 1975 regulations.

During the period of time from December 28, 1977 through June 11, 1979, EPA and the Bunker Hill Company engaged in extensive document discovery, document production, and the development of written testimony for the remand proceedings. Concurrently, EPA and the Bunker Hill entered into a preliminary understanding which set forth, in principle, the areas of agreement between EPA and the Bunker Hill Company. On June 11, 1979, representatives of the Bunker Hill Company and EPA executed a Settlement Agreement and an Interim Regulation.

The regulations promulgated by EPA in November 1975 called for an interim overall plant SO_2 emission limit of 680 tons per week (approximately 82 percent control), acid plant tailgas limits of 2,600 parts per million (ppm) (6-hour average) and a prohibition of bypassing strong gas steams around the acid plant and to the atmosphere. In the technical support document for that rulemaking EPA suggested that supplemental SO_2 injection techniques using a sulfur combustion furnace could be utilized to remedy certain acid plant design deficienceis to enable Bunker Hill to meet the SO_2 control requirements. The sulfur combustion furnace was not a regulatory requirement but rather was suggested as one possible remedy to the SO_2 control problems at Bunker Hill.

As a result of the remand proceedings, EPA initiated a complete re-evaluation of the remanded SO_2 control regulation. The purpose of the review was to demonstrate that either the existing regulation or a more stringent regulation was technically feasible and also to present numerous alternative methods for meeting SO_2 control requirements.

The review included two major segments—an analysis of the Bunker Hill operation and an evaluation of other non-ferrous smelters and acid plants where a high degree of SO_2 capture has been achieved. In addition, the cost and feasibility of SO_2 control alternatives were examined. The technical material supporting this proposed rulemaking is summarized in a report entitled "Summary of Technical Material Supporting EPA Rules Governing Sulfur Dioxide Capture at Bunker Hill", August 1979.

On December 13, 1979, (44 FR 72118) EPA incorporated the terms of the settlement agreement into the SIP by promulgating a new interim SO_2 regulation as 40 CFR 52.676(b). That regulation allows the use of dispersion techniques and was to serve as an interim SO_2 control requirement until such time that a primary Nonferrous Smelter Order (NSO) could be issued to the Bunker Hill Company.

On June 24, 1980, EPA published in the **Federal Register** (45 FR 42514) the minimum requirements for an initial (first) NSO issued pursuant to Section 119 of the Act. EPA is preparing to issue a first NSO to the Bunker Hill Company located in Kellogg, Idaho in accordance with the June 11, 1979 Settlement Agreement. Before the Bunker Hill Company's first NSO can be issued, however, the interim SO_2 control regulation as well as any reference to it must be removed from the Idaho State Implementation Plan. Once this is done, the SIP will meet the requirement of Section 110 of the Act which prohibits the inclusion of dispersion techniques in the SIP.

EPA finds that good cause exists for providing a 30-day comment period for the following reasons: (1) pursuant to the terms of the Settlement Agreement, a short period of time is allowed for exclusion of the interim regulation and issuance of the Bunker Hill Company NSO, (2) the public has had adequate notice of the guidelines for preparation of State Implementation Plans and was provided earlier an opportunity to comment on the terms of the interim regulation and the procedure of its removal from the SIP in 44 FR 5227 (September 7, 1979) and (3) the impact of this rulemaking is limited only to the State of Idaho. Therefore, EPA is soliciting public comments for 30 days on its proposal to remove § 52.676(b) of Title 40 of the Code of Federal Regulations from the Idaho SIP.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Interested parties are invited to comment on all aspects of this amendment to the Idaho SIP. Comments should be submitted, preferably in triplicate, to the address listed in the front of this Notice. Public comments postmarked by December 1, 1980, will be considered in any final action EPA takes on this proposal.

(Secs. 110, 172, Clean Air Act (42 U.S.C. 7410(a), 7502))

Dated: October 21, 1980.

Donald Dubois,

Regional Administrator.

[FR Doc. 80-34004 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

[1] Bunker Hill Company V. EPA, 572 F.2d 1286 (9th Cir. 1977), hearing denied, No. 75-3670 (December 28, 1977).

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40 CFR Part 52

[EN-5-FRL 1651-3]

Indiana State Implementation Plan; Extension of Comment Period

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rulemaking, notice of extension of comment period.

SUMMARY: The U.S. EPA is giving notice that the comment period for the notice of proposed rulemaking on the Indiana State Implementation Plan (SIP) revision to control particulate emissions from iron and steel process sources in the State of Indiana published July 3, 1980, (45 FR 45314) has been extended from October 17, 1980 to October 31, 1980.

DATE: Comments are now due on or before October 31, 1980.

FOR FURTHER INFORMATION CONTACT: Carol Wilmowski, Docket Clerk, Air Enforcement Branch, Enforcement Division, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 353-2082.

SUPPLEMENTARY INFORMATION: This notice extends the period for submitting comments on the notice published July 31, 1980 (45 FR 45314) proposing rulemaking on revisions to Indiana's SIP. These revisions pertain to the control of particulate emissions from iron and steel process sources in the State of Indiana.

United States Steel Corporation, Jones & Laughlin Steel Corporation and Youngstown Sheet & Tube Company, by their attorney, on October 17, 1980, requested a 14 day extension of time for filing their comments regarding U.S. EPA's proposed action on the revisions. In addition, Citizens for a Better Environment, on October 8, 1980, requested a 20-day extension of time for filing their comments.

U.S. EPA has decided that the extension of the public comment period is appropriate and the comment period is hereby extended to October 31, 1980.

Dated: October 22, 1980.

John McGuire,

Regional Administrator.

[FR Doc. 80-34110 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 57

[EN-10-FRL 1649-3]

Proposal To Issue a First Primary Nonferrous Smelter Order to the Bunker Hill Co., Kellogg, Idaho

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to issue a first primary Nonferrous Smelter Order (NSO) to the Bunker Hill Company, Kellogg, Idaho. A Settlement Agreement reached between EPA and the Bunker Hill Company on June 11, 1979, and published at 44 FR 72118 (December 13, 1979) and amended at 45 FR 1419 (January 7, 1980) (pertained to numbering of footnotes), requires that EPA issue a first NSO under Section 119 of the Clean Air Act (the Act) to Bunker Hill. The Agreement calls for the NSO to be issued promptly after promulgation of the national rules governing the NSO program. The Agreement acknowledges that Bunker Hill was considered by the EPA to meet the economic qualification tests of the then proposed NSO regulations. These rules were promulgated in final form on June 24, 1980, (40 FR 42514).

DATE: Written comments must be received on or before December 1, 1980 to be considered by EPA.

ADDRESSEES: Comments should be submitted to Director, Enforcement Division, EPA, Region 10, 1200 Sixth Ave., Seattle, Washington 98101. Supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Betty Swan, EPA, M/S 513, 1200 Sixth Avenue, Seattle, Washington 98101. Telephone 206-442-1387.

SUPPLEMENTARY INFORMATION: Bunker Hill operates a nonferrous lead/zinc smelter at Kellogg, Idaho. On June 11, 1979, representatives of the Bunker Hill Company and EPA executed a Settlement Agreement which is the basis for this first NSO. The Agreement specifies the contents of the NSO, and provides procedures for its issuance. Because EPA had not yet promulgated final national rules governing the NSO program when it entered into the Agreement, the Agreement called for implementing the terms of the NSO in the interim by revision of the Idaho State Implementation Plan (SIP). The Agreement also provides that the Bunker Hill Company would not challenge issuance of its first NSO if it contains the same terms as specified in the Agreement. These terms, which were promulgated by EPA as a revision to Idaho's SIP on December 13, 1979 (44 FR 72118) and which comprise the provisions of the Bunker Hill Company's first NSO are summarized below.

Emission limits: The proposed NSO establishes SO_2 emission limits which Bunker Hill must meet by June 11, 1980. These limits include an overall plant SO_2 emission limit from the two tall stacks of 625 tons, running 7-day average. One exceedence of the 7-day limit is allowed per calendar quarter. The overall limit includes acid plant bypass emissions and excess emissions caused by start-up, shut-down, maintenance and malfunction. Acid plant tailgas SO_2 emissions are limited to 2600 ppm averaged over a running 6-hour period. All emissions are to be measured by approved continuous monitoring equipment which meet specified criteria.

Excess emissions: Bypass of process exhaust strong gas streams around an acid plant is excused only under five narrowly defined situations. The NSO specifies the amount of time bypass can occur following process or acid plant breakdown. It also specifies the amount of time (in terms of operating parameters) that process exhaust gas can bypass the acid plant during acid plant restart. After June 11, 1980 and except as described below, Bunker Hill is prohibited from continuing to operate its processes while the applicable acid plant is shutdown for the annual maintenance period.

Annual acid plant maintenance offset: Continued process operation while an acid plant is shut down for annual maintenance is allowed to occur for up to 14 days per year provided an offset of emissions is achieved. An interim method is provided to establish the offset until the new SO_2 control system is on line. Effective June 11, 1982, for every ton of SO_2 that is bypassed during the annual maintenance period Bunker Hill must, during the course of the year, capture an additional ton of SO_2. Such additional SO_2 must be removed from either the sinter machine weak stream or the blast furnance SO_2 stream neither of which are currently controlled.

Fugitive SO_2 emission program: The Bunker Hill Company is required to install a system to eliminate over 90 percent of the blast furnace upset conditions. This system should result in the capture of approximately 21 tons per week of fugitive SO_2 emissions. Those emissions will be released to the atmosphere via the main stack. If the blast furnace fugitive emission program captures less than 21 tons per week, the overall plant SO_2 emission limit will then be reduced by that portion of the 21 tons per week which is not captured.

Research and development program: The June 11, 1979, Settlement Agreement required the Company to immediately commence a continuous research and development program. Bunker Hill was, however, provided with the option of either employing a full scale or a reduced scale program. The Company chose to implement the full scale program. Successful implementation of the full scale program will satisfy the acid plant maintenance offset provision which will allow the Company to operate the plant within certain limits when an acid plant is down for scheduled maintenance.

The Company has indicated by letter of June 11, 1980, that it chooses to employ the full scale program. However, the NSO contains requirements applicable to both the full scale and reduced scale programs, as provided in the Settlement Agreement.

Supplementary control system: The Company is required to employ a supplementary control system (SCS) to meet National Ambient Air Quality Standards (NAAQS) using an SCS implementation plan and operating manual approved by EPA. SCS program deficiencies defined by an ERA study entitled "Review of the SCS Used by the Bunker Hill Company-Kellogg, Idaho" (EPA 330/2-79-001) must be corrected.

A study must also be performed by Bunker Hill to demonstrate that ambient

SO_2 monitors are located in all areas of maximum expected ambient SO_2 concentrations. Alternative techniques are allowed where air quality in a monitored location is used in conjunction with modeling techniques to predict SO_2 concentrations elsewhere. The modeling techniques, however, must be calibrated using temporary SO_2 monitors. A compliance schedule specifies when the study is to be completed, when a revised SCS plan and operational manual are to be submitted and when the new SO_2 monitors are to be placed into service. Until such time that the Administrator approves the new SCS program, the existing SCS and SO_2 monitors will be used on an interim basis to assure attainment of NAAQS.

Solicitation of comments: The Agency at this time is time is soliciting comments on this proposal to issue a first primary NSO to the Bunker Hill Company, Kellogg, Idaho. It should be noted that the administrative record supporting the interim regulation contained in 40 CFR 52.676(b) constitutes a complete and accepted application for an NSO.

(Secs. 110 and 119 of CAA as amended 42 U.S.C. 7410 and 7419)

Note.—The EPA has determined that this notice does not contain a significant regulation requiring a regulatory analysis under Executive Order 12044.

Dated: October 7, 1980.

Donald P. Dubois,

Regional Administrator.

Part 57 of Chapter I, title 40 of the Code of Federal Regulations is hereby amended as follows:

Subpart I—Idaho

Section 57.901, paragraphs (a) and (b) are added as follows:

§ 57.901 Nonferrous Smelter Order for Bunker Hill Company.

(a) Pursuant to the Bunker Hill Company and EPA Agreement of June 11, 1979, the following requirements constitute the elements of the NSO.

(b) The NSO for the *Bunker Hill Company lead and zinc smelter located in Shoshone County in the Idaho portion of the Eastern Washington-Northern Idaho Interstate Region.*—(1) *SO_2 Emission Limitations.* Effective on June 11, 1980, the owner(s) or operator(s) of the subject smelter shall comply with the requirements of paragraph (b)(1) in regard to the capture of SO_2. The requirements governing SO_2 gas stream bypass during the annual acid plant maintenance period as provided by paragraphs (b)(5) and (b)(6) shall become effective on June 11, 1979.

(i) The owner(s) or operator(s) of the smelter subject to paragraph (b)(1) of this section shall not cause or allow the discharge of gases in excess of:

(A) 2600 parts per million (by volume) SO_2 averaged over any hourly running 6-hour averaging period, from any sulfuric acid plant as determined by continuous monitoring equipment specified in paragraph (b)(1)(iv) of this section and in accordance with the compliance procedures specified in paragraph (b)(4)(iii) of this section. In determining violations of the 6-hour averaging period, no two violations shall contain any common hourly data points; and

(B) 567,000 kg (625 tons) SO_2 over a daily (midnight to midnight) running 7-day period as determined by continuous monitoring equipment [2] specified in paragraph (b)(1)(iv) of this section and in accordance with the compliance procedures specified in paragraph (b)(4)(iii) of this section. Such limitation is plant wide and shall apply to the sum total of SO_2 emissions from the lead smelter main stack and the zinc plant main stack and shall include all excess emissions as defined in paragraph (b)(2)(i) of this section. Except as provided in paragraph (b)(6)(ii) of this section the emission limitation shall not be exceeded more than once per three (3) month calendar quarter, e.g., January, February and March. Such single excused emission shall be the first exceedence of the 7-day limit in the three (3) month quarterly period. In determining violations of the 7-day limit, no two (2) violations shall contain any common daily (midnight-to-midnight) data points. As provided in Appendix A to this regulation and upon notification by the Enforcement Division Director of the EPA-Region X the plant wide emission limit shall be decreased to not less than 548,000 kg (604 tons) SO_2.

(ii) *Bypass Prohibition.* Except as provided in paragraph (b)(2)(ii) of this section all SO_2 gas streams discharged from any zinc plant roaster and from the strong gas exit point on the input end of the lead smelter sinter machine shall at all times be processed in an SO_2 removal facility. The owner(s) or operator(s) shall not cause or allow these SO_2 gas streams to be discharged to the atmosphere.

(iii) *Circumvention.* Other than for temporary process control or to temporarily prevent significant equipment damage, dilution air or other extraneous gases shall not be allowed to enter or combine with any process gas normally treated by an SO_2 removal facility or with any acid plant tailgas prior to SO_2 concentraiton or flow measurement where the purpose of such combination would be to:

(A) In other than the lead smelter or zinc plant main stacks decrease the concentraiton of SO_2 in such streams;

(B) Otherwise adversely effect the operation of any SO_2 removal system, SO_2 concentration measurement device or gas flow measurement device; and

(C) Decrease the concentration of SO_2 in gases exhausted from the sinter machine and zinc roasters which will have the effect of circumventing the requirements of paragraph (b)(2)(ii) of this section. The owner(s) or operator(s) must promptly inform the Administrator of any substantial changes in process gas flow which may affect the performance of any SO_2 removal facility or measurement device, regardless of the purpose for any such change.

(iv) *Continuous Monitoring.* The owner(s) or operator(s) shall install and calibrate, and shall thereafter maintain, operate and periodically test measurement systems for continuously monitoring and recording SO_2 emission concentrations, gas volumetric flow rates and gas flow indication in accordance with paragraph (b)(4)(ii) of this section for the monitoring equipment listed and at the following locations:

(A) Continuously operated SO_2 emission concentration and gas volumetric flow rate monitors and recorders located immediately downstream of each acid plant such that the measurement system measures only the tailgas from one acid plant;

(B) Continuously operated SO_2 concentration and gas volumetric flow rate monitors and recorders located in the zinc plant main stack;

(C) Continuously operated SO_2 concentration and gas volumetric flow rate monitors and recorders located in the lead smelter main stack and the lead smelter acid plant (upstream of the acid plant converter);

(D) Continuously operated gas flow indicating devices which will indicate and record the presence of gas flow in any duct or outlet from the sinter machine where SO_2 gas streams normally treated in an SO_2 removal facility may be bypassed around such facility and be routed to the atmosphere;

(E) Continuously operated gas flow indicating devices which will indicate and record the presence of gas flow in each of the individual five ducts receiving the bypass exhaust gas from zinc roasters #1 through #5. Each device must be located to monitor the bypass from only one roaster;

[2] The owner(s) or operator(s) shall have the right in any enforcement proceeding to raise the issue of the accuracy of continuous monitoring instruments.

(F) Continuously operated gas flow indicating devices which will indicate and record the presence of gas flow in any duct or outlet where a single zinc roaster or combination of zinc roasters exhaust gas streams may be bypassed around an acid plant and routed to the atmosphere; and

(G) Based on a finding that the monitoring equipment specified herein is reasonably deemed to be inadequate to provide for effective regualtory compliance the Administrator may require the owner(s) or operator(s) to install and continuously operate gas volumetric flow rate monitor(s) and recorder(s) in any duct or outlet where exhaust gas may be bypassed around the acid plant(s) and routed to the atmosphere. In the event that such a finding is made by the Administrator, the owner(s) or operator(s) agree to install and operate such continuous monitors on or before sixty (60) days after the owner(s) or operator(s) receive such written notification by the Enforcement Division Director of Region X–EPA.

(v) *Continuous Process Monitoring.* The owner(s) or operator(s) shall install and calibrate, and shall thereafter maintain, operate and periodically test measurement systems for continuously monitoring and recording process parameters for the monitoring equipment listed and at the following locations:

(A) Continuous temperature monitors located to measure and record the inlet gas temperature at the first and third catalyst beds of each sulfuric acid plant;

(B) Continuously operated monitors which will detect and record the commencement and cessation of concentrate feed entering each zinc roaster. The recorder data from such monitors shall be printed on the same chart as used to record bypass gas flow in paragraph (b)(1)(iv) (E) and (F) of this section from each individual zinc roaster; and

(C) Continuously operated monitor which will detect and record the commencement and cessation of concentrate feed entering the sinter machine. The recorded data from such monitor shall be printed on the same chart as used to record bypass gas flow in paragraph (b)(1)(iv)(D) of this section form the sinter machine; and

(vi) *Fugitive SO_2 Emissions.* The owner(s) or operator(s) shall utilize best engineering techniques to capture and vent such fugitive SO_2 gases through stacks serving the facility. Such techniques shall include but not be limited to:

(A) Maintaining and operating all ducts, flues and stacks in a leak-free condition;

(B) Maintaining and operating all process equipment and gas collection systems in such a fasion that outleakages of SO_2 gases will be prevented to the maximum extent possible;

(C) Instituting a program to reduce the fugitive emissions from the zinc roasters by reducing the frequency of positive pressure surges in the zinc roasters. This will be accompanied by component replacement, new fans, better operating practices, or other improvements to the integrity of the gas collection system as necessary to attain the Occupational Safety and Health Administration (OSHA) lead standard. This project will be completed on the dates required by the OSHA regulation to meet the lead workplace concentration standard. The estimated reduction in SO_2 fugitive emissions is approximately 8 tons per week and after treatment in an acid plant is expected to increase the total SO_2 emissions in the zinc smelter main stack by no more than 1 ton per week;

(D) Instituting a program to improve the draft maintained in the sinter machine hooding. This program will include increased maintenance on the strong and weak gas ducts, complete replacement of any mild steel hood material with stainless steel, excluding the last two hood sections which are not subject to high corrosion, and improvements in other system components to achieve 90 percent collection of the existing fugitive emissions estimated to be 4 tons of SO_2 per week. Part of these emissions will be treated in an acid plant so the increase in emissions through the lead smelter tall stack is estimated to be 3 tons of SO_2 per week. Such a program is expected to increase the total SO_2 emissions from the lead smelter main stack by no more than 3 tons per week; and

(E) Installing and operating a manual and if necessary automatically controlled tuyere air flow control system on both blast furnaces on or before June 11, 1980. The system is to be designed to eliminate over 90 percent of the current furnace upset conditions that result in fugitive SO_2 emissions. Such a program is expected to increase the total SO_2 emissions from the lead smelter main stack by no more than 21 tons per week. The program will be designed to reduce the frequency of blast furnace upset conditions to an aggregate total of less than 3.4 hours per week.

(F) Compliance with the fugitive SO_2 emission control program will be judged by Appendix A to this regulation.

(2) *Excess Emissions.* Effective on June 11, 1980, the owner(s) or operator(s) of the subject smelter shall comply with the requirements of paragraph (b)(2) of this section in regard to acid plant bypass, excess emissions and equipment malfunction. The requirements governing excess emissions during the annual acid plant maintenance period as set forth in paragraphs (b)(5) and (b)(6) of this section shall become effective on June 11, 1979.

(i) *Definition of Excess Emissions.* Any SO_2 emissions exceeding the limitations specified in paragraph (b)(1)(i) of this section above shall constitute an excess emission. SO_2 gas streams discharged to the atmosphere from any zinc plant roaster and from the strong gas exit point on the input end of the lead smelter sinter machine without being processed in an SO_2 removal facility shall also constitute an excess emission.

(ii) *Presumptively Excused Excess Emissions.* Where the owner(s) or operator(s) fully comply with the reporting requirements of paragraph (b)(2)(iv) of this section and further demonstrate that the conditions specified in paragraphs (b)(2)(ii) (A) through (E) of this section have been met, the bypass of SO_2 gas streams around an SO_2 removal facility shall be excused. Any excess emissions, whether or not claimed by the owner(s) or operator(s) to be excused excess emissions, may be deemed by the Administrator to violate this regulation where the owner(s) or operator(s) fail to comply with any requirement of paragraph (b)(2)(ii) of this section or upon a finding by the Administrator that the excess emissions claimed to be excusable by the owner(s) or operator(s) were caused by one or more of the conditions set forth in paragraph (b)(2)(v) (A) through (C) of this section. Excess emissions resulting from the following conditions are presumptively excused:

(A) *Process Shutdown Following Acid Plant Breakdown.* In the event of a breakdown or malfunction of an acid plant, the owner(s) or operator(s) may bypass the gas stream normally controlled by such acid plant, only for the time period necessary to shut down the process equipment (zinc roaster(s) or sintering machine) whose SO_2 streams would normally be controlled by such acid plant. Shutdown of the process equipment shall be initiated immediately and the time period to accomplish the shutdown and during which bypass is excused shall not exceed the following:

(*1*) 15 minutes for the sinter machine except where complete emptying of the

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sinter belt is required the time period shall not exceed 60 minutes; and

(2) 30 minutes for shutdown of any single zinc roaster or combination of zinc roasters;

(B) *Process Shutdown Following Zinc Roaster Breakdown.* In the event of a breakdown or malfunction of a zinc roaster, the owner(s) or operator(s) may bypass the gas exhaust from that individual roaster around an acid plant and to the atmosphere commencing 5 minutes after concentrate feed ceases to enter such roaster;

(C) *Process Startup Following Zinc Roaster Shutdown.* During the period when a zinc roaster is restarted following its shutdown the owner(s) or operator(s) may bypass the gas exhausted from that individual roaster around the acid plant and to the atmosphere only as follows:

(1) If either of the zinc plant acid plants is being restarted the owner(s) or operator(s) may bypass, around an acid plant and to the atmosphere, the roaster exhaust gas *only* for the time period necessary for a well designed, operated and maintained acid plant [3] to establish autothermal [4] operation; and

(2) If no acid plant is being restarted and if one or more zinc roasters is operating the owner(s) or operator(s) may bypass, around an acid plant and to the atmosphere, the exhaust gas from the individual roaster which is starting-up but *only* for the time period which ends 15 minutes after concentrate feed commences to enter such roaster;

(D) *Process Start-up Following Sinter Machine Shutdown.* In the event that the sinter machine has been shutdown, and upon its restart, the owner(s) or operator(s) may bypass the exhaust gas, around the acid plant and to the atmosphere, *only* as follows:

(1) If the sintering machine has been shutdown for greater than 3 hours bypass may occur but may not exceed the time period necessary for a well designed, operated and maintained acid plan to re-establish autothermal operation; and

(2) If the sintering machine has been shutdown due to an acid plant component failure and the repair of the acid plant component takes longer than 3 hours bypass during restart of the sinter machine may occur. Such bypass may not exceed the time period necessary for a well designed, operated and maintained acid plant to reestablish autothermal operation;

(E) *Continued Process Operation During Annual Acid Plant Maintenance.* The owner(s) or operator(s) may bypass the process emissions around the acid plant and to the atmosphere during the annual acid plant maintenance period *only* to the extent allowed by paragraphs (b)(5) and (b)(6) of this section;

(iii) *Other Excess Emissions.* The owner(s) or operator(s) may in the required excess emission report of paragraph (b)(2)(iv) of this section claim that excess emissions should be deemed by the Administrator to be excusable. Any excess emission claimed to be excusable under this paragraph (b)(2)(iii) of this section shall be a violation of this regulation unless and until the owner(s) or operator(s) demonstrate to the satisfaction of the Administrator that such excess emission should be excused. For the purpose of illustration, cited below are categories of other excess emissions which may be excused:

(A) Bypass of gas around SO_2 removal facilities where necessary to prevent loss of life, personal injury or severe property damage. (Severe property damage does not include economic losses caused by production losses such as those caused by shut down of the blast furnace or electrolytic zinc processes due to lack of feed material.); and

(B) Sudden and unavoidable excess acid plant tailgas SO_2 emissions which are beyond the control of the owner(s) or operator(s). However, excess emissions shall not be deemed beyond the control of the owner(s) or operator(s) if caused by one or more of the following:

(1) Improperly designed acid plant components;

(2) Improperly operated process(es) or acid plant equipment;

(3) Inadequate maintenance of acid plant and/or gas cleaning systems; and

(4) In general, any fluctuations in volume or SO_2 concentrations of the acid plant feed gas.

(iv) *Excess Emission Report.* For any excess emissions, including those covered in paragraphs (b)(2)(ii) and (b)(2)(iii) of this section the owner(s) or operator(s) shall submit an initial report to the Enforcement Division Director of the EPA—Region X. The report shall be submitted monthly within fifteen (15) days from the last day of the prior month. The owner(s) or operator(s) shall also record and maintain other supplemental information as set forth in paragraph (b)(2)(iv)(B) of this section.

(A) The initial report shall contain the following information:

(1) Identity of the gas stream, stack or other point where the excess emissions accurred;

(2) General magnitude of the excess emissions;

(3) Time and duration of the excess emissions;

(4) Nature and cause of such excess emissions; and

(5) Identity of the equipment causing the excess emissions;

(B) The supplemental information shall include the following and if requested be provided to be Enforcement Division Director of EPA—Region X within thirty (30) days of request:

(1) Specific steps taken by the operator(s) to limit the excess emissions and when those steps were commenced;

(2) If the excess emissions were the result of equipment malfunction, the steps taken to remedy the malfunction and to prevent the recurrence of such malfunction;

(3) Specific magnitude of the excess emissions including monitoring data and calculations which describe or may be used in determining the magnitude of the excess emissions;

(4) Maintenance schedules applicable to the equipment causing the excess emissions;

(5) Copies of properly signed contemporaneous operating log sheets; and

(6) Other related documentation as may be reasonably requested by the Director to assist him in the evaluation of the excess emissions including any information necessary to make the determinations set forth in paragraph (b)(2)(v) of this section.

(C) Failure of the owner(s) or operator(s) to provide the EPA with a full and complete excess emissions report within a timely fashion, shall constitute a violation of this regulation.

(v) *Evaluation of Excess Emission Report. In evaluating the excess emissions, the Enforcement Division Director shall take into consideration, the following:*

(A) Whether the air pollution control systems and process equipment were at all times maintained and operated, to the maximum extent practicable, in a manner consistent with best practice for minimizing emissions;

[3] As used in this regulation, in a well designed, operated and maintained acid plant the first catalyst bed must be at or be heated to a minimum temperature of 750°F before the zinc roaster (or sinter machine) the acid plant serves re-starts.

[4] As used in this regulation the term "autothermal operation" is defined as the point in time when the temperature of gases entering the first catalyst bed in the acid plant converted is at 825°F or when the temperature of gases entering the third catalyst bed is at 750°F whichever comes first. The owner(s) or operator(s) shall insure that at any time an acid plant is started up sufficient gas will be routed to the acid plant as soon as possible to achieve autothermal operation. Further, the fan supplying gas to the lead smelter acid plant (Fan No. 6) shall upon start-up of the sinter machine immediately be brought up to full R.P.M. and operating Logs maintained to document full RPM flow rate.

(B) Whether the amount and duration of the excess emissions were minimized to the maximum extent practicable during periods of such emissions, and process equipment was shut down within the shortest reasonable time after the SO_2 removal facility shut down occurs; and

(C) Whether the excess emissions were part of a recurring pattern indicative of serious deficiencies in, the design, operation or maintenance of, the process(es), the gas cleaning equipment or the SO_2 removal facility, including whether prescribed maintenance schedules were followed.

(vi) Nothing in this subsection shall be construed to limit the authority of the Administrator to take any action under Section 303 of the Clean Air Act.

(3) *Supplementary Control System.* Effective on June 11, 1979, the owner(s) or operator(s) of the subject smelter, in addition to meeting the SO_2 capture requirements of paragraph (b)(1) of this section shall employ a supplementary control system (SCS) to the extent necessary to meet National Ambient Air Quality Standards (NAAQS) for SO_2 and such other additional control measures as may be necessary, to assure the attainment and maintenance of NAAQS for SO_2. The requirements applicable to the SCS program and meeting ambient air quality standards are as follows:

(i) *SCS Analysis.* On January 18, 1979, the Administrator provided the owner(s) or operator(s) with a copy of an EPA technical analysis of the existing SCS program detailing deficiencies in such program;

(ii) *Final SCS Progrom.* Except during the interim period as provided in paragraph (b)(3)(vii) of this section, the final SCS program shall be conducted in accordance with the provisions of an SCS implementation plan and an SCS operational manual, both of which must be approved by the Administrator. The SCS implementation plan shall describe the administrative requirements, personnel staffing, components and equipment of the SCS system. The SCS manual shall describe the circumstances under which, the extent to which, and the procedures through which emissions shall be curtailed to prevent violations of the NAAQS for SO_2. Process SO_2 emission shall be curtailed in accordance with the SCS operating manual whenever the potential for violating any NAAQS for SO_2 is indicated at any point in a designated liability area (as defined in paragraph (b)(3)(v) of this section) by air quality measurements and air quality predictions;

(iii) *The SCS Implementotion Plon.* An approvable SCS implementation plan shall contain (but not be limited to) the following:

(A) A detailed description of the emission monitoring system and the continuous SO_2 monitoring network that will be used in the SCS to detect maximum ground-level SO_2 concentrations in the designated liability area (DLA). Such description must specify the number, type and exact location of each SO_4 monitor and instack monitor to be used. As approvable monitoring system/network must include the following:

(1) Except as provided in paragraph (b)(3)(viii)(C) of this section, the continuous SO_2 monitoring equipment shall be located at all ambient air [5] points of expected maximum groundlevel SO_2 concentrations in the DLA provided that if deemed necessary to guarantee attainment and maintenance of standards, monitors may be located in other locations with the approval of the Administrator. The determination of the locations where maximum concentrations may occur shall take into account all reasonably probable meteorological and process operating conditions, as well as the presence of other sources of SO_2 significantly affecting SO_2 concentrations in the DLA;

(2) The number and location of sites shall be based on dispersion modeling, measured ambient air quality data, meteorological data and other meteorological information;

(3) The system shall include the use of fixed SO_2 ambient monitors and one mobile monitor to be sited as, from time to time, the EPA—Region X may reasonably direct unless the Administrator determines, on the basis of a demonstration by the owner(s) or operator(s), that the use of fewer monitors would not limit coverage of points of maximum concentration or otherwise reduce the capability of the owner(s) or operator(s) to prevent any violations of the NAAQS in the DLA; and

(4) All monitors shall be continuously operated and maintained and shall meet the performance specifications contained in 40 CFR Part 53. The monitors shall be capable of routine real time measurement of maximum expected SO_2 concentrations for the averaging times of SO_2 NAAQS.

(B) A detailed description of the meteorological sensing network. Such description must specify the number, type and exact location of each meteorological instrument to be used. An approvable network must have an assessment capability adequate to identify conditions requiring emission curtailment to prevent possible violations of the NAAQS. The meteorological assessment capability shall provide all forecast and current information necessary for successful use of the system's operational manual;

(C) A program whereby the owner(s) or operator(s) systematically evaluates and improves the ability of the SCS to protect against violations of the NAAQS. Such program mut be based upon the information contained in the EPA Guideline Document—OAQPS 1.2-036; and

(D) A clear delineation of authority delegated to an appropriate named company official to require all other smelter personnel to comply with the SCS operator's curtailment decisions. The identity of responsible and knowledgeable on-site company personnel who are the qualified SCS operators and are authorized to initiate and supervise the actions that will be taken to curtail emissions shall be listed; such personnel must, upon request, be able and be authorized by the Company to inform the Administrator as to the status of the SCS, meteorological and air quality conditions at any time and whether and to what extent the recommendations or determinations of the SCS operator(s) were followed or overridden by any Company offical in making any curtailment or operating decision;

(iv) *The SCS Operating Manual.* An approvable operational manual shall require operation of the SCS to include (but not be limited to) the following:

(A) Prescribed emission curtailment decisions based on the use of real time information from the air quality monitoring network, dispersion model estimates of the effect of SO_2 emissions on air quality, and meteorological observations and predictions; [6]

(B) The maintenance and calibration procedures and schedules for all SCS equipment;

(C) The procedures to be followed for the regular acquisition of all meteorological information necessary to operate the system;

(D) The ambient concentrations and meteorological conditions that shall be used as criteria for initiating various

[5] As used in this regulation the term "ambient air" shall be defined in the same manner as that term is defined in the Clean Air Act and regulations promulgated thereunder.

[6] The intent behind this subparagraph is set forth in subpart D of the recently proposed NSO regulations (44 FR 6283; 6290–6291 (January 31, 1979) and 44 FR 11096; 11097 (February 27, 1979).

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degrees of non-discretionary emission curtailment;

(E) The meteorological variables including the thresholds, ranges and combinations of values as to which judgments may be made to anticipate the onset of, and apply, the criteria stated in paragraph (b)(3)(iv)(D) of this section. Specifically, the maximum emission rates which may prevail under each of these meteorological and air quality situations must be specified. Such emission rates shall be determined by in-stack monitors and shall be the basis for determining whether provisions of the operational manual are adhered to;

(F) The procedures through which and the maximum time period within which a curtailment decision will be made and implemented by the SCS operator;

(G) The method for immediately evaluating the adequacy of a particular curtailment decision, including the factors to be considered in that evaluation;

(H) The procedures through which and the time within which additional necessary curtailment will immediately be effected; and

(I) The procedures to be followed to protect the NAAQS for SO_2 in the event of a mechanical failure in any element of the SCS.

(v) *Designated Liability Area.* The DLA shall be the area within two circles, each with a radius of 10 statute miles (16 kilometers) with the center point of such circles coinciding, respectively, with the main stack serving the lead smelter and the main stack serving the zinc plant. If new information becomes available which demonstrates that the DLA should be redefined, the administrator shall consider such information and if appropriate, redefine the DLA.

(vi) *Consent to Liability.* On or before July 11, 1979, the owner(s) or operator(s) shall submit to the Administrator an affidavit signed by a responsible company official, empowered to do so, stating that in any judicial or administrative proceeding to enforce this regulation the owner(s) will accept responsibility for violations of the NAAQS for SO_2 in areas of ambient air in the DLA as defined by paragraph (b)(3)(v) of this section.

(vii) *Interim Conduct of SCS Program.* Until the Administrator approves under paragraph (b)(3)(x) of this section a revised SCS implementation plan and a revised SCS operational manual required under paragraph (b)(3)(ix)(C) of this section, the owner(s) or operator(s) shall conduct the SCS program in accordance with the existing SCS operational manual and the existing SCS implementation plan which has been approved by the Director of the State of Idaho Department of Health and Welfare (IDHW): *Provided,* That upon execution of the consent to liability as required by paragraph (b)(3)(vi) of this section, the existing manual and plan shall be deemed modified by such consent.

(viii) *Study Regarding NAAQS.* Within the times specified by paragraph (b)(3)(ix) of this section, the owner(s) or operator(s) shall submit a study to EPA—Region X which accomplishes the following:

(A) Demonstrates that the NAAQS for SO_2 are being met in all areas of ambient air within the DLA surrounding the smelting complex;

(B) Corrects the deficiencies in the existing SCS operational manual and SCS implementation plan described in the EPA technical study of the present SCS program as described in paragraph (b)(3)(i) of this section or documents that the EPA study erroneously described such deficiencies;

(C) Demonstrates that ambient SO_2 monitors are located (or will be located) in all areas of maximum expected ambient SO_2 concentrations that take into account all probable meteorological and operating conditions. For specific locations of maximum expected ambient SO_2 concentrations, if the owner(s) or operator(s) can demonstate in the study that maximum ground-level SO_2 concentrations can be predicted through use of alternate techniques then SO_2 ambient monitors may not have to be placed at each such respective location: *Provided,* That such respective localities are inaccesible. "Alternative techniques" as used here shall be deemed to be a demonstration through SO_2 monitoring and calibrated modelling techniques that the compliance status of each unmonitored location of maximum expected SO_2 concentration will be accurately determined from data collected at an alternative monitoring site; and

(D) Failure to timely submit an approvable study shall constitute a violation of this regulation.

(ix) *Required Submissions.* The following items must be submitted to the Administrator within the time limitations shown:

(A) Within two (2) months following the date of promulgation of the final NSO regulations under Section 119 of the Act, the owner(s) or operator(s) shall submit a study plan for the study required by paragraph (b)(3)(viii) of this section; within one (1) month following receipt of such plan the Administrator will provide comments to the owner(s) or operator(s) on such study plan;

(B) Within five (5) months following the date of promulgation of the final NSO regulations under Section 119 of the Act, the owner(s) or operator(s) shall submit a final study plan for the study required by paragraph (b)(3)(viii) of this section which incorporates the EPA comments described in paragraph (b)(3)(ix)(A) of this section;

(C) Within one (1) year following the date of promulgation of the final NSO regulations under Section 119 of the Act or the final tall stack regulations under Section 123 [7] of the Act (whichever is later), the owner(s) or operator(s) shall submit to the Administrator the NAAQS attainment and SO_2 ambient monitor placement study required by subparagraph (b)(3)(viii);

(D) Within eighteen (18) months following the date of promulgation of the final NSO regulations under Section 119 of the Act or the final tall stack regulations under Section 123 of the Act (whichever is later), the owner(s) or operator(s) shall submit to the Administrator an approvable SCS implementation plan and an approvable SCS operational manual which accomplishes the following:

(*1*) takes into account the placement of SO_2 ambient monitors in the areas of maximum expected ambient SO_2 concentrations, as specified by paragraph (b)(3)(viii)(B) of this section; and

(*2*) Incorporates the requirements of paragraphs (b)(3)(iii) and (b)(3)(iv) of this section and which remedies the problems identified in the EPA technical study of the present SCS program as described in paragraph (b)(3)(i); and

(E) Within twenty-four (24) months following the date of promulgation of the final NSO regulations under Section 119 of the Act or the final tall stack regulations under Section 123 of the Act (whichever is later), the owner(s) or operator(s) shall submit to the Administrator a certification that placement of SO_2 ambient monitors is in accordance with paragraph (b)(3)(viii)(C) of this section.

(x) *Final Conduct of SCS Program.* Upon the Administrator's review and approval of the information submitted under paragraph (b)(3)(ix)(D) of this section, the owner(s) or operator(s) will be required to conduct the SCS program in accordance with a revised SCS operational manual and the revised SCS implementation plan approved herein. Failure of the owner(s) or operator(s) to timely submit an approvable study plan, study, SCS implementation plan or SCS

[7] These Section 123 tall stack regulations were proposed in the **Federal Register** on January 12, 1979 (44 FR 2608).

operational manual will constitute a violation of this regulation.

(xi) *SCS Violations.* During the interim conduct of the SCS program as discussed in paragraph (b)(3)(vii), failure to curtail SO_2 emissions when and as much as indicated by the applicable SCS operational manual or to follow the provisions of the applicable SCS manual and SCS implementation plan shall constitute a violation of this regulation if the NAAQS for SO_2 are exceeded as a result of such failure. Upon commencement of the final SCS program as discussed in paragraph (b)(3)(x) of this section, failure to curtail SO_2 emissions when and as much as indicated by the revised SCS operational manual or to follow the provisions of the revised manual and SCS implementation plan shall constitute a violation of this regulation. Any violation of the NAAQS for SO_2 in the DLA shall be a violation of this regulation unless EPA determines on the basis of a showing by the owner(s) or operator(s) that:

(A) The smelter owner(s) or operator(s) had taken all emission curtailment action indicated by the SCS operational manual; and

(B) The violation was caused in significant part by emissions of another source(s) which were in excess of the maximum permissible emissions applicable to such source(s).

(xii) *Continuing Review of the SCS Program.* The owner(s) or operator(s) shall continuously review the design and operation of the SCS program to determine what measures may be available for improving the performance of the system. An annual report shall be submitted to the Administrator by March 1 of each calendar year detailing the results of this review and specifying measures implemented to prevent the recurrence of any ambient SO_2 violations.

(*4*) *Monitoring, Compliance Reporting and Compliance Determination.* Effective on June 11, 1979, the owner(s) or operator(s) of the subject smelter shall comply with the requirements of paragraph (b)(4) of this section in regard to monitoring, compliance reporting and compliance determination except where such requirement is to be met in accordance with a separate compliance schedule provided for by this regulation:

(i) *SCS Program.* For the SCS program, the owner(s) or operator(s) shall:

(A) Maintain, in a useable manner, records of all air quality measurements made, meteorological information acquired, and emission curtailments ordered (including the identity of the persons making such decisions) during the operation of the SCS. Such records shall be retained for at least two years; and

(B) Submit to the Administrator, on a monthly basis, within fifteen (15) days after the end of each month, all measurements made of air quality and all other information regarding the SCS program that the Administrator may request. Such submission shall include a monthly summary indicating all dates and times when a NAAQS for SO_2 was exceeded or equaled in the DLA.

(ii) *Compliance Monitoring.* For compliance monitoring, the owner(s) or operator(s) shall:

(A) *SO_2 Concentration Monitors.* Install, operate and maintain SO_2 concentration measurement system(s) in accordance with the performance specifications and other requirements contained in Appendix D to 40 CFR Part 52, and the conditions outlined as follows:

(*1*) All SO_2 monitors shall be operated continuously and each monitor shall take and record at least one measurement [8] of SO_2 concentration in each 15 minute period;

(*2*) The sampling point shall be located at least 8 stack diameters (diameter measured at sampling point) downstream and 2 diameters upstream from any flow disturbance such as a bend, expansion, constriction, or flame, unless another location is approved by the Administrator;

(*3*) The sampling point for monitoring emissions shall be in the duct at the centroid of the cross section if the cross sectional area is less than 4.645m^2 (50 ft^2) or at a point no closer to the wall than 0.914m (3 ft) if the cross sectional area is 4.645m^2 (50 ft^2) or more. The monitor sample point shall be in an area of small spatial concentration gradient and shall be representative of the concentration in the duct; and

(*4*) The SO_2 concentration measurement system(s) shall be subject to the manufacturer's recommended zero adjustment and calibration procedure at least once per 24-hour operating period unless the manufacturer specifies or recommends calibration at shorter intervals, in which case such specifications or recommendations shall be followed. Records of these procedures shall be made which clearly show instrument readings before and after zero adjustment and calibration.

[8] In the event SO_2 measurements cannot be recorded because monitoring equipment was out-of-service for periodic zero adjustment and calibration or maintenance an arithmetic mean shall be used to determine SO_2 concentration for a given time interval. 75% of the required data will be considered sufficient to calculate a valid arithmetic average.

(B) *Gas Volumetric Flow Rate Monitors.* Install, operate and maintain gas volumetric flow rate system(s) in accordance with the performance specifications and other requirements contained in Appendix E to 40 CFR Part 52 and the conditions outlined as follows:

(*1*) The monitors are to be operated on a continuous basis and must be located at least 8 stack diameters (diameter measured at sampling point) downstream and 2 diameters upstream from any flow disturbance such as a bend, expansion, constriction, or flange, unless another location is approved by the Administrator.

(*2*) The sampling point with the duct shall be representative of the average flow in the duct or at the point specified by the instrument manufacturer.

(*3*) The instrument used to monitor SO_2 gas streams which bypass the lead smelter acid plant shall be adequate to disclose the time of the bypass and its duration.

(*4*) The measurement system(s) shall be subjected to the manufacturer's calibration procedures at intervals recommended by the manufacturer. Records of these procedures shall be made which clearly show instrument readings before and after any adjustments. If manufacturers calibration procedures do not exist procedures will be specified by the EPA.

(C) *Gas Flow Indicating Devices.* Install, operate, and maintain a system to detect the occurrence of situations when any gas is bypassed around an acid plant as specified in paragraph (b)(1)(iv) of this section in accordance with the following conditions:

(*1*) The system design for detecting gas flow shall be approved by the Enforcement Division Director of the EPA Region X;

(*2*) The device shall be located in each flue or duct where gas may bypass an acid plant;

(*3*) The system shall be capable of detecting gas flows as low as 5 percent of the maximum expected flow through each duct; and

(*4*) The system shall be continuously operated and capable of disclosing and recording the time of the bypass and its duration.

(D) *Field Test.* All continuously operated instrumentation required herein shall be field tested after installation. If field test requirements are not specified by the manufacturer EPA will provide test requirements. The Administrator shall be notified at least twenty (20) days prior to that start of the field test period, to afford the Administrator the opportunity to have an observer present.

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(E) *Certification of Monitors.* With the exception of the 168 hour break-in period for the SO_2 concentration measurement system(s), all SO_2 concentration and gas volumetric flow rate and gas flow indicating system(s) shall be recertified by the owner(s) or operator(s) at reasonable intervals as requested by the Administrator but in no case less frequently than once per year. The Administrator shall be notified in writing at least twenty (20) days prior to any tests associated with this requirement so that he may have an observer present. A report of the results of each test shall be forwarded to the Administrator within sixty (60) days of the completion of each test;

(F) *Continuous Data Recorder.* The equipment utilized to record the data and parameters measured by continuous monitoring instrumentation shall meet the following requirements or alternate equivalent requirements as the Administrator may require:

(*1*) Where various parameters are recorded on one strip chart the data must, to the Administrator's satisfaction, be continuously traced and each trace be individually and continuously identifiable when the chart is reproduced. In the event a color coded system of data recording is utilized copies of strip chart recordings submitted to the EPA must also be color coded or include a mathematically reduced tabulation of the data on at least 15 minute intervals;

(*2*) The scale for all SO_2 concentration readings must be set so that the maximum expected readings will be at least 40 percent of full scale;

(*3*) The scale for all gas volumetric flow readings must be set so that the maximum expected readings will be at least 80 percent of full scale; and

(*4*) Other requirements regarding data reduction and recording may be specified by the Administrator as required to enforce this regulation.

(G) All SO_2 concentration, gas volumetric flow rate and gas flow indicating measurement and recording instruments shall be maintained on operational mode and one line at *all* times except that provision will be made excusing the owner(s) or operator(s) from monitoring during periods when monitors break down due to causes beyond the control of the owner(s) of operator(s). In such an event, the owner(s) or operator(s) shall notify the Administrator within three (3) days of such a break down and provide information as to actions taken during the instrument malfunction period. All strip chart recordings of the instrumentation of paragraphs (b)(1)(iv) and (b)(1)(v) of this section must be marked once per shift as to the actual time a selected recorded measurement is being recorded. Quality assurance checks shall be performed on all continuous monitoring instrumentation at the frequency specified by the manufacturer or as otherwise reasonably required by the Administrator;

(H) Maintain, in a useable manner, process strip chart recordings, records of all measurements accumulated by the continuous monitoring systems of paragraph (b)(1)(iv) and (b)(1)(v) of this section and compliance determination calculations (measurements) of paragraph (b)(4)(iii) of this section below. Such information shall be retained for at least two (2) years. The Administrator or his authorized representative shall have reasonable access to these records; and

(I) Maintain, in a useable manner, process strip chart recordings, records and operators log sheets of plant operations for a period of at least two (2) years. The Administrator or his authorized representative shall have reasonable access to these records.

(iii) *Compliance Determination.* For compliance determination, the following shall apply:

(A) *Acid Plant Tailgas—Continuous Monitors.* Compliance with the requirements of paragraph (b)(1)(i)(A) of this section shall be determined using the continuous measurement system(s) of paragraph (b)(1)(iv) of this section installed, calibrated, maintained and operated in accordance with the requirements of paragraph (b)(4)(ii) of this section. An hourly running 6-hour averaging period shall commence at each clock hour and continue for a consecutive 6 clock hour period. A new hourly running 6-hour averaging period will commence at every clock hour. For example, in a given day the following typical hourly running 6-hour averaging periods will occur: 2 a.m. to 8 a.m.; 3 a.m. to 9 a.m.; 4 a.m. to 10 a.m.; and 5 a.m. to 11 a.m. *et seq.* Six-hour average SO_2 concentration shall be calculated as of the end of each clock hour for the preceding 6 hours, in the following manner:

(1) Divide each 6-hour period into not less than twenty-four (24) equally spaced time intervals;

(2) Determine on a compatible basis an SO_2 concentration for each individual time interval.[9] These measurements may be obtained either by continuous integration of all measurements recorded during the time interval or from the arithmetic average of any number of SO_2 concentration readings equally spaced over the time interval, in the latter case, the same number of concentration readings shall be taken in each interval and the readings shall be similarly spaced within each interval; and

(3) Calculate the arithmetic average of all interval concentration measurements in each 6-hour period.

(B) *Acid Plant Tailgas—Manual Test.* Notwithstanding the requirements of paragraph (b)(4)(iii)(A) of this section, compliance with the requirements of paragraph (b)(1)(i)(A) of this section shall also be determined by using the methods described below at such times as may be reasonably specified by the Administrator. For any acid plant, a 6-hour average SO_2 concentration shall be determined as follows:

(*1*) The test of each acid plant tailgas SO_2 concentration shall be conducted while the acid plant is operating at or above the maximum rate at which it will be operated and under such other conditions as the Administrator may specify;

(*2*) Concentrations of SO_2 in emissions shall be determined by using Method 8 as described in 40 CFR Part 60. The analytical and computational portions of Method 8 as they relate to determination of sulfuric acid mist and sulfur trioxide as well as isokinetic sampling, may be omitted from the over-all test procedure;

(*3*) Three independent sets of measurements of SO_2 concentrations shall be conducted during three 6-hour periods for each acid plant. Each 6-hour period will consist of three consecutive 2-hour periods. All tests must be completed within a 72-hour period;

(*4*) In using Method 8, traversing shall be conducted according to Method 1 as described in 40 CFR Part 60. The minimum sampling volume for each 2-hour test shall be 1.132 M^3 (40 ft^3) corrected to standard conditions, dry basis;

(*5*) The velocity of the total effluent from each acid plant evaluated shall be determined by using Method 2 as described in 40 CFR Part 60 of this chapter and transversing according to Method 1. Gas analysis shall be performed by using the integrated sample technique of Method 3 as described in 40 CFR Part 60. Moisture content shall be determined by using Method 4 except that stack gases arising only from a sulfuric acid production unit may be considered to have zero moisture content;

(*6*) The gas sample shall be extracted at a rate proportional to gas velocity at the sampling point;

(*7*) The SO_2 concentration in parts per million-maximum 6-hour average for each stock is determined by calculating the arithmetic average of the results of the three 6-hour test period each consisting of three 2-hour tests; and

(*8*) When necessitated by process variables or other factors, changes to the above test procedures may be approved by the Administrator.

(C) *7-Day Emissions—Continuous Monitoring.* Compliance with the requirements of paragraph (b)(1)(i)(B) of this section shall be determined using the continuous measurement system(s) of paragraph (b)(1)(iv) of this section installed, calibrated, maintained and operated in accordance with the requirements of paragraph (b)(4)(ii) of this section. A daily running 7-day period shall commence at midnight of each day and continue for a consecutive 7-day period. A new daily running 7-day period will commence at midnight of every day. For example, in a given week the following typical daily running 7-day periods will occur: Tuesday (0000 hours) to Monday (2400 hours); Wednesday (0000 hours) to Tuesday (2400 hours) and Thursday (0000 hours) to Wednesday (2400 hours), *et seq.* The SO_2 emission rate for a 7-day period shall be calculated on a daily basis (midnight to midnight) in the following manner:

(*1*) Divide each 6-hour period into not less than twenty-hour (24) equally spaced time intervals;

(*2*) Determine on a compatible basis an SO_2 concentration and a stack gas flow rate measurement for each individual time interval for each affected stack.[10] These measurements may be obtained either by continuous integration of SO_2 concentration and stack gas flow rate measurements (from the respective affected facilities) recorded during the time interval or from the arithmetic average of any number of SO_2 concentration and stack gas flow rate readings equally spaced over the time interval. In the latter case, the number of concentration readings shall be taken in each time interval and the readings shall be similarly spaced within each time interval;

(*3*) Calculate the arithmetic average (pounds SO_2 per hour) of all interval emission rate measurements in each 6-hour period for the zinc plant main stack and the lead smelter main stack and multiply that arithmetic average by the number of time intervals in the 6-hour period; and

(*4*) Calculate the SO_2 emission rate for each consecutive 7-day period (midnight to midnight) by summing the twenty-eight (28) 6-hour average SO_2 emission rates for each stack measured over a 7-day period.

(D) *Miscellaneous Source SO_2 Emissions.* The owner(s) or operator(s) shall perform a manual source test of the SO_2 emissions from the zinc fuming furnace and any other SO_2 emitting process equipment whose SO_2 emissions are not routed through the zinc plant main stack or lead smelter main stack. These emissions will not be used in calculating the 7-day SO_2 emissions as described in paragraph (b)(4)(iii)(c) above but must be submitted to the Administrator on an annual basis. The following shall apply to the performance of the manual source test:

(*1*) Manual source test methods shall be in accordance with the procedures contained in Appendix A to 40 CFR Part 60 and as follows:

(*i*) SO_2 emissions shall be measured by Method 8 sampling train; 3 runs of at least 60 minutes sampling time per run will constitute one manual source test. The minimum sampling volume for each 1-hour test shall be 1.15 m^3 (40.6 ft^3) corrected to standard conditions, dry basis. The analytical and computational portions of Method 8 as they related to determination of sulfuric acid mist, as well as the isokinetic sampling may be omitted from the overall test procedure.

(*ii*) Sampling will be conducted at a rate proportional to gas velocity determined according to Methods 1 and 2.

(*iii*) Two gas samples will be collected during each sampling run, according to Method 3.

(*iv*) Moisture content of the gas stream will be determined from the weight gain of the Method 8 train impringers.

(*v*) When necessitated by process variables or other factors, changes to the above test procedures may be approved by the Administrator.

(*2*) Source tests shall be conducted on or before (twelve months following execution of this Agreement) and at intervals specified by the Administrator but in any event not less than once per year;

(*3*) The process(es) tested shall be operated at or above the maximum rate at which it will be operated during the year and under such other conditions as the Administrator may specify; and

(*4*) The Administrator shall be notified in writing at least twenty (20) days prior to any such test so that he may have an observer present.

(*5*) *Research and Development Program.* Commencing on June 11, 1979, the owner(s) or operator(s) of the subject smelter shall comply with the requirements of paragraph (b)(5) of this section in regard to research and development. The provisions of this paragraph are intended to be read together with those set forth in paragraph (b)(6) of this section regarding bypass of SO_2 streams during the annual acid plant maintenance period:

(i) *Full Scale Research and Development Program.* Except as provided in paragraph (b)(5)(iii) of this section, the owner(s) or operator(s) shall implement a full scale program to capture and control an SO_2 gas stream which was not controlled as of September 28, 1978. A qualifying program shall meet the requirements of paragraphs (b)(5)(ii), (iv), (v), (vi), (vii) and (viii) of this section and shall consist of one of two options:

(A) An SO_2 removal facility (flue gas desulfurization system) to capture the weak stream exhausted from the sinter machine; or

(B) Substantially complete recirculation of the sinter machine weak steam[11] and treatment of the resultant gas stream in an SO_2 removal facility.

(ii) *Fuel Scale System Design Criteria.* The following shall constitute the design criteria for the full scale research and development system:

(A) Sinter machine weak stream flue gas desulfurization system:

(*1*) 95 percent SO_2 capture efficiency as determined by monitoring equipment continuously measuring feed gas SO_2 concentration and tail gas SO_2 concentration; and

(*2*) 95 percent on-line availability;

(B) Substantially complete sinter machine weak stream recirculation:

(*1*) Not less than 97 percent partitioning of SO_2 generated in the machine shall be routed to an SO_2 removal facility;

(*2*) Not more than 3 percent partitioning of the SO_2 gas generated in the machine shall be routed to the atmosphere via the tip end gas stream; and

(*3*) The SO_2 capture efficiency of the SO_2 removal facility shall not be impaired because of the additional gas captured through utilization of weak stream recirculation:

(iii) *Reduced Scale Research and Development Program.* The owner(s) or operator(s) may elect not to perform the full scale research and development program as set forth in paragraph (b)(5)(i) of this section: *Provided,* That:

(A) The owner(s) or operator(s) notify the EPA—Region X, in writing, of such decision no later than June 11, 1980, and provide a detailed account of the reasons for rejection of the full scale research and development program.

[9] Supra note 8.

[10] Supra note 8.

[11] Nothing in this regulation shall be construed to relieve the owner(s) or operator(s) from meeting the requirements of the Clean Air Act or regulations promulgated thereunder regarding construction or modification requirements concerning new sources.

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including all cost and design information considered in the decision;

(B) The owner(s) or operator(s) immediately submit for the Administrator's approval a substitute research and development program, consisting of construction and operation of a flue gas desulfurization system with a minimum volume operating capacity of 5000 SCFM to treat a portion of the weak gas exhausted from the sinter machine or blast furnace;

(C) Such flue gas desulfurization system is constructed and operated in accordance with the requirements of paragraphs (b)(5)(iv), (v), (vi), and (viii) of this secton within the time periods specified in paragraph (b)(5)(vii) of this section. The following shall constitute the design criteria for the reduced scale research and development system:

(*1*) 95 percent SO_2 capture efficiency as determined by monitoring equipment continuously measuring feed gas SO_2 concentration and tailgas SO_2 concentration;

(*2*) 95 percent on-line availability;

(*3*) Continuous measurement instrumentation to monitor and record the following:

(i) System temperatures, pressures and gas and liquid flow rates;

(ii) Feed gas and tailgas SO_2 concentration;

(iii) Pressure drop within the system; and

(iv) pH and all other critical flue gas desulfurization operating parameters such as liquid make-up and recirculation flow rates;

(*4*) To the extent technically feasible sufficient automatic control instrumentation shall be provided such that the system automatically compensates for feed gas excursions in particulate loading, flow rate and SO_2 concentration while insuring minimum design criteria are maintained; and

(*5*) To the extent technically feasible system design and control should be such that correct chemical balance is maintained to avoid scaling, corrosion and equipment malfunction.

(D) The flue gas desulfurization system shall be operated continuously, except during periods of reasonably unavoidable equipment failure in accordance with good engineering practice and in a manner such that the project will result in the collection of information adequate to determine the economic and technological feasibility of a full scale application of such flue gas desulfurization system.

(iv) *Evaluation of the Research and Development Program.* Effective on June 11, 1979, the owner(s) or operator(s) shall evaluate the research and development program and prepare and submit an annual report to the Administrator by March 1 of each calendar year on the progress of the research and development project and detailing the following:

(A) Capital, operating and other costs of the system;

(B) Disposal of by-products (or waste material) and associated environmental impact;

(C) Energy utilization and related potential effects on energy conservation;

(D) The effectiveness of the system to improve capture of other pollutants of both occupational and environmental significance;

(E) Problems in system design and suggested methods or actual methods undertaken to improve the design including any anticipated scale-up problems;

(F) Maintenance requirements and frequency of system shutdown;

(G) Personnel staffing requirements;

(H) SO_2 capture efficiency as impacted by process exhaust gas fluctuations and sinter machine (or blast furnace) shutdowns; and

(I) Such other related technical information as may be reasonably required by the Administrator to assist him in the evaluation of the research and development program.

(v) *System Operation.* The owner(s) or operator(s) shall install and operate the full scale or reduced scale removal facility, whichever it elects, in accordance with good engineering practice and shall make a good faith effort to operate the project continuously, except for periods of reasonably unavoidable malfunction until the expiration date of the first primary non-ferrous smelter order or until discontinuance is authorized under paragraph (b)(6)(iii) of this section or by written authorization of the Administrator, and in such manner as will result in the collection of information necessary to determine the economic and technological feasibility of the facility. If technically feasible, system performance must be at the design criteria as specified in paragraphs (b)(5)(ii) or (b)(5)(iii) of this section subsequent to its initial break-in period.

(vi) *Sonctions.* Except where the owner(s) or operator(s) have first demonstrated to the satisfaction of the Administrator that due to technical infeasibility design criteria cannot be achieved, departure from the design criteria of paragraphs (b)(5)(ii) and (iii) (as applicable) above in the final construction or operation of the research and development program, or failure to meet the compliance schedule and reporting requirements, shall constitute a violation of this regulation.

(vii) *Research and Development Compliance Schedule.* The owner(s) or operator(s) shall comply with the following research and development program compliance schedule:

(A) Complete an engineering evaluation of the full scale and reduced scale research and development systems listed in paragraphs (b)(5)(i) and (b)(5)(iii) of this section and submit a complete report and data to the Administrator on or before June 11, 1980;

(B) Notify the Administrator of the research and development system and the gas stream to be treated on or before June 11, 1980;

(C) Complete all engineering and design work on the research and development system on or before ten months following the notification of paragraph (b)(5)(vii)(B) of this section but in any event not later than April 11, 1981. The Administrator shall be provided with a copy of the engineering design for the technique selected;

(D) Award construction contracts for the SO_2 capture system on or before fourteen months following the notification of paragraph (b)(5)(vii)(B) of this section but in any event not later than August 11, 1981. Such award shall be contingent upon a primary nonferrous smelter order first being issued to the owner(s) or operator(s);

(E) If the full scale research and development system is selected, complete construction of the SO_2 capture system and begin acceptance testing on or before March 11, 1982; and complete all start-up and acceptance testing of the SO_2 capture system and place such system in service by June 11, 1982; and

(F) If the reduced scale research and development system is selccted, complete construction of the flue gas desulfurization system by December 11, 1981, and place such system in service by February 11, 1982.

(viii) *Consent to Access.* The owner(s) or operator(s) shall submit a binding written agreement, signed by a responsible corporate official empowered to do so consenting to:

(A) Grant the representatives and contractors of the EPA access to any information or data employed or generated in the research and development program, including any process, emissions, or financial records which the EPA determines are needed to evaluate the technical or economic merits of the program;

(B) Grant physical access to the representatives and contractors of the EPA to each facility at which such research is conducted; and

(C) Grant the representatives and contractors of the EPA reasonable access to the persons in charge of conducting the program on behalf of the smelter owner for discussions of progress, interpretation of data and results, and any other similar purposes as deemed necessary by the EPA.

(6) *Annual Acid Plant Maintenance Offset.* Commencing on June 11, 1979, the owner(s) or operator(s) of the subject smelter shall comply with the requirements of paragraph (b)(6) of this section in regard to continued process operation during the period when an acid plant is shutdown for annual maintenance.

(i) *Bypass Prohibition,* Except as provided in paragraph (b)(6)(ii) of this section, the owner(s) or operator(s) shall not operate the lead smelter sinter machine or any zinc plant roaster when any acid plant(s) serving that process is shut down for maintenance.

(ii) *Criteria for Continuing Process Operation.* Excess emissions occurring during the period when the acid plant is shutdown for the annual maintenance period [12] shall not constitute a violation of paragraph (b)(1)(ii) of this section or be included in the computation of the plant wide SO_2 emissions of paragraph (b)(1)(i)(B) of this section, provided that:

(A) The owner(s) or operator(s) commits to install additional SO_2 removal facilities and/or performs process changes to capture a gas stream in accordance with the full scale research and development program requirements of paragraphs (b)(5)(i) and (b)(5)(vii) of this section. If at any time the owner(s) or operator(s) elect not to undertake a full scale qualifying project, excess emissions occuring during the period when the acid plant is shut down for any annual maintenance period shall constitute a violation of this regulation;

(B) The owner(s) or operator(s) provide written notification to the EPA—Region X on or before June 11, 1980, that it will perform the full scale research and development program. During the period prior to such notification, excess emissions occurring when the acid plant is shut down for the annual maintenance period shall not constitute a violation of this regulation. Such continued operation while an acid plant is shut down for annual maintenance shall not in any event exceed fourteen (14) calendar days per year for each acid plant through and until June 11, 1980.

(C) Commencing with the first twelve (12) month period after the election of a full scale qualifying research and development system under paragraph (b)(5)(i) of this section, and until the system is required to be placed in service under paragraph (b)(5)(vii) of this section, the combined amount of SO_2 which is released by reason of continued process operation during the annual acid plant maintenance period for all 3 acid plants does not exceed the lesser of fourteen (14) days for each acid plant per year or the annual incremental SO_2 capture for which the full scale research and development system is designed.

(D) During the period of time commencing when the full scale research and development system is required to first be placed in service under paragraph (b)(5)(vii) of this section and ending on the expiration date of the first primary non-ferrous smelter order, the following shall apply:

(*1*) No process operation is allowed to continue while the respective acid plant is shut down for its annual maintenance period until and unless the full scale system or process change has operated for the time period specified in paragraph (b)(6)(iii) of this section;

(*2*) During such time period, the full scale system or process change must perform substantially in accord with the system design criteria set forth in paragraph (b)(5)(ii) of this section;

(*3*) The owner(s) or operator(s) must continue to operate the full scale research and development system beyond the time period described in paragraph (b)(6)(iii) of this section and until the expiration date of the first primary non-ferrous smelter order; further the system must perform substantially in accord with the system design criteria set forth in paragraph (b)(5)(ii) of this section; and

(*4*) The combined annual amount of SO_2 which is released by reason of continued process operation during the annual acid plant maintenance period shall not exceed for all 3 acid plants the annual incremental SO_2 capture for which the full scale research and development system is designed and operated;

(E) Annual maintenance shall not be performed simultaneously on the lead smelter acid plant and any zinc acid plant or simultaneously on both zinc plant and acid plants. If, under paragraph (b)(5)(i) of this section, a sinter machine flue gas desulfurization system is installed, annual maintenance shall not be performed simultaneously on the lead smelter acid plant and the flue gas desulfurization system; further, the sinter machine flue gas desulfurization system shall receive the maximum quantity of SO_2 practicable for the sinter machine when the lead smelter acid plant is shut down. During annual acid plant maintenance at the zinc plant, the zinc plant acid plant which remains in service shall receive the maximum quantity of SO_2 practicable from the operating zinc roasters; and

(F) Continued process operation while an acid plant is shut down for annual maintenance shall not in any event exceed fourteen (14) calendar days for each acid plant per year.

(iii) *Discontinuance of Full Scale Research and Development Program.* In the event that severe and unavoidable production losses are incurred as a direct result of the operation of the full scale research and development system or process change during a full nine (9) month period for the flue gas desulfurization system or three (3) month period for the sinter machine weak stream recirculation, or upon terms otherwise agreed, in writing, by the Administrator, the owner(s) or operator(s) may discontinue operation of the full scale research and development project provided that:

(A) Notification to the Administrator of discontinuance of such operation shall be given within one month following the expiration of the requisite period. Such notification shall be accompanied by a full written justification of and analysis for the discontinuance; and

(B) Until the expiration date of the first primary non-ferrous smelter order, the lead smelter sinter machine and any zinc plant roaster shall be shut down during any subsequent annual acid plant maintenance period.

(iv) *Pre-determined SO_2 Emissions.* For the purposes of determining compliance with the design and operating criteria set forth in paragraphs (b)(6)(ii)(C) and (D) of this section, the quantity of incremental SO_2 deemed captured by the full scale qualifying project shall be calculated using a predetermined quantity of SO_2 which is emitted in the relevant gas stream prior to installation of such full scale project. The determination of pre-exiting SO_2 emissions shall be as follows:

(A) For the sinter machine weak stream, a value of 15.7 tons of SO_2 per 24 hours of operation shall be used;

(B) For the blast furnance, a value of 18.3 tons of SO_2 per 24 hours of operation shall be used; and

(C) On or before June 11, 1980, if the owner(s) or operator(s) demonstrate to the satisfaction of the Administrator,

[12] The term "annual maintenance period" as used herein is defined as the period occurring once (or twice if the catalyst needs to be replaced two times a year) per year for each acid plant when various maintenance functions such as catalyst replacement and heat exchange cleaning occur. This period normally lasts less than two weeks.

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using manual source test techniques, continuous SO_2 measurement techniques, or equivalent alternatives, that a different pre-existing SO_2 emission value is correct, that value may be substituted for the value(s) listed in paragraphs (b)(6)(iv)(A) and (B) of this section upon agreement of the Administrator.

(7) *Violations*—(i) *Violations of Provisions.* Failure to comply with any provisions of this regulation or with the NSO issued to replace this regulation may subject the owner(s) or operator(s) to enforcement and sanctions as set forth in the Clean Air Act and regulations promulgated thereunder.

(ii) *Violations of NAAQS.* Nothing in this subparagraph shall be construed to relieve the owner(s) or operator(s) from liability for violations of the NAAQS.

Appendix A—Fugitive Sulfur Dioxide Emission Control Program and Its Impact to Total Plant Emissions

The total plant emission limitation of paragraph (b)(1)(i)(B) was developed based on historical emission data and included the increase in SO_2 emissions from the main stacks that would likely occur as a result of implementation of the fugitive control program described in paragraphs (b)(1)(vi)(C) (zinc roaster), (b)(1)(vi)(D) (sinter machine), and (b)(1)(vi)(E) (blast furnace). Accordingly, failure of the owner(s) or operator(s) to comply with any of the provisions of the fugitive SO_2 control program will be deemed a violation of this regulation.

For example, if blast furnace upset conditions occur for 8.36 hours in any 7-day period the plant wide emission limit would be reduced 6 tons per running 7-day period, i.e. the new plant wide emission limit would be 619 tons SO_2 per running 7-days.

Compliance will be determined as follows:

a. The zinc roaster program of paragraph (b)(1)(vi)(C) is based on compliance with applicable OSHA lead workplace standards in accordance with the OSHA schedules of compliance;

b. The sinter machine program of paragraph (b)(1)(vi)(D) must ensure complete installation of new stainless steel hooding with the exception of the last two (2) sections of the hood which are not subject to high corrosion on or before June 11, 1980; and

c. The blast furnace program of paragraph (b)(1)(vi)(E) must eliminate 90 percent of the blast furnace upset conditions (currently occuring approximately 20 percent of the time).

EPA inspection of the blast furnace operation will be made to ensure that upset conditions occur no more than an aggregate total of 3.36 hours per any 7-day period. The owner(s) or operator(s) explicitly agree that failure to meet the requirements stated herein at any time subsequent to June 11, 1980, will immediately result in the decrease in the plant wide emission limit in proportion to the amount the objective was not attained. The proportional formula is shown below:

$$\text{Amount of plant wide emission reduction from the 625 tons per 7-day limit} = 21 \times \left[1 - \frac{33.6-2(H_u-3.36)}{33.6}\right]$$

Where H_u = hours in any 7-day period when the blast furnace is in an upset condition. For the purpose of use in this formula H_u cannot exceed 20.16 hours.

[FR Doc. 80-34028 Filed 10-30-80; 8:45 am]
BILLING CODE 6560-33-M

40 CFR PART 180

[FRL 1595-8; PP8F2058/P141]

Oxyfuorfen; Proposed Tolerance

Correction

In FR Doc. 80-26938, appearing at page 58497, in the issue Wednesday, September 3, 1930, on page 58498, make the following corrections:

(1) In the first column, the second full pargraph, the sixth line down, is corrected to read: "dose (LD_{50}) with an LD_{50} greater than 5.0".

(2) In the first column, the second full paragraph, the last line of that paragraph, insert the article "a" after the word "with".

(3) In the second column, the third full pargraph down, the third line, correct ">0.1 percent," to read "<0.1 percent,".

(4) In the last column, last paragraph, the fifth line up from the botton, correct "Order of" to read "Order or".

BILLING CODE 1505-01-M

40 CFR Part 446

[WH-FRL 1646-2]

Paint Formulating; Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability of Additional Analytical Data.

SUMMARY: EPA is making available additional analytical data on wastewater samples taken at six paint formulating plants using the Agency's verification sampling and analysis protocol. The purpose of this notice is to provide these additional data for public review and to request comment on the new data. These data are available in EPA's Public Information Reference Unit. EPA is inviting submission of comments relating only to the new data which are the subject of this notice.

DATES: Comments on these data must be submitted on or before December 1, 1980.

ADDRESS: Send comments to Ben J. Honaker, Effluent Guidelines Division (WH-552), Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460. The additional data will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (Rear) PM 213 (EPA Library). The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Ben J. Honaker, Effluent Guidelines Division (WH-552), Environmental Protection Agency, 401 M St. SW. Washington, D.C. 20460, Telephone (202) 426-2554.

SUPPLEMENTAL INFORMATION: On January 3, 1980 EPA published proposed effluent limitations and standards (45 FR 912) for the Paint Formulation Point Source Category. This proposed regulation implements Sections 301, 304, 306, and 307 of The Clean Water Act of 1977. The comments received by EPA indicated concern by the paint industry over sample handling and accuracy of analytical results based on the use of the Agency's screening protocol. In addition, some commenters expressed concern that there were insufficient analytical data to represent the industry's wastewater adequately. In order to be responsive to these concens, EPA has obtained additional samples of wastewater from the paint industry and analyzed them according to its current verification protocol. Six paint plants, previously sampled by EPA, were visited and wastewater samples were collected and analyzed under procedures that strictly adhered to the *Guidelines Establishing Test Procedures for the Analysis of Pollutants; Proposed Regulations* (44 FR 69464-69575).

SOLICITATION OF COMMENTS: EPA invites and encourages public participation in its rulemaking process. Comments should be specifically directed only to the significance of the new data with respect to the limitations and standards proposed for the paint industry on January 3, 1980. Any comments not related to this specific data will not be considered. The Agency is allowing 30 days from the publication of this notice for evaluation and presentation of comments.

Dated: October 23, 1980.

Eckardt C. Beck,

Assistant Administrator for Water and Waste Management.

[FR Doc. 80-33888 Filed 10-30-80; 8:45 am]
BILLING CODE 6560-29-M

40 CFR Part 447

[WH-FRL 1646-3]

Ink Formulating, Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Envoronmental Protection Agency.

ACTION: Notice of Availability of Additional Analytical Data.

SUMMARY: EPA is making available additional analytical data on wastewater samples taken at three ink formulating plants using the Agency's verification sampling and analysis protocol. The purpose of this notice is to provide these additional data for public review and to request comment on the new data. These data are available in EPA's Public Information Reference Unit. EPA is inviting submission of comments relating only to the new data which are the subject of this notice.

DATES: Comments on these data must be submitted on or before December 1, 1980.

ADDRESS: Send comments to Ben J. Honaker, Effluent Guidelines Division (WH-552), Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460. The additional data will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (Rear) PM-213 (EPA Library). The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Ben J. Honaker, Effluent Guidelines Division (WH-552), Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460, Telephone (202) 426-2554.

SUPPLEMENTAL INFORMATION: On January 3, 1980 EPA published proposed effluent limitations and standards (45FR928) for the Ink Formulation Point Source Category. This proposed regulation implements Sections 301, 304, 306, and 307 of the Clean Water Act of 1977. One of the comments received by EPA indicated concern by the ink industry over sample handling and accuracy of analytical results based on the use of the Agency's screening protocol. In addition, this commenter expressed concern that there were insufficient analytical data to represent the industry's wastewater adequately. In order to be responsive to these concerns, EPA has obtained additional samples of wastewater from the ink industry and analyzed them according to its current verification protocol. Three ink plants, previously sampled by EPA, were visited and wastewater samples were collected and analyzed under procedures that strictly adhered to the *Guidelines Establishing Test Procedures for the Analysis of Pollutants; Proposed Regulations* (44 FR 69464-69575).

SOLICITATION OF COMMENTS: EPA invites and encourages public participation in its rulemaking process. Comments should be specifically directed only to the significance of the new data with respect to the limitations and standards proposed for the ink industry on January 3, 1980. Any comments not related to this specific data will not be considered. The Agency is allowing 30 days from the publication of this notice for evaluation and presentation of comments.

Dated: October 23, 1980.

Eckardt C. Beck,

Assistant Administrator for Water and Waste Management.

[FR Doc. 80-33889 Filed 10-30-80; 8:45 am]
BILLING CODE 6560-29-M

INTERSTATE COMMERCE COMMISSION

49 CFR 1051

[Ex Parte No. MC.-147]

Information Required on Receipts and Bills—Responsibility for Loading and Unloading Motor Vehicles

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: "The Motor Carrier Act of 1980" has changed a number of statutory provisions affecting the Commission. One change is the requirement that when shippers and receivers of freight in interstate commerce require that any person who owns or operates a motor vehicle be assisted in loading and unloading, they shall be responsible for providing this assistance or shall compensate the owner or operator of the motor vehicle for all costs associated with securing such assistance. The purpose of the proposed rule is to implement this change and make explicit in receipts or bills of lading of regulated carriers the responsibility for loading and unloading the motor vehicle and the compensation, if any, to be paid for this service.

DATES: Written comments are due on or before December 15, 1980.

ADDRESSES: An original and 15 copies, if possible, should be sent to: Ex Parte No. MC-147, Room 7417, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Lewis R. Teeple, phone: (202) 275-7612.

SUPPLEMENTARY INFORMATION: In passing the Motor Carrier Act of 1980, the Congress was concerned that drivers, especially owner-operators, be protected against the practice known as "lumping," that is, the coercion of carriers and owner-operators, to obtain assistance in loading or unloading of freight. Section 15 (49 U.S.C. 11109(a)) of the new law mandates that whenever a shipper or receiver of property requires that any person who owns or operates a motor vehicle be assisted in loading and unloading, they are to be responsible for providing assistance or compensate the owner or driver of the motor vehicle for all costs associated with such assistance. This requirement, now in effect, applies to all interstate transportation by motor carrier, not just transportation subject to regulation by this Commission.

Other sections of the Act require that this responsibility for loading and unloading be explicitly set forth in writing. For example, a new part (b) is added to Section 11107 of the recodified Interstate Commerce Act to provide:

The Commission shall require, by regulation, that any arrangement, between a motor carrier of property providing transportation subject to the jurisdiction of the Commission under subchapter II of chapter 105 of this title and any other person, under which such other person is to provide any portion of such transportation by a motor vehicle not owned by the carrier shall specify, in writing, who is responsible for loading and unloading the property onto and from the motor vehicle.

Anyone with an interest in this proceeding should also review the notice of proposed rulemaking in Ex Parte No. MC-43 (Sub-No. ——) Lease and Interchange of Vehicles, which would implement the above requirement

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that regulated carriers set forth in lease agreements the responsibility for loading and unloading. That rulemaking also proposes that the lease contain the compensation, if any, to be paid for loading or unloading.

Similarly, Section 16 of the Act requires that any contract of haul prescribed for motor carriers operating under the 10526(a)(6) exemption, "shall specify the arrangements, including compensation, with respect to loading and unloading of the property transported under such contract." The Act does not, however, make it a requirement that loading and unloading arrangements between regulated carriers and shippers be specifically stated in writing in the contract of carriage or freight bill. In this connection, we have received complaints from shippers, consignees, drivers and motor carriers, that there is confusion at origin and destination as to the responsibility of the parties for loading and unloading. This confusion will be eliminated by a statement as to the loading and unloading responsibility in bills of lading or freight bills of regulated motor carriers.

In proposing this rule, we are mindful of the Congressional intent that the ability of the parties to apportion responsibility for loading and unloading between and among shippers, receivers, carriers, and owner-operators should be left to the market place. The purpose of this rule is to make explicit the market place decision as to apportionment and to make certain the right of an owner-operator, carrier, or driver for recovery of loading or unloading charges if he or she is required to perform or accept services not covered in the agreement.

This proposed action does not significantly affect the quality of the human environment or the conservation of energy resources.

We Propose

To amend title 49 of the Code of Federal Regulations by adding 1051.1(c) to the CFR as set forth in the appendix.

This notice and action are issued under authority contained in 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: October 16, 1980.

By the Commission: Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

Agatha L. Mergenovich,
Secretary.

Appendix

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Part 1051 is amended by adding § 1051.1(c) as follows:

§ 1051.1 [Amended]

(c) Every common and contract carrier by motor vehicle of property subject to the jurisdiction of this Commission shall specify on every receipt or bill of lading issued for the transportation of property in interstate or foreign commerce who is responsible for loading and unloading the property onto and from the motor vehicle and the compensation, if any, to be paid for this service. The receipt or bill of lading issued for the transportation of property in interstate or foreign commerce shall contain the following statement:

Pursuant to Federal Law, 49 United States Code 11109(a) "Whenever a shipper or receiver of property requires that any person who owns or operates a motor vehicle be assisted in the loading or unloading of such vehicle, the shipper or receiver shall be responsible for providing such assistance or shall compensate the owner or operator for all costs associated with securing and compensating the person or persons providing such assistance."

[FR Doc. 80-33951 Filed 10-30-80; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status and Critical Habitat for Stephanomeria malheurensis (Malheur wire-lettuce)

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine the Malheur wire-lettuce (*Stephanomeria malheurensis*) to be an Endangered species and to designate its Critical Habitat, under the authority contained in the Endangered Species Act. This plant is known only from one small population located in Harney County in southeastern Oregon. The lone population of this species is vulnerable to any substantial habitat alteration and faces the potential threat of surface mining on and near the site where it occurs. A determination that *Stephanomeria malheurensis* is an Endangered species and designation of its Critical Habitat would implement the protection provided by the Endangered Species Act of 1973, as amended.

DATES: Comments from the public must be received on or before January 29, 1981. A public meeting and a public hearing will be held on November 13 and December 2, 1980, respectively.

ADDRESSES: Interested persons or organizations are requested to submit comments or materials, preferably in triplicate, to the Regional Director (SE), Department of the Interior, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and material relating to this proposal are available for public inspection by appointment during normal business hours at the Service's Regional Office, 700 NE. Multnomah Street, Suite 550, Portland, Oregon. The public meeting and the public hearing on this proposal will be held at the Museum Club Room, 18 West D Street, Burns, Oregon, beginning at 10:00 a.m. on November 13 and December 2, 1980, respectively.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Marshall, Senior Staff Biologist, Endangered Species Program, Region 1, U.S. Fish and Wildlife Service, Department of the Interior, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232, 503/231-6131.

SUPPLEMENTARY INFORMATION: The first discovery of *Stephanomeria malheurensis* was made in 1966 when seeds of this species were collected along with those from a population of its ancestral subspecies, *Stephanomeria exigua ssp. coronaria*. The locality where these two taxa are found together is at the northern end of the range of the ancestral subspecies. further studies by Dr. Leslie Gottlieb of the University of California, Davis, demonstrated consistently distiguishable field characteristics and reprodutive isolation between these two taxa, establishing *Stephanomeria malheurensis* as a valid species (Gottlieb 1973, 1977, 1978). This annual plant is a member of the aster family (Asteraceae) and grows to 5 dm. tall, with a basal rosette of leaves, a much branched stem with scale-like leaves, and numerous pink to white (rarely yellow-orange) flower heads. *Stephanomeria malheurensis* is known only from one locality ner Malheur National Wildlife Refuge in Hareny County, Oregon. Its Habitat is situated on top of a dry, broad hill on a soil derived from volcanic tuff layered with some limestone. Numbers of individual plants vary greatly from year to year depending on the amount of precipitation prior to and during the spring growing season. This plant flowers in July and August.

The extremely restricted range of this plant makes the species vulnerable to even small land disturbances in and around its habitat. Such a potential threat exists in the form of some recently established mining claims which include the habitat of

Stephanomeria malheurensis. Future zeolite mining in the area endangers the continued existence of this species (Griffith and Hohn, 1979). The following paragraphs further discuss the actions to date involving this plant, the threats to the plant, and the effects of the proposed action.

Background

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be Endangered, Threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Director published a notice in the **Federal Register** (40 FR 27823-27924) of his acceptance of this report as a petition within the context of Subsection 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523-24572) to determine approximately 1,700 vascular plant taxa to be Endangered species. This list was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975 **Federal Register** publication. *Stephanomeria malheurensis* was included in the July 1, 1975, notice and the June 16, 1976, proposal. General comments on the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909-17916).

The Endangered Species Act Amendments of 1978 (Pub. L. 95-632) required that all proposals over two years old be withdrawn. On December 10, 1979, the Service published a notice of the withdrawal of the June 16, 1976, proposal along with other proposals which had expired (44 FR 70796-70797). At this time the Service has sufficient new information to warrant reproposing *Stephanomeria malheurensis*. Its Critical Habitat is proposed for the first time.

Note.—The Department has determined that this is not a significant rule and does not require the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Summary of Factors Affecting the Species

Subsection 4(a)(1) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) states that the Secretary of the Interior shall determine whether any species is an Endangered species or a Threatened species due to one or more of the five factors described in that subsection. These factors and their application to *Stephanomeria malheurensis* Gottlieb are as follows:

1. *Present or threatened destruction, modification, or curtailment of its habitat or range. Stephanomeria malheurensis* has been known from only one 70-acre location south of Burns in Harney County, Oregon, since its discovery. No more than 750 adult plants of the species have been found in any one summer season since observations began in 1968. The restricted range of the species makes it vulnerable to many types of habitat alteration. Zeolite mining in the area is likely in the near future, and mining claims cover the entire area of this species' habitat as well as all adjacent areas. Protection of the habitat of *Stephanomeria malheurensis* and its immediate surroundings is imperative to the conservation of the species.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* Not applicable to this species.

3. *Disease or predation* (including grazing). A 160-acre tract of land including the entire population of *Stephanomeria malheurensis* has been fenced, which prevents grazing of the species by livestock. Larvae of an unidentified insect have been found foraging on the species, but their effect is unknown.

4. *The inadequacy of existing regulatory mechanisms.* The Bureau of Land Management (BLM) administers all of the land supporting this species, and in August 1975 it gave notice of the closure of the 160 acres necessary for the species' survival (40 FR 39536-39537). However, zeolite was determined to be a locatable mineral under mining law in June 1977. In consequence, access to the zeolite ore is regulated by the Mining Law of 1872, as amended. The adequacy of the Federal Land Policy and Management Act of 1976 (Pub. L. 94-579), often called the BLM organic act, to protect *Stephanomeria malheurensis* is unclear in these circumstances. The Endangered Species Act of 1973, as amended, offers additional possibilities for protection of the species.

5. *Other natural or man-made factors affecting its continued existence.* The small size of the only known population causes this species to be in significant danger of extinction due to natural fluctuations in the number of individuals in the population. Since this species is an annual, its numbers vary greatly from year to year, depending largely on the amount of precipitation prior to and during the spring growing season. In 1974 and 1975, juvenile populations of *Stephanomeria* numbered 12,000 and 35,000, respectively (Gottlieb, 1977). New fieldwork shows the population was only a few dozen individuals in August 1980 (Brauner and Gottlieb, 1980). In addition, Brauner and Gottlieb discuss the effects of a 1972 fire which swept much of the colony area. In 1979 and 1980, it has become apparent that cheat grass (*Bromus pectorum)* has invaded the burnt area much to the detriment of *Stephanomeria*. In their September 1980 report, Gottlieb states that the Malheur wire-lettuce is eminently threatened with extinction unless immediate action is taken to control the cheat grass invasion.

Critical Habitat

The Act defines "Critical Habitat" as "(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of Section 4 of this Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by the species at the time it is listed in accordance with the provisions of Section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species."

Critical Habitat for *Stephanomeria malheurensis* is being designated to include the 160-acre Scientific Study Area on Bureau of Land Management land located 27 miles south fo Burns in Harney County, Oregon. This includes the entire, lone population of *Stephanomeria malheurensis*. This area is located on the lands west of state highway 205 within the SE¼ of the NE¼, and the NE¼ of the SE¼, Section 11; and the W½ of the SW¼ of the NW¼, and the SW¼ of the NE¼ of the SW¼, and the NW¼ of the SW¼, Section 12, T27S, R30E, Willamette Meridian. Natural expansion will likely be a desired management goal in the future. The proposed Critical Hibitat includes land within the Scientific Study Area which presently does not support the species but provides a buffer against adverse indirect impacts and which is considered essential for the conservation of the species.

Subsection 4(f)(4) of the Act requires, to the maximum extent practicable, that any proposal to determine Critical Habitat be accompanied by a brief description and evaluation of those activities which, in the opinion of the Secretary, may adversely modify such habitat if undertaken, or may be impacted by such designation. Such

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activities are identified below for this species. It should be emphasized that Critical Habitat designation may not affect all of the activities mentioned below, as Critical Habitat designation only affects Federal agency activities through Section 7 of the Act.

Any activity which would significantly disturb the soil, topography or other physical and biological comnponents of the area where *Stephanomeria malheurensis* occurs would adversely modify its Critical Habitat. Land uses in the immediate locality of the population and in its surroundings must be carefully regulated to prevent such modifications. This might require restricting mining activities within and perhaps near the area in order to prevent adverse direct and indirect impacts. Since access to zeolite on BLM land is regulated by the Mining Law of 1872, the effect of this species' listing and Critical Habitat designation on the mining activity is uncertain (cf. BLM, n.d.; Sheridan 1977, 1978). Cooperative efforts between the Anaconda Company, the BLM, the Service, and any others so as to avoid damage to the species and its habitat are certainly indicated.

Sebsection 4(b)(4) of the Act requires the Service to consider economic and other impacts of specifying a particular area as Critical Habitat. The Service has prepared a draft impact analysis and believes at this time that economic and other impacts of this action are not significant for the foreseeable future. The area proposed as Critical Habitat for *Stephanomeria malheurensis* is already being protected by the BLM, and represents only about 5 percent of the 3,000 acre area with mining claims by the Anaconda Company. The exact distribution of the subsurface deposits of zeolite are unknown, so that their relationship to the habitat requirements of the species cannot be determined. Furthermore, it is not know whether the zeolite is commercially exploitable in this area, and if it is, whether Section 7 would provide protective regulation for the species and its Critical Habitat.

The Service has contacted the Bureau of Land Management, which has jurisdiction over the land under consideration in this proposed action, and the Anaconda Company, which has the mining claims on the land where the species occurs. The BLM, other interested Federal agencies, the Anaconda Company, and other interested persons or organizations are requested to submit information on economic or other impacts of the proposed action. The Service will prepare a final impact analysis prior to the time of final rulemaking.

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Effects of This Proposal If Published As a Final Rule

In addition to the effects discussed above, the effects of this proposal if published as a final rule would include, but would not necessarily be limited to, those mentioned below.

Subsection 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species which is proposed or listed as Endangered, and any proposed or designated Critical Habitat. Provisions for Interagency Cooperation implementing this section are codified at 50 CFR Part 402. New regulations to accommodate amendments to Section 7 are in preparation. This proposed rule requires Federal agencies to confer with the Director on any of their actions which are likely to jeopardize this proposed species, or adversely modify its proposed Critical Habitat. If published as a final rule, Federal agencies would be required to insure that actions they authorize, fund or carry out are not likely to jeopardize the continued existence of this species, or adversely modify its Critical Habitat.

The only known potential action which may be affected by the Endangered Species Act is the zeolite mining by private interests planned for the Federal land in the immediate area which includes the proposed species and its Critical Habitat. As the Federal land management agency, the Bureau of Land Management would be responsible for carrying out the intentions of the Endangered Species Act on this land. The Mining Law of 1872, however, may restrict the authority of the BLM to regulate mining activities of locatable minerals, including zeolite. Voluntary or mandatory protection of this species and its habitat will require cooperation between the BLM, the private mining interests, and the U.S. Fish and Wildlife Service.

The Act and implementing regulations published in the June 24, 1977, Federal Register (42 FR 32373–32381) set forth a series of general trade prohibitions and exceptions which apply to all Endangered plant species. The regulations are found at §17.61 of 50 CFR and are summarized below. With respect to *Stephanomeria malheurensis* all prohibitions of Section 9(a)(2) of the Act, as implemented by § 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions would apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered species, under certain circumstances. No such trade in this species is known. It is anticipated that few permits involving the species would ever be requested.

If this plant is listed as an Endangered species and its Critical Habitat designated, certain conservation authorities would become available and protective measures may be undertaken for it. These could include increased management of the species and its habitat, the provision of two-thirds Federal (and one-third State) funds for the species should Oregon qualify for a cooperative agreement under Subsection 6(c)(2) of the Act, and the development of a recovery plan for the species as specified in Subsection 4(g).

If listed as Endangered under the Act, the Service will review this species to determine whether it should be considered for the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere for placement upon its Annex, and whether it should be considered for other appropriate international agreements.

National Environmental Policy Act

A draft Environmental Assessment has been prepared in conjunction with this proposal. It is on file in the Service's Portland Regional Office, 700 NE Multnomah Street, Suite 550, Portland, Oregon, and may be examined by appointment during regular business hours. A determination will be made at the time of final rulemaking as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (40 CFR Parts 1500—1508).

Public Comments Solicited

The Director intends that the rules finally adopted will be as accurate and effective as possible in the conservation of each Endangered species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological or other relevant data concerning any threat (or the lack thereof) to the species included in this proposal;

(2) The location of any population of *Stephanomeria malheurensis* and the reasons why any habitat of this species should or should not be designated as Critical Habitat;

(3) Additional information concerning the range and distribution of this species;

(4) Current or planned activities in the subject area and the probable impact of such activities on the area designated as Critical Habitat; and

(5) The foreseeable economic and other impacts of the Critical Habitat designation of Federal activities.

Final promulgation of a rule on *Stephanomeria malheurensis* will take into consideration any comments and additional information received by the Director, and such communications may lead him to adopt a final rule that differs from this proposal.

Public Meetings

The Service hereby announces that a public meeting and a public hearing will be held on this proposed rule. The public is invited to attend the meeting and to present opinions and information on the proposal. Specific information relating to the public meeting and the public hearing is set out below:

Public Meeting

Place: Museum Club Room, 18 West D. Street, Burns, Oregon
Date: November 13, 1980
Time: 10:00 a.m.
Subject: Malheur wire-lettuce

Public Hearing

Place: Museum Club Room, 18 West D. Street, Burns, Oregon
Date: December 2, 1980
Time: 10:00 a.m.
Subject: Malheur wire-lettuce

This proposal is published under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; 87 Stat. 884, 92 Stat. 3751, 93 Stat. 1225). The primary authors of the proposed rule are Bruce MacBryde, Office of Endangered Species, Washington, D.C. (703/235–1975) and Peter A. Stine, Endangered Species Staff, Portland Regional Office, Portland, Oregon (503/231–6131).

References Cited

Brauner, S. and L.D. Gottlieb. 1980. Letter dated September 3, 1980 addressed to Dr. Janet Hohn. Portland Regional Office. U.S. Fish and Wildlife Service.

Bureau of Land Management. n.d. Draft Environmental Impact Statement. Surface Management of Public Lands under the U.S. Mining Laws 43 CFR 3809. BLM, Washington. Gottlieb, L.D. 1973 Genetic differentiation, sympatric speciation, and the origin of a diploid species of *Stephanomeria*. Amer. J. Bot. 60(6):545–553. Gottlieb, L.D. 1977. Phenotypic variation in *Stephanomeria exigua* ssp. coronaria (Compositae) and its recent derivative species "Malheurensis." Amer. J. Bot. 64(7):873–880. Gottlieb, L.D. 1978. *Stephanomeria malheurensis* (Compositae), a new species from Oregon. Madrono 25(1):44–46. Griffith, S.K., and J.E. Hohn. 1979. Status report on *Stephanomeria malheurensis* Gottlieb. Prepared by U.S. Fish and Wildlife Service, Portland, July 5, 1979.

Sheridan, D. 1977. Hard rock mining on the public land. Council of Environmental Quality. GPO, Washington.

Sheridan, D. 1978. Mining the public wealth. Sierra Club Bull. 63(3):10–13.

Regulations Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. It is proposed to amend § 17.12 by adding, in alphabetical order, the following to the list of plants:

§ 17.12 Endangered and threatened plants.

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family:						
Stephanomeria malheurensis	Malheur wire-lettuce	U.S.A. (OR)	E	NA	17.96a	NA

2. It is further proposed that § 17.96(a) be amended by adding the Critical Habitat of *Stephanomeria malheurensis* after that of Asteraceae (*Echinacea tennesseensis* as follows:

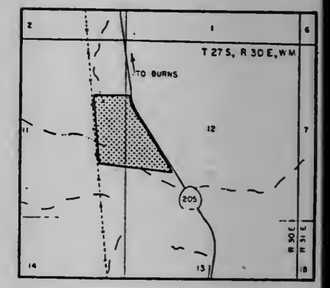
§ 17.96 [Amended]

Asteraceae

Stephanomeria malheurensis

Malheur wire-lettuce

Oregon, Harney County; the lands west of State highway 205 within the SE¼ of the NE¼ and NE¼ of the SE¼, Section 11; and W½ of the SW¼ of the NW¼, and the SW¼ of the NE¼ of SW¼, Section 12, T27S, R30E, Willamette Meridian.



Dated October 27, 1980.

Robert S. Cook,

Director, Fish and Wildlife Service.

[FR Doc. 80-33834 Filed 10-30-80; 8:45 am]
BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 45, No. 213
Friday, October 31, 1980

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

Colorado-Ute Electric Association, Inc., Montrose, Colo.; Proposed Loan Guarantee

Under the authority of Pub. L. 93–32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20–22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $13,600,000 to Colorado-Ute Electric Association, Inc., of Montrose, Colorado. These loans will be used to finance the construction of headquarters and maintenance facilities.

Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed program, including the engineering and economic feasibility studies and the proposed schedule for the advances to the borrower of the guaranteed loan funds from Mr. John J. Bugas, Manager, Colorado-Ute Electric Association, Inc., P.O. Box 1149, Montrose, Colorado 81401.

In order to be considered, proposals must be submitted on or before December 1, 1980 to Mr. Bugas. The right is reversed to give such consideration and make such evaluation or other disposition of all proposals received, as Colorado-Ute Electric Association, Inc., and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20–22 are available from the Director, Office of Information and Public Affairs, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 24th day of October, 1980.

Robert W. Feragen,

Administrator, Rural Electrification Administration.

[FR Doc. 80–33918 Filed 10–30–80; 8:45 am]

BILLING CODE 3410–15–M

East Kentucky Power Cooperative; Final Environmental Impact Statement

Notice is hereby given that the Rural Electrification Administration as lead agency has prepared a Final Environmental Impact Statement in accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969, in connection with a loan guarantee for East Kentucky Power Cooperative (East Kentucky), P.O. Box 707, Winchester, Kentucky 40391. The U.S. Environmental Protection Agency, Region IV; U.S. Army Corps of Engineers, Louisville District; U.S. Department of the Interior (U.S. Fish and Wildlife Service) and Kentucky Department for Natural Resources and Environmental Protection have acted as cooperating agencies during the NEPA process.

The loan guarantee would allow East Kentucky to secure funds required for the construction of a proposed steam-electric generating station near Trapp, Clark County, Kentucky. The project consists of two 650 MW (gross) coal-fired generating units scheduled for operation in 1984 and 1987, respectively, and ancillary facilities. Proposed electric transmission associated with the project involves three 345 kV lines from the Smith Plant to the Avon Substation, (23 km), to the Maggard Substation (92 km), to the Brodhead Substation (59 km); one 161 kV line from Brodhead Substation to Tyner Substation (44.7 km); and four 138 kV lines from the Smith Plant to Lake Reba (14.8 km), Stanton (19.8 km), Spencer Road (24.9 km), and the Dale Station (13.2 km). The project will provide a reliable source of electrical power to fill existing and projected future needs of East Kentucky's member distribution cooperatives.

The Kentucky Department for Natural Resources and Environmental Protection published a public notice of Preliminary Determination under the regulations for Prevention of Significant Air Quality Deterioration (PSD) on May 27, 1980. EPA completed its review. Final determination relative to giving approval to construct the facility under PSD regulations, 40 CFR 52.21 was issued August 21, 1980.

The U.S. Environmental Protection Agency also proposes to issue a National Pollutant Discharge Elimination System (NPDES) Permit, NPDES and application number KY0055972. The NPDES Permit contains limiations on the amounts of pollutants of the Clean Water Act (33 U.S.C. Section 1251 et seq.) and other lawful standards regulations. A revised draft NPDES Permit is included in this Final Environmental Impact Statement.

The Kentucky Department for Natural Resources and Environmental Protection has certified the discharge(s) in accordance with the provisions of Section 401 of the Clean Water Act (33 U.S.C. Section 1251 et seq.) on August 21, 1980.

Additional information on the proposed project may be secured from Mr. Frank W. Bennett, Director, Power Supply Division, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447–6183.

Copies of the Federal Final Environmental Impact Statement have been sent to various Federal, State and local agencies, as outlined in the Council on Environmental Quality regulations. Limited supplies of the Final Environmental Impact Statement are available upon request to Mr. Bennett at the address given above. Copies of the Final Environmental Impact Statement, which includes the Environmental Analysis, Preliminary Determination and revised draft NPDES Permit, may be examined during regular business hours at the East Kentucky headquarters building and at the following locations:

Rural Electrification Administration (USDA), 14th and Independence Avenue, SW., Room 5829, Washington, D.C. 20250
U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30308
Kentucky Department for Natural Resources and Environmental Protection, Century Plaza—U.S. 127 South, Frankfort, Kentucky 40601

Libraries

Clark County Library, 109 S. Main Street, Winchester, Kentucky 40391
Kennedy Memorial Library, West Library, Kentucky 41472
Lexington Public Library, 251 West 2nd Street, Lexington, Kentucky 40500
Mt. Sterling Public Library, 117 West High Street, Mt. Sterling, Kentucky 40353
Madison County Public Library, 345 Lancaster Avenue, Richmond, Kentucky 40475
Menifee County Public Library, Frenchburg, Kentucky 40322
Powell Public Library, Court Street, Stanton, Kentucky 40380
Owsley County Public Library, Boonesville, Kentucky 41314

Persons, organizations and agencies wishing to comment should do so in writing within 30 days and address their correspondence to Mr. Bennett of REA at the address given above.

Final REA action pursuant to this proposed East Kentucky project (including any release of funds) will be taken only after REA has reached satisfactory conclusions with respect to its environmental effects and after procedural requirements set forth in the National Environmental Policy Act of 1969 and any requirements of other environmentally related statutes, regulations and Executive Orders have been met.

This Federal Assistance Program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 24th day of October 1980.

Robert W. Feragen,

Administrator, Rural Electrification Administration.

[FR Doc. 80–33917 Filed 10–30–80; 8:45 am]

BILLING CODE 3410–15–M

United Power Association and Cooperative Power Association; Draft Environmental Impact Statement

Notice is hereby given that the Rural Electrification Administration has prepared a Draft Environmental Impact Statement (DEIS) in accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969, in connection with a request for a loan guarantee commitment from the Rural Electrification Administration from United Power Association of Elk River, Minnesota, and Coopertative Power Association of Minneapolis, Minnesota. This loan guarantee Commitment is planned to assist in obtaining financing for the construction of a 345 kV transmission line from the Sherburne County Substation near Becker, Minnesota, to the Benton County Substation, near St. Cloud, Minnesota.

Additional information may be secured on request, submitted to Frank W. Bennett, Director, Power Supply Division, Rural Electrification Administration, U.S. Department of Agriculture, 14th and Independence Avenue, S.W., Washington, D.C. 20250. Phone: (202) 447–6183. Comments are particularly invited from State and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any enviornmental impact involved from which comments have not been requested specifically.

Copies of the REA DEIS are being sent to various Federal, State and local agencies, as outlined in the Council on Environmental Quality regulations. Copies are available upon request to Mr. Bennett at the previously indicated address. The DEIS may be examined during regular working hours at the offices of REA in the South Agriculture Building, 14th Street and Independence Avenue, S.W., Washington, D.C., or at the office of United Power Association in Elk River, Minnesota.

Comments concerning the environmental impact of the construction proposed should be addressed to Mr. Zoller at the address given above. Comments must be received on or before December 15, 1980, to be considered in connection with the proposed action.

This DEIS has been developed by REA and the Minnestoa Environmental Quality Board (MEQB), Room 100, Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101, as joint lead agencies pursuant to Section 1501.5(b) of the Council of Environmental Quality regulations. MEQB which has approval authority for the routing of high voltage transmission in Minnesota, issued their DEIS for the subject project on July 10, 1980.

Final REA action with respect to this matter (including any release of funds) will be taken only after REA has reached satisfactory conclusions with respect to its environmental effects and after requirements set forth in the National Environmental Policy Act of 1969 have been met.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 24th day of October 1980.

Robert W. Feragen,

Administrator.

[FR Doc. 80–33919 Filed 10–30–80; 8:45 am]

BILLING CODE 3410–15–M

Office of the Secretary

National Advisory Council on Child Nutrition; Meeting

Correction

In FR Doc. 80–32895 appearing on page 70528 in the issue for Friday, October 24, 1980, third column, second line from the bottom of the paragraph, the zip code should read "20250".

BILLING CODE 1505–01–M

Soil Conservation Service

North Fork Forked Deer River Watershed, Tenn.

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of authorization of Federal assistance in the installation of works of improvements.

FOR FURTHER INFORMATION CONTACT: Mr. Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 U.S. Courthouse, Nashville, Tennessee 37203, telephone number (615) 749–5471.

NOTICE: Federal assistance in the installation of works of improvement under the authority of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1001–1008) has been authorized for the North Fork Forked Deer River Watershed, Tennessee.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: October 21, 1980.

Joseph W. Hass,

Acting Chief.

[FR Doc. 80–33968 Filed 10–30–80; 8:45 am]

BILLING CODE 3410–16–M

CIVIL AERONAUTICS BOARD

[Dockets 38224 and 37501; 80–10–149]

Perkiomen Airways, Ltd.; Order

October 24, 1980.

Petition of Perkiomen Airways, Ltd. for compensation for losses sustained in providing compulsory service at Hazleton, Pennsylvania.

By Order 79–10–159, October 25, 1979, the Board defined essential air service for Hazleton as two round trips per day, five days per week, offering a minimum of 10 seats in each direction between Hazleton and either New York or Philadelphia. It was determined that service must be provided by aircraft having at least two engines, two pilots and unimpeded cabin entry through airstairs or similar type access. To date, the Board has not selected a carrier to provide essential air service at Hazleton which had not had air service since 1977 until April 15, 1980, when Perkiomen Airways, Ltd. (Perkiomen) inaugurated Hazleton—Philadelphia service. On May 27, 1980, Perkiomen filed a 30-day notice of its intent to terminate service, however, by Order 80–6–152, the Board required Perkiomen to continue providing service until June 26, 1980.[1]

On July 3, 1980, Perkiomen submitted a petition for advance compensation for the period June 26 through July 26, 1980 in which it estimated losses of $24,406, exclusive of profit element, utilizing Navajo equipment. On July 10, 1980, an operational audit of Perkiomen was conducted by the Board's staff who discovered that Perkiomen was actually providing this service with a Piper Apache, a four-passenger airplane that does not meet the requirements for providing essential air service in this market. Staff then requested that the Federal Aviation Administration's (FAA) General Aviation District Office in Allentown determine which equipment Perkiomen actually used and the number of flights performed during the June 26–July 26 period. The FAA reported (by letter dated July 23, 1980) that Perkiomen operated Navajo equipment during July 10–July 18 in performing twelve round trips, but that during all of June through July 10 it used a Piper Apache in performing 24 round trips. In a letter dated July 30, 1980, staff requested data from Perkiomen indicating losses incurred from its Navajo operations during July 10–July 26, 1980. In its letter of August 4, Perkiomen supplied additional data pertaining to its July 10–26 operations and acknowledged that it had in fact operated the Apache during June 26–July 9, 1980.

On October 2, 1980, Perkiomen submitted an application for compensation for losses for the period June 26–August 24, 1980 and requested that the July 3 petition be either withdrawn and substituted by the instant application or amended entirely by the instant application. Perkiomen has claimed losses of $4,562 for its Apache operations and $30,654 for its Navajo operations, exclusive of a profit element.[2]

In our review of Perkiomen's Navajo-service subsidy need, we have made various adjustments the net effect of which is to reduce its subsidy need from $30,654 to $29,689, exclusive of profit element, during the period July 10—August 24, 1980. We will not now compensate Perkiomen for losses experienced from its Apache operations but will consider this matter in setting a final rate.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, particularly §§ 102, 204, 419 and 1002(d) thereof, and the regulations promulgated in 14 CFR 302 and 304:

1. We set the interim level of compensation for losses sustained by Perkiomen Airways, Ltd. by virtue of its provision of essential air service to Hazleton, Pennsylvania at $225.91 for each scheduled flight completed using Navajo equipment beginning July 10, 1980, subject to a maximum compensation per 30-day period of $903.64 per day times the number of weekdays;

2. This proceeding shall remain open pending entry of an order fixing the final rate of compensation and the amount of such rate of compensation may be the same as, lower than, or higher than the interim rate of compensation set here; and

3. We shall serve this order upon all parties to this proceeding.

We shall publish this order in the **Federal Register.**

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80–33970 Filed 10–30–80; 8:45 am]

BILLING CODE 6320–01–M

[1] We have since extended Perkiomen's obligation for additional 30-day increments.

[2] In brief, Perkiomen had applied for advance compensation for performing essential air service when in fact it had not operated the required number of flights nor had it operated equipment meeting our specifications for performing this service for part of that period. The Bureau of Domestic Aviation has referred this matter to the Bureau of Consumer Protection for its review. It is not the Board's intention to determine Perkiomen's compliance with § 419 or Board orders requiring it to continue serving Hazleton in this order; the intent of this order is merely to determine an interim compensatory rate for its Navajo service.

[Docket 37392; 80–10–147]

Transatlantic, Transpacific and Latin American Service Mail Rates Investigation; Order Fixing Final Service Mail Rates

By Order 80–10–31, served October 10, 1980, we directed all interested persons to show cause why the Board should not establish the international service mail rates proposed therein as final rates of compensation for the period October 1 through December 31, 1980.

Trans World Airlines, Inc. and Pan American World Airways, Inc. have filed notices of objection and answers to Order 80–10–31. Both carriers reiterate their earlier objections to the proposed rates since they are based on the same methodology which they are challenging in the United States Court of Appeals for the Second Circuit.[1] Otherwise, they have no objection to the proposed rates.

Since the answers filed raise no material issue of fact concerning the rates proposed for the final quarter of calendar year 1980, we deem all further procedural steps waived short of fixing the final rates.

Therefore, in accordance with the Federal Aviation Act of 1958, as amended, particularly §§ 204(a) and 406, the Board's Procedural Regulations promulgated in 14 CFR, Part 302, and the authority delegated by the Board in its Organization Regulations, 14 CFR 385.16(g).

1. We make final the tentative findings and conclusions set forth in Order 80–10–31.

2. The fair and reasonable rates of compensation to be paid in their entirety by the Postmaster General in accordance with the provisions of section 406 of the Federal Aviation Act of 1958, as amended, to the carriers for the transportation by aircraft of space-available mail, military ordinary mail and all other mail over their respective routes in the Atlantic, Pacific, and Latin American rate areas,[2] the facilities used and useful therefor, and the services connected therewith, for the period from October 1 through December 31, 1980, or until further Board order, are those set forth in the attached Appendix.[3]

3. The fair and reasonable temporary rates of compensation for the transportation of mail by aircraft in international services for the period from January 1, 1981, until further Board order shall be the final rates established for the period October 1 through December 31, 1980.

4. The terms and conditions applicable to the transportation of each class of mail at the rates established here are those set forth in Order 79–7–16.

5. A copy of this order shall be served upon all parties to this proceeding.

Persons entitled to petition the Board for review of this order in accordance with the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the service date of this order.

We shall make this order effective and an action of the Civil Aeronautics Board upon expiration of the above period unless a petition for review is filed or the Board gives notice that it will review this order on its own motion.

We shall publish this order in the **Federal Register.**

By Julien R. Schrenk, Chief, Domestic Fares & Rates Division, Bureau of Domestic Aviation.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80–33971 Filed 10–30–80; 8:45 am]

BILLING CODE 6320–01–M

[1] *Trans World Airlines, Inc.* v. *Civil Aeronautics Board*, Docket No. 79–4131 and *Pan American World Airways, Inc.* v. *Civil Aeronautics Board*, Docket No. 79–4132.

[2] The Atlantic, Pacific and Latin American rate areas are delineated in Attachments 1, 2, and 3, respectively, to Order 79–7–17.

[3] Appendix is on file with the original at the Office of Federal Register.

DEPARTMENT OF COMMERCE

Maritime Administration

Construction of One 83'–6" Twin Screw Steel Landing Craft; Intent To Compute Foreign Cost

Notice is hereby given of the intent of the Maritime Subsidy Board, pursuant to the provisions of Section 502(b) of the Merchant Marine Act, 1936, as amended, to compute the estimated foreign cost of the construction of one 83'–6" twin screw steel landing craft.

Any person, firm or corporation having any interest (within the meaning of Section 502(b)) in such computations may file written statements by the close of business on November 10, 1980, with the Secretary, Maritime Subsidy Board, Maritime Administration, Room 3099B, Department of Commerce Building, 14th & E Streets NW., Washington, D.C. 20230.

Dated: October 27, 1980.

By Order of the Maritime Subsidy Board, Maritime Administration.

Robert J. Patton, Jr.,

Secretary.

[FR Doc. 80–33858 Filed 10–30–80; 8:45 am]

BILLING CODE 3510–15–M

National Bureau of Standards

Magnetic Tape Labels and File Structure for Information Interchange Issuance of Federal Information Processing Standard

Correction

In FR Doc. 80–32313 appearing at page 68990 in the issue of Friday, October 17, 1980, make the following changes:

(1) On page 68991, second column, third paragraph from bottom, second line, "X.23–1974," should be corrected to read "X3.23–1974,".

(2) On page 68992, first column, last paragraph, second line, "following "mechanisms described" should be corrected to read "following "mechanisms" described".

(3) On page 68992, second column, line 6, "language separately" should be corrected to add "language supplied with the computer system (Federal or ANSI) shall be separately".

(4) On page 68992, second column, sixth complete paragraph, third line, "languages for" should be corrected to read "languages or".

(5) On page 68992, third column, second complete paragraph, line 1, "Dpetional" should be corrected to read "optional".

BILLING CODE 1505–01–M

Approval of Federal Information Processing Standard Microfilm Readers

Under the provisions of Pub. L. 89–306 (79 Stat. 1127; 40 U.S.C. 759(f)) and Executive Order 11717 (38 FR 12315, dated May 11, 1973), the Secretary of Commerce is authorized to establish uniform Federal automatic data processing standards. On June 23, 1980, notice was published in the **Federal Register** (45 FR 42001–42002) that a standard for Microfilm Readers was being proposed for Federal use. Interested parties were invited to submit written comments concerning this proposed standard to the National Bureau of Standards (NBS).

The written comments submitted by interested parties and other material available to the Department relevant to this standard were reviewed by NBS. On the basis of this review, NBS recommended to the Secretary his approval of the standard as a Federal Information Processing Standard (FIPS), and prepared a detailed justification document for the Secretary's review in support of that recommendation. The purpose of this notice is to announce that the Secretary has approved the standard as a FIPS, and that the standard shall be published as FIPS Publication 84. The provisions of the standard are effective on October 31, 1980.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 5317, Main Commerce Building, 14th Street between Constitution Avenue and E Street, NW., Washington, D.C. 20230.

The objective of this standard is to facilitate effective information interchange when the information is recorded on mircoforms generated by computer systems. The standard defines the minimum acceptable image quality for microfilm reading devices for the display of computer output microforms. It also sets requirements for heat and noise factors associated with the safe use of such reading devices.

The approved FIPS contains two portions: (1) An announcement portion which provides information concerning the applicability, implementation, and maintenance of the standard and (2) a specifications portion which deals with the technical requirements of the standard. Only the announcement portion of the standard is provided in this notice. With certain qualifications noted in the announcement portion, this FIPS represents the adoption of American National Standard MS20–1979, Microfilm Readers.

By arrangement with the American National Standards Institute and the National Micrographics Association interested parties may purchase copies of this standard, including the specifications portion, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies section of the announcement portion of the standard.

Persons desiring further information about this standard may contact Mr. Thomas Bagg, System Components Division, Center for Computer Systems Engineering, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, (301) 921–3723.

Dated: October 27, 1980.

Ernest Ambler,

Director.

Federal Information Processing Standards Publication 84

Announcing the Standard for Microfilm Readers

Federal Information Processing Standards Publications are issued by the National

V 45 OC 31 80 0 UMI

Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89-306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973) and Part 6 of Title 15 Code of Federal Regulations (CFR).

Name of Standard. Microfilm Readers.

Category of Standard. Hardware Standard, Computer Output Microfilm Readers.

Explanation. This standard provides the minimum levels of image quality, illumination, and related characteristics for equipment that displays computer-generated microforms which are made in accordance with Federal Information Processing Standards Publication (FIPS PUB) 54, Computer Output Microform (COM) Formats and Reduction Ratios, 16 mm and 105 mm. This standard also contains sections on maximum safe termperatures and maximum acceptable noise levels.

Approving Authority. Secretary of Commerce.

Maintenance Agency. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

Cross Index. American National Standard for Microfilm Readers (ANSI/NMA MS20-1979).

Related Documents. Federal Information Processing Standards Publication, Computer Output Microform (COM) Formats and Reduction Ratios, 16 mm and 105 mm (FIPS PUB 54).

Applicability. This standard is applicable to the acquisition of microform readers used by Federal agencies to display computer-generated microforms.

Users of existing equipment are encouraged to employ this standard. Equipment not in accordance with this standard should be evaluated periodically by Federal agencies because readers with inadequate quality images impact on productivity by causing misreading (errors) and fatigue.

Specifications. This standard adopts in whole the American National Standard for Microfilm Readers (ANSI/NMA MS20-1979).

Qualifications. When microforms contain characters smaller than those permitted by FIPS PUB 54 such as in graphic art materials or engineering drawings, the resolving power of the reader must be increased above the minimum level specified. Appendix A of the standard tabulates resolving power requirements. Appendix B of the standard contains a list of variables of specific features of equipment covered by this standard to which agencies may require conformance as appropriate to their application requirements.

Implementation Schedule. All applicable equipment ordered on or after October 31, 1980 must be in conformance with this standard unless a waiver has been obtained in accordance with the procedure described below.

Exceptions to this standard are made in the following cases:

a. For equipment installed or on order prior to October 31, 1980.

b. Where procurement actions are in the solicitation phase (i.e., Requests for Proposals or Invitations for Bids have been issued) prior to October 31, 1980.

Waivers. Heads of agencies may request that the requirements of this standard be waived in instances where it can be clearly demonstrated that there are appreciable performance or cost advantages to be gained and that the overall interests of the Federal Government are best served by granting the requested waiver. Such waiver requests will be reviewed by and are subject to the approval of the Secretary of Commerce. The waiver request must address the criteria stated above as the justification for the waiver.

Forty-five days should be allowed for review and response by the Secretary of Commerce. Waiver requests shall be submitted to the Secretary of Commerce, Washington, D.C. 20230, and labeled as a Request for a Waiver to a Federal Information Processing Standard. No agency shall take any action to deviate from the standard prior to the receipt of a waiver approval from the Secretary of Commerce. No agency shall begin any process of implementation or acquisition of non-conforming equipment unless it has already obtained such approval.

Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute and the National Micrographics Association.) When ordering, refer to Federal Information Processing Standards Publication 84 (FIPS-PUB-84), and title. Copies of standards and documents referenced and listed in Section 10 of the standard are available from ANSI and NMA. Documents with the prefix MS are available from the National Micrographics Association, 8719 Colesville Road, Silver Spring, Maryland 20910. The other documents are available from the American National Standards Institute, 1430 Broadway, New York, New York 10018. Payment may be made by check, money order, or deposit account.

[FR Doc. 80-33916 Filed 10-30-80; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council's Scientific and Statistical Committee; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Caribbean Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), has established a Scientific and Statistical Committee, which will meet to examine and provide recommendations to the Council on the draft fishery management plan framework for shallow-water reef fish, and also may consider other related business.

DATE: The meeting, which is open to the public, will convene on Tuesday, November 25, 1980, at approximately 9:30 a.m., and will adjourn at approximately 4:30 p.m.

ADDRESS: The meeting will take place at Council Headquarters, Banco de Ponce Building, Room 1108, Hato Rey, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 00918; telephone (909) 753-4926.

Dated: October 28, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80-34033 Filed 10-30-80; 8:45 am]

BILLING CODE 3510-22-M

Sea Grant Review Panel; Partially Closed Meeting

The Sea Grant Review Panel will meet from 8:30 a.m. to 4:30 p.m. on November 12-13, 1980, in the 6th floor Conference Room, Institute of Science and Technology Building, 220 Bonisteel Boulevard, Ann Arbor, Michigan.

The Panel was established in 1976 by Section 209 of the National Sea Grant Improvement Act (Pub. L. 94-461, 33 U.S.C. 1128) to advise the Secretary of Commerce, the Administrator of the National Oceanic and Atmospheric Administration, and the Director of the National Sea Grant College Program with respect to:

(1) Sea Grant proposals, grants, and contracts.

(2) Sea Grant fellowships.

(3) Sea Grant College and Regional Consortia Designations.

(4) Formulation of planning guidelines and priorities.

(5) Other matters at the Secretary's discretion.

The Panel currently has 15 members appointed by the Secretary of Commerce, with a balanced representation of interests, including those qualified in disciplines and fields included in marine sciences as well as other activities related to ocean and coastal resources.

The Panel's meeting agenda has six parts: (A) A presentation by the University of Michigan Sea Grant Program, (B) A discussion of the current posture of Sea Grant, (C) A discussion of program performance evaluation criteria and methodology, (D) A discussion of affirmative action options, (E) A discussion of benefits

documentation methodology, and (F) A discussion of Sea Grant Program managers.

Agenda items A through E will be open to the public, and, if time permits, the chair will solicit oral comments by attendees. Written statements may be submitted at any time before or after the meeting.

With respect to agenda item (F), the Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on October 23, 1980, pursuant to Section 10(d) of the Federal Advisory Committee Act, that this item may be exempt from the provisions of the Act relating to open meetings and public participation, because discussion may disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy within the purview of 5 U.S.C. 552b(c)(6).

Minutes of the open portion of the meeting will be available 30 days thereafter on written request addressed to National Sea Grant College Program 6010 Executive Boulevard, Rockville, Maryland 20852. For further information contact Mr. Arthur G. Alexiou, Executive Secretary of the Sea Grant Review Panel, at the above address. Telephone: (301) 443-8894.

A copy of the Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, Department of Commerce (202) 377-4217.

Dated: October 28, 1980.

Francis J. Balint,

Acting Director, Office of Management and Computer Systems, National Oceanic and Atmospheric Administration.

[FR Doc. 80-34050 Filed 10-30-80; 8:45 am]

BILLING CODE 3510-12-M

National Telecommunications and Information Administration

Frequency Management Advisory Council; Open Meeting

In accordance with Section 10(a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), notice is hereby given that the Frequency Management Advisory Council (FMAC) will meet from 9:30 a.m. to 3:30 p.m. on November 21, 1980, in the Aspen Room at the National Telecommunications and Information Administration, 1325 "G" Street NW., Washington, D.C. (Public entrance to the building is on "G" Street, between 13th Street and 14th Street NW.)

The Council was established on July 19, 1965. The objective of the Council is to advise the Secretary of Commerce on radio frequency spectrum allocation matters and means by which the effectiveness of Federal Government frequency management may be enhanced. The Council consists of 11 members whose knowledge of telecommunications is balanced in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The agenda items for the meeting will be:

(1) Briefing on Spectrum Economics; Mr. Dale Hatfield, Associate Administrator, Office of Policy Analysis & Development, NTIA.

(2) US/ITU Relationships; Discussion of 1975 FMAC "Staff Study on the Future Relationships of the USA with the ITU."

(3) Report of Working Group on "ITU Conference Preparations"—Mr. Bill Borman.

(4) Discussion of FMAC Document; 17-80 concerning the Region 2 Broadcast Satellite Conference 1983—Chairman.

(5) Report of Nominating Committee—Mr. Bill Borman.

(6) Any other procedural business of the Council.

(7) Scheduling of the next meeting.

The meeting will be open to public observation; and a period will be set aside for oral comments or questions by the public which do not exceed 10 minutes each per member of the public. More extensive questions or comments should be submitted in writing before November 19, 1980. Other public statements regarding Council affairs may be submitted at any time before or after the meeting. Approximately 15 seats will be available for the public on a first-come first-served basis.

Copies of the minutes will be available on request 30 days after the meeting.

Inquiries may be addressed to the Council Control Officer, Mr. Charles L. Hutchison, National Telecommunications and Information Administration, Room 268, 1325 "G" Street NW., Washington, D.C. 20005, telephone 202-724-3301.

Dated: October 28, 1980.

C. C. Dodson,

Committee Liaison Officer, National Telecommunications and Information Administration.

[FR Doc. 80-33859 Filed 10-30-80; 8:45 am]

BILLING CODE 3510-60-M

Grant Appeals Board of the Public Telecommunications Facilities Program; Open Meeting

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: By this notice we announce the forthcoming meeting of the Grant Appeals Board of the Public Telecommunications Facilities Program (PTFP).

PURPOSE: To condider the petition of Barbara Wheeler Gilbert, on behalf of the Wiconi Project of the South Dakota United Indian Association (Wiconi), seeking reconsideration of an action of the PTFP staff declining to accept for filing Wiconi's application for a grant under the Public Telecommunications Financing Act of 1978, Pub. L. No. 95-567, 92 Stat. 2405, 47 U.S.C. 390, *et seq.* (1978), refusing to waive the closing date for the filing of applications and denying Wiconi's petition for extraordinary relief to become the substitute applicant for the American Indian Satellite Project.

TIME: December 5, 1980, at 1:30 p.m.

PLACE: National Telecommunications and Information Administration, 1800 G Street, N.W. Room 765, Washington, D.C.

COMMENTS: Interested parties are encouraged to submit comments on the petition for reconsideration of Ms. Gilbert (Appendix A). For the convenience of such parties we have attached a copy of a letter, dated January 30, 1980, setting forth the staff decision rejecting Wiconi's petition for extraordinary relief (Appendix B). An original and seven copies of any comments should be filed on or before November 28, 1980 with: Office of Chief Counsel, NTIA/DOC, 1800 G Street, N.W. Room 703, Washington, D.C. 20504. A certificate of service must be attached to the comments reflecting that a copy of the comments has been served on: Barbara W. Gilbert: Project Director, American Indian Satellite Project, 905 6th Street, S.W. Washington, D.C. 20024.

Additional information may be obtained from Robert Hunter, National Telecommunications and Information Administration, Office of Chief Counsel, 1800 G Street, N.W. Room 703, Washington, D.C. 20504. Telephone (202) 377-1866.

L. Daniel O'Neill,

Chief Counsel.

(Catalog Program Number 11.550.)

July 29, 1980.

Re: Your Departmental Correspondence, June

30, 1980, The American Indian Satellite Project, PTFP File No. 1138–T.

Mr. Henry Geller
Assistant Secretary for Commerce and Information, U.S. Department of Commerce, 1800 G Street, N.W., Room 770, Washington, DC 20504.

Dear Mr. Geller: In accordance with the Rules and Regulations of the Department of Commerce, National Telecommunications and Information Administration, Public Telecommunications Facilities Program; Policy Statement which appeared in the Federal Register of Thursday, June 7, 1979 at Section 2301.33 entitled "Petition for Reconsideration", this document is to be construed as an official petition for reconsideration in regard to the action referenced above concerning the American Indian Satellite Project.

The reply will take the form of page-by-page arguments and information thereof, followed by an explanatory letter, so that vital information concerning the Project will be brought forward in the official record for the petition for reconsideration.

The timeliness of the situation in full view through this document we request that your official answers concerning our provided information and particularly the route(s) to be taken by NTIA in consideration of said provided information.

Respectfully submitted,

Barbara Wheeler Gilbert,

Project Director, American Indian Satellite Project.

Response to June 30, 1980 Communication:

Page 1: Par. 2, L.6: Due to comprehensiveness of grant, clearly it is not inadequate. Cumulative scores over 300 points. Your letter quotes, "It will be better to regroup and do a more thorough job next time around." NTIA makes the assertion that the non-stipulative nature of the quote contained therein is an absolute request for deferral. No such documentation at said writing existed. Neither, has the group known as FACT completed any submission or definitive work regarding a proposal to NTIA ever been completed by its members. In point of fact, that particular group of three people, Lee Piper, Thomas Whitford and the absent Lawrence Tekala have never even provided official Articles of Incorporation, or IRS tax status numbers; or further, no proper documentation of its non-profit status via a submission of minute meetings, dates of the election of officers, the date when the missing Mr. Tekala's position on the Board was duly substituted by a legitimate personage. Nowhere has FACT "explicitly stated that it will amend its application and resubmit it next year". This is assumed by NTIA who, from the record of FACT, has no logical reason to do so, that FACT will provide any work on the American Indian Satellite Project in the future.

Par. 3 to Pg. 2: NTIA offered the "agency theory" as an acceptable avenue for the substitution of South Dakota United Indian Association (Wiconi) (hereinafter SDUIA) for FACT to carry out grant work. Further, NTIA required that the "Kurt Waldheim of the Indians" be brought to them to provide validation of substitution regarding the agency theory. Mr. Russell Means, internationally recognized Indian leader since the early 1970's, came forward, and so provided verbal validation before three attorneys from NTIA, Messers. Skall, Hunter and Soloman. During the teleconference several persons added their knowledge of the matter by request; Mr. Charles Poor Thunder and Mr. John Stewart, as well as Mr. Means, the three attorneys and Mrs. Gilbert. Mr. Means provided personal testimony during the teleconference on the issue of trust law as applicable to the issues of this entire problem. As Means not only may be considered an expert in such legalities, but is a driving force and trustee to the American Indian International Treaty Council at the United Nations, he provided the NTIA attorneys with legal information and direction to speak with Sam DeLoria of New Mexico who, as a member of the bar, and an American Indian, could speak to these issues in an effort to aid the NTIA lawyers in understanding the obligation of all federal departments, agencies, bureaus, etc, in its dealings with the American Indian people. Hence, NTIA is absolutely incorrect in taking the "word" of the BIA as regards the trust responsibility.

NTIA has been provided with accurate information on trust matters, both written and verbal, and still has chosen to ignore its legal obligation on the basis of hearsay from the BIA.

With regard to the granting of the petition for extraordinary relief the grant proposal was allowed to continue for scoring. To date, NTIA has officially not bothered to inform the people concerned with the official scores of the grant. There must be some meaning to this fact when coupled with the others which have come to light within the grant process; i.e. that the other grantees have been notified, monies have been decided upon, and yet, should we have come forward, as in this document, we clearly have, to request reconsideration—appeal to the waiver decision—there seems to be no finances left for us. This peculiarity of action on the part of NTIA can be construed to show its sincerity in dealing with this issue. Although much time has been devoted to denying the American Indian Satellite Project its funding for FY 1980, little time has been devoted to keeping the financial doors open just in case a waiver appeal were to be forwarded on and ruled upon in a positive way.

Let this document provide the record with the information that as NTIA requested submissions or discussions SDUIA brought them forward. However, when simple remedies to NTIA's question could have been been requested of FACT, i.e. providing articles of incorporation, when was Mrs. Piper elected as Chairman, with Tekala's vacancy on the Board, was the group FACT legitimate at the time of questions first raising. These things are or should be on hand at the PTFP files. However, no one at NTIA can show proof that as a legal entity, FACT still exists or existed at the time of its adversary position to NTIA on the submission of SDUIA. In essence, NTIA will not even explore these simple questions to ascertain whether or not FACT has a legal right to insist on the deferral of the grant until next year when it can perhaps do a better job.

Page 2: Par. 1: Barbara Gilbert has information as to the original purpose and incorporation papers of FACT because she aided Mr. Elliott in the creation of the Articles of Incorporation, in wording, in personally typing them, in procuring a lawyer to oversee same, and in no less action than traveling to Phoenix, Arizona to provide, at her own expense, these official papers for signing to Mr. Tekala, Mrs. Piper and Mr. Whitford, Mrs. Gilbert began working on the American Indian Satellite Project via the personal request of the Project's inceptor, Mr. Elliot, over two years ago. As a public communications specialist her services were sought to make the Project a realistic one for the Indian people.

When on Tuesday, January 1st, 1980, Mrs. Gilbert received a telephone call from Mr. William Lucas of NTIA, and was informed that the April deadline (toward which FACT had been aiming then) had been cancelled and the only time for 1980 to file a grant proposal was in January 9th, she immediately telephoned Mr. Whitford to advise him of this information. During that phone call Whitford requested Mrs. Gilbert to write the proposal as "you're the only one of us who has the knowledge of NTIA or the background to pull this thing together in time." When Mrs. Gilbert, who understood that Mr. Whitford was the Chairman of FACT, asked him if he would inform Mrs. Piper that she would proceed in time to meet the deadline, Whitford assured her that he "would take care of Piper". To wit, a letter arrived some weeks later to Mrs. Gilbert authorizing her to be FACT's Washington representative.

Mrs. Gilbert's affiliation with the grant proposal, therefore, came about because of requests. Until the end of March, in point of fact, when Mrs. Gilbert receive a copy of a letter from Mrs. Piper, she was continuing to operate under her prior FACT authorization via phone calls and letters. When, in March, word was received that FACT was withdrawing, Mrs. Gilbert undertook to save the FY 1980 funding via the proposal she had written and sought advice from Mr. William Lucas of NTIA. It was Mr. Lucas who offered the avenue of waiver of the sponsoring organization, in a phone conversation, not only explaining same, but dictating its wording to Mrs. Gilbert who transcribed, typed and submitted said waiver. The substitution stemming from her interpretation of the above cited letter from Mrs. Piper of the FY 1980 withdrawal and her knowledge of the perilous health conditions, among others, of the daily lives of thousands of American Indian people. Her motivation, therefore, was to provide these vastly needed services as quickly as possible. Hence, SDUIA was sought out and agreed to be the substitute group; Mr. Lucas was made aware of this. He had no "in-house" problem with the substitution for said reason(s). In work over one and one-half years with Mr. Lucas, it has been Mrs. Gilbert who has brought Indian peoples' attention to NTIA; i.e. arranging meetings and attending with Mr. Elliott, Mr. Whitford and NTIA's own Mrs. Dinota, in weekly or more often, telephone calls and meetings; Mrs. Gilbert has brought her expertise and most of the Congressional and Indian support to the Project. It was Mrs. Gilbert who established the Advisory Council, made up of Indian leaders and people who are expert in their relative fields who donated their time, concern and advice already to the Project and who stand ready to do so even now.

The agency theory expressed herein at same cite was indeed proven in the teleconference with Mr. Means, Mr. Poor Thunder, Mr. Stewart, Mrs. Gilbert, Mr. Skall, Mr. Hunter and Mr. Soloman.

In summation of this p. 2, par. 1 citation, it is held by Indian leaders whom we have had the finances to contact that the substitution of sponsoring organization from FACT to SDUIA is not only fully justified, by mandatory due to such immensely critical concerns as the extremely poor health situations found among the American Indian people. Footnote 1 on p. 2 directs its attention to a waiver of proposal submission closing date, "We have consistently stated that waiver of closing date would only be considered under the most compelling circumstances. A sufficient demonstration has not been made to distinguish this situation so as to merit such a waiver."

The following questions must be brought forward here relative to the phrase "compelling circumstances". What does NTIA consider "sufficient demonstration" by a non-founded group if not the statistics that the American Indian people on reservations have the lowest form of health care delivery and information, or the lowest sort of educational considerations of any people within the entire United States." Why, when they have been told by responsible leaders and others, do they close their ears and write such clearly unreasonable statements? What, indeed, is a more compelling circumstance than this? Another year's wait for the beginning of this vital and cost-effective Project will mean that things will not change for the first Americans in these areas and that people may literally waste unto death. If NTIA feels that this is not a compelling circumstance, than the question is, what truly is ?

Page 3: Par. 1 and Footnote 2: The situation of Mrs. Piper and Mr. White Bear telegramming NTIA in opposition came five months after the Phase I submission of the AISP grant proposal, a month or more after its own withdrawal of "its" proposal, a month after the attempt at substitution of sponsoring organization. Further, it is true and apparent that FACT, which has been offered full standing on the Project via a multitude of sources, holds fast to an "us (FACT)-or no one" position. When one examines the necessities listed to NTIA in this and other papers, for the Project to go forward, and has freely offered and open door to FACT, explaining the only reasons for a substitution group was an unannounced withdrawal of the proposal, it is extremely difficult to understand where the priorities of FACT lie.

Clearly, SDUIA has shown, by words and written word, often, that a year further without grant funding will have an adverse effect. However, as SDUIA was told to speak with Messers. Skall, Soloman and Hunter on a specific date, filed two supporting briefs on the subject, by specific dates, it is fitting to construe that to date FACT has not brought any substantial work or answers to NTIA for as long as it has existed by the people who are in it. For NTIA to withhold funding for a grant which scored well over 300 cumulative points, on a technicality, in favor of a group which, thus far has provided no definative, positive effort points to a peculiarity or disparity in its official decision-making process.

Page 4: Par. 2: Never specifically has NTIA requested anything other than the "Kurt Waldheim" situation previously stated herein. Mr. Means' authority or legitimacy stands for itself, and as an American Indian person he believes that when he answers a question to the best of his ability, he is swearing on his honor. Other than this SDUIA could have brought to bear much Congressional support as well as that of other Indian leaders, had it been requested at the time.

Par. 3: NTIA states that the two grants appear alike. Of course. They are wirtten and created by Mrs. Gilbert. No question has ever come up on that point. SDUIA assertions of the lack of knowledge of FACT come from those who are on FACT's board at the time of question or those whom FACT might have hired. Mrs. Gilbert provided the information contained in the proposal from her twenty-five years of public communications experience and constant effort with the American Indian people to provide the services referred to herein via the AISP.

As regards Mr. Tekala, Mrs. Gilbert has been informed that well over a year ago, his status as a board member of FACT was void. He left the reservation and therefore had no tribal contact with his people or other Indian groups of the same type. Since then, it has been said that he has died. He therefore, cannot be held as a person able to aid FACT in any way this year.

As pertains to the matter of whether or not FACT was formed by a certain number of Indian people directly, or what its sole duties are, without NTIA's ordering FACT to produce its Articles of Incorporation, board minutes, etc., no one, on either side of the issue can state definitively anything different than Mrs. Gilbert has alleged. Commonly, in law, such situations provide for anyone with a differing opinion to produce evidence substantiating its claim. As SDUIA cannot have access to the FACT Articles of Incorporation, etc. only NTIA can prove this to anyone's satisfaction. At this point we have no proof that FACT is not a surrogate of Indian leaders other than the word of Mr. Means and those already associated with the Project, seems to be the attitude of NTIA. When no other effort was requested of SDUIA by NTIA, it was felt that the evidence produced and other Indian persons whose names had been given to NTIA to re-check these statements were sufficient.

Footnote 4: Although SDUIA was advised that it was ineligible under the articles of its own incorporation, we direct the NTIA attorneys to re-read the articles at article II, which states, "The purpose of this Council or Association shall be to promote the social, health, education, economic and spiritual welfare of the Indians in South Dakota and to assist said members and persons herein before referred to in attaining their ambitions and assist them in the advancement of their respective vocations; to cooperate with Tribal Councils and effect a better understanding and mutual benefit of said agencies and ourselves . . . to in every way cooperate with reservations in assisting the American Indians not living on the reservations and to do any and all things determined necessary for the furtherance of the purposes herein set forth."

This information is contained in the grant proposal. It in no way precludes SDUIA from sponsorship of the American Indian Satellite Project. However, SDUIA can amend its articles to include its pursual of telecommunications entities, if necessary and has been so stated. This is the least of the problems facing this issue; purely a matter of a few minutes paper work.

Page 5: Par. 1: The legality of trust laws being relevant to all federal agencies has been addressed herein, and is included in our previously submitted briefs, and was substantiated further by Mrs. Gilbert, who is a student of such law, Mr. Means, Mr. DeLoria and the director of the Institute for the Development of American Indian Law, Kirke K. Kickingbird, who provided the written information on the subject, *Nine Essays on American Indian Law*, which has been given to the NTIA attorneys concerned with the Project. For NTIA to take the word, over the telephone of the BIA, ignoring the written and verbal statements of the above listed people, and not to thoroughly check these points in the law means that when NTIA is searching for answers to a question on this important issue it feels free to take telephone information and accept same as truth and correct. However, when American Indian leaders and others concerned with trust law bring forward information via telephone conversations and written word concerning this issue, NTIA feels free to ignore a question of constitutionality. This is not dealing in fairness, nor can an issue as vitally important as government attorneys ignoring the Constitutional issue be let simply to float by a departmental administrator.

There is no evidence to substantiate the allegation of NTIA that SDUIA said that the Project is so fragile that failure to continue the application this year would dramatically reduce the chances of it being re-filed next year. The point made was that NTIA, due to its dealings thus far, would not be sought to fund the Project next year by SDUIA. That, it would move forward in the private sector. The problem with pursuing this avenue is that more time would lapse.

Par. 2: See comments above on this page relative to trust law. At line 11, "It has not withdrawn from the Project but merely deferred its application" . . . "regroup and do a more thorough job" in the FY 1981 funding round". Your attention is directed to the entire letter written to NTIA on this matter. It is ambiguous and may (obviously) be constued a number of ways. SDUIA contends that if the word "withdraw" which is used in said letter means deferr than how can other words be taken literally by that party?

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Par. 3: "NTIA has been impressed by the desire of both FACT and Wiconi to plan and construct the Project, etc. . . .". It has been sworn and shown, by several persons, that FACT has done nothing substantive thus far toward forming a cohesive and realistic satellite project. It was done by Mrs. Gilbert. It has been shown that FACT has as its main goal at this time to thwart any attempt at funding this year by any other Indian group. The "deep regret" alluded to in Mr. Cameron's letter, which was written in the NTIA legal department, cannot be thought of as a positive attribute, due to its corrent stand.

General remarks: Outlined for your information, Mr. Geller, are the point-by-point arguments we have with the presentation made to us in the form of the letter from Mr. Cameron of June 30, 1980.

However, it seems that although NTIA speaks as though it would like to do anything necessary to fund the grant, it won't. Nowhere was fairness to the parties brought out. Words were said, but when actions came, they were very different indeed from the words. Since March, the people mentioned in this document have been requesting all manner of different items. Each time one was requested, SDUIA brought the requested material or persons forward. Nothing changed however.

The mandate of NTIA is to provide telecommunications services to the "have-nots". If this is adhered to, then the American Indian people must come first on any list comprised of "have-nots". When FACT has accepted telephone information and SDUIA's information presented in the same way and in writing cannot be accepted for use by NTIA, then a problem exists in the avenue of fair dealing by NTIA with both groups. See Pg. 4, Par. 2 your June 30 letter.

If fairness is proffered by NTIA in its dealings with SDUIA, then why, to date, have we received no notification of our cumulative score—or its availability—from NTIA? Why should such a good grant, that is vital in its scope be turned down on technicalities when other acceptable legal alternatives have been brought forward? Why did NTIA wait until other notifications had been made to other grantees and monies allocated to other programs to produce the June 30th letter? We were told, via conversations with Mr. Soloman, that we could submit for an appeal. But it seems that if justice is returned in our case, via all of the sorted information provided to NTIA in the past and herein, that even if our appeal is heard and ruled upon favorably, there will be no funds left to provide the Project so that it can go forward. For these reasons and more we request an appeal process to promptly be started. Thousands of personal dollars have gone into telephone calls and typing services and photocopy services. This is not the way a grant process is supposed to carry on. When people with the knowledge and the support and the willingness to provide the services alluded to by the AISP grant stand ready to carry out those services, why can it not be done? Certainly *not* for the reasons laid out in the June 30th letter.

In summation, Mr. Geller, how, with our history of paper work to NTIA can it say that we have not made our points; how with the history of over one and one-half year's liasion with the agency; numerous phone calls from Indian leaders, 2 briefs, a two hour plus oral defense with Mr. Means as mentioned previously, 3 avenues given for ruling favorably upon our case and the like can NTIA deny?

It seems that NTIA has one set of standards for one party with the Project and another for the other party. When questions have been raised about FACT's being duly incorporated and possessing three board members in good standing, NTIA has ignored the lack of evidence and not requested same. We seem to be faced with an awful lot of "yes, but's".

This document is provided as an informational one, written in conversational tone, by me soley, because I am sincerely interested in resolving this situation fairly. There is no one else who had part in bringing about this language herein. As a private citizen who no longer has the benefit of voluntary counsel because she no longer is employed by the law firm where she worked when the two briefs were written, she has brought to your attention the matters relative to the situation as she sees them. When the government agencies ignore certain laws, i.e. trust laws, for their own convenience and never follow through on the issues in substance, citizens, I feel, should take an active part in "righting that wrong". I am without benefit of counsel. I would like it otherwise so that I could be sure that I am not putting myself in a bad situation. However, the principle still applies. My words are put forward in the spirit of cooperation between those who may be construed as the "have-nots" and the government. It is my belief that this Project is vital and timely. It has its own merits which have achieved high rank among your NTIA readers of proposals. I ask that the appeal board be set up and in motion so that we can all feel, all parties to this issue, that we have pursued the rights of people of this land in fairness, and no less. I stand ready to aid your board in any way that it sees fit. Please contact me regarding this issue so that resolution may come about quickly.

Most sincerely yours,

Barbara Wheeler Gilbert.

905 Sixth Street, S.W.
Apartment 408
Washington, DC 20024
554–0261, 554–0322

June 30, 1980.

Re: PTFP File No. 1138–T, American Indian Satellite Project.

Arnold P. Lutzker, Esquire,
Dow, Lohnes & Albertson,
Washington, D.C.

Dear Mr. Lutzker: The Wiconi Project of the South Dakota United Indian Association (Wiconi), through you, has petitioned the National Telecommunications and Information Administration (NTIA) for extraordinary relief. Wiconi requests that it be substituted as the sponsoring organization for a FY 1980 grant application that, until March 13, 1980, was pending before the Public Telecommunications Facilities Program (PTFP). That application, submitted by First American's Commission for Telecommunications (FACT), sought funds for planning the American Indian Satellite Project (Project). We have considered your petition and supporting material, together with FACT's opposition and other information on the record, and have concluded that the petition must be denied.

By way of brief background, on January 9, 1980, FACT reactivated for the FY 1980 funding round, its deferred FY 1979 PTFP planning grant application. However, in a March 13, 1980, letter to the PTFP, Lee Piper, Chairperson of FACT's board of directors, asked that the application be withdrawn from consideration "for this funding year" because the board felt that "the proposal as submitted, is inadequate . . . . It will be better to regroup and do a more thorough job next time around." (In our view, FACT was asking that consideration of its application be *deferred* for one year. Section 2301.7 (a) and (b) of the PTFP Rules—FACT's application had been accepted for filing during the FY 1979 funding cycle. 44 Fed. Reg. 46,712, 46,720 (published August 8, 1979). The language of the March 13th letter clearly shows that FACT is not withdrawing its interest in proceeding with the Project. Indeed, FACT explicitly states that it will amend its application and resubmit it next year.

In light of FACT's letter and the importance of the Project to the American Indian people, Wiconi, in a March 21, 1980 letter, asked to be substituted as the Project's sponsoring organization so that the application could remain in contention for a grant this year.

Based on the two letters, the Office of Chief Counsel tentatively concluded that NTIA could not grant the substitution in the absence of either FACT's endorsement or a showing by Wiconi that FACT was acting for another organization or agency which had the authority to substitute another party in its stead for the purpose of applying for a grant.[1] This position was made clear over a period of several days to Wiconi leaders, representatives, and spokesmen. As a result, Wiconi filed a petition for extraordinary relief on April 18, 1980. NTIA granted the petition to the extent that processing of the application could continue pending resolution of sponsorship. The burdens of initially presenting us with facts in support of its agency theory and of proof were placed on Wiconi. 45 Fed. Reg., *supra*, n. 1, at 36,032.

Wiconi has alleged two bases on which NTIA can grant the substitution request: (1) FACT is the agent of 100 Indian leaders; and (2) the government's "trust responsibility" to Indians. To support the agency theory, Wiconi argues that the Project was conceived by Jerry Chris Elliot who presented the idea to the leaders of 40 Indian nations, tribes and

[1] Early conversations with Wiconi spokespersons indicated that the March 21st request was for waiver of the January 9, 1980, application closing date so that Wiconi could submit *its own* application for a grant. PTFP has never waived the closing date and we refused to do so in this case. 45 Fed. Reg. 35,970, 36,032 (May 28, 1980); and note 3, *infra*. We have consistently stated that waiver of a closing date would only be considered under the most compelling circumstances. A sufficient demonstration has not been made to distinguish this situation so as to merit such a waiver.

organizations. These leaders, Wiconi continues, created FACT "solely for the purpose of applying to NTIA . . ." for a planning grant, that this is FACT's only purpose and that FACT's board of directors "reports to a constituency which consists of leaders of the now 100 nations and tribes concerned with the Project." Wiconi's April 25, 1980 Statement in Support of the Petition for Extraordinary Relief at 2–3. (Statement in Support). Wiconi cites Section 274 of Williston on Contracts (Third Edition) for the proposition that an agency relationship can be created—"if the facts fairly disclose" one is acting for or representing another. And, it is argued that because of the manner in which FACT was created; the limitations of its reponsibilities to merely apply for a PTFP grant; that Barbara Gilbert actually prepared the application for FACT's board, but was not affiliated with FACT; and that FACT's board reports to the Indian leaders shows that the leaders are the principal and FACT their agent. From this, Wiconi concludes that the leaders substituted it as the sponsoring organization after FACT deferred the application so that the Project would continue to be considered for a grant this year

In phone conversations NTIA's Deputy Chief Counsel starting on April 17th and in a May 7, 1980 telegram, FACT representatives Lee Piper and Bernie Whitebear opposed the substitution request [3], as well as the possibility of filing jointly with Wiconi this year.[3]

As you know, we gave Wiconi the burden of presenting evidence to support its agency theory. After reviewing Wiconi's material, we conclude that they have not met this burden. Wiconi has given us unsupported and unverified allegations rather than providing us with facts—names, dates, resolutions, etc.,—and supporting affadavits from those involved. For example, throughout the April 25, 1980 Statement in Support, Wiconi makes the following claims:

FACT was created by the leaders of 100 Indian nations and tribes for the purpose of applying for PTFP funds for the Project.

[2] Wiconi asks that we reject FACT's May 7th opposition because it was late and no excuse was offered for the late filing. (We had requested the FACT comment on the Wiconi's pleadings by May 6, 1980. 45 Fed. Reg., *supra* at 36,032). We will not reject the opposition. Wiconi has neither claimed nor shown that any harm or prejudice resulted from the one day delay. Moreover, Wiconi overlooks that FACT had clearly stated its opposition to the substitution in several phone conversations with NTIA's Deputy Chief Counsel, and that this fact was promptly relayed by Wiconi representatives, including Barbara Gilbert and yourself, in phone conversations with the Deputy Chief Counsel, starting on April 17.

[3] In the May 7th telegram, FACT also asked that its application be reactivated for this year, and that it be given until May 19th to submit amendments that earlier had been requested by the PTFP. Except in extraordinary circumstances, the time for filing amendments to applications, Section 2301.5(b) of the PTFP Rules, is strictly adhered to both for the administrative convenience of the PTFP and, more importantly, for fairness to applicants who comply with our filing deadlines. FACT offered no justification for this request and, accordingly, we reject the effort to reactivate the application and to waive, by nearly one month, the time for filing amendments.

FACT's three original directors were not fully familiar with the scope of the Project or the field of telecommunications.

FACT's board of directors reports to the leaders of 100 Indian tribes and nations, and without the continuing support of the leaders, FACT would not be able to implement the Project.

FACT's staff work has been performed by Ms. Barbara Gilbert and FACT has not sought funds from any source other than PTFP.

FACT's PTFP application was prepared by Barbara Gilbert who was acting on behalf of Indian organizations. This work stemmed from Ms. Gilbert's relationship with the leaders of the 100 nations and tribes.

After FACT withdrew, the Indian leaders substituted Wiconi for FACT so that the application could continue to be considered and that action, combined with FACT's withdrawal, terminated the agency relationship between FACT and the Indian people.

Several of these factors would be relevant to our decision to grant the substitution if they had been proven. Unfortunately, Wiconi had failed to provide us with names, dates, or documents to support its allegations. Neither the Indian leaders nor their organizations are identified; no date is given for the meetings at which FACT was selected, and subsequently dismissed, as agent and Wiconi substituted; no copies of resolutions or minutes of meetings were provided; and no written statements from Indian leaders, sworn or unsworn, in support of Wiconi's claims were given to NTIA. The only verification is an affidavit from Barbara Gilbert, who is not an Indian leader. She only states that the facts set out in Wiconi's Statement in Support are true to the best of her knowledge and belief.

In many respects, FACT's FY 1979 and 1980 applications appear to be substantially alike, using the same basic technology to achieve the same goals. Contrary to Wiconi's assertions of the lack of knowledge or familiarity with the Project on the part of FACT's directors, FACT's FY 1979 application was signed by Lawrence Tekala, a FACT director, and he is listed as the contact person for the application. The FY 1979 application does not indicate that Barbara Gilbert was the preparer. (Barbara Gilbert is listed as the project director and contact person on FACT's FY 1980 application.) And, nowhere in that application, or for that matter, in the FY 1980 application, does it indicate that FACT's only purpose is to apply for a PTFP grant or that FACT's board is to report to the Indian leaders. The applications state that the Project was conceived and FACT was formed on April 20, 1979, by several Indian individuals and organizations. FY 1979 application, 150–P, Program Narrative at 2; FY 1980 application, 1138–T, Program Narrative at 8. The Wiconi application's Program Narrative is essentially identical and the statement of the background of the Project does *not* say that FACT was formed by 40 to 100 Indian leaders. At most, FACT's application states that the organization was "created to direct and pursue the development of a National Telecommunications Network controlled by Indian and Native People." FY 1979 application, 150–P, Program Narrative at 5. This is hardly an indication that FACT is a surrogate of the Indian leaders and not an independent legal entity.

In short, Wiconi's supporting materials are insufficient, in light of FACT's opposition and the statements in its applications, to establish, by even a preponderance, the existence of the agency relationship and NTIA's authority to ratify the removal FACT from its timely filed application.[4] Accordingly, we conclude that the facts provided by Wiconi do not "fairly disclose" that an agency relationship ever existed between FACT and the Indian leaders. See Williston, *supra*, page 2.

Independent of the agency theory, Wiconi argues that NTIA, and all Federal agencies, are "legally bound to act in the best interests of the American Indian people" because of the "unique legal responsibilities" the Federal Government owes to the Indian people; *i.e.*, the trust relationship. Statement in Support at 6, citing *Cherokee Nation* v. *Georgia*, 30 U.S. 1 (1831) and *Federal/Indian Relationship* from *Old Problems—Present Issues: Nine Essays on American Indian Law* (Inst. for Development of Indian Law). Specifically, Wiconi argues that FACT's failure to amend its application in response to a PTFP request (and its "withdrawal" of the application) jeopardizes the Project's chances for funding. Therefore, NTIA, acting in the best interests of the American Indian people, should allow Wiconi to prosecute the application in place of FACT. In addition, Wiconi representatives have stated to us that the coalition supporting the Project is fragile and that failure to continue the application this year dramatically reduces the chances of it being refiled next year.

Wiconi has failed to show that the generalized theory of trust responsibility applies specifically to telecommunications and the Interior Department has advised us that it does not. NTIA recognizes the potential merit of such a satellite project and the benefits that it might bring to the Indian people. But, even if we were able to concede that the trust responsibility does apply, we would still be unable to conclude, based on Wiconi's generalized and undocumented arguments, that substituting Wiconi for FACT would be in the best interests of those people. Aside from an allegation, there is no indication that the one year deferral of the application will preclude the fulfillment of the Project. Indeed, this is the second year that FACT has submitted an application for the Project. It has not withdrawn from the Project but merely deferred its application in order to, in FACT's words, "regroup and do a more thorough job" in the FY 1981 funding round. Letter of March 13, 1980, from Lee Piper to the

[4] We also note that Wiconi was advised repeatedly, and as early as April 16th, that it was ineligible under the PTFP Rules because its articles of incorporation did not authorize it to provide public telecommunications services nor state that it was, at least in part, organized for cultural or educational purposes. *See* 47 U.S.C. Sections 392(a)(1), 397(7)(B) and (11), as amended by the Public Telecommunications Financing Act of 1978; and Section 2301.4(a)(4) of the PTFP Rules. This fact, however, is not controlling of our decision here.

V 45 C 31 80 UMI

PTFP. Wiconi has not challenged the truth of that statement beyond saying that it did not believe FACT would have the continued support of the Indian leaders. Absent affidavits from a number of leaders and the existence of an agency relationship, we cannot conclude that the best interests of the Indian people would be served by our terminating FACT's interest in its application and substituting Wiconi.

NTIA has been impressed by the desire of both FACT and Wiconi to plan and construct the Project. We also recognize the potential benefits to the Indian people of such a project. We deeply regret the division between two important Indian organizations and sincerely hope that representatives of the American Indian community will be able to file for the next round of facilities grants in January 1981.

Sincerely,

John Cameron,

Director Public Telecommunications Facilities Division.

cc: Lee Piper and Barbara Gilbert.

[FR Doc. 80-34072 Filed 10-30-80; 8:45 am]

BILLING CODE 3510-60-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1980; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to Procurement List 1980 commodities to be produced by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: October 31, 1980.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher (703) 557-1145.

SUPPLEMENTARY INFORMATION: On June 27, 1980, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (45 FR 43457) of proposed addition to Procurement List 1980, November 27, 1979 (44 FR 67925).

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

Accordingly, the following commodities are hereby added to Procurement List 1980:

Class 7530

Paper, Teletypewriter Roll, 7530-00-721-9691, 7530-00-223-7969, 7530-00-262-9178.

C. W. Fletcher,

Executive Director.

[FR Doc. 80-33921 Filed 10-30-80; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1980; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1980 commodities and a military resale commodity to be produced by and a service to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 3, 1980.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities, military resale commodity, and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities, military resale commodity, and service to Procurement List 1980, November 27, 1979 (44 FR 67925):

Class 6515

Case, Ear Plug, 6515-00-299-8287 (Increase from 80% to 100% of Government requirements).

Class 7510

Paperweight, Shotfilled, 7510-00-286-6985.

Class 7530

Paper, Teletypewriter, Roll, 7530-00-142-9037.

Class 9905

Tree Shade, 9905-00-NSH-0001.

Military Resale Item No. and Name

No. 570, Clothespins, Plastic

SIC 7349

Janitorial Service, Naval Air Station Miramar, San Diego, California.

C. W. Fletcher,

Executive Director.

[FR Doc. 80-33822 Filed 10-30-80; 8:45 am]

BILLING CODE 6820-33-M

COMMUNITY SERVICES ADMINISTRATION

Decision to Fund Ten Conduit Migrant and Seasonal Farmworker Emergency Energy Assistance Programs Operating in Every State Except Hawaii and Alaska

AGENCY: Community Services Administration.

ACTION: Notice to all boards of directors of CAA(s) and SECO(s).

SUMMARY: The Community Services Administration is notifying all Boards of Directors of Community Action Agencies (CAAs) and State Economic Opportunity Offices (SECOs), in accordance with Section 222(a) of the Economic Opportunity Act of 1964, as amended, that a decision has been made to fund ten (10) conduit migrant and seasonal farmworker Emergency Energy Assistance Programs in every state except Hawaii and Alaska.

Grants are being awarded to the following organizations for operation in the following states: New England Farmworker Council (serving Maine, Connecticut, Rhode Island, New Hampshire, Vermont, Massachusetts); Rural New York Farmworker Opportunities, Inc. (serving: New York and New Jersey); Farmworker Corporation of New Jersey, Inc. (serving: Delaware, Maryland, Pennsylvania, Virginia, West Virginia); Mississippi Delta Housing Corporation (serving: Alabama, Georgia, Louisiana, Tennessee, Kentucky, North Carolina, South Carolina, Florida, Mississippi); Minnesota Migrant Council (serving: Illinois, Indiana, Michigan, Minnesota, Ohio, South Dakota, Wisconsin); Colonias del Valle (serving: New Mexico, Oklahoma, Texas, Arkansas); ORO Development Corporation (serving: Kansas, Nebraska, Missouri, Iowa); North Dakota Migrant Council (serving: North Dakota, Montana, Wyoming, Utah, Colorado); Campesions Unidos (serving: California, Arizona, Nevada); and Idaho Migrant Council (serving: Idaho, Oregon, Washington). These organizations will directly engage in Emergency Energy Assistance and

delegate activities in those areas where the conduit has no direct delivery system.

DATE: This notice becomes effective October 31, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Eduardo Gutierrez or Mr. Tom Blackburn-Rodriguez, 1200 19th Street, N.W., Washington, D.C. 20506, Telephone: (202) 254-5400, Teletypewriter (202) 254-6218.

(Sec. 602, 78 Stat. 530, 42 U.S.C. 2942)

William W. Allison,

Acting Director.

[FR Doc. 80-34037 Filed 10-30-80; 8:45 am]

BILLING CODE 6315-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Tripler Army Medical Center, Hawaii; Filing of Environmental Impact Statement

In compliance with the National Environmental Policy Act of 1969 and in accordance with the President's Reorganization Plan No. 1, the Army provided the Environmental Protection Agency for filing, on October 27, 1980, an Environmental Impact Statement concerning the construction of an addition/alteration project at Tripler Army Medical Center, Hawaii, to bring that facility up to current requirements.

Copies of the statement have been forwarded to concerned Federal, State, and local agencies. Interested organizations or individuals may obtain copies from the Hospital Commander, Tripler Army Medical Center, Oahu, Hawaii.

In the Washington area, inspection copies may be seen in the Environmental Office, Office of the Assistant Chief of Engineers, DA, Room 1E676, Pentagon, Washington, D.C. 20310 (Phone number 202-694-4269).

Dated: October 24, 1980.

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health OASHA (IL&FM)

[FR Doc. 80-33998 Filed 10-30-80; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of Army

Intent To Prepare Draft Environmental Impact Statement (DEIS) for Alenalo Stream Flood Control Project, Island of Hawaii

October 24, 1980.

AGENCY: US Army Corps of Engineers, DOD, Honolulu District.

ACTION: Notice of intent to prepare a DEIS.

SUMMARY: 1. The proposed action is a flood-control project. The major objectives are to reduce the potential flood hazard for the safety and well-being of the community, reduce the possible loss from property caused by floodwaters, and reduce erosion which affects coastal water quality and ecosystems.

2. Reasonable alternatives to be investigated in detail during the survey study include the following structural and nonstructural measures:

a. *Structural:*

(1) *Reservoir.* Impoundment and controlled release of floodwaters by a dam and reservoir.

(2) *Channel Improvements and Diversion Channel.* Improving the stream to remove restrictive bends and enlarging the existing channel capacity or constructing a diversion channel to divert storm flows into adequate waterways and to keep the existing stream within the prescribed channel capacity.

b. *Nonstructural:*

(1) *Floodplain Restrictions.* Restriction of future development in the floodplain by land-use controls such as zoning, subdivision regulations, etc.

(2) *Floodproofing.* The alteration of a structure or conditions surrounding the structure to prevent damage by floodwaters.

3. The program involves coordination with the sponsoring agencies, other government agencies, community organizations, and the general public. Activities include informal meetings, workshops, formal public meetings, issuance of public notices and letter responses. All pertinent agencies have been notified of study initiation. An initial public meeting was held with interested agencies and the public in June 1980. Additional workshop and public meeting are scheduled in December 1980 and February 1982, respectively.

a. *Significant Issues to be Analyzed:*

(1) Comparative environmental impacts of the proposed alternatives.

(2) Project impacts on cultural resources.

(3) Project impacts on stream water quality aquatic resources.

(4) Assessment of community responses to alternative plans.

b. *Possible Assignments for Input into the EIS Among the Lead and Cooperating Agencies:*

(1) *US Fish and Wildlife Service.* Provision of a Fish and Wildlife Coordination Act Section 2b report to assist in assessment of ecological impacts.

(2) *State Historic Preservation Officer.* Identification and evaluation of previous cultural resource surveys.

(3) *County of Hawaii.* Socio-economic data.

(4) *State Department of Health.* Water Quality data.

c. *Identification of Other Environmental Review and Consultation Requirements:*

(1) Section 106 of the National Historic Preservation Act of 1966 requires survey and coordination regarding potential impact on significant cultural resources.

(2) Section 404 of the Clean Water Act of 1977 requires evaluation of projects to assess impacts resulting from deposition of dredged or fill materials into waters of the U.S.

(3) Coastal Zone Management Act of 1972 requires that a project must comply with the federal law as well as be consistent with the Coastal Zone Management program for the State of Hawaii.

4. A scoping meeting will not be held on the project. Pertinent Federal, State, and local agencies responsible for planning assessment have already been informed of the proposed action. Those agencies include the sponsoring agency, the County of Hawaii Department of Public Works; State Historic Preservation Officer; the US Fish and Wildlife Service; US Soil Conservation Service; and the US Geological Survey.

5. Under the present schedule, the DEIS will be made available to the public in August 1981.

ADDRESS: Questions about the proposed action and DEIS can be answered by: Mr. James K. Ligh, Project Engineer, US Army Engineer District, Honolulu, Building 230, Fort Shafter, Hawaii 96858, Telephone: (808) 438-9526.

Dated: October 24, 1980.

Kenneth E. Sprague,

Lieutenant Colonel, Corps of Engineers, Deputy District Engineer.

[FR Doc. 80-33862 Filed 10-30-80; 8:45 am]

BILLING CODE 3710-NN

Office of the Secretary

Discharge Review Boards; Revised Complaint Procedures

Notice is hereby given of a revision to procedures under which discharge review applicants or other members of the public may complain to the Office of the Secretary of Defense concerning decisional documents or index entries issued by the Army, Naval, and Air Force Discharge Review Boards.

Decisional documents and index entries issued by the Discharge Review Boards of the Military Departments are subject to certain provisions of the Stipulation of Dismissal and Court Orders in *Urban Law Institute of Antioch College, Inc. v. Secretary of Defense*, Civil Action No. 76–0530, (D.D.C.), (Stipulation of Dismissal: January 31, 1977, Court Orders: August 23, 1978 and November 9, 1978). These provisions were implemented through Department of Defense Directive 1332.28 (Discharge Review Board Procedures and Standards) dated March 29, 1978, with Change 1 dated December 17, 1979, (43 FR 13564, March 31, 1978, and 44 FR 76486, December 27, 1979, respectively) (also 32 CFR 70) and a memorandum from the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) dated October 28, 1978 (44 FR 5185, January 25, 1979). Procedures for processing complaints concerning decisional documents or index entries were set forth in a memorandum from the Principal Deputy Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) dated December 9, 1978 (44 FR 5185, January 25. 1979). These procedures established a three member Joint Service Review Activity, consisting of one officer in grade 0–6 from each of the Military Departments, to act on complaints. Revised procedures for processing complaints were set forth in a memorandum from the Deputy Assistant Secretary of Defense (Military Personnel Policy) dated October 12, 1979 (44 FR 62929, November 1, 1979). These procedures modified the membership of the Joint Service Review Activity to consist of one Judge Advocate from each of the Military Departments since the function of the Joint Service Review Activity is essentially of a legal nature.

The current revision to complaint procedures explains that the Deputy Assistant Secretary of Defense (Military Personnel Policy) is the final authority with respect to action on complaints and sets forth the specific responsibilities of the Military Departments, Discharge Review Boards, Joint Service Review Activity, and Deputy Assistant Secretary of Defense (Military Personnel Policy) in processing complaints. The revision clarifies the internal procedures of the Department of Defense in processing complaints but does not change the overall complaint procedure as it affects discharge review applicants or other members of the public. The revision has no effect upon either the substantive standards of discharge review or the standards for determining the adequacy of a decisional document with respect to the Stipulation of Dismissal or Department of Defense Directive 1332.28. In order to provide discharge review applicants and other interested members of the public with prompt processing of complaints, and in order to ensure compliance with Court Orders, immediate implementation of the revision is required. In view of the above, publication of these revised complaint procedures for public comment thereon is impracticable, unnecessary, and contrary to the public interest.

These revised complaint procedures are effective October 31, 1980. For further information contact Captain Ronald W. Stanley, Administrative Director, Joint Service Review Activity, Office of the Deputy Assistant Secretary of Defense (Military Personnel Policy), telephone (202) 695–5153.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

October 28, 1980.

Complaint Procedures

1. These procedures implement certain provisions of the Stipulation of Dismissal and Court Orders in *Urban Law Institute of Antioch College, Inc. v. Secretary of Defense*, Civil Action No. 76–0530 (D.D.C.) (Stipulation of Dismissal: Jan. 31, 1977, Court Orders: Aug. 23, 1978 and Nov. 9, 1978) and a memorandum from the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) dated 28 October 1978 concerning the same. These procedures are established for the sole purpose of ensuring that decisional documents and index entries issued by the Discharge Review Boards of the Military Departments comply with the requirements of the Stipulation of Dismissal and, when applicable, DoD Directive 1332.28. These procedures may be modified or supplemented by the Deputy Assistant Secretary of Defense for Military Personnel Policy (DASD (MPP)), Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) (OASD (MRA&L)).

2. Any person may correspond with the Office of the Secretary of Defense concerning decisional documents or index entries issued by the Discharge Review Boards. Such correspondence shall be processed in accordance with these procedures. The DASD (MPP) is the final authority with respect to action on such correspondence.

3. A three member Joint Service Review Activity (JSRA) consisting of one Judge Advocate from each Military Department shall advise the DASD (MPP). The operations of the JSRA shall be coordinated by a full-time Administrative Director, who shall serve as Recorder during meetings of the JSRA. The members and the Administrative Director shall serve at the direction of the DASD (MPP).

4. a. Correspondence with the Office of the Secretary of Defense concerning decisional documents or index entries issued by the Discharge Review Boards should be addressed as follows: Joint Service Review Activity, OASD (MRA&L) (MPP), Washington, D.C. 20301.

b. All such correspondence shall be controlled by the Administrative Director through the use of a uniform docketing procedure.

c. All such correspondence shall be reviewed by the Administrative Director and categorized as either a complaint or an inquiry in accordance with the following:

(1) A complaint is any correspondence in which it is alleged that a decisional document or an index entry issued by a Discharge Review Board contains a specifically identified violation of the Stipulation of Dismissal or DoD Directive 1332.28.

(2) An inquiry is any correspondence other than a complaint.

5. The following procedures shall be utilized in processing complaints:

a. The Administrative Director shall acknowledge receipt of the compliant.

b. The Administrative Director shall assign a docket number to the complaint.

c. The Administrative Director shall forward the complaint to the Military Department concerned.

d. The Military Department shall review the complaint and ensure the following:

(1) If the Military Department determines that all of the allegations contained in the complaint are not specific or have no merit, it shall address the allegations using the format at Attachment 1 (Review of Complaint).

(2) If the Military Department determines that some of the allegations contained in the complaint are not specific or have no merit and that some of the allegations contained in the complaint have merit, it shall address the allegations using the format at Attachment 1 (Review of Complaint) and its Discharge Review Board shall take appropriate corrective action by amending the decisional document or, when the decisional document cannot be amended, by notifying the applicant and counsel, if any, of the opportunity to request a new review.

(3) If the Military Department determines that all of the allegations contained in the complaint have merit, its Discharge Review Board shall take appropriate corrective action by amending the decisional document or, when the decisional document cannot be amended, by notifying the applicant and counsel, if any, of the opportunity to request a new review.

(4) If, during the course of its review, the Military Department notes any other defects in the decisional document or index entries (under the Stipulation of Dismissal or DoD Directive 1332.28), its Discharge Review Board shall take appropriate corrective action by amending the decisional document or, when the decisional document cannot be amended, by notifying the applicant and counsel, if any, of the opportunity to request a new review. (This does not establish a requirement for the Military Department to review a complaint for any purpose other than to determine whether the allegations contained in the complaint are specific and have merit; rather, it simply provides a format for the Military Department to address other defects noted.)

(5) When the Discharge Review Board takes corrective action under paras. d(2), d(3), or d(4) above or i below by amending a decisional document concerning a review for which the applicant had the opportunity to request a *de novo* review, it shall notify the applicant and counsel, if any, of the new opportunity to request a *de novo* review.

(6) When the Military Department determines that some or all of the allegations contained in the complaint are not specific or have no merit but its Discharge Review Board takes corrective action under paras. d(2) or d(4) above, the Discharge Review Board's notification to the applicant and counsel, if any, and to the complainant, if other than the applicant or counsel, should include the following or similar wording: "This is in partial response to (your)/(a) complaint to the Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) dated———— concerning————Disharge Review Board decisional document————. A final response to (your)/(the) complaint, which has been returned to the Office of the Assistant Secretary of defense (Manpower, Reserve Affairs, and Logistics) for further review, will be provided to you in the near future."

(7) When the Discharge Review Board takes corrective action under paras. d(3) above or i below, its notification to the applicant and counsel, if any, and to the complainant, if other than the applicant or counsel, should include the following or similar wording: "This is in response to (your)/(a) complaint to the Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) dated———— concerning————Discharge Review Board decisional document————."

e. The Military Department shall return the complaint to the Administrtive Director with a copy of the decisional document and, when applicable, any of the following documents:

(1) The "Review of Complaint".

(2) A copy of the amendment to the decisional document and the accompanying transmittal letter(s) to the applicant and counsel, if any, and to the complainant, if other than the applicant or counsel.

(3) A copy of the notification to the applicant and counsel, if any, of the opportunity to request a new review, and a copy of the notification to the complainant, if other than the applicant or counsel, that the applicant has been authorized a new review.

f. The Administrative Director shall review the complaint and accompanying documents and ensure the following:

(1) If the Military Department determined that any of the allegations contained in the complaint are not specific or have no merit, the JSRA shall review the complaint and accompanying documents. The JSRA shall address the allegations using the format at Attachment 2 (Review of and Recommended Action on Complaint) and shall note any other defects in the decisional document or index entries (under the Stipulation of Dismissal or DoD Directive 1332.28) not previously noted by the Military Department. (This does not establish a requirement for the JSRA to review such complaints for any purpose other than to address the allegations contained in the complaint; rather, it simply provides a format for the JSRA to address other defects not previously noted by the Military Department.)

(2) If the Military Department determined that all of the allegations contained in the complaint have merit and its Discharge Review Board amended the decisional document, the amended decisional document shall be subject to review by the JSRA on a sample basis each quarter using the format at Attachment 3 (Review of and Recommended Action on Amended Decisional Document).

(3) If the Military Department determines that all of the allegations contained in the complaint have merit and its Discharge Review Board notified the applicant and counsel, if any, of the opportunity to request a new review (because the decisional document could not be amended), review of such corrective action is not required.

g. The JSRA shall meet for the purpose of conducting the reviews required in paras. f(1) and f(2) above and k(1) below. The Administrative Director shall call meetings once a month, if necessary, or more frequently depending upon the number of matters before the JSRA. Matters before the JSRA shall be presented to the members by the Recorder. Each member shall have one vote in determining matters before the JSRA, a majority vote of the members determining all matters. Determinations of the JSRA shall be reported to the DASD (MPP) as JSRA recommendations using the prescribed format. If a JSRA recommendation is not unanimous, the minority member may prepare a separate recommendation for consideration by the DASD (MPP) using the same format. Alternatively, the minority member may indicate "dissent" next to his signature on the JSRA recommendation.

h. The DASD (MPP) shall review all JSRA recommendations as follows:

(1) The DASD (MPP) shall review complaints using the format at Attachment 4 (Review of and Action on Complaint). The DASD (MPP) is the final authority in determining whether the allegations contained in a complaint are specific and have merit. If the DASD (MPP) determines that no further action by the Military Department is warranted, the complainant and the Military Department shall be so informed. If the DASD (MPP) determines that further action by the Military Department is required, the Military Department shall be directed to ensure that appropriate corrective action is taken by its Discharge Review Board and the complainant shall be provided an appropriate interim response.

(2) The DASD (MPP) shall review amended decisional documents using the format at Attachment 5 (Review of and Action on Amended Decisional Document). The DASD (MPP) is the final authority in determining whether an amended decisional document complies with the Stipulation of Dismissal and, when applicable, DoD Directive 1332.28. If the DASD (MPP) determines that no further corrective action by the Military Department is warranted, the Military Department shall be so informed. If the DASD (MPP) determines that further corrective action by the Military Department is required, the Military Department shall be directed to ensure that appropriate corrective action is taken by its Discharge Review Board.

(3) It is noted that any violation of the Stipulation of Dismissal is also a violation of DoD Directive 1332.28. However, certain requirements under DoD Directive 1332.28 are not

V 45 OCT 1980 UMI

requirements under the Stipulation of Dismissal. If the allegations contained in a complaint are determined to have merit or if an amended decisional document is determined to be defective on the basis of one of these additional requirements under DoD Directive 1332.28, the DASD (MPP) determination shall reflect this fact.

i. With respect to a determination by the DASD (MPP) that further action by the Military Department is required, its Discharge Review Board shall take appropriate corrective action by amending the decisional document or, when the decisional document cannot be amended, by notifying the applicant and counsel, if any, of the opportunity to request a new review.

j. The Military Department shall provide the Administrative Director with, when applicable, any of the following documents relevant to corrective action taken in accordance with para. i above:

(1) A copy of the amendment to the decisional document and the accompanying transmittal letter(s) to the applicant and counsel, if any, and to the complainant, if other than the applicant or counsel.

(2) A copy of the notification to the applicant and counsel, if any, of the opportunity to request a new review, and a copy of the notification to the complainant, if other than the applicant or counsel, that the applicant has been authorized a new review.

k. The Administrative Director shall review the documents relevant to corrective action taken in accordance with para. i above and ensure the following:

(1) If the Discharge Review Board amended the decisional document, the amended decisional document shall be subject to review by the JSRA on a sample basis each quarter using the format at Attachment 3 (Review of and Recommended Action on Amended Decisional Document).

(2) If the Discharge Review Board notified the applicant and counsel, if any, of the opportunity to request a new review (because the decisional document could not be amended), review of such corrective action is not required.

l. Upon request, the Military Department shall provide the Administrative Director with other documents required by the JSRA or the DASD (MPP) in the conduct of their reviews. In this regard, it is noted that with respect to any allegation that a specific contention made by the applicant to the Discharge Review Board was not addressed by the Discharge Review Board, the complaint review process shall involve a review of all the evidence that was before the Discharge Review Board, including the testimony and written submissions of the applicant, to determine whether the contention was made, and if so, whether it was addressed adequately with respect to the Stipulation of Dismissal and, when applicable, DoD Directive 1332.28.

6. The following procedures shall be utilized in processing inquiries:

a. The Administrative Director shall assign a docket number to the inquiry.

b. The Administrative Director shall forward the inquiry to the Military Department concerned.

c. The Military Department shall prepare a response to the inquiry and provide the Administrative Director with a copy of the response.

d. The Military Department's reponse should include the following or similar wording: "This is in reponse to your inquiry to the Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) dated ——— concerning ———."

7. The Discharge Review Board concerned shall re-index all amended decisional documents and shall provide copies of the amendments to the decisional documents to the Armed Forces Discharge Review/Correction Boards Reading Room.

8. Each Military Department shall provide the Administrative Director with a monthly report using the format at Attachment 6 (Complaints/Inquiries Status Report). The report shall be prepared by the Military Department as of the last day of each month and provided to the Administrative Director not later than the fifth working day of the following month.

9. The Administrative Director is responsible for the disposition of all Military Department, Discharge Review Board, JSRA, and DASD (MPP) documents relevant to processing complaints and inquiries.

10. The Stipulation of Dismissal permits *Urban Law* plaintiffs to submit complaints to the DoD General Counsel for comment. The DoD General Counsel may refer such complaints to the Military Department concerned or to the JSRA for initial comment.

11. a. These procedures are effective 31 October 1980. The Joint Service Review Activity Procedures dated 12 October 1979 are hereby superseded.

b. With respect to the processing of any correspondence that was docketed prior to the effective date of these procedures, any further action shall be taken in accordance with these procedures. No revision of any action taken prior to the effective date of these procedures, to the extent that these procedures differ from the superseded procedures, shall be required.

Attachment 1

Review of Complaint

Military Department:
Decisional Document Number:
Name of Complainant:
Name of Applicant:
Docket Number:
Date of this Review:

1. Specific allegation(s) noted:

2. Finding(s), conclusion, and reason(s) with respect to each specific allegation:

3. Other defects noted in the decisional document or index entries: (Authentication)

Attachment 2—Joint Service Review Activity, Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)

Review of and Recommended Action on Complaint

Military Department:
Decisional Document Number:
Name of Complainant:
Name of Applicant:
Docket Number:
Date of this Review:

1. Attached is the Military Department's "Review of Complaint", which reflects the Military Department's finding(s), conclusion, and reason(s) with respect to each specific allegation noted in para. 2 below as well as any other defects in the decisional document or index entries noted by the Military Department.

2. Specific allegation(s) noted by the Military Department:

3. Specific allegation(s) not noted by the Military Department:

4. Finding(s), conclusion, and reason(s) with respect to each specific allegation:

5. Other defects in the decisional document or index entries not noted by the Military Department:

6. *Recommendation:*

( ) The complainant and the Military Department should be informed that no further action on the complaint is warranted.

( ) The Military Department should be directed to ensure that corrective action consistent with the above comments is taken by its Discharge Review Board.

(Army Member, JSRA)
(Navy Member, JSRA)
(Air Force Member, JSRA)
(Recorder, JSRA)

Attachment 3—Joint Service Review Activity, Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)

Review of and Recommended Action on Amended Decisional Document

Military Department:
Decisional Document Number:
Name of Complainant:
Name of Applicant:
Docket Number:
Date of this Review:
Recommendation:

( ) The amended decisional document complies with the requirements of the Stipulation of Dismissal and, when applicable, DoD Directive 1332.28. The Military Department should be informed that no further corrective action is warranted.

( ) The amended decisional document does not comply with the Stipulation of Dismissal or DoD Directive 1332.28 as noted herein. The Military Department should be directed to ensure that corrective action consistent with the defects noted is taken by its Discharge Review Board.

(Army Member, JSRA)
(Navy Member, JSRA)
(Air Force Member, JSRA)
(Recorder, JSRA)

Yes	No	NA	Item	Source
			1. Discharge data. a. Date of discharge b. Character of discharge c. Reason for discharge d. Specific regulatory authority under which discharge was issued	1. Stip., Para. 5A(1)(d)(i); DoDD, Encl. 2, Para. (d)1.
			2. Service data. (This requirement applies only in conjunction with Military Department implementation of DoD General Counsel letter dated July 20, 1977, or to discharge reviews conducted on or after March 29, 1978.). a. Date of enlistment b. Period of enlistment c. Age at enlistment d. Length of service e. Periods of unauthorized absence* f. Conduct and efficiency ratings (numerical or narrative)* g. Highest rank achieved h. Awards and decorations* i. Educational level j. Aptitude test score k. Art. 15's (including nature and date of offense or punishment)* l. Convictions by court-martial* m. Prior military service and type of discharge(s) received*	2. Ltr from DoD/GC to Military Departments dtd July 20, 1977; DoDD, Encl. 2, Para. (d)2.
			3. Reference to materials presented by applicant. (This requirement applies only to discharge reviews conducted on or after March 29, 1978.). a. Written brief* b. Documentary evidence* c. Testimony*	3. DoDD, Encl. 2, Para. (d)3.
			4. Conclusions. The decisional document must indicate clearly the DRB's conclusion concerning: a. Determination of whether a discharge upgraded under the SDRP would have been upgraded under DoD Directive 1332.28. (This applies only to mandatory re-reviews under Pub. L. No. 95-126 of SDRP reviews.) b. Character of discharge, where applicable.[1] c. Reason for discharge, where applicable.[2]	4. Stip., Para. 5A(1)(d)(iv); DoDD, Encl. 2, Para. (d)4c; Pub. L. No. 95-126.
			5. Reasons for conclusions. The decisional document must indicate clearly the DRB's reasons for conclusions concerning: a. Determination of whether a discharge upgraded under the SDRP would have been upgraded under DoD Directive 1332.28. (This applies only to mandatory re-reviews under Pub. L. No. 95-126 of SDRP reviews.) b. Character of discharge, where applicable.[1] c. Reason for discharge, where applicable.[2]	5. Stip., Para. 5A(1)(d)(v); DoDD, Encl. 2, Para. (d)4d.
			6. Issues. (See Issues Worksheet.)	6. Stip., Paras. 5A(1)(d)(ii), (iii), and (v), 5A(4)(a); DoDD, Encl. 2, Paras. (d)4a, b, and d, (d)8.

Yes	No	NA	Item	Source
			7. Advisory opinions.*	7. Stip., Para. 5A(1)(f); DoDD, Encl. 2, Para. (d)5.
			8. Minority opinions or reports.	8. Stip., Para. 5A(1)(g); DoDD, Encl. 2, Para. (d)7.
			9. Record of names and votes of board members.	9. Stip., Para. 5A(3); DoDD, Encl. 2, Para. (d)6.
			10. Indexing of decisional document.	10. Stip., Para. 5A(5)(e); DoDD, Encl. 2, Para. (f)4a.
			11. Authentication of decisional document. (This requirement applies only to discharge reviews conducted on or after March 29, 1978.)	11. DoDD, Encl. 2, para. (d)9.
			12. Other	12. As appropriate

ISSUES WORKSHEET[3]

Issue	Findings, Conclusions, and Reasons Therefor		
	Yes	No	NA

(to be continued as necessary)

EXPLANATION OF ITEMS MARKED NO
(to be used as necessary)

KEY

Yes: The decisional document meets the requirements of the Stipulation of Dismissal and, where applicable, DoD Directive 1332.28.

No: The decisional document does not meet the requirements of the Stipulation of Dismissal or DoD Directive 1332.28.

NA: Not applicable.

*Items marked by an asterisk do not necessarily pertain to every review. If the decisional document contains no reference to such an item, NA is indicated unless there is a specific complaint with respect to that item, in which case the underlying discharge review record shall be examined in order to determine whether YES or NO should be indicated.

FOOTNOTES

[1] In this instance "where applicable" means all reviews except:

a. Mandatory re-reviews under Pub. L. 95-126 of SDRP reviews.

b. Reviews in which the applicant requested only a change in the reason for discharge and the DRB did not raise the character of discharge as an issue.

[2] In this instance "where applicable" means all reviews in which:

a. The applicant requested a change in the reason for discharge.

b. The DRB raised the reason for discharge as an issue.

c. A change in the reason for discharge is a necessary component of a change in the character of discharge.

[3] a. Issues may be categorized as follows:

(1) Issues of fact, law, or discretion upon which the decision on the application is based, including those factors required by applicable regulations to be considered for determination of the character of and reason for the discharge or dismissal in question [where such factors are a basis for denial of any of the relief requested by the applicant]. (The material in brackets pertains only to discharge reviews conducted on or before March 28, 1978.)

(2) Issues of fact, law, or discretion that would have warranted greater relief than that afforded the applicant by the DRB's decision, if resolved in the applicant's favor; such issues must be stated clearly and specifically.

(3) Issues of fact, law or discretion that are irrelevant because the applicant was afforded full relief on the basis of another issue.

(4) Matters that are not issues of fact, law, or discretion or that are not clearly and specifically stated.

Only those issues in categories (1) and (2) above require findings, conclusions, and reasons therefor.

b. This review may be made based upon the decisional document without reference to the underlying discharge review record except as follows: if there is an allegation that a specific contention made by the applicant to the DRB was not addressed by the DRB. In such a case, the complaint review process shall involve a review of all the evidence that was before the DRB, including the testimony and written submissions of the applicant, to determine whether the contention was made, and if so, whether it was addressed adequately with respect to the Stipulation of Dismissal and, where applicable, DoD Directive 1332.28.

c. This review may be based upon the decisional document without reference to the regulation governing the discharge in question except as follows: if there is a specific complaint that the DRB failed to address a specific factor required by applicable regulations to be considered for determination of the character of and reason for the discharge in question [where such factors are a basis for denial of any of the relief requested by the applicant]. (The material in brackets pertains only to discharge reviews conducted on or before March 28, 1978.)

ATTACHMENT 4.—Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)

Review of and Action on Complaint

Military Department:
Decisional Document Number:
Name of Complainant:
Name of Applicant:
Docket Number:
Date of this Review:

1. Specific allegation(s) noted:
2. Finding(s), conclusion, and reason(s) with respect to each specific allegation:
3. Other defects noted in the decisional document or index entries:
4. *Determination:*
   ( ) No further action on the complaint is warranted.
   ( ) Corrective action consistent with the above comments is required.

(DASD (MPP))

ATTACHMENT 5.—Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)

Review of and Action on Amended Decisional Document

Review of and Action on Complaint

Military Department:
Decisional Document Number:
Name of Complainant:
Name of Applicant:
Docket Number:
Date of this Review:
Determination:

( ) The amended decisional document complies with the requirements of Stipulation of Dismissal and, when applicable, DoD Directive 1332.28. No further corrective action is warranted.

( ) The amended decisional document does not comply with the Stipulation of Dismissal of DoD Directive 1332.28. Further corrective action is required consistent with the defects noted in the attachment:

(DASD (MPP))

Attachment to Attachment 5.—Defects in the Amended Decisional Document (to be used as necessary)

Attachment 6

Complaints/Inquiries Status Report

1. Total number of Complaints/Inquiries received through last day of (previous month): _____
2. Complaints/Inquiries received by docket number * during (current month):
3. Total number of Complaints/Inquiries received through last day of (current month): _____
4. Status of Complaints by docket number * pending Military Department action 60 days or more after the docket date:
5. Status of Inquiries by docket number * pending Military Department action 30 days or more after the docket date:

(Authentication)

[FR Doc. 80-33887 Filed 10-30-80; 8:45 am]
BILLING CODE 3810-70-M

* In chronological order beginning with the "oldest" complaint or inquiry

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of settlement.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice that a Consent Order was entered into between the Office of Enforcement, ERA, and the firm listed below during the month of September 1980. The Consent Order represents resolution of an outstanding compliance investigation by the DOE and the firm and concerns overcharges in sales of gasoline during the period covered by the audit. This Consent Order is concerned exclusively with the firms agreement to refund overcharges through price reduction on all customer purchases.

For further information regarding this Consent Order please contact James C. Easterday, District Manager of Enforcement, Southeast District, Economic Regulatory Administration, 1655 Peachtree Street, N.E., Atlanta, Georgia 30367, telephone number (404) 881-2396.

Firm name and address	Settlement terms	Period covered
P & B Petroleum Company.	Refund $10,150.78, including interest, through price reduction on customer purchases, payment of $500.00 penalty.	March 1, 1979 through April 30, 1979.

Issued in Atlanta, Georgia, on the 21st day of October, 1980.

William R. Gibson,

Acting District Manager of Enforcement.

[FR Doc. 80-33880 Filed 10-30-80; 8:45 am]
BILLING CODE 6450-01-M

Mosbacher Production Co.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Mosbacher Production Company. This Proposed Remedial Order charges Mosbacher with pricing violations in the amount of $780,097.96 connected with the sale of crude oil and condensate at prices in excess of those permitted by 10 CFR Part 212, Subpart D during the time period September 1973 through December 1978, in the Counties of Madison and Leon, Texas.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Wayne I. Tucker, Southwest District Manager, Economic Regulatory Administration, Department of Energy, P.O. Box 35228, Dallas, Texas 75235, or by calling 214/767-7745. Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearing and Appeals, 2000 M Street, NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Dallas, Texas, on the 17th day of October, 1980.

Herbert F. Buchanan,

Deputy District Manager, Southwest District, Economic Regulatory Administration.

[FR Doc. 80-33879 Filed 10-30-80; 8:45 am]
BILLING CODE 6450-01-M

Gasoline Marketing Advisory Committee, Gasoline Decontrol Subcommittee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92.463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Gasoline Decontrol Subcommittee of the Gasoline Marketing Advisory Committee.

Date and time: November 21, 1980—9:30 a.m.–4:00 p.m.

Place: State Capitol, Old Supreme Court Chambers Meeting Room, Colfax Avenue and Sherman Street, Denver, Colorado.

Contact: Georgia Hildreth, Director, Advisory Committee Management, Department of Energy—Room 8G087, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Telephone: 202-252-5187.

Purpose of parent committee: To provide the Department of Energy with expert and technical advice concerning the wholesale and retail selling of gasoline.

Tentative agenda: Discussion of the effects of gasoline decontrol on the industry, the public, and the Department of Energy.

Public participation: The meeting is open to the public. The Chairperson of the Subcommittee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact the Advisory Committee Management Office at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on October 27, 1980.

Georgia Hildreth,

Director, Advisory Committee Management.

[FR Doc. 80-34046 Filed 10-30-80; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Vol. 304]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: October 24, 1980.

BILLING CODE 6450-85-M

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JD [illegible]	JZ [illegible]	API [illegible]	SEC [illegible]	WELL NAME	FIELD NAME	PROD	PURCHASER
*****	*****	*****	***	* **********	**********	****	**********
TEXAS RAILROAD COMMISSION							
**********							
				RECEIVED: 10/07/80 JA: TX			
=A M ARCHER JR							
810\278	P1993	4241330762	103	M L HENDERSON #5 (86255)	CODY BELL (CANYON)	180.0	CMA INC
810\277	P1992	4241330762	103	M L HENDERSON #6 (86639)	CODY BELL (CANYON)	270.0	CMA INC
=ADOBE OIL & GAS CORPORATION				RECEIVED: 10/07/80 JA: TX			
810\215	19134	4229330452	103	N E SMUNTER NO 1	FARRAR SE	378.0	TEXAS UTILITIES FUEL
=AMERICAN PETROFINA COMPANY OF TEXAS				RECEIVED: 10/07/80 JA: TX			
810\343	P2162	4210332036	103	J B TUBB A NO 19L (TUBB)	SAND HILLS (TUBB)	8.5	WARREN PETROLEUM CO
=AMERICAN QUASAR PETROLEUM CO				RECEIVED: 11/07/80 JA: TX			
810\342	P2152	4210332214	103	MUNN A #12	SEC 40 BLK 2 NSTC	0.0	PHILLIPS PETROLEUM C
=AMOCO PRODUCTION CO				RECEIVED: 10/07/80 JA: TX			
810\359	P2148	4218930152	103	ANTON IRISH CLEARFORK UNIT #372	ANTON IRISH	27.0	PIONEER NATURAL GAS
=810\218	19233	4203931355	103	C R ROBERTS #6	HASTINGS WEST	34.6	TEXAS EASTERN TRANSM
810\357	P2136	4218930505	103	D O WILLIAMS #6	ANTON IRISH	1.0	PIONEER NATURAL GAS
810\145	P1292	4234930978	102	DOROTHY CLARK OIL UNIT A #1	CHENEYBOND (COTTON VALLE	54.8	LONE STAR GAS CO
=810\107	15189	4203931418	103	FANNIE DRAKE #29	WEST HASTINGS	36.0	TEXAS EASTERN TRANS
=810\106	15188	4203931429	103	FANNIE DRAKE NO 31	HASTINGS WEST	31.0	AMOCO GAS CO
810\175	18006	4229530560	103	IMKE UNIT #2	N MAMMUTH CREEK	292.0	NORTHERN NATURAL GAS
810\291	P2068	4213533017	103	J M CONDEN R/A A #111	NORTH CONDEN/DEEP/	1.0	PIONEER NATURAL GAS
810\190	17423	4239131345	103	J M O BRIEN B #11-I	GRETA/1300/	180.0	TRANSCONTINENTAL GAS
=810\206	17003	4203931445	103	LAURA O SHAW NO 22	HASTINGS WEST	27.3	TEXAS EASTERN TRANS
=810\091	14279	4203931404	103	MARY CONDON B NO 5	HASTINGS WEST	135.0	AMOCO GAS CO
810\146	P1329	4200331921	103	MIDLAND FARMS X #2	FASKEN (PENN)	54.7	PIONEER NATURAL GAS
810\250	P1652	4221932734	103	MONTGOMERY DAVIES #3	LEVELLAND	15.0	EL PASO NATURAL GAS
810\324	P2422	4229500000	108	PAUL PIERCE #1	N MAMMUTH CREEK	19.0	NORTHERN NATURAL GAS
810\358	P2137	4227930057	103	PRESTON LYDA #1	ANTON IRISH	11.3	PIONEER NATURAL GAS
810\325	P2423	4235730825	103	R P ROBERTS #4	HORIZON	29.0	PHILLIPS PETROLEUM C
810\350	P2180	4235730829	103	R P ROBERTS WELL #5	HORIZON	73.0	PHILLIPS PETROLEUM C
810\293	P2095	4222732002	103	TEX LAND/MAGE CO /A/M/A/B/ #94	IATAN EAST/MORARD/	1.5	GETTY OIL CO
				RECEIVED: 10/07/80 JA: TX			
=ANDERSON PETROLEUM INC							
810\321	P2385	4210500000	103	L B COX JR A #1-B	OZONA (CANYON SAND)	30.0	ANDERSON PIPELINE CO
810\202	P2024	4210532259	103	L B COX JR A 1-11	OZONA (CANYON SAND)	30.0	ANDERSON PIPELINE CO
				RECEIVED: 10/07/80 JA: TX			
=ARCO OIL AND GAS COMPANY							
810\227	P0123	4200332101	103	EMMA CUMMEN NO 69	EMMA	10.0	EL PASO NATURAL GAS
810\274	P1977	4221530965	103	EVERETT BELL GAS UNIT 1 #4	TABASCO (R)	200.0	TENNESSEE GAS PIPELI
810\272	16867	4221530873	103	SWALLOW GAS UNIT #4X-U1	DONNA (7560)	300.0	TENNESSEE GAS PIPELI
810\273	P2038	4221530976	103	SWALLOW GAS UNIT #5	DONNA (7560)	350.0	TENNESSEE GAS PIPELI
810\275	P1978	4221530929	103	SWALLOW GAS UNIT #6	DONNA (7560)	182.0	TENNESSEE GAS PIPELI
810\185	18509	4210304361	108	UNIVERSITY Y TG NO 1	DUNE	0.9	PHILLIPS PETROLEUM C
810\186	18510	4210304360	108	UNIVERSITY Y TG NO 2	DUNE	0.9	PHILLIPS PETROLEUM C
810\187	18511	4210304359	108	UNIVERSITY Y TG NO 3	DUNE	1.5	PHILLIPS PETROLEUM C
810\188	18512	4210304362	108	UNIVERSITY Y TG NO 4	DUNE	0.8	PHILLIPS PETROLEUM C

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JD [illegible]	JZ [illegible]	API [illegible]	SEC	WELL NAME	FIELD NAME	PROD	PURCHASER
*****	*****	*****	***	* **********	**********	****	**********
810\189	18513	4210304353	108	UNIVERSITY Z TG NO 4	DUNE	1.5	PHILLIPS PETROLEUM C
=ARKLA EXPLORATION COMPANY				RECEIVED: 10/07/80 JA: TX			
810\177	16455	4236530774	102	BRANNON #1	CARTHAGE (COTTON VALLEY)	563.0	ARKANSAS LOUISIANA G
=BILBO-ANGELE PRODUCTION CO				RECEIVED: 10/07/80 JA: TX			
810\220	19720	4246900000	103	F M BURNS A-1	VICTORIA	270.0	
=BILL FORNEY INC				RECEIVED: 10/07/80 JA: TX			
810\131	P1651	4229732039	102	MAXINE B MEANS #1	CHARLINE (FORNEY 6) FIEL	700.0	TRANCONTINENTAL GAS
810\131	P1651	4229732039	103	MAXINE B MEANS #1	CHARLINE (FORNEY 6) FIEL	700.0	TRANCONTINENTAL GAS
=BRAZOS RESOURCES INC				RECEIVED: 10/07/80 JA: TX			
810\208	17099	4205100000	102	BILLY POST NO 1	CALDWELL (AUSTIN CHALK)	100.0	FERGUSON CROSSING PI
=CALDWELL OIL & GAS CO INC				RECEIVED: 10/07/80 JA: TX			
810\126	16042	4250700000	102	B M WHITE NO 1-L(A0392)	J A SPILLER(ULMOS)	91.3	CBY & B PIPELINE CO
810\121	16043	4250700000	102	B M WHITE NO 1-U(79839)	J A SPILLER(ESCONDIDO)	73.0	CBY & B PIPELINE CO
=CARHCO ENERGY CORPORATION				RECEIVED: 10/07/80 JA: TX			
810\172	P1637	4218500000	102	FINELY-SMITH NO 1	MARTIN PRAIRIE (SUBCLARK	365.0	LONE STAR GAS CO
810\172	P1637	4218500000	103	FINELY-SMITH NO 1	MARTIN PRAIRIE (SUBCLARK	365.0	LONE STAR GAS CO
810\170	P1632	4218500000	102	KNOTT NO 1	IOLA (SUBCLARKSVILLE) FI	365.0	LONE STAR GAS CO
810\170	P1632	4218500000	103	KNOTT NO 1	IOLA (SUBCLARKSVILLE) FI	365.0	LONE STAR GAS CO
810\169	P1585	4218500000	102	W O YEAGER NO 1	IOLA (GLEN ROSE) FIELD	182.0	LONE STAR GAS CO
810\169	P1585	4218500000	103	W O YEAGER NO 1	IOLA (GLEN ROSE) FIELD	182.0	LONE STAR GAS CO
810\171	P1636	4218500000	102	WILLIAMS NO 1	IOLA (GLEN ROSE) FIELD	73.0	LONE STAR GAS CO
810\171	P1636	4218500000	103	WILLIAMS NO 1	IOLA (GLEN ROSE) FIELD	73.0	LONE STAR GAS CO
=CHAMPLIN PETROLEUM COMPANY				RECEIVED: 10/07/80 JA: TX			
810\198	17672	4243130774	103	I W TERRY NO 2	CONGER SW (PENN)	60.0	NORTHERN NATURAL GAS
=CIG EXPLORATION INC				RECEIVED: 10/07/80 JA: TX			
810\239	P0654	4248330487	102	GREENHOUSE #1	GAGEBY CREEK (ATOKA)	18.0	COLORADO INTERSTATE
=CITIES SERVICE COMPANY				RECEIVED: 10/07/80 JA: TX			
810\229	P0146	4212331020	103	GUMMERT A NO 6 (LOWER ZONE)	COTTONWOOD CK SD 5300	125.0	
810\228	P0145	4212331020	103	GUMMERT A NO 6 (UPPER ZONE)	COTTONWOOD CK SD YEGUA 4	180.0	
=CLINCO INC				RECEIVED: 10/07/80 JA: TX			
810\236	P0383	4220330662	102	PEARCE GAS UNIT NO 1	LANSING N (COTTON VALLEY	180.0	ARKANSAS LOUISIANA G
=CLOVER ENERGY CORP				RECEIVED: 10/07/80 JA: TX			
810\181	18181	4229531423	103	M LAMPLEY #1 (ID# 83672)	NORTH HOPE (FRIO 2880)	91.3	LO-VACA GATHERING CO
=COLA PETROLEUM INC				RECEIVED: 10/07/80 JA: TX			
=810\247	P0541	4232930808	103	DAVENPONY #1	CALVIN (DEAN)	33.5	PHILLIPS PETROLEUM C
=COLORADO INTERSTATE GAS CO				RECEIVED: 10/07/80 JA: TX			
810\142	P0995	4237500000	108	MASTERSON 27M	WEST PANHANDLE (RED CAVE	10.0	COLORADO INTERSTATE
=CONOCO INC				RECEIVED: 10/07/80 JA: TX			
810\364	P2122	4243300000	108	GUEST CANYON SAND #15	GUEST	1.0	CITIES SERVICE OIL C
810\294	P2108	4213500000	108	H S FUSTER #9 ID #08302	CONDEN SOUTH	0.4	PHILLIPS PETROLEUM C
810\252	P1902	4200730631	103	ST CHARLES CU NO 66 87302	BLACKJACK (V-1)	365.0	HOUSTON PIPE LINE CO
810\354	P2252	4242731386	103	T B SLICK EST-N #A2 (87265)	MINCON (VICKSBURG 5900)	400.0	TENNESSEE GAS PIPELI
810\153	P1431	4200331934	103	W H BUNEP A #25 (ID #01663)	FUHRMAN-MASCHO	11.7	PHILLIPS PETROLEUM C
=COTTON PETROLEUM CORPORATION				RECEIVED: 10/07/80 JA: TX			
810\230	P0180	4235730429	103	JEWELL NO 1	FRANTZ (LOWER MORROW)	21.0	DIAMOND SHAMROCK
=CZAR RESOURCES INC				RECEIVED: 10/07/80 JA: TX			
810\351	P2187	4228930352	103	G P RENNOE #1-84934	HENNING	275.0	SOUTH TEXAS GATHERIN
=DIAMOND SHAMROCK CORPORATION				RECEIVED: 10/07/80 JA: TX			
810\322	P2397	4229500000	108	ANDREW S BROADDUS NO 1	MORSE CREEK NW	13.0	SOUTHWESTERN PUBLIC
810\276	P2049	4235730968	103	CARL ELLIS I NO 4	ELLIS RANCH	100.0	NATURAL GAS PIPELINE
810\196	17558	4239330716	103	FRANK M CHAMBERS ET AL C NO 4	MENDOTA NW	1000.0	
=810\302	P1862	4234130485	103	J T BROWN ET AL NO 6	WEST PANHANDLE	55.0	NORTHERN NATURAL GAS

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JD NO	TA OKT	API NO	SEC & WELL NAME
8101301	P1861	4234300000 103	ROBERTSON C NO 5
8101285	P2048	4239330787 103	VERNON M FLOWERS EST NO 4
-DONCHESTER EXPLORATION INC			RECEIVED: 10/07/80 JA: TX
8101284	P2046	4243130404 103	TERRY 18 NO 2 (IU #25805)
8101167	P1560	4243130607 103	WESTBROOK 27 NO 2
-E D ANDERSON			RECEIVED: 10/07/80 JA: TX
8101183	18430	4255802180 10A	UNIVERSITY M #1
-EARL T SMITH & ASSOCIATES INC			RECEIVED: 10/07/80 JA: TX
8101327	P5481	4221131145 102	BOWERS LUCKY 13-35 NO 13
-ECHO PRODUCTION INC			RECEIVED: 10/07/80 JA: TX
8101341	P2319	4249731581 103	KEOWN #1 (#19927)
-ENTERPRISE RESOURCES INC			RECEIVED: 10/07/80 JA: TX
8101240	P0699	4233930400 102	ROBINSON GAS UNIT #1 (86344)
-EXXON CORPORATION			RECEIVED: 10/07/80 JA: TX
8101279	P2003	4239330712 103	FLOWERS-LISTON #2
*8101213	18962	4200331911 103	FULLERTON CLFK UNIT #1911
*8101168	P1572	4200332117 103	FULLERTON CLFK UNIT #735
8101175	P1841	4200130912 103	G W EATON ESTATE #27
8101176	P1642	4207330365 103	MARY LEE CARTER C NO 11
8101200	P2006	4216531694 103	ROBERTSON CLFK UNIT #1042
8101281	P2007	4216531729 103	ROBERTSON CLFK UNIT #7702
8101157	P1509	4235531161 102	S E FLUUR BLUFF G U #1 WELL #1
8101147	P1334	4226130496 103	S K EAST B-30 (86312)
-FISHER-WERR INC			RECEIVED: 10/07/80 JA: TX
8101221	19732	4235330810 103	GUEST A NO 1
8101222	19733	4235330832 103	GUEST A NO 2
-FONA CO			RECEIVED: 10/07/80 JA: TX
8101100	14331	4223300000 108	J L NUEL (00151) NO 2
8101092	14322	4223300000 108	MOORE-LANGDON (00703) NO 1
8101099	14329	4223300000 108	MOORE-LANGDON (00703) NO 10
8101093	14323	4223300000 108	MOORE-LANGDON (00703) NO 2
8101094	14324	4223300000 108	MOORE-LANGDON (00703) NO 4
8101095	14325	4223300000 108	MOORE-LANGDON (00703) NO 5
8101096	14326	4223300000 108	MOORE-LANGDON (00703) NO 6
8101097	14327	4223300000 108	MOORE-LANGDON (00703) NO 7
8101098	14328	4223300000 108	MOORE-LANGDON (00703) NO 8
8101103	14347	4223300000 108	MOORE-LANGDON (00703) NO 9
8101101	14335	4223300000 108	PITCHER (00959) NO A-1
8101102	14336	4223300000 108	PITCHER (00959) NO A-3
-FOREST OIL CORPORATION			RECEIVED: 10/07/80 JA: TX
8101217	19208	4237132635 107	J M DUNLAP 7 NO 1-M
-FRANK J KING			RECEIVED: 10/07/80 JA: TX
*8101209	17158	4239930960 103	CHARLES WAYNE GLASS #2
-FREEMAN PICKETT INC			RECEIVED: 10/07/80 JA: TX
8101353	P2217	4244900000 10A	WINTERBOTHAM #1 (05901)
-G DEPRANG OIL CO			RECEIVED: 10/07/80 JA: TX
8101105	14965	4208331710 102	DEPRANG B NO 11
-GALAXY OIL COMPANY			RECEIVED: 10/07/80 JA: TX
8101124	15912	4223300000 10A	HUBER PRITCHARD #2-01590
-GAS PRODUCING ENTERPRISES INC			RECEIVED: 10/07/80 JA: TX
8101258	P1954	4237530689 103	BIVINS 16-7RU
8101259	P1955	4237530690 103	BIVINS 21-33RU

FIELD NAME	PROD	PURCHASER
WEST PANHANDLE	127.0	NORTHERN NATURAL GAS
MENDUTA NW	66.0	
CONGER (PENN)	64.0	ESPENANZA PIPELINE C
CONGER (PENN)	180.0	ESPENANZA PIPELINE C
INGHAM (DEVONIAN)	0.0	EL PASO NATURAL GAS
BOWENS (DES MOINES UPPER	360.0	PALO DURO PIPELINE C
GREENWOOD (6650 ATOKA)	73.0	LONE STAR GAS CO
BENDER N (5740)	180.0	
MENDUTA NW (GRANITE WASH	653.0	TRANSWESTERN PIPELIN
FULLERTON	37.0	PHILLIPS PETROLEUM C
FULLERTON	20.0	PHILLIPS PETROLEUM C
NECHES (WOODBINE)	20.9	UNITED GAS PIPELINE
NECHES (WOODBINE)	31.5	UNITED GAS PIPELINE
ROBERTSON N (CLFK 7100)	24.0	PHILLIPS PETROLEUM C
ROBERTSON N (CLFK 7100)	24.0	PHILLIPS PETROLEUM C
S E FLUUR BLUFF	730.0	
SARITA EAST (DEEP FRIO)	365.0	NATL GAS PIPELINE CO
ARLEDGE (PENN SAND)	150.0	SUN GAS CO
ARLEDGE (PENN SAND)	15.0	SUN GAS CO
PANHANDLE CANSON COUNTY	0.4	GETTY OIL CO
PANHANDLE MUTCHINSON COU	5.5	GETTY OIL CO
PANHANDLE MUTCHINSON COU	3.0	GETTY OIL CO
PANHANDLE MUTCHINSON COU	3.7	GETTY OIL CO
PANHANDLE MUTCHINSON COU	5.9	GETTY OIL CO
PANHANDLE MUTCHINSON COU	3.7	GETTY OIL CO
PANHANDLE MUTCHINSON COU	1.8	GETTY OIL CO
PANHANDLE MUTCHINSON COU	3.3	GETTY OIL CO
PANHANDLE MUTCHINSON COU	1.8	GETTY OIL CO
PANHANDLE MUTCHINSON COU	3.0	GETTY OIL CO
PANHANDLE MUTCHINSON COU	9.0	GETTY OIL CO
PANHANDLE MUTCHINSON COU	4.8	GETTY OIL CO
GUMEZ (ELLENBURGER)	913.0	LO-VACA GATHERING CO
CREWS SW (GARDNER UP)	73.0	UNION TEXAS PETROLEU
DOVE CREEK (CANYON C)	4.9	CRA INC (GAS)
DECO (GRAY) FIELD	1.9	UNION TEXAS PETROLEU
PANHANDLE FIELD	1.0	J M HUBEN CORP
WEST PANHANDLE (RED CAVE	67.0	COLONADO INTERSTATE
WEST PANHANDLE (RED CAVE	20.0	COLONADO INTERSTATE

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JD NO	TA OKT	API NO	SEC & WELL NAME
8101260	P1956	4237530691 103	BIVINS 21-57RU
8101261	P1957	4237530692 103	BIVINS 21-39RU
8101262	P1958	4237530693 103	BIVINS 28-40RU
8101263	P1959	4237530685 103	BIVINS 33-1S
8101264	P1960	4237530684 103	BIVINS 35-4S
8101265	P1961	4237530682 103	BIVINS 40-1S
8101257	P1953	4237530695 103	BIVINS 5-6D
8101266	P1962	4237530683 103	BIVINS 55-2S
8101253	P1912	4237530674 103	MASTENSON 83-15RU
-GETTY OIL COMPANY			RECEIVED: 10/07/80 JA: TX
8101337	P2290	4234130567 103	M B ARMSTRONG #23
8101336	P2289	4223330755 103	M B ARMSTRONG #24
8101335	P2288	4234130576 103	M B ARMSTRONG #25
8101334	P2287	4234130577 103	M B ARMSTRONG #26
-GRAHAM OIL & GAS LTD			RECEIVED: 10/07/80 JA: TX
8101314	P1779	4203931510 103	T L SMITH #1-A
-GULF OIL CORPORATION			RECEIVED: 10/07/80 JA: TX
8101300	P1959	4215730409 103	A E MYERS NO 25 (LS #04106)
8101296	P1954	4215730883 103	A E MYERS NO 27 (LS #04106)
8101254	P1914	4241330865 103	ALTHEA DYCHE B NO 1
8101347	P2174	4223700000 10A	BILLIE YATES NO 10
8101346	P2172	4223700000 10A	C B CHUNLEY NO 2
8101309	P1758	4239330605 103	CHAMBERS J S NO 1-66
8101276	P1986	4238931060 103	D E PERKINS ET AL NO 1
8101315	P1852	4215730894 103	F I BOOTH ET AL A #47 (#04099)
8101125	15929	4221130983 103	FORGEY #1-112-T
8101326	P2435	4213500000 108	GOLDSMITH SAN ANDRES UNIT #253
8101133	P1260	4237132938 103	MILLIN-WINFIELD NO 1
8101339	P2307	4247531910 103	MUTCHINGS STUCK ASSN #1037
8101338	P2306	4247532009 103	MUTCHINGS STUCK ASSN #1068
8101272	P2089	4237132988 103	J M DYCHE B NO 3
8101340	P2309	4249531065 103	KEYSTONE CATTLE CO #346
8101158	P1512	4249531093 103	KEYSTONE MULT UNIT NO 9335
8101134	P1261	4237132945 103	NORA BOATMAN ET AL C NO 1
8101299	P1857	4203931153 103	STATE TRACT 8 NO 1-(#74200)
8101295	P1853	4215730414 103	T R BOOTH NO 22 (LS #04100)
8101297	P1855	4215730416 103	T R BOOTH NO 23 (LS #04100)
8101298	P1856	4215730887 103	T R BOOTH NO 24 (LS #04100)
-HAM OIL CO			RECEIVED: 10/07/80 JA: TX
8101248	P0635	4223931425 102	WHITLEY #1
-H V HISIEN			RECEIVED: 10/07/80 JA: TX
8101165	P1529	4224931149 103	UEHLKE #1
-HOOKS & HOOKS			RECEIVED: 10/07/80 JA: TX
8101256	P1939	4205932304 103	HOOKS RANCH C #1
-IKE LOVELADY INC			RECEIVED: 10/07/80 JA: TX
8101203	16484	4229732008 103	A GARZA NO 1 (041498)
8101148	P1393	4207931080 103	MABEL FIELD NO 1 (049148)
-INDEPENDENT EXPLORATION CO			RECEIVED: 10/07/80 JA: TX
8101143	P1000	4236731479 102	BIRD #1 A3777
8101132	P1004	4236731583 102	JOHNSON #2 82656
8101144	P1003	4236731488 102	STEPHENS A #1 85819
-J A LEONARD			RECEIVED: 10/07/80 JA: TX

FIELD NAME	PROD	PURCHASER
WEST PANHANDLE (RED CAVE	106.0	COLONADO INTERSTATE
WEST PANHANDLE (RED CAVE	22.0	COLONADO INTERSTATE
W PANHANDLE (RED CAVE)	48.0	COLONADO INTERSTATE
W PANHANDLE (RED CAVE)	10.0	COLONADO INTERSTATE
WEST PANHANDLE (RED CAVE	7.0	COLONADO INTERSTATE
WEST PANHANDLE (RED CAVE	5.0	COLONADO INTERSTATE
WEST PANHANDLE (RED CAVE	22.0	COLONADO INTERSTATE
WEST PANHANDLE (RED CAVE	42.0	COLONADO INTERSTATE
WEST PANHANDLE (RED CAVE	17.0	COLONADO INTERSTATE
PANHANDLE MOORE COUNTY	19.0	PANHANDLE EASTERN PI
PANHANDLE MUTCHINSON COU	2.0	PANHANDLE EASTERN PI
PANHANDLE MOORE COUNTY	19.0	PANHANDLE EASTERN PI
PANHANDLE MOORE COUNTY	0.4	PANHANDLE EASTERN PI
WILDCAT	0.0	
THOMPSON	30.0	UNITED TEXAS TRANSMI
THOMPSON	30.0	UNITED TEXAS TRANSMI
U S M (QUEEN)	9.0	NORTHERN NATURAL GAS
BOONSVILLE BEND CONGL (G	5.4	NATURAL GAS PIPELINE
BOONSVILLE BEND CONGL GA	10.0	NATURAL GAS PIPELINE
N W MENDUTA/LOWER DOUGLA	7.0	MICHIGAN WISCONSIN P
SCOTT (CHERRY CANYON)	275.0	TRANSWESTERN PIPELIN
THOMPSON	10.0	UNITED TEXAS TRANSMI
ALPAR/TONKAWA	70.0	TRANSWESTERN PIPELIN
GOLDSMITH	3.1	PHILLIPS PETROLEUM C
U S M (QUEEN)	29.0	NORTHERN NATURAL GAS
M S A (SAN ANDRES)	1.0	CABOT CORP
WAGON WHEEL (PENN)	107.0	CABOT CORP
U S M (QUEEN)	45.0	NORTHERN NATURAL GAS
KEYSTONE (COLBY)	143.0	CABOT CORP
KEYSTONE (MOLT)	305.0	CABOT CORP
U S M (QUEEN)	48.0	NORTHERN NATURAL GAS
EASTHOP BAY	90.0	
THOMPSON	15.0	UNITED TEXAS TRANSMI
THOMPSON	30.0	UNITED TEXAS TRANSMI
THOMPSON	15.0	UNITED TEXAS TRANSMI
MORALES N (3300)	160.0	HOUSTON PIPELINE CO
WILDCAT	100.0	VALERO ENERGY CORP
DYER CADDO	1.5	MATRIX LAND CO
CLEGG (WILCOX B)	1460.0	EL PASO NATURAL GAS
BUCKSHOT (4950)	11.0	WARREN PETROLEUM CO
BUCKNER (STRAWN)	55.0	JAMES P DUNIGAN INC
BUCKNER (STRAWN)	36.5	JAMES P DUNIGAN INC
BUCKNER (STRAWN)	36.5	JAMES P DUNIGAN INC

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JD NO	DATE RCVD	API NO	SEC-BLK-SURVEY	FIELD NAME
8101197	17567	4205100000	102	COOKSEY A 1
-J CLED THOMPSON				RECEIVED: 10/07/80 JA: TX
8101234	P0210	4241300000	103	ROUSSELOT A #1
-J D THOMAS				RECEIVED: 10/07/80 JA: TX
8101166	P1531	4241330794	103	FRED CASE 53 #1
-J M HUBER CORPORATION				RECEIVED: 10/07/80 JA: TX
8101255	P1918	4223330739	103	BRYAN MAYFIELD UNIT NO 9-25
-JAKE L HAMON				RECEIVED: 10/07/80 JA: TX
8101328	P2256	4221131194	103	URSCHEL #1-49
8101355	P2255	4221131205	103	URSCHEL #1-58
-JOHN D MCCABE				RECEIVED: 10/07/80 JA: TX
*8101344	P2170	4241330441	103	WALTER MCGREGOR #1
-KAISER-FRANCIS OIL COMPANY				RECEIVED: 10/07/80 JA: TX
8101140	P0898	4235700000	10A	JOE STOREY
-KERR-MCGEE CORPORATION				RECEIVED: 10/07/80 JA: TX
8101204	16915	4222330713	103	PITTS NO 83
8101159	P1513	4223330760	103	PITTS NO 88
8101225	P0069	4223330762	103	PITTS NO 90
8101161	P1515	4223330765	103	PITTS NO 92
8101345	P2171	4223330773	103	PITTS NO 93
8101162	P1516	4223330768	103	PITTS NO 94
8101160	P1514	4223330769	103	PITTS NO 95
-LEAR PETROLEUM EXPLORATION INC				RECEIVED: 10/07/80 JA: TX
8101214	19003	4245930435	102	J R BEALL ET AL NO 1
-M K MCDANIEL				RECEIVED: 10/07/80 JA: TX
8101115	15354	4208300000	108	MARY A PRATT NO 1
-MAY PETROLEUM INC				RECEIVED: 10/07/80 JA: TX
8101289	P2057	4229530728	103	LONGHOFER #1
-MEADCO PROPERTIES				RECEIVED: 10/07/80 JA: TX
8101268	P1965	4223531429	103	#1 A SUGG 1900 RRC #06136
8101271	P1968	4223531440	102	#1 A SUGG 3065 RRC #85649
8101273	P1971	4223531425	103	#1 A SUGG 3083 RRC #86089
8101272	P1970	4223531439	102	#1 SHEEN 11 RRC #86408
8101269	P1966	4223531415	103	A SUGG 1901 RRC #84868
8101270	P1967	4223531421	102	CHAVENS 20 RRC #86718
8101267	P1964	4223531410	102	SUGG 3063 - RRC #08048
-MEMBOURNE OIL COMPANY				RECEIVED: 10/07/80 JA: TX
8101138	P1284	4235730928	102	CONDON #1 ID #85913
8101219	19465	4229530716	103	ECCLES UNIT #1 ID #85399
8101137	P1283	4235730931	102	HARDY #2 ID #04471
8101135	P1281	4229530713	102	MAHRELSON #1 ID #86553
8101136	P1282	4235730932	102	JUDICE #2 ID #04514
8101122	15752	4235730875	103	MITCHELL #1
8101237	P0394	4229530691	103	PEERY #5 (ID #04432)
-MGF OIL CORP				RECEIVED: 10/07/80 JA: TX
8101154	P1495	4231732104	103	PANKEN NO 1
8101155	P1496	4231732082	103	PETERS 3 NO 1
-MICHAELSON PRODUCING CO				RECEIVED: 10/07/80 JA: TX
8101251	P1865	4210532477	103	UNIVERSITY 9 #6
8101303	P1864	4210532478	103	UNIVERSITY 9 #7
-MITCHELL ENERGY CORPORATION				RECEIVED: 10/07/80 JA: TX
8101127	16061	4249730377	10A	M Y BENEDICT #1 66201

FIELD NAME	PROD CODE	PURCHASER
INEZ JAMESON (NAVARRO A)	18.2	
SAWYER (CANYON)	213.0	NORTHERN NATURAL GAS
VELREX (SW) CANYON	46.8	NORTHERN NATURAL GAS
PANHANDLE	8.0	COLUMBIA INTERSTATE
TWISTER (DOUGLAS)	545.0	CITIES SERVICE GAS C
TWISTER (DOUGLAS)	545.0	CITIES SERVICE GAS C
FT MCKAVETT (LIME 4270)	23.4	ARCO OIL & GAS CO
PERRYTON	5.0	NORTHERN NATURAL GAS
PANHANDLE MUTCHINSON	16.4	GETTY OIL CO
PANHANDLE MUTCHINSON	4.0	GETTY OIL CO
PANHANDLE MUTCHINSON	21.0	GETTY OIL CO
PANHANDLE-MUTCHINSON	9.0	GETTY OIL CO
PANHANDLE MUTCHINSON	9.8	GETTY OIL CO
PANHANDLE MUTCHINSON	6.0	GETTY OIL CO
PANHANDLE MUTCHINSON	1.6	GETTY OIL CO
DELRUSE (HAYNESVILLE) FI	0.0	ARKANSAS LOUISIANA G
COLEMAN COUNTY REGULAR (	15.0	LOVACA GATHERING CO
CAMBRIDGE (MORROW UPPER)	365.0	DIAMOND SHAMROCK CUR
ELA SUGG (CISCO)	13.0	NORTHERN NATURAL GAS
ELA SUGG (WOLFCAMP)	76.0	NORTHERN NATURAL GAS
ELA SUGG (WOLFCAMP)	106.0	NORTHERN NATURAL GAS
ELA SUGG (WOLFCAMP)	34.0	NORTHERN NATURAL GAS
ELA SUGG (WOLFCAMP)	74.0	NORTHERN NATURAL GAS
ELA SUGG (WOLFCAMP)	160.0	NORTHERN NATURAL GAS
ELA SUGG (CISCO)	26.0	NORTHERN NATURAL GAS
MUNTUON NO (MORROW LOWER	36.0	NORTHERN NATURAL GAS
LEAR (MORROW)	105.0	NORTHERN NATURAL GAS
MANDY (MORROW UPPER)	100.0	TRANSWESTERN PIPE LI
SPERRY (TONKAWA)	73.0	NORTHERN NATURAL GAS
MANDY (MORROW UPPER)	160.0	TRANSWESTERN PIPELIN
PEERY (CLEVELAND)	26.0	TRANSWESTERN PIPELIN
PEERY (MARMATON)	40.0	TRANSWESTERN PIPELIN
SPRABERRY (TREND AREA)	4.2	
SPRABERRY (TREND AREA)	5.8	PHILLIPS PETROLEUM C
FARMER (SAN ANDRES)	7.0	J L DAVIS
FARMER (SAN ANDRES)	7.0	J L DAVIS
DAVENPORT (CONGL)	15.0	NATURAL GAS PIPELINE

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JD NO	DATE RCVD	API NO	SEC-BLK-SURVEY	FIELD NAME
8101123	15783	4223700000	108	M T THORNTON #2 40143
8101163	P1519	4249731474	103	WILLIAM BENNETT #1
-MOBIL OIL CORP				RECEIVED: 10/07/80 JA: TX
8101118	15389	4234100000	108	C R JONES NO 2
8101192	17492	4221932648	103	MAPLE WILSON NO 74
-MOBIL PROD TEXAS & NEW MEXICO INC				RECEIVED: 10/07/80 JA: TX
*8101319	P2360	4224900000	10A	LA GLORIA GAS UNIT NO 71
8101318	P2359	4237130884	108	STATE HOUSTON CTY TIMBER CO D #8
8101317	P2358	4237100000	108	WAYNE MOORE #3
8101329	P2256	4236900000	108	WAYNE MOORE NO 12
-MORAN EXPLORATION INC				RECEIVED: 10/07/80 JA: TX
8101287	P2053	4210532336	103	FRIEND #2
8101286	P2054	4210532335	103	POWELL #2
8101119	15634	4238330158	108	HOCKER 8-6 BTTY - #56
-MORGAN ENTERPRISES INC				RECEIVED: 10/07/80 JA: TX
8101235	P0269	4235531464	102	CHAPMAN J NO 1 (86375)
-NAPECO INC				RECEIVED: 10/07/80 JA: TX
8101211	17795	4237132860	102	STEWART #1
-NATOMAS NORTH AMERICA INC				RECEIVED: 10/07/80 JA: TX
8101120	15522	4248330595	102	PORTEN NO 1
8101120	15522	4248330595	103	PORTEN NO 1
-NICAS SUPPLY INC				RECEIVED: 10/07/80 JA: TX
8101313	P1774	4206530718	103	KEITH #1
8101312	P1773	4206530717	103	KEITH #2
8101311	P1772	4206530716	103	KEITH #3
8101310	P1771	4206530744	103	KEITH #4
-NORTH STAR PETROLEUM CORPORATION				RECEIVED: 10/07/80 JA: TX
8101084	14103	4223300000	10A	W A CARVER A-21 (00985)
8101085	14105	4223300000	10A	W A CARVER A-24 (00985)
8101086	14106	4223300000	10A	W A CANVER A-25 (00985)
8101087	14107	4223300000	10A	W A CANVER A-29 (00985)
8101088	14108	4223300000	10A	W A CANVER A-30 (00985)
8101082	14109	4223300000	10A	W A CANVER A-31 (00985)
8101083	14112	4223300000	10A	W A CANVER A-34 (00985)
8101090	14113	4223300000	10A	W A CANVER A-35 (00985)
-ORION DEVELOPMENT CORP				RECEIVED: 10/07/80 JA: TX
8101320	P2364	4242932222	103	PHILLIPS #1A
-PANHANDLE PRODUCING COMPANY				RECEIVED: 10/07/80 JA: TX
8101194	17539	4206500000	10A	VIDA LEWIS A-4
8101195	17540	4206500000	10A	VIDA LEWIS A-8
-PARKER & PARSLEY INC				RECEIVED: 10/07/80 JA: TX
8101249	P0644	4232930869	103	BUCHANAN E NO 1
-PENNZOIL PRODUCING COMPANY				RECEIVED: 10/07/80 JA: TX
8101152	P1473	4236530941	103	DUNLAP UNIT NO 1
-PETROMARK MINERALS INC				RECEIVED: 10/07/80 JA: TX
8101164	P1524	4204100000	102	JARVIS ESTATE UNIT I NO 1
8101164	P1524	4204100000	103	JARVIS ESTATE UNIT I NO 1
-PHILLIPS PETROLEUM COMPANY				RECEIVED: 10/07/80 JA: TX
8101360	P2113	4246101158	10A	(00800) DHARMON NO 2
8101366	P2130	4213520793	108	(19710) EPBAR-8 NO 36
8101365	P2128	4213507258	10A	(20533) MILLARD-C NO 7
8101348	P2177	4213506443	108	(21556) H PENWELL UNIT NO 104
8101349	P2178	4213507265	10A	(21556) H PENWELL UNIT NO 46

FIELD NAME	PROD CODE	PURCHASER
BOONSVILLE (BEND CONG GA	9.0	SOUTHWESTERN GAS PIP
NHOME (CADDO)	180.0	NATURAL GAS PIPELINE
PANHANDLE WEST	1.5	PANHANDLE EASTERN PI
SLAUGHTER	2.5	AMOCO PRODUCTION CO
LA GLORIA (CULPEPPER)	6.0	NATURAL GAS PIPE LIN
BROOKLAN (TUBBS)	4.6	LONE STAR GAS CO
WAHA DELAWARE	1.3	EL PASO NATURAL GAS
WAHA WEST ELLENBERGER	7.2	EL PASO NATURAL GAS
UZONA (CANYON)	0.0	NORTHERN NATURAL GAS
UZONA (CANYON)	0.0	NORTHERN NATURAL GAS
SPRABERRY (TREND AREA)	4.7	NORTHERN NATURAL GAS
CHAPMAN (HIGHT)	500.0	HOUSTON PIPELINE CO
SIXTY-NINE (PENN DETRITA	3.0	NATURAL GAS PIPELINE
TWITTY GRANITE WASH	231.3	PALO DURO PIPELINE C
TWITTY GRANITE WASH	231.3	PALO DURO PIPELINE C
PANHANDLE CARSON	43.6	PANHANDLE EASTERN PI
PANHANDLE CARSON	62.1	PANHANDLE EASTERN PI
PANHANDLE CARSON	52.2	PANHANDLE EASTERN PI
PANHANDLE CARSON	80.3	PANHANDLE EASTERN PI
PANHANDLE MUTCHINSON COU	4.9	PANHANDLE PRODUCING
PANHANDLE MUTCHINSON COU	4.9	PANHANDLE PRODUCING
PANHANDLE MUTCHINSON COU	4.9	PANHANDLE PRODUCING
PANHANDLE MUTCHINSON COU	4.9	PANHANDLE PRODUCING
PANHANDLE MUTCHINSON COU	4.9	PANHANDLE PRODUCING
PANHANDLE MUTCHINSON COU	4.9	PANHANDLE PRODUCING
PANHANDLE MUTCHINSON COU	4.9	PANHANDLE PRODUCING
PANHANDLE MUTCHINSON COU	4.9	PANHANDLE PRODUCING
STRONG SW (CONGL D) FIEL	766.0	SUN GAS GATHERING CO
PANHANDLE CARSON COUNTY	0.3	GETTY OIL CO
PANHANDLE CARBON COUNTY	0.3	GETTY OIL CO
SPRABERRY (TREND AREA)	15.0	PHILLIPS PETROLEUM C
CARTHAGE/COTTON VALLEY/	950.0	UNITED GAS PIPE LINE
KURTEN (WOODBINE) FIELD	66.0	PRODUCERS GAS CO
KURTEN (WOODBINE) FIELD	66.0	PRODUCERS GAS CO
KING MOUNTAIN (ELLENBURG	6.0	EL PASO NATURAL GAS
GOLDSMITH N (SAN ANDRES-	12.0	EL PASO NATURAL GAS
PENWELL W (DEVONIAN)	0.0	EL PASO NATURAL GAS
PENWELL	1.0	EL PASO NATURAL GAS
PENWELL	7.0	EL PASO NATURAL GAS

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JD NO	TA DRT	API NO	SEC	WELL NAME
8101363	P2116	4213507266	10A	(21556) NORTH PENWELL #17
*8101108	15285	4223300000	108	BELLE NO 3
8101109	16712	4242100000	108	BIVENS U NO 1
8101242	P0731	4234100000	108	BRANTS #1
8101323	P2398	4229500000	10A	BRILLHART-E NO 1
8101128	16145	4242130217	103	CLUCK E NO 1
8101205	16931	4249731439	103	COCANAUGHER NO 2
8101109	15287	4223300000	108	CUCKRELL RANCH NO 39
8101116	15359	4242100000	108	DUVALL A NO 1
8101110	15291	4223300000	108	HAILE W B NO 7
8101111	15292	4223300000	108	HARVEY UNIT NO 08-14
8101129	16146	4219530632	103	HOLLOMAN NO 2
8101130	16147	4234130528	103	INEZ NO 2
*8101200	16714	4223300000	108	JOHNSON AD NO 1
8101112	15294	4223300000	108	JURDAN O NO 43
8101241	P0730	4219500000	108	LEE B #1
8101362	P2115	4246101412	108	N PEMBROOK SPRABERRY #39-05
8101361	P2114	4246101691	108	N PEMBROOK SPRABERRY #78-03
*8101113	15301	4223300000	108	WHITTENBURG C NO 4
*8101201	16716	4223300000	108	WHITTENBURG E NO 1
8101114	15302	4223300000	108	WHORTON NO 1
8101207	17012	4242100000	108	WITT C NO 1
-PITTS OIL CO & DALLAS PROD INC				RECEIVED: 10/07/80 JAS TX
8101226	P0107	4207330376	103	HULCOMB-LITTLE NO 1
-POLK & PATTON INC				RECEIVED: 10/07/80 JAS TX
8101356	P2132	4249731656	103	WALTER SHEPHERD #1
-QUINTEX PETROLEUM CORP				RECEIVED: 10/07/80 JAS TX
8101191	17462	4205730864	103	MANY E STOFER NO 1
-RESOURCES INVESTMENT CORPORATION				RECEIVED: 10/07/80 JAS TX
8101176	16448	4212331005	103	W M PRIDGEN #1
-RIAL OIL COMPANY				RECEIVED: 10/07/80 JAS TX
8101149	P1403	4231732089	103	BUCK BAKER #1 (62742)
-RICHARD PHILLIPS				RECEIVED: 11/07/80 JAS TX
8101179	17322	4242700000	103	GUNZALES B P
-ROBERT CARGILL				RECEIVED: 10/07/80 JAS TX
8101316	P2322	4218330429	103	MOTT UNIT #2-R
-SAMEDAN OIL CORPORATION				RECEIVED: 10/07/80 JAS TX
8101245	P0499	4222530302	103	EAST FT TRINIDAD DEXTEN C #1-2
-SANCHEZ-O'BRIEN MINERALS CORP				RECEIVED: 10/07/80 JAS TX
8101184	16449	4250531120	102	SAN FERNANDO MINERALS NO 1
-SANCHEZ-O'BRIEN OIL & GAS CORP				RECEIVED: 10/07/80 JAS TX
8101089	14116	4247932215	102	J C MARTIN III NO 2
-SAXON OIL COMPANY				RECEIVED: 10/07/80 JAS TX
8101352	P2189	4238300000	103	UNIVERSITY 34-2 NO 4
-SEELY OIL CO				RECEIVED: 10/07/80 JAS TX
8101231	P0196	4249731329	103	MOWERY #1 (79758)
-SHELL OIL CO				RECEIVED: 10/07/80 JAS TX
8101290	P2059	4247531920	103	SEALY SMITH FOUNDATION #163
-SIMPSON-MANN OIL PRODUCERS				RECEIVED: 10/07/80 JAS TX
8101374	P1662	4241300000	102	MYRTLE WILLIAMS ET AL #1-27
-SOHIO NATURAL RESOURCES CO				RECEIVED: 10/07/80 JAS TX
8101178	16565	4217331002	103	W S DAVENPORT C NO 17

FIELD NAME	PROD	PURCHASER
PENWELL	4.0	EL PASO NATURAL GAS
PANHANDLE MUTCHINSON	0.1	EL PASO NATURAL GAS
TEXAS HUGOTON	20.0	MICHIGAN WISCONSIN P
PANHANDLE WEST	20.0	EL PASO NATURAL GAS
KIOWA CREEK-MORROW	18.6	PANHANDLE EASTERN PI
TEX HUGOTON	155.0	MICHIGAN WISCONSIN P
BOONSVILLE (BEND CONGL)	91.3	NATURAL GAS PIPELINE
PANHANDLE MUTCHINSON	4.0	GETTY OIL CO
TEXAS HUGOTON	18.5	MICHIGAN-WISCONSIN P
PANHANDLE MUTCHINSON	9.5	GETTY OIL CO
PANHANDLE MUTCHINSON	12.0	GETTY OIL CO
TEX-HUGOTON	170.0	PANHANDLE EASTERN PI
WEST PANHANDLE	79.0	EL PASO NATURAL GAS
PANHANDLE WEST	20.0	EL PASO NATURAL GAS
PANHANDLE CARBON	0.1	CABOT CORP
MANSFORD MORROW LOWER	20.0	NORTHERN NATURAL GAS
SPRABERRY (TREND AREA)	1.0	NORTHERN NATURAL GAS
SPRABERRY (TREND AREA)	1.0	NORTHERN NATURAL GAS
PANHANDLE MUTCHINSON	0.7	EL PASO NATURAL GAS
PANHANDLE WEST	20.0	EL PASO NATURAL GAS
TEXAS HUGOTON	20.0	MICHIGAN-WISCONSIN P
TEXAS HUGOTON	18.0	MICHIGAN WISCONSIN P
WHITE OAK CREEK (TRAVIS	712.0	DELMI GAS PIPELINE C
BOONSVILLE (BEND CONGL)	285.0	NATURAL GAS PIPELINE
NORTH COLOMA CREEK (7650	88.3	DELMI GAS PIPELINE C
THOMASTON (WILCOX 7800)	0.0	
ACKERLY (DEAN SAND)	15.1	TEXACO INC
KELSEY SOUTH (PENA A)	110.0	FLORIDA GAS TRANSMIS
WILLOW SPRINGS (GODENNEI	275.0	ARKANSAS LOUISIANA G
FORT TRINIDAD EAST (DEXT	25.0	LONE STAR GAS CO
BIG MAC (LOBO 7870) FIEL	500.0	UNITED TEXAS TRANSMI
DELONES CREEK	500.0	UNITED TEXAS TRANSMI
SPRABERRY (TREND AREA)	47.8	PHILLIPS PETROLEUM C
BOONSVILLE (BEND CONGL G	24.0	NATURAL GAS PIPELINE
MONAHANS (PERMIAN TUBB 2	9.0	EL PASO NATURAL GAS
WILLIAMS RANCH (CANYON)	67.0	NORTHERN NATURAL GAS
CALVIN DEAN	25.0	EL PASO NATURAL GAS

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JD NO	TA DRT	API NO	SEC	WELL NAME
-SOUTHLAND ROYALTY CO				RECEIVED: 10/07/80 JAS TX
8101151	P1422	4210532281	103	TODD 67 #6
8101150	P1420	4210532033	103	TODD 70 #1
-STRATA ENERGY INC				RECEIVED: 10/07/80 JAS TX
8101306	P1676	4205130512	102	C L ANDERSUN #1
8101308	P1678	4205130490	102	G B SLOVACEK #1
8101305	P1675	4205130528	102	LUCY SHANKLIN #1
8101307	P1677	4205130542	102	PETER GRANDJEAN UNIT #1
-SUN OIL COMPANY (DELAWARE)				RECEIVED: 10/07/80 JAS TX
8101331	P2271	4208130776	103	CENTRAL NATL BANK A #10
8101330	P2270	4208130787	103	CENTRAL NATL BANK A #11
8101333	P2281	4208130792	103	CENTRAL NATL BANK A #13
8101104	14570	4223300000	108	M M GARCIA L NO 3
8101332	P2278	4208130576	103	TUBB-OMEGA NO 2
-T M HOPKINS				RECEIVED: 10/07/80 JAS TX
8101210	17235	4236500000	103	EDENS GAS UNIT #2
-TARTAN PRODUCTION CO				RECEIVED: 10/07/80 JAS TX
8101193	17505	4205100000	102	MAREK NO 1 (MKC 12510)
-TAYLOR OPERATING COMPANY				RECEIVED: 10/07/80 JAS TX
8101244	P0442	4249700000	103	D K MESSICK #1 (85193)
8101243	P0441	4249700000	103	THOMAS HODGES #5 (85706)
-TEE OPERATING CO				RECEIVED: 10/07/80 JAS TX
8101212	16576	4228330644	103	STOREY NO 1
-TEXACO INC				RECEIVED: 10/07/80 JAS TX
8101156	P1487	4210532649	103	A R KINCAID TRUST #8
8101139	P1289	4232931048	107	CURNELL KNIGHT #1-A
-TEXAS OIL & GAS CORP				RECEIVED: 10/07/80 JAS TX
8101141	P0986	4222530335	103	RUNNING DUKE #2-1
-THOMAS D CRAFFMAN				RECEIVED: 10/07/80 JAS TX
8101216	19203	4228730439	103	TWO FINGERS #1-038275
-TOMMY LITTLEPAGE				RECEIVED: 10/07/80 JAS TX
8101223	19744	4250300000	103	MARY TAYLOR (#19267)
8101224	19745	4250300000	103	NOSSEN #2 (19575)
-TRAVELERS OIL CO				RECEIVED: 10/07/80 JAS TX
8101233	P0200	4206500000	103	BURNETT A NO 4
8101232	P0199	4206500000	103	BURNETT A NO 5
-W MENDDEN				RECEIVED: 10/07/80 JAS TX
8101180	17359	4220100000	103	W J S NO 6
-WATHAN W RICHANAN				RECEIVED: 10/07/80 JAS TX
8101117	15374	4236731239	103	T M KEYES UNIT #1
-WESLEY STEPHENS				RECEIVED: 10/07/80 JAS TX
8101238	P0429	4250333182	103	STOFFERS 40 NO 1
-WHITEHEAD PRODUCTION CO INC				RECEIVED: 10/07/80 JAS TX
8101246	P0515	4223732527	103	SARTAIN-MASON (85869)
-WOOD MCSHANE & THAMS				RECEIVED: 10/07/80 JAS TX
8101102	16403	4216531283	108	ELAM 1 RRC #75067

FIELD NAME	PROD	PURCHASER
WYATT	75.0	PERMIAN CORP
HOWARD DRAW	65.0	PERMIAN CORP
GIDDINGS (AUSTIN CHALK)	50.0	CLAJON GAS CO
GIDDINGS (AUSTIN CHALK)	50.0	CLAJON GAS CO
GIDDINGS (AUSTIN CHALK)	50.0	CLAJON GAS CO
GIDDINGS (AUSTIN CHALK)	50.0	CLAJON GAS CO
LYGAY	98.0	LONE STAR GAS CO
JAMESON/STRAWN	24.0	EL PASO NATURAL GAS
LYGAY	53.0	LONE STAR GAS CO
GARCIA	6.0	TRANSCONTINENTAL GAS
JAMESON NORTH (STRAWN)	12.0	LONE STAR GAS CO
BECKVILLE WEST (COTTON V	108.0	ARKLA GAS
CALDWELL (AUSTIN CHALK)	110.0	MAYNARD/CPC PIPELINE
BOONSVILLE (BEND CONGL G	225.6	NATURAL GAS PIPELINE
BOONSVILLE (BEND CONGL G	138.7	NATURAL GAS PIPELINE
WASHBURN RANCH WEST (SOS	63.5	TRANSCONTINENTAL GAS
OZONA (CANYON SAND)	481.0	NORTHERN NATURAL GAS
GREASEWOOD (SILURO-DEVON	3.4	TEXAS UTILITIES FUEL
RUNNING DUKE (RODESSA)	0.0	
GIDDINGS (AUSTIN CHALK)	100.0	PGP GAS PRODUCTS INC
YOUNG COUNTY REGULAR	3.0	LEWTEX OIL & GAS CO
YOUNG COUNTY REGULAR	45.0	LEWTEX OIL & GAS CO
PANHANDLE-CARBON COUNTY	36.5	PHILLIPS PETROLEUM C
PANHANDLE-CARBON COUNTY	36.5	PHILLIPS PETROLEUM C
DYERSDALE N (Y-5)	358.0	LONE STAR GAS
TOTU SOUTH (CADDO LIME)	186.0	LONE STAR GAS CO
YOUNG COUNTY REGULAR	8.0	LEWTEX OIL & GAS CO
PERRIN EAST (5400 CONGL)	180.0	NATURAL GAS PIPELINE
BLOCK A-34 (YATES)	1.9	EL PASO NATURAL GAS

BILLING CODE 6450-85-C

Other Purchasers Volume No: 304

8101091	Texas Eastern Transmission Co.
8101106	Texas Eastern Transmission Co.
8101107	Amoco Gas Co.
8101108	Panhandle Eastern Pipeline Co.
8101113	Panhandle Eastern Pipeline Co.
8101168	Amoco Production Co.
8101200	Panhandle Eastern Pipeline Co.
8101201	Panhandle Eastern Pipeline Co.
8101206	Amoco Gas Co.
8101209	El Paso Natural Gas Co.
8101213	Amoco Production Co.
8101218	Amoco Gas Co.
8101247	Intratex Gas Co.
8101301	Panhandle Eastern Pipeline Co.
8101302	Panhandle Eastern Pipeline Co.
8101319	Transcontinental Gas Pipeline Corp.
8101344	Northern Natural Gas Co.

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" after the section code. Estimated annual production (PROD) is in million cubic feed (MMcf). An (*) preceeding the control number indicates that other purchasers are listed at the end of the notice.

The applications for determination in these preceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before November 17, 1980.

Please reference the FERC Control Number (JD No.) in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33766 Filed 10-30-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. ER80-715 and ER80-58, et al.]

Alabama Power Co.; Order Accepting for Filing and Suspending Proposed Rates, Granting Waiver of Notice Requirements, and Consolidating Proceedings

Issued October 24, 1980.

On August 29, 1980, Alabama Power Company (Alabama) filed an executed transmission agreement with Alabama Electric Cooperative, Inc. (AEC).[1] Under the proposed agreement, Alabama would provide AEC with firm transmission service to enable AEC to transmit its self-generated energy to two of its distribution cooperative members [2] that are not physically connected with AEC's system. The two distribution entities are presently served under Alabama's Wholesale Tariff Rate REA–1. The proposed agreement would supplant the REA–1 rate for AEC's two members.

Under the terms of the agreement, AEC is to pay Alabama according to the voltage level of transmission service as determined by a cost of service formula. The methodology and procedure to be used in calculating applicable charges are described in exhibits to the agreement.

Alabama states that it intends to periodically update its rates by submitting informational schedules that reflect current costs. The transmission agreement provides that changes in the charges through application of the formula will not be made more frequently than annually.

Alabama has requested waiver of the Commission's notice requirements to permit a September 1, 1980 effective date for the proposed agreement.

On September 4, 1980, AEC filed a letter with the Commission noting its concurrence in Alabama's request for waiver of notice and an effective date of September 1, 1980. AEC states, however, that it disagrees with Alabama's characterization of the agreement as an initial rate filing. AEC further states that the transmission agreement has been approved by the Alabama Public Service Commission.[3] Finally, AEC renews objections to the rate formulae which AEC previously expressed with respect to similar formula rates under investigation in Docket No. ER80–506.

Notice of the filing was issued on September, 5, 1980, with responses due on or before September 26, 1980. No responses have been received.

Discussion

Alabama has tendered its transmission agreement as an initial rate schedule. The agreement however represents a change in service between Alabama and AEC. AEC is presently served by Alabama pursuant to an interconnection agreement under consideration in Docket No. ER80–506. The transmission agreement adds to the service received by AEC by including wheeling to AEC's two distribution cooperative customers. Alabama's submittal, therfore, constitutes a change in service within the purview of section 35.1(c) of the regulations and a change in rate schedule subject to suspension under section 205 of the Federal Power Act.

Alabama and AEC have joined in a request for waiver of the 60-day notice requirement of section 35.3 of the Commission's regulations in order to allow an effective date of September 1, 1980. The parties state that implementation of the agreement is necessary for AEC to begin providing power to the particular delivery points covered by the agreement. Inasmuch as both parties to the agreement have specifically requeste waiver, and no protests have been received, we find that good cause exists to grant waiver of the notice requirements.

Our review indicates that the proposed formula and the rates calculated under the formula hve not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful. Accordingly, we shall accept the formula and associated rates for filing and suspend their operation as ordered below.

In a number of suspension orders,[4] we have addressed the considerations underlying the Commission's policy regarding rate suspensions. For the reasons given there, we have concluded that rate filings should generally be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust and unreasonable or that it may run afoul of other statutory standards. We have acknowledged, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. Such circumstances have been presented here. The Commission notes that the contemplated transmission arrangement is necessary in order to allow AEC to commence generation service to its distribution cooperatives. In addition, we note that both parties to the agreement have requested an effective date of September 1, 1980, and no protests to the agreement have been received. Accordingly, consistent with our treatment of similar rates currently under investigation, we shall exercise our discretion to suspend the rates and formula for only one day, permitting the rates to take effect subject to refund thereafter on September 2, 1980.

In several previous dockets involving various subsidiaries of the Southern Company, the Commission has suspended similar formula rates, initiated investigation into the formulas and resulting rates, and consolidated the pending dockets.[5] Because of the similarity between the formula rates in the instant docket and the formula rates proposed in Docket Nos. ER80–58, *et al.*, we shall also consolidate the instant docket with those ongoing proceedings.

In Docket No. ER80–58,[6] and in subsequent dockets, the Commission has consistently taken the position that if a formulary rate which has not been found to be just and reasonable operates to increase rates, subsequent filings must be made under section 205 of the Federal Power Act. Therefore, any subsequent revision to the charges developed under the suspended formula shall be filed by Alabama as a change in rate within 60 days before its proposed effective date. However, we shall waive the full filing requirements of section 35.13 of the Commission's regulations as to subsequent revisions on condition that any increased charges shall be collected subject to refund pending the outcome of the Commission's investigation.

The Commission Orders

(A) Alabama's request for waiver of the Commission's notice requirements is hereby granted.

(B) The formula and associated rates for transmission service contained in the proposed transmission agreement are hereby accepted for filing and suspended for one day from the proposed effective date, the rates to become effective September 2, 1980, subject to refund.

(C) Waiver of the full filing requirements contained in section 35.13 of the regulations is hereby granted for future changes in transmission charges made in accordance with the formula filed herein, on the condition that Alabama agrees to collect any increased charges under the formula subject to refund pending Commission investigation. Alabama shall file any changes in the charges under the formula with the Commission within 60 days before their proposed effective dates.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of the formula and rates proposed by Alabama in this docket.

(E) This proceeding is hereby consolidated with Docket Nos. ER80–58, ER80–65, ER80–160, ER80–243, ER80–262, ER80–343, ER80–415, ER80–466 and ER80–506 for purposes of hearing and decision.

(F) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment A—Alabama Power Company, Docket No. ER80–715

Filed: August 29, 1980.
Dated: August 28, 1980.
Other Party: Alabama Electric Cooperative.
Effective: September 2, 1980, subject to refund.

Designation and Description

(1) Rate Schedule FERC No. 147 (Supersede Service Agreements dated May 7, 1976, with Baldwin County and dated February 13, 1973, with Pioneer under Electric Tariff Orig. Vol. No. 1)—Agreement For Transmission Service To Distribution Cooperative Members of Alabama Electric Cooperative.

(2) Supplement No. 1 to Rate Schedule FERC No. 147—Delivery Point Agreement (Baldwin Co. E.M.C.)

(3) Supplement No. 2 to Rate Schedule FERC No. 147—Delivery Point Agreement (Pioneer Electric Cooperative).

(4) Supplement No. 3 to Rate Schedule FERC No. 147—Exhibit B, Definition of Service Levels and Associated Losses.

(5) Supplement No. 4 to Rate Schedule FERC No. 147—Exhibit C, Capacity Charges for Transmission facilities (115 KV and above).

(6) Supplement No. 5 to Rate Schedule FERC No. 147—Exhibit D, Capacity Charges for Service from Sub-Transmission Facilities (39 to 69 KV).

(7) Supplement No. 6 to Rate Schedule FERC No. 147—Exhibit E, Capacity Charges for Service from Transmission Substations Facilities (Sub-Transmission Voltage High side and primary distribution—low side).

(8) Supplement No. 7 to Rate Schedule FERC No. 147—Exhibit F, Capacity Charges for Primary Distribution.

(9) Supplement No. 8 to Rate Schedule FERC No. 147—Losses at Each Service Level.

(10) Supplement No. 1 to Supplement No. 4 Rate Schedule FERC No. 147—Rates for 1980.

(11) Supplement No. 1 to Supplement No. 5 Rate Schedule FERC No. 147—Rates for 1980.

(12) Supplement No. 1 to Supplement No. 6 Rate Schedule FERC No. 147—Rates for 1980.

(13) Supplement No. 1 to Supplement No. 7 Rate Schedule FERC No. 147—Rates for 1980.

[FR Doc. 80-33990 Filed 10-30-80; 8:45 am]

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[1] See Attachment A for Rate Schedule designations.

[2] Baldwin County Electric Membership Corporation (Baldwin) and Pioneer Electric Cooperative (Pioneer).

[3] Alabama Public Service Commission, Order No. 2806, issued August 29, 1980.

[4] *E.g., Boston Edisnn Co.*, Docket No. ER80–508 (August 29, 1980) (five month suspension); *Alabama Power Co.*, Docket Nos. ER80–506, *et al.* (August 29, 1980) (one day suspension); *Cleveland Electric Illuminating Co.*, Docket No. ER80–488 (August 22, 1980) (one day suspension).

[5] *See* Docket Nos. ER80–58 and consolidated Docket Nos. ER80–65, ER80–160 (Florida Power Corporation), ER80–243 (Jacksonville Electric Authority), ER80–262 (Florida Power and Light Company), ER80–343 (Savannah Electric and Power Company), ER80–415 (Mississippi Power and Light Company and ER80–506 (Alabama Power Company). AEC was granted leave to intervene in Docket No. ER80–58.

[6] Order issued February 12, 1980.

[Projects Nos. 3353, 3355, and 3365]

Continental Hydro Corp.; Application for Preliminary Permit

October 24, 1980.

Take notice that Continental Hydro Corporation (Applicant) filed on August 25, 1980, there applications for preliminary permits [purusant to the Federal Power Act, 16 U.S.C. §§791 (a)–825(r)] for the projects described below. Correspondence with the Applicant on these projects should be addressed to: Mr. A. Gail Staker, President, Continental Hydro Corporation, 141 Milk Street, Suite 1143, Boston, Massachusetts 02109.

The proposed projects are located as follows:

(i) Salamonie Dam Project No. 3353 would be located at the U.S. Army Corps of Engineers' Salamonie Dam and Lake, a flood control project, on the Salamonie River near Huntington, in Wabash County, Indiana.

(ii) Monroe Dam Project No. 3355 would be located at the U.S. Army Corps of Engineers' Monroe Dam and Lake, a flood control project, on the Salt Creek River near Guthrie, in Monroe County, Indiana.

(iii) Mississinewa Dam Project No. 3365 would be located at the U.S. Army Corps of Engineers' Mississinewa Dam and Lake, a flood control project, on the Mississinewa River near Peoria, in Miami County, Indiana.

Projects Descriptions—The three proposed projects would utilize existing U.S. Army Corps of Engineers' dams and reservoirs.

Project No. 3353 would consist of: (1) a penstock extending from the outlet works; (2) a powerhouse located on the east bank of the river; (3) transmission lines; and (4) appurtenant facilities. Applicant estimates the capacity of the project to be 2.78 MW, and the annual energy output to be 11.1 GWh.

Project No. 3355 would consist of: (1) a penstock extending from the outlet works; (2) a powerhouse located on the east bank of the river; (3) transmission

lines; and (4) appurtenant facilities. Applicant estimates the capacity of the project to be 1.75 MW, and the annual energy output to be 7.0 GWh.

Project No. 3365 would consist of: (1) a penstock extending from the 16" outlet conduit; (2) a powerhouse located on the northwest bank of the river; (3) transmission lines; and (4) appurtenant facilities. Applicant estimates the capacity of the project to be 4.13 MW, and the annual energy output to be 16.5 GWh.

Purpose of Project—Energy produced at proposed Projects Nos. 3353 and 3355 would be sold to Public Service Company of Indiana, while proposed Project No. 3365 would sell energy to Indiana and Michigan Electric Company.

Proposed Scope and Cost of Studies Under Permit—Applicant has requested a 36-month permit to prepare a definitive report for each project, including preliminary design and economic feasibility studies, environmental and social studies, and soils and foundation data. The cost of the aforementioned activities along with obtaining agreements with other Federal, State, and local agencies are estimated by the Applicant to be $51,000 for Project No. 3353, $49,000 for Project No. 3355, and $57,000 for Project No. 3365.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described applications for preliminary permits.) Copies of the applications may be obtained directly from the Applicants.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 26, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 24, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c), as amended 44 FR 61328, (October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d), as amended, 44 FR 61328 (October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about these applications should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 C.F.R., § 1.8 or § 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 26, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The applications are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33991 Filed 10-30-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80.434]

Duke Power Co.; Order Accepting for Filing and Suspending Revised Fuel Conservation Energy Rate Schedule, Initiating Hearing, and Establishing Procedures

October 24, 1980.

On March 26, 1980, the Commission issued an order in Docket Nos. ER78-229, *et al.*, which established principles regarding the submittal of fuel conservation energy rate schedules to the Commission. The order required the utilities in those dockets to file revised fuel conservation rates in compliance with the established principles. On August 27, 1980, Duke Power Company (Duke) completed its filing [1] of a revised fuel conservation energy rate schedule [2] pursuant to the Statement of Principles set forth in the Commission's March 28, 1980 order.[3]

Notice of Duke's filing was issued on June 9, 1980, with responses due on or before June 30, 1980. No comments, protests or petitions to intervene have been received.

Under the fuel conservation rates proposed by Duke, the charge for energy delivered from Duke's system would consist of the company's out-of-pocket costs, including the estimated costs of transmission losses, plus 10% of such out-of-pocket costs or 2 mills/kWh, whichever is less. Fuel conservation energy delivered from the system of a third party would be priced at cost plus the estimated cost of associated transmission losses. The proposed rate schedule specifies that the estimated cost of transmission losses would be based on average transmission losses and the incremental energy costs of Duke at the time of delivery. The proposed rate schedule also provides that out-of-pocket cost would be based on the greater of the actual fuel cost during the time of delivery or the highest-cost replacement fuel obtained during the-60-day period subsequent to the time of delivery. The out-of-pocket cost determination is to be made on a station or unit basis for the quantity of fuel used by the station or unit with no subsequent adjustments based on changes in fuel cost after the time of delivery.

In addition to the above energy charges, the proposed fuel conservation energy rate schedule includes a facilities charge which is to be developed from a formula and expressed on a per kWh basis when energy is generated on Duke's system as follows:

(1) Capacity charges equal to the then current annualized costs of the generating units employed to deliver fuel conservation energy. Energy delivered would be allocated on an hourly basis to appropriate operating units; capacity charges would then be calculated by taking the sum of the products of allocated kWh's and the annualized costs ($/kWh) on a unit-by-unit basis; plus

(2) A transmission facilities charge equal to the then current annualized fully allocated costs of the estimated bulk transmission system. The foregoing transmission charge also would be applicable to third party transactions.

In order to comply with the Statement of Principles contained in the Commission's March 28, 1980 order, Duke has also included language in its rate schedule which describes its proposed dispatch priority and replacement pricing methodology. With respect to dispatch priority of fuel conservation energy, Duke would assign these transactions a priority after all firm requirements and emergency service requirements are met. The company's replacement pricing methodology provides for prices to be based on the highest-cost replacement fuel obtained during the 60-day period subsequent to the time of delivery. Pursuant to the Statement of Principles, the rate schedule provides that corrected billing must be rendered within a specified period (120 days) following the delivery of fuel conservation energy, unless the purchaser agrees to an extension of time.

Discussion

While Duke has provided a sample computation using a rate of return component of 11.03% (15.0% on equity), the formula itself does not provide a clear basis on which a determination can be made as to whether the revenues produced by the formula would be just and reasonable.

The proposed fixed charge rate formula also contains components which are to be stated on a percentage basis, for renewal and replacement expenses, insurance and property taxes. The formula does not specify the bases on which these amounts are to be derived and its does not indicate whether the costs developed are to be associated only with the unit(s) providing the service. Furthermore, the formula does not define the bases for deriving the percentage amount to be included for renewal and replacement expenses. In view of the foregoing, the proposed formula may not properly track the cost of the units directly assigned to fuel conservation energy service.

In addition the proposed fixed charge rate formua provides for the recovery of depreciation expense based on the application of a straight-line depreciation percentage (based on average system depreciation rates) to gross investment in the unit(s) providing fuel conservation energy service. Because the units anticipated to provide fuel conservation energy are the older, more depreciated, if not nearly fully depreciated, units on Duke's system, application of the depreciation percentage to the gross investment cost of these units may result in the over recovery of costs.

Our analysis indicates that the proposed fixed charge rate formula lacks specificity as to the bases upon which several components are derived, that certain formula components may not accurately track the costs associated with the facilities assigned to fuel conservation energy service, and that the rates under the proposed rate schedule may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful. Accordingly, we shall accept the proposed fuel conservation rates for filing, suspend them as ordered below, and order a hearing to be convened in this proceeding.

In a number of suspension orders,[4] we have addressed the considerations underlying the Commission's policy regarding rate suspensions. For the reasons given there, we have concluded that rate filings should generally be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust and unreasonable or that it may run afoul of other statutory standards. We have acknowledge, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. Such circumstances are presented here. While Duke's present rate schedule was not a part of the proceedings in Docket Nos. ER78-229, *et al.*, the company has voluntarily submitted a revised fuel conservation energy rate schedule in keeping with the spirit of the Commission's principles enunciated in our March 28, 1980 order. We also believe tht the revised rates should be made effective as soon as possible so they they will be in place in the event that a fuel emergency should occur. Additionally, no parties have protested or petitioned to intervene in this docket. In order to ensure refund protection for Duke's affected customers pending further review of the proposed rates, we shall exercise our discretion to suspend the rates for only one day from 60 days after filing, permitting the rates to take effect subject to refund thereafter on October 28, 1980.

The Commission Orders

(A) Duke's fuel conservation energy rate schedule is hereby accepted for filing and suspended for one day from 60 days after filing, to become effective on October 28, 1980, subject to refund pending hearing and decision thereon.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the DOE Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procecure and the regulations under the Federal Power Act (18 CFR, Chapter I, 1980), a public hearing shall be held concerning the justness and reasonableness of Duke's proposed fuel conservation energy rate schedule.

(C) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within thirty (30) days of the date of issuance of this order in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. This conference shall be held for purposes of establishing a procedural schedule, including the submittal of a case-in-chief and supporting materials by Duke. The designated law judge is authorized to establish procedural dates, and to rule on all motions (except motions to consolidate or sever and motions to dismiss), as provided for in the Commission rules of Practice and Procedure.

(D) The Secretary shall promptly published this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretory.

Attachment A—Duke Power Company Rate Schedule Designations, Docket No. ER80-434

Designation and Description

(1) Rate Schedule FERC No. 272 (Supersedes Rate Schedule FERC No. 265)—Schedule FCE (Filed 6/10/80).

(2) Supplement No. 1 to Rate Schedule FERC No. 272—Annual Fixed Charge Rate Formula (Filed 8/27/80).

(3) Exhibit A to Rate Schedule FERC No. 272—Computations of the various components of annual FCR portion of FCE schedules.

[FR Doc. 80-33992 Filed 10-30-80; 8:45 am]

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[1] Duke originally submitted its filing on June 2, 1980. The company was notified by letter dated July 23, 1980, that its filing was deficient.

[2] See Attachment A for rate schedule designations.

[3] While Duke has submitted its revised rate schedule in accordance with the March 28, 1980 order, it should be noted that Duke's present fuel conservation energy rate schedules, which became effective January 1, 1974, were not at issue in those dockets.

[4] *E.g., Boston Edison Co.*, Docket No. ER80.508 (August 29, 1980) (five month suspension); *Alabama Power Company*, Docket Nos. ER80.506, *et al.* (August 29, 1980) (one day suspension); *Cleveland Electric Illuminating Company*, Docket No. ER80.488 (August 22, 1980) (one day suspension).

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[Project No. 3437]

Hydroelectric Constructors, Inc.; Application for Preliminary Permit

October 24, 1980.

Take notice that Hydroelectric Constructors, Inc. (Applicant) filed on September 4, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3437 to be known as Grand Valley Project located on the Colorado River near the Town of Grand Junction, Mesa County, Colorado. Correspondence with the Applicant should be directed to: Mr. Glen G. Dorman, President, Hydroelectric Constructors, Inc., Box 6, 5353 West Dartmouth Avenue, Denver, Colorado 80227.

Project Description—The proposed project would utilize the existing U.S. Water and Power Resources Service's Grand Valley Diversion Dam and reservoir and would consist of a powerhouse with one or more generating units having a total rated capacity of 1.145 MW, a switchyard and a 1-mile long transmission line. The project would be capable of generating up to 9,630,000 kWh annually saving the equivalent of 15,800 barrels of oil or 4,500 tons of coal.

Purpose of Project—Energy generated at the project would be sold to the Public Service Company of Colorado or other utilities in the area of the project.

Proposed Scope and Cost of Studies under Permit—The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, a study of environmental impacts and a study of the project's compatibility with irrigation needs. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $50,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before January 5, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 6, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), as amended 44 FR 61328, (October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d), as amended, 44 FR 61328 (October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before January 5, 1981. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33893 Filed 10-30-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-546]

Monongahela Power Co., West Penn Power Co., Potomac Edison Power Co., Virginia Electric & Power Co.; Order Accepting For Filing and Suspending Proposed Rates in Part, Granting Waiver of Notice Requirement, Consolidating Proceedings, and Establishing Procedures

Issued: October 17, 1980.

On July 23, 1980, as completed on August 18, 1980,[1] Allegheny Power Service Corporation (APS) filed on behalf of Monongahela Power Company, Potomac Edison Power Company, and West Penn Power Company—the electric utilities making up the Allegheny Power System—Amendment No. 8 to an Operating Agreement dated January 1, 1973, which provides for interchange services between the Allegheny Power System Companies and the Virginia Electric and Power Company (VEPCO).[2]

Amendment No. 8 provides for an increase in the demand charge for short-term power from $0.070/Kw-week to $0.85/Kw/week and an increase in the demand charge for limited-term power from $3.75/Kw/month to $4.50/Kw/month. Related short-term and limited-term third party transmission charges would be increased from $0.175/Kw-week and $0.74/Kw-month to $0.24/Kw/week and $1.00/Kw/month, respectively. The existing 10% adder to the purchase cost of energy and the 15% adder to the purchase cost of energy supplied by third parties would be limited to 2.0 mills/Kwh and 1.0 mills/Kwh, respectively.

APS has requested the Commission to waive the notice requirements of section 35.3 of the regulations to permit Amendment No. 8 to become effective August 1, 1980.

Notice of the filing was issued on August 4, 1980, with responses due on or before August 22, 1980. No comments, protests, or petitions to intervene were filed.

Discussion

APS's proposed short-term and limited-term demand charges, third party transmission charges, and capped percentage adders are identical to rates and charges previously accepted by the

[1] The Commission's filing requirements were satisfied when Virginia Electric and Power Company submitted its certificate of concurrence and cost support for the revised interchange rates.

[2] *See* Attachment for rate schedule designations.

Commission.[3] Similarly, VEPCO's third party transmission charges and capped percentage adders have also been accepted by the Commission.[4] The Commission permitted the previously submitted rates to become effective on August 1, 1980, and we believe that a concurrent effective date for the instant charges will facilitate implementation of the various service schedules among the parties with which APS is interconnected. Thus, we find that good cuse exists to grant waiver of the notice requirements and we shall accept the portions of the instant submittal identified above for filing to become effective August 1, 1980, without suspension.

Our analysis indicates, however, that the short-term and limited-term demand charges proposed by VEPCO suffer from the same inadequacies as the rates recently submitted by VEPCO in Docket No. ER80.485. The company has provided identical cost data in support of the identical short-term demand charge; the proposed limited-term demand charge is based directly on the short-term demand charge (expressed as a per month charge and adjusted to reflect 20% reserves). As in the prior proceeding, we find that these proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful. Accordingly, we shall accept VEPCO's proposed short-time and limited-term demand charges for filing and suspend them as ordered below.

In a number of suspension orders,[5] we have addressed the considerations underlying the Commission's policy regarding rate suspensions. For the reasons given there, we have concluded that rate filings should generally be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust and unreasonable or that it may run afoul of other statutory standards. We have acknowledged, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. Such circumstances have been presented here. The Commission notes that with respect to the same short-term demand charge as that currently proposed by VEPCO, the Commission ordered a one-day suspension in Docket Nos. ER80–484 and ER80–485. We indicated that potentially excess revenues could be offset, in part, by the use of fixed adders, and that the services in question lend themselves to a nominal suspension. Consistent with the suspension period ordered in Docket Nos. ER80–484 and ER80–485, we shall exercise our discretion to suspend VEPCO's short-term and limited-term demand charges for one day permitting that portion of the instant submittal to take effect subject to refund thereafter on August 2, 1980. Moreover, because this docket presents questions of law and fact common to those being considered in Docket Nos. ER80–484 and ER 80–485, we shall consolidate this proceeding with the proceedings in Docket Nos. ER80–484 and ER 80–485.[6]

In addition, our analysis in Docket Nos. ER80–484 and ER 80–485 indicated the VEPCO's use of average system production investment in support of interchange service demand charges was improper because such average system pricing does not track the demand related costs of the marginal units assigned to interchange service. Our order establishing the hearing in those dockets on the proposed demand charge limited the scope of the proceedings to the proper development of the production component of VEPCO's interchange service demand charges. Accordingly, we shall similarly limit the scope of this proceeding to the proper development of the production component of VEPCO's proposed demand charges for short-term and limited-term power.

The Commission Orders

(A) Waiver of the notice requirements of section 35.3 of the Commission's regulations is hereby granted.

(B) APS's proposed short-term, limited-term, and related third party transmission rates (including the associated capped adders) and VEPCO's proposed third party transmission rates (including all of VEPCO's proposed capped adders) are hereby accepted for filing, to become effective August 1, 1980, without suspension.

(C) The short-term and limited-term demand charges proposed by VEPCO in this proceeding are hereby accepted for filing and suspended for one day, to become effective on August 2, 1980, subject to refund pending hearing and decision thereon.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the DOE Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commisssion's Rules of Practice and Procedure and the regulations under the Federal Power Act [18 CFR, Chapter I (1980)], a public hearing shall be held concerning the justness and reasonableness of the short-term and limited-term demand charges proposed by VEPCO in this proceeding. The investigation shall be confined to the limited issue of the proper development of the production component of VEPCO's proposed demand charges for short-term and limited-term power.

(E) This proceeding is hereby consolidated with Docket Nos. ER80–484 and ER 80–485 for purposes of hearing and decision thereon.

(F) The administrative law judge previously designated to preside in Docket Nos. ER80–484 and ER 80–485 shall convene a conference in this consolidated proceeding at the earliest convenience of the parties in order to establish a procedural schedule that will accommodate consolidation of Docket Nos. ER80–546 with the pending proceeding.

(G) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

Allegheny Power Service Corporation Rate, Schedule Designations, Docket No. ER80–546

Designation and Description

(1) *Monongahela Power Company,* Supplement No. 6 to Rate Schedule FPC No. 32—Short Term Power.

(2) Supplement No. 7 to Rate Schedule FPC No. 32—Limited Term Power.

(3) *The Potomac Edison Company,* Supplement No. 6 to Rate Schedule FPC No. 33—Short Term Power.

(4) Supplement No. 7 to Rate Schedule FPC No. 33—Limited Term Power.

(5) *West Penn Power Company,* Supplement No. 6 to Rate Schedule FPC No. 31—Short Term Power.

(6) Supplement No. 7 to Rate Schedule FPC No. 31—Limited Term Power.

(7) *Virginia Electric and Power Company,* Supplement No. 6 to Rate Schedule FPC No. 99 (Concurs in (1)–(6) above)—Certificate of Concurrence.

[FR Doc. 80-33994 Filed 10-30-80; 8:45 am]

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[3] *Pennsylvania-New Jersey-Maryland Interconnection, et al.,* Docket Nos. ER80.427, *et al.* (Order issued July 31, 1980).

[4] *Pennsylvania-New Jersey-Maryland Interconnection, and Virginia Electric & Power Co.,* Docket Nos. ER80.484 and ER80.485 (order issued August 21, 1980).

[5] *E.g., Boston Edison Co.,* Docket No. ER80–508 (August 29, 1980) (five month suspension); *Alabama Power Co.,* Docket Nos. ER80–506, *et al.* (August 29, 1980) (one day suspension); *Cleveland Electric Illuminating Co.,* Docket No. ER80–488 (August 22, 1980) (one day suspension).

[6] A prehearing conference was held in Docket Nos. ER80–484 and ER 80–485 on September 4, 1980, and a procedural schedule has been adopted.

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[Project No. 2865]

City of Shawano; Application for Short-Form License (Minor)

Otober 24, 1980.

Take notice that the City of Shawano (Applicant) filed on August 31, 1978, an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for construction and operation of an existing water power project to be known as Shawano Project No. 2865. The project is located on the Wolf River near the City of Shawano, Shawano County, Wisconsin. Correspondence with the Applicant should be directed to: Mr. J. Leroy Thilly, Boardman, Suhr, Curry and Field, Attorneys for City of Shawano, Post Office Box 927, Madison, Wisconsin 53701.

Project Description—The existing Shawano project is operated as a run-of-river project and consists of: (1) an existing reinforced concrete dam approximately 150 feet long and 28 feet high, with two earth embankments and a concrete spillway section with six steel Tainter gates, 14 feet by 14 feet; (2) an existing reservoir with a surface area of approximately 197 acres; (3) an existing powerhouse containing a hydroelectric generating unit with an installed capacity of 640 kW; (4) a proposed one mile long by 12,470 volt transmission line to be constructed to connect the project to the distribution system of Shawano; and (5) appurtenant facilities. The estimated annual generation of the project would be 5,500 MWh.

Purpose of Project—The project energy would be distributed to residential, commercial, industrial, and rural customers in the Shawano areas served by the Municipal Electric Utility of Shawano.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—This application was filed as a competing application to Wisconsin Power and Light Company Project No. 710 on the Shawano Hydroelectric Development, under 18 CFR 4.33 (*as amended,* 44 FR 61328, October 25, 1979), and, therefore, no further competing applications or notices of intent to file a competing application will be accepted for filing.

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before December 10, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33995 Filed 10-30-80; 8:45 am]

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[Docket No. EL80-15]

Sierra Pacific Power Co. v. Mt. Wheeler Power, Inc.; Declaratory Order

Issued: October 24, 1980.

By a jointly filed letter with an enclosure of correspondence between them, Sierra Pacific Power Co. (Sierra Pacific) and Mt. Wheeler power, Inc. (Mt. Wheeler) on February 20, 1980, petitioned the Commission for an order construing the meaning of a disputed provison of Sierra Pacific's tariff governing transactions with Mt. Wheeler.[1] We view the letter filing to be a joint petition for declaratory order under 18 CFR 1.7 (1980).

Notice of the filing was issued February 29, 1980, with responses due no later than March 24, 1980. On March 24, 1980, Pacific Gas & Electric Co. (PG&E), a customer of Sierra Pacific taking service under a tariff identical to Mt. Wheeler's, filed a petition to intervene. In the petition, PG&E made no allegations in support of or in opposition to the positions of either Sierra Pacific or Mt. Wheeler.

The provision in controversy is paragraph "B. *Billing Demand*" of Schedule R, which reads as follows:

> The billing demand for any period shall be the greater of the measured demand for the current period; or fifty percent (50%) of the highest billing demand established by the Customer during the preceding eleven (11) months.

Sierra Pacific construes the provision to mean that where, for any current billing period, there is no measured demand, and also there is no measured demand during the preceding 11 month period, there nevertheless will be a billing demand for the current billing period if there was a measured demand prior to the 11 month peirod. The billing demand for the current billing period will be a ratcheted percentage (50%) of the highest billing demand set in the preceding 11 month period. Sierra Pacific's construction is based upon its literal reading of the provision and particularly upon the parties' usage in paragraph "B" of the phrase "billing demand" to describe the demand in the preceding 11 month period by which the ratchet is mulitplied to determine the billing demand in the current billing month.

In contrast, Mt. Wheeler interprets Paragraph "B" to mean that where, for any current billing period, there is no measured demand, and also there is no measured demand in the preceding 11 month period, there will be no billing demand for the current billing period. Mt. Wheeler bases this construction upon its translation of the phrase "billing demand," as it is used the second time in paragraph "B", to mean "measured demand." Mt. Wheeler argues that since there is no measured (actual) demand during the preceding 11 month period, there is no demand against which to multiply the ratchet. Sierra Pacific counters this argument by pointing out that the phrase "billing demand," like the phrase "measured demand," [2] is a term of art specifically defined in Schedule R. Sierra Pacific concludes that Mt. Wheeler's translation of the term of art, "billing demand," into another term of art, "measured demand," tortures the intent of the parties as expressed in writing in the tariff sheet.

In construing contractural language, the rule is that the contract language is to be given its ordinary and commonly accepted meaning without regard to a subjective and unexpressed intent of one of the parties.[3] In the tariff sheet here, both phases, "billing demand" and "measured demand," are expressly given specific, separate, and mutually exclusive definitions. These two definitions appear separately, but side-by-side, on the same page of Schedule R. There is no ambiguity and no vagueness about the meaning of these phrases as used in Schedule R. The presence of the definitions of the two phrases indicates that the parties carefully and specifically made the individual meanings of the phrases manifestly clear as terms of art in the tariff. Hence, there is no justification within the four corners of Schedule R for construing the second use of the phrase "billing demand" in paragraph "B" as "measured demand."

Mt. Wheeler asserts that there is no reasonable relation between the operation of paragraph "B" and any legitimate business purpose Sierra Pacific could have for the paragraph. Sierra Pacific responds that the demand charge is established to provide revenue stability from low load customers such as Mt. Wheeler. If Mt. Wheeler wishes to pursue its objections to the justness and reasonableness of the demand charge, it may do so pursuant to the complaint procedures of section 206 of the Federal Power Act. In such a proceeding, Mt. Wheeler would bear the burden of proving the demand charge to be unlawful.

The Commission orders: (A) Pacific Gas and Electric Company is permitted to intervene in this docket subject to the rules and regulations of the Commission, *provided,* however, that participation of the intervenor shall be limited to matters set forth in its petition to intervene, and *provided* further, that the admission of the intervenor shall not be construed as recognition by the Commission that the intervenor might be aggrieved by any order entered in this proceeding.

(B) The Commission hereby declares that the term "billing demand" as used in the second half of paragraph "B" of Sierra Pacific's Rate Schedule R refers to "billing demand" and not to "measured demand."

(C) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33996 Filed 10-30-80; 8:45 am]

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[1] *Sierra Pacific Power Co.* Rate Schedule FPC No. 11: Schedule R.

[2] Paragraph "C" appearing under the same heading in Schedule R, "Billing Units," under which paragraph "B", "Billing Demand" appears, specifies in pertinent part the definition of the phrase "measured demand":

> C. *Measured Demand:* For the purposes hereof, measured demand shall be defined as maximum measured fifteen-minute average kilowatt load during the billing period. * * *

[3] *Dana Corp.* v. *U.S.*, 470 F.2d 1032, 1041 (Ct. Cl. 1972).

[Project No. 3320]

Sugar River Hydroelectric Power Co.; Application of Preliminary Permit

October 24, 1980.

Take notice that Sugar River Hydroelectric Power Company (Applicant) filed on August 15, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 3320 to be known as the Newport Sugar River Project located on the Sugar River in Sullivan County, New Hampshire. Correspondence with the Applicant should be directed to: Mr. William B. Ruger, Jr., Proprietor, Sugar River Hydroelectric Power Company, Box 293, Newport, New Hampshire 03773.

Project Description—The proposed project would consist of works located at three dam sites along a one-mile stretch of the Sugar River in the Town of Newport, New Hampshire, as follows: (1) the existing Caplan Dam, a concrete structure 175 feet long and 20 feet high, which has a reservoir of 7 acres; (2) the currently breached International Shoe Dam which when reconstructed would create a 1.5-acre reservoir; (3) the currently breached Brampton Dam, which when reconstructed would create a 5.0-acre reservoir; and (4) appurtenant facilities. Each development would include a new or refurbished existing powerhouse and appurtenant works. The entire project would have a combined installed capacity of approximately 450 kW. Applicant estimates that the average annual net generation of the project would be 2,000,000 kWh.

Purpose of Project—Project energy would be sold to local public utilities or to local industrial concerns.

Proposed Scope and Cost of Studies Under Permit—Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time it would perform feasibility, environmental, and marketing studies. Depending upon the outcome of the studies, the Applicant would file an application for FERC license. The Applicant estimates that the total cost of permit studies would be $40,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before January 5, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 6, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), (as amended, 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d), (as amended, 44 FR 61328, October 25, 1979.)

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirement of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's

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Rules. Any comments, protest, or petition to intervene must be filed on or before January 5, 1981. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33997 Filed 10-30-80; 8:45 am]

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[Docket No. CP75-127]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc. and Texas Eastern Transmission Corp.; Petition to Amend Further

October 14, 1980.

Take notice that on September 18, 1980, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, and Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP75-127 a joint petition to amend the order issued in the instant docket on July 18, 1975 [1] as amended, pursuant to Section 7(c) of the Natural Gas Act, by authorizing an additional point of delivery in East Cameron Block 227, offshore Louisiana, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Texas Eastern and Tennessee state that they are parties to a transportation and exchange agreement dated October 17, 1974, as amended, which provides for the transportation and exchange of up to 230,000 Mcf of natural gas at various points.

Tennessee and Texas Eastern propose herein to include in their transportation and exchange agreement natural gas produced from the West Cameron Block 493 Field (WC 493 Field), offshore Louisiana, and to provide for an additional point of delivery by Tennessee to Texas Eastern in East Cameron Block 227, offshore Louisiana, for delivery of said gas pursuant to an amendment to the agreement dated September 9, 1980.

It is stated that Tennessee has secured the right to purchase gas produced from the WC 493 Field, offshore Louisiana, and that by order dated June 26, 1980, in Docket No. CP79-405, it received authorization to construct and operate 29.9 miles of 30-inch pipeline and appurtenant facilities to originate in the WC 493 Field and to extend to an existing subsea side valve on Texas Eastern's 24-inch pipeline in East Cameron Block 227, offshore Louisiana (EC 227 delivery point). It is submitted that the line would enable quantities of gas to be transported from WC 493 to the EC 227 delivery point for delivery to Texas Eastern. It is further submitted that the addition of Tennessee's WC 493 Field gas at the proposed additional delivery point would not increase the existing total contract exchange volume.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 3, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protest filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33985 Filed 10-30-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP76.370]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc., Natural Gas Pipeline Co. of America; Petition To Amend

October 14, 1980

Take notice that on September 25, 1980, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, and Natural Gas Pipeline Company of America (Natural), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP76.370 a joint petition to amend the order issued April 18, 1980, pursuant to Section 7(c) of the Natural Gas Act so as to authorize two additional delivery points for the exchange of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Petitioners state that in the subject docket, they were authorized to construct and operate 9.5 miles of 16-inch pipeline and to exchange of up to 50,000 Mcf of natural gas per day pursuant to the terms of an exchange agreement between the parties dated May 6, 1976.

Petitioners propose herein to add two new delivery points pursuant to the terms of a gas exchange agreement between the parties dated February 11, 1980. It is stated that Tennessee has acquired natural gas produced in West Cameron Block 540 offshore Louisiana, which gas is transported by Texas Eastern Transmission Corporation to Stingray Pipeline Company (Stingray). It is further asserted Stingray would redeliver the gas to Tennessee at a new delivery point proposed herein in West Cameron Block 550.

It is stated that Natural has obtained the right to purchase natural gas produced in Eugene Island Block 321, offshore Louisiana. Petitioners state that the establishment of a new delivery point to Tennessee at Eugene Island Block 302, offshore Louisiana, would serve to implement the delivery of such gas.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 3, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33986 Filed 10-30-80; 8:45 am]

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[Docket No. CP74.94, Phase I, Phase II; Opinion No. 740-C]

United Gas Pipe Line Co. v. Billy J. McCombs, R. James Stillings d.b.a. Gastill Co., David A. Onsgard, Basin Petroleum Corp., Louis H. Haring, Jr., National Exploration Co., E. I. du Pont de Nemours & Co., Bill Forney Sr. and Bill Forney, Inc.; Opinion and Order Affirming Initial Decision on Phase I, Denying Motion To Dismiss, and Partially Affirming Initial Decision on Phase II

Issued: October 24, 1980.

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

I.

We affirm the presiding administrative law judge's Phase I initial decision of March 28, 1978 finding that gas being sold by the McCombs Group [1] to E.I. du Pont de Nemours & Company from the "Butler A" lease in Karnes County, Texas is dedicated to interstate commerce. The Federal Power Commission [2] issued a certificate of public convenience and necessity on December 14, 1954, dedicating gas from oil wells on the Butler A lease to United Gas Pipe Line Company in interstate commerce. Evidence presented presented in the hearings preceding issuance of the administrative law judge's initial decision establishes that the Butler A lease was connected to United's common connection point on January 24, 1955.[3]

The McCombs Group excepts to the administrative law judge's ruling. The McCombs Group acquired the right to sell oil and gas from the Butler A lease on May 19, 1971 when Imperial Investment Company assigned its interests. The McCombs Group alleges that the Butler No. — well, upon which the FPC's 1954 certificate was based, ceased production in May of 1970.[4]

The McCombs Group's argument is that the Commission's certificate of public convenience and necessity has no legal effect beyond the scope of the 1953 contract. The McCombs Group contends that the duration of a certificate is determined by the specifications in the contract. This contention is contrary to the long-standing legal interpretation of the United States Supreme Court concerning the parameters of FPC certificates.[5] The Court has clearly held that the Commission has the authority to issue certificates dedicating the sale of gas to interstate commerce for unlimited duration and that the gas may only be diverted to intrastate commerce with the approval of the Commission. Significantly, when no specification as to time limitation is stated within a certificate of public convenience and necessity, as is true in the instant proceeding, the Supreme Court has ruled that the dedication is for an unlimited period of time regardless of whatever time limitation is provided for in the underlying contract.

While the McCombs Group is correct in stating that the 1953 contract currently in effect describes an expired 1948 leasehold interest, its conclusion that all gas sold from the wells is no longer subject to the Commission's certification conflicts with the ruling in *Hunt* v. *F.P.C.*[6] that "[l]ike the ancient convenant running with the land, the duty to continue to deliver and sell flows with the gas from the moment of first delivery down to the exhaustion of the reserve, or until the Commission, on appropriate terms, permits cessation of service under Section 7(b)." *Sunray Mid-Continent Oil Company* v. *F.P.C.*[7] *similarly expresses the view that there is "a continuing obligation to perform 'service' imposed by the [Natural Gas] Act which outlasts the term of a seller's original contract sale."*

The certificated dedication to interstate commerce extends not only beyond the term of the 1953 contract, but also covers all depths where no depth limitation is specified in the contract. That was the holding regarding the Butler B tract in Opinion No. 740 [8] and the same holding applies to the Butler A tract as well. We reiterate the ruling in Opinion No. 740 that the certificate of public convenience and necessity covers the merchantable natural gas produced from any depth and from all wells drilled on the leaseholds subject to the 1953 Gas Purchase Contract and any subsequent amendment.

This Commission does, of course, possess the authority to implement a remedy in the event of an unauthorized abandonment.[9] The administrative law judge has properly instructed the McCombs Group to repay United in kind the gas which it sold in intrastate commerce, but which was legally dedicated to United in interstate commerce.[10] The judge also properly provided that, if it is later determined that the McCombs Group was under no legal obligation to make deliveries to United, payback in kind from United to the McCombs Group will be required. The McCombs Group and du Pont maintain that it is inequitable to order a retroactive payback because neither party knew that the certification extended beyond the term of the lease, and therefore, the intrastate sales were made in good faith. We pass no judgment upon the motives of the McCombs Group and we are imposing no punitive sanctions upon it. The state of the law is that United is entitled to the gas from the Butler A tract and has been from the date of issuance of the certificate of public convenience and necessity. A payback obligation is an equitable remedy that will be applied to United as well as to the McCombs Group in the event the state of the law is determined to be otherwise. The McCombs Group's argument that United should be required to post bond to assure repayment of the gas is rejected. It is unlikely that United will ever be required to pay back the gas but if it were required to do so, we have no doubt that repayment would be made.

II.

Nor do we find any merit to the contention of the McCombs Group in its August 24, 1979 motion to dismiss Phase I on the grounds the issue is moot due to enactment of the Natural Gas Policy Act which became effective December 1, 1978. The NGPA does not remove this Commission's jurisdiction over pre-NGPA abandonment cases. Section 601(a)(1)(A) of the NGPA removes natural gas from the Commission's jurisdiction if it was not committed or dedicated to interstate commerce on November 8, 1978. The *"Southland* exclusion" in Section 2(18)(B)(iii) of the NGPA provides that certain gas is not considered to be committed or dedicated if the gas was not being sold in interstate commerce on May 31, 1978, and neither person whose action resulted in the gas otherwise being "committed or dedicated," nor that person's affiliates or successors had the rights to the gas on May 31, 1978. The McCombs Group contends that its gas qualifies for the Section 2(18)(B)(iii) exclusion and is therfore removed from the Commission's Natural Gas Act jurisdiction by operation of Section 601(a)(1)(A). However, such removal of jurisdiction operates prospectively only from December 1, 1978. Prior to that date, Commission jurisdiction under Section 7(b) of the NGA is effective.[11]

[1] The McCombs Group consists of Billy J. McCombs, R. James Stillings d.b.a. Gastill Company, David A. Onsgard, Basin Petroleum Corporation, Bill Forney, Sr., and Bill Forney, Inc.

[2] The FPC's functions were transferred to this agency on October 1, 1977.

[3] See Exhibit No. 72 and Transcript at 36.

[4] Ex. 73

[5] *Sunray Mid-Continent Oil Company*, v. *F.P.C.*, 364 U.S. 137 (1960), *Sun Oil Company* v. *F.P.C.*, 364 U.S. 170 (1960), *Atlantic Refining Company* v. *Public Service Commission*, 360 U.S. 378 (1959), *California* v. *Southland Royalty Company*, 436 U.S. 519 (1978). *United Gas Pipe Line, Inc.* v. *McCombs*, 442 U.S. 529 (1979)

[6] 306 F. 2d 334, 342 (5th Cir., 1962), *rev'd on other grounds*, 376 U.S. 515 (1964).

[7] 364 U.S. 137, 153-154 (1960).

[8] *Supra*, 30. Opinion No. 740 states: In the absence of any mention of particular depths, we read that language to include gas produced from any depth and, further, gas produced beyond the term of the contract from wells which were drilled during the term of the contract.

[9] Section 18 of the Natural Gas Act which governs the period of time involved in this case, charges the Commission with the responsibility "to perform any and all acts, and prescribe, issue, make, amend, and rescind such orders, rules and regulations as it may find necessary or appropriate to carry out the provisions of this act."

[10] The price of the volumes to be repaid are set forth at footnote 18 herein.

[11] *California, et al.* v. *Southland Royalty Company, et al.* 436 U.S. 519, (1978); *Cox* v. *F.E.R.C.*,

Footnotes continued on next page

The Commission, therefore, possesses authority to order paybacks for violations of the NGA for the period up to December 1, 1978, regardless of whether it lost authority to do so thereafter under the NGPA, where it finds that the public interest requires that the interstate pipeline's customers be made whole. This can best be accomplished by placing those customers in substantially the same position that they would have been in had the McCombs Group delivered the gas to United during the period in question. In our view this is a judicious enforcement policy consistent with the congressional intent referred to in the floor statement made by the Chairman of the Committee of the House of Representatives that drafted the NGPA, Congressman John Dingell:

> With respect to past violations of the Natural Gas Act, it is appropriate that enforcement be accomplished through development of judicious enforcement policies by the Federal Energy Regulatory Commission in consideration of the objectives of the Natural Gas Policy Act.[12]

We have exercised this authority over other pre-NGPA abandonment cases subsequent to the effective date of the NGPA where we determined that the public interest required payback.[13]

A look at the legislative history of the NGPA also shows that the Act was never intended to obviate the Commission's authority in such instances. Congressman Dingell clarified this point in the House debates when he observed that ". . . the bill's provisions are prospective only in their application and do not directly address the question of civil penalties, criminal prosecutions, and obligations for payback for violations of the Natural Gas Act occuring prior to the date of enactment."[14]

As to the second contention of the McComb's Group in the August 24, 1979 filing, that the NGPA has removed our continuing jurisdiction over the Butler A tract since December 1, 1978, we find that the limited record before us is not conclusive. The McCombs Group claims that the Butler A field gas is no longer dedicated to interstate commerce under Section 2(18)(B)(iii) of the NGPA, the so-called *"Southland* exclusion" provision previously discussed. The interest in the Butler A lease which expired in 1970 belonged to Louis H. Haring, Jr. The McCombs Group is composed of the owners of the lease dated February 9, 1971. On May 31, 1978, Haring did not have the right to explore for, develop, produce, or sell natural gas on the Butler A tract, nor was such natural gas being sold in interstate commerce on that date, according to an affidavit filed by him. Therefore, the McCombs Group concludes that the Butler A lease does not fall within the Commission's jurisdiction.

United and the staff in separate filings, dated September 14, 1979, have raised several arguments which call into question the conclusions reached by the McCombs Group.

When the record in this proceeding was developed, the NGPA had not been enacted, and therefore the record was not developed with a view toward resolving the specific problem raised by the NGPA. Accordingly, solely for purposes of determining the nature of the interests of the parties and the applicability of section 2(18)(B)(iii) of the NGPA, we shall reopen the record.

III.

The presiding administrative law judge in his June 16, 1976 initial decision in Phase II of these proceedings ruled on three proposed settlements intended to resolve all disputes between United and producers concerning gas produced from or attributable to the Butler B lease. One of the proposed settlements was submitted by the National Exploration Company (NEC).[15] It provides for a payback of gas to United that was produced but not sold to United after November 1, 1974 whereas Opinion No. 740 provided for a payment of gas produced after August 20, 1975, the date the Opinion was issued. The judge noted that the settlement called for no refund of money based on the difference between emergency sale rates and then applicable large producer rates which would have amounted to less than $160,000, an amount so small in comparison to overall benefits provided by the settlement that the lack of monetary refund is inconsequential. The base price provided is 60 cents per Mcf through November 1, 1975, without Btu adjustment, plus annual one cent escalations. All production taxes paid by NEC are to be reimbursed and the rate shall escalate to whatever applicable general rate may be approved by the Commission for small producers. The administrative law judge expressly stated in the initial decision that no abandonment of any Butler B leasehold interest is allowable under the settlement nor will any be allowed without Commission approval of an abandonment application. This ruling comports with the understanding of NEC, which remains obligated to adhere to the Opinion No. 740 order to deliver 14.205 percent of the gas from the entire unit rather than exclusively from its own Butler B lease interest. We affirm the judge's approval of the NEC settlement with the limitation that the rate for payback attributable to gas diverted on and after July 27, 1976 may not exceed the applicable small producer ceiling rate enunciated in Opinion No. 742–A.

Another settlement was proposed by Haring, *et al*,[16] which provides that Haring will sell to United any future gas it produces from the Butler B field for the same price as that provided by the NEC settlement, 60 cents per Mcf through November 1, 1975, with one cent annual escalations. It also provides for similar tax reimbursement provisions and escalation to any higher applicable general rate approved by the Commission, including the higher rate for small producers. As with the NEC settlement no abandonment is permitted by adoption of the settlement as has been pointed out by the parties and by the administrative law judge. Haring collected royalties on the sale of Butler B gas by the McCombs Group to du Pont in intrastate commerce that should have been made to United in interstate commerce. Therefore, the judge conditioned approval of the settlement upon the excess royalties realized by the intrastate sales being utilized to obtain gas to reduce the McCombs Group's payback obligation to United. However, we approve of the Haring settlement without the judge's proposed condition, and hold the working interest owner is fully responsible for payback of all of the diverted gas irrespective of any excess royalties which may have been paid. The rate for the gas to be sold by Haring will not exceed the applicable ceiling rate.

The third and final proposed settlement dealt with in the initial decision was submitted by the McCombs Group.[17] The administrative law judge disapproved the proposal because it provided for repayment to United of only 8,500,000 Mcf of gas from specific reserves, including Butler B, whereas the Commission as determined United is entitled to repayment of 15,792,189 Mcf plus all gas diverted elsewhere from the Butler leases, beginning October 31, 1975. The judge also disapproved the settlement because it provided that United's purchase price should be 67.6 cents per Mcf plus adjustments, which he found to be higher than the highest applicable price at the date of diversion. We affirm the reasoning of the judge and the result reached. The arguments raised by the McCombs Group against the judge's ruling are substantially the same as the arguments raised in the Phase I initial decision previously discussed herein and do not merit repeating. The McCombs Group is ordered to make repayment at the highest applicable rate at the time of diversion.[18]

Producer	Docket No.	Order date
B. J. McCombs	CS72–578	4–24–72
R. James Stillings d.b.a. Gastill Company.	CS72–611	4–24–72
David A. Onsgard	CS72–609	4–24–72
Basin Petroleum Corp.	CS71–1119	11–4–71
Bill Forney	CS72–338	3–10–72
Bill Forney, Inc.	CS76–318	3–24–76

The remaining action of the administrative law judge was to defer any decision on the motion of du Pont to be dismissed from the proceedings on the grounds it is not subject to the Commission's jurisdiction. We agree that the extent of du Pont's liability as a result of its having received gas that was sold in violation of the Natural Gas Act may need to be determined after the McCombs Group has either made United whole or has failed to do so. We therefore affirm this ruling as well.

The Commission orders: (A) The initial decision of March 26, 1976 for the period up to December 1, 1978 is affirmed with the provision that the payback rates shall not exceed the highest applicable rate at the date of diversions as set forth in footnote 18 herein.

(B) The August 24, 1979 motion to dismiss Phase I is denied but the record will be reopened for 60 days from the date of issuance of this Order solely for purposes of permitting the parties to present a statement and supporting documentation to the presiding administrative law judge demonstrating the nature of the interest each of its members and each successor in interest had in the Butler A tract on May 31, 1978. The documentation, if unopposed, shall be admitted in evidence. The administrative law judge is authorized to conduct hearings to resolve material issues of fact regarding the documentation if requested by any party. The judge may then entertain a renewal of the McCombs Group's motion. The administrative law judge shall issue an initial decision regarding the question of the Southland exclusion.

(C) The initial decision of June 16, 1976 is affirmed, with the provision that the rates shall not exceed the lower of the approved settlement rate or the applicable small producer ceiling for NEC or Haring *et al*. The condition attached to approval of the Haring settlement is removed. The initial decision is approved with respect to the McCombs Group with the provision that the payback rate not exceed the highest applicable rate at the time of diversion as set forth in footnote 18 herein.

(D) Within 90 days from the issuance of this Opinion and Order all parties will file with the Secretary of the Commission a report reflecting its compliance with the rulings in the initial decisions affirmed herein.

(E) The Secretary shall cause prompt publication of this Opinion and Order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

Appearances

Platt W. Davis, III, J. Evans Attwell, Larry J. Gunn, W. DeVier Pierson, Knox Bemis, James M. Costan, Michelle B. Bolton, William B. Cassin, and *James A. Tramuto* for United Gas Pipe Line Company

Stanley L. Cunningham, Terry R. Barrett, Richard F. Generelly for Billy J. McCombs, *et al.*

John T. Miller, Jr. for National Exploration Company

Kenneth Oden and *Bernard A. Foster, III* for Louis H. Haring, Jr.

Jerome Ackerman, Nicholas W. Fels and *Eric A. Eisen* for E. I. du Pont de Nemours and Company

Glenn Lethom and *Donald J. Stauber* for the Staff of the Federal Energy Regulatory Commission

[FR Doc. 80–33998 Filed 10–30–80; 8:45 am]

BILLING CODE 6450–85–M

[Project No. 3410]

Woods Lake Association; Application for Short-Form License (minor)

October 24, 1980.

Take notice that Woods Lake Association (Applicant) filed on August 27, 1980, an application for license [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–(4)] for continued operation of a water power project to be known as Woods Lake Project No. 3410. The project is located on Lime Creek, tributary to Fryingpan Creek, in Eagle County, Colorado. Corresponsence with the Applicant should be directed to: Russell Scott, Jr., Agent, Woods Lake Association, Post Office Box 4257, Aspen, Colorado 81611.

Project Description—The run-of-the-creek project consists of: (1) a reinforced concrete overflow-type dam 25 feet long and 6 feet high; (2) a reservior having a surface area of 0.018 acres and negligible storage; (3) a gated and screened intake structure and a sluiceway; (4) an 8-inch diameter, 630-foot long cast-iron and steel pipeline; (5) a powerhouse containing a generating unit having a rated capacity of 30-kW operated under a 144-foot head; (6) a short 12-inch diameter pipe tailrace; (7) a 1.02-mile long transmission line, and (8) appurtenant facilities.

Purpose of Project—Project energy is used by the members of the Woods Lake Association. Applicant estimates the annual generation averages about 98,640 kWh.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Footnotes continued from last page

581 F. 2d 449 (1978) *affirming* Opinion No. 1, issued October 28, 1977 and Opinion No. 1–A, issued December 27, 1977.

[13] 124 Cong. Rec. H 13116 (1978).

[14] See *City of Perryton, Texas,* Docket No. C177–701, order issued August 8, 1979; *J. G. Stone,* Opinion No. 48, Docket No. C175–277, issued July 27, 1979; and *Atlantic Richfield Company,* Opinion No. 56, Docket No. C175–201, issued August 3, 1979 and *Texas Oil and Gas Corp.* Docket No. C179–41, orders issued November 9, 1979 and February 5, 1980. This view has also been expressed in a letter from the Chairman of this Commission to Senator Henry M. Jackson, Chairman of the Senate Committee on Energy and Natural Resources on September 8, 1978.

[15] 124 Cong. Rec. H13115 (1978).

[15] NEC was issued a small producer certificate by order issued February 29, 1972 in Docket No. CS71–484. It was absolved of any payback obligation to United in Opinion No. 740, Ordering Paragraph E, at 36 because it was credited for making emergency sales even though not made pursuant to the certificate herein concerned.

[16] Louis H. Haring, Jr. was issued a small producer certificate April 24, 1972 in Docket No. CS72.778.

[17] Small producer certificates have been issued to the parties comprising the McCombs Group as shown below:

[18] The 1953 Gas Purchase Contract as amended February 7, 1961 by H. A. Pagenkopf *et al.* and United extends the term to February 7, 1981. The contract price is not being upheld with respect to the NEC and Haring paybacks because they have agreed with United to the new 60 cents per Mcf rate. This renegotiation of price between the parties is provided for in the contract. The record indicates (Tr. 90,562) that United would have renegotiated the contract to include an FPC clause permitting the prices to escalate to the highest applicable FPC large/small producer ceiling prices if requested by the McCombs Group. Thus, we adopt these rates as an appropriate equitable remedy for the illegal diversion. The rates applicable to repayment volumes diverted during each period are as follows:

(A) The applicable base area rates pursuant to Opinion No. 595: 19.0 cents per Mcf at 14.65 psia until October 1, 1973; 20.0 cents per Mcf at 14.65 psia until August 28, 1975.

(B) 130% of above 20.0 cents per Mcf until January 1, 1978 under Opinion No. 742.

(C) 130% of the applicable flowing gas rate prescribed by Opinion No. 749: 23.5 cents per Mcf at 14.73 psia until July 1, 1978; 29.5 cents per Mcf at 14.73 psia until July 27, 1975.

(D) The applicable small producer ceiling rate prescribed by Opinion No. 742–A: 35.0 cents per Mcf at 14.73 psia until December 1, 1978.

(E) $.393 per MMBtu commencing December 1978 with monthly inflation adjustments thereafter pursuant to the NGPA.

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Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the Application may be obtained directly from the Applicant. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before January 5, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 6, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c), *as amended*, 44 FR 61328 (October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d), *as amended*, 44 FR 61328 (October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before January 5, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20428. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33999 Filed 10-30-80; 8:45 am]

BILLING CODE 6540-85-M

[Project No. 3428]

Worumbo Hydro, Inc.; Application for Preliminary Permit

October 24, 1980.

Take notice that Worumbo Hydro, Incorporated (Applicant) filed on September 5, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3428 to be known as the Worumbo Project located on the Androscoggin River in the Town of Lisbon Falls, Androscoggin County, Maine. Correspondence with the Applicant should be directed to: Mark Issacson, Worumbo Hydro, Inc., P.O. Box 465, Lisbon, Maine 04250.

Project Description—The project now consists of an existing dam, canal and powerhouse in the Worumbo Mill building containing three 300 kW turbine-generators. Applicant proposes to study the feasibility of the installation of four 3.5 MW turbine-generators in a new powerhouse at the west end of the existing dam. A new tailrace channel would also be constructed. The project would be capable of generating an additional 75,000,000 kWh annually saving the equivalent of 123,000 barrels of oil or 35,000 tons of coal.

Purpose of Project—Markets for the electric energy produced would be determined during the term of the preliminary permit.

Proposed Scope and Cost of Studies Under Permit—The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $395,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before January 5, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 9, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c), (*as amended*, 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d), (*as amended*, 44 FR 61328, October 25, 1979).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests of other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervent must be filed on or before January 5, 1981. The Commission's address is: 825 North Capitol Street, NE, Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33687 Filed 10-30-80; 8:45 am]

BILLING CODE 6450-85-M

[Volume 306]

Notice of Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: October 27, 1980.

BILLING CODE 6450-85-M

JD NO	JA DKT	API NO	SEC TWN RGE	FIELD NAME	PROD	PURCHASER
OKLAHOMA CORPORATION COMMISSION						
*AGGIE OIL CO				NOWATA - CLAGETT		10.0 AGG SYSTEMS LTD
*0101685	05665	3510522633	103	RECEIVED: 10/14/80	JA	75.0 AGG SYSTEMS LTD
*0101686	05664	3510522632	103	EDWARDS #1		
*AMAREX INC				KEATON #1		
0101683	05666	3501700000	102	RECEIVED: 10/14/80	JA	290.0 MICHIGAN WISCONSIN P
*AMOCO PRODUCTION CO				MARIE SMITH #1		
0101677	05228	3507321990	102	RECEIVED: 10/14/80	JA	0.0 CONTINENTAL OIL CO
*AMERICAN QUASAR PETROLEUM CO				LEAH M DUNN #1		
0101715	05697	3509520207	107	FEDERAL 1-11		1825.0 NATURAL GAS PIPELINE
*AMOCO PRODUCTION CO				RECEIVED: 10/14/80	JA	
0101714	05704	3513900000	108	FASTY GAS UNIT A #1		
*ANADON CORPORATION				RECEIVED: 10/14/80	JA	19.4 PHILLIPS PETROLEUM C
0101682	05662	3505120095	103	ANDERSON A #1		
*ANADARKO PRODUCTION COMPANY				RECEIVED: 10/14/80	JA	90.0 PHILLIPS PETROLEUM C
0101668	04675	3513921245	102	BIGGS A NO 1		
*ANDOVER OIL COMPANY				RECEIVED: 10/14/80	JA	1029.0 PANHANDLE EASTERN PI
0101644	05703	3501721373	103	GLOBE LIFE B #34-3		
0101643	05708	3501721345	103	GLOBE LIFE D #34-2		185.0 DELMI GAS PIPELINE C
0101645	05701	3501721463	103	GLOBE LIFE F #34-4		195.0 DELMI GAS PIPELINE C
*ARCO OIL AND GAS COMPANY				RECEIVED: 10/14/80	JA	195.0 DELMI GAS PIPELINE C
0101700	05556	3501921970	103	CANFIELD GAS UNIT #5		
0101696	03243	3505920858	103	DALE HEMLING #1		8.0 ARCO OIL & GAS CU
0101698	04642	3504721866	102	FERN WALKER #1		19.0 CITIES SERVICE GAS C
0101654	04661	3504721880	102	HENRY MAY UNIT #1		92.0
0101690	03709	3504732101	103	U S GOVERNMENT #27-2		73.0
0101698	05620	3512120625	103	RECEIVED: 10/14/80	JA	73.0 MICHIGAN WISCONSIN P
*B R CARTER				HUDSON #2		365.0 ARKANSAS LOUISIANA G
0101687	05663	3511321006	102	RECEIVED: 10/14/80	JA	
*B R POLK INC				KENDRICK #1		40.0 DIAMOND B GAS SYSTEM
0101610	05729	3508321104	103	NAVRATIL-STANFORD #1		
0101595	05735	3508330000	103	SADE #1		
0101613	05726	3508321103	103	SADE #2		109.0 EASON OIL CU
0101612	05727	3508321235	103	VAVERKA #3A		54.0 EASON OIL CU
0101611	05728	3508330000	103	RECEIVED: 10/14/80	JA	146.0 EASON OIL CU
*BLAIK OIL COMPANY				ESTILL UNIT #2		292.0 EASON OIL CU
0101704	05682	3504722084	103	MARY BETH #2		18.0 EASON OIL CU
0101707	05674	3504722130	103	RECEIVED: 10/14/80	JA	
*BONANZA PETROLEUM INC				SOVEREIGN #1 LAVERTY		27.0 EXXON CO USA
0101602	04675	3500721624	103	RECEIVED: 10/14/80	JA	50.0 PHILLIPS PETROLEUM C
*BONRAY ENERGY CORP				FILMORE LISTEN #1		
0101721	05660	3508320744	103			180.0 MICHIGAN WISCONSIN P
						150.0 AMINOIL USA INC

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8101709	05671	3504721661	103		JOE FRANKS #1	SW PERRY	150,0	AMINOIL USA INC
8101720	05669	3508320627	103		KIGHTLINGER #1	MULHALL	150,0	AMINOIL USA INC
8101710	05670	3508320755	103		KINCAID A #1	MULHALL	150,0	AMINOIL USA INC
8101722	05667	3508320733	103		KINCAID B #1	MULHALL	150,0	AMINOIL USA INC
•CAYMAN EXPLORATION CORP					RECEIVED: 10/14/80 JA: OK			
8101601	05672	3507322314	103		RIGGS #1		109,5	CONOCO INC
•CHAMPLIN EXPLORATION INC					RECEIVED: 10/14/80 JA: OK			
8101692	05386	3509321714	103		PHILLIPS NO 2		91,3	AMINOIL USA INC
•CHAMPLIN PETROLEUM COMPANY					RECEIVED: 10/14/80 JA: OK			
8101619	04570	3509300000	108		JANTEEN-ROWE #1	E CHANEY DELL	5,0	CHAMPLIN PETROLEUM C
•CHOCTAW GAS CO					RECEIVED: 10/14/80 JA: OK			
8101724	05515	3512120119	108		FEATHERSTON #1	FEATHERSTON #1	13,6	BE TRANSMISSION & CO
•CITIES SERVICE COMPANY					RECEIVED: 10/14/80 JA: OK			
8101708	05673	3506120320	102		TREASURE COVE A #2 (BASAL ATOKA)	NORTH RUSSELLVILLE	54,8	ARKANSAS LOUISIANA G
•CLABBEN OIL AND GAS COMPANY					RECEIVED: 10/14/80 JA: OK			
8101630	05497	3500320718	103		ROSE MEANS #1	S E LAMBERT	250,0	AMINOIL USA
•CONOCO INC					RECEIVED: 10/14/80 JA: OK			
8101648	05698	3507300000	108		HOBBS 30 #2	DOVER-HENNESSEY	14,9	RODMAN PETROLEUM COR
8101647	05659	3507300000	108		HOBBS 30 #6	DOVER-HENNESSEY	9,8	RODMAN PETROLEUM COR
8101646	05661	3505120416	108		LOLA LAWRENCE A #2	E TUTTLE	3,0	MOBIL OIL CO
8101671	05655	3500300000	108		N E CHEROKEE UNIT #13	N E CHEROKEE	0,1	OKLAHOMA NATURAL GAS
8101670	05656	3500300000	108		N E CHEROKEE UNIT #45	N E CHEROKEE	3,3	OKLAHOMA NATURAL GAS
8101672	05654	3504500000	108		PEARL CROOKS #1	MAY	17,0	MICHIGAN-WISCONSIN P
8101649	05650	3501900000	108		VELMA CAMP DEESE UNIT #47	S E VELMA	0,1	GETTY OIL CO
•8101673	05653	3501900000	108		VELMA CAMP DEESE UNIT #50	S E VELMA	0,1	GETTY OIL CO
•COURT PAPPE JR					RECEIVED: 10/14/80 JA: OK			
8101634	05619	3507322331	103		PAM #1	SOONER TREND	182,5	CITIES SERVICE GAS C
•DALCO PETROLEUM INC					RECEIVED: 10/14/80 JA: OK			
8101706	04853	3507322256	103		MASON #1	SOONER TREND	72,0	CITIES SERVICE GAS C
8101618	04854	3507322197	103		MCKEEVER NO 1	SOONER TREND	72,0	CITIES SERVICE GAS C
•DAVIS OIL COMPANY					RECEIVED: 10/14/80 JA: OK			
8101653	05510	3503900000	103		COMBS NO 1	SOUTH THOMAS	600,0	TRANSOK PIPELINE CO
8101689	05654	3503900000	103		WINGARD NO 4	SOUTH THOMAS	200,0	PUBLIC SERVICE CO OF
•DICK BOGERT INC					RECEIVED: 10/14/80 JA: OK			
•8101652	05574	3504722092	103		BOHN 1-32	SOONER TREND	275,0	UNION TEXAS PETROLEU
8101705	05500	3507322162	103		DOROTHY 1-14	SOONER TREND	60,0	PHILLIPS PETROLEUM C
8101637	05511	3507322433	103		EDITH 1-26	SOONER TREND	215,0	EASON OIL CO
•F C D LTD					RECEIVED: 10/14/80 JA: OK			
8101621	02952	3504721575	103		BLASER 1-18	EAST ENID	107,0	GRACE PETROLEUM CORP
•GULF OIL CORPORATION					RECEIVED: 10/14/80 JA: OK			
8101664	05078	3505930056	108		ROETKER #1	LOVEDALE NW	15,0	MICHIGAN WISCONSIN P
•HELMERICH & PAYNE INC					RECEIVED: 10/14/80 JA: OK			
•8101716	04298	3501520842	102		JENNINGS NU 1-20 01520842		183,0	MICHIGAN WISCONSIN P
•8101718	04248	3501520824	102		KECK A NO 1-A		1460,0	MICHIGAN WISCONSIN P
•8101717	04247	3501520834	102		LARSON NO 1-32		2920,0	MICHIGAN WISCONSIN P
•HENRY H GUNGOLL					RECEIVED: 10/14/80 JA: OK			
8101676	05231	3504721911	103		LUCKERT #2-20	NW ENID	0,0	
•J WALTER DUNCAN JR					RECEIVED: 10/14/80 JA: OK			
8101667	04777	3505100000	102		PARR #1	S E CHICKASHA	1095,0	
•JET OIL COMPANY					RECEIVED: 10/14/80 JA: OK			
8101694	05259	3508320967	103		ANNA PRIESS #3	S E RUSSELL	3,0	SERVICE DRILLING CO
•L G WILLIAMS OIL COMPANY INC					RECEIVED: 10/14/80 JA: OK			

JD NO	JA DKT	API NO	SEC	D	WELL NAME	FIELD NAME	PROD	PURCHASER
8101684	05644	3501721151	103		CONDRY 1-1	WATONGA TREND	0,0	MICHIGAN WISCONSIN P
8101640	04919	3501721186	103		LAMB #19-1	YUKON	112,8	PHILLIPS PETROLEUM C
•LADD PETROLEUM CORPORATION					RECEIVED: 10/14/80 JA: OK			
8101655	05472	3509321588	103		WATSON NO 2	RINGWOOD	548,0	OKLAHOMA NATURAL GAS
•LION PETROLEUM CO					RECEIVED: 10/14/80 JA: OK			
8101659	05792	3507300000	108		MASLEY #1	WEST EDMOND	17,0	SWAB CORP
•MOBIL OIL CORP					RECEIVED: 10/14/80 JA: OK			
8101607	05039	3503900000	108		TEO WEBB UNIT • WELL #1	NORTH CUSTER CITY	9,5	NATURAL GAS PL CO OF
•NORTHERN NATURAL GAS CO					RECEIVED: 10/14/80 JA: OK			
8101598	05711	3500721369	103		BANKER NO 1-34	MOCANE	20,0	NORTHERN NATURAL GAS
8101599	05710	3500721521	103		FLOCK NO 1-19	SOUTH LOGAN	10,0	NORTHERN NATURAL GAS
8101597	05712	3500721349	103		HENRICKS NO 1-18	LOGAN SE	19,0	NORTHERN NATURAL GAS
8101596	05714	3500721456	103		JUDY NO 1-35	MOCANE NE	35,0	NORTHERN NATURAL GAS
8101614	05710	3500721469	103		SENN-MULL NO 1-30	LOGAN NW	10,0	NORTHERN NATURAL GAS
8101642	05719	3505920761	103		STATE #1-19	LOVEDALE	990,0	NORTHERN NATURAL GAS
8101615	05716	3505920762	103		STATE NO 1-28	LOVEDALE	150,0	NORTHERN NATURAL GAS
8101616	05715	3505920736	103		STATE NO 1-29	LOVEDALE	170,0	NORTHERN NATURAL GAS
•OFT EXPLORATION INC					RECEIVED: 10/14/80 JA: OK			
8101605	05842	3515320884	102		NONA MINER 1-29		360,0	NATURAL GAS PIPELINE
•PACIFIC OIL & GAS CO					RECEIVED: 10/14/80 JA: OK			
8101641	04797	3515320563	102		#3 COLLIER	NORTH BOILING SPRINGS	456,3	NORTHERN NATURAL GAS
•PETROLEUM INC					RECEIVED: 10/14/80 JA: OK			
8101691	05426	3504321024	103		TAYLOR UNIT B #1	SE CESTOS	200,0	DELHI GAS PIPELINE C
•PHILLIPS PETROLEUM COMPANY					RECEIVED: 10/14/80 JA: OK			
8101678	05145	3513900000	108		ALFA NU 1	GUYMON HUGOTON	0,0	MICHIGAN WISCONSIN P
8101711	05746	3513700000	108		CULBERSON #9	DOYLE	0,0	AMINOIL USA INC
8101591	05740	3501721322	103		DUDEK A NU 1	YUKON	0,0	PANHANDLE EASTERN PI
8101593	05738	3505120875	103		MCCONNELL A NO 1	UNION CITY	0,0	TRANSOK PIPELINE CO
8101712	05745	3513900000	108		MELLISSA NO 1	GUYMON HUGOTON	20,0	PANHANDLE EASTERN PI
8101594	05737	3509321646	103		REML A		0,0	PANHANDLE EASTERN PI
8101713	05743	3501720597	108		STOVER A #1	N PIEDMONT	0,0	OKLAHOMA GAS & ELECT
8101592	05739	3501721054	103		TREECE A #1	YUKON	0,0	PANHANDLE EASTERN PI
8101590	05741	3501721284	103		ZUM MALLEN C #1		0,0	PANHANDLE EASTERN PI
•PHOENIX RESOURCES COMPANY					RECEIVED: 10/14/80 JA: OK			
8101622	02522	3504500000	102		PREWETT 29-1	FARGO	150,0	NORTHERN NATURAL GAS
•READING & BATES PETROLEUM CO					RECEIVED: 10/14/80 JA: OK			
8101630	05749	3501900000	108		FRASER LEASE • WELL #1	CADDO	21,0	UNION OIL CO OF CALI
8101719	05748	3501900000	108		FRASER LEASE • WELL #3	CADDO	20,1	UNION OIL CO OF CALI
8101604	05752	3501900000	108	D	NOBLE B LEASE • WELL #1	CADDO	6,3	UNION OIL OF CALIFOR
8101628	05751	3501900000	108	D	NOBLE B LEASE • WELL #3	CADDO	13,0	UNION OIL CO CALIFOR
8101629	05750	3501900000	108		NOBLE B LEASE • WELL #6	CADDO	3,7	UNION OIL CO CALIFOR
•RED EAGLE OIL CO					RECEIVED: 10/14/80 JA: OK			
8101608	05731	3509321662	103		MCKEE NO 1	CHEYENNE VALLEY	9,0	DELHI GAS PIPELINE C
8101609	05730	3509321636	103		SUNDERMAN NO 1	CHEYENNE VALLEY	75,0	DELHI GAS PIPELINE C
•RICKS EXPLORATION CO					RECEIVED: 10/14/80 JA: OK			
8101726	05328	3505120821	102		DUNN #1	SE CHICKASHA	700,0	ARKANSAS LOUISIANA G
8101699	05590	3509321710	103		NEUFELD 10A (PARKER 10A)	DANE	50,0	PHILLIPS PETROLEUM C
8101688	05588	3509321710	103		PARKER 10B	DANE	20,0	PHILLIPS PETROLEUM C
•RIDDLE OIL CO					RECEIVED: 10/14/80 JA: OK			
8101639	05363	3505500000	108		REEVES #1	SE JESTER	3,0	HARLOW CORP
•SAMEDAN OIL CORPORATION					RECEIVED: 10/14/80 JA: OK			
8101626	05612	3505120773	102		OSBORN #1		385,0	TRANSOK PIPELINE CO

JD NO	JA DKT	API NO	SEC D	WELL NAME	FIELD NAME	PROD	PURCHASER
8101624	05623	3501721252	102	SMRCKA #1		75,0	DELMI GAS PIPELINE C
8101675	05624	3506520270	102	STATE NO 1-4		200,0	AMINUIL USA INC
				RECEIVED: 10/14/80 JA: OK			
*BAMBON RESOURCES COMPANY							
8101603	04675	3506120329	102	FURROW NO 1	RED OAK	1500,0	ARKANSAS LOUISIANA G
8101660	05777	3506120185	106	QUINTON ET AL NO 1	KINTA	16,5	ARKANSAS LOUISIANA G
8101661	05773	3512120380	106	TREKELL NO 1	KINTA	17,4	ARKANSAS LOUISIANA G
				RECEIVED: 10/14/80 JA: OK			
*BHAR-ALAN OIL CO							
8101703	05625	3507322265	103	KELLY #1	SOUNER TREND	35,0	PHILLIPS PETROLEUM C
				RECEIVED: 10/14/80 JA: OK			
*BHAVER PAUL M							
8101657	04053	3505920761	102	NORTHERN NATURAL STATE NO 1-19	LOVEDALE	250,0	NORTHERN NATURAL GAS
				RECEIVED: 10/14/80 JA: OK			
*BUN OIL COMPANY (DELAWARE)							
8101631	05763	3509300000	108	A I RATZLAFF NO 1	RINGWOOD	11,0	UNION TEXAS PETROLEU
8101669	05760	3500700000	108	ALTMILLER WELL #1	COMO S E	7,2	NORTHERN NATURAL GAS
8101627	05758	3505300000	108	SCHMITZ NO 2	WAKITA TREND	4,8	CITIES SERVICE GAS C
8101632	05762	3505920648	108	STATE OF OKLAHOMA D NO 2	MOCANE-LAVERNE	18,0	COLORADO INTERSTATE
				RECEIVED: 10/14/80 JA: OK			
*TENNECO OIL COMPANY							
8101695	05248	3500721671	103	CARLISLE 14-16 (MORROW)	MOCANE-LAVERNE	154,8	COLORADO INTERSTATE
				RECEIVED: 10/14/80 JA: OK			
*TESORO PETROLEUM CORP							
*8101650	05649	3509321734	103	STATE OF OKLAHOMA NO 1-36	N E SEILING	164,0	DELMI GAS PIPELINE C
				RECEIVED: 10/14/80 JA: OK			
*THE ONK COMPANY							
8101656	04840	3500920282	102	1-20 BAKER	SOUTHWEST CARPENTER FIEL	1,8	ARKANSAS LOUISIANA G
*TRANSIERRA EXPLORATION CORP				RECEIVED: 10/14/80 JA: OK			
8101697	05629	3510320924	103	CINNAMON NO 1	TRANSIERRA-CINNAMON FIEL	36,0	AMINOIL USA INC
8101702	05628	3508120981	103	PASCHALL PROPERTIES INC NO 2	SOUTHWEST PRAIRIE GEM FI	34,0	SUN OIL CO
8101690	05446	3504721877	103	RUFUS JAMES NO 3	GARBER	7,0	ATLANTIC RICHFIELD C
*TRIGG DRILLING COMPANY INC				RECEIVED: 10/14/80 JA: OK		350,0	EL PASO NATURAL GAS
8101658	05828	3512920376	102	TAYLOR #1	WATONGA	600,0	DELMI GAS PIPELINE C
8101665	05002	3501120997	102	WOOLMAN #1			
*UNIVERSAL RESOURCES CORPORATION				RECEIVED: 10/14/80 JA: OK			
8101636	05544	3501121022	103	COMBS 1-32	CEDAR SPRINGS	150,0	DELMI GAS PIPELINE C
8101680	05130	3507321473	108	EVANS 2-18	ALTONA	8,0	TRANSOK PIPE LINE CO
8101662	05135	3507321503	108	HUFFMAN 1-10	SOUNER TREND	5,0	PHILLIPS PETROLEUM C
8101663	05134	3512900000	108	KIRBIE 1-35	PEEK SOUTH	5,0	PHILLIPS PETROLEUM C
8101681	05131	3507320853	108	KOOKEN 1-16	ALTONA	19,0	PARTNERSHIP-PROPERTI
8101679	05132	3507321499	108	MCCANDLESS 1-33	ALTONA	4,0	TRANSOK PIPE LINE CO
8101617	05126	3501720790	108	STINE 1-1	CONCHO NE	12,0	OKLAHOMA GAS & ELECT
				RECEIVED: 10/14/80 JA: OK			
*VIERSEN & COCHRAN							
8101693	05416	3504722051	103	LITSCHKE-GREER #1	SOUNER TREND	120,0	UNION TEXAS PETROLEU
				RECEIVED: 10/14/80 JA: OK			
*VULCAN ENERGY CORP							
8101620	03904	3507322223	103	JARRELL #1	SOUNER TREND	40,0	CITIES SERVICE GAS C
8101723	05637	3504721433	103	PHARES #1	NW ELKHORN	150,0	AMINOIL USA INC
8101674	05636	3504721335	103	REIM #1	SOUNER TREND	200,0	AMINUIL USA INC
				RECEIVED: 10/14/80 JA: OK			
*WALKER & WITHROW INC							
8101651	05688	3501721439	103	MAIKA 9-1	NORTH YUKON	125,0	DELMI GAS PIPELINE C
8101635	05592	3501721384	103	TREECE 4-1	NORTH YUKON	125,0	PHILLIPS PETROLEUM C
				RECEIVED: 10/14/80 JA: OK			
*WARREN DRILLING CO INC							
*8101701	05537	3500300000	103	EDNA M DUNN #1	RINGWOOD	85,0	UNION TEXAS PETROLEU
				RECEIVED: 10/14/80 JA: OK			
*WILLIFORD ENERGY CO							
8101631	05647	3501921723	103	APPLE NO 5	HEWITT	24,0	AMINUIL USA INC
8101623	05641	3501921813	103	APPLE NO 6	HEWITT	24,0	AMINUIL USA INC
				RECEIVED: 10/14/80 JA: OK			
*WM J OCONNOR							
8101606	08720	3500320678	103	MCCRAY #1	OAKDALE	180,0	

JD NO	JA DKT	API NO	SEC D	WELL NAME	FIELD NAME	PROD	PURCHASER
8101629	05616	3515120700	103	SARGENT #1	WEST ALINE	100,0	
8101725	05514	3515121008	103	WARREN #1	WEST CARMEN	100,0	
**********							
WYOMING OIL & GAS CONSERVATION COMMISSION							
**********							
*PHILLIPS PETROLEUM COMPANY				RECEIVED: 10/14/80 JA: WY			
8101727	NG 103-79	4902906039	108	DANKER-A NO 1	BIG POLE CAT	18,0	FRANNIE - BEAVER UTI
8101728	NG-104-79	4902906109	108	STATE POLECAT - A NO 6	BIG POLE CAT	22,0	MONTANA - DAKOTA UTI

OTHER PURCHASERS VOLUME NO 1306

8101650 MICHIGAN WISCONSIN PIPELINE CO
8101652 PANHANDLE EASTERN PIPELINE CO
8101673 AMINUIL USA INC
8101685 CITIES SERVICE GAS CO
8101686 CITIES SERVICE GAS CO
8101701 PANHANDLE EASTERN PIPELINE CO
8101716 PRODUCERS GAS CO
8101717 PRODUCERS GAS CO
8101718 PRODUCERS GAS CO

BILLING CODE 6450-85-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" after the section code. Estimated annual production (PROD) is in million cubic feet (MMcf). An (*) preceeding the control number indicates that other purchasers are listed at the end of the notice.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20428.

Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before November 17, 1980.

Please reference the FERC Control Number (JD No) in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33984 Filed 10-30-80; 8:45 am]

BILLING CODE 6450-85-M

Office of Resource Applications

Davis Pumped Storage Project in West Virginia; Draft Report of Study of Alternatives

AGENCY: Department of Energy DOE.

ACTION: Notice of availability of draft report and request for public comment.

SUMMARY: On or about November 10, 1980, the Department of Energy (DOE) will publish a draft study report on alternatives to the Davis (West Virginia) Pumped Storage Project proposed by Allegheny Power System, Inc. The study examined the energy, economic, and environmental merits of various energy supply and conservation alternatives and compared them with the Davis Project. DOE is requesting comments on the draft report from all interested parties.

DATE: The deadline for written comments is December 10, 1980, or 30 calendar days from the publication date of the draft report, whichever is later.

ADDRESS: Requests for the draft study report and comments on the draft report should be mailed to Virginia Ballengee, U.S. Department of Energy, RA-72, Mail Stop 3344 Federal Building, Washington, D.C. 20461. Hand delivered requests or comments should be delivered directly to Mrs. Ballengee at Room 1113, 1200 Pennsylvania Avenue, N.W., Washington, D.C. Persons already receiving notices of Davis Study Task Force meetings or who have previously requested the draft report will receive the report without making a new request.

Comments submitted in response to this notice may be inspected at the Freedom of Information Reading Room, U.S. Department of Energy, Room 1E190, 100 Independence Avenue, Washington, D.C. 20585, between 8:00 a.m. and 4:00 p.m. on business days after the expiration of the thirty (30) day comment period. Comments on the draft report will be published verbatim in the final report along with DOE's response to the comments. Therefore, only written comments will be accepted.

FOR FURTHER INFORMATION CONTACT:: Virginia Ballengee, Office of Resource Applications, U.S. Department of Energy, (202) 633-8963.

Issued in Washington, D.C. on October 27, 1980.

Ruth M. Davis,

Assistant Secretary for Resource Applications, Department of Energy.

[FR Doc. 80-33883 Filed 10-30-80; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180472A; FRL 1613-6]

California Department of Food and Agriculture; Issuance of Specific Exemption for Diazinon

Correction

In FR Doc. 80-29309, at page 63132, in the issue of Tuesday, September 23, 1980, on page 63133, make the following corrections:

(1) In the first column, the first paragraph, correct "diazimnon" to read diazinon".

(2) In the first column, under the "For Further Information Contact:", delete the line which reads "Environmental Protection Programs".

(3) In the first column, under the "Supplementary Information", the first paragraph, the seventh line up, the word "the" preceeding applicant should be capitalized.

(4) In the second column under item number "2.", the first word "Diazinion" is corrected to read "Diazinon" and in the third line "minimim" is corrected to read "minimum".

BILLING CODE 1505-01-M

[PH-ERL 1647-8; PF 155A]

Chevron Chemical Co.; Filing of Pesticide and Food Additive Petitions; Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces amendments to the pesticide and food additive petitions on the herbicide diquat submitted by Chevron Chemical Co. The amendments propose to increase tolerances on certain commodities.

FOR FURTHER INFORMATION CONTACT: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-351, 401 M St., SW., Washington, D.C. 20460 (202-755-1397).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the Federal Register of November 9, 1979 (44 FR 65130) that pesticide petition (PP) 9F2265 and food additive petition (FAP) 9H5239 had been filed by Chevron Chemical Co. These petitions proposed that 40 CFR 180.226 (9F2265) and 80P-1048 21 CFR 193.160 (9H5239) be amended to establish tolerances and/or regulation permitting residues of the herbicide diquat [6,7-dihydrodipyrido (1,2-a:2',1'-c) pyrazinediium] dervied from the application of dibromide salt and calculated as cation in or on certain raw agricultural and/or food commodities.

Chevron Chemical Co., 940 Hensley St., Richmond, CA 94804, has submitted amendments to the above petitions increasing tolerances as follows:

Petition number	Commodity	Previously proposed tolerance (part per million)	Proposed amended tolerance (part per million)
PP 9F2265	Eggs	0.01	0.02
	Milk	0.01	0.02
	Meat, fat, and meat by-products of poultry.	0.01	0.02
FAP 9H5239.	Processed potatoes (including potato chips).	0.2	0.5

(Secs. 408(d)(1); 68 Stat. 512, (7 U.S.C. 135); 409(b)(5); 72 Stat. 1786, (21 U.S.C. 3481))

Dated: October 22, 1980.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-33930 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-32-M

[W-1-FRL 1649-4]

Connecticut Pretreatment Program Submission

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposal to incorporate a pretreatment program into the Connecticut national pollutant discharge elimination system (NPDES) permit program.

SUMMARY: The Connecticut Department of Environmental Protection has submitted a request for approval of its State Pretreatment Program.

DATES: Comments must be received on or before December 1, 1980.

ADDRESSES: Copies of the Connecticut submittal are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, Permits Branch, Room 2109, JFK Federal Building, Boston, Massachusetts 02203; and Department of Environmental Protection, Water Compliance Unit, 122 Washington Street, Hartford, Connecticut 06115.

FOR FURTHER INFORMATION CONTACT: Stephen J. Silva, Permits Branch, Environmental Protection Agency, Region I, Room 2109, JFK Federal Building, Boston, Massachusetts 02203, (617) 223-5061.

SUPPLEMENTARY INFORMATION: The Pretreatment Program required by the Clean Water Act of 1977, governs the control of industrial wastes introduced into Publicly Owned Treatment Works (POTWs). The Connecticut Department of Environmental Protection has submitted a request for approval of its State Pretreatment Program in accordance with the requirements and procedures of the General Pretreatment Regulations (40 CFR Part 403). This request for approval consists of a description of how the State proposes to operate the program. A statement from the Connecticut Attorney General that the State has adequate legal authority to conduct the program, and a Memorandum of Agreement between the State and EPA Regional Office.

EPA is providing an opportunity for public comment on the State's request. Public comments should be sent to EPA at the address indicated above prior to the close of the 30 day comment period. All comments will be considered in the decision on whether or not to approve the program. If there is sufficient public interest, a public hearing will be held, and the time and place of the hearing will be public noticed. All persons submitting comments will be notified of the approval or disapproval of the program by the Administrator.

Dated: October 23, 1980.

Lawrence M. Goldman,

Acting Director, Enforcement Division, Region I.

[FR Doc. 80-33807 Filed 10-30-80; 8:45 am]

BILLING CODE 6560-38-M

[A-5-FRL 1649-6]

Koppers Co., Inc., Wickliffe, Ohio; Installation of an Asbestos Handling System

In the matter of the applicability of Title 1, Part A, Section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412 *et seq.*, and the Federal regulations promulgated thereunder at 40 CFR Part 61, Subpart A (38 F.R. 8826, April 6, 1973) for National Emission Standards for Hazardous Air Pollutants (NESHAPS), to install an asbestos handling system at Koppers Company, Incorporated in Wickliffe, Ohio.

On June 27, 1980 and August 15, 1980, Koppers Company, Incorporated submitted applications to the U.S. Environmental Protection Agency (U.S. EPA), Region V office, for a determination of applicability of the NESHAPS regulations. Under 40 CFR Section 61.06, it has been determined that the asbestos handling system is subject to the NESHAPS modification regulations.

This application was also submitted for our approval of the modification. Under 40 CFR Section 61.08 the installation of the asbestos handling system is approved.

On September 19, 1980, Koppers Company, Incorporated was notified that they are subject to NESHAPS modification regulations and that their applications were complete and approval to install was granted.

This determination does not relieve Koppers Company, Incorporated of the responsibility to comply with the control strategy of all Federal, State and local regulations which are part of the applicable State Implementation Plan as well as all other Federal, State and local requirements. This determination may now be considered final agency action which is locally applicable under Section 307(b)(i) of the Act and therefore a petition for review may be filed in the U.S. Court of Appeals for the Seventh Circuit by any appropriate party. In accordance with 307(b)(i), petitions for review must be filed 60 days from the date of the this notice. For further information contact Patricia Krause, Air Compliance Section, Enforcement Division, Region V, U.S. EPA, 230 South Dearborn Street, Chicago, Illinois 60604 (312) 353-2090.

Dated: October 22, 1980.

John McGuire,

Regionol Administrator.

[FR Doc. 80-33909 Filed 10-28-80; 8:45 am]

BILLING CODE 6560-38-M

[A-1-FRL 1649-5]

Vermont Pretreatment Program Submission

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposal to incorporate a pretreatment program into the Vermont national pollutant discharge elimination system (NPDES) permit program.

SUMMARY: The Vermont Agency of Environmental Conservation has submitted a request for approval of its State Pretreatment Program.

ADDRESSES: Copies of the Vermont submittal are available for public inspection during normal business hours at the Enviornmental ProtectionAgency, Region I, Permits Branch, Room 2109, JFK Federal Building, Boston, Massachusetts 02203; and the Agency of Environmental Conservation, Heritage One, 81 River Street, Montpelier, Vermont 05602.

FOR FURTHER INFORMATION CONTACT: Stephen J. Silva, Permits Branch, Environmental Protection Agency, Region I, Room 2109, JFK Federal Building, Boston, Massaachusetts 02203, (617) 223-5061.

SUPPLEMENTARY INFORMATION: The Pretreatment Program required by the Clean Water Act of 1977, governs the control of industrial waste introduced into Publicly Owned Treatment Works (POTWs). The Vermont Agency of Environmental Conservation has submitted a request for approval of its State Pretreatment Program in accordance with the requirements and procedures of the General Pretreatment Regulations (40 CFR Part 403). This request for approval consists of a description of how the State proposes to operate the program a statement from the Vermont Attorney General that the State has adequate legal authority to conduct the program, and a Memorandum of Agreement between the State and EPA Regional Office. EPA is providing an opportuntiy for public comment on the State's request. Public comments should be sent to EPA at the addrsss indicated above prior to the close of the 30 day comment period. All comments will be considered in the decision on whether or not to approve the program. If there is sufficient public interest, a public hearing will be held,

V 45 O C 31 80 UMI

and the time and place of the hearing will be public noticed. All persons submitting comments will be notified of the approval or disapproval of the program by the Administrator.

Dated: October 23, 1980.

Lawrence M. Goldman,

Acting Director, Enforcement Division, Region I.

[FR Doc. 80-33906 Filed 10-30-80; 8:45 am]
BILLING CODE 6560-38-M

[ER-FRL-1650-8]

Notice of Availability of Environmental Impact Statements

AGENCY: Office of Environmental Review (A-104) U.S. Environmental Protection Agency.

PURPOSE: This notice lists the environmental impact statements (EISS) which have been officially filed with the EPA and distributed to Federal agencies and interested groups, organizations and individuals for review pursuant to the council on Environmental Quality's Regulations (40 CFR Part 1506.9).

PERIOD COVERED: This notice includes EIS's filed during the week of October 20, 1980 to October 24, 1980.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this notice is calculated from October 31, 1980 and will end on December 15, 1980. The 30-day review period for final EIS's as calculated from October 31, 1980 will end on December 1, 1980.

EIS AVAILABILITY: To obtain a copy of an EIS listed in this notice you should contact the Federal agency which prepared the EIS. This notice will give a contact person for each Federal agency which has filed an EIS during the period covered by the notice. If a Federal agency does not have the EIS available upon request you may contact the Office of Environmental Review, EPA, for further information.

BACK COPIES OF EIS'S: Copies of EIS's previously filed with EPA or CEQ which are no longer available from the originating agency are available with charge from the following source: Information Resources Press, 1700 North Moore Street, Arlington, Virginia 22209, (703) 558-8270.

SUMMARY OF NOTICE: This notice sets forth a list of EIS's filed with EPA during the week of October 20, 1980 to October 24, 1980. The Federal agency filing the EIS, the name, address, and telephone number of the Federal agency contact for copies of the EIS, the filing status of the EIS, the actual date the EIS was filed with EPA, the title of the EIS, the State(s) and County(ies) of the proposed action and a brief summary of the proposed Federal action and the Federal agency EIS number, if available, is listed in this notice. Commenting entities on draft EIS's are listed for final EIS's. All additional information relating to EIS's such as time extensions or reductions of prescribed review periods, withdrawals, retractions, corrections or supplemental reports is also noticed under the appropriate agency.

FOR FURTHER INFORMATION CONTACT: Kathi L. Wilson, Office of Environmental Review, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 (202) 245-3006.

Dated: October 28, 1980.

William N. Hedeman, Jr.,

Director, Office of Environmental Review (A-104).

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Director, Office of Environmental Quality, Office of the Secretary, U.S. Department of Agriculture, Room 412-A Admin. Building, Washington, D.C. 20250 (202) 447-3965.

Rural Electrification Administration

Final

JK Smith Power Station Units 1 & 2, transmission, Clark County, Kentucky, October 24; Proposed is the guarantee of a loan for construction and operation of two 650 MW coal-fired electric generating units, with a total generation capacity of 1300 MW gross, at a new plant site to be located near trapp in Clark County, Kentucky. Stack emissions will be controlled by lime-limestone scrubbers, electrostatic, precipitators and boiler design. Condenser cooling will be accomplished by the use of colling towers. Plant water will come from the Kentucky River normaly, or from an onsite water reservoir during periods of extraordinarily low river flow. Cooperating agencies include: EPA, COE, USDI and State of Kentucky. (USDA-REA-EIS (ADM) 80-8-D), Comments made by: EPA, COE, DOI, USDA, State agencies, (EIS Order No. 800813).

Final Supplement

Catawba Nuclear Station Unit 1 (FS-1), York County, South Carolina, October 24; Proposed is the awarding of financial assistance for the purchase of an undivided ownership interest in Catawba Nuclear Station Unit 1 located in York County, South Carolina. Transmission associated with the station will consist of two 230 KV lines now under construction and three existing 230 KV lines to be connected to the Catawba switching station. In conjunction with this filing REA is adopting and supplementing a final EIS issued by NRC, No. 731920, filed 12-11-73. (USDA-REA-(ADM)-80-9-D5) Comments made by: EPA, State Agencies, Individuals, (EIS Order No. 800814).

Soil Conservation Service

Final

Lost-Duck Creek watershed, Kay County, Oklahoma, October 20; proposed is a watershed protection and flood prevention plan for the Lost-Duck Creek watershed in Kay County, Oklahoma. The plan includes the installation of conservation land treatment, 12 floodwater retarding structures, and approximately 12.75 miles of channel work. In addition to the selected plan the alternatives consider: (1) land treatment only and (2) land treatment and a system of floodwater retarding structure. Comments made by: COE, DOC, HHS, DOI, EPA, USDA, State Agencies, Groups, (EIS Order No. 800797).

U.S. Army Corps of Engineers

Contact: Mr. Richard Makinen, Office of the Chief of Engineers, Attn: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army, Corps of Engineers, 20 Massachusetts Avenue, Washington, D.C. 20314 (202) 272-0121.

Draft

Village Creek flood control plan, Birmingham, Jefferson County, Alabama, October 24; Proposed is a flood control plan for village creek in Birmingham, Jefferson County, Alabama. The preferred alternative would involve: (1) prohibiting development, (2) evacuation, (3) installation of flood warning devices, (4) creation of recreation and open space areas, (5) excavation of channels, and (6) modification and/or replacement of four existing bridges. (Mobile District), (EIS Order No. 800810).

Final

Green Bay drainage district, flood reduction, Lee County, Iowa, October 22; proposed is a flood damage reduction plan for the Green Bay levee and drainage district in Lee County, Iowa. The preferred alternative consists of raising 17.2 miles of existing levee to provide additional protection from flooding of the Lost Creek, the Skunk River and the Mississippi River. Also included is the raising of discharge pipes, crop field and the disruption of life forms on 112 acres to relocation of utility lines and drainage ditches, raising and resurfacing five ramps over the levee, and raising and resurfacing a road on the levee. (Rock Island District). Comments made by: EPA, DOI, DOC, USDA, DOT, HUD, HEW, AHP, State and local agencies. (EIS Order No. 800802).

Draft Supplement

Copper Lake and channels water supply (DS-1), Delta and Hopkins Counties, Texas, October 24; proposed is a multipurpose project for Copper Lake and channels in the Sulphur River Basin, Delta and Hopkins Counties, Texas. This statement supplements a final EIS, #770708, filed 6-24-77. This supplement addresses selection of another alternative as the recommended plan which would involve: (1) construction of a multiple-purpose dam on the South Sulphur River, (2) a 19,305 surface acre water supply pool, and recreation development. (Fort Worth district). (EIS Order No. 800809).

DEPARTMENT OF COMMERCE

Contact: Dr. Robert T. Miki, Acting Deputy Assistant Secretary for Regulatory Policy, Room 7614, Department of Commerce, Washington, D.C. 20230 (202) 377-2482.

National Oceanic and Atmospheric Administration

Final

Taking of marine mammals, tuna purse seining operating regulatory, October 22; the proposed action terminates the current general permit allowing the incidental taking of marine mammals in the tuna fishery in the eastern tropical Pacific and establishes conditions for the reissuance of a general permit for the remainder of 1980 and 1981. It includes a determination that the stock of northern offshore spotted dolphin is depleted. A revised allowable take schedule for nonprohibited species will be permitted. Proposed regulations state accidental take enforcement policy, add to or modify four gear requirements in existing regulations, and modify observer responsibilities and importation documentation requirments. Comments made by: DOI, EPA, DOC, State agencies, groups and businesses. (EIS Order No. 800805).

DEPARTMENT OF DEFENSE, AIR FORCE

Contact: Dr. Carlos Stern, Deputy for Environment and Safety, Department of the Air Force, Room 4C885, Pentagon, Washington, D.C. 20330 (202) 697-9297.

Draft

Consolidated space operations center, several counties, Colorado, New Mexico, and Montana, October 24; proposed is the construction of a consolidated space operations center (CSOC) which would combine the two mission elements of satellite control and space shuttle operations. The satellite control element of CSOC would consist of communications, command and control service functions for orbiting spacecraft. The shuttle element would involve DOD flight planning, readiness and control functions. The sites under consideration are: (1) Peterson AFB, Colorado Springs, Colorado; (2) Kirtland AFB, Albuquerque, New Mexico; and (3) Malmstrom AFB, Great Falls, Montana. (EIS Order No. 800811).

DEPARTMENT OF ENERGY

Contact: Dr. Robert Sterm, Acting Director, NEPA Affairs Division, Department of Energy, Mail Station 4G-064, Forrestal Bldg., Washington, DC 20585 (202) 252-4600.

Draft

Industrial fuel gas demonstration project, Memphis, Shelby County, Tennessee, October 24; proposed is the construction and operation of an industrial fuel gas demonstration plant in Memphis, Shelby County, Tennessee. The facility would utilize 3155 tons/d of high-sulfur coal and produce fuel gas for local pipeline distribution to industrial customers. The alternatives considered involve the following: (1) processes, (2) sites, (3) moth-balling and decommissioning, (4) delay of action, (5) no action, and (6) others. (DOE/EIS-0071-D) (EIS Order No. 800815).

ENVIRONMENTAL PROTECTION AGENCY

Contact: Mr. Clinton Spotts, Region VI, Environmental Protection Agency, First International Building, 1201 Elm Street, Dallas, Texas 75270 (214) 767-2716.

Final

WWT facilities construction grant, Santa Fe, Santa Fe County, New Mexico, October 24; proposed is the awarding of a grant for the construction of wastewater treatment facilities for the City and County of Santa Fe, New Mexico. The facilities would consist of 6.5 MGD capacity plant which would utilize an activated sludge process consisting of an oxidation ditch aeration unit preceded by an anoxic denitrification tank for effective nitrogen removal. Wastewater would be discharged to the Santa Fe River. Comments made by: AHP, HUD, DOI, DOT, DOE, State and local agencies, groups, individuals and businesses. (EIS Order No. 800816).

Contact: Mr. Kenneth Bigos, Region IX, Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105 (415) 556-8030.

Final

Los Angeles/Orange County metro area sludge management program, Los Angeles and Orange Counties, California, October 24; proposed is the awarding of a grant to the city and county of Los Angeles and Orange County, California, for the purpose of planning, designing, and constructing the proposed sludge management program. The program would involve: (1) for the City of Los Angeles, dehydration and thermal processing for energy recovery at the hyperion treatment plant; (2) for Los Angeles county, dehydration and thermal processing, composting, and landfilling; and (3) for Orange County, composting and air drying of dewatered sludge in the Round Canyon area. Comments made by: AHP, DOI, FERC, USDA, HUD, USAF, DOT, DOC, State and local agencies, groups, individuals and businesses. (EIS Order No. 800808).

DEPARTMENT OF HUD

Contact: Mr. Richard H. Brown, Director, Office of Environmental Quality, Room 7274, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410 (202) 755-6300.

Final

Wheatstone subdivision, mortgage insurance, Harris County, Texas, October 22; proposed is the issuance of HUD home mortgage insurance for the Wheatstone subdivision located in Harris County, Texas. The area encompasses some 1,200 acres of land. When completed the subdivision would be composed primarily of approximately 4,260 single family dwellings. (HUD-RO6-EIS-80-10F). Comments made by: FEMA, DOE, HEW, USDA, DOI, DOT, AHP, COE, EPA, State agencies. (EIS Order No. 800803).

Department of the Interior

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256, Interior Bldg., Department of the Interior, Washington, D.C. 20240, (202) 343-3891.

Bureau of Land Management

Final

Coso known geothermal resource area, lease, Inyo County, California, October 24; Proposed is the issuance of competitive and non-competitive leases on a major portion of the Coso known geothermal resource area in Inyo County, California. The Coso geothermal study area (CGSA) covers 72,640 acres centered on public land and lands within the western side of the China Lake Naval Weapons Center. It is assumed that the geothermal potential within the CGSA is 600 MW, along with a development model of eleven 50 MW generating stations, plus a probable 50 MW plant to be installed under the Navy's geothermal development program. (FES-80-47). Comments made by: USDA, HUD, DOI, DOT, EPA, AHP, COE, USN, State and local agencies, groups, individuals and businesses. (EIS Order No. 80012).

National Park Service

Final

Redwood National Park, general management plan, Del Norte and Humboldt Counties, California, October 24; Proposed is the general management plan for Redwood National Park located in Del Norte and Humboldt Counties, California. The park encompasses approximately 106,000 acres, of which about 25 percent are within three California State parks. The plan contains the visitor use and facility development plan, the cultural resources management plan, and major goals and actions related to natural resources management and rehabilitation. Four alternatives have been discussed with the preferred alternative combining the no action, extended visit, and the restructured visitor use alternatives. (FES-80-45). Comments made by: USDA, COE, DOI, DOT, EPA, State and local agencies, groups and businesses. (EIS Order No. 800807).

Final

Yosemite National Park, general management plan, Tuolumne, Mariposa, and Madera Counties, October 24; This action involves a general management plan for Yosemite National Park, within Tuolumne, Mariposa, and Madera Counties, California, to guide overall park management and development for approximately 15 years, including specific development concept plans for all developed areas inside the park, proposed additions to the wilderness recommendation for the park and boundary adjustments. The alternatives consider varying emphasis on commercial services in relation to the following: Resource-related activities, backcountry use, recreational activities, no action, resource-related activities/reduced accommodations, and relocation of operational facilities. (FES-80-46). Comments made by: AHP, USDA, DOE, DOI, DOT, EPA, USPS, State and local agencies, groups. (EIS Order No. 800806).

Extension: Water Gap National Recreation Area, Pennsylvania and New Jersey, Published FR October 14, 1980, #800763—has been extended from November 24, 1980 to December 8, 1980.

V 45 OC 31 80 UMI

Heritage Conservation and Recreation Service

Extension: Designation of Five California Rivers in the National Wild and Scenic Rivers System, Published FR September 19, 1980, #800695—has been extended from November 5, 1980 to November 20, 1980.

Bureau of Mines

Withdrawal: Horse Draw Oil Shale Research Tract, Published FR August 8, 1980, #800621 Draft—has been officially withdrawn by the Bureau of Mines.

Tennesee Valley Authority

Contact: Dr. Mohamed T. El-Ashry, Director of Environmental Quality, Tennessee Valley Authority, Forestry Building, Norris, Tennessee 37828, (615) 632-6450, FTS 856-6450.

Draft

Watts Bar waste heat utilization demonstration park, Rhea County, Tennessee, October 24; Proposed is granting of an easement for an approximate 400 acre park to be used for the demonstration of commercial waste heat utilization concepts in Rhea County, Tennessee, the park will be known as the Watts Bar waste heat park and would be located adjacent to the Watts Bar nuclear plant. The alternatives considered are: (1) No action, (2) development at another site, and (3) management schemes. (EIS Order No. 800804).

Department of Transportation

Contact: Mr. Martin Convisser, Director, Office of Environment and Safety, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590, (202) 426-4357.

Federal Highway Administration

Draft

Campbell corridor highway improvements, Tucson, Pima County, Arizona, October 21; Proposed are improvements to the Campbell corridor highway from Broadway Road to Valencia Road in the city of Tucson, Pima County, Arizona. The improvements include construction of six miles of roadway, grade separation at the Southern Pacific Railroad, additional ramps at the I-10 interchange, and a bridge over the Tucson diversion channel/Julian Wash. Other components may include an interchange at the intersection of Broadway and Campbell, and either a grade separation or interchange at 22nd Street. There are four location alternatives considered for the north segment and three for the south. The cooperating agency is the State of Arizona. (FHWA-AZ-EIS-80-03D). (EIS Order No. 800800).

Draft

Salisbury bypass/U.S. 50, U.S. 50 to U.S. 13, Wicomico County, Maryland, October 22; Proposed is the construction of the Salisbury bypass/U.S. 50 from U.S. 50 to U.S. 13, in Wicomico County, Maryland. The length of the facility would be 5.0 miles. The alternatives consider: (1) no build; and (2) two options involving the construction of a controlled access, four-lane divided roadway on different alignments. Interchange options have been developed for the Goddard Parkway and Jersey Road intersections. The cooperating agency is the State of Maryland. (FHWA-MD-EIS-80-02-D). (EIS Order No. 800801).

Columbia Road improvement, Gateway Drive to Forks Road, Grand Forks County, North Dakota, October 20; Proposed is the improvement of Columbia Road from Gateway Drive to Forks Road in the city and county of Grand Forks, North Dakota. The improvements will include the construction of a railroad separation structure and street widening and/or street construction. The alternatives consider: (1) no action, (2) improvement of the transit system, and (3) eight build alternatives which examine various alignments and roadway designs. The cooperating agency is the State of North Dakota. (FHWA-ND-DIS-80-02-D). (EIS Order No. 800799).

Extension: The review period for the above EIS has been extended until December 19, 1980. (#800799).

State College bypass system/U.S. 322, Centre County, Pennsylvania, October 20; Proposed is the completion of the State College bypass system/U.S. 322 through the borough of State College, Centre County, Pennsylvania. The two mile section to be completed would include an interchange with PA-26, a four lane local roadway. Completion of the system would also involve construction of an interchange in the previously built section and a spur known as the Park Avenue extension. In addition to no action, six alignments are considered which include two and four lane schemes, two types of interchanges with PA-26 and a half-build alternative. The cooperating agency is the State of Pennsylvania. (FHWA-PA-EIS-80-02-D). (EIS Order No. 800798).

[FR Doc. 80-34038 Filed 10-30-80; 8:45 am]
BILLING CODE 6560-37-M

FEDERAL RESERVE SYSTEM

Asco, Inc.; Acquisition of Bank

Asco, Inc., Rock Rapids, Iowa, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(3)) to retain 10.7 and to acquire an additional 43.1 percent of the voting shares of Rock Rapids State Bank, Rock Rapids, Iowa. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than November 24, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 23, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33903 Filed 10-30-80; 8:45 am]
BILLING CODE 6210-01-M

Mountain States Bancorporation, Inc.; Formation of Bank Holding Company

Mountain States Bancorporation, Inc., Denver, Colorado, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Mountain States Bank, Denver, Colorado. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 24, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 24, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33901 Filed 10-30-80; 8:45 am]
BILLING CODE 6210-01-M

Rockford Bancorp, Inc.; Formation of Bank Holding Company

Rockford Bancorp, Inc., Rockford, Illinois, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of The Illinois National Bank & Trust Co. of Rockford, Rockford, Illinois. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 20, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 24, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33902 Filed 10-30-80; 8:45 am]
BILLING CODE 6210-01-M

Winters National Corp.; Acquisition of Bank

Winters National Corporation, Dayton, Ohio, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(3)) to acquire 100 per cent of the voting shares of The First National Bank of Circleville, Circleville, Ohio. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Cleveland. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than November 21, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 24, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33904 Filed 10-30-80; 8:45 am]
BILLING CODE 6210-01-M

Alamosa Bancorporation, Ltd.; Formation of Bank Holding Company

Alamosa Bancorporation, Ltd., Denver, Colorado, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 97.1 percent or more of the voting shares of The Alamosa National Bank, Alamosa, Colorado. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 24, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 24, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33979 Filed 10-30-80; 8:45 am]
BILLING CODE 6210-01-M

American National Sidney Corp.; Formation of Bank Holding Company

American National Sidney Corp., Sidney, Nebraska, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 95 percent or more of the voting shares of The American National Bank of Sidney, Sidney, Nebraska. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 24, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 27, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33976 Filed 10-30-80; 8:45 am]
BILLING CODE 6210-01-M

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding company listed in this notice has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and section 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to the application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on the application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than November 24, 1980.

A. *Federol Reserve Bank of San Francisco* (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

Security Pacific Corporation, Los Angeles, California (financing and insurance activities; Florida): to engage through its subsidiaries Security Pacific Finance Corp. and Security Pacific Finance Corp. of Florida, in making or acquiring for its own account or for the account of others, loans and extensions of credit, including making consumer installment personal loans, purchasing consumer installment sales finance contracts, making loans to small businesses and other extensions of credit such as would be made by a factoring company or a consumer finance company and acting as broker or agent for the sale of credit-related life, accident and health insurance and credit-related property and casualty insurance. These activities would be conducted from offices of Security Pacific Finance Corp. and Security Pacific Finance Corp. of Florida, located in Hudson, Florida, serving the State of Florida, and would constitute a relocation of existing offices of Security Pacific Finance Corp. and Security Pacific Finance Corp. of Florida which are currently located in Dade City, Florida.

B. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, October 24, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33977 Filed 10-30-80; 8:45 am]

BILLING CODE 6210-01-M

Citizens Banco, Inc.; Acquisition of Bank

Citizens Banco, Inc., Westminster, Colorado, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(3)) to acquire 100 percent of the voting shares of Citizens Bank, Littleton, Colorado, a proposed new bank. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than November 26, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 27, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33974 Filed 10-30-80; 8:45 am]

BILLING CODE 6210-01-M

Hawkeye Bancorporation; Acquisition of Bank

Hawkeye Bancorporation, Des Moines, Iowa, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(3)) to acquire 97 percent or more of the voting shares of Capital City State Bank, Des Moines, Iowa. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than November 24, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 27, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33973 Filed 10-30-80; 8:45 am]

BILLING CODE 6210-01-M

The Highland Ban-Corp., Inc.; Formation of Bank Holding Company

The Highland Ban-Corp., Inc., Cleveland, Oklahoma, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of The Cleveland Bank, Cleveland, Oklahoma. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than November 24, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 24, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33978 Filed 10-30-80; 8:45 am]

BILLING CODE 6210-01-M

Metropolitan Bancorporation, Inc.; Formation of Bank Holding Company

Metropolitan Bancorporation, Inc., Minneapolis, Minnesota, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 95 percent of the voting shares of Metropolitan State Bank, Minneapolis, Minnesota. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than November 24, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal System, October 24, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33981 Filed 10-30-80; 8:45 am]

BILLING CODE 6210-01-M

Taney County Bancorporation; Formation of Bank Holding Company

Taney County Bancorporation, Kansas City, Missouri, has applied for the Board's approval under § 3(a)(1) of the Bank Holding compnay Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 91.4 percent or more of the voting shares of Security Bank and Trust Company of Branson, Missouri. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 24, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 24, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33980 Filed 10-30-80; 8:45]

BILLING CODE 6210-01-M

Veis Bankshares, Inc.; Formation of Bank Holding Company

Veis Bankshares, Incorporated, Scobey, Montana, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 91 percent of the voting shares of Citizens State Bank of Scobey, Scobey, Montana. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 24, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 27, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33975 Filed 10-30-80; 8:45 am]

BILLING CODE 6210-01-M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on October 24, 1980. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the **Federal Register** is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed FTC request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before November 18, 1980, and should be addressed to Mr. John M. Lovelady, Senior Group Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW., Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

Federal Trade Commission

The FTC requests clearance of a new, single-time, voluntary mail survey questionnaire. The questionnaire will be sent to members of a consumer mail panel to identify panelists who have recently had eye examinations. The FTC will use the information developed from the survey to assist it in making policy decisions related to regulation of opthalmic goods and services. The questionnaire consists of five yes/no checkoff questions and one question requesting the date of most recent eye examination. The FTC estimates that respondents will number approximately 9,000 and that time to fill out the questionnaire will average 3 minutes.

Norman F. Heyl,

Regulatory Reports Review Officer.

[FR Doc. 80-33948 Filed 10-30-80; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Personnel Administration

Statement of Organization, Functions and Delegation of Authority

Part A, Chapter AHP, Office of Personnel, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (43 FR 48020, dated October 18, 1978) is amended by revising the functional statements for the Office of Personnel. The Office of Employee Development is changed to the Office of Executive Personnel, and functions are transferred to and realigned within the Office of Personnel Policy and Communications.

The specific changes are as follows:

1. Delete Section AHP.00 *Mission* through Section AHP.20BS and replace with the following:

Sec. AHP.00 Mission. The Office of Personnel directs the development and implementation of broad program plans under which the Department's personnel and training functions are carried out. The office represents the Department in coordination with the Office of Legislation and the Congress in all personnel matters with the Office of Personnel Management, Congress, other Federal agencies, and the public. The office provides guidance and assistance to all personnel offices, staff directors, and managers in the Department. The office assures the effectiveness and integrity of the Department personnel system as it relates to all current and potential employees of the Department.

Sec. AHP.10 Organization. The Office of Personnel is headed by the Deputy Assistant Secretary for Personnel who reports directly to the Assistant Secretary for Personnel Administration and supervises the following components: Office of Personnel Policy and Communications, Employee Systems Center, Office of Personnel Systems Integrity, and Office of Executive Personnel.

Sec. AHP.20 Functions. A. The Office of Personnel provides leadership and directs and manages the Department-wide personnel system and the Departmental payroll system.

B. The Office of Personnel Policy and Communications provides leadership in and coordinates the development, issuance, and interpretation of Department personnel policies, regulations and procedures. Plans for and manages special high-priority policy or program development tasks and projects. Develops and administers programs and provides technical advice and assistance to Principal Operating Components in the areas of staffing, position management, classification, pay administration, employee relations, labor-management relations and training. Coordinates the Department's committee management activities. Develops systems for communicating personnel policies and information.

1. *Committee Management Staff.* Coordinates Department activities concerned with the establishment, management, and continuation or termination of all HHS public advisory committees and the appointment of members thereto. Gives technical advice and assistance to Principal Operating Component staff with respect to committee management activities, prepares annual reports for the Congress, the Office of Management and Budget, and others as required by pertinent statutes, executive orders, or directives; and oversees the assembling and maintenance of records required by Section 552 of Title 5, United States Code.

2. *Division of Policy.* Coordinates and gives direction to the development and issuance of personnel policies, regulations, and instructions throughout the Department. Manages the systems for communicating personnel policies and information about personnel matters. Provides technical advice and assistance on policy, legal, or regulatory matters. Formulates policies and regulations covering employee conduct, conflicts of interest, and implements established policy related to the Privacy Act and the Freedom of Information Act concerning personnel records. Coordinates the development and issuance of policies and requirements concerned with processing personnel and payroll actions.

3. *Division of Compensation.* Formulates and oversees the implementation of Department-wide policies, regulations, and procedures pertaining to position management, classification, salary and wage administration and employee benefits. Serves as the central HHS reference point inquiries, guidance, and interpretation on position management, classification and pay matters, and acts as HHS liaison with the Office of Personnel Management with respect to such matters.

4. *Division of Organization and Employee Development.* Formulates and oversees the implementation of Department-wide policies, regulations, and procedures pertaining to recruitment, staffing, examining, retention, career counseling, employee education programs, and training except executive development. Provides guidance and advisory services to HHS organizations on organizational development. Serves as the central HHS point of contact for inquiries and interpretation for the above-mentioned functions. Serves as a central source of employment information for candidates seeking employment in HHS. Maintains liaison with the Office of Personnel Management and other Departments and agencies.

5. *Division of Labor-Management and Employee Relations.* Formulates and oversees the implementation of Department-wide policies, regulations and procedures pertaining to labor-management relations. Serves as the central HHS reference point for inquiries, guidance, and interpretation on labor-management relations and acts as HHS liaison with the Office of Personnel Management, the Federal Labor Relations Authority and labor unions and other employee organizations at the international and national level. Assists in the formulation of Department personnel and administrative policies, regulations, and procedures affecting working conditions of employees. Develops and gives direction to employee relations programs, including adverse actions, grievances and programs for counseling employees regarding job-related problems.

6. *Performance Management Division.* Formulates and oversees the implementation of Department-wide policies, regulations and procedures pertaining to performance management. Conducts job analyses of occupations or families of positions in order to develop and publish model performance standards, qualification standards, model rating schedules and classification guides. Oversees the administration of the Uniform Selection Guidelines in order to validate the job-relatedness of selection processes. Provides guidance and advisory services to HHS organizations on improvements in employee performance. Maintains liaison with the Office of Personnel Management and with other Departments and agencies.

2. Delete paragraph AHP.20, Section D in its entirety and replace with the following:

D. Office of Executive Personnel is responsible for the Department's personnel management support programs for all executive level positions, including Senior Executive Service, and for the Department's executive development programs; develops Departmental policies and guidance for executive personnel program coordination and direction; and processes actions required to carry out the assigned responsibilities.

1. Executive Search Division is responsible for conducting the search process involved in obtaining talent for the Department's "executive level" positions (i.e. Senior Executive Service, equivalents and statutory level positions, as well as Schedule C positions at GS–15 and below).

2. Executive Resources Management Division is responsible for policy development and implementation for the Department's Senior Executive Service; and Departmental personnel management for Senior Executive Service; and Departmental personnel management for Senior Executive Service and equivalent level, executive level, and Schedule C positions. Personnel operations for the Office of the Secretary for the Senior Executive Service, General Schedule, Supergrade, Executive Level, and Schedule C positions. Provides Department representation to the Office of Personnel Management for all executive personnel matters.

3. Executive Development Division is responsible for providing overview, guidance, policy direction, and technical advisory services to all HHS organizations in executive development, executive development programs involving employee training at institutions of higher learning or governmental schools and seminar centers; the HHS Senior Executive Service Candidate Development Program; and executive training programs offered through the Executive Development Institute.

Dated: October 20, 1980.

Patricia Roberts Harris,

Secretary.

[FR Doc. 80-33913 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-12-M

Food and Drug Administration

Compilation of Preambles for Over-the-Counter Drugs and Cosmetic Documents; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the availability of the preamble compilation for Over-the-Counter Drugs and Cosmetic regulations. The preamble compilation contains significant preambles of **Federal Register** documents issued by FDA from March 1936 through March 1978. The Over-the-Counter Drugs compilation is a two volume set. The Cosmetic compilation consists of one volume.

ADDRESS: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Lola Batson, Federal Register Writer's Office (HFC–11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: The preamble compilation series has been structured around the current organizational scheme for Food and Drug Administration regulations issued under Chapter I of Title 21 of the Code of Federal Regulations. This compilation is part of a comprehensive effort to make available to the public and the agency a central source for tracing, by subject, the historical development of agency regulations.

The preamble compilation series will be updated annually with cumulative pocket supplements. The agency will publish in the **Federal Register** a notice of availability for each volume and pocket supplement as they become available.

These preamble compilations may be purchased from the Superintendent of Documents. The price for the Over-the-Counter Drug two volume set is $23.00. To order, reference GPO stock no. 017–015–00171–7. The price for the Cosmetic volume is $11.00. To order, reference GPO stock no. 017–015–00170–9.

Dated: October 23, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-33728 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 80N-0271]

International Drug Scheduling; Convention on Psychotropic Substances

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration requests interested persons to submit comments concerning a proposal that the Commission on Narcotic Drugs (CND) of the United Nations impose international manufacturing and distribution restrictions, pursuant to international treaty, or certain anorectic drugs (drugs that diminish appetite). The specific treaty involved is the Convention on Psychotropic Substances, to which the United States is a party. The comments received will be considered in preparing the United States position on the proposed international restrictions on these drugs for a meeting of the CND to be held in February 1981. The issuance of this notice requesting comments is required by law.

DATE: Comments by December 1, 1980.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Edwin V. Dutra, Jr., Bureau of Drugs (HFD–30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: This notice is being published to afford interested persons an opportunity to comment on international drug control measures that have been proposed by the World Health Organization (WHO) under international treaty. The specific treaty involved is the Convention on Psychotropic Substances, to which the United States is a party. The substances involved are certain anorectic drugs, listed below.

Earlier this year the United States was notified that WHO would make recommendations to the Commission on Narcotic Drugs (CND) whether any changes would be justified in the present scheduling status under the Convention on Psychotropic Substances of the following nine anorectic drugs: amfepramine, benzphetamine, chlorphentermine, chlortermine, fenfluramine, mazindol, phendimetrazine, phenmetrazine, and phentermine. The United States was asked to supply WHO with information and data that would aid WHO in making its recommendations to the CND. The CND, of which the United States is a member, will meet in February 1981 to make international scheduling decisions. Under section 201(d)(2)(A) of the Controlled Substances Act (21 U.S.C. 811(d)(2)(A)), the Department of Health and Human Services (HHS) issued a notice in the **Federal Register** of July 18, 1980 (45 FR 48254) requesting interested persons to submit relevant comments and data. Comments and information received from the public and from Government agencies were subsequently submitted to WHO, as requested. The WHO's expert committee then met in September 1980 to evaluate the scheduling status of the nine substances.

HHS has now learned from the Department of State that WHO has recommended that the CND control the following four substances in Schedule IV of the Convention on Psychotropic Substances: (1) Benzphetamine, (2) mazindol, (3) phendimetrazine, and (4) phentermine. The information received from the Department of State is on file in the Dockets Management Branch (formerly the Hearing Clerk's office), FDA. This information may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday. Placing these substances in Schedule IV of the Convention on Psychotropic Substances would require each of the member countries (including the United States) to impose controls regarding licensing, prescriptions, recordkeeping and reporting, and government inspections. Because of existing domestic controls now in force for these substances under the Controlled Substances Act (21 U.S.C. 801 et seq.), the proposed CND action, if adopted, would not obligate the United States to reschedule any of these substances domestically. However, the proposed CND action, if adopted, would require additional manufacturer reporting requirements to be promulgated by the Drug Enforcement Administration under section 307(e) of the Controlled Substances Act (21 U.S.C. 827(e)), as amended by Pub. L. 95–633 (Psychotropic Substances Act of 1978).

HHS has also learned that WHO has recommended that the CND not take any scheduling actions under the Convention on Psychotropic Substances with respect to the following five substances: (1) Amfepramine (known in the United States as diethylpropion) (currently in Schedule IV of the Convention); (2) chlorphentermine (currently not controlled under the Convention); (3) chlortermine (known in the United States as clortermine) (currently not controlled under the Convention); (4) fenfluramine (currently not controlled under the Convention); and (5) phenmetrazine (currently in Schedule II of the Convention). These recommendations will also be considered by the CND at its February 1981 meeting.

Therefore, as required by section 201(d)(2)(B) of the Controlled Substances Act (21 U.S.C. 811(d)(2)(B)), the Food and Drug Administration, at the direction of the Assistant Secretary for Health, invites interested persons to submit comments about these proposed CND actions. The comments received will be considered by HHS in its evaluation of the WHO recommendations. HHS will then recommend to the Secretary of State the position which the United States should take when voting on the scheduling proposals at the CND meeting in February 1981.

Interested persons may, on or before December 1, 1980, submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Note.—The period for the submission of comments is limited to 30 days so that the United States has adequate time to consider the comments received in reaching a decision on how to vote on these proposals at the upcoming CND meeting.

Dated: October 24, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-33726 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 80N-0276]

Drugs for Human Use; Drug Efficacy Study Implementation; Conditions for Continued Marketing of Anabolic Steroids for Treatment of Osteoporosis

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces conditions for continued marketing of anabolic steriods for the treatment of osteoporosis.

DATES: Notices of intent to conduct studies or to rely on another firm's studies are due by December 1, 1980. Notification of ongoing studies or other information intended to demonstrate effectiveness must be submitted by December 30, 1980. Protocols are due on or before January 29, 1981, unless manufacturers intend to rely on ongoing studies or other information. Abbreviated new drug applications must be submitted by January 29, 1981.

ADDRESSES: Responses to this notice should be identified with the NDA number, if any, and the following in a box in the upper portion of the cover letter: "Paragraph XIV Drug—Category X (Anabolic Steroids)," directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857:

Requests for guidelines: Judy Cheeseman, Division of Metabolism and Endocrine Drugs (HFD–30), Bureau of Drugs.

Effectiveness information and data, and study protocols: Division of Metabolism and Endocrine Drug Products (HFD–130), Rm. 14B–04, Bureau of Drugs.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD–310), Bureau of Drugs.

Abbreviated new drug applications: Division of Generic Drug Monographs (HFD–530), Bureau of Drugs.

FOR FURTHER INFORMATION CONTACT: Samarendra Dutta, M.D., Bureau of Drugs (HFD–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3520.

SUPPLEMENTARY INFORMATION: In a notice (DESI 7630) published in the Federal Register of June 24, 1970 (35 FR 10327), FDA announced its conclusions on the effectiveness of certain anabolic steroids, based on reports received from the National Academy of Sciences-National Research Council. The drugs were classified probably effective as adjunctive therapy in the treatment of senile and postmenopausal osteoporosis. They were also classified probably effective for pituitary dwarfism because growth hormone was not readily available at that time. The products were classified either possibly effective or lacking substantial evidence of effectiveness for their other labeled indications. The following products were listed in the 1970 notice and are covered by this publication.

1. NDA 8–736; Methylandrostenediol Aqueous Suspension containing mathandriol 25 or 50 milligrams/milliliter; Maurry Biological Co., Inc., 6109 South Western Ave., Los Angeles, CA 90047.

2. NDA 10–400; Nilevar Tablets containing 10 milligrams norethandrolone; Searle Laboratories, Inc., P.O. Box 5110, Chicago, IL 60680.

3. NDA 11–019; Nilevar Injection containing 25 milligrams/milliliter norethandrolone; Searle Laboratories.

4. NDA 11–761; Adroyd Tablets containing 2.5, 5, or 10 milligrams oxymetholone; Parke-Davis, Division of Warner-Lambert, 201 Tabor Rd., Morris Plains, NJ 07950.

5. NDA 11–891; Durabolin Injection containing 25 or 50 milligrams/milliliter nandrolone phenpropionate; Organon Inc., 357 Mount Pleasant Ave., West Orange, NJ 07052.

6. NDA 12–226; Dianabol Tablets containing 2.5 or 5 milligrams methandrostenolone; Ciba Pharmaceutical Co., 556 Morris Ave., Summit, NJ 07901.

7. NDA 12–733; Anadrol Tablets containing 2.5 milligrams oxymetholone; Syntex Laboratories, Inc., 3401 Hillview Ave., Stanford Industrial Park, Palo Alto, CA 94304.

8. NDA 12–885; Winstrol Tablets containing 2 milligrams stanozolol; Winthrop Laboratories, Division of Sterling Drug Inc., 90 Park Ave., New York, NY 10016.

9. NDA 13–132; Deca-Durabolin Injection containing 50 milligrams/milliliter nandrolone decanoate; Organon, Inc.,

The June 24, 1970 notice listed three products in addition to those listed above. FDA withdrew approval of NDA 11–638 (listed as 11–683 in the 1970 notice) for Searle's Nilevar Drops (norethandrolone) and NDA 7–630 for Organon's Stenediol Injection (methandriol) for failure to submit required reports (36 FR 14342, 38 FR 3208, respectively). Although these products are not marketed and approval has been withdrawn, final effectiveness decisions on the products listed above would be applicable to them because they are identical or closely related to the products covered by this notice. Winthrop Laboratories' NDA 13–268 for Winsteroid Tablets (stanozolol) and NDA 12–885 for Winstrol Tablets (stanozolol) have been combined because they cover the same product.

In a notice published in the Federal Register of December 14, 1972 (37 FR 26623), amended on February 17, 1978 (43 FR 7044), FDA allowed anabolic steroids to remain on the market labeled for the osteoporosis indication pending completion of studies of their effectiveness in treating that disorder. The pituitary dwarfism indication was permitted to remain until growth hormone became more widely available. The December 14, 1972 notice (category X) covered the following types of anabolic steroids, rather than specific products: Stanozolol, oxymetholone, methandrostenolone, nandrolone, decanoate, nandrolone phenpropionate, and norethandrolone. The notice inadvertently omitted any reference to methandriol. However, methandriol-containing products were listed in the June 24, 1970 notice, are included in category X, and are covered by this notice. This notice also applies to any product not the subject of an approved new drug application which is identical, similar, or related to those listed above. An opinion on the applicability of this notice to a specific product may be obtained from the Division of Drug Labeling Compliance (address given above).

Because of the lack of general agreement on parameters to be measured and the techniques for measurement, FDA has developed guidelines for the clinical study of drugs used to treat osteoporosis. The availability of the guidelines was announced in the Federal Register of June 20, 1980 (43 FR 41705). The guidelines may be obtained from the Division of Metabolism and Endocrine Drug Products (address given above).

Data submitted in support of the anabolic steroids' other indications are currently under review. FDA intends to announce its evaluations of these data in a future notice. Since publication of the December 14, 1972 notice, however, growth hormone has become more widely available, FDA has approved two somatropin (formerly called somatotropin) products as effective in the treatment of pituitary dwarfism: Asellacrin manufactured by Serono Laboratories and Crescormon manufactured by the Kabi Group. Thus, because there is no longer justification for the continued marketing of anabolic steroids with the pituitary dwarfism indication, that indication is to be removed from the labeling of anabolic steroids.

Requirements for Products that Are Subjects of Approved NDA's.

FDA will not begin proceedings to withdraw approval of any NDA that has "deemed approved" status on October 31, 1980, provided that the following conditions are met: 1. *Labeling.* The manufacturer labels (in the Indications section) the product as follows: "As adjunctive therapy in senile and postmenopausal osteoporosis. Anabolic steroids are without value as primary therapy but may be of value as adjunctive therapy. Equal or greater consideration should be given to diet, calcium balance, physiotherapy, and good general health promoting measures." As required by 21 CFR 201.200, manufacturers shall indicate that FDA classified the drug as "probably effective" for this indication.

2. *Studies.* a. A study in compliance with the guidelines announced in this notice is undertaken. Each manufacturer need not clinically test its own product as long as at least one other manufacturer, or a consortium of manufacturers, is conducting tests on a product to which the same effectiveness conclusions would ultimately apply. Each manufacturer shall notify FDA on or before December 1, 1980, if it intends to conduct a study according to the guidelines or if it intends to rely on a study conducted by another manufacturer.

b. Any manufacturer who intends to conduct a study shall submit a protocol on or before January 29, 1981, for evaluation by FDA. FDA will complete its evaluation of the protocol on or before April 29, 1981.

c. The manufacturer shall begin the study within 180 days after it is notified of FDA's acceptance of the protocol.

d. From the time it begins the study, the manufacturer will be allowed 3 years to complete it and to analyze and submit the results of the study to FDA. (The three-year period is considered necessary for the completion and evaluation of the studies because of the prolonged period of observation necessary to detect changes in the course of osteoporosis.)

e. FDA will review the results of the study within 4 months after they are submitted. If the studies demonstrate the effectiveness of a product in treating osteoporosis, the product will be upgraded to effective for that indication at that time.

f. Some manufacturers have, in the past, conduted clinical studies on the effectiveness of their products in the treatment of osteoporosis and submitted data to FDA. Other manufacturers are currently conducting studies. In addition, manufacturers may be aware of completed relevant studies, published or unpublished. This information may be sufficient to support upgrading the osteoporosis indication to effective. Manufacturers may rely on data previously submitted to FDA, an ongoing study, or published and unpublished studies to demonstrate the effectiveness of their products. Manufacturers who intend to rely on such information shall submit it on or before December 30, 1980. If a manufacturer intends to rely on an ongoing study, it shall submit an interim progress report. FDA will judge the adequacy of the study according to the guidelines announced in this notice. Manufacturers need not resubmit data previously submitted, but if they intend to rely on it shall completely describe the previous submission, and identify when and where it was submitted. FDA will complete its review of the information and notify the manufacturer of its evaluation by April 29, 1981. If FDA finds that the information submitted is inadequate to support upgrading the indication to effective, the manufacturer shall inform FDA within 30 days of receiving FDA's notification if it intends to conduct studies according to the guidelines announced in this notice. The manufacturer shall submit a protocol for evaluation by FDA within 90 days of receiving FDA's notification that the information initially submitted is inadequate, and FDA will evaluate the protocol within 90 days. The manufacturer shall initiate the study within 180 days of FDA's acceptance of the protocol. Manufacturers will be allowed 3 years to complete, analyze, and submit the studies to FDA. FDA will complete its review of the results of the studies within 4 months of its submission to FDA.

Requirements for Products not the Subjects of Approved NDA's

FDA will not begin regulatory proceedings to remove products from the market based upon the absence of an approved NDA or ANDA under section 505 of the Federal Food, Drug, and Cosmetic Act, provided that all of the following conditions are met:

1. *Labeling.* Manufacturers label their productions according to the labeling set forth in this notice.

2. *Studies.* Manufacturers submit protocols and conduct studies in accordance with the requirements and time limits set forth above for "deemed approved" products.

3. *Submission of ANDA's.* Manufacturers submit ANDA's (21 CFR 314.1(f)) on or before January 29, 1981. If the information in the ANDA is complete and satisfactory, FDA will conditionally approve the ANDA pending the results of clinical studies. Such conditionally approved products will have the same legal status as products that are subjects of "deemed approved" applications reviewed in the Drug Efficacy Study; that is, as products for which safety is not in question, but for which effectiveness has not been proven.

4. FDA has not issued a non-approvable or not-acceptable letter to the applicant concerning the ANDA.

5. The ANDA is conditionally approved by July 31, 1981.

Failure of any manufacturer to comply with each of the conditions of exemption of this notice will result in appropriate regulatory action.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 505, 701, 52 Stat. 1052–1053, as amended, 1055–1056 as amended (21 U.S.C. 355, 371)) and the Administrative Procedure Act (5 U.S.C. 553, 554), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1).

Dated: October 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Analysis.

[FR Doc. 80-33570 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-03-M

American Cyanamid Co.; Chlortetracycline Oblong Tablets With Vitamins; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The agency withdraws approval of a new animal drug application (NADA) providing for use of chlortetracycline oblong tablets with vitamins containing 250 milligrams (mg) of chlortetracycline hydrochloride, 62,500 I.U. vitamin A, 6,250 I.U. vitamin D, and 100 mg nicotinic acid. The sponsor, American Cyanamid Co., requested the withdrawal of approval.

EFFECTIVE DATE: November 10, 1980.

FOR FURTHER INFORMATION CONTACT: David Scarr, Bureau of Veterinary Medicine (HFV–214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4093.

SUPPLEMENTARY INFORMATION: American Cyanamid Co., Agricultural Research Division, P.O. Box 400, Princeton, NJ 08540, is the sponsor of NADA 55–026 which provides for the use of chlortetracycline oblong tablets with vitamins for the prevention and treatment of bacterial scours in calves. This application was originally approved on November 30, 1962, under the Food Additive Amendments (72 Stat. 1786 (21 U.S.C. 348(c)(1))). The sponsor has requested by letter dated February 4, 1980, that approval of the NADA be withdrawn because the product is no longer manufactured or marketed.

V 45 OC 31 80 UMI

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))), under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 55–026 and all supplements thereto for chlortetracycline oblong tablets with vitamins is hereby withdrawn, effective November 10, 1980.

In a separate document published elsewhere in this issue of the Federal Register, § 546.110d *Chlortetracycline hydrochloride tablets* is amended to delete that portion that reflects approval of this NADA.

Dated: October 23, 1980.

Gerald B. Guest,

Acting Director for Veterinary Medicine.

[FR Doc. 80-33873 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-03-M

Health Care Financing Administration

Regional Reorganization; Statement of Organization, Functions, and Delegations of Authority

Part F, Chapter FD, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, (43 FR 5574, February 9, 1978 and 44 FR 12767, March 8, 1979), is amended to reflect the reorganization of HCFA's Regional Offices. The reorganization integrates the management of the Medicare and Medicaid programs and aligns Regional Office components with their Central Office counterparts.

1. Delete the functional statement for the *Office of the Regional Administrator (Regions I–X)* and its subordinate organizational elements in their entirety and substitute the following:

Section FQ.10. Organization. Office of the Regional Administrator. The HCFA regional offices are headed by a Regional Administrator who reports to the Administrator, HCFA. The regional offices include:

A. Division of Health Standards and Quality

B. Division of Quality Control

C. Division of Financial Operations

D. Division of Program Operations

Section FQ.20. Functions. Office of the Regional Administrator. Is the principal line official for regional operations of the Health Care Financing Administration (HCFA). Provides executive leadership and guidance on behalf of the Administrator, HCFA, to all components at the regional level. Implements national policy at the regional level. Assures the effective administration of all HCFA programs including Medicare, Medicaid, Professional Standards Review Organizations (PSROs), quality control, and certification of institutional providers in a major geographical area. Participates in the formulation of new policy and recommends changes in existing national policy for all HCFA programs. Develops and implements a professional relations program within the region for all HCFA programs and serves as the principal HCFA contact with all professional organizations such as hospital and medical associations. At the regional level, takes action to implement HCFA national initiatives undertaken to integrate HCFA program operations and is responsible for coordination of HCFA programs with other HHS components and Federal agencies. Coordinates with the HHS Principal Regional Official to assure effective relationships with State and local governments. Manages all administrative activities for the HCFA components and coordinates such activities with the Regional Administrative Support Center. Initiates and directs the implementation of special regional and headquarters projects affecting all HCFA programs. Directs regional responsibilities relating to experimental and demonstration projects. Oversees a beneficiary services program within the region for all HCFA programs. Provides regional perspective to the Administrator, bureau directors, and staff office directors in the development of HCFA policies, programs, and objectives.

A. *Division of Health Standards and Quality.* Under the direction of the HCFA Regional Administrator the Division of Health Standards and Quality assures that health care services provided under Medicare and Medicaid are furnished in the most effective and efficient manner consistent with recognized professional standards of care. Serves as the regional focus for assuring accountability to health care consumers for the quality of health care services. Participates in the formulation and development of health standards and quality policies and programs; interprets and implements health safety standards and evaluates their impact on the utilization and quality of health care services. Insures appropriate review and application of conditions of participation for providers and suppliers of health services under the Social Security Act and other related Federal programs. Exercises authority for approval/denial/termination of all provider/supplier certification actions under the Medicare program. Makes final determination on all initial budget requests submitted by State agencies. Exercises authority on all fiscal matters relating to section 1864 agreements. Resolves conflicts involving the State Survey Agency and Professional Standards Review Organizations (PSROs). Oversees, monitors and evaluates the Medicaid State Agency, State Survey Agencies and PSROs, and recommends corrective actions are taken as required. Maintains liaison with organizations representing health care professionals, providers of health care services, and program beneficiaries.

Interprets and implements policies and procedures for review and utilization control programs under the Social Security Act and other Federal programs. Oversees the negotiation and award of grants and the operation of local PSROs and Professional Standards Review (PSR) State Councils. Performs regional responsibilities relating to experimental and demonstration projects. Develops and implements a program of liaison with organizations representing health care professionals and providers of health care services, and assumes responsibility for associated program training. Provides current feedback to central office on operations, activities, and problems. Provides regional perspective in the development of central office policies, objectives, and work plans. Monitors and assesses performance and provides technical assistance to End-Stage Renal Disease (ESRD) networks by overseeing financial management and compliance with program policies and regulations and insures coordination with States and local planning agencies and PSROs.

B. *Division of Quality Control.* Under the direction of the HCFA Regional Administrator, the Division of Quality Control develops and conducts ongoing HCFA validation and quality control programs at the regional level. Evaluates the effectiveness of HCFA operations, policies and procedures with focus on those that may result in erroneous expenditures. Conducts ongoing reviews/studies of health care providers and of program policy or administrative procedures showing indications of potential fraud, abuse or program mismanagement. Recommends corrective action, including statutory and regulatory changes, to correct problems identified. Documents findings to the extent of calculating overpayments made to specific providers and/or savings which will accrue as a result of implementing recommended changes in law, regulations, policy or procedures. Conducts and oversees validation programs designed to detect improper expenditures of funds provided through Medicaid and Medicare programs. Monitors contractor/State performance in fulfilling Medicare/Medicaid contract and State plan requirements related to fraud detection and abuse control. Works with PSROs and other peer review bodies to obtain professional case review services and to impose abuse related sanctions. Assumes control of abuse investigations, where warranted, and refers cases of suspected criminal fraud to the Office of Inspector General. Retains independent authority for civil fraud in cases where criminal prosecution is not sought. Has primary responsibility for civil negotiations in all program integrity cases. Works with Medicaid State Agencies and Medicare contractors to ensure that effective systems for detecting and eliminating abuse are in place. Develops and recommends administrative sanctions in cases of fraud or abuse. Monitors the implementation of administrative sanctions imposed by HCFA. Provides information to the HCFA Regional Administrator on improper program expenditures. Operates systematic Medicare and Medicaid quality control programs in a variety of areas such as Early and Periodic Screening, Diagnosis and Treatment (EPSDT), Medicaid eligibility, Medicaid claims processing, Medicaid utilization control, third party liability and Medicare Part B end-of-line bill review. Makes recommendations to the Regional Administrator regarding financial penalties and final decisions concerning Federal/State quality control differences. Assists Medicaid State Agencies and Medicare contractors in improving the management of federally required quality control programs.

C. *Division of Financial Operations.* Under the direction of the HCFA Regional Administrator, the Division of Financial Operations is responsible for financial management, institutional reimbursement, and Automated Data Processing (ADP) systems of Medicare contractors and Medicaid State Agencies. Assures continuing surveillance and appraisal of Medicare contractors regarding the implementation of Medicare institutional reimbursement policy and procedures. Monitors contractor overpayment identification and collection activities; prepares overpayment cases for submission to the Government Accounting Office (GAO) for collection and/or to the Department of Justice for possible prosecution. Identifies problems and initiates action to insure contractor adherence to national Medicare policy and procedures. Directs Medicare regional financial management activities. Directs a program of in-depth surveys to evaluate the effectiveness of the Medicare program with respect to areas of responsibility. Conducts Part A quality assurance program and on-site performance appraisals. Negotiates and approves contractor budgets, modifications to budget allotments and final cost settlements. Coordinates day-to-day contractor financial management activities; reviews and evaluates the cost allocation procedures of contractors.

Plans, manages, and provides federal leadership and assistance to State agencies in implementation, maintenance, and regulatory review of Medicaid State Agency activities with respect to institutional reimbursement, financial management and ADP systems. Interprets Medicaid program and financial policy with respect to institutional reimbursement, financial management, and automated data processing activities. With respect to areas of responsibility, maintains day-to-day liaison with State agencies and monitors their Medicaid program activities and practices by conducting periodic comprehensive on-site program management and financial reviews to assure State adherence to Federal law and regulations. Reviews, approves and monitors State institutional reimbursement plan. Reviews cost allocation plans, determines whether such plans are approvable from the Medicaid standpoint and advises such determinations to Regional Administrative Support Center. Reviews, analyzes, and approves State expenditures for Medicaid contracts. Resolves audits with States. Reviews States' quarterly estimates of expenditures under the Medicaid program and recommends the amount to be estimated in the quarterly grants. Reviews States' quarterly statements of expenditures and recommends appropriate action on amounts claimed. Defers reimbursement action on questionable State claims, reviews the claims for allowability and recommends appropriate action. Issues orders suspending Federal financial participation on behalf of State payments to Title XIX provider institutions and revocation of such suspension orders. Advises, provides technical assistance, supports, and evaluates State management information and claims payment systems. Provides for State and regional input to operational plans, policy, regulations, legislation, and budget formulation with respect to areas of responsibility. Provides current feedback to central office counterparts on operations, activities, and problems. Provides regional perspective in the development of central policy, objectives and work plans related to areas of responsibility.

D. *Division of Program Operations.* Under the direction of the HCFA Regional Administrator, the Division of Program Operations serves as a principal point of contact between the Regional Office and the Medicare contractors and Medicaid State Agencies within the Region. Directs the conduct of liaison and working relationships with these organizations. Directs a program of surveillance and appraisal of Medicaid State Agencies and Medicare contractors to ensure compliance with the Medicaid State Plan and the Medicare contract (respectively). When deficiencies are noted, ensures that corrective action is taken as appropriate. Through the review and approval of Medicaid State Plan material, assures the appropriate use of funds under established policies and conformance with planned objectives of the program. Assures uniformity in Plan changes among assigned States. Directs Title XVIII and Title XIX program coordination to achieve greater uniformity and consistency in assigned contractor and State agency practices and to eliminate unnecessary duplication of effort and cost between the two programs.

Provides support to the Medicaid State Agencies, Medicare contractors and other HCFA components with respect to Medicare/Medicaid policy interpretation and specialized technical assistance. Serves as a State Agency and contractor review and resource point for interpretation of Federal regulations, program objectives and policies. Provides significant recommendations and contributions to national policy development and revision. Provides consultation and assistance to Central Office in the development of new and revised legislation, policy, regulations and guidelines. Participates in the development of long and short range goals and objectives of the agency as well as its policies and directives. Monitors and assesses the performance of Medicaid State Agencies and Medicare contractors in the area of Medicaid and Medicare policy, procedures and instructions. Makes

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recommendations where appropriate and ensures corrective action is taken when deficiencies are identified.

Develops and implements a program of liaison with organizations representing program beneficiaries. Provides direction and guidance to State agencies and Medicare contractors concerning services to beneficiaries. In addition, maintains a program of surveillance and appraisal to assure that appropriate standards are met. Where deficiencies are noted, ensures that appropriate corrective action is taken. Provides Medicare orientation, training and day-to-day liaison with direct-dealing providers and Comprehensive Health Centers (CHCs). Conducts on-site reviews of all direct-dealing providers and CHCs on a regular basis. Individually or in concert with other HCFA representatives, represents HCFA in conferring and negotiating with regional and national officials of other HHS agencies and representatives of private and public organizations, in matters of the administration of the Medicare and Medicaid programs and the impact of these programs on beneficiaries. Coordinates with the Social Security Administration, Office of the Regional Commissioner and provides direction and technical assistance to the Social Security District Offices concerning the Medicare entitlement, post-entitlement, and beneficiary education functions they perform under agreement with HCFA. Monitors the performance of these functions and makes appropriate recommendations.

Dated: October 23, 1980.

Patricia Roberts Harris,

Secretary.

[FR Doc. 80-33912 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-35-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit; Receipt of Application

Applicant: San Diego Zoological Garden, P.O. Box 551, San Diego, California 92112.

The applicant requests a permit to import one male and one female captive born dhole, or Chinese Red Dog (*Cuon alpinus lepturus*) from the Assiniboine Park Zoo, Winnipeg, CANADA for propagation.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), P.O. Box 3654, Arlington, VA 22203.

This application has been assigned file number PRT 2-7163. Interested persons may comment on this application on or before December 1, 1980, by submitting written data, views, or arguments to the Director at the above address. Please refer to the file number when submitting comments.

Dated: October 22, 1980.

Fred L. Bolwahnn,

Acting Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 80-34034 Filed 10-30-80; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Receipt of Application

Applicant: Sparks Nuggett, Inc., 1100 Nuggett Ave., Sparks, NV 89431.

The applicant requests a permit to import one male and one female Asian elephant each two years old for the purpose of propagation and exhibition. The elephants will be obtained from H. B. Knan, Purana Ganj Road Rampour, (U.P.) INDIA. The elephants were not taken from the wild, but were born in captivity in the Indian state of Behar.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), P.O. Box 3654, Arlington, VA 22203.

This application has been assigned file number PRT 2-7162. Interested persons may comment on this application on or before December 1, 1980 by submitting written data, views, or arguments to the Director at the above address. Please refer to the file number when submitting comments.

Dated: October 27, 1980.

Larry LaRochelle,

Acting Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 80-34035 Filed 10-30-80; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Receipt of Application

Applicant: Denver Zoological Gardens, City Park, Denver, CO 80205.

The applicant requests a permit to import in foreign commerce three captive-bred Bactrian camels (*Camelus boctrianus*) from England for enhancement of propagation and survival.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), P.O. Box 3654, Arlington, VA 22203.

This application has been assigned file number PRT 2-7222. Interested persons may comment on this application on or before December 1, 1980 by submitting written data, views, or arguments to the Director at the above address. Please refer to the file number when submitting comments.

Dated: October 27, 1980.

Larry LaRochelle,

Acting Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 80-34028 Filed 10-30-80; 8:45am]

BILLING CODE 4310-55-M

Bureau of Land Management

[NM 27214]

Notice of Coal Lease Offering by Sealed Bid

Correction

In FR Doc. 80-32435, appearing on page 69052, in the issue of Friday, October 17, 1980, make the following correction.

On page 69052, third column, the third line beneath the heading:

New Mexico Principal Meridian, New Mexico

Now reading "Containing 230.00 Acres." should have read "Containing 320.00 Acres."

BILLING CODE 1505-01-M

Baker District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR Part 1780 that a meeting of the Baker District Advisory Council will be held on December 2, 1980.

The meeting will begin at 9 a.m. in the Conference Room on the second floor of the Federal Building, Baker, Oregon.

The agenda for the meeting will include:

1. Approve minutes of the September 16 and October 16, 1980 meetings.

2. Work on the Baker Resource Area Management Framework Plan multiple use decisions.

3. Work on the draft Rangeland Management Program Document (RMPD) covering the Baker Resource Area portion of the Ironside Grazing Management Environmental Impact Statement area.

4. Public comments.

5. Arrangements for the next council meeting.

The meeting is open to the public and news media. Interested persons may make oral statements to the Council between 2 and 3 p.m., or file written statements for the Council's consideration. Anyone wishing to make an oral statement should notify the District Manager, Bureau of Land Management, Federal Building, P.O. Box 987, Baker, Oregon 97814, telephone 503-523-6391, Ext. 281, by 12 noon, Monday, December 1, 1980. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

A report of the Council meeting will be maintained at the District Office and be made available for public inspection and reproduction at the cost of duplication.

Gordon R. Staker,

District Manager.

October 21, 1980.

[FR Doc. 80-33864 Filed 10-30-80; 8:45 am]

BILLING CODE 4310-84-M

Salmon, Idaho, District Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Salmon District Grazing Advisory Board will be held on December 9, 1980. The meeting will begin at 10:00 A.M. in the conference room of the Bureau of Land Management office on South Highway 93, Salmon, Idaho.

The agenda for the meeting is as follows: (1) To elect a chairman and a vice-chairman, (2) to consider and make recommendations concerning allotment management plans, and (3) to consider and make recommendations concerning the expenditure of range betterment and advisory board funds.

The meeting is open to the public. Anyone may make oral statements to the board or file written statements for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, P.O. Box 430, Salmon, Idaho, by November 2, 1980.

Summary minutes of the board meeting will be maintained in the District Office and will be available for public inspection within 30 days following the meeting.

Harry R. Finlayson,

District Manager.

[FR Doc. 80-33865 Filed 10-30-80; 8:45 am]

BILLING CODE 4310-84-M

[W-72518]

Wyoming; Application

October 23, 1980.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Panhandle Eastern Pipe Line Company of Brighton, Colorado, filed an application for a right-of-way to construct an 8-inch gathering pipeline and related facilities for the purpose of transporting natural gas across the following described public lands:

Sixth Principal Meridian, Wyo.

T. 23 N., R. 101 W.,
Secs. 5, 7, and 8.
T. 24 N., R. 101 W.,
Secs. 32 and 33.
T. 23 N., R. 102 W.,
Secs. 12, 13, 14, 22, 32, and 34.
T. 23 N., R. 103 W.,
Secs. 26, 28, 29, and 36.

The proposed pipeline will connect the Davis Treasury Unit #1 Well in Section 33, T. 24 N., R. 101 W., to a point of connection with Mountain Fuel Supply Company's transmission line in Section 29, T. 23 N., R. 103 W., all within Sweetwater County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, Highway 187 North, P.O. Box 1869, Rock Springs, Wyoming 82901.

Harold G. Stinchcomb,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 80-33863 Filed 10-30-80; 8:45 am]

BILLING CODE 4310-84-M

[U-910]

Utah; Deep Creek Mountains Interim Protection Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the interim protection plan for the Deep Creek Mountains in Utah will become available to the public October 30, 1980. A 30 day public comment period concerning the interim protection plan will continue through November 28, 1980, after which the final plan will be implemented.

On or about October 30, a copy of the interim protection plan will be mailed to those on the Deep Creek Mountains mailing list. Copies will also be available at the BLM Utah state office, Richfield and Salt Lake District offices.

All comments should be sent to: Deep Creek Mountains, BLM Utah State Office, 136 East South Temple, Salt Lake City, Utah 84111.

FOR FURTHER INFORMATION CONTACT: Reed Stalder, Utah State Office 801-524-5326.

Dated: October 22, 1980.

Gary J. Wicks,

Director.

[FR Doc. 33809 Filed 10-30-80; 8:45 am]

BILLING CODE 4310-84-M

Delegation of Authority to the Director, Bureau of Land Management, Regarding Nondiscrimination Under Trans-Alaska Pipeline Permits

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Delegation of Authority.

SUMMARY: This notice is issued in accordance with the provisions of 5 U.S.C. 552(a)(1). The Secretary of the Interior has delegated authority to the Director, Bureau of Land Management, regarding nondiscrimination under Trans-Alaska Pipeline permits. The Director, BLM is designated the Department of the Interior Compliance Officer to perform functions assigned to such Officer under regulations implementing section 403 of Pub. L. 93-153 (43 CFR 27). The delegation and designation were issued by Manual Release Number 2284 dated July 29, 1980, Part 235, Chapter 4 of the Department of the Interior Manual. The Director has redelegated his authority to the State Director, Alaska.

EFFECTIVE DATE: October 31, 1980.

ADDRESS: Any inquiries should be sent to: Director (840), Bureau of Land Management, 18th and C Streets, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: John Moeller at the above address on 202-343-6825.

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Dated: October 24, 1980.

James W. Curlin,

Secretary of the Interior.

[FR Doc. 80-33989 Filed 10-30-80; 8:45 am]

BILLING CODE 4310-84-M

Colorado; Termination of Proposed Forest Service Withdrawal Sites and Opening of Lands

The U.S. Department of Agriculture, Forest Service, Rocky Mountain Region, filed withdrawal applications as listed below:

1. Application C-11542 filed September 18, 1970 and published September 30, 1970 as FR Doc. 70-12993 and December 30, 1977 and FR Doc. 77-37092.

New Mexico Principal Meridian-Uncompahgre National Forest

Palmer Roodside Rest

T. 43 N., R. 7 W., Protraction 24A, dated May 5, 1965.
Sec. 20: SE¼, description by metes and bounds as M.S.1909.

Beginnning at Corner No. 1 an iron rod one inch in diameter, two feet long set in a hole drilled in a rock marked 1/1909. Whence, U.S.L.M. E bears S. 8° 42' E., 74 feet. Point on Hayden Mountain bears S. 79° W; thence S. 35° W., 40 feet to intersection with county road, 70 feet to south bank of Red Mountain Creek, 264.5 feet to intersection with line 3-4 of survey number 1910, 540 feet leave east bank of Red Mountain Creek, 564.1 feet to intersection of line 1-2 survey No. 1910, 1150 feet to center of Red Mountain Creek, 1310 feet to witness corner No. 2 a post four feet long set on hard rock in a large mount of stones marked witness corner 2/1909, 1500 feet to corner No. 2 which is inaccessible; thence S. 55° E., 120 feet to center of Red Mountain Creek, 300 feet to corner No. 3 which lies in center of County Road from whence Mt. Elizabeth bears N. 21° 18' E., point of rock on Mt. Abrams bears S. 67° 50' E., thence N. 35° E., 29 feet to witness corner No. 3 a post 4 feet long set in ground as far as rock would permit with mount of stones marked witness corner 3/1909, 950.2 feet to intersetion of line 1-2 survey No. 1910, 1249.8 feet to intersection of line 3-4 survey No. 1910, 1500 feet to corner No. 4 a post 4 feet long with mount of stones marked 4/1909; thence N. 55° W., 85 feet to intersection with Curran Creek, 110.7 feet to intersection with line 4-1 survey No. 304A., 130.9 feet to intersection with line 1-2 of Henderson Lode survey No. 302, 213.1 feet to intersection with line 4-1 of survey No. 302, 287 feet to intersection with Curran Creek, 292.4 feet to intersection with line 1-2 of survey No. 304A., 300 feet to corner No. 1 the place of beginning. 10.27 acres

Emma Lode Roodside Rest

T. 42 N., R. 8 W., Protraction 24B, dated May 5, 1965.
Sec. 11: SE¼ description by metes and bounds as M.S. 20141.

Beginning at Corner No. 1 from which U.S.M.M. Carbon Lake bears S. 17° 59' E. 3927.45 feet; thence N. 36° 49' E. 317.3 feet to intersection with line 5-8 of Snowflake mineral survey No. 4508, 1497.48 feet to intersection with line 5-8 of O.P.P. mineral survey 6998, 1500 feet to corner No. 2 from whence corner No. 8 of Snowflake mineral survey No. 4507 bears S. 46° 37' W., 1214.2 feet; thence N. 53° 11' W., 92.92 feet to intersection with line 7-8 of the O.P.P. mineral survey 6998, 206.67 feet to intersection with line 7-8 of Snowflake mineral survey No. 4507, 600 feet to corner No. 3, from whence corner No. 4 of Swampangel mineral survey No. 15342 bears S. 78° 42' 40" E., 545.22 feet; thence S. 36° 49' W., 112 feet to intersection with Unnamed Creek, 820 feet to intersection with unnamed creek, 1500 feet with corner No. 4; thence S. 53° 11' E., 560 feet to intersection with Silverton R.R., 600 feet to corner No. 1, the place of beginning. 13.95 acres

2. Application C-15142 filed January 14, 1972 and published March 24, 1972 as FR Doc 72-4500 and December 30, 1977 as FR Doc. 77-37175.

Sixth Principal Meridian-Gunnison National Forest

Rivers End Compground

T. 14 S., R 82 W.
Sec. 5: E½NE¼SW¼, NW¼SE¼, N½SW¼SE¼, except the portion included in patented Mineral Survey 8806.
60 acres.

3. Application C-15960 filed March 23, 1972 and published May 11, 1972 as FR Doc. 72-7188 and August 21, 1978 as FR Doc. 78-2330.

New Mexico Principal Meridian-Gunnison National Forest

Williams Creek Campground

T. 42 N., R. 4 W.
Sec. 8: N½NW¼, N½S½NW¼.
120 acres.

Windy Point Overlook

T. 43 N., R. 3 W.
Sec. 18: East 10 chains of Lot 2, NW¼SE¼NW¼, N½SW¼SE¼NW¼.
35 acres.

Hidden Valley Picnic Ground

T. 44 N., R. 2 W.
Sec. 30: W½NW¼NE¼, E½NE¼NW¼.
40 acres.

New Mexico Principal Meridian-Gunnison and San Isabel National Forest

Alpine Tunnel Historic District

T. 51 N., R. 5 E.
Sec. 22: S½SW¼;
Sec. 27: NW¼, N½SW¼;
Sec. 28: NE¼, N½SE¼.
560 acres.

4. Application C-17416 filed December 5, 1972 and not published.

Sixth Principal Meridian-Gunnison National Forest

Taylor Park Sewage Lagoon

T. 14 S., R. 82 W.
Beginning at a point from which Corner No. 9 of Mineral Survey No. 2096 bears S. 45°15' E., 500 feet; thence, S. 57°00' E., 1600 feet; thence, N. 33°00' E., 700 feet; thence, N. 57°00' W., 1600 feet; thence S. 33°00' W., 700 feet to the point of beginning.
25.7 acres.

The applicant agency has cancelled the application in paragraphs one thru four in their entirety.

5. Application C-16210 filed April 27, 1972 published June 21, 1972 FR Doc. 72-9347 and January 5, 1978 FR Doc. 78-115.

New Mexico Principal Meridian-Grand Mesa and Uncompahgre National Forest

Antone Springs Compground

T. 47 N., R. 12 W.
Sec. 15: E½E½SW¼SW¼, W½SE¼SW¼.
30 acres.

Sixth Principal Meridian-Gunnison National Forest

McClure Campground

T. 11 S., R. 89 W.
Sec. 2: S½NW¼SW¼, SW¼SW¼;
Sec. 3: SE¼SE¼, Less 10 acres, more or less, of State Highway 133 roadside zone previously withdrawn under P.L.O. 4579.
90 acres.

The applicant agency has cancelled the application in paragraph five insofar as it affects the lands described.

Therefore, in accordance with the regulations contained in 43 CFR 2091.2-5(b)(1), at 7:45 a.m. on December 1, 1980, the lands described in paragraphs one through five above will be relieved of the segregative effect of the applications and open to such forms of appropriation as may by law be made of National Forest land.

Any questions concerning these lands should be addressed to the undersigned at the Bureau of Land Managment, Colorado State Office, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, CO 80202.

Robert D. Dinsmore,

Chief, Branch of Adjudication.

[FR Doc. 80-33966 Filed 10-30-80; 8:45 am]

BILLING CODE 4310-84-M

Montrose District Advisory Council Meeting

Notice is hereby given in accordance with 43 CFR Part 1780 that a meeting of the Montrose District Advisory Council will be held on December 10, 1980.

The meeting will convene at 9:00 a.m. in the conference room of the Bureau of Land Management office, Highway 550 South, Montrose, Colorado.

The agenda for this meeting will include: (1) A discussion of the functions of the Council; (2) Orientation to Montrose District programs and issues; and (3) Arrangements for the next meeting.

The meeting is open to the public. Interested persons may make oral statements to the Council between 1:30 p.m. and 2:00 p.m. or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, P.O. Box 1269, Montrose, Colorado 81401, telephone 303-249-7791, by close of business on December 3, 1980. Depending on the number of persons wishing to make oral statements, a time limit per person may be established by the District Manager.

Summary minutes of the Council meeting will be maintained at the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Marilyn V. Jones,

District Manager.

[FR Doc. 80-33965 Filed 10-30-80; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Cape Cod National Seashore: Off-Road Vehicle Use: Availability of Management Analysis Alternatives; Public Meetings

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of Analysis of Management Alternatives (including Environmental Assessment) for Off-Road Vehicle Use and Notice of Public Meetings.

SUMMARY: The National Park Service has prepared an Analysis of Management Alternatives (including Environmental Assessment) for Off-Road Vehicle Use, Cape Cod National Seashore, Massachusetts. This analysis includes a description of past and present off-road vehicle use within Cape Cod National Seashore, several alternatives for the management of off-road vehicles on the dunes and beaches of the Seashore, and an assessment of the environmental impacts of each alternative. With this Notice of Intent, the National Park Service is seeking comments on the Analysis of Management Alternative and the selection of a preferred alternative. These comments will assist the National Park Service in the preparation of proposed regulations for off-road vehicle use in Cape Cod National Seashore.

DATES: Written comments will be accepted until January 2, 1981. Public meetings will be held at 7:30 p.m. on December 1, 1980, at Faneuil Hall, in Boston, Massachusetts, and at 7:30 p.m. on December 2, 1980, at the Salt Pond Visitor Center, Cape Cod National Seashore, Eastham, Massachusetts.

ADDRESSES: Comments should be directed to: Superintendent, Cape Cod National Seashore, South Wellfleet, Massachusetts 02663. Copies of the Analysis of Management Alternatives may be obtained from the North Atlantic Regional Office, 15 State Street, Boston, Massachusetts 02109 or the Superintendent's office, Cape Cod National Seashore, South Wellfleet, Massachusetts 02663.

Richard L. Stanton,

Regional Director, North Atlantic Region.

[FR Doc. 80-34045 Filed 10-30-80; 8:45 am]

BILLING CODE 4310-70-M

Delta Region Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 1:30 p.m. CST on November 12, 1980, at the Louisiana Department of Wildlife and Fisheries Building, 400 Royal Street, Room 220, New Orleans, Louisiana.

The Delta Region Preservation Commission was established pursuant to Pub. L. 95-265, Section 907(a) to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park, in the development and implementation of a general management plan, and in the development and implementation of a comprehensive interpretive program of the natural, historic, and cultural resources of the Region.

Matters to be discussed at this meeting include:

1. Workshop Session to review and work on comments of the draft General Management Plan.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-serve basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historical Park.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact James Isenogle, Superintendent, Jean Lafitte National Historical Park, 400 Royal Street, Room 200, New Orleans, Louisiana 70130, telephone area code 504 589-3882. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park.

Dated: October 24, 1980.

Earl A. Hassebrock,

Acting Regional Director, Southwest Region, National Park Service.

[FR Doc. 80-34044 Filed 10-30-80; 8:45 am]

BILLING CODE 4310-70-M

J. Carver Harris DBA The Castillo Shop; Intention to Negotiate Concession Permit

Pursuant to the provisions of Section 5 of the Act of October 9, 1965, (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that on or before December 1, 1980, the Department of the Interior, through the Regional Director, Southeast Region, National Park Service, proposes to negotiate a concession permit with J. Carver Harris DBA The Castillo Shop, authorizing him to continue to provide an interpretive publications and souvenir sales outlet for the public at Castillo de San Marcos National Monument, St. Augustine, Florida, for a period of five (5) years from January 1, 1981, through December 31, 1985.

An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major Federal action having a significant impact on the environment under the National Environmental Policy Act of 1969. The environmental assessment and finding of no significant impact may be reviewed in the Office of the Superintendent, Castillo de San Marcos National Monument, 1 Castillo Drive, St. Augustine, Florida 32084.

The foregoing concessioner has performed his obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on December 31, 1980, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit. This provision, in effect, grants J. Carver Harris, as the present satisfactory concessioner, the right to meet the terms of responsive proposals for the proposed new permit and a preference in the award of the permit, if, thereafter, the proposal of J. Carver Harris is substantially equal to others received. In the event a responsive proposal superior

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to that of J. Carver Harris (as determined by the Secretary) is submitted, J. Carver Harris will be given the opportunity to meet the terms and conditions of the superior proposal the Secretary considers desirable, and, if it does so, the new permit will be negotiated with J. Carver Harris. The Secretary will consider and evaluate all proposals received as a result of this notice.

Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the thirtieth (30th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Superintendent, Castillo de San Marcos, 1 Castillo Drive, St. Augustine, Florida 32084 for information as to the requirements of the proposed permit.

Dated: September 24, 1980.

Joe Brown,

Regional Director, Southeast Region.

[FR Doc. 80-34047 Filed 10-30-80; 8:45 am]

BILLING CODE 4310-70-M

Water and Power Resources Service

Amendatory Distribution System Loan Repayment Contract Between the United States and the Kanawha Water District; Availability of Proposed Amendatory Contract for Public Review and Comment

The Department of the Interior, through the Water and Power Resources Service (Water and Power), intends to execute an amendatory repayment contract with the Kanawha Water District (District) which is located near Willows, California. A proposed amendatory contract has been prepared by Water and Power and the District pursuant to the Reclamation Act of June 17, 1902 (32 Stat. 388), as amended, and the Distribution System Loans Act of July 4, 1955 (69 Stat. 244), as amended.

The primary purpose of the proposed contract is to provide for the payment of interest on a portion of the distribution system loan allocable to municipal and industrial (M&I) service.

A second purpose of the amendatory contract is to make the contract executed in 1972 consistent with Pub. L. 92-487. That law, enacted October 13, 1972, eliminated the need for transferring title of property needed for construction to the United States. Standard articles that are now required, or have been modified subsequent to the execution of the original contract in 1972, have also been included in the proposed amendatory contract.

Following publication of this notice, the proposed amendatory contract will be available for public review and the receipt of written comments for a 30-day period. A copy of the proposed contract may be obtained by writing the Regional Director, Water and Power Resources Service, 2800 Cottage Way, Sacramento, California 95825, or by calling Ms. Cindy Cowden at (916) 484-4540. Public meetings may be held if comments on the proposed contract indicate there is need for clarification or resolution of issues arising during the comment period. Advance notice of such meetings will be provided to parties indicating their interest by written request.

All written correspondence concerning the proposed contract will be made available to the public pursuant to the terms and conditions of the Freedom of Information Act (80 Stat. 388), as amended.

Dated: October 24, 1980.

Aldon D. Nielsen,

Acting Assistant Commissioner of Water and Power Resources.

[FR Doc. 80-33861 Filed 10-30-80; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

[Volume No. 363]

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Decided: October 15, 1980.

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a petition for intervention, either in support of or in opposition to the granting of an application, must be filed with the Commission within 30 days after the date notice of the application is published in the **Federal Register**. Protests (such as were allowed to filings prior to March 1, 1979) will be rejected. A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, including the extent, if any, to which petitioner (a) has solicited the traffic or business of those supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. The Commission will also consider (a) the nature and extent of the property, financial, or other interest of the petitioner, (b) the effect of the decision which may be rendered upon petitioner's interest, (c) the availability of other means by which the petitioner's interest might be protected, (d) the extent to which petitioner's interest will be represented by other parties, (e) the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and (f) the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable compliance with the requirements of the rule may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission indicating the specific rule under which the petition to intervene is being filed, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Section 247(f) provides, in part, that an applicant which does not intend to timely prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If an applicant has introduced rates as an issue it is noted. Upon request, an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administrative acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, unresolved fitness questions, and jurisdictional problems; we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. § 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulation. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. § 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. § 10930(a) [formerly section 210 of the Interstate Commerce Act.]

In the absence of legally sufficient petitions for intervention, filed on or before December 1, 1980 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the following decision-notices on or before December 1, 1980, or the application shall stand denied.

By the Commission, Review Board Number 2, Members: Chandler, Eaton, and Liberman.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, except as otherwise noted.

MC 105566 (Sub-223F), filed May 13, 1980, previously noticed in the **Federal Register** issue of July 17, 1980, and republished this issue. Applicant: SAM TANKSLEY TRUCKING, INC., P.O. Box 1120, Cape Girardeau, MO 63701. Representative: Thomas F. Kilroy, Suite 406, Executive Bldg., 6901 Old Keene Mill Rd., Springfield, VA 22150. Transporting *acids, adhesives, adjusters, alcohols* (except alcoholic liquors), *tanners' bate, cleaning, scouring and washing compounds, fuel oil, pesticides, water clarifying compounds, deodorants, disinfectants, tanners' depilatory, tanning extracts, feeds, feed supplements, paints, plasticizers, solvents, petroleum products, plastics* (other than expanded), *plastic or rubber articles, sizing, acid sludge, and textile softeners* (except in bulk), from the facilities of Rohm and Haas Company, at (a) Los Angeles and Hayward, CA, (b) Calumet City, Morton Grove, and Niles, IL, (c) Louisville, KY, (d) Bristol, Croydon, and Philadelphia, PA, (e) Knoxville, TN, and (f) Dallas and Houston, TX, to points in AL, AR, CT, DE, IA, KS, LA, MD, MA, MS, MO, NE, NJ, NM, NY, NC, ND, OK, PA, SD, VA, WV, and WY. Note: The purpose of this republication is to correct the commodity description.

[FR Doc. 80-33956 Filed 10-30-80; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. OP1-058]

Motor Carrier; Permanent Authority Decisions; Decision-Notice

Decided: October 24, 1980.

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the **Federal Register** of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before December 15, 1980 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. On or before December 30, 1980 an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill. Member Hill not participating.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

MC 95920 (Sub-68F), filed October 3, 1980. Applicant: SANTRY TRUCKING CO., a Corporation, 10505 N.E. 2nd Ave., Portland, OR 97211. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring

special equipment), between points in the U.S., under continuing contract(s) with Western States Shippers Association, Inc., of Portland, OR.

[FR Doc. 80-33057 Filed 10-30-80; 8:45 am]

BILLING CODE 7035-01-M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or to use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Armstrong World Industries, Inc., P.O. Box 3001, Lancaster, PA 17604.

2. Wholly-owned subsidiaries which will participate in the operations and address of their respective principal offices:

a. Armstrong World Industries Canada Ltd., P.O. Box 919, Station "A", Montreal, Quebec H3C 2W2 Canada.
b. E&B Carpet Mills, Inc., P.O. Box 1288, Arlington, TX 76010.
c. Empire Carpet Corporation, P.O. Box 3000, Teterboro, NJ 07608.
d. GLD Wholesale, Inc., O'Hare Lake Office Plaza, 2350 East Devon Avenue, Des Plaines, IL 60018.
e. Pacific World Wholesale, Inc., 25811 Clawiter Road, Hayward, CA 94545.
f. Thomasville Furniture Industries, Inc., P.O. Box 339, Thomasville, NC 27360.

1. Parent corporation and address of principal office: Bird & Son, Inc., Washington Street, East Walpole, Massachusetts 02032.

2. Wholly-owned subsidiary which will participate in the operations, and address of their respective principal office: Bird Machine Company, Inc., Neponset Street, South Walpole, Massachusetts 02071.

1. Parent Corporation: The Coleman Company, Inc., 250 N. St. Francis, Wichita, Kansas 67201.

(A) Coust Catamaran Corp., 4925 Oceanside Blvd., P.O. Box 1008, Oceanside, California.
(B) O'Brien International Inc., 14615 N.E. 91st St., Redmond, Washington 98052.
(C) The Canadian Coleman Company Limited, 700 Kipling Avenue, Toronto, Canada M8Z5V6.
(D) Coleman International Sales, Inc., 2111 E. 37th St. N., Wichita, Kansas.

1. Parent corporation and address of its principal office: Colt Industries Inc, 430 Park Avenue, New York, NY 10022.

2. Wholly-owned subsidiaries which will participate in the operations, and addresses of their respective principal offices:

Central Moloney, Inc, 430 Park Avenue, New York, NY 10022.
Colt Industries Operating Corp, 430 Park Avenue, New York, NY 10022.
Crucible Inc, 430 Park Avenue, New York, NY 10022.
Garlock Inc, 430 Park Avenue, New York, NY 10022.
Menasco Inc, 805 South San Fernando Blvd., Burbank, CA 91510.
Stemco Inc, P.O. Box 1989, Industrial Blvd., Longview, TX 75601.

1. Parent corporation and address of its principal office: Exxon Corporation, 1251 Avenue of Americas, New York, New York 10020.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Reliance Electric Company, 29325 Chagrin Boulevard, Post Office Box 22280, Cleveland, Ohio 44122.
(b) Lorain Products Corporation, 1122 F Street, Lorain, Ohio 44052.
(c) Lorain Telecommunications Electronics Company, Herring Road, Post Office Box 2008, Newnan, Georgia 30264.
(d) Lorain Services, 1122 F Street, Lorain, Ohio 44052.
(e) Reliance Telecommunications Electronics Company, 2100 Reliance Parkway, Post Office Box 919, Bedford, Texas 76021.
(f) PEC Industries Inc., 5780 Carrier Drive, Orlando, Florida 32809.
(g) Osborn Machine Company, 222 South Jared Street, Dubois, Pennsylvania 15801.
(h) Reliable Electric Company, 11333 Addison Street, Franklin Park, Illinois 60131.
(i) Lordel Manufacturing Company, 1107 South Mountain Avenue, Monrovia, California 91016.
(j) Relco Trading Company, 11333 Addison Street, Franklin Park, Illinois 60131.
(k) Kato Engineering Company, 1415 First Avenue N., Mankato, Minnesota 56001.
(l) Kato Engineering International Inc., 1415 First Avenue N., Mankato, Minnesota 56001.
(m) Reliance Electric Export Company, 777 Beta Drive, Mayfield Heights, Ohio 44143.
(n) Power Manufacturing Company, 29325 Chagrin Boulevard, Cleveland, Ohio 44122.
(o) Hayden Electic Service Center, 770 Evans Road, Iveson, Arizona 85713.
(p) Tree Electric Service Company, 1020 South Lipan Street, Denver, Colorado.
(q) Federal Pacific Electric Company, 150 Avenue L, Newark, New Jersey 07101.

1. Parent corporation and address of principal office: Facet Enterpises, Inc., 7030 South Yale Avenue, Tulsa, Oklahoma 74177.

2. Wholly-owned subsidiaries which will participate in the operations, and addresses of their respective principal offices: (a) Campbell Filter Company, 5310 East 31 Street, Suite 1100, Tulsa, Oklahoma 74101.

(1) Parent corporation and address of principal office: Ruddick Corporation, 2000 First Union Plaza, Charlotte, North Carolina 28282.

(2) Wholly-owned subsidiaries which will participate in the operations and address of their respective principal offices:

(a) American & Efird Mills, Inc., 22 American Street, Mt. Holly, North Carolina 28120.
(b) Harris-Teeter Super Markets, Inc., 4017 Chesapeake Drive, Charlotte, North Carolina 28233.
(c) Jordan Business Forms, Inc., Interstate Highway 85 at Sam Wilson Road, Charlotte, North Carolina 28206.

1. Parent Corporation and address of Principal Office: NAPCO Industries, Inc., 1600 South Second Street, Hopkins, Minnesota.

2. Wholly-owned subsidiaries which will participate in the operations and address of their respective principal offices:

Mass Merchandisers, Inc., P.O. Box 790, Harrison, Arkansas 72601.
Banner Wholesalers Inc., Company, 700—106th Street, Arlington, Texas 76010.
Kitchenaides Inc., Box 50999, New Orleans, Louisiana 70150.

1. Parent corporation: National Distillers and Chemical Corp., 99 Park Avenue, New York, New York 10016.

2. Wholly-owned subsidiaries:

(a) U.S. Industrial Chemicals Company, 99 Park Avenue, New York, New York 10016.
(b) Emery Industries, Inc., 1300 Carew Towers, Cincinnati, Ohio 45202.
(c) Holland House Brands, Inc., 1125 Pleasant View Terrace, Ridgefield, New Jersey 07657.
(d) Almaden Vineyards, Inc., 1530 Blossom Hill Road, San Jose, California 95118.

(A) The parent corporation and address of the principal office: Raytheon Company, 141 Spring Street, Lexington, Massachusetts 02173.

(B) Wholly owned subsidiaries which will participate in the operations and address of principal offices:

(1) Amana Refrigeration, Inc., Amana, Iowa 52204.

(2) The Badger Company, Inc., One Broadway, Cambridge, Massachusetts 02142.
(3) Beech Aircraft Corporation, 9709 East Central Street, Wichita, Kansas 67201.
(4) Iowa Manufacturing Company, 916 Sixteenth Street Northeast, Cedar Rapids, Iowa 52402.
(4.1) Division of Iowa Manufacturing Company, El-Jay, 86470 Franklin Boulevard, Eugene, Oregon 97405.
(5) The Kuras-Alterman Corporation, 1578 Route 23, Wayne, New Jersey 07470.
(6) Lexitron Corporation, 9700 Desoto Avenue, Chatsworth, California 91311.
(7) The Machlett Laboratories, Inc., 1063 Hope Street, Stamford, Connecticut 06907.
(8) Modern Maid Company, P.O. Box 1111, Chattanooga, Tennesee 37401.
(9) Raytheon Gulf Systems Company, Hartwell Road, Bedford, Massachusetts 01730.
(10) Raytheon Middle East Systems Company, Hartwell Road, Bedford, Massachusetts 01730.
(11) Raytheon Semiconductor International Company, 350 Ellis Street, Mountain View, California 94042.
(12) Raytheon Service Company, 2 Wayside Road, Burlington, Massachusetts 01803.
(13) Raytheon Marine Sales and Service Company, Sorenson Company, 676 Island Pond Road, Manchester, New Hampshire 03103.
(14) Raytheon Subsidiary Support Company, Inc., Hartwell Road, Bedford, Massachusetts 01730.
(15) Sedco Systems, Inc., 65 Marcus Drive, Melville, Long Island, New York 11747.
(16) Seismograph Service Corporation, 6200 East Forty First Street, Tulsa, Oklahoma 74102.
(17) Speed Queen Company, Shepard and Hall Streets, Ripon, Wisconsin 54971.
(18) Swithcraft, Inc., 5555 North Elston Avenue, Chicago, Illinois 60630.
(19) United Engineers and Constructors, Inc., 30 South Seventeenth Street, Philadelphia, Pennsylvania 19101.

(C) Divisions and Operations of Raytheon Company:

(1) Caloric Corporation, Topton, Pennsylvania 19562.
(1.1) Operation of Caloric Corporation: Glenwood Range Company, 435 Park Avenue, Delaware, Ohio 43015.
(2) Raytheon Data Systems Company, 1415 Boston Providence Turnpike, Norwood, Massachusetts 02062.
(3) D. C. Heath and Company, 2700 North Richardt Avenue, Indianapolis, Indiana 46219.
(4) Electromagnetic Systems Division, 6380 Hollister Avenue, Goleta (Santa Barbara), California 93017.
(5) Equipment Division, 20 Seyon Street, Waltham, Massachusetts 02154.
(6) Microwave and Power Tube Division, Foundry Avenue, Waltham, Massachusetts 02154.
(6.1) Operations of Microwave and Power Tube Division:
(a) Amrad, 2020 North Janice Avenue, Melrose Park, Illinois 60160.
(b) Grafix, 2257 Saw Mill River Road, Elmsford, New York 10523.
(c) Plastic Molded Products Company, 4300 West Bryn Mawr, Chicago, Illinois 60646.
(d) Raytheon Filmamatic, 1120 Federal Road, Brookfield, Connecticut 06804.
(e) Raytheon Medical Imaging, 75 Camp Avenue, Stamford, Connecticut 06907.
(f) Raytheon Nuclear Diagnostics, 70 Ryan Street, Stamford, Connecticut 06907.
(7) Missile Systems Division, Hartwell Road, Bedford, Massachusetts 01730.
(8) Semiconductor Division, 350 Ellis Street, Mountain View, California 94042.
(9) Submarine Signal Division, West Main Road, Portsmouth, Rhode Island 02871.

1. Parent corporation and address of principal office: Steelcase Inc., 1120 36th Street, S.E., Grand Rapids, MI 49501.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Attwood Corporation, Lowell, MI 49331.
(b) Vecta Contract, Inc., Grand Prairie, TX 75051.

1. Parent corporation: Townhouse Penthouse Industries Inc., 7901 Michigan Ave., St. Louis, Missouri 63111.

2. Wholly owned subsidiaries which will participate.

(a) Town House Furn. Ltd. 7901 Michigan Ave. St. Louis, Mo. 63111
(b) Penthouse Furn. Ltd. 2015 Battlefield Rd. Springfield, Mo. 65807
(c) Brittany Furn. Ind. W. Hospital Rd. Paoli, Ind. 47454
(d) Penthouse Amory Ltd. Puckett Drive, Amory, Miss. 38821
(e) Jordan Furn. Ind. Jordan Drive, Booneville, Miss. 38829

I affirm that Townhouse Penthouse Industries is a corporation which directly or indirectly owns 100 percent interest in the subsidiaries participating in compensated intercorporate hauling under U.S.C. 49 10524(b), listed in the attached notice.

1. Parent corporation and address of principal office: Union Camp Corporation, 1600 Valley Road, Wayne, New Jersey 07470.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

Moore Handley, Highway 31 South, P.O. Box 2607, Birmingham, Alabama 35202.
Allied Container Corporation, 1 Allied Drive, Dedham, Massachuetts 02026.

1. Parent Corporation and address of principal office: Westinghouse Electric Corporation, Westinghouse Building—Gateway Center, Pittsburgh, Pennsylvania 15222.

2. Wholly-owned subsidiaries which will participate in the operations, and addresses of their respective principal offices:

(a) Aires Centralis Westinghouse, Inc., Reparto Industrial, Calle La Playa, Santa Isabel, Puerto Rico 00757.
(b) Ampgard Products, Inc., P.O. Box 336, Plant Rd. 854, Km 4.3, Toa Baja, Puerto Rico 00759.
(c) Ascensores Westinghouse, Inc., Reparto Industrial, Calle La Playa, P.O. Box 726, Santa Isabel, Puerto Rico 00757.
(d) Associated Beverage Company, Inc., 3220 East 26th Street, Vernon,California 90023.
(e) Bryloc, Inc., P.O. Box IW, Road #725, Km 0.4, Bo. Llanso Aibonito, Puerto Rico 00609.
(f) Bryco, Inc., P.O. Box IW, Road #725, Km 0.4, Bo. Llanso Aibonito, Puerto Rico 00609.
(g) Computer and Instrumentation de Puerto Rico, Inc., P.O. Box IW, Road #725, Km 0.4, Bo. Llanos Aibonito, Puerto Rico 00609.
(h) Componentes de Iluminacion, S.A. de C.V., c/o Lighting Divisions, Westinghouse Electric Corporation, 7145 Industrial Avenue, El Paso, Texas 79915.
(i) Componentes Electricos de Lamparas S.A. de C.V., c/o Lamp Divisions, Westinghouse Electric Corporation, Surety Tower, Suite 504, 6044 Gateway East El Paso, Texas 79905.
(j) Componentes Motrices, Inc., P.O. Box 112, Gurabo, Puerto Rico 00658.
(k) Coral Ridge Properties, Inc., 3300 University Drive, Coral Springs, Florida 33065.
(l) Broken Woods Golf & Racquet Club, Inc., 3300 University Drive, Coral Springs, Florida 33065.
(m) Coral Highlands Association, Inc., 3300 University Drive, Coral Springs, Florida 33065.
(n) Coral Ridge-Collier Properties, Inc., 3300 University Drive, Coral Springs, Florida 33065.

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(o) Coral Ridge Construction Management Corp., 3300 University Drive, Coral Springs, Florida 33065.
(p) Coral Ridge Realty Corporation, 3300 University Drive, Coral Springs, Florida 33065.
(q) Coral Springs Golf & Tennis Club, Inc., 3300 University Drive, Coral Springs, Florida 33065.
(r) Coral Springs Realty, Inc., 3300 University Drive, Coral Springs, Florida 33065.
(s) Curacao Properties, N.V., 3300 University Drive, Coral Springs, Florida 33065.
(t) Florida National Properties, Inc., 3300 University Drive, Coral Springs, Florida 33065.
(u) Earthmoving & Excavation Company, 3300 University Drive, Coral Springs, Florida 33065.
(v) Highland General Corporation, 3300 University Drive, Coral Springs, Florida 33065.
(w) New Community Development Group Corporation, 3300 University Drive, Coral Springs, Florida 33065.
(x) Ocean Mile Association, Inc., 3300 University Drive, Coral Springs, Florida 33065.
(y) Realty Management Corporation, 3300 University Drive, Coral Springs, Florida 33065.
(z) Royal Continental Hotels Corporation, 3300 University Drive, Coral Springs, Florida 33065.
(aa) Electric Arc, Inc., 4 Saddle Road, Cedar Knolls, New Jersey 07927.
(bb) Electrical Specialty Products Co., P.O. Box 21, Highway 25 South, Montevallo, Alabama 35115.
(cc) Fusibles Westinghouse de Puerto Rico, Inc., P.O. Box F, Road 992, Km 0.4, Luquillo, Puerto Rico 00673.
(dd) Gangloff Corporation, 4 Saddle Road, Cedar Knolls, New Jersey 07927.
(ee) General Control, Inc., P.O. Box 338, Plant Road 854, Km 4.3, Toa Baja, Puerto Rico 00759.
(ff) Half Moon Bay Properties, Inc., P.O. Box 38, 725 Main Street, Half Moon Bay, California 94019.
(gg) Half Moon Bay Construction, Inc., P.O. Box 38, 725 Main Street, Half Moon Bay, California 94019.
(hh) Half Moon Bay Lodge, Inc., P.O. Box 38, 725 Main Street, Half Moon Bay, California 94019.
(ii) Half Moon Bay Realty, Inc., P.O. Box 38, 725 Main Street, Half Moon Bay, California 94019.
(jj) Diamond point Development Corporation, Inc., P.O. Box 38, 725 Main Street, Half Moon Bay, California 94019.
(kk) Northwestern Foods, Inc., P.O. Box 38, 725 Main Street, Half Moon Bay, California 94019.
(ll) Resources Design, Inc., P.O. Box 38, 725 Main Street, Half Moon Bay, California 94019.
(mm) Hub Electric Company, Inc., 940 Industrial Drive, Elmhurst, Illinois 60126.
(nn) ICO de Puerto Rico, Inc., P.O. Box 889, Road 103, Km 7.4, Industrial Park, Fomento Street, Cabo Rojo, Puerto Rico 00623.
(oo) IVI Manufacturing, Inc., P.O. Box 889, Road 103, Km 7.4, Industrial Park, Fomento Street, Cabo Rojo, Puerto Rico 00623.
(pp) Ideal School Supply Company, 11000 S. Lavergne Avenue, Oak Lawn, Illinois 60453.
(qq) Educational Products, Inc., 11000 S. Lavergne Avenue, Oak Lawn, Illinois 60453.
(rr) Interruptores, Inc., P.O. Box 336, Plant Road 854, Km 4.3, Toa Baja, Puerto Rico 00759.
(ss) Kentucky Lamp Company, 2727 Kentronics Drive, Owensboro, Kentucky 42301.
(tt) LWW, Inc., Washington & Lincoln Streets, Building #S–238–54, Cayey, Puerto Rico 00633.
(uu) Lamparas Electricas, Inc., Industrial Avenue No. 8, P.O. Box 636, Cayey, Puerto Rico 00633.
(vv) Longines-Wittnauer, Inc., P.O. Box 2500, 145 Huguenot Street, New Rochelle, New York 10802.
(ww) Credit Financial Corp., P.O. Box 2500, 145 Huguenot Street, New Rochelle, New York 10802.
(xx) Credit Services, Inc., P.O. Box 2500, 145 Huguenot Street, New Rochelle, New York 10802.
(yy) Stereo Dimensions, Inc., P.O. Box 2500, 145 Huguenot Street, New Rochelle, New York 10802.
(zz) Luxaire, Inc., 875 Greentree Road, Building 7, Sixth Floor, Pittsburgh, Pennsylvania 15220.
(aaa) Materiales Plasticos, Inc., P.O. Box 7765, El Tuque Industrial Area, Ponce, Puerto Rico 00731.
(bbb) Metal Working Systems, Inc., Address Unknown.
(ccc) Millar Elevator Industries, Inc., 501 West 42nd Street, New York, New York 10036.
(ddd) Minex de Westinghouse, Inc., P.O. Box 524, Road 992, Km 0.4, Luquillo, Puerto Rico 00673.
(eee) Motores Electricos de Juarez S.A. de C.V., c/o Small Motor Division, Westinghouse Electric Corporation, 7145 Industrial Avenue, El Paso, Texas 79915.
(fff) Pormetco, Inc., Km 0.4, Route 701, P.O. Box JJ, Salinas, Puerto Rico 00751.
(ggg) Productos Circuitos de Puerto Rico, Inc., c/o Computer & Instrumentation Div., 1200 West Colonial Drive Orlando, Florida 32804.
(hhh) Productos Electronicos, Inc., Building 7–600–62, P.R. Road #1 Munoz Rivera #112, Santa Isabel, Puerto Rico 00757.
(iii) Productos Motrices, Inc., P.O. Box 112, Gurabo, Puerto Rico 00658.
(jjj) Productos Westinghouse, Inc., Guanajibo Industrial Park D–Street, Mayaguez, Puerto Rico 00706.
(kkk) Prorelco de Puerto Rico, Inc., Km 0.6, Route No. 701, P.O. Box 456, Salinas, Puerto Rico 00751.
(lll) Semiconductores Westinghouse, Inc., P.O. Box 127, Carr No. 30, Km 6.0, Barrio Rincon, Gurabo, Puerto Rico 00658.
(mmm) 7–Up Bottling Co., Inc., P.O. Box 38, Insular Road 174, Km 2.0, Minillas Industrial Park, Bayamon, Puerto Rico 00619.
(nnn) Thermo King Caribbean, Inc., P.O. Box 397, Ciales, Puerto Rico 00638.
(ooo) Thermo King Corporation, 314 West 90th St., Minneapolis, Minnesota 55420.
(ppp) Thermo King de Puerto Rico, Inc., P.O. Box H, Arecibo, Puerto Rico 00612.
(qqq) Transformadores, Inc., P.O. Box 127, Road 30, Km 6.0 Barrio Rincon, Gurado, Puerto Rico 00658.
(rrr) Tubos Electronicos Westinghouse, Inc., P.O. Box 127, Road 30, Km 6.0 Barrio Rincon, Gurado, Puerto Rico 00658.
(sss) Western Zirconium, Inc., P.O. Box 3208, Ogden, Utah 84409.
(ttt) Westinghouse Broadcasting Company, Inc., 90 Park Avenue, New York, New York 10016.
(uuu) Group W. Productions, Inc., 90 Park Avenue, New York, New York 10016.
(vvv) W–F Productions, Inc., 90 Park Avenue, New York, New York 10016.
(www) Micro-Relay, Inc., 90 Park Avenue, New York, New York 10016.
(xxx) Radio Advertising Representatives, Inc., 90 Park Avenue, New York, New York 10016.
(yyy) Westinghouse Broadcasting Company, Inc., 90 Park Avenue, New York, New York 10016.
(zzz) PM Magazine Program Service, Inc., 90 Park Avenue, New York, New York 10016.
(aaaa) Westinghouse Construction International, Inc., c/o Westinghouse Electric Corporation, Six Gateway Center, Pittsburgh, PA 15222.
(bbbb) Westinghouse Controls, Inc., P.O. Box 359, Road 14, Km 32.0, Coamo, Puerto Rico 00640.
(cccc) Breakers Incorporated, P.O. Box 359, Road 14, Km 32.0 Coamo, Puerto Rico 00640.
(dddd) Westinghouse Corporation, Six Gateway Center, Pittsburgh, Pennsylvania 15222.
(eeee) Westinghouse Hanford Company, P.O. Box 1970, 1019 Columbia Drive, Richland, Washington 99352.
(ffff) Westinghouse Learning Corporation, Cost Building, 2400 Ardmore Boulevard, Pittsburgh, Pennsylvania 15221.
(gggg) Linguaphone Institute, Inc., Cost Building, 2400 Ardmore Boulevard, Pittsburgh, Pennsylvania 15221.
(hhhh) Westinghouse Learning Corporation (Indiana), Cost Building, 2400 Ardmore Boulevard, Pittsburgh, Pennsylvania 15221.
(iiii) Westinghouse-Sturtevant de Puerto Rico, Inc., Reparto Industrial, Calle La Playa—Box 726, Santa Isabel, Puerto Rico 00757.
(jjjj) Wyoming Mineral Corporation, P.O. Box 3042, Penn Center Boulevard, Pittsburgh, Pennsylvania 15230.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-33969 Filed 10-30-80; 8:45 am]
BILLING CODE 7035-01-M

Republications of Grants of Operating Rights Authority Prior to Certification

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the Federal Register.

An original and one copy of a petition for leave to intervene in the proceeding must be filed with the Commission within 30 days after the date of this Federal Register notice. Such pleading shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) addressing specifically the issue(s) indicated as the purpose for republication, and including copies of intervenor's conflicting authorities and a concise statement of intervenor's interest in the proceeding setting forth in detail the precise manner in which it has been prejudiced by lack of notice of the authority granted. A copy of the pleading shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

MC 88594 M2 F (Republication) Notice of Filing of Petition to Modify Certificate, filed April 25, 1979, published in the FR issue of September 25, 1979, and republished this issue. Petitioner: CARLETON G. WHITAKER, INC., Route 17 Exit 84, Town of Deposit, NY 13754. Representative: Michael R. Werner, 167 Fairfield Rd., P.O. Box 1409, Fairfield, NJ 07006. A Decision of the Commission, Review Board Number 2, decided April 28, 1980, served May 16, 1980, finds that the present and future public convenience and necessity require modification of petitioner's Certificate in MC 88594, issued June 22, 1980, and reissued April 23, 1980, to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *foodstuffs* (except commodities in bulk, in bulk, in tank vehicles), in vehicles equipped with mechanical refrigeration, and (2) *materials, equipment and supplies* used in the manufacture, sale, and distribution of foodstuffs (except commodities in bulk, in tank vehicles), between points in New York (except those in Cattaraugus, Chautauqua, Erie, Genesee, Livingston, Monroe, Niagara, Orleans, and Wyoming Counties), on the one hand, and, on the other, New York, NY, points in Nassau, Suffolk, and Westchester Counties, NY, and points in CT, MA, NJ, and RI; that petitioner is fit, willing, and able properly to perform the granted service and to conform to the requirements of Title 49, Subtitle IV, U.S. Code and the Commission's regulations. The purpose of this republication is to reflect petitioner's actual grant of authority.

MC 126305 (Sub-96F), (Correction) (Republication) filed September 7, 1978, published in the FR issues of November 2, 1978, and April 15, 1980 and republished this issue. Applicant: BOYD BROTHERS TRANSPORTATION CO., INC., R.D. 1, Clayton, AL 36016. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. The purpose of this republication is to broaden the commodity description.

MC 138875 (Sub-122F), (Republication) filed December 28, 1979, published in the FR issue of April 6, 1979, and republished this issue. Applicant: SHOEMAKER TRUCKING COMPANY, a Corporation, 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh (same address as applicant). A decision of the Commission, Review Board Number 2, decided February 6, 1980, served February 27, 1980, finds that the present and future public convenience and necessity require operation by applicant as a *common carrier* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *petroleum products* (except commodities in bulk), from the facilities of Shell Oil Company in Multnomah County, OR, to points in Malheur County, OR, and those in Idaho in and south of Adams, Valley, and Lemhi Counties; that applicant is fit, willing, and able properly to perform the granted service and to conform to the requirements of Title 49, Subtitle IV, U.S. Code, and the Commission's regulations thereunder. The purpose of this republication is to broaden the territorial description by authorizing service to points in Malheur County, OR.

MC 140024 (Sub-97F) (republication), filed April 14, 1978, published in the Federal Register issue of July 27, 1978, and republished this issue. Applicant: J. B. MONTGOMERY, INC., 5565 East 52nd Ave., Commerce City, CO 80022. Representative: John F. Decock (same address as applicant). A Decision of the Commission, Division 1, decided June 20, 1980, served June 27, 1980 finds that operations by applicant, as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting: *meats*, in vehicles equipped with mechanical refrigeration, (1) from New York, NY and Philadelphia, PA, to points in IL, IN, KY, MI, and OH; and (2) from Boston, MA, and Mt. Airy, MD, to Chicago, IL; that applicant is fit, willing and able properly to perform the service proposed and to conform to the requirements of the Act and the Commission's rules and regulations. The purpose of this republication is to reflect applicant's actual grant of authority.

MC 140024 (Sub-112F), (republication), filed May 5, 1978, previously noticed in the Federal Register issues of June 6, 1978, August 10, 1978, and republished this issue. Applicant: J. B. MONTGOMERY, INC., 5585 East 52nd Ave., Commerce City, CO 80022. Representative: John F. DeCock (same address as applicant). A Decision of the Commission, Division 1, decided June 20, 1980, served June 27, 1980, finds that operations by applicant, as a *common carrier*, by motor vehicle, in interstate or foreign commerce over irregular routes, transporting: (1)(a) *foodstuffs*, (except in bulk) and (b) *agricultural commodities* otherwise exempt from *economic regulation* under 49 USC 10526(a)(6)(B), when transported in mixed shipments with the commodities in (1)(a) above, in vehicles equipped with mechanical refrigeration, from Philadelphia and Kenneth Square, PA, to points in CA, CO, MN, MO, NE, and TX, restricted to the transportation of shipments having an immediately prior movement by water; that applicant is fit, willing and able properly to perform the service proposed and to conform to the requirements of the Act and the Commission's rules and regulations. The purpose of this republication is to reflect applicant's actual grant of authority.

By the Commission.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-33959 Filed 10-30-80; 8:45 am]
BILLING CODE 7035-01-M

Agricultural Cooperatives; Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

Dated: October 24, 1980.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BPO 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change. The name and address of the agricultural cooperative, the location of the records, and the name and address of the person to whom inquiries and correspondence should be addressed, are published here for interested pesons. Submission of information that could have bearing upon the propriety of a filing should be directed to the Commission's Bureau of Investigations and Enforcement, Washington, D.C. 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

(1) Complete Legal Name Of Cooperative Association Or Federation Of Cooperative Associations: American Farmers Cooperative.
Principal Mailing Address (Street No., City, State, and Zip Code): 101 Hampton Road East Crowley, TX 76036.
Where Are Records Of Your Motor Transportation Maintained (Street, No., City, State and Zip Code): 101 Hampton Road East Crowley, TX 76036.
Person To Whom Inquiries And Correspondence Should Be Addressed (Name and Mailing Address): Hamp Scruggs, 101 Hampton Road East, Crowley, TX 76036.
(2) Complete Legal Name Of Cooperative Association Or Federation Of Cooperative Associations: American Southern Growers Association, Inc.
Principal Mailing Address (Street No., City, State, and Zip Code): 23 B Cooper Place, Bronx, NY.
Where Are Records Of Your Motor Transportation Maintained (Street, No., City, State and Zip Code): 23 B Cooper Place, Bronx, NY.
Person To Whom Inquiries And Correspondence Should Be Addressed (Name and Mailing Address): Arthur Kaplan, 23 B Cooper Place, Bronx, NY.
(3) Complete Legal Name Of Cooperative Association Or Federation Of Cooperative Associations: Farmers Marine Transportation Cooperative.
Principal Mailing Address (Street No., City, State, and Zip Code): Berth 201, Port of Portland, P.O. Box 3471, Portland, OR 97208.
Where Are Records Of Your Motor Transportation Maintained (Street No., City, State and Zip Code): Berth 201, Port of Portland, P.O. Box 3471, Portland, OR 97208.
Person To Whom Inquiries And Correspondence Should Be Addressed (Name and Mailing Address): James H. Sanders, P.O. Box 3471, Portland, OR 97208.
(4) Complete Legal Name Of Cooperative Association Or Federation Of Cooperative Associations: Friend/Amigo, Inc.
Principal Mailing Address (Street No., City, State, and Zip Code): Calle Ignacio Ramirez Ab. Yoli, Empalme Son, Mexico.
Where Are Records Of Your Motor Transportation Maintained (Street No., City, State and Zip Code): Calle Ignacio Ramirez Ab. Yoli, Empalme Sonora, Mexico.
Person To Whom Inquiries And Correspondence Should Be Addressed (Name and Mailing Address): Federico Sanchez, Ab. Yoli, Kilom, #2, Empalme Son, Mexico.
(5) Complete Legal Name Of Cooperative Association Or Federation Of Cooperative Associations: Growers Cooperative of Nayarit, Inc.
Principal Mailing Address (Street No., City, State, and Zip Code): Apartado Postal #1-123, Mexicali, Baja California, Mexico.
Where Are Records Of Your Motor Transportation Maintained (Street No., City, State, and Zip Code): Juarez #101, Victoria de Cortazar, Guanajuato, Mexico
Person To Whom Inquiries And Correspondence Should Be Addressed (Name and Mailing Address): Carlos V. Courtney, Juarez #101 Victoria de Cortazar, Guanajuato, Mexico
(6) Complete Legal Name Of Cooperative Association Or Federation Of Cooperative Associations: International Farmers Union, Inc.
Principal Mailing Address (Street No., City, State, and Zip Code): Apdo Postal No. 329, Nogales, Sonora, Mexico.
Where Are Records Of Your Motor Transportation Maintained (Street No., City, State, and Zip Code): Apdo Postal No. 329, Nogales, Sonora, Mexico.
Person To Whom Inquiries And Correspondence Should Be Addressed (Name and Mailing Address): Alfonso Cuevas, Apdo Postal No. 329, Nogales, Sonora, Mexico.
(7) Complete Legal Name Of Cooperative Association Or Federation Of Cooperative Associations: Sinaloa Growers and Producers, Inc.
Principal Mailing Address (Street No., City, State, and Zip Code): Apartado Postal #1-133, Mexicali B, CFA Mexico.
Where Are Records Of Your Motor Transportation Maintained (Street No., City, State, and Zip Code): Kino 200 Interior, Magdalena Sonora, Mexico.
Person To Whom Inquiries And Correspondence Should Be Addressed (Name and Mailing Address): Manuel Valenzuela A., Kino 200 Interior, Magdalena Sonora, Mexico.
(8) Complete Legal Name Of Cooperative Association Or Federation Of Cooperative Associations: Veracruz Citrus Growers and Packers, Inc.
Principal Mailing Address (Street No., City, State, and Zip Code): Apartado Postal 1-124, Mexicali BC Mexico.
Where Are Records Of Your Motor Transportation Maintained (Street No., City, State, and Zip Code): Ave. Rio Nilo #1-39 Fraccionamiento Colinas Del Rio Aguascalientes, AGS Mexico.
Person To Whom Inquiries And Correspondence Should Be Addressed (Name and Mailing Address): Humberto R. Games, Ave. Rio Nilo #1-39, Frac. Colinas Del Rio, Aguascalientes AGS, Mex.
(9) Complete Legal Name Of Cooperative Association Or Federation Of Cooperative Associations: World Growers Alliance, Inc.
Principal Mailing Address (Street No., City, State, and Zip Code): c/o Luis Gaxiola-Calle I 651, Col Nueva, Mexicali, B.C. Mexico.
Where Are Records Of Your Motor Transportation Maintained (Street No., City, State, and Zip Code): c/o Luis Gaxiola-Calle I 651, Col Nueva, Mexicali, B.C. Mexico.
Person To Whom Inquiries And Correspondence Should Be Addressed (Name and Mailing Address): Refugio Rodriguez, 292 Naranjos St., Los Pinos, Mexicali, B.C., Mexico.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-33955 Filed 10-30-80; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB.111 (Sub-No. 1F)]

Detroit, Toledo & Ironton Railroad Co.—Abandonment—Between Napoleon and Wauseon, OH; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision entered on March 31, 1980, and the decision of the Commission, Division 1, served September 17, 1980, adopted the decision of the Administrative Law Judge, which is administratively final, stating that, the public convenience and necessarity permit the abandonment by the Detroit, Toledo and Ironton Railroad Company of that portion of its line of railroad from milepost 8.0 near Napoleon, OH to the end of the line at milepost 18.7 at Wauseon, OH, a distance of 10.7 miles, subject to the conditions for the protection of employees discussed in *Oregon Short Line R. Co.—Abondonment—Goshen*, 360 I.C.C. 91 (1979), and further subject to the following additional conditions: (1) Applicant shall continue in effect its offer to sell track and right-of-way, including quitclaim and release of appurtenant easements, to Globe-Weis System Company at a cost of $2.00 per foot, (2) applicant shall effectuate a suitable and adequate rail connection between the facilities of Fulton-Landmark, Inc. and Conrail in manner

sufficient to assure alternative uninterrupted rail service to the shipper, and (3) applicant shall not sell, lease, exchange, or otherwise dispose of the right-of-way underlying the track, bridges, and all culverts on the line for a period of 120 days from September 17, 1980 unless said property has first been offered, upon reasonable terms to responsible public authorities or other responsible persons interested in acquiring the property for public use. A certificate of abandonment will be issued to the Detroit, Toledo and Ironton Railroad Company based on the above-described findings on or before December 1, 1980, unless on or before November 17, 1980, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued. The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than November 10, 1980; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line together with a reasonable return on the value of such line, or

(b) cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed. An offer may request the Commission to set conditions and amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of an offer, and no request is made on the Commission to set conditions or amount of compensation, a certificate of abandonment will be issued no later than 50 days after this notice is published. Upon notification to the Commission of the execution of an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in 49 U.S.C. 10905 (as amended by the Staggers Rail Act of 1980, Pub. L. 96-448, effective October 1, 1980). All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,

[FR Doc. 80-33954 Filed 10-30-80 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-43 (Sub-No. 54F)]

Illinois Central Gulf Railroad Co.—Abandonment—in Pike, Walthall and Marion Counties, MS; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision decided December 28, 1979, a finding, which is administratively final, was made by the Administrative Law Judge, stating that, the public converience and necessity permit the abandonment by the Illinois Central Gulf Railroad Company of those portions of the line or railroad, and operations thereof, known as ICG's Fernwood District extending from milepost 1.2 near Fernwood, MS, to milepost 32 at Kokomo, MS; and of ICG's Bogue Chitto District from milepost 102 at Lexie, MS, to milepost 105.76 at Tylertown, MS, all in Pike, Walthall, at Marion Counties, MS, and including all yard and sidetracks (101.3), Saunders (110.6) and Fargo (116.8); *provided, however*, that applicant make available to employees the protective conditions set forth in *Oregon Short Line R. Co.-Abandonment Goshen*, 360 I.C.C. 91 (1979); and further that the applicant shall keep intact all of the right-of-way underlying the track, including all of the bridges and culverts, for a period of 180 days from September 6, 1980, to permit any state and/or local government agency or other interested party to negotiate the acquisition for public use of all or any portion of the right-of-way. A certificate of abandonment will be issued to the Illinois Central Gulf Railroad Company based on the above-described finding of abandonment, on or before December 1, 1980, unless on or before November 17, 1980, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued. The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than November 10, 1980; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed. An offer may request the Commision to set conditions and amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of an offer, and no request is made on the Commission to set conditions or amount of compensation, a certificate of abandonment will be issued no later than 50 days after this notice is published. Upon notification to the Commission of the execution of an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in 49 U.S.C. 10905 (as amended by the Staggers Rail Act of 1980, Pub. L. 96-448, effective October 1, 1980). All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-33952 Filed 10-30-80; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-3 (Sub-No. 20F)]

Missouri Pacific Railroad Co.—Abandonment—and—Abandonment of Trackage Rights—Over Southern Pacific Transportation Co. in St. Mary and Iberia Parishes, LA; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision decided February 11, 1980, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, the public convenience and necessity permit the abandonment by the Missouri Pacific Railroad Company of the following portions of a line of railroad known as the New Iberia Subdivision: (a) That portion extending from milepost 47.6 at New Iberia to milepost 47.8 at New Iberia, a distance of .2 miles in Iberia Parish, LA; (b) that portion extending milepost 52.9 at Olivier to milepost 56.5 at Loisel, a distance of 3.6 miles in Iberia Parish, LA, and (c) that portion extending from milepost 73.5 at Oaklawn to milepost

79.8 at Franklin, a distance of 6.3 miles in St. Mary Parish, LA. The total distance of the above segments is 10.1 miles, subject to the conditions for the protection of employees discussed in *Oregon Short Line R. Co.-Abandonment Goshen*, 360 I.C.C. 91 (1979). A certificate of abandonment will be issued to the Missouri Pacific Railroad Company based on the above-described finding of abandonment, on or before December 1, 1980, unless on or before November 17, 1980, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued. The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than November 10, 1980; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost or all of any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed. An offer may request the Commission to set conditions and amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of an offer, and no request is made on the Commission to set conditions or amount of compensation, a certificate of abandonment will be issued no later than 50 days after this notice is published. Upon notification to the Commission of the execution of an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in 49 U.S.C. 10905 (as amended by the Staggers Rail Act of 1980, Pub. L. 96.448, effective October 1, 1980). All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,

Secretory.

[FR Doc. 80-33953 Filed 10-30-80; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Attorney General

[AAG/A Order No. 56-80]

Privacy Act of 1974; Modified System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice proposes to modify a system of records (Civil Division Case File System, JUSTICE/CIV-001) maintained by the Civil Division.

The Civil Division Case File System is a system of records for which public notice was published in Volume 45, Number 7 of the **Federal Register** on January 10, 1980, consistent with provisions of 5 U.S.C. 552a(e)(4). However, the system will be amended to include the storage of selected data, extracted from each case file, on magnetic diskettes. The "Categories of records in the system" as well as the "Storage" and "Retrievability" sections of the system notice have been revised to reflect this change.

The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the system modification before it is implemented. Therefore, the public, OMB and the Congress are invited to submit written comments on this system modification. Comments should be addressed to the Administrative Counsel, Justice Management Division, Department of Justice, Room 6315, 10th and Constitution Avenue, NW., Washington, D.C. 20530. If no comments are received on or before December 30, 1980, the system modification will be implemented without further notice in the **Federal Register**. No oral hearings are contemplated.

A report of the proposed system has been provided to the Director, OMB, to the President of the Senate and to the Speaker of the House of Representatives.

Dated: October 22, 1980.

Kevin D. Rooney,

Assistant Attorney General for Administration.

JUSTICE/CIV-001

SYSTEM NAME:

Civil Division Case File System.

SYSTEM LOCATION:

U.S. Department of Justice, 10th and Constitution Avenue, N.W., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any and all parties involved in the cases handled by the Civil Division will have identifying data contained in this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) The main record of the system is the official case file which is retained on each case under the jurisdiction of the Civil Division except for those cases for which files are maintained in the Civil Division Case File System: *Field Office, Customs Litigation, Commercial Litigation Branch* and the Office of Alien Property File System, and constitutes the official record of the Department of Justice. All record material relating to a case is retained in the file. Each case is assigned a number comprised of the category designation for the subject matter, the code number for the judicial district where the action originated, and the number of cases of that category which have arisen in that district.

(2) Alphabetical and numerical indices are utilized as a means of access to the proper file by the cross-referencing of the names of all parties to a suit with the file number. Forms CV-54 and carbon-interleaf index cards are used in these indices.

(3) An automated record of selected data which has been extracted from each case file is maintained on magnetic diskettes in order to follow the progress of all Division cases and to obtain statistical data for monthly and fiscal reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

General authority to maintain the system is contained in 5 U.S.C. 301 and 44 U.S.C. 3101. The particular system was established in accordance with 28 CFR 0.77(f) and was delegated to the Civil Division pursuant to the memorandum from the Deputy Attorney General, dated July 17, 1974.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Any record pertaining to any case or matter in the Civil Division may be disseminated to any other component of the Department of Justice, including the F.B.I. and the United States Attorneys' Offices, for use in connection with the consideration of that case or matter or any other case or matter under consideration by the Civil Division or any other component of the Department of Justice. A record maintained in this system of records may be disseminated as a routine use of such record as follows: (1) in any case in which there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, the record in question may be disseminated to the appropriate federal, state, local or foreign agency charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law; (2) in the course of investigating the potential or actual violation of any law, whether civil, criminal or regulatory in nature, or during the course of a trial or hearing, or the preparation for a trial or hearing for such violation, a record may be disseminated to a federal, state, local or foreign agency, or to an individual or organization, if there is reason to believe that such agency, individual or organization possesses information relating to the investigation, trial or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant; (3) a record relating to a case or matter may be disseminated in an appropriate federal, state, local or foreign court or grand jury proceeding in accordance with established constitutional, substantive, or procedural law or practice; (4) a record relating to a case or matter may be disseminated to a federal, state, or local administrative or regulatory proceeding or hearing in accordance with the procedures governing such proceeding or hearing; (5) a record relating to a case or matter may be disseminated to an actual or potential party or his attorney for the purpose of negotiation or discussion of such matters as settlement of the case or matter, plea bargaining, or formal or informal discovery proceedings; (6) a record relating to a case or matter that has been referred by an agency for investigation, prosecution, or enforcement, or that involves a case or matter within the jurisdiction of an agency, or where the agency or officals thereof are a party to litigation or where the agency or officials may be affected by a case or matter, may be disseminated to such agency to notify the agency of the status of the case or matter or of any decision or determination that has been made, or to make such other inquiries and reports as are necessary during the processing of the case or matter; (7) a record relating to a person held in custody pending or during arraignment, trial, sentence or extradition proceedings, or after conviction or after extradition proceedings, may be disseminated to a federal, state, local or foreign prison, probation, parole, or pardon authority, or to any other agency or individual concerned with the maintenance, transportation, or release of such a person; (8) a record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States or to an executive agreement; (9) a record may be disseminated to a federal, state, local, foreign, or international law enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency; (10) a record may be disseminated to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter; (11) a record may be disseminated to the public, news media, trade associations, or organized groups, when the purpose of the dissemination is educational or informational, provided that the record does not contain any information identifiable to a specific individual other than is necessary to identify the matter or where the information has previously been filed in a judicial or administrative office, including the clerk of the court; (12) a record may be disseminated to a foreign country, through the United States Department of State or directly to the representative of such country, to the extent necessary to assist such country in civil or criminal proceedings in which the United States or one of its officers or agencies has an interest; (13) a record that contains classified national security information and material may be disseminated to persons who are engaged in historical research projects, or who have previously occupied policy making positions to which they were appointed by the President, in accordance with the provisions of 28 C.F.R. 17.60.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 C.F.R. 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Service: A record from a system of records may be disclosed as a routine use to the National Archives and Records Service (NARS) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

(1) The case files utilize standard file jackets and are retained in electronic, rotary power files; *or in standard file cabinets. (2) The alphabetical and numericol index cards are retained in standard file cabinets. (3) Automated records are maintoined on magnetic diskettes.*

RETRIEVABILITY:

The files must be retrieved by file number. The file number can be ascertained from the alphabetical index if the name of any party to the suit is known. Automated records can be retrieved by Department of Justice case number, plaintiff's name, defendant's name, or Civil Division attorney's name.

SAFEGUARDS:

Information contained in the system is unclassified. However, only attorneys who have their names recorded in the File Unit can be issued a case file. Minimal information about a case is provided from the various indices to telephone callers, since there is a problem with indentifying the identity of a caller. If a party desires detailed information, he is referred directly to the attorney of record.

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RETENTION AND DISPOSAL:

When a case file is closed by the *responsible attorney*, it is sent to the Federal Records Center for retention in accordance with the authorized Record Disposal Schedule for the classification of the case. Such schedules are approved by the National Archives. After the designated period has passed, the file is destroyed. However, the index and docket cards are not purged.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General; Civil Division; U.S. Department of Justice; 10th and Constitution Avenue, N.W.; Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address inquiries to: Assistant Attorney General; Civil Division; U.S. Department of Justice; 10th and Constitution Avenue, N.W.; Washington, D.C. 20530.

RECORD ACCESS PROCEDURES:

A request for information concerning the cases of the Civil Division should be submitted in writing, with the envelope and letter clearly marked "Privacy Access Request." The request should include the file number and/or the names of any litigants known to the requestor. The requestor should also provide a return address for transmitting the information. Such access requests should be submitted to the System Manager listed above. Requests may also be made by telephone. In such cases the caller will be referred to the attorney of record. The attorney, in turn, may require an official written request.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above. The request should clearly state, what information is being contested, the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

All litigants involved in the cases of this Division are sources of information. Such information is either contained in the record material in the case files or has been extracted from that record material and put onto docket and index cards.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 80-34081 Filed 10-30-80; 8:45 am]

BILLING CODE 4410-01-M

Office of the Attorney General

Consent Decree To Enforce Compliance With Terms of a National Pollutant Discharge Elimination System Permit

In accordance with Departmental policy, 28 CFR § 50.7, 38 FR 19029, notice is hereby given that a proposed consent decree to enforce the terms of a National Pollutant Discharge Elimination System permit, in *United States* v. *City of Twin Falls Idaho, et al.*, Civil No. 1-76-181 has been lodged with the United States District Court for the district of Idaho. The decree imposes on defendant City of Twin Falls certain requirements and compliance dates with respect to the operation of its municipal sewage treatment plant.

The Department of Justice will receive on or before December 1, 1980, written comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530 and should refer to *United States* v. *City of Twin Falls, Idaho, et al.*, D. J. Ref. 90-5-1-1-629.

The proposed order may be examined at the office of the United States Attorney, District of Idaho, Room 693 Federal Building, 550 W. Fort Street, Boise, Idaho 83724, at the Region X office of the Environmental Protection Agency, 1200 6th Avenue, Seattle, Washington 98101, and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 2644, Ninth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20530. A copy of the proposed order may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Angus MacBeth,

Deputy Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 80-33967 Filed 10-30-80; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 80-21]

Herbert Webster Voorhies, Pasadena, Calif.; Hearing

Notice is hereby given that on July 8, 1980, the Drug Enforcement Administration, Department of Justice, issued to Herbert Webster Voorhies, M.D., Pasadena, California, an Order To Show Cause as to why Respondent's applications dated April 28, 1978, and April 23, 1979, for registration as a practitioner with Schedule II-V controlled substances should not be denied.

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Tuesday, November 4, 1980, in Room 324, U.S. Courthouse, 312 North Spring Street, Los Angeles, California.

Dated: October 27, 1980.

Frederick A. Rody, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 80-33957 Filed 10-30-80; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 80-19]

Marshall D. Nickerson, Jr.; Revocation of Registration

On June 20, 1980, the Administrator of the Drug Enforcement Administration (DEA) issued an Order to Show Cause to Marshall D. Nickerson, Jr., M.D. (Respondent) why the Drug Enforcement Administration should not revoke the DEA Certificate of Registration AN 6341717 issued to him pursuant to 21 U.S.C. 823, for the reason that on December 11, 1979, Respondent was convicted in the United States District Court for the District of Columbia of one (1) count of knowing and willful distribution of a controlled substance, in violation of 21 U.S.C. 841(a)(1). This is a controlled substance-related felony. In a letter, dated July 21, 1980, Respondent requested a hearing on the issues raised in the Order to Show Cause. The Honorable Francis L. Young, Administrative Law Judge, ordered the filing of prehearing statements, with which the Government complied. Respondent did not file a prehearing statement. On September 15, 1980, the administrative law judge issued a memorandum to parties in which he concluded that Respondent's failure to file a prehearing statement indicates that he has no serious desire to participate in an evidentiary hearing, and that Respondent's failure to file a prehearing statement or otherwise to state issues constitutes a waiver of his opportunity for an evidentiary hearing. The administrative law judge gave the Government the option of submitting to the administrative law judge documentary materials in support of the Government's position, or requesting an evidentiary hearing for oral presentation of the Government's case. Government counsel submitted documentary evidence to the administrative law judge on October 1, 1980. The administrative law judge submitted his report and certified the record to the Administrator pursuant to 21 CFR 1316.65, on October 9, 1980. Pursuant to 21 CFR 1316.67, the Administrator hereby publishes his Final Order in this proceeding, based upon the findings of fact and conclusions of law set forth below.

The Administrator finds that Respondent pled guilty on December 11, 1979, in the United States District Court for the District of Columbia to one (1) count of knowing and willful distribution of a Schedule II controlled substance. Respondent was sentenced by the Honorable Barrington Parker to six (6) months incarceration at the Allenwood Prison Camp.

The Administrator further finds, based on the Government's Written Allocution Statement and Factual Proffer in Support of Plea, filed at the time of Respondent's plea, that an individual met Respondent at a restaurant in Washington, D.C., in late February or early March, 1977, and discussed with Respondent arrangements for obtaining prescriptions for Dilaudid (hydromorphone). This individual visited Dr. Nickerson at his office, where the doctor told this person that we would write him a prescription for one-hundred (100) tablets of Dilaudid 4 mg. for $300.00. The individual paid Respondent $600.00, and obtained two (2) prescriptions for a total of two-hundred (200) Dilaudid 4 mg. tablets, written in fictitious names. The Administrator finds that Respondent supplied this individual with prescriptions for Dilaudid from the first week of March, 1977 until May, 1977. Respondent would sometimes issue prescriptions in the individual's name, and sometimes in the names of fictitious persons. The individual would either fill prescriptions himself, or give them for other persons to fill, at pharmacies in the District of Columbia and suburban Maryland and Virginia.

The Administrator further finds, based on grand jury testimony, that another individual obtained Dilaudid prescriptions from Respondent during the summer of 1977 by using a third man's identification. Respondent conducted no physical examination on this person at any time. Both this individual and the first individual mentioned sold much of the Dilaudid they obtained from Respondent's prescriptions.

The Administrator further finds, based on computerized records prepared by the Metropolitan Police Department, that Respondent wrote at least 3524 Dilaudid (hydromorphone) prescriptions between June, 1976 and December, 1979. This figure was obtained by audit of pharmacies mentioned in the grand jury testimony. At one pharmacy, Respondent issued eighty-six (86) Dilaudid prescriptions, while other physicians had issued between two (2) and eight (8).

Judge Young found that Respondent has effectively waived his right to an evidentiary hearing by his failure to respond. He cited *United States* v. *Consolidated Mines and Smelting Co., Ltd.*, 455 F.2d 432, 453 (9th Cir. 1971), where the court held that, where no fact question is involved, a plenary, adversary administrative proceeding is not obligatory. This Administration has held that a Respondent is deemed to have waived his right to a hearing if he fails to respond. *In the Matter of James Waymon Mitchell*, 44 F.R. 71466 (1979). While the *Mitchell* decision involved a revocation based on the suspension of Dr. Mitchell's state medical license, there is no reason why the same logic should not apply if the Respondent is convicted of a controlled substance-related felony, as is Dr. Nickerson. Respondent was afforded an opportunity to present evidence in mitigation. He has, through his silence, chosen not to exercise that opportunity. Therefore, the Administrator finds that he waived his right to an evidentiary hearing.

The Administrator hereby adopts the recommendation of the administrative law judge that Respondent's registration be revoked pursuant to 21 U.S.C. 824(a)(2). Having reviewed the record of this matter in its entirety, and having concluded that the subject registration should be revoked for reason that Respondent was convicted of a controlled substance-related felony, it is the decision of the Administrator that said registration be revoked. Accordingly, pursuant to the authority vested in the Attorney General by Section 824 of Title 21, United States Code, and redelegated to the Administrator of the Drug Enforcement Administration, the Administrator hereby orders that the Certificate of Registration AN6341717, previously issued to Marshall D. Nickerson, Jr., M.D., be, and is, hereby revoked, effective December 1, 1980.

October 27, 1980.

Frederick A. Rody, Jr.,

Acting Administrator

[FR Doc. 80-33935 Filed 10-30-80; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 80-17]

Thomas E. Johnston; Revocation of Registration

On June 4, 1980, the Administrator of the Drug Enforcement Administration (DEA) issued an Order to Show Cause proposing to revoke the DEA registration of Thomas E. Johnston, D.O. (Respondent), of Overland Park, Kansas. Simultaneously, citing his preliminary finding of imminent danger to the public health and safety, the Administrator ordered the immediate suspension of the Respondent's registration pending a final determination in these proceedings. By letter dated June 10, 1980, the Respondent requested a hearing on the issues raised by the Order to Show Cause.

On June 19, 1980, Administrative Law Judge Francis L. Young directed that counsel for the Government and counsel for the Respondent exchange and file, on or before July 7, 1980, written prehearing statements containing certain specified elements of information, including a statement of issues perceived, identification of witnesses, summaries of the expected testimony of such witnesses, and a listing of all documents and exhibits to be offered at the hearing. Upon motion of Government counsel, the date for filing prehearing statements by both parties was extended to July 23, 1980. The Government filed its prehearing statement in this matter on July 22, 1980. The Respondent has not filed a prehearing statement as of the date of this Order. Indeed, there has been no further correspondence from the Respondent or his attoney since his brief letter of June 10, 1980, in which he requested a hearing.

On July 31, 1980, the Administrative Law Judge, noting that the Government had timely filed a prehearing statement listing witnesses and documentary evidence, and providing other requested information, and further noting that by his failure to file a prehearing statement, the Respondent had not indicated any desire to call witnesses or offer documentary evidence, ordered that the hearing in this matter be held in Washington, D.C., on September 16, 1980. Judge Young further ordered that no documents would be received and that no witnesses would be heard on behalf of the Respondent, except that the Respondent himself would be permitted to testify on his own behalf, if he chose to appear.

On September 2, 1980, counsel for the Government, citing the foregoing circumstances as evidencing a lack of desire on the Respondent's part to

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participate in an evidentiary hearing, and for other reasons, requested that the hearing set for September 16, 1980, be cancelled.

On September 4, 1980, the Administrative Law Judge, in a Memorandum to Counsel, granted the Government's request that the hearing be cancelled; ruled that the Respondent's failure to respond to the Order for Prehearing Statements constituted, in effect, a waiver of his opportunity for an evidentiary hearing; and ordered that on or before September 30, 1980, Government counsel was to submit to the Administrative Law Judge documentary materials in support of the Government's position that the Respondent's registration should be revoked. Government counsel complied with this request, submitting a copy of the indictment and a copy of the Judgment and Probation/Commitment Order evidencing the felony conviction which was referred to in the Order to Show Cause.

Section 304(a)(2) of the Controlled Substances Act, 21 U.S.C. 824(a)(2), provides, in pertinent part, that a registration to manufacture, distribute or dispense controlled substances may be suspended or revoked upon a finding that the registrant has been convicted of a felony offense, under either Federal or State law, relating to any controlled substance. The documents submitted by the Government establish that on June 2, 1980, in the U.S. District Court for the District of Kansas, in *United States* v. *Thomas E. Johnston, D.O.*, Docket No. 80-20013-01, the Respondent was convicted, in nine counts, of such felony offenses relating to controlled substances.

After concluding, as a matter of law, that the Government had established that there existed a lawful basis for the revocation of the Respondent's DEA registration, the Administrative Law Judge held that the Respondent had effectively waived his right to an evidentiary hearing, through his failure to communicate with the administrative tribunal, and that under such circumstances, a plenary, adversary administrative proceeding was not required. Accordingly, Judge Young concluded that it is wholly proper for the Respondent's registration to be revoked without a hearing, based upon the investigative file and the record of these proceedings as they now appear, and pursuant to 21 CFR 1301.54(e). He therefore terminated the proceedings then pending before him, certified this matter to the Administrator, and recommended that the Respondent's registration be revoked, effective immediately.

The Administrator has considered the record of this matter, as it today stands, as well as portions of the investigative file, and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrator finds that the Respondent has been convicted of felony offenses relating to controlled substances, and further finds that the Respondent has effectively waived his right to a full evidentiary adversary hearing in this case. The Administrator concludes that there is, therefore, a lawful basis for the revocation of the Respondent's registration pursuant to 21 U.S.C. 824(a)(2).

Section 824(a)(2) is couched in discretionary terms. In most cases in which there have been full evidentiary hearings, or written submissions in lieu of such hearings, the Administrator, after finding that there are lawful grounds to support a revocation or denial of registration, is called upon to make a second determination; that is, whether, in light of all of the facts and circumstances in the record, he should revoke or deny the registration. The question generally comes down to whether the Administrator believes that in spite of a conviction a registrant has shown that he or she should nevertheless be entrusted with the authority to prescribe and dispense controlled substances. The burden to make this showing is upon the registrant or respondent. The Administrator today affirmatively states what has long been his policy in deciding these cases in which a registrant has been convicted of a felony offense relating to controlled substances. The establishment of the conviction is, in and of itself, sufficient to support the revocation of a registration. The Administrator then looks to the registrant for mitigation or explanation. The fact of the conviction is a heavy burden to overcome. If, however, the registrant does come forth with sufficient mitigatory evidence, the Administrator will then, and only then, look to the facts behind the conviction or the investigation in order to determine where a proper decision lies.

In this case, the fact of the conviction has been established. The Respondent has failed to come forward to show any reason why his registration should not be revoked. Therefore, the Administrator concludes that the public interest which permeates the statute requires that the Respondent's registration be revoked.

CFR 1316.67 provides that a final order, such as this, shall be effective not less than thirty days after it is published in the **Federal Register** unless the Administrator finds that the public interest necessitates an earlier effective date, in which case the Administrator must specify the conditions which led him to conclude that an earlier date was required. For this purpose, the Administrator has turned to the indictment and the investigative file. These portray the picture of a physician who, in violation of the high public trust imposed upon members of his profession, prescribed controlled substances without the slightest regard for medical necessity and without regard for the health and well-being of those for whom he prescribed such drugs. Complaints concerning the Respondent's prescribing practices continued almost up to the day on which he was sentenced. The public interest in this matter demands that the order of revocation be effective immediately.

Accordingly, having concluded that there is a lawful basis for the revocation of the Respondent's registration, and having further concluded that such registration ought to be revoked, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AJ7877799, previously issued to Thomas E. Johnston, D.O., be, and it hereby is revoked, effective immediately.

Dated: October 27, 1980.

Frederick A. Rody, Jr.,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 80-33936 Filed 10-30-80; 8:45 am]

BILLING CODE 4410-09-M

Office of Justice Assistance, Research, and Statistics

Publication of the Financial and Administrative Guide for Grants

AGENCY: Office of Justice Assistance, Research, and Statistics, U.S. Department of Justice.

ACTION: Final Guideline Manual.

SUMMARY: The Office of Justice Assistance, Research, and Statistics (OJARS) is publishing the new Financial and Administrative Guide for Grants, M 7100.1B. This manual is a reference source and guide for financial questions arising in the administration of programs funded by the Omnibus Crime Control Act of 1968, as amended; the Justice Systems Improvement Act of 1979, and the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. The manual includes requirements and suggestions for the general fiscal administration of statutory requirements, award and payment of funds, reporting requirements, cost allowability principles, procurement and property management standards, grant administration principles and audit requirements.

EFFECTIVE DATE: The guideline becomes effective upon issuance.

FOR FURTHER INFORMATION CONTACT: Arthur E. Curry, Policy Development and Training Division, Office of the Comptroller, Office of Justice Assistance, Research, and Statistics, U.S. Department of Justice, Washington, D.C. 20531 (202) 724-8269.

SUPPLEMENTARY INFORMATION: Before the guideline manual became final, there was extensive involvement in the development of the manual with the State Criminal Justice Councils (CJCs) and personnel from the Office of Justice Assistance, Research, and Statistics, the Law Enforcement Assistance Administration, the National Institute of Justice, and the Bureau of Justice Statistics.

All interested persons were given an opportunity to comment on the proposed guideline manual through a Notice of Proposed Rule Making in the **Federal Register**. We received 19 responses, including comments from state and local governments, nonprofit organizations, educational institutions and other interested members of the public. These comments were considered in the final revision of the guideline manual.

Appendices 1-5 are not included in this **Federal Register** publication as they are OMB circulars which have been published previously in the **Federal Register**. The guideline manual with all appendices will be available upon request to the Office of Justice Assistance, Research, and Statistics, U.S. Department of Justice, 633 Indiana Ave., N.W., Washington, D.C. 20531, Attention: Mail Room.

The following is a summary of the major comments and the action taken on each. In addition to the changes described, other changes have been made to improve the clarity and readability of the guideline manual.

Summary of Significant Changes

Significant changes that have been made in the final guideline manual as a result of public comments include:

1. Paragraph 5, Foreword.

a. A sentence has been added to assure flow-through of applicability of OMB circulars. The sentence states that the provisions of OMB circulars are applicable to subgrantees as well as grantees. Examples are given showing which circulars apply in situations where grantees and subgrantees are different types of recipient.

b. The Foreword has been changed to explain that the grantee is the primary recipient and the subgrantee is the ultimate recipient of grant funds.

2. Paragraph 2. This paragraph has been rewritten to prevent additional restrictions from being imposed on subgrantees. The statement that "CJCs and large grantees should incorporate into their localized documents additional fiscal provisions established by state and local laws, regulations and policies" has been deleted.

3. Paragraph 4c. This paragraph has been rewritten to clarify the agency's policy that uncleared audit reports on prior grants can be reason for rejection of a grant application.

4. Paragraph 11d. This paragraph has been rewritten to include:

a. Entitlement jurisdictions' allocations of Part D funds; and

b. Eligibility criteria for receiving funds as an entitlement jurisdiction.

5. Paragraph 12c. This paragraph has been rewritten to include the retention by the Criminal Justice Council of the $50,000 match free administrative funds allocated for the Judicial Coordinating Council.

6. Paragraph 37b. This paragraph has been changed to show that the requirements for separate accounting and identification for compensation of police and other regular law enforcement and criminal justice personnel is only applicable to funds under the Crime Control Act of 1976.

7. Paragraph 38b. The accounting appendix is a sample only. The appendix title has been changed to show that it is a sample to be used for guidance for a grantee who is establishing an accounting system and that its use is not mandatory.

8. Paragraph 52. This paragraph has been rewritten to clarify the applicability of the travel policy for subgrantees receiving funds through the Criminal Justice Councils.

9. Paragraph 59b. The title of the paragraph has been changed to "Acquisition Requirements" to clarify the intent of the paragraph.

10. Paragraph 60b. The paragraph was rewritten to include entitlement jurisdictions' authority to approve preagreement costs for subgrantees.

11. Paragraph 62b. The paragraph has been rewritten to clarify a fringe benefits issue.

12. Paragraph 66a. Reference to "Part B" has been added to the title "Planning Grants" to clarify that the five percent limit on reprogramming without prior approval applies to active planning grants under the Crime Control Act of 1976 and not to administrative funds under Part D formula and Juvenile Justice formula grants.

13. Paragraph 76. The paragraph has been rewritten to provide clarity.

14. Paragraph 87. The paragraph has been rewritten to show that:

a. The requirement for a listing of property applies to nonexpendable personal property not all property.

b. Disposition instructions must be issued within 120 days not 90 days.

c. The due date for a report of nonexpendable personal property has been changed to 90 days after the end date of the grant.

15. Chapter 8. This paragraph has been rewritten to present the same objectives and methods of audit as presented in OMB Circular A-102, Attachment P.

16. Appendix 5. OMB Circular A-122, Cost Principles for Nonprofit Organizations, has been included in the guideline manual as appendix 5.

Suggested Changes Not Considered Necessary

Comment: "A specific definition of officials authorized to act on behalf of the grantor agency would be helpful. Also, it would be helpful if you would designate the program monitor or grant manager, etc., who will be the official to act for the agency."

Response: This guide is not the proper place to designate agency approval officials. The agency official responsible for each grant is identified in the grant award package provided to the grantee.

Comment: Recommend elimination of requirements for "prior approval of the grantor agency" for cash match being on a project-by-project basis and a program-by-program basis.

Response: This is a long established policy of the agency and has been upheld by several legal opinions.

Comment: The JSIA provides the nonfederal share of the cost of any program or project under Part D, E, and F shall be cash. This is not consistent with the provisions in Attachment E of OMB Circular No. A-110.

Response: The requirement of cash match is a statutory requirement and statutory requirements override regulatory requirements.

Comment: Concern with the three-year requirement on assumption of cost.

Response: The agency's policy of a three-year requirement for assumption of cost is the normal required time. If more time is needed, a request can be made to the agency, and additional time can be allowed if the need is justified.

Comment: Recommend a $25,000 dollar amount be added to reprogramming authority (paragraphs 14b and 20b) to read "* * * by more

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than 25 percent or $25,000 whichever is greater must be approved by the grantor agency."

Response: The 25% reprogramming allows the CJC flexibility to make changes from one program to another program, and allows the grantor agency to review significant changes which affect the approved Comprehensive Plan. The problem with adding a dollar limitation is that this could allow changes to a small grant program which could greatly alter the scope or objective of the program without the grantor agency's knowledge.

Comment: Suggest allowing the CJCs to reprogram Crime Control funds out of Office of Juvenile Justice and Delinquency and Prevention (OJJDP) programs without OJJDP prior approval provided the State continues to meet the 19.15% maintenance of effort requirement.

Response: This paragraph covers OJJDP requirements for maintenance of effort (MOE). The MOE is 19.15% of the total appropriations for the grantor agency, including administrative and categorical funds expended for Juvenile Justice. A CJC's determination of what program can be counted towards the MOE may differ with OJJDP's determination. Also, a state would have no way of knowing how its decrease of MOE or other states' decreases affect the Agency's total figure for MOE.

Comment: Disagree with the policy that entitlement jurisdictions do not have the authority to reprogram funds without prior approval. Remmend that entitlements be given the same 25% limit on reprogramming without prior approval.

Response: The decision to require review by the CJC of any reprogramming by entitlement jurisdictions is within the Agency's authority to establish rules, regulations and procedures to carry out the Act. The review by the CJC is necessary to ensure that reprogramming by entitlement jurisdictions does not jeopardize their approved applications by violating statutory requirements.

Comment: Recommend elimination of match (salaries of personnel) by specific line item cost. Allowing such is inconsistent with the total cost concept and does not appear to meet the requirements that hard match be "new".

Response: This requirement has been in effect since April 30, 1973 and is supported by grantor agency legal opinions as the way the grantor agency can accept salaries of personnel as "new" funds to meet the statutory match requirement.

Comment: Recommend elimination of the requirement to forward to the grantor agency, for informational purposes, any certification required as a result of reduced or unchanged local investment in law enforcement.

Response: Nonsupplanting is a statutory requirement. Any situation requiring special explanation because of reduced or unchanged local investment in law enforcement should be brought to the immediate attention of the grantor agency.

Comment: The obligation and expenditure time for funds was changed from 3 years to 4 years. The 4-year time frame should be the current policy.

Response: The 3-year use of funds for obligation and expenditure is current agency policy as shown in paragraph 8 of Guideline 7100.4A. The 4-year use of funds for obligation and expenditure is explained in G 7100.4A and shows the additional year is allowed when a request for extension of the obligation and/or expenditure period of a program or set of programs is approved by the grantor agency.

Comment: The retention time of three years for grant records is insufficient period of time based on past experience with LEAA.

Response: The required record retention time of three years is in accordance with requirements of OMB Circular Nos. A–102 and A–110.

Comment: Recommend that language be modified to allow for overtime to be charged exclusively to grantor agency funds, if the overtime costs are determined to arise exclusively as a result of approved project activities. "To require proration of overtime costs to LEAA funded and non-LEAA funded activities when the reason for overtime is due exclusively to LEAA funded activities is unreasonable and inconsistent with accepted accounting principles."

Response: The policy of the grantor agency adheres to the apportionment of cost principles wherein costs are distributed to the objective that incurred the cost. If the project causes all of the overtime, it pays for all such costs. Conversely, if the project causes one-half of the overtime, it only pays one-half of the cost.

Comment: Paragraph 50 places greater restriction on individual travel expenses than OMB Circular A–21. For example, this institution would allow visa, passport, tips and laundry charges as legitimate travel expenses under its institutional travel policy.

Response: OMB Circular A–21 is silent on specific cost items for travel. The agency's policy is that these costs are personal costs and are not allowable.

Comment: Paragraph 58 places greater restrictions on rental or space costs and maintenance and operation costs than OMB Circular A–21.

Response: OMB Circular A–21 states that rental costs are allowable to the extent that the decision to rent or lease is reasonable. The agency has established a reasonable rate and space requirement. Amounts exceeding the established rate may be allowed based upon sufficient justification and, prior approval by the grantor agency.

Comment: "Paragraph 62 places significantly greater restrictions on the costs of professional services. The setting of specific rates for consultants hampers the institution's ability to secure the best service for the government and unduly hampers the negotiating position of the grantee."

Response: OMB Circular A–21 states that costs of professional services rendered by the members of a particular profession who are not employees of the institution are allowable when reasonable in relation to the services rendered, and when not contingent upon recovery of the costs from the Government. Therefore, we do not feel the Agency's policy is a conflict.

Comment: "Request paragraph 62 be amended to show maximum rate for consultants of $200 instead of $135 per day. Policy is in conflict with Pub. L. 96–157."

Response: This policy is not in conflict with Pub. L. 96–157 (Section 814) which allows the daily amount for consultants to the maximum of GS–18. This section covers the agency's use of administrative funds used for consultants and does not apply to our policy under grants. The $135 rate is the maximum allowed without justification.

Comment: Recommend elimination of the requirement of notification to grantor agency when Federal funds are expected to exceed the needs of the grantee/subgrantee by more than $5,000 or five percent of award whichever is greater.

Response: The requirement for notification to the grantor agency is in accordance with provisions on budget deviations in OMB Circular Nos. A–102 and A–110.

Comment: "Does paragraph 71 exclude federal employees from part-time work on projects supported by OJARS that is not a dual compensation situation. Does this paragraph exclude federal employees serving on CJC from being reimbursed for costs arising directly from CJC membership."

Response: This paragraph excludes federal employees from receiving salary payments, consultant fees, etc., for part or full-time work performed under grants. Costs, such as travel incurred as a result of serving on the CJC, would be allowed.

Comment: Objects to the definition of "independent public accountant" that is used in OMB Circular A–102 and A–110.

Response: These circulars are incorporated into the guide and are the basis of Chapter 8. The circular defines an independent public accountant as one who is a CPA or a public accountant licensed on or before December 31, 1970. The definition is an OMB/GAO defmition and the grantor agency does not have the authority to alter OMB requirements.

Comment: "It is our opinion that the types of project changes requiring prior approval, as shown as change in project site, changes which decrease the total cost of the project or change in or temporary absence of the project manager/director are the types of issues which have at times strained the "partner" relationship with the grantor agency."

Response: The grantor agency feels that the project changes such as change in project site, changes which decrease the total cost of the project or change in or temporary absence of the project manager/director are the types of changes which can alter the scope or objectives of the approved project and should, therefore, be reviewed prior to implementation.

OJARS Guideline Manual

Financial and Administrative Guide for Grants

United States Department of Justice

Office of Justice Assistance, Research, and Statistics

Distribution: All Grantees; All OJARS, BJS, NIJ & LEAA Prof. Personnel

Initiated By: Office of the Comptroller, Office of Justice Assistance, Research and Statistics

Foreward

1. *Purpose.* This guideline manual has been prepared as a reference source and guide for financial questions arising in the administration of grants awarded pursuant to: (1) Title I of the Omnibus Crime Control and Safe Streets Act of 1968—P.L. 90–351, as amended by the Omnibus Crime Control Act of 1970—P.L. 91–644, and as amended by the Omnibus Crime Control Act of 1973—P.L. 93–83, and (2) Title II of the Juvenile Justice and Delinquency Prevention Act of 1974—P.L. 93–415, as amended by the Fiscal Year Adjustment Act—P.L. 94–273, the Crime Control Act of 1976—P.L. 94–503, the Juvenile Justice Amendments of 1977—P.L. 95–115, and the Justice System Improvement Act of 1979—P.L. 96–157. It identifies the financial management policies and procedures required of grantee organizations to assure their establishment of sound and effective business management systems. Such systems will assure that funds are properly safeguarded and used only for the purposes for which they were awarded. The manual builds upon and complements the grant funding and administrative requirements established in the effective edition of Guideline Manual 4100.1, State Planning Agency Grants and/or 28 CFR Part 31, Formula Grants for Criminal and Juvenile Justice; program announcements for categorical projects and other guidelines. The provisions of this manual are effective upon publication.

2. *Scope.* The provisions of this guideline apply to all grantor agency awards. This guideline is of concern to all grantees and subgrantees.

3. *Cancellation.* Guideline Manual 7100.1A, Financial Guide for Administration of Planning and Action Grants, dated April 30, 1973, with Change 1, dated January 24, 1974; Change 2, dated December 18, 1974; Change 3, dated October 29, 1975; and Change 4, dated November 29, 1978; Instruction 7100.2, Applicability of the Guideline Manual for the Financial Management for Planning and Action Grants, dated July 11, 1974; Guideline 7380.2, Standards for Property Acquired with LEAA Grant Funds, dated August 30, 1976; Guideline 7200.2, LEAA Revolving Fund, dated January 4, 1978, are hereby canceled. This edition of the manual also supersedes financial policy interpretations and directives issued by the former LEAA Regional Offices.

4. *Major Changes.* This edition of the manual updates, as appropriate, all specific policies, procedures and requirements contained in M 7100.1A and Changes 1–4 to the same. The requirements of the Justice System Improvement Act of 1979, OMB Circular A–122, Cost Principles for Non-Profit Organizations, and a new travel policy interpretation for grantees/subgrantees have been included. Of equal significance, major revisions have been made to the format and style of the manual in order to facilitate its use. In addition, the following terms are defined to address current and pending changes:

a. *Grantor Agency* applies to the following:

(1) Office of Justice Assistance, Research, and Statistics (OJARS).

(2) Law Enforcement Assistance Administration (LEAA).

(3) National Institute of Justice (NIJ).

(4) Bureau of Justice Statistics (BJS).

b. *Grants* applies to cooperative agreements as well as to grant awards and all references and requirements concerning grants will apply to cooperative agreements.

5. *Guidance.* The grantor agency views its relationship with the grantee organization as a partnership, with the grantee providing the effort and expertise necessary to carry out approved activities and the grantor agency providing financial assistance under established policies and guidelines. The provisions of OMB circulars apply to subgrantees as well as to grantees. The decision as to which circulars apply is dependent on the ultimate recipient (subgrantee). Examples: When a grant is awarded to the CJC and then subgranted to a nonprofit organization, OMB Circular Nos. A–110 and A–122 would apply; or when a grant is awarded to the CJC and then subgranted to an educational institution, OMB Circular Nos. A–110 and A–21 would apply. Questions concerning the interpretation of policies or the applicability of certain policies to particular programs or projects should be directed to the grantor agency or primary recipient (grantee) as outlined below.

a. *Grantees.* Criminal Justice Councils (CJCs) and categorical grantees funded directly should address their questions to the grantor agency. In addition, the grantor agency will be available to deal with questions not covered by this manual and welcomes suggestions for increasing its utility or clarifying its contents.

b. *Subgrantees.* Subgrantees (ultimate recipients) receiving awards through the grantee (CJC or entitlement jurisdiction) should address their questions to that grantee.

c. *Other Organizations.* Organizations receiving Federal funds via other financial agreements not covered in paragraphs 5 a and b should address their questions to the grantee/subgrantee.

6. *Deviations.* In the event that a grantee determines that a requirement should not or cannot be applied to a program or project, or to a particular circumstance of a program or project, a written request for deviation shall be submitted to the appropriate grantor agency. This request shall specify: the provision(s) that are considered inapplicable to the project, program or circumstance; the reasons why they are considered inapplicable; and, the provision(s) that are intended to be substituted. Action shall not be taken to implement the proposed deviation until written authorization has been received.

7. *Authority.*

a. *Section 1301(a) of the Justice System Improvement Act of 1979*

provides authority for all orders, determinations, rules, regulations, and instructions of the Law Enforcement Assistance Administration which are in effect at the time the Act takes effect to continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by the President, the Attorney General, the Director of the Office of Justice Assistance, Research, and Statistics, the Director of the Bureau of Justice Statistics, the Director of the National Institute of Justice or the Administrator of the Law Enforcement Assistance Administration with respect to their functions under the Act or by operation of law.

b. *Section 1301(d) of the Justice System Improvement Act* authorizes the Administrator of the Law Enforcement Assistance Administration to approve comprehensive plans for the fiscal year beginning October 1, 1979 in accordance with the provisions of Title I of the Omnibus Crime Control and Safe Streets Act of 1968.

c. *The Act reauthorizes a formula grant program* to State and local governments for a four year period covering Fiscal Years 1980 through 1983. Although the new Act begins in FY 1980, by the time the Act is enacted and becomes effective, all of the States will have already prepared and submitted their FY 1980 comprehensive plans. Therefore, either the existing guidelines would have to be issued after the Act becomes effective and FY 1980 plans have been submitted. In that event guidelines would also have to be issued for the preparation of a plan supplement document, to be prepared by each State modifying its previously submitted comprehensive plan and showing compliance with the requirements contained in the new Act. Therefore, all existing guidelines, including M 4100.1F, State Planning Agency Grants, remain in effect for FY 1980.

d. *ALL grant funds (obligated or unobligated)* awarded by the grantor agency prior to FY 1981 are governed by the terms, conditions and matching requirements agreed to at the time of award and are not governed by Section 1301(h) of the JSIA.

8. *Order of Precedence.* In the event there are conflicting or otherwise inconsistent policies applicable to Federal grants, the following order of precedence shall apply:

a. Federal legislation.

b. Federal regulations (Refer to Chapter 2, paragraph 19).

c. Terms and conditions of the grant award.

d. Policies issued in this guideline manual.

e. Guideline Manual 4100.1 (effective edition) for planning, action and formula grants or 28 CFR Part 31.

Robert F. Diegelman,

Assistant Administrator, Office of Planning and Management.

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Chapter 1. Introduction and Use of the Manual

1. *Purpose.* This chapter serves as a guide for the interpretation and application of financial management policies contained in the remaining chapters and appendices of this document. It defines the applicability of the guideline manual, its users, its contents and the procedures for locating specific financial management policies. Users are advised to review this chapter before attempting to locate information within this manual.

2. *Application of Policies.* Although the financial management requirements specified in this guideline manual are applicable to all recipients of aid, with the general exception of contractors funded directly by the grantor agency, it is the responsibility of the CJC and other grant recipients to implement the requirements. In this regard, CJCs and large grantees (such as a unit of general local government receiving a sizable mini-block grant) should prepare their own financial management guidelines to implement the regulatory and administrative requirements contained within the guideline manual.

3. *Users of the Manual.*

a. *Organizations.* This document is provided for the use of all grantees of grantor agency funds and their subgrantees. Specific organizations who are to use the guideline manual include:

(1) *CJCs.* All financial management provisions of this guideline are applicable to CJCs. The guideline is to serve as their primary reference for interpretation of Federal grant administration and financial management policies. Requirements of a programmatic and technical nature are contained in the effective edition of M 4100.1, State Planning Agency Grants and/or 28 CFR Part 31, Formula Grants for Criminal and Juvenile Justice.

(2) *Direct Recipients of Categorical Grants.* All categorical grantees funded directly by the grantor agency are to use this guideline manual as their primary reference for interpreting Federal grant administrtion and financial management policy. Requirements of a programmatic and technical nature are contained in program announcements and in grant award packages.

(3) *Implementing Agencies.* Subgrantees (implementing agencies) of CJCs are to adhere to the financial management requirements of this guideline manual and applicable State and local laws and regulations.

(4) *Contractors.* Although this manual is not for the direct use of contractors, grantees should ensure that monitoring of organizations under contract to them is performed in a manner which will enable the grantees to comply with their overall financial management requirements.

b. *Individuals.* Individuals from the above organizations who may make particular use of the guideline manual include: administrators, financial management specialists, grants management specialists, accountants and auditors. These individuals are to use the guideline manual as the financial policy reference in executing their duties under grantor agency-funded programs and projects. Additionally, the document is structured to serve as a training guide for new employees.

c. *Subject Index.* To assist users in locating the finanaicl management policies contained in the guideline manual, a subject index of all the topics covered has been incorporated as appendix 14.

4. *Categorical Application Submission Process.*

a. *General.* Categorical grants maybe awarded to States, units of local government, educational institutions and hospitals or private non-profit organizations, at the discretion of the grantor agency.

b. *Program Announcements.* The grantor agency announces annually the programs which it has developed for funding under its categorical grant program. These announcements are produced and distributed after being published in the **Federal Register.**

c. *Preparation and Submissions of Applications.* Applications for categorical grants must be processed through the appropriate CJC. This requirement does not apply to the National Institute of Justice (NIJ), Office of Juvenile Justice and Delinquency Prevention (OJJDP) and Community Anti-Crime (CAC) applications. These applications should be submitted directly to the grantor agency. However, since all categorical grants must utilize the same forms and must comply with essentially the same financial and administrative regulations, applicants for NIJ, OJJDP and CAC grants are encouraged to consult with the appropriate CJC prior to preparation and submission of an application.

d. *Types of Categorical Funds* are as follows:

CA Community Anti-Crime
CP Urban Crime Prevention Program
DF Part C Discretionary
ED Part E Discretionary
IN Internship
CD Educational Development
SS Systems and Statistics
TA Technical Assistance
TN Training
PT Prosecutor Training (407)
FR IGA
PR Part B Reobligated
HC High Crime
JS Juvenile Justice (Special Emphasis)
JN Juvenile Justice (OJJDP Institute)
JC Juvenile Justice (Concentrated Federal Effort)
JA Technical Assistance (OJJDP)
NI National Institute
RF Reimbursable
PG Part E. National Priority Grants Program
CJ Part F. General Criminal Justice Grants

V 45 OCT 31 1980 UMI

IJ National Institute of Justice
BJ Bureau of Justice Statistics
MU Multiple Funded

e. *Uncleared Audit Reports.* It is the policy of the grantor agency that it WILL NOT award a categorical grant to any applicant who has an uncleared audit report on prior grantor agency awards. Every applicant for funding is on notice that unless prior audit reports are cleared, their application can be rejected for that reason. Exceptions to this policy may be granted by the Audit Review Committee under the following situations:

(1) Audit Finding under appeal;

(2) Audit Report has been resolved but not cleared and applicant agrees to correct deficiency, or to make payment; or

(3) Uncleared audit report does not negatively impact the programmatic, administrative and financial capability of the applicant to administer Federal funds and achieve project objectives.

5.7. *Reserved.*

Chapter 2. Program Requirements for General Fiscal Administration

Section 1. Justice System Improvement Act of 1979

8. *General.* THIS SECTION IS APPLICABLE TO PROGRAMS AND PROJECTS FUNDED IN FISCAL YEAR 1980–1983. The section sets forth the program requirements relating the general fiscal administration for grants and contracts and other agreements funded by the grantor agency under the Justice System Improvement Act of 1979 (JSIA). The fiscal and administrative requirements applicable to all grantees, subgrantees, contractors and other organizations under Federal agreements are explained in this section and the organizational structure of the agency is defined. This section also explains the respective fiscal requirements imposed by statutes, Federal grant-in-aid regulations and administrative regulations and the new organizational structure for the agency.

9. *Organizational Structure.* The JSIA provides a four year authorization for justice assistance, research and statistics programs. The JSIA establishes four organizations within the Department of Justice under the general authority and policy control of the Attorney General. The authority of any entity established under the JSIA shall extend to civil justice matters only to the extent that such civil justice matters bear directly and substantially upon criminal justice matters or are inextricably intertwined with criminal justice matters. These new organizations are:

a. *Office of Justice Assistance, Research and Statistics (OJARS)* which will coordinate the activities and provide staff support for the three new assistance offices.

b. *Law Enforcement Assistance Administration (LEAA)* which is authorized to operate a State and local assistance program of formula grants, a national priorities program, a discretionary program, training and personnel development programs, community anti-crime program, juvenile justice and delinquency prevention program, and public safety officers' benefits.

c. *National Institute of Justice (NIJ)* which will ensure a balance in basic and applied research; evaluate the effectiveness of programs carried out to determine their impact upon the quality of criminal and civil justice systems; test and demonstrate civil and criminal justice programs; disseminate information; and, give primary emphasis to State and local justice systems.

d. *Bureau of Justice Statistics (BJS)* which will provide a variety of statistical services for the criminal justice community; recommend standards for the generation of statistical data; analyze and disseminate statistics; and, provide for the security and privacy of criminal justice statistics.

10. *Source and Nature of Funds.* The JSIA provides a four year authorization for justice assistance, research and statistics programs. Funds are awarded as formula and categorical (i.e., national priority, discretionary, systems and statistics, research and development, etc.) grants, contracts and other agreements.

a. *Formula grants* are awarded to the States to provide assistance to State and local units of government for improvements in and coordination of their criminal justice activities.

b. *Categorical grants* are awarded to States, units of local government or private organizations at the discretion of the grantor agency. Most categorical awards are competitive in nature in that there are limited funds available and a large number of potential recipients.

c. *Contracts* are awarded by the grantor agency, Criminal Justice Councils, entitlement jurisdictions and other grantees or subgrantees to both profit and non-profit organizations. With the exception of a few justified sole-source situations, contracts are awarded via competitive procurement processes.

d. *Other forms of funding* include interagency agreements and purchase of service arrangements, which are usually entered into by two governmental units or agencies. Such funding arrangements are negotiated by the entities involved.

11. *JSIA funds.* The JSIA authorizes the following funds:

a. *Part A—Community Anti-Crime Grants.* Part A funds are awarded as grants to community and citizens groups for the purpose of enabling the community to engage in a process leading to the identification of problems facing that community with respect to crime, conflicts, disputes and other problems that might lead to crime, and to provide for the consideration by the community of plans to alleviate such problems. These funds are awarded as either categorical grants, cooperative agreements or contracts.

b. *Part B—National Institute of Justice Grants.* Part B funds are awarded as grants, cooperative agreements or contracts with public agencies, institutions of higher education, private organizations or individuals. These funds are to provide for and encourage research and demonstration efforts for the purpose of improving Federal, State and local criminal justice systems and related aspects of the civil justice systems; preventing and reducing crime; insuring citizen access to appropriate dispute-resolution forums; improving efforts to detect, investigate, prosecute and otherwise combat and prevent white-collar crime and public corruption, and identifying programs of proven effectiveness, programs having a record of proven success or programs which offer a high probability of improving the functioning of the criminal justice system.

c. *Part C—Bureau of Justice Statistics Grants.* Part C funds are awarded as grants, cooperative agreements or contracts with public agencies, institutions of higher education, private organizations or private individuals. These funds are to provide for and encourage the collection and analysis of statistical information concerning crime, (including white-collar crime and public corruption), juvenile delinquency and the operation and related aspects of the criminal justice system and to support the development of information and statistical systems at the Federal, State and local levels to improve their efforts to measure and understand these levels of crime.

d. *Part D—Formula Grants Program.* Part D funds are awarded as grants to States and units of local government to provide assistance for improvements in and coordination of their criminal justice activities. The grantor agency awards these funds to States on the basis of population or on a four-part formula taking into account population, crime rate, tax rate and criminal justice expenditures of each jurisdiction. The four-part formula only comes into effect if the Formula Grant appropriation exceeds the FY 1979 appropriation for Parts C and E. Within each State, entitlement jurisdictions (cities, counties and combinations of jurisdictions with a population of 100,000 or more) are entitled to receive grants from the formula grant if the entitlement jurisdiction expends at least .15 percent of the total State and local criminal justice expenditures, and provided that the entitlement jurisdiction would receive at least $50,000. In addition, each State shall provide that at least $50,000 of the Federal funds awarded to it for any fiscal year be made available to the Judicial Coordinating Committee (JCC).

e. *Part E—National Priority Grants Program.* Part E funds are awarded as grants to States, units of local government and combinations of such units for carrying out programs that, on the basis of research, demonstration or evaluation, have been shown to be effective or innovative and to have a likely beneficial impact on criminal justice.

f. *Part F—Discretionary Grants Program.* Part F funds are awarded as grants to States, units of local government, combinations of such units or private non-profit organizations to provide for:

(1) programs to improve and strengthen the criminal justice system;

(2) programs to improve planning and coordination;

(3) programs to assure the equitable distribution of funds among criminal justice components;

(4) programs to prevent and combat white collar crime and public corruption;

(5) court and corrections system improvements;

(6) organized crime programs, and activities to disrupt illicit commerce in stolen goods and property; and,

(7) community and neighborhood anti-crime efforts.

g. *Part G—Training and Manpower Development.* Part G funds are awarded as grants or contracts to provide for prosecutor training and training of criminal justice personnel.

h. *Joint Use of Funds.* Funds awarded under the various parts of the Justice System Improvement Act and the Juvenile Justice Act are to be used for programs and projects in compliance with the legislative intent of each respective part. In addition, there are several instances where, by statute, Congress intends that funds be jointly used.

(1) *Juvenile Justice Maintenance of Effort.* Under Section 1002 of the JSIA, there shall be maintained, for each fiscal year, at least 19.15 percent of total grantor agency appropriations for juvenile delinquency programs with primary emphasis on programs for juveniles convicted of criminal offenses or adjudicated delinquents on the basis of an act which would be a criminal offense if commited by an adult. This 19.15 percent requirement includes both administrative and action funds expended for purposes consistent with the Juvenile Justice Act. These funds are in addition to the funds appropriated under Section 261(a) of the Juvenile Justice Act.

(2) *State Planning.* In conjunction with Part D of the JSIA, formula funds from the Juvenile Justice Act may be used to develop a comprehensive application or for other pre-award activities associated with such a Comprehensive application and to pay that portion of the expenditures which are necessary for efficient administration, including monitoring and evaluation. The amount of Juvenile Justice (JJ) formula funds used for such purpose, however, may not exceed 7½ percent of the total annual allotment.

(3) *Other Federal Programs.* At the discretion of the grantor agency, a State may utilize up to 25 percent of its JJ formula grant funds to meet the non-Federal matching requirement for any other Federal juvenile delinquency program grant excluding grantor agency (LEAA, NIJ or BJS) programs.

12. *Statutory Requirements.* In addition to the broad fiscal provisions of the Justice System Improvement Act, as defined in paragraph 10, there are a number of specific financial requirements to which grantees and subgrantees must adhere. These requirements are identified below:

a. *"Pass-Through" Requirement.* An obligation on the part of the States to make grant funds available to units of local government, or combination of local units. The pass-through requirement is applicable for action funds (Part D formula) for FY 1980 (transition year) and juvenile justice formula funds. The same percentages are required as under the Crime Control and Juvenile Justice Acts. (Refer to Figure 2–2 of this chapter.) The accounting and documentation for State expenditure of the pass-through on behalf of local units of government is also the same. (Refer to paragraph 18a.)

b. *Buy-In.* This requirement is applicable to the total aggregate Part D Formula funds for FY 1980 only which each state is required to pass-through to units of general local government or combination of local units. Each state must provide in the aggregate for FY 1980 (transition year) Part D Formula grants not less than 50 percent of the required non-Federal share. There is no buy-in requirement for FY 1981–1983 funds. This requirement DOES NOT apply to those states granted waivers.

c. *Federal Participation Ratios.* The ratios for Federal participation in the funding of programs or projects out of the Justice System Improvement Act are shown in Figure 2–1.

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Figure 2–1.—*Summary of Match Requirements Under the JSIA*

Fund type	Match requirement	Percentage	Type of match
Part A—Community Anti-Crime	No [1]		
Part B—National Institute of Justice.	No [1]		
Part C—Bureau of Justice Statistics.	No [1]		
Part D Formula:			
Action—State	Yes [1] [3]	10	(1) Cash on a project by project basis or program by program basis if the Criminal Justice Council (State) or Criminal Justice Advisory Board (entitlement jurisdiction) adopts this more restrictive procedure as a formula; or
Administrative—State (in excess of $200,000 or $250,000).	Yes [1]	50	(2) Cash on a combination of the above, if the Criminal Justice Council (State) or Criminal Justice Advisory Board (entitlement jurisdiction) adopts this more restrictive procedure as a formula and with prior approval of the grantor agency; or
Action—Entitlement Jurisdiction (FY 81–83).	Yes [1]	10	(3) Cash on a unit of government basis, i.e., by city, county or by Criminal Justice Council.
Administrative—Entitlement Jurisdiction (in excess of $25,000) (FY 1981–83).	Yes	50	
Part E—National Priority	Yes [1]	50	(1) Cash on a project by project basis; or (2) Cash on an overall program basis when specific unit of government receives National Priority funds for coordinated program funds.
Part F—Discretionary	No [1] [2]		
Part G—Training and Manpower Development.	No [1]		
Technical Assistance	No		

[1] A non-Federal share of money, facilities or services can be required by the grantor agency.
[2] No match on FY 1980 action funds and 50% match on planning for waiver states and a 10% match on both action and planning funds for non-waiver states.
[3] Fifty percent match required for formula project if it is a continuation of a construction project funded from block action funds awarded prior to FY 1980.
[4] Required percentage of match for FY 1980 Parts E and F projects will be determined by the grantor agency.
[5] Fifty percent match will be required for projects extended or renewed for the 4th and 5th years.
[6] Educational Development projects require 25% cash or in-kind match on a project by project basis.

(1) *Part A—Community Anti-Crime Funds.* Federal participation may be up to 100 percent.

(2) *Part B—National Institute of Justice Funds.* Federal participation may be up to 100 percent.

(3) *Part C—Bureau of Justice Statistics Funds.* Federal participation may be up to 100 percent.

(4) *Part D—Formula Funds (Action).* Maximum Federal participation is 90 percent for fiscal year 1981–1983. Federal participation is 100 percent for waiver States and 90 percent for non-waiver States for fiscal year 1980.

(5) *Part D—Formula Funds (Administrotive).* Maximum Federal participation is 50 percent for fiscal year 1981–1983. Federal participation is 50 percent for waiver States and 10 percent for non-waiver States for fiscal year 1980.

(a) *State.* The State may use an amount up to 7½ percent of its total formula grant for administrative purposes. The Federal share of these funds is provided proportionately out of the State share and balance-of-State share of the formula grant. An additional $200,000 for the State and $50,000 for the Judicial Coordinating Committee (JCC) is allowed for administrative purposes and is match free. CJCs without JCCs will be eligible to retain the $50,000 for use in administering grants to the courts under arrangements agreed to with the courts. (The $200,000 for administrative purposes, match free, applies to the waiver States for fiscal year 1980 and all States for fiscal year 1981–1983.)

(b) *Judicial Coordinating Council (JCC).* The JCC may use an amount up to 7½ percent of its allocation for administrative purposes and this must be matched on a dollar-for-dollar basis. An additional $50,000 is allowed for administrative purposes and is match free.

(c) *Entitlement Jurisdiction.* The entitlement jurisdiction may use an amount up to 7½ percent of its allocation for administration. The first $25,000 of the administrative funds is match free and the remaining funds must be matched on a dollar-for-dollar basis. The entitlement jurisdictions may join a combination and aggregate the match free funds with the $25,000 of the other entitlement jurisdictions.

(6) *Part E—National Priority Funds.* Maximum Federal participation is 50 percent for fiscal year 1981–1983. Federal participation for fiscal year 1980 (transition year) will be determined by the grantor agency.

(7) *Part F—Discretionary Grants.* Maximum Federal participation may be up to 100 percent for fiscal year 1980–1983. Federal participation for fiscal year 1980 (transition year) will be determined by the grantor agency. Fifty percent match will be required for projects extended or renewed for the 4th and 5th years except for management and administration of national nonprofit organizations under Section 602(1).

(8) *Part G—Training and Manpower Development Funds.* Maximum Federal participation may be up to 100 percent. Educational Development funds under Section 705(e) require a grantee match of 25 percent of the total project costs.

d. *Hard Match Requirements.*

(1) *The Justice System Improvement Act provides* that the non-Federal share of the cost of any program or project under Parts D, E and F shall be cash.

(2) *Source and Type of Funds.* Hard match (cash) may be applied from the following sources:

(a) Funds from State and local units of government that have a binding commitment of matching funds for programs or projects.

(b) Funds from the following:

1. Housing and Community Development Act of 1974
2. Appalachian Redevelopment Act
3. General Revenue Sharing Act
4. Part D formula (JSIA) for Parts E and F programs and projects

(c) Funds contributed from private sources.

(3) *Match for Part D Formula Funds.*

(a) *Administrative Funds.* An entitlement jurisdiction MAY use any overmatch in administrative funds to match action funds.

(b) *Action Funds.* An entitlement jurisdiction MAY NOT use overmatch in action funds to match administrative funds.

(4) *Timing of Matching Contributions.* Matching contributions need not be applied at the exact time or in proportion to the obligation of the Federal funds. However, the full matching share must be obligated by the end of the period for which the Federal funds have been made available for obligation under an approved program or project.

(5) *Records for Match.* All grantees must maintain records which clearly show the amount and the timing of all matching contributions. In addition, if a program or project has included within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of them in the same manner as it does the grantor agency funds and required matching shares. For all Part D Formula funds, the CJC or the entitlement jurisdiction has primary responsibility for subgrantee compliance with the requirements. For all Part E and F funds, the grantee and the subgrantee or contractual recipient have shared responsibility for ensuring compliance with the requirements regarding matching shares.

(6) *Waiver of Match.*

(a) Section 401(b) of the JSIA provides that grantor agency programs to Indian tribes or aboriginal groups may be awarded with no required matching contribution where the tribes/groups do not have sufficient funds to meet the matching share. List of Indian entities entitled to apply for waiver are available from the U.S. Department of Interior. The following policies and procedures establish the process to be employed in seeking these special waivers.

1. Individual Waivers. Requests for a waiver of matching funds from Indian tribes or other aboriginal groups must be supported by a formal letter of certification stipulating that match for the application cannot be provided. This certification must be executed in name and title by the recognized leader(s) of the applicant Indian group.

2. Fiscal Year Waivers. The grantor agency may, at its discretion, delegate the authority to grant waivers to the CJC. This may cover some or all of the entities in a State. The waiver authority permits the CJC to approve all applications at 100 percent funding from entities during the fiscal year, provided that a certification is obtained from each applicant and forwarded to the grantor agency in Washington. Requests for fiscal year waivers must be supported by a statement from the CJC Director, and approved by the Governor of the State, that each Indian entity covered by the request is unable to provide non-Federal funding for that fiscal year.

(b) Section 401(b) of the JSIA provides that grantor agency funds may be awarded with NO required matching contribution where a unit of State or local government, due to budgetary constraints, is unable to provide the match (i.e., hardship case). For the required policies and procedures for requesting waivers for hardship, refer to 28 CFR Part 31.

e. *Personnel Limitation.* As required by Section 404(c)(2), NO Part D formula grant funds may be expended for programs which have as their primary purpose general salary payments for employees or classes of employees within an eligible jurisdiction. Salary payments as part of an approved program under Section 401(a) of the JSIA are allowable.

f. *Equipment Limitation.* As required by section 404(c)(1), NO grant funds awarded under Part D may be used for the purchase of equipment or hardware except as provided in Section 102(7), or the payment of personnel costs, unless the cost of such purchases or payments is incurred as an incidental and necessary part of a program of proven effectiveness, a program having a record of proven success, or a program offering high probability of improving the functioning of the criminal justice system (including bulletproof vests). In determining whether to apply this limitation, consideration must be given to the extent of prior funding from any source in that jurisdiction for substantially similar activities.

g. *Construction Limitation.* As required by Section 404(c)(3) NO Part D formula grant funds may be expended for new construction projects. This limitation does not apply to any construction projects that were funded under the Crime Control Act prior to the passage of the JSIA and which were budgeted in an approved Comprehensive Plan in anticipation of receiving additional Federal funding. This type of construction may continue to be funded under the JSIA for two years. The definition of construction is "the erection, acquisition or expansion of new or existing buildings or other physical facilities and the acquisition or installation of initial equipment therefor, but does not include renovation, repair or remodeling."

h. *Non-Supplanting of State or Local Funds.* The JSIA prohibits the use of Federal funds to supplant State or local funds. Refer to paragraph 18i for procedures and method of accounting for the non-supplanting requirement.

i. *Assumption of Cost.* CJCs and entitlement areas shall develop written policies that specify the duration and ration of Federal continuation support for particular classes of projects. CJC policies shall apply to the projects of State agencies (including the Judicial Coordinating Committee) and balance-of-state localities. Entitlement jurisdiction policies shall apply to the projects they administer. The policies of the CJC and the entitlement jurisdiction shall assure that Part D formula grant assistance for a project does not exceed three years except under certain circumstances. For exceptions to this policy, refer to 28 CFR Part 31.

j. *Adequate Share.* Section 403(a)(5) requires that an adequate share of Part D formula funds shall be allocated to courts, corrections, police, prosecution, and defensive programs. Also, Section 402(c)(4) and (5) requires that entitlement jurisdictions assure adequate funding for courts and correction programs based on their share of courts and corrections expenditures. For details regarding adequate share, refer 28 to CFR Part 31.

k. *Reimbursement For Unused Equipment.* LEAA may require a grantee or other recipient of funds (Parts A, D, E or F) to reimburse LEAA for the federal share of the cost of any unused equipment OR require that appropriate measures be taken to put such equipment into use where:

(1) the purchase was in connection with a program or project funded by LEAA;

(2) the aggregate cost was $100,000 or more; and,

(3) the equipment was not put into use within one year of the date set for commencement at the time of purchase or has not continued in use during its useful life.

13. *Regulatory Requirements.*

a. In addition to statutory requirements, the award and administration of gant and subgrant funds are subject to applicable regulations and policies that have been promulgated by the Office of Management and Budget (OMB), the General Accounting Office and U.S. Treasury. Grantee, subgrantee and contractor organizations should maintain, or have access to, copies of documents which present additional detailed guidance relating to the award and administration of grants, subgrants, and contracts. The following documents are particularly important to grantees, subgrantees and contractors. Contribution rations of grantor agency programs are unaffected by the documents and, where authorizing legislation contains explicit restrictions on the reimbursement of particular costs, such restirictions are also unaffected.

(1) *Code of Federal Regulations (Titles 28 and 41).* These Titles set forth grantor agency program and administrative regulations applicable to all Federal grants.

(2) *Federal Register.* This publication is issued to announce major proposed and final rule making issuances, including announcements of new programs and regulations, as well as policies issued by the Office of Management and Budget and the Federal grantor agency.

(3) *Federal Management Circular (FMC) 73.7,* Administration of College and University Research Grants. This circular establishes policies and procedures for the administration of all research grants awarded to educational institutions.

(4) *Office of Management and Budget (OMB) Circular A.21,* Cost Principles for Educational Institutions. This circular establishes principles for determining costs applicable to grants and contracts with educational institutions. (Refer to Appendix 1)

(5) *Federal Management Circular (FMC) 74.4,* Cost Principles Applicable to Grants and Contracts with State and Local Governments. This circular establishes principles and standards for determining costs applicable to grants and contracts with State and local governments. (Refer to appendix 2)

(6) *Office of Management and Budget (OMB) Circular A.73 (revised),* Audit of Grants-in-Aid to State and Local Governments. This circular sets forth policies to be followed in the audit of Federal grants-in-aid to State and local governments.

(7) *Office of Management and Budget (OMB) Circular A–88 (revised).* Indirect Cost Rates, Audit and Audit Followup at Educational Institutions. This circular provides policies for: establishing indirect cost rates; auditing; correcting systems deficiencies; and, resolving questioned costs applicable to grants, contracts and other agreements with educational institutions.

(8) *Office of Management and Budget (OMB) Circular A–102,* Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments. This circular establishes standards for the administration of grants to State and local governments. (Refer to appendix 3)

(9) *Office of Management and Budget (OMB) Circular A–110,* Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations. This circular establishes standards for the administration of grants to institutions of Higher Education, Hospitals and other non-profit organizations. (Refer to appendix 4)

(10) *Office of Management and Budget (OMB) Circular A–111,* Jointly Funded Assistance to State and Local Governments and Non-Profit Organizations. This circular establishes policies and procedures to be followed

in the joint funding of related programs of Federal assistance to State and local governments and non-profit organizations.

(11) *Office of Management and Budget (OMB) Circular A–122,* Cost Principles for Non-Profit Organizations. This circular establishes principles for determining costs of grants, contracts, and other agreements with non-profit organizations. (Refer to appendix 5)

b. Copies of the documents referred to in paragraph 13a(1) through 13a(11) are available in booklet form from the Office of Administration, Publications Units, Room G 236, New Executive Office Building, Washington, DC 20503.

14. *Administrative Requirements.*

a. *Applicability of Circulars.* This requirement is the same as under the Crime Control and Juvenile Justice Acts. Refer to paragraph 20a of this chapter.

b. *Other Administrative Requirements.*

(1) *Prior Approval of Cost Items.* Written approval of grant and subgrant costs is required for specific cost items. Those costs generally requiring grantor agency, CJC or entitlement jurisdiction approval are discussed in detail in Chapter 5.

(2) *Reprogramming of Funds.*

(a) *CJC*

1. The movement of funds from one program to another program contained in an approved State formula award, which results in a cumulative increase or decrease in the budgeted total cost for any program of more than 25 percent must be approved by the grantor agency prior to the expenditure of funds. The grantor agency will consider retroactive approval only in extremely unusual circumstances. When such retroactive approval is not considered warranted, the grantor agency will exercise its option to reduce the grant by the amount of the unauthorized reprogrammed funds. (Refer to paragraph 66b of this guideline manual for prior approval requirements.)

2. Prior OJJDP approval is necessary for *any* reprogramming of Part D formula funds out of juvenile justice programs. In addition, OJJDP must be notified of any reprogramming of funds which increases the juvenile justice maintenance of effort share for a specific state.

(b) *Entitlement Jurisdictions.* The movement of funds from one program to another contained in an approved entitlement jurisdiction award requires the prior approval of the CJC. (Refer to paragraph 66b of this guideline manual for prior approval requirements.)

(3) *Redesignation of Fund Year.* Criminal Justice Councils and entitlement jurisdictions are prohibited from changing Part D formula grant and subgrant awards, and their related obligations and expenditures, from one fiscal year to another fiscal year.

(4) *Commingling of Funds.* The accounting systems of all grantees and subgrantees must insure that grantor agency funds are not commingled with funds from other Federal agencies. In addition, grantees and subgrantees are prohibited from commingling funds on either a program by program basis or a project by project basis. Funds specifically budgeted and/or received for one project cannot be used to support another. Where a grantee's or subgrantee's accounting system cannot comply with this requirement, it is recommended that the grantee or subgrantee establish a system to provide adequate fund accountability for each project which it has been awarded.

15. *Reserved.*

Section 2. Omnibus Crime Control and Juvenile Justice Acts

16. *General.* The section sets forth the program requirements relating to general fiscal administration for grants, contracts and other agreements funded by the grantor agency under the Omnibus Crime Control and Safe Streets Act of 1968 (Crime Control Act), as amended, and the Juvenile Justice and Delinquency Prevention Act of 1974 (Juvenile Justice Act), as amended. This section is applicable to programs and projects funded through fiscal year 1979 for the Crime Control Act and through fiscal year 1980 for the Juvenile Justice Act. The fiscal and administrative requirements applicable to all grantees, subgrantees, contractors and other organizations under Federal agreements are explained in three stages. First, the source and nature of funds awarded are defined. Subsequently, the section explains the respective fiscal requirements imposed by statutes, Federal grant-in-aid regulations, and administrative regulations.

17. *Source and nature of funds.* Federal funds provided for the improvement of law enforcement and criminal justice programs, as authorized and appropriated by the Crime Control Act and the Juvenile Justice Act, may be used for: comprehensive planning; implementing law enforcement and criminal justice action programs; or sponsoring specific training, education, research and demonstration projects. The following subparagraphs explain how the funds are awarded and what they are to be used for.

a. *Basis of Awards.* Funds are awarded as formula and block (planning and action) grants, categorical (i.e., discretionary, technical assistance, research and development, etc.) grants, contracts and other agreements.

(1) *Formula and Block* grants are awarded to the States on the basis of their general population and specific target group populations, such as the number of youths under age 18.

(2) *Categorical* grants and cooperative agreements are awarded to States, units of local government or private (profit/non-profit) organizations at the discretion of the grantor agency. Most categorical awards are competitive in nature.

(3) *Contracts* are awarded by the grantor agency, CJCs, and other grantees or subgrantees to both profit and non-profit organizations. With the exception of a few justified sole-source situations, contracts are awarded via competitive procurement processes.

(4) *Other forms of funding* include interagency agreements and purchase of service arrangements, which are usually entered into by two governmental units or agencies. Such funding arrangements are negotiated by the entities involved.

b. *Funds Available Under the Crime Control Act.* Title I of the Crime Control Act authorizes four types of funds. CJCs may use any of these funds to award subgrants or contracts or to enter into other financial arrangements for the procurement of goods and services. Other grantees/subgrantees may use these funds to award contracts or to enter into other financial arrangements for the procurement of goods and services.

(1) *Part B—Planning Grants.* Planning grants are for the use of States and units of general local government in developing and adopting comprehensive law enforcement and criminal justice plans. The grantor agency awards these funds to the States on a formula basis. Each State then sub-awards a portion of its allocation to units of local government. In addition, each state shall provide that at least $50,000 of the Federal funds awarded to them for any fiscal year be made available to the judicial planning committee.

(2) *Part C—Action Grants for Law Enforcement Purposes.* Grants funded under this Part are for the actual implementation of State and local programs to improve and strengthen law enforcement and criminal justice. The grantor agency awards 85 percent of these funds to the States on a formula basis and the remainder as either categorical grants, cooperative agreements or contracts.

(3) *Part D—Training, Education, Research, Demonstration and Special Grants.* Part D funds are for the development of new methods for the prevention and reduction of crime. The grantor agency awards these funds as either categorical grants, cooperative agreements or contracts.

(4) *Part E—Action Grants for Correctional Institutions and Facilities.* Grant funds available under this Part are for the construction, acquisition and renovation of correctional institutions and facilities, and for the improvement of correctional programs and practices. The grantor agency awards 50 percent of these funds to the States on a formula basis and the remaining 50 percent as categorical grants to either CJCs or units of general local government.

c. *Funds Available Under the Juvenile Justice Act.* Title II of the Juvenile Justice Act authorizes three types of funds. CJCs may use any of these funds to award subgrants or contracts or to enter into other financial arrangements for the procurement of goods and services. Other grantees/subgrantees may use these funds to award contracts or to enter into other financial arrangements for the procurement of goods and services.

(1) *Part B, Subpart I—Formula Grants.* Funds available under this subpart are used for various general activities to improve the overall juvenile justice system. Seventy-five percent of the funds appropriated for Part B are awarded by the grantor agency to the States on the basis of relative population of youths under age eighteen.

(2) *Part B, Subport II—Special Emphasis Prevention and Treatment Programs.* Funds available under this subpart are used for the promotion of specific programs designed to develop new approaches for dealing with youths in trouble. Twenty-five percent of the funds appropriated for Part B are awarded directly by the grantor agency as either categorical grants, cooperative agreements or contracts.

(3) *Part C, National Institute for Juvenile Justice and Delinquency Prevention.* Funds made available through the National Institute are used for the collection, preparation and dissemination of useful data and techniques regarding the treatment and control of juvenile offenders. All funds are awarded as either categorical grants, cooperative agreements or contracts.

d. *Joint Use of Funds.* Funds awarded under the various parts of the Crime Control Act and the Juvenile Justice Act are to be used for programs and projects in compliance with the legislative intent of each respective part. In addition, there are several instances where by statute Congress intends that funds be jointly used.

(1) *Juvenile Justice Maintenance of Effort.* Under Section 261(b) of the Juvenile Justice and Delinquency Prevention Act and Section 520(b) of the Crime Control Act of 1976, there shall be maintained for each fiscal year at least 19.15 percent of the total grantor agency appropriations for juvenile delinquency programs. This 19.15 percent requirement may include both administrative and action funds expended for purposes consistent with the Juvenile Justice Act. These funds are in addition to the funds appropriated under Section 261(a) of the Juvenile Justice Act.

(2) *Funding for Corrections.* Funds under both Parts C and E of the Crime Control Act may be used for the improvement of correctional programs and facilities. Under the Part E compliance requirement, however, a State must provide assurance that part E funds will not be used to reduce the Part C funds which a State would normally allocate to corrections.

(3) *State Planning.* In conjunction with Part B of the Crime Control Act, formula funds from the Juvenile Justice Act may be used to develop a State plan or for other pre-award activities associated with such State plan and to pay that portion of the expenditures which are necessary for efficient administration, including monitoring and evaluation. The amount of Juvenile Justice (JJ) formula funds used for administration, however, may not exceed 7½ percent of the total annual allotment.

(4) *Other Federal Programs.* At the discretion of the grantor agency, a State may utilize up to 25 percent of its JJ formula grant funds to meet the non-Federal matching requirement for any other Federal juvenile delinquency program grant excluding grantor agency (LEAA, NIJ or BJS) programs.

18. *Statutory Requirements.* In addition to the broad fiscal provisions of the Crime Control Act and the Juvenile Justice Act, as defined in paragraph 17, there are a number of specific financial requirements which must be adhered to by grantees and subgrantees. These requirements are identified below:

a. *"Pass-Through" Requirement.* An obligation on the part of the States to make grant funds available to local units of government, or combinations of local units, as follows:

Figure. 2.2.—*Summary of Pass-Through to Units of General Local Government*

Fund type	Applicability	Percentage
Part B Planning	Yes	40.
Part C Block	Yes	Variable Pass-Through.
JJ Formula	Yes	66⅔.
All other grantor agency funds.	No	

(1) *Part B-Planning Funds.* Forty percent of a State's Federal planning grant funds must be passed-through to general local units of government, or combinations of local units, unless a waiver has been obtained.

(2) *Part C—Grants for Law Enforcement or Criminal Justice Purposes (Action Funds).* A variable percentage of a State's Federal block action grant funds must be passed through to units of general local government or combinations of local units. This percentage is determined by calculating the ratio of the total non-Federal local expenditures for criminal justice system operation to the total non-Federal expenditures for all operations of the criminal justice system within the State during the preceding fiscal year.

(3) *JJ-Formula Grants.* At least 66⅔ percent of funds received by the State, excluding funds made available to the State advisory group, are to be made available for programs to local units of government or combinations of local units.

(4) *Accounting and Documentation for State Expenditure of Pass-Through Funds on Behalf of Local Units of Government.* CJCs may expend, on behalf of units of general and local government, the "pass-through" portions of Part B planning funds, Part C block action funds and JJ formula funds providing the following conditions are met.

(a) *Prior Approval.* The cost of services provided by the State, or direct outlays by the State on behalf of local units of government, may be charged as funds made available to local units only with the specific prior approval of the CJC and the local unit(s) to which the services will be made available.

(b) *Documentation.* CJC records shall contain explicit documentation of consent for such expenditures. Although no special form of documentation, accounting or recording needs to be used, board meeting minutes, signed certifications or waivers, or written records of local government meetings called for this purpose are recommended.

b. *Buy-In.* This requirement is applicable to the total aggregate Part B and Part C funds which each State is required to pass-through to units of general local government or combinations of local units. Each State must provide in the aggregate for Part B planning and Part C block action grants not less than 50 percent of the required non-Federal share.

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Figure 2-3.—*Summary of Buy-in Requirement*

Fund type	Applicability	Required percentage of non-Federal share to be supplied by State
Part B Planning	Yes (1) (2)	50
Part C Block (including construction).	Yes (3)	50
All Other Grantor Agency Funds.	No	—

(1) Applicable only to REQUIRED Pass-Through of 40%
(2) Not applicable to Grants Awarded to Regional Planning Units
(3) Applicable only to REQUIRED Variable Pass-Through for state.

c. *Federal Participation Ratios.* The ratios for Federal participation in the funding of programs and projects are shown in figure 2-4.

(1) *Part B Planning Funds.* Maximum Federal participation is 90 percent. The ratio may go as high as 100 percent funding to regional planning units. (For a definition of regional planning units, refer to the effective edition of Guideline Manual 4100.1, State Planning Agency Grants.)

(2) *Part C and Part E Action Funds.* Maximum Federal participation is 90 percent for Part C and Part E action funds except for construction under Part C block which is 50 percent.

(3) *Part D.* A grant authorized under this part may be up to 100 percent of the total cost of each project for which the grant is made. Grants using educational development funds are funded at 75 percent Federal participation and 25 percent match.

(4) *JJ Formula Funds.*

(a) *For FY 1978 and prior years obligated funds,* the Federal funds awarded may not exceed 90 percent of the costs of programs and projects funded. The non-Federal share of such costs, therefore, must be at least 10 percent.

(b) *For FY 1978 and prior years unobligated funds* (as of October 1, 1978), the Federal funds awarded may be up to 100 percent of the costs of programs and projects. Any required non-Federal share (up to 10 percent of such costs) will be determined by the CJC.

(c) *For FY 1979 and subsequent years funds,* the Federal funds awarded shall be at 100 percent of the costs of projects and programs funded.

(5) *Exceptions.* Federal participation for all construction projects funded by Part C block and juvenile justice grants is limited to 50 percent. Federal participation for all grants awarded to insular areas (i.e., Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Government of the Northern Mariana Islands) shall be at 100 percent.

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Figure 2-4.—*Summary of Match Requirements Under Crime Control Act and Juvenile Justice Act*

Fund type	Match requirement	Percentage	Type of match	Appropriated
Part A—Community Anti-Crime	No			
Part B—Planning	Yes[1]	10	Cash	Aggregated.
Part C—Block:				
Operational	Yes	10	Cash	(1) On a project by project basis or a program by program basis if the CJC adopts this more restrictive procedure as a formula; or (2) On a combination of the above, if the CJC adopts this more restrictive procedure as a formula and with prior approval of the grantor agency; or (3) A unit of government basis, i.e., by city, county, or by CJC.
Construction	Yes	50	Cash	
Part C: Discretionary—Awarded by grantor agency (including construction).	Yes	10	Cash	(1) A project by project basis; or (2) On an overall program basis when specific unit of government receives discretionary funds for coordinated program funds.
Part E—Awarded by grantor agency or state agency: Block & Discretionary (including construction).	Yes	10	Cash	Block—same as Part C block above. Discretionary—Same as Part C discretionary above.
Part D: Research, Development and Evaluation.	No			
Part D: Training	No			
Part D: Education (excluding Curriculum Development).	No			
Part D: Curriculum Development	Yes[2]	25	Cash or in-kind.	A project by project basis.
Part F:				
Systems and Statistics	No			
Technical Assistance	No			
Juvenile Justice—Formula Subgrants to CJCs or Units of Local government:				
For FY 1978 and prior years obligated funds.	Yes[2 4]	10	Cash	(1) On a project by project basis or a program by program basis if the CJC adopts this more restrictive procedure as a formula; or (2) On a combination of the above, if the CJC adopts this more restrictive procedure as a formula and with prior approval of the grantor agency; or (3) Unit of government basis, i.e., by city, county, or by CJC.
For FY 1978 and prior years unobligated funds (as of October 1, 1978).	No[4 5]			
For FY 1979 and subsequent years funds.	No[4]			
Subgrants to Private Agencies:				
For FY 1978 and prior years obligated funds.	Yes[4]	10	Cash	(1) On a project by project basis; (2) On a program by program basis if the CJC adopts this procedure; or (3) On an agency by agency basis if a given private agency is the recipient of support from more than one subgrant.
For FY 1978 and prior years unobligated funds (as of October 1, 1978) and subsequent years funds.	No[4]			
Juvenile Justice—Special Emphasis (Categorical):				
For FY 1978 and prior years obligated funds.	Yes[4 6]	10	Cash	
For FY 1978 and prior years unobligated funds (as of October 1, 1978) and subsequent years funds.	Yes[4 7]			

[1] Federal participation may be up to 100% funding to regional planning units.
[2] Cash or in-kind as determined by the grantor agency.
[3] A required non-Federal share (up to 10 percent hard match).
[4] A required non-Federal share (50% hard match) is required for construction projects.
[5] A non-Federal share (10% hard match) may be required by the CJC on FY 1978 funds.
[6] Cash requirements may be waived by grantor agency in whole or in part and in-kind match substituted.
[7] A required non-Federal share of 10% hard match (money, facilities or services) can be required by grantor agency.

(1) *Hard Match* may be applied from the following sources:

(a) Funds from State and local units of government, that have been identified in their budgets or appropriations as a binding commitment of matching funds for programs or projects;

(b) Funds from the Housing and Community Development Act of 1974;

(c) Funds contributed from public and private sources;

(d) Funds from Applachian Redevelopment Act; and

(e) Funds from General Revenue Sharing Act.

(2) *New Funds* may be calculated on the basis of:

(a) The amount of increase in cash input to a program or project from the previous year's hard match and non-recurring items; or

(b) The extent to which the current cash input exceeds the previous three years average input, less the previous year's hard match and non-recurring items.

(3) *Salaries of Personnel.* Salaries of personnel transferred to a grantor agency project may not be considered hard match unless the vacancies created by their transfer are filled by personnel whose salaries are from appropriated State or local funds.

e. *Timing of Matching Contributions.* Matching contributions need not be applied at the exact time or in proportion to the obligation of the Federal funds. However, the full grantee and/or subgrantee matching share must be obligated by the end of the period for which the Federal funds have been made available for obligation under an approved program or project. Grantees and subgrantees receiving State appropriated buy-in funds as part of their match may wish to obligate those funds earlier on in the project in order to prevent their lapsing after completion of the State's fiscal year.

f. *Records for Match.* All grantees must maintain records which clearly show the amount and the timing of all matching contributions. In addition, if a program or project has included within its approved budget contributions which exceed the required matching portion, the grantee must maintain records of them in the same manner as he does the grantor agency funds and required matching shares. For all planning and block action funds and for JJ formula funds, the CJC has primary responsibility for compliance with the requirements. For all categorical funds, including JJ Special Emphasis grants, the grantee and the subgrantee or contractual recipient have shared responsibility for ensuring compliance with the requirements regarding matching shares.

g. *Waiver of Match for Indian Applications.* Sections 301(c) and 306 of Title I provide that grantor agency programs or projects to Indian tribes or aboriginal groups may be awarded with no required matching contribution where it is the case that the group does not have sufficient funds available to meet the matching share. Lists of Indian tribes entitled to apply for this wavier are available from the U.S. Department of Interior. The following policies and procedures establish the process to be employed in seeking these special waivers.

(1) *Individual Waivers.* Requests for a waiver of matching funds from Indian tribes or other aboriginal groups must be supported by a formal letter of certification stipulating that match for the Indian application cannot be provided. This certification must be executed in name and title by the recognized Indian leader(s) of the applicant Indian group.

(2) *Fiscal Year Waivers.* The grantor agency may at its discretion delegate the authority to grant waivers to a CJC. This may cover some or all of the Indian entities in a State. The waiver authority permits the CJC to approve all applications at 100 percent funding from Indian entities during the fiscal year, provided that a certification is obtained from each application and forwarded to the grantor agency in Washington. Requests for fiscal year waivers must be supported by a statement from the CJC Director, and approved by the Governor of the State, that each Indian entity covered by the request is unable to provide non-Federal funding for that fiscal year.

h. *One Third Personnel Limitation.* As required by Section 301(d) of the Crime Control Act, not more than one-third of any action grant made under Part C of Title I may be expended for compensation of police and other regular law enforcement personnel exclusive of time engaged in training

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programs or in research, development, demonstration, or other short-term projects (6 months or less). It is intended that the use of part C block grant funds for the salaries of personnel whose primary responsibility is to provide assistance, maintenance, or auxiliary components of law enforcement agencies shall not be subject to the limitations set forth in Section 301(d). Expenditures above this one-third limit are not allowable as a charge on Federal funds but may be allowed as a grantee contribution.

(1) *Applicability.* Subgrantees may individually provide for expenditure of more than one-third of Federal funds for compensation of personnel provided that the combined expenditures for all programs and projects supported by the block grant to the CJC do not exceed the limit. This limitation is applicable to categorical grants on an individual basis.

(2) *Exclusions.* In applying the "one-third" limitation, only the wages and salaries of grantee or subgrantee employees need be counted, and not fees or other remuneration of non-employee consultations or personnel costs of private or educational institution contracts providing services to grantees or subgrantees. The limitation does not apply to personnel compensation under Part B planning grants. Replacement or substitute costs for personnel in training are not within the statutory exclusion, but, where Federal funds are used to reimburse the subgrantee for compensation of personnel "undergoing training programs," this is within the exclusion and the resulting savings can often be applied toward replacement manpower.

(3) *Records.* The CJC must maintain records which demonstrate how it is meeting the one-third limitation for law enforcement and criminal justice personnel. The method used shall be considered an integral part of its official records.

(4) *Suggested Format.* The following is offered as a suggested format for documenting the one-third limitation.

(a) Estimated total personnel compensation in all Part C programs, exclusive of time spent in training, research and development of short-term projects: (a) $———.

(b) Estimated total law enforcement and criminal justice personnel compensation in all Part C programs, exclusive of time spent in training, reseach and development or short-term projects: (b) $———.

(c) Estimated total increases in personnel compensation of implementing agencies, exclusive of same compensation items included in (b): (c) $———.

(d) Estimated expenditures from Federal share for the increased personnel compensation provided in (a) above, exclusive of the same compensation items in (b) and not to exceed 50 percent of (c): (d) $———.

i. *Non-Supplanting of State or Local Funds.*

(1) The Act prohibits the use of Federal funds to supplant State or local funds. Each State must develop procedures to comply with this requirement and maintain these procedures as part of the official records of the State.

(2) Requirement procedures shall account for the non-supplanting requirement in the following manner:

(a) *Certification.* Certifications shall be in writing and should be to the effect that Federal funds have not been used to replace State or local funds that would, in the absence of such Federal aid, be made available for law enforcement and criminal justice. Such certification may be incorporated in prescribed grantee reports and should be provided not less than annually.

(b) *Documentation.* Certifications shall be held in grantee's files for the purposes of Federal audit. Any certifications requiring special explanations because of reduced or unchanged local investment in law enforcement shall be forwarded to the grantor agency for informational purposes.

(c) *Combinations of Local Units.* Where grants are awarded to a combination of local government units, certifications should cover all participating units and their combined law enforcement expenditures.

j. *State Assumption of Costs.* CJCs must demonstrate the willingness of the State and units of general local government to assume the costs of improvements funded by the grantor agency (Crime Control act only) after a reasonable period. The grantor normally defines a "reasonable period" as three years. Accordingly, each State must establish procedures by which subgrantees will specify, in the last year of their grants, what plans have been made for eventual incorporation of some or all project activities into the operation of State or local governmental agencies.

19. *Regulatory Requirements.*

a. *In addition to statutory requirements,* the award and administration of grant and subgrant funds are subject to applicable regulations and policies that have been promulgated by the Office of Management and Budget (OMB), the General Accounting Office and the U.S. Treasury. Grantee, subgrantee and contractor organizations should maintain, or have access to, copies of documents which present additional detailed guidance relating to the award and administration of grants, subgrants, and contracts. The following documents are particularly important to grantees, subgrantees and contractors. Contribution ratios of grantor agency programs are unaffected by the documents and, where authorizing legislation contains explicit restrictions on the reimbursement of particular costs, such restrictions are also unaffected. For a list of the regulatory documents, refer to paragraph 13 of this Chapter.

b. Copies of the documents referred to in paragraph 13a(1) through 13a(11) are available in booklet form from the Office of Administration, Publications Unit, Room G 236, New Executive Office Building, Washington, DC 20503.

20. *Administrative Requirements.*

a. *Applicability of Circulars.* The basic grantor agency focus on the costs principles contained within the circulars referenced in paragraph 13a is the extent to which they contribute to the purposes and execution of the grantor agency programs. Accordingly:

(1) Grantees will each bear their appropriate share of allocated costs as allowable, not only under the appropriate circular, but also under State and local laws or regulations and grantee practices.

(2) Grantees and their subgrantees will accept responsibility for expending and accounting for Federal funds in a manner consistent with:

(a) Pertinent agreements and project and/or program objectives, and

(b) Policies and procedures that apply uniformly both to federally assisted and other activities of the grantee or subgrantee.

(3) Grantees and their subgrantees have the primary responsibility for employing whatever form of organization and management techniques necessary to assure proper and efficient administration and cost allocation, including accounting, budgeting, reporting, auditing and other review controls.

(4) Grantees and subgrantees' costs pertinent to carryiung out functions unrelated to law enforcement programs receiving grant support are not allowable. There can be no recognition of "profit" or other increase above true costs to grantees or subgrantees in executing grants.

B. *Other Administrative Requirements.*

(1) *Prior Approval of Cost Items.* Written approval of grant and subgrant costs is required for specific cost items. This prior approval responsibility is vested in either the CJCs, the entitlement jurisdictions or the grantor agency, depending upon the source of funds and the amount of the cost. Those costs generally requiring grantor agency, CJC, or entitlement jurisdiction approval are discussed in detail in Chapter 5.

(2) *Reprogramming of Funds.*

(a) The movement of funds by the CJC from one program to another program contained in an approved State Comprehensive Plan (latest approved Attachment A), which results in a cumulative increase or decrease in the budgeted total cost for any program by more than 25 percent, must be approved by the grantor agency prior to the expenditure of funds. Such reprogramming will be deemed an amendment of the grant application and award and requires prior grantor agency approval. (Refer to paragraph 66b for prior approval requirements.) The grantor agency will consider retroactive approval only in extremely unusual circumstances. When such retroactive approval is not considered warranted, the grantor agency will exercise its option to reduce the grant by the amount of the unauthorized reprogrammed funds. The 25 percent reprogramming limit will be effective as of the date of this guideline manual and will apply to active block planning and action and juvenile justice formula funds. Reprogramming of FY 1980 and prior years block funds into programs for which the sole or primary purpose is the PURCHASE OF EQUIPMENT OR HARDWARE or into programs for NEW CONSTRUCTION IS PROHIBITED. (Refer to Section 404(c) of the JSIA)

(b) Prior OJJDP approval is necessary for ANY reprogramming of Crime Control funds out of juvenile justice programs. In addition, the OJJDP should be notified of any reprogramming of funds which increases or decreases the juvenile justice maintenance of effort share for a specific State.

(3) *Funds Availability.* Costs of service provided by the State or direct outlays by the State for or on behalf of local units of government may not be charged as funds made "available" to local units without the specific approval of both the CJC's supervisory board and the local units to which the services will be made available. A unit of general local government means any city, county, township, town, borough, parish, village or other general purpose political subdivision of a State or an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior.

(4) *Redesignation of Fund Year.* CJCs are prohibited from changing block action, formula grant and subgrant awards, and their related obligations and expenditures, from one fiscal year to another fiscal year. Refer to the effective edition of Guideline M7100.4, "Block and Juvenile Justice Formula Grant Administration Requirements," for details.

(5) *Comingling of Funds.* The accounting systems of all grantees and subgrantees must insure that grantor agency funds are not comingled with funds from other Federal agencies. In addition, grantees and subgrantees are prohibited from comingling funds on either a program-by-program basis or a project-by-project basis. Funds specifically budgeted and/or received for one project cannot be used to support another. Where a grantee or subgrantee's accounting system cannot comply with this requirement, it is recommended that the grantee or subgrantee establish subsidiary accounts or a system to provide adequate fund accountability for each project which it has been awarded.

21–23. Reserved.

Chapter 3. Award, Payment and Financial Reporting Requirements

24. *General.* All grantees/subgrantees of the Federal grantor agency are bound by uniform award, payment and financial reporting requirements. The purpose of this chapter is to prescribe the procedures which must be followed by grantees/subgrantees in order to properly initiate grant activities, receive Federal advances or reimbursements for expenditures, and report on grant activities. Procedures may vary from one type of grantee/subgrantee to another (e.g., a CJC receiving formula D funds versus a non-profit organization receiving categorical funds).

25. *Conditions of Award and Acceptance*

a. *Award Document.* After completion of the internal review process, grant applications designated for approval are formally awarded by the grantor agency in the form of an issuance of an Award document. This statement identifies the Grantee and Subgrantee (if applicable), the Period of Award, the Type and Amount of Federal Funds and the Award Number. As appropriate, Special Conditions are included which the grantor feels the grantee/subgrantee must meet if he accepts the award. This award notification process is applicable to all grant applications approved for award. All correspondence concerning the award shall refer to the designated Award Number shown on the Award document.

b. *Acceptance Procedures.* The Award document constitutes the operative document obligating and reserving Federal funds for use by the grantee/subgrantee in execution of the program or project covered by the award. Such obligation may be terminated without further cause, however, if the grantee/subgrantee shall fail to affirm its timely utilization of the grant by signing and returning the signed acceptance to the grantor agency WITHIN 45 DAYS from the date of award. No Federal funds shall be disbursed to a grantee/subgrantee until the signed acceptance has been received by the grantor agency.

c. *Special Cancellation Conditions for Subgrants.* The CJC must condition each Part C and E block action and Part D and JJ formula award to include the following cancellation procedures. This condition shall not be placed on CJC awards to entitlement jurisdictions.

(1) *Commencement Within 60 Days.* If a project is not operational within 60 days of the original starting date of the grant period, the subgrantee must report by letter to the CJC the steps taken to initiate the project, the reasons for delay, and the expected starting date.

(2) *Operational Within 90 Days.* If a project is not operational within 90 days of the original starting date of the grant period, the subgrantee must submit a second statement to the CJC explaining the implementation delay. Upon receipt of the 90-day letter, the CJC may cancel the project and redistribute the funds to other project areas. The CJC may also, where extenuating circumstances warrant, extend the implementation date of the project past the 90-day period. When this occurs, the appropriate subgrant files and records must so note the extension.

26. *Payment of Grant Funds.*

a. *Applicability.* The material contained in this section deals with the payment of funds to all grantees. The procedures and regulations discussed are applicable to all grant funds.

b. *Annual Requirement Under $120,000.* Grantees, whose annual fund requirement for all agency grants is less than $120,000, receive Federal funds on a "Check Issued" basis. Upon receipt, review and approval of a REQUEST FOR ADVANCE OR REIMBURSEMENT, H–3 Report, (LEAA Form 7160/3) by the grantor agency, a Voucher and Schedule for Payment is prepared for the amount approved. This schedule is forwarded to the U.S. Treasury requesting issuance and mailing of the check directly to the grantee or its designated fiscal agent. A

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request must be limited to the grantee's immediate cash needs and submitted at least monthly. The H–3 Report, along with the instructions for its preparation, is contained in appendix 6.

c. *Annual Requirement Over $120,000.* Grantees, whose annual fund requirement for all types of agency grants exceeds $120,000, generally receive Federal funds by utilizing the "Letter of Credit" procedure. This funding method is a cash management process prescribed by the U.S. Treasury for all major grant-in-aid recipients. All CJCs must ntilize the Letter of Credit by virtue of the funny levels contemplated for them under the Act. All forms and instructions for using this method of payments are contained in Appendix 7.

d. *Check Issuance.* All checks drawn for the payment fund requests, either under the "Check Issue" or the "Letter of Credit" process, are prepared and disbursed by the U.S. Treasury and not by the grantor agency.

e. *Termination of Advance Funding.* When a grantee organization receiving cash advances by letter of credit or by direct Treasury check demonstrates an unwillingness or inability to attain program or project goals or to establish procedures that will minimize the time elapsing between cash advances and disbursements; cannot adhere to guidelines requirements or special conditions; engages in the improper award and administration of subgrants or contracts, or is unable to submit reliable and/or timely reports; the grantor agency may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by the direct Treasury check method to reimburse the grantee for actural cash disbursement.

27. *Applicability of Cash Requirements to Subgrantees.*

a. *Principle of Minimum Cash on Hand.* Fund requests from subgrantees create a continuing cash demand on grant balances of CJCs. CJCs should keep in mind that idle funds in the hands of subgrantees will impair the goals of the Federal Letter of Credit System. Accordingly, subgrantee requests for funds should conform substantially to the same "as needed" timing as that for CJCs. Grantees who award subgrants, or their fiscal agents, must develop procedures for the disbursement of funds to subgrantees as needed.

b. *Minimum Payments to Subgrantees.* Minimum cash payments of $5,000 to subgrantees, which are consistent with the minimum letter of credit drawdown amount, may be imposed for administrative ease and economy.

28. *Obligation of Funds.*

a. *Federal Obligation Process.* Once a grant award has been signed by the grantor agency, the amount of the award is considered an obligation of the Federal government and is recorded as such in the grantor agency accounting system. Appropriated funds are thereby reserved against the grant until all monies are expended by the grantee/subgrantee or, in case of nonutilization of funds within statutory or other time limits, appropriated funds revert to the grantor agency through deobligation of the unused balance.

b. *Grantee and/or Subgrantee Obligation Process.* Funds are considered obligated by a grantee/subgrantee when a legal liability to pay determinable sums for services or goods is incurred, which will require payment during the same or future period.

c. *Obligation and Expenditure Deadline Dates.* Figure 3–1 represents the maximum deadline for grantee/subgrantee obligation and expenditure of Part B planning funds, Part C and E block action funds, JJ formula funds and part D formula funds.

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Figure 3.1.—*Maximum Obligation/Expenditure Deadline Dates*

Fiscal year	Deadlines	Part B planning	Part C&E action	JJ formula	Part D formula
1977	Obligated	12/31/77	9/30/79	9/30/79	
	Expended	3/31/78	12/31/79	12/31/79	
1978	Obligated	12/31/78	9/30/80	9/30/80	
	Expended	3/31/79	12/31/80	12/31/80	
1979	Obligated	[1]9/30/80	9/30/81	9/30/81	
	Expended	[1]12/31/80	12/31/81	12/31/81	
1980 [2]	Obligated			9/30/82	9/30/82
	Expended			12/31/82	12/31/82
1981	Obligated				9/30/83
	Expended				12/31/83
1982	Obligated				9/30/84
	Expended				12/31/84
1983	Obligated				9/30/85
	Expended				12/31/85

[1] FY 1979 Planning Grant Period Extension from December 31, 1979 to September 30, 1980.
[2] Transition Year.

29. *Grant Periods, Obligation, Expenditure and Extension Information.*

a. *Grant Award Periods.*

(1) *Part B Block Planning Funds for FY 1976 and subsequent years* have a 15 month planning grant period. This period begins October 1 of a fiscal year and ends December 31 of the following fiscal year.

(2) *Part C and E Block Action, JJ Formula Funds for FY 1976 and subsequent years, and Part D Formula Funds* are awarded for the fiscal year in which the grant is awarded (effective the date of the grant award) plus the next two full fiscal years.

(3) *Categorical Grants* are awarded for a specified time, and a particular grant period is established for each categorical award (usually 12 or 18 months).

b. *Obligation of Funds.*

(1) *Part B Block Planning Funds* MUST BE OBLIGATED BY THE CJC within the grant period.

(2) *Part C and E Block Action, JJ Formula, Part D Formula and Categorical Funds* MUST BE OBLIGATED BY THE GRANTEE/SUBGRANTEE within the grant period.

(3) *Any funds in paragraph 29b(1) and (2)* not properly obligated within the grant period will lapse and revert to the grantor agency.

c. *Expenditure of Funds.* Part B block planning, Part C & E block action, Part D formula, JJ formula and categorical funds which have been properly obligated by the end of the grant period will have 90 days in which to be liquidated (expended). Any funds not liquidated at the end of the 90-day period will lapse and revert to the grantor agency.

d. *Grant Award Extensions.*

(1) *Part B Funds for FY 1976 and subsequent years.* As a matter of policy, the obligation and expenditure deadlines for Part B funds shall not be extended. (Refer to the effective edition of G 4100.5 for an exception for FY 1979 planning funds.)

(2) *Part C and E Block Action, Part D Formula and JJ Formula Funds.*

(a) FY 1978 and prior years funds can be granted an extension of the grant period (both obligation and expenditure) upon a written request for an extension fully justifying the need/reason for the extension. This extension must be approved by the grantor agency.

(b) FY 1979 and subsequent years funds can be granted an extension of the grant period (both for obligation and expenditure) for a program or set of programs if a written request is received by the grantor agency at least 180 days before the end date of the grant. The CJCs must meet the required extension criteria and the request must be approved by the grantor agency. (Refer to the effective edition of G 7100.4 for information on extension criteria and limitations.)

(3) *Categorical Funds* can be granted an extension (both for obligation and expenditure) upon receipt of a written request for an extension stating the need for the extension and indicating additional time required. This request must be submitted at least 40 calendar days before the end date of the grant and requires approval by the grantor agency. (Refer to paragraph 66c of this guideline manual for prior approval requirements.) The maximum extension allowable for any project is 12 months and retroactive extension of project periods cannot be considered. Any exception to this policy will require detailed justification.

30. *Program and Financial Reporting Requirements.*

a. *Program Reports.* These reports are prepared in a narrative fashion in order to present information relevant to the performance of a plan, program, or project.

(1) *Narrative Report for Planning.* This is the Annual Planning Grant Application and its attachments. In addition to describiong anticipated planning activities for the forthcoming period, it serves as a performance report for the previous planning period. Reporting in this manner is applicable to CJC recipients of Part B planning funds. Instructions for the preparation of this report are contained in the PLANNING, ACTION, AND JUVENILE JUSTICE AND DELINQUENCY PREVENTION GRANT APPLICATION KIT. The KIT is produced annually and is available from the grantor agency.

(2) *Narrative Report for Part C and E Block Action and JJ Formula Funds.* This reporting requirement is met through the submission of the Annual Comprehensive Plan and its updates. The Comprehensive Plan serves as the performance report for previously planned activities utilizing Part C, Part E and JJ formula funds. Reporting in this manner is applicable to CJCs of block (Part C &E) and JJ formula funds. States which have received multi-year planning status through the approval of a full Comprehensive Plan in the years 1978 and 1979 may submit only a plan update document in accordance with an approved three year cycle. This reporting requirement for formula funds for fiscal year 1981 and subsequent years will be met by submission of an annual Performance Report. No annual performance report is required for fiscal year 1980. Instructions for the preparation of the Comprehensive State Application are contaned in the effective edition of M 4100.1/28 CFR Part 31 and in the JUVENILE JUSTICE AND DELINQUENCY PREVENTION GRANT APPLICATION KIT. These documents are available from the grantor agency.

(3) *Categorical Grant Progress Report (LEAA Form 4587/1).* This report is prepared on a calendar quarter basis and is used to describe the performance of activities or the accomplishment of objectives as set forth in the approved grant application. Reporting in this manner is applicable to all categorical grantees/subgrantees. Reports are due on the 30th day following the end of each calendar quarter and are designed to supply information on the activities and accomplishments of the grant during that quarter. Exception—the first report is due 30 days after the end of the first FULL calendar quarter. The FINAL report is due 90 days after the end date of the grant. The report for the last calendar quarter may also serve as the final report if it includes, as a minimum, a summary statement of progress toward the achievement of the originally stated aims, a list of the significant results and a list of publications resulting from the grant. An original and two copies must always be submitted using LEAA Form 4587/1. Grantees receiving a categorical grant should forward these reports directly to the grantor agency. All subgrantees receiving their award through a CJC must send their progress reports to the CJC for forwarding to the grantor agency. Under these circumstances, an original and three copies should be sent to the CJC in order for the CJC to retain one copy for its files. Copies of the report form with instructions for filling it out are forwarded to grantees/subgrantees at the timne of award as part of the Award Package.

(4) *Special Reports.* In the review and approval process for plans and applications, it is sometimes necessary for the grantor agency to require that special or unique conditions be met in order for the agency to make an award. These Special Conditions will vary from grant to grant; however, acceptance of the award by the grantee/subgrantee constitutes an agreement that the conditions will be met either prior to initiating the project or during the course of the grant period. When this is the case, Special Reports on the meeting of these conditions are required for submittal to the grantor agency. They are prepared free form; however, the timing, content and process for their submittal are detailed in the Award Package.

b. *Financing Reporting.* In order to obtain financial information concerning the use of Federal funds, the grantor agency requires that grantees/subgrantees of these funds submit timely reports for review. These reports are consistent with the manner of reporting established by OMB Circular Nos. A–102 and A–110 and the Letter of Credit requirements established by the U.S. Treasury Department.

(1) *Financial Status Report, H–1 Report (LEAA Form 7160/1).* (a) This report is required from all grantees for each quarter on a calendar-quarter basis. It is designed to reflect financial information relating to Federal and non-Federal obligations and outlays. A separate report is required for each grant with the EXCEPTION that PART C BLOCK (including Small State Supplements), PART E BLOCK, PART D FORMULA and JJ FORMULA grants may be combined on one H–1 report for each fiscal year. However, in these instances, information relating to each type of funds must be identified separately. A copy of the H–1 Report, along with detailed instructions for its preparation and reporting due dates are contained in appendix 8, attachment 1.

(b) In lieu of using the standard H–1 Report, grantees may satisfy the financial reporting requirements by completing an H–1 Turnaround Document. These documents are facsimiles of the H–1 Financial Status Reports created with information extracted from grantor agency's computer files and sent directly to each grantee. Pertinent information such as grantee name and address, grant number and the previously submitted financial information (if any) is printed on the form by the computer. A copy of the H–1 Turnaround Document, along with detailed instructions for its preparation, are contained in appendix 8, attachment 2.

(c) In addition to reporting outlays and obligations, the CJCs must report to the grantor agency the total Federal funds subgranted to both State agencies and local government (including entitlement jurisdictions) for the grant being reported. This information is required on all block Part C and E, Part D formula and Juvenile Justice formula grants. This requirement shall be

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submitted in the Remarks Section, Item 12, of the H-1 Report or the Remarks Section of the Turnaround Document. The total subgranted figure reported in the Remarks Section should agree with the subgrant award information submitted to the Program File (PROFILE).

(2) *Request for Payment on Letter of Credit and Status of Funds Reports (SF-183).* This report is applicable to grantees who are funded under the Letter of Credit system. It is prepared each time a grantee organization requests a drawdown of funds under its Letter of Credit. The reporting format is illustrated and explained in appendix 7, figure 3.

(3) *Daily Status of Federal Funds Report.* This report is applicable to grantees who utilize the Letter of Credit system to obtain Federal funds. It is required on a selective basis as determined by the U.S. Treasury from grantee organization(s) who are to prepare the report(s) for the month(s) specified. The reporting format is illustrated and explained in appendix 7, figure 5.

(4) *Request for Advance or Reimbursement (H-3 Report).* This report is applicable to all grantees who are funded on a "Check-Issued" basis. It is required to document the status of Federal cash when a grantee requests an advance or reimbursement of funds (see paragraph 26b). Refer to appendix 6 for sample of the report.

31. *Specific Subgrant Information Reporting (Profile) Requirements.*

a. *Background.* Thousands of different types of projects have been funded by the grantor agency and the CJCs. As the number and complexity of activities supported by the grantor agency has grown, so also has the need for providing more detailed information concerning the disposition of funds. The agency's Grant Program File (PROFILE) is designed for the automated storage and retrieval of information describing agency programs. PROFILE is operated by agency personnel, and their responsibilities include maintenance of the PROFILE data base from information provided by CJCs and grantor agency project monitors, and the dissemination of information in response to requests from the PROFILE users, Congress, Public Interest Groups and concerned citizens relevant to the agency program.

b. *Participation and Use.* While the PROFILE system is used extensively within the grantor agency, participation in, and use of the system by CJCs and entitlement jurisdictions, is on a voluntary basis. CJCs and entitlement jurisdictions who elect to become users transmit detailed subgrant information to the grantor agency on a monthly basis. This information may be transmitted in either a hardcopy manual format, by a computer tape, or by having a computer communicate directly with the grantor agency computer. Upon receipt, the information is entered into the PROFILE data base and is available for use by the CJCs, the entitlement jurisdictions, and the grantor agency. Using the information contained in the data base, the following types of reports may be produced for use by the participants:

(1) Standard Reports
(2) Periodic Reports
(3) Ad hoc Reports

32.34. *Reserved.*

Chapter 4. Accounting Systems and Financial Records

35. *General.*

a. *Requirement.* All grantees, subgrantees, contractors and other organizations under grants, contracts, cooperative agreements or purchase of service arrangements are required to establish and maintain accounting systems and financial records to accurately account for funds awarded to them. These records shall include both Federal funds and all matching funds of State, local and private organizations.

b. *Purpose.* The purpose of this chapter is to establish accounting system requirements and to offer guidance on procedures which will assist all grantees/subgrantees in:

(1) Complying with the statutory requirements for the awarding, disbursement and accounting of funds.

(2) Comply with the regulatory requirements of the grantor agency, the Office of Management and Budget, and the U.S. Department of the Treasury for the financial management and disposition of funds.

(3) Generating financial data which can be used in the planning, management and control of programs.

(4) Facilitating an effective audit of funded programs and projects (see Chapter 8 of this guideline manual).

c. *References.* The following regulations, directives and reports both supplement the detailed requirements of this chapter for accounting systems and financial recordkeeping and provide additional guidance on how these requirements may be satisfied.

(1) *Office of* Management and Budget Circular A-102 (revised), Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments. (Refer to appendix 3.)

(2) *Office of Management and Budget Circular* A-110 (revised), Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations. (Refer to appendix 4.)

36. *Supervision and Monitoring Responsibilities.*

a. *Grantee Responsibilities.* All grantees receiving direct awards from the grantor agency are responsible for the management and fiscal control of all funds. Responsibilities include the accounting of receipts and expenditures, the maintaining of adequate financial records and the refunding of expenditures disallowed by Federal or State audits.

b. *Responsibilities for Accounting by Subgrantees.* Where the conduct of a program or one of its components is delegated to a subgrantee, contractor or other organization via an approved comprehensive plan, grant award or other means of prior approval by the grantor agency, the grantee is, nevertheless, responsible for all aspects of the program including proper accounting and financial record-keeping by the subgrantee. These responsibilities also include:

(1) *Reviewing Financial Operations.* Grantees should be familiar with, and periodically monitor, their subgrantee's financial operations, records, systems and procedures. Particular attention should be directed to the maintenance of current financial data.

(2) *Recording Financial Activities.* The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the books of the grantee in summary form. Subgrantee expenditures should be recorded on the books of the grantee, or evidenced by report forms duly filed by the subgrantee. Non-Federal contributions applied to programs or projects by subgrantees should likewise be recorded, as should any program income resulting from program operations.

(3) *Budgeting and Budget Review.* The grantee should ensure that each subgrantee prepares an adequate budget on which its award commitment will be based. The detail of each project budget should be maintained on file by the grantee.

(4) *Accounting for Non-Federal Contributions.* Grantees will ensure, in those instances where subgrantees are required to furnish non-Federal matching shares, that the requirements, limitations and regulations pertinent to non-Federal contributions are applied.

(5) *Reporting Irregularities.* Grantees and their subgrantees are responsible for reporting promptly to the grantor agency the nature and circumstances surrounding any financial irregularities discovered, as specified in the effective edition of Guideline 7140.2, Reporting

LEAA Fund, Misuse, Criminal Activity, Conflict of Interest, or Other Serious Irregularities.

37. *Elements of Accounting Systems—Special Grantor Agency Needs.* Funds may be awarded as block grants, formula grants, or categorical grants. The various financial requirements and formulas of the grantor agency's programs, as well as the need for grantees to separately account for individual awards, require a special program account structure extending beyond normal classification by type of receipts, expenditures, assets and liabilities.

a. *Block and Formula Grant Accounts.* To properly account for block and formula grant awards, CJCs should establish and maintain program accounts which will enable separate identification and accounting for:

(1) Planning grant funds applied to each standard budget category included within each approved planning grant application;

(2) Planning grant funds "passed through" to local programs and projects;

(3) Planning grant funds used for contracted planning services or assistance by non-governmental organizations;

(4) Action grant funds applied to each action program included within each approved comprehensive plan;

(5) Part C action grant funds "passed through" to local programs and projects;

(6) Part C action grant funds used for the compensation of police and other regular law enforcement and criminal justice personnel;

(7) Aggregate State funds provided as the "buy-in" for Part B planning and Part C action grants;

(8) JJ formula funds expended through programs of local government;

(9) JJ formula funds utilized to develop a State plan and to pay that portion of expenditures which are necessary for administration;

(10) Part D formula funds (action) applied to each action program included within each approved application;

(11) Part D formula funds (administrative) utilized for administrative purposes; and

(12) Source, type and timing of matching contributions provided under each planning, action, Part D formula and JJ formula grant.

b. *Categorical Grant.* To properly account for categorical grant awards, all grantees should establish and maintain program accounts which will enable, on an individual basis, separate identification and accounting for:

(1) Receipt and disposition of all funds;

(2) Funds applied to each budget category included within the approved grant;

(3) Expenditures governed by any special and general provisions;

(4) Non-Federal matching contribution, if required; and

(5) Crime Control funds used for the compensation of police and other regular law enforcement and criminal justice personnel.

38. *Accounting System.*

a. *The grantee is responsible for* establishing and maintaining an adequate system of accounting and internal controls for itself and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system is considered to be one which:

(1) Presents and classifies projected historical cost of the grant as required for budgetary and evaluation purposes;

(2) Provides cost and property control to assure optimal use of grant funds;

(3) Controls funds and other resources to assure that the expenditure of funds and use of property are in conformance with any general or special conditions of the grant;

(4) Meets the prescribed requirements for periodic financial reporting of operations; and

(5) Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

b. *For an outline of recommended elements to be considered when establishing an accounting system,* refer to appendix 9.

39. *Total Cost Budgeting and Accounting.* Accounting for all funds awarded by the grantor agency shall be structured and executed on a "total program cost" basis. That is, total program costs, including Federal funds, State and local matching shares, and any other fund sources included in the approved project budget shall be the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

40. *Maintenance and Retention of Records.* In accordance with OMB Circulars A-102 and A-110, all financial records, supporting documents, statistical records and all other records pertinent to grants, subgrants or contracts under grants shall be retained by each organization participating in a program or project for at least three years for purposes of Federal examination and audit. State or local governments may impose record retention and maintenance requirements in addition to those prescribed in this chapter.

a. *Coverage.* The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, cancelled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports will be required for consultants.

b. *Retention Period.* The three year retention period starts from the date of the submission of the final expenditure report or for grants which are renewed annually, from the date of the submission of the annual expenditure report. Exceptions to the three-year requirement, such as for records for nonexpendable property acquired with grant funds and for grants having an audit in process, are contained in OMB Circulars A-102 and A-110.

c. *Maintenance.* Grantees/subgrantees are expended to see that records of different Federal fiscal periods are separately identified and so maintained that information desired can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of records stored should be on hand and ready access should be assured.

41. *Cash Depositories.* Grantees/subgrantees of Federal funds shall deposit these funds in a bank with FDIC coverage and the balance exceeding the FDIC coverage must be collaterally secure. Federal regulations do not require physical segregation or the establishment of any eligibility requirement for cash depositories. Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees shall be encouraged to use minority banks (banks which are owned at least 50% by minority group members).

42. *Project Related Income.* Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income. The policies governing the disposition of the various types of project-related income are listed below. (For specific requirements

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and procedures on project-related income earned on grants/subgrants whose primary function is the acquisition of stolen goods and property, refer to appendix 10, Guideline on the Revolving Fund.)

a. *Interest.* In accordance with section 203 of the Intergovernmental Cooperation Act of 1968 (Public Law 90–577), the States and any agency or instrumentality of a State, including State institutions of higher education and State hospitals shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through the states, the subgrantees are not held accountable for interest earned on advances of project funds. Also, Tribal organizations (pursuant to sections 102, 103 and 104 of the Indian Self Determination Act (P.L. 93–638) are not held accountable for interest earned. All other grantees shall remit such interest to the grantor agency, except where governing programmatic regulations indicate otherwise. Grantees shall so order their affairs to ensure minimum balances in their respective grant cash accounts.

b. *Program Income.*

(1) *Sale of Property*—the policy and procedures governing the handling of proceeds from the sale of real and personal property purchased with grant funds is contained in Chapter 6, paragraph 87 of this guideline manual.

(2) *Royalties*—the grantee/subgrantee shall retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the project provide otherwise or a specific agreement governing such royalties has been negotiated between the grantor and the grantee. Refer to Chapter 6, paragraph 86 and Attachment N of OMB Circular Nos. A–102 and A–110 for further details.

(3) *Registration/Tuition Fees and Other*—these types of program income shall be treated in accordance with disposition instructions set forth in the project's terms and conditions. If the terms and conditions of the project do not specify disposition, the grantee/subgrantee shall select one or a combination of the following options.

(a) Used by the grantee/subgrantee for any purposes that further the objectives of the legislation under which the project was made; or

(b) Deducted from the total project costs for the purpose of determining the net costs on which the Federal share of costs will be based.

43–44. *Reserved.*

Chapter 5. Allowability of Costs

Section 1. Applicability

45. *General.* This chapter deals with the rules and principles for determining costs properly chargeable to Part B planning grants; Parts C and E block action grants; Part D formula grants; JJ formula grants; and all categorical grants. The rules and principles are therefore applicable to all grantees and subgrantees for grants awarded from these funds.

46. *Basic Principles.*

a. *Authority.* The material contained in this chapter is based on the standardized cost allocation and allowability principles prescribed for Federal grants-in-aid programs in FMC 74–4, OMB Circulars A–21 and A–122 and the cost-related provisions of grantor agency legislation.

b. *Applicability.* FMC 74–4, Cost Principles Applicable to Grants and Contracts with State and Local Governments, OMB Circular A–21, Cost Principles Applicable to Grants and Contracts with Educational Institutions, and OMB Circular A–122, Cost Principles for Non-Profit Organizations, were promulgated to provide the basis and standards for a uniform approach to the problem of determining costs and also to promote efficiency and better relationships between grantees/subgrantees and their Federal counterparts. The grantor agency has made the circulars applicable to all grantees and subgrantees, who will therefore be guided by these principles in overall administration, audit programs and actions required in making cost determinations. The basic grantor agency focus in determining or examining the allowability of costs within the circulars' framework will be the extent to which cost items contribute to the purpose and execution of the grant program and are so applied. It is assumed that State and local units of government and private non-profit entities receiving funds will each bear their appropriate share of allocated cost as allowable not only under FMC 74–4 and OMB Circulars A–21 and A–122 but also under State and local laws and regulations.

47. *Reserved.*

Section 2. Costs Generally Allowable

48. *General.* This section of the chapter addresses points and questions which have frequently been raised concerning cost allowability. It supplements the detailed listings in FMC 74–4 and OMB Circular A–21 and A–122 for determining the allowability of selected items of cost by the grantor agency, the CJCs or the entitlement jurisdictions, whichever is applicable.

49. *Compensation for Personal Services.*

a. *Two or More Federal Grant Programs.* Where salaries apply to execution of two or more grant programs, proration of costs to each grant must be made. In cases where two or more grants constitute one identified activity or program, salary charges to one grant may be allowable after written permission is obtained from the CJC or grantor agency, as appropriate.

b. *Extra Work.*

(1) A State or local government employee may be employed by a grantee or subgrantee in addition to his full-time job provided the work is performed on the employee's own time and:

(a) The compensation is reasonable and consistent with that paid for similar work in other activities of State or local government;

(b) The employment arrangement is approved and proper under State or local regulations; and

(c) The time and/or services provided is supported by adequate documentation.

(2) To avoid problems arising from overtime, holiday pay, night differential or related payroll regulations, such employment arrangements should normally be made by the grantee or subgrantee directly with the individual, unless there has been a transfer or loan of the employee for which his regular and overtime services provided are to be charged to or reimbursed by the grantee or subgrantee. Overtime and night differential payments are allowed only to the extent that payment for such services is in accordance with the policies of the CJC or unit(s) of local government and has the approval of the CJC, the entitlement jurisdiction or the grantor agency, whichever is applicable. (Refer to paragraph 54.) The overtime premium should be prorated among the various jobs and not charged exclusively to grantor agency funds.

(3) Payment of these premiums will be for work performed by grant or subgrant employees in excess of the established work week (usually 40 hours). Payment of continued overtime is subject to periodic review by the CJCs, entitlement jurisdictions or grantor agency, whichever is applicable.

c. *Grant Purposes and Dual Compensation.* Charges of the time of State and local government employees assigned to grant programs may be reimbursed or recognized only to the extent they are directly and exclusively related to grant purposes or proper for inclusion in indirect costs bases. In no case is dual compensation allowable. That is, an employee of a unit of government may not receive compensation from his unit or agency of government and from a grant or subgrant for a single period of time (e.g., 1 p.m. to 5 p.m.) even though such work may benefit both activities.

50. *Conferences, Symposia and Workshops.* Charges to a grant may include conference or meeting arrangements, publicity, registration, salaries of personnel, rental of staff offices and conference space. Recording or translation services, postage and telephone charges, and travel expenses (including transportation and subsistence) for speakers or participants. Each of these items, when related to grant purposes, are otherwise allowable costs under FMC 74–4 and OMB Circulars A–21 and A–122. Grant funds may not be used for honoraria (i.e., payments to participating individuals or guests other than for documented professional services actually rendered at reasonable compensation rates), entertainment, sports, visas, passport charges, tips, bar charges, personal telephone calls or laundry charges.

51. *National Guard Grants.*

a. *Any grants/subgrants to National Guard forces* for projects related to acquisition of equipment (see paragraph 12f) or training of personnel shall meet the following requirements.

(1) Such projects will be supportive of State or local law enforcement agencies and will not replace or supplant duties properly assigned to law enforcement agencies;

(2) Such projects will be directly and primarily related to civil disorders or natural disaster responses;

(3) Such funds will not duplicate or supplant funds or equipment available to State National Guard units through the Department of Defense;

(4) The State National Guard Adjutant General shall supply certifications of compliance with the above requirments.

b. *Service Contracts.* There are no restrictions against contracts with National Guard units for services to local or State law enforcement units, such as training or technical assistance in planning.

52. *Travel for Grants/Subgrants.* Travel costs are allowable for expenses by employees, who are in travel status on official business. Definitions for travel are:

a. *Domestic Travel* includes travel within and between Canada, the United States and its territories and possessions. Prior approval is required for domestic travel (by educational institutions) during any grant that will cause the amount identified for such travel to be exceeded by $500 or 25 percent of the approved budgeted amount, which ever is greater. (Refer to paragraph 67 of this guideline manual.) Grantees may follow their own established travel rates. If a grantee does not have an established travel policy, the grantee must abide by the Federal travel rates. Subgrantees may follow their own established travel rates. If a subgrantee does not have an established travel policy:

(1) The CJC may require a subgrantee of block funds to abide by state rates; or

(2) The subgrantee must abide by the Federal travel rates.

b. *Foreign Travel* includes any travel outside of Canada and the United States and its territories and possessions. However, for a grantee/subgrantee located outside Canada and the United States and its territories and possessions, foreign travel means travel outside that country. Prior approval is required for all foreign travel (refer to paragraph 67 of this guideline manual).

53. *Reserved.*

Section 3. Costs Requiring Prior Approval

54. *Responsibility for Prior Approval.* Prior approval is written permission provided in advance of an act that will result in either (1) the obligation or expenditure of funds or (2) the performance or modification of an activity under a grant/subgrant project, where such approval is required. Consistent with the block grant structure of the program and the primary grant administration responsibilities vested by statute in the CJCs, the administration of regulatory cost principles and standards issued by the Federal Government is vested in the following three authorities:

a. *The Grantor Agency* reviews for approval, all costs identified in this section when the grantee (CJC or direct recipient of categorical grants) is the direct benefactor of the goods or services to be purchased or supplied. This also applies to costs included in the CJC's planning/administrative budget.

b. *The CJC* reviews for approval all costs identified in this section for subgrantees of block planning, block action, Part D and JJ formula and categorical funds where the CJC is the grantee but not the implementing agency.

c. *The Entitlement Jurisdiction* reviews for approval all costs identified in this section for subgrantees of block planning, block action, Part D and JJ formula and categorical funds where the entitlement jurisdiction is the grantee but not the implementing agency.

55. *Prior Cost Approval Requirement.* This section addresses specific types of costs requiring prior approval. Written approval is required in accordance with paragraph 54a–c of this section, as defined, and for any other costs specified in FMC 74–4 and OMB Circulars A–21 and A–122 as "Costs Allowable With Approval of Grantor Agency" or costs which contain special limitations. Where prior approval authority for subgrantees is required in this section, it will be vested in the CJC or entitlement jurisdiction unless specifically specified as being "RETAINED BY THE GRANTOR AGENCY" as identified in paragraph 57a(2) and (3), 59a, 60b and c, 62b, 63, 64, 66a(1), 66c(1)(b) and (i), 66c(2)(c) and 67. Subgrantee requests for GRANTOR AGENCY prior approval should be submitted through the CJC.

56. *Applicability and Procedure.*

a. *Cost Categories and Expenditure Levels.* It is not the agency's intention to require grantor agency approval of all changes within the listed cost categories, but only for those aspects or elements which specifically require prior approval. Also, the establishment of dollar expenditure levels in this section is intended to furnish blanket grantor agency approval for modest grant related outlays. Costs above such levels may also receive approval upon submission of appropriate data and justification.

b. *Procedure for Request for Prior Approval.* Requests must be in writing and shall provide justificiation and an explanation to permit review of the allowability. The may be submitted:

(1) Through inclusion in the budget or other component of a grant or subgrant application; or

(2) As a separate written request to the appropriate authority as described in paragraph 54.

57. *Automatic Data Processing (ADP) and Automated Fingerprinting Equipment.* Grants may include provisions for procurement of ADP and Automated Fingerprinting Equipment. The grant applications will be written in a manner consistent with maximum open and free competition in the procurement of hardware and services. Brand name will not normally be specified. Criminal justice information and communication systems accordance with speical requirements for grants involving ADP contained in appropriate guidelines and available by request from the grantor agency.

a. *Requirement.*

(1) Prior approval is NOT REQUIRED for the LEASE or RENTAL of such equipment; nevertheless, assurance must be provided that leases or rentals

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greater than $10,000 are obtained in accordance with Federal procurement standards in Attachment O of Circular Nos. A–102 and A–110.

(2) Where the amount of the acquisition exceeds $50,000, prior approval is required for the acquisition of equipment (outright purchase, lease–purchase agreement, or other method for purchase). Such prior approval must be obtained from the GRANTOR AGENCY.

(3) Prior approval is REQUIRED for both the acquisition and lease of all ADP equipment (regardless of cost) which is to be used for the processing and storage of fingerprinting images. Prior approval must be obtained from the GRANTOR AGENCY.

(4) A review of an ADP equipment procurement shall be required and should include a review of the description of the equipment to be purchased. This review shall be documented in writing for the file and shall require the reviewing official (grantor agency, CJC or entitlement jurisdiction) to certify that the procurement is consistent with the following requirements:

(a) The ADP equipment of the type to be purchased was identified within the grant application and is necessary and sufficient to meet the project goals.

(b) The ADP equipment procurement is in compliance with existing Federal/grantor agency, state and local laws and regulations.

(c) A purchase/lease comparison has been conducted demonstrating that it is more advantageous to purchase rather than lease the ADP equipment under consideration.

(d) If software development is involved, it has been demonstrated that computer software already produced and available will not meet the needs of the grant.

(e) If the ADP equipment procurement is to be sole-source, documentation has been submitted to justify the action.

(5) An ADP Procurement Review Form (Suggested Format—Sample Only) is included in this guideline manual as appendix 11. This form is a recommended form for documenting an ADP equipment procurement review and the form is shown as a SAMPLE ONLY.

b. *Definition.* Automatic data processing equipment is defined in 41 CFR, Subpart 1–4.1102–1 as "general purpose commercially available, mass produced automatic data processing components and the equipment systems created from them regardless of use, size, capacity, or price, that are designed to be applied to the solution or processing of a variety of problems or application and are not specifically designed (not configured) for any specific application:" This definition includes:

(1) Digital, analog or hybrid computer equipment;

(2) Auxiliary or accessorial equipment such as data communications terminals, source data automation recording equipment (e.g., optical character recognition equipment, and other data acquisition devices), and data output equipment, (e.g., digital plotters, computer output microfilms, etc., to be used in support of digital, analog, or hybrid computer equipment; whether cable connected, wire connected, radio connected or self-standing, and whether selected or acquired with a computer or separately;

(3) PCAM (Punch Card Accounting Machines) whether used in conjunction with or independently of digital analog, or hybrid computers.

c. *Qualifications and Exclusions.*

(1) Analog computers are covered only when being used as equipment peripheral to a digital computer.

(2) Items of ADP equipment that are (a) physically incorporated in a weapon, or (b) manufactured under a development contract are excluded from the above definition.

(3) Accessories, such as tape cleaners, tape testers, magnetic tapes, paper tapes, disc packs and the like are excluded.

58. *Building Space and Related Facilities.*

a. *Rental Cost.* Prior written approval is required when:

(1) The total rental space requirement, including space for file, conference, mail, supply, reproduction, and storage rooms, is in excess of 150 square feet per employee. Space required for intermittent and/or part-time employees may be included in space requirement.

(2) The rental charge exceeds $10 annually per square foot. The grantee/subgrantee shall certify in writing that the requested rental charge is consistent with the prevailing rates in the local area and shall maintain documentation in its files to support such a determination.

b. *Mintenance and Operation.* Prior approval is required where maintenance and operation expenses, as defined in FMC 74–4 and OMB Circulars A–21 and A–122, when added to any space rental costs, are estimated to exceed an aggregate total of $12.50 annually per square foot of space occupied.

c. *Rearrangements and Alterations.* Prior approval is required when the total estimated outlay for rearrangement and alteration under any grant or subgrant is greater than $10,000. For costs in excess of such amount, justification must normally show that:

(1) The building involved is in reasonably good condition with a life expectancy of five or more years;

(2) The costs are true rearrangement or renovation costs as distinguished from new construction or expansion of an existing building, and

(3) The total costs do not exceed 25 percent of the current value of the building.

d. *Depreciation and Use Allowances on Publicly Owned Buildings.* Prior approval is required only when depreciation or use allowances are to be charged on temporarily idle or excess facilities.

e. *Occupancy Under Rental Purchase or Lease with Option to Purchase Agreement.* Prior approval of costs of occupancy under arrangements of this type must be obtained and may require application of special matching share requirements under construction programs.

59. *Equipment and Other Capital Expenditures.* Equipment and other capital assets (refer to paragraph 12f), including repairs which materially increase their useful life, are allowable provided that the procurement receives prior approval. Approval requirements are as follows:

a. *Planning and Administrative Funds.* Prior approval of items to be acquired for exclusive use in authorized CJC and entitlement jurisdiction operations is required for annual equipment expenditures over $10,000. These expenditures normally consist of furniture, office equipment, vehicles, and other items required for the administrative effort of comprehensive application development, implementation and coordination. Prior approval for CJCs must be obtained from the GRANTOR AGENCY. For subgrantees (including entitlement jurisdictions), CJCs may adopt a $5,000 prior approval requirement or may require review of all proposed equipment acquisitions.

b. *All Other Grant Funds.*

(1) *Specific Provisions of the Grant Agreement.* Where expenditures for equipment are not fully justified by the budget and narrative description portion of the grants, the grantor agency, the CJCs, and entitlement jurisdictions may require that the type, quantity estimated, unit price or other information be provided through the issuance of Special Conditions to the grant award.

(2) *Acquisition Requirements.* In reviewing equipment acquisition budgets and proposals, CJCs and entitlement jurisdictions should adhere to the following principles:

(a) No other equipment owned by the grantee/subgrantee is suitable for the effort.

(b) Grant funds are not used to provide reimbursement for the purchase of equipment already owned by the grantee/subgrantee. Exception: Equipment that has been purchased for a common pool and will be charged to the grant at cost value is allowable. Equipment that has already been purchased and charged to other activities of the university would not be an allowable expense to the grant.

(c) Equipment purchased and used commonly for two or more programs has been appropriately prorated to each activity.

(3) *Helicopters and Airplanes.* The acquisition, use, or maintenance cost of helicopters or airplanes for law enforcement purposes is allowable under the Crime Control Act only. Law enforcement purposes are considered to be surveillance, crowd control, airlifting equipment and personnel, patrol, rescue operations, etc.

60. *Preagreement Costs.* Prior approval is required for preagreement costs. Preagreement costs are defined here as those costs which are considered necessary to the project but occur prior to the starting date of the grant period.

a. *Planning and Administrative Funds.* The grant conditions for planning and administrative funds specifically permit charges of otherwise allowable costs incurred for authorized CJC and entitlement jurisdiction activities or for establishment of CJCs and entitlement jurisdictions, even if incurred prior to the date of the Planning, Part D or JJ formula grant period. Thus, awards may be deemed to have approved "preagreement" costs from the beginning of the grant period set forth in the grant award document (i.e., the beginning of the fiscal year of award unless the grantee has elected a later date).

b. *Block Action, Part D Formula Action, and JJ Formula Action Funds.* Costs which were incurred prior to the date of the subgrant period may be charged to the project where the grant or subgrant application specifically requests support for preagreement costs. CJCs and entitlement jurisdictions may approve preagreement costs for subgrantees if incurred subsequent to the beginning of the Federal fiscal year of award. Approval by the GRANTOR AGENCY is required for any preagreement costs incurred prior to the beginning of the Federal fiscal year of award.

c. *Categorical Grants.* Costs which were incurred prior to the start date of the official grant period of the award may be charged to the project only if prior approval is obtained from the GRANTOR AGENCY.

61. *Proposal Costs.* Costs to projects for preparing proposals for potential Federal grants require prior approval.

62. *Professional Services (Including Contractors and Consultants).*

a. *The requirements* with respect to arrangements for services with individuals, other government units and non-government organizations are as follows:

(1) *Arrangements with individuals* must ensure that:

(a) Dual compensation is not involved (i.e., the individual may not receive compensation from his regular employer and the retaining grantee or subgrantee for work performed during a single period of time even though the services performed benefit both).

(b) The contractual arrangement is written, formal, proper and otherwise consistent with the grantee's usual practices for obtaining such services.

(c) Time and/or services for which payment will be made and rates of compensation will be supported by adequate documentation.

(d) Transportation and subsistence cost for travel performed are at an identified rate consistent with the grantee's general travel reimbursement practices.

(2) *Arrangements with other government units* shall ensure that the work or services for which reimbursement is claimed must be directly and exclusively devoted to grant purposes and charged at rates not in excess of actual cost to the "contractor" government agency.

(3) *Arrangements with non-government organizations* shall ensure that:

(a) The arrangement is written, formal, proper and consistent with the usual practice and policies of the grantee or subgrantee in contracting for or otherwise obtaining services of the type required;

(b) Indirect costs or overhead charges in cost-type arrangements are based on an audited or negotiated rate previously approved by a State or Federal agency or are based on an indirect cost submission reflecting actual cost experience during the contractor's last annual or other recently completed fiscal period; and

(c) The customary fixed fee or profit allowance in cost-type arrangements does not exceed 10 percent of total estimated costs.

(d) Not more that 20 percent of the State's total Federal Planning Grant (State and local portions) may be used for contracted planning services or assistance by nongovernmental organizations.

(4) *Compensation* for consultant services is to be reasonable and consistent with that paid for similar services in the market place. Consideration will be given to compensation including fringe benefits for those individuals whose employers do not provide the same. In addition, the policy is that the maximum rate for consultants is $135 (excluding travel and subsistence costs) for an eight (8) hour day. An eight-hour day may include preparation, evaluation and travel time in addition to the time required for actual performance. A request for compensation for over $135 a day, but not to exceed $200 a day requires prior approval and additional justification. The following is the policy in regard to compensation of various classifications of consultants who perform like-type services and are subject to these limitations.

(a) *Consultants Associated with Educational Institutions.* The maximum rate of compensation that will be allowed is the consultant's academic salary projected for twelve months, divided by 260. These individuals normally receive fringe benefits which include sick leave for a full 12-month period even though they normally only work nine months per year in their academic positions.

(b) *Consultants Employed by State and Local Governments.* Compensation for these consultants will only be allowed when the unit of government will not provide their services without cost. In these cases, the rate of compensation is not to exceed the daily salary rate paid by the unit of government.

(c) *Consultants Employed with Profit, Non-Profit and Not-for-Profit Organizations.* These organizations are subject to competitive bidding procedures. Thus, they are not subject to the $135 per day maximum compensation. In those cases where an individual has authority to consult without employer involvement, the rate of compensation should not exceed the individual's daily salary rate paid by his/her employer subject to the $135 limitation.

(d) *Independent Consultants.* The rate of compensation for these individuals must be reasonable and consistent with that paid for similar services in the market place. Compensation may include fringe benefits.

b. *A grantee should not circumvent* the requirements of paragraphs 62a(1), (3) and (4) by contracting for a fixed product which would not be subject to

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the professional services fee limitation. This is particularly significant in contracting for the services of individuals. If any of the requirements outlined in paragraph 62a are not met, prior approval must be obtained from the GRANTOR AGENCY, CJC or entitlement jurisdiction, whichever is applicable.

63. *Confidential Expenditures.* Approval by the GRANTOR AGENCY is required for all grantees/subgrantees prior to the use of funds for confidential expenditures. Confidential expenditures, as used here, are defined as funds used for purchase of services, purchases of evidence (physical) and purchase of information. Refer to appendix 12, "Guidelines for Confidential Expenditures," for further details.

a. *Confidential expenditures* will not be considered in grants/subgrants to State law enforcement agencies and law enforcement agencies serving counties and cities with populations in excess of 50,000 upon the submission of special information which includes procedures and assurances established by the grantor agency for proper accounting and administration of this cost item. Guidelines and use instructions for handling confidential expenditures must be supplied to the grantees/subgrantees for all grants/subgrants providing support for confidential expenditures.

b. *A special condition* must be applied to all grants/subgrants involving the expenditure of confidential funds. This condition should state:

"Prior to the expenditure of the $——— allocated for confidential funds, the project director shall sign a certification indicating that he has read, understands and agrees to abide by all of the conditions pertaining to confidential fund expenditures as set forth in the effective edition of Guideline Manual 7100.1, Financial and Administrative Guide for Grants."

c. *Certification for Confidential Funds.*

(1) A signed certification is required by the grantor agency, the CJC or the entitlement jurisdiction from all project directors of grants/subgrants involving the disbursement of monies for confidential expenditures from Federal or matching funds. For a sample of the required certification, refer to appendix 12.

(2) A signed certification must be returned to the grantor agency, the CJC or the entitlement jurisdictional to be placed in the official grant file.

d. *Confidential expenditures and other funds that are seized and revert* to a State or local unit of government as a result of grants which use confidential expenditures, for other than informant fees shall be deemed program income pursuant to OMB Circular No. 1–102 up to the total amount of such confidential expenditures used under such grant. This income will be returned to the primary recipient, the CJC or the entitlement jurisdiction and used to support other projects under the appropriate program.

64. *Medical Research Conducted With Grant Funds.* Medical research conducted by any grantee or subgrantee must receive prior approval from the GRANTOR AGENCY before any funds may be expended for the research. Prior approval requests may be prepared as a separate submission or included in the CJC's Comprehensive Application. Regardless of the type of submission selected, the following information must be included in the request for approval:

a. Type of research;

b. Place and persons conducting the research;

c. Amount of research funds available; and

d. The research methodology, including data on chemical agents or medical procedures, use of human volunteer or animal subjects and a description of anticipated experiments.

65. *Contingency Costs for Construction Projects.* Contingencies will be allowed as part of the budget classification but not as a cost item of the construction application. The contingency will be treated as a prior approval item and release of the contingency must be approved by the CJC, the entitlement jurisdiction or the grantor agency. The maximum contingency rate allowable on construction projects shall be 10 percent of direct construction costs.

66. *Deviations From Approved Budgets.*

a. *Planning Grants (Part B).*

(1) CJCs. In grant applications, CJCs are required only to submit gross cost estimate in five broad expenditure categories—personnel, consultant, services, travel, amount available to local units of government, and other expenses. CJCs may transfer among expenditure categories, a cumulative amount of up to five (5) percent of the grant budget. Transfers exceeding these limitations require prior approval by the GRANTOR AGENCY.

(2) *Subgrantees.* Policies concerning budget deviations by planning subgrantees and the need for prior approval shall be determined by the CJC subject only to adherence to the approval requirements in FMC 74–4.

b. *Block Action, Part D Formula and JJ Formula Grants.*

(1) *CJCs* are currently required to submit only total cost estimates for each program for which an action or Part D or JJ formula grant is requested. Thus, no restrictions exist as to modifications of budgeted costs or expenditures within a program except as may be imposed by the normal cost allowability rules and approval requirements of FMC 74–4. Prior approval for reprogramming of funds is required as described in paragraphs 14b(2) and 20b(2) of this guideline manual.

(2) *Subgrantees.* Policies concerning budget deviations by block action, JJ formula and Part D subgrantees (including entitlement jurisdictions), and the need for prior approval shall be determined by the CJC subject only to adherences to the approval requirements of FMC 74–4 and OMB Circulars A–21 and A–122.

c. *Categorical Grants.* Grantees and subgrantees must request prior approval for certain budget deviations. These deviations include:

(1) *Non-Construction Grants.*

(a) Transfer of funds among direct cost categories for awards in which the Federal share exceeds $100,000 when the cumulative amount of such transfers exceeds or is expected to exceed five percent of the total budget. (Applicable to ALL grantees/subgrantees).

(b) Requirement for grantees/subgrantees to notify the GRANTOR AGENCY promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the grantee/subgrantee by more than $5,000 or five percent of the Federal award whichever is greater. (Applicable to ALL grantees/subgrantees).

(c) Changes in the scope or the objective of the project or program. (Applicable to ALL grantees/subgrantees).

(d) Need for additional Federal funding. (Applicable to ALL grantees/subgrantees).

(e) Transfer of funds allotted for training allowances (direct payments to trainees) to other categories of expense. (Applicable to ALL grantees/subgrantees).

(f) Transfer of amounts budgeted for indirect costs to absorb increases in direct costs. (Applicable to ALL grantees/subgrantees).

(g) Addition of items requiring approval in accordance with the provisions of FMC 74–4. (Applicable to grantees/subgrantees of state and local governments).

(h) Expenditures requiring approval in accordance with OMB Circulars A–21 and A–122. (Applicable to grantees/subgrantees of institutions of higher education, hospitals, and non-profit organizations).

(i) Substantive programmatic work under a grant or other agreement which may be subcontracted or transferred only with prior approval of the GRANTOR AGENCY. (Applicable to grantees/subgrantees of institutions of higher education, hospitals and other non-profit organizations).

(2) *Construction Grants.*

(a) Changes in the scope or the objective of the project or program. (Applicable to ALL grantees/subgrantees).

(b) Increases in the budget amounts of Federal funds needed to complete the project. (Applicable to ALL grantees/subgrantees).

(c) Requirement for grantees/subgrantees to notify the GRANTOR AGENCY promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the grantee/subgrantee by more than $5,000 or five percent of the Federal award, whichever is greater. (Applicable to ALL grantees/subgrantees).

(3) *Construction/Non-Construction Grants.*

(a) Fund or budget transfers between the two types of work (construction to non-construction or vice versa) supported. (Applicable to ALL grantees/subgrantees).

(b) Deviations listed in paragraph 66c (1) and (2) as appropriate.

67. *Travel* costs requiring specific prior approval by the GRANTOR AGENCY are for domestic travel (by educational institutions) exceeding $500 or 25 percent of the approved budgeted amount identified for such travel and for each foreign trip. These costs shall be requested as follows:

a. *Domestic Travel* by a written request for approval.

b. *Foreign Travel* may be incorporated into a grant application at the time of submission of the grant application or as a separate letter requesting approval.

68. *Insurance and Indemnification.* Inclusion of insurance or indemnification costs in the approved grant/subgrant budget or award is normally a precondition for allowability of such costs. However, separate request for approval may also be made. Also prior approval of insurance costs incurred in accordance with standard State and local government policy in the conduct of grantee/subgrantee activities, both federally and non-federally related, and consistent with sound business practices, such as bonding of employees or liability insurance for staff, is required.

69. *Management Studies.* Prior approval of costs of management studies is required if the studies are to be performed by agencies other than the grantee/subgrantee or by consultants.

Section 4. Costs Generally Unallowable

70. *Land Acquisition.* Grantor agency legislation specifies that no Federal grant involving the renting, leasing, or constructing of buildings or other physical facilities shall be used for land acquisition. Accordingly, land acquisition costs are unallowable.

71. *Compensation of Federal Employees.* Salary payments, consulting fees or other remuneration of full-time Federal employees are unallowable costs.

72. *Travel of Federal Employees.* Costs of transportation, lodging, subsistence, and related travel expenses of grantor agency employees are unallowable charges. Travel expenses of other Federal employees for advisory committees or other program or project duties or assistance are allowable if they have been:

a. *Approved by* the Federal employee's department or agency, and

b. *Included as* identifiable item in the funds budgeted for the project or subsequently submitted for approval.

73. *Bonuses or Commissions.* The grantee or subgrantee is prohibited from paying any bonus or commission to any individual for the purpose of obtaining approval of an application for grantor agency assistance.

74. *Military type equipment.* Cost for such items as automatic weapons, armored vehicles, explosive devices, and other items typically associated with the military arsenal are unallowable.

75. *Lobbying.*

a. *No part of any grant* shall be used:

(1) For publicity or propaganada purposes designed to support or defeat legislation pending before legislative bodies;

(2) To pay, directly or indirectly, for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a member of Congress, to favor or oppose, by vote or otherwise, any legislation of appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation (18 U.S.C. 3107).

b. *This provision SHALL NOT* limit the following types of activities:

(1) Testimony before legislative bodies reviewing the effectiveness of grant programs, or

(2) Introduction and support in the State legislature of general statutory reform, such as criminal code revisions, court reform, etc.

76. *Fund Raising.* Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable.

Section 5. Indirect Costs and Administrative Expenses

77. *Indirect Costs.* These are costs of an organization that are not readily assignable to a particular project, but are necessary to the operation of the organization and the performance of the project. The costs of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs.

a. *Approved Plan Available.*

(1) The Administration may accept any indirect cost rate or allocation plan previously approved for a grantee by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars.

(2) Where federally-approved rates are used as the basis for charging indirect costs to grant funds, a copy of the Federal agency approval document must be furnished to the grantor agency as part of the grant application.

b. *No Existing Approved Plan.*

(1) Where there is no existing federally-approved rate, indirect costs may not be charged to grant funds on the basis of predetermined fixed rates or a negotiated lump sum unless the rate or sum is approved by the grantor agency. All grantees desiring actual indirect costs and not having a federally-approved rate must submit their proposals to the grantor agency.

(2) In lieu of submitting actual indirect cost proposals, flat amounts not in excess of ten percent of direct labor costs (including fringe benefits) or five percent of total direct costs may be allowed as a predetermined rate. These percentages are based on general experience with respect to minimum overhead support levels required for grantee operations.

(3) Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, e.g., accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

c. *Establishment of Indirect Cost Rates.* In order to be reimbursed for indirect costs, a grantee or organization must first establish an appropriate indirect cost rate and/or cost allocation plan. To do this, the grantee must prepare an indirect cost rate proposal or

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cost allocation plan and submit it to the grantor agency. Local units of government need only submit their cost allocation plans or indirect cost proposals if specifically requested by the cognizant Federal agency. The proposal must be submitted in a timely manner (within six months after the end of the fiscal year) to assure recovery of the full amount of allowable indirect cost, and it must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved. For further information concerning the establishment of indirect cost rates, consult the brochures listed below which are published by the Department of Health, Education, and Welfare which describe the procedures involved in the computation of indirect cost rates. Copies of these brochures may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(1) OASC–1 (Rev)—A Guide for Colleges and Universities, Cost Principles and Procedures for Establishing Indirect Cost Rates for Research Grants and Contracts with the Department of Health, Education, and Welfare.

(2) OASC–5 (Rev)—A Guide for Non-Profit Institutions, Cost Principles and Procedures for Establishing Indirect Cost and Other Rates for Grants and Contracts with the Department of Health, Education, and Welfare.

(3) OASC–10—A Guide for State and Local Government Agencies, Cost Principls and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government.

78. *Cost Allocation Plans—Central Support Services.* CJCs, other State agencies, and local units of government may not charge to a grant the cost of central support services supplied by the State or local except pursuant to a cost allocation plan approved by the cognizant Federal agency. The rate which is to be applied may be on a provisional, final or predetermined basis.

79. *Reserved.* (Administrative Expenses)

80. *Reserved.*

Chapter 6. Procurement and Property Management Standards

81. *Procurement Standards.*

a. *General.* All grantees/subgrantees must follow the Federal standards in establishing procedures for the procurement of supplies, equipment, construction, and other services with grant funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of OMB Circular Nos. A–102 and A–110 and Executive Orders 11246 andf 11375, entitled "Equal Employment Opportunity." State and local government shall refer to appendix 3, OMB Circular A–102, Attachment 0. Institutions of Higher Education, Hospitals and Other Non-Profit Organizations shall refer to appendix 4, OMB Circular A–110, Attachment 0. Any grantee/subgrantee (state or local) whose procurement system, has been certified by a Federal Agency is not subject to prior approval requirements of Attachments 0, OMB Circular A–102. Grantor agency prior approval will only be required for areas beyond limits of the grantee/subgrantee certification.

b. *Adequate Competition.* All procurement transactions whether negotiated or advertised and without regard to dollar value shall be conducted in a manner so as to provide maximum open and free competition.

c. *Noncompetitive Practices.* The grantee/subgrantee shall be alert to organizational conflicts of interest or noncompetitive practices among contractors which may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work and/or RFPs for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. An exemption to this regulation requires the prior approval of the grantor agency and is only given in unusual circumstances such as when a nonprofit organization is acting as the agent for the state or local unit of government. Any request for exemption must be submitted in writing to the grantor agency.

82. *Construction Requirements.* The following policies and procedures relevant to construction are applicable to grantees/subgrantees. For the purpose of determine the appropriate funding ratios for construction projects, refer to Figures 2–1 and 2–4 of Chapter of this guideline manual.

a. *The definitions for construction are:*

(1) Under the Crime Control Act, construction means the erection, acquisition, expansion, remodeling or alteration of existing buildings, and the cost of equipping said facilities. Initial equipment includes heating, plumbing, air conditioning and electrical service and similar fixed equipment items but does not include equipment not inherently a part of the facility, such as office furniture and equipment.

(2) Under the Juvenile Justice and Delinquency Prevention Act, construction means the acquisition, expansion, remodeling and alteration of existing buildings and initial equipment of any such buildings, or any combination of such activities (including architects' fees but not the cost of acquisition of land for buildings). For the definition of initial equipment, refer to paragraph 82a(1).

(3) Under the Justice System Improvement Act, construction means the erection, acquisition, or expansion of new or existing buildings or other physical facilities and the acquisition or installation of initial equipment but does not include renovation, repairs or remodeling. For the definition of initial equipment, refer to paragraph 82a(1).

b. *Qualifications.* When considering the use of grantor agency funds for construction, grantees and subgrantees must be cognizant of the following qualifications as to their use:

(1) Acquisition of non-fixed equipment, feasibility studies, architectural studies and engineering fees, costs of soil borings and the like, may be funded on a 90 percent Federal, 10 percent matching share basis. These costs can be included in one application as a single line item of the budget which shows the 10 percent matching share. The "pure" construction elements (including site preparation) of the budget may then be displayed with their appropriate percentage of Federal participation and matching share.

(2) Grantor agency legislation provides that no portion of Federal grant funds shall be used for the acquisition of land. Grantees/subgrantees should, therefore, consider absorbing land acquisition costs within their share of construction project costs. Land may be used as in-kind match. However, the cost or value of (a) land already beneficially owned by the grantee/subgrantee prior to the fiscal year in which a construction project is approved or (b) which the grantee/subgrantee holds under a grant or patent from the United States for which no consideration was given, may not count as a matching share contribution. Land for which consideration was given to the United States must be valued at acquisition cost.

(3) The total cost of a construction project includes the cost of site preparation, including demolition of existing structures. Any proceeds realized from site preparation activities (e.g., salvage value of structures demolished or the proceeds from sale of timber) shall be applied to the project to reduce the total cost of the construction project.

(4) Payment of relocation costs shall be in accordance with the "Uniform

Relocation Assistance and Real Property Acquisition Policy Act of 1970." Refer to the effective edition of Guideline 4061.1 "Relocation Assistance and Payments," for a detailed explanation of costs for relocation assistance payments.

c. *Special Fiscal Conditions for Construction Projects.* Grant or subgrant funds for construction or facility improvement, which require letting a contract amounting to $100,000 or more to a private company or individual shall require:

(1) *A bid guarantee* equivalent to five percent of the bid price. The bid guarantee shall consist of a firm commitment such as bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified after the forms are presented to him.

(2) *A performance bond* on the part of the contractor for 100 percent of the contract price. "Performance bond" means a bond executed in connection with a contract to assure payment is required by law of all persons supplying labor and material in execution of the work provided for in the contract.

(3) *Where the Federal government* guarantees the payment of money borrowed by a grantee or subgrantee, the CJC may, at its discretion, require adequate bonding and insurance if the bonding or insurance requirements of the grantee or subgrantee are not deemed sufficient to protect adequately the interest of the Federal government. In those instances where construction of facility improvements for less than $100,000 are contemplated and the subgrantee does not have any requirements for bid guarantees, performance bonds and payment bonds, the CJC will impose State requirements on the subgrantees.

d. *Exceptions for JJDP Construction Projects.*

(1) *Source and Types of Funds.* Match for construction programs and/or projects awarded to public agencies must consist of cash appropriated by the grantor or contributed by a private agency or individual. This requirement may be waived by the grantor agency, in whole or in part, for grants awarded to private agencies and in-kind match substituted if:

(a) The program and/or project otherwise meets the criteria of the Juvenile Justice Act.

(b) It is consistent with the State Comprehensive Application.

(c) It is meritorious, i.e., it will help alleviate the juvenile delinquency problem.

(d) A demonstrated and determined good faith effort has been made to find a cash match.

(e) No other reasonable alternative exists except to allow in-kind match.

(2) *Use of Funds.*

(a) Construction programs and projects funded under the Juvenile Justice and Delinquency Prevention Act funds are limited to construction of innovative community based facilities for less than 20 people. Facilities include both buildings and parts or sections of a building to be used for a particular program or project.

(b) Erection of new buildings is not permitted with Juvenile Justice and Delinquency Prevention funds.

(c) Use of Juvenile Justice and Delinquency Prevention funds for construction is equally applicable to programs or projects using Formula or Special Emphasis Prevention and Treatment Program funds.

83. *Standards for Property Management.* The standards and procedures contained in this chapter apply to all grantees/subgrantees receiving grantor agency assistance. The standards are based on the property management standards prescribed in Attachment N of both OMB Circulars A–102 and A–110.

a. *Acquisition.* All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. Expenditures of grant funds for the acquisition of new property, when suitable property required for the successful execution of project is already available within the grantee or subgrantee organization, will be considered unnecessary expenditures.

b. *Screening.* Careful screening should take place before acquiring property in order to ensure that it is needed and that the need cannot be met with property already in the possession of the grantee/subgrantee organization. While there is no prescribed standard for such review, grantee/subgrantee procedures might well establish levels of review dependent on factors such as the cost of the proposed property and the size of the grantee or subgrantee organization. The establishment of a screening committee may facilitate the process; however, a grantee or subgrantee may utilize other managment techniques which it finds effective as a basis for determining that the property is needed and that it is not already available within the grant recipient's organization.

c. *Grant Review Responsibilities.* Grantor agency program monitors and CJC grant reviewers must ensure that the screening referenced above takes place and that the grantee/subgrantee has an effective system for property management. Grantees and subgrantees should be informed that if the grantor agency is made aware that the grantee or subgrantee does not employ an adequate property management system grant costs associated with the acquisition of the property may be disallowed.

d. *Loss, Damage or Theft of Nonexpendable Personal Property.* Grantees/subgrantees are responsible for replacing or repairing the property which is willfully or negligently lost, stolen, damaged or destroyed. Any loss, damage, or theft of the property must be investigated and fully documented and made part of the offical grant records.

e. *Accounting Requirements.* Grantees/subgrantees are required to maintain readily identifiable inventory of nonexpendable personal property (with an acquisition cost of $1,000 or more) purchased in whole or in part with grantor agency funds. Results of this physical inventory are to be made a part of the grantee's official records and must be available for review by authorized Federal and State personnel. In addition, the CJC must ensure that this type of inventory is maintained for its subgrants.

f. *Record Keeping Requirements.* Grantees/subgrantees are required to maintain, as part of the financial records of the grant or subgrant, the following types of property management records for all property acquired in whole or in part with grantor agency funds. The CJC may determine at which level, CJC or subgrantee, records shall be maintained for subgrant property. At a minimum, property management records must meet the following requirements:

(1) Records must contain copies of purchase orders and invoices.

(2) The records must include an inventory control listing for nonexpendable personal property and the list must be kept current. The system may be manual or automated, centralized or decentralized; however, the records must contain:

(a) Item description.

(b) Source of property.

(c) Manufacturer's serial number and, if applicable, a control number.

(d) Grantor agency funded cost equity at time of acquisition.

(e) Acquisition date of cost.

(f) Location, use and condition of property.

(g) Ultimate disposition data including sale price or the method used to determine current fair market value.

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(3) A physical inventory of nonexpendable personal property (with an acquisition cost of $1,000 or more) shall be taken and the results reconciled with the property record at least once every two years to verify the existence, current utilization and continued need for the property. If the CJC determines that property management records shall be maintained by the subgrantees and that the subgrantee shall perform the physical inventory of property, the results of the inventory must be forwarded to the CJC for review and concurrence. These records shall become part of the official grant file of the CJC.

(4) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage or theft to nonexpendable personal property. Any loss, damage or theft of nonexpendable personal property shall be investigated, fully documented and made part of the official grant file.

(5) Adequate maintenance procedures shall be established to keep the nonexpendable personal property in good condition.

(6) Proper sales procedures which would provide for competition to the maximum extent practicable and result in the highest possible return shall be established for unneeded nonexpendable personal property.

g. *Retention Period.* Records for nonexpendable personal property which has been acquired in whole or in part with Federal grant funds must be retained for three years after final disposition of the nonexpendable personal property.

84. *Policies.* Policies and procedures with respect to the acquisition and disposition of property acquired with grant funds must be based on three primary considerations: the function of a property in facilitating successful execution of a project; the necessity for ensuring that grant funds are properly used and accounted for; and, the desirability of minimizing administrative accounting and reporting requirements. All grantees/subgrantees utilizing grant funds for the acquisition of property are responsible for establishing and maintaining systems for the effective management of such property. Grantees/subgrantees shall apply the same policies, procedures and controls normally applied for all of their other property to property acquired with grantor agency funds, provided that the minimum management standards contained in this guideline are met.

85. *Definitions.* The following definitions apply for the purpose of this guideline.

a. *Real Property.* Real Property means land, land improvements, structures, and appurtenances thereto, excluding movable machinery and equipment.

b. *Personal Property.* Personal property means property of any kind except real property. It may be tangible (having physical existence) or intangible (having no physical existence, such as patents, inventions, and copyrights).

c. *Nonexpendable Personal Property.* Nonexpendable personal property is tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit. A grantee or subgrantee may use its own definition of nonexpendable personal, provided that such definition includes all tangible personal property as defined above. That is, if the grantee's/subgrantee's property management system defines nonexpendable personal property in terms which include a broader range of property, i.e., $100 per unit cost and encompasses all items which would be so classified in the above definition, a grantee/subgrantee may continue to use its own criteria.

d. *Expendable Personal Property.* Expendable personal property refers to all tangible personal property other than nonexpendable personal property.

86. *Intangible Personal Property.*

a. *Patents, Patent Rights, and Inventions.* If any grant project produces patents, patent rights, or inventions in the course of work aided by Federal grant or CJC subgrant funds, such facts must be promptly and fully reported to the grantor agency. The grantor agency will determine whether protection of such invention or discovery (including rights under any patents issued thereon) is necessary in accordance with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and statement of Government Patent Policy as printed in 36 P.R. 16889).

b. *Copyrights and Copyrightable Material.* Where the Federal grant or CJC subgrant results in a book or other copyrightable material, the author, grantee or subgrantee is free to copyright the work, but the grantor agency reserves as a royalty, free, nonexclusive and irrevocable license to produce, publish, or otherwise use, and authorize others to use, the work for government purposes.

87. *Standards and Procedures Governing Ownership, use and Disposition of Property.* The following requirements concerning property control and management are applicable to all recipients of Federal funds.

a. *Real Property Acquired With Block, Part D or JJ Formula Funds.*

(1) *Land Acquisition.* Block, Part D or JJ formula funds shall not be used for land acquisition.

(2) *Use of Real Property.* The CJC and its subgrantees may use real property acquired in whole or in part with Federal funds for the authorized purpose of the original grant as long as needed whether or not the program or project continues to be supported by Federal funds.

(3) *Disposition.* Initially, title to and accountability for real property acquired in while or in part with block and formula funds is vested either in the grantee or the subgrantee. Upon completion of the subgrant project, subgrantees shall submit a Final Financial Status Report and a Propety Inventory Report. The property report identifies real property acquired in whole or in part with block or formula funds. Upon receipt and review of the property report, a CJC must formally advise subgrantees within 120 days after the end date of the grant, of the determination it has made relative to the use of the real property. In making this determination, a CJC may exercise one of three options:

(a) Permit the subgrantee to retain the property acquired with Federal funds as long as there is a need for the property to accomplish the purpose of the program or project, whether or not the program or project continues to be supported by Federal funds, provided that the use of such property is consistent with those objectives authorized for support by the CJC.

(b) Direct the real property to be transferred to other subgrantees or a criminal justice activity needing the property, provided that use of such real property is consistent with those objectives authorized for support by the CJC.

(c) Return all real property furnished or purchased wholly with Federal funds to the control of the grantor agency. In the case of real property purchased in part with Federal funds, the subgrantee may be permitted to retain title upon compensating the grantor agency for its fair share of the property. The Federal share of the property shall be computed by applying the percentage of the Federal participation in the total cost of the project for which the property was acquired, to the current fair market value of the property. In those instances wherein the subgrantee does not wish to purchase real property originally purchased in part with Federal funds. disposition instructions shall be obtained from the grantor agency.

b. *Real Property Acquired with Categorical Funds* shall be subject to the same principles and standards as outlined in paragraph 87a with the exception that grantees must request the disposition instructions from the grantor agency.

c. *Nonexpendable Personal Property Acquired With Block, Part D or JJ Formula Funds.* When nonexpendable personal property is acquired in whole or in part with block, Part D or JJ formula funds, title will not be taken by the Federal government but shall be vested either in the CJC or its subgrantees. Said vestment of ownership is subject to the following restrictions on the use and disposition of the property.

(1) *Grant Completion.* Upon completion of the subgrant project, each subgrantee must submit a Final Financial Status Report and a Property Inventory Report. This property report identifies property purchased in whole or in part with block, Part D or JJ formula funds. Upon receipt and review of the property report, the CJC shall formally advise the subgrantee within 120 days after the end date of the grant of the determination it has made relative to the use of the property. In this respect, the CJC may exercise one of two options. It may:

(a) Permit the subgrantee that purchased the nonexpendable personal property to retain such property, provided that the subgrantee makes written assurance that it will use the property in the criminal justice system and consistent with those objectives authorized for support by the CJC.

(b) Permit the nonexpendable personal property to be transferred to other subgrantees needing the property, provided that these recipients make written assurance that they will use the property in the criminal justice system and consistent with those objectives authorized for support by the CJC.

(2) *Use of Nonexpendable Personal Property.* CJCs may permit subgrantees of nonexpendable personal property purchased in whole or in part with block, Part D or JJ formula funds to use such property in the following order of priority:

(a) In the subgrant project as long as there is a need for the property to accomplish the purpose of the project, whether or not the project continues to be supported by Federal funds.

(b) In other CJC or grantor agency funded projects requiring the use of such property.

(c) In grants of other Federal agencies needing the property.

(d) In other criminal justice activities needing the property, provided that these activities are consistent with those authorized for support by the CJC.

(3) *Disposition.* When the property is no longer needed as provided for in paragraph 87c, the subgrantee shall request disposition instructions from the CJC. The CJC shall issue disposition instrucitons within 120 days from the subgrantee's request. The property, with the concurrence of the CJC, may be used for the subgrantee's own official activities in accordance with the following standards.

(a) *Nonexpendable personal property with a unit of acquisition cost of less than $1,000.* The subgrantee may use the property without reimbursement to the CJC or the grantor agency or sell the property and retain the proceeds.

(b) *Nonexpendable personal property with a unit acquisition cost of $1,000 or more.*

1. The CJC may permit the subgrantee to retain the property for other uses provided compensation is made to the CJC. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original CJC block, Part D or JJ formula program under which the subgrant was funded to the current fair market value of the property.

2. The CJC may instruct the subgrantee to ship the property elsewhere. The subgrantee shall be reimbursed by the beneficiary with an amount which is computed by applying the percentage of the subgrantee's participation in the cost of the block, Part D or JJ formula program under which the subgrant was funded to the current fair market value of the property, plus any reasonable shipping or storage cost incurred.

3. The CJC may instruct the subgrantee to sell the property and reimburse the CJC an amount which is computed by applying the percentage of Federal participation in the cost of the original block, Part D or JJ formula project under which the subgrant was funded to the current fair market value of the property. The subgrantee is permitted to retain $100 or ten (10) percent of the proceeds, whichever is greater, for selling and handling expenses.

4. Refunds from the sale or purchase of property may be retained by the CJC and used for program purposes when the sale or purchase of property occurs during the period of award of the block, Part D or JJ formula grant under which the property was purchased. If the sale or purchase of property occurs after the termination date of the grant, the proceeds of the sale or purchase must be returned to the grantor agency for forwarding to Treasury for miscellaneous income.

5. When the CJC determines that nonexpendable personal property with an acquisition cost of $1,000 or more is unique, difficult or costly to replace, the CJC may reserve the right to require the subgrantee to transfer the property to the control of the CJC or directly to a third party named by the CJC when such third party is otherwise eligible under existing regulations. Such reservations shall ensure that the property is appropriately identified in the CJC grant agreement or otherwise made known to the subgrantee.

d. *Nonexpendable Personal Property Acquired Under Categorical Grants by a Government Agency, Educational Institution or Hospital.* When nonexpendable personal property is acquired by governmental grantees, educational institutions, hospitals, and non-profit organizations, in whole or in part with grantor agency categorical funds, title will not be taken by the Federal government, but shall be vested in the grantee subject to the following restrictions on use and disposition of the property:

(1) *Grant Completion.* Within ninety (90) days after the end date of the grant, the grantee shall submit a listing of all nonexpendable personal property purchased for the project. Information provided in this listing shall indicate item description, date of purchase of the property, condition (serviceability) of the property and total cost of the property. This information shall be made a part of the official grant file. Property purchased after submission of the listing must also be reported using the format previously described.

(2) *Use.* The grantee/subgrantee shall use the property in the project for which is was acquired as long as there is a need for the property to accomplish the purpose of the project whether or not the project continues to be supported by Federal funds. When no longer needed for the original project, the grantee/subgrantee shall use the property in connection with its other Federally assisted programs in the following order of priority.

(a) Other grants of the grantor agency needing the property.

(b) Grants of a CJC needing the property.

(c) Grants of other Federal agencies needing the property.

(3) *Disposition.* When the grantee/subgrantee no longer needs the property as provided in paragraph 87d(1), the property may be used for other activities of the grantee in accordance with the following standards:

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(a) *Nonexpendable personal property with a unit acquisition cost of less than $1,000.* The grantee/subgrantee may retain the property for its own use without reimbursement to the Federal government or sell the property and retain the proceeds.

(b) *Nonexpendable personal property with a unit acquisition cost of $1,000 or more.* The grantee/subgrantee may retain the property for other uses provided that compensation shall be computed by applying the percentage of grantor agency participation in the cost of the original project to the current fair market value of the property. If the grantee/subgrantee has no need for the property, he shall request disposition instructions from the component of the grantor agency which administers the grant.

(c) *Grantor Agency Action.* Upon receipt of notification from a grantee/subgrantee that it has no need for nonexpendable personal property with a unit acquisition cost of $1,000 or more, the component of the grantor agency which administers the grant shall use one of the following options:

1. It may instruct the grantee/subgrantee to ship the property to other agencies needing the property. The grantee/subgrantee shall be reimbursed by the beneficiary with an amount which is computed by applying the percentage of the grantee's/subgrantee's participation in the cost of the project to the current fair market value of the property, plus any reasonable shipping and storage costs incurred.

2. It may instruct the grantee/subgrantee to sell the property and reimburse the grantor agency an amount which is computed by applying the percentage of Federal participation in the cost of the project to the current fair market value of the property. The grantee/subgrantee is permitted to retain $100 or ten (10) percent of the proceeds, whichever is greater for selling and handling expenses.

3. When the grantor agency determines that nonexpendable personal property with an acquisition cost of $1,000 or more is unique, difficult or costly to replace, the grantor agency may reserve the right to require the grantee/subgrantee to transfer property to the control of the grantor agency or directly to a third party named by the grantor agency when such third party is otherwise eligible under existing regulations. Such reservation shall ensure that the property is appropriately identified in the grant agreement or otherwise made known to the grantee/subgrantee.

e. *Replacement of Property.* When an item of nonexpendable personal property with an acquisition cost of $1,000 or more is no longer efficient or serviceable but the grantee/subgrantee continues to need the property in its criminal justice system, the grantee/subgrantee may replace the property through trade-in or sale and subsequent purchase of new property, provided the following requirements are met:

(1) *Similar Function.* Replacement property must serve the same function as the original property and must be of the same nature or character, although not necessarily of the same grade or quality.

(2) *Credits.* Value credited for the property, if the property is traded in, must be related to its fair market value.

(3) *Time.* Purchase of replacement property must take place soon enough after the sale of property to show that the sale and the purchase are related.

(4) *Compensation.* Replacement of property under this paragraph is not a disposition of property. The grantee/subgrantee is not required, at the time of replacement, to compensate the Federal government for the Federal share of the property; rather, the Federal share shall be applied to the replacement cost of the property. The replacement property shall be subject to the same instructions on use and disposition as the property replaced.

(5) *Calculation of Federal Share.* The Federal share of the replacement property shall be calculated as follows:

(a) The proceeds from the sale of the original property or the amount credited for trade-in shall be multiplied by the federal share (percentage) to produce a dollar amount.

(b) The percentage of the dollar amount to the total purchase price of the replacement property shall be the Federal share of the replacement property.

(6) *Prior Approval.* Subgrantees of block and categorical grant funds must obtain the written permission of the CJC to use the provisions of this paragraph prior to entering into negotiation for the replacement or trade-in of nonexpendable personal property.

88–89 *Reserved.*

Chapter 7. Additional Grant Requirements

90. *General.* This chapter sets forth additional administrative standards to be used by grantees/subgrantees in administering grant funds.

91. *Printing.* The term printing shall be construed to include and apply to the process of composition, plate-making, presswork, binding, and microfilm; the equipment as classified in the tables in Title II of the Government Printing and Binding Regulations, published by the Joint Committee on Printing, Congress of the United States, and as used in such processes, or the end items produced by such processes and equipment. Pursuant to the Government Printing and Binding Regulations, no project may be awarded primarily or substantially for the purpose of having material printed for the grantor agency. The Government Printing and Binding Regulations allow:

a. *Issuance.* The issuance of a project for the support of nongovernmental publications, provided such projects were issued pursuant to an authorization of law and were not made primarily or substantially for the purpose of having material printed for the grantor agency.

b. *Publications.* The publication of findings by grantees/subgrantees within the terms of their project provided that such publication is not primarily or substantially for the purpose of having such findings printed for the grantor agency.

c. *Initiation.* The initiation of the procurement of writing, editing, preparation of related illustration material from grantees/subgrantees or the internal printing requirements of the grantee/subgrantee necessary for compliance with the terms of the project. However, the printing of such material for the Government must be accomplished in accordance with printing laws and regulations.

d. *Duplication.* A requirement for a grantee/subgrantee to duplicate less than 5,000 units of only one page, or less than 25,000 units in the aggregate of multiple pages of its findings for the grantor agency will not be deemed to be printing primarily or substantially for the grantor agency (e.g., 5,000 copies of 50 pages, etc.). For the purpose of this paragraph, such pages may not exceed a maximum image size of 10¾ by 14¼ inches.

e. *Production.* A requirement for a grantee/subgrantee to produce less than 250 duplicates from original microfilm will not be deemed to be printing primarily or substantially for the grantor agency. Microfilm is defined as one roll of microfilm 100 feet in length or one microfiche.

92. *Publicity.* Project Directors are encouraged to make the results and accomplishments of their activities available to the public. Prior grantor agency approval is not needed for publishing the results of an activity under a project. Responsibility for the direction of the activity should not be ascribed to the grantor agency. However, an acknowledgement of support must be made through use of the following or comparable footnote:

This project was supported by Grant No. ..... awarded by the LEAA, NIJ, BJS or OJARS (indicate the name of the grantor). The contents do not necessarily reflect the views and policies of this grantor agency.

93. *Copyright.* Except as otherwise provided in the conditions of the award, the author is free to arrange for copyright without approval when publication or similar materials are developed from work under a grantor agency supported project. Any such copyrighted materials shall be subject to the Government's right to reproduce them, translate them, publish them, use and dispose of them, and to authorize others to do so for Government purposes. In addition, communications in primary scientific or professional journals publishing initial reports or research or other activities supported in whole or in part by grantor agency project funds may be copyrighted by the journal with the understanding that individuals are authorized to make or have made by any means available to them, without regard to the copyright of the journal, and, without royalty, a single copy of any such article for their own use.

94. *Conflict of Interest.* Personnel and other officials connected with grantor agency funded programs shall adhere to the requirements given below:

a. *Advice.* No official or employee of a State or unit of local government or of non-government grantees/subgrantees shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which grantor agency funds are used, where to his knowledge he or his immediate family, partners, organization other than a public agency in which he is serving as officer, director, trustee, partner, or employee or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest.

b. *Appearance.* In the use of grantor agency project funds, officials or employees of State or local units of government and non-governmental grantees/subgrantees shall avoid any action which might result in, or create the appearance of:

(1) Using his or her official position for private gain;

(2) Giving preferential treatment to any person;

(3) Losing complete independence or impartiality;

(4) Making an official decision outside official channels; or

(5) Affecting adversely the confidence of the public in the integrity of the Government or the program.

95. *Termination of Categorical Projects.* The grantor agency's right to terminate any project will normally be exercised only where it has reason to believe that the grantee/subgrantee is mishandling project funds or is unable to carry out the project properly or where anticipated continuation funds become unavailable. In the event that the project is terminated, the grantor agency will notify the grantee in writing of its decision, specify the reasons therefore, and accord the grantee/subgrantee a reasonable time to terminate project operations or seek support from other sources. A project which is prematurely terminated will be subject to the same requirements regarding audit, recordkeeping, and submission of reports as a project which runs for the duration of the project period. Refer to 28 CFR Part 18 for appeals rights in event of termination.

96. *Changes in Categorical Projects.* All requests for programmatic and/or administrative budget changes must be submitted in a timely manner by the grantee/subgrantee. All requests for changes to the approved grant shall be carefully reviewed by the applicable authority as defined in paragraph 54 for both consistency with this manual and their contribution to project goals and objectives.

a. *Types of Project Changes.* In addition to project changes addressed in paragraphs 29d and 66, there are several other types of changes and/or modifications which require formal approval of the grantor agency. Examples of such changes are:

(1) Change in project site;

(2) Changes which increase or decrease the total cost of the project;

(3) Change in or temporary absence of the project manager/director;

(4) Transfer of Project;

(5) Successor in interest and name change agreements;

(6) Transfer for contracting of project requiring prior approval;

(7) Addition of an item to the project budget requiring prior approval;

(8) Special conditions attainment, if required.

b. *Notification.* All grantees must give prompt notification in writing to the grantor agency of events or proposed changes which may require an adjustment/notification such as those set forth in paragraphs 29d, 66, and 96a. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed change and any other data deemed helpful for grantor agency review.

97. *CJC Supervision and Monitoring Responsibility for Categorical Projects.*

a. *CJCs are responsible* for supervising and monitoring only those projects which have been awarded to them.

b. *When it is the grantee,* the CJC has the responsibility for assuring proper administration of categorical subgrants including responsibility for:

(1) Proper conduct of the financial affairs of any subgrantee or contractor insofar as they relate to programs or projects for which categorical projects funds have been made available; and,

(2) Default in which the CJC may be held accountable for improper use of grant funds.

c. *The CJC should incorporate* categorical grants into its system for subgrant monitoring and supervision and, to the extent appropriate and consistent with the grantor agency guidelines, use the same procedures for supervision of categorical subgrants as are used with block subgrants.

d. *CJC approval is not required for* subgrantees to transfer between direct cost object class budget categories, the cumulative amount of up to 5 percent of the project budget (Federal and non-Federal funds) for project budgets in excess of $100,000.

e. *The CJC has the authority* to approve the changes listed below, provided that the CJC informs the grantor agency in writing of the request, and the action, within 14 calendar days of the CJC action and prior to the original end date of the project. Exceptions to this authority may be made, but will be made known before the CJC has been made the grantee. The areas where a CJC may approve changes for its subgrantees are:

(1) Any cumulative amount of transfers exceeding the limitations set forth in paragraph 97d, if this does not alter the scope or objectives of the approved project.

(2) Extensions of categorical projects up to three months beyond the initial approved duration, not to exceed a total project period of 24 months.

(3) Other minor deviations from categorical projects necessary to assure efficient administration, but not including departures which change the scope or objectives of the approved project or which vary from the project description published in this guideline manual.

f. *Changes exceeding* the authority of the CJCs in paragraph 97e, must receive prior approval from the grantor agency.

g. *In the case of projects for which the CJC is both the grantee and the*

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implementing agency, prior approval for grant extensions in paragraph 29d, project changes specified in paragraph 96a, and budget changes beyond those specified in paragraph 97e, must be obtained from the grantor agency.

98. *Financial Evaluation of Categorical Project Applications.*

a. *Financial evaluation* of project applications involves (1) performing a cost analysis of each project application considered for funding by the grantor agency and (2) determining the adequacy of the applicant institution's accounting system to insure that Federal funds, if awarded, will be expended in a judicious manner.

b. *A cost analysis* is the process of obtaining cost breakdowns, verifying cost data, evaluating specific elements of cost, and examining data to determine the necessity, reasonableness, and appropriateness of the proposed cost. The form and extent of such an analysis will be determined by the grantor agency.

c. *Where an applicant* has never received a grantor agency award, the organization's accounting system must be reviewed prior to award or within a reasonable time thereafter to asure its adequacy and acceptability. This review will also apply where known financial or management deficiencies exist. Such a review will be undertaken by or at the direction of the grantor agency. The results of the review will determine the action to be taken by the grantor agency with regard to the award.

99. *Subgranting and Contracting of Categorical Project-Supported Effort.*

a. *None of the principal activities* of the project-supported effort shall be subgranted or contracted out to another organization without specific prior approval by the grantor agency. Where the intention to award subgrants or contracts is made known at the time of application, this approval may be considered granted if these activities are funded as proposed.

b. *All such arrangements* must be formalized in a contract or other written agreement between the parties involved. The contract or agreement must, at a minimum, state the activities to be performed, the time schedule, the project policies and the flowthrough requirements that are applicable to the subgrantee contractor, or other secondary recipient, other policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be used in determining allowable costs. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the Government.

100. *Close-Out of Categorical Projects.*

a. *Definition.* Close-out is a process in which the grantor agency determinea that all applicable administrative actions and all required work of the grant have been completed by the grantee and the grantor agency.

b. *Grantee Close-Out Requirements.* Within 90 days after the end date of the grant or any approved extension thereof (revised end date) the following documents must be submitted by the grantee to the grantor agency:

(1) *Financial Status Report.* This FINAL report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award amount by the grantor agency. Grantees on a check-issued basis, who have drawn down funds in excess of their obligations/expenditures, shall return unused funds to the grantor agency at the same time they submit the final report.

(2) *Final Progress Report.* This report should be prepared in accordance with instructions provided by the grantor agency.

(3) *Property Inventory Report.* This report reflects ALL real and nonexpendable personal property (useful life of 1 year or more and acquisition cost of $300 or more per unit) purchased with grant funds. This report should include complete descriptions of the property items, dates of purchase, original costs, estimates of current value and condition and the grantee's recommendation for disposing of each item of property. See paragraph 87.

(4) *Invention Report.* All inventions that were conceived or first actually reduced to practice during the course of work under the grant project must be listed on this report.

101–104. *Reserved.*

Chapter 8. Audit Requirements

105. *General.*

a. *Purpose.* The purpose of this chapter is to establish responsibilities for the audit of organizations receiving grantor agency funds. Its intent is to identify grantor agency policies for determining the proper and effective use of public funds, rather than to prescribe detailed procedures for the conduct of an audit. Such detailed procedures are contained in other documents, such as those referenced in paragraph 105e.

b. *Audit Responsibilities.* Pursuant to Office of Management and Budget Circulars A–102, revised "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments," Attachment P, and A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," Attachment F, grantees, subgrantees and subrecipients have the responsibility to provide for an audit of their activities. These audits usually will be made annually, but not less frequently than every two years.

c. *Requirements.* Grantees, as well as their subgrantees, contractors or other organizations under cooperative agreements or purchase of service contracts are to have examinations in the form of audits in conformance with OMB Circulars A–102, Attachment P, or A–110, Attachment F, as applicable. These audits shall be conducted in accordance with the General Accounting Office Standards for Audit of Governmental Organizations, Programs, Activities and Functions, the Guidelines for Financial and Compliance Audits of Federally Assisted Programs (Refer to OMB Circular A–102), any OMB approved compliance supplement and generally accepted auditing standards established by the American Institute of Certified Public Accountants. Additionally, these recipients are subject to other periodic examinations by Federal and State audit organizations. The required audits are to be on an organization-wide basis as opposed to a grant-by-grant basis. This audit must include, at a minimum, an examination of the systems of internal control, systems established to ensure compliance with major laws and regulations affecting the expenditure of Federal funds, financial transactions and accounts, and financial statements and reports of recipient organizations. These examinations are to determine whether:

(1) There is effective control over and proper accounting for revenues, expenditures, assets and liabilities.

(2) The financial statements are presented fairly in accordance with generally accepted accounting principles.

(3) The Federal financial reports (including Financial Status Reports, Cash Reports, and claims for advances and reimbursements) contain accurate and reliable financial data; and are presented in accordance with the terms of applicable agreements, and in accordance with Attachment H of OMB Circular 102.

(4) Federal funds are being expended in accordance with the terms of applicable agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements or on the awards tested.

d. *Full-Scope Auditing.* In addition to arranging and providing for the required OMB Circulars A–102 and 110 organizational financial compliance audit, individual grantees, subgrantees and subrecipients are encouraged to provide for additional audit coverage, as deemed appropriate. The additional audit coverage that may be provided should be determined based on the circumstances surrounding the particular organization, function, program or activity to be audited, management needs and the available audit capability. Additional audit coverage could involve such determinations as:

(1) Were resources managed and used in an economical and efficient manner?

(2) Were desired results and objectives achieved in an effective manner?

(3) Were the organization's accounting system and system of internal controls acceptable prior to the receipt of grantor agency funds?

e. *References.* The requirements for effective accounting systems and financial records, which will facilitate both program management and auditing, are contained in Chapter 4 of this guideline manual. The following directives, regulations and reports provide specific information regarding the audit of grantees, subgrantees and contractors under grants or subgrants:

(1) *Distribution and Resolution of Audit Reports,* G 7140.1 (effective edition).

(2) *Reporting of Possible LEAA Fund Misuse, Criminal Activity, Conflict of Interest, or Other Serious Irregularities,* G 7140.2 (effective edition).

(3) *Office of Management and Budget Circular A–102,* "Uniform Administrative requirements for Grants-in-Aid to State and Local Governments," Attachment P, (Refer to appendix 3).

(4) *Office of Management and Budget Circular A–110,* Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-profit Organizations, Attachment F, (Refer to appendix 4).

(5) *Standards for Audit of Governmental Organizations, Programs, Activities and Functions,* U.S. General Accounting Office, GPO Stock No. 020–000–00110–1.

(6) *Guidelines for Financial and Compliance Audits of Federally Assisted Programs.* U.S. General Accounting Office (effective edition).

(7) *Applicable Grantor Agency Legislation* (refer to Chapter 2 of this guideline manual) and any OMB approved compliance supplements.

106. *Audit Objectives.* Grants and other agreements are awarded subject to conditions of fiscal, program and general administration to which the recipient expressly agrees. Accordingly, the audit objective is to review the recipient's administration of grant funds and required non-Federal contributions for the purpose of determining whether the recipient has:

a. *Established an accounting system and procedures* integrated with adequate internal fiscal and management controls to provide full accountability over the receipt, expenditure and use of program funds.

b. *Expended and used program funds* in accordance with the requirements set forth by the Acts, the grantor agency, other applicable Federal and State laws, regulations and procedures, and the terms and conditions of the award.

c. *Prepared financial reports* containing accurate, reliable and useful financial data, which are fairly presented.

d. *Managed its financial operations* in accordance with sound management practices.

107. *Audits of the CJC.* In accordance with OMB Circular A–102, Attachment P, and grantor agency legislation, the responsibility for providing the audit function of the agency's grant program is with the State.

a. *OMB Circular A–102 Requirements.* An audit examination shall be conducted with reasonable frequency on a continuing basis or at scheduled intervals, usually annually but not less frequently than every two years. Audits performed of the grant programs should be conducted in accordance with the standards normally used by the State audit agency or independent outside auditor and the GAO Standards for Audit of Governmental Organizations, Programs, Activities and Functions. The audit must be arranged for by the State and must be conducted in accordance with the Guidelines for Financial and Compliance Audits of Federally Assisted Programs and any OMB approved compliance supplements. The grantor agency encourages that this audit be performed by or under the direction of the appropriate State audit organization.

B. *Implementation.* In order to accomplish the purpose of the OMB Circular A–102 requirements, the State will specify its arrangements for the audit of the CJC in a formal policy statement and/or procedure. This would include but not necessarily be limited to, the following:

(1) Audit organizations that will conduct the audit (if other than the State auditor, describe how the State auditor will be involved);

(2) Approximate timing of when the audit will be performed;

(3) Audit coverage to be provided. Where the audit will not provide the coverage requirements, specified in this Chapter, the audit policy or procedures must describe the specific arrangements for obtaining audit services that will meet the requirements;

(4) An identification of the audit standards, if any, with which the State will not comply and the reasons why the State cannot comply with the standard;

(5) Receipt and appropriate distribution of the resultant audit report; and,

(6) Audit resolution policies and procedures to be followed in clearing the audit report.

C. *Audit Coverage.* The necessary coverage is specified in the GAO Guidelines for Financial and Compliance Audits of Federally Assisted Programs and the related compliance supplements referenced in paragraph 105e.

d. *Reporting.* A written report shall be prepared upon completion of the audit and three (3) copies furnished to the CJC's Federal Cognizant Audit Agency or the Office of Justice Assistance, Research, and Statistics (OJARS), when a Federal Cognizant Audit Agency has not been designated. When the report is forwarded to OJARS, because it is the Cognizant Audit Agency or a Cognizant Audit Agency has not been designated, it should be sent to the appropriate Office of Audit and Investigation Field Office as designated in Figure 8–1.

Figure 8–1. Addresses of Grantor Agency Office of Audit and Investigation Field Offices

Field offices	Geographical area responsibility
1. *Atlanta:* Atlanta Area Audit and Program Review Office, Office of Audit and Investigation, OJARS, U.S. Department of Justice, 101 Marietta Street, Suite 2322, Atlanta, Georgia 30323, (Com.) 404/221-5037; (FTS) 8/242-5037.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Puerto Rico, Tennessee, Virgin Islands.
2. *Chicago:* Chicago Area Audit and Program Review Office, Office of Audit and Investigation, OJARS, Department of Justice, 175 W. Jackson Street, Suite A-1335, Chicago, Illinois 60604, (Com.) 312/353-1203; (FTS) 8/353-1203.	Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, Wisconsin.
3. *Denver:* Denver Area Audit and Program Review Office, Office of Audit and Investigation, OJARS, U.S. Department of Justice, P.O Box 3119, Denver, Colorado 80201, (Com.) 303/837-2501; (FTS) 8/327-2501.	Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, Wyoming.

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Figure 8-1. Addresses of Grantor Agency Office of Audit and Investigation Field Offices—Continued

Field offices	Geographical area responsibility
4. *Sacramento:* Sacramento Area Audit and Program review Office, Office of Audit and Investigation, OJARS, U.S. Department of Justice, P.O. Box 3010, Sacramento, California 95812, (Com.) 916/440-2131, (FTS) 8/448-2131.	Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Washington, American Samoa, Guam, Trust Territories of the Pacific Islands, Commonwealth of Northern Mariana Islands.
5. *Washington:* Washington Area Audit and Program review Office, Office of Audit and Investigation, OJARS, U.S. Department of Justice, 633 Indiana Avenue, N.W., Washington, D.C. 20531, (Com.) 301/492-9010, (FTS) 8/492-9010.	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia.

e. *Resolution and Cleorance of Audit Reports.* Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each CJC shall have policies and procedures for acting on audit recommendations by designating officials responsible for: follow-up, maintaining a record of the action taken on recommendations and time schedules, responding to and acting on audit recommendations, and submitting periodic reports to the Federal Cognizant Audit Agency on recommendations and action taken. These policies must be consistent with the provisions contained in the effective edition of OJARS Guideline 7140.1, Distribution and Resolution of Audit Reports in instances in which the grantor agency is the Federal Cognizant Audit Agency.

108. *Audit of Subgrantees.* In accordance with OMB Circulars A-102 and A-110, it is the grantor agency's policy that the CJC require that each of its subgrantees' financial management system provide for an examination in the form of independent audit to ascertain the effectiveness of the financial management system and internal procedures that have been established to meet the terms and conditions of the subgrant (financial and compliance audit). Also, the subgrantees' organization is required to have a systematic method of timely and appropriate resolution of audit findings and recommendations. These requirements are applicable to both subgrants awarded from block, formula and categorical grant funds. These audits must be made in accordance with the General Accounting Office's *Standards for Audit of Governmental Organizations, Programs, Activities and Functions* and the *Guidelines for Financial and Compliance Audits of Federally Assisted Programs* and any compliance supplement approved by the Office of Management and Budget. The audit must be performed not less frequently than every two years and be conducted on an organization-wide basis and include an appropriate sample of Federal subgrant awards.

a. *Requirement.* The State is required to develop the policies, procedures and controls necessary to assure that subgrantee organizations receiving grantor agency funds have the required financial and compliance audits performed.

b. *Reporting.* The State shall make such arrangements as necessary to obtain copies of all reports prepared as a result of the required audits and establish a system and submit such reports to the appropriate Federal Cognizant Audit Agency or, where no subgrantee cognizant audit agency has been assigned, to the appropriate grantor agency OAI area office. Known or suspected violations of any laws encountered during audits, including fraud, theft, embezzlement, forgery or other serious irregularities, must be communicated to the grantor agency's Office of Audit and Investigation (see the effective edition of Guideline 7140.2, Reporting of Possible LEAA Fund Misuse, Criminal Activity, Conflict of Interest, or Other Serious Irregularities). If any grantor agency categorical grants are included in the audits, the related reports must be submitted to the grantor agency's Office of Audit and Investigation consistent with the requirement of the effective edition of Guideline 7140.1.

109. *Categorical Grant Audits.*

a. *Grants Awarded to CJC's.* When grants are awarded to State Agencies and are subgranted to another organization for implementation, the audit requirements as set forth in paragraph 108 of this chapter must be fulfilled.

b. *Direct Awards.* When grants are awarded directly to governmental units (those grants not awarded through the CJC or non-profit organizations), the audit responsibility must be fulfilled by the grantee. Each grantee must provide for an examination in the form of an audit to ascertain the effectiveness of the financial management system and internal procedures that have been established to meet the terms and conditions of the grant (financial and compliance audit). Also, the grantee's organization must provide for the timely and appropriate resolution of audit findings and recommendations.

c. *The audits must be made in accordance with* the General Accounting Office's *Standards for Audit of Governmental Organizations, Programs, Activities and Functions* and the *Guidelines for Financial and Compliance Audits of Federally Assisted Programs* and any compliance supplements approved by the Office of Management and Budget. The audit must be performed not less frequently than every two years and be conducted on an organization-wide basis and include an appropriate sample of Federal grant awards.

d. *When direct awords are subgranted to another organization(s)* for implementation, the audit requirement as set forth in paragraph 108 of this chapter must be fulfilled. A written report shall be prepared upon completion of the audit and three (3) copies furnished to the grantee's Federal Cognizant Audit Agency or, where no cognizant agency has been assigned, to the appropriate OAI Area Office as identified in Figure 8-1. Release of audit reports shall be in accordance with applicable Federal and State laws. The report shall contain narrative statements, tabulations, schedules or other pertinent data disclosing the deficiencies found and recommendations needed to correct and/or prevent recurrence of the deficiencies. In addition, the reports shall identify the officials with whom the contents of the report were discussed and whether or not the officials concurred with the findings. Known or suspected violations of any laws encountered during audits, including fraud, theft, embezzlement, forgery or other serious irregularities, must be communicated to the grantor agency's Office of Audit and Investigation (see the effective edition of Guideline 7140.2, Reporting of Possible LEAA Fund Misuse, Criminal Activity, Conflict of Interest, or other Serious Irregularities).

110. *Technical Assistance.* The Office of Audit and Investigation is available to provide technical assistance to grant recipients in implementing the audit requirements of this Chapter where the grantor agency is the assigned cognizant audit agency or no other cognizant agency has been assigned to a grantee. This assistance is available for areas such as: (i) review of the audit arrangements and/or negotiations; (ii) review of the audit program or guide to be used for the conduct of the audit; and, (iii) on-site assistance using the performance of the audit when deemed necessary as a result of universal or complex problems that arise. In addition, the Office of Audit and Investigation provides training courses for the performance of audits on Agency grant programs at the State and local levels. Requests for technical assistance or schedules for the training courses should be addressed to the appropriate Office of Audit and Investigation Area Office identified in Figure 8-1.

Appendix 6. H-3 Report, Request for Advance or Reimbursement Report (LEAA Form 7160/3)

Note.—H-3 Report, form and instructions, filed with the Office of the Federal Register as part of the original document.

Appendix 7. Instructions Relating to the Letter of Credit—Treasury Regional Disbursing Office (RDO) System

1. *General.* This appendix incorporates the procedures to be followed under the Regional Disbursing Office (RDO) method of funding a letter of credit (LOC). Under this RDO system, which is the only one used by the grantor agency, a Treasury Regional Disbursing Center directly services and maintains the LOC. The following operating procedures are derived from those appearing in Part 6, Chapter 1, Treasury Fiscal Requirements Manual (TFRM), and Treasury Circular 1075, as published in the Federal Register on December 14, 1977 (FR 42 62627). A state government may designate a state office (e.g., state Treasurer) other than the CJC as the recipient organization for the LOC. Therefore, officials other than those of the CJC may be responsible for carrying out some or all of these procedures. The grantor agency will look to the CJC Director to see that these procedures are implemented and that participating state officials are familiar with and understand the procedures.

a. *Nature of Letter of Credit.* A letter of credit is a monetary commitment prepared and certified by the grantor agency and authorized by the Treasury Department. It specifies a money amount which a CJC or other authorized recipient organization may draw by the issuance of Request for Payment on Letter of Credit and Status of Funds Report, SF 183, hereafter referred to as Request for Payment. Payment on a letter of credit is by delegation of the Treasury Department at the request of the grantor agency through a designated Treasury Regional Disbursing Center.

b. *Requirements for Use.* The Treasury Department requires that the letter-or-credit method of providing cash be used when the grantor agency has, or expects to have, a continuing relationship with a recipient organization for at least one year, involving annual advances aggregating at least $120,000.

c. *Grantee Commitments.* Upon acceptance of a letter of credit, the grantee commits itself to:

(1) initiating cash drawdowns only when actually needed for its disbursements.

(2) timely reporting of cash disbursements and balances as required by the grantor agency.

(3) the imposition of the same standards of timing and amount upon any secondary recipient organizations including the furnishing of reports of cash disbursements and balances.

d. *Cash advances* made by primary recipient organizations (grantees) to secondary recipient organizations (subgrantees) shall conform substantially to the same standards of timing and amount as apply to primary recipient organizations. Grantees are required to develop procedures whereby subgrantees can obtain funds from grantees as needed for disbursements.

e. *The grantee further acknowledges* that its failure to adhere to these provisions may cause the unobligated portion of the LOC to be revoked by the grantor agency or by the Department of the Treasury.

2. *Summary of Procedures.* In order to implement the letter-of-credit method of advancing funds, the following steps are necessary:

a. *Recipient organization selects an address* where checks are to be sent. If checks are to be sent to a bank, the account number and the name and address of the bank must be provided.

b. *Recipient organization obtains signatures* of individuals authorized to sign Requests for Payment against the letter of credit and signature of an official who has authority to designate the individuals so authorized.

c. *The grantor agency issues the letter of credit* SF 1193A (former TFS 7577) (Figure 2).

(1) For CJCs, this authorization will state an annual limitation based on the recipient organization's anticipated needs.

(2) For all other LOC grantees, this authorization will state the total undisbursed balance for all grants at the time of issuance.

d. *Recipient organization establishes accounting records* to ensure accountability for Federal cash advanced.

e. *Recipient organization presents Requests for Payment* periodically to an RDO, according to actual disbursement needs.

f. *Recipient organization submits reports,* on an as requested basis, accounting for cash drawn down under the LOC.

3. *Issuance of Letter of Credit.*

a. *The letter of credit authorizes the RDO* to advance cash to the designated organization on behalf of the grantor agency, upon submission of a Request for Payment, SF 183.

b. *The grantor agency will establish* a letter of credit for an eligible recipient organization upon receipt of the following:

(1) Two originals of Authorized Signature Card for Payment Vouchers on Letter of Credit, SF 1194 (Figure 1). Refer also to paragraph 4.

(2) Name of recipient organization, the Federal employer identification number assigned by IRS, and address where Treasury check is to be sent. Also, account number, name and address of bank if check is to be sent to a bank.

(3) The recipient's estimated annual cash needs from the grantor agency.

c. *The information in 3b must be sent to* the grantor agency at: 633 Indiana Avenue NW., Washington, D.C. 20531.

d. *Upon receipt and review by the grantor agency* of the information requested in paragraph 3b, the LOC will be certified. The original of the LOC and one SF-1194 will be sent to the cognizant RDO (Figure 4), one copy of the LOC and one SF-1194 will be sent to the recipient organization, and the two remaining copies of the LOC will be retained by the grantor agency.

4. *Authorized Signature Cards.*

a. *The signatures of individuals authorized to sign* Requests for Payment must be on file with the LOC at the RDO before Requests for Payment will be honored.

b. *The SF-1194 must contain* the typed name(s) and related manual signature(s) of at least one but not more than four authorized individuals on any one signature card. It is recommended that a minimum of two signatures be shown in order to provide an alternate in the case of illness or emergency and permit flexibility in making drawdowns. If more than four persons are authorized, use additional signature cards. Cross out any signature block which is not used.

Note.—Signatures must not be submitted which have been pasted over, erased, or painted over with correction fluid.

c. *The SF-1194 provides for a countersignature,* if desired, however, the card must be appropriately noted as explained in the instructions (Figure 1). A countersignature is not required by the U.S. Treasury or the grantor agency and need not be used unless required by the recipient organization.

d. *Two new signature cards, SF-1194, must be submitted* to the address in paragraph 3c whenever there is any

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change in either the recipient organization's name or in the individual(s) authorized to sign Request for Payment or if any amended LOC is required by paragraph 5a(1) below. A change in the position or title of an individual authorized to sign does not warrant a new card. Transmittal of new SF-1194's to the address in paragraph 3c must include a letter indicating that the previous card is to be revoked and the effective date of revocation. Requests for additional cards may also be sent to the address in paragraph 3c.

e. *Newly designated signers should not sign* SF-183 for at least ten working days after the new card is sent to the grantor agency. This is necessary to allow time for the new card to reach the RDO which honors the Request for Payment.

5. *Amending Letters of Credit.*

a. *An amended letter of credit,* signed by a grantor agency authorized certifying officer, is required:

(1) If there is a change in the information contained in the box entitled, "Treasury Checks To Be Made Payable To:" or the box entitled, "In Favor Of".

(2) If there is an increase or decrease in the amount authorized.

(3) If there is a change in the time designation.

(4) If the authorization for the recipient organization to draw amounts in excess of $5,000,000 is established or rescinded.

Note.—The grantor agency will include a statement on the amending SF-1193 explaining any change which is other than a change in the amount authorized.

b. *In the event a CJC* determines that the balance available on the letter of credit is insufficient to meet anticipated expenditures for the remainder of the fiscal year, a request to increase the letter of credit must be submitted to the address in paragraph 3c.

c. *In the event a non-CJC recipient orgonization* receives additional grant awards, the grantor agency will amend the letter of credit to meet these additional requirements.

d. *Under normal conditions, the LOC shall not be amended* for amounts under $5.000. Amendments will not interrupt the progression of the numbers assigned to the Requests for Payment by the recipient organization.

e. *If a recipient organization's total balance of funds* under all active grants falls below the annual amount authorized under the LOC, the grantor agency may reduce the annual amount authorized and notify the recipient organization of the new maximum drawdown limitation.

6. *Establishment of Accounting Records.* Control records should be established by the recipient organization to ensure that:

a. *The total monetary amount* of Requests for Payment issued during the fiscal year does not exceed the maximum fiscal year authorization established by the LOC.

b. *Cash drawn in support of the grantor agency* sponsored programs and projects is:

(1) Accurately accounted for; and

(2) Directly traceable to grantor agency fund sources, i.e., as primary grantee.

c. *Internal management control is exercised to:*

(1) Safeguard assets against loss or unwarranted use;

(2) Ensure that only those authorized individuals designated by the recipient organization's direction will receive, deposit, and/or disburse grantor agency program funds; and,

(3) Ensure that controls are established which provide for the separation of responsibility in requesting, receiving, and reporting Federal funds.

d. *The recipient organization is constantly aware* of its cash position as related to its current disbursement needs. The daily maintenance of the suggested Federal Cash Control Register (Figure 6) or a similar document or methodology would enhance this awareness and facilitate the completion of the Daily Status of Federal Funds Report referenced in paragraph 13.

e. *Cash on hand is the minimum needed* for disbursements to be made immediately or within a few days.

f. *Cash advances to a recipient organization* shall be limited to the minimum amounts needed and shall be timed to be in accord only with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursement by the recipient organization for direct program costs and the proportionate share of any allowable indirect costs.

g. *Cash advances made by primary recipient organizations* (those which receive advances directly from the Federal Government) to secondary recipients shall conform to the same standards of timing and amount as apply to advances by the grantor agency to primary recipient organizations, including the furnishing of reports of cash disbursements and balances. Primary recipient organizations are encouraged to develop procedures similar to the Federal letter of credit for use in providing funds to secondary recipients. Secondary recipients can then draw on the primary recipient as funds are needed for disbursement:

h. *When a recipient organization receiving advance funds by a letter of credit* has demonstrated to the grantor agency an unwillingness or inability to establish procedures that will minimize the time elapsing between advances and the disbursement thereof, the grantor agency shall require the recipient organization to finance its operations with its own working capital, and payments to the recipient organization shall be made by Treasury check to reimburse it for actual cash disbursements. The grantor agency, in turn, will process such reimbursements. The grantor agency, in turn, will process such reimbursements expeditiously so as to minimize the time elapsing between disbursement by and payment to the recipient organization.

7. *Planning Letter of Credit Withdrawals.* Recipient organizations are expected to exercise sound financial judgment and planning to ensure that the requirements for maintaining minimum cash balances are met. In carrying out this responsibility, the disbursing pattern and calculated mail time must be ascertained so that withdrawals are timed as closely as is administratively feasible to actual cash disbursements. In preparing the SF-183:

a. *Determine when funds will be needed* considering such key factors as payroll dates, other fixed costs and payments to be made to subgrantees and contractors; and,

b. *Determine the time required* from transmittal of the SF-183 to the Treasury Regional Disbursing Office to the depositing of the Treasury check.

Example. $20,000 will be needed on the 15th of the month in order to meet payroll expenses, pay bills on hand, and provide funds to subgrantees to meet their current disbursing needs. Normal mail time from the date the SF-183 is submitted to the date the Treasury check is received by the bank is seven days. Therefore on approximately the 8th of the month, the recipient organization should mail the SF-183 to the Treasury RDO.

8. *Use of Request for Payment on Letter of Credit and Status of Funds Report, SF-183, To Obtain Federal Funds.*

a. *To obtain Federol funds, a recipient organization will prepare* a Request for Payment, SF 183, and forward it to the appropriate RDO indicated on the LOC. Figure 3 contains a sample form and detailed instructions for completion. Note that Sections I, II, III and IV must be completed before submission to the RDO.

b. *A supply of SF 183's has been provided* to each grantee operating under the letter of credit procedure. An additional supply of forms may be obtained from the grantor agency.

c. *The distribution of the copies of SF 183,* as shown on the bottom of each copy is as follows:

(1) Original, duplicate, and quintuplicate to the RDO;

(2) Triplicate to the address in paragraph 3c;

(3) Quadruplicate to be retained by the recipient organization.

d. *It is intended that each Request for Payment* will be drawn only in accordance with the grantee's actual immediate or current cash needs. Drawdowns shall not ordinarily be made more frequently than daily, or be in amounts less than $5,000 or more than $5,000,000, unless stated on the letter of credit.

e. *The block "Agency Station Symbol:"* on the SF 183 will show the grantor agency Station Symbol, "15.04.8701."

f. *Each SF 183 drawn will contain* the number identifying the particular Request for Payment document number. The number of the request for Payment will commence with "1" for each letter of credit and will progress in consecutive order. Alphabetical designations will not be used as part of the document number. Amendments to the letter of credit, or rejected requests for payment, do not interrupt the progression of the numbers assigned to the Request for Payment by the drawer.

9. *Deficient SF 183.* If a deficiency on the SF 183 is detected, a deficiency notice will be issued by the RDO and sent to the grantor agency. The grantor agency will then contact the recipient organization. A deficient SF 183 is not ordinarily rejected. However, repeated deficiencies of a similar nature by the same recipient organization may be cause for rejection with the concurrence of the grantor agency. The following are reasons for the issuance of deficiency notices:

a. *There is a difference between the name and address* information of the drawer on the SF 183 and the name and address of the drawer on the SF 1193A.

b. *The address of the payee on the SF 183* is different from the address of the payee on the related SF 1193A.

c. *Any other required information on the SF 183* is incomplete or inaccurate and the grantor agency approved payment.

d. *The cents are left off the amounts* in Section I, II, and/or III.

e. *The Amount Requested in Section I of the SF 183* is less than $5,000 and is not the final drawdown on the available balance.

f. *The signature(s) of the official(s)* authorized to certify requests for payment differs slightly (example: using first two initials and last name instead of the full signature) from the signature(s) on the SF 1194 but otherwise corresponds to the established required signature(s), and the Treasury Disbursing Office approves payment.

10. *Criteria for Rejection of SF 183.* The Request for Payment will also be examined for errors, deficiencies, or omissions of a more severe nature which may necessitate the rejection of the request. There are definitive reasons for the rejection of an SF 183 and the Treasury Disbursing Office will contact the grantor agency prior to any rejection. The reasons for rejection are:

a. *An unauthorized or invalid signature.* (Erasures, painting over with correction fluid, or tapeovers are unacceptable.)

b. *The amount requested in Section I* is greater than the available balance.

c. *The name of the payee to whom* the check is to be issued is not identical to the name of the payee shown in the "Treasury Checks To Be Made Payable To:" block of the related SF 1193A.

d. *The "Amount Requested" block in Section I* is left blank, erased, painted over with correction fluid, or taped over.

e. *Discrepancies exist elsewhere on the SF 183* and the Treasury Disbursing Office cannot obtain correct information from the grantor agency and/or its own file.

f. *If the amount requested is more than $5,000,000* and the grantor agency has not provided an amendment to the related letter of credit authorizing drawdowns of more than $5,000,000.

g. *Excessive funds in the hands of the recipient organization* as determined by Treasury and/or the grantor agency.

h. *A written request from the grantor agency* to withhold payment for a reason other than those listed above. An authorized certifying officer of the grantor agency shall provide written confirmation of this request.

11. *Procedure for Rejecting SF 183.* If there is a reason for rejecting the SF 183 after the Treasury Disbursing Office's examination, the following procedures will generally be implemented:

a. *The Treasury Disbursing Office will contact* the grantor agency prior to any rejection to ask for necessary information and advice on whether payment should be made. If adequate advice is not readily received, the Treasury Disbursing Office places the SF 183 in a "Pending Rejection Status."

b. *Upon being contacted by Treasury,* the grantor agency will notify the grantee and will attempt to resolve the problem.

c. *If the grantor agency does not contact the Treasury Disbursing Office* and instruct it to pay the SF 183 by the close of business of the third workday following the initial call, the SF 183 is automatically rejected upon the opening of business on the following workday.

d. *The original of the rejection notice is sent* directly to the recipient organization by the RDO.

e. *A copy of the rejection notice,* along with the duplicate of the rejected SF 183, is sent to the grantor agency.

12. *Emergency Payment Procedures.* If warranted, emergency payment procedures may be initiated by the RDO at the request of the grantor agency. An emergency situation can generally be said to exist when a requested payment on a letter of credit is not received by the recipient organization two days after the expected receipt date. The use of two days as a guideline should be done only with consideration given to the local history of requesting Federal funds using the U.S. Postal Service. Adhere to the following procedures when an emergency situation arises:

a. *Contact with the Treasury Disbursing Office* is made by the grantor agency and NOT by the recipient organization. Therefore, only the authorized certifying officer of the grantor agency may request that emergency procedures be invoked. The grantees must provide the grantor agency with the following information when there is a need to make an emergency request for funds:

(1) Letter-of-Credit number;

(2) Document number, if available;

(3) Amount requested;

(4) Exact information from block entitled "Make Treasury Check Payable to:" on SF 183;

(5) Date of SF 183 certification; and

(6) Date SF 183 was mailed to the Treasury Disbursing Office (if different from the date of certification).

Note.—The Treasury Disbursing Office will use this information to make a decision on the type of emergency procedure to invoke; therefore, this information must be correct.

b. *If it is determined that the SF 183 has been lost* in transit to the Treasury Disbursing Office, and if time permits the grantor agency contact should request the recipient organization to submit a "Second Original" SF 183. This SF 183 must have the legend "Second Original" affixed at the top of the original and all copies of the form.

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c. *If the grantor agency advises* the Treasury Disbursing Office that the issuance of a check in the regular manner will not provide the funds to the recipient organization by the date needed, utilizing the original or the second original of the SF 183, the Treasury Disbursing Office is authorized to effect payment by means of an existing wire transfer technique. The use of the wire transfer technique can be done only after the Treasury Disbursing Office receives either the original or the second original SF 183.

d. *If, in the judgment of the Treasury Disbursing Office,* the emergency payment cannot wait until receipt of the original or a second original SF 183, and the grantor agency requests, payment may be effected outside the letter-of-credit system. Such a payment must be confirmed with an SF 1166, "Voucher and Schedule of Payments," signed by a grantor agency certifying officer authorized to certify regular payments. Wire transfer facilities may be utilized if appropriate and available.

e. *When a payment is effected outside* the letter-of-credit system, it is the grantor agency's responsibility to determine if the additional advance can be offset against a future increase in the letter of credit authorization or if an amendment is necessary to reduce the current letter of credit authorization (SF 1193A).

13. *Reporting Requirements.*

a. *The grantor agency will furnish to Treasury*

(1) These reports are requested on a selected basis by Treaury at least once a year. Treasury determines which organizations will be required to prepare the report(s) and which month(s) will be reported.

(2) Reporting must conform to the format illustrated and explained in Figure 5 to this appendix.

(3) One copy of each requested report must be forwarded by the grantor agency to Treasury within 30 days after the date of the Treasury's request.

b. *LOC grantees* must structure their accounting records to ensure timely compliance with Treasury's request for completion of a Daily Status of Federal Funds Report. The maintenance of a register similar to that illustrated in figure 6 would assist in the preparation of this report.

c. *Treasury and the grantor agency* shall use the information furnished on the Daily Status of Federal Funds Report to evaluate compliance with sound cash management practices and the requirements set forth in this appendix.

Note.—The submission of the Report of Federal Transactions, Attachment H–2 to OMB Bulletin A–102, is no longer required of grantees under the RDO/LOC system.

Note.—Figures 1 through 6 filed with the Office of the Federal Register as part of the original document.

Appendix 8.—Financial Status Report (H–1 Report and H–1 Turnaround Document)

Note.—Contents of Appendix 8 filed with the Office of the Federal Register as part of the original document.

Appendix 9.—Elements of an Accounting System (Suggested Outline—Sample Only)

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls for itself and ensuring that an adequate system exists for each of its subgrantees and contractors.

a. *Elements of Accounting System.* Accounting systems are made up of a series of operations which involve classifying, recording, summarizing, and reporting transactions. Elements of the system must consist of an account structure, accounting records, source documents, a system for coding financial transactions, and written procedures prescribing the manner in which and by whom these operations are performed. A grantee's accounting system must include the following:

(1) System coding or classification must permit summarization and reporting of grant expenditures by specific programs, projects, uniform receipt and expenditure classifications, and major steps funded in the approved budget cost categories.

(2) Accounting records should adequately identify the receipt and the expenditures of each grantee, subgrantee or contractor.

(3) Accounting records, which must include a ledger and supporting books of account, should refer to subsidiary records or documentation which support each entry and which can be readily located and identified with the grant.

(4) Accurate, current, and complete financial reporting information.

(5) Systems integration with an adequate system of internal controls to safeguard grant funds and properties, check the accuracy and reliability of accounting data, promote operational efficiency, and encourage adherence by the grantee to prescribe management policies.

b. *Accounting systems* are generally one of three kinds:

(1) *Cash Basis*—Expenses are recorded when cash is spent and revenues are recorded when cash is received. This system provides little information on which to base expenditure planning.

(2) *Obligation Basis*—Where expenses are recorded when the funds are obligated. This system is little used and is not preferred.

(3) *Accrual Basis*–Revenues are recorded when goods or services are delivered and expenses are recorded when goods or services are consumed without regard to the timing of the exchange of cash. This system is preferred because it best matches revenues and expenses with the period in which they are actually earned or accrued. Accrual accounting also contains information on the receipt and disbursement of cash.

c. *Internal Controls.* The grantee must establish and maintain a system of internal controls adequate to safeguard grant funds and resources, check the accuracy and reliability of the grant accounting and financial data, promote the operational efficiency of the grantee, and encourage adherence to the grantee's prescribed managerial policies.

Appropriate internal controls area comprised of a plan of organization (grantee policies, structure, division of staff functions, procedures, staff qualifications, etc.) designed to provide the grantee with effective financial and operational control over both its grant programs or projects.

The degree of internal control is dependent upon the size of the grantee and the funds and resources for which the grantee is responsible. The following criteria are basic to an adequate system of internal control:

(1) Operating policies must be clearly stated; systematically communicated throughout the organization; in conformance with applicable laws and external regulations and policies; and designed to promote the execution of authorized activities effectively, efficiently, and economically.

(2) Organizational structure must define and assign responsibility for the performance of all duties necessary to carry out the functions of the grantee.

(3) Responsibility for assigned duties and functions of the grantees must be classified according to authorization, performance, record keeping, custody of resources, and review, to provide proper internal checks on performance and to minimize unauthorized internal checks on performance and to minimize unauthorized, fraudulent, or otherwise irregular acts.

(4) A system of forward planning, embracing all phases of the grantee's operation, must be developed to determine and justify financial, property, and personnel requirements

and to carry out grant operations effectively, efficiently, and economically.

(5) Grant procedures must be simple, efficient, and practicable, giving due regard to the nature of the grant and applicable legal and regulatory requirements. Feasibility, cost, risk of loss or error, and availability and suitability of personnel are factors that should be considered in formulating the procedures.

(6) An adequate system of authorization, record keeping, and transactions coding procedures must be designed by the grantee to ensure compliance with prescribed grant requirements and restrictions of applicable laws, regulations, and internal management policies; to prevent illegal or unauthorized transactions; and to provide proper accounting records for the expenditure of grant funds.

(7) An adequate and efficiently operated information system must be designed to provide prompt, essential, and reliable operating and financial data to the grantee responsible for decision-making and performance review.

(8) The performance of all duties and functions of grantee personnel must be properly supervised. All performance must be subject to adequate review under an effective internal audit program to determine whether performance is effective, efficient and economical and whether management policies are observed; applicable laws, prescribed regulations, and grant conditions are obeyed; and regulations, and unauthorized, fraudulent, or otherwise irregular transactions or activities are prevented or discovered.

(9) The qualifications of officials and employees with regard to education, training, experience, competence, and integrity must be appropriate for the responsibilities, duties, and functions assigned to them.

(10) Each official and employee must be fully aware of his/her assigned responsibilities and understand the nature and consequences of his/her performance. Each must be held fully accountable for the honest and efficient discharge of his/her duties and functions, including, where applicable, the custody and administration of funds and property, and compliance with grant regulations and legal requirements.

(11) Effective procedures must be implemented for expenditure control to ensure that needed goods and services are acquired at the lowest possible cost; that goods and services paid for are actually received; that quality, quantity, and prices are in accordance with applicable contracts or other authorizations by grant officials and that such authorizations are consistent with applicable statutes, regulations, policies, and grant requirements.

(12) All funds, property, and other resources for which the grantee is responsible must be appropriately safeguarded and periodically inventoried to prevent misuse, unwarranted waste, deterioration, destruction, or misappropriation.

d. *Management System.* The grantees should have a management system meeting the following criteria:

(1) Established State, local government, and organization administrative and fiscal practice and policies must be followed by subordinate bodies in the administration of Federal grant funds.

(2) When no established policies and practices govern, reasonable and prevailing administrative and fiscal practices in the area (preferably adapted from public practice) shall be formally adopted and made a matter of record. The record must contain documentation showing that the standards of reasonableness and prevailing practice have been met.

(3) Administrative and fiscal policies must be applied consistently regardless of the source of funds.

e. *Budget and Accounting.*

(1) Establish indirect cost budgets on a basis consistent with the way resources are to be consumed and accounted for.

(2) Record all applied direct costs in work accounts on a basis consistent with the budgets in a formal system that is controlled by the general books of account.

f. *Analysis by the Grantee.*

(1) Identify at the work account level on a monthly basis using data from, or reconcilable with, the accounting system:

(a) Budgeted cost for work scheduled and budgeted cost for work performed.

(b) Budgeted cost for work performed and applied direct costs for the same work.

(c) Variances resulting from the above comparisons classified in terms of labor, materials, or other appropriate elements together with the reasons for significant variances.

(2) Identify on a monthly basis in the detail needed by management for effective control, budgeted indirect costs, actual indirect costs and variances along with the reasons therefor.

(3) Summarize the data elements and associated variances listed in 1 and 2 above through the grantee organization and to the reporting level specified in the grant.

(4) Identify on a monthly basis significant differences between planned and actual technical performance together with the reasons therefor.

(5) Identify managerial actions taken as a result of the above.

(6) Monitor the effectiveness of actions taken to resolve problems or correct deficiencies.

(7) Based on performance to date and on estimates of future requirements, develop revised estimates of cost at completion for elements identified in the grant and compare these with the grant baseline budgets, with current budgets.

g. Revisions and Access to Data.

(1) Incorporate grant changes in a timely manner recording the effects of such changes in budgets and schedules.

(2) Prohibit retroactive changes to records pertaining to work performed that will change previously reported amounts for applied direct costs, or indirect costs, except for correction of errors and routine accounting adjustments.

(3) Prevent revisions to the grant budget baseline except for Government-directed changes to authorized effort, that is, scope, work, and schedules.

(4) At the time changes occur, advise the grantor agency of any changes to baseline budgets or schedules.

(5) The duly authorized representatives of the grantor agency shall be provided access to all of the foregoing information and records in support thereof.

h. *Personnel and Compensation.*

(1) The organization will operate under a comprehensive plan that includes a scale of rates or ranges based upon the responsibilities of each position and its relationship to other positions.

(2) Compensation paid shall be reasonable. Compensation will be considered reasonable if it is a part of a public compensation plan prescribed for the grantee, or if it is comparable to that paid for similar work in the labor market in which the grantee must compete for the kind of employees involved.

(3) The compensation plan must include provisions concerning weekly hours of work; payment, if any, for overtime work; prior approval of all overtime work; and provisions establishing for each authorized part-time position the number of hours to be served each pay period by the incumbent.

(4) In the absence of an applicable public fringe benefit plan, fringe benefits extended to employees must be reasonable and of general application. Fringe benefits will be considered reasonable if they are comparable to the

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benefits extended to employees of similar organizations in the same area.

i. *Safeguarding of Assests.* All funds, property, and other resources for which the grantee is responsible shall be appropriately safeguarded and periodically inventioned under appropriate policies and procedures.

Appendix 10.—LEAA Revolving Funds

1. *Purpose.* This appendix sets forth the responsibilities and procedures for the operation of the LEAA Relvolving Fund established by Title I, Part F, Section 521(e) of the Omnibus Crime Control and Safe Streets Act of 1968 as amended and by Title I Part H. Section 817(f) of the Justice System Improvement Act of 1979.

2. *Scope.* This appendix applies to a Block Action, Part D formula or Parts E or F Grant that has as its primary function the acquisition of stolen goods and property.

3. *Effective Date.* This appendix applies to all applicable Block Action and Discretionary Grants in operation as of October 15, 1976 or Part D formula or Parts E or F grants awarded thereafter. Any project income realized after October 15, 1976 is subject to this guideline.

4. *Management.* The LEAA Revolving Fund is financially managed by the Comptroller's Office with appropriate program support from the LEAA. However, individual CJCs have the responsibility for identifying Block Action or Part D formula grants subject to this guideline and also for forwarding the pro rata Federal share of project income to the LEAA Revolving Fund.

5. *Procedures for the Operation of the Revolving Fund.* The following steps must be taken by all grantees or subgrantees having project operations.

a. *Property Record.* All grantees or subgrantees will keep a "Property Record" of all stolen goods or property acquired by project operations.

(1) Such records will include, at a minimum, the following information.

(a) Grantee/subgrantee name and grant number.

(b) Type of Property, brand or business name, and identification number(s), e.g., Kodak XL Movie Camera, Serial #206365 or Bank Americard #42327330007350.

(c) Amount of project funds expended to acquire each item of stolen goods or property.

(d) Estimated retail value of each item of stolen goods or property acquired by project operation.

(e) Date stolen goods or property was acquired by the project.

(f) Original owner of stolen property if identified.

(g) Name of insurance company for insured stolen goods or property if identified.

(h) Status of property recovered; e.g., held for evidence; claimed by owner; held for sale of auction; etc.

(2) The grantee or subgrantee will forward a copy of the completed Property Record to LEAA, 633 Indiana Avenue, N.W., Washington, D.C. 20531, within 60 days after the termination date of each separate operation during the life of the grant.

b. *Project Income.* All income generated by the project which includes but is not limited to the income from operation of an undercover front business or the sale of unclaimed stolen property may be RETAINED by the grantee or subgrantee and NOT sent to the LEAA Revolving Fund providing:

(1) The grant (including continuation funding) is still active and has an undercover operation still functioning or being developed;

(2) The grantee or subgrantee is not prohibited by state or local laws or regulations from adding the income back into the grant; and,

(3) The grantee or subgrantee agrees to add the income to the confidential expenditure (buy money) category of the budget.

If a grantee or subgrantee cannot abide by the above criteria, then the income MUST be sent to the LEAA Revolving Fund. Also, income not expended at the termination of the grant and any income received after such termination must be forwarded to the LEAA Revolving Fund. This income should be returned to the LEAA Revolving Fund according to the percentage of Federal funds in the grant.

c. *Royalties.* Funds arising from the sale, by the grantee or subgrantee or project participants in the grant, of publication or film rights resulting from the project, must be submitted to the LEAA Revolving Fund. This applies to royalties earned during the grant period or after the grant is terminated.

d. *Sale of Unclaimed Stolen Goods or Property.* Grantees of subgrantees are responsible for the storage and sale of unclaimed stolen goods or property. The normal expenses incurred by the grantee or subgrantee for the storage and sale of unclaimed stolen goods or property may be deducted from the funds received from the sale. The remaining funds are considered income.

e. *Submitting Funds to the LEAA Revolving Fund.* Funds submitted to the LEAA Revolving Fund should be by checks made out to the "LEAA Revolving Fund" and mailed to the Office of the Comptroller, OJARS, 633 Indiana Avenue, N.W., Washington, D.C. 20531. IT IS IMPORTANT that no other project related documents be included with the check.

f. *Disbursements from the LEAA Revolving Fund.* Monies in the Revolving Fund are disbursed by the award of categorical grants in support of the LEAA Anti-Fencing subprogram.

6. Claims Against Owners of Recovered Stolen Property. Section 521(e) of the Crime Control Act, as amended, and Section 817(f) of the Justice System Improvement Act of 1979, gives the Administrator the authority at his discretion to assert a claim against owners of recovered stolen property in the amount to Federal funds used to purchase such goods or property. This authority is exercised only when the equities and the circumstances property warrant it.

7. *Coordination.* All contact relative to the Revolving Fund or the LEAA Anti-Fencing subprogram, should be made directly to LEAA.

Appendix 11.—ADP Equipment Procurement Review Form (Suggested Format—Sample Only)

CJC: _____
CJC File No: _____
Date: _____
Applicant: _____
Applicant File No: _____

I. Equipment to be purchased:
Description _____
Cost _____
(State)$ _____
(Federal)$ _____

Other ADP Expenditures Under Grant
Description _____
Cost _____
(State)$ _____
(Federal)$ _____
*Total Federal $ _____

II. Review Criteria

1. Has the grantee indicated that ADP equipment of the type to be purchased was identified within the grant application and is necessary and sufficient to meet the project goals? Yes—— No——

2. Has the grantee certified that the ADP equipment procurement is in compliance with existing Federal, state, and local laws and regulations? Yes—— No——

3. Has the grantee conducted a purchase/lease comparison demonstrating that it is more advantageous to purchase rather than lease the ADP equipment under consideration? Yes—— No——

4. If software development is involved, has the grantee demonstrated that computer software already produced and available will not meet the needs of the grant? Yes—— No——

5. If the ADP equipment procurement is to be sole-source, has the grantee submitted adequate documentation to justify the action? Yes—— No——

III. Other Comments:

IV. Recommendations:
Approve: _____
Disapprove: _____
Authorized CJC Official _____
Date _____
Approve: _____
Disapprove: _____
Authorized Grantor Agency Official _____
Date _____

*If federal grant funds totalling in excess of $50,000 have been used for ADP procuremenls, then prior approval is required.

Appendix 12.—Guidelines for Confidential Expenditures

Confidential funds are those funds allocated to three types of law enforcement undercover operations.

1. The first category is confidential investigative expenses for purchase of services (P/S) and would include travel or transportation of a non-federal undercover officer or an informant. The lease of an apartment, business front, luxury-type automobiles, a boat or aircraft or similar affects to create or establish the appearance of affluence, credibility and a general atmosphere conducive to the undercover role would also be in this category. Meals, beverage, entertainment and similar expenses for undercover purposes, within reasonable limits, would also be included.

2. The second category is confidential funds for the Purchase of Evidence (P/E). This category would include the purchase of evidence and/or contraband such as drugs, firearms, stolen property, counterfeit tax stamps, etc., required to determine the existence of a crime or to establish the identity of a participant in a crime.

3. The third category is confidential funds for the Purchase of Specific Information (P/I) from informants. All other informant expenses would be confidential investigative expenses (P/S) and would be charged accordingly.

Confidential expenditures are subject to prior approval by the grantor agency. Such approval will be based on a finding that they are necessary and reasonable for proper and efficient administration of the program under which they are to be used. In this conjunction, the grantor agency will make a finding also that the controls over the disbursement are adequate to safeguard misuse of such funds.

1. Confidential expenditures will be authorized for subgrants at the State, county, and city level of law enforcement. For the purpose of this expenditure, a city will be defined as having a population in excess of 50,000.

2. The maximum amount of confidential funds allowable within a grant shall be based upon the following criteria:

(a) Unprogrammed Funds—(funds not committed to specific undercover/investigative operations)—15% of total project amount.

(b) Programmed Funds—(funds committed to specific undercover/investigative operations, e.g., anti-fencing ["store-front"])—limit based upon projected needs for the specific operation or operations.

3. The funds authorized will be established in an imprest fund controlled by a bonded cashier.

4. The supervisor of the unit to which the imprest fund is assigned must authorize all advances of funds up to $500 to agents or officers for the purchase of information. Advances and payments in excess of $500 must be approved by the project director. Such authorization must specify the information to be received, the amount of expenditures, and assumed name of informer.

5. There must be maintained by the investigation unit confidential files of the true names, assumed names, and signature of all informers to whom payments of confidential expenditures have been made. To the extent practicable pictures and/or fingerprints of the informer payee should also be maintained.

6. The cashier shall receive from the agency or officer authorized to make a confidential payment, a receipt for cash advanced to him for such purposes.

7. The agent or officer shall receive from the informer payee a receipt of the following nature:

Figure 1. Receipt From Informer Payee

Receipt

For and in consideration of the sale and delivery to the (State, County, or City of _____ of information or evidence identified as follows:

_____

_____

_____

I hereby acknowledge receipt of $_____ paid to me by (State, County, or City) of _____

Date: _____

Signature: _____

(Witness, if any)[1]

8. The signed receipt from the informer payee with a memorandum detailing the information received shall be forwarded to the agent or officer in charge. The agency or officer in charge shall compare the signature on the receipt with the confidential file of assumed name signatures. He shall also evaluate the information received in relation to the expense incurred, and add his evaluation remarks to the report of the agent or officer who made the expenditure. A certification of payment to the cashier will serve as support for the expenditure from the imprest fund. The certification will be witnessed by the agent or officer in charge on the basis of the report and informer payee's receipt.

9. Each agent or officer in charge shall prepare a quarterly report showing status and reconciliation of the imprest fund and itemizing each payment, name used by informer payee, information received and use to which information was put. This report must be made part of the files and reviewed quarterly by the head of the law enforcement agency to which the subgrant was made.

10. In each instance when grant funds are used for confidential expenditures, it will be understood that all of the above records, except the true name of the informer, are subject to the record and audit provisions of the grantor agency legislation.

Confidential expenditures from Block Part C or Part D formula funds will be allowable only with the specific prior approval of the grantor agency. Such approval must be obtained from the grantor agency by the CJC or subgrantee. The submission for approval must contain the following information:

1. Identity of subgrant and project, and estimated amount of funds to be used for confidential expenditures;

2. Identity of the agent or officer in charge of investigation and name of the bonded cashier; and

3. A copy of the grantee/subgrantee written procedures to be used to safeguard these funds if they differ from the grantor agency's procedures.

Figure 2. Certification

(Appropriate Office Head)
(Name, Position, Grant Title, Location and Number)

Disbursement of Funds for Confidential Expenditures

This is to certify that I have read, understand and agree to abide by all of the conditions for confidential expenditures as set forth in chapter 5, paragraph 63 and Appendix 12 of the effective edition of Guideline Manual 7100.1, Financial and Administrative Guide for Grants.

Date _____

Signature (Project Director) _____

[1]The witness requirement will not in all instances be mandatory, depending on the nature of the meeting and exchange of funds. A requirement should be in effect that on 25 percent of the contracts, when payments are made, a second agent appear as the witness to the transaction. In addition, on 10 percent of the meetings the agent or officer in charge should be present to verify the payment to the informer.

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Appendix 13. Statutory and Regulatory Requirements Applicable to a Criminal Justice Council (CJC)

I. *Statutory and Regulatory Requirements Which Must Be Audited (Mandatory).*

1. *General Fiscal Controls.* Auditors must review, test and evaluate the CJC's:

a. Organizational structure, delegations of authority and functional statements to determine whether fiscal dutie and reponsibilities have been adequately defined and there is an adequate separation of finance and accounting duties and responsibilities.

b. Accounting system and account structure, including the necessary interrelationships with the State's central accounting system, to ensure that the accounting system will provide for:

(1) Receipt, disbursement and expenditure of each grant award, including all matching contributions and, where applicable, program income, interest and refunds from subgrantees, in accordance with grantor agency reporting requirements;

(2) Comparison of actual with budgeted amounts for each grant; and,

(3) Accounting records which are supported by source documentation.

c. Procedures for preparing, verifying and submitting accurate and timely financial reports to the grantor agency.

d. Policies and procedures for supervising and monitoring the financial affairs of its subgrantees insofar as they relate to programs or projects for which Federal funds have been made available. In this regard, the auditor should determine whether:

(1) Adequate fiscal guidelines have been developed and disseminated to inform subgrantees of their responsibilities with respect to accounting for and managing subgrant funds;

(2) Adequate policies, procedures and plans have been developed and implemented for on-site financial monitoring of subgrantees;

(3) Adequate controls have been developed and implemented for the receipt and verification of subgrantees fiscal reports; and

(4) Adequate controls over the purchase, use and disposition of nonexpendable property at the subgrantee level have been developed and implemented.

2. *CJC Fiscal Operations.* Auditors must review, test and evaluate the CJC's fiscal policies, procedures and actual practices, as necessary, to determine compliance with the following requirements.

a. Federal ratios of participation in the funding of programs and projects.

b. Expenditure of funds in accordance with grantor agency guidelines governing the allowability and allocability of costs applicable to agency grants;

c. Expenditure of grant funds in accordance with the applicable budgets approved by the grantor agency;

d. Proper obligation and expenditure of funds within the prescribed grant periods;

e. Drawdown, receipt and deposit of federal funds under the letter of credit authority;

f. Utilization and disposition of nonexpendable property acquired in whole or in part with grant funds; and,

g. Standards for the procurement of supplies, equipment, construction, and other services with grant funds.

3. *Planning Performance and Other Responsibilities Under the Grant.* Auditors must review the CJC's policies, procedures and actual practices, as necessary, to verify the correctness of data contained in its latest grant application submitted to the grantor agency relative to:

a. State assumption of cost;

b. Entitlement vs. non-entitlement;

c. The CJC's strategy for monitoring the implementation, operation, and results of all the projects it supports and for intensively evaluating the results and impact of selected activities;

d. The special planning requirements for CJCs which participate in the JJDPA. programs; and,

e. The requirements under Title VI of the Civil Rights Act of 1964 and the equal employment opportunity regulations of the Department of Justice.

4. *Special Requirements to be Met in the Comprehensive Plan.* Auditors must review the CJC's policies, procedures and actual practices, as necessary, to verify the correctness of data contained in its latest comprehensive plan submitted to the grantor agency relative to:

a. Maintenance of effort for juvenile justice under the Crime Control Act;

B. Equitable distribution of funds under the JJDP Act within the state; and

C. Use of at least 75 percent of the JJDP Act funds for support of advanced techniques in the area of juvenile justice.

5. *Special and General Grant Conditions and Assurances.* Auditors must determine, as appropriate, whether the CJC complied with the special and general conditions and assurances imposed on each grant received during the aduit period.

6. *Audit of Subgrantees*—Due to the variability of program structures and agencies receiving subgrant funds, it is not possible to identify all the areas of coverage for all subgrantees. However, certain broad areas of audit coverage are applicable to most subgrantees and the auditor must:

a. Determine the adequacy of the subgrantee's accounting system, with specific emphasis on the following, if applicable:

(1) The accounting system provides for the necessary fiscal controls to safeguard the funds and assets covered;

(2) The accounting system provides the separation needed to adequately identify the receipt of funds under each subgrant awarded and the expenditure of funds for each subgrant;

(3) The accounting system provides for the recording of total expenditures for each subgrant by approved budget categories;

(4) Entries in summary records refer to subsidiary records and/or source documents which can be readily identified and located; and,

(5) The accounting records provide accurate and current financial reporting information.

b. Perform the tests necessary to determine the allowability of costs on the basis of the appropriate local/State and Federal laws and regulations and generally accepted practices.

c. Determine whether the project was carried out in accordance with the programmatic intent as defined in the project's subgrant application.

d. Determine compliance with the special and general subgrant conditions and assurances imposed upon the subgrant award.

e. Determine whether subgrant funds were properly obligated and expended within the approved subgrant period and budget.

f. Determine whether the subgrantee contributed the required matching contributions as stated in the subgrant application.

g. Where applicable, determine whether project income was properly accounted for and applied toward the project goals and objectives.

h. Where applicable, determine whether all procurements (including the purchase of services) made under the project were in accordance with local/State and Federal procurement standards.

i. Where applicable, determine compliance with local/state and Federal property management, control and disposition requirements.

j. Determine whether cash-in-hand was limited to meet the immediate operating needs of the project.

k. Determine compliance with the special grantor agency requirements relative to the Civil Rights Act and Equal Employment Opportunity Regulations.

1. For audits of subgrantees receiving planning funds, ascertain whether the local/regional planning office has complied with the CJC and grantor agency requirements governing their administrative and functional responsibilities relative to:

(1) Planning;

(2) Monitoring and evaluating, where applicable;

(3) Operations and functions of the local/regional planning councils including any committees thereof; and,

(4) Public accessibility to council and committee meetings and the maintenance of minutes of such meetings.

7. *Follow-up on Prior Audits—Auditors must review the actions taken on the findings and recommendations contained in the previous audit report on the CJC.*

a. Where no corrective actions have been taken, determine whether the problems still exist and whether there is still a need for remedial actions. If so, describe the situations and include appropriate recommendations for remedial actions.

b. Where CJC officials advised the grantor agency that corrective actions have been taken, review the actions taken. Based upon inquiry, observation and test, determine whether the actions taken eliminated the problems. If the problems still exist, describe the situation and indicate what further actions are required.

II. *Statutory and Regulatory Requirements to be Audited as Deemed Necessary and Appropriate by the Auditor.*

1. *CJC Fiscal Operations. Review, test and evaluate the CJC's fiscal policies, procedures and actual practices, as necessary, to determine compliance with the following requirements:*

a. Pass-through of planning and Part C block funds to local units of government;

b. Buy-in of the non-Federal funding required of units of general local government;

c. Source, type and timing of hard match provided under each grant;

d. One-third personnel limitation on use of part C action grant funds;

e. Non-supplanting of State or local funds;

f. Special limitations on funding construction projects; and

g. Twenty percent contract limitation on use of planning funds.

2. *Performance of Planning and Other Responsibilities Under the Grant.* Review the CJC's policies and actual practices, as necessary to verify the correctness of data contained in its latest grant application submitted to the grantor agency relative to the creation, organization, membership (selection/composition), responsibilities and operation of State judicial planning committees and their relationship to the CJC;

3. *Special Requirements to be met in the Comprehensive Plan.* Review the CJC's policies, procedures and actual practices, as necessary, to verify the correctness of data contained in its latest comprehensive plan submitted to the grantor agency relative to:

a. Continuation support for programs funded under the JJDP Act;

b. The CJC's program of technical assistance or services for criminal justice operating agencies within the State.

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[FR Doc. 80-33910 Filed 10-30-80; 8:45 am]
BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-80-101-M]

AMAX Chemical Corp.; Petition for Modification of Application of Mandatory Safety Standard

AMAX Chemical Corporation, P.O. Box 279, Carlsbad, New Mexico 88220 has filed a petition to modify the application of 30 CFR 57.4-27 (fire extinguishers on self-propelled mobile equipment) to its AMAX Mine and Mill located in Eddy County, New Mexico. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of fire extinguishers mounted on electric face equipment.

2. Petitioner has found that stored-pressure fire extinguishers equipped with pressure gauges are best suited to underground equipment as operators can easily check the condition of extinguishers during each start-of-shift inspection.

3. Petitioner has also found that having fire extinguishers mounted on face equipment frequently results in loss of pressure from vibration and/or damage to extinguisher valve mechanisms. This can occur anytime during a shift without the operator's knowledge.

4. In order to better maintain the extinguishers in usable condition, the petitioner proposes an alternate means of providing suitable fire extinguishers readily accessible to operators of self-propelled mobile face mining equipment and electric shuttle cars. This proposal would apply only to equipment powered through trailing cables, with travel distance from a power distribution center limited to the length of cable on each machine.

5. Fire on any of the equipment referred to above will be of electrical origin and the first step by an operator will be to open his or her breaker and disconnect the cable at the power distribution center.

6. As an alternate method, petitioner proposes to maintain one five-pound fire extinguisher at each of the four power distribution centers located along the last open break in each mining section rather than require an extinguisher on each piece of face equipment.

7. Petitioner states that such an arrangement would facilitate maintenance of fire extinguishers in face areas and assure that an extinguisher in usable condition is readily accessible to operators of face equipment at all times.

8. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before December 1, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: October 21, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-34009 Filed 10-30-80; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-80-137-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Blacksville No. 1 Mine located in Monongalia County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that personnel travel intake and return airways to make examinations for hazardous conditions and conduct methane tests.

2. Due to the deterioration of the roof conditions in the old heading of the mine and the continuing effects of the presence of water, it is becoming hazardous for mine personnel to travel the entries of the mine's 1 North headings.

3. These entries were developed in late 1969 and early 1970 and have only been used as return airways.

4. As an alternate method, petitioner proposes to:

a. Take weekly air and methane readings at the 2 West left return regulator;

b. Take weekly air and methane readings inby spad (survey) stations 94, 92, 90 and 97 which are 3 blocks North of the portal fan;

c. Take weekly air and methane readings at spad station 692, the only other return air that can enter this split of air.

5. Petitioner states that this proposed alternate method will at all times guarantee no less than the same measure of protection to the miners as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before December 1, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: October 21, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80.34012 Filed 10-30-80: 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-80-129-C]

Owl Creek Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Owl Creek Coal Co., Inc., St. Charles, Kentucky 42453 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Owl Creek Mine No. 2 located in Hopkins County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of cabs and canopies on the mine's electric face equipment.

2. Petitioner states that the use of cabs or canopies on the mines's electric face equipment would result in a diminution of safety to the miners affected because the equipment operator's visibility would be impaired and encumber head clearance. Also, a large portion of the equipment operator's body would hang over the side and protective areas of the machine while in operation.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before December 1, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: October 21, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-34010 Filed 10-30-80; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-80-139-C]

Jim Walter Resources, Inc. & Thyssen Mining Construction, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Jim Walter Resources, Inc., in conjunction with Thyssen Mining Construction, Inc., P.O. Box 149, Brookwood, Alabama 35444, has filed a petition to modify the application of 30 CFR 77.1914 (permissible electrical equipment) to the Brookwood Mines numbers 4, 5, and 7 located in Tuscaloosa County, Alabama. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The contractor, Thyssen Mining Construction, intends to introduce a new innovation in shaft sinking, using a "v mole" technique. This is a vertical full face drill cutting at 23 feet diameter with the cuttings falling through an existing 5 foot pilot hole to the underground working below where they will be disposed of by conveyors, and other means. This is a proven effective method in Germany.

2. With the exception of two KVA transformers, all electrical components, enclosures, motors, controls and switch panels installed on the V mole drill machine will be of a type approved by MSHA. All relevant cables will carry an MSHA approval number.

3. An adequate number of methane monitors with sensors in strategic positions will be mounted on the machine cutting off the main power supply should the methane content of the air rise above the mandatory limit.

4. Eight shafts will be sunk to depths ranging from approximately 1,700 feet to 2,300 feet, all with a finished diameter of approximately 22 feet. All of these shafts will be used for ventilation purposes.

5. Petitioner proposes the use of two 630 KVA transformers which have not been approved by MSHA as permissible. In support of this proposal, petitioner states that:

a. The two 630 KVA transformers will be air cooled and mounted on the v mole machine;

b. The ventilation of the shaft will be such that a minimum of 9,000 cubic feet per minute of fresh air will pass over the transformers at all times. At no time will contaminated return air pass over the transformers.

c. There will be an adequate supply of fire protection provided for the transformers.

6. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before (December 1, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: October 21, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-34011 Filed 10-30-80; 8:45 am]
BILLING CODE 4510-43-M

Office of the Secretary

[TA-W-7498, 7499, 7499A]

Americana Glass Co., Inc., Queens China Co., Inc., and Americana Art China Co., Inc., Sebring, Ohio; Affirmative Determination Regarding Application for Reconsideration

On September 14, 1980, an official of the United Paperworkers International Union requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers and former workers of the Americana Glass Company, Incorporated, Queens China Company, Incorporated, and Americana Art China Company, Incorporated, Sebring, Ohio. The determination was published in the **Federal Register** on July 18, 1980 (45 FR 48289).The applicant for reconsideration claims that increased imports of decals are causing declines in jobs in the Company's artistry department, and that loss of jobs due to increased Company imported pottery to fill orders which were normally filled with products made at Queens China, Incorporated, such as

mugs and other items, has caused a discontinuance of items produced at the plant.

Conclusion

After review of the application, I conclude that the Union Official's claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 17th day of October 1980.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 80-34022 Filed 10-30-80; 8:45 am]

BILLING CODE 4510-28-M

American Biltrite (URW), et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 10, 1980.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 10, 1980.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 20th day of October 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petitoin	Petition No.	Articles produced
American Biltrite (URW)	Trenton, NJ	10-09-80	10-06-80	TA-W-11,319	Tile floor.
Arcos Corp. (USWA)	Philadelphia, PA	10-10-80	10-07-80	TA-W-11,320	Welding rods and wire.
Bendix Corp. (UAW)	Elyria, OH	10-10-80	9-25-80	TA-W-11,321	Braking devices for trucks.
Bonney Forge Division (union)	Allentown, PA	10-14-80	10-08-80	TA-W-11,322	Stainless steel.
Brookside Corp. (USWA)	McCordsville, IN	10-10-80	10-07-80	TA-W-11,323	Air moving equipment.
Freightliner Corp. (workers)	Chino, CA	10-10-80	10-06-80	TA-W-11,324	Freightline Trucks.
Mordine-Division of Dayton Walther (IAMAW).	Dayton, OH	10-14-80	10-05-80	TA-W-11,325	Cut metal and assembly wheels and drums.
Douglas and Lomason Inc. (UAW)	Marianna, AR	10-14-80	10-06-80	TA-W-11,326	Auto seat frames.
Ex-Cello-O Tool andd Abrasive Products Division (workers).	Pendleton, IN	10-14-80	10-08-80	TA-W-11,327	Honing abrasives used in manufacturing auto engines.
Pilot Knob Pellet (USWA)	Ironton, MO	10-10-80	10-07-80	TA-W-11,328	Iron ore pellets.
Industrial Strainer (workers)	Plymouth, MI	10-10-80	10-02-80	TA-W-11,329	Auto small parts.
Interlake Inc. (USWA)	Chicago, IL	10-10-80	10-08-80	TA-W-11,330	Steel products.
Interlake Inc. (USWA)	Riverdale, IL	10-14-80	10-08-80	TA-W-11,331	Steel products, strapping materials.
Island Creek Coal Co. (workers)	Paintsville, KY	10-09-80	10-06-80	TA-W-11,332	Metallurgical coal.
Joslyn Manufacturing and Supply Co. (USWA)	Fort Wayne, IN	10-10-80	10-07-80	TA-W-11,333	Cold and dot stainless steel bars.
Lamson and Sessions Co. (Co.)	Cleveland, OH	10-14-80	10-06-80	TA-W-11,334	Threaded screws and nuts.
Marcil Manufacturing (Co.)	Hoboken, NJ	10-14-80	10-07-80	TA-W-11,335	Outerwear.
Pickford Mills (workers)	Brooklyn, NY	10-10-80	5-19-80	TA-W-11,336	Sweaters, Shirts, and dresses.
Sewell's Manufacturing Co. (workers)	Temple, GA	10-10-80	10-07-80	TA-W-11,337	Men's suits and pants.
Simon Ellis Inc. (workers)	New York, NY	10-14-80	10-07-80	TA-W-11,338	Skirts, jackets, and jackets.
Sintered Metals North (workers)	Gloucester, MA	10-14-80	10-10-80	TA-W-11,339	Machine parts.
Anaconda Copper Co. (AMT)	Anaconda, MT	10-14-80	10-06-80	TA-W-11,340	Copper ore anodes.
Anaconda Copper Co. (carpenters)	Great Falls, MT	10-14-80	10-08-80	TA-W-11,341	Refined copper, zinc, and lead.
Frank Saltz and Sons, Inc. (workers)	New York, NY	10-14-80	10-08-80	TA-W-11,342	Pants and vests.
McInerney Spring and Wire Co. (UAW)	Grand Rapids, MI	10-15-80	10-06-80	TA-W-11,343	Rough construction seating for autos.
Ralph Edwards Sportswear Inc. (workers)	Puxico, MO	10-14-80	10-08-80	TA-W-11,344	Leather jackets and vests.
Reynolds Metals Co. Listerhill Co. Listerhill Reduction Plant (AWIU).	Sheffield, AL	10-14-80	10-06-80	TA-W-11,345	Molten metal for die castings.
Rud-Shaw Manufacture Inc. (workers)	Brooklyn, NY	10-14-80	10-08-80	TA-W-11,346	Sports jackets and suit jackets.
Ansta Knitwear Manufacturing Corp. (workers).	New York, NY	10-14-80	10-11-80	TA-W-11,347	Knitting yarn.
Barth Ind. Inc. (workers)	Cleveland, OH	10-14-80	9-26-80	TA-W-11,348	Mechines.
Colorado City Manufacturing (workers)	Colorado, TX	10-14-80	10-09-80	TA-W-11,349	Women's clothes.
Fiber-Tex Inc. (workers)	Benzonia, MI	10-15-80	10-10-80	TA-W-11,350	Fiber glass.
Grigg Box Co. (workers)	Detroit, MI	10-14-80	10-07-80	TA-W-11,351	Glass.
Textile Pierce Dying Co. (union)	Paterson, NJ	10-14-80	10-06-80	TA-W-11,352	Textile and dyes.
B&G Fabricating Co., Inc. (union and non-union).	Carnegie, PA	10-15-80	9-29-80	TA-W-11,353	Equipment for steel producers.
Eric Scot Sportswear Inc. (workers)	Farmingdale, NY	10-15-80	10-10-80	TA-W-11,354	Sweaters.
Freddie-Gail (ILGWU)	Hoboken, NJ	10-14-80	10-08-80	TA-W-11,355	Ladies coats.
Gare Long Island Co. (ILGWU)	Long Island, NY	10-14-80	10-08-80	TA-W-11,356	Ladies coats.
Interlake Inc. (workers)	Wilder, KY	10-14-80	10-07-80	TA-W-11,357	Coil and pipe.
M. Frenville Co. Inc. (workers)	Gloversville, NY	10-16-80	10-07-80	TA-W-11,358	Finish leather.
Storms Drop Forge (union)	Springfield, MA	10-15-80	10-10-80	TA-W-11,359	Forgings for tools and aircraft.
Trolley Car Inc. (ILGWU)	New York, NY	9-30-80	9-24-80	TA-W-11,360	Ladies dresses.
U S. Steel Works Geneva Works (USWA)	Provo, UT	10-06-80	10-01-80	TA-W-11,361	Steel products.
Union Metal Co. (workers)	Macedonia, OH	10-16-80	10-10-80	TA-W-11,362	Storage rackings for auto industry.
Allied Chemical Corp. Auto Division (Co.)	Mt. Clemens, MI	9-15-80	9-11-80	TA-W-11,363	Seat belts.

Appendix—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petitoin	Petition-No.	Articles produced
Chemserve Corp. (workers)	Detroit, MI	10-16-80	10-13-80	TA-W-11,364	Caustic soda, acid and sodium.
Dunn Steel Products (UAW)	Plymouth, MI	10-16-80	9-19-80	TA-W-11,365	Ball joints.
Hoover Universal, Inc. (Co.)	Mansfield, OH	7-23-80	7-17-80	TA-W-11,366	Plating of parts for autos.
Jecks Glove (workers)	Gloversville, NY	10-14-80	10-06-80	TA-W-11,367	Contracts cutting and sewing of gloves.
McKnight Road Dodge Inc. (workers)	Pittsburgh, PA	10-14-80	10-10-80	TA-W-11,368	Sale and service of Dodge cars and trucks.
Mt. Vernon Mills Inc. Columbus Division (Co.).	Columbus, SC	10-16-80	10-13-80	TA-W-11,369	Numbered ducks.
Altamont Garment Co., Modern Textiles-(ILGWA)	Altamont, IL	10-15-80	10-09-80	TA-W-11,370	Children's clothing.
Bethlehem Steel Corp (workers)	Terminal Island, CA	10-16-80	10-09-80	TA-W-11,371	Ship repair yard.
Hayes Albion Corp. (AFL-CIO)	Bryan, OH	7-29-80	7-23-80	TA-W-11,372	Automotive door frames.
Kamp Togs, Modern Textiles (ILGWU)	Clarksville, MO	10-15-80	10-09-80	TA-W-11,373	Children's clothing.
Lansford Apparel Co. (ACTWU)	Lansford, PA	10-16-80	10-15-80	TA-W-11,374	Children's dresses.
Martha Manning Co. (ILGWU)	Mascoutah, IL	10-15-80	10-09-80	TA-W-11,375	Dresses, sportswear.
General Motors Corp. Rochester Products Division (workers).	Tuscaloosa, AL	10-14-80	10-08-80	TA-W-11,376	Carburetors.
General Motors Corp. AC-Delco Division (workers).	Atlanta, GA	10-07-80	10-01-80	TA-W-11,377	Distribution of service parts.
General Motors Corp. GM Part Division (UAW).	Detroit, MI	10-14-80	9-03-80	TA-W-11,378	Distribution of service parts.
General Motors GM Parts Division (UAW)	St. Louis, MO	10-14-80	9-03-80	TA-W-11,379	Distribution of service parts.
General Motors GM Parts Division (UAW)	Atlanta, GA	10-14-80	9-03-80	TA-W-11,380	Distribution of service parts.
General Motors GM Parts Division (UAW)	Cheektowaga, NY	10-14-80	9-03-80	TA-W-11,381	Distribution of service parts.
GM-Parts Division (UAW)	Lenexa, KS	do	do	TA-W-11,382	Do.
GM-Parts Division (UAW)	Willow Run, MI	do	do	TA-W-11,383	Do.
GM-Parts Division (UAW)	Cleveland, OH	do	do	TA-W-11,384	Do.
GM-Parts Division (UAW)	Jacksonville, FL	do	do	TA-W-11,385	Do.
GM-Parts Division (UAW)	Omaha, NE	do	do	TA-W-11,386	Do.
GM-Parts Division (UAW)	Bethpage, NY	do	do	TA-W-11,387	Do.
GM-Parts Division (UAW)	Livonia, MI	do	do	TA-W-11,388	Do.
GM-Parts Division (UAW)	Westwood, MA	do	do	TA-W-11,389	Do.
GM-Parts Division (UAW)	Denver, CO	do	do	TA-W-11,390	Do.
GM-Parts Division (UAW)	New Orleans, LA	do	do	TA-W-11,391	Do.
GM-Parts Division (UAW)	Indianapolis, IN	do	do	TA-W-11,392	Do.
GM-Parts Division (UAW)	Beaverton, OR	do	do	TA-W-11,393	Do.
GM-Parts Division (UAW)	Bloomfield, NJ	do	do	TA-W-11,394	Do.
GM-Parts Division (UAW)	Englewood, NJ	do	do	TA-W-11,395	Do.
GM-Parts Division (UAW)	Sandston, VA	do	do	TA-W-11,396	Do.
GM-Parts Division (UAW)	King of Prussia, Pa	do	do	TA-W-11,397	Do.
GM-Parts Division (UAW)	Santa Fe Springs, CA	do	do	TA-W-11,398	Do.
GM-Parts Division (UAW)	Drayton Plains, MI	do	do	TA-W-11,399	Do.
GM-Parts Division (UAW)	Sharonville, OH	do	do	TA-W-11,400	Do.
GM-Parts Division (UAW)	Louisville, KY	do	do	TA-W-11,401	Do.
GM-Parts Division (UAW)	Dallas, TX	do	do	TA-W-11,402	Do.
GM-Parts Division (UAW)	Houston, TX	do	do	TA-W-11,403	Do.
GM-Parts Division (UAW)	Oakland, CA	do	do	TA-W-11,404	Do.
GM-Parts Division (UAW)	Martinsburg, WV	do	do	TA-W-11,405	Do.
GM-Parts Division (UAW)	Lansing, MI	do	do	TA-W-11,406	Do.
GM-Parts Division (UAW)	Reno, NW	do	do	TA-W-11,407	Do.

[FR Doc. 80-34013 Filed 10-30-80; 8:45 am]

BILLING CODE 4510-28-M

E. I. du Pont (UAW), et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 10, 1980.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 10, 1980.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 14th day of October 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
E. I. Dupont (UAW)	Toledo, Ohio	10-6-80	9-30-80	11,236	Automotive paint.
Florsheim Shoe Co. (ACTWU)	Mexico, Mo	10-6-80	9-29-80	11,237	Men's shoes.
F.M.C. Specialty Chemical Division (ICWU)	Buffalo, N.Y	10-6-80	9-29-80	11,238	Sodium perborate.
Jodie Dress Inc. Company (Co.)	New York, N.Y	10-6-80	9-26-80	11,239	Ladies garments.
Kentucky Pants Co. Plant 2 (Co.)	Glasgow, Ky	10-7-80	10-3-80	11,240	Men's and boy's work pants.
Mason Mfg. Co. (Workers)	Providence, R.I	10-6-80	10-3-80	11,241	Metal disposable spools.
Reidboard Brothers Co. (workers)	Elkins, W. Va	10-6-80	9-30-80	11,242	Men's work shirts and jeans.
United Tech. Auto. Division (workers)	Dearborn, Mich	10-6-80	8-29-80	11,243	Automotive.
Washington Overall Mfg. Co. (company)	Scottville, Ky	10-7-80	10-3-80	11,244	Men's and boy's work pants.
Caterpillar Tractor Company (workers)	Milwaukee, Wis	10-2-80	9-25-80	TA-W-11,245	Components for tractors.
Detroit Steel Products (UAW)	Morristown, Ind	10-3-80	9-30-80	TA-W-11,248	Steel leaf springs.
Fairfield Glove Co. (ACTWU)	Fairfield, Iowa	10-6-80	8-29-80	TA-W-11,247	Work gloves.
Fairfield Glove Co. (ACTWU)	Bonaparte, Iowa	10-6-80	8-29-80	TA-W-11,248	Work gloves.
General Electric, Silicone Products Division (IUE).	Waterford, N.Y	10-3-80	9-11-80	TA-W-11,249	Small appliances.
Harry Fisher Corp. (ACTWU)	Philadelphia, Pa	10-6-80	9-23-80	TA-W-11,250	Men's outercoats.
Priscilla Dress Corp. (workers)	Bronx, N.Y	9-26-80	9-16-80	TA-W-11,251	Ladies' pants and dresses, skirts.
S. B. Penick Corp. (ICWU)	Newark, N.J	8-5-80	7-31-80	TA-W-11,252	Organic chemicals.
Starbuck (company)	San Francisco, Calif	10-3-80	9-10-80	TA-W-11,253	Luggage, handbags, etc.
White Automotive Corp. (ACTWU)	Colorado Springs, Colo	10-6-80	10-1-80	TA-W-11,254	Jeep tops and accessories.
Athalon Products, Ltd. (company)	Denver, Colo	10-3-80	9-30-80	TA-W-11,255	Soft sided luggage.
CWC Textion (workers)	Muskegon Hts., Mich	10-3-80	9-29-80	TA-W-11,256	Gray iron castings for automotive industry.
Extractors, Inc., #1 Deep Mine (UMWA)	Wyoming County, W. Va	10-3-80	9-30-80	TA-W-11,257	Metallurgical coal.
Kerr-McGee Nuclear Corp. (workers)	Glenrock, Wy	10-3-80	9-29-80	TA-W-11,258	Uranium ore.
Murray Corp. (UAW)	Eastlake, Ohio	10-3-80	10-1-80	TA-W-11,259	Automobile parts and clutches.
Northwest Cedar, Inc. (company)	Sedro Wooley, Wash	10-6-80	9-30-80	TA-W-11,260	Cedar shakes.
Ohio Truss Mart (workers)	Walled Lake, Mich	10-3-80	9-4-80	TA-W-11,261	Trusses.
Our Darling Sportswear Co. (workers)	New York, N.Y	10-3-80	10-2-80	TA-W-11,262	Ladies swim suits.
Willow Run Rubber Lining (workers)	Farmington, Mich	10-3-80	10-1-80	TA-W-11,263	8-cyl distributor caps.
Carla Leather, Inc. (workers)	New York, N.Y	10-6-80	10-2-80	TA-W-11,264	Leather suede shearling.
Fox Point Sportswear, Inc. (ACTWU)	Port Washington, Wis	10-6-80	9-17-80	TA-W-11,265	Ladies' sportswear.
Hoover Universal, Inc. (Int'l Brotherhood of Boilermakers).	Solon, Ohio	10-6-80	10-1-80	TA-W-11,266	Cold drawn carbon and alloy bar and wire.
J.H. Apparel (workers)	Freeport, N.Y	10-6-80	10-2-80	TA-W-11,267	Boy's, childrens slacks, shirts, sweaters.
Jomac Products, Inc. (workers)	Murphysboro, Ill	10-6-80	9-30-80	TA-W-11,268	Industrial gloves.
Leathermark Sportswear (workers)	New York, N.Y	10-6-80	9-29-80	TA-W-11,269	Jackets.
Merry Olds GMC Trucks (workers)	Rochester, Mich	9-24-80	9-16-80	TA-W-11,270	New car and truck sales.
New Jersey Zinc Company (USWA)	Austinville, Va	10-6-80	10-1-80	TA-W-11,271	Zinc lead concentrates.
Thermo Electron Corp. (workers)	Livonia, Mich	10-8-80	10-2-80	TA-W-11,272	Heat treating and steel mill furnaces.
Wiltens & Michigan (workers)	Detroit, Mich	10-6-80	9-24-80	TA-W-11,273	Graphics and various printed material.
Anaconda-Arco Co. (Int'l Brotherhood of Boilermakers).	Denver, Colo	10-7-80	10-2-80	11,274	Copper cathodes.
Anaconda-Arco Co. (Int'l Brotherhood of Boilermakers).	Great Falls, Mont	10-7-80	10-2-80	11,275	Copper wire bars.
Anacona-Arco (Int'l Brotherhood of Boilermakers).	Anacona, Mont	10-7-80	10-2-80	11,276	Copper fillets.
Apco Knitwear Inc. (ACTWU)	Brodhead, Wis	10-6-80	9-17-80	11,277	Knit shirts.
Crescent Brick Co. (USWA)	Falls Creek, Pa	10-7-80	9-29-80	11,278	Ladle bricks.
Jim Gunning Ford Inc. (company)	Xenia, Ohio	10-6-80	9-30-80	11,279	Sales of cars and trucks.
Patasco & Back Rivers Railroad Co. (UTU)	Sparrows Points, Md	10-6-80	10-2-80	11,280	Carbon steel, pipes, tubing, wire.
Star Debs (workers)	New York, N.Y	10-6-80	9-24-80	11,281	Dresses.
Union City Body Co. (UAW)	Union City, Ind	10-7-80	9-29-80	11,282	Trucks.
W. Va. Birmingham Bolt Co. (Int'l Brotherhood of Boilermakers).	Nitro, W. Va	10-8-80	9-29-80	11,283	Roof support bolts.
AMF/Harley-Davidson Motor Co. Inc. (AIW)	Milwaukee, Wis	10-3-80	10-1-80	TA-W-11,284	Motorcycles and golfcarts.
AMF/Harley-Davidson Motor Co. inc. (AIW)	Wauwatosa, Wis	10-3-80	10-1-80	TA-W-11,285	Motorcycles and golfcarts.
Lynchburg Foundry Co. Archer Creek Plant (USWA).	Campbell County, Va	10-6-80	10-1-80	TA-W-11,286	Ductile and gray iron castings.
Lynchburg Foundry Co. Radford Plant (USWA).	Radford, Va	10-6-80	10-1-80	TA-W-11,287	Ductile and gray iron castings.
M & R Timber (IWA)	Port Angeles, Wash	10-7-80	9-26-80	TA-W-11,288	Lumber.
McCord Corp. Gasket Div. (workers)	Wyandotte, Mich	10-8-80	10-6-80	TA-W-11,289	Gaskets and seals.
Remington Arms Co. Inc. (workers)	Ilion, N.Y	10-8-80	10-6-80	TA-W-11,290	Firearms.
Saginaw Sheet metal Parts Corp. (workers)	Saginaw, Mich	10-6-80	10-2-80	TA-W-11,291	Fenders.
Tecumseh Products Co. (IBEW)	Somerset, Ky	10-6-80	9-26-80	TA-W-11,292	Compressors.
Hilti Inc. (workers)	Cleveland, Ohio	10-6-80	10-5-80	TA-W-11,293	Personnel and payroll.
Julius Resnick Inc. (ILGP & NWU)	Syracuse, N.Y	10-8-80	10-4-80	TA-W-11,294	Ladies handbags.
Lady Arrow Brantley Plant (ACTWU & Co.)	Brantley, Ala	10-6-80	10-1-80	TA-W-11,295	Ladies blouses.
Lady Arrow Evergreen Plant (ACTWU & Co.)	Evergreen, Ala	10-6-80	10-1-80	TA-W-11,296	Ladies blouses.
South Haven Rubber Co. (UAW)	So. Haven, Mich	10-8-80	10-6-80	TA-W-11,297	Manufacturing molded rubber products.
RPM Products, Inc. (workers)	Roseville, Mich	10-8-80	10-3-80	TA-W-11,298	Metal stamped and roll formed components.
RPM Products Inc. Croswell Div. (workers)	Croswell, Mich	10-8-80	10-3-80	TA-W-11,299	Metal stamped and roll formed components.
SISCO Inc. (workers)	Cleveland, Ohio	10-8-80	10-5-80	TA-W-11,300	Repair molds in slag pots.
Wausau Homes Inc. (workers)	Wausau, Wis	10-7-80	10-3-80	TA-W-11,301	Prefabricated houses.
Wausau Homes Inc. (workers)	Oscoda, Mich	10-7-80	10-3-80	TA-W-11,302	Prefabricated houses.
Wausau Homes Inc. (workers)	Lansing, Mich	10-7-80	10-3-80	TA-W-11,303	Prefabricated houses.
Alatex Inc. Andala Plant (ACTWU & company).	Andala, Ala	10-8-80	10-1-80	TA-W-11,304	Men's dress shirts.
Alatex Inc. Andalusia Plant (ACTWU & Co.)	Andalusia, Ala	10-8-80	10-1-80	TA-W-11,305	Men's dress shirts.
Alatex Inc. Enterprise Plant (ACTWU & Co.)	Enterprise, Ala	10-8-80	10-1-80	TA-W-11,306	Men's dress shirts.
Alatex Inc. Montgomery Dis. Center (ACTWU & Co.).	Montgomery, Ala	10-8-80	10-1-80	TA-W-11,307	Men's dress shirts distribution center.
Alatex Inc. Pike Plant (ACTWU & Co.)	Troy, Ala	10-8-80	10-1-80	TA-W-11,308	Men's dress shirts.
Alatex Inc. Troy Plant (ACTWU & Co.)	Troy, Ala	10-8-80	10-1-80	TA-W-11,309	Men's dress shirts.
Bostrom Division of Universal Oil Products (workers).	Cudahy, Wis	9-22-80	7-27-80	TA-W-11,310	Truck van earth moving seats.
Mercury Products Div. of Dyneer (IAM)	Canton, Ohio	10-8-80	10-3-80	TA-W-11,311	Clutches, brakes, pulleys.
O & S Mfg. Division Gulf & Western Mfg. Co. (UAW).	Whitmore, Mich	10-6-80	9-30-80	TA-W-11,312	Steering tie rods.
Verhoven Chevrolet Inc. (workers)	Detroit, Mich	6-16-80	6-12-80	TA-W-11,313	Auto dealership.
Enro Shirt Company (company)	Louisville, Ky	10-10-80	10-7-80	TA-W-11,314	Men's dress shirts.

Appendix—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Jonathan Logan Dresses (workers)	Philadelphia, Pa	10-3-80	10-1-80	TA-W-11,315	Suits and dresses.
Kelly Springfield Tire Company (URW)	Fayetteville, N.C	10-9-80	10-7-80	TA-W-11,316	Passenger car tires.
Kennecott Corp. (workers)	McGill, Nev	10-9-80	10-1-80	TA-W-11,317	Copper products.
Valcraft, Div. of Valeron Corp. (workers)	East Tawes, Mich	10-9-80	9-29-80	TA-W-11,318	Build high speed steel cutting tools.

[FR Doc. 80-34023 Filed 10-30-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-7474]

Eltra Corp., Prestolite Wire Division, Rose City, Mich.; Negative Determination Regarding Application for Reconsideration

By letter dated August 7, 1980 (copy attached), two workers of the Prestolite Wire Division requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of former workers producing automotive ignition were harnesses at Eltra Corporation's Prestolite Wire Division plant in Rose City, Michigan. The determination was published in the **Federal Register** on July 18, 1980, (45 FR 48289).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determinaton of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The workers claim that (1) imports and sales of vehicles contained a like product, causing a substantial decrease in orders from customers for ignition wire assemblies manufactured at Prestolite Wire Division; (2) that workers in a company manufacturing a similar product for the American automotive industry were "approved" adjustment assistance, while the subject firms's workers were denied; and (3) that the Department's investigation revealed that during 1979 and 1980, the Prestolite Wire Division's Rose City plant produced wire assemblies for *one* customer while the plant actually supplied *two* customers.

The Department's review shows that the workers of the Prestolite Wire Division plant in Rose City, Michigan did not meet the "contributed importantly" test of the Trade Act of 1974. First, with respect to the allegation that increased imports of vehicles and decreased sales of domestic vehicles caused a substantial decrease in customers' orders from Prestolite for ignition wire harnesses, automobiles cannot be considered to be like or directly competitive with ignition wire harnesses. Imports of ignition wire harnesses must be considered in determining import injury to workers producing ignition wire harnesses at Prestolite Wire Division.

Secondly, the applicants for reconsideration allege that workers employed at a firm which produced a similar product were certified eligible to apply for adjustment assistance while workers at Prestolite were denied adjustment assistance. The major customer in both these investigations was the same customer (an auto maker). A review of the other case revealed that the customer of that supplier firm did indeed import some wire harnesses. However, that certification was based, in part, on increased import purchases during the period unde investigation, and those imports represented a substantial proportion of the customer's total purchases of that type of wire harnesses. A further review of the customer survey in the Prestolite Wire Division investigation revealed that the customer's purchases of wire harnesses, either from domestic or foreign sources were determined on the basis of part numbers, and that the customer's purchases of imported wire harnesses of the type produced by Prestolite represented less than one percent of its purchases of that type of wire harness in 1979 and in the first three months of 1980. Thus, on the basis of that customer survey, adjustment assistance for TA-W-7474 was denied.

Thirdly, the workers allege the Department's investigation revealed that Prestolite produced for only one customer when, in fact, the Company produced wire harnesses for two customers. The results of the Department's customer survey indicated that the one customer that was surveyed represented 100 percent of Prestolite's sales in 1979 and 95 percent of sales in the January-February 1980 period. Therefore, any import purchases of wire harnesses from Prestolite by the second customer would have been insignificant for purposes of an adjustment assistance determination.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 20th day of October 1980.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 80-34024 Filed 10-30-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-9562-63, 9566, 9569]

General Motors Corp., Detroit, Mich.; Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. It is determined in this case that all of the requirements have been met.

The investigation was initiated on July 28, 1980 in response to a petition which was filed by the United Automobile, Aerospace and Agricutural Implement Workers of America on behalf of workers at the component parts plants of General Motors Corporation listed in the appendix.

In order to determine if increased imports contributed importantly to production and employment declines at General Motors Corporation component parts plants, the Department sought to determine the degree to which each

facility was integrated into the production of General Motors cars, trucks, vans, and general utility vehicles which have been subject to import injury. Where substantial integration was established the Department considered imports of "like or directly competitive" cars, trucks, vans and general utility vehicles in determining import injury to workers producing component parts at the plants.

The Department has determined that increased imports contributed importantly to the decline in sales or production and to total or partial separations of workers at 19 of General Motors Corporation's car and truck assembly plants (TA–W6783, 6917, 6999–7000, 7009, 7015–16, 7059, 7071, 7073–78, 7078–82 and 8613). Workers at these plants are engaged in production of one or more of the following car or truck lines: Mid-size, standard and luxury/specialty cars, pick-up trucks, vans, and general utility vehicles.

During the course of the investigation, it was established that each of the component parts plants listed in the appendix produced a significant proportion of its output for use in the GM car and truck lines which have been subject to import injury.

Because U.S. auto manufacturers redesigned most of their automobiles and/or introduced completely new models from MY 1979 to MY 1981, the composition and distinguishable features of each market class of vehicles has changed substantially. As a result, the continuation of the recent impact of import competition that existed in MY 1979 and 1980 may not continue in MY 1981.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increase of imports of articles like or directly competitive with mid-size, standard and luxury/specialty automobiles, vans, utility vehicles and pick-up trucks produced at final assembly plants of General Motors Corporation contributed importantly to the decline in sales or production and to the total or particl separation of workers at the component parts plants listed in the appendix. In accordance with the provisions of the Act, I make the following certification:

All workers of the component parts plants of General Motors Corporation listed in the appendix who became totally or partially separated from employment on or after the impact date listed in the appendix and before November 15, 1980 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 22nd day October 1980.

James F. Taylor,

Director, Office of Management, Administration and Planning.

Appendix

	Plant and location	Impact date
TA-W-9562	Chevrolet Motor Division, Muncie, Indiana.	Jan. 1, 1980.
TA-W-9563	Fisher Body Division, Grand Rapids Plant #1 Grand Rapids, Michigan.	Dec. 1, 1979.
TA-W-9566	Hydra-Matic Division, Ypsilanti, Michigan.	Nov. 1, 1979.
TA-W-9569	Central Foundry Division, Massena, New York.	Nov. 1, 1979.

[FR Doc. 80-34025 Filed 10-30-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-9564 and 9565]

General Motors Corp., Fisher Body Division, Lordstown, Ohio; and New Departure-Hyatt Bearings Division, Bristol, Conn.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely.

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The investigation was initiated on July 28, 1980 in response to a petition which was filed by the United Automobile, Aerospace and Agricultural Implement Workers of America (U.A.W.) on behalf of workers at the Lordstown, Ohio plant of the Fisher Body Division and the Bristol, Connecticut plant of the New Departure-Hyatt Bearings Division of General Motors Corporation. Workers at the Lordstown plant produce automotive stampings. Workers at the Bristol plant produce bearings and clutch parts.

The investigation revealed that criterion (3) has not been met.

In order to determine if increased imports contributed importantly to production and employment declines at General Motors Corporation component parts plants, the Department sought to determine the degree to which each facility was integrated into the production of General Motors cars, trucks, vans, and general utility vehicles which have been subject to import injury. Where substantial integration was established the Department considered imports of "like or directly competitive" cars, trucks, vans and general utility vehicles in determining import injury to workers producing component parts at the various plants.

The value of production, adjusted for inflation, increased at both plants in model year (MY) 1979 compared with MY 1978. Average employment also increased at both plants in MY 1979 compared with MY 1978. Neither plant was substantially integrated into the production of trade-impacted vehicles during the first 10 months of MY 1980.

The predominant proportion of production at the Lordstown plant during the first 10 months of MY 1980 consisted of body stampings and assemblies used in subcompact and mid-size GM car lines which have not been subject to import injury. Employment increased in the first 10 months of MY 1980 compared to the same period of MY 1979.

At the Bristol plant, a substantial proportion of plant output consisted of bearings which are sold to customers unaffiliated with General Motors. The value of these outside sales, adjusted for inflation, increased in MY 1979 compared with MY 1978 and in the first 3 quarters of MY 1980 compared with the same period in MY 1979.

Conclusion

After careful review, I determine that all workers of the Lordstown, Ohio plant of the Fisher Body Division (TA–W–9564) and the Bristol, Connecticut plant of the New Departure-Hyatt Bearings Division (TA–W–9565) of General Motors Corporation are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 22d day of October 1980.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 80-34019 Filed 10-30-80; 8:45 am]

BILLING CODE 4510-28-M

General Tire & Rubber Co. et al.; Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for worker adjustment assistance issued during the period.

In order for an affirmative determintion to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases it has been concluded that at least one of the above criteria has not been met.

TA–W–7449, 7928, and 8639; General Tire & Rubber Co., Waco, TX, Mt. Vernon, IL, and Mayfield, KY

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA–W–7607; Sheller Globe Corp., Paramount Fabricating Co., Detroit, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA–W–7683; Goodyear Allospace Corp., Akron, OH

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA–W–7831; Dura Corp., Toledo, OH

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA–W–9423; Modern Clothing Co., Inc., Hammonton, NJ

Investigation revealed that criterion (3) has not been met. The investigation revealed that sales by manufacturers for which the subject firm produced under contract did not decline.

TA–W–7654; Eltra Corp., Prestolite Wire Div., Port Huron, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA–W–7777; Quality Spring Products, Div. of Kuhlman Corp., Coldwater, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA–W–7786; Soley Manufacturing Co., Roseville, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA–W–8001; Eaton Corp., Athens, AL

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the firm.

TA–W–8036; The Stanley Works, Stanley Hydraulic Tools Div., Milwaukee, OR

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA–W–8354; Reeves Brothers, Inc., Curon Div., Auburn, IN

Investigation revealed that criterion (3) has not been met. U.S. imports of polyurethane foam are negligible.

TA–W–8361; Estan Manufacturing Co., Madison Heights, MI

Investigation revealed that criterion (3) has not been met. U.S. Imports of oil dipsticks are negligible.

TA–W–7815 and 8632–38; Aetna Industries, Inc., Center Line, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the firm.

TA–W–9525; Unit Parts Co., Oklahoma City, OK

Investigation revealed that criterion (3) has not been met. The worker's firm does not produce an article as required for certification under Section 223 of the Trade Act of 1974.

TA–W–10,290; Platers Service, Inc., Englewood,OH

Investigation revealed that criterion (3) has not been met. The workers' firm does not produce an article as required for certification under Section 223 of the Trade Act of 1974.

TA–W–10,612; Doran Advertising, Inc., Cincinnati, OH

Investigation revealed that criterion (3) has not been met. The workers' firm does not produce an article as required for certification under Section 223 of the Trade Act of 1974.

TA–W–7456; Cyclops Corp., Empire Steel Div., Portsmouth, OH

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

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TA-W-7748; Toledo Stamping & Manufacturing Co., Toledo, OH

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-7834; Pivot Manufocturing Co., Detroit, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the firm.

TA-W-7944; All Products Co., Farewell, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-8008; Ex-Cell-O Corp., McCord-Winn Div., Winchester, MA

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-8365; Dana Corp., Edgerton, WI

The investigation revealed that criterion (3) has not been met. U.S. imports of truck axle assemblies are negligible.

TA-W-9113; Western Electric Co., Inc., Indionapolis, IN

Investigation revealed that criterion (3) has not been met. Production at the Indianapolis plant increased in 1979 and in the first seven months of 1980 compared to the first seven months of 1979. Layoffs at the plant in mid-1980 resulted when the expected continued increased in consumption of telephone sets failed to materialize.

TA-W-9288; Schlegel Corp., Schlegel Tennessee, Inc., Maryville, TN

The investigation revealed that criterion (3) has not been met. U.S. imports of auto weather stripping are negligible.

TA-W-10,545; Toledo Pickling & Steel Service, Inc., Toledo, OH

Investigation revealed that criterion (3) has not been met. The workers' firm does not produce an article as required for certification under Section 223 of the Trade Act of 1974.

TA-W-8270; Borg-Warner Corp., Sterling Heights, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the firm.

TA-W-8049; Russellville Sportswear, Inc., Russellville, AL

Investigation revealed that criterion (3) has not been met. Separations from the subject firm resulted from a transfer of production to other domestic facilities.

TA-W-8861; Anchor Fasteners, Inc., Bedford Heights, OH

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-9729; Sterns Ferguson Co., Inc., Flat Rocks, MI

Investigation revealed that criterion (3) has not been met. Separations from the subject plant resulted from a transfer of production by the company to another domestic facility.

TA-W-10,572; Aero-Detroit, Inc., Oak Park, MI

Investigation revealed that criterion (3) has not been met. The workers' firm does not produce an article as required for certification under Section 223 of the Trade Act of 1974.

Affirmative Determinations

TA-W-7852; Alphonse Knoedler Co., Inc., Lancaster, PA

A certification was issued covering all workers of the firm separated on or after March 20, 1979.

TA-W-8749; International Shoe Co., St. Louis, MO

A certification was issued applicable to all workers at the subject firm separated on or after March 24, 1980.

I hereby certify that the aforementioned determinations were issued during the period October 20–24, 1980. Copies of these determinations are available for inspection in Room S-5314, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210 during normal working hours or will be mailed to persons who write to the above address.

Dated: October 27, 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-34018 Filed 10-30-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-10-249]

Kay Industries, Inc., Detroit, Mich.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 18, 1980 in response to a worker petition received on July 29, 1980 which was filed by the United Auto Workers on behalf of workers and former workers producing marine/ordinance exhaust systems at Key Industries, Incorporated, Detroit, Michigan.

In a letter dated September 25, 1980, the petitioner requested that the petition be withdrawn. On the basis of this withdrawal, continuing the investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C., this 20th day of October 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-34020 Filed 10-30-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-8076]

Mida Manufacturing, Inc., Philadelphia, Pa.; Affirmative Determination Regarding Application for Reconsideration

On September 4, 1980, a worker representative requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers and former workers of Mida Manufacturing, Incorporated, Philadelphia, Pennsylvania. The determination was published in the **Federal Register** on August 8, 1980 (45 FR 52971).

The application for reconsideration claimed that in its reference to criterion (3), that imports of costume jewelry decreased in value, the Department overlooked the fact that while the value of imports may have decreased, the quantity of imports of costume jewelry—due to much lower prices of these items—increased. The applicant also claims that while Mida designed and created new lines of costume jewelry which received great consumer acceptance, these lines were soon duplicated by foreign manufacturers and imported into this country and sold at prices which were below Mida's cost of production.

Conclusion

After review of the application, I conclude that the applicant's claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 22nd day of October 1980.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 80-34021 Filed 10-30-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-7513 and TA-W-7963]

Louis Marx & Co. Girard, Pa., Glen Dale, W. Va.; Negative Determination Regarding Application for Reconsideration

By letter dated September 15, 1980, the Retail, Wholesale and Department Store Union requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers producing children's toys at the Louis Marx and Company plants in Girard, Pennsylvania and Glen Dale, West Virginia. The determination was published in the **Federal Register** on August 26, 1980 (45 FR 56953).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of the facts or of the law justifies reconsideration of the decision.

The union official applying for reconsideration indicated that the United States toy industry as a whole has been losing out to imports, and that a large number of toys produced by the Louis Marx and Company went through a drastic reduction in production resulting in loss of jobs to the plants' work force. The applicant also stated that workers in another U.S. firm making the same products as Louis Marx were certified eligible to apply for adjustment assistance. In addition, the applicant asked that the long-term history of the Company's operations be considered.

A review of the investigative file shows that the Department's negative determination was based on the fact that workers in the Louis Marx and Company's plants in Girard, Pennsylvania and Glen Dale, West Virginia did not meet the "contributed importantly" test of the Trade Act of 1974. Each case must be evaluated on its own merits. The fact that another group of workers was certified in early 1978 cannot affect the determination in this case. The Department agrees that imports of Miscellaneous Toys increased both absolutely and relative to domestic production from 1975 through 1979. However, the Department disagrees with the applicant's claim that the decline in production of a large variety of toys produced at Louis Marx was due importantly to increased import competition, and, that if the investigation had been conducted in an earlier period, the workers would have been eligible to apply for adjustment assistance. The findings of the investigation clearly show that sales, production and employment increased in 1978 compared to 1977 and increased again in 1979 compared to 1978 in each of the above mentioned plants which included the qualifying periods to be considered for eligibility for adjustment assistance in this case, i.e. the period beginning one year prior to the date of the petition. Under the Act a certification could not apply to any layoffs occurring more than one year prior to the petition date. Thus, given, the facts of this case and the one-year rule, eligibility ought not be be based on a long time frame of the history of the firm as suggested by the applicant.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therfore, denied.

Signed at Washington, D.C., this 20th day of October 1980.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 80-34008 Filed 10-30-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-7739]

N.I.D. Shake Co., Humptulips, Wash.; Revised Determination on Reconsideration

On September 3, 1980, the Department made an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the N.I.D. Shake Company, Humptulips, Washington. This determination was published in the **Federal Register** on July 7, 1980 (45 FR 45740).

The application for reconsideration claimed that the Department's customer survey is in error because the N.I.D. Shake Company official saw imported shingle shakes in the yard of her shingle broker's customer. This customer did not report any foreign purchases on the Department's customer survey.

The Department's review indicated that workers of the N.I.D. Shake Company at Humptulips, Washington were denied because they did not meet the "contributed importantly" test of the Trade Act of 1974. The denial was based on a customer survey.

The Department found in its reconsideration investigation of the broker's customer that the customer decreased its purchases from the broker in 1979 and also decreased its purchases of imports. However, that customer continued to decrease its purchases of cedar shakes from all domestic sources in the first four months of 1980 compared to the same period in 1979, and increased its import purchases substantially in the first four months of 1980 compared to the same period in 1979.

Conclusion

After careful review of the facts obtained on reconsideration, it is concluded that increased imports of cedar shakes contributed importantly to the total or partial separation of workers and former workers at the N.I.D. Shake Company, Humptulips, Washington. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers at the N.I.D. Shake Company, Humptulips, Washington, who became totally or partially separated from employment on or after January 1, 1980, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 22nd day of October 1980.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 80-34014 Filed 10-30-80; 8:45 am]

BILLING CODE 4510-28-M

V 4 5 OC 31 80 UMI

[TA-W-9516]

Tiechon Industries, Inc., Troy, Mich.

Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 21, 1980 in response to a petition received on July 9, 1980 which was filed by a company official on behalf of workers at Tiechon Industries, Inc., Troy, Michigan. The workers machine castings.

The petitioning company official requested in a letter that the petition be withdrawn. On the basis of this request, continuing the investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 20th day of October 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-34014 Filed 10-30-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-7613]

Vail Knitting Mills, Ltd., Copaigue, N.Y.; Negative Determination Regarding Application For Reconsideration

By letter of September 16, 1980, Marvin R. Morrison, Attorney At Law, requested administative reconsideration of the Department of Labor's Notice of Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers producing men's and women's sweaters of Vail Knitting Mills, Limited, Copaigue, New York. The determination was published in the Federal Register on June 20, 1980 (45 FR 41722).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) if it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) if, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The applicant for reconsideration stated that the Department's findings "that imports of men's and boys' and women's knitted sweaters and shirts decreased *absolutely* in 1979 compared to 1978" was based solely upon Bureau of Labor Statistics. The applicant believed that those data are incorrect. Applicant further believes that contrary to the Department's findings, customers purchasing men's and women's sweaters did not decrease their reliance on foreign contractors or foreign sources. Applicant further states that the information, including customer survey responses should be made available for scrutiny by the Petitioner because failure to do so and/or take sworn testimony is a procedural deprivation of due process which amounts to a substantive loss as well. The applicant further alleges that workers employed by another manufacturer of women's sweaters were certified eligible to apply for adjustment assistance.

A review of the investigative file shows that U.S. imports of men's and boys' sweaters decreased absolutely and relative to domestic production in 1979 compared to 1978 and decreased absolutely in the first six months of 1980 compared to the same peirod in 1979. Men's and boys' sweaters represented the major proportion of Vail's production. U.S. imports of women's, misses' and children's sweaters decreased both absolutely and relative to domestic production in 1979 compared to 1978, but increased absolutely in the first six months of 1980 compared to the same period in 1979. The sources for these data in terms of imports are from the U.S. Department of Commerce, *U.S. Imports for Consumption*, TSUSA Commodity By Country, IM, Washington, D.C.

A further review of the Department's survey of Vail Knitting Mill's customers (knit apparel manufacturers) revealed that customers representing 100 percent of Vail's sales in 1978, 1979, and 1980 increased their purchases of men's sweaters from Vail while decreasing their purchases of imports in 1979 cpmpared to 1978. While these same customers decreased their purchases from Vail and other domestic sources in the first three months of 1980 compared to the same period in 1979, the percent decrease in purchases of imported men's sweaters was much greater during the same period.

Two of the customers (manufacturers) represented 95 percent of Vail's contract work for men's sweaters in 1978. A secondary survey of those manufacturers' customers was conducted by the Department. Purchases of men's foreign-made sweaters by these customers fell by a relatively greater amount than their purchases of U.S.-made sweaters.

The survey of Vail's customers of women's sweaters representing 100 percent of sales indicated that contracts with manufacturers increased by over 350 percent in 1979 over 1978 and that no contract work for women's sweaters was performed for any manufacturer in the first quarter of 1979 or 1978 by Vail. None of the manufacturers of women's sweaters contracted off shore. A primary importer of women's sweaters whose imports increased in 1979 compared to 1978 and in the first quarter of 1980 compared to the same peirod in 1979 contracted a small amount of work to Vail in 1979 only, and this represented less than one percent of Vail's 1979 total sales. Since sales increased for all manufacturers of women's sweaters with whom Vail did contract work, no secondary customer survey was conducted.

With respect to the applicant's claim that another company was certified which produced articles similar to Vail's, a review of that case revealed that the firm produced sweaters and many other articles of apparel for women, and that customers of that company representing a large percent of its sales decline increased their purchases of imports while reducing purchases from the firm. Almost two-thirds of Vail's production was sweaters for men. The balance consisted of sweaters for women. The customer survey in that case did support a certification.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of facts or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 21st day of October 1980.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 80-34016 Filed 10-30-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-8837, 8837A, B, C, 8838, 8839]

Zimco Industries, New York, N.Y. and Roanoke, Va.; Royalad Manufacturing Co., Peekskill, N.Y.; Southeastern Garment Co., Clinton, N.C.; Marbert Manufacturing Co., Bridgeport, Conn.; Romar Manufacturing Co., South Norwalk, Conn.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

The investigation was initiated on June 16, 1980 in response to a petition which was filed on behalf of workers at Zimco Industries Incorporated, New York, New York; Romar Manufacturing Company, South Norwalk, Connecticut; and Marbert Manufacturing Company, Bridgeport, Connecticut. The workers produced men's and boys' suits, trousers, jackets, rainwear and outerwear.

The investigation was subsequently expanded to include Zimco's Roanoke, Virginia warehouse and other manufacturing facilities, Royalad Manufacturing Company, Peekskill, New York; and Southeastern Garment Company, Clinton, North Carolina.

U.S. imports of men's and boys' tailored dress coats and sportcoats increased both absolutely and relative to domestic production from 1977 to 1978. Imports of men's and boys' tailored suits increased relatively in 1979 compared to the 1975–1978 average. Imports of men's and boys' dress and sport trousers and shorts increased absolutely and relatively in 1978 compared to 1977.

Imports of men's and boys' outercoats and jackets increased relatively in 1978 compared to 1977. Imports men's and boys' woven and knit water repellent rainwear increased both absolutely and relatively to domestic production in 1978 compard to 1977.

Zimco Industries and its manufacturing facilities were certified eligible for Firm Trade Adjustment Assistance by the Commerce Department in August, 1979.

The Department of Commerce surveyed customers of Zimco Industries, Incorporated in 1979. Surveyed customers representing a significant portion of sales declines decreased purchases of men's and boys' suits, trousers, jackets, rainwear and outerwear from Zimco Industries and increased imports from 1977 to 1978.

The Department of Labor surveyed customers of Zimco Industries, updating the Department of Commerce's survey. Some customers responding to the survey decreased purchases from Zimco Industries and increased imports from 1978 to 1979.

Royalad, Southeastern, Marbert, and Romar were closed at the end of 1979. Zimco Industries is currently involved in bankruptcy proceedings. Southeastern was reopened in February 1980. There are no plans to reopen Royalad, Marbert, or Romar.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's and boys' suits, trousers, jackets, rainwear and outerwear produced at Zimco Industries, Inc., New York, New York and Roanoke, Virginia; Royalad Manufacturing Company, Peekskill, New York; Southeastern Garment Company, Clinton, North Carolina; Romar Manufacturing Company, South Norwalk, Connecticut; and Marbert Manufacturing Company, Bridgeport, Connecticut, contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Zimco Industries Incorporated, New York, New York and Roanoke, Virginia; Royalad Manufacturing Company, Peekskill, New York; Southeastern Garment Company, Clinton, North Carolina; Marbert Manufacturing Company, Bridgeport, Connecticut, and Romar Manufacturing Company, South Norwalk, Connecticut who became totally or partially separated from employment on or after May 27, 1979 and before February 1, 1980 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 22th day of October 1980.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 80-34017 Filed 10-30-80; 8:45 am]

BILLING CODE 4510-28-M

NATIONAL CREDIT UNION ADMINISTRATION

Summary of Statutory Enforcement Actions

AGENCY: National Credit Union Administration.

ACTION: Disclosure of statutory enforcement actions, January 1, 1980–June 30, 1980.

SUMMARY: National Credit Union Administration has prepared a written summary of all statutory enforcement actions which have taken place between January 1, 1980 and June 30, 1980. This action is taken pursuant to a Joint Statement of Policy on Disclosure of Statutory Enforcement Actions of the Federal Financial Institutions Examination Council dated January 29, 1980 (45 FR 6648). The summary is available to members of the public upon request.

FOR FURTHER INFORMATION CONTACT:

Robert Fenner, Assistant General Counsel, Office of the General Counsel, National Credit Union Administration, 1776 G Street, NW., Washington, D.C. 20456. Telephone: (202) 357–1030.

SUPPLEMENTARY INFORMATION: On January 29, 1980 the National Credit Union Administration, in conjunction with the other members of the Federal Financial Institutions Examination Council (the "Agencies"), issued a Statement of Policy of Disclosure of Statutory Enforcement Actions. The Statement defined circumstances in which each agency would disclose to the public information concerning statutory enforcement proceedings brought against regulated institutions or other persons subject to the Agencies' enforcement authority. The policy statement applies to proceedings commenced by written notice, to formal supervisory written agreements entered into pursuant to statute, and to proceedings which, though not commenced by a written notice, result in a final agency order.

The Agencies recognized that it was in the public interest to make known the substantive standards used in taking statutory enforcement actions. At the same time, concern was expressed for the need to preserve the confidentiality of information where disclosure might infringe upon the right of privacy, or impair the soundness of a financial institution or the ability of the Agencies to examine the institution efficiently and effectively. Both elements of the public interest have long been recognized and protected by Congress, the Agencies, and the courts.

In order to reconcile and implement these policies, the Agencies determined that, effective January 1, 1980, each Agency woud prepare, at least on a semi-annual basis, a written summary of every final cease and desist, suspension, removal, civil money penalty, and insurance termination order as well as every formal supervisory written agreement issued pursuant to statute after that date. Each summary would describe the essential facts pertinent to agency action in the case and would set forth, in detail, the action taken by the reporting Agency. Names of financial institutions, of other respondents, and of any other persons involved in the matter, and, to the extent feasible, consistent with the objective that a summary contain essential facts, any information that might lead to identification of any persons or companies, would not be disclosed in any summary. All summaries prepared pursuant to this Joint Statement of Policy would be made available by the

Agencies to members of the public upon request.

Pursuant to the Statement, the National Credit Union Administration has prepared a summary of all statutory enforcement actions which have taken place between January 1, 1980 and June 30, 1980. Copies of the summary may be obtained by writing to Mr. Robert Fenner at the above address.

Dated: October 22, 1980.

Lawrence Connell,

Chairman, National Credit Union Administration Board.

[FR Doc. 80-33631. Filed 10-30-80; 8:45 am]

BILLING CODE 7535-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Babcock and Wilcox Water Reactors; Meeting

The ACRS Subcommittee on Babcock and Wilcox Water Reactors will hold a meeting on Wednesday, November 12, 1980, starting at 8:30 a.m. in Room 1046, 1717 H St., NW., Washington, DC. This meeting has been rescheduled from October 30–31, 1980, and all items remain the same as published in the **Federal Register** on October 16 (45 FR 68817).

Additional information regarding this meeting may be obtained by a prepaid telephone call to the Designated Federal Employee, Mr. John C. McKinley, (telephone 303/634–3265) between 8:15 a.m. and 5:00 p.m. EST.

Dated: October 28, 1980.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 80-33880 Filed 10-30-80; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on the General Electric Test Reactor; Meeting Time Change

The meeting time for the ACRS Subcommittee on The General Electric Test Reactor has been changed to 1:00 p.m., Tuesday, November 4, 1980 (instead of 8:30 a.m., Tuesday, November 4, 1980).

All other items regarding this meeting remain the same as stated in the **Federal Register** notice published Monday, October 20, 1980 (45 FR 69320).

Dated: October 28, 1980.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 80-33881 Filed 10-30-80; 8:45 am]

BILLING CODE 7590-01-M

Applications for Licenses to Export/Import Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public Notice of Receipt of an Application", please take notice that the Nuclear Regulatory Commission has received the following application(s) for export/import licenses. A copy of each application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H St., N.W., Washington, D.C.

A request for a hearing or a petition for leave to intervene may be filed on or before December 1, 1980. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, the Secretary, U.S. Nuclear Regulatory Commission and the Executive Secretary, Department of State, Washington, D.C. 20520.

In its review of applications for license to export production or utilization facilities, special nuclear material or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported.

Dated this day October 27, 1980, at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

James R. Shea,

Director, Office of International Programs.

Name of applicant, date of application, date received, and application number	Material type	Material in kilograms		End use	Country of destination
		Total element	Total isotope		
Nissho-Iwai, 10/06/80, 10/08/80, XMAT0144	1,000 Kgs Heavy Water as moderator in FUGEN Reactor.				Japan.
Transnuclear, 10/01/80, 10/02/80, ISNM80013	88.1% enriched uranium	1.591	1.402	Return of material from XSNM01345 not accepted by Ontario Hydro.	From Canada.
Transnuclear, 10/01/80, 10/02/80, XSNM01744	3.35% enriched uranium	15,901.000	533.033	Reload fuel for Stade Reactor	West Germany
Transnuclear, 10/01/80, 10/02/80, XSNM01345 (01)	93.3% enriched uranium	Add'l 1.60	Add'l 1.49	Fuel for Bruce Generating Stations.	Canada.
Transnuclear, 10/06/80, 10/06/80, XSNM01745	3.4% enriched uranium	10,794	367	Reload fuel for Doel 2	Belgium.
Exxon Nuclear, 10/02/80, 10/06/80, XSNM01746	2.95% enriched uranium	9,000	225	Storage and eventual sale to a utility for power reactor fuel needs.	West Germany.
Exxon Nuclear, 10/02/80, 10/06/80, XSNM01747	2.95% enriched uranium	2,670	78	Fuel for KAHL Reactor	West Germany.
Exxon Nuclear, 10/02/80, 10/06/80, XSNM01748	2.85% enriched uranium	15,350	370	Fuel for Gundremmingen B or C Reactor.	West Germany.
U.S. Department of Energy, 09/26/80, 10/07/80, XSNM01749	19.77% enriched uranium	37.200	7.354	Fuel for TRIGA research reactor Pitesti.	Romania.
Westinghouse, 10/06/80, 10/14/80, XSNM01750	3.6% enriched uranium	305,283	9,464	Initial cores, three reloads each and 4 spare assemblies for KNU-7 & 8.	South Korea.
Edlow International, 10/15/80, 10/17/80, XSNM01752	3.55% enriched uranium	19,865	695	Routine reload Forsmark Unit II	Sweden.

[FR Doc. 80-33886 Filed 10-30-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-261]

Carolina Power & Light Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 51 to Facility Operating License No. DPR–23 issued to Carolina Power and Light Company (the licensee), which revised the license for operation of the H. B. Robinson Stream Electric Plant, Unit No. 2 (the facility), located in the Darlington County, South Carolina. The amendment is effective as of the date of issuance.

The amendment modifies License No. DPR–23 to include a requirement to maintain a Safeguards Contingency Plan to be fully implemented in accordance with 10 CFR 73.40(b), within 30 days of this approval by the Commission.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

The licensee's filing dated August 1, 1980 is being withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR 9.12.

For further details with respect to this action, see (1) Amendment No. 51 to License No. DPR–23, and (2) the Commission's related letter dated October 6, 1980. Both of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29550. A copy of these items may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 6th day of October 1980.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1. Division of Licensing.

[FR Doc. 80-33892 Filed 10-30-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-261]

Carolina Power and Light Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 50 to Facility Operating No. DPR–23, issued to Carolina Power and Light Company, which revised the license and Technical Specifications for operation of the H. B. Robinson Unit No. 2 (the facility) located in Darlington County, South Carolina. The amendment is effective as of the date of issuance.

This amendment changes the license to provide for standard provisions for special nuclear, source and byproduct materials, and adds a Technical Specification for the testing and surveillance of sources.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determied that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

For further details with respect to this action, see (1) the application amendment dated December 18, 1974, as supplemented Setember 20, 1979 and July 14, 1980, (2) Amendment No. 50 to License No. DPR–23, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29550. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 30th day of September, 1980.

For the Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch #1, Division of Licensing.

[FR Doc. 80-33893 Filed 10-30-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-255]

Consumers Power Co.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 62 to Provisional Operating License No. DPR–20, issued to Consumers Power Company (the licensee) which revised the Technical Specifications for operation of the Palisades Plant (the facility) located in VanBuren County, Michigan. The amendment is effective as of its date of issuance.

The amendment revises the limiting condition for operation for the auxiliary feedwater system.

The application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated July 31, 1979, (2) Amendment No. 62 to License No. DPR–20 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the Kalamazoo Public Library, 315 South Rose Street, Kalamazoo, Michigan 49000. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 20th day of October, 1980.

V 45 OC 31 80 UMI

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch #5, Division of Licensing.

[FR Doc. 80-33895 Filed 10-30-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-282-OLA and 50-306-OLA]

Northern States Power Co. (Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2); Order dismissing Proceeding

October 24, 1980.

On March 12, 1980, the Nuclear Regulatory Commission published in the Federal Register a notice of proposed issuance of amendment to facility operating license (45 FR 16056-57) in connection with the application of Northern States Power Company (Licensee) to expand the storage capacity of the spent fuel pools at its Prarie Island Nuclear Generating Plant. In response to that notice, the State of Minnesota, by its Minnesota Pollution Control Agency and by its Attorney General (the Petitioner), filed a Request for Hearing and Petition for Leave to Intervene dated April 9, 1980. On April 24, 1980, the Petitioner filed a supplement to its Petition for Leave to Intervene setting forth three contentions on which a hearing was requested and on July 21, 1980, submitted its Amended Contentions 1 and 2 and Withdrawal of Contention 3.

At a prehearing conference held pursuant to Licensing Board order on August 6, 1980, in St. Paul, Minnesota, counsel for the parties and the Petitioner advised the Board that Petitioner, Licensee and the NRC Staff had reached an agreement which called for the withdrawal by the Petitioner of its remaining contentions, the withdrawal of its Request for Hearing and Petition for Leave to Intervene, the termination of this proceeding, and the inclusion of certain language in the license amendment should the NRC authorize its issuance. The Board was further advised that the agreement was subject to approval by the Minnesota Pollution Control Agency and by the Attorney General of the State of Minnesota and that such agreement was contingent upon termination of this proceeding by the licensing Board.

In a joint motion filed on September 24, 1980, Licensee, Staff and Petitioner have informed the Board that the Minnesota Pollution Control Agency and the Attorney General have approved the agreement and moved the Board (1) to approve Petitioner's withdrawal of its Contentions 1 and 2 and withdrawal of its "Request for Hearing and Petition for Leave to Intervene", dated April 9, 1980, as supplemented by its "Supplement to Its Petition to Intervene" dated April 24, 1980, and amended by its filing dated July 21, 1980; and (2) to enter an order terminating this proceeding.

Petitioner's request for leave to withdraw its Petition for Leave to Intervene is pursuant to the Stipulation which has been duly executed by Licensee, Staff and Petitioner and filed as an appendix to the pending joint motion. While we do not expressly pass upon the terms of the Stipulation, we observe that it appears to meet Petitioner's basic concerns as set forth in its Petition for Leave to Intervene. We note further, that aside from the general policy of administrative law favoring harmonious settlement of contested issues, the provisions of 10 CFR 2.759 of the Commission's Rules of Practice specifically encourage the fair and reasonable settlement of outstanding issues in licensing proceedings. Accordingly, in light of the docketed Stipulation, the Board hereby grants the request by Petitioner for leave to withdraw its Petition for Leave to Intervene and its Contentions 1 and 2. Therefore, the Board accepts the withdrawal of the Petitioner in this proceeding.

In view of the withdrawal of the Petitioner, there are no longer any matters in controversy in this proceeding, and, consequently, there is no issue to be heard by the Board. Dismissal of this proceeding is consistent with the Commission's regulations which do not comtemplate a hearing on an application for an operating license, or an amendment thereto, in the absence of any matters in controversy, 10 CFR §§ 2.104, 2.105, 50.58(b), and 50.91 and with the general powers of the presiding officer in § 2.718. Therefore, the joint motion to terminate the proceeding will be granted and the proceeding before this Board will be dismissed.

Accordingly, it is ordered, that the proceeding before this Board, noticed in the Commission's "Proposed Issuance of Amendment to Facility Operating License" dated March 12, 1980, be, and it hereby is, dismissed.

Dr. David L. Hetrick and Dr. Quentin J. Stober, members of this Board, join in this Order.

Dated at Bethesda, Maryland, this 24th day of October, 1980.

For the Atomic Safety and Licensing Board.

Robert M. Lazo, *Chairman.*

[FR Doc. 80-33894 Filed 10-30-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-245]

Connecticut light & Power Co., the Hartford Electric Light Co., Western Massachusetts Electric Co., and Northeast Nuclear Energy Co.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 69 to Provisional Operating License No. DPR-21, issued to Northeast Nuclear Energy Company, The Hartford Electric Light Company, Western Massachusetts Electric Company, and Connecticut Light and Power Company (the licensees), which revised the Technical Specifications for operation of the Millstone Nuclear Power Station, Unit No. 1 (the facility) located in Waterford, Connecticut. The amendment is effective as of its date of issuance.

The amendment revises the Technical Specifications to allow the count rate on the Source Range Monitor (SRM) channels to go below three (3) counts per second under certain circumstances.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this action was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated September 4, 1980, and supplement thereto dated September 24, 1980, (2) Amendment No. 69 to License No. DPR-21, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut 06385. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Attention: Director, Division of Licensing.

Dated at Bethesda, Md., this 9th day of October 1980.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch #5, Division of Operating Reactors.

[FR Doc. 80-33897 Filed 10-30-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-334]

Duquesne Light Co., Ohio Edison Co., and Pennsylvania Power Co.; Issuance of Amendment To Facility Operating License

The U.S. Nuclear Rdegulatory Commission (the Commission) has issued Amendment No. 34 to Facility Operating License No. DPR-66 issued to Duquesne Light Company, Ohio Edison Company, and Pennsylvania Power Company (the licensees), which revised Technical Specifications for operation of the Beaver Valley Power Station, Unit No. 1 (the facility) located in Beaver County, Pennsylvania. The amendment is effective as of the date of issuance.

The amendment revises Table 3.7-4 of Radiological Technical Specification 3.7.8.12 by removing nine hydraulic snubbers from this list.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated October 17, 1980, (2) Amendment No. 34 to License No. DPR-66 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room 1717 H Street, N.W., Washington, D.C. and at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Md., this 20th day of October 1980.

For The Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 80-33898 Filed 10-30-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-334]

Duquesne Light Co., Ohio Edison Co., and Pennsylvania Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 33 to Facility Operating License No. DPR-66 issued to Duquesne Light Company, Ohio Edison Company, and Pennsylvania Power Company (the licensees), which revised Technical Specifications for operation of the Beaver Valley Power Station, Unit No. 1 (the facility) located in Beaver County, Pennsylvania. The amendment is effective as of the date of issuance.

The amendment revises the Radiological Technical Specifications related to the response time required for isolation of the control room ventilation system and for isolation of certain containment penetrations.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated September 30, 1980, (2) Amendment No. 33 to License No. DPR-66 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Md., this 15th day of October 1980.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch #1, Division of Licensing.

[FR Doc. 80-33900 Filed 10-30-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-466 CP]

Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1); Order Scheduling Second Prehearing Conference

October 27, 1980.

Pursuant to 10 CFR 2.752(a) and in accord with the Memorandum and Order of October 3, 1980, on December 2, 1980, and continuing through December 3, 1980, if necessary, a second prehearing conference will be held at the following location: Holiday Inn, Medical Center, 6701 South Main Street, Houston, Texas 77030.

The sessions will begin at 9:00 AM and will recess at 5:00 PM.

The Board will consider the factors set forth in § 2.752(a) (exclusive of the setting of a hearing schedule) only insofar as environmental matters are concerned. The public is invited to attend this conference. However, limited appearance statements will not be received, but will be received at the beginning of the evidentiary hearing.

It is so ordered.

Dated at Bethesda, Md., this 27th day of October 1980.

For the Atomic Safety and Licensing Board.

Sheldon J. Wolfe,

Chairman.

[FR Doc. 80-33899 Filed 10-30-80; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR OVERSIGHT COMMITTEE

Open Meeting

October 28, 1980.

The Nuclear Safety Oversight Committee (NSOC) will meet from 9:00 am to 12:30 pm and 1:45 pm to 4:30 pm on November 17, and from 9:00 am to 11:30 am and 1:00 pm to 4:00 pm on November 18 in Room 7008 of the New

Executive Office Building (NEOB). The NEOB is located on the northeast corner of 17th Street and Pennsylvania Avenue, N.W. in Washington, D.C. The public entrance to the building is on 17th Street between Pennsylvania Avenue and H Street, N.W.

The Committee was established by Executive Order 12202 on March 18, 1980, in response to the recommendations of the President's Commission on the Accident at Three Mile Island (the Kemeny Commission). Generally, the Committee is responsible for monitoring the progress of the utilities and their suppliers, the Nuclear Regulatory Commission, other federal agencies, and state and local authorities in implementing the Kemeny Commission's recommendations and in improving the safety of nuclear power. The Committee will report periodically to the President.

Thus far the Committee has held five meetings: on May 18, 1980 in Pasadena, California; and on July 28 and 29, August 18 and 19, September 16 and 17, and October 7 and 8, 1980 in Washington, D.C. The Committee has heard testimony and had discussion in a number of areas including:

The nature of the Committee's responsibilities as set forth in Executive Order 12202;

The Nuclear Regulatory Commission's (NRC) "Action Plan Developed as a Result of the TMI–2 Accident," designated NUREG–0660 and available through the Document Management Branch, Division of Technical Information and Document Control, NRC, Washington, D.C. 20555;

The procedure utilized in the federal decision-making process as it relates to nuclear safety, and public and private participation;

FEMA's Report to the President (June 1980), and procedures for emergency planning;

The statues of generic safety issues; the analysis and evaluation of operational data;

The NRC budget and allocation of its staff resources to implement the "Action Plan" and how that will affect other NRC functions;

NRC's inspection and enforcement program;

Backfitting and standardization of plant design;

The regulatory relationship between FEMA and NRC.

During the next meeting the Committee will receive testimony and, when appropriate, written materials and documents, concerning the following matters;

The effect of NRC's Action Plan on safety design;

Backfitting and standardization of plant design, and warranty coverage for design deficiencies;

Safety research and training programs;

Quality control in plant design;

Labor-management problems, training programs, and the union's role in safety programs;

Two panels will discuss nuclear safety research, including status, needs, opportunities, and institutional arrangements.

Testimony on these matters will be received from a number of individuals specifically invited by the Committee.

The meeting will be open to public observation. Written Comments or statements may be submitted at anytime before or after the meeting and should be related to the substantive matters identified above. Approximately 60 seats will be available for the public on a first come, first served basis. The Committee meeting will be recorded and the transcript may be examined in the Committee's office at 1133 15th Street, N.W., Suite 307, Washington, D.C.

For further information contact Margo von Kaenel at (202) 653–8468.

Margo W. von Kaenel,

Executive Assistant.

[FR Doc. 80–34043 Filed 10–30–80; 8:45 am]

BILLING CODE 6820–01–M

PRESIDENT'S COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS IN MEDICINE AND BIOMEDICAL AND BEHAVIORAL RESEARCH

Change of Meeting Place

Notice is hereby given that the location of the fifth meeting of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, previously announced, has been changed from Room 2010 of the New Executive Office Building, 1726 Jackson Place, N.W., Washington, D.C. to the John Hay and Colonial Room, Lower Level, Hay Adams Hotel, 800 16th Street, N.W., Washington, D.C. from 9:00 a.m. to 5:30 p.m. on Friday, November 7, 1980 and from 8:30 a.m. to 4:00 p.m. on Saturday, November 8, 1980.

For further information, contact Andrew Burness, Public Information Officer, at (202) 653–8051.

Alexander M. Capron,

Executive Director.

[FR Doc. 80–33920 Filed 10–30–80; 8:45 am]

BILLING CODE 6820–AV–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–17253; File No. SR–Amex–80–25]

American Stock Exchange, Inc.; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94–29, 16 (June 4, 1979), notice is hereby given that on October 16, 1980 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

The Exchange's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange proposes to amend Article V, Section 6 of the Exchange Constitution to (1) extend the period of retained disciplinary jurisdiction over former members from 60 days to one year immediately following termination of membership status or receipt by the Exchange of writtten notification of such termination, whichever occurs later, and (2) expand the scope of such jurisdiction to cover member organizations.

The Exchange's Statement of Purpose and Basis

The Constitutional amendments expanding the period and the scope of the Exchange's retained disciplinary jurisdiction will enhance the Exchange's ability to discharge its self-regulatory responsibilities and conform the Exchange's retained disciplinary jurisdiction to that of other major SROs.

The proposed amendments are consistent with Section 6(b) of the Act in general and further the objectives of Section 6(b)(5) and 6(b)(6) in particular in that they are designed to enhance the Exchange's ability to appropriately discipline former members and their associated persons for violations of the Exchange Act or rules of the Exchange committed during the period of their membership or association with a member.

Comments Received From Members, Participants, or Others on Proposed Rule Change

No comments were solicited or received with respect to the proposed rule change.

Burden on Competition

The Exchange has determined that no burden on competition will be imposed by the proposed rule change.

Within thirty-five days of the date of publication of this notice in the **Federal Register**, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer periods to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submission should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted November 21, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

October 27, 1980.

[FR Doc. 80–34007 Filed 10–30–80; 8:45 am]

BILLING CODE 8010–01–M

SELECTIVE SERVICE SYSTEM

Senior Executive Service Performance Review Board; Appointment of Members

Announcement is made of the appointment of the following persons as members of the SES Performance Review Board for the Selective Service System: James G. Bond, Chairman, David A. Cox, Edward A. Frankle, Herbert C. Puscheck, and Raymond F. Wisniewski.

The announcement of March 28, 1980 (45 FR 23101) is canceled.

Dated: October 27, 1980.

Bernard Rostker,

Director of Selective Service.

[FR Doc. 80–33960 Filed 10–30–80; 8:45 am]

BILLING CODE 8015–01–M

SMALL BUSINESS ADMINISTRATION

Region III Advisory Council Public Meeting

The Small Business Administration Region III Advisory Council, located in the geographical area of Clarksburg, West Virginia, will hold a public meeting at 9:30 a.m., Thursday, November 20, 1980, at the Sheraton Inn, 153 West Main Street, Clarksburg, West Virginia, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Arthur J. Glick, District Director, U.S. Small Business Administration, 109 North Third Street, Clarksburg, West Virginia 26301—(304) 622–6601.

Dated: October 24, 1980.

Michael B. Kraft,

Director, Office of Advisory Councils.

[FR Doc. 80–33914 Filed 10–30–80; 8:45 am]

BILLING CODE 8025–01–M

Region VI Advisory Council; Public Meeting

The Small Business Administration Region VI Advisory Council, located in the geographical area of San Antonio, Texas, will hold a public meeting at 9:00 a.m., Friday, November 21, 1980, at the Federal Building, 727 East Durango, Room B–120, San Antonio, Texas, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Julio Perez, District Director, U.S. Small Business Administration, 727 E. Durango, Room A–513, San Antonio, Texas 78206—(512) 229–6105.

Dated: October 24, 1980.

Michael B. Kraft,

Deputy Advocate for Advisory Councils.

[FR Doc. 80–33915 Filed 10–30–80; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice CM–8/337]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Meeting

The Working Group on International Multimodal Transport and Containers of the Safety of Life at Sea Subcommittee will conduct an open meeting at 9:30 a.m. on November 13, 1980 in Room 8334 of the Department of Transportation Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

The purpose of this meeting is to dicuss matters germane to multimodal transport and containers. The following specific issues will be addressed:

De-briefing and discussion on May 8–27, 1980, UN Conference on a Convention on International Multimodal Transport.

De-briefing and discussion on the June 9–13, 1980, meeting of the Group of Experts on Combined Transport (ECE).

Discussion of the US position for the meeting of the 22nd Session of the IMCO Subcommittee on Containers and Cargoes to be held in London on January 26–30, 1981.

Other matters.

For further information contact Mr. Charles Hochman, USCG (202–426–1577) or Mr. Paul B. Larsen, Department of Transportation (202–426–4710).

Dated: October 23, 1980.

John Todd Stewart,

Choirman, Shipping Coordinoting Committee.

[FR Doc. 80–33938 Filed 10–30–80; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM–8/338]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Meeting

The Working Group on Bulk Chemicals of the Safety of Life at Sea Subcommittee will conduct an open meeting at 9:30 a.m. on November 13, 1980, in Room 1103 at the Department of Transportation's Trans Point Building, 2100 Second Street, SW., Washington, D.C. 20593.

The purpose of the meeting will be to discuss the eighth session of the IMCO Subcommittee on Bulk Chemicals. Major items on the agenda are:

The application of segregated ballast requirements to chemical tankers carrying Annex I oils.

Carriage of mixtures of Annex I and Annex II products.

Review and updating of the Bulk Chemical Code.

Harmonization of the Bulk Chemical and Gas Carrier Codes.

Safety requirements for ships carrying substances for the purpose of incineration at sea.

Inert gas requirements for chemical tankers.

For further information contact: Mr. Frits Wybenga, US Coast Guard (G–MHM–1), Wash., D.C. 20593; Telephone (202) 426–1217.

V 45 OC 31 80 UMI

Dated: October 23, 1980.

John Todd Stewart,

Chairman, Shipping Coordinating Committee.

[FR Doc. 80-33939 Filed 10-30-80; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/339]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Meeting

The Working Group on Standards of Training and Watchkeeping of the Subcommittee on Safety of Life at Sea will conduct an open meeting at 9:30 a.m. on Wednesday, November 18, 1980, in room 7200 of the Nassif Building, Department of Transportation, 400 7th Street, SW., Washington, D.C.

The purpose of the meeting will be to finalize notes on the agenda items (listed below) for submission to the Fourteenth Session of the IMCO Subcommittee on Standards of Training and Watchkeeping to be held in London, January 19, 1981:

Manning of seagoing ships.

Training in the use of automatic radar plotting aids (ARPA).

Training in radar observation and plotting.

Training, qualifications and operational procedures for maritime pilots.

Training and qualifications of crews serving on mobile offshore units.

Training and qualifications of officers and ratings in the handling of hazardous or noxious dry chemicals in bulk.

Security of certificates of competency.

For further information contact Captain R. A. Sutherland, USCG Headquarters (G-MVP/14), 2100 2nd Street, SW., Washington, D.C. 20593. Telephone: (202) 426-1500.

The Chairman will entertain comments from the public as time permits.

Dated: October 23, 1980.

John Todd Stewart,

Chairman, Shipping Coordinating Committee.

[FR Doc. 80-33940 Filed 10-30-80; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/340]

Oceans and International Environmental and Scientific Affairs Advisory Committee; Open Meeting

The General Panel of the Oceans and International Environment and Scientific Affairs Advisory Committee will meet at 9:15 a.m. on Monday, November 10, 1980 in Room 250, National Academy of Science, Washington, D.C.

At this meeting, officers responsible for scientific and environmental affairs in the Department of State and members of the Advisory Committee will discuss U.S. dependence on foreign countries for critical non-fuel minerals and preparations for the UN Conference on New and Renewable Sources of Energy. This session will be open to the public. The public will be admitted to the session to the limits of seating capacity and may be given the opportunity to participate in discussions according to the instructions of the Chairperson.

Due to last minute complications in preparation of agenda documents, it was impossible to publish this notice within the statutory fifteen day limit. Requests for further information on the meeting may be directed to Bronson Percival of the OES Policy Assessment Staff, Department of State. He may be reached by telephone on (202) 632-2764.

Thomas R. Pickering,

Chairman.

[FR Doc. 80-34051 Filed 10-30-80; 8:45 am]

BILLING CODE 4710-07-M

SYNTHETIC FUELS CORPORATION

Initial Solicitation of Project Proposals

AGENCY: United States Synthetic Fuels Corporation.

ACTION: Notice.

SUMMARY: Section 127 of the United States Synthetic Fuels Corporation Act of 1980 (Part B, Title I, Pub. L. 96-294) directs the Corporation to issue its first solicitation for proposals from concerns interested in the construction or operation, or both, of synthetic fuel projects not later than the end of this calendar year. The Corporation has prepared a draft solicitation for applications for projects requiring financial assistance. The Corporation invites public comment on this draft solicitation.

COMMENTS BY: November 14, 1980. Comments should be submitted to the address set forth below.

FOR FURTHER INFORMATION CONTACT: Larry E. Ruff, United States Synthetic Fuels Corporation, 1200 New Hampshire Avenue, N.W., Washington, D.C. 20036, (202) 653-4400.

SUPPLEMENTARY INFORMATION: Public Law 96-294 establishes a national goal of achieving from domestic resources a synthetic fuel production capability equivalent to at least 500,000 barrels per day of crude oil by 1987 and at least 2,000,000 barrels per day of crude oil by 1992. The Corporation's mandate is to assist in attaining this goal by providing financial assistance under Subtitle D, Part B, Title I, Pub. L. 96-294, to include price guarantees, purchase agreements and loan guarantees, loans and joint ventures in conjunction with private sources of capital.

An Energy Security Reserve of $20 billion has been established, of which a portion is available to fund eligible projects under this initial solicitation. Public Law 96-294 requires the Corporation's initial solicitation to be issued not later than the end of this calendar year, after review by an Advisory Committee composed of the Secretaries of Treasury, Defense, Interior and Energy, and the Administrator of the Environmental Protection Agency, as established by Section 123, Pub. L. 96-294. To maintain the momentum of the program, the Corporation intends, if practicable, to issue the final solicitation on December 1, 1980.

Because of the significance of the synthetic fuels industry and its potential impact on the Nation's welfare, environment and security, the Corporation desires to receive maximum public comment currently with the Advisory Committee review, even though receipt of public comment is not required by law. The Corporation will review and consider all comments received by November 14, 1980 in preparing the final solicitation.

All comments should be marked "Comments on Initial Solicitation" and mailed to the United States Synthetic Fuels Corporation, 1200 New Hampshire Avenue, N.W., Washington, D.C. 20036. Persons wishing to be on the mailing list for the final solicitation should so indicate in their comments.

The text of the draft solicitation follows:

John C. Sawhill,

Chairman of the Board.

Draft Initial Solicitation for Proposals for Financial Assistance for Synthetic Fuels Projects

To All Interested Parties: The United States Synthetic Fuels Corporation invites the submission of proposals for financial assistance from concerns interested in the construction and/or operation of synthetic fuel projects, in accordance with the United States Synthetic Fuels Corporation Act of 1980. The Act establishes a national goal of achieving a synthetic fuels production capability from domestic resources equivalent to at least 500,000 barrels per day of crude oil by 1987 and at least 2,000,000 barrels per day of crude oil by 1992. The Corporation will provide financial assistance, in conjunction with private sources of capital, to help attain these goals.

The Corporation will carry out its responsibilities free of rigid, detailed procedural requirements and with maximum flexibility. The Corporation encourages the submission of the broadest range of synthetic fuel projects involving a diversity of technologies. Proposals may request any one or more of the methods of financial assistance which the Corporation is authorized to provide—loan guarantees, price guarantees, and purchase agreements; loans; and joint ventures, in that priority.

Submission of Proposals. This initial solicitation consists of a two-phase process for the submission and evaluation of proposals for financial assistance to synthetic fuel projects.

The Phase One, which will open December 1, 1980 and close March 31, 1981, interested parties are invited to present proposals for all types of synthetic fuel projects for basic evaluation by the Corporation. Applicants should adequately describe their financial resources and expertise for the project; their proposed project, including the technology and plant input and output, their scheduling timetable and risks with respect to completion; their ability to deal with environmental considerations and regulatory requirements; socioeconomic impacts; and their financing plan.

In Phase One, the Corporation is not requiring proposals to meet detailed specifications. The Corporation wishes to have the benefit of the experience and expertise of project sponsors. The Corporation recognizes that in order to attain the goals set by Congress even with assistance from the Corporation, private sector commitments of capital and management and technological effort of a magnitude not previously attempted in the United States are essential. To facilitate these commitments, the Corporation will be flexible and will cooperate fully with project sponsors, financial institutions, investment bankers and other private sector interests that are involved in synthetic fuel projects.

In Phase Two, promising proposals selected under Phase One for further evaluation will be invited to submit detailed, supplemental technical, business and financial information. On the basis of such submissions the Corporation will decide whether to negotiate definitive financial assistance.

Forms of Available Financial Assistance. The Corporation offers, in order of priority, the following general categories of financial assistance: loan guarantees, price guarantees and purchase agreements; loans; and joint ventures. Financial assistance awarded by the Corporation is intended to encourage and supplement, rather than to compete with or supplant, private investment capital which otherwise would be available to a proposed synthetic fuel project. In order to qualify for assistance, a party submitting a proposal must demonstrate the capability to undertake successful completion of the design, construction and/or operation of the project.

All proposals must meet the necessary conditions and requirements of the Act before they may receive financial assistance, and interested parties should familiarize themselves with the Act in preparing their proposals. Copies of the Act are available upon request.

Factors to be Considered. Among the factors which will be considered in awarding financial assistance to a particular proposal are the diversity of its technology from existing projects; the potential unit production cost; the long-term potential of the technology, considering the extent of the natural resources required and their geographic distribution; and the compliance of the technology with applicable regulatory requirements. In addition, the Corporation is obligated to give due consideration to promoting competition in the synthetic fuels industry. In the case of projects involving companies whose rates are regulated, the Corporation may consider whether the rate-making agencies are likely to protect the financial interests of investors and the Corporation. The Corporation will give priority consideration to proposals to be sited in a state which will expedite regulatory, licensing and other governmental activities related to such project.

Address for Submission. Ten copies of each proposal should be submitted to the Corporation before March 31, 1981, addressed to:

Public Summary. Each proposal should contain a separate summary for public release and distribution to interested parties as well as the Govenors of the States in which projects are to be located.

Questions concerning this solicitation may be submitted to the Corporation at any time.

United States Synthetic Fuels Corporation.

For the Board of Directors.

John C. Sawhill,

Chairman.

[FR Doc. 80-33886 Filed 10-30-80; 8:45 am]

BILLING CODE 6450-01-M

V 45 OC 31 80 UMI

Sunshine Act Meetings

Federal Register
Vol. 45, No. 213
Friday, October 31, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 10 a.m. (eastern time), Tuesday, November 4, 1980.

PLACE: Commission conference room 5240, fifth floor, Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED: Open to the public:

1. Recommendation and Selection of Proposed ABAR Contracts.
2. Technical Changes to EEOC Order 365.
3. Report on Commission Operations by the Executive Director.

Closed to the public:

Litigation Authorization; General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION:
Treva I. McCall, Acting Executive Officer, Executive Secretariat, at (202) 634-6748.

Notice issued October 28, 1980.

[S-2000-80 Filed 10-29-80; 10:39 am]

BILLING CODE 6570-06-M

2

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 71037, October 28, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., October 29, 1980.

CHANGE IN MEETING: The following items have been added:

Item Number, Docket Number and Company

CAP-9. E-9606, North Carolina Electric Membership Corp., Four County Electric Membership Corp., ElectriCities of North Carolina, and the Cities of Bennettsville and Camden, South Carolina v. Carolina Power & Light Co.

CP-10. CP80-455, Consolidated Gas Supply Corp.

Kenneth F. Plumb,
Secretary.

[S-1999-80 Filed 10-29-80; 10:23 am]

BILLING CODE 6450-85-M

3

FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 45, 209, 7103910, October 27, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: October 30, 1980.

PLACE: 1700 G Street NW., sixth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION:
Mr. Marshall (202-377-6677).

CHANGES IN THE MEETING: The following items have been added to the open meeting:

Increase in Accounts of an Insurable Type—Larned Savings & Loan Association, Larned, Kansas, into Western Savings Association, Pratt, Kansas.

Application for Bank Membership and Insurance of Accounts—Superior Savings & Loan Association, Los Angeles, California.

No. 412, October 29, 1980.

[S-2002-80 Filed 10-29-80; 2:24 pm]

BILLING CODE 6720-01-M

4

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 9 a.m., November 5, 1980.

PLACE: Hearing Room One, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Monthly Report of actions taken pursuant to authority delegated to the Managing Director.
2. Docket No. 79-94: All Freight Packers & Forwarders, Inc.—Independent Ocean Freight Forwarder License Application—Consideration of Petition for Reconsideration.
3. Discussion of Trade Studies Program.
4. Discussion of Standards of Approvability under Section 15 of the Shipping Act, 1916.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523-5725.

[S-1991-80 Filed 10-29-80; 9:46 am]

BILLING CODE 6730-01-M

5

FEDERAL RESERVE SYSTEM: Board of Governors.

TIME AND DATE: 11 a.m., Friday, October 31, 1980.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Continuation of proposals involving internal personnel procedures relating to the System's employee benefits program. (This matter was orginally announced for a meeting on October 22, 1980.)

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: October 29, 1980.

Theodore E. Allison,
Secretary of the Board.

[S-2003-80 Filed 10-29-80; 3:38 pm]

BILLING CODE 6210-01-M

6

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of November 3, 1980, in Room 825, 500 North Capitol Street, Washington, D.C.

Closed meetings will be held on Tuesday, November 4, 1980, at 10 a.m. and on Wednesday, November 5, 1980, following the 10 a.m. open meeting.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 522b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402(a)(4)(8)(9)(i) and (10).

Commissioners Loomis, Evans, and Friedman determined to hold the aforesaid meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, November 4, 1980, at 10 a.m., will be:

Formal orders of investigation.
Access to investigative files by Federal, State, or Self-Regulatory authorities.
Litigation matters.
Regulatory matters bearing enforsement implications.
Regulatory matter regarding financial institutions.
Institution of administrative proceeding of an enforcement nature.
Institution of injunctive action.
Freedom of Information Act appeal.
Opinion.

The subject matter of the closed meeting scheduled for Wednesday, November 5, 1930, following the 10 a.m. open meeting, will be:

Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.

The subject matter of the open meeting scheduled for Wednesday, November 5, 1980, at 10 a.m., will be:

1. Consideration of whether to grant the appeal of Walter R. Davis from the decision of the Commission's Freedom of Information Act Officer denying Mr. Davis' request for confidential treatment of a transcript of investigative testimony given by him in the course of a private Commission investigation. For further information, please contact David Knight at (202) 272-2454.
2. Consideration of whether to grant the application of Geoffrey P. E. Clarkson for relief pursuant to Rule 242(a)(5)(v) of the Securities Act of 1933. For further information, please contact Thomas J. Baudhuin at (202) 272-2644.
3. Consideration of whether or not to delegate authority to the Director of the Office of Opinions and Review to rule on (1) motions to stay final Commission orders in disciplinary proceedings pending appeal to the federal courts; (2) motions to stay disciplinary action taken by a self-regulatory organization pending review of that action by the Commission; and (3) requests for oral argument in appeals from disciplinary or exclusionary action taken by self-regulatory organizations. For further information, please contact William Stern at (202) 272-2754.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Paul Lowenstein at (202) 272-2092.

October 28, 1980.

[S-2001-80 Filed 10-29-80; 1:24 pm]

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

COMMUNITY SERVICES ADMINISTRATION

64940 10–1–80 / Cost principles; grantee financial management

ENVIRONMENTAL PROTECTION AGENCY

61617 9–17–80 / Steam electric power generating point source category; amendment to BPT variance clause

GENERAL SERVICES ADMINISTRATION

67659 10–14–80 / Contract financing, transfer of policies and procedures

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Fish and Wildlife Service—

65132 10–1–80 / Red Lechwe (Kobus Leche) listed as threatened species

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Immigration and Naturalization Service—

66451 10–7–80 / Statement of organization—field service; addition of Saunderstown as a Class A Port of Entry

Rules Going Into Effect Saturday, November 1, 1980

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—

63479 9–25–80 / Imported filberts; changes in quality provisions

68912 10–17–80 / Irish potatoes grown in Colorado (area No. 2); handling regulation

FEDERAL DEPOSIT INSURANCE CORPORATION

60865 9–15–80 / Securities of insured State nonmember banks

FEDERAL EMERGENCY MANAGEMENT AGENCY

67666 10–14–80 / Purchase of insurance and adjustment of claims

FEDERAL RESERVE SYSTEM

65184 10–2–80 / Securities disclosure provisions

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal Housing Commissioner—Office of Assistant Secretary—

59857 9–11–80 / Revision to thermal requirements for HUD Minimum Property Standards (MPS) for one- and two-family dwellings

[Corrected at 45 FR 62795, 9–22–80]

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development—

66414 10–6–80 / Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance

LABOR DEPARTMENT

Mine Safety and Health Administration—

23990 4–8–80 / Respirable dust; mandatory health standards for underground mines

TRANSPORTATION DEPARTMENT

Coast Guard—

29588 5–5–80 / Lifesaving equipment and exposure suits for Great Lakes vessels

[Originally published at 45 FR 24471, 4–10–80]

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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72404 **Part II—HHS/FDA:**
Certain Biological Products and Human Blood and Blood Products; Changes in Proper Names, Proposed Labeling Requirements and Reorganization and Revision of Regulations

72430 **Part III—Labor/ESA:**
Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

72464 **Part IV—OFR:**
Incorporation by Reference; Approvals, Extensions, and Corrections

72465 **Part V—Interior/OSMRE:**
Partial Approval/Disapproval of the Permanent Program Submission From the State of Illinois Under the Surface Mining Control and Reclamation Act of 1977

72508 **Part VI— Interior/ HCRS:**
1981 Action Program—Identification of Nationwide Recreation Issues

72512 **Part VII—HHS/PHS:**
Health Maintenance Organizations; Employees' Health Benefits Plans

72524 **Part VIII—HHS/PHS:**
Requirements for a Health Maintenance Organization

72538 **Part IX—HHS/HCFA:**
Medicare Program; Qualifying Conditions and Reimbursement of Health Care Prepayment Plans

72552 **Part X—DOE/ERA:**
Domestic Crude Oil Entitlements

72582 **Part XI—HHS/FDA:**
Therapeutically Equivalent Drugs; Availability of List

72610 **Part XII—EEOC:**
Guidelines on Discrimination Because of Religion

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Part II

Department of Health and Human Services

Food and Drug Administration

Certain Biological Products; Changes in Proper Names, and Human Blood and Blood Products; Proposed Labeling Requirements and Reorganization and Revision of Regulations

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 600, 606, 610, 620, 630, 640, 660

[Docket No. 80N-0053]

Changes in Proper Names of certain Biological Products

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) proposes to amend the biological regulations by: (1) Changing the proper names for certain biological products, (2) updating all applicable regulations in Part 600 et seq. to reflect these new names, and (3) updating and reorganizing § 610.53(a) (21 CFR 610.53(a)) for clarity. The proper names are being changed to reduce the length of the name, more accurately identify the product, and eliminate many inconsistencies between the United States Pharmacopeia (USP) and the biologics regulations.

DATE: Comments by December 30, 1980. FDA proposes that any final regulation issued under this proposal be effective 180 days after the date of publication of the final regulation for products initially introduced or initially delivered for introduction into interstate commerce. For blood and blood components, however, FDA proposes that the effective date be 1 year after publication of a final regulation issued under the proposed uniform blood labeling regulation published elsewhere in this issue of the **Federal Register.**

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, Pike, Bethesda MD 20857.

FOR FURTHER INFORMATION CONTACT: Paul Hiranaka, Bureau of Biologics (HFB-620), Food and Drug Administration, 8800 Rockville, MD 20205, 301-443-1306.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA) is proposing to amend the biologics regulations by: (1) Changing the proper names of certain biological products, (2) updating all applicable regulations in Parts 600 through 660 to reflect these new names, and (3) updating and reorganizing § 610.53(a) (21 CFR 610.53(a)) for clarity. The agency has been cooperating with the United States Adopted Names Council (USAN) to improve the proper names of many biological products. USAN is sponsored by the American Medical Association, the United States Pharmacopeial Convention (USP), and the American Pharmaceutical Association. USAN assigns nonproprietary names to new drugs as they are developed, establishes principles for designating names, and conducts a continuing review of product names to ensure that the names concisely and accurately identify specific products. Suitable nonproprietary names serve important functions because they properly identify the substances to which they apply, facilitate better communication between physicians and other professionals, and may be used without restriction by the public at large, as opposed to restrictions imposed upon the use of trademark names. The names that USAN develops or accepts from other agencies are likely to achieve worldwide recognition.

Name Change Amendments

FDA considered changes in the proper names of biological products to more accurately identify the product, to shorten the proper names, if appropriate, and to eliminate inconsistencies between names for products found in the USP and the biologics regulations. Consistent with USAN principles for designating meaningful and distinctive nonproprietary names, FDA proposes to amend the biologics regulations to change the proper names of certain blood products, viral products, bacterial products, antivenins, and allergenic extracts, as follows:

Proposed name	Present name
Blood Products	
1. Albumin	Normal Serum Albumin (Human)
2. Antihemophilic Factor	Antihemophilic Factor (Human)
3. Cryoprecipitated AHF	Cryoprecipitated Antihemophilic Factor (Human)
4. Factor IX Complex	Factor IX Complex (Human)
5. Fibrinolysin	Fibrinolysin (Human)
6. Immune Globulin	Immune Serum Globulin (Human)
7. Mumps Immune Globulin	Mumps Immune Globulin (Human)
8. Measles Immune Globulin.	Measles Immune Globulin (Human)
9. Pertussis Immune Globulin.	Pertussis Immune Globulin (Human)
10. Plasma	Single Donor Plasma (Human)
11. Plasma Fresh Frozen	Single Donor Plasma (Human), Fresh Frozen
12. Plasma Liquid	Single Donor Plasma (Human), Liquid
13. Plasma Platelet Rich	Single Donor Plasma (Human), Platelet Rich
14. Plasma Protein Fraction	Plasma Protein Fraction (Human)
15. Platelets	Platelet Concentrate (Human)
16. Rabies Immune Globulin.	Rabies Immune Globulin (Human)
17. Reagent Red Blood Cells.	Reagent Red Blood Cells (Human)
18. Red Blood Cells	Red Blood Cells (Human)
19. Red Blood Cells Deglycerolized.	Red Blood Cells (Human), Deglycerolized
20. Red Blood Cells Frozen	Red Blood Cells (Human), Frozen
21. Rho(D) Immune Globulin.	Rho(D) Immune Globulin (Human)
22. Source Plasma	Source Plasma (Human)
23. Source Plasma Liquid	Source Plasma (Human), Liquid
24. Source Plasma Pooled	Source Plasma (Human), Pooled
25. Source Plasma Salvaged.	Source Plasma (Human), Salvaged
26. Tetanus Immune Globulin.	Tetanus Immune Globulin (Human)
27. Vaccinia Immune Globulin.	Vaccinia Immune Globulin (Human)
28. Whole Blood	Whole Blood (Human)
29. Whole Blood Platelets and/or Cryoprecipitate Removed.	Whole Blood (Human), Modified
Viral Products	
1. Measles Virus Vaccine Live.	Measles Virus Vaccine, Live Attenuated
2. Measles, Mumps and Rubella Virus Vaccine Live.	Measles, Mumps, and Rubella Virus Vaccine, Live
3. Measles and Rubella Virus Vaccine Live.	Measles and Rubella Virus Vaccine, Live
4. Measles-Smallpox Vaccine Live.	Measles-Smallpox Vaccine, Live
5. Mumps Virus Vaccine Live.	Mumps Virus Vaccine, Live
6. Poliovirus Vaccine Live Oral, Trivalent.	Poliovirus Vaccine Live, Oral, Trivalent
7. Poliovirus Vaccine Live Oral, Type I.	Poliovirus Vaccine Live, Oral, Type I
8. Poliovirus Vaccine Live Oral, Type II.	Poliovirus Vaccine Live, Oral, Type II
9. Poliovirus Vaccine Live Oral, Type III.	Poliovirus Vaccine Live, Oral, Type III
10. Poliovirus Vaccine Inactivated.	Poliomyelitis Vaccine
11. Rubella and Mumps Virus Vaccine Live.	Rubella and Mumps Virus Vaccine, Live
12. Rubella Virus Vaccine Live.	Rubella Virus Vaccine, Live
13. Adenovirus and Influenza Virus Vaccines Combined Adsorbed.	Adenovirus and Influenza Virus Vaccines Combined Aluminum Phosphate Adsorbed
Bacterial Products	
1. Anthrax Vaccine Adsorbed.	Anthrax Vaccine, Adsorbed
2. Diphtheria and Tetanus Toxoids and Pertussis and Poliovirus Vaccines Inactivated, Adsorbed.	Diphtheria and Tetanus Toxoids and Pertussis and Poliomyelitis Vaccines Adsorbed
3. Diphtheria and Tetanus Toxoids and Pertussis Vaccine Adsorbed and Poliovirus Vaccine Inactivated.	Diphtheria and Tetanus Toxoids and Pertussis Vaccine Adsorbed and Poliomyelitis Vaccine
4. Tetanus and Diphtheria Toxoids Adsorbed for Adult Use.	Tetanus and Diphtheria Toxoids Adsorbed (For Adult Use)
Antivenins	
1. Antivenin Rattlesnake, Copperhead and Moccasin.	Antivenin (Crotolidae) Polyvalent
2. Antivenin Widow Spider	Antivenin (Lactrodectus mactans)
3. Antivenin Coral Snake	Antivenin (Micrurus fulvius)
Allergenic Extracts	
Allergenic Extracts Adsorbed.	Allergenic Extractrs, Alum Precipitated

FDA is proposing amendments in the proper names to:

1. Delete the word "Human" from the name of blood products intended for human use because all of these products are now derived from human sources. In the past, certain blood products were derived from bovine as well as human sources. Since there is no longer any reason to distinguish between sources, and because the products are recognized by the medical community as originating from humans, the word "Human" may now be deleted from the proper name of the products.

2. Delete the words "Normal" and "Serum" from the proper name of Normal Serum Albumin (Human). The term "Normal" is confusing because it may be interpreted incorrectly to mean that serum albumin may also be produced from abnormal serum. The word "Serum" is being deleted because, during the last 28 years, the albumin has been derived primarily from plasma (serum plus the blood clotting elements), with a very small percentage of albumin being derived from plasma of the placental origin.

3. Change the proper name of Cryoprecipitated Antihemophilic Factor (Human) to Cryoprecipitated AHF because it will reduce the length of the name. The revised name will clearly distinguish this product (a blood component of Single Donor Plasma prepared in the blood bank) from Antihemophilic Factor (a blood derivative prepared by fractionation from pools of human plasma).

4. Delete the term "Concentrate" from the proper name of Platelet Concentrata. The word "Concentrate" used in the proper name is derived from the method of platelet collection, which involves separation from the plasma and concentration by additional centrifugation. Because this concentration procedure is the usual method of processing, however, FDA believes that the deletion of the term "Concentrate" will not confuse the identity of the product. This proposed proper name change would be consistent with the proper name of the product Red Blood Cells which is not called a concentrate, even though it consists of the red cell portion of blood.

5. Delete the words "Single Donor" from the proper name of Single Donor Plasma (Human), which is plasma primarily intended for intravenous injection. The types of single donor plasma, such as platelet rich or fresh frozen, shall be designated by the proper descriptive modifier following the proper name, e.g., Plasma Platelet Rich. Similarly, varieties of Source Plasma (plasma which is intended for further manufacturing) shall be designated by the proper descriptive modifier following the name, e.g., Source Plasma Liquid.

6. Revise the proper names for Whole Blood (Human) and Red Blood Cells (Human), by preceding the proper name with the name of the specific anticoagulant used. For example, Whole Blood (Human) and Red Blood Cells (Human), collected in anticoagulant citrate phosphate dextrose (CPD) solution shall be called CPD Whole Blood and CPD Red Blood Cells, respectively.

7. Revise the proper name Whole Blood (Human) Modified, to Whole Blood Platelets and/or Cryoprecipitate Removed, in order to more accurately identify the product. The proper name shall be preceded by the name of the anticoagulant used.

8. Change the proper name of Poliomyelitis Vaccine to Poliovirus Vaccine Inactivated to be consistent with the nomenclature of other viral vaccines which indicate the name of the virus producing the vaccine, rather than the name of the disease. As a result of this proposed change, the proper name of the mixed vaccines containing Poliomyelitis Vaccine would be changed accordingly. (See the listing of proper name changes of Bacterial Products.)

9. Delete the word "Attenuated" from the proper name of Measles Virus Vaccine, Live, Attenuated, to make it consistent with the proposed proper names of other live virus vaccines, such as Poliovirus Vaccine Live Oral, Mumps Virus Vaccine Live, or Rubella Virus Vaccine Live.

10. Change the proper name of Adenovirus and Influenza Virus Vaccines Combined Aluminum Phosphate Adsorbed to Adenovirus and Influenza Virus Vaccines Combined Adsorbed; and Allergenic Extracts, Alum Precipitated to Allergenic Extracts Adsorbed. The names of these two products are being changed to be consistent with the names of other adsorbed products which do not contain the name of the adsorbing agent.

11. Revise the proper names for licensed antivenin products. The proposed name changes for the three licensed antivenins follow a uniform format and provide a method for naming future Antivenin products. The proper name Antivenin is followed by the common name of the animal or group of animals producing the venom, but does not include the taxonomic genus and species name. The common name identifies the product and is, therefore, more easily recognized by untrained personnel or others who may need to use the product. The word Antivenin precedes the common names so that all the Antivenins may be properly alphabetized and readily found in any index on antivenins.

Under current license requirements, the package label for each antivenin must include its animal source. In addition, the package insert must include the taxonomic genus and species of the animal or group of animals producing the venom. The package insert must also identify and include the taxonomic genus and species of the animal or animals against whose venom the product is effective and those for which the product is known or suspected to be ineffective.

Miscellaneous Amendments

FDA is also proposing miscellaneous amendments to:

12. Delete commas from the proper names of most biological products, unless the product name contains three or more separate entities and use of a comma is grammatically correct. Removing the commas from the names of most products will not affect their specific identification and will provide a consistent guideline for naming future products. However, commas will continue to be used in proper names when they are needed for clarification.

13. Delete in § 610.53 the 10-year dating period for Normal Serum Albumin (Human), when the product is packaged is hermetically sealed metal containers, because Normal Serum Albumin (Human) is no longer being packaged in such containers. Therefore, a specified dating period is not needed for this kind of packaging.

14. Delete in § 610.53 certain products and their dating periods because they are no longer licensed, and to codify existing dating periods for licensed products which have not been previously listed for which data establish that period beyond which the product cannot be expected beyond reasonable doubt to yield its specific results and retain its safety, purity, and potency. The appropriate data to support these dating periods are on file with the Dockets Management Branch.

The following products would be deleted from the list in § 610.53:

(1) Adenovirus and Influenza Virus Vaccines Combined Aluminum Hydroxide Adsorbed.

(2) Aggregated Radio-Iodinated (I^{131}) Albumin (Human).

(3) Anti-Human Chorionic Gonadotropic Serum.

(4) Blood Grouping Serum Anti-Xg[a].

(5) Cobra Venom Solution.

(6) Cobra Venom Solution with Silicic and Formic Acids.

(7) Diphtheria and Tetanus Toxoids and Poliomyelitis Vaccine.

(8) Diphtheria Toxoid and Pertussis Vaccine.

(9) Fibrinogen (Human).

(10) Fibrinogen with Antihemophilic Factor (Human).

(11) Diphtheria Toxoid and Pertussis Vaccine Adsorbed.

(12) Gas Gangrene Polyvalent Antitoxin.

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(13) Haemophilus Influenzae Typing Serum.
(14) Histamine Azoprotein.
(15) Lymphogranuloma Venereum Antigen.
(16) Modified Plasma (Bovine).
(17) Mumps Vaccine.
(18) Poliomyelitis Vaccine Adsorbed.
(19) Polyvalent modified bacterial antigens with "No U.S. Standard of Potency."
(20) Pseudomonas Polysaccharide.
(21) Radio-Chromated (Cr^{51}) Serum Albumin (Human).
(22) Radio-Iodinated (I^{125}) Serum Albumin (Human).
(23) Radio-Iodinated (I^{131}) Serum Albumin (Human).
(24) Reagent Blood Group Specific Substances A and B.
(25) Rocky Mountain Spotted Fever Vaccine.
(26) Russell Viper Venom.
(27) Schick Test Control.
(28) Staphylococcus Antitoxin.
(29) Tetanus and Gas Gangrene Polyvalent Antitoxin.
(30) Trichinella Extract.

The following products would be added to the list in § 610.53:
(1) Anti-Carcinoembryonic Antigen Serum.
(2) Asparaginase.
(3) Blood Grouping Serum Anti-Co^b.
(4) Hepatitis B Immune Globulin.
(5) Meningococcal Polysaccharide Vaccine Group A.
(6) Meningococcal Polysaccharide Vaccine Group C.
(7) Meningococcal Polysaccharide Vaccine Group A and C Combined.
(8) Pertussis Vaccine Adsorbed.
(9) Pneumococcal Vaccine Polyvalent.
(10) Rabies Immune Globulin.
(11) Red Blood Cells Deglycerolized.

15. Update the dating period for freeze-dried Allergenic Products in § 610.53 to reflect the minimum dating period currently approved as part of a manufacturer's license application. The minimum dating period for such products will be 4 years from the date of manufacture.

16. Change the heading or § 610.53 from "Dating periods for specific products," to "Dating periods for biological products." The dating periods prescribed in § 610.53 apply to general types of bioloical products, rather than to the manufacturer's brand of each product. "Specific product" can be misinterpreted to mean the manufacturer's brand.

17. Change in § 610.53 the dating period for Tuberculin, Purified Protein Derivative, diluted (used for the Mantoux test) to 6 months, based on stability data submitted to the agency. The stability data are on file with the Dockets Management Branch.

18. Revise and reorganize § 610.53 to facilitate interpretation by clearly identifying the dating periods during and after manufacturer's storage and revoke §§ 610.51 and 610.52. As a result of the revision of § 610.53, §§ 610.51 and 610.52 will no longer be necessary.

To permit manufacturers sufficient time to comply with the requirements of any final regulation issued under this proposal the agency proposes that the effective date of the final regulation, except for blood and blood components, be 180 days after the date of its publication in the **Federal Register** for biological products initially introduced or initially delivered for introduction into interstate commerce. For blood and blood components, FDA proposes that the effective date be 1 year after publication of a final regulation issued under the proposed uniform blood labeling regulation published elsewhere in this issue of the **Federal Register**.

The agency has determined under 21 CFR 25.24(d)(10) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 501, 502, 510, 701, 52 Stat. 1040–1042 as amended, 1049–1051 as amended, 1055–1056 as amended, 76 Stat. 794–795 as amended (21 U.S.C. 321, 351, 352, 360, and 371); the Public Health Service Act (secs. 351, 351, 353, and 361, 58 Stat. 702 and 703 as amended, 61 Stat. 536 (42 U.S.C. 262, 263, 263a, 264)), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), it is proposed that Chapter I of Title 21 of the Code of Federal Regulations be amended as follows:

PART 600—BIOLOGICAL PRODUCTS: GENERAL

A. In Part 600:

§ 600.13 [Amended]

1. In § 600.13 by changing the proper names "Whole Blood (Human); Cryoprecipated Antihemophilic Factor (Human); Platelet Concentrate (Human); Red Blood Cells (Human); Single Donor Plasma (Human); and Source Plasma (Human)" to read "Whole Blood; Cryoprecipitated AHF; Platelets; Red Blood Cells; Plasma; and Source Plasma".

2. In § 600.15 by revising paragraph (a), to read as follows:

§ 600.15 Temperatures during shipment.

The following products shall be maintained during shipment at the specified temperatures:

(a) *Products.*

Product	Temperature
Cryoprecipitated AHF	– 18° C or colder
Measles, Mumps and Rubella Virus Vaccine Live.	10° C or colder.
Measles and Rubella Virus Vaccine Live.	Do.
Measles-Smallpox Vaccine Live.	Do.
Measles Virus Vaccine Live	Do.
Mumps Virus Vaccine Live	Do.
Platelets	Between 1° and 10° C if suspended in 20 to 30 mL of plasma or all reasonable methods to maintain the temperature as close as possible to a range between 20° to 24° C, if suspended in 30 to 50mL of plasma.
Plasma	– 18° C or colder.
Plasma Fresh Frozen	Do.
Plasma Liquid	1° to 10° C.
Plasma Platelet Rich	Between 1° and 10° C or all reasonable methods to maintain the temperature as close as possible to a range between 20° and 24° C.
Poliovirus Vaccine Live Oral, Trivalent.	0° C or colder.
Poliovirus Vaccine Live Oral, Type I.	Do
Poliovirus Vaccine Live Oral, Type II.	Do.
Poliovirus Vaccine Live Oral, Type III.	Do.
Red Blood Cells Frozen	– 65° C or colder.
Red Blood Cells (liquid product).	Between 1° and 10° C
Rubella and Mumps Virus Vaccine Live.	10° or colder.
Rubella Virus Vaccine Live	Do.
Smallpox Vaccine (liquid product).	0° C or colder
Source Plasma	– 5° C or colder.
Source Plasma Liquid	10° C or colder.
Whole Blood	Between 1° and 10° C.
Yellow Fever Vaccine	0° C or colder.

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PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

§ 606.120 [Amended]

B. In Part 606 by revising the heading and by amending § 606.120 in paragraph (b)(2) by changing the proper name "Source Plasma (human)" to read "Source Plasma", and in paragraph (b)(9) by changing the proper names "Cryoprecipitated Antihemophilic Factor (Human)" to read "Cryoprecipitated AHF", and "Source Plasma (Human)" to read "Source Plasma".

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

C. In Part 610:

§ 610.11 [Amended]

1. In § 610.11(g) by changing the proper names "Whole Blood (Human); Red Blood Cells (Human); Cryoprecipitated Antihemophilic Factor (Human); Platelet Concentrate (Human); and Single Donor Plasma (Human)" to read "Whole Blood; Red Blood Cells; Cryoprecipitated AHF; Platelets; and Plasma".

§ 610.12 [Amended]

2. In § 610.12(g)(4) by changing the proper names, "Whole Blood (Human); Cryoprecipitated Antihemophilic Factor (Human); Platelet Concentrate (Human); Red Blood Cells (Human); Single Donor Plasma (Human); and Source Plasma (Human)" to read "Whole Blood; Cryoprecipitated AHF; Platelets; Red Blood Cells; Plasma; and Source Plasma," and in paragraph (g)(7) by changing the proper names "Normal Serum Albumin (Human) and Plasma Protein Fraction (Human)" to read "Albumin and Plasma Protein Fraction"; and by deleting reference to Fibrinogen (Human).

§ 610.13 [Amended]

3. In § 610.13(a)(2)(ii) by changing the proper names, "Measles Virus Vaccine, Live, Attenuated; Measles-Smallpox Vaccine, Live; Rubella Virus Vaccine, Live; and Antihemophilic Factor (Human)" to read "Measles Virus Vaccine Live; Measles-Smallpox Vaccine Live; Rubella Virus Vaccine Live; and Antihemophilic Factor"; in paragraph (a)(2)(iii) by deleting the reference to Modified Plasma (Bovine) and Fibrinogen (Human); in the introductory text of paragraph (b) by changing the proper names, "Cryoprecipitated Antihemophilic Factor (Human); Single Donor Plasma (Human); and Source Plasma (Human)" to read "Cryoprecipitated AHF; Plasma; and Source Plasma"; in paragraph (b)(1)(i) by deleting the phrase "and at least 30 milligrams for Fibrinogen (Human)"; and in paragraph (b)(1)(ii) by deleting the names "Aggregated Radio-Iodinated (I^{131}) Albumin (Human); Radio-Chromated (Cr^{151}) Serum Albumin (Human); Radio-iodinated (I^{125}) Serum Albumin (Human); and Radio-Iodinated (I^{131}) Serum Albumin (Human)".

§ 610.15 [Amended]

4. In § 610.15(a) by changing the proper name "Poliovirus Vaccine, Live, Oral" to read "Poliovirus Vaccine Live Oral".

§ 610.51 [Deleted]

5. By deleting § 610.51 *Periods of cold storage.*

§ 610.52 [Deleted]

6. By deleting § 610.52 *Dating period.*

7. By revising § 610.53, to read as follows:

§ 610.53 Dating periods for licensed biological products.

(a) *General.* The following dating periods are based on data relating to usage, clinical experience, or laboratory tests that establish the period beyond which the product cannot be expected beyond resonable doubt to yield its specific results and retain its safety, purity, and potency, provided the product is maintained at the recommended temperatures. The standards prescribed by the regulations in this subchapter, designed to ensure continued safety, purity, and potency of the products, are based on the dating periods set forth below, and package labels shall recommend storage at the appropriate temperatures.

(b) *When the dating period begins.* The dating period for a product shall begin on the date of manufacture, as prescribed in § 610.50. The dating period for a combination of two or more products shall be no longer than the dating period of the component with the shortest dating period.

(c) *Table of dating periods.* In using the following table, a product in column A may be stored by the manufacturer at the prescribed temperature and length of time in either column B or C, plus the length of time in column D. The dating period in column D shall be applied from the day the product leaves the manufacturer's storage, provided the product has not exceeded its maximum storage period, as prescribed in column B or C. If a product is held in the manufacturer's cold storage beyond the period prescribed, the dating period shall be reduced by a corresponding period.

A Product	B Manufacturer's storage period 1°–5° C (unless otherwise stated)	C Manufacturer's storage period 0° C or colder (unless otherwise stated)	D Dating period after leaving manufacturer's storage 2°–8° C (unless otherwise stated)
Adenovirus and influenza virus vaccines combined adsorbed.	Six months	Not applicable	Six months.
Adenovirus vaccine	Six months	do	Six months.
Albumin	Three years	do	(a) Five years, provided labeling recommends storage between 2° and 10° C, or (b) Three years, provided labeling recommends storage at room temperature, no warmer than 37° C.
Allergenic extracts:			
1. With 50 percent or more glycerin.	Three years	do	Three years
2. With less than 50 percent glycerin.	Eighteen months	do	Eighteen months.
3. Products for which cold storage conditions are inappropriate.	Not applicable	do	Eighteen months (from date of manufacture), provided labeling recommends storage at 30° C or colder.
4. Powders and tablets	Not applicable	do	Five years (from date of manufacture), provided labeling recommends storage at 30° C or colder.
5. Freeze-dried products:			
a. Unreconstituted	do	do	Four years (from date of manufacture).
b. Reconstituted	do	do	Eighteen months (cannot exceed 5 year unreconstituted dating period).
Allergenic extracts adsorbed	Eighteen months	do	Eighteen months.
Anthrax vaccine adsorbed	Two years	do	One year.
Antibody to hepatitis B surface antigen, Iodinated (125_I)	Six months	do	Six months.
	Not applicable	do	Forty-five days (from date of manufacture).
Anti-carcinoembryonic antigen serum.	do	do	One year (from date of manufacture) at 4°–8° C.

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A Product	B Manufacturer's storage period 1°–5° C (unless otherwise stated)	C Manufacturer's storage period 0° C or colder (unless otherwise stated)	D Dating period after leaving manufacturer's storage 2°–8° C (unless otherwise stated)
Antihemophilic factor	do	do	One year (from date of manufacture).
Anti-human serum.			
1 Liquid	One year	Two years	One year.
2 Dried	do	do	Five years.
Antirabies serum	do	do	Two years.
Antivenom coral snake	do	do	Five years with an initial 10 percent excess of potency.
Antivenom rattlesnake, copperhead and moccasin	do	do	Five years with an initial 10 percent excess of potency, provided labeling recommends storage at 37° C or colder.
Antivenom widow spider	do	do	Five years with an initial 10 percent excess of potency.
Asparaginase	Not applicable	do	Eighteen months from the date of the last valid potency test.
BCG vaccine	One year	Not applicable	Six months.
Blood grouping serums—Anti-A.			
1 Liquid	One year	Two years	One year.
2 Dried	do	do	Five years.
Anti-A$_1$	do	do	One year
Anti-A, B			
1 Liquid	do	do	One year.
2 Dried	do	do	Five years.
Anti-B			
1 Liquid	do	do	One year.
2 Dried	do	do	Five years.
Anti-C			
1 Liquid	do	do	One year.
2 Dried	do	do	Five years.
Anti-c	do	do	One year.
Anti-CD			
1 Liquid	do	do	One year.
2 Dried	do	do	Five years.
Anti-CDE	do	do	One year
Anti-C^w	do	do	One year.
Anti-Co^a	do	do	One year
Anti-D			
1 Liquid	do	do	One year
2 Dried	do	do	Five years.
Anti-DE	do	do	One year.
Anti-D^u	do	do	One year
Anti-E			
1 Liquid	do	do	One year.
2 Dried	do	do	Five years.
Anti-e	do	do	One year.
Anti-Fy^a	do	do	One year.
Anti-Fy^b	do	do	One year.
Anti-I	do	do	One year.
Anti-Jk^a	do	do	One year.
Anti-Jk^b	do	do	One year.
Anti-Js^a	do	do	One year.
Anti-K	do	do	One year.
Anti-k	do	do	One year.
Anti-Kp^a	do	do	One year.
Anti-Kp^b	do	do	One year.
Anti-Le^a			
1 Liquid	do	do	One year.
2 Dried	do	do	Five years.
Anti-Le^b			
1 Liquid	do	do	One year.
2 Dried	do	do	Five years.
Anti-M	do	do	One year.
Anti-M^a	do	do	One year
Anti-N	do	do	One year.
Anti-P^1	do	do	One year
Anti-S	do	do	One year.
Anti-s			
1 Liquid	do	do	One year
2 Dried	do	do	Five years.
Anti-U	do	do	One year.
Blood group substance AB	do	do	Two years.
Blood group substance A	do	do	Two years.
Blood group substance B	do	do	Two years.
Botulism antitoxin	do	do	Five years with an initial 20 percent excess of potency
Cholera vaccine	do	Not Applicable	Eighteen months.
Coccidiodin	do	do	Three years.
Collagenase	Not applicable	do	Four years (from date of manufacture) provided labeling recommends storage at 37° C or colder.
Cryoprecipitated AHF	do	do	Twelve months from the date of collection of source blood, provided labeling recommends storage at 18° C or colder.

A Product	B Manufacturer's storage period 1°–5° C (unless otherwise stated)	C Manufacturer's storage period 0° C or colder (unless otherwise stated)	D Dating period after leaving manufacturer's storage 2°–8° C (unless otherwise stated)
Diphtheria antitoxin:			
1. Liquid	One year	Two years	Five years with an initial 20 percent excess of potency.
2. Dried	do	do	Five years with an initial 10 percent excess of potency.
Diphtheria and tetanus toxoids and pertussis and poliovirus vaccines inactivated, adsorbed.	Two months	Not applicable	Four months.
Diphtheria and tetanus toxoids and pertussis vaccine adsorbed and poliovirus vaccine inactivated:			
1. If all components are mixed when issued.	Two months	do	Four months.
2. If the pertussis and poliovirus components are unmixed when issued.	One year	do	One year.
Diphtheria and tetanus toxoids and pertussis vaccine.	One year	do	Eighteen months.
Diphtheria and tetanus toxoids and pertussis vaccine adsorbed.	do	do	Eighteen months.
Diphtheria and tetanus toxoids	do	do	Two years.
Diphtheria and tetanus toxoids adsorbed.	do	do	Two years.
Diphtheria toxin for Schick test	do	do	One year.
Diphtheria toxoid	do	do	Two years.
Diphtheria toxoid adsorbed	do	do	Two years.
Factor IX complex	Not applicable	do	One year (from date of manufacture).
Fibrinolysin	One year	Two years	Two years.
Fibrinolysin and desoxyribonuclease combined (bovine).	do	do	Three years, provided labeling recommends storage at 30° C or colder.
Fibrinolysin and desoxyribonuclease combined (bovine) with chloramphenicol.	do	do	Three years, provided labeling recommends storage at 30° C or colder.
Hepatitis B immune globulin	Not applicable	Not applicable	One year.
Hepatitis B surface antigen	Six months	do	Six months.
1. Unlyophilized coated red blood cells.	Not applicable	do	Fourteen days (from date of manufacture).
2. Iodinated (125$_I$) product	do	do	Forty-five days (from date of manufacture).
Histoplasmin	One year	do	Two years.
Immune globulin	Three years	do	Three years.
Influenza virus vaccine	One year	do	Eighteen months.
Leukocyte typing serum (dried)	Not applicable	Not applicable	Two years (from date of manufacture).
Anti-HL-A 1	do	do	Do.
Anti-HL-A 2	do	do	Do.
Anti-HL-A 3	do	do	Do.
Anti-HL-A 5	do	do	Do.
Anti-HL-A 7	do	do	Do.
Anti-HL-A 8	do	do	Do.
Anti-HL-A 9	do	do	Do.
Anti-HL-A 10	do	do	Do.
Anti-HL-A 11	do	do	Do.
Anti-HL-A 12	do	do	Do.
Anti-HL-A 13	do	do	Do.
Limulus amebocyte lysate	Not applicable	Not applicable	Eighteen months (from date of manufacture).
Measles, mumps and rubella virus vaccine live.	do	One year (20° C or colder).	One year.
Measles and mumps virus vaccine live.	do	One year (20° C or colder).	One year.
Measles and rubella virus vaccine live.	do	One year (20° C or colder).	One year.
Measles immune globulin	Three years	Not applicable	Three years.
Measles-smallpox vaccine live	Not applicable	do	One year (from date of manufacture).
Measles virus vaccine live	do	One year (20° C or colder).	One year.
Meningococcal polysaccharide vaccine group A:			
1. Final bulk powder	do	Eighteen months (20° C or colder).	Not applicable
2. Final container	Not applicable	Not applicable	Six months (20° C or colder).
Meningococcal polysaccharide vaccine group C:			
1. Final bulk powder	do	Eighteen months (20° C or colder).	Not applicable.
2. Final container	do	Not applicable	Six months.
Meningococcal polysaccharide vaccine groups A and C combined.	do	do	Six months (20° C or colder)
Mumps immune globulin	Three years	do	Three years (from date the dried or frozen bulk product is placed in final solution).
Mumps skin test antigen	One year	do	Eighteen months.

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A Product	B Manufacturer's storage period 1°–5° C (unless otherwise stated)	C Manufacturer's storage period 0° C or colder (unless otherwise stated)	D Dating period after leaving manufacturer's storage 2°–8° C (unless otherwise stated)
Mumps virus vaccine live	Not applicable	One year (−20° C or colder).	One year.
Normal horse serum	One year	Two years	Five years.
Pertussis immune globulin	Three years	Not applicable	Three years from date the dried or frozen bulk product is placed in final solution.
Pertussis vaccine	One Year	do	Eighteen months.
Pertussis vaccine adsorbed	do	do	Eighteen months.
Plague vaccine	do	do	Eighteen months.
Plasma	Not applicable	do	Five years from date of collection of source blood (−18° C or colder).
Plasma fresh frozen	do	do	One year from date of collecton of source blood (−18° C or colder).
Plasma liquid	do	do	(a) Twenty-six days from date of collection of source blood. (b) 40 days from the date collection of source blood only when CPDA–1 solution is used as the anticoagulant (between 1° and 6° C).
Plasma platelet rich	do	do	Seventy-two hours from time of collection of source blood (20° to 24° C or between 1° and 6° C).
Plasma protein fraction	One year	do	(a) Five years. (b) Three years (provided labeling recommends storage at 30° C or colder).
Platelets	Not applicable	do	Seventy-two hours from time of collection of source blood, provided labeling recommends storage at 20°–24° C or between 1° to 6° C.
Pneumococcal vaccine polyvalent:			
1. Final bulk powder	do	Fifteen months after potency assay (−20° C or colder).	Not applicable.
2. Final container	do	Not applicable	Two years (after date of manufacture).
Poliovirus Vaccine inactivated	One year	do	One year.
Poliovirus vaccine live oral, trivalent:			
1. Frozen	Not applicable	One year (−10° C or colder).	One year, provided labeling recommends storage at a temperature which will maintain ice continuously in a solid state.
2. Liquid	do	Not applicable	Thirty days, provided labeling recommends storage between 2° and 8° C and container has been unopened.
Poliovirus vaccine live oral, type I:			
1. Frozen	do	One year (−10° C or colder).	One year, provided labeling recommends storage at a temperature which will maintain ice continuously in a solid state.
2. Liquid	do	Not applicable	Thirty days, provided labeling recommends storage between 2° and 8° C and container has been unopened.
Poliovirus vaccine live oral, type II:			
1. Frozen	do	One year (−10° C or colder).	One year, provided labeling recommends storage at a temperature which will maintain ice continuously in a solid state.
2. Liquid	do	Not applicable	Thirty days, provided labeling recommends storage between 2° and 8° C and container has been unopened.
Poliovirus vaccine live oral, type III:			
1. Frozen	do	One year (−10° C or colder).	One year, provided labeling recommends storage at a temperature which will maintain ice continuously in a solid state.
2. Liquid	do	Not applicable	Thirty days, provided labeling recommends storage between 2° and 8° C and container has been unopened.
Polyvalent bacterial antigens with "No U.S. standard of potency":			
1. Liquid	One year	Not applicable	Eighteen months.

A Product	B Manufacturer's storage period 1°–5° C (unless otherwise stated)	C Manufacturer's storage period 0° C or colder (unless otherwise stated)	D Dating period after leaving manufacturer's storage 2°–8° C (unless otherwise stated)
2. Dried	do	do	Five years.
Polyvalent bacterial vaccines with "No U.S. standard of potency":			
1. Liquid	One year	do	Eighteen months.
2. Dried	do	do	Five years.
Rabies immune globulin	One year	Not applicable	One year.
Rabies vaccine:			
1. Dried	One year	Two years	Eighteen months.
2. Liquid	Three months	Not applicable	Six months.
Reagent red blood cells	Not applicable	do	Thirty-five days from earliest date of collection.
ACD red blood cells	do	do	(a) Twenty-one days from date of collection of source blood provided labeling recommends storage between 1° and 6° C and the hermetic seal is not broken during processing. (b) Twenty-four hours after plasma removal, provided labeling recommends storage between 1° and 6° C, if the hermetic seal is broken during processing.
CPD red blood cells	do	do	(a) Twenty-one days from date of collection of source blood provided labeling recommends storage between 1° and 6° C and the hermetic seal is not broken during processing. (b) Twenty-four hours after plasma removal, provided labeling recommends storage between 1° and 6° C, if the hermetic seal is broken during processing.
CPDA–1 red blood cells	do	do	(a) Thirty-five days from date of collection of source blood provided labeling recommends storage between 1° and 6° C and the hermetic seal is not broken during processing. (b) Twenty-four hours after plasma removal, provided labeling recommends storage between 1° and 6° C, if the hermetic seal is broken during processing.
Red blood cells deglycerolized	do	do	Twenty-four hours after removal from storage at −65° C or colder provided labeling recommends storage between 1° and 8° C.
Red blood cells frozen	do	do	Three years from date of collection of source blood, provided labeling recommends storage at −65° C or colder.
Rh_o(D) immune globulin	Six months	do	Six months.
Rubella and mumps virus vaccine live.	Not applicable	One year (−20° C or colder).	One year.
Rubella virus vaccine live	Not applicable	One year (−20° C or colder).	One year.
Smallpox vaccine:			
1. Liquid	Not applicable	Nine months (−10° C or colder), if product is maintained as glycerinated or equivalent vaccine in bulk or final containers.	Three months, provided labeling recommends storage at 0° C, or colder.
2. Dried	Six months	Not applicable	Eighteen months.
Source plasma	Not applicable	do	In lieu of an expiration date the collection date shall appear on the label as prescribed in § 640.70(a)(6) of this chapter.
Staphylococcus toxoid	One year	do	Two years.
Streptokinase	do	Two years	Eighteen months.
Streptokinase-streptodornase:			
1. Dried	do	Not applicable	Two years.
2. Tablets	Six months	do	Eighteen months provided labeling recommends storage at 30° C or colder.
Tetanus and diphtheria toxoids adsorbed for adult use.	One year	do	Two years.
Tetanus antitoxin:			
1. Liquid	do	Two years	Five years with an initial 20 percent excess of potency.

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A Product	B Manufacturer's storage period 1°–5° C (unless otherwise stated)	C Manufacturer's storage period 0° C or colder (unless otherwise stated)	D Dating period after leaving manufacturer's storage 2°–8° C (unless otherwise stated)
2. Dried	do	do	Five years with an initial 10 percent excess of potency.
Tetanus immune globulin	do	Not applicable	Three years with an initial 10 percent excess of potency.
Tetanus toxoid	do	do	Two years.
Tetanus toxoid edsorbed	do	do	Two years.
Thrombin	do	Two years	Three years.
Tuberculin:			
1. Purified protein derivative, concentrated containing at least 50 percent glycerin.	One year	Not applicable	Two years.
2. Purified protein derivative, diluted.	Six months	do	One year.
3. Old or purified protein derivative, dried on multiple puncture device.	One year (not to exceed 30° C. Do not refrigerate.	do	Two years, provided labeling recommends storage at a temperature not to exceed 30° C. Do not refrigerate.
Typhoid vaccine	One year	do	Eighteen months.
Typhus vaccine	One year	do	Eighteen months.
Vaccinia immune globulin	Three years	do	Three years.
ACD whole blood	Not applicable	do	Twenty-one days from date of collection, provided labeling recommends storage between 1° and 6° C.
CPD whole blood	do	do	Twenty-one days from date of collection, provided labeling recommends storage between 1° and 6° C.
CPDA-1 whole blood	do	do	Thirty-five days from date of collection, provided labeling recommends storage between 1° and 6° C.
Heparin whole blood	do	do	Forty-eight hours from date of collection, provided labeling recommends storage between 1° and 6° C.
Yellow fever vaccine	do	One year (−20° or colder)	One year, provided labeling recommends storage at 5° C or colder.

(d) *Exemptions.* Exemptions or modifications shall be made only upon written approval, in the form of an amendment of the product license, issued by the Director, Bureau of Biologics.

PART 620—ADDITIONAL STANDARDS FOR BACTERIAL PRODUCTS

D. In Part 620:

§ 620.4 [Amended]

1. In § 620.4(g) by changing the proper name "Poliomyelitis Vaccine" to read "Poliovirus Vaccine Inactivated".

Subpart C—[Heading Amended]

§ 620.20 [Amended]

2. In the heading of Subpart C and the heading and text of § 620.20 by changing the proper name "Anthrax Vaccine, Adsorbed" to read "Anthrax Vaccine Adsorbed."

PART 630—ADDITIONAL STANDARDS FOR VIRAL VACCINES

Subpart A—[Heading Amended]

E. In Part 630:

1. In the heading of Subpart A by changing the proper name "Poliomyelitis Vaccine" to read "Poliovirus Vaccine Inactivated."

§ 630.1 [Amended]

2. In the heading of § 630.1 and in the text of paragraphs (a) and (c) by changing the proper name "poliomyelitis Vaccine" to read "Poliovirus Vaccine Inactivated."

§ 630.2 [Amended]

3. In the heading of § 630.2 and in paragraph (e)(3) by changing the proper name "Poliomyelitis Vaccine" to read "Poliovirus Vaccine Inactivated."

§ 630.3 [Amended]

4. In the introductory paragraphy of § 630.3 by changing the words "poliomyelitis vaccine" to read "poliovirus vaccine".

§ 630.4 [Amended]

5. In § 630.4(b)(1), by changing the words "poliomyelitis vaccine" to read "poliovirus vaccine" and in paragraph (e)(5)(ii) by changing the word "poliomyelitis" to read "poliovirus."

§ 630.6 [Amended]

6. In § 630.6 by changing the proper name "Poliomyelitis Vaccine" to read "Poliovirus Vacine Inactivated."

Subpart B—[Heading Amended]

7. In the heading of Subpart B by changing the proper name "Poliovirus Vaccine, Live, Oral" to read "Poliovirus Vaccine Live Oral."

§ 630.10 [Amended]

8. In the heading of § 630.10 and in paragraphs (a) and (b)(2) by changing the proper name "Poliovirus Vaccine, Live, Oral" to read "Poliovirus Vaccine Live Oral."

§ 630.12 [Amended]

9. In § 630.12(a)(1) and (b) by changing the proper name "Poliovirus Vaccine, Live, Oral" to read "Poliovirus Vaccine Live Oral."

§ 630.13 [Amended]

10. In the heading of § 630.13 by changing the proper name "Poliovirus Vaccine, Live, Oral" to read "Poliovirus Vaccine Live Oral."

§ 630.18 [Amended]

11. In § 630.18 by changing the proper name "Poliovirus Vaccine, Live, Oral" to read "Poliovirus Vaccine Live Oral."

Subpart D—[Heading Amended]

12. In the heading of Subpart D by changing the proper name "Measles Virus Vaccine, Live, Attenuated" to read "Measles Virus Vaccine Live."

§ 630.30 [Amended]

13. In the heading of § 630.30 and in paragraphs (a) and (b)(2) by changing the proper name "Measles Virus Vaccine, Live, Attenuated" to read "Measles Virus Vaccine Live."

§ 630.36 [Amended]

14. In § 630.36(d) by changing the proper name "measles Virus Vaccine, Live, Attenuated" to read "Measles Virus Vaccine Live."

§ 630.37 [Amended]

15. In § 630.37 by changing the proper name "Measles Virus Vaccine, Live, Attenuated" to read "Measles Virus Vaccine Live."

Subpart F—[Heading Amended]

16. In the heading of Subpart F by changing the proper name "Mumps Virus Vaccine, Live" to read "Mumps Virus Vaccine Live."

§ 630.50 [Amended]

17. In the heading of § 630.50 and in paragraphs (a) and (b)(2) by changing the proper name "Mumps Virus Vaccine, Live" to read "Mumps Virus Vaccine Live."

§ 630.51 [Amended]

18. In § 630.51 by changing the proper name "Mumps Virus Vaccine, Live" to read "Mumps Virus Vaccine Live."

§ 630.52 [Amended]

19. In the heading of § 630.52 by changing the proper name "Mumps Virus Vaccine, Live" to read "Mumps Virus Vaccine Live."

§ 630.56 [Amended]

20. In § 630.56(b) and (e) by changing the proper name "Mumps Virus Vaccine, Live" to read "Mumps Virus Vaccine Live."

§ 630.57 [Amended]

21. In § 630.57 by changing the proper name "Mumps Virus Vaccine, Live" to read "Mumps Virus Vaccine Live."

Subpart G—[Heading Amended]

22. In the heading of Subpart G by changing the proper name "Rubella Virus Vacine, Live" to read "Rubella Virus Vaccine Live."

§ 630.60 [Amended]

23. In the heading of § 630.60 and in paragraphs (a) and (d) by changing the proper name "Rubella Virus Vaccine, Live" to read "Rubella Virus Vaccine Live."

§ 630.61 [Amended]

24. In § 630.61 by changing the proper name "Rubella Virus Vaccine, Live" to read "Rubella Virus Vaccine Live."

§ 630.62 [Amended]

25. In § 630.62(b) by changing the proper name "Rubella Virus Vaccine, Live" to read "Rubella Virus Vaccine Live."

§ 630.66 [Amended]

26. In § 630.66 (b) and (d) by changing the proper name "Rubella Virus Vaccine, Live" to read "Rubella Virus Vaccine Live."

§ 630.67 [Amended]

27. In § 630.67 by changing the proper name "Rubella Virus Vaccine, Live" to read "Rubella Virus Vaccine Live."

Subpart I—[Heading Amended]

28. In the heading of Subpart I by changing the proper name "Measles-Smallpox Vaccine, Live" to read "Measles-Smallpox Vaccine Live."

§ 630.80 [Amended]

29. In the heading of § 630.80 and in paragraph (a) by changing the proper name "Measles-Smallpox Vaccine, Live" to read "Measles-Smallpox Vaccine Live."

§ 630.84 [Amended]

30. In the introductory paragraph of § 630.84 by changing the proper name "Measles-Smallpox Vaccine, Live" to read "Measles-Smallpox Vaccine Live."

§ 630.87 [Amended]

31. In § 630.87 by changing the proper name "Measles-Smallpox Vaccine, Live" to read "Measles-Smallpox Vaccine Live."

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

F. In Part 640:

Subpart A—[Heading Amended]

In the heading of Subpart A by changing the proper name "Whole Blood (Human)" to read "Whole Blood."

§ 640.1 [Amended]

2. In the heading and text of § 640.1 by changing the proper name "Whole Blood (Human)" to read "Whole Blood."

§ 640.2 [Amended]

3. In § 640.2(a) by changing the proper name "Whole Blood (Human)" to read "Whole Blood."

§ 640.3 [Amended]

4. In § 640.3 (a) through (f) by changing the proper name "Whole Blood (Human)" to read "Whole Blood."

§ 640.4 [Amended]

5. In § 640.4 (c) and (h) by changing the proper name "Whole Blood (Human)" to read "Whole Blood"; and in paragraph (i) by changing the items "Platelet Concentrate (Human)" and "Platelet Concentrate" to read "Platelets."

§ 640.5 [Amended]

6. In § 640.5 (a) through (e) by changing the proper name "Whole Blood (Human)" to read "Whole Blood"; and in paragraph (c) by changing the item "Anti-Rh (Anti-D) Typing Serum" to read "Anti-D Blood Grouping Serum."

§ 640.6 [Amended]

7. In the heading and in the introductory paragraph of § 640.6 by changing the proper name "Whole Blood (Human)" to read "Whole Blood"; and in paragraph (c) by changing the proper name "Whole Blood (Human), Modified" to read "Whole Blood Platelets and/or Cryoprecipitate Removed."

§ 640.7 [Amended]

8. In the introductory text of § 640.7(g) by changing "Whole Blood (Human), Modified" to read "Whole Blood Platelets and/or Cryoprecipitate Removed"; and in paragraph (g)(1) by changing the word "Modified" to read "Platelets and/or Cryoprecipitate Removed."

Subpart B—[Heading Amended]

9. In the heading of Subpart B by changing the proper name "Red Blood Cells (Human)" to read "Red Blood Cells."

§ 640.10 [Amended]

10. In the heading and text of § 640.10 by changing the proper name "Red Blood Cells (Human)" to read "Red Blood Cells."

§ 640.11 [Amended]

11. In § 640.11 by changing the proper name "Red Blood Cells (Human)" to read "Red Blood Cells."

§ 640.12 [Amended]

12. In § 640.12 by changing the proper name "Red Blood Cells (Human)" to read "Red Blood Cells."

§ 640.13 [Amended]

13. In § 640.13 by changing the proper name "Whole Blood (Human)" to read "Whole Blood."

§ 640.15 [Amended]

14. In § 640.15 by changing the proper name "Red Blood Cells (Human)" to read "Red Blood Cells."

§ 640.16 [Amended]

15. In § 640.16 by changing the proper name "Red Blood Cells (Human)" to read "Red Blood Cells."

§ 640.17 [Amended]

16. In § 640.17 by changing the proper name "Red Blood Cells (Human)" to read "Red Blood Cells"; and by changing the proper name "Red Blood Cells (Human), Frozen" to read "Red Blood Cells Frozen."

§ 640.18 [Amended]

17. In the introductory paragraph of § 640.18 by changing the proper name"Red Blood Cells (Human)" to read "Red Blood Cells"; in paragraph (a) by changing the proper name "Whole Blood (Human)" to read "Whole Blood"; in paragraph (b) by changing the proper names"Red Blood Cells (Human), Frozen " and "Red Blood Cells (Human), Deglycerolized" to read "Red Blood Cells Frozen" and "Red Blood Cells Deglycerolized"; and in paragraph (d) by changing the proper name "Whole Blood (Human)" to read "Whole Blood."

Subpart C—[Heading Amended]

18. In the heading of Subpart C by changing the proper name "Platelet Concentrate (Human)" to read "Platelets."

§ 640.20 [Amended]

19. In the heading of § 640.20 and in paragraphs (a) and (b) by changing the proper name "Platelet Concentrate (Human)" to read "Platelets."

§ 640.22 [Amended]

20. In § 640.22(a) by changing the proper name "Platelet Concentrate (Human)" to read "Platelets."

§ 640.23 [Amended]

21. In § 640.23(a) by changing the proper name "Platelet Concentrate (Human)" to read "Platelets."

§ 640.24 [Amended]

22. In § 640.24(a) and (e) by changing the proper name "Platelet Concentrate (Human)"to read "Platelets"; in paragraphs (b) and (d) by changing the name "platelet concentrate" to read "platelets"; and in pargraph (b) by changing the word "is" to read"are".

§ 640.25. [Amended]

23. In § 640.25(a), in the introductory text of (c) and in (c) (1) and (2) by changing the proper name "Platelet Concentrate (Human)" to read "Platelets."

Subpart D—[Heading Amended]

24. In the heading of Subpart D by changing the proper name "Single Donor Plasma (Human)" to read "Plasma."

§ 640.30 [Amended]

25. In the heading of § 640.30 and in paragraphs (a) and (b) by changing the proper names "Single donor Plasma (Human)" to read "Plasma" and in paragraph (b)(2) by changing the proper name "Whole Blood (Human)" to read "Whole Blood."

§ 640.32 [Amended]

26. In § 640.32(a) by changing the proper names "Single Donor Plasma (Human), Platelet Rich" to read "Plasma Platelet Rich"; "Single Donor Plasma (Human)" to read "Plasma"; "Single Donor Plasma (Human), Fresh Frozen" to read "Plasma Fresh Frozen"; and "Single Donor Plasma (Human), Liquid" to read "Plasma Liquid."

§ 640.33 [Amended]

27. In § 640.33(b) by changing the proper name "Single Donor Plasma (Human)" to read "Plasma."

§ 640.34 [Amended]

28. In § 640.34(a) by changing the proper names "Single Donor Plasma (Human)" to read "Plasma" and "Single Donor Plasma (Human), Liquid" to read "Plasma Liquid"; in paragrah (b) by changing the proper name "Single Donor Plasma (Human), Fresh Frozen" to read "Plasma Fresh Frozen"; in paragraph (c) by changing the proper name "Single Donor Plasma (Human), Liquid" to read "Plasma Liquid"; in paragraph (d) by changing the name "Single Donor Plasma (Human), Platelet Rich" to read "Plasma Platelet Rich"; in the introductory text of paragraph (e) by changing the proper name "Single Donor Plasma (Human)" to read "Plasma" and by changing the proper names "Platelet Concentrate (Human)" to read "Platelets", and "Cryoprecipitated Antihemophilic Factor (Human)" to read "Cryoprecipitated AHF"; in paragraph (e)(1) by changing the proper names "Platelet Concentrate (Human)" to read "Platelets", and "Single Donor Plasma (Human), Fresh Frozen" to read "Plasma Fresh Frozen"; in paragraph (e)(2) by changing the proper names "Cryoprecipitated Antihemophilic Factor (Human)" to read "Cryoprecipitated AHF", and "Single Donor Plasma (Human)" to read "Plasma"; in pargraph (e)(3) by changing the proper names "Platelet Concentrate (Human)" to read "Platelets", "Cryoprecipitated Antihemophilic Factor (Human)" to read "Cryoprecipitated AHF", and "Single Donor Plasma (Human)" to read "Plasma"; and in paragraph (g)(2) by changing the proper names "Single Donor Plasma (Human), Platelet Rich" to read "Plasma Platelet Rich" and "Single Donor Plasma (Human), Liquid" to read "Plasma Liquid."

§ 640.35 [Amended]

29. In the introductory paragraph of § 640.35 by changing the proper name "Single Donor Plasma (Human)" to read "Plasma"; and in paragraph (s) by changing the proper name "Whole Blood (Human)" to read "Whole Blood."

Subpart F—[Heading Amended]

30. In the heading of Subpart F by changing the proper name "Cryoprecipitated Antihemophilic Factror (Human)" to read "Cryoprecipitated AHF."

§ 640.50 [Amended]

31. In the heading of § 640.50 and in paragraphs (a) and (b) by changing the proper name"Cryoprecipitated Antihemophilic Factor (Human)" to read"Cryoprecipitated AHF."

§ 640.52 [Amended]

32. In § 640.52(a) by changing the proper names"Cryoprecipitated Antihemophilic Factor (Human)" to read"Cryoprecipitated AHF" and "Platelet Concentrate (Human)" to read "Platelets."

§ 640.53 [Amended]

33. In § 640.53 (a) and (c) by changing the proper name "Cryoprecipitated Antihemophilic Factor (Human)" to read "Cryoprecipitated AHF."

§ 640.54 [Amended]

34. In § 640.54(a)(3), (b)(1), and (b)(3) by changing the proper name "Cryoprecipitated Antihemophilic Factor (Human)" to read "Cryoprecipitated AHF."

§ 640.55 [Amended]

35. In § 640.55 by changing the proper name "Cryoprecipitated Antihemophilic Factor (Human)" to read "Cryoprecipitated AHF".

§ 640.56 [Amended]

36. In § 640.56 paragraphs (a), (b), and (c)(1) by changing the proper name "Cryoprecipitated Antihemophilic Factor (Human)" to read "Cryoprecipitated AHF."

Subpart G—[Heading Amended]

37. In the heading of Subpart G by changing the proper name "Source Plasma (Human" to read "Source Plasma."

§ 640.60 [Amended]

38. In the heading and text of § 640.60 by changing the proper name "Source Plasma (Human)" to read "Source Plasma."

§ 640.63 [Amended]

39. In § 640.63(a) by changing the proper name "Source Plasma (Human)" to read "Source Plasma."

§ 640.64 [Amended]

40. In the heading of § 640.64 and in paragraphs (a) and (c) by changing the proper name "Source Plasma (Human)" to read "Source Plasma."

§ 640.67 [Amended]

41. In § 640.67 by changing the proper name "Source Plasma (Human)" to read "Source Plasma."

§ 640.68 [Amended]

42. In § 640.68(a), (b) and (c) by changing the proper name "Source Plasma (Human)" to read "Source Plasma."

§ 640.69 [Amended]

43. In § 640.69(a), (b) and (c) by changing the proper name "Source Plasma (Human)" to read "Source Plasma."

§ 640.70 [Amended]

44. In the introductory text of § 640.70(a) by changing the proper name "Source Plasma (Human)" to read "Source Plasma" and in paragraph (b) by changing the proper names "Source Plasma (Human)" and "Source Plasma (Human), Salvaged" to read "Source Plasma" and "Source Plasma Salvaged", respectively.

§ 640.71 [Amended]

45. In § 604.71, in the introductory text of paragraphs (a) and (b), and paragraph (b)(1) and (2), by changing the proper name "Source Plasma (Human)" to read "Source Plasma."

§ 640.72 [Amended]

46. In § 640.72(a)(1) and (b) by changing the proper name "Source Plasma (Human)" to read "Source Plasma."

§ 640.74 [Amended]

47. In the heading of § 640.74 and in paragraph (a) by changing the proper name "Source Plasma (Human)" to read "Source Plasma" and in paragraph (b) by changing the proper name "Liquid Source Plasm (Human)" to read "Source Plasma Liquid."

§ 640.75 [Amended]

48. In § 640.75 by changing the proper name "Source Plasma (Human)" to read "Source Plasma."

§ 640.76 [Amended]

49. In § 640.76(a), (b), and (c) by changing the proper name "Source Plasma (Human)" to read "Source Plasma" and by changing the proper name "Source Plasma (Human), Salvaged" to read "Source Plasma Salvaged."

Subpart H—[Heading amended]

50. In the heading of Subpart H by changing the proper name "Normal Serum Albumin (Human)" to read "Albumin."

§ 640.80 [Amended]

51. In the heading of § 640.80 and in paragraph (a), introductory text of (b) and (b)(1) by changing the proper name "Normal Serum Albumin (Human)" to read "Albumin."

§ 640.81 [Amended]

52. In § 640.81 (e) and (g) by changing the proper name "Normal Serum Albumin (Human)" to read "Albumin."

§ 640.82 [Amended]

53. In § 640.82(f) by changing the proper name "Normal Serum Albumin (Human)" to read "Albumin."

§ 640.85 [Amended]

54. In the introductory paragraph of § 640.85 by changing the proper name "Normal Serum Albumin (Human)" to read "Albumin."

§ 640.86 [Amended]

55. In § 640.86 by changing the proper name "Normal Serum Albumin (Human)" to read "Albumin."

Subpart I—[Heading Amended]

56. In the heading of Subpart I by changing the proper name "Plasma Protein Fraction (Human)" to read "Plasma Protein Fraction."

§ 640.90 [Amended]

57. In the heading of § 640.90 and in paragraph (a), introductory text of (b), and (b)(1) by changing the proper name "Plasma Protein Fraction (Human)" to read "Plasma Protein Fraction."

§ 640.91 [Amended]

58. In § 640.91 (e) and (g) by changing the proper name "Plasma Protein Fraction (Human)" to read "Plasma Protein Fraction."

§ 640.92 [Amended]

59. In § 640.92(f) by changing the proper name "Plasma Protein Fraction (Human)" to read "Plasma Protein Fraction."

§ 640.95 [Amended]

60. In the introductory paragraph of § 640.95 by changing the proper name "Plasma Protein Fraction (Human)" to read "Plasma Protein Fraction."

§ 640.96 [Amended]

61. In § 640.96 by changing the proper name "Plasma Protein Fraction (Human)" to read "Plasma Protein Fraction."

Subpart J—[Heading amended]

62. In the heading of Subpart J by changing the proper name "Immune Serum Globulin (Human)" to read "Immune Globulin."

§ 640.100 [Amended]

63. In the heading of § 640.100 and in paragraphs (a) and (b) by changing the proper name "Immune Serum Globulin (Human)" to read "Immune Globulin."

§ 640.101 [Amended]

64. In § 640.101(e)(3) by changing the proper name "Measles Virus Vaccine, Live, Attenuated" to read "Measles Virus Vaccine Live"; and in paragraph (f) by changing the proper name "Immune Serum Globulin (Human)" to read "Immune Globulin."

§ 640.102 [Amended]

65. In the heading of § 640.102 and in paragraph (d) by changing the proper name "Immune Serum Globulin (Human)" to read "Immune Globulin."

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§ 640.104 [Amended]

66. In § 640.104(b)(2) by changing the proper name "Measles Virus Vaccine, Live, Attenuaed" to read "Measles Virus Vaccine Live."

Subpart K—[Heading Amended]

67. In the heading of Subpart K by changing the proper name "Measles Immune Globulin (Human)" to read "Measles Immune Globulin."

§ 640.110 [Amended]

68. In the heading of § 640.110 and in paragraphs (a) and (b) by changing the proper name "Measles Immune Globulin (Human)" to read "Measles Immune Globulin."

§ 640.112 [Amended]

69. In the heading of § 640.112 and in paragraph (e) by changing the proper name "Measles Immune Globulin (Human)" to read "Measles Immune Globulin."

PART 660—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR LABORATORY TESTS

G. In Part 660:

§ 660.23 [Amended]

1. In § 660.23(a) by changing the proper name "Reagent Red Blood Cells (Human)" to read "Reagent Red Blood Cells."

2. In § 660.25 by revising paragraph (a)(5)(iii), to read as follows:

§ 660.25 Potency test without reference preparations.

(a) * * *

(5) * * *

(iii) For Anti-U, Anti-Kp^a, Anti-Kp^b, Anti-Js^a, Anti-Fy^b, Anti-N, Anti-Le^a, Anti-Le^b, Anti-Di^a, Anti-M^g, Anti-Jk^b, and Anti-Co^b, at least 2+ reaction with undiluted serum.

* * * * *

3. In § 660.28 by revising paragraph (d) to read as follows:

§ 660.28 Labeling.

* * * * *

(d) *Names of antibodies.*

Blood group designation for container label	Optional synonym for package label and package insert
Anti-A	None.
Anti-A$_1$	Do.
Anti-B	Do.
Anti-A,B	Do.
Anti-Di^a	(Anti-Diego^a).
Anti-Fy^a	(Anti-Duffy^a).
Anti-Fy^b	(Anti-Duffy^b).
Anti-I	None.
Anti-Jk^a	(Anti-Kidd^a).
Anti-Jk^b	(Anti-Kidd^b).
Anti-K	(Anti-Kell).
Anti-k	(Anti-Cellano).
Anti-Kp^a	(Anti-Penney).
Anti-Kp^b	(Anti-Rautenberg).
Anti-Le^a	(Anti-Lewis^a).
Anti-Le^b	(Anti-Lewis^b).
Anti-M	None.
Anti-N	Do.
Anti-M^g	(Anti-Gilfeather).
Anti-P$_1$	None.
Anti-D	(Anti-Rh$_o$).
Anti-CD	(Anti-Rh$_o$').
Anti-DE	(Anti-Rh$_o$'').
Anti-CDE	(Anti-Rh$_o$''').
Anti-C	(Anti-rh').
Anti-E	(Anti-rh'').
Anti-c	(Anti-hr').
Anti-e	(Anti-hr'').
Anti-C^w	(Anti-rh^w).
Anti-S	None.
Anti-s	Do.
Anti-U	Do.
Anti-Js^a	(Anti-Sutter).
Anti-Co^b	None.

Interested persons may, on or before December 30, 1980 submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Dockets Management Branch docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, as amended by Executive Order 12221, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Dockets Management Branch, Food and Drug Administration.

Dated: October 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-33509 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Parts 606 and 640

[Docket No. 80N-0120]

Current Good Manufacturing Practice for Blood and Blood Components; Uniform Blood Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) proposes to amend the biologics regulations by revising the labeling requirements for blood and blood components. The proposed revisions simplify and reduce the amount of information required on the container label. Machine-readable encodement of the critical information on the container label would be required. This document also announces the availability of a guideline describing the specifications for a uniform container label complying with the proposed rules. The proposed revisions and guidelines were developed in response to the recommendations of the American Blood Commission's Committee for Commonality in Blood Banking Automation.

DATE: Comments by December 30, 1980. FDA proposes that any final regulation issued under this proposal be effective 1 year after the date of publication of the final regulation. The final regulation would apply to the labeling for all blood and blood components collected on or after the effective date.

ADDRESS: Written comments and requests for a single copy of the guideline to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Steven F. Falter, Bureau of Biologics (HFB–620), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301–443–1306.

SUPPLEMENTARY INFORMATION:

Introduction

In 1974, members of the private sector, including representatives of blood banks and the medical community, developed a long-term plan to implement the Department of Health and Human Services' (DHHS) National Blood Policy (NBP). This plan, the NBP, and related documents were published in the Federal Register of May 28, 1974 (39 FR 18614). Both the implementation plan and NBP set the regionalization of blood banks and transfusion services as a high priority to enhance regional and interregional resource-sharing and to more efficiently collect, process, distribute, and utilize a region's blood supply. Regionalization involves the increased centralization of blood collection and processing and consequent growth in the work-load of regional centers. These factors predispose toward the development and implementation of an automated data processing system to achieve rapid and accurate product distribution.

particularly for components such as platelets and granulocytes with dating periods measured in hours. To efficiently implement blood banking computerization, a nationally compatible system of encoding label information is necessary. The development of compatible equipment for the automation of blood banking requires the uniform placement of the encoded information, and, to assist in the gradual conversion to automation, the uniform placement of the analogous eye-readable information.

Blood and blood components are biological products subject to regulation under section 351 of the Public Health Service Act (42 U.S.C. 262) and are also drugs within the meaning of section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)). The products are governed by the applicable provisions of Parts 600 through 680) of the biologics regulations. Section 606.120 (21 CFR 606.120) prescribes the labeling requirements applicable to all licensed and unlicensed blood and blood component products. Part 640 (21 CFR Part 640) includes additional labeling requirements for specific blood products. Many blood establishments have printed custom labels which, while fully in compliance with the regulations, vary significantly in format and wording. This disparity in the wording and positioning of information, when considered in conjunction with the amount of information required on the container label, significantly decreases the readability of the label, and may be confusing to a user who is unfamiliar with an individual manufacturer's labels. Also, FDA and members of the private sector agree that the large amount of required information on the container label may obscure information that is absolutely necessary for the proper processing and administration of the product.

With extensive cooperation and support from the private sector, FDA has developed the revised labeling requirements now being proposed. FDA believes that the proposed regulations and the guideline now being made available will provide for the continued safe handling and administration of the products so labeled. In addition, the use of uniform labeling by all blood establishments will facilitate regional and interregional sharing of the Nation's blood supply, thereby promoting the efficient use of this valuable resource.

Background

In June 1974, the Committee for Commonality in Blood Banking Automation (CCBBA) was created with volunteers from all areas of the medical community with personnel from FDA participating. In 1975 the CCBBA was incorporated as a task force within the American Blood Commission (ABC). As part of its efforts, the task force undertook to: (1) Review the container label requirements for blood and blood components and recommend a revised simplified container label suitable for use by all blood establishements; (2) select the machine-readable code most serviceable for the blood service industry; and (3) select the key information for inclusion in both eye- and machine-readable form on the container label.

In its deliberations, the CCBBA recognized that an important benefit of simplified uniform labeling would be to decrease the incidence of human error due to the mislabeling or misreading of a blood product's container label, thereby decreasing the probability of an incompatible blood transfusion, a major danger in hemotherapy. Similarly, development of an automated data processing system would permit, at each step of the blood collection/administration process, computer confirmation of the information necessary for the safe and compatible transfusion of the product.

With these factors in mind, CCBBA created a prototype label. Samples of this label, modified to meet FDA regulations, were sent to 16 blood establishments for their use and comment. Revised final label recommendations were then presented to FDA for approval. The CCBBA kept the interested public informed of its progress by newsletter, lecture, and other media forms. Also, representatives presented their findings to the Bureau of Biologics advisory committee, the Panel on Review of Blood and Blood Derivatives. This proposal and the guideline being made available are based on CCBBA's recommendations as contained in its Final Report. Copies of CCBBA's Final Report, printed in seven volumes, are available from the American Blood Commission, 1901 North Ft. Meyer Drive, Suite 300, Arlington, VA 22209 and are also on file for public inspection with the Hearing Clerk, FDA.

Availability of Guideline

Members of the Nation's blood services complex are voluntarily participating in a program to convert from custom labels to a standardized container label format suitable for automated data processing. This format is intended for use by all blood establishments, licensed and unlicensed, in labeling blood and blood components. To assist in this conversion, the Bureau of Biologics at FDA is making available "Guidelines for the Uniform Labeling of Blood and Blood Components." This guideline describes in detail a standardized container label that is suitable for all blood and blood components intended for transfusion and that is in compliance with the revised labeling requirements proposed in this document. Instructions for the printing and use of the preferred bar-code system selected by CCBBA are described in the guideline. Standard ink colors are identified for use in printing the container label and other auxiliary labels, and for color coding the ABO blood group on the blood grouping portion of the container label.

FDA is encouraging voluntary compliance with the revised labeling requirements proposed in this document; therefore, the guideline may be used immediately in printing new standardized labels. However, the guideline may be revised at the time of publication of the final rule in response to comments received or any changes in the labeling requirements contained in the final rules. FDA urges that, by the effective date of the final rules, all establishments labeling blood and blood components convert to the standard label described in the final guideline. Instructions for obtaining a copy of the guideline and for the submission of comments are given at the end of this document.

The Proposed Rules

Throughout the remainder of this document, including the proposed rules, blood and blood products will be identified by their new proposed proper names. The new proper names are proposed elsewhere in this issue of the Federal Register, along with new proper names for other biological products. In many cases, such as for Whole Blood (Human), the proper name has been revised only by deleting the parenthetical word "Human"; however, for several products more extensive revisions to the proper names were proposed. For example, in this document, Whole Blood (Human), Modified is identified as "Whole Blood Platelets and/or Cryoprecipitate Removed"; Single Donor Plasma (Human) as "Plasma Frozen"; Single Donor Plasma (Human), liquid as "Plasma Liquid"; Platelet Concentrate (Human) as "Platelets"; and Cryoprecipitated Antihemophilic Factor (Human) as "Cryoprecipitated AHF."

In its review of the container label, the CCBBA task force evaluated each required label element to determine whether:

(a) It contributed to safety in the processing of the product, or

(b) Provided a necessary, immediate, and essential caution in the administration of the product.

Those elements meeting the above criteria are proposed for inclusion on the container label in § 606.121. The remaining elements will be either required in the instruction circular, as prescribed in proposed § 606.122, or omitted entirely if the information was determined to be obsolete, or not necessary for the proper use of the product.

Some new or revised elements are proposed for inclusion on the container label. As discussed earlier, the paramount objective of the CCBBA task force was to develop an automated data processing system serviceable to the blood banking community. Proposed § 606.121(c)(12) (i) through (v) prescribes the information the task force determined should be in both eye- and machine-readable form. The "collection center identifier" is based on the establishment's registration number, assigned by FDA. Space is reserved on the uniform container label for the inclusion of an encoded collection date, which may be useful for computerized facilities in inventory control. Because inexpensive on-site bar-code printers are not yet widely available, the encoding of the collection date will be optional. Although not required, establishments may encode information on the labels of blood or plasma products intended for further manufacturing use. Proposed § 606.121(c)(13) permits the submission of other encoding plans to the Director, Bureau of Biologics; however, the agency emphasizes that the full benefit of automated data processing is contingent on the nation-wide use of a uniform encoding system. FDA recognizes that rapid obsolescence is intrinsic in a developing technology such as automated data processing and will continue to review existing labeling procedures to ensure that blood product labeling requirements remain in step with modern technology.

In several cases, labeling requirements are being revised to reflect proposed amendments to the Whole Blood additional standards (21 CFR Part 640, Subpart A), published elsewhere in this issue of the Federal Register. A provision of that proposal would require that the blood of previously pregnant or transfused donors be tested to detect significant unexpected antibodies. Section 606.121(e)(1)(iii), (2)(ii), and (4) would require that any significant unexpected antibodies found be listed on the container labels of Whole Blood, Plasma and Red Blood Cells (except for the frozen, deglycerolized or washed Red Blood Cell products) prepared from that donor. Should no unexpected antibodies be found, this label element may be omitted.

Proposed § 606.121(c)(11) (i), (ii), and (iii) describe the criteria for labeling a product with the Rh group of the donor. As proposed, all blood and blood components intended for transfusion must be labeled with the Rh blood group. Previously, Rh group labeling was not required for Plasma and Cryoprecipitated AHF, because it was not generally considered essential for the safe transfusion of these products. On rare occasions when small amounts of red cell remnants are present, the transfusion of Rh positive Plasma to Rh negative persons has been reported to result in Rh allo-antibody production. Therefore, some clinicians believe that only Rh negative units should be used for transfusion patients, such as potentially child-bearing Rh negative females, for whom the consequinces of immunization are most serious. In addition, the uniform blood group labels described in the guideline include both ABO and Rh information on one label; therefore, it would be more burdensome for the user to delete the Rh portion than to include the Rh group which, under § 640.5(c) (21 CFR 640.5(c)), is already known for the donor. The wording of the provision is revised to reflect the revised Whole Blood standards which would require the testing of D-negative blood for the D^u antigen variant.

Proposed § 606.121(d)(1) would require a standard printing scheme for designating Rh positive and negative blood. The printing of the Rh positive and negative groups in contrasting forms will provide an additional safeguard against the mislabeling or misreading of this important information.

In proposed § 606.121(d)(2), a revised color scheme is prescribed for optional use in differentiating ABO blood groups. As noted by the CCBBA, the current color scheme does not correspond with the optional color scheme described for Blood Grouping Sera in § 660.28(a) (21 CFR 660.28(a)) and may be confusing to individuals handling both types of products. The proposed color scheme is more closely correlated to that used for Blood Grouping Sera. To forestall confusion, FDA is proposing in § 606.121(d)(3) that there be an interim transition period during which no color coding would be permitted. This will allow the introduction of the revised color codes without overlap or conflict with the color coding now in use. The transition period would be for 1 year beginning on the effective date of the final rules. The final rules would become effective 1 year after the date of publication in the Federal Register. Thus, the proposed color coding could be optionally introduced 2 years after the date of publication of the final rules in the Federal Register.

Proposed § 606.121(d)(4) would require that the colors used for the optional ABO group color coding be a visual match to specific color samples designated by the Director, Bureau of Biologics. The colors were selected from a coloring system readily available to printers. The colors are identical to the shades of blue and yellow previously selected for use in the Blood Grouping Serum color coding system. The coloring system and the selected colors are identified in the guidelines and in a separate memorandum filed under the docket number of this document and are available upon request from the Hearing Clerk, Food and Drug Administration. Colors in other coloring systems will be visually matched and identified upon request and submission of the coloring system to the Director, Bureau of Biologics.

The guideline describes a number of special labels recommended for use in simplying with the labeling requirements proposed under § 606.121 (f), (h) and (i) and for other purposes not addressed in the proposed regulations. For each special label described, the guideline recommends a specific color as an aid in identifying the type of special label being used. Under proposed § 606.121(d)(5), persons using color-coded special labels must either use the color coding system described in the guidelines or, prior to use, obtain the approval of the Director, Bureau of Biologics for the use of alternative color coding. By this means, FDA intends to prevent the use of color schemes conflicting with those described in the guidelines, and which may result in the misidentification on a special label.

Proposed § 606.121(h) prescribes the special labeling instructions for products shipped in an emergency situation, prior to completion of the required tests. This special label is revised from that previously required under § 640.7(f) (21 CFR 640.7(f)). In the proposed revisions to the Whole Blood standards, revised criteria are prescribed for the emergency shipment of blood, including a requirement that the shipping facility document in writing the circumstances necessitating the emergency shipment. Because this written record includes the name of the receiving facility, this information need no longer be on the container label. Previously, the statements "Do not use until test results received from (name of licensee)" and "Perform crossmatch" were required on the special label for blood shipped in an emergency. In lieu of the former statement, the special label would include the results of any tests completed before shipment and an indication of those tests not completed before shipment. The wording is revised in recognition that the attending physician may determine that it is necessary to transfuse the blood before all test results are received. However, all tests results must be forwarded as soon as testing is completed. The statement "Perform Crossmatch" has been deleted as unnecessary because, under § 606.151(e) (21 CFR 606.151(e)), the receiving facility's standard operating procedure for compatibility testing must describe the procedures to expedite transfusions in life-threatening emergencies, including the procedures for performing a crossmatch.

The proposed revised Whole Blood standards permit the collection of blood for autologous use from patients failing to meet one or moré donor suitability requirements, providing certain criteria are met. Proposed § 606.121(i) prescribes labeling which would differentiate blood collected from these patients, which is only suitable for autologous use, from blood collected from suitable donors for autologous purposes but which is equally suitable for homologous use. In the latter case, only a tie-tag or other special label need be used to identify the patient, date of collection, and the blood's intended autologous use. Blood from a patient failing to meet the donor suitability requirements or that is positive for hepatitis B surface antigen (HBsAg), must be permanently labeled on the final container with the statement "FOR AUTOLOGOUS USE ONLY" to preclude the erroneous use of the product for a homologous transfusion.

FDA advises that some of the provisions cross-referenced in proposed § 606.121(h) and (i) are being revised and redesignated in the proposed revised Whole Blood standards. Section 606.121(h) and (i) will be amended as appropriate in the final rules to reference the new, redesignated provisions.

For final products intended for transfusion, the information required for inclusion in the instruction circular is prescribed in proposed § 606.122. Many of the items proposed for this section were previously required on the container label, and per CCBBA's recommendations would now be required in the instruction circular. In addition, several new cautions or instructions to the user are proposed where the agency has determined that the additional information is necessary to insure that the products are used according to best current medical practice.

Although the requirements of this section are separated according to product, all the required information may be integrated into one common circular for use with all blood and blood component products. Such a circular has been jointly prepared by the American Association of Blood Banks and the American National Red Cross. This *Circular of Information for the Use of Human Blood and Blood Components* is approved for use by the agency and is becoming the voluntary, uniform standard for the blood service community.

Several other amendments are proposed for clarity and continuity. Revised § 606.120 contains only previously existent requirements concerning the general procedures for labeling blood and blood components. The sections of Part 640 pertaining to the labeling of blood and blood components are being deleted. Section 640.70, concerning the labeling requirements for Source Plasma, is being amended to exempt Source Plasma from the labeling requirements of this proposal.

Because this proposed rule represents a substantial revision from the labeling currently required, the agency proposes that any final regulation issued under this proposal be effective 1 year after the publication of the final regulation. The final regulation would apply to the labeling for all blood and blood components collected on or after the effective date.

FDA is permitting the immediate voluntary use of labels and instruction circulars complying with this proposed regulation except that the proposed ABO blood group color coding under § 606.121 (d)(3) may not be used until the specified effective date. The new container label is intended for use only in conjunction with a revised instruction circular meeting the requirements of proposed § 606.122. Therefore, the revised instruction circular must be available concurrent with the use of the new container label. Licensed establishments may begin using the new label without its prior review and approval by FDA, provided the label is printed in accordance with the specifications described in the guideline. Concurrent with its use, licensed establishments should submit the revised label and instruction circular to the Director, Bureau of Biologics as an amendment to their product license(s).

Pertinent background data on which the agency relies in proposing these amendments are on public display in the Dockets Management Branch, Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

The agency has determined that under proposed § 25.24(d)(13) (published December 11, 1979, 44 FR 71742), this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 501, 502, 701, 52 Stat. 1040–1042 as amended, 1049–1050 as amended, 1050–1051 as amended, 1055–1056 as amended (21 U.S.C. 321, 351, 352, 371)) and the Public Health Service Act (sec. 351, 361, 58 Stat. 702 as amended, 703 (42 U.S.C. 262, 264)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), it is proposed that Parts 606 and 640 are amended as follows:

PART 606—CURRENT GOOD MANUFACTURING PRACTICES FOR BLOOD AND BLOOD COMPONENTS

1. In Part 606:

a. By revising § 606.120 to read as follows:

§ 606.120 Labeling, general requirements

(a) Labeling operations shall be separated physically or spatially from other operations in a manner adequate to prevent mixups.

(b) The labeling operation shall include the following labeling controls:

(1) Labels shall be held upon receipt, pending review and proofing against an approved final copy, to assure accuracy regarding identity, content, and conformity with the approved copy.

(2) Each type of label representing different products shall be stored and maintained in a manner to prevent mixups, and stocks of obsolete labels shall be destroyed.

(3) All necessary checks in labeling procedures shall be utilized to prevent errors in translating test results to container labels.

(c) All labeling shall be clear and legible.

b. By adding new §§ 606.121 and 606.122, to read as follows:

§ 606.121 Container Label.

(a) The following container label requirements are designed to facilitate the use of a uniform container label for blood and blood components (except Source Plasma) by all blood establishments. "Guidelines for the

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Uniform Labeling of Blood and Blood Components" is available upon request from the office of the Hearing Clerk, Food and Drug Administration.

(b) The label provided by the collecting facility and the initial processing facility shall not be removed, altered, or obscured, except that the label may be altered to indicate the proper name and other required labeling information for the contents remaining in a container after blood components have been removed.

(c) The container label shall include the following information as well as other specialized information, as required in this section for specific products:

(1) The propoer name of the product in a prominent position.

(2) The name, address, and, if licensed, the license number of each manufacturer.

(3) The donor, pool, or lot number relating the unit to the donor.

(4) The expiration date, including the day and year, and, if applicable, the hour.

(5) The appropirate donor classification statement, "paid donor," or "volunteer donor," in no less prominence than the proper name of the product.

(i) A paid donor is a person who receives monetary payment for a blood donation.

(ii) A volunteer donor is a person who does not receive monetary payment for a blood donation.

(iii) Benefits, such as time off from work, membership in blood assurance programs, and cancellation of nonreplacement fees that are not readily convertible to cash, do not constitute monetary payment within the meaning of this paragraph.

(6) For Whole Blood, Plasma, Platelets, and partial units of Red Blood Cells, the volume of the product, accurate to within ± 10 percent.

(7) The recommended storage temperature.

(8) If the product is intended for transfusion, the statements:

(i) "Caution: Federal law prohibits dispensing without prescription".

(ii) "See circular of information for indications, contraindications, cautions, and methods of infusion".

(iii) "Properly identify intended recipient".

(9) The statement: "This product may transmit the agent of hepatitis".

(10) The name and volume of source material, when applicable.

(11) The statement: "Caution: For Manufacturing Use Only", when applicable.

(12) If the product is intended for transfusion, the ABO and Rh groups of the donor shall be designated conspicuously. The Rh group shall be designated as follows:

(i) If the test using Anti-D Blood Grouping Serum is positive, the product shall b labeled: "Rh positive".

(ii) If the test using Anti-D Blood Grouping Serum is negative but the test for D^u is positive, the product shall labeled: "Rh positive".

(iii) if the test using Anti-D Blood Grouping Serum is negative and the test for D^u is negative, the product shall be labeled: "Rh negative".

(13) For products intended for transfusion, the container label shall bear encoded information in the form of machine-readable symbols approved for use by the Director, Bureau of Biologies. Machine-readable symnbols are optional for products intended only for further manufacturing use. The encoded information shall adequately identify the following:

(i) Proper name of the product.

(ii) Type of anticoagulant (for whole blood and red blood cell products only).

(iii) Collection center identifier.

(iv) Unit number.

(v) ABO and Rh blood group of the donor.

(d) The paper of the container label shall be white and print shall be solid black, with the following exceptions:

(1) The Rh blood group shall be printed as follows:

(i) Rh positive: Use black print on white background.

(ii) Rh negative: Use white print on black background.

(2) The name of the product, the donor classification statement, and the statement "properly identify intended recipient" shall be printed in solid red.

(3) On or before (2 years after date of publication of final rule in the **Federal Register**), a color scheme may not be used on the container label for differentiating ABO blood groups; after that date, the following color scheme may be used:

Blood group	Color of label paper
O	White.
A	Blue.
B	Yellow.
AB	Green.

(4) Ink colors used for the optional color coding system described in paragraph (3) above shall be a visual match to specific color samples designated by the Director, Bureau of Biologics.

(5) Special labels, such as those described in paragraphs (h) and (i) of this section, may be color coded using the colors recommended in the guideline (see § 606.121(a)), or colors otherwise approved for use by the Director, Bureau of Biologics.

(e) Container label requirements for particular products or groups of products.

(1) Whole Blood labels shall include:

(i) The volume of anticoagulant.

(ii) The name of the applicable anticoagulant, immediately preceding and of no less prominence than the proper name and expressed as follows: (*a*) ACD, (*b*) CPD, (*c*) Heparin, or (*d*) CPDA–1.

(iii) If tests for unexpected antibodies are positive, blood intended for transfusion shall be labled: contains (*name of anitibody*).

(2) Red Blood Cells labels shall include:

(i) The volume and kind of Whole Blood, including the type of anticoagulant, from which the product was prepared.

(ii) It tests for inexpected antibodies are positive, Red Blood Cells intended for transfusion shall be labeled: contains (*name of anitibody*) (except that this requirement shall not apply to the frozen, deglycerolized, or washed Red Blood Cell products).

(3) Labels for Red Blood Cells Deglycerolized, Plasama Platelets, Granulocytes, and any product prepared in an open system shall bear the hour of expiration.

(4) If tests for unexpected antibodies are positive, Plasma intended for transfusion shall be labeled: contains (*name of anitibody*).

(5) Recovered plasma labels shall include:

(i) In lieu of an expiration date, the date of collection of the oldest material in the container.

(ii) The statement: "Caution: For Manufacturing Use Only" or "Caution: For Use in Manufacturing Noninjectable Products Only", as applicable.

(iii) For recovered plasma not meeting the requirements for manufacture into licensable products, the statement: "Not For Use in Products Subject to License Under Section 351 of the Public Health Service Act."

(f) Blood and blood components determined to be unsuitable for transfusion shall be prominently labeled: "NOT FOR TRANSFUSION", and the label shall state the reason the unit is considered unsuitable.

(g) Blood and blood components which are reactive for Hepatitis B Surface Antigen, but which are intended for further manufacturing, shall be labeled as required under § 610.40 of this chapter.

(h) The following additional information shall appear on the labeling for blood or blood components shipped in an emergency, prior to completion of required tests, in accordance with § 640.2(f) of this chapter.

(1) The following information shall appear on a special label or tie-tag attached to the container:

(i) The statement: "EMERGENCY USE ONLY."

(ii) Results of any tests prescribed under §§ 610.40 and 640.5(a), (b), or (c) of this chapter completed before shipment.

(iii) Indication of any tests prescribed under §§ 610.40 and 640.5(a), (b), or (c) of this chapter and not completed before shipment.

(2) The label may not bear the name or any other identification of the intended recipient.

(i) The following additional information shall appear on the labeling for Whole Blood or red Blood Cells intended for autologous infusion.

(1) The following information shall appear on a special label or tie-tag attached to the blood container:

(i) Information adequately identifying the patient. (e.g. name, blood group, hospital, identification no.)

(ii) Date of donation.

(iii) The statement: "FOR AUTOLOGOUS USE ONLY."

(2) Units of blood originally intended for autologous use, except those labeled as prescribed under paragraph (i)(3) of this section, may be issued for homologous transfusion provided the container label complies with all applicable provisions of § 606.121 (b) through (e). In such case, the special label or tie-tag required under paragraph (i)(1) of this section shall be removed.

(3) In place of the blood group label, each container of blood intended for autologous use and obtained from a donor who fails to meet any of the donor suitability requirements under § 640.3 of this chapter or who is reactive in the hepatitis tests prescribed under § 610.40 shall be prominently and permanently labeled: "FOR AUTOLOGOUS USE ONLY."

§ 606.122 Instruction circular.

An instruction circular shall be available for distribution if the product is not intended for further manufacturing. The instruction circular shall provide adequate directions for use, including the following information:

(a) Instructions to mix the product before use.

(b) Instructions to use a filter in the administration equipment.

(c) The statement "Do Not Add Medications" or an explanation concerning allowable additives.

(d) Known sensitizing substances.

(e) A description of the product, its source and preparation, including the name and proportion of the anticoagulant used in collecting the Whole Blood from which each product is prepared.

(f) Statements that the product was prepared from blood that was nonreactive when tested for hepatitis B surface antigen by an FDA required test and nonreactive when tested for syphilis by a serological test for syphilis (STS).

(g) The statements: "Warning. The risk of transmitting hepatitis is present. Careful donor selection and available laboratory tests do not eliminate the hazard".

(h) The names of cryoprotective agents and other additives that may still be present in the product.

(i) The names of all tests performed and results when necessary for safe and effective use.

(j) The use of the product, indications, contraindications, side effects and hazards, dosage and administration recommendations.

(k) For Whole Blood Platelets and/or Cryoprecipitate Removed, instructions not to use the unit of blood for patients requiring platelets or antihemophilic factor (whichever is applicable).

(l) For Red Blood Cells, the instruction circular shall contain:

(1) Instruction to add a suitable plasma volume expander if Red Blood Cells are substituted for Whole Blood.

(2) A warning not to add Lactated Ringer's Injection (U.S.P.) solution to Red Blood Cell products.

(m) For Platelets, the instruction circular shall contain:

(1) The approximate volume of plasma the Platelets were prepared from.

(2) Instructions to use as soon as possible but not more than 4 hours after entering the container.

(n) For Plasma, the instruction circular shall contain:

(1) A warning against further processing of the frozen product if there is evidence of breakage or thawing.

(2) Instructions to thaw the frozen product at a temperature between 30° and 37° C.

(3) When applicable, instructions to use the product within 6 hours after thawing.

(4) Instructions to administer to ABO group compatible recipients.

(5) A statement that this product has the same hepatitis risk as Whole Blood; other plasma volume expanders without this risk are available for treating hypovolemia.

(o) For Cryoprecipitated AHF, the instruction circular shall contain:

(1) The statement: "Average potency is 80 or more units of antihemophilic factor."

(2) The statement: "Usually contains at least 150 mg of fibrinogen"; or, alternatively, the average fibrinogen level determined by assay.

(3) A warning against further processing of the product if there is evidence of breakage or thawing.

(4) Instructions to thaw the product for 15 minutes at a temperature of 37° C.

(5) Instructions to store at room temperature after thawing and use as soon as possible but not more than 4 hours after entering or pooling and within 6 hours after thawing.

(6) A statement that saline is the preferred diluent.

(7) Adequate instructions for pooling to ensure complete removal of all concentrated material from each container.

(8) The statement: "Good patient management requires monitoring treatment responses to Cryoprecipitated AHF transfusions with periodic plasma factor VIII or fibrinogen assays in hemophilia A and hypofigrinogenemic recipients, respectively."

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

2. In Part 640:

§§ 640.7, 640.18, 640.26, 640.35 and 640.57 [Deleted]

a. Be deleting §§ 640.7, 640.18, 640.26, 640.35, and 640.57.

b. By revising the introductory text of § 640.70(a) to read as follows:

§ 640.70 Labeling.

(a) In addition to the labeling requirements of § 610.62 of this chapter, and in lieu of the requirements in §§ 606.121, 610.60, and 610.61 of this chapter, the following information shall appear on the label affixed to each container of Source Plasma:

* * * * *

The guideline is available for public examination between 9 a.m. and 4 p.m., Monday through Friday in the Dockets Management Branch (address below). Interested persons may obtain a single copy of the guideline by writing the Dockets Management Branch and identifying the document with the Dockets Management Branch document number found in brackets in the heading of the document.

Interested persons may, on or before December 30, 1980 submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food

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and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal and the guideline. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Dockets Management Branch docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, as amended by Executive Order 12221, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: October 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-33508 Filed 10-30-80; 8:45 am]

BILLING CODE 4110-03-M

21 CFR Part 640

[Docket No. 80N-0062]

Additional Standards for Human Blood and Blood Products; Reorganization and Revision of Regulations

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) proposes to amend the biologics regulations concerning Additional Standards for Human Blood and Blood Products by reorganizing and revising regulations on Whole Blood (Human). This action would organize these regulations into a logical sequence of manufacturing whole blood, from collection to issue, and would ensure that the criteria of safety, purity, potency, and efficacy applicable to Whole Blood (Human) are consistent with the best current judtment of the scientific community.

DATES: Comments by December 30, 1980, FDA proposes that any final regulation issued under this proposal be effective 30 days after the date of publication of the final regulation.

ADDRESS: Written comments to the Dockets Management Branch (Formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard E. Fisher, Bureau of Biologics (HFB–620), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301–443–1306.

SUPPLEMENTARY INFORMATION: Whole Blood (Human) is a biological product subject to regulations under section 351 of the Public Health Service Act (42 U.S.C. 262). It is also a drug as defined in section 201(g) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 321(g)(1)).Section 351 of the Public Health Service Act requires licensing of each manufacturer of Whole Blood (Human) before marketing the product in interstate commerce. Licenses for establishments manufacturing Whole Blood (Human) are issued only after the particular establishment has demonstrated it is capable of manufacturing Whole Blood (Human) that is safe, pure, potent, and effective. Establishment and product licensing for the production and distribution of Whole Blood (Human) is further governed by the Additional Standards for Human Blood and Blood Products under Part 640, Subpart A (21 CFR Part 640, Subpart A).

FDA has reviewed the existing regulations on Whole Blood (Human) in order to revise and update older standards of production and distribution. This review is consistent with the objectives of Executive Order 12044, "Improving Government Regulations." The agency proposes to revise and reorganize these regulations to reflect a logical sequence of manufacture, to delete outdated requirements, and to add new requirements based on recent scientific experience and developments. Because all blood establishments are required to comply with the standards of current good manufacturing practice (GMP) for blood and blood components under Part 606 (21 CFR Part 606), the requirements contained in the existing Whole Blood (Human) regulations and also prescribed in the GMP standards are deleted in the proposed standards for Whole Blood (Human). Changes in labeling requirements for Whole Blood (Human) are not being proposed at this time because the agency is proposing uniform labeling for blood and blood components in a proposal published elsewhere in this issue of the Federal Register. The current labeling requirements recodified as § 640.9a, will remain in effect pending final action on the proposal concerning uniform labeling for blood and blood components. In addition, a proposed new proper name for Whole Blood (Human), along with proposed new proper names for other biological products, is the subject of a proposal regarding changes in proper names of certain biological products published elsewhere in this issue of the Federal Register. The current proper name, Whole Blood (Human), is used throughout these proposed revisions of the Whole Blood (Human) regulations. The agency advises that new proper names that may be adopted under a final rule regarding the changes in proper names of certain biological products, will be included, as appropriate, in the final rule for revisions of the Whole Blood (Human) regulations.

Substantive changes of the existing Whole Blood (Human) regulations are as follows:

1. Proposed § 640.1 would expand the definition of Whole Blood (Human) to specify that Whole Blood (Human) is derived from a homan donor for transfusion or for use in further manufacturing.

2. Proposed § 640.2(a) would delete the term "licensed" in reference to "licensed blood establishments" because the additional standards for Whole Blood (Human) apply to both licensed and unlicended blood establishments under § 606.100.

3. Current § 640.2(b) would be deleted. The check on sterile technique is conducted to monitor the risk of environmental contamination and any subsequent growth of microorganisms during storage. However, because of technological advances and increased availability of equipment, virtually all blood banking establishments now use disposable plastic containers that do not require venting or entry, other than at the terminal end of integrally attached tubing for blood component separation. The use of disposable plastic containers eliminates the possibility of environmental contamination and the need for a continuing check on sterile technique. For these reasons and because of the requirement in proposed § 640.4(b) that all blood be collected in a closed system, FDA concludes that it is no longer necessary to require a periodic check on sterile technique on units of Whole Blood (Human). The current regulations on therapeutic bleedings are redesignated as § 640.2(b).

4. Current § 640.3(e) would be deleted. This section was promulgated before the source plasma regulation concerning the immunization of donors was published and when little was known about the possible effects that blood withdrawn from donors immunized to human blood cell antigens might have on the recipient. In addition, this section does not take into consideration blood from immunized donors who fail to demonstrate a positive immune response to the injection of human blood cell antigens. The agency finds that this section is outdated because required laboratory tests ensure that blood withdrawn from donors immunized to human blood cell antigens will not affect the safety of transfusion.

5. Proposed § 640.3 would provide more specific guidance for determining the health of the donor to ensure continued safety during a blood donation. The agency proposes the following changes:

a. Proposed § 640.3(a) would require that a qualified licensed physician supervise the determination of donor suitability. The agency believes that the suitability of a blood donor must be determined by a physician who is licensed to practice medicine to ensure that adequate treatment is prescribed in the event of a serious donor reaction. Thus, this paragraph conforms with the Source Plasma (Human) donor suitability requirements under § 640.63(a).

b. Proposed § 640.3(b) would limit the ages of donors to 17 through 65 (up to 66th birthday). On or after the 66th birthday, a donor may be accepted only with the approval of the blood bank physician within 4 weeks before the date of donation, provided the donor has specific written consent from a licensed physician and meets all other criteria for donor acceptability. Donors who are considered minors under applicable local laws must have written consent as required by local law. The agency recognizes that the proposed age limitations are arbitrary; however, these proposed age limitations are based upon legal considerations and well-established correlations of the probability of cardiovascular disease as a function of increasing age.

c. Proposed § 640.3(c) would require that donors may not donate more than 450 milliliters ± 10 percent of Whole Blood (Human) in any 8-week period and not more often than four times per calendar year; unless, as an exception to this requirement, the donor is examined and certified in writing by a licensed physician to meet all other donor qualifications. The agency's review of published studies finds that the present limits concerning the frequency of blood donations does not protect blood donors from developing iron deficiency. These studies demonstrate that at the current permissible donation frequency, the donor's iron stores may not be replaced from the normal diet. Moreover, excluding donors on the basis of the lower limits of hemoglobin/hematocrit values for donor eligibility does not prevent donation by iron-depleted individuals because iron stores may be absent in individuals with acceptable hemoglobin/hematocrit values. The impact of a lower permissible freqency of blood donation on the nation's blood supply has been determined by a study conducted by FDA's Bureau of Biologics. Nineteen regions were surveyed, and these accounted for approximately 15 percent of the blood collected in the United States in 1976. Data from the survey demonstrate that with donations limited to four times per calendar year only 0.2 to 0.8 percent of the blood supply in these regions may be lost. Therefore, the agency concludes that limiting blood donations to 4 times per calendar year will adequately protect donors against iron depletion and will not significantly affect the blood supply needs of the nation.

d. Proposed § 640.3(d)(1) would require the use of venipuncture or fingerstick techniques to obtain blood for hemoglobin or hematocrit determination. Hemoglobin determinations must reflect venous hemoglobin values to prevent individuals with anemia or depleted iron stores from donating blood. The agency reviewed published studies concerning various sampling sites used for the source of blood for hemoglobin/hematocrit determination. These studies demonstrated that results obtained with earlobe puncture overestimate the hemoglobin/hematocrit values obtained by venipuncture or fingerstick techniques. Therefore, earlobe puncture screening may result in acceptance of a donor with anemia or depleted iron stores who would otherwise have been deferred. Furthermore, these studies demonstrate that venipuncture and fingerstick values are equivalent and more reproducible than earlobe puncture values. Based upon this evidence, the agency concludes that earlobe sampling is not suitable for hemoglobin/hematocrit determination.

The requirement for minimum hemoglobin values of not less than 12.5 grams of hemoglobin per deciliter of blood for females and 13.5 grams of hemoglobin per deciliter of blood for males is also proposed in this section. Acceptable hematocrit values, if substituted, are no less than 38 percent and 41 percent, respectively. The agency finds that the currently required minimum hemoglobin value of 12.5 grams of hemoglobin per deciliter of blood is significantly below the normal range for males. Large segments of the blood-banking community recognize this fact and commonly use a minimum hemoglobin value of 13.5 grams of hemoglobin per deciliter of blood or the equivalent hematocrit value of 41 percent for male donors. Consequently, the agency concludes that the current minimum hemoglobin/hematocrit value is below the physiologic norm for male donors.

e. Proposed § 640.3(d)(2) would provide specific criteria for blood pressure, pulse, temperature, and weight with a provision that donors outside these limits are acceptable if the donor is examined and certified in writing as acceptable by a licensed physician. The agency believes that specific criteria for donor screening are necessary to ensure continued donor health and the safety and efficacy of the blood product.

f. Proposed § 640.3(d)(3) would be revised to provide specific criteria for malaria, recent tooth extraction and other oral surgery, recent immunizations, and pregnancy. The agency believes that these criteria are necessary to adequately determine the medical history of the donor. Also, the agency is proposing two provisions, in addition to the current requirements concerning hepatitis, to further minimize the risk of transmitting hepatitis. First, a donor is premanently excluded if blood from that donor was the only unit of blood or blood component administered to a recipient who within 6 months developed posttransfusion hepatitis, and second, a donor is excluded if a tatto was received within 6 months prior to donation.

g. Proposed § 640.3(d)(4) would require the rejection of any donor suffering from symptoms of or receiving treatment for acute or chronic disease or receiving prescribed medication, with the exception of vitamins or contraceptives, unless a licensed physician approves otherwise. Also, by requiring the rejection of any donor who does not provide reliable answers to medical history questions because of the influence of drugs, alcohol, or for any other reason. The agency believes that these comprehensive requirements will further ensure an adequate determination of donor suitability.

6. Proposed § 640.4 would establish standards for blood containers and donor sets which will require that blood be collected in a closed system. For the reasons discussed in paragraph 3, above and because of the superiority of modern plastic equipment over glass containers in the collection, processing, storage, and distribution of blood, all blood-banking establishments shall be required to use approved plastic containers and donor sets exclusively.

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Two additional provisions are also proposed in paragraphs (c) and (d) of this section to provide further assurance of a sterile and safe product. The first requires the collection of blood with a single venipuncture and the second requires the mixing of the blood unit by a method which results in a fully anticoagulated unit. Pilot and processing samples are also differentiated in paragraph (g) of this section to promote a clear understanding of their intended use.

7. Proposed § 640.5 would specify that laboratory tests be performed on either pilot or processing samples because both contain a representative sample of the donor's blood. Current § 640.5(a) is unchanged. The agency proposes the following changes:

a. Proposed § 640.5(b) would specify that: (1) the cell group must be determined by tests with anti-A and anti-B blood grouping serum; (2) the serum group must be determined by testing the donor's plasma or serum with known group A and group B red cells; and (3) the results of both cell and serum grouping must agree before a final label is placed on the blood container. The agency believes that a routine cell and serum test procedure will provide reliable ABO group determinations.

b. Proposed § 640.5(c) would require a test for the D varient (D^u) antigen on D negative blood to determine adequately the presence or absence of D antigen. Because the D antigen is recognized as the most immunogenic red cell antigen outside the ABO system, it is extremely important to accurately group blood donors to prevent problems in transfusion and pregnancy. To accurately determine whether a donor is a true Rh-negative individual, it is necessary to test for the D varient (D^u) antigen because donors with this phenotype are Rh-positive, and their blood to transfused to Rh-positive recipients. The agency believes that this provision will provide accurate confirmation of an Rh classification. In addition, the Wiener notations are deleted as concomitant nomenclature to the Fisher-Race notations in the Rh system. The agency believes that the Fisher-Race nomenclature is widely accepted in describing the main relationships of the Rh blood group system in simple and intelligible terms and is likely to remain indispensible to the scientific community. The Wiener nomenclature is deleted because of practical considerations and for no other reason.

c. Proposed § 640.5(d) would require a test for unexpected antibodies in previously pregnant or transfused donors. The agency believes that it is necessary to test these donors for unexpected antibodies to identify blood that may be harmful if transfused and blood that may confuse future serological evaluation. Other donors need not be tested because unexpected antibodies are rarely found in donors who have not been previously pregnant or transfused. Current § 640.5 (d) and (e) would be deleted.

8. Proposed § 640.6 would separate the storage conditions for blood into two categories, transit storage temperature and blood bank storage temperature. This section specifies that the transportation of blood from a collecting facility to a processing facility be either in a refrigerated environment capable of cooling the blood toward a temperature range of 1° to 10° C, or at a temperature range as close as possible to 20° to 24° C for a period not to exceed 4 hours. Also, for the reasons discussed in paragraph 10. below, this section further provides that blood for reissue need not be placed in temporary storage at 1° to 6° C provided the units are returned to the required refrigerated environment within 30 minutes.

9. Proposed § 640.7 would specify conditions for storage of blood used for component separation. These storage conditions reflect present practices in blood component separation. The current regulations on labeling are redesignated as § 640.9a.

10. A new § 640.8 is proposed and would specify the additional requirements concerning the issue and reissue of blood found in current §§ 640.5(e) and 640.4(i). The agency proposes the following changes:

a. Proposed § 640.8(a) would revise current § 640.5(e) and specify that blood may be issued or reissued if the container has a tamper proof seal which remains unbroken and is inspected visually prior to issue or reissue.

b. Proposed § 640.8(b) would revise current § 640.4(i) and specify that blood which has been moved from storage and exposed to room temperature for no more than 30 minutes would be permitted for reissue. Practical experience demonstrates that blood stored at 1° to 6° C and exposed to room temperature for no more than 30 minutes will not exceed 10° C. The agency would not require evidence of storage after issue because the integrity of the blood will not be compromised by this time period. The section would also extend the time period for use after a blood container has been entered from within 6 hours to within 24 hours. The agency has determined that this extended time period (24 hours) does not adversely affect the quality of Whole Blood (Human) because the significant growth of microorganisms during this short storage period at 1° to 6° C is unlikely.

11. A new § 640.9 is proposed and would incorporate exceptions to the requirements for the preparation of Whole Blood (Human) to better organize and consolidate the regulations. These exceptions concern the provisions for emergency issue, autologous infusion, pediatric use, and manufacturing use of Whole Blood (Human).

12. A new § 640.9a is proposed which is a redesignation of current § 640.7.

The agency proposes that the effective date of any final regulation issued under this proposal be 30 days after publication of the final regulation in the Federal Register.

Pertinent background data on which the agency relies in proposing these amendments are on public display in the Dockets Management Branch, Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

The agency has determined that under proposed § 25.24 (d)(10) (published on December 11, 1979 (44 FR 71742)), this proposal is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201, 502, 701, 52 Stat. 1040–1042 as amended, 1050–1051 as amended, 1055–1056 as amended (21 U.S.C. 321, 352, 371)) and the Public Health Service Act (sec. 351, 58 Stat. 702, as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), it is proposed that Part 640 be amended by revising Subpart A to comprise §§ 640.1–640.9a, to read as follows:

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

Subpart A—Whole Blood (Human)

Sec.

640.1 Whole Blood (Human).
640.2 General requirements.
640.3 Suitability of donor.
640.4 Collection of the blood.
640.5 Testing of the blood.
640.6 Storage of the blood.
640.7 Modification of Whole Blood (Human).
640.8 Issue and reissue of the blood.
640.9 Exceptions.
640.9a Labeling.

Subpart A—Whole Blood (Human)

§ 640.1 Whole Blood (Human).

Proper name and definition. The proper name of this product is Whole Blood (Human). Whole Blood (Human) is defined as blood collected from a human donor for transfusion or for use in further manufacturing.

§ 640.2 General requirements.

(a) *Manufacturing responsibility.* A single establishment shall perform all manufacturing of Whole Blood (Human) including donor examination, blood collection, processing (except as provided in § 610.40(b)), storage, and issue except that the Director, Bureau of Biologics, may approve arrangements for divided manufacture between two or more licensed establishments which the Director determines are adequate to ensure compliance with the provisions of this subchapter.

(b) *Therapeutic bleedings.* Blood withdrawn to promote the health of a donor otherwise qualified under the provisions of this section, shall not be used as a source of Whole Blood (Human) unless the container label conspicuously indicate the donor's disease that necessitated withdrawal of blood.

§ 640.3 Suitability of donor.

(a) *Personnel.* The suitability of a donor as a source of Whole Blood (Human) shall be determined by a qualified licensed physician or persons under the physician's supervision and trained in determining donor suitability. Donor suitability shall be determined by medical history, limited physical examination, and hemoglobin or hematocrit evaluation on the day of and prior to the collection of blood from the donor. The establishment shall maintain on the premises a record which identifies the name and qualifications of the person immediately in charge of the employees who determines the suitability of donors when a physician is not present on the premises.

(b) *Age.* Donors shall be between the ages of 17 through 65 (up to the 66th birthday). Donors under 17 years of age are acceptable only if written consent to donate blood has been obtained in accordance with applicable local law. Donors are acceptable on or after the 66th birthday with the approval of the blood bank physician: *Provided,* That the donors have specific written consent from a licensed physician within 4 weeks before the date of donation and meet all other criteria for acceptability.

(c) *Volume and frequency of donation.* A donor shall not serve as a source of more than 450 milliliters ± 10 percent of Whole Blood (Human) in an 8-week period and not more frequently than 4 times per calendar year, unless, as an exception to this requirement, the donor is examined by a licensed physician at the time of donation and certified in writing by the licensed physician to meet all other donor qualifications of this section.

(d) *Donor qualifications.* Donors shall be in good general health as determined in part by the following criteria:

(1) *Hemoglobin or hematocrit determination.* The hemoglobin shall be determined by using a sample of blood obtained by fingerstick or by venipuncture and shall be no less than 12.5 grams per deciliter of blood for females and 13.5 grams per deciliter of blood for males. Acceptable hematocrit values, if substituted, shall be no less than 38 percent and 41 percent, respectively.

(2) *Physical examination*—(i) *Blood pressure.* The systolic blood pressure shall be between 90 and 180 millimeters of mercury; the disastolic blood pressure shall be between 50 and 100 millimeters of mercury.

(ii) *Pulse.* The pulse rate shall be between 50 and 100 beats per minute and regular.

(iii) *Temperature.* The oral temperature shall not exceed 37.5° C.

(iv) *Weight.* Donors shall weigh at least 50 kilograms, except that donors weighing less may donate proportionately less in a reduced volume of anticoagulant if all other donor requirements are met.

(v) *Exceptions.* Donors with measurements outside the limits of paragraph (d)(2)(i) through (iv) of this section are acceptable if the donor is examined by a licensed physician and certified in writing by the physician to be acceptable.

(vi) *Donor skin.* The phlebotomy site shall be free of skin disease, and both arms shall be free of evidence of repeated skin punctures or scars indicative of drug addiction.

(3) *Medical history*—(i) *Viral hepatitis.* A donor shall be deferred permanently if blood from the donor was the only unit of blood or blood component administered to a patient who within 6 months developed posttransfusion hepatitis and who received no other blood fractions capable of hepatitis transmission; or if the donor is known previously to have been positive for Hepatitis B Surface Antigen (HBsAg); or if the donor has a history of viral hepatitis at any time. A donor shall be deferred if the donor has had, within 6 months prior to donation, close contact with an individual with viral hepatitis, or if the donor has been, within 6 months prior to donation, the recipient of blood products or a tattoo.

(ii) *Malaria.* A donor shall be deferred for a history of malaria exposure within 6 months following travel in an endemic area, within 3 years following residence in an endemic area, and malaria or antimalaria prophylaxis within 3 years prior to donation.

(iii) *Tooth extraction or oral surgery.* A donor shall be deferred for a history of tooth extraction or other oral surgery within 72 hours prior to donation.

(iv) *Immunization.* A donor shall be deferred until the symptons of immunization disappear, except that a symptom-free donor who has been immunized with measles (rubeola), mumps, yellow fever, oral polio vaccine, or animal serum products shall be deferred for 2 weeks after the last immunization; and with German measles (rubella), a donor shall be deferred for 1 month after the last injection.

(v) *Pregnancy.* A donor shall be deferred for known existing pregnancy and, unless a licensed physician approves otherwise, for 6 weeks postpartum.

(4) *General.* (i) A donor shall be deferred, unless a licensed physician approves otherwise, if the donor appears to be suffering from symptoms of or receiving treatment for acute or chronic disease or is receiving prescribed medication, with the exception of vitamins or contraceptives.

(ii) A donor shall be deferred if the donor appears to be under the influence of any drug or alcohol or who does not appear to be providing reliable answers to medical history questions.

§ 640.4 Collection of the blood.

(a) *Supervision.* A qualified licensed physician, or persons under the supervision of a qualified licensed physician trained in the procedure, shall draw blood from the donor. The establishment shall maintain on the premises a record that identifies the name and qualifications of the person immediately in charge of employees who collect blood when a physician is not present on the premises.

(b) *Prevention of contamination of the blood.* The skin of the donor at the site of phlebotomy shall be prepared by a method that gives assurance of a sterile container of blood. The blood shall be collected in a sterile, pyrogenfree, closed system.

(c) *Phlebotomy.* Blood shall be collected with a single venipuncture.

(d) *Mixing.* Blood shall be mixed by a method which gives a fully anticoagulated unit.

(e) *Blood containers.* Blood containers shall meet the following standards:

(1) The original blood container shall be the final container and shall not be entered for any purpose except for blood

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transfusion or as specified elsewhere in this part.

(2) The blood container and anticoagulant shall meet specifications set forth in an approved new drug application filed pursuant to section 505 (a) and (b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355 (a) and (b)) and Part 314 of this chapter.

(f) *Donor sets.* The donor set shall be an integral component of the blood container.

(g) *Test samples.* Pilot samples shall be contained in tubing integrally attached to the final container and shall be portions of the anitcoagulated blood contained in the final container. Processing samples shall be collected at the time of donation in separate containers or in tubing integrally attached to the final container.

§ 640.5 Testing of the blood.

All laboratory tests shall be performed on a pilot or processing sample of blood, and these tests shall include the following:

(a) *Serological test for syphilis.* Whole Blood (Human) shall be negative to a serological test for syphilis.

(b) *Determination of the ABO blood group.* Whole Blood (Human) shall be classified according to ABO blood group by testing the red blood cells with licensed Anti-A and Anti-B Blood Grouping Sera and by testing the serum or plasma with known group A and B cells. The unit of Whole Blood (Human) shall not be labeled unless the results of the two tests are in agreement. The testing facility may use unlicensed blood-grouping sera prepared at such facilities, if the blood grouping sera meet the potency and specificity requirements of Part 660 of this subchapter.

(c) *Determination of the Rh group.* Whole Blood (Human) shall be classified accoridng to Rh blood group by testing the red blood cells with licensed Anti-D Blood Grouping serum. If the test using Anti-D Blood Grouping Serum is positive, no further testing is required. If the the test using Anti-D Blood Grouping Serum is negative, the results shall be confirmed by further testing for D^{U} antigen using the antiglobulin technique of a technique of equivalent sensitivity. The testing facility may use unlicensed Anti-D Blood Grouping Serum and unlicensed Anti-Human Globulin Serum prepared at such facility, if the blood grouping sera meet the potency and specificity requirements of Part 600 of this subchapter.

(d) *Test for unexpected antibodies.* Whole Blood (Human) from previously pregnant or transfused donors shall be tested for unexpected antibodies by a method that demonstrates significant alloantibodies.

§ 640.6 Storage of the blood.

(a) *Blood bank storage temperature.* Immediately after collection, blood shall be stored at a temperature range between 1° to 6° C, except that blood from which platelets are to be removed shall be held in storage at a temperature between 20° to 24° C for a period not to exceed 4 hours from the time of collection.

(b) *Transit storage temperatures.* Blood that is transported from the collecting facility to the processing facility shall be transported in an environment capable of continuously cooling the blood toward a temperature range of 1° to 10° C; or at a temperature as close as possible to 20° to 24° C for a period not to exceed 4 hours. Blood transported from the storage facility shall be placed in an appropriate environment to maintain a temperature range between 1° to 10° C during shipment. Blood for reissue need not be placed in temporary storage at 1° to 6° C provided the units are returned to a controlled environment within 30 minutes.

§ 640.7 Modification of whole blood (human).

The establishment may remove platelets and cryoprecipitated antihemophilic factor from Whole Blood (Human) meeting the applicable requirements of this subchapter and the following conditions:

(a) *Platelets removed.* The blood from which platelets are to be prepared shall be stored in accordance with the provisions of § 640.6(a).

(b) *Cryoprecipitated antihemophilic factor removed.* The red blood cells shall be maintained between 1° and 6° C when the plasma is being frozen for removal of cryoprecipitated antihemophilic factor.

(c) *Cryoprecipitated antihemophilic factor and platelets removed.* Paragraphs (a) and (b) of this section shall apply until both platelets and cryoprecipitated antihemophilic factor are separated from the blood.

§ 640.8 Issue and reissue of the blood.

(a) Blood may be issued or reissued if the container has a tamper proof seal that remains unbroken and the blood is inspected visually prior to issue or reissue. The blood may not be issued or reissued if the color or physical appearance is abnormal or there is any indication or suspicion of microbial contamination.

(b) Blood may be reissued if the blood was continuously maintained at 1° to 6° C except during shipment or returned to storage at 1° to 6° C within 30 minutes after issue and if a pilot sample is properly attached. Blood lacking a pilot sample may be reissued if it is accompanied by instructions for sampling and for use within 24 hours after entering the container for sampling.

§ 640.9 Exceptions.

(a) *Emergency use.* Notwithstanding the provisions of § 610.1 of this chapter, blood may be issued before results of all of the tests prescribed in § 640.5 and the test for hepatitis B surface antigen prescribed in § 610.40(a) of this chapter have been completed, where such shipment is in response to a situation that demands immediate action as determined by a responsible person and documented in writing by the shipping facility. Tests shall be completed as soon as possible, and results shall be sent to the facility receiving the emergency shipment.

(b) *Autologous infusion.* Establishments may collect blood intended for infusion into the same person from whom it was collected even if the person fails to meet one or more of the provisions of § 640.3(b): *Provided,* That (1) the collecting facility has obtained a written request, including an explanation from the donor's physician of the desirability for autologous infusion and specifying the volume and frequency of collections; (2) the donor does not have and is not being treated for bacteremia; and (3) the hemoglobin is no less than 11 grams per deciliter of blood, or the hematocrit is no less than 34 percent, unless hemoglobin or hematocrit values below these limits are approved by the blood bank physician. Blood intended for autologous infusion shall be tested as required in § 640.5 except that the requirement that blood shall be negative to a serological test for syphilis in § 640.5(a) shall not apply. The requirement that blood shall be negative for hepatitis B surface antigen in § 610.40(d) shall not apply.

(c) *Pediatric use only.* The original blood container described in § 640.4 may be entered only once to transfer a portion of the blood from the original container to an approved empty container. The blood shall be used within 24 hours after entering the original container.

(d) *Further manufacturing use.* Sections 640.2(b), 640.4(e)(1), 640.5(b), (c), and (d), 640.6, 640.8, and paragraphs (a) and (b) of this section shall not apply to Whole Blood (Human) intended for further manufacturing use. Blood intended for further manufacturing use shall not be modified as described in § 640.7

§ 640.9a Labeling.

In addition to all other applicable labeling requirements, the following, except as prescribed in paragraphs (f), (g), and (h) of this section, shall appear on the label of each container:

(a) *Donor classification.* The appropriate donor classification statement prescribed in § 606.120(b)(2) of this chapter.

(b) *Anticoagulant*—(1) *Name.* The name of the anticoagulant immediately preceding and of no less prominence than the proper name, expressed as follows:

(i) Either "ACD," or "anticoagulant citrate dextrose solution";

(ii) Either "Heparinized" or "heparin solution";

(iii) Either "CPD" or "citrate phosphate dextrose solution";

(iv) Either "CPDA-1" or "anticoagulant citrate phosphate dextrose adenine solution (CPDA-1)."

(2) *Quantity.* The quantity and kind of anticoagulant used and the volume of blood.

(c) *Serological test and test for hepatitis B surface antigen.* Indication of the method used for serological test for syphilis and the test for hepatitis B surface antigen, and the results or the statements "Nonreactive for syphilis by STS" and "Nonreactive for HBsAg by FDA required test", respectively.

(d) *Blood group and type.* Designation of blood group and Rh factor:

(1) The blood group and Rh factor shall be designated conspicuously.

(2) If a color scheme for differentiating the ABO blood groups is used, the color used to designate each blood group on the container shall be:

Blood Group A: Yellow.
Blood Group B: Pink.
Blood Group O: Blue.
Blood Group AB: White.

(e) *Additional information for labels of Group O Bloods.* Each Group O blood shall be labeled with a statement indicating whether or not isoagglutinin titers of other tests to exclude so called "dangerous" Group O bloods were performed, and indicating the classification based on such tests.

(f) *Issue prior to determination of test results.* The label on each container of blood that is issued under § 640.9(a) concerning exceptions for emergency use shall bear the following information and instructions in lieu of the information specified in paragraphs (c), (d) and (e) of this section.

Emergency Shipment for Use Only by (Name of physician, hospital or other medical facility.)

CAUTION

Before Transfusion

1. Do not use until test results received from (name of licensee).
2. Perform crossmatch.

(g) *Whole Blood (Human), Modified.* The label on each container of blood that is issued pursuant to the provisions of § 640.7 shall bear, in addition to the other applicable labeling requirements, the following:

(1) Immediately following and in no less prominence than the proper name, the word "Modified."

(2) A prominent statement indicating that antihemophilic factor has been removed by cryoprecipitation. Such statement may appear on a separate label affixed to the container.

(3) Instructions not to use the unit of blood for patients requiring antihemophilic factor.

(h) *Whole Blood (Human) for further manufacturing use.* The label on each container of blood that is issued pursuant to the provisions of § 640.9(d) shall bear, in addition to the other applicable labeling requirements, the following statement: "Caution: For Manufacturing Use Only."

Interested persons may, on or before December 30, 1980 submit to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Dockets Management Branch docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, as amended by Executive Order 12221, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Dockets Management Branch, Food and Drug Administration.

Dated: October 17, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-33408 Filed 10-30-80; 8:45 am]
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Friday
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Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

New General Wage Determination Decisions

None

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Delaware: DE78-3080	Nov. 3, 1978.
Kentucky:	
KY80-1069	Aug. 15, 1980.
KY80-1090	Aug. 22, 1980.
KY80-1093	Aug. 22, 1980.
KY80-1094	Aug. 22, 1980.
KY80-1101	Aug. 29, 1980.
KY80-1096	Aug. 22, 1980.
KY80-1097	Aug. 22, 1980.
KY80-1095	Aug. 22, 1980.
Michigan: MI80-2065	Aug. 15, 1980.
New Hampshire:	
NH80-2056	Aug. 15, 1980.
NH80-2057	Aug. 1, 1980.
Oklahoma:	
OK80-4062	July 18, 1980.
OK80-4063	July 18, 1980.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Arkansas:	
AR79-4052 (AR80-4083)	Mar. 30, 1979.
AR79-4055 (AR80-4080)	Mar. 30, 1979.
Kentucky:	
KY79-1165 (KY80-1115)	Dec. 14, 1979.
KY79-1169 (KY80-1116)	Dec. 14, 1979.
Massachusetts: MA80-2041 (MA80-3064)	Sept. 12, 1980.
Pennsylvania: PA78-3054 (PA80-3062)	Aug. 11, 1978.
Virginia:	
VA78-3074 (VA80-3065)	Nov. 3, 1978.
VA78-3075 (VA80-3066)	Nov 3, 1978.
VA78-3076 (VA80-3067)	Nov. 3, 1978.

Cancellation of General Wage Determination Decisions

None

Signed at Washington, D.C. this 24th day of October 1980.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

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MODIFICATION PAGE 2

DECISION NO. DE78-3080 - CONT'D	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS-					
HIGHWAY CONSTRUCTION:					
Group 1	13.11	7.9%	10.3%		1.8%
Group 2	12.24	7.9%	10.3%		1.8%
Group 3	11.47	7.9%	10.3%		1.8%
Group 4	10.09	7.9%	10.3%		1.8%
SHEET METAL WORKERS	13.18	1.90	1.06		.09
STONE MASONS	11.40	.95	1.10		
SOFT FLOOR LAYERS:					
New Castle & Kent Cos.	12.30	1.29	1.40		.03

MODIFICATION PAGE 1

DECISION NO. DE78-3080 - MOD #10 (42 FR 51567 - November 3, 1978) State of Delaware	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
ASBESTOS WORKERS	$14.24	1.20	1.90	-	.03
BOILERMAKERS:					
New Castle Co.	15.57	1.275	1.00		.02
CARPENTERS - BUILDING & HEAVY CONSTRUCTION:					
New Castle & Kent Cos.	12.55	1.29	1.40		.03
CARPENTERS - HIGHWAY CONSTRUCTION:					
New Castle & Kent Cos.	10.95	1.29	1.40	a+b	.03
ELEVATOR CONSTRUCTORS	13.26	1.195	.95	a+b	.035
ELEVATOR HELPERS	9.28	1.195	.95	a+b	.035
ELEVATOR PROB. HELPERS	6.63	1.195	.95	a+b	.035
LINE CONSTRUCTION:					
Linemen	13.52	.60+4%	3%		3/4%
Winch truck operators	9.42	.60+4%	3%		3/4%
Truck driver	8.75	.60+4%	3%		3/4%
Groundmen	8.06	.60+4%	3%		3/4%
MILLWRIGHTS:					
New Castle & Kent Cos.	13.37	1.10	2.25		.02
PILEDRIVERMEN, WHARF & DOCK BUILDERS	11.97	2.63	1.40	c	.13
PLUMBERS & STEAMFITTERS:					
New Castle & Kent (north of the sourthern boundary of city of Dover)					
Plumbers	14.89	1.30	1.20		.10
POWER EQUIPMENT OPERATORS - BUILDING & HEAVY CONSTRUCTION:					
Group 1	13.40	7.9%	10.3%		1.8%
Group 2	13.11	7.9%	10.3%		1.8%
Group 3	12.24	7.9%	10.3%		1.8%
Group 4	11.47	7.9%	10.3%		1.8%
Group 5	11.00	7.9%	10.3%		1.8%
Group 6	10.09	7.9%	10.3%		1.8%
Group 7					
100' and over	13.65	7.9%	10.3%		1.8%
150' and over	13.90	7.9%	10.3%		1.8%
200' and over	14.14	7.9%	10.3%		1.8%

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MODIFICATION PAGE 3

DECISION NO. KY80-1089-MOD. #2 (45 FR 54613- August 15, 1980) Warren County, Ky.	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Laborers:					
Group 1	8.75	.40	.70		
Group 2	8.90	.40	.70		
Group 3	9.25	.40	.70		
Line Construction:					
Linemen, Line Truck, Hole Digger, & Cable Splicers	11.95	.55	3%		½ of 1%
Groundmen- Truck Drivers with Winch	10.18	.55	3%		½ of 1%
Groundmen- Truck Drivers	9.56	.55	3%		½ of 1%

MODIFICATION PAGE 4

DECISION NO. KY80-1090-MOD. #2 (45 FR 56280-56283- August 22, 1980) Hardin, Jefferson, and Meade Counties, Ky.	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Bricklayers & Stonemasons	12.34	.50	.40		.01
Ironworkers	12.75	1.00	2.30		.06
Laborers:					
Group 1	8.95	.40	.70		
Group 2	9.65	.40	.70		
Group 3	9.85	.40	.70		
Group 4	10.00	.40	.70		
Group 5	10.15	.40	.70		
Group 6	10.85	.40	.70		
Piledrivermen	11.85	.70	.65		.05
Pipefitters:					
Area 1- Jefferson county	15.46	.85	1.59		.12
Area 2- Hardin (northern portion of county up to but not including Elizabethtown) and Meade County	15.96	.85	1.59		.12

MODIFICATION PAGE 5

DECISION NO. KY80-1093, MOD. #1 (45 FR 56287-56290, August 22, 1980) Boone, Campbell, Kenton, and Pendleton Cointies, Kentucky	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Bricklayers & Stonemasons	14.49$	.80	.45		.02
Electricians	15.70	.70	3%+.80		½%
Laborers:					
Boone, Campbell, & Kenton Counties					
Group A	12.35	.95	.90		.05
Group B	12.45	.95	.90		.05
Group C	12.50	.95	.90		.05
Group D	12.55	.95	.90		.05
Group E	12.70	.95	.90		.05
Group F	12.85	.95	.90		.05
Group G	13.10	.95	.90		.05
Line Construction:					
Linemen & Machine Operators	15.70	.70	3%+.80		½%
Groundmen	11.77$	.70	3%+.80		½%
Marble setters	14.38$	.80	.45		
Marble finishers	13.35				
Terrazzo workers & Tile setters	14.33$	.80	.45		
Terrazzo & Tile finishers	13.35				

MODIFICATION PAGE 6

DECISION NO. KY80-1094 - MOD. #2 (45 FR 46278-46280- August 22, 1980) Henderson County, Ky.	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Millwrights	13.94	.70	.90		
Laborers:					
Group A	9.90	.85	.75		.09
Group B	10.10	.85	.75		.09
Group C	10.20	.85	.75		.09
Group D	10.90	.85	.75		.09
Painters:					
Brush & Roller	11.80	.80	.50		
Drywall Tapers, Paperhangers	12.05	.80	.50		
Sandblasters, Power Tools, & Spray	12.80	.80	.50		

DECISION NO. KY80-1101- MOD. # 2 (45 FR 57919-57921- August 29, 1980) McCracken County, Ky.					
Change:					
Carpenters	12.10	.45	.25		.07
Cement Masons	10.95	.90	.40		.05
Laborers:					
Group 1	0.75	.40	.70		
Group 2	8.95	.40	.70		
Group 3	9.25	.40	.70		
Lathers	12.10	.45	.25		.07
Millwrights & Piledrivermen	12.60	.45	.25		.07

MODIFICATION PAGE 7

DECISION NO. KY80-1096 - MOD. #2 (45 FR 56283-56285 - August 22, 1980) Franklin County, Ky.	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Bricklayers & Stonemasons	13.00	.45	.50		
Ironworkers	12.75	1.00	2.30		.06
Marble, Tile & Terrazo Workers	11.85	.45	.50		
DECISION NO. KY80-1097- MOD. #2 (45 FR 56274-56275- August 22, 1980) Fayette County, Ky.					
Change:					
Bricklayers & Stonemasons	13.00	.45	.50		
Ironworkers	12.75	1.00	2.30		.06
Marble, Tile & Terrazo Workers	11.85	.45	.50		
Roofers	10.40	.75			.02
DECISION NO. KY80-1095 - MOD #2 (45FR 56276-56278- August 22,1980) Boyd County, Ky.					
Change:					
Asbestos Workers	15.60	.60	1.10		.03

MODIFICATION PAGE 8

DECISION NO. MI80-2065 MOD #1 (45FR 54623 August 15, 1980 Allegan, Berrien, Calhoun, Clinton, Eaton, Ingham, Jackson, & Kalamazoo Cos. Michigan	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
BOILERMAKERS	$14.67	1.38	1.45	2.00	.05
BRICKLAYERS & STONEMASONS:					
Allegan County (Allegan, Cheshire, Gun Plain, Martin, Otsego, Trowbridge Valley, and Watson Townships) and Kalamazoo County	12.41	1.15	.70		.09
Allegan County (Remainder)	12.05	.75	.35		.04
CARPENTERS:					
Remaining Counties and the remainder of Berrien and Eaton Counties	12.44	.75	.90		.10
CEMENT MASONS:					
Kalamazoo County; Calhoun Co.; Allegan Co.(Twps of Allegan, Cheshire, Gunn Plain, Martin, Otsego, Trowbridge, Valley & Watson)	11.59	1.15	.70		.09
Remainder of Allegan Co.	11.24	.75	.25		
Allegan Co.(Casco, Ganges & Lee Twps) and Berrien Co.	11.50	.95	1.05		
ELECTRICIANS:					
Clinton and Ingham(except Onondaga, Leslie, Stockbridge and Bunker Hill Twps) Co. and the remainder of Eaton Co.	13.87	.75	3%+1.50		.5%
Jackson County	13.07	4%+1.00	3%+ .70	10%	.26
Remainder of Ingham Co.	13.07	4%+1.00	3%+ .70	10%	.26
ELEVATOR CONSTRUCTORS					
Allegan, Kalamazoo and Calhoun Counties:					
Constructors	13.83	1.20	.95	a	.035
Helpers	70%JR	1.20	.95	a	.035

MODIFICATION PAGE 9

DECISION NO. MI80-2065 MOD #1 (Cont.)	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELEVATOR CONSTRUCTORS: (Cont.)					
Eaton, Ingham & Jackson Counties:					
Constructors	$15.14	1.195	.95	a	.035
Helpers	70%JR	1.195	.95	a	.035
IRONWORKERS:					
Clinton, Ingham & Jackson Counties					
Fence Erectors	12.80	9%	17%	18%	.09
MARBLE, TILE & TERRAZZO WORKERS:					
Remainder of Allegan Co.	11.27	.75	.35		
PAINTERS:					
Calhoun County					
Brush/Roller	11.20		.70		
PLUMBERS:					
Allegan County (Northern Tier Twps.)	14.09	.70+.15	1.30		
Allegan County (Remainder & Kalamazoo County	14.81	.70	1.50		
Berrien County (except Niles & vicinity)	14.42	1.22	.90		.02
Clinton & Ingham Counties and Sunfield, Roxand, Oneida, Delata and Windson Twps in Eaton Co.	14.61	1.05	1.75		.02
Jackson County	14.25	1.35	1.30		.02
ROOFERS:					
Jackson County					
Slate/Tile	14.88	1.20	.75	1.25	.10
Composition	13.57	1.20	.75	1.25	.10
SOFT FLOOR LAYERS:					
Clinton & Ingham Counties and the remainder of Eaton Co.	11.82	.75	.90		.01

MODIFICATION PAGE 10

DECISION NO. MI80-2065 MOD #1 (Cont.)	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Clinton, Eaton & Ingham Counties					
GROUP 1	10.35	.75	.50	a	.04
GROUP 2	10.43	.75	.50	a	.04
GROUP 3	10.49	.75	.50	a	.04
GROUP 4	10.64	.75	.50	a	.04
GROUP 5	10.59	.75	.50	a	.04
GROUP 6	10.71	.75	.50	a	.04
GROUP 7	10.965	.75	.50	a	.04
Jackson County					
GROUP 1	10.33	.75	.50		.04
GROUP 2	10.89	.75	.50		.04
POWER EQUIPMENT OPERATORS:					
BUILDING & HEAVY CONSTRUCTION:					
CLASS A	14.80	1.05	1.80		.10
CLASS B	14.45	1.05	1.80		.10
CLASS C	14.05	1.05	1.80		.10
CLASS D	12.70	1.05	1.80		.10
CLASS E	12.45	1.05	1.80		.10
CLASS F	11.15	1.05	1.80		.10
CLASS G	10.40	1.05	1.80		.10
STEEL ERECTION:					
Clinton, Ingham, & Jackson Counties					
CLASS A	15.88	1.05	1.80	12%	.10
CLASS B	15.63	1.05	1.80	12%	.10
CLASS C	14.75	1.05	1.80	12%	.10
CLASS D	14.54	1.05	1.80	12%	.10
CLASS E	11.98	1.05	1.80	12%	.10
CLASS F	10.81	1.05	1.80	12%	.10

MODIFICATION PAGE 11

DECISION NO. MI80-2065 MOD #1 (Cont.)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS: (Cont.)					
STEEL ERECTION (Cont.)					
Remaining counties					
CLASS A	15.15	1.05	*1.80		.10
CLASS B	14.90	1.05	1.80		.10
CLASS C	14.40	1.05	1.80		.10
CLASS D	13.05	1.05	1.80		.10
CLASS E	11.75	1.05	1.80		.10
CLASS F	10.50	1.05	1.80		.10
UNDERGROUND CONSTRUCTION					
Calhoun, Clinton, Eaton, Ingham & Jackson Cos.					
CLASS I	12.88	1.05	*1.80	12%	.10
CLASS II	12.63	1.05	1.80	12%	.10
CLASS III	11.97	1.05	1.80	12%	.10
CLASS IV	11.46	1.05	1.80	12%	.10
Remainder of Counties					
CLASS I	11.35	1.05	*1.80	12%	.10
CLASS II	10.96	1.05	1.80	12%	.10
CLASS III	10.51	1.05	1.80	12%	.10
CLASS IV	10.26	1.05	1.80	12%	.10

* Retiree Benefit Fund Included in Pension Fund

MODIFICATION PAGE 12

DECISION # NH80-2056 MOD.#2 (45 FR 54631 Aug. 15, 1980)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
HILLSBOROUGH & MERRIMACK COS., NEW HAMPSHIRE					
CHANGE:					
BRICKLAYERS, CEMENT MASONS, MARBLE SETTERS, PLASTERERS, STONE MASONS, TERRAZZO WORKERS & TILE SETTERS	10.19	1.01	.89		.01
DECISION #NH80-2057 MOD. #3 (45 FR 51411 Aug. 1, 1980)					
ROCKINGHAM & STRAFFORD COS., NEW HAMPSHIRE					
CHANGE:					
BRICKLAYERS, CEMENT MASONS, MARBLE SETTERS, PLASTERERS, STONE MASONS, TERRAZZO WORKERS & TILE SETTERS	10.19	1.01	.89		.01

MODIFICATION PAGE 13

DECISION #OK80-4062-Mod. #2 45 FR 48446-July 18, 1980 Tulsa, Creek, Craig, Ottawa, Delaware, Mayes and Rogers Counties, Oklahoma	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
ASBESTOS WORKERS	$13.95	.55	.90		.03
ELECTRICIANS:					
Electricians	13.25	.63	3%+.61		.10
Cable splicers	13.50	.63	3%+.61		.10
Lathers	11.65				.01
PAINTERS (Tulsa, Creek, Rogers & Mayes Counties):					
Brush	11.75		.40		.10
Highwork & stage	12.15		.40		.10
Spray and sandblasting	12.40		.40		.10
Hot or bituminous	13.05		.40		.10
Sheetrock handtools	11.75		.40		.10
Sheetrock power tools	12.15		.40		.10
POWER EQUIPMENT OPERATORS:					
GROUP I	13.20	.70	.75		.12
GROUP II	12.70	.70	.75		.12
GROUP III	12.20	.70	.75		.12
GROUP IV	11.95	.70	.75		.12
GROUP V	11.70	.70	.75		.12
GROUP VI	11.45	.70	.75		.12
GROUP VII	11.20	.70	.75		.12
GROUP VIII	10.20	.70	.75		.12

MODIFICATION PAGE 14

DECISION #OK80-4063-Mod. #1 45 FR 48441-July 18, 1980 Garfield County, Oklahoma	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
ASBESTOS WORKERS	$13.38	.70	1.25		.04
ELECTRICIANS:					
ZONE I	12.70	.70	8%+.10		1%
ZONE II	12.95	.70	8%+.10		1%
ZONE III	13.20	.70	8%+.10		1%
CABLE SPLICERS:					
ZONE I	12.95	.70	8%+.10		1%
ZONE II	13.20	.70	8%+.10		1%
ZONE III	13.45	.70	8%+.10		1%
MARBLE SETTERS	13.52		.80		
PAINTERS:					
GROUP I	10.40	.50	.50	.50	.03
GROUP II	10.90	.50	.50	.50	.03
GROUP III	11.40	.50	.50	.50	.03
GROUP IV	10.90	.50	.50	.50	.03
GROUP V	10.90	.50	.50	.50	.03
TERRAZZO WORKERS	13.52		.80		
TILE LAYERS	13.52		.80		
ADD					
LATHERS	11.25	.55	.80		.09
UNDER PAINTERS CLASSIFICATION DEFINITIONS					
GROUP V - Hazardous work					

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SUPERSEDEAS DECISION

STATE: Arkansas COUNTY: Pulaski
DECISION NO.: AR80-4083 DATE: Date of Publication
Supersedes Decision No. AR79-4052 dated March 30, 1979 in 44FR19103
DESCRIPTION OF WORK: Building Projects (excluding single family homes and apartments up to and including four stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$12.05	.55	1.00		.02
BOILERMAKERS	12.00	.975	1.00		.03
BRICKLAYERS-STONEMASONS	10.40	.70	.35		.04
CARPENTERS:					
Carpenters	10.35	.50	.50		.07
Millwrights-Piledrivermen	10.85	.50	.50		.07
CEMENT MASONS	10.45	.35			.03
ELECTRICIANS:					
Electricians	12.35	.55	3%+1.35		1/4%
Cable splicers	12.475	.55	3%+1.35		1/4%
ELEVATOR CONSTRUCTORS:					
Journeymen	10.18	1.195	.82	4%+a+b	.035
Helpers	70%JR	1.195	.82	4%+a+b	.035
GLAZIERS	9.68				
IRONWORKERS	11.10	.55	.95		.06
LABORERS:					
Group I	7.20	.38	.62		
Group II	7.45	.38	.62		
Group III	7.60	.38	.62		
Group IV	7.70	.38	.62		
Group V	7.85	.38	.62		
Group VI	8.10	.38	.62		
Group VII	8.00	.38	.62		

LABORERS CLASSIFICATION DEFINITIONS

GROUP I
Construction laborers, concrete labor, wrecking labor, mechanic's labor, excavating labor, plumber's labor, electricians labor, green cutter, blowpipe and concrete pump hose placer
GROUP II
Semi-skilled laborer; pipelayer, concrete, clay and mechanical tool, cement mixer, wet or dry finishers, and plasterers, mason tender, mortar mixers, asphalt rakers and shovelers, creosote wood handlers, and chuck tenders
GROUP III
Steel form setters, curb and gutters, grout and cement muckers
GROUP IV
Swinging scaffold, Barco, 90 lb. pavement breaker and burners
GROUP V
Nozzleman (gunite, grout and sand blaster; concrete pump (nozzle placer)
GROUP VI
Powderman and blasters
GROUP VII
Wagon drill

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION:					
Linemen	$13.75		3%		3/8%
Cable splicers	13.875		3%		3/8%
Operator	13.75		3%		3/8%
Groundmen	65%JR		3%		3/8%
Winch equipment	73%JR		3%		3/8%
MARBLE, TILE & TERRAZZO WORKERS	9.00				
PAINTERS:					
Painters, paperhangers and steam cleaners, sheetrock finishers & wall cover hangers	9.25		.50		.03
Spray gun operators and sand blasterers	9.85		.50		.03
All skeleton steel and all work on stages, structural steel over 30 feet high	9.50		.50		.03
PLASTERERS	11.00				.02
PLUMBERS & PIPEFITTERS:					
Within 10 mile radius of Pulaski County Courthouse	12.75	.60	.75		.08
Over 10 miles from Pulaski County Courthouse	13.05	.60	.75		.08
POWER EQUIPMENT OPERATORS:					
Group I	11.66	.45	.45		.05
Group II	10.58	.45	.45		.05
Group III	10.05	.45	.45		.05
Group IV	8.32	.45	.45		.05

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP I
Cranes, draglines, shovels and piledrivers with a lifting capacity of 50 tons or over, and operators of all towers, climbing cranes, and derricks required to work 25 feet or over from the ground, blacksmith, and mechanics
GROUP II
Hydraulic cranes, cherry pickers, backhoes and all derricks with a lifting capacity less than 50 tons, as specified by the manufacturer, all backhoes, tractor or truck type, all overhead and traveling cranes, or tractors with swing boom attachments, gradealls, all above equipment irrespective of motive power, leverman (engineer), hydraulic or bucket dredges, irrespective of size
GROUP III
HEAVY EQUIPMENT OPERATORS - all bulldozers, front end loaders, sidebooms, skytracks, push tractors, pull scrapers, motor graders, trenching machines, regardless of size or motive power, all back fillers, central mixing plants, 10S and larger, finishing machines, boilers fireman, high or low pressure, all asphalt spreaders, hydro truck cranes multiple drum hoist, irrespective of motive power, all rotary, cable tool core drill or churn drill, water well and foundation drilling machines, regardless or size, regardless of motive power and dredge tender operator

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS CONT'D

GROUP IV
LIGHT EQUIPMENT OPERATORS - oiler driver motor crane, single drum hoists, winches and air tuggers, irrespective of motive power, winch or A-frame trucks, forklifts, rollers of all types and pull tractors, regardless of size, elevator operators inside and outside when used for carrying workmen from floor to floor and handling building material, lad-a-vator, conveyor, batch plant, and mortar or concrete mixers, below 10S, end dump euclid, pumpcrete, spray machine and pressure grout machine, air compressors, regardless of size, all equipment, welding machines, light plants, pumps, all well point system, de-watering and portable pumps, space heaters, irrespective of size, and motive power, equipment greaser, oiler, asphalt distributor, and like equipment, safety boat operator and deckahand

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS	$10.21		.30		
SHEET METAL WORKERS	11.57	.55	3%+.72		.04
SPRINKLER FITTERS	11.69	.75	1.05		.08

FOOTNOTES:
a. 1st 6 mos. - none; 6 mos. to 5 yrs. - 6%; over 5 yrs.-8% of ba basic hourly rate.
b. PAID HOLIDAYS - A through G.
PAID HOLIDAYS:
A-New Years Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Day after Thanksgiving; G-Christmas Day.

WELDERS --receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii).

SUPERSEDEAS DECISION

STATE: ARKANSAS COUNTY: Jefferson
DECISION No.: AR80-4080 DATE: Date of Publication
SUPERSEDES DECISION No. AR79-4055 dated March 30, 1979 in 44 FR 19106
DESCRIPTION OF WORK: Building Projects (excluding single family homes and apartments up to and including four stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$12.05	.55	1.00		.02
BOILERMAKERS	12.00	.975	1.00		.03
BRICKLAYERS - STONEMASONS	10.40	.70	.35		.04
CARPENTERS:					
Carpenters	10.35	.50	.50		.07
Millwrights & Piledrivermen	10.85	.50	.50		.07
CEMENT MASONS	10.45	.35			
ELECTRICIANS:					
Electricians	12.35	.55	1.35		3%
Cable splicers	12.475	.55	1.35		3%
ELEVATOR CONSTRUCTORS:					
Journeymen	10.18	1.195	.82	4%+a+b	.035
Helpers	70%JR	1.195	.82	4%+a+b	.035
GLAZIERS	9.68				
IRONWORKERS	11.10	.55	.95		.06
LABORERS:					
Group I	7.20	.38	.62		
Group II	7.45	.38	.62		
Group III	7.60	.38	.62		
Group IV	7.70	.38	.62		
Group V	8.10	.38	.62		
Group VI	8.10	.38	.62		
Group VII	8.00	.38	.62		

-- LABORERS CLASSIFICATION DEFINITIONS

GROUP I - Construction laborers, concrete labor, wrecking labor, mechanic's labor, excavating labor, plumber's labor, electricians labor, green cutter, blowpipe, and concrete pump hose placer
GROUP II - Semi-skilled laborer; pipelayer, concrete, clay and mechanical tool, cement mixer, wet or dry finishers, and plasterers, mason tender, mortar mixers, asphalt rakers & shovelers, creosote wood handlers, chuck tenders
GROUP III - Steel form setters, curb and gutters, grout and cement muckers
GROUP IV - Swinging scaffold, Barco, 90 lb. pavement breaker, and burners
GROUP V - Nozzleman (gunite, grout and sand blaster; concrete pump (nozzle placer)
GROUP VI - Powderman and blasters
GROUP VII - Wagon drill

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION:					
Linemen	$13.75		3%		3/8%
Cable splicers	13.87$		3%		3/8%
Groundmen	65%JR		3%		3/8%
Winch equipment	73%JR		3%		3/8%
MARBLE, TERRAZZO & TILE WORKERS	9.00				
PAINTERS:					
Painters, paperhangers and steam cleaners, sheet rock finishers and wall cover hangers	9.25		.50		.03
Spray gun operators and sand blasters	9.85		.50		.03
All skelton steel and all work on stages, structural steel over 30 feet high	9.50		.50		.03
PLASTERERS	11.00		.50		.03
PLUMBERS & PIPEFITTERS	12.70	.90	.60		.10
POWER EQUIPMENT OPERATORS:					
Group I	11.66	.45	.45		.05
Group II	10.58	.45	.45		.05
Group III	10.05	.45	.45		.05
Group IV	8.32	.45	.45		.05

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP I- Cranes, draglines, shovels and piledrivers with a lifting capacity of 50 tons or over, and operators of all towers, climbino cranes, and derricks required to work 25 feet or over from the ground, blacksmith, mechanics and/or welders

GROUP II - Hydraulic cranes, cherry pickers, backhoes and all derricks with a lifting capacity less than 50 tons, as specified by the manufacturers, all backhoes, tractor or truck type, all overhead and traveling cranes, or tractors with swinging boom attachments, gradalls, all above equipment irrespective of motive power, leverman (engineer), hydraulic or bucket dredges, irrespective of size

GROUP III - HEAVY EQUIPMENT OPERATORS: All bulldozers, all front end loaders, all sidebooms, skytracks, all push tractors, all pull scrapers, all motor graders, all trenching machines, regardless of size or motive power, all hack fillers all central mixing plants, 10S and larger, finishing machines, all boiler firemen high or low pressure, all asphalt spreaders, hydro truck crane, multiple drum hoist, irrespective of motive power, all rotary, cable tool core drill or churn drill, water well and foundation drilling machines, regardless of size, regardless of motive power and dredge tender operator

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS (CONT'D)

GROUP IV - LIGHT EQUIPMENT OPERATORS: Oilerdriver motor crane, aingle drum hoists, winches and air tuggers, irrespective of motive power, winch or A-frame trucks, forklifts, rollers of all types and pull tractors, regardless of size, elevator operators inside and outside when used for carrying workmen from floor to floor and handling building material. Lad-A-Vator, conveyor, batch plant, and mortar or concrete mixers, below 10S, end dump Euclid, pumpcrete, spray machine and preaure grout machine, air compressors, regardless of size, all equipment, welding machines light plants, pumps, all well point system de-watering and portable pumps, space heater, irrespective of size, and motive power, equipment greaser, oiler, asphalt distributor, and like equipment, safety boat operator and deckhand

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS	$10.21		.30		.04
SHEET METAL WORKERS	11.57	.55	3%+.72		.04
SPRINKLER FITTERS	11.69	.75	1.05		.08

FOOTNOTES:

a. 7 paid holidays: A through G.

b. Employer contributes 8% of regular hourly rate to Vacation Pay Credit for employee who had worked in business more than 5 years. Employer contributes 6% of regular hourly rate to Vacation Pay Credit for employee who has worked in business less than 5 years.

PAID HOLIDAYS: FOR ELEVATOR CONSTRUCTORS ONLY
A-New Years' Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Day after Thanksgiving; G-Christmas Day.

WELDERS -- receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifictions listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii).

SUPERSEDEAS DECISION

STATE: KENTUCKY
COUNTIES: BREATHITT, FLOYD, KNOTT, LETCHER, MAGOFFIN, PERRY, & PIKE
DECISION NUMBER: KY80-1116 DATE: Date of Publication
Supersedes Decision No.: KY79-1169 dated December 14, 1979 in 44 FR 72798
DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION PROJECTS - includes single family homes and apartments up to and including four stories

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
AIR CONDITIONING AND HEATING MECHANICS	5.25				
BRICKLAYERS	8.02				
CARPENTERS	7.18				
CEMENT MASONS	6.00				
DRYWALL HANGER	6.18				
DRYWALL FINISHER	6.75				
ELECTRICIANS	6.00				
INSULATION INSTALLERS	6.00				
LABORERS	4.66				
Laborers	4.66				
Mason Tenders	5.25				
PAINTERS	6.00				
PLUMBERS	7.23				
ROOFERS	7.23				
SHEET METAL WORKERS	6.47				
SOFT FLOOR LAYERS	6.00				
TILE SETTERS	7.83				
TRUCK DRIVERS	6.00				
P.E.O.					
BULLDOZER	9.65				
FRONT END LOADER	8.48				
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, (a) (1) (ii)).					

SUPERSEDEAS DECISION

STATE: KENTUCKY
COUNTIES: ESTILL, GARRARD, JACKSON, LEE, LINCOLN, MADISON, & OWSLEY
DECISION NUMBER: KY80-1115 DATE: Date of Publication
Supersedes Decision No.: KY79-1165 dated December 14, 1979 in 44 FR 72796
DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION PROJECTS - includes single family homes and apartments up to and including four stories

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
AIR CONDITIONING AND HEATING MECHANICS	7.00				
BRICKLAYERS	6.21				
CARPENTERS	4.87				
CEMENT MASONS	5.69				
DRYWALL HANGERS	6.14				
DRYWALL FINISHERS	6.50				
ELECTRICIANS	5.00				
INSULATION INSTALLER	4.91				
LABORERS	4.14				
PAINTERS	5.00				
PLUMBERS	8.00				
ROOFERS	5.00				
SHEET METAL WORKERS	5.47				
SOFT FLOOR LAYERS	5.27				
TILE SETTERS	5.86				
P.E.O.					
DOZER	5.00				
FRONT END LOADER	5.83				
BACKHOE OPERATOR	6.14				
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, (a) (1) (ii))					

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SUPERSEDEAS DECISION

STATE: Massachusetts

COUNTIES: Barnstable, Bristol, Dukes, Essex, Middlesex, Norfolk, Plymouth, Suffolk Nantucket

DECISION NUMBER: MA80-3064 DATE: Date of Publication

Supersedes Decision No. MA80-2041 dated September 12, 1980, in 45 FR 60738.

DESCRIPTION OF WORK: Building Projects (including Residential), Heavy and Highway Projects and Marine Projects

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
BARNSTABLE CO. (Barnstable, Borne, Falmouth, Mashpee, and Sandwich); NORFOLK CO. (Bellingham, Franklin, Plainville and Wrentham); PLYMOUTH CO. (Lakeville, Mattapoisett, Middleboro, Rochester and Wareham); BRISTOL CO. (All except Easton); Dukes; Nantucket	$12.28	1.45	1.33		
SUFFOLK, MIDDLESEX, ESSEX COUNTIES; BARNSTABLE (Remainder of County); NORFOLK (Remainder of Co.): PLYMOUTH (Remainder of Co.); BRISTOL (Easton)	14.31	1.40	1.15		.05
BOILERMAKERS	14.63	1.275	10%		.03
BRICKLAYERS: Stone Masons, Plasterers, Cement Masons (except Suffolk, Essex, Middlesex, and Brookline and Milton in Norfolk Co.), Pointers, Caulkers, and Cleaners:					
SUFFOLK CO.; MIDDLESEX (Arlington, Cambridge, Everett, Malden, Melford, Melrose and Somerville); NORFOLK (Brookline and Milton except plasterers)	11.55	.85	1.40		.12
Residential	9.24	.85	1.40		.12
Veneer Plastering	9.24	.84	1.40		.12
NORFOLK (Avon, Holbrook, Randolph and Stoughton); PLYMOUTH (Aington, Bridgewater, Brockton, Carver, Duxbury, E. Bridgewater, Halifax, Hanover, Hanson, Kingston, Marshfield, Middleboro, Pembroke, Plymouth, Norwell (except					

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
BRICKLAYERS: Stone Masons, Plasterers, Cement Masons (except Sulfolk, Essex, Middlesex, and Brookline and Milton in Norfolk Co.), Pointers, Caulkers, and Cleaners (Cont'd)					
plasterers) Rockland, w. Bridgewater & Whitman); BRISTOL CO. (Easton, N & S Easton)	11.80	.85	1.15		.09
Residential	9.44	.85	1.15		.10
Veneer Plastering	9.44	.85	1.15		.09
DUKES; NANTUCKET; NORFOLK (Bellingham, Canton, Dedham, Foxboro, Franklin Norfolk, Norwood, Plainville, Sharon, Walpole, Westwood and Wrentham); PLYMOUTH CO. (Lakeville only); BRISTOL (Attleboro, N. Attleboro, Mansfield, Raynham, Barrowsville, Taunton, Berkley, North Dighton, Rehoboth, Seehonk)	11.60	1.40	.80		.09
Residential	9.28	1.40	.80		.10
Veneer Plastering	9.28	1.40	.80		.09
MIDDLESEX (Reading, N. Reading, Wakefield); ESSEX CO.	11.85	.70	1.25		.09
Residential	9.48	.70	1.25		.10
Veneer Plastering	9.48	.70	1.25		.09
MIDDLESEX (Belmont, Burlington, Concord, Lexington, Lincoln, Stoneham Sudbury, Waltham, Watertown, Wayland, Weston, Winchester & Woburn	11.65	.75	1.40		.09
Residential	9.64	.75	1.00		.09
Veneer Plastering	9.64	.75	1.00		.09
MIDDLESEX (Acton, Ashby, Ayer, Bedford, Billerica, Boxboro, Carlisle, Chelmsford, Dracut, Dunstable, Ft. Devens, Groton, Littleton, Lowell, North Acton, Pepperell, Shirley, South Acton, Tewksbury, Townsend,					

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
BRICKLAYERS: Stone Masons, Plasterers, Cement Masons (except Sulfolk, Essex, Middlesex, and Brookline and Milton in Norfolk Co.), Pointers, Caulkers, and cleaners (Cont'd)					
Tyngsboro, West Acton, Westford, & Wilmington	12.20	.90	.70		.09
Residential	9.76	.90	.70		.09
Veneer Plasterers	9.76	.90	.70		.09
BARNSTABLE CO.; PLYMOUTH (Marion, Mattapoisett, Rochester, and Wareham); BRISTOL (Acushnet, Dartmouth, Fairhaven, Fall River, Freetown, New Bedford, N. & S. Dartmouth Somerset, Swansea, Westport)	11.60	1.20	1.00		.09
Residential	9.28	1.20	1.00		.09
Veneer Plastering	9.28	1.20	1.00		.09
MIDDLESEX (Ashland, Farmington, Holliston, Hopkington, Hudson, Sherborn, Stow) NORFOLK (Medfield, Medway, Millis)	11.60	1.20	1.00		.09
Residential	9.28	1.20	1.00		.09
Veneer Plastering	9.28	1.20	1.00		.09
MIDDLESEX (Newton only); NORFOLK (Dover, Needham, Wellesley)	11.75	.65	1.40		.12
NORFOLK (Braintree, Cohasset, N. Weymouth, Quincy, S. Weymouth, Weymouth); PLYMOUTH (Hingham, Hull, Scituate, and the Islands of Quincy)	11.70	1.10	1.00		.09
Residential	9.36	1.10	1.00		.09
Veneer Plastering	9.36	1.10	1.00		.09

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
CARPENTERS: Soft Floor Layers					
MIDDLESEX (Ashby, Ayer, Lunenburg, Shirley, Lancaster, Harvard, Groton, Pepperell, Townsend, W. Groton, and W. Townsend)	12.20	.75	1.00		.07
ESSEX (Methuen, Lawrence, Andover, N. Andover)	11.95	1.00	1.00		.05
ESSEX (Ipswich, Essex, Gloucester, Rockport, Topsfield, Hamilton, Wenham, Middleton, Danvers, Beverly, Manchester, Peabody, Salem, Marblehead)	11.15	1.00	1.00		.03
SUFFOLK, MIDDLESEX (Remainder of County); Norfolk (all except Avon, Holbrook, Randolph and Stoughton); ESSEX (Remainder of County); PLYMOUTH (Duxbury, Hanover, Hingham, Hull, Marshfield, Norwell, Pembroke, Rockland and Scituate); Bristol (Attleboro, N. Attleboro, & Seekonk)	11.95	1.00	1.00		.07
BARNSTABLE; NORFOLK (Avon, Holbrook, Randolph and Stoughton); PLYMOUTH (Remainder of Co.); BRISTOL (Remainder of County); DUKES; NANTUCKET	12.05	.70	1.00		.04
CEMENT MASONS:					
SUFFOLK: MIDDLESEX (Arlington, Cambridge, Everett, Malden, Medford, Melrose, Somerville, Stoneham, Wakefield, Winchester and Woburn); NORFOLK (Brookline and Milton)	12.15	1.15	.60		.20

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CEMENT MASONS (CONT'D)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
MIDDLESEX (Bedford, Burlington, Lowell, Billerica, Tyngsboro, Westford, Tewksbury, Acton, Littleton, Dracut, Wilmington, Dunstable, Chelmsford, Carlisle)	10.40	.90	.70		.02
MIDDLESEX (Ashby, Ayer, Boxboro, Groton, N. Acton, Pepperell, Shirley, S. Acton, Townsend)	12.20	.90	.70		.10
MIDDLESEX (Ashland, Framingham, Holliston, Hopkinton, Hudson, Marlboro, Maynard, Natick, Sherborne, and Stow	11.60	1.20	1.00		.09
MIDDLESEX (Newton only)	11.75	.65	1.40		.12
MIDDLESEX (Belmont, Concord, Lexington, Sudbury, Waltham, Watertown, Wayland, Weston)	11.65	.75	1.40		.09
MIDDLESEX (Reading, N. Reading); ESSEX (Andover, Amesbury, Boxford, Georgetown, Groveland, Haverhill, Lawrence, Merrimac, Methuen, N. Andover, Salisbury)	11.69	.70	.75		
ESSEX (Remainder of County)	11.85	.70	1.25		.09
ELECTRICIANS:					
MIDDLESEX (Bedford, Billerica, Boxboro, Burlington, Carlisle, Chelmsford, Dracut, Dunstable, Littleton, Lowell, Tewksbury, Tyngsboro, Westford, Wilmington)	12.10	1.15	1.10+3%		.02
MIDDLESEX (Ashby, Ayer, Ft. Devens, Groton, Pepperell, Shirley, Townsend)	12.90	.75	.70+3%		.02
MIDDLESEX (Ashland, Hopkinton, Hudson, Marlboro and Stow)	12.78	1.02	.94+3%		.01

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
SUFFOLK CO.; MIDDLESEX (Remainder of County): NORFOLK (all except Avon, Holbrook, Randolph, Stoughton and Plainville); ESSEX (Lynn, Lynnfield, Nahant, Saugus, Swampscott)					
PLYMOUTH (Hingham, Hull)	14.18	1.05	1.80+3%		.10
BARNSTABLE CO.; PLYMOUTH (Mattapoisett, Rochester, Wareham); BRISTOL COUNTY (Acusnet, Dartmouth, Fairhaven, New Bedford, N. & S. Dartmouth); DUKES; NANTUCKET	11.25	1.30	1.20+3%		f
BRISTOL (Fall River, Freetown, Seekonk, Somerset, Swansea, Westport	11.30	7%	1.00+3%	6%	½%
BRISTOL (Attleboro, N. Attleboro); NORFOLK (Plainville)	12.35	.73	2.05+3%		.02
BRISTOL (Mansfield, Norton, Taunton, Raynham, Rehoboth, Dighton, Berkley) PLYMOUTH (Lakeville, Middleboro)	12.50	.75	1.00+3%		1/10of1%
Residential	9.25	.75	1.00+3%		1/10of1%
NORFOLK (Avon, Holbrook, Randolph, Stoughton); PLYMOUTH (Remainder of County); BRISTOL (Easton) Electricial Contracts over $50,000	12.78	.77	.51+3%	1.00	1%
Electrical Contracts under $50,000	9.51	.57	.38+3%	1.00	1%
ESSEX (Andover, Lawrence, Methuen, N. Andover, Salisbury, W. Newbury, Amesbury, Boxford, Georgetown, Groveland, Haverhill, Merrimac, Newbury, Newburyport, Rowley	12.37	1.00	.75+3%		.02
ESSEX (Remainder of County) Contracts over $30,000	12.25	.92	.31+3%		.02
Contracts $30,000 or less	11.40	.92	.31+3%		.02

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
ELEVATOR CONSTRUCTORS	13.88	1.195	.95	a+b	.035
ELEVATOR CONSTRUCTORS' HELPERS	9.72	1.195	.95	a+b	.035
GLAZIERS:					
SUFFOLK; MIDDLESEX; NORFOLK; ESSEX; PLYMOUTH (all except Carver, Lakeville, Middleboro, Marion, Mattapoisett, Rochester, Wareham); DUKES; NANTUCKET	11.85	.77	1.19		.03
BARNSTABLE; PLYMOUTH (Carver, Lakeville, Middleboro, Marion, Mattapoisett, Rochester, Wareham): BRISTOL CO.	10.25	.62	1.38		.01
IRONWORKERS:					
BRISTOL (except Easton); BARSTABLE: PLYMOUTH (Lakeville, Middleboro, Rochester, Wareham, Marion, Mattapoisett); NORFOLK (Plainville); DUKES NANTUCKET	12.33	1.15	2.35		.05
SUFFOLK; NORFOLK (Remainder of Co.); ESSEX (Manchester Beverly, Peabody, Salem, Lynn, Lynnfield, Saugus, Swampscott, Marblehead, Nahant); PLYMOUTH (Remainder of County); BRISTOL (Easton, N. Easton); MIDDLESEX (Sherborn, Natick, Framingham, Weston, Newton, Arlington, Belmont, Cambridge, Somerville, Waltham, Medford, Malden, Stoneham, Woburn, Winchester, Burlington, Bedford, Lincoln, Lexington, Sudbury, Maynard, Concord, Everett	12.85	1.15	2.05		.10

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
IRONWORKERS (CONT'D)					
MIDDLESEX (Ashby, Shirley, Ayer, Boxboro, Stow, Hudson, Marlboro, Ashland, Hopkinton, Holliston)	12.85	1.15	2.05		.10
ESSEX (Remainder of County); MIDDLESEX (Remainder of County)	12.39	1.15	2.55		.06
LATHERS	11.90	1.00	.55		.03
LINE CONSTRUCTION:					
Lineman	13.50	.70	.50+3%	d	3/8of1%
Driver Groundman	9.64	.70	.50+3%	d	3/8of1%
Groundman	8.82	.70	.50+3%	d	3/8of1%
Equipment Operators	12.06	.70	.50+3%	d	3/8of1%
MARBLE, TILE & TERRAZZO WORKERS	10.90	.85	1.50		
MILLWRIGHTS	12.90	1.00	1.00		.10
PAINTERS:					
BARNSTABLE, PLYMOUTH (Marion, Mattapoisett, Rochester, Wareham); BRISTOL (Acushnet, Dartmouth, Fairhaven, New Bedford, N. &. S. Dartmouth); DUKES; NANTUCKET					
Brush/Roller	10.96	.90	.85		
Raping	11.06	.90	.85		
Spray	12.31	.90	.85		
Sandblast, Chipping Hammer, Power Brush	12.46	.90	.85		
Paperhangers, Vinyl Installer	11.46	.90	.85		
Steel	14.21	.90	.85		
Steel Spray	15.56	.90	.85		
Sandblast, Chipping Hammers, Power Tools (Steel)	15.71	.90	.85		

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PAINTERS (CONT'D)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MIDDLESEX (Bedford, Billerica, Burlington, Carlisle, Chelmsford, Dracut, Dunstable, Littleton, Lowell, Tewksbury, Tyngsboro, Westford and Wilmington)					
Brush/Taper/Paper-Hanging	11.81	1.18	1.00		.04
Spray/Steel/Sandblast	13.31	1.18	1.00		.04
Repaint	10.04	1.18	1.00		.04
Residential	10.04	1.18	1.00		.04
MIDDLESEX (Ashby, Townsend, Pepperell, Groton, Shirley, and Ayer)					
Brush	12.38	.90	1.65		.04
Spray/Sandblast	13.38	.90	1.65		.04
Steel	14.50	.90	1.65		.04
Repaint	10.52	.90	1.65		.04
Residential	9.29	.90	1.65		.04
MIDDLESEX (Boxboro, Action, Concord, Stow, Maynard, Lincoln, Lexington, Hudson, Sudbury, Wayland, Weston, Waltham, Watertown, Newton, Marlboro, Framingham, Natick, Ashland; Sherborn, Hopkinton, Holliston); NORFOLK (Dover, Medfield, Medway, Millis, Needham, Wellesley)					
New Construction:					
Brush	9.00	.85	.70		.06
Steel	9.25	.85	.70		.06
Spray	9.95	.85	.70		.06
Repaint:					
Brush	8.45	.85	.70		.06
Steel	8.70	.85	.70		.06
Spray	9.40	.85	.70		.06
SUFFOLK, ESSEX, PLYMOUTH (Remainder of County); BRISTOL (Remainder of Co.); MIDDLESEX (Remainder of County); NORFOLK (Remainder of County)					
New Construction:					
Brush/Taper	12.61	.82	1.40		.04
Spray/Sandblast	13.61	.82	1.40		.04
Steel	14.88	.82	1.40		.04

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS (CONT'D)					
Repaint:					
Brush/Taper	10.96	.82	1.40		.04
Spray/Sandblast	11.96	.82	1.40		.04
Steel	14.88	.82	1.40		.04
SIGN PAINTERS	10.25	.84	.50	.82	.04
PILEDRIVERMEN	12.80	1.00	1.00		
PLASTERERS:					
SUFFOLK, MIDDLESEX (Arlington, Cambridge, Everett, Malden, Melford, Melrose, Somerville); NORFOLK (Brookline, Milton); PLYMOUTH (Norwell only)	11.53	.85	1.68		.02
PLASTERERS TENDERS	9.80	.75	1.10		.10
PLUMBERS AND STEAMFITTERS:					
BARNSTABLE; BRISTOL (Acushnet, Dartmouth, Fairhaven, Fall River, Freetown, New Bedford, N. & S. Dartmouth, Somerset, Swandea, Westport, and Seekonk) PLYMOUTH (Marion, Mattapoisett Rochester, and Wareham); DUKES, NANTUCKET	12.14	1.05	1.63		.20
Residnetial	10.93	1.05	1.63		.20
MIDDLESEX (Ashby, Townsend, Groton, Shirley, Ft. Devens, Ayer-West of Greenville Branch of The Boston and Maine RR)	11.71	.80	.65	.47	.05
PLUMBERS AND PIPEFITTERS: MIDDLESEX (Acton, Ayer - except West of Greenville Branch of the Boston and Maine RR, Bedford, Billerica, Boxboro, Burlington, Carlisle, Chelmsford, Dracut, Dunstable, Littleton, Lowell, Pepperell, Tewksbury, Tyngsboro, Westford and Wilmington)	13.22	1.10	1.10		.02

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PLUMBERS AND PIPEFITTERS (CONT'D)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MIDDLESEX (Ashland, Belmont, Concord, Framington, Holliston, Hopkington, Lexington, Lincoln, Marlboro, Maynard, Natick, Sherborn, Sudbury, Stow, Waltham, Wayland, Weston, Hudson); NORFOLK (Medway, Medfield, Dover, Wellsley)	14.32	1.30	1.08		.05
SUFFOLK, MIDDLESEX (Remainder of Co.); NORFOLK (except Avon, Holbrook, Randolph, Stoughton, Dover, Medfield, Medway, Wellesley); ESSEX (Lynn, Lynnfield, Nahant, Saugus, Swampscott); PLYMOUTH (Hingham, Hull, Scituate,					
PLUMBERS	14.50	1.02	1.48		.08
PIPEFITTERS	13.36	.94	1.45		.07
PLYMOUTH (Remainder of Co.); BRISTOL (Remainder of County); NORFOLK (Avon, Holbrook, Randolph, Stoughton)	12.85	.95	.80		.05
PLUMBERS, PIPEFITTERS AND STEAMFITTERS:					
ESSEX (Methuen, Lawrence, Groveland, Georgetown, Andover, North Andover)	11.15	.87	1.00		.05
Residential	8.92	.87	1.00		.05
ESSEX (Remainder of Co.)	11.80	1.65	.87		.05
ROOFERS:					
BARNSTABLE CO., PLYMOUTH (Carver, Lakeville, Marion, Mattapoisett, Middleboro, Rochester, Wareham and Hingham); BRISTOL (Seekonk, Rehoboth, Dighton, Berkley, Swansea, Somerset, Fall River, Freetown, Westport, Dartmouth, New Bedford, Achushnet, Fairham); DUKES; NANTUCKET	9.95	.75	.30		

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS (CONT'D)					
PLYMOUTH (Brockton)	8.50				
ESSEX (Haver Hill)	7.65			e,	
SUFFOLK, MIDDLESEX, NORFOLK, ESSEX (Remainder of Co.); BRISTOL (Remainder of co.)					
Journeyman	12.05	.70	1.85		.17
Pitch Work	13.05	.70	1.85		.17
SHEET METAL WORKERS:					
BARNSTABLE, PLYMOUTH (Marion, Mattapoisett, Rochester, Wareham); BRISTOL (Acushnet, Dartmouth, Dighton, Fairhaven, Fall River, Freetown, Rehoboth, Seekonk, Somerset, Swansea, Westport, & New Bedford); DUKES; NANTUCKET	11.24	1.05	1.34		.04
SUFFOLK, MIDDLESEX, NORFOLK, ESSEX, PLYMOUTH (Remainder of County); BRISTOL (Remainder of County)	12.58	1.16	1.55		.10
SPRINKLER FITTERS	14.28	.85	1.20		.08
TILE AND MARBLE FINISHERS	9.90	.90	.75		
TERRAZZO FINISHERS	10.60		1.10		

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PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:

a. Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% of basic hourly rate for 6 months to 5 years of service as vacation pay credit

b. Holidays: A through F and the day after Thanksgiving Day

c. Holidays: A through F, Washington's Birthday, Good Friday & Christmas Eve provided employee has worked at least 45 full days during the 120 calendar days immediately prior to the holiday and the regular scheduled work days immediately preceding and following the holiday

d. Holidays: A through F, Bunker Hill Day, provided the employee has been employed 5 working days prior to any one of the listed holidays

e. Holidays: A through F, Patriots' Day, Washington's Birthday, Columbus Day, Veteran's Day, 1 week of vacation after 1 year's employment

f. Apprentice Training: $1.00 per week per journeyman

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LABORERS (BUILDING):	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I:					
Laborers, Carpenter Tenders, Wrecking Laborers	9.55	.75	1.10		.10
CLASS II:					
Jackhammer Op., Pavement Breakers, Asphalt Rakers, Carbide Core Drilling Machine, Chain Saw Op., Pipelayer, Barco Type Jumping Tampers; Laser Beam, Concrete Pump, Mason Tenders, Motorized Mixers, Ride-on Motorized Buggy, Fence and Beam Rail Erectors	9.80	.75	1.10		.10
CLASS III:					
Air Track, Block Pavers, Rammers Curb Setter	10.30	.75	1.10		.10
CLASS IV:					
Blasterers, Powdermen	10.55	.75	1.10		.10
CLASS V:					
Pre Cast Floor and Roof Plank Erectors	10.05	.75	1.10		.10

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HEAVY AND HIGHWAY LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	9.55	.75	1.10		.10
CLASS II	9.80	.75	1.10		.10
CLASS III	10.30	.75	1.10		.10
CLASS IV	10.55	.75	1.10		.10

CLASS I - Carpenter Tenders, Cement Finisher Tenders, Laborers, Wrecking Laborers

CLASS II - Asphalt Rakers, Fence and Guard Rail Erector, Laser Beam Op., Mason Tender, Pipelayer, Pneumatic Drill Op., Pneumatic Tool Op., Wagon Drill Op.

CLASS III - Air Track Op., Block Pavers, Rammer, Curb Setters

CLASS IV - Blasters, Powdermen

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BUILDING CONSRUCTION: POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	13.76	1.18	1.15	a	.03
CLASS II	13.64	1.18	1.15	a	.03
CLASS III	11.52	1.18	1.15	a	.03
CLASS IV	12.55	1.18	1.15	a	.03
CLASS V	10.21	1.18	1.15	a	.03
CLASS VI	10.83	1.18	1.15	a	.03

CLASS I - Cranes, Shovels, Truck Cranes, Cherry Pickers, Draglines, Trench Hoes, Backhoes, Three Drum Machines, Derricks, Pile Drivers, Elevator Towers, Hoists, Gradalls, Shovel Dozers, Front end Loaders, Fork Lifts, Augers, Boring Machines, Rotary Drills, Post Hole Hammers, Post Hole Diggers, Pumpcrete Machines, Asphalt Plant (on Site), Concrete Batching and/or Mixing Plant (on Site), Crusher Plant (on Site), Paving Concrete Mixers, Timber Jacks, Boom over 150' Including Jib additional $.50 per hour; Boom over 185' including Jib - additional $.90 per hour; Boom over 210' Including Jib - additional $1.25 per hour Boom over 250' including Jib - additional $1.90 per hour; Boom over 295' including Jib- additional $2.65 per hour
CLASS II - Sonic or Vibratory Hammer, Graders, Tandem Scrapers, Concrete Pumps, Bulldozers, Tractors, York Rakers, Mulching Machines, Portable Steam Boiler, Portable Steam Generators, Rollers, Spreaders, Tampers (Self Propelled or Tractor Drawn), Asphalt Pavers, Mechanic Maintenance, Paving Screed Machines, Stationary Steam Boilers, Paving Concrete Finishing Machines, Cal Trucks, Ballast Regulators, Switch Tampers, Rail Anchor Machinery, Tire Trucks (when operated by the Employer on the job site)
CLASS III - Pumps (1-3 Grouped), Compressors, Welding Machines (1-3 Grouped), Generators, Concrete Vibrator, Lighting Plants, Heaters (Power Driven 1-5), Well-Point System (Operating and Installing), Syphones-Pulsometers, Concrete Mixers, Values Controlling Permanent Plant Air to Steam, Conveyors, Jackson Type Tampers, Single Diapragn Pump, Lighting Plants
CLASS IV - Assistant Engineers (Firemen)
CLASS V - Oilers (other than truck cranes and gradalls)
CLASS VI - Oilers on Truck cranes and Gradalls

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day
E-Thanksgiving Day; F-Christmas Day

FOOTNOTE: a. HOLIDAY: A through F, Washington's Birthday, Columbus Day, Veterans Day and Patriots Day.

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DECISION NO. MA80-3064

HEAVY & HIGHWAY CONSTRUCTION

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	13.76	1.18	1.15	a	.03
Hourly premium for boom lenghts including jib					
over 150 feet + $.50					
Over 185 feet + $.90					
Over 210 feet + 1.25					
Over 250 feet + 1.90					
Over 295 feet + 2.65					
GROUP 2	13.64	1.18	1.15	a	.03
GROUP 3	11.52	1.18	1.15	a	.03
GROUP 4	12.55	1.18	1.15	a	.03
GROUP 5	10.21	1.18	1.15	a	.03
GROUP 6	10.83	1.18	1.15	a	.03

GROUP 1 - Power Shovels, Cranes, Truck Cranes, Derricks, Pile Driver, Trenching Machines, Mechanical Hoists Pavement Breakers, Cement Concrete Pavers, Draglines, Hoisting Engines, Three Drum Machines, Pumpcrete Machines, Uke Loaders, Shovel Dozer, Front End Loaders, Mucking Machines, Shaft Hoists, Steam Engines, Backhoe, Gradalls, Cable ways, Fork Lifts, Cherry Pickers, Boring Machines, Rotary Drills, Post Hole Hammers, Port Holes Diggers, Asphalt Plant on Job Site, Concrete Batching and/or Mixing Plant on Job Site, Crusher Plant on Job Site, Paving Concrete Mixers, Timber Jacks

GROUP 2 - Sonic or Vibratory Hammers, Graders, Scrapers, Tandem Scrapers, Bulldozer, Tractors, Mechanic Maintenance, York Rakes, Mulching Machines Paving Screed Machines, Stationary Steam Boilers, Paving Concrete Finishing Machines, Grout Pumps, Portable Steam Boilers, Portable Steam Generators, Rollers, Spreaders, Asphalt Pavers, Locomotives or Machines used in Place thereof, Tampers, Self Propelled or Tractor Drawn, Cal Track, Ballast Regulators, Rail Anchor Machines, Switch Tampers

GROUP 3 - Pump (1-3 Grouped), Compressors, Welding Machine (1-3 Grouped), Generators, Lighting Plants, Heaters (Power Driven) (-5), Syphons-Pulsometers, Concrete Mixers, Valves Controlling Permanent Plant Air Steam, Conveyors, Wellpoint System (Operating and Installing)

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POWER EQUIPMENT OPERATORS (CONT'D)

GROUP 4 - Assistant Engineers (Fireman)

GROUP 5 - Oilers (Other than Truck Cranes & Gradalls)

GROUP 6 - Oilers (on Truck Cranes & Gradalls)

FOOTNOTES:

a. Holidays - New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, Washington's Birthday, Columbus Day, Veterans Day and Patriots Day

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MARINE CONSTRUCTION

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	13.76	1.18	1.15	a	.03
GROUP II	15.02	1.18	1.15	a	.03
GROUP III	13.71	1.18	1.15	a	.03
GROUP IV	13.64	1.18	1.15	a	.03
GROUP V	11.52	1.18	1.15	a	.03
GROUP VI	12.55	1.18	1.15	a	.03
GROUP VII	10.21	1.18	1.15	a	.03
GROUP VIII	10.83	1.18	1.15	a	.03

GROUP I - Shovels, Cranes, Truck Cranes, Cherry Pickers, Derricks, Pile Drivers two or more Drum Machines, Ligjterns, Derrick Boats, Trenching, Mechanic Hoists Pavement Breakers, Cement Concrete Pavers, Draglines, Hoisting Engines, Pumpcrete Machines, Elevating Graders, Shovels Dozers, Front End Loaders, Backhoe, Gradalls, Cable Way, Boring Machines, Rotary Drills, Post Hole Hammer, Post Hole Diggers, Fork Lifts, Timber Jacks, Asphalt Plant (on site), Concrete Batching &/or Mixing Plant (on site), Crusher Plant, (on site), Paving Concrete Mixers; Boom over 150' including Jib-additional $.5) per hour, Booms over 185' including Jib - additional $.90 per hour; Booms over 210' including Jib - additional $1.25 per hour; Booms over 250' including Jib - additional $1.90 per hour; Booms over 295' Including Jib - Additional $2.65 per hour

GROUP II - Master Mechanic

GROUP III - Swinger Engines

GROUP IV - Portable Steam Boilers, Portable Steam Generators, Sonic or Vibratory Hammer, Graders, Scrapers, Tandem Scrapers, Concrete Pumps, Bulldozers, Tractors, York Rakes, Mulching Machines, Rollers, Spreader, Tamper self-propelled or Tractor Drawn, Asphalt Pavers, Concrete Mixers with side Loaders, Mechanics - Maintenance, Cal Trucks, Ballast, Regulator, Switch Tampers, Rail Anchor Machines, Tire Trucks

GROUP V - Pumps, Compressors, Welding Machines, Heaters (Power Driven), Valves controlling Permanent Plan Air or Steam, Well Point Systems, Augers - Powered by Independence Engines & Attached to Pile Drivers, Hydraulic Saws, Generators, Lighting Plants, Syphons-Pulsometers, Concrete Mixers, Conveyors

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POWER EQUIPMENT OPERATORS (CONT'D)

GROUP VI - Assistant Engineers (Fireman)

GROUP VII - Oiler (other than Truck Cranes and Gradalls)

GROUP VIII - Oilers on Truck Cranes and Gradalls

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; E-Thanksgiging Day; F-Christmas Day

FOOTNOTE:

A. Holidays: A through F; Washington's Birthday; Patriots' Day; Columbus & Veterans' Day

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DECISION NO. MA80-3064

BUILDING, HEAVY & HIGHWAY CONSTRUCTION TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	9.565	1.00	1.10	a+b	
CLASS II	9.735	1.00	1.10	a+b	
CLASS III	9.805	1.00	1.10	a+b	
CLASS IV	9.925	1.00	1.10	a+b	
CLASS V	10.025	1.00	1.10	a+b	
CLASS VI	10.315	1.00	1.10	a+b	
CLASS VII	10.605	1.00	1.10	a+b	

CLASS I - Station Wagons, Panel Trucks and Pickup Trucks

CLASS II - Two axle Equipment; Helpers on Low Bed When Assigned at the Discretion of the Employer, Warehousemen, Forklift Operators.

CLASS III - Three Axle Equipment and Tiremen

CLASS IV - Four and Five Axle Equipment

CLASS V - Specialized Earth Moving Equipment under 35 tons other than Convential type trucks, Low Bed, Vachual, Mechanics, Paving Restoration Equipment, Mechanics

CLASS VI - Specialized Earth Moving Equipment over 35 Tons

CLASS VII - Trailers for Earth Moving Equipment (Double Hookup)

PAID HOLIDAYS:

A. New Year's Day; B-Memorial Day; C-Independence Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:

a. One half day's pay each month in which an employee has worked 15 days provided he has been employed for 4 months.

b. Holidays: A through F, Washington's Birthday, Columbus Day, Veteran's Day and Patriots' Day provided an employee works two days of the calendar week in which the holiday falls

SUPERSEDEAS DECISION

STATE: Pennsylvania

COUNTIES: Bucks, Chester, Delaware, Montgomery and Philadelphia

DECISION NO.: PA80-3062

DATE: Date of Publication

Supersedes Decision No. PA78-3054 dated August 11, 1978, in 43 FR 35868.

DESCRIPTION OF WORK: Heavy and Highway Construction

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS	11.72	2.63	1.40	a	.13
CEMENT MASONS	10.59	2.09	2.36		
ELECTRICIANS:					
Philadelphia (only)	13.88	.83	3%+.83		1 3/4%
IRONWORKERS:					
Structural & ornamental Philadelphia (only)	13.77	1.34	1.36		.04
IRONWORKERS:					
Rigger, machinery mover Philadelphia (only)	13.20	1.34	1.36		
LABORERS:					
Group 1	10.05	.95	.85		
Group 2	9.85	.95	.85		
Group 3	9.75	.95	.85		
Group 4	9.90	.95	.85		
Group 5	9.65	.95	.85		
Group 6	10.30	.95	.85		
Group 7	10.15	.95	.85		
Group 8	10.00	.95	.85		

LABORERS CLASSIFICATIONS

Group 1 - Powderman, multiple wagon drill op. under pinning excavation, bottom men

Group 2 - Finished surface asphalt rakers ops., pipelayers, caulkers conduit and duct layers

Group 3 - Other pneumatic tools ops., Laborers stripping concrete forms, carrying or handling lumber, steel & steel mesh and other concrete materials, form pinners, tool room men, Mortar mixers, concrete pitman & spaders, grademen, asphalt shovelers, men working in shoring, men working in lagging, Laborers assistaing in the setting of cut stone, granite or artifical stone, hod carriers, Scaffold builders, all other laborers on construction work, with the exception of workers in compressed air

Group 4 - Wagon drill operators

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LABORERS CLASSIFICATIONS CONT'D

Group 5 - Yard workers: Laborers, scale mixermen, burnermen dustmen, Feeder

Group 6 - Free Air Tunnel: Miner miners bore driver, blasters, drillers, pneumatic shield ops., welders & burners

Group 7 - Miners' helpers, form setters, circular caisson excavation bottom men underpinning excavation bottom men

Group 8 - Trackmen, brakemen, groutmen, bottom shaft men, all others in free air tunnels

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LANDSCAPING:					
Landscape Laborers	8.30	.95	.85	b	
Farm Tractor Driver	8.80	.95	.85	b	
Hydroseeder Nozzlemen	8.80	.95	.85	b	
Mulcher Nozzlemen	8.80	.95	.85	b	
LINE CONSTRUCTION					
Journeyman Lineman	14.38	.60	3%		1%
Winch truck operator	10.03	.60	3%		1%
Groundman	8.57	.60	3%		1%
LINE CONSTRUCTION (RAILROAD ONLY)					
Linemen	10.94	.45	3%	c	.75%
"A" equipment operator	10.94	.45	3%	c	.75%
"B" equipment operator	9.57	.45	3%	c	.75%
MILLWRIGHTS:					
Philadelphia (only)	11.77	2.63	1.40		.13
POWER EQUIPMENT:					
HEAVY CONSTRUCTION					
Wage Group 1	13.71	7.9%	10.3%	d	1.8%
Wage Group 2	13.45	7.9%	10.3%	d	1.8%
Wage Group 3	12.58	7.9%	10.3%	d	1.8%
Wage Group 4	12.37	7.9%	10.3%	d	1.8%
Wage Group 5	12.06	7.9%	10.3%	d	1.8%
Wage Group 6	11.89	7.9%	10.3%	d	1.8%
Wage Group 7	11.38	7.9%	10.3%	d	1.8%
Wage Group 8	10.64	7.9%	10.3%	d	1.8%

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HEAVY CONSTRUCTION CLASSIFICATION DEFINITIONS CONT'D

Group 1 - Handling steel and stone in connection with erection, crane, doing hook work, any machines handling machinery, cable spinning machine, helicopters, machines similar to above

Group 2 - All types of cranes, all types of backhoes, cableways, draglines, keystones all types of shovels derricks, trench shovels, trenching machines, pippin type backhoes, hoist with two towers, pavers 21E and over, all types overhead cranes, building hoists - double drum (unless used as single drum), mucking machines in tunnel, gradalls, front-end loaders 3½ cu. yds. & over, Boat Captain, tandem scrapers, tower type crane operation, erecting, dismantling, jumping or jacking, drills self-contained (drill-master type), fork lift (20 ft. and over), motor patrols (fine grade) batch plant with mixer, machines similar to the above

Group 3 - Conveys (except building conveyors), building hoist (single drum), scrapers and tournapulls, asphalt engineer, roller (high grade finishing) front end loaders under 3½ cu. yds., mechanic-welder, spreaders high or low pressure boilers, concrete pumps, well drillers, fork lift trucks of all types, bulldozers and tractors, ditch winch type trencher, motor patrol, machines similar to the above

Group 4 - Concrete breaking machines rollers machines similar to the above

Group 5 - Seaman pulverizing mixer tireman on power equipment maintenance engineer (power boat) machines similar to the above

Group 6 - Conveyors (building) welding machines, heaters, wellpoints, compressors, farm tractors, fine grade machines, form line graders, road finishing machines, form line graders, road finishing machines, pumps, power broom (self-contained), seed spreader, machines similar to the above

Group 7 - Fireman, grease truck

Group 8 - Oilers and deck hands (personnel boats), grease truck helper

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	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS HIGHWAY CONSTRUCTION:					
Wage Group 1	13.46	7.9%	10.3%	d	1.8%
Wage Group 2	13.23	7.9%	10.3%	d	1.8%
Wage Group 3	12.63	7.9%	10.3%	d	1.8%
Wage Group 4	12.10	7.9%	10.3%	d	1.8%
Wage Group 5	11.73	7.9%	10.3%	d	1.8%
Wage Group 6	11.38	7.9%	10.3%	d	1.8%
Wage Group 7	10.64	7.9%	10.3%	d	1.8%

HIGHWAY CONSTRUCTION CLASSIFICATIONS

Wage Group 1 - Handling steel and stone in connection with erection, cranes doing hook work, and machine handing machinery, helicopters, machines similar to the above

Wage Group 2 - All types of cranes, all types of backhoes, cableways, draglines, keystones, all types of shovels, pavers 21E and over, trenching machines, gradalls, front-end loaders 3½ c.y. and over, boat captain, pippin type backhoes, tandem scrapers, tower type crane operation erecting, dismantling, jumping or jacking, drills self-contained, (drillmaster type), forklift (20 ft. and over), motor patrols (fine grade), batch plant with mixer, machines similar to the above

Wage Group 3 - Carryalls, scrapers, tournapulls, asphalt plant engineers, roller (high grade finishing) front-end loaders under 3½ c.y., spreaders (asphalt), concrete pumps, well drillers, bulldozers and tractors, ditch witch (small trencher), motor patrols, mechanic welder, machines similar to the above

Wage Group 4 - Conveyor loader, seaman pulverizer, ten-ton roller (grader fill stone base) concrete breaking machines, machines similar to the above

Wage Group 5 - Form line grader, fine grade machines, farm tractors, road finishing, concrete spreaders, compressors, power broom self contained, seed spreader, pumps, welding machines, tireman, power equipment, maintenance engineers (power boats), machines similar to the above

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HIGHWAY CONSTRUCTION CLASSIFICATIONS CONT'D

Wage Group 6 - Fireman, grease truck

Wage Group 7 - Oilers and deckhands (Personnel Boats), grease truck helper

FOOTNOTES:

a. Paid Holiday: Labor Day
b. Paid Holidays: July 4th, Labor Day, and Thanksgiving Day
c. Paid Holidays: New Year's Day; Decoration Day; Independence Day; Labor Day; Thanksgiving Day; Christmas Day and Good Friday.
d. Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day and Christmas Day, providing the employee works the day before and after the holiday.

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)."

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
HEAVY & HIGHWAY TRUCK DRIVERS:					
Including Building Site Preparation					
Class 1	9.35	.9175	.975	a+b	
Class 2	9.45	.9175	.975	a+b	
Class 3	9.65	.9175	.975	a+b	

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HEAVY & HIGHWAY TRUCK DRIVERS CLASSIFICATIONS

Class 1 - Helpers, stake body truck (single axle, dumpster)

Class 2 - Dump trucks, tandem & batch trucks, semi-trailers, agitator mixer trucks, and dumpcrete type vehicles, asphalt distributors, farm tractor when used for transportation, stake body truck (tandem)

Class 3 - Euclid type, off-highway equipment or belly dump trucks and double hitched equipment, staddle (ross) carrier, low-bed trailers

FOOTNOTES:

a. Employee will earn one (1) vacation day every two (2) months up to a maximum of five (5) vacation days per calendar year. During each two (2) consecutive months period, employee must have worked twenty-six (26) days in that two month period. After 130 workdays the employee will be entitle to all days of vacation.

b. Paid Holidays: Memorial Day; Independence Day; Labor Day and Veterans Day and five (5) personal holidays provided such employee work the schedule work days before and after said holiday; and employee gives employer one (1) week's notice requesting a personal holiday. The eligibility for personal holidays will be as follows: Employee will earn one (1) personal holiday every two (2) months up to a maximum of five (5) personal holidays per calendar year. During each two (2) consecutive month period, employee must have worked twnety-six (26) days in that two month period. After 130 workdays the employee will be entitled to all person holidays.

SUPERSEDEAS DECISION

STATE: Virginia COUNTIES: Henrico and the Independent City of Richmond

DECISION NO.: VA80-3065 DATE: Date of Publication

Supersedes Decision No. VA78-3074 dated November 3, 1978 in 43 FR 51588

DESCRIPTION OF WORK: Building Construction (does not include single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	10.88	.80	.95		.01
BOILERMAKERS	12.70	1.175	1.30		.04
BRICKLAYERS AND STONEMASONS	12.00	.80	.35		.02
CARPENTERS AND SOFT FLOOR LAYERS	10.55	.55	.55		.06
CEMENT MASONS	9.00				
CEMENT MASONS MACHINE MAN	9.10				
ELECTRICIANS:					
ZONE I-within a 12 air mile radius of Staples Mills Road and Broad Street in the City of Richmond	12.35	6½%	3%		½%
ZONE II-remainder of city of Richmond and Henrico County	13.10	6½%	3%		½%
ELEVATOR CONSTRUCTORS	9.66	.745	.56	a+b	.025
ELEVATOR CONSTRUCTORS HELPERS	6.76	.745	.56	a+b	.025
ELEVATOR CONSTRUCTORS HELPERS PROBATIONARY	4.83				
GLAZIERS	5.95	.30	.10		.01
IRONWORKERS-STRUCTURAL, REINFORCING AND ORNAMENTAL:					
ZONE I-up to 10 miles from Capital Square	10.75	.55	.75		.05
ZONE II-from 10 miles to 30 miles radius	11.125	.55	.75		.05
ZONE III-from 30 miles and beyond	11.375	.55	.75		.05
LABORERS:					
Unskilled	6.70	.25	.35		.06
Tenders, Motorized Georgia Buggy Operators, Nozzlemen (gunite or sandblasting), Concrete Saw,Operators, Air Tool and Vibrator Operators Mortar Mixers, Hod Carriers, Pipelayers, Caulkers, Marble and Tile and Terrazzo Workers Helpers	6.80	.25	.35		.06
Burners (wrecking)	6.95	.25	.35		.06
	7.05	.25	.35		.06

DECISION NO. VA80-3065	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS (CONT'D)					
Floor, Base and Terrazzo Grinders	7.10	.25	.35		.06
Wagon Drill, Air Trac and Similar Drills	7.20	.25	.35		.06
Powdermen	7.45	.25	.35		.06
LATHERS:					
Plasterer and Drywall Finish	10.49	.55	.20		.01
Sheet Rock Applicator	8.79	.55	.20		.01
LEADBURNERS	10.75	.40	.25	c	.01
LINEMEN AND CABLE SPLICERS:					
ZONE I-within a 12 mile air radius of Staples Mill Road and Broad Street in the City of Richmond	12.35	6½%	3%		½%
ZONE II-remainder of City of Richmond and Henrico County	13.10	6½%	3%		½%
MARBLE, TILE AND TERRAZZO WORKERS	9.50				
MILLWRIGHTS	11.95	.55	.55		.01
PAINTERS:					
Brush, Paperhangers, Tapers and Finishers	9.60				
Structural Steel, Swing Stage and Bosun Chair	9.85				
Scaffold or Other Hazard Work Over 50 Feet	9.85				
Spray	10.10				
Sandblasting, Elevated Tanks, Smoke Stacks and all Towers	10.25				
PILEDRIVERMEN AND DOCK-BUILDERS	10.05	.55	.55		
PLASTERERS	11.25				
PLUMBERS AND STEAMFITTERS	11.30	.60	.70		.05
ROOFERS COMPOSITION	7.10				
ROOFERS HELPERS (TEARING OFF OLD ROOFING, CARRYING MATERIALS & CLEAN-UP)	5.20				

DECISION NO. VA80-3065	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SHEET METAL WORKERS:					
City of Richmond	11.32	.45	.35		.01
Remainder of County	11.57	.45	.35		.01
SPRINKLER FITTERS	11.79	.85	1.20		.08

WELDERS-receive rate prescribed for craft performing operation to which welding is incidental.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; F-Christmas Day

FOOTNOTES:

a. Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% of basic hourly rate for 6 months to 5 years of service as vacation pay credit.

b. Paid Holidays: A through F, Day after Thanksgiving.

c. Paid Holidays: A through F; Washington's Birthday; Good Friday and Christmas Eve, provided the employee has worked 30 full days during the 90 calendar days prior to the holiday and the regular scheduled work days immediately preceeding and following the holiday.

DECISION NO. VA80-3065	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS - BUILDING CONSTRUCTION:					
GROUP 1	10.20	.575	.50		.08
GROUP 2	8.10	.575	.50		.08
GROUP 3	6.55	.575	.50		.08
GROUP 4	6.35	.575	.50		.08
GROUP 5	6.16	.575	.50		.08

CLASSIFICATIONS

GROUP 1 - Tunnel machine, cranes, derricks, pile drivers, pavers, two or more drum hoist, finish motor grader, mechanic, batch plant, gradall, quad

GROUP 2 - Cableways, tractors with attachments, combination front end loader and backhoe, front end loader, rubber tired scraper and pans, rough motor grader, 20-ton locomotive, bulldozers, pump crete, trenching machine, mixer larger than 16 S, fork lift

GROUP 3 - Compressor over 125 cu. ft., bottom and end dumps, tractor without attachments, 1 drum hoist, rollers, welding machines (gas or diesel), locomotive under 20-tons, power plant, generator (1200 KW or larger), pumps (over 2 inches, including wellpoints), A-frame trucks, mechanic's helper

GROUP 4 - Firemen

GROUP 5 - Oilers

SUPERSEDEAS DECISION

STATE: Virginia

COUNTIES: York County, The Cities of Hampton and Newport News (including Langley AFB, Fort Eustis and Fort Monroe)

DECISION NO.: VA80-3066 DATE: Date Of Publication

Supersedes Decision No. VA78-3075 dated November 3, 1978 in 43 FR 51590

DESCRIPTION OF WORK: Building Construction (does not include single family homes and apartments up and including 4 atories), Sewer and Water Line Construction.

BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	10.75	.70	.70		
BOILERMAKERS	12.70	1.175	1.30		.04
BRICKLAYERS AND STONE MASONS	11.00				
CARPENTERS AND SOFT FLOOR LAYERS	10.55	.55	.55		.06
CEMENT MASONS:					
Cement Masons	9.50	.40			
Machine and Scaffold Men	9.60	.40			
ELECTRICIANS:					
Zone I-within a 16 air mile radius of 7812 Warwick Bldv., Newport News:					
Wiremen	11.05	.60	8%		1%
Cable Splicers	11.30	.60	8%		1%
Zone II-beyond a 16 air mile radius of 7812 Warwick Bldv., Newport News:					
Wiremen	12.05	.60	8%		1%
Cable Splicers	12.30	.60	8%		1%
ELEVATOR CONSTRUCTORS	8.80	.745	.56	a+b	.025
ELEVATOR CONSTRUCTORS HELPERS	6.16	.745	.56	a+b	.025
ELEVATOR CONSTRUCTORS HELPERS PROBATIONARY	4.40				
GLAZIERS	5.95	.30	.10		.01
IRONWORKERS:					
Structural, ornamental, riggers, reinforcing, fence erectors, and machinery movers	11.30	.75	1.25		.08
LABORERS:					
Unskilled	6.70	.25	.35		.06
Tenders, motorized Georgia buggy operators, nozzlemen (gunite or sandblasting), concrete saw operators, air tool and vibrator operators	6.80	.25	.35		.06

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DECISION NO. VA80-3066

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS CONT'D:					
Mortar mixers, hod carriers, pipelayers, caulkers, marble, tile and terrazzo worker helpers	6.95	.25	.35		.06
Burners (wrecking)	7.05	.25	.35		.06
Floor, base, and terrazzo grinder	7.10	.25	.35		.06
Wagon drill and air trac	7.20	.25	.35		.06
Powdermen	7.45	.25	.35		.06
LATHERS	10.75		.25		
LINE CONSTRUCTION:					
Zone 1-within a 16 air mile radius of 7812 Warwick Blvd., Newport News:					
Linemen	11.05	.60	8%		1%
Cable Splicer	11.30	.60	8%		1%
Zone II-beyond a 16 air mile radius of 7812 Warwick Bldv., Newport News:					
Linemen	12.05	.60	8%		1%
Cable Splicer	12.30	.60	8%		1%
MARBLE SETTERS	10.05				
MILLWRIGHTS	11.95	.55	.55		.01
PAINTERS:					
(York County from a point on the north shore of Queens Creek at the intersection of York River due west to a point on the eastern shore of James River including all cities therein the cities of Hampton and Newport News:)					
Brush and roller	8.80	.35	.45		
Paperhanger, taper, spray, roller with a 6' handle or over, structural steel to 74' from the ground up, swing stage, under 40', sandblasting	9.15	.35	.45		

DECISION NO. VA80-3066

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS CONT'D:					
Swing stage over 40', spray epoxy	9.40	.35	.45		
Epoxy brushed or rolled	9.05	.35	.45		
All work over 74' from the ground	9.30	.35	.45		
Bituminous coatings, hot creosite	10.20	.35	.45		
PAINTERS: REMAINDER OF COUNTY OF YORK					
Brush and roller	9.40	.35	.45		
Paperhanging, taper, spray, roller with a handle 6' or over, structural steel 74' from the ground up, swing stage under 40', sand-blasting	9.75	.35	.45		
Swing stage over 40', epoxy sprayed	10.00	.35	.45		
Epoxy brushed or rolled	9.65	.35	.45		
All work over 74' from the ground	9.90	.35	.45		
Bituminous coatings, hot creosite	10.80	.35	.45		
Piledrivermen and dock-builders	10.05	.55	.55		
Plasterers	11.66	.40			
Plumbers and Steamfitters	11.85	.75	.55		.02
Roofers composition	7.10				
Roofers helpers (tearing off old roofing, carrying materials & clear-up)	5.20				
Sheet metal workers:					
Newport News and Hampton	10.30	.45	.55		.005
York County	10.55	.45	.55		.005
Sprinkler fitters	11.79	.85	1.20		.08
Terrazzo workers and tile setters	10.05				
WELDERS-receive rate prescribed for craft performing operation to which welding is incidental.					

DECISION NO. VA80-3066

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:
a. Holidays: A through F, Day after Thanksgiving.
b. Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% of basic hourly rate for 6 months to 5 years of service as vacation pay credit.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS - BUILDING CONSTRUCTION:					
Group 1	10.20	.575	.50		.06
Group 2	8.10	.575	.50		.08
Group 3	6.55	.575	.50		.08
Group 4	6.35	.575	.50		.08
Group 5	6.16	.575	.50		.08

CLASSIFICATIONS:

Group 1 - Tunnel machine, cranes, derricks, pile drivers, pavers, two or more drum hoist, finish motor grader, mechanic, batch plant, gradall, quad

Group 2 - Cableways, tractors with attachments, combination front end loader and backhoe, front end loader, rubber tired scraper and pans, rough motor grader, 20-ton locomotive, bulldozers, pump crete, trenching machine, mixer larger than 16S, fork lift

Group 3 - Compressor over 125 cu. ft., bottom and end dumps, tractors without attachments, 1 drum hoist, rollers, welding machines (gas or diesel), locomotive under 20-tons, power plant, generator (1200 KW or larger), pumps (over 2 inches, including wellpoints), A-frame trucks, mechanic's helper

Group 4 - Firemen

Group 5 - Oilers

DECISION NO. VA80-3066

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SEWER AND WATER CONSTRUCTION					
LABORERS	3.38				
PIPELAYERS	4.59				
TRUCK DRIVERS	3.50				
LOADERS	4.69				
BACKHOE	6.50				
CRANES	7.90				

SUPERSEDEAS DECISION

STATE: Virginia

LOCATION: The Cities of Chesapeake, Portsmouth and Virginia Beach

DECISION NO.: VA80-3067

DATE: Date of Publication

Supersedes Decision No. VA78-3076 dated November 3, 1978 in 43 FR 51592

DESCRIPTION OF WORK: Building Construction (does not include single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
ASBESTOS WORKERS	10.75	.70	.70		
BOILERMAKERS	12.70	1.175	1.30		.04
BRICKLAYERS AND STONE MASONS	11.38	.70	.20		.03
CARPENTERS AND SOFT FLOOR LAYERS	10.55	.55	.55		.06
CEMENT MASONS:					
Cement Masons	9.85				
Machine and Scaffold Men	9.95				
ELECTRICIANS AND CABLE SPLICERS	11.05	.60	8%	a	1%
ELEVATOR CONSTRUCTORS	8.80	.745	.56	a+b	.025
ELEVATOR CONSTRUCTORS HELPERS	6.16	.745	.56	a+b	.025
ELEVATOR CONSTRUCTORS HELPERS PROBATIONARY	4.40				
GLAZIERS	5.95	.30	.10		.01
IRONWORKERS:					
Reinforcing, Ornamental, Structural, Riggers, Fence Erectors, Machinery Movers	11.30	.75	1.25		.08
LABORERS:					
Unskilled	6.70	.25	.35		.06
Tenders, Motorized Georgia Buggy Operators, Nozzlemen (gunite or sandblasting), Concrete Saw Operators, Air Tool and Vibrator Operators	6.80	.25	.35		.06
Mortar Mixers, Hod Carriers, Pipelayers, Caulkers, Marble, Tile and Terrazzo Workers Helpers	6.95	.25	.35		.06
Burners (wrecking)	7.05	.25	.35		.06
Floor, Base and Terrazzo Grinders	7.10	.25	.35		.06
Wagon Drill and Air Trac	7.20	.25	.35		.06
Powdermen	7.45	.25	.35		.06
LATHERS	10.75		.25		
LEAD BURNERS	10.75	.40	.25	d	.01
LINE CONSTRUCTION:					
Linemen and Cable Splicers	11.05	.60	8%		1%

DECISION NO. VA80-3067

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
MARBLE SETTERS	9.50	.60	.20		
MILLWRIGHTS	11.95	.55	.55		.01
PAINTERS:					
Brush and Roller	9.65		.50		
Structural Steel from Ground to 74 feet	10.15		.50		
Spray, Paperhangers and Tapers	10.00		.50		
Any Work Over 74 feet from the Ground	10.95		.50		
Bituminous Coating and Hot Creosite	11.30		.50		
Swing Stage Under 40 Feet, Rollers With 6 Feet Handles and Over, Epoxy Brushed or Rolled	9.90		.50		
Swing Stage Over 40 Feet	10.15		.50		
Epoxy, Sprayed	10.25		.50		
Sandblasting	10.40		.50		
PILEDRIVERMEN AND DOCK-BUILDERS	10.05	.55	.55		
PLASTERERS	11.66	.40			
PLUMBERS AND STEAMFITTERS	11.30	.80	.75		.12
ROOFERS COMPOSITION	7.10				
ROOFERS HELPERS (Tearing off old roofing, carrying materials & clean-up)	5.20				
SHEET METAL WORKERS	10.05	.45	.55		.005
SPRINKLER FITTERS	11.79	.85	1.20		.08
TERRAZZO AND TILE WORKERS	8.20	.60	.20		

DECISION NO. VA80-3067

WELDERS-receive rate prescribed for craft performing operation for which welding is incidental.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Workmen shall be allowed 2 hours with pay at the start or at the end of the work day on State and National Election days; Tuesday following the first Monday in November, provided they are qualified to and Vote.

b. Employer contributes 8% basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years service as vacation pay credit.

c. Holidays: A through F, Day after Thanksgiving.

d. Holidays: A through F; Washington's Birthday, Good Friday and Christmas Eve provided the employee has worked 30 full days during the 90 calendar days prior to the holiday and the regular scheduled work days immediately preceeding and following the holiday.

[FR Doc. 80-33700 Filed 10-30-80; 8:45 am]
BILLING CODE 4510-27-C

DECISION NO. VA80-3067

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS - BUILDING CONSTRSUCTION:					
GROUP 1	10.20	.575	.50		.08
GROUP 2	8.10	.575	.50		.08
GROUP 3	6.55	.575	.50		.08
GROUP 4	6.35	.575	.50		.08
GROUP 5	6.16	.575	.50		.08

CLASSIFICATIONS

GROUP 1 - Tunnel machine, cranes, derricks, pile drivers, pavers, two or more drum hoist, finish motor grader, mechanic, batch plant, gradall, quad

GROUP 2 - Cableways, tractors with attachments, combination front end loader and backhoe, front end loader, rubber tired scraper and pans, rough motor grader, 20-ton locomotive, bulldozers, pump crete, trenching machine, mixer larger than 16S, fork lift

GROUP 3 - Compressor over 125 cu. ft., bottom and end dumps, tractors without attachments, 1 drum hoist, rollers, welding machines (gas or diesel), locomotive under 20-tons, power plant, generator (1200 KW or larger), pumps (over 2 inches, including wellpoints), A-frame trucks, mechanic's helper

GROUP 4 - Firemen

GROUP 5 - Oilers

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federal register

Friday
October 31, 1980

Part IV

Office of the Federal Register

Incorporation by Reference: Approvals, Extensions, and Corrections

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OFFICE OF THE FEDERAL REGISTER

1 CFR Part 51

Incorporation by Reference

AGENCY: Office of the Federal Register.

ACTION: Approvals, extensions, and corrections of incorporations by reference.

SUMMARY: This document announces final approvals, further extensions, and corrections to a document published on September 30, 1980 at 45 FR 64816. The September 30, 1980 document listed materials approved by the Director of the Federal Register for incorporation by reference into Titles 42–50 of the *Code of Federal Regulations*. Material that is approved for incorporation by reference has the same legal status as if it were published in full in the **Federal Register**.

EFFECTIVE DATE: The Director approves the following incorporations by reference as noted.

FOR FURTHER INFORMATION CONTACT: Rose Anne Lawson at (202) 523–4534.

SUPPLEMENTARY INFORMATION: For more information on incorporation by reference see the document published on September 30, 1980 at 45 FR 64816.

Martha Girard,

Acting Director, Office of the Federal Register.

October 28, 1980.

In FR Doc. 80–29660 at 45 FR 64816, September 30, 1980 make the following changes: On page 64817 under American Society of Heating, Refrigerating and Air Conditioning Engineers, Handbook of Fundamentals, 1977: Extension granted to Dec. 1, 1980.

On page 64817 under Emergency Department Nurses' Association, "P.O. Box 1566, East Lansing, Mich. 48823" is corrected to read: "666 N. Lake Shore Dr., Chicago, Ill. 60611.

On page 64817 under American Nurses Association, "242 Pershing Road" is corrected to read: "2420 Pershing Road."

On page 64817 under American Nurses Association, "ANA Publication Code MS–S" is corrected to read: "ANA Publication Code MS–5 10M 9/75."

On page 64817 under Department of Health and Human Services, approval is given for one year effective October 1, 1980 for: Part 2.1 (except section 5.4, 8.8, 11.2, 11.3, 11.4, Chapter 12, sections 13.2, 13.3, and exhibits 9 and 10) of DHHS Technical Handbook for Facilities Engineering and Construction Manual, Federally Assisted Construction, entitled "2.1 Information for Project Applicants and State Agencies on Design and Construction Related Activities":

On page 64817 under Department of Health and Human Services, "Chapter 14 of DHHS Publication No. (MRA) 79–14500" is corrected to read: "Chapter 14 of DHHS Publication No. (HRA) 79–14500."

On page 64817 under International Conference of Building Officials, Uniform Building Code, 1979 edition: Extension granted to Dec. 1, 1980.

On page 64818 the following corrections, approvals and extensions are made:

Under National Association of Plumbing-Heating-Cooling Contractors, National Standard Plumbing Code: Approved for one year effective October 1, 1980.

Under National Conference of States on Building Codes and Standards, National Building Code: Extension granted to December 1, 1980.

Under United States Public Health Service, "Manual of Tests for Syphilis, 1969" USPHS Publication, add the following: "No. 411, January, 1969."

Under Department of Transportation, National Highway Traffic Safety Administration, Basic Training Course/Emergency Medical Technician (2nd Edition) Course Guide 1977 (DOT Pub. No. HS 802534 through 536): Approved for one year effective October 1, 1980.

Course Guide, National Training Course, Emergency Medical Technician—Paramedic 1977: Extension granted to December 1, 1980.

Appendix A, "National Training Course Guide for Emergency Medical Technicians—Paramedic.": Extension granted to December 1, 1980.

On page 64819 the following corrections, approvals and extensions are made:

Chart of Accounts for Hospitals, 1973 edition: Extension granted to December 1, 1980.

Under American Society for Testing and Materials D–93, Test for Flash Point by Pennsky-Martens Closed Tester, 1979, "1979" is removed and replaced by "1977" and approval is granted for one year effective October 1, 1980.

On page 64820 the following corrections, approvals and extensions are made: Under Inter-Governmental Maritime Consultative Organization, A.264 (VIII), Bulk Grain Cargoes, 1966: Extension granted to December 1, 1980.

Under Naval Publications and Forms Center, Federal Specification ZZ–H–451, Hose, Fire, Woven-Jacketed Rubber or Cambric-Lined, With Couplings, E is approved for one year effective October 1, 1980.

Under American Boat and Yacht Council, P–1, Recommended Practice and Standards Covering Safe Installation of Exhaust Systems for Propulsion and Auxiliary Machinery, 1971: Extension granted to December 1, 1980.

On page 64820 under 46 CFR Subchapter F—U.S. Coast Guard, Department of Transportation, the Director approves the following materials for one year effective October 1, 1980. The following list also contains corrections.

American National Standards Institute (ANSI), 1430 Broadway, New York, N.Y. 10018.

ANSI B1.1 Unified Inch Screw Threads, 1974—56.60–1.

ANSI B1.20.3 Dryseal Pipe Threads (Inch) 1976 (formerly ANSI B2.2–1968)—56.60–1.

ANSI B16.1 Cast Iron Pipe Flanges and Flanged Fittings, 1975—56.60–1, 56.60–10, 56.60–15.

ANSI B16.3 Malleable Iron Threaded Fittings, 150 and 300 lb., 1977—56.60–1.

ANSI B16.4 Cast Iron Threaded Fittings, 125 and 250 lb., 1977—56.60–1.

ANSI B16.5 Steel Pipe Flanges and Flanged Fittings, 1977—56.20–1, 56.30–10, 56.60–1, 56.60–15.

ANSI B16.9 Factory-made Wrought Steel Buttwelding Fittings, 1978—56.60–1.

ANSI B16.10 Face-to-Face and End-to-End Dimensions of Ferrous Valves, 1973—56.60–1.

ANSI B16.11 Forged Steel Fittings, Socket-Welding and Threaded, 1973—56.30–5, 56.60–1.

ANSI B16.14 Ferrous Pipe Plugs, Bushings and Locknuts with Pipe Threads, 1977—56.60–1.

ANSI B16.15 Cast Bronze Threaded Fittings, 1978—56.60–1.

ANSI B16.18 Cast Copper Alloy Solder-Joint Pressure Fittings, 1978—56.60–1.

ANSI B16.20 Ring Joint Gaskets and Grooves for Steel Flanges, 1973—56.60–1.

ANSI B16.21 Non-metallic Flat Gaskets for Pipe Flanges, 1978—56.60–1.

ANSI B16.22 Wrought Copper and Copper Alloy Solder Joint Pressure Fittings, 1980—56.60–1.

ANSI B16.23 Cast Copper Alloy Solder Joint Drainage Fittings—DWV, 1979—56.60–1.

ANSI B16.24 Bronze Pipe Flanges and Flanged Fittings, 1979—56.60–1.

ANSI B16.25 Buttwelding Ends, 1979—56.60–1.

ANSI B16.28 Wrought Steel Buttwelding Short-radius Elbows and Returns, 1978—56.60–1.

ANSI B16.29 Wrought Copper and Wrought Copper Alloy Solder Joint Drainage Fittings—DWV, 1980—56.60–1.

ANSI B18.2.1 Square and Hex Bolts and Screws, 1972—56.60–1.

ANSI B31.1 Power Piping, 1977 with addenda a-1977, b-1978, c-1978, d-1979, e-1979, f-1980— Part 56.

ANSI B31.5 Refrigeration Piping, 1974—58.20–5, 58.20–20.

ANSI B36.10 Welded and Seamless Wrought Steel Pipe, 1979—56.07–5, 56.30–20, 56.60–1.

ANSI B36.19 Stainless Steel Pipe, 1976—56.07–5.

ANSI B93.5 Practice for the Use of Fire Resistant Fluids in Industrial Hydraulic Fluid Power Systems, 1979—58.30–1.

ANSI Z21.22 Relief Valves and Automatic Gas Shutoff Devices for Hot Water Supply Systems, 1979—63.10–30.

On page 64821 under AMERICAN SOCIETY OF MECHANICAL ENGINEERS, the four extensions granted to November 1, 1980 are changed to December 1, 1980.

On page 64822 "A307, Carbon Steel Externally Internally Standard Fasteners, 1978" is corrected to read: "A307, Carbon Steel Externally and Internally Threaded Standard Fasteners, 1978."

On page 64823 under COMPRESSED GAS ASSOCIATION, the two extensions granted to November 1, 1980 are changed to December 1, 1980.

On page 64823 under FLUID CONTROLS INSTITUTE, INC., 69–1–77 Pressure Rating Standard for Steam Traps: Approval granted for one year effective October 1, 1980.

On page 64823 under MANUFACTURERS STANDARDIZATION SOCIETY the address is corrected to read: 5203 Leesburg Pike, suite 520, Falls Church, Va. 22041, (703) 998–7996, and the extensions granted to Nov. 1, 1980 for all the following MSS standards is changed to Dec. 1, 1980.

On page 64824 under MIL–S–901, Shock Tests, HI, (High Impact); Shipboard Machinery Equipment and Systems, Requirements for: Extension granted to Dec. 1, 1980.

On page 64824 under NATIONAL FIRE PROTECTION ASSOCIATION, "To, National Electrical Code, 1980" is corrected to read: "70, National Electrical Code, 1980."

On page 64824 under SOCIETY OF AUTOMOTIVE ENGINEERS, J429, Mechanical and Quality Requirements for Externally Threaded Fasteners, 1977: Approved for one year effective Oct. 1, 1980.

On page 64824 under TUBULAR EXCHANGER MANUFACTURERS ASSOCIATION, Heat Exchangers, Class "B," "C," or "R," 1968 Rev. 1970: Extension granted to Dec. 1, 1980.

On page 64824 under UNDERWRITERS LABORATORIES, UL296, Standard for Oil Burners, 1975: Extension granted to Dec. 1, 1980; and UL814, Standard for Gas Tube Sign and Ignition Cable, 1978: Extension granted to Dec. 1, 1980.

On page 64824 under AMERICAN SOCIETY FOR TESTING AND MATERIALS "093, Test for Flash Point by Pennsky-Martens Closed Tester, 1973" is corrected to read: "D93, Test for Flash Point by Pennsky-Martens Closed Tester, 1977," and approved for one year effective Oct. 1, 1980.

On page 64824 under FEDERAL SPECIFICATION, ZZ–H–451, Hose, Fire, Woven-Jacketed Rubber or Cambric-Lined, with Couplings, E: Approved for one year effective Oct. 1, 1980.

On page 64825 under AMERICAN SOCIETY FOR TESTING AND MATERIALS, "D93, Test for Flash Point by Pennsky-Martens Closed Tester, 1973" is corrected to read: "D93, Test for Flash Point by Pennsky-Martens Closed Tester, 1977," and approved for one year effective Oct. 1, 1980.

On page 64825 under FEDERAL SPECIFICATION, ZZ–H–451, Fire, Woven-Jacketed, Rubber or Cambric Lined, with Couplings, E: Approved for one year effective Oct. 1, 1980.

On page 64825 under INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION, A.264 (VIII), Bulk Grain Cargoes, 1966: Extension granted to Dec. 1, 1980.

On page 64825 under UNDERWRITERS LABORATORIES, UL–19, Woven-Jacketed, Rubber lined Fire Hose, 1978 at 46 CFR 76.10–10 and 95.10–10: Extensions granted to Dec. 1, 1980.

On page 64826 under UNDERWRITERS LABORATORIES, "UL20, Snap Switches, 1974 with revs. thru 1976. . . . .110.10–1; 1211.55–5" is corrected to read: "110.10–1; 111.55–5."

On page 64826 under AMERICAN BUREAU OF SHIPPING, Rules for Building and Classing Steel Barges for Offshore Service, 1973: Extension granted to Dec. 1, 1980.

On page 64827 under AMERICAN NATIONAL STANDARDS INSTITUTE, all standards are approved for one year effective Oct. 1, 1980.

On page 64827 under UNDERWRITERS LABORATORIES, 783, Flashlights and Lanterns, Electric, for Use in Hazardous Locations: Extension granted to Dec. 1, 1980.

On page 64827 under AMERICAN SOCIETY OF MECHANICAL ENGINEERS, Boiler and Pressure Vessel Code, Section VIII Pressure Vessels, 1979 with addenda through Summer 1980: Extension granted to Dec. 1, 1980.

On page 64828 under COAST GUARD, DWG No. 160.005–1, Life Preserver, Fibrous Glass Adult and Child (Jacket Type): Approval granted for one year effective Oct. 1, 1980.

On pages 64828 and 64829 under FEDERAL SPECIFICATIONS, extensions are granted to Dec. 1, 1980 for all standards.

On page 64829 "T–R–505, Rope, Manila and Sisal, B, amd.3" is corrected to read: "T–R–605", and "WW–C–621, Couplings; Hose, Cotton (Rubber-lined) and lined (unlined) E, amd.1" is corrected to read: "WW–C–621, Couplings; Hose, Cotton (Rubber-lined) and Linen (unlined)."

On page 64829 under FEDERAL STANDARDS AND TEST METHOD STANDARDS, extensions are granted to Dec. 1, 1980 for all Federal Standards and Test Method Standards.

On page 64829 under MILITARY SPECIFICATIONS, extensions are granted to Dec. 1, 1980 for all the Military Specifications.

On page 64830 under NAVY DEPARTMENT PLANS extensions are granted to Dec. 1, 1980 for all Navy Department Plans.

On page 64830 under UNDERWRITERS LABORATORIES "UL1988 Fuses (Class H Fuses), 1975" is corrected to read: "UL198B".

On page 64830 under INSTITUTE OF ELECTRICAL AND ELECTRONIC ENGINEERS, 45, Recommended Practice for Electrical Installations on Shipboard, 1977: Extension granted to Dec. 1, 1980.

On page 64831 under FEDERAL SPECIFICATION, ZZ–H–451, Hose, Fire, Woven-Jacketed Rubber or Cambric-Lined, with Couplings, E: Approved for one year effective Oct. 1, 1980.

On page 64831 under UNDERWRITERS LABORATORIES, UL–19 Woven-Jacketed, Rubber lined Fire Hose, 1978: Extension granted to Dec. 1, 1980.

On page 64831 under AMERICAN SOCIETY FOR TESTING AND MATERIALS, D93, Test for Flash Point by Pennsky-Martens Closed Tester: Approved for one year effective Oct. 1, 1980.

On page 64831 under FEDERAL SPECIFICATION, "ZZ–H–45, Hose, Fire, Woven Jacketed Rubber or Cambric-lined, with Couplings, E," is corrected to read: "ZZ–H–451" and approved for one year effective Oct. 1, 1980.

On page 64831 under NAVSHIPS 250, Cable Comparison Guide, 1975: Extension granted to Dec. 1, 1980.

On page 64831 under UNDERWRITERS LABORATORIES, UL–595, Marine Type Electric Lighting

Fixtures, 1974, all revisions through 1977: Extension granted to Dec. 1, 1980.

On page 64832 under FEDERAL SPECIFICATIONS, ZZ–H–451, Hose, Fire, Woven-Jacketed, Rubber or Cambric-Lined, with Couplings, E: Approved for one year effective Oct. 1, 1980.

On page 64832 under MILITARY SPECIFICATIONS, MIL–V–17501, (Valve, Control, Automatic Sprinkler System): Extension granted to Dec. 1, 1980.

On page 64832 under UNDERWRITERS LABORATORIES, UL–19, Woven Jacketed, Rubber Lined Fire Hose, 1978: Extension granted to Dec. 1, 1980.

On page 64836 the following entry is added and approved for one year effective Oct. 1, 1980.

49 CFR Part 399—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

U.S. Dept. of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Va. 22161.

Public Health Service Publication No. 1000, Series 11, No. 8, "Weight, Height, and Selected Body Dimensions of Adults, United States 1960–62—399.205.

[FR Doc. 80-33961 Filed 10-30-80; 8:45 am]
BILLING CODE 1505-02-M

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federal register

Friday
October 31, 1980

Part V

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Partial Approval/Disapproval of the Permanent Program Submission From the State of Illinois Under the Surface Mining Control and Reclamation Act of 1977

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Partial Approval/Disapproval of the Permanent Program Submission From the State of Illinois Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule: partial approval and disapproval of the Illinois program.

SUMMARY: On March 3, 1980, the State of Illinois submitted to the Department of the Interior its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The purpose of the submission is to demonstrate the State's intent and capability to administer and enforce the provisions of SMCRA and the permanent regulatory program regulations, 30 CFR Chapter VII.

After providing opportunities for public comment and thorough review of the program submission, the Secretary of the Interior has determined that the Illinois program only partially meets the minimum requirements of SMCRA and the Federal Permanent program regulations. Accordingly, the Secretary of the Interior has approved in part and disapproved in part the Illinois program. The purpose of this document is to acknowledge the partial approval and disapproval of the program and therefore establish the beginning of the 60 day period in which Illinois has to submit revisions to those portions of the program that have been disapproved by the Secretary. Illinois will not assume primary jurisdiction for implementing SMCRA until its program receives complete approval.

DATE: Illinois has until December 30, 1980 to submit revisions of the disapproved portions of the program for the Secretary's consideration.

ADDRESSES: Copies of the Illinois program submission and the administrative record on the Illinois program are available for public inspection and copying during business hours at:

Office of Surface Mining Reclamation and Enforcement, Room 153, Interior South Bldg., 1951 Constitution Ave., Washington, D.C. 20240.

Office of Surface Mining Reclamation and Enforcement, Region III, Fifth Floor, Room 510, Federal Building and U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204.

Department of Mines and Minerals, Division of Land Reclamation, 227 South 7th Street, Suite 204, Springfield, Illinois 62706.

Department of Mines and Minerals, Division of Land Reclamation, Southern District Field Office, Route 6, Box 140A, Marion, Illinois 62959.

FOR FURTHER INFORMATION CONTACT: Mr. Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, Telephone (202) 343–4225.

SUPPLEMENTARY INFORMATION: This notice is arranged as set forth in the following table:

I General Background on Permanent Program
II General Background on State Program Approval Process
III Background on the Illinois Program Submission
IV Secretary's findings under Section 503 of SMCRA
1. Statute (General)
2. Sanctions for Violations
3. Administrative/Technical Personnel and Funds
4. Permit System
5. Areas Unsuitable for Mining
6. Coordinating Permit Review/Issuance
7. Regulations (General)
8. Solicited/Disclosed Views of the Environmental Protection Agency (EPA), and other Federal Agencies.
9. Concurrence of EPA
10. Held Public Meeting and Hearings
11. Legal Authority/Qualified Personnel
V Secretary's findings Under 30 CFR 732.15
12. Program Provisions for Carrying out SMCRA/30 CFR Chapter VII (General)
13. Alternate Approaches ("State Window")
14. Performance Standards—(Subchapter K)
15. Permits—(Subchapter G)
16. Coal Exploration—(30 CFR 776, 815)
17. Coal Extraction—(Incidental)—(30 CFR 707)
18. Enter, Inspect, Monitor—(30 CFR 840)
19. Performance Bonds—(Subchapter J)
20. Civil and Criminal Sanctions—(30 CFR 845)
21. Notices and Violations/Cessation Orders (30 CFR 842, 843)
22. Lands Unsuitable—(Subchapter F)
23. Public Participation
24. Conflict of Interest—(30 CFR 705)
25. Blasting—(Section 719 of SMCRA)
26. Small Operator Assistance Program—(30 CFR 795)
27. Protection of Employees—(30 CFR 865)
28. Adminstrative and Judicial Review (Subchapter L)
29. Provisions of Documents/Information to OSM
30. Laws
31. Personnel and Funds
VI Disposition of Comments
VII Approval in Part/Disapproval in Part
VIII Effect of This Action
IX Additional Findings

I. General Background on the Permanent Program

The environmental protection provisions of SMCRA are being implemented in two phases—the initial program and the permanent program—in accordance with Sections 501–503 of SMCRA, 30 U.S.C. 1251–1253. The initial program, which became effective on February 3, 1978, for new coal mining operations on non-Federal and non-Indian lands that received state permits on or after that date, and on May 3, 1978, for all coal mines existing on February 3, 1978, is administered and enforced by the Federal Government. The initial program rules were promulgated by the Secretary on December 13, 1977, under 30 CFR Parts 710–725 (42 FR 62639).

The permanent program will become effective in each state upon either the approval of a state program by the Secretary of the Interior or implementation of a Federal program within the state. To be approved, a state program must demonstrate that the state is capable of carrying out the provisions of SMCRA in regulating surface coal mining within the state. If a state program is approved, the state, rather than the Federal government, will be the primary regulator of activities subject to SMCRA. The Federal regulations for the permanent program, including procedures for states to follow in submitting state programs and minimum standards and procedures the State programs must include to be eligible for approval, are found in 30 CFR Parts 700–707 and 730–865. Part 705 was published October 20, 1977 (42 FR 56064), and Parts 795 and 865 (originally Part 830) were published December 13, 1977 (42 FR 62639). The other permanent program regulations were published March 13, 1979 (44 FR 15312–15463). Errata notices were published March 14, 1979 (44 FR 15485), August 24, 1979 (44 FR 49673–49687), September 14, 1979 (44 FR 53507–53509), November 19, 1979 (44 FR 66195), April 18, 1980 (45 FR 26001), June 5, 1980 (45 FR 37818) and July 15, 1980 (45 FR 47424). Amendments to the regulations were published October 22, 1979 (44 FR 60969), as corrected December 19, 1979 (44 FR 75303), December 19, 1979 (44 FR 75302–75303), December 31, 1979 (44 FR 77440–77447), January 11, 1980 (45 FR 2626–2629), April 16, 1980 (45 FR 25998–26001), May 20, 1980 (45 FR 33926–33927), June 10, 1980 (45 FR 39446–39447) and August 6, 1980 (45 FR 52306–52324).

Portions of these regulations that have been suspended, pending further rulemaking, were published on November 27, 1979 (44 FR 67942), December 31, 1979 (44 FR 77447–77454), January 30, 1980 (45 FR 6913) and August 4, 1980 (45 FR 51547–51549).

II. General Background on the State Program Approval Process

The Federal regulations governing state program submissions are found at 30 CFR Parts 730–732. Any state wishing to assume primary jurisdiction under SMCRA for the regulation of surface coal mining within the state may submit a state program for the Secretary's consideration. The Secretary of the Interior has the responsibility to approve or disapprove the program, and must approve or disapprove each specific part of the program. After review of the submission by OSM and other agencies, and opportunity for the state to make additions or modifications to the program and an opportunity for public comment, the Secretary may approve the program unconditionally, approve it conditioned upon minor deficiencies being corrected in accordance with a specified timetable, disapprove the program, or approve it in part and disapprove it in part. If a program or a part thereof is disapproved, the state may submit a revised program that is corrected to meet the requirements of SMCRA and the applicable Federal regulations. If the revised program or a part thereof is also disapproved, SMCRA requires the Secretary of the Interior to establish a Federal program in that state. The state may submit a further proposed state program for the Secretary's consideration after the Federal program has been implemented.

The 104 Day Rule

As originally promulgated, 30 CFR 732.11(d) required that State make any modifications and additions to state program submissions by November 15, 1979. That section stated:

> Program submissions that do not contain all required and fully enacted laws and regulations by November 15, 1979, will be disapproved pursuant to the procedures for the Secretary's initial decision in § 732.13.

As a result of litigation in the U.S. District Court for the District of Columbia, the deadline for states to submit proposed programs was extended from August 3, 1979, to March 3, 1980 and the November 15, 1979, date in 30 CFR 732.11(d) and 732.12(b)(2) became obsolete. Therefore, on May 20, 1980, (45 FR 33927) 30 CFR 732.11(d) and 732.12(b)(2) were amended to change the November 15, 1979, date to the 104th day after program submission. Other minor adjustments were made to the timetables for comments and hearings.

The Secretary's rules for the review of State programs implement his policy that industry, the public, and other agencies of government should have an opportunity to participate effectively in his decisions. The Secretary also has a policy that a State should be afforded the maximum opportunity possible to change its program, when necessary, to cure any deficiencies in it.

To accomplish both of these policy objectives, the Secretary determined that the laws and rules upon which he bases his decision on a state program must be finalized prior to the beginning of the public comment period on the program. By identifying the laws and rules in effect on the 104th day as the basis of his program approval decision, the Secretary assists commenters by informing them of program elements that should be reviewed. Meaningful public comment would be undermined if the program elements were constantly changing until the day before the Secretary's decision.

The 104 day rule affords the State 3½ months following submission within which to modify its laws and rules. In addition, after the Secretary's initial program decision, the State has additional opportunities to revise its laws and regulations.

All program elements other than laws and rules, including Attorney General's opinions, program narratives, descriptions and other information, may be revised by the state at any time prior to program approval. The Secretary will provide opportunity for public comment on those changes, as appropriate.

Effect of Litigation of the Federal Permanent Regulatory Program

The Secretary, in reviewing state programs, is applying the provisions of Section 503 of SMCRA, 30 U.S.C. 1253, and 30 CFR 732.15. In reviewing the Illinois program, the Secretary has followed the Federal regulatory criteria cited above as affected by decisions of the U.S. District Court for the District of Columbia in *In Re: Permanent Surface Mining Regulation Litigation*. That litigation is a consolidation of several lawsuits challenging the Secretary's permanent regulatory program.

Because of the complexity of that litigation, the court issued its decision in two "rounds." The "Round I" opinion, issued February 26, 1980, denied several generic challenges to the permanent program regulations, but remanded all or parts of twenty-two specific regulations. The "Round II" opinion, issued May 16, 1980, denied additional generic challenges to the regulations, but remanded some 40 additional parts, sections or subsections of the regulations. The court also ordered the Secretary to "affirmatively disapprove, under Section 503 [of SMCRA], those segments of a state program that incorporate a suspended or remanded regulation" (Mem. Op., May 16, 1980, p. 49). However, on August 15, 1980, the court stayed this portion of its opinion. The effect of this stay is to allow the Secretary to approve state program provisions in the three circumstances described in paragraph 1 below. Therefore, the Secretary is applying the following standards to the review of state program submissions:

1. The Secretary need not affirmatively disapprove state provisions similar to those Federal regulations that have been suspended or remanded by the District Court where the state has adopted such provisions in a rulemaking or legislative proceeding that occurred either: (1) before the enactment of SMCRA, or (2) after the date of the Round II District Court decision, since such state regulations clearly are not based solely upon the suspended or remanded Federal regulations. (3) In addition, the Secretary need not affirmatively disapprove provisions based upon suspended or remanded Federal rules if a responsible state official has requested the Secretary to approve them.

2. The Secretary will affirmatively disapprove all provisions of a state program that incorporate suspended or remanded Federal rules and do not fall into one of the three categories in paragraph 1, above. The Secretary believes that the effect of his "affirmative disapproval" of such a section in a state's regulations is that the requirements of that section are not enforceable in the permanent program at the Federal level to the extent they have been disapproved. That is, to the extent a provision is disapproved, no cause of action for its enforcement exists in a Federal court, and Federal inspections will not result in notices of violation or cessation orders based upon the "affirmatively disapproved" provisions. The Secretary takes no position as to whether the affirmatively disapproved provisions are enforceable under State law and in State courts. Accordingly, these provisions are not being superseded as a matter of Federal law.

3. A state program need not contain provisions to implement a suspended regulation and no state program will be

disapproved for failure to contain a counterpart to a suspended regulation.

4. A state must have authority to implement all permanent program provisions of SMCRA, including those provisions of SMCRA upon which the suspended regulations were based.

5. A state program may not contain any provision that is inconsistent with a provision of SMCRA.

6. Only those provisions that need not be disapproved because of the District Court's order will be evaluated. These provisions will be unconditionally approved, conditionally approved, or disapproved, in whole or in part, in accordance with 30 CFR 732.13.

7. Upon promulgation of new regulations to replace those that have been suspended or remanded, the Secretary will afford states that have approved or conditionally approved programs a reasonable opportunity to amend their programs, as appropriate. In general, the Secretary expects that the provisions of 30 CFR 732.17 will govern this process.

A list of the regulations suspended or remanded as a result of the Round I and Round II decisions was published in the **Federal Register** on July 7, 1980 (45 FR 45604). Notice of availability of a tentative listing of proposed Illinois regulations that incorporate suspended or remanded Federal Regulations was published at 45 FR 46820–46826, July 11, 1980.

III. Background on the Illinois Program Submission

The Illinois surface mining legislation was enacted September 22, 1979. The Illinois permanent program submission was received by the OSM, Region III, office on March 3, 1980. The submission included regulations that were proposed, but not fully promulgated. Appropriate distribution was made within OSM and to other governmental agencies. Announcement of receipt of the submission was made in newspapers of general circulation in the state of Illinois and published in the **Federal Register** on March 11, 1980 (44 FR 15583–15584).

An appropriately announced public review meeting regarding completeness of the submission was held in Springfield, Illinois on April 10, 1980.

Comments from reviewers regarding the content of the Illinois program were received by the Region III office, and a list of deficiencies and suggestions for corrections was forwarded to the Illinois Department of Mines and Minerals (IDMM, the agency that is to be the regulatory authority under the Illinois program) on May 1, 1980 (Administrative Record Number (ARN): Ill–0063). The determination that the state program was incomplete was published in the **Federal Register** (45 FR 29310–29311) on May 2, 1980. The **Federal Register** notice, published in accordance with Section 732.11(c) of the permanent regulatory program regulations, noted that the following required elements were missing from the proposed Illinois permanent regulatory program:

1. A legal opinion from the Attorney General as required by 30 CFR 731.14(c).
2. Narratives or descriptions of the existing and/or proposed organization of the Illinois regulatory authority as required by 30 CFR 731.14(e).
3. Statistical information describing coal exploration operations or a statement that no such information is available as required by 30 CFR 731.14(h).
4. Brief descriptions of other programs that may be administered by the regulatory authority as required by 30 CFR 731.14(o).
5. A copy of regulations that were in the process of promulgation as required by 30 CFR 731.14(a).

On May 22, 1980, substantive comments regarding the Illinois submission were forwarded to IDMM by OSM, Region III (ARM Ill–0076).

On June 6, 9 and 22, 1980, public meetings were held between Region III–OSM and IDMM to discuss the comments in the May 22, 1980, letter. The results of these meetings are documented in the Administrative Record (ARN Ill–0096, 0111, 0113).

On June 16, 1980, the 104th day after submission of the program, IDMM submitted to OSM revisions and additions to the Illinois permanent program submission. The additions and revisions submitted by Illinois on June 16, 1980, are listed below:

Volume 6—Supplemental Information:

Tab A—Narrative and Descriptions of Existing and proposed organization of the Agency—with Functional Organization Charts (Supplement to Tab E., Volume 1).

Tab B—statement and Data Concerning Coal Exploration Operations.

Tab C—Brief Description of Other Programs Administered by the Regulatory Authority (omitted from Tab N., Volume 1).

Tab D—A statement Regarding Public Participation (refer to Tab N., Volume 2).

Tab E–J—Other Applicable state Laws and Regulations.

Volume 7—A legal Opinion of the Attorney General and a section-by-section comparison of the Act and regulations.

Volume 8—Civil Administrative Code.

Volume 9—A copy of the June 13, 1980, Illinois Register, which includes the proposed state program regulations at pages 1–135.

The revised proposed regulations submitted by Illinois on June 16, 1980, were not fully promulgated. As described above in the discussion of the 104 Day Rule under *General Background on the State Programs Approval Process,* proposed regulations may not form the basis for approval of a state program. Therefore, this notice does not contain findings on the proposed Illinois regulations.

On June 26, 1980, the Regional Director published in the **Federal Register** (45 FR 43221–43223) and in newspapers of general circulation within the state of Illinois a notice that the amended Illinois submission was complete. The notice set forth a summary of the amended state program, the times and locations for public review of the program, and procedures for the public hearings on the substance of the Illinois program. The notice stated that the public comment period on the program would extend until 4:30 p.m., July 30, 1980.

In accordance with the June 26, 1980, notice, public hearings regarding the Illinois permanent program submission were held in Springfield, Illinois, on July 24, 1980, and in Marion, Illinois, on July 25, 1980.

On July 30, 1980, the last day of the public comment period on the Illinois program submission, Illinois submitted substantial additional information, including revised proposed regulations to OSM. The information submitted on July 30, 1980, by Illinois includes:

1. Letter of Transmittal from IDMM to Edgar A. Imhoff dated July 29, 1980.
2. Letter of Alternatives (10 issues) from IDMM to Edgar A. Imhoff dated July 29, 1980.
3. Letter in regard to Permit Completeness from Harvey Sheldon to Edgar A. Imhoff dated July 30, 1980.
4. *Volume 10*—Response to Attachments A and C of OSM III—May 22, 1980, letter.
5. *Volume 11*—Proposed Final Regulations.
6. *Volume 12*—Written and Public Hearing Comments Received during rulemaking with Department Action rule 1700–1815.
7. *Volume 13*—Written and Public Hearing Comments received during rulemaking with Department Action 1816–1845.

As stated previously, revised proposed regulations may not form the basis for approval of a state program and this notice will not discuss proposed regulations. However, as provided in the June 26, 1980, notice of public comment period and public hearings on the Illinois program submission (*see* 45 FR 43222, col. 2), OSM will review the proposed regulations and provide comments on their adequacy to the state of Illinois separately from this notice. These separate comments will be available to the public at the places listed above under "Addresses."

The Regional Director completed his program review on August 12, 1980, and forwarded the public hearing transcript, written presentations, exhibits and copies of all comments to the Director together with a recommendation that the program be approved in part and disapproved in part.

On August 20, 1980, 45 FR 55478, the Secretary publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies.

On August 22, 1980, ARN: ILL–0190, the Director communicated to Illinois the August 15, 1980, opinion of the U.S. District court for the District of Columbia staying its order to "affirmatively disapprove" segments of a state program incorporating suspended or remanded Federal regulations. The state was asked to inform OSM if there were any such provisions in its program that Illinois wished the Secretary *not* to disapprove affirmatively. No reply has been received from Illinois.

On September 23, 1980, the Administrator of the Environmental Protection Agency transmitted his written concurrence on the portions of the Illinois program that the Secretary is approving at this time.

On September 25, 1980, the Director recommended to the Secretary that the program be approved in part and disapproved in part.

Secretary's Findings

In reaching his decision to approve in part and disapprove in part the Illinois program submission, the Secretary makes the following findings pursuant to Section 503 of SMCRA and 30 CFR 732.15. Where appropriate these findings offer corrective action that may be utilized by Illinois in revising disapproved parts of the program for resubmission. However, the resubmitted portions of the program will be subject to review and comment by the public prior to a final decision by the Secretary.

Findings made under Section 503(a)(1) through (7) and (b)(1) through (4) are numbered (1) through (11). Findings made under 30 CFR 732.15(a), (b)(1) through (16), (c) and (d) are numbered (12) through (31).

IV. Findings Under Section 503 of SMCRA

(1) The Secretary finds that the state of Illinois has in part a state law that fully provides for regulation of surface coal mining and reclamation operations in accordance with the requirements of SMCRA for the reasons relating to statutory provisions submitted with the program that are discussed specifically under Findings 12 through 31 below.

(2) The Secretary finds that Illinois has in part a state law that fully provides sanctions for violations of state laws, regulations or conditions of permits concerning surface coal mining and reclamation operations, which sanctions shall meet the minimum requirements of SMCRA including criminal sanctions, forfeiture of bonds, suspensions, revocations, and withholding of permits, and the issuance of cease-and-desist orders by the state regulatory authority or its inspectors for the reasons specifically set forth under Findings 14, 15, 16, 17, 18, 19, 20 and 21 below.

(3) The Secretary finds that Illinois does not have a state regulatory authority with sufficient administrative and technical personnel and sufficient funding to enable the State to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA for the reasons set forth below under Finding 31.

(4) The Secretary finds that Illinois has in part a state law that fully provides for the effective implementation, maintenance, and enforcement of a permit system meeting the requirements of SMCRA for the regulation of surface coal mining and reclamation operations on non-Indian and non-Federal lands within the State for the reasons set forth under Finding 15 below.

(5) The Secretary finds that the state program in part provides for establishment of a process for designation of areas as unsuitable for surface coal mining in accordance with Section 522 of SMCRA for the reasons set forth below under Finding 22.

(6) The Secretary finds that the state program establishes in part a process to avoid duplication by coordinating the review and issuance of permits for surface coal mining and reclamation operations with other Federal or state permit processes applicable to the proposed operations for the reasons set forth below under Finding 27.

(7) The Secretary finds that the State of Illinois does not have rules and regulations fully consistent with the regulations issued by the Secretary pursuant to SMCRA because the State did not have fully promulgated regulations on June 16, 1980, the 104th day after program submission, as required by 30 CFR 732.11(d).

(8) The Secretary has solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise pertinent to the proposed Illinois program.

(9) The Secretary has obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of the Illinois program that are being approved at this time and which relate to air or water quality standards, promulgated under the authority of the Federal Water Pollution Control Act, 33 U.S.C. 1151–1175, and the Clean Air Act, 42 U.S.C. 7401 *et seq.*

(10) The Secretary, through OSM, held a public review meeting in Springfield, Illinois, on April 10, 1980, to discuss the Illinois program submission and its completeness and held public hearings in Springfield, Illinois, on July 24, 1980, and in Marion, Illinois, on July 25, 1980, on the substance of the Illinois program submission.

(11) The Secretary finds that the State of Illinois has in part the legal authority and qualified personnel necessary for the enforcement of the environmental protection standards of SMCRA and 30 CFR Chapter VII, for the reasons set forth below under Findings 12–31.

V. Findings Under 30 CFR 732.15

For each of the specific following findings, the Federal statute citation is given first, followed by the corresponding Illinois statute citation. In accordance with 30 CFR 732.15, the Secretary finds the following on the basis of information in the Illinois program submission, public comments, testimony and written presentations at the public hearings, and other relevant information.

Finding 12

The Secretary finds that the Illinois program submission does not provide in full for Illinois to carry out the provisions and meet the purposes of SMCRA and the Secretary's implementing regulations in 30 CFR Chapter VII. This finding is made under 30 CFR 732.15(a). Detailed discussion of the basis of this finding is found in the discussions following Findings 13–31.

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Finding 13

The Illinois permanent program submission did not contain any proposed "state window" items submitted pursuant to 30 CFR 731.13. As a result of public meetings held on June 6 and 9, 1980, the Illinois Department of Mines and Minerals agreed to consider submitting the following sections of the Illinois proposed regulations as state windows: 1816.49(c), 1816.83, 1816.85(c)(3), 1816.89(b), 1816.103(a), 1817.49(c), 1817.89(b). No such state window provisions have been submitted. This finding is made under 30 CFR 732.15(a).

Finding 14

The Secretary finds that the Illinois Department of Mines and Minerals does not have full authority under Illinois laws and regulations to regulate coal exploration and surface coal mining and reclamation operations and that the Illinois program submission does not include the provisions necessary to implement, administer, and enforce all applicable requirements consistent with Subchapter K of 30 CFR Chapter VII. This finding is made under 30 CFR 732.15(b)(1) and is based upon the lack of promulgated regulations and on the findings listed below.

14.1 *Section 515(a)—Sections 3.01 and 4.01.* SMCRA Section 515(a) requires any permit issued for "surface coal mining operations" to require those operations to meet all applicable performance standards in SMCRA. Illinois Section 3.01 requires "surface mining operations" to comply at a minimum with the performance standards of Article III of the Illinois statute and Section 4.01 requires "underground mining operations" to comply at a minimum with the performance standards of Article IV of the Illinois statute.

The Illinois definition of "underground mining operations" in Section 1.03(a)(26) excludes surface impacts incident to underground mining operations. The SMCRA definition of "surface coal mining operations" explicitly includes such impacts. However, Section 4.11 of the Illinois statute requires surface impacts incident to an underground operation to comply with the performance standards of Article III of the Illinois statute.

Illinois, in its July 30, 1980, submission, explains that Sections 8.06 (b) and (c), which require enforcement actions to be taken against violations "of any requirement" of the Illinois statute, require mining operations to comply with all performance standards in the Illinois statute. This does not conflict with the language of Sections 3.01 and 4.01, which refer to compliance with the performance standards as minimal requirements. Therefore, Sections 3.01 and 4.01 are consistent with SMCRA.

14.2 *Section 515(b)(3)—Section 3.04(a).* The Illinois term "affected land" is substituted for the Federal term "surface coal mining operations" in regulating what lands must be backfilled and graded. As Illinois points out in its July 30, 1980, submission, the intent of Section 515(b)(3) is to require backfilling and grading of lands where mining operations occur or disturb the natural land surface. As defined by Section 1.03(a)(1) of the Illinois statute, "affected land" includes areas where surface or underground mining operations occur or disturb the natural land surface. However, the Illinois definition of underground mining operations excludes some surface impacts incident to an underground operation. Thus, the Illinois statute would not require backfilling and grading of subsidence depressions, and other surface impacts of underground operations, which is inconsistent with SMCRA.

14.3 *Section 515(b)(3)—Section 3.04(b).* SMCRA requires that, in order to obtain the thin overburden exemption from the approximate original contour requirement, mining must have been carried out at the same location "over a substantial period of time." Illinois substitutes the phrase "over a period greater that one year." The Secretary finds this language is consistent with SMCRA and 30 CFR 816.104.

14.4 *Section 515(b)(3)—Section 3.04(c).* The Illinois statute would allow variances from the requirement to return to the approximate original contour wherever there is excess overburden. Section 515(b)(3) of SMCRA requires that this variance be granted only "where the volume of overburden is large relative to the thickness of the coal deposit." The Illinois provision would impermissibly broaden the approximate original contour provisions SMCRA and is, therefore, less stringent.

14.5 *No corresponding Federal provision—3.07(b), (d) and (f).* The Illinois statute contains performance standards for high capability lands, which are defined in Section 3.07(d) as land that is non-prime farm land but capable of row crop use. SMCRA has no such provision. Section 3.07(f) indicates that the high capability land performance standards in Section 3.07(b) are in addition to the other requirements of the Illinois statute. However, Section 3.07(b) would allow removal and replacement of only part of the topsoil, which would be inconsistent with SMCRA Section 515(b)(5). In addition, it would allow the topsoil to be replaced with other available material that is suitable for revegetation. SMCRA Section 515(b)(5) allows such substitution only where the topsoil is of poor quality for where the substituted material is *more* suitable than the topsoil for revegetation. The Illinois provision is inconsistent with SMCRA.

14.6 *Section 515(b)(8)—Section 3.08(b).* SMCRA Section 515(b)(8) allows permanent impoundments only "if authorized in the approved mining and reclamation plan and permit." Illinois Section 3.08(b) does not contain this language, but it does require state approval of permanent impoundments of water, and thus appears to be consistent with SMCRA. The Illinois rules should clarify that permanent impoundments will not be allowed except as authorized by the mining and reclamation plan.

14.7 *Section 515(b)(10)(B)—Section 3.08(a).* The Illinois provision concerning runoff water contains standards that are not found in SMCRA. The Illinois statutory side-by-side submitted by Illinois in accordance with 30 CFR 731.14(a) indicates that Section 3.08(a) is intended to be consistent with SMCRA Section 515(b)(10)(B) *(See* Vol. 4, p. 36 of Illinois submission). However, the reference to draining runoff water from affected areas is unclear. In addition, the Illinois provision would allow construction of temporary impoundments "in accordance with sound engineering practices and standards adopted by the Department by rule." This would be acceptable only if the Illinois regulations are consistent with the requirement in Section 515(b)(10)(B) that siltation structures be constructed as designed and approved in the reclamation plan using the best technology currently available. A conclusion on this section is not possible at present.

14.8 *Section 515(b)(10)(B)(ii)—Section 3.10(d).* Section 515(b)(10)(B)(ii) requires that siltation structures shall be constructed prior to commencement of operation. Illinois Section 3.10(d) is less stringent that SMCRA because it provides that such structures "may" rather than "shall" be constructed prior to commencement of operations. Furthermore, SMCRA requires that an engineer certify that the structure is constructed as designed, whereas the Illinois provision does not clearly require that the construction of siltation structures be certified by a qualified registered engineer.

14.9 *Section 515(b)(10)(C)—Section 3.10(e).* Illinois Section 3.10(e) requires that siltation structures be cleaned out and removed after revegetation unless

"consistent with the reclamation plan." Illinois, in its July 30, 1980, submission, states that this language is intended to exempt only permanent impoundments approved in accordance with Illinois Section 3.08(b) (the Illinois counterpart to SMCRA Section 515(b)(8)) and not to modify the SMCRA requirement that temporary impoundments be cleaned out and removed after revegetation. Based upon this assurance, the Secretary finds the Illinois provision to be acceptable.

14.10 *Section 515(b)(14)—Section 3.11(c).* SMCRA Section 515(b)(14) is a performance standard for disposal of materials constituting a fire hazard. The Illinois statute law contains additional language that lists minimum disposal standards. Certain of these standards are inconsistent with SMCRA, since they would allow covering of toxic materials with water, may allow variances from the approximate original contour provisions of SMCRA and may allow revegetation not meeting the SMCRA standards.

14.11 *Section 515(b)(16)—Section 3.25(b).* The Illinois provision requires extensions of the reclamation period under the following situations: "Acts of God, strikes, inability to receive ordered equipment or extended periods of unreasonable and unexpected weather have made completion within these time limits impossible." This authority is consistent with the SMCRA requirement that reclamation be as contemporaneous as practicable.

14.12 *No corresponding Federal provision—Section 3.14(c).* The Illinois provision requires removal and grading of abandoned roads and mine drainage ditches except where the State determines that retention of a road or ditch is "consistent with and necessary to the reclamation plan." Section 3.14(c) does not clearly require, as does SMCRA, that this determination of consistency with the reclamation plan be made in the context of the permitting process. However, Illinois, in its July 30, 1980, submission, asserts that such a determination must be made as part of a permitting decision. Based upon this assertion; this Illinois provision is consistent with SMCRA.

14.13 *Section 515(b)(20)—Section 3.15(b).* The Illinois provision for responsibility for successful revegetation states that it "does not preclude responsible land management practices" on the land being revegetated. In its July 30, 1980, submission, Illinois indicates that this is intended to prevent normal land management practices from being considered augmentation that could cause the five year period for measuring success to start over again. The preamble to 30 CFR 816.116(b)(1) makes clear that an "accepted local agricultural practice that can be expected to continue as a postmining practice" shall not be considered augmentation. 44 FR 15237, Col. 1, March 13, 1979. The Illinois provision is inconsistent with SMCRA because "responsible land management practices" are not practices that can be expected to continue during the post mining period.

14.14 *Section 515(b)(20)—Section 3.15(c).* Illinois allows the 5-year period of responsibility for revegetation of high capability lands to commence at the date of initial planting rather than after the first full year of augmented seeding, fertilizing and other revegetation work. The first proviso of Section 515(b)(20), however, allows the period of responsibility to commence with initial planting only where long-term intensive agricultural postmining land use has been approved regardless of what type of land is involved. Illinois asserts in its July 30, 1980, submission that its provision is more stringent than SMCRA. However, the purpose of the first proviso in Section 515(b)(20) is to prevent the period of responsibility from recommencing each growing season when new crops are planted and fertilized. If this standard were applied to non-farmed lands, the operator would be able to conduct augmented seeding, fertilizing and other revegetation work throughout the period of responsibility up until the last two years of the period, the time for determining success of revegetation (*See* 30 CFR 816.116(b)(1)(i)). The effects of such recent augmented revegetation practices would prevent a true determination of whether a permanent and self-sustaining vegetative cover has been established. Therefore, the Illinois provision is less stringent than SMCRA.

14.15 *Section 515(b)(20)—Section 3.15(c).* Illinois allows exceptions to the requirement in Section 3.15(c) that the period of responsibility for revegetation commence with the initial planting. This provision would be acceptable if interpreted to allow the period of responsibility to commence at a date later, but not earlier, than the date of initial planting. The scope of the Illinois exception is unclear. No conclusion on the consistency of the Illinois provision with SMCRA is possible at this time.

14.16 *Section 515(e)—Section 3.23(e).* The Illinois provision does not restrict the postmining land uses for which variances from the steep-slope performance standards may be granted. SMCRA Section 515(e)(2) allows the granting of variances only so as to render the land suitable for industrial commercial, residential or public postmining land uses. The Illinois July 30. 1980, submission indicates that variances would also be granted in Illinois for agricultural purposes. However, the intent of SMCRA to prohibit steep-slope variances for agricultural postmining land uses is made clear by Section 515(c)(3), which explicitly allows such variances from the mountaintop removal performance standards. The Illinois provision is inconsistent with Section 515(e)(2) and cannot be accepted.

Finding 15

The Secretary finds that Illinois does not have full authority under State laws, regulations or provisions in the State program to implement, administer and enforce a permit system consistent with the regulations of Subchapter G of 30 CFR Chapter VII and prohibit surface coal mining and reclamation operations wihout a permit issued by the regulatory authority. This finding is made under 30 CFR 732.15(b) and is based upon the lack of promulgated regulations and the findings listed below.

15.1 *Section 506(b)—Section 2.06(b).* SMCRA provides that a successor in interest to a permittee, after meeting certain criteria, may continue surface mining and reclamation operations until the successor's application for a new permit is granted or denied. The Illinois provision is consistent with SMCRA, since successors in interest in Illinois would have to apply for new permits prior to commencing operations.

15.2 *Section 510(a)–Section 2.11.* SMCRA requires the regulatory authority to notify local governmental officials within 10 days of granting a permit. Illinois' provision requires prompt notification of such officials. The Illinois July 30, 1980, submission states that the promulgated regulations will require notice within 10 days of permit approval. This would be acceptable.

15.3 *Section 510(a)–Section 2.08(a).* SMCRA provides granting or denial of permit applications on the basis of a complete mining application and reclamation plan or a revision or renewal thereof. Illinois' deletion of "renewal" appears to limit the applicability of this section. However, Illinois Section 2.07 prescribes requirements for renewal applications that are consistent with SMCRA.

15.4 *Section 510(d)(1)–Section 2.08(b).* SMCRA requires consultation with the Secretary of Agriculture prior to approving a permit application that involves prime farmland. Illinois has omitted this required consultation, which could render its statute

inconsistent with SMCRA. Illinois states in its July 30, 1980, submission that its promulgated rules will require consultation with the Secretary of Agriculture prior to permit approval. This would be acceptable.

15.5 *Sections 510 and 511–Section 2.08(c).* Illinois adds language to its statute that provides review of permits and revised permits for its interagency committee and county board review. This language is acceptable provided the involvement of the interagency committee and county board complies with Sections 510(a), 511(a) and 513 of SMCRA.

15.6 *Section 511(a)(1)–Section 2.03(b).* SMCRA requires that a revised reclamation plan be submitted with an application for revision of a permit. The Illinois provision would allow as an alternative "a statement with supporting evidence that the proposed revision does not require a revision of the reclamation plan". This is consistent with the intent of SMCRA that decisions on permit revision approval be based upon either a revised reclamation plan or the original reclamation plan where that plan covers the revised operation.

15.7 *Section 511(a)(2)–Section 2.09(a).* The Illinois provision does not require that the regulatory authority establish a time period for approval or disapproval of revisions. However, Illinois Section 2.11 requires decisions on applications within designated times and Illinois defines "application" so as to include permit revision applications. Therefore, the Illinois provision is consistent with SMCRA.

15.8 *30 CFR 731.14(g)(1) (Permit Process Review)–Volume 2, Tab A, I, J.* The regulatory authority is responsible for providing special information to the applicant; e.g., fish, wildlife, lands unsuitable, hydrology, geology, climatological. However, the method by which this information would be dispensed has not been explained in sufficient detail to enable the Secretary to find the State's provisions on this point to be adequate.

15.9 *30 CFR 731.14(g)(10) (Consulting with State and Federal Agencies on Historic, Cultural and Archaeological Procedure)–Volume 2, Tab J and Volume 10, Tab L.*

The submitted material is not adequate because:

A. All consultation is indirect and initiated by agencies without program responsibility rather than directly by the regulatory authority.

B. It states that there are "continuing dialogue[s]" between the Illinois Departments of Conservation and Transportation on the one hand and the Fish and Wildlife Service and Corps of Engineers on the other. This does not constitute a sufficient description of systems for consulting on particular decisions that affect the interests of the Fish and Wildlife Service and Corps of Engineers.

Finding 16

The Secretary finds that Illinois does not have the full authority under current Illinois laws and regulations pertaining to coal exploration and surface coal mining and reclamation operations, and the provisions in the Illinois program submission do not provide for the regulation of coal exploration consistent with 30 CFR Parts 776 and 815. This finding is made under 30 CFR 732.15(b)(3) and is based upon the lack of promulgated regulations.

Finding 17

The Secretary finds that Illinois does not have the full authority under current Illinois laws and regulations pertaining to coal exploration and surface coal mining and reclamation operations, and that the Illinois program submission does not include the necessary provisions to require that persons extracting coal incidental to government financed construction maintain information on site consistent with 30 CFR 707. This finding is made under 30 CFR 732.15(b)(4) and is based on the lack of promulgated regulations.

Finding 18

The Secretary finds that Illinois lacks the full authority under State laws and regulations and provisions in the State program to enter, inspect and monitor all coal exploration and surface coal mining and reclamation operations on non-Indian and non-Federal land within the State consistent with the requirements of Section 517 of SMCRA and Subchapter L of 30 CFR Chapter VII. This finding is made under 30 CFR 732.15(b)(5) and is based on the lack of promulgated regulations and the findings listed below.

18.1 *Section 517(a) and (b)(3)—Section 8.01 and 8.02* The Illinois statute substitutes "may enter" for "shall have a right of entry" found in SMCRA. Based and conditioned upon the Illinois Attorney General's assurance (Volume 7, page 16) that this substitution has no legal significance because the Illinois language gives Illinois the legal authority to enter in that "may" is not used permissively, the Illinois language is consistent with SMCRA.

18.2 *Section 517(d)—Section 3.21* The Illinois statute uses the term "surface mining and reclamation operation" in the requirement that signs be posted. This term is undefined in the Illinois statute, although the term "mining and reclamation operations" is defined in the Illinois statute (Section 1.03(a)). Based on the Secretary's interpretation that "surface mining and reclamation operation" is covered by the definition of "mining and reclamation operations," this provision is consistent with SMCRA.

18.3 *30 CFR 731.14(g)(4)—Volume 2, Tab D* Illinois Section 8.01(b) requires that inspections "shall occur without prior notice." However, the narrative states that inspections "may" occur without prior notice. This inconsistency should be resolved, in favor of the statutory language, before the Secretary can unconditionally approve the program.

18.4 *30 CFR 731.14(g)(4)—Volume 2, Tab G* The program submittal is inconsistent with SMCRA because in the injunctive relief portion, the State asserts, perhaps inadvertently, that OSM, rather than Illinois, may institute civil action for refusal to allow an inspection of monitoring equipment. Illinois, not OSM, must be prepared to take such actions.

18.5 *30 CFR 731.14(g)(4)—Volume 2, Tab D* The summary information furnished by activity, reference, and requirement is not sufficient to enable the Secretary fully to evaluate the program's inspection provisions. It does not adequately discuss:

(1) A means to receive and process written and oral reports of possible violations or of imminent danger violations;

(2) A specification of how citizens will be informed of their right to accompany inspectors;

(3) The means for receipt and processing of written reports of an alleged failure to make adequate, complete, or periodic inspections;

(4) A menas to conduct a review of the inspector's decision not to inspect or not to take an enforcement action with respect to a violation alleged by a citizen;

(5) A means to give the public advance notice of formal and informal hearings concerning enforcement actions and penalties.

18.6 *30 CFR 731.14(g)(4)—Volume 2, Tab D* The Illinois submittal is inconsistent with the Federal rules because inspectors do not have the independent authority to take enforcement action immediately upon the detection of a violation, as required by 30 CFR Part 840. Illinois appears to provide for enforcement after filing of an inspection report with a permit coordinator, which is inconsistent with the Federal rule.

Finding 19

The Secretary finds that Illinois does not have full authority under current Illinois laws and regulations pertaining to coal exploration and surface coal mining and reclamation operations, and that the Illinois program submission does not include the provisions necessary to implement, administer and enforce a system of performance bonds and liability insurance or other equivalent guarantees, consistent with the requirements of Subchapter J of 30 CFR Chapter VII. This finding is made pursuant to 30 CFR 732.15(b)(6) and is based on the lack of promulgated regulations and the findings listed below.

Portions of the following Federal bonding regulations were proposed for amendment on January 24, 1980 (45 FR 6028–6042): 30 CFR 800.5, 800.11(b)(1), 800.13, Part 801, 805.13, 805.14, 806.11, 806.12, 806.13, 806.14, 806.17, 807.12, 808.11, 808.12, and 808.13(a). Final Federal regulations on the above referenced bonding sections were published on August 6, 1980 (45 FR 52306–52324). Because of the public comment received by the Secretary during the promulgation process, many changes were made to the proposed rules.

The Secretary is taking the position that a state program's bonding provisions may be approved if they are consistent with either the Federal rules as they existed when the Illinois program was submitted on March 3, 1980, or the rules as amended August 6, 1980. Therefore, if the promulgated regulations included in the Illinois resubmission contain bonding provisions that are consistent with either the Federal rules as promulgated on March 13, 1979, or with the August 6, 1980, amendments, its bonding regulations may be approved. At the time of the final Secretarial decision on the Illinois program, the State will be advised of any further changes that may be required and will be allowed sufficient time to accomplish the changes.

19.1 *No corresponding Federal provision—Section 6.07(a)* Illinois Section 6.07(a) requires that, prior to institution of bond forfeiture proceedings by the Illinois Attorney General, the operator shall have the right to a hearing on the violation upon which the forfeiture would be based. The Secretary finds that the Illinois provision provides for the regulation of mining operations for which no provision is contained in SMCRA and that, pursuant to SMCRA Section 505(b), it is consistent with SMCRA.

19.2 *Section 509—Section 6.07(d)* Section 509 of SMCRA requires that performance bonds be "conditional upon faithful performance of all the requirements of this Act and the permit." Section 701(17) defines "permit area" to include that area of land "covered by the operator's bond as required by Section 509 of this Act." The Secretary has determined that the regulatory authority may forfeit any or all bonds deposited for an entire permit area regardless of the area in which the violation occurred. (30 CFR 808.12(c)). Therefore, Illinois section 6.07(d), by limiting the amount of the bond to be forfeited to "the amount of the bond or deposit for the area in which the violation occurred," is inconsistent with Federal requirements.

19.3 *Section 519(c)(2)–Section 6.08(d)(2)* The Federal provision requires that, prior to bond release, soil productivity for prime farmland be determined to be equivalent to that of simialr non-mined prime farmland through reference to the soil survey contained in the permit application pursuant to SMCRA Section 507(b)(16). The Illinois provision omits the required reference to the soil survey, and is inconsistent with SMCRA unless it is interpreted by regulation or otherwise to require reference to a soil survey contained in the permit application.

19.4 *30 CFR 731.14(g)(3)–Volume 2, Tab C.* The Illinois program element concerning bonding does not contain sufficient information to enable the Secretary to fully evaluate Illinois bonding provisions. It would be improved by submittal of material such as (1) a description of when and how actions against sureties will be taken; (2) a system providing for adequate bond at all times; (3) a system providing for bonds to be updated to cover changes as mining progresses; (4) a system assuring that the latest field conditions are reflected through bond adjustment in coordination with the inspection force; (5) a system allowing for forfeiture of a bond; (6) a description of the factors that will be considered in the establishment of a bond and/or release of all or a portion of the bond.

Finding 20

The Secretary finds that Illinois lacks the full authority or provisions to provide for civil and criminal sanctions for violations of the State law, regulations, and conditions of permits and exploration approvals, including civil and criminal penalties, in accordance with Section 518 of SMCRA and 30 CFR 845. This finding is made under 30 CFR 732.15(b)(7) and is based on the lack of promulgated regulations and the findings listed below.

20.1 *Section 518(a)–Section 8.04(a)* The Illinois statute adds the language "for the purpose of aiding in the administration of this Act." The Illinois Attorney General (Volume 7, page 17) indicates that Illinois Supreme Court decisions require that all penalties be imposed for this purpose to be valid. This provision is not on its face less stringent than SMCRA Section 518, but the Secretary must have before him the State's regulations or a narrative description dealing with its intended application before he can find the provision, as implemented, will be consistent with SMCRA.

20.2 *Section 518(b)—Section 8.04(b).* The Illinois statute omits the requirement that a penalty be assessed without a hearing "[w]here the person charged with such a violation fails to avail himself of the opportunity for a public hearing" as is required by SMCRA. Consequently, it is not clear what circumstances other than the waiver could lead to the assessment of a penalty without a hearing. The Illinois Attorney General (Volume 7, page 17) concludes in his opinion that the provision of an opportunity for a hearing implies that the only time that a hearing would not be held is when the required opportunity is not seized by the operator. Based on this assurance, the Secretary finds the Illinois provision to be acceptable.

20.3 *Section 518(d)—Section 8.04(d).* The Illinois statute provides for collection of a civil penalty, but does not specify, as does SMCRA, who has the authority to institute such actions or in which court the action will be brought. The Illinois Attorney General (Volume 7, page 17) states that the Illinois Constitution and Illinois case law make it clear that such actions are initiated in the Circuit Court and are brought by the Attorney General. Based upon this assurance, the Illinois provision is acceptable.

20.4 *Section 518(e)—Section 8.04(e).* The Illinois statute is on its face consistent with SMCRA, but is rendered inconsistent because of its reference to Illinois Section 8.06. Section 8.06 is the Illinois equivalent of SMCRA Section 521, but is inconsistent with SMCRA because it does not contain all the requirements of SMCRA Section 521. (see Findings 21.1–21.5).

20.5 *30 CFR 731.14(g)(7)—Volume 2, Tab C.* The Illinois submittal indicates that no assessment is made in those instances in which a violation is corrected within a specified abatement period. This is inconsistent with the penalty criteria established in SMCRA

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Section 518(a), because it does not require that each violation be assessed solely upon the established abatement factors.

20.6 *30 CFR 731.14(g)(7)—Volume 2, Tab G.* The Illinois submittal indicates that either a penalty or a cessation order would be issued if the operator fails to abate a violation, whereas SMCRA Section 521(a)(3) and 518(h) require that a cessation order be issued where the operator fails to abate and that a penalty be assessed for each cessation order. The Illinois submittal is inconsistent with SMCRA.

20.7 *30 CFR 731.14(g)(7)—Volume 2, Tab G.* There is an apparent inconsistency in that the Illinois narrative indicates that the operator may submit information within fifteen days, whereas the flow chart in Tab E shows twenty days and proposed Illinois rule 1845.17(a) identifies 20 days.

20.8 *30 CFR 731.14(g)(7)—Volume 2, Tab G.* The Illinois submittal allows a penalty to be calculated on such criteria as the daily cost of abatement and the cost of mitigating any environmental damage, whereas SMCRA Section 518(a) clearly establishes the factors which the amount of the panelty is to reflect. Under the Illinois plan these required factors would be considered by the regulatory authority only as options and then only as adjustments of a penalty rather than an establishing the penalty itself. This is inconsistent with SMCRA.

20.9 *30 CFR 731.14(g)(7)—Volume 2, Tab G.* The Illinois submittal contains insufficient information by which to determine whether the Illinois proposal meets the time periods required by SMCRA (Section 521(a), 30 CFR Part 845) in the payment of penalties and thus is inadequate. The submittal implies that at some point the proposed assessment will be reassessed but is insufficient in that it does not explain by whom and under what circumstances a proposed assessment would be reassessed prior to being sent to the operator.

20.10 *30 CFR 731.14(g)(7)—Volume 2, Tab G.* The Illinois submittal suggests that: (1) judicial review is available to contest the amount of the penalty instead of the administrative review provided by SMCRA; and (2) that any judicial review of a penalty is a *de novo* review. This is inconsistent with SMCRA Section 518(b).

20.11 *30 CFR 731.14(g)(7)—Volume 2, Tab G.* The Illinois submittal does not provide information concerning how the Illinois EPA and other agencies that appear to have some inspection responsibilities will schedule and perform inspections in a manner consistent with SMCRA. Further, they do not appear to have enforcement powers along with inspection powers, which is required by SMCRA.

20.12 *30 CFR 731.14(g)(5)—Volume 2, Tab E.* The flow chart in the Illinois submittal does not make it clear that the inspector is the person responsible for issuing notices of violation and cessation orders while in the field as required by 30 CFR Part 840.

20.13 *30 CFR 731.14(g)(7)—Volume 2, Tab G.* The Illinois submittal suggests an impermissible standard to determine when a notice of violation may be issued. As specified in 30 CFR Part 843, a notice of violation must be issued in each instance in which a violation has occurred without regard to whether or not corrective action can be taken within an abatement period and without regard to whether or not irreversible environmental damage has occurred.

20.14 *30 CFR 731.14(g)(7)—Volume 2, Tab G.* The Illinois submission suggests an impermissible standard for penalty determinations. It is not permissible to have a penalty determined based upon the submission of the case to the Attorney General's Office for litigation. SMCRA Section 518 and Illinois Section 8.04 require that each enforcement action be subject to an assessment process, which is contradicted in this part of the submission.

20.15 *30 CFR 731.14(g)(7)—Volume 1, Tab F; Volume 2, Tab G.* The Illinois submission appears to exclude violations of water and air pollution from assessment and collection under the Illinois surface mining statute which is inconsistent with SMCRA. If the Illinois EPA is to have sole responsibility for air and water, as implied, Illinois must submit processes and procedures which show that the IEPA will inspect, enforce, assess and collect civil penalties in a manner that is consistent with SMCRA.

20.16 *30 CFR 731.14(g)(7)—Volume 2, Tab G.* There is no indication as to what process will be used to include the required assessment factors for each violation. The submittal indicates that fines would be based on factors not allowed to be considered under SMCRA (Section 518). It appears that the only guideline for assessment is the maximum of $5,000 per day. The assessor appears to have the authority to determine whether there is to be an assessment, although no guidelines for these decisions are indicated. Adequate procedures must be identified for determining whether a fine is to be assessed and how the amount of the assessment will be established.

20.17 *30 CFR 731.14(g)(7)—Volume 2, Tab G.* The Illinois submittal indicates that a proposed assessment will be given to the operator as a result of the hearing process before the Illinois Pollution Control Board. The submittal indicates that the Board may determine assessments based on the cost of abatement and the ability to pay, standards which are inconsistent with SMCRA Section 518(a). Generally, this portion of the narrative fails to describe how the new Illinois Pollution Control Board will inspect, enforce, assess and collect penalties consistent with SMCRA.

Finding 21

The Secretary finds that Illinois does not have the full authority under State laws or regulations or provisions to provide for the issuance, modification, termination, and enforcement of notices of violation, cessation orders, and show cause orders in accordance with Section 521 of SMCRA and 30 CFR Parts 840–845. This finding is made under 30 CFR 732.15(b)(8) and is based on the lack of promulgated regulations and the findings listed below.

21.1 *Section 521—Section 8.06.* The Illinois statute omits references to the "authorized representative," which is inconsistent with SMCRA. The Illinois Attorney General (Volume 7, page 19) states that the term "Department" necessarily includes anyone authorized by the Department. The use of "authorized representative" in SMCRA Section 521 emphasizes the independent authority that must be placed in enforcement personnel. The Illinois statute does not clearly give independent authority to enforcement personnel. The Illinois program must provide that field inspectors have the authority to take all enforcement actions.

21.2 *Section 521(a)(2)—Section 8.06(b).* The Illinois statute provides that an operator may seek immediate injunctive relief from an issued order without exhausting administrative remedies and therefore is inconsistent with SMCRA.

21.3 *Section 521(a)(2)—Section 8.06(b).* The Illinois statute does not limit judicial review to that review provided by SMCRA (*See* Finding 28.1), and thus is inconsistent with SMCRA, because Illinois courts would be authorized to second-guess enforcement decisions, including notices and orders issued by the regulatory authority to protect the environment and public health and safety, in circumstances not authorized by SMCRA.

21.4 *Section 521(a)(3)—Section 8.06(c).* The Illinois statute provides that an operator may seek immediate injunctive relief from any order issued under the section without exhausting

administrative remedies as required by SMCRA, and thus is inconsistent with SMCRA.

21.5 *Section 521(a)(3)—Section 8.06(c).* The Illinois statute allows for an extension of the time to abate beyond 90 days (see Attorney General's opinion, (Volume 7, page 19), which is less stringent than SMCRA, which absolutely prohibits such an extension.

Finding 22

The Secretary finds that Illinois lacks the full authority under State laws and regulations or State program provisions to designate areas as unsuitable for surface coal mining consistent with SMCRA Section 522 and 30 CFR Parts 760–769. This finding is made under 30 CFR 732.15(b)(9) and is based on the lack of promulgated regulations and the findings listed below.

22.1 *Section 522—Section 3.16(b).* Illinois adds language that allows, under certain circumstances, mining excavations that remove and do not replace lateral support to be within 10 feet plus one and one-half times the depth of the excavation of established right-of-way lines of any public roads, streets or highways. This provision could conflict with the general prohibition of mining within 100 feet of the outside right-of-way line of any public road found in Section 522(e) (4) and (5) of SMCRA. However, Illinois, in its July 30, 1980, submission, states that this provision does not supersede the provisions of Section 522. Based upon this assurance, the Secretary finds Section 3.16(b) to be consistent with SMCRA.

22.2 *Section 522(a)(3)(A)—Section 7.02(b)(1).* SMCRA Section 522(a)(3)(A) provides that surface areas may be designated unsuitable for mining if mining would be incompatible with existing State or local land use plans or programs while the Illinois provisions refers only to plans. However, Illinois, in its July 30, 1980, submission, states that its promulgated regulations will refer to both plans and programs. If so, the Secretary will be able to approve Section 702(b)(1) on resubmission.

22.3 *Section 522(e) (1) and (2)—No corresponding Illinois section.* The Illinois statute fails to address surface coal mining activities on lands that are protected against mining by SMCRA Section 522(e) (1) and (2). Since some of these areas could contain non-Federal land underlain by coal, this omission could be inconsistent with SMCRA. Illinois, in its July 30, 1980, submission, indicates its intent to promulgate regulations consistent with Sections 522(e) (1) and (2). This would be acceptable, if the Attorney General's opinion indicates that such rules would be authorized.

22.4 *Section 522(e)—Section 7.01(e).* The Illinois provision excepts from its prohibitions operations that existed on August 3, 1977, whereas SMCRA Section 522(e) excepts operations with "valid existing rights." The Illinois provision is acceptable because operations with "valid existing rights" include all operations in existence on August 3, 1977, as well as other operations that did not exist as of that date.

22.5 *30 CFR 731.14(g)(11)—Volume 2, Tab K.* The Illinois submission discussion of staffing requirements and methodology contains insufficient information to enable the Secretary to find there will be adequate staffing to implement this system.

Finding 23

The Secretary finds that Illinois has in part the full authority over State laws or regulations or the provisions in the state program for public participation in the revision and enforcement of State regulations and the State program, consistent with the public participation requirements of the Act and the regulations. This finding is made under 30 CFR 732.15(b)(10) and is based on the lack of promulgated regulations and on the findings listed below.

23.1 *Section 513(a)—Section 2.04(a).* Section 513(a) requires an applicant to advertise in local newspapers the ownership, location and boundaries to be affected by the proposed operation and to submit a copy of the advertisement along with the permit application. Illinois Section 204(a) does not specify the contents of such advertisements nor does it require submittal of a copy of the advertisement along with the permit application. The Federal requirement ensures public notice of a proposed operation. While this deficiency might be remedied by regulation, the Secretary is unable at this time to find that the Illinois program will specify the contents of such advertisements and require submittal of a copy along with the permit application.

23.2 *Section 513(b)—Section 2.04(d).* Section 513(b) provides that, among others, the heads or officers of local governmental agencies shall have the right to file written objections to a permit application and request an informal conference. Illinois Section 204(d) limits local government involvement to the county board of counties to be affected by the proposed operations. This would limit the right of city and town governments and local planning and other agencies to object to an application, which renders the Illinois provision inconsistent with SMCRA.

23.3 *Section 513(b)—Section 2.04(d).* The Illinois statute does not provide that objections to applications shall be immediately transmitted to the applicant and made available to the public as is required by SMCRA Section 513(b). This makes the Illinois provision inconsistent with SMCRA, since it reduces public access to information that would assist public participation in permit decisions.

23.4 *Section 513(b)—Section 2.04(d).* SMCRA Section 513(b) requires that informal conferences on permit applications be advertised in a newspaper at least two weeks prior to the conference date. The Illinois provision contains no such requirement and is, therefore, inconsistent with SMCRA.

23.5 *Section 513(b)—Section 2.04(d).* The Illinois statute does not require that informal conferences be held in the locality of the proposed mining, as is required by SMCRA Section 513(b), and thus is inconsistent with SMCRA.

23.6 *Section 513(b)—Section 2.04(d).* The Illinois statute does not provide that a party to the informal conference on a permit applicatin may have access to the proposed mining area for the purpose of gathering information relevant to the proceeding, as is required by SMCRA. Thus, the Illinois provision is inconsistent with SMCRA.

23.7 *Section 514(e)—Section 2.11(g).* SMCRA Section 514(e) requires that a verbatim record of each public hearing required by the Act be prepared and made available. Illinois Section 211(g) appears to limit this requirement to hearings on permit approvals or disapprovals. However, Illinois Section 8.09 requires transcripts to be made available for other hearings and Illinois, in its July 30, 1980, submission, states that its promulgated regulations will require recording of all hearings. The Secretary finds that this would satisfy minimum Federal requirements for verbatim records.

23.8 *Section 515(b)(15)(A)—Section 3.13(a)(1).* The Illinois provision requires that daily notice of blasting be given residents living within one-half mile of blasting sites whereas SMCRA Section 515(b)(15) requires such notice to be given to all "resident/occupiers." The Illinois provision is consistent with SMCRA if it is interpreted to mean that daily notice shall be provided all resident/occupiers within one-half mile of proposed blasting sites.

23.9 Section 517(f)—Section 8.01(c). Illinois Section 8.01(c) requires public availability of information obtained by the regulatory authority under this "Section," while the Federal provision

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would require availability of information obtained under "this title," referring to the Illinois counterparts to SMCRA Sections 501–529. The Illinois Attorney General (Volume 7, page 16) notes that Illinois is authorized to copy any records under the Illinois statute or permits. This, however, does not ensure public availability of the information as required by SMCRA Section 517(f). The Illinois July 30, 1980, submission, states that the promulgated Illinois regulations will require public availability of all records, reports, inspection materials or information obtained by the regulatory authority under the Illinois counterparts to SMCRA Sections 501–529. The Secretary would be able to approve Section 8.01(c) upon submission of such promulgated regulations, but may not do so at this time.

23.10 *Section 517(f)—Section 8.01(c).* The Illinois statute omits the requirement that records and other information be available to the public at locations in the "county, multicounty, and State" area as required by SMCRA. The Illinois Attorney General (Volume 7, page 17) asserts that such availability at "central and sufficient locations," as required by Illinois Section 8.01(c), complies with SMCRA Section 517(f). The Illinois provision requires that chosen locations be convenient, central and sufficient. This is consistent with the intent of SMCRA.

23.11 *Section 517(h)—Section 8.06(a).* There appear to be no Illinois provisions comparable to SMCRA Section 517(h), which provides for informal review of state inspection and enforcement decisions. Section 8.06(a), listed in the Illinois side-by-side (Vol. 4, p. 61) as comparable to SMCRA Section 517(h), does not provide for review of the refusal of the authorized representative to issue a citation, nor does it require the regulatory autority to give written reasons for the final disposition of the case. Further, the section fails to require the regulatory authority to determine whether or not adequate and complete inspections have been made and furnish a written statement of the reasons for its determination that adequate and complete inspections have or have not been conducted as is required by SMCRA Section 517(h). However, Illinois, in its July 30, 1980, submission, indicates that its promulgated regulations will cover all these points consistently with SMCRA. This would cover the deficiency.

23.12 *Section 519(h)—Section 6.08(c) and 8.09.* Section 519(h) of SMCRA empowers the regulatory authority to administer oaths, subpoena witnesses, or written or printed materials, among other things, for the purpose of a hearing on an appeal of the regulatory authority's decision for bond release. As Illinois notes in its side-by-side comparison (Vol. 4, p. 68), that Illinois Section 6.08(c) "does not give the regulatory authority the powers granted in Subsection 519(h) of the Federal Act." Illinois Section 8.09, which requires adjudicatory hearing procedures, does not apply to Section 6.08. Accordingly, the Illinois statute is inconsistent with SMCRA unless Illinois, by regulation or otherwise, provides the regulatory authority with the powers specified in Section 519(h) of SMCRA for the purpose of a hearing on bond release.

23.13 *Section 520(c)(2)—Section 8.05.* Illinois Section 8.05 does not contain a provision that would allow the Secretary to intervene in a citizen's suit to compel compliance with the Illinois statute. Thus, the Illinois provision is inconsistent with SMCRA Section 520(c)(2).

23.14 *Section 520(d) and 525(e)—Section 8.05(c) and 807(f).* The Illinois statute allows the awarding of litigation costs to any party:

> • • • on the basis of the importance of the proceeding and the participation of the parties to the efficient and effective enforcement of the Act.

SMCRA Section 520(d) allows such awards where deemed appropriate by the court and Section 525(e) allows awards of reasonable litigation costs in administrative proceedings. Regulations promulgated under Section 525(e) provide that a person may receive an award if "the person made a substantial contribution to a full and fair determination of the issues." 43 CFR 4.1294. The Attorney General of Illinois (Volume 7, page 19) states that there is no legally significant difference between SMCRA and the Illinois statute on this issue, while the Illinois July 30, 1980, submission, states that the Illinois provision would not "necessarily" limit judicial discretion in awarding litigation costs.

However, the intent of Section 520(d) is to allow judicial discretion in determining whether to award litigation costs. The Illinois provision clearly would interfere with this discretion by limiting the factors a court could consider in its determination. With respect to administrative proceedings, SMCRA intends, as expressed at 43 CFR 4.1294, that awards will be based on the effectiveness of a party's contribution to a resolution of the issues involved, not on the "importance of the proceeding" or other such factors.

Since the Illinois standard would lead to denials of awards in situations in which Congress intended they would be awarded, the Illinois provision is inconsistent with SMCRA.

23.15 *SMCRA Section 520(f)—Section 8.05(d).* The Illinois statute (SCMCRA Section 8.05(d)) does not specify the venue of suits brought under its provisions. The Secretary finds, pursuant to the assurance of the Illinois Attorney General (Volume 7, page 19) that the omission has the legal effect of giving the injured person a choice of venue, that the provision would allow suits in the judicial district where the affected mining operation is located. This is consistent with SMCRA Section 520(f).

23.16 *No Corresponding SMCRA Section—Section 7.03(f).* The Illinois provision requires the Illinois Department of Mines and Minerals to adopt rules to prevent the filing of repetitive or frivolous "unsuitability" petitions. Section 7.03(f) cannot be approved as consistent with SMCRA until the Secretary has reviewed the rules to determine that Illinois interprets Section 703(f) as not allowing rules that inhibit the right of a person "having an interest which is or may be adversely affected" to file an unsuitability petition.

23.17 *Section 525(a)(1)—Section 8.07(a).* The Illinois provision allows only the person who requests review of an enforcement order or notice may request a hearing on the enforcement action. SMCRA extends this right also to "any person having an interest which is or may be adversely affected" by the enforcement action. The Illinois statutory side-by-side (Volume 4, page 82) states that exclusion of the latter category of persons is intentional. The Illinois provision is inconsistent with SMCRA, because it narrows the class of persons who may request a hearing.

23.18 *No corresponding Federal provision—Section 8.09.* Section 8.09 requires that hearings held under certain sections of the Illinois statute shall have the characteristics of formal, adjudicatory hearings. The reference to Section 7.03(c) is inconsistent with SMCRA since that section refers to hearings on petitions to designate lands unsuitable for surface coal mining, which SMCRA requires to be less formal legislative hearings. *In Re: Permanent Surface Mining Regulation Litigation,* No. 79–1144, slip up at 24–25 (D.D.C. Feb. 26,1980.) Also inconsistent with SMCRA is the reference to Section 8.06, since hearings under SMCRA Section 521(a)(5), the counterpart to Illinois Section 8.06(e), are to be informal. *See also* 30 CFR 843.15.

23.19 *30 CFR 731.14(g)(8)—Volume 2, Tab H.* The Illinois submission does not provide a sufficient basis for the Secretary to find that the Illinois program adequately describes: (1) where the public can inspect records; and (2) the identification of agency records that will be needed to document public notice.

23.20 *30 CFR 731.14(g)(8)—Volume 2, Tab H.* The Illinois submission does not provide a sufficient basis for the Secretary to find that the Illinois program adequately describes: (1) the provisions that have been made to accomodate all those who wish to be heard, (2) the procedures for assuring that comments will be considered by decisionmakers, and (3) the persons or entities responsible for notifying the public.

23.21 *30 CFR 731.14(g)(14)—Volume 2, Tab H.* The Illinois submission does not provided a sufficient basis for the Secretary to find that the Illinois program adequately describes: (1) a standard mechanism for consideration of public views so as to affect decisionmaking, and (2) a means of documenting the listed views, how they were reviewed, and the reasons for the disposition of comments.

23.22 *30 CFR 731.14(g)(14)—Volume 2, Tab H.* The Illinois submission does not provide a sufficient basis for the Secretary to find that the Illinois program adequately describes public inspection of records, informal conferences, the manner in which publication for public notice is assured, and public hearings requirements.

23.23 *30 CFR 732.15(b)(10)—Volume 1, Tab A and D, and Volume 2, Tab N.* The Surface Mining Advisory Council, consisting of 10 members representing conservation, agriculture, surface coal mining industry, local government, environmental protection, the colleges and universities, underground coal mining industry, labor, and the general public, and who were appointed by the Governor for a term of three years, developed draft legislation. The Illinois General Assembly passed HB 2548 and it was signed into law on September 22, 1979. The Advisory Council held numerous meetings that were open to the public. To aid in drafting the Illinois rules, the Illinois Department of Mines and Minerals held public meetings (workshop sessions) on September 21, November 11, 13, 21 and December 3, 5, 6, 12, 13, 14, 19 and 23, 1979. All comments received were presented to the Surface Mining Advisory Council, which met on January 10, 11, 17 and 18, 1980, to review the regulations and all comments thereto. In addition, public hearings were held on July 14, 1980, at Carbondale, Illinois, and on July 15, 1980 at Springfield, Illinois, to review the Illinois state program. The State program (Volume 9) includes revised draft regulations that were published in the Illinois Register on June 13, 1980, and thus were in the official rulemaking process. A public comment period followed the public hearings to allow interested persons to review the program and/or comment. The Illinois rules are in the promulgation process. This meets the requirements for public participation in development of state programs under SMCRA and the Federal rules.

Finding 24

The Secretary finds that Illinois does not have the full authority under State laws or regulations or provisions in the State program to monitor, review and enforce the prohibition against indirect or direct financial interests in coal mining operations of the State by employees of the State consistent with 30 CFR Part 705. This finding is made under 30 CFR 732.15(b)(11) and is based on the lack of promulgated regulations and on the finding listed below.

24.1 *Section 517(g)–Section 9.06.* The Illinois statute limits the financial interest requirements to persons employed by the Department of Mines and Minerals. While the Illinois Attorney General (Volume 7, page 17) states that the financial interest requirements apply to employees of the State regulatory authority, the Illinois program clearly indicates that employees of State agencies other than the Department will have functions or duties in the implementation of the Illinois program. Since these employees are not clearly considered to be employees of the state regulatory authority for conflict of interest purposes, as required by SMCRA, Illinois Section 9.06 is inconsistent with SMCRA.

Finding 25

The Secretary finds that Illinois has authority under State laws to require training, examination, and certification of persons engaged in or responsible for blasting and the use of explosives in accordance with Section 719 of SMCRA. This finding is made under 30 CFR 732.15(b)(12). Because the Secretary has no final regulations for this matter, Illinois is not required to enact regulations on this subject until six months after the Secretary issues his final regulations for training, examination, and certification of persons engaged in or responsible for blasting and the use of explosives.

Finding 26

The Secretary finds that Illinois does not have the full authority under current Illinois laws and regulations pertaining to coal exploration and surface coal mining and reclamation operations and that the State program submission does not include the necessary provisions to provide for small operator assistance consistent with 30 CFR 795. This finding is made under 30 CFR 732.15(b)(13) and is based on the lack of promulgated regulations and on the findings listed below.

26.1 *Section 507(c)–2.02(b).* SMCRA requires the regulatory authority to assume the cost of determining the probable hydrologic consequences of an operator's mining operations if the annual production will not exceed 100,000 tons. The Illinois provision instead applies to the annual production of a single operation. Since an operator may have more than one operation, the Illinois provision would require the regulatory authority to assume the costs of more determinations than would the SMCRA provision. While the Illinois provision is consistent with SMCRA, Federal administration and enforcement and small operator assistance program (SOAP) grants may not be used to cover costs that result from the more liberal Illinois provision. Small operator's assistance will only be provided in accordance with Section 507(c) of SMCRA.

26.2 *30 CFR 731.14(g)(16)–Volume 2, Tab P.* The State submittal is inadequate to enable the Secretary to find that Illinois' SOAP will be consistent with the Federal requirements, because it provides no information regarding the procedure for determining the eligibility of small operators for assistance, the procedure for qualifying laboratories according to work to be done, and the number of contracts expected to be let. Further, the submittal indicates that the regulatory authority has an agreement with Southern Illinois University (SIU) but does not provide a copy of that agreement. Also, the State provides no description of operator eligibility and laboratory qualifications. Further, no information is provided on the process to assure small operator assistance program quality control and laboratory quality assurance.

Finding 27

The Secretary finds that Illinois does not have the full authority under State laws and regulations to provide for the protection of State employees in accordance with the protection afforded Federal employees under Section 704 of SMCRA. This finding is made under 30

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CFR 732.15(b)(14) and is based on the lack of promulgated regulations and the finding listed below.

27.1 *Section 704—No corresponding Illinois provision.* The Illinois statute has no counterpart to SMCRA Section 704, which provides for criminal sanctions against persons who resist, prevent, impede or interfere with persons performing duties under the Act. This is less stringent than SMCRA.

Finding 28

The Secretary finds that Illinois does not have the full authority under State laws or regulations or program provisions to provide for administrative and judicial review of State program actions, in accordance with Sections 525 and 526 of SMCRA and Subchapter L of 30 CFR Chapter VII. This finding is made under 30 CFR 732.15(b)(15) and is based on the lack of promulgated regulations and on the findings listed below.

28.1 *Section 526—Section 8.10.* The Illinois statute does not expressly limit the granting of temporary relief in review proceedings according to those standards set forth in Section 526(c) of SMCRA. The Illinois Attorney General's opinion (Volume 7, page 22) states that similar standards are found in Illinois case law. In addition, the Illinois July 30, 1980, submission includes a copy of the Illinois Administrative Review Act, which does contain appropriate provisions for temporary relief in review proceedings that are consistent with SMCRA. Thus, the Illinois section is acceptable.

28.2 *Section 526—No corresponding Illinois provision.* The Illinois statute does not contain the authority, required by SMCRA 526(e), that actions of the regulatory authority pursuant to an approved State program shall be subject to judicial review by a court of competent jurisdiction. However, the July 30, 1980, submission, include a copy of the Illinois Administrative Review Act which contains appropriate judicial review provisions that are applicable to the SMCRA. This is consistent with SMCRA.

28.3 *30 CFR 731.14(f)(15) Volume 2, Tab 0.* The Illinois system is unclear as to whether a *de novo* review of administrative decisions is provided. This must be clarified and must be in accord with Section 526 of SMCRA.

28.4 *Section 526.* The Illinois statute does not contain any provisions comparable to the judicial review provisions contained in Section 526 (a), (b) and (d) and therefore does not appear to contain the same or similar procedural requirements of SMCRA.

Finding 29

The Secretary finds that Illinois does not have the full authority under the Illinois law and regulations to cooperate and coordinate with, and provide documents and other information to, the Office of Surface Mining. This finding is made under 30 CFR 732.15(b)(16). The Illinois program (Volume 2, Tab I and Tab J) contains provisions to cooperate and coordinate with Federal agencies, but it does not specifically allow for the providing of documents and other information to the Office of Surface Mining as required under the provisions of 30 CFR Chapter VII.

Finding 30

The Secretary finds that the Illinois laws and regulations and the State program do contain provisions that would interfere with or preclude implementation of those in SMCRA and 30 CFR Chapter VII. This Finding is made under 30 CFR 732.15(c) and is based on the findings listed below and on Findings 12–29.

30.1 *30 CFR 701.5—Section 1.03(a)(1).* The Illinois definition of "affected land" does not include water in which surface or underground mining activities occur and does not include land or water located above underground mine workings. To this extent, the Illinois definition is inconsistent with the definition of "affected area" found in the Federal rule.

30.2 *30 CFR 701.5—Section 1.03(a)(18).* The Illinois definition of "permit term" is limited to the period of permitted mining operations, while the term of a permit under SMCRA would include reclamation activities as well. This is less stringent than SMCRA.

30.3 *30 CFR 701.5—Section 1.03(a)(25).* Illinois defines "toxic conditions" and "toxic materials" as conditions and materials that will not support higher forms of plant or animal life. The Federal phrase "toxic forming materials" is defined in terms of being detrimental to biota or uses of water. The Illinois definition is inconsistent with the Federal definition because biota includes are lesser forms of life than are protected by the Illinois definition and the Illinois definition would not necessarily lead to protection of all uses of water.

30.4 *Section 701(28)—Section 1.03(a)(24).* The definitions of "surface mining operations" and "underground operations" in the Illinois statute do not, taken together, include the surface impacts of underground coal mining as does the definition of "surface coal mining operations in SMCRA". This is inconsistent with SMCRA.

30.5 *Section 701(28)—1.03(a)(26).* The definition of "underground mining operations" in the Illinois Statute does not include all activities and areas included in the definition of "surface coal mining operations" in SMCRA. The Illinois definition deletes the activities of cleaning, concentrating, or other processing or preparation loading of coal for interstate commerce at or near the mine site; deletes areas upon which such activities occur or where such activities disturb the natural land surface; deletes adjacent lands which are incidental to any such activities; and fails to include areas such as impoundments, dams, entryways, refuse banks, dumps, stockpiles, overburden piles, culm banks, tailing, holes or depressions, and other areas upon which are sited structures, facilities or other property on the surface, resulting from or incident to such activities. This is less stringent than SMCRA.

30.6 *No corresponding SMCRA section—Section 3.11(d).* The Illinois provision specifies minimum performance standards for disposal of gob and slurry. This provision is not inconsistent with SMCRA, since it specifically states that it does not supersedes any other requirements of the Illinois statute. Thus, all other performance standards will apply to disposal of gob and slurry in addition to those in Section 3.11(d).

30.7 *Section 707—No corresponding Illinois provision.* The Illinois statute contains no counterpart to SMCRA, Section 707, which is a severability clause that, if any part of SMCRA is held invalid, preserves the remainder. Illinois Section 1.04(f), cited by Illinois as being the equivalent of Section 707 (Volume 4, page 94), deals only with revision of the Illinois program when SMCRA or the Federal regulations are changed or held invalid. However, there is no indication in the administrative record that the lack of a severability clause in the statute will be interpreted as rendering the entire statute invalid should one part be declared invalid. Pending clarification of this issue during the resubmission period, the Secretary is unable to determine whether the Illinois statute is consistent with SMCRA in this regard.

Finding 31

The Secretary finds that, with respect to staff, funding and logistics, the Illinois submission does not adequately demonstrate that the Department of Mines and Minerals and other state agencies having a role in the Illinois program have sufficient legal, technical

and administrative personnel and sufficient funding to implement, administer and enforce the provisions of the program. 30 CFR 732.15(b), and other applicable State and Federal laws. This finding is made under 30 CFR 732.15(d) and is based on the findings listed below.

31.1 *30 CFR 731.14(e)—Volume 1, Tab E.* The Illinois program description, including appropriate charts, of the existing and proposed structural organization of the regulatory authority and other agencies that will have duties in the state program, including a description of the coordination system among these agencies and the lines of authority and staffing functions within each agency and among agencies, is unclear in that:

A. Coordination mechanisms to insure that interagency actions will be sufficient or timely are not adequately described. Illinois has not submitted any flow charts, systems analyses, standard operating procedures or other documentation to demonstrate the capability of the interagency scheme to function. There is no specification of the decision authority in event of conflicts between agencies;

B. Illinois has divided so many of its functions and powers that it appears that the Department of Mines and Minerals cannot conduct full inspections as required. The inspection powers are divided among the Departments of Mines and Minerals, Agriculture, and Conservation and the Illinois Environmental Protection Agency (IEPA). No provision is made for coordinating the efforts of the three of more inspectors required to perform a complete review of all activities at a mine, and agencies other than the Department of Mines and Minerals apparently have insufficient power to fulfill responsibilities; and

C. No organizational charts have been submitted that depict the Institute of Natural Resources or its component organizations.

31.2 *30 CFR 731.14(f)—Volume 1, Tab F.* The Illinois submission of supporting agreements between agencies that will have duties under the state program is unclear in that:

A. No agreement is submitted to document the working relationship with the Institute of Natural Resources;

B. The agreement with IEPA does not provide for turnabout times to ensure timely processing of permits or specify the nature of laboratory tests or specifications to be used for product reports and reviews.

31.3 *30 CFR 731.14(g)(2)—Volume 2, Tab B.* The narrative descriptions, flow charts and other documents of the Illinois system for assessing permit fees appear to be adequate. SMCRA Section 507(a) requires the fee revenues to be equal to or less than the actual or anticipated cost of review, administration and enforcement. The information provided by Illinois depicts a system that appears to be feasible. It should be noted, however, that the submission states that 20,000 acres are mined annually and that fees are $125 per hundred acres, which will generate revenues of $500,000 annually. This appears to be a mathematical error since a fee at that rate for 20,000 acres would only equal $25,000 per year. This discrepancy should be clarified.

31.4 *30 CFR 731.14(i)—Volume 1, Tab I.* The summary table of the existing and proposed state program staff, showing job functions, titles and required job experience and training is insufficient to enable the Secretary to evaluate the adequacy of staffing in that:

A. The Illinois submittal indicates that the majority of land reclamation specialists will be in Class I. The job descriptions indicate that Class II, but not Class I, specialists will have authority to issue notices of violations and cessation orders to operators violating the Illinois statute or regulations. However, the number of Class II specialists is not adequate to issue notices and orders;

B. No position, statement of function or other documentation is provided for the proposed positions in the Institute of Natural Resources.

31.5 *30 CFR 731.14(j)—Volume 1, Tab J.* The Illinois program description of how the staffing proposed will be adequate to carry out the functions, including permitting, inspection and legal actions, for the projected workload to ensure that coal exploration and surface coal mining and reclamation operations will be regulated in accordance with the requirements of SMCRA and 30 CFR Chapter VII, is insufficient to enable the Secretary to find that staffing is adequate, because:

A. Based on Illinois' information on frequency of inspections (Volume 2, Tab D), the State would appear not to be able to carry out adequate inspections at mines and other inspectable units. The Illinois proposal is based upon the concept of inspecting mines, while SMCRA and 30 CFR Chapter VII clearly define tipples, preparation plants, carbon recovery operations and other similar structures and projects as "inspectable units";

B. The proposed staffing for the administration of the bonding program at State headquarters level is 5 percent of the duties of the land reclamation supervisor and 10 percent of the duties of the clerk-IV, which appears to be inadequate for dealing with this sensitive element of the program;

C. One attorney is proposed to handle legal matters for the Department of Mines and Minerals. Due to the highly legalistic work inherent to a regulatory agency, one attorney alone cannot perform all necessary work, including giving advice, providing legal opinions, participating in negotiations, and conducting litigation. Illinois proposes to use the services of a contract attorney, but it has not identified the numbers of hours or services provided through this arrangement;

31.6 *30 CFR 731.14(1)—Volume 1, Tab L.* The Illinois submission of the actual capital and operating budget and sources of funds for the past year, current year, and future two years is insufficient to enable the Secretary to evaluate the adequacy of Illinois' finding. By providing a statement of facts or assumptions used in the development of this information, Illinois would assist the Secretary to make a determination of the adequacy of the projections.

Section VI.—Disposition of Comments

The comments received on the Illinois program during the public comment periods described previously under "Background on Illinois' Program Submission" raised numerous issues. The Secretary considered these comments carefully in evaluating Illinois' program, as indicated below. In many instances, where comments relate to Illinois' proposed rules, further relevant information can be found in the letter from the Director of OSM to Illinois officials referred to above under "Background on the Illinois Program Submission." Copies of this letter are available at the locations listed above under "Addresses."

Department of the Interior

1. The Bureau of Mines (BOM) (ARN: ILL–0081) commented that Illinois statute Section 2.08(b)(4), which provides that a permit application shall not be approved if the area proposed to be mined is the subject of a designation proceeding, is more stringent than its SMCRA counterpart Section 510(b)(4) in that it does not provide an exception where the operator has made "substantial, legal, and financial commitments in relation to the [proposed] operation" prior to January 4, 1977. The secretary agrees and finds the Illinois provision to be acceptable.

2. BOM (ARN: ILL–0081) commented that the Illinois statutory-performance standard (Section 3.07) for high

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capability lands is more stringent than the SMCRA requirements for these lands, because this provision will provide better reclamation than the Federal Act for land that does not meet the definition of prime farmland, but which is capable of row-crop use. However, as detailed in Finding 14.5, the Secretary finds the Illinois provision inconsistent with SMCRA.

3. The Heritage Conservation and Recreation Service (HCRS) (ARN: ILL–0095) commented that the Interagency Agreement with the Illinois Deparment of Conservation would be strengthened by specifically including under the general provisions, compliance with 36 CFR 800—Protection of Historic and Cultural Properties. Illinois proposed regulation 1761.12(e), if promulgated, would require joint approval by all affected agencies of surface mining operations that may adversely affect any publicly owned place on the National Register of Historic Places. This would be consistent with the Federal regulations. HCRS also suggested that the agreement should include recreational and heritage resources as part of the Department of Conservation evaluation responsibilities. The Federal regulations do not contain this requirement and the State cannot be required to do more than the Federal rules require.

4. The Geological Survey (GS) (ARN: ILL–0072) recommended that the State be informed about the exisitng Bureau of Land Management/GS/OSM Memorandum of Understanding on the management of Federal coal. A reference to the MOU in the State program was suggested by GS as being needed to inform the general public and the State regulatory authority. A copy of the MOU has been sent to the State and may be referenced in its program, if the State so desired.

5. GS (ARN: ILL–0072) commented that the State should briefly address State procedures for processing exploration, mining plans, or permits that include Federal lands. Jurisdiction for processing exploration and/or mining permits on Federal land lies solely with the Secretary, though a State may enter into a cooperative agreement with the Secretary pursuant to SMCRA Section 523(c) that would allow the State to assume partial responsibility for Federal lands in the State. Illinois chose not to enter into such an agreement at this time and therefore is not required to discuss Federal land impacts in its program.

6. The Fish and Wildlife Service (FWS) (ARN: ILL–0082) pointed out that the proposed Illinois rule 1701.5 definition of "Best Technology Currently Available" is significantly different from the Federal definition, since it requires consideration of economic and energy requirements, and economically viable alternatives. However, the revised proposed rule 1701.5 submitted July 30, 1980, would be acceptable if promulgated since it does not contain the inconsistent references to economic and energy considerations.

7. The FWS (ARN: ILL–0082) noted that proposed Illinois regulation 1762.12(b) would have provided that additional unsuitability for mining criteria could be consistent with the Act, if they provided "for protection" of the public health, safety and welfare. Section 762.12(b) of the Federal regulations provides that such additional criteria are consistent only if they provide "for greater protection." However, the revised Illinois regulations submitted June 16, 1980, contain the word "greater."

8. The FWS (ARN: ILL–0082 and ILL–0176) commented that the Illinois state program does not comply with 30 CFR 731.14(g)(10), which requires a narrative description of the Illinois system for consulting with State and Federal agencies having responsibility for fish and wildlife, historic, cultural and archeological resources, since the Illinois narrative requires consultation only with State agencies. The FWS also commented this would nullify proposed Illinois regulations 1776.12(b)(2), 1780.16, 1784.21, 1786.13(a), and 1786.14(a). Illinois should address in the resubmission its system for consultation with pertinent Federal agencies. *See* Finding 15.9.

9. The FWS (ARN: ILL–0082) pointed out that the inclusion of the words "but in accordance with Subsection 522(a)(1)" in the Illinois regulation 1762.14, which concerns exploration operations on lands designated unsuitable, is misleading. The Secretary agrees with this comment. However, this language was deleted from the proposed Illinois regulations submitted June 16, 1980.

10. The FWS (ARN: ILL–0082) commented that proposed Illinois regulation 1770.12, which addresses coordination of review and issuance of permits with other Federal and State permitting processes applicable to surface coal mining, is inconsistent with the corresponding Federal regulation. The Secretary agrees that the proposed regulation could be changed to insure more direct coordination with the Federal agencies concerned. However, the proposed Illinois regulation does provide for coordination of review and issuance of permits including the applicable requirements of other laws and could, therefore, be consistent with the Federal rule.

11. The FWS (ARN: ILL–0082) suggested rewording Illinois regulations 1779.20, 1783.20 and 1786.17(a)(2). 30 CFR 779.20 and 783.20, which required permit applicants to submit fish and wildlife resources information, have been remanded by the U.S. District Court for the District of Columbia (*In Re: Permanent Surface Mining Regulation Litigation*, No. 79–1144, February 26, 1980). Illinois revised regulations resubmitted on June 16, 1980, omitted these sections. The Secretary cannot require these rules at this time (*See General Background on the State Program Approval Process*, above). Similarly, 30 CFR 780.18 and 784.21, which required permit applications to contain fish and wildlife reclamation plans, have been suspended. Therefore, Illinois' omission of a counterpart to 30 CFR 786.17(a)(2), which requires review of such plans, is not presently significant.

12. The FWS (ARN: ILL–0082) commented that proposed Illinois regulation 1786.11(c) is inconsistent with the corresponding Federal rule, because it does not require that Federal agencies with jurisdiction over or interest in the area of a proposed operation be notified on the filing of a permit application. The Secretary agrees that this proposed regulation is inconsistent with the Federal rule. However, proposed Illinois rule 1786.11(c), submitted July 30, 1980, would, if promulgated, be consistent.

13. The FWS (ARN: ILL–0082) contends that proposed Illinois regulation 1786.19(o) usurps the authority and responsibility of the FWS regarding the Endangered Species Act. The Illinois regulation 1786.19(o) is consistent with the corresponding Federal rule, 30 CFR 786.19(o), and does not usurp the authority of FWS.

14. The FWS (ARN: ILL–0082) contends that proposed Illinois regulation 1786.29(a) concerning conditions of permits should contain a process for consultation with the FWS to maintain the integrity of this provision. The Secretary's regulations, however, have no such requirement and the State cannot be required to do more than the Federal regulations require.

15. The FWS (ARN: ILL–0082) commented that proposed Illinois regulation 1788.12(b)(2) and 1788.12(f) concerning permit revision do not provide for written notification to State and Federal fish and wildlife agencies so that significant deviation from fish and wildlife permit requirements can be identified. These Illinois provisions are consistent with the Federal rules in regard to written notification requirements.

16. The FWS (ARN: ILL–0082) commented that the regulatory authority should contact the FWS in conjunction with Illinois regulations 1816.44(a)(3) and 1817.44(a)(3) concerning the hydrologic balance of stream channel diversions. The Illinois regulation is consistent with the corresponding Federal regulation and the Secretary cannot require the State to do more than the Federal regulations require.

17. The FWS (ARN: ILL–0082) commented that proposed Illinois regulations 1816.97(d) and 1817.97(d) concerning protection of fish, wildlife and related environmental values are inconsistent with the corresponding Federal rules for not requiring protection "to the extent possible using the best technology current available." The Secretary agrees with this comment.

18. The FWS (ARN: ILL–0082) commented that proposed Illinois regulations omit the requirement of the corresponding Federal regulations, 30 CFR 815.133(c) and 817.133(c), that alternative land use may be approved only "after consultation with the landowner or the land management agency having jurisdiction over the land." The Secretary agrees this is inconsistent with the Federal rules.

19. The FWS (ARN: ILL–0082) objected to inclusion of proposed Illinois regulation 1825, concerning high capability lands, without clarification that the Illinois rule would not lead to significant losses of important fish and wildlife areas, especially wetlands. The Secretary agrees that the intent of this rule is unclear. However, it does require that all other requirements of the regulations, including fish and wildlife regulations, be met.

20. The FWS (ARN: ILL–0176) considers the Illinos program to be inadequate and opposes acceptance of it by the Secretary. The Secretary is initially disapproving the program in part.

21. The National Park Service (NPS) (ARN: ILL–0094) commented that it should be allowed to participate in permitting decisions in cases where NPS units may be affected. Illinois proposed regulation 1761.12(e)(2) would require joint approval by the Illinois Department of Mines and Minerals and the NPS of permits for operations that may adversely affect a National Park.

22. The NPS (ARN: ILL–0094) stated that it should be involved in setting bond amounts for surface mining and reclamation activities that may impact NPS units. NPS would be involved in bonding through the permitting process.

23. The NPS (ARN: ILL–0094) commented that it should be allowed to participate in inspections where a NPS unit may be affected, especially inspections undertaken in response to a petition or notification of violation or prior to bond release. Illinois statute Section 8.06(a) provides that if an inspection results from information provided by any person, that person may accompany the inspector on the inspection. The NPS could avail itself of this opportunity. Neither SMCRA Section 519(b) nor Illinois statute Section 6.08(b) requires the regulatory authority to allow outside parties to participate in evaluation inspections conducted prior to bond release. However, 30 CFR 807.11(e), which concerns informal conferences on bond release, has been remanded by the U.S. District Court for the District of Columbia with instructions to include a provision for citizen access to the mine site prior to bond release (*In Re: Permanent Surface Mining Regulation Litigation*, No. 79–1144, February 26, 1980). When the revision to 30 CFR 807.11(e) is promulgated, Illinois will have a reasonable time to amend its program appropriately. *See Effect of Litigation on the Federal Permanent Regulatory Program, supra.*

24. The NPS (ARN: ILL–0094) requested the opportunity to participate in developing criteria for designating lands unsuitable for surface coal mining near NPS units and to be allowed to participate in protecting all resources on lands under its jurisdiction from mining in adjacent areas. Illinois' proposed regulation Section 1762.11, identifying the criteria for designating lands as unsuitable, is consistent with 30 CFR 762.11 and the Secretary cannot require the State to adopt additional criteria. The petition process included in Illinois' proposed regulation 1764.13 provides the opportunity for any person having an interest that is or may be adversely affected to petition to have an area designated as unsuitable for mining. This approach appears to provide the NPS with the opportunity it seeks to protect lands in the National Park System. The Secretary has instructed the Park Service not to seek criteria in State programs that would establish unsuitable for coal mining "buffer zones" adjacent to National Parks, unless these lands meet one or more of the other specific criteria for designation. On June 4, 1979, the Secretary made final decisions on the Federal Coal Management Program. Included in those decisions were numerous changes in the proposed unsuitability criteria for Federal lands. The Secretary chose to delete the automatic "buffer zone" language for national parks and certain other Federal lands for the first criterion (43 CFR 3461.1(a)). Instead, he stated lands adjacent to a national park should be found unsuitable only if they are covered by one of the other specific criteria (43 CFR 3461.1(b)–(t)). This instruction to the National Park Service assures that that agency's approach to State unsuitability criteria will be compatible with the Secretary's policy on Federal unsuitability criteria.

25. The NPS (ARN: ILL–0094) stated that permit applications for coal mining regarding air quality should be referred to its Air Quality Office. SMCRA provides that it will not supersede existing Federal law and existing air quality laws do not require NPS review. However, NPS will be notified of permit applications under its proposed rule 1786.11 of July 30, 1980.

Department of Agriculture

26. The U.S. Forest Service (USFS) (ARN: ILL–0071) suggested that a copy of the Land Report be sent to the surface owner(s) and other person(s) known to the regulatory authority to have an interest in the property. 30 CFR 764.15 doe snot contain such a requirement and a State cannot be required to do more than the Federal rules require.

27. The USFS (ARN: ILL–0071) suggested that the surface owner(s) be notified of intent to perform coal exploration activities. Part 776 of the Secretary's regulations do not require that the surface owner(s) be notified and a State cannot be required to do more than the Federal rules require.

28. The USFS (ARN: ILL–0071) suggested that, where commercial forest is the proposed postmining land use, the State require a detailed management plan that reflects commercial forest management standards. This requirement is found in proposed Illinois regulation 1780.23(a)(5).

29. The USFS (ARN: ILL–0071) suggested that an MOU be established between the State and the USFS to coordinate the regulation of mining on National Forest lands. The Secretary of the Interior has been given the responsibility by SMCRA to receive and approve or disapprove mining plans, and inspect and enforce regulations covering all coal exploration and surface coal mining operations on Federal lands, including National Forest lands. An MOU is being developed by OSM and the USFS to coordinate these activities on National Forest lands.

30. The USFS (ARN: ILL–0071) commented that early release of performance bonds for research areas

would encourage reclamation research. This comment is currently being considered together with the USDA–RECLAM petition for an amendment to 30 CFR Part 780 to allow the use of alternative reclamation practices for research or demonstration purposes. (45 FR 41166–41169, June 18, 1980). This petition has been granted in part and rulemaking has been initiated to consider appropriate amendments to OSM's regulations. The Secretary will require State programs to be consistent with any amendments that are adopted.

31. The USFS (ARN: ILL–0071) noted that the Illinois program submittal did not contain a section discussing the State's Abandoned Mined Land Program. State reclamation plans for abandoned mined lands are separate documents and are not considered part of the regulatory program submittal. Illinois submitted a State program for abandoned mine lands reclamation on July 22, 1980.

32. The USFS (ARN: ILL–0151) stated that the Illinois program submittal does not require Federal agencies to be responsible for bonding requirements on areas where Federal reclamation research is being performed. The comment is currently being considered together with the USDA–RECLAM petition for an amendment to 30 CFR Part 780 (45 FR 41166–41169, June 18, 1980). See comment 30.

33. The USFS (ARN: ILL–0151) suggested that the language "woody materials may be chipped and distributed over the surface as mulch" be added to Sections 1816.114 and 1817.114 of the proposed Illinois rules. The Secretary's regulations do not contain such language and the State is not required to do more than the Federal rules require.

34. The Soil Conservation Service (SCS) (ARN: ILL–0084) questioned the intermittent stream definition found in proposed State regulation 1701.5. The definition used by Illinois, with one exception, is identical to the one in 30 CFR 701.5. Illinois has omitted the conjunction "and" between parts (a) and (b) of the definition, thus indicating fewer streams than under the Federal provision. When this omission is corrected, the definition will be consistent with the Federal rules.

35. The SCS (ARN: ILL–0084) questioned why the definition of agricultural use in proposed Illinois rule 1701.5 included cropping, cultivation and harvesting of plants, but not of trees. The Illinois definition of agricultural use is the same as the definition in the Secretary's rules. The Secretary lacks the authority to require Illinois to include more in its definition than is found in the Federal rules.

36. The SCS (ARN: ILL–0084) recommended either that prime timberland and prime grazing land be excluded from the definition of High Capability Land in proposed Illinois Rule 1701.5 or that they be recognized as suitable postmining land uses for High Capability Lands. The Secretary disagrees that the definition should exclude prime timberland and grazing land. Proposed Illinois rule 1825.11(d) would provide that all other requirements of the regulations, including the postmining land use requirements, be applicable to High Capability Lands. Therefore, timberland and grazing land would be suitable for postmining uses of High Capability Lands.

37. The SCS (ARN: ILL–0084) commented that proposed Illinois regulation 1762.11(b)(3), which would allow renewable resource lands to be designated as unsuitable for all or certain types of surface coal mining operations, should be expanded to include consideration of prime farmland as well as wildlife land, wet lands, etc. "Renewable resource lands" are defined in proposed Illinois Rule 1701.5 to include "areas for agricultural . . . production of food," which would include prime farmland.

38. The SCS (ARN: ILL–0084) commented that a hypothetical case should be developed for interpreting the phrase "reasonable and farmable unit," as it is used in Section 1779.27(b)(5) of the proposed Illinois rules. This subsection specifies that smaller units of land shall not be considered prime farmland. The Illinois provision is inconsistent with 30 CFR 779.27(b)(5), since the latter provision excepts lands from prime farmland treatment only if there are no soil map units that have been designated prime farmland by SCS.

39. The SCS (ARN: ILL–0084) noted that proposed Illinois rule 1780.23(a)(2) does not include "rangeland" as a classification of Illinois lands, but that proposed Illinois rule 1816.115 refers to "range" as a land use. The Secretary's rule 701.5 does not include "rangeland" as a land use category, but rangeland is defined in that rule differently from "grazingland." Illinois' intent, evident in its submission (Volume 5, Tab 13, page 9), is to delete rangeland as a land classification in Illinois, probably because no such lands exist in Illinois. The reference to "range" in proposed Illinois rule 1816.115 is probably inadvertent.

40. The SCS (ARN: ILL–0084) commented that proposed Illinois rules 1785.17 (b)(7) and (b)(8) are inconsistent, because Part (b)(7) speaks to high levels of management, while Part (b)(8) addresses equivalent yields with equivalent management practices on non-mined land of the same soil type. SCS points out the need for a definition of high level management and also recommends using the Illinois Department of Agricultural "Weighted County Average Yield Formula" for determining the postmining productivity. Section 785.17(b)(8) of the Federal rules [corresponding to 1785.17(b)(7)] has been remanded by the U.S. District Court for the District of Columbia, which found that SMCRA requires only that revegetation meet the equivalent levels for surrounding non-mined lands [*In Re: Permanent Surfoce Mining Regulations Litigation*, No. 78–1144, May 16, 1980]. The Secretary may not require an Illinois counterpart to the remanded provision.

41. The SCS (ARN: ILL–0089) commented that proposed Illinois rule 1785.17(c), which indicates that SCS is expected to determine within 30 days whether an applicant's soil reconstruction proposal is adequate, may not allow SCS sufficient time. This time limit is not found in 30 CFR 785.17(c). However, proposed Illinois rule 1786, unlike 30 CFR Part 786, sets specific time limits within which decisions on permit applications must be made. Setting a time limit on SCS review of soil reconstruction proposals is reasonable, therefore, so long as the proposed Illinois rule is not interpreted as allowing permit decisions without the required consultation with SCS.

42. The SCS (ARN: ILL–0084) commented that, if proposed Illinois rule 1805 provided for early release of performance bonds to allow research to be conducted on reclaimed areas, reclamation research would be encouraged. This comment is currently being considered together with the USDA–RECLAM petition (45 FR 41166–41169, June 18, 1980) for an amendment to 30 CFR Part 780 relating to research and demonstration of reclamation technology. [See Comment 30]

43. The SCS (ARN: ILL–0084) suggested that proposed Illinois rule 1815.15(f)(1) is too restrictive and would preclude the use of species not indigenous to the disturbed area. It recommended that qualifying language such as "unless otherwise approved by the regulatory authority" be added to the first sentence in this section. The suggested revision is less stringent than Federal rule 815.15(f)(1) and cannot be approved by the Secretary.

44. The SCS (ARN: ILL–0084) commented that the lower limit for pH (6.0) is not met by streams at some times and recommended that the maximum/minimum values for pH be expressed as "average" or "mean" or some similar term in Section 1816.42(a)(7) of the proposed Illinois rules. As was amplified in the preamble to the OSM regulations (44 FR 15153), OSM must have regulations no less stringent than those adopted by the EPA. The EPA has specified the range in pH that streams must meet. Therefore, this suggestion cannot be approved by the Secretary. However, 30 CFR 816.42(a)(7) has been remanded as a result of the court opinion of May 16, 1980 (*In RE: Permanent Surface Mining Regulation Litigation, No. 79–1144*), and Illinois has removed this provision from its July 30, 1980, proposed regulations.

45. The SCS commented that it presumed "that provisions of 1816.42(a)(2) of the proposed Illinois rules override the minimum standards given in Part 1816.42(a)(7)." In proposed regulations submitted June 16, 1980, Illinois revised Section 1816.42(a)(2) to be consistent with 30 CFR 816.42(a)(2).

46. The SCS (ARN: ILL–0084) commented that in proposed Illinois rule 1816.102(b), Table 1 water storage-outlet capacity the first two lines are valid but figures in lines 3, 4, and 5 are not adequate and would result in system failure. The Illinois proposed rule of July 30, 1980, has been changed to conform to the Federal rule.

47. The SCS (ARN: ILL–0084) recommends use of the Universal Soil Loss Equation to measure soil loss from sheet and rill erosion and maintenance of the soil loss tolerance (T) value on all mined land in Section 1816.106 of the proposed Illinois rule instead of using the 9-inch rule as a criteria before requiring control. The Universal Soil Loss Equation is a technically accepted method of determining soil loss and is to be modified to reflect conditions typical of surface mining operations. However, the State language is identical to the Federal and the State is not required to do more than the Federal rules require.

48. The SCS (ARN: ILL–0084) argued that proposed Illinois rule 1816.111(a) should require a vegetative cover for areas where the postmining land use is industrial and residential. The Secretary agrees that the Illinois rule should, when promulgated, require establishment of diverse, effective and permanent vegetative cover on lands being reclaimed.

49. The SCS (ARN: ILL–0084) pointed out that Section 1816.111(b)(2) of the proposed Illinois rules was less stringent than the corresponding Federal regulation. This was called to the attention of the State in an OSM letter dated May 22, 1980, and has been corrected in later submittals of the State program.

50. The SCS (ARN: ILL–0084) recommended that the Chief of the Division of Forestry in the Illinois Department of Conservation be consulted and his recommendations on the use of introduced species be considered by the State regulatory authority in Section 1816.112 of the proposed Illinois rules. This is not required by the Federal regulations. The State, however, is permitted to establish such an arrangement by means of a cooperative agreement between the Department of Mines and Minerals and the Department of Conservation.

51. The SCS (ARN: ILL–0084) suggested that, for the purpose of determining the success of revegetation, the State should define ground cover in Section 1816.116 of the proposed Illinois rules as litter and the aerial parts of plants less than 0.5 meters from the soil surface. This definition is more restrictive than the definition of ground cover found in 30 CFR 816.116(d)(3) and may be incorporated into the State's regulations if the State so desires.

52. The SCS (ARN: ILL–0084) suggested the use of an alternative herbaceous sampling technique that might be easier to use and more accurate than the method proposed by the State in Section 1816.116(d) of the proposed State rules. Section 816.116(a) of the Federal rules requires that the success of revegetation shall be measureed by techniques approved by the regulatory authority after consultation with appropriate State and Federal agencies. The possibility of adopting the proposed ground cover sampling technique has been called to the State's attention.

53. The SCS (ARN: ILL–0084) commented that Section 1816.117 of the proposed Illinois rules does not require adequate erosion control prior to and during tree establishment. This section of the State's regulations is similar to the Federal rules, which require the establishment of herbaceous ground cover that is at least 70 percent of the ground cover of reference areas with 90 percent statistical confidence or a level of ground cover that is adequate to control erosion as determined by the State regulatory authority. The Secretary believes these provisions are adequate and the State is not required to do more than the Federal rules require.

54. The SCS (ARN: ILL–0084) noted that Section 1816.133(c)(5) of the proposed Illinois rules invalidly implies that all registered professional engineers have the expertise necessary for preparation of postmining land use plans and recommended that use of only qualified engineers be allowed. However, the State language is identical to that of the Federal rule and the State is not required to do more than the Federal rules require.

55. The SCS (ARN: ILL–0084) commented on the provision for dust control in Section 1816.155(b) of the proposed Illinois rules for Class 1 road maintenance in light of research being conducted on alternate dust control methods by the Forest Service and others. Its recommendation is to allow, in addition to watering, other dust control methods approved by the regulatory authority. This is a valid recommendation since dust control measures other than water are presently available. However, 30 CFR 816.155(b) has been remanded in *In Re: Permanent Surfact Mining Regulations Litigation*, No. 79–1144, May 16, 1980. The provision cannot be required at this time.

56. The SCS (ARN: ILL–0084) commented that Section 1825 of the proposed Illinois regulations, which contains performance standards for High Capability Lands encourages changes of land use from prime timberland and prime grazing lands, as well as prime farmlands. The SCS recommends that lands identified as prime timber or grazing land be retained as such in postmining land use plans. Part 1825 is unparalleled in the Federal rules. However, proposed rule 1825.11(d) clearly states that all other requirements of the Illinois regulations will apply to High Capability Land. This would include postmining land use requirements.

57. The SCS (ARN: ILL–0084) questioned whether National Forest lands were exempt from the Illinois statute and future implementing regulations. The Secretary of the Interior is responsible for regulating mining on National Forests and all other Federal lands. Mining companies are required to satisfy Federal requirements. Illinois may assume responsibility for regulating surface coal mining and reclamation operations on Federal lands in Illinois by entering into a cooperative agreement with the Secretary under Section 523(c) of SMCRA. Illinois has not requested to enter into such an agreement.

58. The SCS (ARN: ILL–0084) questioned whether the State would accept petitions to designate National Forest lands unsuitable for coal mining. It also recommended that the USFS be given an opportunity to participate in the designation process. The Secretary, acting through the director of OSM, is responsible for designating areas of Federal lands unsuitable for all or certain types of surface coal mining

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operations in accordance with the requirements of 30 CFR Part 769. The USFS, as the surface managing agency for National Forests, will be provided the opportunity to make recommendations on approval or disapproval of unsuitability designation petitions on National Forest lands.

59. The SCS (ARN: ILL–0084) recommended that the Chief of the Division of Forestry, Department of Conservation, be a member of the Illinois Surface Mining Advisory Committee. This recommendation has been forwarded to the State for its consideration.

60. The SCS (ARN: ILL–0084) recommended that the Chief of the Division of Forestry, Department of Conservation, review permit applications where forest management is the pre and post mining land use. SMCRA does not require such review. However, Illinois statute Section 2.04(d) does provide officers of government agencies the opportunity to file written objections with respect to a permit application. In addition, the Illinois Department of Mines and Minerals can arrange for permit review by the Division of Forestry in its supporting agreement with the Department of Conservation.

61. The SCS (ARN: ILL–0084) recommended that the Chief of the Division of Forestry, Department of Conservation, review reclamation performance when reforestation is included in the reclamation plan. Neither SMCRA Section 519 nor the Federal regulations requires such reviews, though Illinois statute Section 6.08(c) allows heads of State agencies to comment on reclamation performance in bond release proceedings. In addition, the Illinois Department of Mines and Minerals can arrange for reviews by the Division of Forestry in its supporting agreement with the Department of Conservation.

62. The SCS (ARN: ILL–0084) recommended the establishment of provisions for less laterals handling and compaction and more flexibility in slope requirements when forestry is the approved postmining land use. The Secretary recognizes that soil compaction is detrimental to the survival and the growth of trees; however, SMCRA does not make special provisions for soil handling and grading when forestry is the approved postmining land use. Illinois may wish to establish such provisions as an alternative according to the procedures described in 30 CFR 731.13.

63. The SCS (ARN: ILL–0084) recommended that the Illinois regulations provide for reclamation research on mined lands while retaining performance bond requirements. This comment is currently being considered together with the USDA–RECLAM petition for amendment to 30 CFR Part 780 to allow the use of alternative reclamation practices for research or demonstration purposes (45 FR 41166–41169, June 18, 1980). [See Comment 30]

Department of Energy

64. The Department of Energy (DOE) (ARN: Ill–0100) commented that, as required by 30 CFR 731.14(e), the Illinois submission should contain a description of the structural organization of the regulatory authority, including appropriate charts. As presented, the submission lacks the description required by this section of the Federal regulations. The submission should be revised to incorporate a written explanation of the regulatory authority organization, together with appropriate charts. The comment has merit and is addressed in Finding 31.1.

65. The DOE (ARN: ILL–0100) commented that the narrative description of the Illinois system for restricting direct and indirect conflicts of financial interests, required by 30 CFR 731.14(g)(12), should describe the specific civil and criminal remedial actions that will be implemented in order to enforce these restrictions. While this information would be useful, the Secretary will not require it.

66. The DOE (ARN: ILL–0100) commented that the statistical information on coal exploration, mining and reclamation operations in Illinois, submitted pursuant to 30 CFR 731.14(h), is not adequately explained. Illinois submitted additional information on July 30, 1980 (Volume 10, Tab S) which is adequate.

67. The DOE (ARN: ILL–0100) commented that, according to the description of the existing and proposed State program staff, required by 30 CFR 731.14(i), the State regulatory authority will not employ wildlife management professionals, agronomists, geologists or ecologists. The Secretary agrees that the specific expertise provided by these specialists should be available to the Department of Mines and Minerals and that Illinois must demonstrate the availability of personnel to make decisions on permit applications (See Finding 31).

68. The DOE (ARN: ILL–0100) commented that, while Section 1816.131(b) of the proposed Illinois rules allows operations to cease for 30 days before the regulatory authority must be notified Volume 5, Tab 30, page 79 of the Illinois submission indicated without adequate explanation that the time period would be changed to 90 days. However, the proposed rules of July 30, 1980, retain the 30-day provision, which is consistent with the Federal rules.

69. The DOE (ARN: ILL–0100) commented that the applicable water quality standards should be reincorporated into Section 1817.46(a) of the proposed Illinois rules. The proposed revised regulations submitted by Illinois on June 16, 1980, have reinstated the water quality requirement into this section.

70. The DOE (ARN: ILL–0100) suggests that Illinois should explain further why Section 1845.14 of the proposed Illinois rules is better than the Federal rule, which provides for penalties up to $5,000 as opposed to the Illinois $750. It appears that DOE has misunderstood Illinois' submission. Illinois provides for a penalty of $5,000 per violation which may be assessed per day, and in addition, provides for a $750 per day assessment for non-abatement Cessation Orders.

Department of Labor

71. The Mine Safety and Health Administration (MSHA) (ARN: ILL–0075) commented that its guidelines recommended that a 100-year 6-hour frequency storm be used to design drainage diversions for coal processing waste embankments instead of the 100-year, 24-hour storm prescribed in the Illinois regulation. Federal rules 816.92(b) and 817.92(b) also prescribe the 100-year 24-hour precipitation event, and the Illinois rules may not be less stringent.

72. The MSHA (ARN: ILL–0075) has indicated that counterparts to 30 CFR 816.86 and 30 CFR 817.86 are missing from the proposed Illinois regulations and that MSHA must approve plans for extinguishing coal processing waste fires. The Illinois proposed rules of July 30, 1980, contain acceptable counterparts to 30 CFR 816.86 and 817.86.

Environmental Protection Agency

73. The Environmental Protection Agency (EPA) (ARN: ILL–0099) noted that the Illinois State Program did not, as required by 30 CFR 731.14(c), contain the Illinois Attorney General's opinion stating that Illinois has the legal authority to implement, administer and enforce its program. However, on June 16, 1980, Illinois submitted the required Attorney General's opinion.

74. EPA (ARN: ILL–0099) commented that the Illinois program submittal (Vol. I, Tab E) does not contain sufficient narrative for the public to understand the coordination system between agencies, as required by 30 CFR

731.14(e). The Secretary agrees that the narrative must be clarified. (See Finding 31.1)

75. EPA (ARN: ILL–0099) argued that the State has not clearly demonstrated that it has personnel qualified to review reported levels of toxic materials and other pollutants, and to determine appropriate permit limits under the Clean Water Act as required under 30 CFR 816.42(a)(7) and 30 CFR 780.18(b)(9). Findings 31.1 through 31.6 point out deficiencies in staffing and funding.

76. EPA (ARN: ILL–0099) commented that Volume II, Tab I, submitted in response to 30 CFR 731.14(g)(9), which requires coordination of permit issuance with other State, Federal and local agencies, should specifically mention coordinating the issuance of permits with the Illinois Environmental Protection Agency (IEPA). The Illinois submittal of July 30, 1980 (Volume 10, Tab K) includes reference to IEPA but clarification is still needed. *See* Finding 31.

77. EPA (ARN: ILL–0099) commented that proposed Illinois rule 1784.14(b)(2), which requires reclamation plans to include water treatment plans and which refers to Parts 1810–1828 of the Illinois regulations, should be accompanied by the exact wording of those provisions to aid reviewers. The Secretary believes that it is sufficient for the State to incorporate Parts 1810–1828 by reference, especially since these parts are included in the same volume.

78. EPA (ARN: ILL–0099) commented that proposed Illinois regulation 1816.41(c) which contains general requirements for preserving the hydrologic balance, differed from the corresponding Federal rule and needed additional explanation. Proposed regulation 1816.41(c) submitted July 30, 1980, is consistent with the Federal rule.

79. EPA (ARN: ILL–0099) noted that the Illinois program provided no requirement for detention time for sedimentation ponds. The requirement for a 24-hour detention time for sedimentation ponds, 30 CFR 816.46(c) and 817.46(c), has been suspended and cannot be required at this point. OSM will reconsider and repropose new requirements (44 FR 77453) (1979).

80. EPA (ARN: ILL–0099) commented that the Control Measures listed in Section 1817.95(b) of the State regulations, which references 30 CFR 817.95(b), is less stringent because it uses the language "may include" in place of "shall include." Also, the Illinois language allows the owner/operator the option of deciding for himself whether an activity should not be controlled, especially where two or more techniques of control are needed. This section has been remanded and cannot be required at this time. OSM will reconsider and repropose new requirements (45 FR 51547 (1980)).

81. EPA (ARN: ILL–0099) noted that section 1816.81(b) was inconsistent with 30 CFR 816.81(b). The State's original submittal omitted important conditions that had to be met before the regulatory authority could approve the disposal of coal processing waste from outside the permit area in the permit area. The Secretary believes this omission has been corrected in the July 30, 1980, resubmittal and that further changes are not needed.

82. EPA (ARN: ILL–0099) commented that Illinois proposed regulation 1817.12(a) does not require the regulatory authority to approve underground mining beneath or adjacent to streams or impoundments and to determine that subsidence will not cause material damage to water bodies or streams. Also, it does not require the applicant to correct damage or prevent additional subsidence. The EPA citation of the Illinois regulation appears to be in error. Section 1817.126(a) seems to be more applicable to the comment. The State appears to have corrected this problem in its July 30, 1980, resubmittal.

Public Comments

The following acronyms were used to identify commenters: Illinois South Project (ISP); Village of Catlin, Illinois (VCI); Citizens for the Preservation of Knox County (CPKC).

83. *Section 1.02* A commenter (ARN: ILL–073) is concerned that Section 1.02 provides that Illinois will establish requirements that are no more stringent than SMCRA. The commenter suggested that the provision be revised to provide that Illinois law can be more stringent than SMCRA. SMCRA Section 505(b) allows, but does not require, State laws to be more stringent than counterpart SMCRA provisions. Therefore, Illinois Section 1.02 is consistent with SMCRA.

84. *Section 1.03(a)(25)* Illinois South Project (ISP) (ARN: ILL–0179, ILL–0170 and ILL–0148) commented that the definition of "toxic conditions and toxic materials" found in Section 1.03(a)(25) of the Illinois statue does not conform with the definition of "toxic forming materials" found in 30 CFR 701.5. The Secretary agrees with this comment. *See* Finding 30.3.

85. Section 6.07(b) ISP (ARN: ILL–0170, ILL–0179 and ILL–0182) commented that Section 6.07(b) is inconsistent with 30 CFR 808.11(a), because the regulatory authority has discretion in requesting the Attorney General to institute bond forfeiture proceedings. The Secretary disagrees. Section 6.07(b) authorizes the promulgation of rules which are no less stringent than the Federal regulations in describing the events and conditions upon which the Attorney General may be requested to institute bond forfeiture proceedings. Section 6.07(b) would allow Illinois to specify circumstances in which a bond would be forfeited that are more stringent than those required by the Federal regulations.

86. *Section 9.01(h)* ISP (ARN: ILL–0170, ILL–0148, ILL–0179 and ILL–0182) is concerned about whether the requirements of the state program can be made applicable to operations commenced prior to approval of the state program because Section 9.01(h) of the Illinois statute states that rules "shall not be made applicable to any operations prior to the effective date thereof." The Secretary disagrees with this comment because rules cannot apply to operations until such rules are effective. When they become effective, the rules will apply to all operations.

87. *Section 9.01* ISP (ARN: ILL–0148, ILL–0170 and ILL–0179) is concerned that Section 9.01 does not conform with 30 CFR 732.17 because an approval of the proposed regulation by the Director of OSM must be obtained as an amendment to the State program. The Secretary does not agree. 30 CFR 732.17 does not prevent the adoption of a regulation without OSM approval; instead it provides that the regulation shall not take effect for purposes of a state program until approved by OSM as a program amendment.

88. *Section 9.01* The Village of Catlin, Ill. (VCI) (ARN: ILL–0169E) commented that Section 9.01 does not appear to require the State to hold hearings on rulemaking. While the Secretary would not object to a provision requiring a hearing on each rulemaking procedure, Section 9.01(d) does appear to provide for public comment on any rulemaking process and, therefore, appears to be consistent with SMCRA.

89. *Section 506(a)—Section 2.01* ISP (ARN: ILL–0148, ILL–0170, ILL–0179 and ILL–0182) suggests that Section 2.01 is not sufficient to meet the requirements of Section 506(a) of SMCRA. SMCRA Section 506(a) specifies that no person may conduct surface mining operations unless the person has obtained a permit pursuant to an approved State program or pursuant to a Federal program within the time limits set forth. Illinois Section 2.01 is consistent with SMCRA in that it prohibits persons from engaging in mining operations without a permit.

90. *Section 507(e)—Section 2.04(a)* VCI (ARN: ILL–0169E) is concerned that Section 2.04 does not specify where in the county that a permit application will be available for inspection. However,

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Illinois Section 2.04(a) provides that permit applications be available for public inspection at the county seat of each county containing land to be affected under the permit.

91. *Section 6.07(d)* Several commenters (ARN: ILL–0182B and ILL–0171) suggest that Section 6.07(d) limits the liability for bond forfeiture in a manner that is inconsistent with SMCRA and the Federal regulations. The Secretary agrees. See Finding 19.2.

92. *Section 510(b)—Section 2.08* VCI (ARN: ILL–0169E) commented that whereas SMCRA Section 510(b) requires written findings in support of permit decisions, Section 2.08 does not require Illinois to make written findings of fact with respect to comments supplied by the Interagency Committee and the county boards on permit applications. The Secretary disagrees. It appears that Section 2.08(c) does require that Illinois respond in writing to comments made by the Interagency Committee and the county boards before a permit may be issued. In addition, Section 2.08(b) requires written findings in support of permit decisions.

93. *Section 2.04(d)* VCI (ARN: ILL–0169E) is concened that Section 2.04(d) of the Illinois statute fails to require, as does SMCRA Section 513(b), that a newspaper advertisement of an informal conference be placed two weeks before the conference and that such informal conferences be held in the locality of the proposed mining. The Secretary agrees, but Illinois may by regulation cure this deficiency. See Findings 23.4 and 23.5.

94. *Section 513(b)—Section 2.04(d)* VCI (ARN: ILL–0169E) is concerned that Section 2.04(d) of the Illinois statute limits the rights of local government agencies to object to a permit application as required by SMCRA Section 513(b). The commenter is particularly concerned that it is unclear that a village or township would have the right to file written objections. The Secretary agrees. See Finding 23.2.

95. *Section 513(b)—Section 2.04* ISP (ARN: ILL–0148, ILL–0170 and ILL–0179) notes that the Illinois statute, unlike SMCRA Section 513(b), does not allow parties to an informal conference on a permit application access to the proposed application prior to the conference. The commenter questions whether such a defect may be remedied by the promulgation of Section 1786.14(b)(3) of the proposed Illinois rules. The Secretary agrees that the statutory section alone is inconsistent with SMCRA, but believes that an appropriate regulation would make it consistent. See Finding 23.6.

96. *Section 514(e), 519(h) and 525(a)(2)* ISP (ARN: ILL–0148, ILL–0170, ILL–0179 and ILL–0182) commented that although Section 8.09 authorizes the regulatory authority to issue subpoena as the section does not require the enforcement of a subponeas is required by SMCRA Sections 514(e), 519(h), and 525(a)(2). However, Sections 2.11(g) and 8.07(b) are consistent with their SMCRA counterparts, Sections 514(e) and 525(a)(2), in providing for issuance of subpoenas. Illinois Section 6.08(c), though, is inconsistent with SMCRA Section 519(h) in this regard. *See* Finding 23.12. Yet SMCRA nowhere provides for *enforcement* of subpoenas, a power usually not vested in administrative law judges. Therefore, the Illinois statute is not inconsistent with SMCRA in failing to provide for enforcement of subpoenas.

97. *Section 514(e)—Section 2.11(g)* VCI (ARN: ILL–0169E) commented that Section 2.11(g) of the Illinois statute does not require a verbatim record of all public hearings held as is required by SMCRA Section 514(e). As a result, the commenter asserts that hearings to designate land as unsuitable for mining, hearings to remove such designations, hearings on the revision of a mining permit, hearings in the revocation of a permit, and hearings on the release of a bond may not be covered under Section 2.11(g) of the Illinois statute. However, Illinois Section 8.09 requires a verbatim record to be prepared for most hearings held under the Illinois statute and Illinois, in its July 30, 1980, submission, states that its promulgated regulations will require transcripts of all hearings. The Secretary has found this to be acceptable. *See* Finding 23.7.

98. *Section 515(b)(3)* A commenter (ARN: ILL–0179) suggested that high walls should be allowed to remain since they do not contribute to erosion. The Secretary disagrees, because Section 515(b)(3) of SMCRA requires, with respect to surface coal mining operations, the elimination of all highwalls.

99. *Section 3.25(b)* ISP (ARN: ILL–0170, ILL–0179 and ILL–0182) suggests that Section 3.25(b) impermissibly provides an exception to the requirements for contemporaneous backfilling and precludes public participation a decision to allow such an exception by not requiring the decision to be made in the context of a permit approval or permit revision as is required by SMCRA. The Secretary has found that the Illinois provision, which allows extensions of the reclamation period where conditions have made timely reclamation "impossible," is consistent with the SMCRA requirement that reclamation be as contemporaneous as practicable. *See* Finding 14.11. In addition, 30 CFR 816.101 does not require that additional time for rough backfilling and grading be granted only as part of a permit or permit revision approval decision.

100. *Section 517(b)–Section 8.02* ISP (ARN: ILL–0170, ILL–0179 and ILL–0182) suggested that, since the regulatory authority may only impose monitoring requirements by adopting rules pursuant to Section 8.02, the regulatory authority may not impose the case-by-case monitoring requirements provided for in Section 517(b) of SMCRA. The Secretary believes that Section 8.02 provides the authority for the regulatory authority to adopt rules that would allow monitoring requirements to be instituted on a case-by-case basis.

101. *Section 517(b)(3), 704, and 521(c)* ISP (ARN: ILL–0148, ILL–0170, ILL–0179 and ILL–0182) is concerned that Sections 8.01(a) and 8.08 do not provide the same right of entry and sanctions against both an operator and a private landowner for refusal to allow entry as are found in SMCRA Sections 517(b)(3), 704, and 521(c). The Secretary has found Illinois Section 8.01(a) to be consistent with SMCRA (*See* Finding 18.1), and Section 8.08 is consistent with SMCRA Section 521(c). However, Illinois has not enacted a counterpart to SMCRA Section 704 and therefore does not provide for sanctions against operators or landowner for refusal to allow entry that is consistent with SMCRA. *See* Finding 27.1.

102. *Section 517(f)* ISP (ARN: ILL–0148, ILL–0170, ILL–0179 and ILL–0182) is concerned that the Section 8.01 limits the availability of documents to the public more than required by SMCRA Section 517(f). The Secretary has found that Illinois Section 8.01(c) does not provide for public availability of documents that is consistent with SMCRA Section 517(f); however, the proposed regulations would rectify this problem. *See* Finding 23.9.

103. *Section 517(g)–Section 9.06* ISP (ARN: ILL–0170, ILL–0179 and ILL–0181) is concerned that the conflict of interest provision found in Section 9.06 of the Illinois statute is limited in its application to employees of the Department of Mines and Minerals rather than including employees from other state agencies who may perform a function or duty in the program. The Secretary agrees that Section 9.06 is inconsistent with SMCRA Section 517(g) since it does not clearly apply to all employees of the state performing functions or duties under the Illinois Act. *See* Finding 24.

104. *Section 517(g)–Section 9.06* ISP (ARN: ILL–0179) suggests that all state employees performing direct or indirect functions or duties under the Illinois act would be subject to the Section 9.06 of the Illinois statute, instead of merely the Directors of the Interagency Committee as is proposed in Tab L of the Illinois narrative. However, the narrative does not limit the applicability of the conflict of interest provisions to the Directors of the Interagency Committee; it only subjects them to the requirements imposed on other employees. The Secretary, though, is initially disapproving Illinois Section 9.06 because it applies only to employees of the Illinois Department of Mines and Minerals. *See* Finding 24.

105. *Section 517(h)* ISP (ARN: ILL–0179) is concerned that no Illinois statutory provision is comparable to SMCRA Section 517(h), which allows a person to notify the Secretary when that person believes that a violation exists at a mining site or that inspections are not adequate and complete. The Secretary agrees. *See* Finding 23.11.

106. *Section 519(d)(f)(h)* The commenters (ARN: ILL–0148, ILL–0170, ILL–0179 and ILL–0182) are concerned that basic elements of an adjudicatory hearing are not provided in Section 6.06. The Secretary agrees. *See* Finding 23.12.

107. *Section 520(b)(1)(B)–Section 805* ISP (ARN: ILL–0148, ILL–0170, ILL–0179 and ILL–0182) commented that Section 8.05 of the Illinois Act fails to allow any person to intervene as a matter of right in a suit by the State to require compliance with the statute as specified in Section 520(b)(1)(B) of SMCRA. However, Section 529(1)(B) provides for intervention as a matter of right only in suits in Federal courts. Illinois is not required to provide for such intervention in state courts as well.

108. *Section 520(c)–Section 8.05.* ISP (ARN: ILL–0148, ILL–0170, ILL–0179 and ILL–0182) suggests that Section 8.05 is deficient because it fails to provide for the intervention of the Secretary in a citizen's suit as is provided in Section 520(c)(2) of SMCRA. The Secretary agrees. *See* Finding 23.13.

109. *Section 520(d) and 525(e).* ISP (ARN: ILL–0148, ILL–0170, ILL–0179 and ILL–0182) suggests that the Sections 8.05(c) and 8.07(f) limit the award of attorney's fees and other costs and expenditures inconsistently with SMCRA Sections 520(d) and 525(e). The Secretary agrees. *See* Finding 23.14.

110. *Section 521.* ISP (ARN: ILL–0148, ILL–0170, ILL–0179 and ILL–0182) is concerned that an operator or permittee may seek immediate injunctive relief from a court based upon Section 8.06, instead of exhausting administrative remedies for review as is required by SMCRA Section 526(c). The Secretary agrees. *See* Findings 21.2 and 21.4.

111. *Section 522(e)(1)–Section 7.01.* ISP (ARN: ILL–0148, ILL–0170, ILL–0179 and ILL–0182) is concerned that Section 7.01 does not prohibit mining within those areas designated under SMCRA 522(e)(1). The Secretary agrees with this concern, but *see* Finding 22.3.

112. *Section 3.16(b).* ISP (ARN: ILL–0148, ILL–0170, ILL–0179 and ILL–0182) is concerned that it be made clear that Section 3.16(b) does not supersede the requirements of SMCRA Section 522(e)(4). The Secretary agrees. *See* Finding 22.1.

113. *Section 7.03.* ISP (ARN: ILL–0170) is concerned that the hearing on a petition to designate lands unsuitable for mining under Section 7.03 would be adjudicatory pursuant to Section 8.09 of the Illinois statute. The Secretary has found this provision inconsistent with the SMCRA requirement that such a hearing be a relatively informal legislative hearing. *See* Finding 23.19.

114. *Section 703.* ISP (ARN: ILL–0171) is concerned that no Illinois provision is the equivalent of Section 703 of SMCRA which concerns employee protection. The Secretary believes that SMCRA Section 703 provides sufficient protection of employees participating in the administration or enforcement of SMCRA and will not require state programs to contain comparable provisions.

115. *Section 707.* ISP (ARN: ILL–0179), and VCI (ARN: ILL–0169E) are concerned that the Illinois statute contains no severability clause that would preserve the remaining portions of the statute if any part of the statute is declared invalid. There is no indication in the Illinois submission that the entire Illinois statute will be rendered invalid if a single part is declared invalid. However, no conclusion as to the effect of the omission of a severability clause in the Illinois statute is possible at this time. *See* Finding 30.7.

The following comments [nos. 116 through 381] concern the proposed Illinois rules. A detailed discussion of the Illinois proposed rules will be sent in a letter to the State regulatory authority from the Director, OSM, and will be available in the administrative record at the locations specified under "Addressess" above.

116. *Rule 1701.5.* ISP (ARN: ILL–0170) and (CPKC) (ARN: ILL–0169B) are concerned that definitions of "essential hydrologic functions" and "Regional Director" are omitted from the Illinois proposed regulations. SMCRA, though, seeks to preserve the essential hydrologic functions of alluvial valley floors in arid or semiarid regions. No such reasons exist in Illinois and Illinois need not, therefore, define essential hydrologic functions. Illinois is not required to define Regional Director since Regional Directors are Federal officials defined in the Federal regulations.

117. *Rule 1701.5.* The commenter, (ARN: ILL–0169A) suggests the addition of a definition of the term "final decision" in Illinois proposed regulation 1701.5. The Secretary would not object to such a definition as long as it is not inconsistent with SMCRA.

118. *Rule 1701.5.* The commenter (ARN: ILL–0169) suggests the addition of the phrase "or is benefited by" to the definition of "person having an interest * * *" in Section 1701.5 of the proposed Illinois regulations. The Illinois regulation appears to be consistent with the definition of that term in 30 CFR 700.5, and the Secretary believes that definition appears to include the concept with which the commenter is concerned.

119. *Rule 1701.5.* CPKC (ARN: ILL–0169B) is concerned that the definition of "high capability lands" should be rewritten more objectively and should conform with the definition of "high capability lands" used by either the USDA or SCS. The term "high capability land" is not used in SMCRA or the Federal rules. Illinois may define and use the term in any manner it believes appropriate so long as its use does not cause the State's statute and regulations to be inconsistent with SMCRA and the Federal rules.

120. *Rule 1701.5* CPKC (ARN: ILL–0169A) believes that the definition of "valid existing rights" found in Section 1701.5 of the Illinois regulations should be amended to delete the phrase "coal is both needed" in subsection (a)(2)(ii). That portion of the definition is consistent with definition of "valid existing rights" found in 30 CFR 761.5.

121. *Rule 1701.5* ISP (ARN: ILL–0182) and CPKC (ILL–0169A) believe that subsection (c) the definition of "valid existing rights" found in Section 1701.5 of the Illinois regulations should be amended to delete the phrase "If an applicant claims valid existing rights." The Secretary agrees that subsection (c) of the proposed Illinois definition of valid existing rights would be inconsistent with the Federal regulations since it could allow a finding of valid existing rights even if the person had made no attempt, as of August 3, 1977, to obtain permits to mine.

122. *Rule 1701* ISP (ARN: ILL–0170) is concerned that the Illinois regulation do not contain the term "materially damage the quantity and quality of water". This term is defined by 30 CFR 701.5 with respect to alluvial valley floors. Since the alluvial valley floor provisions of

SMCRA apply only in arid and semiarid regions, none of which are in Illinois, a definition of this term is not required in Illinois.

123. *Rule 1701.5* ISP (ARN: ILL–0170) is concerned because the definition of the term "Director" in Illinois rule 1701.5 does not distinguish between the Director of the state agency and the Director of the Office of Surface Mining. The Secretary agrees that this distinction should be made.

124. *Rule 1701.5* CPKC (ARN: ILL–0169B) is concerned that the following terms defined in Illinois Rule 1701.5 need further clarification and more concise definition.

a. "Surface mining activities"

b. "Surface mining operations"

c. "Surface mining and reclamation operations" (the commenter is assumed to be referring to the term "surface coal mining and reclamation operations").

Illinois does not define "surface mining activities," but the Illinois definition of "surface mining operations," a term not found in the Federal regulations, is consistent with the Federal definition of "surface mining activities." The Illinois definition of "surface coal mining and reclamation operations" is consistent with the definition of the term in 30 CFR 700.5.

125. *Rule 1701.5* CPKC (ARN: ILL–0169B) is concerned that "agricultural activities" and "agricultural use" have varied meanings and Section 1701.5 of the Illinois regulations is unclear as to their meaning. The Illinois definition of "agricultural use" is consistent with the Federal definition. Illinois need not define "agricultural activities," since that term is used in the Federal regulations only with respect to alluvial valley floors. *See* comment 122.

126. *Rule 1701.5* CPKC (ARN: ILL–0169B) and VCI (ARN: ILL–0169E) are concered that Illinois Rule 1701.5 does not contain adequate definitions of the following terms. The Secretary's responses are as follows:

a. "Acid drainage"—the proposed Illinois rule of July 30, 1980, contains the same definition as the Federal rules.

b. "Affected area"—the definition in the proposed Illinois rule does not include the land or water located above underground mine workings as required by the Federal rule.

c. "Best technology currently available"—the definition in the proposed Illinois rule of July 30, 1980 is consistent with the Federal rule.

d. "Coal exploration"—the definition in the proposed Illinois rule of July 30, 1980 is consistent with the Federal rule.

e. "Director"—see comment 123.

f. "Intermittent stream"—the definition in the proposed Illinois rule contains the conjunctive "and" rather than the alternative "or", so that it appears less stringent than the Federal rule. See comment 24.

g. "Toxicforming materials"—the proposed Illinois rule submitted July 30, 1980 is consistent with the Federal rule.

h. "Valid existing rights"—the proposed Illinois definition of valid existing rights provides that such rights "are not limited to" the circumstances found in the Federal rule and the Illinois definition adds a subsection (c), not found in the Federal definition, that would allow a finding of valid existing rights where no attempt had been made to obtain permits to mine prior to August 3, 1977. This is inconsistent with the Federal rule.

i. "Permit term"—the Illinois definition in the proposed rules of July 30, 1980 is consistent with SMCRA.

127. *Rule 1701.5* CPKC (ARN: ILL–0169A) suggests that the definition of "public roads," found in Section 1701.5 of the proposed Illinois regulations, should include the right-of-way so that it would be consistent with the description of public road as it is used in the regulations. The Secretary believes this change is unnecessary since Illinois statute Section 7.01(b) prohibits mining within 100 feet of the outside right-of-way line of any public road.

128. *Rule 705.18(c)—Section 1705.18(c)* CPKC (ARN: ILL–0169B) suggests that Illinois Rule 1705.18(c) be amended to include the phrase "including dismissal" in the remedies for violation of the conflict of interest provision. The Secretary finds that, while the suggested language would clarify the available remedies, the Illinois language appears to be consistent with 30 CFR 705.18(c). The existing language would allow the regulatory authority to take the administrative action suggested by the commenter.

129. *Rule 732.15(b)(10)* ISP (ARN: ILL–0053 and ILL–0179) expressed concern that Illinois did not allow for public comment before submitting its program to the Secretary. The Secretary disagrees. *See* Finding 23.23.

130. *Rule 731.14(j)* ISP (ARN: ILL–0170 and ILL–0179) expressed concern that the Illinois program submitted in response to 30 CFR 731.14(j) reflects inadequate staffing. The Secretary agrees. *See* Finding 31.5.

131. ISP (ARN: ILL–0179) asked whether emergency rules adopted by Illinois as part of its program would meet the requirements for program approval, since the time limitations on emergency rules would inhibit public participation. The Commenter also asked whether Illinois must make the changes suggested in the Secretary's Findings. Federal Rule 732.15(b)(10) requires public participation in the adoption of a state program. Section 5.02 of the Illinois Administrative Procedure Act, which allows emergency rules only to deal with threats to the public interest, safety and welfare, and which allows these rules to remain effective only 150 days, is consistent with the provisions of 43 CFR Part 14, which governs OSM rulemaking. Thus, emergency rules may form the basis for program approval.

The Secretary identifies in this notice concerns in the proposed program submission that the State must address in its resubmission. Before the State program can be finally approved, the State must assure the Secretary that the identified concerns will not prevent the State from conducting a State program in accordance with the requirements of SMCRA.

132. ISP (ARN: ILL–0170) suggested that the Illinois Environmental Protection Agency be given inspection and enforcement responsibilties and capabilities in the area of explosives use. The Secretary would not object to the Illinois Department of Mines and Minerals delegating certain functions to another state agency as long as the agency can conduct that portion of the program in accordance with SMCRA.

133. A commenter (ARN: ILL–0169) pointed out that Illinois did not organize its law consistently with the scope, objectives, authority, responsibilities and definitions of the Federal regulations. While 30 CFR 732.15(b) requires the State to have laws to implement, administer and enforce the Federal provisions, a State need not organize its rules in the same manner as the Federal regulations as long as the substantive provisions are included in the State rules. Deficiencies that have been identified in the proposed Illinois rules are discussed in a letter to the regulatory authority from the Director, OSM.

134. *Rule 1760.4* CPKC (ARN: ILL–0169A) suggests that a date be set by which Illinois must have established a process, including a data base, for making decisions on designating lands unsuitable for surface mining. A date is set, in effect, by SMCRA Section 522(a), which requires that a planning process for decisions on designation of lands unsuitable for surface mining, including a data base, be instituted prior to the approval of a State program.

135. *Rule 1761.11(c)* ISP (ARN: ILL–0148) and the Ilinois Archeological Survey (ARN: ILL–0179) have questioned the extent of the prohibitions in the proposed Illinois regulations on mining near parks and historic places. Federal regulation 761.11(c) has been suspended as it applies to places eligible for listing on the National Register of Historic Places (44 FR 67942, November 27, 1979). The Illinois proposed rule of July 30, 1980, is consistent with the Federal rule.

136. *Rule 1761.11* Illinois Archeological Survey (ARN: ILL–0179) expressed concern about interpretation of designating areas unsuitable for surface coal mining in questioning whether sites must be already on the National Register of Historic Sites to be designated unsuitable for surface coal mining. This is consistent with the Federal rules in that 30 CFR 761.11(c) and .12(f)(1) has been suspended by the Secretary insofar as these provisions affect places "eligible for listing on" the National Register of Historic Places [44 FR 67942 [1979]].

137. *Rule 1761.11(e)* ISP (ARN: ILL–0148 and ILL–0179) expressed concern that Illinois' rule, which prohibits mining within 300 feet of occupied dwellings and also dwellings under construction or contracted for at the time of public notice, would provide an exemption to the requirement of a 300 foot buffer zone around occupied dwellings. The Secretary disagrees, since the proposed Illinois rule protects not only occupied dwellings, but also dwellings under construction or contracted for.

138. *Rule 1761.11(h)* Several commenters (ARN: ILL–0148, ILL–0169A and ILL–0182), objected to the proposed Illinois rule, which allows reclamation operations to take place within areas designated unsuitable, because they felt it allowed a loophole for related operation impacts which are considered to be in the reclamation phase. The Secretary has interpreted SMCRA Section 522 as allowing exploration operations on lands designated unsuitable. 30 CFR 762.14. Reclamation of such operations is consistent with the intent of SMCRA and the Federal rules.

139. *Rule 1761.12(f)(1)* ISP (ARN: ILL–0148 and ILL–0170) a commenter objected to the proposed Illinois rule which would protect only "publicly owned" places included on the National Register of Historic places. *See* Comment 135.

140. *Rule 1762.11(b)(1)* (The commenter appears to have incorrectly cited Section 1762.11(a)(1)) CPKC (ARN: ILL–0169B) suggested that additional language and correction be made to proposed Illinois Rule 1762.11(b)(1) by changing "incompatible" to "compatible" and adding the phrase "existing at the time the petition is filed" regarding land use plans and programs. The Secretary disagrees. The proposed Illinois rule is consistent with 30 CFR 762.11(b)(1).

141. *Rule 1762.11(b)(1)* CPKC (ARN: ILL–0169A) suggested the term "existing" be deleted from Illinois Rule 1762.11(b)(1) which sets forth criteria for designating lands as unsuitable for surface coal mining. The Secretary disagrees. The Illinois rule appears to be consistent with 30 CFR 761.11(b)(1).

142. *Rule 1764.13(b)* ISP (ARN: ILL–0148 and ILL–0170) and CPKC (ARN: ILL–0169B) commented that Illinois Rule 1764.13(b) omits the words "only" and "need" from the requirements of information required in a petition to designate an area unsuitable for surface coal mining operations, thereby resulting in the possibility of placing additional burdens on a petitioner not provided in the Federal rule. The Secretary believes that Illinois has corrected this provision in its July 30, 1980, proposed rules.

143. *Rule 1764.13(b)(4)* ISP (ARN: ILL–0148) is concerned that while the Federal rule requires the petitioner's name, address, and telephone number, Illinois has added "the name or names of other persons represented by the petition." The Secretary believes that the proposed Illinois rule is consistent with the Fedeal rule.

144. *Rule 1764.15(a)(5)* CPKC (ARN: ILL–0169A) objected to Illinois' use of the term "baseless" in determining that a petition to have an area designated as unsuitable for surface coal mining operations is incomplete or frivolous. Illinois deleted this term in its proposed rules submitted on June 16, 1980.

145. *Rule 1764.(b)(1)* ISP (ARN: ILL–0148 and ILL–0170) and CPKC (ARN: ILL–0169) suggested that the Illinois Institute of Natural Resources should be allowed to approve contract work, if needed. The Secretary declines to suggest how internal relationships between the Institute and the Department of Mines and Minerals should be conducted.

146. *Rule 1764.15(b)(1)* Several commenters (ARN: ILL–0169 and 0170) are concerned that while 30 CFR 764.15(b)(1) provides for the circulation of copies of the completed petition to different entities, Illinois limits referral of the complete petition to its Institute of Natural Resources. The Secretary disagrees in that Illinois Rule 1764.15(b)(3) appears to contain provisions comparable to 30 CFR 764.15(b)(1).

147. *Rule 1764.(b)(1)* The commenter (ARN: ILL–169A) suggested a deletion of language which states that the Land Report submitted by the Illinois Institute of Natural Resources on a petition to designate lands unsuitable for mining shall not contain a recommendation as to whether the petition should be granted or denied. While the Secretary would not object to the adoption of the commenter's suggestion, the suggestion is not required for the Illinois provision to be consistent with 30 CFR 764.15(b)(1).

148. *Rule 1764.15(b)(3)* CPKC (ARN: ILL–0169A) suggests that the term "interest," as used in proposed Illinois Rule 1764.15(b)(3) should be defined. The rule in question refers to the circulation of copies of the petition to have an area designated as unsuitable for surface coal mining operations to, and the requests for submissions of relevant information from, interested agencies and persons. Such a definition is not required by the Federal rules.

149. *Rule 1764.17(e)* ISP (ARN: ILL–0148 and ILL–0170) the commenter disagreed with the phrase "prepare a detailed statement" and suggested instead "authorize the preparation of a Land Report." The use of phrase "prepare a detailed statement" by Illinois is consistent with 30 CFR 764.17.

150. *Rule 1764.19(a)(3)* ISP (ARN: ILL–0148) the commenter expressed concern for use of the phrase "detailed statement" in proposed Illinois Rule 1764.19(a)(3), because it would be possible for Illinois to prepare its own report separate from the Institute of Natural Resources and base its decision on its report without considering the Land Report. While it is true that the Illinois provisions may allow the preparation of two reports, Illinois would be required to consider all information relating to the designation petition in arriving at a decision. The Land Report would be considered under proposed Rule 1764.19(a)(2).

151. *Rule 1764.19(c)* CPKC (ARN: ILL–0169B) noted Illinois Rule 1764.19(c) cites the Federal rather than State statute and rules. The proposed rule of July 30, 1980 has been corrected.

152. *Rule 1764.23(a)* ISP (ARN: Ill–0148 and ILL–0170) suggested that this section be amended to make the entire information and data base system available to the public at two central locations. The Illinois rule is consistent with 30 CFR 764.23(a). The Secretary cannot require the State to do more than the Federal rules require.

153. *Rule 1764.23* ISP (ARN: ILL–0148 and ILL–0170) suggested that language be added to the Illinois rule that would require publishing of an information booklet concerning procedures for designating lands unsuitable. This requirement is not necessary for compliance with the Federal regulations.

154. *Rule 1764.23(c)* ISP (ARN: ILL–0170) suggested modification of proposed Illinois Rule 1764.23(c) to read

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(modifiers underscored) "make the *entire* information and data base system developed under Section 1764.21 available to the public at *2 central locations* for inspection free of charge and for copying at reasonable cost." This is not required for compliance with the Federal rules.

155. *Rule 1770.12* ISP (ARN: ILL–0148 and ILL–0170) requests that language be added to Illinois Rule 1770.12 that would incorporate Sections 1776.11(e), Part 1785 and Part 1786 to insure that exploration permits would be also included in the required review of the Illinois Committee on Surface Mining Control and Reclamation. While the Secretary would not object to the review, this change is not required for compliance with the Federal rules.

156. *Rule 1771.11(a)* ISP (ARN: ILL–0148 and ILL–0170) notes that the Illinois reference to Rule 1771.13(b) is not valid in Illinois Rule 1771.11(a), since Illinois does not have a Rule 1771.13(b). The cite is not necessary, but the provision does not appear to be inconsistent with the Federal rules since the substantive provisions of 30 CFR 771.13(b) appear in Illinois Rule 1771.11(a). The cite the Rule 1771.13(b) is not contained in the July 30, 1980, version of Rule 1771.11(a).

157. *Rule 1771.21(b)* ISP (ARN: ILL–0148) expressed concern that Illinois has not allowed enough time in its review process of permit applications to allow required public participation and response. Illinois has the discretion to establish deadlines for filing permit applications and revisions, and the Secretary believes that sufficient time has been provided for public participation.

158. *Rule 1771.21(b)(3)* Several commenters (ARN: ILL–0148, ILL–0169A and ILL–0169B) suggest deletion of language in the phrases (suggested deletion underscored): "*significant* revisions must be submitted 180 days before" and *"Insignificant revisions may be approved after review by the regulatory authority."* Further, the commenter pointed out that the term "insignificant revision" is not used in the Federal or State Act. The language of the Illinois rules is consistent with SMCRA Section 511(a)(2), which implies that insignificant revisions need not be subject to notice and hearing requirements.

159. *Rule 1771.25(b)(4)* CPKC (ARN: ILL–0169B) suggested clarification of the term "lands not affected" used in Illinois Rule 1771.25(b)(4) by adding the phrase "totally undisturbed by any facet of mining." The Rule provides permit fee credits for fees already paid for permits issued under the SMCRA Section 502 interim program. This change was believed to be needed because the definition of "affected lands" in Part 1701 is vague. Illinois Rule 1771.25(b)(4) is not inconsistent with SMCRA Section 507(a), which sets only an upper limit on permit fees.

160. *Rule 1776.2* CPKC (ARN: ILL–0169B) noted that Illinois does not reference the Federal Act and regulations in this section. The State has correctly referenced its own act and rules and is not required to refer to the Federal Act or regulations.

161. *Rule 1776.11(b)* Several commenters (ARN: ILL–0148, ILL–0170 and ILL–0169B) pointed out that Illinois does not require that a notice of intent to explore and remove less than 250 tons of coal shall include a map of the exploration areas. The Secretary agrees that this omission makes the Illinois proposed rule inconsistent with the Federal rule.

162. *Rule 1776.12(a)(5)* ISP (ARN: ILL–0148 and ILL–0170) and CPKC [ARN: ILL–0169B] pointed out that Illinois Rule 1776.12(a)(5) does not require applications for coal exploration to include a coal exploration map with the detail called for in 30 CFR 776.12(a)(5). In proposed rules submitted July 30, 1980, Illinois included a map requirement consistent with the Federal rule.

163. *Rule 1776.13(a)* ISP (ARN: ILL–0148 and ILL–0170) was concerned as to when the 10 day period for approval of a permit would commerce. Proposed Illinois Rule 1776.13(a) submitted July 30, 1980, states that approval shall occur within 10 days of the close of the public comment period. This is consistent with 30 CFR 776.13(a), which requires such decisions within a reasonable time.

164. *Rule 1776.12(b)(1)* CPKC (ARN: ILL–0169B) suggested that public notice of coal exploration permits should be given as required by proposed Illinois Rule 1786.11. Proposed Illinois Rule 1776.12(b)(1) is consistent in this regard with 30 CFR 776.12(b)(1).

165. A commenter (ARN: ILL–0169) expressed concern that local people will not be aware of mining permits. In proposed Rule 1786.11, Illinois provides for public notice of permit applications, including advertisements in local newspaper that is consistent with 30 CFR 786.11.

166. *Rule 1778.14(d)* ISP (ARN: ILL–0148 and ILL–0170) and CPKC (ARN: ILL–0169B) stated that proposed Illinois Rule 1778.14(d), which requires information about the applicant's financial condition to provide assurance that no further forfeiture would occur, is not relative to nor needed as compliance information. This language is consistent with the Federal regulations.

167. *Rule 1778.15(a)* Several commenters (ARN: ILL–0148 and ILL–0169) suggested that language added in Illinois Rule 1778.15(a) in which the Illinois Department of Mines and Minerals disclaimed liability for adjudicated right-of-entry problems not be accepted since this situation is adequately handled elsewhere in the State's Act and rules. The added language does not conflict with Federal requirements.

168. *Rule 1778.19(e)* ISP (ARN: ILL–0148) suggests adding language to Rule 1778.19(1c) to require that if grandfathering of prime farmland has been granted, then the applicant should include a map showing exempted acres and a copy of the opinion and order issued by the regulatory authority. While the Secretary would not object to the requirement, the provision is not required by SMCRA or the Federal rules.

169. *Rule 1779.6* Commenter (ARN: ILL–0172) expressed concern that Illinois Rule 1779.6 is a "loophole" because it allows for "predictive information" based upon "expert opinion extrapolation" from known data about "similar areas." The Secretary agrees that the Illinois provision is inconsistent with the Federal regulations to the extent it would allow permit applicants to substitute extrapolations from information about "similar" areas without any testing of the actual area to be mined.

170. *Rule 1779.15(a)* A commenter (ARN: ILL–0172) noted that this section adds the term "when applicable" to the Federal requirement for a description of groundwater hydrology. The commenter contends that this makes the Illinois rule less stringent than the Federal rule. The Secretary believes that this deficiency has been corrected in the State's July 30, 1980 proposed rules.

171. *Rule 1779.15(c)* ISP (ARN: ILL–0148 and ILL–0170) and another commenter, (ARN: ILL–0172), were concerned that the Illinois Rule 1779.15(c), which appears to establish an exemption where a "significant aquifer" does not occur, is less stringent than 30 CFR 779.15. The Secretary believes Illinois Rule 1779.15(c) has been acceptably modified in the State's July 30, 1980 proposed rules.

172. *Rule 1779.16(b)(2)(v)* ISP (ARN: ILL–0148 and ILL–0170) objected to the omission of "dissolved iron" from the water quality data specified in rule 1779.16(b)(2)(v). The Secretary believes this rule has been modified to be consistent with 30 CFR 779.16(b)(2)(v) in the State's July 30, 1980 proposed rules.

173. *Rule 1779.20* Several commenters (ARN: ILL–0148, Ill–0170 and ILL–0172) suggested adding new language regarding fish and wildlife resource information. Because 30 CFR 779.20, which pertained to fish and wildlife resource information, has been suspended, the Secretary cannot require any specific standard at present. [*In Re: Permanent Surface Mining Regulation Litigation*, No. 79–1144, February 26, 1980.]

174. *Rule 1779.21(a)* A commenter (ARN: ILL–0172) suggested that this section was inconsistent with 30 CFR 779.21(a). The Illinois rule on soil survey information tracks the Federal rule and therefore is consistent with it.

175. *Rule 1779.22(a)(1), 1778.22(a)(1), 1816.133(b)(2), and 1817.133(b)(2)* CPKC (ARN: ILL–0169B) proposed changing "the anticipated date of beginning the proposed operation" and "the beginning of mining" to "the date of acquisition" for the above sections in order to make the provisions consistent and provide a definition of historical use of land. This change is not required for compliance with the Federal rules.

176. *Rule 1779.24(i)* ISP (ARN: ILL–0170) Stated that "or eligible for which listing" should be added to Illinois Rule 1779.24(i) concerning boundaries to be shown on permit application maps. The added language is not required for compliance with the Federal rules.

177. *Rule 1779.25(k)(4)* ISP (ARN: ILL–0148 and ILL–0170) commented that the additional language in Illinois rule 1779.25(k)(4) with regard to slope measurement techniques is inadequate. The Secretary agrees that, since Illinois allows medium intensity soil maps or contoured aerial photos in lieu of specific slope measurements, the Illinois proposed rule is inconsistent with the Federal provision.

178. *Rule 1779.27(b)(1) and 1783.27(b)(1)* CPKC (ARN: ILL–0169B) objected that Illinois Rules 1779.27(b)(1) and 1783.27(b)(1) would negate prime farmland criteria for mining reclamation if the land had not been historically used for cropland. The Secretary believes that the Illinois provisions appear consistent with the Federal regulations.

179. *Rule 1779.27(b)(5)* Two commenters (ARN: ILL–0148, ILL–0170 and ILL–0172) objected to the language in Illinois Rule 1779.27(b)(5) which would provide an exemption to prime farmland restoration requirements. The Secretary believes that Illinois has corrected this deficiency in its July 30, 1980, proposed rules.

180. *Rule 1780.6* Commenter (ARN: ILL–0172) expressed concern that Illinois Rule 1780.6 provides a "loophole" in that the proposed rule allows for "predictive information" based upon "expert opinion extrapolation" from known data about "similar areas." The Secretary agrees that the Illinois provision is inconsistent with the Federal regulations to the extent it would allow permit applicants to substitute extrapolations from information about "similar" areas without any testing of the actual area to be mined.

181. *Rule 1784.14(a)(3)* ISP (ARN: ILL–0171) commented that Illinois cites its rule 1817.54. The proposed Illinois rules do not contain a Section 1817.54. However, 30 CFR 817.54 has been remanded. [*In Re: Permanent Surface Mining Regulation Litigation*, No. 79–1144, May 16, 1980]. Therefore, the Secretary cannot require the Illinois rules to contain a corresponding provision and the reference to Section 1817.54 is in error.

182. *Rule 1784.14(b)(2)* A commenter (ARN: ILL–0172) suggests that the "and" after the second comma should be changed to "of" in Section 1784.14(b)(2), which concerns a treatment plan to protect the hydrologic balance. The proposed Illinois regulation appears to be consistent with 30 CFR 784.14(b)(2).

183. *Rule 1784.20(c)(4)* ISP (ARN: ILL–0148 and ILL–0170) expressed concern with the reference to Section 1817.124 in Illinois Rule 1784.20(c)(4), which concerns non-cancellable insurance. The Secretary believes that Illinois has corrected this deficiency in its July 30, 1980, proposed rules.

184. *30 CFR 785 and 823* Several commenters (ARN: ILL–0170 and 0269D) provided suggestions on the re-adoption of regulations that have been suspended. [*In Re: Permanent Surface Mining Regulation Litigation* No. 79–114, February 26, 1980 and No. 79–1144, May 16, 1980]. These suspended provisions will not be required for program approval at this time. Therefore, they do not provide a basis for the Secretary's findings at present.

185. *Rule 1785.13* CPKC (ARN: ILL–0169A) appears to express a concern that an entire county or township acreage cound be included in experimental practice. Illinois Rule 1785.13(e)(3), 30 CFR 785.13(e)(3) and SMCRA Section 711(ii) specify that the experimental practice may be no larger than is necessary to conduct the experiment.

186. *Rule 1785.13(e)(5)(i)* CPKC (ARN: ILL–0169A) suggested additional language that would allow public participation in the review process in the middle of the permit term. While the Secretary would not object to this provision, the provision is not required.

187. *Rule 1785.17(a)* A commenter (ARN: ILL–0169A and ARN: ILL–170) noted that Illinois added language "on which drilling for blasting, blasting, and overburden removal to the coal seam to be mined occurs," concerning the scope of the prime farmlands provisons. The Secretary believes that Illinois has corrected this deficiency in its July 30, 1980, proposed rules.

188. *Rule 1785.17(a)* ISP (ARN: ILL–0170) suggests that Illinois Rule 1785.17(a) be amended to limit revisions and renewals to areas already under permits issued prior to August 3, 1977, and then not include additional land. The "revision and renewal" language in Illinois Rule 1785.17(a) appears to be consistent with SMCRA Section 510(d)(2).

189. *Rule 1785.17(a)* Several commenters (ARN: ILL–0148, ILL–0169, ILL–0179 and ILL–0182) were concerned about the implications of Illinois' use of the term "mining" in the prime farmlands permit application section. Proposed Illinois Rule 1785.17(a) submitted July 30, 1980, refers to "surface coal mining and reclamation operations" instead of "mining." However, while the wording of the proposed Illinois rule is consistent with 30 CFR 785.17(a), Illinois excludes surface impacts of underground mining from its definition of "surface coal mining and reclamation operations," rendering Rule 1785.17(a) inconsistent with the Federal rule.

190. *Rule 1785.17(b) and 1823.14(c)* VCI (ARN: ILL–0169E) pointed out that proposed Illinois Rules 1785.17(b) and 1823.14(c) do not require measuring of the moist bulk density of each major soil horizon of prime farmland soils as do the Federal rules. This specific requirement has ben remanded and the Secretary cannot require such provisions at present. 44 FR 77455, December 31, 1979.

191. *Rule 1785.17(b)(1)* CPKC (ARN: ILL–0169B) suggested that a requirement for bulk density data be added to the permit application requirements for prime farmlands. The Illinois rule tracks the corresponding Federal rule and, therefore, the Secretary cannot require that the State add the suggested requirement. *See also* comment 190.

192. *Rule 1785.17(b)(3)* Commenters (ARN: ILL–0148 and ILL–0169) expressed concern with the meaning of proposed Illinois Rule 1785.17(b)(3), which requires separate stockpiling of topsoil "from the spoil" on prime farmland. The language used in this rule is unclear; however, the Secretary believes that Illinois has corrected this deficiency in its July 30, 1980, proposed rules.

193. *Rule 1785.17(b)(6).* CPKC (ARN: ILL–0169B) requested that the term "reasonable time" in proposed Illinois Rule 1785.17(b)(6) be defined or that

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guidelines be provided. This rule requires permit applications for prime farmlands to demonstrate that higher or equivalent crop yields will be achieved "within a reasonable time." Illinois' rule is consistent with the Federal rule, but appears to be inconsistent with Section 4.02 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. Chap. 127, Part 1001), because it fails to include the standards by which the agency will determine what is a reasonable time.

194. *Rule 1785.17(b)(7)* CPKC (ARN: ILL–0169A) suggested adding the phrase "an unmined soil" in determining current estimated yields for prime farmlands in proposed Illinois Rule 1785.17(b)(7). This additional language is not required in order for the Illinois rule to be consistent with the Federal regulations.

195. *Rule 1785.17(b)(7)* Commenters (ARN: ILL–0148 and ILL–0169) suggested that the Illinois language regarding the determination of estimated yields for prime farmland is a "state window" item. The Illinois rule is consistent with the Federal provisions.

196. *Rule 1785.17(b)(8)* Several commenters (ARN: ILL–0169B and ILL–0169D) are concerned with the deletion of target yields as a standard for revegetation success in proposed Illinois Rule 1785.17(b)(7). The Secretary cannot require that current estimated yields under a high level of management be used as the "target" yield for determining success of revegetation. *In Re: Permanent Surface Mining Regulation Litigation,* No. 79–1144, May 16, 1980. Therefore, the proposed Illinois rule is consistent with Federal requirements.

197. *Rule 1785.17(c)* ISP (ARN: ILL–0148 and ILL–0171) stated that language in the proposed Illinois rule that places deadlines on the U.S.D.A for commenting on prime farmland permit applications should not be allowed. The Federal rule requires consultation with the Secretary of Agriculture prior to issuance of permits for areas including prime farmlands. To the extent that the deadline for U.S.D.A comments would allow the State to make approvals without the required consultation, the Illinois rule is inconsistent with SMCRA and the Federal rules.

198. *Rule 1785.17(d)(1)* Several commenters (ARN: ILL–0148, ILL–0182A, ILL–0169 and ILL–0169E) objected to the phrase "higher and better use" as an alternative to cropland as the postmining and use for prime farmland in proposed Illinois Rule 1785.17(d)(1). The Secretary believes that Illinois has corrected this provision in its July 30, 1980, proposed rules.

199. *Rule 1785.17(e)(1)(i)* ISP (ARN: ILL–0182A, ILL–0148 and ILL–0150) and CPKC (ILL–0169B) requested that the exemption from the prime farmland standards for surface facilities and/or waste piles be stricken from the Illinois rule. One commenter supported this exemption. The Secretary believes this exemption is inconsistent with the Federal rules, because the Illinois rule would not clearly allow exemptions only for surface facilities that are actively used over extended periods and affect a minimal amount of land.

200. *Rule 1785.17(e)(1)(iv)* CPKC (ARN: ILL–0169B) suggested that a substitution of the term "intends" in Illinois Rule 1785.17(e)(1)(iv) for the term "demonstrate" in 30 CFR 785.17 with regard to best technology available should not be allowed. Rule 1785.17(e) concerns exemptions from prime farmland requirements. It has no counterpart in the Federal rules, and is not acceptable. *See* Comment 199.

201. *Rule 1785.17(e)(2)* ISP (ARN: ILL–0182A and ILL–0148) objects to the exemption from the prime farmland requirements of small irregular farm units in Illinois Rule 1785.17(e)(2). Illinois has not included this exemption in its July 30, 1980, proposed rules.

202. *Rule 1786.11(a)* ISP (ARN: ILL–0171) suggests that the newspaper advertisement of the filing of an application be made after the regulatory authority determines that the application is complete. As the commenter notes, Rule 1786.11(a) of the proposed Illinois regulations is consistent with 30 CFR 786.11(a), so that the State is not required to make the suggested revision. The present Illinois proposed regulation would allow the public to have input in the regulatory authority's determination on whether the application was complete.

203. *Rule 1786.11(b)(4)* ISP (ARN: ILL–0171) suggests that the notice required to be sent to governmental and other entities under proposed Illinois Rule 1786.11(c) would not have to indicate where comments can be submitted, as do 30 CFR 786.11(b)(4) and 786.11(c). Proposed Illinois Rule 1786.11(c), submitted by Illinois on June 16, 1980, includes provisions comparable to those of 30 CFR 786.11(b) and which the Secretary believes will ensure that the entities covered by Rule 1786.11(c) will know where to submit comments.

204. *Rule 786.11(c)—Rule 1786.11(c)* ISP (ARN: ILL–0171) noted that Illinois Rule 1786.11(c) fails to require that notice of the filing of a permit application be sent to all the entities specified in 30 CFR 786.11(c). As the Illinois Attorney General (Vol. 7, p. 49) notes, the proposed Illinois rule does specify some specific State agencies that are to receive notice. However, it does not ensure that all the entities specified in 30 CFR 786.11(c) will receive the proper notice. The Secretary believes that Illinois has corrected this deficiency in its July 30, 1980, proposed rules.

205. *Rule 1786.11(c)* ISP (ARN: ILL–0148 and 166.0170) suggests that notice of request for an alternative postmining land use be included in the notice of the filing of a permit application set forth in proposed Illinois Rule 1786.11(c). While this amendment would not be required for the rule to comply with 30 CFR 786.11(c), the Secretary agrees that the change would be beneficial in combining the notices required by 30 CFR 816.133(c) and 30 CFR 786.11(c).

206. *Rule 1786.11(e)(1)* ISP (ARN: ILL–0171) suggests additional language to proposed Illinois Rule 1786.11, that would require a revised application to be treated as if it were a new application if the revised application is submitted after the notice and filing required for a new application but prior to the regulatory authority's decision. Although such a change would be beneficial in ensuring public participation in the permitting process, the change is not necessary to comply with 30 CFR 786.11.

207. *Rule 1786.11(e)(1)* ISP (ARN: ILL–0170) suggested additional language that would address public review of changes made in a permit application after the steps in proposed Illinois Rule 1786.11 have been taken. The proposed Illinois rule appears to be consistent with Federal requirements.

208. *Rule 1786.12(a)* ISP (ARN: ILL–0148) suggests proposed Illinois Rule 1786.12(a) include reference to 1786.11(d) which requires a copy of the complete application be made available for public inspection. The Illinois reference appears to be consistent with the Federal requirement.

209. *Rule 1786.12(a)* ISP (ARN: ILL–0170) suggests that proposed Illinois Rule 1786.12(a) be amended to include a subparagraph (d) to specify who may make public comments on a permit application. The commenter is particularly concerned that comments may be made by the County Board or Commission. The Secretary believes that proposed Illinois Rule 1786.11(c) would include the County Board or Commission under the language "local governmental bodies" or "such other agencies as may have an interest."

210. *Rule 1786.12(b)* ISP (ARN: ILL–0170) suggests that proposed Illinois Rule 1786.12(b) be changed to allow the Interagency Committee 45 days from the last publication of the newspaper notice to comment on permit applications,

instead of 45 days from the first publication as the rule currently states. The proposed Illinois rule allows a reasonable time within which comments shall be submitted, which is consistent with 30 CFR 788.12(b).

211. *Rules 1786.12(b) and 1786.13(a)* ISP (ARN: ILL–0170) suggests that the combined effect of proposed Rules 1786.12(b) and 1786.13(a) is to require members of the Interagency Committee to file objections to a permit application within 30 days while allowing the members of the Interagency Committee 45 days to submit comments on the permit application. The Secretary cannot agree since the Interagency Committee's comments are due within 45 days of the first publication of the newspaper notice and the other governmental agencies' comments and objections are due within 30 days of the last newspaper advertisement. Section 1786.11(a) requires the notice of the application to be advertised once a week for four consecutive weeks. Consequently, it appears that under the Illinois system, the Interagency Committee's comments are due several days before the deadline for filing an objection to the application.

212. *Rule 1786.12(c)* ISP (ARN: ILL–0148) suggests that Illinois Rule 1786.12(c) be amended to include the Interagency Committee as an entity that would receive a copy of comments so that the Interagency Committee, in the commenter's view, could serve more effectively as a resource for the regulatory authority. While this change is not mandated by 30 CFR 786.12(c), the Secretary would not object to the revision.

213. *Rule 786.13—Section 1786.13* CPKC (ARN: ILL–0619B) suggests amending proposed Illinois Rule 1786.13(a) to allow "a person with a valid legal interest" as well as a "person having an interest which is or may be adversely affected" to file objections to a permit application. Proposed Illinois Rule 1786.13(a) is consistent with the language of 30 CFR 786.13(a) and the Secretary cannot require the suggested additional language. However, the existing language appears to encompass the persons with whom the commenter is concerned.

214. *Rule 1786.13(a)* ISP (ARN: ILL–0171) suggests amending proposed Illinois Rule 1786.13(a) to require either that a revised application may not be accepted after publication of the last newspaper notice or that the filing of a revised application would cause the notice and comment periods to commence. The Illinois provision is consistent with the Federal regulation and the Secretary may not require the suggested amendment.

215. *Rule 1786.13(b)(1)* ISP (ARN: ILL–0148) suggests that Illinois proposed Rule 1786.13(b)(1) be amended to include the Interagency Committee as an entity that would receive any objections to an application. This would enable the Interagency Committee, in the commenter's view, to serve more effectively as a resource for the regulatory authority. While this change is not mandated by 30 CFR 786.13(b)(1), the Secretary would not object to the addition.

216. *Rule 1786.14(a)(3)* ISP (ARN: ILL–0148) suggests that the informal conference filing deadline be changed in Illinois proposed Rule 1786.14(a)(3) from 30 days to 60 days after the last publication of the newspaper advertisement. The Illinois provision is consistent with the Federal rule and the Secretary may not require the change.

217. *Rule 1786.14(b)* ISP (ARN: ILL–0148) suggests that Illinois proposed Rule 1786.14(b) be amended to change the time for holding an informal conference from within 75 days of the first date of the newspaper notice to within 90 days of the last date of the newspaper notice. As the commenter points out, the present rule may force the regulatory authority to give two weeks notice of the hearing and hold the hearing within 15 days. The regulatory authority is required, in accordance with 30 CFR 786.14(b), to hold the informal conference within a reasonable time following the receipt of the request. The time set by Illinois is reasonable and the Secretary cannot mandate the precise time limit suggested by the commenter.

218. *Rule 1786.14(b)(2)* ISP (ARN: ILL–0148) suggests that Illinois proposed Rule Section 1786.14(b)(2) be amended to require notice of an informal conference two weeks prior to the informal conference. The Secretary believes that Illinois has corrected this provision in its July 30, 1980, proposed rules.

219. *Rule 1786.14(c)* ISP (ARN: ILL–0171) suggests that proposed Illinois Rule 1786.14(c) is inconsistent with the Federal regulation because it allows a person who has not requested an informal conference to force the cancellation of an informal conference requested by another person. The Secretary agrees that the proposed Illinois rule is inconsistent with SMCRA Section 513(b), which requires that an informal conference shall be held on a permit application upon request and may be cancelled only if all parties to the informal conference agree.

220. *Rule 1786.15* ISP (ARN: ILL–0171) noted that the proposed Illinois rule does not contain a provision for procedures to maintain confidential information in the permit application, as required by 30 CFR 786.15(b). The Secretary agrees that the proposed Illinois rule should be revised to clarify that such information may be kept confidential.

221. *Rule 1786.16.* CPKC (ARN: ILL–0169A) suggests that Illinois amend proposed Illinois Rule 1786.16 to prohibit the State from considering new material unless parties are allowed 28 days to review and comment on the new material. While the Secretary would not object to this provision, the change would not be mandated.

222. *Rule 1786.16.* CPKC (ARN: ILL–0169A) suggests a change in the designation of "(4)" to "(g)" on page 147 in proposed Illinois Rule 1786.16 concerning opportunity for public hearing. The Section appears to be correctly numbered.

223. *Rule 1786.16(a).* ISP (ARN: ILL–0148) suggests that proposed Illinois Rule Section 1786.16(a) be amended to require that a public hearing be requested within 95 days after the last newspaper notice rather than 80 days after the first newspaper notice. This suggestion would be beneficial in allowing the public time to consider whether a hearing may be necessary and the regulatory authority time to schedule the hearing. However, the change is not required by SMCRA.

224. *Rule 1786.16(a).* CPKC (ARN: ILL–0169B) suggests that proposed Illinois Rule 1786.16(a) be amended to allow a "person having an interest which is or may be adversely affected" (defined in proposed Rule 1701.5) instead of an "interested person" (undefined) request a public hearing. The amendment might clarify the intent of the Illinois provision but will not be required.

225. *Rule 1786.16(c).* CPKC (ARN: ILL–0169 A and B) suggests an amendment that would prohibit a state employee, a person who has been employed by the State for more than five years, or a person employed by or representing a coal company for more than five years from being the hearing officer at a public hearing on a permit application. Further, the amendment would require the hearing officer to be an attorney. SMCRA contains no provisions for public hearings on permit applications and no provisions similar to those suggested limiting the persons who may preside at public hearings. Therefore the suggested amendments may not be required.

226. *Rule 1786.16(c).* CPKC (ARN: ILL–0169B) suggests amending Illinois Rule 1786.16(c) to give the hearing officer the power to subpoena witnesses. SMCRA

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does not provide for public hearings on permit applications, so the Secretary may not prescribe the powers of hearing officers presiding at such hearings.

227. *Rule 1786.16(f).* ISP (ARN: ILL–0170) suggests amending this section to require the permit applicant to respond to questions on information in the application or on the proposed operation and to require the regulatory authority to exclude the information from consideration if the applicant fails to respond. Such an amendment is not required by SMCRA.

228. *Rule 1786.16(f)(2).* CPKC (ARN: ILL–0169 A and B) suggests the addition of language to proposed Illinois Rule 1786.16(f)(2) that would include the right to call and cross-examine witnesses in the same manner allowed by Section 60 of the Illinois Civil Practice Act. Such an amendment is not required by SMCRA.

229. *Rule 1786.16(f)(5).* CPKC (ARN: ILL–0169B) suggests the amendment of Illinois Rule 1786.16(f)(5), concerning objections to rulings, to change the phrase "interested person" to the phrase "person having an interest * * *," which is defined in proposed Illinois regulation 1701.5. The suggested change would be consistent with Illinois definitions; however, it will not be required.

230. *Rule 1786.16(f)(5).* CPKC (ARN: ILL–0169 A and B) suggests the amendment of proposed Illinois Rule 1786.16(f)(5) to delete the prohibition of an interlocutory appeal from a hearing officer's ruling. The suggested change is a matter to be determined pursuant to the Illinois Administrative Procedure Act, and thus would not be mandated.

231. *Rule 1786.16(g)(4).* CPKC (ARN: ILL–0169 A and B) suggests the deletion of the phrase "nor submitted to the regulatory authority pursuant to the State Act and these regulations in a situation where no hearing is held" and the addition of language that would allow a 28 day comment period. Since SMCRA contains no provisions for public hearings on permit applications, these changes will not be mandated.

232. *Rule 1786.17.* ISP (ARN: ILL–0171) notes that the Illinois regulation fails to implement 30 CFR 786.17(a)(2). Although this section was not specifically remanded, the section requires the regulatory authority to determine the adequacy of fish and wildlife plans. Regulations requiring the permit application to contain these plans have been remanded. *In Re: Permanent Surface Mining Regulation Litigation* No. 79–1144, February 26, 1980. Consequently, Illinois need not incorporate this provision at this time.

233. *Rule 1786.17(a).* ISP (ARN: ILL–0170) suggests additional language to prohibit the regulatory authority from considering in its review of a permit application information that is not included in a hearing record, unless the information is an internal staff review. Although this addition would be consistent with the public participation intent of SMCRA, proposed Illinois Rule 1786.19 would require the regulatory authority to document in its decision on permit approval information otherwise available that is not included in the application but which forms a basis for the decision. If the information is not supportive of the decision, then a person with an interest which is or may be adversely affected may request a hearing pursuant to proposed Illinois Rule 1787.

234. *Rule 1786.19.* CPKC (ARN: ILL–0169A and B) and (ILL–0171) suggests amending proposed Illinois Rule 1786.19 to require that documents or information on which a permit decision is based be in the record before the Department with "regard to the specific application." The Secretary finds that the Illinois language appears to be consistent with 30 CFR 786.19. The documentation of a permit decision is required to be part of the record and is, except for those items that are treated as confidential under SMCRA and the regulations, available to the public. 30 CFR 786.19 merely requires that the regulatory authority identify with some specificity the documentation of the permit decision that is not a part of the permit application itself.

235. *Rule 1786.19(e).* ISP (ARN: ILL–0148 and ILL–0170) suggests amending proposed Illinois Rule 1786.19(e) to make the section cover both privately-owned places and places eligible for listing in the National Register of Historic Places. The Secretary agrees that proposed Rule 1786.19(e) is inconsistent with 30 CFR 786.19(e) to the extent it does not cover privately-owned places included in the National Register of Historic Places. However, the Secretary may not require the rule to cover places eligible for listing on the Register. *See* Comment 135.

236. *Rule 1786.19(p).* ISP (ARN: ILL–0148 and Ill–0170) suggests several changes to proposed Illinois Rule 1786.19(p) for clarity. This provision concerns criteria for permit approval or denial. While the Secretary believes that the changes would clarify the intent of the section, the changes would not be required, since the Illinois provision concerns review by the Interagency Committee and is not inconsistent with the Federal rules.

237. *Rule 1786.23(b)(1).* ISP (ARN: ILL–0148) suggests that the reference to Section 1771.13 be amended to 1771.11, because there is no Section 1771.13 in the Illinois Rule. The Secretary agrees with this suggestion.

238. *Rule 1786.23(b)(2)(iii).* ISP (ARN: ILL–0148—Ill–0170) suggests amending proposed Illinois Rule 1786.23(b)(2)(iii) so that the time within which a decision must be made is the same whether or not an informal conference has been held. The Illinois provision sets up reasonable time limits which are consistent with 30 CFR 786.23(b)(2)(ii).

239. *Rule 1786.23(c).* ISP (ARN: ILL–0171) points out that if an interested party requests a public hearing pursuant to Section 1786.16 of the proposed Illinois regulations, the person would not receive notice of the permit decision under proposed Illinois Rule 1786.23(c). However, parties to the public hearing on the application would be notified of the permit decision as persons who filed written objections or comments under proposed Rule 1786.23(e), which is consistent with 30 CFR 786.23(e).

240. *Rule 1786.23(d).* ISP (ARN: ILL–0171) suggests that proposed Illinois Rule 786.23(d) be changed to clarify that the applicant must modify the permit rather than the regulatory authority. The Illinois provision is consistent with 30 CFR 786.23(d).

241. *Rule 1786.25(d).* ISP (ARN: ILL–0170) suggests that an additional section be added to prohibit the commencement of the operation prior to the running of the time to appeal the regulatory authority's permit decision. SMCRA Section 514(d) requires that granting of stays of permit decisions is discretionary. Proposed Illinois Rule 1787.11(2) is consistent with 30 CFR 787.11(b)(2) in implementing SMCRA Section 514(d).

242. *Rule 1786.27.* CPKC (ARN: ILL–0169A) suggests the addition of Section (d) to this sub-part which addresses the 30 day administrative review record. The Secretary does not have the authority to require such language since it does not appear in the Federal rules.

243. *Rule 1786.27.* The commenter (ARN: ILL–0169A) suggests that no operation should commence until the time for appeal has run. *See* Comment 241.

244. *Rule 1786.27(b)(2)* ISP (ARN: ILL–0170) notes correctly that Section 1786.27(b)(2) of the proposed Illinois rules concerning right of entry refers to Part 1842, which is not in the state regulations. The reference should be deleted.

245. *Rule 1786.29* CPKC (ARN: 0169B and ILL–1069A) suggested "an appeal" be added to this section heading, "Conditions of permits: Environment, public health, and safety." While the Secretary would not object to this change, the change will not be mandated, since the suggested language does not appear in the Federal rules.

246. *Rule 786.29—Rule 1786.29* CPKC (ARN: ILL–0169B) suggests addition of a paragraph to proposed Illinois Rule 1786.29 to prohibit the commencement of an operation until the expiration of the time to appeal the decision. *See* Comment 241.

247. *Rule 1787* ISP (ARN: ILL–0171) notes that Part 1787 of the Illinois regulations concerning administrative and judicial review of permit decisions does not contain procedures substantively similar to those contained in 43 CFR Part 4, which provide for public participation in the enforcement of the state program. The Secretary agrees that the Illinois submission does not contain provisions for public participation in the enforcement of the state program comparable to those in 43 CFR Part 4.

248. *Rule 1787.11(2)* A commenter suggests the deletion of the provisions for temporary relief on decisions of and failures to act by the regulatory authority. The Illinois provision is consistent with 30 CFR 787.11(b)(2) and need not be changed.

249. *Rule 1787.11* CPKC (ARN: ILL–0169A) suggests new language that would postpone the date on which mining may commence where public comment is involved and also suggests reordering this section. This new language cannot be required since these requirements are not found in the Federal rules.

250. *Rule 787.11(b)(2)(i–iv)—Section 1787.11(2)(i–iv)* CPKC (ARN: ILL–0169B) suggests that proposed Illinois regulation 1787.11(2)(i–iv) be amended by striking the paragraph and adding language that would prohibit the commencement of the operation until after the decision on the appeal has been reached. Section 1787.11(2)(i–iv) of the Illinois regulations is consistent with 30 CFR 787.11 and need not be changed. *See* Comment 241.

251. *Rule 787.12—Section 1787.12* The commenters (ARN: ILL–0169A and ILL–0182) believe that the judicial review provisions in proposed Illinois Rule 1787.12 require clarification. The Illinois regulation is consistent with 30 CFR 787.12 and need not be changed.

252. *Rule 1788.12* ISP (ARN: ILL–0170) suggested that Illinois should add the requirement that a change in a monitoring plan approved under a permit should require a permit revision to insure public participation. Since this requirement is not contained in 30 CFR 788.12, it cannot be mandated.

253. *Rule 1788.12(a)(1)* ISP (ARN: ILL–0171) objected to proposed Illinois Rule 1788.12(a)(1) regarding "significant departure" for which a permit revision would be required. The Secretary believes that the July 30, 1980 proposed Illinois rules are consistent with the Federal rules in this respect.

254. *Rule 1788.12(b)* ISP (ARN: ILL–0182A) suggested that "application for permit revision" be changed to "applications" in order to insure clarity. The Secretary would not object to the change, but will not mandate it since it is not required by the Federal rule.

255. *Rule 1788.12(c)* ISP (ARN: ILL–0170) commented that an application for revision of a permit should not be approved unless the regulatory authority finds that reclamation required by the State Act can be accomplished under the revised plan. The Illinois rule is consistent with 30 CFR 788.12(c) and need not be changed.

256. *Rule 1788.12(d)* (ARN: ILL–0182A) A commenter suggested changing the term incidental boundary "changes" to "revisions" in keeping with the Federal rule. The language substitution by Illinois does not render the provision inconsistent with 30 CFR 788.12(d).

257. *Rule 1788.12(d)* ISP (ARN: ILL–0182A) suggests an alternative to the proportional acreage criterian that are used to describe incidental boundary changes in proposed Illinois Rule 1788.12(d) concerning permit revisions. The Secretary believes the criteria used by the State are acceptable.

258. *Rule 1788.12(e)* ISP (ARN: ILL–0170) commented that proposed Illinois Rule 1788.12(e) has been misplaced and should be included as part of Rule 1788.17, which covers the general requirements for the transfer, assignment, or sale of permit rights. The Secretary believes that the arrangement of the State's rules is acceptable.

259. *Rule 1788.12(f)* ISP (ARN: ILL–0179 and ILL–0182A) objected that the proposed Illinois rule, which provides that determinations of what constitutes a "significant departure" requiring a permit revision shall be made by the regulatory authority in consultation with the permittee, allows decisions "behind closed doors." However, SMCRA Section 511(a)(2) does not require public participation in non-significant revisions in a mining operation.

260. *Rule 1788.13* CPKC (ARN: ILL–0169A) suggests that additional language that would require the submission of permit revision applications 180 days prior to expected commencement of the revised operations in order to allow for public hearings. The Illinois language is consistent with 30 CFR 788.13 and need not be altered.

261. *Rule 1800.5* CPKC (ARN: ILL–0169B) stated that the requirement that a self-bond" be executed by the permittee has been deleted from the definition of "self-bond" in proposed Illinois Rule 1800.5. Illinois used the definition of self-bond in proposed amendments to the Federal bonding regulations published January 24, 1980. This language was changed in final amended Federal bonding regulations published August 6, 1980 (45 FR 52306–52324). Illinois has been advised that its proposed rules should be modified in accordance with the new Federal rule. *See* Finding 19.

262. *Rule 1800.11(b)(ii) and (iii)* CPKC (ARN: ILL–0169B) noted that proposed Illinois Rules 1800.11(b)(1)(ii) and (iii) provide too many possibilities concerning the requirement to file a bond. The provisions appear to be consistent with 30 CFR 800.11(b)(ii) and (iii).

263. *Rule 1800.11(b)(2)* CPKC (ARN: ILL–0169B) noted that Illinois added language at Section 1800.11(b)(2) providing that the regulatory authority shall determine the bond amount in accordance with Parts 1805 and 1806. The commenter suggested that the regulatory authority should "approve" but not "determine" the bond amount and that 1805 and 1806 are poorly stated and do not match the Federal Regulations. Parts 805 and 806 were amended in final Federal regulations published August 6, 1980. The regulatory authority shall determine (not approve) the bond amount under 30 CFR 805.11. Illinois has been advised that modification of the proposed Illinois regulations should be made so provisions are consistent with the amended Federal provisions. *See* Finding 19.

264. *Rule 1805.13(b)(1)* CPKC (ARN: ILL–0169B) suggested that the reference to Section 1816.116 and 1817.116 in Section 1805.13(b)(1) of the June 16, 1980 proposed Illinois regulations should be changed to add the term "revised" Sections 1816.116 and 1817.116. In final Federal regulations published on August 6, 1980, concerning the period of liability under 30 CFR 805.13(b)(1), all references to 30 CFR 816.116 and 817.116 have been deleted. *See* Finding 19.

265. *Rule 1805.13(b)(3)* CPKC (ARN: ILL–0169B) suggested that Section 1805.13(b)(3) of the proposed Illinois regulations of June 16, 1980, concerning approved selected husbandry practices, be omitted. This provision tracks the Federal regulation proposed for amendment January 24, 1980. However, after public comment, changes were made to the proposed rule. The final rule, 30 CFR 805.13(b)(3), was published reflecting these changes on August 6, 1980. *See* Finding 19.

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266. *Rule 1805.13(c), (c)(1) and (c)(2)* CPKC (ARN: ILL–0169B) suggested that proposed Illinois Rules 1805.13(c)(1) and (2) concerning period of bond liability should be deleted from the June 16, 1980, proposed Illinois regulations. This language tracks the proposed amendments to Federal regulations published on January 24, 1980. However, because of public comment, changes were made to these proposed Federal regulations. These changes are reflected in the final Federal regulations published August 6, 1980. *See* Finding 19.

267. *Rule 1805.13(d)* CPKC (ARN: ILL–0169B) stated that Section 1805.13(d) of the June 16, 1980, proposed Illinois regulations concerning the period of bond liability, should refer to "revised" Section 1816.133 rather than Section 1816.133, Illinois is being advised that Section 1816.133 concerning post mining land use is inconsistent with 30 CFR 1816.133.

268. *Rule 1806.12(d)* CPKC (ARN: ILL–0169B) suggested that Section 1806.12(d) of the June 16, 1980, proposed Illinois regulations concerning terms and conditions of bonds should refer to "revised" Section 1805.13 rather than section 1805.13 because the referenced section is a poor regulation. The Federal counterpart, 30 CFR 805.13, has been revised. *See* Finding 19.

269. *Rule 1806.12(e)(1)* CPKC (ARN: ILL–0169B) noted that, whereas 30 CFR 806.12(e)(1) requires the surety to give at least a sixty day notice to the permittee and the regulatory authority of the intent to cancel, Section 1806.12(e)(1) (June 16, 1980 proposed regulations) requires 90 days notice.

Since the provision concerns effective bond cancellation on lands not disturbed, the additional 30 days does not make the Illinois provision inconsistent with the Federal rule. The required minimum notice time of 60 days stated in the Federal rule is satisfied by the changed 90 day requirement of the Illinois rule.

270. *Rule 1806.12(e)(1)* CPKC (ARN: ILL–0169B) suggested that the language "may allow continuation of mining operations on land for which bond is cancelled" be omitted from Section 1806.12(e)(1) of the June 16, 1980, Illinois proposed regulations. This provision concerns allowing operations to continue where the bond has been cancelled, but a replacement bond has been filed. The comparable language in the Federal provision at 30 CFR 806.12(e)(1) is: the regulatory authority "may approve such cancellation". Thus, the Illinois language is consistent with the Federal provision.

271. *Rule 1806.12(e)(1)* CPKC (ARN: ILL–0169B) noted that Section 806.12(e)(1) of the June 16, 1980, proposed Illinois regulations concerning terms and conditions of bonds should refer to "revised" Part 1805 rather than Part 1805 because this Part does not track the Federal regulations. The Federal counterpart (30 CFR 805) has been revised. *See* Finding 19.

272. *Rule 1806.12(e)(6)(iii)* CPKC (ARN: ILL–0169) suggested that 1806.12(e)(6)(iii) of the June 16, 1980, proposed Illinois regulations be revised to provide for immediate cessation of operations upon insolvency of the surety so that Illinois will not allow mining to continue while bonds are in violation. Illinois has drafted the proposed regulation in accordance with 30 CFR 806.12(e)(6)(iii) published on August 6, 1980. The Illinois provision is consistent with the Federal regulation.

273. *Rule 1806.12(f)(1)* CPKC (ARN: ILL–0169B) pointed out that in 1806.12(f)(1) of the June 16, 1980, Illinois proposed regulations, the regulatory authority must obtain possession of certificates of deposit deposited by the applicant whereas 30 CFR 806.12(f)(1) does not require this possession. The additional requirement of the Illinois provision is not inconsistent with the Federal requirements, and is thus satisfactory.

274. *Rule 1806.12(f)(6)* CPKC (ARN: ILL–0169B) pointed out that at 1806.12(f)(6) of the June 16, 1980, Illinois proposed regulations, Illinois added a provision not found in 30 CFR 806.12(f). Illinois provides that any assignment or pledge of collateral supporting a collateral bond will be void and will provide grounds for immediate forfeiture of the repledged collateral. This added language provides additional protection to the regulatory authority. The Illinois proposed rule is not inconsistent with the Federal rule and is thus acceptable.

275. *Rule 1806.12(g)(7)(iii)* CPKC (ARN: ILL–0169B) noted that 1806.12(g)(7)(iii) of the June 16, 1980, proposed Illinois regulations should be revised to provide for immediate cessation of operations upon the insolvency of a surety bank so that Illinois will not allow mining to continue is spite of violations. In 30 CFR 805.12(g)(7)(iii) of final Federal regulations published August 6, 1980, a reasonable period is allowed to replace bond coverage, not to exceed 90 days. Since Illinois allows 30 days, the state provision is consistent with the Federal provision.

276. *Rule 1806.12(h)* CPKC (ARN: ILL–0169B) suggested that since 1806.12(h) of the proposed Illinois regulations of June 16, 1980, has no counterpart in the Federal regulations, this subsection should be omitted. The counterpart to this provision concerning property posted as collateral is contained in new Federal regulations published August 6, 1980, at 30 CFR 806.12(h).

278. *Rule 1806.13* CPKC (ARN: ILL–0169B) pointed out that Section 1806.13 of the proposed June 16, 1980, Illinois regulations should be omitted because it has no counterpart in the Federal rule. The counterpart to this provision concerning escrow bonding is found in new Federal regulations published August 6, 1980 at 30 CFR 806.13.

279. *Rule 1806.14* CPKC (ARN: ILL–0169B) suggested that the Illinois provision concerning self-bonding contained in Section 1806.14 of the June 16, 1980, proposed regulations be omitted because it has no counterpart in the Federal rule. The Federal provision on self-bonding, 30 CFR 806.14, was published August 6, 1980.

280. *Rule 1807.12(a)* CPKC (ARN: ILL–0169B) pointed out that in the Illinois provision concerning the criteria and schedule for bond release, 1807.12(a) of the proposed June 16, 1980, regulations, the word "may" is used instead of "shall" concerning release by the regulatory authority of a portion of bond liability. The language used by Illinois is the same as used in 30 CFR 807.12(a) published August 6, 1980.

281. *Rule 1807.12(b)* CPKC (ARN: ILL–0169B) noted that the Illinois provision concerning the criteria and schedule for release of performance bond, 1807.12(b) of the June 16, 1980, proposed regulations, omits the formula for calculating bond release. Although this formula was contained in the Federal regulation of March 13, 1979, it is omitted in the final regulations published August 6, 1980, 30 CFR 807.12(b). Therefore, the Illinois rule is acceptable. *See* Finding 19.

282. *Rule 1807.12(c)* CPKC (ARN: ILL–0169B) noted that the Illinois provision concerning criteria and schedule for bond release at Section 1807.12(c) of the June 16, 1980 proposed regulations should be changed to correspond to the Federal provision. 30 CFR 807.12(c) has been modified in final regulations published August 6, 1980. *See* Finding 19.

283. *Rule 1807.12(d)* CPKC (ARN: ILL–0169B) stated that the Illinois rule on criteria and schedule for bond release at Section 1807.12(d)(3) of the June 16, 1980, proposed regulations, should add the word "revised" before Sections 1816.116, 1816.133, 1817.116, 1817.133, 1816.166(b)(3)(iii) and 1817.116(b)(3)(ii). Illinois is being advised that proposed Sections 1816.116 and 1817.116 concerning revegetation performance standards and 1816.133 and 1817.133 concerning postmining land use are inconsistent with the Federal regulations.

284. *Rule 1808.11(d)* CPKC (ARN: ILL–0169B) asserts that the Illinois provision concerning bond forfeiture criteria and procedures, Section 1808.11(d) of the June 16, 1980, proposed regulations, should be modified.

The language "any operator against whom forfeiture proceedings have been required shall not be issued a permit for further mining in Illinois *unless he provides additional assurances satisfactory to the Department that such procedure will not again become necessary*" should be changed to delete the underlined portion. Although this language is not contained in the Federal rule, it provides additional protection for the regulatory authority and is thus acceptable.

285. *Rule 1808.12(c)* CPKC (ARN: ILL–0169B) pointed out that the Illinois provision concerning bond forfeiture procedure at Section 1808.12(c) of the June 16, 1980, proposed regulations omits the phrase "with respect to protection of the hydrologic balance." This omission is consistent with 30 CFR 808.12(c) of the Federal regulations published August 6, 1980.

286. *Rule 1808.13(d)(3)* CPKC (ARN: ILL–0169B) suggested that the Illinois bond forfeiture criteria be revised to delete the language allowing the operator to prevent forfeiture when his bond is revoked so long as reclamation work is diligently and satisfactorily being performed. The Illinois language is the same as Federal language in 30 CFR 808.13(a)(3) published August 6, 1980, and is, therefore, acceptable.

287. *Rule 1808.14* CPKC (ARN: ILL–0169B) pointed out that the Illinois provision on determination of bond forfeiture amount, Section 1808.14 of the June 16, 1980, proposed regulations, provides for the bond funds remaining after completion of reclamation to be returned to the operator who submitted the bond. The Secretary finds that this language is in accordance with the Court opinion [*In Re: Permanent Surface Mining Regulation Litigation*, No. 79–1144, February 26, 1980] in which 30 CFR 808.14(b) was remanded because it allowed the regulatory authority to retain forfeited bond money unnecessary for costs and administrative expenses associated with reclamation.

288. *Rule 1816.22(a)* ISP (ARN: ILL–0148 and Ill–01170) objected to the proposed Illinois rule, which exempted "small disturbances" from the topsoil removal requirements. Illinois has deleted this exemption in its July 30, 1980, proposed rules.

289. *Rule 1816.22(c)* ISP (ARN: ILL–0148 and Ill–0170) objected to the Illinois exemption from the topsoiling requirements of previously mined land and land disturbed by other activities. The Secretary believes that Illinois has corrected this deficiency in its July 30, 1980 proposed rules.

290. *Rule 1816.24(c) and 1817.24(c)* Several commenters (ARN: ILL–0148, ILL–0169A and Ill–0170) objected to Illinois' exemption from the topsoil redistribution requirements where inconsistent with the approved past mining use or where it would create unsafe conditions. The Secretary believes that the proposed Illinois rules submitted July 30, 1980, have corrected this problem.

291. *Rule 1816.46(c)* CPKC (ARN: ILL–0169B) pointed out that, through a typographical error the sentence "Temporary storage of the spoil may be approved by the regulatory authority" has been repeated unnecessarily. The Secretary agrees. Illinois has corrected this in its July 30, 1980, proposed regulations.

292. A commenter (ARN: ILL–0179) expressed concern that strip mining cuts have served as water supplies and these impoundments should not be destroyed. Sections 1816.49 and 1817.49 of the proposed Illinois rules allow permanent impoundments to be authorized by the regulatory authority in limited circumstances if properly designed, constructed and maintained.

293. *Rule 1816.49.* CPKC (ARN: ILL–0169B) requested clarification as to whether 30 CFR 816.49(c) requires that perimeter slopes of impoundments shall not be steeper than 1v:2h or 2v:1h. The Federal rule has been misprinted and should read 1v:2h.)

294. *Rule 1816.49(c).* CPKC (ARN: ILL–0169B) objected that the Illinois rule concerning perimeter slopes of impoundments is inconsistent with the Federal rule. The Federal rule requires that perimeter slopes of excavations that will impound water during or after mining shall not exceed 1v:2h. The proposed Illinois rule would require that these slopes not exceed the angle of repose and would not require topsoil replacement on these slopes. The proposed Illinois standard is not consistent with the Federal rules.

295. *Rule 1816.62.* ISP (ARN: ILL–0170) expressed a need for procedures for determining what constitutes an acceptable pre-blast survey. Proposed Rule 1816.62 concerning pre-blast surveys provides acceptable guidelines as to content and purpose of these surveys.

296. *Rule 1816.62(a).* ISP (ARN: ILL–0170) objected to the language that would require a person who makes a request for a pre-blasting survey to the regulatory authority to also make the request to the person conducting the surface mining activities. The Secretary believes such a requirement is consistent with Section 515(b)(15)(E).

297. *Rule 1816.62(b)(1).* ISP (ARN: ILL–0148) expressed concern about the addition of "one time" regarding the conducting of a requested pre-blasting condition survey in the Illinois rule. The Federal rule does not address this specific requirement but the singular "survey" is used therein. Therefore, the "one time" limitation found in the Illinois language is consistent with the Federal rule.

298. *Rule 1816.62(b)(2)(i).* ISP (ARN: ILL–0148) objected to the proposed Illinois rule because it would allow blasting to commence prior to completion of the pre-blasting survey under certain conditions. The proposed Illinois rule would allow this to occur only where 60 days' notice of intent to conduct blasting has been given the public and the request for the survey is made less than 30 days prior to the scheduled commencement of blasting. The rule also would require the notice of intent to include instructions on how to request a survey and state that blasting may commence prior to completion of the survey unless the request is made at least 30 days prior to the scheduled commencement of blasting. The proposed Illinois rule is a reasonable accommodation of the SMCRA requirement that pre-blasting surveys should be made upon request and the need to avoid delays caused by requests for pre-blasting surveys made soon before the scheduled commencement of blasting.

299. *Rule 1816.62(b)(2)(iii).* ISP (ARN: ILL–0148) suggests rewriting of Section 1816.62(b)(2)(iii) of the Illinois rules to clarify the instruction on how to request a pre-blasting survey. This provision is not required by or inconsistent with the Federal rule. The commenter may wish to suggest to the State how such information is to be presented. *See.* Comment 298.

300. *Rule 1816.62(d).* Two commenters (ARN: ILL–0148 and ILL–0179) suggested additional language concerning requestor's objections to findings of the pre-blasting survey. While this language may be helpful, the Federal rule does not require this and a State is not required to provide standards beyond those in the Federal rules.

301. *Rule 1816.64(a)(1).* ISP (ARN: ILL–0148) suggested additional language what would specify the graphic requirements of a published blasting

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schedule. This information goes beyond the Federal rule requirement and will not be required of the State.

302. *Rule 1816.64(o)(2).* ISP (ARN: ILL–0148) suggests clarification of additional language in the Illinois rule regarding who is eligible for a pre-blasting survey. The language at issue is not found in the Federal rule and is consistent with the Federal requirements.

303. *Rule 1816.64(o)(3).* ISP (ARN: ILL–0148) objected to the variance which would permit the firing of small confined charges in coal seams at times other than those scheduled. The Secretary believes this variance is inconsistent with 30 CFR 816.64(a)(1) to the extent it would allow a variance for blasts that use more than five pounds of explosives or blasting agent.

304 *Rule 1816.64(a)(3)* ISP (ARN: ILL–0170) has offered additional language to modify the coal seam blasting provisions. The Secretary cannot require a State to adopt provisions more stringent than the Federal rules.

305 *Rule 1816.65(e)(4) and Section 1816.67(c)* IPS (ARN: ILL–0148 and ILL–0170) suggested additional language that introduces a process for making discretionary determinations of air blast measurements. Such a process would go beyond the Secretary's requirements.

306 *Rule 816.65(f)* One commenter (ARN: ILL–0179) expressed concern that homes should be protected from blasting effects no matter how far away they are from the blasting operation. 30 CFR 816.65(f) has been remanded, *In Re: Permanent Surface Mining Regulation Litigation,* No. 79–1144, May 16, 1980, insofar as it restricts blasting at distances greater than 300 feet.

307. *Rule 1816.65(h)—Section 816.65(i) in Federal rule* ISP (ARN: ILL–0148 and ILL–0170) offered additional language to this section that would require timely and discretionary determination to reduce peak particle velocity standards allowable. This determination is not required in the Federal rule and the Secretary cannot require this of a State.

308. *Rule 1816.65(i)(3)* ISP (ARN: ILL–0148) stated that additional language in the Illinois rule regarding structures leased by the person conducting the mining operation porvided a variance to the Federal rule of 30 CFR 816.65(j) because the maximum peak particle velocity standards will not apply. The Secretary finds this language acceptable as long as a written waiver by the owner and occupant is obtained.

309. *Rule 1816.65(l)* ISP (ARN: ILL–0148) proposed additional language, taken from the interim program, which prohibits blasting within 1000 feet and 500 feet of structures and utility facilities. 30 CFR 816.65(f) has been remanded, *In Re: Permanent surface Mining Regulation Litigation,* No. 79–1144 May 16, 1980, insofar as it restricts blasting at distances greater than 300 feet. The Federal rule cannot be required at this time.

310. *Rule 1816.67(b)* ISP (ARN: ILL–0148) has suggested adding language to the Illinois rule that would require termination of the use of a modified equation for peak particle volocity if one inch per second is exceeded. The language is not contained in the Federal rule and cannot be required.

311. *Rule 1816.67(b)* The commenter (ARN: ILL–0179) has suggested changes to the Illinois rule that is now consistent with the Federal rule concerning seismographic measurements. The State is not required to adopt rules different from the requirements of the Federal rules.

312. *Rule 1816.71(g)(2), (a)(3)* ISP (ARN: ILL–0148) and CPKC (ARN: ILL–0169B) suggested both subsections dealing with box-cut spoils and direct cast spoil be deleted. The Secretary agrees. These Illinois provisions provide a variance inconsistent with the Federal rule.

313 *Rule 1816.83* CPKC (ARN: ILL–0169B) commented that the Illinois provision concerning coal processing waste banks is inconsistent with the Federal rule. The Secretary agrees that the proposed Illinois rule is less stringent than the Federal rule. In particular, the Illinois rule does not create a presumption that an underdrain will be built.

314. *Rule 1816.85(c)(2)* CPKC (ARN: ILL–0169B) objected to the Illinois variance regarding compacting coal waste banks "to the extent necessary." the language was deleted from proposed rules submitted July 30, 1980.

315. *Rule 1816.86* CPKC (ARN: ILL–0169B) pointed out that Illinois omits this section which provides for burning of processing waste. The section was added to the Illinois proposed regulations submitted on July 30, 1980.

316. A commenter (ARN: ILL–0179) expressed concern as to whether there is any way to enforce dust control on haulage roads. Federal rule 816.95, which contained standards for controlling fugitive dust emissions from haul roads, has been remanded [*In Re: Permanent Surface Mining Regulation Litigation* No. 79–1144, May 16, 1980.] the Court ruled tha SMCRA contains no authority for requiring regulation of air pollution except as air pollution is generated by erosion. Thus the provision cannot be required at this time.

317. *Rule 1816.101(a)(3)* ISP (ARN: ILL–0170) noted that the proposed Illinois rule contains additional language not found in 30 CFR 816.101 that would allow "additional spoil ridges" as well as additional time as a variance to the requirement of contemporaneous backfilling and grading. The proposed regulations submitted July 30, 1980, acceptably modified this provision.

318. *Rule 1816.102(a)(2)* ISP (ARN: ILL–0170) commented concerning the need for clarification of the proposed Illinois provisions for backfilling and grading requirements of impoundments. The Secretary has expressed concern that the Illinois provision is unclear, but appears to provide a less stringent standard than required by the Federal rule.

319. *Rule 1816.102(a)(2)* CPKC (ARN: ILL–0169B) objected to language added by Illinois to this section on backfilling and grading. *See* Comment 318.

320. *Rule 1816.103(a)(1)* CPKC (ARN: ILL–0169B) objected to the additional language provided by Illinois in this section dealing with covering of coal and toxic forming materials. This modification is acceptable since the Federal provision has been suspended pending the outcome of rulemaking.

321. *Rule 1816.104(b)(3)* CPKC (ARN: ILL–0169B) suggested completing the section concerning backfilling and grading which appears to be editorially incomplete in the Illinois submittal. Illinois completed this section in proposed rules submitted July 30, 1980.

322. *Rule 1816.104(b)(7)* CPKC (ARN: ILL–0169B) objected to the language in subparagraph (7), which allows final cut impoundments and suggested it be omitted since the Federal rule does not allow for such impoundments. Final cut "permanent" impoundments are allowable under the Federal rule.

323. *Rule 1816.111(a)* ISP (ARN: ILL–0148) and CPKC (ARN: ILL–0169B) expressed concern that the additional language in the Illinois rule "except where permanent vegetative cover is not consistent with the approved land use" provides a blanket exemption for some areas for revegetation. In proposed regulations submitted July 30, 1980 Illinois deleted the additional language.

324. *Rule 1816.111(b)(1) and Rule 1817.111(b)(1)* ISP (ARN: ILL–0170) expressed concern about the broad exemptions from revegetation provided by the Illinois proposed rule. Illinois deleted the exemption from proposed rules submitted July 30, 1980.

325. *Rule 1816.112(a) and 1817.112(a)* ISP (ARN: ILL–0170) and CPKC (ARN: ILL–0169B) objected to the proposed Illinois rule concerning the use of introduced species. The rule would allow "appropriate past research" as an alternative for field trials. Illinois

acceptably clarified this rule in proposed regulations submitted July 30, 1980.

326. *Rule 1816.114(a)* CPKC (ARN: ILL–0169B) and Illinois South (ARN: ILL–0148) objected to additional Illinois language that provides for mulching "when consistent with the post mining land use." The proposed Illinois rule submitted July 30, 1980 was acceptably modified.

327. *Rule 1816.116(a) and 1817.116(a)* ISP (ARN: ILL–0148 and ILL–0170) and CPKC (ARN: ILL–0169B) expressed concern that the proposed Illinois rule provides for the use of "other technical procedures approved by the regulatory authority" regarding techniques to be used to measure success of revegetation. The proposed Illinois rules of July 30, 1980 have been modified acceptably.

328. *Rule 1816.116(b)(2)(ii)* ISP (ARN: ILL–0148) and CPKC (ARN: ILL–0169B) suggest that the ten year responsibility period for revegetation success be reinserted into the Illinois rule. The ten year criteria is not applicable to Illinois since average annual rainfall exceeds the 26.0 inches average annual precipitation criteria. 30 U.S.C. 515(b)(20).

329. *Rule 1816.116(b)(1)* A commenter (ARN: ILL–0169B) and ISP (ILL–0148 and ILL–0170) suggested a change in language for this section of Illinois' rule. This section has been remanded [*In Re: Permanent Surface Mining Regulation Litigation,* No. 79–1144, February 26, 1980]. Illinois modified this provision concerning the period of liability for revegetation success in accordance with the Court's opinion.

330. *Rule 1816.131(b)* CPKC (ARN: ILL–0169B) objected to the proposed Illinois rule concerning temporary cessation of operations because a statement identifying the number of acres to be affected is not required. This Illinois rule is consistent with the Federal rule in proposed regulations submitted July 30, 1980.

331. *Rule 1816.133(b) and 1817.133* CPKC (ARN: ILL–0169B) and ISP (ARN: ILL–0148 and ILL–0170) objected to the Illinois additional language that provides identification on the basis of acreage summaries for each land use type as required by proposed Rule 1701.5. The Secretary does not agree with this objection, because proposed Rules 1779.22 and 1779.24 require a map in the application that will graphically show premining land use locations and provide the ability to verify total acreage of each land use type.

332. *Rule 1816.133(b)(1)* CPKC (ARN: ILL–0169B) expressed concern that this provision concerning postmining land use be reinstated. Since the corresponding Federal rule has been remanded [*In Re: Permanent Surface Mining Regulation Litigation,* No. 79–1144, May 16, 1980], it cannot be required at this time.

333. *Rule 1816.133(b)(2)* ISP (ARN: ILL–0148 and ILL–0170) and CPKC (ARN: ILL–0169B) objected to added Illinois language that provides one set of criteria for determining postmining land use for lands that have been improperly managed under the ownership of mine operators. The Secretary agrees that the Illinois rules are inconsistent with the Federal rules because the Illinois provisions would not ensure that post mining land use will be based on the use the land would have supported if not previously mined and if properly managed.

334. *Rule 1816.133(c)* ISP (ARN: ILL–0148 and ILL–0170) and CPKC (ARN: ILL–0169B) objected to Illinois use of the term "condition" rather than the Federal term "uses" concerning alternate land uses. This proposed Illinois rule of July 30, 1980, has been acceptably modified.

335. *Rule 1816.133(c)(1)* ISP (ARN: ILL–0148 and ILL–0170) and (ARN: ILL–0169B) objected to Illinois' deleting the Federal requirements dealing with consulation with the land owner or land management agency regarding alternative land use. This proposed Illinois rule of July 30, 1980, has been acceptably modified.

336. *Rule 1816.133(c)(2)* ISP (ARN: ILL–0148 and ILL–0170) and CPKC (ARN: ILL–0169B) desire additional language that would require a demonstration that a water impoundment proposed to be left on high capability land improves the value of the agriculatural unit. Such information is required in proposed Illinois Rule 1816.133(c)(1) in order to prove compatability.

337. *Rule 1816.150 through Rule 1816.176* CPKC (ARN: ILL–0169B) suggested sections concerning roads be reinstated in Illinois' rule. Since the Federal rules are suspended, the State may omit them at this time. [*In Re: Permanent Surface Mining Regulation Litigation,* No. 79–1144, May 16, 1980]

338. *Rule 1817.52(a)(2)* The commenter (ARN: ILL–0172) suggests that the clause beginning after the first comma should read: "ground water levels . . ." in Rule 1617.52(a)(2) of the proposed Illinois regulations. The Illinois rule is consistent with 30 CFR 817.52(a)(2) concerning ground water monitoring. While the change is not necessary, Illinois could make it for clarity.

339. *Rule 1817.52(a)(3)* The commenter correctly suggests that the first "shall" in the third line of the text be deleted. This appears to be a misprint in the proposed rule concerning surface and ground water monitoring. This has been corrected in the State's July 30, 1980, submission.

340. *Rule 1817.121(a) ISP* (ARN: ILL–0170) objected to Illinois additional language that allowed an exception to the requirement that subsidence be prevented where the mining technology used requires planned, predictable and controlled subsidence. This is consistent with 30 CFR 817.121(a), which allows planned and controlled subsidence.

341. *Rule 1817.124(c) ISP* (ARN: ILL–0170) objected to additional Illinois language that would limit the period needed for subsidence insurance from that required in the Federal rule. This proposed Illinois rule of July 30, 1980 has been acceptably modified.

342. *Rule 1817.126(c) ISP* (ARN: ILL–0148) suggested that language be added to this section to require that subsurface information leading to a subsidence exemption be included with the permit application. This specific language is not required by the Federal rule, but such evidence would have to be included in the subsidence control plan submitted with the application in order for the application to be complete.

343. *Rule 1823.1* Several commenters (ARN: ILL–0169A, ILL–0148, ILL–0150 and ILL–0169E) objected to the Illinois language that would allow exemptions from the prime farmland requirement for underground mines and areas where drilling, blasting and overburden removal exists. The Secretary agrees that the proposed Illinois rule is inconsistent with the Federal rule to the extent the exemption is not limited to surface facilities of underground mines that are used over extended periods and that affect minimal amounts of land.

344. *Rule 1823.11(a)* CPKC (ARN: ILL–0169B) suggested the Federal rule in 30 CFR 823.11(c) be reinstated in the comparable Illinois section. Since the Federal rule is suspended, the State may omit it at this time. [*In Re: Permanent Surface Mining Regulation Litigation,* No. 79–1144, May 16, 1980]

345. *Rule 1823.11(b)* CPKC (ARN: ILL–0169A) suggested additional language which would prohibit mixing or contaminating prime farmland soils "with any other material." The proposed Illinois rule is consistent with the Federal rule.

346. *Rule 1823.11(c) and 823.15(c)* A commenter (ARN: ILL–0169 and ILL–0169D) expressed concern that the proposed Illinois rule does not contain the target yield provision for determining success of revegetation on prime farmlands that is found in the Federal rule. Since this provision has been remanded, it cannot be required at

this time. *[In Re: Permanent Surface Mining Regulation Litigation,* No. 79-1144, February 26, 1980]

347. *Rule 1823.12(a)(2) and (3)* (ARN: ILL-1069E) a commenter objected that the proposed Illinois rule would allow "placement" instead of "separate removal" of soil horizons in prime farmlands. This is acceptable because combined removal of the B and C soil horizons, which may be approved, would not require separate removal techniques.

348. A commenter (ARN: ILL-0179) suggested that where Illinois provisions concerning soil handling on prime farmland refer to "soil scientist," "soil and plant scientists" should be used. This is not required by the Federal rule.

349. *Rule 1823.14(c)* ISP (ARN: ILL-0148 and ILL-0170) and CPKC (ARN: ILL-0169) suggested that the moist bulk density section be left blank so that the Illinois Department of Mines and Minerals can insert Federal re-promulgated rules. Illinois can adopt this suggestion if it desires.

350. *Rule 1823.14(e)* VCI (ARN: ILL-0169E) expressed concern that the proposed state rule regarding soil removal on prime farmland requires soil stabilization only when seasonably practical. This language was deleted from Illinois' proposed rules submitted July 30, 1980.

360. *Rule 1823.15* ISP (ARN: ILL-0170) and (ARN: ILL-0148) and the Director of Belleville (ARN: ILL-0179) pointed out two subsections (b) and (c) of the proposed Illinois rule are missing from the Illinois submittal and that the State should submit a "state window" on productivity on prime farmland. Since these provisions have been remanded, the State is not required to implement them at this time. *[In Re: Permanent Surface Mining Regulation Litigation,* No. 79-1144, February 26, 1980]

361. *Rule 1823.15* CPKC (ARN: ILL-0169A & B) suggests this entire section be deleted since the Illinois permanent program has deleted the success standards of productivity on prime farmland. Since this provision has been remanded, the State is not required to implement it at this point. *See* Comment 360.

362. *Rule 1823.15(a)* ISP (ARN: ILL-0148) and CPKC (ARN: ILL-0169) objected that the proposed Illinois prime farmland revegetation standard allows a variance where compliance would be "inconsistent with post mining land use." The proposed Illinois rule of July 30, 1980, has been acceptably modified.

363. *Rule 1825.11(c)* ISP (ARN: ILL-0148) and another commenter (ARN: ILL-0179) stated that the proposed Illinois rule, which provides that revegetation success on high capability lands shall be measured in accordance with the standards in Rule 1816.116, does not provide an adequate basis for determining revegetation success on high capability lands. Since prime farmlands are excluded from the Illinois definition of high capability lands, applying the normal standards for determining success of revegetation to high capability lands is consistent with SMCRA and the Federal rules.

364. *Rule 1825.12(a)(2)(ii)—1825.13—1825.14(g)—1825.15—1825.14(g)* Several commenters (ARN: ILL-0148, ILL-0170, ILL-0179 and ILL-0182A) suggest that language be added to all the above stated sections. Part 1825 of the Illinois proposed regulations, which contains special requirements for high capability lands, has no parallel in the Federal rules. Since proposed Rule 1825.11(d) explicitly provides that all other requirements apply to these lands as well, the high capability standards are generally consistent with the Federal rules. The Secretary will require changes in the high capability requirements only where they conflict with other requirements.

365. *Rule 1825.13* ISP (ARN: ILL-0148 and ILL-0170) was concerned that the proposed Illinois rule does not clearly indicate that segregated materials shall be stockpiled separately. The Secretary agrees that it is unclear whether separate stockpiling, which is required by the Federal rules, is required by this added section. *See* Comment 364.

366. *Rule 1825.14(g)* ISP (ARN: ILL-0148 and ILL-0170) suggested that language be added to this section that would require that all postmining alternative land uses and approximate original contour requirements be met. The Secretary agrees that it is unclear whether the proposed Illinois rule is intended to provide a variance from these and the impoundment requirements of the Federal rules. *See* Comment 364.

367. *Rule 1825.15* ISP (ARN: ILL-0148 and ILL-0170) suggested additional language that would clarify the potential of the high capability lands requirement for providing an exemption from the prime farmland criteria. The Secretary agrees that the high capability lands requirements may not provide an exemption from the prime farmland criteria. *See* Comment 364.

368. *Rule 1827.12(d)* CPKC (ARN: ILL-0169A) suggests that the limitation "If required by the regulatory authority" be deleted from the provision for sediment control structures for coal processing plants. The Illinois language is consistent with the Federal rules.

369. *Rule 1840.17(a)* The commenter (ARN: ILL-0172) correctly suggests that the reference to 30 CFR 842.12, found in Rule 1840.17(a) of the proposed Illinois rule, should be changed to Rule 1840.15. Illinois has corrected this reference in its proposed regulations of July 30, 1980.

370. *Rule 1843.12(a)(2)* The commenter (ARN: ILL-0172) suggests that this provision concerning notices of violation must be deleted because in a state program the state has direct enforcement responsibilities, not oversight responsibilities as suggested by the Illinois language. The Secretary finds the proposed Illinois rule inconsistent with SMCRA because it appears to have the effect of providing for inspections by persons who do not have enforcement authority.

371. *Section 843.14(b)—Rule 1843.14(b)* CPKC (ARN: ILL-0169B) suggests the addition of "(2)" to the language of Illinois regulation 1843.14(b). The language of the Illinois regulation appears to be consistent with 30 CFR 843.13(b) concerning service of a show cause order.

372. A commenter (ARN: ILL-0169) suggested that blasting penalties fines should be set aside for homeowners who have damage. The disposition of funds accumulated from penalties is a matter for State discretion.

373. *Section 845.1—Rule 1845.1* CPKC (ARN: Ill-0169B) suggests additional language that would include notice of violations in the penalty provisions. The proposed Illinois rule does not specifically mention notices of violation as mentioned in 30 CFR 845.1, which requires penalty consideration of all notices of violation and cessation orders. However, proposed Illinois Rule 1845.11 does provide for consideration of notices and would, therefore, appear to be consistent.

374. *Section 845.2—Rule 1845.2* CPKC (ARN: ILL-0169B) is concerned that proposed Illinois Rule 1845.2 requires assessment of penalties to aid "in the administration of the State Act," whereas 30 CFR 845.2 requires assessment "to deter violations and to insure maximum compliance with the terms and purposes of the Act on the part of the coal mining industry." The Illinois provision is not on its face less stringent than SMCRA, but it must be clarified. *See* Finding 20.1.

375. *Rule 1845.13(a)* CPKC (ARN: ILL-0169B) suggests the adoption of the Federal point system or an alternative in Illinois Rule 1845.13(a). While the Secretary agrees that some system to identify how penalties will be assessed would be desirable in the administration of the program, such a point system cannot be mandated at this time since

the Federal provision has been remanded. [*In Re: Permanent Surface Mining Regulation Litigation,* No. 79-1144, May 16, 1980]

376. *Section 845.13(b)(3)(ii)(B)—Rule 1845.13(b)(3)* CPKC (ARN: ILL-0169B) suggests that Illinois Rule 1845.13(b)(3), concerning factors to be considered in assessing civil penalties should be amended to specify that negligence can be an act or omission. The Secretary agrees that the Illinois rule should specify, by rule or policy statement, that it defines "negligence" in a mannor consistent with 30 CFR 845.13(b)(3)(ii)(B).

377. *Rule 1845.14* CPKC (ARN: ILL-0169B) suggests the addition of a point system to Illinois Rule 1845.14 comparable to the point system in the Federal system. While the Secretary agrees that some system to identify how penalties will be assessed would be desirable in the administration of the program, such a point system cannot be mandated. *See* Comment 375.

378. *Rule 1845.15(a)* CPKC (ARN: ILL-0169B) suggests that proposed Illinois Rule 1845.15(a) be revised to require assessment of a penalty for a minimum of two separate days under certain circumstances including assignment of a certain number of points to the violation. The Secretary cannot require the use of a point system to assess penalties as the commenter's suggestion would require at this time. See Comment 375.

379. *Rule 1845.15(b)(2)* The cite given by CPKC (ARN: ILL-0169B) is somewhat confusing, but it would appear that the commenter was referring to Illinois proposed Rule 1845.15(b)(2) which is consistent with 30 CFR 845.15(b)(2).

380. *Section 845.17—845.20—Rule 1845.17—1845.20* CPKC (ARN: ILL-0169B) is concerned by the differences between proposed Illinois Rule 1845.17—Rule 1845.20 and 30 CFR 845.17—845.20 with respect to assessment and payment of penalties. The Secretary believes that the proposed Illinois rules of July 30, 1980, adequately require: 1) a permittee providing information pertaining to the assessment of a violation to the regulatory authority; 2) assuring the service of the proposed assessment is accomplished; and 3) providing for review or reassessment of a penalty. This would be acceptable.

381. *Section 845.17(o)—Rule 1845.17(a)* CPKC (ARN: ILL-0169B) suggests that the provision in proposed Illinois regulation 1845.17(a) allowing persons or operators who have received notices or orders within 20 days to submit to the regulatory authority information on the violation be changed to allow only 15 days, as does 30 CFR 845.17(a). Proposed Illinois Rule 1845.17(a) submitted July 30, 1980, allows only 15 days.

382. A commenter (ARN: ILL-0179) requested that the Secretary review the Illinois law, particularly the public participation provisions, to insure that time schedules outlined in the Illinois regulations will be adequate. The Secretary has reviewed the public participation provisions of the Illinois law. See Finding 23 and the detailed discussion of the Illinois rules sent to Illinois by the Director, OSM.

383. CPKC (ARN: ILL-0169B) expressed concern that the number of personnel who have authority to issue violations and cessation orders should be increased. The Secretary agrees. See Findings 31.4 and 31.5.

384. CPKC (ARN: ILL-0169) commented that inspectors should be given the power to issue violations and cessation orders. The Secretary agrees. See Finding 21.1.

385. CPKC (ARN: ILL-1069) commented that the timetable submitted by Illinois for designation of lands unsuitable is not consistent with the proposed Illinois regulations. The Illinois flow chart submitted July 30, 1980, appears to be adequate. Another problem identified is that the number of personnel handling petitions is inadequate. The Illinois narrative on this issue is discussed in Finding 22.5.

386. ISP (ARN: ILL-1070) expressed concern that the number of inspectors authorized to take enforcement action is inadequate. The Secretary agrees. See Finding 31.4 and 31.5. It further suggested that inspection authority be given to other state agencies that make up the Interagency Committee to avoid duplication of expertise. The Secretary would not object to the Illinois Department of Mines and Minerals delegating functions to another state agency as long as the agency can conduct that portion of the program in accordance with SMCRA.

387. ISP (ARN: ILL-0170) expressed concern about the Illinois systems and procedures on revegetation (Vol. 2—Tab F). One concern was how the public and the Interagency Review Committee will be involved in development of technical guidelines. This was clarified in Volume 10, Tab H, submitted July 30, 1980. A second concern was what procedures would be employed to determine 90% ground cover. This also was clarified in Volume 10, Tab H, of the July 30, 1980, submittal. A third concern was for the interaction between the regulatory authority, the Interagency Committee and the general public concerning the determination of whether bond may be released. Deficiencies in the Illinois statute and system element concerning bonding are identified in Finding 19.

388. ISP (ARN: ILL-0170) expressed concern that the Illinois system provides no procedure for determining lands historically used for cropland as prime farmland (Vol 2, Tab F). However, the Illinois narrative requires operators "to delineate areas which by their soil type and *land use"* (emphasis added) are prime farmlands. In addition, Illinois' definition of "historically used for cropland" is the same as the Federal definition.

A second point was that the public should be made aware that the regulatory authority is considering other factors under Rule 1783.27(b)(3) in determining the number of prime farmland acres in the permit application. The Secretary's concerns regarding public participation are outlined in Finding 23.

A third concern was the lack of a system for assessing whether data submitted under 1785.17(b)(7) is adequate to demonstrate that the proposed method of reclamation will achieve equivalent yields. While this system may be helpful, it is not specifically required by the Federal rules.

A fourth concern was that there is no process for determining whether productivity has been met on restored land (Section 1823.15(b) and (c)). The description of this process is not specifically mandated by the Federal rules.

389. ISP (ARN: ILL-0170) commented on the system element concerning use of explosives (Vol 2, Tab F). It suggested that an application be used in making the discretionary decision in Rule 1816.65(h) regarding a reduction in the maximum peak particle velocity allowed. While such an application would be helpful, it is not required by the Federal rules. A further concern was that procedures be included for making discretionary decisions on the use of explosives. Delineation of such procedures is not specifically mandated by the Federal rules.

390. ISP (ARN: ILL-0170) is concerned that the system and procedures submitted by Illinois concerning post-mining land use in Volume 2, Tab F: (1) do not discuss how the regulatory authority will weigh and employ comments on post-mining land use, and (2) do not provide procedures for evaluating data needed to justify alternative post-mining land use under Rule 1816.133(c). The Federal rules do not specifically require Illinois to delineate these procedures.

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391. ISP (ARN: ILL–0170) believes that the systems and procedures concerning backfilling and grading in Volume 2, Tab F: (1) should reference Section 1816.100. (2) should explicitly describe the regulatory authority's responsibilities for ensuring contemporaneous reclamation, and (3) should not provide for mandatory extensions of time for completion of backfilling and grading. Illinois submitted additional information on July 30, 1980, in Volume 10, Tab H. The Secretary's concerns about Illinois backfilling and grading requirements are expressed in Finding 14 of this notice and Finding 14 of the deficiency letter being sent to Illinois by the Director of OSM.

392. ISP (ARN: ILL–0170) suggested that at least one of the staff positions at the Division of Land Reclamation should contain specific responsibilities for evaluation of subsidence control plans. The Secretary has expressed specific concerns regarding staffing in Finding 31.

393. ISP (ARN: ILL–0170) expressed the following concerns about the systems and procedures on permanent and temporary impoundments in Volume 2, Tab F: (1) 1816.133 should be referenced, (2) clear language that all permanent impoundments will meet 1816.133 should be included, (3) a clear directive should be included that impoundment approval will be in accord with existing land uses and recommendations of county and other local officials, (4) guidelines on what constitutes acceptable justification for an impoundment as a post-mining land use should be included, and (5) guidelines should be provided to coal operators on general design criteria for categories of impoundments. While these suggestions are useful, they are not mandated by the Federal rules.

394. ISP (ARN: ILL–0170 and 0169) had several comments regarding the systems and procedures submitted in Volume 2, Tab K concerning designating lands unsuitable for mining. The first comment is that the comment period should be reopened following the July 30, 1980 submittal by Illinois of additional narrative information. Illinois South will have the opportunity to comment on this material prior to the final decision by the Secretary on the Illinois program. The second problem is that the narrative should be expanded to include a determination of the priority of petitions. Further, the staffing is insufficient, and the narrative contains serious timing problems. The Secretary disagrees that timing problems are evident in the Illinois narrative, but agrees that staffing is inadequately described. *See* Finding 22.5. Further, ISP suggests that the regulatory authority provide a document to inform citizens of their rights under Section 522. While this document would be helpful, it is not mandated by the Federal rules. Another point is that the data base should be available to the public. Proposed Illinois Rule 1764.23 provides for public access to the data base system and information.

A third concern is that the timetable in the narrative is not synchronized with the regulations. The Secretary has expressed concern regarding the flowcharts and Illinois adequately revised them in Volume 10, Tab N, on July 30, 1980.

A fourth point is that the regulatory authority does not have criteria by which it will determine a petition "frivolous." While this would be useful, it is not specifically required in the narrative under the Federal rules.

A fifth concern is that there is no information on the type of data base the regulatory authority will develop for designating lands unsuitable nor how the data base will coordinate with the permitting process. The Federal rules do not require this specific information on the data base, in the narrative.

A sixth point was that there is no indication that a data base system will be operable and open to public use by January 3, 1981, and further that the system does not indicate what information will be put in the system. The Federal rules do not require these specific items in the Illinois narrative.

A seventh concern was that no process was identified by which citizens can have access to the system. A description of this process is not specifically required in the narrative by the Federal rules.

An eighth point was that no procedure was described for determining automatic designation as unsuitable. While such a procedure would be useful, its description is not mandated by the Federal rules.

A ninth problem was the lack of a process by which state agencies can designate lands unsuitable and also lack of a priority system for state versus public petitions. A description of this process is not required by the Federal rules.

395. ISP (ARN: ILL–0170) commented concerning the systems and procedures submitted by Illinois regarding conflict of interest (Vol. 2, Tab L). The following concerns were expressed: (1) The state submittal is unclear as to which employees come under the conflict of interest provisions. The Secretary believes that the narrative is adequate; however, see Finding 24. (2) The Illinois submittal contains no description of how annual reporting to the Secretary will be carried out. This description is not required by the Federal rules.

396. *30 CFR 731.14(g)(1)* ISP (ARN: ILL–0170) expressed concern that there is no institutionalized mechanism for consideration of public views presented in the State program at Volume 2, Tab A concerning the timeline for the permit process. A second concern is that the timeline presented by Illinois leaves no room for the Interagency Committee to receive public comment. The Secretary believes that the narrative on the permit review process as supplemented by the July 30, 1980 submittal (Volume 10), is adequate.

A third concern expressed is that the proposed regulations and narrative do not state how public comments will be received. This deficiency is discussed in Finding 23.19–23.23.

A fourth point expressed is that Tab H of Volume 2 contains no procedure for permit revisions. What constitutes significant departures and incidental boundary revision was also questioned. The Secretary believes that the Illinois narrative as supplemented by the July 30, 1980, submittal (Volume 10), is adequate in this regard.

A final point made is that the opportunity for public participation in the development of the Illinois State program is inadequate and that in Volume 2, Tab N, comment 1.h., the State claims the primary beneficiaries of public participation in the pre-submittal period were the coal operators and the Department staff. The Secretary disagrees. See Finding 23.23.

Approval in Part/Disapproval in Part

Pursuant to Section 503 of SMCRA and 30 CFR 732, the Secretary initially approves in part and disapproves in part the Illinois program because the State does not have laws that fully comply with SMCRA, does not have appropriate promulgated regulations, and has systems that are both incomplete and inadequately described. Illinois is not now eligible to assume primary jurisdiction to implement the permanent program. If the State wishes to assume primacy, it must revise its program by resolving the statutory problems, promulgating appropriate regulations, and revising the program narrative. The revised program must be submitted within 60 days of the effective date of this decision. The resubmission will then be reviewed and approved or disapproved under the procedures in 20 CFR 732.

As previously mentioned, the regulations are being disapproved in their entirety since they were not fully promulgated by the 104th day after

program submission. The following sections of the Illinois statute are disapproved for the reasons and to the extent set forth in the paragraphs identified following each provision's section number:

Statute section	Finding No.
1.03(a)(7)	30.1
1.03(a)(18)	30.2
1.03(a)(24)	30.4
1.03(a)(25)	30.3
1.03(a)(26)	30.5
2.04(a)	23.1
2.04(d)	23.2
	23.3
	23.4
	23.5
	23.6
3.04(a)	14.2
304(c)	14.4
3.07(b)	14.5
3.08(a)	14.7
3.10(d)	14.8
3.11(c)	14.10
3.13(a)(1)	23.6
3.15(b)	14.13
3.15(c)	14.14
	14.15
3.23(e)	14.16
6.07(d)	19.2
6.08(c)	23.12
6.08(d)(2)	19.3
7.02(b)(1)	22.2
7.03(c)	23.19
7.03(f)	23.16
8.01(c)	23.8
8.04(a)	20.1
8.04(e)	20.4
8.05	23.13
8.05(c)	23.14
8.06	21.1
8.06(a)	23.11
8.06(b)	21.2
	21.3
8.06(c)	21.4
	21.5
8.06(e)	23.19
8.07(a)	23.17
8.07(f)	23.14
8.09	23.18
9.06	24.1

Effect of This Action

For the present, Illinois is not eligible to assume primary jurisdiction to implement the permanent program. Illinois may submit additions or revisions to its proposed program within 60 days from the date of decision.

If no revised submission is made within 60 days, the Secretary will take the appropriate steps to promulgate and implement a Federal program for the State of Illinois. If the disapproved portions of the State regulatory program are revised and resubmitted within the 60 day time limit, the Secretary will have an additional 60 days to review the revised program, solicit comments from the public, the Administrator of the Environmental Protection Agency, the Secretary of Agriculture and the heads of other Federal agencies, and approve, conditionally approve or disapprove the final Illinois program submission.

This disapproval relates only to the permanent regulatory program under Title V of SMCRA. It does not constitute approval or disapproval of any provisions related to implementation of Title IV of SMCRA, the abandoned mine lands (AML) reclamation program. In accordance with 30 CFR Part 884 (State Reclamation Plans), Illinois may submit a State AML reclamation plan at any time. Final approval of an AML plan, however, cannot be given by the Director of OSM until the State has an approved permanent regulatory program.

Prior to any approval of the Illinois program, the initial Federal lands program regulations in 30 CFR Part 211 will apply to operations on Federal lands in Illinois. After any approval of the Illinois program, the permanent Federal lands program regulations in 30 CFR Part 740 will apply.

The Secretary does not intend to promulgate rules in 30 CFR Part 924 until the Illinois program has been finally approved or disapproved following opportunity for resubmission.

Additional Findings

The Secretary has determined that, pursuant to Section 702(d) of Public Law 95–87, 30 USC 1292(d), no Environmental Impact Statement will be prepared on this approval in part/disapproval in part.

Note.—The Secretary has determined that this document is not a significant rule under E.O. 12044 or 43 CFR Part 14, and no regulatory anlysis is being prepared on this approval in part/disapproval in part.

Dated: October 27, 1980.

Joan M. Davenport,

Assistant Secretary of the Interior.

[FR Doc. 80–33931 Filed 10–30–80; 8:45 am]

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Friday,
October 31, 1980

Part VI

Department of the Interior

Heritage Conservation and Recreation Service

1981 Action Program—Identification of Nationwide Recreation Issues

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DEPARTMENT OF THE INTERIOR

Heritage Conservation and Recreation Service

1981 Action Program-Identification of Nationwide Recreation Issues

AGENCY: Heritage Conservation and Recreation Service, Interior.

ACTION: Notice

SUMMARY: This notice announces that the Heritage Conservation and Recreation Service is now seeking public comment on possible recreation problems and concerns for the 1981 Action Program. The Action Program is the annual implementation phase of the five-year Nationwide Outdoor Recreation Plan. The comments received will enable HCRS to formulate a list of national priority recreation issues for consideration by the Secretary of the Interior. The final 1981 Action Program document on selected issues will be transmitted by the President to the Congress and may propose legislation, policy changes or a combination of recommended actions to remedy national recreation problems.

SUPPLEMENTARY INFORMATION: In accord with the provisions of the Federal Outdoor Recreation Coordination Act of 1963, Pub. L. 88–29, the Secretary of the Interior is responsible for the coordination of the governmental and private sector actions required to assure adequate outdoor recreation resources for present and future generations of Americans. In carrying out this responsibility the Secretary is authorized to formulate and maintain a comprehensive nationwide outdoor recreation plan, taking into consideration the plans of the various Federal agencies, States and their political subdivisions. The plan shall set forth the needs and demands of the public for outdoor recreation and the current and foreseeable availability of adequate recreation resources to meet those needs in the future. The plan shall identify critical outdoor recreation resource problems, recommend solutions, and recommend desirable actions to be taken at each level of government and by the private sector.

In an effort to more effectively discharge its outdoor recreation planning responsibility the Heritage Conservation and Recreation Service has adopted a continual nationwide recreation planning process designed to assess the scope and adequacy of Federal, State and local public agency and private sector recreation resources, programs and activities; identify and provide for the resolution of critical recreation issues and problems; and provide for the effective coordination of Federal and State comprehensive recreation plans. The HCRS Division of Nationwide Recreation Planning has undertaken an analysis of the most recent Statewide Comprehensive Outdoor Recreation Plans (SCORPs) to begin evaluating recreation problems and concerns in recreation for the 1981 Action Program. As Public Law 88–29 requires consideration of State plans in the formulation of the Nationwide Outdoor Recreation Plan, the annual Action Program coordinated by HCRS will increasingly look to the State Action programs for issue data and recommendations for action on identified national issues.

The HCRS nationwide recreation planning process is a continuing policy and program development process consisting of two major elements:

Five Year Assessments of national recreation resources, needs, impacts, benefits, and public outdoor recreation participation trends will be produced for transmittal to the Congress by the President every five years.

Annual Action Programs which identify national priority recreation issues and set forth policy action recommendations required to resolve these issues as determined by the affected Federal agencies and approved by the Secretary of the Interior. This document will be produced annually for transmittal to the Congress by the President.

1981 Action Program Development Process

The 1981 Action Program development process involves the identification of outdoor recreation concerns and problems; the selection of problems of critical importance; the study and correlation of selected problems to form issues; and the development and recommendation of the actions required to resolve priority recreation issues.

The Action Program process annually selects national recreation issues identified through a broad-based review by Federal agencies, States, and the private sector. Issues may range from those that can be resolved in a short timeframe with few resources to those requiring several years of coordinated effort with budgetary needs or legislative changes. The identification and selection of key recreation issues and development of recommendations for action punctuates the five-year Nationwide Plan with yearly implementation phases. Through this process, Federal attention will be director to resolve major issues while responding to changing socio-economic conditions, recreation trends, and other important national policies.

Previous Year Action Programs

The *1979 Nationwide Outdoor Recreation Action Program* focused on nine major public policy issues which affect recreation, including Federal Land acquisition; wild and scenic rivers; national trails; water resources; energy conservation; environmental education; handicapped access; private sector involvement; and recreation research.

The *1980 Nationwide Outdoor Recreation Action Program* consists of six issues: implementation of the Federal land acquisition decisionmaking process adopted in the *1979 Action Program*; alternative sources of funding for the Land and Water Conservation Fund; improved participation by Indian tribes in the Land and Water Conservation Fund; recreation needs of rural areas and small communities; health promotion strategies in urban parks; and documentation of sites important to the history of recreation and parks. The 1980 Action Program reports on the progress and status of actions recommended by the 1979 Action Program for the nine major recreation issues.

Suggested Issue Format

Suggested Issued Format. It is anticipated that issues which are most suitable for inclusion in the 1981 Action Program will be those involving other agencies and multiple policies. Issues should be submitted in written form by December 1, 1980 to HCRS, Division of Nationwide Recreation Planning. To the extent practicable, please use the following format:

A. Concise statement identifying the specific problem or issue to be resolved.

B. Brief narrative statement described the background and circumstances associated with the issue.

C. Brief narrative statement describing the relevant actions taken and or in progress to resolve the issue.

D. Citation of Federal, State, or local actions required to resolve the issue identified.

E. Potential Federal, State, or local actions required to resolve the issue identified.

F. Sources of information relevant to the issue.

G. Name and telephone number of any key contacts who are familiar or active in this issue and could supply more information.

Proposed 1981 Issues

You may wish to make further suggestions or comments on issues which have already been submitted to HCRS for consideration in the 1981 Action Program. After public comment these issues will be correlated to form core issues. Many are still in the problem statement stage at this time. Some of the issues may continue through more than one Annual Action Program, with different aspects addressed in succeeding years. They are as follows:

1. *Strengthen employment-recreation linkages.* This issue deals with the response of park and recreation systems to longterm social problems like unemployment. How can training and placement opportunities be made available to disadvantaged workers in maintenance, rehabilitation and development projects for part and recreation facilities? What are possible linkages with youth, minority, refugee, delinquency, and other social concerns?

2. *Improve small community recreation program delivery.* How can we build onto existing institutional stuctures to increase small community capacities to use funds effectively for recreation?

3. *Develop effective health promotion strategies.* How can mutually cooperative strategies be developed to include health and physical fitness programs in park and recreation settings? How can activities for employees be encouraged during leisure time at the workplace and related to beneftis such as productivity and health?

4. *Elderly population recreation.* Demographics show that the retirement and elderly population is increasing. In what ways will this expanding recreation need be met?

5. *Safety in parks and recreation.* How can safety problems be corrected by recreation facility design and programming? Also, what policies should be developed to aid in determining the responsibilities of park and recreation managers in risk environments and activities?

6. *Issue-oriented research for decisionmakers.* How can research and information assist decisionmakers better? How can data bases (such as visitor use statistics) be made comparable to ensure maximum use and sharing of information? Timely research needs include: vacation patterns and leisure trends, budget cut impacts on park and recreation programs, recreation facility design and planning for energy development.

7. *Inadequate recreation funding.* Growing recreation demand is often not reflected in these budget areas: operation and maintenance, construction and development, and land acquisition. How can these funds be kept from being diminished at disproportionate rates compared to other budget items? What are ways that parks can fill the gap in funding for operation and maintenance? What are the impacts of regressive user fees?

8. *Water resources and recreation.* Has public access been adequately addressed in urban waterfront revitalization and improved water quality areas? Is lake, river and stream protection receiving priority consideration by all levels of government and the private sector?

9. *Handicapped access.* In what areas should accessible recreation for disabled persons receive further emphasis?

10. *Increase the amount of available recreation land where it is most needed.* What methods are available or should be developed to increase or ensure adequate recreation resources? How can Federal goals for open space and recreation be clarified to provide direction in land acquisition and guidelines for state planning? Several concerns are tied to the need for available and accessible land for recreation: closure of private lands to recreationists, and the need for preservation of open space around urban areas to provide close-to-home recreation.

11. *Maintain the quality of recreation lands.* How can the natural characteristics be kept intact on currently owned land resources? This is a large issue area which covers: Intensive use of wilderness and decline of the resource; pollution such as acid rain which can affect an entire biological community; protection of areas to perpetuate natural diversity; and land adjacency issues which are characterized by a lack of intergovernmental planning and coordination.

12. *Emphasize the public transportation role in meeting recreation demand in an energy-efficient manner.* What are the possibilities of the following concepts: Recreational transit service funding in certain Federal grants; development of incentive packages for transit services to recreation areas; and regional information/travel centers with intermodal transportation focal points?

DATE: Comments must be received by December 1, 1980.

ADDRESS: Send written comments to Shirley D. Patterson, Division Chief, Nationwide Recreation Planning, Heritage Conservation and Recreation Service, 440 G Street, N.W., Weshington, D.C. 20243.

FOR FURTHER INFORMATION CONTACT:

Marcia Keener, Outdoor Recreation Planner, Division of Nationwide Recreation Planning, Department of the Interior, Heritage Conservation and Recreation Service, Washington, D.C. 20243 (202) 343–4317.

Dated: October 28, 1980.

Meg Maguire,

Acting Director, Heritage Conservation and Recreation Service.

[FR Doc. 80–33923 Filed 10–30–80; 8:45 am]

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Friday
October 31, 1980

Part VII

Department of Health and Human Services

Public Health Service

Health Maintenance Organizations; Employees' Health Benefits Plans; Final Regulations

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 110

Health Maintenance Organizations; Employees' Health Benefits Plans

AGENCY: Public Health Service, HHS.

ACTION: Final Regulations.

SUMMARY: This rule amends the Public Health Service regulations by setting forth revised requirements for certain employers, States, and political subdivisions of States to include in any health benefits plans offered to their employees the option of membership in qualified health maintenance organizations (HMOs). These changes are made as a result of public comments received on the notice of proposed rulemaking (NPRM) published on July 18, 1979. Certain minor technical and editorial changes have also been made.

EFFECTIVE DATE: This rule is effective on December 1, 1980.

FOR FURTHER INFORMATION CONTACT: Howard R. Veit, Director, Office of Health Maintenance Organizations, Park Building—3rd Floor, 12420 Parklawn Drive, Rockville, Maryland 20857, 301/443–4106.

SUPPLEMENTARY INFORMATION: On July 18, an NPRM was published in the **Federal Register** (44 FR 42083–91) proposing changes to 42 CFR Part 110, Subpart H, issued under Title XIII of the Public Health Service Act, as amended (the Act). Section 1310 of the Act (42 U.S.C. 300e–9) requires certain employers, States, and political subdivisions of States to include in the health benefits plans offered their employees the option of membership in qualified health maintenance organizations (HMOs).

Interested persons were given an opportunity to submit comments on the proposed amendments by September 17, 1979. Forty-four comments were received by September 17, 1979, and three were received after that date. All comments received were considered in revising these regulations.

As an introductory note, the Department wishes to emphasize that to the extent that the employing entity (the collective term for employers, States and political subdivisions of States) and qualified HMOs can negotiate successfully the inclusion of the HMO option(s) in the employing entity's health benefits plan, it encourages such negotiation. However, in order for an HMO to maintain its status as a qualified HMO, it must provide services and be organized and operated in accordance with Subpart A of this Part ("Requirements for a Health Maintenance Organization"). Thus, in negotiating with a qualified HMO, an employing entity may not insist upon any terms which would require the HMO to violate any Subpart A requirements.

The comments received, responses thereto, and the changes made, if any, are summarized below:

1. Proposed § 110.803(a) defined when the request for inclusion by an HMO must be received by an employing entity in terms of the expiration or renewal date of certain contracts. Subparagraph (2)(ii) of that section stated that a collective bargaining agreement that is "for a fixed term in excess of one year and has provisions for periodically changing wages, hours, or conditions of employment * * *" is to be considered as either expired or renewable at the time provided by the agreement for discussion of these changes. Two commenters suggested that the term "periodically changing" was imprecise in that it covered both those provisions of the contract that changed automatically on a periodic basis without the need for discussion as well as those provisions that provided for a periodic discussion of changes. The Department notes that it intended for this provision to apply only when the contract contained the latter type of provision. It notes further that the section, as proposed, was also inadvertently broader than intended in that it referred to provisions for periodically changing "wages, hours, or conditions of employment." The Department intended that only provisions that provided for renegotiating health benefits should be considered in determining when the HMO should submit its request for inclusion. The Department believes that more precision is necessary in order to clarify both of these points. Accordingly, the phrase "* * *" and provides that its terms regarding health benefits may be renegotiated during the term of the agreement * * *" has been substituted in § 110.803(a)(2)(ii) in place of the phrase "has provisions for periodically changing wages, hours, or conditions of employment." The same change has been made in § 110.807(a)(2), which relates to when the offer of the HMO option is to be raised in the collective bargaining process.

2. The purpose of § 110.803(c) is to require the HMO to furnish the employing entity with a broad description of the way the HMO is organized and operated, including sufficient information for it to determine whether it is subject to a request for inclusion by the HMO and, if so, and if there are competing HMOs, to determine which HMO(s) to offer. Section 110.803(c)(4) requires an individual practice association (IPA) type HMO to furnish to the employing entity a list of the IPA members by name, specialty, address, days and hours of operation and whether they are accepting new patients from the HMO membership, with the listing current within 90 days of the HMO's request for inclusion. One commenter requested that the HMO be required to list only the number of physicians in the IPA and another suggested that the HMO should list the telephone numbers of the IPA physicians instead of their days and hours of operation. The Department agrees that the proposed requirement is burdensome on the HMO and that employing entities do not need all of the information it would have required the HMO to provide. The Department believes that a more appropriate way to reduce the burden on the HMO is to delete the requirement that it include the addresses and days and hours of operation of the IPA physicians. Accordingly, § 110.803(c)(4) has been amended to require the HMO to list the IPA members by name, specialty, and whether they are accepting new patients from the HMO membership.

Other commenters noted the information required to be submitted about the IPA, as well as that required to be submitted by the non-IPA type HMOs under § 110.803(c)(5), could be inaccurate or out-of-date at the time of enrollment. The Department thinks that a listing current within 90 days of the HMO's request for inclusion is sufficient to meet the needs of the employing entity when the HMO makes this request. It emphasizes, however, that § 110.108(c) of Subpart A of this Part provides clearly that the HMO has the obligation to disclose fully and fairly information to prospective enrollees at the time of the offer of enrollment, including a general description of participating providers, as well as the locations and hours of service of the HMO.

3. Proposed § 110.803(c)(9) would have required the HMO to provide the employing entity with a report of the financial condition of the HMO consisting of its most current financial statements in addition to its most recently audited annual set of financial statements. One commenter opposed this requirement as being not only burdensome to the HMO, but also

potentially misleading to the employing entity in that the HMO's most current financial statements were not required to be audited. Other commenters suggested that the provision be revised to require the HMO to include a narrative description of its current financial position, as this would be more comprehensible to the layman. The Department agrees that this section should be changed in the interest of minimizing the burden on the HMO while at the same time providing that accurate, relevant information will be available to the employing entity. Accordingly, this section has been revised by deleting the requirement that the HMO must submit its most current financial statements. It now requires the HMO to provide only its most recently audited annual financial statements.

4. Proposed § 110.803(c)(12) would have required an HMO to provide the employing entity its proposed rates for basic and supplemental services to be charged by the HMO on the effective date of the HMO coverage. Under certain conditions, copayment levels and the corresponding premium rates were also required to be stated. A number of commenters requested clarification of this provision. In response to an inquiry as to which rating structures need to be included, the Department notes that, as a minimum, the HMO must provide its rates for an individual and for two or more persons. In response to an inquiry as to when, if-ever, an HMO must furnish rates for supplemental health services and copayments, the offering of which are subject to negotiation (see discussion below in section 15), the Department notes that rates for the supplemental health services and copayments yet to be negotiated are not required to be provided to the employing entity at the time of the HMO's request for inclusion.

Additionally, a number of commenters were concerned that the HMO's statement of its proposed rates would be construed by the employing entity as a guarantee by the HMO that these would be its actual rates. These commenters felt that such an interpretation of the provision would be unfair because an HMO, at the time it requests inclusion, may not necessarily know: (a) The day on which the coverage for employees selecting the HMO option will begin; (b) the HMO's own cost experience in the interim before final rates are determined; and (c) the employing entity's preferred rating structure.

The Department notes that it did not intend to require the HMO to submit, at the time of its request, guaranteed rates. It agrees with the commenters that this interpretation of § 110.803(c)(12) would be unreasonable. It also believes that, because of the uncertainties inherent in estimating rates, HMOs should be given the option of stating their current rates (and the dates these rates become effective) instead of their estimated rates. Accordingly, the Department has revised the section. It now requires HMOs to state either (a) their current rates, including copayments, if any, for basic (and uniformly included supplemental) health services and the dates these rates became effective, or (b) their estimated rates for these services.

5. Proposed § 110.803(d) would have required the employing entity to respond, within 30 days of receipt of a request by an HMO for inclusion, with information enabling the HMO to determine whether the employing entity is required to offer the HMO option upon proper request.

The comments received by the Department as to this proposal and its responses thereto are as follows: (a) A number of commenters requested that the proposed 30 day response period be extended to assure that the employing entity had sufficient time to gather the necessary information. The Department agrees that a longer response period would be beneficial and has changed the 30 day response period to 60 days. The Department has extended similarly to 60 days the proposed 30 day period in § 110.803(e), which applies to the length of time the employing entity has to notify the HMO when it has concluded that the HMO's request is inadequate; (b) Two commenters recommended that since an employing entity is not subject to section 1310 of the Act unless 25 or more of its employees reside in the service area of the HMO, such an entity should be required to include information regarding its employees' health benefits plan only if it has 25 or more employees who reside within the service area of the HMO. The Department agrees with this comment and has incorporated this change into the regulation; (c) One commenter requested that, in order to inform the HMO more precisely, the employing entity should include, in addition to its contribution levels, the dates on which they became effective. The Department agrees that this information would be helpful to the HMO in deciding how to proceed with its request for inclusion in the employing entity's health benefits plan and has incorporated this requirement in the final regulations; and (d) One commenter requested that private employers, in addition to public entities, be required to furnish the HMO with a description of the health benefits that are required to be included in health benefits plans under State law or regulation. The Department notes that the reason that the regulation is limited to public entities is that there are laws or regulations in some States requiring certain benefits, including limitations and exclusions, that are applicable only to employees of public entities, in contrast with those laws or regulations requiring certain benefits that are applicable to all employees in a State. Since the Department believes that this latter, more general type of information is readily available to HMOs, it does not find it necessary to increase the burden on private employers by requiring them to furnish this information to the HMO.

6. Section 110.803(e) pertains to the notification of the HMO by the employing entity that the HMO's request for inclusion is inadequate. As noted above in section 5, the section has been modified, in response to public comment, to allow the employing entity 60 days to notify the HMO. Three commenters objected to this proposed section on the grounds that the HMO, and not the employing entity, should be responsible for submitting a valid request. The Department notes that the HMO is, of course, responsible for submitting an accurate request for inclusion. However, the Department believes that, if the employing entity intends to refuse to include the HMO alternative in its health benefits plan because it believes the HMO's request to be insufficient, it is only reasonable that the entity notify the HMO of the basis for its conclusion.

One commenter recommended that employing entities be allowed, as a condition of the HMO's participation in the health benefits plan, to make their own determinations as to the fiscal soundness of an HMO which has requested inclusion. The Department believes that this type of scrutiny of an HMO is unnecessary. It notes that federally qualified HMOs are required, under § 110.108(a) of the regulations, to have fiscally sound operations and that the Department monitors carefully their compliance with that requirement. Moreover, to permit each employing entity to make this determination as a requirement for the HMO's inclusion in the health benefits plan would lead to inconsistent determinations and would undermine the purposes of section 1310 by allowing the exclusion of HMOs that the Department has determined are eligible for inclusion.

7. Section 110.803(f) describes when an HMO must submit a new request for

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inclusion in a health benefits plan of an employing entity. Four commenters recommended that, regardless of whether any employees enroll in the HMO during the initial offering, the entity should be required to continue to offer the HMO during the entire health benefits year so that new employees, transfers, and others who subsequently become eligible to enroll in the HMO (see § 110.806(e)(2) for a complete list) have the opportunity to do so. Other commenters took the opposite position; namely, that if the HMO does not get any enrollees during the initial offering period, it should have to submit a new request in order for any subsequently eligible employees to enroll. The Department believes that the former position reflects accurately the purposes of section 1310 of the Act in that it assures that more employees will be offered the option of membership in a qualified HMO. Accordingly, the regulation has been changed to require that the employees described in § 110.806(e)(2) be given the opportunity to enroll in the HMO during the entire health benefits year, regardless of whether any other employees of that entity have enrolled previously in the HMO.

8. Section 110.804 sets forth the details of how the HMO option is to be offered by the employing entity to its employees. One commenter suggested that, as a condition to the offering of the HMO, the HMO should be required to execute a contract with the employing entity binding the HMO to assure the delivery of health services to employees who subsequently enroll in the HMO. The Department notes that, in order to obtain Federal qualification, an HMO must provide assurances satisfactory to the Secretary that it will arrange for the provision of all medically necessary basic health services to its members. (See § 110.102(a)). Since the Department monitors, on an ongoing basis, the compliance of HMOs with their assurances, it does not believe that the contract suggested above between the employing entity and the HMO is necessary.

9. Section 110.805 describes which HMOs must be included in a health benefits plan. Paragraph (c) of this section, which is intended to promote competition among HMOs, describes alternate HMOs which may be offered by the employing entity instead of an HMO which made a timely request. A new section (c)(4) was proposed to limit the alternate HMOs which were otherwise eligible to be offered to those which were "included in the health benefits plan on terms no less favorable to the employing entity's employees (with regard to the employing entity's monetary contribution) than those on which the HMO submitting the timely request would have been included." A number of commenters objected to and suggested deletion of the proposed § 110.805(c)(4). They stated that the phrase "no less favorable" was ambiguous and could result in the offering of an alternate HMO that, even though the employer's monetary contribution was no less favorable to the employee, (a) underbid the timely HMO by offering employees a less favorable package of health benefits, or (b) was less favorable to employees in that it would cost them more out-of-pocket (e.g. for copayments).

The Department, while noting that § 110.805(c)(4) was intended to protect employees, acknowledges that the provision fails to contribute to that end because it does not protect employees in situations such as those described above. The Department has decided to delete this provision because of the difficulties inherent in trying to determine on a qualitative basis whether a plan is less favorable to an employee, and because it is not convinced that there is a problem with employer behavior in this regard. However, the Department is interested in receiving information from the public as to whether § 110.805(c) is being used in a manner that affects employees adversely. Upon receipt of such comments, it will reconsider what action, if any, is appropriate.

10. Section 110.806(a) requires that each employing entity provide each qualified HMO which is included in its health benefits plan with "fair and reasonable" access to eligible employees. The section then details what, at a minimum, this access shall include. While one commenter wanted the HMO's access to employees to be more flexible, others suggested that the term be defined in specific detail. The Department believes that the regulation adequately defines access by setting forth the minimum requirements for fair and reasonable access. It notes that an employing entity may, of course, agree to permit the HMO more favorable access than that required by the regulation.

11. Section 110.806(c), which sets forth the rules for the group enrollment period, requires the employing entity to have a group enrollment period with no waiting periods or exclusions or limitations based on health status as a condition of enrollment in the HMO or transfer to non-HMO coverage from an HMO. Two commenters recommended changing this section to allow a prospective HMO enrollee to remain with his original carrier if on the effective date of change to HMO coverage the enrollee is an inpatient and the original carrier responsibility continues through confinement. The Department notes that it has no authority to mandate the application of coordination of benefits agreements. However, as stated in § 110.806(c), nothing in these regulations prohibits voluntary agreements between HMOs and other carriers which are included in the health benefits plan, such as the one suggested above.

12. Section 110.806(d), as proposed, required the employing entity to "assure that employees selecting the option of HMO membership will not, because of this selection, lose their eligibility for other health benefits, such as dental or prescription drug coverage, for which they were previously eligible or would be eligible if selecting a non-HMO option and which are not included in the services provided by the HMO on a prepaid basis." This requirement, for convenience, will be referred to below as the "continued eligibility" requirement.

Twenty commenters addressed the continued eligibility requirement in their letters. The comments are summarized as follows: (a) One commenter urged the Department to retain the language as proposed, citing the requirement as critical for HMOs to compete in the marketplace; (b) one commenter, while approving the proposed regulation, urged its expansion to assure eligibility for any employment-related benefits; (c) five commenters objected to the provision, claiming it would unduly burden and result in additional administrative costs to employers; (d) eleven commenters felt the proposed regulation should be limited to "free-standing" or "self-contained" benefits, that is, benefits which are offered as a separate, discrete package and not integrated into a basic medical insurance policy or a major medical plan; many of these commenters requested clarification as to the level and scope of benefits the Department was proposing be subject to the requirement; and (e) four commenters urged that the requirement apply only to free-standing benefits, except that dental benefits should be extracted from a comprehensive package of indemnity benefits because the dental benefit is "significant."

The Department notes that the purpose of section 1310 and its implementing regulations is to assure that employees are given a true option to choose among competing alternatives in health benefits plans, including HMOs. The continued eligibility requirement, which assures that employees who choose to enroll in an HMO are not penalized by that choice with respect to free-standing health benefits available to employees is, among other provisions, a means of achieving that statutory purpose.

In light of the public comments received, however, the Secretary has revised the regulation to require an employing entity, at the request of the HMO, to provide for continued eligibility only as to those benefits which are "free-standing" and not offered by the HMO to its members as part of the HMO benefit package. The term "free-standing" is defined at § 110.806(d)(2). Further, the provision at § 110.806(d) is applicable only when the HMO does not offer a particular health benefit in whole or in part. Because, in the experience of the Department, this is most likely to occur with respect to the offering of three distinct health benefits, prescription drugs, dental services, and optical services, the Department has limited the applicability of § 110.806(d) to these benefits. Should the public submit information regarding any other free-standing health benefits for which employees selecting the HMO option would be likely, in the absence of the continued eligibility requirement, to lose their eligibility, the Department will consider further rulemaking to broaden the requirement.

In view of the response that this proposed section elicited, the Department believes that it is appropriate to clarify this section by adding to the regulation specific examples of what the employing entity is, and is not, required to continue to make available to its employees selecting an HMO option. This addition to the regulations includes examples showing when the employing entity is required to continue to make available the free-standing benefits not available through the HMO to its employees because the HMO option being offered does not provide for any level of that particular benefit. The regulation also includes examples showing when the employing entity need not continue to make available the free-standing, non-HMO coverage to employees selecting the HMO option.

In addition, as noted in one of the examples under § 110.806(d), nothing in this regulation requires that the coverage for the free-standing benefit be made optional (or mandatory) for employees selecting the HMO option if coverage for the benefit is not optional (or mandatory) for employees selecting the non-HMO option.

The Department also notes that § 110.806(d) does not address whether the employing entity must continue to make available to employees who select the HMO option non-health related benefits, such as life or disability insurance. While the Department has decided not to include in these regulations a requirement that employing entities continue to make these non-health benefits available, it is concerned that any employing entity that does not do so may be acting in a manner inconsistent with other Federal statutes. The Department intends to report any discriminatory or anti-competitive conduct to the appropriate Federal agencies for monitoring in this regard. Moreover, it notes that under § 110.808(c), the employing entity may only exclude from its contribution to the HMO option those portions of the contribution allocable to benefits (either related to health or not) for which eligible employees continue to be covered notwithstanding selection of the HMO option.

Finally, the Department notes that, while it is now limiting this requirement to free-standing benefits, the HMO and employer may agree to give employees access to coverage for an "integrated" benefit.

13. Section 110.806(e)(2) specifies when the employng entity shall make available the opportunity to select among different existing alternatives within a health benefits plan outside of the group enrollment period. Proposed § 110.806(e)(2)(ii) specified that this opportunity must be provided, among others, to eligible employees who, "have been transferred or have changed their place of residence, resulting in * * * loss of membership in a qualified HMO in which they were previously enrolled." A commenter noted that this language would not have given an otherwise eligible employee the opportunity to select a new option if he or she transferred or moved out of the service area of the HMO in which he or she was enrolled and was allowed by that HMO to retain membership. While this employee would not have lost membership in a qualified HMO, the services of the HMO would not longer be readily available and accessible since the employee would reside outside the HMO's service area. In order to accommodate this situation, the Department has changed the phrase, "resulting in loss of membership in a qualified HMO in which they were previously enrolled" to "resulting in residence outside the service area of a qualified HMO in which they were previously enrolled."

14. Section 110.806(e)(2)(iii) requires the employing entity to make available the opportunity to select among different existing alternatives within a health benefits plan to eligible employees who are covered by any alternative which ceases operation. One commenter felt this requirement should be deleted since it placed an unreasonable burden on employing entities. Another commenter suggested that the provision be amended to allow for a reasonable period of time for the transition of these employees to a new health benefits option. Since the Department believes that the section as proposed is reasonable in light of the importance of assuring that all employees are provided the opportunity for continuous health care coverage, it has not changed this section.

15. Two different proposed sections addressed the determination of which supplemental health services were to be included with the required basic health services in the HMO's prepaid benefit package. Proposed § 110.806(f)(3) would have allowed the HMO to select, for all employees, the supplemental health services to be included as part of its prepaid benefit package. Proposed § 110.808(a)(3) would have allowed the HMO to add supplemental health services to its prepaid benefit package if the amount of the HMO's premium is less than the employing entity's contribution to the HMO alternative. A number of commenters objected to these proposed rules on the following grounds: (a) They would only only increase the cost of health care but also eliminate the potential cost savings of offering an HMO, which is a major reason for the attractiveness of HMOs to employing entities; and (b) The inclusion of supplementals is more properly a subject for the negotiation process; in fact, allowing the HMO to select supplemental defeats the provisions of § 110.806(f) (1) and (2), which give the employing entity the right either to negotiate the supplemental health services to be offerd through its collective bargaining process or to select them through the same decision-making process it uses with respect to the non-HMO alternatives in its health benefits plan.

The Department notes that the HMO Amendments of 1976 (Pub. L. 94-460) amended section 1301(b)(1) of the Act to allow HMOs to include supplemental health services in their basic health services provided to their members for a basic health service payment. The Conference Committee, in its report

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adopting this provision as proposed by the House of Representatives, noted that the provision was necessary because "there are some States which require HMOs under State law to offer services which are not included among the defined basic health services." (H.R. Rep. #94–1513, 94th Cong., 2d Sess. 19 (1976)). The House Committee, in its report, explained its amendment by stating that "(It) would simplify the marketing of benefits by HMO's (sic) allowing them to choose a single benefits package which was competitive in the area which is served and to market that single package to all of its members. The present requirements (making the choice optional with members) have proved cumbersome for HMO's (sic) which find that each member, or group of members chooses a different set of supplemental health services for which to contract, with the result that the HMO must provide and administer a great variety of different benefit packages to its different groups of members." (H.R. Rep. #94–518, 94th Cong., 1st Sess. 16 (1975)).

Thus, the legislative history shows clearly that Congress intended to allow HMOs to determine on a non-negotiable basis which supplemental health services to include in their prepaid benefit packages, if those supplemental services are (a) required to be offered under State law or (b) included uniformly by the HMO in the prepaid benefit package offered to all of its members.

Given this background, the Department has concluded that it is inappropriate to provide that the offering of all supplemental health services by the HMO is subject to negotiation. However, it does believe that it is consistent with section 1301(b)(1) of the Act and its legislative history to limit the HMO's right to determine on a non-negotiable basic which supplemental health services to include to the two situations described above.

In addition, based on the revision to § 110.806(d) ("Continued availability of other health benefits") described in item #12 above, the Department has concluded that a conforming amendment to this provision is appropriate. Accordingly, the Department has added a third situation in which the HMO may require the offering of certain supplemental health services as part of its basic health services package: When coverage for the supplemental health service at issue is available through the non-HMO option and that coverage is not available to employees selecting the HMO option. For example, if the coverage is available in an integrated (i.e., not free-standing) health service benefit plan, and thus is not required by § 110.806(d) to be made available to employees selecting the HMO option, the HMO may require the offering of this supplemental health service as part of its prepaid health services package. This result would also occur if the HMO and the employer had mutually agreed that the continued availability requirement of § 110.806(d) would not be applied with respect to a given supplemental health service.

A supplemental health service which did not fall in any of the three categories described above would properly be the subject of negotiation between the employing entity and the HMO, as well as the collective bargaining process, if any. The Department believes that this approach not only furthers the legislative intent by reducing the administrative burden on HMOs, but also does not interfere unduly with the employing entity's collective bargaining or other decision-making processes. Accordingly, § 110.806(f)(3) has been modified to reflect this approach.

Further, in light of the analysis set forth above, the Department has reconsidered the appropriateness of proposed § 110.808(a)(3) (which would have allowed HMOs to add prepaid supplemental health services so as to raise its premium up to the amount of the employing entity's contribution to the non-HMO alternative). Consistent with the revision to § 110.806(f)(3), proposed § 110.808(a)(3) has been deleted.

16. Section 110.808(a) sets forth the general principles for determining the employing entity's contribution to the HMO option. Proposed subparagraph (2) of that section stated that the amount of this contribution shall be equal, in terms of dollars, "to the largest amount of contribution per employee paid to any other option which is available to all eligible employees included in the health benefits plan * * *" (up to the amount of the HMO's premium). A number of commenters noted that using "all eligible employees" as a standard for determining contribution was not only inequitable but also would have an inflationary impact on those companies which determine their contributions based on the earning levels of each particular employee. Since the Department agrees with these commenters, it has changed § 110.808(a)(2) to require contribution by the employing entity based on the largest amount of contribution "for that individual employee".

17. Proposed § 110.808(a)(4) (now § 110.808(a)(3)) required the employing entity to increase the amount of its contribution for the HMO option whenever its contribution to other alternatives in its health benefits plan increases (up to the amount of the HMO premium). A number of commenters objected to this provision because they believe it to be inflationary and likely to be detrimental to the relationship between HMOs and employers. They also pointed out that applying this requirement in the middle of the health benefits year might result in altering an employing entity's contribution which was fixed by a contract with the HMO. Other commenters suggested that the Department add that the employing entity has the right to decrease the amount of its contribution for the HMO option whenever its contribution to other health plan alternatives decreases.

The Department believes that these comments have merit with respect to the proposed rule's applicability to the case where the employing entity's contribution to the HMO option is fixed by contract. Accordingly, the Department had decided to modify the provision. The employing entity is now required to increase its contribution to the HMO option during the health benefits year unless (a) the employing entity's contribution is fixed by contract or other arrangement with the HMO, or (b) the employing entity and HMO come to any other agreement on this issue. Of course, if the employing entity's contribution to the non-HMO alternative is to be revised only prospectively for the following health benefits year, then this revised contribution is to be used in determining the employing entity's contribution for the HMO premium. (See § 110.808(g)(1).) The Department also notes that while nothing in the statute or regulations prohibits an employing entity from decreasing its contribution to the HMO option at the time that its contribution to its other alternatives decreases, the parties may, of course, provide otherwise.

Finally, the Department encourages HMOs and employing entities to make provisions in advance on the subject of adjustments to the contribution rate in the event that the employing entity's contribution to other alternatives in its health benefits plan changes midterm during the health benefits year. It believes that agreement in advance on this issue would be beneficial to the relationship between HMOs and employing entities.

18. At the same time that the proposed subpart H rules were published, § 110.809 was promulgated as a final regulation. (44 FR 42082, July 18, 1979). This section sets forth the conditions under which an employer must arrange for its employees' contributions for membership in a qualified HMO to be paid through payroll deductions. Although § 110.809 was effective immediately, it was also included in the NPRM, and the Department requested comments on it as well as on the proposed amendments to subpart H. The Department received the following comments on this provision: (a) A recommendation for deletion on the basis that the cost of setting up payroll deductions for a number of small HMOs would be prohibitive; (b) a suggestion that a grace period of one year be allowed for an employer to implement a payroll deduction system where one does not presently exist; and (c) a suggestion that a minimum number of enrollees in the HMO be required before the employing entity had to offer a payroll deduction. The Department notes that neither the statute (section 1310(c)) nor the regulation requires an employing entity to institute a payroll deduction system for HMO enrollees if it doesn't already provide such a system for paying employees' contributions for other options in the health benefits plans. The first and second suggestions are therefore not appropriate. The Department cannot adopt the suggestion in the third comment because it is inconsistent with section 1310(c).

19. The Department has also made certain minor technical and editorial changes.

The Assistant Secretary for Health of the Department of Health and Human Services, with the approval of the Secretary of Health and Human Services, amends 42 CFR Part 110, Subpart H, as set forth below.

Dated: June 30, 1980.

Julius B. Richmood,

Assistant Secretary for Health.

Approved: October 21, 1980.

Patricia Roberts Harris,

Secretary.

Subpart H—Employees' Health Benefits Plans

Sec.

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Authority: Sec. 215, 58 Stat. 690 (42 U.S.C. 216); secs. 1301–1318, as amended, 92 Stat. 2131–2141 (42 U.S.C. 300e–300e–17)

Subpart H—Employees' Health Benefits Plans

§ 110.801 Definitions.

In addition to the terms defined in § 110.101 and 110.602, as used in this subpart:

"Bargaining representative" means a representative designated or selected for the purposes of collective bargaining under the National Labor Relations Act, as amended, (29 U.S.C. 151 *et seq.*) or under the Railway Labor Act, as amended, (45 U.S.C. 151 *et seq.*) or under a public entity collective bargaining agreement, or under the laws of any State or political subdivison thereof, or other employee representative designated or selected under any law.

"Carrier" means a voluntary association, corporation, partnership, or other organization which is engaged in providing, paying for, or reimbursing all or part of the cost of health benefits under group insurance policies or contracts, medical or hospital service agreements, membership or subscription contracts, or similar group arrangements, in consideration of premiums or other periodic charges payable to the carrier.

"Collective bargaining agreement" means an agreement entered into between an employing entity and the bargaining representative of its employees, and includes agreements entered into on behalf of groups of employing entities with the bargaining representative of their employees in accordance with the provisions of the National Labor Relations Act, as amended (29 U.S.C. 151 *et seq.*), or the Railway Labor Act, as amended, (45 U.S.C. 151 *et seq.*) or the laws of any State or political subdivision thereof.

"Designee" means any person or entity authorized to act on behalf of an employing entity or a group of employing entities to offer the option of membership in a qualified health maintenance organization to their eligible employees.

"Eligible employee" means an employee who is eligible to participate in a health benefits plan.

"Employee" means any individual employed by an employer or public entity on a full- or part-time basis.

"Employer" shall have the meaning given that term in Section 3(d) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C 203(d), 203(x)), except that the term "employer" does not include (1) the Government of the United States, the government of the District of Columbia or any territory or possession of the United States, a State or any political subdivision thereof, or any agency or instrumentality (including the United States Postal Service and Postal Rate Commission) of any of the foregoing; or (2) a church, convention or association of churches, or any organization operated, supervised, or controlled by a church, convention, or association of churches which organization (i) is an organization described in section 501(c)(3) of the Internal Revenue Code of 1954, and (ii) does not discriminate (A) in the employment, compensation, promotion, or termination of employment of any personnel, or (B) in the extension of staff or other privileges to any physician or other health personnel, because such persons seek to obtain or obtained health care, or participate in providing health care, through an HMO.

"Employing entity" means an employer or public entity.

"Employing entity-employee contract" means a legally enforceable agreement (other than a collective bargaining agreement) between an employing entity and its employees for the provision of, or payment for, health benefits for its employees, or for its employees and their eligible dependents.

"Group enrollment period" means the period of at least 10 working days each calendar year during which each eligible employee is given the opportunity to select among the alternatives included in a health benefits plan.

"Health benefits" means health benefits and services.

"Health benefits contract" means a contract or other agreement between an employing entity or a designee and a carrier for the provision of, or payment for, health benefits to eligible employees or to eligible employees and their eligible dependents.

"Health benefits plan" means any arrangement for the provision of, or payment for, any of the basic and supplemental health benefits described in §§ 110.102 and 110.103 of this Part offered to eligible employees, or to eligible employees and their eligible dependents, by or on behalf of an employing entity.

"Public entity" means a State as defined by section 2(f) of the Public Health Service Act (42 U.S.C. 201(f)), a political subdivision of a State, or any agency or instrumentality of the foregoing. "Political subdivision" includes counties, parishes, townships,

cities, municipalities, towns, villages, and incorporated villages.

"To offer a health benefits plan" means to make participation in a health benefits plan available to eligible employees, or to eligible employees and their eligible dependents, and to make a financial contribution to the plan whether the financial contribution by the employing entity on behalf of these employees is made directly or indirectly, (e.g. through payments on any basis into a health and welfare trust fund).

§ 110.802 Applicability.

The regulations of this subpart apply in each calendar year to:

(a) Each employer which was required during any calendar quarter of the previous calendar year to pay its employees the minimum wage specified by Section 6 of the Fair Labor Standards Act of 1938 (or would have been required to pay its employees the minimum wage but for Section 13(a) of that Act) and which during any calendar quarter of the previous calendar year employed an average of not less than 25 employees; and

(b) Each public entity, as a condition of the payment to the State of funds under Sections 314(d), 317, 318, 1002, 1525, or 1610 of the Public Health Service Act, which during any calendar quarter of the previous calendar year employed an average of not less than 25 employees, if the employer or public entity:

(1) Offers, or if there is offered on behalf of the employer or public entity, in the calendar year beginning after any calendar quarter of the previous calendar year in which the employer or public entity employed an average of not less than 25 employees, a health benefits plan to its eligible employees; and

(2) Has received a written request for inclusion in the employer's or public entity's health benefits plan (which request meets the requirements of § 110.803) from one or more qualified HMOs which provide basic health services in an HMO service area in which at least 25 employees of the employer or the public entity, respectively, reside.

§ 110.803 Requirements for a request for inclusion of the HMO option in a health benefits plan; employing entity response.

(a) *Time limitations.* (1) Unless otherwise agreed to by the HMO and the employing entity or designee, an HMO's request for inclusion in an employing entity's health benefits plan must be received by the employing entity or designee no more than 365 days and not less than 180 days before the expiration or renewal date of a health benefits contract or employing entity-employee contract, and no more than 365 days and not less than 180 days before the expiration date of a collective bargaining agreement, or in the case of a public entity, such longer period as may be prescribed by State law.

(2) For the purposes of this paragraph:

(i) A collective bargaining agreement that is automatically renewable or without fixed term shall be treated as having an expiration or renewal date on the earliest anniversary date of the collective bargaining agreement.

(ii) A collective bargaining agreement that is for a fixed term in excess of one year and provides that its terms regarding health benefits may be renegotiated during the term of the agreement shall be treated as having an expiration or renewal date at the time provided by the agreement for discussion of these changes.

(b) *To whom the written request is to be directed.* The request for inclusion must be in writing and (1) in the case of an employer, be directed specifically to the employer's managing official at the employer site being solicited or to the employer's designee; and (2) in the case of a public entity, be directed to the Chief Executive Officer of the public entity, or to the public entity's designee.

(c) *Information which the request must include.* The request must (1) Provide evidence that the Secretary has determined that the HMO is a qualified HMO in accordance with section 1310(d) of the Act and Subpart F of this part;

(2) Describe the HMO's service area or proposed service area and give the dates basic and supplemental health services will be provided in the area or areas;

(3) Indicate whether the services of health professionals which are provided as basic health services are provided through health professionals who are (i) members of the staff of the organization, or (ii) members of a medical group(s), or (iii) members of an individual practice association(s), or (iv) health professionals who have contracted with the HMO for the provision of these services or (v) any combination of the above;

(4) If the HMO provides health services through an individual practice association(s), provide a listing of member physicians by name, specialty, and whether they are accepting new patients from the HMO membership. This listing must be current within 90 days of the date of the request for inclusion;

(5) If the HMO provides health services other than through an individual practice association, provide for each ambulatory care facility the facility's address, days and hours of operation, a statement whether it is accepting new patients from the HMO membership, and the names and specialities of the facility's providers of basic and supplemental health services. This information must be current within 90 days of the date of the request for inclusion;

(6) List the hospitals where HMO members will be provided basic and supplemental health services;

(7) Identify (i) the nature of the HMO entity, i.e., for profit or non-profit, public or private, sole proprietorship, partnership, or stock or non-stock corporation, , (ii) the members of the HMO's policymaking body, and (iii) the principal managing officer of the HMO;

(8) Provide a statement of the HMO's capacity to enroll new members and the likelihood of any future limitations on enrollment;

(9) Provide the HMO's most recently audited annual financial statements;

(10) Provide proposed implementing agreements between the HMO and the employer, public entity, or designee for the HMO offering;

(11) Provide sample copies of solicitation brochures and membership literature which will be used in the offer of the HMO alternative to employees;

(12) State either (i) the HMO's current rates, including copayments, if any, for basic (and uniformly included supplemental) health services and the dates these rates became effective, or (ii) the HMO's estimated rates for these services.

(d) *Employing entity response.* An employing entity or designee shall respond in writing to an HMO's request for inclusion no later than 60 days after the receipt of the request and shall state whether the employing entity has 25 or more employees who reside within the service area of the HMO. If so, the employing entity or designee shall also state the expiration or renewal dates of its health benefits contracts, employer-employee contracts, and public entity-employee contracts covering these employees, the amount of the employing entity's current contribution (and, where applicable, the employee's contribution) for health benefits, including the dates those contribution levels became effective, and the expiration dates of any collective bargaining agreements covering these employees. In addition, in this response, a public entity or its designee shall furnish the HMO with a description of health benefits, including limitations and exclusions, required under State law or regulation for health benefits plans for employees of the public entity.

(e) *Effect of inadequate request.* If the request for inclusion does not meet the requirements of paragraphs (a)–(c) of this section, the employing entity is not required to include the HMO alternative in its employees' health benefits plan under § 110.805 until the HMO makes its request in accordance with those paragraphs. In such a case, the employing entity or its designee shall, within 60 days after receipt of the request, notify the HMO in writing of the basis for its conclusion that the request does not meet the requirements of paragraphs (a)–(c) of this section.

(f) *New request for inclusion.* If an employing entity includes the HMO alternative in a health benefits plan in accordance with a request meeting the requirements of paragraphs (a)–(c) of this section, the employing entity shall offer the HMO alternative to the employees described in § 110.806(e)(2) during the entire health benefits year. However, if no employees enroll during the health benefits year, the HMO seeking inclusion in the health benefits plan for subsequent enrollment periods shall submit a new request in accordance with paragraphs (a)–(c) of this section.

(g) *Discretionary offering of HMO alternative.* Nothing in this subpart prevents the employing entity or designee from offering the HMO alternative at any time by mutual agreement with the HMO.

§ 110.804 Offer of HMO option to employees.

(a) *Inclusion of HMO option.* An employing entity subject to § 110.802 shall, at the time a health benefits plan is offered to its eligible employees, include in the plan the option of membership in qualified HMOs in accordance with this section.

(b) *Employees to whom the HMO option must be offered.* Each employing entity subject to this subpart shall offer the option of membership in a qualified HMO to each eligible employee, or to each eligible employee and his or her eligible dependents, who reside within the service area of the qualified HMO being offered.

(c) *Manner of offering the HMO option.* (1) For the employees of an employing entity subject to this subpart who are represented by a bargaining representative, the offer of membership in a qualified HMO (i) must first be made to the bargaining representative, and (ii) if the offer is accepted by the representative, must then be made to each represented employee.

(2) For those employees not represented by a bargaining representative, the offer must be made directly to those employees in accordance with this subpart.

§ 110.805 HMOs which must be included in a health benefits plan.

(a) *HMOs providing basic health services through varying arrangements with health professionals.* If more than one qualifed HMO engaged in the provision of basic health services in an area in which eligible employees of an employing entity subject to this subpart reside has requested inclusion in the employer's or public entity's health benefits plan as provided by § 110.802(a)(2)(ii), and if:

(1) One or more of these organizations provides basic health services through physicians or other health professionals who are members of the staff of the organization or a medical group (or groups), and

(2) One or more of these organizations provides basic health services through (i) an individual practice association (or associations), or (ii) a combination of such an association (or associations), medical group (or groups), staff, and individual physicians and other health professionals under contract with the organization, then, of the qualified HMOs included under this section in a health benefits plan of an employing entity subject to this subpart, at least one shall be an organization which provides basic health services as described in subparagraph (1) of this paragraph and at least one shall be an organization which provides basic health services as described in subparagraph (2) of this paragraph. For purposes of this paragraph, individual physicians and other health professionals who have contracted with the HMO do not include health professionals who are members of the HMO's staff, of medical groups, or of entities which would be medical groups but for the requirements of subparagraph (3)(i) of the definition of medical group in § 110.101.[1]

(b) *Additional HMOs which must be included.* An employing entity subject to this subpart shall offer the option of membership in additional qualified HMOs to its eligible employees, described in subparagraphs (1) and (2) of this paragraph, if the additional qualified HMOs demonstrate that their service areas include the place of residence of at least 25 employees of the employing entity:

(1) Who do not reside in the service area of qualified HMOs already included in the employing entity's health benefits plan; or

(2) To whom membership in qualified HMOs already included in the health benefits plan is not available because these HMOs have closed their enrollment of additional eligible employees of the employing entity.

(c) *Alternate HMOs which may be included.* An employing entity subject to this subpart is not required to include in the health benefits plan offered to eligible employees the option of membership in the specific qualified HMO which initiated the request for inclusion in the health benefits plan if (1) the employing entity or designee includes in the health benefits plan the option of membership in one or more other qualified HMOs that may not have made a request within the time limit of § 110.803(a) but are willing to be included, (2) these latter HMOs are of the same type (i.e., as described in paragraph (a)(1) or (2) of this section) as the HMO which submitted the timely request, and (3) all of the employees of the employing entity residing in the service area of the HMO submitting the timely request reside in areas served by these latter HMOs.

§ 110.806 How the HMO option is to be included in the health benefits plan.

(a) *HMO access to employees.* The employing entity shall provide each qualified HMO which is included in its health benefits plan with fair and reasonable access, not less than 30 days prior to and during the group enrollment period, to employees referred to in § 110.804(b) for purposes of presenting and explaining its program in accordance with § 110.108(c) of this Part. This access shall include, at a minimum, the opportunity for the distribution of educational literature, brochures, announcements of meetings, and other relevant printed materials meeting the requirement of § 110.108(c) to each employee referred to in § 110.804(b). In no event shall the employing entity provide qualified HMOs access to eligible employees which is more restrictive or less favorable than the access it provides other offerors of alternatives included in the health benefits plan, whether or not these offerors elect to avail themselves of that access.

(b) *Review of HMO offering materials.* The HMO shall give the employing entity or designee the opportunity to review, revise, and approve HMO educational and offering materials before distribution. Revisions shall be limited to correcting factual

[1] These requirements are that the members of the medical group "as their principal professional activity (over 50 percent individually) engage in the coordinated practice of their profession and as a group responsibility have substantial responsibility (over 35 percent in the aggregate of their professional activity) for the delivery of health services to members of an HMO."

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errors and misleading or ambiguous statements, unless otherwise agreed to by the HMO and the employer or public entity or designee, or as may be required by law. The employing entity or designee shall complete promptly any of these revisions in the offering material so as not to delay or otherwise interfere with the group enrollment period.

(c) *Group enrollment period; prohibition of waiting periods, exclusions, and limitations.* An employing entity or designee including the option of membership in a qualified HMO under this subpart as part of the health benefits plan offered to its eligible employees shall provide for a group enrollment period, prior to the effective date of the HMO coverage established under paragraph (g) of this section, without application of waiting periods or exclusions or limitations based on health status as a condition of enrollment in the HMO or transfer to non-HMO coverage from an HMO. Nothing in this subpart precludes the uniform application of coordination of benefits agreements between the HMOs and the other carriers which are included in the health benefits plan.

(d) *Continued availability of other health benefits.* (1) At the request of a qualified HMO, the employing entity or its designee shall provide that employees selecting the option of HMO membership will not, because of this selection, lose their eligibility for free-standing dental, optical, or prescription drug benefits for which they were previously eligible or would be eligible if selecting a non-HMO option and which are not included in the services provided by the HMO to its members as part of the HMO prepaid benefit package.

(2) For purposes of this paragraph, the term "free-standing" refers to a benefit which (i) is not integrated or incorporated into a basic health benefits package or major medical plan, and (ii) is either (A) offered by a carrier other than the one offering the basic health benefits package or major medical plan, or (B) subject to a separate premium from the premium for the basic health benefits package or major medical plan.

Illustrative Examples: Set forth below are examples of the employing entity's obligation with respect to the continued eligibility of employees selecting the HMO option for these free-standing health benefits:

1. The health benefits plan includes a free-standing dental benefit. The HMO does not offer any dental coverage as part of its health services provided to members on a prepaid basis. The employing entity must provide for the continued eligibility of those employees selecting the HMO option for dental coverage.

Note: If the dental coverage is not optional for employees selecting the non-HMO option, nothing in this regulation requires that the coverage be made optional for employees selecting the HMO option. Conversely, if this coverage is optional for employees selecting the non-HMO option, nothing in this regulation requires that the coverage be mandatory for employees selecting the non-HMO option.

2. If the non-HMO option provides free-standing coverage for optical services (such as refraction and the provision of eye glasses), and the HMO does not, the employing entity must provide for the continued eligibility for those employees selecting the HMO option for optical coverage.

3. The non-HMO option includes dental coverage in its major medical package, with a common deductible applied to dental as well as non-dental benefits. The HMO provides no dental coverage as part of its prepaid health services. Because the dental coverage is not free-standing, the employing entity is not required to provide for the continued eligibility for dental coverage for those employees selecting the HMO option, although it is free to do so.

(e) *Affirmative written selections.* (1) During the group enrollment period in which the alternative of membership in any particular qualified HMO is offered to an eligible group of employees for the first time, the employing entity or designee shall present the health benefits plan alternatives to each eligible employee residing in the service area of the HMO with the requirement that an affirmative written selection be made among the different alternatives included in the health benefits plans. In subsequent group enrollment periods, it shall make available a selection among the alternatives; however, a written selection is required only when the eligible employee elects to change from one alternative to another.

(2) In addition to the group enrollment period, the employing entity or designee shall make available the opportunity to select among different existing alternatives within a health benefits plan to eligible employees who: (i) Are new employees, (ii) have been transferred or have changed their place of residence, resulting in eligibility for membership in a qualified HMO for which they were not previously eligible by place of residence, or resulting in residence outside the service area of a qualified HMO in which they were previously enrolled, or (iii) are covered by any alternative which ceases operation. At the time these employees are eligible to participate in the health benefits plan, the employing entity or designee shall make available, without waiting periods or exclusions or limitations based on health status as a condition, the opportunity to enroll in an alternative HMO or transfer to a non-HMO coverage from an HMO, and shall require these employees to make an affirmative written selection among the different alternatives included in the health benefits plan.

(f) *Determination of copayment levels and supplemental health services.* The selection of a copayment level and of supplemental health services to be contracted for is to be made as follows:

(1) For those employees represented by a collective bargaining representative, the selection of copayment levels and supplemental health services is subject to the collective bargaining process.

(2) For those employees not represented by a bargaining representative, the selection of copayment levels and supplemental health services to be offered to eligible employees is subject to the same decisionmaking process used by the employing entity with respect to the non-HMO alternatives in its health benefits plan.

(3) In all cases, the HMO has the right to include with its basic health services provided to its members for a basic health services payment, on a non-negotiable basis, those supplemental health services (i) that are required to be offered under State law, or (ii) that are included uniformly by the HMO in its prepaid benefit package, or (iii) coverage for which is available to employees selecting the non-HMO option but not available to employees selecting the HMO option.

(g) *Effective dote of coverage.* Unless otherwise agreed to by the employing entity, or designee, and the HMO, the effective date of coverage by the HMO for employees selecting the HMO option shall begin on the day the non-HMO coverage expires or is renewed without lapse.

§ 110.807 When the HMO is to be offered to employees.

The employing entity or designee shall offer eligible employees the option of membership in a qualified HMO at the earliest date permitted under the terms of existing collective bargaining agreements, employer-employee or public entity-employee contracts, or contracts for health benefits. Should the HMO's request for inclusion in a health benefits plan be received at a time when these existing contracts or agreements do not provide for including a qualified HMO in the health benefits plan, the inclusion of the HMO in the health benefits plan shall occur at the time that new agreements or contracts are offered or negotiated and shall be consistent with the following paragraphs:

(a) Unless mutually agreed otherwise, if a collective bargaining agreement is in force at the time the request for inclusion in the health benefits plan is made by the HMO to the employing entity or designee, the request shall be raised in the collective bargaining process (1) when a new agreement is negotiated, (2) if the agreement is for a fixed term in excess of one year and provides that its terms regarding health benefits may be renegotiated during the term of the agreement, at the times provided by the agreement for discussion of these changes, or (3) in accordance with a specific process to review HMO offers.

(b) Unless mutually agreed otherwise, for those employees not covered by a collective bargaining agreement, the employing entity or designee shall include the HMO option in any health benefits plan offered to eligible employees when the existing employer-employee contract or public entity-employee contract is renewed or when a new health benefits contract or other arrangement is negotiated. If an employer-employee or public entity-employee contract or a health benefits contract has no fixed term or has a term in exess of one year, the contract shall be treated as renewable on its earliest anniversary date. If the employing entity or designee is self-insured, the budget year shall be treated as the term of the existing contract.

(c) Unless mutually agreed otherwise, for employing entities with multiple contracts or other arrangements included as part of the health benefits plan which may have different expiration or renewal dates, the employing entity shall include the HMO option, in accordance with paragraphs (a) and (b) of this section, for each contract or arrangement at the time the contract or arrangement is renewed or reissued or the benefits provided under the contract or arrangement are offered to employees.

§ 110.808 Contributions for HMO option.

(a) *General principles.* (1) The employing entity or designee shall include the HMO option in the health benefits plan on terms no less favorable, with respect to the employing entity's monetary contribution or designee's cost for health benefits calculated in dollars and cents, than those on which the other alternatives in the health benefits plan are included. However, the employing entity or designee is not required to pay more for health benefits as a result of offering the option of membership in a qualified HMO than it would otherwise be required to pay for health benefits by a collective bargaining agreement or other employer-employee contract or public entity-employer contract in effect at the time the HMO is included in the health benefits plan.

(2) An employing entity or designee which calculates the health benefits contribution on a per employee earnings level basis must apply that same calculation to the HMO contribution. The amount of the employing entity's or designee's contribution per employee for the HMO option must be equal, in terms of dollars and cents, to the largest amount of the contribution that would be paid for that individual employee to any other alternative which is included in the health benefits plan, but shall not be required to exceed the amount of the HMO premium.

(3) The employing entity or designee shall increase the amount of its contribution for the HMO option at the time the contribution to other alternatives in the health benefits plan increases (up to the amount of the HMO premium), unless (i) the employing entity's or designee's contribution is fixed by a contract or other arrangement between the employing entity or designee and the HMO, or (ii) otherwise agreed to by the employing entity or designee and the HMO.

(b) *Administrative expenses.* The employing entity or designee may not consider administrative expenses incurred in connection with offering any alternative in the health benefits plan in determining the amount of its contribution to the HMO. However, if the employing entity or designee has special requirements for other than standard solicitation brochures and membership literature, it shall determine and distribute any administrative costs attributable to these requirements, in the case of the offering of the HMO option, in a manner consistent with its method of determining and distributing these costs for the non-HMO alternatives.

(c) *Exclusion for contribution for certain benefits.* In determining the amount of the employing entity's contribution or designee's cost for the HMO option, the employing entity or designee may exclude those portions of the contribution allocable to benefits (e.g., life insurance or insurance for supplemental health benefits) for which eligible employees or eligible employees and their eligible dependents will be covered notwithstanding selection of membership in an HMO, and which are not offered on a prepaid basis by the HMO to the employing entity's employees.

(d) *Contributions determined by collective bargaining agreements or by other contracts or by law.* Where the specific amount of the employing entity's contribution for health benefits is fixed by a collective bargaining agreement, by an employer-employee or public entity-employee contract, or by law, the amount so determined shall constitute the employing entity's obligation for contribution toward the HMO premiums on behalf of eligible employees or eligible employees and their eligible dependents.

(e) *Allocation of portion of a contribution determined by a collective bargaining agreement.* Where the employing entity's contribution for health benefits is determined by a collective bargaining agreement, but the amount so fixed includes contribution for benefits in addition to health benefits, the employing entity shall determine, or shall instruct its designee to determine, the portion of its contribution applicable to health benefits in accordance with paragraph (g) of this section.

(f) *Contributions not determined by collective bargaining agreements or by other contracts or by law.* For employees not covered by a collective bargaining agreement, employer-employee or public entity-employee contract, or by a law specifying the contribution for health benefits, the employing entity's contribution to the HMO on behalf of eligible employees or eligible employees and their eligible dependents shall be determined in accordance with paragraphs (a), (b), (c), and (g) of this section on the basis of the total cost of providing the health benefits offered to the employees for the most recent period for which experience is available.

(g) *Calculation of cost.* An employing entity's contribution or designee's cost for alternatives other than the qualified HMO, included in the health benefits plan shall be determined in the following manner, unless otherwise agreed to by the HMO and the employing public entity or designee:

(1) *Prospective calculation.* If the employing entity's contribution or designee's cost for non-HMO alternative health benefits is determined solely on the basis of a fixed prospective amount (not subject to retrospective adjustment) then the amount of the prospective payment made by or on behalf of the employing entity to the non-HMO alternative for the provision of health benefits to eligible employees or to eligible employees and their eligible dependents shall constitute the employing entity's contribution toward the HMO premium.

(2) *Retrospective calculation.* If the employing entity's contribution or designee's cost for non-HMO alternative health benefits is determined by a contract with a carrier on any form of retrospective experience rating basis,

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including any determination of current premiums which reflects, takes into account, or is otherwise based on any form of supplementation or any rebate, refund or other redistribution of premiums collected in any previous year for which experience is available, any billing contract arrangement, any plan of self-insurance, any direct service plan provided by the employing entity or designee, or any other form of health benefits plan wherein the actual cost to the employing entity or designee is determined retrospectively, an estimated cost shall be used to determine the obligation for contribution toward the HMO premium. The employing entity or designee shall determine this estimated cost based on consideration of the following factors: (i) The employing entity's or designee's cost experience for the non-HMO alternatives with respect to the most recent benefit period for which the experience is available at the time when the employing entity's prospective contribution or designee's obligation to the HMO is to be determined; (ii) a reasonable allowance for inflation based on historical cost trends and the anticipated future costs increases; (iii) where applicable and consistently applied, cost differences experienced in the provision of health benefits for separate regional or local areas of employment; (iv) anticipated changes in the composition and experience of the covered population actually being served by the non-HMO alternatives attributable to the shift of enrollment to the HMO; (v) any changes in health benefits to be provided by the non-HMO alternatives during the period for which the estimated contribution is to be determined; (vi) any other anticipated material change in the experience rating basis under any health benefits contract for the benefits period.

(h) *Retention of data.* An employing entity or designee shall retain the data used to compute its level of contribution to the alternatives included in the health benefits plan for three years. The Secretary may review this data either on her own initiative or in response to a request to the Secretary from an HMO or an employee of the employing entity which sets forth reasonable grounds supporting the request to determine whether the level of contributions determined by the employing public entity or designee complies with this subpart.

§ 110.809 Payroll deductions.

Each employing entity which provides payroll deductions as a means of paying employees' contributions for health benefits or which provides a health benefits plan to which an employee contribution is not required, and which is required by § 110.802(a) to offer its employees the option of membership in a qualified HMO, shall, with the consent of an employee who exercises this option, arrange for the employee's contribution, if any, for HMO membership to be paid through payroll deductions.

§ 110.810 Relationship of Section 1310 of the Public Health Service Act to the National Labor Relations Act, as amended, and the Railway Labor Act, as amended.

The obligation of an employing entity subject to this subpart to include the option of membership in a qualified HMO in any health benefits plan offered to its eligible employees shall be carried out consistently with the obligations imposed on that employing entity under the National Labor Relations Act, the Railway Labor Act, and other laws of similar effect.

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October 31, 1980

Part VIII

Department of Health and Human Services

Public Health Service

Requirements for a Health Maintenance Organization; Final Regulations

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 110

Health Maintenance Organizations; Requirements for a Health Maintenance Organization

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: This rule amends the Public Health Service regulations by setting forth revised requirements for the organization and operation of federally qualified health maintenance organizations (HMOs). These amendments are made as a result of (1) public comments on the interim regulations published on July 18, 1979, and (2) public comments on the notice of proposed rulemaking (NPRM) governing relationships between federally qualified HMOs and other parties, also published on July 18, 1979.

EFFECTIVE DATE: This rule is effective on December 1, 1980.

FOR FURTHER INFORMATION CONTACT: Howard R. Veit, Director, Office of Health Maintenance Organizations, Park Building, 3rd Floor, 12420 Parklawn Drive, Rockville, Maryland 20857, 301/443-4106.

SUPPLEMENTARY INFORMATION: On July 18, 1979, interim regulations were published in the **Federal Register** (44 FR 42060–71) to amend 42 CFR Part 110, Subpart A, issued under Title XIII of the Public Health Service Act (the Act). Interested persons were given an opportunity to submit comments concerning these regulations by September 17, 1979. Fifteen persons submitted comments on the interim final regulations. Also on July 18, 1979, an NPRM was published in the **Federal Register** (44 FR 41838–41) concerning the relationships between federally qualified HMOs and other parties. The Secretary invited comments by September 17, 1979, and stated that after the public comments were received, the policies would be revised as warranted and incorporated into regulations or set forth as interpretive rulings, as appropriate. Ten persons submitted comments on the NPRM.

The following are summarized below: (1) The comments received, responses thereto, and the changes made, if any, on the Subpart A interim final regulations; (2) the comments received, responses thereto, and the changes made, if any, in the policies stated in the NPRM on relationships between federally qualified HMOs and other parties, including which of these policies have been added, and where, to the Subpart A regulations; and (3) the changes made to correct technical problems in the regulations.

The Department also notes that on April 29, 1980, at 45 FR 28654–63, it published in the **Federal Register** a series of informational questions and answers based on the interim regulations for Subpart A. The Department refers the public to that document for further information on the requirements of Subpart A. It notes that the document will be amended as appropriate in the near future to reflect the revisions made to the Subpart A regulations by this notice.

Subpart A Interim Final Regulations

1. Section 110.102 addresses the required health benefits for basic health services, including short-term rehabilitation and physical therapy. Several commenters requested clarification of the duration of these "short-term" services. The regulations have been changed to specify that short-term rehabilitation services and physical therapy must be provided if the HMO determines that the provision of these services can be expected to result in significant improvement of a member's condition within a period of two months. The physical therapy requirement has been moved from § 110.102(a)(2)(ii) to § 110.102(a)(2)(iii) to clarify that short-term physical therapy is required on both an outpatient and inpatient basis.

2. Section 110.102(a)(5)(ii), pertaining to referral services for the abuse of or addiction to alcohol and drugs, has been amended to indicate that prolonged rehabilitation services for alcohol or drug abuse or addiction in a specialized inpatient or residential facility need not be offered by an HMO as a basic health service. The Department notes, however, that an HMO may choose to offer prolonged rehabilitation services as a supplemental health service. This change is in response to a request by a commenter that this information, which was included in the preamble of the interim regulations, be incorporated into the final regulations.

3. Section 110.102(d) lists the permissible exclusions from the required basic health services. Section 110.102(d)(9) has been modified at the request of a commenter who noted that the exclusion of vision and hearing care as a basic health service failed to take into consideration that some vision and hearing services may be a part of physician services, such as care for diseases of the eye and ear, as well as preventive health services, as in the case of eye and ear examinations for children through age 17 to determine the need for vision or hearing correction. The exclusion for vision and hearing care has been clarified to indicate that this care need not be provided as a basic health service except as required by sections 1302(1)(A) and 1302(1)(H)(vi) of the Act and §§ 110.102(a)(1) and 110.102(a)(8) of these regulations.

4. Section 110.104(a)(2), pertaining to non-conforming medical groups, has been changed and is now § 110.104(a)(3). This revised section clarifies that after the four-year period which follows the month in which the HMO was qualified, the HMO may provide services through a non-conforming medical group if it meets the definition of medical group as set forth in § 110.101 or if the Secretary has determined that the entity meets the conditions set forth in § 110.104(a)(3)(ii). A suggestion to permit the four-year period allowed for the use of a non-conforming medical group to commence from the date of the HMO's contract with the group has been rejected because section 1301(b)(3)(B)(ii) of the Act indicates that the four-year period is to be calculated from the month after the HMO's qualification date.

5. One commenter requested clarification of the requirements that apply to the HMO's contracts for health services under § 110.104(c). In response, the Department has separated this paragraph into two subparagraphs to delineate clearly the difference between the requirements for (1) contracts between the HMO and medical groups or IPAs, and (2) direct service contracts between the HMO and health professionals. Section 110.104(c)(1) now lists the requirements for the former type of contract and § 110.104(c)(2) clarifies that the contract between the HMO and its health professionals must include provisions for appropriate continuing education in addition to four of the provisions which an HMO must include in its contracts with medical groups or IPAs: a description of the responsibilities of the parties to the contract; the agreed upon compensation for services; an agreement that the contracting parties will look solely to the HMO for compensation for services provided to HMO members; and a provision specifically requiring participation by health professionals in the quality assurance activities which the HMO is required to have under § 110.108(j).

6. Section 110.105(e) states that HMOs may charge a late payment penalty on accounts receivable which are in arrears. The Department has not adopted the suggestion that the regulations require 30 days written notice or limit the HMO's late payment penalty charges to amounts which are not in dispute. These limitations are not properly within the scope of the Act. Of course, an HMO may agree to these limitations.

7. Section 110.108(a)(1) requires an HMO to have a fiscally sound operation. In the preamble to the interim final regulations, the Secretary expressed the intention of using a ratio of current assets to current liabilities of at least one-to-one as a benchmark in administering the cash flow requirement of § 110.108(a)(1)(ii). A commenter noted that current liabilities may exceed current assets at any given date, because the former may include a significant amount of prepaid dues (deferred income) and the latter a relatively low amount for receivables. Further, the proposed ratio test was cited as an inappropriate benchmark for evaluating adequacy of cash flow because cash flow is dynamic and the ratio test is a static measure of liquidity. The Department agrees with these comments and notes that the adequacy of cash flow will now be examined on a case-by-case basis to assure that the HMO can meet its obligations as they become due. Accordingly, the requirement at § 110.108(a)(1)(ii) has been changed to require an HMO to provide evidence of its ability to meet its obligations as they become due, as determined by sufficient cash flow and by adequate liquidity. The evaluation of the maintenance of adequate liquidity will start with the ratio test of current assets to current liabilities of at least one-to-one, but will allow for valid deviations such as the situation noted in this paragraph.

8. The Department received a number of inquiries as to the scope of § 110.108(a)(2)(i), which sets out the standards for the satisfactory administrative and managerial arrangements with respect to the HMO's policymaking body. In particular, the inquiries have focused on the requirement that the policymaking body *"exercises oversight and control* over the HMO's policy and personnel to assure that management actions are in the best interest of the HMO and its membership" (Emphasis added). In order to determine whether the HMO's policymaking body has the capability to and does in fact carry out these responsibilities and thus meets the requirements of § 110.108(a)(2)(i), the Department requires the HMO to demonstrate that its policymaking body has the appropriate skills (e.g., planning, financial management and evaluation skills) to perform these oversight and control functions.

9. The Department has received a number of questions as to whether it is permissible for federally qualified HMOs to expel or refuse to reenroll their members who have reached age 65. The Department's position has always been that the expulsion of such persons by an HMO is inconsistent with Title XIII of the Act. (The expulsion of the aged by HMOs receiving Federal financial assistance may also violate the Age Discrimination Act of 1975, as amended. (42 U.S.C. 6101 *et seq.)*) In order to avoid confusion in this regard, the Department has decided to incorporate this prohibition expressly into the regulations. Accordingly, § 110.108(f), which prohibits an HMO from expelling or refusing to reenroll any member, as well as from refusing to enroll individual members of a group, on the basis of the health status or health care needs of the member or individual, has been modified by adding age as an impermissible basis for such actions by the HMO. It is still permissible, of course, for HMOs to require that, as a condition of continued eligiblility for membership, dependents of a subscriber, upon reaching a specified age, convert to nongroup membership in accordance with § 110.108(g).

10. Section 110.108(g) had required an HMO to offer conversion privileges to subscribers leaving a group "on the same terms and conditions as are available to a nongroup subscriber." Because this requirement was phrased in terms of "subscribers," a number of commenters expressed confusion as to the conversion privileges which the HMO is required to offer "members" who would otherwise lose their eligibility for HMO membership. Since the language was inadvertently narrower than intended, the regulation has been changed to require an HMO to offer membership on the same terms and conditions as are available to a nongroup subscriber to:

(1) Each subscriber (and enrolled dependents) leaving a group; and

(2) Each member who would otherwise cease to be eligible for HMO membership because of his or her age or the death or divorce of a subscriber.

11. Section 110.108(k) pertains to certification of providers. The Department agrees with a comment that it is not necessary to require non-institutional providers to be certified by Medicare or Medicaid. It notes that the requirements of this section are intended to insure that HMO institutional providers are certified in accordance with Federal or national certification standards. Since individual providers are required to meet State licensure requirements, and since certification of certain health professionals under Title XVIII or Title XIX of the Social Security Act is for reimbursement purposes only, the requirements have been changed to require that the HMO offer institutional services only through institutional providers that maintain such certification. Hospitals, however, may satisfy the "certification" requirement either by certification under Title XVIII or by accreditation by the Joint Commission on Accreditation of Hospitals. The requirements as to clinical laboratories through which the HMO provides services (except for laboratories exempted from section 353 of the Public Health Service Act, "Licensing of Laboratories," by paragraphs (d)(2), (i) or (1) of that section), must either be certified under Medicare or Medicaid or be licensed under section 353. The Department notes that these regulations do not apply to the HMO's own laboratory, although the laboratory may otherwise be subject to the requirements of section 353 or Medicare or Medicaid.

12. Section 110.108(o) covers reporting and disclosure requirements for HMOs and § 110.108(o)(1) requires HMOs to furnish specific reports to the general public upon request. One commenter inquired where a request by the public for information which an HMO has reported to the Department under § 110.108(o)(1) should be directed. The Department notes that requests regarding information reported under this subsection may be directed to the HMO, in accordance with the HMO's reporting procedure, or to the Department's Office of Health Maintenance Organizations.

13. A number of commenters noted that § 110.108(o)(2)(ii), which sets out which transactions between an HMO and a party in interest must be disclosed to the Secretary, imposed a heavy reporting burden on HMOs. Accordingly, the section has been changed. It would require the reporting only of *significant* business transactions between the HMO and a party in interest, instead of the previous requirement that *all* such business transactions be reported. The term "significant business transaction" is adapted from the Department's Medicare-Medicaid regulations at 42 CFR 420.201, which govern the disclosure of ownership and control information by providers, intermediaries, and carriers. For purposes of § 110.108(o)(2)(ii), the term is defined (see § 110.101) as "any business transaction or series of transactions during any one fiscal year

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of the HMO, the total value of which exceeds the lesser of $25,000 or five percent of the total operating expenses of the HMO."

14. Section 110.108(o)(2)(ii)(B) requires an HMO to disclose, among other items, certain transactions between itself and a party in interest for the furnishing of services. A commenter suggested that since the ordinary employee-employer relationship does not constitute a suspect or potentially abusive transaction, services provided by employees of the HMO in the normal course of their employment should be excluded from services which are subject to disclosure. The Secretary agrees with this comment and has changed § 110.108(o)(2)(ii)(B) to exclude transactions for these services from those subject to disclosure.

NPRM on Relationships Between Federally Qualified HMOs and Other Parties

The NPRM addressed issues that arose under five general headings: (1) The legal structure of an HMO, (2) the HMO's conduct of other activities, (3) the activities of providers affiliated with the HMO, (4) arrangements for HMO contract services, and (5) maximizing HMO enrollment. The Secretary has decided to finalize the policies which were detailed in the NPRM as follows: (1) Certain of the policies set forth in the NPRM, as clarified in response to comments, are now incorporated into the subpart A regulations, as detailed in the first section below, and (2) the remainder of the policies set forth in the NPRM, as clarified in response to comments, are summarized in the second section below. These latter policies have been adopted as official policies of the Department and are set forth in the informational document referred to above (45 FR 28654–63).

Third Party Policies Incorporated Into the Subpart A Regulations

1. Section 110.104(a) addresses the requirements for providers of basic and supplemental health services. A new § 110.104(a)(2) has been added, which modifies the policy set forth in the NPRM that would have permitted sharing of physicians by alternative model HMOs, but only to the extent that the physicians the IPA shares with the alternative model HMO (i.e., either a staff or medical group model) constituted less than 50 percent of the physicians participating in the IPA. Two commenters, citing a lack of statutory authority, objected to this requirement and questioned the basis for the 50 percent limitation. The Department notes that the purpose behind the enactment of section 1310(b), which requires employers in certain circumstances to offer their employees the option of membership in different model HMOs, is to encourage competition among different model HMOs (as well as between HMOs (as well as between HMOs and other health care providers) by providing employees with real "alternatives from which to choose for their care." (H.R. Rep. #93–451, 93rd Cong., 1st Sess. p. 39). If alternative model HMOs were to offer services to HMO members through the same physicians, the result would defeat the essential purpose of section 1310(b) by limiting genuine consumer choice. Accordingly, the Department believes a limitation is necessary to assure that the purpose of section 1310(b) is fulfilled. However, it agrees that a 50 percent limitation, in the absence of other information, may not be appropriate. Therefore, the regulation at § 110.104(a)(2) permits physician sharing between an IPA and medical group or staff HMO of 50 percent or more, but only if this sharing is approved by the Secretary as being consistent with the purposes of section 1310(b). The Secretary will, on a case-by-case basis, review the characteristics of those HMOs which share physicians in excess of the 50 percent limitation, taking into account the following factors: (1) The total number of practicing physicians in the service area of each HMO which proposes to share physicians with another HMO, (2) the number of physicians to be shared as a percentage of the IPA's total pool, (3) the specialties of the shared physicians, (4) the overlap of the service areas of the HMOs which propose sharing, (5) the practice location of the shared physicians in relation to the location of the other HMO physician providers, and (6) such other factors as the Secretary may consider necessary in determining whether the sharing of physicians enables the HMOs to meet the purpose of section 1310(b).

The Department notes that there is no limitation of physician sharing by competing IPAs or by competing IPA model HMOs, since the purpose of encouraging different model HMOs to compete with each other is not applicable in these situations. All HMOs must, of course, assure the accessibility and availability of services to their members.

2. Section 110.108(a)(1), which requires the HMO to have a fiscally sound operation, has been expanded to incorporate the policy set out in the NPRM that all HMOs shall maximize their enrollment.

Although the NPRM invited the public to suggest standards to determine whether on HMO is maximizing its enrollment, none of the four comments received suggested any such standards. For example, one commenter, noting that flexible indicators were preferable to standards, suggested that the Department meet with representatives of the HMO industry to develop such indicators. Another commenter suggested standards for determining whether an HMO has failed, as opposed to succeeded, in maximizing its enrollment. Noting that none of the comments received suggested for determining whether an HMO is maximizing its enrollment, the Department has determined that it is not feasible to set such uniformly applicable standards. Rather, is has decided that it is more appropriate to implement this policy by requiring (at § 110.108(a)(1)(vii)), that each HMO submit a plan to maximize its enrollment. The Department notes that it will only examine the extent to which the HMO has maximized its enrollment as it relates to the HMO's continued fiscal soundness.

The Department also notes that while membership growth is essential to the development and maintenance of a financially viable HMO, HMOs must monitor their growth in the context of per member per month revenues and costs. Accordingly, the HMO's efforts to maximize enrollment must be consistent with sound management.

3. Section 110.108(h)(1) sets forth the requirement that at least one-third of the HMO's policymaking body must be members of the HMO. This section has been modified to incorporate the policy set forth in the NPRM that the one-third of the policymaking body who are members of the HMO must reside in or in proximity to the HMO's service area. This policy is based on the clear Congressional intent to require member participation in the HMO policymaking body in order to assure that input is available from individuals who represent the viewpoint of users of the HMO's services.

The Department received a request to clarify this requirement with respect to (1) an HMO with regional components and one overall policy body, and (2) different HMOs with policymaking bodies consisting of the same members. The regulation now specifies that the one-third member portion of the policymaking body shall consist of individuals who live in or in proximity to the service area of at least one regional component of the HMO or at least one of the HMOs, respectively.

4. The NPRM reiterated the policy that an HMO may not offer prepaid health benefits which do not meet the requirements of the Act. This prohibition is already included in the regulations, at § 110.102(e), which prohibits an HMO from offering to provide or arrange for the provision of prepaid basic health services which do not meet the requirements of § 110.102(a).

5. A new § 110.109, *Prohibited Activities,* has been added. This section prohibits an HMO, including its employees in the normal course of their employment, from selling, marketing, or promoting, directly or through arrangements with other entities, health insurance or health service benefit plans for health benefits which are included in the health benefits package offered by the HMO to an individual or a group. Thus, for any individual or group, the HMO may not sell, market, or promote health insurance or a health service benefit plan for a benefit for which the member is eligible to receive services under his or her prepaid benefit package. In the NPRM, the Department had proposed to prohibit the "promotion or sale" by an HMO of "competing health insurance." Two commenters, noting that this prohibition could be evaded by the sale of competing health insurance through the marketing staff of an HMO who are licensed as individuals, suggested that the prohibition be extended to selling, promoting, or marketing through the HMO's employees or through other arrangements (such as by an arrangement with another entity). Another commenter noted that the phrase "competing health insurance" was vague and imprecise. Since the Department agrees with these comments, it has structured the prohibition to (1) apply to an HMO and to its employees, (2) encompass marketing as well as selling or promoting, and (3) apply to health insurance and health service benefit plans, instead of competing health insurance. However, the Department has limited the prohibition, as to any individual or group, to benefits which the HMO includes in the prepaid health benefit package offered to that individual or group. Thus, for example, if an HMO does not include dental services in the prepaid benefit package it offers to an individual, it would not be prohibited from offering that individual coverage for dental services through an indemnity insurance or health service benefit plan.

Five commenters opposed the proposed restrictions on an HMO's activities. These commenters suggested that the Secretary did not have the statutory authority to limit the HMO's activities. They also characterized the proposed policy as anti-competitive and as detrimental to HMOs, on the basis that an HMO would be prohibited from engaging in certain activities while similar restrictions were not placed on its competitors. The Department believes that the restriction is consistent with the statute. The Department notes that the purpose of Congress in enacting Title XIII of the Act was to foster competition by making HMOs available as a genuine alternative health delivery system, rather than to foster entities which sell, promote or market health insurance or health service benefits plans which compete with the HMO's benefit package. (See S. Rep. No. 93–129, 93rd Cong., 1st Sess. pp. 7, 8 (1973) and H.R. Rep. No. 93–451, 93rd Cong., 1st Sess. p. 8 (1973).) The Department notes that permitting an HMO or its employees to engage in the activities prohibited by § 110.109 would defeat the purpose of Title XIII because it would reduce the incentives for the HMO to offer its qualified prepaid health benefits package in a competitive manner, which might then threaten the fiscal soundness of the HMO. Accordingly, the Department views this limited prohibition as being within the scope of its authority under Title XIII and necessary for its proper implementation.

As to the comments suggesting that the proposed restriction was anti-competitive, the Department believes that the limitation which it has added to § 110.109 has addressed these concerns. Because the HMO is not prohibited from offering indemnity insurance or health service benefit plan coverage for services it does not include in its prepaid health benefit plan, it would be free to respond to a competitive situation by doing so. The HMO would, of course, have the alternative option of offering the services at issue on a prepaid basis as part of its prepaid health benefit package. In the Department's view, this array of options available to the HMO enhances the HMO's competitive posture.

The former §§ 110.109 and 110.110 have been renumbered as §§ 110.110 and 110.111, respectively.

One commenter inquired whether it is permissible for an HMO to own or control a subsidiary that is a separate legal entity and, if so, whether there are any prohibitions on the activities of an HMO's subsidiaries. Nothing in the Act prohibits an HMO from having a subsidiary that is a separate legal entity. Furthermore, at this time there are no prohibitions on the activities of an HMO's subsidiaries. For example, the prohibition at § 110.109 applies to the HMO entity only; it does not apply to subsidiaries of HMOs.

The Department is, however, currently collecting data on the activities of HMO subsidiaries. In particular, the Department is evaluating whether HMO subsidiaries are (1) offering to provide or arrange for prepaid services which do not meet the requirements of Title XIII, or (2) selling, marketing, or promoting, directly or through arrangements with other entities, health insurance or health service benefit plans in the manner prohibited (as to the HMO itself) by the new § 110.109. The Department intends to analyze these data to determine what prohibitions, if any, should be applicable to the activities of HMO subsidiaries. If it appears that some prohibitions might be appropriate, the Department will issue a notice of proposed rulemaking setting forth its proposed policies, invite public comments, and finalize the policies and incorporate them into regulations or set them forth as interpretive rulings, as appropriate.

Other Third Party Policies

1. As set forth in the NPRM, an HMO is required to be a separate legal entity; it may not be a cost center or separate line of business of a sponsor organization. However, an HMO may be a subsidiary of another legal entity as long as the HMO is itself a legal entity with its own policymaking body.

Three commenters, concerned about the requirement noted in the NPRM that each HMO must b a separate legal entity, suggested an exemption from this requirement for public HMOs. Section 1301(a) of the Act and § 110.101 of these regulations, which include in the definition of an HMO the requirement that it be a legal entity, do not distinguish between public and private HMOs. However, the Secretary notes that a public HMO may be administered by a cost center or a department of a public entity, as long as the HMO is the legal entity.

2. The policy that officers, directors, and employees of a sponsoring organization may be included in the non-member portion of the HMO's policymaking body remains as described in the NPRM.

3. The policy that the Department does not intend to regulate the scope of the activities in which a medical group may engage when it is not providing services to members of its affiliated HMO remains as stated in the NPRM. In response to a comment, the Secretary notes that this policy applies to the non-

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HMO activities of an individual practice association as well.

4. The policies as to the extent to which HMOs may contract with other parties to perform certain administrative functions which the HMO elects not to perform itself remains as stated in the NPRM. (See 44 FR 41840, section 4).

Technical Changes

1. Section § 110.104(b) has been changed to clarify that payments made by an HMO for physician services from a non-conforming medical group that meets the requirements set forth in § 110.104(a)(3)(ii) will not be counted against the 15 percent limitation on contracting which applies to an HMO four years following the month after its qualification.

2. Section § 110.104(c)(1)(vi) (formerly § 110.104(c)(4)) has been corrected to indicate that the requirement for professional liability coverage applies to medical groups and IPAs *or* the health professionals associated with them, rather than to medical groups, IPAs *and* health professionals associated with them. The interim final regulations contained the correct language in the preamble; however, there was a typographical error in the regulation itself.

3. Section § 110.108(a)(1)(iii) requires that certain HMOs, in order to demonstrate that they have a fiscally sound operation, submit a financial plan. With the publication on April 9, 1980, at 45 FR 24352–7, of regulations implementing section 1305A of the Act ("Loans and Loan Guarantees for Acquisition and Construction of Ambulatory Health Care Facilities"), the Department will soon be initiating the process of making these awards. Accordingly, § 110.108(a)(1)(iii) has been amended to require an HMO seeking a Federal loan or loan guarantee under section 1305A, as well as certain other HMOs, to submit a financial plan to the Secretary.

4. Section § 110.108(a)(v), which requires the HMO to procure and maintain in force a fidelity bond or bonds in an amount not less than $100,000, has been changed to clarify that the $100,000 minimum is applicable to "each" individual who is entrusted with the handling of the HMO's funds.

5. Sections § 110.108(o)(2)(i) and (3) of the interim regulations required an HMO to furnish to the Secretary the information required to be disclosed under the regulations implementing Sections 1124 and 1902(a)(38) of the Social Security Act, at 42 CFR 420.206 and 42 CFR 455.104, respectively. (These references have been changed to reflect the correct citations.) In the interim regulations, the requirements for the disclosure of this information were inadvertently different: While the Section 1124 information was required to be reported to the Secretary annually, the Section 1902(a)(38) information was required to be reported to the Secretary within 35 days of a request and to HMO members upon reasonable request. In order to treat similarly all of the information required to be disclosed under these provisions of the Social Security Act, the provision in former § 110.108(o)(3) has been combined with § 110.108(o)(2)(i). Section 110.108(o)(2) now requires that the information described above (in addition to the information about significant business transactions with parties in interest) be reported annually to the Secretary and be available to members upon reasonable request. The rest of § 110.108(o) has been renumbered accordingly.

The Assistant Secretary for Health of the Department of Health and Human Services, with the approval of the Secretary of Health and Human Services, amends 42 CFR Part 110, Subpart A, as set forth below.

Dated: June 6, 1980.

Julius B. Richmond,

Assistant Secretary for Health.

Approved: October 21, 1980.

Patricia Roberts Harris,

Secretary.

Subpart A is revised to read as follows:

Subpart A—Requirements for a Health Maintenance Organization

Sec.

110.101 Definitions.
110.102 Health benefits plan: Basic health services.
110.103 Health benefits plan: Supplemental health services.
110.104 Providers of basic and supplemental health services.
110.105 Payment to the HMO for basic health services.
110.106 Payment to the HMO for supplemental health services.
110.107 Availability, accessibility, and continuity of basic and supplemental health services.
110.108 Organization and operation.
110.109 Prohibited activities.
110.110 Special requirements: Titles XVIII and XIX of the Social Security Act.
110.111 Special requirements: Federal employees' health benefits program.

Authority: Sec. 215 of the Public Health Service Act, as amended, 58 Stat. 690 (42 U.S.C. 216); secs. 1301–1318 of the Public Health Service Act, as amended, 92 Stat. 2131–2141 (42 U.S.C. 300e–300e–17).

Subpart A—Requirements for a Health Maintenance Organization

§ 110.101 Definitions.

As used in this part: "Act" means the Public Health Service Act.

"Basic health services" means health services described in § 110.102(a).

"Community rating system" means a system of fixing rates of payments for health services which meets the requirements of § 110.105(a)(3).

"Comprehensive health services" means as a minimum the following services which may be limited as to time and cost:

(1) Physician services (§ 110.102(a)(1));

(2) Outpatient services and inpatient hospital services (§ 110.102(a)(2));

(3) Medically necessary emergency health services (§ 110.102(a)(3)); and

(4) Diagnostic laboratory and diagnostic and therapeutic radiologic services (§ 110.102(a)(8)).

"Direct service contract" means a contract for the provision of basic or supplemental health services or both between an HMO and (1) a health professional other than a member of the staff of the HMO, or (2) an entity other than a medical group or an IPA.

"Full-time student" means a student who is enrolled for a sufficient number of credit hours in a semester or other academic term to enable the student to complete the course of study within not more than the number of semesters or other academic terms normally required to complete that course of study on a full-time basis at the school in which the student is enrolled.

"Health maintenance organization" (HMO) means a legal entity which provides or arranges for the provision of basic and supplemental health services to its members in the manner prescribed by, is organized and operated in the manner prescribed by, and otherwise meets the requirements of, section 1301 of the Act and the regulations of this subpart.

"Health professionals" means physicians (doctors of medicine and doctors of osteopathy), dentists, nurses, podiatrists, optometrists, physicians' assistants, clinical psychologists, social workers, pharmacists, nutritionists, occupational therapists, physical therapists, and other professionals engaged in the delivery of health services who are licensed, practice under an institutional license, are certified, or practice under authority of the HMO, a medical group, individual practice association, or other authority consistent with State law.

"Individual practice association" (IPA) means a partnership, association, corporation, or other legal entity:

(1) Which delivers or arranges for the delivery of health services and which has entered into a written services arrangement or arrangements with health professionals, a majority of whom are licensed to practice medicine or osteopathy. The written services arrangement shall provide:

(i) That these health professionals shall provide their professional services in accordance with a compensation arrangement established by the entity; and

(ii) To the extent feasible:

(A) For the sharing by these health professionals of health (including medical) and other records, equipment, and professional, technical, and administrative staff; and

(B) For the arrangement and encouragement of the continuing education of these health professionals in the field of clinical medicine and related areas.

"Medical group" means a partnership, association, corporation, or other group:

(1) Which is composed of health professionals licensed to practice medicine or osteopathy and of such other licensed health professionals (including dentists, optometrists, and podiatrists) as are necessary for the provision of health services for which the group is responsible;

(2) A majority of the members of which are licensed to practice medicine or osteopathy; and

(3) The members of which:

(i) As their principal professional activity (over 50 percent individually) engage in the coordinated practice of their profession and as a group responsibility have substantial responsibility (over 35 percent in the aggregate of their professional activity) for the delivery of health services to members of an HMO;

(ii) Pool their income from practice as members of the group and distribute it among themselves according to a prearranged salary or drawing account or other similar plan unrelated to the provision of specific health services;

(iii) Share health (including medical) records and substantial portions of major equipment and of professional, technical, and administrative staff;

(iv) Arrange for and encourage continuing education in the field of clinical medicine and related areas for the members of the group and health professionals employed by the group; and

(v) Establish an arrangement whereby a member's enrollment status is not known to the health professional who provides health services to the member.

"Medical group members" means (1) a health professional engaged as a partner, associate, or shareholder in the medical group, or (2) any other health professional employed by the group who may be designated as a medical group member by the medical group.

"Medically underserved population" means the population of an urban or rural area designated by the Secretary as an area with a shortage of personal health services. The Secretary will designate these areas as described in § 110.203(d).

"Member," when used in connection with an HMO, means an individual who has entered into a contractual relationship with the HMO or on whose behalf a contractual arrangement has been entered into with the HMO by a subscriber under which the HMO assumes the responsibility for the provision to the member of basic health services and such supplemental health services as may be contracted for.

"Non-conforming medical group" means an entity which would be a medical group for the purposes of this part but for its failure to satisfy the requirements in paragraph (3)(i) of the definition in this section of "medical group" that the members of a medical group: (1) Spend over 50 percent of their professional time in the coordinated practice of their profession and (2) as a group have substantial responsibility (over 35 percent in the aggregate of their professional time) for the delivery of health services to members of an HMO. Except for purposes of § 110.104(a), regarding the providers of basic health services which an HMO may use, a "non-conforming medical group" shall be considered as a "medical group" for purposes of this subpart.

"Nonmetropolitan area" means an area no part of which is within a standard metropolitan statistical area as designated by the Office of Management and Budget and which does not contain a city whose population exceeds 50,000 individuals.

"Party in interest" means: (1) Any director, officer, partner, or employee of an HMO, any person who is directly or indirectly the beneficial owner of more than 5 percent of the equity of the HMO, any person who is the beneficial owner of a mortgage, deed of trust, note, or other interest secured by, and valuing more than 5 percent of the assets of the HMO, and, in the case of an HMO organized as a nonprofit corporation, an incorporator or member of the corporation under applicable State corporation law;

(2) Any entity in which a person described in paragraph (1)—

(i) Is an officer or director;

(ii) Is a partner (if the entity is organized as a partnership);

(iii) Has directly or indirectly a beneficial interest of more than 5 percent of the equity; or

(iv) Has a mortgage, deed of trust, note, or other interest valuing more than 5 percent of the assets of such entity;

(3) Any member of the immediate family of an individual described in paragraph (1).

"Policymaking body" of an HMO means a board of directors, governing body, or other body of individuals which has the authority to establish policy for the HMO.

"Qualified HMO" means an HMO found by the Secretary to be qualified within the meaning of Section 1310 of the Act and Subpart F of this part.

"Rural area" means any area not listed as a place having a population of 2,500 or more in Document #PC(1)A, "Number of Inhabitants," Table VI, "Population of Places," and not listed as an urbanized area in Table XI, "Population of Urbanized Areas" of the same document (1970 Census or most recent update of this document, Bureau of Census, U.S. Department of Commerce).

"Secretary" means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

"Service area" means the geographic area as defined through zip codes, census tracts, or other geographic subdivisions, found by the Secretary to be the area within which the HMO provides or arranges for basic and supplemental health services that are available and accessible to its members as required by section 1301(b)(4) of the Act.

"Significant business transaction" means any business transaction or series of transactions during any one fiscal year of the HMO, the total value of which exceeds the lesser of $25,000 or 5 percent of the total operating expenses of the HMO.

"Staff of the HMO" means health professionals who are employees of the HMO and who:

(1) Provide services to HMO members at an HMO facility subject to the staff policies and operational procedures of the HMO;

(2) Engage in the coordinated practice of their profession and provide to members of the HMO the health services which the HMO has contracted to provide;

(3) Share medical and other records, equipment, and professional, technical, and administrative staff of the HMO;

(4) Participate in continuing education in their professional field as provided or arranged for by the HMO; and

(5) Provide their professional services in accordance with a compensation arrangement, other than fee-for-service, established by the HMO. This arrangement may include, but is not limited to, fee-for-time, retainer or salary.

"Subscriber" means a member who has entered into a contractual relationship with the HMO or who is responsible for making payments for basic health services (and contracted for supplemental health services) to the HMO or on whose behalf these payments are made.

"Supplemental health services" means the health services described in § 110.103(a).

"Unusual or infrequently used health services" means: (1) Those health services which are projected to involve fewer than 1 percent of the encounters per year for the entire HMO membership, or,

(2) Those health services the provision of which, given the enrollment projection of the HMO and generally accepted staffing patterns, is projected will require less than 0.25 full time equivalent health professionals.

§ 110.102 Health benefits plan: Basic health services.

(a) An HMO shall provide or arrange for the provision of basic health services to its members as needed and without limitations as to time and cost other than those prescribed in the Act and these regulations, as follows:

(1) Physician services (including consultant and referral services by a physician), which shall be provided by a licensed physician, or if a service of a physician may also be provided under applicable State law by other health professionals, an HMO may provide the service through these other health professionals;

(2)(i) Outpatient services, which shall include diagnostic services, treatment services and x-ray services, for patients who are ambulatory and may be provided in a non-hospital based health care facility or at a hospital; (ii) inpatient hospital services, which shall include but not be limited to, room and board, general nursing care, meals and special diets when medically necessary, use of operating room and related facilities, use of intensive care unit and services, x-ray services, laboratory, and other diagnostic tests, drugs, medications, biologicals, anesthesia and oxygen services, special duty nursing when medically necessary, radiation therapy, inhalation therapy, and administration of whole blood and blood plasma; (iii) outpatient services and inpatient hospital services shall include short-term rehabilitation services and physical therapy, the provision of which the HMO determines can be expected to result in the significant improvement of a member's condition within a period of two months;

(3) Instructions to its members on procedures to be followed to secure medically necessary emergency health services both in the service area and out of the service area;

(4) Twenty outpatient visits per member per year, as may be necessary and appropriate for short-term evaluative or crisis intervention mental health services, or both;

(5) Diagnosis, medical treatment and referral services (including referral services to appropriate ancillary services) for the abuse of or addiction to alcohol and drugs:

(i) Diagnosis and medical treatment for the abuse of or addiction to alcohol and drugs shall include detoxification for alcoholism or drug abuse on either an outpatient or inpatient basis, whichever is medically determined to be appropriate, in addition to the other required basic health services for the treatment of other medical conditions;

(ii) Referral services may be either for medical or for nonmedical ancillary services. Medical services shall be a part of basic health services; nonmedical ancillary services (such as vocational rehabilitation and employment counseling) and prolonged rehabilitation services in a specialized inpatient or residential facility need not be a part of basic health services;

(6) Diagnostic laboratory and diagnostic and therapeutic radiologic services in support of basic health services;

(7) Home health services provided at a member's home by health care personnel, as prescribed or directed by the responsible physician or other authority designated by the HMO; and

(8) Preventive health services, which shall be made available to members and shall include at least the following:

(i) A broad range of voluntary family planning services;

(ii) Services for infertility;

(iii) Well-child care from birth;

(iv) Periodic health evaluations for adults;

(v) Eye and ear examinations for children through age 17, to determine the need for vision and hearing correction; and

(vi) Pediatric and adult immunizations, in accord with accepted medical practice.

(b) In addition, an HMO may include a health service described in § 110.103 as a supplemental health service in the basic health services which it provides or arranges for its members for a basic health services payment.

(c) To the extent that a natural disaster, war, riot, civil insurrection, epidemic or any other emergency or similar event not within the control of an HMO results in the facilities, personnel, or financial resources of an HMO being unavailable to provide or arrange for the provision of a basic or supplemental health service in accordance with the requirements of this subpart, the HMO is required only to make a good-faith effort to provide or arrange for the provision of the service, taking into account the impact of the event. For purposes of this paragraph, an event is not within the control of an HMO if the HMO cannot exercise influence or dominion over its occurrence.

(d) The following are not required to be provided as basic health services:

(1) Corrective appliances and artificial aids;

(2) Mental health services, except as required under section 1302(1)(D) of the Act and paragraph (a)(4) of this section;

(3) Cosmetic surgery, unless medically necessary;

(4) Prescribed drugs and medicines incidental to outpatient care;

(5) Ambulance services, unless medically necessary;

(6) Care for military service connected disabilities for which the member is legally entitled to services and for which facilities are reasonably available to this member;

(7) Care for conditions that State or local law requires be treated in a public facility;

(8) Dental services;

(9) Vision and hearing care except as required by sections 1302(1)(A) and 1302(1)(H)(vi) of the Act and paragraphs (a)(1) and (a)(8) of this section;

(10) Custodial or domiciliary care;

(11) Experimental medical, surgical, or other experimental health care procedures, unless approved as a basic health service by the policymaking body of the HMO;

(12) Personal or comfort items and private rooms, unless medically necessary during inpatient hospitalization;

(13) Whole blood and blood plasma;

(14) Long-term physical therapy and rehabilitation;

(15) Durable medical equipment for home use (such as wheel chairs, surgical beds, respirators, dialysis machines); and

(16) Health services which are unusual and infrequently provided and not necessary for the protection of individual health, as approved by the Secretary upon application by the HMO.

(e) An HMO may not offer to provide or arrange for the provision of basic health services on a prepayment basis which do not include all the basic health services set forth in paragraph (a) of this section or which are limited as to time and cost except in a manner prescribed by this part.

§ 110.103 Health benefits plan: supplemental health services.

(a) Each HMO may provide to its members any of the following health services, which may be limited as to time and cost:

(1) Services of facilities for intermediate and long-term care;

(2) Vision and hearing care not included as a basic health service;

(3) Dental services;

(4) Mental health services not included as a basic health service;

(5) Long-term physical medicine and rehabilitative services (including physical therapy);

(6) Prescription drugs prescribed in the course of the provision by the HMO of basic outpatient or supplemental health services; and

(7) Other health services which are not included as basic health services.

(b) An HMO shall determine the level and scope of supplemental health services included with basic health services provided to its members for a basic health services payment or those services offered to its members as supplemental health services.

(c) An HMO is authorized, in connection with the prescription or provision of prescription drugs, to: (1) Maintain, review, and evaluate a drug use profile of its members receiving these services, (2) evaluate patterns of drug utilization to assure optimum drug therapy, and (3) provide for instruction of its members and of health professionals in the use of prescription and non-prescription drugs. Each HMO providing these services shall insure that:

(i) The program is developed jointly by the physicians and pharmacists associated with the HMO;

(ii) The objectives of the program are explained to all health professionals and members of the HMO;

(iii) Individual rights are protected and that all information regarding and identifying an individual is available only to appropriate health professionals of the HMO and to the individual member at his request;

(iv) The primary thrust of the program is optimum drug therapy for the individual member of the HMO; and

(v) The information obtained in drug utilization review is utilized in educational programs for health professionals and members of the HMO.

§ 110.104 Providers of basic and supplemental health services.

(a)(1) The HMO shall provide that the services of health professionals which are provided as basic health services will, except as provided in paragraph (e) of this section, be provided or arranged for through (i) health professionals who are staff of the HMO, (ii) a medical group or groups, (iii) an IPA or IPAs, (iv) physicians or other health professionals under direct service contracts with the HMO for the provision of these services, or (v) any combination of staff, medical group or groups, IPA or IPAs, or physicians or other health professionals under direct service contracts with the HMO.

(2) A staff or medical group model HMO may have as providers of basic health services physicians who have also entered into written services arrangements with an IPA or IPAs, but only if either (i) these physicians number less than 50 percent of the physicians who have entered into arrangements with the IPA or IPAs, or (ii) if the sharing is 50 percent or greater, the Secretary approves the sharing as being consistent with the purposes of section 1310(b) of the Act.

(3) Within the 4 year period beginning with the month following the month in which an HMO becomes a qualified HMO, physician services which are basic health services may also be provided by a non-conforming medical group. After this 4 year period, the HMO may use this entity to provide physician services which are basic health services only if (i) the entity meets the definition of medical group in § 110.101, or (ii) the Secretary determines that the principal professional activity (over 50 percent individually) of the entity's members is the coordinated practice of their profession, and if the HMO has demonstrated to the satisfaction of the Secretary that the entity is committed to the delivery of medical services on a prepaid group practice basis by either:

(A) Presenting a reasonable time-phased plan for the entity to achieve compliance with the "substantial responsibility" requirement of Subparagraph (3)(i) of the definition of "medical group" in § 110.101. The HMO shall update the plan annually and shall demonstrate to the satisfaction of the Secretary that the entity is making continuous efforts and progress towards compliance with the requirements of the definition of "medical group," or,

(B) Demonstrating that compliance by the entity with the "substantial responsibility" requirement is unreasonable or impractical because *(1)* the HMO serves a non-metropolitan or rural area as defined in § 110.101, or *(2)* the entity is a multi-specialty group which provides medical consultation upon referral on a regional or national basis, or *(3)* the majority of the residents of the HMO's service area are not eligible for employer-employee health benefits plans and the HMO has an insufficient number of members to require utilization of at least 35 percent of the entity's services.

(b) After the expiration of the first fiscal years of an HMO beginning after the month in which it become a qualified HMO, the HMO may not, in any fiscal year, enter into contracts for basic and supplemental health services with physicians other than members of staff, medical groups, of IPAs if the amounts paid under these contracts exceed (1) 15 percent of the total estimated amount to be paid in that fiscal year by the HMO to physicians for the provision of basic and supplemental health services by physicians, or (2) if the HMO principally serves a rural area, 30 percent of that amount. However, this paragraph does not apply to payments under a contract for the purchase of physician services from a non-conforming medical group that meets the conditions set forth in § 110.104(a)(3)(ii).

(c) HMOs shall include: (1) In their contracts with medical groups or IPAs for the provision of basic and supplemental health services at least the following:

(i) A description of responsibilities of the parties to the contract;

(ii) The agreed upon compensation for services;

(iii) An agreement that the medical group or IPA, its members and the health professionals contracting with it, will look solely to the HMO for compensation for services provided to the HMO's members. This agreement shall not extend to copayments or payments for supplemental health services on other than a prepaid basis, but the contracting party shall not assert any claim for compenstion against members in excess of these copayments or payments for these supplemental health services;

(iv) Provisions requiring participation by health professionals in quality assurance activities;

(v) A description of mechanisms, such as risk sharing, financial incentives, or other incentives, to be applied to monitor utilization and to control costs

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of basic and supplemental health services and to achieve utilization goals; and

(vi) Assurances that medical groups and IPAs, or the health professionals associated with them, will be protected by professional liability coverage, either through insurance or self-insurance;

(2) In their contracts with health professionals for the provision of basic and supplemental health services (except for unusual or infrequently used services) at least the following:

(i) The provisions described in paragraphs (c)(1)(i), (ii), (iii), and (iv) of this section; and

(ii) Provisions requiring appropriate continuing education.

(d) Staff model HMOs shall have effective procedures to monitor utilization and to control cost of basic and supplemental health services, and to achieve utilization goals.

(e) Paragraph (a) of this section does not apply to the provision of the services of a physician—

(1) Which the HMO determines are unusual or infrequently used services; or

(2) Which, because of an emergency, it was medically necessary to provide to the member other than as required by paragraph (a) of this section; or

(3) Which are provided as part of the inpatient hospital services by employees or staff of a hospital or provided by staff of other entities such as community mental health centers, home health agencies, visiting nurses' associations, independent laboratories, or family planning agencies.

(f) Supplemental health services shall be provided or arranged for by the HMO and need not be provided by providers of basic health services under contract with the HMO.

(g) Each HMO shall:

(1) Pay the provider, or reimburse its members for the payment of reasonable charges for basic health services (or supplemental health services which the HMO agreed to provide on a prepayment basis) for which its members have contracted, which were medically necessary and immediately required to be obtained other than through the HMO because of an unforeseen illness, injury, or condition, as determined by the HMO;

(2) Adopt procedures to review promptly all claims from members for reimbursement for the provision of health services described in paragraph (g)(1) of this section, including a procedure for the determination of the medical necessity for obtaining the services other than through the HMO; and

(3) Provide instructions to its members on procedures to be followed to secure these health services.

§ 110.105 Payment for basic health services.

(a) *Basic health services payment.* Each HMO shall provide or arrange for the provision of basic health services for a basic health services payment which:

(1) Is to be paid on a periodic basis without regard to the dates these services are provided;

(2) Is fixed without regard to the frequency, extent, or kind of basic health services actually furnished;

(3) Except as provided in paragraph (c) of this section, is fixed under a community rating system, as described in paragraph (b) of this section; and

(4) May be supplemented by nominal copayments which may be required for the provision of specific basic health services. Each HMO may establish one or more copayment options calculated on the basis of a community rating system.

(i) An HMO may not impose copayment charges that exceed 50 percent of the total cost of providing any single service to its members, nor in the aggregate more than 20 percent of the total cost of providing all basic health services.

(ii) To insure that copayments are not a barrier to the utilization of health services or membership in the HMO, an HMO may not impose copayment charges on any subscriber (or members covered by the subscriber's contract with the HMO) in any calendar year, when the copayments made by the subscriber (or members) in that calendar year total 100 percent of the total annual premium cost which that subscriber (or members) would be required to pay if he (or they) were enrolled under an option with no copayments. This limitation applies only if the subscriber (or members) demonstrates that copayments in that amount have been paid in that year.

(b) *Community rating system.* Under a community rating system, rates of payment for health services may be determined on a per-person or per-family basis and may vary with the number of persons in a family. Except as otherwise authorized in this paragraph, these rates must be equivalent for all individuals and for all families of similar composition. Rates of payment may be based on either a schedule of rates charged to each subscriber group or on a per-member-per-month (or per-subscriber-per-month) revenue requirement for the HMO. In the former event, rates may vary from group to group if the projected total revenue from each group in substantially equivalent to the revenue which would be derived if the schedule of rates were uniform for all groups. In the latter event, the payments from each group of subscribers shall be calculated to yield revenues substantially equivalent to the product of the total number of members (or subscribers) expected to be enrolled from the group and the per-member-per-month (or per-subscriber-per-month) revenue requirement for the HMO. In addition, a community rating system must meet the following requirements:

(1) Rates of payment may not vary because of actual or anticipated utilization of services by individuals associated with any specific group of subscribers. These provisions do not preclude changes in the rates of payment which are established for new enrollments or reenrollments and which do not apply to existing contracts until the renewal of these contracts.

(2) Rates of payment shall reflect differences in benefits and copayment requirements.

(3) The following differentials may be established under a community rating system.

(i) Nominal differentials in rates may be established to reflect differences in marketing costs and the different administrative costs of collecting payments from the following categories of potential subscribers:

(A) Individual (nongroup) subscribers (including their families),

(B) Small groups of subscribers (100 subscribers or fewer),

(C) Large groups of subscribers (over 100 subscribers).

(ii) Differentials in rates may be established for subscribers enrolled in a HMO: (A) Under a contract with a governmental authority under section 1079 ("Contracts for Medical Care for Spouses and Children: Plans") or section 1086 ("Contracts for Health Benefits for Certain Members, Former Members and their Dependents") of Title 10 ("Armed Forces"), United States Code; or (B) under any other governmental program (other than the health benefits program authorized by chapter 89 ("Health Insurance") of Title 5 ("Government Organization and Employees"), United States Code; or (C) under any health benefits program for employees of States, political subdivision of States, and other public entities.

(iii) an HMO may establish a separate community rate for separate regional components of the organization upon satisfactory demonstration to the Secretary of the following:

(A) Each regional component is geographically distinct and separate from any other regional component; and

(B) Each regional component provides substantially the full range of basic health services to its members, without extensive referral between components of the organization for these services, and without substantial utilization by any two components of the same health care facilities. The separate community rate for each regional component of the HMO must be based on the different costs of providing health services in the respective regions.

(c) *Exceptions to community rating requirement.* (1) In the case of an HMO which provided comprehensive health services on a prepaid basis before it became a qualifed HMO, the requirement of community rating shall not apply to the HMO during the forty-eight month period beginning with the month following the month in which it became a qualifed HMO.

(2) The requirement of community rating does not apply to the basic health services payment for basic health services provided a member who is a full-time student at an accredited institution of higher education.

(d) *Charges for benefits covered by workers' compensation law or insurance policy.* The requirements respecting the basic health services payment do not apply to the provision of basic health services to a member for an illness or injury for which the member is entitled to benefits under a workers' compensation law or an insurance policy, but only to the extent these benefits apply to these services.

(1) For the provision of services for an illness or injury for which a member is entitled to benefits under a workers' compensation law, the HMO may, if authorized by this law, charge or authorize the provider of the services to charge, in accordance with the charges allowed under the law: (i) The insurance carrier, employer, or other entity which under the law is to pay for the provision of the services, or (ii) the member, to the extent that the member has been paid under the law for the services.

(2) For the provision of services for an illness or injury for which a member is entitled to benefits under an insurance policy, an HMO may charge or authorize the provider of the services to charge: (i) The insurance carrier under the policy, or (ii) the member, to the extent that the member has been paid under the policy for the services.

(e) *Late payment penalty.* HMOs may charge a late payment penalty on accounts receivable which are in arrears.

§ 110.106 Payment for supplemental health services.

(a) An HMO may require supplemental health services payments, in addition to the basic health services payments, for the provision of each health service included in the supplemental health services set forth in § 110.103 for which subscribers have contracted, or it may include supplemental health services in the basic health services provided its members for a basic health services payment.

(b) Supplemental health services payments may be made in any agreed upon manner, such as prepayment or fee-for-service. Supplemental health services payments which are fixed on a prepayment basis, however, shall be fixed under a community rating system, unless the supplemental health services payment is for a supplemental health service provided a member who is a full-time student at an accredited institution of higher education. In the case of an HMO which provided comprehensive health services on a prepaid basis before it became a qualifed HMO, the community rating requirement shall not apply to that HMO during the forty-eight month period beginning with the month following the month in which it became a qualifed HMO.

(c) When the HMO provides supplemental health services on a prepayment basis for which the member is entitled to benefits under a workers' compensation law or an insurance policy, the HMO may take the actions described in § 110.105(d)(1) or (2) (respecting charges for basic health services which are benefits under a workers' compensation law or insurance policy) as appropriate.

§ 110.107 Availability, accessibility, and continuity of basic and supplemental health services.

Within the HMO's service area, basic health services and those supplemental health services for which members have contracted shall be:

(a) Provided or arranged for by the HMO;

(b) Available and accessible to each of the HMO's members promptly as appropriate with respect to:

(1) Geographic location, hours of operation, and provisions for after-hours services (medically necessary emergency services must be available and accessible 24 hours a day, 7 days a week); and

(2) Staffing patterns within generally accepted norms for meeting the projected membership needs; and

(c) Provided in a manner which assures continuity, including but not limited to:

(1) Provision of a health professional who is primarily responsible for coordinating the member's overall health care; and

(2) Development of a health (including medical) recordkeeping system through which pertinent information relating to the health care of the patient is accumulated and is readily available to appropriate professionals.

§ 110.108 Organization and operation.

(a) *Fiscally sound operation and administrative and managerial arrangements.* (1) Each HMO shall have a fiscally sound operation as demonstrated by:

(i) Total assets being greater than total unsubordinated liabilities. In this evaluation, loan funds awarded or guaranteed under section 1305 of the Act are not included as liabilities, and if the funds have not been disbursed to the HMO by the Secretary or by an escrow agent, they are not included as assets;

(ii) Sufficient cash flow and adequate liquidity to meet obligations as they become due;

(iii) A net operating surplus. If the HMO has not earned a cumulative net operating surplus during the three most recent fiscal years, did not earn a net operating surplus during the most recent fiscal year, does not a have positive net worth, or is seeking a Federal loan or loan guarantee under sections 1305 or 1305A of the Act, the HMO shall submit a financial plan satisfactory to the Secretary to achieve net operating surplus within available fiscal resources. This plan shall include:

(A) A detailed marketing plan;

(B) Statements of revenue and expense on an accrual basis;

(C) Sources and uses of funds' statements; and

(D) Balance sheets;

(iv) A plan for handling insolvency which allows for continuation of benefits for the duration of the contract period for which payment has been made, continuation of benefits to members who are confined on the date of insolvency in an inpatient facility until their discharge, and payments to unaffiliated providers for services rendered;

(v) A fidelity bond or bonds, procured and maintained by the HMO, in an amount fixed by its policymaking body but not less than $100,000 per individual, covering each officer and employee entrusted with the handling of its funds. The bond may have reasonable deductibles, based upon the financial strength of the HMO;

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(vi) Insurance policies or other arrangements, secured and maintained by the HMO and approved by the Secretary to insure the HMO against losses arising from professional liability claims, fire, theft, fraud, embezzlement, and other casualty risks; and

(vii) A plan to maximize its enrollment in a manner consistent with sound management.

(2) Each HMO shall have administrative and mangerial arrangements satisfactory to the Secretary, as demonstrated by at least the following:

(i) A policymaking body which exercises oversight and control over the HMO's policies and personnel to assure that management actions are in the best interest of the HMO and its membership; and

(ii) Personnel and systems sufficient for the HMO to organize, plan, control and evaluate the financial, marketing, health services, quality assurance program, administrative and management aspects of the HMO. At a minimum, the HMO shall be managed by an executive whose appointment and removal are under the control of the HMO's policymaking body.

(b) *Financial risk.* Each HMO shall assume full financial risk on a prospective basis for the provision of basic health services, except that it may obtain insurance or make other arrangements: (1) For the cost of providing to any member basic health services the aggregate value of which exceeds $5,000 in any year;

(2) For the cost of basic health services provided to its members other than through the HMO because medical necessity required their provision before they could be secured through the HMO; and

(3) For not more than 90 percent of the amount by which its costs for any of its fiscal years exceed 115 percent of its income for that fiscal year.

(c) *Broadly representative enrollment.* After full and fair disclosure of its benefits, coverage, rates, grievance procedures, location, and hours of service, and a general description of its participating providers and financial condition, each HMO shall offer enrollment to persons who are broadly representative of the various age, social, and income groups within its device area. In the case of an HMO which has a medically underserved population located in its service area, not more than 75 percent of the HMO members may be enrolled from the medically underserved population unless the area in which that population resides is also a rural area.

(d) *Open enrollment.* If the HMO has either provided comprehensive health services on a prepaid basis for a period of at least 5 years or has an enrollment of at least 50,000 members, it shall have an open enrollment period at least once during the fiscal year next following each fiscal year in which it did not have a financial deficit. (For purposes of this paragraph, financial deficits must be reported and certified by an independent Certified Public Accountant.) The period of open enrollment shall be determined under paragraph (d)(1) of this section. During open enrollment, the HMO shall accept individuals for membership in the order in which they apply for enrollment and, except as provided in paragraph (d)(2) of this section, without regard to preexisting illness, medical condition, or degree of disability.

(1) An open enrollment period for an HMO shall be the lesser of—

(i) 30 days, or

(ii) The number of days in which the organization enrolls a number of individuals at least equal to 3 percent of its total net increase in enrollment (if any) in the fiscal year preceding the fiscal year in which the open enrollment period is held. In determining the total net increase in enrollment in an HMO, the HMO need not include any individual who is (A) enrolled in the HMO through a group which had a contract or other arrangement for health care services with the HMO when the HMO was determined to be a qualified HMO, or (B) entitled to insurance benefits under Title XVIII of the Social Security Act or to medical assistance under a State plan approved under Title XIX of that Act and was enrolled in the HMO when the HMO was determined to be a qualified HMO.

(2) An HMO is not required to enroll individuals who are confined to an institution because of (i) chronic illness, (ii) permanent injury, or (iii) other infirmity which would cause economic impairment to the HMO, as demonstrated to the satisfaction of the Secretary, if these individuals were enrolled.

(3) And HMO may defer the effective date of benefits for individuals enrolled under this paragraph for up to 90 days after the date of enrollment.

(4) An HMO may require an individual applying for membership at periods other than the required annual open enrollment period to submit to and pay for a health status questionnaire or a health examination. An HMO may deny enrollment based on results of this questionnaire or health examination.

(5) The Secretary may, under paragraph (e) of this section, waive the requirements of this paragraph for an HMO which demonstrates that compliance with the provisions of this paragraph would jeopardize its economic viability.

(e) *Waiver of open enrollment.* In order to obtain a waiver under paragraph (d)(5) of this section, the HMO shall submit documentation that it has prospectively determined on an actuarial basis, using data available in the area or from similar organizations elsewhere, that the average utilization of services of potential individual members would so increase costs as to jeopardize the economic viability of the organization if it maintained an open enrollment period.

(f) *Health status and enrollment.* The HMO shall not expel or refuse to re-enroll any member nor refuse to enroll individual members of a group, on the basis of the health status, health care needs, or age of the member or individual. For purposes of this paragraph, a "group" is an entity which consists of members who enroll in the HMO through a contract or other arrangement which provides for the enrollment of two or more subscribers. Nothing in this subpart prohibits an HMO from requiring that, as a condition of continued eligibility for membership, dependents of a subscriber, upon reaching a specified age, convert to nongroup membership consistent with the terms of § 110.106(g).

(g) *Conversion of membership.* Each HMO shall offer membership on the same terms and conditions as are available to a nongroup subscriber to:

(1) Each subscriber (and his enrolled dependents) leaving a group; and

(2) Each member who would otherwise cease to be eligible for HMO membership because of his or her age or the death or divorce of a subscriber.

(h) *Policymaking body.* (1) In the case of a private HMO, no later than one year after becoming operational as a qualified HMO, at least one-third of the membership of its policymaking body must be members of the HMO who reside in or in proximity to the service area of the HMO. An HMO with regional components and one overall policymaking body must assure that the individuals satisfying the one-third member requirement reside in, or in proximity to, the service area of at least one of the HMO's regional components. HMOs with policymaking bodies consisting of the same individuals must assure that the individuals satisfying the one-third member requirement reside in, or in proximity to, the service area of at least one of the HMOs.

(i) No member having ownership of or financial interest in, or employed by, or gaining financial reward from direct dealings with, the HMO or a plan-affiliated institution or organization, and no members of the immediate family of such member shall be included in the minimum one-third member representation on the policymaking body. However, none of the foregoing prohibits the payments of directors' fees or other similar fees, or interest and dividends derived from membership in an HMO cooperative, to persons serving on the policymaking body.

(ii) There shall be equitable representation on the member portion of the policymaking body of members from the medically underserved populations served by the HMO in proportion to their enrollment relative to the entire enrollment; except that if the membership from these medically underserved populations is at least 5 percent of the total enrollment, then those populations shall not be without representation.

(2) In the case of public HMO, have an advisory board to its policymaking body operating the HMO which board meets the requirements of subparagraph (1) of this paragraph, and to which may be delegated policymaking authority for the HMO.

(i) *Grievance procedures.* Each HMO shall have and use meaningful procedures for hearing and resolving grievances between the HMO (including the staff of the HMO, the medical group, and the IPA) and the members of the HMO. These procedures must assure that: (1) Grievances and complaints will be transmitted in a timely manner to appropriate decisionmaking levels within the HMO which have authority to take corrective action; and (2) appropriate action will be taken promptly, including a full investigation if necessary and notification of concerned parties as to the results of the HMO's investigation.

(j) *Quality assurance program.* Each HMO shall have an ongoing quality assurance program for is health services which:

(1) Stresses health outcomes to the extent consistent with the state of the art;

(2) Provides review by physicians and other health professionals of the process followed in the provision of health services;

(3) Uses systematic data collection of performance and patient results, provides interpretation of these data to its practitioners, and institutes needed change; and

(4) Includes written procedures for taking appropriate remedial action whenever, as determined under the quality assurance program, inappropriate or substandard services have been provided or services which should have been furnished have not been provided;

(k) *Certification of institutional providers.* Each HMO shall assure that institutional providers through which it provides basic and supplemental health services (1) are certified either under Title XVIII of the Social Security Act (Medicare) in accordance with 42 CFR Part 405 or under Title XIX of the Social Security Act (Medicaid) in accordance with the regulations governing participation of providers in the Medical Assistance Program; or (2) in the case of hospitals, are either accredited by the Joint Commission on Accreditation of Hospitals or certified by Medicare; or (3) in the case of clinical laboratories (except for laboratories exempted from section 353 of the Public Health Service Act by paragraphs (d)(2), (i), or (1) of that section), certified by Medicare or Medicaid or licensed under section 353.

(l) *Continuing education of health professionals.* Each HMO shall provide, or make arrangements for, continuing education for its health professional staff;

(m) *Health education.* In support of the provision of health services, each HMO shall actively provide its members:

(1) Health education services including instruction in personal health care measures;

(2) Information about its services, including education on generally accepted medical standards for use and frequency of its services; and

(3) Nutritional education and counseling;

(n) *Medical social services.* In support of the provision of health services, each HMO shall offer its members medical social services, which shall include appropriate assistance in dealing with the physical, emotional and economic impact of illness and disability. These services may include pre- and post-hospitalization planning, referral to aervices provided through community health and social welfare agencies, and related family counseling;

(o) *Reporting and disclosure requirements.* (1) While safeguarding the confidentiality of the doctor-patient relationship, each HMO shall provide an effective procedure to develop, compile, evaluate, and report to the Secretary, to its members, and to the general public, at the times and in the manner the Secretary requires, statistics and other information relating to:

(i) The cost of its operations;

(ii) The patterns of utilization of its services;

(iii) The availability, accessibility, and acceptability of its services;

(iv) To the extent practical, developments in the health status of its members;

(v) Information demonstrating that the HMO has a fiscally sound operation;

(vi) Other matters as the Secretary may require;

(2) Each HMO shall report to the Secretary annually, within 180 days of the end of its fiscal year (unless for good cause shown, the Secretary authorizes an extension of time):

(i) The information required to be reported by disclosing entities under regulations implementing section 1124 and section 1902(a)(38) of the Social Security Act (see 42 CFR 420.206 and 42 CFR 455.104), respectively.

(ii) A description of the following significant business transactions between the HMO and a party in interest, and a justification that the costs of these transactions do not exceed the costs which would be incurred if these transactions were to be with someone who is not a party in interest (or if they do, a justification that the higher costs are consistent with prudent management and fiscal soundness requirements):

(A) Sale, exchange, or leasing of property;

(B) Furnishing for consideration of goods, services (including management services, but excluding health services provided to members by staff, medical groups, IPAs, or any combination thereof and services provided by employees of the HMO in the normal course of their employment), or facilities; and

(C) Lending of money or other extension of credit.

(3)(i) Report to the Secretary annually, within 180 days of the end of its fiscal year (unless for good cause shown, the Secretary authorizes an extension of time), a combined financial statement for the organization and such entity if:

(A) Thirty-five percent or more of the costs of operation of the HMO go to a party in interest; or

(B) Thirty-five percent or more of the revenue of a party in interest is from the HMO.

The combined financial statements must display in separate columns the financial information for the HMO and each of these parties in interest. Inter-entity transactions must be eliminated in the consolidated column. These statements must have been examined by an independent auditor in accordance with generally accepted accounting principles, and must include appropriate opinions and notes.

(ii) The Secretary may, upon a written request from an HMO and for good

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cause shown, waive the requirement that its combined financial statement include the financial information required in this paragraph with respect to a particular entity.

(p) *Human diginity.* Each HMO shall be organized and operated in a manner intended to preserve human dignity;

(q) *Confidentiality of health records.* Each HMO shall establish adequate procedures to insure confidentiality of its members' health (including medical) records; and

(r) *Referral information.* Each HMO shall make arrangements either directly or through its providers to assure that the HMO or the health professional coordinating the member's overall health care is kept informed about the services provided to its members by referral resources.

§ 110.109 Prohibited activities.

An HMO may not sell, market or promote, to an individual or group, directly or through arrangements with other entities, health insurance or a health service benefit plan for health benefits which the HMO includes in the prepaid health benefits package offered to that individual or group. In addition, the HMO may not permit its employees to do so in the normal course of their employment.

§ 110.110 Special requirements: Titles XVIII and XIX of the Social Security Act.

(a) As provided in section 1307(d) of the Act, an HMO which otherwise complies with section 1301(b) and section 1301(c) of the Act, and with the applicable regulations of this subpart, and which enrolls members who are entitled to insurance benefits under Title XVIII of the Social Security Act or to medical assistance under a State plan approved under Title XIX of that Act, may still be considered as an HMO, if with respect to its Title XVIII and Title XIX members it provides services and is operated as required by Title XVIII or XIX, as appropriate, and regulations thereunder.

(b) Notwithstanding any inconsistent requirements of this subpart, an HMO which enters into a contract with the Secretary under Title XVIII of the Social Security Act or with a State under Title XIX of that Act shall, with respect to its members entitled to insurance benefits or medical assistance under those titles, comply with the applicable Title XVIII or Title XIX requirements, including deductible and coinsurance requirements, enrollment mix and enrollment practice requirements, in accordance with the provisions of Title XVIII or the Title XIX State plan of the State with which it is contracting. Copayment options which are not in accordance with a Title XIX State plan may not be imposed on Title XIX enrollees.

(c) Any grievance procedures authorized under Title XVIII or Title XIX of the Social Security Act are not superseded by the provisions of § 110.108(i).

§ 110.111 Special requirements: Federal employee health benefits program.

An entity which provides health services to a defined population on a prepaid basis and which has members who are enrolled under the health benefits program authorized by chapter 89 of Title 5, United States Code, may be considered as an HMO for purposes of receiving assistance under this Part if with respect to its other members it (a) provides health services in accordance with section 1301(b) of the Act and the applicable regulations of this part and (b) is organized and operated in the manner prescribed by section 1301(c) of the Act and the applicable regulations of this part.

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federal register

Friday
October 31, 1980

Part IX

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Qualifying Conditions and Reimbursement of Health Care Prepayment Plans

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 418

Medicare Program; Qualifying Conditions and Reimbursement of Health Care Prepayment Plans

AGENCY: Health Care Financing Administration, (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: The proposed rules set forth Medicare qualifying conditions and principles of reimbursement for prepaid health care organizations that furnish or arrange to furnish medical and other health services under Part B of Medicare and are reimbursed on a reasonable cost basis. The proposed reimbursement principles are similar, to the extent possible, to those for Health Maintenance Organizations reimbursed on a reasonable cost basis. The purpose of these proposed rules is to clarify and simplify existing policy and to assure uniform treatment of both types of prepayment organizations under Medicare.

DATES: In order to assure consideration, comments should be received on or before December 30, 1980.

ADDRESSES: Address comments to: Administrator, Health Care Financing Administration, Department of Health and Human Services, P.O. Box 17073, Baltimore, MD 21235.

If you prefer, you may deliver your comments to: Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., in Washington, D.C. or to Room 789, East High Rise Building, 6401 Security Boulevard, in Baltimore, Maryland.

When commenting please refer to BPP–3–P. Agencies and organizations are requested to submit their comments in duplicate. Comments will be available for public inspection, beginning approximately 2 weeks after publication, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202) 245–7890.

FOR FURTHER INFORMATION CONTACT: Frank Emerson, 301–597–2968.

SUPPLEMENTARY INFORMATION: A prepayment organization may be broadly defined as an organization that furnishes, or arranges for furnishing, comprehensive health services to its enrollees in return for a predetermined, periodic payment.

Section 1833(a)(1)(A) of the Social Security Act, 42 U.S.C. 1395l(a)(1)(A), allows prepayment organizations, under certain conditions, to elect to be paid on a reasonable cost basis for medical and other health services covered by Medicare instead of being paid on a reasonable charge basis, as is more customary for most Part B services.

These proposed rules set forth for the first time in regulations the conditions for coverage and reimbursement for prepayment organizations that elect this option. At the present time, group-practice prepayment plans (GPPPs) may qualify for reasonable cost reimbursement under section 1833(a)(1)(A) on the basis of administrative guidelines (see GPPP Manual, HIM–8) which set only minimal qualification criteria.

These regulations are being proposed because there is a need: (1) to include in regulations the qualification and reimbursement criteria for reasonable cost reimbursement under section 1833(a)(1)(A); (2) to adopt qualification criteria that more specifically and precisely distinguish prepayment organizations eligible for reasonable cost reimbursement from other modes of health care delivery and reimbursement and from health maintenance organizations; and (3) to conform reasonable cost reimbursement for health care prepayment plans and health maintenance organizations (HMOs). The regulations also are prompted by the enactment of section 1876 of the Social Security Act, 42 U.S.C. 1395mm, which deals with the qualification and reimbursement of HMOs in the Medicare program. Prior to this provision there was a lack of specificity in the statutory language and little guidance accompanying the legislative history regarding prepayment organization qualifications and reimbursement. With the addition of the Medicare HMO provision, however, and the several HMO amendments to the Public Health Service Act, the Medicare program was given more detailed legislative direction on these matters. Where appropriate, the requirements in these regulations are consistent with those for HMOs.

The Department has placed strong emphasis on developing HMOs as an alternate health care delivery system. Therefore, the decision to pattern these amendments after the cost-basis HMO regulations has been adopted, in part, to aid this effort. Imposing the same principles should facilitate a health care prepayment plan's transition to HMO status.

In addition, by patterning the proposal in certain key respects on the existing HMO regulations, we hope to improve both the quality of care and the cost accountability of prepayment organizations by imposing stricter, more specific requirements and eliminating provisions in the administrative guidelines that are no longer appropriate. It should also give us the opportunity to evaluate more accurately how well these organizations are meeting the objective of furnishing better service to Medicare beneficiaries.

Terminology

The term "health care prepayment plan" (HCPP) is used in these proposed regulations to describe prepayment organizations that elect to receive payment on a reasonable cost basis under section 1833(a)(1)(A) of the Act for medical and other health services.

The term HCPP also distinguishes these organizations from HMOs, which are reimbursed for hospital, physician and other covered Part A and Part B services. HCPPs, on the other hand, may be reimbursed only for medical (including physician) and other health services covered under Part B. Another important difference is that HMOs, unlike HCPPs, can qualify for incentive payments (i.e., HMOs can retain a certain portion of savings resulting from efficient operation). In addition, HMOs have to meet a more comprehensive set of qualification requirements.

Basic Requirements

The proposed regulations set forth the following basic requirements for prepayment organizations, other than HMOs, that wish to receive reimbursement from the Medicare program for medical and other health services they furnish to Medicare beneficiaries:

(1) Qualification criteria and reimbursement principles for prepayment organizations that elect reasonable cost reimbursement as HCPPs; and

(2) Payment of other prepayment organizations on the same reasonable charge basis that is generally used to reimburse physicians and suppliers of services under Part B of Medicare.

Qualification of HCPP's

These proposed regulations broadly define an HCPP as an organized health care delivery system that accepts responsibility for the organization, financing and delivery of health care services for a defined population on a prepayment basis. Thus, HCPPs are distinguished from other types of health delivery systems in that they do not have a purely health care financing role, or a purely delivery role. Rather, they

are concerned with obtaining and financing an assured source of supply of health care services adequate to meet the demands of their enrollee populations. The other basic distinguishing characteristic is that the financing of the health care services is done on a prepayment basis, that is, the organizations meet the costs of these health care services through periodic payments from plan enrollees. These periodic payments (premiums) are made to the organizations without regard to the frequency or extent of services furnished to any particular enrollee or whether the enrollee has received services.

The specific requirements that an organization must meet in order to qualify as an HCPP are set forth in the regulations as a series of conditions and, where appropriate, standards that expand upon the conditions.

These conditions relate to: (1) The range of services provided; (2) the arrangement the HCPP makes for covered services it does not provide directly; (3) the composition of the HCPP's physician and other medical staff; (4) enrollee access to services; and (5) fiscal accountability; (6) and the written agreement with the Administrator.

1. *Range of Services.*

The proposed regulations require that an HCPP must provide at least the following services to its Medicare enrollees: physicians' services; and diagnostic X-ray, laboratory and other diagnostic tests. We consider these to be the essential health services and represent the minimum from among the medical and other health services Part B covers that a HCPP should offer its Medicare enrollees. The HCPP may, of course, offer other services covered under Part B and may also furnish inpatient hospital services and other services Medicare covers under Part A. Physicians' services are, of course, the core of services furnished by health care prepayment plans. (See S. Rep. No. 404, Part I, 89th Cong., 1st Sess. 43 (1965).) Diagnostic tests are also required to assure that physician services offered by the plan are reinforced by the availability of essential diagnostic support. This requirement would also make the Part B services required to be furnished by the HCPP regulations consistent with those required for certain HMO's. (See 42 CFR 405.2005(b). However, the HCPP may not receive payment under the provisions of this regulation for services furnished by a provider of services, whether covered under Part A or Part B. HCFA will make payment for these services directly to the provider of the services (hospital, HHA, or SNF) through its Medicare fiscal intermediary.

2. *Provision of Services.*

The proposed regulations provide that an HCPP must furnish its services through institutions, entities and persons approved by the Medicare program. For example, if services are furnished by independent laboratories, portable X-ray suppliers or end-stage renal disease facilities, the laboratory or supplier must have been approved as meeting the applicable conditions for coverage as described in Subparts M, N and U of 42 CFR Part 405, the Medicare regulations. Similarly, if an HCPP furnishes services provided by a hospital, skilled nursing facility, home health agency, or a provider of outpatient physical therapy services, these providers must have approved provider agreements under the Medicare program.

These regulations also require that for an HCPP to qualify, a physician must provide medical direction of the HCPP's health care staff. HCPP's would not be required to have a physician on the premises at all times during office hours in order to qualify, nor would a physician be required to directly supervise all nonphysician health care professionals. However, if a physician was not present, one would have to be available through direct telecommunication for consultation, and to assist with medical emergencies. This is supportive of the Department's efforts to provide basic health care services to medically underserved populations. These populations live in areas designated as having a shortage of personal health services, due principally to insufficient numbers of physicians and high numbers of people eligible for Medicare and Medicaid. We have not proposed a requirement that a physician be on the premises for specific amounts of time or how frequently. We would like to receive comments on the need for, and terms of, such a requirement.

While some latitude in physician direction and supervision is proposed for purposes of the qualifying conditions for HCPP's, we must point out, however, that coverage of nonphysician services under Part B of Medicare is limited. Generally, under current policy, only those nonphysician services performed "incident to a physician's professional service" are covered, and then only when a physician is actually present and immediately available to provide assistance and direction. These Part B coverage requirements would apply to services furnished by HCPPs in the same way they apply to services furnished by any health care facility or individual to Medicare beneficiaries.

The Department is reviewing current policies on payment for nonphysician services performed "incident to a physician's professional service". We would welcome comments on the current reimbursement policy and recommendation for change.

Another provision requires that if the HCPP provides covered services to its Medicare members through agreements with physicians, other than those employed by the HCPP, or with suppliers that are not owned, operated, or controlled by the HCPP, the HCPP is responsible for insuring that the services furnished under these agreements are efficient, effective, and economical.

3. *Access to Services.*

To assure that services can be obtained when needed, the proposed regulations require that the specified minimum range of covered services furnished by an HCPP to its Medicare enrollees must be: (1) furnished by the HCPP directly or under agreements; (2) available and accessible to each of its enrollees promptly; and (3) furnished in a manner that assures continuity of each enrollee's health care. Additionally, in order to assure continuity of care, the HCPP must maintain an adequate medical recordkeeping system and must assure that a health care professional in its organization is responsible for coordinating each enrollee's overall health care.

4. *Organization and Operation of Services.*

The proposed regulations also require an HCPP to have a fiscally sound operation and to meet certain other organizational and operational requirements that HMOs under Medicare are required to meet.

With respect to fiscal solvency, these regulations require that the organization have a financial plan that demonstrates, among other things: (1) a positive cash flow, (2) the ability to establish reserves, and (3) provision against the risk of insolvency. In assessing the fiscal solvency of an HCPP, we will take into consideration any Public Health Service grant funds, as well as any other revenues.

The other organizational and operational requirements that an HCPP must meet include minimum standards dealing with the re-enrollment of Medicare beneficiaries and grievance procedures.

These administrative requirements represent the minimum we believe necessary to provide a reasonable expectation of financial stability and of the organization's capacity to serve its enrollees in an efficient manner. They are based on our experience to date with cost-based HMOs under Medicare

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and on generally accepted sound business practices.

5. *Organization of physician services.*

The proposed regulations provide that physician services furnished by the HCPP to its Medicare enrollees must be furnished through one of the following: (1) employees of the organization; (2) a medical group or an individual practice association; (3) physicians who have contracted with the HCPP to furnish services; (4) any combination of staff, medical group, individual practice association, or physicians that have contracts with the HCPP; or (5) an entity that for the first 3 years as an HCPP would qualify as a medical group under these regulations but its physician members do not meet all of the requirements for professional activity (e.g., time spent in delivery of services to the HCPP's enrollees).

Request for Comments on Proposed Criteria From Current Cost Basis Group Practice Prepayment Plans

We anticipate that all of the cost basis group practice prepayment plans currently participating in Medicare will be able to meet the requirements contained in these proposed regulations. However, we do not have sufficient information available to confirm this. We would appreciate receiving from the plans comments concerning whether there are requirements they will not be able to meet and, if so, what timetable they think will be appropriate to come into compliance with these regulations.

Reimbursement of HCPPs

1. *Reimbursement options for prepayment organizations.*

There are three reimbursement options under Medicare for prepayment organizations. They may be characterized as the HMO option, the reasonable charge option, and the reasonable cost option. Section 1876 of the Act authorizes the Medicare program to provide reimbursement to HMOs on either a reasonable cost or an incentive basis for services covered under Parts A and B of the program. Section 1833(a) provides that, in general, reimbursement for items and services covered under Part B of the Medicare program shall be 80 percent of the reasonable charge for such items and services, after subtracting the beneficiaries' deductibles and taking into account other applicable limitations under the law. Section 1833(a)(1)(A) permits prepayment organizations to receive 80 percent of the reasonable cost of medical and other health services covered under Part B furnished to their Medicare enrollees, after taking into account the beneficiaries' deductibles and other limitations.

Organizations qualifying as HMOs are reimbursed under 42 CFR Part 405, Subpart T. Prepayment organizations electing the reasonable charge option are paid according to administrative guidelines (see discussion below under *Reimbursement of Other Prepayment Organizations*). These proposed regulations would clarify and establish uniform reimbursement policy for prepayment organizations that elect the option to receive payment of reasonable cost for medical and other health services covered under Part B.

2. *Reimbursement Policy Changes.*

The current administrative guidelines for paying GPPPs offer a number of different methods of reimbursement. They do not provide for reimbursement of certain costs unique to prepayment organizations, such as marketing costs. On the other hand, they do allow, in some situations, the payment of an "equalization factor" which is a payment for long-range capital needs in excess of budgeted costs. (This payment is allowed only if the premiums the GPPP's non-Medicare enrollees are charged includes a similar amount for this purpose.)

As indicated above, we believe it desirable to adopt reimbursement criteria for HCPPs similar to those for HMOs that are reimbursed on a reasonable cost basis. For instance, marketing and certain other costs that are unique to the prepayment form of health care delivery would now be included as allowable costs for HCPPs. Also, these regulations would not provide for the payment of an equalization factor since future capital needs are not recognized in the definition of reasonable cost. (Section 1861(v)(1)(A) of the Act limits reasonable cost to costs "actually incurred" in the efficient delivery of needed health services such as those defined in 42 CFR Part 405, Subpart D.)

3. *Reasonable Cost Reimbursement.*

The reimbursement sections of these regulations are patterned, to the extent possible, on the reimbursement regulations for cost-basis HMOs which follows in large part, the principles of reimbursement for costs incurred by providers of services under Medicare (see 42 CFR Part 405, Subpart D). A prepayment organization that elects and qualifies to receive payment under this method will receive 80 percent of the reasonable cost of covered medical and other health services furnished directly or under arrangements to its enrolled Medicare beneficiaries, after subtracting the amount of any deductibles for which its Medicare enrollees are responsible. Its Medicare enrollees will be liable for: (1) amounts required under Medicare for deductible and coinsurance. These regulations follow the HMO regulations in regard to the method an HCPP may use to collect from its Medicare enrollees amounts for deductible and coinsurance. This means that an HCPP may choose to collect these amounts in a number of different ways such as a premium, membership fee, or a charge per unit of service. However, regardless of the method the HCPP uses, the total amount it collects for deductible and coinsurance may not exceed the actuarial value of the deductible and coinsurance its Medicare enrollees would have paid for deductibles and coinsurance had they not been enrolled in the HCPP; and (2) amounts for noncovered services.

Payments to an HCPP will: (1) be made monthly on a per capita basis, in accordance with Medicare instructions, for those Medicare beneficiaries enrolled in the HCPP; (2) approximate as closely as possible the reimbursable cost the HCPP is incurring in furnishing covered Part B services to its Medicare enrollees; and (3) be adjusted, if necessary, during the reporting period (usually 1 year) to bring payments in line with its estimated reimbursable costs. A settlement will be made following the close of the reporting period to bring interim payments made during the period into conformance with the amount payable under Medicare rules.

4. *Apportionment and Allocation of Costs.*

The proposed regulations also set forth specific methods for allocating costs among different departments of the HCPP, and for the apportionment of an HCPP's costs between its Medicare enrollees and other patients. However, § 418.45(g) and § 418.47(d) of the proposed regulations permit an HCPP, subject to the approval of HCFA, to use methods of cost allocation or apportionment of costs which differ from those provided in the proposed regulation. Because of the need for standardization and consistency in HCPP cost reporting, an HCPP which desires to use an alternative method is required to demonstrate that the method it proposes to use results in a more accurate and equitable allocation or apportionment than the standard methods described in the proposed regulations.

Section 418.45(e) of the proposed regulations permits an HCPP, subject to HCFA approval, to adjust the statistics that are used to compute the apportionment of costs for the direct professional services of physicians and

other health care personnel. The adjustment is made to reflect differences in the time and complexity of covered Part B services furnished directly or under arrangements to Medicare enrollees of the HCPP. This adjustment, known as "weighting", is permitted since the direct services of physicians and other health care personnel vary in time and complexity from patient to patient, depending on the patient's condition and other factors. Current guidelines permit use of a standard time differential ("time factor") in the apportionment of the costs of physician services. This time factor recognizes the cost differential related to the expenditure of physicians' time in providing services to patients who are 65 years of age or older as compared to the time spent in treating younger patients. However, it should be noted that the standard time differential, currently 20 percent, is under study by HCFA and may be modified as the results of studies and other relevant data become available to HCFA.

5. *Reimbursement for Provider Services, and for Services Furnished by an HCPP to Nonenrolled Beneficiories.*

While the proposed regulations would permit an HCPP to furnish covered Part B services to its Medicare enrollees under an agreement with a provider of services (i.e., a hospital, a skilled nursing facility, or a home health agency and, for limited purposes of furnishing outpatient physical therapy or speech pathology services a clinic, rehabilitation agency, or public health agency), HCFA will make payment for these provider services directly to the provider through its fiscal intermediary, rather than to the HCPP.

An HCPP may furnish covered Part B services to Medicare beneficiaries who are not enrollees of the HCPP. However, even though the HCPP is being paid on a cost basis with respect to its Medicare enrollees, payment for services to non-enrolled Medicare beneficiaries would be made to the HCPP through its area Medicare carrier on a reasonable charge basis.

6. *Differences from Cost-Basis HMO Regulations.*

As mentioned earlier, the reimbursement sections of these regulations are patterned on the reimbursement regulations for cost-basis HMOs. Since HCPPs, however, are not reimbursed for as wide a range of services as cost-basis HMOs are reimbursed (see 42 CFR Part 405, Subpart T), these regulations do not follow exactly the regulations for cost-basis HMOs. For instance, we have not included in these regulations reimbursement requirements for services furnished to an HCPP's enrollees by a "provider of services", since such services are not reimbursable to HCPPs, as may be in the case of HMOs.

Also, in an effort to make these regulations easier to understand, we have used somewhat different language from that in the cost-basis HMO regulations.

Reimbursement of Other Prepayment Organizations

The administrative guidelines currently used by the Medicare program (see GPPP Manual, HIM-8) for reasonable charge reimbursement of prepayment plans have permitted payment under a number of different methods (e.g., statistical visit, charges related to premium, or non-bill, etc.), not all of which are subject to the payment limitations for reasonable charges set forth in 42 CFR Part 405, Subpart E. The proposed regulations would bring reasonable charge reimbursement completely into line with 42 CFR Part 405, Subpart E. This is the same reasonable charge basis used to pay physicians, suppliers and non-hospital clinics. Payment would continue to be made to these prepayment plans as is done for physician and suppliers through the area Medicare carrier.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

42 CFR Chapter IV, Subchapter B, is amended as follows:

1. In part 405, Subpart B, § 405.241 is revised to read as follows:

§ 405.241 Payment of supplementary medical insurance benefits to prepayment organizations.

A prepayment organization that has not qualified as a health care prepayment plan (HCPP) or health maintenance organization (HMO) will be paid through its Medicare carrier, for Part B services furnished to its Medicare enrollees, on the basis of reasonable charges in accordance with § 405.240 and § 405.251. These organizations will be paid 80 percent of reasonable charges after subtracting their enrollees' deductible amounts and taking the other limitations under Part B into consideration. (See 42 CFR Part 418 for definition and reimbursement of HCPPs. See 42 CFR Part 405, Subpart T, for definition and reimbursement of HMOs.)

2. A new Part 418 is added to read as follows:

PART 418—HEALTH CARE PREPAYMENT PLANS

Subpart A—General Provisions

Sec.
418.1 Scope of part.
418.2 Definitions.

Subpart B—Qualifying Conditions

418.21 Basic requirements.
418.23 Agreement with the Administrator.
418.24 Termination of agreements.
418.25 Operating experience.
418.27 Range of services.
418.29 Provision of services.
418.31 Access to services.
418.33 Organization and operation.

Subpart C—Reimbursement

418.41 General principles.
418.43 Allowable costs.
418.45 Cost apportionment.
418.47 Financial records, statistical data, and cost finding.
418.49 Interim per capita payments.
418.51 Final settlement.

Authority: Sections 1102, 1833(a)(1)(A), 1861(v) and 1871 of the Social Security Act, 42 U.S.C. 1302, 1395l(a)(1)(A), 1395x(v) and 1395hh.

Subpart A—General Provisions

§ 418.1 Scope of part.

(a) *Basis.* This part is based on section 1833(a)(1)(A) of the Social Security Act, 42 U.S.C. 1395l(a)(1)(A) which provides that, under certain conditions, an organization that furnishes or makes available, on a prepayment basis, medical and other health services covered by Supplementary Medical Insurance (Part B of the Medicare program) may elect to be reimbursed on the basis of reasonable costs, rather than reasonable charges.

(b) *Purpose.* This part specifies the qualifying conditions that an organization described in paragraph (a) of this section must meet in order to be reimbursed on a reasonable cost basis under section 1833(a)(1)(A) of the Act, and the rules under which HCFA will determine reasonable cost reimbursement. Such an organization is referred to in this part as a health care prepayment plan (HCPP).

§ 418.2 Definitions.

As used in this part, unless the context indicates otherwise:

"Act" means the Social Security Act.

"Administrator" means the Administrator of the Health Care Financing Administration, or a HCFA official or employee with authority to act on the Administrator's behalf.

"Beneficiary" means an individual enrolled in Part B of the Medicare program.

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"Coinsurance" and "Deductible" mean the amounts a Medicare enrollee of an HCPP incurs for covered Part B services as described in §§ 405.240, 405.243, 405.245 and 405.248 of Part 405. 42 CFR 418.41(e) describes the manner in which these payments will be made.

"Covered Part B services" means items or services specified in § 418.27, and any additional medical and other health services that the HCPP furnishes to its Medicare enrollees.

"Deductible"—See definition of "Coinsurance" and "Deductible."

"General instructions" means manuals and other written guide materials for the Medicare program issued by HCFA.

"HCFA" means the Health Care Financing Administration.

"Health Care Prepayment Plan (HCPP)" means an organization that:

(1) Is responsible for the organization, financing and delivery of covered Part B services to a defined population on a prepayment basis;

(2) Elects to be reimbursed on a reasonable cost basis; and

(3) Meets the qualifying conditions, including the agreement with the Administrator, specified in Subpart B of this part.

"Health maintenance organization" means a health care delivery organization that furnishes services covered under both Part A and Part B of Medicare in accordance with section 1876 of the Act (42 U.S.C. 1395mm) and Part 405, Subpart T of this subchapter.

"Individual practice association" means a partnership, corporation, association, or other legal entity that:

(1) Furnishes medical items and services primarily through physicians who practice in their individual offices and who are reimbursed in accordance with a compensation agreement established by the association; and

(2) Meets the requirements of § 418.29(e).

"Medical group" means a partnership, corporation, association, or other legal entity that furnishes medical items and services primarily through physicians who:

(1) Generally share facilities and substantial portions of major equipment and professional, technical, and administrative staff;

(2) Are usually reimbursed on other than a fee-for-service basis; and

(3) Furnish their services in the manner specified in § 418.29(d).

"Medical and other health services" means items and services covered under section 1861(s) of the Act (see Subpart B of Part 405 of this subchapter).

"Medicare enrollee" means an enrollee of an HCPP who is a beneficiary under Part B of Medicare.

"Part A" means the Hospital Insurance Program for the Aged and Disabled under title XVIII of the Act.

"Part B" means the Supplementary Medical Insurance Program for the Aged and Disabled under title XVIII of the Act.

"Provider of services" means an entity as defined in section 1861(u) of the Act (42 U.S.C. 1395x(u) and in § 405.605 of Part 405 of this subchapter.

"Reporting period" means the period specified by HCFA for which an HCPP must report its costs and utilization.

"Services furnished directly by the HCPP" means covered Part B services which the HCPP furnishes its enrollees directly through:

(1) Physicians and other health care personnel who are employees of the HCPP;

(2) A group of physicians, a medical center or other facility (other than a provider of services) that is related to the HCPP by common control or ownership; or

(3) A combination of 1 and 2 above.

"Services and supplies (including drugs and biologicals which cannot be self-administered) furnished by the HCPP that are incident to a physician's professional service" means services and supplies that are:

(1) Generally furnished in physicians' offices or clinics;

(2) Furnished either without charge or included in the HCPP's costs;

(3) Furnished as an incidental, but integral part of a physician's professional service;

(4) In the case of a service furnished by a non-physician, the service must be furnished under the direct, personal supervision of a physician, i.e., a physician is present in the HCPP and immediately available to provide assistance or direction; and

(5) Furnished by a member of the health care staff who is an employee of the HCPP or a physician or group of physicians that furnishes services under arrangements with the HCPP.

"Services furnished under arrangements by the HCPP" means covered Part B services which the HCPP furnishes to its enrollees under arrangements with:

(1) A group of physicians organized on a group-practice or individual-practice basis; or

(2) Physicians and other Health care personnel who are not employees of the HCPP.

Under the terms of an arrangement, the receipt of Medicare payment by the HCPP, with respect to services for which the Medicare enrollee is entitled to have payment made under this part, discharges the liability of the enrollee, or any other person to pay for the services.

Subpart B—Qualifying Conditions

§ 418.21 Purpose and basic requirement.

(a) The purpose of these qualifying conditions is to assure that an organization has the ability to provide a specified range of medical services on a prepayment basis efficiently, effectively and economically to an enrollee population. Generally, each qualifying condition is explained by a series of standards. By applying the standards, HCFA can determine the extent and degree to which an organization is complying with each condition indicated.

(b) To qualify or continue as an HCPP under Medicare, an organization or HCPP must be in compliance with all of the conditions and applicable standards set forth in §§ 418.23 through 418.33.

Therefore, when the term "HCPP" appears in a condition or standard, it applies as well to "organizations" not yet participating as HCPPs, unless the context indicates otherwise.

§ 418.23 Agreement with the administrator.

(a) *General requirement.* In order to participate and receive payment as an HCPP under the Medicare program, an organization must enter into written agreement with the Administrator as an HCPP. This agreement shall include a provision that the HCPP agrees not to charge its Medicare enrollees for covered Part B services amounts that exceed their deductible and coinsurance.

(b) *Filing of agreement.* An interested organization must:

(1) Request two copies of an agreement from HCFA;

(2) Submit any information on its qualifications requested by HCFA; and

(3) Submit both copies of the agreement signed by an authorized representative to the Administrator.

(c) *Acceptance of agreement by the Administrator.* The Administrator will return to the HCPP one copy of the agreement with a notice of acceptance specifying the effective date, if the Administrator:

(1) Determines that it would be consistent with efficient and effective program administration to do so;

(2) Determines, on the basis of evidence relating to the qualifications of the organization, that it meets the requirements of this part and other applicable HCFA regulations. The evidence may include that obtained onsite, if an onsite evaluation is found necessary by the Administrator and agreed to by the organization.

(d) *Content and terms of the agreement.* Under the agreement, the HCPP agrees to the following:

(1) *Maintaining compliance with conditions.* Agrees to maintain compliance with the requirements set forth in this part and to report promptly to HCFA any failure to do so.

(2) *Allowable charges.* Agrees not to charge the Medicare enrollee, a beneficiary, or any other person for items and services for which such individual is entitled to have payment made under the provisions of this part (or for which the individual would have been entitled if the HCPP complied with the applicable procedural and other requirements set forth in this part) except for any deductible or coinsurance amounts for which the individual is liable.

(3) *Required refunds.*

(i) The HCPP agrees to refund as promptly as possible any money incorrectly collected as charges, premiums, or otherwise, from such individuals or from someone on their behalf.

(ii) "Money incorrectly collected" means charges collected in excess of the amount for which the individual was liable under § 418.23(a) and § 418.23(d). It includes amounts collected at a time when the individual was believed not to be entitled to Medicare benefits but:

(A) The individual is later determined to have been entitled to Medicare benefits; and

(B) The individual was entitled or enrolled with the HCPP during the term of the HCPP's agreement with the Administrator.

(4) *Additional provisions.*

(i) The HCPP agrees not to impose any limitations on the acceptance of Medicare enrollees or beneficiaries for care and treatment that it does not impose on all other individuals.

(ii) The agreement may contain any additional provisions that the Administrator finds necessary or desirable for efficient and effective program administration.

(e) *Duration of agreement.* Except for the term of the initial agreement, the agreement shall be for a term of one year and may be renewed annually by mutual consent. The term of the initial agreement shall be set by the Administrator.

(f) *Appeal rights.* If the Administrator refuses to enter into or renew an agreement, the organization is entitled to an administrative hearing conducted by a hearing officer designated by the Administrator, if it files a written request for a hearing within 30 days of the date of the Administrator's written notice of refusal. The parties to the hearing shall be the organization and a representative of the Administrator. The decision of the hearing officer shall be final and binding upon the parties. The hearing officer shall conduct the hearing so as to assure due process to the parties and shall be guided by the provisions of 42 CFR 405.2081–405.2087, 405.2089–405.2090 relating to similar hearing for HMOs.

§ 418.24 Termination or nonrenewal of agreements.

(a) *Termination or nonrenewal by HCPP.*

(1) *Notice to Administrator.* If the HCPP does not wish to renew its agreement at the end of the term, it shall give written notice thereof to the Administrator at least 90 days before the end of the term of the agreement. If the HCPP wishes to terminate its agreement before the end of the term, it shall file with the Administrator a written notice stating the intended effective date of termination.

(2) *Action by the Administrator.*

(i) The Administrator may approve the effective termination date proposed by the HCPP, or set a different date no later than 6 months after the proposed effective termination date in the HCPP's notice.

(ii) The Administrator may approve a date which is less than 6 months after the HCPP's proposed effective termination date if he determines that termination on that date would not:

(A) Unduly disrupt the furnishing of services to the community serviced by the HCPP; or

(B) Otherwise interfere with the efficient administration of the Medicare program.

(3) *Cessation of business.* If an HCPP ceases to furnish services to the community, that shall be deemed to be a voluntary termination of the agreement by the HCPP effective on the last day of business.

(b) *Termination or nonrenewal by the Administrator.*

(1) *Cause for terminotion or nonrenewal.* The Administrator may terminate or not renew an agreement if he determines that the HCPP:

(i) No longer meets the requirements under this part; or

(ii) Is not in substantial compliance with the provisions of the agreement, the requirements of this part, any other applicable HCFA regulations, or any applicable provisions of title XVIII of the Act; or

(iii) Has undergone a change of ownership.

(2) *Notice of termination or nonrenewal.* The Administrator will give notice of termination or nonrenewal to the HCPP at least 90 days before the effective date stated in the notice.

(3) *Appeal by the HCPP.* An HCPP may appeal the termination or nonrenewal of its agreement in accordance with the provisions set forth in § 418.23(f). The appeal does not postpone the effective date of termination.

(c) *Effect of termination or nonrenewal.* Payment will not be available for services furnished by the HCPP on or after the effective date of termination or nonrenewal.

(d) *Notice to the public.* Prompt notice of the date and effect of termination or nonrenewal shall be given to the public, through publication in local newspapers:

(1) By the HCPP, if it has initiated the nonrenewal or termination, and as to a termination, the HCPP shall not give notice until after the Administrator has approved or set a termination date;

(2) By the Administrator, when he has initiated termination or nonrenewal of the agreement.

(e) *Conditions for reinstatement after termination or nonrenewal of agreement by the Administrator.* When an agreement with an HCPP is terminated or is not renewed by the Administrator, the HCPP may not file another agreement to furnish services under the Medicare program unless the Administrator:

(1) Finds that the cause for the termination or nonrenewal of the prior agreement has been removed; and

(2) Is assured that the cause for the termination or nonrenewal will not recur.

§ 418.25 Operating experience.

Condition. The HCPP must have been providing, and as an HCPP continue to provide, the range of covered Part B services specified in § 418.27 to a sufficient number of individuals, enrolled on a prepayment basis, to assure HCFA that there is a reasonable basis for determining a rate of reimbursement in accordance with this subpart.

§ 418.27 Range of services.

Condition. The HCPP must at a minimum furnish to its Medicare enrollees, directly or under arrangements with others, the following medical and other health services:

(1) Physicians' services; and

(2) Diagnostic X-ray tests, laboratory, and other diagnostic tests.

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§ 418.29 Provision of services.

(a) *Condition.* The HCPP must provide covered Part B services to its Medicare enrollees through institutions, entities, and persons that have qualified under the applicable requirements of title XVIII of the Social Security Act (see paragraph (b) of this section), and applicable State or local regulatory authorities.

(b) *Standard: Conformance with Medicare conditions of participation and conditions for coverage.*

(1) A provider of services that furnishes items or services to the HCPP's Medicare enrollees must have qualified under the applicable conditions of participation specified in Subparts J, K, L, and Q of part 405 of this subchapter.

(2) Independent laboratories, portable x-ray suppliers, or end-stage renal disease facilities that provide services to the HCPP must have qualified under the applicable conditions for coverage specified in Subparts M, N and U of part 405 of this subchapter.

(c) *Standard: Organization of physician services.*

(1) Except for physicians' services that are unusual or infrequently used, the physicians' services furnished by an HCPP to its Medicare enrollees must be furnished through:

(i) Its employees of the HCPP;

(ii) A medical group (subject to provisions of paragraph (d) of this section);

(iii) An individual practice association (subject to the provisions of paragraph (e) of this section);

(iv) Physicians who have contracted with the HCPP for the provision of their services (subject to the provisions of paragraph (c)(2) of this section);

(v) Any combination of staff, medical group, individual practice association, or physicians specified under paragraph (c)(1)(i) through (iv) of this section who have contracts with the HCPP; or

(vi) An entity that, during the organization's first 3 years as an HCPP in the Medicare program, would be a medical group but for the requirements for professional activity in paragraph (d)(3) of this section. After this 3-year period, these services may be provided by the entity only if HCFA determines that the principal professional activity of the entity's members (over 50 percent individually) is the coordinated practice of their profession, and:

(A) At least 20 percent of the physicians in the HCPP's service area are members of the entity;

(B) The HCPP has an insufficient number of enrollees to require the use of 35 percent of the entity's services; or

(C) The entity serves two or more HCPPs or HMOs that, in the aggregate, use at least 35 percent of the entity's services.

(2) After the organization's first 3 years as an HCPP in the Medcicare program, HCFA will not make reimbursement for costs incurred under contracts with physicians under paragraph (c)(1)(iv) of this section, if the amount projected to be paid under these contracts in a reporting period exceed:

(i) 15 percent, or

(ii) 30 percent, if the HCPP serves principally a rural area,

of the total amount projected to be paid by the HCPP to all physicians for the furnishing of physicians' service.

A waiver of this requirement may be granted by HCFA for good cause shown.

(d) *Standard: Requirements for a medical group.* A medical group that furnishes services to an HCPP must meet the following requirements:

(1) It must have a written services agreement with the HCPP to furnish services to the HCPP's enrollees;

(2) It must be composed of health professionals, a majority of whom are licensed to practice medicine or osteopathy, and of other health professionals (including dentists, optometrists, and podiatrists) that are considered necessary for the provision of health services for which the group is responsible; and

(3) Each of its members devotes at least 50 percent of his time to the practice of his profession, and the group devotes at least 35 percent of its total professional activity to the delivery of health services to enrollees of an HCPP or HMO;

(4) Its members must pool their income from practice as members of the group and distribute it among themselves according to a prearranged salary or drawing account or other similar plan unrelated to the provision of specific health services;

(5) Its members must share health and medical records and substantial portions of major equipment and the services of professional, technical, and administrative staff;

(6) Its members must share the services of such additional other health care professionals (e.g., paramedical, ancillary, and other non-physician personnel directly involved in the provision of health care) as are available and appropriate for the effective and efficient delivery of the services of the group; and

(7) it must have an arrangement whereby an enrollee's enrollment status is not known to the health professional who furnishes health services to the enrollee.

(e) *Standard: Requirements for an individual practice association.* An individual practice association that furnishes services to an HCPP must meet the following requirements:

(1) It must have a written services agreement with the HCPP to furnish services to the HCPP's enrollees; and

(2) It must deliver or arrange for the delivery of health services and have a written service agreement or agreements with health professionals, a majority of whom are licensed to practice medicine or osteopathy. The written service agreement must provide:

(i) That the health professionals will furnish their services in accordance with a compensation agreement established by the association; and

(ii) To the extent feasible, for the sharing by these health professionals of health, medical and other records, major equipment, and the services of professional, technical, and administrative staff.

(f) *Standard: Physician Direction.* The HCPP's health delivery system must assure that a physician provides medical direction of its health care activities, and consultation for and medical supervision of the health care professionals who are directly involved in the furnishing of health care. The HCPP must demonstrate that:

(1) A physician provides medical direction for the HCPP's health care activities and consultation for, and medical supervision of the health care staff;

(2) If a physician is not present during the times the clinic or office is open to furnish medical services, a physician is available through direct telecommunication for consultation, and for advice and assistance with medical emergencies; and

(3) Each patient is under the care of an HCPP physician or a physician who furnishes services under an arrangement with the HCPP.

(g) *Standard: Effective arrangements.* If covered Part B services are furnished by an HCPP to its enrollees under arrangements with physicians who are not employees of the HCPP, or suppliers of services that are not owned, operated or controlled by the HCPP, these arrangements must be an efficient, effective, and economical means of furnishing services.

(h) *Standard: Conformance with State and local requirements.* An HCPP and its officers must meet all requirements that are imposed by State and local regulatory or licensing authority.

§ 418.31 Access to services.

(a) *Condition:* An HCPP must assure that its services are accessible to its enrollees and there is continuity of care.

(b) *Standard: Availability and accessibility of services.* An HCPP must assure that covered Part B services, as well as other services its enrollees are entitled to receive, are available promptly and accessible within generally accepted community norms and in sufficient quantity for effective care.

(c) *Standard: Continuity of care.* An HCPP must furnish health care in a manner that assures continuity of care, including, but not limited to:

(1) Provision for a health care professional who is primarily responsible for coordinating each enrollee's overall health care; and

(2) Development of a health and medical record-keeping system through which all pertinent information relating to the health care of the enrollee is accumulated and is readily available to appropriate professionals.

(3) Maintaining communications with health resources to which it has referred enrollees to assure that it is kept informed about the services provided to them.

§ 418.33 Organization and operation.

(a) *Condition.* The HCPP must have a fiscally sound operation and must meet the standards specified in this section.

(b) *Standard: Solvency.* The HCPP must have a fiscally sound operation that demonstrates:

(1) A positive cash flow, including provisions for retirement of existing and proposed indebtedness;

(2) The ability to establish reserves, in compliance with applicable State laws pertaining to the fiscal responsibility of those reserves;

(3) Adequate provision has been made against the risk of insolvency that allows for:

(i) Continuation of benefits for the duration of the contract period for which payment has been made; and

(ii) Continuation of benefits to enrollees who are confined on the date of insolvency in an inpatient facility, until their discharge; and

(4) That the organization has obtained and maintains in force a fidelity bond or bonds covering every officer and employee entrusted with the handling of its funds. The amount of the bond may be fixed by the organization's board of directors or other policy-making body, but the amount may not be less than $100,000.

(c) *Standard: Re-enrollment.* The HCPP may not expel or refuse to re-enroll any Medicare enrollee because of his health status or health care needs.

(d) *Standard: Grievances.* The HCPP must have a grievance system that provides fair and equitable procedures for hearing and resolving grievances between the HCPP (including the staff of the HCPP, a medical group or an individual practice association) and its enrollees that, at a minimum:

(1) Facilitates the submission of grievances, including procedures for transmitting them in a timely manner to appropriate decision-making levels within the HCPP that have authority to take corrective action;

(2) Provides for a full investigation of the grievance and assures that appropriate action is taken promptly in every case; and

(3) Provides for timely notification to the Medicare enrollee (or his representative) as to what action is being taken.

(e) *Standard: Statistical and other information systems.*

(1) The HCPP must have effective procedures to develop, compile, and evaluate statistics and other information relating to:

(i) The cost of its operations;

(ii) The patterns of utilization of its services;

(iii) The availability, accessibility, and quality of its services;

(iv) To the extent practical, developments in the health status of its enrollees; and

(v) Other matters as HCFA may require.

(2) The HCPP must report the information specified in paragraph (e)(1) of this section, at the time and in the manner specified by HCFA, to HCFA, its enrollees, and the general public.

(f) *Standard: Confidentiality.* The HCPP must establish adequate procedures to insure the confidentiality of its enrollees' health and medical records and of the physician-patient relationship but shall not rely on such procedures to deny HCFA information needed to make proper reimbursement or otherwise for the efficient and effective administration of its program responsibilities.

Subpart C—Reimbursement

§ 418.41 General principles.

(a) *Reimbursement on a reasonable cost basis.*

(1) HCFA will pay an HCPP on the basis of the reasonable cost the HCPP incurs in furnishing covered Part B services to its Medicare enrollees, after taking into consideration the enrollees' deductibles, coinsurance and other applicable limitations under Part B. Reasonable cost is defined in section 1861(v)(1)(A) of the Act and Subpart D of Part 405 of this subchapter. The costs incurred by the HCPP in furnishing covered Part B services to its Medicare enrollees are reimbursable if proper and necessary, reasonable in amount, and appropriately apportioned among the HCPP's Medicare enrollees, other enrollees, and non-enrolled patients. In order to be considered reasonable, actual costs of the HCPP may not exceed those a prudent and cost-conscious buyer would incur in furnishing care.

(b) *Covered services not reimbursed under this subpart.*

(1) Services reimbursed under Part A are not reimbursable to an HCPP. HCFA will make payment for these services directly to the hospital, or other provider of services, on a reasonable cost basis through the provider's Medicare fiscal intermediary (for more details, see subpart D of Part 405 of this chapter).

(2) Covered Part B services furnished by a provider of services to an HCPP's Medicare enrollees are not payable to the HCPP. HCFA will make payment for these services to the provider on behalf of the Medicare enrollee through the provider's Medicare fiscal intermediary. This requirement does not affect Medicare payment to the HCPP for physicians' services furnished to its Medicare enrollees for which the physicians are compensated by the HCPP.

(3) HCFA will make payment to an HCPP for covered Part B services furnished by the HCPP to a Medicare beneficiary who is not enrolled in the HCPP if the beneficiary assigns his rights to payment in accordance with § 405.1675 of this subchapter. Payment will be made on a reasonable charge basis through the HCPP's Medicare carrier.

(c) *Interim payments.* HCFA will pay an HCPP a monthly interim per capita rate of payment in accordance with § 418.49 of this subpart. The interim payment will be subject to retroactive adjustment at the end of each reporting period as specified in § 418.51.

(d) *Deductions from reasonable cost.* In determining the amount due an HCPP for covered Part B services furnished its Medicare enrollees, HCFA will deduct from the reasonable cost actually incurred by the HCPP an amount equal to the actuarial value of the deductible and coinsurance amount that would otherwise be applicable to those services if the Medicare enrollees who received the services had not been enrolled in the HCPP.

(e) *Deductible and Coinsurance Payments.* The requirements for

deductible and coinsurance shall be satisfied by payment to the HCPP by the Medicare enrollee or by someone on his behalf of equivalent amounts that do not exceed the actuarial value of the deductible and coinsurance for which its Medicare enrollees otherwise would have been liable had they not enrolled in the HCPP. The payment of such amounts may be made as a premium, membership fee, charge per unit, or similar charge (or as a portion thereof if such a charge represents prepayment for non-covered services).

§ 418.43 Allowable costs.

(a) *General principle.* Allowable costs are those direct and indirect costs incurred by an HCPP which are proper and necessary for the efficient delivery of covered Part B services. Allowable costs include, subject to the conditions and limitations of this part, those costs related to furnishing services to enrollees, as well as costs of enrollment, marketing, membership, and similar costs that are proper and necessary to the HCPP's operations.

(b) *Provider cost reimbursement principles applicable to HCPP's.*

The allowability of an HCPP's costs in furnishing covered Part B services to its Medicare enrollees is generally determined according to the principles of Medicare reimbursement for provider costs (see Subpart D of Part 405 of this chapter). These cost principles include (but are not limited to) the following:

(1) *Depreciation.* An appropriate allowance for depreciation on buildings and equipment is an allowable cost, in accordance with §§ 405.415, 405.417, and 405.418.

(2) *Interest expense.* Necessary and proper interest on both current and capital indebtedness is an allowable cost, in accordance with § 405.419.

(3) *Bad debts.* Bad debts are deductions from revenue and may not be included in allowable costs except as follows:

(i) If an HCPP has made a reasonable effort to collect them, bad debts attributable to deductible and coinsurance amounts for services furnished under this part for which a Medicare enrollee is liable in a reporting period are reimbursable under this part, subject to the conditions in § 405.420.

(ii) If these deductible and coinsurance amounts are paid, in full or in part, by a Medicare enrollee or someone on his behalf through a monthly premium or other periodic amount, the amount of allowable bad debts for a Medicare enrollee for a reporting period is limited to an amount which does not exceed three times the monthly rate for the actuarial value of the deductible and coinsurance amounts.

(4) *Charity and courtesy allowances.* Charity and courtesy allowances are deductions from revenue. They may not be included in allowable costs, in accordance with § 405.420.

(5) *Cost of educational activities.* An appropriate part of the net cost of approved educational activities engaged in by an HCPP is an allowable cost, in accordance with § 405.421.

(6) *Research costs.* Costs incurred for research purposes, over and above patient care, are not allowable costs in accordance with § 405.422.

(7) *Grants, gifts, and income from endowments.* Grants, gifts, and income from endowments are treated in accordance with § 405.423.

(8) *Value of services of nonpaid workers.* The value of services of nonpaid workers of an HCPP is not an allowable cost, except as provided in § 405.424.

(9) *Purchase discounts and allowances and refunds of expenses.* Discounts and allowances that an HCPP receives on purchases of goods and services and refunds of previous expense payments must be deducted from the costs to which they relate, in accordance with § 405.425.

(10) *Compensation of owners.* A reasonable allowance of compensation for services of owners is an allowable cost, if the services are actually performed and are necessary as specified in § 405.426.

(11) *Cost to related organizations.*

(i) Except as provided in paragraph (b)(11)(ii), costs applicable to services, facilities, and supplies furnished to an HCPP by an organization related to the HCPP by common ownership or control must be included in the allowable costs of the HCPP at the cost to the related organization, in accordance with § 405.427. These costs may not exceed the price of comparable services, facilities, or supplies that would be paid by a prudent buyer purchasing elsewhere.

(ii) For purposes of this part, a medical group, or other facility or supplier, is not considered a related organization solely because of a risk-sharing or incentive agreement with an HCPP for reimbursement or compensation for services furnished the HCPP's enrollees, or solely because substantially all services furnished by the medical group or other facility or supplier are furnished to enrollees of the HCPP. However, if one of the organizations clearly exercises significant management or ownership influence or control over the other, or has the power to do so, the HCPP and the organization shall be considered to be related.

(12) *Medicare limitation on reimbursement.* Section 405.455, which limits payments to the lesser of the reasonable cost or the customary charges for covered services, does not apply with respect to covered Part B services furnished by an HCPP to its Medicare enrollees.

(c) *Enrollment and marketing costs.*

(1) Necessary and proper enrollment and marketing costs incurred by an HCPP in offering covered Part B services to potential enrollees are allowable in accordance with this part. These costs include selling, advertising, promotional, and other marketing costs and may not exceed an amount that would be incurred under prudent and cost-conscious management.

(2) In determining whether enrollment and marketing costs are reasonable in amount, HCFA shall take into account the relatively higher costs that the HCPP may incur in initially offering its plan to Medicare beneficiaries.

(d) *Membership costs.*

Membership costs that are incurred in maintaining and servicing contracts for prepayment enrollees are allowable costs. These costs include, but are not limited to, reasonable costs incurred in connection with maintaining statistical, financial, and other data on enrollees.

(e) *Cost of physicians' services furnished directly by an HCPP.*

(1) *Principle.* The cost incurred by an HCPP for the compensation of physicians furnishing covered Part B services, who are employees or partners of the HCPP, or who are members of a group of physicians related to the HCPP by common ownership or control as determined under paragraph (b)(11) of this section, is an allowable cost to the extent it is reasonable. Reasonableness of compensation is based on compensation paid similar physicians furnishing similar services in a comparable setting. The portion of compensation cost that exceeds what is normally incurred for similar services is not an allowable cost.

(2) *Application.* Compensation for the direct patient care services of physicians (e.g., salaries, wages, incentive payments, fringe benefits, etc.) shall be distinguished from payments to physicians for administrative services (e.g., expenses attributable to facilities, equipment, support personnel, supplies, etc.) in determining whether compensation is allowable. Physicians compensation may take various forms, but it is intended that the aggregate compensation allowable be reasonable in relation to the services personally furnished. Reasonableness of compensation is determined by comparison with compensation paid for comparable services and responsibilities.

(f) *Cost of physicians' services or other supplier services under arrangements.*

(1) Subject to the limitations described in paragraphs (f) (2), (3) and (4) of this section, the amount paid by an HCPP to a physician or physician group (organized as a medical group or as an individual practice association) or other supplier of services for covered Part B services furnished under arrangements is an allowable cost to the extent it is reasonable, as determined in paragraph (e) of this section.

(2) The amount paid by an HCPP for covered Part B services furnished under arrangements on a fee-for-service basis is an allowable cost to the extent it does not exceed the reasonable charges for the services as defined in subpart E of Part 405 of this subchapter.

(3) If an individual practice association has written agreements with its physicians that include acceptance by them of effective incentives (such as risk-sharing or other financial incentives) designed to avoid unnecessary or costly use of health services, then the amount paid by an HCPP for covered Part B services furnished under arrangements is an allowable cost to the extent it is reasonable, as determined under paragraph (e) of this section.

(4) If an individual practice association does not have written agreements with its physicians as specified in paragraph (f)(3) of this section, the amount paid by an HCPP for covered Part B services furnished under arrangements is an allowable cost to the extent it does not exceed the reasonable charges for the services as defined in subpart E of Part 405 of this subchapter.

(g) *Special Medicare program requirements.*

(1) The following costs that are incurred by an HCPP solely for purposes of the Medicare program and are unique to the Medicare program's HCPP provisions will be reimbursed in full by Medicare:

(i) the reasonable cost of reporting individual beneficiary enrollment accretion and deletion data; and

(ii) the reasonable cost of special data required from an HCPP by the Medicare program solely for program evaluation and planning purposes.

(2) These costs must be separately budgeted and approved in advance of the reporting period.

(3) The costs of acquiring and maintaining data which the HCPP is required to maintain and furnish HCFA under any other provision of this part will be apportioned in accordance with § 418.45. These costs include the normal administrative costs incurred by the HCPP in obtaining reimbursement from the Medicare program, including the cost of maintaining and reporting statistical, accounting, and actuarial data to determine the amount of reimbursement due and the cost of preparing cost reports.

§ 418.45 Cost apportionment.

(a) *General policy.* Total allowable direct and indirect costs of an HCPP shall be apportioned among Medicare enrollees of the HCPP, other enrollees, and any non-enrolled patients of the HCPP, as specified in this section and using methods approved by HCFA. (See § 418.43(g) for the reimbursement of costs incurred in meeting special Medicare program requirements.) The two basic objectives of this apportionment are that, to the extent reasonably possible:

(1) Non-Medicare enrollees or non-enrolled patients of the HCPP will not bear the costs of delivering care to Medicare enrollees of the HCPP; and

(2) The Medicare program will not bear the costs of delivering care to non-Medicare enrollees or non-enrolled patients of the HCPP.

(b) *Apportionment of covered Part B services furnished directly by an HCPP.* The total allowable direct and indirect costs of covered Part B services furnished directly by an HCPP shall be apportioned for each department on the basis of the ratio of the covered Part B services furnished to Medicare enrollees of the HCPP to total services furnished by the department to all enrollees of the HCPP and other patients. (For example, there would be separate apportionments for such departments as medical, laboratory and radiological services.) The sum of the apportioned costs for each department furnishing covered Part B services is the total share of the costs the Medicare program will bear.

(c) *Apportionment of covered Part B services furnished under arrangements.* The share of the cost of covered Part B services furnished under arrangements by an HCPP that the Medicare program bears shall be determined as follows, subject to the conditions and limitations set forth in paragraph (g) of this section:

(1) If the HCPP pays for the services on a basis other than charges, the amount the HCPP pays, to the extent it is reasonable, shall be apportioned for each department on the basis of a ratio of the covered Part B services furnished to the HCPP's Medicare enrollees to total services furnished to all the HCPP's enrollees and other patients covered by the payment.

(2) If apportionment on the basis specified in paragraph (c)(1) of this section results in the Medicare program bearing the costs of delivering care to individuals who ar not Medicare enrollees of the HCPP (i.e., because of the special nature of the terms of the HCPP's financial agreement with a group of physicians), the share that the Medicare program bears shall be determined on some other appropriate basis approved by HCFA.

(3) If the HCPP pays for covered Part B services on a charge basis, the share that the Medicare program bears shall be the charges paid by the HCPP under the terms of the agreement for these services if these charges do not exceed the reasonable charges for the services, as defined in Subpart E of Part 405 of this chapter. This limitation does not apply in the case of HCPP payments to a physician group organized on an individual practice basis that meets the requirements specified in §418.43(f)(3).

(d) *Apportionment of other services for which an HCPP assumes financial responsibility.* The share that the Medicare program bears for the cost of covered Part B services payable under this part, other than those furnished directly or under arrangements, shall be determined in accordance with paragraph (c) of this section, unless payment of a greater amount is approved by HCFA. For example, payment of the charges of a physician or other Part B supplier (rather than the reasonable charge for the service as defined in Subpart E of Part 405 of this chapter) may be justified if:

(1) The physician or other Part B supplier furnishes services to enrollees of the HCPP on an infrequent basis;

(2) These charges represent an insignificant amount of total reimbursement to the HCPP by the Medicare program; and

(3) These charges do not exceed the amounts charged by the physician or other Part B supplier to other patients for similar services.

(e) *Weighting for services of physicians and other health care personnel furnished directly or under arrangements.*

(1) *General policy.*

(i) If an HCPP meets the requirements set forth in paragraph (e)(2) of this section, it may adjust the statistics that are used to compute the apportionment of costs for the direct professional services of physicians and other health care personnel (i.e., salaries, wages, incentive payments, fringe benefits, etc.) to reflect differences in the time and complexity required to furnish covered

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Part B services to the HCPP's Medicare enrollees as opposed to other patients. This adjustment will be referred to as "weighting".

(ii) An HCPP may not weight costs related to equipment, medical records, supplies, and other costs not related to the direct professional services of physicians and other health care personnel.

(iii) An HCPP may use only one method of weighting for services.

(2) *Conditions for weighting of services.* An HCPP may weight services used to compute the apportionment of costs of covered Part B services furnished directly or under arrangements if:

(i) The weighting is approved in advance by HCFA;

(ii) The weighting is based on statistics or adequate data acceptable to HCFA;

(iii) The services furnished Medicare enrollees of the HCPP, other enrollees, and non-enrolled patients used in apportionment ratios are weighted on the same basis to assure an equitable apportionment of costs;

(iv) The weighting is applied only to services furnished to HCPP patients in the ambulatory health care setting (e.g., medical center or clinic) if the weighting system is based on a methodology, which relies primarily on data collected from services delivered to non-institutionalized patients exclusively;

(v) The payment limitations set forth in § 418.43(f)(1) are applied; and

(vi) Apportionment is on the basis of services, as specified in paragraphs (b) and (c)(1) of this section.

(f) *Methods of apportionment of administrative and general costs of an HCPP*

(1) An HCPP's enrollment and marketing costs (see section 418.43(c)), membership costs (see section 418.43(d)), and other administrative and general costs shall be apportioned on the basis of a ratio of the Medicare enrollment to the total HCPP enrollment if these costs:

(i) Benefit the total enrolled population of the HCPP; and

(ii) Are not directly associated with providing medicare care.

(2) General mangement and other administrative and general costs of an HCPP that bear a significant relationship to services furnished by the HCPP shall be included in the overall costs of the HCPP. These costs shall be apportioned on the basis of the percentage of the HCPP's total other costs that have been apportioned to the Medicare program, as set forth in this section.

(g) *Other methods of apportionment.*

(1) An HCPP may use a method of apportionment of costs other than the methods specified in this section if:

(i) The method results in a more accurate and equitable apportionment of allowable costs;

(ii) The method is justifiable from an administrative and cost standpoint;

(iii) The HCPP submits a written request to HCFA at least 90 days before the start of the reporting period for which the alternate method is to be used; and

(iv) HCFA approves the request.

(2) If an HCPP obtains HCFA's approval to use an alternate method of apportionment of costs under paragraph (g)(1) of this section, it may not revert to another method without first obtaining HCFA's approval as specified in paragraph (g)(1) of this section.

(3) For an initial reporting period, an HCPP that does not have the capability to collect the statistical and financial data needed to apportion allowable costs as required by this section may, after first obtaining the approval of HCFA, use another method for doing so. However, the HCPP must present a plan that satisfies HCFA that it will have this collection capability by the end of its second reporting period.

§ 418.47 Financial records, statistical data, and cost finding.

(a) *General principle.* In order for HCFA to make a proper determination of reimbursable costs to an HCPP, the HCPP must maintain financial and other records, in the form and detail specified by SCFA, on the covered Part B services it furnishes, either directly or under arrangements, to its Medicare enrollees. These records must:

(1) Contain accurate and sufficient detail on incurred costs, enrollment, and statistical data; and

(2) Follow standardized definitions, accounting, statistics, and reporting practices that are widely accepted in the health care industry, except where the provisions of this subpart require the use of specialized methods.

(b) *Accounting standards.* An HCPP must provide adequate cost and statistical data, based on its financial and statistical records, which are capable of verification by qualified autitors. The cost data must be based on an approved method of cost finding and on an accrual basis of accounting. Cost data from a governmental institution that operates on a cash basis of accounting will be acceptable; however, appropriate depreciation on capital assets will be allowable rather than the expenditure for the capital asset.

(c) *Departmental basis for reporting data.* An HCPP must report by departments (i.e., medical care, laboratory, X-ray) the statistical and financial data for covered Part B services it furnishes directly unless it receives approval from DCFA to use an alternate method as provided in paragraph (d) of this section. It must furnish statistics that indicate the frequency and type of service provided, in the form and detail prescribed by HCFA. Costs allocable to more than one department, such as medical records, must be distributed to each such department in proportion to the benefits received by the department. Other general and administrative costs that bear a significant relationship to the services furnished by the HCPP, that cannot be assigned to a specific department, must be allocated on the basis of costs already distributed or allocated to the department.

(d) *Other methods of allocating costs.*

(1) An HCPP may use a method of allocating costs other than by department if:

(i) The method results in a more accurate and equitable allocation of allowable costs;

(ii) The method is justifiable from an administrative and cost standpoint;

(iii) The HCPP submits a written request to HCFA at least 90 days before the start of the reporting period for which the method of allocationg costs is to be used; and

(iv) HCFA approves the request.

(2) If an HCPP obtains HCFA's approval to use an alternate method of allocating costs under paragraph (d)(1) of this section, it may not revert to another method without first obtaining HCFA's approval as specified in paragraph (d)(1) of this section.

(e) *Data on services provided through arrangements.*

If covered Part B services are furnished by an HCPP under arrangements, the HCPP must furnish statistical, financial, and other information with respect to those services in the form and detail specified by HCFA.

(f) *Administrative cost data.*

(1) If an HCPP uses a separate department (or organization) to perform administrative services that benefit the HCPP's administration and the HCPP's major functional components, these costs must be allocated or distributed to each component in reasonable proportion to the benefits received by the component.

(i) Examples of administrative services are centralized purchasing, accounting, data processing, etc.

(ii) Examples of major functional components are a medical center and other activity owned by the HCPP.

(2) Other allocable administrative service costs that cannot otherwise be distributed shall be allocated on the basis of costs already distributed or allocated to the component (see § 418.45(f)(2).

(g) *Audit and inspection authority.* An HCPP must permit the Department of Health, Education, and Welfare and the Comptroller General to audit or inspect any books and records of the HCPP and of any related organization that pertain to the determination of amounts payable for covered Part B services furnished its Medicare enrollees.

§ 418.49 Interim per capita payments.

(a) *Principle of payment.* Prior to the first day of each month HCFA shall pay an HCPP an interim per capita rate of payment for each Medicare enrollee of the HCPP, for whom the Medicare program is responsible for making such a payment under this part.

(b) *Determination of rate.* The interim per capita rate of payment is equal to 80 percent of the estimated per capita reasonable cost (after subtracting an amount equal to the actuarial value of the HCPP's Medicare enrollees' deductible) of providing covered Part B services to the HCPP's Medicare enrollees. HCFA will determine the interim per capita rate annually on the basis of the HCPP's annual operating and enrollment forecast (see paragraph (c) of this section). This rate may be revised during the reporting period as explained in paragraph (e) of this section.

(c) *Budget and enrollment forecast.*

(1) An HCPP must submit to HCFA an annual operating budget and enrollment forecast, in the form and detail specified by HCFA, at least 30 days before the beginning of each reporting period. A reporting period shall be 12 consecutive months, except that the HCPP's initial reporting period for participating in Medicare may be as short as 6 months or as long as 18 months.

(2) The budget and enrollment forecast must be based upon information and statistical data that can be verified by HCFA. This information and data includes, but is not limited to, all ledgers, books, records, and original evidence of costs and statistical data that pertain to the determination of reasonable cost.

(3) If an HCPP does not submit the budget and enrollment forecast on a timely basis, HCFA may:

(i) Establish an interim per capita rate of payment on the basis of the best available data that HCFA is reasonably certain will not result in an overpayment being made; or

(ii) If there is not sufficient data on which to establish an interim per capita rate of payment, advise the HCPP that interim payments will not be made until the required reports are submitted.

(d) *Interim cost and enrollment report.* An HCPP must submit to HCFA an interim cost report and enrollment data applicable to the first 6-month period of the HCPP's reporting period in the form and detail specified by HCFA. The interim cost report shall be submitted not later than 45 days after the close of the first 6-month period of the HCPP's reporting period.

(e) *Adjustments of rate.* HCFA may adjust the interim per capita rate, to the extent necessary, in order to maintain the interim payments at the level of estimated current reasonable costs. HCFA shall make these adjustments on the basis of adequate data supplied by the HCPP in its interim estimated cost and enrollment report or on such other evidence that HCFA may have that the rate based on actual costs differs from the current rate. Typical examples where adjustments may be necessary are:

(1) A change in the number of Medicare enrollees in the HCPP that affects its per capita cost rate;

(2) A significant change in the costs estimated when the annual operating budget was prepared; or

(3) A significant change in the use of covered Part B services by the HCPP's Medicare enrollees.

(f) *Adjustments of interim payments.*

(1) If an HCPP does not furnish the reports and data required under this part on a timely basis in order for HCFA to determine proper interim payments, HCFA may, in order to assure that an overpayment will not be made, offset the interim payments. Interim payment shall remain offset until the HCPP submits the required reports and data and HCFA can make a reasonable estimate of per capita costs.

(2) HCFA may make lump-sum payments from time to time during a reporting period to adjust the total amounts paid during the reporting period to the level of incurred costs.

(3) If HCFA determines that an overpayment has been made to the HCPP, HCFA may offset the overpayment against all or part of the interim payments until the overpayment has been recovered.

§ 418.51 Final settlement.

(a) *General requirement.* HCFA and an HCPP must make a final settlement, and payment of amounts due either to the HCPP or to HCFA, following the submission and review of the HCPP's annual cost report and the supporting documents specified in paragraph (b) of this section.

(b) *Annual cost report as basis for final settlement.*

(1) *Form and due date.* An HCPP must submit to HCFA a cost report and supporting documents in the form and detail specified by HCFA, no later than 90 days following the close of a reporting period.

(2) *Contents.* The report must include:

(i) The HCPP's per capita incurred costs of providing covered Part B services to its Medicare enrollees during the reporting period, including any costs incurred by another organization related to the HCPP by common ownership or control;

(ii) The HCPP's methods of apportioning costs among its Medicare enrollees, enrollees who are not Medicare beneficiaries, and other non-enrollees, including Medicare beneficiaries receiving health care services on a fee-for-service or other basis; and

(iii) Information on enrollment and other data as specified by HCFA.

(3) *Extension of time to submit cost report.* HCFA may grant an HCPP an extension of time to submit a cost report for good cause shown.

(4) *Failure to report required financial information.* If an HCPP does not submit the required cost report and supporting documents within the time specified in paragraph (b)(1) of this section, and has not requested and received an extension of time for good cause shown, HCFA may:

(i) regard the failure to report this information as evidence of likely overpayment and reduce or suspend interim payments to the HCPP; and

(ii) Determine that amounts previously paid are overpayments, and make appropriate recovery.

(c) *Determination of final settlement.* Following the HCPP's submission of the reports specified in paragraph (b) of this section in acceptable form, HCFA will make a determination of the total reimbursement due the HCPP for the reporting period and the difference, if any, between this amount and the total interim payments made to the HCPP. HCFA will send to the HCPP a notice of the amount of reimbursement by the Medicare program. This notice will:

(1) Explain HCFA's determination of total reimbursement due the HCPP for the reporting period; and

(2) Inform the HCPP of its right to have the determination reviewed at a hearing as provided in Part 405, Subpart R of this subchapter.

(d) *Payment of amounts due.*

(1) Within 30 days of HCFA's determination, HCFA or the HCPP, as

appropriate, will make payment of any difference between the total amount due and the total interim payments made to the HCPP by HCFA.

(2) If the HCPP does not pay HCFA within 30 days of HCFA's determination of any amounts the HCPP owes HCFA, HCFA may offset further payments to the HCPP to recover, or to aid in the recovery of, any overpayment identified in its determination.

(3) Any offset of payments HCFA makes under paragraph (d)(2) of this section shall remain in effect even if the HCPP has requested a hearing on the determination under the provisions of Part 405, Subpart R.

(e) *Tentative settlement.*

(1) If a final settlement cannot be made within 90 days after the HCPP submits the report specified in paragraph (b) of this section, HCFA will make an interim settlement by estimating the amount payable to the HCPP.

(2) HCFA or the HCPP will make payment within 30 days of HCFA's determination under the tentative settlement of any estimated amounts due.

(3) The tentative settlement is subject to adjustment at the time of a final settlement.

(Secs. 1102, 1833 (a)(1)(A) and (e), 1861(v), and 1871 of the Socail Security Act (42 U.S.C. 1302, 1395 (a)(1)(A) and (e), 1395x(v) and 1395hh)

(Catalog of Federal Domestic Assistance Programs No. 13.774—Medicare—Supplementary Medical Insurance)

Dated: October 13, 1980.

Howard Newman,

Administrator, Health Care Financing Administration.

Approved: October 14, 1980.

Patricia Roberts Harris,

Secretary.

[FR Doc. 80-34041 Filed 10-30-80; 8:45 am]

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Friday
October 31, 1980

Part X

Department of Energy

Economic Regulatory Administration

Domestic Crude Oil Entitlements

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DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 211

[Docket No. ERA-R-80-36]

Domestic Crude Oil Entitlements

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed rulemaking and public hearings.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a proposed rulemaking and public hearings on amendments to the Mandatory Petroleum Allocation Regulations modifying the treatment of domestic crude oil under the entitlements program, 10 CFR 211.67, to allocate more equitably the benefits of access to price-controlled crude oil. The proposal would reduce post-entitlement cost differences between equivalent price-controlled and uncontrolled domestic crude oil caused by the changes in relative market values among all uncontrolled crudes since 1973. This would be accomplished by establishing separate entitlement obligations for refineries in PADDs I–IV and refineries in PADD V on each barrel of price-controlled crude oil (other than Alaska North Slope Crude Oil). These obligations would be equal to the difference between the average cost of uncontrolled domestic crude oil and the average cost of price-controlled crude oil in PADDs I–IV and PADD V.

We are also proposing two alternatives which would address the cost differentials between high and low sulfur crude oil in PADDs I–IV.

It is proposed that any final rule that is adopted would be effective with respect to refiners' receipts and runs-to-stills beginning January 1, 1981, reflected in the Entitlements Notice to be issued in March 1981.

DATES: Written comments must be received on or before December 30, 1980.

Hearing dates: San Francisco, California, November 18, 1980; Washington, D.C., December 3, 1980.

Requests to speak by 4:30 p.m. p.s.t. November 12, 1980, for the San Francisco hearing; by 4:30 p.m. e.s.t. November 25, 1980, for the Washington, D.C. hearing.

ADDRESSES: All comments and requests to speak at the Washington, D.C. hearing should be submitted to the Economic Regulatory Administration; Office of Public Hearing Management, Docket No. ERA–R–80–36, Department of Energy, Room B–210, 2000 M Street, N.W., Washington, D.C. 20461.

Requests to speak at the San Francisco hearing should be submitted to the U.S. Department of Energy, Region IX, Attn: Terry Osborn, 333 Market Street, San Francisco, California 94105.

Hearing locations: San Francisco hearing; Holiday Inn Fisherman's Wharf, Pacific South Room, second level, 1300 Columbus Avenue, San Francisco, California 94133; Washington, D.C. hearing; James Forrestal Building, 1000 Independence Avenue, S.W., Room GE–086 (Auditorium), Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT:

Cynthia Ford (Office of Public Hearings Management), Economic Regulatory Administration, Room B–210, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653–3971.

William L. Webb (Office of Public Information), Economic Regulatory Administration, Room B–110, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653–4055.

Daniel J. Thomas (Office of Petroleum Price Regulations), Economic Regulatory Administration, Room 7116, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653–3263.

Margaret Carroll (Office of Petroleum Allocation Regulations), Economic Regulatory Administration, Room 7202–G, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653–3254.

David A. Welsh (Office of Crude Oil Operations), Economic Regulatory Administration, Room 6128–Q, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653–3459.

William Funk or Peter Schaumberg (Office of General Counsel), Department of Energy, Room 6A–127, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–6736 or 252–6754.

SUPPLEMENTARY INFORMATION:

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- A. The Entitlements Program
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I. Background

A. The Entitlements Program

In 1974, the crude oil entitlements program was adopted by the Federal Energy Administration, a predecessor agency of the Department of Energy (DOE), to allocate the benefits of price-controlled domestic crude oil equitably among all sectors of the petroleum industry, and among all users. The entitlements program was designed to reduce the cost disparities among refiners caused by the crude oil price controls. Without the program refiners with access to domestic price-controlled crude oil would have enjoyed a significant advantage over refiners with access primarily to higher priced crude oil, principally imports.

Briefly stated, the Mechanics of the entitlements program in 10 CFR § 211.67 are as follows: Each month refiners report to DOE's Economic Regulatory Administration (ERA) with respect to their crude oil runs-to-stills, receipts of controlled and uncontrolled (*i.e.*, exempt from price controls) categories of crude oil (old oil, upper tier, exempt domestic crude oil, upper tier Alaska North Slope (ANS) oil and imported crude oil), and their actual weighted average acquisition costs for each such category. From this data, ERA determines and publishes a National Domestic Crude Oil Supply Ratio ("DOSR"), which is the ratio for the reported month of all refiners' receipts of price-controlled crude oil to all refiners' crude oil runs-to-stills, subject to certain adjustments. Each refiner is allocated a number of entitlements determined by that refiner's crude oil runs-to-stills multiplied by the DOSR, and is required to have entitlements for all the price-controlled crude oil that it received. By way of illustration, if the DOSR is .25 and a particular refiner received 100 barrels of crude oil that month, that refiner would be issued 25 entitlements. If, for example, the refiner actually received more than 25 barrels of old oil in that month, it would be required to purchase entitlements from a refiner that received less than the average. The price of an entitlement is determined by taking the difference between the weighted average cost per barrel of old crude oil and the weighted average cost of all uncontrolled crude oil (imported and domestic exempt crude oil) for all refiners.

In addition to the substantial increases in world crude oil price and the gradual decontrol of domestic crude oil over the past year, other changing price relationships have affected the entitlements program. These include an increase in low sulfur crude premiums, a widening of the range of imported crude oil prices not necessarily reflecting quality differentials, and an increase in the prices paid for exempt domestic crude oil.

Since the current entitlements program operates on a *weighted average cost* basis for both controlled and uncontrolled crudes, the post-entitlement cost of those uncontrolled crudes (whether domestic or imported) that vary significantly from the average cost will necessarily be substantially higher or lower than the post-entitlement cost of equal value and quality domestic price-controlled crudes. By way of illustration, if a refiner purchases exempt crude oil at a price $5 above the weighted average cost for exempt crude oil, the post-entitlement cost for that crude oil will be $5 above that of a refiner buying price-contraolled crude oil (since the net cost is raised to the average exempt crude cost by the addition of an entitlement obligation).

In recent months ERA has received numerous requests to remove cost disparities among crude oils so as to establish more equitable product pricing. In response, we recently adopted the Alaska North Slope Crude Oil Entitlements rule, 45 FR 46752 (July 10, 1980), to reduce differentials in refiners' crude acquistion costs by allocating the benefits of price-controlled Alaska North Slope (ANS) crude oil to all refiners on a more equitable basis. Many requests sought reduction of other domestic crude cost differences; others have requested that the cost differences among imported crude oils be reduced.

This proposed rulemaking is concerned with reducing cost differences between controlled and uncontrolled domestic crude oils that are caused by domestic crude oil price controls and not price relationships between uncontrolled domestic and foreign crude oil. Crude cost disparities between controlled and uncontrolled domestic crudes are caused by the mechanics of the entitlements program and DOE can properly correct these problems. However, disparities among uncontrolled crude costs are a function of the domestic and international marketplace and therefore, will not be addressed in this rulemaking.

B. The Domestic Crude Oil Cost Disparities

The existing entitlement program establishes entitlement obligations as the difference between the *weighted average cost* of each tier of price-controlled crude oil and the *weighted average cost* of exempt crude oils (both foreign and domestic). Recently, in PADDs I–IV, the sum of the actual price of old oil and the cost of an entitlement (or the actual price of upper tier crude oil plus the prescribed fraction of an entitlement) was several dollars less that the posted price for the same quality exempt domestic crude oil. Our data indicate that refiners with access to price-controlled crude oil enjoyed as much as a $6–8.00 per barrel post-entitlements advantage in January 1980. In June 1980, the differential had decreased to approximately $2–5.00 per barrel. The difference between exempt domestic and imported crude oil narrowed, reflecting a greater volume of available crude oil in the market, the softening of crude prices and to some extent changes in the calculation of the entitlement price (*i.e.*, removing ANS upper tier crude oil from the calculation of the average uncontrolled crude cost).

This post-entitlement crude cost differential stems directly from the fact that the entitlement price is derived from the *weighted average cost* of all uncontrolled crude oil (which includes imported crude oil, stripper, heavy, incremental tertiary, tertiary incentive, newly discovered, and other domestic crude oil exempted from controls under the phased decontrol program) which has been substantially less than the uncontrolled domestic crude postings in PADDs I–IV and higher than the uncontrolled domestic postings in PADD V. In particular, two categories of crude oil cause the average uncontrolled cost (and thereby the entitlement price) to be relatively low, exempt PADD V production and lower priced contract imports.

Substantial volumes of imported crude oil at contract prices that are markedly below the posted price for comparable quality crude oils (whether imported or domestic uncontrolled) cause a reduction in overall average uncontrolled cost. Similarly, most exempt crude oil in PADD V (except ANS) is sold at prices well below national weighted average prices because of its low gravity and high sulfur content. As compared to the weighted average costs in PADDs I–IV for exempt domestic crudes, prices in PADD V average about $10.00 per barrel less. By including costs of these crudes in the average uncontrolled price computation, the price of an entitlement is reduced.

Since the entitlement price is calculated using national weighted average uncontrolled crude oil costs, the average post-entitlement cost of controlled domestic crudes in PADDs I–IV will be lower than the *average* post-entitlement cost uncontrolled domestic crudes in PADDs I–IV. By way of illustration, if the average lower tier crude oil costs $7.00 per barrel and the entitlement price is $25.00, the post-entitlement cost (excluding any "runs credit" reduction) would be $32.00, yet the cost for a barrel of exempt crude oil of similar quality may have been as high as $39.00, creating a $7.00 advantage for the controlled crude oil. Conversely, in PADD V the post-entitlement cost for the controlled crude may have been higher than the cost of comparable quality exempt crudes by as much as $6.00.

This wide post-entitlement disparity in refiner acquisition costs between similar qualities of domestic crude (often from the same field) solely due to whether one crude is controlled and the other uncontrolled, appears to be inequitable. Therefore, we are proposing an adjustment to the entitlements program to reduce this post-entitlement cost disparity between controlled and uncontrolled crudes.

In PADDs I–IV, price-controlled crudes are selling for approximately the same price whether they have low or high sulfur content. In 1974, when the entitlements program was instituted, the low sulfur premium was only about 10 cents per barrel. Today, however, the sulfur differential of exempt domestic crudes is in the range of $2.00 per barrel. Three out of every four barrels of exempt domestic crude in PADDs I–IV, are low sulfur. Therefore, if, as a result of the changes proposed in this rulemaking, controlled crude costs in PADDs I–IV are increased to the level of the *weighted* average exempt domestic crude, average high sulfur price-controlled crude costs might be in excess of the costs for the comparable quality exempt crude. We therefore also are proposing to reduce the entitlement obligations on price-controlled high sulfur crudes in PADDs I–IV so as to equalize their average post-entitlement cost with the average cost of exempt high sulfur crudes in PADDs I–IV.

The situation in PADD V is essentially the reverse of that in PADDs I–IV. The weighted average post-entitlement cost of controlled crude oil in PADD V generally exceeds the average cost of uncontrolled crudes in PADD V. This is due to the fact that PADD V exempt crudes, a majority of which are heavy crudes of 20° API or less, are of significantly lower quality and therefore lower in value and price than those in PADDs I–IV. Notwithstanding the

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overall lower quality, PADD V price-controlled crudes incur the same entitlement obligation as the corresponding tier in PADDs I–IV, resulting in post-entitlement costs in excess of PADD V exempt crudes. To some extent this higher average cost may be justified, as it reflects the higher average quality of price-controlled crude oil in PADD V as compared to the uncontrolled crude oil in PADD V, which includes all crude oil of 20°API or less. This rulemaking proposes an adjustment to the entitlements program in PADD V to compensate for the unique features of that market as compared with PADDs I–IV.

In the alternative to the changes for PADDs SI–IV and PADD V described above, we are proposing changes to the entitlements program which would address only the sulfur differential described above for PADDs I–IV. In other words, the existing entitlements program would remain unchanged except for an adjustment which would reflect a $2.00 sulfur differential, which currently exists among prices of exempt high and low sulfur crudes, in the post-entitlement cost of controlled crudes in PADDs I–IV.

II. Rulemaking Objectives

By proposing amendments to the crude oil entitlements regulations we seek to achieve several objectives. Primarily, we hope to minimize the inequities in crude oil acquisition costs caused by the current regulatory scheme, which result in refiners of controlled crude oil in PADDs I–IV having proportionately lower costs, and refiners of controlled crude oil in PADD V having higher costs. The principal effect of this rule would be to narrow the ranges of crude costs within both PADDs I–IV and PADD V, and to improve competitive equity between refiners purchasing domestic controlled and domestic exempt crudes.

In addition, we are proposing to amend the entitlements regulations to adjust the entitlement obligations for high sulfur controlled crude oil to reflect the sulfur differential in PADDs I–IV.

DOE ultimately may adopt some or all of the modifications to the entitlements program proposed herein. Comments should address separately the proposals for PADDs I–IV and PADD V, and the sulfur differential. However, in view of gradual decontrol, recent reductions in exempt crude postings and the sulfur differential and the expiration of price controls in September 1981, no corrective action may be taken. Therefore, we specifically solicit comments as to whether the inequities in the current entitlements program require any changes at this time.

III. Proposed Changes

A. First Alternative Proposal

The regulation proposed herein would modify the method for calculating the number of barrels of deemed old oil included in a refiner's adjusted crude oil receipts, and thereby its entitlement obligations. In PADDs I–IV, the obligation would be icreased for receipts of controlled crude oil so that the post-entitlement cost for old oil and upper tier crude oil (excluding ANS upper tier crude oil) would be raised to the weighted average post-entitlement cost of domestic uncontrolled crude oil in PADDs I–IV (excluding ANS crude oil). After this initial adjustment, the entitlement obligation would be reduced for high sulfur controlled crude oil so as to bring the average post-entitlement cost of high sulfur controlled crude oil in line with average costs for high sulfur exempt domestic crudes in PADDs I–IV. In PADD V, the entitlement obligation for receipts of price-controlled crude oil would be reduced so that the post-entitlement cost for old oil and upper tier crude oil (excluding ANS upper tier crude oil) in PADD V would be lowered to the weighted average post-entitlement cost of domestic uncontrolled crude oil in PADD V.

1. PADDs I–IV

Under the existing regulations, each barrel of old oil is equal to one barrel of deemed old oil. Under this proposal, § 211.67(b)(2) would be revised to provide a deemed old oil ratio (DOOR) for old oil and a new method for calculating the DOOR for upper tier crude oil (exept ANS upper tier crude oil) included in a refiner's receipts in PADDs I–IV. The proposed change would raise the entitlement obligation for receipt of a barrel of old oil and thereby increase its cost.

Each barrel of old oil included in a refiner's adjusted crude oil receipts in that month at refineries in PADDs I–IV (which for purposes of this regulation would include Puerto Rico and the Virgin Islands) would constitute a fraction of a barrel of deemed old oil, though the fraction generally would be greater than one. The numerator of the fraction would be equal to the refiners' reported weighted average cost per barrel in PADDs I–IV of exempt domestic crude oil (which includes all domestic crude oil exempt from the provisions of Part 212 for that month, except ANS crude oil because of its unique transportation and quality factors), less the refiners' reported weighted average cost per barrel in PADDs I–IV of old oil, less a value (X), for the sulfur differential. The denominator of the fraction would be the entitlement price for that month.

Excluding the subtraction for the sulfur differential, discussed below, the principal difference between the proposed DOOR and the existing treatment for old oil would be to raise the average post-entitlement cost of old oil in PADDs I–IV to the average cost of exempt domestic crudes in PADDs I–IV.

By way of illustration, if the weighted average cost of old oil in PADDs I–IV is $7.00, the weighted average cost of uncontrolled crude is $34.00, the weighted average cost of exempt domestic crude in PADDDs I–IV is $36.00, and the entitlement price is $27.00, the effect of the proposed change would be as follows. Under existing § 211.67(b)(2), a barrel of old oil is equal to one barrel of deemed oil. Under the proposal, a DOOR would be established for old oil. The numerator would be equal to the average exempt domestic crude cost in PADDs I–IV ($36.00) less the average cost of old oil ($7.00). The denominator would be equal to the entitlement price ($27.00), with the result that a barrel of old oil is equal to 29/27ths of a barrel of deemed old oil. As a result of this increased obligation, the post-entitlement cost in this example for a barrel of controlled crude in PADDs I–IV would be raised $2.00 to the weighted average cost of exempt domestic crudes in PADDs I–IV.

The proposed change to § 211.67(b)(2) for receipts of upper tier crude oil in PADDs I–IV would be essentially the same as the change for old oil. Each barrel of upper tier crude oil (except ANS upper tier crude oil) included in a refiner's adjusted crude oil receipts in that month at refineries in PADDs I–IV would constitute the following fraction of a barrel of deemed old oil: the numerator would be equal to the refiners' reported weighted average cost per barrel in PADDs I–IV of exempt domestic crude oil (except ANS), less the refiners' reported weighted average cost per barrel in PADDs I–IV of upper tier crude oil (except ANS upper tier crude oil), and less a value, (X), for the sulfur differential; the denominator would equal the entitlement price for that month. As with old oil, the proposed DOOR for upper tier crude oil would be increased over the existing DOOR by the difference in that month between the weighted average cost of exempt domestic crude oil in PADDs I–IV and the weighted average cost of all uncontrolled crude oil, over the entitlement price.

The entitlements data for June 1980 used in the Draft Regulatory Analysis show that the cost differential between weighted average domestic exempt crude in PADDs I–IV (excluding ANS) and the average of all uncontrolled crudes was approximately $2.00. This would have been the increased obligation for a barrel of controlled crude oil had this proposed change been in effect in June. *See* the Draft Regulatory Analysis for a more complete explanation of the projected impact of this proposed rule on refiners' costs.

We are proposing to decrease the numerator of the proposed DOORs for both old oil and upper tier crude oil by a value, (X), to reflect the sulfur differential. Even though the increased entitlement obligations outlined above would roughly equalize price-controlled crudes with domestic exempt crudes in PADDs I–IV, price-controlled crude costs still would not reflect the cost differential for high and low sulfur content which currently exists among the domestic exempt crudes. At the time that the entitlements program first was instituted, there was approximately a 10 cent per barrel differential between high and low sulfur crudes. Thus the entitlements regulations provided for no quality distinction. Recently, however, the sulfur differential has been in the range of $2.00. As a result, refiners buying controlled high sulfur crude oil at effectively the same cost as low sulfur price-controlled crude are receiving oil worth about $2.00 less per barrel.

As noted earlier, the entitlements changes proposed above would raise the cost of price-controlled crude to the *weighted average* exempt domestic crude cost in PADDs I–IV. This average price is a composite of approximately three barrels of low sulfur crude for each barrel of high sulfur crude. Thus, if low sulfur exempt crude averages $38 per barrel, and high sulfur exempt crude averages $36 per barrel, the weighted average cost would be $37.50 and the proposed regulations would raise the cost of price-controlled crude to this level. As a result, price-controlled low sulfur crude still would be underpriced by $.50 versus the comparable exempt crude, and high sulfur price-controlled crude would exceed the exempt crude cost by $1.50.

We are proposing to compensate only for the high sulfur differential, since the average low sulfur exempt domestic crude cost in PADDs I–IV is relatively close to the average for both high and low sulfur exempt domestic crudes. Since our data is based on postings which may be higher than actual purchase prices, actual low sulfur exempt domestic crude costs may be somewhat lower than we project. Therefore, it is not clear that any adjustment is warranted to raise the cost of controlled low sulfur crudes. Conversely, it can be stated with certainty that exempt high sulfur crudes in PADDs I–IV cost substantially less on the average than the weighted average of both high and low sulfur exempt domestic crudes in those PADDs because of the three to one ratio of low to high sulfur production. As a result, if the cost of all price-controlled crudes in PADDs I–IV were raised by the proposed DOOR changes to the weighted average of both high and low sulfur exempt crudes in PADDs I–IV, the high sulfur controlled crudes would be overpriced as compared to the comparable quality exempt domestic crudes.

We therefore are proposing to reduce the entitlement obligation for high sulfur controlled crudes by subtracting a value, (X), from the numerator of the proposed DOORs for old oil and upper tier crude oil (except ANS upper tier crude oil) in PADDs I–IV. Our data show that there is now a definable price break of $2.00 per barrel at .6 percent sulfur and we propose to use this figure to delineate high and low sulfur crudes. For each barrel of old oil and upper tier crude oil (except ANS) included in a refiner's crude oil receipts in PADDs I–IV below .6 percent sulfur, (X) would be zero in the numerator of the DOOR for those barrels. Thus, no adjustment would be made for these low sulfur controlled crudes.

For each barrel of controlled crudes in PADDs I–IV included in a refiner's receipts which has a sulfur content of .6 percent or greater, we propose to set the value of (X) at $1.50. The $1.50 figure was derived above from the $2.00 difference between high and low sulfur exempt domestic crudes in PADDs I–IV. Because of the three to one volume ratio, high sulfur crudes average $1.50 below the composite average.

We specifically would like commenters to address the need for the sulfur adjustment, the proposed .6 percent sulfur breakpoint as well as the proposed $1.50 figure to be used in the DOOR calculation. Further, we solicit comment on any added reporting or other administrative burden that might result from this change.

2. PADD V

As was noted in an earlier section of the preamble, the situation in PADD V is essentially the reverse of that in PADDs I-IV. Exempt domestic crude oil in PADD V is low-priced because it generally is high in sulfur and low in gravity. As a result, when the weighted average cost in PADD V of old oil and upper tier crude oil (except ANS upper tier crude oil) are added to the cost of an entitlement or prescribed fraction of an entitlement, respectively, this net cost exceeds the weighted average cost of comparable quality exempt domestic crude oil in PADD V. We therefore are proposing to decrease the entitlement obligation for receipt of controlled crude oil in PADD V to narrow the cost differential between exempt domestic and controlled crudes in PADD V.

Under the proposal, § 211.67(b)(2) would be revised to provide a deemed old oil ratio for old oil and a new method for calculating the deemed old oil ratio for upper tier crude oil (except ANS upper tier crude oil) included in a refiner's crude oil receipts in PADD V. Under the existing regulations, each barrel of old oil is equal to one barrel of deemed old oil. The proposed change would establish a DOOR for old oil in PADD V, reducing the entitlement obligation for receipt of a barrel of old oil and thereby reducing its cost.

Each barrel of old oil included in a refiner's adjusted crude oil receipts in that month at refineries in PADD V (which for purposes of this regulation would include Guam) would constitute a fraction of a barrel of deemed old oil. The numerator of the fraction would be equal to the refiners' reported weighted average cost per barrel received at refineries in PADD V of exempt domestic crude oil (except ANS crude oil), less the refiners' reported weighted average cost per barrel received at refineries in PADD V of old oil. the denominator of the fraction would be the entitlement price for that month.

Since PADD V exempt domestic crudes are lower priced, the proposed DOOR would reduce the deemed old oil ratio to less than one for each barrel of old oil.

For example, if the weighted average cost of old oil in PADD V is $7.00, the weighted average cost of uncontrolled crude oil is $34.00, the weighted average cost of exempt domestic crude oil in PADD V is $24.00 and the entitlement price is $27.00, the effect of the proposed change would be as follows. The numerator of the fraction would be equal to the weighted average cost of exempt domestic crude in PADD V ($24.00) less the weighted average cost of old oil in PADD V ($7.00), which equals $17.00. The denominator would be the entitlement price ($27.00). Each barrel of old oil in PADD V would incur under this example a reduced entitlement obligation of 17/27ths of a barrel of deemed old oil. The 10/27ths

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reduction in the ratio reflects the $10.00 difference between average uncontrolled crude ($34.00) and PADD V exempt domestic crude ($24.00).

The proposed change to § 211.67(b)(2) for receipts of upper tier crude oil in PADD V would be essentially the same as that for old oil. Each barrel of upper tier crude oil (except ANS upper tier crude oil) included in a refiner's adjusted crude oil receipts in that month at refineries in PADD V would constitute the following fraction of a barrel of deemed old oil: the numerator would be equal to the refiners' reported weighted average cost per barrel received at refineries in PADD V of exempt domestic crude oil (except ANS crude oil), less the refiners' reported weighted average cost per barrel received at refineries in PADD V of upper tier crude oil (except ANS upper tier crude oil); the denominator would equal the entitlement price for that month.

As with old oil, the proposed DOOR for PADD V upper tier crude oil would be decreased from the existing DOOR by the difference in that month between the weighted average cost of all uncontrolled crude oil and the weighted average cost of exempt domestic crude oil in PADD V, over the entitlement price.

If the proposed changes for PADD V are adopted, the existing provisions of § 211.67(a)(4), which provide for a California adjustment, no longer would be in effect.

ANS upper tier crude oil is a uniquely priced tier of crude oil because of its high transportation costs and because it is marketed in both PADDs I–IV and PADD V. We therefore are not proposing a change to the existing DOOR for ANS upper tier crude oil in § 211.67(b)(2).

We ultimately may adopt the proposed changes for both PADDs I–IV and PADD V, or for one region and not the other. In the event that we adopt changes only for one region, the existing deemed old oil ratios in § 211.67(b)(2) would continue to be applicable to the region for which no change is made.

B. Second Alternative Proposal

As an alternative to the first proposal described above, we are proposing amendments to the entitlements regulations to reflect in the costs of controlled crudes in PADDs I–IV the sulfur differential which exists among the exempt domestic crudes in those PADDs. This alternative proposal would make no provision for amending the regulations to adjust for any other differential which may exist between controlled and exempt domestic crude oils.

A thorough discussion of the sulfur differential is included in the analysis of the first alternative proposal, part of which included a sulfur adjustment. In brief, there currently exists a $2.00 per barrel differential between high and low sulfur exempt domestic crudes in PADDs I–IV, while there is only a 10 cent per barrel sulfur differential among the controlled crudes. Since there is a three to one ratio of low to high sulfur crudes in PADDs I–IV, in order to properly reflect the sulfur differential which exists among exempt domestic crude oil, controlled low sulfur crude should be increased in cost by $.50 and controlled high sulfur crudes should be reduced in cost by $1.50.

In the first alternative, we proposed not to include the $.50 upward adjustment for the reasons explained therein. However, since in this second alternative there would be no other crude cost adjustment before the sulfur adjustment (controlled crude costs would not have been raised to the weighted average cost of exempt crudes in PADDs I–IV), we propose to include for PADDs I–IV both the $1.50 downward adjustment for high sulfur controlled crude and the $.50 upward adjustment for low sulfur controlled crude to reflect the full $2.00 per barrel sulfur differential which exists among exempt domestic crudes in PADDs I–IV.

Under this proposal, the number of barrels of deemed old oil included in a refiner's crude oil receipts each month pursuant to § 211.67(b)(2) would be adjusted to reflect the sulfur differential. The number of barrels of old oil would be increased by the number of barrels of old oil and upper tier crude oil (except ANS upper tier crude oil) between zero and .6 percent sulfur content included in its crude oil receipts in that month at refineries in PADDs I–IV, multiplied by a fraction. The numerator of the fraction would be $.50. The denominator would be the entitlement price for that month. The effect of this provision would be to increase the refiner's entitlement obligations and add $.50 to the refiner's cost of each barrel of low sulfur controlled crude oil in PADDs I–IV.

In addition, the number of barrels of deemed old oil would be decreased by the number of barrels of old oil and upper tier crude oil (except ANS upper tier crude oil) greater than .65 percent sulfur content included in a refiner's crude oil receipts in that month at refineries in PADDs I–IV, multiplied by a fraction. The numerator of the fraction would be $1.50 and the denominator would be the entitlement price for that month. Thus a refiner's entitlement obligation would be reduced by $1.50 for each barrel of controlled high sulfur crude oil included in its receipts in PADDs I–IV.

We are not proposing any adjustment for sulfur in PADD V under this option. The factors which justify including the differential in PADDs I–IV do not exist in PADD V, principally because of the high proportion of high sulfur crude oil in that market.

Commenters are requested to address their comments to both the merits of this option versus the first alternative, the proposed .6 percent sulfur breakpoint and the $1.50 and $0.50 sulfur adjustments. Further, we solicit comments on any added reporting or other administrative burden that might result from this change.

C. Changes to Reporting Requirements

The implementation of any of the previously described proposals would require additional information to be provided by refiners to the entitlements program (ERA–49, Refiners Monthly Report). We therefore have proposed new reporting requirements for § 211.66(h) which would provide the volume and cost information necessary to compute the weighted averages for old oil, upper tier crude oil and uncontrolled domestic crude oil separately for refineries in PADDs I–IV and refineries in PADD V. The information required under the proposed reporting requirements also would enable ERA to implement a sulfur adjustment for PADDs I–IV.

A "draft" ERA–49 form which incorporates all of the changes has been submitted to the Energy Information Administration for review and clearance and is attached as an appendix to this proposed rule. Adoption of all or some of these modifications will depend on the content of the final rule in this proceeding.

D. Effective Date

We are proposing to make any regulatory changes effective for crude oil receipts and runs-to-stills in January 1981, which would be reflected in the entitlements notice for March 1981. Given that the post-entitlement cost differentials between controlled crudes and exempt domestic crudes in PADDs I–IV have recently decreased, reflecting lower exempt postings, perhaps there may be no need to adopt any of the proposed amendments as early as January. Alternatively, it may be that as a result of changes in the world crude oil market the differentials may increase or be at an unacceptable level by the time of the public hearings or the close of the public comment period. We therefore solicit specific comments on whether the effective date of any final rule should be earlier or later than January 1, 1981.

IV. Procedural Requirements

A. Section 404 of the DOE Act

Pursuant to the requirements of Section 404(a) of the Department of Energy Organization Act (the DOE Act), we have referred this proposed rule to the Federal Energy Regulatory Commission for a determination whether the proposed rule would significantly affect any matter within the Commission's jurisdiction. The Commission will have until the close of the public comment period to make this determination.

B. Section 7 of the FEA Act and NEPA Considerations

Pursuant to section 7(a) of the Federal Energy Administration Act of 1974 (15 U.S.C. § 787 *et seq.*, Pub. L. No. 93–275, as amended), the requirements of which remain in effect under section 501(a) of the DOE Act, the delegate of the Secretary of Energy shall, before promulgating proposed rules, regulations, or policies affecting the quality of the environment, provide a period of not less than five working days during which the Administrator of the Environmental Protection Agency (EPA) may provide written comments concerning the impact of such rules, regulations, or policies on the quality of the environment. Such comments shall be published together with publication of notice of the proposed action.

A copy of the notice was sent to the EPA Administrator. The Administrator indicated that he does not foresee these actions having an unfavorable impact on the quality of the environment as related to the duties and responsibilities of the EPA.

The Assistant Secretary for Environment has determined, after consultation with the Office of the General Counsel, that these amendments would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA, 42 U.S.C. § 4321 *et seq.*). Therefore, neither an environmental assessment nor an environmental impact statement will be necessary.

C. Executive Order 12044

In accordance with Executive Order No. 12044, "Improving Government Regulations" (43 FR 12661, March 24, 1978) and DOE's implementing Order 2030.1, "Procedures for the Development and Analysis of Regulations, Standards, and Guidelines" (44 FR 1032, January 3, 1979), a Draft Regulatory Analysis has been prepared which examines the impacts of the proposals set forth above. A summary of the Draft Regulatory Analysis is attached as an appendix to this notice. The entire Draft Regulatory Analysis is available for public inspection at Room B–110 of the Economic Regulatory Administration, 2000 M Street, N.W., Washington, D.C. Copies may be obtained from ERA's Office of Public Information, Room B–110, 2000 M Street, N.W., Washington, D.C. 20461.

You are invited to provide comments on the Draft Regulatory Analysis at the same time you submit comments on the proposed rule. The comments will be taken into account before the preparation of a Final Regulatory Analysis or any final rule that may be adopted.

V. Written Comments and Public Hearings Procedure

A. Written Comments

You are invited to participate in this proceeding by submitting data, views or arguments with respect to the issues set forth in this notice of proposed rulemaking. All comments should be submitted by 4:30 p.m., e.s.t., 60 days from the date of publication of this notice in the **Federal Register**. Comments should be submitted to the appropriate address indicated in the "Addresses" section of this preamble and should be identified on the outside envelope and on documents submitted with the designation "Domestic Crude Oil Entitlements," Docket No. ERA–R–80–*36*. Ten copies should be submitted. All comments received by the ERA will be available for public inspection in the DOE Freedom of Information Office, Room 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., and in the ERA Office of Public Information, Room B–110, 2000 M Street, N.W. Washington, D.C. between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

Any information or data submitted which you consider to be confidential must be so identified and submitted in writing, one copy only. We reserve the right to determine the confidential status of the information or data and to treat it according to our determination.

B. Public Hearings

1. *Procedure for Request to Make Oral Presentation.* The time and place for the hearings are indicated in the "Dates" and "Addresses" sections of this preamble. If necessary to present all testimony, the hearings will resume at 9:30 a.m. on the next business day following the first day of each hearing.

You may make a written request for an opportunity to make an oral presentation at the hearings. The requests should contain a telephone number where you may be contacted during the day before the particular hearing at which you will speak.

If you are selected to be heard at the San Francisco, California hearing, we will notify you before 4:30 p.m., p.s.t. on November 14, 1980; if you are selected to be heard at the Washington hearing we will notify you before 4:30 p.m. e.s.t. on December 1, 1980. You are requested to submit 100 copies of your statement on the morning of the hearings at the hearing locations.

In the event that a hearing is cancelled, every effort will be made to publish advance notice in the **Federal Register**. Moreover, actual notice will be given to all persons scheduled to testify at the hearing. As it is not possible to give actual notice of cancellation or changes in the date or time of a hearing, persons planning to attend any hearing are advised to contact the public hearings division of the DOE office on the working day immediately preceding the date of the hearing to confirm that it will be held as scheduled.

2. *Conduct of the Hearings.* We reserve the right to select the persons to be heard at the hearings, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearings. The length of each presentation may be limited, based upon the number of persons requesting to be heard.

An ERA or other DOE official will be designated to preside at the hearings. These will not be judicial or evidentiary type hearings. Questions may be asked only by those conducting the hearings. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements have been made and will be subject to time limitations.

You may also submit questions to be asked by the presiding officer of any person making a statement at either hearing to the addresses indicated above for requests to speak, for the location concerned, before 4:30 p.m. on the day before the hearing. If you wish to ask a question at one of the hearings, you may submit the question, in writing, to the presiding officer. If the question is submitted at the hearing, the presiding officer will determine whether the question is relevant, and whether time

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limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearings will be announced by the presiding officer.

Transcripts of the hearings will be made. The entire record of the hearings, including the transcripts, will be retained by the ERA and made available for inspection in the DOE Freedom of Information Office, Room 1E-190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., and in the ERA Office of Public Information, Room B-110, 2000 M Street, N.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. You may purchase a copy of the transcripts from the reporter.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, 15 U.S.C. § 787 *et seq.*, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, 42 U.S.C. § 6201 *et seq.*, Pub. L. 94-163, as amended, Pub. L. 94-385, and Pub. L. 95-70; Department of Energy Organization Act, 42 U.S. C. § 7101 *et seq.*, Pub. L. 95-91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Part 211 of Chapter II, Title 10 of the Code of Federal Regulations, is proposed to be amended as set forth below.

Issued in Washington, D.C., October 24, 1980.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

§ 211.66 [Amended]

1. Section 211.66 is amended by revising paragraph (h) to read as follows:

* * * * *

(h) *Monthly report.* On or prior to the fifth day of each month, commencing with the month of January 1981, each refiner shall file with the ERA a report certifying the following information as to the second month prior to the month in which the report is filed;

(1) The actual or estimated volume (to the best of the knowledge of the certifying officer) of old oil included in the crude oil receipts of that refiner separately for refineries located in PADDs I–IV and for refineries located in PADD V.

(2) The actual or estimated volumes (to the best of the knowledge of the certifying officer) of (i) ANS upper tier crude oil and (ii) upper tier crude oil, respectively, included in the crude oil receipts of that refiner separately for refineries located in PADDs I–IV and for refineries located in PADD V.

(3) Any permitted or required adjustments to the actual or estimated volumes of old, upper tier and ANS upper tier crude oil included in the crude oil receipts of that refiner separately for refineries located in PADDs I–IV and for refineries in PADD V.

(4) The volume of crude oil runs-to-stills of that refiner separately for refineries located in PADDs I–IV and for refineries located in PADD V, taking into account, and specifying the amount of, the adjustments provided for in § 211.67(d).

(5) The weighted average cost for that refiner (including transportation cost to the refinery) of old oil, upper tier crude oil (excluding ANS upper tier crude oil), ANS upper tier crude oil, other ANS crude oil, stripper well crude oil (as defined in Part 212 of this chapter), incremental tertiary crude oil (as determined pursuant to § 212.78), tertiary incentive crude oil (as determined pursuant to § 212.78), Naval Petroleum Reserve crude oil, heavy crude oil (as determined pursuant to Executive Order No. 12153), other domestic crude oils the first sale of which is exempt from the provisions of Part 212 of this chapter for that month and imported crude oil included in that refiner's crude oil receipts, separately for refineries located in PADDs I–IV and refineries located in PADD V. For refiners required to file transfer pricing report forms under § 212.84 of this chapter, the weighted average cost of imported crude oil reported under this subparagraph should be derived from the landed costs set forth in such reports.

(6) The estimated volume (to the best of the knowledge of the certifying officer) of old and upper tier crude oil (excluding ANS upper tier crude oil) which has a sulphur content equal to or greater than .6 percent, included in the crude oil receipts of that refiner for refineries located PADDs I–IV and for refineries located in PADD V.

(7) Such other information as the ERA may request.

First Alternative Proposal

§ 211.67 [Amended]

2. Section 211.67 is amended by revising paragraph (b)(2) to read as follows:

(b) * * *

(2) The number of barrels of deemed old oil included in a refiner's adjusted crude oil receipts for purposes of the definition of national domestic crude oil supply ratio in § 211.62 of this subpart, paragraph (b)(1) of this section, and paragraph (c) of this section shall be calculated as follows: (i) Each barrel of old oil included in its adjusted crude oil receipts in that month at refineries in PADDs I, II, III and IV (which for purposes of this paragraph includes Puerto Rico and the Virgin Islands) shall constitute that fraction of a barrel of deemed old oil the numerator of which is equal to the refiners' reported weighted average cost per barrel received at refineries in PADDs I, II, III and IV of domestic crude oil (except ANS crude oil) the first sale of which is exempt from the provisions of Part 212 of this chapter for that month, less the refiners' reported weighted average cost per barrel received at refineries in PADDs I, II, III and IV of old oil, and less (X), and the denominator of which is the entitlement price for that month; (ii) Each barrel of upper tier crude oil (except ANS upper tier crude oil) included in its adjusted crude oil receipts in that month at refineries in PADDs I, II, III and IV shall constitute that fraction of a barrel of deemed old oil the numerator of which is equal to the refiners' reported weighted average cost per barrel received at refineries in PADDs I, II, III and IV of domestic crude oil (except ANS crude oil) the first sale of which is exempt from the provisions of Part 212 of this chapter for that month, less the refiners' reported weighted average cost per barrel received at refineries in PADDs I, II, III and IV of upper tier crude oil (except ANS upper tier crude oil) and less (X), and the denominator of which is the entitlement price for that month; (iii) Each barrel of old oil included in its adjusted crude oil receipts in that month at refineries in PADD V (which includes Guam for purposes of this paragraph) shall constitute that fraction of a barrel of deemed old oil the numerator of which is equal to the refiners' reported weighted average cost per barrel received at refineries in PADD V of domestic crude oil (except ANS crude oil) the first sale of which is exempt from the provisions of Part 212 of this chapter for that month, less the refiners' reported weighted average cost per barrel received at refineries in PADD V of old oil, and the denominator of which is the entitlement price for that month; (iv) Each barrel of upper tier crude oil (except ANS upper tier crude oil) included in its adjusted crude oil receipts in that month at refineries in PADD V shall constitute that fraction of a barrel of deemed old oil the numerator of which is equal to the refiners' reported weighted average cost per barrel received at refineries in PADD V of domestic crude oil (except ANS crude oil) the first sale of which is exempt from the provisions of Part 212 of this chapter for that month, less the refiners' reported weighted average cost per barrel received at refineries in PADD V of upper tier crude oil (except ANS upper tier crude oil) and the denominator of which is the entitlement price for that month; (v) Each barrel of ANS upper tier crude oil shall constitute that fraction of a barrel of deemed old oil the numerator of which is equal to the reported weighted average cost per barrel to refiners of imported crude oil and domestic crude oil the first sale of which is exempt from the provisions of Part 212 of this chapter for that month, less such weighted average cost per barrel to refiners of ANS upper tier crude oil, and the denominator of which is the entitlement price for that month; (vi) For each barrel of old oil or upper tier crude oil (except ANS upper tier crude oil) less than .6 percent sulfur content included in a refiner's adjusted crude oil receipts at refineries in PADDs I–IV, the value of (X) in subsections (i) and (ii) shall be zero; for each barrel of old oil or upper tier crude oil (except ANS upper tier crude oil) equal to or greater than .6 percent sulfur content included in a refiner's adjusted crude oil receipts at refineries in PADDs I–IV, the value of (X) in subsections (i) and (ii) shall be $1.50.

§ 211.67 [Amended]

3. Section 211.67 is amended by revising paragraph (a)(4) to read as follows:

(a) * * *

(4) For each month in the period June 1978 through December 31, 1980, the number of entitlements issued under paragraph (a)(1) of this section to each refiner shall be increased by: (i) the number of barrels of California lower tier crude oil included in its adjusted crude oil receipts in that month multiplied by a fraction, the numerator of which is $2.38 plus or minus $.09 for each degree API gravity (or fraction thereof) by which the weighted average gravity of all California lower tier crude oil included in that refiner's adjusted crude oil receipts in that month either falls below or exceeds, respectively, 18 degrees API, and the denominator of which is the entitlement price for that month; and (ii) the number of barrels of California upper tier crude oil included in its adjusted crude oil receipts in that month multiplied by a fraction, the numerator of which is $1.45 plus or minus $.09 for each degree API gravity (or fraction thereof) by which the weighted average gravity of all California upper tier crude oil included in that refiner's adjusted crude oil receipts in that month either falls below or exceeds, respectively, 18 degrees API, and the denominator of which is the entitlement price for that month; *provided that* the dollar value of additional entitlements issued under this subparagraph (4) shall not exceed the dollar value of the obligation (as calculated under paragraph (b) of this section) for the crude oil with respect to which such additional entitlements are issued. The refiner shall calculate and report the weighted average gravity of California lower tier crude oil and California upper tier crude oil separately, and in calculating such weighted average gravities shall (A) determine the gravity of such crude oil for each receipt of such crude oil in that month on the basis of the gravity of such crude oil at the time it becomes a receipt, and (B) determine a single monthly weighted average gravity for such crude oil by weight averaging (on a volumetric basis) all of such individual receipts in that month.

Second Alternative Proposal

§ 211.67 [Amended]

2. Section 211.67 is amended by adding a new paragraph (b)(3) which reads as follows:

(b) * * *

(3) The number of barrels of deemed old oil included in a refiner's adjusted crude oil receipts each month shall be: (i) increased by the number of barrels of old oil and upper tier crude oil (except ANS upper tier crude oil) less than .6 percent sulfur content included in its adjusted crude oil receipts in that month at refineries in PADDs I–IV multiplied by a fraction the numerator of which is $.50 and the denominator of which is the entitlement price for that month, (ii) decreased by the number of barrels of old oil and upper tier crude oil (except ANS upper tier crude oil) equal to or greater than .6 percent sulfur content included in its adjusted crude oil receipts in that month at refineries in PADDs I-IV multiplied by a fraction the numerator of which is $1.50 and the denominator of which is the entitlement price for that month.

Appendix 1—Summary of Draft Regulatory Analysis

Problem

Average crude costs for refiners are dependent on degree of access to controlled crudes, the nature of the crudes, the costs of the exempt crudes, and whether the refinery is in PADD V or in PADDs I–IV. Of these factors, only cost differences due to degree of access to controlled crudes result from Department of Energy (DOE) regulations. The crude oil entitlements system was developed to equitably distribute the benefits of access to controlled crudes, and has generally accomplished that objective. However, changes in relative costs of exempt domestic and imported crudes have recently caused significant advantages and disadvantages to refiners with access to controlled crudes.

Two measures of the equitable distribution of access to controlled crude are used in this analysis. The first compares the net post-entitlement costs of comparable controlled and exempt domestic crudes using the posted prices of these crudes. This method is generally used by refiners to assess available purchase options. In June 1980, controlled crudes cost less than exempt in PADDs I–IV, and more in PADD V.

Table 1—Controlled Crude Cost Advantage

June 1980

PADD I–IV:
Low Sulfur—$5.00
High Sulfur—$2.00
PADD V——$5.00

The controlled crude cost advantage causes refiners to have lower or higher average costs than refiners with less controlled crude. In June 1980, refiners in PADDs I–IV had an average cost advantage of 4 cents for each extra percent of controlled crude. For example, a refiner with 50% controlled crude would have had a $1.20 advantage compared to one with 20% controlled crude. In PADD V, increased percentages of controlled crude resulted in higher crude costs, which is inverse to the general impact of access to controlled crude in PADDs I–IV.

The proposed regulation is expected to reduce the advantages or disadvantages of access to controlled crude oils, so as to accomplish more equitable distribution of the benefits of price controls on crude oil.

Objectives

The proposed regulation should reduce the controlled crude cost disparities based on postings, and reduce the impact of the access to controlled crude on each refiners average crude cost. Ideally, post-entitlement costs of controlled crudes should equal those of equivalent exempt crudes, so that refiners will be indifferent among controlled and exempt volumes. Through this objective may not be realized, regulations that reduce these cost disparities will accomplish more equitable distribution of the benefits of access to controlled crude oil and improve the competitive posture among all refiners.

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Alternatives

Phased decontrol is reducing the impact of the cost disparity between exempt and controlled crudes. In addition, the exempt domestic and international crude markets may be restoring a price structure based on the quality and location of the crude, which should equate exempt domestic and imported crude costs in the United States. Therefore, one alternative is to continue the present entitlement system until crude oil controls end in October 1981.

Another alternative is to equalize controlled crude costs to those of comparable exempt domestic crude costs in each region, thereby reducing the cost disparities between controlled and exempt domestic crudes. Costs in PADD V and costs in PADDs I–IV would be use to calculate separate entitlement obligations for each region. The options consist of various combinations of this alternative and the present program.

Option 1

Establish separate entitlement obligations for PADD V and PADDs I–IV based upon exempt domestic crude costs for refineries in each region. the obligation for controlled ANS crude would also be calculated from the exempt domestic crude costs in PADDs I–IV.

Option 2

Same as Option 1 for PADD V and PADDs I–IV refineries. the obligation for controlled ANS would be calculated from the average cost of all uncontrolled (domestic and foreign) crudes as is done in the current entitlements program. The ANS rule was recently adopted, and may be modified in a separate proceeding so that further modification, as in Option 1, may be necessary.

Option 3

only obligations for refineries in PADDs I–IV would be calculated from the exempt domestic crude costs in that region. PADD V and controlled ANS would continue under the present method.

Refineries in PADDs I–IV have been the principal petitioners for better crude costs equalization. In addition, the major volume of controlled crude is in PADDs I–IV.

Option 4

The obligations for refineries in PADD V would be calculated from exempt domestic crude costs, excluding exempt ANS, in PADD V. PADD I–IV refineries and refiners of controlled ANS would continue to incur entitlement obligations calculated under the present system.

The largest per barrel cost discrepancies are in PADD V, though the volume of controlled crude within that region is only about 5% of the controlled crude in PADDs I–IV. This option would reduce these large discrepancies, without having a substantial effect on the rest of the counrty.

Significant increases since 1973 in the premium for low sulfur crudes also contribute to the cost disparity between exempt and controlled crudes in PADDs I–IV. Imposing additional obligations on low sulfur crudes, or reducing obligations on high sulfur crudes are also evaluated for their effects on crude cost disparities. Adjustments to the obligatins in PADDs I–IV on the basis of sulfur level of the controlled crude are evaluated for both the present entitlement system and Options 1, 2 and 3. Separate obligations for all low sulfur and all high sulfur controlled crudes on a national basis are also evaluated.

Impacts

Crude cost changes that occurred between June and September 1980 are expected to reduce the net cost disparities between controlled and exempt domestic crudes in PADDs I–IV. Exempt domestic crude postings were reduced to $34 for high sulfur and $36 for low sulfur crudes in PADDs I–IV and Saudi Arabia increased its prices by $2. There were no changes to the exempt postings in PADD V. The estimated effect of these changes on the cost disparities is shown in Table 2. The cost disparities for low dulfur and most high sulfur crudes in PADDs I–IV are projected to decline by almost $2. In PADD V, controlled crudes will continue to cost about $5 more than comparable exempt crudes. The posted prices for high gravity asphaltic crudes in PADDs I–IV have been reduced to the level of the PADD V crudes, and these asphaltic crudes now bear the same cost disparities as the PADD V crudes.

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The phased decontrol program is gradually reducing the impact of these cost disparities. As the total volume of controlled crude decreases, the total effect of the disparities is reduced. In June 1980 half of all domestic crude was exempt. Approximately 3% is added to the exempt volume each month. However, refiners with access to controlled crudes will still be impacted by the disparities, and competitive inequities may exist well into 1981. Thus, retention of the present program relies on phased decontrol and uncertain market actions to reduce cost disparities and achieve more equitable distribution of the benefits of controlled crude oil.

Equalization of average controlled and exempt crude costs in each major region reduces the cost disparities by changing the entitlement obligations, rather than waiting for market price relationships to change. The impacts on posted price disparities in June 1980 of the four optional methods are shown in Table 3. In Option 1 and 2, disparities are reduced in both regions as these options would impose a domestic crude based obligation in both regions. Option 1 would also use the exempt domestic crude costs of refiners in PADDS I–IV to establish the entitlement obligation on controlled ANS. It's effect on costs of controlled ANS relative to exempt ANS was not determined as comparable posting data for ANS is not available. Option 3 reduces the disparities in PADDs I–IV, while Option 4 reduces them only in PADD V.

Table 2

Post-Entitlement Cost Disadvantages of Controlled Crudes

	Present Entitlements System (1)				(2)			
	June 1980				September 1980			
	Lower Tier	Upper Tier			Lower Tier	Upper Tier		
PADDS I-IV								
Lower Sulfur								
Louisiana North	-5.20	-5.22			-2.62	-2.64		
Mirando	-5.27	-5.07			-2.69	-2.49		
High Sulfur								
Mississipi East	-2.07	-2.37			-0.49	-0.79		
So. Texas Mixed	-2.12	-2.47			-0.54	-0.84		
Montana Heavy	-2.12	-2.00			-0.54	-0.42		
E. Texas Asphaltic	-0.56	-0.75			+4.38	+4.19		
PADD V								
Bellevue West 30°	+4.71	+4.78			+4.28	+4.47		
Oxnard 26°	+5.10	+5.08			+4.67	+4.65		
Whittier 22°	+5.49	+5.43			+5.06	+5.00		

(1) Based on June 1980 postings and entitlement obligations for June 1980 receipts.

(2) Projected from September 1980 postings and estimated entitlement obligations for September 1980 receipts.

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TABLE 3

NET COST DIFFERENCES OF CONTROLLED AND EXEMPT CRUDES(1)

JUNE 1980

	Present Program		Option 1		Option 2		Option 3		Option 4	
	Lower Tier Cost Diff.	Upper Tier Cost Diff.	Lower Tier Cost Diff.	Upper Tier Cost Diff.	Lower Tier Cost Diff.	Upper Tier Cost Diff.	Lower Tier Cost Diff.	Upper Tier Cost Diff.	Lower Tier Cost Diff.	Upper Tier Cost Diff.
PADDS I-lV										
Low Sulfur										
Louisiana North	-5.20	-5.22	-3.29	-3.34	-3.29	-3.34	-3.29	-3.34	-5.20	-5.22
Mirando	-5.27	-5.07	-3.36	-3.19	-3.36	-3.19	-3.36	-3.19	-5.27	-5.07
High Sulfur										
Mississippi East	-2.07	-2.37	-0.16	-0.49	-0.16	-0.49	-0.16	-0.49	-2.07	-2.37
So. Texas Mixed	-2.12	-2.47	-0.21	-0.59	-0.21	-0.59	-0.21	-0.59	-2.12	-2.47
Montana Heavy	-2.12	-2.00	-0.21	-0.59	-0.21	-0.59	-0.21	-0.59	-2.12	-2.00
E. Texas Asphaltic	-0.56	-0.75	+1.35	+1.13	+1.35	+1.13	+1.35	+1.13	-0.56	-0.75
PADD V										
Bellevue West 30°	+4.71	+4.78	-1.32	-1.44	-1.32	-1.44	+4.71	+4.78	-1.32	-1.44
Oxnard 26°	+5.10	+5.08	-0.57	-0.68	-0.57	-0.68	+5.10	+5.08	-0.57	-0.68
Whittier 22°	+5.49	+5.43	+0.18	+0.03	+0.18	+0.03	+5.49	+5.43	+0.18	+0.03

(1) A negative value indicates that the controlled crude has a lower cost than the exempt crude. Differences are equal to the controlled tier posting plus the entitlement obligation less the exempt tier posting.

The reductions in PADDs I-IV disparities that would be caused by these alternatives in June 1980 are comparable to those that are expected to occur from exempt crude price changes between June and September 1980. We estimate that the average cost of exempt domestic crudes in PADDs I-IV will be close to that of all uncontrolled crude received in the United States in September 1980, and therefore, in that month, these options may have little effect on the disparities in PADDs I-IV. Foreign and PADD I-IV market actions are not expected to reduce cost disparities in PADD V.

The average exempt domestic crude cost in PADDs I-IV was $36.46 in June 1980, which is less than the posted prices plus a reasonable allowance for transportation of the high sulfur crudes in that region. The reported average costs for these crudes ranged from under $15 to almost $41 a barrel. A significant portion of exempt crude is obtained at less than the general level of posted prices. As a result, on the basis of June data, under these options the increased entitlement obligation would be less than the amount needed to eliminate the tier cost disparities based on posted prices. In the course of this analysis we also determined that the average costs of exempt domestic crudes in several earlier months were below the posting level. Thus, there is an indication that cost disparities will remain under all of these options.

Reducing the posted price disparities also reduces the impact of access to controlled crudes on the average costs of refiners. The average crude costs of refiners relative to their degree of access to controlled crude are shown graphically on Tables 4 and 5. Table 4 shows that the average post-entitlement costs of refiners in PADDs I-IV generally declined about 4 cents per barrel with each one percent increase in the proportion of controlled crude under the present entitlements program. Under Options 1, 2 and 3, this advantage would be reduced to about 1 cent per barrel, as shown in Table 5.

TABLE 4

AVERAGE POST-ENTITLEMENT CRUDE COST
PADD I-IV REFINERS
PRESENT SYSTEM

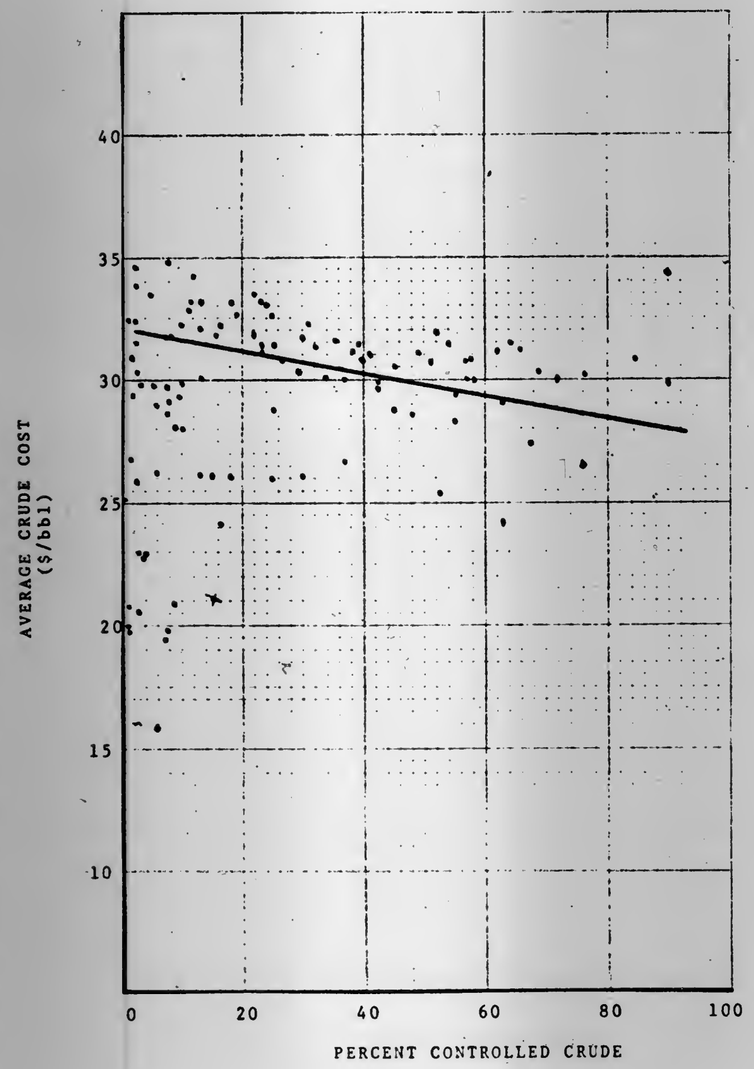
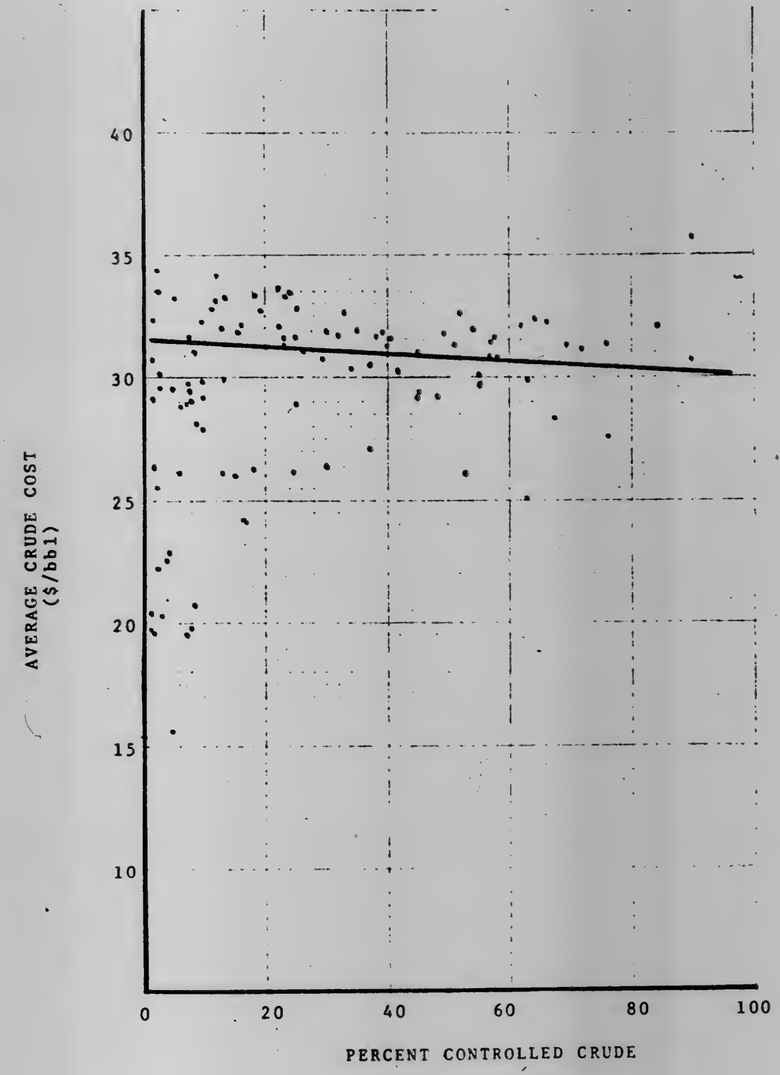


Table 5

AVERAGE POST-ENTITLEMENT CPUDE COSTS
PADD I-IV REFINERS
OPTIONS 1, 2, 3



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The entitlement program, by effectively requiring refiners with large proportions of controlled crude to transfer money to those with small fractions of controlled crude, causes a flow of money from PADD I-IV refiners to PADD V refiners. As the major PADD V refiners also operate refineries in PADDs I-IV, some of this regional transfer occurs within these firms. Therefore, the cash flow from PADDs I-IV to PADD V may be overstated in terms of the impact of the cash flow on product costs in each region.

All of these options increase the cash flow into PADD V. Options 1, 2 and 4 reduce the obligations on controlled crudes in PADD V. Option 3 increases the obligations in PADDs I-IV, and some of the added payment is distributed in PADD V (see Table 6).

Table 6

CASH FLOW FROM PADD I-IV TO PADD V REFINERIES

June 1980

	Cash Flow (Million Dollars)
Present Program	100
Option 1	140
Option 2	157
Option 3	126
Option 4	131

Reducing the obligation on controlled high sulfur crudes in PADDs I-IV would have reduced the cash flow by $50 million. If an offsetting obligatory increase were imposed on low sulfur crudes in PADDs I-IV, the cash flows would be unchanged from those in Table 6. The reduction of the sulfur differential to $2.00 in September 1980, reduces the high sulfur reduction to $1.50. If adopted, the $1.50 reduction would reduce the cash flow into PADD V by $22 million in January 1981.

Crude costs will be reduced for some refiners in PADDs I-IV, and for most refiners in PADD V under these options. Each refiner's proportion of controlled crude determines the effect of each option on that refiner. In the month of June 1980, the proportions of controlled crude which divide increased and decreased costs are shown in Table 7.

Table 7

CUT-OFF POINT OF BENEFITS FOR REFINERS

June 1980

Option 1	
PADDs I-IV	Less than 22% of receipts in lower tier, upper tier, and controlled ANS
PADD V	All refiners benefit
Option 2	
PADDs I-IV	Less than 15% of receipts in lower tier and upper tier, excluding controlled ANS
PADD V	All refiners benefit
Option 3	
PADDs I-IV	Less than 19% of receipts in lower tier and upper tier, excluding controlled ANS
PADD V	All refiners benefit
Option 4	
PADDs I-IV	All refiners' cost increased by a decreased run credit
PADD V	Refiners of controlled crude, othe than ANS

As the national average crude cost is not changed under the entitlement program or these modifications, average consumer prices are not expected to be effected under these options. Individual refiner's costs would be increased or decreased. However as market forces rather than DOE regulations, are setting product prices it is reasonable to expect that many of these cost changes will not flow through to consumer costs.

The added administrative burden for any of these options is minimal. Refiners that operate only in one region would continue to report the same data in the same manner as under the current program. The fourteen refiners that operate refineries in both regions would have to submit their entitlement data separately for each region. Most of these refiners collect the data on a regional basis so they could readily report it by region.

The calculation methods and formulae are similar to those now in use, so there would be little added burden on DOE in adopting and operating any of these options.

In 1973 crude oil postings of low sulfur crudes were 10 to 15 cents above those for high sulfur crudes. In June 1980, this premium had increased to $3.00 in PADDs I-IV. However, in September 1980 it was reduced to $2.00. PADD V crudes, which had been at the same cost level as PADDs I-IV crudes in 1973, were posted at $10-12 below crudes in PADDs I-IV. These price level differences reflect the mix of products refined from the different types of crudes in the two regions. The change in the premium contributes to the crude cost disparities. Therefore, two methods to adjust for the sulfur premiums were also evaluated in this analysis.

Approximately three-quarters of the crude produced in PADDs I-IV have low sulfur content. Therefore, in January 1981 the average posting would be about $1.50 above that for high sulfur crudes. One method would reduce the entitlement obligations beginning with January 1981 crude receipts of controlled high sulfur crudes by $1.50 and raise them on controlled low sulfur crudes by $0.50. The other would only reduce the obligations on controlled high sulfur crudes. Since these controlled crudes are expected to have a cost advantage over exempt crudes, any reduction in the entitlement obligation would increase their advantage.

However, market price changes, or adoption of one of the options that will increase entitlement obligations, may cause the post-entitlement costs of controlled high sulfur crudes to exceed those of exempt high sulfur crudes. If so, a reduction of the obligation for the controlled high sulfur crudes may be appropriate. However, an added obligation on low sulfur controlled crudes would reduce the cost advantage of these crudes relative to exempt low sulfur crudes, and would increase rather than decrease their cost disparity.

Dividing the crude receipts of all refiners into two categories, high and low sulfur, and establishing separate obligations for each category on a national basis was also evaluated. Refiners would have to report volumes and costs of high and low sulfur crudes in each region which is expected to impose a substantial burden on them. Most low sulfur crude is found in PADDs I-IV and costs are in a narrow range. The high sulfur crudes, however, have a wide range of costs, reflecting the different price structures in PADDs I-IV and V. A national obligation is not expected to equalize costs in both regions for high sulfur crudes, but should do so for the vast majority of low sulfur crudes.

APPENDIX 2

ECONOMIC REGULATORY ADMINISTRATION
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1-78

DOMESTIC CRUDE OIL ENTITLEMENTS PROGRAM
REFINERS MONTHLY REPORT

ERA-49

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ACCESSION NUMBER

DATE YEAR MONTH DAY

This report is mandatory under Public Laws 93-159, 94-163, and 93-275 as amended.

1. REPORTING FIRM IDENTIFICATION INFORMATION — Check If Any Change In Identification Data ☐

a. Name

b. Street/Box/RFD

c. City d. State ZIP Code

f. Name of Contact Person g. Telephone (Including Area Code)

h. Reporting Firm Short Name i. Amendment Number ☐

2. a. DATE OF REPORT: YEAR MONTH DAY b. REPORTING PERIOD YEAR MONTH

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3. CERTIFICATION

I CERTIFY THAT THE INFORMATION SUBMITTED ON AND WITH THIS FORM IS FACTUALLY CORRECT, COMPLETE AND IN ACCORDANCE WITH ERA REGULATIONS (TITLE 10, CODE OF FEDERAL REGULATIONS) AND THE INSTRUCTIONS TO FORM ERA-49.

a. Name and Title of Certifying Official b. Signature c. Date Certified

THE U.S. CODE, (CRIMES AND CRIMINAL PROCEDURES), SECTION 1001, MAKES IT A CRIMINAL OFFENSE TO MAKE A WILLFULLY FALSE STATEMENT OR REPRESENTATION TO ANY DEPARTMENT OR AGENCY OF THE UNITED STATES AS TO ANY MATTER WITHIN ITS JURISDICTION

ECONOMIC REGULATORY ADMINISTRATION
Washington, D.C. 20461

DOMESTIC CRUDE OIL ENTITLEMENTS PROGRAM
REFINERS MONTHLY REPORT

ERA-49

FOR ERA USE ONLY

ACCESSION NO.

DATE: YEAR MONTH DAY

REPORTING FIRM SHORT NAME DATE OF REPORT YEAR MONTH DAY

4.1 CRUDE OIL RECEIPTS (PADDS 1-4) REPORTING PERIOD - YEAR MONTH

CATEGORY OF CRUDE OIL (A)		TOTAL VOLUME (BARRELS) (D)	TOTAL COST (E)	WEIGHTED AVERAGE COST PER BARREL (F)
11109	Old Oil		$ .000	$
11209	New Oil		$ .000	$
11219	Stripper Well Oil		$ .000	$
11229	Tertiary Oil		$ .000	$
11239	HEAVY OIL		$ .000	$
11249	Newly Discovered Oil		$ .000	$
11259	ANS Upper Tier		$ .000	$
11269	Other ANS		$ .000	$
11279	MARKET TIER		$ .000	$
11289	Synthetic Crude		$ .000	$
11299	Naval Petroleum Reserve		$ .000	$
11309	Imported Oil		$ .000	$
11399	TOTAL CRUDE OIL RECEIPTS		$ .000	$

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DATE: [ ][ ] YEAR [ ][ ] MONTH [ ][ ] DAY

REPORTING FIRM SHORT NAME [ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ] DATE OF REPORT YEAR [ ][ ] MONTH [ ][ ] DAY [ ][ ]

4.2 CRUDE OIL RECEIPTS (PADD 5) | REPORTING PERIOD - YEAR [ ][ ] MONTH [ ][ ]

CATEGORY OF CRUDE OIL (A)		TOTAL VOLUME (BARRELS) (D)	TOTAL COST (E)	WEIGHTED AVERAGE COST PER BARREL (F)
12109	Old Oil	[ ][ ][ ][ ][ ][ ][ ][ ][ ]	$ [ ][ ][ ][ ][ ][ ][ ][ ][ ].[0][0]	$ [ ][ ][ ][ ]
12209	New Oil	[ ][ ][ ][ ][ ][ ][ ][ ][ ]	$ [ ][ ][ ][ ][ ][ ][ ][ ][ ].[0][0]	$ [ ][ ][ ][ ]
12219	Stripper Well Oil	[ ][ ][ ][ ][ ][ ][ ][ ][ ]	$ [ ][ ][ ][ ][ ][ ][ ][ ][ ].[0][0]	$ [ ][ ][ ][ ]
12229	Tertiary Oil	[ ][ ][ ][ ][ ][ ][ ][ ][ ]	$ [ ][ ][ ][ ][ ][ ][ ][ ][ ].[0][0]	$ [ ][ ][ ][ ]
12239	HEAVY OIL	[ ][ ][ ][ ][ ][ ][ ][ ][ ]	$ [ ][ ][ ][ ][ ][ ][ ][ ][ ].[0][0]	$ [ ][ ][ ][ ]
12249	Newly Discovered Oil	[ ][ ][ ][ ][ ][ ][ ][ ][ ]	$ [ ][ ][ ][ ][ ][ ][ ][ ][ ].[0][0]	$ [ ][ ][ ][ ]
12259	ANS Upper Tier	[ ][ ][ ][ ][ ][ ][ ][ ][ ]	$ [ ][ ][ ][ ][ ][ ][ ][ ][ ].[0][0]	$ [ ][ ][ ][ ]
12269	Other ANS	[ ][ ][ ][ ][ ][ ][ ][ ][ ]	$ [ ][ ][ ][ ][ ][ ][ ][ ][ ].[0][0]	$ [ ][ ][ ][ ]
12279	MARKET TIER	[ ][ ][ ][ ][ ][ ][ ][ ][ ]	$ [ ][ ][ ][ ][ ][ ][ ][ ][ ].[0][0]	$ [ ][ ][ ][ ]
12289	Synthetic Crude	[ ][ ][ ][ ][ ][ ][ ][ ][ ]	$ [ ][ ][ ][ ][ ][ ][ ][ ][ ].[0][0]	$ [ ][ ][ ][ ]
12299	Naval Petroleum Reserve	[ ][ ][ ][ ][ ][ ][ ][ ][ ]	$ [ ][ ][ ][ ][ ][ ][ ][ ][ ].[0][0]	$ [ ][ ][ ][ ]
12309	Imported Oil	[ ][ ][ ][ ][ ][ ][ ][ ][ ]	$ [ ][ ][ ][ ][ ][ ][ ][ ][ ].[0][0]	$ [ ][ ][ ][ ]
12399	TOTAL CRUDE OIL RECEIPTS	[ ][ ][ ][ ][ ][ ][ ][ ][ ]	$ [ ][ ][ ][ ][ ][ ][ ][ ][ ].[0][0]	$ [ ][ ][ ][ ]

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5.1 OLD OIL RECEIPTS (PADDS 1-4) | REPORTING PERIOD - YEAR [ ][ ] MONTH [ ][ ]

	OLD OIL (A)	VOLUME IN BARRELS (B)	SUBTOTALS (VOLUME IN BARRELS) (C)	TOTALS (VOLUME IN BARRELS) (D)
21119	FOR OWN ACCOUNT AT OWN REFINERIES		[ ][ ][ ][ ][ ][ ][ ][ ]	
21129	FOR NON-REFINERS AT OWN REFINERIES		[ ][ ][ ][ ][ ][ ][ ][ ]	
	FOR OWN ACCOUNT AT OTHER REFINERS NAME			
21131	[ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ]	[ ][ ][ ][ ][ ][ ][ ][ ][ ]		
21132	[ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ]	[ ][ ][ ][ ][ ][ ][ ][ ][ ]		
21133	[ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ]	[ ][ ][ ][ ][ ][ ][ ][ ][ ]		
21134	[ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ]	[ ][ ][ ][ ][ ][ ][ ][ ][ ]		
21135	[ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ]	[ ][ ][ ][ ][ ][ ][ ][ ][ ]		
21136	[ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ]	[ ][ ][ ][ ][ ][ ][ ][ ][ ]		
21137	[ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ]	[ ][ ][ ][ ][ ][ ][ ][ ][ ]		
21138	[ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ][ ]	[ ][ ][ ][ ][ ][ ][ ][ ][ ]		
21139	FOR OWN ACCOUNT AT OTHER REFINERS		[ ][ ][ ][ ][ ][ ][ ][ ]	
21199	TOTAL OLD OIL RECEIPTS (21119 + 21129 + 21139)			[ ][ ][ ][ ][ ][ ][ ][ ]
	ADJUSTMENTS			
21219	FOR OWN ACCOUNT AT OWN REFINERIES		[ ][ ][ ][ ][ ][ ][ ][ ]	
21229	FOR NON-REFINERS AT OWN REFINERIES		[ ][ ][ ][ ][ ][ ][ ][ ]	
21239	FOR OWN ACCOUNT AT OTHER REFINERS		[ ][ ][ ][ ][ ][ ][ ][ ]	
21299	TOTAL ADJUSTMENTS (21219 + 21229 + 21239)			[ ][ ][ ][ ][ ][ ][ ][ ]
21399	ADJUSTED MONTHLY RECEIPTS (21199 + 21299)			[ ][ ][ ][ ][ ][ ][ ][ ]

21409	FOR ERA USE ONLY	NET CORRECTION FROM PRIOR MONTH AMENDED REPORTS	[ ][ ][ ][ ][ ][ ][ ][ ]
21499		CORRECTED MONTHLY RECEIPTS FOR CALCULATIONS	[ ][ ][ ][ ][ ][ ][ ][ ]

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5.2 OLD OIL RECEIPTS (PADD 5) | REPORTING PERIOD - YEAR [ ] MONTH [ ]

	OLD OIL (A)	VOLUME IN BARRELS (B)	SUBTOTALS (VOLUME IN BARRELS) (C)	TOTALS (VOLUME IN BARRELS) (D)
22119	FOR OWN ACCOUNT AT OWN REFINERIES		[ ]	
22129	FOR NON-REFINERS AT OWN REFINERIES		[ ]	
	FOR OWN ACCOUNT AT OTHER REFINERS			
	NAME			
22131	[ ]	[ ]		
22132	[ ]	[ ]		
22133	[ ]	[ ]		
22134	[ ]	[ ]		
22135	[ ]	[ ]		
22136	[ ]	[ ]		
22137	[ ]	[ ]		
22138	[ ]	[ ]		
22139	FOR OWN ACCOUNT AT OTHER REFINERS		[ ]	
22199	TOTAL OLD OIL RECEIPTS (22119+ 22129+ 22139)			[ ]
	ADJUSTMENTS			
22219	FOR OWN ACCOUNT AT OWN REFINERIES		[ ]	
22229	FOR NON-REFINERS AT OWN REFINERIES		[ ]	
22239	FOR OWN ACCOUNT AT OTHER REFINERS		[ ]	
22299	TOTAL ADJUSTMENTS (22219+ 22229 + 22239			[ ]
22399	ADJUSTED MONTHLY RECEIPTS (22199 +22299			[ ]
22409	FOR ERA USE ONLY — NET CORRECTION FROM PRIOR MONTH AMENDED REPORTS			[ ]
22499	CORRECTED MONTHLY RECEIPTS FOR CALCULATIONS			[ ]

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ACCESSION NO [ ]
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REPORTING FIRM SHORT NAME [ ] DATE OF REPORT YEAR [ ] MONTH [ ] DAY [ ]

6.1 UPPER TIER OIL RECEIPTS (PADDS 1-4) | REPORTING PERIOD - YEAR [ ] MONTH [ ]

	UPPER TIER OIL (A)	VOLUME IN BARRELS (B)	SUBTOTALS (VOLUME IN BARRELS) (C)	TOTALS (VOLUME IN BARRELS) (D)
31119	FOR OWN ACCOUNT AT OWN REFINERIES		[ ]	
31129	FOR NON REFINERS AT OWN REFINERIES		[ ]	
	FOR OWN ACCOUNT AT OTHER REFINERS			
	NAME			
31131	[ ]	[ ]		
31132	[ ]	[ ]		
31133	[ ]	[ ]		
31134	[ ]	[ ]		
31135	[ ]	[ ]		
31136	[ ]	[ ]		
31137	[ ]	[ ]		
31138	[ ]	[ ]		
31139	FOR OWN ACCOUNT AT OTHER REFINERS		[ ]	
31199	TOTAL UPPER TIER OIL RECEIPTS (31119+ 31129+ 31139)			[ ]
	ADJUSTMENTS			
31219	FOR OWN ACCOUNT AT OWN REFINERIES		[ ]	
31229	FOR NON-REFINERS AT OWN REFINERIES		[ ]	
31239	FOR OWN ACCOUNT AT OTHER REFINERS		[ ]	
31299	TOTAL ADJUSTMENTS (31219+ 31229+ 31239)			[ ]
31399	ADJUSTED MONTHLY RECEIPTS (31199+ 31299)			[ ]
31409	FOR ERA USE ONLY — NET CORRECTION FROM PRIOR MONTH AMENDED REPORTS			[ ]
31499	CORRECTED MONTHLY RECEIPTS FOR CALCULATIONS			[ ]

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6.2 UPPER TIER OIL RECEIPTS (PADD 5) REPORTING PERIOD - YEAR ____ MONTH ____

UPPER TIER OIL (A)	VOLUME IN BARRELS (B)	SUBTOTALS (VOLUME IN BARRELS) (C)	TOTALS (VOLUME IN BARRELS) (D)
32119 FOR OWN ACCOUNT AT OWN REFINERIES			
32129 FOR NON REFINERS AT OWN REFINERIES			
FOR OWN ACCOUNT AT OTHER REFINERS NAME			
32131			
32132			
32133			
32134			
32135			
32136			
32137			
32138			
32139 FOR OWN ACCOUNT AT OTHER REFINERS			
32199 TOTAL UPPER TIER OIL RECEIPTS ((32119+32139+32139)			
ADJUSTMENTS			
32219 FOR OWN ACCOUNT AT OWN REFINERIES			
32229 FOR NON REFINERS AT OWN REFINERIES			
32239 FOR OWN ACCOUNT AT OTHER REFINERS			
32299 TOTAL ADJUSTMENTS ((32219+32229+32239)			
32399 ADJUSTED MONTHLY RECEIPTS (32199+32299)			

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32409	FOR ERA USE ONLY	NET CORRECTION FROM PRIOR MONTH AMENDED REPORTS	
32499		CORRECTED MONTHLY RECEIPTS FOR CALCULATIONS	

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7.1 RUNS TO STILLS (PADDS1-4) REPORTING PERIOD - YEAR ____ MONTH ____

(A)	VOLUME IN BARRELS (B)	SUBTOTALS (VOLUME IN BARRELS) (C)	TOTALS (VOLUME IN BARRELS) (D)
41119 FOR OWN ACCOUNT AT OWN REFINERIES			
FOR OWN ACCOUNT AT OTHER REFINERS NAME			
41131			
41132			
41133			
41134			
41135			
41136			
41137			
41138			
41139 TOTAL FOR OWN ACCOUNT AT OTHER REFINERS			
41189 TOTAL FOR OWN ACCOUNT (41119+41139)			
41169 FOR SYNTHETIC CRUDE OIL			
41129 FOR NON REFINERS AT OWN REFINERIES			
41159 EXPORTS OF REFINED PETROLEUM PRODUCTS OR RESIDUAL FUEL OIL			
41199 TOTAL RUNS TO STILLS (41119 + 41139 + 41169 + 41129 - 41159			
41219 Net Correction From Prior Month Amended Reports			
41259 Processing Agreements Net Correction FOR ERA USE ONLY			
41299 Corrected Monthly Runs To Stills For Calculations			
41399 Volumes (Excluding Processing Agreements) Not Qualifying For Small Refiner Bias			
PROCESSING AGREEMENTS FOR OTHER REFINERS AT OWN REFINERIES NAMES			
41141			
41142			
41143			
41144			
41145			
41146			
41147			
41148			
41149 TOTAL FOR OTHER REFINERS AT OWN REFINERIES			
41179 TOTAL FOR OTHERS (41129 +41149)			

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REPORTING FIRM SHORT NAME ____ DATE OF REPORT. YEAR ____ MONTH ____ DAY ____

7.2 RUNS TO STILLS (PADD 5) REPORTING PERIOD – YEAR ____ MONTH ____

(A)	VOLUME IN BARRELS (B)	SUBTOTALS (VOLUME IN BARRELS) (C)	TOTALS (VOLUME IN BARRELS) (D)
42119 FOR OWN ACCOUNT AT OWN REFINERIES			
FOR OWN ACCOUNT AT OTHER REFINERS			
NAME			
42131			
42132			
42133			
42134			
42135			
42136			
42137			
42138			
42139 TOTAL FOR OWN ACCOUNT AT OTHER REFINERS			
42189 TOTAL FOR OWN ACCOUNT (42119 + 42139			
42169 FOR SYNTHETIC CRUDE OIL			
42129 FOR NON-REFINERS AT OWN REFINERIES			
42159 EXPORTS OF REFINED PETROLEUM PRODUCTS OR RESIDUAL FUEL OIL			
42199 TOTAL RUNS TO STILLS 42119 + 42139 + 42169 + 42129 – 42159			
42219 Net Correction From Prior Month Amended Reports			
42259 Processing Agreements Net Correction — FOR ERA USE ONLY			
42299 Corrected Monthly Runs To Stills For Calculations			
42399 Volumes (Excluding Processing Agreements) Not Qualifying For Small Refiner Bias			
PROCESSING AGREEMENTS FOR OTHER REFINERS AT OWN REFINERIES			
NAMES			
42141			
42142			
42143			
42144			
42145			
42146			
42147			
42148			
42149 TOTAL FOR OTHER REFINERS AT OWN REFINERIES			
42179 TOTAL FOR OTHERS 42129 + 42149			

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8.1 ANS UPPER TIER (PADDS 1-4) REPORTING PERIOD - YEAR ____ MONTH ____

UPPER TIER OIL (A)	VOLUME IN BARRELS (B)	SUBTOTALS (VOLUME IN BARRELS) (C)	TOTALS (VOLUME IN BARRELS (D)
51119 FOR OWN ACCOUNT AT OWN REFINERIES			
51129 FOR NON-REFINERS AT OWN REFINERIES			
FOR OWN ACCOUNT AT OTHER REFINERS			
NAME			
51131			
51132			
51133			
51134			
51135			
51136			
51137			
51138			
51139 FOR OWN ACCOUNT AT OTHER REFINERS			
51199 TOTAL ANS UPPER TIER OIL RECEIPTS 51119 + 51129 + 51139			
ADJUSTMENTS			
51219 FOR OWN ACCOUNT AT OWN REFINERIES			
51229 FOR NON-REFINERS AT OWN REFINERIES			
51239 FOR OWN ACCOUNT AT OTHER REFINERS			
51299 TOTAL ADJUSTMENTS 51219 + 51229 + 51239			
51399 ADJUSTED MONTHLY RECEIPTS 51199 + 51299]			

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51409	FOR ERA USE ONLY	NET CORRECTION FROM PRIOR MONTH AMENDED REPORTS	
51499		CORRECTED MONTHLY RECEIPTS FOR CALCULATIONS	

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8.2 ANS UPPER TIER (PADD 5) REPORTING PERIOD - YEAR ____ MONTH ____

	UPPER TIER OIL (A)	VOLUME IN BARRELS (B)	SUBTOTALS (VOLUME IN BARRELS) (C)	TOTALS (VOLUME IN BARRELS) (D)
52119	FOR OWN ACCOUNT AT OWN REFINERIES			
52129	FOR NON REFINERS AT OWN REFINERIES			
	FOR OWN ACCOUNT AT OTHER REFINERS			
	NAME			
52131				
52132				
52133				
52134				
52135				
52136				
52137				
52138				
52139	FOR OWN ACCOUNT AT OTHER REFINERS			
52199	TOTAL ANS UPPER TIER RECEIPTS 52119 + 52129 + 52139			
	ADJUSTMENTS			
52219	FOR OWN ACCOUNT AT OWN REFINERIES			
52229	FOR NON REFINERS AT OWN REFINERIES			
52239	FOR OWN ACCOUNT AT OTHER REFINERS			
52299	TOTAL ADJUSTMENTS (52219 + 52229 + 52239			
52399	ADJUSTED MONTHLY RECEIPTS (52199 + 52299			
52409	FOR ERA USE ONLY		NET CORRECTION FROM PRIOR MONTH AMENDED REPORTS	
52499			CORRECTED MONTHLY RECEIPTS FOR CALCULATIONS	

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9.1 HIGH SULPHUR (PADDS 1-4) REPORTING PERIOD - YEAR ____ MONTH ____

	UPPER TIER OIL (A)	VOLUME IN BARRELS (B)	SUBTOTALS (VOLUME IN BARRELS) (C)	TOTALS (VOLUME IN BARRELS) (D)
64119	FOR OWN ACCOUNT AT OWN REFINERIES			
64129	FOR NON REFINERS AT OWN REFINERIES			
	FOR OWN ACCOUNT AT OTHER REFINERS			
	NAME			
64131				
64132				
64133				
64134				
64135				
64136				
64137				
64138				
64139	FOR OWN ACCOUNT AT OTHER REFINERS			
64199	TOTAL HIGH SULPHUR OIL RECEIPTS 64119 + 64129 + 64139			
	ADJUSTMENTS			
64219	FOR OWN ACCOUNT AT OWN REFINERIES			
64229	FOR NON-REFINERS AT OWN REFINERIES			
64239	FOR OWN ACCOUNT AT OTHER REFINERS			
64299	TOTAL ADJUSTMENTS 64219 + 64229 + 64239			
64399	ADJUSTED MONTHLY RECEIPTS (64199 + 64299			
64409	FOR ERA USE ONLY		NET CORRECTION FROM PRIOR MONTH AMENDED REPORTS	
64499			CORRECTED MONTHLY RECEIPTS FOR CALCULATIONS	

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[FR Doc. 80-34002 Filed 10-30-80; 8:45 am]
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federal register

Friday
October 31, 1980

Part XI

Department of Health and Human Services

Food and Drug Administration

Therapeutically Equivalent Drugs; Availability of List

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 20

[Docket No. 78N-0170]

Therapeutically Equivalent Drugs; Availability of List

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its public information regulations to make available a list of FDA-approved prescription drug products, together with therapeutic equivalence evaluations of products in the List that are available from more than one source. This document announces the availability of the Approved Prescription Drug Products List (the List), and responds to the public comments received on the proposed policy of making such a list available and on the content and format of the List.

EFFECTIVE DATE: December 1, 1980.

FOR FURTHER INFORMATION CONTACT: Howard P. Muller, Jr., Bureau of Drugs (HFD-30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3220.

ADDRESS: Copies of the Approved Prescription Drug Products List may be obtained from: United States Government Printing Office, Washington, DC 20402 (refer to the publication by name).

SUPPLEMENTAL INFORMATION: In the Federal Register of January 12, 1979 (44 FR 2932), FDA proposed to amend § 20.117 (21 CFR 20.117) of its public information regulations to include in the list of available computer printouts approved prescription drug products with therapeutic equivalence evaluations. "Approved prescription drug products" refers to prescription drug products approved by FDA through new drug applications (NDA's) or abbreviated new drug applications (ANDA's) under the provisions of section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) or, in the case of antibiotics, through analogous applications known as Form 5's or Form 6's under section 507 of the act (21 U.S.C. 357). All drug products on the List have been fully reviewed and approved for safety and effectiveness by FDA. The List also includes therapeutic equivalence evaluations for multiple-source drug products. Those products on the List that are evaluated as therapeutically equivalent can be expected, in the judgment of FDA, to have equivalent therapeutic effect and equivalent potential for adverse effects when administered to the patient under the conditions specified in the labeling.

The List, which was prepared in response to requests from State health agencies for assistance in administering their drug product selection laws, was presented as a proposal so that interested persons could review and comment on the List and all aspects of the Federal Register proposal. The agency received more than 100 comments addressing most points covered in the proposal and the preface to the List, and also concerning specific drug products included or not included in the List. This document responds only to comments concerning the proposed policy of making this List available and to the comments on the preface (Part I) of the List. FDA is responding individually to comments about specific product listings (Part II of the List).

Although a number of comments opposed the preparation of the List, many comments supported the List by agreeing with statements made in the proposal and in the preface to the List. Many of these comments were from elderly persons on fixed incomes who said that they need drug products frequently. They urged FDA to help their physicians and pharmacists provide them with drug products that are less expensive and yet therapeutically equivalent. Other comments in support of the List came from Federal, State, and local health-related agencies and private institutions and organizations urging that FDA take action to foster the availability of less expensive, therapeutically equivalent drug products.

The regulation is being finalized essentially as proposed, 44 FR 2932, January 12, 1979. A few changes have been made, however, for clarification. The word "all" in the first line of the regulation has been deleted, and the word "marketed" has been added to the regulation. This reflects FDA's policy to include on the List only those prescription drug products that have been approved for marketing under sections 505 and 507 of the act, and which are currently being marketed. FDA will remove from the List any drug product which is no longer being marketed, even though there remains an approved application for that product. Unmarketed products may periodically appear on the List, however, until FDA becomes aware of their nonmarketed status. Conversely, when FDA becomes aware through the application review process that an approved drug product is being remarketed, it will again be included on the List. The proposed regulation has also been amended by deleting all references to "certificate holder" or "certificate." As explained in the preface to the List under Part E, "Precautions to Users of the List," the List identifies only the holder of the approved application in FDA files. Finally, the phrase "route of administration" was inadvertently left out of the proposal and has been added to the final regulation.

A summary of the substantive comments and the agency's responses follow:

I. Policy Considerations in Proposing List

1. One comment cited a journal article which included a survey finding that only 21 percent of those over 65 years of age were willing to accept a less expensive generic equivalent prescription. The survey also found that of those age 56 to 64, only 30 percent would accept a substitute drug. The comment concluded, based on this survey, that prescription drug users who are over age 56 are responsible for the lack of product substitution, rather than health professionals and the drug industry, as FDA contended in the proposal.

The agency believes that the article cited by the comment does not contain sufficient information about the survey for FDA to comment on its results. Even so, FDA notes that the article concluded: "It appears that a program of educating the elderly to the safety, efficacy, and economic merits of accepting equivalent products when not restricted by their physicians is in order." The agency agrees that reluctance in choosing less expensive duplicate prescription drug products in the place of more expensive brand name prescription drugs may be caused largely by a lack of information about the safety, effectiveness, and therapeutic equivalence of the duplicate drug products. FDA believes that the information provided by the List will help to lessen doubts that may exist regarding the safety, effectiveness, and economic advantage of therapeutically equivalent duplicate drug products.

2. Another comment said that the public would not be educated by the publication of the List as contended by FDA in the proposal. The comment said that while most people would know that a List exists, only a few would be familiar with the List's contents.

The agency believes that publication of the List will lend to increased consumer awareness of less expensive therapeutically equivalent prescription drug products. The availability of the List is announced in this Federal Register document and copies will be provided to State health agencies. The release of such information usually prompts coverage in the public and trade press, which in turn broadens consumer awareness. Such increased awareness should stimulate greater consumer demand for less expensive therapeutic equivalents, and physicians and pharmacists should be influenced to respond to that demand by prescribing and dispensing such less expensive drug products.

3. One comment questioned FDA's statements in the proposal that the absence of a list of therapeutically equivalent drug products permits the continuation of a situation involving potential dangers to health as well as deception to consumers, because FDA has repeatedly assured the public that drug products on the market are safe and effective, that defective products will be quickly removed, and that advertising and promotion are monitored. The comment asked how FDA recognized dangers in the absence of a list and how the List would negate such dangers.

The agency believes that the publication of the information contained in the List will protect the public health by helping to eliminate a situation involving potential dangers to health as well as deception of consumers. First, in the absence of an official List, pharmacists or other persons responsible for pharmacy or institutional drug purchasing would be required to make their own evaluations of therapeutic equivalence. Such an evaluation, without the information that will be provided by the List, presents a risk that drug products that are not therapeutically equivalent may be purchased for substitution, with possible adverse health consequences to patients. Second, a List of therapeutically equivalent drug products is needed to balance and correct allegations about the therapeutic inequivalence of drug products that have appeared, for example, in advertisements in newspapers and on radio and television. These allegations imply that the minimum standards for drug quality are inadequate to assure such quality, that differences in pharmaceutically equivalent drug products generally produce differences in therapeutic effects, and that government regulation never assures therapeutic equivalence. FDA believes that the broad dissemination of these allegations to the general public, as well as to health professionals, may lead to a decline of public confidence in the quality of the nation's drug supply. For this reason, an authoritative statement from the Federal agency charged with monitoring and assuring the safety, effectiveness, and quality of drugs is needed.

It is also important to note that, contrary to what is implied in the comment, the absence of a list of therapeutically equivalent drug products does not mean that drug products on the market are not safe and effective, or that defective products will not be quickly removed, or that the agency is not monitoring advertising and promotion. The List is simply a compilation of those marketed drug products that have been approved by FDA under sections 505 and 507 of the act, with certain exceptions as explained in the proposal (at pp. 2948-2949) and elsewhere in this document. These products have already been fully reviewed and approved for safety and effectiveness by FDA. The List also includes therapeutic equivalence evaluations for those approved prescription drug products that are available from more than one source. Drug products evaluated as therapeutically equivalent are pharmaceutical equivalents that can be expected to give the same therapeutic effect when administered to the patient under the conditions specified in the labeling.

4. A comment contended that although the List may have been desirable a decade ago, it now is counterproductive. The comment argued that manufacturers of generic products have ample resources to promote their products without FDA "assistance", and that they foster their own image, their reputation for quality, and the benefits of substitution by a variety of means. Furthermore, the comment argued, health professionals today may easily obtain reliable information on generic drug products from manufacturers, distributors, medical journals, pharmacy journals, academic institutions, and individual expertise. The comment asserted that the fact that more than 40 States now permit generic substitution proves that these resources have already been effectively used.

The agency believes that publication of the List now would not be counterproductive merely because progress has already been made in generic drug product selection. All persons involved in drug product selection need accurate, complete, and understandable information about therapeutically equivalent prescription drug products. Such information properly may come from the Federal agency charged with monitoring and assuring the safety, effectiveness, and quality of the nation's drug supply. Pharmacies, hospitals, States, and private and public institutions and organizations continue to ask FDA to share its broad knowledge of the safety and effectiveness of drug products, so that they can continue to carry out their duties to protect and promote the public health, provide health care services safely and with efficiency and cost-effectiveness, and advise physicians and pharmacists on drug product selection.

5. One comment said that the Model State Drug Product Selection Act (Model Act) is intended to encourage and implement generic drug product substitution, and that the FDA List is purportedly not intended to be used for drug substitution—it is not, as stated in the proposal, a recommendation of which products persons should purchase, prescribe, or dispense. However, the comment said, the Model Act would require that each State formulary include all drug products determined by FDA to be therapeutically equivalent. The comment concluded that when combined with the Model Act, the FDA List is intended to be used for drug substitution.

Although FDA acknowledges that the List is intended, among other things, to assist the States in implementing drug product selection laws, the List is not a recommendation of which products to purchase, prescribe, or dispense. The Model Act, a joint effort of the Department of Health and Human Services (DHHS) and the Federal Trade Commission (FTC), is being made available to the States to assist them in enacting their own drug product selection legislation. The Model Act, if chosen by a State as a guide, would require an appropriate State health agency to establish a formulary that would list equivalent drug products, potentially including all drug products determined by FDA to be therapeutically equivalent. As one aspect of DHHS's cooperation with FTC, FDA has been asked to prepare a List of such products to be provided to the States. Thus, the List is intended to assist the States in establishing a formulary that would list therapeutically equivalent drug products; it is not intended to designate any drug products as preferable to others for purposes of generic substitution.

6. One comment contended that FDA has attempted to suppress the industry's right to be heard, to prevent open, uncensored discussion of the issues, and to destroy the credibility of the pharmaceutical industry in refusing to publish in the proposal the objections to

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the List set forth in PMA's lawsuit to challenge the List. *Pharmaceutical Manufacturers Ass'n v. Kennedy*, 471 F. Supp. 1224 (D.Md. 1979). The comment said that this decision is especially offensive in view of the comprehensive nature of the **Federal Register** proposal.

The agency disagrees with this comment and believes that the issue it raises was adequately addressed in the proposal, which states at p. 2936:

> The objections of PMA to an FDA list of therapeutically equivalent drug products, as set forth in its complaint, need not be discussed point-by-point in this document. This preamble simply describes the reasons for issuing such a list, the legal, scientific, and regulatory bases on which such a list may be prepared and issued and the details of the list that FDA proposes to issue. Opportunity to comment and raise specific objections, in light of the specific proposal in this notice, is being provided to the public, including PMA. The objections of PMA, both in its complaint and, if PMA chooses, as particularized by its comments on this proposal, will be considered by FDA in determining how to proceed in this matter.

II. Legal Authority and Legal Status

7. One comment contended that it is beyond FDA's regulatory authority to make a judgment of therapeutic equivalence. The comment said that it is within FDA's authority to establish regulatory requirements for drug products intended for marketing, and to require those wishing to market such products to provide sufficient documentation assuring that the products meet those regulatory requirements. The only comparison of drug products that FDA could make based on this information, the comment asserted, would be an evaluation of the degree to which such products meet the established regulatory requirements, which do not include standards for therapeutic equivalence. Another comment said the List should be enacted through the Congressional legislative process and not by a regulatory agency.

FDA has concluded that it does have the authority to determine therapeutic equivalence on the basis of criteria explained in the proposal. FDA evaluates as therapeutically equivalent approved drug products that meet the following general criteria: (1) They are pharmaceutical equivalents in that (a) they contain identical amounts of the same active drug ingredient in the same dosage form; and (b) they meet compendial or other applicable standards of identity, strength, quality, and purity; (2) they are bioequivalent in that (a) they do not present a known or potential bioinequivalence problem; or (b) if they do present such a known or potential problem, they are shown to meet an appropriate bioequivalence standard; (3) they are adequately labeled; and (4) they are manufactured in compliance with current good manufacturing practice. These four criteria are applied to information already contained in FDA files regarding the safety, effectiveness, and quality of approved prescription drug products to make a nonregulatory evaluation of therapeutic equivalence. The four criteria are regulatory determinations which FDA is statutorily authorized to make. FDA's authority to require that drug products meet compendial standards is based on section 501(b) of the act; to require that certain drug products meet bioequivalency requirements on sections 201(p), 502, 505, and 701(a) of the act; to require adequate labeling on sections 502, 505, and 507 of the act, and 21 CFR 201.100; and to require compliance with current good manufacturing practice regulations on sections 501(a)(2)(B) and 701(a) of the act. The Degree to which drug products are found to be therapeutically equivalent is determined by the degree to which they meet the four criteria. This is a nonregulatory evaluation in which the agency simply applies the four criteria to drug product information in FDA files. Furthermore, the therapeutic equivalence evaluations do not constitute an order or a rule, they do not impose a requirement or restriction, nor do they constitute determinations that any products are in violation of the act or that any products are preferable to others.

FDA is authorized to make public its therapeutic equivalence evaluations on the basis of the following statutory provisions: section 310 of the Public Health Service Act directs the Secretary [whose authority is delegated to the Commissioner of Food and Drugs (21 CFR 5.1(a)(2))] to issue "information related to public health, in the form of publications or otherwise, for the use of the public" and to publish "other pertinent health information for the use of persons and institutions concerned with health services." Section 311(a) of the Public Health Serivce Act directs the Secretary to "advise the several States on matters relating to the preservation and improvement of the public health". Section 708(b) of the Federal Food, Drug, and Cosmetic Act authorizes the Secretary to disseminate information about drugs "in situations involving, in the opinion of the Secretary, imminent danger to health, or gross deception of the consumer." Section 306 of the act authorizes FDA to use written notices in place of formal enforcement actions when the public interest will be adequately served by such notices.

Regarding the comment that the List should be enacted through the Congressional legislative process and not by FDA, the agency believes that Congress authorized FDA's publication of the List through the statutory provisions cited in the preceding paragraph.

8. Several comments argued that FDA's reliance on section 705(b) of the act (21 U.S.C. 375(b)) is incorrect. Section 705(b) states in part: "The Secretary may also cause to be disseminated information regarding foods, drugs, devices or cosmetics in situations involving, in the opinion of the Secretary, imminent danger to health or gross deception to the consumer." The comments said that FDA's reliance upon this section is misapplied because the agency has not indicated an "imminent danger to health or gross deception of the consumer." FDA has only cited newspaper advertisements and radio and television spot announcements directed to the public which the agency believes are misleading. Such examples, the comments said, can hardly be classified as an "imminent danger." Furthermore, the comments said that the limitations imposed by section 705(b) of the act reflect congressional consideration of the agency's use of publicity. The comments explained that the legislative history of section 705(b) of the act shows that FDA was deliberately denied the discretion it now claims and that the agency was forbidden to interfere with competition among legally marketed prescription drug products solely to promote policy. The comments said that Congress considered and rejected an earlier version of secton 705(b) of the act that would have broadly authorized the Secretary to disseminate "such information regarding any food, drug, or cosmetic as he deems necessary in the interest of public health." By adopting the limited terms of section 705(b) of the act, the comment said, Congress deliberately circumscribed the agency's authority to use its influence to persuade the public to purchase or refrain from purchasing legally marketed products.

The agency disagrees with the comment that reliance on the section 705(b) of the act is misapplied. In relying on that section, the magnitude of the potential danger or deception need not be estimated because that section is not a limitation upon the authority of the agency. Rather, as explained in the proposal (at p. 2936), this statutory provision places within the express scope of the Secretary's duties

something that is one of the Secretary's implied functions. *Hoxsey Cancer Clinic v. Folson*, 155 F. Supp. 376, 378 (D.D.C. 1957). Because section 705(b) of the act merely expresses an implicit power of the Secretary and the Commissioner, it is not necessary to determine whether the specific conditions for invoking the explicit authority under that section now exists. It is important to note, however, that potential dangers do exist. Currently, in the absence of an official List, pharmacists would be required to make their own evaluations of therapeutic equivalence, usually without the comprehensive information available to the agency. Such evaluations without adequate information create a risk that drug products that are not therapeutically equivalent may be substituted and dispensed, with possible adverse health consequences to patients. In addition, a list of therapeutically equivalent drug products is needed to balance and correct deceptive materials disseminated widely in recent years alleging the therapeutic inequivalence of drug products. Many publications and other media still imply that the minimum standards for drug quality are inadequate to ensure such quality, that differences in pharmaceutically equivalent drug products generally produce differences in therapeutic effects, and that government regulation never assures therapeutic equivalence. The broad dissemination of these assertions to the general public, as well as to health professionals, may lead to a decline of public confidence in the quality of the nation's drug supply.

Regarding the comment that by adopting the more limited terms of section 705(b) of the act, Congress circumscribed FDA's authority to use its influence to persuade the public to purchase or refrain from purchasing legally marketed products, FDA does not believe that the List is an effort to persuade the public. The List contains only public information and advice; it imposes no requirement or restriction upon any person; it makes no recommendations as to which products persons should purchase, prescribe, or dispense, or, conversely, which products should be avoided. The List actually enhances the public's freedom of choice by providing information necessary to a decision whether a brand name drug or its therapeutically equivalent substitute should be selected.

9. Another comment said that the Federal Food, Drug, and Cosmetic Act precludes FDA from judging the therapeutic equivalence of different drugs as part of the new drug approval process. In evaluating new drug applications, the comment said FDA's role is limited to a review of the safety and efficacy of drugs. The comment explained that the legislative history of the 1962 amendments to the act shows that judging relative efficacy among different drugs is not a proper function for FDA. The comment said that therapeutic equivalence as used in the proposal is akin to relative efficacy as considered in 1962 because the preamble, in discussing the concepts of therapeutic equivalence and bioequivalence, discusses them in terms of the efficacy of drug products.

It is the agency's position that the part played by the new drug approval process in FDA's determination of therapeutic equivalence does not expand that process beyond a review of the safety and effectiveness of drug products. As explained in the response to the first comment in this Part, FDA evaluates as therapeutically equivalent those drug products that meet four general criteria. In addition, there are three major elements which comprise the scientific and regulatory foundations underlying the four general criteria: (1) Pharmaceutical equivalence, (2) bioequivalence, and (3) controls to ensure consistency of quality in, and pharmaceutical equivalence and bioequivalence among, individual batches produced by all manufacturers. This third element includes FDA's new drug approval process, as well as the antibiotic certification processes, the batch certification procedures, the good manufacturing practice regulations, and FDA's monitoring of the marketplace. The new drug approval process is an important part of FDA's program for determining the therapeutic equivalence of drug products. The process of reviewing and approving new drug applications enables FDA, in addition to determining pharmaceutical equivalence and bioequivalence of the drug products, to review the inactive ingredients in the drug products, to ensure the adequacy of labeling, and to evaluate any proposed specific manufacturing controls to ensure appropriate quality and batch-to-batch consistency. Only when all these elements meet regulatory requirements may an application be approved. Although the information submitted in support of a new drug application is part of the information FDA uses to make a therapeutic equivalence determination, a determination of therapeutic equivalence is separate from the new drug approval process. FDA emphasizes that it will continue to approve new drug applications only on the basis of safety, effectiveness, and any bioavailability requirement.

In addition, FDA's determination of therapeutic equivalence does not involve a judgment of relative efficacy. Relative efficacy refers to a comparison of the effectiveness of different therapeutic moieties, whereas therapeutic equivalence determinations involve different manufacturers' products containing the same active drug ingredients. Moreover, FDA's determination of therapeutic equivalence is not a judgment as to which manufacturer's product is "better" or "more effective."

10. Several comments charged that the agency is circumventing the express restrictions of section 705(b) of the act by invoking the generalized grants of publication authority conferred by the Public Health Service Act. The comments contended that in interpreting statutes the general must give way to the specific. The Public Health Service Act must be construed in harmony with section 705(b) to mean that only in limited circumstances should FDA enter the competitive arena on behalf of or against specific products. The comments also said that the dissemination of information envisioned by the Public Health Service Act relates to neutral scientific and epidemiological data designed to improve the quality of health care services. The comments explained that the publication grant codified in section 310 of the Public Health Service Act derives from former 42 U.S.C. 7, which authorized the study, investigation, and release of information related to the "diseases of man and conditions influencing the propagation and spread thereof." The original legislation was directed toward health rather than economic concerns, argued the comments, and there is no basis for supposing that the Public Health Service Act was intended to give the FDA authority to officially rate specific drug products in a purported effort to decrease consumer costs. The comments also said that the grant of authority in section 311(a) of the Public Health Service Act for advice to the States on public health matters cannot properly be read as giving FDA the power to prepare and disseminate the proposed List. To do so, said the comments, would not only displace the traditional authority of health professionals to independently judge the comparative quality of prescription drug products, but would redistribute the primary control of prescribing and dispensing from the States to the Federal Government.

The agency disagrees with the contention that FDA has incorrectly

interpreted and applied the Public Health Service Act and the Federal Food, Drug, and Cosmetic Act. As explained in the response to comment 8 above, the agency does not agree that section 705(b) limits FDA's authority in this area, nor does it restrict FDA's application of the Public Health Service Act. In addition, publication of the List conforms exactly to the direction of sections 310 and 311(a) of the Public Health Service Act. The availability of approved drug products evaluated by FDA as therapeutically equivalent, as well as the identity of pharmaceutically equivalent drug products which are evaluated by FDA as not therapeutically equivalent, is important information related to the public health. The List provide information that is useful to persons and institutions concerned with health services, and it compiles information in FDA files that is relevant to drug product selection for use by those consumers, institutions, and State agencies who want it.

The agency also disagrees with the comment that the List usurps the authority of health professionals. An FDA evaluation of therapeutic equivalence in no way relieves practitioners of their professional responsibilities in prescribing and dispensing drug products with due care to individual patients. If the characteristics of a specific product are important in the therapy of a particular patient, the physician's specification of that product is appropriate. FDA recognizes that drug products that are therapeutically equivalent may still vary, for example, in color, shape, taste, or packaging and patients may not perceive them as identical or equally acceptable. For this reason, these drug products are not substitutable or interchangeable in all cases. FDA does not determine whether different drug products are substitutable or interchangeable for use by a particular patient; rather, this judgment rests with the practictioner who, in prescribing and dispensing drug products, can consider the unique characteristics, needs, or problems of the patient. Pharmacists, in dispensing drug products, must be familiar with, for example, the expiration times and labeling conditions for storage, particularly for reconstituted products, to ensure that patients are properly advised when one product is substituted for another.

Finally, the agency disagrees that the List would infringe on the States' authority in regulating the prescribing and dispensing of drug products. The List is intended to assist the States in carrying out their duties to protect and promote the public health, both in providing health care services safely and with efficiency and cost-effectiveness, and in advising physicians and pharmacists of the requirements of State drug product selection laws. The States continue to ask FDA to share its broad knowledge of the safety, effectiveness, and quality of the nation's drug supply.

11. Several comments said that the notice-and-comment procedure followed in adopting the List unlawfuly denies manufacturers and the general public the right to an evidentiary hearing. Some comments contended that an evidentiary hearing is necessary because the List will have a substantial economic and legal impact on drug manufacturers, and that physicians, pharmacists, consumers, and State agencies will be relying heavily on the List to select drug products and to develop State formularies. The comments contended that only the evidentiary hearing procedure would guarantee the accuracy and reliability of the final version of the List. The comments said that each determination of therapeutic equivalance in the List, if questioned by the manufacturer, deserves an adjudicatory hearing. Further, the comments said it is impossible for manufacturers, especially those with several drugs evaluated on the List, to adequately review all relevant available data bearing on the equivalence issues within the notice-and-comment period permitted.

Other comments contended that a hearing is required because of various types of factual determinations that are involved in the therapeutic equivalence determination. One drug manufacturer requested an evidentiary hearing concerning FDA's specific findings on the bioavailability or bioequivalence of its drug products. The comment said its products would be adversely affected because FDA intends that the List be used to influence the substitution of a second drug product for the drug product first prescribed. Another comment said that the therapeutic equivalence information proposed for the List may include official fact findings and declarations relating to specific drug products and manufacturers. Essential to each of these determinations, the comment contended, is a complex appraisal of scientific facts as well as an individual evaluation of manufacturer processes and quality control procedures. The comment said that these particular fact-oriented inquiries must be made in an adjudicatory setting. Another comment explained that the Federal Food, Drug, and Cosmetic Act provides procedures for determining the effectiveness of new drugs. Those procedures, the comment said, provide that a party aggrieved by FDA decisions concerning the effectiveness of that product has the opportunity to an evidentiary hearing to challenge the correctness and evidentiary basis of that decision. The comment contended that FDA's determinations of therapeutic equivalence are decisions concerning the effectiveness of the drug products considered equivalent, and the aggrieved manufacturer is entitled to an evidentiary hearing concerning the correctness and evidentiary basis for such decisions. The comment said that any other interpretation of the act would enable FDA to make public assertions about the effectiveness of a manufacturer's approved product that would have the practical effect of amending the labeling for that product without giving the manufacturer the opportunity to be heard and to challenge in an evidentiary proceeding the basis for such assertions. One comment said that when FDA publicly declares that drug products in a group containing the same active ingredient are therapeutically equivalent, the agency claims comparative efficacy or quality for each approved product in the group. The comment claimed that equivalence judgments such as these are, in effect, new claims for the products. If a manufacturer made a similar equivalence claim, the comment said, that manufacturer would be required to submit a supplemental application to amend its NDA (or ANDA) to encompass the additional claim (21 CFR 314.8(a)(4)(ii)). Such an application would trigger the adjudicatory procedures provided by statute for regulatory approvals, which include the right to request an evidentiary hearing. Similarly, another comment said in making therapeutic equivalence determinations, FDA should give notice that it is proposing to amend all approved NDA's (or ANDA's) for products containing the active ingredient to include the claim of therapeutic equivalence (21 CFR 314.200(a)). The comment said that each notice should cite all data and arguments that the agency relied on to substantiate the new claim, and should advise affected parties of their opportunity for a hearing (21 CFR 314.200(b)). The comment also said that if a hearing is subsequently requested, it should be granted in any case in which the requestor demonstrates that there is a genuine and substantial issue of

material fact as to the accuracy of the proposed claim. (21 CFR 314.200(g)(6).)

FDA is of the opinion that publication of the List does not require an evidentiary hearing. The agency believes that most of the comments misconstrue the legal status of the List. As explained in the proposal (at p. 2937), the List contains only public information and advice. It does not constitute an order or a rule as defined in the Administrative Procedure Act (5 U.S.C. 551(4)) and, consequently, adherence to the rulemaking procedures of that statute (5 U.S.C. 553) is not required. The List neither determines nor adjudicates the legal rights of any drug manufacturer or distributor; it does not impose any requirement or restriction upon any person; it does not interpret or apply the act in a manner that creates any obligation on any person; it makes no recommendation as to which products persons should purchase, prescribe, or dispense, or conversely, which products should be avoided. To the extent that the List identifies drug products approved for marketing under sections 505 and 507 of the act, it merely sets forth information to which the public is entitled under the Freedom of Information Act. Exclusion of a drug product from the List would not necessarily mean that the drug product is in violation of section 505 or 507 of the act, or that it is not safe or effective, or that it may not be therapeutically equivalent to other drug products. (For reasons explained on pages 2948–2952 of the proposal, several classes of drug products are excluded from the List: for example, prescription drug products approved as safe for marketing prior to 1962 and not yet determined to be effective, and drug products that have not been reviewed and approved through the new drug or antibiotic approval process.) Decisions on whether specific drug products are subject to the requirements of either section 505 or 507, or whether specific drug products have fulfilled those requirements, are made in clearly defined proceedings unrelated to the release of information on approval decisions. To the extent that the List sets forth FDA's evaluations of the therapeutic equivalence of drug products that have been approved, it contains FDA's advice to the public and to the States regarding an important public health matter. These evaluations do not constitute determinations that any products are in violation of the act or that any products are preferable to others. These are nonregulatory evaluations that are based on the application of certain criteria to information contained in FDA files. Most of the reasons cited by the comments for demanding an evidentiary hearing (for example, determinations of effectiveness and bioequivalence) concern determinations that were made by FDA in clearly defined proceedings when there existed the right to an evidentiary hearing. Thus, the notice and comment procedure used in adopting this List is sufficient.

The purely advisory character of the List was recognized by the court in P.M.A.'s unsuccessful attempt to enjoin FDA from issuing the List, *P.M.A. v. Kennedy, supra* at 1229, 1231, in which the court observed:

> The information contained in the Drug List includes a list of approved drug products found by FDA to be safe and effective as well as therapeutically equivalent to each other * * *. There is nothing to indicate that the Drug List and Price Guide do any more than list or compile data which has already been obtained via statutory procedure * * *. No agency is ordering any PMA member to engage in or refrain from any action. Nor is any agency doing anything which is binding on the parties.

FDA also believes that § 314.200(a), (b), and (g)(6), which provide for notice of opportunity for hearing when the agency proposes to refuse to approve a new drug application or to withdraw the approval of an application, do not apply in this situation. The agency stresses that the therapeutic equivalence evaluations are based on information already in FDA files as to the safety, effectiveness, and quality of approved drug products and as such are not new claims. Furthermore, the evaluations of therapeutic equivalence apply only to approved drug products and are based on their pharmaceutical equivalence, bioequivalence, labeling, and compliance with current good manufacturing practice regulations. Thus, the List does not constitute an agency action requiring a notice of opportunity for hearing under § 314.200(a).

12. One comment said that FDA's proposal is contrary to section 5 of the Federal Trade Commission (FTC) Act. The Federal Trade Commission has held that making an affirmative claim for a product without a "reasonable basis" for the claim is an unfair trade practice under section 5. A reasonable basis in the case of a drug product, according to FTC precedents, requires scientific studies, medical literature, or clinical experience. The comment said that FDA acknowledges the lack of such evidence by its reliance on the presumption that pharmaceutically equivalent drug products are also bioequivalent unless there exists contrary scientific evidence. The comment also noted that under the standards of "reasonable basis" there is a serious question whether FDA's representation that a particular drug is therapeutically equivalent to another drug would constitute an unfair trade practice if such representation were made by a drug manufacturer.

The FTC precedents referred to by the comment are not applicable to the labeling and advertising of prescription drugs. Nonetheless, FDA believes that its determinations of therapeutic equivalence do rest on a reasonable basis, including scientific studies, medical literature, and clinical experience. Part III(B) of the proposal explains that a therapeutic equivalence determination is based on the following scientific and regulatory foundations: (1) Pharmaceutical equivalence—drugs which contain identical amounts of the same active drug ingredient in the same dosage form, and which meet compendial or other applicable standards of identity, strength, quality, and purity; (2) bioequivalence—drugs not presenting a known or potential bioinequivalence problem, or, if such a problem is shown, the drugs meet an appropriate bioequivalence standard; and (3) controls to ensure consistency of quality in, and pharmaceutical and bioequivalency among, individual batches produced by all manufacturers, which includes the new drug approval and antibiotic certification processes, the batch certification process, good manufacturing practice regulations, and FDA's monitoring of the marketplace. In addition, an FDA evaluation of therapeutic equivalence refers to those drug products which meet the four general criteria listed in the response to comment 7 above. The scientific and regulatory foundations and the criteria described above involve the use of scientific studies, medical literature, and clinical experience. Accordingly, a reasonable basis does exist for FDA to make therapeutic equivalence determinations, and the contention that FDA acknowledges the lack of a reasonable basis for such determinations due to its reliance on a presumption that pharmaceutically equivalent drug products are also bioequivalent unless there exists contrary scientific evidence, ignores the basis for that presumption in scientific studies and clinical experience. As will be explained in the response to comment 18 below, scientific studies and clinical experience have shown that it is unnecessary to use human subjects and clinical resources to test a large number of drugs for which there is no evidence of bioavailability problems, or to reprove the safety and effectiveness

of an active ingredient which has already been established to be safe and effective.

13. One comment noted that the listed manufacturers are likely to use the therapeutic equivalence evaluations in their promotional materials. The comment argued, however, that citations to the List in advertising and sales information would violate principles in the prescription drug advertising regulations. For example, 21 CFR 202.1(e)(6)(iii) prohibits "literature references or quotations that are significantly more favorable to a drug than has been demonstrated by substantial evidence or substantial clinical experience." The comment argued that because many of the drug products at issue have been approved with less than the statute's mandate for "substantial evidence," the conclusions in the List must be based upon substantial clinical experience if they are to be cited in advertising as a basis for a claim of therapeutic equivalence. For newly approved imitative products, substantial clinical experience simply does not exist. In addition, the comment said that references to the List in advertising by the manufacturer of a newly approved imitative product would present "information from a study in a way that implied that the study represents larger or more general experience with the drug than it actually does." (21 CFR 202.1(e)(6)(v).) Finally, the comment said that use of the List in advertising would constitute an improper citation to "favorable data or conclusions from nonclinical studies of a drug, such as * * * in vitro, in a way that suggests they have clinical significance when in fact no such clinical significance has been demonstrated." (21 CFR 202.1(e)(6)(vii))

The agency disagrees that the use of therapeutic equivalence evaluations in advertising would violate the prescription drug advertising regulations. FDA's basis for determining therapeutic equivalence does meet the substantial evidence test in § 202.1(e)(6)(iii), and does include studies which have clinical significance as stated in § 202.1(e)(6)(vii). In addition, § 202.1(e)(6)(v) is not violated because reference to therapeutic equivalence evaluations would not imply a broader experience with the drug than has actually occurred. As explained in the proposal, an evaluation of therapeutic equivalence applies only to approved prescription drug products that are pharmaceutically equivalent, bioequivalent, adequately labeled, and are manufactured in compliance with current good manufacturing practice. Other considerations in determining therapeutic equivalence include conformity with compendial or other standards of identity, strength, quality, and purity. Some of the mechanisms FDA uses to determine therapeutic equivalence are the new drug approval and antibiotic certification processes, the batch certification procedures, the good manufacturing practice regulations, and the agency's monitoring of the marketplace. FDA also disagrees with the comment that the phrases "literature * * * more favorable" and "favorable data or conclusions" are applicable to the agency's therapeutic equivalence evaluations. As explained in the response to comment 11 above, to the extent that the List sets forth FDA's evaluation of therapeutic equivalence, it contains FDA's advice to the public and to the States regarding an important public health matter. The evaluations do not constitute determinations that any products are in violation of the act or that any products are preferable to others. They are based on the application of certain criteria to information contained in FDA files to make these nonregulatory evaluations.

The agency notes, however, that it is now considering whether the use of therapeutic equivalence evaluations would be appropriate in prescription drug advertising or in prescription drug product labeling. When an agency policy is developed on these issues, it will be publicly announced.

14. One comment contended that the proposed therapeutic equivalence codes in the List are not uniformly favorable. For example, drug products coded "BX" are adverse findings which should be communicated to health professionals through the package insert. The comment further contended that the regulations governing supplemental new drug applications appear to require that drug product labeling be modified to reflect FDA equivalence findings, since 21 CFR 314.8(d)(2) requires the deletion "from package labeling, promotional labeling, and drug advertising of false, misleading, or unsupported indications for use or claims for effectiveness." The comment also said it may be that mere approval and labeling of a product with the generic name of the drug implies that all products containing the same active ingredient are equivalent. In some States, the comment noted, substitution of such products for their fully approved counterparts is lawful. Yet, the comment said, drug product labeling fails to advise physicians and pharmacists of the fact that these products are not therapeutically equivalent. This would cause the drug labeling to be misleading for failure to reveal a material fact (21 U.S.C. 321(n)) and would require correction under 21 CFR 314.8(d)(2). The comment concluded that the regulatory principles discussed above dramatize the inconsistency of the proposed List with the well-established principles under which the Federal Food, Drug, and Cosmetic Act is now administered.

The agency disagrees with the comment. First of all, the "BX" code is not an adverse finding regarding a particular drug product, but merely indicates that at the present time the agency has insufficient data to determine whether the product is therapeutically equivalent under the stated criteria. Neither the "BX" code nor any of the other therapeutic equivalence evaluations constitute determinations that a product is in violation of the act or that a product is preferable to others. They are nonregulatory evaluations based on the application of the four criteria for therapeutic equivalence (i.e., pharmaceutical equivalence, bioequivalence, adequacy of labeling, and current good manufacturing practice) to information already contained in FDA files concerning the drug products. Second, the agency disagrees that § 314.8(d)(2) would require drug product labeling to be modified to reflect FDA therapeutic equivalence findings. For reasons already explained in the proposal and in the responses to comments number 11 and 12 above, the therapeutic equivalence evaluations are not "false, misleading, or unsupported indications for use or claims for effectiveness." Third, as explained in response to comment 13 above, the agency is considering whether information concerning therapeutic equivalence evaluations should be used in prescription drug product labeling or advertising. Pending that consideration, the agency has not determined that information concerning therapeutic equivalence or therapeutic inequivalence is a material fact under 21 U.S.C. 321(n). However, since prescription drug product labeling and advertising does not presently include information concerning therapeutic equivalence evaluations, such evaluations are not directly relevant to drug product labeling because the labeling provides adequate information for the safe and effective use of the drug product. "Therapeutically equivalent drug products" refers to drug products which are otherwise safe and effective and which can be expected, in the judgment of FDA, to have equivalent therapeutic effect and equivalent

potential for adverse effects when used under the conditions set forth in their labeling.

15. Several comments stated the belief that the List would be promoting the interchangeability of drugs. One of these comments said that by publishing the List, FDA will in effect become an insurer of drug interchangeability and therapeutic equivalency in the United States. The comment explained that the implications of this are significant. For example, any physician or pharmacist who is sued for malpractice because of the unintended result of a prescription drug product could rely in defense on the List. Another comment said that FDA should assume all medical and legal responsibility for drug substitutions that the physician and pharmacist carry out. A third comment said that States would rely on the List as an "implied guarantee" of the interchangeability of drugs, and that this would raise questions concerning Federal and State legal liability for the content of the List.

It is not FDA's intent to become an "insurer of drug interchangeability," nor is it the agency's intent to assume all responsibility for drug product substitution by physicians and pharmacists. As pointed out in the proposal, FDA believes that drug products that are therapeutically equivalent are not necessarily interchangeable in all instances. Because such products may still vary, for example, in color, shape, taste, or packaging, patients may not perceive them as identical or equally acceptable. FDA makes no judgment as to whether different drug products are substitutable or interchangeable for use by a particular patient; rather, this judgment rests with practitioners who, in prescribing and dispensing drug products, should consider the unique characteristics, needs, or problems of the patient. Regarding the comment concerning physician or pharmacist malpractice suits, an FDA evaluation of therapeutic equivalence in no way relieves practitioners of their professional duty to prescribe and dispense drug products with due care to individual patients. In those circumstances where the characteristics of a specific product, other than its active ingredient, are important in the therapy of a particular patient, the physician's specification of that product is appropriate. Also, pharmacists must be familiar, for example, with the expiration times and labeling conditions for storage, particularly for reconstituted products, to ensure that patients are properly advised when one product is substituted for another.

16. Another comment, noting that FDA is proposing to amend 21 CFR 20.177, which provides that certain computer printouts be made available for public inspection at FDA, said that the computer printouts referred to in this section include information on new drugs and abbreviated new drug applications, approval status, and other information on IND's and NDA's. In none of these, the comment said, does FDA make any additional administrative determinations. The comment argued that the List, however, which is proposed to be part of this same section, would include evaluations of therapeutic equivalence. The comment said that because these are not part of the IND or NDA approval process, they do not belong in this section of the regulations. The comment concluded that FDA does not distinguish between its authority to disclose, on the one hand, information readily available in agency records and, on the other hand, new information based on complex medical and scientific determinations of therapeutic equivalence.

FDA advises, as stated in the proposal (at p. 2937), that it is amending § 20.117 in conjunction with the List only to give the public a point of reference reflecting the availability of the List. Because the List is informational and advisory in nature, the agency believes that it is best identified in the regulations describing FDA records and information that are available to the public. Contrary to what is said in the comment, FDA believes that the List is relevant to information on NDA's and ANDA's. The List includes prescription drug products which FDA has had the authority and opportuntiy to evaluate and approve for safety and effectiveness. It also includes therapeutic equivalency determinations of these approved drug products based on the general criteria explained above.

17. One comment said that States will interpret the List as a Federal directive and not merely as FDA assistance to the States. The comment said that such a directive would be beyond FDA's legal authority.

The agency disagrees that States will interpret the List as a Federal directive. The legal status of the List was clearly explained in the **Federal Register** proposal (at p. 2939). Further, the proposal explained that one reason FDA is publishing the List is in response to requests from several States for assistance in developing their drug product selection legislation. Pharmacies, hospitals, States, and private and public institutions and organizations continue to ask FDA to share its broad knowledge of the safety and effectiveness and quality of drug products, so that they can continue to carry out their duties to protect and promote the public health, both in providing health care services safely and with efficiency and cost-effectiveness, and in advising physicians and pharmacists on drug product selection.

III. Therapeutic Equivalence

18. Several comments questioned FDA's presumption that pharmaceutically equivalent drug products are also bioequivalent unless there is scientific evidence to the contrary. Some of the comments said that the agency's presumption is not supported by scientific data and does not represent sound scientific reasoning. The comments contended that pharmaceutical equivalence and therapeutic equivalence should be determined on a case-by-case basis. Other comments cited examples of products to show the dangers in presuming that pharmaceutically equivalent drug products are also bioequivalent in the absence of evidence to the contrary, and said FDA's approach is premature because additional problems may not emerge until there is more experience with product interchange and more multisource products.

FDA disagrees with the criticism directed at its conclusion that pharmaceutically equivalent drug products are also bioequivalent unless there is scientific evidence to the contrary. FDA is of the opinion that only where scientific evidence demonstrates a known or potential problem of bioinequivalence should a manufacturer be required to establish that its product is bioequivalent to a reference product, which generally is the pharmaceutically equivalent product marketed by the holder of the original new drug application. In such a situation, individual products are presumed not to be bioequivalent until proven otherwise by adequate scientific studies.

Since the early identification of bioinequivalence problems, FDA has sought to ensure the bioequivalence of pharmaceutically equivalent drug products. The agency has undertaken two parallel activities: (1) The development of requirements for bioavailability testing and for demonstrating bioequivalence (now codified in 21 CFR Part 320), and (2) in anticipation of such requirements, a review of the evidence of bioavailability and bioequivalence in ANDA's for those pharmaceutically equivalent drug

products for which evidence of a bioinequivalence problem exists. This second activity has functioned well for the last 8 years and has provided considerable bioequivalence data and information from ANDA submissions. For these products there is a reliable basis for determining the bioequivalence of specific pharmaceutically equivalent drug products. In addition, much information has been obtained from FDA-supported research and from the scientific literature.

Because many of the issues raised by the comments were debated during the development of the above programs, FDA does not believe it is necessary to respond in detail at this time. The proposal (at pp. 2940–2943) discusses such earlier debates. FDA remains convinced that only where scientific evidence demonstrates a known or potential problem of bioinequivalence should a manufacturer be required to establish that its product is bioequivalent to a reference product. FDA believes that among the drugs that are currently marketed by more than one supplier, those drugs having known or potential bioinequivalence problems have now mostly been identified. For the remainder, bioequivalence can be presumed on the basis of pharmaceutical equivalence. As the Drug Bioequivalence Study Panel of the Office of Technology Assessment (OTA) concluded in 1974: "It is neither feasible nor desirable that studies of bioavailability be conducted for all drugs or drug products. Certain classes of drugs for which evidence of bioequivalence is critical should be identified. Selection of these classes should be based on clinical importance, ratio of therapeutic importance to toxic concentration in blood, and certain pharmaceutical characteristics." FDA believes it is neither in the interest of the public health nor a productive use of the nation's scarce research resources to require costly duplication of tests. A regulatory system that requires such duplicative testing is wasteful, anticompetitive, scientifically unsound, and ethically dubious.

19. One comment questioned FDA's presumption that compliance with dissolution standards ensures bioequivalence and, therefore, therapeutic equivalence. The comment said that in the current state of the art, the true test of effectiveness or equivalence of a drug product is the controlled clinical trials or, at a minimum, measurement of blood levels in man compared with those of an accepted reference product. Yet, the comment said, many products that were presumed to be equivalent to pioneer products in FDA's List have been subjected to neither test.

The agency believes that compliance with dissolution standards does help to ensure bioequivalence and therapeutic equivalence. The results of in vitro dissolution testing are a useful and reliable indication of uniformity in manufacturing a product, and the rate of dissolution does influence the bioavailability of the drug. The agency disagrees, however, that in vivo tests, clinical trials, or blood level determinations are required for every drug product to show effectiveness or equivalence. As explained in the response to comment 18 above, a manufacturer should be required to establish that its product is bioequivalent to a reference product only where scientific evidence demonstrates a known or potential problem of bioinequivalence, and, among the drugs that are currently marketed by more than one supplier, most drugs having bioinequivalence problems have now been identified. Thus, there is little or no scientific justification for involving human subjects and huge clinical resources to test a large number of drugs for which there is no evidence of bioavailability problems, or to reprove the safety and efficacy of an active ingredient which is already firmly established as safe and effective. In addition, unnecessary human testing cannot be ethically justified. It should be noted that in vivo tests are imposed for drugs having documented or potential bioequivalence problems.

20. One comment said the net number of drugs included in the List that are realistically eligible for source selection by the pharmacist at retail is only 134, or about 14 percent of the entire List. The comment noted that over half of these items are designated as "AB", meaning that FDA at some point thought they presented questions of bioequivalence and sought additional data from the manufacturers. These figures are significant, the comment argued, because FDA has said that relatively few drugs have inequivalence problems. In fact, the comment argued, the agency's own list of potential problem drugs constitutes more than half of the multisource market represented in the List. The comment also said that since so many multiple-source drugs are designated as "AB", FDA should make available the information that prompted a conclusion that these drugs are equivalent.

The agency advises that the purpose of the Approved Prescription Drug Products List is to provide a list of prescription drug products that FDA has had the authority and opportunity to evaluate for safety and effectiveness. In addition, the List contains evaluations of therapeutic equivalence for these approved drug products. In developing the List, FDA evaluated for therapeutic equivalence only multisource drug products, i.e., those pharmaceutical equivalents available from more than one manufacturer, since those are the only products that are eligible for source selection by health-care professionals. As stated in the response to the first two comments in this part of the preamble, FDA believes that among multisource drugs, most drugs having known or potential bioinequivalence problems have now been identified. For the remainder, bioequivalence can be presumed on the basis of pharmaceutical equivalence. In publishing the List, FDA is not claiming that all drug products are therapeutically equivalent or that all products are bioequivalent. As indicated by the comment, many drug products in the List are coded as therapeutically inequivalent, and many of these are so designated because of bioinequivalence problems. FDA's contention is that it has studied and is continuing to study bioavailability/bioequivalency among the nation's drugs and, based on information available to the agency, it is now able to evaluate the therapeutic equivalency of all multiple-source drug products that the agency has approved through the new drug approval process or the antibiotic certification process. In addition, FDA will revise these evaluations whenever warranted by new information, including bioavailability/bioequivalency data.

Regarding the comment that FDA should make available the information upon which it based its conclusion that "AB" drugs are therapeutically equivalent, the agency believes that the List, the preamble to the proposal, and this preamble to the final rule provide sufficient explanation and background for FDA's determinations of therapeutic equivalence. The agency does not believe it is either necessary or practical to include in the List the complete data that were reviewed by FDA scientists to determine the therapeutic equivalency of drug products on the List.

21. One comment said that because the List names 54 more drugs as having bioequivalence concerns than were named in the 1976 list of drug products with bioavailability problems, popularly known as the "Blue Book," inequivalence should be assumed in the absence of proof to the contrary. The comment also noted that 11 products previously listed as "approved" in that publication are excluded from the List.

The agency disagrees that this increase in the number of drug products listed as having bioequivalence concerns is due entirely to previously unanticipated bioequivalence problems. The publication referred to (HEW Publication No. FDA/76–3009; see the **Federal Register** of February 5, 1976 (41 FR 5339)) included a list of drug products with known or suspected problems of bioinequivalence which were subject to approved new drug applications. That list excluded post-1962 drug products, DESI drugs requiring a full NDA as a basis of approval, controlled-release and enteric-coated products, and antibiotic products. Of the 54 drugs mentioned by the comment as being included in the 1979 List but not in the 1976 list, 24 were antibiotics which were excluded because oral antibiotics had undergone in vivo testing for approval and certification; 12 were post-1962 drugs; one (phenytoin) was reported missing from the 1976 list but actually was included; one (chlorotrianisene) was incorrectly coded as "BP" in 1979 List and should have been coded as "AA"; two were DESI drugs requiring a full NDA and thereby excluded from the 1976 list; and six were found inequivalent due to reasons other than bioequivalence. This leaves the following eight bioavailability-problem drugs which were included in the 1979 list but were inadvertently overlooked in compiling the 1976 list: Colchicine-probenecid (BP), medroxyprogesterone acetate (BP), prednisolone acetate (BP), testosterone (BP), fluoxymesterone (BP), amitriptyline (AB) and (BP), sulfamethoxazole (AB) and (BP), sulfamethizole (AB).

Regarding the comment which noted that 11 drugs were included in the 1976 list as approved but are excluded in the 1979 List, the agency advises that the marketing of most of these products has been discontinued by their manufacturers. Two of these 11 drugs, digitoxin and digoxin, are not included in the 1979 List and are specifically mentioned in the 1976 list as not requiring an NDA because of their "old drug" status. In summary, the 11 multiple-source compounds which are identified in the 1976 list as being approved, but which are not included in the 1979 List are: Aminosalicylic acid tablets, bendoflumethiazide tablets, and paramethasone acetate tablets—included in the 1979 list as single source drugs; potassium aminosalicylate powder and tablets—the powder is coded "AA" in the List, and the tablets are now single source; digoxin tablets and digitoxin tablets—the injectable form is on the list, and the tablet form is not the subject of an approved application and is therefore excluded from the 1979 List; benzoylpas calcium powder, calcium aminosalicylate granules and tablets, dienestrol tablets, sulfamethoxypridazine tablets, and sulfamethoxypridazine acetyl oral suspension—all have been discontinued by their manufacturer.

22. Another comment said the definition of "pharmaceutical equivalents" should require that the products contain the same inactive ingredients or that they be produced by the same manufacturing methodology or technique. The comment explained that manufacturing involves the process and the technique of production as well as the selection of so-called inactive ingredients to achieve the predetermined objective of the dosage form. Relatively minor alterations of any of these elements can influence the therapeutic effect of the product. One of the examples of this given by the comment is that magnesium stearate is on the generally recognized as safe (GRAS) list as a safe ingredient; however, when inappropriately used in a product formulation it can totally prevent absorption of a drug entity and ultimately lead to therapeutic failure. The analysis for safety is not sufficient to assume therapeutic equivalence. The comment also noted that FDA acknowledged in the definition of bioavailability that variations in inactive ingredients or manufacturing methodology or technique can result in variations in product performance.

Although FDA agrees with many points in this comment, the agency's experience with reviewing inactive ingredients does not support the statement that it is necessary and appropriate for "pharmaceutical equivalents" to contain the same inactive ingredients or to be produced under the same manufacturing method or technique. Inactive ingredients and manufacturing methodology are extremely important. Through the new drug approval process, FDA has the opportunity to review the proposed formulation and manufacturing procedures. The fact that they are not identical from manufacturer to manufacturer is one of the fundamental reasons why FDA has limited the List of drugs to "approved" drug products. The agency reviews inactive ingredients through a variety of mechanisms including the evaluation of individual inactive ingredients to ensure safety and the review of formulation information in new drug applications to ensure that appropriate ingredients are used. In addition, the agency imposes bioequivalence study requirements on drugs where there is reason to believe different formulations (of inactive ingredients) would pose bioequivalence problems.

23. One commenter said that during his service on the USP Committee of Revision the most serious problems encountered were those of FDA's concern with violations by substitution of potent medicaments with lower-cost, life-endangering substances that were both chemically and pharmaceutically equivalent, and in a sense even bioequivalent. Two examples of this substitution were: (1) The substitution of Cyanocobalamin (vitamin B^{12}) with an "equivalent" amount of cobalamin concentrate in high-potency injections which, because of protein and other impurities in the concentrate, produced shock in the patient and then death; (2) the substitution of reserpine with an "equivalent" amount of Rauwolfia extract, which produced side effects more serious than those of the potent but useful reserpine.

The agency believes that the comment has confused two terms that were defined in the proposal. The examples cited by the comment do not fit the definiton of "pharmaceutical equivalents." Cyanocobalamin and cobalamin concentrate as well as reserpine and Rauwolfia extract are not drug products that contain identical amounts of the identical active drug ingredient, i.e., the same salt or ester of the same therapeutic moiety in identical dosage forms. Rather, they are "pharmaceutical alternatives," i.e., drug products that contain the identical therapeutic moiety, or its precusor, but not necessarily in the same amount or dosage form or as the same salt or ester. FDA does not evaluate the therapeutic equivalence of pharmaceutical alternatives.

24. One comment questioned FDA's position that therapeutically equivalent drug products may vary in certain respects such as color, taste, shape, or packaging without affecting their equivalence. The comment argued that each of these characteristics, if changed in an NDA-approved product, would require a supplement to the NDA supported by bioequivalence and stability data. The comment noted that stability is crucial to the integrity of the drug entity and to the release characteristics of the drug from the drug product. In addition, changes in disintegration and/or dissolution rate can adversely effect the bioavailability

of the product. The comment said it is essential to define the ways in which drug products vary because these variations may directly affect compliance with therapeutic regimens.

The agency notes that the proposal explained that drug products that are therapeutically equivalent may still vary in characteristics such as color, shape, taste, or packaging. Because of this, patients may not perceive such drug products as identical or equally acceptable and, thus, it cannot be said that they are substitutable or interchangeable in all cases. FDA believes that in such cases the practitioner, in prescribing and dispensing drug products, should consider the unique characteristics, needs, or problems of the patients. However, so long as there exists this professional regard for the individual patient, FDA believes that if one therapeutically equivalent drug product is substituted for another, there is no substantial reason to believe that the patient will receive a drug product that is different in terms of the therapeutic effect intended.

FDA agrees with the comment that improper packaging may affect drug stability and, thus, the bioequivalence of drug products. This is taken into account in the NDA and ANDA approval process. In addition, supplemental requirements for these changes and whether bioavailability data or stability data are required in the supplement are covered in §§ 314.8 and 320.21 of the regulations.

25. One comment disagreed with FDA's statement that internal manufacturing standards used to provide greater patient convenience or patient acceptance of a drug product do not relate to the safety and effectiveness of the drug product but are considered pharmaceutical elegance. The comment argued that patient compliance is often related to patient convenience and the acceptance of a drug product and that patient compliance is directly related to the actual safety and effectiveness experienced with any drug therapy. The comment said that FDA has not sufficiently recognized the importance of patient compliance to the actual effectiveness of ingestible products, especially in light of FDA's recent reversal of its position that fasting versus with-meals labeling differences between E-mycin and the generic erythromycin does not defer the establishment of therapeutic equivalence evaluations for maximum allowable cost (MAC) purposes. Another comment disagreed with FDA's statement that manufacturers who adopt specifications beyond those needed to reasonably ensure drug product quality do so for the purpose of elevating product "elegance" and that such additional standards do not necessarily produce a "better" product. The comment cited FDA's argument in the *Lannett* case, i.e., "Everyone is aware that a dozen different chefs can use the same ingredients, the same recipe, and employ the same enthusiasm, but produce a dozen different versions of what should be the same meal. No less is true of drugs, particularly drugs which present bioavailability problems * * * Variations in manufacturing processes, equipment, storage, and inactive ingredients may and do give rise to dissimilarities among products * * *." The comment contended that FDA's argument in *Lannett* is compelling and should not be ignored at this time.

The agency agrees that patient compliance is often related to patient convenience and the patient's overall acceptance of a drug product. In addition, the degree to which a patient complies with the prescribed drug therapy will obviously be a factor in how effective that drug product will be. The agency also believes, however, that bioequivalent drug products which have standards beyond those required to establish their safety and effectiveness and bioavailability may have distinguishable differences in appearance, taste, and so on. As discussed in the proposal (at p. 2940), these differences may result in one product being preferred over another, but it would not be a "better" product in the sense that it is more effective or safe.

The agency believes that the comment is incorrect in contending that a MAC was not established for erythromycin-base tablets because of a recognizable difference in labeling, and that this could affect patient compliance and product performance. An MAC was initially recommended by FDA because all manufacturers of these dosage forms demonstrated the bioavailability/bioequivalency of their product through appropriate in-vivo studies. The agency reversed its position after a review of data submitted by the Upjohn Co. which showed that its enteric-coated erythromycin-base product provided significantly higher blood levels when administered in the presence of food than under fasting conditions. Perhaps the comment was referring to erythromycin stearate tablets. As the agency noted in the preface to the List, some firms were able to show that their product performed satisfactorily when administered shortly before meals and therefore was labeled to reflect that information. However, erythromycin stearate is much more adversely affected by food than is erythromycin-base enteric-coated drug products and, when administered shortly after food intake, is marginally acceptable. On this basis, FDA stated in the preface to the List that optimal product performance is achieved when erythromycin stearate is given under fasting conditions, and recommended that all products be so administered. Under these conditions, all products have been demonstrated to be bioequivalent.

FDA also disagrees with the comment's reference to the *Lannett* argument. In *Lannett*, the agency was concerned with firms producing a product without an approved new drug application. The comment apparently interpreted the quoted portion of the *Lannett* argument to mean that the agency does not believe that manufacturers under any circumstances can produce an equivalent drug product even when using the same ingredients. That interpretation is incorrect. The new drug application system is designed to ensure safe and effective drugs as well as comparable drug product performance, regardless of differences in inactive ingredients. Standards beyond those needed for safety, effectiveness, and bioavailability go to that product's pharmaceutical elegance and quality.

26. One comment said that FDA's position on the value of compendial standards in ensuring multisource product equivalence is inconsistent with that argued in the *Lannett* case. In *Lannett*, FDA stated that "only specially designed tests on each manufacturer's product rather than standards set forth in recognized compendia" can determine whether a me-too drug product is bioequivalent to the pioneer drug. However, in support of the 1979 List, FDA stated: "For these reasons, it is appropriate to conclude that current compendial and antibiotic standards and similar standards in new drug applications provide a reasonable basis for evaluating whether two or more drug products are pharmaceutically equivalent and thus may be therapeutically equivalent."

The agency has not been inconsistent with regard to the importance of compendial standards. The position of the manufacturer in the *Lannett* case was that its products met compendial standards and that nothing more was needed to ensure product quality and performance. The agency's position is that compendial requirements alone will not ensure acceptable bioequivalence performance and that application standards are therefore essential to ensure bioequivalence. Where bioequivalence is not an issue, compendial requirements are important in ensuring product quality.

27. One comment disagreed with FDA's statement that the compendia have made significant improvements since the 1974 OTA report (e.g., the adoption of dissolution standards). The comment stated that pharmaceutical scientists have shown that much remains to be done with equipment and procedures before reproducible dissolution standards can be established.

The agency believes that significant improvements have been made in the compendia since the 1974 OTA report. One of the more notable accomplishments is that 25 dissolution standards were added to the *U.S. Pharmacopeia* (USP) (from 7 in 1970 to 32 in 1975), and 4 were added to the *National Formulary* (NF) (from 5 in 1970 to 9 in 1975). A somewhat wider application of dissolution requirements was made in the 1980 edition of the USP/NF. The agency recognizes that the reproducibility of dissolution testing has posed difficulties with some drugs. However, extensive assistance for dissolution testing and training programs for the paddle method provided by the agency's National Center for Drug Analysis have done much to improve this situation. The agency believes that the USP has been moving forward by developing improved equipment specifications and calibrators that are more precise and better defined than those previously used.

28. Another comment disagreed with the statement in the proposal that individual manufacturers who use standards exceeding those of the compendia refuse to make such standards public. The comment contended that improvement in test procedures developed by innovative companies are often used by innovators before their general use simply because of the substantial "compendial lag" that exists from the time a new test is submitted until it becomes official in the compendia.

Consistent with the statement in the proposal, FDA is aware of examples where manufacturers have failed to provide to the USP all of the specifications they use for producing a drug substance or product. However, the agency recognizes that improved test procedures may be used by innovators before their general use or before their adoption by the compendia. The necessary validation and review procedures that must be accomplished before new test procedures can be adopted officially and required of all manufacturers of a drug product require considerable time.

29. One comment stated that the proposed therapeutic equivalence evaluations incorrectly assume that certain drug products approved on the basis of less-than-full NDA's will perform in the same fashion as their fully approved counterparts.

The agency believes that the approval of drug products through the ANDA process is a valid basis for therapeutic equivalence determinations. The agency disagrees with the argument that the ANDA approval process is less demanding than the NDA approval process, and that product quality is less reliable among drug products covered by an approved ANDA. As explained in the proposal, an ANDA is authorized instead of a full NDA only after a decision has been made through the DESI review process that further clinical studies demonstrating the safety and effectiveness of the product are unnecessary. FDA requires that the person submitting an ANDA for a product demonstrate that the product is bioequivalent to the innovator's product, or in certain cases to a reference standard, unless the person submitting the ANDA can demonstrate that the bioavailability of its product is self-evident, or the agency decides that bioavailability is unimportant to the achievement of the product's intended uses. Because the safety and effectiveness of an ANDA's drug was previously demonstrated, and because of the bioequivalence requirement, it is clear that products approved through the ANDA process will perform in the same fashion as their counterparts approved through the full NDA process. Although some products were approved through the ANDA process before the bioequivalence requirements were implemented, FDA believes that it would be unnecessary and wasteful to now require proof of bioequivalence of all these products when there has been no documented evidence of or potential for bioinequivalence. For those products that do present known or potential bioequivalence problems, FDA can require bioavailability data at any time. FDA will not evaluate as therapeutically equivalent any products with a known or potential bioequivalence problem.

30. One comment stated that opinions vary on the inferences to be drawn from the existence of an approved ANDA based on the requirements for approval, and suggested that additional information is needed to help evaluate the strength of the inferences FDA draws from mere ANDA approval. Because the ANDA procedure makes little or no contribution to assurances about equivalence, the comment stated, the agency has an obligation to more precisely inform the public about what products on its List actually have bioavailability data on record. The comment said that FDA should supply a list of products showing (a) those for which a bioequivalence requirement was imposed by FDA, (b) those ANDA's which included in vivo bioavailability data, and (c) those for which FDA imposed a bioavailability requirement that was subsequently deferred. In addition, FDA should make public (1) the statistics relating to chemical inequivalence uncovered by the agency's program which tests categories of drugs on the basis of therapeutic importance, volume of usage, past quality problems, and other parameters, (2) the frequency and percentage of bioequivalence problems uncovered through FDA-funded clinical studies, and (3) any data the agency has to support its position that there are very few bioinequivalence problems among marketed multi-source products.

The agency believes, as explained in the respose to comment 29 above, that the ANDA procedure does contribute to assurances of therapeutic equivalence. In addition, the List provides the information called for by this comment. In regard to item (a) above, the List identifies all active ingredients and dosage forms that the agency believes pose actual or potential bioequivalence problems and identifies which firms have completed bioequivalence studies for these drug products. In regard to item (b) above, the List provides information as to which new drug applications have been accompanied by in vivo bioequivalence studies for those drug products. In regard to item (c) above, the List identifies those situations where the agency believes that a firm should demonstrate the bioequivalence of its products but has not yet done so. The information that the comment suggests that FDA make public, i.e., items (1), (2) and (3) above, are available from various sources. The data relating to chemical inequivalence referred to under item (1) of the comment is already available to the public under the Freedom of Information Act. The frequency and percentage of bioequivalence problems uncovered through FDA-funded studies has been publicized through publications in newsletters and scientific journals by the investigators who performed these studies. The data on which the agency

based its conclusions regarding the extent of bioinequivalence problems among marketed multisource products are referred to at length in the proposal (at pp. 2941–2943).

31. In the proposal, FDA explained that it assures the quality of marketed generic drug products through its authority to require premarketing approval of an ANDA that contains information about the manufacturing processes, ingredients, and labeling to be used by each firm marketing the drug. However, one comment contended that the *Lannett* decision has shown this assumption to be erroneous because FDA conceded that each of the drugs involved in that case was generally recognized as safe and effective as a generic entity, but the agency maintained that the individual product formulations were new drugs for which prior approval was required. The comment noted that the court rejected FDA's argument, and held that *Lannett's* products were not new drugs within the meaning of the act. The comment said that the agency could not compel *Lannett* to submit manufacturing and quality data for FDA's review and approval before it commenced marketing. The comment concluded that, under the *Lannett* holding, FDA can no longer effectively require that persons wishing to introduce generic products into the market first obtain approval of their manufacturing and quality control capabilities through the ANDA process.

The agency disagrees that, under the *Lannett* holding, it can no longer effectively require that persons wishing to introduce generic products into the market first obtain approval through the ANDA process. FDA continues to maintain that the language in *Lannett* regarding this issue was "dicta," and that the Court of Appeals for the Third Circuit held only that the district court incorrectly concluded that *Lannett* had not waived its right to an administrative hearing on the proper classification of its drugs. The Solicitor General decided not to seek certiorari to the U.S. Supreme Court in *Lannett* because such a petition could seek review only of the actual decision of the court of appeals, with which FDA does not disagree, rather than a review of the "dicta" in the court's opinion, with which FDA does disagree.

Subsequent to the *Lannett* decision, a different appellate court strongly supported FDA's position that generic copies of previously approved drugs are subject to premarketing approval. *Premo Pharmaceutical Laboratories, Inc.* v. *United States*, Nos. 79–6226, 79–6185 (2d Cir. July 29, 1980). FDA is continuing to require premarketing approval for generic drug products and believes that, if needed, the Supreme Court will review this issue. It should also be noted that only those drug products for which FDA has had the authority and opportunity to evaluate for safety, effectiveness, and quality are included in the List. Thus, in light of *Lannett*, the List is especially important because it enables physicians and pharmacists to identify FDA-approved drug products for selection.

32. Two comments said that one of the most important criteria established by FDA in judging whether or not two products can be considered equivalent in the manufacturer's record of compliance with FDA's Current Good Manufacturing Practice (CGMP) regulations. The comments said, however, that without accurate manufacturer compliance information, the List does not assure prospective users that the sources of supply listed are in fact performing competently. The comments pointed out that the appearance of a product on the List under the code "AA" or "AB" implies that the manufacturer is in compliance with CGMP regulations. But the comments said that an examination of the public record on the performance of suppliers whose names and products are listed in the New York generic drug product list does not support any general endorsement of the quality of listed firms. In some cases, the comments noted, the record shows major compliance failures that are recent and unresolved, despite the inclusion of both the company and the products inspected in the FDA List. The comments cited the following examples as taken from actual FDA inspection reports of Quality Assurance Profiles: Inspections at two of a firm's establishments revealed serious violations of CGMP requirements from August to September, 1978. On January 5, 1979, FDA issued its List including 10 of the firm's drugs. Four of those 10 had specifically been identified as not conforming to CGMP regulations. The comments said that on January 30, 1979, FDA issued to the firm a regulatory letter alleging that the August to September inspection findings were serious violations which, if not corrected, warranted further regulatory sanctions. The comments concluded that the FDA record demonstrated that the manufacturer was not in compliance with CGMP regulations when its products were placed on the List. The comments also said that there is at least one firm mentioned in the FDA List whose products were recently excluded by the New Jersey Drug Utilization Review Council from the State's generic drug product list. The firm's poor record of compliance with CGMP regulations was cited as the reason for the exclusion.

The agency agrees that compliance with CGMP regulations is necessary to assure batch-to-batch consistency in drug product quality and believes it has been successfully enforcing the CGMP regulations. Also, the agency substantively improved the CGMP regulations as published in the **Federal Register** of September 29, 1978. However, as indicated in the preface to the List, from time to time approved products—whether brand name or generic—may violate one or more requirements of the act. In such cases, the agency will initiate appropriate enforcement action to remove the violative product from the market. If the problem leading to the violation continues, FDA will undertake additional steps to eliminate the risk. Such regulatory action, however, is independent of the inclusion of products in the List. The sole criterion for inclusion of a marketed product in the List is its being the subject of an approved application. Marketed products will not be removed from the List until completion of FDA proceedings to withdraw approval of the product under section 505 or 507 of the act, as applicable. FDA believes that retention of a violative product on the List will not have any adverse health consequences because other legal procedures are available to the agency to prevent actual marketing of violative products.

It should also be noted that when there is a change in the information contained in FDA files concerning a multiple-source drug product that is on the List, there exists the potential that the drug product will no longer meet the criteria for therapeutic equivalence as initially evaluated. In this instance, FDA will reevaluate the drug's therapeutic equivalency by applying the current information to the criteria for therapeutic equivalence. If the reevaluation reveals that the listed therapeutic equivalence evaluation is no longer accurate, the evaluation will be revised accordingly.

33. FDA stated in the proposal that the latest revision of CGMP regulations would assure a high degree of batch-to-batch consistency of drug product quality. A comment contended that the extent to which CGMP regulations contribute to product uniformity among multiple sources is directly proportional to the uniformity of enforcement by

FDA's inspection programs. The comment claimed that inspection standards and frequency of inspection vary among different categories of manufacturers, and FDA inspectors vary considerably in their abilities to evaluate manufacturing and quality control standards. The comment also said that significant differences appear to exist in the enforcement practice of FDA's district offices. Another comment stated that CGMP regulations provide "minimum standards" and that a requirement of meeting minimum standards does not ensure the equivalence of multisource manufactured products.

FDA is aware of the need to achieve uniform enforcement not only of the CGMP regulations but in all of its compliance activities. The agency strives to meet this goal through a number of programs. For example, FDA has comprehensive training programs administered both nationally and regionally, such as its basic and advanced drug schools. These programs are designed to enhance the expertise of field inspectional staff and to promote a uniform approach to CGMP inspections. Uniformity is also promoted through the use, by headquarters and field personnel, of inspectional, compliance, and administrative programs in such staff manuals as the *Investigator Operations Manual*, the *FDA Compliance Programs Manual*, and the *Compliance Policy Guide Manual*. Uniform interpretation/application of the CGMP regulations is also promoted through headquarters-field communications, including periodic meetings of the staffs of the field districts and the Bureau of Drugs. In addition, the agency has a centralized review and approval process for all its regulatory actions.

The agency acknowledges that perfect uniformity of enforcement, as apparently envisioned by the commenter, is complicated by two unavoidable factors. First, no two cases of noncompliance with CGMP's are exactly alike. The type of response FDA may consider could therefore vary somewhat from case to case, and is based on such considerations as the severity and number of violations, the potential impact on drug product quality, safety, and effectiveness, the potential for a health hazard, and the effectiveness and promptness of any corrective measures. These considerations necessitate a certain amount of individual judgment, which is the second factor. Within the framework of established policies and procedures a certain degree of individual judgment must be exercised, from the observations of the field investigators to district managers to headquarters officials. The agency is convinced, however, that multiple levels of review incorporated in its compliance procedures are sufficient to counter any negative impact this factor may have on achieving the greatest possible degree of uniform enforcement. These multiple levels of review include the review of all proposed significant regulatory actions by the Bureau of Drugs, Office of the Commissioner, and the General Counsel before referral to the Department of Justice.

Regarding the frequency of FDA inspections, the agency acknowledges that some drug firms may, in fact, be inspected more often than others. Although the Federal Food, Drug, and Cosmetic Act requires at least biennial inspections of drug manufacturers, more frequent inspections may be made for a variety of reasons. For example, a firm's state of compliance may necessitate more frequent inspections to ensure that CGMP violations are corrected. The agency wishes to clarify, however, that not all FDA inspections involve comprehensive CGMP evaluations. For example, limited inspections may be conducted to obtain specific product stability data, to investigate consumer complaints, to collect samples and review production records under national surveillance programs, or to inspect drug products offered under contract to Federal agencies under the Government-Wide Quality Assurance Program. The agency believes that these inspections do not hinder uniform enforcement. In fact, uniform enforcement could be hampered if all firms were inspected with equal regularity, regardless of the circumstances.

Regarding the comment that the CGMP regulations constitute only the minimum current good manufacturing practice, the agency believes that when these standards are followed they provide a high degree of assurance of drug product quality. The agency wishes to emphasize, however, that compliance with CGMP regulations is only one of the factors which determines a finding of therapeutic equivalence. Pharmaceutical equivalence, bioequivalence, and adequacy of labeling are additional factors that are considered in determining a therapeutic equivalence evaluation.

34. One comment disagreed with FDA's contention that under section 507 of the act the monitoring of drug product manufacturing processes ensures batch-to-batch uniformity of individual product entities. The comment cited FDA as saying that from January 1974 through October 1978, 20,000 batches were submitted with the rejection rate averaging less than one-half of 1 percent. The comment said that FDA's argument in this area is misleading, and that antibiotic batch certification requires only a series of in vitro tests which, at best, ensure chemical purity, potency, and unit-to-unit dosage form chemical content. The comment said there is documented evidence of bioinequivalence of marketed products that have passed all FDA batch certification requirements (for example tetracycline, oxytetracycline, and digoxin). The fact that the rejection rate of antibiotic batches has averaged less than one-half of 1 percent for more than 4 years, the comment said, is hardly compelling evidence upon which to assess the relativity of batch certification to therapeutic equivalence. The comment said that the only conclusion which may be drawn from these data is that there is agreement between a particular manufacturer's assay and the assay of FDA's certification laboratory.

The agency believes that the antibiotic batch certification process does help to ensure batch-to-batch uniformity of antibiotic drug products. Generally, antibiotic batch certification requires a series of in vitro tests, and, at times, biological tests, to ensure chemical purity, potency, and unit-to-unit dosage form chemical content. When FDA becomes aware of a bioinequivalence problem with an antibiotic, it may require that the product meet dissolution test standards. The agency has already developed such required certification standards for tetracycline and oxytetracycline. When a bioinequivalence problem is detected, a dissolution standard is developed using a product for which FDA has clinical evidence of safety and effectiveness and blood level information. The dissolution test is then added to the monograph as a requirement for certification. It should be noted that in addition to the antibiotic batch certification process FDA uses other mechanisms to control batch-to-batch consistency, namely, current good manufacturing practice regulations and FDA's monitoring of the drug supply in the marketplace.

35. The criteria for pharmaceutical equivalents include the requirement that the products "meet compendial or other applicable standards of identity, strength, quality, and purity." Two comments expressed the view that although FDA monitors marketed drug

products through its analytical laboratories and its field surveillance, it cannot assure the public that all products meet the applicable standards. The comments said recalls of drug products represent failures of the quality assurance system, and that in many cases those products have been used for patient care before the deficiency comes to the attention of the manufacturer or FDA. The comment noted that the *FDA Quarterly Reports* said that approximately 70 percent of the domestic human drugs examined and classified by FDA are found to be in compliance. Since a significant portion of the marketed drug products does not comply with regulatory requirements, the comment concluded, an assumption of therapeutic equivalence is unwarranted.

FDA is confident that drug products found to be pharmaceutically equivalent and bioequivalent will remain so and thus may be evaluated as therapeutically equivalent. In the proposal (at pages 2939–2947) the agency thoroughly explained its scientific and regulatory foundations for evaluating drug products as therapeutically equivalent. In addition to bioequivalence requirements, FDA controls batch-to-batch consistency through the new drug approval and antibiotic certification processes, the batch certification procedures, the CGMP regulations, and FDA's monitoring of the marketplace. This monitoring program involves a continuous effort to detect the occasional problems that may be associated with marketed prescription drug products and includes factory inspections, the Quality Assurance Program for Selected Marketed Drugs, the Drug Product Problem Reporting Program, the Antibiotic Post-Certification Sampling Program, the District-Initiated Sampling Program, the Government-Wide Quality Assurance Program, the Maximum Allowable Cost (MAC) Program, the Biopharmaceutics Research Program, manufacturers' reports of problems involving their own drug products, and manufacturers' reports of problems involving competitors' drug products. FDA believes that these diverse programs, each with different scope and purpose but somewhat overlapping perspectives on the prescription drug market, provide assurance that manufacturers and drug products deviating from established requirements will be detected with reasonable promptness. In addition, as explained in Part V below, the recent FDA *Analysis of Prescription Drug Recall Rates* showed that the recall rate for the population of drug products most likely to be the subject of drug product substitution was very low. This demonstrates that consumers, physicians, and pharmacists are very unlikely to encounter a multisource therapeutically equivalent drug product that will be the subject of a recall. Finally, as explained in the response to comment 32 above, regulatory action against violative drug products is independent of the inclusion of products in the List. Marketed products will not be removed from the List until completion of FDA proceedings to withdraw approval of the product under section 505 or 507, as applicable. However, FDA will revise its listed therapeutic equivalence evaluation if warranted by a change in the information in FDA files concerning a particular drug product.

36. One comment argued that in promoting drug product substitution, FDA has failed to consider the economic and public health aspects of "look-alike" drugs. The comment said the implications of "look-alikes" for patient safety are a serious concern: FDA recalls totaled nearly 2,000 over a recent 6-year period, and, according to the comment, the recall rate is many times higher for nonresearch-based manufacturers of generics than for research-intensive companies. The comment said that to the extent that lower-cost generic products are substituted for brand-name drugs, it is likely that generic drugs will have an ever-increasing share of the market, and it is reasonable to expect that the necessity for recalls, because of potentially dangerous mistakes, will increase proportionately. Furthermore, the comment said that with increased substitution, confusion by the consumer of manufacturer identity associated with "look-alike's" may be significant. For example, the comment said that consumers may think they have the brand name drug product, may use the brand name in referring to the look-alike, or may even mix the look-alike with the brand name product in the same bottle. Prompt manufacturer identification, the comment said, is essential to effective drug enforcement, and such identification can easily be delayed or even become impossible with look-alike's.

The agency disagrees with this comment. First of all, for the reasons set forth in the responses to comments 10 and 11 in Part II, FDA disagrees that the purpose of the List is to promote drug product substitution. In addition, the comment's reference to 2,000 recalls over a 6-year period mainly includes products which either do not require NDA's, or which require approved NDA's but which have been marketed illegally. Only about 1 percent of the 2,000 recalls involved approved drug products. It is thus invalid to assume that the approved drug product marketplace is filled with deficient drug products. The agency believes it is especially important, because of the many generic drugs available, whether or not they duplicate the appearance of brand name products, to publish a list of approved prescription drug products that meet FDA requirements and which identifies those products that are therapeutically equivalent. In order to help minimize the chance that products that are not therapeutically equivalent or that are unapproved are used in filling prescriptions. The agency recognizes the need for consumers to be informed when drug substitution occurs in order to prevent them from receiving another product without their knowledge. However, the agency has no evidence to warrant changing its position that the substitution of approved therapeutically equivalent "look-alike" products does not pose any significant problem.

37. One comment said the findings and recommendations of the 1974 OTA Report are presented in a selective, unbalanced, and self-serving manner by FDA in the proposal and that in citing quotations from Congressional hearings on the OTA Report, FDA quotes only a few select favorable statements. Furthermore, the comment said that Recommendation 11 of the OTC Report, which called for an official list of "interchangeable" drug products, was contingent on "considerations of current technology and of technology that we believe could be developed within the next few years." The comment stressed that among the deficits listed in the 1974 OTA Report were those associated with "current standards, particularly compendial standards." These standards, said the commenter, are still deficient, dissolution testing standards remain inadequate, there continues to be a compendial lag in adoption of new methodology, and manufacturer inspections are sporadic. The comment said that if FDA claims it has met the OTA's prerequisites to the preparation of a list proposed under Recommendation 11, it should place its case before an appropriate outside group of pharmaceutical and medical scientists for evaluations.

The agency disagrees that any attempt was made to selectively quote, to FDA's benefit, the recommendations of the 1974 OTA Report. Its

recommendations have been a matter of public record since July, 1974. Recommendation 11, referred to by the comment, proposed the establishment of an official list of drug products evaluated for therapeutic equivalence. The completion of other FDA actions, as explained in the proposal, now makes it feasible for FDA to implement this recommendation. Regarding the comment that compendial standards and dissolution testing standards are deficient, the agency's response to comment 27 above refutes that assertion. In addition, the response to comment 28 above addresses the charge regarding a compendial lag.

38. A comment pointed out that FDA makes definitive evaluations about therapeutic equivalency while at the same time makeing several disclaimers of responsibility for any consequences of these evaluations. The following examples were given. (1) FDA makes no recommendation as to which products persons should purchase, prescribe, or dispense or which products whould be avoided. (2) Because therapeutically equivalent drug products may vary as to color, shape, taste, or packaging, patients may not perceive them as identical or equally acceptable, and for this reason FDA should not state that such drug products are substitutable or interchangeable in all cases. (3) It is sound and appropriate for FDA and the public to rely on the requirements of law, compendial standards, and the drug approval process; however, FDA does not require the public to rely on these regulatory controls or to accept this conclusion. (4) FDA's evaluations of therapeutic equivalence are not binding on any State, physician, pharmacist, or patient.

The agency advises that it did not make any of the statements cited by the comment as disclaimers of responsibility for consequences of therapeutic equivalence evaluations. The proposal pointed out in explaining the legal status of the List that it does not constitute an order or a rule, impose a requirement or restriction upon any person, interpret or apply the act in a manner that creates any obligation on any person, or make a recommendation as to which products persons should purchase, prescribe, or dispense, or conversely, which products should be avoided. Further, because FDA obviously is not the prescriber or the dispenser, it is not in a position to determine whether different drug products are substitutable or interchangeable for use by a particular patient; this judgment rests with the practitioner or dispenser, who, in prescribing and dispensing drug products, can take into consideration the unique characteristics, needs, or problems of the patient. This responsibility is explained in the preface to the List under the heading "E. Precautions to Users of the List."

39. One comment suggested that FDA should publish a list of all prescription drug products marketed in the United States under existing regulations and summarize the specific regulatory standards that have been applied to the individual products and the degree to which producers and their products have complied with these standards. The comment said that such a list should include the following drug products: (1) "Grandfathered" drugs, (2) "old" drugs not subjected to DESI review, (3) "old" drugs subjected to, and passed by, DESI, (4) "old" drugs subjected to DESI but put in possibly effective, or ineffective status, (5) new drugs covered by NDA's or Form-5's, (6) new drugs covered by ANDA's or Form-6's, (7) drugs in interstate commerce but not currently in any of the categories, and (8) drugs in intrastate commerce and not subject to FDA authority. The comment also said FDA should make no representations concerning "equivalency" or "interchangeability".

The agency agrees that the availability of such a list would be desirable, but it does not agree that agency recommendations concerning therapeutic equivalence on drug products which are the subject of approved applications for safety and effectiveness should be withheld unless such a comprehensive list is available. Such a list would be extremely difficult to develop and keep current. Through publication of the List, FDA will make known those drug products it has reviewed and approved. The List represents the vast majority of prescription drugs used in this country.

IV. Specific Criteria Used in Preparation of List

40. Several comments objected to the exclusion of pre-1938 drugs from the List. The comments said that their exclusion was illogical and seriously restricted the usefulness of the List, since pre-1938 drugs represent the bulk of those drugs which are available from multiple sources. The comments also said that the pre-1938 drugs should be included in the List because most of these drugs are contained in the USP and thus are required to meet compendial standards of strength, quality, and purity. Therefore, it was stated, any pre-1938 drug for which compendial standards exist should be considered pharmaceutically equivalent and available for substitution unless there is evidence of a bioequivalence problem. One comment recommended that until pre-1938 drugs are included in the List, FDA should include prominent statements on the cover and title page explaining their exclusion.

The agency believes that pre-1938 drugs, including those in the USP, should be excluded from the List because these drugs are not the subject of approved NDA's. The List only contains information on products approved through the preclearance procedures of the act. FDA is able to evaluate as therapeutically equivalent only those drug products that the agency has had the authority and opportunity to evaluate and ensure for safety, effectiveness, and quality. The agency agrees, however, that pre-1938 drugs should be incorporated into the List once the information necessary to ensure their safety, effectiveness, and quality is available. The agency notes that the final version of the preface to the List states that pre-1938 drugs not subject to the premarket clearance procedures of the law are excluded from the List.

41. Comments also objected that drugs still being evaluated for effectiveness under the Drug Efficacy Study Implementation (DESI) were excluded from the List. These comments contended that neither the definition of pharmaceutical equivalence nor the definition of bioequivalence includes the concept of effectiveness and that bioavailability is not an issue in determining therapeutic equivalence. Thus, it was argued that the agency's assumption that pharmaceutically equivalent drug products are bioequivalent unless there is evidence to the contrary should also apply to DESI drugs that are pharmaceutically equivalent. The comments contended that this rationale has already been accepted by the Federal Government, because Butazolidin Alka, a drug presently listed as ineffective under DESI, was included in the List of Maximum Allowable Cost (MAC) drugs by the Health Care Financing Administration. The comments said that a drug may not be included on the MAC List if there is any regulatory action to establish a bioequivalence requirement, and the bioavailability issue is not considered in establishing a MAC drug. In publishing the List, the comments said that FDA should follow the same criteria, i.e., one of presumed bioequivalence, and the concept of bioavailability should not be considered.

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As stated in the preface to the List, the agency has considered and rejected the option of including drug products still under review in the DESI process. The agency's position is that drug products still being evaluated for effectiveness under DESI should be excluded from the List until such time as the active ingredient or combination of ingredients has been fully evaluated and found to be effective. A primary question that must be answered before a DESI drug product may be fully approved for marketing is whether it is effective for its indications; only after this question has been answered does the secondary question of therapeutic equivalence become relevant.

FDA agrees that therapeutic equivalence theoretically may be possible for less-than-effective drugs. In addition, the agency agrees that bioequivalent and pharmaceutically equivalent drug products may be less than effective. But these factors have not been found to justify the agency's evaluation of the therapeutic equivalence of these drugs for inclusion on the List. At the same time, these factors do not prevent the agency from making a therapeutic equivalence evaluation for a drug for which the Pharmaceutical Reimbursement Board is considering establishing a maximum allowable cost. Phenylbutazone alka was included in the MAC program solely on the basis that at the time there was only a single manufacturer and distributor, even though the drug had been evaluated as less than effective, and administrative steps had been undertaken to remove the drug from the market. The comments were in error in stating that a drug may not be included on the MAC list if there is any regulatory action to establish a bioequivalence requirement. Many drugs for which a bioequivalence requirements is pending are included in the MAC program because FDA has assured the Pharmaceutical Reimbursement Board that all current manufacturers of the drug have submitted adequate bioequivalence data to the agency.

42. Several comments said that the List identifies only "actual manufacturers" and unfairly discriminates against products marketed by distributors and relabelers who do not also manufacture the products they market. One comment maintained that the "failure of the List to include distributors keyed to each manufacturer will necessarily result in the users of the List generally perferring to deal with actual manufacturers or manufacturer/distributors since dealing with a distributor would require independent confirmation of the source of its drug product." Finally, a comment suggested that to assist the States in implementing their drug product substitution laws, FDA should require that drug product labels bear the name and address of the approved manufacturer.

The agency believes that the comments have misconstrued the basis on which drug firms are included in the List. The products in the List are identified by the names of the holders of approved applications, which are in most instances the actual manufacturers of the products, rather than by the names of the actual manufacturers themselves. This is because the application holder may have had its product manufactured for it by a contract manufacturer and may simply be distributing the product for which it has obtained approval. (A complete discussion of FDA's determination of "application holder" for purposes of the List can be found in the preface to the List under Part E, "Precautions to Users of the List".)

FDA does not believe that there is a feasible way at this time to maintain an up-to-date and complete list linking the products of each approved application holder with the distributors and relabelers handling those products. Products subject to an approved application are frequently manufactured for distributors, under the distributor's labeling, for marketing by the distributor. Because these distributors often shift their source of supply in the commercial marketplace without informing FDA, even if FDA were to attempt to expand the List to link distributors with holders of approved applications, it would not have ready access to the information necessary to do so.

The agency does not agree that the makeup of the List is such that users will necessarily prefer to deal with holders of approved applications rather than with distributors (i.e., those distributors who do not hold the approved applications for their products). The agency believes that in most cases the labels of products marketed by these distributors also identify (as the manufacturer or packer) the holder of the approved application for the labeled product. This label disclosure permits a would-be purchaser to relate the product to the List in a ready and convenient way. The agency encourages distributors to make the necessary disclosure on the drug product label to assist pharmacists, if they choose to substitute a therapeutically equivalent drug for the one prescribed, to select a drug product supplied by a listed holder of an approved application. Nonetheless, the agency may consider feasible alternatives that would identify distributors who are not the holders of approved applications.

It should be noted that although FDA would encourage labels to disclose voluntarily the name of the holder of the approved application for the product, the agency does not have authority to require such disclosure. The Federal law requires that a drug product label bear the name and place of business of the manufacturer, packer, or distributor (21 U.S.C. 502(b)(1)). The choice of which of these persons or which combination of these persons are to be identified is left to the labeler of the product and to the requirements of State law.

43. One comment stated that FDA should not evaluate as therapeutically equivalent drug products that infringe patents because including such drugs on the List violates constitutional principles as well as patent laws and discourages discovery and disclosure of new inventions. Another comment said that a pharmacist relying on the List may be sued for selling an "unlicensed" generic product. Therefore, the List should mention that FDA does not consider the patent status of drugs.

The patent laws do not have any bearing on the enforcement of the Federal Food, Drug, and Cosmetic Act, and the agency does not consider these laws when reviewing new drug applications and making drug product approval decisions. If a firm submits a new drug application for a patented drug, FDA reviews the application without considering any patent issue. If the application is approvable, it is approved. However, to inform the public of this policy the agency, as requested by the comment, will include a statement in the preface to the List to the effect that the patent status of a drug is not considered by the agency in its review of applications to market drugs.

44. One comment objected to the inclusion of single-source drugs in the List. The comment contended that the presence of single-source items is misleading and could even cause prescribing or dispensing errors. The comment said that physicians or pharmacists might assume, unless they carefully check the List, that different dosage forms or strengths of a drug under a single-source heading are equivalent.

The agency disagrees with the comment and believes that including single-source drug products approved for safety and effectiveness adds to the completeness of the List. The agency is confident that, as a result of their highly technical and specialized training, practitioners and pharmacists will not assume that different dosage forms or strengths of a drug under a single-source heading are equivalent.

45. One comment noted that the Task Force of the American College of Neuropsychopharmacology's final report, which was recently prepared with the help of FDA staff members, deals with the question of equivalence among different versions of psychotropic drugs and recommends the establishment of criteria for developing bioequivalence data within this product class. According to the comment, the report said that bioinequivalence may occur because of the improper substitution of psychotropic drugs after the repeal of anti-substitution laws. The comment noted that many drugs on the List are psychotropic drugs and are designated as "AA", eligible for substitution. The comment said that the possible hazards to patients who rely on these products could be significant.

The agency agrees with the Task Force of the American College of Neuropsychopharmacology that it would be undesirable to use multisource pyschotropic drug products interchangeably unless their bioequivalence had been established. The Task Force, however, did not address all psychotropic drugs, but specifically addressed the tricyclic antidepressants and phenothiazines. These drugs have been coded to indicate a known or potential bioequivalence problem. The agency has published proposed bioequivalence regulations for these two drug classes requiring both in vivo bioavailability studies and in vitro dissolution testing to establish bioequivalence. (The proposal for tricyclic antidepressants published in the Federal Register of February 17, 1978 (43 FR 6965); the proposal for phenothiazines published in the Federal Register August 26, 1980 (45 FR 56832).)

46. One comment objected to FDA's position that there may be variations in the labeling instructions for drug administration among pharmaceutically equivalent products and that judgments of therapeutic equivalence can be made only when each product is taken in accordance with its particular labeling directions. The comment argued that because these products are listed as being therapeutically equivalent, they will be considered interchangeable.

The agency disagrees. As stated in the proposal, there may occasionally be variations among pharmaceutically equivalent products in the labeling instructions on dose and administration. For example, a particular brand of an antibiotic might require administration on an empty stomach, while another brand might permit administration without regard to food intake on the basis of blood level studies done after administration in the presence of food. Thus, an FDA evaluation of therapeutic equivalence applies only when these products are taken in accordance with labeling directions for the particular product. The preface to the List, Part E, "Precautions to Users of the List," explains this to practitioners. In addition, the agency's explanation of therapeutically equivalent drug products in this document, in the proposal, and in the preface to the List has included the phrase "when administered to the patient under the conditions specified in the labeling."

47. A few comments objected to FDA's procedure of permitting bioequivalence and therapeutic equivalence to be demonstrated by testing a single lot, especially in the use of controlled-release dosage forms. The comments argued that the results of a test on a single lot are not a sufficient basis for assuming continued equivalence in subsequent manufacturing operations. The comments said that FDA must evaluate a manufacturer's ability to produce bioavailable products on a sustained, on-going basis.

The agency believes that it is neither feasible nor necessary to conduct bioequivalence studies on individual lots of a product. Lot-to-lot uniformity can be assured by in vitro dissolution testing when specifications, manufacturing procedures, and controls are identical for all lots. When deficient dissolution performance or lot-to-lot variability is identified through in vitro dissolution testing, the product will be coded as therapeutically inequivalent even though acceptable bioequivalence has been demonstrated in a single lot. This is the procedure that was followed with imipramine and chlorothiazide tablets.

48. One comment stated that the proposal to restrict maximum allowable drug content variations to 1 percent should be reevaluated. This reevaluation should consider topically, orally, and insertion-administered drug products that are being developed or are on the market that are designed not to release their entire contents from their drug reservoirs during their prescribed dosage interval. The actual potency of these products, the comment said, is not normally the labeled drug content but rather, the labeled rate of drug release for the period of administration. The comment suggested that a more comprehensive format for the List be developed, allowing for the display of release rates and durations as well as total drug contents.

The agency notes that the maximum allowable content variation of 1 percent deals with equivalence among products having the same active ingredient but in somewhat different amounts. The agency uses a criterion of equivalence for products where labeled strengths do not vary by more than 1 percent. Most marketed drug products which vary in labeled amount of active ingredient will vary by more than 1 percent and are therefore considered, by the agency, to be pharmaceutical alternatives, not pharmaceutical equivalents. For example, butabarbital sodium tablets, 15 milligrams (mg) and 16.2 mg, are pharmaceutical alternatives because they vary in labeled amount of active ingredient by more than 1 percent. These two products would not be considered therapeutically equivalent because they are not pharmaceutical equivalents due to the differences in labeled amount of active ingredient. Specialized products in which the drug is released from the dosage form at a controlled rate have been evaluated separately using a criterion of equivalence that considers rate of release from the dosage form.

49. One comment said that FDA should consider how it might communicate potentially meaningful differences in the extent and rate of drug bioavailability over the period of administration for similar controlled-release products. This could be in the form of a quantitative performance or merit index that would provide a method of quantitatively discriminating between individual controlled-release products on the basis of how well these products were able to approach the constant maintenance of a target serum drug level. The comment said that an index would allow FDA to include the quantitative index value for each controlled-release product in future lists. This would provide the prescribing physician or dispensing pharmacist with a means to select the best drug bioavailability profile for each patient and, the comment said, it would ensure that similar controlled-release drug products with differing performance characteristics would not be inadvertently considered therapeutically equivalent.

While this commenter describes interesting criteria for evaluating controlled-release drug products that may deserve further consideration, the agency believes the suggestion is not currently relevant to the List. With regard to controlled-release drug

products, the proposal stated (at p. 2951) that these dosage forms are subject to bioavailability and bioequivalence differences primarily because different firms developing controlled-release products for the same active ingredient rarely employ the same approach to formulating their controlled-release products. The agency believes that different controlled-release dosage forms containing the same active ingredients in equal strengths should not be evaluated as bioequivalent unless equivalence between individual products has been specifically demonstrated through appropriate bioequivalence studies.

50. One comment suggested that an additional code should be added to the List to indicate drug products that are being considered therapeutically inequivalent for reasons of potential differences in a patient's compliance with a prescribed dosage regimen or because of differences in the labeled dosage regimen. The comment stated that all treatment regimens are not likely to be followed equally by self-medicating patients, and some drug products have particular characteristics that can either promote or impede patient compliance with a prescribed treatment regimen.

The agency believes that differences in patient compliance between brands should be minimal because the evaluation of products for therapeutic equivalence has been limited to those involving the same active ingredient, strength, and dosage form. Perhaps the comments were concerned that agency recommendations would extend to comparing controlled-release products or specialized dosage forms with conventional dosage forms. It should be apparent to any reader of the List that this has not occurred. Moreover, except in situations where product equivalence has been demonstrated, comparisons have not been made between controlled-release products. The agency has identified in the proposal actual or potential issues associated with legitimate significant differences between conventional dosage forms of pharmaceutical equivalents. Because each of these situations is unique and needs to be discussed individually, the agency does not agree that a new code would serve any purpose. Although the agency agrees that patient compliance warrants concern, it does not believe that the List is the proper vehicle to attempt to improve patient adherence to treatment regimen.

51. One comment noted that an alphabetical listing of the top 200 drugs for 1977 appeared in the April 1978 issue of *Pharmacy Times*. The comment said that these top 200 drugs represented 68.8 percent of all prescriptions, and that 53 of the top 200 drugs are not listed in FDA's proposed List. The comment said that for the generic copies of these 53 drugs, FDA is unable to make a determination of therapeutic equivalence. The comment also said that these 53 drugs are among the most well known prescription products in America.

The agency notes that the comment named only 16 of the 53 drugs it referred to. These 16 drug products are either pending resolution of safety or effectiveness questions and are listed in the appendix to the List, or are drugs marketed prior to 1938 that are not subject to the premarket clearance procedures of the law. Only those drug products fully reviewed and approved for safety and effectiveness by FDA are included in the List. The Drug Efficacy Study Implementation (DESI) process for 2 of the 16 drug products cited by the comment, Atarax and Aldactone, has recently been completed. These drugs were found to be safe and effective for their intended use and will therefore be included in a future supplement to the List.

52. One comment said that the determinations of therapeutic equivalence are unaccompanied by findings sufficient to apprise affected persons of the bases for such determinations. The comment said that in some cases (e.g., hydralazine), there appears to be no data to support FDA's determinations. The comment said the following information is needed to explain FDA's determinations:

a. For drugs coded "AA": whether such coding is the result of,

(1) Actual in vivo bioequivalence studies,

(2) In vitro bioequivalence studies correlated to in vivo data,

(3) Uncorrelated in vitro data (dissolution, for example),

(4) Data on only some drugs from which the equivalence of others has been presumed,

(5) Data on only one drug product from which the equivalence of others has been presumed, or

(6) The lack of any reports to FDA of equivalence problems.

The comment further said these drugs should be accompanied by information as to which of the "therapeutically equivalent" drugs had undergone the studies required in a full NDA and which drugs had undergone no clinical studies, as well as which drugs had been the subject of actual in vivo bioavailability studies. Other comments said that health professionals should know for which "AA" drugs therapeutic equivalence has been assumed and when it has been demonstrated.

b. For drugs coded "AB": the bioavailability study protocol followed by each manufacturer in demonstrating the bioequivalence of his drug product.

c. For drugs coded "BP": sufficient differentiation between those drug products approved on the basis of clinical studies and those approved without submission and review of such studies. The comment said that merely telling physicians and pharmacists that drug products may not be of equal efficiency without telling them which of those drug products had, in fact, been proven effective in humans may create the misleading impression that all drug products listed as "BP" are of suspect bioavailability or effectiveness. Other comments said that information concerning which "BP" drugs are supported by a full NDA, and is the basis for the determination of safety and effectiveness, should be known to the health professional.

The agency believes that the determinations in the List are accompanied by sufficient explanatory data. A drug product identified with an "AA" code in the List is a pharmaceutically equivalent product with no known or suspected bioequivalence issue. These products have been approved for safety and effectiveness by FDA, manufactured in accordance with current good manufacturing practice regulations, and meet compendial standards. The basis for FDA's evaluation leading to the "AA" code for drug products is discussed in detail in the preface to the List and in the proposal. The agency's approach in deciding which drugs pose bioequivalence problems follows the July 15, 1975 Office of Technology Assessment (OTA) Drug Bioequivalence Panel recommendations, which stated that it is not feasible, necessary, or desirable that studies of bioavailability be conducted for all drugs or drug products. To further subdivide code "AA" to indicate which drug products had gone through clinical studies and which drug products had been the subject of actual in vivo bioavailability studies or in vivo/in vitro correlated studies would be contrary to the OTA Panel approach which FDA adopted. Moreover, there is no basis for including information on what drug products meet a nonexistent requirement. For the record, few firms have carried out bioavailability/bioequivalence studies on "AA" class drugs.

It was not FDA's intent to display the bioequivalence/bioavailability study protocol of each manufacturer in the

List. As was explained in the List's preface, the "AB" code identifies an active ingredient in a dosage form for which the submission of bioavailability data is required for approval and indicates that the firm has performed an acceptable bioequivalence study on its product.

Regarding the comment on "BP" drugs, although the agency does not differentiate between those drug products approved on the basis of clinical studies and those drug products approved through the ANDA process, potential bioequivalence problem drugs are coded "AB" when the firm submits adequate data to show that its product is bioequivalent/bioavailable. An example of this is found in the List. Ciba's Metandren (methyltestosterone) tablets are coded "AB" because the firm has submitted adequate data to show bioavailability; all of the other firms' products are coded "BP" because none of the other firms has submitted such data.

In summary, the agency believes that the List, the preamble to the Federal Register proposal, and this preamble to the final rule, provide sufficient explanation and background for FDA's determinations of therapeutic equivalence. As explained further in the response to comment 54 below, the agency does not believe it is necessary or practical to include in the List the complete history and data upon which the agency relied to determine the therapeutic equivalence of a drug product.

53. Several comments said that explanations given in the List for the different coding classifications present potential problems. The comments said that some of these definitions are ambiguous and lead to a variety of possible interpretations. Examples of the problems noted by the comments include the definition for "AB" products. The comments said that the definition is unclear whether or not these drugs are substitutable. Regarding classification "AT" (topicals), the comments said that drug products are considered to be pharmaceutically equivalent if they contain the same active ingredients and are identical in strength, dosage form, and route of administration. It would seem resasonable to assume, said the comments, that the different bases used in many ointments and creams, while not active ingredients, significantly affect the rate, duration, and quantity of medication reaching the skin. Regarding classification "BX", the comments said this is a deceptive identification for drug originators because they would have had to provide a documented NDA with adequate clinical data in support of the therapeutic performance of the product. The comments said that the product of any manufacturer who has an original NDA should therefore be specifically identified as such, since the issue of multiple-source equivalence arose only after products were later introduced without requirement of full clinical studies.

The agency concurs with the suggestion to further define "AB". The paragraph in the preface to the List describing the "AB" code has been clarified to state that one product of a drug ingredient heading, coded "AB", is not therapeutically equivalent to a drug product under the same heading which is coded "BD" or "BP". Only those drugs coded "AB" under the ingredient and dosage form headings are recommended as being therapeutically equivalent.

Regarding the suggestion that different bases in topical ointments or creams could affect the rate, duration, and quantity of medication reaching the skin, FDA will review any data that show that a pharmaceutically equivalent product has produced a different therapeutic effect based upon a different base in an ointment or cream. Until that time, FDA will continue to consider products in the same topical dosage form as therapeutically equivalent in the absence of contrary data if they are pharmaceutically equivalent.

Regarding the comment that it was deceptive to identify the drug innovators with a "BX" code since they had to provide a documented NDA with adequate clinical data in support of the therapeutic performance of the product, the agency agrees and will delete the "BX" code from the innovator's product if that product is specifically known not to present the same basis of concern as do the other brands. On the other hand, the fact that an innovator initially performed clinical studies on a product does not necessarily mean that the innovator's product is not subject to the same concerns that led to the inclusion of the "BX" code on other products.

54. Another comment said that the therapeutic equivalence coding system used in the List presents difficulties in correctly identifying the products that are coded. The comment said it is likely that the explanation of the codes will not be read by the typical pharmacist with a busy schedule. The result will be the general assumption that all drugs listed under a particular heading are therapeutically equivalent. In addition, the comment said that the products listed as having bioequivalence problems may require further clarification. For example, phenytoin sodium oral capsule, Dilantin, has been grouped with three products that are probably not bioequivalent. Therefore, the comment said the possibility exists that the reader may incorrectly assume that any one of these drugs can justifiably be substituted for another.

FDA's primary purpose in preparing the List is to provide to the public the agency's information and advice on the therapeutic equivalence of approved multisource drugs. The agency intends to share more detailed information on the therapeutic equivalency of drugs with the States and other interested persons so that they may use this information in their decisions as to which drugs to include in their formulary and which drugs to purchase or dispense. State drug formulary committees have continually asked for the basis of FDA's therapeutic equivalence decisions. Moreover, it is important to explain the bases for these conclusions so that if States disagree, they can act differently. The agency notes, however, that although additional data and information are available upon request, it believes that the preface to the List, the Federal Register proposal, and this final rule, provide sufficient explanation and background for FDA's determinations of therapeutic equivalence. The agency does not believe it is necessary or practical to include in the List the complete history and data on a drug product that allowed FDA scientists to determine its therapeutic equivalence. For example, a recent FDA submission to the Pharmaceutical Reimbursement Board to substantiate the claim of the therapeutic equivalency of hydralazine tableted product was over 75 pages long. It is not feasible to disseminate or use as large a document that would result from the inclusion of these data and information for all drugs on the List.

The agency believes that health professionals should have little difficulty in understanding the codes, and will not make general assumptions that all drugs listed under a particular heading are therapeutically equivalent when the drugs have been clearly identified as therapeutically inequivalent. The coding system that FDA has devised is much less complicated than the pharmacological properties of the drug that are contained in the labeling, such as actions, indications, adverse reactions and so on. It should be noted that there were favorable comments from individuals and organizations who were very pleased with format of the List and had no difficulty in correctly identifying the therapeutic equivalence determinations by the displayed code.

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V. The Lilly Study

FDA has said it can detect no differences in marketed drug products based on the type or the size of the manufacturer. However, a study conducted by Pauls and Kloer, "FDA Enforcement Activities Within the Pharmaceutical Industry: Analysis of Relative Incentive" (hereafter called the "Lilly study") argued that there are significant differences between products marketed by research-intensive companies and those marketed by non-research-intensive companies. The study concluded that non-research-intensive companies are at least seven times as likely to have a recall as are research-intensive companies. In the category of court actions, the study said that non-research-intensive companies have at least 43 times more court actions than do research-intensive companies. Many of the comments received on the proposal discussed the Lilly study and FDA's criticisms of it in the preamble to the proposal. Some comments defended the Lilly study's division of the industry into research-intensive and non-research-intensive companies, and explained the criteria by which this distinction was made. The comments also defended and further explained the Lilly study's selection process for the research-intensive firms. Other comments criticized Paul deHaan's analysis of the pharmaceutical industry as cited in the proposal and questioned his selection of companies and conclusions made about the industry. One comment showed that when analyzing the industry according to sales, conclusions similar to the Lilly study are reached. Some comments refuted FDA's claim that the Lilly study included recalls that had nothing to do with drug quality and even recalls that did not involve drug products. Another comment criticized FDA for not discussing FDA-initiated court actions, and showed that the incidence of such court actions support the conclusions of the Lilly study. Finally, one comment defended the Lilly study's finding that FDA's enforcement records do not demonstrate product and manufacturer uniformity regarding safe and high quality prescription drugs.

The agency advises that it has consistently disputed the assertion that the Lilly study is valid. The comments indicated that small differences in the selection of research-intensive firms do not have a significant impact on the results of the study. That may be true for the way the recall data are analyzed in the Lilly study, but when coupled with other objections the agency has raised regarding the way in which recall data were treated in the study, selection of the research-intensive firms is critical. One of the major criticisms the agency has made is that the study did not include a denominator by which to compare research-intensive and non-research-intensive and large and small firms. Further, the study tried to compare entities that are not comparable. That is, by comparing the quality of different drug products which have no possibility of being substituted under generic substitution practices, the Lilly study obscured the significance of any quality differences it purports to find. Rather than simply criticize the manner in which the Lilly study was performed, FDA has taken the same recall data and done a more extensive, and FDA believes more valid, analysis of the data. The *Analysis of Prescription Drug Recall Rates* (which is available from the National Technical Information Service (NTIS), Springfield, VA, order No. PB80–182611, and which has also been placed on file in the FDA Hearing Clerk's office) shows no significant quality differences between any meaningful set of comparisons (e.g., products of small firms vs. large firms, PMA vs. non-PMA products, and so on). In the study, the recall rate for the population of drug products most likely to be substituted was shown to be very low. This low rate demonstrates that consumers, physicians, and pharmacists are very unlikely to encounter a multisource therapeutically equivalent drug product in the list that will be the subject of a recall. In addition, and of equal importance, the differences in recall rates of product groups compared in the study are small and dependent on a few large recalls. These differences do not support the contention that a pharmacist or physician can make product selection decisions based upon the supposed superiority of identifiable product groups. The agency agrees with the Lilly study's premise that recall data are perhaps the best available surrogate measure of drug quality. The agency does not, however, agree that the Lilly study is a valid analysis of the FDA recall data, or that the recall data, when properly analyzed, lead to a conclusion that significant differences in drug quality can be ascribed to segments of the drug industry found among the manufacturers of the drugs that the agency has evaluated as therapeutically equivalent.

Regarding the comments' contention that FDA has not commented on that aspect of the Lilly study which compared the rate of court actions against research-intensive and other firms, the agency advises that although it has not analyzed court actions in detail, it is clear to the agency that court cases are not a valid measure of drug defects. Most court cases do not involve violations which reflect on drug quality specifically (in fact, much of the recent drug litigation has been in the area of new drug provisions of the act), and may result from a number of factors which are not relevant to drug quality, such as the firm's perception of the strength of its case, the relative economics of litigating versus market withdrawal, regulatory philosophy and approach, and other factors which are extraneous to the central quality issue.

With respect to the Lilly analysis of the Drug Product Problem Reporting System reports, the agency believes that such reports are not a basis for a reliable index of drug quality. In any voluntary reporting system there are many factors to take into account before a correlation between drug quality and the data can be made. Such systems, while invaluable as an early warning mechanism for problems, are susceptible to manipulation by efforts of some drug firms to discredit others. Certainly the nature of the complaints are not always drug quality related, and their seriousness varies to a considerable degree.

VI. Economic Considerations

A. Anti-Inflationary and Consumer Savings Potential of Drug Substitution

55. Several comments said that drug prices have played little part in the increased cost of health care. Some of the comments questioned the anti-inflationary potential of measures aimed at increased drug substitution, citing the relatively small share of pharmaceutical products in total national health care expenditures and the lower rate of increase in the Consumer Price Index for drugs relative to the total index and to its All Medical Care component.

The agency advises that the proposal acknowledged these points but also pointed out that "these facts do not mean, however, that cost-savings in the prescription drug market would not be helpful to the economy, to the consumer, or to the taxpayer. They merely make clear that no single step will be adequate to restrain health costs." The comments have offered nothing to counter this. They argued, in effect, that retarding the rate of price increase of some categories of consumer products is not worth pursuing if there are other categories where prices are rising faster. This argument is not persuasive, especially when offered against a proposal which simply shares with the public useful information already in FDA's possession.

56. Some comments said that the Federal Trade Commission (FTC) overstated the potential savings from drug substitution. In the proposal, FDA cited the *FTC Staff Report's* conclusion that "the potential for the realization of consumer savings is substantial." Various comments questioned the accuracy of the report's estimate of an upper limit to potential direct savings for drug substitution in the range of $245 million to $408 million. Some of the comments cited a trade publication report of an apparent reduction of the FTC estimate to only $70 million. Other comments questioned the methods and assumptions used by FTC or the validity of the results to which they led.

FDA is not in a position to defend in detail the FTC's methods or results, nor is there any need to do so. The studies cited by FTC, including its own study, focus on potential savings across all or most multisource drugs. FDA does not view the results as projections or forecasts of savings to be achieved, but does believe that they sufficiently demonstrate that the opportunities for savings are substantial, a conclusion not refuted by the comments. Moreover, the propriety and utility of publishing a List that identifies those drugs established as therapeutic equivalents does not depend on a precise estimate of drug substitution savings to consumers. The List is merely a systematic presentation of information used by FDA in its own work. In this respect it is parallel to FDA's earlier publication of a list of inequivalent drugs. Providing reliable information on therapeutically equivalent drugs can only enhance the ability of drug purchasers to recognize and take advantage of opportunities for direct savings by drug selection. Finally, it should be noted that the trade publication citation of an apparent reduction of the FTC estimate to only $70 million was inaccurate and the error was corrected in a later issue to advise that the estimated saving is consistent with the FTC estimate.

57. One comment pointed out that about 45 percent of the dollar value and 55 percent of the prescriptions for all drugs are multisource, and that 12.4 percent of all prescriptions are written generically, suggesting that "only" 32.6 percent of current prescription dollar volume could be multisource drugs subject to further product selection.

According to FDA's calculation, the latter figure should be 34.9 percent. That figure, applied to about $9 billion manufacturers' annual sales volume, translates to about $3.1 billion of manufacturers' sales, and that should be considered the minimum dollar volume of such drugs, since it is unlikely that all generically written prescriptions currently are filled with generic rather than brand name drugs. Regardless of the precise amounts, the agency's decision to publish the List is not contingent on the share of the current prescription dollar volume that is accounted for by multisource drugs.

58. Some comments cited various surveys and other evidence, including those cited in the FTC Staff Report, to indicate that varying proportions of physicians, pharmacists, and even consumers do not favor or practice product substitution. Some comments contended that the exclusion of drugs having known or suspected problems of inequivalence would diminish the potential for savings from product selection. Specifically, some comments indicated that 193 drugs identified as "problem drugs" with respect to bioequivalence in FDA's 1975 list represented an average of about 12 percent of all prescriptions in their respective therapeutic classes and that the currently proposed FDA List shows a net increase of 42 multisource "problem" drugs.

FDA acknowledges that the various multisource drugs are not equally subject to product selection. However, taking the dollar volumes offered at face value and assuming further, hypothetically, that multisource drugs without established equivalence now account for as much as 15 percent of all prescriptions (and hence 35 percent of multisource prescriptions subject to further product selection), the dollar volume of $3.1 billion calculated above would be reduced to $2.0 billion. That amount, which ignores future growth, still represents a considerable target for product selection.

59. Other comments addressed the question of generic vs. brand-name price differentials used in making estimates of direct savings from product selection. It was argued that wholesale price comparisons (based, for example, on *Red Book* figures) are inaccurate and that retail prices should be used. One comment stated, however, that an analysis based on retail prices is almost impossible. Another suggested comparing the average cost of brand drug prescriptions with the average cost for the same drug "when the pharmacist is already engaging in product selection."

FDA agrees that a retail price comparison would be useful (as would a comparison of actual transaction prices at wholesale), provided it distinguished between retail prices charged for generic drugs used to dispense generic prescriptions and brand drugs so used. Unfortunately, the comment did not provide any of the data it recommended. Another comment, however, suggested that consumer savings of at least 20 percent to 40 percent are possible at retail. If it is assumed that average retail savings of no more than 20 to 40 percent might apply to all of the $2 billion sales of multisource drugs subject to further product selection, total additional annual savings of $400 to $800 million are implied. Granted that the current rate of product substitution is well below 100 percent and is unlikely to reach 100 percent, the savings increment will be smaller in proportion to the actual rate of substitution ultimately expected. A rate of 50 percent, for example, would imply additional consumer savings of $200 to $400 million a year without taking account of the rapid prospective growth of multisource drug sales.

B. Federal, Private and State Administrative Costs

60. Several comments contended that the cost to FDA in publishing and maintaining the List could amount to hundreds of thousands of dollars and that manufacturers would have to incur costs of monitoring the List to assure its accuracy.

The agency advises that generating and keeping track of the information that will appear in the List is an internal cost that FDA will incur whether it publishes the List or not. There will be a modest internal cost increment for compilation and computer services to prepare annual issues and monthly updates of the List, but the only significant Federal costs of keeping the List current and publicly available will be those for printing, subscription list maintenance, and mailing by the Superintendent of Documents. FDA expects interest in the list to be sufficiently extensive to ensure subscription revenues adequate to cover these costs, based on an annual subscription rate of $20 ($25 if mailed to a foreign address). Assuming an external subscription volume of 10,000 and internal use of as much as 2,000, revenues from the mail subscription service would be approximately $200,000. The total printing costs for internal distribution would be less than $10,000.

Many State governments will reference the FDA List as the official formulary. They will either print and sell their own copies or recommend a subscription to the FDA List. The annual subscription cost of $20 per copy should cover State-generated demands also. The total demand for the List, direct and

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indirect, is uncertain. In addition to retail and hospital pharmacies, physicians and libraries may also want to have access to the List. Clearly, however, the subscription method ensures that total printing and distribution costs will not exceed public willingness to pay.

Finally, FDA sees no reason to believe that drug industry costs to review the updates of the List for omissions and accuracy would be other than insignificant, and no specific figure was offered by the comments.

61. Another comment said that administrative expenses to State governments in promoting generic substitution may cancel out any consumer savings and, further, that the FDA List will not lessen the expenses of these State activities.

The agency advises that the 46 States that have enacted drug product selection laws (almost half of which have been adopted since 1977) did so for their own reasons, and not to create a market for the FDA List. Conversely, the value of the List does not depend solely on its utility in State efforts to promote product selection. If the availability of a convenient and reliable List of therapeutically equivalent drugs leads to an increase of no more than 1 or 2 percent of prescriptions written and dispensed generically, multi-million dollar savings in drug costs would be realized each year. Similarly, as indicated in the proposal, the FDA List can help States in their own drug purchase programs, and eight States have requested such assistance. It should be noted that FDA's proposal also responds to the requests of at least 19 States for assistance in preparing formularies in support of their product selection laws. Providing a master List that could be used or adapted by each State for its own circumstances is clearly more cost-effective for FDA than assisting each State individually. The comments seemed to suggest, however, that FDA should not provide such a List unless the State programs are demonstrably cost-effective and/or the List will demonstrably reduce State administrative costs for the programs. The agency disagrees. Regarding the comment that the List will not ease State costs of developing formularies, the only evidence offered is that no formulary, including FDA's List, has been or can be used without review and adaptation to the needs of each State. The agency believes it is precisely the existence of a master List to be reviewed and adapted that offers economies to the States in the "start-up" costs of developing formularies and to FDA in assisting them.

C. Indirect Economic Effects

62. Several comments said that expenditures for drugs are the most cost effective in the health care ystem. The comments pointed out that drug therapy at modest cost may reduce the need for hospitalization at very high cost, and cited examples of new drug developments having that effect. Therefore, it was argued, regulating the drug market is a case of misplaced priorities in the control of health care costs.

Regarding the cost-effectiveness of drugs, FDA can only agree and would add that drugs are very cost effective when they reduce death and suffering as well as when they avoid hospitalization costs. The agency does not agree, however, that the social worth of a product is a valid reason for failing to reveal information useful to its purchasers, or that providing such information amounts to misplaced regulation of the market when it is fully expected to improve the efficiency of the market.

63. Several comments said that the promotion of drug substitution will divert revenues from research-intensive companies and thereby discourage research and development of new drug products. The comments pointed out that drug research and development, conducted by many brand name manufacturers, is financed almost exclusively from sales revenues. They argued that a reduction of such revenues would reduce incentives to "invest" in research and development and that this in turn would result in reduced introduction of innovative drugs with consequent long-term health benefit losses to consumers, and in adverse balance of payments effects due to impacts on U.S. drug exports and shifting of U.S. drug company research to foreign countries. Other comments said that through the List, FDA is encouraging a market which favors noninnovating generic product manufacturers.

The agency notes that these comments were not supported by evidence or analysis exploring the manner or degree of any effects on new drug research activity that might follow from increased generic drug product selection. It appears, however, that any reduction of new drug research incentive to a manufacturer as a result of product substitution would take the form of reductions in the present values of the revenue streams and, hence, in the rates of return expected from newly developed drugs. The *FTC Staff Report* referred to in the January 12, 1979 **Federal Register** proposal cited three separate studies on this topic by academic economists. One study estimated that if consumer savings (and manufacturer revenue losses) amounted to 4 to 11 percent of sales a year by 1984, then 0.6 to 1.7 fewer new single chemical entities might be introduced each year out of an average of 15. Another study estimated that, taking patent periods, profit rates, and revenue patterns into account, increased drug substitution would eliminate less than 4 percent of the present value of the expected stream of profits from an average new chemical entity. The study concluded that this would have negligible effects on drug research incentives and on the rate of innovation. The third study, using a similar model and somewhat different assumptions, estimated that product selection would produce a 10-percent reduction in the expected rate of return on an average new chemical entity and a consequent reduction in industry research and development expenditures of $46 million. The latter figure, however, was obtained by applying the research and development to sales ratios of 11.5 percent to an assumed $400 million reduction of multisource drug sales revenues. This procedure is not implausible, but its result can be regarded only as a benchmark rather than a reliable projection. FDA acknowledges that the effect of increased product substitution on new drug research and development activity cannot be foretold with confidence. No evidence or analysis was offered in the comments, however, to offset the implication of the economic studies cited above that the impact on incentives to research and development expenditures would be no more than moderate and possibly negligible. Further, it seems reasonable to suppose that any reduction in research and development effort would tend to focus on marginal, less financially attractive projects. Since substantial consumer savings appear to be required in order to produce anything more than small changes in the economic incentive for research and development, there is no reason to conclude that the tradeoff, if any, is unsatisfactory in terms of the public interest.

Finally, it is necessary to reiterate that in addition to providing support to State drug product selection programs, the FDA List also offers important information to physicians, pharmacists, and consumers who want to avail themselves of it. Because that information can easily be made available, FDA does not agree with the

proposition that the opportunity for a better-informed market for prescription drugs should be rejected simply because some members of the prescription drug industry contend that a less well-informed market is essential to continued drug innovation. If it turns out that a well-informed market is inconsistent with economic incentives for the development of safe and effective new drugs at a rate considered possible and socially desirable, the remedy should not be sought in the economically inefficient device of withholding or obscuring information. A problem of sufficient dimensions to be presented as a public issue would warrant, instead, an open and responsible public solution such as, for example, legislative action on more effective patent protection periods for new drugs. The existence of such a problem, however, has not been established.

64. Other comments contended that the promotion of drug substitution will reduce economic incentives for developing new uses and dosage forms of multisource drugs. The comment said that increased price competition fostered by the List could actually increase incentives to develop and promote new single-source drugs to the extent that it removes the economic incentive to promote, investigate, improve, or monitor multisource drugs. As a result of such a reallocation of research incentives, it was contended, "many multisource drugs may become orphans in favor of new but not necessarily significantly improved single source drugs."

The agency believes that it is by no means obvious that such a trade-off would be unfavorable. The comment did not explain the rationale for its suggestion that increased introductions of new single-source drugs might not include significant improvements. It seems reasonable to assume that a firm committing resources to new drug development would prefer to pursue promising opportunities for significant improvements if they were available. Viewed in this light, such a shift might appear to some as an attractive prospect, even after taking account of the possibility that consumer savings on multisource drugs might be reduced to some degree by more frequent introduction and use of higher-priced single-source drugs. However, the possibility of disincentives to the further improvement of "mature" drugs also warrants consideration independently of any assumptions about associated new drug development efforts. The comments contended that the cost of establishing an approved new use or even dosage form will not be incurred if their potential competitive advantage is nullified by the presence of substitutable equivalent products in the one case or their imminent presence in the other. Although FDA recognizes that it is entirely plausible that such situations may occur, the agency disagrees that such situations would occur generally in an environment of increased duplicate drug product selection. The agency believes that the latter would require, first, that the bulk of postmarket product investigation and evolutionary development occur after the product has not only become multisource but has acquired therapeutically equivalent competitors, rather than during its single-source phase. No evidence was offered by the comments that this would be the case. Second, for a firm that is a major producer of a multisource drug, new uses or dosage forms that result in increased sales of the drug may justify their development cost even though the revenue gains are shared with other producers. Such possibilities are, of course, open to generic as well as brand name manufacturers. Further, even proponents of drug product selection would be naive to suppose that product differentiation and differential pricing, and hence opportunities for profitable product improvement, will universally or quickly disappear from markets for multisource drugs. Granting the qualitative merit of the point, its practical implications are problematic, especially in terms of the likely incremental impact of the FDA List.

65. Several comments argued that the List will have an anticompetitive impact. One comment asserted that this is because the List discriminates by excluding distributors and relabelers of multisource drugs, as well as manufacturers of pre-1938 drugs and post-1938 drugs not approved. It was argued that listed manufacturers would be preferred by users of the List.

Aside from the possibility that distributors might include the names of manufacturers on their labeling, the agency believes that there is little merit in this contention. It appears relevant mainly to purchasing by pharmacies and it is difficult to give weight to the suggestion that such purchasers would remain ignorant of the identities of source manufacturers or would be significantly deterred by procedures for independent confirmation of the source if that were required. The issue of "unapproved" drugs seems hardly relevant inasmuch as the List by definition deals with "approved" drugs and FDA has not "approved" the categories of drugs in question. If the lack of "approved" status has not so far deterred physicians or pharmacists from selecting a drug, there seems little reason to suppose that nonappearance on a List of "approved" drugs would reverse the situation. With respect to the identification of distributors in the List, see the response to comment 42 above.

66. A few comments said that wider use of lower-cost, therapeutically equivalent drug products will adversely affect the quality of health care. It was argued that therapeutic equivalence of a generic product and the product of a research-intensive firm does not mean the health care associated with the use of these drugs is equivalent because the latter product includes an array of informational services that practitioners need to properly understand and prescribe the drug. Fostering the substitution of lower-cost drug products would result in curtailment of these necessary services.

The agency recognizes that valuable informational and educational services are woven into the complex fabric of drug promotional activities. Presumably, however, the period of greatest effort and expenditure for these services—and the period of their greatest need and worth to practitioners— is from the introduction of a new product to its "mature" phase, after which the effort tapers off. Indeed, it appears that the marketing "momentum" of a successfully branded drug that is established during the period of heavy promotional and informational activity may typically carry over far into the period when the drug has accumulated substantial multisource competition. By the time therapeutically equivalent generic products enter the picture, it would seem that most of the advantages to brand marketers and practitioners alike that are cited or alluded to in the comment will have been captured. While it can be agreed, therefore, that useful informational services add to the costs of research-intensive manufacturers, it does not follow that these costs will be inadequately compensated or that physicians will be inadequately informed as a result of such increased generic competition as may be fostered by the List.

D. Absence of a Regulatory Analysis

67. Several comments stated that FDA had proposed a significant regulation requiring regulatory analysis under Executive Order 12044. It was contended that major direct and indirect economic impacts would result from promotion of increased drug substitution, including (a) administrative costs to FDA and to manufacturers, and (b) adverse effects

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on research and development of new drug products to the detriment of innovative manufacturers and ultimately to patients. It was asserted that the List will have an overall effect on the economy of more than $100 million and threatens to cost a large segment of the prescription drug industry millions of dollars yearly in diversion of sales revenues to noninnovating firms.

Direct administrative costs of the List to FDA and to manufacturers were discussed earlier and, as stated, FDA has discovered no reason to regard such cost increments as other than very modest. As explained in the proposal (at p. 2953), the agency has determined that the publication of the List is not covered by Executive Order 12044. First, the List is not a regulation, it is a compilation of information available to the agency. Second, the List will not, as the comment contends, have an overall impact on the economy of $100 million through claimed adverse effects on new drug research and development. Regarding this latter contention, it is necessary to distinguish between policies and programs favoring drug product selection and the separate existence of the FDA List. The law and policy of most of the States, in addition to purchasing and welfare programs of the Federal government, now actively promote drug product selection. There is no reason to believe that this objective will not be actively pursued—whether or not the FDA List is made public—since the effort was initiated long before development of the List began. Therefore, any adverse effects on sales revenues and research activities that research-intensive drug firms experience would occur whether or not FDA publishes the List. In determining whether a regulatory analysis is required, therefore, only the incremental impact of the List is relevant.

A $100 million impact on drug research and development expenditures would represent nearly 10 percent of the industry's total domestic research and development effort. To produce such a reduction on the basis of an 11.5 percent R&D to sales ratio would require that the independent impact of the List on industry sales revenues amount to about $870 million. If such a revenue impact were achieved by average savings of 20 to 40 percent on drugs shown on the List as therapeutically equivalent, the sales volume of such drugs subject to these (new) savings would have to be $2.18 to $4.35 billion, that is, new savings of 20 to 40 percent would have to be realized on every dollar of a sales volume equal to about 24 to 48 percent of total prescription drug sales. All of this sales volume, moreover, would have to be found among the drugs identified as therapeutically equivalent in the FDA List and, within those, among drugs subject to low-price and generic competition and on which such savings are not already being realized. Therefore, there is no combination of remotely reasonable assumptions by which the incremental impact of the List on drug substitution could produce a significant effect on drug industry research and development expenditures.

There are major defects also in the additional assertion that diversion of sales revenues from research-intensive to non-innovating drug firms would have a major economic impact requiring a regulatory analysis. It is not evident that revenue losses other than those corresponding to direct consumer savings (which savings were not claimed as a major economic impact subject to regulatory analysis) will necessarily be incurred by research-intensive firms. The latter do, after all, have the option of defending market shares by meeting generic price competition. If they choose to hold to a declining sales volume at higher prices, that presumably is the strategy they regard as more profitable. But there is nothing about the existence of the List that compels research-intensive firms to acquiesce in the diversion of sales revenue to noninnovative firms. In addition, it is not evident that all revenue losses to other drug firms would be to noninnovative firms. Research intensive drug firms also manufacture and distribute a substantial number of generic drugs.

The research-intensive firms who are members of the Pharmaceutical Manufacturers Association account for about 90 percent of total prescription sales. It may be supposed that a one-percentage-point "diversion" of revenue to non-PMA firms would be a less than major economic impact of the proposed List. This might amount to $90 million. In order to suffer such a loss of sales revenue to non-PMA firms, the PMA firms would have to refuse totally to meet price competition on therapeutically equivalent drugs marketed by non-PMA firms. Even assuming such a total refusal to compete, it must be assumed that not all of PMA firms' sales would be lost, since that would imply a total absence of brand loyalty among physicians and a total ability and desire to substitute non-PMA generic drugs at the pharmacy level. Hence, all of a sales volume of drugs considerably greater than $90 million would have to be both subject to and unresponsive to price competition and maximum practicable substitution by therapeutically equivalent non-PMA drugs in order to produce the $90 million transfer. More realistically, the assumption that PMA firms would meet the price competition further increases the dollar value of drugs that would have to meet these conditions. Finally, it would be necessary that all practicable substitutions would have to be achieved on this substantial volume of PMA drug sales—possibly several hundred million dollars—and would also have to be attributable to the availability of the FDA List.

FDA therefore affirms its earlier conclusion that the availability of the List will not produce a major economic impact through retarded drug research and development or through diversion of sales revenues from research-intensive to noninnovative firms.

VII. Procedures for Preparing and Distributing the List

68. Several comments claimed that the List is a cumbersome document containing hundreds of entries and requiring familiarity with various caveats and disclaimers. The comments said its great length, the use of letter codes, the inclusion of single-source drugs, and the prefatory qualifications, as well as the failure to show supporting data, all combine to produce a document that is likely to generate confusion and error. Another comment said the many explanations, codes, and apparent disclaimers contained in the preface are difficult to relate to the information in the List. The List thus falls short as a ready reference source which can be used under daily working conditions. One comment said that because the List is "controversial", it will be necesary to develop special guides, codes, caveats, and disclaimers that provide sufficient information for its proper use. The comment said that this will make the List even more difficult to use and could cause confusion and error.

The agency disagrees that the List will prove as cumbersome and confusing as the comment contends. Drug information as presented by the List is a dynamic and complex area which unavoidably could cause some confusion. As explained in the proposal, FDA, in preparing the List, initially drew from information in its computerized files of approved NDA's, and antibiotic Form 5's. In order to minimize the potential for error, a complete list of approved NDA's, ANDA's, and antibiotic Form 5's, as of April 1978, was published as an interim document in May 1978 and sent to appropriate State officials and agencies, including health officers, boards of pharmacy, and drug procurement agents, for review and comment. By notice published in the Federal Register of June 30, 1978 (43 FR 28557), this interim list was also made publicly available, with a request for additions, deletions, or corrections. In addition, on two separate occasions, FDA sent to each application holder data worksheets listing its products that FDA had identified as being approved and solicited corrections. The agency received an excellent response with considerable updating information, indicating a serious and careful review by the firms. The agency revised the List in response to these requests. Information regarding approved antibiotic Form 6's (the antibiotic drug submissions analogous to the ANDA) was also included for those antibiotic products last certified within the period of their expiration date. Although the therapeutic equivalence evaluations were not previously circulated, the preface to the List contains extensive explanatory information about them. These evaluations reflect FDA's application of specific criteria to the multisource drug products on the List. The agency believes that the code letters used to explain the basis for these evaluations will not cause confusion once the user becomes familiar with them.

69. Several comments claimed that the List will be virtually obsolete on the day it is published. The comment said that the New York list was subjected to repeated correction, including a notice of changes that was printed within 1 week of publication of the original list, monthly corrections, and at least two major quarterly revisions. Because of the size of the FDA List and the changing nature of the prescription drug market, the comments said it is not possible to publish a currently accurate list. The comments said that if the New York list is now obsolete after only 1 year, the FDA counterpart will be outdated in an even shorter time because FDA is able to investigate the market more rapidly and currently than the New York Department of Health. The comments also said various situations could cause rapid obsolescence such as products no longer being marketed, formulation changes, availability of new dosage forms, new sources of supply, major recalls, and important label changes. To demonstrate the difficulty in keeping these lists updated, the comments compared the List with the New York list. The comments pointed out that the FDA List includes nine product categories coded as nonequivalent, although these same nine products appear on the New York list as therapeutically equivalent. In addition, in New York it is illegal to substitute a tricyclic antidepressant. Nevertheless, several appear on the FDA List as equivalent.

The agency acknowledges the difficulty in keeping the List current. As explained in the response to comment 68, considerable effort was involved in preparing the List, including substantial assistance from the application holders. Because of this initial effort, few corrections were required for a final publication. The agency is planning to provide periodic supplements furnishing, among other things, new drug approval information and, if necessary, revised therapeutic equivalence evaluations. The agency's goal is to provide supplements at monthly intervals at least during the first year after the List is published. An updated List will be published on an annual basis, and each subscription will include all periodic supplements in a given year.

The agency recognizes there may be differences between the List and individual State lists. The FDA List is not an order or a rule, but contains only information and the agency's advice to the public and to the States regarding therapeutic equivalence evaluations, and as such should enable the States to carry out their duties to protect and promote the public health. Thus, a State may or may not adopt the same therapeutic equivalence evaluations as described in this List. Regarding the comment that nine drugs listed in the original New York Equivalency list as therapeutically equivalent are not equivalent in the FDA List, the agency advises that of those nine drug evaluations, three have been revised in the New York list to correspond to the FDA List, two drugs did not have discrepancies in their evaluations but were apparently misread by the commenter, two drugs in the FDA List had errors in coding, and two drugs are listed as having particular problems which are in the process of resolution.

70. One comment said that the preface to the List does not emphasize the key role of pharmacists in exercising independent professional judgments on behalf of patients in drug product selection. Rather than read through the 19 pages of technical language in the preface, the comment said, consumers will simply refer to the List and assume that all drug products that are pharmaceutical equivalents are identical and may be freely interchanged. Another comment said the List should be made available to the professional pharmacist who can then determine whether or not to make the List available to the public.

The agency advises that the purpose of the List is to provide the public with a compilation of drug products that the agency has evaluated and approved for safety and effectiveness. In addition, the List includes therapeutic equivalence evaluations of these approved drug products. The List does not define the role of the pharmacist and the patient in drug product selection. The responsibilities of the pharmacist in the area of drug product substitution are covered by most State drug product selection laws. FDA believes that most consumers will rely on the professional judgments of their physicians and pharmacists in choosing their drug therapy.

71. One comment said that to ensure that pharmacists do in fact substitute lower-priced generic drugs, the public should be adequately advised of FDA's policy. The comment noted that one California survey found that 85 percent of the pharmacists will substitute upon the request of the consumer. However, it was also found that on the average pharmacists were marking up the prices of generics more then they were marking up the prices of brand name drugs. In other words, pharmacists were not passing the cost savings in full to consumers. Instead, they were making higher profits on generics. Therefore, in the public interest, the comment recommended that FDA distribute the List and initiate a program to fully inform consumers of their right to request lower-priced therapeutically equivalent drug products. One means of doing this, the comment suggested, would be an educational program by FDA to promote consumer knowledge of generics and their availability and lower cost.

The agency advises that the List is publicly available, and its availability has received widespread attention in the media. The Department of Health and Human Services generally engages in a number of well-publicized programs to notify consumers that lower-priced drugs may be available. For example, the Maximum Allowable Cost (MAC) program's "Guide to Prescription Drug Costs," is a well-known reference for pharmacists and physicians. FDA believes that through these mechanisms, plus others that will accompany publication of this List, including its use by State governments, the public will be well aware of the availability of less expensive therapeutically equivalent drugs.

72. One comment said the List should be evaluated on a quarterly basis in a manner that would permit any

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interested person to challenge the drugs listed as bioequivalent. The comment said that these challenges should be evaluated by an impartial advisory group outside of FDA consisting of professionals with expertise in such fields as medicine, clinical pharmacology, and associated scientific disciplines. The advisory group should have the authority to recommend the removal of a drug from the List if it decides that there is reasonable doubt that the product in question is actually bioequivalent. The comment said that FDA should remove such products from the List and reinstate only when scientific studies conclusively demonstrate that there is no significant bioequivalence problem.

It is the agency's opinion that such an advisory group is unnecessary because the results hoped to be accomplished by the advisory group can be achieved within the present FDA regulatory framework. Any interested person may at any time submit information to the agency which would challenge any findings in the List, including the determinations of therapeutic equivalence. In addition, FDA ensures the quality of marketed drug products through its many progams to monitor the marketplace. These programs are explained on pages 2946–2947 of the proposal.

The agency will, on a continuing basis, review all new information on drug products included in the List. If the information indicates that the therapeutic equivalency evaluation of a drug product on the List is no longer accurate, the evaluation will be revised accordingly. However, as stated in the response to comment 32 of this preamble, the sole criterion for inclusion of a marketed product in the List is its being the subject of an approved application. Marketed products will not be removed from the List until completion of FDA proceedings to withdraw approval of the application under section 505 or 507 of the act, as applicable.

73. One comment noted that the proposal calls for the List to be revised on a quarterly basis and that a method will be devised for publishing all revisions that took place during the preceding 90 days. The comment said that a more practical approach would be to have the revisions made on a continuing basis and published, as made, in the **Federal Register**. Also, additions to the List would be available for substitution on a timely basis. The comment noted that the **Federal Register** is readily available, authoritative, and widely read, and thus the best source for disseminating this information to the largest number of interested parties.

The agency believes that the suggestion to provide List revisions on a continuing basis in the **Federal Register** may have merit. However, for the present time, FDA has decided to publish supplements at monthly intervals (athough the agency originally proposed to revise the List quarterly). The supplements will contain a cumulative index to assist the user in updating the List. The List will be republished annually to include all updated information.

74. Another comment said that FDA should examine the feasibility of having the List printed on microfiche, since microfiche could be used for the entire formulary, and it is easy to use and has an inherent cost savings.

The agency advises that the List is intended, among other things, as a reference source of therapeutic equivalence evaluations to State health officials. The agency believes that many States will generate secondary informational materials for use by their licensed pharmacists and perhaps other health professionals. The use of microform techniques as a format will be considered if there is a demand for the agency List in such a format.

75. One comment said that although offering the List for sale through the Government Printing Office would be adequate for some interested groups, such groups as pharmacies, hospitals, State procurement agencies, and public health clinics should receive a copy of the List directly. If direct mailing is not economically feasible, the comments said that these groups should receive individualized notice of the availability of the List.

The agency advises that the availability of the List is announced in this **Federal Register** document, and copies will be provided to State health agencies. Such actions normally result in a much broader awareness of the availability of the publication through the public and trade press. In addition, the availability of the List will be announced in the *FDA Drug Bulletin*, which is sent approximately every two to three months to health professionals across the country.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201 et seq., 52 Stat. 1040 et seq. as amended (21 U.S.C. 321 et seq.)), the Public Health Service Act (sec. 1 et seq., 58 Stat. 682 et seq. as amended (42 U.S.C. 201 et seq.)), and the Freedom of Information Act (Pub. L. 90–23, 81 Stat. 54–56 as amended by 88 Stat. 1561–1565 (5 U.S.C. 552)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 20 is amended in § 20.117 by adding new paragraph (a)(3), to read as follows:

§ 20.117 New drug information.

(a) * * * (3) A listing of new drug applications, abbreviated new drug applications, antibiotic Form 5's, or antibiotic Form 6's, which were approved since 1938 and which are still approved, covering marketed prescription drug products except prescription drug products covered by applications deemed approved under the Drug Amendments of 1962 and not yet determined to be effective in the Drug Efficacy Study Implementation program. The listing includes the name of the active ingredient, the type of dosage form, the route of administration, the trade name of the product, the name of the application holder, and the strength or potency of the product. The listing also includes, for each active ingredient in a particular dosage form for which there is more than one approved application, an evaluation of the therapeutic equivalence of the drug products covered by such applications.

* * * * *

Effective date. This regulation becomes effective December 1, 1980.

(Secs. 201 et seq., 52 Stat. 1040 et seq. as amended (21 U.S.C. 321 et seq.); sec. 1 et seq., 58 Stat. 682 et seq. as amended (42 U.S.C. 201 et seq.); Pub. L. 90–23, 81 Stat. 54–56 as amended by 88 Stat. 1561–1565 (5 U.S.C. 552))

Dated: October 27, 1980.

Jere E. Goyan,

Commissioner of Food and Drugs.

[FR Doc. 80-34055 Filed 10-30-80; 8:45 am]

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Friday
October 31, 1980

Part XII

Equal Employment Opportunity Commission

Guidelines on Discrimination Because of Religion

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1605

Guidelines on Discrimination Because of Religion

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final guidelines.

SUMMARY: The Equal Employment Opportunity Commission is revising its *Guidelines on Discrimination Because of Religion* in response to public confusion concerning the duty of employers and labor organizations to reasonably accommodate the religious practices of employees and prospective employees. These Guidelines clarify this duty in an effort to protect employees and prospective employees from being discriminated against because of their religious practices or beliefs.

EFFECTIVE DATE: November 1, 1980.

FOR FURTHER INFORMATION CONTACT: Karen Dannart, Acting Director, or Raj K. Gupta, Supervisory Attorney, Office of Policy Implementation, Room 4002, 2401 E Street, NW., Washington, D.C. 20506; (202) 634-7060.

SUPPLEMENTARY INFORMATION:

I. Background

Section 701(j) of Title VII of the Civil Rights Act of 1964, as amended, creates an obligation to provide reasonable accommodation for the religious practices of an employee or prospective employee unless to do so would create an undue hardship. In 1977, the Supreme Court rendered its decision in *Trans World Airlines, Inc.* v. *Hardison*, 432 U.S. 63 (1977). The Court's interpretation of an undue hardship led to much confusion in the employment sector. It left employers, employees and labor organizations unclear as to the extent of the statutory duty under Title VII to provide reasonable accommodation for the religious practices of an employee or prospective employee. The Commission held public informational hearings on this issue in April and May of 1978 in New York City, Los Angeles and Milwaukee. The hearings established that the public desired clarification of the Guidelines and that many employers had developed alternative methods for accommodating the religious practices of their employees and prospective employees which could generally be used by other employers.* To allow interested persons an opportunity to participate in all stages of its rulemaking process and in compliance with Executive Order 12044 (43 FR 12661, March 24, 1978, as amended by E.O. 12221, 45 FR 44249, July 1, 1980), the Commission noticed its intent to review its current *Guidelines on Discrimination Because of Religion* (44 FR 6200, January 31, 1979). On September 14, 1979, the Commission published a proposed revision (44 FR 53706) of its Guidelines which appear at 29 CFR 1605. The Proposed Guidelines were published for public comment for 90 days.

These Guidelines are a significant regulation under Executive Order 12044. There are no regulatory burdens or record keeping requirements necessary for compliance with the Guidelines. The Commission has determined that they will not have a major impact on the economy and that a regulatory analysis is not necessary.

In compliance with Executive Order 12067 (43 FR 28967, July 5, 1978), the Commission has consulted with the representatives of the necessary federal departments and agencies on the revision of its Guidelines.

II. An Overview of the Guidelines

A. *The Obligation to Reasonably Accommodate Religious Practices.* These Guidelines set forth the underlying principle of the Guidelines being superseded and of Section 701(j) of Title VII of the Civil Rights Act. The principle is: failure to reasonably accommodate the religious practices of an employee or prospective employee is an unlawful employment practice; and employers, labor organizations and other entities covered by Title VII (collectively referred to as "employer") have an obligation to accommodate religious practices, unless they can demonstrate that accommodation would result in undue hardship.[1]

The obligation to accommodate begins when an individual notifies the employer of the need for an accommodation. Once notified, the employer should consider the available alternatives for accommodating the religious practices of the individual involved. If there is more than one alternative available which would not cause undue hardship, the employer must offer the alternative which would least disadvantage the employment opportunities of the individual requiring the accommodation.[2]

B. *Alternatives for Accommodating Religious Practices.* The Guidelines include examples of alternatives which an employer should consider when an individual's religious practices conflict with the employer's work schedule. The examples suggest the use of voluntary substitutes and swaps, flexible scheduling, lateral transfer and change of job assignment.[3]

The Guidelines specifically address the accommodation of religious practices which do not permit an individual to join or pay dues to a labor organization.[4]

The principles of the Guidelines also apply to the accommodation of other religious practices, such as practices concerning dietary requirements, dress and other grooming habits, observation of a mourning period for a deceased relative, and prohibition of medical examinations.[5]

C. *Undue Hardship.* If any employer refuses to accommodate an individual's religious practices, it must justify the refusal by demonstrating that undue hardship would in fact result from each available alternative.[6] In determining whether an accommodation would require more than a *de minimis* cost, and, therefore, constitute undue hardship, the Commission will give due consideration to the identifiable cost in relation to the size and operating cost of the employer, and the number of individuals who actually need the accommodation.[7] The Guidelines recognize that generally, under *Hardison*, the regular payment of premium wages would constitute undue hardship.[8] However, the Commission will presume that the infrequent or temporary payment of premium wages and the payment of administrative costs are not more than *de minimis* and do not constitute undue hardship.[9] A mere assumption that many others, with the same belief as the individual seeking accommodation, may also need an accommodation, is not sufficient to prove undue hardship in the case of that particular individual.[10]

In reference to the *Hardison* holding on seniority,[11] the Guidelines state that there would be undue hardship if an accommodation required a variance from a bona fide seniority system. They also make it clear that, under Title VII, employers and unions may include provisions in a collective bargaining agreement which allow for voluntary substitutes and swaps as a means of accommodating religious practices.

D. *Selection Practices.* The Guidelines address two selection practices which tend to exclude individuals from employment opportunities because of their religious beliefs: (1) the scheduling of tests and other selection procedures at a time when an individual cannot attend because of this or her religious practices;[12] and (2) inquiries which determine an applicant's availability to work during an employer's scheduled working hours.[13]

If an individual cannot take a test or comply with some other selection procedure because it is scheduled at a time which conflicts with his or her religious practices, the employer has an obligation to make a reasonable accommodation, for example, by allowing the person to take the test at another time.

Based on testimony from the hearings, discussions with representatives of organizations interested in the issue of religious discrimination, and comments from the public on the proposed Guidelines, the Commission concludes that the use of pre-selection inquiries which determine an applicant's availability has an exclusionary effect on persons whose religious practices conflict with an employer's working hours. An employer must, therefore, justify the use of these inquiries by business necessity.

E. *"Religious" Nature of a Practice or Belief.* The Guidelines do not confine the definition of religious practices to theistic concepts or to traditional religious beliefs. The definition also includes moral and ethical beliefs. Under the Guidelines, a belief is religious not because a religious group professes that belief, but because the individual sincerely holds that belief with the strength of traditional religious views. This definition is based on the Supreme court decisions in *Seeger*[14] and *Welsh*[15] and on the standard applied in Commission Decisions.[16]

III. Analysis of Public Comments and Changes to the Guidelines as Proposed

During the 90 day public comment period, the Commission received approximately 350 comments from employers, religious organizations, business associations, labor organizations, and private individuals. About one-half of the comments supported the proposed Guidelines. Most of these comments were from individuals and organizations that observe the Sabbath from sunset on Friday to sunset on Saturday. These commentators described many personal experiences of alleged discrimination and emphasized that, if adopted, the proposed Guidelines would greatly decrease the incidence of religious discrimination in the future. In contrast, the criticism of the proposed Guidelines came mostly from employers and business associations.

The following is an analysis of the major comments received and the changes made to the proposed Guidelines because of these comments. For each section of the final Guidelines, the analysis describes the major public comments, the substantive changes and, finally, the structural changes, such as the incorporation of all substantive footnotes into the text of the Guidelines.

Section 1605.1—"Religious" Nature of a Practice or Belief. Some commentators criticized the definition of religious practices as being too broad and vague, and felt that determining whether a person's belief was sincerely held would be difficult. They also believed that the standard which the Supreme Court developed in the leading selective service decisions, *Seeger* and *Welsh*, was an inappropriate standard for Title VII. The Commission has not made any substantive changes to this section because the definition is well established by court decisions under Title VII and by Commission Decisions. (See *Overview* II E.)

Structural changes: proposed footnote 1 is now incorporated into the text as the last sentence of this section. Footnote 2 of the proposed Guidelines is now footnote 1.

Section 1605.2—Reasonable Accommodation Without Undue Hardship.

(a) *Purpose.* The Commission did not receive any comments on this sub-section. Therefore, no substantive changes have been made.

Structural changes: footnote 3 of the proposed Guidelines, quoting Section 701(j) of Title VII, has been eliminated as unnecessary. Footnote 4 of the proposed Guidelines is now incorporated into the text.

(b) *Duty to Accommodate.* No comments were received on this sub-section. Therefore, there are no substantive changes.

Structural changes: the two sentences of proposed § 1605.2(b)(1) are now sub-sections (1) and (2) respectively. Proposed footnote 5 is now footnote 2. Proposed footnote 6 is now incorporated into the text as sub-section (3).

(c) *Reasonable Accommodation.* This new sub-section combines § 1605.2(b)(2) and (c)(2) of the proposed Guidelines. Many commentators objected to the requirement in proposed § 1605.2(b)(2) that an employer must "explore all possible methods of reasonable accommodation." They felt that the word "explore" was vague and that the obligation "to explore all possible methods" was too onerous. The new § 1605.2(c)(1) clarifies the Commission's position that an employer's obligation to reasonably accommodate an individual's religious practices involves a consideration of available alternative methods of accommodation; and that where an employer refuses to accommodate, it must show that undue hardship would in fact result from each available method of accommodation.

Some commentators believed that the requirement in proposed § 1605.2(c)(2) to "adopt the alternative which least disadvantages the individual" would be inconsistent with *Hardison*. In response to these comments, § 1605.2(c)(2) has been revised. It now states the criteria the Commission will use to determine whether an accommodation is reasonable. It is consistent with *Hardison* and with general Title VII principles. the employer does not have to offer an alternative which would cause undue hardship. However, when there is more than one means of accommodation which would not cause undue hardship, the employer must offer the alternative which least disadvantages the employment opportunities of the individual being accommodated.

Some commentators thought the Guidelines should state that employees have a duty to cooperate in the making of a reasonable accommodation. Because neither Section 701(j), nor any other Section of Title VII, imposes such an obligation on the employee, the Commission does not deem it warranted.

(d) *Alternatives for Accommodating Religious Practices.* In response to the comments, the words "must explore" have been substituted by the words "should consider".

Some commentators objected to the use of the word "satisfactory" when referring to voluntary substitutes. Therefore, in place of "satisfactory", the final Guidelines now use the phrase "substantially similar qualifications", which is the same phrase as that used in the Commission's 1967 Guidelines at 29 CFR § 1605.1(b).[17] The word "swap" has been added to the subtitle "Voluntary

*The transcript of the hearings can be examined by the public at: The Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, D.C. 20506.

[1] Section 1605.2(b).
[2] Section 1605.2(c)
[3] Section 1605.2(d)(1).
[4] Section 1605.2(d)(2).
[5] Section 1605.2(d)(1).
[6] Section 1605.2(c)(1).
[7] Section 1605.(2)(e)(1).
[8] *Hardison*, supra, 432 U.S. at 84
[9] Section 1605.2(e)(1).
[10] Section 1605.2(c)(1).
[11] *Hardison*, supra, 432 U.S. at 80
[12] Section 1605.3(a).
[13] Section 1605.3(b).
[14] *United States* v. *Seeger*, 380 U.S. 163 (1965).
[15] *Welsh* v. *United States*, 398 U.S. 333 (1970).
[16] Section 1605.1.
[17] 32 FR 10298 (July 13, 1967).

Substitutes" in response to the comments.

Structural changes: Proposed § 1605.2(c) is renumbered as § 1605.2(d). Footnote 7 of the proposed Guidelines is now footnote 4. Footnote 8 of the proposed Guidelines has been eliminated.

(e) *Undue Hardship.*

(1) *Cost*—Several commentators argued that the test of *de minimis* in *Hardison* is actual, not relative, cost and that factors such as the size and operating cost of the employer as stated in § 1605.2(e)(1), should not be considered in determining cost. The Commission has reviewed this sub-section in light of the comments and finds that it is consistent with the holding in *Hardison*. However, in response to the comments, it has now been clarified that when investigating a charge, the Commission will presume that the infrequent or temporary payment of premium wages, and the payment of administrative costs do not constitute more than a *de minimis* cost. The language in the proposed Guidelines in this regard was misunderstood as suggesting that the incurring of these costs would always be viewed as *de minimis*.

(2) *Seniority.* Some employers mentioned that the unilateral implementation by the employer of suggested methods of accommodation, such as voluntary substitutes, flexible scheduling, lateral transfer and change of job assignment, could violate a seniority clause in a collective bargaining agreement. The language in this sub-section has been revised to make it clear that where such accommodation requires a variance from a bona fide seniority system, it would be considered as creating an undue hardship.

Structural changes: In the proposed Guidelines, this was sub-section (d) of § 1605.2. It is now sub-section (e).

Section 1605.3—Selection Practices. This section is derived from § 1605.2(e)(1) and (2) of the proposed Guidelines. Sub-section (a) is the same as proposed § 1605.2(e)(1). No comments were received on this sub-section, and no changes have been made.

Sub-section (b) was § 1605.2(e)(2) of the proposed Guidelines. This sub-section also incorporates the substance of footnotes 9 and 10. The sub-section has been rewritten to state the Commission's conclusion that the use of pre-selection inquiries into an applicant's availability has an exclusionary effect on the employment opportunities of persons with certain religious practices. The new language of this sub-section clarifies that unless an employer can show that its use of these inquiries, in fact, did not have an exclusionary effect on its employees or prospective employees, it must justify the use by business necessity. It also suggests an alternative selection procedure which would have a lesser exclusionary effect. Under this procedure, an employer could ask about an applicant's availability to work during the normal work hours apart from any required absences for religious needs; and after offering the position, but before hiring the applicant, it may inquire whether the applicant's religious practices would affect his or her availability in order to determine whether an accommodation is possible. Many employers objected to this alternative which was stated in footnote 10 of the proposed Guidelines. They emphasized their need to know, at the beginning of the selection process, when an individual is available to work. The Commission believes that this alternative is important and has left it in the final Guidelines. In an overwhelming number of cases, the decision by an employer to offer an employment opportunity is likely to remain unaffected by the post-offer information on the need for a religious accommodation. In those infrequent instances where the job is offered to an applicant who then states his or her need for a work schedule accommodation because of religious practices, an employer may be either able to accommodate the need or offer the job to another qualified applicant. Because of the infrequency of such situations and the minimal time required in offering the job to another applicant where the desired accommodation is not possible, the Commission believes that the suggested method would normally serve the employer's legitimate business interest, and also avoid unduly restricting the equal employment opportunities for the religious observers.

Appendix A to §§ 1605.2 and 1605.3—Background Information. No substantive changes to the appendix were necessary. Footnote 11 of the proposed Guidelines is now footnote 5 in the appendix.

Dated: October 28, 1980.

Eleanor Holmes Norton,

Chair, Equal Employment Opportunity Commission.

Accordingly, the Guidelines of the EEOC, 29 CFR Part 1605, are revised to read as follows:

PART 1605—GUIDELINES ON DISCRIMINATION BECAUSE OF RELIGION

Sec.

1605.1 "Religious" nature of a practice or belief.
1605.2 Reasonable accommodation without undue hardship as required by Section 701(j) of Title VII of the Civil Rights Act of 1964.
1605.3 Selection practices.
Appendix A to §§ 1605.2 and 1605.3
1 Background information.

Authority: Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq.

§ 1605.1 "Religious" nature of a practice or belief.

In most cases whether or not a practice or belief is religious is not at issue. However, in those cases in which the issue does exist, the Commission will define religious practices to include moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views. This standard was developed in *United States* v. *Seeger*, 380 U.S. 163 (1965) and *Welsh* v. *United States*, 398 U.S. 333 (1970). The Commission has consistently applied this standard in its decisions.[1] The fact that no religious group espouses such beliefs or the fact that the religious group to which the individual professes to belong may not accept such belief will not determine whether the belief is a religious belief of the employee or prospective employee. The phrase "religious practice" as used in these Guidelines includes both religious observances and practices, as stated in Section 701(j), 42 U.S.C. 2000e(j).

§ 1605.2 Reasonable accommodation without undue hardship as required by Section 701(j) of Title VII of the Civil Rights Act of 1964.

(a) *Purpose of this section.*

This section clarifies the obligation imposed by Title VII of the Civil Rights Act of 1964, as amended, (sections 701(j), 703 and 717) to accommodate the religious practices of employees and prospective employees. This section does not address other obligations under Title VII not to discriminate on grounds of religion, nor other provisions of Title VII. This section is not intended to limit any additional obligations to accommodate religious practices which may exist pursuant to constitutional, or other statutory provisions; neither is it intended to provide guidance for statutes which require accommodation on bases other than religion such as § 503 of the Rehabilitation Act of 1973.

[1] See CD 76-104 (1976), CCH ¶6500; CD 71-2620 (1971), CCH ¶6283; CD 71-779 (1970), CCH ¶6160.

The legal principles which have been developed with respect to discrimination prohibited by Title VII on the bases of race, color, sex, and national origin also apply to religious discrimination in all circumstances other than where an accommodation is required.

(b) *Duty to accommodate.*

(1) Section 701(j) makes it an unlawful employment practice under § 703(a)(1) for an employer to fail to reasonably accommodate the religious practices of an employee or prospective employee, unless the employer demonstrates that accommodation would result in undue hardship on the conduct of its business.[2]

(2) Section 701(j) in conjunction with § 703(c), imposes an obligation on a labor organization to reasonably accommodate the religious practices of an employee or prospective employee, unless the labor organization demonstrates that accommodation would result in undue hardship.

(3) Section 1605.2 is primarily directed to obligations of employers or labor organizations, which are the entities covered by Title VII that will most often be required to make an accommodation. However, the principles of Section 1605.2 also apply when an accommodation can be required of other entities covered by Title VII, such as employment agencies (§ 703(b)) or joint labor-management committees controlling apprenticeship or other training or retraining (§ 703(d)). (See, for example, § 1605.3(a) "Scheduling of Tests or Other Selection Procedures.")

(c) *Reasonable Accommodation.*

(1) After an employee or prospective employee notifies the employer or labor organization of his or her need for a religious accommodation, the employer or labor organization has an obligation to reasonably accommodate the individual's religious practices. A refusal to accommodate is justified only when an employer or labor organization can demonstrate that an undue hardship would in fact result from each available alternative method of accommodation. A mere assumption that many more people, with the same religious practices as the person being accommodated, may also need accommodation is not evidence of undue hardship.

(2) When there is more than one method of accommodation available which would not cause undue hardship, the Commission will determine whether the accommodation offered is reasonable by examining:

(i) The alternatives for accommodation considered by the employer or labor organization; and

(ii) The alternatives for accommodation, if any, actually offered to the individual requiring accommodation. Some alternatives for accommodating religious practices might disadvantage the individual with respect to his or her employment opportunites, such as compensation, terms, conditions, or privileges of employment. Therefore, when there is more than one means of accommodation which would not cause undue hardship, the employer or labor organization must offer the alternative which least disadvantages the individual with respect to his or her employment opportunities.

(d) *Alternatives for Accommodating Religious Practices.*

(1) Employees and prospective employees most frequently request an accommodation because their religious practices conflict with their work schedules. The following subsections are some means of accommodating the conflict between work schedules and religious practices which the Commission believes that employers and labor organizations should consider as part of the obligation to accommodate and which the Commission will consider in investigating a charge. These are not intended to be all-inclusive. There are often other alternatives which would reasonably accommodate an individual's religious practices when they conflict with a work schedule. There are also employment practices besides work scheduling which may conflict with religious practices and cause an individual to request an accommodation. See, for example, the Commission's finding number (3) from its Hearings on Religious Discrimination, in Appendix A to §§ 1605.2 and 1605.3. The principles expressed in these Guidelines apply as well to such requests for accommodation.

(i) Voluntary Substitutes and "Swaps".

Reasonable accommodation without undue hardship is generally possible where a voluntary substitute with substantially similar qualifications is available. One means of substitution is the voluntary swap. In a number of cases, the securing of a substitute has been left entirely up to the individual seeking the accommodation. The Commission believes that the obligation to accommodate requires that employers and labor organizations facilitate the securing of a voluntary substitute with substantially similar qualifications. Some means of doing this which employers and labor organizations should consider are: to publicize policies regarding accommodation and voluntary substitution; to promote an atmosphere in which such substitutions are favorably regarded; to provide a central file, bulletin board or other means for matching voluntary substitutes with positions for which substitutes are needed.

(ii) Flexible Scheduling.

One means of providing reasonable accommodation for the religious practices of employees or prospective employees which employers and labor organizations should consider is the creation of a flexible work schedule for individuals requesting accommodation.

The following list is an example of areas in which flexibility might be introduced: flexible arrival and departure times; floating or optional holidays; flexible work breaks; use of lunch time in exchange for early departure; staggered work hours; and permitting an employee to make up time lost due to the observance of religious practices.[3]

(iii) Lateral Transfer and Change of Job Assignments.

When an employee cannot be accommodated either as to his or her entire job or an assignment within the job, employers and labor organizations should consider whether or not it is possible to change the job assignment or give the employee a lateral transfer.

(2) Payment of Dues to a Labor Organization.

Some collective bargaining agreements include a provision that each employee must join the labor organization or pay the labor organization a sum equivalent to dues. When an employee's religious practices to not permit compliance with such a provision, the labor organization should accommodate the employee by not requiring the employee to join the organization and by permitting him or her to donate a sum equivalent to dues to a charitable organization.

(e) Undue Hardship.

(1) Cost.

An employer may assert undue hardship to justify a refusal to accommodate an employee's need to be absent from his or her scheduled duty hours if the employer can demonstrate that the accommodation would require "more than a *de minimis* cost".[4] The Commission will determine what constitutes "more than a *de minimis* cost" with due regard given to the

[2] See *Trans World Airlines, Inc.* v. *Hardison*, 432 U.S. 63, 74 (1977).

[3] On September 29, 1978, Congress enacted such a provision for the accommodation of Federal employees' religious practices. See Pub. L. 95-390, 5 U.S.C. 5550a "Compensatory Time Off for Religious Observances."

[4] *Hardison, supra*, 432 U.S. at 84.

identifiable cost in relation to the size and operating cost of the employer, and the number of individuals who will in fact need a particular accommodation. In general, the Commission interprets this phrase as it was used in the *Hardison* decision to mean that costs similar to the regular payment of premium wages of substitutes, which was at issue in *Hordison*, would constitute undue hardship. However, the Commission will presume that the infrequent payment of premium wages for a substitute or the payment of premium wages while a more permanent accommodation is being sought are costs which an employer can be required to bear as a means of providing a reasonable accommodation. Further, the Commission will presume that generally, the payment of administrative costs necessary for providing the accommodation will not constitute more than a *de minimis* cost. Administrative costs, for example, include those costs involved in rearranging schedules and recording substitutions for payroll purposes.

(2) Seniority Rights. Undue hardship would also be shown where a variance from a bona fide seniority system is necessary in order to accommodate an employee's religious practices when doing so would deny another employee his or her job or shift preference guaranteed by that system. *Hardison, supra*, 432 U.S. at 80. Arrangements for voluntary substitutes and swaps (see paragraph (d)(1)(i) of this section) do not constitute an undue hardship to the extent the arrangements do not violate a bona fide seniority system. Nothing in the Statute or these Guidelines precludes an employer and a union from including arrangements for voluntary substitutes and swaps as part of a collective bargaining agreement.

§ 1605.3 Selection practices.

(a) Scheduling of Tests or Other Selection Procedures. When a test or other selection procedure is scheduled at a time when an employee or prospective employee cannot attend because of his or her religious practices, the user of the test should be aware that the principles enunciated in these guidelines apply and that it has an obligation to accommodate such employee or prospective employee unless undue hardship would result.

(b) Inquiries Which Determine An Applicant's Availability to Work During An Employer's Scheduled Working Hours.

(1) The duty to accommodate pertains to prospective employees as well as current employees. Consequently, an employer may not permit an applicant's need for a religious accommodation to affect in any way its decision whether to hire the applicant unless it can demonstrate that it cannot reasonably accommodate the applicant's religious practices without undue hardship.

(2) As a result of the oral and written testimony submitted at the Commission's Hearings on Religious Discrimination, discussions with representatives of organizations interested in the issue of religious discrimination, and the comments received from the public on these Guidelines as proposed, the Commission has concluded that the use of pre-selection inquiries which determine an applicant's availability has an exclusionary effect on the employment opportunities of persons with certain religious practices. The use of such inquiries will, therefore, be considered to violate Title VII unless the employer can show that it:

(i) Did not have an exclusionary effect on its employees or prospective employees needing an accommodation for the same religious practices; or

(ii) Was otherwise justified by business necessity.

Employers who believe they have a legitimate interest in knowing the availability of their applicants prior to selection must consider procedures which would serve this interest and which would have a lesser exclusionary effect on persons whose religious practices need accommodation. An example of such a procedure is for the employer to state the normal work hours for the job and, after making it clear to the applicant that he or she is not required to indicate the need for any absences for religious practices during the scheduled work hours, ask the applicant whether he or she is otherwise available to work those hours. Then, after a position is offered, but before the applicant is hired, the employer can inquire into the need for a religious accommodation and determine, according to the principles of these Guidelines, whether an accommodation is possible. This type of inquiry would provide an employer with information concerning the availability of most of its applicants, while deferring until after a position is offered the identification of the usually small number of applicants who require an accommodation.

(3) The Commission will infer that the need for an accommodation discriminatorily influenced a decision to reject an applicant when: (i) prior to an offer of employment the employer makes an inquiry into an applicant's availability without having a business necessity justification; and (ii) after the employer has determined the applicant's need for an accommodation, the employer rejects a qualified applicant. The burden is then on the employer to demonstrate that factors other than the need for an accommodation were the reason for rejecting the qualified applicant, or that a reasonable accommodation without undue hardship was not possible.

Appendix A to §§ 1605.2 and 1605.3—Backgrouod Information

In 1966, the Commission adopted guidelines on religious discrimination which stated that an employer had an obligation to accommodate the religious practices of its employees or prospective employees unless to do so would create a "serious inconvenience to the conduct of the business". 29 CFR 1605.1(a)(2), 31 FR 3870 (1966).

In 1967, the Commission revised these guidelines to state that an employer had an obligation to reasonably accommodate the religious practices of its employees or prospective employees, unless the employer could prove that to do so would create an "undue hardship". 29 CFR 1605.1(b)(c), 32 FR 10298.

In 1972, Congress amended Title VII to incorporate the obligation to accommodate expressed in the Commission's 1967 Guidelines by adding section 701(j).

In 1977, the United States Supreme Court issued its decision in the case of *Trans World Airlines, Inc.* v. *Hardison*, 432 U.S. 63 (1977). *Hardison* was brought under section 703(a)(1) because it involved facts occurring before the enactment of Section 701(j). The Court applied the Commission's 1967 Guidelines, but indicated that the result would be the same under Section 701(j). It stated that Trans World Airlines had made reasonable efforts to accommodate the religious needs of its employee, Hardison. The Court held that to require Trans World Airlines to make further attempts at accommodations—by unilaterally violating a seniority provision of the collective bargaining agreement, paying premium wages on a regular basis to another employee to replace Hardison, or creating a serious shortage of necessary employees in another department in order to replace Hardison—would create an undue hardship on the conduct of Trans World Airlines' business, and would therefore, exceed the duty to accommodate Hardison.

In 1978, the Commission conducted public hearings on religious discrimination in New York City, Milwaukee, and Los Angeles in order to respond to the concerns raised by *Hardison*. Approximately 150 witnesses testified or submitted written statements.[5] The witnesses included employers, employees, representatives of religious and labor organizations and representatives of Federal, State and local governments.

The Commission found from the hearings that:

[5] The transcript of the Commission's Hearings on Religious Discrimination can be examined by the public at: The Equal Employment Opportunity Commission, 2401 E Street NW., Washington, D.C. 20506.

(1) There is widespread confusion concerning the extent of accommodation under the *Hardison* decision.

(2) The religious practices of some individuals and some groups of individuals are not being accommodated.

(3) Some of those practices which are not being accommodated are:

—Observance of a Sabbath or religious holidays;

—Need for prayer break during working hours;

—Practice of following certain dietary requirements;

—Practice of not working during a mourning period for a deceased relative;

—Prohibition against medical examinations;

—Prohibition against membership in labor and other organizations; and

—Practices concerning dress and other personal grooming habits.

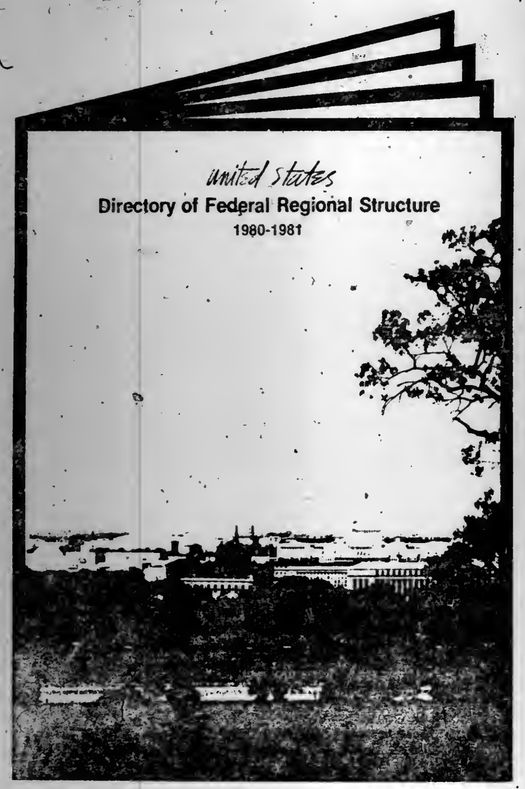
(4) Many of the employers who testified had developed alternative employment practices which accommodate the religious practices of employees and prospective employees and which meet the employer's business needs.

(5) Little evidence was submitted by employers which showed actual attempts to accommodate religious practices with resultant unfavorable consequences to the employer's business. Employers appeared to have substantial anticipatory concerns but no, or very little, actual experience with the problems they theorized would emerge by providing reasonable accommodation for religious practices.

Based on these findings, the Commission is revising its Guidelines to clarify the obligation imposed by Section 701(j) to accommodate the religious practices of employees and prospective employees.

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